

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA )  
 )  
 -versus- )  
 )  
 JAMES A. COX, )  
 )  
 Defendant. )

Docket #15-CRS-054673,  
15-CRS-54665

**MOTION FOR APPROPRIATE RELIEF**

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NOW COMES THE DEFENDANT, JAMES A. COX, and moves this Court to grant him appropriate relief from his convictions for Discharging a Weapon into an Occupied Dwelling/Moving Vehicle (N.C.G.S. § 14-34.1(B), Conspiracy to Commit Robbery with a Dangerous Weapon (N.C.G.S. § 14-87), Breaking and Entering (N.C.G.S. § 14-54(A)) and sentences thereon. The following exhibits are attached to this motion:

**Exhibit A - Docket # COA18-692 - Record on Appeal**

**Exhibit B - Trial Transcripts**

**Exhibit C - Docket # COA18-692 - Defendant-Appellant's Brief**

**Exhibit D - Docket # COA18-692 - Brief for the State**

**Exhibit E - Docket # COA18-692 - Opinion of the Court of Appeals**

**Exhibit F - Docket # 94PA19 - State's Petition for Discretionary Review**

**Exhibit G - Docket # 94PA19 - Defendant's Response to Petition for Discretionary Review**

**Exhibit H - Docket # 94PA19 - Brief for the State**

**Exhibit I - Docket # 94PA19 - Defendant-Appellee's Brief**

**Exhibit J - Docket # 94PA19 - Opinion of the Supreme Court**

In support of this motion, the Defendant shows the following:

**INTRODUCTION AND PROCEDURAL HISTORY**

1. Defendant James A. Cox and Ashley Dean Jackson were charged with several offenses arising from an incident that occurred on August 8, 2015.

2. Cox and Jackson were tried before this Court and a jury During the January 8, 2018 Criminal Session of this Court, the Honorable William W. Bland presiding. At the conclusion of trial, Cox was convicted of Discharging a Weapon into an Occupied Dwelling/Moving Vehicle (N.C.G.S. § 14-34.1(B), Conspiracy to Commit Robbery with a Dangerous Weapon (N.C.G.S. § 14-87), Breaking and Entering as a felony (N.C.G.S. § 14-54(A)).

3. Both defendants gave notice of appeal in open court, but Jackson later withdrew it and elected not to appeal.

4. Cox prosecuted a direct appeal to the North Carolina Court of Appeals, Case # COA18-692. On March 5, 2019, the Court of Appeals affirmed in part and reversed in part, reversing the conviction of Conspiracy to Commit Robbery with a Dangerous Weapon, and reducing the conviction for felony Breaking and Entering to misdemeanor Breaking and Entering, affirming the conviction for Discharging a Weapon into an Occupied Property, and remanding for resentencing. State v. Cox, 264 N.C. App. 217, 825 S.E.2d 266 (N.C. Ct. App. 2019).

5. The State thereafter successfully sought discretionary review from the North Carolina Supreme Court. On August 14, 2020 the North Carolina Supreme Court reversed the judgment of the Court of Appeals and reinstated the convictions. State v. Cox, 375 N.C. 165, 846 S.E.2d 482 (N.C. 2020).

6. This motion now follows. No prior application seeking the relief requested herein has been made to this Court or any other court of competent jurisdiction.

7. Counsel hereby gives notice to the State that Defendant is asserting substantial violations of his rights under the United States Constitution, including but not limited to those guaranteed under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; and that he is asserting substantial violations of his rights under the North Carolina Constitution, including but not limited to the provisions contained in Article I, Sections 19, 21 and 23. Defendant is asserting other violations of Federal and State statutory and common law, all of which will be cited in greater particularity prior to the Court's consideration of the Motion for Appropriate Relief at a hearing.

### **STATEMENT OF THE FACTS**

#### Pre-Trial Motions

8. On January 9, 2018, the cases were called for trial and the State moved to join both defendants for a consolidated trial, to which the defense voiced no opposition. (ROA:8-11, T:8-9). Jury selection commenced immediately thereafter. During jury selection, Juror Number 4 was seated as a sworn juror. Upon completion of jury selection, the jury was impaneled. (T:17-18).

#### The Evidence at Trial

9. Following opening statements, ANGELA LEISURE testified first for the State. (T:27). Leisure testified that since she graduated high school, she worked at various jobs, including sales and fast food restaurants. (T:28). In August, 2015, she was living at 128 Silver Leaf Drive in Brynn Marr, North Carolina with her daughter. (T:28). At that time she was in a relationship with Daniel McMinn, and was friends with Richard Linn who lived nearby. (T:29). She described her friendship with Linn as one that centered around drugs; she would get drugs from him, and at times, he would get drugs from her. (T:29, 44). On the date of the incident, she was addicted to pills, marijuana, and cocaine. (T:29-30).

10. On August 8, 2015 she arrived home with Daniel McMinn shortly before midnight and went to change her clothes in her bedroom. (T:31-32). She heard McMinn let some people into her house, and heard yelling, and saw co-defendant Ashley Jackson, whom she knew, walk by her bedroom. (T:30, 37-38). Leisure testified that Jackson pulled her hair and hit her, causing her to fall down while saying "Give me my money." (T:38-39). Leisure testified as she struggled with Jackson, Richard Linn and James Cox came into the house. (T:40-41). She claimed that she saw Cox holding an object under his shirt which she assumed to be a gun, and shouted for someone to call the police. (T:42). She did not see a firearm. (T:64). Leisure testified McMinn was threatened not to call police, and placed his phone back into his pocket. Thereafter, Linn pulled Jackson off Leisure, saying "That's enough" and then all three of the visitors left Leisure's home. (T:43). Leisure went into her bedroom and locked the door, and after McMinn removed the three from the home, she heard banging on the front door and glass breaking. (T:43).

11. Leisure claimed she had no idea about the money Jackson demanded from her. (T:44). She acknowledged that prior to the incident, Linn had given her money to obtain drugs for him, but claimed it was approximately 1 month prior. (T:45). She brought the \$50 Linn gave her to her drug dealer, who took the money but gave her nothing in return. (T:45). Leisure admitted that she was buying drugs for multiple people, including Linn. (T:57). Despite this theft, she claimed that Linn never told her that the money was intended to buy drugs for anyone else, and claimed she never had to repay Linn the \$50 that he gave to her, even though he requested his money back. (T:45-46).

12. On cross-examination, Leisure testified that she did, in fact, owe money to Richard Linn, contradicting both her direct examination and a statement she gave to police on August 8, 2015. (T:53). Leisure testified that Linn contacted her between the time he gave her the money

and the date of the incident for his money to be returned, and that she avoided him. (T:59-60). She further admitted that she lied to police after the incident when she told them that the incident was not drug related. (T:53). Leisure also admitted that she lied to police when she had not seen Ashley Jackson for several years. (T:55). Leisure admitted that nothing was taken from her or her home during this incident. (T:54). She also testified that McMinn may have allowed the three people into her home while she was in her bedroom. (T:58).

13. Importantly, Leisure further testified on cross-examination that she never saw James Cox's face, nor did she know his name, on the night of the incident. (T:61). She described him to police as either Hispanic or of mixed race. (T:61). She also told police she knew the first two suspects (Linn and Jackson) but did not know the third suspect. (T:62).

14. Following Leisure's testimony, the jury was excused for the day and the case continued to the following day.

#### The Issue Concerning Juror Number 4

15. At the start of proceedings on January 10, 2018, the Court alerted the parties that after Angela Leisure's testimony the day before, Juror Number 4 told the bailiff that he knew Leisure because they had worked together in the past. (T:79). The defense requested further voir dire and the Court brought in the juror and questioned him. The juror told the Court that he had worked with Leisure at a Taco Bell years prior, but stated that he could still be fair and impartial despite his prior relationship with the witness. (T:81). Without asking him any questions, trial counsel consented to Juror Number 4 remaining on the jury. (T:82-84)

#### The Evidence at Trial Continued

16. DANIEL MCMINN testified that on August 8, 2015, he was dating Angela Leisure and went home with Angela Leisure. (T:86-87). As Leisure entered the house, he saw a car park

in front of the home, and three people started walking to the front of the house. (T:88). Of the three, he only recognized Richard Linn. (T:89). McMinn never told Jackson to stop or not to enter the house. (T:105). McMinn testified that Jackson entered the house and went looking for Leisure. (T:90). The other two remained outside. (T:91). He and the other two entered the house to see what was going on. (T:93). Inside, he saw Jackson fighting with Leisure, and pulled out his cell phone to call 911 when he claimed that Cox showed him a gun and told him not to make any calls. (T:94-95). When asked if he got a good look at the gun, he replied "I think I did, yeah" but could not describe the gun as anything other than a handgun. (T:95). McMinn put his phone back in his pocket and Linn persuaded Jackson to leave Leisure alone. (T:95). After Jackson got off of Leisure, the three walked out the front door and McMinn locked it behind them. (T:96). McMinn claimed that someone kicked the door, damaging it, and heard someone fire a gun through the door, but the bullet was never found. (T:98). McMinn also claimed that there was no corresponding bullet hole through the door. (T:99).

17. On cross-examination, McMinn claimed that he never saw Linn purchase drugs from Leisure during the multi-year relationship, and never saw her giving drugs to anyone else from her home. (T:104). McMinn also admitted that he walked to court from the District Attorney's Office and sat in the courtroom with Richard Linn, the same person who allegedly burglarized his girlfriend's home. (T:115-116). He was also impeached with a statement he gave to police on the night of the incident, in which he never claimed a firearm was used or present. (T:120).

18. RICHARD LINN testified for the State pursuant to a cooperation agreement. (T:130-131). In that agreement, he entered an Alford plea to Breaking and Entering, agreed to testify against the Defendant and co-defendant, and was promised probation and dismissal of the greater charges. (T:142-144). Linn testified that he and Leisure were friends, and he used her as a

connection to obtain drugs regularly. (T:122-123). He would give her the money, and she would pick up the drugs and distribute them later. (T:123). According to Linn, prior to August 8, 2015, Cox gave him money to buy drugs, and Linn then gave the money to Leisure. (T:125-126). Contradicting Leisure's testimony, Linn testified that he gave the money to Leisure the same day of the alleged incident, not 1 month before. (T:126). Further contradicting Leisure, he gave her approximately \$80, not \$50, for Percocet pills. (T:126). After Leisure failed to deliver, Linn contacted her several times, telling her it was not all of his money that he gave her, but she avoided him. (T:127).

19. Linn testified that Cox came to his house with Jackson on the night of the incident and told him to get into the car, and was in possession of a gun. (T:128-129). Linn claimed he did not know why they wanted to go to Leisure's house. (T:129). However, he wanted to question Leisure about his own missing money. (T:145). Contradicting McMinn's testimony, Richard Linn testified that when they pulled up to Leisure's home, they walked to the front door and asked to speak with Leisure, and Jackson told McMinn that Leisure had taken money from her. (T:133-134). Further contradicting McMinn's testimony, Linn claimed Cox and Jackson entered the house and he remained outside until there was a fight between Leisure and Jackson. (T:135-136). Linn testified that McMinn did not attempt to stop anyone from entering the house. (T:146-147). Linn claimed to see Defendant direct McMinn to put his cell phone away while holding a handgun. (T:136-137). Linn testified her told Jackson to stop attacking Leisure, and said they needed to go, and all three left the residence. (T:138). Linn testified that Cox turned and kicked the front door, damaging it, and then fired the gun through the door. (T:138-139). They all got back into the car and drove off, and Linn was dropped off and home and put his children to bed. (T:139-140).

20. At some point shortly after the incident, Linn was questioned by law enforcement and gave a different version of the events of August 8, 2015 before invoking his right to counsel. (T:140). During that interview, he told police that Leisure had stolen \$20 from him, and the \$20 had belonged to a female. (T:142). On cross-examination, Linn testified that he pled guilty to Breaking and Entering, but was not actually guilty of that charge. (T:143). He further admitted that there was no agreement or consensus to rob Leisure; the only reason they went to Leisure's house was to confront her about the missing money. (T:145-146). Linn further admitted on cross-examination that it may have been Cox that physically pulled Jackson off Leisure inside the house. (T:148). Linn further admitted that he initially lied to police, telling them that the female who was owed \$20 was named something other than Ashley, possibly Amber. (T:154).

21. DETECTIVE JACOB PARKER of the Jacksonville Police Department testified that on August 8, 2015, he was working an overnight shift providing security for a car dealership when he received a call regarding a robbery or burglary investigation. (T:165-166). The following morning he went to work and arranged to meet Leisure at her home. (T:167-168). He attempted to find the projectile that was allegedly discharged from a firearm, but was unable to locate the bullet. (T:171, 185). As a result of that meeting, he obtained the name Richard Linn, and met with Leisure again at the police station and recorded his interview with her. (T:171, 185). During his interviews with Leisure, she omitted any mention of drugs being involved in this incident. (T:214-215). Further investigation developed the name Ashley Jackson, and he obtained a warrant for Jackson's arrest. (T:190-191). Jackson was arrested on August 10, 2015, and Cox was in her company. (T:192-193). Parker spoke with Richard Linn, who lied to him and told him the name of the female that accompanied him to Leisure's home was named "Amber" and that the name of the other male was "J." (T:213). Linn did tell Parker that Angela Leisure had stolen \$20 from



him, and that \$20 belonged to an unnamed female. (T:215-216). Linn never told police that he entered into any agreement with either Cox or Jackson to rob anyone on August 8, 2015. (T:221).

22. Cox and Jackson were taken to the police station, and were both questioned. (T:194). Jackson gave a statement, denying criminal activity. (T:194-195). Cox gave consent for his vehicle to be searched, but a search produced nothing. (T:214). Without objection, Detective Parker testified that Cox refused to speak with him. (T:201). Later, Jackson told Parker that she did commit an assault, but still denied breaking into Leisure's house or firing a weapon. (T:201-202).

23. Detective Parker testified that approximately 10 police officers searched the scene of the alleged crime, but found no bullet and no firearm. (T:219).

24. POLICE OFFICER ROBIN WALLACE testified she responded to an address on August 10, 2015 in Jacksonville for a call for service. (T:223-224). Upon arrival, she found Ashley Jackson and James Cox in a bedroom of the residence, and immediately placed them in handcuffs as a result of a warrant for Jackson's arrest. (T:224-225). Jackson told her that she had not done anything wrong and was innocent. (T:233). The two were separated, and Jackson consented to a search of the bedroom and her vehicle which was in the driveway. (T:226). The search of the room produced a small amount of marijuana and paraphernalia, some rounds of .22 caliber ammunition, a spent shell casing, a 9mm gun case, and two cell phones. (T:226-227, 230). During her arrest processing, Jackson told Wallace that she never had a gun, and was "not going down for no gun." (T:232-233).

25. Following Police Officer Wallace's testimony, the State rested. (T:237).

### The Motion for a Judgment of Acquittal

26. Trial counsel moved to dismiss Count # 1, First Degree Burglary and Count # 2, Conspiracy to Commit Robbery with a Dangerous Weapon, but did not move to dismiss Count # 3, Discharging a Firearm into Occupied Property. (T:240). The court denied the application, and continued the case until the following day. (T:246).

### The Defense Case

27. POLICE OFFICER KOURTNEY MARTIN of the Jacksonville Police Department testified she responded to 128 Silver Leaf Drive on August 9, 2015 and interviewed Daniel McMinn. (T:255). During that interview, McMinn told her, contrary to his earlier sworn testimony, that the three intruders gained entry into Angela Leisure's home by kicking the door in first, and he also never stated that a firearm was used. (T:255, 258). Martin also spoke with Angela Leisure and asked Leisure if the incident was drug related, but Leisure told her the incident did not have anything to do with drugs. (T:260-261).

28. POLICE OFFICER WILLIAM WOOLFOLK of the Jacksonville Police Department Crime Scene Investigation team testified that he responded to 128 Silver Leaf Drive to search for evidence. (T:265). He went to "great length" to search for the alleged bullet that was fired into the house, searching a sofa and taking pictures off of walls, even starting to take some furniture apart, but found nothing. (T:266-267).

29. JAMES COX testified in his own defense. Cox graduated from high school in Onslow County in 2011, and was working at a carpet cleaning company. (T:272). On August 8, 2015, he was in a romantic relationship with Ashley Jackson, and frequented her home. (T:274). He knew Richard Linn as an acquaintance, and on August 8, 2015 he asked Linn to procure some pain pills because Jackson's back was aching. (T:277-278). Cox did not take pain pills himself, but

acknowledged using marijuana. (T:276). Linn promised to help, and told Cox to drop off money to him and to await his call. (T:277-278). Cox dropped off the money and waited for Linn's call at Jackson's home. (T:278). Later, Linn called and asked Cox to come pick him up because the young lady that he gave Cox's money to took the money but stopped answering his calls. (T:278). Linn told Cox that he was good friends with the young lady and if he got a ride to her house, he would be able to talk to her and get the money returned. (T:278). Cox had no idea who Angela Leisure was or where she lived. (T:276, 279).

30. Cox drove with Jackson over to Linn's house and picked him up. (T:279). He did not carry or display a gun, contrary to what Linn claimed. (T:279). Linn directed Cox to Leisure's home, and was himself upset because apparently the same woman had stolen his money as well as Cox's money. (T:280). As they drove up to the house, McMinn was outside, about to carry some bags into the house, and Linn went to speak with McMinn. (T:280). Linn said he needed to talk to Angie, and McMinn said ok and permitted the three to enter the house by holding the door open. (T:281). Once inside, McMinn closed the front door and called for Leisure, who appeared from out of her bedroom. (T:281-282). Jackson asked Leisure where was the money, and Leisure at first feigned ignorance, then started laughing at Jackson. (T:282). Linn then accused Leisure of stealing \$50, of which \$20 was Jackson's, and again feigned ignorance before laughing at them again. Id. At that point, a scuffle broke out between Leisure and Jackson, and Cox suggested they leave. (T:283). McMinn started to intercede, but Cox told him that he would get Jackson, pulled Jackson off Leisure, and walked out the front door. (T:283). McMinn followed them out, shouting profanities at them before slamming the door shut. (T:284). Jackson gave the bottom of the door a "horse kick" before the three entered the car and drove off. (T:284-285). Cox denied ever

possessing a weapon on that evening, stealing anything from the house, or entering without permission. (T:285).

31. On August 10, 2015, he was with Jackson at her home when police officers arrived, came into the bedroom, and demanded “the gun.” (T:275). He was handcuffed, and gave police permission to search his car before he was forcibly taken to the police station. (T:275).

32. Following Cox’s testimony, the defense rested and Jackson elected to present no evidence. (T:315). The defense renewed its motions to dismiss at the close of all evidence, and again the motions were denied. (T:315-318). However, the State agreed to abandon all counts in Indictment in Case # 15-CRS-54674, Assault with a Deadly Weapon, Injury to Real Property, and Injury to Personal Property. (T:317).

#### The Charge Conference

33. During the charge conference, the trial court acknowledged that the Indictment alleged that James A. Cox and Ashley Dean Jackson were charged with conspiring with each other and Richard Linn to rob Angela Leisure. (T:326). However, the court indicated that it would instruct the jury that they could find the defendants guilty if they conspired with each other, or Richard Linn. (T:326). Co-counsel objected on behalf of Jackson. Id. Trial counsel did not object on behalf of Cox. (T:329, 344).

#### The Jury Charge

34. In instructing the jury, the trial court used the language from Pattern Jury Instructions 2102.80, Felonious Conspiracy, incorporating some, but not all, of the language from Instruction 217.20, Robbery with a Firearm. (ROA:24, T:358-359). The court did not instruct the jury as to a claim of right defense, nor did counsel request such an instruction or lodge an objection to the jury instructions.

### Deliberations

35. Shortly after deliberations commenced, the jury sent the court a note with two questions: “Can we get clarification of ‘While the defendant knows that the defendant is not entitled to take the property’ page 6 last line of robbery definition” and “Is it still robbery to take back one owns (sic) property?” (ROA:14, T:371). The court invited responses from the attorneys. (T:371). The District Attorney suggested the court re-read the jury instruction in response, and trial counsel stated “I’ve never seen it done another way, so I don’t have another solution.” (T:372-373). The court then noted “[i]t’s a slippery slope to go into, you know. Legal justifications need to be pled and argued, and all that, and I can’t go there.” (T:373-374).

36. The court then convened the jury and instructed them that they had to determine the facts from the evidence, and apply those facts to the jury instructions, but gave no further instruction. (T:376). Counsel raised no objection. (T:379).

37. After breaking for the weekend, the jury delivered the verdict the following working day, finding Ashley Dean Jackson guilty of Conspiracy to Commit Robbery with a Dangerous Weapon, Breaking and Entering as a felony, and Simple Assault. (T:393). The jury also found James A. Cox guilty of the lesser-included offenses of Breaking and Entering as a felony, Conspiracy to Commit Robbery with a Dangerous Weapon, and Discharging a Weapon into an Occupied Property. (T:393-394).

38. Trial counsel then moved to set aside the verdict on the grounds that the verdict was against the weight of the evidence, but the motion was denied. (T:408). The court imposed sentence on both defendants and entered judgment.

### Direct Appeal to the Court of Appeals

39. Defendant perfected a direct appeal to the Court of Appeals in Case # COA18-692, raising the following claims of error:

I. WHETHER THE TRIAL JUDGE COMMITTED PLAIN ERROR BY FAILING TO RESPOND TO THE JURY'S TWO QUESTIONS?

II. WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILURE TO REQUEST FURTHER INSTRUCTIONS IN RESPONSE TO THE JURY'S TWO QUESTIONS?

III. WHETHER THE TRIAL JUDGE ERRED IN DENYING THE DEFENDANT'S MOTION AT THE END OF ALL THE EVIDENCE, TO DISMISS CONSPIRACY TO COMMIT ARMED ROBBERY?

IV. WHETHER THE TRIAL JUDGE ERRED IN DENYING THE DEFENDANT'S MOTION AT THE END OF ALL THE EVIDENCE, TO DISMISS FELONIOUS BREAKING AND ENTERING?

40. In reversing the conviction of Conspiracy to Commit Robbery with a Dangerous Weapon, and reducing the conviction for felony Breaking and Entering to misdemeanor Breaking and Entering, and in affirming the conviction for Discharging a Weapon into an Occupied Property, the Court of Appeals never reached Claim I and Claim II. State v. Cox, 264 N.C. App. 217, 825 S.E.2d 266 (N.C. Ct. App. 2019).

41. The State petitioned the North Carolina Supreme Court for discretionary review in Case # 94P19, and Cox cross-petitioned for discretionary review as to Claims I and II. The North Carolina Supreme Court granted the State's petition, but denied Cox's petition. In reversing the Court of Appeals and reinstating the convictions, the North Carolina Supreme Court never reached either of those claims.

42. This Motion for Appropriate Relief now follows the North Carolina Supreme Court's final decision on direct appeal dated August 14, 2020.

## ARGUMENT

### **CLAIM I – DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL BASED UPON COUNSEL’S FAILURE TO REQUEST A JURY INSTRUCTION ON THE CLAIM OF RIGHT DEFENSE, FAILURE TO OBJECT TO THE TRIAL COURT’S FAILURE TO INSTRUCT THE JURY ON THE CLAIM OF RIGHT DEFENSE, FAILURE TO OBJECT TO THE TRIAL COURT’S REFUSAL TO ANSWER A JURY NOTE ON SUBSTANTIVE ISSUES OF LAW, FAILURE TO OBJECT TO THE TRIAL COURT’S JURY INSTRUCTION ON FELONIOUS BREAKING AND ENTERING, AND FAILURE TO OBJECT TO THE VERDICT AS A MUTUALLY EXCLUSIVE, LEGALLY INCONSISTENT VERDICT**

43. The Sixth Amendment of the United States Constitution guarantees each defendant in a criminal prosecution the right to the effective assistance of counsel. The fundamental right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive due process of law in an adversarial system of justice. United States v. Cronin, 466 U.S. 648, 658 (1984).

44. The Supreme Court has held that “[t]he benchmark of judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial [court] cannot be relied on having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984).

45. Under the Strickland standard, ineffective assistance of counsel is established when the defendant shows that (1) trial counsel’s performance was deficient, i.e., that he or she made errors so egregious that they failed to function as the “counsel guaranteed the defendant by the Sixth Amendment,” and (2) the deficient performance prejudiced the defendant enough to deprive him of due process of law. Id. at 687.

46. North Carolina Constitutional law essentially mirrors the Federal Constitutional guarantee of effective assistance of counsel. North Carolina Constitution, Article I, §§ 19 and 23. “To prevail on a claim of ineffective assistance of counsel, a defendant must first show that

his counsel's performance was deficient and then that counsel's deficient performance prejudiced his defense.” State v. Allen, 360 N.C. 297, 316 (2006), citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

47. A court deciding a claim of ineffective assistance of counsel must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. “The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Strickland, 466 U.S. at 690. Strickland cautions courts to refrain from second-guessing counsel’s strategic decisions from the superior vantage point of hindsight. Id. at 689. “Strategic choices made **after a thorough investigation of law and facts relevant to plausible options** are virtually unchallengeable.” Id. at 690-691 (emphasis added).

48. The United States Supreme Court and the Fourth Circuit have both stressed that a defendant's right to the effective assistance of counsel includes assistance by an attorney who has conducted a reasonable investigation into the relevant facts and law to determine whether matters of the defense can be developed. See Strickland, 466 U.S. at 691; Porter v. McCollum, 558 U.S. 30 (2009); Rompilla v. Beard, 545 U.S. 374;; see also Coles v. Peyton, 389 F.2d 224, 226 (4th Cir. 1968) (holding “the defendant's right to representation does entitle him to have counsel conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial”); Scott v. Wainwright, 698 F.2d 427, 429–30 (11th Cir. 1983) (defense counsel's failure to familiarize himself with the facts and relevant law made him so ineffective that the Appellant's guilty plea



was involuntarily entered); Washington v. Strickland, 693 F.2d 1243, 1257 (5th Cir. 1982) (when counsel fails to conduct a substantial investigation into any of his client's plausible lines of defense, the attorney has failed to render effective assistance of counsel); Young v. Zant, 677 F.2d 792, 798 (11th Cir. 1982) (where counsel is so ill prepared that he fails to understand his client's factual claims or the legal significance of those claims, counsel fails to provide service within the expected range of competency); Williams v. Washington, 59 F.3d 673 (7th Cir. 1995) (counsel failed to seek out or interview witnesses other than two clients, did not visit scene of crime, and was insufficiently familiar with documents in case to make sound decisions as to how to proceed.; Sanders v. Ratelle, 21 F.3d 1446 (9th Cir. 1994) (counsel's failure to interview, subpoena, or take statement against penal interest from Appellant's brother, notwithstanding reliable indications that brother was actual perpetrator, was "unfathomable" and "evidenced a gargantuan indifference to the interests of his client."); Foster v. Lockhart, 9 F.3d 722 (8th Cir. 1993) (counsel's decision not to investigate potentially viable defense was unreasonable and could not be justified as "tactical decision" to focus exclusively on alternative defense.); Reynoso v. Giurbino, 462 F.3d 1099 (9th Cir. 2006) (counsel was ineffective in failing to conduct investigative interviews of two alleged eyewitnesses and failing to cross-examine-these witnesses); Adams v. Bertrand, 453 F.3d 428 (7th Cir. 2006) (counsel failed to find and present "pivotal witness" because counsel "committed to a predetermined strategy without a reasonable investigation.").

*A. Counsel's Failure to Request a Jury Instruction on the Claim of Right Defense, and Failure to Object to the Omission of Language Instructing the Jury as to Claim of Right as a Defense, Constituted Deficient Performance Under the Sixth Amendment*

49. Fifty-six years ago, the North Carolina Supreme Court recognized claim of right as a defense to robbery, holding:

A defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property, or for the personal protection and safety [of defendant and others, or as a frolic, prank or practical joke, or under color of official authority. State v. Lawrence, *supra*; State v. Lunsford, 229 N.C. 229, 49 S.E. 2d 410; State v. Curtis, 71 N.C. 56; State v. Sowls, *supra*. **Where such defenses are specifically interposed and arise on the evidence, defendant is entitled to such explanation of the law as will serve to bring clearly into focus the conflicting contentions.**

State v. Spratt, 265 N.C. 524, 526-527 (1965) (emphasis added).

50. This is precisely why Footnote 4 of the June, 2016 version of Pattern Jury Instruction 217.10 (Common Law Robbery) states "In the event that a defendant relies on claim of right, the jury should be told that if the defendant honestly believed he was entitled to take the property, he cannot be guilty of robbery."

51. "When a defendant requests a special jury instruction that is correct in law and supported by the evidence, the court **must** give the instruction in substance." State v. Godwin, 369 N.C. 605, 613, (2017) (emphasis added).

52. Here, the record is clear that counsel failed to request a jury instruction on the claim of right defense, and likewise registered no objection to the omission of the type of language endorsed by Footnote 4 of the June, 2016 version of Pattern Jury Instruction 217.10. Given the fact that the Defendant took the witness stand in his own defense and his testimony established a claim of right defense, there was no legitimate strategic or tactical decision for counsel's failure to

request this type of instruction. As a consequence, counsel rendered Constitutionally-deficient performance under the Sixth Amendment.

*B. Counsel's Failure to Object to the Trial Court's Refusal to Answer a Jury Note on the Substantive Legal Issue of Defendant's Claim of Right Defense Constituted Deficient Performance Under the Sixth Amendment*

53. "In instructing the jury, it is well settled that the trial court has the duty to declare and explain the law arising on the evidence relating to each substantial feature of the case." State v. Reaves-Smith, 844 S.E.2d 19, 26 (N.C. Ct. App. 2020), quoting State v. Scaturro, 253 N.C. App. 828, 835, 802 S.E.2d 500, 506 (2017), see also State v. Hockett, 309 N.C. 794, 800 (1983); State v. Everette, 284 N.C. 81, 87, 199 S.E.2d 462, 467 (1973). N.C.G.S. § 15A-1232 requires a trial judge "to declare and explain the law arising from the evidence". After a court instructs the jury initially, it may provide additional instructions in order to respond to jury questions, to correct or clarify erroneous or ambiguous instructions, or to instruct the jury on an erroneously omitted issue. N.C.G.S. § 15A-1234(a)(1)-(4).

54. In State v. Hockett, the defendant was convicted of First Degree Sexual Offense and Armed Robbery. At trial, the State presented evidence that the defendant threatened to shoot the victim. During deliberations, the jury submitted a question to the court, asking "Is the threat of harm or force with a deadly weapon the same as actually having or using a weapon?" Hockett at 800. The court convened the jury, and interpreting the question as one of fact rather than law, instructed the jury that they must determine the facts and he could not answer the question. The jury foreman then restated the question in open court as

Well, what we are asking is, if an individual threatens another individual as to, I'll blow your head off or I'll shoot you, by law, whether that individual actually has a gun or not, is he guilty as if he had a gun, if he did not have one by that threat?

Id at 800-801. The court again refused to answer the question over counsel's objection.

55. The North Carolina Supreme Court reversed the conviction, finding that the trial court incorrectly interpreted the question as one of fact rather than law. The jury's question was "a clear indication that the jury had questions about the legal difference; i.e. the difference in the elements between first degree sexual offense and second degree sexual offense and between robbery with a dangerous weapon and common law robbery." Id. at 801. In reversing, the Supreme Court held that the court was obligated to explain to the jury the applicable law to the case, especially so where the jury had questions about elements of the charged offenses. Id.

56. Here, the same exact scenario existed as in Hockett. Here, the jury had a question about an indispensable element of Count # 2 – whether it was robbery for a person to attempt to reclaim their own property. This was not just Defendant's defense, the prosecution's own evidence supported this. However, the trial court not only failed to instruct the jury on the claim of right defense, it failed to answer this legal – not factual – question and explain to the jury the law applicable to this case.

57. Further exacerbating this problem was trial counsel's failure to request that the court properly instruct the jury on the applicable law. This was especially so in light of a very specific jury question that clearly indicated they had a question about the law that was determinative to their verdict as to Count # 2. In failing to request that the court answer the jury's question directly and with the appropriate law on claim of right as a defense, counsel rendered Constitutionally deficient performance as there was no legitimate strategic or tactical reason to do so.

*C. Counsel's Failure to Object to the Trial Court's Jury Instruction Including Robbery as an Element of Felonious Breaking and Entering and Failure to Object to the Verdict as a Mutually Exclusive, Legally Inconsistent Verdict Constituted Deficient Performance Under the Sixth Amendment*

58. The general rule is that a verdict is not required to be consistent and mere inconsistency will not invalidate a verdict. However, “only when a verdict is not responsive to the indictment or . . . is incomplete, insensible or repugnant,” may a judge decline to accept it and order “the jury to retire and bring in a proper verdict.” State v. Hampton, 294 N.C. 242, 247–48 (1978); see also State v. Abraham, 338 N.C. 315 (1994)

59. Verdicts that are legally inconsistent and contradictory – “mutually exclusive” - will entitle a criminal defendant to relief. State v. Mumford, 364 N.C. 394 (2010); State v. Surcey, 139 N.C. App. 432 (2000). One way a verdict can be legally inconsistent and mutually exclusive is where a jury acquits a defendant of one crime that necessarily means that the jury has found one or more elements lacking, which are also necessary elements of a crime or crimes as to which they returned a guilty verdict. See State v. Hames, 170 N.C. App. 312, 612 S.E.2d 408 (2005), State v. Yang, 174 N.C.App. 755 (N.C. Ct. App. 2005).

60. In Hames, the defendant was originally charged with Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury and Attempted First Degree Murder after shooting the victim during an altercation. The jury convicted the defendant of the lesser-included offenses of Assault with a Deadly Weapon Inflicting Serious Injury and Attempted Voluntary Manslaughter. On direct appeal, the Court of Appeals reversed, ruling that by finding Hames guilty of the lesser-included offense of Assault with a Deadly Weapon Inflicting Serious Injury, the jury necessarily made a finding that the defendant did not have the intent to kill the victim. At the same time, by finding him guilty of Attempted Voluntary Manslaughter, the jury found that he did have the intent to kill the victim. Those two verdicts were logically and mutually inconsistent, because “both

views cannot exist at the same time,” and the finding of no intent to kill on the one count negated the same element as to the other count. Hames at 322.<sup>1</sup> As a result, the Court of Appeals ordered a new trial as to the assault count.

61. Here, Cox was originally charged in the Indictment with Count # 1, First Degree Burglary, under the theory that he broke and entered the dwelling of Angela Leisure with the intent to commit a robbery therein. (ROA:5). Count # 2 charged Defendant with Conspiracy to Commit Robbery with a Dangerous Weapon against Angela Leisure. Thus, both counts subsumed the elements of armed robbery – as the trial court instructed the jury. Trial counsel never objected to the instruction or requested that the court instruct the jury that if they did not find Defendant guilty of Count # 1 as charged, they should not consider Count # 2.

62. However, by finding Defendant guilty of the lesser-included offenses of Felonious Breaking and Entering, the jury necessarily found that Defendant did not have the intent to commit a robbery. This finding negated a critical element of Count # 2. Essentially, the jury made the finding that Defendant did not have the intent to commit a robbery as to Count # 1, but made the finding that he did have the intent to commit a robbery as to Count # 2. Just as in Hames and Yang, because “both views cannot exist at the same time,” that rendered those two verdicts legally inconsistent and mutually exclusive.

63. Counsel’s failure to object to the charge and to the verdict resulted in the court receiving a legally inconsistent and mutually exclusive verdict. Further, that failure to object deprived Defendant of the ability to raise the issue on direct appeal.

---

<sup>1</sup> The same two offenses and the same problem existed in State v. Yang, 174 N.C.App. 755 (N.C. Ct. App. 2005). There, the Court of Appeals arrived at the same conclusion as Hames.

64. In the absence of any legitimate strategic or tactical reason that justified these failures, counsel's performance was Constitutionally deficient under the Sixth Amendment, thereby satisfying the first prong of Strickland.

*D. Prejudice*

65. Here, the prejudice resulting from counsel's failures created the perfect storm for a conviction on the three counts. At various points, counsel failed to request that the court instruct the jury as to the law applicable to this case – the defense of claim of right. The failure to request or object to the omission of the instruction left the jury with an incomplete understanding of the applicable law. When it became obvious that the jury was struggling with the facts of the case and the defense raised, the jury sought clarification on the law. This was the perfect opportunity for the court to clearly explain to the jury the law as applicable and relevant to the evidence and defense raised. However, this opportunity was lost, in no small part due to counsel's failure to advocate. As a result, the jury rendered a legally inconsistent and mutually exclusive verdict, which stood as a result of counsel's failure to object. Thus, the Defendant has established clear prejudice in a linear progression of events that ends with his current incarceration.

66. As the defense has established the second prong of Strickland, this Court should grant this motion and vacate the Defendant's convictions, and order a new trial.

## CONCLUSION

72. In conclusion, Defendant has set forth factually intensive issues which can and should only be properly presented during an evidentiary hearing. N.C.G.S. § 15A-1420(c)(1) provides that "any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit."

73. In State v. McHone, 348 N.C. 254 (1998) the North Carolina Supreme Court found that the right to a hearing is not automatic, but is to be determined by the trial court from the motion and any supporting or opposing information presented. In McHone, the Court found that the defendant was entitled to a hearing because there was a question of fact that could only be determined by a fact-finding hearing.

74. In State v. Hardison, 126 N.C.App. 52 (1997), the Court of Appeals determined that a hearing was appropriate to determine factually disputed issues such as ineffective assistance of counsel. In Hardison, the defendant argued that there existed a conflict of interest with the counsel representing him during the entry of his guilty plea. The Court determined that the nature of the claim was such that it would not appear on the face of the record but would instead require a hearing.

75. The Defendant respectfully submits that the issues presented herein require an evidentiary hearing to be properly presented and fully litigated.

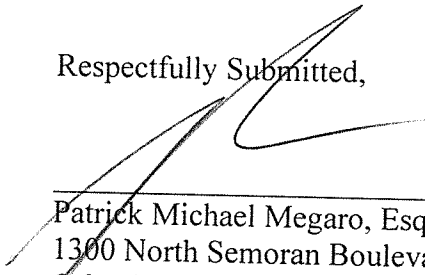
76. Pursuant to N.C.G.S. § 15A-1420(a)(1)(c1), counsel certifies that there is a sound legal basis for the motion and that it is being made in good faith; and that the attorney has notified both the District Attorney's office and the attorney who initially represented the Defendant of the motion; and further, that counsel has reviewed the trial transcript.



WHEREFORE, Defendant respectfully requests that this Court grant the instant motion, vacate his judgment of conviction, and order a new trial; permit counsel to file any additional memoranda or briefs at least 30 days prior to signing any Order; permit counsel to review any proposed Order submitted by the State before this Court makes a decision on the motion; and grant such other and further relief as this Court deems just, proper and equitable.

Dated: May 20, 2021

Respectfully Submitted,



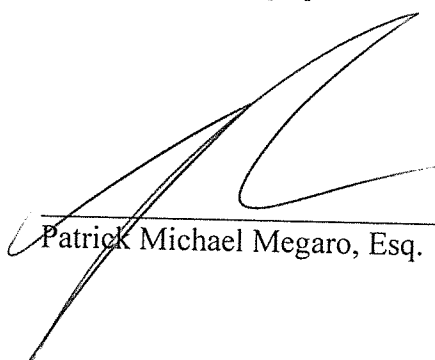
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Texas Bar ID # 24091024  
Washington State Bar ID # 50050  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2021, I served a copy of the foregoing upon:

Onslow County District Attorney  
602 Anne Street  
Jacksonville, NC 28540



---

Patrick Michael Megaro, Esq.

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

)  
)  
)  
)  
)  
)  
)

Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT A

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

STATE OF NORTH CAROLINA,	)	
	)	
v.	)	Onslow County
	)	15 CRS 54673
JAMES A. COX,	)	15 CRS 54665
Defendant,	)	
	)	
	)	

2018 JUL -5 AM 9:03  
 CLERK COURT OF APPEALS  
 OF NORTH CAROLINA

FILED

\*\*\*\*\*  
 PROPOSED RECORD ON APPEAL  
 \*\*\*\*\*

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**ORGANIZATION OF TRIAL TRIBUNAL**

This case came on for a joint trial with co-defendant Ashley Jackson at the 8 January 2018 Criminal Session of Onslow County Superior Court, before a jury and the Honorable William W. Bland, Judge Presiding. The Defendant was charged with First Degree Burglary, Conspiracy to Commit Armed Robbery and Shooting into Occupied Dwelling.

Defendant was convicted of Felonious Breaking or Entering, Conspiracy to Commit Armed Robbery and Shooting into an Occupied Dwelling. The charges of Conspiracy to Commit Armed Robbery and Shooting into Occupied Dwelling were consolidated for a sentence of 60 to 84 months. On the charge of Felonious Breaking or Entering a suspended sentence was entered of 6 to 17 months.

Defendant gave Notice of Appeal in open court. The Co-defendant, Ashley Jackson, gave Notice of Appeal, but later withdrew the appeal on January 25, 2018.

Record on Appeal Filed 7-5-18  
Docketed 7-9-18

**APPEARANCE OF TRIAL COUNSEL**

Mr. Nathan E. Sweet and Mr. Richard S. Sholar, Assistant District Attorneys, Judicial District 4B, represented the State.

Mr. Bryon M. Smith, Attorney at Law, Jacksonville, North Carolina, represented Defendant, James Cox.

**TRANSCRIPT OF PROCEEDINGS**

Pursuant to Appellate Rule 9(c), the complete stenographic transcript of the proceedings in this case taken by Court Reporter Katie K. Thomas at the January 8, 2018 Criminal Session of Onslow County Superior Court and consisting of 410 pages will be filed by the court reporter when the case is assigned a docket number.

**EXHIBITS**

Pursuant to Appellate Rule 9(d), all exhibits received into evidence in this case are a necessary part of the Record on Appeal. Upon request, the Onslow County Clerk of Court will forward exhibits to the Clerk of the North Carolina Court of Appeals.

File No. <b>15CR 054673</b>		Law Enforcement Case No. <b>15-6128</b>	LID No.	SID No.	FBI No.
<b>WARRANT FOR ARREST</b>		<b>STATE OF NORTH CAROLINA</b>			
Offense I F-FIRST DEGREE BURGLARY II F-CONSP ROBBERY DANGRS WEAPON III F-DIS WEAP OCC DWELL/MOVING VEH		<b>ONSLow</b> County In The General Court Of Justice District Court Division			
<b>THE STATE OF NORTH CAROLINA VS.</b>		To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below:			
Name And Address Of Defendant <b>JAMES A. COX</b>  517 BIRCHWOOD  JACKSONVILLE NC 28546 ONSLOW COUNTY		I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did during the nighttime between the hours of 11:00PM-12:00AM ON 8/8/2015 break and enter the dwelling house of ANGELA LEISURE located at 128 SILVER LEAF DR. JACKSONVILLE, NC 28546. At the time of the breaking and entering, the dwelling house was actually occupied by ANGELA LEISURE & DANIEL MCMINN. The defendant broke and entered with the intent to commit a felony therein, ROBBERY.			
Race <b>B</b>	Sex <b>M</b>	Date Of Birth <b>07/18/1993</b>	Age		
Social Security No./Tax ID No.		Drivers License No. & State			
Name Of Defendant's Employer					
Offense Code(s)		Offense In Violation Of G.S.			
I 2226		I 14-51			
II 1221		II 14-87			
III 5218		III 14-34.1(B)			
Date Of Offense <b>08/08/2015</b> through <b>08/08/2015</b>					
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) <b>2015-08-10</b> <b>SE8418Y</b>					
Complainant (Name, Address Or Department) <b>JACOB PARKER</b> <b>JACKSONVILLE POLICE DEPARTMENT</b> <b>200 MARINE BLVD</b> <b>JACKSONVILLE NC 28541</b> <b>ONSLOW COUNTY (910) 455-4000</b>					
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)		I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did conspire with ASHLEY JACKSON & RICHARD LINN to commit the felony of robbery with a dangerous weapon, NCGS 14-87, against ANGELA LEISURE.			
<b>ANGELA RENEE LEISURE</b> <b>128 SILVER LEAF DR</b>  <b>JACKSONVILLE NC 28546</b> <b>ONSLOW COUNTY (910) 550-7115</b>		This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.			
<input checked="" type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued <b>08/10/2015</b>		Signature <b>K S PATTON</b>	
		<input checked="" type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC		Location Of Court <b>Onslow County Courthouse; 0001</b> <b>625 COURT ST</b> <b>JACKSONVILLE, NC 28540</b>	
		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court		Court Date  Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM	

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to execute the Warrant and any information obtained about the whereabouts of the defendant.

**RETURN OF SERVICE**

I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served	<input type="checkbox"/> AM	Date Returned
8/10/15	8/10/15	3:40	PM	8/10/15

By arresting the defendant and bringing the defendant before:

Name Of Judicial Official  
*[Signature]*

This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return  
*[Signature]*

Name Of Officer (Type Or Print)  
R. Wallay

Department Or Agency Of Officer  
Jacksonville P.D.

**REDELIVERY/REISSUANCE**

Date	Signature	<input type="checkbox"/> Dep. CSC	<input type="checkbox"/> Assist. CSC	<input type="checkbox"/> CSC
------	-----------	-----------------------------------	--------------------------------------	------------------------------

**RETURN FOLLOWING REDELIVERY/REISSUANCE**

I certify that this Warrant was received and served as follows:

Date Received	Date Served	Time Served	<input type="checkbox"/> AM	Date Returned
			<input type="checkbox"/> PM	

By arresting the defendant and bringing the defendant before:

Name Of Judicial Official

This Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return

Name Of Officer (Type Or Print)

Department Or Agency Of Officer

**APPEAL ENTRIES**

The defendant, in open court, gives notice of appeal to the Superior Court.

The current pretrial release order is modified as follows:

Date

Signature Of District Court Judge

**WAIVER OF PROBABLE CAUSE HEARING**

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived

Signature Of Defendant

Signature Of Attorney

District Attorney	<input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent	Attorney For Defendant	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	<b>PRIOR CONVICTIONS:</b>
-------------------	--	------------------------	---	---------------------------

PLEA:  guilty  no contest \_\_\_\_\_ VERDICT:  guilty \_\_\_\_\_ M.CL.  A1  1  2  3  
 guilty  no contest \_\_\_\_\_  guilty \_\_\_\_\_ M.CL.  A1  1  2  3  
 guilty  no contest \_\_\_\_\_  guilty \_\_\_\_\_ M.CL.  A1  1  2  3  
 not guilty \_\_\_\_\_  not guilty \_\_\_\_\_

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is ORDERED that the defendant:  pay costs and a fine of \$ \_\_\_\_\_

be imprisoned for a term of \_\_\_\_\_ days in the custody of the  sheriff.  MCP.  DAC.\* Pretrial credit \_\_\_\_\_ days served.

Work release  is recommended.  is not recommended.  is ordered. (use form AOC-CR-602)

The Court finds that a  longer  shorter period of probation, than that which is specified in G.S. 15A-1343.2(d) is necessary.

Execution of the sentence is suspended and the defendant is placed on unsupervised probation\* for \_\_\_\_\_ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution**	Attorney's Fee	Community Service Fee	Other
\$	\$	\$	\$	\$

\*\*Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: (Note To Clerk: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance).")

6. complete \_\_\_\_\_ hours of community service during the first \_\_\_\_\_ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-708 within \_\_\_\_\_ days.

7. not be found in or on the premises of the complainant or \_\_\_\_\_

8. not assault, communicate with or be in the presence of the complainant or \_\_\_\_\_

9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)

10. Other: \_\_\_\_\_

It is ORDERED that this:  Judgment is continued upon payment of costs.

case be consolidated for judgment with \_\_\_\_\_

sentence is to run at the expiration of the sentence in \_\_\_\_\_

COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE:  Probable cause is found as to all Counts except \_\_\_\_\_, and the defendant is bound over to Superior Court for action by the grand jury.  No probable cause is found as to Count(s) \_\_\_\_\_ of this Warrant, and the Count(s) is dismissed.

Date

Name Of District Court Judge (Type Or Print)

Signature Of District Court Judge

**CERTIFICATION**

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date

Date Delivered To Sheriff

Signature

Deputy CSC  
 Assist. CSC  CSC



STATE OF NORTH CAROLINA

In the General Court of Justice  
Superior Court Division

Onslow County

File No.

15CRS054673

Film No.

STATE OF NORTH CAROLINA VERSUS

Defendant

JAMES A. COX

INDICTMENT

- I. FIRST DEGREE BURGLARY
- II. CONSPIRACY TO COMMIT ROBBERY DANGEROUS WEAPON
- III. DISCHARGING FIREARM INTO OCCUPIED PROPERTY

Date of Offense

Offense in Violation of G.S.

AUGUST 8, 2015

§14-51; §14-2.4; §14-34.1

- I. The jurors for the State upon their oath present that on or about the date of offense shown and in Onslow County the defendant named above unlawfully, willfully and feloniously did during the nighttime break and enter the dwelling house of Angela Leisure located at 128 Silver Leaf Drive, Jacksonville, North Carolina. At the time of the breaking and entering, the dwelling house was actually occupied by Angela Leisure & Daniel McMinn. The defendant break and entered with the intent to commit a felony therein.
- II. And the jurors for the State upon their oath present that on or about the date of offense shown and in Onslow County the defendant named above unlawfully, willfully and feloniously did conspire with Ashley Jackson and Richard Linn to commit the felony of robbery with a dangerous weapon, G.S. 14-2.4, against Angela Leisure and the State of North Carolina.
- III. And the jurors for the State upon their oath present that on or about the date of offense shown and in Onslow County the defendant named above unlawfully, willfully and feloniously did discharge a handgun, a firearm, into an occupied dwelling, a building. Located at 128 Silver Leaf Drive, Jacksonville, North Carolina while it was actually occupied by Angela Leisure and Daniel McMinn.

Signature of Prosecutor

WITNESSES

J. PARKER, JPD

A. WEAVER, JPD

DANIEL MCMINN

ANGELA LEISURE

A. Smith JPD

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and, after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in the Bill of Indictment.

NOT A TRUE BILL

te

11/15/16

Signature of Grand Jury Foreman

(TYPE OR PRINT IN BLACK INK)

6

File no.

ISCRS 54673

Additional File Nos.

STATE OF NORTH CAROLINA

Onslow

County

In The General Court Of Justice

District  Superior Court Division

Name Of Defendant, Petitioner, Respondent

James A. Cox, Jr.

Street Address Of Defendant, Petitioner, Respondent

Permanent Mailing Address Of Defendant, Petitioner, Respondent (If Different Than Above)

Telephone Number of Defendant, Petitioner, Respondent

ORDER OF ASSIGNMENT OR DENIAL OF COUNSEL

G.S. 7A-146(11), 7A-292(15), 7A-450, 7A-451(a), 15A-1340.23(d)

Check here if defendant is in jail

Full Social Security No.

Has No Social Security No.

Date Of Offense

Most Serious Class Of Offense

Offense(s) (List Offense(s) Only If File No. Has Not Been Assigned)

INSTRUCTIONS: The Court should complete Part I. or Part II. of this form. Do not use this form for first-degree murder cases or murder cases where the degree is undesignated, except for cases where the defendant was under 18 years of age at the time of the offense, or for capital post-conviction cases or appeals to the Court of Appeals or Supreme Court. For adult first-degree murder cases or murder cases where the degree is undesignated at the trial level, the Office of Indigent Defense Services will use form AOC-CR-624. For capital post-conviction cases, the Office of Indigent Defense Services will use form AOC-CR-625. For appellate cases, the Court will use form AOC-CR-350.

I. ASSIGNMENT OF COUNSEL

From the petition heard in this matter, the affidavit made by the applicant named above, and the inquiry made by the Court, which is documented in the record, it is determined that the applicant is not financially able to provide the necessary expenses of legal representation, and (check one):

- 1. is charged with a felony, a misdemeanor other than a Class 3, or a Class 3 misdemeanor that was committed before December 1, 2013, or is a petitioner or respondent in a proceeding or action listed in G.S. 7A-451(a); it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law; and that the attorney named below or the public defender in this judicial district shall provide representation.
2. is charged with a Class 3 misdemeanor that was committed on or after December 1, 2013, and (check one):
a. the Court has found that the defendant has more than three prior convictions; it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law.
b. the Court has not found at this time that the defendant has more than three prior convictions, the defendant is in custody, the Court does not intend at this appearance to modify the defendant's conditions of release to allow the defendant to be released pending trial without posting a secured bond, and the defendant has a constitutional right to meaningful access to the courts; it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law; and that the attorney named below or the public defender in this judicial district shall provide representation that is limited pursuant to G.S. 15A-141(3) and 15A-143 to the time period of the applicant's pretrial confinement on the Class 3 misdemeanor charge.

It is further ORDERED that the defendant shall be represented by:

the attorney named below.  the public defender in this judicial district.

Name Of Appointed Attorney (If Applicable)

Next Court Date

Appellate Defender

Date

Signature

Judge  Clerk Of Superior Court  Asslt. CSC  Deputy CSC  Magistrate

NOTE: A magistrate may appoint counsel if designated to do so by the Chief District Court Judge. See G.S. 7A-146(11) and G.S. 7A-292(15).

7

**II. DENIAL OF COUNSEL**

From the petition heard in this matter, the affidavit made by the applicant named above, and the inquiry made by the Court, which is documented in the record, it is determined that the applicant (*check all that apply*):

- 1. is charged with a felony, a misdemeanor higher than a Class 3, or a Class 3 misdemeanor that was committed before December 1, 2013, but will not receive an active or suspended term of imprisonment if he/she is convicted of the offense(s) for which he/she is charged; it is ORDERED that the defendant's petition is denied.
- 2. is charged with a Class 3 misdemeanor that was committed on or after December 1, 2013, the Court has found that the defendant has fewer than four prior convictions, and the case shall proceed as a fine only case; it is ORDERED that the defendant's petition is denied.
- 3. will not receive an active or suspended term of imprisonment if he/she is found in contempt; it is ORDERED that the defendant's petition is denied.
- 4. is financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is not indigent and his/her petition is denied.

Date	Signature	<input type="checkbox"/> Judge <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Magistrate
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**NOTE:** A magistrate may appoint counsel if designated to do so by the Chief District Court Judge. See G.S. 7A-146(11) and G.S. 7A-292(15).

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF ONSLOW

FILE NO: 15crs 54665;


STATE OF NORTH CAROLINA

16crs 054673; 15crs 054674

v.

2017 DEC 12  
P 4: 04  
ONSLOW CO., C.S.C.

MOTION FOR JOINDER

Ashley Jackson,  
James CoxBY 

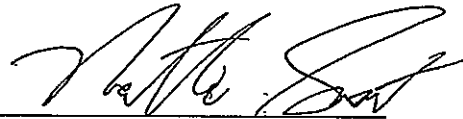
NOW COMES the State, by and through the undersigned Assistant District Attorney, and moves this Court pursuant to N.C.G.S. 15A - 926 to join the defendant's and all criminal charges for one trial and in support of its motion alleges the following:

- 1) In the above captioned file number 15crs054665 Ashley Jackson is charged with Conspiracy to Commit Robbery with a Dangerous Weapon, 1<sup>st</sup> Degree Burglary and Simple Assault.
- 2) In the above captioned file numbers 15crs054673 and 15crs054674 James Cox is charged with 1<sup>st</sup> Degree Burglary, Conspiracy to Commit Robbery with a Dangerous Weapon, Discharging a Weapon into Occupied Dwelling, Assault with a Deadly Weapon, Injury to Real Property, and Injury to Personal Property.
- 3) On August 8<sup>th</sup>, 2015 Angela Leisure was in her bedroom at 128 Silver Leaf Drive, Jacksonville, NC when Ashley Jackson entered her home and began to harass her.
- 4) At that time the Angela Leisure noticed that Ashley Jackson had a male, later identified as James Cox come in with her and was carrying a firearm, and Richard Linn was present but did not have a firearm.
- 5) During this incident Ashley Jackson demanded money from Angela Leisure and assaulted her. Ashley Jackson told James Cox to fire the weapon.
- 6) In response, Angela Leisure ran into her bedroom, locked the door and got on the ground. At this time there was loud banging on the door and a gun shot was heard. The police were contacted immediately.
- 7) Jacksonville Police Detective Jacob Parker conducted the investigation and the witness involved in the above captioned case are similar.

- 8) Richard Linn has previously pled guilty to (F) B&E in Onslow County Superior Court and has agreed to testify against the above captioned defendants.
- 9) This case involved a common scheme and plan, were part of the same transaction, and are so closely connected in time and place and occasion that it would be difficult to separate proof of one charge from proof of the others.

WHEREFORE the State moves this Court to Join each of the criminal charges alleged against the defendant arising out of the same transaction or occurrence for disposition during one trial.

This the 12th day of December, 2017.

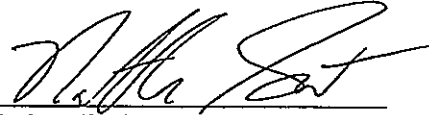


Nathan E. Sweet  
Assistant District Attorney  
632 Court Street  
Jacksonville, NC 28546

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion upon the attorney of record, Ernie Wright and Bryon Smith, for the defendants, by personal delivering a copy to their Superior Court Mailbox, Onslow County, NC, 28546.

This the 12th day of December, 2017.



---

Nathan E. Sweet  
Assistant District Attorney  
632 Court Street  
Jacksonville, NC 28546

STATE OF NORTH CAROLINA

11

File No.

15CRS54673,74, 15CRS 54665

ONSLOW County

In The General Court Of Justice  
 District  Superior Court Division

STATE VERSUS

JUDGMENT/ORDER OR  
OTHER DISPOSITION

Name Of Defendant

JAMES COX AND ASHLEY JACKSON

Race

Sex

Date Of Birth

Attorney For State

SWEET, NATHAN, E

Def. Found  
Not Indigent

Def. Waived  
Attorney

Attorney  
Denied

Attorney For Defendant

SMITH, BRYON AND WRIGHT, ERNIE

Appointed

Retained

Crt Rptr Initials

KT

Offense(s)

MOTION FOR JOINDER

THE STATE REPRESENTED BY ASSISTANT DISTRICT ATTORNEY, NATHAN SWEET, MAKES A MOTION FOR JOINDER OF ALL THE CASES FOR TRIAL.

MOTION ALLOWED, <sup>WB</sup> WITHOUT OBJECTION BY EITHER DEFENDANT.

SIGNATURE OF JUDGE

Date

01/09/2018

Name Of Presiding Judge (Type Or Print)

WILLIAM W. BLAND

Signature Of Presiding Judge

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA  
 COUNTY OF ONSLOW

FILED

IN THE GENERAL COURT OF JUSTICE  
 SUPERIOR COURT DIVISION  
 FILE NO.: 15CRS-54673, 53674, 2036  
 and 2037

2018 JAN -8 A 11:39

STATE OF NORTH CAROLINA

vs.

JAMES A. COX,

Defendant.

**MOTION TO EXCLUDE EVIDENCE AS A RESULT OF AN IMPROPER PHOTOGRAPHIC  
 LINEUP. EYEWITNESS IDENTIFICATION REFORM ACT.**


NOW COMES, the Defendant, James A. Cox and moves the Court to exclude evidence obtained as a result of an improperly conducted photo array and shows unto the Court the following:

1. Detective J. Parker upon being informed that a potential co-defendant known at the time as Ashleigh Brock prepared and printed off a photograph purported to be Ashley Jackson, a co-defendant and alleged co-conspirator in this action; this single photograph was not presented with five (5) fillers as required by 15A-284.50.
2. That the photograph was not presented to the purported witness Angela Leisure as part of an array as required by N.C.G.S. 15A 284.50 (EIRA) as well as codified in pattern jury instructions NCPI 105.65: as well as JPD policy and procedures.
3. That the Defendant James A. Cox would ordinarily not have standing to object to the array administered to Angela Leisure, but in this case the Defendant James A. Cox is alleged to be a co-conspirator and the State has moved to join the cases of James A. Cox and Ashley Jackson together.

WHEREFORE, the Defendant respectfully moves the Court to suppress the results photographic example provided to the potential witness Angela Leisure; the Defendant James A. Cox contends he was only charged as a result of information obtained as a result of the improper photographic array that potentially identified Ashley Jackson as the suspect. That the improper identification of Ashley Jackson led police to the identify of the Defendant James A. Cox.

WHEREFORE, the Defendant James A. Cox prays that this Court rule the identification of Ashley Jackson be suppressed and all evidence recovered after the subsequent arrest of Ashley Jackson that led to the apprehension of James A. Cox be suppressed and the Court dismiss all pending charges pending against the Defendant James A. Cox.

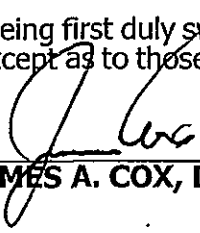
This the 8th, day of January, 2018.

  
 BRYON M. SMITH  
 Attorney at Law  
 814 New Bridge Street  
 Jacksonville, North Carolina 28540  
 Telephone: (910)455-0053



**VERIFICATION**

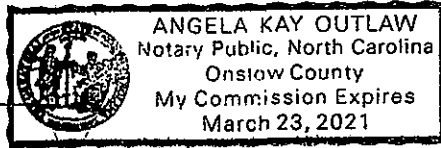
The Defendant, JAMES A. COX, being first duly sworn deposes and says, that he has read the foregoing Motion and the same is true except as to those matters stated on belief and as to those he believes them to be true.



**JAMES A. COX, Defendant**

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

Sworn to and subscribed before me, this  
8th, day of January, 2018.

  
NOTARY PUBLIC

My Commission Expires: 03/23/2021

**CERTIFICATE OF SERVICE**

The undersigned has this date served this pleading in the above-entitled action upon all other parties to this action by hand delivery or by depositing a copy hereof in a postpaid envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service, property addressed the below referenced party(s):

Nathan Sweet  
Assistant District Attorney  
District Attorney's Office  
Onslow County Courthouse  
Jacksonville, NC 28540

This the 8th, day of January, 2018.



**BRYON M. SMITH**

- Can we get clarification of

" While the defendant knows that the defendant is not entitled to take the property "

Page 6 last line of Robbery  
Definition.

- Is it still Robbery to take back  
one owns property?

Ex 1

**CONCLUDING INSTRUCTIONS—JURY CONSIDER ALL EVIDENCE, JUDGE NOT EXPRESS OPINION, UNANIMOUS VERDICT, SELECTION OF FOREPERSON.**

**THESE CONCLUDING INSTRUCTIONS APPLY TO BOTH DEFENDANTS.**

Members of the jury, you have heard the evidence and the arguments of counsel. If your recollection of the evidence differs from that of the attorneys, you are to rely solely upon your recollection. Your duty is to remember the evidence whether called to your attention or not.

You should consider all the evidence, the arguments, contentions and positions urged by the attorneys, and any other contention that arises from the evidence.

The law requires the presiding judge to be impartial. You should not infer from anything I have done or said that the evidence is to be believed or disbelieved, that a fact has been proved or what your findings ought to be. It is your duty to find the facts and to render a verdict reflecting the truth. ~~All twelve of you must agree to your verdict. You cannot reach a verdict by majority vote.~~

When you have agreed upon a unanimous verdict as to each count, your foreperson should so indicate on the verdict forms.

*(EXCUSE THE ALTERNATE JURORS.)*

After reaching the jury room your first order of business is to select your foreperson. You may begin your deliberations when the bailiff delivers the verdict forms to you. Your foreperson should lead the deliberations. When you have unanimously agreed upon a verdict as to each count and as to each defendant and are ready to announce your verdicts, your foreperson should record your verdicts, sign and date the verdict forms, and notify the bailiff by knocking on the jury room door or otherwise summoning the bailiff. You will be returned to the courtroom and your verdict will be announced.

Thank you. You may retire and select your foreperson.

(Count Three, as to Ashley Dean Jackson)<sup>16</sup>

**SIMPLE ASSAULT.**

The defendant has been charged with simple assault.

For you to find the defendant guilty of this offense, the State must prove two things beyond a reasonable doubt:

First, that the defendant assaulted the victim by engaging in a physical altercation or affray with Angela Leisure.

And Second, that the defendant acted intentionally, without justification or excuse.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally engaged in a physical altercation or affray with Angela Leisure, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or both of these things, it would be your duty to return a verdict of not guilty.

---

*End of instructions specific as to charges alleged against defendant Ashley Dean Jackson.*

---

For a defendant to be guilty of a crime, it is not necessary that the defendant do all of the acts necessary to constitute the crime. If two or more persons join in a common purpose to commit First Degree Burglary, Felonious Breaking or Entering, or Non-Felonious Breaking or Entering, each person, if actually or constructively present, is guilty of the crime.

A defendant is not guilty of a crime merely because the defendant is present at the scene, even though the defendant may silently approve of the crime or secretly intend to assist in its commission. To be guilty, the defendant must aid or actively encourage the person committing the crime or in some way communicate to another person the defendant's intention to assist in its commission.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant acting either by herself or acting together with another person or with other persons committed First Degree Burglary, Felonious Breaking or Entering, or Non-Felonious Breaking or Entering as each of these crimes has been described to you in these instructions, it would be your duty to return a verdict of guilty to the crime that you found from the evidence beyond a reasonable doubt that the defendant committed.

If you do not so find or if you have a reasonable doubt as to whether the defendant committed either First Degree Burglary, Felonious Breaking or Entering, or Non-Felonious Breaking or Entering, it would be your duty to return a verdict of not guilty.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant Ashley Dean Jackson broke into or entered a building without the consent of the owner or tenant, intending at that time to commit Robbery with a Dangerous Weapon therein, it would be your duty to return a verdict of guilty of felonious breaking or entering. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious breaking or entering, but would consider whether the defendant Ashley Dean Jackson is guilty of non-felonious breaking or entering. Non-felonious breaking or entering differs from felonious breaking or entering in that it need not be done with the intent to commit a felony so long as the breaking or entering was wrongful, that is, without any claim of right.

~~If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant Ashley Dean Jackson wrongfully broke into or entered another person's building without that person's consent, it would be your duty to return a verdict of guilty of non-felonious breaking or entering. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.~~

Robbery with a Dangerous Weapon is a crime that occurs when a defendant with a firearm takes and carries away property from a person (or the presence of a person) without that person's voluntary consent by endangering or threatening that person or another person's life with the use or threatened use of a firearm, while the defendant knows that that the defendant is not entitled to take the property and the defendant intends to deprive that person of its use permanently.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant Ashley Dean Jackson broke into and entered an occupied dwelling house without the owner's or the tenant's consent, during the nighttime, and at that time intended to commit Robbery with a Dangerous Weapon therein, it would be your duty to return a verdict of guilty of first degree burglary. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first degree burglary, but would consider whether the defendant Ashley Dean Jackson is guilty of felonious breaking or entering. Felonious breaking or entering differs from first degree burglary in that both a breaking and an entry are not necessary. Either a breaking or an entry is enough. Furthermore, the building that was involved need not have been a dwelling house, need not have been occupied, and the breaking or entry need not have been in the nighttime.

(Count Two, as to Ashley Dean Jackson)

FIRST DEGREE BURGLARY, INCLUDING LESSER INCLUDED OFFENSES. ACTING IN CONCERT.

The defendant Ashley Dean Jackson has been charged with first degree burglary, which is breaking and entering in the nighttime of another person's occupied dwelling house without that person's consent, and with the intent to commit a felony, which in this case is alleged to be Robbery with a Dangerous Weapon.

For you to find the defendant Ashley Dean Jackson guilty of this offense, the State must prove five things beyond a reasonable doubt:

First, that the defendant Ashley Dean Jackson broke and entered a dwelling house. A breaking need not be actual; that is, the person breaking need not physically remove the barrier herself. She may, by a threat of force, inspire such fear as to induce the occupant to allow her to enter.

Second, that the breaking and entering was during the nighttime. The law considers it to be nighttime when it is so dark that a person's face cannot be identified except by artificial light or moonlight.

Third, that at the time of the breaking and entering the dwelling house was occupied.

Fourth, that the owner or tenant did not consent to the breaking and entering.

And Fifth, that at the time of the breaking and entering the defendant Ashley Dean Jackson intended to commit a felony, Robbery with a Dangerous Weapon, within the dwelling house.



(Count One, as to Ashley Dean Jackson)

FELONIOUS CONSPIRACY.

The defendant has been charged with feloniously conspiring to commit Robbery with a Dangerous Weapon.

For you to find the defendant Ashley Dean Jackson guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant Ashley Dean Jackson and James A. Cox or Richard Linn entered into an agreement.

Second, that the agreement was to commit Robbery with a Dangerous Weapon. Robbery with a Dangerous Weapon is a crime that occurs when a defendant with a firearm takes and carries away property from a person (or the presence of a person) without that person's voluntary consent by endangering or threatening that person or another person's life with the use or threatened use of a firearm, while the defendant knows that that the defendant is not entitled to take the property and the defendant intends to deprive that person of its use permanently.

And Third, that the defendant Ashley Dean Jackson and James A. Cox or Richard Linn intended that the agreement be carried out at the time it was made.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant Ashley Dean Jackson agreed with James A. Cox or with Richard Linn to commit Robbery with a Dangerous Weapon, and that the defendant Ashley Dean Jackson and James A. Cox or Richard Linn intended at the time the agreement was made that it would be carried out, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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**STATE OF NORTH CAROLINA vs. ASHLEY DEAN JACKSON**

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The following instructions on pages 12 through 17 relate specifically to the charges as alleged against defendant Ashley Dean Jackson only.

(Count Three, as to James A. Cox)

DISCHARGING A FIREARM INTO OCCUPIED PROPERTY.

The defendant James A. Cox has been charged with discharging a firearm into occupied property.

For you to find the defendant James A. Cox guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant James A. Cox willfully or wantonly discharged a firearm into a building. An act is willful or wanton when it is done intentionally with knowledge or a reasonable ground to believe that the act would endanger the rights or safety of others.

Second, that the building was occupied by one or more persons at the time that the firearm was discharged.

And Third, that the defendant knew that the building was occupied by ~~one or more persons.~~

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully or wantonly discharged a firearm into a building while it was occupied by one or more persons, and that defendant knew it was occupied by one or more persons, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

---

*End of instructions specific as to charges alleged against defendant James A. Cox.*

---

(Count Two, as to James A. Cox)

FELONIOUS CONSPIRACY.

The defendant has been charged with feloniously conspiring to commit Robbery with a Dangerous Weapon.

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant James A. Cox and Ashley Dean Jackson entered into an agreement.

Second, that the agreement was to commit Robbery with a Dangerous Weapon. Robbery with a Dangerous Weapon is a crime that occurs when a defendant with a firearm takes and carries away property from a person (or the presence of a person) without that person's voluntary consent by endangering or threatening that person or another person's life with the use or threatened use of a firearm; while the defendant knows that that the defendant is not entitled to take the property and the defendant intends to deprive that person of its use permanently.

And Third, that the defendant James A. Cox and Ashley Dean Jackson intended that the agreement be carried out at the time it was made.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant James A. Cox agreed with Ashley Dean Jackson to commit Robbery with a Dangerous Weapon, and that the defendant James A. Cox and Ashley Dean Jackson intended at the time the agreement was made that it would be carried out, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

For a defendant to be guilty of a crime, it is not necessary that the defendant do all of the acts necessary to constitute the crime. If two or more persons join in a common purpose to commit First Degree Burglary, Felonious Breaking or Entering, or Non-Felonious Breaking or Entering, each person, if actually or constructively present, is guilty of the crime.

A defendant is not guilty of a crime merely because the defendant is present at the scene, even though the defendant may silently approve of the crime or secretly intend to assist in its commission. To be guilty, the defendant must aid or actively encourage the person committing the crime or in some way communicate to another person the defendant's intention to assist in its commission.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant acting either by himself or acting together with another person or with other persons committed First Degree Burglary, Felonious Breaking or Entering, or Non-Felonious Breaking or Entering as each of these crimes has been described to you in these instructions, it would be your duty to return a verdict of guilty to the crime that you found from the evidence beyond a reasonable doubt that the defendant committed.

If you do not so find or if you have a reasonable doubt as to whether the defendant committed either First Degree Burglary, Felonious Breaking or Entering, or Non-Felonious Breaking or Entering, it would be your duty to return a verdict of not guilty.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant James A. Cox broke into or entered a building without the consent of the owner or tenant, intending at that time to commit Robbery with a Dangerous Weapon therein, it would be your duty to return a verdict of guilty of felonious breaking or entering. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious breaking or entering, but would consider whether the defendant James A. Cox is guilty of non-felonious breaking or entering. Non-felonious breaking or entering differs from felonious breaking or entering in that it need not be done with the intent to commit a felony so long as the breaking or entering was wrongful, that is, without any claim of right.

~~If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant James A. Cox wrongfully broke into or entered another person's building without that person's consent, it would be your duty to return a verdict of guilty of non-felonious breaking or entering. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.~~

Third, that at the time of the breaking and entering the dwelling house was occupied.

Fourth, that the owner or tenant did not consent to the breaking and entering.

And Fifth, that at the time of the breaking and entering the defendant James A. Cox intended to commit a felony, Robbery with a Dangerous Weapon, within the dwelling house.

Robbery with a Dangerous Weapon is a crime that occurs when a defendant with a firearm takes and carries away property from a person (or the presence of a person) without that person's voluntary consent by endangering or threatening that person or another person's life with the use or threatened use of a firearm, while the defendant knows that that the defendant is not entitled to take the property and the defendant intends to deprive that person of its use permanently.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant James A. Cox broke into and entered an occupied dwelling house without the owner's or the tenant's consent, during the nighttime, and at that time intended to commit Robbery with a Dangerous Weapon therein, it would be your duty to return a verdict of guilty of first degree burglary. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first degree burglary, but would consider whether the defendant James A. Cox is guilty of felonious breaking or entering. Felonious breaking or entering differs from first degree burglary in that both a breaking and an entry are not necessary. Either a breaking or an entry is enough. Furthermore, the building that was involved need not have been a dwelling house, need not have been occupied, and the breaking or entry need not have been in the nighttime.

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**STATE OF NORTH CAROLINA vs. JAMES A. COX**

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The following instructions on pages 5 through 10 relate specifically to the charges as alleged against defendant James A. Cox only.

(Count One, as to James A. Cox)

FIRST DEGREE BURGLARY, INCLUDING LESSER INCLUDED OFFENSES. ACTING IN CONCERT.

~~The defendant James A. Cox has been charged with first degree~~ burglary, which is breaking and entering in the nighttime of another person's occupied dwelling house without that person's consent, and with the intent to commit a felony, which in this case is alleged to be Robbery with a Dangerous Weapon.

For you to find the defendant James A. Cox guilty of this offense, the State must prove five things beyond a reasonable doubt:

First, that the defendant James A. Cox broke and entered a dwelling house. A breaking need not be actual; that is, the person breaking need not physically remove the barrier himself. He may, by a threat of force, inspire such fear as to induce the occupant to allow him to enter.

Second, that the breaking and entering was during the nighttime. The law considers it to be nighttime when it is so dark that a person's face cannot be identified except by artificial light or moonlight.



## TESTIMONY OF INTERESTED WITNESS.

You may find that a witness is interested in the outcome of this trial. You may take the witness's interest into account in deciding whether to believe the witness. If you believe the testimony of the witness in whole or in part, you should treat what you believe the same as any other believable evidence.

## PHOTOGRAPHS - AS ILLUSTRATIVE EVIDENCE.

Photographs were introduced into evidence in this case for the purpose of illustrating and explaining the testimony of several witnesses. These photographs may not be considered by you for any other purpose.

## IMPEACHMENT OR CORROBORATION BY PRIOR STATEMENT.

Evidence has been received tending to show that at an earlier time a witness made a statement which may conflict or be consistent with the testimony of the witness at this trial. You must not consider such earlier statement as evidence of the truth of what was said at that earlier time because it was not made under oath at this trial. If you believe the earlier statement was made, and that it conflicts or is consistent with the testimony of the witness at this trial, you may consider this, and all other facts and circumstances bearing upon the witness's truthfulness, in deciding whether you will believe or disbelieve the witness's testimony.

## DEFINITION OF INTENT.

Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom.

## CIRCUMSTANTIAL EVIDENCE.

There are two types of evidence from which you may find the truth as to the facts of a case—direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain or group of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

## MOTIVE.

Proof of motive for the crime is permissible and often valuable, but never essential for conviction. If you are convinced beyond a reasonable doubt that the defendant committed the crime, the presence or absence of motive is immaterial. Motive may be shown by facts surrounding the act if they support a reasonable inference of motive. When thus proved, motive becomes a circumstance to be considered by you. The absence of motive is equally a circumstance to be considered on the side of innocence.

**CREDIBILITY OF WITNESS.**

You are the sole judges of the believability of a witness.

You must decide for yourselves whether to believe the testimony of any witness. You may believe all, any part, or none of a witness's testimony.

In deciding whether to believe a witness you should use the same tests of truthfulness that you use in your everyday lives. Among other things, these tests may include: the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; the manner and appearance of the witness; any interest, bias, prejudice or partiality the witness may have; the apparent understanding and fairness of the witness; whether the testimony is reasonable; and whether the testimony is consistent with other believable evidence in the case.

**WEIGHT OF THE EVIDENCE.**

You are the sole judges of the weight to be given any evidence. If you decide that certain evidence is believable you must then determine the importance of that evidence in light of all other believable evidence in the case.

**EFFECT OF DEFENDANT ASHLEY DEAN JACKSON'S DECISION NOT TO TESTIFY.**

The defendant Ashley Dean Jackson in this case has not testified. The law gives the defendant this privilege. This same law also assures the defendant Ashley Dean Jackson that her decision not to testify creates no presumption against the defendant Ashley Dean Jackson. Therefore, the silence of the defendant Ashley Dean Jackson is not to influence your decision in any way.

## JURY INSTRUCTIONS

State v. James A. Cox; State v. Ashley Dean Jackson  
Onslow County, NC. January 12, 2018

Members of the jury: All of the evidence has been presented. It is now your duty to decide from this evidence what the facts are. You must then apply the law which I am about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you think it is, or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied.

**BURDEN OF PROOF AND REASONABLE DOUBT.**

The defendant has entered a plea of "not guilty." The fact that the defendant has been charged is no evidence of guilt. Under our system of justice, when a defendant pleads "not guilty," the defendant is not required to prove the defendant's innocence; the defendant is presumed to be innocent. The State must prove to you that the defendant is guilty beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason and common sense, arising out of some or all of the evidence that has been presented, or the lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's guilt.

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR CRIMINAL DIVISION  
FILE NO: 15CRS 54673

STATE OF NORTH CAROLINA  
VS

VERDICT

JAMES A. COX,  
DEFENDANT,

WE, THE JURY, RETURN AS OUR UNANIMOUS VERDICT THAT THE DEFENDANT,  
JAMES A. COX IS:

COUNT ONE

           GUILTY OF FIRST DEGREE BURGLARY  
 Bo OR  
           GUILTY OF FELONIOUS BREAKING OR ENTERING  
 OR  
           GUILTY OF NON-FELONIOUS BREAKING OR ENTERING  
           OR  
           NOT GUILTY

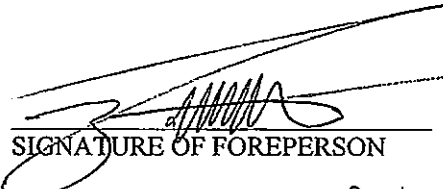
COUNT TWO

Bo GUILTY OF CONSPIRACY TO COMMIT ROBBERY WITH A DANGEROUS WEAPON  
           OR  
           NOT GUILTY

COUNT THREE

Bo GUILTY OF DISCHARGING A WEAPON IN TO AN OCCUPIED PROPERTY  
           OR  
           NOT GUILTY

THIS THE 16 DAY OF JANUARY, 2018.

  
SIGNATURE OF FOREPERSON  
William John Fotts #  
PRINTED NAME OF FOREPERSON  
1/16/18

# Northside High School

Jacksonville



North Carolina

This is to Certify That

James Arnold Cox Jr

has satisfactorily completed the course of study prescribed  
by the Board of Education for the High School and is granted this

## Diploma

in witness whereof, we set our hands and seal this June, 2011

*Pamela C. Thomas*  
BOARD CHAIRMAN

*Kathy J. Spencer*  
SUPERINTENDENT

*Maria L. Johnson*  
PRINCIPAL

*Camp Lejeune SNCO Wives' Club*


# *Scholarship Award*

*Presented To:*

***James Cox***

*On this 14 day of May 2011 for their excellence in academics and contributions made to the community. The Scholarship Committee, Thrift Shop, SNCO Wives' Club, and all the volunteers that made this possible would like to wish you luck with your future endeavors.*

  
\_\_\_\_\_  
*Donna Stenberg, President*  
*SNCO Wives' Club, Camp Lejeune*

  
\_\_\_\_\_  
*Sandra Agosto, Vice President*  
*SNCO Wives' Club Camp Lejeune*

Crossroads W<sup>36</sup>orship Center

126 Center Street

Jacksonville, NC

APR 15 2011

To Whom It May Concern:

This letter is to recommend James A. Cox Jr. to receive the 2011 Staff NCO Wives Club Scholarship. I have been his youth pastor for six years. In that time James has been crucial in developing the youth worship team that organized and produced in excess of 30 local Christian concerts. These events reached out to the entire Onslow County with attendance of more than 200 students from the area. He has also been part of many extra curricular activities in the community from football, band and fellowship of Christian Athletes. He has strived to do well in all those scenarios and has been a positive influence to many of his peers. He is a very capable and talented young man who would represent the scholarship well. God Bless You!

In Christ.

Jake Korkian

Crossroads Youth Pastor



**CROSSROADS CHRISTIAN FELLOWSHIP**

126 CENTER STREET  
JACKSONVILLE, NC 28546  
910-353-2111

5 APRIL 2012

To Staff NCO Wives Club,

I meet James Cox in June of 2000 and have been blessed to watch him grow into a very talented and confident young man. He has been a large part of our community at every stage of his life. He has been involved with Royal Rangers, youth activities and ministry.

As a Royal Ranger, James began to display natural leadership ability. He has always been a high achiever in completing his merit work and earning high honors in every area possible within this ministry. He even joined an elite group called Frontiersmen Camping Fellowship, which is a voluntary advanced group within the Rangers program. During this time he was tasked with various challenges which he handled with impressive maturity. The adult leaders always returned with many stories about his accomplishments.

Once he entered the youth program at our church, James was selected as one of the founding members of a newly formed youth worship team. This worship group organized and ministered to the community in over 30 local youth Christian concerts at various locations. These concerts had an average attendance of 60 – 80 youth from the Onslow county area. During this time James was personally involved in organizing, ministering and conducting follow up activities that made this a very well known local set of events. Most importantly, James has developed as a musician as well as a young leader willing to go the extra mile to succeed.

I am confident that he will be an asset to any school, church or ministry group that he is involved in. Although I know God has great plans for this young man, I also know that there is going to be a hole left that no one person will be able to fill. James has been and will continue to be a man that will bless those he comes in contact with due to his talents, humility and willingness to follow Gods plan for his life.

Be Blessed,



Pastor Jake Korkian

Ignite Youth Ministries

# Staff NCO Wives Club

Post Office Box 8067 \* Camp Lejeune, North Carolina 28547

910/451-5591

May 1, 2011

Dear James

Congratulations! You have been selected to receive a Camp Lejeune SNCO Wives Club scholarship in the amount of \$250.

Funds for the scholarship are earned through volunteer efforts in our Thrift Shop.

We will send a check to your chosen college later in the summer. Your application indicated your intended choice of schools; however, if this information changes, it is imperative that you notify us immediately so that your funds will not be delayed. Please also make sure that we have the correct mailing address for the school of your choice, if you did not include it on your application.

Good luck with your educational endeavors and have a great summer.

Sincerely,



Lezley Dellinger  
Camp Lejeune SNCO Wives Club  
Scholarship Chair

To Whom It May Concern,

I have had the great pleasure to know James Cox for the past five years as his Associate Youth Pastor. Through those years, James has shown characteristics that young adults his age do not always have. James strives for leadership opportunities and is always standing by to help others when in need. He has shown compassion, dedication, and commitment to his community by participating in a variety of community outreach programs throughout the years with his local church. I have watched James take on leadership opportunities head on that others would avoid, and be successful at it. His determination does not allow him to fail, and he never comes short of the mark.

James currently has taken the next step in his life by participating in Christians Masters Program which allows him to experience different avenues of helping, not just those in North Carolina, but all over the United States. This is a challenge for the average young adult while trying to take college classes, but James has shown to be anything but average. It has been a pleasure to watch this young man grow-up and I am excited to see what the future has in store for him. James is an outstanding addition to society as a young adult and I can't wait to see what he is going to do with his unlimited potential. Investing in this young man's future is not only a must, but is essential to the benefit of our society.

MICHAEL F. STUMPF  
mfstumpf@gmail.com

Onslow County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

And Address Of Defendant

James Cox, Jr.
517 Birchwood Ct.
Jacksonville, NC 28546

Social Security No. SID No.

Race B Sex M DOB 7-18-93

WORKSHEET PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING (STRUCTURED SENTENCING)

(For Offenses Committed On Or After Dec. 1, 2009)

G.S. 15A-1340.14, 15A-1340.21

I. SCORING PRIOR RECORD/FELONY SENTENCING

Table with 4 columns: NUMBER, TYPE, FACTORS, POINTS. Rows include Prior Felony Class A Conviction (X10), Prior Felony Class B1 Conviction (X 9), Prior Felony Class B2 or C or D Conviction (X 6), Prior Felony Class E or F or G Conviction (X 4), Prior Felony Class H or I Conviction (X 2), Prior Class A1 or 1 Misdemeanor Conviction (X 1).

SUBTOTAL T

Defendant's Current Charge(s):

If all the elements of the present offense are included in any prior offense whether or not the prior offenses were used in determining prior record level.

+ 1

The offense was committed while the offender was: on supervised or unsupervised probation, parole, or post-release supervision; serving a sentence of imprisonment; or on escape from a correctional institution.

+ 1

County File No. State (if other than NC)

TOTAL T

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.

Table with 2 columns: No. Of Prior Convictions, Level. Rows: 0 (I), 1-4 (II), 5+ (III).

PRIOR CONVICTION LEVEL [ ]

- The Court has determined the number of prior convictions to be and the level to be as shown above.
In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.

FELONY

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the total points determined in Section I above.

Table with 2 columns: Points, Level. Rows: 0-1 (I), 2-5 (II), 6-9 (III), 10-13 (IV), 14-17 (V), 18+ (VI).

PRIOR RECORD LEVEL [ I ]

- The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.
In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.
In finding a prior record level point under G.S. 15A-1340.14(b)(7), the Court has relied on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

- The Court finds that all of the elements of the present offense are included in a prior offense.
For each out-of-state conviction listed in Section V on the reverse, the Court finds by a preponderance of the evidence that the offense is substantially similar to a North Carolina offense and that the North Carolina classification assigned to this offense in Section V is correct.
The Court finds that the State and the defendant have stipulated in open court to the prior convictions, points and record level.

Date 1-16-2018 Name Of Presiding Judge (Type Or Print) William W. Bland

Signature Of Presiding Judge [Signature]

III. STIPULATION

The prosecutor and defense counsel, or the defendant, if not represented by counsel, stipulate to the information set out in Sections I and V of this form, and agree with the defendant's prior record level or prior conviction level as set out in Section II based on the information herein.

1-12-18 Signature Of Prosecutor [Signature] Date 1.18.17 Signature Of Defense Counsel Or Defendant [Signature]

IV. DNA CERTIFICATION (For Offenses Committed On Or After Feb. 1, 2011)

A review of the case record (the form required by G.S. 15A-266.3A(c)) and the records of the State Bureau of Investigation (the DCI-CCH rap sheet) indicates that (check one):

- 1. The defendant is NOT required to provide a DNA sample for this conviction because (i) the offense is not covered by G.S. 15A-266.4 or (ii) a sample of the defendant's DNA has previously been obtained and the defendant's DNA record is currently stored in the State DNA database.
2. The defendant IS required to provide a DNA sample for this conviction because (i) the offense is covered by G.S. 15A-266.4 and (ii) a sample of the defendant's DNA has not previously been obtained and the defendant's DNA record has not previously been stored in the State DNA Database, or if previously obtained and stored, the defendant's DNA sample and record have been expunged.

Date 1-12-18 Name Of Prosecutor (Type Or Print) NES Signature Of Prosecutor [Signature]

V. PRIOR CONVICTION

NOTE: Federal law precludes making computer printout of DCI-CCH (rap sheet) part of permanent public court record.

NOTE: The only misdemeanor offenses under Chapter 20 that are assigned points for determining prior record level for felony sentencing are misdemeanor death by vehicle [G.S. 20-141.4(a2)] and, for sentencing for felony offenses committed on or after December 1, 1997, impaired driving [G.S. 20-138.1] and commercial impaired driving [G.S. 20-138.2]. First Degree Rape and First Degree Sexual Offense convictions prior to October 1, 1994, are Class B1 convictions.

Table with 6 columns: Source Code, Offenses, File No., Date Of Conviction, County (Name of State if not NC), Class. Row 1: [Blank], Poss. Misdemeanor up to 11202, 150251346, 7-21-15, OASlow, 3.

See AOC-CR-600 Continuation for additional prior convictions.

Source Code: 1 - DCI, 2 - NCIC, 3 - AOC/Local, 4 - AOC/Statewide, 5 - ID Bureau, 6 - Other

Date Prepared: \_\_\_\_\_

Prepared By: \_\_\_\_\_

STATE OF NORTH CAROLINA

ONSLOW County JACKSONVILLE Seat of Court

File No.

15CRS054673

53

NOTE: [Use AOC-CR-342 for DWI offense(s).]

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

JUDGMENT AND COMMITMENT
ACTIVE PUNISHMENT - FELONY
(STRUCTURED SENTENCING)

(For Convictions On Or After Jan. 1, 2012)

G.S. 15A-1301, -1340.13

Name Of Defendant
COX, JAMES, A

Race B Sex M Date Of Birth 07/18/1993

Attorney For State
NATHAN E SWEET

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant
BRYON M SMITH

Appointed Retained Crt Rptr Initials
KT

The defendant was found guilty/responsible, pursuant to plea pursuant to Afford of no contest trial by judge trial by jury, of

Table with columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., F/M, CL., \*Pun. CL.
Rows: 15CRS054673 53 DIS WEAP OCC DWELL/MOVING VEH 08/08/2015 14-34.1(B) F D
15CRS054673 52 CONSP ROBBERY DANGRS WEAPON 08/08/2015 14-87 F E

\*NOTE: Enter punishment class if different from underlying offense class...
The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 00.
Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission to this issue.
2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.

PRIOR RECORD LEVEL: I III V II IV VI

The Court (NOTE: Block 1 or 2 MUST be checked.):

- 1. makes no written findings because the term imposed is: (a) in the presumptive range. (b) for a Class A felony. (c) for adjudication as a violent habitual felon, G.S. 14-7.12. (d) for drug trafficking. (e) in the aggravated range, pursuant to G.S. 20-141.4(b)(1a).
2. finds the Determination of aggravating and mitigating factors on the attached AOC-CR-605. egregious aggravation under G.S. 14-27.2A, 14-27.4A, 14-27.23, or 14-27.28, on the attached AOC-CR-618, which requires a sentence in excess of that authorized by G.S. 15A-1340.17.
3. adjudges the defendant to be a habitual felon to be sentenced (offenses committed before Dec. 1, 2011) as a Class C felon. (offenses committed on or after Dec. 1, 2011) four classes higher than the principal felony (no higher than Class C).
4. adjudges the defendant to be a habitual breaking and entering status offender, to be sentenced as a Class E felon.
5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months.
6. finds enhancement pursuant to: G.S. 90-95(e)(3) (drugs). G.S. 14-3(c) (hate crime). G.S. 50B-4.1 (domestic violence). G.S. 14-50.22 (gang-misdemeanor). Other:
This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission.
7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one) (Class A-E felony committed prior to Oct. 1, 2013) 60 months. (Class A-E felony committed on or after Oct. 1, 2013) 72 months. (Class F or G felony committed on or after Oct. 1, 2013) 36 months. (Class H or I felony committed on or after Oct. 1, 2013) 12 months.
8. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one) a. and therefore makes the additional findings and orders on the attached AOC-CR-615, Side One. b. but makes no finding or order concerning registration or satellite-based monitoring due to a sentence of life imprisonment without parole.
9. finds the above-designated offense(s) involved the physical or mental sexual abuse of a minor. (NOTE: If offense(s) is not also a reportable conviction in No. 8 above, this finding requires no further action by the court.)
10. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
12. (offenses committed on or after Dec. 1, 2017, only) finds that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2). and that the defendant was a criminal gang leader or organizer as defined in G.S. 14-50.16A(3). This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission.
13. finds the above-designated offense(s) involved (check one) (offenses committed Dec. 1, 2008 - Nov. 30, 2017) criminal street gang activity (offenses committed on or after Dec. 1, 2017) criminal gang activity, G.S. 14-50.25.
14. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) the defendant refused to consent. (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.
15. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
16. finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one)

to Life Imprisonment Without Parole for Class A Felony. Class B1 Felony. Violent Habitual Felon. egregious aggravation under No. 2, above.

in the custody of:

N.C. DACJJ.

to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A.

Other:

for a minimum term of: 60 months

and a maximum term of: 84 months

ASR term (Order No. 4, Side Two) months

to Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for 11 days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

Table with columns: File No., Offense, County, Court, Date

Material opposite unmarked squares is to be disregarded as surplusage.

Appellate & Bakery

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs \$ 482.50	Fine \$	Restitution* \$ 0.00	Attorney's fees \$ 0.00	SBM Fee \$ 0.00	Appt Fee/Misc \$ 0.00	Total Amount Due \$ 482.50
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See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
- 3. The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_
- 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction and Juvenile Justice, then he or she will be released at the end of the ASR term specified on Side One. G.S. 15A-1340.18.
- 5. Other:  
**PAY TOTAL AMOUNT AS A CONDITION OF PAROLE OR POST-RELEASE SUPERVISION, OR FROM WORK RELEASE EARNINGS.**

The Court recommends:

- 1. Substance abuse treatment.  2. Psychiatric and/or psychological counseling.  3. Work release  should  should not be granted.
- 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.  
 but the Court does not recommend restitution be paid  as a condition of post-release supervision.  from work release earnings.

The Court further recommends:

**ORDER OF COMMITMENT/APPEAL ENTRIES**

- 1. It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

**SIGNATURE OF JUDGE**

Date: 01/16/2018  
Name Of Presiding Judge (type or print): THE HONORABLE WILLIAM W BLAND  
Signature Of Presiding Judge: *[Handwritten Signature]*

**ORDER OF COMMITMENT AFTER APPEAL**

Date Appeal Dismissed: \_\_\_\_\_ Date Withdrawal Of Appeal Filed: \_\_\_\_\_ Date Appellate Opinion Certified: \_\_\_\_\_

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date: \_\_\_\_\_ Signature Of Clerk: \_\_\_\_\_  
 Deputy CSC  Asst. CSC  
 Clerk Of Superior Court

**CERTIFICATION**

I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- Appellate Entries (AOC-CR-350)
- Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
- Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
- Victim Notification Tracking Form
- Additional File No.(s) And Offense(s) (AOC-CR-626)
- Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)
- Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One)
- Additional Findings (AOC-CR-618)
- Convicted Sex Offender Permanent No Contact Order (AOC-CR-620)
- Other: \_\_\_\_\_

Date: \_\_\_\_\_ Date Certified Copies Delivered To Sheriff: 1/17/18  
Signature Of Clerk: \_\_\_\_\_  
 Deputy CSC  Asst. CSC  
 Clerk Of Superior Court **SEAL**

Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA  
ONslow County JACKSONVILLE

44

File No.

15CRS054673

51

NOTE: [Use ADC-CR-310 for DWI offense(s).]

In The General Court Of Justice

District  Superior Court Division

STATE VERSUS

JUDGMENT SUSPENDING SENTENCE - FELONY

PUNISHMENT:  COMMUNITY  INTERMEDIATE  
(STRUCTURED SENTENCING)

(For Offenses Committed Dec. 1, 2011 - Nov. 30, 2016)

G.S. 15A-1341, -1342, -1343, -1343.2, -1346

Name Of Defendant  
COX, JAMES, A

Race

B

Sex

M

Date Of Birth

07/18/1993

Attorney For State

NATHAN E SWEET

Def. Found  
Not Indigent

Def. Waived  
Attorney

Attorney For Defendant

BRYON M SMITH

Appointed

Retained

Crt Rptr Initials

KT

The defendant was found guilty/responsible, pursuant to  plea  pursuant to Afford  of no contest  trial by judge  trial by jury, of

File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M	CL.	*Pun. CL.
15CRS054673	51	BREAKING AND OR ENTERING (F)	08/08/2015	14-54(A)	F	H	

\*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

The Court  1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 00.  
Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission to this issue.  
 2. makes no prior record level finding because none is required.

PRIOR RECORD LEVEL:  I  III  V  
 II  IV  VI

The Court (NOTE: Block 1 or 2 MUST be checked.):

- 1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).
- 2. makes the Determination of aggravating and mitigating factors on the attached AOC-CR-605.
- 3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-606.
- 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
- 5. adjudges the defendant to be (check only one)  a habitual felon to be sentenced four classes higher than the principal felony (no higher than Class C).  
 a habitual breaking and entering status offender, to be sentenced as a Class E felon.
- 6. finds enhancement pursuant to:  G.S. 90-95(e)(3) (drugs).  G.S. 14-3(c) (hate crime).  G.S. 50B-4.1 (domestic violence).  
 G.S. 14-50.22 (gang misdemeanor).  Other: \_\_\_\_\_ This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission.
- 7. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603C, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-615, Side Two.
- 8. finds the above-captioned offense(s) involve the (check all that apply)  physical or mental  sexual abuse of a minor.  
 (If No. 7 not found) and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603C, Page Two, Side Two.
- 9. finds that a  motor vehicle  commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
- 10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
- 11. finds the above-designated offense(s) involved criminal street gang activity. G.S. 14-50.25.
- 12. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply)  the defendant refused to consent.  
 (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.
- 13. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
- 14. finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned

for a minimum term of 6 months for a maximum term of 17 months in the custody of the N.C. DACJJ.

This sentence shall run at the expiration of sentence imposed in file number \_\_\_\_\_

The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the  sentence imposed above.  imprisonment required for special probation set forth on AOC-CR-603C, Page Two.

SUSPENSION OF SENTENCE

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on  supervised  unsupervised probation for 24 months.

- 1. The Court finds that a  longer  shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).
- 2. The Court finds that it is NOT appropriate to delegate to the Section of Community Corrections the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.
- 3. This period of probation shall begin  when the defendant is released from incarceration  at the expiration of the sentence in the case below.

File No.	Offense	County	Court	Date
15CRS054673	53	ONslow	Superior	01/16/2018

4. The defendant shall comply with the conditions set forth in file number \_\_\_\_\_

5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)

MONETARY CONDITIONS

The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule  determined by the probation officer.  set out by the court as follows: \_\_\_\_\_

Costs	Fine	Restitution*	Attorney's Fees	Comm Serv Fee	EHA Fee	SBM Fee	Appt Fee/Misc	Total Amount Due
\$ 0.00	\$	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$

\*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.

The Court finds just cause to waive costs, as ordered on the attached  AOC-CR-618.  Other: \_\_\_\_\_

Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.

Material opposite unmarked squares is to be disregarded as surplusage.



REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)

NOTE: Any probationary judgment may be extended pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device, or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) Satisfy child support and family obligations, as required by the Court. If the defendant is on supervised probation, the defendant shall also: (5) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer. (6) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (7) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (8) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (9) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. (10) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (11) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. (12) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction and Juvenile Justice for the actual costs of drug or alcohol screening and testing.

13. The Court finds that the defendant is responsible for acts of domestic violence and therefore makes the additional findings and orders on the attached AOC-CR-603C, Page Two, Side Two.

SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1)

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

- 14. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of... or until relicensed by the Division of Motor Vehicles, whichever is later.
15. Successfully pass the General Education Development Test (G.E.D.) during the first... months of the period of probation.
16. Complete... hours of community service during the first... days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-708 is not due because it is assessed in a case adjudicated during the same term of court. to be paid pursuant to the schedule set out under Monetary Conditions on the reverse. within... days of this Judgment and before beginning service.
17. Report for initial evaluation by TASC participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.
18. Not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with ANGELA LEISURE, DANIEL MCMINN, RICHARD LINN AND ASHLEY JACKSON. "Contact" includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except
19. (for offenses committed on or after December 1, 2012) Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of... days, ... months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
20. Other:

21. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603C, Page Two.

ORDER OF COMMITMENT/APEAL ENTRIES

- 1. It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date: 01/16/2018 Name Of Presiding Judge (type or print): THE HONORABLE WILLIAM W BLAND Signature Of Presiding Judge: [Handwritten Signature]

CERTIFICATION

I certify that this Judgment and the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- 1. Appellate Entries (AOC-CR-350)
2. Judgment Suspending Sentence (AOC-CR-603C, Page Two) (additional conditions of probation)
3. Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
4. Extraordinary Mitigation Findings (AOC-CR-606)
5. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)
6. Judicial Findings As To Required DNA Sample (AOC-CR-319)
7. Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two)
8. Convicted Sex Offender Permanent No Contact Order (AOC-CR-620)
9. Additional File No.(s) And Offense(s) (AOC-CR-626)
10. Other:

Date Date Certified Copies Delivered To Sheriff Signature Of Clerk Deputy CSC Asst. CSC Clerk Of Superior Court SEAL

Material opposite unmarked squares is to be disregarded as surplusage.

1           **THE COURT:** That motion is respectfully denied.

2           **MR. SMITH:** Mr. Cox would like the Court to note his  
3 appeal to the appellate division.

4           **THE COURT:** You were retained here?

5           **MR. SMITH:** Our arrangement was through this stage  
6 of the trial only, Judge. I would ask the Court to appoint  
7 the Appellate Defender, Judge.

8           **THE COURT:** I know it was his parents, you indicated  
9 that, but if you would have your client fill out an affidavit,  
10 but I will then refer it to the Appellate Defender and  
11 Indigent Defendant Services.

12           **MR. SMITH:** Thank you, Your Honor.

13           **THE COURT:** I thank each of you.

14           **MR. SWEET:** Thank you very much, Judge.

15           **THE COURT:** I don't know if there was a motion for  
16 appellate release, but there's no appeal bond. Also, in each  
17 case, any earnings would be applied towards costs assessed in  
18 the case.

19           **MR. WRIGHT:** I didn't make a motion.

20           **THE COURT:** I know you didn't, but I thought we  
21 would just cover it. I don't think you expected it.

22           **MR. WRIGHT:** I can ask the Court to set an appeal  
23 bond, but that's going to be denied.

24           **THE COURT:** There's no appeal bond. The sentences  
25 become effective today, and as to any money earned in jail or

**DEFENDANT'S PROPOSED ISSUES ON APPEAL**

- I. Whether the trial court erred in denying Defendant Cox's Motion to Dismiss Conspiracy to Commit Armed Robbery and Felonious Breaking and Entering?
- II. Whether the trial court's failure to include co-defendant Linn as a conspirator in the jury instructions constituted plain error and a violation of Due Process?
- III. Whether the trial court committed plain error by failing to answer the jury's questions about the ownership of property?
- IV. Whether the trial court's deviation from the Pattern Jury Instructions with respect to the elements of Conspiracy to Commit Robbery constituted plain error?
- V. Whether the trial court erred in failing to set aside the conviction of Conspiracy to Commit Robbery, when the jury necessarily determined that the Defendant had no intent to commit robbery, by their verdict in the Burglary case?
- VI. Whether defense counsel was ineffective for not objecting or making a ten day MAR, when the trial court was informed of the terms of a plea offer which the defendant rejected?
- VII. Whether defense counsel was ineffective by failing to submit the mitigating factor that "the relationship between the defendant and victim was extenuating?"
- VIII. Whether the trial court erred by not declaring a mistrial when the bailiff stated the jury was "on the verge" of deciding the case?
- IX. Whether the trial court committed plain error by instructing on both conspiracy and acting in concert?

STATE OF NORTH CAROLINA

48

File No.

