

No.

DISTRICT 3B

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA,)

)

From Carteret County

v.)

)

Case # 14-CRS-20372, 50376, 50377

DUSTIN JAMAL WARREN,)

)

Defendant-Petitioner.)

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Warren, Dustin Jamal Warren, by and through undersigned counsel, respectfully petitions this Court to issue its writ of certiorari pursuant to Rule 21 of the N.C. Rules of Appellate Procedure to review the order of the Honorable Joshua W. Willey, Jr., Superior Court Judge, Carteret County, dated July 21, 2020¹, denying Warren’s motion for appropriate relief.

Attached to this petition for consideration by the Court are the following:

- Exhibit 1** - Certified Copy of Judgment of Conviction
- Exhibit 2** - Motion for Appropriate Relief filed 12-8-2016
- Exhibit 3** - State's Response to Motion for Appropriate Relief filed 9-22-2017
- Exhibit 4** - Transcripts of Evidentiary Hearing 6-6-2018
- Exhibit 5** - Transcripts of Evidentiary Hearing 6-11-2020
- Exhibit 6** - Certified Copy of Order Denying Motion for Appropriate Relief filed 7-22-2020

¹ The order was not filed until the following day, July 22, 2020, and sent via mail to undersigned counsel, who received it on July 29, 2020.

INTRODUCTION AND PROCEDURAL HISTORY

Dustin Warren was arrested January 31, 2014 and charged with possession and distribution of methamphetamine precursor, in violation of N.C.G.S. § 90-95(d1)(2), manufacturing methamphetamine, in violation of N.C.G.S. § 90-95(b)(1a), and conspiracy to manufacture methamphetamine, in violation of N.C.G.S. § 14-2.4(a). Warren pleaded not guilty. On February 24, 2014, Warren was indicted on charges of possession of precursor chemicals with the intent to manufacture methamphetamine, manufacturing methamphetamine, conspiracy to manufacture methamphetamine. The indictment also charged Warren as a habitual felon.

Warren proceeded to trial September 8, 2014 and he was convicted by a jury on all counts. At sentencing, the trial court consolidated 14-CRS-50372, possession and distribution of a methamphetamine precursor, with 14-CRS-50376, manufacture of methamphetamine, then sentenced the Warren for the Class C felony to a presumptive term of 127 months minimum to 165 months' maximum in the Department of Correction. In 14-CRS-50377, conspiracy, the Warren was sentenced to the presumptive range of 127 months minimum to 165 months' maximum to be served at the expiration of the previous sentence. (Exhibit 1).

Warren directly appealed his conviction to this Court in Case # COA15-499, raising the following points on appeal:

1. THE TRIAL COURT ERRED IN DENYING DEFENSE COUNSEL'S MOTION TO WITHDRAW BASED ON THE REASONS EXPLAINED TO THE COURT AND THUS DENIED THE DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE UNITED STATES AND NORTH CAROLINA CONSTITUTIONS

2. THE TRIAL COURT'S DENIAL OF THE DEFENDANT'S MOTION TO CONTINUE TO ALLOW HIM TO SECURE WITNESSES FOR HIS DEFENSE DENIED THE DEFENDANT THE EFFECTIVE ASSISTANCE OF COUNSEL AND HIS DUE PROCESS RIGHTS AS GUARANTEED BY THE 5TH, 6TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF NORTH CAROLINA

3. THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN THE TRIAL ATTORNEY FAILED TO REQUEST THE COURT BRING BRANDON ELPS FROM THE JAIL, AS THE COURT OFFERED, TO MAKE AN OFFER OF PROOF OF HIS TESTIMONY CONCERNING HEATHER KENNON GETTING HIM INTO TROUBLE AND THEN GOING TO LAW ENFORCEMENT AS THIS WAS THE THEORY OF DEFENDANT'S CASE ON TRIAL

4. THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BY NOT HAVING TWO WITNESSES BROUGHT BACK FROM THE DEPARTMENT OF CORRECTION TO TESTIFY TO HEATHER KENNON'S UNTRUTHFULNESS

5. THE TRIAL COURT DENIED THE DEFENDANT A FAIR TRIAL BY NOT GRANTING A CONTINUANCE AND THUS EXCLUDING NEGATIVE CHARACTER WITNESSES AGAINST HEATHER. KENNON AS THEY WERE AVAILABLE WITHIN THE DEPARTMENT OF CORRECTION AND NEED ONLY BE BROUGHT BACK BY THE STATE ON A WRIT. THEIR NEGATIVE TESTIMONY AS TO THE TRUTHFULNESS AND CHARACTER OF HEATHER KENNON WOULD HAVE SIGNIFICANTLY IMPEACHED THE STATE'S CASE AND LIKELY RESULTED IN ACQUITTALS OF THE DEFENDANT

6. THE TRIAL COURT ERRED IN SENTENCING THE DEFENDANT AS A CLASS C FOR CONSPIRACY TO MANUFACTURE METHAMPHETAMINE WHEN THE FELONY IS A CLASS D

Warren's conviction was affirmed in a written opinion dated November 17, 2015 by this

Court.

A timely petition for discretionary review in the North Carolina Supreme Court was denied January 28, 2016.

Thereafter, Warren filed his Motion for Appropriate Relief in the court below on December 8, 2016. (Exhibit 2). The State filed a response in opposition thereto on September 22, 2017.

(Exhibit 3). The court below initially held an evidentiary hearing on the motion on June 6, 2018, presided over by the Honorable Benjamin G. Alford, Superior Court Judge (retired). (Exhibit 4). At the conclusion of the hearing, the court took the motion under advisement and promised a ruling at a future date. However, Judge Alford retired prior to issuing a ruling.

As a result, a second evidentiary hearing was held on June 11, 2020 before the Honorable Joshua W. Willey, Jr., Superior Court Judge. (Exhibit 5). The court issued a written order denying the Motion for Appropriate Relief, which was filed on July 22, 2020. (Exhibit 6).

This petition now follows.

FACTS²

On January 29, 2014, there was approximately 1.5 inches of snow on the ground on an unusually cold day in Atlantic Beach, North Carolina. Dustin Warren ran into Heather Kennon, who was in some sort of distress, and gave her a ride to the Seashore Motel in Atlantic Beach, North Carolina. (Exhibit 2(f):74). Kennon checked into the room by herself. (Exhibit 2(f):87). After she checked in, she asked Warren for a ride to the store, and purchased what appeared to be groceries. (Exhibit 2(f):345). At the time, Warren was dating Anique Pittman.

When Warren decided to leave and go to Anique Pittman's condominium, Kennon asked him for a ride because Kennon did not want to stay in the motel room. (Exhibit 2(f):363). Motel staff saw Warren leave the motel, and to them it appeared that the room was empty from at least 12:30 a.m. until 7:30 a.m. the following morning. (Exhibit 2(f):105).

Anique Pittman had picked up Warren's friend, Mark Thomas, and invited him to spend the night at her condominium after Thomas had gotten into an argument with his wife. (Exhibit 2(f):310), Exhibit 4:54, Exhibit 5:39-40). Pittman testified that she lived in a condominium complex in a nice neighborhood with her 13-year old son, and no illegal activity occurred at her home. (Exhibit 2(f):311-312, 381).

Once Warren and Kennon arrived at Pittman's house, Kennon wanted to stay in Warren's car as she waited for someone to pick her up. (Exhibit 2(f):365). Pittman never saw Kennon on the evening of January 29, 2014. (Exhibit 2(f):313). Warren hung up his car keys on a key hanger near the front door and told Thomas he was going to sleep, and went into the bedroom with Pittman

² The facts set forth herein are based upon the court file, the Motion for Appropriate Relief, the transcripts of the trial, the transcripts of the first Motion for Appropriate Relief hearing, and the transcripts of the second hearing. At the start of the second hearing, the State requested that the entirety of the court file, including the motion and its attachments, the trial transcripts, and the transcripts of the June 6, 2018 hearing be admitted into evidence and considered. (Exhibit 5:4-6). The defense stipulated to their admission, and the court below expressly considered them. (Exhibit 5:7, 194).

where he remained for the night. (Exhibit 2(f):366). Later, he was awoken by Thomas, who showed that Heather Kennon had come into Pittman's condominium, and Warren went back to bed. (Exhibit 2(f):369). Warren never left the house that night. (Exhibit 2(f):312). Even if he wanted to, he could not because the bridge connecting Atlantic Beach from Morehead City was closed as a result of the weather conditions, cutting off vehicular traffic. (Exhibit 4:41, 42, 45, 51-52, 62).

Cassie Flowers had dated Dustin Warren for several months in 2013, but their relationship had ended prior to January 2014, and they were not on speaking terms. (Exhibit 5:59). Cassie Flowers knew of Heather Kennon, but did not know her personally; she disapproved of the people Kennon associated with. (Exhibit 5:59-60). On January 29, 2014, she was living in her own residence by herself with her dog in Morehead City, North Carolina. (Exhibit 5:60). The dog, a Labrador Retriever, always barked loudly whenever someone approached the door to Flowers' residence. (Exhibit 5:61). At no time during that day, night, or the following morning did she ever see Dustin Warren or Heather Kennon, nor did anyone visit her at her home. (Exhibit 5:61).

Throughout the night, Kennon continuously went in and out of Pittman's condominium, giving Thomas the impression that she was waiting to get picked up by someone. (Exhibit 5:22-23). Each time she went in or out, the door was left ajar, allowing cold air to come in, despite his requests that she leave the door closed and annoying Thomas. (Exhibit 5:23-24). At one point, Thomas lost patience and locked the front door, locking Kennon out. Id. After that, Kennon disappeared. (Exhibit 2(f):24).

The following morning, Mark Thomas asked him to drive him to buy cigarettes and breakfast. (Exhibit 2(f):370), Exhibit 5:27-28). Kennon had disappeared. (Exhibit 2(f):373). When he and Thomas entered Warren's car, they noticed that the window was down, there was

drug paraphernalia in the front seat, and a room key for a motel. (Exhibit 2(f):370-371, Exhibit 5:27-28). None of these items had been in the car when it was parked the night before. (Exhibit 2(f):372).

At approximately 9:30 a.m. on the morning of January 30, 2014, a motel housekeeping staff member entered the empty room and saw a black bag and numerous suspicious items, including a can of kerosene. (Exhibit 2(f):108). She called 911 and police were dispatched. (Id.).

Police made entry into the room and found what appeared to be a clandestine methamphetamine laboratory, including a number of precursor chemicals, and significantly, cold packs. (Exhibit 2(f):136-146, 216). Eventually, all of the items inside the room were collected that morning pursuant to a search warrant. (Id.). The bag contained Kotex-brand items, either sanitary napkins or tampons. (Exhibit 2(f):189, Exhibit 5:115).

While law enforcement officers were at the motel processing the items, Dustin Warren and Mark Thomas drove up to a convenience store that was across the street from the motel and were immediately taken into custody. (Exhibit 2(f):194, 373-374, Exhibit 5:29). Two pills of Adderall, a prescription medication, were found inside the driver's side door handle. (Exhibit 2(f):188). Additionally, the key to the motel room was found near Warren's car. (Exhibit 2(f):191).

Later, an arrest warrant was issued, and served upon, Heather Kennon, and she was charged along with Warren for possessing the items inside the motel room. (Exhibit 2(f):227).

Who initially represented Heather Kennon is at issue; on the file jacket of her case file for this prosecution, Docket # 14-CRS-50380, the name "Fulcher" appears on the line for the attorney of record, is crossed out, and the name "Suggs" appears beside the crossed-out "Fulcher." (Exhibit 4:125-126, Exhibit 5:186-187). Ultimately, Christopher Suggs, Esq., represented Kennon, though he knew that he was not the first lawyer on her case. (Exhibit 4:146).

After he was arrested, Warren was appointed counsel, James Wallace III, who employed a private detective, Ann Harris Scadden. (Exhibit 4:88). Ms. Scadden interviewed Mark Thomas during her investigation. *Id.* Approximately 1 month later, Warren retained Rodney Fulcher, Esq. with \$2,500.00, which was his income tax refund. *Id.* When he retained Fulcher, he was told that Fulcher was already court-appointed to represent Heather Kennon, but Fulcher stated he might be able to “finagle” something to get relieved from her case and represent Warren. (Exhibit 4:88-89). Fulcher never discussed a conflict of interest, or asked Warren to waive a conflict of interest. (Exhibit 4:89).

Fulcher advised Warren that there was a 57-month plea offer that had been extended by the State, and repeatedly pressed Warren to accept the plea offer. (Exhibit 4:90).

From the first day of his representation, Warren was adamant about going to trial and repeatedly told Fulcher that he was innocent. (Exhibit 4:126). Warren gave his attorney Mark Thomas’ contact information, and asked him to contact Cassie Flowers, who was incarcerated at the time, as Flowers would be able to contradict a key fact in Heather Kennon’s anticipated testimony – whether Warren and Kennon went to Flowers’ home and picked up chemicals commonly used to manufacture methamphetamine. (Exhibit 4:91-93). In addition, Warren told Fulcher that another person named Brandon Elps had been set up by Heather Kennon and was criminally prosecuted as a result of that set up, and was ready, willing and able to testify; Elps was also incarcerated in a local county jail at the time of trial. (Exhibit 4:94-95).

Rodney Fulcher was Brandon Elps’s prior criminal defense attorney, and had represented Elps prior to Warren’s trial. (Exhibit 4:131-132).³

³ At the 2018 MAR hearing, Fulcher testified definitively that he represented Elps in a prior criminal case before Warren’s 2014 trial. At the 2020 MAR hearing, Fulcher claimed he could not remember if he had represented Elps before, and was impeached with his prior testimony. (Exhibit 5:157-158)

Prior to trial, Heather Kennon entered into an agreement with the District Attorney to testify against Warren. (Exhibit 4:127-129, Exhibit 5:143). Fulcher admitted that there was never any question as to the chemical composition of the items found in the motel room; the issue in the case was whether Dustin Warren knowingly possessed any of those items, or whether they were exclusively possessed by Kennon. (Exhibit 4:128). Fulcher also admitted that after he and Warren learned that the prosecution was going to call Heather Kennon as a witness against Warren, attacking her credibility became of paramount importance. (Exhibit 4:130-131).

Despite this, Fulcher admittedly never spoke with any of those three witnesses. (Exhibit 4:131, Exhibit 5:157-159).

Approximately one week before the trial was scheduled to commence, on September 2, 2014, Rodney Fulcher appeared in court and asked to be relieved as counsel:

Your Honor, this is a case that I was retained in. As we've kind of gone along with it, I don't think Mr. Warren and I see eye-to-eye on everything. I don't think I can zealously represent him at a trial based on the evidence, the conversations we've had. So it's going to be my motion to withdraw from the case. Also, he's unable to continue to finish hiring me.

(Exhibit 4(e):2-3).

The trial court inquired of Warren, who stated:

Thank you, Your Honor. I retained Mr. Fulcher right after I got indicted. Twenty-seven days after I got locked up I retained him for basically \$2,500. I was never mentioned or told or anything there would be any other -- extra money for court or nothing. But my girlfriend got the money -- you know what I'm saying -- to him. We got him retained and everything.

None of my witnesses have been talked to. None of the evidence, what I have asked to be received such as -- you have a -- we have this -- a main suspect person that these things were caught in her motel room, that it had been 19 hours prior to being in that motel room, is the main person that's saying that I'm the person doing these things. Okay?

He hasn't talked to none of my witnesses. Hasn't got none of the evidence. I asked to pull her records -- medical records stuff, and there was evidence on the scene that was not even tested.

...
I feel like I'm being railroaded. I feel like my lawyer didn't do a good job, you know what I'm saying.

...
I feel like they're trying to railroad me here. And I'm just -- I'm ready to go to trial, because I can win this case. **And he don't want to go to trial, because he asked for more money.** So I just -- I mean, whatever. I'm not going to be railroaded. ...So I'm just asking for him to withdraw from my case, and we just proceed toward trial. But I need enough time to prepare for trial, and **I need a lawyer who's going to do the job that I asked him to do. That includes getting the evidence and talking to my witnesses and stuff like that.**

(Exhibit 2(e):2-5) (emphasis added).

Fulcher declined the court's invitation to respond to Warren's allegations. (Exhibit 4(e):6-7). The trial court then denied the motion to withdraw, and ordered the case to be tried the following week. *Id.*

After that hearing, the relationship between attorney and client further deteriorated. (Exhibit 5:107).

Fulcher attempted to secure the attendance at trial of Thomas, Flowers, and Elps, via court-ordered writs of habeas corpus ad testificandum. (Exhibit 4:134-135, Exhibit 5:160). However, none of the three witnesses were brought to court. (Exhibit 4:135). On the first day of trial, Fulcher

moved to continue the case because some witnesses had not yet been served with subpoenas, arguing

The other one, Your Honor, is going to be my motion to continue the case. Since last Your Honor ruled last week in the case, concerning the -- my continued representation of my client, we had to send out immediately that afternoon an entire list of witnesses that he said he wanted. And we got -- those subpoenas went out that afternoon; many of those have not been served as of yet. **They're material witnesses.**

It prejudices his case if they're not here. So I would certainly ask to continue it to have those here. I think the burden -- **the prejudice to him would be a lot worse than it would be any burden on the State,** to reschedule this case.

(Exhibit 2(f):54) (emphasis added)

Trial commenced on September 8, 2014. (Exhibit 2(f)). The State's theory of prosecution was that Dustin Warren constructively possessed the items found inside the motel room, along with Heather Kennon. (Exhibit 2(f):444). At trial, the State called a number of law enforcement officers and the motel staff who testified generally as to the contents of the motel room and the condition in which it was found. The central witness in the State's case was Heather Kennon, who had entered into a cooperation agreement with the District Attorney and agreed to testify against Warren.

Kennon testified that she was a heroin and pill addict, and met with Dustin Warren on January 29, 2014. (Exhibit 2(f):243). Kennon testified that everything found in the motel room belonged to Dustin Warren and that Warren was responsible for cooking methamphetamine that they both ingested; the only things that she had brought was a coat and a purse. (Exhibit 2(f):247). She further testified that they drove to Cassie Flowers' house in Morehead City in order to obtain chemicals to make methamphetamine on the night of January 29, 2014. (Exhibit 2(f):259-260). Kennon testified that she and Warren went to Anique Pittman's home and spent the night there

where she claimed methamphetamine was being used and manufactured. (Exhibit 2(f):351). On cross-examination, Kennon admitted that she had a previous romantic relationship with Brandon Elps. (Exhibit 2(f):356). She also testified that Mark Thomas was at Anique Pittman's house on the night in question. (Exhibit 2(f):256). Kennon claimed that she remained at Anique Pittman's home all night through the following morning when Warren was arrested, helped Pittman clean up her apartment, and left. (Exhibit 2(f):258).

Following Kennon's testimony, the State rested. After the State rested, the District Attorney inquired as to whether the defense was going to present evidence:

MR. SPENCE: Going to call Mark Thomas?

MR. FULCHER: **I do not know if Mark Thomas had been writted back or Cassie Flowers either.** But I plan to call Lisa -- Richard Willis, and Anique Pittman. All the other ones I am certain are here to testify.

(Exhibit 2(f):298) (emphasis added).

Anique Pittman testified as a defense witness consistently with the facts above. During Anique Pittman's testimony, the State cross-examined her by pointing out the absence of both Cassie Flowers and Mark Thomas:

Q: Okay. Is Mark Thomas here today?

A: No, sir. He's in -- he's incarcerated.

Q: Is Cassie Flowers here?

A: I don't even know Cassie Flowers.

(Exhibit 2(f):390).

Following Anique Pittman's testimony, the following transpired:

THE COURT: All right. Mr. Fulcher, you have some motion you want --

MR. FULCHER: I do, Your Honor. We would -- **I would like to call one witness, a Brandon Elps, for the purposes of testifying to the truth of Ms. Kennon. He's over in custody in our jail.** It would be limited to the fact -- of testimony, that she had, in previous occasions, gotten him in trouble, went to the law on him and all that. So that would be my motion, to have him over here. **And the other two witnesses would be -- and the other two would be for Cassie Flowers in the Department of Corrections, and Mark Thomas. They, too, would be witnesses to show -- testify to the untruthfulness of Ms. Kennon** and things that she had said and done in the past. And I would make a motion to continue, to get those witnesses here.

(Exhibit 2(f):329-330) (emphasis added).

The trial court acknowledged that writs for Mark Thomas and Cassie Flowers were issued on September 4, 2014, and invited defense counsel to make an offer of proof as to Brandon Elps, because the court would “be happy to have the Sheriff bring him over.” (Exhibit 2(f):330-331). Counsel never took the court up on its offer.

Dustin Warren testified in his own defense at trial and denied knowledge or possession of any of the items inside the motel room consistent with the statement of facts above. (Exhibit 2(f):353-363).

Following Warren’s testimony, the defense rested. (Exhibit 2(f):464). No further discussion or inquiry was made regarding Mark Thomas, Cassie Flowers, or Brandon Elps.

After all of the evidence, both Fulcher and the District Attorney gave their closing arguments to the jury. (Exhibit 2(f):408-444). Both characterized the central question for the jury to resolve as a credibility contest between Heather Kennon and Dustin Warren:

The only thing we have testimony of anything that went in that room is Heather Kennon's testimony, that she and Dustin were making it. But nobody else confirms that they were doing it. Nobody else was in that room except for the two of them.

...
Nobody has any confirmation of that. The only thing is Heather Kennon's testimony.

...
Once again, all we have is the testimony of Heather Kennon. And it's only through her testimony that we can imply any involvement by Dustin. I'd submit that she is very inconsistent and very dishonest in who she says who she is.

...
So in light of all this, and I'm asking that you examine the evidence that Judge Alford is going to ask you to examine, and ask you to judge the credibility of the witnesses. Certainly, I ask you to examine everything that you said -- heard Heather Kennon said, and if you believe her, and if you don't believe her, then I ask that you find Mr. Warren not guilty. I ask you to examine the evidence, the testimony of Dustin. If you don't believe him either, I still ask you to find him not guilty. Based upon the evidence, the testimony is the only thing that could actually put him in any kind of connection with it, and I dare say that I think she's very incredible.

(Exhibit 2(f):420, 421, 423, 425) (defense closing argument)

You can convict Dustin Warren on his own statement. The things that he said. The things that don't make sense.

...
You can convict him -- if you don't believe him, if you think he's up here telling you or cooking you up a story, you can convict him on that. On that basis. Because when somebody testifies, even though they don't have to, we don't put a halo over their head or believe their testimony. He becomes a witness.

...
Heather Kennon was not really a witness; she's an exhibit. She's Exhibit A. Exhibit A. Addict. I want you to think about these two people. Heather Kennon, who was up for five nights straight. If her story wasn't straight, she did a heck of a job even remembering what she did.

...
Your common sense is going to tell you, between those two people, if you had asked Heather Kennon to butter a piece of toast that day, I doubt she could do that. And she's not going to be able to construct some chemical operation to create a substance.

...

But I guarantee you, between those two, they both were involved. It doesn't matter how much he was involved. But your common sense is going to tell you, between those two people, who was the leader and who was the follower? Like I said, Mr. Warren has got to explain everything, and he's got an explanation for everything, but he's got an explanation for every single thing in isolation.

(Exhibit 2(f):430, 431, 433, 436, 437) (State's closing argument).

Following closing arguments and the jury instructions, the jury returned verdicts of guilty as to all charges on September 10, 2014. (Exhibit 2(f):457-458). Warren was sentenced as indicated above.

Following the affirmance of his conviction on direct appeal, Dustin Warren filed a Motion for Appropriate Relief on December 8, 2016. (Exhibit 2). The motion raised a claim of ineffective assistance of counsel based upon Fulcher's failure to interview or call Mark Thomas, Cassie Flowers, or Brandon Elps as defense witnesses. (Exhibit 2:7).

At the two evidentiary hearings, Cassie Flowers, Mark Thomas, and Dustin Warren testified on behalf of the defense. Rodney Fulcher and Chris Suggs testified as prosecution witnesses.

In his testimony, Fulcher admitted he never spoke with any of the three missing witnesses. (Exhibit 4:131, Exhibit 5:157-159). He further admitted that after the writs of habeas corpus were not satisfied, he made no further efforts to secure the attendance of those witnesses. (Exhibit 4:135-136). Fulcher further testified that he did not make the decision not to call them as witness simply because they had criminal records; he "just wanted to see what they had to say, if it was anything credible" first. (Exhibit 4:133).

When confronted with the Heather Kennon court file jacket, Rodney Fulcher could not explain why his name was on the file jacket and crossed out. (Exhibit 5:136). Rodney Fulcher admitted at the evidentiary hearing that he subsequently represented Heather Kennon on this same

case after she violated probation, and obtained a favorable resolution for her. (Exhibit 4:126, Exhibit 5:136). When asked whether he had ever represented Heather Kennon prior, Fulcher gave vague responses:

Q. Had you ever represented Heather Kennon, prior?

A. It's -- not to my -- I don't believe I have. I know in this case I did not. I never spoke to her about this case before.

Q. About a prior case?

A. I don't remember if I have. Nothing that would have been involved with Mr. Warren.

Q. Well, whether it was involving Mr. Warren or not?

A. I don't -- I don't recall if I ever represented her before.

(Exhibit 4:126).

At the second evidentiary hearing, Fulcher gave the same vague responses when asked the same question about Brandon Elps:

Q. Had you ever represented Brandon Elps prior to Mr. Warren's trial in September of 2014?

A. I don't remember if I did. I know that I've done some things for him after this. But nothing that... Mr. Elps' reputation preceded him before this, and that was the main reason why I did not want to call Mr. Elps, because he was always in custody for some type of problem.

Q. You hadn't represented Mr. Elps in the past, correct?

A. I said I don't remember if I have. It's been -- I have represented him since this particular event.

(Exhibit 5:157).

This was at odds with his prior testimony at the first evidentiary hearing in 2018:

Q: And it's safe to say you never spoke with Cassie Flowers either?

A: That's correct.

Q: And never spoke to Mr. Elps?

A: That's correct. I would say that I had represented Mr. Elps in the past before.

Q: You had been -- represented Mr. Elps?

A: Yeah. But nothing -- not in this case.

Q: In what kind of case?

A: A criminal case. So I was familiar with his criminal history.

(Exhibit 4:131-132)

The court below issued a written decision and order denying the motion on July 22, 2020. (Exhibit 6). In the order, the court below made the factual finding that Fulcher never contacted Mark Thomas, Cassie Flowers, or Brandon Elps. (Exhibit 6, ¶¶ 37, 42, 48, 51). The court further found that Fulcher failed to make an offer of proof or take any action to secure their attendance in court when Flowers and Thomas were not transported to testify in court. (Exhibit 6, ¶ 48). Additionally, the court made the following findings that are at issue herein:

56. Had Thomas testified at trial his testimony would have partially corroborated that of Kennon and directly contradicted Pittman's. Pittman denied that there was any drug activity at her condo whereas both Thomas and Kennon described an all night drug party. Hence it is likely that his testimony would have strengthened the State's case and weaken that of the defense. There is not a reasonable probability that his testimony at trial would have resulted in a different outcome.

57. As noted above, because of her feigned inability to remember a single person who supplied her drugs, the Court finds that Thomas' testimony is not credible. However had she testified she would have directly contradicted Pittman and Thomas who testified to crossing the Atlantic Beach Bridge in coming from Newport to the Pittman condo; according to Flowers the bridge was closed at all relevant times. There is not a reasonable probability that her testimony at trial would have resulted in a different result.

...

59. Even if Kennon's testimony were totally discredited the State still had a very strong circumstantial case.

60. At the evidentiary hearing, Defendant did not produce testimony of other attorneys in order to prove that his counsel's performance was deficient; and, nor did Defendant introduce standards of professional conduct established by the North Carolina Indigent Defense Services, American Bar Association or any other entity to prove that trial counsel's performance was deficient.

61. Defendant failed to allege or establish that his counsel's performance was so deficient that it prejudiced his defense such-that but for his counsel's errors, the result of the trial would have been different.

...

A. Defendant has not established the necessary facts by a preponderance of the evidence.

B. Defendant has not shown the existence of the asserted ground for relief.

C. Defendant has not shown that counsel's performance was deficient; and that the deficient performance prejudiced the defense.

(Exhibit 6).

This petition now follows.

REASONS WHY THE WRIT SHOULD ISSUE

POINT I – THE COURT BELOW'S ADJUDICATION OF PETITIONER'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL WAS CONTRARY TO THE CLEARLY-ESTABLISHED *STRICKLAND* STANDARD, INVOLVED AN UNREASONABLE APPLICATION OF THE CLEARLY-ESTABLISHED *STRICKLAND* STANDARD, AND WAS BASED UPON UNREASONABLE FACTUAL DETERMINATIONS IN LIGHT OF THE EVIDENCE PRESENTED AT THE MOTION FOR APPROPRIATE RELIEF HEARING

The right to effective assistance of counsel and to due process of law are guaranteed in the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Sections 19 and 23 of Article I of the Constitution of North Carolina. *See* United States Constitution Amendment V, Amendment VI, Amendment XIV; North Carolina Constitution Article I, §§ 19, 23; *State v Rogers*, 352 N.C. 119, 124-25 (2000); *State v. Tunstall*, 334 N.C. 320, 432 S.E.2d 331 (1993). 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. *See United States v. Cronin*, 466 U.S. 648, 658 (1984).

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.” *See Strickland v. Washington*, 466 U.S. 668, 686 (1984).

Under the *Strickland* standard, ineffective assistance of counsel is made out 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. *See Strickland*, 466 U.S. at 687; *see also State v Blakeney*, 352 N.C. 287, 307-308 (2000).

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." *See Strickland*, 466 U.S. at 690.

A. Counsel's Failure to Interview Witnesses That He Represented to the Trial Court Were Material and Had Relevant, Exculpatory Evidence for the Defense Was Objectively Unreasonable, As Was Counsel's Failure to Make Efforts to Secure their Attendance in Court and to Call Them to Testify

The United States Supreme Court has repeatedly held that the Sixth Amendment's guarantee of effective assistance of counsel requires assistance by an attorney who has conducted a reasonable investigation into the relevant facts of the case and the applicable law. *See Strickland v. Washington*, 466 U.S. 688, 691 (1984); *Porter v. McCollum*, 558 U.S. 30, 39 (2009); *Rompilla v. Beard*, 545 U.S. 374 (2005); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Williams v. Taylor*, 529 U.S. 362, 396 (2000).

The best evidence of this can be found in the language of the *Strickland* decision itself. While *Strickland* cautions courts to refrain from second-guessing counsel's strategic decisions from the superior vantage point of hindsight, at the same time "[s]trategic choices made **after a thorough investigation of law and facts relevant to plausible options** are virtually unchallengeable." *Id.* at 689-691 (emphasis added).

The United States Court of Appeals for the Fourth Circuit, following the Supreme Court's guidance, has held that "*Strickland's* objective reasonableness prong requires counsel to conduct

appropriate factual and legal inquiries and to allow adequate time for trial preparation and development of defense strategies." *Huffington v. Nuth*, 140 F.3d 572, 580 (4th Cir. 1998).

More to the point, the Fourth Circuit has clearly held "[t]rial counsel have an obligation to investigate possible methods for impeaching a prosecution witness, and failure to do so may constitute ineffective assistance of counsel." *Tucker v. Ozmint*, 350 F.3d 433, 444 (4th Cir. 2003), *see also Hoots v. Allsbrook*, 785 F.2d 1214, 1221 (4th Cir. 1986).

Adopting *Strickland*, the North Carolina Supreme Court has held that the State Constitutional right to effective assistance of counsel requires a defense lawyer to interview potential defense witnesses, prepare a defense, and secure witnesses' attendance at trial. *See State v. Braswell*, 312 N.C. 553, 562 (N.C. 1985); *State v. McEntire*, 71 N.C. App. 720 (N.C. Ct. App. 1984); *State v. Moorman*, 320 N.C. 387, 402 (1987).

Here, several key facts are beyond dispute: (1) Rodney Fulcher never spoke with any of the three witnesses; (2) the witnesses were ready, willing and able to testify; (3) the witnesses were more accessible and easily produced in court because they were incarcerated; (4) the witnesses would have offered evidence that would have corroborated the defense and cast significant doubt on Heather Kennon's testimony.

To find that the witnesses were material, this Court need only to consult the trial transcript and in Fulcher's repeated representations to the trial court that the three witnesses at issue here were "material" and explained exactly why they were material to the defense – "to testify to the untruthfulness of Ms. Kennon."

It goes without saying that an attorney has a duty to be candid with a court. When an attorney represents to a court that a witness, who is incarcerated, is material and necessary for the defense, and requests the court to expend governmental resources to transport that prisoner from a

jail or prison to court, then the court can assume that the attorney has a good faith basis for making such a request.

It would be logically impossible for this Court to accept this indisputable fact on the one hand, and simultaneously accept the contradictory explanation that despite these repeated representations, counsel essentially misrepresented to the court that the witnesses were material, and never had any intention of calling them as witnesses to begin with.

Either Fulcher believed the witnesses were material and necessary to the defense, or he did not. Either his representations to the court were accurate and truthful, or they were not.

If his representations were accurate and truthful, then his later explanation that he never had any intention of calling the witnesses cannot be credited. If his representations were inaccurate and untruthful, and he was merely posturing or engaging in dilatory tactics, his testimony cannot be credited.

Further, it is clear that his failure to speak with the witnesses, much less call them, was not strategic. As Fulcher conceded, all of the witnesses in this case, except the police officers and motel staff, had criminal records. He did not make the determination not to speak with the witnesses based on their criminal records:

Q. And is it fair to say that you'd made the decision, after you knew these people, these folks' criminal history, not to call them as a witness? You made that decision prior to trial?

A. I had it in the back of my mind. I called those people -- we had those people subpoenaed, and I was going to speak with those when they came. **I just wanted to see what they had to say, if it was anything credible. I didn't know what they were going to say.**

(Exhibit 4:132-133).

Given Fulcher's admissions, the testimony of the witnesses, and the indisputable record of trial proceedings, Dustin Warren has satisfied the first prong of *Strickland*.

B. Dustin Warren Suffered Prejudice as a Result of Counsel's Failure to Interview and Call Relevant Defense Witnesses Who Were Ready, Willing and Able to Testify

To establish prejudice, a “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.” *See Wiggins v. Smith*, 539 U.S. 510, 534 (2003), *quoting Strickland*, 466 U.S. at 694; *State v. Benitez*, 810 S.E.2d 781 (N.C. Ct. App. 2018).

However, prejudice to a defendant is presumed when “the likelihood that any lawyer, even a fully competent one, could provide effective assistance’ is remote.” *See Tunstall*, 334 N.C. at 329, 432 S.E.2d at 336, *quoting Cronin*, 466 U.S. at 659-660; *see also State v. Maher*, 305 N.C. 544, 550, 290 S.E.2d 694, 698 (1982).

As was stated during the evidentiary hearings, there were only two people who knew what occurred, or did not occur, in the motel room – Dustin Warren and Heather Kennon.

The court below found that “[e]ven if Kennon's testimony were totally discredited the State still had a very strong circumstantial case.” This conclusion is belied not only by the evidence at trial, but belied by the closing arguments of both counsel at trial, belief by Rodney Fulcher’s admissions on the witness stand, and belied by the law. Heather Kennon was the *sine qua non* of this case. Without her testimony, the only evidence the State had that Dustin Warren possessed the items in the room was his mere presence – which is legally insufficient to establish knowing possession or accessorial liability.

To find prejudice in this case, this Court need to look no further than defense counsel’s testimony. Fulcher’s sworn testimony demonstrates that he knew that Kennon’s credibility was the central issue in the case **before** trial:

Q. Okay. **So prior to trial**, you knew that Heather Kennon was going to get up and testify and then it would really hinge on her credibility, whether the jury believed her or not?

A. **That's what he and I discussed.** I said, "It's going to come down to her -- her belief -- her testimony of what happened and your testimony of what happened."

Q. And it's fair to say that **Mr. Warren had told you prior to trial that Mr. Elps, Ms. Flowers, and Mr. Thomas would give evidence that would cast out on Heather Kennon's credibility?**

A. **Late -- late in the game he did.**

Q. Okay. And cast out on her credibility in general, and **cast out on specific portions of her testimony?**

A. **He did.** And that is why we -- when we listed all the witnesses, the ones who I actually called were the ones who could refute the things that she said, and where he was at, and where she was at, who had the most credibility, like Anique Pittman and the other two witnesses.

(Exhibit 4:130-131) (emphasis added)

Q. Okay. When it became apparent to you that Heather Kennon was going to turn State's evidence and testify against Dustin Warren, became -- her credibility became all the more important at that point, correct?

A. That's correct.

(Exhibit 5:165).

Thus, counsel's failure to make appropriate efforts to secure these witnesses' attendance in court or even interview them left gaping holes in the defense that the prosecution exploited.

Anique Pittman's testimony left a 9+ hour gap in Warren's alibi. That gap would have been filled in by Mark Thomas, who saw Kennon going in and out of Warren's car. Thomas' testimony that Kennon disappeared in the middle of the night after he locked her out of Anique Pittman's home would have directly contradicted her testimony that she remained in Pittman's home the following morning, helping to clean up a clandestine methamphetamine laboratory. Thomas' testimony would also have directly contradicted Kennon's testimony that there was rampant and open drug use and Pittman's home the night before Dustin Warren's arrest, as he

testified. The court below's factual finding in ¶ 56 in Exhibit 6 is belied by the record; Thomas' testimony would have not corroborated Kennon's testimony, but would have contradicted it. However, his testimony would have corroborated Dustin Warren's testimony and his defense.

The court below acknowledged that Cassie Flowers' testimony would have directly contradicted a key portion of Kennon's testimony – that she and Warren had gone to Flowers' home to get the same cold packs that were subsequently found inside the hotel room and allegedly used to manufacture methamphetamine.

Finally, Brandon Elps' testimony would have also established that Heather Kennon had a reputation or character trait for untruthfulness – thereby further establishing that her testimony concerning Dustin Warren's actions was even less credible. This would have given further credence to a defense closing argument that Kennon's testimony was *falsus in uno, falsus in omnibus*. The fact that feminine hygiene products were found in the bag in the room that she specifically disavowed cast doubt upon her credibility; they certainly did not belong to Warren. Given the entire picture of the case, all three of the witnesses would have corroborated Dustin Warren and Anique Pittman's testimony. Their absence, as was explicitly pointed out during Pittman's cross-examination, and as implicitly argued during the District Attorney's summation to the jury, impaired the defense.

C. Conclusion

It is clear that there was deficient performance in this case. Fulcher admitted he never bothered to speak with witnesses that he represented to the court were necessary and material to the defense, much less secure their appearance or call them as witnesses. It is further clear that these failures negatively impacted the defense, such that had the witnesses testified, Heather Kennon's testimony, and with it, the State's theory of prosecution, would have been discredited.

The question for this Court to consider was whether counsel's failures were strategic and therefore excusable, which he admitted at one point, were not, or whether they were influenced by his financial dispute with Dustin Warren, his prior representation of Brandon Elps, his possible prior representation of Heather Kennon, or his subsequent retention by Heather Kennon on the same case. What is evident is that Dustin Warren received ineffective assistance of counsel, requiring review by this Court, and reversal of the order denying the Motion for Appropriate Relief.

Finally, the court below's finding that the defense's failure to produce expert witness testimony or standards of conduct from the North Carolina Indigent Defense Services, the American Bar Association, or another entity is legally erroneous. None of those organizations set the standard for effective assistance of counsel under the United States Constitution's Sixth Amendment. The United States Supreme Court, and the lower courts in their application of Supreme Court precedent, set the standard for the Sixth Amendment guarantee of effective assistance. A criminal defendant is not required to present anything other than the governing legal principles and the evidence in support of his or her contention that those legal principles were violated. To undersigned counsel's knowledge, no court (and certainly not the United States Supreme Court) has ever held that in order to make out a claim of ineffective assistance, a defendant must present expert witness testimony. That is simply not the law.

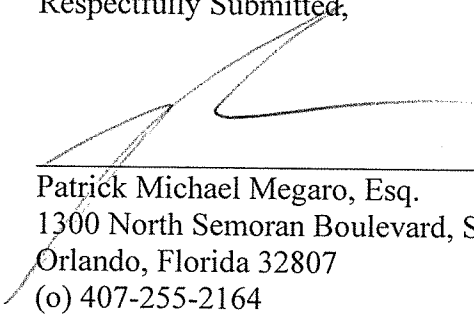
PRAYER FOR RELIEF

Dustin Jamal Warren respectfully prays that this Court issue its writ of certiorari to the Superior Court of Carteret County to review the order above specified, upon issues stated as follows:

- (1) Whether Dustin Jamal Warren received ineffective assistance of counsel;
and that the Petitioner have such other relief as the Court may seem proper.

Dated: August 24, 2020

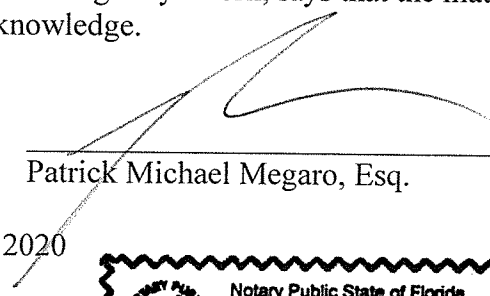
Respectfully Submitted,



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pmegaro@halscottmegaro.com
North Carolina Bar ID # 46770
New Jersey Bar ID # 3634-2002
New York Bar ID # 4094983
Florida Bar ID # 738913
Texas Bar ID # 24091024
Washington State Bar ID # 50050
Attorney for Dustin Jamal Warren

VERIFICATION

The undersigned attorney for petitioner, after being duly sworn, says that the material allegations of the petition are true to my personal knowledge.

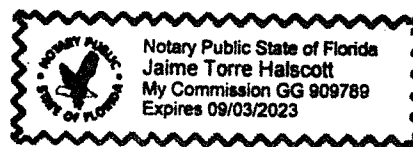


Patrick Michael Megaro, Esq.

Subscribed and sworn to before me on August 24, 2020



Notary Public

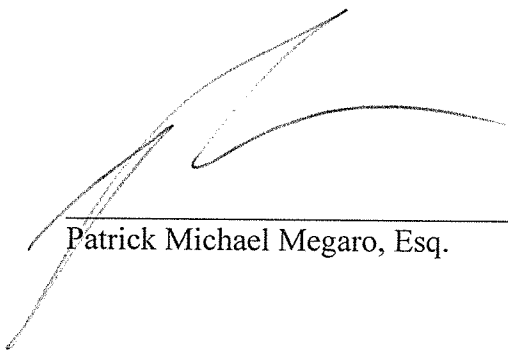


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. First Class Mail August 24, 2020

Office of the District Attorney
Carteret County
302 Court House Square
Beaufort, North Carolina 28516

North Carolina Attorney General
114 West Edenton Street
Raleigh, North Carolina 27603



Patrick Michael Megaro, Esq.

EXHIBIT 1

STATE OF NORTH CAROLINA

File No.

14CRS050372

52

CARTERET County

BEAUFORT Seat of Court

In The General Court Of Justice

NOTE: (This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-342 for DWI offense(s).)

District Superior Court Division

STATE VERSUS

JUDGMENT AND COMMITMENT ACTIVE PUNISHMENT - FELONY (STRUCTURED SENTENCING) (For Convictions On Or After Jan. 1, 2012)

Name Of Defendant

WARREN,DUSTIN,JAMAL

Race

W

Sex

M

Date Of Birth

10/24/1977

G.S. 15A-1301, 15A-1340.13

Attorney For State

SPENCE,DAVID,L

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

FULCHER,RODNEY,G

Appointed

Retained

Crt Rptr Initials

JS

The defendant pled guilty pursuant to Alford to was found guilty by a jury of pled no contest to

Table with columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., F/M, CL., *Pun. CL. Rows include offenses like POSS/DISTRIBUTE METH PRECURSOR and MANUFACTURE METHAMPHETAMINE.

*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement). PRIOR RECORD LEVEL: I III V II IV VI

The Court:

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 15. Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue 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.

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) for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5). (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 or G.S. 14-27.4A, 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 an 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 an 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). Other: This finding is based on the jury's determination of this issue 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, 2008, only) finds the above designated offense(s) involved criminal street gang activity. G.S. 14-50.25.
13. 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.
14. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
15. (for judgments entered on or after Dec. 1, 2013, only) 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)

Form with checkboxes for sentencing options: Life Imprisonment Without Parole, Violent Habitual Felon, Life Imprisonment With Parole, ASR term, to Death, in the custody of: N.C. DAC, Other.

The defendant shall be given credit for 223 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. Includes stamp: TRUE COPY, CLERK OF SUPERIOR COURT, CARTERET COUNTY.

Signature of Clerk of Superior Court, Carteret County.

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	Fine	Restitution*	Attorney's Fees	SBM Fee	Appt Fee/Misc	Total Amount Due
\$ 2,564.50	\$	\$	\$	\$	\$	\$ 2,564.50

*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, 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: _____

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

- 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.
- 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	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
9/10/2014	BENJAMIN G. ALFORD	

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	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> 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.

- Appeal 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	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC
9/10/2014	9/10/2014		SEAL

Material opposite unmarked squares is to be disregarded as surplusage.

EXHIBIT 2

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
)
V.)
)
DUSTIN JAMAL WARREN)
)

FILE NO.: 14-CRS-50372, 50376-77

MOTION FOR APPROPRIATE RELIEF

NOW COMES THE MOVANT DUSTIN JAMAL WARREN, and moves this Court to grant him appropriate relief from his conviction and sentence, pursuant to N.C.G.S. § 14-18.

The following documents are attached here as exhibits:

- Exhibit A: Affidavit of Petitioner Warren
- Exhibit B: Affidavit of Cassie Flowers
- Exhibit C: Affidavit of Mark Thomas
- Exhibit D: Affidavit of Kathleen Roberts
- Exhibit E: Excepts of Motion Hearing Transcript
- Exhibit F: Excepts of Trial Transcript

INTRODUCTION

1. Movant was arrested January 31, 2014 and charged with possession and distribution of methamphetamine precursor, in violation of N.C.G.S. § 90-95 (d1)(2), manufacturing methamphetamine, in violation of N.C.G.S. § 90-95(b)(1a), and conspiracy to manufacture methamphetamine, in violation of N.C.G.S. § 14-2.4(a). Movant pleaded not guilty. On February 24, 2014, Movant was indicted on charges of possession of precursor chemicals with the intent to manufacture methamphetamine, manufacturing methamphetamine, conspiracy to manufacture methamphetamine. The indictment also charged Movant as a habitual felon.

2. Movant proceeded to trial September 8, 2014 and he was convicted by a jury on all counts. At sentencing, the trial court consolidated 14 CRS 50372, possession and distribution of a methamphetamine precursor, with 14 CRS 50376, manufacture of methamphetamine, then sentenced the Movant for the Class C felony to a presumptive term of 127 months minimum to 165 months' maximum in the Department of Correction. In 14 CRS 50377, conspiracy, the Movant was sentenced to the presumptive range of 127 months minimum to 165 months' maximum to be served at the expiration of the previous sentence.

3. Movant's direct appeal was denied November 17, 2015 by the Court of Appeals. In its Order, the Court of Appeals ruled,

From the cold record, we are unable to determine whether defense counsel's failure to make an offer of proof regarding Elps' testimony or defense counsel's failure to call Flowers and Thomas to testify regarding Kennon's untruthfulness constituted trial strategy or conduct that may rise to ineffective assistance of counsel. We dismiss these arguments without prejudice to Movant's right to pursue these claims in a subsequent MAR proceeding.

4. A timely petition for discretionary review in the North Carolina Supreme Court was denied January 28, 2016.

5. This motion follows.

STATEMENT OF FACTS

6. Shortly before 12 p.m. on 29 January 2014, Movant drove his gold Buick to the Seashore Motel in Atlantic Beach, North Carolina. Accompanying Movant was Heather Kennon ("Kennon"), an acquaintance Movant knew through his brother. Movant pulled up to the motel office, Kennon alighted the car, and went into the office to register for a room. Scott Way ("Way"), the manager of the Seashore Motel, watched as Kennon alighted from the front passenger seat. Kennon filled out a registration card and paid for a room for the night. On the registration card,

Kennon listed her name and the license plate of Movant's gold Buick. Way accepted the registration and payment and gave her a key to room 9. After checking in, Way testified Kennon and Movant stayed in the car for a "little while," and then proceeded into the room.

7. Approximately two hours after checking in, Kennon returned to the motel office and asked for an extra space heater. Snow was on the ground that day and it was very cold outside. Carla Thomas ("Carla"), an assistant manager at the Seashore Motel, explained to Kennon the motel is old and another space heater would likely blow the circuit breaker. Way brought extra blankets to room 9 and offered them in lieu of a second space heater. Way testified a man opened the door roughly two or three inches and "announced that they were in, you know, in – not decent," and did not want the extra blankets. Way testified he heard a male voice, and did not observe any males enter or exit room 9 except for Movant.

8. The next morning, Way and Carla began the process of checking out guests and cleaning rooms previously rented. Around 9:00 or 9:30 a.m., Carla knocked on the door of room 9 to ascertain whether Kennon and Movant needed anything or would like to register for another night. After no answer, Carla announced her identity and that she was about to enter the room. Carla unlocked the door and entered the room. She noticed a black bag which contained, among other items, a mask and a glue gun. Carla also noticed a pickle jar turned upside-down with a dried white residue at the bottom. After viewing the contents of room 9, Carla informed Way of her findings. Together, they determined the police needed to be summoned. Way called 911.

9. Kennan testified that on 28 January 2014, she met Movant at the Doubletree Hotel in Atlantic Beach, North Carolina. Kennan and Movant shared a room at the hotel, where they injected and inhaled methamphetamine, respectively. Movant had already obtained the materials

to make methamphetamine, with the exception of cold packs. Kennon and Movant stopped by Cassie Flowers' ("Flowers") residence to obtain cold packs.

10. On 29 January 2014, Kennon accompanied Movant to the Seashore Motel. After registering and paying for the room, Movant parked the gold Buick in front of room 9. Kennon testified Movant brought a black suitcase into the room, which contained the precursors to, and various supplies necessary to manufacture, methamphetamine. Movant began removing the precursors and supplies from the suitcase and arranging them in preparation to make methamphetamine.

11. While Movant prepared the supplies, Kennan injected herself with methamphetamine she had received from Movant the previous day. Kennan attempted to assist Movant in making methamphetamine. Movant became dissatisfied with Kennan's assistance and manufactured the methamphetamine alone, as Kennon looked on. Kennon testified the manufacturing process yielded approximately 4.5 grams of methamphetamine.

12. After Movant finished, he left the supplies in room 9 at the Seashore Motel and they traveled to Anique Pittman's ("Pittman") residence. Pittman was Movant's girlfriend. Kennon testified she, Movant, Pittman, and Mark Thomas ("Thomas") drank beers, ingested methamphetamine, and spent the night. Kennon testified Movant had the key to room 9 and intended to return to the Seashore Motel to retrieve the black suitcase and supplies prior to check out. The next morning, Movant left Kennon at Pittman's house to retrieve the materials left in room 9. Kennon testified while Movant was gone, Thomas texted Pittman's phone "saying the law got [Movant]."

13. In the midmorning hours of 30 January 2014, Atlantic Beach Police Lieutenant Brian Prior ("Lieutenant Prior") received a call regarding a potentially hazardous chemicals and

HAZMAT situation at the Seashore Motel. Upon arrival, Lieutenant Prior made contact with Carla, who told him about the items she had discovered inside room 9.

14. Lieutenant Prior entered the room, and observed: (1) a 7-up two-liter bottle with an unknown “red slushy residue” at the bottom; (2) plastic tubing; (3) a soda cap that had been “hollowed out” with a tube placed through the cap and secured with glue; (4) a funnel; (5) a face mask; (6) a glass jar with an unknown white powdery substance at the bottom; (7) Coleman fuel; (8) cardboard containers with salt in them; and (9) a used syringe located in the trashcan. Lieutenant Prior determined these items were consistent with items in a methamphetamine lab, based on his training and experience. Lieutenant Prior secured the room and obtained a search warrant.

15. After the search warrant was issued, room 9 was processed by North Carolina State Bureau of Investigation (“SBI”) agents. SBI Special Agent Kelly Ferrell (“Agent Farrell”) was in charge of responding to clandestine laboratories found in the eastern portion of the state as a “Site Safety Officer.” Agent Farrell was called to room 9 of the Seashore Motel to process a suspected methamphetamine laboratory on 30 January 2014. Agent Farrell documented the items located in room 9.

16. Agent Farrell analyzed the red slushy residue found in the bottom of the 7-up bottle, which tested positive for hydrochloric acid, a precursor chemical for methamphetamine. Agent Farrell also observed a bottle of Flow Easy drain cleaner, which contains sulfuric acid, and a Walgreens cold pack, which contains ammonium nitrate. Agent Farrell testified both sulfuric acid and ammonium nitrate are precursor chemicals for methamphetamine. Agent Farrell also observed various other trappings of a methamphetamine laboratory in room 9, including: (1) masks; (2)

burnt aluminum foil; (3) a hot glue gun; (4) coffee filters; (5) green rubber gloves; (6) a bottle of hydrogen peroxide; and (7) a two pack of Energizer brand batteries of advanced lithium.

17. Agent Kennon testified the materials found in room 9 were “typical of what [is] see[n]” at a methamphetamine lab using the “one-pot cook” method. Agent Farrell testified: (1) it took her “less than a minute” to determine the materials found in room 9 were a clandestine methamphetamine laboratory; and (2) the precursor chemicals found in room 9 were in fact used to produce methamphetamine.

18. Atlantic Beach Police Officer David Ennis (“Officer Ennis”) arrived at the Seashore Motel and assisted Lieutenant Prior. Officer Ennis briefly looked inside room 9 and sealed off the crime scene to ensure no one entered or exited except those authorized to do so. Officer Ennis reviewed the registration card Kennon had filled out at the time of check in. Officer Ennis ran the vehicle license plate number Kennon listed on the registration card, and found the plate was issued to a Buick vehicle registered to Movant.

19. While Officer Ennis remained on the scene, he noticed a gold Buick enter the Seashore Motel parking lot. Officer Ennis made contact with Movant, the driver of the car, and asked him why he was at the motel. Movant replied he was “just driving around.” While talking to Movant, Officer Ennis noticed two blue pills located in “the grip of the driver’s side door” handle of Movant’s vehicle. Movant admitted the pills were Adderall, a controlled substance.

20. Officer Ennis instructed Movant to exit his vehicle, handcuffed him, and placed him under arrest for possession of a controlled substance. Thomas was inside the car at the time of Movant’s arrest and was also arrested on unrelated charges. Officer Ennis performed a pat down of Movant and a key fell “from the lower half of his body.” Officer Ennis picked up and examined

the key, issued to room 9 at the Seashore Motel. Movant was transported to the Carteret County Detention Center for processing.

ARGUMENT

MOVANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHERE TRIAL COUNSEL FAILED TO PREPARE FOR TRIAL, FAILED TO REQUEST THE TRIAL COURT BRING A WITNESS IN FROM JAIL TO MAKE AN OFFER OF PROOF CONCERNING THE STATE'S CHIEF WITNESS HEATHER KENNON, AND FAILED TO HAVE TWO WITNESSES TRANSPORTED FROM THE DEPARTMENT OF CORRECTION TO TESTIFY TO HEATHER KENNON'S UNTRUTHFULNESS.

A. Introduction

21. The right to effective assistance of counsel and to due process of law are guaranteed in the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Sections 19 and 23 of Article I of the Constitution of North Carolina. *See* U.S. Const. amends. V, VI, XIV; N.C. Const. art. I, §§ 19, 23; *State v Rogers*, 352 N.C. 119, 124-25 (2000); *State v. Tunstall*, 334 N.C. 320, 432 S.E.2d 331 (1993).

22. “It is implicit in the constitutional guarantees of assistance of counsel and confrontation that an accused and his counsel shall have a reasonable time to investigate, prepare and present his defense.” *See State v. McFadden*, 292 N.C. 609, 616, 234 S.E.2d 742, 747 (1977). 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. *See United States v. Cronin*, 466 U.S. 648, 658 (1984).

23. 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.” *See Strickland v. Washington*, 466 U.S. 668, 686 (1984). Under the *Strickland* standard, ineffective

assistance of counsel is made out when the Movant 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 Movant by the Sixth Amendment," and (2) the deficient performance prejudiced the Movant enough to deprive him of due process of law. *See Strickland*, 466 U.S. at 687; *see also State v Blakeney*, 352 N.C. 287, 307-08 (2000).

24. 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." *See Strickland*, 466 U.S. at 690.

25. To establish prejudice, a "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." *See Wiggins v. Smith*, 539 U.S. 510, 534 (2003) (quoting *Strickland*, 466 U.S. at 694). However, prejudice to a defendant is presumed when "the likelihood that any lawyer, even a fully competent one, could provide effective assistance' is remote." *See Tunstall*, 334 N.C. at 329, 432 S.E.2d at 336 (quoting *Cronic*, 466 U.S. at 659-660); *see also State v. Maher*, 305 N.C. 544, 550, 290 S.E.2d 694, 698 (1982).

B. Movant was denied the effective assistance of counsel where Trial Counsel failed to investigate Movant's case and prepare for trial resulting in Trial Counsel's request to withdraw because he could not "zealously advocate" on Movant's behalf

26. The previous month the case had been set for trial and defense counsel moved to continue to be given more time to prepare. The case was continued. The week prior to trial defense counsel moved to withdraw stating:

Your Honor, this is a case that I was retained in. As we've kind of gone along with it, I don't think Mr. Warren and I see eye-to-eye on everything. I don't think I can zealously represent him at a trial based on the evidence, the conversations we've had. So it's going to be my motion to withdraw from the case.

(See Transcript of Motion Hearing, September 2, 2014 "Motions Hearing" at pp. 2-3).

27. Additionally, counsel told the court that he had not finished being paid. *Id.* The trial court denied the motion to withdraw. (Motions hearing at p. 7). On the day of trial, Trial Counsel again moved to continue the case explaining that after the denial of his motion to withdraw the previous week, Trial Counsel sent out subpoenas, although many had not been served as of the date of trial. (See Trial Transcript Vol. I September 8, 2014 ("T.T.") at p. 7). Apparently defense counsel had not used the earlier months' continuance to subpoena the witnesses. *Id.* The trial court denied the motion to continue. *Id.*, at pp. 7-8.

28. Counsel proved to be unprepared to try the case and to zealously defend the defendant, just as he informed the Trial Court the week before trial. Trial Counsel's failures highlight his abdication of a basic principle under the rule of professional conduct: "As advocates, a lawyer zealously asserts the client's position under rules of the adversary system." *See* N.C. Rules of Professional Conduct, Rule 0.1(2).

29. The Constitutions of both the United States and North Carolina guarantee the right to the assistance of counsel for his defense and case law has interpreted the Constitutions as

guaranteeing the effective assistance of counsel. *See Strickland v. Washington, supra.*; *see also State v. Braswell*, 312 N.C. 553, 562 (N.C. 1985). Here, it is clear Trial Counsel had failed to prepare the case for trial. He waited until the week before trial to send out subpoenas for witnesses and expressed his disinterest in preparing any defense by claiming his intent to withdraw from the case because he had not been paid completely.

30. Trial Counsel can offer no reasonable or tactical explanation for failing to issue subpoenas for witnesses, obviously important to any defense at trial, until the week before trial was to begin. There is no evidence the failure to prepare was the fault of Mr. Warren or that he interfered with his lawyer's efforts. Trial Counsel knew the importance of the witnesses for which he issued subpoenas and yet waited until the week before trial to issue the mechanism by which they would be brought to court. His admission on the day of trial that many of the subpoenas had not been served, thereby denying Mr. Warren a full defense at trial, is further evidence of Trial Counsel's lack of preparation and interest in zealously advocating on behalf of his client.

31. In examining Mr. Warren's claim that he was denied effective assistance of counsel, the Court is required to examine both the objective reasonableness of Trial Counsel's failure to issue trial subpoenas for witnesses who would have significantly impeached the State's chief witness, Heather Kennon, and the prejudice Mr. Warren suffered at trial as a result of these witnesses not appearing. Here, there is no objectively reasonable basis not to be prepared for trial, particularly having witnesses in court that were critical to Mr. Warren's defense. Second, the jury was not able to evaluate the testimony of the witnesses, who would have testified that Kennon had a history of untruthfulness, and had the jury heard these witnesses, there is a reasonable likelihood that the outcome of the trial would have been different.

C. Movant was denied the effective assistance of counsel where Trial Counsel failed to request that witness Brandon Elps be brought from jail to court to testify concerning Heather Kennon getting him in trouble and then reporting him to law enforcement, which was Movant's theory of defense at trial.

32. The North Carolina Constitutional right to effective assistance of counsel requires a defense lawyer to interview potential defense witnesses, prepare a defense, and secure witnesses' attendance at trial. *See State v. McEntire*, 71 N.C. App. 720 (N.C. Ct. App. 1984); *State v. Moorman*, 320 N.C. 387, 402 (1987).

33. Heather Kennon, who was defendant's alleged accomplice, testified for the State providing detailed testimony of the defendant's conspiracy with her to manufacture methamphetamine and the steps he took securing the hotel room and setting up the process. There was no witness to the conspiracy other than the defendant and Ms. Kennon. No one placed the defendant manufacturing the methamphetamine except Ms. Kennon. Her testimony was crucial to the State. Thus her credibility was crucial to the State.

34. Trial Counsel failed to have Brandon Elps, who was being held in the local jail, to be brought into Court to testify on behalf of the defense. (T.T. p 330). Trial Counsel represented to the court that Mr. Elps would impeach Ms. Kennon, the most crucial witness in the State's case. Counsel represented Mr. Elps would testify that on previous occasions Ms. Kennon got Mr. Elps into trouble and then went to the law. He proffered this testimony evidenced a pattern of behavior on her part, which was the defense theory at trial. *Id.*

35. Inexplicably counsel did not have Mr. Elps brought over at least to make an offer of proof by issuing a trial subpoena. (T.T. p 331). This failure was further exacerbated when Trial Counsel failed to seek the Court's assistance in getting Elps from jail to testify. The procedure to bring forward an inmate from the Department of Correction is straightforward. Every court of

record, upon application by defense counsel, has the power to issue a Writ of Habeas Corpus ad Testificandum for writs bringing before the court any prisoner who may be detained in any prison within the state for the purpose of that inmate testifying as a witness on behalf of the defendant making the application. *See* N.C.G.S. §17-41.

36. Here, Trial Counsel unreasonably failed to invoke the Trial Court's authority to have a key witness for the defense brought to Court. Elps was critical in that his testimony would impeach the credibility of the State's chief witness and her credibility was central to the State's ability to prevail. The jury was denied the opportunity to hear from Elps and to consider his testimony in evaluating the veracity of the State's case. If the jury had heard the testimony, there is a reasonable likelihood the outcome of the trial would have been different.

D. Movant was denied the effective assistance of counsel where Trial Counsel failed to have two witnesses transported from the Department of Correction to testify to the untruthfulness of the State's key witness, Heather Kennon.

37. The North Carolina Constitutional right to effective assistance of counsel requires a defense lawyer to interview potential defense witnesses, prepare a defense, and secure witnesses' attendance at trial. *See State v. McEntire*, 71 N.C. App. 720 (N.C. Ct. App. 1984); *State v. Moorman*, 320 N.C. 387, 402 (1987).

38. Ms. Kennon who was Mr. Warren's alleged accomplice, testified for the State as its chief witness implicating Mr. Warren. She testified in detail the alleged conspiracy between she and Mr. Warren to manufacture methamphetamine and the steps he took securing the hotel room and setting up the process. There was no witness to the conspiracy other than Mr. Warren and Ms. Kennon and no one testified to seeing Mr. Warren manufacture methamphetamine other than Ms. Kennon. In short, her testimony was crucial to the State's case and thus her credibility.

39. One of the most common methods of impeachment is by showing that the witness's character is bad, which may be done by means of "character witnesses." *See* Brandis & Broun N.C.Evid. §155 p. 553 (7th Edition). There were two witnesses, Cassie Flowers and Mark Thomas, who were in the custody of the State. Both were expected to testify Ms. Kennon was not truthful in her testimony at trial and that the claims against Mr. Warren were false. The procedure to bring forward an inmate from the Department of Correction is straightforward. Every court of record, upon application by defense counsel, has the power to issue a Writ of Habeas Corpus ad Testificandum for writs bringing before the court any prisoner who may be detained in any prison within the state for the purpose of that inmate testifying as a witness on behalf of the defendant making the application. *See* N.C.G.S. §17-41.

40. Trial Counsel waited until after his motion to withdraw (a week before trial) was denied, and he was forced to take the case to trial that he first told the Trial Court that he had issued a subpoena to have these witnesses available at trial. Both were in the custody of the State at the time. However, despite his representations, there was no indication defense counsel ever executed upon the Writs of Habeas Corpus Ad Testificandum for these two necessary witnesses. Such a failure cannot be explained away as a reasonable strategic decision and the failure robbed Mr. Warren of the ability to fully present his defense at trial.

41. Pursuant to Strickland, Mr. Warren is entitled to a new trial. In the alternative, the record is inconclusive and cannot affirmatively refute the claims made and thus it is appropriate for this Court to set this matter for an evidentiary hearing.

CONCLUSION AND RELIEF REQUESTED

42. Movant 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.”

43. 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 Movant was entitled to a hearing because there was a question of fact that could only be determined by a fact-finding hearing.

44. 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 Movant 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.

45. The Movant respectfully submits that the issues presented herein require remand for new sentencing hearing, or in the alternative, an evidentiary hearing to be properly presented and fully litigated. 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 Movant of the motion; and further, that counsel has reviewed the trial transcripts.

WHEREFORE, DUSTIN JAMAL WARREN 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 thirty (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 Movant such other and further relief as this Court deems just, proper and equitable.

Dated: December 8, 2016

Respectfully Submitted,



Patrick Michael Megaro, Esq.
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Orlando, Florida 32801
(o) 407-255-2164
(f) 855-224-1671
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North Carolina Bar ID # 46770
New Jersey Bar ID # 3634-2002
New York Bar ID # 4094983
Florida Bar ID # 738913
Texas Bar ID # 24091024
Washington State Bar ID # 50050

CERTIFICATE OF SERVICE

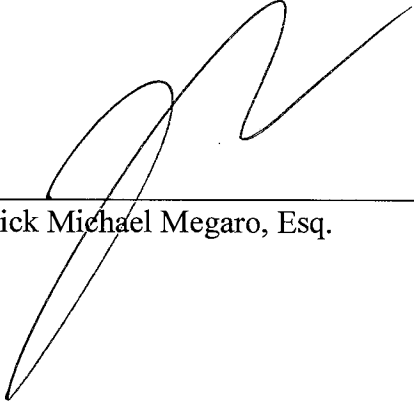
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S.

First Class Mail on December 8, 2016 to:

Office of the Clerk of Court
Superior Court Division
In and for Carteret County
300 Court House Square
Beaufort, NC 28516

Office of the District Attorney
In and for Carteret County
302 Court House Square
Beaufort, NC 28516

Rodney G. Fulcher, Esq.
416 Live Oak Street
Beaufort, NC 28516



Patrick Michael Megaro, Esq.

EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
)
V.)
)
DUSTIN JAMAL WARREN)
)

FILE NO.: 14-CRS-50372, 50376-77
MOTION FOR APPROPRIATE RELIEF

**AFFIDAVIT OF PETITIONER DUSTIN WARREN IN SUPPORT OF
MOTION FOR APPROPRIATE RELIEF**

I, DUSTIN JAMAL WARREN, hereby affirm under pains and penalties of perjury, the statements contained in this affidavit. I make this affidavit in support of my Motion for Appropriate Relief filed contemporaneously herewith.

1. When my trial lawyer filed a motion to suppress evidence, it was because I drew it up and told him to file it. It was supposed to be a joint motion by my lawyer and the lawyer for Heather Kennon. When the State figured this out, Heather Kennon immediately was offered full immunity to testify against me at trial and that allowed her to change her story for a third time. I was told that if I refused to take a plea, Heather Kennon was going to throw me under the bus.

2. During the whole time while I was being represented by Trial Counsel, he was regularly filing motions to continue because he was not prepared and made no effort to be prepared. The reason witnesses were not there was because my lawyer waited too long to get subpoenas issued and when he did try, the subpoenas were improper. I was also told the witnesses were not present because the sheriff “forgot” to serve the subpoenas and writs.

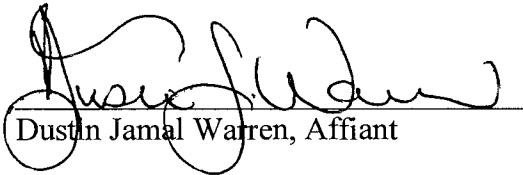
3. It was clear to me from the beginning that my trial lawyer never expected a trial and never prepared for one. He never discussed a trial strategy with me and never spoke about any defense I might have. It is my belief that the reason he only asked for \$2,500 flat fee to take my

case was because he never expected he would have to go to trial. I also believe that the reason he asked to withdraw from the case and then asked for a continuance was to hide the fact that he was not prepared when the case was called.

4. My relationship with my attorney turned very poor and bitter after I stood up in Court and told the judge why I wanted a new lawyer. I know that my statements embarrassed my lawyer and that simply exposed a profound conflict between us. I believe this conflict affected his trial preparation and performance to the extent that it affected the jury's verdict. Really, my lawyer was just going through the motions, literally.

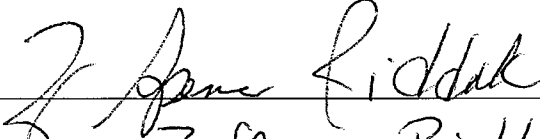
FURTHER AFFIANT SAYETH NOT

Dated: July 7th, 2016


Dustin Jamal Warren, Affiant

NOTARIAL STATEMENT

I hereby certify that on the 7th day of July, 2016, the above-named person did appear before me in person and, upon presentation of sufficient identification, was placed under oath and did swear that the statements contained herein are true and correct.

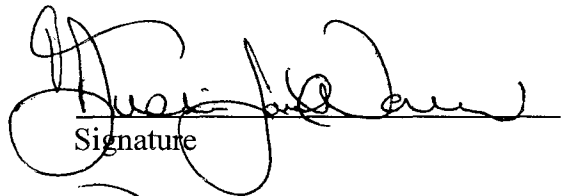

Print Name: Z Spence Riddick
NOTARY PUBLIC

My Commission Expires: May 9, 2020

NOTARIZED VERIFICATION

STATE OF North Carolina
COUNTY OF Fasquotank

Before me, the undersigned authority, personally appeared Dustin Jamal Warren, who first being duly sworn, says that he: (1) is the Defendant in the above-styled proceeding; (2) has read the foregoing Motion for Appropriate Relief and has personal knowledge of the facts and matters therein set forth and alleged; and (3) reads, writes and understands English (or that the foregoing has been translated for him) and (4) under the penalties of perjury, hereby swears and affirms that the foregoing is true and correct.


Signature

DUSTIN JAMAL WARREN
Printed Name

The foregoing was acknowledged before me this 7th day of July, 2016, by Dustin Jamal Warren, who produced Prison I.D. as identification, and who did/did not take an oath.

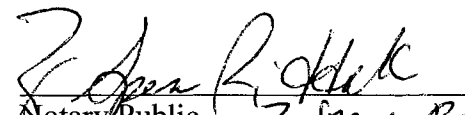

Notary Public Spence Riddick
My Commission Expires: May 9, 2020

EXHIBIT B

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
)
V.)
)
DUSTIN JAMAL WARREN)
)

FILE NO.: 14-CRS-50372, 50376-77

AFFIDAVIT OF CASSIE J. FLOWERS IN SUPPORT OF PETITIONER DUSTIN WARREN'S MOTION FOR APPROPRIATE RELIEF

I, CASSIE JEAN FLOWERS, hereby affirm under pains and penalties of perjury, the statements contained in this affidavit. I make this affidavit in support of Dustin Jamal Warren's Motion for Appropriate Relief filed contemporaneously herewith.

1. I was incarcerated at the North Carolina Women's Correctional Institution at Maury from September 8, 2014, through November 22, 2015.

2. I met Petitioner Dustin Warren in September, 2013, and we dated until the end of December, 2013, when we stopped communicating regularly. I did not have contact with Petitioner from December, 2013 until December, 2015, after his trial had concluded.

3. On January 28 and January 29, 2014, I was home alone in my house in Moorhead City, North Carolina, with my chocolate Labrador named Rusty. No one came to my home at any time on those dates particularly because the weather was so bad. Snow, sleet, and ice, combined with sub-zero temperatures, made any travel in the early morning hours of January 29, 2014, very dangerous. If anyone had come up my driveway, the dog would have barked to warn me. I live alone and my doors are always locked and secured at night. Dustin Warren never had a key to my home.

4. When I got out of jail, I saw in the paper that Petitioner Dustin Warren had been arrested. I received in December, 2014, a Christmas card from Dustin and he sent me a note asking me to review a portion of the trial transcript, particularly the testimony of Heather Kennon and some statements she made about me. I do not know what a “cold pack” is, there were never any “ingredients” in my home to make drugs, and my home was never used to make drugs. I never saw Heather Kennon or Dustin Warren on January 28, 2014, or January 29, 2014. All of this was testified to by Heather Kennon and all of these statements were false.

5. Dustin Warren never came to my house in the early morning hours of January 29, 2014. It would have been unusual for Dustin Warren to come to my home because we were not communicating at the time. It would have been unusual for Heather Kennon to come to my house because she and I did not get along.

6. I was informed by Dustin that his trial attorney had asked the trial judge to issue a subpoena and order to come to the jail to pick me up to be brought to court to testify at Dustin’s trial. The State never came to pick me up. If I had been given the opportunity to testify at Dustin’s trial, I would have testified that the things Heather Kennon said took place, specifically, that Dustin came to my house in the early morning of January 29, 2014 to obtain ingredients to make drugs were false.

7. If I am called as a witness to testify during an evidentiary hearing on Dustin’s motion for appropriate relief, I will testify consistently with the statements contained in this affidavit. I state that I am making this affidavit voluntarily and in support of the motion for relief. The things Heather Kennon testified to at trial regarding coming to my house are absolutely false.

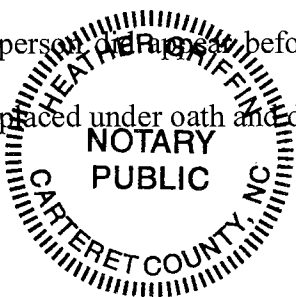
FURTHER AFFIANT SAYETH NOT.

Dated: 10/31, 2016

Cassie Jean Flowers
Cassie Jean Flowers, Affiant

NOTARIAL STATEMENT

I hereby certify that on the 3rd day of October, 2016, the above-named person ~~appeared~~ before me in person and, upon presentation of sufficient identification, was placed under oath and did swear that the statements contained herein are true and correct.



Heather Griffin
Print Name: Heather Griffin
NOTARY PUBLIC

My Commission Expires: 3/25/2017

EXHIBIT C

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
)
V.)
)
DUSTIN JAMAL WARREN)
)

FILE NO.: 14-CRS-50372, 50376-77

**AFFIDAVIT OF MARK THOMAS IN SUPPORT OF PETITIONER
DUSTIN WARREN'S MOTION FOR APPROPRIATE RELIEF**

I, MARK THOMAS, hereby affirm under pains and penalties of perjury, the statements contained in this affidavit. I make this affidavit in support of Dustin Jamal Warren's Motion for Appropriate Relief filed contemporaneously herewith.

1. I am currently incarcerated at Lanesboro Correctional Institution in Polkton, North Carolina, and was incarcerated at the time of Dustin Warren's trial. I did not testify at Dustin's trial because I was never picked up and brought to court despite there being an active order from the Court to do so.

2. I was with Dustin from January 29, 2014, until the time he was arrested on January 30, 2014. I spoke with Ann Scadden, the lead detective for the Office of the Public Defender right after Dustin was arrested and told her that I had relevant information to offer on behalf of Dustin. Dustin's trial lawyer, Rodney Fulcher, never contacted me about testifying for Dustin at trial. I was willing and able to testify if I had been brought to court.

3. Heather Kennon testified falsely at trial when she testified the Moorhead City/Atlantic Beach Bridge was closed down. It was, in fact, open because I was picked up by Dustin's girlfriend, Anique Pittman on her way to her condo in Atlantic Beach to meet Dustin. We crossed the bridge from Moorhead City to get to Atlantic Beach.

4. Dustin telephoned me and said he was on his way to Anique Pittman's condo but was dropping off Heather Kennon at a local motel. He said he had to wait there with Heather because the heater in the room she rented did not work. He said she was waiting for someone to come pick her up and that he did not want to leave her alone until her ride got there.

5. Dustin arrived at the condo shortly after Anique Pittman and I arrived there. He and I ate some hot dogs and drank a couple of beers. Dustin invited me to make myself at home and he and Anique went into the bedroom. Dustin said Heather Kennon's transportation still had not yet arrived, and she was sitting in Dustin's car in Anique Pittman's condo parking lot waiting for someone to pick her up.

6. Heather arrived at Anique Pittman's condo a short time later saying her ride was running late. While we were there, she kept running in and out of the condo. Heather Pittman had access to Dustin's car because I witnessed her take the key to his car off the key ring rack by the door.

7. Around 2 a.m., Heather asked me to take her somewhere but because I did not have a license I woke up Dustin. Dustin did not want to go anywhere but said I could use his car. I did not go.

8. Shortly after that, Heather Kennon had someone come meet her outside the condo and picked her up. She never returned because I locked the door behind her after she left and then went to sleep. Around 9 a.m., I woke up hungry and asked Dustin to drive me to the Kangaroo gas station and then to a nearby McDonald's restaurant.

9. When we went outside to the parking lot to get into his car, I noticed that the passenger window was about one-third of the way rolled down, saw tin foil in the passenger seat

and floorboard and saw a motel key laying in the seat. Dustin was checking to see if anything was missing and said the spare key to his car had been moved.

10. We left the condo parking lot and headed to the gas station. As we pulled into the Kangaroo gas station we saw police grouped together at the Seashore Motel which was across the street. Dustin said police were surrounding the hotel room Heather Kennon had rented and he was worried something had happened to her.

11. We drove across the street to find out what happened, were immediately swarmed by police and arrested. I had no idea why we were being arrested at that point. I then learned I was arrested on unrelated charges and gave a recorded audio statement to which I would have testified had I been given the opportunity.

12. At no time did Anique Pittman, Dustin Warren, or I ever participate in manufacturing methamphetamine and there was never any combination of chemicals put together at Anique Pittman's condo while I was present there. Heather Kennon testified falsely about this at trial. Heather Kennon was not at the condo when I woke up after she left and we had not been partying all night at the condo. Heather Kennon testified falsely. I had no knowledge of what was found in Heather's motel room and Dustin never said to me that he ever knew what was found.,

13. I was never given an opportunity to testify at Dustin's trial. Had I been brought to court to testify, I would have testified consistently with the statements contained herein. If I am called to testify at an evidentiary hearing on Dustin's motion for appropriate relief, I will testify consistently with these statements. I state that I am making this affidavit voluntarily and in support of the motion for relief.

FURTHER AFFIANT SAYETH NOT.

Dated: Nov. 3RD, 2016

Mark Thomas
Mark Thomas, Affiant

NOTARIAL STATEMENT

I hereby certify that on the 3 day of November, 2016, the above-named person did appear before me in person and, upon presentation of sufficient identification, was placed under oath and did swear that the statements contained herein are true and correct.

Edith S. Martin
Print Name: Edith S. Martin
NOTARY PUBLIC

My Commission Expires: 6-15-2019

EXHIBIT D

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
)
V.)
)
DUSTIN JAMAL WARREN)
)

FILE NO.: 14-CRS-50372, 50376-77

MOTION FOR APPROPRIATE RELIEF

AFFIDAVIT OF KATHLEEN ROBERTS IN SUPPORT OF PETITIONER DUSTIN WARREN'S MOTION FOR APPROPRIATE RELIEF

I, KATHLEEN ROBERTS, hereby affirm under pains and penalties of perjury, the statements contained in this affidavit. I make this affidavit in support of Dustin Jamal Warren's Motion for Appropriate Relief filed contemporaneously herewith.

1. I have lived in Carteret County, North Carolina for several years and was living with Dustin Warren at the time of his arrest. I have known Dustin since 2011. I have never observed Dustin drunk or high when we lived together and never observed his with excess amounts of money because he could barely make ends meet financially.

2. Dustin worked at his job in order to pay off his car and came home almost every day. I never saw Dustin use illegal drugs or sell drugs. Many times when I was sick or got hurt, I could trust Dustin to handle all of my medications for me because I knew he would never use them or steal them. I was never short on any pill count while Dustin was around.

3. Dustin frequently brought in friends to our home. I never saw Heather Kennon in our home and never saw her with Dustin. When he and I lived together, I never saw Dustin with a suitcase or a blue tote bag. The only bag he had was a red book bag he kept his clothes in which he would take with him when he went to stay with his girlfriend, Anique Pittman.

4. The burn on Dustin's hand that an officer at his trial testified was "fresh" and the result of the illegal manufacture of drugs in fact happened long before his arrest. Dustin burned his hand while cooking at his job. I helped him treat the wound right after it happened by using an aloe plant and bandages.

5. Before trial, I had reached out to Dustin's lawyer, Rodney Fulcher, to tell him that I was available and willing to testify for Dustin. His attorney Mr. Fulcher, repeatedly turned me away and ignored the information I had to offer. At one point he told me that he wanted to "wait and see" what happened with the motion to suppress and if he lost, he would have me come in and discuss testifying at trial.

6. I had no idea the motion was going to be decided on the day the trial started and as a result, what Mr. Fulcher told me was a lie. There was no possible way I could discuss my testimony with him in support of Dustin's defense.

7. I received a subpoena in the evening of September 9, 2014, which ordered me to appear at trial on September 8, 2014. The trial ended the next day and I never testified. When I got the subpoena, I immediately tried to call Mr. Fulcher to find out why the subpoena was served so late and that there was no time to prepare my testimony but I never received a return phone call and have not spoken with Mr. Fulcher.

8. I declare that I was willing and able to testify on behalf of Dustin at his trial and had information that was relevant to his case. I further declare that if I am called to testify at an evidentiary hearing, I am prepared to testify consistently with the statements I have made herein.

FURTHER AFFIANT SAYETH NOT.

Dated: Spt 30, 2016

Kathleen Roberts
Kathleen Roberts, Affiant

NOTARIAL STATEMENT

I hereby certify that on the 30th day of September, 2016, the above-named person did appear before me in person and, upon presentation of sufficient identification, was placed under oath and did swear that the statements contained herein are true and correct.

Samuel Shalhoub
Print Name: Samuel Shalhoub
NOTARY PUBLIC

My Commission Expires: January 29th, 2018

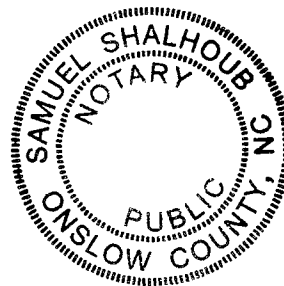


EXHIBIT E

1 (The defendant is present in the courtroom
2 with counsel.)

3 MR. SPENCE: Your Honor, this is Dustin
4 Jamal Warren. His cases appear on next week's Trial
5 Calendar, and they're first on the trial list. They are
6 14 CRS 50376, 50377 and 50372.

7 He has a Class C felony of manufacturing
8 Methamphetamine; a Class C felony for conspiracy to
9 manufacture Methamphetamine; the Class F felony of
10 possessing Meth precursor chemicals; and he has a
11 separate habitual felon indictment on his cases.

12 These cases were set for trial last month
13 in front of Judge Paul Jones. They were called for
14 trial, at which time Mr. Fulcher made a motion to
15 continue the case, and Judge Jones granted that motion,
16 just to get more time to prepare.

17 And I think Mr. Fulcher has a motion, and
18 maybe Mr. Warren has a motion. But they want to be
19 heard about the matter.

20 MR. FULCHER: Your Honor, this is a case
21 that I was retained in. As we've kind of gone along
22 with it, I don't think Mr. Warren and I see eye-to-eye
23 on everything. I don't think I can zealously represent
24 him at a trial based on the evidence, the conversations
25 we've had. So it's going to be my motion to withdraw

1 from the case.

2 Also, he's unable to continue to finish
3 hiring me. I had run it by him last week as we talked
4 about different aspects of the trial, and when I told
5 him some of the things, he told me, he said, "I probably
6 need to get another attorney."

7 So I don't know if it's a joint motion for
8 me to get out, or, definitely, just my motion.

9 THE COURT: Okay. Mr. Warren, do you want
10 to be heard?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Glad to hear you. Stand up.

13 (The defendant complies.)

14 THE DEFENDANT: Thank you, Your Honor. I
15 retained Mr. Fulcher right after I got indicted.
16 Twenty-seven days after I got locked up I retained him
17 for basically \$2,500. I was never mentioned or told or
18 anything there would be any other -- extra money for
19 court or nothing. But my girlfriend got the money --
20 you know what I'm saying -- to him. We got him retained
21 and everything.

22 None of my witnesses have been talked to.
23 None of the evidence, what I have asked to be received
24 such as -- you have a -- we have this -- a main suspect
25 person that these things were caught in her motel room,

1 that it had been 19 hours prior to being in that motel
2 room, is the main person that's saying that I'm the
3 person doing these things. Okay?

4 He hasn't talked to none of my witnesses.
5 Hasn't got none of the evidence. I asked to pull her
6 records -- medical records stuff, and there was evidence
7 on the scene that was not even tested. Syringes were
8 found on the scene. I have never shot up in my life.
9 This girl has as a record of syringe use and everything.
10 No transcripts were taken[sic]. I asked the police to
11 take fingerprints. Now the syringe is missing. Now
12 it's drug paraphernalia.

13 I feel like I'm being railroaded. I feel
14 like my lawyer didn't do a good job, you know what I'm
15 saying. And I asked -- you know, he started trying to
16 push it, six months after I'm indicted. There's people
17 been there for two years; they're trying to push me to
18 trial.

19 I feel like they're trying to railroad me
20 here. And I'm just -- I'm ready to go to trial, because
21 I can win this case. And he don't want to go to trial,
22 because he asked for more money. So I just -- I mean,
23 whatever. I'm not going to be railroaded.

24 And I don't want Mr. Wallace, because we
25 have a conflict of interest on it. I can't take the

1 Public Defender's office because we have a conflict. He
2 actually had my brother in a case, and I had him for it.

3 So -- and actually, his investigator I'm asking to be on
4 the case.

5 So I'm just asking for him to withdraw from
6 my case, and we just proceed toward trial. But I need
7 enough time to prepare for trial, and I need a lawyer
8 who's going to do the job that I asked him to do. That
9 includes getting the evidence and talking to my
10 witnesses and stuff like that.

11 That's all I ask, Your Honor, is a fair
12 trial. I'm ready to take this trial. I have got a
13 motion for suppression. The officers that went in that
14 room didn't have a search warrant. And when they tell
15 me I got to go to trial, you can see my motion for
16 suppression. I think he did a good job on the
17 suppression. He mentioned -- he did mention a couple
18 things I asked him to in the suppression motion, but he
19 did a great job on that. And if that's the \$3,000, for
20 that motion, then I'm going to see it all the way. You
21 know, it's fine.

22 But other than that, I have no hard
23 feelings for the State, and I appreciate Mr. Spence for
24 his professional[sic] in the whole situation. But I'm
25 innocent, being -- I feel like I'm being railroaded.

1 And I'm going to take this to trial. You
2 know, if I got to do a life sentence for something I
3 didn't do, I'd feel better doing seven years for
4 something I did do. So that's how I feel about it.

5 THE COURT: Does the State wish to be
6 heard?

7 MR. SPENCE: Judge, the discovery was given
8 back in last February. An offer was made; offer has
9 been rejected. The offer still stands rejected. He
10 keeps wanting the same -- the same plea offer, to drop
11 the habitual and plead to the Class F. I said, "No."

12 Mr. Fulcher has talked to the witnesses --
13 I'm sure he has, because they are in jail and available.
14 He has all the evidence I have. He has the videos. He
15 made a Motion to Suppress.

16 And again, the State is ready to go forward
17 with this thing. And if Mr. Warren doesn't want
18 Mr. Fulcher, then I would ask that the Court declare him
19 to have waived counsel, and proceed to trial on Monday.

20 It's a Meth lab. They destroyed all --
21 they destroyed it, because of the nature of what it is.
22 So that's what he's talking about, the stuff --

23 THE DEFENDANT: The police destroyed.

24 MR. SPENCE: -- that's not available.

25 THE COURT: Anything further, Mr. Fulcher?

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MR. FULCHER: No, Your Honor.

THE COURT: The Motion to Withdraw is denied. The Motion to Continue is denied. The case will be tried next week. You can have a seat back over there.

(The proceedings were concluded.)

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CERTIFICATE


STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, Jean Speights, RMR, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings, pages 1 through 7, is a true, correct, and verbatim transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

Given under my hand this 30th day of January, 2015.



Jean Speights, RMR
Official Court Reporter
Second Trial Division

\$2,500 [1] 3/17
\$3,000 [1] 5/19

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EXHIBIT F

1 STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
2 COUNTY OF CARTERET SUPERIOR COURT DIVISION

3 FILE NO. 14 CRS 50372, 50376-77

4
5 STATE OF NORTH CAROLINA,)
6 VS.) TRANSCRIPT OF TRIAL
7 DUSTIN JAMAL WARREN,)
8 Defendant.)
9)

10 Transcript of Trial in the General Court
11 of Justice, Superior Court Division, held in Carteret
12 County, Beaufort, North Carolina, commencing during the
September 8, 2014, Criminal Session, before the Honorable
Benjamin G. Alford, Judge presiding.

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20 VOLUME I OF III

21
22
23
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1 (All parties are present in the courtroom.)

2 THE COURT: And to the members of our petit

3 jury, I want to welcome those of you who have been
4 selected to serve at this one-week term of Carteret
5 County Superior Court.

6 As your Bailiff -- as our Sheriff of
7 Carteret County, Asa Buck, said, my name is Ben Alford.
8 I make my home in New Bern. And for the past almost 15
9 years, it's been my pleasure to serve you as one of your
10 Resident Superior Court Judges, and for the past 12
11 years or so as your Senior Resident Superior Court
12 Judge.

13 This call upon your time doesn't come
14 often. I'm sure, as I'm sitting here, some of you have
15 been called for the first time in your adult lives;
16 others of you are on about the three- to five-year
17 rotation plan. It represents your contribution to our
18 democratic way of life. It is an assurance or a
19 guarantee that if chance or design were to bring one of
20 you to a court in either a civil or a criminal
21 entanglement, that your rights and liberties would be
22 safeguarded by the same standards that you discharge
23 here this week in your duties as jurors.

24 I'm sure the term will not go beyond this
25 week; I don't know how far into the week it will go.

1 We'll get a better grip of that as we begin our
2 business. But if you have any questions or concerns, if
3 you would get the attention of one of our bailiffs, and
4 we'll make every effort to take care of your needs.

5 Mr. D.A., do you have a calendar you wish
6 to call?

7 MR. SPENCE: I do, Your Honor.

8 THE COURT: All right.

9 (Whereupon, Mr. Spence called the
10 Calendar.)

11 THE COURT: All right. What's the first
12 order of business for the State?

13 MR. SPENCE: Your Honor, the State is going
14 to call the case of North Carolina versus Dustin Warren.
15 He's in court today with his lawyer, Mr. Rodney Fulcher,
16 and the State is ready to proceed in that matter.

17 THE COURT: Mr. Fulcher?

18 (The Defendant is present in the courtroom
19 with counsel.)

20 MR. FULCHER: Your Honor, we have a couple
21 motions I'd like to make before we move forward with
22 this.

23 MR. SPENCE: Do we need the jury out of the
24 courtroom for these motions?

25 MR. FULCHER: Probably for the latter one.

1 MR. SPENCE: What's the latter one?

2 MR. FULCHER: The Motion to Suppress.

3 MR. SPENCE: I'd like to pick a jury before
4 we hear the Motion to Suppress.

5 THE COURT: We'll do that.

6 MR. SPENCE: Okay.

7 THE COURT: But the other one?

8 MR. FULCHER: The other one, Your Honor, is
9 going to be my motion to continue the case. Since last
10 Your Honor ruled last week in the case, concerning
11 the -- my continued representation of my client, we had
12 to send out immediately that afternoon an entire list of
13 witnesses that he said he wanted. And we got -- those
14 subpoenas went out that afternoon; many of those have
15 not been served as of yet. They're material witnesses.
16 It prejudices his case if they're not here.

17 So I would certainly ask to continue it to
18 have those here. I think the burden -- the prejudice to
19 him would be a lot worse than it would be any burden on
20 the State, to reschedule this case.

21 MR. SPENCE: We went through this last
22 week. The witnesses, some of them, are in custody, and
23 we'll get them here. The other people, you've known
24 about them, and they've been in the report. And --

25 THE COURT: Most respectfully, the Motion

1 to Continue is denied. And we'll hear the other motion
2 as soon as we pick a jury.

3 Members of the Jury, the State has now
4 called for trial the case entitled the State of North
5 Carolina versus Dustin Jamal Warren.

6 I inform you that the defendant is
7 Mr. Warren.

8 Mr. Warren, if you would stand, sir, so
9 that they might see who you are, please, sir.

10 (The defendant complies.)

11 THE COURT: Thank you very much.
12 Mr. Warren is charged with on or about January 29th to
13 January 30th of 2014, with possession of an immediate
14 precursor chemical with the intent to manufacture
15 Methamphetamine.

16 He's also charged with, on or about that
17 same date and time, with manufacturing Methamphetamine.

18 He's also charged with conspiracy with
19 Heather Kennon to manufacture Methamphetamine.

20 After the jury -- and Mr. Warren will be
21 represented by Mr. Rodney Fulcher, who's a member of the
22 Carteret Bar and practices in and about the Carteret
23 County area. He'll be representing Mr. Warren in this
24 matter.

25 The State will be represented by Mr. David

1 Spence. He's a member of Mr. Scott Thomas's staff,
2 Mr. Thomas being your elected District Attorney here in
3 the 3B Judicial District: Carteret, Craven and Pamlico
4 Counties.

5 After you've heard all the evidence, I will
6 give you the instructions on the law that you're to
7 apply to the facts as you find those facts to be. It's
8 important that you follow the law as I give it to you
9 and not as you thought it was or as you might like it to
10 be. This is important, because everyone tried for the
11 same crime be treated in the same way, and have the same
12 law applied to them.

13 At this point, you're not expected to know
14 the law involved in this case, and the lawyers should
15 not question you about that law except to ask if you'd
16 be willing to follow it as given to you by the Court.

17 In just a minute, the Clerk is going to
18 call twelve of your members up. If you would, come on
19 up into the jury box, and our Bailiff will show you
20 where to take your seat. Madame Clerk?

21 (Whereupon, twelve jurors were called into
22 the jury box.)

23 THE COURT: Ladies and Gentlemen, this is
24 the part of the trial commonly referred to as the voir
25 dire, the jury selection process. It's the time when

1 the Court and the lawyers will have the opportunity to
2 ask you some questions, none of which are designed to
3 pry into your personal affairs, only to determine your
4 suitability for service on this one particular case.

5 If you are asked something you think is too
6 personal, say so. We just won't delve into it. In
7 fact, it's the only time during the course of the trial
8 that the lawyers will be able to have direct dialogue
9 with you.

10 After the trial begins, they'll be able to
11 make an opening statement to you, and at the end of the
12 trial to make a closing argument to you.

13 Right now, this is the only time that they
14 will be able to just have direct dialogue with you.

15 (Voir dire examination is conducted by the
16 Court, Mr. Spence and Mr. Fulcher.)

17 * * *

18 THE COURT: All right. Let me see counsel
19 up here briefly, please.

20 (Discussion off the record at the bench.)

21 THE COURT: All right. These 13 jurors, we
22 have some preliminary matters that we'll be taking up
23 that need to be taken up out of the presence of the
24 jury. The Appellate Courts of this State have told me,
25 as the Trial Judge, that certain of these matters must

1 be taken up out of the presence of the jury.

2 Don't worry or speculate about what's going
3 on in your absence. We're merely taking up matters
4 involving questions of law that, as I said, have to be
5 taken up out of your presence.

6 So while we're doing that, there's no need
7 for you to hang around. We're going to start the trial
8 of this case at 2`o'clock this afternoon, and so that
9 I'm going to excuse you in just a minute from the
10 courtroom and to return, so we can start the trial at
11 2:00.

12 While you're absent, remember these
13 following -- and to the other jurors as well -- you're
14 not to talk about the cases that are here for trial
15 among yourselves, or with anybody else. Don't let
16 anybody talk to you about them or in your presence, and
17 if they do or attempt to, let us know it. Don't form or
18 express any opinion about the guilt or innocence of the
19 people for trial here this week. The only time to talk
20 about the case and the only time to express such an
21 opinion is in the jury room after you have begun your
22 deliberations. Don't have any contact with the Court,
23 the parties, the lawyers, the witnesses, anybody
24 involved in the case. Don't read about it in the paper,
25 should there be anything, or listen to any radio or

1 television accounts. And please do not do any
2 investigation by social media, Internet, anything like
3 that.

4 These rules are real important so that the
5 State and the defendant can get a fair trial from the
6 jury.

7 So with that said, these 13 jurors are
8 excused and to return just outside those doors just a
9 minute or two before 2`o'clock, and we'll bring you in
10 and continue. Everybody else remain seated. These
11 jurors are excused.

12 (The jurors exited the courtroom.)

13 THE COURT: All right. Let your record
14 reflect that the 13 jurors have vacated the courtroom.

15 To the balance of our Venire, what I'm
16 going to do is to ask you to call that number that we
17 have on your summons. Call that number after
18 5:30 o'clock p.m. tonight. Now, everybody heard me say
19 5:30 tonight? Please raise your -- don't you feel like
20 you're back in first grade? I promise you, there's a
21 good reason for it.

22 Anyway, that number will have a recorded
23 message, and I don't know what that message is going to
24 be yet. We will know that as we get into the case. It
25 may say to report tomorrow morning at 9:30 for trial, or

1 it may say to call back after 11`'clock in the morning
2 or to return Wednesday morning. I don't know that until
3 we get further along into the case.

4 However, if this is the last time that we
5 lay eyes on each other for jury service this week, I do
6 want to say thank you for your willingness to be great
7 citizens to the people of Carteret County in serving the
8 judicial branch of our government.

9 And with that said, if you'll hand your
10 juror badges to our Bailiff in the back, you're excused,
11 and call that number after 5:30 tonight. Thank you very
12 much.

13 (The remaining jury panel exited the
14 courtroom.)

15 THE COURT: Let the record reflect that the
16 balance of the Venire has vacated the courtroom.

17 (An unrelated matter was heard before the
18 Court.)

19 * * *

20 (All parties are present in the courtroom.)

21 THE COURT: All right. Back to the matter
22 involving State versus Dustin Jamal Warren.

23 The defendant, through counsel, did file a
24 motion to suppress certain evidence, filed that on or
25 about August 6, 2014. And the State received a copy of

1 that, did you?

2 MR. SPENCE: I have been served,

3 Your Honor, and prepared to answer that motion. At the
4 Court's pleasure, I would ask for a brief break.

5 THE COURT: All right. The Court has read
6 the motion and finds that the same does initially comply
7 with the statute in that it shifts the burden of
8 'production' to the State in going forward. The Court
9 has read the motion and the affidavit attached thereto.

10 Therefore, we're going to take about a
11 15-minute recess and we'll come back, and the State
12 should be prepared then to offer evidence on this motion
13 to suppress. And the defendant will be able to offer
14 any evidence that they wish. Yes, sir.

15 THE DEFENDANT: May I please be excused to
16 use the restroom?

17 THE COURT: We're getting ready to take a
18 break to do that. Court's at ease 15 minutes.

19 (A brief recess was taken.)

20 * * *

21 (The jury is not present in the courtroom.)

22 THE COURT: Let the record reflect that all
23 jurors are out of the courtroom. The State may call its
24 first witness in, with respect to defendant's motion to
25 suppress illegally-obtained.

1 MR. SPENCE: Detective Brian Prior.

2 (The witness took the witness stand.)

3 (The witness was duly sworn.)

4 THE COURT: Make yourself comfortable. You
5 may inquire.

6

7 **BRIAN PRIOR [VOIR DIRE],**

8 having been first duly sworn, at 11:39 a.m. was called as a
9 witness on behalf of the State and testified as follows:

10

11 **DIRECT EXAMINATION**

12 BY MR. SPENCE

13 Q Would you state your name for the Court,
14 please, sir?

15 A Brian Prior.

16 Q And, Officer Prior, you're currently
17 employed by the Atlantic Beach Police Department; is
18 that correct?

19 A Yes, sir.

20 Q And what is your current rank?

21 A Lieutenant.

22 Q How long have you been employed by that
23 Department?

24 A Since March 8th of 1999.

25 Q And prior to that, did you have Law

1 Enforcement experience?

2 A Yes, sir.

3 Q Where was that?

4 A Pottawatomie County, Kansas, where I was a
5 Pottawatomie County Sheriff's Deputy in St. Mary's
6 Police Department, part-time officer.

7 Q And how long did you serve with that
8 Department?

9 A Both Departments, about 14 and a half years
10 before I moved here.

11 Q And when did you receive your Law
12 Enforcement -- your initial Law Enforcement
13 certification?

14 A It was either 1995 or 1996. I had just
15 retired from the military.

16 Q Okay. And you're talking about the one in
17 Kansas?

18 A Yes, sir.

19 THE COURT: You've been with Atlantic Beach
20 how long now?

21 THE WITNESS: Fourteen, 15 years. It was
22 March of '99.

23 BY MR. SPENCE

24 Q You received your North Carolina
25 certification what year?

1 A 2000, sir.

2 Q And where did you get that training?

3 A Carteret County Community College, BLET,
4 sir.

5 Q And since that time, have you been employed
6 with Atlantic Beach Police Department that -- your whole
7 career?

8 A Yes, sir.

9 Q And would you tell Judge Alford the various
10 titles that you have earned or ranks you have earned and
11 job descriptions or jobs within the Department you have
12 done?

13 A I started as a patrolman, worked my way to
14 Corporal, then I got promoted to Line Sergeant,
15 supervised the shift. I was then selected to be the K-9
16 officer and sent to K-9 School and then Advanced K-9
17 School. I have been the Operations Lieutenant which
18 encompassed handling all the administrative affairs,
19 Communications Supervisor, and the Evidence Custodian.
20 And then in 2010, around April, I was moved into
21 Investigations.

22 Q Okay.

23 A To fill a slot there.

24 Q Investigations in the Atlantic Beach Police
25 Department, is that divided into property crimes, drug

1 crimes, or is it one unit?

2 A Sir, we're one unit. We work whatever the
3 cases require.

4 Q Okay. And are you a supervisor with that
5 unit at the present time?

6 A I'm classified as a Lead Investigator, but
7 my assistant answers directly to the Major, so I don't
8 have anybody under me right now.

9 Q Okay.

10 A Directly.

11 Q And in your assignment and in preparation
12 for your assignment, did you receive any specialized
13 education in the field of controlled substances that has
14 allowed you to become more educated and do your job in a
15 more efficient manner?

16 A Yes, sir. I have.

17 Q Would you briefly tell His Honor what those
18 things may include.

19 A I have completed the North Carolina
20 Criminal Investigative Certificate Program that had a
21 multitude of different cases. I have had cases for the
22 Meth Lab Certification Qualification Course. I have had
23 Undercover Drug Officer. I have had Date Rape Drug
24 Recognition, and other drug classes like that.

25 Q Have you made arrests for the violation of

1 the North Carolina Controlled Substance Act during your
2 time with Atlantic Beach Police Department?

3 A Yes, sir, I have.

4 Q Could you just give a rough estimate about
5 how many drug investigations you've been involved in as
6 either lead or as assisting officer?

7 A Several hundred, here.

8 Q Did you also do that in Kansas?

9 A Yes, sir.

10 Q And, like them out there?

11 A At least 4- or 500. I was on the Drug
12 Crimes Unit there, sir.

13 Q Okay. Have you attended conferences that
14 deal with specifically the drug Methamphetamine?

15 A Yes, sir.

16 Q Would you describe those courses for the
17 Court?

18 A Every year we get an eight-hour
19 recertification course put on by the North Carolina
20 State Bureau of Investigation where we go over
21 recognition of it, additional training, any kind of
22 safety issues, things like that. Both hands-on and/or
23 practical and classroom.