15CRS054673

ONSLOW County

Additional File No.(s)

In The General Court Of Justice
[ ] District [X] Superior Court Division

STATE VERSUS

APPELLATE ENTRIES

Rules 7, 9, 11, and 27 of the N.C. Rules of Appellate Procedure

Name Of Defendant
COX, JAMES, A

Date(s) Of Trial
01/16/2018

Codefendant(s) If Tried Jointly
ASHLEY JACKSON

Name And Address Of Defendant's Trial Counsel
BRYON M SMITH
814 New Bridge St
Jacksonville, NC 28540

Name And Address Of Trial Prosecutor
NATHAN E SWEET
632 COURT STREET
JACKSONVILLE, NC 28540

Telephone No. Email Address
(910) 455-0053

Telephone No. Email Address
910-478-3610

Name And Address Of Defendant's Trial Counsel

Name And Address Of Trial Transcriptionist
THOMAS, KATIE, K
625 COURT STREET
JACKSONVILLE, NC 28540

Telephone No. Email Address

Telephone No. Email Address
910-478-3600

Name And Address Of Defendant's Appellate Counsel

[X] The Appellate Defender (919) 354-7210
123 W. Main Street, Suite 500, Durham, NC 27701
NOTE: All indigent appeals are assigned to the Appellate Defender.
[ ] Retained Appellate Counsel

Name And Address Of Trial Transcriptionist

Telephone No. Email Address

Telephone No. Email Address

Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)

Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)

Date(s) Telephone No.

Date(s) Telephone No.

Email Address

Email Address

(Attach additional sheet(s) if necessary)

JUDGE'S INITIAL APPEAL ENTRIES

- 1. [X] a. The defendant has given Notice of Appeal to the N.C. Court of Appeals, or
[ ] b. This is a capital case appealable as of right to the N.C. Supreme Court.
2. Release of the defendant pursuant to G.S. 15A-536 is [X] denied. [ ] allowed upon execution of a secured bond in the amount of \$ \_\_\_\_\_ and compliance with the following additional conditions:
3. Unless indigent, the defendant shall arrange for the transcription of the proceedings as provided in the Rules of Appellate Procedure.
[X] 4. (NOTE: Check in all cases where defendant is indigent.) The defendant is indigent and has requested a transcript and the appointment of counsel. It is ORDERED that the defendant is allowed to appeal as an indigent and:
a. The Office of Indigent Defense Services shall pay the costs of producing a transcript, and of reproducing the record and the defendant's brief.
b. The Appellate Defender is appointed to perfect the defendant's appeal or assign other appellate counsel pursuant to rules issued by the Office of Indigent Defense Services.
c. Upon request, the Clerk shall furnish to the Appellate Defender, or to alternate counsel designated by the Appellate Defender, a copy of the complete trial division file in the case and, upon request, any documentary exhibits.
d. Unless the parties stipulate that parts of the proceedings shall not be transcribed, the Clerk shall order from the transcriptionist(s) a transcript of all parts of the proceedings except:

Original-File Copy-Transcriptionist(s) Copy-Defendant's Trial Counsel Copy-Defendant's Appellate Counsel (or Defendant if unrepresented) Copy-District Attorney

Material opposite unmarked squares is to be disregarded as surplusage.

Handwritten notes: 1/17/18, dep da, dep beth, report appellate, nac

**JUDGE'S INITIAL APPEAL ENTRIES (continued)**

5. If a transcript has been ordered, the defendant in a non-capitally tried case shall serve a proposed record on appeal on the State within 35 days after the reporter's or transcriptionist's certification of delivery of the transcript. If a transcript has been ordered, the defendant in a capitally tried case shall serve a proposed record on appeal on the State within 70 days after the reporter's or transcriptionist's certification of delivery of the transcript. If no transcript has been ordered, the defendant shall serve a proposed record on appeal on the State within 35 days after filing notice of appeal.
6. The State shall serve its amendments, objections or proposed alternative record on appeal on the defendant within 30 days if this is a non-capital case or 35 days if this is a capital case, after service upon it of the defendant's proposed record on appeal.
7. The indigent defendant does not read or speak the English language, but reads and/or speaks his or her native language of \_\_\_\_\_ . The Court therefore authorizes the services of a language translator or interpreter during the pendency of the appeal for the purposes of (1) written translation of attorney-client correspondence, assignments of error in the settled record on appeal, appellate briefs filed by the defendant and the State, and appellate opinion(s), and/or (2) verbal interpretation of attorney-client communication at each critical stage of the appellate proceedings.  
The Court further Orders that a language translator or interpreter with the necessary knowledge, skill, experience, training and education to perform the above services shall be selected and paid by the Administrative Office of the Courts.
8. The Clerk shall deliver a copy of these Appellate Entries to the Appellate Defender, counsel for all parties, or the defendant, if not represented by counsel.

Date 01/16/2018	Name Of Presiding Judge (type or print) WILLIAM W. BLAND	Signature Of Presiding Judge 
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**CLERK'S TRANSCRIPT ORDER AND CERTIFICATE**

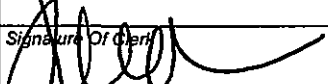
(NOTE: To be completed ONLY when defendant is indigent.)

**To The Transcriptionist(s) Named On The Reverse:**

Prepare and deliver to the parties a transcript of all portions of the proceedings in the above-captioned case except:  
(Specify any portions of the proceedings which need not be transcribed pursuant to a stipulation filed by the parties under Rule 7(a)(2), or pursuant to No. 4.d. on reverse side.)

I certify that I delivered a copy of this Transcript Order to the transcriptionist(s) on the date shown below:

- personally.  
 by mailing it to the transcriptionist(s) at the address(es) shown on the reverse.

Date Clerk's Transcript Order Entered And Filed 01/16/2018	Date Order Delivered To Transcriptionist(s), If Different 01/17/2018
Name Of Clerk (type or print) JENNIFER MCCORMAC	Signature Of Clerk 
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	

**EXTENSION OF TIME TO PREPARE TRANSCRIPT OR SERVE RECORD**

1. **Extension of time to file transcript:** Pursuant to Rule 7, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, the Court finds that this is a criminal case that did not result in a sentence of death and it is ORDERED that the time for preparation of the transcript is extended for 30 days.
2. **Extension of time to serve proposed record on appeal:** Pursuant to Rules 11 and 27, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, it is ORDERED that the time for service of the proposed record on appeal is extended for 30 days.

**NOTE:** The trial court may grant only one extension of time to serve the proposed record on appeal. Any additional motion for an extension of time to serve the proposed record on appeal must be made to the appellate court where the appeal is to be heard. In a case in which a sentence of death was not entered, the trial court may grant one motion for an extension of time to prepare the transcript. Any subsequent motions for an extension of time to prepare the transcript must be made to the appellate court where the appeal is to be heard. In capitally tried cases that resulted in the imposition of the death penalty, motions for an extension of time to prepare the transcript must be made directly to the Supreme Court. Rules 7 and 27, N.C. Rules of Appellate Procedure.

Date	Name Of Judge (type or print)	Signature Of Judge
------	-------------------------------	--------------------

**CERTIFICATION**

I certify this Appellate Entries form is a true and complete copy of the original on file in this case.

Date	Signature And Seal	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
------	--------------------	--

Material opposite unmarked squares is to be disregarded as surplusage.

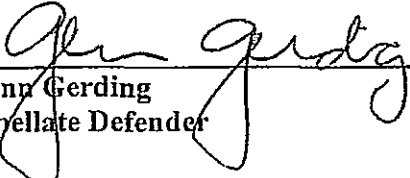
**APPOINTMENT OF APPELLATE COUNSEL  
BY THE APPELLATE DEFENDER**

STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
 JAMES A. COX )  
 15 CRS 54673, 54665 )  
 Onslow County )

Defendant having been convicted of a criminal offense in this action and having given notice of appeal to the North Carolina Court of Appeals, and the Trial Court having appointed the Appellate Defender as appellate counsel for the defendant, the Appellate Defender appoints the attorney named below as appellate counsel to perfect defendant's appeal, pursuant to IDS Rules, Part 3. A copy of the Court's Appellate Entries is attached to the copy of this Appointment Notice that has been transmitted to the appointed appellate counsel. The original of this Appointment Notice has been mailed to the Clerk of Superior Court for filing.

**Appointed Appellate Counsel:** **William Michael Spivey**  
Post Office Box 1159  
Rocky Mount, North Carolina 27802  
Telephone 252-972-2711  
Facsimile 252-977-2777  
Email [mspivey@earthlink.net](mailto:mspivey@earthlink.net)

This the 2nd day of January, 2018.

  
\_\_\_\_\_  
Glenn Gerding  
Appellate Defender

In addition to the appointed appellate counsel named above, the Office of the Appellate Defender has provided a copy of this Appointment Notice to all parties as listed on the Appellate Entries, including the defendant and the court reporter.

**ATTENTION CLERK OF COURT. File this Appointment Notice in your office. Please mail a photocopy of the complete court files, including any documentary exhibits, to Mr. Spivey.**

North Carolina  
Onslow County

FILED

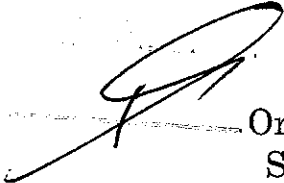
General Court of Justice  
Superior Court Division  
File Nos.: 15 CRS 54763  
15 CRS 54665

2016 APR 16 P 2:39

State of North Carolina

vs.

James A. Cox



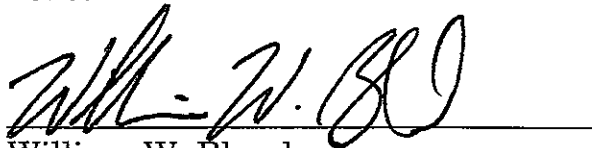
Order Extending Time to  
Serve Proposed Record

Upon motion of the defendant and for good cause shown:

IT IS HEREBY ORDERED pursuant to Rules 7(b)(1) and Rule 27(c)(1) of the N.C. Rules of Appellate Procedure that the time for service of Appellant's proposed record on appeal in this matter is extended for 30 days.

IT IS FURTHER ORDERED that counsel for the defendant promptly serve a copy of this Order on all other parties to this action.

This the 4<sup>th</sup> day of April 2017.

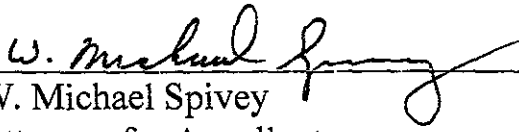


William W. Bland  
Senior Resident Judge of Superior Court

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing Order Extending Time to Serve Proposed Record was served upon Mr. Nathan E. Sweet, Assistant District Attorney, by United States Postal Service first-class mail, postage prepaid, addressed to Mr. Nathan E. Sweet, Assistant District Attorney, 632 Court Street, Jacksonville, NC 28540.

This the 11th day of April 2018.

  
\_\_\_\_\_  
W. Michael Spivey  
Attorney for Appellant  
PO Box 1159  
Rocky Mount, NC  
Phone: 252 - 972 - 2711  
Fax: 252-972-2777



STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE  
**FILED** SUPERIOR COURT DIVISION  
FILE NOS. 15CRS54673,  
15CRS54665  
2018 MAY -7 P 1:51

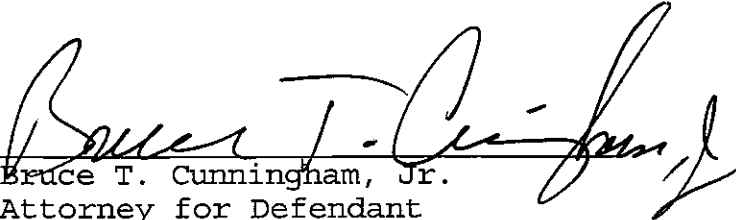
STATE OF NORTH CAROLINA ONSLOW CO., C.S.C.  
BY RT

v. ) NOTICE OF APPEARANCE AS COUNSEL  
) FOR DEFENDANT-APPELLANT  
)  
JAMES A. COX, )  
)  
DEFENDANT )

\*\*\*\*\*  
Notice of Appearance as Counsel for Defendant-Appellant  
\*\*\*\*\*

NOW COMES the undersigned, Bruce T. Cunningham, Jr., of the Moore County Bar, pursuant to Rule 33(a) of the Rules of Appellate Procedure, and gives Notice of Appearance as counsel for the Defendant-Appellant James Cox in this matter.

This the 3rd day of May, 2018.

  
Bruce T. Cunningham, Jr.  
Attorney for Defendant  
The Law Office of Bruce T. Cunningham, Jr.  
225 N. Bennett Street  
Southern Pines, NC 28387  
Phone: 910.693.3999  
Fax: 910.695.0983  
btcunningham545@gmail.com  
NC Bar No. 5564

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the attached document on all parties to this cause by:

- Hand delivered a copy hereof to the attorney for each said party addressed as follows:
- Depositing a copy hereof, postage prepaid, in the United States Mail, addressed to the attorney for each said party as follows:
- Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:
- Telecopying a copy hereof to the attorney for each said party as follows:

William Spivey  
P.O. Box 1159  
Rocky Mount, NC 27802

Ernie Lee  
District Attorney  
632 Court St.  
Jacksonville, NC 28540

This the 3rd day of May, 2018.

Law Office of Bruce T. Cunningham, Jr.

---

Bruce T. Cunningham, Jr.  
Attorney for Defendant  
The Law Office of Bruce T. Cunningham, Jr.  
225 N. Bennett Street  
Southern Pines, NC 28387  
Phone: 910.693.3999  
Fax: 910.695.0983  
btcunningham545@gmail.com  
NC Bar No. 5564

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NOS.: 15 CRS 054673  
15 CRS 054665

STATE OF NORTH CAROLINA  
Plaintiff

vs.

**MOTION TO WITHDRAW**


JAMES A. COX,  
Defendant

NOW COMES W. Michael Spivey, court-appointed appellate counsel for Appellant James A. Cox, and respectfully moves this Court for an order permitting him to withdraw. The ground for this motion is that Appellant has retained counsel, James Cunningham, to represent him in this appeal. Counsel shows the Court:

1. The undersigned was appointed by the Appellate Defender to represent Appellant James A. Cox in this appeal.
2. James Cunningham, Attorney at Law, has advised counsel that he has been retained to represent Mr. Cox on appeal. Mr. Cox has filed a Notice of Appearance in the trial court.
3. Mr. Cox' consent to counsel withdrawal is attached hereto.

WHEREFORE, the undersigned moves that he be permitted to withdraw as attorney for Appellant James A. Cox.


This the 11th day of May 2018.

  
W. Michael Spivey  
Attorney for Appellant  
State Bar No.: 8991  
P.O. Box 1159  
Rocky Mount, NC 27802  
Telephone: (252) 972-2711  
Email: mspivey@earthlink.net

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of this Motion to Withdraw was served upon all other parties to this action on the date shown below by placing a copy in an envelope with adequate postage thereon and depositing the same in an official depository of the United States Postal Service under the exclusive care and custody of the United States Postal Service, said envelope being properly addressed to Mr. Nathan E. Sweet, Assistant District Attorney, 632 Court Street, Jacksonville NC 28450.

This the 11th day of May 2018.

  
W. Michael Spivey  
Attorney for Defendant-Appellant  
P.O. Box 1159  
Rocky Mount, N.C. 27802  
Telephone: 252-972-2711  
Fax: 252-972-2777

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NOS.: 15 CRS 054673  
15 CRS 054665

STATE OF NORTH CAROLINA  
Plaintiff

vs.

JAMES A. COX,  
Defendant

**ORDER PERMITTING  
APPOINTED COUNSEL  
TO WITHDRAW**

This matter came on to be heard before the undersigned Judge of Superior Court upon motion of court-appointed appellate counsel to withdraw. Mr. Cox has retained private counsel and consented to Mr. Spivey's withdrawing from further representation.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that W. Michael Spivey be and hereby is permitted to withdraw as attorney for Appellant James A. Cox.

This the \_\_\_\_ day of May 2018.

---


William W. Bland  
Senior Resident Judge of Superior Court  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Defendant-Appellant's Proposed Record on Appeal, has been duly served on the following by sending first-class mail, postage prepaid to:

Nathan E. Sweet  
Assistant District Attorney  
632 Court St.  
Jacksonville, NC 28540

This the 24<sup>th</sup> day of May, 2018.

By:   
Bruce T. Cunningham, Jr.  
Attorney for Defendant/Appellant

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15 CRS 54673, 15 CRS 54665

\*\*\*\*\*

STATE OF NORTH CAROLINA, )  
 )  
v. )  
 )  
JAMES A COX, )  
Defendant, )  
 )

\*\*\*\*\*

**CERTIFICATE OF SETTLEMENT**

Counsel for Defendant-Appellant James A. Cox certifies as follows:

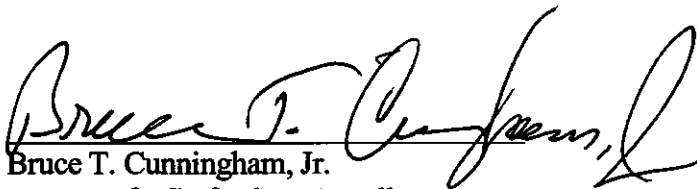
Defendant-Appellant served the Proposed Record on Appeal by sending it to the State Appellee on May 24, 2018; and

(1) The Record on Appeal has been settled by stipulation, or

(2) The Record on Appeal has been settled because the time has expired for the State-Appellee to serve upon Defendant-Appellant a notice of approval of Proposed Record on Appeal or objections, amendments or alternative Proposed Record on Appeal pursuant to N.C. R. App. P.11.

Based upon the forgoing, Defendant-Appellant's Proposed Record on Appeal constitutes the Record on Appeal in this case as a matter of law, N.C. R. App. P. 11. A copy of this Certificate has been served this day upon Nathan Sweet, the Assistant District Attorney representing the State in this case.

This the 2<sup>nd</sup> day of July, 2018.

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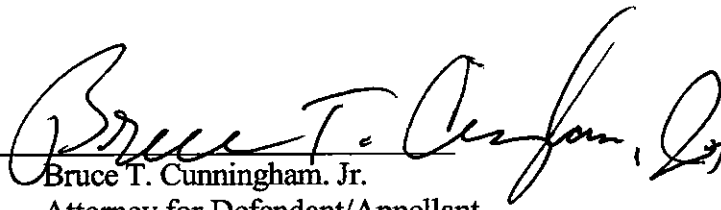


**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Defendant-Appellant's Record on Appeal, has been duly served on the following by sending first-class mail, postage prepaid to:

Josh Stein  
Attorney General  
Department of Justice  
Post Office Box 629  
Raleigh, NC 27602

This the 2nd day of July, 2018.

By:   
Bruce T. Cunningham, Jr.  
Attorney for Defendant/Appellant

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

)  
)  
)  
)  
)  
)  
)

Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT B

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\* \* \* \* \*

STATE OF NORTH CAROLINA	)	ONSLow COUNTY
	)	
VS.	)	
	)	
JAMES A. COX	)	15 CRS 54673
and	)	
ASHLEY DEAN JACKSON	)	15 CRS 54665

\* \* \* \* \*

TRANSCRIPT, Volume I of V  
January 9, 2018

\* \* \* \* \*

January 8, 2018, Criminal Session

The Honorable William W. Bland, Judge Presiding

Jury trial

## A P P E A R A N C E S

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1 (THE TRIAL BEGAN ON 01/30/18 AT 10:35 AM, WITH  
2 THE DEFENDANTS AND THEIR ATTORNEYS PRESENT, THE  
3 PROSECUTORS PRESENT, THE JURY ABSENT.)

4 THE COURT: Good morning. Are we ready to proceed?

5 MR. SWEET: Yes, sir. Judge, may we approach real  
6 quick?

7 THE COURT: Certainly.

8 (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

9 MR. SWEET: May I proceed, Judge?

10 THE COURT: Yes, sir.

11 MR. SWEET: Judge, calling the Court's attention to  
12 Line 14 and 15 and Line 37 on this week's trial calendar.  
13 That would be 15 CRS 54673 and 54674, both Mr. James Cox and  
14 as well as Line 37 on the calendar with Ms. Ashley Jackson.  
15 Judge, I believe that file number is -- for the record,  
16 Line 37 would be 15 CRS 54665.

17 Judge, having those cases, a plea offer was made  
18 most recently to Mr. Cox from me, officially, on behalf of the  
19 district attorney's office, at 15 CRS 54673 and 54674 to one  
20 count of second-degree burglary. We left that offer open a  
21 couple of weeks during the month of December for them to get  
22 back. We extended that time and was informed that they would  
23 not be accepting that offer; therefore, we called his case to  
24 trial.

25 MR. SMITH: Is that still your decision to reject

1 the offer of second degree, Mr. Cox?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** It's my understanding Mr. Cox is  
4 standing with his attorney Byron -- Bryon Smith, sorry. Is  
5 that right, you were extended an offer of second-degree  
6 burglary with the sentencing, I guess, in the discretion of  
7 the Court?

8 **MR. SMITH:** No agreement, that's correct.

9 **THE COURT:** That was in December, 2017, and extended  
10 into 2018 a little.

11 **MR. SWEET:** Extended to basically the first week --  
12 I made my inquiries the first week of 2018.

13 **THE COURT:** You're rejecting that offer, Mr. Cox, is  
14 that right?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** You're still rejecting it, you don't  
17 want that offer?

18 **THE DEFENDANT:** Correct, Your Honor.

19 **MR. SMITH:** Thank you, Judge.

20 **MR. SWEET:** In terms of Line 37 with Ms. Ashley  
21 Jackson, 15 CRS 54665, the last official offer from the  
22 district attorney's office was for her to plead guilty to one  
23 count of conspiracy to commit robbery with a dangerous weapon  
24 and one count of first-degree burglary. That was made back in  
25 the summer of 2016 by another prosecutor. My understanding is



1 that was rejected, as well, and is rejected today.

2 **MR. WRIGHT:** Judge, that is correct. That offer was  
3 made about a year and a half ago, and there's been no further  
4 discussion, and we respectfully rejected it then and we  
5 respectfully reject it now.

6 **THE COURT:** You are aware of the charges against  
7 you -- each of the defendants are aware of the charges against  
8 them and the potential punishment for their respective  
9 punishment classes, is that right?

10 **DEFENDANT JACKSON:** Yes, sir.

11 **DEFENDANT COX:** Yes, Your Honor.

12 **MR. SWEET:** Judge, we would, at this time, request  
13 that the Court allow the state to join for trial those file  
14 numbers that have been previously mentioned, 15 CRS 54673 and  
15 674 for Mr. James Cox, and 15 --

16 **MR. SMITH:** That's without objection from Mr. Cox.

17 **MR. SWEET:** And 15 CRS 54665 for Ms. Ashley Jackson.

18 **MR. WRIGHT:** We have no objection, and we withdraw  
19 the motion, for several reasons, that we previously filed.

20 **THE COURT:** You're James A. Cox, is that right?

21 **DEFENDANT COX:** Yes, sir.

22 **THE COURT:** This is 15 CRS 54673 and 15 CRS 54674.  
23 These other cases that are on the calendar, Number 16 and 17,  
24 those are not -- those are not today's trial cases?

25 **MR. SWEET:** Correct, Judge.

1           **THE COURT:** Okay. All right.

2           **MR. SWEET:** If I may proceed briefly, Judge, for  
3 record purposes about why the state moved to join those.  
4 Obviously, we have a unique circumstance in that we have --  
5 the state has made a motion to join both -- two file numbers  
6 from the same transaction in regards to the same defendant,  
7 Mr. Cox, at Line 14 and 15, and also join for trial two  
8 defendants; obviously, Ms. Jackson and Mr. Cox, as has been  
9 previously mentioned. Obviously, joinder is the rule, Judge  
10 and, just for the record, we would contend that the evidence  
11 that's going to be presented meets every factor that the Court  
12 is to consider in the nexus of whether cases should be joined,  
13 it's temporal proximity, it's got a geographic proximity.  
14 There's similarity among the victims, as the evidence will  
15 show. There are -- it's pretty much the exact same evidence  
16 and the exact same witnesses that the state would use in both  
17 trials.

18           The offenses are extremely similar, even though they  
19 have one or two differences in their indictments. They're  
20 extremely similar, especially with the main charges,  
21 first-degree burglary and conspiracy to commit robbery. The  
22 defendant -- we would contend both defendants had similar  
23 motives, our evidence will show that. And, finally, that a  
24 similar modus operandi was used by both defendants, Judge. So  
25 we would contented the nexus was met on all accounts, as the

1 evidence will show in this trial, in regards to joinder and,  
2 obviously, that's been unopposed, at this point. I just  
3 wanted to state that for the record, Judge. Thank you.

4 **THE COURT:** Thank you. Can y'all just approach a  
5 moment?

6 **MR. SWEET:** Yes, sir.

7 (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

8 **THE COURT:** All right. Let's bring the jury in,  
9 please.

10 (PROSPECTIVE JURORS ENTERED THE COURTROOM AT  
11 10:47 AM.)

12 **THE COURT:** Good morning, ladies and gentlemen. Can  
13 each of you hear me okay?

14 (JURORS RESPONDED IN THE AFFIRMATIVE.)

15 **THE COURT:** I want to welcome those of you who have  
16 been selected to serve as jurors for this criminal session of  
17 superior court here in Onslow County. Let me introduce  
18 myself. My name is Will Bland. I'm a judge of the superior  
19 court. I live in Goldsboro, in Wayne County, and I've been  
20 assigned to preside at this session of superior court in your  
21 county by the chief justice of the Supreme Court of North  
22 Carolina. In fact, I'll be here for most of the next six  
23 months. Superior court judges travel around a district of the  
24 state for six-month terms. It's my pleasure to be here. I  
25 had an opportunity to be here about a year ago, and I very

1 much enjoy working in this county.

2           So you'll know the court personnel with whom you'll  
3 be working and their respective duties -- and, first, let me  
4 mention your resident superior court judge, Chuck Henry. He's  
5 a judge that I've had the pleasure to know, both as a lawyer  
6 and as a judge, and I think your county is well served there.  
7 So it's my pleasure to be here in his office.

8           The elected clerk of superior court is Lisa M.  
9 Brown, and she is represented here in this courtroom by deputy  
10 clerk of superior court Jennifer McCormac. She administers  
11 oaths to the witnesses and keeps the court records. You see a  
12 whole stack of files in front of her here. And if you've ever  
13 been to the clerk's office, you'll see walls and walls and  
14 walls of files, and that's what the clerk's office keeps track  
15 of.

16           The court reporter is Katie Thomas. She takes down  
17 and transcribes everything that's said in this courtroom in a  
18 trial and the various motions. How she does that, I cannot  
19 explain it to you, but she and other court reporters  
20 throughout the state do that job very well, and it's a very  
21 important job.

22           The bailiffs -- there he is. We have a number of  
23 bailiffs in the courtroom. Ken Plume is there at the back.  
24 With him, in the back, is James Seifert, I believe, and  
25 Mr. Wheeland, Nicholas Wheeland, is here, and Sean Selleck

1 and, actually, your primary interaction will probably be with  
2 Deputy Selleck. He'll be the one who takes you to and from  
3 the jury room, at the time that comes. If you have any matter  
4 that arises, you have any sort of personal issue that needs to  
5 be addressed, just let one of the bailiffs know and they'll  
6 let me know and we'll try to address it promptly.

7           In order to minimize noise and confusion in the  
8 courtroom, I'll ask that all jurors, witnesses, defendants and  
9 spectators remain seated while court is in session. This call  
10 upon your time does not come frequently and may never be  
11 repeated in your lifetime. It is one of the obligations of  
12 citizenship, and there are very few things that you are really  
13 required to do in our society, and this is one of them and I  
14 appreciate your willingness to do it. Your coming here to do  
15 it this week represents your contribution to our democratic  
16 way of life. It is an assurance that if chance or design  
17 brings you to a court can of law in any civil or criminal  
18 entanglement, your rights and liberties will be regarded by  
19 the same standards of justice and protected by the same  
20 considerations that you discharge here in your duties as  
21 jurors.

22           You are being asked -- you're being asked to perform  
23 one of the highest duties that can be imposed upon any  
24 citizen, and that is to sit in judgment on the facts which  
25 will determine and settle disputes among your fellow citizens.

1 Trial by jury is a right guaranteed to every citizen, and I  
2 think you saw earlier this morning the video that stressed  
3 that, but this is the real thing.

4           After you've been selected as a juror and have  
5 qualified by taking the oaths, you become the sole judges of  
6 the weight to be given any evidence, and the credibility of  
7 each witness. Any decision agreed to by all 12 jurors, which  
8 is free of partiality, unbiased and unprejudiced, reached in  
9 sound and conscientious judgment, based on credible evidence  
10 and in accord with the Court's instructions becomes a final  
11 result in a case. You will be, in effect, officers of the  
12 court.

13           It is my duty to see that the trial is conducted in  
14 accord with the rules of law that prescribe trial procedure,  
15 to rule on points of evidence, to maintain order, to preserve  
16 decorum and to instruct you on the law that you are to apply  
17 to the facts as you find the facts to be.

18           You must understand that neither the Court nor the  
19 parties, nor the witnesses, nor the lawyers have any -- may  
20 have any private contact or conversation with you during this  
21 week. I'm a little less familiar with this courthouse, but I  
22 think it's like Wayne County's courthouse. I know you have a  
23 lot of construction going on over there so it's hard to avoid  
24 one another, but if you see someone you know walking around  
25 and they suddenly act like they don't want to talk to you,

1 that's because they don't want to talk to you. They've been  
2 instructed not to talk to you, and you shouldn't speak to  
3 them. Don't take it as a sign of rudeness, or anything else.  
4 It's just to make sure nobody -- if you just say, hey, how are  
5 you doing, it was good to see you the other day, and it's  
6 perfectly innocuous, someone else seeing it may think, oh, I  
7 saw them talking to that lawyer or that court person, and get  
8 the wrong idea. So the way to do it is just back off this  
9 week and, once this week is done, chat away.

10           Your entry upon this service will impose upon you  
11 certain duties and grave responsibilities. It requires you be  
12 prompt in attendance, attentive to your duties, faithful to  
13 your oaths and tolerant of your fellow jurors, and sound and  
14 deliberate in your evaluations, and firm but not stubborn in  
15 your convictions.

16           You went over the qualifications for jury service  
17 this morning, and I believe each of you was determined to be  
18 qualified. Those of you that had some issues have already  
19 brought them up with the jury clerk. I recognize each of you  
20 will be inconvenienced by serving on the jury for this week,  
21 and every effort will be made to see that your time is not  
22 wasted. When it can be foreseen that you will not be needed  
23 in the courtroom for an extended period, you'll be released  
24 and given a definite time to return. Please return promptly  
25 at the specified time. Again, I -- jury service is a

1 fundamental obligation, and I appreciate your doing it.

2           So the next case the state is calling is the State  
3 versus James Arnold Cox, Jr., and State versus Ashley Dean  
4 Jackson. The state is represented in this case -- I didn't  
5 mention, your elected district attorney is Ernie R. Lee, and  
6 he is here in this court represented by assistant district  
7 attorneys Nathan Sweet and Seth Sholar, and the defendant,  
8 James A. Cox, is here represented by Bryon Smith, attorney  
9 Bryon Smith, of the local bar. Ashley Dean Jackson is  
10 represented by attorney Ernest J. Wright, also of the Onslow  
11 County bar.

12           The defendant, James A. Cox, is charged with  
13 first-degree burglary, conspiracy to commit robbery with a  
14 dangerous weapon, discharging a weapon into occupied property,  
15 assault with a deadly weapon, injury to real property and  
16 injury to personal property.

17           The defendant, Ashley Dean Jackson, is charged with  
18 conspiracy to commit robbery with a dangerous weapon,  
19 first-degree burglary, and simple assault, and these two cases  
20 are what's called joined for trial, because they come out of  
21 the same operative -- alleged to have occurred out of the same  
22 operative set of facts.

23           Each defendant has entered a plea of not guilty.  
24 The fact that these defendants or any defendant is brought to  
25 court is not evidence of guilt. It's the administrative way



1 to bring it here to be tried. These defendants and each  
2 defendant, when brought to court is presumed to be innocent.

3 Ladies and gentlemen what we're going to do now is  
4 jury selection. Each of the lawyers will have an opportunity  
5 ask you some questions. They're not going to try and delve  
6 too personally into your private lives and they're not trying  
7 to embarrass you in any way, but each of the lawyers is  
8 working to ensure that we have a fair and impartial jury, so I  
9 ask that you -- they'll be respectful to you, and I ask that  
10 you be respectful to them in your answers. If there are some  
11 questions that you have concerns about, you can address that,  
12 at that point, but each of these attorneys is well experienced  
13 in this court, and I don't think there will be any issues with  
14 that.

15 So, with that, let's call twelve jurors to the box,  
16 please.

17 **(TWELVE JURORS WERE CALLED TO THE JURY BOX.)**

18 **THE COURT:** Thank you. These potential jurors are  
19 with the state, Mr. Sholar.

20 **(THE JURY SELECTION BEGAN AT 11:00 AM.)**

21 **THE COURT:** It's about 12:40. Members of the jury,  
22 we're going to now take a lunch recess until 2:00. There's a  
23 list of instructions to give you, but it really boils down to  
24 don't talk about the case. Don't speculate on what's going  
25 on. Don't talk about -- just don't talk about it. Talk about

1 the heat wave that's melting the snow and the puddles you have  
2 to step in, but don't speculate as to the progress of this  
3 case or anything that has happened so far. That means don't  
4 talk to anybody, any court personnel, any of the lawyers, any  
5 of the people associated with this case. Another way to put  
6 it, do not form or express an opinion about the case. I don't  
7 know if there have been any locations mentioned yet, but don't  
8 go to any locations that have been described. Basically, just  
9 have lunch and come on back.

10 Is an hour and 20 minutes enough time for each of  
11 you? We can make it a little longer, if we need to. Let's  
12 take a break until 2:00. Again, don't talk among yourselves  
13 about the case. Talk about the weather.

14 (JURORS EXCUSED FROM THE COURTROOM AT 12:40  
15 PM.)

16 THE COURT: Anything else?

17 MR. SHOLAR: Not right now, Your Honor.

18 (A LUNCH RECESS WAS TAKEN AT 12:42 PM. COURT  
19 RESUMED SESSION AT 2:01 PM, WITH THE DEFENDANTS  
20 AND THEIR ATTORNEYS PRESENT, THE PROSECUTORS  
21 PRESENT, THE PROSPECTIVE JURY PRESENT.)

22 THE COURT: Everybody is here -- is back.

23 MR. WRIGHT: Yes, Your Honor.

24 THE COURT: When we last left -- so far, I've been  
25 here two days and I've had grilled cheese sandwiches at both

1 of those locations I know of. They were good, and I saw a lot  
2 of you and walked back out because I didn't want to create any  
3 kind of problem there, but I hope everybody had a good lunch  
4 and I appreciate your attention to getting back.

5 We have two spots, I believe, in the jury box.  
6 Let's call two additional jurors.

7 (JURY SELECTION CONTINUED AT 2:04 PM AND  
8 CONCLUDED AT 2:53 PM, WITH 12 JURORS PLUS TWO  
9 ALTERNATES BEING SELECTED AND PASSED BY THE  
10 STATE AND THE DEFENDANTS. THE REMAINING  
11 PROSPECTIVE JURORS WERE EXCUSED.)

12 **THE COURT:** Let's go ahead and impanel this jury.

13 When you come back, I'm going to discuss with you  
14 your role as jurors, but we're going to go ahead and have you  
15 impaneled now, and then you'll go with the bailiff. He'll  
16 show you where the jury room is.

17 If you'll show them that, and we'll take -- let's  
18 call it like 10 after 3:00.

19 Let's impanel them first.

20 **THE CLERK:** Will the jury please stand. Members of  
21 the jury, you have been sworn and are now impaneled to try the  
22 issues in the case of the State of North Carolina versus James  
23 Cox and Ashley Jackson. You will sit together, hear the  
24 evidence, and render your verdict accordingly. You may be  
25 seated.

1           **THE COURT:** If each of y'all will go with the  
2 bailiff, he'll show you where that jury room is, and then take  
3 about a 15-minute break. Come back here, I guess. I don't  
4 think -- anything we're going to need to address?

5           **MR. SWEET:** Not on the record, no, Judge.

6           **THE COURT:** I think we're ready to go. Just come  
7 back here.

8           We'll talk for a second when they're out of the  
9 room, all right?

10           Take the jury to the jury room.

11           Don't talk about this case. Don't think about  
12 anything, except for a Coke and a nab, or whatever.

13                           **(THE JURY WAS EXCUSED FROM THE COURTROOM AT**  
14                           **2:56 PM.)**

15           **THE COURT:** All right. The jury has left the  
16 courtroom, and the courtroom door is closed. Anything from  
17 either party, before we take a break?

18           **MR. SWEET:** Not from the state, Judge.

19           **MR. WRIGHT:** Nor the defense.

20           **MR. WRIGHT:** Not from Mr. Cox.

21           **THE COURT:** We have contemplated them taking notes.  
22 Are you prepared for that?

23           **THE BAILIFF:** We have the notepads.

24           **THE COURT:** Let's take a break until 10 after 3:00.

25                           **(A RECESS WAS TAKEN AT 2:57 PM. COURT RESUMED**

1                   **SESSION AT 3:10 PM, WITH THE DEFENDANTS AND**  
2                   **THEIR ATTORNEYS PRESENT, THE PROSECUTORS**  
3                   **PRESENT, THE JURY ABSENT.)**

4                   **THE COURT:** We're back in the courtroom. The jury  
5 is not present right now. Anything, from any party, that's  
6 come up?

7                   **MR. SWEET:** Not from the state, Your Honor.

8                   **MR. WRIGHT:** Not from the defense.

9                   **THE COURT:** The bailiff has placed some notepads in  
10 each of the juror's chairs. Don't let me forget to read them  
11 the instruction regarding the notes. I plan to do that but,  
12 if I forget, you can kind of nudge me and I'll do that. I'll  
13 give them some basic instructions about how we're going to  
14 proceed, and then the state can do their opening. Each of you  
15 are going to make an opening, Mr. Wright and Mr. Smith?

16                   **MR. SMITH:** I'll see what Mr. Sholar says.

17                   **MR. WRIGHT:** If they make one, I'll make one.

18                   **THE COURT:** However you want to do it. I'm not  
19 putting any limits on it. It will be a standard process.

20                   **THE BAILIFF:** They're ready, sir.

21                   **THE COURT:** Okay. Let's bring the jury back into  
22 the courtroom.

23                   **THE BAILIFF:** Yes, sir.

24                   **(THE JURY RETURNED TO THE COURTROOM AT 3:14**  
25                   **PM.)**

1           **THE COURT:** Okay. Good afternoon. All 14 jurors  
2 are back in the courtroom.

3           Ladies and gentlemen, you have been selected, and  
4 just before the break you were impaneled to serve as jurors in  
5 the case of the State of North Carolina versus James Cox and  
6 State of North Carolina versus Ashley Jackson. At this time,  
7 I want to explain to you the manner in which we will proceed  
8 as we attempt together to find the truth in this case.

9           First, the attorneys will have an opportunity to  
10 make opening statements. The purpose of an opening statement  
11 is narrow and limited. It is an outline of what the attorney  
12 believes the competent and admissible evidence will be.

13           An opening statement is not evidence and must not be  
14 considered by you as evidence. The evidence will come in the  
15 form of the testimony of witnesses, admissions of the parties,  
16 stipulations of counsel and any physical exhibits that may be  
17 offered by the parties.

18           Following opening statements, evidence will be  
19 offered, witnesses will be placed under oath and questioned by  
20 the attorneys. It may be that documents and other physical or  
21 other tangible exhibits will be offered and received as  
22 evidence. If any exhibit is given to you to examine, you  
23 should examine it carefully, individually, and without  
24 comment. It is the right of the attorneys to object when  
25 testimony or other evidence is offered that the attorney

1 believes is not admissible.

2           When the Court sustains an objection to a question,  
3 the jurors must disregard the question and the answer, if one  
4 has been given, and draw no inference from the question or the  
5 answer or speculate as to what the witness would have said, if  
6 permitted to answer. When the Court overrules an objection to  
7 any evidence, you must not give such evidence any more weight  
8 than if the objection had not been made. If the Court grants  
9 a motion to strike all or part of the answer of a witness to a  
10 question, you must disregard and not consider the evidence  
11 that has been stricken.

12           During the course of the trial, it may be that  
13 questions of law will arise that need to be considered by the  
14 Court out of the presence of the jury. When this happens, I  
15 may ask you to go to the jury room for a few minutes. You  
16 should not worry or speculate about what takes place in the  
17 courtroom during your absence. We will merely be considering  
18 questions that have to be heard outside the presence of the  
19 jury. All of the competent evidence in the case will be  
20 presented while you are present in courtroom.

21           When the evidence is completed the attorneys will  
22 make their final statements or arguments. The final arguments  
23 of the attorneys are not evidence but are given to you to  
24 assist you in evaluating the evidence. Your duty is to decide  
25 the facts from the evidence. You, and you alone, are the

1 judges of the facts.

2           It is important that you be fair and attentive  
3 during the trial. You will see and hear the evidence and  
4 decide the facts. You will then apply the law that I will  
5 give you to those facts. To be an effective juror, you must  
6 not be influenced, to any degree, by any personal feelings,  
7 sympathy for or prejudice against any of the parties involved  
8 in the case.

9           The fact that a criminal charge has been filed  
10 against each defendant is not evidence. Each defendant is  
11 innocent of any crime, unless and until the state proves the  
12 defendant's guilt, beyond a reasonable doubt.

13           Finally, before you retire to consider your verdict,  
14 you must obey the following rules:

15           First, you must not talk about the case amongst  
16 yourselves. The only place this case may be discussed is in  
17 the jury room; and then, only after you begin your  
18 deliberations, and your deliberations will begin at the  
19 conclusion of the case, after you've been instructed on the  
20 law and the final arguments have been made.

21           Second, you must not talk about this case with  
22 anyone else, including members of your families, or allow  
23 anyone else to talk with you or say anything in your presence  
24 about this case. This makes jury duty challenging. You  
25 haven't done anything but sit here all day long, so when you



1 get home, people may want to talk about this case. Don't talk  
2 about this case. People around the dinner table say various  
3 things that have nothing to do with this case. Before you  
4 leave tonight, you'll be instructed not to talk about the  
5 case. You'll be in violation of a court order, if you do. If  
6 there are any attempts to communicate with you or in your  
7 presence about the case, you must notify the bailiff of that  
8 fact immediately.

9 In this age of instant electronic communication, I  
10 want to emphasize, in addition to not speaking face to face  
11 with anyone about the case, you should not engage in any form  
12 of electronic communication about the trial, including but not  
13 limited to Twitter, blogging, Facebook, text messaging,  
14 instant messaging or any other such means of communication.

15 Third, you must keep all phones turned off when you  
16 are in the courtroom or the jury room, except on breaks.

17 Fourth, while you sit as a juror in this case, you  
18 are not to form an opinion about the guilt or innocence of the  
19 defendant, nor are you to express to anyone any opinion about  
20 the case, until I tell you to begin your deliberations.

21 Fifth, you must not talk or communicate, in any way,  
22 with any of the parties, attorneys or witnesses involved in  
23 the case. This rule applies inside as well as outside the  
24 courtroom, and it prohibits any type of conversation, whether  
25 about the evidence in this case or about the weather or just

1 to pass the time of day. You've got your jury badges on.  
2 That separates you for the purposes of this week.

3 Sixth, you must not read or listen to any news media  
4 coverage of this trial, including newspaper, television, radio  
5 or Internet accounts. Newspaper, radio, television and  
6 Internet accounts may be inaccurate or may contain references  
7 to matters which are not proper for your consideration. Your  
8 verdict must be based solely on the evidence presented during  
9 this trial, and no other source.

10 Seventh, and this is a biggie. You must not allow  
11 what you have seen on popular television shows that concern the  
12 legal system or police investigations to influence you.  
13 Television shows may leave you with an improper, preconceived  
14 idea about the legal system. As I like to point out, I've  
15 never seen a show on TV where it has five hours of jury  
16 selection and you watch all that. So this is different from  
17 television.

18 As far as this case is concerned, you are not  
19 prohibited from watching such shows; however, there are many  
20 reasons why you cannot rely on television legal programs,  
21 including the fact that these shows, first, are not subject to  
22 the rules of evidence and legal safeguards that apply in this  
23 courtroom; and, two, are works of fiction that present  
24 unrealistic situations for dramatic effect. While  
25 entertaining, television legal dramas condense, distort and

1 ignore many procedures that take place in real cases, in real  
2 courtrooms. No matter how convincing they try to be, these  
3 shows cannot depict the reality of an actual case or police  
4 investigation. You must put aside anything you think you know  
5 about the legal system that you saw on television.

6 Eighth, you must not visit the scene or the place  
7 that is the subject of the trial, or make any independent  
8 inquiry or investigation about this matter. You may not  
9 conduct any research, including Internet research, to look for  
10 any information regarding the case.

11 When you came back in, you saw a notepad in your  
12 seat. First, I would ask look at those notepads and make sure  
13 they're blank and there's nothing in there. Does anybody have  
14 any notes or anything that may be left from a prior trial, or  
15 anything? All the notebooks are clear, is that right? Seeing  
16 no response, all notebooks are clear.

17 In my discretion, you will be allowed to take notes.  
18 You're not required, however, to take notes, and your  
19 attention, first and foremost, should be on the evidence as  
20 presented here. When you begin your deliberation, you may use  
21 your notes to help refresh your memory as to what was said in  
22 court. I caution you, however, not to give your notes or the  
23 notes of any of the other jurors undue significance. While  
24 taking notes, a juror may fail to hear important portions of  
25 testimony. Any notes taken by you are not to be considered by

1 evidence in this case. Your notes are not an official  
2 transcript of the trial. For that reason, you must remember  
3 that, in your jury deliberations, notes are not entitled to  
4 any greater weight than the individual recollections of other  
5 jurors.

6 If you take notes, you may disclose them only to  
7 your fellow jurors during your deliberations. You are not to  
8 show them to anyone else.

9 While I will permit you to take notes, I instruct  
10 you to listen intently, at all, times to the testimony. Each  
11 of you must obey each of these rules to the letter. Unless  
12 you do so, there is no way the parties can be assured of  
13 absolute fairness and impartiality.

14 It is your duty, while the trial is in progress or  
15 while it is in recess or while you are in the jury room to see  
16 that you remain a fair and impartial trier of the facts. If  
17 you violate these rules, you violate an order of the court and  
18 this is contempt of court, which could subject you to  
19 punishment, as provided by law.

20 We're now ready for the opening statements of  
21 counsel. The jury is with the state.

22 **MR. SHOLAR:** Thank you, Your Honor.

23 (MR. SHOLAR MADE AN OPENING STATEMENT AT 3:25  
24 PM.)

25 **THE COURT:** Thank you, Mr. Sholar.

**Angela Leisure - Direct Examination by Mr. Sweet**

1 Will there be an opening statement for Ms. Jackson?

2 **MR. WRIGHT:** Yes, Your Honor.

3 (MR. WRIGHT MADE AN OPENING STATEMENT AT 3:30  
4 PM.)

5 **THE COURT:** Thank you, Mr. Wright.

6 Mr. Smith, on behalf of Mr. Cox.

7 (MR. SMITH MADE AN OPENING STATEMENT AT 3:36  
8 PM.)

9 **THE COURT:** Thank you, Mr. Smith. The state may  
10 call your first witness.

11 **MR. SWEET:** If I may proceed, I would like to call  
12 Angela Leisure.

13 **ANGELA LEISURE,**  
14 having been called as a witness for the State  
15 at 3:38 p.m., was sworn and testified as follows during  
16 **DIRECT EXAMINATION BY MR. NATHAN E. SWEET:**

17 **Q** Can you please state your name for the record?

18 **A** Angela Leisure.

19 **Q** Ma'am, how old are you?

20 **A** Thirty-three.

21 **Q** What's your date of birth?

22 **A** April 1, 1984.

23 **Q** All right. Where did you grow up, Ms. Leisure?

24 **A** Jacksonville, North Carolina.

25 **Q** So you were born and raised here?

## Angela Leisure - Direct Examination by Mr. Sweet

1           A     I moved around. Military brat, but primarily from  
2 Jacksonville.

3           Q     Was your dad in the United States Marine Corps?

4           A     Yes, sir.

5           Q     When did you move back here and stay?

6           A     1999, around, maybe '98, we moved here, then I  
7 bought my house in 2010.

8           Q     Did you graduate locally?

9           A     Yes, sir. White Oak High School.

10          Q     What kind of jobs have you had since graduating?

11          A     Primarily sales, a few fast food.

12          Q     Here in Jacksonville, right?

13          A     Yes, sir.

14          Q     Where did you live on August 8<sup>th</sup>, 2015?

15          A     128 Silver Leaf Drive.

16          Q     Where is that at in the county? Whereabouts is  
17 that?

18          A     Brynn Marr, by the mall.

19          Q     Brynn Marr?

20          A     Mm-hmm.

21          Q     Who did you live there with, at the time?

22          A     Myself, and my daughter, Trinity, resided there  
23 sometimes.

24          Q     You say Trinity did sometimes?

25          A     Yes.

## Angela Leisure - Direct Examination by Mr. Sweet

1 Q Why was that?

2 A Her father and I have joint custody.

3 Q And did you have a relationship, a romantic  
4 relationship, with anybody, at that time?

5 A Yes.

6 Q What was his name?

7 A Daniel McMinn.

8 Q How long had you been dating Daniel, at that time?

9 A Probably three years, at that time, on and off.

10 Q Okay. Were you familiar, at that time, with an  
11 individual by the name of Richard Linn?

12 A Yes.

13 Q How did you know Mr. Richard Linn?

14 A We were friends. He lived close by, and his  
15 children played with my daughter, sometimes.

16 Q Okay. And how long -- talking about August 8,  
17 2015 -- this is a while back. At that time, how long had you  
18 known Mr. Linn?

19 A Over five years, I think. Something like that.

20 Q Okay. All right. And what was the nature of your  
21 and Mr. Linn's relationship, besides the children knowing each  
22 other?

23 A We sometimes would -- drugs were involved, and we  
24 would sometimes get drugs from one another.

25 Q Were you, at that time, addicted to drugs?

## Angela Leisure - Direct Examination by Mr. Sweet

1           A     Yes.

2           Q     And what were you taking, at the time?

3           A     Pills, marijuana, cocaine. Sometimes cocaine.

4           Q     Okay. And since then, what have you done in your  
5 life?

6           A     I'm in a treatment program, currently.

7           Q     Is that essentially an inpatient treatment program?

8           A     Yes.

9           Q     And how long have you been engaged in that?

10          A     A few months, but I've been really involved this  
11 last month, more so than before.

12          Q     All right. Is that essentially out of town?

13          A     Yes.

14          Q     Okay. Now, do you recall the events of the evening  
15 of August 8, 2015?

16          A     Yes.

17          Q     What happened that evening?

18          A     We were at Daniel's mother's house and we came to my  
19 house right before midnight. I went inside to get dressed.  
20 Some people were at the door. Daniel let them in. Ashley  
21 came to the door and started --

22                **MR. SMITH:** I object to what they --

23                **THE WITNESS:** I'm sorry.

24                **MR. SWEET:** August 8<sup>th</sup> of 2015, is what I asked.

25                **THE COURT:** If she knows.



## Angela Leisure - Direct Examination by Mr. Sweet

1           **MR. WRIGHT:** I join in.

2           **THE COURT:** Come on up.

3                   **(AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)**

4           **THE COURT:** You can rephrase, but overruled.

5           **Q**     Let me ask you this. August 8, 2015, you had  
6 already told us you returned home from Daniel McMinn's  
7 parents' house, correct?

8           **A**     Yes.

9           **Q**     So redirecting here, what do you do when you get  
10 home?

11          **A**     Go inside to change.

12          **Q**     Okay. To change for what?

13          **A**     Because I like to change into sweatpants, or  
14 whatnot. I was in work clothes. I was wearing heels and a  
15 skirt for school or for work.

16          **Q**     It's obviously late that evening. What time is  
17 this?

18          **A**     Like 11:45. Right before midnight.

19          **Q**     And did you change, at that point in time?

20          **A**     No, I was not fully dressed.

21          **Q**     And what happened when you were trying to get  
22 dressed?

23          **A**     I got attacked. I was getting yelled at, then  
24 attacked.

25          **Q**     Where were you when that happened? Where were you,

## Angela Leisure - Direct Examination by Mr. Sweet

1 in your house?

2 A Right by my bedroom door. Right outside my bedroom  
3 door.

4 Q Okay.

5 A There's our front entryway, my washer and dryer with  
6 some doors, and then my bedroom.

7 Q Okay. At that point in time, you were in your  
8 bedroom. Layout-wise, can you see what's happening in the  
9 front of the house?

10 A No.

11 Q So you don't know what's going on out front and who  
12 is out there, at that point in time?

13 A No. I heard somebody.

14 Q Okay.

15 MR. SWEET: May I approach, Judge?

16 THE COURT: Yes.

17 MR. SWEET: Your Honor, if the record can reflect  
18 I'm handing the state's witness what's been previously marked  
19 as State's Exhibit 1.

20 Q Ma'am, take a moment and look at that. What is  
21 depicted in State's Exhibit 1, ma'am?

22 A My house.

23 Q All right. Is that the house that you lived in, on  
24 August 8, 2015?

25 A Yes.

## Angela Leisure - Direct Examination by Mr. Sweet

1           **Q**     Does that fairly and accurately represent your house  
2 at that time?

3           **A**     Yes.

4           **Q**     Would that help you in illustrating your testimony  
5 to the jury?

6           **A**     Yes.

7           **MR. SWEET:** Your Honor, the state would move to  
8 admit State's Exhibit 1.

9           **MR. SMITH:** No objection from Mr. Cox.

10          **MR. WRIGHT:** No objection.

11          **THE COURT:** Admitted for illustrative purposes.

12          **Q**     Exhibit 2, if you would look at the photo on top.  
13 Take a second and look at that. What is State's Exhibit 2?

14          **A**     The entryway to my house.

15          **Q**     Okay. And is that a photograph that fairly and  
16 accurately depicts your entryway on August 8 of 2015?

17          **A**     Yes.

18          **Q**     Would that help you in illustrating your testimony  
19 today, ma'am?

20          **A**     Yes.

21          **Q**     If you could set that down, as well, and pick up the  
22 last photograph there.

23          **MR. SWEET:** If the record can reflect the witness  
24 picked up State's Exhibit 3.

25          **Q**     Ma'am, what is depicted in State's Exhibit 3?

## Angela Leisure - Direct Examination by Mr. Sweet

1           **A**     The entryway, looking out.

2           **Q**     Okay.

3           **A**     Of my house.

4           **Q**     Of your house. Does that fairly and accurately  
5 represent your house as it appeared on August 8, 2015?

6           **A**     Yes.

7           **Q**     Would that help you illustrate your testimony today?

8           **A**     Yes.

9           **MR. SWEET:** Same motion Judge, to admit that.

10          **THE COURT:** Number 3?

11          **MR. SWEET:** Yes, sir, State's Exhibit Number 3.

12          **THE COURT:** Three is admitted.

13          **MR. SWEET:** And State's Exhibit 2, collectively.

14          **THE COURT:** State's Exhibits 2 and 3 are admitted  
15 for illustrative purposes.

16          **Q**     If you could --

17          **MR. SWEET:** If I can ask the witness to step down  
18 with State's Exhibits 1, 2 and 3 and, at this time -- in an  
19 effort, for the record, to publish it to the jury.

20          **THE COURT:** You're going to have her doing it by  
21 holding it?

22          **MR. SWEET:** We're going to hold it and let her point  
23 to where things are on the house, Judge.

24          **THE COURT:** Okay.

25          **MR. WRIGHT:** May I approach the witness, Your Honor?

**Angela Leisure - Direct Examination by Mr. Sweet**

1           **THE COURT:** Yes. How are you going to position  
2 yourselves for this?

3           **MR. SWEET:** We're going to stand right here, and it  
4 would be our request -- and there's two chairs over there,  
5 where they can --

6           **THE COURT:** Ms. Leisure, you can step down with  
7 Mr. Sweet, and the other two attorneys can stand where you can  
8 see.

9           **THE WITNESS:** Do I need these?

10          **MR. SWEET:** Yes.

11                   **(THE WITNESS LEFT THE STAND.)**

12          **Q**     Ma'am, I'm going to hold up State's Exhibit 1 for  
13 you.

14          **THE COURT:** Before we get going, you might need to  
15 step back.

16                   Can everyone in the jury see State's Exhibit 1  
17 satisfactorily?

18                   **(JURORS RESPONDED IN THE AFFIRMATIVE.)**

19          **THE COURT:** Okay. That's fine. Thank you.

20          **Q**     Now, ma'am, is there a front door here to this  
21 house?

22          **A**     Yes.

23          **Q**     If you could point that out.

24          **A**     **(THE WITNESS INDICATED ON S-1.)**

25          **Q**     Is there a screen door, essentially, on that?

## Angela Leisure - Direct Examination by Mr. Sweet

1           A     Yes.

2           Q     So there's two doors on the home depicted in State's  
3 Exhibit 1, correct?

4           A     Yes.

5           Q     All right. And I'm going to show you State's  
6 Exhibit 2. And you already said that's looking down the front  
7 hallway of your home.

8           A     Yeah.

9           Q     If you could tell us where, in relation -- if we're  
10 looking down your front hallway here, where you were at when  
11 you said you were initially assaulted.

12          A     Over this way. My bedroom is right here. This is  
13 my washer and dryer, and then you go out to the outside.  
14 (Indicating on S-2.)

15          Q     Okay. And what is this that's depicted in State's  
16 Exhibit 2 on the side, on the right?

17          A     That's a mirror. It's a mirrored door that wasn't  
18 attached to anything. It was just kind of leaning up against  
19 the corner right there. The gun hit that.

20          Q     That happened not at that point, initially, right,  
21 but later, is that right?

22          A     Yes.

23          Q     State's Exhibit 3, does that -- is that basically a  
24 more well-lit picture looking down your hallway?

25          A     Yes. This is that mirror there, and then we were

## Angela Leisure - Direct Examination by Mr. Sweet

1 about right on the side of that mirror, to the left of that.

2 Q Was your master bedroom back in that direction?

3 A Yes.

4 Q Now, you can return. Thank you, ma'am.

5 (THE WITNESS RETURNED TO THE STAND.)

6 MR. SWEET: If I may proceed, Judge.

7 THE COURT: Yes.

8 Q Ma'am, when you're in your master bedroom, what are  
9 you doing when you're initially assaulted?

10 A I was right by the door. I was changing. My door  
11 was probably open as I was changing. It's my house. I would  
12 have done that. And I was just kind of by the doorway. I  
13 heard yelling, and I went out to see.

14 Q Who did you see walk in, at that point in time?

15 A Ashley.

16 Q Ashley who?

17 A Jackson.

18 Q Is she present in court today?

19 A Yes.

20 MR. SMITH: I'm going to object to identification,  
21 pursuant to our hearings earlier. Judge, based --

22 MR. SWEET: If we may approach, Judge.

23 THE COURT: Yes.

24 (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

25 THE COURT: Thank you. Overruled.

## Angela Leisure - Direct Examination by Mr. Sweet

1 Q So I'm asking you again -- though it's choppy, I  
2 know, with the objections, but who is it that you saw enter  
3 your room and assault you?

4 A Ashley.

5 Q Ashley who?

6 A Jackson.

7 Q Is she in the courtroom today?

8 A Yes.

9 Q Where is she at?

10 A Right there. (Indicating Defendant Jackson.)

11 Q Before this, had you seen Ashley Jackson before?

12 A Yes.

13 Q Keep your voice up and tell the jury, how did you  
14 come to see her before this incident?

15 A I knew her child's father. Her children's father  
16 was the son of one of my friends.

17 Q Did you know her children's name?

18 A Yes.

19 Q Okay. And do you know them today?

20 A Yes.

21 Q Can you tell us their names?

22 A Briana and Adriana Murray, I think is their last  
23 name.

24 Q So when you get assaulted initially by Ashley  
25 Jackson, what does she do to you?



## Angela Leisure - Direct Examination by Mr. Sweet

1           **A**     I don't remember. I remember her pulling my hair  
2 and hitting me on the side of my head. Somehow, I got to the  
3 ground. I'm sure I fell to the ground and she probably pushed  
4 me to the ground.

5           **Q**     Did she say anything to you, at that point in time?

6           **A**     Yes.

7           **Q**     Okay. What did she say?

8           **A**     "Give me my money. Give me money. Give me my  
9 money. Give me the money."

10           **MR. WRIGHT:** I'm sorry. She said three different  
11 things.

12           **THE WITNESS:** I don't recall which it was, exactly.  
13 It was about money.

14           **MR. WRIGHT:** Judge, I've got to object. What I'm  
15 saying is, it's very important. If she doesn't know what she  
16 said -- it's very important. Give me money, give me my money,  
17 give me something. But I'm just trying to find out what  
18 exactly did she say.

19           **THE WITNESS:** I don't recall, exactly.

20           **THE COURT:** Just state what you recall, to the best  
21 of your ability.

22           **THE WITNESS:** Give me the money.

23           **Q**     So where are you at and where is she at, when she  
24 starts demanding money from you?

25           **A**     Outside of my bedroom door, in front of the washer

## Angela Leisure - Direct Examination by Mr. Sweet

1 and dryer.

2 Q Okay. And how did you go from your bedroom to the  
3 hallway, at that point in time?

4 A It's right there.

5 Q Okay. Is it the same hallway we could see in  
6 State's Exhibits Number 2 and 3?

7 A No, it's not really a hallway. There's a hallway  
8 and then the washer and dryer and my room. It's just enough  
9 room for a washer and dryer to fit, and they were behind a  
10 door -- two doors.

11 Q Now, what else do you recall about this time period?

12 A Some fighting.

13 Q Who is fighting?

14 A She's fighting me. She was on top of me, fighting  
15 me, and I was laying on the ground.

16 Q What was she doing to you, at that point in time?

17 A Pulling my hair and punching me on the side of the  
18 head.

19 Q Okay. And did you fight back, at that point in  
20 time?

21 A I tried to get her off me. Yes, I fought back.

22 Q And how long does this assault go on for?

23 A It seemed like a long time, but maybe a minute or  
24 two. Not --

25 Q And at some point, does anybody else come into the

## Angela Leisure - Direct Examination by Mr. Sweet

1 room with you?

2 A Yes. Daniel was in there. Richard came in through  
3 the front door, and then James was in there, all right there,  
4 standing over us.

5 Q Okay. So I'm going to ask you last names so we're  
6 clear for the jury. What is Richard's last name?

7 A Linn.

8 Q Okay. And what is James's last name?

9 A Cox.

10 Q Do you see Mr. Cox in the courtroom today?

11 A Yes.

12 Q Can you point him out for the jury?

13 A Right there. (Indicating Defendant Cox.)

14 Q Okay. And you said there was another individual  
15 named Daniel. Is that who you've already previously testified  
16 to as being your boyfriend at the time?

17 A Yes.

18 Q What was his last name?

19 A McMinn.

20 Q Now, what do you remember about when they came into  
21 the living room and this assault is taking place?

22 A I just remember looking up and seeing Daniel and  
23 James standing there, and then Richard came in, and he was --  
24 where that picture was taken, he was standing kind of right  
25 there. He wasn't exactly right next to us, where James and

## Angela Leisure - Direct Examination by Mr. Sweet

1 Daniel were.

2 Q Okay. What else happened after that, ma'am?

3 A I looked up and I saw his hand over, like he had a  
4 gun, and I said, "Oh, shit, he's got -- oh, shoot, he's got a  
5 gun. Call the cops."

6 Q Who is he?

7 A James.

8 Q All right. James who?

9 A Cox.

10 Q Okay. And how did you know there was a firearm  
11 there?

12 A It looked like it. He had his hand over it. It was  
13 in the waist of his pants, and he had his hand there, holding  
14 it underneath his shirt.

15 Q All right. What happens after you see that, ma'am?

16 A I yelled for the cops to be called.

17 Q And was -- who were you expecting to call the cops?

18 A Daniel, I guess.

19 Q Was Daniel standing near you?

20 A Yes.

21 Q And did he have a cell phone, to your knowledge, at  
22 the time?

23 A Yes.

24 Q What happened after that?

25 A I -- he went to go take his phone out and was

## Angela Leisure - Direct Examination by Mr. Sweet

1 threatened to not call, so he put it back.

2 Q What else do you remember about that time?

3 A Richard walking in, and Richard said, "Get off her.  
4 That's enough." He might have pulled her off of me. I think  
5 he might have. I don't recall exactly, but she got off me and  
6 then they walked out, or left out.

7 Q And what happens after she gets -- who is she, first  
8 of all?

9 A Ashley.

10 Q Okay. What happens after Ashley gets off of you?

11 A They go toward the front door.

12 Q Okay. What happens after that? What do you do?

13 A I went into my room.

14 Q Okay. What do you do, once you're in your room?

15 A Locked the door.

16 Q Okay. And what happens after that?

17 A They -- Daniel got them out, and then there was  
18 kicking at the door, banging. I didn't know what it was at  
19 that time, because I was in my room. There was banging, and  
20 then I heard a gunshot that hit the glass. So I heard it  
21 hitting something, and I yelled, "Are you okay?" And Daniel  
22 was on the other side of the house by then, and he said,  
23 "Yes."

24 Q Were the police called, at that point, in time?

25 A Yes.

## Angela Leisure - Direct Examination by Mr. Sweet

1           Q     Okay. Now, the two individuals, James Cox and  
2 Ashley Jackson, did they have permission to come into your  
3 home that evening?

4           A     No.

5           Q     Did you ever have them into your home before that?

6           A     No.

7           Q     Who -- who owned that home?

8           A     Me.

9           Q     Okay. Did you own it, or did you rent it?

10          A     I owned it.

11          Q     And it was in your name?

12          A     Yes.

13          Q     And the money that was demanded of you, did you have  
14 any idea, at the time, what Ashley Jackson was asking -- was  
15 talking about?

16          A     No.

17          Q     Why not?

18          A     I would have never gotten her any drugs.

19          Q     Who would you have gotten drugs?

20          A     Richard.

21          Q     Richard. Is that Richard Linn?

22          A     Yes.

23          Q     Did he ever give you money to buy drugs for him?

24          A     Yes.

25          Q     Okay. And what kind of drugs would he have you buy

## Angela Leisure - Direct Examination by Mr. Sweet

1 him?

2 A Pills or marijuana, occasionally.

3 Q And had he given you money recently to this

4 August 8, 2015 date, to buy drugs?

5 A Yes.

6 Q Was it that night that he had given it to you?

7 A No.

8 Q When had he given it to you?

9 A A month or more before that. It was quite a while.

10 Q Do you remember how much he had given you, how much  
11 money?

12 A I think \$50.

13 Q What did you do with that \$50?

14 A Gave it to the dope man.

15 Q What did that guy do?

16 A Took it, never came back.

17 Q Okay. Did you ever get drugs, at that point in  
18 time, with that \$50 and give it to Richard?

19 A No.

20 Q Did Richard ever indicate that it was for anybody  
21 else?

22 A No.

23 Q Now, did you have to pay back the \$50 that he had  
24 given you, back to Richard?

25 A No.

## Angela Leisure - Direct Examination by Mr. Sweet

1 Q Okay. And did he ask you, as a followup, where is  
2 my money, before this night?

3 A Yes.

4 Q What did he ask you?

5 A To give him the money back.

6 Q Did he specify an amount?

7 A No, I don't think.

8 Q Now, subsequent to this, this event happening, do  
9 you have a conversation with the Jacksonville Police  
10 Department when they show up?

11 A Yes.

12 Q Okay. And did you know Ashley's last name, at the  
13 time?

14 A No.

15 Q All right. Did you -- what did you tell them, in  
16 terms of names that you remember?

17 A That it was Burke, or something with a B.

18 Q To your knowledge, does -- did Ashley ever have a  
19 last name that started with a B?

20 A I believe so.

21 Q Okay. And how do you know that?

22 A Just hearing it, or maybe Facebook. Somehow, I  
23 remember it be being a B.

24 Q Did you ever see any photographs taken by the  
25 Jacksonville Police Department of Ashley's neck?



## Angela Leisure - Direct Examination by Mr. Sweet

1           **A**     Yes.

2           **Q**     And do you recall whether her name is tattooed on  
3 the back of her neck?

4           **MR. WRIGHT:** Judge, I've got to object. She didn't  
5 say -- she said she didn't see the picture. Now he is asking  
6 her what's on the picture.

7           **MR. SWEET:** She said she did see a picture.

8           **THE COURT:** Let's let the jury go out for a minute,  
9 please.

10                           **(THE JURY WAS EXCUSED FROM THE COURTROOM AT**  
11                           **4:01 PM.)**

12           **THE COURT:** The jury is out of the courtroom and the  
13 courtroom door is closed. I was under the impression that we  
14 weren't getting into photographs at the police station, and  
15 before we open up some barrel, I want to make sure where we  
16 are.

17           **MR. SWEET:** Judge, we didn't have a conversation  
18 about photographs that were taken. I think the motion was  
19 about the photographic lineup. I guess, to be clear to the  
20 Court, these photographs were taken of Ashley Jackson's  
21 person, her body, to document the scratches and marks, and  
22 we're putting them into evidence tomorrow as part of our case,  
23 with the Jacksonville Police Department, and they also  
24 document on her neck she's got the name "Ashley Brock"  
25 tattooed across her neck. So I don't know what the issue is,

**Angela Leisure - Direct Examination by Mr. Sweet**

1 in terms of --

2 **MR. SMITH:** If -- the identification is still  
3 outstanding. We were going to do that tomorrow. These  
4 photographs were taken post 8/12, I believe. These  
5 photographs are taken after her arrest. The question is, did  
6 you ever see the photographs, that could have been sitting in  
7 his office. That's not what we're here to talk about.

8 **MR. SWEET:** The follow-up question, though, was did  
9 you see the photographs taken by the Jacksonville Police  
10 Department in this case, and there's only one set of  
11 photographs that the Jacksonville Police Department took of  
12 Ashley Jackson. I mean, you know, if they want to make this  
13 harder than it should be and keep objecting, I mean --

14 **MR. SMITH:** The state is getting --

15 **THE COURT:** I think they're entitled to object, and  
16 I'm not siding one way or the other, but I'm certainly willing  
17 to address it. Where -- so the assault has happened, she's  
18 gone down to the police department. This is that night, is  
19 that where we are in the chronology, or this is some days  
20 later?

21 **MR. SWEET:** It's a few days later when they document  
22 the back of Ashley Brock's neck. The question is obviously  
23 aimed at the fact that she had just given the information to  
24 the Jacksonville Police Department that there was an Ashley,  
25 and she says that her last name begins with a B. This is to

**Angela Leisure - Direct Examination by Mr. Sweet**

1 corroborate that, at some point in time, she had it -- she had  
2 a name, a last name, that started with a B, to refute the idea  
3 that she had no idea who Ashley was. So it has nothing to do  
4 with the photo identification lineup. It's just to  
5 corroborate the witness' testimony that she's put in that  
6 Ashley did, in fact, have a last name that started with a B.  
7 That's all. I can withdraw it and we'll put it into evidence  
8 tomorrow. That's fine.

9 **THE COURT:** I feel like maybe we're a little before  
10 the -- maybe ahead of ourselves. I'm not saying it's not  
11 admissible. I'm not saying it is, necessarily. I just wasn't  
12 sure where we were.

13 **MR. SWEET:** For simplification, I'll withdraw, on  
14 the record, and say that we'll handle that issue tomorrow,  
15 Judge.

16 **THE COURT:** Okay. Because the officer is going to  
17 be here tomorrow, is that right? And then she may testify  
18 after him again, or something like that.

19 **MR. SWEET:** Logistically, I would prefer that not to  
20 happen, which is one of the reasons, but there's more than one  
21 way to skin a cat. If they don't want me to do it one way,  
22 I'll do it the other way. That's fine. I can get it in  
23 through the officer, and we'll do it that way. That's fine.

24 **MR. SMITH:** I think to solve the identification  
25 problem, put the officer up.

## Angela Leisure - Direct Examination by Mr. Sweet

1           **THE COURT:** I'm not saying there is a problem but,  
2 if there is a problem, we've let the cat out of the bag, and  
3 we probably need to proceed. Okay, so we'll bring the jury  
4 back in, and you're going to withdraw that question, and I'm  
5 not prohibiting it forever. I just think we're out of order.

6           **MR. SWEET:** I understand, Judge.

7           **THE COURT:** Anything else we need to address?

8           **MR. WRIGHT:** I just want to make sure I know what  
9 dates he's talking about. Is it the 12<sup>th</sup>.

10           **MR. SWEET:** August 8<sup>th</sup> is the only date I've asked  
11 about.

12           **MR. WRIGHT:** Right, but this incident happened --  
13 that we're discussing -- days afterward, and --

14           **MR. SWEET:** I'm not asking about the incident. I'm  
15 just asking if she ever saw a photograph of Ashley, but  
16 that's --

17           **THE COURT:** Is she going to testify that she saw the  
18 name on the back of her neck, or is that withdrawn?

19           **MR. SWEET:** We'll just withdraw it.

20           **THE COURT:** Are you good to go?

21           **MR. SWEET:** Yes, sir.

22           **THE COURT:** I'm okay to go a bit further, but should  
23 we stop today or -- and come back, or what? Do you want to --  
24 to get to a better stopping point?

25           **MR. SWEET:** I think it can be done in five to 10

**Angela Leisure - Direct Examination by Mr. Sweet**

1 minutes but, obviously, the Court's timeline is what we're  
2 here for.

3 **THE COURT:** That's fine. Let's bring the jury back  
4 in and continue the testimony.

5 **(THE JURY RETURNED TO THE COURTROOM AT 4:08**  
6 **PM.)**

7 **THE COURT:** Thank you, ladies and gentlemen.  
8 Okay, sustained. That question and answer, if any,  
9 is stricken, and the jury is to disregard.

10 **Q** Ma'am, did you know right after this event took  
11 place Ashley Jackson's actual last name, at that time?

12 **A** No.

13 **Q** Okay. And what did you tell the Jacksonville Police  
14 Department, at that time, what you remembered her name was?

15 **A** Something with a B.

16 **Q** What do you mean by, "something with a B?" What  
17 part of her name?

18 **A** Her last name.

19 **Q** Her last name, okay. Did you say her first name  
20 correctly?

21 **A** Yes.

22 **Q** And later on, did you have an interview with  
23 Detective Parker, with the Jacksonville Police Department?

24 **A** Yes.

25 **Q** Okay. And not going into anything in terms of photo

**Angela Leisure - Cross-Examination by Mr. Wright**

1 identification things there, but did you give him the name of  
2 the two children of Ashley Jackson's that you've testified  
3 previously?

4 A Yes.

5 Q Okay. And at that point -- were you aware, at that  
6 point, that her actual last name was Jackson, Ashley Jackson?

7 A No.

8 Q So it wasn't you that discovered that, in other  
9 words?

10 A No.

11 Q But sitting here today, ma'am, in court, are the two  
12 individuals that came into your home, Mr. Cox and Ashley  
13 Jackson, seated here in court?

14 A Yes.

15 MR. SWEET: Nothing further of this witness, Judge.

16 THE COURT: Thank you. Yes, sir, Mr. Wright.

17 MR. WRIGHT: Thank you.

18 **CROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

19 Q Ms. Leisure, shortly after the alleged incident, you  
20 were interviewed by several people -- detectives from  
21 Jacksonville Police Department, in particular. Do you  
22 remember talking to an Officer Martin?

23 A No.

24 Q Do you remember telling Officer Martin, when he  
25 asked you if you owed Ashley or Richard any money, and you

## Angela Leisure - Cross-Examination by Mr. Wright

1 stated you did not?

2 A I did say I did not. I was -- I didn't want the  
3 drug scene out there. I didn't want it to be known I was  
4 involved with drugs, but I was. At that time, I was not in  
5 recovery and I didn't want anybody -- the cops looking at me.  
6 I mean, I was doing and dealing drugs. Of course, I didn't  
7 want them to know.

8 Q So let me make sure I'm clear. When Officer Martin  
9 asked you if you owed Ashley or Richard money and you stated  
10 you did not --

11 A I did not.

12 Q -- that was not the truth.

13 A That was not the truth.

14 Q Okay. And you also stated that you did not have a  
15 large amount of cash on hand; that the incident was not drug  
16 related, and that they did not take anything from the home  
17 during the course of the incident.

18 A Yes, I said that.

19 Q You told him that.

20 A Yes.

21 Q And do you recall telling him words to the effect,  
22 Ashley pulled her hair and punched her in the face? She  
23 stated that she said words to the effect, quote, give me my  
24 money, closed quote. Do you remember saying that to Officer  
25 Martin?

## Angela Leisure - Cross-Examination by Mr. Wright

1           A     No.

2           Q     Now, do you recall after -- after Richard had pulled  
3 her off of you, my client off of you, do you recall my client  
4 leaving out the door?

5           A     Yes.

6           Q     Okay. She left.

7           A     Yes.

8           Q     Did she take anything with her?

9           A     No.

10          Q     Did she take any money from you?

11          A     No. I didn't have any.

12          Q     Did she take any items out?

13                **MR. SWEET:** Objection.

14                **THE WITNESS:** No.

15                **MR. SWEET:** He's asking her two questions, without  
16 giving her the opportunity --

17                **THE COURT:** Make sure we get an answer. Overruled.

18                **MR. WRIGHT:** Thank you.

19          Q     Did she take any money from your person?

20          A     No. I did not have any.

21          Q     I didn't ask you that. Did she take any money from  
22 your person?

23          A     No.

24          Q     Did she take any money from your property?

25          A     No.



## Angela Leisure - Cross-Examination by Mr. Wright

1 Q Now, you said you knew Richard -- you've known  
2 Richard Linn for about five years.

3 A Yes.

4 Q Is that right?

5 A Yes.

6 Q Now, do you recall telling Officer Parker, or  
7 Detective Parker, that you hadn't seen Ashley Jackson for  
8 several years, or at least up to five years?

9 A I don't recall saying five years, but it had been  
10 some years, yeah. I didn't see her, really, like that at all.

11 Q Does she know where you lived?

12 A I'm not sure. I doubt -- I never showed her. So I  
13 don't know.

14 Q She had not been to your house?

15 A Not with me, no.

16 Q But Mr. Linn had been to your house.

17 A Yes.

18 Q And the three people that were there were Mr. Linn,  
19 Mr. Cox and Ms. Jackson.

20 A Yes.

21 Q Okay. And you said that Mr. Linn stood outside  
22 during the incident, between you and Ms. Jackson.

23 A The beginning part of the incident, correct.

24 Q The beginning part?

25 A Yes.

## Angela Leisure - Cross-Examination by Mr. Wright

1 Q So are you saying when you came out of your room,  
2 Mr. Linn never entered your residence?

3 A At that time, no, I did not see him.

4 Q You didn't see him when -- when -- at that time?

5 A No. He could have been at the front door, but I  
6 just didn't see him.

7 Q Does Mr. Linn know Mr. Daniel McMinn?

8 A Yes. Through me, he knew him.

9 Q So would it be fair to say that Daniel McMinn knows  
10 Mr. Linn?

11 A Yes.

12 Q But didn't know Mr. Cox or Ms. Ashley --

13 A Yes.

14 Q -- Jackson? Now, is it your testimony that Mr. Linn  
15 never gave you \$20, on behalf of Ms. Jackson --

16 A Yes. I didn't --

17 Q -- to buy pills?

18 A I did not know it was from her. I thought it was  
19 his money.

20 Q He never said anything to you that this money  
21 belongs to someone else?

22 A No.

23 Q You don't remember \$20, in particular?

24 A No.

25 Q But you do remember \$50 --

## Angela Leisure - Cross-Examination by Mr. Wright

1           A     Yes.

2           Q     -- that you said you never paid him back or  
3 delivered the drugs.

4           A     Hmm-mm.

5           Q     Now, during that time, you were, in fact, purchasing  
6 pills from someone else.

7           A     Yes.

8           Q     For other people?

9           A     Yes.

10          Q     Okay. And Richard Linn was one of the people.

11          A     Yes.

12          Q     And you're residing now in a rehab center?

13          A     Yes.

14          Q     Now, when you came out, would it be fair to say that  
15 the individuals, three individuals -- at least two individuals  
16 were inside your house?

17          A     Yes.

18          Q     Okay. You said that you never gave permission for  
19 them to enter your house.

20          A     No.

21          Q     Do you know if Mr. McMinn let them in your house?

22          A     He says she pushed past him, so I don't know.

23          Q     You don't know -- you don't know if he authorized  
24 them or let them come in?

25          A     No.

## Angela Leisure - Cross-Examination by Mr. Wright

1           **Q**     Do you know -- ma'am, isn't it true that Mr. Richard  
2 Linn asked, where is Angel, and Mr. McMinn allowed Mr. Linn  
3 in?

4           **A**     Nobody said anything.

5           **MR. SWEET:**  Objection.  She's already testified.  My  
6 objection is, she's already testified.

7           **THE COURT:**  I'll overrule it.  She can answer that,  
8 if she knows.

9           **Q**     If you know.

10          **A**     No, I did not hear Richard's voice, and nobody said,  
11 "Angel".  Actually, he may have called me Angie.

12          **Q**     So it's your testimony, then, that you don't know if  
13 Mr. McMinn -- you didn't see it, if Mr. McMinn allowed them to  
14 come in and wait for you?

15          **A**     No.

16          **Q**     I want to make sure I'm clear on this.  In one of  
17 the photographs, it shows one of the panels missing on the  
18 door, I think State's Exhibit 3.  At the time you came out and  
19 got into the scuffle or the altercation with my client, was  
20 that door in that condition?

21          **A**     I don't think so.  It happened after, when they  
22 left.

23          **Q**     The door was not in that condition?

24          **A**     The door was not kicked in, when they first were  
25 there.

## Angela Leisure - Cross-Examination by Mr. Wright

1           Q     In other words, what I'm asking is, if someone were  
2 to say the door was kicked in, and that's how they entered the  
3 residence, that's not true.

4           A     No.

5           Q     You know that for a fact?

6           A     I wouldn't say for a fact, but I remember hearing  
7 something when I was -- when they left. So I would say it  
8 happened when they left --

9           Q     Okay.

10          A     -- to try to get back in.

11          Q     Now, prior to the 8th of August, 2015, do you -- and  
12 if it was asked, I just want to make sure. When was the last  
13 time you saw Daniel -- I mean Richard Linn, prior to that  
14 incident?

15          A     Maybe a few weeks or a month, over a month, if I had  
16 seen him since he gave me that money.

17          Q     You hadn't seen him since then?

18          A     I would say, no.

19          Q     Do you know if he tried to contact you during that  
20 period of time?

21          A     Yes, for money.

22          Q     For his money?

23          A     (WITNESS NODDED HEAD.)

24          Q     So you knew he wanted his money back, or wanted  
25 something.

## Angela Leisure - Cross-Examination by Mr. Smith

1           A     Yes.

2           Q     But you were avoiding him --

3           A     Yes.

4           Q     -- because the guy that you went to didn't give you  
5 the goods or the money back.

6           A     Yes.

7           **MR. WRIGHT:** Thank you. That's all I have.

8           **THE COURT:** Mr. Smith.

9           **CROSS-EXAMINATION BY MR. BRYON M. SMITH:**

10          Q     So you admit you're a drug dealer?

11          A     Yeah.

12          Q     Drug abuser?

13          A     Was.

14          Q     So this treatment program you're going to has cured  
15 you?

16          A     Excuse me?

17          Q     This drug treatment program you're going through has  
18 cured you?

19          **MR. SWEET:** Objection. It's not relevant.

20          **THE COURT:** You can you address it briefly.

21          **THE WITNESS:** Yes.

22          Q     So are you coming out tomorrow?

23          A     The treatment program? No.

24          Q     So you're still in treatment, you're still  
25 undergoing --

## Angela Leisure - Cross-Examination by Mr. Smith

1           A     An addiction is a lifelong disease.

2           **THE COURT:** Move on.

3           Q     You, very clearly, in the courtroom said this is  
4 James Cox. On the night of August 8th, you had no idea who  
5 this was, did you?

6           A     I did not see his face. I don't remember -- I never  
7 had hung out with him but, when I seen the pick -- when I seen  
8 him, yeah.

9           Q     You knew his name was James Cox?

10          A     No, I didn't know his name was James Cox. I  
11 recognize him, but I didn't know his name before.

12          Q     Did you tell Officer Martin he's either mixed or  
13 Hispanic or black?

14          A     Yes. I knew he wasn't white.

15          Q     You told the cops, particularly Officer Martin --  
16 I'm asking you very particularly about this. You told Officer  
17 Martin that you might have Mr. Linn's phone number.

18          A     I don't know who Officer Martin is.

19          Q     Kourtney Martin is her name. She would have been  
20 the first one responding.

21          A     I don't know. I don't know who she is.

22          Q     How many cops did you talk to that night?

23          A     I don't know. Maybe three.

24          Q     Was one a female?

25          A     Yes. There might have been more than one female.

## Angela Leisure - Cross-Examination by Mr. Smith

1 There was about -- a lot of people in my house that night.

2 There was a lot of officers in my house that night.

3 Q Taking photographs?

4 A Mm-hmm. There was a gentleman taking photographs, I  
5 believe.

6 Q How many cops interviewed you that night?

7 A One or two. A male, maybe. I don't remember.

8 There was a lot going on that night.

9 Q You gave a lot of different stories. I'm trying to  
10 straighten that out.

11 MR. SWEET: Objection.

12 THE COURT: Ask questions, please.

13 Q Did you tell Officer Martin, or any officer, whether  
14 it's male or female or sheriff's department, that she did not  
15 know the third suspect? Did you tell them that?

16 A I did, mm-hmm. Yes.

17 Q But today you say it's James Cox.

18 A Yeah.

19 Q And you described Ashley as 5' 2" or 5' 3" with a  
20 thin frame.

21 A She was thin before.

22 Q How long did you talk to Officer Martin?

23 A I cannot tell you that. Not long. Maybe 15  
24 minutes. I don't know.

25 Q So they cleared the scene by midnight?



## Angela Leisure - Cross-Examination by Mr. Smith

1           A     No.

2           Q     You said it happened at 11:45.  They got there at  
3 what time?

4           A     I didn't look at my clock to see what time they came  
5 in.  I don't know.  It was around midnight.

6           Q     When did the officers leave your home?

7           A     I don't know.  I don't want to say 12:15 and be  
8 wrong, so --

9           Q     When is the last time you sold drugs to Mr. Linn?

10          A     That time.  Right around that time.

11          Q     Was it a weekly thing, before then?

12          A     No.  There was not -- it was not a certain time  
13 frame, just whenever.

14          Q     So 20 times in the last two years?

15          A     No.

16          Q     Nineteen?  Give me a number.  I'm asking.

17          A     I don't know.  I don't know a number.  Ten.

18          Q     So ten felonies over the last year?

19               **MR. SWEET:**  Objection.

20               **THE WITNESS:**  See why I didn't say anything about it  
21 being drug related?  It is a felony.  That's why I did not  
22 admit to that before.

23          Q     Did you ever find a bullet in your home?

24          A     No.

25          Q     Did you assist JPD in looking for a bullet in your

## Angela Leisure - Cross-Examination by Mr. Smith

1 home?

2 A Yes.

3 Q Do you know the name of the officer that assisted  
4 JPD in doing that search?

5 A No, but I could describe him.

6 Q Can you describe the color of the firearm you  
7 contend was in Mr. Cox's --

8 A No.

9 Q So you didn't see a firearm?

10 A No, I just saw the shape of his hand over it. I did  
11 not see a firearm.

12 Q When is the last time Mr. Linn had been in your  
13 home?

14 A That time.

15 Q Okay. Prior to August 8<sup>th</sup>, when was the last time  
16 Mr. Linn had been in your home?

17 A Maybe a month before.

18 Q Were your drug deals normally done at your home, or  
19 were they done on the roadside, or at a convenience store?

20 A Different places.

21 Q Where were you, initially, when Officer Parker -- or  
22 Detective Parker made contact with you to get you to come to  
23 Jacksonville Police Department to do further followup?

24 A My mother's, I believe.

25 Q Did he call you on her phone or your phone?

## Angela Leisure - Cross-Examination by Mr. Smith

1           A     My phone.

2           Q     How many days later?

3           A     It was a Sunday, I think.  So whatever night the 8th  
4 was -- I don't recall what day of the week the 8th was, but  
5 maybe one or two nights.

6           Q     When the officer, which you say you can describe,  
7 came to your house to search for this bullet you allege was  
8 fired, how long did he stay?

9           A     Thirty minutes.

10          Q     Did you point out some imperfections in the wall, or  
11 things of that nature?

12          A     I'm sorry?

13          Q     Did you point out holes in the wall, or other  
14 imperfections?

15          A     Yes.

16          Q     Did you look in the sofa, look in the loveseat?

17          A     Yes.  Just the love seat.  We didn't look in the  
18 sofa.

19                **MR. SMITH:**  I think that's all, Judge.  Thank you.

20                **MR. SWEET:**  For the sake of time, we have no  
21 redirect.

22                **THE COURT:**  I think this is a good time to stop for  
23 today.

24                Ladies and gentlemen of the jury, earlier I referred  
25 to certain instructions at the recess, and I referred to the

1 short form and the long form. You're going to get the long  
2 form right now, but the long form boils down to do not talk  
3 about the case. Do not form an opinion about the the case.  
4 Do not talk among yourselves or with others about the case.

5 Here is the long form. Members of the jury, we're  
6 now going to take an overnight -- ma'am, you can step down.

7 (WITNESS EXCUSED FROM THE STAND.)

8 **THE COURT:** Ms. Leisure, if you'll just stay for a  
9 moment, until we finish this. Thank you.

10 Members of the jury, we'll now take an overnight  
11 recess. During this recess and any other recesses that we  
12 have while this trial is in progress, I instruct you that it  
13 is your duty to carefully observe the cautious I'm now going  
14 to give to you during the course of the trial. You should not  
15 talk with each other about the case. You may only talk with  
16 each other about the case at the end of the trial, when you go  
17 to the jury room to consider your verdict.

18 It may be difficult for you to understand why you  
19 may not discuss the case amongst yourselves until it is  
20 finally submitted to you. It would be unfair to discuss the  
21 case among yourselves, before you receive everything necessary  
22 to reach an informed decision. Until you are instructed to  
23 begin deliberations on your verdict, you should not form or  
24 express any opinion about the case.

25 You should not talk or have contact of any kind with

1 any of the parties, attorneys or witnesses. You should not  
2 talk to anyone else or allow anyone else to talk with you or  
3 in your presence about the case. If anyone attempts to  
4 communicate with you about the case, you must notify the  
5 bailiff immediately. If that person persists, simply walk  
6 away and notify the bailiff.

7 In this age of electronic communication and  
8 research, I want to emphasize that, in addition to not  
9 speaking face to face with anyone about the case, you should  
10 not engage in any form of electronic communication about the  
11 trial, including, but not limited to, Twitter, blogging,  
12 Facebook, text messaging, instant messaging, gaming, or any  
13 other form of electronic communication. Any such  
14 communication could lead to a mistrial and would severely  
15 compromise the parties' right to a fair trial.

16 You should explain this rule prohibiting discussion  
17 of the case to your family and friends. When the trial is  
18 over, you'll be released from this instruction. At that time,  
19 you may, but are not required to, discuss the case and your  
20 experiences as a juror, but not tonight or tomorrow. The case  
21 is still going on.

22 You should avoid watching, reading or listening to  
23 any accounts of the trial that might come from any news media.  
24 Media reports may be incomplete or inaccurate. I don't know  
25 that there will be anything in the media about this but, if

1 there is, disregard it. You may only consider and decide this  
2 case upon the evidence received at the trial.

3           If you acquire any information from an outside  
4 source, you must not report it to the other jurors, and you  
5 must disregard it in your deliberations. In addition, you  
6 should report the outside source of information to the bailiff  
7 or to the Court, at the first opportunity. And I would ask  
8 that you please do that, if that should happen to come your  
9 way. You're required to do it, first, and I'm not going to  
10 make any judgment on you, as to that. But the purpose is to  
11 ensure a fair trial.

12           While the trial is going on, you must not go to any  
13 place where the case arose, which is that Brynn Marr area.  
14 You all are more familiar with Onslow County than I am. Just  
15 drive home. Don't stop and look around. If you live out that  
16 way, just go home, but don't circle the house or slow down, or  
17 anything else. Just do what you normally do.

18           Don't make any independent inquiry or investigation  
19 about this matter including, but not limit to, any Internet or  
20 any other research. Don't go on the Internet to try to figure  
21 out how the law works, or anything about this case or anything  
22 at all. You are prohibited from performing your own  
23 experiments as well. This case involves the scene and the  
24 events as it existed at the time, not as it exists today.  
25 Seeing pictures or materials without explanation in court is

1 unfair to the parties, who need you to decide this case based  
2 solely upon the evidence that is admitted in this case.

3           If you base your verdict on anything other than what  
4 you learn in this courtroom, that could be grounds for a  
5 mistrial, which means that all the work that you and your  
6 fellow jurors have put into this case will be wasted. The  
7 lawyers, parties and judge will have to do this all over  
8 again. If you communicate with others, in violation of my  
9 orders, you could be held in contempt of court. That's why  
10 this is so important.

11           After you have rendered your verdict or have been  
12 otherwise discharged by me, you'll be free to do any research  
13 you choose or share your experience directly or through your  
14 favorite electronic means.

15           You must keep all cell phones off while you're in  
16 the courtroom or the jury room, except on recess, while the  
17 trial is in progress. You may only talk on a cell phone  
18 during a recess, outside the jury room.

19           If, during the trial, issues arise that would affect  
20 your ability to pay attention as a fair and impartial juror,  
21 you may explain the matter to the bailiff who will inform me.

22           At any time, if you cannot hear a witness, an  
23 attorney or me, please make that fact known immediately by  
24 raising your hand.

25           Come back tomorrow morning at 9:30. Report to the

1 jury room, which the bailiff -- in fact, I'll have you leave  
2 and go to the jury room. Take your notebooks with you and  
3 leave.

4 Do you lock the jury room tonight?

5 **THE BAILIFF:** Just have them set the pads in the  
6 chairs.

7 **THE COURT:** Just set your notebooks in your chair  
8 and go to the jury room. Have a very good evening. I  
9 appreciate very much your service today. Come on back  
10 tomorrow morning at 9:30, and we'll pick up where we left off.

11 **(THE JURY WAS EXCUSED FROM THE COURTROOM AT**  
12 **4:31 PM.)**

13 **THE COURT:** Okay. The jury has left the courtroom.  
14 The courtroom door is closed. Anything from either party,  
15 before we recess for the evening?

16 **MR. SWEET:** No, sir.

17 **MR. SMITH:** Not for Mr. Cox.

18 **THE COURT:** Not for Ms. Jackson.

19 **THE COURT:** Do we have to have a hearing, at some  
20 point? It sounds like we do.

21 **MR. SWEET:** Frankly, Judge, I'm so confused at  
22 exactly what they're objecting to at this point that I would  
23 like to hear what they're requesting that the state or the  
24 Court limit or -- outside of the actual photo identification  
25 lineup itself, that's what the motion pertains to. You know,



1 I guess a hearing would help me know a little more about when  
2 they -- they're using photo identification lineup objection  
3 about things that aren't about the photo identification  
4 lineup. At least I'll know what my bounds are, and we don't  
5 have this choppiness with the jury.

6 **THE COURT:** Each of you have done a fine job. Each  
7 of you is responsible for handling your case as you see fit  
8 but, if we need to hear something -- so far, I think we're  
9 doing okay. You have some officers available tomorrow, right?

10 **MR. SWEET:** Yes.

11 **THE COURT:** All right. If there's nothing  
12 further --

13 **MR. SWEET:** No, sir. Thank you.

14 **THE COURT:** Mr. Wright? Mr. Smith?

15 **MR. SMITH:** No, sir.

16 **MR. WRIGHT:** Judge, is the witness, Ms. Leisure, is  
17 she through, or is she subject to recall, or what are we going  
18 to do?

19 **MR. SWEET:** We would ask that she be released from  
20 our subpoena.

21 **THE COURT:** I would like her available throughout  
22 the trial. Any reason she can't be?

23 **MR. SWEET:** Well --

24 **MR. WRIGHT:** I understand you have to travel to go  
25 get her.

1           **THE COURT:** Where is she coming from?

2           **MR. SWEET:** Judge, we prefer --

3           **THE COURT:** It's outside the county.

4           **MR. SWEET:** Yeah. I had a significant drive.

5 That's why I wanted to --

6           **THE COURT:** I don't know that I was aware of that.

7 Is she planning to come back tomorrow?

8           **MR. SWEET:** No, sir.

9           **THE WITNESS:** I can.

10           **MR. SWEET:** If we have more issues and they want to  
11 recall her during their chase in chief --

12           **MR. WRIGHT:** That's what I'm saying, Judge. As long  
13 as she's on standby, I don't care if she goes back down but,  
14 during the presentation of our case, we may need to call her  
15 for whatever reason.

16           **MR. SWEET:** You can go get her.

17           **MR. WRIGHT:** I can go get her? I don't want to  
18 release her from the subpoena.

19           **MR. SWEET:** She didn't have a subpoena, technically,  
20 because we weren't able to serve her ahead of time.

21           **THE COURT:** She is the victim in this case with very  
22 serious charges against the defendants, and she's available to  
23 be gotten, if we need to get her. She can be on standby. I  
24 would ask for some heads-up, if you anticipate you need to  
25 call her but, no, Ms. Leisure, you are subject to being

1 recalled during the course of this trial. So you're going to  
2 be available within the State of North Carolina, is that  
3 right?

4 **THE WITNESS:** Yes.

5 **THE COURT:** There's no medical appointment? You're,  
6 generally speaking, available? I realize you're somewhat of a  
7 distance away.

8 **THE WITNESS:** Yeah.

9 **THE COURT:** She'll be available as needed.

10 **MR. WRIGHT:** Thank you, Your Honor.

11 **THE COURT:** I don't want to jerk her around or jerk  
12 anybody around, but, no, you're an important witness in this  
13 case and I'm not just going to say leave completely, at this  
14 point.

15 **THE COURT:** Recess until 9:30.

16 **(THE EVENING RECESS WAS TAKEN AT 4:36 PM.)**

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NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\* \* \* \* \*

STATE OF NORTH CAROLINA	)	ONSLow COUNTY
	)	
VS.	)	
	)	
JAMES A. COX	)	15 CRS 54673
and	)	
ASHLEY DEAN JACKSON	)	15 CRS 54665

\* \* \* \* \*

TRANSCRIPT, Volume II of V  
January 10, 2018

\* \* \* \* \*

January 8, 2018, Criminal Session

The Honorable William W. Bland, Judge Presiding

Jury trial

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1 (COURT RESUMED SESSION ON 01/10/18 AT 9:39 AM,  
2 WITH THE DEFENDANTS AND THEIR ATTORNEYS  
3 PRESENT, THE PROSECUTORS PRESENT, THE JURY  
4 ABSENT.)

5 THE COURT: Anything from anybody, before we start?

6 MR. SWEET: No, sir.

7 THE COURT: I've been made aware that Juror Number 4  
8 told the bailiff, after the testimony of Ms. Leisure yesterday  
9 that he was a manager at Ruby Tuesday, or something like that,  
10 and he knows her.

11 MR. SWEET: Oh, okay.

12 THE COURT: What did he tell you?

13 THE BAILIFF: He said he worked with her.

14 THE COURT: Did he say anything else?

15 THE BAILIFF: In the fast food industry, that's it.

16 THE COURT: I'll inquire as to how you all would  
17 like to proceed. We can bring him back in and ask him if that  
18 affects his ability to be fair and impartial.

19 MR. WRIGHT: Judge, I think a voir dire would be  
20 appropriate in this case, before we can make a decision.

21 MR. SWEET: I think the Court needs to inquire with  
22 him whether that would affect his ability to be fair and  
23 impartial, without reopening examination at that point, and  
24 see what he says and go from there, Judge.

25 THE COURT: Okay. I hate to put him on the spot,

1 but let's ask Number 4 to come in.

2 (JUROR NUMBER 4 ENTERED THE COURTROOM AT 9:41  
3 AM.)

4 THE COURT: All right. Good morning, Mr. Nixon. I  
5 don't want you to feel on the spot, because you're not, and I  
6 appreciate -- you've done exactly what we asked you to do.  
7 You mentioned to the bailiff, apparently, after Ms. Leisure  
8 testified yesterday that you realize you'd worked with her in  
9 the restaurant industry. Is that what I understand?

10 MR. SWEET: Yes, sir.

11 THE COURT: Can you go into any detail?

12 JUROR NUMBER FOUR: I worked with her for probably  
13 about a year. She worked day shift, I worked night shift.

14 THE COURT: You worked at Ruby Tuesdays, is that  
15 where you worked?

16 JUROR NUMBER FOUR: No, huh-uh. It was Taco Bell.  
17 It was when I was a teenager.

18 THE COURT: So how many years ago was that?

19 JUROR NUMBER FOUR: Probably 15, maybe 16.

20 THE COURT: Have you talked to anybody else in the  
21 jury pool about this?

22 JUROR NUMBER FOUR: No, sir.

23 THE COURT: Okay.

24 JUROR NUMBER FOUR: You told us not to discuss this.

25 THE COURT: This is a question only you can answer.

1 Do you think your knowledge, that you know Ms. Leisure,  
2 apparently -- is there anything beyond a working -- do you  
3 know anything about her personal life at all, beyond how she  
4 was at work?

5 **JUROR NUMBER FOUR:** No.

6 **THE COURT:** Strictly professional relationship?

7 **JUROR NUMBER FOUR:** Yes, sir.

8 **THE COURT:** How closely did you work together, or  
9 just on the same shifts?

10 **JUROR NUMBER FOUR:** I took over for her. She worked  
11 during the day.

12 **THE COURT:** She worked before you, and you came  
13 later, so you didn't even really work together but, based on  
14 whatever knowledge you have of her and anything else, do you  
15 think that will affect your ability to be fair and impartial  
16 in this case, either towards Ms. Jackson, Mr. Cox, or to the  
17 State of North Carolina? Will that affect you, one way or the  
18 other?

19 **JUROR NUMBER FOUR:** No, sir. I just don't want to  
20 get in trouble or jeopardize the case, or anything.

21 **THE COURT:** You're absolutely not in trouble, and  
22 it's not a prohibition against knowing the people. The  
23 question is whether you can set aside whatever -- everybody  
24 comes to court with personal experiences. In your case,  
25 you've had this slight interaction with her, but the

1 question -- and -- so some people, for whatever reason, the  
2 nature of the case or the way they know somebody, it's like,  
3 look, I try to be a fair person but, in this case, I don't  
4 think I can be. And if you say that, there's nothing wrong  
5 with saying that. And if you feel that way, you absolutely  
6 should say that. If it's just that you have some passing  
7 knowledge of her in the past and it's not going to affect you  
8 in this case, that's fine, too. Only you can answer that  
9 question. So do you think you can be fair and impartial in  
10 this case, towards all parties?

11 **JUROR NUMBER FOUR:** Yeah.

12 **THE COURT:** You don't think you're going to recall  
13 anything further about her or her life, or --

14 **JUROR NUMBER FOUR:** No.

15 **THE COURT:** Okay. All right. Anything I haven't  
16 covered here?

17 **MR. SWEET:** The state is satisfied with that.

18 **MR. WRIGHT:** I just have a couple questions.

19 **THE COURT:** Approach for a second.

20 (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

21 **THE COURT:** Just to clarify a little bit. Were you  
22 in any kind of supervisory relationship over her?

23 **JUROR NUMBER FOUR:** I don't know if she was still  
24 working there when I was a supervisor or not.

25 **THE COURT:** You don't recall being in a supervisory

1 position, is that right?

2 **JUROR NUMBER FOUR:** Yes.

3 **THE COURT:** And anything about why she left or why  
4 you left, is there anything you remember, anything about that,  
5 or why she may have left the employment of Taco Bell?

6 **JUROR NUMBER FOUR:** No. I don't remember.

7 **THE COURT:** All right.