24 Q Okay. Have you ever participated or
25 investigated either Meth labs or, as they're sometimes

1 referred to, mobile Meth labs, or portable or temporary
2 Meth labs?

3 A Yes, sir.

4 Q Okay. Could you tell how many times that
5 you've dealt with those-type issues?

6 A Somewhere between 20 and 25 times.

7 Q Okay. During your training and your
8 certification in this, are you made aware of the various
9 types of these labs that may occur or may be used or
10 made, as far as what chemicals and what you might see as
11 far as paraphernalia, also the equipment?

12 A Yes, sir.

13 Q Okay. And are you aware of the precursor
14 chemicals for the production of Methamphetamine?

15 A Yes, sir.

16 Q Are you -- have you seen assorted types of
17 Meth labs constructed by various other defendants
18 besides this one?

19 A Yes, sir.

20 Q Have you been involved in the
21 destruction-part of these labs, or just the
22 investigation part?

23 A A little bit in the destruction-part.

24 Q Okay. Do you know how many hours of
25 advanced training you've had specifically in the area of

1 investigating Methamphetamine labs, either temporary or
2 so-called permanent?

3 A Over a hundred, sir.

4 Q Okay. Were you on duty in the late morning
5 hours of January the 30th, 2014?

6 A Yes, sir. I was.

7 Q And where were you at, on duty at that
8 time?

9 A I was in the Investigations office.

10 Q Okay. And where is that located?

11 A In Atlantic Beach Police Department, 125
12 West Fort Macon Road.

13 Q Okay. Now, for his Honor's reference, and
14 also for the record, there is a main intersection,
15 Highway 70 and Highway 58, there at Atlantic Beach; is
16 that correct?

17 A That's Atlantic Beach Causeway, and it's
18 58, sir.

19 Q And how far is your Department located west
20 of that intersection?

21 A 125 yards, maybe.

22 Q Okay. You're familiar with a location
23 called the Seashore Motel?

24 A Yes, sir.

25 Q Would you tell His Honor where that's

1 located?

2 A If you come across Atlantic Beach Causeway
3 and come to the traffic light, sir, you take a left,
4 it's pretty-much the second motel on the right. It's
5 just past -- it will be on the south side of the road.

6 MR. SPENCE: Your Honor, may I approach the
7 witness?

8 THE COURT: You may.

9 MR. SPENCE: Mr. Fulcher has been provided
10 this, his photographs on this --

11 (Documents to Mr. Fulcher.)

12 (State's Voir Dire Exhibit Numbers [1],
13 [2], [3] and [4] marked for identification.)

14 BY MR. SPENCE

15 Q Lieutenant Prior, if I could hand you what
16 I've labeled for identification as State's Voir Dire
17 Exhibits [1], [2], [3] and [4]. Would you just look at
18 these four items and tell me, yes or no, whether you
19 recognize what's shown by those photographs.

20 (Witness examines photographs.)

21 THE WITNESS: Yes, sir. I do.

22 BY MR. SPENCE

23 Q Okay. And do those photographs show -- let
24 me just go -- State's Exhibit [1], if you could look at
25 that and if you could tell me briefly what that

1 photograph is or what that representation is.

2 A Sir, this here's the Seashore Motel, which,
3 it's two entrances and exits, got a pool in the middle,
4 the rooms run along these lines. This here is East Fort
5 Macon Road. North is in this direction. Back to the
6 west is where the main intersection is, would be to the
7 left, and Fort Macon would be to the right.

8 Q Okay. Is this from an aerial photograph
9 off the Google Earth web site?

10 A Yes, sir.

11 Q Has a compass arrow pointing north right
12 there, which would indicate the other directions?

13 A Yes, sir.

14 Q And does this show the location of the
15 Seashore Motel, the place where you responded on
16 January 30, 2014?

17 A Yes, sir.

18 Q Lieutenant, if you could take this marker,
19 please, and just circle and initial the Seashore Motel,
20 the place that we're talking about.

21 (Witness complies.)

22 BY MR. SPENCE

23 Q Okay. Is that -- the motel is three-sided?

24 A Yes, sir.

25 Q And there's a pool in the middle?

1 A Yes, sir.

2 Q Okay. And State's Exhibit Number [1], does

3 that fairly and accurately depict that as an aerial

4 photograph of the location we're talking about?

5 A Yes, sir.

6 MR. SPENCE: Offer this into evidence,

7 Judge.

8 THE COURT: Any objection?

9 MR. FULCHER: No.

10 THE COURT: It is received.

11 (State's Voir Dire Exhibit Number [1]

12 received in evidence.)

13 BY MR. SPENCE

14 Q State's [2], [3], and [4], Lieutenant

15 Prior --

16 THE COURT: Excuse me. I'm going to show

17 this as State's Exhibit Number [1] on VD, voir dire.

18 MR. SPENCE: Correct. Thank you.

19 THE COURT: I'm sorry.

20 MR. SPENCE: That's okay.

21 BY MR. SPENCE

22 Q State's Exhibits [2], [3] and [4], are

23 these photographs -- do these photographs depict street

24 views of the same motel that you have testified about?

25 A Yes, sir.

1 Q And would State's Exhibit Number [2], for
2 voir dire purposes, if you could tell what that
3 illustrates.

4 A This right here is the Google road-map-look
5 of the west entrance where the Management office is.
6 You can see the motel sign. And that's the -- like I
7 said, the first entrance you come to on the west, it
8 goes in and around, and then you see the bricks, and
9 then you see the fencing where the pool is located in
10 the center, sir.

11 Q Okay. Now, disregarding where these came
12 from, the Google Earth site, have you visited this
13 location many times in your career?

14 A Yes, sir.

15 Q In fact, visited it on January 30th, 2014?

16 A Yes, sir.

17 Q Do these pictures fairly and accurately
18 represent the entranceway, the street view and another
19 vantage point of this motel, and do these illustrate
20 your testimony in this case?

21 A Yes, sir. They do.

22 Q Do they fairly and accurately depict the
23 way that motel was laid out and the way it appeared from
24 the street in January 2014?

25 A Yes, sir.

1 MR. SPENCE: Judge, I would offer these,
2 all marked as [2], [3] and [4], for voir dire purposes.

3 THE COURT: Any objection?

4 MR. FULCHER: Nothing to the pictures,
5 Your Honor.

6 THE COURT: They are received.

7 (State's Voir Dire Exhibit Numbers [2], [3]
8 and [4] received in evidence.)

9 BY MR. SPENCE

10 Q Lieutenant Prior, in the early -- before
11 noon, mid-morning hours of January 30th, 2014, did you,
12 while you were on duty, receive some sort of emergency
13 communication from the Seashore Motel?

14 A The Carteret Command and Communication
15 Center received a call. What I had heard, sir, was the
16 police and fire being dispatched to a hazardous chemical
17 or HAZMAT call located at 120 East Fort Macon Road,
18 Seashore Motel.

19 Q Okay. How long had you been on duty that
20 day?

21 A Probably an hour, hour and a half.

22 Q Okay. When you came to work, did you have
23 any active investigations at the Seashore Motel
24 involving any controlled substances?

25 A No, sir.

1 Q Did you know of this defendant, Dustin
2 Warren, possibly being at the Seashore Motel in any form
3 or fashion?

4 A No, sir.

5 Q Were you working any cases regarding Dustin
6 Warren or his co-defendant Heather Kennon, regarding any
7 controlled substances?

8 A No, sir.

9 Q Did you have any inkling that there might
10 be some sort of controlled substance being manufactured
11 at the Seashore Motel?

12 A No, sir. I didn't.

13 Q Was the emergency or 911 call the first
14 time you ever thought about responding to that motel
15 that day?

16 A When the page went out, that's the first
17 time.

18 Q Okay. How far were you from that motel
19 when you got that?

20 A A quarter mile.

21 Q Okay.

22 A From the Police Department to the motel.

23 Q Okay. And it came in through the 911
24 system; is that correct?

25 A I'm assuming, sir. Because like I said,

1 the communications now is all consolidated. So we don't
2 get the phone calls like we used to in the past.

3 Q Okay. What was the -- you got the
4 dispatch?

5 A Yes, sir.

6 Q The nature of the dispatch was what?

7 A Hazardous chemicals.

8 Q And located where?

9 A At 120 East Fort Macon Road, Seashore
10 Motel.

11 Q Okay. And did you know who called that in?

12 A It was supposed to be by Management.

13 Q Okay. And based on hearing that call, what
14 was your immediate response to that call about hazardous
15 chemical in that motel?

16 A I went to go to initially help the Fire
17 Department. If we needed to cordon something off or to
18 help conduct investigations if they needed it.

19 Q Okay. Did the Fire Department also
20 respond?

21 A Yes, sir.

22 Q And where are they located in reference to
23 your Department?

24 A About 10 feet to the east of us.

25 Q Okay. Were fire trucks -- did they go to

1 the scene with sirens?

2 A Yes, sir.

3 Q And have you, for the purposes of this
4 hearing, obtained the CAD report of that 911 call
5 showing the time the call came out, the nature of the
6 call, and the time that you were en-route?

7 A Yes, sir.

8 Q And did you provide that for the file?

9 A That will show -- I don't know if I called
10 en-route because of all the radio talk going on, or if I
11 just called on-scene.

12 Q Are you familiar with a CAD report?

13 A Yes, sir.

14 (State's Voir Dire Exhibit Number [9]
15 marked for identification.)

16 BY MR. SPENCE

17 Q Okay. And what I had prenumbered, this is
18 going to be State's Exhibit Number [9] for voir dire
19 purposes, and I'll ask you if you can just identify this
20 document, which is a stapled three-page document. Do
21 you recognize that form?

22 A Yes, sir. It's a standard Carteret County
23 Communications Center -- it's called a CAD report.

24 Q Okay.

25 A Or draft record.

1 Q Okay. Have you seen that and looked at it?

2 A Yes, sir.

3 Q Does it accurately reflect the nature of
4 the call, the origin of the call, and the basic time
5 that you responded to that call?

6 A Yes, sir.

7 Q What time did the call come in?

8 A Bear with me. These are a little bit
9 awkward. The first units were en route at 9:43,
10 according to their clock on their computer system.

11 Q Okay. And the nature of the call?

12 A Was a hazardous materials, or HAZMAT call,
13 is how it's labeled.

14 Q And based on your training and experience,
15 is a 911 call about a hazardous material, is that some
16 sort of thing you need to respond to?

17 A Yes, sir. The initial notes say, "Found in
18 a room were funnels, masks, tinfoil, two glue guns, a
19 jar with some substance in it, and other items."

20 Q Okay.

21 A Condensed off of this.

22 Q Okay.

23 A But like I said, I'm not sure what the
24 dispatcher was told through the 911 system.

25 Q Okay. You got a HAZMAT call?

1 A Yes, sir.

2 Q Okay. Did you know what you were going to
3 find when you got out there?

4 A No, sir. I had no clue.

5 Q Okay. Where did you go when you got out
6 there?

7 A I pulled up in the parking lot and was met
8 by a member of Management.

9 Q Okay. Do you know who owns that motel?

10 A It's supposed to be Scott
11 D'Michelle(phonetic) and John D'Michelle, from what I
12 understand.

13 Q Were there people that -- employees out
14 there, specifically Carla Thomas and Scott Way?

15 A Yes, sir.

16 Q And did they represent themselves to be the
17 night clerks, or the clerks there on duty?

18 A Ms. Thomas was the Management at the time.

19 THE COURT: Is it 9:43 a.m. or p.m.?

20 THE WITNESS: A.M., sir.

21 MR. SPENCE: A.M.

22 THE COURT: Thank you.

23 BY MR. SPENCE

24 Q And when you responded, where did you go
25 when you left the Police Department as far as -- or when

1 you got to the motel?

2 A I pulled up on -- in through the western
3 parking lot and then pulled around, was generally in the
4 western area of where I parked when I got there and got
5 out of the car.

6 Q Okay. And did you go to the office and
7 speak with the people who made the call?

8 A They were already outside the room in the
9 general cleaning area.

10 Q Okay.

11 A If I remember right. They were already
12 outside of the room in the parking lot.

13 Q What were the weather conditions that day?

14 A Icy. Snow. We had gotten snow and ice.
15 It was still pretty-much ice/snow covered, cold, chilly.

16 Q And the motel itself, was it -- was there
17 vacancy or was it heavily occupied, or do you remember?

18 A I don't believe it was heavily occupied at
19 the time, sir. I don't remember exactly how many cars
20 were in the parking lot.

21 Q Okay. Were you directed to a specific room
22 by Management?

23 A Yes, sir.

24 Q And were you directed to that room to clear
25 up the hazardous materials call?

1 A That's where they went to show us. Yes,
2 sir.

3 Q Okay. And would you tell His Honor, did
4 you enter Room 9 to find out about this hazardous
5 material that had been called in?

6 MR. FULCHER: Your Honor, I'm going to
7 object at this point. This is the whole crux of our
8 argument is we don't believe that the maid, whatever,
9 had the right to enter that room any way to even call
10 them to get them there. So that's kind of the whole
11 crux of the argument is that Ms. Carla Thomas didn't
12 have the authority to go in, violate a right of privacy
13 of Mr. Warren and Ms. Kennon who was staying in the
14 room, violated their right of privacy to go in, to even
15 get contact to call officers. So that would be our
16 objection to that point.

17 THE COURT: The objection is overruled.
18 BY MR. SPENCE

19 Q Okay. Did Ms. Thomas have the key to that
20 door?

21 A Yes, sir.

22 Q Or a key to that door?

23 A Yes, sir.

24 Q And did she indicate to you that that's
25 where -- the room she had called you about?

1 Number [5] into evidence, Judge, and like him to keep it
2 for right now.

3 THE COURT: Any objection to Number [5]?

4 MR. FULCHER: Nothing to that layout.

5 THE COURT: It is received.

6 (State's Voir Dire Exhibit Number [5]
7 received in evidence.)

8 THE COURT: Are you offering Number [9],
9 the CAD report?

10 MR. SPENCE: I am.

11 THE COURT: It is received.

12 (State's Voir Dire Exhibit Number [9]
13 received in evidence.)

14 * * *

15 (State's Voir Dire Exhibit Number [6]
16 marked for identification.)

17 BY MR. SPENCE

18 Q State's Number [6], for voir dire purposes,
19 Lieutenant Prior, would you tell us what this picture
20 illustrates or shows?

21 A This shows, right here, this is Room Number
22 9; that's Room Number 10. That's where the door, where
23 the air conditioner, the windows, and the two lounge
24 chairs were out front.

25 Q So the entrance to Door Number 9, the

1 actual room is that way?

2 A Yes, sir.

3 Q And Room Number 10, the room is that way
4 (indicating)?

5 A Yes, sir.

6 Q And does this -- actually -- this actually
7 was taken that day showing the weather conditions and
8 also the outside door of that Room Number 9?

9 A Yes, sir.

10 Q Use it to fairly and accurately -- does it
11 fairly and accurately depict your testimony and
12 illustrate your testimony in this case, or would it help
13 illustrate your testimony?

14 A Yes, sir.

15 Q When you made entry to the room, Ms. Thomas
16 let you in the room?

17 A Yes, sir.

18 Q How far into the room did you go before you
19 noticed something that caught your attention?

20 A Probably 10 foot.

21 Q Okay. What did you see?

22 A Because I don't have it memorized -- I
23 mean, I got my notes -- but I remember seeing a gray
24 trash can, some plastic tubing, a soda cap that was
25 plastic with a hole drilled through and plastic tubing

1 in it and glue around it. A little bit further in I saw
2 a blue bag with Coleman fuel, hot glue guns, a face
3 mask, some foil with burn marks on it.

4 Q Okay. Did you seize anything in this
5 initial entry?

6 A No, sir. Didn't touch it.

7 Q Did you -- how far into the room did you
8 get before you noticed that what you had was a -- some
9 sort of Meth lab?

10 A From initial appearance, we're talking
11 10-foot when I saw the first. And then after I saw the
12 initial, I swept the rest of the room to see what we
13 could be roughly dealing with, and backed out.

14 (State's Voir Dire Exhibit Numbers [7] and
15 [8] marked for identification.)

16 BY MR. SPENCE

17 Q Okay. And State's Number [7] and [8], and
18 if I could let you look at these photographs -- and
19 these, again, are for purposes of this voir dire
20 hearing -- could you look at these and see if you
21 recognize what is shown in these photographs?

22 A Yes, sir.

23 Q What are those things?

24 A That's what I saw when I got in, which was
25 a two-liter 7UP/Pepsi bottle with an unknown substance

1 in the bottom of it and white stuff, the plastic tubing
2 with the cap and the hot glue gun on it, the funnel and
3 the trash can.

4 On this picture, this one here depicts the
5 same thing. We weren't sure what was in -- I didn't
6 know what was in that substance. It was just a white
7 can or white plastic container that had an unknown
8 substance in it.

9 Q Okay. Where were the things that you saw
10 in [8] and [9] -- or [7] and [8] rather? Where were
11 they located?

12 A They're generally in this area right here,
13 sir, which is the dresser.

14 Q On top of the dresser?

15 A Yes, sir.

16 Q So you would have come in the door?

17 A I got to about here(indicating).

18 Q Okay. Would you mark -- put the letter or
19 initials "BP" as the place -- farthest egress you got
20 into that room, and would you show where the door is and
21 draw an arrow from the door to where -- the farthest you
22 got. And would you also put an X down there on the
23 dresser-part where you saw this bottle.

24 A Okay(witness complies).

25 MR. SPENCE: Thank you. Judge, I'd offer

1 State's Number [7] and [8] at this time. [5], [6], [7],
2 [8], and I believe [5] is the diagram which Your Honor
3 may need to look at to refer. I don't think I need them
4 anymore.

5 THE COURT: I've already admitted [5], the
6 sketch. Any objection as to [6], [7] and [8]?

7 MR. FULCHER: Nothing to those photos.

8 THE COURT: They are received.

9 (State's Voir Dire Exhibit Numbers [6], [7]
10 and [8] received in evidence.)

11 MR. SPENCE: And I will also hand up the
12 CAD report that's been introduced as State's Number [9].
13 I think Your Honor has all my exhibits right now.

14 THE COURT: Okay.

15 BY MR. SPENCE

16 Q Detective Prior, how long did it take you,
17 based on your training and experience, to determine
18 that, in fact, there was a hazardous material in that
19 room?

20 A Forty-five seconds, less. Maybe 30.

21 Q And how long did it take you to determine
22 that possibly involved were the controlled substances or
23 the controlled substance Methamphetamine manufacture
24 going on in that room?

25 A It would be the same time: 30 to 45

1 seconds, maximum.

2 Q Okay. And what about those things you saw
3 gave you that ability or gave that conclusion?

4 A From the training I have received through
5 all the schools and the SBI. I mean, these were
6 identical things that you would find consistent with a
7 general Meth lab.

8 Q After you saw those, determined -- you also
9 determined that there was no explosion ready to take
10 place; is that right?

11 A Sorry. Yes, sir. Nothing -- nothing that
12 would involve anything producing a vapor or any
13 chemicals mixing, bubbling, things like that at that
14 time. No, sir.

15 Q Still, it's still a matter that demanded
16 your complete and immediate attention?

17 A Yes, sir.

18 Q And what did you do after you saw what you
19 saw?

20 A I went outside the door. The Fire
21 Department was walking up, Captain Andy Reid(phonetic),
22 I said: "It looks like we have a Meth lab."

23 I had talked to Officer Ennis and said,
24 "Guard the door. Nobody in or out but me. I have to
25 call the SBI, and I got to start on a search warrant."

1 Q Did you, in fact, at some point draft a
2 search warrant?

3 A Yes, sir.

4 Q Was that submitted before any further entry
5 into that room, or even a search of that room?

6 A Yes, sir. We got it signed by Judge
7 Nobles, and I waited for the SBI agents to show up.

8 Q Okay. Again, at any time during your
9 initial entry did you seize any items? Did you
10 rearrange any items? Did you touch any items?

11 A No, sir.

12 Q And that was your response to that 911 call
13 was what you just testified to; is that correct?

14 A Yes, sir.

15 Q At any time were Ms. Thomas at the motel or
16 Mr. Way acting on behalf of Law Enforcement in searching
17 some room at their motel?

18 A No, sir.

19 Q Did you ever ask them to be on the lookout
20 for Dustin Warren or Meth labs, or call you if you saw
21 them show up?

22 A No, sir.

23 Q Okay. Had you ever met them?

24 A No, sir. Not that I can recall.

25 Q Okay. And as part of the motel Management,

1 she let you in that room; is that correct?

2 A Yes, sir.

3 MR. SPENCE: Judge, I believe that's all I
4 have at this point on my voir dire.

5 THE COURT: Cross-examination, Mr. Fulcher?

6

7 **CROSS-EXAMINATION**

8 BY MR. FULCHER

9 Q Sergeant Prior, on the day you received the
10 phone call, you spoke with Carla Thomas, correct?

11 A Yes, sir.

12 Q Okay. And I believe in her statement to
13 you she said that she went to the room and knocked on
14 the door, correct? 9:30 that morning, Room Number 9?

15 A I didn't collect her handwritten statement.
16 When I got on-scene I arrived at 9:44 on-scene, made
17 contact with a C. Thomas, the Manager in the parking
18 lot, who stated she went to clean the room and found
19 assorted chemicals and other items in the room.

20 As far as follow-up interview or written
21 statements, I didn't get that.

22 Q So your only interaction with Ms. Thomas
23 was, once you arrived there, she come and told you,
24 "Hey, this is what I found"?

25 A Yes, sir.

1 Q She didn't go into elaborate detail with
2 you about how she got in there and why she went in
3 there?

4 A Other than she said she went in to clean
5 the room that they do, and that was all the initial
6 conversations I have had with her.

7 Q Okay. Did that sound kind of strange at
8 9:40 a.m.? Check-out time is around 11?

9 A Sir, I can't say why or why not they clean
10 rooms and at what times. They do them different for
11 each hotel. I mean --

12 Q You only responded on what Ms. Thomas told
13 you, and that what -- that was the instigation that got
14 you to go into the room?

15 A I was going to what was dispatched as a
16 hazardous materials call.

17 Q Right.

18 A Didn't know who had called it in, who would
19 be waiting for me on-scene, had no idea of any of that.
20 I was just dispatched to Seashore Motel for hazardous
21 materials.

22 Q And that's when you entered the room and
23 went in?

24 A Yes, sir.

25 Q Okay. Now, you said upon the report that

1 when you made entry you observed there was a trash can
2 on top of the dresser, plastic tubing, different things

3 I think you already testified to?

4 A Yes, sir. That stuff in the --

5 Q Okay. Did you smell anything in that room
6 that was like anything had been burning or any kind of
7 vapors or any kind of chemicals that were in the room?

8 A No, sir. Because if I had smelled
9 anything, as soon as I entered I would have backed off.

10 Q And so you said that -- the list that you
11 made you said that you found, didn't smell anything,
12 didn't see any open flames, any burning, burnt or
13 anything -- all you saw was --

14 A Yes, sir. The foil packets appeared to
15 have some burn marks on it. You could see where the
16 glue gun was used.

17 Q You didn't hear anything like a clock
18 ticking, anything that, "Hey, this is going to explode"?

19 A No, sir.

20 Q So all you're saying that you saw is what
21 was the list that you made?

22 A That's the initial list. Yes.

23 Q And you didn't see any of those things, on
24 its own, would put you in any danger that the room was
25 going to explode or catch fire or anything?

1 A No. Like I had previously said, I didn't
2 see anything that would serve an imminent threat.

3 Q Okay.

4 A Right then and there.

5 Q No -- no -- no open flames, no ignition
6 sources, anything that would -- you simply saw the bag
7 and just everything that you listed there?

8 A Yes, sir.

9 Q You said earlier that you've been trained
10 in many of these different -- what would be the proper
11 procedure for even looking -- for obtaining a Meth
12 lab -- going in to see those then?

13 A You take an initial assessment on what you
14 initially see or feel. Like I said, I didn't smell
15 anything at the time or nothing cooking or producing any
16 fumes or vapors -- then I would have backed out and put
17 on a breathing apparatus to look a little more. I go to
18 see just enough, and then I called the SBI.

19 Q But no time that you were in there, there
20 was no indication of any chemical smells, any flames,
21 anything that would -- no fog hanging in the room, just
22 all you see was what was listed, sitting on the table?

23 A Like I said, all I saw were components.
24 There was nothing that appeared to be putting out vapors
25 or anything.

1 Q Hotel staff didn't tell you, "Hey, we smell
2 these strange smells, these fires and vapors," anything
3 like that?

4 A No, sir.

5 Q And there was nobody in the room when you
6 were there, was there?

7 A No, sir.

8 Q And they didn't report seeing anybody in
9 there when they went in there, did they?

10 A I don't remember her saying anybody was or
11 wasn't in the room. Just that they went in to clean it
12 and they saw chemicals laying around.

13 Q So just the result of what you observed
14 sitting on the table, that's when you left and decided
15 you needed to go get a search warrant and went and got
16 one.

17 MR. FULCHER: I don't think I have any
18 other questions for him on this particular part of it.

19 MR. SPENCE: No follow-up questions, Judge.

20 THE COURT: Thank you, sir. You may stand
21 down.

22 THE WITNESS: Yes, sir.

23 (The witness stepped down from the witness
24 stand.)

25 MR. SPENCE: That's the showing for the

1 State, and I'm prepared to briefly argue the State's
2 case.

3 THE COURT: Does the defendant wish to
4 offer any evidence on their Motion to Suppress?

5 MR. FULCHER: Your Honor, I don't think I
6 have any other -- just to be heard on the face of it.

7 THE COURT: All right. I'll be glad to
8 hear you.

9 MR. FULCHER: Your Honor, I'd certainly
10 renew the motion that we filed if -- as the motion says,
11 we have the -- not to get too much into the facts, but
12 it is at 9:30 in the morning when we have somebody from
13 the motel going and knock on the door to go in.

14 In and of itself, at 9:30 in the morning, I
15 don't know why they would think the room was abandoned.
16 According to Ms. Thomas' statement, we're going to see
17 later, they're going to say that they thought the room
18 was abandoned at 9:30 -- 9:40 in the morning, when
19 check-out time is 11:00, to go into the room and look
20 for -- not having smelled any chemicals, hearing any
21 fire, anything burning, anything out of the way, other
22 than just to go knock on the door.

23 Protocol, I believe with a -- we'll find,
24 is to see if the room is abandoned, and when there was
25 no key, no luggage, anything there, and in her statement

1 she's going to say, "I let myself in to see if they had
2 left the key inside."

3 Well, if you're staying in a motel room,
4 you have the right to privacy. At 9:30 in the morning
5 somebody may be sleeping. I don't know if they're a
6 late riser or what they may be. But she goes and takes
7 it upon herself to go in to see if there's a key left.
8 No key left, and then she begins to look around. We do
9 not know what she did and what she saw once she went in
10 there.

11 My argument is, she didn't have a right,
12 violated the right of privacy of Heather Kennon and
13 Dustin Warren, who was there at that point, to even go
14 into that room and look, at 9:30 -- 9:40 in the morning
15 goes in and looks around.

16 Many of the things that -- if she did go in
17 there, we don't know what was in the room. She could
18 have certainly put things in there. She could have
19 moved things around in there. And they were sitting in
20 a situation that Sergeant Prior found when he goes in
21 there.

22 So my point right off the bat is, is the
23 right of privacy was violated of those people living in
24 that motel room, Heather Kennon, Dustin Warren, if they
25 were there, had an expectation of privacy, and would be

1 subject to a Warrant Requirement.

2 We hear that morning she goes in, she's not
3 the Manager, enters the room concerning that it's been
4 abandoned and sees all these things and immediately
5 calls the officer.

6 We don't know what she did in the room. So
7 certainly, there is a possibility that she could have
8 gone in and touched things. She says she sees a bag
9 with sticks sticking out of it. Doesn't go into any
10 other detail other than she goes into the room and
11 starts looking.

12 The things that she finds, in and of
13 itself, I don't think, would be considered any type of
14 danger. She sees a gas can, and some rubber gloves and
15 a funnel and a sanitary napkin. Those things, in and of
16 itself, I don't know if they come to the point of
17 causing any kind of damage or explosion or destruction,
18 and she goes in without a search warrant and is not a
19 policeman. So she does call officers and they do come
20 up.

21 He -- Sergeant Prior himself testified to
22 the fact, "I wouldn't have gone in but for her
23 testimony."

24 So I think the whole thing revolves
25 around -- the crux is, she didn't have a right to go in

1 and see anything, calls them, and then he goes in and
2 sees the list of what he says.

3 The argument about the abandoned property
4 is, you know, when a defendant temporarily abandons
5 property with intent to return will give rise to
6 privacy. But there was a note -- he was not in the
7 room, there was baggage in the room, there was nothing
8 found there, so there is an expectation of privacy that
9 was violated.

10 And that takes us to the point that they
11 go -- the officers walk in. Well, it says when officers
12 believe that persons on -- need aid -- we've heard no
13 testimony from anybody that said, "Well, there's going
14 to be an explosion. There was an open fire, chemicals
15 being smelled."

16 They just go in and look and find some
17 things laying, and according to State versus Wallace,
18 there must be some probable cause, circumstances which
19 would warrant an exception to the Warrant Requirement.

20 We haven't heard anything. They do decide
21 to go in and look around those things and there's no
22 emergency there. Nothing that would cause explosion,
23 nothing there. And then it's a question about the
24 explosion of an active Meth lab. Two factors.

25 There was no contamination of structure by

1 flammable vapors. He testified he didn't smell
2 anything. All he saw was a bag sitting there and no
3 ignition source. No fire, no matches, none of those
4 things.

5 So those things would rise -- or
6 representing a Meth lab, and everything seemed to
7 respond from what she illegally found by going in that
8 room from the very beginning. And that's, I think, the
9 source of what this motion is.

10 The staff didn't report anything to police
11 that indicated any kind of immediate danger to the
12 public, to any person in the room, or anything that
13 would require assistance that would involve destroying
14 evidence.

15 I'm asking you to grant this motion based
16 upon the fact that she didn't have the right to go in
17 there, and but for her going in there we would never
18 have the officers going in there, and it does violate
19 the Constitutional rights of Ms. Kennon and Mr. Warren.

20 THE COURT: All right. Mr. Spence?

21 MR. SPENCE: Judge, there's absolutely
22 nothing more irrelevant in this case than whether
23 Ms. Thomas had violated the Check-Out Rule of Whatever.
24 She's not a government agent. The 4th Amendment does
25 not govern her conduct.

1 There's a -- the right to privacy is not --
2 the right against an unreasonable search and seizure is
3 by government agents. This is not a warrantless search.
4 This is simply a warrantless entry to check out a
5 reported hazardous material in a room. And the only
6 phrase that comes to my mind is *completely by the book*.

7 Not only does this officer have a right to
8 go check out this call, the nature of the call or what
9 it is, he's got a duty to respond, to check and identify
10 it, and then take the appropriate actions from there,
11 which, in fact, is not doing a search, not seizing
12 items, simply backing out after the emergency became
13 clear what it was, and going through the proper
14 procedures.

15 I don't think I have ever seen a case that
16 was done more by the book by an officer. And again,
17 what the maid or cleaning woman did is completely
18 irrelevant. She's not an authority figure. She's not a
19 government official. She wasn't deputized. She wasn't
20 sent in there. She found something and reported it.
21 They showed up and did the right thing after that. It
22 is not a warrantless search which requires probable
23 cause. It's simply entry to solve an emergency or
24 determine that. Thank you.

25 THE COURT: All right. I'll give you the

1 final argument, if there's anything you want to respond
2 to that.

3 MR. FULCHER: Your Honor, I certainly would
4 agree that she is not a government official or Law
5 Enforcement, but she's working in a -- in a place where
6 people have a right of privacy, a motel room, that if
7 Your Honor or any -- or Mr. D.A. or any -- or myself
8 goes to a motel, we don't expect somebody to come in the
9 room at 9:40 in the morning. There is an expectation of
10 privacy. The things we have, things we have on our
11 person, and she is coming in the room of no reason, for
12 no apparent reason other than, I don't know, maybe just
13 to examine what's going on into the room. When she
14 comes into the room and everything from that, I say, is
15 rights violated, it becomes poison to my client.
16 Anything that's found after that.

17 So I would reiterate the fact that she
18 didn't have a right to come in that room. If she had
19 come in for a legitimate reason and found these things,
20 hey, we could call and get a search. She had no right
21 from the very beginning; Constitutionally protected
22 right of privacy in that room.

23 THE COURT: All right. This matter is
24 before the Court on a Motion to Suppress illegally
25 obtained evidence filed by the Defendant through Counsel

1 on August 6, 2014; and the Court found, from the
2 evidence offered, makes the following Findings of Fact,
3 States separately as Conclusions of Law thereon, and
4 enters its Order as follows:

5 Number one: On January 30th, 2014, Lieutenant
6 Brian Prior was a member of the Atlantic Beach Police
7 Department working with their Criminal Investigations
8 Division.

9 Next Number: Lieutenant Prior, by his training
10 and experience and many years in Law Enforcement, has been
11 trained to recognize precursor chemicals utilized in the
12 manufacturing of Methamphetamine. Lieutenant Prior has
13 seen an assortment of Methamphetamine labs previously.

14 Next Number: The Court received into evidence
15 the State's Exhibits [1] through [8] on voir dire --
16 actually, [1] through [9] on voir dire, and the same were
17 received.

18 Next Number: Lieutenant Prior, prior to
19 January 30th, 2014, did not know the defendant, Dustin
20 Jamal Warren, or Heather Kennon, K-E-N-N-O-N.

21 Next Number: At approximately 9:43`a.m., on
22 January 30th, 2014, a call came in to the Atlantic Beach
23 Police Department with respect to possible hazardous
24 chemicals or materials at the Seashore Motel located in
25 Atlantic Beach, North Carolina.

1 Next Number: Lieutenant Prior went to the
2 Seashore Motel on that date at approximately that time, and
3 there talked to a Carla Thomas, an employee of the Seashore
4 Motel.

5 Next Number: Ms. Thomas, as a member of the
6 cleaning crew of the Seashore Motel, opened Room Number 9
7 of which the Defendant and Heather Kennon were occupants
8 but were not present at that time.

9 Next Number: Upon entering Room Number 9,
10 Ms. Thomas saw several items that aroused her suspicion
11 about the dangerous nature of the same.

12 Next Number: Ms. Thomas or someone for and on
13 behalf of the Seashore Motel made a call to Law Enforcement
14 that resulted in Lieutenant Prior coming to the Seashore
15 Motel.

16 Next Number: After Lieutenant Prior arrived at
17 the Seashore Motel, Ms. Thomas opened the door to Room
18 Number 9 of the Seashore Motel, and Lieutenant Prior
19 entered the room for approximately 10 feet.

20 Next Number: Upon entering, in plain view,
21 Lieutenant Prior saw various and sundry materials including
22 plastic tubing, a soda cap with a hole drilled into it and
23 tubing placed through the cap, a blue bag with Coleman
24 fuel, a hot-glue gun, a face mask and tin foil with burn
25 marks on the same.

1 Next Number: From his training and experience,
2 Lieutenant Prior knew or suspected that the sundry
3 materials that he discovered in Room 9 of the Seashore
4 Motel on that date were those utilized in the making of a
5 laboratory for the manufacture of Methamphetamine.

6 Next Number: Following his view of these items,
7 Lieutenant Prior backed out of the room, secured the same
8 with another Atlantic Beach police officer, called the
9 State Bureau of Investigation to report a suspected Meth
10 lab and ordered that the room not be entered, except by
11 him, after the SBI was on-scene. Centered, in all caps,
12 Conclusions of Law: This Court has jurisdiction over the
13 subject matter of and the parties to this litigation.

14 Number Two: The entry of Room Number 9 of
15 the Seashore Motel by Carla Thomas was lawful in that it
16 was within the course and scope of her employment of said
17 motel and was to perform one of the duties of her
18 employment in the cleaning, to wit, the cleaning of the
19 room.

20 Next Number: Lieutenant Prior had the
21 permission of an employee of the Seashore Motel to enter
22 Room Number 9 to investigate an alleged Methamphetamine
23 laboratory in said room. Centered in all caps, Order: It
24 is therefore ordered, adjudged and decreed that none of the
25 Constitutional rights of the Defendant, either State or

1 Federal, were violated by the entry of Lieutenant Prior
2 into Room Number 9 of the Seashore Motel on January 30th,
3 2014, at approximately 9:40 a.m.

4 It is further ordered that none of the other
5 Constitutional rights of the Defendant with respect to the
6 search of Room Number 9 pursuant to a warrant issued for
7 searching said premises on the basis of what Lieutenant
8 Prior saw, after having been admitted by Ms. Thomas, were
9 violated.

10 This, the 8th day of September, 2014. Make
11 it for my signature. The Court also reserves the right
12 to add to or delete or to reword that Order prior to the
13 termination of the term.

14 Anything further from the State?

15 MR. SPENCE: No, sir. We're prepared to
16 proceed at 2`o'clock.

17 THE COURT: Anything further from the
18 defendant?

19 MR. FULCHER: No, Your Honor.

20 THE COURT: Show his exception to the entry
21 and signing of that judgment. Do you have any other
22 business you want to conduct?

23 MR. SPENCE: No, I don't, Judge.

24 THE COURT: Sheriff?

25 * * *

1 (A Grand Jury matter was heard before the
2 Court.)

3 THE COURT: Anything further?

4 MR. SPENCE: Judge, I believe Mr. Fulcher
5 wants to be heard. I think his client wants to make an
6 opening statement instead of Mr. Fulcher, and I don't
7 think that's allowed, but I'll ask him to be --

8 MR. FULCHER: Your Honor, my client has
9 eloquently(phonetic) claimed that he wants to make an
10 opening statement. So I told him I would bring it to
11 Your Honor's attention.

12 THE COURT: Okay. Mr. Warren, that is --
13 if you have a lawyer, your lawyer acts in your behalf.

14 THE DEFENDANT: Yes, sir. I'm asking for a
15 statement, Your Honor.

16 THE COURT: That's denied.

17 THE DEFENDANT: Okay. I'll ask him to read
18 my statement for me then.

19 THE COURT: Recess us until 2:00`p.m.

20 (A luncheon recess was taken.)

21 * * *

22 THE COURT: Where is your jury, Sheriff?
23 Let the record reflect that all jurors are out of the
24 courtroom.

25 Mr. Warren, I know that you handed

1 Mr. Fulcher a document that you wanted him to read to
2 the jury as your opening statement.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Let me see if I can help you
5 understand this process. Mr. Fulcher was appointed by
6 the Court at your request to represent you, or you hired
7 him.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You hired Mr. Fulcher?

10 THE DEFENDANT: I also tried to fire him.

11 THE COURT: And I didn't allow that.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Because of the timing of it.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: At this point, Mr. Fulcher is
16 your counsel, and you don't have the right to serve as
17 that counsel at this point, because the Court, in its
18 discretion, determines that it's too late for me to
19 discharge him and allow you to represent yourself in
20 this case.

21 And I haven't read that, but what I'm going
22 to do is I'm going to have Mr. Fulcher mark it as
23 Defendant's Exhibit Number [1].

24 THE DEFENDANT: I appreciate that.

25 THE COURT: And have it preserved in case

1 of Appellate review. In case of it.

2 (Defendant's Exhibit Number [1] marked and
3 received in evidence.)

4 THE COURT: And the purpose of an opening
5 statement is very narrow and limited, as I will tell the
6 jury. It's to be an outline of what the attorney
7 believes the competent and admissible evidence will be.
8 It is not the opportunity for the State to get up there
9 and say anything they want to about this case, or about
10 you, or it's not the opportunity for Mr. Fulcher to get
11 up and say anything that doesn't pertain to the
12 relevance of what the evidence is.

13 But I am going to preserve that, that
14 statement, in case there is appellate review.

15 Is there anything from the State before we
16 bring the jury back?

17 MR. SPENCE: No, sir.

18 THE COURT: Anything from the defendant,
19 Mr. Fulcher?

20 MR. FULCHER: No, sir.

21 THE COURT: Yes, sir?

22 THE DEFENDANT: I understand this, sir, and
23 I appreciate you at least allowing me to preserve this.
24 The thing is that I do know other people that have had
25 trials and they've been allowed, you know what I'm

1 saying, to give their own opening statement. I'm facing
2 a lot of time here. I got off of a four and a half year
3 plea bargain. And, sir, I would not be here today if I
4 was guilty. I'm innocent. And this is my life, you
5 know. And if we're going to do this, that's all I ask
6 is we do it right. We have our --

7 THE COURT: Wait a minute. We are doing it
8 right, sir. And I have made the ruling. And I'm not
9 going to have any more discussion about it.

10 THE DEFENDANT: Okay.

11 THE COURT: That's it. Bring the jury
12 back.

13 SHERIFF: Yes, sir.

14 MR. SPENCE: Your Honor, may I retrieve
15 those exhibits from the voir dire hearing?

16 THE COURT: Yes, sir.

17 MR. SPENCE: I may use those as exhibits
18 also.

19 (The jurors entered the courtroom and took
20 their seats in the jury box.)

21 THE COURT: Let the record reflect all
22 jurors have returned to the courtroom.

23 Madame Clerk, please impanel this jury.

24 THE CLERK: Yes, sir. Ladies and Gentlemen
25 of the jury, please stand.

1 (Jurors comply.)

2 THE CLERK: You have been chosen and sworn
3 and now you are impaneled to try the issues joined in
4 the State of North Carolina versus Dustin Jamal Warren.
5 Sit together, hear the evidence, and render your verdict
6 accordingly. Thank you. You may be seated.

7 (Jurors comply.)

8 THE COURT: Ladies and Gentlemen, you've
9 been selected and you are now impaneled to hear the case
10 entitled State of North Carolina versus Dustin J.
11 Warren.

12 At this time, I want to explain to you the
13 manner in which we will proceed as we attempt together
14 to find the truth in this case.

15 First, the lawyers will have the
16 opportunity to make an opening statement. The purpose
17 of an opening statement is very narrow and limited. It
18 is to be an outline of what the attorney believes the
19 competent and admissible evidence will be. An opening
20 statement is not evidence and you must not consider it
21 as such.

22 Following opening statements, evidence will
23 be offered, witnesses will be placed under oath and
24 questioned by the lawyers. It may be that some
25 documents or other tangible exhibits will be offered and

1 received into evidence, and if such an exhibit is given
2 to you to examine, please do so individually, carefully,
3 and without comment.

4 It's the right of a lawyer to object when
5 that lawyer believes that certain evidence is being
6 offered that is inadmissible. When the Court sustains
7 an objection to a question, the jurors must disregard
8 the question and the answer, if one has been given, and
9 draw no inference from the question or speculate about
10 what the witness may have said if permitted to answer.

11 If the Court overrules an objection to any
12 evidence, you must not give such evidence any more
13 weight than if the objection had not been made.

14 If the Court grants a motion to strike all
15 or part of a witness's answer to a question, then the
16 jury must disregard and not consider the evidence that
17 has been stricken.

18 During the course of the trial it may be
19 that questions of law will arise that I'll need to take
20 up out of the presence of the jury. When that happens,
21 I may ask you to step to your jury room just outside the
22 courtroom. Don't worry or speculate. We're taking up
23 only a matter involving a question of law that has to be
24 taken up out of your presence.

25 Please be assured that all competent and

1 admissible evidence will be presented while you're in
2 the courtroom.

3 When the evidence is completed, the lawyers
4 will have the opportunity to make their final arguments.
5 And the final arguments, again, of the attorneys, are
6 not evidence but are given to assist you in evaluating
7 the evidence.

8 Finally, just before you retire to consider
9 your verdict, I will give you further instructions on
10 the law that applies to this particular case. At that
11 time I will declare and explain to you the law arising
12 on the evidence and then you'll be taken to your jury
13 room to begin your deliberations.

14 We're now ready for the opening statements.
15 Will the State wish to make such?

16 MR. SPENCE: Yes, sir.

17 THE COURT: You may proceed.

18 (Mr. Spence presents his opening
19 statement.)

20 THE COURT: Members of the Jury, the
21 defendant may also make an opening statement at this
22 time, or the defendant may defer to the making of that
23 opening statement until a later time in the trial.

24 Does the defendant wish to make an opening
25 statement at this time?

1 MR. FULCHER: Yes, Your Honor.

2 THE COURT: Please proceed, sir.

3 (Mr. Fulcher presents his opening
4 statement.)

5 THE COURT: The State may call your first
6 witness.

7 MR. SPENCE: Scott Way, please.

8 (The witness came forward.)

9 SHERIFF: Raise your right, face the jury.

10 THE CLERK: Left-hand on the Bible, raise
11 your right.

12 THE WITNESS: Sorry about that.

13 (The witness was duly sworn.)

14 MR. SPENCE: If you'll go around there.

15 And the microphone does not work.

16 THE COURT: Make yourself comfortable.

17 THE WITNESS: Okay.

18 (The witness took the witness stand.)

19

20 **SCOTT WAY,**

21 having been first duly sworn, at 2:23 p.m. was called as a
22 witness on behalf of the State and testified as follows:

23

24

25

DIRECT EXAMINATION

BY MR. SPENCE

Q Would you state your name for the Court,
please?

A Scott Way.

Q And your last name is spelled how?

A W-A-Y.

Q Okay. And, Scott, where are you currently
employed?

A Veneer Technologies.

Q I'm sorry?

A Veneer Technologies in Newport.

Q And back in late December of -- I'm
sorry -- late January of 2014, did you work at the
Seashore Motel?

A Yes. I was hired as a Manager.

Q Okay. You were the Manager at that time?

A Yes.

Q Okay. Do you know a woman named Carla Jean
Thomas?

A Yes.

Q And how do you know her?

A She's my girlfriend.

Q Okay. Did she also work there at the time?

A Yes.

1 Q What was her job title?

2 A Assistant Manager/Housekeeping.

3 Q Okay. And what were your duties there,
4 generally, at that motel?

5 A Maintenance, Housekeeping, collecting
6 rents, and keeping the grounds in good working order.

7 Q Okay. How long had you worked there as of
8 January 2014?

9 A About seven months.

10 Q Okay.

11 A September.

12 Q Same -- same time Carla worked there?

13 A Yes.

14 Q And do you remember the afternoon of
15 January 29th, 2014?

16 A Yes.

17 Q Okay. Were you working that day?

18 A Yes.

19 Q Okay. Did you work seven days a week
20 there?

21 A Yes.

22 Q Okay.

23 A Well, I worked there, plus at night I would
24 go to work at Veneer Technologies. I worked there -- I
25 worked both jobs.

1 Q Okay. Did Carla work the same hours you
2 did, or at least the same --

3 A Yes.

4 Q -- number of days?

5 A Oh, yes.

6 Q Where is the Seashore Motel?

7 A 120 East Fort Macon Road.

8 Q And how many rooms does the Seashore Motel
9 have?

10 A Twenty.

11 Q Okay. And do you remember approximately
12 how many of those rooms were rented in January -- on
13 January 29th, 2014?

14 A Five or six.

15 Q Okay. Probably wasn't the best beach day
16 there that was invented?

17 A No. About an inch and a half of snow on
18 the ground.

19 Q And East Fort Macon Road, if you're going
20 over from Morehead City across the Causeway and get to
21 the main light, you can turn left --

22 A Yes.

23 Q -- onto Fort Macon Road; is that correct?

24 A Yes.

25 Q And the Seashore is on the right about how

1 far from that intersection?

2 A About a hundred yards, maybe.

3 Q And how is the motel laid out?

4 A It's a horseshoe-shaped motel. Our
5 Manager's office and the check-in office in the front,
6 followed by a series of rooms and then around, rooms one
7 through eight, or one through seven, and then eight
8 through 15, and 15 through 20.

9 Q Okay. All -- everything on one floor?

10 A Yes.

11 Q Okay.

12 A No -- no --

13 Q And are you able to see the rooms from the
14 Manager's office?

15 A Not directly from the Manager's office, but
16 we do have a closed-circuit TV system that was set up.

17 Q Okay. Was that operating that day?

18 A Yes, it was.

19 Q And you can see the rooms from that?

20 A Yes.

21 (State's Exhibit Numbers [1], [2] and [3]
22 marked for identification.)

23 BY MR. SPENCE

24 Q Okay. Scott, I'm going to hand you three
25 photographs. They're going to have stickers on them.

1 State's Exhibits [1], [2] and [3]. And I'm going to ask
2 you if you'll just look at these and say yes or no,
3 whether you recognize the things shown in these
4 photographs. Okay?

5 A Sure. Yes.

6 Q If you'll look at all three and say yes or
7 no whether you recognize all three?

8 A Yes. All three of them. Yes.

9 Q What, generally, are these photographs of?

10 A They're the pictures of the Seashore Motel.

11 Q Specifically, State's Exhibit Number [1],
12 hand that to you. Would you look at that and tell me if
13 you recognize what is shown in that photograph?

14 A This is the Manager's office right here
15 with the check-in, and then there's an office and
16 apartment behind there and a series of rooms, and then
17 there's a pool area and a series of rooms across the
18 back.

19 Q Okay. What is the vantage point from
20 State's Exhibit Number [1]? Where are you looking from?

21 A That is from Fort Macon Road.

22 Q Is that where you turn into the entrance?

23 A Yes, yes. The entrance of the hotel.

24 Q So somebody coming to check in would drive
25 through that?

1 A Yes.

2 Q And would this photograph help illustrate
3 your testimony if we need to use it? Would it help?

4 A Yes.

5 Q Okay. State's Number [2], could you just
6 tell, generally, what that photograph shows?

7 A It's, again, the front of the Seashore
8 Motel, showing the entrance to the motel and the
9 check-in office.

10 Q Okay. What vantage point is that?

11 A The entrance to the Fort Macon Road,
12 heading towards the Fort Macon State Park.

13 Q Okay. And also State's Exhibit Number [2],
14 illustrate your testimony about the location of this
15 motel and how it appeared that day?

16 A Yes.

17 Q State's Number [3], would you look at that
18 and see if you can generally tell me what is shown in
19 that photograph?

20 A Yes, this is the exit of the motel.

21 Q Okay.

22 A You're looking at Rooms 24 through -- or 23
23 to 20, I believe, and then -- but that is the exit to
24 the motel.

25 Q One way in, one way out?

1 A Generally, yes. I mean, it -- wasn't
2 always followed that route, but yes, generally, that's
3 the way it should be.

4 Q Okay. This shows the pool area and the --
5 again, the exit?

6 A Yes.

7 Q And would that photograph, if needed, help
8 illustrate your testimony?

9 A Yes.

10 MR. SPENCE: Your Honor, I would offer [1]
11 through [3] to illustrate his testimony, if needed.

12 THE COURT: Any objection?

13 MR. FULCHER: Nothing, Judge.

14 THE COURT: Members of the Jury, State's
15 Exhibits [1] through [3] are being received for
16 illustrative purposes, that is, for the purpose of
17 illustrating this witness's testimony, to the extent
18 that you find that it does so illustrate his testimony.
19 You'll consider it for no other purpose. You may
20 continue.

21 (State's Exhibit Numbers [1], [2] and [3]
22 received in evidence.)

23 * * *

24 (State's Exhibit Number [4] marked for
25 identification.)

1 BY MR. SPENCE

2 Q And one other photograph I need to show
3 you, Scott, State's Exhibit Number [4]. If you could
4 look at this, please, and let me know if you recognize
5 what is shown in that photograph, generally.

6 A Yes. That is the entrance to Room 9 on the
7 day of the snow.

8 Q Okay. The date we're talking about?

9 A Yeah. Because 9 actually did not have a
10 number on it, and 10 is sitting right next to it.

11 Q Okay. And looking at this photograph,
12 which door is the one to Room 9? The door on the right
13 or the door on the left?

14 A The door on the right. This one right
15 here(indicating).

16 Q This one?

17 A Yeah.

18 Q The one without the "10" on it?

19 A Exactly.

20 Q And would this photograph also help
21 illustrate the location of that room?

22 A Yes.

23 Q In the motel?

24 MR. SPENCE: Offer State's [4], Judge.

25 THE COURT: Any objection?

1 MR. FULCHER: No objection.

2 THE COURT: It's received, for illustrative
3 purposes.

4 (State's Exhibit Number [4] received in
5 evidence.)

6 BY MR. SPENCE

7 Q Scott, did you -- do you remember seeing or
8 checking in a guest by the name of Heather Kennon on the
9 late morning hours of the 29th of January?

10 A Yes, I do.

11 Q Okay. Had you ever seen her before or know
12 her before?

13 A No.

14 Q Okay. Did she arrive there by herself or
15 with someone else?

16 A With someone else.

17 Q Okay. And when did you first see them?

18 A Well, when they pulled up, when she got --
19 came in the office. The office is set up where you
20 can -- a person here, and you can look out and see the
21 vehicle that they're in, how many people, so on and so
22 forth. So that's -- I saw the vehicle, one other
23 person, and I asked her what she -- you know, how I
24 could help her. And --

25 Q Okay. Was she driving the car or in the

1 passenger's seat?

2 A She -- evidently in the passenger's seat.

3 Q She got out of the passenger's seat to come
4 to your office?

5 A Yes.

6 Q And when someone checks in or checked in on
7 that date, during that period of time, is there a
8 receipt that they are required to fill out?

9 A Yes. There's a registration card they're
10 required to fill out. It has date, name, driver's
11 license number, address, vehicle information.

12 Q Number?

13 A And the room number, room rate, and number
14 of nights.

15 (State's Exhibit Number [5] marked for
16 identification.)

17 BY MR. SPENCE

18 Q Okay. And if I can approach with State's
19 Exhibit Number [5].

20 THE COURT: You may.

21 BY MR. SPENCE

22 Q And ask you if you have seen that document
23 before.

24 A Yes.

25 Q And what is that?

1 A That is a registration card for the
2 Seashore Motel.

3 Q And what date is this specifically for?

4 A January 29th.

5 Q Okay. And is this the actual receipt given
6 to the customer after they -- or actually kept by the
7 office?

8 A This is the one that's kept by the office.
9 Yes.

10 Q And this was kept for that room for that
11 night?

12 A Exactly.

13 Q And who is the person who rented that room
14 or signed for that room?

15 A Heather Kennon.

16 Q Okay. And did she put down a year and make
17 of a car and a license plate number of a car?

18 A Yeah. It was a gold Buick, and in -- yeah.

19 Q Is that the car that you observed?

20 A Yes.

21 Q Okay. And do you recall what time she
22 checked in that day?

23 A It was around 11:45, 12`o'clock, something
24 like that.

25 Q Okay. And number of guests in the party,

1 is that a question that you ask everybody?

2 A Every time.

3 Q Okay. And what did -- what was indicated
4 on there as the number of guests in that party?

5 A Two.

6 Q Two?

7 A Two.

8 Q Okay. I assume the room was paid for in
9 some form or fashion?

10 A Yeah. It's -- Seashore has a cash-only
11 policy.

12 Q Cash only?

13 A Uh-huh.

14 Q What was the rental rate for that motel for
15 that one night?

16 A Thirty-four dollars plus tax.

17 Q Okay.

18 A Would be --

19 Q And after the check-in procedure, what did
20 you observe regarding that couple or that car?

21 A Well, they went to -- they pulled around,
22 because -- to the back, and --

23 Q When you say *to the back*, is that --

24 A It's straight ahead. Towards the back-part
25 of the horseshoe.

1 Q Okay. Got it.

2 A Okay. Which is -- that corner room, which
3 has a -- the camera looks right at it, so --.

4 Q Okay.

5 A They stayed in the room -- in the car for a
6 little while; they went into the room. Heather then
7 came back up to the office about an hour or so later,
8 maybe two hours -- I'm not exactly sure --

9 Q Right.

10 A -- when it was -- asking if we could get
11 another heater for the room. It's an older motel;
12 wiring wasn't all that great. We put another heater, it
13 blows the circuit breakers along that back wall. So we
14 offered additional blankets. She didn't say yes or
15 didn't say no. And later on that afternoon, I went back
16 to the room to give them extra blankets and make it more
17 comfortable for them, because we kept the heaters on in
18 the rooms because of the colder weather, and it was
19 comfortable enough for most -- you know, for most.

20 Q Were the heaters -- was the heater working
21 in that room?

22 A Very much so.

23 Q Okay. When you went back -- and did you
24 ever see them leave the motel between the time they
25 checked in and the time that you brought some blankets

1 to them?

2 A Somewhere around that evening, about 5:00
3 or 6:00, I believe, they both left. And if I'm not
4 mistaken, I had to -- at that point I had to go to work
5 or something along those lines, and I wasn't there for
6 the duration of the night.

7 Q Okay. Now, when you went -- at some point
8 did you go to take them the blankets?

9 A Yes. Around -- around 2`o'clock or so.

10 Q Okay.

11 A I had to go there. And that's when I
12 knocked on the door; the door was opened maybe two or
13 three inches. They announced that they were in, you
14 know, in -- not decent, and then they were fine.

15 Q Okay. They were fine?

16 A Yeah.

17 Q They did not want the blankets?

18 A No. Didn't want the blankets. Didn't
19 want -- at that point the heater was working fine.

20 Q Okay. Did you see -- was there a male
21 person in the room along with Ms. Kennon?

22 A The way the door was opened I could not
23 see, but it was a male voice on the other side of -- the
24 room had been darkened out.

25 Q Okay. You were talking to a male person?

1 A Yes.

2 Q Did you ever see any other male people
3 except Mr. Warren?

4 A No.

5 Q Okay.

6 A Not coming and going from that hotel room.

7 Q Did you even know who Dustin Warren was?

8 A No.

9 Q Okay. What time -- how long did you stay
10 there before you had to go to your next job?

11 A I was there until about 5`o'clock or so,
12 between 5:00 and 6:00, somewhere in there. I remember
13 calling in late and having to explain this to my boss.

14 Q Did you -- did the occupants of Room
15 Number 9 stay there or did they leave before you left
16 for work?

17 A It's hard to tell exactly when they left.
18 I don't remember seeing the vehicle when I pulled out to
19 go to work that night. But again, I wasn't there for --
20 in -- Ms. Thomas will be able to tell you more -- she's
21 there -- she was there during those hours that I was
22 out.

23 Q Okay. And what time did you come back to
24 the Seashore the next day?

25 A I got home about 1`o'clock in the morning,

1 and the vehicle was not there.

2 Q Okay. The gold Buick was not there?

3 A The gold Buick was not there.

4 Q Okay. And were you -- did you work from
5 the time you got back there until the next morning?

6 A Yeah. Well, slept. Yes. Yes. We were
7 there.

8 Q Did you ever see that gold Buick come back
9 to that room?

10 A Yes.

11 Q Okay.

12 A That afternoon. We started our morning
13 process of cleaning rooms. That started about 8:30,
14 9'o'clock. We started checking on people. Waited for
15 that one -- for the last one, because we weren't sure
16 if -- because the vehicle wasn't there -- knocked on the
17 door about 9:00, 9:30, something like that, to see if
18 they were there, to see if they wanted to stay another
19 night, you know, our normal routine, if they needed
20 anything. There was no answer. We weren't sure. We
21 unlocked the door, went in, and that's when we found the
22 bag with the stuff in it.

23 Q Okay. Now, when you were at work, Carla
24 was working there; is that correct?

25 A Yes.

1 Q Did you talk to her about the fact the car
2 had not come back since 5`o'clock that previous day?

3 A No, because people would come and go for
4 reasons not really relevant, you know, to that hotel,
5 you know.

6 Q Just didn't make any difference to you?

7 A Right. I mean, it's -- it's a motel
8 that -- middle of the winter, you know.

9 Q So the fact that the car left and didn't
10 come back didn't mean anything particular to you in the
11 scheme of things?

12 A No, not in the --

13 Q What did you find when you went in there to
14 find out if the room had still -- was occupied or had
15 people in it or if they'd left or what?

16 A Honestly, it was Ms. Thomas that went into
17 that room. She called me in afterwards, and that's when
18 we decided to just back out of the room and close the
19 door and call the cops.

20 Q Okay. What made you want to call the cops
21 based on what you saw?

22 A The -- in the trash can was a
23 respirator-style mask, a -- several bottles and melted
24 plastic stuff. I was like, you know, I'm not Law
25 Enforcement or anything, but I knew that that just

1 wasn't right, you know. And I have heard so much --

2 MR. FULCHER: Objection.

3 THE COURT: Sustained.

4 BY MR. SPENCE

5 Q Enough to alarm you to call the police?

6 A Exactly.

7 Q Did you notice that the beds in that room
8 had been moved or destroyed -- not destroyed -- moved or
9 even turned down?

10 A I don't recall.

11 Q Okay. Shortly thereafter, when the police
12 were called, the police showed up there; is that right?

13 A Yes.

14 Q Including Lieutenant Prior?

15 A Yes.

16 Q And Officer Ennis was there at some point?

17 A Yes.

18 Q And they talked to you about what you had
19 seen or what had gone on in that Room Number 9; is that
20 correct?

21 A Yes.

22 Q And did you actually write out a brief
23 statement on the form they provided about what you had
24 observed that day?

25 A Yes, I did.

1 Q And you've seen a copy of this -- actually,
2 you've seen the original this morning; is that correct?

3 A Yes.

4 Q And you've read that?

5 A Yes, I have.

6 Q And was it accurate when you wrote it?

7 A Yes.

8 Q Is it still accurate, based on what you
9 remember?

10 A Yes.

11 MR. SPENCE: Okay. May I approach
12 Your Honor?

13 THE COURT: You may.

14 (State's Exhibit Number [6] marked for
15 identification.)

16 BY MR. SPENCE

17 Q State's Exhibit Number [6], Scott, if
18 you'll look at that, is that the statement that I just
19 referred to?

20 A Yes.

21 Q Okay. And do you remember what Officer
22 Ennis instructed you to do when he gave you this piece
23 of paper or this form?

24 A To fill it out to the best of my knowledge
25 and to get it back to him as soon as possible.

1 Q Okay. Did he tell you what to say or
2 anything like that?

3 A No, not at all.

4 Q Okay. And these are your own words?

5 A Yes.

6 Q And it's not been changed, altered, or
7 anything like that since it was made; is that correct?

8 A That is correct.

9 Q And it's still true as of your information
10 and belief as it was that day?

11 A Yes.

12 MR. SPENCE: Okay. Your Honor, I'd ask
13 that Number [6] be admitted into evidence and ask that
14 he be allowed to read the short statement, publishing --

15 THE COURT: Any objection to [6]?

16 MR. FULCHER: No, Your Honor.

17 THE COURT: It is received.

18 (State's Exhibit Number [6] received in
19 evidence.)

20 BY MR. SPENCE

21 Q Scott, if you could just start with, "I,
22 Scott Way," and read what you wrote for Detective Ennis
23 and his benefit that day.

24 A Okay, "I, Scott Way, want to make the
25 following statement: At 11:45`a.m. on January 29th,

1 2014, I rented Room Number 9 to Heather Kennon. The
2 gentleman with her never got out of the car. I then saw
3 them sitting in the car in front of the room around
4 12:30 and they left and came back, asked to be moved to
5 another room because of the cold, or have another
6 heater. They were told that there was not another room
7 other that -- didn't have -- there was -- excuse me --
8 told that the other room had the same heater, and only
9 one portable heater to a room. At 2:00`p.m. I knocked
10 on their door to give them more blankets. He announced
11 that they were naked and to give them a second. He then
12 opened the door, and I couldn't see him clearly because
13 the room was dark, and I offered him the blankets; they
14 said they were good. Between 5:00 and 6:00 they left
15 again, never to return until the next morning after the
16 police were called. Housekeeping checked the room at
17 9:30 a.m., found the bag, called me into the room,
18 showed me, and we called 911 about 9:40. I left to go
19 to the store that morning. At that time when I
20 returned, the gold Buick was back, and the police were
21 talking to the two individuals in the car."

22 Q Okay. The person -- do you recognize in
23 the courtroom the person the police were talking to when
24 you got back?

25 A Yes.

1 Q And is he here in the courtroom?

2 A Yes.

3 Q Where is he?

4 A (Indicating).

5 MR. SPENCE: Ask the record reflect he
6 pointed to Dustin Warren.

7 THE COURT: The record will so reflect.

8 BY MR. SPENCE

9 Q Is that the same person you saw in the gold
10 Buick, checking into the room?

11 A Yes.

12 Q Okay. Did you see the gold Buick in front
13 of Room Number 9 during the time you were there that
14 afternoon of the 29th?

15 A Yeah. A couple different times.

16 Q Okay. Did you ever see them leave
17 separately during this period of time?

18 A No.

19 Q How many keys, Scott, are these -- go to
20 these rooms when someone checks in?

21 A One.

22 Q Okay. And could -- what kind of key are we
23 talking about?

24 A An old-style motel key, actual key with a
25 blue oval or a -- kind of a teal green, I guess,

1 oval-shaped with a room number, the *Seashore Motel* on
2 the backside, the information for the hotel, and so on,
3 so forth.

4 Q Okay. Old-type motel key, not the card
5 swipe?

6 A Old-style motel key. Yes.

7 MR. SPENCE: Okay. I think that's all I
8 have of this -- of Mr. Way.

9 THE COURT: Cross-examination.

10
11 **CROSS-EXAMINATION**

12 BY MR. FULCHER

13 Q Mr. Way, for the record, were you the
14 Manager for the Seashore Motel that particular day?

15 A Yes.

16 Q Okay. And was Ms. Thomas -- it's
17 confusing -- was she a maid or is she Housekeeping or
18 was she a Manager?

19 A Well, her and I were together and are
20 together. We were there to run the motel as a couple.

21 Q In her statement to the officer she said
22 that she was the Manager. I'm just checking to see.

23 A She was like, the Assistant Manager.

24 Q How long have you been in the business of
25 managing motels?

1 A That was my first attempt.

2 Q Now, you said on January the 29th that

3 Ms. Kennon came up to rent a room; is that correct?

4 A Yes.

5 Q Okay. Did you ask her for her license or
6 anything?

7 A Yes.

8 Q Okay. And did she have any?

9 A Yes.

10 Q Okay. Did she tell you that she didn't
11 have a vehicle?

12 A No.

13 Q Okay. So she gave you somebody else's
14 vehicle?

15 A She just wrote down the information of the
16 vehicle that she was in.

17 Q So she -- is that part of the requirements
18 to rent a room, to have a driver's license?

19 A Yes. Driver's license, yes, vehicle
20 information. If you're not driving, then no.

21 Q Okay. In your experience, is it common for
22 a couple who comes in, for them to come together?

23 MR. SPENCE: Objection to *common*.

24 THE COURT: Overruled.

25 THE WITNESS: No, it's not uncommon.

1 BY MR. FULCHER

2 Q Okay. So usually, they'll come in
3 together?

4 A No.

5 MR. SPENCE: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Okay. No, they --

8 MR. FULCHER: Go ahead.

9 THE COURT: Go ahead.

10 THE WITNESS: Okay. People would come in
11 all the time: Husband and wife, you know, outside with
12 the kids or whatever, and, you know, one person would
13 come in to check in quite frequently.

14 BY MR. FULCHER

15 Q And the person who usually comes in, one
16 who usually does the paying, I would assume, that's who
17 you need, to get the money. And so she came in by
18 herself; is that correct?

19 A Came to the office, yes.

20 Q Okay. And she's the one who paid for the
21 room?

22 A Yes.

23 Q She paid for it cash, out of her own
24 pocket?

25 A Yes.

1 Q No check, no credit card. Have you ever
2 seen Mr. Warren at this motel before?

3 A No.

4 Q So, fair to say, pretty-much, he wasn't a
5 regular customer there?

6 A No.

7 Q You told me you'd never seen him. So you
8 said on this particular morning at 11:45, she comes in
9 and you rent a room to her?

10 A Uh-huh. Yes.

11 Q And you said Mr. Warren was -- never gets
12 out of the car at this time; is that correct?

13 A At that time, no.

14 Q Okay. And you said that was 11:45, but I
15 believe you testified that on your card it was 2`o'clock
16 when they checked in?

17 A It was 2`o'clock -- the check-in time was
18 2`o'clock. She didn't have the additional \$15 to pay
19 for the early check-in, so I just let it slide. You
20 know.

21 Q So we can confirm it was sometime before
22 noon?

23 A It was right about -- yeah, about 11:45,
24 quarter -- about 11:45, 12:00.

25 Q Now, I believe you also testified in your

1 writing that you saw Mr. Warren sitting in a car for a
2 while with the car running?

3 A Both at check-in and again in front of the
4 room briefly, when we went outside to -- forget what we
5 were doing.

6 Q Did you ever see anybody take anything out
7 of that car, take anything into the room?

8 A No, but I don't hover over top of people
9 when they're checking into the rooms.

10 Q But you did notice that he was sitting in a
11 car?

12 A Yes.

13 Q And did notice that a couple times, that he
14 moved?

15 A Yeah. The traffic in and out had to
16 pretty-much go either past the hotel office or, you
17 know, we had several things that we had to do through
18 the course of the day that would take us outside, and if
19 a vehicle's not there, we'd take a note of it.

20 Q Do you remember later on in the afternoon
21 Mr. Warren still sitting in the car with the car
22 running?

23 A No.

24 Q Now, at any time you walked by Room 9, did
25 you ever smell any strong chemicals or anything coming

1 out of that room?

2 A No.

3 Q Nothing weird, no weird smells or --

4 A No.

5 Q Does that room have a -- what kind of
6 ventilation system does that room have?

7 A It has an AC unit and that's about it. The
8 door.

9 Q Fire extinguisher in there? I'm assuming a
10 fire alarm in there?

11 A Smoke detector, yes.

12 Q Smoke detector. So if there was any kind
13 of burning or cooking or anything that's hot or smoke,
14 would it set those things off?

15 MR. SPENCE: Objection.

16 THE COURT: If he knows. Overruled.

17 THE WITNESS: I would assume so.

18 BY MR. FULCHER

19 Q Okay. So if I went into the room and I lit
20 up, set a fire or burnt something that was out of the
21 ordinary --

22 MR. SPENCE: Objection to *out of the*
23 *ordinary*.

24 THE COURT: Well, sustained.

25 BY MR. FULCHER

1 Q If I just went in there and lit a fire or
2 was cooking something --

3 A If you were to go into the room and light a
4 cigarette or anything like that, it would not set off
5 the smoke detector.

6 Q But anything that was a large flame?

7 A Right.

8 Q With some heat or smoke would cause
9 something to go off?

10 A That's why we didn't allow burning or
11 cooking in the rooms.

12 Q What's the size of these rooms you say
13 approximately?

14 A That one is one of our larger rooms.
15 Actual -- it had -- it held two queen-sized beds. It
16 held -- it had a small kitchenette-style with just a
17 small mini-fridge. Actual footage, I'm not exactly
18 sure.

19 Q Did you walk by that room any time that
20 day?

21 A Several times.

22 Q Okay. And none of the times you walked by
23 did you smell anything out of the ordinary?

24 A No. It was cold outside and the wind was
25 blowing pretty bad, pretty strong that day. So in that

1 horseshoe it kind of blows things around.

2 Q Okay. Didn't hear anything out of the
3 ordinary in there?

4 A No. Again, the wind was blowing pretty
5 good, so you --

6 Q Any open windows in that room?

7 A You can.

8 Q Did you ever see any of those open when you
9 walked in there?

10 A No. It was very cold that day.

11 Q Did you ever see Mr. Warren at any time
12 outside of the car or outside of the room doing
13 anything?

14 A Yeah. At one point in time there was -- he
15 was outside in a pair of red pajama pants of some sort.
16 I think he was having a cigarette or something.

17 Q But he wasn't doing anything suspicious,
18 like hiding?

19 A No.

20 Q Never saw him take anything out of the car,
21 take it to the room?

22 A No.

23 Q For the time you saw him?

24 A No.

25 Q Now, you said around -- let me ask, did

1 Ms. Kennon ever come and ask -- what did she -- did she
2 ever make a complaint about the temperature of the room?

3 A Other than to ask for -- or request a
4 second heater, no.

5 Q Okay. And you told her she couldn't have
6 one?

7 A Could not have, but I did offer her
8 additional blankets.

9 Q Okay. Did she -- did she make a fuss or
10 anything about that?

11 A Not at all.

12 Q At that time? Okay. You testified earlier
13 around 2'o'clock you went back to carry them some more
14 blankets?

15 A Yes.

16 Q Okay. And could you see into the room?

17 A No.

18 Q Okay. When you opened the door to go in
19 there, was any smoke coming out of there, any vapors?

20 A No. The -- like I said, they announced
21 that they were "indisposed," and the door was open maybe
22 3 inches and dark inside.

23 Q But that certainly left that open long
24 enough to see some kind of smell or some kind of --

25 MR. SPENCE: Objection.

1 THE COURT: Sustained.

2 BY MR. FULCHER

3 Q But you couldn't -- you didn't see anything
4 that was going on in the room at that time?

5 A No. I wasn't looking to spy on them. No.

6 Q Did they accept -- did they ever accept the
7 blankets you took?

8 A No.

9 Q Okay. You testified between 5:00 and 6:00
10 they left. You said they left again. Did they leave
11 earlier?

12 A Yeah. I believe it was around 12:30 they
13 left and came back.

14 Q The time they were gone, how long were
15 they, approximately?

16 A Honestly, I couldn't tell you.

17 Q And so you said around 5:00 they left, and
18 to the best of your knowledge, they didn't return?

19 A Right. Because when I came back at
20 1`o'clock that night, the vehicle was gone.

21 Q Is it possible anybody else could have gone
22 in that room?

23 MR. SPENCE: Objection --

24 THE COURT: Sustained as to *possible*.

25 BY MR. FULCHER

1 Q Could it be that anybody had access to that
2 room that had a key?

3 A No. If they --

4 MR. SPENCE: Objection.

5 THE COURT: Sustained.

6 BY MR. FULCHER

7 Q But you -- you weren't there to see the
8 room all night?

9 A We have an apartment there behind the
10 office. We were there -- one of us was there all night
11 long.

12 Q So were you-all sitting up all night
13 looking into the room?

14 A No.

15 Q Trying to see what's going on?

16 A No.

17 Q Now, the next morning at 9:30 you said
18 Housekeeping -- you went in to check. What's your
19 protocol of going in to see whether somebody is still in
20 the room or not?

21 A We started at about 9`o'clock that morning
22 with rooms that were stayovers, checking to make sure
23 they had towels and blankets and so on and so forth.
24 And as we come around back towards the office, which is
25 back toward that general direction, we stopped -- we

1 noticed the vehicle wasn't there. I was doing a room
2 further up the line; she had knocked on the door, no
3 answer, knocked again, no answer, announced that we were
4 coming in, and she opened the door, went in, and then
5 came and got me.

6 Q What time is check-out?

7 A 11`'clock.

8 Q One last question: When you said you saw
9 Mr. Warren, you said he had red -- are you sure they
10 were pajamas or could they have been jogging pants?

11 A They could have been.

12 MR. FULCHER: I don't think I have any
13 other questions for Mr. Way.

14 THE COURT: Any redirect?

15 MR. SPENCE: No, sir.

16 THE COURT: You may stand down. Thank you,
17 sir.

18 THE WITNESS: Thank you very much.

19 (The witness stepped down from the witness
20 stand.)

21 THE COURT: You may call your next witness.

22 MR. SPENCE: Call Carla Jean Thomas,
23 please.

24 (The witness was duly sworn.)

25 MR. SPENCE: Same place, Carla.

1 (The witness took the witness stand.)

2 THE COURT: You may inquire.

3

4 **CARLA JEAN THOMAS,**

5 having been first duly sworn, at 2:57 p.m. was called as a
6 witness on behalf of the State and testified as follows:

7

8 **DIRECT EXAMINATION**

9 BY MR. SPENCE

10 Q State your name for the Court, please.

11 A Carla Jean Thomas.

12 Q And, Carla Jean, I think we've already kind
13 of met. You worked at the Seashore Motel during this
14 period of time?

15 A Yes, sir.

16 Q And with your boyfriend, Scott?

17 A Yes, sir.

18 Q Okay. And where are you working now?

19 A I work for Wilco Hess in Newport.

20 Q Do you remember the night that we're
21 talking about here today?

22 A Yes, sir.

23 Q Okay. Were you there when Room Number 9
24 was checked into?

25 A Yes, sir. I was cleaning a room, and he

1 went and rented -- when -- we have an alarm system.

2 When somebody opens the door, it rings it for us. He

3 went to the office to rent the room.

4 Q And while he was renting the room and
5 filling out the form and issuing the key and things like
6 that, you were busy doing something else?

7 A Yes. I was cleaning another -- a different
8 room.

9 Q Okay. Do you remember when the first time
10 was you saw either Heather Kennon or this defendant
11 (indicating) there that day?

12 A Yes, sir. They finished checking in, and I
13 saw them drive straight back to right in front of Room
14 Number 9, and they got out, went inside.

15 Q Okay.

16 A Well, they sat there for a little bit,
17 probably 30 minutes. So then while I'm cleaning out --
18 I'm always watching, in case people come in to check
19 in -- and they got out and went inside, both of them.

20 Q And what kind of car; do you recall?

21 A It was a gold four-door Buick.

22 Q Do you know who was driving that car?

23 A The gentleman. I did not know his name at
24 that time, but a gentleman was driving. She was in the
25 passenger.

1 Q Okay. Did you ever get a chance to get a
2 good look at the gentleman in that gold Buick?

3 A Not at that time.

4 Q Okay. Any time later? Either that day or
5 the next day?

6 A That day and the next day. That day I saw
7 him outside of the room when he was smoking a cigarette
8 and he had red clothes on. I know they were red. And I
9 spoke to him because I was in the laundry room.

10 Q Okay. And was that car in front of Room
11 Number 9 the whole time they were there?

12 A The whole time they were there. But they
13 did leave a couple of times for 30 minutes to an hour
14 and came back, both times.

15 Q Leave together?

16 A Yes, sir.

17 Q Come back together?

18 A Yes, sir.

19 Q Okay. Ever see one leaving the car and not
20 the other one?

21 A No.

22 Q Okay. After they checked in, you said they
23 came and went a couple times?

24 A Yes, sir.

25 Q Did you -- is it your policy or your

1 personal policy to keep track of what everybody's doing
2 in these rooms, what they're taking in or anything?

3 A No, but we have a video camera --

4 Q Okay.

5 A -- that is set up if -- for the different
6 cameras. It's four different screens. And, you know,
7 I'm always -- when I'm in the bedroom, I'm -- I can
8 see -- it moves -- when something moves I look at it,
9 and you could see the car, like, turning and leaving out
10 the exit, or somebody pulling in the drive.

11 Q Okay.

12 A So you just notice it. It's not that
13 you're --

14 Q Okay.

15 A -- trying to spy. You just notice people
16 coming and going.

17 Q Okay. And somebody taking something into a
18 motel room wouldn't be an event you would be surprised
19 about, would you?

20 A No. People take luggage into rooms every
21 day.

22 Q Do you remember some point in the afternoon
23 when Ms. Kennon wanted another heater for that Room
24 Number 9?

25 A Yes, sir. I was the one that went to the

1 office when she came in the front door and she asked for
2 another heater. And I said that I would -- by law, we
3 cannot put more than one heater in there because it is
4 an old system, an old electrical system, and it blows
5 the breaker which can cause a fire. So I said -- then
6 she asked for another room. I said, "The only other
7 room I have available has the same kind of heat."

8 Q All the rooms have the same kind of heat?

9 A There was only -- of the rooms that we
10 could rent, there were only two that had wall-based
11 heaters.

12 Q And the rest had --

13 A The rest had the portable plug-in heaters.
14 Yes, sir.

15 Q Did the heater in Room Number 9 work, to
16 your knowledge?

17 A Yes, sir.

18 Q Okay.

19 A They were left on high until we rented that
20 room.

21 Q Okay. After you explained the heater thing
22 to her, did you see her go back to Room Number 9?

23 A Yes, sir.

24 Q Did she come to your office by herself, or
25 did Mr. Warren come with her?

1 A She came by herself.

2 Q And what's the next thing you remember
3 happening that afternoon?

4 A Shortly after she came to the room and
5 left, we went to -- when she went back to the room, I
6 went down to the laundry room and were getting blankets
7 out, and he was standing out there smoking. Then he
8 went back inside the room. I got the blankets ready for
9 rooms 9 and 11; Scott went and knocked on the door and
10 they refused the blankets.

11 Q Okay. So you got blankets ready, gave them
12 to Scott, he went --

13 A He went to Room 9; I went to Room 11.

14 Q Okay.

15 A But they refused the blankets so I just put
16 them back up.

17 Q Okay. Do you remember if Room Number 11
18 got the blankets?

19 A Yes, they did.

20 Q Okay. What's the next thing you remember
21 regarding Room Number 9 and its occupants?

22 A They were not there -- when I went to bed
23 at 12:30 they were not there. When I woke up at 7:30
24 they were not there.

25 Q Okay. Was the car there?

1 A No. No vehicle was there, and it had --
2 the wind had blown stuff over the tire tracks, so I knew
3 no one had been there in that spot that they had parked
4 in previously.

5 Q So it had tire tracks in the snow?

6 A There were no tire tracks in the morning.

7 Q Okay.

8 A And it wasn't, you know, where a car had
9 been sitting.

10 Q So it had snowed that night?

11 A A little -- more sleet, and then it had
12 blown it all around.

13 Q Okay. So at one point, there were tire
14 tracks that had been made by that car, and then the car
15 was gone and stuff had been blown over there?

16 A Yes, sir.

17 Q Got it.

18 A And then like he said, we started on the
19 rooms that we could -- the ones that were empty, we
20 cleaned them first so that we could re-rent them, then
21 we did everyone else, and then we went to the their room
22 last. And the reason I went before that is because they
23 had not been there all night long.

24 Q Okay.

25 A So I just wondered, even if they -- you

1 know, thinking maybe they didn't want to stay, they just
2 left, period, and left the key on the desk. We've had
3 that happen before.

4 Q Some people rent by the hour sometimes?

5 A Yes.

6 Q For various purposes?

7 A Yes, sir.

8 Q Okay. And you try -- you're trying to get
9 the rooms cleaned as quickly as you can during the day?

10 A Yes, sir. To re-rent them before check-in
11 time of 4`o'clock.

12 Q Okay. When is the next time you went in
13 that room?

14 A I knocked on the door at 9:30 in the
15 morning on January 30th.

16 Q Okay. And tell the Members of the Jury
17 what happened, what you saw.

18 A I knocked on the door once, nobody
19 answered. I knocked again, no one answered. I
20 announced who I was and that I was coming in the room so
21 that they would not get upset or anything. So I
22 unlocked the door with our master key and the beds were
23 pristine. So I was like, That's odd.

24 So I looked around, and I was looking for
25 our towels and everything, because I have to take those

1 out of there. There was a hand wash -- hand wash-towel
2 missing, so I went around into the little kitchenette
3 area and it was sitting there, and out of the cabinet
4 was this black bag sticking out of -- the doors were
5 open and the black bag was sticking there. When I
6 looked in, I automatically knew what it was for because
7 I just have --

8 Q Just tell what was in the bag.

9 A Okay. There was a can of kerosene. There
10 was a -- an air mask, a paper air mask; a glue gun;
11 sanitary napkins; plastic; and on the counter was a
12 pickle jar with dried white residue, upside down.

13 Q Okay.

14 A So I slowly backed out of the room and went
15 and got the Manager and brought him back to the room to
16 show him what was there.

17 Q Okay. The Manager was Scott?

18 A Yes.

19 Q Okay. You don't have to call him
20 "Manager", do you?

21 A No, I don't have to call him that.

22 Q Suffice it to say there wasn't any beach
23 paraphernalia in the room?

24 A None whatsoever, sir. That was the only
25 bag in the room.

1 Q Okay. And again, did it cause you to make
2 a phone call about what you found in the room?

3 A Yes, sir.

4 Q And why did you -- did you call the police?

5 A First, yes. I called 911 first because of
6 the kerosene.

7 Q Okay.

8 A Because there is no reason you need
9 kerosene in my motel room.

10 Q And did the police respond?

11 A Yes, sir.

12 Q Did the fire --

13 A She sent it out as a -- the 911 lady told
14 me, "It's a HAZMAT call, and I will send them directly."

15 Q Okay.

16 A And then that's when Mr. Prior showed up
17 first.

18 Q And did the Fire Department show up also?

19 A Yes.

20 Q Fire Department, sirens and lights going,
21 all that stuff?

22 A Yes, sir.

23 Q And at some point you talked to the
24 officers about the goings-on in Room Number 9 that day;
25 is that correct?

1 A Yes, sir.

2 Q Did you see that gold Buick again that
3 morning?

4 A Yes, sir. Around -- I want to say
5 11`'clock that morning it pulled back into the drive of
6 the entrance to the motel.

7 Q Just --

8 A Just very slow.

9 Q Just the entrance?

10 A Just the entrance. Uh-huh.

11 Q And Room Number 9 is toward the back of the
12 horseshoe; is that right?

13 A Yes, sir.

14 Q Okay. So did the car stop at the entrance
15 or did it drive all the way back to Room Number 9?

16 A It drove all the way back to -- right by
17 Room Number 9.

18 Q Okay. And what was going on back there at
19 that time?

20 A Officer Ennis was -- pulled into a spot
21 backwards, just sitting there, because he was told to by
22 the SBI, not to leave the room alone. No one could go
23 in or come out.

24 Q And did Officer Ennis deal with or did you
25 see Mr. Warren and that gold car that morning?

1 A Yes, sir. He was the driver.

2 Q Anybody else in the car with him that day?

3 A Yes, sir. There was a blond-haired -- a
4 dirty-blond-hair individual, a male passenger.

5 Q Not Ms. Kennon?

6 A No, it was a male, sir.

7 Q Okay. Did you see the interaction between
8 officer Ennis and Mr. Warren and that passenger, or were
9 you doing other things?

10 A No, I was watching what was going on.

11 Q Okay. When Officer Ennis saw the gold
12 Buick, did he go up to the Buick and talk to the people
13 in it?

14 A Yes, sir.

15 Q Okay. The person you saw come -- you saw
16 at your motel occupy Room Number 9 on 1/29/14 through
17 1/30/14, is that person in the courtroom?

18 A Yes, sir.

19 Q Where is he?

20 A He's sitting at the defendant
21 table(indicating).

22 Q Had you ever seen him there before?

23 A No, sir.

24 Q Had you ever seen Ms. Kennon there before?

25 A No, sir.

1 Q Okay. You said the beds had not been
2 touched; they had not been turned down; is that right?

3 A No, sir. They were exactly the way I left
4 them the day before.

5 Q Okay. And the time your room was left --
6 at the time they checked in, the room was clean, beds
7 were made?

8 A Yes, sir.

9 Q Everything in place?

10 A Yes, sir.

11 Q Okay. And when you came back in, you saw
12 the kerosene can and the other items that caused you
13 alarm; is that right?

14 A Yes, sir. And yes. The trash.

15 Q And the same as with Scott, Officer Ennis
16 asked you on a form provided by the Police Department to
17 make a statement about what you had observed, and you
18 did make such a statement; is that correct?

19 A Yes, sir.

20 MR. SPENCE: And if I can approach, Judge.

21 THE COURT: Yes, sir.

22 (State's Exhibit Number [7] marked for
23 identification.)

24 BY MR. SPENCE

25 Q This is State's Exhibit Number [7], Carla,

1 and I'd ask you to look at this and see if you've seen
2 that, today.

3 A Yes, sir.

4 Q Okay. Did I give you that this morning to
5 look at?

6 A Yes, sir.

7 Q Had you seen it since you wrote it back in
8 January?

9 A No.

10 Q Okay. And did you read that statement?

11 A I read it this morning, yes.

12 Q And does it fairly and accurately reflect
13 what you wrote that day?

14 A Exactly.

15 Q Does it appear to be your handwriting?

16 A It is my handwriting.

17 Q Does it appear to have any words changed or
18 things added to it or subtracted to it?

19 A No, sir.

20 Q Is it true and accurate as of the time you
21 wrote it?

22 A Yes, sir.

23 Q Okay. And is it true and accurate today,
24 as far as things that are stated in there?

25 A Yes, sir.

1 MR. SPENCE: Your Honor, I'd offer State's
2 Number [7] and allow -- ask her to read that as a way of
3 publishing it.

4 THE COURT: Any objection to receiving it
5 into evidence?

6 MR. FULCHER: No, Your Honor.

7 THE COURT: It is received. She may read
8 the same.

9 (State's Exhibit Number [7] received in
10 evidence.)

11 THE WITNESS: "I, Carla J. Thomas, want to
12 make the following statement: On January 29th, 2014, I
13 observed Heather Kennon and a male individual leave Room
14 Number 9 around 12:30 p.m. and they came back a few
15 minutes later. At 2:00`p.m. Heather came to the office
16 and asked for another heater for their room. I told her
17 that we didn't have any more and that only one could be
18 plugged in the room at a time. She asked for another
19 room, and I told her that it had the same kind of
20 heater. She said "okay" and went back to her room."

21 BY MR. SPENCE

22 Q Carla, slow it down just a tad.

23 A Sorry. "Approximately 30 minutes later, I
24 went to the laundry room to get some blankets for Room
25 11 and for Room Number 9, if they wanted any. The

1 Manager knocked and was told, No, they didn't need any
2 more blankets. The two individuals left the room right
3 before dark and did not return the rest of the evening.
4 At 9:30 a.m. on 1/30 -- on January 30th, '14, I knocked
5 on the door of Room Number 9 and announced myself. No
6 one answered so I let myself in to see if they had left
7 the key inside. There was no key but I noticed a handle
8 to a bag sticking out from under the sink cabinet. I
9 went to the cabinet and looked inside. There was an
10 aluminum gas can in there with rubber gloves, a funnel,
11 and a sanitary napkin. Also, there was a glue gun in
12 the bag and one laying outside of the bag. I turned
13 around to leave the room. When I saw the trash
14 overflowing with another funnel, a tube melted at one
15 end, a heavy-duty air filter mask, and pieces of
16 aluminum foil, I called the Manager over and showed him
17 what I found, and we decided to call 911 and the owner
18 at that time. I placed the 911 call at 9:40 a.m."

19 BY MR. SPENCE

20 Q Carla, do you remember how long they stayed
21 in Room Number 9, total? A number of hours you could
22 estimate?

23 A They checked in right before noon, and they
24 were gone by 6:00`p.m., never to -- the car never came
25 back.

1 Q Okay. And did the car leave a couple times
2 during that period of time?

3 A Yes, sir.

4 Q Okay. The 24-hour period of time was six
5 hours, total, in that room?

6 A Yes, sir.

7 MR. SPENCE: Okay. Your Honor, may I
8 approach the witness?

9 THE COURT: Yes, sir.

10 (State's Exhibit Numbers [8], [9], [10] and
11 [11] marked for identification.)

12 BY MR. SPENCE

13 Q Carla, I am going to show you what I have
14 marked for identification as State's Exhibits [8], [9],
15 [10] and 11, and ask you, if you look at all four of
16 these, and after you look at all four, tell me, yes or
17 no, if they -- if you recognize what's shown in them,
18 just as a group.

19 A Yes, sir.

20 Q Okay. Do these things illustrate things
21 that you saw that day in that hotel room?

22 A That is exactly the way I found the room
23 that day.

24 Q Would these help illustrate your testimony
25 about what you found and where you found it and where

1 these things were located?

2 A Yes, sir.

3 Q Okay. I'm going to start with State's
4 Exhibit Number [8] for identification, Ms. Thomas, and
5 ask you to look at this and tell me what it is, what is
6 shown in that picture and how -- how you remember that.

7 A And this bag with -- the gasoline-can I
8 found under the sink with all this stuff that was in
9 there: The salt, the glue gun, the funnel, the tape,
10 the ziplock baggies.

11 Q Okay. Now, that State's Exhibit [8], that
12 is located or had been put on a bed; is that correct?

13 A Yes, sir. This would be the bed on the
14 right-hand side of the room nearest to the bathroom.

15 Q When you saw it, was it on the bed or
16 beneath the sink?

17 A No, sir. It was beneath the sink.

18 Q Did it appear in the same condition or the
19 same color and things like that? Do you know it's the
20 same bag?

21 A Yes, sir.

22 Q And did you look inside the bag?

23 A Yes, sir.

24 Q And are the things shown in State's Number
25 [8] inside that bag the same things that were in it

1 underneath the sink?

2 A Yes, sir.

3 Q And the can, where was that found?

4 A It was -- the bag was sitting under the
5 sink that was right next to the bag.

6 Q Okay. And are those items that are now
7 located on the bed, are they -- do they appear to be the
8 same items you saw there underneath the sink?

9 A Yes, sir.

10 Q And does that photograph illustrate your
11 testimony about what you saw?

12 A Yes, sir.

13 MR. SPENCE: Okay. Thank you. Your Honor,
14 I'd ask that be admitted. I'm going to hand these to
15 the Court so the Court can look at them. I know you
16 were trying to look over her shoulder.

17 (Documents tendered to the Court.)

18 MR. SPENCE: Counsel has seen them.

19 THE COURT: All right. Any objection to
20 the introduction of those photographs for illustrative
21 purposes?

22 MR. FULCHER: No.

23 THE COURT: They are received into
24 evidence. You may publish the same.

25

1 (State's Exhibit Numbers [8], [9] and [10]
2 and [11] received in evidence.)

3 MR. SPENCE: Judge, if I could just go
4 through [9], [10] and [11] briefly.

5 BY MR. SPENCE

6 Q Ms. Thomas, Number [9], would you tell us
7 what that is, and is that where you found it?

8 A Yes. This is the trash can that I found
9 that -- the funnel was exactly where it is; the bags of
10 trash were right there. This pill bottle, that I have
11 no idea what it is, because it was exactly like that, it
12 was just plain white, in a 7UP 2-liter bottle with
13 tubing taped to it.

14 Q Okay. State's Number [10], if you'll look
15 at that.

16 A This is just a different view of the -- of
17 the 2-liter bottle and the pill bottle and the tubing.

18 Q Okay. State's Number [11].

19 A This is the view of what I found in -- in
20 front of the microwave, the pickle jar with the dried
21 residue inside of it, the drain cleaner, the hand towel
22 that I was looking for and the glue gun and the ice
23 bucket.

24 Q Okay. And you did not touch these items or
25 rearrange those?

1 A No, sir.

2 MR. SPENCE: Okay. Your Honor, I would ask
3 that these photographs [8], [9], [10] and [11] be
4 published to the jury, and also pictures which are
5 State's Exhibit [4], [3], [2], and [1], these total
6 eight photographs be passed to the jury. I think it
7 will be fairly brief.

8 THE COURT: Sure. Sheriff, take possession
9 of those and send four of them down the front row and
10 four down the back row, please, sir.

11 (Exhibits published to the jury.)

12 THE COURT: All right. The jury has now
13 had an opportunity to review those, State's Exhibits [1]
14 through [4], and [8] through [11].

15 MR. SPENCE: I believe that's all I have
16 for my witness at this time.

17 THE COURT: Cross-examination, Mr. Fulcher.

18

19 **CROSS-EXAMINATION**

20 BY MR. FULCHER

21 Q Ms. Thomas, were you -- Scott Way is your
22 supervisor?

23 A He's my boyfriend.

24 Q What was your work relationship as of the
25 night in question?

1 A We were hired as a couple to run the motel.
2 So when he went to work that -- later that evening,
3 because the Veneer Technologies said that they could
4 come in late because of the ice, I am the one that
5 run -- I run the motel while he is gone.

6 Q So you consider yourself Management there?

7 A I do.

8 Q So there was some question about, you told
9 the officer you were the Manager, Housekeeper --

10 A Well, because he was the one that was -- he
11 filled out the application, but it was understood that
12 the man wanted a couple to run the motel.

13 Q So you said around 12:30, you observed
14 Heather and Mr. Warren come to the motel room?

15 A They left the motel room at that time.

16 Q Okay.

17 A They checked in right before noon, and they
18 only stayed probably for 30 minutes and then they left
19 together.

20 Q Okay. Did you see how long they were gone?

21 A They were back by 2:00, because she came to
22 the office saying that it was cold in there.

23 Q The time that they were gone, would that be
24 consistent with the time that maybe someone could run to
25 the store and pick up a few items, clothes, food,

1 something like that?

2 A Could be. I have no clue where they went.

3 Q And so when they come back, Heather comes
4 to the room, she was asking for --

5 A To the office, yes. She asked for another
6 heater.

7 Q And you-all told her you didn't have any
8 more, and based upon that, she could bring -- she could
9 have some blankets?

10 A Well, I told her that we couldn't plug
11 another heater in the room, and then she asked for
12 another room. I said the only other room I have has the
13 same kind of heater. And so I said, "We can bring more
14 blankets," and she didn't answer yes or no either way.
15 And we knocked on the door -- Scott knocked on the door
16 after that and they did not want the blankets.

17 Q And do you know approximately what time
18 that was?

19 A Between 2:00 and 2:30.

20 Q Okay. When Scott come back, did he --

21 A I was outside with him.

22 Q Okay. You were with him when he went back?

23 A Yes. I was taking blankets to the other
24 room, Number 11.

25 Q When he walked by, did he -- he didn't

1 testi -- did you see anything, smell anything, or have
2 anything coming out of that room that would say it was
3 unusual at that time?

4 A No, sir.

5 Q Okay. How often were you by that room
6 during the day?

7 A I was outside from 8:00 until probably
8 3`o'clock in the afternoon.

9 Q This room right next to the laundry room?

10 A Yeah. It's diagonal from it.

11 Q You'd probably run back and forth many
12 times that day?

13 A Yup.

14 Q Okay. Any time you walked by there, any
15 strange smells, chemical smells?

16 A No, sir.

17 Q No fire alarms going off and fire being
18 burnt?

19 A No, sir.

20 Q I think -- you have been in that room; it
21 has a ventilation system in it?

22 A It has windows and an air conditioning unit
23 on the back wall.

24 Q When you walked by, did you ever see any of
25 the windows open?

1 A No.

2 Q Did it have a back door to it?

3 A No, sir.

4 Q So only one way in?

5 A One way in, one way out.

6 Q Now, you said that that afternoon they
7 left, that two of the individuals left the room; is that
8 correct?

9 A They -- after they -- we knocked on the
10 door and asked for the blankets. The next time that I
11 noticed them they were leaving, between 5:00 and
12 6:00`p.m. It was just getting dark.

13 Q Okay. All right.

14 A And then I never saw the car again until
15 the next day, when Mr. Warren pulled in with his friend.

16 Q Did you see -- you said -- did you see
17 anybody else pull up in that area?

18 A No.

19 Q In front of -- of the house?

20 A No.

21 Q One of the things you testified to earlier
22 was that you saw some -- that you had surveilling
23 equipment, videos?

24 A Uh-huh. Yes. Yes. We do have.

25 Q Did you ever see Mr. Warren or Ms. Kennon

1 take anything in that room, on that video?

2 A No.

3 Q You keep those surveillance cameras up to
4 date, right?

5 A They're always running, but they're not
6 recording.

7 Q But during that time, you didn't see
8 anything -- well, let me ask you this question.

9 A I was outside.

10 Q The next morning when the officers come
11 up --

12 A Yes, sir.

13 Q -- did they ask you anything about the
14 surveillance cameras?

15 A Yes.

16 Q Okay. Did you-all observe those cameras,
17 the videos on those cameras?

18 A Yes. But they're not recording, so we
19 can't re -- can't go backward and show them anything
20 that happened. I see it as it happens.

21 Q Okay.

22 A It's in our bedroom. It was in our
23 bedroom.

24 Q You said the next morning you went to the
25 room and knocked on the door. What time did you say is

1 the check-out time?

2 A 11:00 a.m.

3 Q And so you went in and -- approximately
4 around 9:30 that morning?

5 A Yes, sir.

6 Q Okay. And when you opened the door, was
7 there -- did you see any luggage in there?

8 A The black bag hanging out of the sink.

9 Q Okay. You're saying the black bag was
10 hanging out of the sink?

11 A It was shoved under the sink, sticking out
12 about this far (indicating) with the doors open.

13 Q Okay. Did you go in the room and look any
14 further in that bag?

15 A Yes, sir.

16 Q Okay. Did you ever move the bag?

17 A No, sir.

18 Q You just looked at the bag?

19 A I just opened the cabinet doors. I didn't
20 even touch the bag.

21 Q You said you saw some rubber gloves. Did
22 the rubber gloves look like they'd been used?

23 A Yes, sir. They were dirty.

24 Q Sanitary napkin and aluminum gas can?

25 A Yes, sir.

1 Q When you walked in, did you smell anything
2 out of the way?

3 A No, sir.

4 Q Did you see anything, any burn marks on
5 anything?

6 A No, sir. The only thing that I saw, that
7 had to do with anything that had to do with heat, was
8 the melted tubing from a, like, a fish tank. It looked
9 like that kind of tube.

10 Q But nothing -- no strange smells, no
11 vapors --

12 A No.

13 Q -- nothing burned on anything?

14 A Glue guns don't usually make a smell.

15 Q When Mr. Warren and Ms. Kennon came to the
16 room, did you consider them a couple?

17 A Yes, sir.

18 Q Okay. Did you ever see them show any kind
19 of affection or anything?

20 A No, they just walked in the room together.
21 The only time that I would have assumed the reason --
22 besides them renting the room together -- the reason I
23 assumed they were a couple was when we knocked on the
24 door -- when Scott knocked on the door and he said, "We
25 are naked."

1 Q So it was just your assumption at the time
2 that they were a couple?

3 A Yes, sir.

4 Q And Ms. Kennon is the one who paid for the
5 room?

6 A Yes, sir.

7 Q It's your opinion from your experience of
8 working in a motel room is that if a couple comes in, is
9 it usual for the woman to pay for it?

10 MR. SPENCE: Objection.

11 MR. FULCHER: Her opinion, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: It goes both ways. I mean, I
14 have seen women come in and pay, and I have seen men
15 come in and pay. It just -- it's always either way.
16 It's not unusual.

17 BY MR. FULCHER

18 Q And you didn't see anybody else come to
19 that room at any other time?

20 A No, sir. Not a -- not a single individual
21 or a car pulled up to that room.

22 MR. FULCHER: I don't have any other
23 further questions.

24 THE COURT: Anything on redirect?

25 MR. SPENCE: No, sir.

1 THE COURT: You may stand down. Thank you,
2 ma'am.

3 MR. SPENCE: Your Honor, may they be
4 excused? They've been all here, all morning, on
5 subpoena. All day.

6 THE COURT: Do you need them any further,
7 Mr. Fulcher?

8 MR. FULCHER: I don't believe so.

9 THE COURT: If you need them back, we can
10 get them.

11 Members of the Jury, we're going to take an
12 afternoon recess. Each day after today we'll start
13 court at 9:30. At about 11'clock in the morning,
14 depending on where we are in the testimony, we'll take a
15 morning recess for 15 minutes, when you can use
16 restrooms, smoke in any appropriate areas, get soda.
17 We'll resume court, go until about 12:30, quarter to
18 1:00, take a lunch recess until 2'clock, resume court,
19 go to about, this time, 3:30 or so, depending on where
20 we are in the testimony, and take a 15-minute recess.
21 And it would be my intent and purpose to have you out of
22 here each day at 4:45 p.m.

23 While you're away from the courtroom,
24 remember my admonitions from earlier: Not to speak
25 about it among yourselves or with anybody else. Let no

1 one speak to you about it or in your presence. If they
2 do, let us know it by getting the attention of our
3 Bailiff. Don't form or express an opinion about the
4 guilt or innocence of the defendant. Have no contact
5 with the Court, the parties, the lawyers, the witnesses.
6 Don't try to find out anything about it outside the
7 courtroom.

8 By that clock, let's just return at quarter
9 of 4:00, by that clock. Everybody else remain seated.
10 These 13 jurors are excused.

11 (The jurors exited the courtroom.)

12 THE COURT: All right. Let the record
13 reflect all jurors are out of the courtroom.

14 Anything from the State before we recess?

15 MR. SPENCE: No, sir. Thank you.

16 THE COURT: Mr. Fulcher?

17 MR. FULCHER: Nothing, Your Honor.

18 THE COURT: We'll just be at ease 15
19 minutes. Thank you.

20 (A brief recess was taken.)

21 * * *

22 (All parties are present in the courtroom.)