8 **MR. WRIGHT:** Judge, we're satisfied.

9 **THE COURT:** Mr. Nixon, thank you very much. And I  
10 don't want you to feel singled out.

11 **JUROR NUMBER FOUR:** I just want to be honest.

12 **THE COURT:** That's what we asked you to do, and I  
13 appreciate you doing that, and you'll just remain, as if --  
14 you're right back to where you were, I suppose. If there's  
15 any question, don't get into it with the other jurors, but I  
16 don't want them to feel you were singled out, in some fashion,  
17 but I don't know how to do that. Thank you. I'm going to  
18 return you to the jury pool, and y'all will come back in a few  
19 minutes. So you can go back to the jury room. I suppose the  
20 thing to tell them is you were aware of something you wanted  
21 to get clear with the Court, and you've done it, and not give  
22 them any further details.

23 **(JUROR NUMBER FOUR WAS EXCUSED FROM THE**  
24 **COURTROOM AT 9:46 AM.)**

25 **THE COURT:** All right. So we had that interview, I

1 suppose, with Mr. Nixon. As I understand it, all parties are  
2 satisfied that he can be a fair and impartial juror, is that  
3 right? The Court sees no reason to remove him.

4 **MR. SMITH:** As to Mr. Cox, we're satisfied.

5 **MR. WRIGHT:** As to Ms. Jackson, we're satisfied.

6 **MR. SWEET:** The state is satisfied.

7 **THE COURT:** Thank you all very much. All right.

8 Anything else this morning?

9 **MR. WRIGHT:** No, Your Honor.

10 **MR. SWEET:** No, sir.

11 **THE COURT:** All right. Thank you. Let's bring the  
12 jury in, please. The state is ready to proceed, I assume.

13 **MR. SWEET:** Yes, Your Honor.

14 **THE COURT:** Okay. I may have to take a short break  
15 early on, to take care of an administrative matter. I have to  
16 find a good spot and take care of that when I need to.

17 **MR. SWEET:** We'll be flexible the whole morning,  
18 Judge.

19 **(THE JURY RETURNED TO THE COURTROOM AT 9:50**  
20 **AM.)**

21 **THE COURT:** All right. Good morning, ladies and  
22 gentlemen.

23 Let the record show all 14 jurors are back in the  
24 courtroom.

25 Thank you very much for returning this morning. We

**Daniel McMinn - Direct Examination by Mr. Sweet**

1 try to make the best use of your time as we can. I don't  
2 think I talked yesterday about just the general course of  
3 events for the day, but what we try to do -- and, hopefully,  
4 you won't be here forever, so this will be a short-term thing,  
5 anyway, but we have a morning session. We typically take one  
6 15-minute break in the morning, go to lunch. We try to shoot  
7 for 12:30 to 2:00, and then an afternoon break for about 15  
8 minutes and finish by 5:00, try to. All of that is subject to  
9 change. We may finish a little early. We might be called  
10 upon to go a little late. I try to avoid that, if I can. And  
11 I will go ahead and tell you, there's one administrative  
12 thing, wholly unrelated to this case, that I may have to  
13 address at some point. So we might take a short moment, at  
14 some point this morning pretty soon. Don't read anything into  
15 that.

16 So thank you very much for coming back, and we are  
17 continuing with the case.

18 Will the state call their next witness, please.

19 **MR. SWEET:** Thanks, Judge. Your Honor, the state's  
20 next witness will be Mr. Daniel McMinn.

21 **DANIEL MCMINN,**  
22 having been called as a witness for the State  
23 at **9:51 a.m., was sworn and testified as follows during**  
24 **DIRECT EXAMINATION BY MR. NATHAN E. SWEET:**

25 **Q** Please state your name for the record.

## Daniel McMinn - Direct Examination by Mr. Sweet

1           A     Daniel Joseph McMinn.

2           Q     All right.  Would you keep your voice up,  
3 Mr. McMinn?

4           A     Oh, yeah.  Sorry.  Daniel Joseph McMinn.

5           Q     And how old are you, sir?

6           A     Forty.

7           Q     All right.  Were you born and raised here in  
8 Jacksonville?

9           A     Yep.  Yes, sir.

10          Q     What kind of work do you do?

11          A     I'm a cook.  At work at Applebee's right now.

12          Q     You reside here in Onslow County, still?

13          A     Yes, I do.

14          Q     Back in August of 2015, were you in a dating  
15 relationship?

16          A     Yes.

17          Q     Who were you in a dating relationship with?

18          A     Angela Leisure.

19          Q     How long, at that point in time, had you been dating  
20 her?

21          A     It was about two years, at that point.

22          Q     Okay.  And do you recall August 8<sup>th</sup> of 2015, going  
23 to your parents' house for dinner that evening?

24          A     Yes.

25          Q     And around what time did you return -- or did you



## Daniel McMinn - Direct Examination by Mr. Sweet

1 leave your parents' house with Angela Leisure?

2 A Yes.

3 Q And do you recall around what time you did?

4 A I want to say maybe ten or 11ish.

5 Q Where did your parents live, at that time,  
6 whereabouts?

7 A One side of Brynn Marr, like over by the main base  
8 side.

9 Q Okay. And at the time, were you living with Angela  
10 Leisure?

11 A No.

12 Q Okay. Did you return home with her, to her house,  
13 that evening?

14 A Yes.

15 Q And do you recall where she lived?

16 A Yes.

17 Q All right. Where did she live at, sir?

18 A Oh, it was just less than a five-minute ride. It's  
19 pretty close.

20 Q Sitting here today, do you remember the exact  
21 address?

22 A Yes.

23 Q Okay. What was the address?

24 A Of Angela's house?

25 Q Mm-hmm.

## Daniel McMinn - Direct Examination by Mr. Sweet

1           A     128 Silver Leaf.

2           Q     Okay. And was it just you two that went from your  
3 parents' house back to her house?

4           A     Yes.

5           Q     Okay. Now, what happened when you arrived back at  
6 her house that evening, sir?

7           A     Well, we pulled up in the driveway and she went  
8 inside.

9           Q     Okay.

10          A     And then, as I was going -- you know, about to go in  
11 behind her, a car came up down the road. It was dark, and  
12 they pulled up on the curb in front of the house, and then a  
13 few -- three people got out, started walking towards the front  
14 of the house.

15          Q     Where were you standing at, when you saw this?

16          A     I would have been -- I had already -- I had got out  
17 of the car, and then I would have been moving towards the  
18 front door. So maybe -- I would have been a handful of feet  
19 in front of the front door.

20          Q     Okay. And was it light or dark outside, at that  
21 point in time?

22          A     It was dark.

23          Q     Okay. Is it well lit there at night?

24          A     I don't -- it was -- it was dark, you know. I  
25 don't -- there was -- there's a streetlight.

## Daniel McMinn - Direct Examination by Mr. Sweet

1 Q Okay.

2 A It's not the darkest place.

3 Q And what did you observe as these three individuals  
4 were approaching you at the front of the residence?

5 A Well, they pulled up kind of quick, and it was  
6 unexpected, and they just kind of got out of the car and  
7 started coming towards the house really quick.

8 Q Okay. Did you recognize any of the individuals, at  
9 that time?

10 A I only -- I only recognized one of them.

11 Q All right. Who did you recognize?

12 A Mr. Richard Linn.

13 Q All right. And is Mr. Richard Linn in the courtroom  
14 today?

15 A Yes, sir.

16 Q Okay. And can you point him out for us?

17 A He's right back there. (Indicating.)

18 Q Is that the same individual you saw that evening?

19 A Yes.

20 Q Okay. Now, how did you know Mr. Richard Linn before  
21 this?

22 A He was an acquaintance of Angela.

23 Q Did you have many dealings with Mr. Linn?

24 A I knew of him. I knew they were friends. I'd -- he  
25 would -- what do you say -- I'd see him from time to time.

## Daniel McMinn - Direct Examination by Mr. Sweet

1 Not very much at all, but I knew of him.

2 Q Did he have young -- does he have young children, to  
3 your knowledge?

4 A I believe so, yes.

5 Q Okay. Did Angela have children, at that time?

6 A Yes.

7 Q Okay. Did you ever have any drug interaction, or  
8 interaction with drugs, involving drugs, with Mr. Linn?

9 A No.

10 Q Okay. You, yourself?

11 A Well, there was a time where I kind of had a  
12 suspicion about the nature of their relationship, and I -- and  
13 I spoke up to Richard one time but, other than that, that's  
14 it.

15 Q All right. But you never -- did you ever purchase  
16 drugs with Mr. Linn?

17 A No.

18 Q Now, what happens when you're on the front porch of  
19 the residence that evening?

20 A Well, the defendant Jackson seemed to -- she kind of  
21 just went through the house -- went into the house, looking  
22 for -- where is Angela, where is Angela. She kind of just  
23 shoop. They were approaching kind of fast, and all it  
24 happened kind of quick, and she was in the house and found  
25 Angela.

## Daniel McMinn - Direct Examination by Mr. Sweet

1 Q It happened quickly?

2 A (WITNESS NODDED HEAD.)

3 Q You said that Ms. Jackson asked where Angela was.

4 A Yeah.

5 Q Okay. And was she outside of the residence when she  
6 asked where Angela was?

7 A Yeah. They were outside. They were -- I can't  
8 remember exactly what they said, but it was like, where is  
9 Angela. They made it clear that they were there to see her.

10 Q Did you -- what was your feelings about the nature  
11 of their inquiry about where Angela was?

12 A I could tell there was aggression, like they were --  
13 I could tell something was wrong.

14 Q Now, the front of the residence there at 128, what's  
15 the -- what are the doors like there, of the residence?

16 A Oh, well, it's a single door. It's not a double  
17 door, it's a single door and, at the time, there was a screen  
18 door.

19 Q Okay.

20 MR. SWEET: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 MR. SWEET: If the record can reflect I'm handing  
23 the witness what's been previously marked and admitted into  
24 evidence as State's Exhibit Number 1.

25 Q Can you take a moment and look at that, sir? It's

## Daniel McMinn - Direct Examination by Mr. Sweet

1 been previously admitted, Mr. McMinn, but is that the  
2 residence you were at that evening?

3 A Yes.

4 Q Does State's Exhibit 1 depict those two doors that  
5 you're talking about?

6 A It looks like it.

7 Q Okay. If you could set the State's Exhibit 1 down  
8 and pick up the other photograph beside you.

9 MR. SWEET: If the record can reflect he's now been  
10 handed and picked up State's Exhibit 2.

11 Q Sir, that's been previously admitted, as well, but  
12 is that basically the open front door with the screen door  
13 shut, of that residence?

14 A Looks like it.

15 Q And is that consistent with your memory of how it  
16 looked at the time?

17 A Yes.

18 Q Okay. Is that how that door was when you testified  
19 previously that Ms. Jackson went in?

20 A Yeah. There would have been the front -- it would  
21 have been just like that, yeah.

22 Q Okay. Do you recall whether you, you know, propped  
23 the screen door open, so to speak?

24 A She went into the house. I don't think I was that  
25 far along yet. So if the -- if the door behind her had sealed

## Daniel McMinn - Direct Examination by Mr. Sweet

1 shut --

2 Q So is your testimony that Ms. Jackson goes in first?

3 A That's the way I recall it.

4 Q Okay. What did you see after that?

5 A What we all -- we all went inside to see what was  
6 going on. It would have been apparent that the defendant Cox  
7 was there kind of as enforcement.

8 MR. SMITH: Objection.

9 MR. WRIGHT: Objection, Judge. Speculation.

10 MR. SMITH: Speculation.

11 MR. WRIGHT: Move to strike.

12 THE COURT: Overruled.

13 Q So, in terms of who goes in first, you already  
14 testified who went in first. Who goes in second, after  
15 Ms. Jackson?

16 A I don't -- I don't -- the order that the three of us  
17 got -- three of us got in there, I don't recall.

18 Q Now, was Mr. Linn there, as well?

19 A Yes, he was.

20 Q Did he go in with you, at that time?

21 MR. SMITH: Asked and answered.

22 MR. SWEET: He hasn't answered.

23 THE COURT: Overruled.

24 THE WITNESS: I can't say for sure if he was the  
25 last in. I can't say for sure. I don't know.

## Daniel McMinn - Direct Examination by Mr. Sweet

1           Q     Okay. So at that point in time, are the two -- two  
2 of the individuals that you saw enter the residence, are they  
3 in court here today?

4           A     Yeah.

5           Q     All right. Can you point them out for the jury?

6           A     They're right there. (Indicating the defendants.)

7           **MR. SWEET:** If the record can reflect the witness  
8 pointed at Mr. Cox and Ms. Jackson.

9           Q     You've already pointed out Mr. Linn in the  
10 courtroom, isn't that right?

11          A     Mm-hmm.

12          Q     Now, what is the first thing that you do when you go  
13 inside the residence?

14          A     Well, the defendant Jackson is kind of giving it to  
15 Angela pretty good, you know, from fighting with her. They're  
16 going at it, and I didn't really get involved to break them  
17 up. We were -- to my knowledge, we were -- they -- she --  
18 they had made connection in the bedroom, I think, and then  
19 they ended up coming back out in front of the washer and dryer  
20 and they were on the floor, and I recall me and the other two  
21 guys kind of just standing there.

22          Q     Okay. And did you have a cell phone on you, at the  
23 time?

24          A     Yes, I did.

25          Q     And did you get your cell phone out?



## Daniel McMinn - Direct Examination by Mr. Sweet

1           A     Yes. I went to reach for my cell phone.

2           Q     Why did you do that?

3           A     Because I was going to call 911.

4           Q     What happened when you got your cell phone?

5           A     That's when I noticed Defendant Cox had a gun, and  
6 he showed it so I could see it, and kind of in a threatening  
7 way, you know, don't do that with your phone.

8           Q     How did he present that gun to you? How did he show  
9 it to you?

10          A     I think it was just a -- it was here, and he kind of  
11 just showed it to me. It wasn't like right in my face kind of  
12 thing. I don't recall that.

13          Q     Okay. Did you get a good look at the gun?

14          A     I -- I think I did, yeah.

15          Q     What type of firearm was it, not it the model, but  
16 was it a handgun or shotgun?

17          A     I don't know guns. It was a handgun.

18          Q     At that point in time, what do you do in response to  
19 that?

20          A     I think I put my phone back in my pocket, and I kind  
21 of just go into chill mode. Thankfully, Richard spoke up at  
22 one point and said, "I think she's had enough. Come on, let's  
23 go."

24          Q     How -- do you hear any other statements by  
25 Ms. Jackson or Mr. Cox or Mr. Linn, at that time?

## Daniel McMinn - Direct Examination by Mr. Sweet

1           A     I know -- I know -- I know Richard Linn started  
2 saying, I think, "Come on. Let's go." I recall that. If  
3 anything else was said, I don't -- I don't recall.

4           Q     Okay. Why, at that time, didn't you step up and try  
5 to fight Mr. Cox or Ms. Jackson or Mr. Linn?

6           A     I think it was for self-preservation, and maybe just  
7 thinking it would be over. We all made it out safe. I mean,  
8 if another person would have done something different -- we're  
9 here. We didn't get shot.

10          Q     Did this all happen pretty quickly? How long did  
11 this whole event last?

12          A     Just a few moments. I mean a few minutes, you know.  
13 A few minutes.

14          Q     What happens after you see Mr. Linn -- hear Mr. Linn  
15 say, "She's had enough, let's go?" What happens after that?

16          A     I believe it -- I'm pretty certain it took him at  
17 least twice to say that but, somehow, somebody made the  
18 decision for them to head out the door.

19          Q     What did you do, in response to that?

20          A     I immediately -- I kind of was behind them to the  
21 door, because I wanted to see if they were going to leave. I  
22 wanted to shut it and lock it, and that's what I did.

23          Q     What happened after you shut the door and locked the  
24 door?

25          A     Well, you can see there's a little hallway there.

## Daniel McMinn - Direct Examination by Mr. Sweet

1           **MR. SWEET:** If the record can reflect he's holding  
2 up State's Exhibit 2.

3           **THE WITNESS:** If there's questions about how I  
4 acted, you know, to your previous questions about defending  
5 her, why didn't I step up and defend her, what I did is, I --

6           **MR. SMITH:** Objection. Not responsive.

7           **THE WITNESS:** I was -- you asked me what I did after  
8 they left. I backed up behind this wall, here, so if  
9 something else happened, I wouldn't be in the -- you know, in  
10 the range of the gun, or whatever would happen. I kind of got  
11 behind that wall. Angela was back in the room, so we were  
12 clear of this hallway for anything that came through it.

13 (Indicating on S-2.)

14           **Q**     Okay. So, at that point, you were concerned about  
15 the firearm being used again?

16           **A**     (WITNESS NODDED HEAD.)

17           **Q**     Were you in fear, during that time?

18           **A**     Yeah. I think it was a cool head. Yeah, I was -- I  
19 was -- we were -- we were scared. I was scared, you know, but  
20 it was a cool head that got me out of that hallway. Wasn't in  
21 the way of what was coming.

22           **Q**     After you locked the front door, what happened after  
23 that?

24           **A**     Again, I heard talking, like they wanted to get back  
25 in there. It sounded like they were mad. They were out, and

## Daniel McMinn - Direct Examination by Mr. Sweet

1 being locked out, and they wanted to get back in, and then I  
2 think it was a foot came through the door.

3 Q Okay. What part of the door do you recall it came  
4 through?

5 A Well, we're looking at a -- I don't know how many  
6 panels. It went through one of these lower, longer, panels,  
7 right here. (Indicating on S-2.)

8 Q Okay. Now, what happened after you saw the foot  
9 come through the door?

10 A I think the gun came -- came -- and it got shot. He  
11 shot the gun.

12 Q Could you see who fired the firearm, at that point  
13 in time?

14 A No. There was a -- there was a hole in the door  
15 where it had been kicked, and it -- I don't really -- I  
16 couldn't see who was shooting, no.

17 Q You couldn't see through the door?

18 A No.

19 Q What did you hear, at that point in time? When you  
20 said a shot went off, did you hear the shot go off?

21 A Yeah, mm-hmm.

22 Q And what happened when the shot went off? Did you  
23 see anything happen inside the residence?

24 A No. Other than, you know, the mirror here. I don't  
25 think they ever found the bullet.

1           Q     Sure.  But did you see -- did you see anything in  
2 the residence that was different, after you heard that shot go  
3 off, that was not there, or not present, before the shot went  
4 off?  Did anything change, in other words?

5           A     I --

6           Q     It's okay if you don't remember, I'm just asking.

7           A     No.  I mean, they left, I locked the door and then  
8 they wanted to get back in.  I'm not -- other than that,  
9 I'm -- hmm-mm.

10          Q     When you got to the residence on August 8, 2015, and  
11 you went inside, was there a hole in the door, the front door?

12          A     Not to my knowledge.

13                **MR. SWEET:**  Nothing further of this witness, Judge.

14                **THE COURT:**  All right.  I hate to do this, but I'm  
15 going to ask -- this is -- we're going to take a short break,  
16 but -- so we don't leave y'all sitting here, if you will go  
17 back to the jury room for just a minute.  And this is on the  
18 Court's motion.  Don't concern yourself about what we're doing  
19 here.  Y'all can be at ease back there.  Don't discuss the  
20 case.  I hope we've made that clear.  Don't discuss the case.  
21 Don't form any opinions.  Thank you.

22                        **(THE JURY WAS EXCUSED FROM THE COURTROOM AT**  
23                        **10:10 AM.)**

24                **THE COURT:**  Mr. McMinn, if you want to step down,  
25 you're going to be called back for cross-examination.  Don't

1 talk about the case with anybody. Let's all be at ease for  
2 just a minute. I'll speak with the person who is here to see  
3 me.

4 (COURT STOOD AT EASE AT 10:11 AM. COURT  
5 RESUMED SESSION AT 10:42 AM, WITH THE  
6 DEFENDANTS AND THEIR ATTORNEYS PRESENT, THE  
7 PROSECUTORS PRESENT, THE JURY ABSENT.)

8 MR. SWEET: Judge, it's my fault. About seven or  
9 eight minutes ago, I told them they could take a quick break.  
10 I'll go outside and grab them.

11 THE COURT: I know I said kind of be at ease, and it  
12 turned into -- does anybody need another minute? Tell you  
13 what, Mr. Cox, you go, I'll go. All right.

14 (A RECESS WAS TAKEN AT 10:43 AM. COURT RESUMED  
15 SESSION AT 10:45 AM, WITH THE DEFENDANTS AND  
16 THEIR ATTORNEYS PRESENT, THE PROSECUTORS  
17 PRESENT, THE JURY ABSENT.)

18 THE COURT: Are you ready to proceed?

19 MR. SWEET: Yes, Your Honor.

20 MR. WRIGHT: Yes, sir.

21 THE COURT: Thank you all. I'm sorry for that  
22 interruption, and I'm going to tell them I think we'll  
23 probably try to go to 12:30, but anybody -- on these matters  
24 of a personal nature, if anybody needs anything, we'll take a  
25 break. Kind of give a signal, and we'll take a break.

1           Let's bring the jury back in.

2           **THE BAILIFF:** Yes, sir.

3           **MR. SWEET:** Would you like me to recall Mr. McMinn?

4           **THE COURT:** Yes, sir. Mr. McMinn, come on back up  
5 to the stand.

6                           **(THE WITNESS RETURNED TO THE STAND.)**

7           **THE COURT:** I'll remind you in front of the jury,  
8 but I'll remind you now, as well, that you're still under  
9 oath.

10                           **(THE JURY RETURNED TO THE COURTROOM AT 10:47**  
11                           **AM.)**

12           **THE COURT:** All right. Thank you, ladies and  
13 gentlemen.

14           All 14 jurors are back in the courtroom.

15           I'll just tell you, that went a little longer than I  
16 intended, and that was completely on some administrative needs  
17 of the Court we did that. We'll probably go straight through  
18 until 12:30, but don't hesitate if, for some reason, you need  
19 a break. Give the bailiff the nod, and we'll take another  
20 short recess, if somebody needs it, between now and then. So  
21 don't hesitate, on that front.

22           Mr. McMinn is still on the stand.

23           Mr. McMinn, you're still under oath and you are with  
24 Mr. Wright.

25           **MR. WRIGHT:** Thank you, Your Honor.

## Daniel McMinn - Cross-Examination by Mr. Wright

1 CROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:

2 Q Mr. McMinn, you indicated that you had been dating  
3 Angela Leisure for about two years prior to the August 15<sup>th</sup>  
4 incident.

5 A Yes, sir. It might have been a little bit less than  
6 that.

7 Q It could have been a little bit more, like three  
8 years, which is what she said.

9 A I met her in -- we met at work in about November of  
10 2013, and sometime in -- it's hard to pinpoint when we started  
11 dating or when we started becoming an item.

12 Q Okay.

13 A But it would have been sometime early 2014.

14 Q Okay. On August 8<sup>th</sup>, 2015, where were you living?  
15 What was your address?

16 A 728 Grace Street.

17 Q Were you living by yourself?

18 A With my mom.

19 Q With your parents?

20 A Mm-hmm.

21 Q You indicated that you had went to your parents' for  
22 dinner.

23 A Mm-hmm.

24 Q And you were coming back to the place. Now, when  
25 you pulled up, it was about, you're saying, 12 midnight or



## Daniel McMinn - Cross-Examination by Mr. Wright

1 11:00, between 11 and 12 at night?

2 A I think a few minutes ago I said between 10 and 11,  
3 but it was 11ish.

4 Q So let's say 11ish, okay. Was your porch light on,  
5 or do you have a porch light?

6 A My porch light?

7 Q The porch light to 128 Silver Leaf.

8 A I don't recall if it was on or not.

9 Q Does it work?

10 A It -- yeah, it works.

11 Q And would one normally have a porch light on when  
12 they're coming home that late?

13 A I don't -- I don't see why it would -- it would be  
14 up to whoever -- I don't see --

15 Q Do you want to see where you're going, and see  
16 who --

17 A You might have left it on, you might have left it  
18 off.

19 Q You don't know?

20 A (WITNESS SHOOK HEAD.)

21 Q All right. Now, you said three people came up, and  
22 the only one you recognized was Mr. Linn.

23 A That's correct.

24 Q Okay. How did you -- you saw Mr. Linn visit the  
25 residence before?

## Daniel McMinn - Cross-Examination by Mr. Wright

1           A     Yeah. I was aware that they were friends.

2           Q     Were you aware that he was purchasing drugs from  
3 Ms. Leisure during your two-year -- two to three-year  
4 relationship?

5           A     At that point in time, I had suspicions, but I  
6 didn't really know.

7           Q     So for two to three years, you never -- it was never  
8 admitted, or you never saw any evidence that she was dealing  
9 drugs from that house?

10          A     Not that I saw.

11          Q     Is that your testimony?

12          A     Not that I saw. Yes.

13          Q     That you never -- you never seen that?

14          A     I never saw it.

15          Q     Okay. And you said that at the time that the three  
16 drove up, you knew Richard Linn. You don't know the other  
17 two?

18          A     That's correct.

19          Q     Okay. And you said the first one to speak was my  
20 client, Ashley Jackson, not Richard Linn.

21          A     I remember the pace of them coming at me, and I  
22 remember her being the one that was getting inside, and she  
23 was the one that was first.

24          Q     She was the one, according to you, that said, Where  
25 is Angela, according to you?

## Daniel McMinn - Cross-Examination by Mr. Wright

1           A     (WITNESS NODDED HEAD.)

2           Q     Okay.  Is that your testimony?  You have to state  
3 something for the record.

4           A     That's -- that's way I recall it.

5           Q     Now, were you aware, at that time, that Ms. Angela  
6 Leisure was trying to avoid Mr. Linn, because she owed him  
7 money?

8           A     No.

9           Q     And what, if anything, did you do to stop Ms. Ashley  
10 Jackson from going in your house, or the house that you had  
11 the door open?

12          A     I think I saw three people that came out of the car  
13 aggressively, by surprise, and I think that I might have just  
14 been surprised, and -- it wasn't my -- it's not my house.

15          Q     So let me ask you the question a different way.  Did  
16 you ask Ms. Ashley Jackson to stop, or did you tell her to  
17 come back out of the house when she went in?  Yes or no, sir.

18          A     No.

19          Q     Now, you said after she went in, we all went in, but  
20 you couldn't recall who went in after she came in.

21          A     What I recall, by the time the rest of us got in the  
22 house, they were already -- she was already locked onto  
23 Angela.

24          Q     Right.  Do you recall hearing any words, prior to  
25 the altercation occurring; for example, where is my money, or

## Daniel McMinn - Cross-Examination by Mr. Wright

1 Angela saying to her, I don't have your effing money? Do you  
2 recall hearing any conversation before they, quote, locked up?

3 A To be sure, I would probably have to look at a  
4 statement that I made. I don't -- I don't really recall.

5 Q Okay. Let's talk about the statement you made. I  
6 want to direct your attention to 8/9/2015, less than 24 hours  
7 after the incident. Do you recall making a statement to  
8 Officer Martin of the Jacksonville Police Department?

9 A I don't know which one Officer Martin is.

10 Q Okay. Do you recall being interviewed by the young  
11 lady seated on the bench there, front bench?

12 A I remember a lot of -- I remember several policeman  
13 there. I don't really remember which one I spoke to.

14 Q Did you speak to male and female?

15 A We were all -- we were all there. There was -- I  
16 probably spoke to male and female.

17 Q Okay. That answers my question. But you don't  
18 recall specifically speaking to Officer Martin, Officer K.C.  
19 Martin?

20 A No. I don't recall which one I spoke to.

21 Q Okay. Do you recall stating to Officer Martin, or  
22 any officer that was there that, as you were walking through  
23 the door, three people approached you from the front yard, and  
24 you stated they were waiting for Angela Leisure and himself to  
25 return, in a vehicle outside the residence? Do you remember

## Daniel McMinn - Cross-Examination by Mr. Wright

1 saying that?

2 A Would you repeat that?

3 Q Yes. You stated that you were carrying items in the  
4 house from your car. As you were walking through the door,  
5 three people approached you from the yard. He stated he  
6 assumed they were waiting for Angela Leisure and himself to  
7 return, in a vehicle outside the residence. Do you remember  
8 making that statement? In other words, that a vehicle was  
9 already there and they apparently was waiting for you to get  
10 there. Do you remember making that statement?

11 A I --

12 Q This is less than 24 hours --

13 MR. SWEET: Objection, Judge.

14 THE COURT: Answer the question, please.

15 THE WITNESS: I remember pulling up, and I usually  
16 have -- I might have had a water or coffee in my hand.  
17 Sometimes my hands are full, going inside the house. I recall  
18 as I was making my way towards the front door, I recall the  
19 car pulling up and people getting out.

20 Q Do you recall stating that they came to the door and  
21 asked if he knew Angel, and he stated he shut the door,  
22 attempting to keep them outside. Do you remember saying that  
23 to Officer Martin or any JPD officer on the 9th of August,  
24 2015?

25 A When you say, "he," you're referring to me?

## Daniel McMinn - Cross-Examination by Mr. Wright

1           Q     You, yes. He stated he shut the door, attempting to  
2 keep them outside. Do you remember saying that? If you do,  
3 sir, you can say. If you don't --

4           A     No. The part -- I don't really recall the part at  
5 the front door. You know, where, exactly, I was, right by the  
6 front door or a little bit further away from the front door, I  
7 don't really recall.

8           Q     Okay. Mr. McMinn, do you remember this? Daniel  
9 McMinn stated the subjects then kicked in the front door. The  
10 lower right panel to the door had been kicked mostly out of  
11 the frame. Do you remember telling them that, at that time,  
12 the lower right panel door had been kicked mostly out of the  
13 frame, in the beginning, when they first came up, and then you  
14 said they entered the house?

15          A     You're saying my statement at the time is that when,  
16 we got to the house, there was already a hole in the door?

17          Q     No, sir. What I'm saying is, you told the police  
18 that when they walked up, you closed the door and they kicked  
19 the door in, they kicked the panel out. At that time, he  
20 stated the subjects entered the home. Do you remember saying  
21 that, less than 24 afterwards?

22          A     That sounds -- that sounds a little -- that sounds a  
23 little befuddled, to me, as far as the sequence of those  
24 events.

25          Q     What is befuddled about what I just questioned you

## Daniel McMinn - Cross-Examination by Mr. Wright

1 about?

2           **A**     Because when I -- when the foot came through the --  
3 when the door was shut and the foot came through the door,  
4 that was already after they left and I had shut and locked it.

5           **Q**     Right. So, sir, it's not what you call -- isn't it  
6 true, it's not what we call befuddled, it's what we call an  
7 inconsistency?

8           **MR. SWEET:** Objection.

9           **THE COURT:** Sustained.

10          **Q**     Isn't it true, sir, that the statement you gave to  
11 the police, less than 24 hours after it happened, was not the  
12 truth, as compared to your testimony today?

13          **MR. SWEET:** Objection. Foundation.

14          **THE COURT:** Sustained.

15          **Q**     Sir, did you make that statement to the police less  
16 than 24 hours after the incident?

17          **MR. SWEET:** Objection. Asked and answered.

18          **THE COURT:** Overruled. He can answer that.

19          **THE WITNESS:** Is that a statement I wrote, or is  
20 that something that I spoke and somebody else wrote?

21          **MR. WRIGHT:** Judge, I would ask that he answer the  
22 question "yes" or "no."

23          **THE COURT:** Restate the question.

24          **Q**     The question is, did you make this statement to  
25 Officer K.C. Martin on August 9<sup>th</sup>, 2015? And the statement

**Daniel McMinn - Cross-Examination by Mr. Wright**

1 is that they came to the door and asked if he knew Angel. He  
2 stated he shut the door, to attempt to keep them outside. He  
3 further stated that the subjects kicked in the front door.  
4 The lower right panel to the door had been kicked in, mostly  
5 out of the frame, and further he stated the subjects then  
6 entered the home. Do you recall making that statement to  
7 Officer K.C. Martin?

8 **A** That's not the way I would have described it.

9 **MR. SWEET:** Judge, I'm going to object.

10 **THE COURT:** Overruled. You can address it.

11 **THE WITNESS:** I don't believe that's the way I would  
12 have described it, because -- that's not exactly the way I  
13 would have described it, because that's not what I remember.  
14 That's -- you know, they came through and -- and opened the  
15 door that Angela had already walked through and left open for  
16 me to come in behind.

17 **Q** Okay. And that's what you testified to today, is  
18 that they came through and opened the door, that the door was  
19 not kicked in, and then they entered the home.

20 **A** The door was fine until after they were in the house  
21 and then they left the house and I locked the door, and then  
22 that's when the door got messed up.

23 **Q** Now, at this time, was Richard Linn in the house?  
24 Did he go in with all -- with everybody?

25 **A** Yeah. There was a time where all of us were in



## Daniel McMinn - Cross-Examination by Mr. Wright

1 there.

2 Q Okay. And was there a time that Richard Linn left  
3 and stood outside, on the front porch?

4 A What I recall is that Richard spoke up and said it  
5 was time to go, because she'd had enough, or whatever. It  
6 was -- Richard spoke up at least once.

7 Q Do you recall Mr. Linn asking for his \$50 that he  
8 had given to Ms. Leisure to purchase drugs?

9 A Not that I recall, no.

10 Q Do you recall Ms. Jackson asking for her \$20 that  
11 she had given to Ms. Leisure to purchase pills?

12 A There might have been -- I can't really speak for  
13 certain. There might have been, where is Angela, or where is  
14 my money. I don't really remember, you know, what --

15 Q Was there anything taken from the residence by  
16 Ms. Ashley Jackson?

17 A Not that I'm aware of.

18 Q Was there any threats being made to take property  
19 belonging to Ms. Leisure, out of her residence?

20 A Not that I'm aware of, that I could speak to.

21 Q Isn't it true, sir, that they got into the  
22 altercation, you said, and correct me if I'm wrong, there  
23 could have been some words said? I mean, in other words,  
24 something could have been said before the altercation  
25 occurred, but you're not sure. Is that a fair --

## Daniel McMinn - Cross-Examination by Mr. Wright

1           A     Well, when the two females made contact, we were --  
2 we were 20 feet -- 20 -- 15, 20 feet away.

3           Q     Okay. And then they made contact, and then  
4 Mr. Linn, about a minute later, or two minutes later, broke it  
5 up, broke them up, and got Ms. Jackson out of the place?

6           A     I think he tried to, but it might not have worked  
7 right away. It took a few more seconds, I think.

8           Q     It was about a couple minutes in all?

9           A     (WITNESS NODDED HEAD.)

10          Q     Okay.

11          A     I think so.

12          Q     And from the time that she left out of the  
13 residence, did you see her after that night?

14          A     No, no, because once the door got shut, then the gun  
15 went off. No, no.

16          Q     You don't know where she was, after the door was  
17 shut?

18          A     No.

19          Q     You don't know if she went back to the car, or  
20 anything.

21          A     No.

22          Q     But you know that Mr. Linn, Mr. Cox and Ms. Jackson  
23 were together when that door closed.

24          A     They had all -- the -- other than what happened  
25 coming back through the door, it appeared that the danger had

## Daniel McMinn - Cross-Examination by Mr. Smith

1 subsided.

2 Q Did you see the foot come through the door?

3 A I could -- I don't -- I don't think I actually saw a  
4 foot.

5 Q Well, you said -- you testified on direct that a  
6 foot came through the door. Did you see the foot? That's all  
7 I'm asking.

8 A I could tell -- if you're asking me if I saw his  
9 foot or a foot, I don't have a visual remembering a foot.

10 Q So that means you wouldn't have a visual remembrance  
11 of whether it was a male foot or a female foot, would you?

12 A I honestly can't speak to that, unless we're going  
13 to talk about, you know, the strong door and size and  
14 strength.

15 Q So your answer, then, is, no, you can't tell?

16 A For sure? No.

17 MR. WRIGHT: That's all I have, Your Honor. Thank  
18 you.

19 THE COURT: Mr. Smith.

20 CROSS-EXAMINATION BY MR. BRYON M. SMITH:

21 Q Mr. McMinn, is it your testimony you did not provide  
22 a written statement to Detective Martin, who is seated here in  
23 the tan suit?

24 A I provided a statement.

25 Q But not a written -- you orally told her what

## Daniel McMinn - Cross-Examination by Mr. Smith

1 happened?

2           A     I gave a written statement, I presume. I didn't  
3 hear him say that that was my written statement. I didn't  
4 hear the attorney say.

5           Q     My questions are completely different from his. So  
6 did you provide a written statement to Detective Martin, or  
7 Officer Martin at the time, or anybody from JPD?

8           A     I -- yeah. I mean, I assume I did. Wouldn't they  
9 have wanted me to?

10          Q     I think that's a question for JPD, not for you. Did  
11 you not mention to Detective Martin, Officer Martin at the  
12 time -- you didn't mention at all there was a firearm, did  
13 you?

14          A     There was a fire -- I would have been saying that  
15 from the beginning, because when the cops showed up, they were  
16 looking for -- they were -- they were looking for the bullet.

17          Q     You said you spoke to several cops, but you don't  
18 remember their names?

19          A     Hmm-mm.

20          Q     You didn't know Mr. Cox's name that night.

21          A     Nope.

22          Q     Did you have any idea who he was that night?

23          A     No idea.

24          Q     But you identified him today, though, as the person  
25 who came in.

## Daniel McMinn - Cross-Examination by Mr. Smith

1           A     Yep, from -- mm-hmm.

2           Q     But you're not sure if he came in before you or  
3 after you.

4           A     How the three of us got through the door in  
5 sequence, I can't speak to, no.

6           Q     So it could have been Mr. Linn, number one; you,  
7 number two; Mr. Cox, number three, or some combination.

8           A     Yes.

9           Q     As you went in the screen door, do you remember  
10 holding it back, like this, holding it open for someone to  
11 follow in behind you? (Indicating.)

12          A     No.

13          Q     And did you walk to court today with Mr. Linn?

14          A     No. Did I walk to --

15          Q     Walk to court from the D.A.'s office, with Mr. Linn,  
16 side by side with Mr. Linn?

17          A     From the D.A.'s office to here?

18          Q     Yes, sir.

19          A     Yeah, yeah.

20          Q     You've been sitting beside him during today's  
21 proceedings.

22          A     I suppose. Yeah.

23          Q     And this is a person that JPD alleges burglarized  
24 your house, and you're sitting right beside him today.

25                **MR. SWEET:** Objection to what JPD alleges.

**Daniel McMinn - Redirect Examination by Mr. Sweet**

1           **THE COURT:** Overruled.

2           **THE WITNESS:** He didn't burglarize my house.

3           **Q**     Do you think he burglarized the house of a longtime  
4 girlfriend of yours?

5           **A**     I don't mean to -- I don't know -- he -- he wasn't  
6 the one with the intent there.

7           **Q**     He didn't intend to get his money back?

8           **MR. SWEET:** Objection.

9           **THE COURT:** Sustained.

10          **MR. SMITH:** That's all. Thank you, Judge.

11          **MR. SWEET:** May I approach briefly?

12          **THE COURT:** Yes.

13          **REDIRECT EXAMINATION BY MR. NATHAN E. SWEET:**

14                 **MR. SWEET:** If the record can reflect I'm handing  
15 the state's witness what's been previously marked as State's  
16 Exhibit 4.

17           **Q**     You've had a lot questions, not about what you've  
18 said here today but what you said back two years ago, on  
19 August 9, 2015, so I'm going to ask you, do you remember  
20 perfectly what you told Kourtney Martin, or any JPD officer,  
21 and the exact order, two years ago?

22           **A**     Do I remember perfectly? No.

23           **Q**     Would it help refresh your recollection if you saw a  
24 summary, a summary of what the officer said you said?

25           **A**     I'm sure it would.

## Daniel McMinn - Redirect Examination by Mr. Sweet

1           Q     Okay.  And you've been asked about that previously.  
2     Can you pick up State's Exhibit 4 for me and take a look at  
3     that.  I believe it's the third and fourth paragraph down,  
4     sir.

5           A     The -- which one am I looking at here?

6           Q     Can you look at the third and fourth paragraph down,  
7     where it says, "Daniel McMinn stated."

8           A     Mm-hmm.

9           Q     Okay.

10          A     There's two of them in a row that start out that  
11     way.

12          Q     Okay.  Can you tell us what you -- what that report  
13     says you said?

14          A     Well, reading here, "Daniel McMinn stated he was  
15     carrying items into the house from his car.  As he was walking  
16     through the door, three people approached him from the front  
17     yard.  He stated he assumed they were waiting for Angela  
18     Leisure and himself to return, in a vehicle outside the  
19     residence.  He stated they came to the door and asked if they  
20     knew Angel.  He stated he shut the door, attempting to keep  
21     them outside.  Daniel McMinn stated the subjects then kicked  
22     in the front door.

23                     "The lower right panel to the door had been kicked  
24     mostly out of the frame, consistent with this statement.  
25     There were wood chips from the wooden door breaking scattered

**Daniel McMinn - Recross-Examination by Mr. Wright**

1 on the floor in front of the front door. He stated subjects  
2 entered the home."

3 Q Okay. That last part says, "He stated subjects  
4 entered the home," that last sentence.

5 A Mm-hmm.

6 Q Can you say that again for us?

7 A "He stated the subjects entered the home."

8 Q So Mr. Wright asked you if you asked -- if you told  
9 them the subjects then entered the home. That's not what that  
10 report says, is it?

11 A It doesn't say, "then."

12 Q Okay.

13 MR. SWEET: Nothing further, Judge.

14 THE COURT: Mr. Wright?

15 MR. WRIGHT: Yes.

16 **RECROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

17 Q Speaking of the same statement, it says you stated  
18 the subjects then kicked in the front door. Do you see where  
19 it says that? Beginning of the second paragraph you read.

20 A Yeah. Then kicked in the front door.

21 Q The subject then kicked in the front door. That's  
22 your first statement. Your last statement then says, "He  
23 stated the subjects entered the home." So that's the first  
24 sentence of your paragraph, as compared to the last.

25 MR. SWEET: Objection.



**Daniel McMinn - Recross-Examination by Mr. Smith**

1           **Q**     Isn't that true?

2           **MR. SWEET:** The evidence is that it's a summary of  
3 what he said, not his exact statement. Again, the  
4 characterization.

5           **THE COURT:** I'm not restating your question, but the  
6 paragraph, I believe everybody agrees, was prepared by the  
7 officer.

8           **MR. WRIGHT:** That's correct, it's prepared by the  
9 officer.

10          **THE COURT:** One sentence came before the other. Is  
11 that your question?

12          **MR. WRIGHT:** Right. The first sentence --

13          **THE COURT:** You may ask.

14          **MR. WRIGHT:** The first sentence was about kicking  
15 the door in. The last sentence in the paragraph is, they  
16 entered. That's all. The report speaks for itself, and I  
17 would agree to let them introduce it, let the jurors read it  
18 and let them determine. Otherwise, I have no further  
19 questions.

20          **THE COURT:** All right. Mr. Smith?

21 **RECCROSS-EXAMINATION BY MR. BRYON M. SMITH:**

22          **Q**     Mr. McMinn, have you had the chance to read the  
23 supplement? Is there any mention in this, by you, that  
24 there's a firearm?

25          **A**     You asked me two questions. Have I had a chance to

## Richard Linn - Direct Examination by Mr. Sweet

1 read this?

2 Q Yes, sir.

3 A No.

4 Q I'll give you -- I think the Court will give you a  
5 couple of minutes to answer that question.

6 A What was your second question?

7 THE COURT: What is the question?

8 Q Is there any mention by you, to Officer Martin, in  
9 this summarization, that there was a firearm?

10 A I don't see it.

11 Q Thank you, Mr. McMinn.

12 MR. SMITH: That's all.

13 THE COURT: Thank you.

14 MR. SWEET: Nothing further, Judge.

15 THE COURT: Thank you, Mr. McMinn. You can step  
16 down, please.

17 (WITNESS EXCUSED FROM THE STAND.)

18 THE COURT: Call your next witness.

19 MR. SWEET: The state would call Mr. Richard Linn to  
20 the stand.

21 RICHARD LINN,

22 having been called as a witness for the State

23 at 11:17 a.m., was sworn and testified as follows during

24 DIRECT EXAMINATION BY MR. NATHAN E. SWEET:

25 Q Can you please state your name for the Court?

## Richard Linn - Direct Examination by Mr. Sweet

1           A     Richard Phillip Linn.

2           Q     All right.  There's no mic up there that projects  
3 anything.  You're going to have to do it yourself, okay?  Sir,  
4 how old are you?

5           A     Thirty-four.

6           Q     All right.  Did you grow up here in Jacksonville?

7           A     No, sir.

8           Q     Where did you grow up?

9           A     Military brat, so mostly east side.  Okinawa, Japan.

10          Q     Okinawa?  Was it your mom or dad that was in the  
11 service?

12          A     Both parents were in the service.

13          Q     Okay.  And do they live here, locally?

14          A     My father does.

15          Q     Okay.  And what do you do for a living?

16          A     Currently, working at the landfill.

17          Q     How did you get a job at the landfill?

18          A     I was doing community service and they liked my  
19 work, so they gave me a referral.

20          Q     How did you get into community service?

21          A     During my plea bargain, the judge ordered that I  
22 work 30 hours a week or more and, if not, I had to do 30 hours  
23 a week of community service.

24          Q     Are you married?

25          A     Technically.

## Richard Linn - Direct Examination by Mr. Sweet

1 Q Technically, okay. Are you separated?

2 A Yes.

3 Q Do you have children?

4 A Yes.

5 Q Do you know Angela Leisure, who is obviously part of  
6 this case?

7 A Yes, sir.

8 Q How did you get to know Angela Leisure?

9 A I've known her for many years. We're friends  
10 through a mutual acquaintance.

11 Q Who was that mutual acquaintance? I'll ask you  
12 this. Was it Mr. Cox or Ms. Jackson --

13 A No, sir.

14 Q -- either of the defendants? Okay. And do you all  
15 have children that are the same ages?

16 A My youngest son is a little older than her daughter,  
17 I believe.

18 Q All right. And after you got to know Angela  
19 Leisure, did you basically use her as a go-between to obtain  
20 narcotics?

21 A At times.

22 Q Okay. And about when did this begin?

23 A I'm really not sure.

24 Q All right. So we're talking, obviously, about  
25 August 8<sup>th</sup>, 2015, this incident. Was it before that time?

## Richard Linn - Direct Examination by Mr. Sweet

1           A     Yes.

2           Q     Okay.  And do you have any idea or, you know,  
3     estimation on how long that had been going on, before this  
4     date?

5           A     Probably at least a year.

6           Q     At least a year?

7           A     (WITNESS NODDED HEAD.)

8           Q     Okay.  And how often would that happen?

9           A     Maybe once a month, once every other month.

10          Q     Okay.  And what would you do with Ms. Leisure, in  
11     terms of obtaining these narcotics?

12          A     I would give her the money, she would go get them  
13     for me, and then I would pick them up.

14          Q     Okay.  And did you ever introduce her, leading up to  
15     August 8, 2015, to either of the defendants seated to my left?

16          A     No, sir.

17          Q     Okay.  And how did you come -- prior to August 8,  
18     2015, did you know the Defendant Cox in this case?

19          A     Yes.

20          Q     And how did you get to know him?

21          A     I met him through -- I believe it was one of his  
22     friends that walked in my front yard and asked me for a  
23     cigarette.  We started talking, and then he brought him by one  
24     day.

25          Q     And where did you live, at that time?

## Richard Linn - Direct Examination by Mr. Sweet

1           A     421 Thomas Drive, in Brynn Marr.

2           Q     In Brynn Marr. So it's in the City of Jacksonville?

3           A     Yes, sir.

4           Q     And did you come to find out where Mr. Cox was  
5 staying at, at that time?

6           A     I don't think I ever knew where he stayed.

7           Q     So do you have any idea why he was walking by your  
8 house?

9           A     No, sir.

10          Q     Okay. Now, how long before August 8<sup>th</sup>, 2015, do  
11 you begin, you know, talking with the defendant, Mr. Cox?

12          A     We had brief interactions. Probably -- I honestly  
13 can't say, for certain. I'd say at least six months.

14          Q     Okay. Did you know his legal name at the time?

15          A     No, I didn't.

16          Q     How did you know him?

17          A     I kind of just knew him as J.

18          Q     As J?

19          A     As J.

20          Q     Now, as part of that, did you ever meet Ashley  
21 Jackson?

22          A     I met her through a friend.

23          Q     Okay. And did you meet her through Mr. Cox, though?

24          A     Not originally.

25          Q     Okay. So when did you first meet Ms. Jackson?

## Richard Linn - Direct Examination by Mr. Sweet

1           A     I'm unsure about the actual specific date, or even  
2 the time frame. I knew her through a friend I called C.J.  
3 They have two kids together.

4           Q     And are they boys, girls?

5           A     Two girls.

6           Q     Do you recall their names?

7           A     Briana is the only name I recall.

8           Q     Okay. Now, closer in time to August 8, 2015, did  
9 you ever have any interaction with Ms. Jackson and Mr. Cox  
10 together, the three of you, prior to this date?

11          A     They may have been together, but I hardly ever  
12 interacted so much with Ms. Jackson.

13          Q     Okay.

14          A     We may have spoke once or twice, but I don't recall  
15 any interactions with her, per se.

16          Q     Okay. Now, at any point in time, did the defendant,  
17 Mr. Cox, give you money to buy narcotics?

18          A     Yes.

19          Q     Did he know who you were giving this money to, to  
20 buy narcotics from?

21          A     I really don't remember if I told him. I probably  
22 left him in the dark on who I was getting it from. I kind of  
23 tried to keep both them in the dark about each other, for  
24 legal purposes.

25          Q     Okay. And did you tell Ms. Leisure about the fact

## Richard Linn - Direct Examination by Mr. Sweet

1 that any of the money was Mr. Cox's, that you had gotten?

2 A No.

3 Q Now, leading up to this on August 8, 2015, did you  
4 give Ms. Leisure some amount of money to buy narcotics?

5 A Yes.

6 Q Okay. And when, approximately, was that?

7 A I really don't recall.

8 Q Okay.

9 A It would have been within the time frame, the  
10 vicinity of that night.

11 Q Okay. Was any of that money, money that you had  
12 gotten from Mr. Cox?

13 A Yes.

14 Q And do you recall how much that was?

15 A Twenty dollars.

16 Q Twenty dollars, okay. And did you put any money  
17 with that?

18 A Yes.

19 Q Okay. How much money did you put with that?

20 A I want to say 60. I'm not really sure.

21 Q What were you attempting to purchase through  
22 Ms. Leisure?

23 A Percocets.

24 Q Percocets, okay. Now, did you get -- did you give  
25 money to Ms. Leisure?



## Richard Linn - Direct Examination by Mr. Sweet

1           A     Yes.

2           Q     Did you ever get Percocets in return?

3           A     No.

4           Q     Okay.  And what happened after you didn't -- what  
5 did you do, in response to not getting the Percocets?

6           A     I text her a couple times, you know, letting her  
7 know it wasn't all my money, and tried getting in touch with  
8 her, but I could never get a response back from her.

9           Q     Okay.  Did you tell her whose money it was that you  
10 had given her?

11          A     Not specifically.

12          Q     Okay.  And did you know, at the time, where she  
13 lived?

14          A     Yes.

15          Q     Okay.  How far of a drive was it to her house from  
16 your house?

17          A     It's about three streets back.  Not to say it's only  
18 three streets to get there, but if you actually counted the  
19 streets behind my house.

20          Q     Now, had Mr. Cox and Ms. Jackson contacted you about  
21 that money, leading up to August 8, 2015?

22          A     Yes.

23          Q     Okay.  And how did they do that?

24                **MR. SMITH:**  Objection to they.

25                **MR. WRIGHT:**  Yes.

## Richard Linn - Direct Examination by Mr. Sweet

1           **MR. SWEET:** I'll rephrase.

2           **Q**     Had Mr. Cox contacted you about that money?

3           **A**     Yes.

4           **Q**     How did he do that?

5           **A**     I believe he might have called.

6           **MR. SMITH:** Objection, Judge, if he doesn't  
7 remember.

8           **THE COURT:** Just state what you know.

9           **Q**     Do you know for sure how he got up with you about  
10 the money?

11          **A**     It was through text or phone call.

12          **Q**     So he had your number?

13          **A**     Yes.

14          **Q**     Okay. Did he know where you lived?

15          **A**     Yes.

16          **Q**     Obviously, he walked by previously, right? Now, on  
17 August 8<sup>th</sup>, 2015, do you recall that, the evening time,  
18 August 8<sup>th</sup>, 2015?

19          **A**     Do I recall the evening? Hard to forget.

20          **Q**     Where were you that evening, sir?

21          **A**     I was in my home, with my kids.

22          **Q**     Okay. Who else lived at that home with you?

23          **A**     My father, my brother and my two kids.

24          **Q**     Okay. And what happened that evening?

25          **A**     I received a call. I was in my bedroom with my

## Richard Linn - Direct Examination by Mr. Sweet

1 youngest son, William. We were getting ready for bed. I  
2 received a call from Mr. Cox, saying, "Come outside." I went  
3 outside, and he was in front of my carport, standing.

4 Q What did you see, at that time?

5 A He had a gun in his left hand, and he said, "Get in  
6 the car," and I got in the car.

7 Q Okay. Was Ms. Jackson around, at that point in  
8 time?

9 A I didn't see her until I got into the car.

10 Q Okay. And what happened once you were inside the  
11 car?

12 A We drove to Angela's house.

13 Q Okay. Now, why did you drive to Angela's house.

14 A Because they wanted to.

15 MR. SMITH: Objection to what they wanted, Judge.

16 THE WITNESS: I believed it was because they wanted  
17 to talk to her about their money.

18 Q Okay.

19 THE COURT: Overruled.

20 Q Who wanted to talk to her about their money? Which  
21 one of these defendants?

22 A I could say James Cox, specifically, but I'm not --  
23 I'm not 100 percent on whether I heard Ashley say that or not.

24 Q Why aren't you 100 percent certain?

25 A I really never -- I tried to kind of keep distance

## Richard Linn - Direct Examination by Mr. Sweet

1 from Ashley, because they were boyfriend and girlfriend, and I  
2 didn't want any accusations to ever occur. So I usually --  
3 when it's dealing with a female, I'd rather not deal with  
4 them.

5 Q But in the car, why don't you recall whether Ashley  
6 said anything about getting the money?

7 A I honestly just don't remember.

8 Q Okay. Does -- at that point in time, what are you  
9 feeling? What are you thinking, when you're in that vehicle?

10 A Uncomfortable, because I'm sitting in a booster  
11 seat.

12 Q Okay. And was it in the backseat or the front seat?

13 A Back passenger side.

14 Q Okay. And who was driving the vehicle?

15 A James was.

16 Q Okay. Now, as part of your case in this situation,  
17 you were initially charged with similar charges, isn't that  
18 right?

19 A First-degree burglary.

20 Q Conspiracy to commit robbery, not the completed act,  
21 but conspiracy, first-degree burglary, isn't that right?

22 A Yes.

23 Q And you took a plea offer, didn't you?

24 A Yes.

25 Q As part of that plea offer, did you agree to testify

## Richard Linn - Direct Examination by Mr. Sweet

1 truthfully?

2 A Yes.

3 Q Is that a requirement of your probation, that you  
4 testify truthfully?

5 A Yes.

6 Q Why didn't you tell the police when they first began  
7 investigating this case about the previous drug relations with  
8 you and Mr. Cox and Ms. Jackson?

9 A Mainly to kind of save my own butt.

10 Q What were you worried about?

11 A Drug charges.

12 Q Okay. And you were worried about being charged with  
13 unrelated drug transactions?

14 A Yes.

15 Q Did you talk to the police around the incident time  
16 about the events that took place at the residence of Angela  
17 Leisure?

18 A Yes.

19 Q So did you tell them in full -- did you tell them  
20 about that only, essentially?

21 A Basically, yeah.

22 Q Now, how long does it take you to get from your  
23 house to Angela Leisure's house?

24 A I mean, by car, you can get there, I would say, at  
25 least two minutes.

## Richard Linn - Direct Examination by Mr. Sweet

1 Q Two minutes?

2 A (WITNESS NODDED HEAD.)

3 Q And who told Mr. Cox and Ashley Jackson where Angela  
4 Leisure actually lived?

5 A That would be me.

6 Q Now, when you get to Angela Leisure's house, what  
7 happens?

8 A We pulled up right by the curb. We get out of the  
9 car. Daniel was right in front of the sidewalk, which goes  
10 from the driveway down to the front door, which is probably  
11 about 20 feet away from the front door. We asked to speak to  
12 Angie.

13 MR. SMITH: I'll object to the "we". If we can get  
14 clarification as to who is asked.

15 THE COURT: Try and be specific. If you're speaking  
16 about a group, speak of the group, but if you're speaking of  
17 an individual, speak of an individual.

18 A Me.

19 Q So at that point in Daniel, you said, was on the  
20 sidewalk -- near the sidewalk where it meets the driveway?

21 A The sidewalk comes to the top of the driveway and  
22 goes around her garage to the front door. The front door is  
23 kind of embedded between part of a room and the garage.

24 Q Okay. And around what time was this?

25 A I would probably say between 10 and 11ish.

## Richard Linn - Direct Examination by Mr. Sweet

1 Q So sometime later -- late in the evening on  
2 August 8, 2015. Would you agree with that?

3 A Yes.

4 Q Now, what happens -- what do you observe, as you're  
5 walking up to the residence?

6 A I see Daniel standing outside. I -- I recall it  
7 being him, smoking a cigarette, but it might not be completely  
8 accurate.

9 Q Okay.

10 A I might have just kind of thought he was smoking a  
11 cigarette. Mr. Jackson and Ms.-- wait, Ms. Jackson and  
12 Mr. Cox is kind of behind -- at my back corners. We asked to  
13 speak to Angela.

14 MR. SMITH: Same objection, Judge.

15 MR. WRIGHT: Objection.

16 Q Who asked to speak?

17 A Sorry. We kind of all just blurted out -- I'm  
18 sorry, me, Mr. Cox and Ms. Jackson all blurted out we were  
19 there to basically talk to Ms. Leisure.

20 Q All right. What was the demeanor of Mr. Cox, at the  
21 time?

22 A I would only really have to guess.

23 Q Don't guess. Do you recall?

24 A I don't recall, specifically.

25 Q Okay. That's fine. What about Ms. Jackson?

## Richard Linn - Direct Examination by Mr. Sweet

1           A     I don't recall, specifically.

2           Q     Okay. After you -- all three of you are essentially  
3     inquiring about where Ms. Leisure is. What happens after  
4     that?

5           A     I remember, I believe, Ms. Jackson saying something  
6     about money being taken. I don't remember specifically,  
7     though. I do remember it was brought up about money.

8           Q     Let me stop you. Is this to Mr. McMinn or is this  
9     inside the residence?

10          A     This is to Daniel, letting him know -- them trying  
11     to tell him, pretty much, about what they were there for,  
12     Ms. Leisure.

13          Q     How long were you all outside with Mr. McMinn?

14          A     Only a couple minutes.

15          Q     Okay. Did it happen pretty quickly?

16          A     Yeah, it was pretty quick.

17          Q     Now, does Mr. McMinn let any of you inside the  
18     residence?

19          A     He didn't verbally or physically kind of let us in.

20          Q     Who opens the door to get into the residence?

21          A     I am actually unsure on who went in first.

22          Q     Who goes into the residence?

23          A     Mr. Cox, Ms. Jackson, and Daniel.

24          Q     Where do you stay, at that point in time?

25          A     I kind of stay in the driveway, kind of freaking



## Richard Linn - Direct Examination by Mr. Sweet

1 out.

2 Q Up until that point in time -- you had Angela's  
3 number, right?

4 A Yes.

5 Q Did anybody reach out to Angela, you, Mr. Cox,  
6 Ms. Jackson, and ask for permission to come into her house?

7 A No.

8 Q Did anybody ask permission of Mr. McMinn if they  
9 could go inside?

10 A Not that I'm aware of.

11 Q And why do you stay outside the residence? Why  
12 don't you go in, initially?

13 A Luke I said, I was kind of freaking out. I was  
14 thinking of actually running home.

15 Q All right. Why were you thinking of running home?

16 A Because the situation ended up being completely  
17 beyond what I ever expected, and I mean --

18 Q Did you like Ms. Leisure at the time, personally?

19 A Yeah. She was actually my closest friend.

20 Q At the time, did you go there with the intent to  
21 hurt her?

22 A No.

23 Q Now, do you run home?

24 A No, I don't. I hear Ms. Leisure crying -- I thought  
25 it was to Daniel -- for help, saying, please help me. Do

## Richard Linn - Direct Examination by Mr. Sweet

1 something. And at that time, I entered the house and kind of  
2 looked around and assessed it and, shortly after, I walk in  
3 between Mr. Cox and the fight between Ms. Leisure and  
4 Ms. Jackson.

5 Q So what -- when you walk into the residence, where  
6 is Ms. Leisure and Ms. Jackson?

7 A Ms. Leisure and Ms. Jackson are -- well, Ms. Leisure  
8 is on the ground. Ms. Jackson is on top of her, right in  
9 front of the laundry room, her bedroom and laundry room, and  
10 there's a linen closet, kind of.

11 Q Was Ms. Leisure wearing any clothes?

12 A I don't -- I don't remember seeing any clothes.

13 Q Okay. Now, at that point in time, do you see  
14 Mr. Cox inside the residence, the defendant here?

15 A Yes. He was at the corner of the hallway into the  
16 house and living room wall.

17 Q Do you see Mr. McMinn at this time, when you first  
18 enter the residence? Do you see Mr. Daniel McMinn?

19 A Yes. He was in the hallway a little past the  
20 entrance to the garage.

21 Q Okay. Now, what do you see Mr. McMinn do, at this  
22 time?

23 A He's kind of standing there, has a phone in one  
24 hand, and he's just really standing there.

25 Q Okay. And what do you see Mr. Cox do after that, if

## Richard Linn - Direct Examination by Mr. Sweet

1 anything?

2 A He -- he directed him to basically either put the  
3 phone down or put it away.

4 Q Did you see anything in Mr. Cox's hand, at that  
5 time?

6 A A pistol.

7 Q Okay. By a pistol, what do you mean?

8 A Handgun. Revolver, I believe.

9 Q Was it the same one that you had seen earlier?

10 A Yes.

11 Q Okay.

12 A Well, to the best of my knowledge.

13 Q Could you ever specifically describe that handgun  
14 for the police? Were you able to say, it's this model, this  
15 type of gun?

16 A No. I really don't care for guns, so I'm not  
17 into --

18 Q So you don't care for guns. You're unable to  
19 describe it fully?

20 A I could probably only describe the type of it being  
21 a revolver gun.

22 Q It was a revolver, you said?

23 A Yes.

24 Q Now, how is that revolver in Mr. Cox's hand pointed?

25 A It's not really held so much up, more kind of

## Richard Linn - Direct Examination by Mr. Sweet

1 just -- more for show, I would say, than pointing it. He's  
2 not pointing it at anyone, specifically.

3 Q While he's holding this up, are Ms. Leisure and the  
4 defendant, Ms. Jackson, still on the ground?

5 A Yes.

6 Q What happens after that?

7 A I kind of go up to Ms. Jackson, and I say, "She's  
8 had enough," you know. Basically, it's enough. "We need to  
9 go." And I think about kind of trying to actually physically  
10 break it up, but I don't, because I remember Mr. Cox is behind  
11 me. So I kind of turn to him and I tell him, "Hey, that's  
12 enough. We need to go."

13 Q What happens after you tell them that?

14 A Shortly after, we leave the premises -- we leave the  
15 house.

16 Q And what happens when you're outside the residence?

17 A Mr. Cox turns around and kicks in the bottom  
18 right-hand side of the door.

19 Q Was the door shut, at that point in time?

20 A Yes.

21 Q Did you see his foot, where it went?

22 A Through the door.

23 Q So it went through the door?

24 A (WITNESS NODDED HEAD.)

25 Q Where are you standing, when you see this?

## Richard Linn - Direct Examination by Mr. Sweet

1           A     Right next to him.

2           Q     Now, why did he kick the door?  He's outside, you  
3 convinced him to go outside.

4           MR. SMITH:  That's speculation, Judge.

5           THE COURT:  If he knows.

6           Q     Do you know?  Did he tell you?

7           A     No, he didn't.

8           Q     How was he acting, at that time?

9           A     Pretty aggravated.

10          Q     Did he have the pistol, still?

11          A     Yes.

12          Q     Okay.  And what do you see, at that point in time?

13          A     After he kind of gets done kicking the door, he  
14 shoots at the door.

15          Q     Okay.  And how was he standing, when he shoots at  
16 the door?

17          A     I really don't recall.

18          Q     Okay.  Where is Ms. Jackson when the defendant,  
19 Mr. Cox, is shooting the door?

20          A     I really don't recall, specifically, where she was.  
21 She might have been walking to the car, might have already  
22 been in the car.

23          Q     Now, once the firearm goes off, what happens?

24          A     We all go back to the car, get back in the car and  
25 then they drive.  They drop me off at Scott and Thomas stop

## Richard Linn - Direct Examination by Mr. Sweet

1 sign, which is -- there's a house between my house and that  
2 stop sign, and I get out there, go inside, and kind of tuck my  
3 kids into bed.

4 Q Do they leave, at that point in time?

5 A Yes.

6 Q Now, when Mr. Cox fires at the door, describe if you  
7 can, for the Court, how he's holding the firearm. Is it two  
8 hands on, one hand?

9 A It was one hand.

10 Q Is -- is he pointing the firearm at the door?

11 A It was pointed at the door, yes.

12 Q By him, right?

13 A Yes.

14 Q Now, subsequent to this, you talked to the  
15 Jacksonville Police Department, didn't you?

16 A Yes.

17 Q Specifically, Detective Parker?

18 A Yes.

19 Q And did you relay the information about that night  
20 to him, about August 8, 2015? Did you tell him?

21 A There was a conversation we had at my house, where I  
22 don't remember exactly how much of the story I covered, but I  
23 kind of briefed it up, at one point in time and, when we went  
24 to JPD, I ended up actually asking for a lawyer, I think,  
25 after he asked me the names of the defendants.

## Richard Linn - Cross-Examination by Mr. Wright

1 Q Did you make some statement to him about the night  
2 before that, though? Did you talk to him at your residence?

3 A Yes.

4 Q Okay. All right. You walked over -- of course, you  
5 came over earlier -- you walked over here with me and  
6 Mr. McMinn.

7 A Yes.

8 Q Because you met me at my office, right?

9 A Yes.

10 Q You're on probation now?

11 A Yes, sir.

12 Q And as part of probation you're drug tested, right?

13 A Yes, sir.

14 Q And there are certain conditions that, you know, you  
15 work, and all that stuff, right?

16 A Yes, sir.

17 Q Are you abiding by that now?

18 A Yes, sir.

19 Q All right.

20 MR. SWEET: Nothing further of this witness, Judge.

21 THE COURT: Thank you. Mr. Wright,

22 cross-examination.

23 CROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:

24 Q Mr. Linn, when you were initially interviewed by  
25 Detective Parker, isn't it true, sir, the first time, I

## Richard Linn - Cross-Examination by Mr. Wright

1 believe, whenever he approached you, you told him that Angela  
2 stole \$20 from you, that that money belonged to a female. Do  
3 you remember saying that?

4 A I don't remember saying the female part.

5 Q And then Detective Parker said, "I advised him  
6 before I asked him any other question I needed to read him his  
7 rights."

8 A I actually don't remember him reading me my rights.

9 Q Okay. Now -- so let's go back on your statement.  
10 You were at home and you get a call, okay?

11 A Yes.

12 Q And before I begin questioning you, I want to talk  
13 about the deal you made with the state. Do you remember  
14 entering into a plea bargain with them?

15 A Yes, sir.

16 Q And I believe on the 9th day of August, almost two  
17 years to the date of this incident, you entered into a plea  
18 arrangement to plead to a lesser charge of breaking and  
19 entering, in an Alford plea, basically. Do you know what that  
20 plea was, Alford plea, what that is?

21 A No, sir.

22 Q Okay. Do you understand that an Alford plea is  
23 saying that --

24 MR. SWEET: He already said, no, Judge. Objection.

25 THE COURT: I think he can explain what it is.



## Richard Linn - Cross-Examination by Mr. Wright

1           **MR. WRIGHT:** I can explain.

2           **Q**     An Alford plea says, do you consider it to be in  
3 your best interests to plead guilty to the breaking and  
4 entering, and you said, yes.

5           **A**     Yeah.

6           **Q**     But, according to your testimony, you didn't break  
7 and enter.

8           **A**     Yeah.

9           **Q**     But you pled guilty to it.

10          **A**     Yes, sir.

11          **MR. SWEET:** Objection. Judge, that would be a  
12 finding for the purpose --

13          **THE COURT:** Overruled.

14          **Q**     Now, part of the plea arrangement was that all other  
15 charges -- and the charges, the all other charges are, in  
16 part -- two of the charges are the conspiracy to commit armed  
17 robbery and the burglary would be dismissed --

18          **A**     Yes, sir.

19          **Q**     -- in exchange for your plea to a lesser charge.  
20 You would agree breaking and entering is a much lesser charge.

21          **MR. SWEET:** Objection. Asked and answered.

22          **THE COURT:** Just ask the questions.

23          **Q**     Is it a lesser charge?

24          **A**     Yes, sir.

25          **Q**     And also, not only to plead to a lesser charge, but

## Richard Linn - Cross-Examination by Mr. Wright

1 you would also receive a probationary sentence on the  
2 condition you testify truthfully, if requested by the state,  
3 against my client.

4 A Yes, sir.

5 Q Then it talks about no contact with the prosecuting  
6 witness.

7 A Yes.

8 Q Okay. And you're here today, testifying in this  
9 case --

10 A Yes, sir.

11 Q -- in part, based on this plea bargain.

12 A Yes.

13 Q Now, initially when you were questioned by the  
14 police, you did mention there was money that Angela stole from  
15 you.

16 A Yes.

17 Q Was it \$20 or was it \$50?

18 A It was -- I want to say between 60 and \$80 total.

19 Q That includes the \$20 --

20 A Yes.

21 Q -- in question here?

22 A Yes.

23 Q Okay. And were you aware that Ms. Leisure said she  
24 was avoiding you, that she didn't have the money to pay you,  
25 that's why she wasn't answering your texts, or anything?

## Richard Linn - Cross-Examination by Mr. Wright

1           A     I kind of thought maybe that was the case, but I --  
2     I mean, she didn't tell me specifically she was avoiding me,  
3     or anything like that.

4           Q     And isn't it true, sir, that when you received the  
5     phone call, you were not forced to get into that car to go  
6     over to her place. You wanted to go over there and question  
7     her about your \$50.

8           A     Yeah, it would have been nice to talk to her face to  
9     face about my money.

10          Q     You wanted your money.

11          A     But if -- it wasn't the first time she's taken money  
12     from me, so I knew I would get back eventually.

13          Q     Yeah. But at no time, sir -- isn't it true, at no  
14     time while you were going -- I guess -- how long from the time  
15     they picked you up until the time you went there, how many  
16     minutes or how many --

17          A     Probably about two minutes.

18          Q     How about how many?

19          A     About two.

20          Q     Did you ever enter into an agreement with either  
21     Ms. Jackson or Mr. Cox to rob Ms. Leisure of any money?

22          A     No.

23          Q     You didn't enter any agreement, did you?

24          A     No.

25          Q     Y'all didn't even discuss that, did you?

## Richard Linn - Cross-Examination by Mr. Wright

1           A     No.

2           Q     You went there because you -- they were -- well,  
3 Ms. Jackson was inquiring, in part, about her money.

4           A     Yes.

5           Q     And she wanted her money from you and you didn't  
6 have it.

7           A     Yes.

8           Q     And if you had it, would you have given it to her?

9           A     Yes.

10          Q     And that would have avoided all of this, wouldn't  
11 it?

12          A     Yes.

13          Q     But you didn't have the \$20 to give her, and you  
14 wanted to go over to Ms. Leisure to collect the \$20. Is that  
15 the reason this trip was made?

16          A     (WITNESS NODDED HEAD.)

17          Q     In part?

18          A     In part.

19          Q     And you were hoping to get some monies from that, as  
20 well.

21          A     It would have been nice to get my money back, yeah.

22          Q     And this is primarily what you, in fact, told the  
23 police when you were interviewed.

24          A     Yes.

25          Q     Okay. And -- now, while you said that you didn't

## Richard Linn - Cross-Examination by Mr. Wright

1 get permission to enter from Ms. Leisure or Mr. McMinn, did  
2 Mr. McMinn object to Ms. Jackson going in, at that time?

3 A Not that I'm aware.

4 Q Did he say, stop?

5 A I didn't hear it.

6 Q Did he close the door on you all and say, stay out?

7 A No.

8 Q Was the door kicked in --

9 A Not at the moment.

10 Q -- and you all bum rushed in?

11 A No.

12 Q As a matter of fact, isn't it true, sir, that what  
13 happened was, Ms. Jackson asked if Ashley were -- if Angela,  
14 I'm sorry, was there, she went in, some words were exchanged.  
15 Did you hear any words exchanged between the two?

16 A I was outside when words were exchanged.

17 Q And an altercation ensued. Did you ever get  
18 your \$50 that evening?

19 A No.

20 Q Did Ms. Jackson or Mr. Cox ever get their \$20?

21 A No.

22 Q Was anything taken from the residence?

23 A No.

24 Q So, therefore, no silverware, no jewelry, no TV,  
25 nothing you can barter to make up that difference, nothing was

## Richard Linn - Cross-Examination by Mr. Wright

1 taken.

2 A Nothing was taken.

3 Q Okay. You broke up the fight, told everybody to  
4 leave, and at least Ms. Jackson, as far as you know, left.

5 A What's that?

6 Q She left --

7 A Yes.

8 Q -- once you broke up the fight.

9 A Yes.

10 Q Now, is it your testimony that you were the one that  
11 broke the fight up, or was there someone else that broke up  
12 the fight?

13 A I didn't physically break up the fight. I just  
14 said, "Hey, it's enough. We need to go."

15 Q Okay. Do you recall who physically pulled her up  
16 and got her out?

17 A She physically pulled herself off.

18 Q Are you sure it wasn't Mr. Cox that got her up and  
19 got her out of there?

20 A Actually, I can't say for sure.

21 Q Okay. Now, one other thing. Mr. Linn, do you  
22 recall telling Detective Parker, when he was interviewing  
23 you -- and by the way, do you know whether that interview was  
24 tape-recorded?

25 A Which interview?

## Richard Linn - Cross-Examination by Mr. Wright

1 Q The last one.

2 A The one at JPD?

3 Q Yes.

4 A I kind of assumed it was recorded. I mean --

5 Q Were you told it was being recorded?

6 A Not that I can remember.

7 Q Okay. Do you recall how long that interview lasted?

8 A It seemed like forever. I believe about half an  
9 hour to an hour. I'm really not sure.

10 Q The last question I have is, at the time of the  
11 entry into Ms. Leisure's residence at night, did you all --  
12 when I say, you all, I mean the three, did you all talk about  
13 committing a larceny?

14 A No.

15 Q Did you all ever talk about committing any type of  
16 felony?

17 A No.

18 Q Certainly, you didn't talk about robbery --

19 A No.

20 Q -- did you?

21 A No, sir.

22 MR. WRIGHT: That's all I have, Your Honor. Thank  
23 you.

24 THE COURT: Mr. Smith.

25 MR. SMITH: Thank you, Your Honor.

## Richard Linn - Cross-Examination by Mr. Smith

1 CROSS-EXAMINATION BY MR. BRYON M. SMITH:

2 Q Ms. Leisure, at that point in time, was your closest  
3 friend. Is that what you told us?

4 A Yes.

5 Q But she owed you 60 or \$80 for how long?

6 A I'm sorry?

7 Q She owed you the 60 or \$80 or the Percocets you  
8 wanted for how long?

9 A I mean, not long.

10 Q Hours, days, weeks?

11 A Hours.

12 Q So when had you last been to her house to make this  
13 purchase?

14 A I can't actually say I was at her house when I  
15 dropped off the money.

16 Q Did you meet at Furniture Fair or did you meet  
17 somewhere else?

18 A I really don't remember where I met her.

19 Q You don't really remember how much you gave her, 60  
20 or 80?

21 A No, sir.

22 Q You were concerned about your closest friend, so I'm  
23 sure you called the police and said, look, I was involved in  
24 the break-in. Is that how that went?

25 A I didn't call the police.



## Richard Linn - Cross-Examination by Mr. Smith

1 Q So you didn't want to protect your closest friend?

2 A I'm sorry?

3 MR. SWEET: Objection, characterization.

4 Q You didn't want to try to help your closest friend?

5 MR. SWEET: Objection.

6 THE COURT: Make your question clear.

7 MR. SWEET: The same thing they requested, the name,  
8 we request that, too.

9 THE COURT: I'm just -- just be clear in your  
10 question, please.

11 THE WITNESS: If you're asking did I put myself  
12 first and save my own butt, yes, that was the case. I did  
13 enter the house to talk them out. I was trying to prevent  
14 anyone from getting hurt.

15 Q You did hear Mr. Linn testify earlier here in the  
16 courtroom, correct?

17 A Yes.

18 Q He said he can't recall how the three males in the  
19 situation went in, whether he went first or you went first.  
20 Is that your recollection, as well?

21 A No, I -- well, I don't recall because, like I said,  
22 I stayed out. The three of them went in, but I couldn't tell  
23 you which one went in first, second or third.

24 Q Well, is it a fair statement to say you weren't  
25 exactly a bystander in this?

## Richard Linn - Cross-Examination by Mr. Smith

1           A     (THE WITNESS DID NOT RESPOND.)

2           Q     You weren't exactly a bystander, were you?

3           A     There's fault to be -- yeah.

4           Q     You were never asked by Detective Parker, or anybody  
5 at JPD, to submit to a gun residue -- gunshot residue test of  
6 your fingers or hands.

7           A     No. I actually asked them if they could do one,  
8 after they made the comment of they -- they -- well, they  
9 didn't make a comment. They implied that Daniel might have  
10 gotten shot, and I said, "Well, will you do a gunshot residue  
11 then?"

12          Q     And you knew what that was for.

13          A     What's that?

14          Q     You knew what that was for, right?

15          A     The gunshot residue, I guess it tells if someone  
16 shot a gun.

17          Q     Okay. You weren't keeping your hands in your  
18 pockets, were you?

19          A     No.

20          Q     So were you arrested that night or early the next  
21 morning?

22          A     I was arrested -- I wasn't fully arrested until  
23 after I had went to JPD and asked for a lawyer, and shortly --  
24 later, he came back and arrested me. I would say probably the  
25 afternoon, sometime about maybe 2:00 or 3:00. I can't tell

## Richard Linn - Cross-Examination by Mr. Smith

1 you for sure.

2 Q Let me see if I -- you're interviewed in your  
3 father's carport by Detective Parker and an officer named  
4 Grantham, an older gentleman about 65 or so?

5 A Yeah.

6 Q But you were placed in cuffs and taken to JPD?

7 A Yes.

8 Q So -- but you don't think you were arrested?

9 A Oh, I think I was arrested, at that point, yes, but  
10 when they said they wanted to talk to me, I asked them if I  
11 was being under -- if I was under arrest. They said, no. I  
12 asked them if I had any warrants. They said, no. They said  
13 that they were not arresting me, they were detaining me.  
14 (Indicating.)

15 Q Did they do air quotes like that, or was that  
16 your --

17 A That was me.

18 Q Detaining you in handcuffs, detaining you in the  
19 back of a patrol car?

20 A (WITNESS NODDED HEAD.)

21 Q Even at that point, you weren't very forthcoming  
22 with Detective Parker. You tried to throw him off track a  
23 little bit, right?

24 A Yes. I wasn't forthcoming about the drugs or  
25 anything like that.

## Richard Linn - Cross-Examination by Mr. Smith

1 Q In fact, you told him the female's name that was  
2 with you that night was Amber.

3 A I don't remember the Amber part. I might have said  
4 a different name, but I really couldn't even remember the  
5 name.

6 Q Were you high?

7 A No, sir.

8 Q If you had gotten the drugs from Angel when you went  
9 over there, would you have gotten high?

10 A Probably not.

11 Q As part of your plea arrangement, the Class D felony  
12 was taken off the table, is that correct?

13 A Yes, sir.

14 Q You were represented by a lawyer with almost 40  
15 years experience.

16 A Mister --

17 Q Stroud.

18 A Stroud, yes.

19 Q You know he's a board certified specialist in  
20 criminal law, is that correct?

21 A Yes.

22 Q When the prosecutor made this deal with you, they  
23 told you they were going to determine what was truthful, is  
24 that correct?

25 A No.

## Richard Linn - Cross-Examination by Mr. Smith

1 Q What did the prosecutor -- when he made the deal,  
2 what did he tell you?

3 A The only thing I ever heard was to be truthful.

4 Q Who makes that decision? Does the jury make that  
5 decision?

6 A That's a very good question.

7 Q Does the prosecutor make the decision that you're  
8 going to tell him the truth?

9 A (THE WITNESS SHRUGGED HIS SHOULDERS.)

10 Q You avoided prison, correct?

11 A Yes, sir.

12 Q And at that point, you had been in jail 184 days?

13 A About six months.

14 Q So a shade over six months?

15 A (WITNESS NODDED HEAD.)

16 Q Onslow County jail the whole time?

17 A Yes.

18 Q Not very pleasant.

19 A Yes.

20 Q You were willing to strike a deal to get out of  
21 there.

22 A Well, I was already out.

23 Q \$100,000 bond, you got sprung out?

24 A My -- well, it took my dad some time, but he bonded  
25 me out.

**Richard Linn - Redirect Examination by Mr. Sweet**

1           **Q**     Before August 8, August 15, had you ever partied at  
2 Ms. Leisure's house, gotten high there?

3           **A**     Never partied there, no.

4           **MR. SMITH:** Thank you, Mr. McMinn -- I'm sorry,  
5 Mr. Linn.

6           **THE WITNESS:** You're welcome.

7           **THE COURT:** Redirect?

8           **MR. SWEET:** Judge, just a couple questions it will  
9 be really brief.

10 **REDIRECT EXAMINATION BY MR. NATHAN E SWEET:**

11           **Q**     Mr. Linn, were you aware of any conversation between  
12 Ms. Jackson and Mr. Cox about what they wanted to do that  
13 evening, before they got to your house?

14           **A**     No.

15           **Q**     You weren't present for any of that, were you?

16           **A**     No, sir.

17           **Q**     In the short ride after you were forced into your  
18 car by Mister --

19           **MR. SMITH:** Objection, characterization.

20           **Q**     Into their car --

21           **MR. SWEET:** He's already testified to this.

22           **Q**     -- by Mr. Cox, in the short ride from your house,  
23 after he made you get in the car with him, to Angela Leisure's  
24 house, he didn't discuss robbing her, did he?

25           **A**     No.

**Richard Linn - Recross-Examination by Mr. Smith**

1           **THE COURT:** Anything further? Further cross?

2           **MR. SMITH:** No, sir.

3           **MR. WRIGHT:** Judge, just --

4           **RECROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

5           **Q**     You made the statement about putting yourself first.  
6     Do you remember stating that?

7           **A**     When he asked me why I didn't help my friend by  
8     calling the cops.

9           **Q**     Right. Isn't it true, as far as plea bargaining,  
10    you're putting yourself first?

11          **A**     I guess, all around, you could say that.

12          **Q**     They're facing jail, you're not.

13          **MR. SWEET:** Objection, at this point, Judge.

14          **MR. WRIGHT:** Judge, facing, I think, is the proper  
15    word. They haven't been convicted.

16          **MR. SWEET:** That's improper, at this point.

17          **THE COURT:** He's testified as to -- ask a question.

18          **MR. WRIGHT:** I'll withdraw the question.

19          **THE COURT:** Okay. Anything further?

20          **MR. WRIGHT:** Nothing further.

21          **MR. SMITH:** I'll follow that question.

22          **RECROSS-EXAMINATION BY MR. BRYON M. SMITH:**

23          **Q**     When you talked to Detective Parker, you briefed it  
24    up. Is that the word you used, briefed it up?

25          **A**     I -- I summed it up, yes.

**Ricard Linn - Recross-Examination by Mr. Wright**

1           **Q**     To put yourself in the best possible light to the  
2 officer, you were standing on the front porch.

3           **A**     I wouldn't exactly say that. I mean, it might have  
4 put me in the best possible light, but it wasn't so much my  
5 intention.

6           **MR. SMITH:** Thank you, sir. That's all.

7           **MR. SWEET:** Nothing further.

8           **MR. WRIGHT:** I just have one, if I may, really  
9 quick.

10 **RECROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

11           **Q**     Mr. McMinn testified he was suspicious of the  
12 relationship you and Angela Leisure had. Did you all ever --  
13 or did you ever do any drugs in front of Mr. McMinn?

14           **A**     No.

15           **Q**     Or any dealings in front of him?

16           **A**     No. Actually, he did confront me once. He thought  
17 I was selling Ms. Leisure drugs.

18           **MR. WRIGHT:** That's all I have, Your Honor. Thank  
19 you.

20           **MR. SWEET:** Nothing further.

21           **THE COURT:** Thank you, Mr. Linn.

22                   **(WITNESS EXCUSED FROM THE STAND.)**

23           **THE COURT:** Counsel, approach a second.

24                   **(AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)**

25           **THE COURT:** I was just asking -- discussing, really,



1 the logistics of lunch with counsel. If we take a lunch break  
2 from now until quarter to 2:00, it will be an hour and a half.

3 Here is the short form of the same instruction,  
4 which boils down to the simple concept of don't talk about the  
5 case among yourselves. You're free to have lunch together,  
6 but don't talk about the case. That's a challenge. I  
7 recognize that's a challenge, because that's what you've done  
8 all day, but jury duty is not simple and it's your duty, and  
9 you can be held in contempt of court if you discuss this case  
10 outside the presence of the other jurors and before you're set  
11 to deliberate. So talk about something else. Don't form any  
12 opinions about the case.

13 So, members of the jury, we'll now take a lunch  
14 recess. I remind you to observe, during this recess, the  
15 rules that I've given you earlier. Do not talk or communicate  
16 with each other or anyone else about any matter connected with  
17 this case, or allow anyone else to talk about it in your  
18 presence. Do not talk to or have any contact with the  
19 parties, attorneys, witnesses. That can be challenging, once  
20 you walk into the courthouse, but walk on. They'll do their  
21 duty. You do your duty and return to the jury room. Do not  
22 conduct any investigation or receive or attempt to receive any  
23 reports or information related to this from any source,  
24 including media, the Internet, social networking, or any other  
25 means. Do not form or express an opinion about the case. All

1 the evidence has not yet been presented. So with that  
2 caution, which you've done well so far, just continue to do  
3 that. Have a nice lunch. Report back to the jury room at  
4 quarter to 2:00. The bailiff will take you to the jury room.

5 Let me do one thing before you leave. I meant to do  
6 this first thing. Can you look in your notebooks and make  
7 sure it's as you left it before, minus any notes you may have  
8 taken this morning, and you can leave your notebooks there.  
9 Leave your badge on. Wear that to lunch. That makes you  
10 stand out in a crowd. And don't talk about the case. Have a  
11 great lunch. See you back at quarter to 2:00.

12 (THE JURY WAS EXCUSED FROM THE COURTROOM AT  
13 12:10 PM.)

14 THE COURT: The jury has left the courtroom, the  
15 courtroom door is closed, or closing.

16 Detective Parker, I'm sorry. They told me about  
17 your personal situation, but I think we'll get to you first  
18 this afternoon, so I appreciate your work with that. Every  
19 case is a challenge.

20 Anything else before we go to lunch?

21 MR. SWEET: No. Thanks, Judge, for working with us  
22 on that.

23 MR. WRIGHT: Not by the defense.

24 MR. SMITH: Not by us.

25 (A LUNCH RECESS WAS TAKEN AT 12:14 PM. COURT

**Jacob Parker - Direct Examination by Mr. Sholar**

1                   **RESUMED SESSION AT 1:49 PM, WITH THE DEFENDANT**  
2                   **AND HIS ATTORNEY PRESENT, THE PROSECUTOR**  
3                   **PRESENT, THE JURY ABSENT.)**

4                   **THE COURT:** Are you ready, Mr. Sweet?

5                   **MR. SWEET:** Yes, Your Honor. I believe Mr. Sholar  
6 is going to call the next witness.

7                   **THE COURT:** Any matters before the jury comes back?

8                   **MR. SMITH:** Not for Mr. Cox.

9                   **MR. WRIGHT:** No, Your Honor.

10                  **THE COURT:** Let's bring the jury back.

11                   **(THE JURY RETURNED TO THE COURTROOM AT 1:50**  
12                   **PM.)**

13                  **THE COURT:** All right. Good afternoon. All 14  
14 jurors are back in the courtroom again. Thank you for working  
15 with the shuffle and all of that, and being back here to  
16 continue this case.

17                   Call your next witness, Mr. Sholar.

18                  **MR. SHOLAR:** Your Honor, the state will call  
19 Detective Jacob Parker to the stand.

20                  **THE COURT:** Okay.

21                                   **JACOB PARKER,**  
22 having been called as a witness for the State  
23 at 1:51 p.m., was sworn and testified as follows during  
24 **DIRECT EXAMINATION BY MR. RICHARD S. SHOLAR:**

25                   **Q** Sir, state your name for the record, please.

## Jacob Parker - Direct Examination by Mr. Sholar

1           A     Jacob Daniel Parker.

2           Q     What do you do for a living?

3           A     I am employed with the Jacksonville Police  
4 Department. I'm a detective with the police department.

5           Q     How long have you worked with Jacksonville Police  
6 Department?

7           A     Just under nine years, sir.

8           Q     Now, Detective Parker, what did you do before you  
9 worked with the Jacksonville Police Department?

10          A     Served in the military and I worked in construction.  
11 My family owned a construction company, so I did that prior to  
12 becoming a law enforcement officer.

13          Q     How long did you serve in the military?

14          A     About four years.

15          Q     You said you've been a law enforcement officer with  
16 Jacksonville Police Department for about nine years, is that  
17 correct?

18          A     Yes, sir.

19          Q     Okay. And when you were becoming a police officer  
20 with the Jacksonville Police Department what do you do,  
21 training-wise, before you become a police officer?

22          A     You attend BLET, which is basic law enforcement  
23 training. You cover several blocks of instruction from motor  
24 vehicle law -- all kinds of stuff, and you spend quite a bit  
25 of amount of time on the range, doing firearms training,

**Jacob Parker - Direct Examination by Mr. Sholar**

1 becoming proficient at shooting a handgun. So I have a little  
2 bit of knowledge about that.

3 Q What's the name of that training? What's the exact  
4 name of that training?

5 A BLET, basic law enforcement training.

6 Q After BLET, at that point, what did you do?

7 A I got hired with the Jacksonville Police Department.  
8 I started on patrol, and I immediately, within the first year,  
9 I became a member of the Jacksonville Police Department's SWAT  
10 team. So I've been on there for eight years, spent about five  
11 and a half years on patrol, and I have been in investigations  
12 for just under three years now.

13 Q Now, when you're on patrol, are you the person that  
14 gets to the scene first, sometimes?

15 A Yes.

16 Q An initial responder, that is.

17 A Absolutely.

18 Q You said you did that for how long?

19 A About five and a half years. First on scene, your  
20 primary focus, at that point, is to secure the scene, make  
21 sure everybody is safe and preserve evidence and preserve  
22 life.

23 Q Now, you said after being a patrol officer you went  
24 to the SWAT unit, is that correct?

25 A Yes. That is a -- it's a part-time assignment, so

**Jacob Parker - Direct Examination by Mr. Sholar**

1 I'm also a patrol officer but also an active member of the  
2 SWAT team. So it's dual duties. So I'm currently still on  
3 the SWAT team now. Have been doing it for just over eight  
4 years.

5 Q Your duties on the SWAT team, what do they consist  
6 of?

7 A Extensive training on tactics, like room clearing  
8 tactics, answering high-risk search warrants, high-risk calls,  
9 barricaded subjects, hostage situations. Dealing with  
10 anything that is a higher risk of death for officers and for  
11 citizens, and there's a lot of firearms training that goes  
12 into that. I don't know if I mentioned that. We shoot  
13 weapons a lot.

14 Q These weapons you shoot as a SWAT, do they vary?

15 A We have about three weapons that we shoot,  
16 particularly. As entry person -- I'm on the entry team -- we  
17 have a duty handgun, which is a nine millimeter Glock. We  
18 also are assigned an AR 15 or M4, which is a rifle, and we  
19 will also have a sniper weapon system, a sniper rifle. Those  
20 are pretty much the three weapons that we're issued.

21 Q Okay. Now, you said after SWAT, you became --  
22 you're a detective, right? What does it take to become a  
23 detective? What gets you up to that level?

24 A Years on the job. Experience. You have to go  
25 through a board process. So you're actually -- you're

**Jacob Parker - Direct Examination by Mr. Sholar**

1 interviewing for the position. You have to submit paperwork,  
2 some reports, to make sure that your reports are high enough  
3 quality that they can be presented in court.

4 Q Do you do anything besides law enforcement?

5 A Yes, I do. I own my own firearms consulting  
6 company, where we teach firearms training and we teach  
7 tactics, and I teach how to -- for citizens, how to respond to  
8 an active shooter, stuff like that. It's very common,  
9 nowadays. So we give some information on that.

10 Q How often do you do the other job, the firearms  
11 training?

12 A Usually do about two courses a month. That's year  
13 round.

14 Q And during this training, are you handling firearms?

15 A Yes, sir, handling firearms, assisting people in  
16 learning how to shoot, and proper weapons manipulation.

17 Q Now, Detective Parker, were you employed in the  
18 capacity of a detective on August 8<sup>th</sup>, 2015?

19 A Yes, sir.

20 Q Okay. What were your duties on August 8<sup>th</sup>, 2015?

21 A I was actually working at National Dodge, security,  
22 on the 8th, in August, and that was from about 10:00 p.m. at  
23 night to about 4:00 in the morning. It was an extra duty  
24 assignment, and I'm just providing security for the National  
25 Dodge dealership.

## Jacob Parker - Direct Examination by Mr. Sholar

1           **Q**     Now, when you're performing this extra duty  
2 assignment, do you still get dispatched calls from other parts  
3 of the Jacksonville Police Department?

4           **A**     You can. I was also the on-call detective that  
5 night, so I did receive a phone call in regards to this  
6 situation.

7           **Q**     And that situation, where was it regards to, what  
8 area?

9           **A**     128 Silver Leaf Drive, where Angela Leisure lived  
10 at, in regards to a robbery slash burglary incident. I got --  
11 received a phone call from Lieutenant Leyble, in regard to  
12 this situation.

13          **Q**     Detective Parker, did you go to 128 Silver Leaf that  
14 night?

15          **A**     That night, I was not requested to respond to 128  
16 Silver Leaf. The subjects were no longer on scene, and no one  
17 was injured. So, per --

18               **MR. SMITH:** That's a conclusion, Judge. I object to  
19 that.

20               **THE COURT:** Is this your basis for why you didn't go  
21 that night?

22               **THE WITNESS:** Yes, sir.

23               **THE COURT:** Overruled.

24               **THE WITNESS:** So I didn't respond to the scene that  
25 night because no one was injured, and I was just notified, per



## Jacob Parker - Direct Examination by Mr. Sholar

1 department policy. The detective -- the on-call detective has  
2 to be notified.

3 Q What day of the week was August 8<sup>th</sup>?

4 A It was a Saturday.

5 Q Okay. Now, you said you weren't notified.

6 A No, I was notified.

7 Q But not --

8 A Not requested to respond.

9 Q Now, August 9<sup>th</sup>, what did you do August 9<sup>th</sup>?

10 A I went to church.

11 Q Okay.

12 A At 10:00, I received a phone call from my  
13 supervisor, Sergeant Ketchum, who read the incident report on  
14 this incident and asked me if I would go in and start working  
15 on the case because of its nature.

16 Q Did you do that, Detective Parker?

17 A Yes, sir. Shortly after 10:00 p.m. -- or  
18 correction, 10:00 a.m., I went in to work and started making  
19 contact with the victim.

20 Q So you went to work at 10:00 a.m. How did you begin  
21 this investigation at 128 Silver Leaf?

22 A I first read over the initial report and obtained  
23 information of Angela Leisure, if that's how you pronounce her  
24 last name, got all her contact information so I could speak  
25 with her over the phone, and read over the report and saw that

## Jacob Parker - Direct Examination by Mr. Sholar

1 Richard Linn was also a person of interest, a possible  
2 suspect, and obtained his information, too, so hopefully I  
3 could track him down and interview him, as well. And I saw  
4 there was two other individuals that we thought one of them's  
5 name was Ashley but we weren't sure of the other person, the  
6 male.

7 Q At this point, you knew there was a Richard Linn but  
8 you weren't sure of the other two individuals?

9 A No. Just someone named Ashley and another male.

10 Q Okay. And once you gathered all of this  
11 information, what was the next step in your investigation?

12 A Once I read the report, took notes from it, I  
13 reached out to Angela over the phone and asked her if I could  
14 come out to her residence with a CSI officer and take a look  
15 at the residence, at the crime scene, and collect any evidence  
16 that was not collected the night prior, and get an initial  
17 interview with her at her house, just so she could go over  
18 with what occurred that night.

19 Q What did Ms. Leisure say, in regards to you coming  
20 over?

21 A Upon -- after making contact with her, we arranged  
22 to meet at her house at noontime. So at that time, myself and  
23 CSI Woolfolk met her there. I started talking to her about  
24 what occurred. She said that her and her boyfriend had come  
25 home and they had made their way into the house, and they were

**Jacob Parker - Direct Examination by Mr. Sholar**

1 almost immediately met by three individuals, one of them being  
2 Richard Linn. And from there -- let me see verbatim what she  
3 said. She said, from what she could tell, Richard Linn  
4 brought Ashley and the unknown black male to her residence and  
5 they forced their way into her home. Continuing, she said  
6 once they got inside her home, Ashley pushed her to the floor  
7 and started beating her, assaulting her, punching her. And at  
8 that time Ashley was being assaulted, she noticed the black  
9 male had a handgun. Once she saw that, she yelled to her  
10 boyfriend, told him to call the police. And Mr. McMinn  
11 attempted to call the police but the male, the unidentified  
12 male, pretty much told him not to call, while he was  
13 brandishing the weapon.

14           From there, moments later, Mr. Linn got Ashley off  
15 of Angela and they exited the residence. At that time -- at  
16 that time, McMinn was trying to close the door, to secure the  
17 door, and the -- the unidentified black male kicked the door a  
18 couple times. Don't know how many times, exactly how many  
19 times, he kicked it, and then discharged his firearm through  
20 the door, sending that projectile down the hallway, passing  
21 through a mirror. It was a mirror. It's kind of like an  
22 accordion mirror that has hinges in the middle, and you can  
23 stand it up. It's about five foot tall. It passed through  
24 the mirror, it grazed the wall and appeared to be stuck in the  
25 sofa that was in the living room area, which is just kind of

## Jacob Parker - Direct Examination by Mr. Sholar

1 down the end of the hallway, the foyer hallway.

2 Q Detective Parker, her -- when you're meeting with  
3 her, it's noon of August 9<sup>th</sup>, is that correct?

4 A Yes.

5 Q Okay. And you received a call at what time the  
6 previous night, the dispatch, or the call from Lieutenant  
7 Leyble?

8 A It was roughly -- probably 11:30, somewhere up in  
9 there, around that time, at night.

10 Q Late at night?

11 A Mm-hmm.

12 Q You were speaking to her at her home, correct, on  
13 August 9<sup>th</sup>.

14 A Yes. Her initial interview was at her home, then we  
15 went back to the police department.

16 Q What was her demeanor like on August 9<sup>th</sup> at  
17 noontime?

18 A Angela?

19 Q Yes, sir.

20 A She was -- I mean, she was somewhat calm, by this  
21 point. I guess level headed, I guess you would say. It  
22 seemed like she processed what happened to her that night and  
23 was able to talk pretty freely about it.

24 Q Now, after she tells you what happened, what was  
25 your next step in the investigation?

**Jacob Parker - Direct Examination by Mr. Sholar**

1           A     Knowing that we only have one person identified,  
2     which is Richard Linn, my next step is to try to get the other  
3     two people identified as soon as possible.  So that being  
4     said, I asked her if she would come back to the police  
5     department with me and we could sit down, we could go over, we  
6     could debrief the situation again and start to try to figure  
7     out who this Ashley subject was and the other unidentified  
8     male.

9                     Prior to doing that, myself and CSI Woolfolk pretty  
10    much canvassed the house, looking for the projectile, which we  
11    never could locate.  We did locate several places where it  
12    passed through, like the mirror, and it nicked the wall and  
13    then it appeared that it got lodged in the sofa, somewhere,  
14    but we could never find it, and we didn't want to cut her sofa  
15    to pieces, even though we did end up cutting some of the  
16    material off.

17           Q     You said you canvassed the house.  Describe what  
18    canvass means to the jury, please.

19           A     Pretty much go over it with a fine tooth comb, like  
20    you're walking every inch of it, looking for evidence.  Even  
21    if it's a bright-lit room, you could possibly end up using a  
22    flashlight to look under sofas, to look in the couch, to pull  
23    the couch cushions out and to dig down in there, to see if you  
24    can find any evidence.

25                     **MR. SHOLAR:**  Your Honor, may I approach?

## Jacob Parker - Direct Examination by Mr. Sholar

1           **THE COURT:** Yes, sir.

2           **MR. SHOLAR:** Let the record reflect I'm approaching  
3 with what's previously been marked as State's Exhibits 5  
4 through 9.

5           **A**     Should I go ahead and pick these up?

6           **Q**     Yes, sir. If you'll look at what's been previously  
7 marked as State's Exhibit 5, Detective Parker. Do you have  
8 it?

9           **A**     Yes, sir.

10          **Q**     Detective Parker, what is that?

11          **A**     It's the front door to her residence. And the front  
12 door -- the lower panel, probably from the floor to about the  
13 three or three and a half feet has got a portion of the door  
14 kicked out or pushed out. It's removed.

15          **Q**     Is that what you noticed about that door?

16          **A**     Yes.

17          **Q**     How big was that portion, would you estimate?

18          **A**     It's about three foot in length and probably about  
19 six inches wide.

20          **Q**     You said there's a place broken out?

21          **A**     Yes, sir.

22          **Q**     Where does the top of that break start?

23          **A**     Just above the door handle. About eight inches  
24 above the door handle is where it starts, and just to the side  
25 of the door handle.

## Jacob Parker - Direct Examination by Mr. Sholar

1 Q You said you went to the scene that day.

2 A The next day.

3 Q The next --

4 A The night after it occurred, I went there.

5 Q Does that photograph fairly and accurately represent  
6 the condition of that door when you arrived that day?

7 A Yes, sir.

8 Q If you'll divert your attention to Exhibit 6,  
9 State's Exhibit 6. What is that, Detective Parker?

10 A It's a close-up of the door. It is a close-up of --  
11 it looks like the section of the door that was kicked out, and  
12 it's -- there's a small measurement, a sticky note, on the  
13 door, placed by a black smudge that appeared to be a bullet  
14 hole.

15 Q Do you know who placed that?

16 A I would say CSI Woolfolk did the day that I was  
17 there.

18 Q Okay. Now, Detective Parker, does that image there  
19 fairly and accurately represent the door as it appeared that  
20 day?

21 A Yes, sir.

22 Q If you'll look at State's Exhibit Number 7. What is  
23 that, Detective Parker?

24 A It's another close-up of the door. It might be the  
25 other side. Now, it looks like the panel has been removed.

**Jacob Parker - Direct Examination by Mr. Sholar**

1 You can still see it's the bullet hole. I think it's the same  
2 side of the door.

3 **MR. SMITH:** Objection to what he thinks, Judge.  
4 Either he knows or he doesn't.

5 **THE COURT:** State what you know.

6 **THE WITNESS:** It is. It's the same side of the  
7 door. It has the projectile hole in it.

8 **Q** You said projectile hole. How are you able to come  
9 to that conclusion, Detective Parker?

10 **A** Seeing it in person, you can see the dimensions of  
11 it, and it's actually a hole in the door. It's not as clear  
12 on this photo, but you can tell it's a hole in the door.