23 THE COURT: Anything from the State before
24 we bring our jury back, Mr. Spence?

25 MR. SPENCE: No, sir.

1 THE COURT: Mr. Fulcher, anything from the
2 defendant, please, sir?

3 MR. FULCHER: No, sir.

4 THE COURT: Bring the jury back, please,
5 Sheriff.

6 SHERIFF: Yes, sir.

7 (The jurors entered the courtroom and took
8 their seats in the jury box.)

9 THE COURT: Let the record reflect that all
10 jurors are back in the courtroom. The State may call
11 your next witness.

12 MR. SPENCE: Special Agent Kelly Farrell,
13 please.

14 (The witness was duly sworn.)

15 (The witness took the witness stand.)

16 THE COURT: You may inquire.

17

18 **KELLY FARRELL,**

19 having been first duly sworn, at 3:49 p.m. was called as a
20 witness on behalf of the State and testified as follows:

21

22 **DIRECT EXAMINATION**

23 BY MR. SPENCE

24 Q State your name for the Court and the jury,
25 please, ma'am.

1 A Kelly Farrell.

2 Q And, Ms. Farrell, how are you currently
3 employed?

4 A I'm a Special Agent with the North Carolina
5 State Bureau of Investigation.

6 Q I know what the SBI is; what's *Special*
7 *Agent* mean?

8 A That's our -- that's our title, like
9 detectives with a Police Department or Sheriff's Office,
10 we're titled *Special Agent*.

11 Q Do you have -- to get Special Agent, do you
12 have to have a Law Enforcement certification?

13 A Yes, sir.

14 Q So there are SBI agents that haven't gone
15 through the BLEET program or got a certification; they're
16 not Special Agents, but they are agents?

17 A No. Every -- every agent has gone through
18 basic Law Enforcement Training for the State of North
19 Carolina. Special Agents go through another academy
20 specifically teaching us things related to the SBI.

21 MR. SPENCE: I learned something today too.

22 BY MR. SPENCE

23 Q How long have you been with the SBI, Kelly?

24 A Since 2002.

25 Q And tell the Members of the Jury what you

1 did before you went to the SBI, and your educational
2 background.

3 A I graduated from the University of North
4 Carolina at Wilmington with a degree in Criminal Justice
5 and a minor in Sociology. And I have a graduate degree
6 in Criminal Justice Administration from Methodist
7 University.

8 Q What is your current assignment within the
9 SBI?

10 A Currently, my assignment is a Site Safety
11 Officer which means I primarily respond in the east,
12 everything east of 95 North and South, to clandestine
13 laboratories.

14 Q Okay. What is a clandestine laboratory?

15 A A clandestine laboratory is any kind of
16 controlled substance that's made through a chemical
17 reaction, basically manmade. Predominantly what we
18 respond to are Meth labs.

19 Q And how long have you had that assignment?

20 A I am specifically a Site Safety Officer
21 since October of 2011. But starting -- when I started
22 my career with the Bureau, I first started out as a
23 Crime Scene Agent. And as a Crime Scene Agent, I went
24 through the Basic Clan Lab Certification School. The
25 Basic Clan Lab Certification allows you to go in and

1 help recognize the hazard: "Is it a lab? Is it not a
2 lab? What are those hazards?" Which is what Mr. Prior
3 has is a Basic Clan Lab Certification. So I had that
4 very early on, probably since 2003.

5 I later was assigned as a drug agent
6 primarily to Cumberland and Sampson Counties where I
7 worked, from an investigative standpoint, many Meth
8 labs. And now as Site Safety Officer, I respond -- and
9 pretty-much the duties of a Site Safety Officer, I'm
10 responsible for everyone on-scene, their safety, make
11 sure we have an emergency plan if something happens. I
12 coordinate other efforts such as the Fire Department,
13 EMS, do we need extra personnel? And then right down to
14 dismantling the lab itself. Is there something that we
15 have to make safe? Overpacking, the chemicals, and the
16 hazardous waste to be removed from the scene.

17 Q Why is it a safety issue, generally, with
18 Methamphetamine?

19 A Individually, the ingredients used to make
20 Meth by themselves are not dangerous. They have
21 corrosive -- some have corrosive qualities; some have
22 inhalation hazards. It's the mixture of those chemicals
23 together is what makes them volatile.

24 Q And I assume you've dealt with clandestine
25 labs of various sizes?

1 A Yes, sir.

2 Q And in various -- maybe the active lab
3 where things are being cooked or chemical reactions are
4 taking place?

5 A Yes, sir.

6 Q And then some where chemical reactions have
7 taken place and what's left is the residue?

8 A Right.

9 Q Okay. And did you respond to this
10 particular location, Room 9 at the Seashore Motel, on
11 January 30th, 2014, after being called by Lieutenant
12 Prior?

13 A Yes, I did.

14 Q Do you know what time you got there?

15 A I and Agent Reeves got on-scene
16 approximately 3:05`p.m. that afternoon.

17 Q Who is Agent Reaves?

18 A Agent Reaves is another SBI agent assigned
19 to the Jacksonville, North Carolina, office.

20 Q And he's here with you in court today,
21 right?

22 A Yes.

23 Q Okay. Did you both do about the same thing
24 regarding this lab, or did you handle the same
25 responsibilities?

1 A My responsibility -- he was -- he was there
2 to assist me, take my notes about what was being, you
3 know, observed and taken away from the scene.

4 Q Okay. Tell the Members of the Jury what
5 you did on this occasion when you first arrived on the
6 scene and if that's what you always do.

7 A I had previously spoken to Detective Prior,
8 and he told me that he had gone into this hotel room,
9 saw things indicative of Meth lab-related items. So I
10 entered the room, kind of do a walk-through just to see
11 what I see to make sure there's no immediate hazards
12 that need -- need to be addressed. And we began
13 processing -- processing the things in the room.

14 Q Okay. When you say *processing the things*
15 *in the room*, what does that mean?

16 A We want to photograph everything, and then
17 begin writing down each individual item that we're going
18 to remove from the room.

19 Q Okay. Now, at some point, after you --
20 while you're in progress and also when you finish, is
21 there a list of the items that were seized from that
22 room, pursuant to your responsibilities?

23 A Yes.

24 Q And did you -- do you have in front of you
25 a list that you could just read of the things that were

1 taken out of that motel room that you considered
2 indicative of a Meth lab?

3 A Sure. I will start with the area around
4 the desk, the sink/countertop area inside the hotel
5 room.

6 Q Okay.

7 A The first -- first thing on the list was a
8 green, 2-liter bottle consisting of a red slush
9 material. I conducted what is called a Ph test on the
10 bottle. The slush material was acidic. What this said
11 to me was this is what we call an HCL generator:
12 Hydrochloric Acid Generator.

13 Q And how is that significant to you in this
14 investigation?

15 A When Methamphetamine is produced, it is
16 formed in a -- in a liquid state. To get the liquid
17 Meth, which is a base, to a usable form, to the user, it
18 has to be made into a power -- powder -- excuse me.

19 How that's done is with -- an HCL generator
20 is made of salt, normal table salt that you find in your
21 home, mixed with sulfuric acid. Those two things
22 together, when mixed together make HCL gas.

23 The HCL gas is bubbled. There's tubing
24 coming out of an HCL generator. The tubing is run into
25 the liquid Meth, and the powder falls out into a powder

1 form from the liquid.

2 Q Okay. So the 2-liter bottle containing
3 that slush material, that was what you considered to be
4 an HCL generator; is that correct?

5 A Yes, sir.

6 Q Are you familiar with the term in North
7 Carolina, *precursor chemical*?

8 A Yes.

9 Q Is hydrochloric acid a precursor chemical?

10 A Yes.

11 Q And this thing you found, would that be
12 qualified as a precursor chemical?

13 A Yes.

14 Q What else did you find there?

15 A I found two pieces of tubing approximately
16 both 3 feet long. They were hot-glued to bottle caps.

17 Q What type tubing are we talking about?
18 Aquarium tubing, that sort of thing?

19 A I would have to refer to the pictures.

20 Q Okay.

21 A May I?

22 Q I'll get to those.

23 A Okay. You want to get to that.

24 Q You'll get to -- you can just go down --

25 A Sure. A dust mask.

1 Q Okay. Is that -- is that significant?

2 A Yes. Masks we typically see on-scene
3 because the fumes emitted from the actual cooking vessel
4 and the HCL generators are harsh to breathe in.

5 Q Okay. Are there always fumes?

6 A Cooking, yes. And with the HCL generators,
7 yes. A spoon.

8 Q You found a spoon?

9 A Yes.

10 Q Okay.

11 A A piece of burnt aluminum foil.

12 Q And how is that significant?

13 A It's common drug paraphernalia used to
14 smoke the Meth powder. They put it in aluminum foil,
15 light it with a lighter and smoke it.

16 Q Okay.

17 A Would you like me to continue?

18 Q I would.

19 A 24-ounce glass jar containing a white
20 residue. A hot-glue gun.

21 Q And what was that used for?

22 A Hot-glue guns are used to attach the tubing
23 that we are talking about with the HCL generators to the
24 cap.

25 Q Okay. And anything else found in that

1 location?

2 A 16-ounce of -- it was Floweasy-brand drain
3 opener, and it was about a quarter full. Floweasy drain
4 cleaner contains sulfuric acid.

5 Q Is that also what's called a precursor
6 chemical?

7 A Yes.

8 Q And did you check the inside of the trash
9 can?

10 A Yes, sir. That was the next area we went
11 to. Inside the trash can was a gray funnel, multiple --

12 Q I'm sorry. Go ahead.

13 A Multiple pieces of burnt aluminum foil,
14 numerous coffee filters, one empty box of
15 Walgreens'-brand instant cold pack.

16 Q Do you know what that is? What is that?

17 A The Walgreens' -- the Walgreens' brand,
18 they're cold packs. And what's inside the cold packs is
19 ammonium nitrate, which is used in the cooking process.

20 Q These are cold packs like you would apply
21 to --

22 A An injury. Yeah.

23 Q Okay.

24 A One empty container of My Essentials-brand
25 salt that was empty. Packages for 360-brand coffee

1 filters which is a 40-count bag. Another empty cold
2 pack which was Walgreens' brand, and a syringe.

3 Q Do coffee filters have any significance or
4 relevance to Meth labs?

5 A Yeah. Coffee filters are used to -- again,
6 I said when the Meth is made it's in a liquid form, and
7 what's in the bottom is a sludgy material from the
8 combination of the pseudoephedrine used to cook, sodium
9 hydroxide, it leaves a bug slush. So coffee filters are
10 used to kind of syphon off the liquid from the sludge at
11 the bottom of the cook.

12 Q Okay. Did you inventory as part of your
13 investigation a blue duffel bag that has been testified
14 was found near the sink?

15 A I did. Inside that was a gallon-size
16 Coleman-brand camp fuel. It was about a quarter full.
17 A box of quart-size Ziplock-brand bags. Another glue
18 gun. Green rubber gloves. There was a 10-fluid-ounce
19 bottle of Rexall-brand hydrogen peroxide that was about
20 3/4s full.

21 Q And what is that?

22 A Hydrogen peroxide -- people who cook
23 Methamphetamine have their own recipes, to put it in
24 simple terms. Some people like to add a little bit of
25 hydrogen peroxide or water because they think it makes

1 the reaction itself go quicker. Where did I leave off?

2 Q I think the cardboard sticks.

3 A A clear plastic bag containing cardboard
4 sticks; a knife; pliers and wire cutters.

5 Q And what would those be used for?

6 A Part of the process is adding lithium to
7 the chemical reaction. Typically, where they get the
8 lithium is by stripping batteries, the inside of
9 batteries out. Wire cutters and pliers are commonly how
10 they get inside the battery to get the lithium out,
11 which is highly reactive with water. Not a good
12 combination. A kitchen knife; there were two
13 Kotex-brand pads, feminine pads.

14 Q Do those have significance in this context?

15 A No, it was just what was in the bag.

16 Q Okay. I thought I might learn something.

17 A Can't help you there. Let's see. Two glue
18 sticks; a plastic container. And there were two,
19 1-pound My Essentials-brand salt containers, one of
20 which was full and one of which was empty. Again,
21 multiple coffee filters; a gray funnel; a pair of
22 needle-nose pliers; a spoon; two rolls of black
23 electrical tape. And then there was one, two-pack
24 Energizer-brand batteries of advanced lithium, and a
25 single battery found outside of that packaging, and four

1 and a half glue sticks.

2 Q Okay. With the exception of the -- of the
3 Kotex napkins, is there anything in that list that's
4 inconsistent with a Methamphetamine lab?

5 A No. This is typical of what we see.

6 Q You said people have different recipes.
7 Does anybody have all these things sometimes, maybe part
8 of them, or more?

9 A What this is indicative of is what we call
10 a one-pot-cook. Over the years, we've gone from very
11 large cooks -- with the pseudoephedrine law limiting how
12 much pseudoephedrine you can buy at a time, what we've
13 seen is the emergence of the one-pot.

14 And so it takes five things to make these
15 one-pots: Pseudoephedrine; sodium hydroxide or lye;
16 your ammonium nitrate which comes out of the cold packs;
17 some type of solvent -- what we typically see in the
18 East is Coleman fuel. What did I say. Sodium
19 hydroxide, ammonium nitrate, pseudoephedrine, Coleman
20 fuel, and a lithium -- the lithium makes the reaction
21 actually react, and then they shake it, shake the
22 bottle. You can cook as little as a box to a couple
23 boxes in a -- in a 2-liter plastic bottle, basically.

24 Q Okay. And one-pot is a name that you've --
25 somebody has given this particular process as the type

1 that was used here?

2 A Yes.

3 Q And as far as a time frame for cooking
4 enough to use, do you have any idea how long it would
5 take if you had the ingredients to do this?

6 A We've seen anywhere from 30 minutes up to
7 about three hours is typically what we have determined
8 how long it takes.

9 Q Okay. Is there anything about the one-pot
10 process that -- about vapors or smells?

11 A Since these cooks have become small with
12 the one-pots, you really have to be very near the cook
13 to smell it. Because the older cooking, with anhydrous
14 ammonia -- like actually having anhydrous ammonia puts
15 off much more of a smell. The cooks were larger back
16 then. So you have to be very close to these -- the
17 cooking vessel to actually smell the smell of it. And
18 they're very much -- they're capped off. Everything is
19 under pressure which makes these one-pots very explosive
20 because you have to continue to let the -- to basically
21 let the pressure out of the bottle. If you don't, it's
22 going to explode.

23 Q It has to be tended to?

24 A Yes.

25 Q Carefully?

1 A Yes.

2 Q And the people doing the cooking would need
3 masks on?

4 A I would want one, yes.

5 Q And as far as people in a -- in the parking
6 lot smelling fumes coming out of a room, would that be
7 consistent with this-type operation or not?

8 A No.

9 MR. SPENCE: If I could approach?

10 THE COURT: Yes, sir.

11 BY MR. SPENCE

12 Q Kelly, I'm going to show you or hand you a
13 group of pictures.

14 A Sure.

15 (State's Exhibit Numbers [12], [13], [14],
16 [15], [16], [17], [18], [19] and [20] marked for
17 identification.)

18 BY MR. SPENCE

19 Q I think I have already handed you some of
20 these. And I'm going to -- these are labeled for
21 identification as State's Exhibits [12] through [20].
22 And if you could just look at those collectively and
23 tell me, yes or no, whether these things -- if you
24 recognize what is shown in those photographs.

25 A Yes, sir. I do.

1 Q Do those photographs all accurately depict
2 things that would help illustrate your testimony about
3 what you found and the significance of the things you
4 found that day?

5 A Yes, sir.

6 Q And use those to illustrate your testimony
7 for the jury?

8 A Yes, sir.

9 Q Okay. If I could take one at a time, and
10 start with State's Exhibit Number [12], would you tell
11 the Members of the Jury -- and we'll pass these at some
12 point --

13 A Sure.

14 Q -- but just, what does that show? State's
15 [12]?

16 A State's Exhibit Number [12] is a picture --
17 overall picture of the trash can that shows some of the
18 items like the mask, spoon, the funnel, inside the trash
19 can.

20 Q Is that shown as it was found?

21 A Yes, sir. As we found it, yes.

22 Q And I assume at some point you'd get those
23 out of the trash can and put them out where you can
24 inventory them, so to speak?

25 A Yes, sir. That's correct.

1 Q State's Number [13], if you could tell the
2 Members of the Jury what that --

3 A State's Exhibit Number [13] is a picture
4 from items that were in the duffel bag: The different
5 pliers, spoons, funnel, green gloves.

6 Q Okay. Thank you. State's [14]?

7 A State's Exhibit Number [14] is the package
8 of Energizer Advanced Lithium batteries and the single
9 battery that was found.

10 Q State's [14] (sic)?

11 A This is actually State's Exhibit [15].

12 Q Oh, I'm sorry.

13 A And it is the Walgreens' box of instant
14 cold pack.

15 Q Now, [15].

16 A No. We're -- you're coming up to [16].

17 Q Coming up to [16]. All right. Thanks.

18 A State's Exhibit [16] is a picture of the
19 2-liter bottle I described earlier with the Ph paper
20 showing that it was acidic.

21 Q Okay. There's something on there that
22 looks like a cigarette with a red stain on it. Is that
23 the Ph --

24 A That is the Ph paper. Yes, sir.

25 Q And that's the red slush bottle?

1 A Yes.

2 Q And is that the tubing also shown here?

3 A Yes. I took the cap off to do the Ph.

4 Q Okay. And would it be sort of like
5 aquarium tubing?

6 A Yes.

7 Q Okay. Fish --

8 A Yes.

9 Q -- aquarium filter?

10 A Exactly that size.

11 Q State's [17]?

12 A State's Exhibit [17] is a picture of the
13 coffee filter packaging.

14 Q And that would be relevant how, in a
15 one-pot, clandestine Meth lab?

16 A Again, you have to separate the solvent
17 layer from the bottom of the slush. The solvent layer,
18 the Coleman fuel, is where the Meth is contained once
19 it's finished cooking.

20 Q State's [19]?

21 A State's Exhibit [19] is a picture of a
22 syringe.

23 Q And that would be used paraphernalia?

24 A It could be paraphernalia. I have also
25 seen it used to inject water into the chemical process,

1 or hydrogen peroxide. But it's typical of drug
2 paraphernalia to actually use as well.

3 Q But it could be used in making it also?

4 A Sure. Yep.

5 Q State's Number [20]?

6 A State's Exhibit Number [20] is a picture of
7 the two My Essentials-brand salt containers.

8 Q Just regular --

9 A Just regular.

10 Q -- store salt?

11 A Store salt. Yup.

12 Q Okay. And I think I left out -- did I
13 leave out [18] or did I duplicate [18]?

14 A Looks like you left out [18].

15 Q Okay. [18].

16 A [18] is a picture of the inside of a white
17 plastic bottle containing sodium hydroxide.

18 Q Okay. State's Number [11] has previously
19 been introduced and passed around to the jury. And
20 would you look at that and tell the Members of the Jury
21 what it is you see in that photograph?

22 A State's Exhibit [11], what's pertinent in
23 this photograph is the bottle of drain opener which
24 contains sulfuric acid.

25 Q Okay. Is there tubing shown running from

1 various bottles to other places, or is that --

2 A I see a hot glue gun, and I can't tell from
3 the picture if that's the cord from the microwave, or
4 tubing, in that picture.

5 Q Okay.

6 A But there's a hot glue gun as well.

7 Q Okay.

8 A And the glass jar on top of the microwave.

9 Q Let me ask you this: From the time you
10 entered that hotel room, how long did it take you to
11 determine this was a one-pot clandestine Meth lab?

12 A Less than a minute.

13 (State's Exhibit Number [21] marked for
14 identification.)

15 BY MR. SPENCE

16 Q State's Number [21] has not been introduced
17 but has been marked for identification. Would you look
18 at this and see if you can tell me what that appears to
19 be and if it appears to be something you're familiar
20 with.

21 A State's Exhibit Number [21] looks like
22 burnt aluminum foil, which is a common way to smoke
23 Meth.

24 Q Okay. To smoke Meth?

25 A Yes.

1 Q Not inject it?

2 A Right.

3 Q And you don't know where this was found or
4 who it was found on, do you?

5 A I do not.

6 Q Okay. What is done with these items after
7 you -- a scene such as this, when you do your report,
8 you do your investigation and documentation, what is
9 done with all this stuff, and what has to be done with
10 it?

11 A All these items are deemed hazardous waste
12 and have to go to a specialized facility. The SBI at
13 this point is responsible for taking these items from
14 the scene, and we do what's called overpack. And
15 basically, we segregate the items, like the HCL
16 generator has to be what we call neutralized, because
17 basic chemistry, things are either acidic, basic, or
18 neutral.

19 Being that that's acidic, we add what's
20 called Amphomag, and it brings -- brings that container
21 to neutral. And all these items -- not all of the
22 items, but that specifically is placed in a 5-gallon
23 bucket, appropriately marked. Some of the stuff is just
24 considered trash, but it's still got to go to a
25 specialized place to be discarded because it's

1 considered Meth lab waste.

2 And, what happens once we take all this
3 stuff from the scene, it goes to a centralized place and
4 the Drug Enforcement Agency, the DEA, has contracted
5 these hazardous waste contractors to come and remove
6 that material from the centralized storage.

7 Q So it's basically destroyed?

8 A Yes, sir.

9 Q Because it has to be immediately?

10 A Yes.

11 Q Okay. In this lab that you investigated or
12 the one you looked at on that date, did it -- would it
13 be possible to have a liquid Methamphetamine that a
14 Meth -- an injector of Methamphetamine would be able to
15 inject? Would it produce liquid in addition to powder?

16 A I'm not sure I understand what you're
17 asking.

18 Q I'm not sure I understand what I'm trying
19 to ask.

20 A Try again.

21 Q People use Methamphetamine?

22 A Yes.

23 Q And it's introduced into the body by
24 various ways?

25 A Uh-huh.

1 Q Why don't you tell me which ways -- how it
2 can be introduced into the body?

3 A Smoking it, snorting it, and we -- we're
4 seeing a rise in needle injection.

5 Q Okay. Now, smoking it is not rolling it
6 into something like a marijuana cigarette; it's
7 different than that, isn't it?

8 A Right. I have seen anything from lighting
9 it on tinfoil, like he showed me, to putting it in light
10 bulbs. I mean, I have seen a lot of creative ways to
11 actually smoke it.

12 Q And it's basically putting it on fire so
13 the vapors are inhaled?

14 A Correct. Correct.

15 Q So would this-type operation produce liquid
16 Methamphetamine in addition to powder Methamphetamine?

17 A I think where you're going with this, when
18 Meth is -- when Meth is technically made, it is in a
19 liquid form. And like I explained the process of
20 getting liquid Meth, is base. It's not usable. It has
21 to be formed into a powder to use. Now, from that
22 powder, you can smoke, snort, inject from the powder.

23 Q Okay. How would you inject the powder?

24 A I have -- my understanding is they either
25 add water to it to liquefy it.

1 Q Okay. So is there anything about this
2 operation that would limit it to one type of usage,
3 either smoking, snorting?

4 A No. No.

5 Q So a Meth addict could find some way to get
6 some of this in his body, however they chose to get it
7 in there?

8 A Yes.

9 Q Okay. These one-pot operations can be set
10 up in an area as small as an automobile, right?

11 A I mean, you can do it anywhere. I mean,
12 literally, it's homemade, improvised equipment that you
13 can do anywhere. Typically what we see is -- you know,
14 they actually do the cook in one place, and that process
15 of turning the liquid to a powder, the common
16 terminology is salting it out, or shooting it. They may
17 go to another location to do that step. It's kind of a
18 two-step process. You make the Meth, and then you salt
19 it out to turn it to powder.

20 Q Any doubt in your mind that what was
21 located in Room Number 9 at the Seashore Motel was a
22 clandestine Meth lab?

23 A Yes.

24 Q There's no doubt?

25 A I'm sorry. It was. It was. Whereas we

1 did not find a cooking vessel, the components to make
2 Meth were there.

3 Q Okay. So it would be inconsistent with
4 anything else, wouldn't it?

5 A There's nothing else it would have been.

6 Q Okay. And the precursor chemicals, there
7 were at least three that you found there?

8 A Sulphuric acid, sodium hydroxide, and --
9 what did I say? Sulphuric acid, sodium hydroxide and
10 sodium.

11 Q And in your opinion, were these chemicals
12 and these items used to manufacture Methamphetamine in
13 Room 9 of the Seashore Motel?

14 A Yes.

15 Q Now, you did not -- you had what -- you
16 provided limited assistance -- I'm sorry -- to Atlantic
17 Beach Police Department this day; is that right?

18 A Yes.

19 Q What is that?

20 A My specific role was to come in and
21 dismantle and remove the Meth lab. We did not
22 participate in the investigative activity with this lab,
23 this particular lab.

24 Q You're not talking to witnesses; you're not
25 trying to find out anything about that. You're just

1 there for -- to get that lab --

2 A To process it and --

3 Q And get it gone?

4 A And get it gone.

5 MR. SPENCE: Okay. That's all I have of
6 Agent Farrell.

7 THE COURT: Cross-examination.

8

9

CROSS-EXAMINATION

10 BY MR. FULCHER:

11 Q Agent Farrell, what's the average number of
12 Meth busts in the last year, to your knowledge, that
13 you're aware of, that you've been involved in?

14 A That I have been involved in? Up to
15 this -- actually have those stats on my laptop.
16 Probably 30 that I have done, that I have dismantled
17 this year.

18 Q Do you know -- and can you -- in your
19 experience, what the number is over the entire state?

20 A We're well over 300, probably approaching
21 400 now.

22 Q In your experience, is it men and women
23 both using this?

24 A Yes.

25 Q About equal?

1 A I don't know the specifics, but yes, men
2 and women both.

3 Q And a lot of these people, are they -- to
4 your knowledge, are they finding how to make this on the
5 Internet, and can you learn to do these things?

6 A Actually, the DEA has restricted as much as
7 they can, taking that information off the Internet.
8 Mostly, it's learned through a network. I mean, what
9 we've typically found is Meth users, the group functions
10 to make Meth. You know, typically what we see is, I go
11 buy the Sudafed, one person goes and gets the batteries,
12 and we all meet up at some point to cook to get high.

13 Q Did you find any --

14 A Pseudoephedrine?

15 Q -- pseudoephedrine in the room?

16 A No, sir.

17 Q So there wasn't any there. Sometimes do
18 you use Meth strips to test when you go into these
19 rooms?

20 A I'm not familiar with a Meth strip. Could
21 you --

22 Q Is there any identification to use when you
23 go in to see if there's any materials, other than your
24 common knowledge, that can test, "This is definitely
25 Meth, this is definitely a precursor"?

1 A There was -- I think I understand. There
2 was nothing in the room that looked like finished
3 product that would -- if there had have been, it would
4 have been seized and submitted to the Crime Lab.

5 Q Okay.

6 A Is that what you're asking, or no? I want
7 to answer your question.

8 Q No finished product in the actual room?

9 THE COURT: His question was, was there any
10 finished product in the room?

11 THE WITNESS: Not to my knowledge, sir.
12 Sorry.

13 BY MR. FULCHER

14 Q Was there any test that you have or that
15 you could have used to see whether Meth had been cooked
16 in that room within the last --

17 A No. There's not -- there's not a test to
18 do that, no.

19 Q Can you explain the process of gassing?

20 A Gassing it off?

21 Q Yeah.

22 A That is, again, turning liquid Meth, when
23 it's cooked, into a powder. Gassing it off is another
24 terminology for the HCL generator, which is the
25 combination of the sulphuric acid and salt. Those two

1 things together make hydrogen chloride gas. And gassing
2 it off is that process of turning the Meth liquid into a
3 powder.

4 Q In doing that, does that emit some strange
5 odors?

6 A It does.

7 Q Okay. And like a fog, or a --

8 A It can. Depending on -- it takes a drop of
9 sulphuric acid for that reaction to start. So depending
10 on who did the process, did they do a lot and it
11 produced a lot of smoke, I mean, that's -- it's a
12 case-by-case basis.

13 Q Now, you testified earlier that some of
14 these things in these tubes were under extreme pressure,
15 capable of explosion. On the release of any of these
16 things, certainly that would release some type of fog or
17 smoke or smell, wouldn't it?

18 A No. The one-pot cooks are under pressure.
19 Typically what we see is anything from like, you know,
20 16, 20-ounce bottle on up to a 2-liter bottle. And you
21 can physically see the reaction. They call it *rolling*,
22 because it's making a violent chemical reaction.

23 Those combination of chemicals create a lot
24 of pressure. It's under pressure. You can sometimes
25 see the bulging of the plastic. You've got to kind

1 of -- they call it burping it, is basically releasing
2 some of -- some of the air out of it. But it's not some
3 big plume of smoke when you do that.

4 Q But if we were in a small room and some of
5 that was released, you'd certainly be able to smell it,
6 wouldn't you?

7 A I have never been around one without a
8 respirator. But these one-pot cooks, going in to where
9 people have just cocked them, it's not an overwhelming
10 smell like the old anhydrous way of making Meth.

11 Q Now, you said that you testified that some
12 of these things can be made in one place and moved to
13 another?

14 A Uh-huh.

15 Q Are these chemicals volatile? When
16 they're -- what's the time frame -- if I were to make
17 something here, the approximate time to move it? How
18 long can they stay -- be transported or moved?

19 A Again, what you're looking at is,
20 individually, these components, you know, by themselves,
21 are not going to -- unless you're looking at putting
22 something like a solvent under extreme heat,
23 individually, by themselves, the components are fine.
24 It's when they're mixed is where you come to the point
25 where you may have a problem with the interaction of it.

1 I'm not sure if I'm answering your question.

2 Q That's clear. In a situation like that,
3 somebody would need to be keeping an eye -- it's not
4 something you can just leave, I wouldn't think?

5 A When I referred to earlier -- let me see if
6 I can clarify. A lot of -- it's a two-step process.
7 You cook the Meth; it's in liquid form. That's step
8 one. We'll just, for simplicity's sake, say step one is
9 making the Meth. Step two being getting it from a
10 liquid to a powder. What I meant by that comment is,
11 it's common to see, cook one place, take the liquid and
12 go gas it off somewhere else. Does that answer --

13 Q When that thing is active, under pressure,
14 that's probably not something that you would leave
15 alone, in your experience?

16 A They have. I mean, I have seen them
17 anywhere from riding down the highway in a car to the
18 woods to outbuildings, and it can be done anywhere.

19 Q How long would it take for something like
20 that to explode if something happened?

21 A I mean, there's no way to put
22 specifically -- I mean, a lot of it has to do with air
23 temperature and environmental conditions.

24 Q You testified they found some kerosene?

25 A Coleman fuel.

1 Q Coleman fuel?

2 A Which is a solvent. Yes, sir.

3 Q And did you see any of that had been used?

4 A The Coleman camp fuel felt about quarter
5 full, so --.

6 Q Was there -- did you test any of the
7 materials in there to see if there was mixtures or
8 solvents or anything?

9 A The only thing that warranted doing a test
10 was the HCL generator. A lot of times, I have to
11 determine whether, for overpacking purposes, to be
12 disposed of, I have got to determine what it is. And
13 sometimes, those -- the sludge from a leftover one-pot
14 and the sludge from an HCL generator can appear the
15 same. So just to confirm it, I do a Ph test. The Ph
16 test on an HCL generator will be acidic, where the Ph
17 test on the actual cooking vessel will be basic.

18 Q We've all heard things like having
19 explosions from these things.

20 A Yes.

21 Q What possibly could cause one of those?

22 A The explosion occurs because all that stuff
23 is under pressure and it builds up, or they add too much
24 of one ingredient. I mean, it could be anything.

25 Q So in a situation -- you certainly couldn't

1 leave that alone?

2 A I wouldn't want to, but people have fallen
3 asleep and it blown up. I mean --

4 Q Purposely, somebody shouldn't leave
5 something like that?

6 A No, but you're not exactly dealing with
7 level-headed-thinking people either.

8 Q Now, you said that the bag that you found
9 had some female products in it as well, Kotex?

10 A Yes. If you're referring to the Kotex,
11 yes.

12 Q And you didn't come onto the scene until
13 after the Atlantic Beach Police had already been in;
14 they called you?

15 A Yes.

16 Q So you weren't there for who was there and
17 what was going on; you just came after the fact?

18 A Correct.

19 Q One last thing: There was a syringe that
20 was found there. Did you happen to see a syringe?

21 A There was a syringe -- was it in the trash?
22 Let me double check.

23 Q Was that tested for any fingerprints or any
24 of that?

25 A No, sir.

1 Q And one last question: There was some
2 white substance that was found on -- I can't remember
3 what you said now -- was that tested to find out what
4 that was?

5 A No, the Crime Lab in that circumstance will
6 not let you submit that residue from the Clan lab.

7 Q Can you explain why that syringe was
8 destroyed, and obviously --

9 A It's in a Meth lab, and, I mean, it's --
10 the Crime Lab is not going to take submission of a
11 syringe, so I destroyed it so it doesn't injure anyone.

12 MR. FULCHER: I don't think I have any
13 other questions.

14 THE COURT: Do you have any redirect?

15 MR. SPENCE: Just a few.

16 THE WITNESS: Sure.

17

18 **REDIRECT EXAMINATION**

19 BY MR. SPENCE

20 Q Mr. Fulcher said there was -- you found no
21 finished product in the room?

22 A Correct.

23 Q No finished product was left in the room by
24 whoever was cooking it, was there?

25 A I found no finished product in the motel

1 room.

2 Q And people cook Meth so they can ingest it;
3 is that right?

4 A Yes, sir.

5 Q Just like if you cook a meal, your intent
6 in cooking the meal is to eat the meal?

7 A Yes, sir.

8 Q Not leave it out, cooked?

9 A Indeed.

10 Q Okay. And would it help to have two people
11 working on this-type thing, or is one enough?

12 A Two. I mean, two or more.

13 Q Okay. Why wouldn't one person be able to
14 do something like this?

15 A For a variety of reasons. I mean, the
16 behavior of people using Meth, they usually want
17 somebody to look out, or they want somebody helping peel
18 the batteries, you know, another set of hands to help as
19 the process goes along.

20 Q And watch all the gassing and the boiling
21 and all the other stuff?

22 A Yeah.

23 Q Okay. Now, I just called Raymond up here
24 to ask him if he had anything in addition to add to you,
25 and he said no. So you don't think he has anything he

1 can tell the jury more than you've said, is there?

2 A No. No offense to Agent Reeves, but no.

3 MR. SPENCE: Make sure I didn't steal his
4 thunder. Thank you very much. I have no further
5 questions.

6 THE COURT: Any recross on the basis of
7 that redirect?

8 MR. FULCHER: Just one question.

9

10 **RECROSS-EXAMINATION**

11 BY MR. FULCHER

12 Q Are you testifying that it would be
13 impossible for one person to be able to --

14 A Yes, it's possible.

15 Q It is possible?

16 A Yes.

17 THE COURT: You may stand down.

18 THE WITNESS: Thank you, sir.

19 (The witness stepped down from the witness
20 stand.)

21 MR. SPENCE: Your Honor, may they both be
22 released?

23 THE COURT: They may. Let me see counsel
24 up here.

25 (Discussion off the record at the bench.)

1 MR. SPENCE: Your Honor, I'm going to
2 publish those photographs, and I think that might take
3 us through 4:45.

4 THE COURT: Are you moving to admit State's
5 [12] through [20]?

6 MR. SPENCE: I am.

7 THE COURT: Any objection, for illustrative
8 purposes?

9 MR. FULCHER: Not for illustrative
10 purposes.

11 THE COURT: They are received.

12 (State's Exhibit Numbers [12], [13], [14],
13 [15], [16], [17], [18], [19] and [20] received in
14 evidence.)

15 THE COURT: Do you wish to publish them
16 among the several jurors?

17 MR. SPENCE: I do.

18 THE COURT: Sheriff, take possession of
19 those, State's Exhibits [12] through [20], and start
20 some down the front and some down the back, please, sir.

21 (Exhibits published to the jury.)

22 MR. SPENCE: I have two more witnesses --
23 actually, three. But they're all sort of long witnesses
24 so I'm at your --

25 THE COURT: Okay.

1 MR. SPENCE: -- mercy.

2 THE COURT: Ladies and Gentlemen, the next
3 witness will take longer than my promise to have you out
4 of here each day at 4:45, so we're going to take the
5 overnight recess at this time. We'll reconvene tomorrow
6 morning at 9:30 a.m.

7 While you're away from the courtroom,
8 remember, don't talk about it among yourselves or with
9 anybody else; let no one speak to you about it or in
10 your presence. If they do, let us know it. Don't form
11 or express an opinion about the guilt or innocence of
12 the defendant. Have no contact with the Court, the
13 parties, the lawyers, the witnesses, and don't try to
14 find out anything about it or make any investigation
15 outside the courtroom.

16 So with that said, you may take your juror
17 badges, put them in your seats, and if everybody else
18 will remain seated, this jury is excused until tomorrow
19 morning at 9:30. Thank you very much.

20 (The jurors exited the courtroom.)

21 THE COURT: Let the record reflect all
22 jurors are out of the courtroom.

23 Anything from the State before we recess?

24 MR. SPENCE: No, sir. Thank you.

25 THE COURT: Anything from the defendant?

1 MR. FULCHER: No, Your Honor.

2 THE COURT: Mr. Spence --

3 MR. SPENCE: Yes, sir.

4 THE COURT: -- I'm inclined to put on there
5 a message to the jury, just call back tomorrow after
6 5:30.

7 MR. SPENCE: Yes, sir.

8 THE COURT: I mean, your two witnesses,
9 evidence for the defendant --

10 MR. SPENCE: Argument and stuff like that.

11 THE COURT: -- charge to the jury,
12 argument. So if you would, just put on there, please,
13 Joy, a message that the jury is to call tomorrow after
14 5:30 for further instructions.

15 All right. Sheriff, recess us until 9:30
16 tomorrow morning, please, sir.

17 (Court was adjourned for the day.)

18 **(End of Volume I of III.)**

19

20

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CERTIFICATE

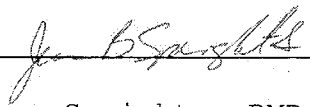
STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, Jean Speights, RMR, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings, pages 1 through 169, is a true, correct, and verbatim transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

Given under my hand this 16th day of January, 2015.



Jean Speights, RMR
Official Court Reporter
Second Trial Division


1 **STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE**
2 **COUNTY OF CARTERET SUPERIOR COURT DIVISION**
3 **FILE NO. 14 CRS 50372, 50376-77**

4 _____
5 **STATE OF NORTH CAROLINA,)**
6 **VS.) CERTIFICATE OF**
7 **DUSTIN JAMAL WARREN,) DELIVERY**
8 **Defendant.)**
9 _____)

10 This is to certify that the transcript of
11 proceedings at the September 8, 2014, Criminal Session of
12 Carteret County Superior Court was ordered on September 17,
13 2014, on the Appellate Entries, comprises **170 pages**, and
 was delivered electronically and by U.S. Mail, postage
 pre-paid, to the parties listed below, on the 16th day of
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\$15 [1] 91/18	2-Liter [9] 3/22 4/7 119/12 119/17 137/8 138/2 143/23 147/19 159/20 20 [11] 4/11 20/6 69/8 71/23 145/16 145/21 149/5 149/6 167/5 167/13 167/19 20-ounce [1] 159/20 2000 [1] 17/1 2002 [1] 132/24 2003 [1] 134/4 201 [1] 4/12 2010 [1] 17/20 2011 [1] 133/21 2014 [23] 1/11 8/13 13/25 21/5 23/16 25/15 25/24 26/11 54/1 54/5 54/19 54/22 57/3 57/10 66/14 67/8 67/15 68/13 86/1 114/12 135/11 171/10 171/11 2015 [2] 170/18 171/13 21 [4] 4/12 150/13 150/16 150/21 22 [4] 2/21 2/22 2/23 2/24 23 [1] 71/22 24 [2] 2/21 71/22 24-hour [1] 116/4 24-ounce [1] 139/19 25 [1] 20/6 252 [1] 1/25 252-504-3138 [1] 1/18 252-504-4500 [2] 1/16 171/16 26 [3] 2/22 2/23 2/24 27602 [1] 171/15 28302 [1] 171/18 28516 [3] 1/15 1/18 171/15 28557 [1] 171/24 29 [1] 3/8 29th [9] 8/12 67/15 68/13 74/9 76/4 85/25 87/14 89/2 114/12 2:00 [6] 11/11 58/19 86/9 114/15 121/21 122/19 2:23 [1] 65/21 2:30 [1] 122/19 2:57 [1] 100/5	5 5-gallon [1] 151/22 500 [1] 19/11 50372 [2] 1/3 171/3 50376-77 [2] 1/3 171/3 504-4444 [1] 1/25 58 [2] 21/15 21/18 5:00 [6] 79/2 80/12 86/14 97/9 97/17 124/11 5:30 [4] 12/19 13/11 169/6 169/14 5:30 o'clock [1] 12/18
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1 STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
 2 COUNTY OF CARTERET SUPERIOR COURT DIVISION

3 FILE NO. 14 CRS 50372, 50376-77

4 _____
 5 STATE OF NORTH CAROLINA,)
 6 VS.) TRANSCRIPT OF TRIAL
 7 DUSTIN JAMAL WARREN,)
 8 Defendant.)
 9 _____)

10 Transcript of Trial in the General Court
 11 of Justice, Superior Court Division, held in Carteret
 12 County, Beaufort, North Carolina, commencing during the
 13 September 8, 2014, Criminal Session, before the Honorable
 14 Benjamin G. Alford, Judge presiding.

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18 **VOLUME II OF III**

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1 (All parties are present in the courtroom.)

2 THE COURT: Anything from the State before
3 we bring our jury back?

4 MR. SPENCE: No, Your Honor. Ms. Kennon
5 has been housed in Craven County and there was a snafu,
6 and she's on her way. I will take my witnesses out of
7 order.

8 THE COURT: Okay.

9 MR. SPENCE: And make sure we don't waste
10 the jury's time.

11 THE COURT: Anything from the defendant?

12 MR. FULCHER: Nothing, Your Honor.

13 THE COURT: Bring the jury back, please.

14 (The jurors entered the courtroom and took
15 their seats in the jury box.)

16 THE COURT: Madame Court Reporter, let the
17 record reflect all the jurors have returned to the
18 courtroom. Good morning. The State may call your next
19 witness.

20 MR. SPENCE: Officer David Ennis, please.
21 David, if you'll come right behind me, bring your report
22 and your materials that you need. Left-hand on the
23 Bible and raise your right, face the jury.

24 (The witness was duly sworn.)

25 MR. SPENCE: David, if you'll take the

1 witness stand over there.

2 (The witness took the witness stand.)

3 THE COURT: You may inquire.

4
5 **DAVID ENNIS,**

6 having been first duly sworn, at 9:35 a.m. was called as a
7 witness on behalf of the State and testified as follows:

8
9 **DIRECT EXAMINATION**

10 BY MR. SPENCE

11 Q Would you state your name for the Court and
12 the jury, please?

13 A Officer David Ennis.

14 Q Okay. And, Officer Ennis, how are you
15 currently employed?

16 A Atlantic Beach Police Department.

17 Q And how long have you worked with AB?

18 A Since April 26, 2012.

19 Q Okay. And when did you get your
20 certification to become a Law Enforcement officer in
21 North Carolina?

22 A I think probably two months prior to that.

23 Q Okay. And where did you take your Basic
24 Law Enforcement Training?

25 A Carteret Community College.

1 Q And would you tell the Members of the Jury
2 how many hours Basic Law Enforcement training is, how
3 long it lasts, and how many hours it is.

4 A It's a six-month course. It's
5 approximately -- I want to say anywhere from -- it's
6 either 600, 700 hours worth of training.

7 Q Okay. And you have to pass the various
8 courses within that -- the college course, to even be
9 able to take the State exam; is that correct?

10 A Yes, sir.

11 Q And you take the State exam and get your
12 certification?

13 A Yes, sir.

14 Q And your duties, since you've been with
15 Atlantic Beach, would include what?

16 A Anything that's asked of me. I mean, just
17 whatever call I get is what I go to.

18 Q Okay.

19 A Traffic investigating; take reports; found
20 property. I mean, you name it. Kind of a one-man deal,
21 sometimes.

22 Q Not a one-man show?

23 A One-man deal.

24 Q Okay. That would be the role of a patrol
25 officer; is that correct?

1 A Yes, sir.

2 Q And a patrol officer, explain what they do

3 as far as everyday police work. Is that the person on

4 the street the public deals with?

5 A Face to face.

6 Q Okay. And you're familiar with Lieutenant

7 Prior; is that correct?

8 A Yes, sir.

9 Q And how long have you worked with Brian?

10 A Since day-one of me being employed with

11 Atlantic Beach.

12 Q Okay. Have you ever had to testify in

13 Superior Court before?

14 A Never.

15 Q First time?

16 A First time.

17 Q The matter that we are talking about today

18 is the suspected Meth lab found at the Seashore Motel in

19 the latter part of January of 2014. Do you remember

20 that event?

21 A Yes, I do.

22 Q How did you first become aware that you

23 were needed or may be needed at that location at that

24 time?

25 A We had a HAZMAT call come out to the

1 Seashore Motel.

2 Q Okay. Were you working at that time?

3 A Yes, I was.

4 Q Okay. Were you in your patrol car or
5 somewhere else, or were you at the station?

6 A I was in a VIPS vehicle. It's a -- not
7 Very Important People, but a volunteer for police
8 officer and stuff. Because of the snow, my Charger
9 probably wouldn't handle the road too well, so I had to
10 have a vehicle that had 4-wheel drive.

11 Q Okay.

12 A So I was in the VIPS car.

13 Q And you brought up the weather. Tell us
14 about the weather back in late January on this occasion.

15 A It was -- like I said, it was snow, mainly
16 sleet, if anything, was coming down. The roads were
17 pretty icy. It was definitely, definitely still cold
18 and a pretty good -- pretty good wind blowing, so --.

19 Q And you had to actually drive another car
20 other than your patrol car just to have traction enough
21 to get around?

22 A Yeah. I had to have it in 4-wheel drive
23 high the entire time.

24 Q Okay. Did you respond with Lieutenant
25 Prior to the motel that morning of the 30th or did you

1 respond separately?

2 A Separately.

3 Q Do you know how long it took you to get
4 there from the time you got the HAZMAT call?

5 A Not long at all. Approximately one, two
6 minutes at the most.

7 Q And when you got there, was Lieutenant
8 Prior already there?

9 A Yes, he was.

10 Q Okay. And just like the military, there's
11 a chain of command in Police Departments; is that
12 correct?

13 A Yes, sir.

14 Q And if you have a certain rank, then you
15 give the orders, and if you have a certain rank, you
16 take the orders?

17 A Yes, sir.

18 Q Sort of like life. And who was in charge
19 of handling that incident for Atlantic Beach Police
20 Department that day? Who was the person, the lead
21 person?

22 A Lieutenant Prior.

23 Q Okay. And when you got there, did you talk
24 to him about what he had found, or did you look at
25 things with him at the same time?

1 A The only communication that we had was, I
2 guess you could say in passing I heard, you know, "Meth
3 lab, we got a Meth lab." And I peeked my head in the
4 room briefly, saw what I saw, and I was like, "Okay,
5 well, I don't need to be in there."

6 Q Okay.

7 A So I came back out and then started --
8 Harvey instructed me to assist Lieutenant Prior with
9 anything that he needed.

10 Q And Jeff Harvey is now the new Police Chief
11 in Atlantic Beach; is that right?

12 A Doug Harvey.

13 Q Oh, Doug Harvey. Another Harvey. Two of
14 them over there now?

15 A Two.

16 Q Lieutenant Prior had made entry into that
17 room, enough to see what it contained, and he was -- he
18 went to draw a search warrant; is that correct?

19 A Yes.

20 Q What did he advise you to do and what did
21 you do while he was drafting the search warrant?

22 A He told me to stand by the room and make
23 sure that nobody went in or out of the room unless it
24 was him, or directed by him.

25 Q For what purpose is that, other than

1 safety, obviously safety?

2 A Obviously, scene safety. But any kind of
3 contamination or anything like that with somebody
4 bringing something into the room or, you know, somebody
5 going in there that doesn't need to be there.

6 Q Okay.

7 A I mean, it's a crime scene so nobody's
8 allowed in.

9 Q Okay. It's a crime scene until the Police
10 Department gets through dealing with the crime scene:
11 Nobody comes in and out of the room, no people with the
12 paper or the press or anybody else?

13 A Nobody.

14 Q Okay. And did you use some sort of item to
15 tape-off the crime scene?

16 A I believe we did use some type of crime
17 scene tape, and we were in the process of getting what
18 is the Management of the motel called; a lock-out
19 device.

20 Q Okay.

21 A It's basically like a big clam-shell-type
22 looking-thing that goes over the door handle --

23 Q Okay.

24 A -- so nobody can get a key except for the
25 person that has the key to the lock-out device.

1 Q Okay. Sort of like they use for when homes
2 are for sale for the Realtors?

3 A Right.

4 Q A special -- like a key for a key. And at
5 the time you were doing that and waiting for Lieutenant
6 Prior to get back with the search warrant, did you do
7 other things, investigative things, that you were
8 trained to do as a police officer?

9 A Yes, I did.

10 Q What did you do?

11 A I researched information off of the motel
12 receipt, as far as the subject that rented the room and
13 the registration plate on the car.

14 Q Okay. Did you talk to Ms. Thomas and
15 Mr. Way there at least a little bit to find out
16 anything?

17 A Yes, I did. I pulled up the driver's
18 license photos of both subjects.

19 Q Okay.

20 A Ms. Kennon and Mr. Warren.

21 Q Okay.

22 A And I showed them to Thomas, and she stated
23 that that was who, in fact, checked in and was in the
24 car.

25 Q Now, the information you received from the

1 motel receipt would include the license plate number on
2 that car; is that correct?

3 A Yes, sir.

4 Q And you also had at least Heather Kennon's
5 name on there?

6 A Uh-huh.

7 Q And you had on their receipt that there
8 were two people -- she signed up to have two people in
9 that room?

10 A Yes.

11 Q And you ran -- you have the ability to run
12 that plate; is that correct?

13 A Yes, I do.

14 Q And where does that -- where do you have
15 such a machine?

16 A I didn't have my MVT(phonetic), but I do
17 have an app: It's called CJ Leads, and I have it on my
18 phone, and I can run driver's license information, among
19 other things.

20 Q Okay. And the car in question that was
21 linked to that motel room, who was that car registered
22 to?

23 A Mr. Warren.

24 Q Did you know of Mr. Warren before? Had you
25 ever heard of him?

1 A Yes.

2 Q Had you ever dealt with him?

3 A Yes.

4 Q Okay. Were you familiar with his car?

5 A Yes.

6 Q Describe the car for the Members of the
7 Jury, what it looked like.

8 A It was an older model Buick four-door. I
9 know it has a busted taillight.

10 Q Okay. What color?

11 A Tan.

12 Q Okay.

13 A Tan, brown, whatever you want to call it.

14 Q Had you dealt with that car before?

15 A Yes, I have.

16 Q Okay. Did Mr. Warren live in Atlantic
17 Beach, as far as you know, or did -- had you just seen
18 him over there?

19 A No, he -- he had lived in Atlantic Beach at
20 a few different addresses. I think his last address
21 over there was 107 Knollwood.

22 Q Okay.

23 A I saw his car there a little bit,
24 frequently, before this incident.

25 Q Okay. Did you know Heather Kennon?

1 A I do not know who that is.

2 Q Okay. Based on the information that you
3 had, that you had identified the two people who were in
4 that room as Heather Kennon and Dustin Warren?

5 A Yes.

6 Q In the car?

7 A Yes.

8 Q And talked to the -- Mr. Thomas and --
9 Ms. Thomas and Mr. Way about where -- their comings and
10 goings, and how long they stayed and how long they'd
11 been gone?

12 A Correct.

13 Q That sort of thing. At some point, did you
14 see that car that you had known about? Did you see that
15 drive into the motel?

16 A Yes, I did.

17 Q Tell the Members of the Jury -- first of
18 all, tell the Members of the Jury about the entranceway
19 to that motel. Is it flat? Is it inclined? What does
20 it look like?

21 A The entranceway to the Seashore Motel is --
22 it's definitely on a steep grade as far as when you
23 enter. It's not flat and level. I mean, you have to
24 come up from the road and actually drive up and into it.
25 You want me to go further than that?

1 Q That's all. And again, you testified
2 that -- was there -- when you got there, was there ice,
3 sleet or snow on that ramp leading up to the motel?

4 A Yes.

5 Q Okay. And where were you when you first
6 saw Mr. Warren's car that morning, about 10:30 in the
7 morning?

8 A I was back, then, in front of Room Number
9 9, right in front of it, standing guard.

10 Q And when did you first lay eyes on his car?

11 A As it was actually pulling into -- you
12 know, as soon as I see a car pulling in, going to be
13 directed towards it, and as soon as I saw the front of
14 the car, I knew immediately whose car it was.

15 Q Okay. And what did you do?

16 A I exited my vehicle and went to go make
17 contact with him.

18 Q Okay. How far did he pull in, in the
19 motel?

20 A Approximately to the -- to the end of the
21 pool. Like, the pool's in the very center of the motel,
22 got to the very end of that where the parking lot
23 started and that's where I made contact.

24 Q Was that like, between Room Number 9 and
25 the office, like halfway between there? Or was it

1 closer to the one --

2 A Between -- yeah, halfway between the office
3 and Room Number 9.

4 Q Okay. And were you in uniform?

5 A Yes.

6 Q And did you have lights on or lights
7 activated on your patrol car there in the parking lot?

8 A No. No lights on.

9 Q Okay. A marked car?

10 A A marked vehicle, yes.

11 Q Okay. And did you approach the car that
12 you saw come in?

13 A Yes, I did.

14 Q Okay. And tell the Members of the Jury why
15 you approached that car.

16 A Based -- based on information that we had
17 received, along with the hotel receipt, identification
18 from Management stating that Mr. Warren was, in fact,
19 there on that property, the car registered to the room
20 was Mr. Warren's car, definitely a person of interest in
21 that case.

22 Q Okay. Lo and behold, here he comes?

23 A And here he comes.

24 Q Okay. You go up to the car; does he get
25 out of the car?

1 A Later.

2 Q Okay.

3 A Not -- not immediately.

4 Q Okay. Tell the Members of the Jury your
5 conversation with Mr. Warren there at the motel.

6 A I asked Mr. Warren what he was doing
7 basically out and about; he said he was just driving
8 around. I asked him if he was staying at the motel and
9 he said no. Not really any reason for him to -- to be
10 out, you know, that he could inform me of, other than,
11 "I'm just driving around." Whenever I looked down in
12 the door jamb, the grip on the driver's side door, I saw
13 two blue pills.

14 Q Did you ask him what those were?

15 A I did.

16 Q What did he say?

17 A Adderall.

18 Q That's a stimulant medication?

19 A Yes. A controlled substance.

20 MR. SPENCE: May I approach?

21 THE COURT: You may.

22 (State's Exhibit Number [24] marked for
23 identification.)

24 BY MR. SPENCE

25 Q I'm going to show you what I'm going to

1 label for identification -- and I know this is out of
2 order, so I'll say that right now -- State's [24]. Ask
3 if you recognize State's [24].

4 A I do.

5 Q What are those?

6 A These are two, 10-milligrams Adderalls.

7 Q Okay. He advised you what they were?

8 A Uh-huh.

9 Q Okay. They were in where?

10 A In the grip on the driver's side door.

11 Q Where he was?

12 A Yes.

13 Q Okay. In plain view?

14 A Plain view.

15 Q You seized those?

16 A I did.

17 Q Is that correct? Put them in your evidence
18 locker or -- evidence locker, and brought them to court?

19 A Yes.

20 Q Per my instructions?

21 A Yes, I did.

22 Q Do these appear to be the same ones, same
23 condition?

24 A Same ones. Same condition.

25 MR. SPENCE: Offer State's [24], Judge.

1 THE COURT: Any objection?

2 MR. FULCHER: No, Your Honor.

3 THE COURT: They are received.

4 (State's Exhibit Number [24] received in
5 evidence.)

6 BY MR. SPENCE

7 Q Did he have any explanation for those
8 pills, or excuse?

9 A He said that they were his aunt's pills.

10 Q Okay. He didn't tell you why his aunt's
11 pills were in his armrest?

12 A No, not that I recall.

13 Q Okay. Any other further conversation with
14 him about being at this motel?

15 A No other conversation about that. After
16 identification of the pills and knowing that it is a
17 controlled substance and not in the prescription bottle
18 as it is, and not prescribed to Mr. Warren, that's
19 whenever I asked him to exit the vehicle.

20 Q That's a crime. It's called a crime, isn't
21 it?

22 A Yes.

23 Q Did you place him under arrest?

24 A Yes, I did.

25 Q What did he do, based on that?

1 A After I placed him under arrest, I put him
2 in my patrol vehicle.

3 Q Did you search him, at least do a limited
4 search of his person, or pat-down?

5 A I did a pat-down for weapons initially and
6 then put him into my patrol vehicle.

7 Q Okay. And tell the Members of the Jury if
8 anything happened by the time -- from the time you
9 arrested him until you put him in the patrol vehicle.

10 A Whenever Mr. Warren exited the vehicle, a
11 key fell from the lower half of his body. After I was
12 able to see the key on the ground, it was the room key
13 to Room Number 9. After that, I initially just patted
14 him down for weapons, as I said, and then escorted him
15 over to my patrol vehicle.

16 Q Okay. Did you ask him at any time if he
17 was staying there at the motel or had any reason to be
18 there?

19 A Prior to that, yes, I did.

20 Q What did he say?

21 A He said no.

22 Q What did he say he was doing there?

23 A Said he was just driving around.

24 Q And the key dropped out of the car or his
25 pants?

1 A I believe it was from his pants. I don't
2 think it would come out from the car. Whenever he stood
3 up, that's whenever it fell from his person.

4 Q And it fell on the ground?

5 A Yes, it did.

6 Q Retrieved it?

7 A I did, yes.

8 Q Okay. And also made a photocopy of that;
9 is that correct?

10 A Yes.

11 (State's Exhibit Number [23] marked for
12 identification.)

13 MR. SPENCE: All right. State's [23], if I
14 can approach.

15 THE COURT: Yes, sir.

16 BY MR. SPENCE

17 Q Would you look at State's [23]. There are
18 basically four images on this photograph taken at the AB
19 Police Department. Could you look at that and see if
20 you recognize any things contained on there? Do some of
21 them -- two are pictures of keys?

22 A Yes.

23 Q Okay. Are those the pictures of the key
24 that dropped out of his pocket?

25 A Yes.

1 Q And what -- what's written on that key, or
2 what does that key go to?

3 A Says right here, Room Number 9, Seashore
4 Motel, Atlantic Beach.

5 Q Okay.

6 A That's pretty-much all I can read from it.

7 Q Okay. And was the key returned to the
8 owners of the motel so they could use it?

9 A Yes, it was.

10 Q Okay. And does this photograph of these --
11 of the keys here, do these represent the way those keys
12 appear, the way the key appeared on the date you
13 photographed it and retrieved it?

14 A Yes.

15 Q And helped illustrate your testimony?

16 A Yes.

17 MR. SPENCE: Judge, I'd offer [23]. I'm
18 going to actually fold it over right now, [23], showing
19 the keys.

20 THE COURT: Any objection as to the key?

21 MR. FULCHER: No. No, Your Honor.

22 THE COURT: It's received.

23 (State's Exhibit Number [23] received in
24 evidence.)

25

1 BY MR. SPENCE

2 Q Did he say anything when the key fell out?

3 A I think initially it was something to the
4 effect of, "I don't know," or something along those
5 lines. I can't 100 percent recall.

6 Q Okay. How long did you stay there on the
7 scene with Mr. Warren?

8 A After placing him in my patrol vehicle, we
9 did a search of the vehicle for any other contraband.
10 After the search was completed, Sergeant Harvey and I
11 dealt with another subject in a car and we transported
12 both of them to the Police Department for processing, so
13 approximately maybe 30 minutes at the most.

14 Q Okay. Who was -- do you know who the
15 subject was in the car with Mr. Warren?

16 A Yes. Mark Alan Thomas.

17 Q Are you familiar with him?

18 A Yes.

19 Q Was he arrested that day?

20 A Yes, he was.

21 Q Was he arrested for the Meth lab or
22 something else?

23 A No, it was unrelated things.

24 Q Okay. Anybody else in the car except
25 Dustin Warren and Mark Alan Thomas?

1 A No.

2 Q Okay. When you -- did you transport them
3 to the jail and book them after Lieutenant Prior arrived
4 with a search warrant?

5 A I transported Mr. Warren to the jail.

6 Q Okay. After the search warrant was --

7 A After the search warrant and everything was
8 done.

9 Q Okay. And when you got down to the jail,
10 is there a booking procedure where the jailers go
11 through the items and pockets of the arrestees and pull
12 stuff out that may be important?

13 A Yes.

14 Q And were you present for that?

15 A I was not present. I was in the actual
16 Magistrate's office.

17 Q Where was Mr. Warren?

18 A He was in the -- as soon as you walk into
19 the jail, where they have the height chart, that's where
20 they do the pat-down and they exchange and put their
21 cuffs on and take yours off, he was in that area.

22 Q They also photograph the arrestees?

23 A Yes.

24 Q Had he been photographed earlier at the
25 Atlantic Beach Police Department?

1 A Yes, he had.

2 MR. SPENCE: May I approach?

3 THE COURT: Yes, sir.

4 BY MR. SPENCE

5 Q The photograph, State's [23], which has
6 been admitted to illustrate the keys, I'm going to now
7 unfold it. Are there photographs on State's [23] that
8 show photographs of Mark -- I'm sorry -- of Dustin
9 Warren, taken at the Atlantic Beach Police Department,
10 for the booking procedures?

11 A Yes.

12 Q And does this appear -- is this how he
13 appeared that day?

14 A Yes.

15 Q When he was arrested? Can you tell the
16 Members of the Jury what he's wearing when he was
17 arrested?

18 A I believe it's a yellow, blue, and white
19 striped polo shirt and a white undershirt.

20 Q Okay. And how cold was it that day?

21 A Somewhere around 30.

22 (State's Exhibit Number [22] marked for
23 identification.)

24 MR. SPENCE: Okay. State's [22] for
25 identification, if I can approach with that.

1 THE COURT: Yes, sir.

2 BY MR. SPENCE

3 Q If you can identify that photograph?

4 A These are also photos of Mr. Warren wearing
5 the same shirt. Basically these are tattoos. It's also
6 a part of our looking for our information, any scar,
7 mark -- scar, mark or tattoo that you have, we write
8 down for our information, so these are pictures of his
9 tattoos.

10 Q Also shows his physique or weight?

11 A Yes.

12 Q Ribs, and things like that?

13 A Yes.

14 Q Okay. Did you notice anything about -- on
15 his person? Any injuries, any burns, anything like that
16 on his hands or anything relevant to what you
17 investigated here?

18 A Yes. He had a severe burn on the top
19 portion of his left hand, right here, approximately
20 pretty-much that long and about that wide(indicating).

21 Q And is that shown somewhat in State's [22],
22 when he's lifting his shirt?

23 A Yes. The top portion of his hand, right
24 here.

25 Q Okay. The top portion of his left hand?

1 A Uh-huh.

2 Q Right. Okay. Does this illustrate his
3 appearance that day, the markings on his body, his
4 physique, and the burn that you recognized on the top of
5 his hand?

6 A Yes.

7 Q Okay. Did that burn appear to be fresh,
8 scabbed-over, or otherwise?

9 A Freshly scabbed over.

10 BY MR. SPENCE

11 Q Okay. State's [21] for identification, if
12 you could look at this item, and I'll ask you if you've
13 seen this item before today.

14 A Yes, I have.

15 Q And do you recognize it?

16 A Yes, I do.

17 Q And what is it?

18 A This is aluminum foil with burn marks on
19 it.

20 Q Okay. And where did that item come from?

21 A This came from the small -- on a small
22 right pocket. You know how you have your regular pants
23 pocket? The little small pocket above that. It's -- I
24 mean, it's not big enough to hold anything other than
25 something that's, you know, extremely small. This

1 actually came from that pocket.

2 Q Like a jean pocket?

3 A A jean pocket.

4 Q Okay. And you heard SBI Agent Farrell
5 testify yesterday about the use of foil and burns and
6 smoking Methamphetamine. Are you familiar with that
7 also?

8 A Yes, I am.

9 Q Is this consistent with foil used to burn
10 or smoke Methamphetamine?

11 A Yes, it is.

12 Q This is some drug paraphernalia; is that
13 correct?

14 A Yes, sir.

15 Q And that's based on your training and
16 experience?

17 A Yes, sir.

18 Q Okay. Consistent with the Meth lab
19 production you found in Room 9?

20 A Yes.

21 Q Okay. What else did you find in your
22 search of Mr. Warren?

23 A Also found some cash on his person.

24 Q Okay. Was that seized?

25 A Yes, it was.

1 (State's Exhibit Number [25] marked for
2 identification.)

3 BY MR. SPENCE

4 Q State's Number [25] I'll hand you, and ask
5 you if you can recognize basically a package and what's
6 in it.

7 A 147 U.S. dollars.

8 Q Okay. Where was that taken from?

9 A Let's see. I believe it was taken from his
10 pocket.

11 Q Okay. It came from Mr. Warren?

12 A Yes.

13 Q At the booking procedures at the jail?

14 A I believe this came from our processing at
15 the Police Department.

16 Q Okay. It was seized from his person?

17 A Yes.

18 Q And \$147 cash?

19 A Yes.

20 Q So, the foil that was seized at the jail,
21 turned over to you and placed in evidence; is that
22 correct?

23 A That's correct.

24 Q The Adderall also?

25 A Yes.

1 Q The money?

2 A Yes.

3 MR. SPENCE: Okay. Offer those into
4 evidence, Judge.

5 THE COURT: [21], [22] and [25]?

6 MR. SPENCE: Yes, sir. [21], [22] and
7 [25]. Correct.

8 THE COURT: Any objection?

9 MR. FULCHER: No, Your Honor.

10 THE COURT: They're received.

11 (State's Exhibit Numbers [21], [22] and
12 [25] received in evidence.)

13 BY MR. SPENCE

14 Q Mr. Warren was booked into the jail, and at
15 that point, they'd taken him into their facility, and
16 you leave; is that right?

17 A That's correct.

18 Q Okay. Have you seen him since that time
19 until today?

20 A No, I have not.

21 Q Okay. Do you recognize Dustin Warren as
22 the person you saw there that night? Is he in the
23 courtroom?

24 A Yes, I do.

25 Q Where is he?

1 A Sitting right there(indicating).

2 Q How long have you known him, or known of
3 him?

4 A Ever since I have been employed with
5 Atlantic Beach Police Department.

6 MR. SPENCE: Okay. I'll tender Officer
7 Ennis for questions.

8 THE COURT: Cross-examination, Mr. Fulcher.

9

10 **CROSS-EXAMINATION**

11 BY MR. FULCHER

12 Q Officer Ennis, when you arrived that
13 morning, you responded to what you were told from the
14 Manager -- the Management; is that correct?

15 A I was -- responded, informed by Dispatch.

16 Q And they had responded to what they had
17 been told by Management; is that correct?

18 A That is correct.

19 Q Okay. And when you got there, you did find
20 that the room was registered in Heather Kennon's name;
21 is that correct?

22 A Yes, I did.

23 Q Name written on the --

24 A On the receipt.

25 Q -- on the receipt and all that. Now, you

1 testified that the -- Mr. Warren's car was listed on
2 that paper as well; is that correct?

3 A Yes.

4 Q Is it unusual, in your opinion, from your
5 experience, that when you check in a motel, there has to
6 be an automobile registered on it?

7 MR. SPENCE: Objection, unless he knows
8 about that.

9 THE COURT: Overruled. If he knows, he may
10 answer.

11 THE WITNESS: I don't -- I don't see
12 anything odd about it.

13 BY MR. FULCHER

14 Q Okay. Now, when you got there, did you go
15 into the room?

16 A Like, as I previously stated, I peeked my
17 head in just for a second to see what was going on.

18 Q And there was nobody in the room at the
19 time that you could see?

20 A Not that I recall.

21 Q When you opened the door was there any
22 unusual smells?

23 A Nope. Just cold.

24 Q Just cold. Did you -- did you have a log
25 when you logged all this information in, or did you just

1 write the information down?

2 A I'm not sure what you're --

3 Q Sometimes in an officer's report they list,
4 you know, 9:45 --

5 A Are you talking about an entry log?

6 Q Yes. Is that correct?

7 A No, I do not have that.

8 Q And during the whole time that you were
9 there, you didn't see anything unusual outside that room
10 or anybody come -- else come up there, did you?

11 A Just Law Enforcement personnel, Atlantic
12 Beach Fire Department, and that was it.

13 Q All right. Now, you said the next thing
14 that you saw was approximately -- well, excuse me. Let
15 me back up before we get that far.

16 All the other information that you had,
17 concerning the day before, you had gotten from
18 Mr. Thomas and the other areas of Management over there;
19 you didn't do any other investigation on your own, did
20 you? About what went on in -- alleged to go on in that
21 room?

22 A Are you referring to as far as a
23 Methamphetamine lab?

24 Q Yes.

25 A No.

1 Q And all the questions about the blanket and
2 not having any heat and all that, you got all that
3 information from the Management; is that correct?

4 A From Management. Yes.

5 Q Okay. All right. Now, you said that
6 shortly thereafter is when you saw Mr. Warren pull into
7 the parking lot?

8 A Yes, sir.

9 Q Okay. And you said that when you
10 approached him and asked him, he said he was just riding
11 around; is that correct?

12 A That's correct.

13 Q That's not against the law to do that, is
14 it? Just to ride around?

15 A No.

16 Q Okay. And you said -- and you asked him --
17 when you looked into the car you found some pills in the
18 car. Did he tell you they were his aunt's pills?

19 A Yes.

20 Q And they were in -- you said they were in
21 the door?

22 A It was in the grip.

23 Q Okay. I think you said or asked him to
24 step out of the car. When he got out of the car there
25 was a key falling. Isn't it possible that key could

1 have fallen off of -- his leg would have drove it out of
2 the seat? Did you actually see it fall out of his
3 pocket?

4 A I did not see it fall out of his pocket.
5 I -- whenever he exited the vehicle it fell from the
6 lower half of his person.

7 Q So it could have obviously been on the
8 seat, and just when he got up, it was knocked out of the
9 car?

10 A I guess that could be a possibility, yes.

11 Q Now, you said there was another person in
12 the car, Mark Thomas; is that correct?

13 A Yes.

14 Q You-all had some warrants on him, didn't
15 you?

16 A Yes, we did.

17 Q And you-all made -- arrested him. What
18 color was his hair?

19 A I believe he had a shaved head at that
20 time. So if I had to recall, somewhere dirty blond, or
21 something like that.

22 Q If it had been blond you certainly would
23 have noticed that, wouldn't you?

24 A I mean, dirty blond. I mean, not like
25 bleach-blond, but --.

1 Q Now, you said when Mr. Warren got out of
2 the car he had a T-shirt on, polo shirt on?

3 A No, he had a sweatshirt.

4 Q Okay.

5 A Yes, he did.

6 Q It was a hoody he had?

7 A A black hoody.

8 Q All right. And certainly, the hoody would
9 have been consistent with the weather being cold?

10 A I would imagine so.

11 Q And after you took him and started to speak
12 with him, pat him down, you said that he had a burn mark
13 on his hand?

14 A Yes.

15 Q Did he tell you --

16 MR. SPENCE: Objection to what he told you.
17 Self-serving.

18 THE COURT: Sustained.

19 BY MR. FULCHER

20 Q Did he make any mention of that burn?

21 A Yes, he did.

22 Q Okay. What, if anything, did he tell you?

23 MR. SPENCE: Objection. Self-serving.

24 THE COURT: Sustained.

25 BY MR. FULCHER

1 Q Did he tell you he had --

2 MR. SPENCE: Objection. Self-serving.

3 THE COURT: I sustained the objection,
4 Mr. Fulcher. Do not ask him about that again.

5 BY MR. FULCHER

6 Q Did Mr. Warren have any Meth on him?

7 A Not that I discovered on his person at that
8 time.

9 Q Now, you said you did find some tinfoil?

10 A I did not; the jail staff did.

11 Q Okay. You also said there was found some
12 cash on him, \$147. Is that a large amount of money?

13 A Not a large amount of money.

14 Q A couple other questions: When you went to
15 the motel room, had any of the Management reported any
16 fires to you or anything -- any unusual, suspicious
17 activity in the room about fires burning or fire alarms
18 going off?

19 A No fire alarms, nothing like that. Just
20 HAZMAT.

21 Q And you said you didn't really go in the
22 room, other than just to take a glance?

23 A Yeah. Just to stick my head in real quick,
24 see what was going on.

25 Q Did you happen to see any of the evidence

1 at any time during the investigation that they found,
2 the bag? Any of the materials?

3 A I remember seeing a bag and a -- like, a
4 2-liter bottle.

5 Q Okay. So you heard testimony that they
6 found some feminine products in that?

7 A Yes.

8 Q Okay. Did you make a list of that on any
9 of the discovery, that you listed what was found?

10 A I -- there's no need for me to.

11 MR. FULCHER: I don't have any further
12 questions.

13 THE COURT: Redirect?

14 MR. SPENCE: No --

15

16 **REDIRECT EXAMINATION**

17 BY MR. SPENCE

18 Q I think when I asked you about the picture
19 I didn't ask about if he had any other clothes. He did
20 have a sweatshirt on before the pictures were taken at
21 the jail?

22 A Before the pictures were taken, yes.

23 Q Okay. Or at the PD?

24 A Yes.

25 Q And he had a T-shirt or actually a collared

1 shirt or short-sleeved shirt and undershirt underneath
2 the sweatshirt?

3 A Yes.

4 Q Okay. That's fine. Wanted to clear that
5 up.

6 MR. SPENCE: Thank you. That's all I have.

7 THE COURT: Any recross on the basis of
8 this?

9 MR. FULCHER: Nothing, Your Honor.

10 THE COURT: Thank you, sir. You may stand
11 down.

12 (The witness stepped down from the witness
13 stand.)

14 THE COURT: The State may call your next
15 witness.

16 MR. SPENCE: Your Honor, we're waiting on
17 Ms. Kennon to arrive, and I'm going to call Lieutenant
18 Prior out of order and maybe call him again, but call
19 him right now so we can proceed.

20 THE COURT: Yes, sir.

21 (The witness was duly sworn.)

22 (The witness took the witness stand.)
23
24
25

BRIAN PRIOR,

having been first duly sworn, at 10:09 a.m. was called as a
witness on behalf of the State and testified as follows:

DIRECT EXAMINATION

BY MR. SPENCE

Q State your name for the Court, please, sir.

A Brian Prior.

Q And there's a couple ways to spell *Prior*.

How do you spell your last name, Brian?

A P-R-I-O-R.

Q And your current employment is what?

A Atlantic Beach Police Department, sir.

Q And how long have you been employed with
that Department?

A This Department here, since March 8th of
1999.

Q When did you receive your North Carolina
Law Enforcement Certification?

A 2000, sir.

Q And where did you do your BLET training?

A Carteret County Community College.

Q Did you have prior Law Enforcement
experience prior to that?

A Yes, sir. I do.

1 Q Where was that?

2 A At Pottawatomie County Sheriff's

3 Department, and St. Mary's Police Department, both in
4 Kansas.

5 Q Okay. And is that where you grew up,
6 Brian?

7 A No, sir. That was my last duty station in
8 the military.

9 Q And how long did you work in Law
10 Enforcement at Kansas?

11 A Fourteen years, approximately.

12 Q And would you tell the Members of the Jury
13 your current assignment with AB?

14 A My current assignment is Lieutenant,
15 assigned to Criminal Investigations as a detective.

16 Q During your career, what assignments have
17 you had and done at that Police Department?

18 A At this particular Department I have been a
19 Patrolman; a Corporal promoted to Line Sergeant; was a
20 K-9 officer; was assigned to Investigation work,
21 Narcotics; back as a Patrol Commander or Patrol
22 Sergeant. I was the Operations or Administrations
23 Officer over Communications and daily operations, and
24 then in 2019 I went back to Investigations.

25 Q Okay. Investigations includes drug

1 investigations and property crime; is that correct?

2 A Yes, sir. We don't have anything

3 specialized. We got to work them all.

4 Q Okay. Your training to be a drug
5 investigator, how much additional training do you get,
6 to be allowed to do your job in the best way possible?

7 A I have completed the Criminal Investigator
8 Certificate Program for North Carolina. That's excess
9 of 500 hours. I have got several hundred hours in Drug
10 Officer course for the basic and advanced drug
11 interdiction, date rape crimes, drug cases like that. I
12 have been certified by the -- through the SBI
13 Clandestine Lab Response Team.

14 Q Okay. So have you also participated using
15 informants to buy drugs at the street level?

16 A Yes, sir.

17 Q Have you, in fact, bought drugs undercover
18 yourself as an officer?

19 A Yes, sir.

20 Q Okay. Approximately how many drug arrests
21 or drug investigations have you conducted at Atlantic
22 Beach in your career?

23 A A couple of hundred.

24 Q Okay. Are you familiar with the drug
25 Methamphetamine?

1 A Yes, sir.

2 Q You said you received specific training

3 about clandestine labs and specific training in

4 that-type drug?

5 A Yes, sir.

6 Q Are you familiar with the things that Agent

7 Farrell testified about yesterday?

8 A Yes, sir.

9 Q About clandestine labs?

10 A Yes, sir.

11 Q One-pot and stuff like that? How was it

12 that you knew to go to Seashore Motel the morning of

13 January 30th, 2014?

14 A I heard Carteret County Communications

15 Center Dispatch over the fire and police about a

16 hazardous chemicals or a HAZMAT situation at 120 East

17 Fort Macon Road, which is the Seashore Motel.

18 Q Okay. Hazardous material calls come in or

19 emergency calls come in, police are taught to run

20 towards those, right?

21 A Yes, sir.

22 Q Okay. And you responded to that motel?

23 A Yes, sir.

24 Q What's the first thing you did when you got

25 there?

1 A I pulled up in the parking lot; I made
2 contact with Ms. Thomas.

3 Q Okay. Did she tell you why she called you?

4 A She said that she had found items
5 generically in Room 9. When I pulled up and got out of
6 my car she met me and we were gone right to the room.

7 Q Okay. What did you do next?

8 A Ms. Thomas opened the door and then I
9 entered the room.

10 Q Okay. Would you tell the Members of the
11 Jury what you saw when you entered the room?

12 A When I initially entered the room, I saw a
13 7UP 2-liter bottle with substance -- unknown substance
14 in the bottom of it. Also had some white residue around
15 it. I saw plastic tubing; I saw a soda cap that had
16 been hollowed out and then a tube put through it had
17 some glue around it. There was a funnel, a face mask,
18 and a couple other items in the room.

19 Q Okay. When you see those items, based on
20 your training and experience, what's the only conclusion
21 you could make?

22 A Consistent with a Meth lab, sir.

23 Q When you were in that room, did you notice
24 the condition of the beds themselves in the motel room?
25 Were they turned down?

1 A They looked -- appeared to be made up,
2 folded, and hadn't been pulled out. They weren't in
3 disarray.

4 Q Okay. They did not appear to have been
5 slept in?

6 A Yes, sir.

7 Q The law requires you, even though you are
8 in the presence of contraband, the law -- does the law
9 require you or does the law allow you to search that
10 room without a warrant, or do you need to get that
11 warrant done?

12 A We got the warrant done, sir.

13 Q And how did you -- when you were going to
14 draw the search warrant, how did you make sure that the
15 room was not going to be tampered with and entered in
16 any other way?

17 A I had -- I asked Officer Ennis to guard the
18 room until they took their precautions that they were
19 taking to secure the room. And he was left there and
20 the room was closed by the lady, Ms. Thomas.

21 Q Okay. When did you first talk to
22 Ms. Thomas, or Mr. Way, in a way more than in a passing
23 way?

24 A I didn't, after the initial contact with
25 Ms. Thomas in telling me and then opening the door.

1 Q Okay. You did your thing; Officer Ennis
2 did his thing?

3 A Yes, sir.

4 Q How long did it take you to draw the search
5 warrant?

6 A About an hour, sir.

7 Q And you had Superior Court Judge John
8 Nobles sign that; is that right?

9 A Yes, sir.

10 Q And came back with it?

11 A Yes, sir.

12 Q Tell the Members of the Jury how you
13 execute a search warrant in an unoccupied room.

14 A When the SBI and we got there at around
15 3:00 in the afternoon, we entered the room. I read the
16 warrant to the room, and I placed a copy of the warrant
17 on the bed.

18 Q You've got to read the warrant to an empty
19 room?

20 A Yes, sir.

21 Q You also -- you can go ahead. What did you
22 do next?

23 A After we -- I read the warrant, Special
24 Agent Farrell and Reaves, I showed them what I had
25 initially had, which is what I told them on the phone.

1 And then I let them -- Special Agent Reaves process --
2 or excuse me -- Special Agent Farrell process the lab
3 for packaging and repackaging.

4 Q Okay. What did you find in that room?
5 What did you discover in that room, the various items?
6 If you can just maybe say what they were off the top of
7 your head.

8 A There was Coleman fuel. Like I said, a
9 face mask, a funnel, the 2-liter bottle of soda -- soda
10 bottle that had residue in the bottom of it. There was
11 a glass jar near the microwave. I thought it was a
12 pickle jar that had some kind of unknown white powdery
13 substance in the bottom of it. There was a couple of
14 what I think are cardboard containers with salt in them.
15 There was a syringe in the trash can.

16 Q And as -- go ahead.

17 A I believe that Agent Farrell found some
18 sanitary napkins in the bag that was there.

19 MR. SPENCE: Okay. May I approach?

20 THE COURT: Yes, sir.

21 (State's Exhibit Number [26] marked for
22 identification.)

23 BY MR. SPENCE

24 Q Lieutenant Prior, I'm going to show you
25 what I have labeled for identification as State's

1 Exhibit [26]. Would you look at that photograph and see
2 if you can identify what is shown in that photograph.

3 A Yes, sir. It's the east -- the "bedroom"
4 located on the east side of the room where I placed the
5 search warrant after reading it.

6 Q Okay. So you read it to the empty room and
7 you place it down there; is that right?

8 A Yes, sir.

9 Q And what about after you leave the room?
10 Is there an inventory left in that room that you're
11 required to do?

12 A At this -- with the instance with the Meth
13 lab, the SBI did the inventory and processing. And
14 until that was done, there wasn't one on that. When I
15 did the return of the search warrant I just put "pending
16 inventory list" from the State Bureau of Investigation.

17 Q This, [26], illustrates the condition of
18 the bed, and also a copy of the search warrant that is
19 laid on the bed?

20 A Yes, sir.

21 Q Photographed that first; specific reason to
22 show that you actually did that?

23 A Yes, sir.

24 Q And to illustrate your testimony; is that
25 correct?

1 A Yes, sir.

2 MR. SPENCE: Offer [26], Your Honor, into

3 evidence.

4 THE COURT: Any objection?

5 MR. FULCHER: None.

6 THE COURT: It is received for illustrative
7 purposes.

8 (State's Exhibit Number [26] received in
9 evidence.)

10 BY MR. SPENCE

11 Q Were you on-scene when Officer Ennis was
12 dealing with Mark Thomas?

13 A No, sir.

14 Q Did you see Dustin Warren any time at that
15 motel that morning when you were doing your
16 responsibilities?

17 A No, sir.

18 Q Okay. Did you know Dustin Warren?

19 A Yes, sir.

20 Q Okay. Did you see him at any time later
21 that day?

22 A Yes, sir. At the Police Department.

23 Q Okay. Atlantic Beach Police Department?

24 A Yes, sir.

25 Q And why was he taken there?

1 A Officer Ennis had arrested him.

2 Q Okay. And did you -- did you meet with him
3 and after he was under arrest?

4 A Yes, sir.

5 Q And were you interested in talking to him
6 about what went on there at that motel room?

7 A Yes, sir. I wanted to get his side of the
8 situation.

9 Q Okay. Are there some rights that are
10 required to be read to someone who is in custody who you
11 intend to interview?

12 A Yes, sir.

13 Q Okay. What are those rights called
14 normally?

15 A The Miranda Warning.

16 Q Okay. And did Mr. Warren indicate that he
17 may want to make some sort of statement to you?

18 A Yes, sir.

19 Q And did you read him his rights regarding
20 any statement he might make?

21 A Yes, sir.

22 Q Prior to that?

23 A Yes, sir. I did.

24 Q Is that done on a form that is provided by
25 the Atlantic Beach Police Department and used by every

1 Department in the nation?

2 A Yes, sir.

3 Q A similar form. Okay. And it's called a
4 General Adult Miranda Rights Form; is that correct?

5 A Yes, sir.

6 Q And did you, in fact, fill it out with the
7 date and the case number and the time?

8 A Yes, sir. I did.

9 MR. SPENCE: Okay. If I could approach.

10 THE COURT: Yes, sir.

11 (State's Exhibit Number [27] marked for
12 identification.)

13 BY MR. SPENCE

14 Q State's [27], can you identify that
15 document for the Court and the Members of the Jury,
16 please? What is that generally called?

17 A Yes, sir. This is the rights waiver form
18 that's drawn up on Atlantic Beach Police Department
19 letterhead. It has the case number, the date, the
20 approximate time. It states the subject rights, place
21 for them to put their initials, and then there's a spot
22 for his signature, or the person requesting signature,
23 and the two witnesses.

24 Q Okay. And what are the rights that you
25 tell him he is entitled to under the 5th Amendment to

1 the United States Constitution?

2 A Number one is, you have the right to remain
3 silent. Number two is, anything you say can and will be
4 used against you in court. And then here it states, Do
5 you understand your rights? And they say yes or no.
6 And do you want to speak with me? And then it was yes
7 or no. Then the next one, three, it says, You have the
8 right to talk to a lawyer or have one present during
9 questioning. And then four, If you want a lawyer before
10 or during questioning but cannot afford one, one will be
11 appointed to represented you. And, Do you want to speak
12 to me without a lawyer being present? And that's a yes
13 or no.

14 Q Okay. Did he agree to talk with you
15 initially about this?

16 A Yes, sir.

17 Q Okay. Did he, what they call, waive his
18 Miranda rights?

19 A Yes, sir.

20 Q And did you speak with him briefly about
21 this?

22 A Yes, sir. I did.

23 Q Now, State's [27], this is the form, and
24 you have -- was it signed in your presence?

25 A Yes, sir.

1 Q Dustin Warren, age 36?

2 A Yes, sir.

3 Q He initialed all these places?

4 A Yes, sir.

5 Q Indicated that he wanted to talk without a
6 lawyer being present?

7 A Yes, sir.

8 MR. SPENCE: And I'd offer State's [27],
9 Your Honor.

10 THE COURT: Any objection?

11 MR. FULCHER: No, Your Honor.

12 THE COURT: It is received.

13 (State's Exhibit Number [27] received in
14 evidence.)

15 BY MR. SPENCE

16 Q How long did you end up talking to him?

17 A Not long. Maybe 10 minutes, maybe 15.

18 Q Okay. Would you tell the Members of the
19 Jury what Mr. Warren told you that morning about his
20 situation that he found himself in custody on.

21 A Mr. Warren generally stated that he was at
22 the motel, but he was just dropping off some girl named
23 Heather. Mr. Warren then said he didn't know her, that
24 he had not been in the room. Mr. Warren did give me
25 Heather's phone number. Mr. Warren said that he didn't

1 want to discuss why he had come back to the room or
2 others -- other than to pick up Heather. And then
3 Mr. Warren said he didn't want to discuss the matter
4 when I had asked him about drugs and a Meth lab in the
5 room.

6 Q Okay. Did he indicate he wanted -- he
7 didn't want to talk any further?

8 A Yes, sir. So I stopped talking to him.

9 Q By law, if somebody agrees to answer
10 questions and then says they want to stop answering
11 questions, that's completely allowed and you have to
12 stop asking questions?

13 A Yes, sir.

14 Q Okay. And after that, he was transported,
15 booked for these crimes; is that correct?

16 A Yes, sir. He was given back to Officer
17 Ennis and they did that.

18 Q Okay. So the only thing he told you, he
19 was dropping her off and he was not in the room?

20 A Yes, sir.

21 Q Didn't want to talk about what was in the
22 room?

23 A Yes, sir.

24 Q Okay. Did you know they found the key on
25 him at the time you were talking to him?

1 A Yes, sir. I did.

2 Q Did you ever ask him specifically about
3 that?

4 A No, sir.

5 Q Okay.

6 A Like I said, sir, he didn't want to talk
7 about that, so I didn't push it.

8 Q Okay. The person you talked to that day,
9 after doing your initial entry, your preparation of the
10 search warrant, your investigation and collection of
11 evidence, is that person in court today?

12 A Yes, sir.

13 Q Where is he?

14 A Mr. Warren, sitting right next to
15 Mr. Fulcher(indicating).

16 Q And are you familiar with the defendant
17 Heather Kennon, his co-defendant in this case?

18 A Yes, sir. I am now.

19 Q Okay. Did you know her before this date?

20 A No, sir.

21 Q Okay. Did you talk to Officer Ennis about
22 his investigation about the motel receipt and the fact
23 that Heather Kennon was the person who actually was with
24 Mr. Warren renting that room?

25 A Yes, sir.

1 Q Okay. And were warrants taken out on
2 Heather Kennon -- I'm sorry -- did you see Heather
3 Kennon on the 30th of January?

4 A No, sir. I didn't.

5 Q Okay. Were you ever able to locate her?

6 A No, sir.

7 Q Okay. Due to that fact, what kind of
8 process was issued against Heather Kennon on the 30th of
9 January?

10 A I drew up warrants on Ms. Kennon and went
11 before -- one of the Magistrates found probable cause
12 and issued me warrants for arrest on her.

13 Q So warrants for arrest went out on
14 Ms. Kennon?

15 A Yes.

16 Q Mr. Warren was in custody?

17 A Yes.

18 Q So Ms. Kennon was waiting to be picked up?

19 A Yes.

20 Q At some point later she was picked up?

21 A Yes, sir.

22 Q Charged with the same offense as Mr. Warren
23 was charged with?

24 A Yes, sir.

25 Q Okay. And at some point late this

1 summer -- she's -- she's still in custody, right?

2 A Yes, sir.

3 Q Some point late this summer, she indicated
4 through her lawyer she would like to talk to you about
5 this matter; is that right?

6 A Yes, sir.

7 Q Okay. And her lawyer's name is Chris
8 Suggs; is that right? Did you know that?

9 A Yes, sir. I -- I knew when you had told me
10 about it when you called me. That's all.

11 Q Did you ever meet with Mr. Suggs?

12 A No, sir.

13 Q Okay. And at some point, did you meet with
14 Ms. Kennon and interview Ms. Kennon about this matter?

15 A Yes, sir. I did.

16 Q Okay. Now, she will be testifying here
17 when she arrives --

18 MR. SPENCE: Your Honor, that's all the
19 questions I have at this time. I'm going to need to
20 re-call Detective Prior at the appropriate time. But
21 that's all I have at this particular time.

22 THE COURT: Cross-examination, Mr. Fulcher.

23

24

25

CROSS-EXAMINATION

BY MR. FULCHER

Q Officer Prior, when you showed up that morning, you were responding to the bulletin that you got from Communications, right?

A Yes, sir.

Q And that was based upon what the Management told them?

A Yes, sir.

Q And when you got there, you once testified that you did find that the room was rented in the name of Heather Kennon's name. Her name is -- she's the one who rented it? Excuse me.

A Yes, sir.

Q Okay. And that you went to the room and opened the door with Management; is that correct?

A Management opened the door for me. Yes.

Q And how far did you go into the room?

A Initial -- like I said, initial entry was about 10 feet; saw what I saw on the counter; went a little bit further so I could see over where the microwave was, and that was about it.

Q And you didn't touch or do any other investigation other than just look; is that correct?

A Just a cursory look, sir.

1 Q Okay. Did you see any -- anything, pills,
2 or anything laying around in there?

3 A No, sir.

4 Q So your testimony is you turned most of the
5 investigation over to the SBI personally or -- A.B.P.D.
6 didn't do any investigation as far as checking for --
7 you said you had experience with -- as a Meth lab?

8 A Yes, sir.

9 Q But you didn't do any personal
10 investigation yourself, did you?

11 A Yes, sir. I did.

12 Q Okay.

13 A Not with the lab. When I called the State,
14 it's because they're required -- and like Ms. Farrell or
15 Agent Farrell said yesterday, they are required to come
16 process the labs and make sure everything is
17 neutralized, no additional hazards, and move all that
18 out.

19 Q When did you begin your investigation into
20 the room, checking the things?

21 A When I got there.

22 Q Okay. Now, you testified that you just
23 went in and looked around. When did you go in and start
24 looking at the different materials?

25 A Oh, I didn't do that. No. But as far as

1 investigation into the case, I mean, I conducted
2 interviews --

3 Q Okay.

4 A -- and follow-up and things like that. I
5 didn't understand you.

6 Q Maybe I'm not making myself clear. You
7 personally didn't examine the evidence?

8 A No, sir. I did not.

9 Q You left all that to the SBI?

10 A Yes, sir.

11 Q So you went about -- the residue that was
12 found or fingerprints tested and all that?

13 A No, sir. That was all up to them.

14 Q Okay. When you went in, did you see -- did
15 you smell anything that smelled out of the way like
16 something burning, any chemical smells?

17 A There was nothing current or anything
18 consistent like something had been done right then and
19 there, like had just finished a cook or something like
20 that.

21 Q You, in your experience, do you know the
22 different types of smells that would come from a Meth
23 lab?

24 A You can get cat urine, ether-type smell.
25 You know, each lab is a little bit different like Agent

1 Farrell had told you yesterday.

2 Q Okay. You didn't smell any of those in the
3 room?

4 A Not active. No, sir.

5 Q And I believe you -- the room is not a very
6 big room, is it?

7 A No, sir. I think the rough measurements
8 were 13 or 14 by 17 or 18. Something like that.

9 Q No windows were open in the room --

10 A No, sir.

11 Q -- when you went there? Now, I believe you
12 testified earlier that you said that in the bag there
13 was some sanitary napkins?

14 A Yes, sir.

15 Q Okay. That would be certainly more
16 consistent with a female involved?

17 MR. SPENCE: I'll stipulate to that.

18 THE COURT: You may answer.

19 THE WITNESS: It could be.

20 BY MR. FULCHER

21 Q All right. And shortly thereafter, when
22 you -- you said you interviewed Mr. Warren and he
23 answered the questions up until the point that he said,
24 "Now I may need to get a lawyer." Is that correct?

25 A I don't even think he ever asked for a

1 lawyer. He just said he didn't want to talk about the
2 incident, and that's where I left it.

3 Q Okay. Now, there was a Mark -- you said
4 Mark Thomas was arrested this time as well?

5 A Yes, sir.

6 Q Okay. Was he arrested for anything
7 concerning this situation?

8 A No, sir.

9 Q Do you know if his charges were later
10 dropped?

11 A I have no clue, sir.

12 COURT REPORTER: I'm sorry. Your answer,
13 sir?

14 THE WITNESS: I said I had no clue.

15 BY MR. FULCHER

16 Q And you said you interviewed Ms. Kennon at
17 a later point, right?

18 A Yes, sir.

19 Q It was eight months later?

20 A Pretty-much so. The --

21 Q Close to eight months?

22 A Yeah. It was on August 22nd, after being
23 contacted by Assistant District Attorney Spence.

24 Q And at that point, up until that point, she
25 hadn't made any statements to you?

1 A No, sir. And I hadn't attempted to get
2 any.

3 MR. FULCHER: I don't have any further
4 questions, Your Honor.

5 THE COURT: Any redirect?

6 MR. SPENCE: Just to clear it up.

7

8 **REDIRECT EXAMINATION**

9 BY MR. SPENCE

10 Q Once Ms. Kennon was arrested and had a
11 lawyer, you're prohibited from even going up and trying
12 to get something, aren't you?

13 A Yes, sir. I didn't try and track her down
14 and Mirandize her or anything like that.

15 Q Okay. But after she has a lawyer, you
16 can't go up to her and even try to interview her?

17 A Yes, sir.

18 Q The statements that you got -- I'm sorry --
19 the statements that Ms. Thomas and Mr. Way talked about
20 yesterday, were those done at the Police Department at
21 your request?

22 A I had asked Officer Ennis to get me
23 statements. I don't think they were done at the Police
24 Department. I believe they were done at the motel.

25 Q Okay. And those were done and taken and

1 collected by Officer Ennis and not you?

2 A Yes, sir.

3 Q All right. And you were here yesterday and
4 you heard them say that they -- that this --
5 Mr. Warren's car hadn't been there since 6:00`p.m. the
6 night before?

7 A Yes, sir.

8 Q Okay. Just to clear up another thing, you
9 saw the things in the room. You just didn't touch them,
10 rearrange them or mess with them because the SBI is
11 charged with doing that; is that correct?

12 A Yes, sir.

13 Q Okay. And the very nature of a Meth lab is
14 it's going to be destroyed because it's volatile and
15 toxic; is that right?

16 A Yes, sir. It takes a special search
17 warrant.

18 MR. SPENCE: Okay. I believe that's all I
19 have right now.

20 THE COURT: Any recross?

21 MR. FULCHER: No, Your Honor.

22 THE COURT: You may stand down. Let me see
23 counsel.

24 (The witness stepped down from the witness
25 stand.)

1 (Discussion off the record at the bench.)

2 THE COURT: Members of the Jury, we're

3 waiting on transport of the final witness. I believe it
4 will be for the State. And so we're going to just take
5 a quick recess. And remember during that time, don't
6 talk about it among yourselves or with anybody else, and
7 don't let anybody speak to you about it in your
8 presence. If they do, let us know it. Don't form or
9 express an opinion about the guilt or innocence of the
10 defendant. Have no contact with the Court, the parties,
11 the lawyers, the witnesses. Don't try to find out
12 anything about it outside the courtroom.

13 Let's return at, say, between quarter of
14 11:00 by the clock on the wall. Everybody else remain
15 seated. These jurors are excused.

16 (The jurors exited the courtroom.)

17 THE COURT: All right. Let the record
18 reflect that all jurors are out of the courtroom.

19 Anything from the State before we recess?

20 MR. SPENCE: No, sir.

21 THE COURT: We'll just be at ease about 15
22 minutes.

23 (A brief recess was taken.)

24 * * *

25 (All parties are present in the courtroom.)

1 THE COURT: Anything for the State before
2 we bring our jury back?

3 MR. SPENCE: No, sir.

4 THE COURT: Anything from the defendant?

5 MR. FULCHER: No, Your Honor.

6 THE COURT: Bring the jury back, please,
7 Sheriff.

8 (The jurors entered the courtroom and took
9 their seats in the jury box.)

10 THE COURT: All right. Let the record
11 reflect all jurors have returned to the courtroom.

12 The State may call your next witness.

13 MR. SPENCE: The State would call Heather
14 Kennon, please.

15 THE COURT: All right. Ms. Kennon, if you
16 would come around.

17 (The witness was duly sworn.)

18 MR. SPENCE: Heather, if you'll come around
19 here, sit in that chair and face me and the jury.

20 (The witness took the witness stand.)

21 MR. SPENCE: And that microphone does not
22 work. That's a prop.

23

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HEATHER DIANE KENNON,

having been first duly sworn, at 10:56 a.m. was called as a
witness on behalf of the State and testified as follows:

DIRECT EXAMINATION

BY MR. SPENCE

Q Good morning. Would you state your name
for these folks over here?

A Heather Diane Kennon.

Q And if you'll speak as slowly and as loudly
as you can. I'm bad at speaking fast myself. Heather,
how do you spell your last name?

A K-E-N-N-O-N.

Q And how old are you, Heather?

A Twenty-nine.

Q I'm sorry?

A Twenty-nine.

Q And right now, you're -- with the orange
suit on, you live over there at the jail?

A Yes.

Q Well, that's okay. Where is your address,
outside of a custodial situation?

A 159A K7 Lane in Newport.

Q Okay. And who lives there?

A My mom.

1 Q And who else lives there?

2 A My son and my brother.

3 Q How many children do you have, Heather?

4 A Two.

5 Q And what are their names?

6 A Brianna and Malichi.

7 Q And how old are they?

8 A Five -- or six and 10.

9 Q Okay. And who has custody of those
10 children right now while you're in custody?

11 A My mom's got my son, and my daughter's with
12 her grandma.

13 Q Okay. So they're with family?

14 A Uh-huh.

15 Q Okay. Have they been to visit you down
16 there are the jail?

17 A No, I don't want them to.

18 Q Okay. How long have you been in jail?

19 A Seven months. Seven and a half months.

20 Q Do you know what -- about what time you
21 were arrested, what date, what month?

22 A February 2nd. I turned myself in.

23 Q Okay. Did you know you had warrants out
24 for your arrest on this matter?

25 A Yes, sir.

1 Q Heather, do you know the person on trial
2 here today, Dustin Warren?

3 A Yes.

4 Q How long have you known Mr. Warren?

5 A About a year.

6 Q Okay. How did you meet him?

7 A Through his brother.

8 Q What's his brother's name?

9 A Brandon Hobbs.

10 Q Okay. And how long had you known Brandon?

11 A Not long at all. A couple months.

12 Q Okay. Do you know where you met Dustin for
13 the first time?

14 A No, I don't remember that.

15 Q Okay. Will you tell us, the Members of the
16 Jury, if in January 2014 you had some sort of drug
17 addiction that you were battling?

18 A Yes.

19 Q And what was that? What were you addicted
20 to?

21 A Meth and opiates.

22 Q Okay. And tell the Members of the Jury
23 what a Methamphetamine addiction is like, briefly.

24 A It's awful. It -- I don't really now how
25 to describe it.

1 Q Is there a compulsion to use it?

2 A Yeah.

3 Q What sort of sensations do you get from
4 that?

5 A It -- it makes you want to go. It gives
6 you a lot of energy.

7 Q Okay. And you had also an opiate
8 addiction?

9 A Uh-huh.

10 Q Pills?

11 A Uh-huh. Yes.

12 Q What type pills?

13 A Percocet, Opana.

14 Q Okay.

15 A Any kind of opiates.

16 Q Okay. And an opiate is something -- a
17 heroin derivative; is that correct?

18 A Yes, sir.

19 Q So essentially, a heroin addiction also?

20 A Yes, sir.

21 Q How long have you been addicted to heroin?

22 A Since last year, the beginning or the end
23 of last year, around September, October.

24 Q And is that the first time you did heroin?

25 A No.

1 Q Okay. How long had you had drug addiction
2 problems or battled drug addiction?

3 A The past 10 years.

4 Q Okay. And have you suffered the
5 consequences of that drug addiction?

6 A Yes.

7 Q Okay. Been arrested?

8 A Yes.

9 Q Been in jail?

10 A Yes.

11 Q Away from your kids?

12 A Yes.

13 Q Okay. How is that?

14 A Sucks.

15 Q Okay. Do you remember checking in to the
16 Seashore Motel shortly before noon on January 29th,
17 2014?

18 A Yes.

19 Q Okay. Could you tell the Members of the
20 Jury about how it is you checked in there and why it is
21 you checked in there on that morning?

22 A There was snow on the ground outside, and
23 we were driving around. He had some stuff --

24 Q Okay.

25 A -- mixed in a bottle.

1 Q Let me stop you right here. When you say
2 he or we --

3 A Dustin. Had some stuff mixed in a bottle,
4 and we needed somewhere to gas it. So -- and he just
5 pulled up in the motel, and I jumped out, not even
6 thinking or anything, and just jumped out, went in there
7 and got a room.

8 Q Okay. Let me ask you, what had you been
9 doing the day before this happened?

10 A Meth.

11 Q No. What had you been doing generally?
12 Where had you been?

13 A Oh. The DoubleTree.

14 Q Okay. And had -- again, I want to take you
15 slow through specific questions. Were you staying at
16 the DoubleTree with Dustin before the 29th of January?

17 A We had actually met there, because we were
18 in separate rooms. And then somehow we met up. I don't
19 remember exactly how, but somehow we met up and we
20 stayed in the room together, like, one night I think.
21 And we were doing Meth.

22 Q Okay. Was that the night before you
23 checked in to the Seashore?

24 A Yeah.

25 Q Okay. Who had that room at the DoubleTree?

1 A I had a room on my own.

2 Q Okay.

3 A And he had -- or somebody that he was with
4 had a room.

5 Q Okay.

6 A I'm not sure who.

7 Q Other people there that you knew at the
8 DoubleTree?

9 A No. Well, I went with a friend of mine to
10 go hang out with some guys that she knew there, that
11 worked there.

12 Q Did you know his -- did you text him or
13 have a way to contact him?

14 A Yes.

15 Q Okay. And the morning of the 29th, what
16 was the weather like?

17 A Snowing, snow on the ground.

18 Q Okay. Did you have that room at the
19 DoubleTree for one day, two days, or how long?

20 A I think I had it for three days, three
21 nights, I think. Two or three nights. I don't remember
22 exactly how long.

23 Q How many of these nights did you spend with
24 Dustin Warren?

25 A One.

1 Q Okay. Was that the night of the 28th?

2 A I believe so.

3 Q Okay. What kind of car did he have?

4 A I don't even remember. It's a tan -- tan
5 car. I don't know what kind it was.

6 Q Had you been in that car before?

7 A Yes.

8 Q Okay. Two-door? Four-door? What is it?

9 A Four-door.

10 Q Okay. And do you have a car?

11 A No.

12 Q What kind of transportation do you use?

13 A My brothers, my friends. That's --

14 Q You just depend on people?

15 A Yeah.

16 Q Okay. And at what point did you see Dustin
17 Warren on January 29th before you went to the Seashore?
18 What time in the morning did you first see him?

19 A I seen him the night before.

20 Q Okay.

21 A The DoubleTree.

22 Q Okay. And you stayed in his room?

23 A Yeah. We stayed in the room together.

24 Q Okay. And did drugs in the room?

25 A Yeah.

1 Q Okay. What -- what type?

2 A Meth.

3 Q Okay. How did you take or ingest your
4 Methamphetamine?

5 A I believe I was shooting it.

6 Q Okay. And how about Dustin?

7 A Smoking it.

8 Q Does he shoot up?

9 A No, I don't think so.

10 Q Okay. Do you know where that Meth came
11 from?

12 A Yes.

13 Q Who did it come from?

14 A Dustin.

15 Q Okay. And when you left the DoubleTree,
16 why did you go to the Seashore Motel?

17 A Because -- I don't even know why he pulled
18 up in there -- because we really didn't have nowhere
19 else to go.

20 Q Okay.

21 A So -- because I think there was snow on the
22 bridge, or ice on the bridge or something. We couldn't
23 get back over the bridge to Morehead.

24 Q Did you have some things, and what kind of
25 possessions did you have with you in that car?

1 A A coat, a purse, and that's it.

2 Q Okay.

3 A A couple of pieces of clothes.

4 Q Okay. And what about the -- did you have a
5 duffle bag with you?

6 A No.

7 Q Okay. Do you remember having a duffle bag
8 there at the Seashore Motel?

9 A No.

10 Q Okay. Do you remember buying anything to
11 take to the Seashore Motel?

12 A No.

13 Q Okay. Do you remember having stuff like
14 salt, other ingredients, batteries, things like that at
15 the Seashore Motel?

16 A Yes.

17 Q Okay. How did you get those things?

18 A They were -- Dustin brought them in luggage
19 and a suitcase.

20 Q Okay. A suitcase or a bag, or what was it?

21 A A suitcase.

22 Q And you checked in to the motel; you went
23 to the clerk. Is that correct?

24 A Yes.

25 Q And you paid, and was that your money?

1 A It was mine and his.

2 Q Okay.

3 A 20 of it was mine; 20 of it was his.

4 Q And you checked into a room?

5 A Yes.

6 Q Did you-all go into the room?

7 A Yes.

8 Q What did you take into the room with
9 you-all?

10 A A black suitcase, and -- that's all I
11 remember is a black suitcase.

12 Q Okay. What was in it?

13 A Some -- a few of his clothes and some stuff
14 to make the Meth with.

15 Q Okay. Did he have that in the DoubleTree
16 also?

17 A I don't remember.

18 MR. SPENCE: Okay. May I approach?

19 THE COURT: Yes, sir.

20 BY MR. SPENCE

21 Q I'm going to show you some photographs,
22 Heather, of some things that were taken out of this room
23 and ask you about these. State's Number [8], which has
24 been admitted into evidence, do you recognize that?

25 A Kind of, yeah.

1 Q Okay. Do you recognize that can?

2 A Yeah.

3 Q What is that?

4 A Gasoline.

5 Q Okay.

6 A Fuel.

7 Q And do you recognize that piece of luggage
8 or duffle bag?

9 A Yeah.

10 Q And whose is that?

11 A Dustin's.

12 Q And what's in it?

13 A The precursors for Meth.

14 Q Okay. Do you know about how to make Meth?

15 A No.

16 Q Okay. Does Dustin know?

17 A Yes.

18 Q Have you seen him do it?

19 A Yes.

20 Q Have you ever helped him do it before?

21 A Yes, I helped him gas it.

22 Q Did you help him do it before this night?

23 A No.

24 Q Okay. Do you recognize what's shown as
25 State's Number [9], that bottle?

1 A Yes.

2 Q What is that?

3 A That's to gas it.

4 Q Okay. Just asking you what it -- is that a
5 bottle?

6 A It's a 2-liter bottle.

7 Q Okay. And what's inside the bottle or
8 around the bottle?

9 A Tubing.

10 Q Okay. Do you remember that stuff?

11 A Yeah.

12 Q Okay.

13 A Yes.

14 Q Do you remember the things that are shown
15 in Item [11], in that motel room?

16 A Yes.

17 Q Okay. Tell the Members of the Jury what
18 happened when you got in that motel room. Did you go to
19 sleep? Did you turn down the beds? Or did you do
20 something else?

21 A No, we -- he gassed it.

22 Q Okay. We've got to go back. We don't know
23 what gassing it is.

24 A Okay.

25 Q Tell me what you did. Did you set up

1 something? Did you arrange things? Did you take things
2 out of the suitcase?

3 A He did.

4 Q Okay. And what did you do?

5 A I was getting high.

6 Q Okay. And what were you taking?

7 A I was doing Meth.

8 Q Okay. Injecting it?

9 A Yes.

10 Q Is that --

11 A And smoking it.

12 Q Is that Meth that you had already had from
13 the DoubleTree?

14 A Yes.

15 Q And who did you get that from?

16 A Dustin.

17 Q Who set up all these things and the glue
18 guns and the tubing?

19 A Dustin.

20 Q Okay. Did you help him set them up, or did
21 he give you instructions?

22 A No.

23 Q Okay. Where were you when this was being
24 done?

25 A In the room, and -- well, I was running

1 back and forth from the car to -- and the room, because
2 I was so cold in the room, and I was going out to sit in
3 the car in the heat.

4 Q Okay. At some point, did you-all leave the
5 motel for a period of time and come back?

6 A No.

7 Q You don't remember?

8 A I did. I went to the store.

9 Q Okay.

10 A A few times.

11 Q Okay. And what did you get at the store?

12 A I don't remember. I went to go get a pack
13 of cigarettes. I think I went to get a lighter, because
14 we didn't have a lighter. And I think that's it.

15 Q Okay. And how long did you-all stay in
16 that room from the time you checked in until the time
17 you-all left and never came back?

18 A About -- from check-in time, which was like
19 noon, to 5`o'clock.

20 Q Okay. And during that period of time, what
21 did you-all do in that room?

22 A Make Meth.

23 Q And tell the Members of the Jury what part
24 you took in it. What did you do to help make this
25 Methamphetamine?

1 A I helped gas it.

2 Q Okay. Explain what that means.

3 A It's -- I don't even really know what it
4 means.

5 Q What did you do?

6 A He put gas in a bottle, and I was taking
7 the tube and putting it in the jar. That's all.

8 Q Okay. Were you doing it correctly?

9 A No.

10 Q Why not?

11 A I don't know. Because I don't know how to
12 do it.

13 Q Okay. What did he -- how did you know you
14 weren't doing it correctly?

15 A Because he was getting angry at me.

16 Q Okay.

17 A Or frustrated with me.

18 Q Okay. What happened? Did he tell you how
19 to do it, or did you --

20 A He did. He told me how to do it one or two
21 times, and then I kept doing it wrong so he just did it
22 hisself[sic].

23 Q Okay. And how is this Methamphetamine
24 made? Did you see how it was being made or how it came
25 out?

1 A In powder form.

2 Q Okay. Did you see it come out in powder
3 form?

4 A Yes.

5 Q Okay. And what was it put into as the
6 powder form?

7 A What do you mean?

8 Q Was it put into a container?

9 A He put it -- he drained it on a coffee
10 filter and then let it dry, and then I don't remember
11 what he done with it when it dried.

12 Q Okay. Your interest in this was getting
13 the final product and getting it in you?

14 A Yes.

15 Q Okay. Do you know how much Meth you-all
16 made or you helped him make that day?

17 A I think he said about four and a half
18 grams.

19 Q Okay. Is that -- did you have some?

20 A Yes.

21 Q Okay. When you left the Seashore, where
22 did you-all go?

23 A To Anique Pittman's house.

24 Q Who?

25 A Anique Pittman.

1 Q His girlfriend. Is she in court today?

2 A Yes.

3 Q Where is she?

4 A She's right there, in the
5 courthouse(indicating).

6 Q Back there in the pink dress?

7 A Yes.

8 Q Okay. How long have you known her?

9 A I don't.

10 Q Okay. Where did she live?

11 A On Atlantic Beach at *A Place at the Beach*.

12 Q Okay. And did you-all take the
13 Methamphetamine over there?

14 A Yes.

15 Q Okay. Who was over there?

16 A Her and Mark Thomas.

17 Q Is Mark Thomas here?

18 A No. I don't see him.

19 Q Okay. Whose the guy next to Ms. Pittman?

20 A I don't know who that is.

21 Q Where did you spend the night the night
22 after you left the Seashore?

23 A Anique Pittman's house.

24 Q How many keys did you have to the hotel?

25 A One.

1 Q And who was over there doing Meth at Anique
2 Pittman's house?

3 A All of us.

4 Q You?

5 A Me, Dustin, Anique and Mark.

6 Q Okay. Were you smoking and injecting?

7 A Yes.

8 Q Okay. Was Dustin smoking and injecting?

9 A No, I don't even know if he done any,
10 because he drank a few beers and then went to sleep.

11 Q Okay. And did Anique Pittman do some?

12 A Yes.

13 Q Did Mark Thomas do some?

14 A Yes.

15 Q Okay. Did you intend to stay at Anique
16 Pittman's house, or did you-all intend to come back to
17 the Seashore Motel and clean up?

18 A No, we intended to stay at Anique's house.

19 Q What time was check-out the next day at
20 Seashore?

21 A 11'clock.

22 Q And did you know that some things were left
23 over there in that motel room?

24 A Yes.

25 Q Did you know that there were illegal things

1 left in that motel room?

2 A Yes.

3 Q And how did you deal with those things?

4 A What do you mean?

5 Q Did you-all decide to go over and clean
6 them up?

7 A Oh, he was planning on going back the next
8 morning and getting it.

9 Q Okay.

10 A Before check-out time.

11 Q Okay. And did you give him the key to do
12 that, or did he have the key?

13 A He had the key.

14 Q Okay. And do you remember him leaving
15 Anique Pittman's house to go to the Seashore?

16 A Yes.

17 Q Okay. What's the next thing you remember?

18 A Mark texting Anique's phone saying that the
19 law got him, and we cleaned up the apartment and then we
20 left.

21 Q Cleaned up Anique's apartment?

22 A Uh-huh.

23 Q What did you clean up?

24 A Paraphernalia, just evidence.

25 Q Why did you do that?

1 A Because we were scared they were going to
2 come there.

3 Q Okay. And you knew what had been left in
4 that motel room?

5 A Yes.

6 Q Okay. Do you know where that duffle bag --
7 was that in the suitcase you-all brought into the
8 Seashore?

9 A Do I know what?

10 Q Was it in the -- was the duffle bag inside
11 the suitcase?

12 A No, I don't think so.

13 Q Okay. Who did that belong to?

14 A What?

15 Q The duffle bag.

16 A The duffle bag? Him. Dustin.

17 Q Okay. Did it have some of your stuff in it
18 also?

19 A No.

20 Q Had any sanitary napkins in it?

21 A No, not that I remember.

22 Q Okay. If some were found, would those be
23 yours?

24 A I don't think so.

25 Q Okay.

1 A I don't remember. Maybe, but I don't
2 remember.

3 Q Okay. Did you bring anything -- did you
4 have anything to provide, as far as salt or batteries or
5 anything like that for this Methamphetamine?

6 A No.

7 Q Okay.

8 A I brought me and my purse.

9 Q Did you go with him, or did you go buy
10 anything to provide this Meth lab?

11 A Yes. We went to Morehead to get some cold
12 packs.

13 Q Okay. Where did you go?

14 A Cassie Flowers' house.

15 Q Okay. What did you need cold packs for?

16 A Because we were missing -- that's the
17 ingredient we were missing.

18 Q Did you-all leave the motel and go over
19 there?

20 A Yes. The night before.

21 Q The night before?

22 A Uh-huh.

23 Q Okay. So before you checked in?

24 A Yes, before we checked in at the --

25 Q And what happened when you went to Cassie

1 Flowers' house to get the cold packs?

2 A He went in, got the stuff and came back
3 out, and I sat in the car.

4 Q Okay. Cold packs were used in that room to
5 make the Methamphetamine?

6 A Yeah. I'm pretty sure.

7 Q From the time you-all got in there until
8 the time you left, how long did it take you to make
9 enough Meth to take over to Anique Pittman's house?

10 A How long did it take us?

11 Q Uh-huh.

12 A I don't know. A couple hours.

13 Q Okay. Did you ever intend to sleep in that
14 room or stay in that room at all?

15 A Yeah.

16 Q Okay. It just didn't happen?

17 A No, because it was too cold in there.

18 Q Okay. Did you ask for another heater at
19 one point?

20 A Yes.

21 Q They didn't have one?

22 A No, they didn't have none. We asked for
23 some extra blankets; they didn't have any of those.

24 Q Okay. Did somebody come with some blankets
25 at some point and knock on the door, if you remember?

1 A I don't think so.

2 Q Okay. Did you ever sleep in that room?

3 A No.

4 Q Okay. Were you left in that room by
5 yourself at any time or did you leave Dustin there?

6 A I left Dustin there and went to the store.

7 Q Do you know where you went?

8 A To the store.

9 Q Which one?

10 A The BP. I think it's BP.

11 Q On the Causeway?

12 A It's on the main road, like when you go to
13 the stop light and you take a left and you go on down,
14 it's like diagonal from the hotel.

15 Q Okay. Was the process of cooking this
16 Methamphetamine, did you have to put on any mask or gas
17 mask at all?

18 A No.

19 Q Okay. Did you ever see any of those
20 things?

21 A No, not that I remember.

22 Q Okay. Was there any odor, any chemicals,
23 any burning smell?

24 A Yeah.

25 Q What was that like?

1 A It was -- it just smelled like chemicals.

2 Q Okay. And could you smell it outside the
3 room, or you smelled it inside the room?

4 A I don't think so, because I walked out the
5 room and I didn't smell it outside.

6 Q Okay. What was Dustin -- do you know how
7 he was dressed or what he was wearing there at the
8 motel?

9 A I don't -- I think jogging pants, but I
10 don't remember.

11 Q Do you know what color they might have
12 been?

13 A Gray.

14 Q When you registered at the motel, you
15 registered for two guests; is that correct?

16 A Yes, sir.

17 Q That was you and Dustin?

18 A Yes, sir.

19 Q And you used his car license plate and his
20 car?

21 A Yes, sir.

22 Q Is that correct? Who had the key in their
23 possession the whole time?

24 A Dustin.

25 Q Okay. Were you aware or did you know he

1 had left Anique Pittman's to go back to the Seashore to
2 get that stuff?

3 A Yes. Yes.

4 Q How did you know that?

5 A Because he told me.

6 Q And you got information that he'd been
7 arrested?

8 A Yes.

9 Q Is that right?

10 A Yes.

11 Q Now, you have been to court before; is that
12 correct?

13 A Yes, sir.

14 Q And I have actually prosecuted you before,
15 haven't I?

16 A I don't think so.

17 Q Okay. Let me go over your criminal
18 convictions in the last 10 years.

19 A Okay.

20 Q And tell me if I'm right: You were
21 convicted of misdemeanor larceny in January of 2006; is
22 that correct?

23 A I guess, yeah. I don't -- I don't remember
24 that far back.

25 Q Okay. Convicted of possession of Schedule

1 IV controlled substance in 2006?

2 A Yes.

3 Q Convicted of another count of possession of
4 Schedule IV controlled substance in 2006?

5 A Yes.

6 Q Schedule IV, what would that be?

7 A I don't know. Pills, maybe.

8 Q Okay. Convicted of misdemeanor larceny in
9 2006?

10 A Yes.

11 Q Okay. All these things drug-related?

12 A I guess, yeah. Yeah. I was high when I
13 committed them so, yeah.

14 Q Forgery in April 2007?

15 A Yes.

16 Q DWI in 2009?

17 A Yes.

18 Q Simple assault in 2008?

19 A Yes.

20 Q Larceny by cutting off one of those tags in
21 the store?

22 A Yes.

23 Q 2011?

24 A Yes.

25 Q Serve time for that?

1 A Yes.

2 Q Feloniously possessing Schedule I

3 controlled substance in 2007?

4 A Yes.

5 Q Was that heroin?

6 A Yes.

7 Q And you pled guilty in this case to the
8 Class-F felony of possession of precursor chemical to
9 create Methamphetamine; is that correct?

10 A Yes.

11 Q And you agreed to plead guilty to that
12 early on with your lawyer, Mr. Suggs; is that right?

13 A Yes.

14 Q Okay. And in August, Mr. Suggs talked to
15 you about possibly testifying at Dustin Warren's trial?

16 A Yes.

17 Q Is that correct?

18 A Yes.

19 Q Did you agree to do that?

20 A Yes.

21 Q Okay. Did you receive any particular
22 promise of leniency or anything else in exchange for
23 your testimony?

24 A No, none other than two of my -- the two
25 C-felonies were going to get dropped.

1 Q They were going to get dropped anyway,
2 right?

3 A Right.

4 Q Okay. Anything additional promised to you
5 besides letting you plead to that and possibly taking
6 active prison time?

7 A No, nothing other than it would be -- it
8 would look better on me. I mean, it would be in my
9 favor.

10 Q Okay. Were you told that if you testified
11 it would be relayed to the Judge that you cooperated, in
12 another trial, and he could take that in consideration?

13 A Yes.

14 Q Okay. But no specific promise whatsoever
15 about any reduction in sentence or any probation or
16 anything like that about your -- for your testimony?

17 A No.

18 Q Is that right?

19 A No.

20 Q Okay. The time you were in this room at
21 the Seashore, were you high during this time?

22 A Yes.

23 Q And how often do you have to take Meth if
24 you're a Meth addict?

25 A You don't have to have it. It's not

1 something you have to have. You just want it. It's a
2 mind thing.

3 Q A craving?

4 A Yeah. No, no. It's a mind thing. It's
5 like you're telling yourself you want it, but you don't
6 need it.

7 Q Okay. And during the period we talked
8 about here, and even two or three days before, how often
9 had you taken Methamphetamine during that period of
10 time?

11 A I was doing it every day for probably six
12 days, seven days.

13 Q And what effect does it have on you?

14 A Kept me up the whole time.

15 Q Did you sleep at all?

16 A No.

17 Q And that allows you -- is that fun? Is
18 that --

19 A It was at the time. I mean, not -- I don't
20 know. It's -- it's -- I can't describe it.

21 Q Okay. Obviously, you haven't had any in
22 the last seven months?

23 A No.

24 Q Okay. You decide to turn yourself in,
25 what, two days after this happened? Two or three?

1 A Three days.

2 Q Okay. Where had you stayed during that
3 other period of time where you were on the run?

4 A At a friend's house.

5 Q Okay. Trying to avoid being arrested?

6 A Yeah.

7 Q Okay. When is the last time you served
8 prison time before you got picked up on this?

9 A 2011.

10 Q Okay. So you knew what it was like?

11 A Yes.

12 Q Do you know what it's like over there?

13 A Yes.

14 Q You didn't want to go back?

15 A No.

16 Q Okay. Had you ever seen anyone cook Meth
17 before this day in the Seashore Motel?

18 A Yes.

19 Q Okay. Who is that?

20 A Dustin.

21 Q Okay. And do you know how to make a Meth
22 lab or make -- or make your own Methamphetamine?

23 A No.

24 Q If you knew how to do it yourself, would
25 you do it yourself?

1 A No. I probably wouldn't ever learn,
2 because -- no.

3 Q If you wanted Methamphetamine, how would
4 you get it?

5 A Go buy it.

6 Q Okay. Was there some sort of Meth lab
7 going on at Anique Pittman's house also?

8 A Yes.

9 Q And who had set that one up?

10 A Mark Thomas.

11 Q So there was one at the Seashore and one --
12 you-all went to another one at Anique's house?

13 A Yes.

14 Q Was it -- they were making it while you
15 were there?

16 A Yes.

17 Q And did you help clean that up after you
18 learned that Dustin had been arrested?

19 A The little bit that was left of it, but
20 they cleaned up the majority of it.

21 Q Okay. And the cops never showed up at
22 Anique's house, did they?

23 A No.

24 Q Okay. And the first time they -- the first
25 time Officer Prior knew about that Meth lab at Anique's

1 house was when you told him in August; is that right?

2 A Yes.

3 Q Okay. How long did it take you-all to set
4 up the lab at the Seashore?

5 A I don't even remember. 45 minutes, maybe.

6 Q Okay. Did you do any of the gluing, the
7 glue gun stuff at all?

8 A No, no.

9 Q Did you watch it being done?

10 A No.

11 Q Did you care how it was being done?

12 A No.

13 Q Okay. You basically just paid half of the
14 room?

15 A Yeah. Yes, sir.

16 Q And wanted some of the product?

17 A Yes, sir.

18 Q Okay. Had you ever purchased like,
19 pseudoephedrine pills or pseudoephedrine for Dustin
20 Warren in the past?

21 A Yes, sir.

22 Q And for doing that, what did you receive
23 for doing that?

24 A Some of the Meth.

25 Q From him?

1 A Some of the Meth.

2 Q Is it illegal to buy a lot of

3 pseudoephedrine at the same time?

4 A Yes. You're not -- you're not allowed to
5 buy more than one box at a time.

6 Q Okay. So getting several people to buy
7 boxes is the way to go?

8 A Yes.

9 Q And you had done that?

10 A Yes.

11 Q You know Brandon Hobbs?

12 A Yes.

13 Q Who is that?

14 A His brother. Dustin's brother.

15 Q And does he manufacture Meth?

16 A Yes.

17 Q Tight little community, isn't it?

18 A Yes. It's a little circle.

19 Q If you're a Meth addict, you needed to know
20 who has it, right?

21 A Yes.

22 Q And if you're a Meth addict or any other
23 addict, that's the driving force of your life, isn't it?

24 A Yes. Where to find it.

25 Q Even more than your children?

1 A Yes.

2 Q Everything?

3 A Yes.

4 Q When you were interviewed by Detective
5 Prior, did he videotape that interview with you?

6 A Yes.

7 Q You're crying a little bit?

8 A A little bit.

9 Q Thinking about your kids?

10 A Yes.

11 MR. SPENCE: That's all I have at this
12 time.

13 THE COURT: Cross-examination, Mr. Fulcher.

14

15 **CROSS-EXAMINATION**

16 BY MR. FULCHER:

17 Q Ms. Kennon, you know more about making Meth
18 than you're putting on, don't you?

19 A No.

20 Q You live on White Oak Drive?

21 A No.

22 Q You ever lived there?

23 A Have I ever lived there?

24 Q Yeah.

25 A I lived there for like, two months with

1 Josh Dixon.

2 Q You live near White Oak Drive?

3 A On Hibbs Road. Yes. I live on K7 Lane.

4 Q Do you know a Josh Dixon?

5 A Yes.

6 Q You've been associated with Josh?

7 A Back in the summer of 2011.

8 Q Mr. Dixon's known to be dealing with Meth
9 too, doesn't he?

10 A Yes.

11 Q Do you know Billy and Ryan Crank?

12 A No. I have heard of them, but I don't know
13 them.

14 Q Do they live close to where you live?

15 A No. I don't know. I don't know where they
16 live.

17 Q And all these -- you know Brandon Hobbs?

18 A Yes.

19 Q All these people that you're listing, they
20 have been known to manufacture Meth, deal with Meth,
21 haven't they?

22 A Yes.

23 Q How about a Cody Wilderman(phonetic)?

24 A Who?

25 Q Cody Wilderman?

1 A Yes.

2 Q He's associated with Meth labs as well?

3 A I don't know if he's associated with them
4 but I know he does it.

5 Q You know all these people, don't you?

6 A Yes.

7 Q And you've been associating with them?

8 A Yes.

9 Q Now, on the night of January the 27th, you
10 were staying at the DoubleTree, you said?

11 A The night of what?

12 Q January the 27th.

13 A Yes.

14 Q And you said you stayed there -- you were
15 going to plan to stay there three nights?

16 A Yes.

17 Q Okay. Do you work anywhere?

18 A (Witness shook her head.)

19 Q How were you affording to stay there?

20 A Somebody got me a room there.

21 Q You stayed the night with Michael Pearson?

22 A construction worker named Michael Pearson?

23 A I don't know. I don't know who that is. I
24 may have been, but I don't remember. I don't remember
25 him. I don't remember his name.

1 Q But you were staying there and getting
2 high?

3 A Yes.

4 Q And somebody else was paying for it?

5 A Yes.

6 Q Okay. Was Michael Pearson the one paying
7 for it?

8 A I don't remember his name, but he worked at
9 the DoubleTree.

10 Q Is he the security -- actual security
11 worker there?

12 A I'm not sure what he does there.

13 Q Okay. So you were staying there, and you
14 planned to stay there three nights. You said that's
15 where you met Dustin?

16 A That's where we met up. I knew him before
17 this.

18 Q Wasn't Dustin staying there with a friend?

19 A Yes.

20 Q And it was a high school friend that he had
21 known from school?

22 A Okay.

23 Q Actually, you met him outside when you went
24 to smoke a cigarette, didn't you?

25 A Outside?

1 Q You can't smoke in DoubleTree, can you?

2 A No, but we did. We smoked out the sliding
3 glass doors to outside.

4 Q And that's when you first met him, wasn't
5 it?

6 A No, I have known -- I've known Dustin.

7 Q I'm talking about on this particular night,
8 on the night of the --

9 A I don't -- I don't remember. No, no.

10 Q You didn't go there together, did you?

11 A No.

12 Q Okay. This is the first time you came
13 into -- encountered him that night?

14 A When?

15 Q Outside smoking at the DoubleTree?

16 A I don't remember. I don't remember.

17 Q Now, in your statement you wrote, you said
18 that you began mixing components there -- I think in
19 your statement that you made to the officer you began
20 mixing components for your Meth at the DoubleTree?

21 A Yes.

22 Q Okay. And you needed a cold pack?

23 A Huh?

24 Q And you needed a cold pack?

25 A Yes, I guess he did.

1 Q Okay. Well, this was on Atlantic Beach?

2 A Yes.

3 Q Okay. Now, then you said that you went to
4 Heather Kennon's[sic] house, but weren't the bridges
5 closed that night?

6 MR. SPENCE: Objection. That is Heather
7 Kennon.

8 MR. FULCHER: Oh, excuse me.

9 THE COURT: Ask your question again.

10 BY MR. FULCHER

11 Q On that night, you said you were mixing
12 components and you needed a cold pack?

13 A Uh-huh.

14 Q And then did you say that you needed to go
15 to Cassie Flowers' house? Where does Cassie Flowers
16 live?

17 A In Morehead.

18 Q And you-all were at Atlantic Beach,
19 correct?

20 A Yes.

21 Q Well, wasn't the bridge closed that night
22 for ice?

23 A I don't think -- no, it was -- it had just
24 started snowing when we had went -- or I don't know. I
25 don't know.

1 Q You're not real sure, are you?

2 A No, I'm not. I don't remember if the

3 bridge is closed or not at that time, but I know it's
4 closed the next day.

5 Q And so you say you left the DoubleTree and
6 went to the Seashore to finish --

7 A Yes.

8 Q -- making Meth? Now, you said you went
9 directly to the Seashore, didn't you?

10 A No, we didn't. We stopped at like, one
11 person's house, or maybe two peoples' house. I don't
12 really remember. I don't recall.

13 Q Do you remember stopping at Lisa Turner's
14 house?

15 A Yes.

16 Q Talking to Richard Willis?

17 A A guy named who?

18 Q Richard Willis?

19 A No.

20 Q And then you remember staying there for
21 maybe an hour, hour and a half?

22 A No.

23 Q Don't remember any of that?

24 A No.

25 Q So you said you go to the Seashore Motel.

1 You checked in, didn't you?

2 A Yes.

3 Q Put your name on the --

4 A Yes.

5 Q You didn't have any driver's license?

6 A Yes, I had an ID. I didn't have a driver's
7 license.

8 Q You don't have an automobile, right?

9 A No.

10 Q So you had to have -- you had to have
11 Dustin's car, be able to put on there?

12 A His plate number.

13 Q So you checked -- do you remember what time
14 you checked in that morning?

15 A I don't really remember. Maybe 11:00
16 something, 12:00 something.

17 Q Okay. And you said during this whole time,
18 that you had some Meth materials that you were driving
19 around in the car with?

20 A Yeah.

21 Q Okay. Didn't that bother you any?

22 A Not at the time. I was high.

23 Q So your testimony is that you don't
24 remember how long you stayed at these houses before you
25 went to the Double -- to the Seashore Motel, Seahorse

1 Motel, but you remember pulling up, giving your ID,
2 going in, registering?

3 A Yeah.

4 Q And it was your intention to stay there, is
5 what you're saying?

6 A I thought -- yeah, I thought that was the
7 plan, but then it got -- it was cold in there.

8 Q Okay.

9 A So we couldn't stay.

10 Q You went up to the office and asked on
11 several occasions to, you know, "Can we get a heat" --
12 right? And they told you you couldn't have it?

13 A No, I went up there once, I think, and then
14 Dustin flagged the woman down as I was walking outside.
15 I saw her once.

16 Q And you didn't ever -- and say you want
17 another room or another place where it was warmer?

18 A I don't remember.

19 Q Okay. Do you remember Dustin sitting out
20 -- Dustin -- you went into the room, and you said it was
21 cold. Do you remember Dustin sitting out in the car
22 where it was warm, waiting to get everything, get you
23 situated into the room?

24 A No.

25 Q He never sat out in the car?

1 A No.

2 Q So not the Manager --

3 A We went in at the same time.

4 Q Okay. So is it possible that the maid made
5 just a mistake in seeing Mr. Warren sitting out in the
6 car for long periods of time?

7 A I guess, because Dustin never sat in the
8 car.

9 Q Did the two of you ever sit in the car
10 while it was running out there?

11 A I don't know. I don't think so.

12 Q So the maid and the Manager, if they said
13 they saw you sitting out there, they would have been
14 mistaken?

15 MR. SPENCE: Objection to the argument.

16 THE COURT: Sustained.

17 BY MR. FULCHER:

18 Q Do you remember a time when the Manager,
19 Mr. -- well, the actual Manager came in, Scott Way, and
20 brought you some blankets?

21 A No. He may have, but I don't remember.

22 Q You don't remember. Okay. Well, you
23 testified earlier that there were these things being
24 made in the room. You said it did leave a smell, like a
25 chemical smell?

1 A Yes.

2 Q And you certainly smelled it?

3 A It was a little bit strong, yes.

4 Q Okay. All right. So did you and Dustin
5 leave a couple times and go to the store and get drinks,
6 something to eat?

7 A I left. I don't think Dustin left.

8 Q Dustin didn't go with you?

9 A No.

10 Q So once again, if the Management claimed
11 they saw both of you --

12 MR. SPENCE: Objection to the argument.

13 THE COURT: Let him finish the question.

14 BY MR. FULCHER

15 Q So they both would be mistaken?

16 MR. SPENCE: Objection.

17 THE COURT: Overruled. If she knows.

18 THE WITNESS: I don't know. I don't
19 remember. I don't -- I mean, I'm pretty sure. Because
20 they didn't see us leave until we left for the good --
21 for good that day.

22 BY MR. FULCHER:

23 Q Okay. So you said that -- in the room was
24 very cold?

25 A Yes.

1 Q Didn't Dustin -- do you know where Dustin
2 lives?

3 A He was staying with some woman. I don't
4 really know where it's at or anything about it, really.

5 Q Did he invite you back to her house that
6 night because it was too cold and you had a place to
7 stay?

8 A No.

9 Q He never invited you back to there?

10 A No.

11 Q But did you leave the motel and go to
12 Anique's house?

13 A Yes, yes.

14 Q And Dustin went on and went to bed, didn't
15 he? Went to sleep?

16 A Not as soon as we got there, but a few
17 hours after we got there, yes.

18 Q Did you stay with Mark Thomas?

19 A No, I stayed at Anique's.

20 Q I mean, did you ever spend any time with
21 Mark Thomas that day?

22 A No.

23 Q You never spent any time in Dustin's
24 automobile with Mark Thomas that day?

25 A No.

1 Q Leave the window down and --

2 A No.

3 Q Okay. And so you're testifying that you
4 were at Anique Pittman's, and they were continuing to
5 make Meth and party, but Dustin wasn't around for any of
6 that, was he?

7 A He helped control that Meth lab, because it
8 had done something, it started smoking or something and
9 he went out there and fixed it. I was in the bedroom
10 and he was -- it was going on in the living room.

11 Q Were you ever in a relationship with
12 Mr. Warren?

13 A No.

14 Q Did you ever write Mr. Warren a letter and
15 tell him that you would -- you had to defend him and
16 make sure that everything was --

17 A Yes, I did. That was when my mind was
18 still cloudy from the drugs.

19 Q You never wrote him a letter to tell him
20 that you got his back, and that you care about him and
21 you had a good time with him and make sure nothing
22 happened to him?

23 A Yes, I did.

24 Q Okay.

25 MR. SPENCE: You got them?

1 MR. FULCHER: I got them.

2 MR. SPENCE: I haven't seen it before.

3 MR. FULCHER: I just received a copy from
4 Mr. Warren.

5 THE COURT: Well, you're not going to use
6 it now. Give it back to him.

7 MR. SPENCE: I ask that the testimony be
8 stricken then.

9 THE COURT: Ladies and Gentlemen, the
10 recent questioning about a letter is not to be
11 considered by you. Strike it from your memory.

12 BY MR. FULCHER

13 Q Now, Mr. Spence asked you some questions
14 about your criminal record. You have -- you pled guilty
15 to felony possession, right, back in 2007?

16 A Yes.

17 Q Okay. And larceny by an anti-inventory
18 device where you --

19 A Yes.

20 Q One of those things?

21 A Yes.

22 Q So I don't need to be going over this
23 again. It's been asked and answered. You've certainly
24 got a criminal record, right?

25 A A little bit.

1 Q A lot of these charges were for dishonesty?

2 MR. SPENCE: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: Only a couple times.

5 BY MR. FULCHER

6 Q Misdemeanor -- but you do -- misdemeanor
7 larceny, taking something that weren't yours?

8 A Yes.

9 Q Larceny by anti-inventory, failure to
10 return rental property?

11 A Okay.

12 Q Intoxicated and disruptive?

13 A I have never had any of those charges.

14 Q Never been convicted of any of those?

15 A I have never been convicted of intoxicated
16 and disruptive. Never.

17 Q You are Heather Diane Kennon?

18 A Yes, sir.

19 Q And lived at -- sometime -- or birthday of
20 July -- June 23rd, 1985?

21 A Yes.

22 Q You weren't, in January of 2008, convicted
23 of intoxicated and disruptive?

24 A I don't believe so. I may have been, but I
25 don't remember.

1 Q You said you didn't -- you got an ID, but
2 you don't have a driver's license, do you?

3 A Yes.

4 Q Is that the reason why, because you failed
5 to submit medical reports?

6 A Yes.

7 Q Failure to submit your substance abuse
8 evaluation --

9 MR. SPENCE: Objection, if these are
10 convictions or what.

11 THE COURT: I haven't heard the question.

12 BY MR. FULCHER

13 Q My question, she didn't have a driver's
14 license?

15 A No.

16 Q And my question was, why does she not have
17 a driver's license?

18 A Because I didn't go through with the
19 classes for the DUI.

20 Q Those classes would be substance abuse
21 evaluation?

22 A Yes. I done the substance abuse
23 evaluation, but I didn't do the classes itself.

24 Q And you didn't submit your medical report
25 that was requested by the Court?

1 A Right.

2 Q Okay. You ever been red-flagged in a
3 hospital?

4 MR. SPENCE: Objection.

5 THE WITNESS: What does that have to do
6 with this?

7 THE COURT: Sustained.

8 BY MR. FULCHER:

9 Q Do you know Mr. Brandon Elps?

10 A Yes.

11 Q Did you have a relationship with him?

12 MR. SPENCE: Objection. What relevance to
13 this case?

14 THE COURT: Overruled. Bring it together.

15 BY MR. FULCHER

16 Q You ever had any kind of relationship with
17 him?

18 A Yes.

19 THE COURT: She's already answered that.

20 BY MR. FULCHER

21 Q Have you -- were you evicted -- did you
22 have him arrested on a couple of occasions?

23 MR. SPENCE: Objection.

24 THE COURT: Sustained.

25 BY MR. FULCHER

1 Q Ms. Kennon, it wasn't until like, in August
2 that you decided that you were going to testify

3 against him?

4 A Yes.

5 Q That was after you got that plea offer; is
6 that correct?

7 A Yes.

8 Q Up to that point, you planned to go to
9 trial with it?

10 A No.

11 Q But at that point, you hadn't decided you
12 were going to testify against him?

13 A No.

14 Q It was only after you received the plea
15 bargain that you decided that you would sign the
16 agreement and testify?

17 A No. When I was told that he was trying to
18 put it all on me, I decided to testify.

19 Q And during that -- part of -- you had to
20 testify truthfully --

21 A Yes.

22 Q -- against him? And completely, I believe
23 is what the word is?

24 A Yes.

25 Q This plea bargain pretty-much gives you the

1 power to testify to pretty-much anything against him,
2 doesn't it? He gets some immunity?

3 MR. SPENCE: Objection to that phrase.

4 THE COURT: Sustained.

5 BY MR. FULCHER

6 Q You never sold any drugs before --

7 MR. SPENCE: Objection.

8 THE COURT: Sustained.

9 THE WITNESS: No.

10 THE COURT: Ask her what she's been
11 charged, tried and convicted of in the past 10 years for
12 which the maximum punishment exceeds 60 days in jail.

13 MR. FULCHER: Your Honor, I don't have any
14 other questions.

15 THE COURT: Do you have any redirect?

16 MR. SPENCE: I do.

17

18 **REDIRECT EXAMINATION**

19 BY MR. SPENCE

20 Q You have been an addict for how long? An
21 active addict?

22 A Almost 10 years. Around 10 years.

23 Q And during that period of time, Heather,
24 have you --

25 THE COURT: Hold on. Let her repeat that.

1 I don't think the jury heard.

2 THE WITNESS: Around 10 years.

3 BY MR. SPENCE

4 Q Have you been able to hold down a job or a
5 career during that period of time?

6 A Once. Once or twice.

7 Q What kind of work?

8 A Hotel work, housekeeping.

9 Q Okay. How do you support your children?

10 A My mom does it. My mom and her grandma
11 does it. Brianna's grandma does it. I don't.

12 Q Addiction has kept you out of the
13 employment arena?

14 A Yes.

15 Q Kept you in jail?

16 A Yes.

17 Q Kept you away from your kids?

18 A Yes.

19 Q All for the addiction to a powder?

20 A Yes.

21 THE COURT: I think this is outside the
22 scope of cross-examination.

23 MR. SPENCE: Well, I'm going to --

24 BY MR. SPENCE

25 Q Now, you -- Mr. Fulcher asked you about the

1 DoubleTree and staying over there for three nights and
2 about these men. Have you ever -- how do you buy your

3 Meth if you don't have jobs? How do you get it?

4 A Well, my ex-boyfriend was helping me get
5 it. Nada, he would help me buy it.

6 Q Okay.

7 A Or I'd buy a box of Sudafed for people and
8 they'd give me some in exchange.

9 Q Okay. Have you ever done other things to
10 get to feed your addiction?

11 A Yes.

12 Q Have you ever done things you're not proud
13 of?

14 A Yes.

15 Q Ever had sex just to get the drugs?

16 A Yes.

17 Q Takes you down pretty far, doesn't it?

18 A Yes.

19 Q Was there anything you wouldn't do to get
20 some Meth?

21 A No.

22 Q If you could make all the Meth you wanted
23 yourself, you'd probably do it?

24 MR. FULCHER: Objection, leading.

25 THE COURT: Sustained.

1 MR. SPENCE: That's all I have.

2 THE COURT: Recross on the basis of that

3 redirect?

4

5

RECROSS-EXAMINATION

6

BY MR. FULCHER

7

Q You don't have custody of any of your

8

children, do you?

9

A No.

10

MR. FULCHER: I don't have any more

11

questions.

12

THE COURT: You may stand down.

13

(The witness stepped down from the witness

14

stand.)

15

THE COURT: Further evidence from the

16

State?

17

MR. SPENCE: Judge, at this point, subject

18

to rebuttal evidence, that would be the evidence for the

19

State.

20

THE COURT: Members of the Jury, all the

21

evidence has been presented by the State. And at this

22

time, I'm required to take up a matter involving a

23

question of law. And for that reason, I'm going to

24

excuse you probably just out to the back of the

25

courtroom while I take that up. Do not yet allow your

1 minds to be made up. Don't discuss it among yourselves.
2 Don't form any or express an opinion about the guilt or
3 innocence of the defendant.

4 All right. Sheriff, show them outside.

5 SHERIFF: Yes, sir.

6 (The jurors exited the courtroom.)

7 THE COURT: Let the record reflect that all
8 jurors are out of the courtroom.

9 Mr. Fulcher, I would not permit the use of
10 that letter because I note from the file that in
11 February of 2014, the State answered your request to
12 discovery and made a request for reciprocal discovery.

13 I know that you say that you just got that
14 letter today, but I want your client to know that this
15 is not trial by ambush. That if he had that letter,
16 he -- and he wanted to use it, he was required to turn
17 it over to the State before the trial began.

18 That having been said, the Court will now
19 consider any request or motion from the defendant to
20 dismiss at the end of the State's case.

21 MR. FULCHER: Your Honor --

22 THE COURT: Let me hear you, please, sir.

23 MR. FULCHER: Your Honor, I would make a
24 motion to dismiss the case at this point. You've heard
25 the whole State's case, and I don't think the State has

1 made the necessary requirements to prove beyond a
2 reasonable doubt --

3 THE COURT: Well, then again, it's not
4 beyond a reasonable doubt at this time.

5 MR. FULCHER: Excuse me. Meet the
6 necessary requirements to move forward, even handed over
7 to a jury, based upon the elements of conspiracy,
8 possession of a precursor, and manufacture at this
9 point.

10 Just heard evidence that my client was with
11 this lady and at the room. We have not heard any
12 manufacturing. We haven't heard any production. We
13 haven't seen any distributing of any of those things.
14 No agreement to do these things that was premeditated
15 before.

16 I would certainly make my motion at this
17 point.

18 THE COURT: All right. Do you wish to be
19 heard?

20 MR. SPENCE: No, sir. I don't.

21 THE COURT: All right. The motion at the
22 end of the State's case to dismiss the three counts
23 against the defendant shall be and the same is hereby
24 denied.

25 Do you anticipate evidence for and on

1 behalf of the defendant, Mr. Fulcher?

2 MR. FULCHER: We do.

3 THE COURT: All right. Mr. Warren, if you
4 would please stand, sir.

5 (The defendant complies.)

6 THE COURT: This is the time when you would
7 have the opportunity to present evidence which might
8 include calling of certain witnesses. It might also
9 include your testifying. Do you understand those
10 things?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If you desire to testify,
13 there's nobody in this courtroom that can prevent you
14 from doing that; do you understand?

15 THE DEFENDANT: I understand.

16 THE COURT: Also, if you desire not to
17 testify, there's nobody in the courtroom that can make
18 you testify; do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you do testify, you
21 understand that you would be subjected to
22 cross-examination by the State and inquiry into the
23 matters involving what we're here for, as well as any
24 prior criminal history?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And that having been said, is
2 it your desire to testify at this time?

3 THE DEFENDANT: I haven't made up my mind
4 yet. I want to see how strong my case is. I might not
5 need to.

6 THE COURT: Okay. All right. And I think
7 a wise person would make that decision after they've
8 conferred with counsel and, of course, during the time
9 that you're presenting evidence --

10 THE DEFENDANT: Yes, sir.

11 THE COURT: -- you can be conferring with
12 him about that at that time. You don't have to make
13 that decision at this time.

14 THE DEFENDANT: I understand.

15 THE COURT: All right. Anything further
16 from the State before we bring the jury back?

17 MR. SPENCE: Is there going to be evidence?

18 MR. FULCHER: Yes.

19 THE COURT: Okay. All right. Are you
20 prepared at this time?

21 MR. FULCHER: Yes.

22 THE COURT: All right. Sheriff, bring your
23 jury back.

24 MR. SPENCE: Who are you going to call
25 first?

1 MR. FULCHER: Lisa Gill Turner.

2 MR. SPENCE: Did you give me a list of your
3 witnesses and your --

4 MR. FULCHER: I gave those to Nancy last
5 week.

6 MR. SPENCE: Okay.

7 THE COURT: Wait down there until the jury
8 comes back, please.

9 WOMAN: Oh.

10 MR. SPENCE: Going to call Mark Thomas?

11 MR. FULCHER: I do not know if Mark Thomas
12 had been writted back or Cassie Flowers either. But I
13 plan to call Lisa -- Richard Willis, and Anique Pittman.
14 All the other ones I am certain are here to testify.

15 MR. SPENCE: Would you give me Richard
16 Willis's date of birth?

17 MR. WILLIS: 1/27/73.

18 (The jurors entered the courtroom and took
19 their seats in the jury box.)

20 THE COURT: Let your record reflect all
21 jurors have returned to the courtroom.

22 Will there be evidence for the defendant,
23 please, Mr. Fulcher?

24 MR. FULCHER: There will be.

25 THE COURT: Please call your first witness.

1 MR. FULCHER: I call Lisa Hill Turner.

2 THE COURT: Okay. Ms. Turner.

3 THE CLERK: Left hand on the Bible, raise
4 your right, please.

5 (The witness was duly sworn.)

6 THE COURT: Make yourself comfortable,
7 please, ma'am.

8 (The witness took the witness stand.)

9 THE COURT: You may inquire.

10

11 **LISA HILL TURNER,**

12 having been first duly sworn, at 11:55 a.m. was called as
13 a witness on behalf of the Defendant and testified as
14 follows:

15

16 **DIRECT EXAMINATION**

17 BY MR. FULCHER

18 Q Please state your name.

19 A Lisa Hill Turner.

20 Q And where do you currently reside?

21 A 208 Forest Knoll Drive in Atlantic Beach,
22 North Carolina.

23 Q And do you -- how do you know the
24 defendant, Dustin Warren?

25 A His stepfather was a good friend of mine

1 for about 30 years, and I met him through him, and we
2 did a lot of corresponding, wrote a lot. He was -- he
3 was living in another state, and we did a lot of writing
4 to each other. And he's made a bunch of pictures for me
5 and, you know, we kind of sit there, out, and talk about
6 art and always trying to figure out some kind of
7 business to go in where we could make some money with
8 his art and doing T-shirts and, you know, trying to find
9 some niche where we can hit it and make a killing.
10 Because he's real smart as far as marketing and stuff.

11 Q I want to direct your attention, just to
12 kind of narrow the testimony, to January the 28th, 2014.

13 A Yes, sir.

14 Q Were you home that day?

15 A Yes, I was at home.

16 Q Were you at home all day?

17 A Yes. I'm disabled, so I stay at home a
18 lot. And I was in a bad car wreck so I spend a lot of
19 time asleep, so I sleep most of the time.

20 Q Okay. Did you happen -- did Dustin happen
21 to come by your house that day?

22 A Dustin came by.

23 Q Do you know what time of day it was?

24 A It was around 10-ish, 10:30. It was at
25 night.

1 Q Okay.

2 A And so he knocked on the door. I said,

3 "Who is it?" I said, "Well, come on in."

4 And so he came in. And I don't know, I
5 just hugged and kissed him, and just laid back down on
6 the bed, because that's the way he's used to seeing me,
7 with my television on, watching Turner Classic Movies.
8 And Country was with me. Country is Richard Willis.

9 And so he went back in the living room and talked to
10 him, and then I went on back to sleep during the movie.
11 And then a couple --

12 Q I don't mean to interrupt you. Was there
13 anybody else with Dustin?

14 A Yeah. He had -- there was a girl; I saw
15 her behind him. But I didn't -- I don't even remember
16 if they introduced me or not.

17 Q Did she come in the house with him?

18 A Oh, I was in my bedroom and I just stayed
19 in my bedroom. I didn't get up. And they went in the
20 living room where my other roommate is and sat and
21 talked to Country until about -- I reckon about
22 1`o'clock, I believe.

23 Q How many hours were they approximately
24 there?

25 A 11:00, 12:00, about two -- two or three

1 hours, from what I understand.

2 Q Did you have any discussions with Dustin
3 that night?

4 A No.

5 Q Did you ever talk -- so you never talked
6 about maybe refresh -- did you ever talk about art?

7 A Oh, yeah. Yeah. We were talking about his
8 artwork, because he -- well, he did show her some stuff
9 he'd made that I have got hanging on the wall that he
10 sent me, because he did a really good Keith Richards
11 picture for me, and I'm a big Rolling Stones fan. So we
12 did talk about that.

13 Q So he was there for quite a while?

14 A Yeah. As far as I know. I was -- they
15 were back in the living room. And, yeah. Because you
16 have to walk through my -- how I know they were there is
17 you have to walk through my room to get to the bathroom.

18 Q Okay. The young lady that testified before
19 you, Heather Kennon --

20 A Yes.

21 Q -- did you recognize her?

22 A No, I didn't.

23 Q Okay.

24 A But I don't recognize a lot of people. I
25 used to own a bar.

1 THE COURT: Just --

2 THE WITNESS: Okay.

3 THE COURT: -- if you recognized her.

4 BY MR. FULCHER

5 Q That's all you can definitely say, that he
6 we definitely there that night for around two or three
7 hours?

8 A Yes. And I talked to Country about it and
9 that's what he was telling me.

10 THE COURT: No, no. He just asked you
11 if --

12 MR. FULCHER: That's all.

13 THE COURT: -- there for two or three
14 hours.

15 THE WITNESS: Yes.

16 THE COURT: Don't answer anything other
17 than what he asks you.

18 THE WITNESS: Okay. I'm sorry, sir.

19 BY MR. FULCHER

20 Q And as far as you know, they just left
21 after that, nothing --

22 A Yes. Yes. He came in and said "good
23 night."

24 MR. FULCHER: That's all the questions I
25 have.

1 THE COURT: Cross-examination.

2

3 **CROSS-EXAMINATION**

4 BY MR. SPENCE

5 Q What's that got to do with this case? Do
6 you know why you're here?

7 A Not really.

8 MR. SPENCE: Okay. I don't have any
9 questions.

10 THE COURT: You may stand down.

11 (The witness stepped down from the witness
12 stand.)

13 THE COURT: Call your next witness.

14 MR. FULCHER: Call Richard Willis.

15 (The witness was duly sworn.)

16 THE COURT: Make yourself comfortable,
17 Mr. Willis.

18 (The witness took the witness stand.)

19 THE COURT: You may inquire.

20

21 **RICHARD WILLIS,**

22 having been first duly sworn, at 11:59 a.m. was called as
23 a witness on behalf of the Defendant and testified as
24 follows:

25

DIRECT EXAMINATION

BY MR. FULCHER

1
2
3 Q Please state your name.

4 A Richard Willis.

5 Q And where do you reside?

6 A I live in Broad Creek right now.

7 Q Do you know Mr. Warren?

8 A Yes, sir.

9 Q How do you know Mr. Warren?

10 A I have known him from his brother and his
11 stepdad.

12 Q Okay. You heard Ms. Turner Hill testify
13 just a few minutes earlier about being over at the
14 house?

15 A Yes.

16 Q That night, slash, morning?

17 A Yeah. But it was more morning time than it
18 wasn't that night.

19 Q Did Dustin come there that day?

20 A Yeah. Yeah.

21 Q Okay. And did he have anybody with him?

22 A Yeah. He had the defendant over there.

23 Q And approximately how long did they stay
24 there?

25 A It weren't three hours. It was like a

1 couple hours.

2 Q Does Dustin confide in you?

3 A What does that mean?

4 Q Does Dustin confide in you?

5 A What do you mean?

6 Q Does he tell you -- tell you things?

7 A Oh, I mean, we talk a lot. I mean, you
8 know, we sit there and have conversations. I think I
9 was drinking beer and I think he was just -- he had
10 talked to Lisa and then come out there and talked to me.

11 Q Did he mention anything about having Meth
12 with him that night?

13 A No. Never. None.

14 Q Did he go out to the car and check
15 anything?

16 A No.

17 Q Okay. Did he state where he was going from
18 there?

19 A No, he sure didn't. Well, actually,
20 yeah --

21 MR. SPENCE: Objection to what the
22 defendant told him.

23 THE COURT: Sustained. Sustained.

24 THE WITNESS: Yes, he did.

25 THE COURT: Sustained. You cannot tell

1 what he said.

2 BY MR. FULCHER

3 Q He did come over?

4 A Yes, sir.

5 MR. FULCHER: Okay. I don't have any other
6 questions.

7 THE COURT: Have you got any questions?

8

9

CROSS-EXAMINATION

10 BY MR. SPENCE

11 Q You don't know what went on at that
12 SeaShore, do you?

13 A No.

14 MR. SPENCE: Okay. I don't have any
15 further questions.

16 THE COURT: Thank you, sir, Mr. Willis.

17 You may stand down. Call your next witness.

18 (The witness stepped down from the witness
19 stand.)

20 MR. FULCHER: Call Anique Pittman.

21 THE COURT: All right. Ms. Pittman.

22 (The witness was duly sworn.)

23 THE COURT: Make yourself comfortable,
24 please, ma'am.

25 (The witness took the witness stand.)

1 THE COURT: You may inquire, Mr. Fulcher.

2

3 **ANIQUE MICHELLE PITTMAN,**

4 having been first duly sworn, at 12:02 p.m. was called as
5 a witness on behalf of the Defendant and testified as
6 follows:

7

8 **DIRECT EXAMINATION**

9 BY MR. FULCHER

10 Q Please state your name.

11 A Anique Michelle Pittman.

12 Q Where do you reside?

13 A I live in Newport, 123 Croatan Drive.

14 Q How do you know Dustin Warren?

15 A I have known him for about four years.

16 He's my boyfriend.

17 Q Have you ever seen Mr. Warren do Meth?

18 A No, I have not.

19 Q Okay. Now, you heard testimony earlier
20 that he was at the DoubleTree the night before?

21 A Yes, sir.

22 Q Do you have any information on that?

23 A I do know about that. He was --

24 Q Excuse me. First, how do you know that?

25 A Well, he was at the house. He was -- he

1 stayed at my house as well. The girl -- can I say her
2 name? I know these girls. Anyway, she called. She was
3 in an abusive relationship the prior two nights before
4 through the middle of the night and she needed some
5 help. She needed somewhere to stay. And --

6 Q So she called you?

7 A She called Dustin. I didn't know her prior
8 to that. They -- high school friends. She needed
9 somewhere to stay.

10 MR. SPENCE: Objection. Who are we talking
11 about?

12 THE COURT: I have no idea.

13 BY MR. FULCHER

14 Q You were saying that somebody contacted
15 you -- who contacted you?

16 A This girl, Nicole, that he --

17 THE COURT: Did she call you?

18 THE WITNESS: She talked -- she called the
19 house where Dustin --

20 THE COURT: No. Did she call you?

21 THE WITNESS: No, sir.

22 THE COURT: Then she may not testify about
23 that telephone call.

24 BY MR. FULCHER

25 Q Okay. Was Dustin texting you that night?

1 A Yes, sir.

2 Q Okay. So you knew where he was at?

3 A Yes, sir.

4 Q When, if any time on the 29th, did -- let
5 me ask you, before we get to that point, you heard
6 Ms. Kennon testify earlier that all these people came
7 over to your house?

8 A Yeah.

9 Q That night?

10 A Uh-huh.

11 Q Did all these people -- was there a Mark
12 Thomas at your house?

13 A There was. Mark -- Mark was at my house.
14 Yes, sir.

15 Q Was he doing Meth that night?

16 A Not that I'm aware of. I picked him up.
17 Him and his wife were in an altercation. He had been
18 locked up prior, the week before, and they weren't
19 supposed to be together because he was locked up for a
20 domestic altercation with her.

21 So I picked him up, brought him to the
22 house. He stayed up -- the way my condo was laid out, I
23 have my bedroom, and then there's a hallway. And then
24 my room -- my living room was oceanfront, glass front,
25 ocean, with a balcony. He sat up there and there was an

1 extra bedroom. I told him he could have that room. He
2 had my laptop and stuff, and he was on the -- talking to
3 his wife and his mother.

4 Q He was there?

5 THE COURT: Ask another question.

6 THE WITNESS: But I was in my room.

7 BY MR. FULCHER

8 Q So he was -- was Dustin there?

9 A Dustin showed up. I had spoke with him
10 after I picked up Mark. I told him, because the roads
11 were bad, that I would contact him by the time I got to
12 the bridge and let him know, and he showed up to the
13 house about 15, 20 minutes after.

14 Q So he came there?

15 A Yes.

16 Q Was he high?

17 A Not that I know of. He came in, took a
18 shower, he ate and went to sleep.

19 Q Did he have Meth on him?

20 A No.

21 Q Was there -- were these people making Meth
22 then?

23 A No.

24 Q What were you-all doing there?

25 A We were doing nothing there. I mean, just

1 normal activity. I live there. I have a son that lives
2 at my house. I have a 13-year-old son. I mean, I would
3 not -- and I'm in a nice resort condo community. I
4 would not be making Meth with neighbors all around me.
5 That's ridiculous.

6 Q What, if anything, did Dustin do? Did
7 he -- after he came?

8 A He took a shower. I made him some hot dogs
9 and he went to sleep.

10 Q You were in the room with him?

11 A Uh-huh.

12 Q You didn't leave any --

13 A Did he -- did I get up and leave?

14 Q Did he?

15 A About 2`o'clock in the morning, he -- Mark
16 came in my bedroom, wake him up, said he needed a ride
17 somewhere, and Dustin told him he wasn't going anywhere.
18 He couldn't go anywhere. The roads were bad. And
19 that --

20 Q Did Dustin leave the next morning?

21 A He did leave the next morning. Mark came
22 and wake him up, said he needed a cigarette and there
23 was no cigarettes there. So -- and then Mark wanted
24 something to eat, they wanted, so they got in the car,
25 they left, went, and that was the last I seen of him.

1 Q Did you -- did you invite Mark to stay?

2 A I mean --

3 Q Make himself at home?

4 A Yeah. Yeah. I mean, I let him.

5 Q Was there -- did Heather -- that was -- did
6 she come there that night?

7 A I did not see Heather at my house at all.
8 I know that Dustin did tell me that she had --

9 MR. SPENCE: Objection to what Dustin told
10 her.

11 THE COURT: Sustained.

12 MR. FULCHER: Can't testify to what Dustin
13 says.

14 THE WITNESS: Okay. I mean -- okay. She
15 did not come up in my house. No, sir.

16 BY MR. FULCHER

17 Q So it's your testimony that you invited
18 Mark up to the house?

19 A Yeah. I picked Mark up and brought him to
20 my house.

21 Q And Dustin came over and spent the night?

22 A Yes.

23 Q And there was no drugs, no making,
24 manufacturing --

25 A Absolutely not. Absolutely not.

1 Q Came in, went to sleep. And you never laid
2 eyes on them?

3 A No, I did not.

4 Q The next morning when you woke up was
5 Dustin there?

6 A Excuse me?

7 Q The next morning when you woke up.

8 A Was Dustin there? Uh-huh. He was in bed
9 with me.

10 Q Okay. And so at any time did he leave?

11 A Through the night, no, sir.

12 Q Do you know why he left?

13 A That morning? Mark wanted to go to the
14 store to get cigarettes. Mark asked him to leave.
15 Other than that, he came in, wake him up. I mean, he
16 was dead asleep. I was asleep.

17 Q So Dustin --

18 A I mean --

19 Q To your knowledge, did he have anywhere
20 else he had to be?

21 A There was no plan of being anywhere else
22 but staying in the bed.

23 Q Were you aware that he had been at the
24 Double -- I mean, at the Seashore Motel?

25 A He -- I knew he had dropped her off there.

1 MR. SPENCE: Objection.

2 THE COURT: Sustained. The jury will

3 disregard.

4 BY MR. FULCHER

5 Q But you don't know anything else about it?

6 A No, sir. I don't know anything else.

7 Q How did you find out that he'd been
8 arrested?

9 A Mark, he called me.

10 Q What, if anything, did you do after you
11 found out?

12 A After he found out I was arrested?

13 Q That he was arrested.

14 A That I had sat there and tried to figure
15 out what was going on. Mark had called. I called Mark
16 back, spoke with him. He said --

17 MR. SPENCE: Objection to what he said.

18 THE COURT: Sustained.

19 MR. FULCHER: You can't say anything --

20 THE WITNESS: Okay. I'm sorry. I don't
21 understand that.

22 THE COURT: That's all right.

23 THE WITNESS: But I spoke with Mark, and
24 told me, and then I waited and -- and I got a phone call
25 and I was asked to come pick up his property from jail.

1 And I come, got his keys from his car, and went, picked
2 up his property, the car from the motel parking lot.

3 BY MR. FULCHER

4 Q Is it possible that Heather could have been
5 in the house --

6 MR. SPENCE: Objection --

7 THE COURT: Sustained.

8 BY MR. FULCHER

9 Q Did you look through your house?

10 A No, sir.

11 Q Okay.

12 A I mean, I was still laying in the bed.

13 Q Did you see anything out of the ordinary in
14 your house the next morning?

15 A No, not that I know of. No, sir. I mean,
16 I didn't really, you know, look around. Once I got a
17 phone call, I was laying in bed expecting to come back
18 with food from McDonald's, and I just went on, threw
19 some -- some clothes on and out the door.

20 BY MR. FULCHER

21 Q Did you ever contact Heather Kennon for
22 anything?

23 A I had spoken with her before she had turned
24 herself in, and then I did speak with her through one of
25 the -- one of the girls that she was locked up with I

1 know, and she had called me. Heather never called me.
2 And then I did go visit her one time when she was in
3 Craven.

4 Q Did she ever make any statements to you?

5 A The only statement she made, that she was
6 going to make sure that everything was -- you know, that
7 she was going to make sure everything was right and that
8 she would do the right thing and tell what she needed to
9 do, and --.

10 Q Did she ever say anything specific about
11 Dustin, about helping him out?

12 A Yes, she did, that she would help him out,
13 but that she would help, you know, make sure he was
14 clear, that it wasn't his stuff and she would make sure
15 that it was clear off of that.

16 Q When did she tell you that?

17 A I believe she told me that when I went to
18 see her in jail.

19 Q Where did you see her in jail at?

20 A Craven.

21 MR. FULCHER: I don't have anything else.

22 THE COURT: Cross-examination, Mr. Spence.

23

24

25

CROSS-EXAMINATION

BY MR. SPENCE

3 Q Okay. You're Anique Michelle Pittman?

4 A Yes, sir.

5 Q Is that right?

6 A Uh-huh.

7 Q Convicted of possession of Schedule III
8 controlled substance on April 29th, 2009?

9 A Of?

10 Q Is that you?

11 A I'm sorry. I didn't --

12 Q Possession of Schedule III controlled
13 substance?

14 A Misdemeanor. Yes, sir.

15 Q That's you?

16 A Yes, sir.

17 Q What was that drug?

18 A It was a Percocet.

19 Q Okay. You went to Craven County to talk to
20 Heather Kennon?

21 A I did. Yes, sir.

22 Q And you're his boyfriend?

23 A No, I'm his girlfriend.

24 Q Or your girlfriend. I'm sorry.

25 A Uh-huh.

1 Q So you care about him, don't you?

2 A Of course I do.

3 Q And you know what's going to happen if he
4 gets convicted, don't you?

5 A Do -- yeah. I mean, yes, of course.

6 Q He's not going to be your boyfriend
7 anymore, is he?

8 A Yes, he will be.

9 Q Okay. So you went there, and were you
10 talking to Heather to tell her what to say to help your
11 man out?

12 A No, I did not tell her nothing to say. And
13 I mean, it's recorded. It's a recorded conversation.

14 Q You recorded it?

15 A No, it is recorded through the -- through
16 the jail. It's a -- they have televised visits.

17 Q Okay. Was she a friend of yours?

18 A No, sir.

19 Q You didn't know her before that?

20 A No, I know of her. I met her a while back.
21 She was dating another person that I know probably
22 about -- while she was pregnant with one of her
23 children.

24 Q Who's Brandon Hobbs?

25 A That is Dustin's half-brother.

1 Q What's he involved in?

2 A He's arrested for a Meth lab.

3 Q Okay. So you went to visit a person in
4 Craven County jail who you barely even knew?

5 A Yeah. Well, she -- I had had conversations
6 between -- from jails that they were -- she was calling
7 me through someone else as well.

8 Q Okay. And you don't really know what you
9 saw that night at your house, do you?

10 A What do you mean, I don't know what I saw?

11 Q Who was there, what time they got there,
12 all that stuff. You don't have any details, do you?

13 A I know that Mark and I and Dustin were at
14 my house, and Dustin and I were in my bedroom. Yes,
15 sir, I do.

16 Q When you went and got Dustin's car where
17 was it?

18 A At the Seashore Motel.

19 Q How did he get that room key in his
20 possession?

21 A I have no clue. I wasn't with him.

22 Q Weren't with him that day before, were you?

23 A I was with him once he got to my house,
24 yes.

25 Q You don't know how he got the key, do you?

1 A No.

2 Q You don't know if he was ever at the
3 Seashore, do you?

4 A I know that -- I don't know if I -- how to
5 say this. I know that once I have spoke with him and I
6 spoke with Mark too --

7 Q I'm asking you --

8 A I'm telling you --

9 Q Do you know he was at the Seashore with
10 Heather Kennon?

11 A Do I know that he was at the Seashore?

12 Q Yes.

13 A Yes. He told me that he was taking her to
14 the Seashore. Yes.

15 Q Now, since he got arrested back in January,
16 all this valuable information you have, have you shared
17 it with these officers so they could look at it and
18 investigate it and see if the truth was coming out?

19 A No, I didn't know that I was responsible to
20 do that. I have never really been involved in anything
21 like this.

22 Q Well, if you've got information that might
23 help your boyfriend, don't you think you might tell
24 somebody about it?

25 A I have an attorney right here that's

1 represented. I have been in constant contact with him.

2 Q So he's the one that's going to clear this
3 stuff up, not the Law Enforcement?

4 A Well, he's the one that we have hired to
5 represent him in the case.

6 Q Okay. You're currently on probation, or
7 not on probation?

8 A No, sir. I'm not on anything.

9 Q Okay. Is Mark Thomas here today?

10 A No, sir. He's in -- he's incarcerated.

11 Q Is Cassie Flowers here?

12 A I don't even know Cassie Flowers.

13 Q Anybody else at your house that day?

14 A No, I just -- I have told you who was at my
15 house.

16 Q When did you leave that house?

17 A When I got a phone call from Dustin after
18 he was in -- brought here.

19 Q Do you live there anymore?

20 A No, sir. It was a winter rental.

21 Q When did you move out?

22 A I moved out in February.

23 Q What day?

24 A I mean, maybe February -- I had all my
25 stuff out of there by, like, February -- by Valentine's

1 I know I had it all out of there.

2 Q So you were leaving there anyway in

3 February, right?

4 A I was leaving there prior to -- my lights
5 and everything were turned onto the residence I moved to
6 prior to this arrest.

7 Q Okay.

8 A Yeah. I was moving to Newport anyways. I
9 had a -- my friend of mine that was selling a place of
10 residence and I was moving into that, that I already had
11 prior plans of moving.

12 MR. SPENCE: That's all I have.

13 THE COURT: Any redirect?

14 MR. FULCHER: Just a couple quick
15 questions.

16

17 **REDIRECT EXAMINATION**

18 BY MR. FULCHER

19 Q So the night in question, Dustin was there;
20 is that correct?

21 A Yes, sir.

22 Q Mark Thomas was there?

23 A Yes, sir.

24 Q Anybody else there?

25 A Just me.

1 Q Did you -- did Dustin leave his keys for
2 anybody that night?

3 A By my door I have a key hanger. And Mark
4 had asked if he --

5 MR. SPENCE: Objection to what Mark said.

6 THE COURT: Sustained.

7 THE WITNESS: Okay. I'm sorry. Yes, there
8 was keys left --

9 THE COURT: This is beyond the scope of
10 cross-examination.

11 THE WITNESS: Okay. There was keys left.
12 I'm sorry.

13 THE COURT: Don't speak while I'm speaking.

14 THE WITNESS: I'm sorry. I'm sorry. I
15 don't -- I don't understand --

16 BY MR. FULCHER

17 Q Did you get -- did you ever get interviewed
18 by any officers from this case?

19 A Yes, sir.

20 Q Okay. Who interviewed you?

21 A Detective Prior and Detective Black.

22 Q Okay. Did you make any statements to them?

23 A I was questioned about the, you know, the
24 ongoing -- of the night before. I was questioned about
25 any drug uses, anything that I had, anything that I knew

1 about Dustin, and, you know, why he went on at my house
2 and all that.

3 Q Did you answer him candidly, truthfully?

4 A Yes, sir.

5 Q Tell them the same thing you told the jury
6 today?

7 A Yes, sir.

8 Q Did you have -- did this cause you any
9 problems as a result of this?

10 A Well --

11 THE COURT: This is beyond the scope of
12 cross, about causing her any problems.

13 BY MR. FULCHER

14 Q Did you get fired from this?

15 A Yes, I did lose my job.

16 MR. FULCHER: I don't have any other
17 questions.

18 THE COURT: Anything further?

19

20 **RE-CROSS-EXAMINATION**

21 BY MR. SPENCE

22 Q So you did talk to these folks about this,
23 didn't you?

24 A Have I spoke with them? Yes, sir. I spoke
25 with them. They called me and asked me to come in right

1 after his arrest, but not during this time.

2 Q So when I asked you if you talked to Law
3 Enforcement about the stuff you testified about, you
4 said no, didn't you?

5 A Well, I was kind of -- I'm kind of confused
6 about what you're asking. You said -- I thought you
7 were talking about this stuff that I had talked to
8 Heather about.

9 Q All this stuff you said today, did you tell
10 them that when you talked to them?

11 A Anything that you've asked or whatever they
12 asked me I talked to them about.

13 Q Did you volunteer the stuff that you
14 volunteered today?

15 A Yeah.

16 Q To them? You told them all this stuff?

17 A I mean, I told them what they asked me. I
18 hadn't spoke with Heather at that point except for
19 the -- before she got arrested, and yes, I did tell them
20 that.

21 Q Okay.

22 A I didn't tell that I had already spoke to
23 them prior to the phone calls that she had made me,
24 yeah. But no, I didn't tell -- didn't contact them and
25 say, "Hey, she's called me, or I went to see her," no.

1 MR. SPENCE: Okay. That's all.

2 THE COURT: Thank you, ma'am. You may

3 stand down.

4 THE WITNESS: Yes, sir.

5 (The witness stepped down from the witness
6 stand.)

7 THE COURT: Do you want to call your next
8 witness?

9 MR. FULCHER: Your Honor, I need to check
10 the availability of two possible witnesses.

11 THE COURT: We'll take an early recess for
12 lunch, and we'll come back.

13 Ladies and Gentlemen, we're going to take
14 the lunch recess at this time. Remember, don't talk
15 about it among yourselves, or let anybody else speak to
16 you about it in your presence. If they do, let us know
17 it. Don't form or express any opinion about the guilt
18 or innocence of the defendant. Have no contact with the
19 Court, the parties, lawyers, the witnesses. Don't read
20 about it or listen to radio or television accounts, and
21 don't try to find anything about it outside the
22 courtroom.

23 I think 1:30 this afternoon should be a
24 sufficient lunch break. Is that satisfactory with the
25 jury? An hour and 15 minutes? All right. Very good.

1 Everybody else remain seated. These jurors are excused.
2 Return at 1:30.

3 (The jurors exited the courtroom.)

4 THE COURT: Let the record reflect all
5 jurors are out of the courtroom. Anything from the
6 State before we recess?

7 MR. SPENCE: No, sir.

8 THE COURT: Mr. Fulcher, anything?

9 MR. FULCHER: Nothing at this point.

10 THE COURT: Sheriff, recess us until
11 1:30 p.m.

12 (A luncheon recess was taken.)

13 * * *

14 (All parties are present in the courtroom.)

15 THE COURT: Anything from the State before
16 we bring our jury back?

17 MR. SPENCE: Your Honor, I put requests on
18 your desk that I had worked on that during the lunch
19 break, and I had figured I'd do it now instead of trying
20 to find it later. I couldn't find my pattern jury
21 instructions in a way where I thought the language I
22 wanted was in there, so I just handed that up for the
23 Court. I know you're aware of the case and the law,
24 whatever. So that's why it's on your desk.

25 THE COURT: Okay. Anything from the

1 defendant?

2 MR. FULCHER: Yes, Your Honor. We would

3 bring a couple questions about witnesses.

4 THE COURT: Yes, sir.

5 MR. FULCHER: Your Honor, if I may approach
6 on one witness?

7 THE COURT: Yes.

8 (Discussion off the record at the bench.)

9 THE COURT: All right. Mr. Fulcher, you
10 have some motion you want --

11 MR. FULCHER: I do, Your Honor. We
12 would -- I would like to call one witness, a Brandon
13 Elps, for the purposes of testifying to the truth of
14 Ms. Kennon. He's over in custody in our jail. It would
15 be limited to the fact -- of testimony, that she had, in
16 previous occasions, gotten him in trouble, went to the
17 law on him and all that. So that would be my motion, to
18 have him over here.

19 And the other two witnesses would be -- and
20 the other two would be for Cassie Flowers in the
21 Department of Corrections, and Mark Thomas. They, too,
22 would be witnesses to show -- testify to the
23 untruthfulness of Ms. Kennon and things that she had
24 said and done in the past.

25 And I would make a motion to continue, to

1 get those witnesses here.

2 THE COURT: Mr. Spence?

3 MR. SPENCE: Judge, the fact that somebody
4 might have done something untruthful, possibly, if they
5 are believed, is irrelevant to whether, on this
6 occasion, it happened in this case.

7 I don't see how in the world that's under
8 the rules of character evidence even, that can be
9 allowed. You're allowed to get general reputation of
10 truthfulness in the community, but not specific
11 instances of somebody getting somebody else in trouble.
12 It has nothing to do with this particular case.

13 THE COURT: It would appear to the Court
14 that any writ for -- says it's -- that was issued by
15 this Court was done last Thursday, September the 4th,
16 and the trial was scheduled -- was due to start the 8th,
17 and the person, Ms. Flowers, is not currently in the
18 Carteret County jail and neither is Mark Thomas, is my
19 understanding.

20 As to the other one, testifying about some
21 alleged bad act of Heather Kennon at some earlier time
22 without any connection to this case, would -- this Court
23 does not believe would have relevance to the charges for
24 which the defendant stands trial in this case, and would
25 not grant a continuance for that.

1 If you want to make an offer of proof as to
2 that -- who is it that's in the Carteret County jail?

3 MR. FULCHER: Brandon Elps. But I don't
4 think I can do anything other than specific instances --

5 THE COURT: I understand. If you want to
6 make an offer of proof as to that, I'll be happy to have
7 the Sheriff bring him over.

8 All right. Anything further before I
9 bring -- have you and your client decided to testify?

10 MR. FULCHER: My client will be testifying.
11 That's correct. And he will be our last client -- our
12 last evidence.

13 THE COURT: All right. Bring your jury
14 back, please, Mr. Sheriff.

15 (The jurors entered the courtroom and took
16 their seats in the jury box.)

17 THE COURT: All right. Let your record
18 reflect all jurors have returned to the courtroom.

19 You may call your next witness, please,
20 Mr. Fulcher.

21 MR. FULCHER: Your Honor, we call
22 Mr. Dustin Warren.

23 THE COURT: All right.

24 SHERIFF: Left-hand on the Bible, raise
25 your right, face the jury.

1 (The witness was duly sworn.)

2 THE WITNESS: So help me, Jesus.

3 (The witness took the witness stand.)

4 THE COURT: You may inquire.

5

6 **DUSTIN JAMAL WARREN,**

7 having been first duly sworn, at 1:42 p.m. was called as a
8 witness on behalf of the Defendant, and, testifying in his
9 own behalf, testified as follows:

10

11 **DIRECT EXAMINATION**

12 BY MR. FULCHER

13 Q Please state your name for the record.

14 A Dustin Jamal Warren.

15 Q Okay. And what's your age and occupation?

16 A I'm 37 years old, and I'm a culinary
17 degree -- I have a culinary degree from the College of
18 Albemarle.

19 Q And how long have you lived in Carteret
20 County?

21 A For about three years.

22 Q And where did you come -- where were you
23 born and raised?

24 A Raleigh, North Carolina.

25 Q Okay. So since you came to Carteret

1 County, what, if anything, have you -- have you worked
2 at, or where have you worked? Excuse me.

3 A I did -- basically I did cooking. I cook
4 for a living. I did a little bit of construction. When
5 the time -- you know how the economy is around here, so
6 during the wintertime it's kind of rough, but I have --
7 I try to do cooking because that's my -- that's my
8 passion's at.

9 Q Okay. I want to direct your attention to
10 the time in question that we've been discussing in
11 court. Let me ask you, before January the 27th,
12 28th-time of this year, did you know Heather Kennon?

13 A I knew her briefly. I met her through my
14 brother. Me and my brother are two different type of
15 people. But he was messing, they were like boyfriend,
16 girlfriend, for a little stint.

17 Q What's your brother -- who is your brother?

18 A My brother's name is Brandon Lee Hobbs.
19 He's my younger brother.

20 Q Okay. And did -- so you met Ms. Kennon
21 through your brother; is that pretty-much what your
22 testimony is?

23 A Yes, sir. That's how I know her,
24 through -- that's how I know Ms. Kennon, through my
25 brother. She's not somebody I normally hang out with or

1 spend time with.

2 Q Okay.

3 A She's not in my circle of friends.

4 Q All right. On the night that we were --
5 that's in discussion here, were you at the DoubleTree?

6 A Yes, sir. I was.

7 Q Okay. And why were you at the DoubleTree?

8 A It was actually January 28th. It was late
9 at night. I got a phone call from a friend of mine. I
10 had known her since I was in high school. I have known
11 her for 20 years. We dated briefly in high school. But
12 she -- actually, I met her last Christmas just by
13 chance, by -- she works at Belk's, Clinique, she's a
14 makeup artist, and I was in there buying presents.

15 And I seen her, and we just started
16 exchanging. And she was involved in a very abusive,
17 terrible relationship with her husband, and she had
18 called -- this was not the first time she had called
19 me -- she actually called me a couple times. But one
20 time she even asked me could I ask my girlfriend could
21 she stay at her house, because it was so bad. She was
22 beat up so bad.

23 So this time she called me, said she needed
24 somebody to console her --

25 MR. SPENCE: Objection to what she said.

1 THE COURT: Sustained.

2 BY MR. FULCHER

3 Q So you were -- you knew her?

4 A Yes. And I went to console her.

5 Q Okay. And at that point, were you aware
6 that Heather Kennon was at the DoubleTree?

7 A Oh. Not -- not when I got the phone call
8 from -- to go to DoubleTree. Actually, I live right
9 across the street from DoubleTree. It's a two-second
10 walk. I live -- I live right there on the sound side
11 where it used to be the Sheraton. And I think Nicole
12 actually rented that room to be near me. I mean, she
13 just -- I think she had an attraction for me --

14 MR. SPENCE: Objection.

15 THE COURT: Sustained.

16 THE WITNESS: Okay.

17 THE COURT: I need you -- I admonish you
18 just to answer his question and not start running off.

19 THE WITNESS: I'm sorry.

20 BY MR. FULCHER

21 Q Okay. So you were at the motel consoling
22 your friend, Nicole, at the time?

23 A Yes, sir.

24 Q Okay. And what, if any, time that night
25 did you happen to meet Heather Kennon?

1 A I pulled up to the DoubleTree. As I pulled
2 up I noticed a lady standing out front smoking a

3 cigarette, and when I got out of my car, I went up to
4 it. She was there smoking a cigarette. I asked her
5 what she was -- do you want me to go ahead and explain,
6 or can I do it --

7 Q I'm going to ask you, did you have contact
8 with her?

9 A Yes, sir. I did have contact with her. I
10 asked her what she was doing there. She was out there,
11 she said she was smoking a cigarette, because you
12 couldn't smoke upstairs due to the --

13 MR. SPENCE: Objection to running on.

14 THE COURT: Yes.

15 BY MR. FULCHER

16 Q Let me ask you, at the motel, could you
17 smoke inside?

18 A No, sir. They're real strict. They
19 actually have alarms that connect to the -- that tells
20 the front desk, and they have security.

21 Q Okay. So you were at the -- so you were
22 there visiting a friend, you happened to run into her,
23 you hadn't planned to meet her there, though?

24 A Oh, no, sir. No, sir. It was just by
25 astronomical chance.

1 Q But you knew her because of your brother?

2 A Yes.

3 MR. SPENCE: Objection to leading.

4 THE COURT: Sustained. Don't lead.

5 BY MR. FULCHER

6 Q Okay. So what, if anything, did you-all
7 discuss after you saw her outside?

8 A She told me she had been there for three
9 days. She looked pretty high. She was standing with --
10 I asked her "why" she was doing there; she said she had
11 been staying with a guy she met there, a -- a security
12 worker, and that they was up on the third floor getting
13 high and she had Meth and invited me up there to party
14 with them.

15 Q Did you go up there?

16 A No, I declined, because I was there to see
17 Nicole.

18 Q Okay. Did you actually go and stay with
19 Nicole?

20 A I went upstairs, actually, took her -- I
21 actually introduced Heather to Nicole. I took her
22 upstairs. We were talking. I just -- I told her that
23 Nicole's a real conservative woman, not to mention any
24 drug use or anything.

25 MR. SPENCE: Objection to this answer.

1 THE COURT: Sustained.

2 THE WITNESS: I'm sorry.

3 BY MR. FULCHER

4 Q Did you, at that point --

5 A I apologize.

6 Q Did you have any Meth on you?

7 A Did I have any Meth on me?

8 Q Yes.

9 A No, sir. That's not with my lifestyle.

10 No, sir.

11 Q Were you -- was your intention to be there
12 to make Meth?

13 A No, sir. My intentions was to see Nicole
14 there. And I called my girlfriend first to let her know
15 I was going there.

16 Q So you called Anique Pittman, you testified
17 earlier, to let her know you were there?

18 A Yes. Yes, sir.

19 Q And what, if anything else, happened that
20 night there? Did you spend the night? Did you get up
21 and leave?

22 A I -- we -- I basically just stayed on the
23 phone with my girlfriend all night, because, you know,
24 it was kind of awkward, but I was just trying to do the
25 right thing for this girl. I mean, my mother was beat

1 on, and I know how it is, so that's --

2 MR. SPENCE: Objection.

3 THE COURT: Sustained.

4 MR. FULCHER: All right.

5 THE WITNESS: Yeah. I was on the phone
6 with my girlfriend.

7 BY MR. FULCHER

8 Q The next morning -- so you spent the night
9 there?

10 A I stayed with my clothes on beside her in
11 the bed. Yes, sir.

12 Q Okay.

13 A It was not sexual.

14 Q The next morning what, if anything, did you
15 do first thing that morning?

16 A She woke me up around 6`o'clock.

17 Q You said *she*. Who's *she*?

18 A I'm sorry. It was Nicole. She woke me up
19 at 6`o'clock. She had to go to work at Belk's,
20 Clinique, as I said. And she told me that I could just
21 stay there to check out. I was off work because of the
22 snow for two days. And, um, so that's what I -- I
23 didn't have intentions to make Meth or I could have done
24 it then, from 6`o'clock to 11`'clock, and I had the
25 whole room to myself, and so --

1 Q Did you happen to run into Ms. Kennon any
2 time that morning?

3 A Yes, sir. What I actually did, when she
4 told me --

5 THE COURT: No. He just asked you did you
6 run into her.

7 THE WITNESS: Yes. She knocked on the
8 door.

9 THE COURT: Ask your next question.

10 BY MR. FULCHER

11 Q So did you -- did she agree to anything
12 after you spoke to her?

13 A What do you mean?

14 Q Did you make any -- rephrase that question.
15 Did you-all make any plans for the day after that?

16 A She asked me to -- a couple things.

17 Q Okay. Any of those illegal in activities?

18 A Maybe the second -- maybe -- well, the
19 first part might have been. I don't know how that goes.
20 But she asked me something to do -- I would call it
21 illegal, I think.

22 Q So at this point, you hadn't -- did you
23 even -- what did you have with you at the motel? Let me
24 ask that question.

25 A I didn't -- I didn't have anything on me.

1 I -- like I say, I live right -- my residence is right
2 across the street.

3 Q Okay.

4 A I didn't -- I didn't have anything but what
5 I had on me.

6 Q At the motel, did you have any -- you heard
7 the Special Agents and the officers testify of things
8 that are used to make Meth. Did you have a suitcase
9 with you at the DoubleTree?

10 A I don't even own a suitcase, sir. I have a
11 red --

12 Q Did you have kerosene, tubing?

13 A No, sir. That's -- no, sir.

14 Q So you were just at the motel spending the
15 night?

16 A Definitely didn't have tampons in the bag
17 either.

18 Q All right. So you -- what, if any time,
19 did you leave the DoubleTree?

20 A Well, she left on my car, first.

21 Q Okay. When you said *she*?

22 A That's what -- Heather came to my room, to
23 ask me to borrow my car.

24 Q Okay. So she -- Heather came and asked you
25 to borrow your car?

1 A Yes, sir.

2 Q Did you give her the keys?

3 A Well, she said that she needed to -- she
4 needed to go to the gas station. There's a gas station
5 right across the street from the DoubleTree. And she
6 was limping. When I first met her the night before --
7 and I forgot to add this point -- when I met her she was
8 limping.

9 MR. SPENCE: Objection.

10 THE COURT: Sustained.

11 THE WITNESS: She was limping that day.

12 BY MR. FULCHER

13 Q Let me ask the question first. So what
14 condition was she in?

15 A She had -- was -- an obvious step -- like,
16 she couldn't hardly walk on her ankle.

17 Q Did she tell you what that was from?

18 A She said she had slipped on the ice and
19 really needed to go to the hospital. She wanted me to
20 take her to New Bern Hospital.

21 Q Was it icy that day?

22 A Yeah. The snow was pretty bad.

23 Q Okay. And so did you take her to the -- to
24 New Bern?

25 A I asked her, why does she want to go to New

1 Bern? Why not just go to Carteret County?

2 Q What, if anything, did she tell you?

3 A She said that she couldn't go to Carteret
4 County because she was red-flagged for obtaining drugs
5 by false pretenses.

6 MR. SPENCE: Objection.

7 THE COURT: Overruled.

8 BY MR. FULCHER

9 Q So did you actually take her to New Bern?

10 A I asked her -- the first thing I asked her
11 to do --

12 THE COURT: He just asked you, did you take
13 her to New Bern. Are you having a hard time
14 understanding his questions?

15 THE WITNESS: No, sir. This is new to me.

16 THE COURT: Then answer his question.

17 THE WITNESS: I'm sorry. I apologize.

18 BY MR. FULCHER

19 Q So you just testified to the fact she
20 wanted you to take her to New Bern. You asked her, she
21 said she couldn't go. My next question was, did you
22 take her to New Bern?

23 A No, sir.

24 Q Why didn't you take her?

25 A I told -- I told -- I asked her to see her

1 ankle, and it didn't look like it was an emergency. I
2 couldn't see no swelling or a real bruise, purple
3 bruising going on with it. And I told her to think
4 about it, and she offered -- she said she would -- she
5 would pay me if I'd take her.

6 Q Okay. So did you accept any payment to
7 take her?

8 A No, sir.

9 Q Okay. So you never went?

10 A I told her I couldn't.

11 Q Okay. What was the condition of the roads
12 that day?

13 A It was pretty bad.

14 Q When you say *pretty bad*, can you tell the
15 jury what the conditions were?

16 A It was -- I would -- it was quite a bit of
17 snow on the ground, and it was pretty -- like the night
18 before it was cold, and so it was kind-of like a black
19 ice, kind of like, in spots.

20 Q So you were -- had some trepidation of
21 driving?

22 A Yes, sir.

23 Q Well, after you told her that you were not
24 going to take her, what, if anything, happened next?

25 A She asked me could she borrow my car, and I

1 said yes, you can -- because it was right across the
2 street.

3 Q How long was she gone?

4 A Well, it was about 30, 45 minutes, and I
5 looked out my window to see, and I noticed that the
6 store was actually closed.

7 Q Did she tell you where she went?

8 A When she got back, she was really nervous.
9 She was shaking, jittery, bird-like. But she said she
10 went to the grocery store because she said that the
11 store was closed, and I felt like she wasn't telling me
12 the truth. But I --

13 Q Did she come back with any groceries or
14 food?

15 A Yeah, she did have some -- some bags of
16 stuff, a load of groceries and stuff.

17 Q She didn't tell you, other than that, where
18 she went?

19 A She just said she was at the grocery store.

20 Q What, if anything, did you do after she
21 came back -- let me ask you, approximately how long did
22 you say she was gone?

23 A I'd say about 45 minutes. It was almost
24 close to check-out time. I was just getting worried --
25 I was getting worried.

1 Q What time was check-out at the DoubleTree?

2 A 11:00.

3 Q Okay. After she came back, what, if
4 anything, did you do then?

5 A She came back and she was almost in tears
6 and jittery, and I was just glad my car was back. And
7 she -- she basically was like -- she asked me could I
8 take her to New Bern again, and she offered -- she
9 offered -- said, Look, if you need anything, you know,
10 money -- she even joked about having sex -- and she said
11 she had dope on her. She said she had Meth. She had --
12 she offered me whatever I wanted to.

13 Q Did you give her any Meth?

14 A No, I didn't have any Meth to give her.

15 Q Okay. So shortly after you had this
16 conversation with her, did you ever leave the motel?

17 A Yes, sir. It was about check-out time. It
18 was time -- time to go.

19 Q Okay. Where did you go?

20 A Well, I called my girlfriend up. Well,
21 where did I go?

22 Q That's correct. Where did you go from --

23 A I live right across the street, and I take
24 care of my 80-year-old grandmother (phonetic). And I
25 wanted to check on her because we was having electrical

1 problems with our electric box and sometimes the heat
2 shuts down, so I stopped there first.

3 Q Did Heather go with you?

4 A Yes. Yes. She wanted to ride to a motel,
5 another motel.

6 Q Okay. Let me ask you, what's your -- the
7 lady's name that you -- you said *godmother*, what's her
8 name?

9 A Ms. Kathy, ah, Roberts.

10 Q Okay. So you left. Did -- let me just
11 back up one question. Did Heather say she wanted to go
12 anywhere else after you left?

13 A She only asked me to take her to the -- she
14 kept asking me about the hospital deal, and that was
15 just -- I mean, the roads was too bad, and my back brake
16 light is out, and that's just -- it's not happening.

17 Q So you --

18 A Even if -- if it was emergency, I would
19 have took her, but it wasn't emergency.

20 Q All right. So you left, and she went with
21 you -- you went to your godmother's. How long were you
22 there?

23 A Oh, I just walked in and walked out.
24 Actually, Heather stayed in the car. I just wanted to
25 make sure the heat was running and that she was okay.

1 And actually, my godmother was asleep, or else she would
2 probably be here to testify for me, but she was asleep
3 when I walked in. And I just made sure everything was
4 okay at the house.

5 Q So you leave your godmother's house.
6 Where, if anywhere, did you go after that?

7 A As soon as I leave there -- actually, the
8 lady that you had testify today, Lisa Hill Turner's
9 house.

10 Q Anybody with you when you went there?

11 A Yeah. Heather was with me.

12 Q Okay. And what did you -- let me ask you,
13 did you have anything in the car with you when you left?
14 Suitcases?

15 A I forgot. Yeah, I actually -- because she
16 had some things at that room that I took out. It was
17 groceries, she had a tote bag, she had some -- like a
18 basket of -- a small basket of clothes.

19 Q Okay. So she had a tote bag, small bag of
20 clothes and some food?

21 A Yeah. That she had got from -- gray bags
22 that you get from --

23 Q You didn't go through that or anything, did
24 you?

25 A No, sir. It wasn't mine to go through.

1 Q Did she have any kerosene, any tubing,
2 anything that you were aware of?

3 A Who, me?

4 Q Yes.

5 A Did I have it?

6 Q Yes.

7 A No, sir. I don't carry things like that.

8 Q So you left there, and before we take that
9 next step to go to your -- to Lisa's house, you heard
10 Ms. Kennon testify that you-all were cooking Meth at the
11 DoubleTree?

12 A And that's impossible, and I can tell you
13 why.

14 Q How is that impossible?

15 A Because we're on the third story of a
16 nonsmoking floor, and they have strict security there.
17 Okay?

18 MR. SPENCE: Objection to this.

19 THE COURT: Sustained.

20 BY MR. FULCHER

21 Q Did you have -- did you have -- did you
22 leave that motel room with any Meth or any precursors or
23 anything like that?

24 A No, but Heather claims she had some on her,
25 because she had offered me some. I didn't see it, how

1 much she had, but she had some.

2 Q But you did not cook any Meth at that motel
3 room?

4 A No, sir. I don't know how to cook Meth. I
5 have never cooked Meth.

6 Q And so you left, and you go to Ms. Lisa's
7 house that was here earlier today?

8 A Yes, sir.

9 Q Okay. What time of day was it you arrived
10 at Lisa's house?

11 A It was right after check-out, so I would
12 say I was there around 11:30, maybe 11:30.

13 Q Okay. And what, if anything, did you do
14 once you got there?

15 A I wanted to check on her to make sure she's
16 okay. I'm sure you can tell, she's a little -- you
17 know, she's a single woman, and she don't have no man
18 around, so I do a lot of maintenance and help her out
19 with a lot of things there. So she -- I wanted to check
20 on her before I went to my girlfriend's house across
21 Atlantic Beach where I would be shut down for the rest
22 of the day. I hadn't planned on coming back. So I
23 stopped in and I didn't want to leave Heather in the car
24 so I invited her in, and -- so --

25 Q Did she come in with you?

1 A Yes, sir. She did.

2 Q And what, if anything, did you do at

3 Lisa's?

4 A I went in, I seen -- I don't know that
5 guy's name that was here. I called him Country, because
6 I mean, I just know him --

7 Q The guy who testified was there?

8 A I know him through Lisa. You know, he was
9 staying there at the residence at the time. And -- but
10 he was there, and a few other people were there. And I
11 was glad to see that, because she needed, you know,
12 help. I took Heather to her back bedroom, introduced
13 her to Lisa. Lisa has an outstanding history and she
14 tells all these great stories, so -- but I showed her a
15 lot of art work that I had done.

16 MR. SPENCE: Judge, I object to this
17 monologue.

18 THE COURT: Sustained. Sustained.

19 BY MR. FULCHER

20 Q So you were there just carrying on a
21 conversation?

22 A I was there to check to see if she was
23 okay.

24 Q Approximately how long were you at Lisa's
25 house?

1 A It felt like an hour to an hour and a half,
2 but I'm not -- I wasn't looking at the clock.

3 Q All right. Now, once you left there,
4 where, if anywhere, did you go from there?

5 A Heather asked me to take her to a motel
6 room.

7 Q Okay. And where did you take her?

8 A I took her to the motel that's on the way
9 to my girlfriend's condo, which is Seashore Motel.

10 Q You ever been there before?

11 A Um, no.

12 Q Never spent the night there before?

13 A No.

14 Q You know anything about the rooms there?

15 A I do now.

16 Q At that time, did you know anything about
17 it?

18 A No, sir.

19 Q Okay. Did she say anything to you about
20 what her plans were?

21 A She -- I mean, do you want me to comment on
22 the conversation we had in the car?

23 Q The conversation when you left Lisa's and
24 you were headed to the motel, what made you decide on
25 that motel?

1 A Because it was -- it was on the beach, it
2 was on the way to my girlfriend's condo, it was a
3 straight shot, and that's basically it.

4 Q Did you have any money to -- was it your
5 intention to stay there?

6 A No, sir. No. I didn't need a place to
7 stay. I had two "residence."

8 Q And so you had left Lisa's, were heading
9 there. What happened once you arrived at the Seashore
10 Motel?

11 A She went and stopped at the front; she went
12 in and paid for it.

13 Q Why didn't you go do that?

14 A Because I wasn't renting the motel room.

15 Q And did you give them your name, your
16 license number or anything?

17 A No, sir. I didn't sign anything or have
18 anything -- I don't even know how my license got on that
19 thing.

20 Q Yeah. Okay. All right. So what, if
21 anything, did you do after she came out and registered?

22 A I told Ms. Kennon, I said, "Do you need
23 anything before I leave?" I said, "Because I'm getting
24 ready to leave," and she didn't have no vehicle. I
25 said, "You need anything? You need to go to the store?"

1 She says, "Yes, I need to go to the store. I forgot
2 something."

3 Q Okay. When you arrived there, did you go
4 into the room with Ms. Kennon?

5 A Not at that time. I went to the store
6 first.

7 Q Did she go -- did she go into the room and
8 check it out? She checked in, did she go into the room?

9 A No, sir. No. We went -- she went -- I
10 took her straight to the store, because I wasn't
11 planning on staying there.

12 Q And what, if anything, did you get from the
13 store?

14 A Um, I never got out of the car. She went
15 in and got -- and got some things that she needed.
16 She -- I didn't ever see -- I didn't ever see what she
17 got.

18 Q Did you -- so after you left the store
19 where did you go?

20 A We went back to the motel.

21 Q Okay. What happened after you arrived at
22 the motel?

23 A We went in, and I noticed there's a small
24 space -- and she -- because it was cold in there -- and
25 she cut on the heater.

1 Q And what time of day was this?

2 A I would have to say it was between probably
3 1:00, 1:30.

4 Q Okay. Why didn't you just leave her right
5 there?

6 A Why didn't I leave? Oh, I'm sorry. I had
7 to -- I took her things in the room. That's the main --
8 you know.

9 Q What did you take her things for?

10 A Because she was limping.

11 Q What did you take in the room for her?

12 A Sir?

13 Q What kind of things did you take in the
14 room for her?

15 A She had a small clothing basket-thing and
16 had, like, a tote bag, and she had a bunch of like, bags
17 she had bought from the grocery store with her food
18 service card or --

19 Q All right. So you -- you went in and the
20 place was cold. What -- did she say anything about the
21 room?

22 A She -- I just -- I really don't -- I can't
23 really be truthful and comment on what she said about
24 the room. She was just cold, I remember..

25 Q Did she -- what, if anything, did she do

1 about the cold room?

2 A Well, cut on -- they had this little floor
3 heater model, and they cut it on.

4 Q Okay. Did that warm the room?

5 A No, it wasn't -- it wasn't emitting any
6 heat.

7 Q Okay. Did you go to the Manager and talk
8 to them, or did she?

9 A Not at first. I was trying to toggle with
10 the -- the heater. The light was on, but it was no heat
11 coming from it.

12 Q Did she leave?

13 A She went and talked to the Manager. She
14 was -- she was actually upset. She said she wanted --
15 she was going to ask for another room.

16 Q Did she get another room?

17 A They refused her on that, and she was very
18 upset about it.

19 Q So she was upset when she came back?

20 A Yes. Well, then she -- yes, sir.

21 Q Did she ask -- did she ask for another
22 heater or blankets?

23 A Yes. Well, the first thing -- that's
24 right. Well, the first thing she asked for was a -- for
25 a heater, and they didn't give her that, and then she

1 asked for a room.

2 Q Tell her why she couldn't have another
3 heater?

4 A They said something about -- something
5 about the breaker couldn't handle it or something, what
6 she told me.

7 Q All right. So how long approximately this
8 time did you go in there?

9 A I would say a good -- all this is going on
10 and she's raising cain, 30, 45 minutes.

11 Q Were you in there -- you heard testimony
12 that there -- she testified that you were in there
13 cooking Meth and had all this -- was any of that going
14 on in there?

15 A No, sir. It was not. Not while I was
16 there.

17 Q Smell wires and chemicals burning and vapor
18 in the air and smog and smoke?

19 A There was nothing like that going on while
20 I was there, sir.

21 Q Did you see any of these things that they
22 testified was there in that room at that time you went
23 in there? Tubing, and kerosene and all that?

24 A No, it was just like a blank space with all
25 her stuff laid out. Like on the counters, and the bags

1 that she had and stuff.

2 Q All right. So did you leave at that point?

3 A Did I lead?

4 Q Did you leave the motel once she came back
5 and said that, you know, they won't give any -- another
6 heater. What -- did you leave at that point?

7 A No, sir. I didn't.

8 Q Why didn't you leave then?

9 A The reason was is because she was telling
10 me to -- that she had somebody that was supposed -- she
11 was trying to get somebody to come pick her up.

12 Q Did she tell you who it was?

13 A She was talking to a lot of people.

14 Q She didn't tell you about specifics?

15 A I heard Mike -- a guy's name, Mike, she
16 kept talking about, and she told him to take and just to
17 bring the heater, and she was like -- she told me --
18 him -- she would provide a sexual favor for him if he
19 would just bring a heater. I mean --

20 Q Is she high at the time?

21 A Yes, sir. I think she was. She was really
22 jittery and -- and emotional.

23 Q At this point, you didn't give her
24 anything, did you? As far as Meth or pills or any kind
25 of illegal drugs?

1 A Did I? No, sir. I didn't.

2 Q All right. So did anybody come to the room
3 while you were there?

4 A Yes. Yes, sir. Yes, sir. There was a
5 knock on the door, probably about a while -- you know
6 what I'm saying. I just got a new phone, and I was just
7 sitting there while she's trying to find a ride and we
8 heard a knock.

9 Q Okay. Did anybody come in the room?

10 A I got -- I got up and said, "Just a
11 second," you know. They claim I said, "I'm naked," but
12 I said, "Just a second." I wasn't naked.

13 Q All right. Did -- who was at the door?

14 A It was the Manager.

15 Q Okay. Did he say or do anything?

16 A I opened up the door, and he said, "I have
17 blankets." He was up -- he was upset because the --
18 that she had been raising so much cain about the heat
19 situation.

20 Q Did she take -- did she accept the blanket?

21 A I was -- I was like the mediator between
22 him and her, and I turned around, I said, "Heather, do
23 you want any blankets in this room?"

24 And she's like, "F, no. I don't want no
25 blankets in this stinking room. I'm leaving." She was

1 really mad about it.

2 Q At that point, nothing unusual in the room,
3 nothing -- any unusual activities going on?

4 A No, sir.

5 Q Okay. What, if anything, did you do after
6 he left?

7 A After he left, um, I went out to my car and
8 sat in my car for a while. I was texting, talking to my
9 girlfriend and had the heater on. The room was cold.
10 And I sat out there for while and noticed that the maids
11 and Managers are walking back and forth and doing their,
12 you know, their duties.

13 Q Nobody stopped in to look at your room or
14 anything?

15 A They didn't stop and look at the room, but
16 they was going between my car and the front door of the
17 room, and which is like on a walkway between -- they
18 were coming from the laundry room to the other rooms.

19 Q Why didn't you just leave? Why did you
20 stay there a little bit longer?

21 A Because my girlfriend was at her friend's
22 house in -- in Newport, and I was basically just -- I
23 was waiting on Heather to get a ride and to get back up
24 with my girl, because she wasn't at the condo. And even
25 though I have a key to my girlfriend's condo, I was -- I

1 was basically waiting for us to just -- to get together.
2 And I was off for the day and messing with my new phone
3 and I really wasn't -- I put myself in a bad position
4 being where I was at.