13 **Q** Okay. Is that -- does that fairly match what  
14 Ms. Leisure told you, when you arrived?

15 **A** Yes. After speaking to her, yes.

16 **Q** Does that photo fairly and accurately represent that  
17 part of the panel the day that you went and investigated?

18 **A** Yes, sir, it does.

19 **Q** If you would move your attention to Exhibit 8,  
20 Detective Parker. Do you have it?

21 **A** Got it.

22 **Q** What is that, Detective Parker?

23 **A** It's another close-up of the panel, with a  
24 measurement piece on it where the projectile entered the door.

25 **Q** It's the measurement next to the projectile hole, at



## Jacob Parker - Direct Examination by Mr. Sholar

1 this point?

2 A Yes, sir. Do you want me to hold it up?

3 Q Not yet, sir. Does that fairly and accurately  
4 represent that part of the door?

5 A Yes, sir, it does.

6 Q Now, if you'll look at the last exhibit, Exhibit 9.  
7 What is that, Detective Parker?

8 A It's an extreme close-up of the projectile hole, the  
9 bullet hole with a measurement piece beside it. It's -- it's  
10 an extreme close-up picture of it.

11 Q Once again, does that fairly and accurately  
12 represent the door you saw that day?

13 A Yes, it does.

14 MR. SHOLAR: The state would move to enter into  
15 evidence State's Exhibits 5 through 9.

16 MR. SMITH: Without objection.

17 THE COURT: They're admitted.

18 MR. WRIGHT: No objection

19 THE COURT: For illustrative purposes.

20 MR. SHOLAR: The state would move to publish those  
21 by handing them to the jury.

22 THE COURT: Do you want to pass them around?

23 MR. SHOLAR: That would be preferred.

24 THE COURT: Mr. Bailiff, if you'll pass those to the  
25 jury.

**Jacob Parker - Direct Examination by Mr. Sholar**

1           If each of you will look at them carefully,  
2 individually and without comment and simply pass them to the  
3 next juror.

4                           **(STATE'S EXHIBITS 5-9 WERE PUBLISHED TO THE**  
5                           **JURY.)**

6           **THE COURT:** State's Exhibits 5, 6, 7, 8, and 9 have  
7 each been published to the jury, and each juror has had an  
8 opportunity to examine them. You can proceed.

9           **MR. SHOLAR:** Thank you, Your Honor.

10          **Q**     Detective Parker, you said there was a projectile  
11 hole in the door.

12          **A**     Yes, sir.

13          **Q**     Once you go into the residence, is there a hall?

14          **A**     Yes, sir, there is. It's probably 10 to 12 feet  
15 long, with a short opening up to the left, best I remember,  
16 which opens up into her bedroom, and I want to say there was  
17 like a linen slash laundry room closet, and then that opens up  
18 into a bigger living room area, which spills over to the  
19 right, which is a kitchen.

20          **Q**     You said there's a mirrored door in there?

21          **A**     Well, it's -- I don't know how to explain it better  
22 than it's multiple mirrors that are on hinges, and it's  
23 probably about five foot in height, and each panel -- each  
24 mirror panel is probably about a foot wide, two or three of  
25 those panels.

## Jacob Parker - Direct Examination by Mr. Sholar

1 Q That collapsable mirror, where was it at, in  
2 relation to the front door?

3 A It was -- to the best of my memory, it was just down  
4 the hallway, right when it starts to open up into the living  
5 room area. It was right there on the left, I believe.

6 Q Okay. You said it was on the left. Now, what did  
7 that mirror look like?

8 A About five foot in height.

9 Q I mean, what was the condition of the mirror?

10 A One of those panels had -- the projectile had passed  
11 through it, as well, and so it was shattered. One of those  
12 mirror panels was spider webbed, I would say, is probably the  
13 best terminology to use, because the projectile passed through  
14 it.

15 Q Did you say that was a through hole?

16 A Mm-hmm.

17 MR. SHOLAR: May I approach, Your Honor?

18 THE COURT: Yes, sir.

19 MR. SHOLAR: Let the record reflect I'm approaching  
20 with what's previously been marked as State's Exhibits 10, 11  
21 and 12.

22 Q If you would take a look at those, Detective Parker.

23 A Yes, sir.

24 Q Now, if you'll place your attention on Exhibit  
25 Number 10. What is that?

## Jacob Parker - Direct Examination by Mr. Sholar

1           A       Ten is an overview of the mirror. It appears to be  
2 two panels. As I said, they're about a foot wide, and you can  
3 see the projectile passed through it. It entered through the  
4 backside of the mirror and came out on the mirror side and  
5 kept traveling.

6           Q       It went through the backside of the mirror and came  
7 out the mirror side?

8           A       Mirror side.

9           Q       Which way was it facing, the mirror, when you came  
10 in? Was it facing toward the door or away?

11          A       It's facing away from the door, towards the living  
12 room area.

13          Q       Okay. Does that photograph fairly and accurately  
14 represent the condition of the mirror that day?

15          A       Yes, sir.

16          Q       If you'll look at Exhibit Number 11.

17          A       All right.

18          Q       What is that?

19          A       It's an extreme close-up of the projectile hole,  
20 just an up-close-and-personal shot of the hole in the mirror.

21          Q       So that's on the mirror side again?

22          A       Yes, sir.

23          Q       Does that photo fairly and accurately represent the  
24 condition of the mirror that day?

25          A       Yes, sir, it does.

**Jacob Parker - Direct Examination by Mr. Sholar**

1           **Q**     If you'll look at Exhibit Number 12. What is that,  
2 Detective Parker?

3           **A**     Same thing. It's a medium close-up of the  
4 projectile hole on the mirror side.

5           **Q**     Does that fairly and accurately represent the  
6 condition of the mirror from that angle?

7           **A**     Yes, sir, it does.

8           **MR. SHOLAR:** At this time, the state would move to  
9 admit State's Exhibits 10 through 12.

10           **THE COURT:** State's Exhibits 10 through 12 are  
11 admitted for illustrative purposes.

12           **MR. SHOLAR:** The state is going to move to publish.

13           **THE COURT:** Are there more photos?

14           **MR. SHOLAR:** There are. I can wait.

15           **THE COURT:** Let's go ahead and wait.

16           **Q**     Detective Parker, you said that mirror had a  
17 backside.

18           **A**     Mm-hmm.

19           **Q**     The backside, which way did the bullet pass through?

20           **A**     The bullet passed through the backside and then out  
21 the actual mirror side, and kept traveling down before it hit  
22 a wall.

23           **Q**     Okay.

24           **A**     One of the walls in the living room.

25           **MR. SHOLAR:** Your Honor, may I approach?

## Jacob Parker - Direct Examination by Mr. Sholar

1           **THE COURT:** Yes.

2           **MR. SHOLAR:** Let the record reflect I'm approaching  
3 with what's been previously marked as State's Exhibits 13 and  
4 14.

5           **Q**     Detective Parker, if you'll take a look at State's  
6 Exhibit 13. What is that, Detective Parker?

7           **A**     It's the backside of the mirror with a projectile  
8 hole in it.

9           **Q**     Does it fairly and accurately represent the backside  
10 of the mirror?

11          **A**     Yes, sir.

12          **Q**     Okay. Now, Exhibit 14, what is that?

13          **A**     Just an extreme close-up of it.

14          **Q**     Now, does that fairly and accurately represent the  
15 mirror, the backside of the mirror?

16          **A**     Yes, sir.

17          **Q**     Now, Detective Parker, once you saw the hole in the  
18 mirror, did you look past the mirror to see what happened  
19 next, since it was a through hole?

20          **A**     Oh, yeah. When we canvassed the residence, we were  
21 trying to locate the projectiles, one of our main goals. So  
22 we track it with -- just pretty much follow, the best -- the  
23 best that we can tell, the trajectory of the bullet. As it  
24 passed through the door, you can see that it was coming in the  
25 house. So we looked for the next bullet hole, and we saw that

## Jacob Parker - Direct Examination by Mr. Sholar

1 in the mirror; and then, after we saw there was a hole in the  
2 mirror, we just continued to look where the next impact point  
3 was, and we saw there was a wall that had an impact point in  
4 it.

5 Q That wall, where was it at, in relation to the  
6 mirror?

7 A It was -- it's kind of hard to explain. It's  
8 further straight out in front of it and just slightly to the  
9 left. So as the bullet passes through the mirror, it kind of  
10 just -- it just lodges or nicks the wall, makes contact with  
11 the wall, as it keeps continuing traveling.

12 Q You said that was a nick, not an entry hole?

13 A No. I'm pretty sure it's just a nick.

14 Q Now, after the -- after the wall, what else did you  
15 see after the ricochet on the wall?

16 A It appeared to us that it entered -- to myself and  
17 CSI Woolfolk -- that it entered the sofa.

18 MR. SMITH: Objection to what Mr. Woolfolk  
19 determined.

20 THE COURT: Sustained. What it appeared to you or  
21 what you saw.

22 THE WITNESS: It appeared it entered the sofa that  
23 was right there, pushed up against the wall where it had just  
24 made contact with the wall -- or the projectile did.

25 Q It was close to the wall where you saw the ricochet

## Jacob Parker - Direct Examination by Mr. Sholar

1 point?

2           **A**     It was pushed up to it. So as the -- through  
3 experience shooting a lot of rounds through glass, into  
4 sheetrock, bullets, when they tend to hit a medium, an object,  
5 they will change directions, or -- depending on what angle  
6 it's shot at. In this instance right here, as it makes  
7 contact with the sheetrock, at that angle, it changed the  
8 direction of it, and appears to have put itself into the sofa.

9           **MR. SHOLAR:** Your Honor, may I approach?

10          **THE COURT:** Yes, sir.

11          **MR. SHOLAR:** Let the record reflect I'm approaching  
12 with what's previously been marked as State's Exhibits 15  
13 through 19.

14          **Q**     Detective Parker, if you'll look at Exhibit 15.  
15 What is that?

16          **A**     That is a close-up of sheetrock that has a nick in  
17 it. From what we could tell, it looks like where the  
18 projectile nicked the wall.

19          **Q**     Okay. Does that fairly and accurately represent the  
20 wall as it was that day?

21          **A**     Yes. It also has a measurement sticky that's curled  
22 up on it.

23          **Q**     Now, if you'll look at Exhibit 16. What is that?

24          **A**     It's a further -- it's an overview of that. You can  
25 barely see the nick because it's on a white wall, but you can



## Jacob Parker - Direct Examination by Mr. Sholar

1 see the curled up measuring sticky just below the nick case.

2 Q Once again, does that fairly and accurately  
3 represent the wall?

4 A Yes, sir. Also, in that picture, you can see the  
5 doorway to Angela's bedroom, over to the left.

6 Q Okay. Do you see the couch in that picture, or no?

7 A You cannot. You can see a little table with some  
8 photographs on it.

9 Q Exhibit 17, if you'll look at that. What does that  
10 depict?

11 A It's another close-up with a sticky measurement pad  
12 underneath it, stuck to the wall, where it nicked -- where it  
13 hit the wall.

14 Q Okay. Does that fairly and accurately represent,  
15 once again, the wall, as it was that day?

16 A Yes, sir.

17 Q If you'll look at Exhibit 18. What does that  
18 depict, Detective Parker?

19 A Eighteen is the sofa, which is dark in color, and  
20 it's a downward angle photograph of the sofa, with a -- there  
21 was a black hole that was consistent with the hole that was in  
22 the door, about the same diameter, and it was -- in relation  
23 to the wall, it's probably about four to six feet down the  
24 wall where the sofa was located.

25 Q Okay. Now, if you'll look at Exhibit 19, what is

## Jacob Parker - Direct Examination by Mr. Sholar

1 that?

2 A It's an overview of the sofa.

3 Q Now, do Exhibits 18 and 19 fairly and accurately  
4 represent the sofa, as you saw it there that day?

5 A Yes, sir.

6 MR. SHOLAR: At this point, the state would move to  
7 publish -- the state would move to admit photos -- I mean  
8 Exhibits 13 through 19 -- sorry, 10 through 19.

9 THE COURT: Any objection to any of those?

10 MR. WRIGHT: No, Your Honor.

11 MR. SMITH: No, Your Honor.

12 THE COURT: All of those are admitted for  
13 illustrative purposes.

14 MR. SHOLAR: I would like to move to publish them to  
15 the jury, Your Honor.

16 THE COURT: Let's do that second group in the same  
17 way. Look at them individually, carefully, without comment,  
18 and then pass them to the next juror, please.

19 (STATE'S EXHIBITS 10 THROUGH 19 WERE PUBLISHED  
20 TO THE JURY.)

21 THE COURT: Each of those exhibits, 10 through 19,  
22 has been published to the jury.

23 Anything further?

24 MR. SHOLAR: Yes, sir.

25 Q Detective Parker, so at this point, you've canvassed

## Jacob Parker - Direct Examination by Mr. Sholar

1 the scene, is that correct?

2 A Yes, sir.

3 Q Okay. And after you canvassed the scene, what did  
4 you do next?

5 A Met back at the police department with Angela so we  
6 could go over the incident again, under audio and video  
7 recording. We have to record our interviews, so that's why we  
8 bring them back, and we want to debrief them again, to see if  
9 it is consistent from the first time they told us and the  
10 second time to the third time, to see if anything changes, if  
11 there's any inconsistencies, so we brought her back to the  
12 station.

13 Q Before you left, did you look for a bullet casing?

14 A Yes, we -- myself -- both of us looked for a casing.  
15 I know one was recovered. I'm pretty sure CSI Woolfolk is the  
16 one that recovered that.

17 Q Did you find a bullet?

18 A No, we did not find a projectile at all. We -- like  
19 I said, we made cuts with a razor blade into that sofa,  
20 looking for the projectile. We dug into some of the wood that  
21 is used to assemble the sofa, and we couldn't recover a  
22 projectile anywhere.

23 Q And you said you had read the reports before you  
24 went there. Was that the night before?

25 A Mm-hmm.

**Jacob Parker - Direct Examination by Mr. Sholar**

1           **Q**     How many officers from the Jacksonville Police  
2 Department were there?

3           **A**     Several. Anywhere from -- I want to say six to  
4 eight officers, easy, maybe even 10. There was a lot out  
5 there.

6           **Q**     And there were also Mr. McMinn and Ms. Leisure, as  
7 well, correct?

8           **A**     Yes, sir.

9           **Q**     So do you find it uncommon to find a bullet?

10          **A**     Not really. It's looking for a needle in a  
11 haystack. It could be from when it ricocheted off the wall,  
12 it could have passed through the sofa.

13                   **MR. SMITH:** He's speculating, Judge. We object to  
14 that.

15                   **THE COURT:** Rephrase your question. Go ahead, just  
16 restart your question.

17                   **MR. SHOLAR:** Okay.

18          **Q**     You said you didn't find the bullet.

19          **A**     (WITNESS SHOOK HEAD.)

20          **Q**     I said, do you find that uncommon?

21          **A**     No, it's not uncommon.

22          **Q**     Why is it not uncommon?

23          **A**     You have people walking in and out of the crime  
24 scene. Bullets do strange things when they strike objects.  
25 Sometimes they stop, sometimes they don't. Sometimes their

## Jacob Parker - Direct Examination by Mr. Sholar

1 direction gets changed. It's not uncommon at all to not find  
2 a projectile on a crime scene. It can be pushed into the dirt  
3 by officers walking around looking for it.

4 Q You said you shoot quite often, correct?

5 A All the time.

6 Q You handle firearms.

7 A Yeah, on a daily basis.

8 Q So you're accustomed to seeing where bullets go?

9 A Yes, sir.

10 Q Now, you said that you went back to the station with  
11 Ms. Leisure. What did you do, once you got there?

12 A Once we got back there, I got our recording program  
13 up and running, went back in the interview room, debriefed the  
14 incident again. It was consistent. And at that point, it was  
15 time to try to identify the other two individuals that were  
16 with Richard Linn. We knew the female's name was Ashley. One  
17 of the reporting officers, from speaking with Angela, thought  
18 the female's last name --

19 MR. SMITH: Hearsay. Double hearsay.

20 THE WITNESS: -- started with a B.

21 THE COURT: Angela testified to that. It's  
22 overruled.

23 Q Continue.

24 A Angela believed Ashley's last name started with a B.  
25 So with that information, I went to some of our databases that

**Jacob Parker - Direct Examination by Mr. Sholar**

1 I have access to and looked for the Ashleys that we have had  
2 any contact with -- we, as in law enforcement, have had  
3 contact with -- to see if I can identify an Ashley that is the  
4 same race, approximate -- close height and build to what  
5 Angela provided us. She said she was approximately five foot  
6 tall to five foot three, and build and around 105 pounds. So  
7 with -- with that information, I went through our databases  
8 and was able to locate a couple Ashley Bs, with the last name  
9 starting with a B. None of those were the Ashley that  
10 committed the incident.

11 **MR. SMITH:** Objection.

12 **MR. WRIGHT:** Conclusion.

13 **THE COURT:** Sustained.

14 **MR. SMITH:** Move to strike that comment.

15 **THE COURT:** Strike the last comment about his  
16 conclusions.

17 **THE COURT:** Describe what you did, please. The jury  
18 should disregard that.

19 **Q** When you're in the interview room, is it just you  
20 and her there?

21 **A** Yes, sir.

22 **Q** Is it a quiet place?

23 **A** Yes, sir.

24 **Q** You said it's where now, police department or  
25 sheriff's department?

## Jacob Parker - Direct Examination by Mr. Sholar

1           A     It's at the police department, on the second story.

2           Q     Do you consider it a safe place?

3           A     Yes, sir.

4           Q     Ms. Leisure's demeanor, what was it like in this  
5 room?

6           A     She's calm, she's comfortable. I provided her a  
7 glass of water, anything she needs to make her calm and  
8 comfortable.

9           Q     At this point, how are your efforts in finding out  
10 Ashley's last name going?

11          A     So with neither of the females that I pulled up  
12 being the Ashley in question --

13               MR. SMITH: Same conclusion. Objection.

14               THE WITNESS: -- per Angela --

15               THE COURT: Sustained as to that. Restate your  
16 question. Approach.

17                        (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

18          Q     Officer Parker, during the course of the interview,  
19 did Ms. Leisure -- did she give you any more information about  
20 why she thought it was a particular Ashley?

21          A     Yes. She told me that she met Ashley through an  
22 older female by the name of Sheila Washington, and Sheila --  
23 Ashley dated Sheila Washington's son, Carlos Murray.

24          Q     Okay. What else did she tell you?

25          A     She said that Ashley and Carlos had a domestic

**Jacob Parker - Direct Examination by Mr. Sholar**

1 violence history, so there should be some reports on file with  
2 the police department with their -- they had two children in  
3 common together -- with their children mentioned in the  
4 report, and she was able to provide those two children's  
5 names. So with those names of Briana and Adriana -- I believe  
6 is how you pronounce them -- Murray, I was able to put those  
7 two names in our database and our reporting system, and that  
8 gave me the name of Ashley Jackson. So with the information  
9 she provided me, saying she had two kids, I went, recovered  
10 the name Ashley Jackson, found a photograph of Ashley  
11 Jackson --

12 **MR. SMITH:** Objection.

13 **THE WITNESS:** -- and showed her that photograph.

14 **MR. SMITH:** Objection.

15 **THE COURT:** Sustained.

16 **Q** Now, after you got this information, what did you do  
17 after the interview, based on that information?

18 **A** Confirmed that it was her, with --

19 **MR. SMITH:** Objection.

20 **THE COURT:** Sustained.

21 **MR. SMITH:** Move to strike.

22 **THE WITNESS:** I don't know how to answer that  
23 question.

24 **Q** Once you concluded the interview, did you go to the  
25 magistrate?



## Jacob Parker - Direct Examination by Mr. Sholar

1           A     I did.

2           Q     What did you do?

3           A     I drew warrants on Ashley Jackson.

4           Q     At that point, after that, were you able to come  
5 into contact with Ms. Ashley Jackson?

6           A     We made a couple of attempts. I made a couple of  
7 attempts looking for her in the Jacksonville area that day, on  
8 the 9th. I was not able to locate her. So when we -- when we  
9 take out warrants, we have to put that information into a  
10 database so it notifies all law enforcement officers that the  
11 person has an outstanding warrant for arrest. So after --  
12 after I notified dispatch, which sends out a message and puts  
13 it in the system -- so if they get pulled over in a traffic  
14 stop or we come in contact with them when we're conducting a  
15 report, we see they have a warrant and take them into  
16 custody -- I secured for the night, after not being able to  
17 find her that day.

18          Q     After that day, did you have an opportunity to come  
19 in contact with her?

20          A     I did. The following day, which was the 10th,  
21 Officer Wallace got called to a scene to remove two subjects,  
22 and one of those subjects was Ashley Jackson and the other was  
23 a Mr. James Cox, and that's when I came in contact with them.

24          Q     Was that a separate incident?

25          A     That was a separate incident, but Officer Wallace

## Jacob Parker - Direct Examination by Mr. Sholar

1 saw that Ashley had warrants for her arrest.

2 MR. WRIGHT: Objection.

3 MR. SMITH: Objection.

4 MR. SHOLAR: She's coming to testify, Your Honor.

5 THE COURT: That's fine. I understand. But the  
6 question is, did you come into contact with Ashley Jackson?

7 MR. SHOLAR: That was it.

8 THE COURT: So answer that question.

9 Q Where did you come in contact with her at,  
10 eventually?

11 A At 626 South Hampton Drive, is where I went out and  
12 responded and made contact with Ashley Jackson.

13 Q So you went out to the scene?

14 A Yes.

15 Q What did you do, once you got there?

16 A I briefly spoke to them.

17 MR. SMITH: I need some clarification as to which --  
18 is he talking about Officer Wallace?

19 THE COURT: When you refer to any individual, make  
20 sure you're clear what individual you're referring to. If  
21 you're referring to a group, make sure you identify who is in  
22 that group, okay, because there are a lot of people involved.  
23 Just make sure pronouns, when you say, he, she, they, we know  
24 who you're talking about.

25 Q Once you got to that location on Hampton Drive, who

## Jacob Parker - Direct Examination by Mr. Sholar

1 exactly did you speak with? What was that person's name?

2 A I spoke to Ashley Jackson, I spoke to James Cox, and  
3 I spoke to the homeowner. Let me read for a minute and I'll  
4 be able to get her name, too. Ms. Royal.

5 Q Okay. And that home, is -- did you go into the  
6 home?

7 A I did.

8 Q Where did you go?

9 A Myself and other officers got consent from Ms. Royal  
10 to search the room that they were staying in.

11 MR. SMITH: Same objection.

12 THE WITNESS: Ashley Jackson and James Cox.

13 THE COURT: Clarification. Overruled.

14 THE WITNESS: And we searched that room and located  
15 a gun case.

16 Q Is that all you found in the room?

17 A I don't remember, right offhand, if there was  
18 anything else that we found. Give me one second to read  
19 through. I can't see anything else right now, sir.

20 Q You said you found -- is it a gun case?

21 A Yes, sir, something that you would store a handgun  
22 in.

23 Q How do you know that's what it is?

24 A Through experience, seeing them -- that's what  
25 they're sold as.

## Jacob Parker - Direct Examination by Mr. Sholar

1 Q Was there anything in the case?

2 A Not that I remember.

3 Q After you found this, and everything, you searched  
4 the scene, what did you do next, Detective Parker?

5 A I pulled both Ashley Jackson and James Cox aside  
6 individually, not together, and briefly spoke to them, let  
7 them know what I was there for, and I would like to talk to  
8 them back at the police department.

9 Q Okay.

10 A So we arranged transportation back to the police  
11 department.

12 Q What did you do when you arrived back at the police  
13 department?

14 A After I arrived back, I made sure that both of --  
15 both Ms. Jackson and Mr. Cox were in interview rooms. I made  
16 sure that our recording program was on so everything could be  
17 documented, and I told Mr. Cox that I was going to interview  
18 Ms. Jackson first. So I went in and sat down with her and  
19 started interviewing her, after reading her, her Miranda  
20 rights.

21 Q You read these Miranda rights. What did she do  
22 after that?

23 A I've got it documented in my report that she -- she  
24 denied all accounts of being involved with the burglary, and  
25 even after I told her that Richard Linn also said that she was

**Jacob Parker - Direct Examination by Mr. Sholar**

1 involved, she still denied any part.

2 **MR. WRIGHT:** I've got to object to that. Richard  
3 Linn never said -- never testified she was involved.

4 **THE COURT:** That -- let's send the jury out for just  
5 a little bit. If you'll go, please, to the -- again, don't  
6 discuss the case. Don't speculate on what we're doing here,  
7 and don't talk among yourselves about the case. Take a break.  
8 Take a personal moment, if you need it, and we'll be back  
9 shortly.

10 **(THE JURY WAS EXCUSED FROM THE COURTROOM AT**  
11 **2:51 PM.)**

12 **THE COURT:** All right. I guess I'm concerned about  
13 where we're going here. The jury is outside of the courtroom.  
14 The courtroom door is closed.

15 **MR. SHOLAR:** Your Honor, it's not the state's  
16 intention to go into anything Richard Linn said.

17 **MR. WRIGHT:** Judge --

18 **THE COURT:** A general -- we've outlined, even before  
19 the case began, sort of areas that we knew to be -- and you  
20 can push those areas if you want to, but my understanding is  
21 we didn't see the need to, and we keep running up against  
22 them, so I want to see where we are.

23 **MR. SHOLAR:** Once again, I have no intention of  
24 bringing out anything from Richard Linn, just what she knew  
25 and her -- I mean --

## Jacob Parker - Direct Examination by Mr. Sholar

1           **MR. WRIGHT:** Judge, in his report, he said she  
2 denied all accounts of being involved with the burglary. I  
3 would have been satisfied if he had just testified to that,  
4 period, but to say, oh, and Richard Linn even said -- you  
5 know, I just think that's totally improper.

6           **THE COURT:** I don't think -- of course, Richard Linn  
7 has testified.

8           **MR. WRIGHT:** He's testified.

9           **THE COURT:** He testified that she was there, but  
10 that's different -- I understand that's different from what  
11 the statements were at that time. So, as I understand, she  
12 made a statement. She denied involvement, is that it?

13           **MR. WRIGHT:** Exactly, period.

14           **MR. SHOLAR:** Exactly. I was not trying to invoke  
15 that.

16           **THE COURT:** Just be cautious as we get into these  
17 areas. Let's be careful and precise with our answers. Be  
18 sure you're asking what needs to be asked and answering what  
19 needs to be answered, and wait for the next question before  
20 going any further. I just thought there might be other issues  
21 we needed to touch on.

22           **MR. SHOLAR:** I have three more questions.

23           **THE COURT:** Are we going to get into Mr. Cox's  
24 statement? Did Detective Parker talk to Mr. Cox?

25           **MR. SHOLAR:** He talked to him, but he wouldn't say

## Jacob Parker - Direct Examination by Mr. Sholar

1 anything.

2 MR. SMITH: That's the same as not saying anything,  
3 or I want a lawyer, that's exactly the same problem.

4 MR. SHOLAR: What now?

5 MR. SMITH: If you say, what did he say to you,  
6 Mr. Parker? Oh, I want a lawyer. That's exactly what the  
7 amendment is for, to keep that from coming into evidence. So  
8 don't even ask him.

9 MR. SHOLAR: We're not going to talk about Mr. Cox.

10 MR. SWEET: My take on it, Judge, would be the state  
11 would still be allowed to shore up the investigation and say,  
12 did you attempt to speak with Mr. Parker, and he can say, I  
13 attempted, and just leave it there.

14 THE COURT: That's fine.

15 MR. SMITH: I have no problem with that.

16 THE COURT: He's certainly under no obligation to  
17 testify, but I understand he may be testifying. Is that what  
18 I understand? Don't misunderstand that. He's free not to,  
19 but I'll give the appropriate instructions.

20 MR. SMITH: (MR. SMITH NODDED HEAD.)

21 THE COURT: That's fine. I agree with you,  
22 Mr. Sweet. He can say he didn't wish to answer any questions,  
23 that's fine, which is fully his right. He asked for a lawyer,  
24 which is fully his right. You mentioned Miranda rights, and  
25 that's worth knowing, perhaps. Did she waive her Miranda

**Jacob Parker - Direct Examination by Mr. Sholar**

1 rights before she -- I'm assuming she did, because there was  
2 no objection.

3 **MR. WRIGHT:** Yes, sir, she waived.

4 **THE COURT:** I assumed she must have, because you  
5 would have said something -- or maybe not. She denied  
6 involvement in the case. Anything else?

7 **MR. SWEET:** Judge, I would just let the Court know,  
8 in anticipation of what I believe is going to be the evidence  
9 here very shortly, is there's another statement made by Ashley  
10 Jackson during, essentially, the booking process, after she's  
11 removed from that residence, and it's a spontaneous-type  
12 request and statement from her. Nothing has been filed by the  
13 defense, but that's the only other statement that we would get  
14 into from Ashley Jackson, and my understanding, from the lack  
15 of filings, is that there's no issue with -- from the defense  
16 that that statement is admissible.

17 **THE COURT:** Do you know what she's talking about,  
18 Mr. Wright -- what he's talking about?

19 **MR. WRIGHT:** Yes, Your Honor. She was standing in  
20 the holding cell, and I'm not going to object to that.

21 **THE COURT:** I appreciate that.

22 **MR. SMITH:** I have no standing to object.

23 **MR. WRIGHT:** She basically -- just for the record,  
24 she says that she did do the assault, but she did not bring  
25 into the residence or fire any weapon, and that she wasn't



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1 going down for that. That's what she said.

2 **THE COURT:** She said it better than you could,  
3 didn't she, Mr. Wright?

4 **MR. WRIGHT:** I mean, that's what she said, and we're  
5 not contesting that.

6 **THE COURT:** And you intend to introduce that  
7 statement?

8 **MR. SHOLAR:** That's correct, Your Honor. That would  
9 be the last --

10 **THE COURT:** That's fine. Thank you. I just want to  
11 kind of be clear. Just ask the questions and answer the  
12 questions, and we'll be good, I think, and wait until the next  
13 question.

14 Okay, let's bring the jury back in.

15 **THE BAILIFF:** Yes, sir.

16 **THE COURT:** Mr. Sholar, you're going to pick this  
17 up. She made a statement to you.

18 **MR. SHOLAR:** She denied, and then we'll move out of  
19 the interview. I think that's where we're at.

20 **THE COURT:** Tell them we'll take a recess for about  
21 seven minutes.

22 **(A RECESS WAS TAKEN AT 3:01 PM. COURT RESUMED**  
23 **SESSION AT 3:10 PM, WITH THE DEFENDANTS AND**  
24 **THEIR ATTORNEYS PRESENT, THE PROSECUTORS**  
25 **PRESENT, THE JURY ABSENT.)**

## Jacob Parker - Direct Examination by Mr. Sholar

1           **THE COURT:** Are you ready?

2           **MR. SHOLAR:** Yes, sir.

3           **THE COURT:** Let's bring the jury back in.

4           **THE COURT:** I'm going to quickly say, disregard the  
5 last question and answer. Mr. Sholar, rephrase your question,  
6 something like that.

7                           **(THE JURY RETURNED TO THE COURTROOM AT 3:11**  
8                           **PM.)**

9           **THE COURT:** All right. Thank you, ladies and  
10 gentlemen.

11           All right. The 14 jurors are back in the courtroom.

12           Ladies and gentlemen, if you'll disregard the last  
13 question and answer.

14           Mr. Sholar, restate your question.

15           **Q**    So you were in an interview room with Ashley  
16 Jackson. Did you ask her about the burglary, alleged  
17 burglary, that took place at 128 Silver Leaf, on August 8<sup>th</sup>?

18           **A**    Yes, sir.

19           **Q**    And did she respond to that, that question?

20           **A**    Yes, sir. She denied any involvement in it.

21           **Q**    Okay. Was that the extent of your conversation with  
22 her, in the interview room?

23           **A**    Yes, sir.

24           **Q**    And after that, Detective Parker, where did you go  
25 next?

## Jacob Parker - Direct Examination by Mr. Sholar

1           A     Went to go speak with Mr. Cox.

2           Q     Did you attempt to speak to him?

3           A     Yes, sir.

4           Q     Did he speak to you?

5           A     He did not wish to speak to me.

6           Q     After he didn't wish to speak to you, where did you  
7 go after that?

8           A     At that point, went to the magistrate's office to --  
9 well, first spoke with Officer Wallace, and told her that we  
10 would be transporting them to the Onslow County jail and that  
11 I had to go take out warrants on Mr. James Cox, the same  
12 warrants that I had already taken out on Ms. Ashley Jackson.

13          Q     Okay. And at that point, did you go to the  
14 magistrate's office?

15          A     Yes, sir.

16          Q     Okay. Did anything happen while you were in the  
17 magistrate's office?

18          A     Yes, sir. Let me find it so I can say exactly how  
19 it occurred. While I finished swearing out to the warrants,  
20 Officer Wallace was processing -- which is fingerprinting and  
21 photographing -- Ashley Jackson. At that time, Officer  
22 Wallace notified me that Ms. Jackson would like to speak with  
23 me, and so myself and another detective entered the booking  
24 room at the Onslow County jail, and I'm just going to read it  
25 so it can be documented correctly. Ms. Jackson stated that

**Jacob Parker - Cross-Examination by Mr. Smith**

1 she did do the assault but she did not do -- she did not break  
2 into the residence or fire the weapon, and that she wasn't  
3 going down for that. After she made that statement, that was  
4 the end of my contact with her.

5 Q When you went in there, did you ask her anything?

6 A I did not. I told her I couldn't ask her any  
7 questions.

8 Q She just spoke to you and told you this?

9 A Yes, sir.

10 MR. SHOLAR: Nothing further, Your Honor.

11 THE COURT: Mr. Wright?

12 MR. WRIGHT: Judge --

13 MR. SMITH: Actually, if you don't mind, since they  
14 switched up, I'm going to switch up.

15 THE COURT: You told me that.

16 **CROSS-EXAMINATION BY MR. BRYON M. SMITH:**

17 Q Detective Parker, you're aware we get a copy of your  
18 report. You're aware of that. At some point in this case,  
19 you applied for a search warrant, is that correct?

20 A For phones, yes, sir.

21 Q And in the search warrant application, you made a  
22 list of all your credentials and your training and your  
23 education.

24 A Yes, sir.

25 Q As I notice in this credential list, I see you've

## Jacob Parker - Cross-Examination by Mr. Smith

1 never testified in superior court. That's not listed on your  
2 application, is it?

3 A I don't know if it is, but I have, yes, sir.

4 Q You made sure you put in there about testifying  
5 before the grand jury. You put that in there.

6 A Yes, sir.

7 A Okay.

8 Q But you don't put anything about testifying in  
9 superior court. In this case, you didn't even go to the grand  
10 jury, did you? Someone else went in your stead.

11 MR. SHOLAR: Objection. Relevance, Your Honor.

12 THE COURT: Sustained.

13 Q Do you have a copy of what we've been referring to  
14 as a case supplement report that was printed 10/20/15, in  
15 front of you, sir? Is that what you're reading from?

16 A I would have to see it to make sure that it's what  
17 I'm looking at. How does it -- can you tell me how it starts  
18 off?

19 Q It's called "Case Supplemental Report." Is this  
20 something you prepared?

21 A Okay. Does it -- yes, sir. Does it -- all of them  
22 are going to look like that from each officer. Does it start  
23 off with -- or does it have Number 7 and assigned  
24 investigator?

25 Q J.D. Parker, Investigator 554.

## Jacob Parker - Cross-Examination by Mr. Smith

1           **A**     No, below that. Below that, it has numbers 1  
2 through 7. Number 7 says, "Assigned investigator, Detective  
3 Jacob Parker."

4                   **MR. SMITH:** May I approach, to clear this up?

5                   **THE COURT:** Yes, sir.

6           **Q**     Detective Parker, I'm handing you what's been marked  
7 Defendant's Exhibit Number 1 for the purpose of  
8 identification. Is that what you're working from? I know  
9 mine -- there's a lot of writing on mine.

10           **A**     Yes, sir.

11           **Q**     Okay. All right. So where is the seven you're  
12 pointing out to me, so I know if we're talking about the same  
13 thing?

14           **A**     Right here, 1 through 7. (Indicating on D-1.)

15           **Q**     Very well. I gotcha. So at police school, they  
16 told you to prepare this very carefully, make sure it was  
17 correct?

18           **A**     Yes, sir.

19           **Q**     You're satisfied your timeline is correct as to when  
20 you did this and when you did that?

21           **A**     As best as it could be. You're getting bits and  
22 pieces of information, and you're trying to piece it back  
23 together, as best as possible. I have noticed one date error  
24 in here.

25           **Q**     Hmm. Just one?

## Jacob Parker - Cross-Examination by Mr. Smith

1           **THE COURT:** Ask a question, please.

2           **Q**     So you list on this case supplement report, that's  
3 at this point marked as Defendant's Exhibit 1, that  
4 Mr. Ketchum is your supervisor.

5           **A**     Yes, sir, he is.

6           **Q**     Okay. What rank is he?

7           **A**     Sergeant Ketchum, he's a sergeant.

8           **Q**     But this night, when you're sitting at National  
9 Dodge --

10          **A**     Yes, sir.

11          **Q**     -- you get called off the case by Lieutenant Leyble,  
12 is that right, by a call?

13          **A**     She notifies me I'm not needed at the scene. So I'm  
14 working an off-duty assignment. So I'm not really working --  
15 I'm not on duty, per se. I am doing an extra -- another job,  
16 but I am the on-call detective that night. So I respond to  
17 anything and everything patrol needs an investigator to  
18 respond to. So when this incident occurred, Lieutenant  
19 Leyble, per policy, had to notify me, but she did not feel the  
20 need that I had to go out to the scene, at that time.

21          **Q**     Do you know if she went to the scene?

22          **A**     Mm-hmm.

23          **Q**     She did or did not?

24          **A**     She did.

25          **Q**     So Mr. Ketchum is the chief of investigations, is

## Jacob Parker - Cross-Examination by Mr. Smith

1 that the way that --

2 A He's the first supervisor in investigations, then  
3 there's a lieutenant and a captain.

4 Q So if they give you conflicting orders that night,  
5 who do you abide by? Do you abide by Leyble, since she's a  
6 lieutenant?

7 A It wasn't that night, sir. That night, she told me  
8 she did not need me. The next day, on -- if you look at the  
9 second paragraph on 8/9, at approximately 1000 hours, that's  
10 when Sergeant Ketchum called me and told me, hey, the incident  
11 that occurred last night where a shot was fired into an  
12 occupied dwelling, I need you to go in and start investigating  
13 that case.

14 Q But if I read your report correctly, you wanted to  
15 go that night. You were itching to get out there, weren't  
16 you? Did you call Leyble?

17 A No. I did call her. I'm never itching to go out to  
18 a crime scene, unless I need to, unless they request me, but I  
19 wanted to make sure that she had an investigator at her  
20 disposal so, if she felt like she needed one, I would be there  
21 for her. So I followed up with her about two or three times  
22 to make sure she was good. The last time I followed up with  
23 her, the crime scene had long -- or the scene the long been  
24 cleared. No one was out there, anymore, and I just wanted to  
25 make sure that she was good to go with the incident, and she



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1 was, and I went home for the evening.

2 Q But you actually followed up with her in person.

3 A That is when I went to the station, yes, sir. I  
4 went to the station to drop off a key, and I asked her, hey,  
5 how did that case turn out, the incident, and she still didn't  
6 think I needed to go out anywhere or follow up with  
7 interviews, so I went home for the evening.

8 Q And evening would be -- you said you worked at  
9 National Dodge until 4:00.

10 A It was early morning hours.

11 Q How were you relieved at National Dodge? I mean,  
12 does Jan Friis come and take over for you, or somebody else?

13 A No. It could be a detective, it could be a  
14 supervisor, it could be a patrol officer that's off duty  
15 that's not actually working in the City of Jacksonville that  
16 signs up to work security there. They pay us to perform  
17 security there, so we will work a six-hour shift at National  
18 Dodge and cover their three dealerships.

19 Q So you were anxious to go to the crime scene or you  
20 wanted to stay to get the whole six hours?

21 A That's where I was working, yes, sir, but if she had  
22 requested me to come out there --

23 Q Do you just call Justin Lee, or somebody like that,  
24 to come and take over for you?

25 MR. SHOLAR: Objection, Your Honor.

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1           **THE WITNESS:** No, sir. I would leave that  
2 assignment and go to work.

3           **THE COURT:** Overruled.

4           **Q** Do you pick up your payment the next morning, or do  
5 you pick it up Friday?

6           **A** No, sir, later in the week, from National Dodge.

7           **Q** Do you drive by there in a patrol car?

8           **MR. SHOLAR:** Your Honor, may we approach?

9           **THE COURT:** If need be, yes.

10                           **(AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)**

11           **Q** So 10:00 the next morning now, if I'm reading your  
12 report right, Sergeant Ketchum decides it's important. Is  
13 that the way you phrased it?

14           **A** To do what, sir?

15           **Q** Sergeant Ketchum decides it's important that you go  
16 out there.

17           **A** Yes, sir.

18           **Q** So, as you said, the case has gone cold. If there  
19 were witnesses, they've left, is that right?

20           **A** It's not that it's gone cold. It was just there was  
21 no suspects in custody at the time. We couldn't locate  
22 Richard Linn that night, so that's why I wasn't needed. After  
23 Sergeant Ketchum read over the report, he decided that it  
24 needed to be followed up, right then, instead of waiting until  
25 Monday. So he called me and told me to go to the station and

## Jacob Parker - Cross-Examination by Mr. Smith

1 start working on this case.

2 Q You said you couldn't find Richard Linn that night.

3 A Not that night, no, sir.

4 Q Didn't officer Martin have an address for Mr. Linn?

5 A I'm sure she did.

6 Q You're not privy to a copy of her report?

7 A No, I am, I am, but I haven't read her report  
8 recently.

9 Q I'll ask her. So was this your first week as a  
10 detective, first night as a detective?

11 A No. About -- about six months.

12 Q If Lieutenant Leyble is at the scene, are those  
13 people, for lack of a better term, her people, her squad?

14 A Yes, sir.

15 Q What do you guys call it?

16 A We've been called both over recent years. At that  
17 time, I think it was squads and it could be some evening squad  
18 officers and some night squad officers that were responding to  
19 that scene. Since it was after 7:00 p.m., those are the only  
20 two squads working, evening shift squad and a night shift  
21 squad that works from 7:00 p.m. to 7:00 a.m.

22 Q So Sunday morning, pre-church, or around church, you  
23 begin an investigation?

24 A I was in church, received a phone call, and left and  
25 started working on it then.

## Jacob Parker - Cross-Examination by Mr. Smith

1 Q He told you to look at the incident further. Was he  
2 more specific than that?

3 A No. It was -- not really, other than when we have  
4 shots into an occupied dwelling, anything involving a  
5 discharging of firearm, it's taken very seriously. So that's  
6 why it could not wait until Monday, because not knowing who  
7 the other individuals were at the time, who knew if they were  
8 going to try to retaliate again. So we started working on it  
9 then to try to identify these people and interview them, make  
10 contact with them, arrest them, if needed.

11 Q But it wasn't that big a deal at midnight and 1:00?

12 A Not to Lieutenant Leyble.

13 Q So now, 12, 14 hours later, it's important to  
14 Mr. Ketchum.

15 A (WITNESS NODDED HEAD.)

16 Q All right. What time did you and Mr. Woolfolk go  
17 out to the home Ms. Leisure alleges was hers?

18 A I went out there -- arranged to meet with her at  
19 noontime at her residence. I want to say Woolfolk showed up  
20 shortly after that, because I had already had dispatch contact  
21 him and let him know that I was going to need a CSI officer  
22 out there on scene to look for evidence.

23 Q Mr. Woolfolk's report tells that he did yeoman like  
24 work looking for that bullet.

25 A He did what?

## Jacob Parker - Cross-Examination by Mr. Smith

1 Q Yeoman like is the word he actually used in his  
2 report. Did you turn the sofa over, look in the bottom?

3 A (WITNESS NODDED HEAD.)

4 Q How many hours were you there?

5 A I would say probably a total -- probably close to  
6 two hours, to canvass the hallway and the living room area.

7 Q Since we have the same report now, I'll ask you to  
8 return to Page 29. It's marked at the bottom, Page 29. I see  
9 a place for supervisor's signature. Did Sergeant Ketchum ever  
10 autograph this?

11 A Sir, I don't have a 29. I've got my supplement. My  
12 last page is Page 9.

13 Q But you identified this as the same one that you're  
14 redding from.

15 A It might continue going to some further, or they  
16 might be renumbered, but I printed off my supplement for the  
17 report for this case.

18 Q Since I don't know what page you have, I'll ask you  
19 to find the portion where you intend -- or you contend that  
20 you went to Hargett Street, looking for Ms. Jackson. Can you  
21 find that page?

22 A Yes, sir. Give me one minute. I think I've seen  
23 that. New River, Hargett Street?

24 Q Mm-hmm.

25 A Yes, sir.

## Jacob Parker - Cross-Examination by Mr. Smith

1 Q I'm looking at the paragraph directly below that.

2 A Yep. That's where it says, "on 8/9."

3 Q So, really, we're talking about 8/10.

4 A That's 8/10.

5 Q Is that how they would grade you to become a  
6 detective, by making excellent reports?

7 MR. SHOLAR: Objection, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: Errors happen, sir.

10 Q Did Sergeant Ketchum review it and autograph it?

11 A I'm sure he did.

12 Q And he didn't catch it, did he?

13 A No, sir, apparently not.

14 Q Are you going to have to take this back to him and  
15 say, look, I put the wrong date on this one?

16 MR. SHOLAR: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q You never interviewed Mr. McMinn.

19 A There's a brief section in this report that I was  
20 told I couldn't bring up, so I'm not going to bring it up.

21 THE COURT: Just answer the questions, please.

22 Q Did you ever conduct a gunshot residue test on Mr.  
23 Cox?

24 A On Mr. Cox? No, sir. The first time that I laid  
25 eyes on him was out -- it was on the 10th, so that would have

**Jacob Parker - Cross-Examination by Mr. Smith**

1 been two days after the incident, not quite 48 hours, but  
2 close to that, at 626 South Hampton Drive. GSR kits are  
3 usually --

4 **Q** I don't want usually, I want specifically.

5 **A** Specifically, about four hours is the optimal time  
6 frame. I'm not saying you can't find GSR on people after  
7 that, but if they wash their hands, if they put their hands in  
8 their pockets five minutes after they have shot a weapon,  
9 there's the possibility that gunshot residue is no longer on  
10 their hands. So two days after -- after the incident, chances  
11 are that the gunshot residue is not going to still be on his  
12 hands, if he's washed his hands or taken a shower or put his  
13 hands in his pockets.

14 **Q** Those four hours you were at National Dodge could  
15 have been very important to Mr. Cox, couldn't it?

16 **A** (THE WITNESS DID NOT RESPOND.)

17 **Q** You were at National Dodge for an additional four  
18 hours. Instead of being an on-call detective, you stayed  
19 right there.

20 **THE COURT:** Just ask one question, please.

21 **Q** Was Mr. Linn forthcoming with you as to who the  
22 people were that he alleged went to the home of Ms. Leisure?

23 **A** No, sir. He provided the name "Amber", I believe.

24 **Q** So --

25 **A** And J for the male subject.

## Jacob Parker - Cross-Examination by Mr. Smith

1 Q So he was being deceptive with you, is that your  
2 interpretation?

3 A I couldn't tell.

4 Q When you talked about going to South Hampton, did  
5 you get a chance to look inside a vehicle that you contend is  
6 Mr. Cox's vehicle?

7 A Yes, sir. He gave consent to search the vehicle.

8 Q And he consented to be arrested.

9 A Do what, sir?

10 Q He consented to be arrested, as well. He didn't  
11 fight you, he consented.

12 A He was transported to the station, attempted to be  
13 interviewed and then arrested, yes, sir.

14 Q So the transport was out of good will?

15 A We didn't have enough information, at that time, to  
16 arrest him.

17 Q But you hauled him down to the station.

18 A He was willing.

19 Q Or you had Officer Grantham haul him down to the  
20 station.

21 A Can I point out a section in the report?

22 Q Just answer my question. An officer transported  
23 him.

24 A He was willing to go to station and talk.

25 Q In your interview with Ms. Leisure, did she allege



**Jacob Parker - Cross-Examination by Mr. Wright**

1 to you or admit to you that she used drugs?

2 A No, sir.

3 Q Did she admit to you or allege to you she bought and  
4 sold drugs?

5 A No, sir. It was money.

6 Q Did she allege to you that anything was taken from  
7 her home?

8 A No, sir.

9 MR. SMITH: Judge, I think that's all. Thank you.

10 THE COURT: Mr. Wright?

11 **CROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

12 Q Just a couple questions. Do you recall, Detective  
13 Parker, Mr. Linn telling you that Angela Leisure stole \$20  
14 from him and the money belonged to a friend?

15 A Let me see if I can find that, sir.

16 Q It's Page 28, middle paragraph on my -- in the  
17 middle.

18 A Linn stated Angela took \$20 cash from him. Is that  
19 what you're taking about?

20 Q It says, "While waiting for Mr. Richard Linn's  
21 father to arrive, Richard Linn stated Angela stole \$20 from  
22 him, and that money belonged to a female." Do you recall him  
23 saying that to you? The paragraph that begins, "After  
24 Corporal Woolfolk finished processing the crime scene," you  
25 proceeded to 421 Thomas Drive.

**Jacob Parker - Redirect Examination by Mr. Sholar**

1           A     Is it in that paragraph?

2           Q     Yes.  Go about maybe six, seven lines.

3           A     While waiting for Mr. Richard Linn's father to  
4 arrive, he stated \$20 -- stolen \$20 from him, and that money  
5 belonged to a female.  Okay, I see where you're at.

6           Q     I mean, he told you that, that that money was  
7 stolen.  In other words, he never got that money back from  
8 Ms. Leisure.

9           A     Okay.  Yes, sir.

10          Q     I'm asking you.  You took the statement from him.

11          A     Yes.

12          Q     And he did say the money belonged to a female?

13          A     Yes.

14          Q     He didn't identify who the female was, though, did  
15 he?

16          A     No, sir.

17                **MR. WRIGHT:**  Judge, I believe that's all I have.

18                **THE COURT:**  Redirect?

19                **MR. SHOLAR:**  May I have a moment, Your Honor?

20                **THE COURT:**  Yes, sir.

21                **REDIRECT EXAMINATION BY MR. RICHARD S. SHOLAR:**

22            Q     Detective Parker, talking about GSR, is that gunshot  
23 residue?

24            A     Yes, sir.

25            Q     What, exactly, is gunshot residue?

## Jacob Parker - Redirect Examination by Mr. Sholar

1           A     It is pretty much the burnt powder.  When you fire a  
2     weapon and it cycles, there is -- there is powder or burnt  
3     powder that is emitted from the weapon system that will land  
4     on your hand, it will land on your sleeves, if you're wearing  
5     long sleeves.  You can probably even find it on your face.

6           Q     This gunshot residue, this powder, does it tell you  
7     forensically what weapon discharged that bullet?

8           A     No, sir.

9           Q     No?  Now, if you get gunshot residue, do you send it  
10    to the lab?

11          A     Yes, sir.  I believe so.  That would be more of a  
12    question for CSI Woolfolk.

13          Q     Okay.  Did you have any eyewitnesses that knew what  
14    J looked like?

15          A     Just the ones that were involved, Angela and McMinn.

16          Q     Did they describe what he looked like?

17          A     Yes, sir.

18                **MR. SMITH:**  Objection.  He didn't ask Mr. McMinn any  
19    questions.

20                **THE COURT:**  Overruled.

21          Q     The -- isn't gunshot residue just a way of seeing  
22    who the suspect is that fired a weapon?

23          A     Seeing if someone fired a weapon.

24          Q     In this case, you already had -- you had information  
25    that a weapon was fired.

## Jacob Parker - Redirect Examination by Mr. Sholar

1           A     Mm-hmm.

2           Q     You had information about what that person looked  
3 like.

4           A     Yes, sir.

5           Q     Now, you were at National Dodge when the incident  
6 happened, is that correct?

7           A     Yes, sir.

8           Q     But now you got called by who was it?  Leyble?

9           A     Lieutenant Leyble.

10          Q     Lieutenant Leyble.  Was Lieutenant Leyble there by  
11 herself?

12          A     No.  Probably six to ten other officers were there  
13 with her.  She is the supervisor on scene.

14          Q     You said six to ten other officers?

15          A     Mm-hmm.

16          Q     How many officers are there at JPD on a shift?

17          A     On a shift?

18          Q     Mm-hmm.

19          A     There's about anywhere from seven to 10 officers on  
20 a squad.  During that time that she was working, there was two  
21 squads working.  So roughly -- you could roughly say 15 to 20  
22 officers, max.

23          Q     You said 15 to 20 in the City of Jacksonville?

24          A     (WITNESS NODDED HEAD.)

25          Q     At that time?

**Jacob Parker - Recross-Examination by Mr. Smith**

1           A     Mm-hmm.

2           Q     And seven were on scene?

3           A     Probably six to ten were on scene.

4           Q     So half of the squad of patrol officers, at that  
5 time, were at 128 Silver Leaf, investigating?

6           A     Yes, sir, to make sure the scene was safe, make sure  
7 the citizens were safe, and secure the crime scene.

8           **MR. SHOLAR:** Nothing further, Your Honor.

9           **THE COURT:** Anything further, Mr. Smith?

10          **RECCROSS-EXAMINATION BY MR. BRYON M. SMITH:**

11          Q     So none of those 10 officers found a firearm?

12          A     No, sir.

13          Q     None of those 10 or so officers found a projectile?

14          A     Not a projectile.

15          Q     None of those 10 or so officers found a shell  
16 casing?

17          A     A shell casing was located.

18          Q     At 128 Silver Leaf?

19          A     At 128, yes, sir.

20          Q     I'd love to see that in the report. Do you have  
21 that with you?

22          A     I believe one was found that night, sir. That would  
23 be an initial responding officer. There was six to ten of  
24 them.

25          Q     Do you know this officer's alleged name that found

**Jacob Parker - Recross-Examination by Mr. Wright**

1 this so-called spent shell?

2 A I can list some officers that were on scene. I  
3 don't know specifically the one that found the shell casing.

4 Q Did anybody take a photograph of it?

5 A I'm pretty sure it was recovered, sir.

6 Q I'll give you a minute to look in your notes, if you  
7 want.

8 A All I've got is my supplement. I don't have it in  
9 my notes. I responded the next day. That would be an initial  
10 responding officer.

11 MR. SMITH: Nothing further, Judge.

12 **RECROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

13 Q What is an ICOP, Detective Parker?

14 A Where is that at, sir?

15 Q Well, it -- I can help you out. It has something to  
16 do with interviewing folks and recording interviews. Are you  
17 familiar with that phrase, ICOP?

18 A I'm not familiar with ICOP.

19 Q Are you familiar, then, with Video Oversight?

20 A Yes, I am familiar with Video Oversight.

21 Q What is a Video Oversight?

22 A It's our video program where we turn it on and  
23 record videos at the department, in our interview rooms. We  
24 have approximately two cameras, pretty much like the one  
25 that's above your head, and there will be one in the top

**Jacob Parker - Recross-Examination by Mr. Wright**

1 corner and there will be one around eye level. So when we go  
2 into the interview room, we pretty much get their information,  
3 we walk out, tell them we'll be right back, and we'll get  
4 Video Oversight up and running so that interview can be  
5 recorded.

6 Q And was Richard Linn subject to a Video Oversight  
7 interview?

8 A Give me a second. I'm pretty sure he was. He was  
9 at the department. Yes, sir, he was.

10 Q So we should have an interview of Richard Linn, and  
11 we should have exactly what he told you. Were you doing the  
12 interview?

13 A Mm-hmm. Yes, sir.

14 Q Okay. One last question. Did Richard Linn ever  
15 tell you that he entered into an agreement or conspired with  
16 Mr. Cox and Ms. Jackson to engage in an armed robbery that  
17 night of 8/8/15?

18 A No, sir.

19 Q He never told you that in the interview, did he?

20 A No, sir.

21 **MR. WRIGHT:** That's all. Thank you.

22 **MR. SHOLAR:** Nothing further, Your Honor.

23 **THE COURT:** All right. Detective, thank you. You  
24 can step down. You're available, if you need to be recalled,  
25 is that right?

## Robin Wallace - Direct Examination by Mr. Sholar

1           **THE WITNESS:** Yes, sir.

2           **THE COURT:** Okay. Thank you.

3                   **(WITNESS EXCUSED FROM THE STAND.)**

4           **THE COURT:** All right. Call your next witness.

5           **MR. SHOLAR:** Your Honor, the state would call  
6 Officer Robin Wallace to the stand.

7                                   **ROBIN WALLACE,**

8 having been called as a witness for the State

9 at 3:42 p.m., was sworn and testified as follows during

10 **DIRECT EXAMINATION BY MR. RICHARD S. SHOLAR:**

11           **Q**     Ma'am, state your name for the record, please.

12           **A**     Robin Wallace.

13           **Q**     Ms. Wallace, what do you do for a living?

14           **A**     I'm a police officer for Jacksonville Police  
15 Department.

16           **Q**     How long have you held that position?

17           **A**     For almost eight years.

18           **Q**     Almost eight years? What is your rank?

19           **A**     I'm a PO II, police officer II.

20           **Q**     To become a police officer with the Jacksonville  
21 Police Department, did you have to do any training?

22           **A**     Yes, sir.

23           **Q**     What did that training consist of?

24           **A**     The BLET academy, which is the basic law enforcement  
25 training over at Coastal.



## Robin Wallace - Direct Examination by Mr. Sholar

1 Q What did you do, during that training?

2 A We did anything from report writing, to law, to  
3 testimony, to shooting, driving, a range --

4 Q Did you pass that course?

5 A I did.

6 Q When were you sworn in as a law enforcement officer?

7 A Jacksonville.

8 Q When?

9 A Oh, sorry. It was July 19<sup>th</sup>, 2010.

10 Q 2010, okay. Now, since you became a police officer  
11 at the Jacksonville Police Department, have you had any  
12 additional training?

13 A As a police officer? No.

14 Q Okay. Now, on August 10, 2015, were you on duty  
15 that day?

16 A I was, sir.

17 Q What were your duties that day, as a police officer?

18 A I was a patrol officer, taking calls for service.

19 Q And when you're on patrol, are you -- if you had a  
20 certain part of town, do they give you an area to go to?

21 A Most of the times they do, yes, sir.

22 Q Okay. Was that the case this day?

23 A I believe, yes.

24 Q Now, during your duties that day, did you ever go to  
25 626 South Hampton Drive?

## Robin Wallace - Direct Examination by Mr. Sholar

1           A     I did.

2           Q     Why did you go there, Officer Wallace?

3           A     At approximately 9:30 in the morning, I received a  
4 call for service that I was supposed to meet with the victim.

5           **MR. WRIGHT:**  Objection, Your Honor.

6           **MR. SHOLAR:**  Rephrase.

7           **THE COURT:**  Okay.

8           Q     What was the individual's name?

9           **THE COURT:**  Approach for a second.

10                    **(AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)**

11           **THE COURT:**  Go ahead, Mr. Sholar.

12           Q     So you said you went to 626 South Hampton Drive, is  
13 that correct?

14           A     Correct.

15           Q     Was that in response to a call for service?

16           A     Yes, sir.

17           Q     When you arrived there, did you come in contact with  
18 Ms. Ashley Jackson and Mr. James Cox?

19           A     Yes, sir.

20           Q     Where were they at?

21           A     They were in the bedroom.

22           Q     Is that where you made contact with them?

23           **THE COURT:**  With whom?

24           **MR. SHOLAR:**  With Ashley Jackson and James Cox.

25           **THE WITNESS:**  Yes, sir, I did, both Ashley -- Miss

## Robin Wallace - Direct Examination by Mr. Sholar

1 Ashley and Mister James.

2 Q Upon seeing them, what did you do, Officer Wallace?

3 A I immediately grabbed Miss Ashley and placed her  
4 into handcuffs, and Mr. James Cox was also placed in handcuffs  
5 and removed from the bedroom.

6 Q At this point, had you -- was there a warrant out  
7 for their arrest?

8 A Yes.

9 MR. SMITH: Objection.

10 Q Did you know that?

11 A I knew that prior to getting to South Hampton.

12 MR. SMITH: Objection. I would like to be heard.

13 THE COURT: Approach again, please.

14 (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

15 THE COURT: Strike the last question and answer and  
16 rephrase your question.

17 Q Officer Wallace, who, exactly, had a warrant for  
18 their arrest?

19 A Ms. Jackson.

20 Q Ms. Jackson?

21 A Mm-hmm.

22 Q What did you do, when you walked in the bedroom?

23 A I knocked on the door. She answered the door. I  
24 immediately placed her in handcuffs and removed her from the  
25 bedroom.

## Robin Wallace - Direct Examination by Mr. Sholar

1 Q At that point, where did you take her?

2 A Into the living room.

3 Q Into the living room?

4 A Yes.

5 Q What did you do next, Officer Wallace?

6 A I had her sit down on a stool for a while, until I  
7 was directed to do anything further by the sergeant.

8 Q At that point, did you do any further investigation  
9 in the home?

10 A I did. I actually separated Miss Ashley from Mister  
11 James and took her outside to ask her if she would give me  
12 consent to search the bedroom, and she actually gave me  
13 written consent to search the bedroom and her vehicle that was  
14 sitting in the driveway.

15 Q After that consent, did you go back into the  
16 bedroom?

17 A I did, sir.

18 Q What did you do, once you arrived in the bedroom?

19 A I went ahead and I located several different things  
20 that were seized and logged into evidence.

21 Q What did those things consist of?

22 A Metal grinder with marijuana, located in the  
23 dresser; a small plastic bag with one gram of marijuana,  
24 located on the dresser; a small plastic bag with five grams --  
25 approximately five grams of marijuana, located on dresser,

## Robin Wallace - Direct Examination by Mr. Sholar

1 inside a green cloth bag on the dresser; 12 rounds, one spent  
2 round, located in Newport cigarette box in a green cloth bag  
3 on dresser; black scale with marijuana on it, located in the  
4 green cloth bag on the dresser; a dark blue nine millimeter  
5 gun case, empty, located in the hutch, and then there was a  
6 black Samsung cell phone located in Miss Ashley's purse and a  
7 black ZTE cell phone located in Miss Ashley's purse.

8 Q You said you found all those items?

9 A Yes, sir.

10 MR. SHOLAR: Your Honor, may I approach?

11 THE COURT: Yes, sir.

12 MR. WRIGHT: Judge, may we approach?

13 THE COURT: Yes, sir.

14 (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

15 THE COURT: Proceed, Mr. Sholar.

16 MR. SHOLAR: Your Honor, may I approach? Let the  
17 record reflect I'm approaching with what's been previously  
18 been marked as State's Exhibit 19.

19 THE COURT REPORTER: You have a 19.

20 THE COURT: Is it marked 20? Nineteen was a picture  
21 of the sofa.

22 MR. SHOLAR: I will mark it 20. Let the record  
23 reflect this is State's Exhibit 20.

24 Q Officer Wallace --

25 A Yes, sir.

## Robin Wallace - Direct Examination by Mr. Sholar

1 Q -- what is that box?

2 A It's a box of evidence from JPD -- from Jacksonville  
3 Police Department.

4 Q In the course of the investigation, what do you do  
5 with the evidence?

6 A Once it's seized from whatever location, we  
7 transport it back to the station, where it's processed,  
8 entered into the databank and then handed over to the property  
9 management who then files it and does their portion of  
10 processing.

11 Q It goes into the box?

12 A Yes. They -- then they go ahead and they group the  
13 items together and usually stick it in one container it can  
14 fit.

15 Q Is there a number assigned to these things?

16 A There is. It's a case number, just like this  
17 (Indicating). This is the case number to the report  
18 (Indicating on S-20.) And these, I guess, are the -- well,  
19 these are the tag numbers for each piece of evidence that's  
20 inside of this box, as well.

21 Q Okay. And the number that's on the end, you said  
22 that's the case number?

23 A Right here, sir?

24 Q Yes.

25 A Yes. And I'll double check. Yes, sir.

## Robin Wallace - Direct Examination by Mr. Sholar

1           Q     Now, what's the case number on your report for this  
2 case?

3           A     1506128.

4           Q     What's the number on the box, right there?

5           A     1506128, as well as all these labels here. There  
6 are six of them.

7           Q     They all have the same number?

8           A     Yes, sir.

9           Q     So that means all of this came from the same place,  
10 same day?

11          A     Yes, sir.

12          Q     If you would, would you open that box for me,  
13 please, without removing anything from it.

14          A     Yes.

15          Q     If you would look into the box. Is there a bag that  
16 contains shell casings?

17          A     Yes, sir.

18                **MR. SHOLAR:** Your Honor, may I approach?

19                **THE COURT:** Yes, sir.

20                **MR. SHOLAR:** Let the record reflect I'm marking this  
21 as State's Exhibit 21.

22          Q     Officer Wallace, you said that's a bag?

23          A     Yes, sir.

24          Q     Does that bag contain any identifying information?

25          A     Yes. It says it's a Newport box, cigarette box,

## Robin Wallace - Direct Examination by Mr. Sholar

1 containing 12 .22 caliber bullets and one spent .22 caliber  
2 shell casing. It was located in a green bag on -- green bag  
3 on dresser in the suspect's bedroom, is what the label says.

4 Q Is that the box that you seized that day?

5 A Yes, sir.

6 Q Okay.

7 MR. SHOLAR: Your Honor, the state would move to  
8 admit State's Exhibit 21 in evidence.

9 THE COURT: State's 21 is admitted.

10 MR. SHOLAR: The state would move to publish it to  
11 the jury.

12 THE COURT: Is she going to be going through some  
13 other evidence, as well? Can we do it all in one swoop?

14 MR. SHOLAR: Just that one exhibit.

15 THE COURT: Again, jurors, if you will examine this  
16 individually, carefully, and without comment, and then pass it  
17 to the next juror, please.

18 (STATE'S EXHIBIT 21 WAS PUBLISHED TO THE JURY.)

19 THE COURT: State's Exhibit 21 has been published to  
20 the jury.

21 MR. SHOLAR: May I approach to inspect that piece of  
22 evidence?

23 THE COURT: Yes, sir.

24 Q Officer Wallace, you said that's a Newport box with  
25 unspent rounds and spent rounds in it?



## Robin Wallace - Direct Examination by Mr. Sholar

- 1           A     One spent round, yes, sir.
- 2           Q     Will you cut that open, please. Cut open the bag.
- 3           A     Open it up?
- 4           Q     Mm-hmm.
- 5           A     (THE WITNESS COMPLIED WITH THE REQUEST.)
- 6           Q     Will you remove the contents of the bag?
- 7           A     (THE WITNESS COMPLIED WITH THE REQUEST.)
- 8           Q     Now, Officer Wallace, if you could, what is in front  
9 of you right now?
- 10          A     I'm sorry, sir?
- 11          Q     What do you have sitting in front of you right now?
- 12          A     Twelve rounds and one spent round.
- 13          Q     And the box?
- 14          A     And the Newport cigarette box.
- 15          Q     When you got there, you found them in the box?
- 16          A     Yes, sir.
- 17          Q     Now, while you were on scene, how many people -- who  
18 was there?
- 19          Q     Other than law enforcement?
- 20          A     Other than law enforcement, just Miss Ashley,  
21 Mr. Cox, the caller that got me to the call, and Miss Ashley's  
22 daughter.
- 23          Q     How did you come to find out that information about  
24 the daughter?
- 25          A     When I arrived on scene, the caller that led me to

## Robin Wallace - Direct Examination by Mr. Sholar

1 the address, she opened the front door and allowed law  
2 enforcement to enter the home. And as soon as she opened the  
3 door, a small female child, Adriana Murray, was standing in  
4 the living room. We told the caller to grab the little girl  
5 and remove her out of the home, immediately.

6 Q So now after you seized the evidence and everything,  
7 did you go back to the station?

8 A I did.

9 Q Okay. Did you have any conversation with  
10 Ms. Jackson, on the way? Did you transport her, first of all?

11 A She was transported, and I believe I was the one  
12 that did that, yes, sir.

13 Q Did you have any conversation?

14 A Not on the ride to the police station, no, sir.

15 Q Okay. Did you ask her any questions when you got to  
16 the police station?

17 A No, sir.

18 Q Did she say anything to you?

19 A Only at the jail.

20 Q Did you -- did you ask her any questions there?

21 A No, sir.

22 Q What did she say to you at the jail?

23 A At the jail, as she was waiting to be processed  
24 through the booking process of fingerprinting, photographing,  
25 all that, she stated that she never had a gun, and then she

## Robin Wallace - Cross-Examination by Mr. Wright

1 said, "not going down for no gun."

2 MR. SHOLAR: Nothing further, Your Honor.

3 THE COURT: If this box is getting in your way,  
4 Mr. Smith -- if we can -- just hand that to the bailiff so it  
5 will be out of the way. Set it over there, if you want.

6 Are you going first, Mr. Wright?

7 MR. WRIGHT: Yes.

8 CROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:

9 Q Officer Wallace, she also told you during this  
10 period of time that she didn't do anything wrong, that she was  
11 innocent. Do you recall her telling you that?

12 A Let me find that, sir.

13 Q It's the third paragraph from the bottom one, first  
14 page.

15 A Yes, sir, she did.

16 Q You told her you had a warrant for her arrest and  
17 she was involved a home invasion over the weekend, and she  
18 stated, hey, I didn't do anything. I did not do anything, and  
19 I'm innocent -- that she was innocent.

20 A Yes, sir.

21 Q And she also -- the admission she made was  
22 spontaneous when she was waiting to be processed. She said  
23 Hey, I never had a gun, or I'm not going down for a gun.

24 A Correct.

25 Q She basically told you that without any -- any

## Robin Wallace - Cross-Examination by Mr. Wright

1 questioning, or anything.

2 A Correct.

3 Q Was the -- were shell casings fingerprinted or  
4 DNAed?

5 A Once they're out of my custody and they went into  
6 the property management, I'm not sure what they did with it,  
7 sir.

8 Q You don't know if they were fingerprinted or DNAed  
9 to see whether the box, or anything --

10 A I do not know.

11 Q But my client was fingerprinted, Ms. Ashley Jackson,  
12 was fingerprinted as part of the process, photographed and  
13 fingerprinted?

14 A Correct.

15 Q So you all had her fingerprints on file and could  
16 easily match them. There was the ability to match anything  
17 with those.

18 A Could they have?

19 Q With those bullets, yes.

20 A Of course, they could have.

21 Q Okay. So -- oh, and the other thing is, the written  
22 consent to search that my client gave, do you have a copy of  
23 that?

24 A Not in my report supplement, but it may be in the  
25 master case file.

## Robin Wallace - Cross-Examination by Mr. Wright

1 Q And if your report is correct, when you separated  
2 them and you got her outside, alone, you asked her if she  
3 would give consent to search her bedroom, and isn't it true  
4 that Ashley Jackson told you, hey, you can search anything you  
5 wanted?

6 A Yes.

7 Q And provided you with a written statement to  
8 search --

9 A Correct, she did.

10 Q -- her bedroom. So she was cooperative, not  
11 evasive. She said, you can search anything you want.

12 A (WITNESS NODDED HEAD.)

13 Q And did you search in her vehicle, or anything else  
14 besides her bedroom?

15 A I did not search her vehicle. I don't have that  
16 down.

17 Q Okay. So she provided a written consent to search  
18 for her bedroom and her vehicle --

19 A Correct.

20 Q -- that was sitting in the driveway?

21 A Correct.

22 Q So you said you didn't search the vehicle?

23 A I don't recall searching the vehicle at all.

24 Q But she did give voluntary consent.

25 A Yes, sir.

## Robin Wallace - Cross-Examination by Mr. Smith

1           **MR. WRIGHT:** That's all I have.

2           **THE COURT:** Mr. Smith.

3           **CROSS-EXAMINATION BY MR. BRYON M. SMITH:**

4           **Q**     Ms. Royals, the home owner at 626, is the only one  
5 who was a smoker in that house, is that correct?

6           **A**     I don't know what she does, sir.

7           **Q**     Well, you don't know if Ashley was a smoker?

8           **A**     I didn't know Ashley until that day, so I don't know  
9 what she does.

10          **Q**     She was there for hours. Did she ask for a  
11 cigarette?

12          **A**     I don't smoke, and I don't offer cigarettes, and I  
13 don't let people smoke.

14          **Q**     Did she ask for a cigarette?

15          **A**     Not that I remember, offhand.

16          **Q**     Did Mr. Cox ask for a cigarette?

17          **A**     Not that I remember, offhand.

18          **Q**     But when you sent the little girl out front with  
19 Ms. Royals, she was outside, smoking a cigarette?

20          **A**     I don't know. I was inside the house, sir.

21          **Q**     Did you not have Ms. Royals take the young child  
22 outside?

23          **A**     Yes, I did, sir.

24          **Q**     And you didn't look out anymore, look outside?

25          **A**     I was busy inside.

## Robin Wallace - Cross-Examination by Mr. Smith

1 Q Did you see any ashtrays in the house?

2 A I don't recall.

3 Q Did you look for them?

4 A No.

5 MR. SMITH: That's all, Judge. Thank you.

6 THE COURT: Anything further of this officer?

7 MR. SHOLAR: Nothing further, Your Honor.

8 THE COURT: Okay. Thank you, officer. If you will  
9 put the items back into Exhibit 21. In fact, we have some  
10 tape. Can we seal it? Are you going to be using anything  
11 from these items with 21?

12 MR. SWEET: We ask those be put back by Officer  
13 Wallace.

14 THE WITNESS: Do you want me to sign where I opened  
15 it then?

16 THE COURT: Any objection if she seals this exhibit  
17 at the end of today's business? We'll seal it at that point,  
18 but leave it here on the desk, if you will, please.

19 (WITNESS EXCUSED FROM THE STAND.)

20 THE COURT: Next witness.

21 MR. SWEET: Your Honor, that's the state's showing.  
22 Thank you very much.

23 THE COURT: Okay.

24 THE COURT: Will you all approach again, for just a  
25 minute.

1 (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

2 THE COURT: All right. Ladies and gentlemen, there  
3 are a few procedural matters to be addressed at this stage,  
4 and I think by the time we've done that it will be time to go  
5 home, anyway. So I'm going to, from your perspective, go  
6 ahead and have an overnight recess.

7 So, members of the jury, you will now take an  
8 overnight recess. I'll have you return at 10:00 tomorrow  
9 morning. That's my own doing. I have a matter in Wayne  
10 County at 7:30 I have to attend to. We're going to take an  
11 overnight recess. I remind you again to observe the rules  
12 I've given you earlier, which boil down to don't talk about  
13 the case. Don't reach an opinion about the case. Just have a  
14 good evening but, in a slightly longer form, but not too long,  
15 I remind you to observe, during this recess, the rules I gave  
16 you earlier. Do not talk or communicate with each other about  
17 this case or allow anyone to talk about it in your presence.  
18 Do not talk to or have any contact with any of the parties,  
19 attorneys or witnesses. Do not conduct any investigation.

20 There have been a couple of addresses mentioned  
21 here. If they're near where you live, that's fine to drive on  
22 past them, but don't stop, don't look, don't pay particular  
23 attention to it.

24 Do not conduct any investigation, receive or attempt  
25 to receive any reports or information related to this case



1 from any source, including media, the Internet, social  
2 networking or any other means.

3 Most important, do not form or express an opinion  
4 about the case. Don't go home and talk about it around the  
5 table tonight, because whoever you talk to will undoubtedly  
6 want to voice an opinion, and that's improper. Just tell them  
7 you have been instructed by the Court not to talk about the  
8 case. You'll look forward to talking to them this weekend --  
9 or simply you were told not to talk about the case, but have a  
10 good evening and we'll see you back here tomorrow morning,  
11 back in the jury room at 10:00. Just leave your notebooks and  
12 your badges in your chair.

13 (THE JURY WAS EXCUSED FROM THE COURTROOM AT  
14 4:14 PM.)

15 THE COURT: The jury has left the courtroom. The  
16 state has rested. Are there any motions for the defendant?

17 MR. SMITH: I'll speak first for Mr. Cox. As to  
18 indictment one on 15 CRS 54 --

19 THE COURT: Do I have the file? I think I do. Let  
20 me make sure I'm looking with you on these things. Which file  
21 number?

22 MR. SMITH: It's 54673, Judge. Judge, in Count One  
23 of the indictment, it's very clear when Mr. Rodriguez drew  
24 this indictment up, at the time of the breaking and entering,  
25 the dwelling house was occupied by Angela Leisure and Daniel

1 McMinn.

2 **THE COURT:** I can't hear you very well. If you'll  
3 maybe start back at the top and say what you just said.

4 **MR. SMITH:** I'm going to make a split argument as to  
5 Count Number One. The indictment is very clear the home was  
6 occupied by Angela Leisure and Daniel McMinn. All of the  
7 state's evidence was Mr. McMinn was outside. Ms. Leisure may  
8 well have been inside. I think the state would counterargue,  
9 well, the indictment covered one or both. But the way they  
10 phrased it with the ampersand "and", that is a word of  
11 conjunction, Judge. They both had to be inside the home at  
12 the time. Ampersand is different than and/or. It requires  
13 both of the people to be in the home, and Mr. McMinn, clearly,  
14 was not. I would make that my motion as to Count Number One.

15 **THE COURT:** That's not the motion I expected, but go  
16 ahead. I'll hear arguments, I guess.

17 **MR. SMITH:** As to Count Two, conspiracy, the only  
18 witness that we've had, at this point in the state's evidence,  
19 to make any representation or allusion of conspiracy is  
20 Mr. Linn. He flatly denied a conspiracy occurred. I would  
21 make a motion to dismiss that charge, Judge.

22 Judge, I'll have no argument as to Count Number  
23 Three.

24 On 54674, Count Number One, as to Mr. McMinn, Judge,  
25 in the light most favorable to the state, it's possible the

1 state -- I'll have no argument on Number One.

2 **THE COURT:** Which is One, the assault with a deadly  
3 weapon?

4 **MR. SMITH:** As to Mr. McMinn, Judge.

5 **THE COURT:** I'm having a hard time finding the  
6 indictment in here.

7 **MR. SWEET:** I can approach with copies, if you would  
8 like, Judge.

9 **THE COURT:** So you're not arguing the assault with a  
10 deadly weapon?

11 **MR. SMITH:** No, Judge. As to Line Two, I don't  
12 think there's any evidence to support that, and I will make a  
13 general motion. As to Line Three, I don't think there's any  
14 evidence to support that allegation. I'll make just a general  
15 argument.

16 **THE COURT:** Okay. Does the state wish to be heard?

17 **MR. SWEET:** Yes, sir. We just ask that you deny the  
18 defendant's, Mr. Cox's, motion in regards to the first-degree  
19 burglary, in that the house -- obviously, the goal in the  
20 indictment is to allege all the necessary elements, and Angela  
21 Leisure or Daniel McMinn or one of them would be sufficient  
22 enough for the state to go forward, if either one of them  
23 actually occupied. That's, obviously, the purpose of an  
24 indictment. Adding "and" in there doesn't make the state  
25 prove that both were occupying, in order to meet its elements,

1 the elements of the crime.

2 This indictment puts the defendant, Mr. Cox, on  
3 notice of what the state's position was and what our evidence  
4 was. Obviously, if they, after reading the report, wanted us  
5 to mince that further, they could have filed a bill of  
6 particulars, if they were confused on who was in the house and  
7 who wasn't. Although, I would say that Mr. McMinn returning  
8 home with Angela Leisure in order to spend the evening there,  
9 which has been the evidence, he was outside of the home in the  
10 immediate curtilage and, by for all intents and purposes,  
11 certainly in the light most favorable to the state and what's  
12 been put on the record, he was intending on going inside. So  
13 it was actually occupied and, of course, Angela Leisure was  
14 already in there.

15 Part Two, in terms of the conspiracy to commit  
16 robbery with a dangerous weapon, obviously, if the state were  
17 required to put on the exact thoughts or statements by either  
18 one of these defendants in order to prove a conspiracy, then  
19 we would be in trouble, but that's not the law and that's not  
20 what the state has to prove. It's common sense and rational  
21 inferences and, certainly, in the light most favorable to the  
22 state, at this point in time, when two individuals show up, as  
23 the evidence has shown, to Mr. Linn's house, telling him to  
24 get in the car, demand their money, one of them has a firearm,  
25 he goes to someone else's house with Ashley Jackson and they

1 go right into someone's house, without stopping to think or  
2 talk to each other, that this was something that they had  
3 developed beforehand, that they were going to go get their  
4 money. So the idea that this is not a conspiracy certainly,  
5 in the light most favorable to the state, we would contend is  
6 not the case. Thank you.

7 **THE COURT:** I'll go ahead and hear from you too,  
8 Mr. Wright.

9 **MR. WRIGHT:** I'll be brief. With regard to 15 CRS  
10 54665, Ashley D. Jackson, Judge, the first count is the  
11 conspiracy charge, and I specifically asked Mr. Linn was there  
12 ever any type of an agreement entered into; clearly, any  
13 agreement to commit any type of larceny or felony or anything,  
14 and that the parties intended that the agreement be carried  
15 out. Those are the three elements of conspiracy, Judge.

16 In taking the case in the light most favorable to  
17 the state -- I'm reading from the pattern jury instructions --  
18 taken in the light most favorable to the state, number one,  
19 there's no evidence that an agreement was entered into.  
20 Number two, the agreement was committed; that is, to commit  
21 any felony or larceny, or anything of that nature. That  
22 hasn't been proven. And number three, that the defendant --  
23 defendants intended for the agreement to be carried out.  
24 Clearly, Mr. Linn knew nothing about it. There's been no  
25 evidence that the other two conspired, and so we think that,

1 even taking evidence in the light most favorable to the state,  
2 that that charge fails.

3 Judge, one other thing, State v. Cook, which I  
4 found, a 1955 case, it basically says that -- and this will go  
5 to my second count of the burglary, first-degree burglary  
6 charge, that if entry was made for some nonfelonious  
7 purpose -- and we would submit, in this case, entry was made  
8 to retrieve money that already belonged to you, and it's, at  
9 best, an assault, there were no felonies that were enunciated  
10 or came out in evidence. Cook stands for the proposition that  
11 if your entry was for some nonfelonious purpose, then that  
12 second charge of first-degree burglary cannot stand. We also  
13 agree with the argument of Attorney Smith.

14 **THE COURT:** The ampersand argument.

15 **MR. WRIGHT:** And is conjunctive -- or is  
16 disjunctive. So we would submit that you have to take your  
17 indictment in the four corners that you find it. And so we  
18 would make the same argument, for that reason. And for the  
19 assault charge, Judge, we have no argument on that. We think  
20 the evidence -- there is some evidence, taken in the light  
21 most favorable to the state, that there was, in fact, an  
22 altercation in the case but, with regard to the first and  
23 second ones, Judge, we stated our grounds.

24 **THE COURT:** Okay. Does the state want to be heard,  
25 or the same arguments?

1           **MR. SWEET:** Judge, obviously, slightly different on  
2 the second issue. Just for the record, we would contend that  
3 the felony larceny after breaking and entering that was  
4 attempted and, of course, the larger issue of conspiracy to  
5 commit robbery with a dangerous weapon, that the idea they  
6 went there to take the money is a sufficient felony.  
7 Certainly, at this point, in the light most favorable to the  
8 state, to constitute the underlying felony for the first-  
9 degree burglary, obviously, they -- I would contend that,  
10 after a long search last night, looking through some cases all  
11 over the country, frankly, this notion that they're going  
12 there to get their money and that's not a felony is not  
13 correct.

14           So I don't know -- it's just not how the law is.  
15 You can't break into someone's home and barge in there with a  
16 firearm and demand \$20 because you think you're owed it  
17 because you gave it to a third party. There are all kinds of  
18 problems with that. We contend that's not the law. It  
19 doesn't negate the idea this is a robbery. Obviously, we're  
20 going to argue to the jury, if the Court allows us to proceed  
21 on this but, certainly, in the light most favorable to us,  
22 Judge, we contend that's not the case. We agree with State  
23 versus Cook, but it just doesn't apply here. Thank you,  
24 Judge.

25           **THE COURT:** All right. As to each motion by each

1 defendant, looking at each of those motions and considering  
2 them carefully -- and they're well argued -- but looking at it  
3 in the light most favorable to the state, those motions are  
4 denied. Thank you. Respectfully.

5 So we'll come back tomorrow at 10:00.

6 **MR. WRIGHT:** That would be fine.

7 **THE COURT:** You're not committed to it, but can you  
8 give me a hint? Should I expect more evidence in the morning?

9 **MR. SMITH:** About 30 from Mr. Woolfolk and about 10  
10 from Officer Martin.

11 **MR. WRIGHT:** We -- at this time, we're not decided.

12 **THE COURT:** That's fine. I'm not holding you to it.

13 As you stated, Mr. Smith, I think the jury instructions are  
14 going to be kind of a bear, assuming we get to the jury, so  
15 I'm trying to think ahead a little bit. Anything in  
16 particular on that, that you would like me to think about?

17 **MR. SWEET:** Judge, from the state --

18 **THE COURT:** I'm not holding anybody to it, either,  
19 but I'll try and figure out how to put it together. They've  
20 each got a fairly long litany of charges, to begin with.

21 **MR. SWEET:** Judge, I would certainly ask, ahead of  
22 time, just for time purposes tomorrow, that the Court consider  
23 the acting in concert instruction, the standard pattern jury  
24 instruction for acting in concert, as well as intent, the  
25 pattern jury instruction for that. I think those are two



1 important ones. Obviously, we would -- I may speak further  
2 with cocounsel and some of the officers and see if we can  
3 narrow the amount of charges that we go forward with on some  
4 of these misdemeanors. I'm not making any statements on the  
5 record, officially. That's the state's intention, at this  
6 point, but I'm going to look into that, and it may move things  
7 along, in regard to the jury, on that, too.

8           **THE COURT:** I guess we'll probably have -- gosh, I  
9 don't know. We'll just have to see. We'll finish, and you're  
10 not held to this, but maybe finish the presentation of  
11 evidence by lunch, anyway. We might have to let them go to  
12 get the instructions hammered out and come back Friday.

13           **MR. WRIGHT:** It is going to be a beast.

14           **THE COURT:** What did you say, Mr. Wright?

15           **MR. WRIGHT:** Judge, it is going to be difficult,  
16 because we intend to contest the acting in concert  
17 instruction, so we're going to have some -- probably a brief,  
18 or something, in support of our position.

19           **THE COURT:** I guess I better get working on it then.

20           **MR. WRIGHT:** Yes, sir.

21           **THE COURT:** Anything else before tomorrow?

22           **MR. SWEET:** No, sir.

23           **MR. WRIGHT:** No.

24           **THE COURT:** Thank you.

25                           **(THE EVENING RECESS WAS TAKEN AT 4:30 PM.)**

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\* \* \* \* \*

STATE OF NORTH CAROLINA	)	ONSLow COUNTY
	)	
VS.	)	
	)	
JAMES A. COX	)	15 CRS 54673
and	)	
ASHLEY DEAN JACKSON	)	15 CRS 54665

\* \* \* \* \*

TRANSCRIPT, Volume III of V  
January 11, 2018

\* \* \* \* \*

January 8, 2018, Criminal Session

The Honorable William W. Bland, Judge Presiding

Jury trial

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1 (COURT RESUMED SESSION ON 01/11/18 AT 10:16 AM,  
2 WITH THE DEFENDANTS AND THEIR ATTORNEYS  
3 PRESENT, THE PROSECUTORS PRESENT, THE JURY  
4 ABSENT.)

5 THE COURT: Good morning.

6 MR. WRIGHT: Good morning Judge.

7 MR. SWEET: Good morning.

8 THE COURT: Sorry to hold you up a little bit.

9 MR. SWEET: No problem.

10 THE COURT: Are all of the jurors here?

11 THE BAILIFF: Yes, sir.

12 THE COURT: Anything we need to address, before we  
13 get started?

14 MR. SWEET: Not from the state, at this point,  
15 Judge.

16 MR. WRIGHT: Not from the defendant Jackson.

17 MR. SMITH: Not from Mr. Cox.

18 THE COURT: Mr. Wright, will there be any evidence  
19 on behalf of Ms. Jackson?

20 MR. WRIGHT: No, Your Honor.

21 THE COURT: Mr. Smith?

22 MR. SMITH: Yes, sir, there will.

23 THE COURT: All right. Let's bring the jury in.  
24 You have about two witnesses to call?

25 MR. WRIGHT: Judge, since there will be no evidence,

1 if you'll give me the opportunity to renew my motion, just on  
2 the record.

3 **THE COURT:** Yes. You mean now, or later?

4 **MR. WRIGHT:** Whatever the Court wants. I just want  
5 to get a chance to renew my motion.

6 **THE COURT:** Certainly, at the close of all evidence.

7 **MR. WRIGHT:** I just want to make sure.

8 **THE COURT:** Yeah.

9 **MR. WRIGHT:** Since I'm not presenting any evidence,  
10 I would renew my motions.

11 **THE COURT:** Yes, yes.

12 **MR. WRIGHT:** Judge, you can deny for the same  
13 reason.

14 **THE COURT:** On the record, I'll just say, thank you.

15 (THE JURY RETURNED TO THE COURTROOM AT 10:18  
16 AM.)

17 **THE COURT:** Good morning, ladies and gentlemen. All  
18 right, the state has presented its evidence.

19 Will there be any evidence on behalf of Mr. Cox,  
20 Mr. Smith?

21 **MR. SMITH:** Yes, Your Honor, there will be.

22 **THE COURT:** Call your first witness.

23 **MR. SMITH:** Judge, I call Detective Kourtney Martin  
24 of the Jacksonville Police Department.

25

**Kourtney Martin - Direct Examination by Mr. Smith**

1

**KOURTNEY MARTIN,**

2

having been called as a witness for Defendant Cox

3

at 10:19 a.m., was sworn and testified as follows during

4

**DIRECT EXAMINATION BY MR. BRYON M. SMITH:**

5

**Q** Ma'am, good morning.

6

**A** Hello.

7

**Q** Please state your name.

8

**A** Kourtney Martin.

9

**Q** Ms. Martin, you're a member of the Jacksonville

10

Police Department?

11

**A** Yes.

12

**Q** For how many years?

13

**A** Six.

14

**Q** Were you on duty on the 8th of August, 2015?

15

**A** Yes.

16

**Q** Did your work include the overnight shift on

17

August 9, 2015?

18

**A** Yes.

19

**Q** Were you a member of the uniformed division or

20

detective division?

21

**A** Uniformed.

22

**Q** Did you respond to an address in Brynn Marr?

23

**A** Yes.

24

**Q** What's the address, ma'am?

25

**A** 128 Silver Leaf Drive.

**Kourtney Martin - Direct Examination by Mr. Smith**

1           **Q**     Do you have a two-page report in front of you that I  
2 just called -- my definition -- case supplement report. Do  
3 you have a copy of that?

4           **A**     Mine is three.

5           **Q**     Okay.

6           **A**     So no.

7           **Q**     Say that again.

8           **A**     Mine is three pages, so no.

9           **MR. SMITH:** May I approach the witness, just to  
10 confirm?

11          **THE COURT:** Yes.

12          **Q**     May I see your three-page report, ma'am?

13          **A**     (THE WITNESS INDICATED.)

14          **Q**     May I see the second and third page?

15          **A**     (THE WITNESS INDICATED.)

16          **MR. SMITH:** Just one second, please, Judge. May I  
17 confer with the D.A. for just a second?

18          **THE COURT:** Yes.

19                   **(THE PROSECUTOR AND THE DEFENDANT'S ATTORNEY**  
20                   **CONFERRED.)**

21          **MR. SMITH:** Sorry for the holdup, Judge.

22          **Q**     Officer Martin, may I retrieve your third page?

23          Apparently no one here has your third page.

24          **A**     I won't be able to tell you about it, but you can  
25 hold it.



## Kourtney Martin - Direct Examination by Mr. Smith

1                   (THE PROSECUTOR AND THE DEFENDANT'S ATTORNEY  
2                   CONFERRED.)

3                   MR. SMITH: May I re-approach the witness, Judge? I  
4 think we have this sorted out.

5                   THE COURT: Yes.

6                   Q     Thank you, ma'am. At the Silver Leaf address that  
7 evening and that morning, did you interview Mr. McMinn?

8                   A     I spoke to him. I did not interview him.

9                   MR. WRIGHT: I'm sorry, ma'am, I can't hear you.

10                  THE WITNESS: I spoke to him briefly.

11                  Q     Did he tell you a firearm was used?

12                  A     He did not.

13                  Q     His version of the events was that he shut the door  
14 and the door was kicked in and then the three alleged  
15 perpetrators came in. Is that the way he phrased it?

16                  A     That's what I understood.

17                  Q     As part of your investigation that night, you  
18 obtained an address for Richard Linn, a white male, date of  
19 birth 4/20/83?

20                  A     Yes.

21                  Q     And you also recovered an address of 425 Thomas  
22 Drive?

23                  A     Yes.

24                  Q     I'm not here just to jump on JPD reports but, as a  
25 result of that, did you go to 421 Thomas Drive?

## Kourtney Martin - Direct Examination by Mr. Smith

1           A     That's what my report says, yes.

2           Q     421 Thomas Drive, there's an old couple named Newman  
3 that live there, in their late 70s, right? One of them drives  
4 a Mini Cooper.

5           A     Is that a question?

6           Q     There's an elderly couple, the Newmans, at 421, that  
7 drive a Mini Cooper.

8           A     Okay.

9           Q     But your information was that Mr. Linn lived at 425,  
10 but you went to 421.

11          A     Okay.

12          Q     Is that an accurate statement, you went to a  
13 different address, two doors down?

14          A     That's what my report says, yes. I drove by it. I  
15 did not go to that address and knock on the door.

16          Q     Does your report indicate the lights were off in the  
17 home?

18          A     Yes.

19          Q     Two vehicles in the driveway, one of them being a  
20 Mini Cooper. Does it reflect that?

21          A     Yes.

22          Q     Did you take a moment to run the plates on the Mini  
23 Cooper?

24          A     I don't recall.

25          Q     Would you have put it in the report, if you had run

**Kourtney Martin - Cross-Examination by Mr. Wright**

1 the plates?

2 A Maybe.

3 Q Was it your intention to see if Mr. Linn was there?

4 A Yes.

5 Q But you didn't go to the house that you had  
6 information he lived at. You went to one two doors down.

7 A That's what my report says, yes.

8 MR. SMITH: Thank you, Officer Martin.

9 THE COURT: Cross-examination?

10 MR. SHOLAR: No, Your Honor.

11 THE COURT: Mr. Wright?

12 MR. WRIGHT: Yes.

13 **CROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

14 Q Officer Martin, when you made this report, was it on  
15 8/9/15, or shortly after the incident occurred?

16 A Yes, sir. I wrote the report on the 9th of August,  
17 2015.

18 Q So the next day?

19 A Correct.

20 Q Within 24 hours?

21 A I wrote it the following morning. This happened at  
22 10 minutes before midnight, so it would be --

23 Q Within 24 hours.

24 A Correct.

25 Q And so things were fresh on your mind, at the time?

## Kourtney Martin - Cross-Examination by Mr. Wright

1           A     Correct.

2           Q     Now, Mr. McMinn told you that -- he said they came  
3 to the door and asked if he knew Angel. Do you remember --

4           A     Yes.

5           Q     Do you remember him saying that? And then  
6 Mr. McMinn told you -- at that moment in time, he stated he  
7 shut the door, attempting to keep them outside.

8           A     Mm-hmm.

9           Q     He told you that.

10          A     That's what I understood, yes.

11          Q     Okay. And then Mr. McMinn further tells you that  
12 the subjects then kicked the front door.

13          A     Mm-hmm.

14          Q     Kicked in the front door. I'm sorry.

15          A     Mm-hmm.

16          Q     Is that what -- if you could say, "yes," for the  
17 record, please.

18          A     Yes.

19                **THE COURT:** Ask her a question to which she can  
20 respond?

21                **MR. WRIGHT:** Well, mm-hmm, Judge. I'm trying to get  
22 her to say, "yes."

23                **THE COURT:** Ask the question. She can say, "yes" or  
24 "no" and then explain.

25          Q     Did Daniel McMinn tell you, subjects then kicked in

## Kourtney Martin - Cross-Examination by Mr. Wright

1 the front door?

2 A That's what I understood.

3 Q Then he stated, the subjects then entered the home.

4 A That's what I understood.

5 Q Was that the sequence that you understood?

6 A You have to keep in mind, I got there six minutes  
7 after the call came in. So I was the first non-supervisor,  
8 the first responding officer at the scene. So when I get  
9 there, it's really chaotic. Our first concern is making sure  
10 that the people who have invaded this home aren't there  
11 anymore and that it's safe. And then my next concern is  
12 making sure that the victims are okay, and in this case we had  
13 someone that had been assaulted, so that's our next concern.  
14 I was not the original reporting officer. That's the person  
15 who takes most of the information and does the full  
16 conversations. I also was not the investigator at that time.  
17 Like they said, I was a uniformed patrol officer. So what I'm  
18 doing is, I'm getting bits and pieces of information from  
19 Richard Linn. And I also spoke to Angela, as well. So that  
20 is what I understood from the bits and pieces happened.

21 Q Right. But your bits and pieces were accurate,  
22 though. That's all I'm trying to get at.

23 A When I wrote this report, yes, that's what I  
24 believed happened, based on what he told me.

25 Q Okay.

**Kourtney Martin - Redirect Examination by Mr. Smith**

1           **MR. WRIGHT:** That's all I have.

2           **THE COURT:** Anything further, Mr. Smith?

3           **REDIRECT EXAMINATION BY MR. BRYON M. SMITH:**

4           **Q**     You were trying to help Ms. Leisure in this  
5 situation. You called her the victim. Was the victim being  
6 forthcoming with you?

7           **MR. SHOLAR:** Objection. Speculation.

8           **THE WITNESS:** I don't know.

9           **THE COURT:** As to her impression, that's fine, you  
10 can ask that. As to what your impression was at the time.

11          **THE WITNESS:** I don't know.

12          **Q**     Did she tell you she had been involved in the drug  
13 trade?

14          **A**     No.

15          **Q**     Did you ask that question?

16          **A**     Yes.

17          **Q**     So she gave you no response?

18          **A**     She responded.

19          **Q**     How?

20          **A**     I know I asked her. That's why I want to tell you  
21 exactly what she said.

22          **Q**     Did she tell you that -- if I'm reading your report  
23 right, you put in quotation marks, "Might have Mr. Linn's  
24 phone number."

25          **A**     Do you want me to answer the last question or this

**Kourtney Martin - Cross-Examination by Mr. Sholar**

1 one?

2 Q I'm sorry. I'll give you an opportunity to answer.

3 A Angela Leisure told me that the incident was not  
4 drug related.

5 Q So were you here present earlier in the week when  
6 she said this was, in fact, drug related?

7 A No.

8 Q So the person you're trying to help has now  
9 testified that she was not giving you correct information, is  
10 that correct?

11 MR. SHOLAR: Objection, leading, Your Honor.

12 THE COURT: Sustained.

13 Q She told you she might have Mr. Linn's number?

14 A Yes.

15 Q And she subsequently located that and gave you his  
16 number?

17 A Yes.

18 Q Thank you, Detective Martin.

19 MR. SMITH: That's all, Judge.

20 THE COURT: Anything further?

21 MR. SHOLAR: From the state, Your Honor.

22 **CROSS-EXAMINATION BY RICHARD S. SHOLAR:**

23 Q Now, Detective Martin, you said you took a report  
24 that night.

25 A Yes.

## Kourtney Martin - Cross-Examination by Mr. Sholar

1           Q     I believe it's been referred to by Mr. Smith  
2 multiple times.

3           A     Yes.

4           **MR. SHOLAR:** Your Honor, may I approach?

5           **THE COURT:** Yes.

6           Q     Detective Martin, do you have your report with you  
7 today?

8           A     Yes, I do.

9           Q     And you said that you spoke with Mr. McMinn, is that  
10 correct?

11          A     Yes, I did.

12          Q     Okay. And you said this was how long after the  
13 incident?

14          A     I arrived six minutes after they called 911.

15          Q     You said after they called 911. So when they called  
16 911, the incident had occurred before that?

17          A     They said two minutes, so within 10 minutes of it  
18 happening.

19          Q     So close in time thereafter?

20          A     Correct.

21          Q     When you arrived, who did you speak with first?

22          A     I spoke to -- I made contact with both victims at  
23 the front door of the residence, so I don't recall.

24          Q     Who was the person you had a longer conversation  
25 with? Was it Mr. McMinn?



## Kourtney Martin - Cross-Examination by Mr. Sholar

1           A     Yes.

2           Q     When you spoke to Mr. McMinn, what was his demeanor  
3 like?

4           A     I don't recall, exactly. Consistent with the  
5 victim. A home invasion.

6           Q     When you spoke with him, you said you asked for a  
7 summary.

8           A     Yes.

9           Q     Okay. And then you took down what he said to you in  
10 your report, is that correct?

11          A     Correct.

12          Q     And now what, exactly, did he tell you happened when  
13 the subjects kicked in the front door? What exactly did he  
14 tell you, from your report?

15          A     He was shutting the door.

16          Q     What does your summary say that he said, exactly,  
17 from your report?

18          A     He stated he shut the door, attempting to keep them  
19 outside.

20          Q     What did he say next?

21          A     The subjects then kicked in the front door.

22          Q     If you'll continue through that paragraph.

23          A     The lower right panel to the door had been kicked  
24 in, mostly out of the frame, consistent with the statement.  
25 There were wood chips from the wooden door breaking, scattered

**Kourtney Martin - Recross-Examination by Mr. Wright**

1 on the floor in front of the front door. He stated subjects  
2 entered the home.

3 Q So you're saying he didn't say the subjects then  
4 entered the home?

5 A Correct.

6 MR. SHOLAR: Nothing further, Your Honor.

7 THE COURT: Mr. Wright?

8 RE CROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:

9 Q Are you saying he said the subjects entered the door  
10 before he closed the door?

11 A He stated he shut the door.

12 Q And that they kicked the door in?

13 A Correct.

14 Q And then, at some point, entered?

15 A Correct.

16 MR. WRIGHT: No further questions. Thank you.

17 MR. SMITH: No further questions. Thank you, Judge.

18 THE COURT: Thank you. Officer, you can step down.

19 THE WITNESS: Thank you.

20 (WITNESS EXCUSED FROM THE STAND.)

21 THE COURT: Call your next witness, Mr. Smith.

22 MR. SMITH: I would like to call Officer Woolfolk  
23 from the Jacksonville Police Department.

24

25

## William Woolfolk - Direct Examination by Mr. Smith

1

WILLIAM WOOLFOLK,

2

having been called as a witness for the Defendant

3

at 10:36 a.m., was sworn and testified as follows during

4

DIRECT EXAMINATION BY MR. BRYON M. SMITH:

5

Q Sir, good morning to you. State your name for the

6

record.

7

A William Woolfolk.

8

Q You're employed by Jacksonville Police Department?

9

A Yes, sir.

10

Q How many years, sir?

11

A Thirteen years.

12

Q You're currently a member of the CSI team -- what do

13

you call your team. I shouldn't lead you.

14

A Crime scene investigations. It's part of the

15

investigations office, detectives.

16

Q Did you have occasion to come to 128 Silver Leaf

17

Drive, in Brynn Marr, to investigate this?

18

A Yes, I did.

19

Q Were you requested to come out by Detective Parker?

20

A Yes, sir.

21

Q Since I don't know what -- I'm sorry, do you have a

22

copy of your case supplement report with you, sir?

23

A Yes, sir.

24

Q It's obvious our page numbers are off. I'm just

25

going to ask you about the first page of your report.

## William Woolfolk - Direct Examination by Mr. Smith

1           A     Sure.

2           Q     I'm going to ask you to refer to Paragraph Number 5.

3           A     Yes, sir.

4           Q     You began your investigation by describing the home,  
5 is that correct?

6           A     Yes, sir.

7           Q     In the fourth line, you say the alleged bullet made  
8 entry. Is that your language?

9           A     I'm trying to find it. I apologize I'm just trying  
10 to find that line. Yes, sir. I see it. I see it, yes. The  
11 alleged bullet made after it was fired.