5 Q Did you go back in that room any more?

6 A I didn't -- no, I didn't. I think Heather
7 had told me that she -- she came out here and told me
8 that she needed to handle something in the room, and
9 told me that she needed to make some privacy, she wanted
10 some privacy, so I gave her her privacy.

11 Q Did anybody come while you were there and
12 go in that room?

13 A Not -- not that I saw, no.

14 Q Okay. Any time did she come out and
15 you-all leave?

16 A Heather -- I -- okay. Explain the question
17 again so I can get it.

18 Q I said, you said you were sitting out
19 waiting. How long did you wait?

20 A I would -- I say I sat in my car for about
21 45 minutes, and I got a phone call -- actually, I got a
22 phone call from a guy named Mark Thomas. He's another
23 friend of my brother's who's connected to Heather.

24 Q Okay. So you were on the phone with him?

25 A He called me up and asked me -- he said --

1 needed a place --

2 MR. SPENCE: Objection to what he said.

3 THE COURT: Sustained.

4 BY MR. FULCHER

5 Q But you -- you were in a conversation with
6 him. Don't go into detail about the conversation. You
7 can't. He's not here.

8 A Oh.

9 Q You were just --

10 A I had him as a witness but they didn't call
11 him.

12 Q You were in conversation with him?

13 A Yeah. Yes.

14 Q Okay. At any time did she come out of the
15 room that afternoon? Heather?

16 A Yes, yes. Yes, sir. She came -- she came
17 out.

18 Q Okay. Did -- what, if anything, did she
19 say to you?

20 A She told me -- I told her I was getting
21 ready to leave because my girlfriend and Mark was coming
22 to -- to her condo, you know, to my girlfriend's condo.
23 And I asked her could she please hurry up and find a
24 ride. I didn't want to leave her there in a cold room
25 with no vehicle.

1 Q What time of day was this that she finally
2 left?

3 A It was probably around 4`o'clock.

4 Q Was it starting to get dark around then?

5 A It kind of -- like I say, it was a snowy
6 day, kind of cloudy day. It was kind of like one of
7 those days that it just gets dark early. But it was
8 kind of -- it wasn't a bright day.

9 Q And what time did you actually leave the
10 motel?

11 A I would say about 4`o'clock.

12 Q Okay.

13 A I didn't -- I didn't -- I haven't -- I
14 wasn't watching the clock, you know. But I would say
15 about 4`o'clock.

16 Q All right. Did Heather leave with you?

17 A Yeah, because her -- actually, I told her,
18 I said, "Look, if you -- if you can't get a ride and
19 I'll take you to my girlfriend's condo with me, and I
20 want you to -- you can just sit in my car or whatnot, or
21 you can come up with me and wait until your ride gets
22 there. I don't want to leave you here."

23 Q Did she get in the car with you and go?

24 A Yes, sir.

25 Q She have the key to the room with her?

1 A I -- I -- to be honest with you, I can't
2 say I saw it.

3 Q All right. So you leave, and how long did
4 it take you to get from there to Anique's house?

5 A It's really about a seven, eight-minute
6 drive. But, you know, snow on the ground. I mean, I
7 wasn't speeding or anything. And I actually -- I
8 actually stopped at this gas station before I even went.

9 Q Did you buy anything there?

10 A Yeah. I bought me some cigarettes and some
11 coffee because I was cold.

12 Q And did you go on to Anique's after you
13 left there?

14 A Yes, sir. I did.

15 Q Okay. And Heather was with you?

16 A Yes, sir.

17 Q All right. So you end up at -- so maybe
18 20, 30 minutes later you end up at Anique's house; is
19 that correct?

20 A Oh, a lot quicker than that.

21 Q 15, 20 maybe?

22 A I just stopped in to get cigarettes and
23 coffee and we went straight there. *A Place at the*
24 *Beach*, my girlfriend's condo, was right down the road.

25 Q Okay. When you got to Anique's who was

1 there?

2 A Well, when I got to Anique's -- when I got
3 to Anique's Mark and Anique was there.

4 Q Okay. They do anything illegal there?
5 Smoking -- smoking, using drugs?

6 A Oh, my girlfriend wouldn't have that in her
7 house. No, sir.

8 THE COURT: He just asked you if anybody
9 was --

10 THE WITNESS: No, sir.

11 BY MR. FULCHER

12 Q So did you get out of the car and go in?

13 A I told Heather that she could come up with
14 me, 236, and she wanted to stay in the car.

15 Q Okay. Why didn't she want to go in? Do
16 you know?

17 A I actually think she was trying to use my
18 room --

19 MR. SPENCE: Objection, what she thought.

20 THE COURT: Sustained.

21 BY MR. FULCHER

22 Q Did she tell you?

23 A She didn't tell me --

24 MR. SPENCE: Objection.

25 THE WITNESS: -- she told me she wanted to

1 stay and wait in the car. She was going to wait on a
2 ride.

3 BY MR. FULCHER

4 Q Okay. Who was she waiting for?

5 A Some guy to come pick her up. She was
6 waiting for some guy to pick her up.

7 Q All right. So you went on in the house at
8 Anique's. What did you do once you got there?

9 A I talked to Mark for a second, stayed and
10 bought some pizza. I didn't feel like pizza, so I asked
11 Anique to fix me something quick; she made me some hot
12 dogs. And I took a quick shower and I got out -- I told
13 Mark that -- I really wasn't feeling good. I had a bug
14 that was coming on to me since, like, I was with Nicole.
15 And I told him that I was getting ready to lay down, and
16 he had -- you know, make yourself at home, and if he
17 needed anything he could use my car.

18 Q And so did you give him -- give him your
19 key?

20 A No, I always hang my car keys up at her
21 front door. There's a little hanger she's got right
22 there by the front door so I left it.

23 Q But he had the right to use it if he needed
24 to?

25 A I gave him permission. Yes, sir.

1 Q While you were there, did he take the car
2 and go anywhere, to your knowledge?

3 A I went to sleep. I went to bed --
4 actually, we went in her bedroom and shut the door off,
5 and I don't -- I don't know. We made love and I went to
6 sleep.

7 Q Can you describe her house and her place
8 where she stayed at? Is it wide open? Is it --

9 A Um, it's kind of like, blocked up and goes
10 into an L. It's like, you walk in the front door and
11 her room is right directly to the right, and it's got
12 its own bathroom and stuff. And then you go to the
13 left, it goes down a hallway and then it's living room,
14 and then it shoots back to like, an L, like in a cut.
15 And it goes to a -- basically another bedroom, which is
16 her son's bedroom.

17 Q Okay. So once you got there, you-all went
18 in the room. Did you know if anybody else came that
19 night?

20 A Well, yes, I do -- I do know.

21 Q I mean, let me rephrase that question.
22 When you went into the bedroom with her, was anybody
23 else there?

24 A At that time, at that specific time, only
25 Mark was in there with me.

1 Q Heather ever come up?

2 A I did -- I did see her.

3 Q Let me ask you, was -- you heard testimony
4 earlier this was just like a zoo: Making Meth, smoking
5 Meth. Is any of that going on in that house?

6 A My girlfriend would not allow nothing like
7 that. No, sir. Not in any -- never. And that's on
8 Jesus' life. Never.

9 MR. SPENCE: Objection to that testimony.

10 THE COURT: I'm not going to warn you
11 again, son. Just answer the man's questions yes or no.

12 THE WITNESS: Yes, sir. I'm sorry.

13 THE COURT: And don't add anything else to
14 it.

15 THE WITNESS: Yes, sir.

16 BY MR. FULCHER

17 Q Okay. So after you went to the bedroom did
18 you come back out any more that night?

19 A I got woken up at 2`o'clock.

20 Q Who woke you up?

21 A Mark woke me up.

22 Q Okay. Why did he wake you up?

23 A He said he wanted me -- he said he needed
24 to talk to me, so I got up and went to the hallway, and
25 I seen Heather sitting on the -- in the living room.

1 Q Any illegal drugs being used then that
2 you're aware of?

3 A I didn't smell anything funny or see
4 anything funny.

5 Q All right. So you -- so Mark woke you up.
6 As a result of him waking you up, did you go anywhere
7 with him?

8 A No. He wanted me to take him somewhere,
9 him and Heather somewhere.

10 Q You didn't go anywhere?

11 A No, sir. I felt bad, and I was tired. I
12 told him he could go.

13 Q So did you go back to bed after that?

14 A Yes, sir. I did.

15 Q Okay. Didn't get up any more during the
16 night?

17 A No.

18 Q Best of your knowledge, you don't know if
19 anybody else was in the house at that point?

20 A No, sir. I don't.

21 Q Okay. What, if anything, happened the next
22 morning, which would be the morning of the 30th?

23 A That was Thursday morning. Around 9:00,
24 9:30, I'm lying in bed with Anique and Mark wakes me up.

25 Q Okay. And as a result of him waking you

1 up, did you go anywhere, do anything?

2 A He wanted to -- he wanted cigarettes.

3 Q Did you give in?

4 A I didn't feel like getting up so I tried to
5 give him some of mine, and I couldn't find them.

6 Q Okay. So did you go -- what happened as a
7 result of --

8 A He said he wanted some food too, so I got
9 up, I said, all right. I was -- I was pretty upset
10 about it, and, um, I got dressed and told her I was
11 going to go get some cigarettes and take him to
12 McDonald's.

13 Q Okay. Did you leave?

14 A Yes, sir.

15 Q Did you notice anything funny about your
16 car when you got up?

17 A Yes, sir. I did.

18 Q What -- was anything different than when
19 you left it?

20 A Yes, sir. I did.

21 Q What was different about it?

22 A When -- first thing I noticed when I got in
23 my car was that my passenger window was about a third of
24 the way down. There was all kind of items on my seat,
25 front seat, and I seen a -- like a -- it was a square,

1 like, metal thing that was in my floor board, like
2 tinfoil, that was in my floor board. And it was like --
3 it was folded so -- like it had something in it. I
4 thought it was something in it, and I grabbed it.

5 Q Okay. Did it have anything in it?

6 A Um, I never opened it.

7 Q Okay. What did you do with it?

8 A I just -- I put it in my pocket. I didn't
9 know what it was.

10 Q Okay.

11 A And, um, so I also noticed there was a --
12 a -- when I was -- Mark was getting in, I -- just
13 cleaning everything up, I noticed that the -- that there
14 was a motel key that was there, like right there in the
15 side of the passenger's side of the car.

16 Q Okay. Did you look to see what motel key
17 it was?

18 A I just automatically knew it was -- it was
19 Heather's motel key.

20 Q How did you know --

21 A Well, the reason why, because I don't go to
22 motels, and it would be -- it had a number 9 on it.

23 Q Never seen anything about your windows or
24 your --

25 A Yes, sir.

1 Q -- parking cars or anything?

2 A My -- I have a spare key. It had been
3 moved too. My cup holder, it's -- actually, there's
4 this little pull-out thing, you know, and I had my spare
5 key there. It was actually in my cup holder. It had
6 been moved. And the car was so cold, I was blowing
7 smoke out of my mouth. And I -- I got in the car and
8 cranked it up and sat there with Mark and cut the
9 heat -- the heat on.

10 I looked around to see if anything was
11 missing out of my car, because I think -- I felt
12 somebody might have took something. But I --

13 Q You're saying the car was in a totally --
14 looked different than it was when you got out of it the
15 night before?

16 A Definitely had been things that happened in
17 it that -- that I didn't -- wasn't around to --

18 Q What, if anything, did you do after you got
19 the car started, and did you go anywhere?

20 A We was going to see -- if you know anything
21 about Atlantic Beach, you go from -- from -- from Fort
22 Macon, you're going to McDonald's. And we were going --
23 I was going to stop at the store and go to McDonald's.

24 Q Did you actually go to McDonald's?

25 A Um, sir?

1 Q Did you stop at the store first?

2 A Yes, sir. First thing I did was I stopped

3 at -- no. No, sir. I didn't. I'm sorry. The first
4 thing I did was -- the Seashore Motel is right across
5 the street from the gas station. And when I pulled
6 up -- and I had already had it in my mind that I was
7 going to stop by, you know, to check on Heather, you
8 know. I didn't say anything to Mark and we didn't talk
9 about it or nothing. He was over there texting on his
10 phone.

11 Q Let me ask you, before I even ask that,
12 where was Heather when you woke up that morning? Was
13 she at the house?

14 A I don't know. I didn't -- I --

15 Q She's not -- you didn't see her at
16 Anique's?

17 A I got out of her bedroom and went straight
18 out the door. Mark -- I got dressed and went straight
19 out the door.

20 Q You went in the car and left?

21 A Yes, sir.

22 Q And you went to the store?

23 A Yes, sir. Well, I was going to the store,
24 but when I get to the store, you look -- like the
25 officer was explaining, that on the hill there's a

1 motel. And I looked up on the hill and I could see a
2 bunch of officers surrounding Heather's motel room,
3 bunch of officer cars.

4 Q So did you --

5 A I -- I diverted from going to the store and
6 was immediately worried about her.

7 Q Okay.

8 A I didn't know what the situation was, going
9 on, and I pulled up.

10 Q So you went to the motel room with the
11 intention of seeing what was going on with Heather?

12 A Yes, sir.

13 Q Do you think she is back at the motel room?

14 A At that time I didn't think she -- I didn't
15 know where she was at. But I thought -- that's what I
16 thought. Something was wrong with her, like, medically
17 or something. You know, I -- I didn't know.

18 Q Parked the car with you?

19 A Yes, sir.

20 Q So you pulled up and the first person you
21 saw was Officer Ennis?

22 A Um, I think so. I'm not really sure, but I
23 think he was -- was the one.

24 Q Okay. Did he -- you stopped, and he --

25 A Yes, he was the one. You're right. I

1 was -- he was the one.

2 Q Okay. So he came up to --

3 A He was standing outside the door of her
4 room.

5 Q All right. So what happened after you
6 pulled up and he stopped you?

7 A Mr. -- Officer Ennis came -- came to --
8 rushed to my door and asked me what was I doing.

9 Q What, if anything, did you tell him?

10 A He scared me, and didn't know what to
11 think. I was, like, "Riding around."

12 Q Did you -- did you have any pills or
13 anything in that car?

14 A Yes, sir. I did have -- I had two
15 10-milligram Adderall. They're non-narcotic pills.

16 Q Were they yours?

17 A Sir?

18 Q Were they yours?

19 A No, they're -- they were actually -- the
20 lady Lisa Hill's that she -- she left them in my car not
21 too long ago and -- but, I mean, I was wrong for having
22 them, you know.

23 Q So you told the officer that?

24 A Yes, sir. I did tell him that.

25 Q Did he place you under arrest for that?

1 A He asked me to step out of the car.

2 Q Okay. And you heard the officer's
3 testimony, when you got out of the car the key fell out
4 of your pocket, or out of your lower body?

5 A Yes, sir. That's -- it didn't happen like
6 that. My key -- the key -- when I moved all the stuff
7 out of the room from Mark sitting down, I put it in the
8 cup holder. The cup holder. It wasn't in my lap, or if
9 it -- you know, it didn't fall out. It didn't happen
10 like that. It just didn't happen like that.

11 Q You didn't have that key on you, though, on
12 your person?

13 A Oh, no, sir. I didn't.

14 Q So he said -- he also testified you had
15 \$147 on you?

16 A Yes, sir.

17 Q Where did that money come from?

18 A I worked hard for it and honest at my job.
19 I'm a cook.

20 Q Where were you working at the time?

21 A The Captain's Table. I'm a cook.

22 Q And that was money that you had on you?

23 A Yes, sir.

24 Q Money that the officer shows as evidence a
25 few minutes ago?

1 A Yeah. I worked hard for that money.

2 Q After that, what, if anything, happened
3 after that?

4 A He placed me in a vehicle. He placed Mark
5 Thomas in a vehicle. And I was actually in Mr. Prior's
6 vehicle. And we -- en route to -- to the police station
7 where he had a conversation with me.

8 Q Okay. What kind of conversation did
9 you-all have on the way down?

10 A He asked me did I know anything about what
11 was going on in Heather's motel room. And I said, "No,
12 sir, I don't."

13 And he said -- he said, "Are you sure about
14 that?"

15 And I said, "No -- yes, sir, I am sure." I
16 said -- he said, "Well, you know we found a suspected
17 Meth lab in there."

18 I said, "No, sir, I do not."

19 He said -- he said, "Do you have anything
20 to do with it?"

21 I said, "Well, sir, would you please take
22 prints?"

23 And he said, "We're not" -- he said, "We
24 don't need prints. We got everything on video. That's
25 all we need."

1 And I said, "Well, good then. Because I'm
2 innocent."

3 Q Well, so they took you on down to the
4 police station and went through the booking process?

5 A We went to Atlantic Beach Police Station
6 first, and they had Mark there. I just found out Mark
7 had a -- I didn't know he had live warrants on him for
8 stealing an automobile.

9 Q How did you find out about that?

10 A Because the officers were talking about it
11 right there at the police station. And he was in -- and
12 Mark was yelling, "I can't go down for this. I can't go
13 down for this." Habitual felon.

14 Q So they took you to the -- to the room and
15 booked you. And you heard the officer testify you had a
16 burn mark on your hand?

17 A Yes, sir.

18 Q How did you get that burn mark?

19 A I got that at work. I work with a lot of
20 grease and stuff. I'm always cutting my hands. And
21 it's part of the job is getting burns and stuff all the
22 time. Actually, the refrigerator, the freezer is right
23 there with these cold chicken tenders, and the grease is
24 right there, and I burned my hand. It was a grease
25 flame right here. And it was -- it was an old wound.

1 It had been already starting to scab over, and it wasn't
2 major. It was minor.

3 Q Did you tell them that, when they asked
4 you?

5 A Did I tell who?

6 Q Did you tell the officer?

7 A Yes, sir. I did. I said they could ask my
8 boss too if they needed to, because he helped me doctor
9 it up.

10 Q What, if anything, happened after that
11 afternoon?

12 A I -- they wanted to question me and Mark.
13 They questioned him.

14 Q Did you answer their questions?

15 A I did. I went in there and I was going to
16 ask -- answer the questions, and then something just
17 told me I need to get a lawyer, because they was talking
18 all this stuff that I didn't know nothing about, and I
19 just -- I just thought it would be best to get a lawyer.

20 Q Did you decide at that time that maybe you
21 better get someone to help you?

22 A Yes, sir.

23 Q Okay. And other than that, that was all
24 that kind of pretty-much went down that day with you?

25 A Yes. Yes. Well, no. Actually, it's

1 really not --

2 THE COURT: Just be a little bit more
3 specific.

4 BY MR. FULCHER

5 Q What, if anything else -- did anything else
6 happen to you after you were at --

7 A Yes.

8 Q Just answer the question.

9 A Yes, sir.

10 Q Could you tell the Court what happened?

11 A Okay. Well, I -- I went to -- they brought
12 me to Carteret County jail en route, and when I got down
13 there I was with -- I called Anique and told her please
14 pick up my car. And she -- she asked me what I was
15 being locked up for. I said, I do not know. And I got
16 to -- down here to the jail, and Mark, me and him had a
17 conversation.

18 Q Okay. You can't tell anything he said.
19 Did you do anything as a result of that, of your
20 conversation with him? Make any statements to anybody
21 as a result of that?

22 A Sir?

23 Q Did you make any statements to Law
24 Enforcement or to anybody as a result of your
25 conversation with Mark? Can't tell us what he said.

1 A Can I tell you what he showed me?

2 Q What, if anything, did he show you?

3 A He showed me the bags of Meth he had on
4 him.

5 Q How many bags did he --

6 A He had two. And I tried -- he's got it in
7 a letter I tried to --

8 MR. SPENCE: Objection.

9 THE COURT: Sustained.

10 BY MR. FULCHER:

11 Q Do you know how to make -- do you know how
12 to make a Meth lab, make Meth?

13 A No, sir.

14 Q You heard testimony earlier about
15 Ms. Kennon said that you were in the room and pipes and
16 gases and all that; do you understand all that?

17 A No, sir. But I know a lot of people are
18 doing it now.

19 Q Have you ever seen it made?

20 A No, sir. I have never been around it made.

21 Q Well, this evening at the -- let me go
22 back. Did you ever have in your possession any of those
23 items that the officers said were found in that room?

24 A None of those items nor the tampons that
25 was found with those items.

1 Q About how many hours had passed since the
2 day you left her room until you actually were picked up?

3 A Sir?

4 Q Made your statements and were picked up by
5 the officers. Do you know about how many hours it was
6 since you left the room?

7 A How many hours had it been since I made my
8 statements?

9 Q How many hours since you left the motel,
10 Seashore Motel, until they arrested you?

11 A Nineteen hours had passed. A whole 19
12 hours had passed.

13 Q Do you know what Heather was doing that
14 whole -- the entire time?

15 A No, sir. I was asleep, and even she
16 testified to that.

17 Q Any time when you were in the motel room,
18 the limited time that you were at the Seashore Motel,
19 did you see her make any Meth?

20 A No, sir. She was going to the bathroom and
21 shooting it. I do know that.

22 Q She tell you that she knew how to make any
23 of it?

24 A Yes. She had told me she knew how to make
25 it.

1 Q Tell you where you learned it from?

2 A Yes, sir.

3 Q Where did she learn it from?

4 A From my brother.

5 Q Your brother. Your brother is being
6 charged and -- with making a Meth lab?

7 A It's a whole group of people, yeah.

8 THE COURT: Next question.

9 THE WITNESS: And I'm not with their
10 lifestyle.

11 BY MR. FULCHER

12 Q Did she use any other drugs while you were
13 there?

14 A Not that I know of.

15 Q Heather ever -- did she ever try to contact
16 you?

17 A Yes, sir.

18 Q How did she contact you?

19 A Through letters, and through Anique.

20 Q Okay. What did she tell you? What did she
21 tell Anique?

22 MR. SPENCE: Objection.

23 THE COURT: Did you provide those?

24 MR. FULCHER: No. No, I didn't ask
25 about -- my question is what, if anything, did she tell

1 Anique.

2 MR. SPENCE: Objection.

3 THE COURT: Sustained. Unless he was
4 present at the time it was said.

5 BY MR. FULCHER

6 Q Did Anique tell you she had any
7 conversation with her?

8 A Yes, sir.

9 Q What did she tell you they spoke about?

10 MR. SPENCE: Objection.

11 THE COURT: Sustained.

12 BY MR. FULCHER:

13 Q Mr. Warren, you got a little bit of
14 criminal history, don't you?

15 A Yes, sir. I do.

16 Q Some of those things that you've been
17 convicted of, you proud of?

18 MR. SPENCE: Objection to that question.

19 THE COURT: Sustained.

20 BY MR. FULCHER

21 Q You ever make mistakes in your life?

22 MR. SPENCE: Objection.

23 THE COURT: Sustained. You may ask him
24 what he's been charged and tried over the last 10 years,
25 or from the date he's released from any of those crimes.

1 BY MR. FULCHER

2 Q Can you explain to the Court what, if
3 anything, you have been convicted of in the last 10
4 years, or --

5 A Can I explain it with an explanation?

6 THE COURT: No, sir. You may answer his
7 question.

8 BY MR. FULCHER

9 Q Have you ever been?

10 A My main charge in 2000 when I was 20 -- 20
11 years old, I had a second-degree murder charge.

12 MR. SPENCE: Objection to the charge.

13 BY MR. FULCHER

14 Q Were you convicted of that?

15 A I pled -- I pled the Alford plea, no
16 contest.

17 Q Could you tell us what the effects of --

18 MR. SPENCE: Objection.

19 THE COURT: I haven't heard the question.

20 BY MR. FULCHER

21 Q Can you tell us what happened?

22 A I was defending my home.

23 MR. SPENCE: Objection.

24 THE COURT: Sustained. Motion to strike is
25 allowed.

1 BY MR. FULCHER

2 Q You ever been charged with any drug
3 charges?

4 A One --

5 MR. SPENCE: Objection to the form of the
6 question.

7 THE COURT: Sustained.

8 THE WITNESS: One marijuana charge.

9 BY MR. FULCHER

10 Q You ever been convicted of any sub -- of
11 possession of drugs?

12 A That's not in my lifestyle, except for
13 marijuana. And I only do that socially.

14 Q You did your time and you served your time?

15 A Yes, sir. I did.

16 Q At any time from January 29th through
17 January the 30th, did you ever have in your possession
18 any Meth, any chemicals that would be used to make Meth?

19 A No, sir. I didn't.

20 MR. FULCHER: I don't have any further
21 questions for him.

22 THE COURT: Cross-examination.

23

24

25

CROSS-EXAMINATION

1
2 BY MR. SPENCE

3 Q Okay. Let me just first clear up your
4 criminal history. You are Dustin Jamal Warren; is that
5 correct?

6 A Yes, sir.

7 Q Date of birth, October 24th, 1977?

8 A Yes, sir.

9 Q Convicted of second-degree murder in Craven
10 County on April 18th, 2002; is that correct?

11 A Yes, sir.

12 Q How long did you serve?

13 A Almost 11 years.

14 Q You got out in 2013?

15 A I got out, 10 years.

16 Q When did you get out?

17 A It was July 11, 2011.

18 Q Okay. Convicted in Pender County of
19 possession of controlled substance in jail in
20 September 2006?

21 A Marijuana. Yes, sir.

22 Q Possession of controlled substance in jail.
23 That's a drug, isn't it, marijuana?

24 A Oh, yes, sir.

25 Q It's a drug, isn't it?

1 A Yes, sir.

2 Q Just like the Adderall is a drug, isn't it?

3 A Yes, sir.

4 Q A controlled substance?

5 A Yes, sir.

6 Q Convicted of assault with a deadly weapon
7 on September 3rd, 2013, here in Carteret County; is that
8 correct?

9 A Wrongly charged, but yes, it was a
10 misdemeanor.

11 Q You pled guilty to it, didn't you?

12 A You were the prosecutor. You -- I had to.
13 I was scared of it.

14 Q Did I make you plead guilty?

15 A You wouldn't give me no pleas.

16 Q Convicted of assault on a police officer in
17 Pender County on September 13th, 2006, also?

18 A That was behind them beating me up.

19 Q You've got an excuse for everything, don't
20 you, Mr. Warren?

21 A All I'm doing is telling the truth, sir.

22 Q Okay.

23 A I'm not stuttering.

24 Q You just happened to have those pills in
25 your -- in the door handle of your car; weren't yours?

1 A I take responsibility for them.

2 Q Okay. You happened to have that foil in
3 your pocket?

4 A Yes, sir.

5 Q That was just laying in your car?

6 A It was folded in my car.

7 Q And you put it in your pocket?

8 A Yes, sir. I did.

9 Q That same day. So another bad choice?

10 A I take responsibility for it. That's why
11 I'm telling --

12 Q Okay. Burn on your hand, coincidence?

13 A That's from hard work.

14 Q Okay. Happened to have that key in your
15 car to the motel room. Coincidence?

16 A Heather was there that night when I went to
17 sleep. I don't -- I don't -- that's not coincidence.

18 Q Okay. Did it fall on the ground like
19 Officer Ennis said, or something else happen with it?

20 A I mean, it was actually in -- when -- it
21 was in my key holder.

22 Q So he's not telling the truth; it fell on
23 the ground?

24 A I don't know why he told that, but I know
25 it didn't fall on the ground when I stood up. I don't

1 know why.

2 Q Did you see it?

3 A I hate to even argue about such a simple
4 point, but it's -- it's the truth.

5 Q Okay. Now, Nicole, she's your -- what is
6 she, your friend? Girlfriend? What is she?

7 A Um, she's a high school friend of mine for
8 20 years.

9 Q What's her name?

10 A Nicole Ridenour.

11 Q Is she in the courtroom?

12 A No, sir.

13 Q Has she been here all week?

14 A Sir?

15 Q Has she been here all week?

16 A She's going through marriage counseling
17 now. She couldn't. She didn't want to be involved.

18 Q Where does she live?

19 A Where does she live?

20 Q Yeah.

21 A She lives in Morehead.

22 Q So she could be here, couldn't she?

23 A She's going through marriage counseling.
24 Her husband and her are being bought. I tried to get
25 her. I did. I had other witnesses to try to call, but

1 they're not even --

2 Q That's just bad luck too, isn't it,
3 Mr. Warren?

4 A Especially when the State had custody of
5 them and you can't send them here. That's -- you --
6 yeah, that's terrible, though.

7 Q And you know how much time you're facing if
8 you get convicted?

9 A A life sentence. A life sentence.

10 Q No, not a life sentence. That's not true.

11 A That is true, sir. If I get --

12 Q You're facing time?

13 A Three -- these three charges is over -- is
14 a minimum of 30 years, if I get convicted. You-all
15 offered her probation --

16 MR. SPENCE: I object to *a life sentence*.

17 THE WITNESS: -- for her plea against me.

18 THE COURT: That's sustained.

19 BY MR. SPENCE

20 Q You're facing a lot of time; you know that?

21 A Could you tell the jury how much I'm
22 facing?

23 THE COURT: Mr. Spence and Mr. Fulcher will
24 be permitted to argue what the range of punishments
25 are --

1 THE WITNESS: Okay. Thank you.

2 THE COURT: -- at the time they make
3 final arguments to the jury. Ask your next question.

4 THE WITNESS: Thank you, sir.

5 BY MR. SPENCE

6 Q All right. You didn't know where Heather
7 Kennon was that morning when you came back to the motel,
8 did you? You didn't know she was there?

9 A I didn't know. No, sir.

10 Q Now, let me just cut to the chase: You
11 don't deny you were at the Seashore Motel between noon
12 on the 29th of January, 2014, and about 5:00 or 4:00 in
13 the afternoon, at least. You were there the whole time;
14 is that right?

15 A I do have a little bit of problem with that
16 time line.

17 Q Tell me, what's the problem with that?

18 A I think I got there about 1:30, because
19 actually, the time my witnesses came in, that's about
20 the time that I was -- I was actually at their house.

21 Q Okay. The time you checked in, what time
22 was that? Or the time Heather checked in?

23 A The time line, it says 2`o'clock on the
24 check-in time on your -- in your discovery.

25 Q What time did you get there?

1 A I guess maybe around 1:00, 1:30.

2 Q Okay. You got there, you stayed with her
3 the whole time; is that right?

4 A No, sir. I was in my car for about an
5 hour.

6 Q You stayed there the whole time when she
7 was there?

8 A I wasn't, I mean, with her the whole time.

9 Q Let me ask you, you took her there; isn't
10 that correct?

11 A Yes, sir. Yes, sir.

12 Q And when you left, you left and went to
13 Anique's house with her; isn't that correct?

14 A Yes, sir. Yes, sir.

15 Q And the rest of that time you were at the
16 Seashore Motel, weren't you?

17 A Yes, sir.

18 Q Okay. So you got four or five hours you
19 were together there at the motel, that's clear?

20 A It was about two -- about two and some
21 change. I left about 4:30. It was about 1:30 when I
22 got there, so maybe 4:00, 4:30. So, I mean, about three
23 hours, so --.

24 Q So if the check-in time said something
25 different, you --

1 A The check-in time said 2`o'clock.

2 Q Okay. And you said that you saw her go and
3 shoot up some Meth in the bathroom?

4 A I didn't see her. I just know that's what
5 she was doing because she told me.

6 Q Did you see her take something in the
7 bathroom?

8 A Did she take something?

9 Q Yeah.

10 A I don't know what she -- I didn't see the
11 syringe or nothing like that she had. But, I mean, she
12 told -- I know what she was doing. She told me that's
13 what she was doing.

14 Q You knew what she was doing?

15 A Sir?

16 Q You knew it?

17 A Yeah. Yeah. I knew she was doing.

18 Q You see the Meth?

19 A No, I never seen the Meth that she had.

20 Q Seen any chemicals around there?

21 A No, sir.

22 Q Any tubing?

23 A No, sir.

24 Q So the time you-all were there, you didn't
25 see anything in that bedroom?

1 A Just her stuff and the basket and the gray
2 bag -- bags of groceries she had bought.

3 Q Okay. And nobody else in and out of that
4 room but you and her?

5 A Except for the Manager, when he came in.

6 Q Well, he didn't come in, did he?

7 A He stepped to the door.

8 Q And you told him you were naked?

9 A No, sir. I said, "Wait a second." I
10 didn't say, "I'm naked."

11 Q Okay. Did you let him in?

12 A I opened the door and talked to him.

13 Q Okay.

14 A I mediated.

15 Q Okay. Did you ever think about getting
16 underneath the bed covers to get warm if you were cold?

17 A I don't think my girlfriend would approve
18 of something like that with her. I wasn't there to get
19 her under the bed covers.

20 Q Is Lisa Turner your aunt?

21 A She's my god-aunt.

22 Q Your god-aunt?

23 A Yes, sir.

24 MR. SPENCE: I don't have any other
25 questions of this witness.

1 THE COURT: Any redirect?

2 (Mr. Fulcher shook his head.)

3 THE COURT: Thank you, sir. You may stand
4 down.

5 (The witness stepped down from the witness
6 stand.)

7 THE COURT: Further evidence for the
8 defendant?

9 MR. FULCHER: That will be all the
10 evidence.

11 THE COURT: Will there be rebuttal evidence
12 for the State?

13 MR. SPENCE: No, sir.

14 THE COURT: Members of the Jury, all the
15 evidence has been presented. It will soon be your duty
16 to decide from the evidence what the facts are, and to
17 apply the law that I will give to you to those facts in
18 arriving at your verdict.

19 But prior to the arguments of the lawyers
20 and the final instructions of the Court on the law that
21 will follow the lawyers' speeches, I'm required to
22 confer with the lawyers about the law involved in this
23 case, and I'm going to excuse you from the jury room
24 while we take that up as well as other matters. In
25 fact, given the hour, that we won't be able to finish it

1 today -- that is, the final arguments and the charge and
2 the deliberations -- I probably am going to excuse you
3 for the overnight recess.

4 While you're away from the courtroom,
5 please remember not to talk about it among yourselves or
6 with anybody else. Don't let anybody speak to you about
7 it or in your presence. If they do or attempt to, let
8 us know it. Don't form or express an opinion about the
9 guilt or innocence of the defendant. Have no contact
10 with the Court, the parties, the lawyers, the witnesses.
11 Don't read about it in the paper, listen to radio or
12 television accounts, and don't try to find out anything
13 about it outside the courtroom.

14 If you would drop your juror tags in your
15 jury seats and return tomorrow morning at 9:30, we'll
16 bring you in and conclude the trial at that time. Thank
17 you very much. Everybody else remain seated. The jury
18 is excused.

19 (The jurors exited the courtroom.)

20 THE COURT: All right. Let the record
21 reflect all the jurors are out of the courtroom.

22 At the conclusion of all the evidence,
23 Mr. Fulcher, is there a motion from the defendant? If
24 so, let me hear you, please, sir.

25 MR. FULCHER: Your Honor, I will certainly

1 renew my Motion to Dismiss. Based upon that, I still
2 don't think that we have heard, you know, enough
3 evidence to even submit to the jury.

4 We heard my client; now we've heard his
5 side of the story, and we certainly have proven to the
6 fact that the prosecution's key witness is Ms. Kennon,
7 obviously is very untruthful. She -- her story does not
8 match up with what the statements from the witnesses
9 said during the time line. We've heard evidence from
10 Mr. Warren that he was only in the room long enough to
11 drop her off. We haven't heard any evidence that
12 there -- that he had anything in his possession, any
13 kind of precursors, any kind of controlled substance for
14 manufacturing, or any kind of agreement made with
15 Ms. Kennon to move forward.

16 I would certainly make my motion once again
17 to dismiss.

18 THE COURT: Do you wish to be heard, Mr.
19 Spence?

20 MR. SPENCE: No, sir. I don't.

21 THE COURT: Motion to Dismiss at the
22 conclusion of all the evidence shall be and the same is
23 hereby denied.

24 Let's go into a charge conference. And I
25 want to give you the pattern jury instruction number and

1 its delineation, and then I'll come first to the State
2 and then to the defendant for any requests for
3 additions, deletions or modifications to the same.

4 101.05, Function of the Jury. 101.10,
5 Burden of Proof and Reasonable Doubt. 101.15,
6 Credibility of Witness. 101.20, Weight of the Evidence.
7 104.25, Accomplice Testimony for the Prosecution.
8 104.50, Photographs, et cetera, as Illustrative
9 Evidence. 104.50A, Photographs, et cetera, as
10 Substantive Evidence. 105.20, Impeachment or
11 Corroboration by Prior Statement. 105.21, False and
12 Contradictory or Conflicting Statements of Defendant.
13 105.35, Impeachment of a Witness Other than Defendant by
14 Proof of Crime. 260.15B, Possession of an Immediate
15 Precursor Chemical. 260.19, Manufacturing a Controlled
16 Substance. 202.80, Felonious Conspiracy. And 101.35,
17 Concluding Instructions.

18 Any requests from the State?

19 MR. SPENCE: Just to make sure I didn't
20 miss the one about the co-defendant testimony. Is that
21 in there?

22 THE COURT: I believe that's Accomplice
23 Testimony, 104.25.

24 MR. SPENCE: Okay.

25 THE COURT: That you may find the witness

1 was an accomplice in the case.

2 MR. SPENCE: Yes, sir.

3 THE COURT: "An accomplice is a person who
4 joins with another in commission of a crime. The
5 accomplice may take part in acts necessary to accomplish
6 the crime, and may knowingly help or encourage another
7 in the crime, either before or during its commission.
8 The law considers an accomplice to have an interest in
9 the outcome of the case. If you find the witness was an
10 accomplice, you should examine every part of the
11 testimony of the witness with the greatest care and
12 caution. After doing so, if you believe the testimony
13 in whole or in part, you should treat what you believe
14 the same as any other believable evidence."

15 MR. SPENCE: Yes, sir. And did I hear
16 Acting in Concert? I was trying to write down --

17 THE COURT: I did not. Is that a request?

18 MR. SPENCE: Yes, it is.

19 THE COURT: And you have served or given to
20 the Court -- did you give Mr. --

21 MR. SPENCE: I did. I gave him a copy of
22 that.

23 THE COURT: The request for special
24 instructions, which basically tracks the language of the
25 statute about how manufacturing --

1 MR. SPENCE: Yes, sir.

2 THE COURT: -- may take place.

3 MR. SPENCE: I just didn't see it in the
4 pattern itself. It says manufacture, but it didn't --
5 wasn't defined.

6 THE COURT: It is not defined, but they --
7 okay. Any from the State -- I mean, from the defendant?
8 Excuse me.

9 MR. FULCHER: No, Your Honor. I certainly
10 agree with the description of manufacturing and all
11 that.

12 THE COURT: All right. Then I will give
13 the Acting in Concert and that requested and -- special
14 requested instruction about the definition of
15 manufacturing.

16 MR. SPENCE: Thank you.

17 THE COURT: In this case, the State would
18 have the opening and the closing argument, and the
19 defendant would have the middle argument.

20 MR. SPENCE: I'll only take the last
21 argument. I will not take the first argument and the
22 last.

23 THE COURT: All right. I'm going to then
24 work on this charge and will have a copy of it for both
25 of you this afternoon so that you can take a look at it

1 in formulating your final closing arguments. Okay?

2 MR. SPENCE: Thank you.

3 THE COURT: Anything further from the
4 State?

5 MR. SPENCE: No, sir.

6 THE COURT: Mr. Fulcher?

7 MR. FULCHER: No.

8 THE COURT: All right. We'll just be at
9 ease until tomorrow morning at 9:30. You don't need to
10 formally close court, Sheriff.

11 **(End of Volume II of III.)**

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CERTIFICATE


STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, Jean Speights, RMR, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings, pages 171 through 402, is a true, correct, and verbatim transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

Given under my hand this 16th day of January, 2015.



Jean Speights, RMR
Official Court Reporter
Second Trial Division

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STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
 COUNTY OF CARTERET SUPERIOR COURT DIVISION


FILE NO. 14 CRS 50372, 50376-77

STATE OF NORTH CAROLINA,)	
VS.)	CERTIFICATE OF
DUSTIN JAMAL WARREN,)	DELIVERY
Defendant.)	
_____)	

This is to certify that the transcript of proceedings at the September 8, 2014, Criminal Session of Carteret County Superior Court was ordered on September 17, 2014, on the Appellate Entries, comprises **233 pages**, and was delivered electronically and by U.S. Mail, postage pre-paid, to the parties listed below, on the 16th day of January, 2015:

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1 (All parties are present in the courtroom.)

2 (The jurors are not present in the
3 courtroom.)

4 THE COURT: Let the record reflect all
5 jurors are out of the courtroom. I have provided
6 counsel for the State and defendant with a copy of the
7 jury instructions the Court intends to give.

8 Does the State wish to be heard regarding
9 the same?

10 MR. SPENCE: No. They appear to be
11 complete, accurate, and state the law completely, fully.

12 THE COURT: Mr. Fulcher?

13 MR. FULCHER: I agree. Everything seems to
14 be in order.

15 THE COURT: All right. Anything from the
16 State before we bring our jury back?

17 MR. SPENCE: No, sir, Judge. I'm only
18 going to take the last argument, waive the opening
19 argument.

20 THE COURT: Anything from the defendant?

21 MR. FULCHER: Just one thing. My client
22 would like to have these final proceedings recorded.

23 THE COURT: All right. Madame Court
24 Reporter, if you would please record the final arguments
25 of the attorneys. Have we got everybody here?

1 SHERIFF: Yes, sir.

2 THE COURT: You may bring them back.

3 SHERIFF: Yes, sir.

4 THE COURT: Thank you, sir.

5 (The jurors entered the courtroom and took
6 their seats in the jury box.)

7 THE COURT: Let the record reflect that all
8 jurors have now returned to the courtroom. Good
9 morning, Ladies and Gentlemen.

10 Ladies and Gentlemen, all the evidence has
11 been presented. It's now time for the final arguments
12 of the lawyers. At the conclusion of these arguments, I
13 will instruct you on the law in this case, and then
14 you'll be taken to your jury room to begin your
15 deliberations.

16 The final arguments of the attorneys are
17 not evidence but they're given to assist you in
18 evaluating the evidence. The lawyers are permitted in
19 their final statements to argue, to characterize the
20 evidence, and to attempt to persuade you to a particular
21 verdict.

22 It's improper for a lawyer in a final
23 argument to become abusive, to inject personal
24 experiences, to express a personal belief as to the
25 guilt or innocence of the defendant, or to make

1 arguments on the basis of matters outside the record,
2 except concerning those matters which the Court may take
3 judicial notice.

4 A lawyer may, however, on the basis of that
5 lawyer's analysis of the evidence, argue any position or
6 conclusion with respect to a matter in issue.

7 And if, in the course of making a final
8 argument, the lawyer attempts to restate a portion of
9 the evidence and your recollection of the evidence
10 differs from that of the lawyer arguing to you, you are,
11 in recalling and remembering the evidence, to be guided
12 exclusively by your recollection of the evidence.

13 In this case, the State has the opening and
14 the closing argument and defendant has the middle
15 argument. And the State is waiving its opening
16 argument. Is that true, Mr. Spence?

17 MR. SPENCE: That's correct, Judge Alford.

18 THE COURT: The jury will be with the
19 defendant, Mr. Fulcher.

20 MR. FULCHER: Good morning, Ladies and
21 Gentlemen. Certainly, thank you for your participation
22 as a jury.

23 The saying that no good deed goes
24 unpunished, never was that such the case as in the case
25 we're at hand with. To go back and think about the

1 evidence that we've heard and just put it in kind of a
2 time line, it seems to always be better to hear a story.

3 It was certainly a cold and snowy day,
4 January the 28th, 2014. My client, Dustin Warren, was
5 at the DoubleTree motel. He was there with a friend of
6 his who he had met in high school, and she was going
7 through some problems and he was there consoling her.

8 It was during this time that he was there
9 that he happens to run across a friend of his brother's
10 who's Heather Kennon. She was outside smoking, can't
11 smoke inside, so he just happened to run past her and he
12 had known her, and so he runs into her and speaks to
13 her.

14 Well, he stays the night with his friend.
15 The next morning we hear that she approaches him and
16 says, "Hey, can you take me to New Bern? I need -- I
17 have got a bad ankle. I need to go to the hospital.
18 And can you take me?"

19 He says, "Well, you know, the roads are" --
20 it's her testimony that the roads, I think from
21 everybody, that it was icy and cold, and they can't --
22 it's hard to go -- may not even be able to get across
23 the bridge because it's icy. And so he says, "I can't
24 go."

25 And she says, "Well, I really need to go.

1 Can you take me?"

2 And he says, "Well, can't we just go to
3 Morehead?"

4 "Well, we can't go to Morehead because,
5 hey, I've got a red flag."

6 Well, he says, "No, I can't do it," and
7 notices that she's obviously high from the previous
8 night.

9 It gets closer to check-out time and she
10 approaches him again and says, Hey, if you can't take me
11 can you allow me to use the car? I need to go to the
12 store and pick up a few things."

13 And so he lets her borrow the car and stays
14 gone for a while and he notices when she comes back she
15 has a few bags, different things, and -- but she's --
16 kind of seems shaken and had stayed gone longer than he
17 thought just going up to the store, but he doesn't think
18 any more about it. It's at check-out time and plans to
19 leave.

20 And she says, "You know, I don't really
21 have anywhere else to go. Can you take me to another
22 hotel? You know, I'm here. I need to go somewhere."

23 So Mr. Warren says, "Hey, yeah. My
24 girlfriend lives just up the road so I'll take you up
25 there," and she catches a ride. And next thing you

1 know, she says, "Let's go here. There's a motel right
2 here."

3 And he pulls into the Seashore Motel.

4 Well, he helps -- notices that she has with her a bag,
5 several other bags of groceries or -- and some other
6 things that he doesn't go into detail what they were,
7 but he notices her in the car and he helped them put
8 them in there, and they travel on.

9 Once they get there, she goes in and
10 registers. She has the money, rents the room, and he
11 notices that, you know, she's still high. And he says,
12 "You know, do you need some help?"

13 And so she -- she says, you know, he can
14 just help me take my bags. And we take -- we go into
15 the motel, she goes in and registers with no license,
16 other than an ID, no car in her name, so she gives them
17 his plate numbers, because it's a requirement to get in.

18 Well, it's around 11:30, 12`o'clock. And
19 he notices that -- you know, one of the things he
20 notices on the way, that she was texting different
21 people, and, you know, at that time didn't think much
22 about it, but just realized that she was --
23 conversation, and he says, "Okay, do you need some help
24 moving things in?"

25 "Yes."

1 Once again, as he's trying to help her,
2 certainly takes the bags, takes them into the room. But
3 when he goes into the room the thing that he notices is,
4 very cold, beds are in there, and he notices that he
5 puts her bags on the bed. And he says, you know, it's
6 really cold. It's cold in here. And she says, "Yeah,
7 it is," and notices only one heater in there.

8 Well, she goes to the Management and tries
9 to get another heater. We've heard testimony that it
10 was -- that they wouldn't allow another heater in there
11 due to the electrical equipment. And so she asks, "Can
12 we get another room?" She was denied on that, and so
13 the next thing they say, "We'll bring you some
14 blankets."

15 Well, in the meantime, we heard testimony
16 that Mr. Warren is in the room trying to fix the little
17 heater that's in there. She comes back to the room and
18 lets him know these things. In the meantime he says,
19 "You know, I've got to get ready to go. It's cold. Do
20 you really want to stay here?"

21 And at no time do we see that he notices
22 anything else different in that room other than her
23 bags, blue bag, some bags of groceries, and some other
24 things that she has.

25 A short while later that Manager, Scott

1 Way, comes and brings some blankets. She has been in
2 the bathroom, according to him, and even to her own
3 testimony, uses some drugs. Meanwhile, he's been trying
4 to work on getting this heater to work.

5 And so the man, Mr. Way, comes and knocks
6 on the door. He said, "Do you want these blankets?"
7 And he asked her, since she's in the back of room, she
8 said, "No, I don't need them." And so he tells him, "We
9 don't want the blankets."

10 Well, the whole time, we've heard testimony
11 that the car was running outside while he was waiting
12 for all this -- it was his intention to drop her off and
13 leave and go back, to go on to his girlfriend Anique's
14 house.

15 Well, she says, "Well, before you go, can
16 you take me to the store? I need to get a few things."

17 So once again, him being a nice guy, picks
18 her up and takes her to the store, picked a few things
19 up, all those things confirmed by the Manager, and Ms.
20 Carla saying that, "Yeah, we see the car move a couple
21 times. They left, come back; left, come back."

22 On the way, he asked her, he says, "Are you
23 sure you can stay here? Do you have somebody to stay
24 with? You know, your -- your -- your foot's sore and
25 your ankle's swelled up," and she says, "No, I have got

1 some friends that are coming, one of these guys being
2 Mark Thomas that might get me. I'll be all right."

3 He brings her back and waits outside, his
4 testimony was, texting his girlfriend. He didn't really
5 have anywhere else to go until he could get there. And
6 she goes into the room.

7 It gets closer to around 4:30, said he'd
8 been approximately 30, 40 minutes, and asks her once
9 again, he said, "Are you sure you want to stay here?
10 It's a cold room." He said, "You've got some injuries.
11 Do you want to -- do you want to go? Come up with me?
12 We've got heat at Anique's. You can come stay if you
13 want for a little while," and she says, "Yes."

14 Get in the car, and they drive to the house
15 which he said is only a few minutes away.

16 Upon arrival, she decides she does not want
17 to come up. She's going to stay in the car. Well,
18 Dustin says, "Hey, I have got," you know -- when he goes
19 in, she stays in the car with -- her testimony, that he
20 goes in, Anique fixes him some hot dogs, gets a shower
21 and goes in and lays down, noticing that the only people
22 who were there at that time is Dustin and Anique. And
23 then, testimony is, shortly thereafter, this Mark Thomas
24 comes up to the house.

25 No evidence at this point of anybody taking

1 drugs, no wild parties, no machines cooking, smoking, he
2 just goes in, lays down, and rests.

3 Shortly after, he said Mark Thomas comes
4 in. And my client says he goes and really spends the
5 rest of the night in a cordoned-off room with his
6 girlfriend. He doesn't see, before he goes to bed, any
7 sign of Heather ever coming up, and the only person he
8 sees there is Mark.

9 He falls asleep during the night. We heard
10 testimony that Mark wakes -- tries to wake him up. He
11 gets up, decides he doesn't want to go anywhere with him
12 in that particular moment, goes back to bed and notices
13 around the room at that point. Nobody there except for
14 Mark, and Anique, who's in the room with him.

15 Next morning, which would be the morning of
16 the 30th, around 9:20, he's awakened by this guy Mark
17 and says, "We need to go to the store. Can I get some
18 cigarettes and McDonald's?"

19 Well, he gets up, walks out to the car and
20 notices there's some funny thing about the car. Windows
21 down, part of the way down on the passenger's side,
22 making it even more colder and damper in the car than it
23 was due to the weather. Notices that the spare key has
24 been moved that usually is in the console, and a piece
25 of tinfoil that kind of looks burnt on the floor, and he

1 just picks it up and inadvertently sticks it in his
2 pocket. He sees nothing else missing but he has some
3 other valuables in the back seat when he was moving but
4 doesn't realize, so he and Mark head out to the store.

5 Well, they get down a little ways, and his
6 testimony says, "You can see the motel just a little
7 ways up there," and he sees some police cars.

8 Well, Heather is not at the house, and he
9 remembers, the last time, she was injured and that was
10 where she was staying at. He said, "Well, I'm going to
11 go check and see what's going on. Maybe something
12 happened to her."

13 Pulls up into the parking lot. Certainly,
14 at this point, if there was any indigo(phonetic) that
15 there was some criminal activity going on, he sees all
16 the cops there, certainly would not be going back into
17 the lion's den to see what that was about, see what's
18 going on. But he does pull up to see what's going on
19 with his friend. And the whole time, notices his
20 friend, Mark's in the car texting furiously. "Strange,"
21 he says.

22 But he pulls up, and Officer Ennis
23 approaches him and asks him, says, "Hey. What are you
24 doing?"

25 Officer Ennis said, "I recognized him; he's

1 been in the community. I know who he was. I knew the
2 car he drove."

3 And he says, you know, "I was just out
4 driving."

5 And he says, detective looks in the car and
6 he sees the Adderall in the door and says, "Hey, can you
7 step out? Whose are they?"

8 "They're my aunt's."

9 We know that they should not be that way
10 and so he's asking to step out of the car. When he
11 steps out of the car, the key to the room happens to
12 fall on the ground. Surprise to Dustin that this key is
13 on the ground, but it falls out.

14 Officer Ennis picks it up and asks him
15 about it, and he's as shocked as anybody is that the key
16 was still in there. But he obeyed and gets out of the
17 car, and he's searching him, and he finds the tinfoil
18 that was still in his pocket. And he put it on him and
19 picked it up. Also finds \$147 that he had made from
20 work that was in his pocket, and they place him under
21 arrest and take him down to the AB Police Station.

22 During the process, processing, when they
23 begin to take photos of him, they realize he's got a
24 burn mark on his hand. Well, that's certainly
25 explainable. He says he's worked as a cook, told us

1 that there was grease; there was an area there where he
2 worked at when he got burnt a couple days earlier.

3 Testimony is consistent with the officer that it was
4 scabbed over, and so they make note of that and that he
5 has that happen.

6 Well, he's taken and asked by Officer Prior
7 some questions about it and he voluntarily says, "Yes,
8 I'll ask these questions."

9 Terry[sic] starts getting some questions
10 asked to him that -- "I don't know I'm real sure about
11 these things. I mean, what's going on? I'm not certain
12 about what I should say, maybe something that I could --
13 could be used against me."

14 And it's his right. He doesn't answer it
15 anymore.

16 As a result, he is picked up from there and
17 taken to Beaufort down to the jail. At the jail he sees
18 Mark Thomas, who was also in the car, and was arrested
19 at the same time with outstanding warrants. And Mark
20 says -- shows him, he says, you know, "I have got two
21 bags of drugs in my pocket."

22 Or -- Dustin seems to think that's kind of
23 strange, how that didn't come up when they picked him
24 up. But regardless, he notices that, and he is booked
25 and charged with the three charges that are before you

1 today: Conspiracy, manufacturing Methamphetamine, and
2 possession and distribution, a precursor.

3 Now, Judge Alford is going to tell you in a
4 few minutes the instructions: That the State has the
5 burden of proof to prove each and every element of these
6 charges against Mr. Warren, and to prove those to --
7 beyond a reasonable doubt to you. And he'll explain all
8 that to you in a few minutes.

9 But I just want to take a look at just some
10 of what the State alleges Mr. Warren has done. Well,
11 the first thing they're going -- they want to ask you to
12 consider -- and I'm going to ask you to consider the
13 evidence -- is that he conspired with Heather Kennon to
14 manufacture this Methamphetamine. The testimony that we
15 heard from the evidence that's been presented, we've not
16 heard any testimony from her, from him, from any of the
17 other witnesses, that there was any, ever, kind of an
18 agreement: "Hey. Let's go down to the DoubleTree.
19 Let's meet at a certain time and go down and we're going
20 to cook some Meth."

21 Haven't heard any kind of agreement. We
22 haven't heard any conversations to do that, any kind of
23 actions that they planned to go and do this. He just
24 simply meets her there and she says, "Let's go," and
25 then he takes her there.

1 She -- we've heard no evidence that there
2 was any smells or any fogs or smoke there, and it's
3 certain -- if you use your common sense, if you're
4 cooking hot, hot chemicals and things that are burning,
5 certainly, somebody would smell it. We have no evidence
6 of that.

7 The only thing we have testimony of
8 anything that went in that room is Heather Kennon's
9 testimony, that she and Dustin were making it. But
10 nobody else confirms that they were doing it. Nobody
11 else was in that room except for the two of them.

12 She claimed, Well, we met at the DoubleTree
13 and we were making Meth there, which nobody else can
14 confirm, and we pack it up and we move from there highly
15 volatile chemicals under pressure, that we heard it
16 could explode, and we take those and we travel from the
17 DoubleTree Motel down the road to the Seashore Motel.

18 She conveniently forgets that along the
19 way, "Well, we stopped for an hour, hour and a half, two
20 hours, at Lisa Turner's house." She conveniently
21 forgets, "Well, yeah, we also met Richard Willis who was
22 there," and he saw them.

23 And so if you believe her testimony about
24 that, you have to believe that this unstable transport
25 of things that nobody worries about, "Well, the car may

1 explode, none of these things will happen," you have to
2 believe that no worries about this thing, "We've
3 traveled all this distance from one place to the other
4 with this time-out in between," and it shows up in the
5 room, nobody sees anybody moving anything to the room,
6 there's video surveillance there, nothing shown taking
7 boxes and bags and all that in. Nobody has any
8 confirmation of that. The only thing is Heather
9 Kennon's testimony.

10 The State would also have you to believe
11 that Dustin Warren was manufacturing Methamphetamine at
12 the Seashore Motel. But I submit that for the evidence
13 that's presented, and the testimony, we've not heard any
14 evidence that there was any producing or preparing or
15 processing or making any kind of substance at the hotel.
16 Yes, there was some things found there. Don't know how
17 they got there. We know that nobody says they were in
18 the possession of Dustin at that point.

19 We have the Manager, we have the Assistant
20 Manager, we have Officer Prior, Officer Ennis, all these
21 people going by this room, looking in this room,
22 absolutely no smells, no -- no idea of anything burning
23 in there.

24 The only thing we see is these bags of
25 things that are sitting in the room. Not one shred of

1 evidence, I submit to you, have we heard from testimony
2 or evidence that Dustin Warren was in there cooking
3 these things up, processing this, burning these things,
4 and putting these things together.

5 The only thing, once again, testimony of
6 Heather Kennon. But at the time she said, "Well, I was
7 in there, high. And I wanted more Meth. And I was
8 going to do whatever I needed to do."

9 So once again, the State would have you
10 consider that.

11 Lastly, the State would have you consider
12 that he -- Dustin had in his possession these precursor
13 materials, these chemicals and all these different
14 things. We've not heard any testimony that he knowingly
15 or any way put these things together. All the things
16 that we know was that he goes to the room, drops her
17 off, and when they go -- go in later, these things here.

18 Certainly, maybe in those bags that she
19 dropped off some of these things could be there. We
20 heard testimony that she's associated with known people
21 who deal with Meth. Josh Dixon. His brother, Mark
22 Thomas. All of these people were synonymous with Meth
23 labs.

24 Certainly, she would know something about
25 that. Certainly, she could have very well bought those

1 materials and put those in, and that is what she went
2 and got, and that's what she put in the bags when they
3 went in there.

4 Once again, no smells, no anything in
5 there. The only thing we know is the room was rented to
6 her, the room was under her control. It was her
7 sanitary napkins that were in the bag, not Dustin's. He
8 would have no need for those. That was found in her
9 bag. Dustin never acts any kind of suspicious about it.
10 He actually comes back to check on her.

11 Certainly, if he'd been guilty of running a
12 Meth lab in there, why would he come back the next day
13 and come to this place?

14 Once again, all we have is the testimony of
15 Heather Kennon. And it's only through her testimony
16 that we can imply any involvement by Dustin.

17 I'd submit that she is very inconsistent
18 and very dishonest in who she says who she is.
19 Obviously, she says, "I was high and I was staying with
20 somebody at the DoubleTree Motel the night before. Been
21 there three days, didn't have any money to stay, but,
22 hey, I was getting high, was living off these other
23 people."

24 Wanted to leave, meets up, wants to go to
25 the hospital. Not just to go -- "Hey, I need some more

1 drugs. Maybe I can get some more drugs at the
2 hospital."

3 She claims that they were making Meth at
4 the DoubleTree. Once again, we have no verification of
5 that. No reports from the DoubleTree, nothing received
6 from the DoubleTree, nobody from there, nobody
7 testifying who was there, other than Heather. There's
8 no evidence.

9 She wants you to believe that they packed
10 up a live Meth lab that they had manufactured there, put
11 it in the car and traveled with it.

12 Once again, Hey, conveniently forgets we
13 stopped, Lisa's, Lisa Hill Turner's place for a while,
14 had Richard Willis there, stopped at the store. Her
15 testimony, we go straight there. No. Didn't go
16 straight there. She seems to forget.

17 She says, Hey. I wanted to go to the --
18 she goes, she registers there, goes in, seems to forget
19 that, hey, the car was outside running, which is
20 verified by the Manager and his assistant, things that
21 could make her consistent. Says she goes, leaves there,
22 goes to Anique Pittman's and is there making Meth. No
23 other evidence of anybody smoking Meth there or
24 manufacturing there or this wild party that's going on
25 there. Once again, only the evidence, testimony, of

1 Heather Kennon.

2 One of the things that she said, she said
3 this bag that was there that she has from the
4 DoubleTree, that she carries to the Seashore, but that
5 bag never goes to Anique's. This bag was supposedly
6 filled with all these things. The bag never shows up
7 there. So I still say there's many holes in her
8 testimony.

9 So in light of all this, and I'm asking
10 that you examine the evidence that Judge Alford is going
11 to ask you to examine, and ask you to judge the
12 credibility of the witnesses.

13 Certainly, I ask you to examine everything
14 that you said -- heard Heather Kennon said, and if you
15 believe her, and if you don't believe her, then I ask
16 that you find Mr. Warren not guilty.

17 I ask you to examine the evidence, the
18 testimony of Dustin. If you don't believe him either, I
19 still ask you to find him not guilty. Based upon the
20 evidence, the testimony is the only thing that could
21 actually put him in any kind of connection with it, and
22 I dare say that I think she's very incredible.

23 Sum it up, I ask that you just take, listen
24 to everything that you have, examine the evidence.
25 Weigh the credibility. And I submit to you, I believe

1 the fate -- the State has failed to meet its burden of
2 proving that Dustin Warren is guilty beyond a reasonable
3 doubt. Thank you.

4 THE COURT: The jury is with the State.

5 MR. SPENCE: Thank you, Rodney. I don't
6 use these things(referring to podium). I'm a free-range
7 prosecutor.

8 When you're a defense lawyer or you're a
9 defendant, you're stuck with the facts that you get.
10 You do the best you can. Mr. Fulcher is a good lawyer;
11 he ain't got a whole lot to work with.

12 You know, basically what he did, and I
13 think what his client -- you've seen during the trial
14 sort of running the show, basically, he told -- repeated
15 Dustin Warren's version of whatever that was he said
16 yesterday. He's just repeating Dustin Warren's
17 contentions.

18 You know what? You can repeat a falsehood
19 a thousand times and it will never become the truth.
20 There seemed to be a lot of things missing. There seems
21 to be a lot of talk about things that happened the night
22 before and after. Well, how about the fact, how did
23 that stuff get in that room?

24 I mean, are we talking about the same case?
25 The room was clean. It was empty. These two got in the

1 room, it was rented for two people. They stayed there
2 for about five hours, and when they left and didn't come
3 back, there was this -- you've seen the pictures, you
4 know, bottles hooked up, tubes, things like that. Where
5 did that come from?

6 Mr. Fulcher and Mr. Warren kind of act
7 like -- I mean, how do they explain it? Did it just --
8 was it beamed up? Did somebody sneak in there and set
9 that up? Because you know Mr. Warren's own testimony.
10 The best witness I have in the case is that man right
11 there in the blue shirt (indicating Mr. Warren). He puts
12 himself there. He puts himself there. He didn't drop
13 her off like he said, or like he had Mr. Fulcher say.
14 He didn't drop her off there. He was there, we know,
15 according to these Management people, from about
16 11:45 a.m. until about 5:00 or 6:00. They were there at
17 that road (phonetic). He can't change that fact.

18 You know, I think when he walked up there
19 with his own Bible and his own script or whatever he had
20 with him, he was so proud he was a cook. Oh, he's a
21 cook, all right. He cooking up plans. He's cooking up
22 schemes. He's cooking up ways to cover up things. He's
23 cooking up stories. He's cooking up defenses. He's
24 cooking up Meth.

25 And the reason you have to cook if you're

1 Dustin Warren, the reason you have to cook and the
2 reason you have to create smoke in here, or smoke
3 screens, is the fact that the facts are none.

4 And through the discovery process in this
5 state, every criminal defendant upon indictment is
6 entitled to get all the State's evidence against him:
7 Copied, given to him, so he can have and keep and look
8 at and examine. And since January 30th of 2014, Dustin
9 Warren has had the packet of evidence, the pictures, the
10 statements to look at.

11 And here we are on September 10th, I think,
12 nine months of looking at it, nine months of having
13 this, "I have got to come up with a way to explain this
14 stuff," and that's what you heard yesterday was an
15 attempt to do that, but you can't do it. Nobody can do
16 it.

17 You can't take away facts. You can't take
18 away facts. What you can do is, of course, you can talk
19 about everything else but the five hours you spent at
20 the room. You can talk about things other than, how
21 would Heather Kennon have transported all this stuff by
22 herself? She didn't have a car or a license. He had a
23 car. He had a trunk. He had a place to keep things.
24 But he's jammed up.

25 He's put there with her, in and out of the

1 room. The Management sees them, interacts with them,
2 then they don't come back. And he comes back the next
3 day, and all these unfortunate things happen like the
4 key falls out. He's got to try to explain that to you.
5 He's got to explain the unexplainable.

6 And the reason his story, or whatever that
7 was yesterday, you may say, "Well, that doesn't make any
8 sense." You can't make any sense out of it. You do
9 what you can. You do what you can to survive.

10 To believe -- again, I can't even -- I'm
11 not even going to start talking about what he said and
12 what -- what parts are ludicrous. I would contend his
13 whole story is absurd.

14 A man who's got two warm places to live on
15 a snowy day spends five hours in a motel room freezing
16 to death with a girl? For what reason? What reason?

17 It takes him five hours to get from the
18 DoubleTree to *A Place at the Beach*. I don't know. Five
19 hours to go five miles? You stop for five hours in
20 between for -- for no reason, and you stop in a place
21 that's almost vacant, cheap. You don't have a hundred
22 people there, like DoubleTree, around to watch what you
23 do. And you've got an addict with you who's willing to
24 put her name on the receipt, and you send her in, put
25 her name on the receipt. "I'll stay in the car."

1 As I told you in jury selection, the jury's
2 primary job is to judge the credibility of the witnesses
3 and the credibility of the lawyers and the credibility
4 of the case. What's true? What makes sense? In light
5 of your common sense and experience, what makes sense to
6 you? If it doesn't make sense, you don't have to
7 believe it. You can reject it. You can call it what it
8 is.

9 The State only asks you to believe what
10 you've seen: The facts. If you believe these
11 Management people, if you think they're telling the
12 truth, if you don't think they're coming in here lying
13 to you and committing perjury, then they put these
14 people here.

15 And if you believe him, he puts himself
16 there. And I'll talk about Heather in a moment because
17 that's a different matter. That's a different matter.

18 You can convict Dustin Warren on his own
19 statement. The things that he said. The things that
20 don't make sense. The guy's been convicted of murder.
21 "I'm not going to let her drive my car. It's got a
22 burnt-out taillight. It's against the law. They
23 don't -- I can't let her drive a car. She doesn't have
24 a license. And marijuana is not a drug, or Adderall is
25 not a drug. It's like, you know."

1 You can convict him -- if you don't believe
2 him, if you think he's up here telling you or cooking
3 you up a story, you can convict him on that. On that
4 basis. Because when somebody testifies, even though
5 they don't have to, we don't put a halo over their head
6 or believe their testimony. He becomes a witness.

7 Facts are -- facts are messy things.

8 Fact: That room was empty. That room was clean.

9 Fact: Heather Kennon and Dustin Warren
10 went in that room.

11 Fact: They stayed there for about five
12 hours, according to the Management testimony.

13 Fact: They were cold and freezing,
14 rejected blankets. None of the beds were turned down.

15 You know, Mr. Convicted-Murderer, he won't
16 sleep in -- he won't get under the covers. Well,
17 there's two beds in there, folks. He somehow takes some
18 kind of moral offense at that? You think they're in
19 there, cold? Do you think that's the reason they wanted
20 this stuff? Do you think the reason they didn't open
21 the door and get those blankets is because they didn't
22 want the blankets anymore or they didn't want people to
23 see what was going on in there? See what's going on.

24 Those are facts. That lab just didn't
25 exist, it didn't grow there. It didn't exist before

1 they showed up, and it was torn down after they left.

2 And when you're on trial, and the State has
3 pictures, and the State has these people who were there,
4 and the State has your own statements about the fact
5 that you didn't know who she was, you just dropped her
6 off and left, "I was just driving around, happened to
7 pull in there." It's hard when those things are set in
8 stone and you've got to weave some kind of story out of
9 that. You've got to protect yourself. You've got to
10 survive.

11 Perfect motel. There's no requirement
12 people have a car when they register in a motel. You
13 can walk up and stay in one if you want to. Number of
14 guests, two.

15 Now, Mr. Warren, of course, having all this
16 in his possession, he's hung up. He sees this 2`o'clock
17 check-in time, he's hung up on that. So he thinks, you
18 know, "This is set in stone."

19 Well, guess what? It's not. Because those
20 Managers told you, they checked in early. You think the
21 Seashore is going to turn down 35 bucks on January 29th
22 when it's snowing, or turn down 10 bucks? Turn down a
23 customer? Not let them check in early when there's four
24 or five other people at a motel? He wants to compress
25 the time.

1 But even in his time frame, he puts himself
2 there from 2`o'clock until when they left at 5`o'clock.
3 Plenty of time, according to Agent Farrell, to cook this
4 stuff, to make it.

5 Heather Kennon was brought in here by the
6 State, not really as a witness. We don't need her as a
7 witness. Heather Kennon was brought in here to you
8 because you don't live this life. You don't know about
9 this life, thank goodness. You don't know about
10 addiction. You don't know about the slavery it creates.
11 You don't know about the compulsion.

12 Heather Kennon was not really a witness;
13 she's an exhibit. She's Exhibit A. Exhibit A. Addict.

14 I want you to think about these two people.
15 Heather Kennon, who was up for five nights straight. If
16 her story wasn't straight, she did a heck of a job even
17 remembering what she did. But she's got an addiction to
18 Methamphetamine, and she's got holes in her arms where
19 the money goes. And she's got a hole in her soul that
20 she can't fill up, that she tries to fill up with drugs.
21 And she can't live without it. An addict has to find
22 the substance they're addicted to. They have to have
23 it. Their brain tells them they'll die unless they have
24 more of it.

25 And if you're an addict, and you're a slave

1 to that drug, then the person who has it, sells it, or
2 can make it, is the Master. Whatever you want.
3 Whatever they want, you will do. An addiction is so
4 powerful that a mother with all these maternal instincts
5 would rather hang out around Meth-heads and Meth
6 suppliers and people who have Meth than to be with her
7 children. To hang out in strange places. To have sex
8 with strange men. To lay up with whoever. To do
9 whatever. To buy whatever. "If I can get a little bit
10 in me, I'll do it."

11 The addict is a slave. And the evil of the
12 drug maker and the drug dealer is they create a slave.
13 They create the absolute market. It's like having a
14 restaurant where everybody had to eat there because they
15 couldn't do without it.

16 Addicts don't call the shots. Addicts
17 don't make the plans. Addicts simply follow their
18 addiction. And when she ran into Dustin Warren, I
19 guarantee you she knew she hit a gold mine. Because she
20 didn't have to sleep with anybody else in the DoubleTree
21 to get some Meth. She didn't have to come up with some
22 money some way, steal something from some store, cut off
23 some device to pawn something to get some money to buy
24 the Meth she needs to put in her veins. No. She hit a
25 home run that night because she ran into a man that she

1 knew could make it. Could create it. With simple
2 products. Man. How great is that? That's why you
3 leave the DoubleTree. You don't need to lay around with
4 anybody anymore to get some Meth. The guy can make it.
5 Create it. That's what the story is about.

6 Do you think in that relationship between
7 him and Heather Kennon -- who's calling the shots in
8 that one? Who's calling the shots? Who called the
9 shots during this trial? You know, you can watch
10 Mr. Warren during the trial, you can observe him. Who
11 was asking the questions of the agent? He was telling
12 his lawyer what to ask about the Meth lab.

13 He's been trying to get his lawyer to ask
14 questions that are irrelevant. He's been trying to say
15 things that are irrelevant. He wants to run the show in
16 the courtroom too. So do you think between those two
17 people, which one of these people came up with this
18 plan -- and it really doesn't matter legally -- which
19 one of those two people is in charge?

20 Who do you think set this up? Some little
21 29-year-old addict who's twitching, who's been up for
22 five or six hours[sic] and probably can't hold two tubes
23 together? Do you think she put all these tubes
24 together? Do you think she came up with this? Do you
25 think she did this and that he didn't know about it or

1 wasn't part of it or assisted it at least? That's all
2 it required.

3 Your common sense is going to tell you,
4 between those two people, if you had asked Heather
5 Kennon to butter a piece of toast that day, I doubt she
6 could do that. And she's not going to be able to
7 construct some chemical operation to create a substance.
8 The only thing Heather Kennon cares about is what's
9 coming out the other end, and how soon. Because she's
10 an addict.

11 And when she leaves, after her sentence,
12 she can either become an addict or keep being an addict
13 or she can stop being an addict. We can't control that.
14 There's no evidence that night that she was anything but
15 that. So she testified to what she could remember.

16 I don't know, four or five days without
17 sleep -- remember in college when you had an
18 all-nighter, you took a couple NoDoz or something to
19 keep you awake. The next morning, you know how you
20 felt. People work different shifts. You know how you
21 feel. Up all night drinking coffee, taking NoDoz,
22 caffeine to help keep awake, the next day you're chewing
23 your teeth, you know, you're grinding your teeth like
24 Chiclets.

25 It can't be pleasant to be an addict. It

1 affects your perception, your ability to plan, your
2 ability to do things. But I guarantee you, between
3 those two, they both were involved. It doesn't matter
4 how much he was involved. But your common sense is
5 going to tell you, between those two people, who was the
6 leader and who was the follower?

7 Like I said, Mr. Warren has got to explain
8 everything, and he's got an explanation for everything,
9 but he's got an explanation for every single thing in
10 isolation.

11 "Oh, the pills? Oh. Those are my aunt's.
12 Just some Adderall." Got to explain this. "Oh, I found
13 this in the car the next day, so I wadded it up and put
14 it in my pocket. That's why that was there. I got
15 paid. That's why I had all this money on me. Burn on
16 my hand? Cooking. Key fell out" -- or actually, I
17 don't think he ever said the key fell out. Mr. Fulcher
18 said that. I think he said it was in a cup holder.

19 "Somebody put the key there and it fell out. Whatever."

20 All these bad things. "I've got an
21 explanation for this. I've got an excuse for this,
22 excuse for that, excuse for this, excuse for this."

23 You know what? He might be able to
24 explain, somehow, five or six things, but the State can
25 explain all of it. At one time. Because it's all

1 consistent. It's all consistent with this crime.

2 I think there was a guy on Saturday Night
3 Live, he kept -- he would talk about things that were so
4 absurd, he would say something like, "I hate when that
5 happens. Don't you hate when that happens? Don't you
6 hate when that happens? When you, you know, you --
7 you're trying to help a girl and she's making -- she
8 turns -- puts your car on the receipt, you know, and
9 gets you -- you know, makes a Meth lab and you knew
10 nothing about it, and the next day you end up with Meth
11 paraphernalia and these pills somebody just happened to
12 leave in your handle? All that stuff. You know, and
13 you drive back there and the key falls out and they
14 arrest you? Don't you hate when that happens?"

15 I do. Don't happen to innocent people.
16 Happens to people who put themselves in situations, who
17 absolutely cover themselves up with crime and try their
18 best to get out of it. To get it off of them.

19 People have a natural defense mechanism.
20 We all have it. When we do something wrong and we're
21 asked about it or asked to explain it, we want to talk
22 about everything else but that. We want to talk about
23 the night before. We want to talk about the DoubleTree
24 or Nicole or texting, or how much Nicole has been
25 abused, or Anique. All that stuff.

1 We don't want to talk about the stuff that
2 was found. We don't want to admit that part. And it's
3 human nature. It's a defense mechanism. Minimize the
4 things you did wrong; talk about everything else. And
5 that's what you saw on the stand.

6 You saw an hour or so of -- and you saw two
7 witnesses called that had nothing to do with this case.
8 They didn't even know why they were in court. Why was
9 that? Because he's running the show. He thinks it's
10 important to talk about the night before. Not the Meth
11 lab. "Let's leave that part alone. Not touching that."

12 It's like when he was at the station:
13 "Let's talk about -- how about we talk about the Meth
14 lab?"

15 "I'd rather not."

16 "Why not?"

17 Your common sense is going to tell you why
18 not. When he's caught there -- and I contend, he came
19 up that ramp, he didn't know the police were there until
20 he came up that ramp to clean up that room. When he
21 came over that ramp and saw the cops, he's toast,
22 because this guy knows him and knows his car. And they
23 know, and he knows his car is on that receipt.

24 Where is he going to go then? He's caught.
25 So he has to start fabricating.

1 "What are you doing here?"

2 "Nothing. I'm driving around."

3 "You're driving around? How come you're
4 pulling up on a ramp on a snowy day? Why don't you
5 drive up in a place that's flat?"

6 All the excuses.

7 "I just dropped her off."

8 When he talked to Detective Prior, I
9 contend to you your common sense will tell you the
10 reason was he didn't try to explain the Meth-lab-part,
11 because he really didn't know what his defense was going
12 to be at that point. He didn't know exactly what he --
13 what we had. He didn't know about these statements. He
14 didn't have the resources to create a story at that
15 point. So he just punted. "I'll punt. I'll wait.
16 I'll get all the discovery and I'll come up with one at
17 trial."

18 That's what your common sense is going to
19 tell you about that.

20 I'm not going to take much longer, because
21 a mentor of mine told me once, "When you're talking to
22 the jury," he goes, "Remember that the mind can only
23 absorb what the rear can endure."

24 So I'm going to finish up here in about
25 five minutes.

1 satisfied or entirely convinced. Let me explain that a
2 little bit. Very quickly. There's a portrait over
3 there of our 33rd president, Franklin D. Roosevelt.

4 If we sent you to the jury room, and we cut
5 that portrait up into a thousand pieces and we sent it
6 back there and told you to come out when you had no
7 reasonable doubt what was shown or what that puzzle
8 showed, who was in that puzzle, and you get back there
9 and you put those pieces together, and there would come
10 a point way before you got all these things put
11 together, you don't need every single piece. You don't
12 need the tie. But when you get the important pieces put
13 together, folks, there may be a hundred, maybe even 500
14 of those pieces left, you know at some point you are
15 fully satisfied, entirely convinced, that that puzzle
16 shows FDR.

17 You don't have to get the frame, the
18 background, the suit, or anything else. But there are
19 certain important parts that you do get. That's proof
20 beyond a reasonable doubt.

21 Very quickly, the crimes, Judge Alford will
22 explain, and it's just common sense, conspiracy does not
23 have to be any formal agreement to do anything. It's
24 simply two people, by their actions, show that they
25 agree to do something.

1 Now, five hours in a room with the stuff
2 left-over here, what do you think their agreement was?
3 What do you think their plan was? Drug dealers don't
4 write down contracts.

5 You know, if you -- if you're out -- if
6 you're looking at a desert and you see a man come out
7 there and lay down a stick and leave, and you see
8 another man come out there and lay down a stick next to
9 it and leave, an hour later another man comes and lays
10 down a stick next to that and leaves, and the fourth man
11 comes out an hour later and all you see is four people
12 laying down sticks but they make a square, don't you
13 think there was a plan to make a square out there with
14 those sticks? You can tell it by the actions.

15 Actions speak louder than words. Actions
16 speak louder than anything. So conspiracy is simply,
17 you can tell that their agreement was to manufacture
18 Meth in that room.

19 Manufacturing Meth is simply, Judge Alford
20 will tell you, the combining, synthesizing of chemicals
21 or anything to make, bring about any kind of chemical,
22 any kind of controlled substance.

23 They're not charged with possessing
24 controlled substance because there was none found.
25 Because that's the good part. That's the part that goes

1 in the arms. You don't leave that. You don't leave a
2 good meal on the plate when it's cooked. There's
3 nothing left. But they're charged with making it.

4 Agent Farrell was clear. There's
5 nothing -- there's nothing consistent with any other
6 conclusion that this is the manufacture of
7 Methamphetamine and a clandestine one-pot lab.

8 And I learned something too this week.
9 One-pot lab. There's no other explanation. That's what
10 they were doing. They were finished. They left.

11 Possession of a precursor chemical? Well,
12 you got -- Judge Alford will tell you that if you find
13 that those things were in the room and that Dustin
14 Warren and Heather Kennon possessed those things, either
15 together or separately, and again, possession are things
16 you have on you, you know, on your person, or also that
17 you know about, you know that they're there, and you
18 have the physical ability to do something to move them
19 around, to move them, to leave them, to throw them away,
20 or whatever -- you know, I possess everything I have on
21 right now, but I also possess everything I have in my
22 office right now. Everything in my closet at home I
23 possess. I can't get to it, but I possess it. Simple
24 as that. Constructive possession. Knowledge about it.
25 Power, intent to control or use it.

1 It's all common sense, folks. Even the
2 legal language. Even the legal terms are common sense.

3 I contend to you the evidence is
4 overwhelming. Evidence from credible witnesses is
5 overwhelming. There's no other conclusion for what was
6 found and what was seen and what was discovered and what
7 was done.

8 You heard Anique Pittman. Last-ditch
9 effort. She drives a hundred-mile round-trip to see
10 somebody in jail that she don't even know. You think
11 she went to console that person? Or did she go on
12 behalf of her boyfriend? What does your common sense
13 tell you about that?

14 On behalf of the State of North Carolina,
15 on behalf of all the addicts in this County, on behalf
16 of all the people with holes in their arms and holes in
17 their soul and chains around their heart, on behalf of
18 all the slaves that white powder creates, I ask you to
19 find Dustin Warren guilty of these charges. Thank you
20 very much.

21 THE COURT: Members of the Jury, all the
22 evidence has been presented. It's now your duty to
23 decide from this evidence what the facts are. You must
24 then apply the law, which I'm about to give to you, to
25 those facts. It's absolutely necessary that you

1 understand and apply the law as I give it to you, and
2 not as you think it is or as you might like it to be.
3 This is important, because justice requires that
4 everyone tried for the same crime be treated in the same
5 way and have the same law applied.

6 The defendant's entered a plea of not
7 guilty. The fact that he has been indicted is no
8 evidence of his guilt. Under our system of justice,
9 when a defendant pleads not guilty, the defendant is not
10 required to prove the defendant's innocence. A
11 defendant is presumed to be innocent.

12 The State must prove to you that the
13 defendant is guilty beyond a reasonable doubt.

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

21 You are the sole judges of the
22 believability of witnesses. You must decide for
23 yourselves whether to believe the testimony of any
24 witness. You may believe all, or any part, or none of a
25 witness's testimony. In deciding whether to believe a

1 witness, you should use the same tests of truthfulness
2 which you use in your everyday lives. Among other
3 things, these tests may include the opportunity of the
4 witness to see, hear, know, or remember the facts or
5 occurrences about which the witness testified; the
6 manner and appearance of the witness; any interest,
7 bias, prejudice or partiality the witness may have; the
8 apparent understanding and fairness of the witness, and
9 whether the testimony is reasonable, and whether the
10 testimony is consistent with other believable evidence
11 in the case.

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

17 You may find that a witness was an
18 accomplice in this case. An accomplice is a person who
19 joins with another in the commission of a crime. The
20 accomplice may take part in acts necessary to accomplish
21 the crime, or may knowingly help another in the crime
22 either before or during its commission. The law
23 considers an accomplice to have an interest in the
24 outcome of the case. If you find that a witness was an
25 accomplice, you should examine every part of the

1 testimony of the witness with the greatest care and
2 caution. After doing so, if you believe the testimony
3 in whole or in part, you should treat what you believe
4 the same as any other believable evidence.

5 Certain evidence was introduced in this
6 case for the purpose of illustrating and explaining the
7 witness -- the testimony of a witness. This evidence
8 may not be considered by you for any other purpose.
9 Certain other evidence was introduced into evidence in
10 this case that may be considered by you as evidence of
11 facts it illustrates or shows.

12 Evidence has been received tending to show
13 at an earlier time a witness made a statement which may
14 conflict or be consistent with the testimony of the
15 witness at this trial. You must not consider such
16 earlier statement as evidence of the truth of what was
17 said at that earlier time, because it was not made under
18 oath at this trial.

19 If you believe the earlier statement was
20 made and that it conflicts or is consistent with the
21 testimony of the witness at this trial, you may consider
22 this, and any other facts and circumstances bearing upon
23 the witness's truthfulness in deciding whether you will
24 believe or disbelieve a witness's testimony.

25 Evidence has been received concerning

1 criminal convictions of a witness. You may consider
2 this evidence for one purpose only. If, considering the
3 nature of the crime, you believe that this bears on the
4 witness's truthfulness, you may consider it, together
5 with all other facts and circumstances bearing upon the
6 witness's truthfulness, in deciding whether you will
7 believe or disbelieve a witness's testimony at this
8 trial. You may not consider the evidence for any other
9 purpose.

10 The defendant has been charged with
11 unlawfully possessing an immediate precursor chemical.
12 For you to find the defendant guilty of this crime, the
13 State must prove two things beyond a reasonable doubt:

14 First, that the defendant knowingly
15 possessed sodium, sulfuric acid, hydrochloric acid, or
16 Thionyl chloride. These substances are immediate
17 precursor chemicals. A person possesses a chemical when
18 he's aware of its presence and has both the power and
19 intent to control the disposition or use of that
20 substance. And, second, that the defendant intended to
21 manufacture Methamphetamine, which is a controlled
22 substance.

23 Intent is seldom, if ever, provable by
24 direct evidence. It must ordinarily be proved by
25 circumstances from which it may be inferred.

1 For a defendant to be guilty of a crime,
2 it's not necessary that the defendant do all the acts
3 necessary to constitute the crime. If two or more
4 persons join in a common purpose to commit possession of
5 an immediate precursor chemical, each of them, if
6 actually or constructively present, is guilty of the
7 crime.

8 If you find from the evidence, beyond a
9 reasonable doubt, that on or about the alleged date the
10 defendant knowingly possessed sodium, sulfuric acid,
11 hydrochloric acid or Thionyl chloride and intended to
12 manufacture Methamphetamine, a controlled substance, it
13 would be your duty to return a verdict of guilty.

14 If you do not so find, or if you have a
15 reasonable doubt as to one or more of these things, it
16 would be your duty to return a verdict of not guilty.

17 The defendant has been charged with
18 manufacturing Methamphetamine, a controlled substance.
19 For you to find the defendant guilty of this offense,
20 the State must prove beyond a reasonable doubt the
21 defendant manufactured Methamphetamine.

22 Producing, preparing, propagating,
23 compounding, converting, or processing Methamphetamine,
24 either by extraction from substances of natural origin
25 or by chemical synthesis would be manufacturing

1 Methamphetamine, a controlled substance.

2 For a defendant to be guilty of a crime,
3 it's not necessary that the defendant do all of the acts
4 necessary to constitute the crime. If two or more
5 persons join in a common purpose to commit manufacturing
6 Methamphetamine, each of them, if actually or
7 constructively present, is guilty of the crime.

8 If you find from the evidence, beyond a
9 reasonable doubt, that on or about the alleged date the
10 defendant manufactured Methamphetamine, it would be your
11 duty to return a verdict of guilty.

12 If you do not so find, or if you have a
13 reasonable doubt, it would be your duty to return a
14 verdict of not guilty.

15 The defendant has been charged with
16 feloniously conspiring to commit the felony of
17 manufacturing Methamphetamine. For you to find the
18 defendant guilty of this offense, the State must prove
19 three things beyond a reasonable doubt:

20 First, that the defendant and Heather
21 Kennon entered into an agreement.

22 Second, that the agreement was to commit
23 the felony of manufacturing Methamphetamine.
24 Manufacturing Methamphetamine is procuring, preparing,
25 propagating, compounding, converting or processing

1 Methamphetamine either by extraction from substances of
2 natural origin or by chemical synthesis.

3 And, third, that the defendant and Heather
4 Kennon intended that the agreement be carried out at the
5 time it was made.

6 If you find from the evidence, beyond a
7 reasonable doubt, that on or about the alleged date the
8 defendant agreed with Heather Kennon to commit the
9 felony of manufacturing Methamphetamine, and that the
10 defendant and the person intended at the time the
11 agreement was made that it would be carried out, it
12 would be your duty to return a verdict of guilty.

13 If you do not so find, or if you have a
14 reasonable doubt as to one or more of these things, it
15 would be your duty to return a verdict of not guilty.

16 Members of the Jury, you have heard the
17 evidence and the arguments of counsel. If your
18 recollection of the evidence differs from that of the
19 lawyers or the attorneys, you are to rely solely upon
20 your recollection. Your duty is to remember the
21 evidence, whether called to your attention or not.

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

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

9 When you have agreed upon a unanimous
10 verdict as to each charge, your Foreperson should so
11 indicate on the verdict forms.

12 After reaching the jury room, your first
13 order of business is to select your Foreperson. You may
14 begin your deliberations when the bailiff delivers the
15 verdict forms to you. Your Foreperson should lead your
16 deliberations.

17 When you have unanimously agreed upon a
18 verdict as to each charge and you are ready to announce
19 them, your Foreperson should record your verdicts, sign
20 and date the verdict forms, and notify the bailiff by
21 knocking on the jury room door, or otherwise summoning
22 the bailiff. You will be returned to the courtroom and
23 your verdict will be announced.

24 And, Dr. Thomas, if I might ask if you
25 would just take a seat on the front row right there,

1 I'll speak with you in just a second.

2 (Juror complies.)

3 THE COURT: And as to the original twelve
4 jurors, thank you. You may now retire to your jury room
5 and select your Foreperson.

6 (At 10:42 a.m., the jurors exited the
7 courtroom.)

8 THE COURT: Let the record reflect that the
9 original twelve jurors have vacated the courtroom.

10 Prior to sending the verdict forms and the
11 instructions to the jury, the Court will now consider
12 any requests from the State or the defendant to assure a
13 complete and adequate instruction is submitted to the
14 jury.

15 Are there any from the state?

16 MR. SPENCE: None.

17 THE COURT: Any from the defendant?

18 MR. FULCHER: Nothing, Judge.

19 THE COURT: The Court has provided counsel
20 for the State and for the defendant with copies of the
21 verdict forms.

22 Does the State wish to be heard about the
23 same?

24 MR. SPENCE: No, sir.

25 THE COURT: Does the defendant wish to be

1 heard?

2 MR. FULCHER: No, Your Honor.

3 THE COURT: All right. Sheriff, if you
4 would please deliver the verdict forms and the
5 instructions to the jury, and they shall see how they
6 find.

7 SHERIFF: Yes, sir.

8 THE COURT: Go ahead and just send them in.

9 SHERIFF: Yes, sir.

10 THE COURT: Thank you, Sheriff.

11 SHERIFF: Yes, sir.

12 THE COURT: All right. We're going to take
13 about a 15-minute recess at this time. And if the State
14 has other business, then we'll take that up when we
15 return.

16 MR. SPENCE: Thank you, Judge.

17 THE COURT: Dr. Thomas, come up here.
18 We're at ease for 15, 20 minutes.

19 (The Court is at ease.)

20 * * *

21 THE COURT: (11:13 a.m.) All right. Let
22 the record reflect that all jurors are out of the
23 courtroom. I'm informed by the bailiff that we have a
24 verdict.

25 Anything from the State before we bring the

1 jury back? Mr. Spence, anything before we bring the
2 jury back?

3 MR. SPENCE: No, sir. Thank you.

4 THE COURT: Mr. Fulcher?

5 MR. FULCHER: No, sir.

6 THE COURT: Bring the jury back.

7 SHERIFF: Yes, sir.

8 (The jurors entered the courtroom and took
9 their seats in the jury box.)

10 THE COURT: Let the record reflect that all
11 jurors have returned to the courtroom.

12 Members of the Jury, have you selected one
13 of your members as your Foreperson? If so, would that
14 person stand and give us your name.

15 MS. ELLIS: Marcella Ellis.

16 THE COURT: Mrs. Ellis, has the jury been
17 able to reach a unanimous verdict as to all three
18 counts?

19 MS. ELLIS: Yes, sir.

20 THE COURT: Did you mark, date, and sign
21 the verdict forms in the appropriate places?

22 MS. ELLIS: I did, sir.

23 THE COURT: Did you put them back in that
24 manila envelope? And if you would hand them to the
25 Bailiff, thank you so much. You may have a seat.

1 (Ms. Ellis complies.)

2 (Documents tendered to the Court.)

3 THE COURT: The Court has reviewed the
4 verdict forms and finds that they are in the appropriate
5 order.

6 Madame Clerk, would you please publish the
7 verdicts.

8 THE CLERK: Yes, sir. Thank you.

9 Ladies and Gentlemen of the jury, please
10 stand.

11 (Jurors comply.)

12 THE CLERK: Case Number 14 CRS 50372, State
13 of North Carolina versus Dustin Jamal Warren: We, the
14 Jury, by unanimous verdict, find that the defendant is
15 guilty of possessing precursor chemicals with the intent
16 to manufacture Methamphetamine.

17 This, the 10th day of September, 2014,
18 Marcella Ellis, Foreperson of the jury.

19 Is this your verdict, so say you-all?

20 (Jurors answered affirmatively.)

21 THE CLERK: File Number 14 CRS 50376, State
22 of North Carolina versus Dustin Jamal Warren: We, the
23 Jury, by unanimous verdict, find that the defendant is
24 guilty of manufacturing Methamphetamine.

25 This, the 10th day of September, 2014,

1 Marcella Ellis, Foreperson of the jury.

2 Is this your verdict, so say you-all?

3 (Jurors answered affirmatively.)

4 THE CLERK: File Number 14 CRS 50377, State
5 of North Carolina versus Dustin Jamal Warren: We, the
6 Jury, by unanimous verdict, find the defendant is guilty
7 of conspiracy to commit the felony of manufacturing
8 Methamphetamine.

9 This, the 10th day of September, 2014,
10 Marcella Ellis, Foreperson of the jury.

11 Is this your verdict, so say you-all?

12 (Jurors answered affirmatively.)

13 THE COURT: All right. You may have a
14 seat.

15 (Jurors comply.)

16 THE COURT: Members of the Jury, your
17 Foreperson, Ms. Ellis, has returned as your verdict that
18 the defendant's guilty of possessing a precursor
19 chemical with the intent to manufacture Methamphetamine,
20 guilty of manufacturing Methamphetamine, and conspiracy
21 to commit the felony of manufacture Methamphetamine.

22 If those were your verdicts, and if those
23 continue to be your verdicts, please indicate by raising
24 your hand.

25 (All jurors raised their hand.)

1 THE COURT: Let the record reflect that all
2 twelve jurors have raised their hand. Thank you very
3 much.

4 Anything further for this jury at this
5 time, Mr. Fulcher?

6 MR. FULCHER: No, Your Honor.

7 MR. SPENCE: No, sir.

8 THE COURT: Ladies and Gentlemen, I need to
9 take up a matter involving a question of law. We will
10 be back with you in just a minute.

11 Sheriff -- while you're in the jury room,
12 don't talk about this case or discuss it in any way.
13 Thank you very much. Show them to the jury room.

14 SHERIFF: Yes, sir.

15 (The jurors exited the courtroom.)

16 THE COURT: Let the record reflect all
17 jurors are out of the courtroom. Let me see counsel
18 briefly, please.

19 (Discussion off the record at the bench.)

20 MR. SPENCE: Judge, if I can have one
21 moment to look at this.

22 MR. FULCHER: Yes, Your Honor.

23 THE COURT: All right. In point of fact, I
24 think what I'm going to do is, I'm just going to -- the
25 State has offered to not proceed on the habitual felon

1 as it relates to the Class-F felony, possession of
2 immediate precursor.

3 MR. SPENCE: I think we can have -- yes,
4 sir. It would be cleaner that way, and I'll just
5 dismiss that based on that verdict, because I think the
6 sentence is not going to be any more or less if we do,
7 and it will be wasting the jury's time, so --.

8 THE COURT: All right. Showing for the
9 State, then?

10 MR. SPENCE: Judge, we have two Class-C,
11 level-five convictions, 15 prior points. I have a
12 worksheet prepared. I have prepared it for the
13 habitual, so I took some things out but added it back on
14 there. He has one point for assault with a deadly
15 weapon, a conviction in 2013, Carteret County; six
16 points for a second-degree murder conviction in Craven
17 County; two points for a felonious larceny conviction in
18 Pitt County; one point for assault on a government
19 official in Pender County; felonious possession of a
20 stolen vehicle in Pender County, two points; possession
21 of a controlled substance in jail, Pender County, two
22 points; injury to real property is a Class-one
23 misdemeanor, Halifax County, 1 point. Fifteen prior
24 points, right in the middle of Level Five, so I don't
25 need to add anything about prior offenses. And so he's

1 facing a C -- two C-5s, and one F-5. If Mr. Fulcher
2 could review this, sign it.

3 The State is ready for sentencing, and
4 we'll dismiss the habitual-felon-charge status.

5 MR. FULCHER: Your Honor, if I may
6 approach.

7 THE COURT: Yes, sir.

8 (Document tendered to the Court.)

9 THE COURT: All right. Showing for the
10 defendant, please, Mr. Fulcher.

11 MR. FULCHER: Nothing, Your Honor.

12 THE COURT: All right. Ask your client to
13 stand.

14 (The defendant complies.)

15 THE COURT: Consolidate 14 CRS 50372 with
16 14 CRS 50376, that's a Class-F and a Class-C. He's got
17 15 points. He's a prior Record Level Five. The Court
18 makes no written findings because the term imposed is
19 within the presumptive range.

20 Order that he be imprisoned for a term of
21 not less than 127 nor more than 165 months in the
22 Department of Adult Corrections with credit for time
23 served.

24 Mr. Fulcher, how much time do you have in
25 this case, sir?

1 MR. FULCHER: I was not originally
2 appointed in this case. I'll just -- can give you
3 time --

4 THE COURT: That's right. You were not --
5 you were not appointed. All right, sir.

6 The Court recommends payment as a condition
7 of post-release supervision or from work release
8 earnings; that the defendant should -- is there any
9 restitution that the State is seeking for the
10 destruction of that Meth lab?

11 MR. SPENCE: I don't have it. And I
12 wouldn't ask for it in this situation.

13 THE COURT: All right. And he'll pay the
14 costs. That's the judgment in that case.

15 In 14 CRS 50377, it's a Class-C, Conspiracy
16 to Manufacture Methamphetamine, same record points, same
17 record level. 127 to 165 at the expiration of the first
18 judgment. The Court makes the same recommendations.

19 Does the defendant give Notice of Appeal?

20 MR. FULCHER: We do give Notice of Appeal.

21 THE COURT: Defendant, having given Notice
22 of Appeal in open court, further notice is hereby
23 waived. The Court will appoint the Appellate Defender
24 to perfect and file the Appeal for and on behalf of the
25 defendant. Bond is denied, pending the appeal.

1 Anything further from the State?

2 MR. SPENCE: No, sir. Thank you very much.

3 THE COURT: Mr. Fulcher?

4 MR. FULCHER: No.

5 THE COURT: He's in your custody, Sheriff.

6 SHERIFF: Yes, sir.

7 THE COURT: The jury is discharged. We'll
8 be at ease just a minute.

9 (The proceedings were concluded.)

10 **(End of Volume III of III.)**

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CERTIFICATE

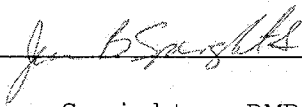
STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, Jean Speights, RMR, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings, pages 403 through 462, is a true, correct, and verbatim transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

Given under my hand this 16th day of January, 2015.



Jean Speights, RMR
Official Court Reporter
Second Trial Division

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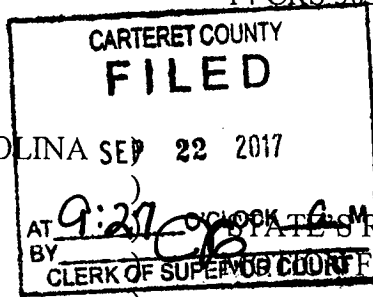
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 459/11
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 461/11
 yourself [1] 432/9
 yourselves [1] 446/23

EXHIBIT 3

NORTH CAROLINA
CARTERET COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CRS.50372, 50376,77

COPY



STATE OF NORTH CAROLINA)
SEP 22 2017)

V.) STATE'S RESPONSE TO DEFENDANT'S
BY) FOR APPROPRIATE RELIEF
CLERK OF SUPERIOR COURT)

DUSTIN JAMAL WARREN,)
Defendant)

THE STATE OF NORTH CAROLINA, by and through the undersigned Assistant District Attorney and pursuant to an order of this Court that a written response be filed by October 6, 2017 and N.C.G.S. Section 15A-1411, *et. seq.*, hereby files the following answer to the defendant's Motion for Appropriate Relief:

I.

The State agrees that the statement of facts set out in Defendant's motion is basically accurate but only as it pertains to the State's case. IT OMITTS ENTIRELY any mention of the defendant's case which included testimony by the following defense witnesses:

- 1. LISA HILL TURNER
- 2. RICHARD WILLIS
- 3. ANIQUE PITTMAN
- 4. DUSTIN JAMAL WARREN

The testimony of those witnesses is included in Volume 2 of the Trial Transcript and their testimony is summarized herein:

DUSTIN JAMAL WARREN: The defendant provided an elaborate but only partial alibi, admitting he was at the Seashore Motel with Heather Kennon between approximately 1:00 PM and 5:00 PM on January 29, 2014. The remainder of Mr. Warren's testimony is contained within Volume 2 of the Trial Transcript and the state asks that said testimony be incorporated herein by reference as if fully set forth.

ANIQUE PITTMAN: Ms. Pittman testified that the defendant and Ms. Kennon arrived at her condo in the late afternoon of January 29, 2014 but admitted that prior to that, the defendant was with Heather Kennon at the Seashore Motel during the relevant

time period-between 1:00 PM and 5:00 PM when the state contends the methamphetamine was being "cooked."

LISA HILL TURNER: Ms. Turner testified that the movant and Heather Kennon were together and visited with her in her home the night before this crime occurred.

RICHARD PAYNE WILLIS: Mr. Payne's testimony was essentially the same as Ms. Turner's regarding the movant's presence in Ms. Turner's home the night before the crime occurred.

II. THE RELEVANT LAW REGARDING MAR HEARINGS

Section 15A-1420 of the North Carolina General Statutes (hereinafter G.S.) sets out the basic procedural rules for MAR proceedings. Subsection (c)(1) provides that unless the court determines that the MAR is "without merit," "[a]ny party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing materials presented." Neither the statute nor the case law fully explains what is meant by the term "without merit." At the least, the term must include MARs that fail for substantive reasons. Thus, a court may deny a MAR without a hearing on grounds that it is without merit when: (1) there are no disputed facts and the claim must fail as a matter of law; (2) there are disputed facts and the claim must fail as a matter of law even if all disputed facts are resolved in the movant's favor; (3) defendant cannot establish the requisite prejudice even if he or she can establish the asserted ground for relief; or (4) the harmless error standard governs and the error, even if established, is harmless beyond a reasonable doubt.

It is clear from the MAR statute that an evidentiary hearing is not required unless the MAR passes the threshold G.S. 15A-1420(c)(1) requirement that it "not be without merit." In making this determination, the court evaluates the substantive basis of the claim vis-à-vis the Strickland two-part test, the requirements of which are set out below.

III. STRICKLAND'S "INEFFECTIVE ASSISTANCE OF COUNSEL STANDARD

To establish IAC, the defendant must satisfy the two-part test set forth by the United States Supreme Court in *Strickland v. Washington* and adopted by the North Carolina Supreme Court in *State v. Braswell*. Under that test, a defendant must first show that counsel's performance was "deficient." This prong of the test requires a showing that counsel's performance fell below an objective standard of reasonableness. Second, a defendant must show that the deficient performance prejudiced the defense. When an IAC claim is raised after a jury trial, the second prong of the test requires a defendant to show that "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." This has been interpreted to mean that an error *"does not warrant reversal of a conviction unless there is a reasonable*

probability that, but for counsel's errors, there would have been a different result in the proceedings."