12          Q     You never found a projectile of any type.

13          A     That's correct.

14          Q     You searched the sofa, you searched the wall, you  
15 searched the ceiling.

16          A     Yes, sir. We went to great lengths. We even had  
17 the homeowner assist us in turning over furniture. We took  
18 pictures off the walls, just to see if this bullet had  
19 impacted anything else.

20          Q     Did it come to the point where you started taking  
21 the sofa and loveseat apart?

22          A     Yes, sir. What appeared to be -- the reason why I  
23 said alleged is because we didn't find a projectile but, from  
24 the front door, you could see the path of what appeared to be  
25 a small caliber projectile through the door, that went through

## William Woolfolk - Cross-Examination by Mr. Sholar

1 sort of a wall partition, a mirror thing, and then it skimmed  
2 off the wall. A couch was resting against it, and we looked  
3 at the couch and we could see what appeared to be an impact  
4 point, however small, on the top side of the couch. So we  
5 started from there, really.

6 Q Even after that, negative results, no projectile was  
7 found?

8 A Correct. We opened up -- with the homeowner's  
9 permission, I cut open the couch a little bit to see if this  
10 projectile had landed underneath the fabric covering. We  
11 turned it over, shook it, maybe to hear a projectile  
12 rattling around. We were unsuccessful.

13 Q Based on the technology and information you had,  
14 there was no way for you to tell where the firearm had been  
15 discharged, whether it was weeks before, months before, the  
16 night before?

17 A Correct.

18 Q Mr. Woolfolk, thank you.

19 MR. SMITH: That's all I have.

20 THE COURT: Yes, sir.

21 **CROSS-EXAMINATION BY MR. RICHARD S. SHOLAR:**

22 Q CSI Woolfolk, you said you've been a police officer  
23 13 years. How long have you been a CSI?

24 A Over six years.

25 Q And in that time, how many scenes have you

## William Woolfolk - Cross-Examination by Mr. Sholar

1 investigated?

2 A Directly or indirectly, over 100.

3 Q Okay. And during this time as a CSI, you've seen  
4 bullet holes, is that correct?

5 A (WITNESS NODDED HEAD.)

6 Q I notice you said, when Mr. Smith asked you, it  
7 appeared to be a small caliber, is that correct?

8 A That's what it appeared to be, yes, sir.

9 Q And when you got on scene, you said the first hole  
10 was in the front door, right?

11 A That's what it appeared to be, yes, sir.

12 Q Okay. When you walked through the house, you saw  
13 other holes, is that correct?

14 A Yes, sir.

15 Q What else did it hit?

16 A Well, after it went through the front door -- I  
17 believe it was a lower panel -- the next point of impact,  
18 again, based on my training, was -- I don't know how I  
19 described it, but it was like a mirror partition. I believe  
20 it was sort of hinged. It struck that.

21 Q Okay. And after that, was there a backside to that  
22 mirror?

23 A Right. Whatever struck it -- and, again, by  
24 looking -- just looking at the hole, it looked like it went  
25 through that mirrored wall or partition.

## William Woolfolk - Cross-Examination by Mr. Sholar

1 Q Then there was a wall past that, right?

2 A Right.

3 Q Was that still in the same trajectory?

4 A Just off to the side. And, again, I'm not a  
5 ballistics person but, if you're familiar with firearms, once  
6 a bullet is fired, once it strikes something, whether it's a  
7 wall, piece of wood, bone, it's going to -- it could go off in  
8 a myriad of directions. What assisted me in sort of seeing  
9 what was going on is that the evening prior, an evidence  
10 technician had taken some photographs and they had left -- we  
11 call them scales, but little pieces of adhesive with basically  
12 ruler markings against items of interest, like where he was,  
13 following whatever had been pushed through the door, and then  
14 went through the mirrored thing, then it struck the wall, off  
15 to the -- sort basically behind the mirror, but it would be to  
16 the left.

17 Q Then there's the sofa, and that's directly after  
18 that, right?

19 A Yep.

20 Q Okay. So you said it's a small caliber, to start  
21 with. So it's a small projectile, in the first place.

22 A It appears to be a small caliber, based on just the  
23 hole, the first hole through the door.

24 Q Now, when -- when this projectile -- what appears to  
25 be a projectile -- hits multiple objects, does the whole

## William Woolfolk - Redirect Examination by Mr. Smith

1 projectile make it through these objects, or --

2       A     It sort of depends. Again, it depends on how big  
3 the round is, how much gunpowder was in the primer to force  
4 it, you know, how much speed it was carrying and, when it  
5 strikes successive surfaces, it -- most bullets will tend to  
6 flatten out a little bit.

7       Q     The sofa would be the fourth object that it hit?

8       A     Yes, sir.

9       Q     This is a sofa. It has padding in it, correct?

10      A     Yes, sir.

11      Q     Okay. Now, during your training and experience over  
12 those six years of CSI is it uncommon to not find a projectile  
13 when finding projectile holes?

14      A     It is not uncommon. There have been more -- this  
15 isn't the only time this has happened where we've searched  
16 high and low. We know a projectile did whatever it did but we  
17 couldn't find, you know, the end point.

18      Q     Thank you, Officer Woolfolk.

19            **MR. SHOLAR:** Nothing further, Your Honor.

20            **REDIRECT EXAMINATION BY MR. BRYON M. SMITH:**

21      Q     Mr. Woolfolk, you weren't in a position to make a  
22 calculation as to a caliber, based on what you saw, a caliber  
23 like a 40, 380, you weren't in position to make that.

24      A     It appeared to me to be a small caliber, just by the  
25 initial impact hole.



**James Cox - Direct Examination by Mr. Smith**

1           **Q**     So it could have been a 40, could have been a nine  
2 millimeter could have been a 380?

3           **A**     It could be.

4           **Q**     Thank you, Mr. Woolfolk.

5           **MR. SMITH:** That's all.

6           **THE COURT:** Anything further for this witness?

7           **MR. SHOLAR:** No, Your Honor.

8           **THE COURT:** Thank you.

9                         **(WITNESS EXCUSED FROM THE STAND.)**

10          **MR. WRIGHT:** Judge, I don't have any questions.

11          **THE COURT:** Thank you.

12          **MR. SMITH:** Mr. Woolfolk is here pursuant to my  
13 subpoena. I don't mind if he's released.

14          **MR. SWEET:** He's on our subpoena, too.

15          **THE COURT:** You're each going back to the  
16 department, right?

17          **THE WITNESS:** Yes, sir.

18          **THE COURT:** Any further evidence?

19          **MR. SMITH:** I'll call Mr. Cox.

20                                 **JAMES COX,**

21 having been called as a witness for Defendant Cox

22 at 10:45 a.m., was sworn and testified as follows during

23 **DIRECT EXAMINATION BY MR. BRYON M. SMITH:**

24           **Q**     Good morning, sir. Please state your name for the  
25 record so Madam Court Reporter can record it.

## James Cox - Direct Examination by Mr. Smith

- 1           A     James Arnold Cox, Jr.
- 2           Q     Mr. Cox, you don't have gum in your mouth, do you?
- 3           A     No, I don't.
- 4           Q     How old are you, sir?
- 5           A     I am 24.
- 6           Q     Do you live in Jacksonville?
- 7           A     Yes, sir. I was born and raised in Jacksonville.
- 8           Q     Where do you live, presently?
- 9           A     I presently live at 517 Birchwood Court.
- 10          Q     Is that with your mother and father?
- 11          A     Yes, sir.
- 12          Q     Did you go to school, Onslow County Schools?
- 13          A     Yes, sir. I graduated from Northside High School.
- 14          Q     What year?
- 15          A     2011.
- 16          Q     Where are you working now?
- 17          A     I'm currently working with a carpet cleaning
- 18     service. Whenever I get a call out, they call me and I go and
- 19     meet up wherever he tells me, whatever location, and we'll go
- 20     and clean carpets or clean windows or clean -- wax the floors
- 21     of certain businesses in the area, in the surrounding area of
- 22     Jacksonville.
- 23          Q     Where have you worked since graduation?
- 24          A     Since graduation -- I actually went to college after
- 25     I graduated high school. I was going to Liberty University

## James Cox - Direct Examination by Mr. Smith

1 online, and I attended a discipleship program in Raleigh.  
2 It's called True Culture Raleigh. And while attending that  
3 discipleship program, I actually worked with a company called  
4 Levee, and we went to different places around the country and,  
5 you know, worked with the super bowl, worked with the PGA golf  
6 championship tournament, and even attended a conference in  
7 Missouri where Barack Obama was actually at.

8 Q Have you ever had other jobs in Jacksonville?

9 A In Jacksonville?

10 Q During this time.

11 A After that first year in Raleigh, I came back after  
12 the discipleship program was over with, and I have had some  
13 other jobs here. I worked with the Courtyard Marriott as a  
14 houseman and, after doing that job, I went to try to apply at  
15 Alorica and a lawn care business. I got hired at Alorica, and  
16 they said --

17 Q Don't say what they said. Did they do urine  
18 screenings and drug tests?

19 A Yes, sir.

20 Q Did you pass all of those?

21 A Yes, I did.

22 Q How about your background check?

23 A Yes. I did not pass the background check.

24 Q Because of these charges you're facing today?

25 A Yes, sir.

## James Cox - Direct Examination by Mr. Smith

1 Q On the 8th of August, 2015, were you in a  
2 relationship with the codefendant, Ashley Jackson?

3 A Yes, sir, I was.

4 Q You and she don't have any children, is that a fair  
5 statement, you don't have any kids with her?

6 A Correct. I don't have any kids with her.

7 Q She has some other children.

8 A Yes, sir.

9 Q Did y'all live together at the address that Robin  
10 Wallace alleged, 626 South Hampton?

11 A No, sir. We did not live together; however, I did  
12 spend time with her over there, sometimes.

13 Q About how much?

14 A Probably would go over there sometimes every other  
15 weekend, maybe a few times a month.

16 Q You didn't pay rent there?

17 A I did not pay rent there, no, sir.

18 Q Were you on any kind lease, or --

19 A I was not on the lease.

20 Q Did there come a time around the 10th of August when  
21 some JPD officers came into the home?

22 A Yes, sir.

23 Q How many came in?

24 A I'm not exactly sure on the number, but there was a  
25 lot. There was quite a few.

## James Cox - Direct Examination by Mr. Smith

1 Q Were their weapons drawn?

2 A Yes, sir.

3 Q Do you remember Officer Wallace, who testified  
4 yesterday? Was she one of the ones who came in?

5 A Yes, she was one of the officers.

6 Q Were they saying anything or asking you anything, or  
7 what were they doing when they came in?

8 A Initially, they came in the house, and there was --  
9 they were screaming they were Jacksonville police and they  
10 were asking -- they were like, where is the gun? Where is the  
11 gun? And they barged in the room. I've never had anything  
12 like that happen. It was pretty traumatizing.

13 Q Did they find a gun?

14 A No, they did not.

15 Q Did they search your vehicle?

16 A Yes, sir. I gave consent to search. I gave the  
17 detective consent to search.

18 Q You went down with them voluntarily?

19 A Yes, sir, it was voluntary.

20 Q But you were cuffed?

21 A Actually, the detective told me that I wasn't  
22 arrested, but they -- he forced me to come to the station.  
23 Like, I told him that I didn't want to go to the station. You  
24 know, I didn't know what was going on, and he basically said,  
25 you're not being arrested, but I'm detaining you and taking

## James Cox - Direct Examination by Mr. Smith

1 you to the station.

2 Q Did you make any phone calls, as a result of that?

3 A I did not make any phone calls. The officer who was  
4 on the stand yesterday, Wallace, I think that might be her  
5 name, she -- while I'm being detained, she or another officer,  
6 I think maybe her name was Officer Haywood, made a call to my  
7 mother to -- for Ms. Jackson's daughter.

8 Q Were you put on the phone so you could speak to your  
9 mother?

10 A No, no, sir.

11 Q On the 8th of August -- I'm going to go backwards a  
12 little bit -- did you have any idea where Ms. Leisure lived?

13 A Absolutely not. Never heard of her.

14 Q On the 8th of August, did you know Mr. Linn?

15 A Yes, I did know Mr. Linn.

16 Q How did you meet Mr. Linn?

17 A Actually, one day my car -- I'm not sure if it ran  
18 out of gas or if it broke down, but it was right near his  
19 house, and my house happens to be down the street from his  
20 house, and I was looking at my car, and that's when he ended  
21 up walking outside and talking to me, saying, you know, hey,  
22 what's going on? I work on cars, and we ended up chatting it  
23 up a bit, and that's when we exchanged numbers.

24 Q He had made some allegations against you that you  
25 offered him some money to purchase Percocets or Xanax, or some

## James Cox - Direct Examination by Mr. Smith

1 type of tablets like that. Is that true?

2 A Yes. I have never indulged in that kind of thing.  
3 I don't do pills like Percocets or Xanax; however, in the  
4 past, I have used marijuana.

5 Q And you have a conviction for marijuana.

6 A Yes, sir, I do.

7 Q When your car broke down and ran out of gas, about  
8 how long -- how much prior to August 8<sup>th</sup> was that?

9 A It was a while, like a few years before that point.

10 Q Had there been any conversations between you and  
11 Mr. Linn during that time?

12 A Between the time that my car broke down on  
13 August 8<sup>th</sup>, somewhat. Minimal, but not too much.

14 Q Did there come a time, specifically on August 8<sup>th</sup>,  
15 that Mr. Linn approached you again or called you or made any  
16 contact with you?

17 A Yes, sir.

18 Q Tell the Court about that.

19 A Basically --

20 Q Not basically. Specifically.

21 A On the 8th, Mr. Linn, he called me and he notified  
22 me that -- well, earlier in the daytime, Ms. Jackson was  
23 complaining of back problems, and I knew that Mr. Linn may be  
24 able to help with that. So I called Mr. Linn, and he said  
25 that he would get back with me. So he called me and said he

## James Cox - Direct Examination by Mr. Smith

1 would be able to help her, Ms. Jackson, with her back  
2 problems, and that I simply needed to bring him the money and  
3 that he would help me, and just to go back home and wait for  
4 his call to come back out. That's when I proceeded to go back  
5 home, and then I left my house and went back to where  
6 Ms. Jackson was staying at and spent time with her daughter,  
7 and her daughter fell asleep, tucked her daughter in, and then  
8 that time is when Mr. Linn called back. That's when he said  
9 that he --

10 Q Let me stop you a minute. What did he want you to  
11 do?

12 A He wanted me to come pick him up. He said he didn't  
13 have what I was looking for from Ms. Jackson, and the young  
14 lady that he gave the money to, took the money, went in the  
15 house and never came back out and stopped answering his calls  
16 and his text messages, but he said that he was good friends  
17 with her. He said he was close to her, and if I were to take  
18 him over to her house, which is not far from his house, that  
19 he would be able to talk to her and get Ms. Jackson's money  
20 back.

21 Q Now, at that point, were you aware of whether  
22 Mr. Linn had a vehicle or license? Do you know anything about  
23 his situation?

24 A I knew that he worked on cars. Like I said, he told  
25 me that, and I knew that he had different rides, but I wasn't



## James Cox - Direct Examination by Mr. Smith

1 sure that it was his ride or if it was any of his siblings'  
2 rides, because he did have multiple older family members that  
3 lived there.

4 Q He's alleged, in his direct examination yesterday  
5 and cross-examination yesterday, that when you came to his  
6 home you had a weapon in your left hand.

7 A That's correct. He did say that.

8 Q Is that incorrect?

9 A Yes. I never had a weapon, ever, at any point in  
10 time, when I went to Mr. Linn.

11 Q When was the last time you ever used a weapon?

12 A Honestly, the last time that I have used a weapon  
13 was probably when I was like 12 or 13, and my father, he took  
14 me to the range once and I didn't really care for it and,  
15 after that point, I haven't used any weapons since then.

16 Q So this journey to Ms. Leisure's house, were you the  
17 driver?

18 A I was the driver.

19 Q Did you know where she lived?

20 A I did not know where she lived.

21 Q Who was giving you directions?

22 A Mr. Linn was giving me directions.

23 Q Did it appear that Ms. Jackson knew where you were  
24 going?

25 A Ms. Jackson knew we were going to have Mr. Linn talk

## James Cox - Direct Examination by Mr. Smith

1 to the person that he gave the money to and try to get it  
2 back, but she didn't know, like, what place we were going.

3 Q So Mr. Linn was giving directions; for example, turn  
4 left, turn right, things of that nature?

5 A Yeah. He was pretty upset, as well, when he got in  
6 the car, too, because he said, you know, not only had they  
7 taken her -- Ms. Jackson's \$20 but they had also taken \$50  
8 of his money, and so he was pretty irate himself, upon giving  
9 me the directions.

10 Q You made it to 128 Silver Leaf, based on his  
11 directions?

12 A (WITNESS NODDED HEAD.)

13 Q Who was there, at the time?

14 A Mr. McMinn was outside. He just, like, closed his  
15 door, and he had a little gas station bag, like he just came  
16 from the gas station.

17 Q Closed the door to the home?

18 A His vehicle, his car, or whoever's car he was  
19 driving.

20 Q Did you walk into the home with him?

21 A I did walk into the home with him, but I mean not  
22 initially. Initially, when he got out of the car, Mr. Linn,  
23 he got out and he went over and talked to Mr. McMinn. He  
24 approached Mr. McMinn, and I stood on one side behind him and  
25 Ms. Jackson stood on the other side, while he talked to

## James Cox - Direct Examination by Mr. Smith

1 Mr. Linn. When Mr. Linn came up to Mr. McMinn, he asked  
2 Mr. McMinn, he was like, hey, how is it going? I need to talk  
3 to Ms. Leisure.

4 Q Did he use that name, or did he say --

5 A He said -- no. "I need to talk to Angie, and I know  
6 she's here because I was over here earlier." That's what  
7 Mr. Linn said. And Mr. McMinn was like, okay, that's fine.  
8 And, you know, I didn't know Mr. McMinn, and I don't believe  
9 Ms. Jackson knew Mr. McMinn, but he didn't have any issue with  
10 us coming into his residence. He never said, don't come into  
11 my residence. He never closed the door, or anything like  
12 that. He was perfectly fine with it, as if he was used to  
13 having people come to his residence that he may not know that  
14 well because, like I said, he didn't object to us walking in,  
15 and he actually held the door open for us to come inside.

16 Q So who walked in? Who walked into the home?

17 A Mr. McMinn was walking towards the door. He opened  
18 the door, and that's when we went in.

19 Q We have the same problem. Who is the "we" you are  
20 speaking of?

21 A Mr. Linn walked in first, and then it was  
22 Ms. Jackson and then it was me.

23 Q When is the next time you saw Ms. Leisure?

24 A Once we got in and Mr. McMinn closed the door, he  
25 was already calling for Angie to come out the bedroom, and

## James Cox - Direct Examination by Mr. Smith

1 that's when she had came out. That's when -- the first time I  
2 saw her is when she came out of her bedroom.

3 Q Some events happened shortly after that, correct?  
4 Something happened between Ms. Leisure and someone else in the  
5 home.

6 A Yes, sir. Miss -- once Ms. Leisure came out of the  
7 bedroom, that's when Ms. Jackson asked Ms. Leisure, where is  
8 my money, and Ms. Leisure, she was like, what money, and kind  
9 of seemed like she may have been, you know, on a substance, or  
10 whatever, because she was laughing when Ms. Jackson asked her  
11 about the money. Ms. Jackson wasn't confrontational, she  
12 wasn't irate, at that point. She was just simply trying to  
13 keep calm and get what was rightfully hers, and Ms. Leisure  
14 was laughing in her face and saying, what money. That's when  
15 Mr. Linn butted in, and Mr. Linn said, you also took -- you  
16 took my \$50 and you took \$20 which was Ms. Jackson's. That's  
17 when Mr. Linn said that, and Angie said, what money? What are  
18 you talking about, and kept laughing in Ms. Jackson's face,  
19 and that's what agitated Ms. Jackson and led to the scuffle.

20 Q Do you know who struck the first blow?

21 A I -- I don't know exactly who struck the first.

22 Q You didn't strike Ms. Leisure?

23 A No, sir.

24 Q Did Mr. Linn strike Ms. Leisure?

25 A No, sir.

## James Cox - Direct Examination by Mr. Smith

1           Q     After this little commotion, did Mr. McMinn ask you  
2 to leave, or what happened next?

3           A     During the scuffle, they were scuffling, and  
4 Mr. Linn was kind of standing in the back, and I was kind of  
5 like, I think we should just leave, because this was not a  
6 good idea to even come here. I didn't like the idea of  
7 Ms. Jackson getting in a fight and, like, I'm about peace and  
8 not that. While the scuffle was going on, Mr. McMinn went to  
9 approach Ms. Jackson, I guess to try to get her off  
10 Ms. Leisure, or separate them from the scuffle, and I put my  
11 hands up, in a stopping motion, and I said, "Hey, no need to  
12 mess with Ms. Jackson. I'll get Ms. Jackson." And that's  
13 when I got Ms. Jackson off of -- you know, off of Angie, got  
14 them from between each other, because they were -- they were  
15 going at it and, once I got her off, that's when we went to  
16 leave.

17          Q     Did you leave?

18          A     Yes, sir.

19          Q     Did Mr. Linn leave?

20          A     Yes, sir.

21          Q     Did Ms. Jackson leave?

22          A     Yes, sir.

23          Q     Did Mr. McMinn follow you?

24          A     Yes. As we were exiting out of the house,  
25 Mr. McMinn was using profanity and just, you know, really,

## James Cox - Direct Examination by Mr. Smith

1 like, upset and irate, I guess because maybe Ms. Jackson got  
2 into a fight, and he was really upset, and he said, you know,  
3 f-u-b, like, f-u-b, you know --

4 Q I understand.

5 A -- I guess to us or Ms. Jackson, or to me, I don't  
6 know but he said it as we were leaving out of the door and,  
7 from what I recall, Mr. Linn was out first and then I was  
8 leaving out and Ms. Jackson was last, and as he said that  
9 profanity and went to slam the door, Ms. Jackson, she nudged  
10 me, like bumped into me, and I turned around. I didn't know  
11 what it was. I didn't know if Mr. McMinn had came out and  
12 tried to attack me. I didn't know what was going on. So I  
13 turned around and, no sooner than I turned around, I see  
14 Ms. Jackson horse kick the bottom of the door.

15 Q The term horse kick, you mean a backward motion?

16 A Yes. I guess -- I guess -- you know, she was  
17 already agitated because we went there to get -- she had went  
18 over there to try to see if Richard could talk to Angie to get  
19 Ms. Jackson's money back and Ms. Jackson was unsuccessful, you  
20 know, being able to come up with a calm agreement or calm  
21 reconciliation to be able to get her money back and, on top of  
22 that, she got hit on the way out, I guess.

23 Q Where did you leave to that night? Where did you  
24 go?

25 A Once we left the house?

## James Cox - Cross-Examination by Mr. Sweet

1 Q Mm-hmm.

2 A We left there and I went to take Mr. Linn back to  
3 his place, and then, from there --

4 Q Did he ride in the front or backseat?

5 A He was in the backseat.

6 Q To your knowledge, was anything taken from the home?

7 A There was nothing taken from the home.

8 Q It's your testimony that you went in with the  
9 consent of Mr. McMinn?

10 A Yes, sir. There was definitely consent.

11 Q Is it your testimony you did not fire a weapon?

12 A Absolutely not. I did not fire a weapon.

13 Q You did not possess a weapon?

14 A What was that?

15 Q You did not possess a weapon?

16 A I don't own any weapons at all. No, sir.

17 Q If the door was damaged, it's your testimony it was  
18 Ms. Jackson?

19 A Yes. She -- yes, sir.

20 Q Mr. Cox, the state will have some questions for you.  
21 Please answer their questions.

22 MR. SWEET: May we proceed?

23 THE COURT: Yes.

24 CROSS-EXAMINATION BY MR. NATHAN E. SWEET:

25 Q All right. Good morning, Mr. Cox.

## James Cox - Cross-Examination by Mr. Sweet

1           A     Good morning.

2           Q     You said you go to Liberty University online?

3           A     Yes, I did.

4           Q     You did. Did you graduate?

5           A     I did not graduate.

6           Q     All right. That's my alma mater. That's where I  
7 went to law school at. Why did you pick Liberty?

8           A     Basically, I've been in church my whole life, and my  
9 youth pastors -- I go to youth -- I went to youth camp every  
10 summer, as a teenager. My youth pastor suggested that I go to  
11 this discipleship program, because it would be a good place  
12 to, you know, get out of Jacksonville, you know, learn more  
13 about, you know, Christianity and God, and be able to, you  
14 know, build a better life, because I'm not military and this  
15 is a military town, and there's not too much to expand on for  
16 somebody who is not in the marines.

17          Q     But you went online. You didn't go to Lynchburg,  
18 Virginia?

19          A     No, sir. I was online because, like I said, I was  
20 in a discipleship program in Raleigh, and that required a lot  
21 of service to the community.

22          Q     How long ago was that? How long was it that you  
23 went to Raleigh to do that?

24          A     I would say 2013 or 2012, because I graduated in  
25 2011, and then after that I went to college.



## James Cox - Cross-Examination by Mr. Sweet

1 Q Okay. Did you stay up there in Raleigh?

2 A No, sir. After about a year, I came back here.

3 Q All right. Why did you have to come back here?

4 A The discipleship program was over with.

5 Q It was over with?

6 A Yes.

7 Q Okay. What did you do when you got back here to  
8 Jacksonville?

9 A Once I got back to Jacksonville, I moved in with my  
10 parents and proceeded to find a new job here.

11 Q Okay. Is that when you first began using marijuana?

12 A No, sir.

13 Q Okay. When did you first begin using it, or begin  
14 using it?

15 A I don't recall, exactly, but it was probably 2010.

16 Q Essentially while you were still at home?

17 A Yes, sir.

18 Q And you didn't get that marijuana from Angela  
19 Leisure, did you?

20 A No, I did not, sir.

21 Q And how -- up until August 8<sup>th</sup>, 2015, you were  
22 still using marijuana at that time, right?

23 A Sometimes, yes, sir.

24 Q Okay. And were you getting that marijuana from  
25 Angela Leisure?

## James Cox - Cross-Examination by Mr. Sweet

1           A     No, I was not, sir.

2           Q     Were you getting it from Richard Linn?

3           A     Not -- at that point, no, sir, I was not.

4           Q     Who were you getting it from?

5           A     I had got it from Mr. Linn before that.

6           Q     I'm sorry?

7           A     I got it from Mr. Linn, prior to that date but,  
8 August 8<sup>th</sup>, I didn't give him any money to try to get  
9 anything.

10          Q     So you did have a drug interaction with Mr. Linn,  
11 prior to August 8<sup>th</sup>?

12          A     As far as, like, marijuana was concerned, yes, I  
13 did. When I initially met him, he said he could get that kind  
14 of thing.

15          Q     You just told us on the record that August 8<sup>th</sup>,  
16 2015 was the first time you ever met Mr. Linn.

17          A     I never said that August 8<sup>th</sup> was the first time I  
18 ever met Mr. Linn. I said I knew Mr. Linn prior to that. I  
19 said I knew him probably four years before that, because my  
20 car had broke down in front his house, and that's when he came  
21 out.

22          Q     So when your car broke down, it wasn't on  
23 August 8<sup>th</sup>, 2015, it was previous to that?

24          A     Yes, sir.

25          Q     Okay. So if you had said that on the record, you

## James Cox - Cross-Examination by Mr. Sweet

1 didn't mean to say that. You didn't mean to say that --

2 MR. SMITH: Objection.

3 THE COURT: Move on.

4 Q So August 8<sup>th</sup>, 2015 -- well, strike that. I asked  
5 you previously, you didn't answer, who did you get your  
6 marijuana from, besides Mr. Linn?

7 A Normally, I mean, I just -- one of my old neighbors.

8 Q Okay. What was their name?

9 A I don't really know his name. I just know that he  
10 called himself R, Roy or R.

11 Q August 8, 2015, had you ever met Angela Leisure at  
12 all?

13 A No, sir, I didn't know who she was. I had seen her  
14 before, but I didn't know who she was. I didn't know her, or  
15 anything like that.

16 Q So she had no idea, as far as you know, who you  
17 were?

18 A She knew prior -- she knew before August 8<sup>th</sup> that  
19 Richard knew me and that I knew Richard and Ms. Jackson.

20 Q How is that?

21 A She had seen Richard, and I and Ms. Jackson. She  
22 had seen us before, prior to that, because Richard was talking  
23 about cars to me, and he went with me over by Furniture Fair,  
24 where Ms. Leisure was working at, and he said he had to talk  
25 to Ms. Leisure, and that's when Ms. Leisure came out, and that

## James Cox - Cross-Examination by Mr. Sweet

1 was prior to the 8th, as well. Ms. Leisure came out and  
2 talked to Mr. Linn.

3 Q Did she talk to you, at that time?

4 A No, no.

5 Q Okay. Now, August 8<sup>th</sup>, 2015, what did you do that  
6 day?

7 A I spent time with Ms. Jackson's daughter and  
8 Ms. Jackson, and talked to my parents.

9 Q All right. Where did you spend time with  
10 Ms. Jackson at?

11 A 626 South Hampton, at Ms. Royal's house, where  
12 Ms. Jackson was staying at the time.

13 Q Okay. And how long did you stay there? What time  
14 did you leave that residence?

15 A I was probably there on and off, because it was in  
16 Brynn Marr, and my parents' house is in Brynn Marr. So  
17 sometimes I just go over to my parents' house. I take a  
18 break, because things get hectic over there, because Ms. Royal  
19 had a little girl over there, too.

20 Q August 8<sup>th</sup>, 2010, were you staying there, living  
21 there with Ms. Jackson?

22 A No, sir, I was not.

23 Q Where were you living?

24 A 517 Birchwood Court.

25 Q Where is that, your parents' house?

## James Cox - Cross-Examination by Mr. Sweet

1           A     Yes, it is.

2           Q     And when would you go over, again, to Ms. Royal's  
3 house?

4           A     It just depends.  If Ms. Jackson called me --  
5 probably like, you know, a few times a month.  You know,  
6 sometimes like -- maybe, like, I can say every other weekend  
7 or so.

8           Q     Every other weekend?

9           A     Yes.

10          Q     So you didn't stay there during the week?

11          A     Correct.  Yeah, I worked.

12          Q     Okay.  So August 10<sup>th</sup>, 2015, was a Monday.  Were  
13 you over there in the middle of the day on Monday?

14          A     I'm sorry?

15          Q     August 10, 2015, when the Jacksonville Police  
16 Department followed Ms. Royal home at her request and you were  
17 at her residence, that was a Monday.  Why were you there on a  
18 Monday?

19          A     I had spent the night Sunday.  I believe I had the  
20 day off.

21          Q     Now, about this incident, did you go over to  
22 Mr. Linn's house in the evening, for the first time?

23          A     No, sir.

24          Q     When did you go to his house for the first time?

25          A     It was earlier in the daytime, actually.

## James Cox - Cross-Examination by Mr. Sweet

1           Q     Okay. But you said you were hanging out at your  
2 parents' house.

3           A     Yeah. I would go back and forth between.

4           Q     Okay. Your mom, she lives right down the road from  
5 Mr. Linn, isn't that right?

6           A     Yes, it is.

7           Q     And you previously testified that your car was  
8 broken down, that's how you met him. But you didn't mean that  
9 day.

10          A     It broke down or got out of gas.

11          Q     So it did break down that day?

12          A     Not on August 8<sup>th</sup>, no. Before that, like a few  
13 years before that.

14          Q     Okay. How did you get to Mr. Linn's house on  
15 August 8, 2015?

16          A     With my vehicle.

17          Q     With your vehicle?

18          A     Yes, sir.

19          Q     So it was working at that time?

20          A     Yes, sir, it was.

21          Q     Why did you go to his house on August 8, 2015?

22          A     So that I could provide him with the money he  
23 requested so he could help Ms. Jackson.

24          Q     So it was all to help Ms. Jackson out?

25          A     That's correct.

## James Cox - Cross-Examination by Mr. Sweet

1 Q Okay. And he's not a doctor, right? Mr. Linn is  
2 not a doctor, you knew that.

3 A Yes, sir.

4 Q So what were you engaging in there? To your  
5 knowledge, what were you asking him to do to help Ms. Jackson?  
6 What were you asking him to do?

7 A To get some pain relievers.

8 Q So some prescription drugs?

9 A Yes, sir.

10 Q Okay. So it's your testimony that that's why you  
11 went over there, is to help Ms. Jackson get prescription  
12 drugs?

13 A That is correct.

14 Q All right. How long had you been with Ms. Jackson,  
15 at that time?

16 A It was a few years, on and off.

17 Q Okay. And what do you mean by on and off?

18 A We dated, and if there was ever, like, you know, any  
19 issues, sometimes we would need time apart and we stopped  
20 dating, and then we would reconcile and we would date.

21 Q So you would reconcile and break up is that what  
22 you're saying?

23 A Not necessarily break up, but, yeah, take time apart  
24 I guess you could say.

25 Q Okay. During that time, did you know Ms. Jackson to

## James Cox - Cross-Examination by Mr. Sweet

1 engage in prostitution?

2 A No, sir.

3 Q All right. She never did that while you were with  
4 her?

5 A No, sir. Not to my knowledge.

6 Q Okay. Were drugs used throughout your relationship  
7 with Ms. Jackson?

8 A No, sir.

9 Q Did you ever see her use drugs?

10 A Yes.

11 Q But you never used them?

12 A Like I said, I have used marijuana in the past.

13 Q All right. And did you use them with Ms. Jackson  
14 while you were with her?

15 A In the past, I have used marijuana with Ms. Jackson.

16 Q And you provided her drugs. You were attempting to  
17 provide her drugs with Mr. Linn, right?

18 A Yes, because she didn't want to wait in the ER  
19 because there were long lines and she was in pain, and  
20 Mr. Linn made me aware that he would be able to help with that  
21 sort of thing.

22 Q Okay. All right. Your relationship with  
23 Ms. Jackson, did it continue past August 10, 2015?

24 A Did my relationship with Ms. Jackson continue past  
25 August --



## James Cox - Cross-Examination by Mr. Sweet

1 Q -- 8th, 2015, and August 10, 2015?

2 A Yes, to an extent.

3 Q What do you mean, to an extent?

4 A I mean, we still talked past August 8<sup>th</sup>, but I  
5 didn't -- I wasn't going over there as much, and just took  
6 some extra time apart because of this. It was just a big  
7 deal, and it's something new, something that has never  
8 happened to me, and it was really traumatizing. I just wanted  
9 to take a step back. It's not something that is -- I'm used  
10 to.

11 Q What is not something that you're used to?

12 A Being in a police car, being taken to a detective  
13 station and being interviewed, or being told that I'm getting  
14 charged with really, really serious crimes that, you know, I  
15 wasn't involved with, or had very minimal involvement in, and  
16 then being told you're going to be charged with something that  
17 you didn't do. That's pretty traumatizing, especially in a  
18 time like this, when it's so hard to get jobs and it's so hard  
19 to survive, and people judge you, and they see you first and  
20 they hire you, and they like you, then the background check  
21 comes back and they say, whoa, these pending charges, you  
22 know.

23 Q Did -- has your relationship with Ms. Jackson  
24 involved domestic violence?

25 A There were a call or two of domestic violence

## James Cox - Cross-Examination by Mr. Sweet

1 before, in the past.

2 Q Serious calls, isn't that right?

3 A I mean, just regular domestic violence calls.

4 Q I mean, you know, your relationship subsequent to  
5 that has resulted in other problems, hasn't it?

6 A Yes, sir, it has.

7 Q Serious problems, isn't that right?

8 A Yes, sir.

9 Q Now, your relationship with Ms. Jackson, subsequent  
10 to this, has it been one which has involved drugs, after the  
11 fact? Have y'all continued to use drugs throughout this time?

12 A No, sir.

13 Q Okay. On August 10, 2015, when the Jacksonville  
14 Police Department had to go to Ms. Royal's house because you  
15 all were in there, you were in a bedroom within Ms. Royal's  
16 house, isn't that right?

17 A That is correct.

18 Q And you were in the room with Ms. Jackson, isn't  
19 that right?

20 A That is right.

21 Q And within that room, they found drugs, right?

22 A Yes.

23 Q Okay. They found marijuana, correct?

24 A That's correct.

25 Q They found a straw with some white powdery substance

## James Cox - Cross-Examination by Mr. Sweet

1 on it, isn't that right?

2 A I'm not aware of that.

3 Q Okay. You weren't aware that was found, or you're  
4 not aware that that was in the room?

5 A No, sir. I wasn't aware that was found out there,  
6 or even in the room.

7 Q Okay. There was a scale in there, is that right?

8 A Yes, that's correct.

9 Q Okay. And what did you use that scale for?

10 A Sometimes, like, if we had jewelry, we would, like,  
11 use it to try to weigh it out and see how much it's worth,  
12 through weight.

13 Q Jewelry?

14 A Yes, sir. We would see how much it's worth, through  
15 weight, and sometimes, like in the prior -- in the past, if I  
16 were to, like, try to get any amount of marijuana, I want to  
17 see how much it weighed, to make sure that, you know, whatever  
18 I paid for was the correct amount.

19 Q Why did you have jewelry that you needed to weigh?

20 A I mean, it was old stuff that we may have had, you  
21 know, if we ever needed some extra money, or something like  
22 that.

23 Q All right. Was it a scale to weigh the jewelry that  
24 you all owned?

25 A I actually got the scale, it was given to me.

## James Cox - Cross-Examination by Mr. Sweet

1 Q Okay. But I mean you got the scale to weigh  
2 jewelry?

3 A That's correct. That's initially what I had got it  
4 for, yeah.

5 Q Okay. All right. While this is going on inside the  
6 home, Adriana Murray, Ms. Jackson's daughter, is outside the  
7 room, isn't that right?

8 A While what's going on, exactly sir?

9 Q On August 10, 2015, Adriana Murray is in the home  
10 with you all, isn't that right?

11 A Yes, sir.

12 Q So she is staying in Ms. Royal's home with you guys,  
13 isn't that right?

14 A Yes, sir.

15 Q And you guys are in the bedroom together when the  
16 Jacksonville Police Department arrived, isn't that right?

17 A Yes, but I had already got up and was checking on  
18 her and making sure she's was taken care of but, yes, sir.

19 Q And there's drugs in the room that you're in?

20 A There was marijuana, yes, sir.

21 Q Where is Adriana staying during this time?

22 A She was in the living room.

23 Q Was she sleeping in the living room?

24 A At first she was, but then she got up.

25 Q Where did she stay the night at, at Ms. Royal's

## James Cox - Cross-Examination by Mr. Sweet

1 house? You said you stayed all night.

2 A In the living room, on the couch.

3 Q In the living room, on the couch?

4 A Yes.

5 Q All right. Did -- how did you know Ms. Royal?

6 A I only knew Ms. Royal through Ms. Jackson.

7 Q All right. Did you see any interaction with  
8 Ms. Jackson and Ms. Royal?

9 A Prior to August 10<sup>th</sup>, or just on August 10<sup>th</sup>, or  
10 what?

11 Q That weekend, August 8<sup>th</sup> through August 10<sup>th</sup>,  
12 did you see any interaction?

13 A I mean, they would talk.

14 Q Okay. Was there any argument? Was there any  
15 threats that you saw Ms. Jackson make to Ms. Royal?

16 A There weren't threats, but there were, like, weird  
17 things going on.

18 Q What kind of weird things were going on?

19 A Well, like, I had told her, prior to those dates,  
20 that I felt like maybe she should try to find, like, a  
21 different place to stay, because I felt like the welcome mat  
22 had been ran out, because Ms. Royal had a daughter, too. She  
23 has serious problems, and it caused a lot of medical  
24 attention, and the house is really, really cluttered. And can  
25 you restate the question?

## James Cox - Cross-Examination by Mr. Sweet

1           Q     Did you see any threats or any violence from  
2 Ms. Jackson to Ms. Royal?

3           A     I didn't see any threats from Ms. Jackson to  
4 Ms. Royal, but it kind of seemed like Ms. Royal was doing some  
5 fishy stuff to try to get us to leave.

6           Q     She asked you to leave, didn't she?

7           A     No, sir.

8           Q     She didn't ask you to leave?

9           A     No. I wish she would have. That would have -- you  
10 know, it would have been a lot easier.

11          Q     It would have got you out of that room before JPD  
12 got there, huh?

13          A     No. I just wished that would have happened because  
14 we could have left, instead of wasting JPD's time. There's  
15 other things they could have been doing.

16                   MR. SWEET: May I approach, Judge?

17                   THE COURT: Yes.

18          Q     If you can pick up State's Exhibit 21 for me.

19                   THE COURT: I'm noting for the record that, at the  
20 conclusion of the day yesterday, with consent of all parties,  
21 that bag was resealed by the officer that testified yesterday.

22                   MR. SWEET: Thank you, Judge.

23          Q     All right. Do you recognize State's Exhibit 21?

24          A     I recognize it from yesterday.

25          Q     All right. You've never seen it before that?

## James Cox - Cross-Examination by Mr. Sweet

1           A     No, sir.

2           Q     Hold that up for the jury.

3           A     (THE WITNESS COMPLIED WITH THE REQUEST.)

4           Q     How do you recognize it from yesterday?

5           A     The officer had it.

6           Q     Okay. And you were here when the officer said that  
7 was found in the room that you were in, right?

8           A     Yes, sir.

9           Q     All right. Now, do you remember that being in that  
10 room?

11          A     No, I don't.

12          Q     How big is this room?

13          A     Um --

14          Q     It's pretty small, isn't it?

15          A     It was a decent size room. It wasn't real big. It  
16 wasn't really, really small. It was decent size.

17          Q     They didn't have to go searching for that, it was in  
18 plain sight?

19          A     I don't know. I don't smoke cigarettes. I have  
20 used marijuana in the past, but I don't smoke cigarettes.

21          Q     And in that State's Exhibit 21, there's one spent  
22 shell casing, isn't that right?

23          A     Yes, sir.

24          Q     Did you see the gun box that was there in the room,  
25 that was found by JPD?

## James Cox - Cross-Examination by Mr. Sweet

1           A     I was not aware there was any kind of case in the  
2 room, until one of the police officers had brought it out  
3 while I was in handcuffs, on the couch.

4           Q     And there's no firearm in there, was there?

5           A     Not that -- not to my knowledge.

6           Q     Okay. And you have no idea how that gun box got  
7 there, or that spent shell casing, isn't that right?

8           A     Yeah. I had no idea; however, Ms. Royal did say to  
9 the officer that the gun case -- her ex-husband, they were  
10 going through a divorce at the time. Her ex-husband was  
11 getting out the military, and he was giving some sort of  
12 gun --

13          Q     I'm not asking what Ms. Royal said.

14          A     -- gun case --

15          Q     I'm asking, do you know whether there was a gun in  
16 that case? You, specifically.

17          A     I don't know. I didn't even know there was a case  
18 in the room, until the officer brung it up.

19          Q     Okay. And you --

20          A     It was really cluttered in that room.

21          Q     I'm sorry?

22          A     It was a very, very cluttered room that we was in.  
23 Ms. Jackson and I cleaned it up a little bit, but there was  
24 still a lot of clutter and stuff in there, because once, I  
25 guess, her ex-husband left, she let stuff go and didn't want



## James Cox - Cross-Examination by Mr. Sweet

1 to touch her ex-husband's stuff, because she have feelings. I  
2 don't know. I don't know.

3 Q Okay. You said that Ashley Jackson kicked the door  
4 in on August 8, 2015.

5 A I did.

6 Q Okay. She's the one who did that?

7 A Yes.

8 Q All right. Who fired the shot?

9 A No one fired a shot, to my knowledge. No one -- no  
10 one had a weapon, to my knowledge.

11 Q No one had a -- well, did you see a shot fired or  
12 not?

13 A No.

14 Q Okay. Mr. Linn didn't fire a shot?

15 A Not to my knowledge.

16 Q Well, I mean, you were with Mr. Linn, according to  
17 your testimony.

18 A I was only with Mr. Linn at that point in time, when  
19 it happened. I wasn't with Mr. Linn the rest of the night and  
20 I wasn't with Mr. Linn the next day. While I was there, there  
21 was no weapon fired and there was no weapon brandished. There  
22 was never a weapon brung out, and I never had a weapon myself.

23 Q So you never saw Mr. Linn, on August 8<sup>th</sup>, 2015,  
24 pull out a pistol and shoot the door?

25 A I never saw him pull out anything. I never saw him

## James Cox - Cross-Examination by Mr. Sweet

1 aim anything. I never saw a weapon, period.

2 Q You never saw Ms. Jackson do that, right?

3 A That's correct.

4 Q Okay. And you admit that you were in that house,  
5 though, that night.

6 A I was in the house, I was.

7 Q And was -- when you went in the house, was  
8 Ms. Leisure undressed?

9 A Not to my -- no, no, I don't believe so.

10 Q How was she dressed?

11 A I believe she had a pair of shorts on and a  
12 little -- like a sports bra type thing.

13 Q Did you hear what Ms. Jackson was saying to  
14 Ms. Leisure?

15 A Initially, she said, you know, hey, where is my  
16 money, or where is the money, where is the money that --

17 Q Where is the money?

18 A -- that Mr. Linn gave you.

19 Q You went -- when you went to the house that evening,  
20 you were going there to retrieve money from Angela Leisure,  
21 isn't that right?

22 A No, sir. I knew when I went to that house that  
23 evening Mr. Linn was going to try to come to some kind of  
24 compromise or reconcile with the person who he gave the money  
25 to. That's what I was told.

## James Cox - Cross-Examination by Mr. Sweet

1           Q     You didn't go there to the house that evening to get  
2 the \$20 back that you had given?

3           A     No, sir, I did not.

4           Q     Why did you go?

5           A     I -- the only reason I went anywhere near there was  
6 to make sure Ms. Jackson would be safe going around people  
7 that, you know, she's not familiar with and that Mr. Linn  
8 wasn't going to try to put Ms. Jackson in any kind of crazy  
9 situation.

10          Q     How were you going to keep Ms. Jackson safe?

11          A     I mean, I'm pretty fit. I'm an athlete. I'm in  
12 shape.

13          Q     Pretty intimidating, you think?

14          A     Not intimidating, but I have, you know, taken judo  
15 in the past, martial arts, which is something that, you know,  
16 they -- they don't agree with, using weapons. They don't even  
17 agree with offensive gestures. Judo is about defensive  
18 techniques.

19          Q     Okay. And that's why you're not a violent person,  
20 that you testified to on direct. You said you're not a  
21 violent person.

22          A     Yeah, I'm not a violent person.

23          Q     Okay. And when you're there, you see Ms. Jackson  
24 attack Angela Leisure, isn't that right?

25          A     Yes, sir, I do.

## James Cox - Cross-Examination by Mr. Sweet

1           Q     Okay.  And there's this fight, and you stand by and  
2 do what?

3           A     Well --

4           Q     You know judo, you know all this other stuff, you're  
5 about peace.  I mean, you know, why didn't you stop the fight?

6           A     Like I said, when she -- when they initially started  
7 the scuffle, I went to try to break it up, but they were just  
8 going like so at it, you know, I didn't -- I wasn't trying to  
9 hurt either of them, and I wanted -- I just wanted Ms. Jackson  
10 to get what was rightfully hers.

11          Q     So you wanted to allow her to try to retrieve her  
12 money by force?

13          A     No, I didn't want her to do it by force.  I didn't  
14 want her to fight.  I just wanted her -- I didn't even want  
15 her to say anything.  I just wanted Mr. Linn to talk to the  
16 people he knew and, you know, get the money back that he had  
17 and give it to who it was rightfully owed to.  I didn't want  
18 her to talk to anybody.  I didn't -- I wanted him to handle it  
19 like he said he was going to.

20          Q     You heard Mr. Linn and Mr. McMinn both testify that  
21 when Mr. McMinn tried to get out his cell phone that you  
22 showed a firearm and told -- essentially told him to put the  
23 cell phone up.

24          A     I don't know what they said, but I heard Mr. McMinn  
25 say that.  I don't know about Mr. Linn, but I heard Mr. McMinn

## James Cox - Cross-Examination by Mr. Sweet

1 say that.

2 Q So you're saying that didn't happen?

3 A No. I had my hands up in a stopping motion. I  
4 never saw him reach for his phone, but I did see him try to go  
5 and look like -- I don't know if he was going to try to attack  
6 them or hit Ms. Jackson, or whatever, but I put my hands in a  
7 stopping position to keep that from happening. I never had  
8 anything in my hands.

9 Q So you put your hand up to stop Mister --

10 A Both of my hands. I was like, hold up, hold up,  
11 because he was motioning towards them to, I guess, you know,  
12 try to like -- I don't know, get them -- maybe break them up  
13 or try to just get Ashley from trying to mess with  
14 Ms. Jackson. So I wanted to make sure he wasn't going to try  
15 to harm Ms. Jackson.

16 Q So you wanted to keep him from helping Miss --

17 A Not helping, but I wanted to keep him from hurting.  
18 I didn't want him near her, because she's -- they just got  
19 into a scuffle. She just got into a scuffle with what's  
20 supposed to be his girlfriend, or sister, or whoever she is to  
21 him. They were in the house together. She just got through  
22 with a scuffle. I didn't want him anywhere near Ms. Jackson  
23 because, for all I know, he was going to assault or attack  
24 Ms. Jackson, because Ms. Jackson tried to assault whoever  
25 Ms. Leisure is to him.

## James Cox - Cross-Examination by Mr. Sweet

1           Q     So you didn't want Ms. Jackson anywhere near  
2 Mr. McMinn?

3           A     Yeah. I didn't even want her in the house.

4           Q     But you took Ms. Jackson -- you took, you drove.  
5 You drove Ms. Jackson and Mr. Linn to the home that evening,  
6 isn't that right?

7           A     That is correct.

8           Q     And you went inside somebody else's home that you  
9 essentially didn't know.

10          A     That is correct.

11          Q     And this was at night. You walked right through the  
12 front door with Ashley Jackson and Mr. Linn, and you went into  
13 the home, isn't that right?

14          A     We didn't walk right in through the front door. We  
15 were let in. We stopped at the front door. The front door  
16 was closed. There was no other screen, or nothing like that,  
17 to my knowledge. There was one door. It was closed.

18          Q     There was only one door on the home?

19          A     Yes, there was one door. To my knowledge, there was  
20 one door. It was closed. Mr. McMinn opened that door for us  
21 and acknowledged for us to come in.

22                   **MR. SWEET:** One more question, Judge. If I may  
23 approach.

24          Q     If the record can reflect I'm handing the witness  
25 what's been previously marked as State's Exhibits 1 and 2,

## James Cox - Cross-Examination by Mr. Sweet

1 taking back State's Exhibit 21. Please look at State's  
2 Exhibit 1 and 2, sir. That's photographs that were taken on  
3 August 8<sup>th</sup> and August 9<sup>th</sup> of 2015, of the home, 128 Silver  
4 Leaf, right?

5 A That's correct.

6 Q It has a second door, doesn't it?

7 A It does, but it looks brand new. I mean, like I  
8 said, there was one door, and there was that door that's  
9 behind it. This looks brand new?

10 Q So what, they put the door on after you left? They  
11 added a door to the home?

12 A Well, the detective wasn't over there until 12 that  
13 afternoon. I mean, they could have went to Home Depot in the  
14 morning. I don't recall there being an extra door, I really  
15 don't but, then again, there was a lot going on.

16 Q Obviously, you know, that's an element of the crime  
17 of burglary, don't you?

18 A What's that?

19 Q You know that opening a door is an element to the  
20 crime of burglary, don't you?

21 A If Mr. McMinn opened the door for us to come in,  
22 that's not a burglary. He opened the door. I didn't open his  
23 door. He opened the door for us to come in and motioned for  
24 us to come in, gestured for us to come in.

25 Q It's your testimony that second door, that screen

**James Cox - Cross-Examination by Mr. Wright**

1 door, wasn't on that home that evening?

2           **A**     I'm not a hundred percent sure, but I remember there  
3 being one door, not two. It may could have been held open, or  
4 something.

5           **MR. SWEET:** Nothing further, Judge.

6           **THE COURT:** Mr. Wright?

7           **MR. WRIGHT:** Just a couple questions, if may.

8 **CROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

9           **Q**     Mr. Cox, there was mention of marijuana and the  
10 bullets, and everything that were found in the room, I think.

11          **A**     That's correct.

12          **Q**     Okay. Now, those items were in a green cloth bag.  
13 They weren't in plain view, as the district attorney stated.  
14 Do you remember that?

15          **A**     I believe so.

16          **Q**     They were in a bag. In other words, they were  
17 concealed. They weren't out in the open.

18          **A**     I believe so.

19          **MR. SWEET:** Your Honor, I'll object, since it's not  
20 what he testified to.

21          **THE COURT:** A little less leading, please,  
22 Mr. Wright.

23          **MR. WRIGHT:** Judge, I'm on cross-examination.

24          **THE COURT:** Well, you are, but still.

25          **MR. SWEET:** Foundation.



**James Cox - Redirect Examination by Mr. Smith**

1           Q     Well, let me ask this, then. You stated -- I think  
2 the prosecutor stated that there was a straw with some white  
3 powder that was also found.

4           A     Yes, sir. I heard the the prosecutor did say that.

5           Q     And you said that you don't recall that?

6           A     That's correct.

7           Q     Do you recall the officer that testified yesterday,  
8 Officer Wallace, in her testimony, do you recall her not  
9 saying anything about a straw with white powder --

10          A     That's correct.

11          Q     -- listed in her report?

12          A     That's correct.

13          Q     So where would the prosecutor get that from?

14          A     I'm not sure, sir.

15                **MR. WRIGHT:** That's all the questions I have. Thank  
16 you.

17                **THE COURT:** Mr. Smith?

18                **REDIRECT EXAMINATION BY MR. BRYON M. SMITH:**

19           Q     Mr. Cox, as you're in handcuffs at the home, 626  
20 South Hampton, did JPD officers bring out to you and display  
21 to you items that they had seized?

22           A     Yes, sir, some of them, not all of them.

23           Q     Did my office provide you a list of inventory items  
24 that JPD provided to me through the D.A.'s office?

25           A     Yes, sir.

## James Cox - Redirect Examination by Mr. Smith

1           Q     Was one of the items they allege that was seized  
2 from South Hampton Drive a nine millimeter gun case?

3           A     Yes, that is one of the things that was taken.

4           Q     Did they also allege it was empty?

5           A     Yes, they did.

6           Q     And the bullets they've exhibited as Exhibit Number  
7 21 appeared to you to be what caliber?

8           A     I didn't actually look at them. I just saw -- I  
9 held it and I looked at the Newport box, but I didn't look at  
10 the bullets.

11           MR. SMITH: May he examine Exhibit 21? Is it down  
12 here?

13           MR. SMITH: May I unseal it?

14           THE COURT: Yes.

15           Q     Do those appear to be 9-millimeter shells, sir?

16           A     No, sir.

17           Q     What do they appear to be, to you?

18           A     Like, maybe a .22, .22 caliber.

19           MR. SMITH: Thank you.

20           THE COURT: Any questions based on that?

21           MR. SWEET: That's fine.

22           MR. SMITH: Does the Court want me to reseal those?

23           THE COURT: Let's leave them there for a minute, if  
24 there's any cross. Any further questions?

25           MR. SMITH: That's the extent of my questions.

## James Cox - Recross-Examination by Mr. Sweet

1           **THE COURT:** Mr. Wright?

2           **MR. WRIGHT:** I just have a question.

3           **RECCROSS-EXAMINATION BY MR. ERNEST J. WRIGHT:**

4           **Q**     Mr. Cox, have you ever seen a nine millimeter bullet  
5 or shell?

6           **A**     Yes, sir.

7           **Q**     Okay. As compared to a .22, is it smaller? Is it  
8 larger?

9           **A**     A nine millimeter compared to a .22, it's bigger,  
10 like thicker, a lot thicker than this type of bullet.  
11 (Indicating.)

12          **Q**     In your opinion, can a nine millimeter bullet be  
13 fired from a .22?

14          **A**     That's impossible. It doesn't fit.

15          **MR. WRIGHT:** That's all I have.

16          **RECCROSS-EXAMINATION BY MR. NATHAN E. SWEET:**

17          **Q**     The gun wasn't found. There was no gun in the room.

18          **A**     Yes, sir.

19          **Q**     There's just a case.

20          **A**     Yes, sir.

21          **Q**     So we're talking about a nine millimeter case that a  
22 .22 could fit in, correct?

23          **A**     Not necessarily.

24          **Q**     The bullets weren't found in the case, were they?

25          **A**     Not to my knowledge, no.

**James Cox - Redirect Examination by Mr. Smith**

1           **Q**     So, theoretically, they could -- very rationally,  
2 they aren't even connected, isn't that right, the case and the  
3 projectile that was found?

4           **A**     I mean, they could be, or -- I mean --

5           **Q**     They could be?

6           **A**     Yeah, they could be.

7           **Q**     Okay.

8           **MR. SWEET:** Nothing further, Judge.

9           **REDIRECT EXAMINATION BY MR. BRYON M. SMITH:**

10          **Q**     Mr. Cox, JPD provided you with an inventory of  
11 things seized from Ms. Royal's home, including a nine  
12 millimeter -- specifically a nine millimeter gun case.

13          **A**     Yes, sir.

14          **Q**     They've also introduced, or they've had the state  
15 introduce, Exhibit 22, which you've identified as .22 caliber  
16 bullets, is that correct?

17          **A**     Yes, sir, that's correct.

18          **MR. SMITH:** That's all.

19          **THE COURT:** State's Exhibit 21.

20          **MR. SMITH:** Twenty-one.

21          **THE COURT:** Any further questions?

22          **MR. SWEET:** No, sir.

23          **MR. WRIGHT:** No, Your Honor.

24          **THE COURT:** Thank you, Mr. Cox.

25          **THE WITNESS:** Thank you, Your Honor.

1 (WITNESS EXCUSED FROM THE STAND.)

2 MR. WRIGHT: Judge, that completes our showing on  
3 behalf of Mr. Cox. We'll have no additional evidence, Judge.

4 THE COURT: Any evidence on behalf --

5 MR. WRIGHT: No showing on behalf of Ms. Jackson.

6 THE COURT: I'm going to have you all go out  
7 briefly, then we'll come back and discuss the logistics for  
8 the day, rather than doing it up here. So if y'all will go to  
9 the jury room.

10 Again, I'll remind you, you know, the main line.  
11 Don't talk about the case. Don't form any opinions about the  
12 case. You've not been instructed as to the law in this case.  
13 You've not been -- heard the arguments in this case. So just  
14 go back there and be at ease in the jury room. We'll call you  
15 back in a few minutes to figure out our plan for the day,  
16 okay?

17 (THE JURY WAS EXCUSED FROM THE COURTROOM AT  
18 11:35 AM.)

19 THE COURT: The jury has left the courtroom and the  
20 courtroom door is closed.

21 Yes, sir, let's address motions, if any, at this  
22 point.

23 MR. WRIGHT: Judge, at the close of all the  
24 evidence, the defendant, Ashley Jackson, renews nonsuit in  
25 this case, based on the argument that we made previously,

1 Judge.

2 **THE COURT:** Motion to dismisses to all counts?

3 **MR. WRIGHT:** That's correct, Judge.

4 **THE COURT:** Mr. Smith?

5 **MR. SMITH:** Judge, my motion to dismiss is to all  
6 counts in the indictment. At this point stage in the  
7 proceeding, Judge, I know Mr. Sweet has talked to me about the  
8 injury to personal property, injury to real property. The  
9 only evidence the jury could have, at this point, is that  
10 Ms. Jackson did that. There is zero evidence that Mr. Cox had  
11 anything to do with that, and I make that my motion to dismiss  
12 those charges, Judge.

13 **THE COURT:** I wouldn't say zero evidence. There's  
14 evidence he had a gun. There is evidence a gunshot was fired.  
15 As to who fired it, there may be questions, but there's some  
16 evidence.

17 **MR. SMITH:** That's my argument, Judge.

18 **THE COURT:** All right.

19 **MR. SWEET:** Just to clean things up, we would ask,  
20 for the same reasons we stated at the close of our evidence,  
21 that the Court deny those motions.

22 Just to kind of simplify things going forward, if we  
23 are permitted to go forward but, certainly, in response to  
24 Mr. Smith's comments, while we disagree that there's not  
25 evidence, certainly, we just, in terms of -- in terms of

1 judicial efficiency, are not going to be proceeding on the  
2 three misdemeanors.

3 **THE COURT:** Make your decision based on your own  
4 reasoning. You don't have to put it on judicial efficiency.  
5 We'll address it, one way or the other.

6 **MR. SWEET:** Judge, I know, but I just mean in terms  
7 of -- it's the state's decision.

8 **THE COURT:** It is the state's decision. So if the  
9 state has a decision, let me know what it is.

10 **MR. SWEET:** I just mean, in terms of the system, not  
11 Your Honor.

12 **THE COURT:** That's fine.

13 **MR. SWEET:** But 15 CRS 54674 contains an assault  
14 with a deadly weapon, misdemeanor injury to real property,  
15 injury to personal property against Mr. Cox. In that  
16 indictment, the state would not proceed -- would like to  
17 abandon at this point.

18 **THE COURT:** The entire indictment 15 CRS 54674,  
19 assault with a deadly weapon, injury to real property, injury  
20 to personal property, the state is taking a dismissal in those  
21 charges?

22 **MR. SWEET:** Yes, sir. And again, for the record,  
23 not because we don't think there's sufficient evidence but for  
24 our own reasons, Judge. Thank you.

25 **THE COURT:** That's fine. All right. That takes

1 that off. I guess you incorporate your argument from  
2 previously as to the motions to dismiss that you made at the  
3 close of state's evidence, same arguments.

4 **MR. SWEET:** Yes, sir.

5 **THE COURT:** All right. Again, looking at this in  
6 the light most favorable to the nonmoving party, to the state,  
7 I'll deny those motions on behalf of Ms. Jackson, as to the  
8 three counts against her, conspiracy to commit robbery with a  
9 dangerous weapon and first-degree burglary and simple assault,  
10 those motions to dismiss are denied. As to Mr. Cox,  
11 first-degree burglary, conspiracy to commit robbery with a  
12 dangerous weapon and discharging a firearm into occupied  
13 property, those motions to dismiss are denied, respectfully.

14 All right. You certainly got rid of a few pages of  
15 instructions, so that may be helpful there. The state is not  
16 presenting any rebuttal evidence?

17 **MR. SWEET:** No, sir.

18 **THE COURT:** I didn't do a whole lot on the jury  
19 instructions last night. I did look a little bit at the  
20 acting in concert issues. Let me -- let me ask this. What is  
21 the felony that the state contends that these defendants broke  
22 and entered the house to commit?

23 **MR. SWEET:** With the intent of committing robbery  
24 with a dangerous weapon.

25 **THE COURT:** Do you want to take a break for a moment



1 and come back and talk?

2 **MR. SWEET:** May we approach with counsel?

3 **THE COURT:** Sure. There's nobody in here but us  
4 chickens.

5 (AN OFF-THE-RECORD BENCH CONFERENCE WAS HELD.)

6 **THE COURT:** We'll just be at ease. Just kind of  
7 don't go too far. I think it will be at least past 12 before  
8 we come back in here. We'll just go to my office.

9 **THE BAILIFF:** Do you want to let the jury --

10 **THE COURT:** They can certainly go until 2:00. I'm  
11 wondering if they can go longer than that.

12 **THE COURT:** I'm thinking we're going to get  
13 arguments today, and not the -- which that frees me up. What  
14 time do you think the jury -- 2:30, is that --

15 **MR. SWEET:** I think so.

16 **THE COURT:** You guys know each other, how long you  
17 like to go.

18 **MR. SWEET:** I think I'll be -- with covering  
19 everything, probably half an hour.

20 **MR. SMITH:** Twenty, max, for me.

21 **MR. WRIGHT:** Twenty, 30. I'm last. I'm last.

22 **MR. SWEET:** The rules state that if any defendant  
23 puts on evidence, we're last.

24 **THE COURT:** What are you saying?

25 **MR. SWEET:** Just in terms of order of argument, the

1 state argues last, according to the rules, if any defendant  
2 joined for trial presents evidence. I've got it right here,  
3 Judge.

4 **THE COURT:** We'll talk about it.

5 **MR. WRIGHT:** We need to talk about it.

6 **THE COURT:** Let's bring the jury back in and let's  
7 let them go until -- I don't want them to feel like we're  
8 wasting their time.

9 Okay, let's bring the jury back in. I'm going to  
10 let them go until 2:15. We're going to be talking for a  
11 while.

12 **MR. SWEET:** Can I just inquire whether State's  
13 Exhibit 20 was admitted into evidence?

14 **THE CLERK:** No.

15 **THE COURT:** Was there a white straw in that box?

16 **MR. SWEET:** They didn't keep the drugs, Judge.

17 **THE COURT:** Whatever the reference was.

18 **MR. WRIGHT:** It wasn't listed in the report, Judge.

19 **THE COURT:** There was no objection. Do you think we  
20 can get it done, if we start back at 2:30?

21 **MR. SWEET:** 2:30 is great, Judge.

22 **MR. WRIGHT:** Sure.

23 **(THE JURY RETURNED TO THE COURTROOM AT 11:46**  
24 **AM.)**

25 **THE COURT:** All right. Thank you, ladies and

1 gentlemen.

2 All 14 jurors are back in the courtroom right now.

3 What we've been talking about, as much as anything,  
4 is just logistics. We are at the conclusion of all the  
5 evidence in this case; however, let me just put it up front  
6 again. Don't form an opinion about the case, at this point.  
7 Don't talk about it amongst yourselves, at this point.

8 I'll give you a little outline of what we're going  
9 to do the rest of the day and tomorrow. This afternoon, you  
10 will hear from each of the attorneys in their closing  
11 arguments. We'll discuss closing arguments, but keep in mind  
12 that they're to help you review the evidence. It's not  
13 evidence, in and of itself, but they're important for you to  
14 consider. And then, tomorrow morning, I will instruct you on  
15 the law and, at that point, you'll be sent to the jury room to  
16 begin your deliberations, and at that point is when you start  
17 talking about the case and forming your opinions. So I'll ask  
18 you continue as we've done so far, to not form an opinion  
19 about the case and not talk about the case among yourselves.

20 There are a number of other procedural things we  
21 need to address, in anticipation of that, so make sure --  
22 that's a little tricky, but we'll have you come back at 2:30  
23 this afternoon. Return back to the jury room, and we'll  
24 proceed from there.

25 So let me give you the short form -- shorter form

1 instruction again, just to remind you. You've done well on  
2 all of this.

3           So, members of the jury, we'll now take -- you'll  
4 take a lunch recess until 2:30 this afternoon. I remind you  
5 to observe, during this recess, the rules I've given you  
6 earlier and repeated just a moment ago the substance of it.  
7 Do not talk or communicate with each other or anyone else  
8 about any matter connected with this case or allow anyone else  
9 to talk about it in your presence. Do not talk to or have any  
10 contact with any of the parties, attorneys or witnesses. You  
11 will have your badges on, your jury badges on, during lunch.

12           Don't run out to any of these locations that you've  
13 heard of. Do not conduct any investigation or receive or  
14 attempt to receive any information related to the case from  
15 any source. Don't form an opinion or express an opinion about  
16 the case. Come back here this afternoon at 2:30. Thank you  
17 very much.

18           The bailiff will take you to the jury room, and you  
19 all can go from there.

20                           **(THE JURY WAS EXCUSED FROM THE COURTROOM AT**  
21                           **11:50 AM.)**

22           **THE COURT:** The jury has left the courtroom. The  
23 courtroom door is closed. As I think about it, is there any  
24 reason that the court reporter and the clerk and all the other  
25 court officials can't come back at, perhaps, 2:00 and we'll do

1 the summary of the -- what we determine the charge conference  
2 to be then, and then have them come back at 2:30?

3 **MR. SWEET:** That's fine with us.

4 **THE COURT:** Kind of keep your eye out, more or less  
5 around 2:00. Let's be in recess until at least 2:00, and then  
6 we'll have a conference among ourselves here.

7 (A LUNCH RECESS WAS TAKEN AT 11:51 AM. COURT  
8 RESUMED SESSION AT 2:12 PM, WITH THE DEFENDANTS  
9 AND THEIR ATTORNEYS PRESENT, THE PROSECUTORS  
10 PRESENT, THE JURY ABSENT.)

11 **THE COURT:** Is everybody here that needs to be here?

12 **MR. SWEET:** I think so, Judge.

13 **MR. SMITH:** Yes, sir.

14 **THE COURT:** Okay. We are back in session in these  
15 two cases, State of North Carolina versus James A. Cox, 15 CRS  
16 54673, and State of North Carolina versus Ashley Dean Jackson,  
17 15 CRS 54665. At about 11:30 or so this morning, all the  
18 evidence had been presented, the jury was sent out and told to  
19 return at 2:30. It's about 2:15 right now. We held an  
20 informal charge conference in chambers, and I'm going to  
21 review what we've done there. And please correct me if I  
22 misstate what we discussed.

23 First, I'll go ahead and address this. I spoke to  
24 you, Mr. Smith, just a moment ago about this. We talked about  
25 trying to have the conspiracy and the burglary sort of running

1 parallel in the two -- in the instructions but, of course,  
2 they also need to run parallel in the verdict sheet, and they  
3 are labeled -- these offenses are labeled Count One and Count  
4 Two. So I think, with Mr. Smith's permission, I'm going to do  
5 them just in the order that they are in the indictments, which  
6 doesn't make them run exactly parallel but, as we'll discuss  
7 in just a minute, the conspiracy is going to be slightly  
8 different for the reasons that we'll discuss.

9           In terms of jury instructions, 101.05, function of  
10 the jury; 101.10, burden of proof and reasonable doubt;  
11 101.15, credibility of witnesses; 101.20, weight of the  
12 evidence; 101.30, the effect of the defendant's, Ashley  
13 Jackson's, decision not to testify, and that will be made  
14 clear it applies only to her. Definition of intent, that's  
15 120.10; 104.05, circumstantial evidence; 104.10, motive;  
16 104.20, testimony of interested witness; 104.50, photographs  
17 as illustrative evidence; 105.20, impeachment or corroboration  
18 by prior statement. I think that's it for the sort of  
19 preliminary matters. And then we're going to have two  
20 separate sets of instructions as to each defendant, beginning  
21 with Mr. Cox, because he's going to argue first, also, right?

22           **MR. SMITH:** That's correct, Judge.

23           **THE COURT:** So I'll say, as to the defendant, James  
24 A. Cox... and there we will discuss felonious conspiracy,  
25 202.80 and, in that instruction, we're going to speak of the

1 conspiracy only as between James Cox and Ashley Jackson. And  
2 that is satisfactory to the state and the defendant, as I  
3 understand it.

4 **MR. SWEET:** Yes, sir.

5 **MR. SMITH:** That's correct.

6 **THE COURT:** Then 214.10, first-degree burglary  
7 covering second-degree burglary, felonious breaking or  
8 entering and nonfelonious breaking and entering, as lesser  
9 included offenses, and also including -- I have the number  
10 right here -- acting in concert is going to weave into that.  
11 That will be acting in concert with -- allegedly with Ashley  
12 Dean Jackson. And then, in Mr. Cox's case, 208.90,  
13 discharging a firearm into occupied property. And then we'll  
14 do a separate -- and I'm going to -- we discussed this. I'm  
15 going to give one written -- I might even do two, maybe give  
16 them to the foreman to have one at each end of the table, but  
17 one or two sets of instructions, and I'll label -- it will be  
18 labeled on there that these instructions are as to Mr. Cox,  
19 and these instructions are as to Ms. Jackson.

20 I'll send them -- make sure I have your email  
21 addresses. I'll try to send them to you tonight so you can  
22 look over it.

23 Then it will say, as to Ashley Dean Jackson. Her  
24 first count will be the felonious conspiracy. I may have said  
25 them backwards just a minute ago. But going back to Mr. Cox,

1 his first count is going to be related to the first-degree  
2 burglary and the lesser included offenses. The second count  
3 relates to the conspiracy.

4 In Ms. Jackson's case, the first count is going to  
5 be the conspiracy to commit robbery with a dangerous weapon,  
6 and that conspiracy allegation or instruction is going to  
7 relate to James A. Cox. Is it James A. Cox, Jr.?

8 **MR. SMITH:** It's, Jr., Judge.

9 **THE COURT:** Do you have any problem if we do the  
10 verdict sheet as James A. Cox, Jr.? How is the indictment?

11 **MR. SWEET:** James A. Cox, without the junior.

12 **THE COURT:** I guess we'll stick to that. You're  
13 that person, too. So I'll refer to you that way throughout  
14 this. Her conspiracy is allegedly with you, James A. Cox, or  
15 Richard Linn. And, of course, the indictment mentions both of  
16 those names. I've told Mr. Wright, and everybody else, I'm  
17 willing to simply do it with James A. Cox; however,  
18 Mr. Wright, on behalf of his client, has asked that we include  
19 Richard Linn, because the indictment says James A. Cox and  
20 Richard Linn, to which I'm agreeable, with the one important  
21 change, it would be James A. Cox or Richard Linn. So the  
22 Court will use that, in accordance with the law, in terms of  
23 the conspiracy, and I know that you object to that.

24 **MR. WRIGHT:** If you'll note my exception to that.  
25 The indictment says, "and."



1           **THE COURT:** Yes, sir. Mr. Wright, on behalf of his  
2 client, takes exception to that. That exception is noted for  
3 the record, but I'm going to proceed with "or". So felonious  
4 conspiracy by conspiring with A or B in this case. A is  
5 Mr. Cox, B is Mr. Linn.

6           **MR. SWEET:** If I may, just a real quick question  
7 about that. In terms of Mr. Cox's, you said that you were  
8 going to put it down as Cox and Jackson in that conspiracy,  
9 right? Or are you just going to put -- I'm sorry that he did  
10 conspire with Jackson alone, just Jackson?

11           **THE COURT:** Correct.

12           **MR. SWEET:** All right. Just making sure, because  
13 I'm having to write it down, too, just to make sure I don't  
14 get that wrong.

15           **THE COURT:** Thank you for asking.

16           **MR. SWEET:** Just checking.

17           **THE COURT:** Because I haven't printed it all out.  
18 We discussed it, but it's not printed out. So if you have any  
19 questions, particularly as relates to your arguments, let's be  
20 clear now. And then, finally, in the case of Ms. Jackson,  
21 simple assault, 208.41. And then, finally, the concluding  
22 instructions. The concluding instructions will be along the  
23 pattern jury instruction. I do stick a little sentence in  
24 there that I'm including in these instructions with that.

25           **MR. WRIGHT:** Is that 101.35?

1           **THE COURT:** Yes, 101.35.

2           **MR. WRIGHT:** Judge, did you go over the burglary,  
3 first-degree burglary instruction for Ms. Jackson?

4           **THE COURT:** I may not have. I meant to. Count One  
5 for Ms. Jackson is the conspiracy. Again, that's with Mr. Cox  
6 or Mr. Linn. That's 202.80. Then, as to the burglary for  
7 Ms. Jackson, that's 214.10. That's first-degree burglary  
8 covering the lesser included offenses of second-degree  
9 burglary, felonious breaking or entering, and nonfelonious  
10 breaking or entering, as lesser included offenses.

11           Now, in both cases, Mr. Cox and Ms. Jackson, I am,  
12 pursuant to the footnote, Footnote One in the pattern jury  
13 instructions, going to add the sentence or phrases, "a  
14 breaking need not be actual; that is, the person need not  
15 physically remove the barrier himself," in the case of Mr.  
16 Cox; "herself," in the case of Ms. Jackson. "He or she may,  
17 by threat of force" -- I'm not going to include the  
18 parenthetical phrase in that footnote. "He or she may, by a  
19 threat of force, inspire such fear as to induce the occupant  
20 to allow him or her to enter, period." I'm adding that.  
21 Nothing else out of that footnote.

22           And just throughout this -- I'll send you a copy --  
23 but where there are parenthetical selections, I will select  
24 what comports with the evidence; for example, dwelling house,  
25 or whatever.

1           Anything else as to the instructions, from the  
2 state?

3           **MR. SWEET:** No, sir.

4           **THE COURT:** I note your exception, Mr. Wright, that  
5 we discussed earlier. Anything else besides that, as to the  
6 instructions?

7           **MR. WRIGHT:** No, Judge.

8           **THE COURT:** Mr. Smith?

9           **MR. SMITH:** I'm satisfied, Your Honor.

10          **THE COURT:** I appreciate it. Every case always has  
11 some interesting little challenges, and this one did, too, I  
12 think. I appreciate your discussions as we thought through  
13 it.

14          All right. When we come back in, I'm going to say  
15 what was said in the -- at the beginning, when they were first  
16 impaneled. When the evidence is completed the attorneys will  
17 make their final statements or arguments. These final  
18 arguments of the attorneys are not evidence, but are given to  
19 assist the jurors in evaluating the evidence. And, you know,  
20 I'll hand it to you, Mr. Sweet -- no, I'll hand it to you,  
21 Mr. Smith.

22          **MR. SMITH:** Yes, sir.

23          **THE COURT:** All right. We'll just go with one,  
24 two, three. I guess we'll see where we are, but the logical  
25 break would probably be after you, Mr. Wright, if we took a

1 break. Let's just see how far we go. If Mr. Smith gets wound  
2 up and going strong --

3 **MR. SMITH:** I'm not that kind of guy, Judge. I get  
4 to the point.

5 **THE COURT:** Anything else, before we bring the jury  
6 back?

7 **MR. SWEET:** No, sir.

8 **MR. WRIGHT:** No, sir.

9 **THE COURT:** Thank you. Let's bring the jury back  
10 in.

11 **(THE JURY RETURNED TO THE COURTROOM AT 2:31**  
12 **PM.)**

13 **THE COURT:** We are back in court. All 14 jurors are  
14 present in the courtroom. We discussed a little bit the  
15 procedure before lunch and, just to remind you of that, what  
16 we'll do this afternoon is hear arguments from each of the  
17 attorneys on their respective positions. I've told them we'll  
18 probably take a break in there. We'll hear from Mr. Smith on  
19 behalf of Mr. Cox; Mr. Wright, on behalf of Ms. Jackson, and  
20 Mr. Sweet, on behalf of the State of North Carolina.

21 So, at this time, the attorneys will make their  
22 final statements or arguments. The final arguments of the  
23 attorneys are not evidence but are given to you to assist you  
24 in evaluating the evidence.

25 With that, Mr. Smith.

1           **MR. SMITH:** Thank you, Judge Bland.

2                   **(MR. SMITH MADE A CLOSING ARGUMENT AT 2:32 PM.**

3                   **MR. WRIGHT MADE A CLOSING ARGUMENT AT 2:47 PM.)**

4           **THE COURT:** I was going to stand up and stretch, but  
5 let's do that real quick. Let's take about five minutes, and  
6 you'll just step on back to the jury room, take care of any  
7 personal matters, and then we'll come come right back out.  
8 You know what not to do. Don't discuss the case. Don't talk  
9 among yourselves about the case. Just stretch out and tend to  
10 things, and we'll come back and hear the final argument from  
11 the state. Thank you.

12                   **(THE JURY WAS EXCUSED FROM THE COURTROOM AT**  
13                   **3:09 PM.)**

14           **THE COURT:** All right. The jury is outside the  
15 courtroom, and the courtroom door is closed. We'll take a  
16 short recess.

17                   **(A RECESS WAS TAKEN AT 3:10 PM. COURT RESUMED**  
18                   **SESSION AT 3:18 PM, WITH THE DEFENDANTS AND**  
19                   **THEIR ATTORNEYS PRESENT, THE PROSECUTORS**  
20                   **PRESENT, THE JURY ABSENT.)**

21           **THE COURT:** Everybody ready?

22           **MR. SWEET:** Yes, sir.

23           **THE COURT:** Let's bring them back in.

24                   **(THE JURY RETURNED TO THE COURTROOM AT 3:19**  
25                   **PM.)**

1           **THE COURT:** Okay. After that seventh inning  
2 stretch, we're all back. All 14 jurors are here and the jury  
3 is with the state, Mr. Sweet.

4           **MR. SWEET:** Thanks, Judge.

5                   **(MR. SWEET MADE A CLOSING ARGUMENT AT 3:19 PM**  
6                   **PM.)**

7           **THE COURT:** Thank you, Mr. Sweet.

8           As we said, I realize this day has been little bit  
9 disjointed. If I were to begin the instructions now -- which  
10 I'll tell you now they'll be sort of long -- it would be 5:00.  
11 I don't know if we would even finish. So we'll start those  
12 tomorrow.

13           So members of the jury, we'll now take an overnight  
14 recess. You may think I just go to breakfast all the time,  
15 but I have another breakfast at 7:30 tomorrow. So how is  
16 9:45? Will that work for each of you? Any problem with that?  
17 Let's say 9:45 tomorrow morning. So, ladies and gentlemen,  
18 we'll now take an overnight recess. I remind you, once again,  
19 to observe, as you have observed -- and I thank you for doing  
20 so -- observe during this recess the rules I've given you  
21 earlier. In short, don't make a conclusion -- reach  
22 conclusions about this case, and don't deliberate or talk  
23 amongst yourselves about this case.

24           Do not talk or communicate with each other or with  
25 anybody else about any matter connected to this case or allow

1 anyone to talk about it in your presence. Do not talk to or  
2 have any contact with any parties, attorneys or witnesses. Do  
3 not conduct any investigation on the way home tonight by going  
4 by any of these addresses that were brought up. Do not  
5 conduct any investigation or receive or attempt to receive any  
6 reports or information related to this case from any source.  
7 That includes the Internet. Don't look on the Internet to see  
8 what you can discover, including the media, the Internet,  
9 social networking or by any other means. Do not form or  
10 express an opinion about the case.

11 Go home and come on back tomorrow morning at 9:45,  
12 and we'll be ready to go, okay? Thank you all very much.  
13 Leave your badge and your notebooks on your chairs.

14 (THE JURY WAS EXCUSED FROM THE COURTROOM AT  
15 3:59 PM.)

16 THE COURT: All right. Thank you all for your  
17 arguments. Anything before we -- I will note the jury is out  
18 of the courtroom.

19 Yes, sir.

20 MR. WRIGHT: Just one thing. I think there was a  
21 request that may have been made that my client be questioned  
22 if she agrees with the argument I made, with regard to the  
23 simple assault charge, and the Court can inquire of her now,  
24 and she told me she's willing to answer.

25 THE COURT: Okay. Thank you. Ms. Jackson, I think,

1 as I recall --

2 **MR. WRIGHT:** Judge, I indicated on the simple  
3 assault charge I didn't have much of an argument; however, I  
4 would argue to look at the justification and excuse aspect of  
5 the simple assault charge, and that may have been implied that  
6 I'm pleading her guilty to that. I'm not, and I didn't intend  
7 to in my jury argument. I just want to make sure that the  
8 Court inquires of her, if she agrees with my argument.

9 **THE COURT:** I think the question of guilty or not  
10 guilty is a question for the jury. I think you essentially  
11 conceded that you were in some sort of -- I don't want say  
12 affray because, legally, that's the same word as assault, but  
13 there was some sort of altercation between the two of them.

14 **MR. WRIGHT:** I've never denied, nor has she denied,  
15 there was an altercation.

16 **THE COURT:** Do you have any problem with the  
17 argument he made?

18 **DEFENDANT JACKSON:** No, sir, I don't.

19 **THE COURT:** Certainly, I'm sending each of these  
20 questions to the jury for their determination but, to the  
21 extent he acknowledged you were in some sort of physical  
22 disagreement with Ms. Leisure, to that extent do you have any  
23 problem with the argument he made, in that regard?

24 **DEFENDANT JACKSON:** No, sir, I don't.

25 **THE COURT:** Thank you. Does that cover it



1 sufficiently?

2 **MR. WRIGHT:** As far as I'm concerned, it does.

3 **THE COURT:** All right. I was trying to work on  
4 these instructions while you were doing that. Also, I did  
5 come across -- think about this paragraph. This is under  
6 acting in concert. It's the second paragraph in this  
7 parenthetical. The defendant is not guilty of a crime merely  
8 because the defendant is present at the scene, even though the  
9 defendant may silently approve of the crime or secretly intend  
10 to assist in its commission. To be guilty, the defendant must  
11 aid or actively encourage the person committing the crime or,  
12 in some way, communicate the defendant's intention to assist  
13 in its commission. I would intend to include that paragraph.

14 **MR. WRIGHT:** I like that.

15 **THE COURT:** I felt pretty confident you would, but I  
16 wanted to cover it, anyway. Okay. I think that's it. I'm  
17 trying to work that in. If you don't mind, give me your email  
18 address.

19 **MR. SMITH:** We're handing them up right now, Judge.

20 **THE COURT:** Anything else, officially, that we need  
21 to do while we're in court and on the record?

22 **MR. SMITH:** Nothing for Mr. Cox.

23 **MR. WRIGHT:** Nor Ms. Jackson.

24 **THE COURT:** Nothing from the state?

25 **MR. SWEET:** No, sir.

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**THE COURT:** Let's be at recess then, until 9:45.

**(THE EVENING RECESS WAS TAKEN AT 4:04 PM.)**

**(END OF VOLUME III.)**

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\* \* \* \* \*

STATE OF NORTH CAROLINA	)	ONSLow COUNTY
	)	
VS.	)	
	)	
JAMES A. COX	)	15 CRS 54673
and	)	
ASHLEY DEAN JACKSON	)	15 CRS 54665

\* \* \* \* \*

TRANSCRIPT, Volume IV of V  
January 12, 2018

\* \* \* \* \*

January 8, 2018, Criminal Session

The Honorable William W. Bland, Judge Presiding

Jury trial

## A P P E A R A N C E S

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and  
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1                   (COURT RESUMED SESSION ON 01/12/18 AT 10:04 AM,  
2                   WITH THE ATTORNEYS PRESENT, THE PROSECUTORS  
3                   PRESENT, BOTH DEFENDANTS ABSENT, THE JURY  
4                   ABSENT.)

5                   **THE COURT:** Good morning, everyone. We've all been  
6 here for a little bit this morning. The jury is here, they're  
7 in the jury room, not in the courtroom. We talked informally,  
8 and I prepared the written jury instructions which, as I  
9 indicated, I think, given the sort of -- confusing isn't the  
10 right word, but just -- maybe confusing is the right word, but  
11 to make it so the jury can follow along with the instructions,  
12 the way this is set up between the two defendants, I'm going  
13 to give each juror a set of jury instructions where they can  
14 read along. That, of course, goes against the general advice  
15 of any speaker who says, don't give out your handout, but I  
16 think it will help them follow along and see the structure of  
17 the way things are set up.

18                   We reviewed a couple of questions here. One  
19 question I had brought to the attention of all the attorneys  
20 was, it seemed to me, that second degree -- there was no way a  
21 reasonable jury could find second-degree burglary without  
22 finding first-degree burglary. It does seem entirely possible  
23 that a reasonable jury might find first-degree burglary or  
24 they might not find first-degree burglary, but the only  
25 difference between first and second is the occupied dwelling,

1 and the dwelling was pretty clearly occupied, by every version  
2 of events.

3           So, by agreement -- and, again, as I said, this is  
4 not to favor anybody. I don't know that it does favor anyone.  
5 I can't figure out how it cuts one way or the other, but I do  
6 think it's in accord with the facts and law and the evidence.  
7 So we're taking out second-degree burglary. So there will be  
8 first-degree burglary, felonious breaking or entering, and  
9 nonfelonious or misdemeanor breaking or entering on the  
10 instructions.

11           We also modified, at the request of Mr. Smith, which  
12 I think is well -- a good suggestion, as to the headings. I  
13 had included the headings in all of these. I go back and  
14 forth on that in my mind, sometimes, but I think it does -- if  
15 a jury -- as long as they have the written instructions, it's  
16 kind of useless to give it to them as just a bunch of words,  
17 unless you can have a page number and heading to refer to  
18 certain circumstances.

19           So, as to Count One, as to James Cox, it simply  
20 says, first-degree burglary including lesser included  
21 offenses. Acting in concert, I didn't separate out the acting  
22 in concert. It's woven into that same instruction. And then  
23 the same heading as to Ashley Jackson. So we've amended that.  
24 I think y'all have seen it. And, also, on the last page, the  
25 back page, the concluding instructions, we added a line at the

1 top, these concluding instructions apply to both defendants,  
2 just to make it clear that they do apply to both defendants.  
3 I put some language in there to kind of separate out where --  
4 you know, what crimes Mr. Cox is alleged to have committed and  
5 what the elements are of those, and what crimes Ms. Jackson is  
6 alleged to have committed and what the elements are of those,  
7 and made that as clear as I could, but I think that makes it  
8 clearer. So, Mr. Smith, that's fine.

9 Okay. It's 10:10 now. Court started at quarter --  
10 well, at least yesterday, we recessed until quarter to 10 this  
11 morning. Most of us have been here since a little bit before  
12 9:30 this morning. Neither defendant is present in court.  
13 The defendant's father is in court, just noted, but I'm not  
14 asking him, necessarily, anything. We'll proceed without  
15 them, if we have to. They've got a few minutes, because we've  
16 got to print up these jury instructions, but any idea where  
17 they are, or anything you would like to say? Let me put it  
18 that way.

19 **MR. SMITH:** I just spoke to Mr. Cox. He said they  
20 were both so worried last night, they stayed up all night.  
21 They suddenly fell asleep. They've been awakened by his wife,  
22 James's mom, and they are on the way. That's the report I  
23 got.

24 **THE COURT:** Thank you.

25 **MR. WRIGHT:** Judge, if I --

1           **THE COURT:** If there is any -- I'm sure you've told  
2 them, but they -- they should know, as the attorneys certainly  
3 know, that we'll proceed without them, and I think, generally,  
4 people think that's not favorable to people, not to be present  
5 when they're on trial.

6           **MR. SMITH:** Mr. Wright and I discussed it. It  
7 certainly hurts their acting in concert.

8           **THE COURT:** Yes, sir. Mr. Wright?

9           **MR. WRIGHT:** Yes, sir. Judge, although we mentioned  
10 on the record deleting the second-degree burglary, as I read  
11 the instructions, there was language in your instructions  
12 regarding the second-degree burglary, and I want to make sure  
13 that --

14           **THE COURT:** I think I've taken that out.

15           **MR. WRIGHT:** I'm talking about the copy that I got.

16           **THE COURT:** Which copy are you looking at? Does  
17 yours include second-degree burglary in it?

18           **MR. WRIGHT:** Yes, sir, and I can give you a page  
19 number.

20           **THE COURT:** Let me give you this. This is a draft.  
21 It's not entirely exactly correct as to what's going to be  
22 distributed, because I think we changed the way these  
23 concluding instructions apply to both defendants, but I took  
24 second-degree burglary out of that, and we took it out of the  
25 heading for first-degree burglary, where it said covering



1 second-degree burglary. I think we've taken out all reference  
2 to second-degree burglary but, if I haven't -- if we haven't,  
3 I very much ask you to let me know, because I did a search,  
4 too, a controlled find kind of thing, or command find.

5 MR. WRIGHT: I've got two -- two copies of  
6 instructions.

7 THE COURT: That's right.

8 MR. WRIGHT: The first one was single page, the  
9 second one was double sided.

10 THE COURT: I don't know why that --

11 MR. WRIGHT: I'm not sure.

12 THE COURT: One was a PDF, I think.

13 MR. WRIGHT: The latest one was the double sided. I  
14 have not -- I assumed it was just like the first one.

15 THE COURT: I'll show you when she comes back out.

16 MR. WRIGHT: Because the first one I got --

17 THE COURT: I think we've got it, but it gets -- I  
18 appreciate it, and now is absolutely the time.

19 MR. WRIGHT: All right, Judge.

20 THE COURT: I don't think it's the end of the world  
21 if there's an error in there. Probably not. I would like to  
22 avoid it, if we can. So, if you see one, let me know. I will  
23 say, what I was going to do there was make sure they each had  
24 a pen, which they do but, as we go through, if we find some  
25 error, just a simple error, just to ask them to correct it on

1 their copy. For example, I misspelled robbery a couple times.  
2 I think I've corrected those. If we're told we put one of the  
3 defendant's names wrong and I should have put the other one --  
4 I tried to watch for that -- but any error like that I'll get  
5 them to correct.

6 **MR. SMITH:** Is Ms. McCormac bringing the verdict  
7 sheets?

8 **THE COURT:** The verdict sheets, I've got them here.  
9 Let me hand you -- any of you. Could one of you grab these  
10 and just pass that around if you will.

11 (VERDICT SHEETS SHOWN TO THE ATTORNEYS.)

12 **THE COURT:** I think the use of the word "or" between  
13 those lesser included offenses is a much better choice than  
14 what I had suggested, which I didn't like that language, but I  
15 felt like they need some instruction as to how to proceed  
16 between the choices.

17 **MR. SWEET:** It's good with the state, Judge.

18 **MR. WRIGHT:** We're satisfied as to Ms. Jackson.

19 **MR. SMITH:** As to Mr. Cox, we're satisfied.

20 **MR. WRIGHT:** Judge, as I understand it, you are  
21 printing out a new set of instructions to give to us, the  
22 amended set.

23 **THE COURT:** Yes. So you might want to tear up --

24 **MR. WRIGHT:** Because the two I have still have  
25 second degree in there.

1           **THE COURT:** Do look at it. Make sure, because  
2 that's very important, what you're saying. But I think we've  
3 got it. Let's look through this together. So the jury  
4 instructions, on the first page, kind of going through page  
5 one, page two, page three, page four, page five. This is  
6 where the concerns you were expressing are. Look especially  
7 close there. The word "second-degree burglary" is taken out  
8 of the heading. It says, "first-degree burglary, including  
9 lesser included offenses, acting in concert."

10           Going down to the bottom paragraph on Page 6, it  
11 says, essentially, if you find first-degree burglary you  
12 should find him guilty but, if you do not so find, or have a  
13 reasonable doubt as to one or more of these things, you will  
14 not return a verdict of guilty of first-degree burglary but  
15 will consider whether the defendant, James A. Cox, is guilty  
16 of felonious breaking and entering, which doesn't have the  
17 second degree there.

18           Then the issue comes back up on Page 8. And Page 8,  
19 at least at the top, is the acting in concert instruction.  
20 Again, the second-degree burglary reference is removed, but  
21 the first paragraph, if two or more persons join in a common  
22 purpose to commit first-degree burglary, felonious breaking or  
23 entering or nonfelonious breaking and entering, each person --  
24 I actually changed that word. I think it said each of them,  
25 in the pattern jury instruction, but I thought that was

1 getting confusing. I said, each person, if actively or  
2 constructively presently is guilty of a crime.

3           And then it's mentioned again. This litany of  
4 offenses is under the third paragraph on Page 8, first-degree  
5 burglary, felonious breaking or entering, nonfelonious  
6 breaking or entering. And then the final paragraph. Again,  
7 first-degree burglary, felonious breaking or entering or  
8 nonfelonious breaking or entering. I don't see any reference  
9 there to second-degree burglary.

10           Then, on Pages 9 and 10, the same issue would come  
11 up starting on Page 13, as to Ashley Jackson. That's, of  
12 course, your client, Mr. Wright. So the heading, first-degree  
13 burglary, including lesser included offenses, acting in  
14 concert. Through the elements, if you find those five  
15 elements, return a verdict of guilty of first-degree burglary.  
16 If you do not so find, or have a reasonable doubt -- I'm on  
17 Page 14 -- as to one or more of these things, you will return  
18 a verdict of not guilty of first-degree burglary, but would  
19 consider whether the defendant, Ashley Dean Jackson, is guilty  
20 of felonious breaking or entering.

21           Then, getting to where it's -- a group of potential  
22 crimes is listed again, on Page 16, under the acting in  
23 concert section, the first paragraph just has first-degree  
24 burglary, felonious breaking or entering and nonfelonious  
25 breaking or entering. And the third and fourth paragraphs on

1 those pages also don't have second-degree burglary. I think  
2 that's good.

3 And even though we put a beginning and an end to the  
4 section about each of the defendants, the final page applies  
5 to both defendants' concluding instructions, which are just  
6 concluding instructions. Okay. Anybody see anything that's a  
7 problem?

8 **MR. SWEET:** These are the nicest looking jury  
9 instructions I've ever seen, Judge. Well done. They look  
10 like an SAT exam the way they're printed out. The state is  
11 satisfied.

12 **THE COURT:** Okay. Any word on the clients?

13 **MR. COX, SR.:** They're between the parking lot and  
14 here.

15 **THE COURT:** Okay. I'll give them a few minutes.  
16 Everybody is satisfied with the jury instructions and  
17 everybody is satisfied with the verdict sheets, so far anyway?

18 **MR. SWEET:** Yes.

19 **MR. WRIGHT:** Yes. Generally, we get a copy of the  
20 verdict sheet.

21 **THE COURT:** We'll get you a copy. Can we do that  
22 later?

23 **MR. WRIGHT:** Yes.

24 **(BOTH DEFENDANTS ENTERED THE COURTROOM AT 10:24**  
25 **AM.)**

1           **THE COURT:** All right. It's about 10:25 a.m., and  
2 everyone is in the courtroom, all the attorneys and all the --  
3 each defendant is here. The jury instructions have been  
4 approved, and the reason they look so nice is because we're  
5 handing them to the jury. If I were just reading them, they  
6 wouldn't look this good. And you've each seen the verdict  
7 sheets, and so I think we're ready to proceed.

8           **MR. SMITH:** I've seen the verdict sheet. We're  
9 satisfied, Judge.

10          **MR. WRIGHT:** Yes, sir.

11          **THE COURT:** So everybody is ready to go, right?

12          **MR. SWEET:** Yes, Your Honor.

13          **MR. SMITH:** Yes, Your Honor.

14          **THE COURT:** All right. Let's bring the jury in,  
15 please.

16                   **(THE JURY RETURNED TO THE COURTROOM AT 10:27**  
17                   **AM.)**

18          **THE COURT:** Good morning, ladies and gentlemen.  
19 Thank you again for the manner in which you have performed  
20 your service in a timely manner, and we are moving, likewise,  
21 as efficiently as we can.

22                   Your notebooks are still there. If you would  
23 confirm, please, for me, that any markings inside those  
24 notebooks are markings you have made, there's nothing new or  
25 additional or nothing has changed in there. You were

1 certainly not required to take notes, but I do want to make  
2 sure there are -- they are your notes and haven't come from  
3 anywhere else. Is anything different from the way they were  
4 left?

5 (JURORS RESPONDED IN THE NEGATIVE.)

6 THE COURT: If there is, if you would raise your  
7 hand. Okay. No hands being raised, I'm assuming the  
8 notebooks are in the same condition that you left them.

9 Now, I am going to ask you to hold onto your pens.  
10 I'm going to hand out -- or the bailiff is going to hand out  
11 to you the jury instructions that I'm going to read from. I  
12 don't always hand it out to be read at the same time as I'm  
13 reading them, but I think in this case it's appropriate just  
14 to make sure that you're able to follow it and to see the  
15 structure of the -- well, of the instructions and of your duty  
16 as to it applies to each defendant, as to each charge, as to  
17 each defendant and to understand the elements. I think,  
18 rather than sitting there, listening to it, you'll be able to  
19 read along and sort of understand the structure. The only  
20 thing I would ask is that you please don't read ahead, just  
21 read with me as we go through.

22 If you would distribute those, please, sir.

23 (A COPY OF THE COURT'S INSTRUCTIONS WAS GIVEN TO  
24 EACH JUROR.)

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### JUDGE BLAND'S CHARGE TO THE JURY

**THE COURT:** We have 14 jurors in here, and each juror has his or her own copy, is that right? Okay. Thank you. Read with me, or just listen but, if you get sort of confused as to where we are, you can follow along and maybe understand the structure again.

Members of the jury, all of the evidence has been presented. It is now your duty to decide from this evidence what the facts are. You must then apply the law which I'm about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you think it is or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied.

Each defendant has entered a plea of not guilty. The fact that a defendant has been charged is no evidence of guilt. Under our system of justice, when a defendant pleads not guilty, the defendant is not required to prove the defendant's innocence. The defendant is presumed to be innocent. The state must prove to you that the defendant is guilty, beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason and common sense, arising out of some or all of the evidence that has been presented, or the lack or insufficiency of the



1 evidence, as the case may be. Proof beyond a reasonable doubt  
2 is proof that fully satisfies or entirely convinces you of a  
3 defendant's guilt.

4           You are the sole judges of the believability of a  
5 witness. You must decide for yourselves whether to believe  
6 the testimony of any witness. You may believe all, any part  
7 or none of a witness' testimony. In deciding whether to  
8 believe a witness, you should use the same tests of  
9 truthfulness that you use in your everyday lives. Among other  
10 things, these tests may include the opportunity of the witness  
11 to see, hear, know or remember the facts or occurrences about  
12 which the witness testified; the manner and appearance of the  
13 witness; any interest, bias, prejudice or partiality the  
14 witness may have; the apparent understanding and fairness of  
15 the witness; whether the testimony is reasonable, and whether  
16 the testimony is consistent with other believable evidence in  
17 the case.

18           You are the sole judges to be given -- you are the  
19 sole judges of the weight to be given any evidence. If you  
20 decide that certain evidence is believable, you must then  
21 determine the importance of that evidence, in light of all  
22 other believable evidence in the case.

23           The defendant, Ashley Dean Jackson, in this case,  
24 has not testified. The law gives the defendant this  
25 privilege. The same law also assures the defendant, Ashley

1 Dean Jackson, that her decision not to testify creates no  
2 presumption against the defendant, Ashley Dean Jackson.  
3 Therefore, the silence of the defendant, Ashley Dean Jackson,  
4 is not to influence your decision, in any way.

5 Intent is a mental attitude, seldom provable by  
6 direct evidence. It must ordinarily be proved by  
7 circumstances from which it may be inferred. You arrive at  
8 the intent of a person by such just and reasonable deductions  
9 from the circumstances proven as a reasonably prudent person  
10 would ordinarily draw therefrom.

11 There are two types of evidence from which you may  
12 find the truth as to the facts of a case, direct evidence and  
13 circumstantial evidence. Direct evidence is the testimony of  
14 one who asserts actual knowledge of a fact, such as an  
15 eyewitness. Circumstantial evidence is proof of a chain or  
16 group of facts and circumstances indicating the guilt or  
17 innocence of a defendant.

18 The law makes no distinction between the weight to  
19 be given either direct or circumstantial evidence, nor is a  
20 greater degree of certainty required of circumstantial  
21 evidence than of direct evidence.

22 You should weigh all the evidence in the case.  
23 After weighing all the evidence, if you are not convinced of  
24 the guilt of a defendant, beyond a reasonable doubt, you must  
25 find the defendant not guilty.

1           Proof of motive for the crime is permissible and  
2 often valuable, but never essential for conviction. If you  
3 are convinced, beyond a reasonable doubt, that the defendant  
4 committed the crime, the presence or absence of motive is  
5 immaterial. Motive may be shown by facts surrounding the act,  
6 if they support a reasonable inference of motive. When thus  
7 proved, motive becomes a circumstance to be considered by you.  
8 The absence of motive is equally a circumstance to be  
9 considered on the side of innocence.

10           You may find that a witness is interested in the  
11 outcome of this trial. You may take the witness' interest  
12 into account, in deciding whether to believe the witness. If  
13 you believe the testimony of the witness, in whole or in part,  
14 you should treat what you believe the same as any other  
15 believable evidence.

16           Photographs were introduced into evidence in this  
17 case for the purpose of illustrating and explaining the  
18 testimony of several witnesses. These photographs may not be  
19 considered by you for any other purpose.

20           Evidence has been received tending to show that, at  
21 an earlier time, a witness made a statement which may conflict  
22 or be consistent with the testimony of the witness at this  
23 trial. You must not consider such earlier testimony as  
24 evidence of the truth of what was said at that earlier time,  
25 because it was not made under oath at this trial. If you

1 believe the earlier statement was made and that it conflicts  
2 or is consistent with the testimony of the witness at this  
3 trial, you may consider this, and all other facts and  
4 circumstances bearing upon the witness' truthfulness, in  
5 deciding whether you will believe or disbelieve the witness'  
6 testimony.