When applying the Strickland analysis, the court does not engage in hindsight. Additionally, "because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Finally, if the court can determine at the outset that there is no reasonable probability that in the absence of counsel's alleged errors the result of the proceeding would have been different or that a defendant would not have pleaded guilty, it need not determine whether counsel's performance was actually deficient. ***In other words, it is permissible for a court to resolve IAC claims by first addressing the prejudice prong of the IAC analysis.***

IV. COUNSEL'S REPRESENTATION WAS NOT DEFICIENT UNDER THE *STRICKLAND* TEST.

The movant suggests that counsel should have called witnesses BRANDON ELPS, CASSIE FLOWERS AND MARK ALLEN THOMAS to either present a relevant character trait of the State's witness HEATHER KENNON or to rebut some minor detail of her testimony.

However, there is no evidence FROM ANY WITNESS, INCLUDING THE DEFENDANT HIMSELF, to contradict the fact that the defendant and Heather Kennon were the sole occupants of Room 9 of the Seashore Motel between the approximate hours of 1:00 P.M. and 5:00 P.M. of January 29, 2014. More importantly, none of the affidavits provided by the movants DO NOT CONTRADICT THIS IN ANY WAY. No witnesses either called or which could have been called can place the defendant anywhere but the scene of this crime during this relevant time period.

According to the movant, it was "deficient" of his trial counsel in failing to call CASSIE FLOWERS as a defense witness. By her affidavit FLOWERS says that she could have testified under oath, eight months after the fact, that she can specifically recall that the movant and Heather Kennon did not stop by her house on January 28, 2014 to get "cold packs." So the movant is claiming that his lawyer should have called a convicted drug dealer to rebut a tiny portion of Kennon's testimony. The fact is, that trial counsel would have been deficient "per se" if he HAD called FLOWERS as a witness.

The same can be said for not calling MARK ALLEN THOMAS who, according to his affidavit, would have testified that the Atlantic Beach Bridge was not closed to traffic as Kennon testified. The rest of his testimony would mirror that of his girlfriend Anique Pittman, who testified at trial. Anique Pittman would have obviously been the preferred witness over THOMAS, just by examining their respective criminal records. At the time of trial, THOMAS was serving a sentence and was already under indictment for

being an habitual felon. Calling THOMAS as a witness would have almost been “deficient” as a matter of law.

These were not alibi witnesses who were either not subpoenaed or called as was the case in *Koskela v. United States*, 235 F.3 1148 (8th Circuit 2001) and, in addition, due to their criminal histories, calling these witnesses would have damaged the defendant’s case to a greater extent. A defense attorney must always weigh the potential damage in calling a witness against whatever gain that might accrue to his client. That is the crux of a “strategic” decision that courts have been cautioned in interfering with. The current criminal histories of these two witnesses suggested by the movant are attached to this response as Exhibits “A” and “B.”

As to the failure to call BRANDON ELPS, the movant in his motion contends that trial counsel should have made an offer of proof but fails to include any affidavit from ELPS in this motion that sets out what his testimony would have been. Without this, the court can make no determination about whether the failure to call him was deficient.

V. THE DEFENDANT WAS NOT PREJUDICED BY HIS COUNSEL’S FAILURE TO CALL THE SUGGESTED WITNESSES

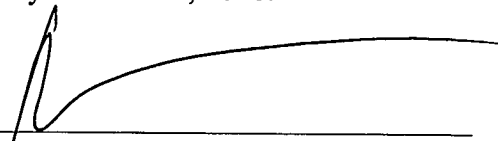
The second prong of the *Strickland* test requires a defendant to show that “counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” This has been interpreted to mean that an error “does not warrant reversal of a conviction unless there is a reasonable probability that, but for counsel’s errors, there would have been a different result in the proceedings.” In support of this argument, the State contends that the evidence was strong and the jury rejected the testimony of Anique Pittman and the defendant, whose testimony presented fully all of the defenses available to the defendant. A reading of the entire transcript clearly bears this out.

VI. AN EVIDENTIARY HEARING ON THIS MATTER IS UNNECESSARY

Since the State contends that the threshold test has not been met, an evidentiary hearing on this matter is not required or even permitted.

WHEREFORE THE STATE CONTENDS THAT the defendant's Motion for Appropriate Relief should be denied as a matter of law without need of an evidentiary hearing.

Respectfully submitted, this the 21st day of October, 2016.



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ASSISTANT DISTRICT ATTORNEY
DISTRICT 3-B
300 COURTHOUSE SQUARE
BEAUFORT, N.C. 28516
(252) 838-8246
STATE BAR NUMBER 9477

EXN:011 11

Reference: 04ZT000015
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N.C. DRIVER LICENSE SYSTEM

RESPONSE BASED UPON:
CUSTOMER ID: 20920404 PAGES: 50
ATTENTION: IMAGE: Y
DRIVER HISTORY RESPONSE

NAME: THOMAS MARK ALLEN
ADDRESS: 196 EDWARDS ST
CITY: STALEY STATE: NC ZIP: 273558029 TOTAL POINTS: 0
DOB: 06-03-1980 HEIGHT: 5 FT. 07 IN. SEX: M EYES: BLU HAIR: BLO RACE: W
PRIMARY LICENSE NO: 20920404
SECONDARY LICENSE NO:
ORG. ISS.DT: 11-25-96 OS DL NO: NON-RESIDENT MILITARY: N REAL ID: OS STATE:

*** DRIVER LICENSE STATUS: CLS C SUSPENDED ***

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
I	D	04-23-12	06-03-18	N	N	N	N	N	N	ID CARD

ENDORS:

CRD TRNS:0006630383

CLASS	GRP	LIC TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	LMT PRIV	COND RESTR	STATUS
C	O	11-25-96	06-03-00	N	N	N	N	N	N	SUSPENDED

ENDORS:
RSTR: 0 NONE

OCCUR/ BEG DATE	CONV/ END DATE	NATURE OF RECORD OR DIVISION ACTION	POINTS
		SCHBUS: NOT ELIG FOR SCHOOL BUS DRIVER CERTIFICATION	
04-22-14	INDEF	SUSP: FAILURE TO APPEAR	
11-28-13	02-18-14	CONV: (634)FAIL TO APPEAR COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2013IF 705482 CITATION ID: 060F6203	
01-30-13	PERM	SUSP: 3 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED	
10-25-12	01-30-13	CONV: *(606)DRIVING WHILE LICENSE REVOKED COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2012CR 703317 CITATION ID: 0F976449	
08-17-02	07-24-03	CONV: (606)DRIVING WHILE LICENSE REVOKED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 02CRS046500 CITATION ID: C1607699	
07-26-03	04-02-04	CONV: (606)DRIVING WHILE LICENSE REVOKED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 03CR 043958 CITATION ID: C3791845	
01-17-13	PERM	SUSP: 3 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED	
07-22-12	01-17-13	CONV: *(606)DRIVING WHILE LICENSE REVOKED COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2012CR 053458 CITATION ID: C1084368	
08-17-02	07-24-03	CONV: (606)DRIVING WHILE LICENSE REVOKED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 02CRS046500 CITATION ID: C1607699	
07-26-03	04-02-04	CONV: (606)DRIVING WHILE LICENSE REVOKED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 03CR 043958 CITATION ID: C3791845	
01-17-13	PERM	SUSP: 3 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED	
06-20-12	01-17-13	CONV: *(606)DRIVING WHILE LICENSE REVOKED	

COURT: CARTERET COUNTY COURT, NC
COURT: AOC #: 2012CR 053009 CITATION ID: C0081624

08-17-02 07-24-03 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 02CRS046500 CITATION ID: C1607699

07-26-03 04-02-04 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 03CR 043958 CITATION ID: C3791845

05-30-12 PERM SUSP: 3 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED

07-21-11 05-30-12 CONV: *(606)DRIVING WHILE LICENSE REVOKED
COURT: WAKE COUNTY COURT, NC
COURT: AOC #: 2011CR 751542 CITATION ID: 0271696E

08-17-02 07-24-03 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 02CRS046500 CITATION ID: C1607699

07-26-03 04-02-04 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 03CR 043958 CITATION ID: C3791845

04-26-11 INDEF SUSP: FAILURE TO PAY FINE

07-20-10 02-23-11 CONV: (635)FAIL TO PAY
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 2010CR 722049 CITATION ID: 06682E43

12-02-10 PERM SUSP: 3 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED

07-20-10 12-02-10 CONV: *(606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 2010CR 722049 CITATION ID: 06682E43

08-17-02 07-24-03 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 02CRS046500 CITATION ID: C1607699

07-26-03 04-02-04 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 03CR 043958 CITATION ID: C3791845

08-16-10 06-03-18 REN ISS: ID EN:

11-02-09 INDEF SUSP: FAILURE TO APPEAR

06-19-09 09-02-09 CONV: (634)FAIL TO APPEAR
COURT: FORSYTH COUNTY COURT, NC
COURT: AOC #: 2009CR 021606 CITATION ID: C5907726

11-02-09 INDEF SUSP: FAILURE TO APPEAR

06-19-09 09-02-09 CONV: (634)FAIL TO APPEAR
COURT: FORSYTH COUNTY COURT, NC
COURT: AOC #: 2009CR 021606 CITATION ID: C5907726

04-27-09 06-03-10 DUP ISS: ID EN:

08-21-07 INDEF SUSP: FAILURE TO APPEAR

10-28-06 06-21-07 CONV: (634)FAIL TO APPEAR
COURT: FORSYTH COUNTY COURT, NC
COURT: AOC #: 2006CR 037021 CITATION ID: C5912848

03-20-07 06-03-10 DUP ISS: ID EN:

03-20-07 06-03-10 DUP ISS: ID EN:

11-30-06 06-03-10 DUP ISS: ID EN:

03-11-06 08-03-07 SUSP: FAILURE TO PAY FINE

07-23-05 01-09-06 CONV: (635)FAIL TO PAY
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 2005CR 085927 CITATION ID: C6439888

11-09-05 PERM SUSP: 3 OFFENSES OF DRIVING WHILE IMPAIRED

07-23-05 11-09-05 CONV: *(625)DRIVING WHILE IMPAIRED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 05CR 085927 CITATION ID: C6439888

03-22-01 07-02-01 CONV: *(625)DRIVING WHILE IMPAIRED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 01CR 024929 CITATION ID: C1141786

05-02-99 05-17-00 CONV: *(625)DRIVING WHILE IMPAIRED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 99CR 041089 CITATION ID: 09070557

11-09-05 PERM SUSP: 3RD MOVING VIOLATION WHILE LICENSE SUSPENDED

07-23-05 11-09-05 CONV: *(625)DRIVING WHILE IMPAIRED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 05CR 085927 CITATION ID: C6439888

07-02-05 07-02-07 SUSP: 2 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED

04-29-98 01-11-99 CONV: (608)HIT AND RUN (PERSONAL INJURY)
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 98CRS063782 CITATION ID: M0121411

05-02-99 05-17-00 CONV: *(625)DRIVING WHILE IMPAIRED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 99CR 041089 CITATION ID: 09070557

10-06-05 10-06-06 SUSP: REFUSED CHEMICAL TEST

07-23-05 07-23-05 CONV: (786)REFUSED CHEMICAL TEST
COURT: GUILFORD COUNTY DIST CT, NC
COURT: AOC #: 000020920404-UNK CITATION ID: 64398881

07-24-05 INDEF SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)

07-23-05 07-24-05 CONV: (028)30 DAY CIVIL
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 05CR 085927 CITATION ID: C6439888

07-02-05 07-02-07 SUSP: 2 OFFENSES OF DRIVING WHILE LICENSE SUSPENDED

08-17-02 07-24-03 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 02CRS046500 CITATION ID: C1607699

07-26-03 04-02-04 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 03CR 043958 CITATION ID: C3791845

07-02-05 07-02-06 SUSP: 1 OFFENSE OF DRIVING WHILE LICENSE SUSPENDED

07-26-03 04-02-04 CONV: (606)DRIVING WHILE LICENSE REVOKED
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 03CR 043958 CITATION ID: C3791845

03-20-04 03-22-04 SUSP: FAILURE TO APPEAR

10-18-03 01-16-04 CONV: (634)FAIL TO APPEAR
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 03IF 038675 CITATION ID: 02546518

12-31-03 06-03-10 REN ISS: ID EN:

12-21-03 04-02-04 SUSP: FAILURE TO APPEAR

07-26-03 10-20-03 CONV: (634)FAIL TO APPEAR
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 03CR 043958 CITATION ID: C3791845

07-21-03 INDEF SUSP: FAILURE TO APPEAR

08-17-02 05-14-03 CONV: (634)FAIL TO APPEAR
COURT: GUILFORD COUNTY COURT, NC
COURT: AOC #: 02CRS046500 CITATION ID: C1607699

07-16-02 INDEF SUSP: FAILURE TO APPEAR

03-22-01	05-16-02	CONV: (634)FAIL TO APPEAR COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 01CR 024929	CITATION ID: C1141786
07-16-02	INDEF	SUSP: FAILURE TO APPEAR	
03-22-01	05-16-02	CONV: (634)FAIL TO APPEAR COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 01CR 024929	CITATION ID: C1141786
12-10-01	06-03-05	REN ISS: ID	EN:
07-02-01	INDEF	SUSP: 2 OFFENSES OF DRIVING WHILE IMPAIRED	
03-22-01	07-02-01	CONV: *(625)DRIVING WHILE IMPAIRED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 01CR 024929	CITATION ID: C1141786
05-02-99	05-17-00	CONV: *(625)DRIVING WHILE IMPAIRED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 99CR 041089	CITATION ID: 09070557
07-02-01	PERM	SUSP: 3RD MOVING VIOLATION WHILE LICENSE SUSPENDED	
03-22-01	07-02-01	CONV: (403)HIT AND RUN (PROPERTY DAMAGE) COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 01CR 024929	CITATION ID: C1141786
05-17-00	PERM	SUSP: 3RD MOVING VIOLATION WHILE LICENSE SUSPENDED	
04-29-98	01-11-99	CONV: (608)HIT AND RUN (PERSONAL INJURY) COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 98CRS063782	CITATION ID: M0121411
05-02-99	05-17-00	CONV: *(625)DRIVING WHILE IMPAIRED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 99CR 041089	CITATION ID: 09070557
05-19-01	INDEF	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
05-19-01	05-19-01	CONV: (028)30 DAY CIVIL COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 01CR 038709	CITATION ID: 00616720
03-22-01	INDEF	SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)	
03-22-01	03-22-01	CONV: (028)30 DAY CIVIL COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 01CR 024929	CITATION ID: C1141786
05-17-00	PERM	SUSP: 3RD MOVING VIOLATION WHILE LICENSE SUSPENDED	
05-02-99	05-17-00	CONV: *(625)DRIVING WHILE IMPAIRED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 99CR 041089	CITATION ID: 09070557
02-13-99	02-13-01	SUSP: 2ND MOVING VIOLATION WHILE LICENSE SUSPENDED	
05-10-97	08-12-97	CONV: (630)CONSUME ALCOHOL/DRUGS <21 COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 97CR 004920	CITATION ID: 07663408
04-29-98	01-11-99	CONV: (608)HIT AND RUN (PERSONAL INJURY) COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 98CRS063782	CITATION ID: M0121411
05-17-00	INDEF	SUSP: 1 OFFENSE OF DRIVING WHILE IMPAIRED	
05-02-99	05-17-00	CONV: *(625)DRIVING WHILE IMPAIRED COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 99CR 041089	CITATION ID: 09070557
05-24-99	05-24-00	SUSP: REFUSED CHEMICAL TEST	
05-02-99	05-02-99	CONV: (786)REFUSED CHEMICAL TEST COURT: GUILFORD COUNTY COURT, NC COURT: AOC #: 000020920404-UNK	CITATION ID: 9070557

05-02-99 INDEF SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)

05-02-99 05-02-99 CONV: (028)30 DAY CIVIL
 COURT: GUILFORD COUNTY COURT, NC
 COURT: AOC #: 99CR 041089 CITATION ID: 09070557

05-02-99 ACDNT: GUILFORD COUNTY, NC
 ACDNT: CASE ID:000082449

02-26-99 06-03-05 REN ISS: ID EN:

02-13-99 02-13-01 SUSP: 2ND MOVING VIOLATION WHILE LICENSE SUSPENDED

04-29-98 01-11-99 CONV: (608)HIT AND RUN (PERSONAL INJURY)
 COURT: GUILFORD COUNTY COURT, NC
 COURT: AOC #: 98CRS063782 CITATION ID: M0121411

08-12-97 08-12-98 SUSP: CONSUMING ALCOHOL/DRUGS WHILE LESS THAN 21

05-10-97 08-12-97 CONV: (630)CONSUME ALCOHOL/DRUGS <21
 COURT: CARTERET COUNTY COURT, NC
 COURT: AOC #: 97CR 004920 CITATION ID: 07663408

02-13-99 02-13-00 SUSP: FAIL TO STOP AND RENDER AID, HIT AND RUN

04-29-98 01-11-99 CONV: (608)HIT AND RUN (PERSONAL INJURY)
 COURT: GUILFORD COUNTY COURT, NC
 COURT: AOC #: 98CRS063782 CITATION ID: M0121411

01-08-99 01-11-99 SUSP: FAILURE TO APPEAR

04-29-98 09-17-98 CONV: (634)FAIL TO APPEAR
 COURT: GUILFORD COUNTY COURT, NC
 COURT: AOC #: 98CRS063782 CITATION ID: M0121411

11-10-98 01-14-99 CONV: (302)DRIVING NO OPERATOR LICENSE
 COURT: GUILFORD COUNTY COURT, NC PJC
 COURT: AOC #: 98CR 100725 CITATION ID: C8969901

03-19-98 06-03-00 ORG ISS: ID EN:

08-12-97 08-12-98 SUSP: CONSUMING ALCOHOL/DRUGS WHILE LESS THAN 21

05-10-97 08-12-97 CONV: (630)CONSUME ALCOHOL/DRUGS <21
 COURT: CARTERET COUNTY COURT, NC
 COURT: AOC #: 97CR 004920 CITATION ID: 07663408

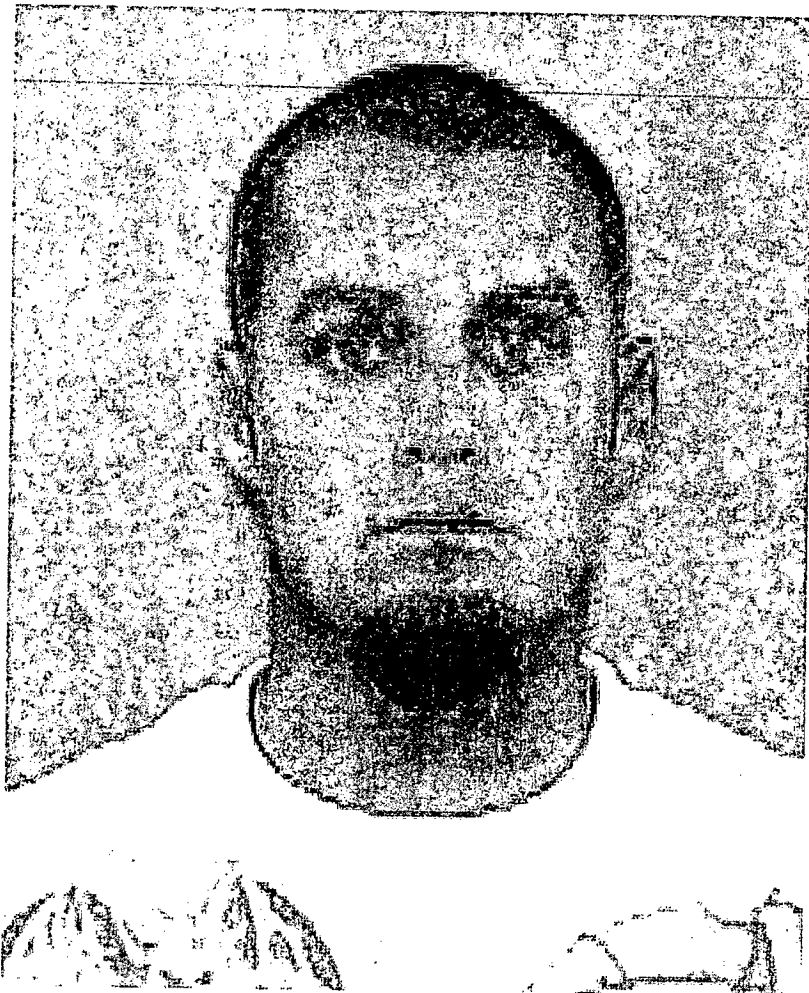
05-10-97 06-23-97 SUSP: 10 DAY CIVIL REVOCATION

05-10-97 05-10-97 CONV: (028)10 DAY CIVIL
 COURT: CARTERET COUNTY COURT, NC
 COURT: AOC #: 97CR 004920 CITATION ID: 07663408

12-29-96 01-09-97 CONV: (302)DRIVING NO OPERATOR LICENSE
 COURT: RANDOLPH COUNTY COURT, NC A&A/PJC
 COURT: AOC #: 96CR 017450 CITATION ID: C7081887

11-25-96 06-03-00 ORG ISS: CLS C EN:
 RSTR:0 NONE

**
 IMAGE :



**
IMAGE CAPTURE DATE: 2012-04-23
IMAGE CAPTURE TIME: 15.36.47
**

ACCIDENTS NOTED ON THIS DOCUMENT SHALL NOT BE
CONSIDERED DETERMINATIVE OF FAULT OR NEGLIGENCE
ON THE PART OF THE INDIVIDUAL

**
CERTIFIED A TRUE COPY OF THE D/L RECORD OF THE PERSON NAMED HEREIN AS APPEARS
ON THE AUTOMATED SYSTEM OF DMV. G.S.20-26(B).
* END OF MESSAGE *

Reference: 04ZT00001E
Msg Key : QH
Date/Time: 20170921094543
Source : III

04ZT00001E.III.QH.20170921094543.
TO: J3BD10 -021987 20170921 09:45:43 005D71CF8C
FROM: III 20170921 09:45:43
3L013B830015C62QH
NC016055A

THIS NCIC INTERSTATE IDENTIFICATION INDEX MULTIPLE RESPONSE IS THE
RESULT OF YOUR INQUIRY ON NAM/THOMAS,MARK SEX/M RAC/W DOB/19800603 PUR/C
ATN/ADA DAVID SPENCE

NAME FBI NO. INQUIRY DATE
THOMAS,MARK ALLEN 923698CB8 2017/09/21

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
M W 1980/06/03 506 125 GRN BLN Y

BIRTH PLACE
NORTH CAROLINA

FINGERPRINT CLASS PATTERN CLASS
20 63 13 PO 16
16 65 11 13 15

ALIAS NAMES
THOMAS,ALLEN THOMAS,MARK A
THOMS,MARK A

OTHER BIRTH DATES SCARS-MARKS-
1980/06/30 TATTOOS SOCIAL SECURITY
SC L FGR 244-35-5561
TAT ABDOM 244-35-5567
TAT L ARM
TAT R ARM
TAT BACK
TAT CHEST
TAT L FGR
TAT L LEG
TAT R LEG
TAT L SHLD
TAT R SHLD
PRCD L EAR
PRCD R EAR
TAT L BRST
TAT L FOOT
TAT LIP

IDENTIFICATION DATA UPDATED 2014/12/04

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:
NORTH CAROLINA - STATE ID/NC0684567A

END - 1ST NCIC III RECORD OF MULTIPLE RESPONSE

NAME FBI NO. INQUIRY DATE
THOMAS,MARK WILLIAM 476905NB2 2017/09/21

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
M W 1981/06/03 510 230 BRO BLK N

BIRTH PLACE
INDIANA

FINGERPRINT CLASS PATTERN CLASS

ALIAS NAMES
THOMAS,MARK THOMAS,MARK W

SCARS-MARKS-
TATTOOS SOCIAL SECURITY
SC R ARM 306-96-5579

IDENTIFICATION DATA UPDATED 2016/07/15

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE

FOLLOWING:
INDIANA - STATE ID/IN01127849

END - LAST NCIC III RECORD OF MULTIPLE RESPONSE

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

Reference: 04ZT00001N
Msg Key : QR
Date/Time: 20170921094616
Source : CCHINQ

04ZT00001N.CCHINQ.QR.20170921094616.
TO: J3BD10 -021989 20170921 09:46:16 1896BC54EA
FROM: CCHINQ 20170921 09:46:16
TO:NC016055A
FROM:NC016055A
Completion Code: HIT010000
SINGLE HIT (QR)

This Computerized Criminal History Response Is Based On Input Of:
ORI: NC016055A Purpose Code: C
Attention: ADA DAVID SPENCE Operator Id: MDG
Name: THOMAS,MARK
FBI Number: 923698CB8

COMPUTERIZED CRIMINAL HISTORY

Name: THOMAS,MARK ALLEN
SID: NC0684567A
FBI Number: 923698CB8
Race: White
Sex: Male
Date of Birth: 06-03-1980
Birth Place: NC
Description: North Carolina
Height: 5 Ft. 06 In.
Weight: 175 Lbs.
Eyes: BLUE
Hair Color: BROWN
Skin Color: MEDIUM
Fingerprint Type: AFIS
Fingerprint Class: 01RS 02LS 03RS 04WU 05RS 06LS 07RS 08LS 09LS 10LS
DOC Number: 0636880
Arrestee DNA Available at NC State Crime Lab: No
Convicted offender DNA Available at NC State Crime Lab: Yes
Birth Dates: 06-30-1980
Scars, Marks, and Tattoos:

PRCD L EAR
PRCD R EAR
SC L FGR
TAT ABDOM
TAT BACK
TAT CHEST
TAT FACE
TAT L ARM
TAT L BRST
TAT L FOOT
TAT L LEG
TAT L SHLD
TAT LIP
TAT R ARM
TAT R LEG
TAT R SHLD

Social Security Numbers: 244-35-5561
244-35-5567

Driver's Licenses: 20920304NC
20920404NC

Alias: THOMAS, ALLEN
THOMAS, MARK A
THOMS, MARK A

Cycle 01 Arrested: 06-13-1996 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0160000 CARTERET CO SO - COMMUNICATIONS
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 96060499A Check Digit Number: F91236H
Offense Charge: 01 LARCENY MISDEMEANOR
Offense Charge: 02 RESIST OFFICER
Offense Charge: 03 OBSTRUCT & DELAY OFFICER

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 12-17-1996 Court Docket: 1996CR 006893
Court Offense: 001 MISDEMEANOR LARCENY - MISDEMEANOR
Date of Offense: 06-13-1996
General Statute: 14-72(A)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 12-17-1996 Court Docket: 1996CR 006894
Court Offense: 002 RESISTING PUBLIC OFFICER - MISDEMEANOR
Date of Offense: 06-13-1996
General Statute: 14-223
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE

Cycle 02 Arrested: 07-09-1996 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0160300 ATLANTIC BEACH POLICE DEPARTMENT
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 96480C Check Digit Number: J73118K
Offense Charge: 01 BREAKING/ENTERING MOTOR VEHICLE
Offense Charge: 02 LARCENY
Offense Charge: 03 POSS STOLEN GOODS

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 03-06-1997 Court Docket: 1996CR 007986
Court Offense: 001 BREAK OR ENTER A MOTOR VEHICLE - FELONY
Date of Offense: 07-09-1996
General Statute: 14-56
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 03-06-1997 Court Docket: 1996CR 007986
Court Offense: 002 MISDEMEANOR LARCENY - MISDEMEANOR
Date of Offense: 07-09-1996
General Statute: 14-72(A)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 30D
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Special Conditions: CREDIT FOR TIME SERVED

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 03-06-1997 Court Docket: 1996CR 007986
Court Offense: 003 POSS STOLEN GOODS/PROP (M) - MISDEMEANOR
Date of Offense: 07-09-1996
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Cycle 03 Arrested: 02-01-1997 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0160000 CARTERET CO SO - COMMUNICATIONS
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 17020134A Check Digit Number: M12144G
Offense Charge: 01 BREAKING AND ENTERING MOTOR VEH
Offense Charge: 02 LARCENY MISDEMEANOR
Offense Charge: 03 POSS OF STOLEN PROPERTY MISDEMEANOR

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 03-06-1997 Court Docket: 1997CR 001145
Court Offense: 001 BREAK OR ENTER A MOTOR VEHICLE - FELONY
Date of Offense: 02-01-1997
General Statute: 14-56
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 03-06-1997 Court Docket: 1997CR 001145
Court Offense: 002 MISDEMEANOR LARCENY - MISDEMEANOR
Date of Offense: 02-01-1997
General Statute: 14-72(A)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Special Conditions: CONSOLIDATED W/96CR 7986

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 03-06-1997 Court Docket: 1997CR 001145
Court Offense: 003 POSS STOLEN GOODS/PROP (M) - MISDEMEANOR
Date of Offense: 02-01-1997
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 03-06-1997 Court Docket: 1997CR 001146
Court Offense: 004 INJURY TO REAL PROPERTY - MISDEMEANOR
Date of Offense: 02-01-1997
General Statute: 14-127
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Cycle 04 Arrested: 04-29-1998 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0410200 GREENSBORO PD - RECORDS
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 98121411 Check Digit Number: R27141P
Offense Charge: 01 HIT & RUN

Court ORI: NC041035J GUILFORD CO SUP CRT GREENSBORO
Disposition Date: 01-11-1999 Court Docket: 1998CRS063782
Court Offense: 001 ATTEMPTED FELONIOUS HIT AND RUN - FELONY
Date of Offense: 04-29-1998
General Statute: 20-166(A)
Plea: GUILTY TO A LESSER DEGREE
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 6M-8M
Probation Sentence: 36M Supervised Probation: Y
Fine: \$250
Court Costs: \$455
Attorney Type: PUBLIC DEFENDER OFFICE Judgement Satisfied:
Superior Court Transfer: 06-22-1998
Special Conditions: ORD MOD PROB 081500 BY JUDGE FRYE, SUPERVISION FEES AND
ARREARAGE US REMITTED, FEES ARE HEREBY WAIVED, THIS IS A
CORRECTED ORDER.

Cycle 05 Arrested: 06-09-1998 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0760000 RANDOLPH CO SO - ASHEBORO
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 9804616 Check Digit Number: DC1816Q
Offense Charge: 01 LARCENY IN GENERAL/FELONY FELONY
Offense Charge: 02 POSSESSING STOLEN GOODS/FELONY FELONY

Court ORI: NC076025J RANDOLPH CO DIST COURT-ASHEBORO
Disposition Date: 04-21-1999 Court Docket: 1998CR 006497
Court Offense: 001 FELONY LARCENY - FELONY
Date of Offense: 05-08-1998
General Statute: 14-72(A)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER

Court ORI: NC076025J RANDOLPH CO DIST COURT-ASHEBORO
Disposition Date: 04-21-1999 Court Docket: 1998CR 006497
Court Offense: 002 POSS STOLEN GOODS/PROP (F) - FELONY
Date of Offense: 05-08-1998
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER

Cycle 06 Arrested: 06-17-1998 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0410000 GUILFORD CO SO - GREENSBORO
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 237398 Check Digit Number: R98156B
Offense Charge: 01 BREAKING & ENTERING
Violations: 002
Offense Charge: 02 LARCENY
Violations: 002
Offense Charge: 03 CONSPIRE BREAKING & ENTERING
Violations: 002
General Offense: CONSPIRACY TO COMMIT

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006646
Court Offense: 001 BREAKING AND OR ENTERING (F) - FELONY

Date of Offense: 05-25-1998
General Statute: 14-54(A)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 8M-10M
Probation Sentence: 60M Supervised Probation: Y
Restitution: \$4598.91
Structured Sentencing Offense Class: H
Structured Sentencing Prior Points: 04 Supervised Probation: 009 M
Attorney Type: PUBLIC DEFENDER OFFICE Judgement Satisfied: No
Superior Court Transfer: 07-13-1998
Special Conditions: WS ST GDS,CS,CONTRABAND,FIREARMS;NT USE POSS CS;BREATH
URINE BLD TEST;72 HRS COMM SERVICE;INTENSIVE PROBATION 9 MO
CURFEW DISC OF PO;CLIFTON EVERETT JD;D MASSIE PD
BETH TOOMES

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006646
Court Offense: 002 LARCENY AFTER BREAK/ENTER - FELONY
Date of Offense: 05-25-1998
General Statute: 14-72(B)(2)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE
Superior Court Transfer: 07-13-1998

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006646
Court Offense: 003 POSS STOLEN GOODS/PROP (F) - FELONY
Date of Offense: 05-25-1998
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE
Superior Court Transfer: 07-13-1998

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006647
Court Offense: 004 FELONY CONSPIRACY - FELONY
Date of Offense: 05-25-1998
General Statute: 14-2.4(A)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE
Superior Court Transfer: 07-13-1998

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006648
Court Offense: 005 FELONY CONSPIRACY - FELONY
Date of Offense: 05-26-1998
General Statute: 14-2.4(A)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE
Superior Court Transfer: 07-13-1998

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006649
Court Offense: 006 BREAKING AND OR ENTERING (F) - FELONY
Date of Offense: 05-26-1998
General Statute: 14-54(A)
Plea: GUILTY
Verdict: GUILTY

Disposition: Trial By Judge Consolidated Court County: 150
Consolidated Court Docket Number: 1998CRS006646
Consolidated Line Number: 51
Attorney Type: PUBLIC DEFENDER OFFICE
Superior Court Transfer: 07-13-1998
Special Conditions: CLIFTON EVERETT JD;D MASSIE PD;TOOMES ASST DA

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006649
Court Offense: 007 LARCENY AFTER BREAK/ENTER - FELONY
Date of Offense: 05-26-1998
General Statute: 14-72(B)(2)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE
Superior Court Transfer: 07-13-1998

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006649
Court Offense: 008 POSS STOLEN GOODS/PROP (F) - FELONY

Date of Offense: 05-26-1998
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE
Superior Court Transfer: 07-13-1998

Prison Date: 07-11-2001 SID: NC0684567A FBI Number: 923698CB8
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Prisoner Name: THOMAS, MARK A
Status: SUBJECT INCARCERATED FOR THE FOLLOWING CONVICTIONS:

Prison Count: 01
Offense: BREAKING/ENTERING INTENT TO COMMIT FELONY - FELONY
Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006646 Confinement: 10M
Special Conditions: INITIAL
Prison Count: 02
Offense: HIT AND RUN - FELONY ATTEMPTED1
Court ORI: NC041035J GUILFORD CO SUP CRT GREENSBORO
Disposition Date: 01-11-1999 Court Docket: 1998CRS063782 Confinement: 8M
Special Conditions: CONCURRENT
Prison Count: 03
Offense: BREAKING/ENTERING INTENT TO COMMIT FELONY - FELONY
Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-05-1999 Court Docket: 1998CRS006649
MULTIPLE CHARGES 1 DISPOSITION M
Special Conditions: INITIAL

Prison Date: 07-11-2001A SID: NC0684567A FBI Number: 923698CB8
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Prisoner Name: THOMAS, MARK A
Status: SUBJECT INCARCERATED FOR THE FOLLOWING CONVICTIONS:

Prison Count: 01
Offense: DRIVING WHILE IMPAIRED - MISDEMEANOR
Court ORI: NC041025J GUILFORD CO DIST CRT-GREENSBORO
Disposition Date: 07-02-2001 Court Docket: 2001CR 024929 Confinement: 6M-10M
Special Conditions: CONC W/1

Prison Status Date: 11-12-2001 SID: NC0684567A FBI Number: 923698CB8
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Status: DISCHARGED

Cycle 07 Arrested: 12-28-2002 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0410200 GREENSBORO PD - RECORDS
Arrest Name: THOMAS, MARK ALLEN
Check Digit Number: FH8796J
Offense Charge: 01 OBTAIN PROPERTY FALSE PRETENSE FELONY
Date of Offense: 12-28-2002
General Statute: 14-100 Offense Provision: ADM DISCH

Cycle 08 Arrested: 07-12-2003 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0160300 ATLANTIC BEACH POLICE DEPARTMENT
Arrest Name: THOMAS, MARK A
Agency Case Number: 2003001125 Check Digit Number: S45642H
Offense Charge: 01 POSS W/INT SELL DEL COUNTERFEIT CONTROL SUBSTANCE
General Statute: 90-95A1
Offense Charge: 02 CONSPIRACY FELONY
General Statute: 14-2.4A
Offense Charge: 03 ASSAULT GOVERNMENT OFFICIAL/EMPLOYEE
General Statute: 14-33C4
Offense Charge: 04 INTOXICATED AND DISRUPTIVE
General Statute: 14-444

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 02-04-2004 Court Docket: 2003CR 053540
Court Offense: 001 INTOXICATED AND DISRUPTIVE - MISDEMEANOR
Date of Offense: 07-12-2003
General Statute: 14-444
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 02-04-2004 Court Docket: 2003CR 053541
Court Offense: 002 ASSAULT GOVT OFFICIAL/EMPLY - MISDEMEANOR
Date of Offense: 07-12-2003
General Statute: 14-33(C)(4)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 02-04-2004 Court Docket: 2003CR 053538
Court Offense: 003 FELONY CONSPIRACY - FELONY
Date of Offense: 07-12-2003
General Statute: 14-2.4(A)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 02-05-2004 Court Docket: 2003CRS053539
Court Offense: 004 PWISD COUNTERFEIT CS - FELONY
Date of Offense: 07-12-2003
General Statute: 90-95(A)(2)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 5M-6M
Structured Sentencing Offense Class: I
Structured Sentencing Prior Points: 09
Structured Sentencing Type: ACTIVE SENTENCE
Firearms Penalty: N
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 10-29-2003
Special Conditions: AS COND OF POST REL SUPERVISION OR WK RELEASE PAY C--300 SB
I FEE/75.00 ABPD/357.00 FORFEITED TO CC BOE.

Prison Date: 04-14-2004 SID: NC0684567A FBI Number: 923698CB8
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Prisoner Name: THOMAS, MARK A
Status: SUBJECT INCARCERATED FOR THE FOLLOWING CONVICTIONS:

Prison Count: 01
Offense: CREATE, SELL, DELIVER COUNTERFEIT CONTROLLED SUBSTANCE - FELONY
Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 02-05-2004 Court Docket: 2003CRS053539 Confinement: 6M
Restitution: \$000000375
Special Conditions: INITIAL
Prison Count: 02
Offense: CHEAT - PROPERTY/SERVICES - MISDEMEANOR SOLICIT6
Court ORI: NC041025J GUILFORD CO DIST CRT-GREENSBORO
Disposition Date: 03-27-2003 Court Docket: 2002CR 107266 Confinement: 4M
Special Conditions: CONCURRENT
Prison Count: 03
Offense: DRIVER LICENSE REVOKED - MISDEMEANOR
Court ORI: NC041025J GUILFORD CO DIST CRT-GREENSBORO
Disposition Date: 04-02-2004 Court Docket: 2003CR 043958 Confinement: 3M
Special Conditions: CONCURRENT

Prison Status Date: 07-07-2004 SID: NC0684567A FBI Number: 923698CB8
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Status: DISCHARGED

Cycle 09 Arrested: 01-15-2006 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0410300 HIGH POINT PD - RECORDS SECTION
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 1691641 Check Digit Number: QN8106Q
Palm Prints: N Photo Available: Y
Fingerprint Number: 1008812006015003
Booking Number: B80000010940
Offense Charge: 01 LARCENY OF MOTOR VEHICLE FELONY
Violations: 001
Date of Offense: 01-15-2006
General Statute: 14-72(A) Offense Provision: TOT COUNTY

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 12-04-2006 Court Docket: 2006CRS066461
Court Offense: 001 LARCENY OF MOTOR VEHICLE (F) - FELONY
Date of Offense: 01-15-2006
General Statute: 14-72(A)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-25-2006
Special Conditions: PER PLEA

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 12-04-2006 Court Docket: 2006CRS066463
Court Offense: 002 POSSESS DRUG PARAPHERNALIA - MISDEMEANOR
Date of Offense: 01-15-2006

General Statute: 90-113.22
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 120D Time Served: 5 D
Probation Sentence: 24M Supervised Probation: Y
Fine: \$200
Court Costs: \$245
Structured Sentencing Offense Class: 1
Structured Sentencing Prior Points: 14
Structured Sentencing Type: COMMUNITY SENTENCE
Firearms Penalty: N
Days to Complete Community Service: 090
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY Judgement Satisfied:
Superior Court Transfer: 04-25-2006
Special Conditions: SDC 5DA CR \$200CSW(CAMPBELL);022107-ORD MOD WAIVE CSW & FEE
40HRS ACT GCJ-IN LIEU CSW(FRYE);040907-ORD MOD(STONE);

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 12-04-2006 Court Docket: 2006CRS066463
Court Offense: 003 POSSESS MARIJUANA UP TO 1/2 OZ - MISDEMEANOR
Date of Offense: 01-15-2006
General Statute: 90-95(D)(4)
Plea: GUILTY TO A LESSER DEGREE
Verdict: GUILTY TO LESSER DEGREE
Disposition: Trial By Judge Consolidated Court County: 400
Consolidated Court Docket Number: 2006CRS066463
Consolidated Line Number: 51
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-25-2006

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 08-01-2007 Court Docket: 2006CRS066463
Court Offense: 004 MISDEMEANOR PROBATION VIOL - MISDEMEANOR
Date of Offense: 01-15-2006
General Statute: 15A-1345
Disposition: Process Revocation
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-25-2006
Special Conditions: SDC 12DA CR RUN CONCURR W/07CRS 85413 DART(VAUGHN);

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 08-01-2007 Court Docket: 2006CRS066462
Court Offense: 005 MISDEMEANOR PROBATION VIOL - MISDEMEANOR
Date of Offense: 01-15-2006
General Statute: 15A-1345
Disposition: Process Revocation
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-25-2006
Special Conditions: SDC @ EXP 66463 NO CR RUN CONCURR W/07CRS85413 DART(VAUGHN)

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 12-04-2006 Court Docket: 2006CRS066462
Court Offense: 006 RESISTING PUBLIC OFFICER - MISDEMEANOR
Date of Offense: 01-15-2006
General Statute: 14-223
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Consecutive Sentence: CASES
Confinement: 60D
Probation Sentence: 24M Supervised Probation: Y
Structured Sentencing Offense Class: 2
Structured Sentencing Prior Points: 14
Structured Sentencing Type: COMMUNITY SENTENCE
Firearms Penalty: N
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-25-2006
Special Conditions: SDC @ EXP 06CRS 66463 NO CR FOLL CONDS IN 66463 (CAMPBELL):

Cycle 10 Arrested: 10-28-2006 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0340200 WINSTON-SALEM PD
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 1465778 Check Digit Number: RF6980A
Arrest Provisions: MORTON
Palm Prints: N Photo Available: Y
Fingerprint Number: 1000232006301014
Booking Number: C00000025309
Offense Charge: 01 POSSESS STOLEN MOTOR VEHICLE FELONY

Violations: 001
Date of Offense: 10-28-2006
General Statute: 14-77.1 Offense Provision: OUT-OF-CO WARRANT
Offense Charge: 02 LARCENY OF MOTOR VEHICLE FELONY
Violations: 001
Date of Offense: 10-28-2006
General Statute: 14-72(A) Offense Provision: OUT-OF-CO WARRANT

Court ORI: NC034025J FORSYTH CO DIST CRT-WINSTON-SALE
Disposition Date: 11-17-2006 Court Docket: 2006CR 062389
Court Offense: 001 POSSESS STOLEN MOTOR VEHICLE - FELONY
Date of Offense: 10-28-2006
General Statute: 20-106
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 8M-10M
Probation Sentence: 18M Supervised Probation: Y
Fine: \$100
Court Costs: \$110
Structured Sentencing Offense Class: H
Structured Sentencing Prior Points: 14
Structured Sentencing Type: INTERMEDIATE SENTENCE Supervised
Probation: 006 M
Attorney Type: PUBLIC DEFENDER OFFICE Judgement Satisfied:
Special Conditions: 130.00 ATTNY FEE;TASC;DNA
WAIVE PSF, COST, FINE AND ARREARAGE 022107
DEF ELECTED TO ACTIVATE SENTENCE, TERMINATE PROBATION,
8-10 MOS, 21D CR, JUDGE WOOD GUILFORD CO 080107

Court ORI: NC034025J FORSYTH CO DIST CRT-WINSTON-SALE
Disposition Date: 11-17-2006 Court Docket: 2006CR 062389
Court Offense: 002 RECKLESS DRIVING TO ENDANGERER - TRAFFIC
Date of Offense: 10-28-2006
General Statute: 20-140(B)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE

Court ORI: NC034025J FORSYTH CO DIST CRT-WINSTON-SALE
Disposition Date: 11-17-2006 Court Docket: 2006CR 062389
Court Offense: 003 RESISTING PUBLIC OFFICER - MISDEMEANOR
Date of Offense: 10-28-2006
General Statute: 14-223
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE

Court ORI: NC034025J FORSYTH CO DIST CRT-WINSTON-SALE
Disposition Date: 01-19-2007 Court Docket: 2006CR 062389
Court Offense: 004 MOTIONS - MISDEMEANOR
Date of Offense: 10-28-2006
General Statute: 15A-951
Disposition: Process Other
Attorney Type: PUBLIC DEFENDER OFFICE
Special Conditions: ON IN ERROR

Court ORI: NC041045J GUILFORD CO DIST CRT-HIGH POINT
Disposition Date: 01-31-2007 Court Docket: 2006CR 096736
Court Offense: 005 LARCENY OF MOTOR VEHICLE (F) - FELONY
Date of Offense: 10-28-2006
General Statute: 14-72(A)
Disposition: Dismissal Without Leave (By DA)

Cycle 11 Arrested: 04-17-2007 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0410300 HIGH POINT PD - RECORDS SECTION
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 1691641 Check Digit Number: QP0521J
Palm Prints: N Photo Available: Y
Fingerprint Number: 1008812007107001
Booking Number: B80000014186
Offense Charge: 01 ROBBERY WITH DANGEROUS WEAPON FELONY
Violations: 001
Date of Offense: 04-17-2007
General Statute: 14-87 Offense Provision: TOT COUNTY

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 08-01-2007 Court Docket: 2007CRS085413
Court Offense: 001 COMMON LAW ROBBERY - FELONY
Date of Offense: 04-17-2007
General Statute: 14-87.1

Plea: GUILTY TO A LESSER DEGREE
Verdict: GUILTY TO LESSER DEGREE
Disposition: Trial By Judge Consolidated: Yes
Confinement: 21M-26M Time Served: 7 D
Structured Sentencing Offense Class: G
Structured Sentencing Prior Points: 16
Structured Sentencing Type: ACTIVE SENTENCE
Firearms Penalty: N
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 06-05-2007
Special Conditions: SDC PER PLEA 7DA CR DART(VAUGHN);042009-REST OF RIGHTS;

Prison Date: 08-08-2007 SID: NC0684567A FBI Number: 923698CB8
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Prisoner Name: THOMAS, MARK A
Status: SUBJECT INCARCERATED FOR THE FOLLOWING CONVICTIONS:

Prison Count: 01
Offense: COMMON LAW ROBBERY - FELONY
Court ORI: NC041035J GUILFORD CO SUP CRT GREENSBORO
Disposition Date: 08-01-2007 Court Docket: 2007CRS085413 Confinement: 2Y2M
Special Conditions: INITIAL
Prison Count: 02
Offense: DRUG PARAPHERNALIA - USE/POSSESS - MISDEMEANOR
Court ORI: NC041035J GUILFORD CO SUP CRT GREENSBORO
Disposition Date: 12-04-2006 Court Docket: 2006CRS066463 Confinement: 4M
Special Conditions: CONCURRENT
Prison Count: 03
Offense: RESISTING OFFICER - MISDEMEANOR
Court ORI: NC041-GUILFORD CO COURTS
Disposition Date: 12-04-2006 Court Docket: 2006CRS066462 Confinement: 60D
Special Conditions: EXP/BC-002,MOD TERM CORRECTED 121207 PER CONT MOD
Prison Count: 04
Offense: RECEIVING STOLEN VEHICLE - FELONY
Court ORI: NC034035J FORSYTH CO SUP CRT-WINSTON-SALEM
Disposition Date: 11-17-2006 Court Docket: 2006CRS062389 Confinement: 10M
Special Conditions: CONCURRENT
Prison Count: 05
Offense: DWI LEVEL 1 - MISDEMEANOR
Court ORI: NC041025J GUILFORD CO DIST CRT-GREENSBORO
Disposition Date: 11-09-2005 Court Docket: 2005CR 085927 Confinement: 4M
Special Conditions: CONCURRENT
Prison Count: 06
Offense: COMMUNICATING THREATS - MISDEMEANOR
Court ORI: NC041025J GUILFORD CO DIST CRT-GREENSBORO
Disposition Date: 06-14-2005 Court Docket: 2005CR 070311 Confinement: 1M
Special Conditions: CONCURRENT
Prison Count: 07
Offense: RESISTING OFFICER - MISDEMEANOR
Court ORI: NC041025J GUILFORD CO DIST CRT-GREENSBORO
Disposition Date: 08-03-2007 Court Docket: 2006CR 077403 Confinement: 4M
Special Conditions: CONCURRENT
Prison Count: 08
Offense: POSSESS SCHEDULE VI - MISDEMEANOR
Court ORI: NC041035J GUILFORD CO SUP CRT GREENSBORO
Disposition Date: 12-04-2006 Court Docket: 2006CRS066463
MULTIPLE CHARGES 1 DISPOSITION M
Special Conditions: CONCURRENT
Prison Count: 09
Offense: RESISTING OFFICER - MISDEMEANOR
Court ORI: NC041025J GUILFORD CO DIST CRT-GREENSBORO
Disposition Date: 08-03-2007 Court Docket: 2007CR 095913
MULTIPLE CHARGES 1 DISPOSITION M
Special Conditions: CONCURRENT

Cycle 12 Arrested: 01-15-2011 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0410300 HIGH POINT PD - RECORDS SECTION
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 1691641 Check Digit Number: QP8495N
Fingerprint Number: 1008822011015004
Booking Number: 260000010555
Offense Charge: 01 SIMPLE ASSAULT MISDEMEANOR
Violations: 001
Date of Offense: 01-15-2011
General Statute: 14-33(A) Offense Provision: TOT

Court ORI: NC041045J GUILFORD CO DIST CRT-HIGH POINT
Disposition Date: 11-17-2011 Court Docket: 2011CR 066074
Court Offense: 001 ASSAULT ON A FEMALE - MISDEMEANOR

Date of Offense: 01-15-2011
General Statute: 14-33(C)(2)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PUBLIC DEFENDER OFFICE

Cycle 13 Arrested: 07-21-2011 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC092013Y CITY/COUNTY BU OF ID - RALEIGH
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 5411000432 Check Digit Number: 3572CST Local Id: 343153
Arrest Provisions: BEST POSSIBLE PRINTS
Fingerprint Number: 1000042011202026
Booking Number: 1000042011202026
Offense Charge: 01 MISDEMEANOR PROBATION VIOL MISDEMEANOR
Violations: 001
Date of Offense: 07-21-2011
General Statute: 15A-1345

Cycle 14 Arrested: 03-23-2014 SID: NC0684567A FBI Number: 923698CB8
Arresting Agency ORI: NC0410300 HIGH POINT PD - RECORDS SECTION
Arrest Name: THOMAS, MARK ALLEN
Agency Case Number: 1691641 Check Digit Number: QQ6879W
Fingerprint Number: 1008822014082003
Booking Number: 260000021337
Offense Charge: 01 ATT ROBBERY-DANGEROUS WEAPON FELONY
Violations: 001
Date of Offense: 03-23-2014
General Statute: 14-87 Offense Provision: TOT
Offense Charge: 02 ROBBERY WITH DANGEROUS WEAPON FELONY
Violations: 001
Date of Offense: 03-23-2014
General Statute: 14-87 Offense Provision: TOT

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 10-14-2014 Court Docket: 2014CRS071647
Court Offense: 001 ATT ROBBERY-DANGEROUS WEAPON - FELONY
Date of Offense: 03-23-2014
General Statute: 14-87

Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated Court County: 400
Consolidated Court Docket Number: 2014CRS071646
Consolidated Line Number: 51
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 06-18-2014

Court ORI: NC041055J GUILFORD CO SUP CRT-HIGH POINT
Disposition Date: 10-14-2014 Court Docket: 2014CRS071646
Court Offense: 002 ROBBERY WITH DANGEROUS WEAPON - FELONY
Date of Offense: 03-23-2014
General Statute: 14-87

Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 77M-105M Time Served: 205 D
Court Costs: \$2984
Structured Sentencing Offense Class: D
Structured Sentencing Prior Points: 18
Structured Sentencing Type: ACTIVE SENTENCE
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER Judgement Satisfied: Yes
Superior Court Transfer: 06-18-2014

Prison Date: 10-29-2014 SID: NC0684567A FBI Number: 923698CB8
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Prisoner Name: THOMAS, MARK A
Status: SUBJECT INCARCERATED FOR THE FOLLOWING CONVICTIONS:

Prison Count: 01
Offense: ROBBERY WITH DANGEROUS WEAPON - FELONY
Court ORI: NC041035J GUILFORD CO SUP CRT GREENSBORO
Disposition Date: 10-14-2014 Court Docket: 2014CRS071646 Confinement: 8Y9M
Restitution: \$000002984
Special Conditions: INITIAL
Prison Count: 02
Offense: ROBBERY WITH DANGEROUS WEAPON - FELONY ATTEMPTED1
Court ORI: NC041035J GUILFORD CO SUP CRT GREENSBORO
Disposition Date: 10-14-2014 Court Docket: 2014CRS071647
MULTIPLE CHARGES 1 DISPOSITION M
Special Conditions: INITIAL

BASED ONLY ON FBI NUMBER.

THIS CRIMINAL HISTORY IS FOR A SINGLE STATE RECORD.

THIS CRIMINAL HISTORY RECORD INFORMATION ON THE ABOVE-NAMED INDIVIDUAL IS A CERTIFIED COPY SUBSTANTIATED BY FINGERPRINTS, AS IT APPEARS IN THE SBI/DCI FILES.

STATE/FEDERAL REGULATIONS REQUIRE A ONE-YEAR RECORD OF DISSEMINATION.

* * * CAUTION * * *
CHANGES TO THIS RECORD MAY OCCUR AT ANY TIME AND A NEW INQUIRY SHOULD BE MADE FOR SUBSEQUENT USE.

*****END OF RECORD*****

Reference: 04ZT00001N
Msg Key : QR
Date/Time: 20170921094618
Source : III

04ZT00001N.III.QR.20170921094618.
TO: J3BD10 -021990 20170921 09:46:18 005D71CF9E
FROM: III 20170921 09:46:18
EL013B830015C72QR
NC016055A

THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/923698CB8. THE RECORD MAY BE OBTAINED FROM
WITHIN YOUR STATE. THE INTERSTATE IDENTIFICATION INDEX CONTAINS
NO ADDITIONAL DATA.
END

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN * 516 ROSEMARY S=M R=W DOB=06031980 11CR 052737
AKA THOMAS, MARK @
OF:061211 (M) COMMUNICATING THREATS GUILTY 092211 CR
FINE/COSTS\$.00 REST\$ SENT:010- D TYPE:C PROB:NONE
SPEC. COND: 7 DAYS CREDIT;

THOMAS, MARK, ALLEN * 516 ROSEMARY S=M R=W DOB=06031980 11CR 052738
AKA THOMAS, MARK @
OF:061211 (M) SECOND DEGREE TRESPASS GUILTY 092211 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
SPEC. COND: CONS WITH 11CR52737;

THOMAS, MARK, ALLEN * 246 BROAD CR S=M R=W DOB=06031980 14CR 050138
AKA THOMAS, MARK @
OF:011314 (M) POSSESS MARIJUANA UP TO 1/2 OZ DISMISSED BY DA 052114 CR
SPEC. COND: IN DAC;

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS,MARK? R=RACE: S=SEX: DOB:

THOMAS,MARK,ALLEN * 1603 WOODSID S=M R=W DOB=06031980 14CR 050371
AKA THOMAS,MARK @
OF:012914 (M) UNAUTHORIZED USE OF MOTOR VEH DISMISSED BY DA 020314 CR
SPEC. COND: PER P/W;
-+- -+- -+-
THOMAS,MARK,ALLEN 747 BROAD CR S=M R=W DOB=06031980 96CR 006893
OF:061396 (M) MISDEMEANOR LARCENY DISMISSED BY DA 121796 CR
-+- -+- -+-
THOMAS,MARK,ALLEN 747 BROAD CR S=M R=W DOB=06031980 96CR 006894
OF:061396 (M) RESISTING PUBLIC OFFICER DISMISSED BY DA 121796 CR
-+- -+- -+-
THOMAS,MARK,ALLEN 267 NINE MIL S=M R=W DOB=06031980 96CR 007986
OF:070996 (F) BREAK OR ENTER A MOTOR VEHICLE DISMISSED BY DA 030697 CR
OF:070996 (M) MISDEMEANOR LARCENY GUILTY 030697 CR
FINE/COSTS\$.00 REST\$ SENT:030- D TYPE:A PROB:NONE
SPEC. COND: CREDIT FOR TIME SERVED
OF:070996 (M) POSS STOLEN GOODS/PROP (M) DISMISSED BY DA 030697 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 196 EDWARDS S=M R=W DOB=06031980 97CR 001145
 OF:020197 (F) BREAK OR ENTER A MOTOR VEHICLE DISMISSED BY DA 030697 CR
 OF:020197 (M) MISDEMEANOR LARCENY GUILTY 030697 CR
 FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
 SPEC. COND: CONSOLIDATED W/96CR 7986
 OF:020197 (M) POSS STOLEN GOODS/PROP (M) DISMISSED BY DA 030697 CR
 +- +- +-
 THOMAS, MARK, ALLEN 196 EDWARDS S=M R=W DOB=06031980 97CR 001146
 OF:020197 (M) INJURY TO REAL PROPERTY DISMISSED BY DA 030697 CR
 +- +- +-
 THOMAS, MARK, ALLEN 196 EDWARDS S=M R=W DOB=06031980 97CR 004920
 OF:051097 (T) DRIVING WHILE IMPAIRED NOT GUILTY 081297 CR
 OF:051097 (T) DRIVE AFTER CONSUMING < 21 GUILTY 081297 CR
 FINE/COSTS\$ 90.00 REST\$ SENT:030- D TYPE:C PROB:024M UNSUPV.
 SPEC. COND: OBTAIN ASSES W/IN 30 D:FOLLOW RECOMM:SUB TO BLOOD,URI

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS,MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 516 ROSEMARY S=M R=W DOB=06031980 98CR 006646
OF:052598 (F) BREAKING AND OR ENTERING (F) TRANSFERRED TO S.C. 070698 CR
OF:052598 (F) LARCENY AFTER BREAK/ENTER TRANSFERRED TO S.C. 070698 CR
OF:052598 (F) POSS STOLEN GOODS/PROP (F) TRANSFERRED TO S.C. 070698 CR
OF:052598 (F) BREAKING AND OR ENTERING (F) GUILTY 040599 CRS
FINE/COSTS\$.00 REST\$ 4598.91 SENT:008-010M TYPE:I PROB:060M SUPV.

SEE ALSO: 98CRS006649

SPEC. COND: WS ST GDS,CS,CONTRABAND,FIREARMS;NT USE POSS CS;BREAT

OF:052598 (F) LARCENY AFTER BREAK/ENTER DISMISSED BY DA 040599 CRS
OF:052598 (F) POSS STOLEN GOODS/PROP (F) DISMISSED BY DA 040599 CRS

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THOMAS, MARK, ALLEN 516 ROSEMARY S=M R=W DOB=06031980 98CR 006647
OF:052598 (F) FELONY CONSPIRACY TRANSFERRED TO S.C. 070698 CR
OF:052598 (F) FELONY CONSPIRACY DISMISSED BY DA 040599 CRS

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THOMAS, MARK, ALLEN 516 ROSEMARY S=M R=W DOB=06031980 98CR 006648
OF:052698 (F) FELONY CONSPIRACY TRANSFERRED TO S.C. 070698 CR
OF:052698 (F) FELONY CONSPIRACY DISMISSED BY DA 040599 CRS

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS,MARK? R=RACE: S=SEX: DOB:

THOMAS,MARK,ALLEN 516 ROSEMARY S=M R=W DOB=06031980 98CR 006649
OF:052698 (F) BREAKING AND OR ENTERING (F) TRANSFERRED TO S.C. 070698 CR
OF:052698 (F) LARCENY AFTER BREAK/ENTER TRANSFERRED TO S.C. 070698 CR
OF:052698 (F) POSS STOLEN GOODS/PROP (F) TRANSFERRED TO S.C. 070698 CR
OF:052698 (F) BREAKING AND OR ENTERING (F) GUILTY 040599 CRS

CONSOLIDATED FOR JUDGMENT WITH 98CRS006646 51

SPEC. COND: CLIFTON EVERETT JD;D MASSIE PD;TOOMES ASST DA
OF:052698 (F) LARCENY AFTER BREAK/ENTER DISMISSED BY DA 040599 CRS
OF:052698 (F) POSS STOLEN GOODS/PROP (F) DISMISSED BY DA 040599 CRS

-+-

-+-

-+-

THOMAS,MARK,ALLEN 516 ROSEMARY S=M R=W DOB=02231978 03CR 003072
OF:060603 (T) NO OPERATORS LICENSE DISMISSED BY DA 111203 CR

SPEC. COND: ATTY CROWE;

OF:060603 (I) FOLLOWING TOO CLOSELY CHARGED CR
(I) IMPROPER EQUIP - SPEEDOMETER RESP LESSER OFFENSE 111203

FINE/COSTS\$ 125.00 REST\$ SENT: - TYPE: PROB:NONE PAID

SPEC. COND: ATTY CROWE;

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 200 APT #4 E S=M R=W DOB=06031980 03CR 003105
OF:061603 (M) CRIMINAL CONTEMPT GUILTY 061603 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE: PROB:NONE
SPEC. COND: 30 DAYS ACTIVE & PAY 200.00 FINE; **PAR PAY** 6-24-03

THOMAS, MARK, ALLEN 200 APT# 4 E S=M R=W DOB=06031980 03CR 053108
LID: MTWM5567A-150
OF:060603 (T) FICTITIOUS INFO TO OFFICER GUILTY 070103 CR
FINE/COSTS\$.00 REST\$ SENT:015- D TYPE:A PROB:NONE
SPEC. COND: CREDIT FOR TIME SERVED;

THOMAS, MARK, ALLEN 200 APT# 4 E S=M R=W DOB=06031980 03CR 053538
LID: MTWM5567A-150
OF:071203 (F) FELONY CONSPIRACY DISMISSED BY DA 020404 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 200 APT# 4 E S=M R=W DOB=06031980 03CR 053539
 LID: MTWM5567A-150
 OF:071203 (F) PWISD COUNTERFEIT CS TRANSFERRED TO S.C. 102703 CR
 OF:071203 (F) PWISD COUNTERFEIT CS GUILTY 020504 CRS
 FINE/COSTS\$.00 REST\$ SENT:005-006M TYPE:A PROB:NONE
 SPEC. COND: AS COND OF POST REL SUPERVISION OR WK RELEASE PAY C/
 +-+ +-+ +-+

THOMAS, MARK, ALLEN 200 APT# 4 E S=M R=W DOB=06031980 03CR 053540
 LID: MTWM5567A-150
 OF:071203 (M) INTOXICATED AND DISRUPTIVE DISMISSED BY DA 020404 CR
 +-+ +-+ +-+

THOMAS, MARK, ALLEN 200 APT# 4 E S=M R=W DOB=06031980 03CR 053541
 LID: MTWM5567A-150
 OF:071203 (M) ASSAULT GOVT OFFICIAL/EMPLY DISMISSED BY DA 020404 CR
 +-+ +-+ +-+

THOMAS, MARK, ALLEN 208 FOREST K S=M R=W DOB=06031980 11CR 002066
 OF:072011 (M) MISD PROB VIOL OUT OF COUNTY PROCESS REVOKED 080111 CR
 SPEC. COND: CREDIT FOR 27 DAYS;

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC| MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 516 ROSEMARY S=M R=W DOB=06031980 11CR 052740
OF:061311 (M) BREAKING OR ENTERING (M) DISMISSED BY DA 092211 CR
-+- -+- -+-

THOMAS, MARK, ALLEN 195 NINE FOO S=M R=W DOB=06031980 12CR 002902
OF:101012 (M) MISD PROB VIOL OUT OF COUNTY PROCESS REVOKED 012913 CR
SPEC. COND: ATTY JONES; CREDIT FOR 35 DAYS;
OF:101012 (M) MISD PROB VIOL OUT OF COUNTY PROCESS REVOKED 012913 CR
SPEC. COND: SEE PRIOR JUDGEMENT;
-+- -+- -+-

THOMAS, MARK, ALLEN 516 ROSEMARY S=M R=W DOB=06031980 12CR 053009
OF:062012 (T) DWLR GUILTY 011713 CR
FINE/COSTS\$.00 REST\$ SENT:045- D TYPE:A PROB:NONE
SPEC. COND: ATTY SUGGS;

THOMAS, MARK, ALLEN 195 NINE FOO S=M R=W DOB=06031980 12CR 053458
OF:072212 (T) DWLR GUILTY 011713 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
SPEC. COND: CONCURRENT W/12CR53009

|OF:OFFENSE DATE|DOB=BIRTH| (M) MISD | (F) FELONY | (T) TRAFFIC |

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS,MARK? R=RACE: S=SEX: DOB:

THOMAS,MARK,ALLEN 195 NINE FOO S=M R=W DOB=06031980 12CR 055438
OF:112712 (T) DWLR DISMISSED BY DA 011713 CR
SPEC. COND: PLED TO OTHER;

THOMAS,MARK,ALLEN 196 EDWARDS S=M R=W DOB=06031980 12CR 701008
OF:041012 (T) ALLOW UNLICENSED TO DRIVE DISMISSED BY DA 011713 CR
OF:041012 (T) FICTITIOUS INFO TO OFFICER GUILTY 011713 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
SPEC. COND: CONS W/12CR53458

THOMAS,MARK,ALLEN 195 NINE FOO S=M R=W DOB=06031980 12CR 703317
OF:102512 (T) SPEEDING 072 IN 55 ZONE DISMISSED BY DA 013013 CR
OF:102512 (T) DWLR GUILTY 013013 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
SPEC. COND: CONS WITH 12CR55438;

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC| MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 246 BROAD CR S=M R=W DOB=06031980 13CR 055816
OF:122913 (M) ASSAULT ON A FEMALE DISMISSED BY DA 020314 CR
SPEC. COND: PER P/W;

VICTIMS RIGHTS: Y DOM VOL CH: Y DOMESTIC VIOLENCE CONVICTED: N

-- -- --

THOMAS, MARK, ALLEN 246 BROAD CR S=M R=W DOB=06031980 14CR 050137
OF:011314 (M) ASSAULT ON A FEMALE DISMISSED BY DA 022614 CR
SPEC. COND: PER P/W;

VICTIMS RIGHTS: Y DOM VOL CH: Y DOMESTIC VIOLENCE CONVICTED: N

-- -- --

THOMAS, MARK, ALLEN * 516 ROSEMARY S=M R=W DOB=06031980 11CR 052737
AKA THOMAS, MARK @

OF:061211 (M) COMMUNICATING THREATS GUILTY 092211 CR
FINE/COSTS\$.00 REST\$ SENT:010- D TYPE:C PROB:NONE
SPEC. COND: 7 DAYS CREDIT;

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN * 516 ROSEMARY S=M R=W DOB=06031980 11CR 052738
AKA THOMAS, MARK @
OF:061211 (M) SECOND DEGREE TRESPASS GUILTY 092211 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
SPEC. COND: CONS WITH 11CR52737;

THOMAS, MARK, ALLEN * 246 BROAD CR S=M R=W DOB=06031980 14CR 050138
AKA THOMAS, MARK @
OF:011314 (M) POSSESS MARIJUANA UP TO 1/2 OZ DISMISSED BY DA 052114 CR
SPEC. COND: IN DAC;

THOMAS, MARK, ALLEN * 1603 WOODSID S=M R=W DOB=06031980 14CR 050371
AKA THOMAS, MARK @
OF:012914 (M) UNAUTHORIZED USE OF MOTOR VEH DISMISSED BY DA 020314 CR
SPEC. COND: PER P/W;

THOMAS, MARK, ANTHEY RT 1, BOX 24A S=M R=B DOB=10071964 87CR 007424
OF:101387 (T) NO OPERATORS LICENSE DISMISSED BY DA 111787 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

330 FORSYTH

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS,MARK? R=RACE: S=SEX: DOB:

THOMAS,MARK,ALLEN 196 EDWARDS S=M R=W DOB=06031980 06CR 037021
OF:102806 (T) DWLR DISMISSED BY DA 111710 CR
OF:102806 (M) POSSESS MARIJUANA UP TO 1/2 OZ DISMISSED BY DA 111710 CR
SPEC. COND: DESTROY CONTRA.

THOMAS,MARK,ALLEN 196 EDWARDS S=M R=W DOB=06031980 06CR 062389
LID: MTWMA-330
OF:102806 (F) POSSESS STOLEN MOTOR VEHICLE GUILTY 111706 CR
FINE/COSTS\$ 210.00 REST\$ SENT:008-010M TYPE:I PROB:018M SUPV.
SPEC. COND: 130.00 ATTNY FEE;TASC;DNA
OF:102806 (T) RECKLESS DRIVING TO ENDANGER DISMISSED BY DA 111706 CR
OF:102806 (M) RESISTING PUBLIC OFFICER DISMISSED BY DA 111706 CR
OF:102806 (M) MOTIONS PROCESS OTHER 011907 CR
SPEC. COND: ON IN ERROR

THOMAS,MARK,ALLEN 196 EDWARDS S=M R=W DOB=06031980 09CR 021606
OF:061909 (T) DWLR DISMISS WITH LEAVE 090209 CR
OF:061909 (I) UNLAWFUL USE OF HIGHWAYS DISMISS WITH LEAVE 090209 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC| MORE-

330 FORSYTH

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 196 EDWARDS S=M R=W DOB=06031980 10CR 005483
OF:022610 (M) MISDEMEANOR LARCENY DISMISSED BY DA 090710 CR
-+- -+- -+-

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

750 RANDOLPH

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 196 EDWARDS S=M R=W DOB=06031980 96CR 017450
OF:122996 (T) AIDE & ABET UNDERAGE PERSON/DR PRAYER FOR JUDGMENT 010997 CR
FINE/COSTS\$ 65.00 REST\$ SENT: - TYPE: PROB:NONE PAID

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

750 RANDOLPH

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS, MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN 196 EDWARDS S=M R=W DOB=06031980 97CR 001496
OF:012597 (M) POSS MARIJ >1/2 TO 1 1/2 OZ CHARGED CR
(M) POSSESS MARIJUANA UP TO 1/2 OZ CONV LESSER OFFENSE 041097
CONSOLIDATED FOR JUDGMENT WITH 97CR 001496 02
OF:012597 (M) POSSESS DRUG PARAPHERNALIA GUILTY 041097 CR
FINE/COSTS\$ 115.00 REST\$ SENT:045- D TYPE:C PROB:001Y UNSUPV.
SPEC. COND: RCJ-CONTROLLED SUBSTANCE & DRUG PARAPH TO BE DESTROYE

-+- -+- -+-

THOMAS, MARK, ALLEN 196 EDWARDS S=M R=W DOB=06031980 98CR 006497
OF:050898 (F) FELONY LARCENY DISMISSED BY DA 042199 CR
OF:050898 (F) POSS STOLEN GOODS/PROP (F) DISMISSED BY DA 042199 CR

-+- -+- -+-

THOMAS, MARK, ALLEN 196 EDWARDS S=M R=W DOB=06031980 99CR 002292
OF:021199 (M) RESISTING PUBLIC OFFICER CHARGED CR
(M) DISORDERLY CONDUCT CONV LESSER OFFENSE 042199
FINE/COSTS\$ 136.00 REST\$ SENT:045- D TYPE:C PROB:012M SUPV.
SPEC. COND: RCJ-C/A \$300-3/17/00 ORD EXT PROB-7/27/00 FINAL DISCH

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

750 RANDOLPH

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: THOMAS,MARK? R=RACE: S=SEX: DOB:

THOMAS, MARK, ALLEN	196 EDWARDS	S=M R=W	DOB=06031980	10CR 056014
OF:101810 (M) SECOND DEGREE TRESPASS			DISMISSED BY DA	031411 CR
OF:101810 (M) INJURY TO REAL PROPERTY			DISMISSED BY DA	031411 CR
--	--	--	--	--

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

END

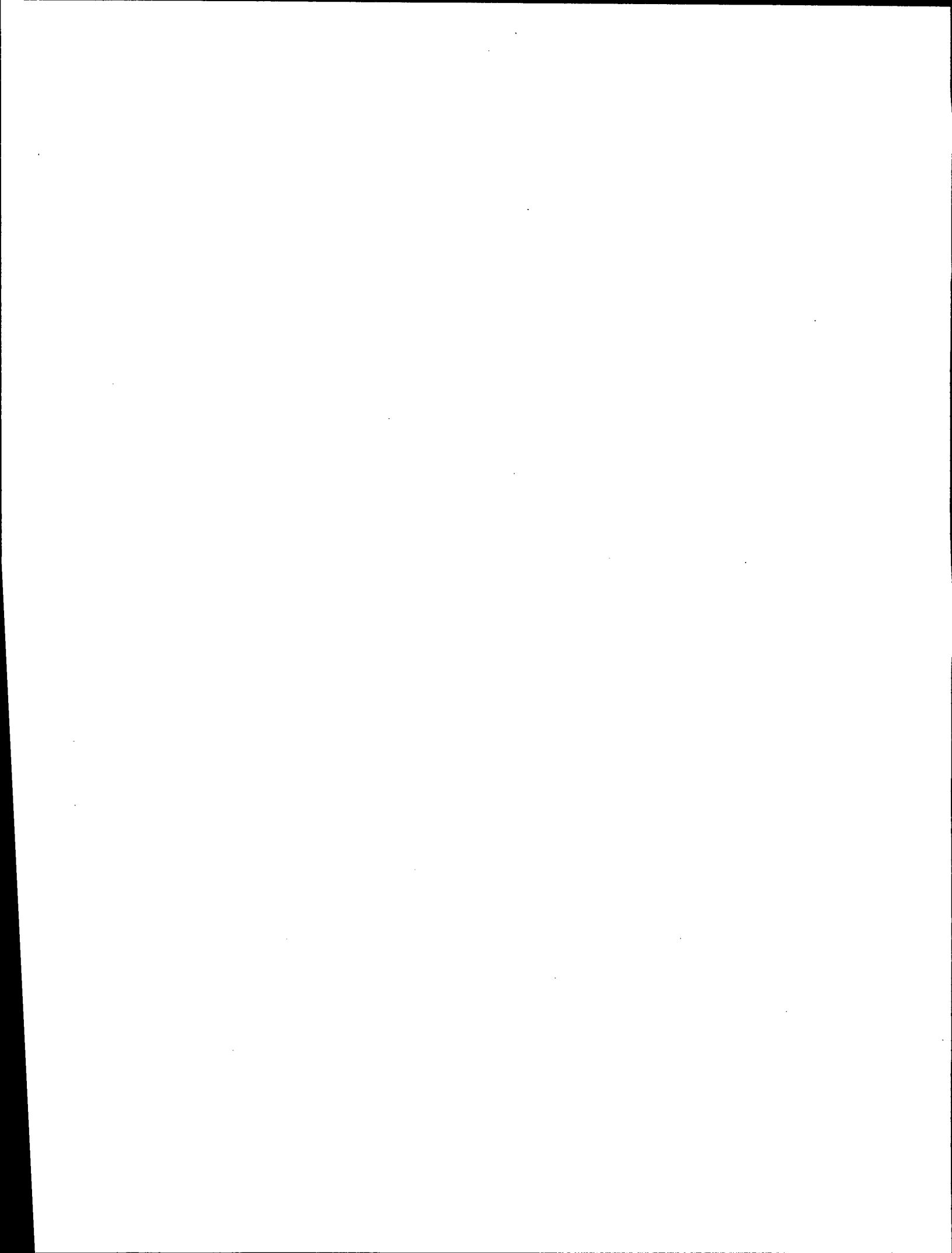


Exhibit 1

Reference: 04ZT00000E
Msg Key : QDF
Date/Time: 20170921093415
Source : DMVISS

04ZT00000E.DMVISS.QDF.20170921093415.
TO: J3BD10 -021956 20170921 09:34:15 18B414A295
FROM: DMVISS 20170921 09:34:15
N.C. DRIVER LICENSE SYSTEM

RESPONSE BASED UPON:
CUSTOMER ID: 21889766 PAGES: 50
ATTENTION: IMAGE: Y
DRIVER HISTORY RESPONSE

NAME: FLOWERS CASSIE JEAN
ADDRESS: 212 BAY VIEW BLVD
CITY: ATLANTIC BEACH STATE: NC ZIP: 285125510 TOTAL POINTS: 3
DOB: 02-21-1989 HEIGHT: 5 FT. 06 IN. SEX: F EYES: GRN HAIR: BRO RACE: W
PRIMARY LICENSE NO: 21889766
SECONDARY LICENSE NO:
ORG. ISS.DT: 03-03-05 OS DL NO: NON-RESIDENT MILITARY: N REAL ID: OS STATE:

*** DRIVER LICENSE STATUS: CLS C ACTIVE ***

LIC
CLASS GRP TYP ISSUE DT EXPIR DT CDL DISQ PROB LMT COND PRIV RESTR STATUS
C R 11-23-15 02-21-23 N N N N N ACTIVE
ENDORS:
RSTR: 0 NONE

CRD TRNS:0014963213

OCCUR/ BEG DATE	CONV/ END DATE	NATURE OF RECORD OR DIVISION ACTION	POINTS
SCHBUS: NOT ELIG FOR SCHOOL BUS DRIVER CERTIFICATION			
08-18-17		ACDNT: LENOIR COUNTY, NC ACDNT: CASE ID:105208961	PERS INJ
06-07-16	07-13-16	CONV: (313)SPEEDING (59 MPH IN A 45) COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2016IF 702686	3 CITATION ID: 0527989F
01-21-14	05-06-14	CONV: (313)SPEEDING (64 MPH IN A 55) COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2014CR 700207	3 CITATION ID: 087F3280
12-08-13	05-01-14	CONV: (202)IMPROPER EQUIPMENT - SPEEDOMETER COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2013CR 703838	CITATION ID: 073F3479
06-26-13	02-21-15	DUP ISS: CLS C EN: RSTR:0 NONE	
04-21-13	12-05-13	CONV: (313)SPEEDING (47 MPH IN A 35) COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2013IF 701604	2 CITATION ID: 07F78950
04-21-13		ACDNT: CARTERET COUNTY, NC ACDNT: CASE ID:103740235	PERS INJ
12-02-12		ACDNT: CARTERET COUNTY, NC ACDNT: CASE ID:103631449	
11-21-12	02-21-15	DUP ISS: CLS C EN: RSTR:0 NONE	
09-18-12	11-21-12	SUSP: FAILURE TO APPEAR	
05-16-12	07-18-12	CONV: (634)FAIL TO APPEAR COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2012CR 701432	CITATION ID: 0F463856
09-18-12	11-21-12	SUSP: FAILURE TO APPEAR	
05-16-12	07-18-12	CONV: (634)FAIL TO APPEAR COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2012CR 701432	CITATION ID: 0F463856

09-17-12	11-21-12	SUSP: FAILURE TO APPEAR		
05-16-12	07-17-12	CONV: (634)FAIL TO APPEAR COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2012IF 701712	CITATION ID: 0F463857	
01-21-12	04-01-13	CONV: (313)SPEEDING (54 MPH IN A 45) COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2012IF 700217	CITATION ID: 0950976E	2
01-11-12	02-21-15	DUP ISS: CLS C EN: RSTR:0 NONE		
11-05-11	10-23-12	CONV: (313)SPEEDING (54 MPH IN A 45) COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2011CR 703444	CITATION ID: 0564777E	2
02-02-11	02-21-15	DUP ISS: CLS C EN: RSTR:0 NONE		
12-08-10	02-21-15	DUP ISS: CLS C EN: RSTR:0 NONE		
12-03-10	01-04-11	CONV: (302)DRIVING NO OPERATOR LICENSE COURT: ONSLOW COUNTY COURT, NC COURT: AOC #: 2010CR 710845	CITATION ID: 025429E5	PJC
12-03-10	01-04-11	CONV: (202)IMPROPER EQUIPMENT - SPEEDOMETER COURT: ONSLOW COUNTY COURT, NC COURT: AOC #: 2010CR 710845	CITATION ID: 025429E5	
11-20-10	12-08-10	SUSP: FAILURE TO PAY FINE		
02-05-10	09-15-10	CONV: (635)FAIL TO PAY COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2010CR 050608	CITATION ID: WARRANT	
08-04-09	08-04-09	CLINIC: FAILED		
05-28-09		HEARING: CONFERENCE - CLINIC		
03-12-09		ACDNT: CARTERET COUNTY, NC ACDNT: CASE ID:102555813		
03-05-09	02-21-15	DUP ISS: CLS C EN: RSTR:0 NONE		
03-02-09	04-28-09	CONV: (313)SPEEDING (44 MPH IN A 35) COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2009CR 000602	CITATION ID: C9823092	2
10-07-08	02-21-15	DUP ISS: CLS C EN: RSTR:0 NONE		
09-26-08		ACDNT: CARTERET COUNTY, NC ACDNT: CASE ID:102440783		PERS INJ
05-24-08	07-10-08	CONV: (202)IMPROPER EQUIPMENT - SPEEDOMETER COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2008IF 701793	CITATION ID: 013E4928	
04-20-08	09-12-08	CONV: (202)IMPROPER EQUIPMENT - SPEEDOMETER COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2008IF 701294	CITATION ID: 002E6063	
12-13-07	01-23-08	CONV: (313)SPEEDING (57 MPH IN A 45) COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2007IF 704699	CITATION ID: 06E60858	3
06-02-07	06-25-07	CONV: (317)NO MOTORCYCLE ENDORSEMENT COURT: CARTERET COUNTY COURT, NC COURT: AOC #: 2007CR 002459	CITATION ID: 05296300	3
03-07-07	02-21-15	ORG ISS: CLS C EN: RSTR:0 NONE		
01-23-07	02-21-10	ORG ISS: CLS C LEV3 EN: RSTR:0 NONE		

01-04-07 ACDNT: CARTERET COUNTY, NC
ACDNT: CASE ID:101929084

10-13-06 02-21-07 DUP ISS: CLS C LEV2 EN:
RSTR:17 GRAD LIC LEVEL 2 RESTRICTION

09-03-05 09-03-06 SUSP: REFUSED CHEMICAL TEST

08-12-05 08-12-05 CONV: (786)REFUSED CHEMICAL TEST
COURT: CARTERET COUNTY COURT, NC
COURT: AOC #: 05CR 054301 CITATION ID: 6771606X

08-13-05 09-05-06 SUSP: 30 DAY CIVIL REVOCATION(SUSPENSION)

08-12-05 08-13-05 CONV: (028)30 DAY CIVIL
COURT: CARTERET COUNTY COURT, NC
COURT: AOC #: 05CR 054301 CITATION ID: C6771606

08-12-05 02-21-07 DUP ISS: CLS C LEV2 EN:
RSTR:17 GRAD LIC LEVEL 2 RESTRICTION

03-03-05 02-21-07 ORG ISS: CLS C LEV2 EN:
RSTR:17 GRAD LIC LEVEL 2 RESTRICTION

02-23-04 02-21-07 ORG ISS: CLS C LEV1 EN:
RSTR:16 08-23-2004

**
IMAGE :



**
IMAGE CAPTURE DATE: 2015-11-23
IMAGE CAPTURE TIME: 11.43.10

**

ACCIDENTS NOTED ON THIS DOCUMENT SHALL NOT BE
CONSIDERED DETERMINATIVE OF FAULT OR NEGLIGENCE
ON THE PART OF THE INDIVIDUAL

**

CERTIFIED A TRUE COPY OF THE D/L RECORD OF THE PERSON NAMED HEREIN AS APPEARS
ON THE AUTOMATED SYSTEM OF DMV. G.S.20-26(B).
* END OF MESSAGE *

Reference: 04ZT00000N
Msg Key : QH
Date/Time: 20170921093503
Source : III

04ZT00000N.III.QH.20170921093503.
TO: J3BD10 -021965 20170921 09:35:03 005D71CEB8
FROM: III 20170921 09:35:03
7L013B830015C22QH
NC016055A

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/FLOWERS,CASSIE SEX/F RAC/W DOB/19890221 PUR/C
ATN/ADA DAVID SPENCE

NAME	FBI NO.	INQUIRY DATE
FLOWERS,CASSIE JEAN	471114TC9	2017/09/21

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
F	W	1989/02/21	506	137	GRN	BRO	Y

BIRTH PLACE
NORTH CAROLINA

FINGERPRINT CLASS PATTERN CLASS

ALIAS NAMES
FLOWERS,CASSIE J FLOWERS,J
FLOWERS,JEAN

SCARS-MARKS-
TATTOOS SOCIAL SECURITY
SC R EAR 238-63-9612
SC R EYE
TAT L SHLD

IDENTIFICATION DATA UPDATED 2016/06/21

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:
NORTH CAROLINA - STATE ID/NC1250385A

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

Reference: 04ZT00000W
Msg Key : QR
Date/Time: 20170921093609
Source : CCHINQ

04ZT00000W.CCHINQ.QR.20170921093609.
TO: J3BD10 -021970 20170921 09:36:09 1896BC5464
FROM: CCHINQ 20170921 09:36:09
TO: NC016055A
FROM: NC016055A
Completion Code: HIT010000
SINGLE HIT (QR)

This Computerized Criminal History Response Is Based On Input Of:
ORI: NC016055A Purpose Code: C
Attention: ADA DAVID SPENCE Operator Id: MDG
Name: FLOWERS, CASSIE
FBI Number: 471114TC9

COMPUTERIZED CRIMINAL HISTORY

Name: FLOWERS, CASSIE JEAN
SID: NC1250385A
FBI Number: 471114TC9
Race: White
Sex: Female
Date of Birth: 02-21-1989
Birth Place: NC
Description: North Carolina
Height: 5 Ft. 06 In.
Weight: 130 Lbs.
Eyes: GREEN
Hair Color: BROWN
Skin Color: MEDIUM
DOC Number: 1013311
Arrestee DNA Available at NC State Crime Lab: No
Convicted offender DNA Available at NC State Crime Lab: Yes
Scars, Marks, and Tattoos:

SC R EAR
SC R EYE
TAT L SHLD

Social Security Numbers: 238-63-9612

Driver's Licenses: 21889766NC
21889766NCNC

Alias:
FLOWERS, CASSIE
FLOWERS, CASSIE J
FLOWERS, J
FLOWERS, JEAN
HOWERS, CASSIE

Cycle 01 Arrested: 08-17-2007 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160300 ATLANTIC BEACH POLICE DEPARTMENT
Arrest Name: FLOWERS, CASSIE JEAN
Check Digit Number: Q77390R
Palm Prints: Y Photo Available: Y
Fingerprint Number: 773126201801
Booking Number: 773126201801
Offense Charge: 01 SIMPLE ASSAULT
General Statute: 14-33A

Cycle 02 Arrested: 11-21-2009 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160200 MOREHEAD CITY PD - COMM CENTER
Arrest Name: FLOWERS, CASSIE JEAN
Agency Case Number: 11192009014 Check Digit Number: 0178CGS
Fingerprint Number: 1006022009325002
Booking Number: 1006022009325002
Offense Charge: 01 FELONY LARCENY FELONY
Violations: 001
Date of Offense: 11-21-2009
General Statute: 14-72(A) Offense Provision: BAIL/ROR

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 10-01-2010 Court Docket: 2009CR 055561

Court Offense: 001 MISDEMEANOR LARCENY - MISDEMEANOR
Date of Offense: 11-19-2009
General Statute: 14-72(A)
Plea: GUILTY TO A LESSER DEGREE
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 120D
Probation Sentence: 18M Supervised Probation: Y
Court Costs: \$133
Restitution: \$1047.55
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY Judgement Satisfied:
Special Conditions: ATTY LUPTON;NBCOF LIKE;CONT W/CURRENT TREATMENT;SUB TO
WS&S;NOT USE,POSS SUBSTANCES NOT IN ORIGINAL CONTAINER;
REMAIN EMPLOYED/IN SCHOOL;

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 10-01-2010 Court Docket: 2009CR 055561
Court Offense: 002 POSS STOLEN GOODS/PROP (F) - FELONY
Date of Offense: 11-19-2009
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Court ORI: NC016025J CARTERET CO DIST CRT - BEAUFORT
Disposition Date: 08-21-2012 Court Docket: 2009CR 055561
Court Offense: 003 MISDEMEANOR PROBATION VIOL - MISDEMEANOR
Date of Offense: 11-19-2009
General Statute: 15A-1345
Disposition: Process Revocation
Confinement: 30D
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY

Cycle 03 Arrested: 01-17-2012 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160300 ATLANTIC BEACH POLICE DEPARTMENT
Arrest Name: FLOWERS,CASSIE JEAN
Check Digit Number: V46359W
Palm Prints: Y Photo Available: Y
Fingerprint Number: 7730000000145583
Offense Charge: 01 MAINTN VEH/DWELL/PLACE CS (M) MISDEMEANOR
General Statute: 90-108(A)(7)
Offense Charge: 02 POSSESS DRUG PARAPHERNALIA MISDEMEANOR
General Statute: 90-113.22
Offense Charge: 03 POSSESS SPRING LOADED KNIFE MISDEMEANOR
General Statute: 14-269.6
Offense Charge: 04 PWIMSD SCH IV CS FELONY
General Statute: 90-95(A)(1)
Offense Charge: 05 PWIMSD SCH VI CS FELONY
General Statute: 90-95(A)(1)
Offense Charge: 06 MANUFACTURE SCH VI CS FELONY
General Statute: 90-95(A)(1)
Offense Charge: 07 MANUFACTURE SCH IV CS FELONY
General Statute: 90-95(A)(1)
Offense Charge: 08 CONSP SELL/DELIVER SCH IV CS FELONY
General Statute: 90-98
Offense Charge: 09 CONSP SELL/DELIVER SCH VI CS FELONY
General Statute: 90-98

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050225
Court Offense: 001 PWIMSD SCH IV CS - FELONY
Date of Offense: 01-14-2012
General Statute: 90-95(A)(1)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050225
Court Offense: 002 PWIMSD SCH VI CS - FELONY
Date of Offense: 01-14-2012
General Statute: 90-95(A)(1)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050225
Court Offense: 003 MANUFACTURE SCH VI CS - FELONY
Date of Offense: 01-14-2012

General Statute: 90-95(A)(1)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050226
Court Offense: 004 MAINTN VEH/DWELL/PLACE CS (F) - FELONY
Date of Offense: 01-14-2012
General Statute: 90-108(A)(7)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated Court County: 150
Consolidated Court Docket Number: 2012CRS052489
Consolidated Line Number: 52
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050226
Court Offense: 005 POSSESS DRUG PARAPHERNALIA - MISDEMEANOR
Date of Offense: 01-14-2012
General Statute: 90-113.22
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050228
Court Offense: 006 POSSESSION SPRING-LOADED KNIFE - MISDEMEANOR
Date of Offense: 01-14-2012
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050227
Court Offense: 007 MANUFACTURE SCH IV CS - FELONY
Date of Offense: 01-14-2012
General Statute: 90-95(A)(1)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050227
Court Offense: 008 CONSP SELL/DELIVER SCH IV CS - FELONY
Date of Offense: 01-14-2012
General Statute: 90-98
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050227
Court Offense: 009 CONSP SELL/DELIVER SCH VI CS - FELONY
Date of Offense: 01-14-2012
General Statute: 90-98
Disposition: Dismissal Without Leave (By DA)
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 04-17-2012

Cycle 04 Arrested: 06-03-2012 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160300 ATLANTIC BEACH POLICE DEPARTMENT
Arrest Name: FLOWERS, CASSIE JEAN
Agency Case Number: AB120399 Check Digit Number: V46348E
Palm Prints: Y Photo Available: Y
Fingerprint Number: 7730000000145673
Offense Charge: 01 FELONY LARCENY FELONY
General Statute: 14-72(A)
Offense Charge: 02 POSS STOLEN GOODS/PROP (F) FELONY
General Statute: 14-71.1

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS052489
Court Offense: 001 FELONY LARCENY - FELONY
Date of Offense: 06-02-2012
General Statute: 14-72(A)
Disposition: Dismissal Without Leave (By DA)

Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 07-17-2012
Special Conditions: PREVIOUS MICROFILM+: 1200209999
PREVIOUS MICROFILM+: 1300159999
PREVIOUS MICROFILM+: 1400059999

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS052489
Court Offense: 002 POSS STOLEN GOODS/PROP (F) - FELONY
Date of Offense: 06-02-2012
General Statute: 14-71.1

Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 8M-19M
Probation Sentence: 30M Supervised Probation: Y
Court Costs: \$354
Restitution: \$0.00
Structured Sentencing Offense Class: H
Structured Sentencing Prior Points: 05
Structured Sentencing Type: COMMUNITY SENTENCE
Firearms Penalty: N

Days to Complete Community Service: 120
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY Judgement Satisfied: Yes
Superior Court Transfer: 07-17-2012
Special Conditions: PROB TO BEGIN AFTER RELEASED FROM SENTENCE NOW SERVING, NOT
ASSOC WITH JOHNATHON DOYLE, TASC & FOLLOW RECOM, 40 HRS CO
M SER/120 DAYS/PAY FEE

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 07-08-2013 Court Docket: 2012CRS052489
Court Offense: 003 FELONY PROBATION VIOLATION - FELONY
Date of Offense: 06-02-2012
General Statute: 15A-1345

Disposition: Process Other
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 07-17-2012
Special Conditions: PROB MOD: 40 HRS IN JAIL IN LIEU OF 40 HRS COM SERVICE
TO BEGIN SERVING IMMEDIATELY

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 02-17-2014 Court Docket: 2012CRS052489
Court Offense: 004 FELONY PROBATION VIOLATION - FELONY
Date of Offense: 06-02-2012
General Statute: 15A-1345

Disposition: Process Other
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 07-17-2012
Special Conditions: 90 DAY CRV

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 07-21-2014 Court Docket: 2012CRS052489
Court Offense: 005 FELONY PROBATION VIOLATION - FELONY
Date of Offense: 06-02-2012
General Statute: 15A-1345

Disposition: Process Revocation
Attorney Type: PRIVATE OR NO DEFENSE ATTORNEY
Superior Court Transfer: 07-17-2012
Special Conditions: PROB REVOKED, 8-19 MOS, 92D CREDIT, CONCURRENT TO SENT NOW
SERVING

Cycle 05 Arrested: 01-23-2013 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160300 ATLANTIC BEACH POLICE DEPARTMENT
Arrest Name: FLOWERS, CASSIE J
Agency Case Number: AB130062 Check Digit Number: V46331V
Arrest Provisions: WARRANTS
Palm Prints: Y Photo Available: Y
Fingerprint Number: 7730000000150848
Offense Charge: 01 BREAKING AND OR ENTERING (F) FELONY
General Statute: 14-54(A)
Offense Charge: 02 FELONY LARCENY FELONY
General Statute: 14-72(A)
Offense Charge: 03 RECEIVE STOLEN GOODS/PROP (F) FELONY
General Statute: 14-71
Offense Charge: 04 RECEIVE STOLEN GOODS/PROP (M) MISDEMEANOR
General Statute: 14-71
Offense Charge: 05 OBTAINING PROPERTY BY FALSE PRETENSE MISDEMEANOR
General Statute: 14-100

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS050310
Court Offense: 001 BREAKING AND OR ENTERING (F) - FELONY
Date of Offense: 12-01-2012
General Statute: 14-54(A)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 10M-21M Time Served: 11 D
Court Costs: \$444
Restitution: \$195.00
Structured Sentencing Offense Class: H
Structured Sentencing Prior Points: 09
Structured Sentencing Type: ACTIVE SENTENCE
Firearms Penalty: N
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 02-13-2013
Special Conditions: \$450.00 ATTY FEE \$60 APT FEE \$420.00 INTERIM ATTY FEE, CT D
EBT TO BE CIVIL JUDGMENT. DURING POST RELEASE SUPER TO HAVE
NO CONTACT W/CO-DEF, CURFEW & EMOF

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS050310
Court Offense: 002 LARCENY AFTER BREAK/ENTER - FELONY
Date of Offense: 12-01-2012
General Statute: 14-72(B)(2)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 02-13-2013

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS050310
Court Offense: 003 POSS STOLEN GOODS/PROP (F) - FELONY
Date of Offense: 12-01-2012
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 02-13-2013

Court ORI: NC025035J CRAVEN CO SUP COURT - NEW BERN
Disposition Date: 06-26-2014 Court Docket: 2013CRS050265
Court Offense: 004 OBTAIN PROPERTY FALSE PRETENSE - FELONY
Date of Offense: 12-29-2012
General Statute: 14-100
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Confinement: 10M-21M Time Served: 13 D
Court Costs: \$464
Restitution: \$0.00
Structured Sentencing Offense Class: H
Structured Sentencing Prior Points: 06
Structured Sentencing Type: ACTIVE SENTENCE
Firearms Penalty: N
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER Judgement Satisfied: No
Superior Court Transfer: 03-18-2013
Special Conditions: \$360IAF/\$240 PRIOR IAF/\$60AAF/PYMNT COND POST REL:\$ OWED

Court ORI: NC025035J CRAVEN CO SUP COURT - NEW BERN
Disposition Date: 06-26-2014 Court Docket: 2013CRS050265
Court Offense: 005 POSS STOLEN GOODS/PROP (F) - FELONY
Date of Offense: 12-29-2012
General Statute: 14-71.1
Plea: GUILTY TO A LESSER DEGREE
Verdict: GUILTY
Disposition: Trial By Judge Consolidated Court County: 240
Consolidated Court Docket Number: 2013CRS050265
Consolidated Line Number: 51
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 03-18-2013

Cycle 06 Arrested: 05-09-2013 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160000 CARTERET CO SO - COMMUNICATIONS
Arrest Name: FLOWERS, CASSIE JEAN
Check Digit Number: 8064ATP
Fingerprint Number: 1007122013129002
Booking Number: 1007122013129002
Offense Charge: 01 LARCENY BY ANTI-INVNTY DEVICE FELONY
Violations: 001

Date of Offense: 05-09-2013
General Statute: 14-72.1(D1)
Offense Charge: 02 POSS STOLEN GOODS/PROP (M) MISDEMEANOR
Violations: 001
Date of Offense: 05-09-2013
General Statute: 14-71.1

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS051869
Court Offense: 001 LARCENY DEFEAT ANTI-THEFT DEV - FELONY
Date of Offense: 05-09-2013
General Statute: 14-72.11(2)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated Court County: 150
Consolidated Court Docket Number: 2013CRS050310
Consolidated Line Number: 51
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 07-19-2013

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS051869
Court Offense: 002 POSS STOLEN GOODS/PROP (M) - MISDEMEANOR
Date of Offense: 05-09-2013
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 07-19-2013

Cycle 07 Arrested: 07-13-2013 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160200 MOREHEAD CITY PD - COMM CENTER
Arrest Name: FLOWERS, CASSIE JEAN
Agency Case Number: 07132013006 Check Digit Number: 0916CGX
Fingerprint Number: 1006022013194001
Booking Number: 1006022013194001
Offense Charge: 01 BREAKING AND OR ENTERING (F) FELONY
Violations: 001
Date of Offense: 07-13-2013
General Statute: 14-54(A) Offense Provision: ADULT ARR
Offense Charge: 02 FELONY LARCENY FELONY
Violations: 001
Date of Offense: 07-13-2013
General Statute: 14-72(A) Offense Provision: ADULT ARR
Offense Charge: 03 POSS STOLEN GOODS/PROP (F) FELONY
Violations: 001
Date of Offense: 07-13-2013
General Statute: 14-71.1 Offense Provision: ADULT ARR

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS053041
Court Offense: 001 LARCENY AFTER BREAK/ENTER - FELONY
Date of Offense: 07-13-2013
General Statute: 14-72(B)(2)
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 09-12-2013

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS053042
Court Offense: 002 POSS STOLEN GOODS/PROP (F) - FELONY
Date of Offense: 07-13-2013
General Statute: 14-71.1
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 09-12-2013

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS053040
Court Offense: 003 BREAKING AND OR ENTERING (F) - FELONY
Date of Offense: 07-13-2013
General Statute: 14-54(A)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated: Yes
Consecutive Sentence: CASES
Confinement: 10M-21M Time Served: 4 D
Court Costs: \$374
Restitution: \$0.00
Structured Sentencing Offense Class: H

Structured Sentencing Prior Points: 09
Structured Sentencing Type: ACTIVE SENTENCE
Firearms Penalty: N
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 09-12-2013
Special Conditions: 4 DAYS CREDIT, EXP OF 13CRS50310, CT DEBT TO BE CIVIL JUDGM
ENT

Cycle 08 Arrested: 07-30-2013 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160300 ATLANTIC BEACH POLICE DEPARTMENT
Arrest Name: FLOWERS, CASSIE JEAN
Agency Case Number: AB130826 Check Digit Number: W39861W
Palm Prints: Y Photo Available: Y
Fingerprint Number: 7730000000152465
Offense Charge: 01 CONSPIRE TO COMMIT LARCENY DEFEAT ANTI THEFT DEVICE
FELONY
Violations: 002
General Statute: COMMON LAW

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS001999
Court Offense: 001 CONSPIRE TO COMMIT LAR DEFEAT ANTI THEFT DEVI - FELONY
Date of Offense: 05-09-2013
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 07-22-2013

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS001994
Court Offense: 002 CONSPIRE TO COMMIT LARCENY DEFEAT ANTI THEFT - FELONY
Date of Offense: 05-09-2013
Disposition: Dismissal Without Leave (By DA)
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 07-22-2013

Cycle 09 Arrested: 01-22-2014 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160200 MOREHEAD CITY PD - COMM CENTER
Arrest Name: FLOWERS, CASSIE JEAN
Check Digit Number: 1009CGC
Fingerprint Number: 1006022014022005
Booking Number: 1006022014022005
Offense Charge: 01 MAINTN VEH/DWELL/PLACE CS (F) FELONY
Violations: 001
General Statute: 90-108(A)(7) Offense Provision: ADULT ARR

Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2014CRS050278
Court Offense: 001 MAINTN VEH/DWELL/PLACE CS (F) - FELONY
Date of Offense: 09-09-2013
General Statute: 90-108(A)(7)
Plea: GUILTY
Verdict: GUILTY
Disposition: Trial By Judge Consolidated Court County: 150
Consolidated Court Docket Number: 2013CRS053040
Consolidated Line Number: 51
Attorney Type: COURT APPOINTED - NOT PUBLIC DEFENDER
Superior Court Transfer: 02-28-2014

Prison Date: 02-18-2014 SID: NC1250385A FBI Number: 471114TC9
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Prisoner Name: FLOWERS, CASSIE J
Status: SUBJECT INCARCERATED FOR THE FOLLOWING CONVICTIONS:

Prison Count: 01
Offense: POSSESSING STOLEN GOODS - FELONY
Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS052489 Confinement: 3M
Special Conditions: INITIAL
Prison Count: 02
Offense: MAINTAIN ANY PLACE CONTROLLED SUBSTANCE - FELONY
Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 10-09-2012 Court Docket: 2012CRS050226
MULTIPLE CHARGES 1 DISPOSITION M
Special Conditions: INITIAL

Prison Date: 04-16-2014 SID: NC1250385A FBI Number: 471114TC9
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Prisoner Name: HOWERS, CASSIE
Status: SUBJECT INCARCERATED FOR THE FOLLOWING CONVICTIONS:

Prison Count: 01
Offense: BREAKING/ENTERING INTENT TO COMMIT FELONY - FELONY
Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 04-16-2014 Court Docket: 2013CRS050310 Confinement: 10M-21M

Special Conditions: CONC W/1
General Statute: 14-54(A)

Prison Date: 06-26-2014 SID: NC1250385A FBI Number: 471114TC9
Prison ORI: NC092175C NC CORR IDENT BRANCH-RALEIGH
Prisoner Name: FLOWERS, CASSIE J
Status: SUBJECT INCARCERATED FOR THE FOLLOWING CONVICTIONS:

Prison Count: 01
Offense: POSSESSING STOLEN GOODS - FELONY
Court ORI: NC025035J CRAVEN CO SUP COURT - NEW BERN
Disposition Date: 06-26-2014 Court Docket: 2013CRS050265 Confinement: 10M-21M

Special Conditions: CONC W/2
General Statute: 14-71.1

Prison Count: 02
Offense: CHEAT - PROPERTY/SERVICES - FELONY
Court ORI: NC025035J CRAVEN CO SUP COURT - NEW BERN
Disposition Date: 06-26-2014 Court Docket: 2013CRS050265
MULTIPLE CHARGES 1 DISPOSITION M

General Statute: 14-111
Prison Count: 03
Offense: ASSAULT WITH DEADLY WEAPON - MISDEMEANOR
Court ORI: NC025025J CRAVEN CO DIST COURT - NEW BERN
Disposition Date: 06-26-2014 Court Docket: 2014CR 050379 Confinement: 120D
Special Conditions: CONC W/2

General Statute: 14-33(B)
Prison Count: 04
Offense: POSSESSING STOLEN GOODS - FELONY
Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 06-26-2014 Court Docket: 2012CRS052489 Confinement: 8M-19M
Special Conditions: CONC W/2

General Statute: 14-71.1
Prison Count: 05
Offense: MAINTAIN ANY PLACE CONTROLLED SUBSTANCE - MISDEMEANOR
Court ORI: NC016035J CARTERET CO SUP COURT BEAUFORT
Disposition Date: 06-26-2014 Court Docket: 2012CRS050226
MULTIPLE CHARGES 1 DISPOSITION M
General Statute: 90-108(7)(A)

Cycle 10 Arrested: 02-08-2017 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160000 CARTERET CO SO - COMMUNICATIONS
Arrest Name: FLOWERS, CASSIE JEAN
Check Digit Number: 1210AUW
Palm Prints: Y Photo Available: Y
Fingerprint Number: 1007132017039003
Booking Number: 148000003716
Offense Charge: 01 SIMPLE POSSESS SCH IV CS (M) MISDEMEANOR
Violations: 001
Date of Offense: 10-24-2016
General Statute: 90-95(D)(2) Offense Provision: ADULT ARR

Cycle 11 Arrested: 07-14-2017 SID: NC1250385A FBI Number: 471114TC9
Arresting Agency ORI: NC0160100 BEAUFORT POLICE DEPARTMENT
Arrest Name: FLOWERS, CASSIE
Check Digit Number: 1707AUP
Fingerprint Number: 1007132017195001
Booking Number: 148000004216
Offense Charge: 01 SIMPLE POSSESS SCH II CS (M) MISDEMEANOR
General Statute: 90-95(D)(2)
Offense Charge: 02 SIMPLE POSSESS SCH IV CS (M) MISDEMEANOR
Violations: 002
General Statute: 90-95(D)(2)
Offense Charge: 03 POSSESS DRUG PARAPHERNALIA MISDEMEANOR
General Statute: 90-113.22

BASED ONLY ON FBI NUMBER.