7           Now, everything we have gone through so far applies  
8 equally to each defendant. We're going to have two sections  
9 here. You'll see the first where it says, State of North  
10 Carolina versus James A. Cox. This relates to the offenses  
11 that have been charged against James A. Cox. You'll have two  
12 verdict sheets when you get to the jury room. One will relate  
13 to James A. Cox, one will relate to Ashley Dean Jackson. What  
14 we're going to go through now is the charges as they relate to  
15 James A. Cox.

16           The defendant, James A. Cox, has been charged with  
17 first-degree burglary, which is breaking and entering in the  
18 nighttime of another person's occupied dwelling house, without  
19 that person's consent and with the intent to commit a felony,  
20 which in this case is alleged to be robbery with a dangerous  
21 weapon.

22           For you to find the defendant, James A. Cox, guilty  
23 of this offense, the state must prove five things, beyond a  
24 reasonable doubt:

25           First, that the defendant, James A. Cox, broke and

1 entered a dwelling house. A breaking need not be actual; that  
2 is, the person breaking need not physically remove the barrier  
3 himself. He may, by a threat of force, inspire such fear as  
4 to induce the occupant to allow him to enter.

5 Second, that the breaking and entering was during  
6 the nighttime. The law considers it to be nighttime when it  
7 is so dark that a person's face cannot be identified except by  
8 artificial light or moonlight.

9 Third, that at the time of the breaking and  
10 entering, the dwelling house was occupied.

11 Fourth, that the owner or tenant did not consent to  
12 the breaking and entering.

13 And fifth, that at the time of the breaking and  
14 entering, the defendant, James A. Cox, intended to commit a  
15 felony, robbery with a dangerous weapon, within the dwelling  
16 house.

17 Robbery with a dangerous weapon is a crime that  
18 occurs when a defendant with a firearm takes and carries away  
19 property from a person or the presence of a person, without  
20 that person's voluntary consent, by endangering or threatening  
21 that person or another person's life with the use or  
22 threatened use of a firearm, while the defendant knows that  
23 the defendant is not entitled to take the property and the  
24 defendant intends to deprive that person of its use  
25 permanently.

1           If you find from the evidence, beyond a reasonable  
2 doubt, that on or about the alleged date, the defendant, James  
3 A. Cox, broke into and entered an occupied dwelling house  
4 without the owner's or the tenant's consent, during the  
5 nighttime, and that -- and at that time, intended to commit  
6 robbery with a dangerous weapon therein, it would be your duty  
7 to return a verdict of guilty of first-degree burglary. If  
8 you do not so find, or have a reasonable doubt as to one or  
9 more of these things, you will not return a verdict of guilty  
10 of first-degree burglary but would consider whether the  
11 defendant, James A. Cox, is guilty of felonious breaking or  
12 entering.

13           Felonious breaking or entering differs from  
14 first-degree burglary in that both a breaking and an entry are  
15 necessary. Either a breaking or an entry is enough.  
16 Furthermore, the building that was involved need not have been  
17 a dwelling house, need not have been occupied, and the  
18 breaking or entry need not have been in the nighttime.

19           If you find from the evidence, beyond a reasonable  
20 doubt, that on or about the alleged date, the defendant, James  
21 A. Cox, broke into or entered a building without the consent  
22 of the owner or tenant, intending at that time to commit  
23 robbery with a dangerous weapon therein, it would be your duty  
24 to return a verdict of guilty of felonious breaking or  
25 entering. If you do not so find, or have a reasonable doubt

1 as to one or more of these things, you will not return a  
2 verdict of guilty of felonious breaking or entering but would  
3 consider whether the defendant, James A. Cox, is guilty of  
4 nonfelonious breaking or entering.

5 Nonfelonious breaking or entering differs from  
6 felonious breaking or entering in that it need not be done  
7 with the intent to commit a felony, so long as the breaking or  
8 entering was wrongful; that is, without any claim of right.

9 If you find from the evidence, beyond a reasonable  
10 doubt, that on or about the alleged date, the defendant, James  
11 A. Cox, wrongfully broke into or entered another person's  
12 building without that person's consent, it would be your duty  
13 to return a verdict of guilty of nonfelonious breaking or  
14 entering. If you do not so find, or if you have a reasonable  
15 doubt as to one or more of these things, it would be your duty  
16 to return a verdict of not guilty.

17 For a defendant to be guilty of a crime, it is not  
18 necessary that the defendant do all of the acts necessary to  
19 commit the crime. If two or more persons join in a common  
20 purpose to commit first-degree burglary, felonious breaking or  
21 entering, or nonfelonious breaking or entering, each person,  
22 if actively or constructively present, is guilty of the crime.

23 A defendant is not guilty of a crime merely because  
24 the defendant is present at the scene, even though the  
25 defendant may silently approve of the crime or secretly intend

1 to assist in its commission. To be guilty, the defendant must  
2 aid or actively encourage the person committing the crime or,  
3 in some way, communicate to another person the defendant's  
4 intention to assist in its commission.

5           If you find from the evidence, beyond a reasonable  
6 doubt, that on or about the alleged date, the defendant,  
7 acting either by himself or acting together with another  
8 person, or with other persons, committed first-degree  
9 burglary, felonious breaking or entering or nonfelonious  
10 breaking and entering, as each of these crimes has been  
11 described to you in these instructions, it would be your duty  
12 to return a verdict of guilty to the crime that you found from  
13 the evidence, beyond a reasonable doubt, that the defendant  
14 committed. If you do not so find, or if you have a reasonable  
15 doubt as to whether the defendant committed either  
16 first-degree burglary, felonious breaking or entering, or  
17 nonfelonious breaking or entering, it would be your duty to  
18 return a verdict of not guilty.

19           In Count Two, the defendant has been charged with  
20 feloniously conspiring to commit robbery with a dangerous  
21 weapon. For you to find the defendant guilty of this offense,  
22 the state must prove three things, beyond a reasonable doubt:

23           First, that the defendant, James A. Cox, and Ashley  
24 Dean Jackson entered into an agreement.

25           Second, that the agreement was to commit robbery



1 with a dangerous weapon.

2           Robbery with a dangerous weapon is a crime that  
3 occurs when a defendant with a firearm takes and carries away  
4 property from a person or the presence of a person, without  
5 that person's voluntary consent, by endangering or threatening  
6 that person or another person's life with the use or  
7 threatened use of a firearm, while the defendant knows that  
8 the defendant is not entitled to take the property and the  
9 defendant intends to deprive that person of its use  
10 permanently.

11           And third, that the defendant, James A. Cox, and  
12 Ashley Dean Jackson, intended that the agreement be carried  
13 out at the time it was made.

14           If you find from the evidence, beyond a reasonable  
15 doubt, that on or about the alleged date, the defendant, James  
16 A. Cox, agreed with Ashley Dean Jackson to commit robbery with  
17 a dangerous weapon and that the defendant, James A. Cox, and  
18 Ashley Dean Jackson intended at the time the agreement was  
19 made that it would be carried out, it would be your duty to  
20 return a verdict of guilty.

21           If you do not so find, or have a reasonable doubt as  
22 to one or more of these things, it would be your duty to  
23 return a verdict of not guilty.

24           In Count Three, the defendant, James A. Cox, has  
25 been charged with discharging a firearm into occupied

1 property. For you to find the defendant, James A. Cox, guilty  
2 of this offense, the state must prove three things, beyond a  
3 reasonable doubt:

4           First, that the defendant, James A. Cox, willfully  
5 or wantonly discharged a firearm into a building. An act is  
6 willful or wanton when it is done intentionally, with  
7 knowledge or reasonable grounds to believe that the act would  
8 endanger the rights or safety of others. That says, "or," it  
9 should be "of." I think that's clear enough.

10           Second, that the building was occupied by one or  
11 more persons at the time the firearm was discharged.

12           And third, that the defendant knew that the building  
13 was occupied by one or more persons.

14           If you find from the evidence, beyond a reasonable  
15 doubt, that on or about the alleged date, the defendant  
16 willfully or wantonly discharged a firearm into a building  
17 while it was occupied by one or more persons, and that the  
18 defendant knew it was occupied by one or more persons, it  
19 would be your duty to return a verdict of guilty. If you do  
20 not so find, or have a reasonable doubt as to one or more of  
21 these things, it would be your duty to return a verdict of not  
22 guilty.

23           Now, this concludes the specific instructions as to  
24 the allegations and the counts against James A. Cox.

25           We'll begin now to discuss the charges or counts

1 against Ashley Dean Jackson.

2 In Count One, the defendant, Ashley Dean Jackson,  
3 has been charged with feloniously conspiring to commit robbery  
4 with a dangerous weapon. For you to find the defendant,  
5 Ashley Dean Jackson, guilty of this offense, the state must  
6 prove three things, beyond a reasonable doubt:

7 First, that the defendant, Ashley Dean Jackson and  
8 James A. Cox or Richard Linn entered into an agreement.

9 Second, that the agreement was to commit robbery with a  
10 dangerous weapon.

11 Robbery with a dangerous weapon is a crime that  
12 occurs when a defendant with a firearm takes and carries away  
13 property from a person or the presence of a person, without  
14 that person's voluntary consent, by endangering or threatening  
15 that person or another person's life with the use or  
16 threatened use of a firearm, while the defendant knows that  
17 the defendant is not entitled to take the property, and the  
18 defendant intended to deprive that person of its use  
19 permanently.

20 And third, that the defendant, Ashley Dean Jackson  
21 and James A. Cox or Richard Linn intended that the agreement  
22 be carried out at the time it was made.

23 If you find from the evidence, beyond a reasonable  
24 doubt, that on or about the alleged date, the defendant,  
25 Ashley Dean Jackson, agreed with James A. Cox or with Richard

1 Linn to commit robbery with a dangerous weapon, and that the  
2 defendant, Ashley Dean Jackson, and James A. Cox or Richard  
3 Linn intended at the time the agreement was made that it would  
4 be carried out, it would be your duty to return a verdict of  
5 guilty. If you do not so find or have a reasonable doubt as  
6 to one or more of these things, it would be your duty to  
7 return a verdict of not guilty.

8 In Count Two, the defendant, Ashley Dean Jackson,  
9 has been charged with first-degree burglary, which is breaking  
10 and entering in the nighttime of another person's occupied  
11 dwelling house without that person's consent and with the  
12 intent to commit a felony which, in this case, is alleged to  
13 be robbery with a dangerous weapon.

14 For you to find the defendant, Ashley Dean Jackson,  
15 guilty of this offense, the state must prove five things,  
16 beyond a reasonable doubt:

17 First, that the defendant, Ashley Dean Jackson,  
18 broke and entered a dwelling house. A breaking need not be  
19 actual; that is, the person breaking need not physically  
20 remove the barrier herself. She may, by threat of force,  
21 inspire such fear as to induce the occupant to allow her to  
22 enter.

23 Second, that the breaking and entering was during  
24 the nighttime. The law considers it to be nighttime when it  
25 is so dark that a person's face cannot be identified except by

1 artificial light or moonlight.

2 Third, that at the time of the breaking and  
3 entering, the dwelling house was occupied.

4 Fourth, that the owner or tenant did not consent to  
5 the breaking and entering.

6 And fifth, that at the time of the breaking and  
7 entering, the defendant, Ashley Dean Jackson, intended to  
8 commit a felony, robbery with a dangerous weapon, within the  
9 dwelling house.

10 Robbery with a dangerous weapon is a crime that  
11 occurs when a person -- excuse me. Let me start that  
12 paragraph again. Robbery with a dangerous weapon is a crime  
13 that occurs when a defendant with a firearm takes and carries  
14 away property from a person or the presence of a person  
15 without that person's voluntary consent by endangering or  
16 threatening that person or another person's life with the use  
17 or threatened use of a firearm, while the defendant knows that  
18 the defendant -- there is two "that's" there. There should  
19 just be one -- while the defendant knows that the defendant is  
20 not entitled to take the property, and that the defendant  
21 intends to deprive that person of its use permanently.

22 If you find from the evidence, beyond a reasonable  
23 doubt, that on or about the alleged date, the defendant,  
24 Ashley Dean Jackson, broke into and entered an occupied  
25 dwelling house without the owner's or the tenant's consent

1 during the nighttime and, at that time, intended to commit  
2 robbery with a dangerous weapon therein, it would be your duty  
3 to return a verdict of guilty of first-degree burglary. If  
4 you do not so find, or have a reasonable doubt as to one or  
5 more of these things, you will not return a verdict of guilty  
6 of first-degree burglary but would consider whether the  
7 defendant, Ashley Dean Jackson, is guilty of felonious  
8 breaking or entering.

9           Felonious breaking or entering differs from  
10 first-degree burglary in that both a breaking and an entry are  
11 not necessary. Either a breaking or an entry is enough.  
12 Furthermore, the building that was involved need not have been  
13 a dwelling house, need not have been occupied, and the  
14 breaking or entry need not have been in the nighttime.

15           If you find from the evidence, beyond a reasonable  
16 doubt, that on or about the alleged date, the defendant,  
17 Ashley Dean Jackson, broke into or entered a building without  
18 the consent of the owner or tenant, intending at that time to  
19 commit robbery with a dangerous weapon therein, it would be  
20 your duty to return a verdict of guilty of felonious breaking  
21 or entering.

22           If you do not so find or have a reasonable doubt as  
23 to one or more of these things, you will not return a verdict  
24 of guilty of felonious breaking or entering, but would  
25 consider whether the defendant, Ashley Dean Jackson, is guilty

1 of nonfelonious breaking or entering.

2 Nonfelonious breaking or entering differs from  
3 felonious breaking or entering in that it need not be done  
4 with the intent to commit a felony, so long as the breaking or  
5 entering was wrongful, that is, without any claim of right.

6 If you find from the evidence, beyond a reasonable  
7 doubt, that on or about the alleged date, the defendant,  
8 Ashley Dean Jackson, wrongfully broke into or entered another  
9 person's building without that person's consent, it would be  
10 your duty to return a verdict of guilty of nonfelonious  
11 breaking or entering.

12 If you do not so find, or if you have a reasonable  
13 doubt as to one or more of these things, it would be your duty  
14 to return a verdict of not guilty.

15 For a defendant to be guilty of a crime, it is not  
16 necessary that the defendant do all of the acts necessary to  
17 constitute the crime. If two or more persons join in a common  
18 purpose to commit first-degree burglary, felonious breaking or  
19 entering or nonfelonious breaking or entering, each person, if  
20 actively or constructively present, is guilty of the crime.

21 A defendant is not guilty of a crime merely because  
22 the defendant is present at the scene, even though the  
23 defendant may silently approve of the crime or secretly intend  
24 to assist in its commission. To be guilty, the defendant must  
25 aid or actively encourage the person committing the crime or,

1 in some way, communicate to another person the defendant's  
2 intention to assist in its commission.

3           If you find from the evidence, beyond a reasonable  
4 doubt, that on or about the alleged date, the defendant,  
5 acting either by herself or acting together with another  
6 person, or with other persons, committed first-degree  
7 burglary, felonious breaking or entering, or nonfelonious  
8 breaking or entering, as each of these crimes has been  
9 described to you in these instructions, it would be your duty  
10 to return a verdict of guilty to the crime that you found from  
11 the evidence, beyond a reasonable doubt, that the defendant  
12 committed. If you do not so find, or if you have a reasonable  
13 doubt as to whether the defendant committed either  
14 first-degree burglary, felonious breaking or entering or  
15 nonfelonious breaking or entering, it would be your duty to  
16 return a verdict of not guilty.

17           In Count Three, the defendant, Ashley Dean Jackson,  
18 has been charged with simple assault. For you to find the  
19 defendant guilty of this offense, the state must prove two  
20 things, beyond a reasonable doubt:

21           First, that the defendant, Ashley Dean Jackson,  
22 assaulted the victim by engaging in a physical altercation or  
23 affray with Angela Leisure.

24           And, second, that the defendant, Ashley Dean  
25 Jackson, acted intentionally, without justification or excuse.



1           If you find from the evidence, beyond a reasonable  
2 doubt, that on or about the alleged date, the defendant,  
3 Ashley Dean Jackson, intentionally engaged in a physical  
4 altercation or affray with Angela Leisure, it would be your  
5 duty to return a verdict of guilty. If you do not so find, or  
6 have a reasonable doubt as to one or both of these things, it  
7 would be your duty to return a verdict of not guilty.

8           That concludes the specific instructions as to the  
9 charges or counts against Ashley Dean Jackson.

10           Now, these concluding instructions on this final  
11 page applies to both defendants.

12           Members of the jury, this final page, concluding  
13 instructions, apply to both defendants. Members of the jury,  
14 you have heard the evidence and the arguments of counsel. If  
15 your recollection of the evidence differs from that of the  
16 attorneys, you are to rely solely upon your recollection.  
17 Your duty is to remember the evidence, whether called to your  
18 attention or not. You should consider all of the evidence,  
19 the arguments, contentions and positions urged by the  
20 attorneys, and any other contention that arises from the  
21 evidence.

22           The law requires the presiding judge to be  
23 impartial. You should not infer from anything I have done or  
24 said that the evidence is to be believed or disbelieved, that  
25 a fact has been proved, or what your findings ought to be. It

1 is your duty to find the facts and to render a verdict  
2 reflecting the truth.

3 All 12 of you must agree to your verdict. You  
4 cannot reach a verdict by majority vote. When you have agreed  
5 upon a unanimous verdict as to each count, your foreperson  
6 should so indicate on the verdict forms.

7 At this time, Ms. King and Ms. Walters, thank you  
8 very much for your service. Everyone did come back, so you  
9 two, if you will just step out of this jury pool and, just for  
10 a moment, have a seat in the audience, please. Thank you very  
11 much for your service.

12 (ALTERNATE JURORS EXCUSED FROM THE JURY BOX.)

13 **THE COURT:** As to the remaining 12 jurors, after  
14 reaching the jury room, your first order of business is to  
15 select your foreperson. You may begin your deliberations when  
16 the bailiff delivers the verdict forms to you. Your  
17 foreperson should lead the deliberations. When you have  
18 unanimously agreed upon a verdict as to each count and as to  
19 each defendant and are ready to announce your verdicts, your  
20 foreperson should record your verdicts, sign and date the  
21 verdict forms, and notify the bailiff by knocking on the jury  
22 room door or otherwise summoning the bailiff. You'll be  
23 returned to the courtroom and your verdict will be announced.  
24 Thank you.

25 You may now retire and select your foreperson and,

1 when you've done so, please knock on the door and get the  
2 bailiff's attention and the verdict sheets will be delivered  
3 to you. Thank you very much.

4           You may take your notes with you. I remind you that  
5 your notes are not evidence but are there to help you  
6 recollect the evidence, and you should listen to each juror as  
7 to their recollection of the evidence.

8                   **(THE JURY RETIRED TO THE JURY ROOM AT 11:00**  
9                   **AM.)**

10           **THE COURT:** All right. The two alternate jurors  
11 have been excused. The 12 jurors have left the courtroom and  
12 the courtroom door is closed. Before we send the verdict  
13 forms to the jury, are there any additions or corrections or  
14 modifications to the jury instructions, as given?

15           **MR. SWEET:** Not from the state, Judge. Thank you.

16           **MR. WRIGHT:** Not from defendant Jackson.

17           **MR. SMITH:** Not for Mr. Cox.

18           **THE COURT:** I added a few words in there, I think,  
19 which added to the clarity, but I think the instructions as  
20 written and provided to them are equally clear.

21           Okay. The verdict form, I made one change to it, to  
22 comport with the instructions, from what y'all saw a moment  
23 ago, and that was only to say, under the first-degree burglary  
24 counts, for the misdemeanor breaking and entering to say  
25 guilty of nonfelonious breaking or entering, because that's

1 how it was referred to in the jury instructions. That is, of  
2 course, misdemeanor breaking and entering. With that one  
3 modification on the verdict form -- you can look again, if you  
4 would like to -- is the verdict form satisfactory to the -- to  
5 all parties?

6 **MR. SMITH:** As to Mr. Cox, yes, sir.

7 **MR. WRIGHT:** As to Ms. Jackson, yes.

8 **MR. SWEET:** For the state, yes.

9 **THE COURT:** I'm sending those two verdict sheets, a  
10 pad, which has no notes on it and, of course, they have their  
11 notepads, and two pens to the jury, when they have selected  
12 their foreperson.

13 When the jury has selected their foreperson, if you  
14 would deliver those verdict sheets to the jury, please. Thank  
15 you.

16 **(ALTERNATE JURORS EXCUSED FROM SERVICE.)**

17 **THE COURT:** Mr. Sheriff, you have delivered the  
18 verdict forms?

19 **THE BAILIFF:** The bailiff has them.

20 **THE COURT:** All right. I'm going to assume, unless  
21 we find out otherwise, everything is going just as it should,  
22 so we'll be at ease. Don't go too far.

23 **(COURT STOOD AT EASE IN THIS MATTER AT 11:06**  
24 **AND RESUMED SESSION AT 1:10 PM, WITH THE**  
25 **DEFENDANTS AND THEIR ATTORNEYS PRESENT, THE**

1                                   **PROSECUTORS PRESENT, THE JURY ABSENT.)**

2                   **THE COURT:** Okay. The jury has indicated that they  
3 have some question -- a question or questions. They've  
4 given -- they've written it down and given this to the  
5 bailiff.

6                   First, it says, "Can we get clarification of -- in  
7 quotes -- while the defendant knows that the defendant is not  
8 entitled to the property, end quote." And they point out  
9 that's on Page 6, the last line of the robbery definition.

10                  Every time the robbery definition is given, I put  
11 the word "while" in. I say that, because if you look at the  
12 pattern jury instruction, I think what it says is something  
13 like, comma, the defendant, knowing that the defendant is not  
14 entitled to the property, and that -- it may not be, but it's  
15 confusing, I think. So I was hoping that word would help.

16                  Then they have a second question, which I think is  
17 kind of the same thing. "Is it still robbery to take back  
18 one's -- or one" -- but I think that mean one's -- "one's own  
19 property?"

20                  Your pitch was somewhat successful, Mr. Wright, but  
21 I'm not sure how you get clearer than, "while the defendant  
22 knows that the defendant is not entitled to take the  
23 property," except when you look at it in conjunction with the  
24 other, saying, is it still robbery to take back one's own  
25 property? I'm open to some thoughts here.

1           **MR. SWEET:** I would just say, the only thing, at  
2 this point, that we can do is reread them the instruction and  
3 just say, you know, the instruction is the law in the matter,  
4 and I think, at this point, we can't really clarify that any  
5 more than we all -- the Court already has.

6           **MR. WRIGHT:** That's true, Judge, because nothing was  
7 taken, first of all. Did they say in there --

8           **THE COURT:** No. You can certainly look at this, and  
9 I'll mark this as Court's Exhibit Number 1, at some point. I  
10 wasn't casting any aspersion on you, Mr. Wright. I was really  
11 thinking -- and I left this in the assault, where it said, you  
12 know, without -- what's it say? Without justification or  
13 excuse. That's kind of -- that's actually what I was  
14 referring to when I said that. I don't really think that -- I  
15 don't think it was error to have that in there, certainly, but  
16 no justification or excuse has been offered, and nor does  
17 there appear to be one.

18           **MR. WRIGHT:** Well, I kind of indirectly did.

19           **THE COURT:** You talked about it in your argument, so  
20 I left it in there, partly for that reason.

21           **MR. WRIGHT:** I agree.

22           **THE COURT:** I don't think it's error.

23           **MR. WRIGHT:** I do agree with the prosecutor, we just  
24 need to read them the instruction again.

25           May I approach, Judge?

1           **MR. SMITH:** I've never seen it done another way, so  
2 I don't have another solution.

3           **THE COURT:** They've already got their own personal  
4 copies of the instructions, so --

5           **MR. WRIGHT:** Well, the only thing you can probably  
6 say is, you've got -- reread -- we ask that you reread. I  
7 don't know that we ever addressed the question, "Is it still  
8 robbery to take back one's own property?"

9           **THE COURT:** What do you propose I read to them?

10          **MR. SWEET:** Our proposal would be, from the state,  
11 would just be that you bring them back in and, during the --  
12 obviously, addressing the question, let them know that you've  
13 given them a copy of the instructions, you've already read  
14 those instructions, they're to follow those instructions and  
15 to continue the deliberations.

16          **MR. SMITH:** I think -- I think that would help solve  
17 the problem.

18          **THE COURT:** I can read the robbery instruction, but  
19 I think that --

20          **MR. WRIGHT:** I don't think you need to.

21          **THE COURT:** All of this is misdirection, in a way,  
22 but the rob -- it's not misdirection, but it's kind of a  
23 subset.

24          **MR. SWEET:** Right, of the burglary.

25          **THE COURT:** Okay. It's a slippery slope to go into,

1 you know. Legal justifications need to be pled and argued,  
2 and all that, and I can't go there. I don't know how to say  
3 it, first of all, and I don't think I should, second of all.  
4 I'll say, it's the duty of the jury to determine the facts  
5 from the evidence presented and apply the facts to the law,  
6 and the law, as applicable in this case, has been set out in  
7 these jury instructions that you have a copy of and were read  
8 to you. If you would like to request another reading, I  
9 suppose I can do that, of the whole thing, but I'm not going  
10 to do that. And they should simply refer to the instructions  
11 as given. And I don't think I'll refer to common sense,  
12 but -- but make their best efforts to apply -- determine the  
13 facts and apply them to the law. That's really all I can tell  
14 them. But I can give them a break for lunch. How long should  
15 we go to lunch?

16 **MR. WRIGHT:** At least an hour.

17 **THE COURT:** I'm going to ask them.

18 **MR. WRIGHT:** We normally do an hour and a half.

19 **THE COURT:** Do you want to spend your holiday  
20 weekend with me?

21 **MR. WRIGHT:** Since I only had an hour to write my  
22 closing argument.

23 **THE COURT:** I'm going to give them at least an hour.  
24 I'm willing to give them an hour and a half, but I expect  
25 they're anxious to get back, too. I'll ask them.



1 All right, let's bring the jury in, please.

2 (THE JURY RETURNED TO THE COURTROOM AT 1:20  
3 PM.)

4 THE COURT: Okay. All 12 jurors are here in the  
5 courtroom.

6 Will the foreperson of the jury please stand. If  
7 you would state your name, please, sir.

8 JUROR NUMBER SEVEN: My name is William John Potts,  
9 III.

10 THE COURT: Mr. Foreperson, I have gotten a note --  
11 I guess this is your handwriting.

12 JUROR NUMBER SEVEN: Yes, sir.

13 THE COURT: -- on behalf of the jury. Two  
14 questions. The first was, "Can we get clarification of" --  
15 and then, in quotes -- "while the defendant knows that the  
16 defendant is not entitled to take the property," and that's  
17 referring to Page 6, the last line of the robbery definition.  
18 That same line, it's also -- every time the robbery with a  
19 dangerous weapon is defined, it includes that same line.

20 Then you've also asked -- you, the jury, have also  
21 asked, "Is it still robbery to take back one owns -- or one's  
22 own property?" You can have a seat, sir. That's fine. Thank  
23 you.

24 All I can really say is this. That you, as the  
25 juror -- jury -- determine from the evidence what the facts

1 are, and then you take those facts and you apply it to the law  
2 as is given to you in the jury instructions.

3 In the first paragraph, it does say it's absolutely  
4 necessary that you understand and apply the law as I give it  
5 to you and not as you think it is or as you might like it to  
6 be. Each of you has been given a printed copy of the jury  
7 instructions, and all I can really do is simply refer you to  
8 those instructions as to the law that's applicable in this  
9 case. I can reread it all for you, if you would ask, but I  
10 think you've got the copies and you can do that. That's  
11 really all I can say, in answer to that question.

12 I can address lunch. This may be a question you  
13 haven't asked here. What we'll do now is take a lunch recess  
14 of at least an hour, and I'm certainly willing to go an hour  
15 and a half. How long would you prefer? I guess we can either  
16 come back at 2:30 or at 3:00. It's almost 1:30 now, so either  
17 2:30 or 3:00.

18 SEVERAL JURORS: 2:30.

19 **THE COURT:** Is 2:30 enough time for everybody? I  
20 think we'll be running across the street. So what we'll do,  
21 ladies and gentlemen, is now take a lunch recess and, of  
22 course, you are in deliberation, at this point; however,  
23 you're not to deliberate during lunch and at your separate  
24 tables, or wherever you may go, or whatever.

25 So you've heard this before, but let me say it

1 again. It's equally, if not more, important now. Members of  
2 the jury, we'll now take a lunch recess until 2:30 this  
3 afternoon. I remind you to observe, during this recess, the  
4 rules we've had throughout this trial. Don't talk or  
5 communicate with each other or anyone else about any matter  
6 connected with this case or allow anyone else to talk about it  
7 in your presence.

8 Don't have any contact with the parties, attorneys  
9 or witnesses. Don't conduct any investigation or attempt to  
10 receive any reports from any source, including the Internet.  
11 Most importantly, during lunch, don't talk about the case and  
12 don't form or express an opinion about the case or about the  
13 matters that you've talked about this morning. You're going  
14 to be back soon enough, at 2:30, and you can go right back to  
15 where you were.

16 I thank you, and you're certainly free to ask any  
17 questions, but -- again, as I've just described, that's your  
18 duty and the instructions that you've been given. So if y'all  
19 will go back to the jury room and, from there, right out to  
20 lunch, and come back at 2:30, please.

21 Yes, ma'am. As long as it's about lunch, or  
22 something, yeah.

23 **JUROR NUMBER EIGHT:** Well, it's not about the case,  
24 it's just a question. You said we could ask questions. It's  
25 not about the actual case. It's about the rules. What kind

1 of question would actually -- would warrant an actual answer,  
2 other than, look at your instructions?

3 **THE COURT:** That's a fair question, and --

4 **JUROR NUMBER EIGHT:** Because --

5 **THE COURT:** I'm not sure.

6 **JUROR NUMBER EIGHT:** Because we're not further than  
7 where we were when we came in here.

8 **THE COURT:** Most -- some of the open ended questions  
9 in this will probably get a similar answer, which could be to  
10 look at this and apply it as the law is set out in the  
11 document, in the jury instructions. It may be one that would  
12 have something more clear.

13 **JUROR NUMBER EIGHT:** I'm not trying to be  
14 disrespectful.

15 **THE COURT:** Certainly. I don't go into your  
16 province as a juror, and that's why we have this wall between  
17 us. Use your common sense, life experiences, the evidence  
18 you've heard in the case, and arguments, and everything else  
19 about what you've heard here. That's all I can tell you.

20 **JUROR NUMBER EIGHT:** Okay.

21 **THE COURT:** You're going to meet back there, and  
22 then you'll come back in here, and I'm going to say, thanks  
23 for coming back from lunch, and I'll send you back out.

24 **JUROR NUMBER SEVEN:** What do I do with this packet?

25 **THE COURT:** Thank you for mentioning that. You

1 should give it to the bailiff and he'll give it to the clerk  
2 and we'll return it to you when you come back. Thank you for  
3 asking that.

4 So go to lunch, and we'll see you back at 2:30.  
5 Thank you.

6 (THE JURY WAS EXCUSED FROM THE COURTROOM AT  
7 1:28 PM.)

8 THE COURT: Anything as to the questions and  
9 answers, such as they were?

10 MR. SMITH: Not from Mr. Cox. Thank you.

11 MR. SWEET: Not from the state.

12 MR. WRIGHT: And not from Ms. Jackson.

13 THE COURT: Okay. I strive to be polite with them,  
14 and I understand their frustration but I don't know what to  
15 tell them, except for do your best.

16 Okay, let's be in recess until 2:30.

17 (A LUNCH RECESS WAS TAKEN AT 1:29 PM. COURT  
18 RESUMED SESSION AT 2:35 PM, WITH THE DEFENDANTS  
19 AND THEIR ATTORNEYS PRESENT, THE PROSECUTORS  
20 PRESENT, THE JURY ABSENT.)

21 THE BAILIFF: Your Honor we have 12 here.

22 THE COURT: Let's bring them back in here and just  
23 welcome them back and send them back.

24 (THE JURY RETURNED TO THE COURTROOM AT 2:37  
25 PM.)

1           **THE COURT:** We are back in court. The jury is here  
2 I hope you didn't get soaked, as I did. But thank you for  
3 being back.

4           Mr. Bailiff, if you would hand this to the  
5 foreperson.

6           You may and resume your deliberations in the jury  
7 room. Thank you all very much.

8                           **(THE ENVELOPE CONTAINING THE VERDICT SHEET WAS**  
9                           **DELIVERED TO THE JURY FOREPERSON, AND THE JURY**  
10                           **RETIRED TO THE JURY ROOM AT 2:38 PM.)**

11           **THE COURT:** We're back at ease in that case.

12                           **(COURT STOOD AT EASE IN THIS CASE AT 2:38 PM.**  
13                           **COURT RESUMED SESSION AT 4:41 PM, WITH THE**  
14                           **DEFENDANTS AND THEIR ATTORNEYS PRESENT, THE**  
15                           **PROSECUTORS PRESENT, THE JURY ABSENT.)**

16           **THE COURT:** If we have to extend into next week, is  
17 there an objection from anybody as to extending the  
18 jurisdiction of this Court into next week? And I'll get a  
19 commission.

20           **MR. SWEET:** Not from the state, Your Honor.

21           **MR. SMITH:** Certainly not from Mr. Cox.

22           **MR. WRIGHT:** Certainly not from Ms. Allen -- I mean  
23 Ms. Jackson. I just --

24           **THE COURT:** That's the Allen charge.

25           **MR. WRIGHT:** It's the Allen charge I'm thinking

1 about, but I just want the Court to know that I may disappear  
2 because of guardian ad litem, but I'll be available to come  
3 back for the verdict.

4 **THE COURT:** Okay. We'll try to accommodate you.  
5 Can you be here to kick off the week, though?

6 **MR. WRIGHT:** I can be here.

7 **THE COURT:** We'll send them off ahead of the  
8 calendar on Monday.

9 **MR. SWEET:** I would say that, Mr. Wright, according  
10 to local rules, we've already started so we have priority over  
11 your --

12 **MR. WRIGHT:** I understand, but I can leave and come  
13 back, with the Court's permission.

14 **THE COURT:** I'll certainly try to accommodate you.

15 **MR. WRIGHT:** Thank you.

16 **THE COURT:** The jury has requested that whatever  
17 lawyer said we would be done by Friday at noon be held over  
18 the weekend. That's, obviously, not a funny joke, but a joke.

19 Okay, let's bring the jury in and see where we are.

20 **THE BAILIFF:** They're on the verge of something.  
21 They would like a few minutes.

22 **THE COURT:** They can have a few minutes.

23 **THE BAILIFF:** Whatever that means.

24 **THE COURT:** They can have a few minutes. Just make  
25 clear to them they shouldn't feel rushed.

1 (COURT STOOD AT EASE AT 4:43 PM. COURT RESUMED  
2 SESSION AT 4:59 PM, WITH THE DEFENDANTS AND  
3 THEIR ATTORNEYS PRESENT, THE PROSECUTORS  
4 PRESENT, THE JURY ABSENT.)

5 THE COURT: It's 5:00 on the button. Let's bring  
6 the jury in and see where we are. Even if they say, we just  
7 need a minute, tell them to come on in.

8 What time should they come on in Tuesday?

9 MR. SWEET: What time are you going to be here?

10 THE COURT: 10:00 suits me.

11 MR. SWEET: So, in that case, I would just have them  
12 here at 10:00 and send them back before we do calendar call.

13 MR. WRIGHT: That's fine.

14 MR. SMITH: Yes, sir.

15 THE COURT: I am going to inquire of the foreman as  
16 to whether he thinks the jury will be able to reach a verdict  
17 as to each defendant, as to all counts. That's all I'm going  
18 to ask them.

19 (THE JURY RETURNED TO THE COURTROOM AT 5:00  
20 PM.)

21 THE COURT: All right Mr. Potts, you're the jury  
22 foreman, correct?

23 JUROR NUMBER SEVEN: Yes, sir.

24 THE COURT: Okay. I have one question for you.  
25 Just answer this question "yes" or "no." I'm not asking



1 anything about which way, but do you believe this jury will be  
2 able to reach a verdict as to each defendant and as to each  
3 count for each defendant?

4 **JUROR NUMBER SEVEN:** I believe we can, with more  
5 time, sir.

6 **THE COURT:** Yes. That's fine. Thank you. I'm  
7 sorry that this is going to carry over. It's going to carry  
8 over to Tuesday. It's a holiday weekend, as you well know.  
9 Let me just make one inquiry before we go any further. If we  
10 can -- I would anticipate coming back at 10:00 on Monday. If  
11 you all would rather come back at 2:00, or something like  
12 that, if you need some time to get your work in order, I can  
13 accommodate you, or would you rather just come back at 10:00?  
14 It's going to feel like Monday, I promise, but Tuesday, of  
15 course, after Martin Luther king Day on Monday, you come in at  
16 10:00.

17 **A JUROR:** 10:00 Tuesday, does that work?

18 **A JUROR:** Yes, sir.

19 **JUROR NUMBER FIVE:** There's no way, sir, we can do  
20 it tonight?

21 **THE COURT:** I'm sorry. No.

22 **JUROR NUMBER FIVE:** I think we're close.

23 **THE COURT:** I regret, but I really can't do that.  
24 The thing is, and I've learned this a long time ago, it's not  
25 just a few of us, it's a lot of people that get -- and I

1 realize you all are a lot of people, as well, but I'm afraid I  
2 can't do that.

3           So, you know where I'm going with this. Members of  
4 the jury, we're going to take a weekend recess. You've been  
5 thinking about this all day long. You're going to get home,  
6 it's on your mind, but this is not a conversation for the  
7 dinner table or anywhere else. Don't talk to your friends or  
8 significant others. Don't talk about this case, period  
9 outside -- outside the jury. And I do remind you, it can be  
10 contempt of court if it comes back that you're not able to  
11 follow that direction.

12           So, members of the jury, we'll now take the weekend  
13 recess until 10:00 on Tuesday, Tuesday morning,  
14 January 16<sup>th</sup>, 2018. I remind you to observe, during this  
15 recess, the rules I've given you throughout the trial. Do not  
16 talk or communicate with each other or anyone else about any  
17 matter connected with this case, or allow anyone to talk about  
18 it in your presence. Do not talk to or have any contact with  
19 any of the parties, attorneys, witnesses.

20           Do not conduct any investigation or receive or  
21 attempt to receive any reports or information related to this  
22 case from any source, including the media, the Internet,  
23 social networking or other means. There was a question  
24 earlier in this case. I recognize, perhaps, some of the  
25 frustration with the answer. This is not a question to be

1 researched on the Internet, or anywhere else, over the  
2 weekend.

3 Do not form or express any further opinions about  
4 the case. Just hold your thoughts until you come back Tuesday  
5 morning at 10:00.

6 Again, I appreciate very much your service and the  
7 way that you're handling the duties. Thank you for that, but  
8 we're going to stop for the week. We did get rid of the snow  
9 and we brought in some rain. Let's come back Tuesday morning  
10 at 10:00. Just leave the same way you have before. You can  
11 just put your stuff on the chair and go home.

12 Mr. Potts, the foreman, if you would hand the  
13 verdict sheets to the bailiff.

14 Mr. Bailiff, if you would return it to the clerk,  
15 please, to hold.

16 (THE ENVELOPE CONTAINING THE VERDICT SHEETS WAS  
17 RETURNED TO THE CLERK.)

18 THE COURT: You may go. Thank you so much.

19 (THE JURY WAS EXCUSED FROM THE COURTROOM AT  
20 5:05 PM.)

21 THE COURT: Okay. The jury has left for the  
22 weekend, and the courtroom door is closed. Anything else you  
23 want to do?

24 MR. SWEET: No, sir.

25 MR. SHOLAR: Not at all.

1           **THE COURT:** I appreciate the patience of everybody  
2 in here. You never know how it's going to go. Let's go home,  
3 unless anybody has anything to address.

4           **MR. SWEET:** No, Judge. I would just say, if the  
5 Court would state for the record that this session is holding  
6 over until Tuesday.

7           **THE COURT:** I appreciate you saying that. I  
8 contacted David Hoke, and I am going to hold this session  
9 over. I think, logistically, but I'm not certain, I'll be  
10 serving two commissions. I'll be serving this commission,  
11 which I'm extending over to next week, and I have another  
12 commission for next week here, so I look forward to seeing  
13 everybody here.

14           **THE CLERK:** I will draw up an order extending the  
15 session which goes in the court minutes that says you  
16 officially held it over.

17           **THE COURT:** Have a great weekend. We're going to  
18 recess until Tuesday morning at 10:00.

19                           **(THE EVENING RECESS WAS TAKEN AT 5:07 PM.)**

20                           **(END OF VOLUME IV.)**

21  
22  
23  
24  
25

NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

\* \* \* \* \*

STATE OF NORTH CAROLINA	)	ONSLow COUNTY
	)	
VS.	)	
	)	
JAMES A. COX	)	15 CRS 54673
and	)	
ASHLEY DEAN JACKSON	)	15 CRS 54665

\* \* \* \* \*

TRANSCRIPT, Volume V of V  
January 16, 2018

\* \* \* \* \*

January 8, 2018, Criminal Session

The Honorable William W. Bland, Judge Presiding

Jury trial

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1 (COURT RESUMED SESSION ON 1/16/2018, AT 10:18  
2 AM, WITH THE DEFENDANTS AND THEIR ATTORNEYS  
3 PRESENT, THE PROSECUTORS PRESENT, THE JURY  
4 ABSENT.)

5 THE COURT: Good morning. Are all the jurors here?

6 THE BAILIFF: Let me double check.

7 THE COURT: I understand all 12 jurors are back, so.  
8 Let's bring them in and deal with that.

9 (THE JURY RETURNED TO THE COURTROOM AT 10:20  
10 AM.)

11 THE COURT: Good morning, ladies and gentlemen.  
12 Thank you all for coming back. We've gone from the ice age to  
13 the heat wave, and I guess back into the ice later this week,  
14 maybe. We'll see.

15 We are here in open court, all 12 jurors are present  
16 in the cases of James A. Cox, 15 CRS 54673, and Ashley  
17 Jackson, 15 CRS 54665. They all -- first of all, would you --  
18 your notepads or whatever are still down there. Would you  
19 just look through those and make sure they are as you left  
20 them when you left them on Friday.

21 (THE JURORS COMPLIED WITH THE REQUEST.)

22 THE COURT: Nothing new on there? If there is  
23 something new or something has changed, raise your hand.

24 (NO JUROR RAISED HIS OR HER HAND.)

25 THE COURT: Mr. Bailiff, if you would, if you would



1 return this envelope to the foreman, please.

2 (THE ENVELOPE CONTAINING THE VERDICT SHEETS WAS  
3 RETURNED TO THE JURY FOREPERSON.)

4 THE COURT: Mr. Potts, I believe -- and if you would  
5 look in that envelope, make sure the envelope is as you left  
6 it on Friday.

7 (THE JURY FOREPERSON COMPLIED WITH THE  
8 REQUEST.)

9 THE COURT: All right. With that, I'm going to  
10 return you to the jury room to resume your deliberations.  
11 Thank you very much.

12 (THE JURY RETIRED TO THE JURY ROOM AT 10:21  
13 AM.)

14 THE COURT: Anything further in that matter?

15 MR. SWEET: Not from the state.

16 MR. WRIGHT: No, Your Honor.

17 MR. SMITH: Not for Mr. Cox.

18 (COURT STOOD AT EASE IN THIS MATTER AT 10:22  
19 AM. COURT RESUMED SESSION AT 10:54 AM, WITH  
20 THE DEFENDANTS AND THEIR ATTORNEYS PRESENT, THE  
21 PROSECUTORS PRESENT, THE JURY ABSENT.)

22 THE COURT: The jury has a verdict. Let's bring the  
23 jury in.

24 (THE JURY RETURNED TO THE COURTROOM AT 10:58  
25 AM.)

1           **THE COURT:** Thank you very much. Let the record  
2 show all 12 jurors are back in the courtroom in the matters of  
3 Ashley Jackson and James Cox.

4           Mr. Foreperson, if you would stand and state your  
5 name for the record.

6           **JUROR NUMBER SEVEN:** William John Potts, III.

7           **THE COURT:** And if you'll answer this question yes  
8 or no. Has the jury reached a unanimous verdict as to each  
9 charge against each defendant?

10          **JUROR NUMBER SEVEN:** Yes.

11          **THE COURT:** Have you signed and dated the verdict  
12 forms?

13          **JUROR NUMBER SEVEN:** I haven't dated it. It just  
14 said, "signature," but I can date it, if you need to date it.

15          **THE COURT:** They need to be dated. If you'll just  
16 look in there and date the forms.

17                   **(THE FOREPERSON DATED THE VERDICT SHEETS IN**  
18                   **OPEN COURT AT 10:59 AM.)**

19          **THE COURT:** But you put the unanimous verdicts on  
20 those sheets, is that right?

21          **JUROR NUMBER SEVEN:** Yes, sir, I did.

22          **THE COURT:** You've now signed and dated each verdict  
23 sheet?

24          **JUROR NUMBER SEVEN:** Yes, sir.

25          **THE COURT:** If you would please -- put it back in

1 the envelope, if you would, please, and hand that envelope to  
2 the bailiff who will hand it to me.

3 Thank you for dating it. I see we didn't have a  
4 line on there for dating. I can see why you didn't do that.  
5 Actually, we did. I'm going to hand this back to you. Where  
6 it says -- I think you've dated it properly by putting it over  
7 to the side of your signature, but see where it says, "this,  
8 the blank day of January, 2018?" If you'll fill in the blank  
9 on that.

10 **JUROR NUMBER SEVEN:** Yes, sir.

11 **(THE FOREPERSON DATED THE VERDICT SHEETS IN THE**  
12 **PROPER SPACE ON THE SHEETS.)**

13 **THE COURT:** If you would bring that back to me,  
14 please.

15 Thank you.

16 Madam Clerk, if you'll take the jury verdicts,  
17 please.

18 **THE CLERK:** Will the jury please stand. In the  
19 matter of the State of North Carolina versus Ashley Dean  
20 Jackson, File Number 15 CRS 54665, we, the jury, return as our  
21 unanimous verdict, that the defendant, Ashley Dean Jackson,  
22 is, in Count One, guilty of conspiracy to commit robbery with  
23 a dangerous weapon; in Count Two, guilty of felonious breaking  
24 or entering; in Count Three, guilty of simple assault.

25 Is that your verdict, so say you all?

1                   **(JURORS RESPONDED IN THE AFFIRMATIVE.)**

2                   **THE CLERK:** In the matter of the State of North  
3 Carolina versus James A. Cox, File Number 15 CRS 54673, we,  
4 the jury, return as our unanimous verdict, that the defendant,  
5 James A. Cox is, in Count One, guilty of felonious breaking or  
6 entering; Count Two, guilty of conspiracy to commit robbery  
7 with a dangerous weapon; and Count Three, guilty of  
8 discharging a weapon into an occupied property.

9                   Is that your verdict, so say you all?

10                   **(JURORS RESPONDED IN THE AFFIRMATIVE.)**

11                   **THE CLERK:** Thank you.

12                   **THE COURT:** Ladies and gentlemen, if you all agree  
13 and assent to the verdicts as read by the clerk, please raise  
14 your hands, as to each verdict, as to each defendant.

15                   **(EACH JUROR RAISED HIS OR HER HAND.)**

16                   **THE COURT:** Let the record show all hands are being  
17 raised by each juror. You all can have a seat.

18                   Are there any requests from either attorney?

19                   **MR. WRIGHT:** Generally, I make posttrial motions  
20 once the jury is discharged.

21                   **THE COURT:** I was thinking polling, whether you're  
22 asking that or not.

23                   **MR. WRIGHT:** I'm not asking that they be polled.

24                   **MR. SMITH:** No, sir.

25                   **THE COURT:** The Court accepts the verdicts as to

1 each charge and each defendant, and orders that each verdict  
2 be recorded.

3 Is there anything further with this jury, from the  
4 state?

5 **MR. SWEET:** Not from the jury, Judge. Thank you.

6 **THE COURT:** Anything from this jury?

7 **MR. WRIGHT:** Not from the defendant Jackson.

8 **MR. SMITH:** Not from Mr. Cox.

9 **THE COURT:** Thank you. Ladies and gentlemen, this  
10 concludes your work in this case and your service for the last  
11 week's jury service.

12 (JURORS EXCUSED FROM SERVICE.)

13 **THE COURT:** State is praying judgment?

14 **MR. STATE:** Judge, we were anticipating, because of  
15 the extensive calendar call this morning and the other  
16 matters, praying judgment at 2:00 --

17 **THE COURT:** Let's do it now.

18 **MR. SWEET:** I would just need to get a few things to  
19 pray judgment, because that was the plan coming in, to pray  
20 judgment at 2:00, but I can certainly get them, if the Court  
21 wants to proceed now.

22 **THE COURT:** Let's proceed now. Do you need a minute  
23 or two?

24 **MR. SWEET:** I would just need two minutes with the  
25 prior record sheets.

1           **THE COURT:** Take two minutes, and Mr. Sholar, if you  
2 would come up with the other attorneys while he does that.

3                   **(AN OFF THE RECORD BENCH CONFERENCE WAS HELD.)**

4           **THE COURT:** If the record could show, even though  
5 the jurors have been dismissed, all 12 of the jurors are  
6 present. So I'll ask this one question, if I can.

7           Mr. Potts, on Count One, as to Mr. Cox, where it  
8 indicates -- it looks like you found him guilty of felonious  
9 breaking and entering, there had been -- there was a mark  
10 below that, that's been crossed out. It says, "guilty of  
11 nonfelonious breaking and entering," was the jury's unanimous  
12 verdict --

13           **JUROR NUMBER SEVEN:** Felonious, yes, sir.

14           **THE COURT:** -- guilty of felonious? And you put  
15 your initials there, it looks like, or some sort of mark. Is  
16 that your initials?

17           **JUROR NUMBER SEVEN:** Yes, sir, that's my initials,  
18 saying I initialed it felonious, yes, sir.

19           **THE COURT:** And checkmark, okay. Is that right? As  
20 to each juror, if you would raise your hand if that was your  
21 unanimous verdict.

22                   **(EACH JUROR RAISED HIS OR HER HAND.)**

23           **THE COURT:** All 12 jurors raised their hands. Thank  
24 you.

25           We can go in either order. Does the state want to

1 be heard as to sentencing?

2           **MR. SWEET:** We would. Obviously, the Court has  
3 heard the evidence, I won't belabor that. Obviously, the  
4 Court takes into account retribution on behalf of society and  
5 victims, rehabilitation and the idea of deterrence in each of  
6 these matters. I know the Court is familiar with the  
7 presumptive ranges in this.

8           In terms of Mr. Jackson, obviously, the Class D  
9 felony has to be an active sentence.

10           **THE COURT:** You mean Mr. Cox.

11           **MR. SWEET:** Mr. Cox, I'm sorry. It has to be an  
12 active sentence. We would ask whatever the Court orders there  
13 that there be drug treatment involved as part of his stint at  
14 the Department of Correction.

15           With Ms. Jackson, we would ask for some active  
16 sentence on her, as well, Judge, so we can fashion drug  
17 treatment for her, as well, Your Honor.

18           Obviously, these are serious matters. The Court has  
19 seen, while they're record level one for felony sentencing,  
20 we've had dealings with them in the past. The Court can see  
21 that in the idea of the rehabilitation and, going forward, how  
22 to deter future conduct with this.

23           The Court -- just to make you aware, at the  
24 appropriate time, now, at sentencing, obviously, there's a  
25 pending serious matter between Mr. Cox and Ms. Jackson, where

1 Ms. Jackson is the alleged victim of a kidnapping. So we have  
2 some serious conduct with both of these individuals. We would  
3 ask for active sentences on both, in the Court's discretion,  
4 according to the North Carolina General Statutes. Thank you.

5 **THE COURT:** Mr. Wright, do you wish to be heard as  
6 to Ms. Jackson?

7 **MR. WRIGHT:** Judge, may it please the Court, you've  
8 heard through the trial that my client, she's the mother of  
9 two, ages nine and seven. Judge, she worked for Coastal  
10 Enterprise aboard the base.

11 **THE COURT:** Where do those two children live?

12 **MR. WRIGHT:** I don't believe, right now, that she  
13 has custody of them. I think they're with the father in this  
14 case, and so -- but as I understand, there's a custody battle  
15 going on between them in this case. Judge, she has  
16 absolutely -- I think she has a zero prior record level. For  
17 purposes of the felony conviction, she doesn't have a record,  
18 Judge. For the misdemeanor, Judge, I think she has a two or  
19 three. Maybe a one, two or three, but nothing that is  
20 discernable. So she doesn't have a substantial prior criminal  
21 history.

22 You heard the facts in this case, Judge, and I think  
23 in this case, you heard the testimony -- you didn't hear my  
24 client's testimony. She didn't take the stand. She didn't  
25 swear under oath as to anything. That's not to be held



1 against her but, at the same time, Judge, you heard all the  
2 evidence in the case, and we ask the Court not to fashion an  
3 active sentence. She served 30 days in pretrial confinement  
4 regarding these charges, Judge.

5 **THE COURT:** Twenty-two days.

6 **MR. WRIGHT:** Is it 22? She told me somewhere around  
7 30, but she did serve active time when she was arrested for  
8 these charges, Judge. So it's not like she hasn't been  
9 without any time. We ask the Court to consider placing her on  
10 probation for a period of time, Judge, and allow her to pay  
11 back her debt to society in this case, Judge, so she will be  
12 allowed to be with her kids, or at least have a chance for  
13 custody of her kids, Judge. Thank you.

14 **THE COURT:** Yes, sir, Mr. Smith.

15 **THE BAILIFF:** Judge, if I can approach with a  
16 sentencing memorandum. A lot of those things are exactly what  
17 Mr. Cox testified to during his testimony. He graduated from  
18 Northside here in Onslow County, Judge. I have several  
19 letters from employers, people he got scholarships from, as he  
20 completed high school. Judge, it's too late to point fingers,  
21 it's too late to try to beg. The jury has spoken.

22 **THE COURT:** Too late to leave the gun at home.

23 **MR. SMITH:** The Class D block does contain a  
24 provision for supervised release. I ask the Court to consider  
25 the mitigated side of the Class D.

1           **THE COURT:** Is there any restitution in these cases?

2           **MR. SWEET:** Not that we're asking for, Judge.

3           **THE COURT:** Stand up, please, Ms. Jackson. All  
4 right, Ms. Jackson, you've been found guilty by a jury of  
5 conspiracy to commit robbery with a dangerous weapon, guilty  
6 of felonious breaking or entering and guilty of simple  
7 assault. Both of these cases are sad, in so many ways. Your  
8 first felony sentencing. I don't have a favorite sentencing,  
9 by any means, but my least favorite thing to do is sentence  
10 people on a first felony, particularly when it was so  
11 avoidable.

12           All right, this will be on form 603-D. The  
13 defendant has been found guilty pursuant to her trial by jury  
14 of the three charges we've just listed. Conspiracy to commit  
15 robbery with a dangerous weapon, what's the date again?  
16 August 15, 2015, is that right? Is that the offense date?

17           **MR. SWEET:** August 8, 2015.

18           **THE COURT:** August 8, okay. Guilty of conspiracy to  
19 commit robbery with a dangerous weapon, that's a Class E  
20 felony; guilty of felonious breaking or entering, that's a  
21 Class H felony; and guilty of simple assault, that's a Class  
22 Two misdemeanor. The Court has determined, pursuant to the  
23 statute, the prior record level points for felony sentencing  
24 of the defendant to be zero, making her a prior record level  
25 one for felony sentencing. The Court makes no written

1 findings because the prison term imposed is within the  
2 presumptive range of sentences authorized by statute.

3 The Court, having considered the evidence, arguments  
4 of counsel and statements of the defendant, orders that the  
5 above offenses, all three, be consolidated for judgment, and  
6 the defendant be imprisoned for a minimum term of 25 months  
7 and a maximum term of 42 months in the North Carolina  
8 Department of Adult Correction. The defendant shall be given  
9 credit for 22 days spent in confinement, prior to the date of  
10 this judgment, as a result of the charges, to be applied to  
11 the imprisonment required under special probation.

12 Subject to the conditions set out in this judgment,  
13 the execution of this sentence is suspended, she's placed on  
14 supervised probation for 36 months. Monetary conditions: pay  
15 the costs, including the jail fees.

16 What's your attorney's fees, Mr. Wright?

17 **MR. WRIGHT:** Judge, I can prepare an affidavit. I  
18 will tell you it's in excess of 35 hours.

19 **THE COURT:** I'm sure it is. I'll do the math at 40.  
20 I guess I can do it at 35.

21 **MR. WRIGHT:** I think 70 is the rate, times 40 is  
22 2,800.

23 **THE COURT:** So the attorney's fees in this case  
24 would be somewhere around \$2,800. Let's say under \$3,000.  
25 That includes the attorney's fees pursuant to the contract, as

1 well as the \$60 appointment fee. Let's just put it at any  
2 amount under \$3,000. Do you wish to be heard about that  
3 amount? Do you wish to be heard about the amount he's  
4 indicating as attorney's fees? It will be something under  
5 \$3,000.

6 **DEFENDANT JACKSON:** Yes, sir.

7 **THE COURT:** Does that seem like a fair amount to  
8 you? Do you want to be heard about the amount, or does that  
9 seem fair to you?

10 **DEFENDANT JACKSON:** Yes, sir, he does deserve that.

11 **THE COURT:** It will be 2,500 to 3,000 plus the \$60  
12 appointment fee and a community service fee. Regular  
13 conditions of probation. Let's go to intermediate  
14 punishments, special probation. She's to serve an active term  
15 of eight months in the custody of the North Carolina  
16 Department of Adult Correction. The credit goes to the  
17 sentence at large but doesn't go -- I did say earlier it did.

18 **MR. WRIGHT:** You did.

19 **THE COURT:** That's fine. I'll put it towards the  
20 special probation. I'm trying to think of the parameters.  
21 That will be effective immediately.

22 Special conditions of probation -- she's graduated  
23 high school, hasn't she?

24 **MR. WRIGHT:** Judge, she has not.

25 **THE COURT:** Successfully complete the general

1 education development test during the first 12 months of  
2 probation, complete 60 hours community service during the  
3 first 180 days of probation, report for an initial -- well,  
4 let's see. Have I given her enough time to go through the  
5 DART program? It's close.

6 **MR. SWEET:** It's close. The standard is 90 days, so  
7 we have enough time.

8 **THE COURT:** I'll put that in there. I'm not sure  
9 whether it's in the intermediate punishment or under other  
10 but, in the active portion of her sentence, it's recommended  
11 that the DAC provide substance abuse treatment and, when she  
12 gets out, report for an initial evaluation by TASC,  
13 participate in all further evaluation, counseling, treatment  
14 or education programs and other therapeutic requirements until  
15 discharged. She's not to assault, threaten, harass or be  
16 found on the premises or the workplace of Angela Leisure.

17 **MR. SWEET:** Yes, and I would ask for Daniel McMinn,  
18 as well.

19 **THE COURT:** Daniel McMinn or Richard Linn or James  
20 Cox. Is there any reason she needs to have involvement with  
21 James Cox?

22 **MR. WRIGHT:** She doesn't, Judge. Not at this time.

23 **THE COURT:** Basically, everybody that was involved  
24 in this case, stay away from all of them. Contact, as will be  
25 explained to you, includes any kind of contact, electronic

1 contact, personal contact, sending a friend to contact,  
2 sending a secret message through somebody. Leave every one of  
3 them alone.

4 Anything else on that judgment?

5 **MR. SWEET:** No, sir.

6 **THE COURT:** You can have a seat for just a moment,  
7 Ms. Jackson.

8 Mr. Cox, if you'll please stand up. All right, this  
9 is James A. Cox, also James A. Cox, Jr. Mr. Cox has been  
10 found guilty, after trial by jury, of felonious breaking or  
11 entering. That's a class -- I'm going to list these the other  
12 way. In Count Three, guilty of discharging a weapon into an  
13 occupied property, that's a Class D felony; in Count Two,  
14 conspiracy to commit robbery with a dangerous weapon, that's a  
15 Class E. I'm just going to do those two on this first  
16 judgment. This will be an active judgment on 601.

17 The Court has determined, pursuant to statute, the  
18 prior record level points of the defendant to be zero, making  
19 him prior record level one. The Court makes no written  
20 findings because the prison term imposed is within the  
21 presumptive range.

22 The Court, having considered the evidence, arguments  
23 of counsel, statements of the defendant, orders that those two  
24 offenses, the Class D and Class E be consolidated for  
25 judgment -- those two charges be consolidated for judgment,

1 the defendant be sentenced to a minimum of 60 months, a  
2 maximum of 84 months in the custody of the North Carolina  
3 Department of Adult Correction.

4           You're very fortunate that bullet didn't hit  
5 anybody.

6           The defendant shall be given credit for 11 days  
7 spent in confinement, prior to the date of this judgment, as a  
8 result of these charges. Assess the costs. I'm just going to  
9 assess the costs in that particular case, which include those  
10 11 days of jail fees. We'll address the other case here.  
11 Court recommends substance abuse treatment, and I would say --  
12 you can put this on both of them -- psychiatric and/or  
13 psychological counseling.

14           Now, on form 603-D, James A. Cox, James A. Cox, Jr.,  
15 same person, has been found guilty by trial by jury of --  
16 guilty of felonious breaking or entering, that's a Class H  
17 felony, from August 8<sup>th</sup>, 2015. The Court determines,  
18 pursuant to statute, the prior record level points of the  
19 defendant to be zero, making him prior record level one. The  
20 Court makes no written findings because the prison term  
21 imposed is within the presumptive range.

22           The Court, having considered the evidence, arguments  
23 of counsel, statements of the defendant, orders the defendant  
24 be imprisoned for a minimum term of six months and a maximum  
25 term of 17 months. He's got zero days credit. Subject to the

1 conditions set out below, the execution of this sentence is  
2 suspended, he's placed on supervised probation for a period of  
3 24 months. He's to pay the costs and attorney's fees.

4 Do you have an approximate idea, Mr. Smith?

5 **MR. SMITH:** I'm retained, Judge.

6 **THE COURT:** Pay the costs. Regular conditions of  
7 probation. Special conditions of probation that -- has your  
8 client got his high school diploma?

9 **MR. SMITH:** Yes. I handed it up.

10 **THE COURT:** Yes, you handed it up. You had a lot of  
11 people pulling for you, and they'll pull for you again, but  
12 you're going to have to get through this hurdle. Report for  
13 an initial evaluation by TASC, participate in all further  
14 evaluation, counseling, treatment or education programs.

15 Mostly this is here to give you some help when you  
16 get out.

17 This sentence runs at the expiration of the first --  
18 sorry about that. It runs at the expiration of Counts Two and  
19 Three.

20 He's not to assault, threaten, harass or be in the  
21 premises or workplace of Ms. Leisure, Angela Leisure,  
22 Mr. McMinn -- the people, same people. Richard Linn and  
23 Ashley Jackson.

24 Anything else from the state?

25 **MR. SWEET:** No, sir.



1           **THE COURT:** Any other special requests, in terms of  
2 treatment, from the defendants?

3           **MR. WRIGHT:** Not from Ms. Jackson, Judge.

4           **MR. SMITH:** No, sir, not as to treatment.

5           **THE COURT:** There were some very bad decisions that  
6 had some very bad results. I hope you'll complete this and  
7 take advantage of at least the substance abuse treatment and  
8 work towards a better life. I wish you both the best.

9           They're in your custody.

10          **MR. WRIGHT:** Judge, I just wanted to make sure that  
11 I reserved my motions, and everything, in the case.

12          **THE COURT:** Certainly. Any motions made are  
13 preserved and are noted for the record.

14          **MR. WRIGHT:** I wanted to make them before the Court  
15 sentenced, but I waited until after, but I wanted to make  
16 sure.

17          **THE COURT:** There's -- they were timely made, at  
18 least from the Court's perspective, they're timely made and  
19 timely preserved, if that covers it. I'll say whatever else  
20 you need me to say on that.

21          **MR. WRIGHT:** No. I want to state for the record  
22 what the motions were.

23          **THE COURT:** Go ahead.

24          **MR. WRIGHT:** The first motion is to set aside the  
25 verdict as against the greater weight of the evidence in the

1 case.

2 **THE COURT:** That motion is respectfully denied.

3 **MR. WRIGHT:** The second motion, Judge, is to set  
4 aside the verdict and order a new trial for errors committed  
5 during the trial.

6 **THE COURT:** That motion is respectfully denied.

7 **MR. WRIGHT:** And, Judge, at this time, my client --  
8 I'll talk to her about it, she may withdraw it, but she tells  
9 me she wants an appeal through the public defender's office,  
10 Judge, regarding the case.

11 **THE COURT:** Okay. Note the defendant's, Ashley Dean  
12 Jackson's, appeal. Refer to -- I think it refers to IDS,  
13 right, indigent defendant services, to appoint appellate  
14 counsel?

15 **THE CLERK:** The Appellate Defender.

16 **THE COURT:** The Appellate Defender's office, okay.

17 **MR. WRIGHT:** Thank you.

18 **MR. SMITH:** I have the same motion Mr. Wright did,  
19 as well as, Judge, we would ask the Court --

20 **THE COURT:** Do you want to walk me through them?

21 **MR. SMITH:** Sure. The verdict was against the  
22 greater weight of the evidence.

23 **THE COURT:** That motion is respectfully denied.

24 **MR. SMITH:** Judgment notwithstanding the verdict as  
25 alleged by the jury.

1           **THE COURT:** That motion is respectfully denied.

2           **MR. SMITH:** Mr. Cox would like the Court to note his  
3 appeal to the appellate division.

4           **THE COURT:** You were retained here?

5           **MR. SMITH:** Our arrangement was through this stage  
6 of the trial only, Judge. I would ask the Court to appoint  
7 the Appellate Defender, Judge.

8           **THE COURT:** I know it was his parents, you indicated  
9 that, but if you would have your client fill out an affidavit,  
10 but I will then refer it to the Appellate Defender and  
11 Indigent Defendant Services.

12           **MR. SMITH:** Thank you, Your Honor.

13           **THE COURT:** I thank each of you.

14           **MR. SWEET:** Thank you very much, Judge.

15           **THE COURT:** I don't know if there was a motion for  
16 appellate release, but there's no appeal bond. Also, in each  
17 case, any earnings would be applied towards costs assessed in  
18 the case.

19           **MR. WRIGHT:** I didn't make a motion.

20           **THE COURT:** I know you didn't, but I thought we  
21 would just cover it. I don't think you expected it.

22           **MR. WRIGHT:** I can ask the Court to set an appeal  
23 bond, but that's going to be denied.

24           **THE COURT:** There's no appeal bond. The sentences  
25 become effective today, and as to any money earned in jail or

1 prison, that will be applied towards the costs and other  
2 financial obligations. Any unpaid financial obligations at  
3 the conclusion of the sentences will be a civil judgment.

4 (END OF TRANSCRIPT.)

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TRANSCRIPT CERTIFICATION

This is to certify that the foregoing transcript of proceedings taken at the January 8, 2018, Criminal Session of Onslow County Superior Court is a true and accurate transcript of the proceedings as reported by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This the 22nd day of March, 2018.

  
\_\_\_\_\_  
Katie K. Thomas, RMR  
Official Court Reporter

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

)  
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Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT C

No. COA18-692

FOUR B DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

STATE OF NORTH CAROLINA,	)	
	)	
v.	)	Onslow County
	)	15CRS54673
JAMES A. COX,	)	15CRS54665
Defendant,	)	

\*\*\*\*\*

DEFENDANT/APPELLANT'S BRIEF

\*\*\*\*\*

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NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

STATE OF NORTH CAROLINA,	)	
	)	
v.	)	Onslow County
	)	15CRS54673
JAMES A. COX,	)	15CRS54665
Defendant,	)	

\*\*\*\*\*

DEFENDANT/APPELLANT’S BRIEF

\*\*\*\*\*

**QUESTIONS PRESENTED**

- I. WHETHER THE TRIAL JUDGE COMMITTED PLAIN ERROR BY FAILING TO RESPOND TO THE JURY’S TWO QUESTIONS?
  
- II. WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILURE TO REQUEST FURTHER INSTRUCTIONS IN RESPONSE TO THE JURY’S TWO QUESTIONS?
  
- III. WHETHER THE TRIAL JUDGE ERRED IN DENYING THE DEFENDANT’S MOTION AT THE END OF ALL THE EVIDENCE, TO DISMISS CONSPIRACY TO COMMIT ARMED ROBBERY?
  
- IV. WHETHER THE TRIAL JUDGE ERRED IN DENYING THE DEFENDANT’S MOTION AT THE END OF ALL THE EVIDENCE, TO DISMISS FELONIOUS BREAKING AND ENTERING?

## **STATEMENT OF THE CASE**

The Defendant was tried with co-defendant Ashley Jackson at the 8 January, 2018 criminal session of Onslow County Superior Court, before a jury and the Honorable William W. Bland, Judge Presiding.

Defendant was convicted of felonious breaking and entering, Conspiracy to Commit Armed Robbery and Shooting into Occupied Dwelling.

The Defendant received a suspended sentence for felonious breaking and entering.

The remaining charges were consolidated into one judgment of 60 to 84 months.

Defendant gave Notice of Appeal in open court. Tr. p 409.

Co-defendant Ashley Jackson gave Notice of Appeal but later withdrew the appeal on 25 January, 2018.

## **STATEMENT OF GROUNDS FOR APPELLATE REVIEW**

Defendant appeals to this Court pursuant to N.C.GEN.STAT. § 7A- 27(b), from the final judgment of the Superior Court of Onslow County.

## **STATEMENT OF THE FACTS**

State's witness, Angela Leisure testified that she was a friend of Richard Linn and that "we would sometimes get drugs from one another". Tr. p 29. Ms.

Leisure's boyfriend was named Daniel McMinn. Angela testified that about midnight on August 8, 2015, "Some people were at the door. Daniel let them in". Tr. p 30.

The individuals who came in were Richard Linn, James Cox and his girlfriend, Ashley Patterson. Angela testified that Ashley began hitting her and pushed her to the ground, saying "Give me my money. Give me money. Give me my money. Give me the money." Tr. p 39.

Richard Linn pulled Ashley off of Angela and the three individuals started heading toward the door. Angela heard a kicking at the door and heard a gunshot.

Angela testified that Richard Linn had given her \$50.00 a month earlier to buy drugs for him from the "dope man". Angela never gave Richard any drugs in exchange for the \$50.00. Richard had asked Angela for his money back.

On cross exam by Ashley's lawyer, Angela said she lied to the police when she told them that she did not owe Ashley or Richard any money. Tr. p 52-53.

Angela also said that she did not know that \$20.00 that Richard Linn gave her came from Ashley. Tr. p 56.

Richard Linn had tried to contact Angela during the preceding month. When Angela was asked whether Richard wanted his money back, she nodded her head in agreement, saying she knew he wanted his money back.

Daniel McMinn, Angela's boyfriend, testified he was in front of the house when three people turned up. He recognized Richard Linn. Daniel testified "she (Ashley) went into the house, and then the rest of the group went inside. After a few minutes, Daniel heard Richard say, "She's had enough, let's go." Daniel heard a shot, but couldn't see who fired the shot through the door.

Over a space of three pages of transcript, Mr. McMinn tried to explain whether he told the police that the subjects kicked in the front door entering or leaving. Tr. P. 117 to 119.

Richard Linn testified for the State that he made a plea bargain with the State in exchange for his testimony. He stated that he basically used Angela as a go-between to obtain narcotics. He further said that in the time period leading up to August 8, 2015, he had received \$20.00 from Mr. Cox to purchase Percocets. Tr. p 126. He said he never received the Percocets. Linn stated that Ashley and Mr. Cox wanted to go to Angela's house "to talk to her about their money". Tr. p 129.

Linn testified that when Cox was leaving Angela's residence, "After he kind of gets done kicking the door, he shoots at the door". Tr. p 139.

During cross examination, Linn was asked, "Did you ever enter into an agreement with either Ms. Jackson or Mr. Cox to rob Ms Leisure of any money?" He answered "No". Tr. p 145. He also said, "It would have been nice to get my

money back”. Tr. p 146. Linn testified that nothing was taken from Angela’s house. At the end of the cross by Ashley’s attorney, Linn acknowledged that he, Mr. Cox and Ms. Jackson did not talk about robbery. Tr. p 149.

On redirect of Linn by the prosecutor, he was asked, “Mr. Linn, were you aware of any conversation between Ms. Jackson and Mr. Cox about what they wanted to do that evening, before they got to your house?” Linn said “No”. Tr. p 156.

Detective Jacob Parker testified that he interviewed Mr. Linn and that Linn did not state that he entered into an agreement or conspired with Mr. Cox or Ms. Jackson to engage in an armed robbery the night of August 8, 2015. Tr. p 221.

### **STANDARDS OF REVIEW**

ISSUE I: Errors which are not objected to by counsel are reviewed for Plain Error, which means that "the error had a probable impact on the jury's finding that the defendant was guilty". *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 2012).

ISSUE II: Constitutional errors are reviewed *de novo*, under which this Court "considers the matter anew and freely substitutes its own judgment for that of the lower tribunal". *State v. Williams*, 362, N.C. 628, 669 S.E.2d 290, 294 (2008).

ISSUES III AND IV: Issues of whether motions to dismiss should be granted are reviewed under the abuse of discretion standard of whether there is sufficient evidence to support a conviction. *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 416, 419 (2007).

## **ARGUMENT**

### **I. THE TRIAL JUDGE COMMITTED PLAIN ERROR BY FAILING TO RESPOND TO THE JURY'S TWO QUESTIONS.**

The evidence in this matter presented the scenario of an unfulfilled drug deal. As is often the case in a transaction, there is a buyer, a seller, and a broker. The evidence in the case was that Richard Linn and co-defendant Ashley Jackson were the buyers, Angela Leisure, the State's main witness, was the broker, and the seller was identified by Angela as "the dope man". Tr. p 45.

The testimony from Angela Leisure was that Richard Linn would give Angela money from time to time to buy pills or marijuana. Tr. p 45. About a month before the incident, Richard gave Angela \$50.00, and according to Angela, she "gave it to the dope man". Tr. p 45. (Richard Linn testified for the State that Ashley contributed an additional \$20.00, and the total amount in question to purchase pills was about \$60-\$80 dollars.)

Angela admitted during direct exam that about a month passed by, and she did not get drugs from "the dope man".

Angela testified that Linn, Cox and Jackson came to her house and her boyfriend, Daniel “let them in”. Tr. p 30.

Further, Mr. Linn testified on cross exam that he, the Defendant, and co-defendant did not go to Angela’s to commit a robbery, but to get their money back. App. 13 Tr. p 145.

Angela admitted on direct exam by the prosecutor that when she and Ashley were arguing and scuffling, Ashley was saying “Give me my money”. Tr. p 39.

During the jury charge, Judge Bland correctly told the jurors that Armed Robbery involves the taking of property from a person, while the defendant “*knows that the defendant is not entitled to take the property*”. (emphasis added) R. p. 24. To assist the jury, the Court gave the jury a copy of the written jury charge.

After deliberating for about two hours, the jury returned a note which indicated that they had two questions related to the critical legal issue of the case. The note said the first question was “Can we get clarification of ‘While the defendant knows that the defendant is not entitled to take the property’”. The second question was “Is it still robbery to take back one’s own property?”. R. p. 14.

Judge Bland refused to answer the jury’s direct questions about a critically important element of Armed Robbery.



“It is the duty of the trial judge to ‘declare and explain the law arising from the evidence relating to each substantial feature of the case.’” *State v. Hockett*, 309 N.C. 794, 800 (1983), (citing *State v. Everette*, 284 N.C. 81, 87, 199 S.E.2d 462, 467 (1973))

In addition, N.C.GEN.STAT. § 15A-1232 requires a trial judge “to declare and explain the law arising from the evidence”. App. 1. N.C.GEN.STAT. § 15A-1234 gives a judge authority to give the jury additional instructions, “to respond to an inquiry of the jury made in open court”. App. 2.

Contained in the Appendix is a copy of the entire discussion by the parties and Judge Bland concerning what should the Judge’s response to the jury’s note be. In a nutshell, the Judge told the jury, “All I can really say is this. That you, the jury, determine from the evidence what the facts are and then you take those facts and you apply it to the law as is given to you in the jury instructions.” App. 3, Tr. p 375-376.

The Defendant contends that the *Hockett* case is directly on point. The Supreme Court stated in *Hockett* that “This (the jury’s question) is clearly a question asking for clarification on a point of law”. *Hockett* at 800. The Supreme Court granted Hockett a new trial, saying “We feel that the trial court should have at least reviewed the elements of the offenses if it was not going to directly answer the question as defense counsel had requested”. Finally, “We hold that the failure

of the trial court to answer the questions of the jury on an important point of law was prejudicial error and the conviction must be reversed and a new trial granted”. *Hockett* at 802.

The Defendant asks for the same result in this matter. The Defendant was charged with conspiring with his girlfriend to commit Armed Robbery. It was clear that the jury was concerned about whether the Defendant knew he was not entitled to take the property and whose property the money was. The State’s witnesses acknowledged that the individuals who came to Angela’s house believed the money was theirs, since Angela did not provide the pills that were to be purchased.

Since the additional instruction was given to the jury without objection from defense counsel, this Court must review the issue under Plain Error.

Plain Error is present when “the error had a probable impact on the jury’s finding that the defendant was guilty”. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012)

The Defendant contends that simply the way the note was worded supports the notion that the jury would have concluded that no attempted robbery legally took place, and therefore no conspiracy to rob took place, if the judge had instructed the jury that they must decide if the Defendant and co-defendant knew that they were not entitled to take the property.

Therefore, an element that the State was required to prove beyond a reasonable doubt is that the Defendant knew he was not entitled to take property of Ms. Leisure.

Going back to *State v. Hockett*, the Supreme Court held that when a jury asks a question of law about a case, at a minimum, the judge should reinstruct about the elements of the offense being tried. “We feel that the trial court should have *at least* reviewed the elements of the offenses...” *Hockett* at 802 (emphasis added)

Judge Bland could have clarified that a person is not entitled to commit other crimes during the course of attempting to retrieve their property, such as the assault by co-defendant Jackson.

The questions in the note related to the most critical issue in the case, “can a defendant be convicted of Conspiracy to Commit Robbery when he is simply agreeing to attempt to retrieve property that he reasonably believes he is entitled to take?”.

In “CRIMES, A Guidebook of the Elements of Crime,” published by the N.C. School of Government, Professor Jessica Smith wrote in the section on Larceny, “A person who honestly believes he or she is entitled to taken property is not guilty of larceny, even if this belief is wrong. *State v. Booker*, 250 N.C. 272, 108 S.E.2d 426 (1959).

In *Booker*, the opinion by the North Carolina Supreme Court set forth the definition of larceny as “the felonious taking and carrying away from any place at any time the *personal property of another*, without the consent of the owner, with the felonious intent to deprive the owner of his property permanently and to convert it to the use of the taker or to some other person than the owner”. Further, “To be guilty of larceny, the taking must be accompanied by a felonious intent, that is, an intent to convert to her own use, thereby depriving the owner of the use and possession of his chattels”. *Id* at 274.

It is clear from the testimony that not only did Ashley Jackson and Defendant Cox believe that the property attempted to be taken belonged partly to Ashley and partly to Richard Linn, but Angela believed the same thing.

The following exchange took place between Angela and Ashley’s attorney;

Q. Do you know if he (Richard Linn) tried to contact you during that period of time?

A. Yes, for money.

Q For his money?

A. (WITNESS NODDED HEAD)

Q. So you knew he wanted his money back, or wanted something?

A. Yes

App. 9, Tr. p 59-60.

Defendant contends that Judge Bland committed Plain Error by not answering the jury's two questions, and if he had done so, there would have been a probability of a verdict of not guilty to Conspiracy to Commit Armed Robbery.

**II. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILURE TO REQUEST FURTHER INSTRUCTIONS IN RESPONSE TO THE JURY'S QUESTIONS RELATED TO THE INTENT ELEMENT OF ROBBERY**

Following the note from the jury, the judge and both lawyers discussed what should be done in response. Judge Bland stated that he believed he should simply reread the jury charge, despite the fact that the jury had a written copy of the instructions. The prosecutor and Ashley's attorney suggested that the judge should read to the jury the instructions that the jury already had, and undoubtedly read. Defense counsel for Defendant Cox stated, "I've never seen it done another way, so don't have another solution". Tr. p 373.

In addition, Defendant Cox's lawyer thought asking the jury to read the instruction "would help solve the problem". Tr. p 373.

In *U.S. v. Cronin*, 466 U.S. 648, 108 S.Ct. 2039 (1984), the United States Supreme Court stated "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." *Cronin* at 655. The two questions submitted by the jury presented defense counsel with the opportunity for the judge to provide the jury with an instruction on the law that

bolstered the defense. Attorney Smith failed to request a clarification on the law related to the element that “the defendant knows that the defendant is not entitled to take the property”. Defense counsel missed an opportunity to benefit his case. Under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), the Sixth Amendment right to effective assistance of counsel is violated if counsel’s performance is deficient and the deficiency prejudiced the Defendant.

Defendant contends it was objectively unreasonable, and clearly prejudicial, to not ask the judge to clarify an important question of law, which the jury could have used to return a verdict of not guilty.

Defendant contends that since the prejudicial and deficient performance of counsel was apparent from the face of the record, this Court may consider the Defendant’s claim. *State v. Fair*, 354 N.C. 131, 557 S.E.2d 500 (2001). While Defendant is mindful of the recent decision by the North Carolina Supreme Court in *State v. Todd*, 369 N.C. 707, 799 S.E.2d 834 (2017), he argues that the holding in *Todd* is inapplicable to the present case for two reasons. First, the facts of *Todd* related to ineffective assistance of an appellate counsel with respect to which of a number of issues to brief and argue. Second, *Todd* is concerned with making sure that there is in the record evidence of whether counsel made a “strategic decision” which might explain the seemingly ineffective performance. Under no stretch of the imagination could defense counsel’s failure to ask the trial judge to clarify the

law in response to the jury's questions be a strategic decision to somehow benefit the Defendant.

A new trial on Conspiracy to Commit Armed Robbery is required.

**III. THE TRIAL JUDGE ERRED IN DENYING THE DEFENDANT'S MOTION AT THE CLOSE OF ALL THE EVIDENCE, TO DISMISS THE CHARGE OF CONSPIRACY TO COMMIT ARMED ROBBERY.**

The proof of a conspiracy requires an agreement with at least one other person to commit an unlawful act, with the intent that the agreement be carried out.

*State v. Horton*, 275 N.C. 651, 170 S.E.2d 466 (1969)

The indictment returned against the Defendant in this matter alleged that “the defendant above unlawfully, willfully and feloniously did conspire with Ashley Jackson and Richard Linn to commit the felony of robbery with a dangerous weapon”. R. p 5. However, when State's witness Richard Linn testified on cross, he was asked, “Did you ever enter into an agreement with either Ms. Jackson or Mr. Cox to rob Ms. Leisure of any money?”. His answer was “No”.

At the close of the State's case, defense counsel moved to dismiss the Conspiracy to Rob charge, arguing as follows: “As to Count Two, conspiracy, the only witness that we've had, at this point in the State's evidence, to make any representation or allusion of conspiracy is Mr. Linn. He flatly denied a conspiracy occurred. I would make a motion to dismiss that charge Judge.”

App. 11, Tr. p 240.

At the close of all the evidence, Defendant's counsel renewed his Motion to Dismiss the charge of Conspiracy to Commit Armed Robbery, by stating, "Judge, my motion to dismiss is to all counts in the indictment." App. 12, Tr. p 316.

The question raised on a motion to dismiss at the close of all the evidence is whether there was sufficient evidence to justify submitting the case to the jury for determination. *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007).

The Defendant argues that the State's case on Conspiracy to Commit Armed Robbery fails on two counts. First, the State's own witness, Richard Linn emphatically declared that there was no conspiracy among himself, Defendant Cox and co-defendant Jackson.

According to the State's evidence, Richard Linn gave Ms. Leisure \$60.00 to buy pills, and Jackson contributed \$20.00 more.

After Mr. Linn was asked whether there was a conspiracy to rob Ms. Leisure, he was asked, "Did you all ever talk about committing any type of felony?" He answered again, "No". Tr. p 149.

The Defendant respectfully submits that the State did not present sufficient evidence of an agreement between Defendant Cox and co-defendant Jackson to commit robbery.



In fact, the Defendant contends that the argument in Claim One indicates that there was insufficient evidence of a robbery being attempted, since there was no evidence that the Defendant, by himself or with Ashley, knew they were not entitled to take the money. Therefore, there was no intent to take the property of another.

A conspiracy may not be established by “mere suspicion” or a “mere relationship or association between the parties”. *State v. Benardello*, 164 N.C. App. 708, 596 S.E.2d 358(2004).

Defendant contends that the unequivocal statement of Mr. Linn that a conspiracy did not exist required the trial judge to dismiss the charge of Conspiracy to Commit Armed Robbery.

#### **IV. THE TRIAL JUDGE ERRED IN DENYING DEFENDANT’S MOTION AT THE END OF ALL THE EVIDENCE TO DISMISS FELONIOUS BREAKING AND ENTERING.**

The jury returned a verdict of guilty to Felonious Breaking and Entering, despite the fact that Angela Leisure testified that “Some people were at the door. *Daniel let them in.*” Tr. p 30.

When Daniel McMinn testified, he did not contradict Angela’s statement that Daniel let them in. Tr. p 106. When Richard Linn testified, his testimony about the individuals entering and leaving the residence was confusing and contradictory. Tr. p 135.

At the end of the State's case, Defendant's attorney made an argument that took Judge Bland by surprise. The argument was that "they both had to be inside the home at the same time. Ampersand is different than and/or. It requires both of the people to be in the home, and Mr. McMinn clearly was not".

Defendant contends that the appropriate phrasing for the motion to dismiss the felonious breaking or entering was that insufficient evidence was presented by the State and that Angela clearly said that Daniel let the defendants into the house.

To the extent that the motion to dismiss at the close of the State's case and at the close of all the evidence was inadequate, the Defendant contends that defense counsel rendered ineffective assistance of counsel. The motion at the close of all the evidence did not present the objection with any more clarity than the motion at the end of the State's case. Attorney Smith simply stated, "My motion to dismiss is to all counts in the indictment" without any particular argument being made on any particular contention by the State.

### **CONCLUSION**

Upon the foregoing argument and authorities, the Defendant requests that this Court dismiss the charge of Conspiracy to Commit Armed robbery, or in the alternative remand for a new trial. With respect to felonious breaking and entering, the Defendant requests that the charge be dismissed based on Angela Leisure's testimony.

Since the Shooting into Occupied Dwelling was consolidated with the Conspiracy charge, the Defendant contends that, if the Conspiracy conviction is vacated, that a new sentencing be awarded on Shooting into Occupied Dwelling. *State v. Perry*, 305 N.C. 225, 287 S.E.2d 810 (1982).

Respectfully submitted, this the 8th day of August, 2018.

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**CERTIFICATE OF COMPLIANCE WITH RULE 28**

I hereby certify that this brief was prepared using Fourteen Point, proportional typeface (specifically Microsoft Word 2003, Times New Roman, 14 point). This brief complies with the word limitation of N.C.R. App. P. 28(j)(2)(A)(2) because this brief does not exceed 8,750 words (specifically **4,104** words), excluding the parts of the brief exempted by N.C.R. App. P. 28(j)(2)(A)(2).

By: Electronically Submitted  
Bruce T. Cunningham, Jr.

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Brief was filed this day with the Clerk of the Court of Appeals of North Carolina and served upon attorney of record for the State of North Carolina by depositing a copy in the United States Mail, properly addressed, postage paid, to:

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This the 8th day of August, 2018.

Electronically Submitted  
Bruce T. Cunningham, Jr.

Attorney for Defendant/Appellant

No. COA18-692

FOUR B DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

STATE OF NORTH CAROLINA,	)	
	)	
v.	)	Onslow County
	)	15CRS54673
	)	15CRS54665
	)	
JAMES A. COX,	)	
Defendant,	)	

\*\*\*\*\*  
 DEFENDANT/APPELLANT JAMES A COX’S BRIEF APPENDIX  
 \*\*\*\*\*

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**§ 15A-1232. Jury instructions; explanation of law; opinion prohibited.**

In instructing the jury, the judge shall not express an opinion as to whether or not a fact has been proved and shall not be required to state, summarize or recapitulate the evidence, or to explain the application of the law to the evidence. (1977, c. 711, s. 1; 1985, c. 537, s. 1.)

**§ 15A-1234. Additional instructions.**

(a) After the jury retires for deliberation, the judge may give appropriate additional instructions to:

- (1) Respond to an inquiry of the jury made in open court; or
- (2) Correct or withdraw an erroneous instruction; or
- (3) Clarify an ambiguous instruction; or
- (4) Instruct the jury on a point of law which should have been covered in the original instructions.

(b) At any time the judge gives additional instructions, he may also give or repeat other instructions to avoid giving undue prominence to the additional instructions.

(c) Before the judge gives additional instructions, he must inform the parties generally of the instructions he intends to give and afford them an opportunity to be heard. The parties upon request must be permitted additional argument to the jury if the additional instructions change, by restriction or enlargement, the permissible verdicts of the jury. Otherwise, the allowance of additional argument is within the discretion of the judge.

(d) All additional instructions must be given in open court and must be made a part of the record. (1977, c. 711, s. 1.)

1 PROSECUTORS PRESENT, THE JURY ABSENT.)

2 THE COURT: Okay. The jury has indicated that they  
3 have some question -- a question or questions. They've  
4 given -- they've written it down and given this to the  
5 bailiff.

6 First, it says, "Can we get clarification of -- in  
7 quotes -- while the defendant knows that the defendant is not  
8 entitled to the property, end quote." And they point out  
9 that's on Page 6, the last line of the robbery definition.

10 Every time the robbery definition is given, I put  
11 the word "while" in. I say that, because if you look at the  
12 pattern jury instruction, I think what it says is something  
13 like, comma, the defendant, knowing that the defendant is not  
14 entitled to the property, and that -- it may not be, but it's  
15 confusing, I think. So I was hoping that word would help.

16 Then they have a second question, which I think is  
17 kind of the same thing. "Is it still robbery to take back  
18 one's -- or one" -- but I think that mean one's -- "one's own  
19 property?"

20 Your pitch was somewhat successful, Mr. Wright, but  
21 I'm not sure how you get clearer than, "while the defendant  
22 knows that the defendant is not entitled to take the  
23 property," except when you look at it in conjunction with the  
24 other, saying, is it still robbery to take back one's own  
25 property? I'm open to some thoughts here.



1           **MR. SWEET:** I would just say, the only thing, at  
2 this point, that we can do is reread them the instruction and  
3 just say, you know, the instruction is the law in the matter,  
4 and I think, at this point, we can't really clarify that any  
5 more than we all -- the Court already has.

6           **MR. WRIGHT:** That's true, Judge, because nothing was  
7 taken, first of all. Did they say in there --

8           **THE COURT:** No. You can certainly look at this, and  
9 I'll mark this as Court's Exhibit Number 1, at some point. I  
10 wasn't casting any aspersion on you, Mr. Wright. I was really  
11 thinking -- and I left this in the assault, where it said, you  
12 know, without -- what's it say? Without justification or  
13 excuse. That's kind of -- that's actually what I was  
14 referring to when I said that. I don't really think that -- I  
15 don't think it was error to have that in there, certainly, but  
16 no justification or excuse has been offered, and nor does  
17 there appear to be one.

18           **MR. WRIGHT:** Well, I kind of indirectly did.

19           **THE COURT:** You talked about it in your argument, so  
20 I left it in there, partly for that reason.

21           **MR. WRIGHT:** I agree.

22           **THE COURT:** I don't think it's error.

23           **MR. WRIGHT:** I do agree with the prosecutor, we just  
24 need to read them the instruction again.

25                   May I approach, Judge?

1           **MR. SMITH:** I've never seen it done another way, so  
2 I don't have another solution.

3           **THE COURT:** They've already got their own personal  
4 copies of the instructions, so --

5           **MR. WRIGHT:** Well, the only thing you can probably  
6 say is, you've got -- reread -- we ask that you reread. I  
7 don't know that we ever addressed the question, "Is it still  
8 robbery to take back one's own property?"

9           **THE COURT:** What do you propose I read to them?

10          **MR. SWEET:** Our proposal would be, from the state,  
11 would just be that you bring them back in and, during the --  
12 obviously, addressing the question, let them know that you've  
13 given them a copy of the instructions, you've already read  
14 those instructions, they're to follow those instructions and  
15 to continue the deliberations.

16          **MR. SMITH:** I think -- I think that would help solve  
17 the problem.

18          **THE COURT:** I can read the robbery instruction, but  
19 I think that --

20          **MR. WRIGHT:** I don't think you need to.

21          **THE COURT:** All of this is misdirection, in a way,  
22 but the rob -- it's not misdirection, but it's kind of a  
23 subset.

24          **MR. SWEET:** Right, of the burglary.

25          **THE COURT:** Okay. It's a slippery slope to go into,

1 you know. Legal justifications need to be pled and argued,  
2 and all that, and I can't go there. I don't know how to say  
3 it, first of all, and I don't think I should, second of all.  
4 I'll say, it's the duty of the jury to determine the facts  
5 from the evidence presented and apply the facts to the law,  
6 and the law, as applicable in this case, has been set out in  
7 these jury instructions that you have a copy of and were read  
8 to you. If you would like to request another reading, I  
9 suppose I can do that, of the whole thing, but I'm not going  
10 to do that. And they should simply refer to the instructions  
11 as given. And I don't think I'll refer to common sense,  
12 but -- but make their best efforts to apply -- determine the  
13 facts and apply them to the law. That's really all I can tell  
14 them. But I can give them a break for lunch. How long should  
15 we go to lunch?

16 **MR. WRIGHT:** At least an hour.

17 **THE COURT:** I'm going to ask them.

18 **MR. WRIGHT:** We normally do an hour and a half.

19 **THE COURT:** Do you want to spend your holiday  
20 weekend with me?

21 **MR. WRIGHT:** Since I only had an hour to write my  
22 closing argument.

23 **THE COURT:** I'm going to give them at least an hour.  
24 I'm willing to give them an hour and a half, but I expect  
25 they're anxious to get back, too. I'll ask them.

1 All right, let's bring the jury in, please.

2 (THE JURY RETURNED TO THE COURTROOM AT 1:20  
3 PM.)

4 THE COURT: Okay. All 12 jurors are here in the  
5 courtroom.

6 Will the foreperson of the jury please stand. If  
7 you would state your name, please, sir.

8 JUROR NUMBER SEVEN: My name is William John Potts,  
9 III.

10 THE COURT: Mr. Foreperson, I have gotten a note --  
11 I guess this is your handwriting.

12 JUROR NUMBER SEVEN: Yes, sir.

13 THE COURT: -- on behalf of the jury. Two  
14 questions. The first was, "Can we get clarification of" --  
15 and then, in quotes -- "while the defendant knows that the  
16 defendant is not entitled to take the property," and that's  
17 referring to Page 6, the last line of the robbery definition.  
18 That same line, it's also -- every time the robbery with a  
19 dangerous weapon is defined, it includes that same line.

20 Then you've also asked -- you, the jury, have also  
21 asked, "Is it still robbery to take back one owns -- or one's  
22 own property?" You can have a seat, sir. That's fine. Thank  
23 you.

24 All I can really say is this. That you, as the  
25 juror -- jury -- determine from the evidence what the facts

1 are, and then you take those facts and you apply it to the law  
2 as is given to you in the jury instructions.

3           In the first paragraph, it does say it's absolutely  
4 necessary that you understand and apply the law as I give it  
5 to you and not as you think it is or as you might like it to  
6 be. Each of you has been given a printed copy of the jury  
7 instructions, and all I can really do is simply refer you to  
8 those instructions as to the law that's applicable in this  
9 case. I can reread it all for you, if you would ask, but I  
10 think you've got the copies and you can do that. That's  
11 really all I can say, in answer to that question.

12           I can address lunch. This may be a question you  
13 haven't asked here. What we'll do now is take a lunch recess  
14 of at least an hour, and I'm certainly willing to go an hour  
15 and a half. How long would you prefer? I guess we can either  
16 come back at 2:30 or at 3:00. It's almost 1:30 now, so either  
17 2:30 or 3:00.

18           SEVERAL JURORS: 2:30.

19           THE COURT: Is 2:30 enough time for everybody? I  
20 think we'll be running across the street. So what we'll do,  
21 ladies and gentlemen, is now take a lunch recess and, of  
22 course, you are in deliberation, at this point; however,  
23 you're not to deliberate during lunch and at your separate  
24 tables, or wherever you may go, or whatever.

25           So you've heard this before, but let me say it

App. 9  
Angela Leisure - Cross-Examination by Mr. Wright

1 Q In other words, what I'm asking is, if someone were  
2 to say the door was kicked in, and that's how they entered the  
3 residence, that's not true.

4 A No.

5 Q You know that for a fact?

6 A I wouldn't say for a fact, but I remember hearing  
7 something when I was -- when they left. So I would say it  
8 happened when they left --

9 Q Okay.

10 A -- to try to get back in.

11 Q Now, prior to the 8th of August, 2015, do you -- and  
12 if it was asked, I just want to make sure. When was the last  
13 time you saw Daniel -- I mean Richard Linn, prior to that  
14 incident?

15 A Maybe a few weeks or a month, over a month, if I had  
16 seen him since he gave me that money.

17 Q You hadn't seen him since then?

18 A I would say, no.

19 Q Do you know if he tried to contact you during that  
20 period of time?

21 A Yes, for money.

22 Q For his money?

23 A (WITNESS NODDED HEAD.)

24 Q So you knew he wanted his money back, or wanted  
25 something.

## Angela Leisure - Cross-Examination by Mr. Smith

1 A Yes.

2 Q But you were avoiding him --

3 A Yes.

4 Q -- because the guy that you went to didn't give you  
5 the goods or the money back.

6 A Yes.

7 MR. WRIGHT: Thank you. That's all I have.

8 THE COURT: Mr. Smith.

9 CROSS-EXAMINATION BY MR. BRYON M. SMITH:

10 Q So you admit you're a drug dealer?

11 A Yeah.

12 Q Drug abuser?

13 A Was.

14 Q So this treatment program you're going to has cured  
15 you?

16 A Excuse me?

17 Q This drug treatment program you're going through has  
18 cured you?

19 MR. SWEET: Objection. It's not relevant.

20 THE COURT: You can you address it briefly.

21 THE WITNESS: Yes.

22 Q So are you coming out tomorrow?

23 A The treatment program? No.

24 Q So you're still in treatment, you're still  
25 undergoing --

1 McMinn.

2 THE COURT: I can't hear you very well. If you'll  
3 maybe start back at the top and say what you just said.

4 MR. SMITH: I'm going to make a split argument as to  
5 Count Number One. The indictment is very clear the home was  
6 occupied by Angela Leisure and Daniel McMinn. All of the  
7 state's evidence was Mr. McMinn was outside. Ms. Leisure may  
8 well have been inside. I think the state would counterargue,  
9 well, the indictment covered one or both. But the way they  
10 phrased it with the ampersand "and", that is a word of  
11 conjunction, Judge. They both had to be inside the home at  
12 the time. Ampersand is different than and/or. It requires  
13 both of the people to be in the home, and Mr. McMinn, clearly,  
14 was not. I would make that my motion as to Count Number One.

15 THE COURT: That's not the motion I expected, but go  
16 ahead. I'll hear arguments, I guess.

17 MR. SMITH: As to Count Two, conspiracy, the only  
18 witness that we've had, at this point in the state's evidence,  
19 to make any representation or allusion of conspiracy is  
20 Mr. Linn. He flatly denied a conspiracy occurred. I would  
21 make a motion to dismiss that charge, Judge.

22 Judge, I'll have no argument as to Count Number  
23 Three.

24 On 54674, Count Number One, as to Mr. McMinn, Judge,  
25 in the light most favorable to the state, it's possible the



1 Judge.

2 THE COURT: Motion to dismisses to all counts?

3 MR. WRIGHT: That's correct, Judge.

4 THE COURT: Mr. Smith?

5 MR. SMITH: Judge, my motion to dismiss is to all

6 counts in the indictment. At this point stage in the

7 proceeding, Judge, I know Mr. Sweet has talked to me about the

8 injury to personal property, injury to real property. The

9 only evidence the jury could have, at this point, is that

10 Ms. Jackson did that. There is zero evidence that Mr. Cox had

11 anything to do with that, and I make that my motion to dismiss

12 those charges, Judge.

13 THE COURT: I wouldn't say zero evidence. There's

14 evidence he had a gun. There is evidence a gunshot was fired.

15 As to who fired it, there may be questions, but there's some

16 evidence.

17 MR. SMITH: That's my argument, Judge.

18 THE COURT: All right.

19 MR. SWEET: Just to clean things up, we would ask,

20 for the same reasons we stated at the close of our evidence,

21 that the Court deny those motions.

22 Just to kind of simplify things going forward, if we

23 are permitted to go forward but, certainly, in response to

24 Mr. Smith's comments, while we disagree that there's not

25 evidence, certainly, we just, in terms of -- in terms of

## Richard Linn - Cross-Examination by Mr. Wright

1           A     I kind of thought maybe that was the case, but I --  
2     I mean, she didn't tell me specifically she was avoiding me,  
3     or anything like that.

4           Q     And isn't it true, sir, that when you received the  
5     phone call, you were not forced to get into that car to go  
6     over to her place. You wanted to go over there and question  
7     her about your \$50.

8           A     Yeah, it would have been nice to talk to her face to  
9     face about my money.

10          Q     You wanted your money.

11          A     But if -- it wasn't the first time she's taken money  
12     from me, so I knew I would get back eventually.

13          Q     Yeah. But at no time, sir -- isn't it true, at no  
14     time while you were going -- I guess -- how long from the time  
15     they picked you up until the time you went there, how many  
16     minutes or how many --

17          A     Probably about two minutes.

18          Q     How about how many?

19          A     About two.

20          Q     Did you ever enter into an agreement with either  
21     Ms. Jackson or Mr. Cox to rob Ms. Leisure of any money?

22          A     No.

23          Q     You didn't enter any agreement, did you?

24          A     No.

25          Q     Y'all didn't even discuss that, did you?

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

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)  
)  
)  
)

Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT D

NO. COA 18-692

FOUR B DISTRICT

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA )

v. )

JAMES A. COX, )

Defendant. )

From Onslow County

15 CRS 54673

15 CRS 54665

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BRIEF FOR THE STATE

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COURT OF APPEALS  
OF NORTH CAROLINA

FILED

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NORTH CAROLINA COURT OF APPEALS

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BRIEF FOR THE STATE

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ISSUES PRESENTED

- I. DID THE TRIAL COURT COMMIT PLAIN ERROR IN RESPONDING TO THE JURY'S QUESTIONS?
- II. DID THE DEFENDANT'S COUNSEL ACT IMPROPERLY IN HIS ACTIONS REGARDING THE JURY'S QUESTION REGARDING THE INTENT ELEMENT OF ROBBERY?
- III. DID THE TRIAL COURT PROPERLY DENY THE DEFENDANT'S MOTION TO DISMISS THE CHARGE OF CONSPIRACY TO COMMIT ARMED ROBBERY AT THE CLOSE OF ALL THE EVIDENCE?
- IV. DID THE TRIAL COURT PROPERLY DENY THE DEFENDANT'S MOTION TO DISMISS THE CHARGE OF FELONIOUS BREAKING AND ENTERING AT THE CLOSE OF ALL THE EVIDENCE?



## STATEMENT OF THE CASE

This case came on for a joint trial with the defendant and co-defendant Ashley Jackson at the 8 January 2018 criminal session of Onslow County Superior Court before a jury and the Honorable William W. Bland, Judge Presiding. (R pp 1, 11). The defendant was charged with First Degree Burglary, Conspiracy to Commit Armed Robbery and Shooting into an Occupied Dwelling. (R pp 1, 3-4).