THIS CRIMINAL HISTORY IS FOR A SINGLE STATE RECORD.

THIS CRIMINAL HISTORY RECORD INFORMATION ON THE ABOVE-NAMED INDIVIDUAL IS A CERTIFIED COPY SUBSTANTIATED BY FINGERPRINTS, AS IT APPEARS IN THE SBI/DCI

FILES.

STATE/FEDERAL REGULATIONS REQUIRE A ONE-YEAR RECORD OF DISSEMINATION.

* * * CAUTION * * *

CHANGES TO THIS RECORD MAY OCCUR AT ANY TIME AND A NEW INQUIRY SHOULD
BE MADE FOR SUBSEQUENT USE.

*****END OF RECORD*****

Reference: 04ZT00000W
Msg Key : QR
Date/Time: 20170921093612
Source : III

04ZT00000W.III.QR.20170921093612.
TO: J3BD10 -021971 20170921 09:36:12 005D71CECA
FROM: III 20170921 09:36:12
EL013B830015C32QR
NC016055A

THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/471114TC9. THE RECORD MAY BE OBTAINED FROM
WITHIN YOUR STATE. THE INTERSTATE IDENTIFICATION INDEX CONTAINS
NO ADDITIONAL DATA.
END

150 CARTERET
092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE	212 BAYVIEW	S=F	R=W	DOB=02211989	07CR 002685
OF:061507 (M)	COMMUNICATING THREATS			DISMISSED BY DA	090507 CR
-+-	-+-	-+-			
FLOWERS,CASSIE,JEAN	212 BAY VIEW	S=F	R=W	DOB=02211989	05CR 001877
OF:040605 (T)	SPEEDING 063 IN 45 ZONE	CHARGED			CR
(I)	IMPROPER EQUIP - SPEEDOMETER	RESP	LESSER OFFENSE	052305	
FINE/COSTS\$ 125.00	REST\$ SENT: -	TYPE:	PROB:NONE	PAID	
-+-	-+-	-+-			
FLOWERS,CASSIE,JEAN	212 BAY VIEW	S=F	R=W	DOB=02211989	05CR 005185
OF:081205 (M)	POSSESS MARIJUANA UP TO 1/2 OZ	DISMISSED BY DA			111407 CR
-+-	-+-	-+-			
FLOWERS,CASSIE,JEAN	212 BAY VIEW	S=F	R=W	DOB=02211989	05CR 054301
LID: CFWF9612J-150					
OF:081205 (T)	DRIVING WHILE IMPAIRED	DISMISSED BY DA			111407 CR
OF:081205 (T)	DRIVE AFTER CONSUMING < 21	DISMISSED BY DA			111407 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN	212 BAY VIEW S=F R=W DOB=02211989	06CR 055002
LID: CFWF9612J-150		
OF:090506 (M) INJURY TO PERSONAL PROPERTY	DISMISSED BY DA	111407 CR
-+-	-+-	-+-
FLOWERS,CASSIE,JEAN	212 BAY VIEW S=F R=W DOB=02211989	06CR 055069
LID: CFWF9612J-150		
OF:090206 (F) FINANCIAL CARD THEFT	TRANSFERRED TO S.C.	112706 CR
OF:090206 (F) FINANCIAL CARD THEFT	DISMISSED BY DA	050207 CRS
-+-	-+-	-+-
FLOWERS,CASSIE,JEAN	212 BAY VIEW S=F R=W DOB=02211989	06CR 055073
LID: CFWF9612J-150		
OF:090206 (F) FINANCIAL CARD THEFT	TRANSFERRED TO S.C.	112706 CR
OF:090206 (F) FINANCIAL CARD THEFT	DISMISSED BY DA	050207 CRS

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

STATE OF NORTH CAROLINA

File No.

17CR 051138

CARTERET

County

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

INFORMATION

Name And Address Of Defendant

ADAM WAGI YAGHI
 301 LORD GRANVILLE D
 R4IVE
 MOREHEAD CITY NC 28557

Race	Sex	Date Of Birth
W	M	03/27/1996

G.S. 15A-644

Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
I. LARCENY OF A FIREARM	03/08/2017	14-72(B)	H

I, the undersigned prosecutor, upon information and belief allege that on or about the date(s) of offense shown above and in the county indicated above, the defendant named above unlawfully, willfully and feloniously did steal, take, and carry away a SIG Sauer P225, Serial Number U477131, a firearm, the personal property of Thomas Shapiro.

Signature Of Prosecutor

WAIVER

I, the undersigned defendant, waive the finding and return of a Bill of Indictment into Court and agree that the case may be tried upon the above information.

Date	Signature Of Defendant	Signature Of Attorney For Defendant
09/21/2017		

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 06CR 055087
LID: CFWF9612J-150
OF:090206 (M) MISDEMEANOR LARCENY TRANSFERRED TO S.C. 112706 CR
OF:090206 (M) POSS STOLEN GOODS/PROP (M) TRANSFERRED TO S.C. 112706 CR
OF:090206 (M) MISDEMEANOR LARCENY GUILTY 050207 CRS
FINE/COSTS\$ 135.00 REST\$ 1137.31 SENT:030- D TYPE:C PROB:012M SUPV.
SPEC. COND: NOT TO ASSOCIATE WITH WILLIAM WARREN, LAURA WARREN, O
OF:090206 (M) POSS STOLEN GOODS/PROP (M) DISMISSED BY DA 050207 CRS
OF:090206 (M) MISDEMEANOR PROBATION VIOL PROCESS OTHER 030308 CRS
SPEC. COND: MODIFIED: TASC ASSESSMENT EHA 30 DAYS,NT CONSUME AL
-+- -+- -+-
FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 07CR 000103
OF:010407 (T) LIC/PRMIT TIME LIMIT VIOL <18 DISMISSED BY DA 022807 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 07CR 002459
OF:060207 (T) NO MOTORCYCLE ENDORSEMENT WAIVED 062507 CR
FINE/COSTS\$ 160.00 REST\$ SENT: - TYPE: PROB:NONE PAID
OF:060207 (I) MOTORCYCLE/MOPED HELMET/PSGR WAIVED 062507 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE: PROB:NONE PAID
-+- -+- -+-
FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 07CR 052141
LID: CFWF9612J-150
OF:050107 (M) PROFANE LANGUAGE ON HIGHWAY DISMISSED BY DA 072307 CR
-+- -+- -+-
FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 07CR 052142
LID: CFWF9612J-150
OF:050107 (M) POSSESS MARIJUANA UP TO 1/2 OZ DISMISSED BY DA 072307 CR
OF:050107 (M) POSSESS DRUG PARAPHERNALIA CHARGED CR
(M) DISORDERLY CONDUCT CONV LESSER OFFENSE 072307
FINE/COSTS\$ 110.00 REST\$ SENT:010- D TYPE:C PROB:012M UNSUPV.
SPEC. COND: NBC OF LIKE;

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 07CR 053886

LID: CFWF9612J-150

OF:080407 (M) RESISTING PUBLIC OFFICER GUILTY 012808 CR

FINE/COSTS\$.00 REST\$ SENT:010- D TYPE:C PROB:012M UNSUPV.

SPEC. COND: REMIT COSTS;QUINN,JD CROWE,ATTY

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FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 07CR 054025

LID: CFWF9612J-150

OF:081207 (M) SIMPLE ASSAULT DISMISSED BY DA 101107 CR

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FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 07CR 701372

OF:070207 (M) POSS MTBV/U-WN NOT 19/20 GUILTY 082307 CR

FINE/COSTS\$ 120.00 REST\$ SENT:045- D TYPE:C PROB:012M UNSUPV.

SPEC. COND: ATTY CROWE;

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FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 07CR 701379

OF:070207 (I) FAIL TO WEAR SEAT BELT-DRIVER DISMISSED BY DA 082307 CR

OF:070207 (M) SIMPLE POSSESS SCH VI CS (M) DISMISSED BY DA 082307 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN	118 DEANS CO	S=F R=W	DOB=02211989	08CR 052292
LID: CFWF9612J-150				
OF:042708	(M) INJURY TO PERSONAL PROPERTY		DISMISSED BY DA	100808 CR
	-+-	-+-	-+-	
FLOWERS,CASSIE,JEAN	118 B DUNES	S=F R=W	DOB=02211989	08CR 052654
LID: CFWF9612J-150				
OF:050708	(M) INJURY TO PERSONAL PROPERTY		DISMISSED BY DA	100808 CR
	-+-	-+-	-+-	
FLOWERS,CASSIE,JEAN	118 B DUNES	S=F R=W	DOB=02211989	08CR 053460
LID: CFWF9612J-150				
OF:062408	(M) ASSAULT AND BATTERY		DISMISSED BY DA	100808 CR
VICTIMS RIGHTS: Y	DOM VOL CH: Y	DOMESTIC VIOLENCE CONVICTED: N		

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 212 BAYVIEW S=F R=W DOB=02211989 08CR 053461
LID: CFWF9612J-150
OF:062408 (M) POSS STOLEN GOODS/PROP (M) GUILTY 100808 CR
FINE/COSTS\$ 121.00 REST\$ SENT:045- D TYPE:C PROB:018M SUPV.
SPEC. COND: ATTY LUPTON;NOT USE, POSS ILLEGAL SUBSTANCES, ETC;NBC O
OF:062408 (M) MISDEMEANOR PROBATION VIOL PROCESS OTHER 041309 CR
SPEC. COND: HOUSE ARRENT;CONT ON PROBATION;
OF:062408 (M) MISDEMEANOR PROBATION VIOL PROCESS OTHER 110910 CR
SPEC. COND: CONT ON PROBATION;

|OF: OFFENSE DATE|DOB=BIRTH| (M) MISD | (F) FELONY | (T) TRAFFIC |

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 08CR 053893

LID: CFWF9612J-150

OF:071308 (F) AWDWIKISI CHARGED CR

(M) ASSAULT INFLICT SERIOUS INJ(M) CONV LESSER OFFENSE 121208

FINE/COSTS\$ 121.00 REST\$ SENT:045- D TYPE:C PROB:036M SUPV.

SPEC. COND: ATTY LUPTON;SUB TO WS&S;NOT USE,POSS ILLEGAL SUBSTANC

OF:071308 (M) MISDEMEANOR PROBATION VIOL PROCESS OTHER 041309 CR

SPEC. COND: CONT ON PROBATION

OF:071308 (M) MISDEMEANOR PROBATION VIOL PROCESS OTHER 110910 CR

SPEC. COND: CONT ON PROBATION;10/D ACTIVE;

OF:071308 (M) MISDEMEANOR PROBATION VIOL PROCESS REVOKED 082112 CR

SPEC. COND: CREDIT FOR 30/D;

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FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 09CR 000231

OF:012409 (M) SIMPLE ASSAULT DISMISSED BY DA 050509 CR

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FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 09CR 000233

OF:012409 (T) AID AND ABET IMPAIRED DRIVING DISMISSED BY DA 082709 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 09CR 000602
OF:030209 (T) SPEEDING 053 IN 35 ZONE CHARGED CR
(I) SPEEDING 044 IN 35 ZONE RESP LESSER OFFENSE 042809
FINE/COSTS\$.00 REST\$ SENT: - TYPE: PROB:NONE
SPEC. COND: REMIT COST;
OF:030209 (T) LICENSE NOT IN POSSESSION DISMISSED BY DA 042809 CR
-+- -+-
FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 09CR 051106
LID: CFWF9612J-150
OF:030809 (M) HARASSING PHONE CALL DISMISSED BY DA 050509 CR
-+- -+-
FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 09CR 051107
LID: CFWF9612J-150
OF:030709 (M) HARASSING PHONE CALL DISMISSED BY DA 050509 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 09CR 055561
LID: CFWF9612J-150

OF:111909 (F) FELONY LARCENY CHARGED CR
(M) MISDEMEANOR LARCENY CONV LESSER OFFENSE 100110
FINE/COSTS\$ 133.00 REST\$ 1047.55 SENT:120- D TYPE:C PROB:018M SUPV.

SPEC. COND: ATTY LUPTON;NBCOF LIKE;CONT W/CURRENT TREATMENT;SUB T

OF:111909 (F) POSS STOLEN GOODS/PROP (F) DISMISSED BY DA 100110 CR
OF:111909 (M) MISDEMEANOR PROBATION VIOL PROCESS REVOKED 082112 CR

-+- -+- -+-

FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 09CR 056111
LID: CFWF9612J-150

OF:123009 (M) HARASSING PHONE CALL NOT GUILTY 042610 CR

-+- -+- -+-

FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 10CR 050366
LID: CFWF9612J-150

OF:122209 (M) SIMPLE POSSESS SCH III CS (M) DISMISSED BY DA 092110 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 212 BAYVIEW S=F R=W DOB=02211989 10CR 050367

LID: CFWF9612J-150

OF:122209 (T) RECKLESS DRVG-WANTON DISREGARD DISMISSED BY DA 092110 CR

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FLOWERS, CASSIE, JEAN 212 BAYVIEW S=F R=W DOB=02211989 10CR 050608

LID: CFWF9612J-150

OF:020510 (T) RECKLESS DRIVING TO ENDANGER DISMISSED BY DA 082510 CR

SPEC. COND: ATTY LUPTON;

OF:020510 (T) FAIL TO OBEY TRAFFIC OFFICER PRAYER FOR JUDGMENT 082510 CR

FINE/COSTS\$ 156.00 REST\$ SENT: - TYPE: PROB:NONE PAID

SPEC. COND: ATTY LUPTON;

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FLOWERS, CASSIE, JEAN 212 BAYVIEW S=F R=W DOB=02211989 10CR 055190

OF:120710 (T) DWLR

DISMISSED BY DA 022411 CR

OF:120710 (T) FAIL TO NOTIFY DMV ADDR CHANGE GUILTY 022411 CR

FINE/COSTS\$ 143.00 REST\$ SENT:005- D TYPE:C PROB:012M UNSUPV.

SPEC. COND: NOT TO VIOL CURRENT PROB;QUINN, JD CHERRY, ATTY

|OF:OFFENSE DATE|DOB=BIRTH| (M) MISD | (F) FELONY | (T) TRAFFIC |

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 11CR 002648
OF:090511 (T) EXPIRED REGISTRATION CARD/TAG DISMISSED BY DA 112211 CR
OF:090511 (I) EXPIRED/NO INSPECTION DISMISSED BY DA 112211 CR
-+- -+- -+-

FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 11CR 002807
OF:092611 (T) EXPIRED REGISTRATION CARD/TAG DISMISSED BY DA 012412 CR
OF:092611 (I) EXPIRED/NO INSPECTION DISMISSED BY DA 012412 CR
-+- -+- -+-

FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 11CR 002943
OF:100811 (M) SHOPLIFTING CONCEALMENT GOODS GUILTY 040113 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
SPEC. COND: ATTY LUPTON;CONS WITH 11CR3463;

FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 11CR 003225
OF:102711 (M) POSSESS MARIJUANA UP TO 1/2 OZ DISMISSED BY DA 032212 CR
SPEC. COND: NO EVIDENCE;OFFICER NO-SHOW;

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 207 E BOARDW S=F R=W DOB=02211989 11CR 003463
OF:122011 (M) POSSESS MARIJUANA UP TO 1/2 OZ GUILTY 040113 CR
FINE/COSTS\$ 180.00 REST\$ SENT:120- D TYPE:C PROB:018M SUPV.
SPEC. COND: ATTY LUPTON;SUBJ TO ANY COND OF CURR PROBATION;PAY \$2
OF:122011 (M) POSSESS DRUG PARAPHERNALIA GUILTY 040113 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
OF:122011 (M) MISDEMEANOR PROBATION VIOL PROCESS OTHER 021414 CR
SPEC. COND: 60/D CRV VIO AND CONT ON PROBATION;
OF:122011 (M) MISDEMEANOR PROBATION VIOL PROCESS REVOKED 072114 CR
-+- -+- -+-
FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 11CR 702597
OF:081411 (T) EXPIRED REGISTRATION CARD/TAG DISMISSED BY DA 112111 CR
SPEC. COND: COMPLIED;
OF:081411 (I) EXPIRED/NO INSPECTION DISMISSED BY DA 112111 CR
-+- -+- -+-
FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 11CR 703043
OF:092711 (T) EXPIRED REGISTRATION CARD/TAG DISMISSED BY DA 111711 CR
OF:092711 (I) EXPIRED/NO INSPECTION DISMISSED BY DA 111711 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 11CR 703044
OF:092711 (T) LICENSE NOT IN POSSESSION DISMISSED BY DA 111711 CR

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FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 11CR 703444
OF:110511 (T) SPEEDING 061 IN 45 ZONE CHARGED CR

(I) SPEEDING

054 IN 45 ZONE RESP LESSER OFFENSE 102312

FINE/COSTS\$ 188.00 REST\$

SENT: - TYPE: PROB:NONE PAID

SPEC. COND: ATTY LUPTON;

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FLOWERS, CASSIE, JEAN 306 TRYON S=F R=W DOB=02211989 12CR 001485
OF:060212 (T) EXPIRED REGISTRATION CARD/TAG DISMISSED BY DA 101012 CR

SPEC. COND: COMPLIED;

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FLOWERS, CASSIE, JEAN 212 BAY VIEW S=F R=W DOB=02211989 12CR 003442
OF:120212 (M) POSSESS MARIJUANA UP TO 1/2 OZ DISMISSED BY DA 092413 CR

SPEC. COND: SMCD;

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN	312 BAY VIEW	S=F	R=W	DOB=02211989	12CR 003482
OF:121412	(M) RAPID ACCELERATION			DISMISSED BY DA	040113 CR
	-+-		-+-		-+-
FLOWERS,CASSIE,JEAN	212 BAYVIEW	S=F	R=W	DOB=02211989	12CR 050185
OF:093011	(M) COMMUNICATING THREATS			DISMISSED BY DA	022112 CR
SPEC. COND: COMPLIED;					
	-+-		-+-		-+-
FLOWERS,CASSIE,JEAN	207D BOARDWA	S=F	R=W	DOB=02211989	12CR 050225
OF:011412	(F) PWIMSD SCH IV CS			TRANSFERRED TO S.C.	040212 CR
OF:011412	(F) PWIMSD SCH VI CS			TRANSFERRED TO S.C.	040212 CR
OF:011412	(F) MANUFACTURE SCH VI CS			TRANSFERRED TO S.C.	040212 CR
OF:011412	(F) PWIMSD SCH IV CS			DISMISSED BY DA	100912 CRS
OF:011412	(F) PWIMSD SCH VI CS			DISMISSED BY DA	100912 CRS
OF:011412	(F) MANUFACTURE SCH VI CS			DISMISSED BY DA	100912 CRS

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 207D BOARDWA S=F R=W DOB=02211989 12CR 050226
OF:011412 (F) MAINTN VEH/DWELL/PLACE CS (F) TRANSFERRED TO S.C. 040212 CR
OF:011412 (M) POSSESS DRUG PARAPHERNALIA TRANSFERRED TO S.C. 040212 CR
OF:011412 (F) MAINTN VEH/DWELL/PLACE CS (F) GUILTY 100912 CRS
CONSOLIDATED FOR JUDGMENT WITH 12CRS052489 52

OF:011412 (M) POSSESS DRUG PARAPHERNALIA DISMISSED BY DA 100912 CRS
-+- -+- -+-

FLOWERS, CASSIE, JEAN 207D BOARDWA S=F R=W DOB=02211989 12CR 050227
OF:011412 (F) MANUFACTURE SCH IV CS TRANSFERRED TO S.C. 040212 CR
OF:011412 (F) CONSP SELL/DELIVER SCH IV CS TRANSFERRED TO S.C. 040212 CR
OF:011412 (F) CONSP SELL/DELIVER SCH VI CS TRANSFERRED TO S.C. 040212 CR
OF:011412 (F) MANUFACTURE SCH IV CS DISMISSED BY DA 100912 CRS
OF:011412 (F) CONSP SELL/DELIVER SCH IV CS DISMISSED BY DA 100912 CRS
OF:011412 (F) CONSP SELL/DELIVER SCH VI CS DISMISSED BY DA 100912 CRS
-+- -+- -+-

FLOWERS, CASSIE, JEAN 207D BOARDWA S=F R=W DOB=02211989 12CR 050228
OF:011412 (M) POSSESSION SPRING-LOADED KNIFE TRANSFERRED TO S.C. 040212 CR
OF:011412 (M) POSSESSION SPRING-LOADED KNIFE DISMISSED BY DA 100912 CRS

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC| MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 12CR 050890
OF:022612 (M) SIMPLE ASSAULT DISMISSED BY DA 082012 CR
SPEC. COND: NO VICTIM

-+- -+- -+-
FLOWERS,CASSIE,JEAN 306 TRYON ST S=F R=W DOB=02211989 12CR 052207
OF:051712 (M) SIMPLE ASSAULT DISMISSED BY DA 060512 CR
SPEC. COND: DISMISSAL OF 12CR50795;
VICTIMS RIGHTS: Y DOM VOL CH: Y DOMESTIC VIOLENCE CONVICTED: N

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 306 TRYON ST S=F R=W DOB=02211989 12CR 052489
 OF:060212 (F) FELONY LARCENY TRANSFERRED TO S.C. 070212 CR
 OF:060212 (F) POSS STOLEN GOODS/PROP (F) TRANSFERRED TO S.C. 070212 CR
 OF:060212 (F) FELONY LARCENY DISMISSED BY DA 100912 CRS
 SPEC. COND: PREVIOUS MICROFILM#: 1200209999
 OF:060212 (F) POSS STOLEN GOODS/PROP (F) GUILTY 100912 CRS
 FINE/COSTS\$ 354.50 REST\$.00 SENT:008-019M TYPE:C PROB:030M SUPV.
 SEE ALSO: 12CRS050226
 SPEC. COND: PROB TO BEGIN AFTER RELEASED FROM SENTENCE NOW SERVIN
 OF:060212 (F) FELONY PROBATION VIOLATION PROCESS OTHER 070813 CRS
 SPEC. COND: PROB MOD: 40 HRS IN JAIL IN LIEU OF 40 HRS COM SERVIC
 OF:060212 (F) FELONY PROBATION VIOLATION PROCESS OTHER 021714 CRS
 SPEC. COND: 90 DAY CRV
 OF:060212 (F) FELONY PROBATION VIOLATION PROCESS REVOKED 072114 CRS
 SPEC. COND: PROB REVOKED, 8-19 MOS, 92D CREDIT, CONCURRENT TO SEN
 +-+ +-+ +-+
 FLOWERS,CASSIE,JEAN 306 TRYON ST S=F R=W DOB=02211989 12CR 055572
 OF:120612 (M) INTERFERE EMERG COMMUNICATION DISMISSED BY DA 040113 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 + 12CR 701432
OF:051612 (T) EXPIRED REGISTRATION CARD/TAG WAIVED 112112 CR
FINE/COSTS\$ 215.00 REST\$ SENT: - TYPE: PROB:NONE PAID
OF:051612 (I) EXPIRED/NO INSPECTION WAIVED 112112 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE: PROB:NONE PAID

-+- -+- -+-

FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 13CR 000104
OF:011613 (M) PARK IN UNDESIGNATED AREAS GUILTY 062513 CR
FINE/COSTS\$.00 REST\$ SENT: - TYPE:C PROB:NONE
SPEC. COND: ATTY LUPTON;PAY \$20 INSTALL;
OF:011613 (M) SHOW CAUSE PROCESS OTHER 120513 CR
SPEC. COND: 1 DAY ACTIVE;

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FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 13CRS001994
OF:050913 (F) CONSPIRE TO COMMIT LARCENY DEF DISMISSED BY DA 041614 CRS

-+- -+- -+-

FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 13CRS001999
OF:050913 (F) CONSPIRE TO COMMIT LAR DEFEAT DISMISSED BY DA 041614 CRS

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC| MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 13CR 003307
OF:122713 (T) RECKLESS DRVG-WANTON DISREGARD DISMISSED BY DA 042314 CR
SPEC. COND: PLEAD TO OTHER;

-+- -+- -+-
FLOWERS,CASSIE,JEAN 306 TRYON ST S=F R=W DOB=02211989 13CR 050310
OF:120112 (F) BREAKING AND OR ENTERING (F) TRANSFERRED TO S.C. 020413 CR
OF:120112 (F) LARCENY AFTER BREAK/ENTER TRANSFERRED TO S.C. 020413 CR
OF:120112 (F) POSS STOLEN GOODS/PROP (F) TRANSFERRED TO S.C. 020413 CR
OF:120112 (F) BREAKING AND OR ENTERING (F) GUILTY 041614 CRS
FINE/COSTS\$ 444.50 REST\$ 195.00 SENT:010-021M TYPE:A PROB:NONE
SEE ALSO: 13CRS051869

SPEC. COND: \$450.00 ATTY FEE \$60 APT FEE \$420.00 INTERIM ATTY FEE
OF:120112 (F) LARCENY AFTER BREAK/ENTER DISMISSED BY DA 041614 CRS
OF:120112 (F) POSS STOLEN GOODS/PROP (F) DISMISSED BY DA 041614 CRS

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC| MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 306 TRYON ST S=F R=W DOB=02211989 13CR 051869
OF:050913 (F) LARCENY DEFEAT ANTI-THEFT DEV TRANSFERRED TO S.C. 070113 CR
OF:050913 (M) POSS STOLEN GOODS/PROP (M) TRANSFERRED TO S.C. 070113 CR
OF:050913 (F) LARCENY DEFEAT ANTI-THEFT DEV GUILTY 041614 CRS
CONSOLIDATED FOR JUDGMENT WITH 13CRS050310 51
OF:050913 (M) POSS STOLEN GOODS/PROP (M) DISMISSED BY DA 041614 CRS
-+- -+- -+-

FLOWERS, CASSIE, JEAN 212 BAYVIEW S=F R=W DOB=02211989 13CR 053040
OF:071313 (F) BREAKING AND OR ENTERING (F) TRANSFERRED TO S.C. 081913 CR
OF:071313 (F) BREAKING AND OR ENTERING (F) GUILTY 041614 CRS
FINE/COSTS\$ 374.50 REST\$.00 SENT:010-021M TYPE:A PROB:NONE
SEE ALSO: 14CRS050278
SPEC. COND: 4 DAYS CREDIT, EXP OF 13CRS50310, CT DEBT TO BE CIVIL
-+- -+- -+-

FLOWERS, CASSIE, JEAN 212 BAYVIEW S=F R=W DOB=02211989 13CR 053041
OF:071313 (F) LARCENY AFTER BREAK/ENTER TRANSFERRED TO S.C. 081913 CR
OF:071313 (F) LARCENY AFTER BREAK/ENTER DISMISSED BY DA 041614 CRS

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC| MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAYVIEW S=F R=W DOB=02211989 13CR 053042
OF:071313 (F) POSS STOLEN GOODS/PROP (F) TRANSFERRED TO S.C. 081913 CR
OF:071313 (F) POSS STOLEN GOODS/PROP (F) DISMISSED BY DA 041614 CRS

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FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 13CR 703838
OF:120813 (T) SPEEDING 074 IN 55 ZONE CHARGED CR
(I) IMPROPER EQUIP - SPEEDOMETER RESP LESSER OFFENSE 050114
FINE/COSTS\$ 213.00 REST\$ SENT: - TYPE: PROB:NONE PAID

SPEC. COND: ATTY LUPTON;PAY \$50 IE FEE;

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FLOWERS,CASSIE,JEAN LOT 36 WILLI S=F R=W DOB=02211989 14CR 050278
OF:090913 (F) MAINTN VEH/DWELL/PLACE CS (F) TRANSFERRED TO S.C. 022414 CR
OF:090913 (F) MAINTN VEH/DWELL/PLACE CS (F) GUILTY 041614 CRS
CONSOLIDATED FOR JUDGMENT WITH 13CRS053040 51

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

MORE-

150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 14CR 700207
OF:012114 (T) SPEEDING 075 IN 55 ZONE CHARGED CR
(I) SPEEDING 064 IN 55 ZONE RESP LESSER OFFENSE 050614
FINE/COSTS\$ 188.00 REST\$ SENT: - TYPE: PROB:NONE PAID
SPEC. COND: ATTY LUPTON;

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FLOWERS,CASSIE,JEAN 212 BAY VOE S=F R=W DOB=02211989 + 16CR 055209
OF:102416 (M) SIMPLE POSSESS SCH IV CS (M) GUILTY 021517 CR
FINE/COSTS\$ 180.00 REST\$ SENT:120- D TYPE:C PROB:012M UNSUPV.
SEE ALSO: 16CR 055266

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FLOWERS,CASSIE,JEAN 212 BAY VOE S=F R=W DOB=02211989 16CR 055266
OF:102416 (M) SIMPLE POSSESS SCH IV CS (M) GUILTY 021517 CR
CONSOLIDATED FOR JUDGMENT WITH 16CR 055209 01
OF:102416 (M) SIMPLE POSSESS SCH IV CS (M) DISMISSED BY DA 021517 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

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150 CARTERET

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN	212 BAYVIEW	S=F	R=W	DOB=02211989	17CR 051671
OF:042017 (M) MISDEMEANOR LARCENY				PENDING	TRIAL- 100417 CR
OF:042017 (M) POSS STOLEN GOODS/PROP (M)				PENDING	TRIAL- 100417 CR
-+-	-+-				-+-
FLOWERS, CASSIE, JEAN	212 BAYVIEW	S=F	R=W	DOB=02211989	17CR 052619
OF:071417 (M) SIMPLE POSSESS SCH II CS (M)				PENDING	TRIAL- 092517 CR
OF:071417 (M) SIMPLE POSSESS SCH IV CS (M)				PENDING	TRIAL- 092517 CR
OF:071417 (M) SIMPLE POSSESS SCH IV CS (M)				PENDING	TRIAL- 092517 CR
-+-	-+-				-+-
FLOWERS, CASSIE, JEAN	212 BAYVIEW	S=F	R=W	DOB=02211989	17CR 052620
OF:071417 (M) POSSESS DRUG PARAPHERNALIA				PENDING	TRIAL- 092517 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

END

240 CRAVEN

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICED
CRITERIA- NAME: FLOWERS, CASSI? R=RACE: S=SEX: DOB:

FLOWERS, CASSIE, JEAN 212 BAYVIEW S=F R=W DOB=02211989 + 13CR 050265
OF:122912 (F) OBTAIN PROPERTY FALSE PRETENSE TRANSFERRED TO S.C. 031113 CR
OF:122912 (M) POSS STOLEN GOODS/PROP (M) TRANSFERRED TO S.C. 031113 CR
OF:122912 (F) OBTAIN PROPERTY FALSE PRETENSE GUILTY 062614 CRS
FINE/COSTS\$ 464.50 REST\$.00 SENT:010-021M TYPE:A PROB:NONE NOT PAID
SPEC. COND: \$360IAF/\$240 PRIOR IAF/\$60AAF/PYMNT COND POST REL:\$ O
OF:122912 (M) POSS STOLEN GOODS/PROP (M) CHARGED CRS
(F) POSS STOLEN GOODS/PROP (F) CONV LESSER OFFENSE 062614
CONSOLIDATED FOR JUDGMENT WITH 13CRS050265 51

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FLOWERS, CASSIE, JEAN 212 BAY VOE S=F R=W DOB=02211989 14CR 050379
OF:013014 (M) ASSAULT WITH A DEADLY WEAPON GUILTY 062714 CR
FINE/COSTS\$ 260.00 REST\$ SENT:120- D TYPE:A PROB:NONE NOT PAID
SPEC. COND: \$260.00 COURT COST SHALL BE DOCKETED AS CIVIL JUDGMEN
VICTIMS RIGHTS: Y DOM VOL CH: Y DOMESTIC VIOLENCE CONVICTED: N

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

END

660 ONSLOW

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN 212 BAY VIEW S=F R=W DOB=02211989 + 10CR 710845
OF:120310 (I) SPEEDING 060 IN 45 ZONE CHARGED CR
(I) IMPROPER EQUIP - SPEEDOMETER RESP LESSER OFFENSE 012711
FINE/COSTS\$ 166.00 REST\$ SENT: - TYPE: PROB:NONE PAID
SPEC. COND: MOTION FOR APPROPRIATE RELIEF, STRIKE/VAC JJ 010411, RL
OF:120310 (T) DWLR CHARGED CR
(T) NO OPERATORS LICENSE PRAYER FOR JUDGMENT 010411
FINE/COSTS\$.00 REST\$ SENT: - TYPE: PROB:NONE

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

END

530 LENOIR

092117 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: FLOWERS,CASSI? R=RACE: S=SEX: DOB:

FLOWERS,CASSIE,JEAN	212 BAYVIEW	S=F	R=W	DOB=02211989	17CR 051878
OF:081817 (T) DRIVING WHILE IMPAIRED				UNSERVED	CR
-+-	-+-			-+-	
FLOWERS,CASSIE,JEAN	212 BAYVIEW	S=F	R=W	DOB=02211989	17CR 051879
OF:081817 (M) SIMPLE POSSESS SCH IV CS (M)				UNSERVED	CR
-+-	-+-			-+-	
FLOWERS,CASSIE,JEAN	212 BAY VIEW	S=F	R=W	DOB=02211989	17CR 703524
OF:081817 (M) SIMPLE POSSESS SCH IV CS (M)				PENDING TRIAL-	100417 CR
OF:081817 (M) POSSESS MARIJ PARAPHERNALIA				PENDING TRIAL-	100417 CR

|OF:OFFENSE DATE|DOB=BIRTH|(M)MISD|(F)FELONY|(T)TRAFFIC|

END

EXHIBIT 4

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NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

* * * * *

STATE OF NORTH CAROLINA

vs

CARTERET COUNTY

DUSTIN WARREN,

14 CRS 50372; 76; 77

Defendant.

* * * * *

MOTION FOR APPROPRIATE RELIEF
Volume 1 of 1
Wednesday, July 6, 2018

* * * * *

Transcript of proceedings in the General Court of Justice,
Superior Court Division, Carteret County, North Carolina, at
the June 4, 2018, Criminal Session, before the Honorable
Benjamin G. Alford, Judge Presiding, heard in the North Carolina
Superior Court at Beaufort.

APPEARANCES:

David L. Spence, Esq.
Beaufort, North Carolina
on behalf of the State

Patrick M. Megaro, Esq.
Orlando, Florida
on behalf of the Defendant

Jean Speights, RMR, RPR
Official Court Reporter
Post Office Box 1122
Lewisburg, NC 24901

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GENERAL INDEX

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EXHIBITS

ON BEHALF OF THE STATE

No. Description

Marked/Rec'd

MAR1 Handwritten document by Cassie Flowers

41 46

MAR2 Handwritten document by Mark Thomas

72 74

MAR3 Handwritten notes of Dustin Warren

105

MAR4 Affidavit of Dustin Warren

140 141

1 (The afternoon session of Superior Court is
2 called to order.)

13:30:50 3 THE COURT: Thank you, sheriff.

13:30:52 4 SHERIFF: Yes, sir, Judge.

13:30:52 5 MR. SPENCE: Your Honor, we're here on a Motion for
13:30:55 6 Appropriate Relief.

13:30:55 7 Mr. Megaro, you can come up here if you'd like and
13:30:59 8 bring your client with you, whoever else you need to assist.

13:31:02 9 Your Honor, Patrick Megaro is the counsel filing --
13:31:06 10 had filed this license in North Carolina -- filed this back in
13:31:10 11 2016. Both of us filed Answers, and Your Honor decided, after
13:31:16 12 much deliberation, that an evidentiary hearing would be
13:31:20 13 something that probably needed to be had in these kind of cases.

13:31:23 14 Judge, the File Number is, again, State versus --
13:31:27 15 State of North Carolina versus Dustin Warren, a Carteret County
13:31:30 16 Case of 14 CRS 50372, 50376 and 50377.

13:31:36 17 Judge, if I can hand up a couple things that you may
13:31:41 18 not have. There is a -- this case is here because there were
13:31:47 19 some Ineffective Assistance motions that were attempted to be
13:31:50 20 raised, and were raised to some extent on direct appeal.

13:31:54 21 And I have circled the conclusions of the court and
13:31:58 22 the limitations on, really, what -- what was heard in the Court
13:32:02 23 of Appeals without prejudice. That appears on the last page.
13:32:06 24 The discussion really isn't that important. But it's sort of
13:32:11 25 limited to --

13:32:12 1 (Documents tendered to the Court.)

13:32:13 2 MR. SPENCE: -- to three things: Was -- was the trial
13:32:16 3 counsel ineffective in not calling either Brandon Elps, not
13:32:22 4 calling Mark Thomas, not calling Cassie Flowers to testify, or,
13:32:27 5 as to -- and to challenge the credibility of State's witness
13:32:33 6 Heather Kennon, who was also a co-defendant at the time.

13:32:36 7 I believe there's nothing filed in Mr. Megaro's
13:32:43 8 motion regarding Mr. Elps, so I would assume that has been
13:32:47 9 abandoned. And so, really, we're down to whether Mr. Fulcher
13:32:51 10 was ineffective under the Strickland standard by not calling
13:32:58 11 Cassie Flowers and Mark Thomas to challenge parts of her
13:33:03 12 testimony.

13:33:03 13 And again, if -- Mr. Megaro, if I have incorrectly
13:33:08 14 stated that, please correct me. But that's at least what my
13:33:12 15 understanding is, why we're here, and the limitations on -- on
13:33:17 16 what can be presented or argued.

13:33:18 17 THE COURT: First of all, let me ask Counsel, for the
13:33:21 18 record, simply to identify themselves and whom they represent.

13:33:25 19 MR. SPENCE: David L. Spence, State of North Carolina,
13:33:28 20 Bar Number 9477. And I'm Assistant DA in Carteret County.

13:33:33 21 THE COURT: Okay.

13:33:33 22 MR. MEGARO: Good afternoon, Your Honor. I'm Patrick
13:33:35 23 Michael Megaro -- M-E-G-A-R-O -- Bar ID Number is 46770, on
13:33:40 24 behalf of Dustin Warren.

13:33:41 25 With the Court's permission, my associate, Robert

13:33:45 1 Bynther -- it's B-Y-N-T-H-E-R -- is present at counsel table.
13:33:49 2 He is not admitted in the State of North Carolina; he is
13:33:52 3 admitted in the State of Florida. And I simply brought him
13:33:55 4 along, simply to observe --

13:33:56 5 THE COURT: Welcome.

13:33:57 6 MR. MEGARO: -- could learn something from this.

13:33:59 7 THE COURT: Welcome.

13:33:59 8 MR. BYNTER: Thank you, Your Honor.

13:33:59 9 MR. MEGARO: Thank you, Your Honor. Your Honor, with
13:34:02 10 respect to the motion, there were three essential -- three main
13:34:05 11 claims raised in the motion regarding Ineffective Assistance,
13:34:06 12 and that was failure to call Brandon Elps. And in that motion I
13:34:12 13 didn't address that, because that was addressed on direct appeal
13:34:15 14 as well.

13:34:15 15 And the other two prongs of the motion was with
13:34:18 16 respect to Ms. Cassie Flowers and Mr. Mark Thomas. Mr. Mark
13:34:24 17 Thomas is currently serving an active state prison term, and he
13:34:28 18 has been brought over here today. I did meet with him earlier
13:34:32 19 today.

13:34:32 20 Ms. Cassie Flowers is presently incarcerated in this
13:34:36 21 county on pending charges. Her counsel is present here in
13:34:39 22 court, and I have had the chance to speak with him earlier
13:34:43 23 today.

13:34:43 24 Mr. Elps's whereabouts are currently unknown because
13:34:48 25 he has been released from the Department of Adult Corrections,

13:34:49 1 and I have made efforts to locate him, but he's no longer here.

13:34:54 2 Nevertheless, with respect to that claim, I would be
13:34:57 3 relying upon the official record in this case, because there was
13:35:01 4 a proffer as to what his testimony would have been that was made
13:35:06 5 on the record by trial counsel --

13:35:07 6 MR. SPENCE: No --

13:35:08 7 MR. MEGARO: -- if I recall --

13:35:09 8 MR. SPENCE: -- that was -- no. There was no proffer
13:35:10 9 made. He was not brought over even for a proffer.

13:35:15 10 MR. MEGARO: Very well.

13:35:17 11 THE COURT: Well, the record is what the record is.

13:35:18 12 MR. SPENCE: The Court of Appeals addressed that. He
13:35:21 13 was not brought over for a proffer.

13:35:24 14 THE COURT: All right.

13:35:26 15 MR. MEGARO: But in any event, there is an issue that
13:35:30 16 I think we should probably address before the case moves
13:35:34 17 forward.

13:35:35 18 One of the witnesses that I had proposed to call
13:35:38 19 would have been Ms. Cassie Flowers, who is, as the Court's
13:35:41 20 aware -- is aware, is present here. Her counsel has -- and she
13:35:47 21 had submitted an affidavit in 2016 when this motion was filed
13:35:52 22 prior to the advent of her current charges.

13:35:56 23 She has since been charged, and her counsel,
13:35:59 24 Mr. James Upton[sic], is present here in court. And it's my
13:36:05 25 understanding that -- and I can't fault Counsel for this: He

13:36:12 1 does not want to endanger her situation with respect to her
13:36:16 2 testimony. If she were to give testimony that would be
13:36:19 3 considered unfavorable to the State, that potentially could
13:36:23 4 impact any plea negotiations that she may have.

13:36:28 5 I have discussed this matter with my client, and he
13:36:33 6 has asked me to move forward with Ms. Flowers as a witness. But
13:36:37 7 I would remind the State that she does have pending charges, and
13:36:41 8 not that I'm advocating for her, but I would not seek to elicit
13:36:45 9 any information concerning her pending charges. And she, I
13:36:47 10 believe, would have an absolute right to have her counsel
13:36:50 11 present and advise her and invoke the Fifth Amendment as to
13:36:54 12 those matters, notwithstanding her testimony on other matters.
13:36:59 13 So --

13:36:59 14 THE COURT: Okay.

13:37:02 15 MR. SPENCE: Mr. Lupton can address that better. I
13:37:05 16 think that he is going to advise her not to testify in the
13:37:09 17 matter because she is -- again, I'll say on the record, whatever
13:37:13 18 she says here is not going to affect any plea negotiations I
13:37:17 19 have on her pending cases with Mr. Lupton. I'm not going to do
13:37:20 20 that.

13:37:20 21 However, I don't think Mr. Lupton wants her on the
13:37:23 22 stand to possibly maybe commit another crime under oath,
13:37:27 23 testifying under oath, or for whatever reason. I'll let him
13:37:31 24 talk -- speak to Your Honor about that situation. And he's
13:37:34 25 advised Mr. Megaro exactly, I think, what his stance is. Is

13:37:38 1 that correct, Jim?

13:37:39 2 MR. LUPTON: Your Honor, may I?

13:37:40 3 THE COURT: Yes, sir.

13:37:41 4 MR. LUPTON: Your Honor, thank you. Ms. Flowers was
13:37:42 5 brought over earlier today, and I did speak with her and
13:37:45 6 explained to her that if she is called to testify, certainly,
13:37:48 7 the Prosecutor's duty is to impeach or attempt to impeach her as
13:37:54 8 to her credibility.

13:37:54 9 As he does that, he'll be permitted to speak to her
13:37:58 10 of bad conduct that would be admissible regarding her
13:38:03 11 credibility, which could include conduct for which she is now in
13:38:09 12 this Superior Court for felony charges.

13:38:13 13 I have advised her that should she testify, she would
13:38:17 14 be subject to discuss, potentially, charges that are now
13:38:21 15 pending, which could affect my ability to defend her, which
13:38:25 16 also, I think, in fairness, could affect -- if the State felt
13:38:30 17 that or perceived that what she was saying was not honest
13:38:35 18 admissions -- might affect how they view the case, not to
13:38:37 19 conform to what the State is asking her, but could affect their
13:38:41 20 view of her and could affect, again, the strength in my ability
13:38:45 21 to defend her.

13:38:45 22 And therefore, I strongly have instructed her to
13:38:49 23 invoke her Fifth Amendment to not testify, if called.

13:38:53 24 THE COURT: Well, I'm certainly not going to let
13:38:55 25 Mr. Megaro or Mr. Spence inquire into any matters for which the

13:39:00 1 charges are currently pending. But to say that she doesn't want
13:39:04 2 to testify because if she testifies inaccurately the State may
13:39:11 3 have some repercussions in the way of perjury, that's not a good
13:39:15 4 enough reason not to testify.

13:39:16 5 But I am going to order, Mr. Spence, and Mr. Megaro,
13:39:18 6 do not get into anything for which this woman is currently
13:39:24 7 charged in Carteret County or in any other county.

13:39:27 8 And I don't think they intend to do that. I think
13:39:30 9 they intend to reserve their questioning as to anything that she
13:39:34 10 knew about the case involving Mr. Warren.

13:39:39 11 MR. MEGARO: That's correct, Your Honor. My -- my
13:39:40 12 intention is to confine her testimony probably exclusively to
13:39:46 13 the four corners of the affidavit that was submitted in this
13:39:48 14 Motion for Appropriate Relief.

13:39:50 15 THE COURT: But I do want, Mr. Lupton, if you would,
13:39:52 16 can you be here and stay? And if you feel like there's
13:39:55 17 something that's being asked that calls upon her to comment, in
13:39:59 18 any way, on any charges that are pending against her anywhere,
13:40:04 19 to intercede with an objection and give me the reason why.

13:40:10 20 MR. LUPTON: Your Honor, I thank you for that. And
13:40:11 21 I'd also ask if I would be allowed to speak to her when she
13:40:14 22 comes over, because Mr. Spence did share to me -- with me how he
13:40:19 23 may impeach her. And I'd like to advise her about that and just
13:40:24 24 speak to her --

13:40:25 25 THE COURT: Sure.

13:40:25 1 MR. LUPTON: -- before she takes the stand.

13:40:26 2 THE COURT: Absolutely.

13:40:27 3 MR. LUPTON: And I will stay in here.

13:40:29 4 MR. SPENCE: Again, I will avoid all that stuff. I
13:40:31 5 wasn't intending on getting into it. However, I have some
13:40:34 6 things from her Facebook account which I pulled off yesterday.
13:40:36 7 And just now finding out she will be testifying, that might lead
13:40:42 8 her to testify in contravention of her affidavit.

13:40:48 9 THE COURT: Well --

13:40:49 10 MR. SPENCE: And, again, if I could -- if I could
13:40:50 11 share that with Mr. Megaro, because, again, I just pulled it off
13:40:53 12 the computer just as an abundance of caution. But I'll be glad
13:40:56 13 to share that with him.

13:40:59 14 THE COURT: As it potentially impeaches her affidavit,
13:41:00 15 it's fair game.

13:41:02 16 MR. SPENCE: Yes, sir. I knew that. But in fairness,
13:41:04 17 I would like to at least show this to him. I've shown it to Mr.
13:41:07 18 Lupton this morning also, and found it yesterday on her
13:41:07 19 Facebook.

13:41:09 20 THE COURT: Is Ms. Flowers over here, back in the
13:41:12 21 back?

13:41:12 22 SHERIFF: I will bring her right now.

13:41:14 23 THE COURT: Yes. Please bring her so that Mr. Lupton
13:41:17 24 can have a conference with her.

13:41:18 25 THE SHERIFF: Yes, sir.

13:41:19 1 THE COURT: And if you would share that with Mr.

13:41:20 2 Megaro --

13:41:22 3 MR. SPENCE: I will.

13:41:23 4 THE COURT: -- and give him a moment to look at it.

13:41:25 5 (Mr. Spence and Mr. Megaro confer.)

13:43:49 6 MR. SPENCE: Ann Scadden, who is with -- Dustin
13:43:49 7 Warren's affidavit -- has some documentation that I told you
13:43:49 8 about.

13:43:49 9 MR. MEGARO: Right.

13:43:49 10 MR. SPENCE: Ann, you can come up with that. Make
13:43:49 11 sure I've got the right ones. Let me see the notes. She can
13:43:49 12 just show you what she has --

13:43:51 13 MR. MEGARO: Sure.

13:43:51 14 MR. SPENCE: -- real quickly.

13:43:52 15 (Ms. Scadden tenders documents to Mr. Megaro.)

13:43:52 16 MR. SPENCE: Ann, could you leave those with me, so I
13:43:52 17 can --

13:43:52 18 MS. SCADDEN: This?

13:43:52 19 MR. SPENCE: Yes.

13:43:52 20 MS. SCADDEN: You have them.

13:43:52 21 MR. SPENCE: I know that.

13:45:34 22 MS. SCADDEN: I'll make copies. Yeah.

13:45:36 23 (Rodney Fulcher is present in the courtroom.)

13:48:36 24 MR. SPENCE: Your Honor, if I could address a couple
13:51:33 25 preliminary matters. I don't want to interrupt your reading.

13:51:37 1 THE COURT: Yes, sir.

13:51:37 2 MR. SPENCE: Before we start back, before I forget it,
13:51:39 3 mainly, the State would -- for purposes of this hearing, move to
13:51:45 4 introduce the entire court file which contains the transcript of
13:51:48 5 the court proceedings, and ask that be made -- made part of the
13:51:52 6 record on this motion.

13:51:53 7 I also have obtained from Ms. Speights a transcript
13:51:59 8 of the continuance motion made by Mr. Fulcher a month before,
13:52:03 9 and some of the things that were said in there by Mr. Warren,
13:52:07 10 and his -- his -- his intentions. And I have sent a copy to Mr.
13:52:12 11 Megaro last night by email, and I'll hand up -- this is -- it's
13:52:16 12 basically a two-page colloquy --

13:52:18 13 (Documents tendered to the Court.)

13:52:18 14 MR. SPENCE: -- maybe even before Your Honor in the
13:52:23 15 August session, prior to the September trial session.

13:52:30 16 THE COURT: Judge Paul Jones heard this.

13:52:32 17 MR. SPENCE: Okay.

13:52:33 18 THE COURT: But it's part of the record, and the Court
13:52:35 19 will receive it.

13:52:35 20 MR. SPENCE: Yes, sir, it is. And also, in the court
13:52:38 21 file, of course, I filed a motion -- I filed a response, and a
13:52:42 22 lot of my response was dealing with the credibility of the
13:52:46 23 witnesses that were intended to be called. And I attached their
13:52:50 24 criminal histories.

13:52:51 25 In order to maybe save some time, when they take the

13:52:55 1 stand, I'd just let Your Honor know, the criminal histories are
13:52:59 2 available inside the file and I have them here if you need to
13:53:02 3 look at them.

13:53:05 4 I think the relevant criminal histories in this
13:53:07 5 particular case are what I could have cross-examined them on in
13:53:15 6 2014, the 10-year window, because that was -- that was the
13:53:19 7 calculation by trial counsel, whether to call them or not with
13:53:21 8 what they could be cross-examined about at that time.

13:53:24 9 I think, in addition, this hearing, which takes place
13:53:27 10 a little over three and a half years later, if they have
13:53:30 11 anything additional, it affects their credibility at this
13:53:33 12 hearing.

13:53:34 13 So I would ask for that window, which is a little bit
13:53:36 14 more expansive than the 8C 10-year limitation should apply at
13:53:41 15 this hearing. And, again, I would just leave that up to
13:53:44 16 Your Honor, but let you know that the actual records are in my
13:53:49 17 Answer.

13:53:49 18 THE COURT: Okay. Well, I'll deal with it if it comes
13:53:52 19 up at the hearing. Mr. Megaro, is Ms. Flowers intending to be
13:54:09 20 your first witness?

13:54:10 21 MR. MEGARO: Yes, Your Honor. I would -- since she's
13:54:12 22 on the County's time and Mr. Lupton's time, I would call her
13:54:16 23 first, and then --

13:54:16 24 THE COURT: Okay.

13:54:16 25 MR. MEGARO: -- I would intend to call Mr. Mark Thomas

13:54:19 1 second, since he's on also the County's time, and call my client
13:54:22 2 last.

13:54:23 3 THE COURT: Okay.

13:54:23 4 (The Court confers with his bailiff.)

13:54:52 5 MR. MEGARO: Your Honor, does the Court permit laptops
13:54:53 6 at counsel table?

13:54:56 7 THE COURT: Absolutely.

13:54:57 8 MR. MEGARO: I always have to ask.

13:54:58 9 THE COURT: I can't imagine, with that sort of
13:55:00 10 technology available to us -- and I think that we have wi-fi in
13:55:04 11 the Carteret County Courthouse, which you can access.

13:55:07 12 MR. MEGARO: Thank you. You'd be surprised.

13:55:09 13 THE COURT: I probably would.

13:55:10 14 (An unrelated matter was heard before the Court.)

13:56:04 15 (Ms. Flowers is present in the courtroom with her
14:00:22 16 counsel, Mr. Lupton.)

14:00:33 17 MR. SPENCE: Judge, if I could have one moment to tidy
14:00:36 18 up some loose ends here.

14:00:38 19 (Mr. Spence exits the courtroom, returns
14:00:40 20 momentarily and tenders documents to Mr. Lupton.)

14:03:39 21 THE COURT: Are the parties ready to proceed? Is the
14:03:59 22 State ready?

14:04:01 23 MR. SPENCE: I'm ready.

14:04:03 24 MR. LUPTON: Your Honor, Mr. Spence just gave me some
14:04:05 25 more information; he just now handed it to me. If I could have

14:04:07 1 a moment to share this with Mr. Flowers. Thank you.

14:04:10 2 (Mr. Lupton and Ms. Flowers exit courtroom and
14:04:14 3 return after several minutes.)

14:07:35 4 THE COURT: Mr. Megaro, you may call your first
14:07:37 5 witness.

14:07:38 6 MR. MEGARO: Thank you, Your Honor. The defense would
14:07:41 7 call Ms. Cassie Jean Flowers.

14:07:43 8 (The witness was duly sworn.)

14:07:49 9 (The witness took the witness stand.)

14:07:53 10 MR. MEGARO: Your Honor, would the Court require me to
14:07:55 11 stand when questioning the witness or be seated? It's up to
14:07:58 12 you.

14:07:59 13 THE COURT: The State rules provide that questioning
14:08:01 14 is done by Counsel from the counsel table in a seated position.

14:08:05 15 MR. MEGARO: Thank you.

14:08:06 16 THE COURT: Yes, sir.

14:08:06 17

14:08:06 18 **CASSIE JEAN FLOWERS,**

14:08:06 19 having been first duly sworn, at 2:08 p.m. was called as a
14:08:06 20 witness on behalf of the Defendant and testified as follows:

14:08:07 21 **DIRECT EXAMINATION BY MR. MEGARO**

14:08:08 22 Q. Good afternoon, Ms. Flowers. How are you?

14:08:10 23 A. I am doing -- doing good. How are you?

14:08:12 24 Q. Can you speak into the microphone? I'm having a
14:08:13 25 little -- hard time --

14:08:15 1 THE COURT: The microphone doesn't work. Just speak
14:08:17 2 up.

14:08:17 3 BY MR. MEGARO

14:08:17 4 Q. Speak up.

14:08:17 5 A. All right.

14:08:18 6 Q. I just want to make clear, as we get started, I do not
14:08:21 7 want to ask you and I do not want you to answer anything about
14:08:24 8 any pending charges in any county right now. Okay?

14:08:28 9 A. Yes, sir.

14:08:29 10 Q. All right. Thank you. How do you know Dustin Warren?

14:08:33 11 A. I met him in September of 2013, and we dated for a
14:08:36 12 couple months up until about Christmas.

14:08:38 13 Q. Okay. Christmas of 2013?

14:08:41 14 A. Yes. Yes, sir.

14:08:41 15 Q. And did there come -- is that when your relationship
14:08:45 16 terminated?

14:08:46 17 A. Yeah. For the -- yes. I tried calling him and
14:08:48 18 texting him and he wouldn't answer my calls.

14:08:52 19 Q. After your relationship terminated, were you on
14:08:54 20 speaking terms, or not at all?

14:08:56 21 A. No.

14:08:58 22 Q. Did you know a young lady named Heather Kennon?

14:09:01 23 K-E-N-N-O-N.

14:09:04 24 A. Yes, sir. I know of her. And --

14:09:05 25 Q. And what is -- what -- in late 2013, what was your

14:09:09 1 relationship with Ms. Kennon?

14:09:11 2 A. Me and Heather never got along. We -- she was -- I
14:09:14 3 believe she was jealous of me --

14:09:16 4 MR. SPENCE: Objection.

14:09:16 5 THE COURT: Overruled.

14:09:20 6 BY MR. MEGARO

14:09:20 7 Q. Now, did you have any relationship with Heather Kennon
14:09:23 8 in January of 2014?

14:09:26 9 A. No -- not at all.

14:09:27 10 Q. Did you ever associate with her or hang out with her,
14:09:30 11 socialize?

14:09:32 12 A. No.

14:09:34 13 Q. Now, I want to draw your attention to the evening of
14:09:37 14 January 28th and January 29th, 2014. Do you recall where you
14:09:42 15 were?

14:09:43 16 A. The 28th and 29th? Yes, sir. I do.

14:09:45 17 Q. And where were you that day?

14:09:47 18 A. I was snowed-in at my place in Morehead City.

14:09:50 19 Q. Who were you living with at the time?

14:09:52 20 A. I was by myself. I had my dog there too.

14:09:56 21 Q. Is that a chocolate Labrador?

14:09:58 22 A. Yeah. That's Rusty.

14:10:00 23 Q. Did the dog ever alert you as to whether people were
14:10:04 24 being -- approaching the house?

14:10:05 25 MR. SPENCE: Objection to what the dog did.

14:10:08 1 THE COURT: Overruled.

14:10:08 2 BY MR. MEGARO

14:10:09 3 Q. Would the dog bark if someone came up to the front --

14:10:11 4 MR. SPENCE: Objection.

14:10:12 5 THE WITNESS: Yes.

14:10:12 6 THE COURT: Overruled.

14:10:13 7 BY MR. MEGARO

14:10:13 8 Q. Okay. On January -- on the evening of January 28th
14:10:17 9 and January 29th of 2014, did anyone come to your house on
14:10:23 10 either of those days?

14:10:24 11 A. No one came by. I couldn't even leave my house
14:10:27 12 because I -- no one came by.

14:10:28 13 Q. And that was going to be my next question: Did you
14:10:30 14 leave your house at any time during those two days?

14:10:32 15 A. No. I have a two-wheel drive vehicle, and I did
14:10:34 16 not -- I couldn't leave the house. I didn't even have dog food
14:10:37 17 there.

14:10:37 18 Q. Okay. Did anyone have the key to your home other than
14:10:40 19 yourself?

14:10:41 20 A. No. Definitely not.

14:10:43 21 Q. At any point during the time -- evening of
14:10:46 22 January 28th to January 29th, 2014, did you ever hear your dog
14:10:51 23 barking to alert you?

14:10:55 24 A. Not -- not once.

14:10:56 25 Q. Did there come a point in time when you learned that

14:10:59 1 Dustin Warren had been arrested?

14:11:01 2 A. Yes. Yes, sir.

14:11:02 3 Q. When was that?

14:11:03 4 A. That was after I got out of jail. After I was
14:11:08 5 arrested for some assault charges, I saw his face on the paper.

14:11:13 6 Q. Okay.

14:11:13 7 A. In the -- on the news.

14:11:15 8 Q. All right. Now, when was the next time that you heard
14:11:20 9 from Dustin Warren?

14:11:22 10 A. Let's see. I was in prison -- it was, like, two years
14:11:24 11 later. December of 2015 I believe he sent me a Christmas card
14:11:31 12 and showed me some trial transcripts that Heather Kennon said
14:11:33 13 stuff about me in court that was not true.

14:11:38 14 Q. All right. And when you say "trial transcripts,"
14:11:41 15 you're referring to Ms. Kennon's testimony?

14:11:44 16 A. Yes, sir.

14:11:44 17 Q. Okay. And did you review those transcripts?

14:11:46 18 A. Yes, sir. I did.

14:11:50 19 Q. What did you notice about the content of those
14:11:52 20 transcripts?

14:11:54 21 A. I noticed that she lied and said --

14:11:56 22 MR. SPENCE: Objection.

14:11:57 23 THE COURT: Overruled.

14:11:59 24 THE WITNESS: I noticed that she said that she had
14:12:01 25 been by my house, and that's the day that it snowed, and I was

14:12:05 1 snowed in. And I know for a fact no one came by. No one at
14:12:08 2 all.

14:12:08 3 BY MR. MEGARO

14:12:09 4 Q. Would you have allowed her into your home --

14:12:10 5 A. No, I would not have.

14:12:11 6 Q. -- in January of 2014?

14:12:14 7 A. No. No, sir.

14:12:14 8 Q. At any point in time on the evening of January 28th,
14:12:16 9 2014, or at any point in time on January 29th, 2014, did Dustin
14:12:23 10 Warren ever come to your home and ask you for a cold pack or any
14:12:28 11 other items in order to make drugs?

14:12:30 12 A. No, sir.

14:12:37 13 Q. And as of January 28th, 2014, to January 29th, 2014,
14:12:40 14 were you even on speaking terms with Mr. Warren?

14:12:43 15 A. No, no. We weren't talking.

14:12:47 16 Q. Now, you mentioned that you were incarcerated for a
14:12:49 17 period of time in 2014, right? I just need you to answer out
14:12:54 18 loud for me.

14:12:54 19 A. What did you say? I'm sorry. I couldn't --

14:12:56 20 Q. You mentioned earlier that you were incarcerated for a
14:12:58 21 period of time in 2014?

14:13:00 22 A. Yes, sir.

14:13:00 23 Q. Okay. Do you remember the date of your arrest?

14:13:03 24 A. When I got arrested?

14:13:05 25 Q. Yes.

14:13:05 1 A. On January 30th --

14:13:07 2 Q. 2014?

14:13:08 3 A. -- for the assault -- or when I went to prison?

14:13:11 4 Q. When did you go -- well, let's start with that. When

14:13:13 5 did you go to prison in 2014?

14:13:15 6 A. It was February 14th, 2014.

14:13:18 7 Q. Okay.

14:13:21 8 A. '15? Or, was it '15?

14:13:23 9 Q. Some time in mid-February --

14:13:26 10 A. Yeah.

14:13:26 11 Q. -- of 2014? And did you remain incarcerated

14:13:28 12 throughout the rest of the year?

14:13:29 13 A. Yes, sir.

14:13:30 14 Q. Okay. And do you remember where you were

14:13:33 15 incarcerated?

14:13:34 16 A. I was incarcerated at Raleigh. I did about a year

14:13:37 17 there, and then I went to minimum security in Maury, North

14:13:41 18 Carolina.

14:13:42 19 Q. When you were incarcerated, were you incarcerated

14:13:44 20 under your current name, Cassie Jean Flowers?

14:13:46 21 A. Yes, sir.

14:13:47 22 Q. And did you use any alias or any different dates of

14:13:49 23 birth or any identifying information?

14:13:51 24 A. No, sir.

14:13:54 25 Q. At any point in time in 2014, did anyone identifying

14:13:59 1 themselves as a lawyer from Mr. Dustin Warren or an investigator
14:14:05 2 for Mr. Warren's defense team ever come to interview you?

14:14:08 3 A. No, sir.

14:14:09 4 Q. Did anyone ever request that you call them on the
14:14:11 5 phone or make a phone call to the women's prison and speak to
14:14:17 6 you regarding the facts of the case?

14:14:18 7 A. No, sir.

14:14:19 8 Q. When was the first time that anyone had contacted you
14:14:22 9 to speak to you about the facts of Mr. Warren's case?

14:14:26 10 A. When I got the Christmas card --

14:14:28 11 Q. Okay.

14:14:28 12 A. -- I guess. Well, he didn't -- he just said, "Look
14:14:31 13 what Heather says. She -- she's lying about you."

14:14:33 14 And obviously, it was lies, but he didn't say anything
14:14:37 15 at the time --

14:14:38 16 Q. Okay.

14:14:38 17 A. -- about stating the truth or anything. I didn't know
14:14:41 18 who was -- all this was going to happen.

14:14:45 19 Q. Did there come a point in time when you and I spoke
14:14:48 20 regarding the facts of the case?

14:14:49 21 A. Yes, sir.

14:14:49 22 Q. All right. And is that when you submitted the
14:14:51 23 affidavit?

14:14:52 24 A. Yes, sir.

14:14:52 25 Q. Okay. And the affidavit that you submitted, that was

14:14:59 1 signed and dated October 3rd, 2016; is that right?

14:15:01 2 A. Yes, sir.

14:15:02 3 MR. MEGARO: Thank you very much, ma'am. No further
14:15:04 4 questions for Ms. Flowers.

14:15:06 5 THE COURT: Cross-examination, Mr. Spence?

14:15:08 6 MR. SPENCE: Yes, sir.

14:15:08 7 **CROSS-EXAMINATION BY MR. SPENCE**

14:15:08 8 Q. Ms. Flowers, where were you when you signed this
14:15:10 9 affidavit?

14:15:11 10 A. What's the date on that affidavit?

14:15:13 11 Q. October 3rd, 2016.

14:15:17 12 A. I was released from prison. I was -- I don't know
14:15:22 13 where I got it notarized at, but I was home.

14:15:26 14 Q. How did you get this? Did you type this up?

14:15:30 15 A. I wrote it out, and then it was edited.

14:15:34 16 Q. Okay. You wrote it long-hand?

14:15:36 17 A. Yes, sir.

14:15:36 18 Q. And who did you send it to?

14:15:38 19 A. I sent it to my mother.

14:15:41 20 Q. Okay. And --

14:15:43 21 A. And edited it.

14:15:44 22 Q. Did you have instructions for her to give it to
14:15:46 23 somebody?

14:15:48 24 A. No, sir.

14:15:48 25 Q. Okay. So you -- where is that piece of paper? Does

14:15:53 1 your mother still have it?

14:15:56 2 A. No -- what do you mean?

14:15:58 3 Q. Why did you fill -- why did you even write out a piece
14:16:02 4 of paper about what happened? Why did you do that?

14:16:04 5 A. Because I was sent the trial transcripts where Heather
14:16:07 6 Kennon lied.

14:16:07 7 Q. Okay. Who sent you those?

14:16:09 8 A. Dustin sent me those.

14:16:10 9 Q. From jail?

14:16:11 10 A. Yes.

14:16:13 11 Q. Did he tell -- did Dustin tell you what to put -- put
14:16:15 12 to write down?

14:16:16 13 A. No, he didn't tell me what to write down.

14:16:18 14 Q. He just sent you those transcripts; there was no
14:16:20 15 instruction, and no talk about what you should mention in this
14:16:24 16 letter?

14:16:25 17 A. No.

14:16:25 18 Q. So you just -- you just made -- you just figured on
14:16:28 19 your own to draft a document and give it to your mother?

14:16:32 20 A. Well, I wrote down facts about the case.

14:16:35 21 Q. Why?

14:16:37 22 A. With help.

14:16:38 23 Q. Who?

14:16:40 24 A. With Dustin.

14:16:41 25 Q. With Dustin's help?

14:16:42 1 A. Yes.

14:16:42 2 Q. Okay. Were you-all in the same prison area?

14:16:45 3 A. No. No.

14:16:45 4 Q. Communicating, though, by letter?

14:16:47 5 A. Yes.

14:16:48 6 Q. From prison to prison?

14:16:50 7 A. Yes.

14:16:50 8 Q. And Dustin would tell you things to put, and you would

14:16:54 9 write them down?

14:16:54 10 A. No, he never asked me to lie or anything like that.

14:16:56 11 Q. I know that.

14:16:57 12 A. I'm only here to state the truth. Yes, sir.

14:16:59 13 Q. I understand that. Because you're a truthful person.

14:17:02 14 But did Dustin tell you what you should mention in your letter?

14:17:06 15 A. The facts that I need to mention, yes, sir.

14:17:08 16 Q. He told you -- he suggested things you should mention?

14:17:11 17 A. I'm not -- I wouldn't never say anything that I

14:17:13 18 wouldn't say by myself.

14:17:14 19 Q. You weren't here for the trial, correct?

14:17:16 20 A. Correct. I was not.

14:17:17 21 Q. You had nothing to do and you have no idea what

14:17:19 22 happened on January 28th or 29th, 2014, by your own testimony,

14:17:23 23 correct?

14:17:25 24 A. 2014?

14:17:26 25 Q. The date this happened?

14:17:28 1 A. Yeah.

14:17:29 2 Q. The date Dustin was arrested.

14:17:31 3 A. I was not there when he was arrested.

14:17:32 4 Q. Exactly. You don't know anything about what happened
14:17:35 5 dealing with that meth lab, do you?

14:17:37 6 A. No, I don't -- I don't know about the meth stuff, but
14:17:40 7 I can tell you that I was home at that time and no one came by
14:17:43 8 my house. That's what I'm here saying.

14:17:43 9 Q. Okay. So the only thing you know about is the cold
14:17:45 10 packs?

14:17:46 11 A. I didn't know what a cold pack was at the time, but
14:17:49 12 now I do.

14:17:52 13 Q. Okay. So anyway, your testimony is limited to one
14:17:55 14 thing: That either Dustin or Heather didn't come by your house,
14:18:00 15 or you didn't see them come by your house on that one day?

14:18:02 16 A. Yes, sir.

14:18:02 17 Q. That's the only thing you can possibly add to this
14:18:05 18 case, right?

14:18:06 19 A. That no one came by my house.

14:18:08 20 Q. Right. Okay. Did you leave your house at all by
14:18:11 21 foot?

14:18:11 22 A. No. No, sir.

14:18:12 23 Q. It was a bad snow, wasn't it?

14:18:13 24 A. Yes, sir. Yes, sir.

14:18:14 25 Q. As a matter of fact, that highrise bridge from

14:18:15 1 Atlantic Beach to Morehead was closed, wasn't it?

14:18:18 2 A. Yes, sir.

14:18:18 3 Q. It was. You couldn't get over it, could you?

14:18:21 4 A. No, sir.

14:18:24 5 Q. Where did you live in Morehead City?

14:18:26 6 A. Actually, it was Wilson's(sic) Trailer Park.

14:18:29 7 Q. Okay.

14:18:29 8 A. I had a trailer there.

14:18:30 9 Q. And who -- was that your trailer?

14:18:32 10 A. Yes, sir. Well --

14:18:32 11 Q. In your name?

14:18:33 12 A. I was renting it in my name. Yes, sir.

14:18:35 13 Q. Okay. And what was your rent there?

14:18:39 14 A. Like, 4- or \$500 a month.

14:18:41 15 Q. Okay. You have a lot of friends that come visit that

14:18:43 16 trailer, right?

14:18:44 17 A. Yes, sir.

14:18:44 18 Q. And did any of them happen to stop by that day?

14:18:48 19 A. No. No, sir. Nobody came by at all.

14:18:50 20 Q. You just couldn't get around to Morehead City?

14:18:52 21 A. No, I couldn't. I didn't -- I was sleeping.

14:18:54 22 Q. Okay. Did you have Internet access?

14:18:58 23 A. I'm pretty sure my phone did.

14:19:01 24 Q. TV?

14:19:02 25 A. Yeah. Yes, sir. Yes, sir.

14:19:02 1 Q. Okay. What did -- what did you do -- you testified
14:19:04 2 that you were there all day the 28th and 29th. What did you
14:19:08 3 have for lunch the day of the 28th?

14:19:10 4 A. Cereal and Ramen noodles.

14:19:12 5 Q. Okay.

14:19:14 6 A. I was -- yeah.

14:19:15 7 Q. How about for dinner?

14:19:18 8 A. I don't remember.

14:19:18 9 Q. What time did you go to bed?

14:19:20 10 A. I probably slept all those two days. You know,
14:19:23 11 sleeping, waking up.

14:19:24 12 Q. Okay. At that time, you were addicted to drugs,
14:19:27 13 weren't you?

14:19:28 14 A. Yes, sir.

14:19:29 15 Q. What drugs?

14:19:33 16 A. Xanax. Methamphetamine.

14:19:36 17 Q. Methamphetamine. And do you know a person named
14:19:40 18 Brandon Hobbs?

14:19:41 19 A. Yes, sir.

14:19:41 20 Q. How do you know him?

14:19:43 21 A. I know him.

14:19:44 22 Q. How do you know him?

14:19:46 23 A. I know him from outside.

14:19:48 24 Q. I know that. How?

14:19:50 25 A. From Facebook.

14:19:52 1 Q. Have you ever met him, or are you just on Facebook
14:19:54 2 with him?

14:19:55 3 A. I've met him.

14:19:55 4 Q. And you hung around him, haven't you?

14:19:57 5 A. Yes, sir.

14:19:57 6 Q. Hung around him and Dustin?

14:19:59 7 A. Yes, sir.

14:19:59 8 Q. Where do they live?

14:20:01 9 A. I do not recall. I think at the Beach.

14:20:03 10 Q. You ever been to Dustin's house when you were dating
14:20:05 11 him?

14:20:06 12 A. One time.

14:20:06 13 Q. Only one time? Would he come to your house all --
14:20:09 14 most of the time?

14:20:10 15 A. Yes, sir.

14:20:11 16 Q. You dated him how long?

14:20:14 17 A. Briefly. About four months.

14:20:15 18 Q. So again, four months at a time. How many times did
14:20:18 19 he come to your house?

14:20:19 20 A. Um, numerous times.

14:20:21 21 Q. You go to his house more than once, ever?

14:20:25 22 A. No. No, sir.

14:20:26 23 Q. Did Brandon live with him?

14:20:28 24 A. No, sir. No. No, sir.

14:20:29 25 Q. Where did Brandon live?

14:20:30 1 A. I'm not sure about Brandon at that time.

14:20:32 2 Q. Okay. You know what Brandon does, don't you? You

14:20:35 3 know what he -- he's involved in drugs?

14:20:36 4 A. Yes, sir.

14:20:37 5 Q. Cooks it. Cooks meth, doesn't he?

14:20:39 6 A. No, sir. Not that I'm aware of.

14:20:40 7 Q. You don't know about that?

14:20:41 8 A. No, sir.

14:20:41 9 Q. Who did you get your meth from?

14:20:44 10 A. On the street.

14:20:45 11 Q. Who?

14:20:47 12 A. Just -- I don't know.

14:20:48 13 Q. Same people?

14:20:49 14 A. I don't know.

14:20:49 15 Q. Tell us who you bought meth from, to -- you're a meth

14:20:52 16 addict; you bought meth, right?

14:20:54 17 A. I would get it from my friends.

14:20:56 18 Q. Who? Give us some names.

14:20:58 19 A. I don't recall.

14:20:59 20 MR. LUPTON: Objection.

14:20:59 21 THE COURT: Sustained.

14:21:07 22 BY MR. SPENCE

14:21:14 23 Q. So where were you when this trial occurred in

14:21:17 24 September of 2014? Were you incarcerated?

14:21:25 25 A. Yes. What date was it?

14:21:28 1 Q. September of 2014.

14:21:29 2 A. September, I don't believe I was.

14:21:38 3 Q. Did you have pending charges then from -- different

14:21:40 4 pending charges -- not these -- but different ones at that time

14:21:42 5 that had been resolved?

14:21:44 6 A. Yes. I had pending charges.

14:21:46 7 Q. Okay. Who was your lawyer in those cases?

14:21:48 8 A. Jim Lupton.

14:21:50 9 Q. On the cases that were pending in 2014?

14:21:52 10 A. Yes, sir.

14:21:53 11 Q. Okay. And you had no idea what was said at the trial,

14:21:58 12 who testified to what at the trial, or anything like that, did

14:22:00 13 you?

14:22:01 14 A. Well, I did receive the transcripts, but that's --

14:22:03 15 that's --

14:22:04 16 Q. I'm talking first-hand knowledge.

14:22:06 17 A. No, sir.

14:22:13 18 Q. Okay. When did you first hear from Mr. Megaro about

14:22:19 19 filing this affidavit?

14:22:23 20 A. Well, I had -- I wrote up some stuff while I was in

14:22:26 21 prison, but I -- after I got out, that's when I spoke with him.

14:22:29 22 Q. Okay. Now, you said you wrote it up in prison; you

14:22:32 23 gave it to your mother?

14:22:32 24 A. Yes.

14:22:33 25 Q. Do you know what she was supposed to do with it?

14:22:35 1 A. Just to edit it, look for mistakes.

14:22:37 2 Q. How would she know?

14:22:38 3 A. I mean, like, you know, punctuation and stuff.

14:22:40 4 Q. Okay. And when did you receive this typed affidavit?

14:22:44 5 A. Um, I received that while I was in prison.

14:22:49 6 Q. Okay. And did the things you write -- wrote in your
14:22:52 7 handwritten letter, are they exactly the same as here, the
14:22:55 8 facts?

14:22:55 9 A. Yes. And some of the stuff wasn't necessary so they
14:22:58 10 left that out.

14:22:59 11 Q. What was that stuff?

14:23:00 12 A. I don't remember, but the -- I don't remember. It
14:23:03 13 wasn't factual.

14:23:04 14 Q. Well, what was it?

14:23:05 15 A. I can't recall.

14:23:09 16 Q. Did it have to do with what you were talking about,
14:23:11 17 the case and the transcript?

14:23:12 18 A. No, sir.

14:23:14 19 Q. Dustin told you to write about the transcript, right?

14:23:17 20 A. Yes, sir.

14:23:17 21 Q. And you wrote some stuff in there?

14:23:18 22 A. Yes.

14:23:19 23 Q. And then somebody -- you took it out?

14:23:22 24 A. We're just sticking to the facts. The facts, just to
14:23:24 25 keep it simple.

14:23:25 1 Q. Okay. Now, your criminal history, if I could just go
14:23:35 2 over your criminal convictions. I think they're all less than
14:23:40 3 10 years old. And just tell me, yes or no, whether these -- you
14:23:43 4 were convicted of those crimes. You're Cassie Jean Flowers;
14:23:47 5 date of birth 2/21/89?

14:23:51 6 A. Yes, sir.

14:23:53 7 Q. Convicted in Carteret County in May of 2007,
14:23:56 8 Misdemeanor Larceny?

14:23:59 9 A. Yes, sir.

14:24:01 10 Q. Speak up, please. Guilty on -- convicted on
14:24:04 11 January 28th, 2008, Resisting a Public Officer?

14:24:09 12 A. Yes, sir.

14:24:10 13 Q. Possession of Malt Beverage Under Age in -- on
14:24:14 14 August 2007?

14:24:15 15 A. Yes, sir.

14:24:20 16 Q. Possession of Stolen Goods, misdemeanor version, on
14:24:23 17 October 8th, 2008, in Carteret County?

14:24:25 18 A. Yes, sir.

14:24:29 19 Q. Assault Inflicting Serious Injury, convicted on
14:24:32 20 12/12/2008, in Carteret County?

14:24:34 21 A. Yes, sir.

14:24:37 22 Q. Another Misdemeanor Larceny conviction in Carteret
14:24:38 23 County on 10/10 -- I mean, I'm sorry -- 10/1/2010; is that
14:24:43 24 correct?

14:24:44 25 A. Yes, sir.

14:24:45 1 Q. And Mr. Lupton represented your whole entire history
14:24:49 2 in court, correct?

14:24:50 3 A. Yes, sir.

14:24:54 4 Q. Convicted of Shoplifting in Carteret County,
14:24:57 5 April 1st, 2013?

14:24:59 6 A. Yes, sir.

14:25:01 7 Q. Convicted of Possession of Drug Paraphernalia on
14:25:07 8 May -- I'm sorry -- April 1st, 2013?

14:25:11 9 A. Yes, sir.

14:25:14 10 Q. Convicted on -- of Maintaining a Vehicle or Dwelling
14:25:17 11 for the Purpose of Storing, Using or Selling Controlled
14:25:20 12 Substances, on October 9th, 2012?

14:25:24 13 A. Yes, sir.

14:25:27 14 Q. Convicted of Felonious Possession of Stolen Goods in
14:25:31 15 Carteret County on October 9th, 2012; correct?

14:25:34 16 A. Yes, sir.

14:25:37 17 Q. Felonious Breaking or Entering conviction, 4/16/2014,
14:25:39 18 in Carteret County?

14:25:44 19 A. Yes, sir.

14:25:44 20 Q. And you got a 10-to-12-month sentence; is that
14:25:46 21 correct?

14:25:47 22 A. Yes, sir.

14:25:47 23 Q. So that's what you would have been in jail on in
14:25:49 24 September of 2014, correct?

14:25:51 25 A. Yes, sir.

14:26:01 1 Q. Another conviction for Maintaining a Dwelling or
14:26:04 2 Vehicle for the Purpose of Using, Possessing or Selling
14:26:07 3 Controlled Substances, April 16, 2014?

14:26:11 4 A. Yes, sir.

14:26:12 5 Q. And at some point, you went down to Costa Rica; is
14:26:16 6 that right?

14:26:17 7 A. Yes, sir.

14:26:17 8 Q. When did you go down to Costa Rica?

14:26:20 9 A. I went to Costa Rica October 23rd -- was it 2016?

14:26:27 10 Q. And how long did you stay down there?

14:26:29 11 A. I stayed down there until February 3rd.

14:26:32 12 Q. February 3rd, 2017?

14:26:35 13 A. (Witness nods her head).

14:26:35 14 Q. And what would -- why did you go to Costa Rica?

14:26:38 15 A. I went to Costa Rica to get clean.

14:26:41 16 Q. Okay.

14:26:41 17 A. In a 90-day drug program.

14:26:43 18 Q. Okay. So you were a drug addict or drug user during
14:26:51 19 September of 2014, of course, right?

14:26:54 20 A. Yes, sir. I was in active addiction.

14:26:57 21 Q. And how often would you use?

14:27:00 22 A. All day, every day.

14:27:01 23 Q. All day, every day. And you said it was Xanax and
14:27:03 24 meth?

14:27:04 25 A. Yes, sir.

14:27:04 1 Q. And what effect would it have on your ability to
14:27:07 2 recall things?

14:27:09 3 A. Quite a lot.

14:27:10 4 Q. And you said you slept most of the time?

14:27:13 5 A. Yes, sir.

14:27:13 6 Q. So if somebody had come by your house -- and just come
14:27:15 7 by your house -- you wouldn't have heard it, but you said your
14:27:20 8 dog would have heard it?

14:27:21 9 A. Yes, sir. My doors are always locked.

14:27:24 10 Q. Okay. Again -- I understand that. But you're -- what
14:27:29 11 you're saying is that since the dog didn't wake you up, you
14:27:33 12 concluded that no one came by, correct?

14:27:36 13 A. Yes. Nobody came by my house. I'm a hundred percent
14:27:39 14 sure.

14:27:39 15 Q. Why is that, if you were asleep?

14:27:42 16 A. I would have woken up. That's for sure.

14:27:45 17 Q. Why would you have woken up?

14:27:46 18 A. Because they would have knocked at the door, my dog
14:27:48 19 would have(demonstrating). He would have started barking.

14:27:50 20 Q. Okay. So essentially, you're relying on the dog to
14:27:53 21 wake you up if someone's at your door; is that your testimony?

14:27:55 22 A. Well, dog or not, I would have woken up.

14:27:58 23 Q. Okay. Did they say -- did the transcript say they
14:28:00 24 pounded on your door?

14:28:02 25 A. No, sir.

14:28:02 1 Q. Did they say they knocked on your door?

14:28:03 2 A. They said they came in the house.

14:28:05 3 Q. They said they came in?

14:28:06 4 A. My doors are definitely locked. This is Willis's

14:28:08 5 Trailer Park we're taking about.

14:28:12 6 Q. So it was a trailer?

14:28:13 7 A. Yes.

14:28:14 8 Q. Dustin ever have a key to it?

14:28:15 9 A. No, definitely not.

14:28:17 10 Q. Ever?

14:28:17 11 A. No, sir.

14:28:18 12 Q. Ever use a key?

14:28:18 13 A. No, sir.

14:28:18 14 Q. Never used it?

14:28:19 15 A. No, sir.

14:28:20 16 Q. Ever use your car?

14:28:21 17 A. Yes. He used my car.

14:28:22 18 Q. Was your -- was your house key on the -- on the key

14:28:24 19 ring?

14:28:24 20 A. No. No, sir.

14:28:25 21 Q. It was a separate key?

14:28:26 22 A. Yes. I kept it in my pocket at all times.

14:28:28 23 Q. Okay. Now, when you came back, why did -- why did you

14:28:30 24 come back from Costa Rica?

14:28:32 25 A. Well, I came back to -- to spend my birthday with my

14:28:37 1 family, and my father passed away that day.

14:28:42 2 Q. What, on the 3rd?

14:28:43 3 A. Yes, sir.

14:28:44 4 Q. And so his funeral arrangements were done the
14:28:47 5 subsequent week; is that correct?

14:28:49 6 A. Yes, sir.

14:28:49 7 Q. And so you just got back to Carteret County, and you
14:28:54 8 were -- you actually got new charges and pled guilty to those
14:28:58 9 charges while you came back for that short period of time,
14:29:00 10 correct?

14:29:01 11 A. What were those charges?

14:29:02 12 Q. Well, they were Simple Possession of a Schedule-IV
14:29:05 13 Controlled Substance, a date of offense -- well, actually,
14:29:09 14 pending warrants. 2/15 of 2017 you took care of that with
14:29:14 15 Mr. Lupton in court, correct?

14:29:15 16 A. Yes, sir. That happened before I went.

14:29:16 17 Q. Okay.

14:29:16 18 A. I didn't take care of it until after.

14:29:18 19 Q. Okay.

14:29:18 20 A. I remember.

14:29:19 21 Q. I got it. So while you were here, you took care of
14:29:22 22 these court dates?

14:29:23 23 A. Yes, sir.

14:29:28 24 Q. And you have a conviction out of Craven County for
14:29:33 25 Obtaining Property by False Pretenses that occurred on

14:29:36 1 6/26/2014, correct?

14:29:38 2 A. Yes, sir.

14:29:39 3 Q. And a District Court conviction for Assault with a
14:29:43 4 Deadly Weapon, conviction date 6/27/2014, correct?

14:29:48 5 A. Yes, sir.

14:29:49 6 Q. So you're in jail; they brought you back to plead to
14:29:52 7 those while you were in jail?

14:29:54 8 A. Yes, sir.

14:29:54 9 MR. SPENCE: That's all I have.

14:30:12 10 THE COURT: Any redirect?

14:30:13 11 MR. MEGARO: Your Honor, before Mr. Spence concludes
14:30:16 12 his cross-examination, my client just handed me photocopies that
14:30:20 13 he had in his folder of the handwritten statement of
14:30:22 14 Ms. Flowers. It's not signed. And I also have one from
14:30:26 15 Mr. Thomas. I didn't have these prior. And I think in all
14:30:29 16 fairness, Mr. Spence should be allowed to look at them. Like I
14:30:32 17 say, there doesn't appear to be anything materially different
14:30:35 18 other than just long-windedness, but I'll hand these up.

14:30:38 19 THE COURT: He can take a look at them while you
14:30:40 20 conduct any redirect that you want to conduct.

14:30:43 21 MR. MEGARO: Thank you.

14:30:43 22 THE COURT: And then I'll let you re-cross if you find
14:30:46 23 it's necessary.

14:30:47 24 MR. SPENCE: Yes, sir.

14:30:48 25 MR. MEGARO: One moment, please.

14:30:48 1 (Mr. Megaro confers with his client.)

14:30:50 2 MR. MEGARO: Judge, I have no redirect for

14:30:58 3 Ms. Flowers. But if Mr. Spence has additional questions based

14:31:01 4 on these of pieces of paper, I'm fine with it.

14:31:04 5 THE COURT: Thank you, sir.

14:31:04 6 (Mr. Spence examines documents.)

14:31:13 7 MR. SPENCE: Is it back to me?

14:31:41 8 THE COURT: Yes, sir.

14:31:41 9 (State's Exhibit MAR Number [1] marked for

14:31:41 10 identification.)

14:31:41 11 **EXAMINATION BY MR. SPENCE**

14:31:41 12 Q. Ms. Flowers, I'm going to mark for identification this

14:31:46 13 handwritten document -- I think it's four pages -- as State's

14:31:51 14 Exhibit [1] -- State's MAR Exhibit [1]. I'm going to hand you

14:32:14 15 this and ask you if you can identify that.

14:32:17 16 A. Yes. This is my handwriting. I wrote this.

14:32:20 17 Q. And when did you write that?

14:32:23 18 A. Let's see. I don't know the exact date, but while I

14:32:27 19 was incarcerated.

14:32:28 20 Q. Okay. Hand that back. But this is your handwriting?

14:32:32 21 A. Yes, sir.

14:32:32 22 Q. And did you -- is this -- is this the handwritten

14:32:38 23 thing you wrote?

14:32:39 24 A. Yes, sir.

14:32:39 25 Q. Why did you put this caption on it, this legal

14:32:42 1 caption, on some handwritten note that you did?

14:32:45 2 A. I'm not sure. Just to make it look like a court
14:32:48 3 document.

14:32:48 4 Q. Make it look official?

14:32:50 5 A. Yes, sir. I guess.

14:32:55 6 Q. And, again, let me just go down there. And you
14:33:03 7 said -- you said, "I, Cassie Jean Flowers, being at least 18
14:33:08 8 years of age and of sound mind, after first being duly sworn,
14:33:12 9 does depose and state the following:" Did you write that?

14:33:15 10 A. Yes, sir.

14:33:15 11 Q. Why did you write those words if you were just going
14:33:18 12 to write a letter about what happened?

14:33:19 13 A. To make it look like a court document.

14:33:21 14 Q. Did you -- well, did you know those words?

14:33:24 15 A. Yes.

14:33:24 16 Q. "After being fully -- being duly sworn does depose and
14:33:31 17 state the following." You knew how to put that down in a
14:33:34 18 letter?

14:33:34 19 A. Yes, sir.

14:33:34 20 Q. You say, "I am currently incarcerated at the North
14:33:40 21 Carolina Department of Corrections located at Maury, North
14:33:43 22 Carolina"?

14:33:44 23 A. Yes, sir.

14:33:44 24 Q. You wrote that down? Did you write all these numbers
14:33:47 25 down and these paginations and margins, stuff like that, all

14:33:51 1 that by yourself?

14:33:52 2 A. Just little paragraphs and numbers. Yes, sir.

14:33:54 3 Q. So this is how it went to Dustin's mother, just like
14:33:57 4 this?

14:33:57 5 A. To my mother, yes.

14:33:59 6 Q. To your mother?

14:34:01 7 A. Yes.

14:34:01 8 Q. So this was the only thing -- there's not another
14:34:04 9 writing anywhere that went to your mother about this?

14:34:08 10 A. No. No, sir.

14:34:08 11 Q. Okay. It says, "I am and was a willing witness in
14:34:12 12 Dustin Warren's case, but I was not given the opportunity to
14:34:15 13 testify at the trial despite a court order writ of habeas corpus
14:34:19 14 that was issued by the judge to have me brought to trial from
14:34:21 15 the Department of Corrections." You wrote that?

14:34:24 16 A. Yes, sir.

14:34:24 17 Q. How did you learn all this legal language?

14:34:27 18 A. It's a prison. There's plenty of legal help there.

14:34:30 19 Q. So did you -- did you use someone to guide you?

14:34:33 20 A. Yes.

14:34:34 21 Q. What -- and who gave you that?

14:34:35 22 A. The other girls there, the women there that had been
14:34:38 23 through the same thing.

14:34:38 24 Q. The same thing what?

14:34:40 25 A. The same -- this kind of -- a Motion of Appropriate

14:34:42 1 Relief and --

14:34:42 2 Q. Trying to help somebody else out?

14:34:45 3 A. Yes.

14:34:45 4 Q. So they told you how to write an affidavit up?

14:34:48 5 A. Yes, sir.

14:34:48 6 Q. Did they tell you what to say in it?

14:34:50 7 A. No, that's -- that was me.

14:34:51 8 Q. Okay. You've had no communication with Dustin Warren

14:35:05 9 since December of 2013, correct?

14:35:09 10 A. Yes, sir.

14:35:10 11 Q. But he communicated with you in December of 2014?

14:35:12 12 A. In 2015, when I was in Raleigh in prison.

14:35:18 13 Q. 2015 or '14?

14:35:20 14 A. It was '15. Whatever that says.

14:35:22 15 Q. This says '14.

14:35:24 16 A. Does it? Well, that's when he commun -- he sent me a

14:35:26 17 Christmas card with some transcripts.

14:35:30 18 Q. Well, the trial was in September. Did he have the

14:35:32 19 transcripts before then?

14:35:34 20 A. Well, he had them at that time.

14:35:56 21 Q. So you were home alone, and if anyone had come to your

14:35:59 22 house, your dog Rusty would have barked to warn you?

14:36:03 23 A. Yes, sir. I would have woken up. Yes, sir.

14:36:05 24 Q. Okay. You write -- or you said in this that, "There's

14:36:12 25 never been any ingredients to make homemade drugs in your home."

14:36:16 1 Is that correct?

14:36:17 2 A. That's correct. Not for the use of making drugs.

14:36:19 3 Yes, sir.

14:36:22 4 Q. But there have been drug ingredients in your home,
14:36:25 5 paraphernalia?

14:36:27 6 A. Paraphernalia.

14:36:27 7 Q. Okay. Are you familiar how meth is made?

14:36:33 8 A. No, sir. Not at that time.

14:36:38 9 Q. It says, "Sleet, snow and ice, because subzero
14:36:41 10 temperatures made travel extremely dangerous in the hours of
14:36:44 11 January 29th, 2014." Is that correct?

14:36:46 12 A. Yes, sir.

14:36:47 13 Q. Said, "And the bridge was closed," right?

14:36:48 14 A. Yes, sir.

14:36:48 15 Q. You knew where Mark Thomas lived at that time?

14:36:51 16 A. No, sir.

14:36:52 17 Q. So it would not have been possible for him to drive
14:36:56 18 his car from Morehead to Atlantic Beach on those days, would it?

14:36:59 19 A. Not unless he was already at the Beach.

14:37:02 20 Q. You couldn't get over the bridge, right?

14:37:04 21 A. Yes, sir.

14:37:04 22 Q. So if he says he drove from Morehead to Atlantic Beach
14:37:07 23 on those two days to visit Anique Pittman, that would not be
14:37:13 24 true, would it?

14:37:13 25 A. If he was already from Morehead to the Beach?

14:37:17 1 Q. Yes. If he -- if he drove over there on those days
14:37:20 2 when the bridge was closed.

14:37:22 3 A. Maybe -- maybe if he had a two -- a four-wheel-drive
14:37:25 4 vehicle. But I know I wasn't going to take my two-wheel-drive
14:37:26 5 over it.

14:37:26 6 Q. Okay. But you said -- you said the bridge was closed.

14:37:32 7 A. Yes. There's people who would still drive over it,
14:37:36 8 but it was closed.

14:37:37 9 MR. SPENCE: Offer State's MAR [1] into evidence, just
14:37:44 10 to --

14:37:44 11 THE COURT: Any objection?

14:37:44 12 MR. MEGARO: No, Your Honor.

14:37:46 13 MR. SPENCE: -- corroborate whatever it was.

14:37:48 14 THE COURT: It is received. Madame Clerk will make a
14:37:50 15 copy so that the defendant may get another copy.

14:37:54 16 (State's Exhibit MAR Number [1] received in
14:37:54 17 evidence.)

14:37:55 18 MR. MEGARO: Thank you.

14:37:59 19 MR. SPENCE: That's all.

14:37:59 20 THE COURT: Any redirect?

14:37:59 21 MR. MEGARO: No, Your Honor. Thank you.

14:38:01 22 THE COURT: Thank you, ma'am. You may stand down.

14:38:02 23 (The witness stepped down from the witness
14:38:02 24 stand.)

14:38:02 25 THE COURT: Call your next witness.

14:38:04 1 MR. MEGARO: Defense would call Mark Thomas.

14:39:14 2 THE COURT: All right. If you would, please, Madame
14:39:15 3 Clerk, swear the witness.

14:39:17 4 (The witness was duly sworn.)

14:39:27 5 (The witness took the witness stand.)

14:39:27 6 THE COURT: You may inquire.

14:39:27 7 MR. MEGARO: Thank you, Your Honor.

14:39:27 8

14:39:27 9 **MARK THOMAS,**

14:39:27 10 having been first duly sworn, at 2:39 p.m. was called as a
14:39:27 11 witness on behalf of the Defendant and testified as follows:

14:39:27 12 **DIRECT EXAMINATION BY MR. MEGARO**

14:39:42 13 Q. Mr. Thomas, are you currently incarcerated?

14:39:44 14 A. Yes, sir.

14:39:45 15 Q. In which prison are you currently housed in?

14:39:48 16 A. I'm in Marion. Marion Correctional.

14:39:52 17 Q. Now, I want to -- by the way, what is your release
14:39:56 18 date of your current sentence?

14:39:59 19 A. January 31st, '21.

14:40:02 20 Q. Thank you. Mr. Thomas, how do you know Dustin Warren?

14:40:09 21 A. He's a good friend of mine. I really don't know
14:40:13 22 Dustin all as much as I do his brother. I was -- his brother
14:40:16 23 was, like, my best friend. That's how I came to meet Dustin.
14:40:20 24 We had a brief relationship. I have only known him maybe a
14:40:25 25 year, year and a half.

14:40:26 1 Q. Okay, sir. I want to draw your attention now to
14:40:30 2 January 29th, 2014. Were you in the company of Mr. Warren on
14:40:34 3 that date?

14:40:35 4 A. Yes, sir.

14:40:35 5 Q. Okay. And when did you leave his company on
14:40:41 6 January 29th, 2014?

14:40:44 7 A. I'm assuming it would be when we got arrested.

14:40:47 8 Q. You were both arrested together?

14:40:49 9 A. Yes, sir.

14:40:49 10 Q. And was it at that point that you two were separated?

14:40:51 11 THE COURT: Hold on one second. There's somebody back
14:40:55 12 there talking.

14:40:57 13 THE SHERIFF: I think it's -- they're working on
14:40:58 14 the --

14:40:58 15 THE COURT: Oh, it is?

14:40:58 16 THE SHERIFF: Yeah. I think they're up --

14:41:00 17 THE BAILIFF: I think they're in the attic.

14:41:02 18 THE COURT: All right. I beg your pardon. You may
14:41:04 19 continue, sir.

14:41:05 20 BY MR. MEGARO

14:41:05 21 Q. Since January 29th -- I'm sorry. Were you arrested on
14:41:13 22 January 29th, 2014, or January 30th, 2014?

14:41:19 23 A. I'm not -- no --

14:41:19 24 Q. Okay.

14:41:19 25 A. -- 100 percent sure neither. The same day -- whatever

14:41:21 1 date Dustin was arrested. We was both arrested at the same
14:41:25 2 time. Different charges, but the same time.

14:41:26 3 Q. All right. What were you arrested for on that date?

14:41:28 4 A. Um, Larceny of a Motor Vehicle, or Possession of a
14:41:34 5 Stolen Motor Vehicle.

14:41:35 6 Q. Possession of a?

14:41:36 7 A. Stolen Motor Vehicle.

14:41:37 8 Q. Okay. Just, if you could, keep your voice up.

14:41:40 9 A. Yes, sir.

14:41:40 10 Q. I'm having a little trouble hearing you. And did
14:41:44 11 whatever you were arrested for, did that have anything to do
14:41:47 12 with what --

14:41:47 13 A. Nothing at all.

14:41:48 14 Q. -- Mr. Warren was arrested for?

14:41:49 15 A. Nothing at all.

14:41:50 16 Q. Were you ever charged with anything that Mr. Warren
14:41:53 17 had been --

14:41:53 18 A. No, sir.

14:41:53 19 Q. -- arrested and charged with?

14:41:56 20 A. Nothing.

14:41:58 21 Q. When was the last time -- when was the next time that
14:42:00 22 you saw Dustin Warren?

14:42:01 23 A. Today.

14:42:02 24 Q. So you haven't seen him since January 2014 until
14:42:05 25 today?

14:42:06 1 A. No.

14:42:09 2 Q. Mr. Thomas, when you were arrested on January 29th or
14:42:13 3 30th, 2014, were you incarcerated for the remainder of that
14:42:17 4 year?

14:42:18 5 A. No. I --

14:42:21 6 Q. -- were you released --

14:42:21 7 COURT REPORTER: I'm sorry. I didn't hear you.

14:42:21 8 THE WITNESS: No, I -- I was not.

14:42:21 9 BY MR. MEGARO

14:42:21 10 Q. Okay.

14:42:23 11 A. I got out. I got out that same day.

14:42:26 12 Q. All right.

14:42:26 13 A. And I was re-arrested in March. I have been locked up
14:42:29 14 since March.

14:42:30 15 Q. March of 2014?

14:42:31 16 A. 2014.

14:42:32 17 Q. And is that for the sentence that you're currently
14:42:34 18 serving?

14:42:35 19 A. Yes, sir.

14:42:36 20 Q. So if you were arrested in March of 2014, were you
14:42:39 21 incarcerated in September of 2014?

14:42:43 22 A. Yeah.

14:42:43 23 Q. Were you incarcerated? Do you know?

14:42:47 24 A. September, I think I was in Pender.

14:42:50 25 Q. Pender?

14:42:50 1 A. No, no. I was sent -- I was -- I was still in
14:42:52 2 Guilford County Jail.

14:42:53 3 Q. At the Guilford County Jail?

14:42:55 4 A. Yes, sir. In September of 2014.

14:42:56 5 Q. Did you have charges pending?

14:42:57 6 A. Yes.

14:42:58 7 Q. All right. Did you ever have the opportunity to speak
14:43:03 8 with a Ms. Ann Scadden regarding Dustin Warren?

14:43:08 9 A. Yes, I did.