The defendant was convicted of Felonious Breaking or Entering, Conspiracy to Commit Armed Robbery and Shooting into an Occupied Dwelling. (R pp 1, 33). The trial court consolidated the defendant's charges of Conspiracy to Commit Armed Robbery and Shooting into an Occupied Dwelling for sentencing and the defendant received a consolidated sentence of 60 to 84 months. For the conviction of Felonious Breaking and Entering, the court entered a suspended sentence of 6 of 17 months. (R pp 1, 42-45). The defendant gave notice of appeal in open court. (R pp 46, 48-49).

## STATEMENT OF THE FACTS

Daniel McMinn testified that he and Ansela Leisure arrived at Ms. Leisure's home and she entered the house. As Mr. McMinn was going into the house, a car drove up quickly and three persons got out, the defendant, the co-defendant and Richard Linn, coming to the house very fast. (T pp 88-89). Mr.

McMinn could tell there was aggression and something was wrong when the co-defendant asked where Ms. Leisure was. (T p 91). He stated the co-defendant entered the house first and it was apparent that the defendant was there for enforcement. (T pp 93-94). Mr. McMinn testified the co-defendant was giving it to Ms. Leisure pretty good in fighting with her (T p 94). Mr. McMinn went to reach for his cell phone when he noticed the defendant had a gun and, in a threatening manner, made it clear to Mr. McMinn "don't do that with the phone." (T pp 94-95). Mr. McMinn stated Mr. Linn finally said that was enough and to go. Mr. McMinn said he did not step in because it was for self-preservation and they made it out safely and did not get shot. (T pp 95-96). Ms. Leisure stated she was in her bedroom changing when the co-defendant walked in. (T p 37). The co-defendant assaulted her, pulling her hair and hitting her on the side of the head. Ms. Leisure fell to the ground, and the co-defendant kept saying "give me the money." (T pp 38-39). Ms. Leisure testified that Mr. Linn walked in and told the co-defendant to get off Ms. Leisure and that was enough. Mr. Linn and the defendants left the room. Ms. Leisure closed and locked her bedroom door. (T p 43). Ms. Leisure stated that Mr. McMinn got the defendants out and she heard banging and then a gunshot. (T p 43). Ms. Leisure testified that she had been given money in the past to buy drugs for Mr. Linn and would have never gotten drugs for the co-

defendant. (T p 44). Ms. Leisure admitted she owed Mr. Linn money Mr. Linn had given her to purchase drugs. (T pp 45-46). Mr. McMinn stated he was scared and, when they left, he closed the door. He heard them talking, and they sounded mad. They wanted to get back in and a foot came through the door. He heard a gunshot that was fired into the house. The bullet hit the mirror in the house and lodged in a sofa. (T pp 97-98).

Richard Linn testified he would give Ms. Leisure money to buy drugs for him from time to time. (T pp 122-23). Mr. Linn stated he had been given money by the defendant but Ms. Leisure and the defendant did not know about this arrangement. (T pp 125-26). Mr. Linn stated that he received a call from the defendant and was told to come outside. Mr. Linn came outside and the defendant had a gun in his left hand and told Mr. Linn to get in the car with the co-defendant. (T p 199). Mr. Linn was taken to Ms. Leisure's home by the defendants. (T p 129). Mr. Linn stated he had taken a plea deal to testify and testify truthfully in this case. (T pp 130-31).

Mr. Linn was unsure about who went into Ms. Leisure's home first but the defendant, co-defendant and Mr. McMinn went into the house. (T p134). Mr. Linn stated he stayed outside, thinking about running away and was freaking out because the situation was beyond what he expected. (T p 135). Mr. Linn said he heard Ms. Leisure crying for help and he entered the house

and saw the defendant. He saw the co-defendant fighting with Ms. Leisure. (T pp 135-36). He saw Mr. McMinn with a phone and the defendant direct him to put the phone down or away while the defendant held a pistol in his hand. (T p 137).

Mr. Linn stated he told the co-defendant "she's had enough" and "we need to go." (T p 138). Mr. Linn and the defendants left the house. Once outside, the defendants kicked the bottom right hand side of the door when it was shut. (T pp 138-39). Mr. Linn stated the defendant was acting aggravated and "when he be done kicking the door he shoots the door with his pistol." (T pp 139-40).

Detective Jacob Parker met Ms. Leisure at her home. Detective Parker stated Ms. Leisure told him that she and her boyfriend had just gotten home when Mr. Linn, the co-defendant and an unknown black male, (later identified as the defendant), forced their way into her home. (T pp 52, 169). Ms. Leisure told him the co-defendant pushed her to the floor and started beating her. Mr. Leisure told him the unknown black male had a gun and she yelled for Mr. McMinn to call the police but the black male told him not to while holding the gun. Ms. Leisure stated the unidentified black male kicked the door several times and fired the gun through the door sending the projectile down the hallway passing through a mirror. (T p 168). The defendants were identified

in court as being the individuals entering the house. (T p 52). Detective Parker located several places where the projectile passed but never found it. (T p 171).

Ms. Leisure described the co-defendant as five foot to five foot three tall weighing around 105 pounds. (T p 188). As a result of speaking with Ms. Leisure at the police station Detective Parker obtained a warrant for the co-defendant. (T pp 188-91).

Detective Parker testified that he received a call from Officer Robin Wallace, who had been called to a residence at 626 South Hampton Drive to remove two subjects. This occurred the day after the incident at Ms. Leisure's home. The subjects were the defendant and the co-defendant. (T p 191-92). Detective Parker spoke to the defendant and the co-defendant. Detective Parker spoke to the owner of the home, who consented to a search of the home and the room in which the two defendants were staying. The detective found a handgun case in the room where the two defendants were staying. (T p 193).

Detective Parker spoke to each defendant separately. The co-defendant denied any involvement with a burglary. (T pp 194-95, 200). The defendant declined to speak with Detective Parker. (T p 201). Later, when the co-defendant was being processed and booked, she asked to speak with Detective Parker. She admitted she did assault Ms. Leisure but did not break in the

residence or fire the weapon, and said she “would not go down for that.” (T pp 201-02).

Officer Robin Wallace testified she responded to a service call and came into contact with the defendants. She stated they were in the bedroom of a home located at 626 South Hampton Drive. (T p 224). She stated she had a warrant for the arrest of the co-defendant. (T p 225). The co-defendant gave written consent to search the room. (T p 226). The search found twelve rounds, one spent round in a Newport cigarette box in a green bag, a dark blue nine millimeter empty gun case, a metal grinder with marijuana, plastic bag with five grams of marijuana, a black ZTA cell phone and a black Samsung cell phone. (T pp 226-27). While at the jail, the co-defendant told Officer Wallace she never had a gun and “was not going down for no gun”. (T pp 232-33).

The defendant testified that he was in a relationship with the co-defendant and, on 8 August 2015, the defendant went to Mr. Linn’s house to have Mr. Linn purchase pain relievers for the co-defendant. The defendant gave Mr. Linn money to purchase the drugs. (T pp 277-78, 292-93). The defendant testified later that Mr. Linn wanted the defendant to come pick him up because Ms. Leisure had taken the money gone into the house . Ms. Leisure did not come back out and Ms. Leisure would not answer his call or text

messages. Mr. Linn told the defendant he would talk to Ms. Leisure and get the money back. (T p 278).

The defendant testified that he never had a weapon when he went to Mr. Linn's home. (T p 279). The defendant testified that Mr. Linn went and talked to Mr. McMinn and then they all walked into the house. (T pp 281-82). The defendant stated that the co-defendant and Mr. Linn asked for their money and Ms. Leisure said what money, and was disrespecting the co-defendant. The defendant said this is what led to the fight. (T pp 282, 304). The defendant testified that Mr. McMinn went to approach the co-defendant to break up the fight and the defendant put his hands up in a stopping motion and told him not to mess with the co-defendant. He stated they started to leave and Mr. McMinn was irate, using profanity and went to slam the door. The defendant stated that the co-defendant kicked the door after it was closed on them after the fight. (T pp 282-284, 307). The defendant testified he did not possess or own any weapons. (T p 285). The defendant testified that no one had a gun, and he never saw a weapon or anyone shoot the door. (T pp 303-304).

## ARGUMENT

### I. THE TRIAL COURT DID NOT COMMIT PLAIN ERROR IN RESPONDING TO THE JURY'S QUESTIONS.

The defendant argues that the trial court committed plain error in its instruction on feloniously conspiring to Commit Robbery with a Dangerous Weapon. The trial court instructed the jury regarding this charge, to which the defendant did not object at trial. (T pp 358-359, 369). The defendant now argues error in the jury charge and the trial court's response and additional instructions to two questions by the jury as a basis for his appeal.

"A party may not make any portion of the jury charge, or omission therefrom, the basis of an issue presented on appeal, unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the objection; provided that opportunity was given to the party to make the objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury."

N.C. R. App. P. Rule 10 (a) (2).

The defendant has argued that the trial court committed plain error.

"In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action, nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error."

N.C. R. App. P. Rule 10 (a) (4).



Plain error arises when the error is “so basic, so prejudicial, so lacking in its elements that justice cannot have been done.” *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). “Under the plain error rule, defendant must convince the Court not only that there was error, but that absent the error, the jury probably would have reached a different result.” *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993). The defendant bears the burden of showing that an error arose to the level of plain error. *State v. Bishop*, 346 N.C. 365, 385, 488 S.E.2d 769, 779 (1997).

Our Supreme Court has held that, “It is the rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court.” *Odom*, at 661, 300 S.E.2d at 378 (1983) (quoting *Henderson v. Kibbe*, 431 U.S. 145, 154, 97 S.Ct. 1730, 52 L.Ed.2d 203, 212 (1977)).

After charging the jury, the judge may give additional instructions in response to a jury deliberation question. N.C. Gen. Stat. § 15A-1234(a)(1). The judge may also “repeat other instructions to avoid giving undue prominence to the additional instructions.” N.C. Gen. Stat. § 15A-1234(b). “[T]he trial court is in the best position to determine whether further additional instruction will aid or confuse the jury in its deliberations, or if further instruction will prevent or cause in itself an undue emphasis being placed on a particular portion of the

court's instructions.” *State v. Hazel*, 243 N.C. App. 741,744, 779 S.E.2d 171, 173 (2015) (quoting *State v. Prevette*, 317 N.C. 148, 164, 345 S.E.2d 159, 169 (1986)).

In this case, the trial court in its instructions stated, “Robbery with a dangerous weapon occurs when a defendant with a firearm takes and carries away property from a person or in the presence of a person, without that person’s voluntary consent, by endangering or threatening that person or person’s life with the use or threatened use of a firearm, while the defendant knows that the defendant is not entitled to take the property”. (T p 359). It is for the jury to find the defendant not guilty if it believed this requirement was not met, not for the trial court to instruct it to so find. The defendant in this case cites *State v. Hockett*, 309 N.C. 794, 800, 309 S.E.2d 249 (1983), arguing the court should have instructed the jury that it must find the defendants knew they were not entitled to take the property. The jury must apply the facts to the instructions to make its determination.

The defendant has argued incorrectly that the trial judge is required to declare and explain the law arising from the evidence. (Defendant’s brief pp 8-9). The trial court complied with N.C. Gen. Stat. § 15A-1232 in its jury instructions. The trial court, as stated in N.C. Gen. Stat. § 15A-1232, did not “express an opinion as to whether or not a fact has been proved” and did not

explain the application of the law to the evidence. The defendant appears to argue that it would want the trial court to violate the statute. This case is distinguishable to the case in *Hockett*.

In *Hockett*, the trial court refused to reinstruct the jury and told the jury to continue to deliberate. *Id.* at 801-02, 309 S.E.2d at 253. In this case, the trial judge had discussions with the State and the defendant's attorney as to how to proceed, and all parties agreed to call the jury back and refer it to the jury instructions for guidance. (T pp 371-76). The jury was already provided with a copy of the jury instructions. (T p 376). The trial court responded to the jury questions by referring them to the copies of the instructions they were given. The defendant has cited *State v. Booker*, 250 N.C. 272, 108 S.E.2d 426 (1959), for the argument that a person who honestly believes he is entitled to the taken property is not guilty of larceny, even if the belief is wrong. However, a review of *Booker* shows the Supreme Court did not make this holding but upheld the guilty verdict, finding the trial court had properly charged the jury and there was sufficient evidence to find the defendant guilty. *Id.* at 274-75, 108 S.E.2d at 428. As in *Booker*, the jury could determine the defendant's intent from his and his co-defendant's statements, witness statements, and their conduct at Ms. Leisure's home.

The trial court did not commit plain error in responding to the jury questions presented at trial, and the defendant's argument has no basis and should be denied.

**II. THE DEFENDANT'S COUNSEL ACTED APPROPRIATELY IN HIS ACTIONS AT TRIAL REGARDING THE JURY'S QUESTIONS.**

If the defendant is raising the issue of ineffective assistance of counsel regarding the jury questions this has not been shown. Generally, claims for ineffective assistance of counsel should be considered through a motion for appropriate relief filed in the trial court and not on direct appeal. *State v. Mills*, 205 N.C. App. 577, 586, 696 S.E.2d 742, 748 (2010) (citing *State v. Stroud*, 147 N.C. App. 549, 553, 557 S.E.2d 544, 547 (2001)), *State v. Perry*, 217 N.C. App. LEXIS 456, 802 S.E.2d 566, 573 (2017), *review denied*, 2017 N.C. LEXIS 970 (N.C. December 7, 2017).

On appeal, this Court reviews whether a defendant was denied effective assistance of counsel *de novo*. *State v. Wilson*, 236 N.C. App. 472, 475, 762 S.E.2d 894, 896 (2014). Under the Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Sections 19 and 23 of the North Carolina Constitution, "[a] defendant's right to counsel includes the right to the effective assistance of counsel." *State v. Braswell*, 312 N.C. 553, 561, 324 S.E.2d 241, 247 (1985) (citation omitted). In *Braswell*, our Supreme Court

“expressly adopt[ed] the test set out in *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674 (1984), as a uniform standard to be applied to measure ineffective assistance of counsel under the North Carolina Constitution.” *Braswell*, 312 N.C. at 562-63, 324 S.E.2d at 248.

On appeal, a defendant must show that his counsel's conduct “fell below an objective standard of reasonableness” to prevail. *Strickland*, 466 U.S. at 688, 80 L. Ed. 2d at 693. To show that, the defendant must satisfy a two-part test.

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

*Id.* at 687, 80 L. Ed. 2d at 693

For the error of counsel, even an objectively unreasonable error, to warrant the reversal of a conviction, “[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694, 80 L. Ed. 2d at 698. “That requires a substantial, not just conceivable, likelihood

of a different result.” *Cullen v. Pinholster*, 563 U.S. 170, 189, 179 L. Ed. 2d 557, 575 (2011). To make this determination, the Court “must consider the totality of the evidence before the judge or jury.” *Strickland*, 466 U.S. at 695, 80 L. Ed. 2d at 698.

The defendant has failed to show his counsel actions regarding the jury questions were deficient and that a different result would have occurred. The defendant has presented no evidence for the record to show there is a substantial likelihood of a different result. There is substantial evidence that the defendant and co-defendant conspired together to force Mr. Linn to go with them to get money they had given Mr. Linn from Ms. Leisure by force. Defendant’s attorney agreed with the trial court and the State that the jury should be given the instructions again in response to the jury’s questions, which is a normal practice for jury questions. These actions were appropriate and did not deprive the defendant of a fair trial. Based on the overwhelming evidence presented at trial, a different result would not have occurred. Therefore, the standard required for ineffective assistance of counsel is not met here, and the defendant’s argument is meritless.

**III. THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO DISMISS THE CHARGE OF CONSPIRACY TO COMMIT ARMED ROBBERY AT THE CLOSE OF ALL THE EVIDENCE.**

A trial court's denial of a defendant's motion to dismiss is reviewed *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). This Court must determine "whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993), *cert. denied*, 531 U.S. 890, 148 L.Ed.2d 150 (2000)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980).

Evidence must be viewed in the light most favorable to the State with every reasonable inference drawn in the State's favor. *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 233 (1994), *cert. denied*, 515 U.S. 1135, 132 L.Ed. 2d 818 (1995); N.C. Gen. Stat. § 14-54 (a).

A criminal conspiracy is "an agreement, express or implied, between two or more persons, to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means." *State v. Gell*, 351 N.C. 192, 209, 524 S.E.2d 332, 343

(2000). “Direct proof of the charge [of conspiracy] is not essential, for such is rarely obtainable. It may be, and generally is, established by a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy.” *State v. Whiteside*, 204 N.C. 710, 712, 169 S.E. 711, 712 (1933), quoted in *State v. Gibbs*, 335 N.C. 1, 48, 436 S.E.2d 321, 348 (1993), *cert. denied*, 512 U.S. 1246, 129 L. Ed. 2d 881 (1994).

The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial or both. *State v. Bullard*, 312 N.C. 129, 322 S.E.2d 370 (1984). If the evidence is circumstantial, “the question for the court is whether a reasonable inference of defendant’s guilt may be drawn from the circumstances. If so, it is for the jury to decide whether the facts, taken singly or in combination, satisfy them beyond a reasonable doubt that the defendant is actually guilty.” *State v. Thomas*, 296 N.C. 236, 244, 250 S.E.2d 204, 209 (1978). What constitutes substantial evidence is a question of law for the court.

What the evidence proves or fails to prove is a question of fact for the jury. *State v. Stephens*, 244 N.C. 380, 93 S.E. 2d 431 (1956). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). “The elements of armed robbery are: (1) the unlawful



taking or an attempt to take personal property from the person or in the presence of another (2) by use or threatened use of a firearm or other dangerous weapon (3) whereby the life of a person is endangered or threatened.” *State v. Hill*, 365 N.C. 273, 275, 715 S.E.2d 841, 843 (2011). The elements of armed robbery have been met in this case.

There is substantial evidence to support the conclusion that the defendants had entered into a conspiracy to forcefully obtain money from Ms. Leisure. The defendant called Mr. Linn and told him to come outside. The defendant had a gun in his hand and told Mr. Linn to get in the car. The co-defendant was in the car, and Mr. Linn drove to Ms. Leisure’s home because the defendants wanted to get the money they had given Mr. Linn. (T pp 128-129). Mr. Linn had not told Ms. Leisure the money he had given her for drugs had been obtained from the defendant. (T pp 125-126).

Mr. McMinn stated the defendants were showing aggression as they approached and that the defendant “was there kind of as enforcement” as the co-defendant entered Ms. Leisure’s home in front of Mr. McMinn. (T pp 93-94). Officer Parker stated Ms. Leisure told him the defendants forced their way into her home. (T p 168-169). After entering the home of Ms. Leisure, the co-defendant began fighting with Ms. Leisure demanding money. Ms. Leisure was yelling for Mr. McMinn to call the police. (T p 42). As the fight was

proceeding, the defendant told Mr. McMinn to put his phone down or away while the defendant was holding a pistol in his hand. (T pp 135-138). The defendants left, and the front door was closed behind them. Then the defendant was banging and a gunshot was heard. (T p 43). Mr. Linn testified that, after the door was closed, the defendant kicked in the bottom of the door and shot in the house. (T p 138-139).

There is sufficient evidence for a jury to find there was a conspiracy between the defendant and his co-defendant to commit armed robbery. The two defendants wanted to get the money they had given to Mr. Linn to purchase drugs. The defendants drove to Mr. Linn's home while armed and ordered him into the car and to drive to the victim's home. The defendants did not ask permission to enter the victim's residence and Mr. Linn initially stayed outside because he was freaking out. (T p 135). After entering the house the co-defendant fought the victim demanding money while the defendant showed a gun to stop the use of a phone by Mr. McMinn. (T pp 39, 169). The defendant, after leaving the house, kicked the door and fired a shot into the house.

There was substantial evidence presented at trial to establish the elements of Conspiracy to Commit Armed Robbery. The trial court, based on the evidence presented, properly denied the defendant's motion to dismiss at

the close of all the evidence the charge of Conspiracy to Commit Armed Robbery.

**IV. THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO DISMISS THE CHARGE OF FELONIOUS BREAKING AND ENTERING AT THE CLOSE OF ALL THE EVIDENCE.**

The defendant argues that the charge of Felonious Breaking and Entering should have been dismissed. "[T]he essential elements of felonious breaking or entering are (1) the breaking or entering (2) of any building (3) with the intent to commit any felony or larceny therein. The breaking or entering must be without the consent of the owner or occupant." *State v. Johnson*, 208 N.C. App. 443, 448, 702 S.E.2d 547, 550 (2010) (quoting *State v. Williams*, 330 N.C. 579, 585, 411 S.E.2d 814, 818 (1992)), disc. review denied, 365 N.C. 84, 706 S.E.2d 247 (2011).

The evidence is sufficient to find the defendant guilty of felonious breaking and entering. The defendants entered Ms. Leisure's home without permission to forcibly obtain money from her by physical force and the showing of a firearm. Once unsuccessful in obtaining money from Ms. Leisure there is sufficient evidence to show the defendant kicked in the door of the home once it was closed behind him and the defendant fired a pistol in the home that

passed through the residence hallway, a mirror and into a sofa. (T pp 37-43, 93-98, 136-140, 168-170).

The defendant further argues that defense counsel rendered ineffective assistance of counsel in his motion to dismiss the charge of felonious breaking and entering. As stated previously the defendant must show his attorney's actions "fell below an objective standard of reasonableness" to prevail. The defendant has not satisfied the two part test required under *Strickland*. The defendant has not shown his attorney made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Secondly, the defendant has not shown that the deficient performance prejudiced the defense. There has been no showing that defendant's attorney's alleged error was so serious as to deprive the defendant of a fair trial. Rather, there was overwhelming evidence presented at trial of the elements of Felonious Breaking and Entering.

Detective Parker stated that Ms. Leisure told him the defendants forced their way in, the co-defendant assaulted her, and the defendant had a handgun. Ms. Leisure also told Detective Parker that the defendant was holding a gun, and when she yelled for Mr. McMinn to call the police, the defendant said "don't call the police" while he was holding the gun. (T p 169). Ms. Leisure also told Detective Parker that Mr. McMinn tried to close the door

but the defendant kicked the door partially open, fired a shot through the door, which passed down a hallway through a mirror and into a sofa. (T p 169). Ms. Leisure identified the defendant as the man who entered her home with a gun, kicked in the door and fired the shot. (T p 52).

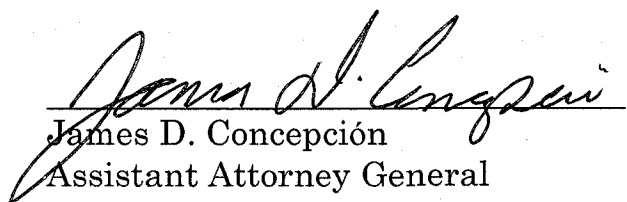
The trial court properly denied the defendant's motion to dismiss the charge of Felonious Breaking and Entering at the close of the evidence, and the defendant's argument is meritless.

### CONCLUSION

The State respectfully requests that this Court uphold the convictions and sentences entered by the trial court.

This the 8th day of November, 2018.

**JOSHUA H. STEIN**  
**ATTORNEY GENERAL**

  
James D. Concepción  
Assistant Attorney General

State Bar #16281

North Carolina Department of Justice  
Transportation Division

Mail Service Center 1505

Raleigh, North Carolina 27699-1505

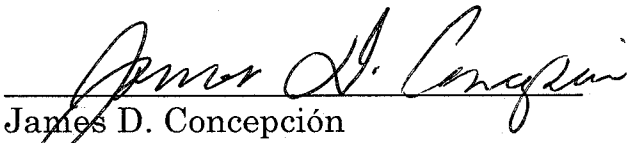
Telephone: 919.707.4480

Email: [jconcepcion@ncdoj.gov](mailto:jconcepcion@ncdoj.gov)

**CERTIFICATE OF COMPLIANCE WITH RULE 28 (j)(2)**

Undersigned counsel certifies that the State's Brief is in compliance with Rule 28(j)(2) of the North Carolina Rules of Appellate Procedure in that it is printed in thirteen-point Century Schoolbook font and the body of the brief, including footnotes and citations, contains no more than 8,750 words as indicated by Word, the program used to prepare the brief.

This the 8th day of November, 2018.

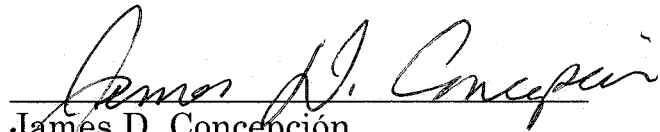
  
James D. Concepción  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing BRIEF FOR THE STATE upon the defendant, by placing a copy of same in the United States Mail, first class postage prepaid, addressed to his attorney of record as follows:

Bruce T. Cunningham  
Law Office of Bruce T. Cunningham  
225 North Bennett St.  
Southern Pines, NC 28387

This the 8th day of November, 2018.



James D. Concepción  
Assistant Attorney General  
State Bar #16281  
North Carolina Department of Justice  
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STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

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Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT E



IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-692

Filed: 5 March 2019

Onslow County, Nos. 15 CRS 54673, 15 CRS 54665

STATE OF NORTH CAROLINA,

v.

JAMES A. COX

Appeal by Defendant from Judgments entered 16 January 2018 by Judge William W. Bland in Onslow County Superior Court. Heard in the Court of Appeals 28 January 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General James D. Concepción, for the State.*

*The Law Office of Bruce T. Cunningham, Jr., by Bruce T. Cunningham, Jr., for defendant-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

James A. Cox (Defendant) appeals from his convictions for Conspiracy to Commit Armed Robbery with a Dangerous Weapon and Felonious Breaking or Entering.<sup>1</sup> The evidence presented at trial tends to show the following:

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<sup>1</sup> Defendant was also convicted of Discharging a Weapon into an Occupied Property but raises no arguments on appeal regarding this offense.

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*Opinion of the Court*

Sometime prior to the night of 8 August 2015, Defendant gave Richard Linn (Linn) \$20.00 to purchase Percocet tablets or other drugs. Linn testified he regularly used Angela Leisure (Leisure) as a go-between to purchase drugs. On this occasion, Linn added his own money to Defendant's and gave Leisure approximately \$50.00 or \$60.00. Leisure admitted she never purchased the drugs and never returned the money to Linn.

Linn further testified on the evening of 8 August 2015, Defendant and his girlfriend, Ashley Jackson (Jackson), arrived at Linn's house and demanded he come outside. Defendant was standing outside with a gun in his hand and told Linn to "get in the car." Linn stated Defendant and Jackson wanted to go to Leisure's house "to talk to her about their money." After getting in the car, Linn directed Defendant to Leisure's house.

Leisure's boyfriend, Daniel McMinn (McMinn), testified he was standing outside of Leisure's home when Defendant, Jackson, and Linn arrived. Jackson asked McMinn where Leisure was. Jackson and Defendant entered the house and McMinn followed. After entering the home, Jackson attacked Leisure by pulling her hair, punching her, and forcing her to the ground. Leisure recalled Jackson saying, "give me my money" or "give me the money." McMinn testified he reached for his cell phone to call the police, but he stopped when he saw Defendant display a handgun "in a threatening way."

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*Opinion of the Court*

After several minutes of fighting, Linn called Jackson off, saying: “I think she’s had enough. Come on, let’s go.” Defendant, Jackson, and Linn left the house. Linn testified once outside Defendant turned and kicked a hole in the door. Defendant also fired a shot into Leisure’s home, which struck a mirrored door inside the home. Defendant, Jackson, and Linn left Leisure’s home without obtaining any money or personal property.

Based on these events, Defendant was arrested and charged with First-Degree Burglary, Conspiracy to Commit Robbery with a Dangerous Weapon, and Discharging a Weapon into an Occupied Property.<sup>2</sup> Following the State’s presentation of evidence, Defendant moved to dismiss all charges. This Motion was denied.

Subsequently, Defendant presented evidence, including his own testimony. Defendant’s evidence tended to show he went to Linn’s house on 8 August 2015 to give Linn \$20.00 to purchase pain relievers for Jackson. Later in the evening, Linn requested Defendant pick him up because Leisure had taken the money and would not answer his phone calls. Linn said he would talk to Leisure in person and get Defendant’s money back. Defendant claimed no one, including himself, had a weapon on 8 August 2015 and that Jackson kicked in the door, not Defendant. At the close

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<sup>2</sup> Jackson was charged as a co-defendant with Conspiracy to Commit Robbery with a Dangerous Weapon, First-Degree Burglary, and Simple Assault, and their cases were joined for trial.

STATE V. COX

*Opinion of the Court*

of all the evidence, Defendant renewed his Motion to Dismiss all charges, which the trial court denied.

After instructing the jury, the trial court provided the jury with written copies of its jury instructions. After deliberating for approximately two hours, the jury returned a note with two questions related to the Conspiracy charge: The first question stated, “Can we get clarification of ‘While the defendant knows that the defendant is not entitled to take the property,’ ” which was part of the definition in the jury instructions on Conspiracy to Commit Robbery with a Dangerous Weapon. The jury’s second question asked, “Is it still Robbery to take back one owns [sic] property?” After conferring with counsel, and without any objection by Defendant’s trial counsel, the trial court declined to answer the jury’s two questions directly. Instead, the trial court referred the jury back to its written copy of the jury instructions.

On 16 January 2018, the jury returned a verdict finding Defendant guilty of Felonious Breaking or Entering, Conspiracy to Commit Robbery with a Dangerous Weapon, and Discharging a Weapon into an Occupied Property. The trial court entered a consolidated judgment on the Conspiracy to Commit Robbery with a Dangerous Weapon and Discharging a Weapon into an Occupied Property charges, sentencing Defendant to a minimum of 60 months and a maximum of 84 months in the custody of the North Carolina Department of Adult Correction. On the Felonious

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*Opinion of the Court*

Breaking or Entering charge, Defendant received a suspended sentence of 6 to 17 months and was placed on supervised probation for a term of 24 months. Defendant gave oral notice of appeal at trial. This Court has jurisdiction to hear Defendant's appeal under N.C. Gen. Stat. § 7A-27(b)(1) (2017) and N.C.R. App. P. 4(a)(1).

**Issues**

Defendant raises several issues including whether the trial court committed plain error in refusing to answer the jury's questions or whether his trial counsel committed ineffective assistance of counsel by failing to request further instructions in response to the jury's questions. However, the dispositive issues in this case, raised by Defendant, are whether the trial court: (1) erroneously denied Defendant's Motion to Dismiss the charge of Conspiracy to Commit Robbery with a Dangerous Weapon at the close of all the evidence; and (2) erroneously denied Defendant's Motion to Dismiss the charge of Felonious Breaking or Entering at the close of all the evidence.

**Analysis**

Defendant contends the trial court erred in denying his Motion to Dismiss the Conspiracy to Commit Robbery with a Dangerous Weapon and Felonious Breaking or Entering convictions based upon the sufficiency of the evidence. Defendant argues the State presented no evidence Defendant possessed the requisite felonious intent necessary for these two convictions. We agree.

**I. Standard of Review**

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*Opinion of the Court*

This Court has stated:

The standard for ruling on a motion to dismiss is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense. Substantial evidence is relevant evidence which a reasonable mind might accept as adequate to support a conclusion. In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal.

*State v. Wood*, 174 N.C. App. 790, 795, 622 S.E.2d 120, 123 (2005) (citations and quotation marks omitted). “This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted).

II. Conspiracy to Commit Robbery with a Dangerous Weapon

“In order to prove a criminal conspiracy, the State must show an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way.” *State v. Gray*, 56 N.C. App. 667, 672, 289 S.E.2d 894, 897 (1982) (citation omitted). In this case, the State had the burden to present substantial evidence tending to show that Defendant and Jackson agreed to commit each element of Robbery with a Dangerous Weapon against Leisure.

“For the offense of robbery with a dangerous weapon, the State must prove ‘(1) the unlawful taking or attempt to take personal property from the person or in the

STATE V. COX

*Opinion of the Court*

presence of another; (2) by use or threatened use of a firearm or other dangerous weapon; (3) whereby the life of a person is endangered or threatened.’” *State v. Pratt*, 161 N.C. App. 161, 163, 587 S.E.2d 437, 439 (2003) (quoting *State v. Wiggins*, 334 N.C. 18, 35, 431 S.E.2d 755, 765 (1993)); *see also* N.C. Gen. Stat. § 14-87(a) (2017). The taking or attempted taking must be done with felonious intent. *State v. Norris*, 264 N.C. 470, 472, 141 S.E.2d 869, 871 (1965) (quoting *State v. Lawrence*, 262 N.C. 162, 163-68, 136 S.E.2d 595, 597-600 (1964)). Our Supreme Court has stated, “Felonious intent is an essential element of the crime of robbery with firearms and has been defined to be the intent to deprive the owner of *his goods* permanently and to appropriate them to the taker’s own use.” *State v. Brown*, 300 N.C. 41, 47, 265 S.E.2d 191, 196 (1980) (citations omitted).

Under existing North Carolina case law, a defendant can negate the element of felonious intent by showing he took or attempted to take the property under a bona fide claim of right or title to the property. *See State v. Spratt*, 265 N.C. 524, 144 S.E.2d 569 (1965). In *Spratt*, our Supreme Court stated, “A defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a *bona fide claim of right or title to the property*, or for the personal protection and safety of defendant and others, or as a frolic, prank or practical joke, or under color of official authority.” *Id.* at 526-27, 144 S.E.2d at 571 (emphasis added) (citations omitted). *Spratt*, in turn, relied on a line of cases including *State v.*

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*Opinion of the Court*

*Lawrence*. In *Lawrence*, the defendant was charged with robbery after assaulting the victim because defendant claimed the victim “owed him something.” 262 N.C. at 168, 136 S.E.2d at 600. In granting a new trial, the Supreme Court held the defendant was entitled to a jury instruction on felonious intent where the conflicting evidence could permit a finding the taking was without felonious intent. *Id.*; *see also* N.C.P.I.—Crim. 217.10 n.4 (June 2016) (pattern jury instruction for Common Law Robbery specifically providing: “In the event that a defendant relies on claim of right, the jury should be told that if the defendant honestly believed he was entitled to take the property, he cannot be guilty of robbery”).<sup>3</sup>

Decisions from this Court, however, have questioned *Spratt* and rejected the notion that a defendant cannot be guilty of armed robbery where the defendant claims a good-faith belief that he had an ownership interest in the property taken.<sup>4</sup> *See State v. Oxner*, 37 N.C. App. 600, 604, 246 S.E.2d 546, 548 (1978) (“We renounce the notions that force be substituted for voluntary consent and violence be substituted for due process of law.”), *judgment aff’d without precedential value*, 297 N.C. 44, 252 S.E.2d

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<sup>3</sup> We note the pattern jury instructions for Robbery with a Firearm, Attempted Robbery with a Firearm, and Robbery with a Dangerous Weapon Other than a Firearm do not include such express language specific to this claim of right defense. *Compare* N.C.P.I.—Crim. 217.10 (June 2016) (Common Law Robbery), *with* N.C.P.I.—Crim. 217.20 (June 2018) (Robbery with a Firearm), N.C.P.I.—Crim. 217.25 (May 2003) (Attempted Robbery with a Firearm), *and* N.C.P.I.—Crim. 217.30 (June 2018) (Robbery with a Dangerous Weapon – Other than a Firearm). However, the element of felonious intent is required for all of these offenses. *See Spratt*, 265 N.C. at 526, 144 S.E.2d at 571 (citation omitted).

<sup>4</sup> A review of other jurisdictions reveals a split across the country on whether a bona fide claim of right defense precludes an armed robbery conviction. *See generally* Kristine Cordier Karnezis, Annotation, *Robbery, Attempted Robbery, or Assault to Commit Robbery, as Affected by Intent to Collect or Secure Debt or Claim*, 88 A.L.R.3d 1309 (1978 & Supp. 2018).



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705 (1979); *State v. Willis*, 127 N.C. App. 549, 552, 492 S.E.2d 43, 45 (1997). *Oxner* presented similar facts as the case at bar: a claim of money owed related to a drug deal and a charge of robbery with a firearm. 37 N.C. App. at 602-04, 246 S.E.2d at 547-48. However, on review, our Supreme Court divided equally, leaving this Court's opinion without precedential value. Moreover, *Oxner* differs from this case in that there: (A) the defendant denied taking any property at all; and (B) the claim was vague and related to an unliquidated amount. *See id.* at 604, 246 S.E.2d at 548. Here, the claim was for specific amounts, there was no dispute Defendant—along with Linn and Jackson—intended to recoup their money, and even Leisure admitted she owed the money.

In *Willis*, the defendant contended the State was required to prove the victim actually owned the property taken in order for the offense to constitute armed robbery. 127 N.C. App. at 551-52, 492 S.E.2d at 44-45. This Court rejected this argument and held in the absence of any evidence showing the defendant had an ownership interest in the property, the bona fide claim of right, or “self-help,” defense simply did not apply. *Id.* In reaching its decision, however, this Court did question the ongoing viability of *Spratt*. *Id.* at 552, 492 S.E.2d at 45. Nevertheless, to the extent *Willis* is construed as conflicting with the earlier Supreme Court opinions in *Lawrence* and *Spratt*, among others, we conclude we remain bound to follow and

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*Opinion of the Court*

apply *Spratt*. See *Respass v. Respass*, 232 N.C. App. 611, 625, 754 S.E.2d 691, 701 (2014) (citations omitted).

Here, unlike in *Willis*, the evidence at trial demonstrates Defendant, along with Linn and Jackson, went to Leisure's home to retrieve the money they provided to Leisure for the purchase of drugs. The witnesses for both the State and defense agreed Defendant, Linn, and Jackson were attempting to collect monies owed to them. Defendant testified he gave Linn the money to purchase drugs from Leisure; Linn told Defendant that he would talk to Leisure and get Defendant's money back; and that he, Jackson, and Linn went to Leisure's house in an attempt to recover their money. Both Linn and Leisure, who testified for the State, agreed that Defendant and Jackson went to Leisure's house to obtain money they believed was their property. After a thorough review of the record, we conclude the State presented no evidence tending to show Defendant possessed the necessary intent to commit robbery. Rather, all of the evidence proffered at trial supports Defendant's claim that Defendant, Linn, and Jackson went to Leisure's house to retrieve their own money. Therefore, under *Spratt*, Defendant could not be guilty of Conspiracy to Commit Robbery with a Dangerous Weapon because he—and his alleged co-conspirators—held a good-faith claim of right to the money. See *Spratt*, 265 N.C. at 526-27, 144 S.E.2d at 571.

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*Opinion of the Court*

Because there was no evidence suggesting Defendant had an intent to take and convert property belonging to another, the trial court erred in denying Defendant's Motion to Dismiss the charge of Conspiracy to Commit Robbery with a Dangerous Weapon. Consequently, we reverse the Judgment on that charge.

III. Felonious Breaking or Entering

“The essential elements of felonious breaking or entering are (1) the breaking or entering (2) of any building (3) with the intent to commit any felony or larceny therein.” *State v. Williams*, 330 N.C. 579, 585, 411 S.E.2d 814, 818 (1992) (citation omitted). Here, the trial court expressly instructed the jury that to convict Defendant of Felonious Breaking or Entering, it was required to find Defendant intended to commit Robbery with a Dangerous Weapon. As discussed above, the trial court erred in denying Defendant's Motion to Dismiss the charge of Conspiracy to Commit Robbery with a Dangerous Weapon because Defendant lacked the necessary felonious intent. Therefore, the trial court also erred in denying Defendant's Motion to Dismiss the charge of Felonious Breaking or Entering, which was expressly only predicated on the felony of Robbery with a Dangerous Weapon.

Nevertheless, the jury did find Defendant guilty of Felonious Breaking or Entering, including finding the State had proven all of the elements of that offense. “Misdemeanor breaking or entering, G.S. 14-54(b), is a lesser included offense of felonious breaking or entering and requires only proof of wrongful breaking or entry

STATE V. COX

*Opinion of the Court*

into any building.” *State v. O’Neal*, 77 N.C. App. 600, 606, 335 S.E.2d 920, 924 (1985) (citations omitted). Misdemeanor Breaking or Entering does not require a finding of felonious intent. *See id.* As our holding above only negates the element of Defendant’s felonious intent to commit Robbery with a Dangerous Weapon, the jury’s verdict still supports finding Defendant guilty of Misdemeanor Breaking or Entering. We reverse and remand to the trial court to arrest judgment on the charge of Felonious Breaking or Entering and to enter judgment on Misdemeanor Breaking or Entering. *State v. Silas*, 168 N.C. App. 627, 635, 609 S.E.2d 400, 406 (2005) (citation omitted), *modified on other grounds and aff’d*, 360 N.C. 377, 627 S.E.2d 604 (2006).

**Conclusion**

Accordingly, we reverse the Defendant’s conviction for Conspiracy to Commit Robbery with a Dangerous Weapon. Defendant did not challenge his conviction for Discharging a Weapon into an Occupied Property; however, we remand for resentencing because this offense was consolidated for judgment with Conspiracy to Commit Robbery with a Dangerous Weapon. Further, we reverse Defendant’s conviction of Felonious Breaking or Entering and remand this matter for the trial court to arrest judgment on Felonious Breaking or Entering and enter judgment against Defendant for Misdemeanor Breaking or Entering.

REVERSED IN PART AND REMANDED.

Chief Judge McGEE and Judge HUNTER concur.

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

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Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT F

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	)	
	)	<u>From Onslow County</u>
v	)	Nos. 15CRS54673, 54665
	)	No. COA18-692
JAMES A. COX	)	

\*\*\*\*\*

MOTION FOR TEMPORARY STAY

(State of NC)

(Filed 22 March 2019)

(Allowed 22 March 2019)

and

PETITION FOR WRIT OF SUPERSEDEAS

(State of NC)

(Filed 22 March 2019)

(Allowed 14 August 2019)

and

PETITION FOR DISCRETIONARY REVIEW  
UNDER G.S. 7A-31

(State of NC)

(Filed 9 April 2019)

(Allowed 14 August 2019)

and

CONDITIONAL PETITION FOR DISCRETIONARY  
REVIEW UNDER G.S. 7A-31

(Defendant)

(Filed 17 April 2019)

(Denied 14 August 2019)

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SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA )
v. )
JAMES A. COX )

From Onslow
No. COA18-692

2019 MAR 22 P 12:12

FILED

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STATE'S PETITION FOR WRIT OF SUPERSEDEAS
AND APPLICATION FOR TEMPORARY STAY

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA

The State of North Carolina, by and through Joshua H. Stein, Attorney
General, and James D. Concepcion, Assistant Attorney General, respectfully
petitions this Court, pursuant to Appellate Rule 23(b), to issue its writ of
supersedeas to stay enforcement of the Court of Appeals' opinion in State v.
Cox, No. COA18-692, 2019 N.C. App. LEXIS 164, 2019 WL 1028643 (N.C. Ct.
App. Jan. 28, 2019), filed 5 March 2019, with a certification date of 25 March
2019, pending review by this Court.

The State of North Carolina further requests, pursuant to Appellate Rule
23(e), that this Court enter an order temporarily staying the enforcement of

the Court of Appeals' judgment and mandate to permit this Court time to consider the State's petition for writ of supersedeas and petition for discretionary review. A copy of the Court of Appeals' opinion is attached hereto, and the State's petition for discretionary review will be filed within the time allowed by Appellate Rule 15(b).

In support of this application and petition, the State shows the following:

**PROCEDURAL HISTORY**

This case came on for a joint trial with the defendant and co-defendant Ashley Jackson at the 8 January 2018 criminal session of Onslow County Superior Court before a jury and the Honorable William W. Bland, Judge Presiding. (R pp 1, 11). The defendant was charged with First Degree Burglary, Conspiracy to Commit Armed Robbery and Shooting into an Occupied Dwelling. (R pp 1, 3-4).

The defendant was convicted of Felonious Breaking or Entering, Conspiracy to Commit Armed Robbery and Shooting into an Occupied Dwelling. (R pp 1, 33). The trial court consolidated the defendant's charges of Conspiracy to Commit Armed Robbery and Shooting into an Occupied Dwelling for sentencing and the defendant received a consolidated sentence of 60 to 84 months. For the conviction of Felonious Breaking and Entering, the



court entered a suspended sentence of 6 of 17 months. (R pp 1, 42-45). The defendant gave notice of appeal in open court. (R pp 46, 48-49).

Before the Court of Appeals, the defendant argued the trial court erred by denying the defendant's Motion to Dismiss the charge of Conspiracy to Commit Robbery with a Dangerous Weapon and Felonious Breaking or Entering convictions based upon the sufficiency of the evidence. By opinion issued 5 March 2019, the Court of Appeals held the State failed to present sufficient evidence that the defendant was guilty of Conspiracy to Commit Robbery with a dangerous Weapon and remanded for resentencing because the offense was consolidated for judgment with Discharging a Weapon into an Occupied Property. The Court of Appeals also reversed the defendant's conviction of Felonious Breaking or Entering and remanded the matter for the trial court to arrest judgment on Felonious Breaking or Entering and enter judgment against the defendant for Misdemeanor Breaking and Entering. Cox, 2019 N.C. App. LEXIS 164 at \*13.

**REASONS WHY THIS COURT SHOULD ISSUE A  
TEMPORARY STAY AND WRIT OF SUPERSEDEAS**

As explained in the State's forthcoming petition for discretionary review, the Court of Appeals erred by finding the State failed to present sufficient evidence that the defendant was guilty of Conspiracy to Commit Robbery with

a Dangerous Weapon and Felonious Breaking or Entering and finding the trial court erred in denying the defendant's motion to dismiss these charges. The Court of Appeals further erred in directing the trial court arrest judgment on Felonious Breaking or Entering and enter judgment against the defendant for Misdemeanor Breaking or Entering. This Court should accept this case for review because the Court of Appeals' decision did not adequately address the issue it raised regarding whether a bona fide claim of right defense precludes an armed robbery conviction, the Court of Appeals noted in its opinion that there is a split across the country regarding this issue, and because the cause involves legal principles of major significance to the State's jurisprudence.

To allow this Court time to determine whether to accept this case for review under Section 7A-31, this Court should issue a temporary stay. Then, pending review, this Court should issue a writ of supersedeas. Without a stay and supersedeas, the judgment will be reversed in part and remanded. Without a stay and supersedeas, the State may be required to take irreversible or unnecessary actions which the Court of Appeals has ordered but which this Court may ultimately hold improper, and which actions may moot the issues the State seeks to bring forward.

WHEREFORE, the State of North Carolina respectfully requests that this Court grant a temporary stay of the enforcement of the mandate of the Court of Appeals which issues 25 March, 2019, pending this Court's resolution of the State's petition for writ of supersedeas. The State further respectfully requests this Court issue a writ of supersedeas to stay enforcement of the Court of Appeals' judgment pending review of the decision by this Court. Respectfully submitted this the 22nd day of March, 2019.

**JOSH STEIN**  
**ATTORNEY GENERAL**




James D. Concepción  
Assistant Attorney General  
N.C. State Bar #16281  
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Email: [jconcepcion@ncdoj.gov](mailto:jconcepcion@ncdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing STATE'S PETITION FOR WRIT OF SUPERSEDEAS AND APPLICATION FOR TEMPORARY STAY upon the Defendant by United States Mail, First Class Postage Prepaid, by mailing a copy of the same to his attorney of record as follows:

Bruce T. Cunningham  
Law Office of Bruce T. Cunningham  
225 North Bennett St.  
Southern Pines, NC 28387

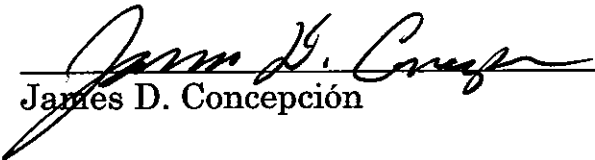
This the 22nd day of March, 2019.

  
James D. Concepcion  
Assistant Attorney General

**VERIFICATION**

I, James D. Concepción, being first duly sworn, depose and say that I have read the foregoing PETITION FOR WRIT OF SUPERSEDEAS AND APPLICATION FOR TEMPORARY STAY and know the same are true of my own knowledge, except as to matters stated on information and belief and, as to those matters, I believe them to be true.

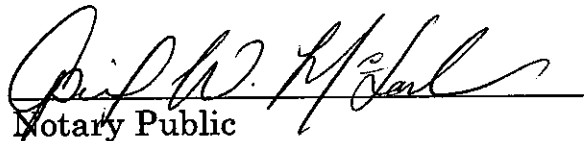
This the 22nd day of March, 2019.

  
James D. Concepción

STATE OF NORTH CAROLINA

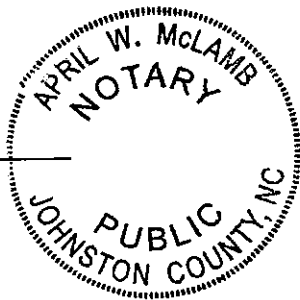
COUNTY OF Johnston

Sworn to and subscribed before me, this the 22nd day of March, 2019.

  
Notary Public

My Commission Expires:

01-26-2021





## Supreme Court of North Carolina

AMY L. FUNDERBURK, Clerk  
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From N.C. Court of Appeals  
( 18-692 )  
From Onslow  
( 15CRS54665 15CRS54673 )

22 March 2019

Mr. James D. Concepcion  
Assistant Attorney General  
N.C. DEPARTMENT OF JUSTICE  
Transportation Section  
1505 Mail Service Center  
Raleigh, NC 27699

**RE: State v James A. Cox - 94P19-1**

Dear Mr. Concepcion:

The following order has been entered on the motion filed on the 22nd of March 2019 by State of NC for Temporary Stay:

"Motion Allowed by order of the Court in conference, this the 22nd of March 2019."

**s/ Earls, J.  
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 22nd day of March 2019.

Amy L. Funderburk  
Clerk, Supreme Court of North Carolina

A handwritten signature in black ink, appearing to read "M. C. Hackney".

M. C. Hackney  
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Bruce T. Cunningham, Jr., Attorney at Law, For Cox, James A. - (By Email)

Mr. James D. Concepcion, Assistant Attorney General, For State of North Carolina - (By Email)

Mr. Ernie Lee, District Attorney

Hon. Bettie B. Gurganus, Clerk

West Publishing - (By Email)

Lexis-Nexis - (By Email)

No. 94PA19

FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
 JAMES A. COX )

From Onslow

\*\*\*\*\*

STATE'S PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

FILED  
APR 09 2019  
SUPREME COURT  
OF NORTH CAROLINA

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NO. 94P19

FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	)	
	)	
v.	)	<u>From Onslow</u>
	)	
JAMES A. COX	)	

\*\*\*\*\*

STATE'S PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA

NOW COMES the State of North Carolina, by and through undersigned counsel, and respectfully petitions the Supreme Court of North Carolina, pursuant to Appellate Rule 15 and N.C.G.S. § 7A-31(c)(2) and (c)(3), to certify for discretionary review the opinion filed by the North Carolina Court of Appeals in State v. Cox, No. COA18-692 (N.C. Ct. App. Mar. 5, 2019).

In support of this petition, the State shows the following:

PROCEDURAL HISTORY

Defendant was tried jointly with his co-defendant/girlfriend Ashley Jackson at the 8 January 2018 Criminal Session of Superior Court, Onslow

County, before the Honorable William W. Bland; and he was convicted of felonious breaking or entering, conspiracy to commit armed robbery, and discharging a weapon into occupied property. (Rpp 1-5, 33) The court entered two judgments: the first consolidated the Class D discharging a weapon into occupied property with the Class E conspiracy to commit armed robbery, and imposed 60-84 months; and the other imposed a suspended 6-17 months for felony breaking and entering. (Rpp 42-45) Defendant appealed.

The Court of Appeals reversed defendant's convictions for conspiracy to commit armed robbery and felony breaking or entering due to insufficiency of the evidence of felonious intent to take property to which he was not entitled. State v. Cox, No. COA18-692 (N.C. Ct. App. Mar. 5, 2019). Defendant did not challenge his conviction for discharging a weapon into occupied property.

The State's application for temporary stay was granted by this Court on 22 March 2019.

### STATEMENT OF THE FACTS

Facts of the case. To summarize for purposes of this petition: defendant gave \$20 to Richard Linn to illegally procure Percocet tablets or other controlled substances. Linn asked his contact, victim Angela Leisure, to procure the drugs, and he gave to Leisure defendant's money as well as some of his own for the same purposes. Sometime later defendant, apparently

unhappy with Ms. Leisure's progress, went armed with a handgun to Leisure's house to get his money back, along with his girlfriend Ashley Jackson and Linn. They entered Ms. Leisure's house, and defendant displayed the handgun to prevent anyone from calling the police. Ms. Jackson attacked Leisure physically, beating her and demanding their money until Linn called Jackson off by saying Leisure had "had enough." They left without actually taking anything, but defendant kicked a hole through Leisure's door on the way out and in addition fired a shot into the house from the outside.

Court of Appeals' opinion. The Court of Appeals addressed whether the State had presented sufficient evidence of the felonious intent that was necessary for the two convictions that required felonious intent as an element. The Court of Appeals quoted language from this Court's opinion in State v Spratt, 265 N.C. 524, 144 S.E.2d 569 (1965), that "[a] defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property, or for personal protection and safety of defendant and others, or as a frolic, prank or practical joke, or under color of official authority." Id. at 526-27, 144 S.E.2d at 571. The Court of Appeals noted that Spratt in turn relied on other cases including State v. Lawrence, 262 N.C. 162, 136 S.E.2d 595 (1964). Cox, slip op. at 7.

The Court of Appeals then noted, with some concern, that it had previously questioned Spratt and had rejected the notion that a defendant cannot be guilty of armed robbery in every case where the defendant claims a good-faith belief that he had an ownership interest in the property taken, citing both State v. Oxner, 37 N.C. App. 600, 246 S.E.2d 546 (1978), and State v. Willis, 127 N.C. App. 549, 492 S.E.2d 43 (1997). Cox, slip op. at 8-9, and n. 4 (noting that a review of other jurisdictions reveals a split across the country on whether a bona fide claim of right defense precludes an armed robbery conviction, and citing 88 A.L.R.3d 1309 (1978 & Supp. 2018)).

But ultimately the Court of Appeals concluded that it was “bound to follow and apply Spratt.” Cox, slip op. at 9-10.

Applying the above-quoted language in Spratt then, the Court of Appeals held that all the evidence in this case supported defendant’s claim that he, Ashley Jackson, and Richard Linn went to Ms. Leisure’s house to retrieve their own money, and that therefore, “under Spratt, Defendant could not be guilty of Conspiracy to Commit Robbery with a Dangerous Weapon because he—and his alleged co-conspirators—held a good-faith claim of right to the money.” Cox, slip op. at 10. And it similarly reasoned, as to the felony breaking or entering, that since that crime was predicated in this particular case only upon the intent to commit armed robbery, it too failed, requiring remand for the

lesser-included misdemeanor B&E, which requires no felonious intent. Cox, slip op. at 10.

### **REASONS WHY CERTIFICATION SHOULD ISSUE**

This case involves legal principles of major significance to the jurisprudence of the State. The language in Spratt is pure dicta; it is an open question for this Court whether a participant in an illegal drug deal can employ violent self-help and then escape liability for armed robbery under a belief that he was “entitled” to money he gave to someone expecting illegal drugs in return. The Court of Appeals’ opinion has the effect of sanctioning violent methods that more recent opinions from our courts, and other courts, have rejected, and it neglects entirely the principle of forfeiture that arises from illegal drug-dealing.

- A. The Court of Appeals over-states the language of Spratt and fails to recognize that its language is not a holding but rather is mere dicta. There is no “entitlement” or “bona fide right” to money from drug-dealing.**

Spratt does state that “[a] defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property, or for personal protection and safety of defendant and others, or as a frolic, prank or practical joke, or under color of official authority.” Spratt, 265 N.C. at 526-27, 144 S.E.2d at 571.

But this statement is pure dicta. This Court's only holding in Spratt was that because the defendant relied upon an alibi defense—denying all involvement to the charge that he drew a pistol on a convenience store clerk and grabbed at money in the till—the evidence did not raise any issue on intent to steal at all and, as a result, the trial court's minimal instructions on the intent element were not erroneous. Id. at 527, 144 S.E.2d at 572. Spratt is not a sufficiency of the evidence case, but one about proper jury instructions. This Court included the above-quoted language in Spratt only in order to explain that if the facts of that case had contained a more challenging issue as to intent, an instruction with greater “comprehensiveness and specificity” might have been warranted. Id. at 526-27, 144 S.E.2d at 571-72.

The language in Spratt, which the Court of Appeals now mistakes as a holding, is dicta. The quote from Spratt is merely this Court's restatement or summary of four particular factual scenarios along with citations to the four respective cases in which it addressed those scenarios: (i) State v. Lawrence, 262 N.C. 162, 136 S.E.2d 595 (1964), is the “bona fide claim of right or title to the property” case; (ii) State v. Lunsford, 229 N.C. 229, 49 S.E.2d 410 (1948), is the “for the personal protection and safety of defendant and others” case; (iii) State v. Curtis, 71 N.C. 56 (1874), is the “as a frolic, prank or practical joke”

case; and (iv) the case of State v. Sowls, 61 N.C. 151 (1867), is the “under color of official authority” case.

The last three of these cases, Lunsford, Curtis, and Sowls, are far afield of this case factually and need not be discussed here; but the case of Lawrence, even though it too was an instructional case rather than a sufficiency of the evidence case, is the one that addresses the claim-of-right defense. And it reveals an important contrast with the facts of Cox. Namely, there was no illegal transaction in Lawrence, no illegitimate contract or drug-dealing.

Lawrence involved a fully legal transaction—the defendant and the victim lawfully purchased and consumed whisky together. Later, the defendant drove the victim to a deserted area and began striking him and saying to him “You owe me something,” to which the victim replied, “What do I owe you . . . I would be glad to pay you.” The defendant answered, “That’s O.K., I’ll get it myself,” and proceeded to forcibly seize the victim’s wallet and take money from it. Then the defendant continued the beating, and struck the victim on the head with bottles. On appeal, the defendant argued that the trial court erred in its instructions on robbery by failing to explain the term “felonious taking” because, he argued, it was his belief that he was owed the money that he took from the victim’s wallet and that this negated felonious intent. This Court agreed that the trial court’s instructions failed to capture



this nuance, and awarded the defendant a new trial. It said that in light of all the circumstances, a contention by defendant that his actions amounted only to a forcible trespass “may seem unreasonable indeed,” but he was nevertheless entitled to have the jury consider the theory that he was owed the money he took; and because “[t]he learned judge inadvertently failed to give a legal explanation of the term ‘felonious taking,’ and to apply it to the facts,” a new trial was necessary. Lawrence, 262 N.C. at 168, 136 S.E.2d at 600.

This case, by contrast, deals not with money owed for legitimate activities, like whisky lawfully purchased and consumed, but rather with an illegitimate deal for illegal controlled substances. Defendant here cannot claim lawful entitlement to money given over for illegal substances, and on top of that, employ violent self-help methods to attempt to regain possession of it. The facts and reasoning of Lawrence simply do not support any extension of the actual holding in Spratt to the particular type of illegal transaction and violent self-help employed here.

In sum, because the language in Spratt was not necessary to its holding that the trial court’s instruction on intent was not deficient in light of the defendant’s defense of alibi, the Court of Appeals in this case was not “bound” by Spratt, as it seemed to believe, Cox slip op. at 9-10, on the question of

sufficiency of the evidence in the instant case. Nor is this Court required to follow the language in Spratt as precedent on sufficiency.

It is a fully open question for this Court to now decide whether a defendant who gave money to someone in an illegitimate drug-dealing scenario can claim entitlement to it and employ armed and violent self-help methods to try to get it back, and yet escape liability for any offenses requiring the element of felonious intent. Because the Court of Appeals' opinion has put a stamp of approval on the language of Spratt and relied upon it as a "holding," which it is not, this Court should grant review and reverse the Court of Appeals' opinion. The Court of Appeals' opinion has the practical effect of essentially sanctioning armed confrontation as a self-help measure where a defendant merely has a bona fide belief that he is owed money, no matter whether the circumstances are legitimate or illegitimate.

Obvious public policy reasons exist for strictly limiting the circumstances and methods under which someone should be permitted to enforce the collection of their perceived debts. This Court should allow review to clarify Spratt's proper application of the claim of right defense, and to hold that felonious intent for armed robbery can exist, even where a defendant believes he is merely collecting on a debt owed to him, where the perceived debt was an illegitimate one for illegal drugs and where violence was employed.

**B. The Court of Appeals' opinion neglect basic forfeiture principles and erroneously treats this scenario, illegal drug-dealing, as if it were a legitimate contractual arrangement.**

The Court of Appeals' opinion appears to attribute no significance to the fact that defendant here gave money to Ms. Leisure for the purchase of illegal controlled substances. It proceeds as if this drug transaction constituted legitimate contractual dealing. The Court of Appeals does note the similarity of the facts here to those in its own prior cases State v. Oxner, 37 N.C. App. 600, 246 S.E.2d 546 (1978), aff'd without precedential value, 297 N.C. 44, 252 S.E.2d 705 (1979), and State v. Willis, 127 N.C. App. 549, 492 S.E.2d 43 (1997) (both of which involved perceived debts for illegal drugs); and it does note that these cases, and cases from other jurisdictions, have questioned the principle set out in the Spratt language. See Cox, slip op. at 8, and fn. 4 (citing 88 A.L.R. 3d 1309 (1978 & Supp. 2018)). Yet despite this, and despite that the statement in Spratt is mere dicta, the Court of Appeals concluded that "we remain bound to follow and apply Spratt." Cox, slip op. at 9-10.

The Court of Appeals should have been guided by the reasoning in its own Oxner and Willis and by the basic statutory principle that money either intended for or flowing from the sale of illegal controlled substances is forfeited. A defendant can claim no interest in it. Section 90-112 of the North Carolina

General Statutes provides that the following shall be subject to forfeiture: “All money” which is “acquired, used, or intended for use, in selling, purchasing, manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance in violation of the provisions of this Article.” N.C.G.S. § 90-112 (a)(2) (2017).

This forfeiture principle was an important basis for the decision in Oxner. Although Oxner was a case about instructions rather than sufficiency of the evidence, and although it was affirmed without precedential value by this Court, it is nevertheless pertinent here for its sound and relevant reasoning:

Oxner rejected the defendant’s “bona fide claim of right” theory as a defense to attempted armed robbery in part because the defendant was illegally dealing in marijuana and because he used a sawed-off shotgun in carrying out what he believed to be the collection of a debt. Oxner’s facts are similar to those here. In Oxner, the defendant’s girlfriend Iris Harris gave victim Louis Keith some marijuana. Later, defendant came to Keith, armed, and said, “You have got my money.” The defendant pointed the shotgun at him and beat him up, after which Keith was missing \$50. The trial court instructed, in pertinent part, that if the jury found that the defendant took the property through the use of a shotgun, “the defendant knowing that he was not

entitled to take the property,” then it would be the jury’s duty to find him guilty of armed robbery. Oxner, 37 N.C. App. at 603, 246 S.E.2d at 547.

On appeal, the defendant challenged the trial court’s instructions as inadequate and argued in part that there was evidence that he was owed the money, and thus that he did not have felonious intent when he took it. The Court of Appeals, however, upheld the trial court’s instructions saying, “we reject the defendant’s contention that he cannot be found guilty of robbery and forcible taking of property from the actual possession of another where he has a bona fide claim of right or title to the property,” and it rejected the defendant’s contention that “such belief negates the requisite *animus furandi* or intent to steal.” Oxner, 37 N.C. App. at 604, 246 S.E.2d at 548. It cited, among other factors, the fact that the defendant was dealing in marijuana in violation of Chapter 90 and that he used a sawed-off shotgun to aid in his taking of the property. The Court of Appeals in Oxner concluded, “We renounce the notions that force be substituted for voluntary consent and violence be substituted for due process of law.” Oxner, 37 N.C. App. at 604, 246 S.E.2d at 548.

Like Oxner, Willis also soundly recognized the principle that even if a defendant purports to be merely collecting an owed debt, if it is done with violence and if the debt is for illegal drugs, the defendant has no entitlement

to that property, and its taking constitutes armed robbery. In Willis the defendant entered a trailer armed with a shotgun, having been told by a man named Littlejohn that there would be drugs or money for him under the mattress in a bedroom. The occupants of the trailer did not know what he was talking about. The defendant went into the bedroom and came out with a VCR and a black case. At trial, his motion for dismissal of the armed robbery charges was denied; and he advanced the claim on appeal, arguing that for armed robbery, the State must show that the property belongs to the person from whom it is taken, here, the occupants of the trailer at the time. The Court of Appeals in Willis correctly rejected the idea that ownership of the property was relevant at all, and noted that the felonious intent for armed robbery relates only to whether the property was taken by force or fear from the person who rightly had possession or control of the property, not who owned it. Thus, it held that the motion to dismiss for insufficiency of the evidence was correctly denied by the trial court. Willis, 127 N.C. App. at 551-52, 492 S.E.2d at 44-45.

The Court of Appeals in Willis also soundly reasoned that in so holding, it was rejecting the defendant's related argument that he himself had a legitimate ownership interest in the VCR and black case because a man had agreed to give him those items in exchange for a drug purchase. Willis, 127 N.C. App. at 552, 492 S.E.2d at 45. Noting the language from Spratt that "[a]

defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property,” the Court in Willis recognized that other jurisdictions “have rejected this proposition and noted that this type of self-help is incompatible with an ordered and civilized society.” Willis, 127 N.C. App. at 552, 492 S.E.2d at 45. According to the Court, the adoption of the defendant’s argument “would be but one step short of allowing lawless reprisal to become an acceptable means of redressing grievances.” Id. Although it ultimately held that the language from Spratt did not apply because the evidence “simply does not support the defendant’s claim that he took the VCR and black case with a good faith belief that he was the lawful owner of those items,” id., its concerns—about the dangers of a type of self-help that is “incompatible with an ordered and civilized society,” and its desire not to foster tolerance for “lawless reprisal,” especially when carried out with firearms—are legitimate and significant.

This Court has rejected constructions that would have the effect of fostering armed violence. See, e.g., State v. Holloman, 369 N.C. 615, 628, 799 S.E.2d 824, 833 (2017) (holding that N.C.G.S. § 14-51.4(2)(a) allowing an aggressor to regain the right to use defensive force under certain circumstances does not apply in situations in which the aggressor initially uses deadly force against the person provoked—otherwise, “gun battles would effectively become

legal”). It should reject the Court of Appeals’ opinion in this case for this reason.

Finally, and in the alternative, the Court of Appeals’ opinion below fails to recognize that felonious or larcenous intent does not turn on ownership but rather on possessory rights; such that here, even if this illegitimate drug deal were to be somehow recognized as a legitimate contract, Ms. Leisure would need to be recognized as having been rightfully in possession of the money as a bailee, and defendant, unless he demonstrated that the term of the deal had expired, would not have been “entitled” to take even his own money from her by force. See Perkins and Boyce, Criminal Law, 297 (3rd ed. 1982) (“Larceny is an offense against possession. . . . Even the owner himself may commit larceny by stealing his own goods if they are in the possession of another and he takes them from the possessor wrongfully with intent to deprive him of a property interest therein.”) Here, even if the money in Leisure’s possession was in fact defendant’s, defendant made no showing to negate his felonious intent in trying to take it from the person who was in rightful possession.



- C. In addition, the Court of Appeals erred by finding insufficient evidence of conspiracy, as conspiracy can be supported by evidence of an agreement to do an unlawful act or to do a lawful act in an unlawful way.**

Finally, even if for the sake of argument defendant was entitled to take his money back from Ms. Leisure under a bona fide claim of right to it, negating felonious intent, it is still the case that there would be sufficient evidence in this case of conspiracy to commit armed robbery. Conspiracy is defined as “an agreement, express or implied, between two or more persons, to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means.” State v. Roache, 358 N.C. 243, 281, 595 S.E.2d 381, 406 (2004). Here, the breaking and entering of the house, the display of the handgun, the beating of Ms. Leisure, and the discharge of the weapon into her house, all evince “an unlawful way” or “unlawful means.” The Court of Appeals’ opinion finding insufficient evidence of conspiracy appears likely to conflict with the cases from this Court defining conspiracy as an agreement to do a lawful act in an unlawful way or by unlawful means.

### CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court grant the State’s petition for discretionary review.

**ISSUE TO BE BRIEFED**

**DID THE COURT OF APPEALS ERR BY REVERSING, FOR INSUFFICIENCY OF THE EVIDENCE, THE CONVICTIONS FOR CONSPIRACY TO COMMIT ARMED ROBBERY AND FELONIOUS BREAKING OR ENTERING?**

Electronically submitted this the 9th day of April, 2019.

**JOSHUA H. STEIN  
ATTORNEY GENERAL**

**Electronically Submitted  
Daniel P. O'Brien  
Special Deputy Attorney General**

North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602  
(919) 716-6500  
State Bar No. 22232  
dobrien@ncdoj.gov

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing STATE'S PETITION FOR DISCRETIONARY REVIEW upon the DEFENDANT by electronic mail, addressed to his ATTORNEY OF RECORD as follows:

Mr. Bruce T. Cunningham, Jr.  
Law Office of Bruce T. Cunningham, Jr.  
Btcunningham545@gmail.com

Electronically submitted this the 9th day of April, 2019.

Electronically Submitted  
Daniel P. O'Brien  
Special Deputy Attorney General

No. 94P19

FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA, )

)

v. )

From Onslow County

)

15 CRS 54673

JAMES A. COX, )

15 CRS 54665

)

Defendant.

\*\*\*\*\*

DEFENDANT'S RESPONSE TO STATE'S  
PETITION FOR DISCRETIONARY REVIEW AND DEFENDANT'S  
ALTERNATIVE PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

FILED  
APR 17 2019  
SUPREME COURT  
OF NORTH CAROLINA

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SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA,	)	
	)	
v.	)	From Onslow County
	)	15 CRS 54673
JAMES A. COX,	)	15 CRS 54665
Defendant.	)	

\*\*\*\*\*

DEFENDANT’S RESPONSE TO STATE’S  
PETITION FOR DISCRETIONARY REVIEW AND DEFENDANT’S  
ALTERNATIVE PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA:

NOW COMES the Defendant, James A. Cox, by and through undersigned counsel and respectfully responds to the Petition for Discretionary Review filed by the State of North Carolina on 9 April, 2019.

Further, in the event that this Court grants the State’s Petition, the Defendant requests that this Court review the issues not addressed by the Court of Appeals, concerning the failure of the trial judge to answer a question submitted by the jury.

In support of this Response and alternate Petition, the Defendant shows the following:

**PROCEDURAL HISTORY**

The Defendant concurs with the State's recitation of the procedural history.

### **STATEMENT OF THE FACTS**

In addition to the summaries of facts in the Petition for Discretionary Review and the Opinion of the Court of Appeals, the Defendant would set out the following pertinent information.

Mr. Linn entered into a plea bargain with the State and testified. The Bill of Indictment included Richard Linn as a co-conspirator. When asked on cross examination, "Did you ever enter into an agreement with either Ms. Jackson or Mr. Cox to rob Ms. Leisure of any money?" he answered "No." (Tr. p 145) He further answered that he, the defendant and Ms. Jackson did not talk about committing any type of felony.

Neither the Defendant or Co-defendant were charged with Attempted Robbery with a Dangerous Weapon.

### **REASONS WHY CERTIFICATION SHOULD NOT ISSUE**

- I. IN THE OPINION BELOW THE COURT OF APPEALS PROPERLY FOUND THAT THERE WAS INSUFFICIENT EVIDENCE PRESENTED BY THE STATE TO SUPPORT THE CHARGES OF CONSPIRACY TO COMMIT ARMED ROBBERY AND FELONIOUS BREAKING AND ENTERING.**

The Defendant argued in his Brief that there were two grounds underlying the claim of error by Judge Bland to deny the Defendant's Motion to Dismiss Conspiracy to Commit Armed Robbery and Felonious Breaking and Entering at



the close of the State's evidence, the close of all the evidence, and following the verdict; 1) that there was no evidence at all presented by the State to support the findings of an agreement between Mr. Cox and Ms. Jackson, and 2) there was no intent to take the property of another.

With respect to the first ground, the State called as a witness the third individual listed on the Conspiracy indictment as a co-conspirator, Richard Linn. On cross-examination Mr. Linn was asked by counsel for co-defendant Jackson:

Q. Did you ever enter into an agreement with either Ms. Jackson or Mr. Cox to rob Ms Leisure of any money?

A. No.

Q. Ya'll didn't even discuss that, did you?

A. No.

Q. You went there because you—they were—well, Ms. Jackson was inquiring, in part, about her money.

A. Yes.

App. 1, Tr. pp 145-146.

No other witness presented any testimony about an agreement between the co-defendants to rob Ms. Leisure, and, in fact, neither defendant was charged with an attempted Armed Robbery.

At the close of the State's case, counsel for Defendant argued, "As to Count Two, conspiracy, the only witness that we've had, at this point in the State's evidence, to make any representation or allusion of conspiracy is Mr. Linn. He flatly denied a conspiracy occurred. I would make a motion to dismiss that charge Judge." App. 3 Tr. p 240.

“A conspiracy may not be established by ‘mere suspicion’ or a ‘mere relationship or association between the parties.’” *State v. Benardello*, 164 N.C. App. 708, 596 S.E.2d 358 (2004). In the discussion in the Petition on the insufficiency of the evidence to show a conspiracy, the State does not argue that any witness testified to the existence of an agreement. The list of circumstances upon which the State relies, “breaking and entering of the house, display of the handgun, the beating of Ms. Leisure, and discharge of the weapon into her house, could be equally considered to show acting in concert, on which the jury was also instructed. (PDR at p 16) No argument is made that, in fact, an agreement to rob was formed.

The second ground was submitted by the Defendant in Claim I and Claim III of Defendant’s Brief below; that there was no intent to take property belonging to another. Therefore, there could be no conspiracy to rob or intent to commit felonious breaking and entering.

All of the evidence presented reflects that Ashley Patterson wanted her money back. Ms. Leisure testified that before the scuffle, Ashley said, “Give me my money, give me the money, give me my money.” App. 4 Tr. p 39. Mr. Linn stated that the reason the three went to the house was “it was because they wanted to talk to her about their money.” App. 5 Tr. p 129.

The cases cited by the State in its argument related to a “bona fide claim of right to personal property” are not pertinent to the facts of this case. In *State v. Oxner*, 37 N.C.App. 600, 246 S.E.2d 546 (1978), the defendant’s girlfriend had already given drugs to the victim, and the defendant wanted payment. That is the exact opposite of the situation here.

In *State v. Spratt*, 265 N.C. 524, 144 S.E.2d 569 (1965), the defendant was charged with Attempted Armed Robbery and a threat to kill. There are no similar charges in this matter.

In *State v. Willis*, 127 N.C.App., 540, 492 S.E.2d 43 (1997), the evidence showed a home invasion with a search of drugs. During the search of the house for drugs by the three invaders, a VCR and black case were taken. The Court of Appeals opinion stated, “The dispositive issue is whether the *absence of any evidence as to the ownership* of the VCR and black case requires dismissal of the armed robbery charges.” *Id* at 551. (emphasis added) Again, that scenario is the reverse of the scenario here, where there was a definite claim made for specific property in a specific amount.

Actually, in the present case, it is possible that Ms. Leisure, an acknowledged drug addict at the time of the incident, was practicing a scam to obtain money to support her own habit. There was no evidence as to who she was going to obtain the drugs from for the \$20.00, and what the reason was that she could not provide

the drugs. The Defendant's case is a far cry from the authorities argued by the State in the Petition for review.

For all of the reasons above, the Defendant requests that this Court not grant the State's Petition to review the unanimous decision of the Court of Appeals.

**REASON WHY DEFENDANT'S ALTERNATIVE PETITION FOR  
DISCRETIONARY REVIEW SHOULD BE GRANTED**

**II. REVIEW IS REQUESTED OF THE ISSUES RELATED TO THE  
FAILURE OF THE TRIAL JUDGE TO ANSWER THE JURY'S  
TWO QUESTIONS**

In the Defendant's first two arguments in his Brief for the Court of Appeals, he contended that Judge Bland erred by not directly answering the jury's questions arising during their deliberations.

The questions were "Can we get clarification of 'While the defendant knows that the defendant is not entitled to take the property,'" and "Is it still robbery to take back one's own property?" ROA p. 14.

The Judge did not answer the jury's questions, saying "All I can really say is this. That you, the jury determine from the evidence what the facts are and then you take those facts and you apply it to the law as is given to you in the instructions." App. 6 Tr. pp 375-376.

In Claim Two of the Brief, Defendant argued that defense counsel was ineffective for not requesting further instructions on the questions asked by the jury.

The opinion in the Court of Appeals did not address those two claims, stating that “the dispositive issues in this case” are whether the trial court erred in denying the Defendant’s motions to dismiss Conspiracy to Commit Robbery with a Dangerous Weapon and Felonious Breaking and entering, at the close of all the evidence.

The Defendant contends that this Court should deny the State’s Petition for Discretionary Review. However, if the State’s Petition is granted, then the Defendant requests the Court to either enter an Order remanding the matter to the Court of Appeals to address the two issues not addressed, or grant review of the two issues in conjunction with the request for review made by the State.

### **ISSUES TO BE BRIEFED**

- I. DID THE COURT OF APPEALS ERR BY REVERSING, FOR INSUFFICIENCY OF THE EVIDENCE, THE CONVICTIONS FOR CONSPIRACY TO COMMIT ARMED ROBBERY AND FELONIOUS BREAKING OR ENTERING?

In the event this Court grants the State’s Petition, the Defendant requests that review also be granted to allow briefing of the following two additional issues;

- II. WHETHER THE TRIAL JUDGE COMMITTED PLAIN ERROR BY FAILING TO RESPOND TO THE JURY’S TWO QUESTIONS?
- III. WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILURE TO REQUEST FURTHER INSTRUCTIONS IN RESPONSE TO THE JURY’S TWO QUESTIONS?

### **CONCLUSION**

WHEREFORE, the Defendant requests that the State's Petition for Discretionary Review be denied. If the State's Petition is allowed, then the Defendant requests that his Petition for Discretionary Review of the two issues related to the jury questions be allowed.

Respectfully submitted, the 17th day of April, 2019.

THE LAW OFFICE OF BRUCE T. CUNNINGHAM, JR.

By: Electronically Submitted  
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NC Bar No. 5564

**CERTIFICATE OF SERVICE**

I certify that I have, this day, served the foregoing DEFENDANT'S  
RESPONSE TO STATE'S PETITION FOR DISCRETIONARY REVIEW AND  
DEFENDANT'S ALTERNATIVE PETITION FOR DISCRETIONARY  
REVIEW to the State by electronic mail as follows:

Daniel P. O'Brien  
Special Deputy Attorney General  
North Carolina Department of Justice  
dobrien@ncdoj.gov

This the 17th day of April, 2019.

THE LAW OFFICE OF BRUCE T. CUNNINGHAM, JR.

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SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA,	)	
	)	
v.	)	Onslow County
	)	
	)	15 CRS 54673
	)	15 CRS 54665
JAMES A. COX,	)	
Defendant,	)	

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DEFENDANT’S RESPONSE TO STATE’S  
 PETITION FOR DISCRETIONARY REVIEW AND DEFENDANT’S  
 ALTERNATIVE PETITION FOR DISCRETIONARY REVIEW APPENDIX

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1           A     I kind of thought maybe that was the case, but I --  
2     I mean, she didn't tell me specifically she was avoiding me,  
3     or anything like that.

4           Q     And isn't it true, sir, that when you received the  
5     phone call, you were not forced to get into that car to go  
6     over to her place. You wanted to go over there and question  
7     her about your \$50.

8           A     Yeah, it would have been nice to talk to her face to  
9     face about my money.

10          Q     You wanted your money.

11          A     But if -- it wasn't the first time she's taken money  
12     from me, so I knew I would get back eventually.

13          Q     Yeah. But at no time, sir -- isn't it true, at no  
14     time while you were going -- I guess -- how long from the time  
15     they picked you up until the time you went there, how many  
16     minutes or how many --

17          A     Probably about two minutes.

18          Q     How about how many?

19          A     About two.

20          Q     Did you ever enter into an agreement with either  
21     Ms. Jackson or Mr. Cox to rob Ms. Leisure of any money?

22          A     No.

23          Q     You didn't enter any agreement, did you?

24          A     No.

25          Q     Y'all didn't even discuss that, did you?

1           A     No.

2           Q     You went there because you -- they were -- well,  
3           Ms. Jackson was inquiring, in part, about her money.

4           A     Yes.

5           Q     And she wanted her money from you and you didn't  
6           have it.

7           A     Yes.

8           Q     And if you had it, would you have given it to her?

9           A     Yes.

10          Q     And that would have avoided all of this, wouldn't  
11          it?

12          A     Yes.

13          Q     But you didn't have the \$20 to give her, and you  
14          wanted to go over to Ms. Leisure to collect the \$20. Is that  
15          the reason this trip was made?

16          A     (WITNESS NODDED HEAD.)

17          Q     In part?

18          A     In part.

19          Q     And you were hoping to get some monies from that, as  
20          well.

21          A     It would have been nice to get my money back, yeah.

22          Q     And this is primarily what you, in fact, told the  
23          police when you were interviewed.

24          A     Yes.

25          Q     Okay. And -- now, while you said that you didn't

1 McMinn.

2 THE COURT: I can't hear you very well. If you'll  
3 maybe start back at the top and say what you just said.

4 MR. SMITH: I'm going to make a split argument as to  
5 Count Number One. The indictment is very clear the home was  
6 occupied by Angela Leisure and Daniel McMinn. All of the  
7 state's evidence was Mr. McMinn was outside. Ms. Leisure may  
8 well have been inside. I think the state would counterargue,  
9 well, the indictment covered one or both. But the way they  
10 phrased it with the ampersand "and", that is a word of  
11 conjunction, Judge. They both had to be inside the home at  
12 the time. Ampersand is different than and/or. It requires  
13 both of the people to be in the home, and Mr. McMinn, clearly,  
14 was not. I would make that my motion as to Count Number One.

15 THE COURT: That's not the motion I expected, but go  
16 ahead. I'll hear arguments, I guess.

17 MR. SMITH: As to Count Two, conspiracy, the only  
18 witness that we've had, at this point in the state's evidence,  
19 to make any representation or allusion of conspiracy is  
20 Mr. Linn. He flatly denied a conspiracy occurred. I would  
21 make a motion to dismiss that charge, Judge.

22 Judge, I'll have no argument as to Count Number  
23 Three.

24 On 54674, Count Number One, as to Mr. McMinn, Judge,  
25 in the light most favorable to the state, it's possible the

## Angela Leisure - Direct Examination by Mr. Sweet

1           A     I don't remember. I remember her pulling my hair  
2 and hitting me on the side of my head. Somehow, I got to the  
3 ground. I'm sure I fell to the ground and she probably pushed  
4 me to the ground.

5           Q     Did she say anything to you, at that point in time?

6           A     Yes.

7           Q     Okay. What did she say?

8           A     "Give me my money. Give me money. Give me my  
9 money. Give me the money."

10           MR. WRIGHT: I'm sorry. She said three different  
11 things.

12           THE WITNESS: I don't recall which it was, exactly.  
13 It was about money.

14           MR. WRIGHT: Judge, I've got to object. What I'm  
15 saying is, it's very important. If she doesn't know what she  
16 said -- it's very important. Give me money, give me my money,  
17 give me something. But I'm just trying to find out what  
18 exactly did she say.

19           THE WITNESS: I don't recall, exactly.

20           THE COURT: Just state what you recall, to the best  
21 of your ability.

22           THE WITNESS: Give me the money.

23           Q     So where are you at and where is she at, when she  
24 starts demanding money from you?

25           A     Outside of my bedroom door, in front of the washer

App. 5  
Richard Linn - Direct Examination by Mr. Sweet

1 youngest son, William. We were getting ready for bed. I  
2 received a call from Mr. Cox, saying, "Come outside." I went  
3 outside, and he was in front of my carport, standing.

4 Q What did you see, at that time?

5 A He had a gun in his left hand, and he said, "Get in  
6 the car," and I got in the car.

7 Q Okay. Was Ms. Jackson around, at that point in  
8 time?

9 A I didn't see her until I got into the car.

10 Q Okay. And what happened once you were inside the  
11 car?

12 A We drove to Angela's house.

13 Q Okay. Now, why did you drive to Angela's house.

14 A Because they wanted to.

15 MR. SMITH: Objection to what they wanted, Judge.

16 THE WITNESS: I believed it was because they wanted  
17 to talk to her about their money.

18 Q Okay.

19 THE COURT: Overruled.

20 Q Who wanted to talk to her about their money? Which  
21 one of these defendants?

22 A I could say James Cox, specifically, but I'm not --  
23 I'm not 100 percent on whether I heard Ashley say that or not.

24 Q Why aren't you 100 percent certain?

25 A I really never -- I tried to kind of keep distance

1 All right, let's bring the jury in, please.

2 (THE JURY RETURNED TO THE COURTROOM AT 1:20  
3 PM.)

4 THE COURT: Okay. All 12 jurors are here in the  
5 courtroom.

6 Will the foreperson of the jury please stand. If  
7 you would state your name, please, sir.

8 JUROR NUMBER SEVEN: My name is William John Potts,  
9 III.

10 THE COURT: Mr. Foreperson, I have gotten a note --  
11 I guess this is your handwriting.

12 JUROR NUMBER SEVEN: Yes, sir.

13 THE COURT: -- on behalf of the jury. Two  
14 questions. The first was, "Can we get clarification of" --  
15 and then, in quotes -- "while the defendant knows that the  
16 defendant is not entitled to take the property," and that's  
17 referring to Page 6, the last line of the robbery definition.  
18 That same line, it's also -- every time the robbery with a  
19 dangerous weapon is defined, it includes that same line.

20 Then you've also asked -- you, the jury, have also  
21 asked, "Is it still robbery to take back one owns -- or one's  
22 own property?" You can have a seat, sir. That's fine. Thank  
23 you.

24 All I can really say is this. That you, as the  
25 juror -- jury -- determine from the evidence what the facts

1 are, and then you take those facts and you apply it to the law  
2 as is given to you in the jury instructions.

3           In the first paragraph, it does say it's absolutely  
4 necessary that you understand and apply the law as I give it  
5 to you and not as you think it is or as you might like it to  
6 be. Each of you has been given a printed copy of the jury  
7 instructions, and all I can really do is simply refer you to  
8 those instructions as to the law that's applicable in this  
9 case. I can reread it all for you, if you would ask, but I  
10 think you've got the copies and you can do that. That's  
11 really all I can say, in answer to that question.

12           I can address lunch. This may be a question you  
13 haven't asked here. What we'll do now is take a lunch recess  
14 of at least an hour, and I'm certainly willing to go an hour  
15 and a half. How long would you prefer? I guess we can either  
16 come back at 2:30 or at 3:00. It's almost 1:30 now, so either  
17 2:30 or 3:00.

18           SEVERAL JURORS: 2:30.

19           THE COURT: Is 2:30 enough time for everybody? I  
20 think we'll be running across the street. So what we'll do,  
21 ladies and gentlemen, is now take a lunch recess and, of  
22 course, you are in deliberation, at this point; however,  
23 you're not to deliberate during lunch and at your separate  
24 tables, or wherever you may go, or whatever.

25           So you've heard this before, but let me say it

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-692

Filed: 5 March 2019

Onslow County, Nos. 15 CRS 54673, 15 CRS 54665

STATE OF NORTH CAROLINA,

v.

JAMES A. COX

Appeal by Defendant from Judgments entered 16 January 2018 by Judge William W. Bland in Onslow County Superior Court. Heard in the Court of Appeals 28 January 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General James D. Concepción, for the State.*

*The Law Office of Bruce T. Cunningham, Jr., by Bruce T. Cunningham, Jr., for defendant-appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

James A. Cox (Defendant) appeals from his convictions for Conspiracy to Commit Armed Robbery with a Dangerous Weapon and Felonious Breaking or Entering.<sup>1</sup> The evidence presented at trial tends to show the following:

---

<sup>1</sup> Defendant was also convicted of Discharging a Weapon into an Occupied Property but raises no arguments on appeal regarding this offense.



STATE V. COX

*Opinion of the Court*

Sometime prior to the night of 8 August 2015, Defendant gave Richard Linn (Linn) \$20.00 to purchase Percocet tablets or other drugs. Linn testified he regularly used Angela Leisure (Leisure) as a go-between to purchase drugs. On this occasion, Linn added his own money to Defendant's and gave Leisure approximately \$50.00 or \$60.00. Leisure admitted she never purchased the drugs and never returned the money to Linn.

Linn further testified on the evening of 8 August 2015, Defendant and his girlfriend, Ashley Jackson (Jackson), arrived at Linn's house and demanded he come outside. Defendant was standing outside with a gun in his hand and told Linn to "get in the car." Linn stated Defendant and Jackson wanted to go to Leisure's house "to talk to her about their money." After getting in the car, Linn directed Defendant to Leisure's house.

Leisure's boyfriend, Daniel McMinn (McMinn), testified he was standing outside of Leisure's home when Defendant, Jackson, and Linn arrived. Jackson asked McMinn where Leisure was. Jackson and Defendant entered the house and McMinn followed. After entering the home, Jackson attacked Leisure by pulling her hair, punching her, and forcing her to the ground. Leisure recalled Jackson saying, "give me my money" or "give me the money." McMinn testified he reached for his cell phone to call the police, but he stopped when he saw Defendant display a handgun "in a threatening way."

STATE V. COX

*Opinion of the Court*

After several minutes of fighting, Linn called Jackson off, saying: "I think she's had enough. Come on, let's go." Defendant, Jackson, and Linn left the house. Linn testified once outside Defendant turned and kicked a hole in the door. Defendant also fired a shot into Leisure's home, which struck a mirrored door inside the home. Defendant, Jackson, and Linn left Leisure's home without obtaining any money or personal property.

Based on these events, Defendant was arrested and charged with First-Degree Burglary, Conspiracy to Commit Robbery with a Dangerous Weapon, and Discharging a Weapon into an Occupied Property.<sup>2</sup> Following the State's presentation of evidence, Defendant moved to dismiss all charges. This Motion was denied.

Subsequently, Defendant presented evidence, including his own testimony. Defendant's evidence tended to show he went to Linn's house on 8 August 2015 to give Linn \$20.00 to purchase pain relievers for Jackson. Later in the evening, Linn requested Defendant pick him up because Leisure had taken the money and would not answer his phone calls. Linn said he would talk to Leisure in person and get Defendant's money back. Defendant claimed no one, including himself, had a weapon on 8 August 2015 and that Jackson kicked in the door, not Defendant. At the close

---

<sup>2</sup> Jackson was charged as a co-defendant with Conspiracy to Commit Robbery with a Dangerous Weapon, First-Degree Burglary, and Simple Assault, and their cases were joined for trial.

STATE V. COX

*Opinion of the Court*

of all the evidence, Defendant renewed his Motion to Dismiss all charges, which the trial court denied.

After instructing the jury, the trial court provided the jury with written copies of its jury instructions. After deliberating for approximately two hours, the jury returned a note with two questions related to the Conspiracy charge: The first question stated, "Can we get clarification of 'While the defendant knows that the defendant is not entitled to take the property,' " which was part of the definition in the jury instructions on Conspiracy to Commit Robbery with a Dangerous Weapon. The jury's second question asked, "Is it still Robbery to take back one owns [sic] property?" After conferring with counsel, and without any objection by Defendant's trial counsel, the trial court declined to answer the jury's two questions directly. Instead, the trial court referred the jury back to its written copy of the jury instructions.

On 16 January 2018, the jury returned a verdict finding Defendant guilty of Felonious Breaking or Entering, Conspiracy to Commit Robbery with a Dangerous Weapon, and Discharging a Weapon into an Occupied Property. The trial court entered a consolidated judgment on the Conspiracy to Commit Robbery with a Dangerous Weapon and Discharging a Weapon into an Occupied Property charges, sentencing Defendant to a minimum of 60 months and a maximum of 84 months in the custody of the North Carolina Department of Adult Correction. On the Felonious

STATE V. COX

*Opinion of the Court*

Breaking or Entering charge, Defendant received a suspended sentence of 6 to 17 months and was placed on supervised probation for a term of 24 months. Defendant gave oral notice of appeal at trial. This Court has jurisdiction to hear Defendant's appeal under N.C. Gen. Stat. § 7A-27(b)(1) (2017) and N.C.R. App. P. 4(a)(1).

**Issues**

Defendant raises several issues including whether the trial court committed plain error in refusing to answer the jury's questions or whether his trial counsel committed ineffective assistance of counsel by failing to request further instructions in response to the jury's questions. However, the dispositive issues in this case, raised by Defendant, are whether the trial court: (1) erroneously denied Defendant's Motion to Dismiss the charge of Conspiracy to Commit Robbery with a Dangerous Weapon at the close of all the evidence; and (2) erroneously denied Defendant's Motion to Dismiss the charge of Felonious Breaking or Entering at the close of all the evidence.

**Analysis**

Defendant contends the trial court erred in denying his Motion to Dismiss the Conspiracy to Commit Robbery with a Dangerous Weapon and Felonious Breaking or Entering convictions based upon the sufficiency of the evidence. Defendant argues the State presented no evidence Defendant possessed the requisite felonious intent necessary for these two convictions. We agree.

**I. Standard of Review**

STATE V. COX

*Opinion of the Court*

This Court has stated:

The standard for ruling on a motion to dismiss is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense. Substantial evidence is relevant evidence which a reasonable mind might accept as adequate to support a conclusion. In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal.

*State v. Wood*, 174 N.C. App. 790, 795, 622 S.E.2d 120, 123 (2005) (citations and quotation marks omitted). “This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted).

II. Conspiracy to Commit Robbery with a Dangerous Weapon

“In order to prove a criminal conspiracy, the State must show an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way.” *State v. Gray*, 56 N.C. App. 667, 672, 289 S.E.2d 894, 897 (1982) (citation omitted). In this case, the State had the burden to present substantial evidence tending to show that Defendant and Jackson agreed to commit each element of Robbery with a Dangerous Weapon against Leisure.

“For the offense of robbery with a dangerous weapon, the State must prove ‘(1) the unlawful taking or attempt to take personal property from the person or in the

STATE V. COX

*Opinion of the Court*

presence of another; (2) by use or threatened use of a firearm or other dangerous weapon; (3) whereby the life of a person is endangered or threatened.’” *State v. Pratt*, 161 N.C. App. 161, 163, 587 S.E.2d 437, 439 (2003) (quoting *State v. Wiggins*, 334 N.C. 18, 35, 431 S.E.2d 755, 765 (1993)); *see also* N.C. Gen. Stat. § 14-87(a) (2017). The taking or attempted taking must be done with felonious intent. *State v. Norris*, 264 N.C. 470, 472, 141 S.E.2d 869, 871 (1965) (quoting *State v. Lawrence*, 262 N.C. 162, 163-68, 136 S.E.2d 595, 597-600 (1964)). Our Supreme Court has stated, “Felonious intent is an essential element of the crime of robbery with firearms and has been defined to be the intent to deprive the owner of *his goods* permanently and to appropriate them to the taker’s own use.” *State v. Brown*, 300 N.C. 41, 47, 265 S.E.2d 191, 196 (1980) (citations omitted).

Under existing North Carolina case law, a defendant can negate the element of felonious intent by showing he took or attempted to take the property under a bona fide claim of right or title to the property. *See State v. Spratt*, 265 N.C. 524, 144 S.E.2d 569 (1965). In *Spratt*, our Supreme Court stated, “A defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a *bona fide claim of right or title to the property*, or for the personal protection and safety of defendant and others, or as a frolic, prank or practical joke, or under color of official authority.” *Id.* at 526-27, 144 S.E.2d at 571 (emphasis added) (citations omitted). *Spratt*, in turn, relied on a line of cases including *State v.*

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*Opinion of the Court*

*Lawrence*. In *Lawrence*, the defendant was charged with robbery after assaulting the victim because defendant claimed the victim “owed him something.” 262 N.C. at 168, 136 S.E.2d at 600. In granting a new trial, the Supreme Court held the defendant was entitled to a jury instruction on felonious intent where the conflicting evidence could permit a finding the taking was without felonious intent. *Id.*; see also N.C.P.I.—Crim. 217.10 n.4 (June 2016) (pattern jury instruction for Common Law Robbery specifically providing: “In the event that a defendant relies on claim of right, the jury should be told that if the defendant honestly believed he was entitled to take the property, he cannot be guilty of robbery”).<sup>3</sup>

Decisions from this Court, however, have questioned *Spratt* and rejected the notion that a defendant cannot be guilty of armed robbery where the defendant claims a good-faith belief that he had an ownership interest in the property taken.<sup>4</sup> See *State v. Oxner*, 37 N.C. App. 600, 604, 246 S.E.2d 546, 548 (1978) (“We renounce the notions that force be substituted for voluntary consent and violence be substituted for due process of law.”), *judgment aff’d without precedential value*, 297 N.C. 44, 252 S.E.2d

---

<sup>3</sup> We note the pattern jury instructions for Robbery with a Firearm, Attempted Robbery with a Firearm, and Robbery with a Dangerous Weapon Other than a Firearm do not include such express language specific to this claim of right defense. Compare N.C.P.I.—Crim. 217.10 (June 2016) (Common Law Robbery), with N.C.P.I.—Crim. 217.20 (June 2018) (Robbery with a Firearm), N.C.P.I.—Crim. 217.25 (May 2003) (Attempted Robbery with a Firearm), and N.C.P.I.—Crim. 217.30 (June 2018) (Robbery with a Dangerous Weapon – Other than a Firearm). However, the element of felonious intent is required for all of these offenses. See *Spratt*, 265 N.C. at 526, 144 S.E.2d at 571 (citation omitted).

<sup>4</sup> A review of other jurisdictions reveals a split across the country on whether a bona fide claim of right defense precludes an armed robbery conviction. See generally Kristine Cordier Karnezis, Annotation, *Robbery, Attempted Robbery, or Assault to Commit Robbery, as Affected by Intent to Collect or Secure Debt or Claim*, 88 A.L.R.3d 1309 (1978 & Supp. 2018).

STATE V. COX

*Opinion of the Court*

705 (1979); *State v. Willis*, 127 N.C. App. 549, 552, 492 S.E.2d 43, 45 (1997). *Oxner* presented similar facts as the case at bar: a claim of money owed related to a drug deal and a charge of robbery with a firearm. 37 N.C. App. at 602-04, 246 S.E.2d at 547-48. However, on review, our Supreme Court divided equally, leaving this Court's opinion without precedential value. Moreover, *Oxner* differs from this case in that there: (A) the defendant denied taking any property at all; and (B) the claim was vague and related to an unliquidated amount. *See id.* at 604, 246 S.E.2d at 548. Here, the claim was for specific amounts, there was no dispute Defendant—along with Linn and Jackson—intended to recoup their money, and even Leisure admitted she owed the money.

In *Willis*, the defendant contended the State was required to prove the victim actually owned the property taken in order for the offense to constitute armed robbery. 127 N.C. App. at 551-52, 492 S.E.2d at 44-45. This Court rejected this argument and held in the absence of any evidence showing the defendant had an ownership interest in the property, the bona fide claim of right, or "self-help," defense simply did not apply. *Id.* In reaching its decision, however, this Court did question the ongoing viability of *Spratt*. *Id.* at 552, 492 S.E.2d at 45. Nevertheless, to the extent *Willis* is construed as conflicting with the earlier Supreme Court opinions in *Lawrence* and *Spratt*, among others, we conclude we remain bound to follow and



STATE V. COX

*Opinion of the Court*

apply *Spratt*. See *Respass v. Respass*, 232 N.C. App. 611, 625, 754 S.E.2d 691, 701 (2014) (citations omitted).

Here, unlike in *Willis*, the evidence at trial demonstrates Defendant, along with Linn and Jackson, went to Leisure's home to retrieve the money they provided to Leisure for the purchase of drugs. The witnesses for both the State and defense agreed Defendant, Linn, and Jackson were attempting to collect monies owed to them. Defendant testified he gave Linn the money to purchase drugs from Leisure; Linn told Defendant that he would talk to Leisure and get Defendant's money back; and that he, Jackson, and Linn went to Leisure's house in an attempt to recover their money. Both Linn and Leisure, who testified for the State, agreed that Defendant and Jackson went to Leisure's house to obtain money they believed was their property. After a thorough review of the record, we conclude the State presented no evidence tending to show Defendant possessed the necessary intent to commit robbery. Rather, all of the evidence proffered at trial supports Defendant's claim that Defendant, Linn, and Jackson went to Leisure's house to retrieve their own money. Therefore, under *Spratt*, Defendant could not be guilty of Conspiracy to Commit Robbery with a Dangerous Weapon because he—and his alleged co-conspirators—held a good-faith claim of right to the money. See *Spratt*, 265 N.C. at 526-27, 144 S.E.2d at 571.

STATE V. COX

*Opinion of the Court*

Because there was no evidence suggesting Defendant had an intent to take and convert property belonging to another, the trial court erred in denying Defendant's Motion to Dismiss the charge of Conspiracy to Commit Robbery with a Dangerous Weapon. Consequently, we reverse the Judgment on that charge.

III. Felonious Breaking or Entering

"The essential elements of felonious breaking or entering are (1) the breaking or entering (2) of any building (3) with the intent to commit any felony or larceny therein." *State v. Williams*, 330 N.C. 579, 585, 411 S.E.2d 814, 818 (1992) (citation omitted). Here, the trial court expressly instructed the jury that to convict Defendant of Felonious Breaking or Entering, it was required to find Defendant intended to commit Robbery with a Dangerous Weapon. As discussed above, the trial court erred in denying Defendant's Motion to Dismiss the charge of Conspiracy to Commit Robbery with a Dangerous Weapon because Defendant lacked the necessary felonious intent. Therefore, the trial court also erred in denying Defendant's Motion to Dismiss the charge of Felonious Breaking or Entering, which was expressly only predicated on the felony of Robbery with a Dangerous Weapon.

Nevertheless, the jury did find Defendant guilty of Felonious Breaking or Entering, including finding the State had proven all of the elements of that offense. "Misdemeanor breaking or entering, G.S. 14-54(b), is a lesser included offense of felonious breaking or entering and requires only proof of wrongful breaking or entry

STATE V. COX

*Opinion of the Court*

into any building.” *State v. O’Neal*, 77 N.C. App. 600, 606, 335 S.E.2d 920, 924 (1985) (citations omitted). Misdemeanor Breaking or Entering does not require a finding of felonious intent. *See id.* As our holding above only negates the element of Defendant’s felonious intent to commit Robbery with a Dangerous Weapon, the jury’s verdict still supports finding Defendant guilty of Misdemeanor Breaking or Entering. We reverse and remand to the trial court to arrest judgment on the charge of Felonious Breaking or Entering and to enter judgment on Misdemeanor Breaking or Entering. *State v. Silas*, 168 N.C. App. 627, 635, 609 S.E.2d 400, 406 (2005) (citation omitted), *modified on other grounds and aff’d*, 360 N.C. 377, 627 S.E.2d 604 (2006).

**Conclusion**

Accordingly, we reverse the Defendant’s conviction for Conspiracy to Commit Robbery with a Dangerous Weapon. Defendant did not challenge his conviction for Discharging a Weapon into an Occupied Property; however, we remand for resentencing because this offense was consolidated for judgment with Conspiracy to Commit Robbery with a Dangerous Weapon. Further, we reverse Defendant’s conviction of Felonious Breaking or Entering and remand this matter for the trial court to arrest judgment on Felonious Breaking or Entering and enter judgment against Defendant for Misdemeanor Breaking or Entering.

REVERSED IN PART AND REMANDED.

Chief Judge McGEE and Judge HUNTER concur.

# Supreme Court of North Carolina

STATE OF NORTH CAROLINA

v

**JAMES A. COX**

From N.C. Court of Appeals  
( 18-692 )  
From Onslow  
( 15CRS54673 )

## ORDER

Upon consideration of the petition filed by State of NC on the 22nd of March 2019 for Writ of Supersedeas of the judgment of the Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

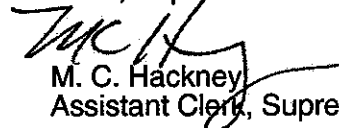
"Allowed by order of the Court in conference, this the 14th of August 2019."

**s/ Davis, J.  
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of August 2019.



Amy L. Funderburk  
Clerk, Supreme Court of North Carolina

  
M. C. Hackney  
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Bruce T. Cunningham, Jr., Attorney at Law, For Cox, James A. - (By Email)

Mr. James D. Concepcion, Assistant Attorney General, For State of North Carolina - (By Email)

Mr. Daniel P. O'Brien, Special Deputy Attorney General, For State of North Carolina - (By Email)

Mr. Ernie Lee, District Attorney

Hon. Bettie B. Gurganus, Clerk

West Publishing - (By Email)

Lexis-Nexis - (By Email)

# Supreme Court of North Carolina

STATE OF NORTH CAROLINA

v

**JAMES A. COX**

From N.C. Court of Appeals  
( 18-692 )  
From Onslow  
( 15CRS54673 )

## ORDER

Upon consideration of the petition filed on the 9th of April 2019 by State of NC in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Allowed by order of the Court in conference, this the 14th of August 2019."

**s/ Davis, J.  
For the Court**

Therefore the case is docketed as of the date of this order's certification. Briefs of the respective parties shall be submitted to this Court within the times allowed and in the manner provided by Appellate Rule 15(g)(2).

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of August 2019.



Amy L. Funderburk  
Clerk, Supreme Court of North Carolina  
*M. C. Hackney*  
M. C. Hackney  
Assistant Clerk, Supreme Court Of North Carolina

- Copy to:
- North Carolina Court of Appeals
  - Mr. Bruce T. Cunningham, Jr., Attorney at Law, For Cox, James A. - (By Email)
  - Mr. James D. Concepcion, Assistant Attorney General, For State of North Carolina - (By Email)
  - Mr. Daniel P. O'Brien, Special Deputy Attorney General, For State of North Carolina - (By Email)
  - Mr. Ernie Lee, District Attorney
  - Hon. Bettie B. Gurganus, Clerk
  - West Publishing - (By Email)
  - Lexis-Nexis - (By Email)

# Supreme Court of North Carolina

STATE OF NORTH CAROLINA

v

**JAMES A. COX**

From N.C. Court of Appeals  
( 18-692 )  
From Onslow  
( 15CRS54673 )

## ORDER

Upon consideration of the conditional petition filed on the 17th of April 2019 by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

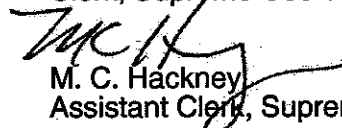
"Denied by order of the Court in conference, this the 14th of August 2019."

**s/ Davis, J.**  
**For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of August 2019.



Amy L. Funderburk  
Clerk, Supreme Court of North Carolina

  
M. C. Hackney  
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Bruce T. Cunningham, Jr., Attorney at Law, For Cox, James A. - (By Email)

Mr. James D. Concepcion, Assistant Attorney General, For State of North Carolina - (By Email)

Mr. Daniel P. O'Brien, Special Deputy Attorney General, For State of North Carolina - (By Email)

Mr. Ernie Lee, District Attorney

Hon. Bettie B. Gurganus, Clerk

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STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

)  
)  
)  
)  
)  
)  
)

Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT G

No. 94P19

FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA, )

)

v. )

From Onslow County

)

15 CRS 54673

JAMES A. COX, )

15 CRS 54665

Defendant. )

\*\*\*\*\*

DEFENDANT’S RESPONSE TO STATE’S  
PETITION FOR DISCRETIONARY REVIEW AND DEFENDANT’S  
ALTERNATIVE PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*



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SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA,	)	
	)	
v.	)	From Onslow County
	)	15 CRS 54673
JAMES A. COX,	)	15 CRS 54665
Defendant.	)	

\*\*\*\*\*

DEFENDANT’S RESPONSE TO STATE’S  
PETITION FOR DISCRETIONARY REVIEW AND DEFENDANT’S  
ALTERNATIVE PETITION FOR DISCRETIONARY REVIEW

\*\*\*\*\*

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA:

NOW COMES the Defendant, James A. Cox, by and through undersigned counsel and respectfully responds to the Petition for Discretionary Review filed by the State of North Carolina on 9 April, 2019.

Further, in the event that this Court grants the State’s Petition, the Defendant requests that this Court review the issues not addressed by the Court of Appeals, concerning the failure of the trial judge to answer a question submitted by the jury.

In support of this Response and alternate Petition, the Defendant shows the following:

**PROCEDURAL HISTORY**

The Defendant concurs with the State's recitation of the procedural history.

### **STATEMENT OF THE FACTS**

In addition to the summaries of facts in the Petition for Discretionary Review and the Opinion of the Court of Appeals, the Defendant would set out the following pertinent information.

Mr. Linn entered into a plea bargain with the State and testified. The Bill of Indictment included Richard Linn as a co-conspirator. When asked on cross examination, "Did you ever enter into an agreement with either Ms. Jackson or Mr. Cox to rob Ms. Leisure of any money?" he answered "No." (Tr. p 145) He further answered that he, the defendant and Ms. Jackson did not talk about committing any type of felony.

Neither the Defendant or Co-defendant were charged with Attempted Robbery with a Dangerous Weapon.

### **REASONS WHY CERTIFICATION SHOULD NOT ISSUE**

#### **I. IN THE OPINION BELOW THE COURT OF APPEALS PROPERLY FOUND THAT THERE WAS INSUFFICIENT EVIDENCE PRESENTED BY THE STATE TO SUPPORT THE CHARGES OF CONSPIRACY TO COMMIT ARMED ROBBERY AND FELONIOUS BREAKING AND ENTERING.**

The Defendant argued in his Brief that there were two grounds underlying the claim of error by Judge Bland to deny the Defendant's Motion to Dismiss Conspiracy to Commit Armed Robbery and Felonious Breaking and Entering at

the close of the State's evidence, the close of all the evidence, and following the verdict; 1) that there was no evidence at all presented by the State to support the findings of an agreement between Mr. Cox and Ms. Jackson, and 2) there was no intent to take the property of another.

With respect to the first ground, the State called as a witness the third individual listed on the Conspiracy indictment as a co-conspirator, Richard Linn. On cross-examination Mr. Linn was asked by counsel for co-defendant Jackson:

Q. Did you ever enter into an agreement with either Ms. Jackson or Mr. Cox to rob Ms Leisure of any money?

A. No.

Q. Ya'll didn't even discuss that, did you?

A. No.

Q. You went there because you—they were—well, Ms. Jackson was inquiring, in part, about her money.

A. Yes.

App. 1, Tr. pp 145-146.

No other witness presented any testimony about an agreement between the co-defendants to rob Ms. Leisure, and, in fact, neither defendant was charged with an attempted Armed Robbery.

At the close of the State's case, counsel for Defendant argued, "As to Count Two, conspiracy, the only witness that we've had, at this point in the State's evidence, to make any representation or allusion of conspiracy is Mr. Linn. He flatly denied a conspiracy occurred. I would make a motion to dismiss that charge Judge." App. 3 Tr. p 240.

“A conspiracy may not be established by ‘mere suspicion’ or a ‘mere relationship or association between the parties.’” *State v. Benardello*, 164 N.C. App. 708, 596 S.E.2d 358 (2004). In the discussion in the Petition on the insufficiency of the evidence to show a conspiracy, the State does not argue that any witness testified to the existence of an agreement. The list of circumstances upon which the State relies, “breaking and entering of the house, display of the handgun, the beating of Ms. Leisure, and discharge of the weapon into her house, could be equally considered to show acting in concert, on which the jury was also instructed. (PDR at p 16) No argument is made that, in fact, an agreement to rob was formed.

The second ground was submitted by the Defendant in Claim I and Claim III of Defendant’s Brief below; that there was no intent to take property belonging to another. Therefore, there could be no conspiracy to rob or intent to commit felonious breaking and entering.

All of the evidence presented reflects that Ashley Patterson wanted her money back. Ms. Leisure testified that before the scuffle, Ashley said, “Give me my money, give me the money, give me my money.” App. 4 Tr. p 39. Mr. Linn stated that the reason the three went to the house was “it was because they wanted to talk to her about their money.” App. 5 Tr. p 129.

The cases cited by the State in its argument related to a “bona fide claim of right to personal property” are not pertinent to the facts of this case. In *State v. Oxner*, 37 N.C.App. 600, 246 S.E.2d 546 (1978), the defendant’s girlfriend had already given drugs to the victim, and the defendant wanted payment. That is the exact opposite of the situation here.

In *State v. Spratt*, 265 N.C. 524, 144 S.E.2d 569 (1965), the defendant was charged with Attempted Armed Robbery and a threat to kill. There are no similar charges in this matter.

In *State v. Willis*, 127 N.C.App., 540, 492 S.E.2d 43 (1997), the evidence showed a home invasion with a search of drugs. During the search of the house for drugs by the three invaders, a VCR and black case were taken. The Court of Appeals opinion stated, “The dispositive issue is whether the *absence of any evidence as to the ownership* of the VCR and black case requires dismissal of the armed robbery charges.” *Id* at 551. (emphasis added) Again, that scenario is the reverse of the scenario here, where there was a definite claim made for specific property in a specific amount.

Actually, in the present case, it is possible that Ms. Leisure, an acknowledged drug addict at the time of the incident, was practicing a scam to obtain money to support her own habit. There was no evidence as to who she was going to obtain the drugs from for the \$20.00, and what the reason was that she could not provide

the drugs. The Defendant's case is a far cry from the authorities argued by the State in the Petition for review.

For all of the reasons above, the Defendant requests that this Court not grant the State's Petition to review the unanimous decision of the Court of Appeals.

**REASON WHY DEFENDANT'S ALTERNATIVE PETITION FOR  
DISCRETIONARY REVIEW SHOULD BE GRANTED**

**II. REVIEW IS REQUESTED OF THE ISSUES RELATED TO THE  
FAILURE OF THE TRIAL JUDGE TO ANSWER THE JURY'S  
TWO QUESTIONS**

In the Defendant's first two arguments in his Brief for the Court of Appeals, he contended that Judge Bland erred by not directly answering the jury's questions arising during their deliberations.

The questions were "Can we get clarification of 'While the defendant knows that the defendant is not entitled to take the property,'" and "Is it still robbery to take back one's own property?" ROA p. 14.

The Judge did not answer the jury's questions, saying "All I can really say is this. That you, the jury determine from the evidence what the facts are and then you take those facts and you apply it to the law as is given to you in the instructions." App. 6 Tr. pp 375-376.

In Claim Two of the Brief, Defendant argued that defense counsel was ineffective for not requesting further instructions on the questions asked by the jury.



The opinion in the Court of Appeals did not address those two claims, stating that “the dispositive issues in this case” are whether the trial court erred in denying the Defendant’s motions to dismiss Conspiracy to Commit Robbery with a Dangerous Weapon and Felonious Breaking and entering, at the close of all the evidence.

The Defendant contends that this Court should deny the State’s Petition for Discretionary Review. However, if the State’s Petition is granted, then the Defendant requests the Court to either enter an Order remanding the matter to the Court of Appeals to address the two issues not addressed, or grant review of the two issues in conjunction with the request for review made by the State.

### **ISSUES TO BE BRIEFED**

- I. DID THE COURT OF APPEALS ERR BY REVERSING, FOR INSUFFICIENCY OF THE EVIDENCE, THE CONVICTIONS FOR CONSPIRACY TO COMMIT ARMED ROBBERY AND FELONIOUS BREAKING OR ENTERING?

In the event this Court grants the State’s Petition, the Defendant requests that review also be granted to allow briefing of the following two additional issues;

- II. WHETHER THE TRIAL JUDGE COMMITTED PLAIN ERROR BY FAILING TO RESPOND TO THE JURY’S TWO QUESTIONS?
- III. WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILURE TO REQUEST FURTHER INSTRUCTIONS IN RESPONSE TO THE JURY’S TWO QUESTIONS?

### **CONCLUSION**

WHEREFORE, the Defendant requests that the State's Petition for Discretionary Review be denied. If the State's Petition is allowed, then the Defendant requests that his Petition for Discretionary Review of the two issues related to the jury questions be allowed.

Respectfully submitted, the 17th day of April, 2019.

THE LAW OFFICE OF BRUCE T. CUNNINGHAM, JR.

By: Electronically Submitted  
Bruce T. Cunningham, Jr.  
225 N. Bennett Street  
Southern Pines, NC 28387  
Phone: 910.693.3999  
Fax: 910.695.0983  
btcunningham545@gmail.com  
NC Bar No. 5564

**CERTIFICATE OF SERVICE**

I certify that I have, this day, served the foregoing DEFENDANT'S RESPONSE TO STATE'S PETITION FOR DISCRETIONARY REVIEW AND DEFENDANT'S ALTERNATIVE PETITION FOR DISCRETIONARY REVIEW to the State by electronic mail as follows:

Daniel P. O'Brien  
Special Deputy Attorney General  
North Carolina Department of Justice  
dobrien@ncdoj.gov

This the 17th day of April, 2019.

THE LAW OFFICE OF BRUCE T. CUNNINGHAM, JR.

By: Electronically Submitted  
Bruce T. Cunningham, Jr.  
225 N. Bennett Street  
Southern Pines, NC 28387  
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btcunningham545@gmail.com  
NC Bar No. 5564

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA,	)	
	)	
v.	)	Onslow County
	)	
	)	15 CRS 54673
	)	15 CRS 54665
JAMES A. COX,	)	
Defendant,	)	

\*\*\*\*\*

DEFENDANT’S RESPONSE TO STATE’S  
 PETITION FOR DISCRETIONARY REVIEW AND DEFENDANT’S  
 ALTERNATIVE PETITION FOR DISCRETIONARY REVIEW APPENDIX

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App. 1  
Richard Linn - Cross-Examination by Mr. Wright

1           A     I kind of thought maybe that was the case, but I --  
2     I mean, she didn't tell me specifically she was avoiding me,  
3     or anything like that.

4           Q     And isn't it true, sir, that when you received the  
5     phone call, you were not forced to get into that car to go  
6     over to her place. You wanted to go over there and question  
7     her about your \$50.

8           A     Yeah, it would have been nice to talk to her face to  
9     face about my money.

10          Q     You wanted your money.

11          A     But if -- it wasn't the first time she's taken money  
12     from me, so I knew I would get back eventually.

13          Q     Yeah. But at no time, sir -- isn't it true, at no  
14     time while you were going -- I guess -- how long from the time  
15     they picked you up until the time you went there, how many  
16     minutes or how many --

17          A     Probably about two minutes.

18          Q     How about how many?

19          A     About two.

20          Q     Did you ever enter into an agreement with either  
21 Ms. Jackson or Mr. Cox to rob Ms. Leisure of any money?

22          A     No.

23          Q     You didn't enter any agreement, did you?

24          A     No.

25          Q     Y'all didn't even discuss that, did you?

1           A     No.

2           Q     You went there because you -- they were -- well,

3           Ms. Jackson was inquiring, in part, about her money.

4           A     Yes.

5           Q     And she wanted her money from you and you didn't  
6           have it.

7           A     Yes.

8           Q     And if you had it, would you have given it to her?

9           A     Yes.

10          Q     And that would have avoided all of this, wouldn't  
11          it?

12          A     Yes.

13          Q     But you didn't have the \$20 to give her, and you  
14          wanted to go over to Ms. Leisure to collect the \$20. Is that  
15          the reason this trip was made?

16          A     (WITNESS NODDED HEAD.)

17          Q     In part?

18          A     In part.

19          Q     And you were hoping to get some monies from that, as  
20          well.

21          A     It would have been nice to get my money back, yeah.

22          Q     And this is primarily what you, in fact, told the  
23          police when you were interviewed.

24          A     Yes.

25          Q     Okay. And -- now, while you said that you didn't

1 McMinn.

2           **THE COURT:** I can't hear you very well. If you'll  
3 maybe start back at the top and say what you just said.

4           **MR. SMITH:** I'm going to make a split argument as to  
5 Count Number One. The indictment is very clear the home was  
6 occupied by Angela Leisure and Daniel McMinn. All of the  
7 state's evidence was Mr. McMinn was outside. Ms. Leisure may  
8 well have been inside. I think the state would counterargue,  
9 well, the indictment covered one or both. But the way they  
10 phrased it with the ampersand "and", that is a word of  
11 conjunction, Judge. They both had to be inside the home at  
12 the time. Ampersand is different than and/or. It requires  
13 both of the people to be in the home, and Mr. McMinn, clearly,  
14 was not. I would make that my motion as to Count Number One.

15           **THE COURT:** That's not the motion I expected, but go  
16 ahead. I'll hear arguments, I guess.

17           **MR. SMITH:** As to Count Two, conspiracy, the only  
18 witness that we've had, at this point in the state's evidence,  
19 to make any representation or allusion of conspiracy is  
20 Mr. Linn. He flatly denied a conspiracy occurred. I would  
21 make a motion to dismiss that charge, Judge.

22           Judge, I'll have no argument as to Count Number  
23 Three.

24           On 54674, Count Number One, as to Mr. McMinn, Judge,  
25 in the light most favorable to the state, it's possible the

## Angela Leisure - Direct Examination by Mr. Sweet

1           A     I don't remember. I remember her pulling my hair  
2 and hitting me on the side of my head. Somehow, I got to the  
3 ground. I'm sure I fell to the ground and she probably pushed  
4 me to the ground.

5           Q     Did she say anything to you, at that point in time?

6           A     Yes.

7           Q     Okay. What did she say?

8           A     "Give me my money. Give me money. Give me my  
9 money. Give me the money."

10           MR. WRIGHT: I'm sorry. She said three different  
11 things.

12           THE WITNESS: I don't recall which it was, exactly.  
13 It was about money.

14           MR. WRIGHT: Judge, I've got to object. What I'm  
15 saying is, it's very important. If she doesn't know what she  
16 said -- it's very important. Give me money, give me my money,  
17 give me something. But I'm just trying to find out what  
18 exactly did she say.

19           THE WITNESS: I don't recall, exactly.

20           THE COURT: Just state what you recall, to the best  
21 of your ability.

22           THE WITNESS: Give me the money.

23           Q     So where are you at and where is she at, when she  
24 starts demanding money from you?

25           A     Outside of my bedroom door, in front of the washer



1 youngest son, William. We were getting ready for bed. I  
2 received a call from Mr. Cox, saying, "Come outside." I went  
3 outside, and he was in front of my carport, standing.

4 Q What did you see, at that time?

5 A He had a gun in his left hand, and he said, "Get in  
6 the car," and I got in the car.

7 Q Okay. Was Ms. Jackson around, at that point in  
8 time?

9 A I didn't see her until I got into the car.

10 Q Okay. And what happened once you were inside the  
11 car?

12 A We drove to Angela's house.

13 Q Okay. Now, why did you drive to Angela's house.

14 A Because they wanted to.

15 MR. SMITH: Objection to what they wanted, Judge.

16 THE WITNESS: I believed it was because they wanted  
17 to talk to her about their money.

18 Q Okay.

19 THE COURT: Overruled.

20 Q Who wanted to talk to her about their money? Which  
21 one of these defendants?

22 A I could say James Cox, specifically, but I'm not --  
23 I'm not 100 percent on whether I heard Ashley say that or not.

24 Q Why aren't you 100 percent certain?

25 A I really never -- I tried to kind of keep distance

1 All right, let's bring the jury in, please.

2 (THE JURY RETURNED TO THE COURTROOM AT 1:20  
3 PM.)

4 THE COURT: Okay. All 12 jurors are here in the  
5 courtroom.

6 Will the foreperson of the jury please stand. If  
7 you would state your name, please, sir.

8 JUROR NUMBER SEVEN: My name is William John Potts,  
9 III.

10 THE COURT: Mr. Foreperson, I have gotten a note --  
11 I guess this is your handwriting.

12 JUROR NUMBER SEVEN: Yes, sir.

13 THE COURT: -- on behalf of the jury. Two  
14 questions. The first was, "Can we get clarification of" --  
15 and then, in quotes -- "while the defendant knows that the  
16 defendant is not entitled to take the property," and that's  
17 referring to Page 6, the last line of the robbery definition.  
18 That same line, it's also -- every time the robbery with a  
19 dangerous weapon is defined, it includes that same line.

20 Then you've also asked -- you, the jury, have also  
21 asked, "Is it still robbery to take back one owns -- or one's  
22 own property?" You can have a seat, sir. That's fine. Thank  
23 you.

24 All I can really say is this. That you, as the  
25 juror -- jury -- determine from the evidence what the facts

1 are, and then you take those facts and you apply it to the law  
2 as is given to you in the jury instructions.

3           In the first paragraph, it does say it's absolutely  
4 necessary that you understand and apply the law as I give it  
5 to you and not as you think it is or as you might like it to  
6 be. Each of you has been given a printed copy of the jury  
7 instructions, and all I can really do is simply refer you to  
8 those instructions as to the law that's applicable in this  
9 case. I can reread it all for you, if you would ask, but I  
10 think you've got the copies and you can do that. That's  
11 really all I can say, in answer to that question.

12           I can address lunch. This may be a question you  
13 haven't asked here. What we'll do now is take a lunch recess  
14 of at least an hour, and I'm certainly willing to go an hour  
15 and a half. How long would you prefer? I guess we can either  
16 come back at 2:30 or at 3:00. It's almost 1:30 now, so either  
17 2:30 or 3:00.

18           SEVERAL JURORS: 2:30.

19           THE COURT: Is 2:30 enough time for everybody? I  
20 think we'll be running across the street. So what we'll do,  
21 ladies and gentlemen, is now take a lunch recess and, of  
22 course, you are in deliberation, at this point; however,  
23 you're not to deliberate during lunch and at your separate  
24 tables, or wherever you may go, or whatever.

25           So you've heard this before, but let me say it

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

)  
)  
)  
)  
)  
)  
)

Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT H

NO. 94PA19

FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
 JAMES A. COX )

From Onslow

\*\*\*\*\*

NEW BRIEF FOR THE STATE  
Appellant

\*\*\*\*\*

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SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
 JAMES A. COX )

From Onslow

\*\*\*\*\*

NEW BRIEF FOR THE STATE  
(Appellant)

\*\*\*\*\*

ISSUE PRESENTED

DID THE COURT OF APPEALS ERR BY REVERSING  
DEFENDANT’S CONVICTIONS FOR CONSPIRACY TO  
COMMIT ARMED ROBBERY AND FELONIOUS  
BREAKING OR ENTERING, UPON REASONING THAT  
THERE WAS INSUFFICIENT EVIDENCE OF FELONIOUS  
INTENT UNDER THE “BONA FIDE CLAIM OF RIGHT”  
DEFENSE?

**STATEMENT OF THE CASE**

Defendant was tried jointly with his girlfriend, co-defendant Ashley Jackson, at the 8 January 2018 Criminal Session of Superior Court, Onslow County, before the Honorable William W. Bland. (R p 1) Defendant was charged with first-degree burglary, conspiracy to commit armed robbery, and discharging a firearm into occupied property. (R pp 1-5) (Defendant was also charged with assault with a deadly weapon, injury to real property, and injury to personal property (T p 14); and these three charges were dismissed by the State at the close of all the evidence. (T p 317)) Defendant was convicted of felonious breaking or entering, conspiracy to commit armed robbery, and discharging a weapon into occupied property. (R p 33) The court entered two judgments: the first consolidated the Class D discharging a weapon into occupied property with the Class E conspiracy to commit armed robbery and imposed a term of 60-84 months; and the other judgment, covering felonious breaking or entering, imposed a suspended term of 6-17 months. (R pp 42-45) Defendant appealed.

Defendant did not challenge his conviction for discharging a weapon into occupied property. But the Court of Appeals reversed defendant's convictions for conspiracy to commit armed robbery and felonious breaking or entering, holding that there was insufficient evidence that defendant had felonious

intent to take property to which he was not entitled. State v. Cox, No. COA18-692 (N.C. Ct. App. Mar. 5, 2019), slip op. at 11-12.

As to the first judgment, because the conspiracy to commit armed robbery was consolidated with the unchallenged discharging a weapon into occupied property, the Court of Appeals remanded for resentencing on the Class D discharging a weapon offense alone. And as to the second judgment covering felonious breaking or entering, the Court of Appeals concluded that all that remained without the element of felonious intent was misdemeanor breaking or entering; so the court remanded to superior court to arrest judgment on felonious breaking or entering and to enter judgment on misdemeanor breaking or entering. Cox, slip op. at 12.

The State applied to this Court for a temporary stay, which was granted on 22 March 2019. The State on 9 April 2019 filed a petition for discretionary review on the issue of whether the Court of Appeals erred by reversing for insufficiency of the evidence defendant's convictions for conspiracy to commit armed robbery and felonious breaking or entering. Defendant on 17 April 2019 filed a response to the petition and a conditional petition on two additional issues pertaining to the trial court's and defense counsel's actions in response to questions from the jury. On 16 August 2019, this Court granted the State's petition for discretionary review and supersedeas; and denied defendant's conditional petition. Cox, No. 94PA19 (N.C. Aug. 16, 2019).

**STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW**

Review of the decision of the Court of Appeals is based upon this Court's order of 16 August 2019 allowing the State's petition for discretionary review. N.C.G.S. § 7A-31(c) (2017); N.C. R. App. P. 15 (2019).

**STATEMENT OF THE FACTS**

The facts at trial: Defendant gave \$20 to an acquaintance, Richard Linn, to procure narcotics—Percocet tablets. (T pp 125-26, 277) (This occurred during the summer of 2015. While some evidence at trial indicated defendant gave the money to Linn a month or more before the 8 August incident that was the basis for the charges (T pp 45, 59), other evidence indicated that defendant gave it on 8 August itself. (T pp 277-78, 292))

Richard Linn put some of his own money together with defendant's \$20 and went to his friend and contact, victim Angela Leisure, and gave her \$50-\$60 and asked her to procure the Percocets. (T pp 45, 59, 126) He did not tell her whose money it was. (T p 127) Leisure thought it was all Linn's. (T p 56)

Angela Leisure then gave the money to "the dope man." But the dope man never came back to her with any drugs. (T pp 45, 60) Linn texted Leisure a couple of times asking after the narcotics; and he let her know the money he had given her was not all his money. (T p 127) But she had not received any drugs yet, and so she avoided responding to him. (T pp 60, 127)

Late on the night of 8 August 2015, defendant and his girlfriend Ashley Jackson drove to Linn's house. Defendant showed Linn a gun in his left hand. Linn understood that defendant and Ashley Jackson wanted to talk to Angela Leisure about their money. (T p 129) They all drove to Leisure's house, arriving there in just a few minutes, at about 11:45 p.m. (T pp 30-31, 131-32)

Angela Leisure and her boyfriend Daniel McMinn had just arrived home for the night and McMinn was still outside the house when defendant, Jackson, and Linn pulled in the driveway and walked up to the house quickly. Ms. Jackson was heard to ask "where is Angela," and she went past McMinn into the house. (T pp 88-91) It was clear that all three were there to see Angela Leisure. (T p 91)

After Ms. Jackson entered Leisure's house she went back to the bedroom area and attacked Leisure physically, striking her in the head, pulling her hair, pushing her to the floor, and then straddling her on the floor and striking her and saying, "Give me the money" or "give me my money." (T p 39) The beating lasted a couple of minutes. (T pp 40, 112)

Defendant and Richard Linn came inside the house as well; and defendant displayed his handgun to prevent Leisure's boyfriend Daniel McMinn from using his cell phone to call the police. (T pp 42-43, 95, 137, 169)

Richard Linn ultimately called Ms. Jackson off, saying, "Get off her. That's enough." (T p 43) The three of them then left, and McMinn locked the

front door behind them. (T p 96) McMinn could still hear them outside; and someone seemed angry and wanting to get back inside the house. The lower panel of the front door was then kicked in. (T p 98) Then a gun was fired through the door and a bullet came into the house and struck a mirror down the hallway. (T pp 98, 169, 177)

Leisure, after she had scrambled into her bedroom and locked the door, heard the banging and then a shot. (T p 43) She asked McMinn if he was alright; then they called the police.

Defendant, Linn, and Jackson had not taken any money. (T pp 54, 148) It was defendant who kicked in the panel of Leisure's door (T p 138); and it was defendant who fired the shot into the house from the outside through the door. (T pp 139-40, 174)

Defendant testified at trial. His testimony was that Ms. Jackson was trying to "get what was rightfully hers." (T pp 282, 306) He testified that during the fight, Jackson was asking Leisure "where is my money" or "where is the money." (T p 304) But Angela Leisure was saying, "What money?" (T p 282) That was when Richard Linn butted in and said "you took my \$50 and you took \$20 which was Ms. Jackson's." (T p 282)

Defendant also testified that after they left the house it was Ms. Jackson who kicked in the door (T p 284); and that it was not him who possessed or fired a weapon (T p 284). He testified no one had fired a shot at all. (T p 303)

At the close of all the evidence, defendant moved to dismiss all counts; and the trial court denied the motion. (T pp 316-18)

Court of Appeals' opinion: The Court of Appeals addressed whether the State had presented sufficient evidence of the felonious intent that was necessary for the two convictions that required felonious intent as an element. It did not address defendant's appellate claims regarding the questions sent out from the jury during deliberation (see R p 14; Def.'s COA Br., Issues I & II.), given that its conclusion as to sufficiency was dispositive of the case.

The Court of Appeals quoted language from this Court's opinion in State v. Spratt, 265 N.C. 524, 144 S.E.2d 569 (1965), that

A defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property, or for personal protection and safety of defendant and others, or as a frolic, prank or practical joke, or under color of official authority.

Id. at 526-27, 144 S.E.2d at 571. The Court of Appeals noted that Spratt in turn relied on a line of cases including State v. Lawrence, 262 N.C. 162, 136 S.E.2d 595 (1964). Cox, slip op. at 7.

The Court of Appeals then noted that it had previously questioned this language in Spratt and had rejected the notion that a defendant cannot be guilty of armed robbery in every case, categorically, where the defendant claims a good-faith belief that he had an ownership interest in the property



taken, citing two of its prior cases: State v. Oxner, 37 N.C. App. 600, 604, 246 S.E.2d 546, 548 (1978) (“[W]e reject the defendant’s . . . bona fide claim of right” defense where, among other reasons, he was violating Chapter 90 by dealing in marijuana and where he used a sawed-off shotgun), aff’d without precedential value, 297 N.C. 44, 252 S.E.2d 705 (1979); and State v. Willis, 127 N.C. App. 549, 552, 492 S.E.2d 43, 45 (1997) (questioning Spratt and noting that armed self-help to collect drug debt “is incompatible with an ordered and civilized society”). Cox, slip op. at 8-10. The Court of Appeals also noted in a footnote that a review of other jurisdictions revealed a split across the country on the bona fide claim of right defense and whether it precluded an armed robbery conviction, citing 88 A.L.R.3d 1309 (1978 & Supp. 2018)). Id., slip op. at 8, n. 4.

But ultimately the Court of Appeals concluded that it was “bound to follow and apply” Spratt. Cox, slip op. at 9-10.

Applying the above-quoted language in Spratt then, the Court of Appeals held that the State had presented no evidence in this case tending to show that defendant had felonious intent; rather, that all the evidence here supported defendant’s claim that he and his co-conspirators, Ashley Jackson and Richard Linn, went to Ms. Leisure’s house to retrieve their own money, and that therefore, “under Spratt, defendant could not be guilty of conspiracy to commit robbery with a dangerous weapon because he—and his alleged co-

conspirators—held a good-faith claim of right to the money.” Cox, slip op. at 10. It therefore reversed the conviction for conspiracy to commit armed robbery. Id. at 12. And it similarly reasoned, as to the felony breaking or entering, that since that crime was predicated in this particular case only upon the intent to commit armed robbery, it too failed, requiring reversal and remand for entry of judgment on the lesser-included offense of misdemeanor breaking or entering, which requires no felonious intent. Cox, slip op. at 10-12.

### **STANDARD OF REVIEW**

This Court reviews the Court of Appeals *de novo* for any error of law as to preserved issues. See State v. Brooks, 337 N.C. 132, 149, 446 S.E.2d 579, 590 (1994).

### **ARGUMENT**

#### **I. THE COURT OF APPEALS ERRED BY REVERSING DEFENDANT’S CONVICTIONS, FOR CONSPIRACY TO COMMIT ARMED ROBBERY AND FELONIOUS BREAKING OR ENTERING, UPON REASONING THAT THERE WAS INSUFFICIENT EVIDENCE OF FELONIOUS INTENT UNDER THE “BONA FIDE CLAIM OF RIGHT” DEFENSE.**

The Court of Appeals in this case makes a number of legal errors on its way to holding that no evidence was presented that defendant had the felonious intent necessary for convictions of conspiracy to commit armed robbery and felonious breaking or entering. The resulting Court of Appeals

opinion has the effect of encouraging armed self-help by any persons who believe they are owed a debt, whether legitimate or illegitimate. This Court should not only hold there was sufficient evidence of felonious intent in this case, but also correct the errors of law below and de-incentivize the use of armed self-help, especially as between those involved in the illegal drug trade.

**A. The Court of Appeals fails to recognize that Spratt dealt with instructions rather than sufficiency, and that its language was dictum rather than a holding. There is no “entitlement” to money from drug-dealing; and the jury here could so find.**

This Court in 1965 addressed an issue of unlawful-taking/felonious-intent in State v. Spratt, 265 N.C. 524, 144 S.E.2d 569 (1965), and said that

A defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property, or for personal protection and safety of defendant and others, or as a frolic, prank or practical joke, or under color of official authority.

Id. at 526-27, 144 S.E.2d at 571 (citing cases to be discussed below).

But this statement is pure dictum. This Court’s only holding in Spratt was that because the defendant there relied upon an alibi defense—denying all involvement to the charge that he drew a pistol on a convenience store clerk and grabbed at money in the till—the evidence did not raise any issue on intent to steal at all and, as a result, the trial court’s minimalist instructions on the intent element were not erroneous. Id. at 527, 144 S.E.2d at 572. Spratt is not

a sufficiency of the evidence case, but one about the proper level of detail in jury instructions. This Court in Spratt included the above-quoted language in its opinion only in order to explain that if the facts of that case had contained a more challenging issue as to intent, i.e., any evidence that would have raised conflicting inferences upon which a jury must decide, an instruction with greater “comprehensiveness and specificity” on the issue of intent might have been warranted. Id. at 526-27, 144 S.E.2d at 571-72.

The language in Spratt, which the Court of Appeals now mistakes as a holding, is merely this Court’s restatement or summary of four particular factual scenarios touching on felonious intent, along with citations to the four respective cases in which it had addressed those scenarios: (i) State v. Lawrence, 262 N.C. 162, 136 S.E.2d 595 (1964), is the “bona fide claim of right or title to the property” case; (ii) State v. Lunsford, 229 N.C. 229, 49 S.E.2d 410 (1948), is the “for the personal protection and safety of defendant and others” case; (iii) State v. Curtis, 71 N.C. 56 (1874), is the “as a frolic, prank or practical joke” case; and (iv) the case of State v. Sowls, 61 N.C. 151 (1867), is the “under color of official authority” case.

The last three of these cases, Lunsford, Curtis, and Sowls, are far afield of this case factually and are not pertinent here; but the case of Lawrence, even though it too was a case about instructions rather than about sufficiency of the evidence, is the one that addresses the claim-of-right defense. So it has some

informative value here – and yet what it reveals is the important contrast between the facts of Lawrence and those in this case. Namely, there was no illegitimate contract or drug-dealing in Lawrence, and no use of a firearm.

Lawrence involved a fully legal transaction—the defendant and the victim lawfully purchased and consumed whisky together. But later, the defendant drove the victim to a deserted area and began striking him and saying to him “You owe me something,” to which the victim replied, “What do I owe you . . . I would be glad to pay you.” The defendant answered, “That’s O.K., I’ll get it myself,” and proceeded to forcibly seize the victim’s wallet and take money from it. The defendant then continued beating the victim and struck him on the head with bottles. Defendant did not challenge the assault conviction on appeal; but argued only that the trial court erred in its instructions on robbery by failing to explain the term “felonious taking” because, he argued, it was his belief that he was owed the money that he took from the victim’s wallet and that this negated felonious intent. This Court agreed that the trial court’s instructions failed to capture this nuance, and awarded the defendant a new trial. It said that in light of all the circumstances, a contention by defendant that his actions amounted only to a forcible trespass “may seem unreasonable indeed,” but he was nevertheless entitled to have the jury consider the theory that he was owed the money he took; and because “[t]he learned judge inadvertently failed to give a legal

explanation of the term ‘felonious taking,’ and to apply it to the facts,” a new trial was necessary. Lawrence, 262 N.C. at 168, 136 S.E.2d at 600.

This case, by contrast, deals not with money owed for legitimate activities, like whisky lawfully purchased and consumed, but rather with an illegitimate deal for illegal controlled substances. Defendant here cannot claim lawful entitlement to money given over for illegal substances, and on top of that, employ violent self-help methods to attempt to regain possession of it. The facts and reasoning of Lawrence simply do not apply here, nor do they support the application of the Spratt language to the particular type of illegal transaction and violence employed here.

In sum, because the language in Spratt was not necessary to its holding that the trial court’s instruction on intent was not deficient in light of the defendant’s defense of alibi in that case, the Court of Appeals in this case was not “bound” by Spratt, as it seemed to believe, Cox slip op. at 9-10, on a question of sufficiency of the evidence. Nor is this Court required to follow the language in Spratt as precedent on sufficiency.

The test for sufficiency of the evidence is well-established. In short, the evidence must be viewed in the light most favorable to the State, with the State being entitled to every reasonable inference to be drawn from it, setting aside all contradictions and discrepancies. State v. Osborne, \_\_\_ N.C. \_\_\_, \_\_\_, 831 S.E.2d 328, 333 (2019). If there is any evidence of any kind tending to support

a finding of the defendant's guilt, the case must be submitted to the jury. Id.; State v. Lowery, 309 N.C. 763, 766, 3090 S.E.2d 236 (1983).

Because the Court of Appeals here has put a stamp of approval on the language of Spratt and relied upon it as a "holding" as to sufficiency, which it is not, it has reached the wrong conclusion about sufficiency here; and this Court should reverse. The Court of Appeals' opinion wrongly extends Spratt and Lawrence to wholly novel arenas: sufficiency of the evidence and illegal transactions. And it has the practical effect of removing from the prosecutor's toolbox the most logical charge by which the State discourages armed confrontation as a self-help measure for those who have a belief that they are, whether legitimately or illegitimately, owed money.

There exist, of course, other charges that could fit the basic scenario here—forcible trespass could be charged; various kinds of misdemeanor assault; misdemeanor breaking or entering, etc. Defendant may claim, for that reason, that any charge involving felonious intent should not be permitted in the prosecutor's toolbox—i.e., that it would constitute over-criminalization, or that it would violate some principle touching upon double jeopardy principles or over-punishment. Yet all these other possible charges are mere misdemeanors. First-degree burglary and conspiracy to commit armed robbery are felony charges that carry the kind of punishment that the law allows, and which properly discourage the highly dangerous behavior exemplified by the

facts of this case. The gravamen of armed robbery is not the taking of property; it is the danger associated with the use of firearms and the threat to human life. State v. Ballard, 280 N.C. 479, 485, 186 S.E.2d 372, 375 (1972).

The law simply does not permit a person to employ arms and violence to collect on a perceived debt for illegal drugs. At the very least, the law and the evidence presented here properly allowed the jury to determine whether defendant was “entitled” to take property in this manner. See also State v. Brown, 300 N.C. 41, 47-54, 265 S.E.2d 191, 197-99 (1980) (in armed robbery case, held that despite defendant’s belief that he was entitled to the money or property, there was sufficient evidence to permit the jury to reasonably infer that he feloniously took \$300 by the threatened use of a shotgun against victim’s will by putting him in fear; adequacy of the jury charge addressed separately).

This Court has also held, in a different context, that the intent to use violence to collect on a perceived debt constitutes a felonious intent. In State v. Hager, 320 N.C. 77, 357 S.E.2d 615 (1987), the following constituted “ample evidence” of ill-will in a murder and armed robbery case: testimony that the defendant stated that Ball owed him approximately \$2000 on a drug debt; and, in discussing his intention to collect the money owed to him by Ball, defendant acknowledged that he might have to use violence, indicating that he “might have to tap him in the knees.” Id. at 82-83, 357 S.E.2d at 618.



That this constitutes felonious intent is reasonable. In North Carolina, we have a civil system in place to solve the problems associated with debt collection and to prevent any possible recourse to violent methods. A lessor who wants to take possession of goods when a lessee is insolvent may proceed “without judicial process,” i.e., through self-help, only “if it can be done without breach of the peace.” N.C.G.S. § 25-2A-525(3) (2019). Otherwise, the lessor must proceed “by action,” i.e., by legal process. Id.

The law forbids banks and other legitimate creditors from trying to collect on lawful debts through any sort of means that involve the use or threatened use of violence. See N.C.G.S. § 75-51 (2019); N.C.G.S. § 58-70-95 (2019). “No debt collector” or “collection agency” shall “collect or attempt to collect any debt” alleged to be due and owing by “[u]sing or threatening to use violence or any illegal means to cause harm to the person, reputation or property of any person.” N.C.G.S. § 75-51(a)(1) (2019); N.C.G.S. § 58-70-95(1) (2019). See also Holloway v. Wachovia Bank & Trust Co., 339 N.C. 338, 452 S.E.2d 233 (1994) (automobile repossession aided by use of a firearm and physical battery—held that trial court erred in granting defendant bank summary judgment on civil claims). Creditors must go through proper civil and legal channels to seek redress and to collect on debts.

It cannot be, as a legal matter and as a social policy matter, that we eliminate the most logical and appropriate charges, the only felony charges

which carry any real deterrent, for a person who, having a perceived debt over illegal drug-dealing, goes armed and employs violence to collect on it. To uphold the decision below would be to encourage a very dangerous practice. For those inclined to think they are owed something, particularly those who think they are owed a great deal, the opinion below makes the possibility of misdemeanor punishments an attractive and relatively light cost to pay.

**B. The Court of Appeals' holding neglects the principle of forfeiture and erroneously treats illegal drug-dealing as a legitimate contractual arrangement.**

The Court of Appeals' holding appears to attribute no significance to the fact that defendant here gave money to Ms. Leisure for the purchase of illegal controlled substances. The opinion proceeds largely as if this drug transaction constituted legitimate contractual dealing. The Court of Appeals does note the similarity of the facts here to those in its own prior cases State v. Oxner, 37 N.C. App. 600, 246 S.E.2d 546 (1978), aff'd without precedential value, 297 N.C. 44, 252 S.E.2d 705 (1979), and State v. Willis, 127 N.C. App. 549, 492 S.E.2d 43 (1997), both of which involved perceived debts for illegal drugs, and both of which found that fact to militate against the defendants' appellate claims. And the Court of Appeals does note that these cases, and cases from other jurisdictions, have questioned the principle set out in the Spratt language, and have rejected its principle as an encouragement to violence. See Cox, slip op. at 8, and n. 4 (citing 88 A.L.R. 3d 1309 (1978 & Supp. 2018)). Yet

despite this (and despite that the statement in Spratt is in actuality mere dictum in that case), the Court of Appeals concluded that “we remain bound to follow and apply Spratt.” Cox, slip op. at 9-10. The State believes the Court of Appeals has perhaps given too much deference to this Court’s words, and has overlooked the actual holding of Spratt.

The Court of Appeals should have been guided by the reasoning in its own Oxner and Willis and by the recognition that money either intended for or flowing from the sale of illegal controlled substances is subject to forfeiture. A defendant can claim no interest in it. Section 90-112 of the North Carolina General Statutes provides that the following shall be subject to forfeiture: “All money” which is “acquired, used, or intended for use, in selling, purchasing, manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance in violation of the provisions of this Article.” N.C.G.S. § 90-112 (a)(2) (2017).

This forfeiture principle was an important basis for the decision in Oxner. Although Oxner too was a case about instructions rather than sufficiency of the evidence, and although it was affirmed without precedential value by this Court, it is nevertheless pertinent here for its sound and relevant reasoning:

Oxner rejected the defendant’s “bona fide claim of right” theory as a defense to attempted armed robbery in part because the defendant was

illegally dealing in marijuana and because he used a sawed-off shotgun in carrying out what he believed to be the collection of a debt. Oxner's facts are similar to those here. In Oxner, the defendant's girlfriend Iris Harris gave victim Louis Keith some marijuana. Later, defendant came to Keith, armed, and said, "You have got my money." The defendant pointed the shotgun at him and beat him up, after which Keith was missing \$50. The trial court instructed, in pertinent part, that if the jury found that the defendant took the property through the use of a shotgun, "the defendant knowing that he was not entitled to take the property," then it would be the jury's duty to find him guilty of armed robbery. Oxner, 37 N.C. App. at 603, 246 S.E.2d at 547.

On appeal, the defendant challenged the trial court's instructions as inadequate and argued in part that there was evidence that he was owed the money, and thus that he did not have felonious intent when he took it. The Court of Appeals, however, upheld the trial court's instructions saying, "[W]e reject the defendant's contention that he cannot be found guilty of robbery and forcible taking of property from the actual possession of another where he has a bona fide claim of right or title to the property," and it rejected the defendant's contention that "such belief negates the requisite *animus furandi* or intent to steal." Oxner, 37 N.C. App. at 604, 246 S.E.2d at 548. It cited, among other factors, the fact that the defendant was dealing in marijuana in violation of Chapter 90 and that he used a sawed-off shotgun to aid in his

taking of the property. The Court of Appeals in Oxner concluded, “We renounce the notions that force be substituted for voluntary consent and violence be substituted for due process of law.” Oxner, 37 N.C. App. at 604, 246 S.E.2d at 548.

And Willis goes one step further than Oxner since it is a sufficiency of the evidence case. Like Oxner, Willis also soundly recognized the principle that even if a defendant purports to be merely collecting an owed debt, if it is done with violence and if the debt is for illegal drugs, the defendant has no entitlement to that property, and its taking can constitute armed robbery. In Willis the defendant entered a trailer armed with a shotgun, having been told by a man named Littlejohn that there would be drugs or money for him under the mattress in a bedroom. He asked the occupants of the trailer “where the drugs were,” but they did not know what he was talking about. The defendant then went into the bedroom and came out with a VCR and a black case. At trial, his motion for dismissal of the armed robbery charges was denied; and he advanced his claim on appeal, arguing that for armed robbery, the State must show that the property belongs to the person from whom it is taken, i.e., the occupants of the trailer at the time.

But the Court of Appeals in Willis rejected the idea that ownership of the property was relevant at all, and noted that the felonious intent for armed robbery relates only to whether the property was taken by force or fear from

the person who rightly had possession or control of the property, not who owned it. Thus, it held that the motion to dismiss for insufficiency of the evidence had been correctly denied by the trial court. Willis, 127 N.C. App. at 551-52, 492 S.E.2d at 44-45.

The Court of Appeals in Willis also soundly reasoned that in so holding, it was rejecting the defendant's related argument that he himself had a legitimate ownership interest in the VCR and black case because a man had agreed to give him those items in exchange for a drug purchase. Willis, 127 N.C. App. at 552, 492 S.E.2d at 45. Noting the language from Spratt that "[a] defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property," the Court of Appeals in Willis recognized that other jurisdictions "have rejected this proposition and noted that this type of self-help is incompatible with an ordered and civilized society." Willis, 127 N.C. App. at 552, 492 S.E.2d at 45. According to the Court of Appeals in Willis, the adoption of the defendant's argument "would be but one step short of allowing lawless reprisal to become an acceptable means of redressing grievances." Id. Although it ultimately held that the language from Spratt did not apply because the evidence "simply does not support the defendant's claim that he took the VCR and black case with a good faith belief that he was the lawful owner of those items," id., its concerns—about the dangers of a type of self-help

that is “incompatible with an ordered and civilized society,” and its desire not to foster tolerance for “lawless reprisal,” especially when carried out with firearms—are legitimate and significant.

This Court has rejected constructions that would have the effect of fostering armed violence. See, e.g., State v. Holloman, 369 N.C. 615, 628, 799 S.E.2d 824, 833 (2017) (holding that N.C.G.S. § 14-51.4(2)(a), allowing an aggressor to regain the right to use defensive force under certain circumstances, does not apply in situations in which the aggressor initially uses *deadly* force against the person provoked—otherwise, “gun battles would effectively become legal”).

For the same basic reason, this Court should reverse the Court of Appeals’ opinion here. Obvious public policy reasons exist for strictly limiting the circumstances and methods under which someone should be permitted to enforce the collection of their perceived debts.

This Court has never held that the claim of right defense can apply to property that is the subject of an illegal transaction or to perceived debts based on illegal dealings; and it should reverse a Court of Appeals holding that extends the law in that unwarranted direction, a direction not in harmony with an ordered and civilized society.

**C. The Court of Appeals errs in its belief that the offenses in question are offenses against ownership. They are offenses against rightful possession or control; and here, the jury could have found that defendant was not “entitled” to the money because Leisure was in rightful possession of it.**

Additionally, and in the alternative, the Court of Appeals’ opinion below fails to recognize that felonious or larcenous intent does not turn on who owns the property, but rather on who has the right to possession and control. To be sure, ownership often satisfies this right. The language of ownership, and ownership as a general feature, is seen in many of the cases dealing with the question of felonious or larcenous taking. But ownership is not required. See Perkins and Boyce, *Criminal Law*, 297 (3rd ed. 1982) (“Larceny is an offense against possession. . . . Even the owner himself may commit larceny by stealing his own goods if they are in the possession of another and he takes them from the possessor wrongfully with intent to deprive him of a property interest therein.”); State v. Mason, 279 N.C. 435, 440-41, 183 S.E.2d 661, 664 (1971); State v. Lynch, 266 N.C. 584, 586, 146 S.E.2d 677, 679 (1996); see also Willis, 127 N.C. App. at 551-52, 492 S.E.2d at 44-45 (ownership of the property not relevant at all; felonious intent for armed robbery relates only to whether the property was taken by force or fear from the person who rightly had possession or control of the property, not who owned it).



Here, even if this illegitimate drug deal were to be somehow recognized as a legitimate contract, Ms. Leisure would need to be recognized as having been rightfully in possession of the money as a bailee; and defendant, unless he demonstrated that the term of the deal had expired, would not have been “entitled” to take even his own money from her by force. That is to say, defendant’s evidence that the money was “his own” or, along with his co-conspirators, “theirs,” is of no significance at all. The only question is whether they violated Leisure’s rightful possession.

Thus, even if the money in Leisure’s possession were defendant’s money, defendant presented no evidence to counter his felonious/unlawful intent in trying to take it from the person who was in rightful possession. By defendant’s own trial testimony, he gave \$20 to Richard Linn on 8 August 2015, and later that same night went armed to retrieve it from the person with whom Linn had made the arrangement. (T pp 277-80, 292) There was no evidence of any time-limiting-element in the terms of this deal; and an expectation of delivery within 24 hours of placing the order is a term that cannot be simply presumed in a vacuum. At the very least, the evidence here presented a question of fact for the jury—the jury could very well decide on these facts that defendant was not “entitled” to even his own money under these circumstances.

**D. In addition, the Court of Appeals erred by finding insufficient evidence of conspiracy, as conspiracy can be supported by evidence of an agreement to do an unlawful act or to do a lawful act in an unlawful way.**

Finally, even if for the sake of argument defendant was entitled to take the money he felt he was owed from Ms. Leisure under a bona fide claim of right to it, negating felonious intent, it is still the case that there would be sufficient evidence here of conspiracy to commit armed robbery due to the unlawful way in which defendant and his confederates carried out the plan. Conspiracy is defined, as it has been for over a century, as “an agreement, express or implied, between two or more persons, to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means.” State v. Roache, 358 N.C. 243, 281, 595 S.E.2d 381, 406 (2004); see also State v. Barnes, 345 N.C. 184, 216, 481 S.E.2d 44, 61 (1997), cert. denied, 523 U.S. 1024, 140 L. Ed. 2d 473 (1998) (“A criminal conspiracy is an express or implied agreement between two or more persons to do an unlawful act, to do a lawful act in an unlawful way, or to do a lawful act by unlawful means.”); State v. McCullough, 244 N.C. 11, 16-17, 92 S.E. 2d 389, 392 (1956) (defendant’s agreement to transport beer in his truck, done without the truck being registered for the purpose of transporting beer as required by law, and no bill of lading, sufficient to sustain conviction of conspiracy); State v. Dalton, 168 N.C. 204, 205, 83 S.E. 693, 694 (1914) (conspiracy is generally defined to be “an agreement between

two or more individuals to do an unlawful act or to do a lawful act in an unlawful way”; held that an indictment, charging that employees of a rival company unlawfully conspired to injure the business of another by resorting to systematic falsehoods and misrepresentations, sufficiently charged conspiracy).

“Unlawful act” and “lawful act done in an unlawful way” tend to blend together in practice—the unlawful methods tend to turn the act into an unlawful act. But to the extent that the “lawful act” here can be compartmentalized as the attempt to retrieve one’s own money, lawful by itself, then the means by which it was carried out here, by threatened use of a firearm, was certainly an unlawful method. The indictment here charges the most serious version of the completed act, and so put defendant on notice of the State’s allegations of his means, i.e., use of a firearm. And the evidence supported submission of conspiracy to the jury, because there was ample proof that the three confederates agreed to the methods they employed.

“Direct proof” of a charge of conspiracy is not essential, for such is rarely obtainable; proof is generally established by “a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy.” State v. Whiteside, 204 N.C. 710, 712, 169 S.E. 711, 712 (1933); State v. Gibbs, 335 N.C. 1, 48, 436 S.E.2d 321, 348 (1993), cert. denied, 512 U.S. 1246, 129 L. Ed. 2d 881 (1994). A

conspiracy may be an implied understanding rather than an express agreement. State v. Arnold, 329 N.C. 128, 142, 404 S.E.2d 822, 831 (1991).

Here, the evidence demonstrates, at the very least, an agreement to act in “an unlawful way” or by “unlawful means”: Defendant showed Richard Linn a gun in his left hand, and Linn then got in the car with him and Ashley Jackson; all knew they were going to drive over to Angela Leisure’s house to confront her about the money. (T p 129) They drove to Leisure’s house together. (T pp 30-31, 131-32) All were present and participated in entering the house, where Jackson attacked Leisure. Jackson was aided by defendant’s display of the weapon to ensure that Leisure’s friend did not call the police (T pp 42-43, 95, 137, 169); and Jackson was eventually called off by Linn, who said, “Get off her. That’s enough.” (T p 43) As they left, defendant kicked in Leisure’s door from outside, and then discharged the firearm into her house. (T pp 138-40) Taken collectively, this evidence points unerringly to the existence of a conspiracy to, at the very least, act by unlawful means.

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In conclusion, the Court of Appeals has committed legal error in a number of ways that require correction from this Court. As to sufficiency of the evidence to support the conviction, there are a number of different ways under which the jury here could have concluded that defendant was not entitled to the property, that is, that he had felonious intent when he conspired

with others and tried to take the money: there is no entitlement to drug money; there is no entitlement to use firearms and violent means; and there is no entitlement to take something from someone in rightful possession.

The State asks that this Court:

-expressly reject the Court of Appeals' interpretation and application of the language in Spratt to this sufficiency of the evidence case;

-hold that felonious intent can be shown where a defendant, even believing he is owed a debt, uses arms and violence to collect it, that is to say, hold that the "bona fide claim of right" defense does not apply to armed and violent acts or to debts incurred via illegal dealing;

-re-state and clarify that the unlawful taking or felonious intent element of armed robbery pertains to the possessor's right to possess or control property, not to ownership of it;

-and hold that sufficient evidence of conspiracy exists where there is an agreement, even if at some core level the result of the act would be lawful, to carry out an act in an unlawful way or by unlawful means.

It is important that the Court address these matters expressly because, assuming this Court reverses the Court of Appeals' sufficiency holding and then remands to that court for consideration of the issues that it bypassed, the State's position is that, under a proper interpretation of the law, defendant cannot meet his burden of showing (i) plain error or prejudice from the way the

trial court responded to the jury's questions, or (ii) ineffective assistance of counsel for failing to request further instructions. That is to say, even if the jury had been instructed in more detail regarding the meaning of "entitled to take the property" (and in accordance with the principles set out by the State in this New Brief), such instructions would not have aided defendant, but rather, the reverse. The resulting verdict would have been the same.

### **CONCLUSION**

For the foregoing reasons, the State respectfully asks this Court to reverse the decision of the Court of Appeals and remand to that court for its consideration of the issues that its holding bypassed.

Electronically submitted this the 16th day of October, 2019.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing NEW BRIEF FOR THE STATE upon the DEFENDANT by electronic mail, addressed to his ATTORNEY OF RECORD as follows:

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Assistant Appellate Defender  
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Electronically submitted this the 16th day of October, 2019.

Electronically Submitted  
Daniel P. O'Brien  
Special Deputy Attorney General

STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

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Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT I



No. 94PA19

FOURTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA     )  
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JAMES A. COX                     )

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DEFENDANT-APPELLEE'S NEW BRIEF

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SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	)
	)
v.	)
	)
JAMES A. COX	)

\*\*\*\*\*

DEFENDANT-APPELLEE'S NEW BRIEF

\*\*\*\*\*

ISSUE PRESENTED

**Whether the Court of Appeals correctly held, in accordance with hundreds of years of precedent, that a person who seeks only to recover his own property lacks felonious intent to commit robbery?**

## STATEMENT OF THE FACTS

During the summer of 2015, Angela Leisure was addicted to pills, marijuana, and cocaine. Ms. Leisure and Richard Linn were friends and sometimes got drugs from one another. (Tpp 29-30) Mr. Linn used Ms. Leisure as a go-between to get narcotics. He gave her money to buy drugs. She got the drugs and gave them to Mr. Linn. Mr. Linn had purchased drugs from Ms. Leisure approximately ten times over the previous two years. (Tpp 29, 63, 122)

Mr. James Cox and Ms. Ashley Jackson dated during the summer of 2015. (Tp 130) Sometime prior to 8 August 2015, Mr. Cox gave Mr. Linn \$20 to buy some Percocet pills. (Tpp 125-26) Mr. Cox testified the pain relievers were to treat Ms. Jackson's back pain. (Tpp 277-78, 293)

Mr. Linn gave Mr. Cox's \$20 and some of his own money to Ms. Leisure to buy Percocet pills. (Tpp 44-45, 126-27) Mr. Linn did not tell her that some of the pills were for someone else. (Tpp 45, 126) Ms. Leisure testified that Mr. Linn gave her the money for the Percocet pills about a month before 8 August 2015. She gave the money to "the dope man" but never got the Percocet pills or the money back. (Tpp 45, 60)

Ms. Leisure testified that she never delivered the Percocet pills to Mr. Linn and never returned the money. (Tp 57) During the month prior to 8 August 2015, Mr. Linn tried to contact Ms. Leisure. He asked her, "Where is my money?" and asked for his money back. (Tpp 46, 59) Mr. Linn texted Ms.

Leisure to tell her it was not all his money. He tried to get in touch with her, but did not receive a response. (Tp 127) Ms. Leisure testified she knew Mr. Linn wanted his money back, but she was avoiding him because “the dope man” did not give her any Percocet pills and did not return the money. (Tp 60) Mr. Linn also felt Ms. Leisure was avoiding him. (Tp 145)

Prior to 8 August 2015, Mr. Cox and Ms. Jackson asked Mr. Linn about the \$20. (Tp 127) On 8 August 2015, Mr. Cox and Ms. Jackson went to Mr. Linn’s house. Mr. Linn testified that Mr. Cox had a gun. (Tp 129) Mr. Cox testified he never had a gun that evening. (Tp 279) Mr. Cox, Ms. Jackson, and Mr. Linn then drove to Ms. Leisure’s house to talk to her about their money. (Tp 129) They wanted their money back from Ms. Leisure. (Tp 146)

Ms. Leisure and her boyfriend, Daniel McMinn, returned to her house around 11:45 p.m. on 8 August 2015. (Tpp 29-31) Ms. Leisure went inside, leaving the door open, and Mr. McMinn saw a car pull up. Mr. Linn, Ms. Jackson, and Mr. Cox walked up to the house quickly and Ms. Jackson said, “Where is Angela?” (Tpp 88-90, 110) Ms. Jackson, Mr. McMinn, Mr. Linn, and Mr. Cox all went inside the house. (Tpp 90, 93)

Ms. Leisure testified that Ms. Jackson assaulted her by pulling her hair and hitting the side of her head. Ms. Leisure testified that she fell down and Ms. Jackson said, “Give me my money. Give me money. Give me my money. Give me the money.” (Tpp 38-39) Ms. Jackson and Ms. Leisure fought for a



minute or two. Mr. McMinn testified he pulled out his cell phone to call the police, but Mr. Cox showed a gun, so he put his phone back into his pocket and went “into chill mode.” (Tp 95) Mr. Cox testified that when Mr. McMinn moved towards Ms. Jackson, he put up his hands in a “stopping motion” and said he would get Ms. Jackson; he never displayed a gun. (Tp 283)

At some point, Mr. Linn said “Get off her. That’s enough.” Ms. Jackson got up and she, Mr. Linn, and Mr. Cox left. Once they were outside, Ms. Leisure and Mr. McMinn heard someone kick the door and fire a gunshot that hit a mirror inside the house. (Tpp 43, 98) Mr. Linn testified Mr. Cox kicked and shot at the door. (Tpp 138-39) Mr. Cox testified Ms. Jackson kicked the door and no one had a weapon or fired a gunshot. (Tpp 284, 303)

The State charged Mr. Cox with first-degree burglary, conspiracy to commit robbery with a dangerous weapon, discharging a firearm into occupied property, assault with a deadly weapon, injury to real property, and injury to personal property. (Rpp 5, 8) At the close of all the evidence, the State dismissed the charges of assault with a deadly weapon, injury to real property, and injury to personal property. (Tp 317)

The trial court instructed that in order to find Mr. Cox guilty of felonious breaking or entering as a lesser-included offense of first-degree burglary, the jury had to find he acted with an intent “to commit robbery with a dangerous weapon[.]” (Tp 356) The trial court instructed that to find Mr. Cox guilty of

conspiracy to commit robbery with a dangerous weapon, it had to find he entered into an agreement with Ashley Jackson “to commit robbery with a dangerous weapon.” (Tpp 358-59)

During deliberations, the jury asked, “Can we get clarification of ‘while the defendant knows that the defendant is not entitled to take the property’ page 6 last line of robbery definition.” The jury also asked, “Is it still robbery to take back one owns property?” (Rp 14) The trial court understood the jury to be asking whether it was still robbery to take back “one’s own property.” (Tp 371) The trial court responded to the jury, “All I can really say is this. That you, as the juror – jury – determine from the evidence what the facts are, and then you take those facts and you apply it to the law as is given to you in the jury instructions.” (Tpp 375-76) The jury found Mr. Cox guilty of felonious breaking or entering, conspiracy to commit robbery with a dangerous weapon, and discharging a firearm into occupied property. (Rp 33)

In *State v. Cox*, 825 S.E.2d 266 (N.C. Ct. App. 2019), the Court of Appeals reversed Mr. Cox’s convictions for felonious breaking or entering and conspiracy to commit robbery with a dangerous weapon. The Court held that “all of the evidence proffered at trial supports Defendant’s claim that Defendant, Linn, and Jackson went to Leisure’s house to retrieve their own money.” Thus, Mr. Cox “could not be guilty of Conspiracy to Commit Robbery with a Dangerous Weapon because he—and his alleged co-conspirators—held

a good-faith claim of right to the money.” *Id.* at 270 (citing *State v. Spratt*, 265 N.C. 524, 526-27, 144 S.E.2d 569, 571 (1965)). The Court of Appeals further held “the trial court also erred in denying Defendant’s Motion to Dismiss the charge of Felonious Breaking or Entering, which was expressly only predicated on the felony of Robbery with a Dangerous Weapon.” Thus, the Court reversed that conviction and remanded for entry of judgment on misdemeanor breaking or entering. *Id.* at 270-71.

### ARGUMENT

**The Court of Appeals correctly held, in accordance with hundreds of years of precedent, that a person who seeks only to recover his own property lacks felonious intent to commit robbery.**

The State does not contest the Court of Appeals’ determination that “all of the evidence” at trial showed Mr. Cox, Ms. Jackson, and Mr. Linn sought only to recover their own money. Accordingly, this case is very simple. The Court of Appeals followed hundreds of years of precedent, dating all the way back to England, in holding that a person who seeks only to recover his own property lacks felonious intent to commit robbery. Therefore, the Court of Appeals correctly held the State presented insufficient evidence of felonious breaking or entering and conspiracy to commit armed robbery, both of which were predicated on a finding of intent to commit robbery. This Court should affirm.

***A. The Court of Appeals correctly held, in line with hundreds of years of precedent, that a person who seeks only to recover his own property lacks felonious intent to commit robbery***

As a starting point, it is vital to recognize the State does not contest the Court of Appeals' determination that "*all of the evidence* proffered at trial supports Defendant's claim that Defendant, Linn, and Jackson went to Leisure's house to retrieve their own money." *State v. Cox*, 825 S.E.2d 266, 270 (N.C. Ct. App. 2019) (emphasis added). Instead, the State argues the Court of Appeals erroneously relied upon *dicta* in *State v. Spratt*, 265 N.C. 524, 144 S.E.2d 569 (1965), and that *Spratt* does not apply because it dealt with a jury instruction issue. The State is mistaken. First, the challenged language in *Spratt* was necessary to its decision and reflected settled law, stretching all the way back to England, that a person cannot steal his own money. Second, it is immaterial that *Spratt* involved a challenge to jury instructions rather than the sufficiency of the evidence.

In *Spratt*, the defendant argued the trial court erred by failing to instruct the jury on the element of felonious intent for attempted armed robbery. To start the analysis, this Court recognized that "[a] taking with 'felonious intent' is an essential element of the offense of armed robbery, of attempt to commit armed robbery, and of common law robbery[.]" *Id.* at 526, 144 S.E.2d at 571. This Court then recognized that the "comprehensiveness and specificity of

the definition and explanation of ‘felonious intent’ required in a charge depends on the facts in the particular case” and

where the evidence relied on by defendant tends to admit the taking but to deny that it was with felonious intent, it is essential that the court fully define the “felonious intent” contended for by the State and also explain defendant’s theory as to the intent and purpose of the taking, in order that the jury may understandingly decide between the contentions of the State and defendant on that point.

*Id.* As to a “defendant’s theory as to the intent and purpose of the taking,” this Court recognized,

A defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property, or for the personal protection and safety of defendant and others, or as a frolic, prank or practical joke, or under color of official authority.

*Id.* at 526-27, 144 S.E.2d at 571. Thus, “Where such defenses are specifically interposed and arise on the evidence, defendant is entitled to such explanation of the law as will serve to bring clearly into focus the conflicting contentions.”

*Id.* at 527, 144 S.E.2d at 572.

In applying these legal principles to the facts, this Court held that “the defendant pleaded and offered evidence tending to prove an alibi. The *evidence* did not raise a direct issue as to intent.” *Id.* at 527, 144 S.E.2d at 572 (emphasis in original). Thus, the instruction that the jury had to find an “intent to rob” was “a sufficient definition of ‘felonious intent’ as applied to the robbery

statute, *in the absence of evidence raising an inference of a different intent or purpose.*” *Id.* (emphasis added) In other words, because the defenses of a *bona fide* claim of right, etc., were not “specifically interposed” and did not “arise on the evidence,” a more comprehensive definition of felonious intent was not required.

“When an opinion issues for the Court it is not only the result but also those portions of the opinion necessary for that result by which [courts] are bound[.]” *Seminole Tribe v. Fla.*, 517 U.S. 44, 66, 135 L. Ed. 2d. 252, 273 (1996), because *stare decisis* directs courts “to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law.” *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 668, 106 L. Ed. 2d 472, 543 (1989) (Kennedy, J., concurring and dissenting). In order to address the defendant’s argument in *Spratt* that the instruction on felonious intent was insufficient, this Court had to explain the circumstances under which an expanded definition of felonious intent is necessary. Thus, this Court’s recitation of the law on felonious intent was part and parcel of its ultimate holding.

Furthermore, this Court’s explication of the law as to felonious intent in *Spratt* was in line with an unbroken string of cases stretching from the present all the way back to England, and holding that a person who seeks only to recover his own property lacks felonious intent. Indeed, even after *Spratt*, this

Court held, “Felonious intent is an essential element of the crime of robbery with firearms and has been defined to be the intent to deprive the owner of *his goods* permanently and to appropriate them to the taker’s own use.” *State v. Brown*, 300 N.C. 41, 47, 265 S.E.2d 191, 196 (1980) (emphasis in original).

Prior to *Spratt*, this Court decided *State v. Lawrence*, 262 N.C. 162, 136 S.E.2d 595 (1964), where the defendant struck the victim with his fists and said, “You owe me something.” When the victim offered to pay the defendant, the defendant responded, “That’s O.K., I’ll get it myself” and took money from the victim’s wallet. On appeal, the defendant argued the trial court erred by failing to sufficiently “inform the jury of the specific felonious intent requisite to constitute robbery in a forcible taking[.]” *Id.* at 164, 136 S.E.2d at 597. This Court agreed, holding the evidence that the defendant told the victim “he owed him something and he (defendant) would get it himself” tended to negate felonious intent, and therefore the trial court “failed to give a legal explanation of the term ‘felonious taking,’ and to apply it to the facts.” *Id.* at 168, 136 S.E.2d at 600.

Even before *Lawrence*, this Court held that a trial court did not err by instructing the jury that “[a] man cannot be convicted of larceny in taking his own property, and if the defendant had such property he cannot be convicted.... Now, did the defendant take the mule, believing at the time that she was his property? He swears that he did, and if he honestly so believed, this would take

from the act an element essential to the constitution of the crime--the felonious intent.” *State v. Thompson*, 95 N.C. 596 (1886).

Finally, in *State v. Sows*, 61 N.C. 151 (1867), this Court cited with approval *Hall’s case*, 3 Car. & P. 409 (14 Eng. C. L. Rep. 337), where the defendant set a trap and caught a pheasant, and a gamekeeper started to take them away. When the defendant asked for them back, and the gamekeeper refused, the defendant lifted a large stick and “threatened to beat out his brains if he did not deliver them[,]” at which point the gamekeeper gave them back. The Court ruled that even if the defendant “might be liable to penalties for having them in his possession, yet if the jury think that he took them under a *bona fide* impression that he was only getting back the possession of his own property, there was no *animus furandi*, and the prosecution must fail.”

The settled law that a person who seeks only to recover his own property lacks felonious intent is not confined to the jury instruction context. Indeed, when examining the sufficiency of indictments, this Court has also held, “[I]n an indictment for robbery the allegation of ownership of the property taken is sufficient *when it negatives the idea that the accused was taking his own property.*” *State v. Mason*, 279 N.C. 435, 440, 183 S.E.2d 661, 664 (1971) (quoting *State v. Sawyer*, 224 N.C. 61, 65-66, 29 S.E.2d 34, 37 (1944) (emphasis added)). Thus, the law appears to be uniform that a person who seeks only to recover his own property lacks felonious intent.



Furthermore, the jury's questions in this case also tend to show the public's understanding that a person cannot steal his own property. The jury actually asked the trial court, "Can we get clarification of 'while the defendant knows that the defendant is not entitled to take the property' page 6 last line of robbery definition[,] and, "Is it still robbery to take back one[]s own[] property?" (Rp 14) The jury's questions tend to show the jury's, and therefore the general public's, difficulty with the notion that a person can steal his own property.

Additionally, the fact that the superior court judges who draft our pattern jury instructions also recognize the claim of right defense to robbery and larceny further illustrates the settled nature of this law. *See* N.C.P.I.—Crim. 217.10 n.4 ("In the event that a defendant relies on claim of right, the jury should be told that if the defendant honestly believed he was entitled to take the property, he cannot be guilty of robbery"); N.C.P.I.—Crim. 216.11 n.5 (same with respect to larceny, citing "Perkins & Boyce, CRIMINAL LAW, 3d Ed. (1982), at 326.").

Thus, the law is clear that a person who seeks only to recover his own property lacks felonious intent to commit robbery. Accordingly, because it is uncontested that "*all of the evidence proffered at trial* supports Defendant's claim that Defendant, Linn, and Jackson went to Leisure's house to retrieve their own money," the Court of Appeals correctly held the trial court erred by

denying Mr. Cox's motion to dismiss. Indeed, when "the State's case is made to rest entirely on testimony favorable to the defendant and there is no evidence *contra* which does more than support a possibility or raise a conjecture, demurrer thereto should be sustained." *State v. Allison*, 319 N.C. 92, 98, 352 S.E.2d 420, 423-24 (1987).

In *Allison*, the defendant was convicted of attempted robbery with a dangerous weapon, and this Court held that the "uncontradicted evidence offered by the State in this case, that Allison informed the police of the intended robbery beforehand and later assisted the police in gathering evidence, does not permit a reasonable inference that defendant had the specific intent to unlawfully deprive the store owner of his personal property." *Id.* at 97, 352 S.E.2d at 423. As a result, this Court held the State "failed to produce substantial evidence of Allison's specific intent to unlawfully deprive the victim of personal property, an essential element of attempted armed robbery. Thus, the trial court erred in denying defendant's motions to dismiss." *Id.* at 98, 352 S.E.2d at 424; *see State v. Cook*, 242 N.C. 700, 89 S.E.2d 383 (1955); *State v. Foy*, 131 N.C. 804, 42 S.E. 934 (1902).

The same is true here. The State failed to present sufficient evidence of an essential element of the offenses-felonious intent to commit robbery. Indeed, to convict Mr. Cox of felonious breaking or entering, the jury had to find that he "intended to commit a felony, robbery with a dangerous weapon, within the

dwelling house.” (Tp 355) To convict Mr. Cox of conspiracy, the jury had to find that he and Ms. Jackson entered into an agreement “to commit robbery with a dangerous weapon.” (Tpp 358-59)

The State’s argument that the explication of the law in *Spratt* does not govern because *Spratt* was a jury instruction case also must fail. The “substantial evidence” standard for whether there was sufficient evidence of every element of a crime is the same as the “substantial evidence” standard for whether a jury instruction on an element was supported. *Compare State v. Campbell*, 2019 N.C. LEXIS 1190, \*8 (Dec. 6, 2019), *with State v. Dick*, 370 N.C. 305, 308, 807 S.E.2d 545, 547 (2017). In order to perform either task, our appellate courts must say what the law is. Once the appellate court states what the law is, whether it is necessary to adjudicate a jury instruction claim or a sufficiency of the evidence issue, that law becomes the common law of North Carolina.

Indeed, this Court has looked to the law in cases dealing with the sufficiency of jury instructions when deciding the sufficiency of the evidence. For example, in *Brown*, this Court addressed the defendant’s claim that “the State has failed to prove the essential element of felonious intent.” *Brown*, 300 N.C. at 46-47, 265 S.E.2d at 195-96. In deciding that issue, this Court relied upon its earlier decisions in *State v. Lunsford*, 229 N.C. 229, 49 S.E.2d 410 (1948), and *Sowls*, 61 N.C. 151, in which this Court had granted new trials

because the trial courts erroneously failed to give the defendants' requested instructions on felonious intent. *Brown*, 300 N.C. at 47-50, 265 S.E.2d at 196-97.

The State also argues the Court of Appeals' decision "has the practical effect of removing from the prosecutor's toolbox the most logical charge by which the State discourages armed confrontation as a self-help measure for those who have a belief that they are, whether legitimately or illegitimately, owed money." The State further argues that any "other possible charges are mere misdemeanors." (State's Brief, p 14)

But, the Court of Appeals' decision does not in any way sanction "armed confrontation as a self-help measure[.]" In reality, the Court of Appeals merely issued a narrow holding, in line with well-settled law, that a person who seeks only to recover his own property lacks felonious intent.

The State ignores the fact that Mr. Cox was punished for "armed confrontation as a self-help measure" because he was also convicted of the Class D felony of discharging a firearm into occupied property. Moreover, the State neglects to mention that it actually did charge Mr. Cox with three other crimes—assault with a deadly weapon, injury to real property, and injury to personal property—but chose to dismiss those charges. The fact that they were misdemeanors is immaterial. Countless felonies and misdemeanors exist to punish "armed confrontation as a self-help measure."

Furthermore, it is simply not this Court's role to "de-incentivize the use of armed self-help[.]" (State's Brief, p 10) "The General Assembly is the 'policy-making agency' because it is a far more appropriate forum than the courts for implementing policy-based changes to our laws." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 169, 594 S.E.2d 1, 8 (2004) (citation omitted).

Moreover, despite the unbroken line of this Court's cases holding that a person who seeks only to recover his own property lacks felonious intent to commit robbery, the General Assembly has not acted to change the law. Thus, "[b]ecause the General Assembly has not done so, it is clear that the legislature has acquiesced" in this Court's jurisprudence on felonious intent. *State v. Jones*, 358 N.C. 473, 483-84, 598 S.E.2d 125, 131-32 (2004).

The State also asserts that this Court has held that "the intent to use violence to collect on a perceived debt constitutes a felonious intent" in *State v. Hager*, 320 N.C. 77, 357 S.E.2d 615 (1987). (State's Brief, p 15) But *Hager* has absolutely nothing to do with felonious intent to commit robbery. This Court simply held there was sufficient evidence of premeditation and deliberation for first-degree murder. In doing so, it merely recited the evidence of an attempt to collect on a debt in support of the premeditation and deliberation factor that there was "ill-will or previous difficulty between the parties[.]" *Id.* at 82-83, 357 S.E.2d at 618.

The State also cites a variety of civil law provisions and asserts, “Creditors must go through proper civil and legal channels to seek redress and to collect on debts.” (State’s Brief, p 16) That may be true as a matter of civil law, but those provisions have no bearing on whether a person who seeks only to recover his own property has felonious intent to commit robbery. None of those provisions make noncompliance a felony. Indeed, none even make noncompliance a crime.

In sum, this Court should affirm the Court of Appeals and continue to hold that a person who seeks only to recover his own property lacks felonious intent to commit robbery. “[T]he doctrine of *stare decisis* is of fundamental importance to the rule of law.” *Welch v. Texas Dept. of Highways and Public Transportation*, 483 U.S. 468, 494, 97 L. Ed. 2d 389, 410 (1987). *Stare decisis* ensures that “the law will not merely change erratically” and “permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.” *Vasquez v. Hillery*, 474 U.S. 254, 265, 88 L. Ed. 2d 598, 610 (1986).

However, even if this Court decides to overrule the line of cases holding that a person who seeks only to recover his own property lacks felonious intent, it should do so only prospectively. In *State v. Vance*, 328 N.C. 613, 403 S.E.2d 495 (1991), this Court abolished the common law rule that “a killing was not

murder unless the death of the victim occurred within a year and a day of the act inflicting injury.” *Id.* at 617-19, 403 S.E.2d at 498-99. However, this Court recognized that to apply its decision “abrogating the year and a day rule to permit the defendant to be convicted of murder in the present case would, at the very least, permit his conviction upon less evidence than would have been required to convict him of that crime at the time the victim died[.]” *Id.* at 622-23, 403 S.E.2d at 501. Thus, this Court held the “prohibitions against *ex post facto* laws embodied in the fifth and fourteenth amendments to the Constitution of the United States require that we give this decision abolishing the year and a day rule prospective effect only.” *Id.* at 621, 403 S.E.2d at 500. Accordingly, this Court reversed the defendant’s conviction for second-degree murder. *Id.*

Likewise, if this Court modifies the settled common law in this case, any application of that change to Mr. Cox would, at the very least, “permit his conviction upon less evidence than would have been required to convict him of” conspiracy and breaking or entering at the time of the offenses. *Id.* at 622-23, 403 S.E.2d at 501. Thus, the *ex post facto* clauses of the federal and state constitution, N.C. Const. art. I, §16, should also prohibit any application of a change in the law to Mr. Cox.

***B. The State's new claim that Mr. Cox's money was subject to forfeiture is unreserved and meritless***

The State next argues “[t]he Court of Appeals’ holding appears to attribute no significance to the fact that defendant here gave money to Ms. Leisure for the purchase of illegal controlled substances.” (State’s Brief, p. 17) There are two good reasons for that. First, because the State makes this argument for the first time in this Court, the Court of Appeals did not have an opportunity to address that argument.

In *State v. Romano*, 369 N.C. 678, 800 S.E.2d 644 (2017), the State argued for the first time on appeal that the good faith, inevitable discovery, and independent source exceptions to the exclusionary rule applied. This Court held, “A review of the record reveals that the State did not advance these arguments at the suppression hearing; accordingly, the issues are waived and are not properly before this Court.” *Id.* at 693, 800 S.E.2d at 654.

Similarly, the State did not make this argument to the trial court. Moreover, the State never made this argument in its brief to the Court of Appeals. Thus, the State, as the appellant in this Court, failed to preserve this issue for appeal.

Second, even if this Court addresses the State’s new argument, it fails. The State cites N.C. Gen. Stat. §90-112 and asserts “that money either



intended for or flowing from the sale of illegal controlled substances is subject to forfeiture. A defendant can claim no interest in it.” (State’s Brief, p 18)

However, the State neglects to inform this Court that “section 90-112(a)(2) is a criminal, or *in personam*, forfeiture statute rather than a civil, or *in rem*, forfeiture statute.” *State v. Woods*, 146 N.C. App. 686, 690-91, 554 S.E.2d 383, 386 (2001) (citing *State ex rel. Thornburg v. Currency*, 324 N.C. 276, 378 S.E.2d 1 (1989)). “Criminal forfeiture, therefore, must follow criminal conviction.” *State v. Johnson*, 124 N.C. App. 462, 476, 478 S.E.2d 16, 25 (1996).

Here, however, Mr. Cox was not convicted of any Chapter 90 offense involving a controlled substance. Indeed, no drug deal even took place. While Mr. Cox and Mr. Linn gave money to Ms. Leisure for the purchase of Percocets, no sale ever occurred. Thus, the money Ms. Leisure owed to Mr. Cox, Mr. Linn, and Ms. Jackson was not subject to forfeiture.

The State also relies upon *State v. Oxner*, 37 N.C. App. 600, 246 S.E.2d 546 (1978), *aff’d without precedential value*, 297 N.C. 44, 252 S.E.2d 705 (1979), and *State v. Willis*, 127 N.C. App. 549, 492 S.E.2d 43 (1997). First, the Court of Appeals’ decision in *Oxner* has no precedential value whatsoever. Second, *Oxner* and *Willis* are distinguishable.

*Oxner* is distinguishable because it involved an attempt to recover money allegedly owed after an actual transfer of marijuana, whereas there was no drug deal in this case. But also, the Court of Appeals recognized that trial

courts need not instruct juries to find the defendant took property “with the specific intent to convert [it] to his own use where the issue was not the intent with which the [property] [was] taken but whether [it] [was] taken at all.” *Id.* at 603, 246 S.E.2d at 548 (citing *State v. Lee*, 282 N.C. 566, 193 S.E.2d 705 (1973)). Because the defendant in *Oxner* “denied taking any property from the prosecuting witness at all[,]” the Court of Appeals held the instructions were adequate. *Id.* at 603-04, 246 S.E.2d at 548. Similarly, in *Willis*, the Court of Appeals held, “Assuming the continued viability of *State v. Spratt*, however, the evidence in this case simply does not support the defendant’s claim that he took the VCR and black case with a good faith belief that he was the lawful owner of those items.” *Willis*, 127 N.C. App. at 552, 492 S.E.2d at 45.

Unlike in *Oxner* and *Willis*, it is uncontested here that “all of the evidence proffered at trial supports Defendant’s claim that Defendant, Linn, and Jackson went to Leisure’s house to retrieve their own money.” *Cox*, 825 S.E.2d at 270. Thus, the Court of Appeals correctly reversed the convictions.

***C. The State’s claim that Ms. Leisure had a superior possessory interest fails because she had no interest in the money at all***

The State also asserts, “Ms. Leisure would need to be recognized as having been rightfully in possession of the money as a bailee; and defendant, unless he demonstrated that the term of the deal had expired, would not have been ‘entitled’ to take even his own money from her by force.” (State’s Brief, p

24) In support of that proposition, the State asserts, “Larceny is an offense against possession.... Even the owner himself may commit larceny by stealing his own goods if they are in the possession of another and he takes them from the possessor wrongfully with intent to deprive him of a property interest therein.” (State’s Brief, p 23 citing Perkins and Boyce, Criminal Law, 297 (3<sup>rd</sup> ed. 1982)).

However, the very next portion of that treatise demonstrates the principle has no application here:

An example of larceny committed by the owner is this: O delivers his watch to J, a jeweler, for certain repairs. J makes the necessary repairs, and has a lien on the watch for his proper charges for the work done. O goes to the jewelry store, and seeing his watch near at hand while J is engaged with another customer in a different part of the room, takes the watch and carries it away without the consent of J, with intent to thwart J’s claim for compensation. O is guilty of larceny of the watch.

Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 297-98 (3d ed. 1982).

Here, Ms. Leisure did not have any sort of lien on, or claim to, the money given to her. Mr. Cox, Mr. Linn, and Ms. Jackson clearly had a superior possessory interest to Ms. Leisure, who had no interest in their money at all.

***D. The State presented insufficient evidence that Mr. Cox entered into an agreement with Ms. Jackson “to commit robbery with a dangerous weapon[,]” which was an essential element of conspiracy***

Finally, the State argues that even if Mr. Cox was entitled to take the money under a *bona fide* claim of right, “it is still the case that there would be

sufficient evidence here of conspiracy to commit armed robbery due to the unlawful way in which defendant and his confederates carried out the plan.” (State’s Brief, p 25) In support of that claim, the State asserts that a conspiracy is “an agreement express or implied, between two or more persons, to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means.” (State’s Brief, p 25 quoting *State v. Roache*, 358 N.C. 243, 281, 595 S.E.2d 381, 406 (2004)).

However, the State overlooks the fundamental principle that “Due Process requires the sufficiency of the evidence be reviewed with respect to the theory upon which the jury was instructed.” *State v. Helms*, 832 S.E.2d 897, 899 (N.C. 2019). Here, the trial court instructed that to find Mr. Cox guilty of conspiracy, the jury had to find he entered into an agreement with Ms. Jackson “to commit robbery with a dangerous weapon.” (Tpp 358-59) The requirement that conspirators must intend the commission of a felony makes sense because, as of structured sentencing, the actual felony the parties conspired to commit is determinative of punishment. *See* N.C. Gen. Stat. §14-2.4 (subject to certain exceptions, “a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit[.]”) Thus, the felony the parties conspired to commit is an element of conspiracy. *See, e.g., State v. Dubose*, 208 N.C. App. 406, 409, 702 S.E.2d 330,

333 (2010) (To be convicted of conspiracy “the State must prove there was an agreement to perform every element of the underlying offense.”).

### CONCLUSION

It is uncontested that “*all of the evidence* proffered at trial supports Defendant’s claim that Defendant, Linn, and Jackson went to Leisure’s house to retrieve their own money.” *State v. Cox*, 825 S.E.2d 266, 270 (N.C. Ct. App. 2019) (emphasis added). Moreover, the Court of Appeals followed hundreds of years of precedent in holding that a person who seeks only to recover his own property lacks felonious intent to commit robbery. Therefore, the Court of Appeals correctly held the State presented insufficient evidence of felonious breaking or entering and conspiracy to commit armed robbery, both of which were predicated on a finding of intent to commit robbery. This Court should affirm.

Respectfully submitted, this the 18<sup>th</sup> day of December, 2019.

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**CERTIFICATE OF SERVICE**

I certify Defendant-Appellee's New Brief has been electronically served upon Daniel P. O'Brien, Special Deputy Attorney General, North Carolina Department of Justice, by emailing it to [dobrien@ncdoj.gov](mailto:dobrien@ncdoj.gov).

This the 18<sup>th</sup> day of December, 2019.

By Electronic Submission:

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STATE OF NORTH CAROLINA  
ON SLOW COUNTY

THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

THE STATE OF NORTH CAROLINA

-versus-

JAMES A. COX,

Defendant.

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Docket #15-CRS-054673,  
15-CRS-54665

# EXHIBIT J

IN THE SUPREME COURT OF NORTH CAROLINA

No. 94PA19

Filed 14 August 2020

STATE OF NORTH CAROLINA

v.

JAMES A. COX

Appeal pursuant to N.C.G.S. § 7A-31 from the published decision of a unanimous panel of the Court of Appeals, 264 N.C. App. 217, 825 S.E.2d 266 (2019), finding error and reversing a judgment entered on 16 January 2018 by Judge William W. Bland in the Superior Court, Onslow County. Heard in the Supreme Court on 4 May 2020.

*Joshua H. Stein, Attorney General, by Daniel P. O'Brien, Special Deputy Attorney General, for the State.*

*Glenn Gerding, Appellate Defender, and Andrew DeSimone, Assistant Appellate Defender, for defendant-appellee.*

MORGAN, Justice.

In this case we must determine whether the trial court erroneously denied defendant's motion to dismiss the charge of conspiracy to commit robbery with a dangerous weapon and the charge of felonious breaking or entering at the close of all of the evidence. In light of our conclusion that the State presented sufficient evidence at defendant's trial to show that defendant possessed the requisite felonious intent necessary to support defendant's convictions of each of these charged offenses, we find



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no error in the trial court's ruling. Accordingly, we reverse the decision of the Court of Appeals and reinstate these convictions.

*Factual and Procedural Background*

At trial, the State's evidence tended to show that on 8 August 2015, defendant and his girlfriend Ashley Jackson went to the home of Richard Linn. Prior to this date, defendant had given \$20.00 to Linn so that Linn could purchase, *inter alia*, Percocet tablets on behalf of Jackson. These tablets constituted a prescription medication which neither defendant nor Linn could legally possess. After receiving the \$20.00 amount of funds from defendant, Linn contacted Angela Leisure to obtain the controlled substances sought by defendant, added some of Linn's own money to defendant's \$20.00 amount, and ultimately gave Leisure an amount of funds between \$50.00 and \$60.00 for the purchase of drugs. While Leisure had operated as a regular "go-between" for Linn in his past efforts to acquire illicit controlled substances, on this occasion, Leisure neither obtained the illegal drugs which were requested by Linn nor returned any of the drug purchase money to him.

Upon arriving at Linn's residence on 8 August 2015, defendant displayed a gun to Linn and demanded that Linn accompany defendant and Jackson in going to Leisure's house "to talk with her about their money." Defendant, Jackson, and Linn went to Leisure's home by vehicle. When they arrived, Leisure's boyfriend Daniel McMinn was standing outside of Leisure's residence. Defendant, Jackson, and Linn

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entered Leisure's home, followed by McMinn. Once inside, Jackson pulled Leisure's hair, punched her, and forced her to the floor, demanding "their money." McMinn started to call the police, but he stopped when defendant displayed a handgun "in a threatening way." After a few minutes, Linn told Jackson to stop her assault on Leisure, saying: "I think she's had enough." As defendant, Jackson, and Linn departed Leisure's residence, defendant kicked a hole in the front door of Leisure's home and fired a shot into the residence, striking a mirrored door inside the home. Defendant, Jackson, and Linn did not obtain money or any personal property from Leisure's home.

Based on the events of 8 August 2015, defendant was arrested and charged with first-degree burglary, conspiracy to commit robbery with a dangerous weapon, and discharging a weapon into an occupied property.

Following the State's presentation of its evidence at trial, defendant moved to dismiss the charges against him for insufficiency of the evidence. After the motion was denied, defendant presented evidence in his defense, including his own testimony. Defendant testified that he went to Linn's home on 8 August 2015 to give Linn \$20.00 to purchase pain relievers for Jackson, and that later in the day, Linn had asked defendant to transport Linn to Leisure's home because Leisure had taken the \$20.00 but then would not answer Linn's telephone calls. According to defendant, Linn said that Linn would get defendant's money back during an in-person encounter with Leisure. In his testimony, defendant claimed that neither he, Jackson, or Linn

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had a weapon during the encounter on 8 August 2015 and stated that it was Jackson rather than defendant who had kicked the front door at Leisure's home. At the close of all of the evidence, defendant renewed his motion to dismiss the charges against him. The trial court denied the motion.

After instructing the jury regarding the charges and the pertinent law in the case, the trial court further provided the jury with written copies of the jury instructions. After deliberating for approximately two hours, the jury submitted two questions to the trial court, each relating to the conspiracy to commit robbery charge: (1) "Can we get clarification of 'while the defendant knows that the defendant is not entitled to take the property,' " [with regard to the definition in the jury instructions on Conspiracy to Commit Robbery with a Dangerous Weapon] and (2) "Is it still Robbery to take back . . . one owns [sic] property?" After conferring with all counsel, and specifically without any objection from defendant, the trial court declined to answer the jury's questions and instead referred the jury to the written jury instructions which the trial court had previously provided to it.

On 16 January 2018, the jury returned guilty verdicts against defendant on the charges of conspiracy to commit robbery with a dangerous weapon, felonious breaking or entering, and discharging a weapon into an occupied property. The trial court sentenced defendant to a consolidated term of 60–84 months of incarceration for the offenses of conspiracy to commit robbery with a dangerous weapon and discharging a weapon into an occupied property. For the felonious breaking or

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entering offense, defendant received a suspended sentence of incarceration of 6–17 months and was placed on supervised probation for a term of 24 months. Defendant appealed to the Court of Appeals.

The Court of Appeals reversed defendant’s conviction for conspiracy to commit robbery with a dangerous weapon. Although on appeal defendant did not contest his conviction for discharging a weapon into an occupied property, nonetheless the lower appellate court remanded the case in which defendant was convicted of discharging a weapon into an occupied property for resentencing because it was consolidated for judgment with the conspiracy to commit robbery with a dangerous weapon conviction, which the Court of Appeals decided to reverse. The court below also reversed defendant’s conviction for felonious breaking or entering and remanded the matter in order for the trial court to arrest judgment with respect to this felony conviction and to enter judgment against defendant for misdemeanor breaking or entering. In reversing defendant’s conviction for the offense of conspiracy to commit robbery with a dangerous weapon, the Court of Appeals relied upon our decision in *State v. Spratt*, 265 N.C. 524, 144 S.E.2d 569 (1965) and its predecessor cases in concluding here that defendant could not be guilty of conspiracy to commit robbery with a dangerous weapon because defendant did not have the required felonious intent when attempting to take property from Leisure under a bona fide claim of right to the money which she had been given on defendant’s behalf. Concomitantly, the Court of Appeals held that the lack of felonious intent on the part of defendant negated his

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ability to be convicted of the offense of felonious breaking or entering; however, since misdemeanor breaking or entering is a lesser-included offense of felonious breaking or entering, and since the lesser offense contains all of the elements of the greater offense except for felonious intent, the lower appellate court reasoned that the jury's determination that defendant had committed an offense of breaking or entering would, under these circumstances, be converted to the commission of a misdemeanor breaking or entering offense by defendant.

The State sought a temporary stay of the operation of the mandate of the Court of Appeals, which we allowed on 22 March 2019. On 9 April 2019, the State filed a petition for discretionary review, seeking to be heard by this Court on the issue of whether the Court of Appeals erred by reversing defendant's convictions for the offenses of conspiracy to commit armed robbery and felonious breaking or entering on the basis of insufficiency of the evidence. On 17 April 2019, defendant filed a response to the State's petition for discretionary review, as well as his conditional petition for discretionary review. On 14 August 2019, we allowed the State's petition for discretionary review, issued a writ of supersedeas, and denied defendant's conditional petition for discretionary review.

*Analysis*

The test for sufficiency of the evidence in a criminal prosecution is well-established. "[T]he trial court must consider the evidence in the light most favorable

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to the State, giving the State the benefit of every reasonable inference. If there is substantial evidence of each element of the offense charged or lesser included offenses, the trial court must deny defendant's motion to dismiss as to those charges supported by substantial evidence and submit them to the jury for its consideration; the weight and credibility of such evidence is a question reserved for the jury." *State v. Williams*, 330 N.C. 579, 584, 411 S.E.2d 814, 818 (1992) (citations omitted).

Criminal conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means. *State v. Arnold*, 329 N.C. 128, 142, 404 S.E.2d 822, 830 (1991). Therefore, in the present case, the State had the burden to present substantial evidence tending to show that defendant and Jackson agreed to commit each element of robbery with a dangerous weapon against Leisure.

For the offense of robbery with a dangerous weapon, the State must prove three elements: (1) the unlawful taking or attempt to take personal property from the person or in the presence of another; (2) by use or threatened use of a firearm or other dangerous weapon; (3) whereby the life of a person is endangered or threatened. *State v. Wiggins*, 334 N.C. 18, 35, 431 S.E.2d 755, 765 (1993); N.C.G.S. § 14-87(a) (2019). The taking or attempted taking must be done with felonious intent. *State v. Norris*, 264 N.C. 470, 472, 141 S.E.2d 869, 871 (1965) (citing *State v. Lawrence*, 262 N.C. 162, 163–68, 136 S.E.2d 595, 597–600 (1964)). "Felonious intent is an essential element of the crime of robbery with firearms and has been defined to be the intent to deprive

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the owner of his goods permanently and to appropriate them to the taker's own use.”  
*State v. Brown*, 300 N.C. 41, 47, 265 S.E.2d 191, 196 (1980).

In the present case, the Court of Appeals has been persuaded by defendant's contention, citing our holding in *Spratt*, that a person cannot be guilty of robbery if he or she forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property, since such a bona fide claim negates the requisite felonious intent required for the offense of robbery with a dangerous weapon. The State, however, argues that the law does not permit a person to use violence to collect on a perceived debt for illegal drugs.

In the opinion which it rendered in this case, the Court of Appeals exercised studious review of our decisions in *Spratt* and *Lawrence*, as well as other appellate decisions which it considered to involve issues which are similar to those which exist in the present case. The lower appellate court went on to conclude that it “remain[ed] bound to follow and apply *Spratt*” in the resolution of this case.

In *Spratt*, the defendant entered a convenience store, brought items of merchandise to the cashier's counter for apparent purchase, and when the cashier opened the cash register at the counter to conduct the transaction, defendant put his hand in the cash register drawer in which money was located. Defendant wielded a pistol, told the cashier “it was a stickup,” demanded the money, and reached for it. The cashier was able to foil defendant's effort to obtain the money from the store's

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cash register, and defendant left without the money. Defendant was charged with the offense of attempt to commit armed robbery and was found by a jury to be guilty of the charged crime. In this Court's issued opinion in which no error was found in defendant's conviction upon his appeal, we discussed the concept of felonious intent, noting that it is an essential element of the offense of attempt to commit armed robbery. In this Court's discussion of felonious intent in *Spratt*, we cited *Lawrence* for the proposition that

where the evidence relied on by defendant tends to admit the taking but to deny that it was with felonious intent, it is essential that the court fully define the 'felonious intent' contended for by the State and also explain defendant's theory as to the intent and purpose of the taking, in order that the jury may understandingly decide between the contentions of the State and defendant on that point . . . . For instance, as in *Lawrence*, defendant may contend that his conduct in taking the property amounts only to a forcible trespass.

265 N.C. at 526, 144 S.E.2d at 571 (citation omitted).

In the course of our discussion of the role of the element of felonious intent in different criminal offenses and our rumination about the courts' assessment of the element of felonious intent in light of different theories of criminal culpability in *Spratt*, we offered the following observation which the Court of Appeals mistakenly treats in the instant case as our dispositive holding in *Spratt*:

A defendant is not guilty of robbery if he forcibly takes personal property from the actual possession of another under a bona fide claim of right or title to the property, or



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for the personal protection and safety of defendant and others, or as a frolic, prank or practical joke, or under color of official authority.

*Id.* at 526–27, 144 S.E.2d at 571.

The defendant in *Lawrence*—the case which *Spratt* primarily relies on in its discussion of felonious intent—was the operator of a motor vehicle who offered a ride to the prosecuting witness Wimbley, a member of the United States Marine Corps who was dressed in civilian clothes on this occasion, as Wimbley walked along the street after his own motor vehicle experienced mechanical failure. Wimbley accepted the offer of a ride and joined the defendant and a passenger in the vehicle. During the journey, the defendant and Wimbley bought some whiskey with all three individuals consuming some of it. Later, the defendant stopped the vehicle on a dead-end road with defendant and his original passenger both striking Wimbley with their fists. The defendant said to Wimbley, “You owe me something,” to which Wimbley replied, “What do I owe you . . . I would be glad to pay you.” The defendant then said, “That’s okay, I’ll get it myself,” and then forcibly seized Wimbley’s wallet and removed money from it. The defendant was charged with the offenses of robbery and felonious assault. A jury found the defendant guilty of robbery. On appeal, this Court determined that the defendant was entitled to a new trial because the trial court erred by instructing the jury to determine if there was an unlawful taking rather than giving a legal explanation of the term “felonious taking” and directing the jury to apply it to the facts. *Lawrence*, 262 N.C. at 168, 136 S.E.2d at 600. This conclusion

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was reached upon our evaluation of the defendant's contention in *Lawrence* that his actions amounted only to a forcible trespass, a crime which required an unlawful taking but no felonious intent, which he had the right to have a jury to consider upon proper instructions. *Id.*

This review of the respective facts, analyses, and outcomes of the two cases decided by this Court upon which the Court of Appeals expressly relies in its decision in the present case—*Spratt* and *Lawrence*—serves to place them in proper context and assist in determining how they apply in this case. While we recognized in *Spratt* the pivotal nature of felonious intent as an element of the offense of attempt to commit armed robbery, the defendant in *Spratt*, in attempting to take money from a convenience store's cash register while employing a firearm, was not attempting to forcibly take personal property from the actual possession of another under a bona fide claim of right or title to the property—as defendant contends that defendant was undertaking in the instant case in attempting to obtain money that he considered to belong to him from Leisure. This distinction between *Spratt* and the current case renders *Spratt* inapplicable here, including the passage from our opinion in *Spratt* which this Court intended to be illustrative and which the Court of Appeals construed here to be dispositive. *Lawrence*, the predecessor of *Spratt*, is distinguishable from, and hence inapplicable to, the present case in that, although the element of felonious intent constituted an issue in *Lawrence* just as it does in the present case, the position adopted by defendant in *Lawrence* rested on an alternative and lesser measure of

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criminal culpability regarding the intent which he harbored concerning the money, while the position adopted by defendant in the instant case fully rests on a total lack of criminal culpability regarding the intent which he harbored concerning the money. Significantly neither *Spratt*, nor *Lawrence*, nor any other case in this state has heretofore authorized a party to legally engage in “self-help” by virtue of the exercise of a bona fide claim of right or title to property which is the subject of an illegal transaction. Here, defendant was involved with other individuals in an effort to regain money which was the subject of an illegal transaction involving the purchase of controlled substances.<sup>1</sup> In this regard, the Court of Appeals has erroneously extended beyond existing legal bounds the right of a party to engage in “self-help” and to forcibly take personal property from the actual possession of another under a bona fide claim or right to the property. Accordingly, with regard to the trial court’s denial of defendant’s motion to dismiss the charge of conspiracy to commit robbery with a dangerous weapon, we conclude that the trial court did not err.

We likewise hold that the trial court reached a correct ruling with respect to defendant’s motion to dismiss the charge of felonious breaking or entering. “The essential elements of felonious breaking or entering are (1) the breaking or entering (2) of any building (3) with the intent to commit any felony or larceny therein.”

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<sup>1</sup> Indeed, the nature of defendant’s transaction and agreement with Leisure means that determining the existence of a bona fide claim would likely require the application of commercial law principles to an illegal drug deal. We cannot imagine that the common law tradition or the General Assembly would require such an approach.

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*Williams*, 330 N.C. at 585, 411 S.E.2d at 818. As already discussed, the trial court properly denied defendant's motion to dismiss the charge of conspiracy to commit robbery with a dangerous weapon because the record contained evidence tending to show that defendant possessed the requisite felonious intent to support the charge. Since both of the issues presented to this Court concern whether defendant possessed the same requisite felonious intent necessary to support both of his convictions, we conclude that the trial court also properly denied defendant's motion to dismiss the charge of felonious breaking or entering.

*Conclusion*

For the reasons stated, we find no error in defendant's convictions of the offense of conspiracy to commit armed robbery with a dangerous weapon and the offense of felonious breaking or entering. Due to the existence of sufficient evidence regarding felonious intent, the trial court properly denied defendant's motions to dismiss the charges against him. Accordingly, we reverse the decision of the Court of Appeals and order defendant's convictions to be reinstated.

REVERSED.