14:43:08 10 Q. And was it your understanding that Ms. Scadden was an
14:43:12 11 investigator from Mr. Warren's defense attorney?

14:43:14 12 A. Yes.

14:43:14 13 Q. When you spoke with Ms. Scadden, did you give her
14:43:17 14 information regarding the case?

14:43:18 15 A. Yes.

14:43:19 16 Q. And did she ask you questions about what you knew?

14:43:24 17 A. I vaguely remember that. I don't -- she didn't ask
14:43:27 18 very much. She said that somebody would be getting back in
14:43:30 19 touch with me.

14:43:30 20 Q. Okay. Did anyone ever get back in touch with you?

14:43:34 21 A. No.

14:43:34 22 Q. Did anyone visit you at the Guilford County Jail --

14:43:37 23 A. No.

14:43:37 24 Q. -- prior to September 2014, other than Ms. Scadden, to
14:43:42 25 speak to you regarding your --

14:43:43 1 A. No.

14:43:43 2 Q. -- information? Where did you meet with Ms. Scadden?

14:43:47 3 A. Here at the Public Defender's Office.

14:43:49 4 Q. Okay.

14:43:50 5 A. Or somewhere right here in the back of the courthouse.

14:43:52 6 Q. Okay. So at this building, you believe?

14:43:54 7 A. Yeah.

14:43:55 8 Q. And when was that; do you remember?

14:43:58 9 A. Within two or three days of Dustin being arrested.

14:44:00 10 Q. Okay. Did you ever speak -- other than Ms. Scadden,

14:44:07 11 did you ever speak with any attorneys regarding Dustin Warren's

14:44:11 12 case?

14:44:11 13 A. No.

14:44:12 14 Q. Did anyone ever contact you by letter, by telephone,

14:44:16 15 or send a message through somebody else --

14:44:18 16 A. No.

14:44:19 17 Q. -- that they needed to speak to you about this?

14:44:21 18 A. No.

14:44:22 19 Q. Who was the first attorney that you spoke to regarding

14:44:24 20 Dustin Warren's case?

14:44:25 21 A. You.

14:44:26 22 Q. And do you recall when that was?

14:44:27 23 A. Today.

14:44:28 24 Q. Prior to today?

14:44:29 25 A. Yeah. I mean, you sent me notifications that we had

14:44:34 1 the trial or we might be coming for this hearing or whatever.

14:44:37 2 Q. Okay.

14:44:38 3 A. But as far as speaking to you personally? Today.

14:44:41 4 Q. Did there come a point in time when Dustin Warren sent
14:44:46 5 you any information as to -- to review anything regarding this
14:44:50 6 case?

14:44:50 7 A. Yes.

14:44:51 8 Q. And when was that, if you recall?

14:44:57 9 A. It would probably be in 2015.

14:45:00 10 Q. All right.

14:45:01 11 A. Maybe when I was -- I was at Burgaw. I was at Pender
14:45:05 12 Correctional then.

14:45:05 13 Q. All right.

14:45:05 14 A. I think this is after he had already acquired you.

14:45:08 15 Q. After -- I'm sorry?

14:45:09 16 A. After he had already spoke with you. He had you in
14:45:12 17 his -- in his case or whatever.

14:45:13 18 Q. Okay. Did -- and what did Mr. Warren ask you to do?

14:45:16 19 A. He just asked me, would I be willing to testify to
14:45:20 20 what happened that night, you know what I mean. The events and
14:45:23 21 everything that happened.

14:45:24 22 Q. And can you tell the Court what happened that night
14:45:26 23 that you were in Mr. Warren's company?

14:45:29 24 A. Yeah.

14:45:30 25 Q. Go ahead.

14:45:31 1 A. Um, well, it started out, I called Dustin. Because me
14:45:36 2 and my wife was arguing, I needed a place to stay. So I called
14:45:39 3 him up, and I don't know what he was doing. He was busy. He
14:45:44 4 was doing something. But he has his girlfriend come and pick me
14:45:47 5 up. She picked me up in Newport around -- I think it was
14:45:51 6 Paradise East. I was at another friend's house. She picked me
14:45:54 7 up, and we went to her apartment or condo -- it's called A Place
14:45:59 8 At The Beach on Atlantic Beach -- and waited for Dustin to show
14:46:04 9 up.

14:46:04 10 Before we got there we stopped at the Harris Teeter
14:46:08 11 right there in Morehead City, and we bought some food and we
14:46:10 12 bought hot dogs, chips, drinks, stuff like that. And we went
14:46:15 13 back to her condo, waited for Dustin. He got there -- I don't
14:46:20 14 know, maybe an hour later, something like that. We cooked, hung
14:46:24 15 out for a little bit, that was it. I mean, he went to bed. I
14:46:28 16 hung out in the living room.

14:46:34 17 Q. Were you ever in the company of the young lady named
14:46:36 18 Cassie Jean Flowers on that evening?

14:46:38 19 A. No.

14:46:39 20 Q. Do you know who that person is?

14:46:40 21 A. I don't personally know her at all. I mean, I have
14:46:43 22 seen her around, but I don't know her.

14:46:45 23 Q. Okay. You're acquainted with her, or --

14:46:48 24 A. Not really.

14:46:49 25 Q. -- exchange words with her? Hello? Anything?

14:46:51 1 A. No. I mean, we're Facebook friends, but I mean,
14:46:54 2 that's pretty-much it.

14:46:54 3 Q. Have you ever socialized with her?

14:46:57 4 A. No.

14:46:58 5 Q. Hung out? Have you ever been to her home?

14:47:00 6 A. I -- I have, but not for her. I do construction work,
14:47:03 7 and I actually replaced some shingles on her house for her dad,
14:47:07 8 you know what I mean.

14:47:08 9 Q. Okay. But that was in a professional capacity?

14:47:11 10 A. Yeah. Yeah.

14:47:11 11 Q. So, not like you were hanging out with her?

14:47:14 12 A. Yeah. See, I don't even think she was there.

14:47:16 13 Q. Okay.

14:47:16 14 A. I don't even think she was there.

14:47:18 15 Q. On the night of January 29, 2014, did you at any point
14:47:21 16 in time go with Dustin Warren to Cassie Flowers's --

14:47:23 17 A. No.

14:47:23 18 Q. -- home? At any point in time on December -- I'm
14:47:27 19 sorry. Are you familiar with the woman named Heather Kennon?

14:47:31 20 A. Yes.

14:47:33 21 Q. Did you see her on January 29th, 2014?

14:47:35 22 A. Yes.

14:47:36 23 Q. Can you tell the Court how you -- under what
14:47:38 24 circumstances you saw her?

14:47:42 25 A. She came in. Dustin and Anique was already in the

14:47:46 1 bedroom, and Dustin had told me she was outside. I guess she
14:47:49 2 was waiting for somebody to come pick her up.

14:47:52 3 Q. By the way, where was this?

14:47:53 4 A. A Place At The Beach, Anique's condo.

14:47:55 5 Q. Anique's condo?

14:47:56 6 A. Yes, sir.

14:47:56 7 Q. Okay. Go ahead. I'm sorry.

14:47:58 8 A. And I was in -- I was in the living room, Dustin and
14:48:00 9 Anique was in the bedroom, and Heather came in. We talked a
14:48:05 10 little bit, you know what I'm saying. She was -- she was
14:48:08 11 wanting me to do something for her, like, she was having
14:48:11 12 problems.

14:48:12 13 She was -- we -- we was -- me and Heather was doing
14:48:14 14 drugs, and she was having a problem with hers or whatever. And
14:48:17 15 so she asked me to do her a favor and I wouldn't, so she left.

14:48:23 16 And I just continued. I was on the -- on the phone,
14:48:24 17 arguing back and forth with my wife. I guess -- I don't know.
14:48:28 18 A little bit of time went by, an hour maybe. She came back in.
14:48:32 19 She kept going in and out, in and out.

14:48:35 20 Q. And when you say she kept going in and out, are you
14:48:38 21 referring to leaving --

14:48:39 22 A. Yeah --

14:48:39 23 Q. -- the condo?

14:48:39 24 A. -- leaving -- leaving the condo.

14:48:40 25 Q. Okay.

14:48:40 1 A. She kept, like, because the night -- the door, if you
14:48:45 2 didn't turn the handle to the door, it would open itself. You
14:48:47 3 know what I'm saying. Like, the little catch, the lock, would
14:48:49 4 not lock. You had to actually twist it to get it to lock. And
14:48:53 5 she kept running in and out, and she wouldn't twist the door, so
14:48:56 6 that the door would swing open.

14:48:57 7 I mean, it was January 29th. So it was -- it was
14:49:00 8 snowing. It had been showing for, like, two or three days. It
14:49:03 9 was cold. And I kept hearing the door banging, banging,
14:49:06 10 banging. So I'd go back over there and I'd shut the door, and
14:49:09 11 then I'd come back in, she would run back in, you know what I'm
14:49:12 12 saying, and she would leave out again, she'd leave the door open
14:49:15 13 again. So finally, I locked the door.

14:49:16 14 Q. What time was that?

14:49:17 15 A. 1, 2`o'clock.

14:49:22 16 Q. A.M.?

14:49:23 17 A. Yeah. Yeah. Maybe -- probably about 2`o'clock.

14:49:25 18 Because I think she had -- yeah. She had -- she had asked me to
14:49:28 19 take her somewhere. I don't have no license, you know, so I
14:49:31 20 woke Dustin up. I was trying to get rid of her, you know what
14:49:35 21 I'm saying. She was getting on my nerves. You know what I
14:49:36 22 mean. She was pretty-much on her own. She was doing her own
14:49:39 23 thing. Nobody was really associating with her. You know what I
14:49:41 24 mean. Dustin and Anique was in the bedroom. I was in the
14:49:43 25 living room arguing back and forth on the phone with my wife.

14:49:46 1 So, I mean, I was just trying to get rid of her.

14:49:50 2 Dustin told me to take her wherever she wanted to go, but I
14:49:53 3 didn't want to drive, you know what I mean. So I just told her
14:49:56 4 I couldn't do it.

14:49:56 5 Q. Okay. And after you locked the door between 1 or -- 1
14:50:02 6 or 2:00`a.m., did you hear from Heather Kennon again?

14:50:06 7 A. No.

14:50:06 8 Q. Okay.

14:50:08 9 A. I went to sleep a little bit after that.

14:50:10 10 Q. All right. What was the next thing you knew when you
14:50:14 11 woke up?

14:50:15 12 A. I got up that morning; Dustin was still asleep. I
14:50:20 13 woke up, and I was in there by myself, smoked my last cigarette.
14:50:24 14 And finally Dustin got up. When he got up I asked him to take
14:50:28 15 me to the store to get some cigarettes, and I told him I'd buy
14:50:31 16 his breakfast. I offered to buy breakfast for us.

14:50:34 17 Q. Okay.

14:50:34 18 A. And we left. We went to the -- we went to the store,
14:50:38 19 but that's when we seen the incident at the Seashore Motel. And
14:50:43 20 so we went across the street to see what was going on. That's
14:50:45 21 when I -- I didn't even know that's where she was at.

14:50:48 22 I remember he said, you know, there was a motel key
14:50:51 23 laying in his car seat, and we -- first of all, when we left
14:50:54 24 to -- the apartment that morning to go to McDonald's, when we
14:50:58 25 walked out there, the passenger's side window where I was

14:51:01 1 getting in was probably about halfway down, and, I mean, the car
14:51:05 2 looked like somebody had been having a little party in there,
14:51:07 3 you know what I mean. And there was a motel key, whatever, and
14:51:11 4 so Dustin said we needed to go pick up Heather. After we --
14:51:15 5 after we eat breakfast we need to go pick up Heather. Because
14:51:17 6 it's only, like, 9`o'clock, you know what I mean. Hotel, I
14:51:19 7 think, check-out time is, like, 11 or something like that.

14:51:22 8 So we get in the car. After he cleans up a little bit
14:51:26 9 we get in the car and we're going down the road, we pull into
14:51:29 10 the Kangaroo -- I think it's Kangaroo -- it might be a Scotch
14:51:32 11 Man. I don't know. But we pulled in there to get cigarettes
14:51:34 12 and we seen all the commotion across the street at the -- at the
14:51:37 13 motel.

14:51:38 14 And that's when I found out that the motel Heather was
14:51:42 15 at was that -- at the Seashore. And so we pulled over there to
14:51:45 16 check on her. You know, he was checking -- he was worried about
14:51:49 17 her he seemed like, and that's when everything just -- we got
14:51:53 18 swarmed.

14:51:54 19 Q. Okay. At any pint in time on January 29th, 2014, did
14:52:02 20 you, Dustin Warren, and Anique Pittman ever participate in
14:52:05 21 manufacturing methamphetamine?

14:52:06 22 A. No. No.

14:52:08 23 Q. Combining chemicals together?

14:52:09 24 A. No.

14:52:09 25 Q. Mixing chemicals? Anything like that?

14:52:12 1 A. No.

14:52:14 2 Q. Was Heather Kennon at the condo when you woke up the
14:52:18 3 next morning?

14:52:19 4 A. No.

14:52:19 5 Q. Did you see her or hear from her at any point in time
14:52:22 6 from the time that you locked the front door at 2:00`a.m. --

14:52:25 7 A. No.

14:52:25 8 Q. -- until the following morning when you were picked up
14:52:27 9 by the police?

14:52:28 10 A. No.

14:52:29 11 Q. All right. Now, going back to the night before, did
14:52:40 12 Dustin ever call you to tell you he was on his way over to
14:52:44 13 Anique Pittman's condo?

14:52:50 14 A. I can't say for sure. I called him and asked him to
14:52:55 15 come -- if I could come stay with him. And like I said, I don't
14:52:58 16 know what he was doing, but Anique was right down the road from
14:53:02 17 where I was at. So she was close -- closer to picking me up
14:53:05 18 than he would have been. So he's like, "I'm going to send
14:53:08 19 Anique to pick you up," he's like, "and I'll be there shortly."

14:53:10 20 I think -- I'm -- I'm pretty sure we -- we did have
14:53:13 21 some kind of contact afterwards, maybe at the grocery store when
14:53:15 22 we was getting something to eat. I might have called and asked
14:53:18 23 him what he wanted, you know, or something like that. I don't
14:53:19 24 know.

14:53:19 25 Q. Well, let me ask you, would reviewing your affidavit

14:53:23 1 refresh your memory as to the content of your conversation with
14:53:26 2 Dustin Warren before you saw him on the night of January 29th,
14:53:29 3 2014?

14:53:30 4 A. Yeah. I mean, that should -- that would be fine.

14:53:32 5 MR. MEGARO: Your Honor, may I approach the witness?

14:53:34 6 THE COURT: You may.

14:53:35 7 BY MR. MEGARO

14:53:40 8 Q. And if you can, please take a look at this document.

14:53:43 9 I'm going to direct your attention to paragraph number four.

14:53:46 10 Just take a look at it and look up when you're done.

14:53:50 11 A. Oh, yeah, yeah, yeah. Yeah.

14:53:51 12 Q. Okay.

14:53:51 13 A. That's right. He did -- we did -- I don't know if he
14:53:54 14 called me or if I called him. That was probably when we was at
14:53:56 15 the -- at the grocery store.

14:53:58 16 Q. Okay.

14:53:58 17 A. You know, and he did say he had to drop her off.

14:54:01 18 That's right.

14:54:01 19 Q. When you say "he" you're talking --

14:54:03 20 A. Yeah. Dustin said he had to drop Heather off at the
14:54:06 21 motel first, and then he would meet us there, at Anique's condo.

14:54:09 22 Q. Okay. Did he -- during that conversation, did he ever
14:54:13 23 tell you that he was going -- tell you anything about going into
14:54:16 24 the room with Heather or doing --

14:54:17 25 A. No.

14:54:17 1 Q. -- anything inside the room with her?

14:54:19 2 A. No. He just said he had to drop her off and he'd be
14:54:23 3 right there.

14:54:23 4 Q. Okay. And how long after you spoke to Dustin did you
14:54:25 5 see him over at Anique Pittman's condo?

14:54:28 6 A. It couldn't have been long. I mean, it was -- all
14:54:30 7 this happened, it was still -- I want to say it was still
14:54:33 8 daylight.

14:54:34 9 Q. Okay.

14:54:35 10 A. From the time she picked me up and we went to the --
14:54:37 11 she picked me up in Newport, we came through Morehead, stopped
14:54:40 12 at the grocery store and went straight to her apartment. Dustin
14:54:42 13 was right behind us, maybe 30, 45 minutes at the most.

14:54:47 14 Q. Do you recall about what time it was?

14:54:49 15 A. Like I said, it was still daylight. So this time of
14:54:52 16 year, it would have to be before 5`o'clock.

14:54:54 17 Q. Okay. Do you recall whether the bridge to Atlantic
14:54:57 18 Beach was open or closed?

14:54:59 19 A. It was -- it was definitely opened. I mean, we didn't
14:55:01 20 go all the way to Emerald Isle to come back around. We went
14:55:05 21 from Morehead City straight across the bridge.

14:55:07 22 Q. Did you see any other cars on the bridge when you
14:55:09 23 passed over the bridge?

14:55:10 24 A. That, I can't tell you. I mean, it's been a long
14:55:12 25 time. But I can tell you that we went across the bridge.

14:55:15 1 MR. MEGARO: Okay. Thank you. No further questions
14:55:21 2 for Mr. Thomas, Your Honor.

14:55:23 3 THE COURT: Cross-examination, Mr. Spence?

14:55:25 4 MR. SPENCE: Yes, sir.

14:55:25 5 **CROSS-EXAMINATION BY MR. SPENCE**

14:55:25 6 Q. What were you -- what's -- what were you serving a
14:55:27 7 sentence for? What are you serving a sentence for right now?

14:55:30 8 A. I'm serving a sentence for Robbery with a Dangerous
14:55:33 9 Weapon.

14:55:34 10 Q. Out of Guilford County?

14:55:35 11 A. Yes, sir.

14:55:35 12 Q. How many different robberies? Three?

14:55:37 13 A. No, sir.

14:55:38 14 Q. One?

14:55:39 15 A. One robbery. One Robbery With a Dangerous Weapon, and
14:55:44 16 one Attempted Robbery with a Dangerous Weapon.

14:55:47 17 Q. Okay. So two different places?

14:55:50 18 A. Yes, sir.

14:55:51 19 Q. With a gun?

14:55:52 20 A. No.

14:55:54 21 Q. With a knife?

14:55:55 22 A. Yeah.

14:55:59 23 Q. So Anique Pittman came and picked you up in Newport?

14:56:01 24 A. Yes, sir.

14:56:02 25 Q. And what kind of car did she have?

14:56:06 1 A. I could not tell you. It's a little hatchback. I do
14:56:09 2 know that.

14:56:09 3 Q. Okay. And you -- the roads were clear enough, or she
14:56:16 4 could drive you from Newport all the way to Atlantic Beach?

14:56:18 5 A. Yeah.

14:56:19 6 Q. The roads weren't closed?

14:56:20 7 A. No.

14:56:21 8 Q. Weren't icy?

14:56:23 9 A. No.

14:56:24 10 Q. There was other traffic on the road?

14:56:25 11 A. Oh, yeah, yeah. There was plenty of traffic on the
14:56:26 12 road.

14:56:27 13 Q. Plenty of traffic?

14:56:27 14 A. Yeah.

14:56:27 15 Q. And no reason somebody couldn't drive around Morehead
14:56:30 16 City at the time, could they?

14:56:32 17 A. No.

14:56:32 18 Q. Okay. And what did you do -- the day of the 28th,
14:56:35 19 where did you spend that day?

14:56:42 20 A. I'm -- I'm not sure about the dates.

14:56:43 21 Q. Well, the day before you got arrested.

14:56:44 22 A. Okay. The day before I got arrested I was in Newport
14:56:49 23 at a friend's house, and me and my wife were -- had been
14:56:52 24 arguing, so I didn't want to stay there with her and the -- and
14:56:56 25 the friend. That's the night that we went to -- I went to

14:56:59 1 Anique's.

14:57:00 2 Q. Were you arguing the whole day?

14:57:02 3 A. Yeah. Unfortunately.

14:57:02 4 Q. About what?

14:57:04 5 A. Ask her.

14:57:05 6 Q. What was she mad about?

14:57:08 7 A. Everything.

14:57:08 8 Q. Were you doing drugs?

14:57:09 9 A. No, no. We -- that's a different -- totally different

14:57:13 10 story.

14:57:13 11 Q. Okay.

14:57:13 12 A. That's -- me and my wife, you know what I mean, we --

14:57:15 13 that's just the way we are.

14:57:17 14 Q. Were you addicted to drugs at the time?

14:57:19 15 A. No, I wouldn't say addicted to drugs.

14:57:20 16 Q. Using drugs?

14:57:21 17 A. Yeah. Now, hold on. Slow down a little bit. Um, at

14:57:26 18 the time that me and my wife were arguing? What are you saying?

14:57:29 19 Q. No.

14:57:29 20 A. What are you asking?

14:57:30 21 Q. This period of time.

14:57:31 22 A. And what are you asking?

14:57:32 23 Q. Were you a drug user during this period of time?

14:57:34 24 A. I had used drugs, yes.

14:57:36 25 Q. During this period of time, were you using drugs?

14:57:38 1 A. At that moment?

14:57:40 2 Q. No.

14:57:41 3 A. During that time period?

14:57:42 4 Q. During the time that week. How about the week of

14:57:43 5 January 28, 29?

14:57:45 6 A. I'm sure that I might have used some drugs that week.

14:57:46 7 Q. And what was your drug of choice?

14:57:49 8 A. Marijuana is my drug of choice.

14:57:50 9 Q. Okay. What were you using, though? Methamphetamine?

14:57:52 10 A. I may have, yes.

14:57:53 11 Q. And did you get that from Brandon Hobbs?

14:57:56 12 A. I couldn't have got it from Brandon Hobbs, because I'm

14:57:59 13 pretty sure he was in jail.

14:58:00 14 Q. He was in jail?

14:58:01 15 A. Yeah.

14:58:01 16 Q. But if he wasn't in jail, you'd probably gotten it

14:58:03 17 from Brandon, wouldn't you?

14:58:05 18 A. Maybe not.

14:58:05 19 Q. But he cooks some good meth, doesn't he?

14:58:07 20 A. Nah.

14:58:08 21 Q. He doesn't?

14:58:10 22 A. As a matter of fact, Brandon Hobbs was arrested and

14:58:12 23 put in jail before I ever moved back to Carteret County. I

14:58:15 24 didn't move back to Carteret County from High Point until

14:58:18 25 December the 10th.

14:58:20 1 Q. Okay. You know Brandon Hobbs --

14:58:21 2 A. I do know Brandon Hobbs.

14:58:21 3 Q. -- you know him to cook meth?

14:58:24 4 A. I don't know about his action, but I know Brandon

14:58:25 5 Hobbs.

14:58:27 6 Q. Where would you get your meth from?

14:58:28 7 A. I mean, from meth dealers.

14:58:31 8 Q. Who?

14:58:32 9 A. Is that something -- I don't know. Specific names?

14:58:35 10 Q. Yeah. Names.

14:58:37 11 A. I don't know if I -- I -- if I can tell you names

14:58:39 12 right now.

14:58:40 13 Q. Why not?

14:58:40 14 A. I mean, that's --

14:58:41 15 Q. Under oath. Be honest.

14:58:42 16 MR. MEGARO: Your Honor, I object. I think --

14:58:44 17 THE COURT: Overruled. If he knows. If he doesn't

14:58:46 18 know, he can say he doesn't know, but if you know, answer the

14:58:48 19 question.

14:58:48 20 BY MR. SPENCE

14:58:48 21 Q. Give me some names.

14:58:51 22 A. Let's see. I really don't know. I really don't know.

14:58:59 23 Q. Are they anonymous people or friends you'd call up?

14:59:02 24 A. They'd be friends.

14:59:02 25 Q. Okay. The names of your friends who would sell meth

14:59:06 1 to you?

14:59:06 2 A. Okay. I would buy it from Troy Brown sometimes.

14:59:09 3 Q. Okay. Who else?

14:59:10 4 A. Troy Brown. Walt Richardson. You know.

14:59:13 5 Q. Okay.

14:59:13 6 A. Those are the -- those are the two main people that I
14:59:15 7 messed with. Those -- those were friends.

14:59:17 8 Q. Okay. Would they make it or just sell it?

14:59:19 9 A. They sold it.

14:59:20 10 Q. Okay.

14:59:21 11 A. I don't think either one of them ever made it.

14:59:24 12 Q. Okay. And Dustin Warren is Brandon Hobbs' brother,
14:59:26 13 correct?

14:59:26 14 A. Half-brother, yeah.

14:59:27 15 Q. Okay. Used to live together?

14:59:30 16 A. Excuse me?

14:59:30 17 Q. Did they used to live together?

14:59:32 18 A. Nah. I mean, growing up, I would assume they -- they
14:59:36 19 lived together. At that time that -- that I knew Dustin he had
14:59:40 20 his own home.

14:59:41 21 Q. Okay. When did you first get involved with this
14:59:45 22 particular proceeding here, as far as writing documents, filing
14:59:48 23 affidavits, anything like that?

14:59:50 24 A. I immediately tried to get involved in it when I heard
14:59:55 25 that Heather was trying to say that everything was Dustin --

14:59:59 1 Dustin was doing this, Dustin was doing that. I tried to talk
15:00:03 2 to his attorney within days of him getting locked up.

15:00:06 3 Q. Okay. And what information were you trying to give
15:00:09 4 him? Because you weren't even there at the motel, were you?

15:00:12 5 A. No, I was at Anique Pittman's house with him where he
15:00:15 6 was at.

15:00:16 7 Q. Okay. So the only thing you can testify about is the
15:00:18 8 things that happened at Anique Pittman's house, correct?

15:00:20 9 A. Yes, sir.

15:00:20 10 Q. And then getting arrested a few moments later?

15:00:23 11 A. Yup. Not a few moments. The next day.

15:00:25 12 Q. Okay. But as far as when the lab was constructed or
15:00:27 13 when it was checked in or what happened at the Seashore or who
15:00:31 14 saw what at the Seashore, you don't have any knowledge of that,
15:00:33 15 do you?

15:00:34 16 A. No. I was never at the Seashore.

15:00:36 17 Q. And you don't know what happened during that period of
15:00:38 18 time before, in the evening of 1/29, correct?

15:00:43 19 A. On 1/29 Dustin was with me at Anique's house.

15:00:46 20 Q. I got that. But before that, the day before that, you
15:00:49 21 have no idea what was going on at the Seashore, were you?

15:00:53 22 A. No. If the day before --

15:00:56 23 Q. Okay. Let me -- what time did you get to Anique's
15:00:59 24 house, and what time was Dustin at Anique's house with you?

15:01:04 25 A. I'm not sure what day. The day before we got

15:01:06 1 arrested. I'm not sure what day it was, whether it was the 29th
15:01:08 2 or the 30th. If you can refresh my memory --

15:01:11 3 Q. Okay.

15:01:11 4 A. -- what day that we got arrested.

15:01:13 5 Q. The day before you were arrested, you were at Anique's
15:01:15 6 house that evening?

15:01:17 7 A. All afternoon. All night.

15:01:18 8 Q. Okay. When did Dustin show up?

15:01:20 9 A. Maybe 30 minutes after I got there.

15:01:22 10 Q. What time?

15:01:23 11 A. I would say 5`o'clock. 4, 4:30, 5`o'clock.

15:01:27 12 Q. So --

15:01:27 13 A. It was daylight. It was daylight.

15:01:29 14 Q. Okay. But it was in the afternoon?

15:01:31 15 A. Yes, sir.

15:01:31 16 Q. So the entire day of that -- before that, the entire
15:01:35 17 time before that of the 29th, you had no idea what was going on
15:01:38 18 at that motel, did you?

15:01:41 19 A. I don't know what day it was that -- whether it was
15:01:43 20 the 29th or the 28th. No, I don't know what happened at that
15:01:46 21 motel. I was not at that motel.

15:01:48 22 Q. Right. So you could not have known what evidence was
15:01:51 23 there, what the cops found, or who did what?

15:01:54 24 A. No. No.

15:01:54 25 Q. Had you -- have you ever read the transcript of this

15:01:56 1 case?

15:01:56 2 A. No.

15:01:57 3 Q. It was never sent to you?

15:01:59 4 A. Yeah. A piece of it was sent to me.

15:02:01 5 Q. Who sent it to you?

15:02:02 6 A. I think Mr. Megaro.

15:02:06 7 Q. Okay. And how did you end up drafting these

15:02:08 8 affidavits?

15:02:09 9 A. That's my written statement. I drew those up.

15:02:12 10 Q. This typed-up one is not your written statement?

15:02:14 11 A. No, I wrote those. A handwritten -- there should be a

15:02:17 12 handwritten somewhere that was notarized by me.

15:02:20 13 Q. Okay. We'll talk about that in a second. But the

15:02:22 14 typed one, how did that get done?

15:02:27 15 A. I -- Mr. Megaro had it typed up.

15:02:29 16 Q. Okay. And he sent it back to you to sign?

15:02:32 17 A. No, it was already -- yes. Yes. He sent it back to

15:02:35 18 me to have it notarized.

15:02:36 19 Q. Okay. And the handwritten one, is that something you

15:02:39 20 did yourself?

15:02:40 21 A. Yes.

15:02:40 22 MR. SPENCE: May I approach?

15:02:40 23 THE WITNESS: Yup.

15:02:43 24 THE COURT: Yes, sir.

15:02:44 25

15:02:44 1 (State's Exhibit MAR Number [2] marked for
15:02:44 2 identification.)

15:02:44 3 BY MR. SPENCE

15:02:44 4 Q. What I have got marked as State's MAR [2], would you
15:02:47 5 look at this and see if that is the document you're referring
15:02:51 6 to?

15:02:51 7 A. Yes, that's my handwriting.

15:02:52 8 Q. Okay. And did you do all this stuff?

15:02:54 9 A. Yeah.

15:02:55 10 Q. Now, this has got a legal caption on it, correct?

15:02:58 11 A. I got that information.

15:02:59 12 Q. From where?

15:03:00 13 A. From Dustin.

15:03:01 14 Q. So he gave it to you?

15:03:02 15 A. From his attorney.

15:03:03 16 Q. Okay. Wait a second. The information for this, who
15:03:05 17 did you get it from?

15:03:06 18 A. Which -- the information at the top, his name and the
15:03:09 19 case number?

15:03:10 20 Q. This legal caption. Yes, sir.

15:03:11 21 A. Yeah. I got all that from his attorney. That's
15:03:14 22 the -- that was what I was told, the legal way to do it.

15:03:17 23 Q. What -- what -- what instruction did his attorney give
15:03:19 24 to you about drafting this?

15:03:20 25 A. He just asked me to write my statements of what

15:03:22 1 happened that day, as I could remember them.

15:03:24 2 Q. And did he tell you to put a caption on it like this?

15:03:26 3 A. No. He didn't tell me to put it like that. I took
15:03:30 4 that upon myself.

15:03:30 5 Q. Okay. And all these statements in here, it says, "I,
15:03:32 6 Mark Thomas, being at least 18 years of age and of sound mind,
15:03:35 7 after first being sworn, does depose and state the following."
15:03:37 8 Did you write that?

15:03:38 9 A. Yes.

15:03:39 10 Q. Did you make that up out of your own head?

15:03:41 11 A. No. That was jailhouse attorneys. I mean, we -- you
15:03:44 12 know, I'm in prison. I got all kinds of people helping me out.

15:03:48 13 Q. So is there a standard form down there for doing these
15:03:51 14 things at the jails?

15:03:52 15 A. No, I wouldn't assume.

15:03:52 16 Q. Have you seen -- have you seen the one Cassie did?

15:03:55 17 A. No.

15:03:59 18 Q. So you've got all this legal language here, and that's
15:04:01 19 just -- that's -- who advised you?

15:04:04 20 A. Um, the -- just talking with people that filed motions
15:04:07 21 for their selves[sic] in prison.

15:04:09 22 Q. Okay.

15:04:09 23 A. I mean, that's a pretty standard thing for an
15:04:12 24 affidavit.

15:04:12 25 Q. Have you ever done one of these before?

15:04:14 1 A. No.

15:04:14 2 Q. Okay.

15:04:16 3 A. Not that I can recall.

15:04:16 4 Q. But do you recognize this as your -- as something that

15:04:19 5 you signed and submitted?

15:04:21 6 A. Yes, sir.

15:04:21 7 Q. It's your handwriting?

15:04:22 8 A. It definitely is.

15:04:23 9 Q. All that print?

15:04:24 10 A. Yes, sir.

15:04:24 11 MR. SPENCE: Okay. Move to admit State's MAR [2] to

15:04:29 12 corroborate his testimony.

15:04:32 13 THE COURT: Thank you, sir. It is admitted, without

15:04:32 14 objection.

15:04:32 15 (State's Exhibit MAR Number [2] received in

15:04:32 16 evidence.)

15:04:32 17 COURT REPORTER: Counselor, I didn't hear what you

15:04:32 18 said.

15:04:36 19 MR. MEGARO: I said "without objection." Sorry.

15:04:39 20 BY MR. SPENCE

15:04:39 21 Q. So you have not read the transcript, have you?

15:04:44 22 A. No, sir.

15:04:44 23 Q. You don't know what Anique Pittman testified to, do

15:04:47 24 you?

15:04:47 25 A. No.

15:04:47 1 Q. You don't know if she didn't testify to the same
15:04:49 2 things you would have testified to, do you?

15:04:51 3 A. No. I don't know. I don't know what she testified
15:04:53 4 to.

15:04:54 5 Q. So without knowing that, you have no idea what you
15:04:56 6 could possibly have added to this case, do you?

15:04:59 7 A. No.

15:04:59 8 Q. Okay. Your criminal history is pretty lengthy,
15:05:03 9 correct?

15:05:04 10 A. You could say that.

15:05:06 11 Q. Well, let's go over it, then. We'll let the Judge
15:05:08 12 decide. Were you -- you are Mark Alan Thomas, and your date of
15:05:13 13 birth, 6/3/1980?

15:05:15 14 A. Yes, sir.

15:05:16 15 Q. Let me ask if you were convicted of the following
15:05:18 16 crimes: Communicating Threats, September in 2011 in Carteret
15:05:21 17 County?

15:05:24 18 A. Yeah.

15:05:25 19 Q. Yes or no?

15:05:25 20 A. Yes.

15:05:27 21 Q. Second Degree Trespass, 9/22/11, Carteret County; yes
15:05:30 22 or no?

15:05:31 23 A. I don't recall that Trespassing, but --

15:05:32 24 Q. Could be?

15:05:33 25 A. -- it could be.

15:05:35 1 Q. Hard to remember sometimes, right?

15:05:37 2 A. Sure.

15:05:38 3 Q. Misdemeanor Larceny, March of 1987?

15:05:41 4 A. Yes.

15:05:45 5 Q. Two counts of that?

15:05:48 6 A. Sounds correct.

15:05:50 7 Q. Felonious Breaking or Entering in Carteret County,

15:05:52 8 1999. Were you put on probation for 60 months?

15:05:57 9 A. Yes.

15:06:03 10 Q. Several counts of that, right?

15:06:07 11 A. No.

15:06:08 12 Q. Not just one break-in; there were several?

15:06:09 13 A. No. It was just one.

15:06:10 14 Q. Just one?

15:06:11 15 A. Yeah. Just one.

15:06:13 16 Q. Fictitious Information to an Officer, 2003, in

15:06:15 17 Carteret County?

15:06:16 18 A. I don't recall that.

15:06:18 19 Q. July 1st, 2003, Carteret County, Fictitious

15:06:21 20 Information to an Officer. You got credit for time served after

15:06:24 21 you pled guilty?

15:06:26 22 A. I must have.

15:06:27 23 Q. Okay. PWISD Counterfeit Controlled Substance, 2004?

15:06:33 24 A. Yeah.

15:06:34 25 Q. What was that controlled substance?

15:06:36 1 A. Obviously, it was counterfeit.

15:06:37 2 Q. I know that.

15:06:39 3 A. It was --

15:06:39 4 Q. What's it supposed to be?

15:06:41 5 A. Counterfeit cocaine.

15:06:42 6 Q. You told somebody it was cocaine?

15:06:44 7 A. Yes, sir.

15:06:44 8 Q. Okay. That was a lie, right? That wasn't true, was

15:06:48 9 it?

15:06:48 10 A. No. It wasn't cocaine.

15:06:49 11 Q. Did they give money?

15:06:50 12 A. Yes. Yeah.

15:07:01 13 Q. Possession of -- Felonious Possession of Stolen Motor

15:07:02 14 Vehicle, Forsyth County, of 2006?

15:07:09 15 A. Yup.

15:07:09 16 Q. Possession of Drug Paraphernalia, Guilford County,

15:07:11 17 2005?

15:07:14 18 A. Yeah.

15:07:19 19 Q. Attempted Felonious Hit-and-Run, Guilford County,

15:07:22 20 1999?

15:07:27 21 A. Yeah.

15:07:27 22 Q. DWI, Guilford County, 2000?

15:07:31 23 A. Yup.

15:07:31 24 Q. Assault on a Female, Guilford County, 2001?

15:07:35 25 A. Yup.

15:07:45 1 Q. Soliciting to Obtain Property by False Pretenses,
15:07:48 2 Guilford County, 2003?

15:07:54 3 A. I don't -- I don't recall that.

15:07:58 4 Q. Might be?

15:08:00 5 A. I --

15:08:00 6 Q. Could be?

15:08:02 7 A. I don't remember ever being charged with a Soliciting
15:08:04 8 to Obtain Property by False --

15:08:06 9 Q. That was what you were pled to. You were charged with
15:08:08 10 Obtaining by False Pretense. It was knocked down to a
15:08:10 11 misdemeanor and you pled guilty, right?

15:08:12 12 A. May -- yes.

15:08:13 13 Q. Got put on probation?

15:08:15 14 A. Yes.

15:08:16 15 Q. Had that revoked. Communicating Threats in 2005 in
15:08:22 16 Guilford County?

15:08:23 17 A. Yeah.

15:08:24 18 Q. DWI; another DWI, level I, 2005, in Guilford County?

15:08:28 19 A. Yes.

15:08:32 20 Q. Resisting a Public Officer, 2006, Guilford County?

15:08:34 21 A. Yes.

15:08:36 22 Q. Drug Paraphernalia, Guilford County, 2006?

15:08:38 23 A. Yes.

15:08:40 24 Q. Drunk and Disruptive, Guilford County, 2007?

15:08:43 25 A. Yup.

15:08:44 1 Q. Common Law Robbery, Guilford County, 2007?

15:08:48 2 A. Yup.

15:08:49 3 Q. So that was the Armed Robbery reduced to Common Law,
15:08:52 4 right?

15:08:54 5 A. Yes.

15:08:55 6 Q. So it's another Armed Robbery?

15:08:56 7 A. Uh-huh.

15:08:57 8 Q. That's three. Was that a gun?

15:08:59 9 A. No.

15:08:59 10 Q. Knife?

15:08:59 11 A. No.

15:09:00 12 Q. What?

15:09:01 13 A. A bottle.

15:09:02 14 Q. A bottle. Okay. And again, you've got -- looks
15:09:11 15 like -- looks like two convictions for Robbery with a Dangerous
15:09:14 16 Weapon -- actually, one for Attempted, which is the same crime,
15:09:16 17 and one for Robbery; is that right? 2014?

15:09:19 18 A. Yup.

15:09:20 19 Q. Okay. Who's Charles Jarvis?

15:09:26 20 A. That is -- old friend, associate.

15:09:34 21 Q. You saw him on the 29th, didn't you?

15:09:39 22 A. I would assume it would be the 28th.

15:09:41 23 Q. Okay. Did you see him on the 28th?

15:09:43 24 A. Yes.

15:09:44 25 Q. Where did you see him?

15:09:47 1 A. At Anique's.

15:09:47 2 Q. Okay. Did you ever use his car that day?

15:09:52 3 A. Yes.

15:09:55 4 Q. And was he the one that charged you with unauthorized

15:09:57 5 use --

15:09:57 6 A. Yes.

15:09:58 7 Q. -- of his car that day?

15:09:59 8 A. Yes.

15:09:59 9 Q. And where did you take his car?

15:10:04 10 A. I took his car to Newport.

15:10:07 11 Q. From where, the Beach?

15:10:09 12 A. From the Beach.

15:10:10 13 Q. You were at the Beach on the 28th?

15:10:12 14 A. I think this one was -- I think this was two days

15:10:14 15 before we got arrested, so it would be the 27th.

15:10:17 16 Q. Okay. You took his -- you wrecked it somewhere,

15:10:20 17 right?

15:10:20 18 A. No, I did not wreck it.

15:10:21 19 Q. Didn't wreck it on 20th Street?

15:10:23 20 A. No. I told him I wrecked it.

15:10:24 21 Q. But that was false, right?

15:10:25 22 A. That was false. That was false.

15:10:28 23 Q. So where was it?

15:10:29 24 A. It was parked at Wal-Mart.

15:10:33 25 Q. Why did you tell him you wrecked it?

15:10:35 1 A. Okay. Um, the whole thing is, Jarvis stole my money
15:10:40 2 while I was asleep.

15:10:42 3 Q. What, that night?

15:10:43 4 A. The night before.

15:10:44 5 Q. At Anique's house?

15:10:45 6 A. Yes.

15:10:45 7 Q. Was he at Anique's house that weekend?

15:10:47 8 A. No.

15:10:48 9 Q. Okay.

15:10:48 10 A. This was two days before we got arrested. Two -- two
15:10:51 11 days prior to any of this happening with Dustin. And so when
15:10:56 12 he -- he stole my money, I borrowed his car. He had loaned me
15:11:03 13 his car, you know what I mean. And so as a pay-back to him for
15:11:07 14 stealing my money, I kept his car longer than I was supposed to.

15:11:11 15 Q. Were you going -- were you going to keep it for good?

15:11:12 16 A. No. I wasn't -- I just wasn't taking it back to him.

15:11:15 17 Q. Okay.

15:11:15 18 A. I left his car parked -- I left his car parked at
15:11:20 19 Wal-Mart and told his wife, because his wife was burning my
15:11:23 20 phone up, looking for him. And he wouldn't answer the phone for
15:11:26 21 his wife, so she was -- started calling my phone, harassing me,
15:11:29 22 looking for him. So I told her where to go get his car. I
15:11:32 23 wouldn't tell him where it was at. I told him I wrecked it on
15:11:34 24 20th Street. Which was not true. The car was in perfect shape,
15:11:39 25 sitting at Wal-Mart, with more gas in it than when I took it.

15:11:44 1 Q. Okay. So that makes it all good, right?

15:11:47 2 A. No.

15:11:47 3 THE COURT: Let's -- let's move on.

15:11:49 4 BY MR. SPENCE

15:11:49 5 Q. Did Charles Jarvis call you and Anique Pittman and
15:11:54 6 talk on the phone about your car? About that car?

15:11:58 7 A. No. He called my phone.

15:11:59 8 Q. Okay.

15:12:00 9 A. He was -- he was texting me.

15:12:01 10 Q. Okay. Did he tell you to take something out of that
15:12:05 11 car?

15:12:06 12 A. I don't think -- nothing about taking --

15:12:06 13 Q. Like a plastic bag?

15:12:10 14 A. I don't -- any of that.

15:12:14 15 MR. SPENCE: That's all I have.

15:12:20 16 THE COURT: Any redirect?

15:12:20 17 MR. MEGARO: Very brief, Your Honor.

15:12:21 18 **REDIRECT EXAMINATION BY MR. MEGARO**

15:12:25 19 Q. Mr. Thomas, did you read the portion of Heather
15:12:27 20 Kennon's testimony and Mr. Warren's trial where she said that
15:12:31 21 you and her cooked meth at Anique Pittman's condo?

15:12:36 22 A. Yes, I read that page.

15:12:37 23 Q. True or false?

15:12:38 24 A. False. Also, on that, if I can, on that same page,
15:12:41 25 she said that we were all smoking and injecting drugs together.

15:12:46 1 Q. True or false? And then --

15:12:47 2 A. That's false. She even goes back to say it again on
15:12:50 3 that same page. She said it herself. That Dustin didn't even
15:12:53 4 do any drugs.

15:12:54 5 Q. Okay. Did you see in the transcripts where Ms. Kennon
15:12:56 6 testified that she was at Anique Pittman's condo the morning on
15:13:01 7 January 29th, 2014, when you woke up?

15:13:05 8 A. No, I didn't read that.

15:13:06 9 Q. Okay.

15:13:08 10 A. I don't -- I don't remember that.

15:13:12 11 Q. During the evening of January 28, 2014, into the early
15:13:18 12 morning hours of January 29, 2014, did you ever see anything --
15:13:22 13 see Dustin Warren's spare car key?

15:13:25 14 A. I didn't see it. I seen it in the seat the next
15:13:27 15 morning.

15:13:28 16 Q. When you say "in the seat?"

15:13:29 17 A. His car.

15:13:31 18 Q. In his car?

15:13:32 19 A. Yeah.

15:13:32 20 Q. And that was where the window was rolled down?

15:13:35 21 A. Yes.

15:13:35 22 Q. All right. Did Dustin ever make a comment to you
15:13:37 23 about not being able to find his spare car key?

15:13:41 24 A. It was -- it -- she had took his key off the rack by
15:13:44 25 the door.

15:13:45 1 Q. Off the key rack by the door?

15:13:46 2 A. Yes.

15:13:47 3 Q. Okay. And you mentioned earlier about her going in
15:13:49 4 and out --

15:13:50 5 A. Yeah.

15:13:50 6 Q. -- slamming the door and opening the door. Was she
15:13:53 7 going into Mr. Warren's car?

15:13:55 8 A. I would assume that's what she was --

15:13:56 9 MR. SPENCE: Objection.

15:13:57 10 THE COURT: Sustained.

15:13:58 11 BY MR. MEGARO

15:13:58 12 Q. Was Dustin Warren in your company continuously from
15:14:05 13 January 28th, 2014, from the time you met up with him at Anique
15:14:09 14 Pittman's house, until the following morning when you were both
15:14:13 15 picked up by the police?

15:14:14 16 A. Yes.

15:14:14 17 MR. MEGARO: Thank you, sir. I have no further
15:14:16 18 questions for Mr. Thomas.

15:14:17 19 THE COURT: Re-cross?

15:14:18 20 **RE-CROSS-EXAMINATION BY MR. SPENCE**

15:14:18 21 Q. You weren't with him on the 28th; you were fighting
15:14:21 22 with your wife, right?

15:14:22 23 A. On the phone at Anique's.

15:14:23 24 Q. Okay. What day did you get arrested on this charge,
15:14:28 25 on your charge? The 30th?

15:14:32 1 A. I don't -- I don't know. The same day that Dustin got
15:14:34 2 arrested. I don't know the dates. I can't remember the dates.
15:14:36 3 Q. Okay. Now, I meant -- I meant to ask you: You said
15:14:46 4 you and Heather were doing drugs at the house?
15:14:48 5 A. Yes.
15:14:48 6 Q. What? What drugs?
15:14:50 7 A. Meth.
15:14:51 8 Q. Where did you get that?
15:14:53 9 A. I just told you earlier the two names. I had had my
15:14:57 10 own. I don't know. Heather had hers. Heather had her own,
15:15:00 11 so --
15:15:00 12 Q. Okay. Have any effect on you? Yeah?
15:15:04 13 A. What I had?
15:15:05 14 Q. About your memory or anything like that you recall?
15:15:07 15 A. No.
15:15:08 16 Q. Has no effect?
15:15:09 17 A. No.
15:15:09 18 Q. What effect does it have?
15:15:10 19 A. It just keeps you up.
15:15:12 20 Q. Okay.
15:15:12 21 A. I mean, everybody -- different people do different
15:15:14 22 things, depending on how much you do.
15:15:20 23 Q. And again, you don't know what Anique Pittman
15:15:24 24 testified to?
15:15:25 25 A. No, I have -- I have no clue what Anique said.

15:15:28 1 Q. She might have said everything you're saying?

15:15:29 2 A. She might have.

15:15:30 3 MR. SPENCE: Okay. That's all I have.

15:15:31 4 THE COURT: Anything else?

15:15:32 5 MR. MEGARO: No, sir.

15:15:33 6 THE COURT: You may stand down.

15:15:35 7 (The witness stepped down from the witness
15:15:35 8 stand.)

15:15:36 9 THE COURT: You may call your next witness.

15:15:38 10 MR. MEGARO: Your Honor, I would call my client,
15:15:40 11 Dustin J. Warren.

15:16:01 12 THE COURT: Okay. Mr. Warren, step right over there
15:16:03 13 to the Bible, please, sir.

15:16:05 14 (The Defendant was duly sworn.)

15:16:12 15 (The Defendant took the witness stand.)

15:16:12 16 THE COURT: You may inquire.

15:16:12 17 MR. MEGARO: Thank you.

15:16:12 18

15:16:12 19 **DUSTIN J. WARREN,**

15:16:12 20 having been first duly sworn, at 3:16 p.m. was called as a
15:16:12 21 witness on behalf of the Defense, and testifying in his own
15:16:12 22 behalf, testified as follows:

15:16:12 23 **DIRECT EXAMINATION BY MR. MEGARO**

15:16:26 24 Q. Mr. Warren, is it safe to say you know the two
15:16:31 25 witnesses who have just testified?

15:16:32 1 A. Yes, sir, I do.

15:16:33 2 Q. Did there come a point in time in the last couple of
15:16:36 3 years where you asked either one of them to review any documents
15:16:38 4 concerning your case and to possibly help you as a witness?

15:16:40 5 A. Yes, sir, I did.

15:16:41 6 Q. And how did you approach them?

15:16:43 7 A. Um, I approached them through letters. Um, I sent
15:16:47 8 transcripts. I sent Cassie a Christmas card and I explained to
15:16:52 9 her what had happened to me.

15:16:54 10 Q. Okay. And at any point in time did you direct either
15:16:59 11 one of those witnesses as to what to say, what you wanted them
15:17:04 12 to say?

15:17:04 13 A. I was adamant, because this -- these-type situations
15:17:06 14 make people uncomfortable, so I was adamant about, all I wanted
15:17:08 15 was the truth, no matter what. And I was adamant about that.

15:17:12 16 Q. Okay. Did you ask either one of them to lie?

15:17:18 17 A. No, sir. That's been my whole defense, to have them
15:17:21 18 to be a part of this, is to ask them, you know, I just wanted
15:17:23 19 the truth.

15:17:24 20 Q. Okay. Now, in this particular case, Heather Kennon
15:17:29 21 started out as your -- as your co-defendant, or your -- was she
15:17:34 22 separately charged, or was she charged as a co-defendant in this
15:17:36 23 case?

15:17:37 24 A. She -- she was -- they were trying to treat it as a
15:17:41 25 co-defendant situation.

15:17:43 1 Q. Do you know where she got arrested and -- where she
15:17:45 2 got arrested?

15:17:46 3 A. No, I don't.

15:17:49 4 Q. After your arrest on this case, who represented you
15:17:54 5 initially?

15:17:55 6 A. When I -- when I first got arrested, which was January
15:17:58 7 the 3rd, I was assigned -- court-appointed James Wallace, III,
15:18:02 8 and given his detective, Ms. Ann Harris Scadden, as the
15:18:05 9 detective in the case as a court-appointed. He -- she did talk
15:18:12 10 to I think Mark, and did some other stuff, and that was one of
15:18:15 11 the reasons why I had her subpoenaed. But they never -- even
15:18:17 12 though she was an Officer of the Court they never brought her
15:18:21 13 forward.

15:18:22 14 Q. Okay. Did there come a point where you changed
15:18:25 15 lawyers?

15:18:25 16 A. Yes, sir. I changed -- um, between January 30th to
15:18:32 17 March 2nd, 2014, I was referred to Rodney Fulcher as an
15:18:38 18 affordable lawyer by a guy that I was in the county jail with,
15:18:42 19 said he was an affordable lawyer. I just got my tax money,
15:18:45 20 which was \$2,500.

15:18:46 21 I had approached him, asking him would you -- I let him
15:18:51 22 know my situation, that's all the money I had, would he be
15:18:54 23 willing to represent me for \$2,500, because I heard that's what
15:18:58 24 he would charge for some representations. And -- and he -- he
15:19:03 25 said at the time that he was actually court-appointed for

15:19:05 1 Heather Kennon who was the -- the -- my -- supposed to be my
15:19:09 2 co-defendant, and that he might could finagle something to make
15:19:13 3 it happen where he could come off her case and he could take my
15:19:16 4 money.

15:19:16 5 When he did take my money, he -- it just seemed like he
15:19:21 6 lost total interest in my case.

15:19:23 7 Q. I'm going to -- I'm going to stop you just --

15:19:23 8 A. Sure.

15:19:23 9 Q. -- so we can kind of --

15:19:24 10 A. Yes, sir.

15:19:24 11 Q. -- go step-by-step. You mentioned that he represented
15:19:29 12 Heather Kennon?

15:19:29 13 A. That's what he --

15:19:29 14 Q. Or he told you that he represented --

15:19:31 15 A. That's what I was told. Yes, sir.

15:19:34 16 Q. Did anyone ever go over with you a conflict of
15:19:36 17 interest waiver form or a conflict of interest rights or
15:19:40 18 anything like that?

15:19:41 19 A. No, sir. I know nothing of that.

15:19:43 20 Q. Okay. Do you know what a conflict of interest is?

15:19:51 21 A. I kind of understand the concept of it, but there's,
15:19:54 22 like, so much types of conflicts of interest. And I never
15:19:58 23 looked at it as that, being a conflict of interest, on that
15:20:01 24 issue.

15:20:02 25 Q. So kind of, sort of --

15:20:03 1 A. Somewhat.

15:20:03 2 Q. -- you're familiar with the term?

15:20:06 3 A. Yes, sir. I am familiar with the term.

15:20:08 4 Q. All right. Now, after Mr. Fulcher started

15:20:12 5 representing you, did you have conversations with him about the

15:20:14 6 facts of the case?

15:20:17 7 A. He was -- he did talk briefly about my situation, and

15:20:21 8 I asked him some things that I would like for him to talk to

15:20:24 9 witnesses, and -- and, you know, we -- I did talk a little,

15:20:27 10 briefly about -- all he wanted me to take was a 57-month plea

15:20:31 11 bargain. He wasn't really interested in doing any kind of work,

15:20:34 12 leg work.

15:20:35 13 Q. Well, let me go step-by-step.

15:20:37 14 A. Okay.

15:20:37 15 Q. Did you ever give Mr. Fulcher the name of Mark Thomas?

15:20:41 16 A. Yes. I definitely gave him -- actually, Mark Thomas,

15:20:43 17 when I had the court-appointed lawyer, James Wallace, he was

15:20:47 18 adamant about coming down, and he did talk to Ms. Ann. He was

15:20:52 19 wanting to do whatever he could to tell his side of the story.

15:20:54 20 Q. My question is, did you tell Mr. Fulcher that you had

15:20:58 21 a willing witness with Mark --

15:21:01 22 A. Yes, sir, I did.

15:21:01 23 Q. -- Thomas?

15:21:02 24 A. Yes, sir, I did.

15:21:02 25 Q. And did you give -- did you give him Mark Thomas's

15:21:05 1 contact information?

15:21:05 2 A. Yes. Yes, sir, I did. Actually, I think Mark called
15:21:09 3 down there and he was turned away. He kept saying that he would
15:21:12 4 talk with the witnesses after the suppression --

15:21:12 5 MR. SPENCE: Objection to what anybody else said about
15:21:15 6 a conversation.

15:21:15 7 THE COURT: Sustained. Sustained.

15:21:16 8 MR. MEGARO: Try to stay away from what other people
15:21:21 9 say. Just --

15:21:21 10 BY MR. MEGARO

15:21:22 11 Q. Okay. So that -- my point is, at a given point in
15:21:26 12 time, where -- Mr. Fulcher did have Mr. Thomas's information?

15:21:29 13 A. Oh, he had all his information. Yes, sir.

15:21:31 14 Q. Okay. What about Ms. Flowers?

15:21:37 15 A. I didn't really know Ms. Flowers even involved in the
15:21:39 16 case until, like, the third version of Heather's story that came
15:21:43 17 to me. She -- they kept giving me versions of the story where
15:21:46 18 she came up with. Cassie Flowers doesn't even involve in this
15:21:50 19 case, so nowhere in the narrative or anything that happened.

15:21:51 20 She was --

15:21:53 21 Q. Right. Let me stop you there.

15:21:54 22 A. But -- yes. But when this came up, I did ask him to
15:21:57 23 please get in -- it was adamant that, you know, because this is
15:21:59 24 the witness that -- actually, the State witness against me
15:22:02 25 brought forward. So, yes. Let's bring her forward and see what

15:22:06 1 she's got to say. I did.

15:22:07 2 Q. You mentioned the third statement. Are you referring
15:22:09 3 to a -- a report or statement made by Heather Kennon to law
15:22:15 4 enforcement prior to trial?

15:22:17 5 A. It was a -- it was a statement that did ask -- one of
15:22:20 6 the statements that I seen she wrote that was on a recorded
15:22:23 7 statement that I was -- I was -- I reviewed on September the --
15:22:26 8 the 2nd, 2014, prior, for a week -- the week before trial.

15:22:31 9 Q. And was this in a packet of discovery or court
15:22:35 10 documents?

15:22:36 11 A. He -- he let -- he -- he had reviewed it beforehand
15:22:39 12 but he hadn't told me, "Let me actually see it," but I -- we had
15:22:42 13 known that Cassie Flowers was involved through the witness --
15:22:45 14 the State witness. And he had a -- well-enough time to know
15:22:49 15 that she was needed in this case.

15:22:51 16 Q. When did you tell Ms. Fulcher -- I'm sorry --
15:22:54 17 Mr. Fulcher that Ms. Flowers was not -- was a potential witness
15:22:59 18 in the case?

15:23:00 19 A. As soon as he told me the version of Heather Kennon's
15:23:03 20 story, that we went and -- over that bridge and went to Cassie's
15:23:06 21 house and got cold packs.

15:23:09 22 Q. Okay.

15:23:10 23 A. And I was probably three months, four months prior to
15:23:12 24 trial.

15:23:13 25 Q. Okay. So just so I have the time period down --

15:23:17 1 A. Yes.

15:23:17 2 Q. -- several months prior to trial --

15:23:20 3 A. Several months.

15:23:20 4 Q. -- you found out that Ms. -- Ms. Kennon had implicated

15:23:23 5 Cassie Flowers. That's when you told --

15:23:26 6 A. Yes, sir.

15:23:26 7 Q. -- Mr. Fulcher?

15:23:27 8 A. Yes, sir.

15:23:27 9 Q. Okay. That's what I -- where was Ms. Flowers at the

15:23:30 10 time of your trial?

15:23:33 11 A. She was incarcerated.

15:23:34 12 Q. Okay. And did you know this? Did you know where she

15:23:36 13 was?

15:23:37 14 A. I -- I found out that she was incarcerated through a

15:23:40 15 friend, Anique, and she -- she contacted her for me, um, and

15:23:45 16 sent her a Christmas card, and I let her know what happened. I

15:23:50 17 sent some of the transcripts to let her review them.

15:23:53 18 Q. Okay.

15:23:54 19 A. And I told her that I was, you know, about -- I was

15:23:57 20 found guilty of this and that I needed her to "fight" a

15:24:02 21 affidavit, a truthful statement of what happened on that night.

15:24:07 22 Q. Are you familiar with an individual named Brandon

15:24:10 23 Elps?

15:24:12 24 A. Yes, I am.

15:24:12 25 Q. And can you tell the Court how you know Mr. Elps?

15:24:14 1 A. Um, I met Brandon Elps while I was in the county jail
15:24:18 2 here. I used to -- I had contacts then, so I would have to come
15:24:21 3 out of the blocks and go to the medical to clean my contacts
15:24:23 4 out. And they have a crab pot here, which is in the middle,
15:24:26 5 single cell that's in away from the -- away from the other
15:24:31 6 blocks. And Brandon Elps, he was out there in that single cell
15:24:34 7 and I got to talking to -- with him.

15:24:35 8 And I come to find out that he was actually in here on
15:24:38 9 charges which actually were secret indictments of him, and
15:24:41 10 Ms. -- Ms. Kennon selling meth -- methadone on a school
15:24:46 11 property, and I actually have evidence of that here. Daniel
15:24:50 12 Black was the narcotics officer.

15:24:51 13 He started telling me about her and how he -- she
15:24:54 14 got --

15:24:54 15 MR. SPENCE: Judge, I object. He's not even in this
15:24:57 16 hearing. He's not even -- there's no issue about --

15:24:57 17 THE COURT: Overruled. Go ahead.

15:24:58 18 MR. SPENCE: -- Brandon Elps' testimony or anything
15:25:01 19 else. It's not been brought forth by affidavit.

15:25:03 20 THE COURT: I'm going to allow a little bit of it.

15:25:05 21 THE WITNESS: He just told me that she had been
15:25:08 22 untruthful on him, and that she had him in trouble, and he'd be
15:25:12 23 willing to testify to her pattern of behavior at my trial, if
15:25:16 24 that happened.

15:25:16 25

15:25:16 1 BY MR. MEGARO

15:25:16 2 Q. And this information that you came by from Mr. Elps,
15:25:18 3 was that prior to your trial?

15:25:20 4 A. Oh, yes. He was -- it was prior before my trial. He
15:25:22 5 was here -- the day of my trial, he was in custody in the crab
15:25:26 6 pot here.

15:25:26 7 Q. Okay. Now, prior to trial, did you pass that
15:25:30 8 information along to Mr. Fulcher?

15:25:32 9 A. Yes. And he filed for the subpoenas. Actually, I
15:25:35 10 think he went through the wrong way of even subpoenaing a inmate
15:25:39 11 that's in jail custody. But he did try to subpoena him, and
15:25:41 12 they asked him would he -- would they be willing to offer proof,
15:25:44 13 but he didn't do it. I don't know why.

15:25:46 14 Q. Okay. At any point in time during your pretrial
15:25:52 15 proceedings up until the point of trial, did Mr. Fulcher ever
15:25:56 16 give you any information as to whether he had spoken with either
15:26:00 17 Mr. Elps, Ms. Flowers, or Mr. Thomas?

15:26:03 18 A. Mr. Fulcher did not review any evidence. He didn't
15:26:07 19 examine any evidence. He didn't talk to any witnesses. He
15:26:10 20 didn't -- he didn't do anything. All he wanted me to do was
15:26:12 21 take a plea bargain. He was not -- he kept reminding me that I
15:26:15 22 hadn't paid him enough to go to trial.

15:26:18 23 Q. Did there come a point in time when Mr. Fulcher sought
15:26:20 24 to be relieved as your attorney?

15:26:22 25 A. Yes.

15:26:23 1 Q. Do you remember when that was?

15:26:24 2 A. Yes. Okay. The -- there's a lot of things that
15:26:31 3 happened in the first process to get here. But he -- it was
15:26:37 4 right -- right -- I guess it was -- it was September the 1st or
15:26:40 5 2nd.

15:26:43 6 Q. Okay. Go ahead.

15:26:44 7 A. It was September the 1st and 2nd. And, um -- we,
15:26:48 8 um -- he came to me and the first thing he said was, "We're
15:26:54 9 being forced to trial, September 8th."

15:26:59 10 He said that -- he said that, basically, you know -- I
15:27:04 11 asked him, you know, "Is there some kind of time limit, you
15:27:07 12 know, that" -- oh, yeah. He told me that we were forced to
15:27:09 13 trial, and that -- yeah -- I needed to take this 57-month plea
15:27:12 14 bargain.

15:27:12 15 And I said, "Well," I said, "is there any time limit I
15:27:16 16 have, to notify or secure witnesses prior to a trial? I mean,
15:27:20 17 there's only a couple days."

15:27:22 18 He said -- and he said yes. I asked him. "Well, is a
15:27:26 19 three-day notification of subpoena, you know, a witness, is it
15:27:30 20 not enough time?"

15:27:30 21 And he agreed. I asked him to file a continuance
15:27:34 22 because we were not ready for trial. He basically -- he said --
15:27:38 23 I said, "Nor can my witnesses be brought, you know, in time."

15:27:42 24 He said he would but, you know, the Judge probably will
15:27:45 25 deny it. He said a lot of things with respect to the Trial

15:27:49 1 Judge, but he also said he didn't like going in front of the
15:27:52 2 Trial Judge. And I asked him, "Well, if you feel that way,
15:27:55 3 would you please ask for another Judge so we can -- that you
15:27:59 4 have a better relationship with."

15:28:00 5 He said he couldn't do that; it was out of his hands.
15:28:03 6 He said that -- I remarked that other people I knew had to pay
15:28:07 7 lawyers, they could choose their Judges. And he said, well, he
15:28:09 8 couldn't in this case, and he said that he -- he told me that
15:28:15 9 he -- the Prosecution wanted me. He advised me to take this
15:28:18 10 plea because if I didn't, he felt like I would lose.

15:28:21 11 I told him if he felt like that, then he needed to
15:28:23 12 withdraw from my case. And I told him that he had not took my
15:28:25 13 case in serious consideration; that all he did from the
15:28:27 14 beginning was assume that I would take a plea bargain. I
15:28:30 15 reminded him that he had even turned away witnesses of mine.

15:28:33 16 When I called at his office to make an appointment,
15:28:35 17 give affidavit statements, he did not respond to that but said
15:28:38 18 he would bring me before the Judge to request for withdrawal of
15:28:41 19 counsel. He said I had not paid him enough for a trial anyway.

15:28:44 20 Q. Okay. I knew you -- you're reviewing your notes.

15:28:45 21 A. Right.

15:28:45 22 Q. Are these the notes that you prepared?

15:28:48 23 A. Yes, I have. Yes.

15:28:49 24 Q. Okay.

15:28:49 25 A. It's a lot of stuff to cover.

15:28:50 1 Q. I know. Let me just kind of slow you down.

15:28:53 2 A. Okay.

15:28:53 3 Q. Take you bit by bit. And I know that the transcripts
15:28:57 4 are on file. But did there come a point in time where
15:29:00 5 Mr. Fulcher sought to be relieved in court?

15:29:02 6 A. Yes. We had -- the withdrawal hearing was the two
15:29:06 7 days after that, which was on a Friday. The Honorable Judge
15:29:10 8 asked him would he -- you know, why was he trying to withdraw
15:29:13 9 off my case. He stood up, he said, "You know, Your Honor, I
15:29:16 10 can't -- I feel like I can't zealously defend Mr. Warren."

15:29:19 11 He said he -- we didn't see eye to eye, and he said
15:29:22 12 that -- that he -- he falsely said that I hadn't finished paying
15:29:26 13 him.

15:29:26 14 Q. Okay. Let's -- we'll leave that alone for the time
15:29:31 15 being.

15:29:31 16 Did Ms. Kennon ever send you any attorneys -- I'm
15:29:35 17 sorry -- Ms. Kennon ever send you any letters while your case
15:29:38 18 was pending for trial?

15:29:39 19 A. Yes. This was at the beginning right after I hired
15:29:41 20 Mr. -- Mr. Fulcher. She began writing me letters from the jail.
15:29:47 21 She was -- there was about five letters I had. She was asking
15:29:51 22 me not -- you know, begging me not to talk to the police; saying
15:29:54 23 just to calm down, you know, everything -- she was going to tell
15:29:56 24 the truth about what happened, just trying to, you know, ease --
15:29:59 25 and every -- you know, ease me, tell me everything is going to

15:30:02 1 be all right. Just begging me not to talk to -- anything to any
15:30:05 2 officers or any investigators.

15:30:06 3 I gave four of those letters to Mr. Fulcher. One of
15:30:10 4 them wasn't -- wasn't as strong, I kept myself. And I did try
15:30:13 5 to bring those -- those letters in trial, but I was refused at,
15:30:16 6 because he failed to do some -- go through some process to get
15:30:20 7 them in.

15:30:20 8 Q. Were any of those -- that was going to be my next
15:30:22 9 question: Were any of those letters introduced at trial?

15:30:26 10 A. He had the four, and he -- she got on the stand and
15:30:29 11 she did admit to writing those letters, and when we --

15:30:31 12 THE COURT: He just asked you did any of them get
15:30:33 13 admitted into evidence. Listen to the question --

15:30:35 14 THE WITNESS: Oh, I'm sorry.

15:30:35 15 THE COURT: -- and answer just that.

15:30:36 16 THE WITNESS: Sorry. No. They wasn't unable to.

15:30:39 17 MR. MEGARO: Okay. Thank you. I'm sorry. Bear with
15:30:48 18 me just a moment.

15:30:49 19 THE COURT: Yes, sir.

15:30:49 20 (Pause in proceedings.)

15:30:49 21 BY MR. MEGARO

15:30:49 22 Q. During the trial, as you've heard Heather Kennon's
15:31:00 23 testimony where she testified that you were with her all night
15:31:06 24 at Anique Pittman's house, and she had testified that she had
15:31:10 25 mixed chemicals to make meth at Anique Pittman's home, all those

15:31:15 1 other things that -- and she was with Cassie Flowers -- at that
15:31:19 2 point during the trial, did you tell her attorney that -- that
15:31:22 3 those statements were not true and that there were other
15:31:25 4 witnesses that were able to contradict those statements?

15:31:29 5 A. You say, during trial?

15:31:31 6 Q. Yeah.

15:31:31 7 A. He already knew it wasn't true. I've already
15:31:34 8 discussed this with him. That was the whole purpose of having
15:31:36 9 these witnesses there. That was the importance of it. But,
15:31:38 10 yes, he knew it was untrue.

15:31:42 11 Q. And, obviously, neither Mr. Thomas nor Mr. Elps nor
15:31:46 12 Ms. Flowers testified at your trial; would that be correct?

15:31:49 13 A. That's correct, sir.

15:31:50 14 Q. Okay. Now, did there come a point during the trial
15:32:03 15 where a bag of evidence was opened and the contents displayed to
15:32:06 16 the jury?

15:32:09 17 A. No. But the SBI agent was asked about it.

15:32:12 18 Q. Okay. And the bag of evidence, is that the evidence
15:32:16 19 which was recovered from the hotel room?

15:32:18 20 A. Yes, sir.

15:32:18 21 Q. All right. And is it safe to say that your defense at
15:32:22 22 the trial was that the contents of the hotel room were Heather
15:32:27 23 Kennon's and Heather Kennon's alone, and that you had no
15:32:30 24 involvement or no knowledge of those items?

15:32:34 25 A. Um, could you repeat the question, please?

15:32:36 1 Q. Was it your defense at trial that the contents of the
15:32:41 2 hotel room that were found, the precursors to meth --

15:32:43 3 A. Right.

15:32:44 4 Q. -- the meth lab --

15:32:45 5 A. Right.

15:32:45 6 Q. -- that those items were Heather Kennon's, Heather
15:32:48 7 Kennon's alone, and that you knew nothing about it, you didn't
15:32:51 8 possess those items?

15:32:52 9 A. I don't know who's the possessor of it, whose that
15:32:55 10 stuff was, but it wasn't mine.

15:32:56 11 Q. Okay. Did there come a point in time during the trial
15:33:01 12 that you found out that one of the items recovered from the
15:33:04 13 hotel room in that bag of evidence was a box of tampons?

15:33:08 14 A. I think they said tampons. I don't know if it was a
15:33:11 15 box, but I know that the evidence wasn't in the discovery.

15:33:15 16 Q. Okay. And the fact -- when you say that evidence
15:33:18 17 was -- wasn't in discovery, are you talking about an inventory?

15:33:22 18 A. Yes, sir. I have that at home.

15:33:23 19 Q. Tampons were not listed on the inventory?

15:33:26 20 A. No, sir.

15:33:26 21 Q. And the first time you learned of the presence of
15:33:29 22 tampons was when?

15:33:30 23 A. We were sideswiped in trial with it. It should have
15:33:33 24 been the centerpiece of the defense.

15:33:35 25 Q. Was that ever mentioned by the defense?

15:33:38 1 A. No.

15:33:38 2 Q. The tampons?

15:33:39 3 A. He just let it go. He just let it go. I -- due to
15:33:43 4 our -- our interpersonal conflict, he just -- he let -- he
15:33:44 5 just -- he let stuff like that go. He didn't pounce on it.

15:33:47 6 Q. Okay. Now, I want to draw your attention to the first
15:33:53 7 day of the trial. Did there come a point in time where you
15:33:58 8 asked Mr. Fulcher where your witnesses were, on the first day of
15:34:00 9 trial?

15:34:01 10 A. That was the first day of trial. I walked into this
15:34:04 11 courtroom and I asked Mr. -- I've had a feeling that my -- my
15:34:06 12 witness -- there was no way possible to get them here, and I
15:34:09 13 asked him first thing, "Are my witnesses here?" He asked the
15:34:12 14 Madame Clerk, "Are the witnesses here?"

15:34:14 15 And she said, "I'm sorry. But the sheriff forgot to
15:34:18 16 serve the subpoenas."

15:34:19 17 Q. Do you know what other efforts were made to bring
15:34:22 18 those witnesses to court?

15:34:24 19 A. He didn't object to it. He didn't object to it at
15:34:27 20 all. But I don't -- there was no -- there was -- there was
15:34:29 21 no -- no, sir.

15:34:31 22 Q. Okay. How well did you know Heather Kennon?

15:34:42 23 A. I met her a couple times through my brother. He used
15:34:45 24 to date her. I knew she had a son.

15:34:51 25 Q. Do you know whether Heather Kennon had any medical

15:34:53 1 issues or medical problems?

15:34:55 2 A. Well, I wanted -- I knew through Brandon Elps that,
15:34:58 3 you know, she was --

15:34:59 4 MR. SPENCE: Objection.

15:34:59 5 THE COURT: Sustained.

15:35:01 6 BY MR. MEGARO

15:35:01 7 Q. What did you personally know about -- what, if
15:35:04 8 anything, did you personally know about Heather Kennon's
15:35:07 9 condition?

15:35:07 10 A. That she -- that she was notorious for faking
15:35:10 11 injuries, and could get drugs. She had a bad record, criminal
15:35:16 12 record. Driving record, terrible driving record.

15:35:21 13 Q. Now, the part about faking injuries or going -- going
15:35:24 14 to the doctor to get drugs, did you pass that information along
15:35:27 15 to your attorney as well?

15:35:28 16 A. I asked him to -- to obtain that information. And I
15:35:32 17 had some information he didn't even use, but he didn't even make
15:35:36 18 any effort to get -- to look at that. He said that was
15:35:38 19 impossible to get.

15:35:39 20 MR. MEGARO: All right. Thank you. I have no further
15:35:52 21 questions for Mr. Warren, Your Honor.

15:35:53 22 THE COURT: Cross-examination Mr. Spence?

15:35:54 23 **CROSS-EXAMINATION BY MR. SPENCE**

15:35:54 24 Q. Mr. Warren, did you do some handwritten notes and give
15:35:58 25 them to Mr. Megaro in this case?

15:36:00 1 A. Yes, sir. Quite a bit.

15:36:02 2 Q. Where are they?

15:36:03 3 A. My handwritten notes?

15:36:04 4 Q. Yeah.

15:36:04 5 A. I think Mr. Megaro has them.

15:36:07 6 MR. MEGARO: They're --

15:36:07 7 MR. SPENCE: The handwritten ones?

15:36:12 8 MR. MEGARO: The handwritten notes are right in front

15:36:13 9 of them.

15:36:14 10 THE COURT: He's got them.

15:36:16 11 MR. SPENCE: Oh. You've got them.

15:36:17 12 BY MR. SPENCE

15:36:17 13 Q. So they haven't been introduced; they've been -- just

15:36:19 14 been up here --

15:36:21 15 A. I want them introduced. Actually, we didn't go over

15:36:23 16 everything that needed to be --

15:36:24 17 Q. So he's not really done his job, has he?

15:36:26 18 A. No. He's done a great job.

15:36:30 19 Q. Okay. Thank you. This here, what is that?

15:36:32 20 A. This is just a time line of stuff that happened.

15:36:33 21 Q. Is this something you gave Mr. Fulcher?

15:36:36 22 A. No, sir.

15:36:37 23 Q. Because it wasn't done at the time, was it?

15:36:40 24 A. I don't understand the question.

15:36:41 25 Q. When did you write this?

15:36:43 1 A. About two months ago.

15:36:44 2 Q. Okay. I'm going to call that MAR Number [4] -- I
15:36:47 3 mean, [3]. And I'm going to have to write it on there.

15:36:59 4 (State's Exhibit MAR Number [3] marked for
15:36:59 5 identification.)

15:36:59 6 BY MR. SPENCE

15:36:59 7 Q. And this is your writing?

15:37:04 8 A. Yes, sir. That's my writing.

15:37:05 9 Q. Two months ago; is that right?

15:37:07 10 A. Just about.

15:37:07 11 Q. So this is just a list of 24 things that you think
15:37:11 12 weren't done correctly, correct?

15:37:13 13 A. That's correct.

15:37:13 14 Q. Did you get them all out with Mr. Megaro up here, or,
15:37:15 15 you got something else you want to get out in front of the
15:37:19 16 Judge, of this stuff?

15:37:20 17 A. Are you willing to let me -- allow to talk about it?

15:37:23 18 Q. I'm not asking you. I'm just saying, is there
15:37:24 19 anything in there you think the Judge ought to hear about that
15:37:26 20 you didn't -- that you weren't asked about?

15:37:28 21 A. Yeah. I would like a couple things said.

15:37:29 22 Q. Go ahead.

15:37:30 23 A. I appreciate it, Mr. Spence. Thank you.

15:37:31 24 Q. Thank you.

15:37:33 25 A. I just want to say, you know, for -- you know, our

15:37:36 1 motion for a continuance, you know, after we -- you know, while
15:37:39 2 I was -- while I was there we had a withdrawal, and he was
15:37:42 3 asking me -- the Judge asked me to stand up and state my case,
15:37:45 4 how -- why did I want to withdraw for him off my case?

15:37:49 5 And, you know, when I stood up I said, you know, "He
15:37:53 6 hasn't -- he hasn't been effective. He hasn't -- he hasn't, you
15:37:54 7 know, analyzed any evidence. He hasn't -- he hasn't talked to
15:37:58 8 any of my witnesses. He's been ineffective on every account.
15:38:02 9 All he was concerned was my money."

15:38:04 10 As I'm talking, I'm looking down at Mr. Fulcher and
15:38:07 11 he's turning purple. He's very embarrassed in open court. He
15:38:10 12 was angry with me. And this -- by me having to state my -- my
15:38:13 13 complaints with this man in open court, it really caused more --
15:38:15 14 it was more than a conflict of interest: It caused a conflict
15:38:18 15 of interpersonal relationship between us. It was a gulf between
15:38:21 16 us after this.

15:38:22 17 And, you know, we -- we -- we denied -- you know, I was
15:38:24 18 denied that. You know, I was stuck with this guy to go all the
15:38:26 19 way through the trial. And there was times he should have
15:38:29 20 objected, he should have objected to, and there's things he
15:38:32 21 should have done. He just let -- like the tampons, he should
15:38:34 22 have -- you know, he should have been -- he should have pounced
15:38:35 23 on it. There was a animosity between us.

15:38:38 24 Q. Okay. Now, you're talking about the hearing in August
15:38:40 25 where all this took place?

15:38:42 1 A. The double hearing. The double withdrawal hearing.

15:38:45 2 That was part of it. Yes, sir.

15:38:45 3 Q. In August?

15:38:46 4 A. I think so. Yes, sir.

15:38:48 5 Q. And didn't you tell the Court and tell Mr. Fulcher you
15:38:50 6 were going to hire your own lawyer?

15:38:52 7 A. I wanted to. Yes, sir.

15:38:53 8 Q. Well, you told him you were going to retain a lawyer,
15:38:55 9 to hell with him, you were going to do your -- do it yourself?

15:38:58 10 A. Yes, sir.

15:38:58 11 Q. Okay. So what did you expect him to do after you told
15:39:01 12 him you were going to hire your own lawyer?

15:39:03 13 A. I was just -- I was really frustrated. I just felt
15:39:06 14 like I was being railroaded. I felt like he was not -- he was
15:39:09 15 not having my -- my best interest in mind.

15:39:11 16 Q. Okay. Did you try to hire a lawyer?

15:39:13 17 A. I was never allowed to, um, get rid of him. It was
15:39:16 18 denied.

15:39:16 19 Q. No. You're free to get rid of him.

15:39:18 20 A. No, I -- I was denied that fact. We were -- like, the
15:39:21 21 trial was coming up. I was denied that.

15:39:22 22 Q. You were denied the right to represent yourself?

15:39:25 23 A. I was told that's not wise to do.

15:39:28 24 Q. Okay. Did you -- but in August, you had a month
15:39:30 25 between August and September to hire a lawyer. Did you make an

15:39:33 1 attempt to do that?

15:39:34 2 A. Well, none of the evidence had been analyzed. None of
15:39:37 3 the witnesses had been talked to. I was still stuck, like, from
15:39:40 4 day one.

15:39:40 5 Q. Okay. The answer would be no, right?

15:39:42 6 A. Yes, sir.

15:39:42 7 Q. Okay. And you said these tampons, that was -- you
15:39:51 8 think that was just a big -- a big part of the trial?

15:39:54 9 A. It was a haymaker-type-thing. We never had a chance
15:39:56 10 to analyze it. I was wondering why it was even missing. I even
15:39:59 11 looked at you and you were flabbergasted by it. I mean, when
15:40:02 12 the jury -- I looked at the jury, I looked at my lawyer, I mean,
15:40:04 13 I looked at you and you didn't even know it -- because
15:40:06 14 evidently, you hadn't been presented with the evidence too.

15:40:08 15 And I think it should have been -- because the whole
15:40:10 16 time, this whole situation, it was of who this bag belonged to.
15:40:14 17 This woman with -- the day I picked her up, I'm at that motel.
15:40:17 18 I shouldn't have been at that motel, but I was there with a
15:40:19 19 married woman at that motel. I ran into her just by chance.

15:40:23 20 Q. Okay.

15:40:23 21 A. I wasn't -- I wasn't just -- it was -- it was a
15:40:25 22 chance. She just asked me for a ride.

15:40:27 23 Q. Okay. My question is, the tampons came out in the
15:40:29 24 trial?

15:40:31 25 A. Yes, sir.

15:40:33 1 Q. And the tampons, the presence of tampons in that, that
15:40:40 2 would not have been favorable information for the State, would
15:40:42 3 it? It's not going to hurt your case, would it? It would hurt
15:40:47 4 my case?

15:40:47 5 A. I think it would have helped my case.

15:40:49 6 Q. How?

15:40:50 7 A. I think it would have showed -- it would have gave
15:40:52 8 more direction to who -- where the bag came from.

15:40:54 9 Q. Okay. It was just you and Heather, right?

15:40:56 10 A. Um, for --

15:40:57 11 Q. They weren't your tampons, were there?

15:40:59 12 A. No, sir. They were not my tampons.

15:41:00 13 Q. So if the jury sees a woman and man together and some
15:41:02 14 tampons, they probably can do the math and figure out whose
15:41:06 15 tampons, right?

15:41:07 16 A. Yes, sir.

15:41:07 17 Q. So the tampons would show that it was Heather Kennon's
15:41:09 18 stuff, right?

15:41:10 19 A. I don't know whose -- I think she was -- really,
15:41:12 20 honestly, I think she was partying with those people at that
15:41:15 21 motel. And, I mean, that was just trashing their little party
15:41:17 22 they had. I don't -- I don't really think it was her stuff, but
15:41:19 23 it wasn't mine.

15:41:21 24 Q. Of course it wasn't yours.

15:41:22 25 A. No, sir. It was not mine.

15:41:23 1 Q. And a jury would know that?

15:41:25 2 A. I would -- I would think so. Everything got out.

15:41:27 3 Yes, sir.

15:41:31 4 Q. You testified at your trial under oath, right?

15:41:34 5 A. Yes, sir.

15:41:35 6 Q. And you were able to tell your whole story at trial?

15:41:39 7 A. Yes, sir.

15:41:43 8 Q. And Anique testified, right?

15:41:45 9 A. Right.

15:41:46 10 Q. She told her whole story under oath, right?

15:41:51 11 A. Yes, sir.

15:41:54 12 Q. Two other people testified, correct, for you?

15:41:57 13 A. Yes, sir.

15:41:58 14 Q. They told their story under oath, correct?

15:42:00 15 A. Well, the reason I had those people there is because,

15:42:02 16 one --

15:42:02 17 THE COURT: He just asked you, did they testify.

15:42:04 18 THE WITNESS: Yes, sir.

15:42:04 19 BY MR. SPENCE

15:42:04 20 Q. Okay. Is there anything Anique Pittman would testify

15:42:09 21 to that Mark Thomas could add anything to?

15:42:12 22 A. Yes, sir.

15:42:13 23 Q. What?

15:42:15 24 A. Well, the fact is, is that it's really important

15:42:18 25 that -- because Mark was up with Heather. He could see her

15:42:21 1 going in and out of the house. She took my keys, my car keys.
15:42:24 2 He can -- she can -- Mark can testify that, you know, "Hey.
15:42:27 3 There's another witness that we did not -- we were not out
15:42:30 4 partying making methamphetamine like she claimed, with six other
15:42:33 5 people."

15:42:33 6 He could -- he could claim a lot of things on that
15:42:36 7 version. Only thing I have in this -- in this case is to attack
15:42:38 8 her -- her untruthfulness and her pattern of behavior. That's
15:42:44 9 all I have.

15:42:45 10 Q. Okay.

15:42:45 11 A. That was my only angle.

15:42:46 12 Q. I got it. Now, Judge Alford did issue writs for
15:42:51 13 both -- for Mark Thomas and Cassie Flowers, correct?

15:42:53 14 A. Sir?

15:42:53 15 Q. Didn't Judge Alford issue writs during the -- for
15:42:55 16 those two people?

15:42:57 17 A. Yes, sir. He did.

15:42:57 18 Q. So Mr. Fulcher is not to blame for that, is he?

15:43:00 19 A. Well, that's the part -- I was trying to say with
15:43:01 20 the -- your rebuttal in the case of State, they're saying that
15:43:03 21 it would have been deficient to bring them. But it was never a
15:43:06 22 fact of being deficient to bring them. It was never a trial
15:43:09 23 strategy. It was the point that he knew about the importance.
15:43:11 24 He did. He filed it late, but he did file it. But it was never
15:43:15 25 really part of his -- his thing. It was the State that failed

15:43:17 1 to bring them. He failed to object to it. That was his
15:43:20 2 failure. He allowed it to happen.

15:43:22 3 Q. Allowed what?

15:43:23 4 A. He allowed them not to be there without objecting to
15:43:25 5 it. The writs were filed. The Judge did file. The State --
15:43:28 6 when I got here, they said the State had forgot to serve the
15:43:30 7 subpoenas, these writs.

15:43:31 8 Q. But the Judge who ordered the writs would have allowed
15:43:35 9 these people to come in?

15:43:35 10 A. They were in State custody. They had no way to get
15:43:38 11 down here. It was the State that had to bring them down here.

15:43:40 12 Q. So it was my fault?

15:43:42 13 A. No, sir. I don't blame you. I know you didn't have
15:43:44 14 nothing to do with this.

15:43:45 15 Q. Okay. Now, you paid Mr. -- Mr. Fulcher \$2,500?

15:43:48 16 A. Yes, sir.

15:43:49 17 Q. From a tax return?

15:43:51 18 A. That's all I had. Yes, sir. That's every bit of
15:43:54 19 money I had.

15:43:55 20 Q. Before I forget about it, let me go over your criminal
15:43:57 21 history.

15:43:58 22 A. Yes, sir.

15:43:58 23 THE COURT: We went over it in the trial. I'll take
15:44:00 24 judicial notice of it.

15:44:01 25 MR. SPENCE: Okay.

15:44:02 1 BY MR. SPENCE

15:44:02 2 Q. Who paid Mr. Megaro in this case?

15:44:07 3 A. A friend paid for --

15:44:08 4 Q. Who?

15:44:09 5 A. Ms. Silvia Flowers paid for him.

15:44:11 6 Q. So Cassie Flower's mother --

15:44:13 7 A. Yes, she did --

15:44:13 8 Q. -- paid Mr. Megaro --

15:44:13 9 A. Yes, sir.

15:44:14 10 Q. -- to help you?

15:44:15 11 A. Yes, sir.

15:44:16 12 Q. How much?

15:44:17 13 A. Is that even --

15:44:18 14 Q. Yeah --

15:44:18 15 A. Is that even --

15:44:20 16 THE COURT: I don't need to hear that. You don't have

15:44:24 17 to answer that.

15:44:25 18 THE WITNESS: Thank you, sir.

15:44:27 19 MR. SPENCE: That's all I have.

15:44:28 20 THE COURT: Anything further?

15:44:36 21 MR. MEGARO: No, Your Honor. Thank you.

15:44:37 22 THE COURT: Thank you, sir. You may stand down.

15:44:40 23 THE WITNESS: Thank you, Judge.

15:44:40 24 (The Defendant stepped down from the witness

15:44:40 25 stand.)

15:44:40 1 THE COURT: Call your next witness.

15:44:43 2 MR. MEGARO: Your Honor, at this time, we would rest.

15:44:45 3 (The Defense rests.)

15:44:45 4 THE COURT: All right. Does the State wish to call
15:44:47 5 any?

15:44:48 6 MR. SPENCE: Very briefly.

15:44:50 7 THE COURT: Please.

15:44:50 8 MR. SPENCE: Rodney Fulcher.

15:44:52 9 THE COURT: Please swear the witness, Madame Clerk.

15:44:53 10 (The witness was duly sworn.)

15:44:53 11 MR. MEGARO: Your Honor, my client brought his "card"
15:45:05 12 down, but I believe this has been admitted by the State.

15:45:06 13 THE COURT: I don't think it's been admitted.

15:45:08 14 MR. SPENCE: I didn't admit it.

15:45:09 15 MR. MEGARO: Oh, okay.

15:45:09 16 THE COURT: -- thank you.

15:45:09 17 (The witness took the witness stand.)

15:45:09 18

15:45:09 19 **RODNEY FULCHER,**

15:45:09 20 having been first duly sworn, at 3:45 p.m. was called as a
15:45:09 21 witness on behalf of the State and testified as follows:

15:45:09 22 **DIRECT EXAMINATION BY MR. SPENCE**

15:45:14 23 Q. State your name, please, for the Court, sir.

15:45:16 24 A. Rodney Fulcher.

15:45:17 25 Q. And, Mr. Fulcher, you're a North Carolina Bar member

15:45:21 1 since what year?

15:45:22 2 A. 1999.

15:45:23 3 Q. And in that time, do you take criminal appointed
15:45:26 4 cases? Criminal retained cases?

15:45:28 5 A. Both.

15:45:28 6 Q. Okay. In this case, just to clear this up, did you
15:45:31 7 ever represent Heather Kennon in this case?

15:45:34 8 A. No. I think Mr. Suggs was the one who was
15:45:37 9 representing her.

15:45:37 10 Q. Okay. So there was no conflict to even be dealt with,
15:45:40 11 correct?

15:45:40 12 A. I never spoke with Heather Kennon about anything.

15:45:42 13 Q. Okay. Tell the members -- tell His Honor -- and we
15:45:46 14 can limit this to August, September, during the time this is
15:45:49 15 being prepared for trial -- your relations and what you did or
15:45:54 16 what Mr. Warren asked you to do regarding this case.

15:45:58 17 A. Beginning in August, we were -- we knew at that point
15:46:02 18 Mr. Warren was going -- certainly was going to reject any plea
15:46:05 19 offers, and I think Your Honor put them in -- even made that
15:46:08 20 clear to us.

15:46:08 21 So shortly after that, we began to -- we met several
15:46:12 22 times over in the jail down by the fingerprinting room and began
15:46:16 23 to discuss, "Hey. What is our plan to go?"

15:46:18 24 And I had said, "Listen. The evidence in this case is
15:46:22 25 very strong against you. The risk/reward is certainly a lot

15:46:28 1 that you'd be looking at if you're convicted."

15:46:30 2 The more we went, the more adamant he was we was going
15:46:33 3 to try it, and the differences of opinion that we have was on
15:46:36 4 the evidence of the case and the direction to go on doing that.

15:46:38 5 I was of the assumption that we needed to attack the
15:46:41 6 evidence that the State had. There was a state lab official
15:46:45 7 coming; there was several officers that were to be there. And
15:46:51 8 Mr. Warren was -- seemed to be more wanting to attack
15:46:56 9 credibility at that point than attacking what the State was
15:46:58 10 going to present. That was the huge difference that we had at
15:47:01 11 the time.

15:47:02 12 Q. And did he tell you that the two witnesses that you
15:47:06 13 needed to call on his behalf were Cassie Flowers and Mark
15:47:09 14 Thomas?

15:47:10 15 A. We had talked about Cassie Flowers and Mark Thomas,
15:47:12 16 but at that point, we really did not know that Heather Kennon
15:47:15 17 was even going to testify in that case, because she was a
15:47:18 18 co-defendant, and Mr. Suggs was representing her in that case.
15:47:21 19 So at that point, we didn't know that she was going to testify
15:47:26 20 against us.

15:47:26 21 Q. She was a charged co-defendant?

15:47:28 22 A. She was a charged co-defendant.

15:47:30 23 Q. Okay. And at what point did you find out or were you
15:47:33 24 informed that she was going to actually plead guilty and testify
15:47:36 25 for the State?

15:47:36 1 A. I believe it was when we -- we rejected -- Mr. Warren
15:47:40 2 finally rejected the offer on the table, is when you let me know
15:47:45 3 and Mr. Suggs let me know, that at that point, she was going to
15:47:48 4 be a State's witness, testifying.

15:47:50 5 Q. Okay. And after that, did the names Cassie Flowers --

15:47:55 6 A. Yes.

15:47:55 7 Q. -- and Mark Thomas come up?

15:47:56 8 A. Absolutely.

15:47:57 9 Q. And did they come up -- what month or what time period
15:48:00 10 are we talking about?

15:48:01 11 A. It would be mid- to late August before -- it was very
15:48:04 12 close to trial time.

15:48:05 13 Q. Okay. And had you read all the discovery?

15:48:08 14 A. I had read all the State's discovery that we had.

15:48:11 15 Q. Okay. And in your opinion, were you prepared to try
15:48:15 16 the case based on what the State -- the open-file discovery from
15:48:19 17 the State?

15:48:19 18 A. I was prepared to try the case on what the State's
15:48:22 19 evidence was, but I was not prepared to go forward with any
15:48:26 20 information to cross-examine any of these witnesses that
15:48:31 21 Mr. Warren only had. One, I didn't know anything about them.
15:48:33 22 Two, they were all -- every one in the Department of Corrections
15:48:35 23 or in custody. And I informed him that their credibility would
15:48:39 24 be at issue.

15:48:40 25 Q. Okay. Now, how long have you known, from hanging

15:48:45 1 around Criminal Court, the name Cassie Flowers?

15:48:48 2 A. Ever since I have been practicing.

15:48:50 3 Q. And do you think that she would have made a credible
15:48:54 4 witness on the stand, given her criminal history and your
15:48:57 5 knowledge of her credibility and drug use?

15:49:00 6 A. No. And that was part of the conflict between me and
15:49:02 7 Mr. Warren.

15:49:03 8 Q. Okay. Did he insist that you call them?

15:49:04 9 A. Yes.

15:49:05 10 Q. And, of course, strategically, you're in charge of who
15:49:10 11 to call?

15:49:11 12 A. That's correct.

15:49:12 13 Q. And did you make a strategic decision not to call her?

15:49:16 14 A. I -- he insisted, and I issued the writ. Judge Alford
15:49:20 15 signed it, and we sent it.

15:49:21 16 Q. Right.

15:49:21 17 A. But it was my intention that I would not call her,
15:49:25 18 because I could get the same testimony of what he wanted to get
15:49:28 19 out of -- out of Ms. Anique Pittman, who was a lot-more-credible
15:49:31 20 witness.

15:49:31 21 Q. Okay. Ms. Pittman had no prior criminal history --

15:49:35 22 A. She did not.

15:49:35 23 Q. -- or very little?

15:49:36 24 A. She did not.

15:49:37 25 Q. Okay. And the same with Mark Thomas: At the time you

15:49:39 1 were having to bring him over, he was facing -- or he was
15:49:43 2 being -- serving time for armed robbery?

15:49:46 3 A. He was in the Department of Corrections as well.

15:49:47 4 Q. Okay. So what did you advise Mr. Warren about --
15:49:50 5 about calling Mr. Thomas as a strategic move to rebut some minor
15:49:55 6 part of Heather Kennon's testimony?

15:49:57 7 A. It was the same deal with Cassie Flowers: That she --
15:49:59 8 he would not be very credible, and the only thing that he would
15:50:03 9 be able to do would refute anything that she said. And I didn't
15:50:06 10 know that -- what she was doing to testify until you made it
15:50:09 11 known that late in the ball game.

15:50:11 12 Q. Okay. And, again, you would be calling Cassie Flowers
15:50:14 13 basically to talk about the cold packs and rebut that little --

15:50:17 14 A. That's correct.

15:50:18 15 Q. -- piece? And in order to rebut that small piece of
15:50:23 16 testimony, her whole criminal history would be -- will be
15:50:25 17 exposed?

15:50:26 18 A. That was my thinking.

15:50:26 19 Q. And also, she would become associated with the
15:50:31 20 defendant you were trying to help?

15:50:32 21 A. It was her -- be honest with you, it was her
15:50:34 22 background and her record that really bothered me, anything she
15:50:37 23 would say and testify.

15:50:38 24 Q. Okay. And the same -- same thing would apply to Mark
15:50:40 25 Thomas?

15:50:41 1 A. That's correct.

15:50:41 2 Q. Okay. In preparation for this hearing, has Mr. Megaro
15:50:46 3 ever talked to you about this case?

15:50:48 4 A. No.

15:50:48 5 Q. Has he ever tried to subpoena your file?

15:50:50 6 A. No.

15:50:50 7 Q. Ever tried to subpoena your notes?

15:50:53 8 A. No.

15:50:53 9 Q. Issued any discovery that you know of?

15:50:55 10 A. No.

15:50:55 11 Q. Has he applied for any discovery, posttrial?

15:50:58 12 A. No.

15:51:00 13 Q. When did we finally get to talk about this case?

15:51:03 14 A. Probably late last week.

15:51:05 15 Q. And did I hand you the MAR and let you read it?

15:51:08 16 A. You let me read it.

15:51:09 17 Q. Okay. Is that the first time we've even talked about
15:51:11 18 it?

15:51:11 19 A. That's correct.

15:51:12 20 Q. And what was my instruction to you after I gave the
15:51:14 21 MAR?

15:51:14 22 A. That I needed to kind of get myself familiarized with
15:51:17 23 what -- the MAR, be able to answer any questions that you need
15:51:21 24 or Megaros[sic] asked.

15:51:23 25 Q. Now, the name Brandon Elps came up. Are you familiar

15:51:25 1 with that name from coming to court?

15:51:27 2 A. I am.

15:51:27 3 Q. And was there some -- something Mr. Elps was being
15:51:31 4 asked to provide in this case?

15:51:31 5 A. Very similar situation: To refute anything that
15:51:34 6 Heather Kennon would testify to, and her credibility.

15:51:37 7 Q. Okay. And was his testimony going to be something
15:51:41 8 like, at some point in the past she tried to get him in trouble?

15:51:45 9 A. That was what Mr. Warren's -- our MO would be with
15:51:48 10 him. And, once again, he was in custody, and I was weighing the
15:51:52 11 evidence, credibility issues of what he could possibly help the
15:51:56 12 case was, and I was very much dead against that.

15:51:59 13 Q. Okay. Now, what about the tampon issue? Do you
15:52:02 14 remember that coming up at trial?

15:52:04 15 A. I don't remember that at all.

15:52:06 16 Q. Okay. It would be in the transcript if it came up and
15:52:08 17 how it came up?

15:52:09 18 A. Correct.

15:52:10 19 Q. Okay. Mr. Warren was -- testified in his own defense?

15:52:15 20 A. He did, and that was against my wishes as well.

15:52:17 21 Q. Okay. Why did you advise him not to testify?

15:52:19 22 A. I advised him that if he was to testify, that
15:52:21 23 certainly, you would delve into his criminal history.

15:52:24 24 Q. Which included convictions for Second Degree Murder?

15:52:27 25 A. Correct.

15:52:27 1 Q. And other things?

15:52:28 2 A. That's correct.

15:52:30 3 Q. And, probably not be received too well?

15:52:32 4 A. Correct.

15:52:32 5 Q. And, just based on your -- your experience working in
15:52:35 6 Carteret County, practicing law, for all this period of time?

15:52:41 7 A. It was my -- it was my thought from the very beginning
15:52:45 8 that the State had a very strong case and that we were not going
15:52:49 9 to win this case if we tried it. That was part of the reason
15:52:52 10 why I kind of moved -- pushed us towards, "Hey, taking a plea,"
15:52:56 11 because I knew the amount of time that was hanging over his
15:52:58 12 head.

15:52:58 13 Once he insisted, I moved to continue, obviously, to
15:53:02 14 get these people that he demanded that we get here, and then at
15:53:06 15 trial I cross-examined and directed, and then we called Anique
15:53:09 16 Pittman and our witnesses, because they were the only people
15:53:12 17 that could testify that I didn't think's credibility would be at
15:53:16 18 issue that could add any light to what Mr. Warren was asking.
15:53:18 19 But I thought the State had a stronger case than we did.

15:53:21 20 Q. And, again, the downside was horrific?

15:53:25 21 A. Yes.

15:53:26 22 Q. And the upside was at least manageable?

15:53:29 23 A. Correct.

15:53:31 24 Q. And also, the State has the burden of proof. Isn't it
15:53:34 25 the defense lawyer's job to sit and listen and pick a case apart

15:53:38 1 as it evolves?

15:53:39 2 A. That's correct.

15:53:39 3 Q. And how many -- how many cases have we tried together
15:53:41 4 in this court?

15:53:42 5 A. Several.

15:53:42 6 Q. Okay. Did you do anything in this case that you -- or
15:53:51 7 handle this case any differently because of the way Mr. Warren
15:53:56 8 spoke about you or spoke about you in court?

15:53:58 9 A. No. I -- when His Honor said that I was to stay in
15:54:03 10 the case, I gave it the same amount of preparation and response
15:54:07 11 to the discovery as I would have as if he'd had paid me \$10,000.

15:54:10 12 Q. Okay.

15:54:10 13 A. Because that was my -- I took an oath to uphold the
15:54:13 14 law, and that's what I did. And I tried, to the best of my
15:54:15 15 ability, what was before me.

15:54:17 16 Q. And, also, Judge Alford's been the Resident Superior
15:54:22 17 Court Judge and Chief Resident since you've been practicing?

15:54:25 18 A. He has.

15:54:25 19 Q. And you know Judge Alford, what he will do as far as
15:54:29 20 his continuances at the last moment, motions to withdraw at the
15:54:32 21 last moment, things like that; is that correct?

15:54:34 22 A. That's correct.

15:54:35 23 Q. And did you sort of know what was going to -- how it
15:54:38 24 was going to play out?

15:54:39 25 A. I knew that that late in the ball game, it would be

15:54:41 1 very hard for this case to be continued.

15:54:43 2 Q. Okay. What about Mr. Warren's expressed intent to
15:54:45 3 hire another attorney? Tell us about that briefly.

15:54:49 4 A. When we were down discussing and I really informed him
15:54:51 5 of the weakness of our case, the strength of the State's case
15:54:53 6 and that it was my opinion that the case should be pled, that's
15:54:57 7 when he said, "I guess you and I don't see eye to eye, and I
15:55:00 8 need to hire another attorney."

15:55:02 9 Q. Okay.

15:55:02 10 A. "Or I need another attorney."

15:55:03 11 MR. SPENCE: Okay. And that's all I have of
15:55:07 12 Mr. Fulcher.

15:55:08 13 THE COURT: Cross-examination, Mr. Megaro?

15:55:11 14 MR. MEGARO: Yes, Your Honor. Briefly, may I check
15:55:13 15 something with Madame Clerk?

15:55:14 16 THE COURT: Sure.

15:55:24 17 MR. MEGARO: Your Honor, may I approach the witness?

15:55:25 18 THE COURT: You may.

15:55:26 19 MR. MEGARO: Thank you.

15:55:47 20 MR. SPENCE: It's a probation violation.

15:56:22 21 MR. MEGARO: Right. But this is our whole file.

15:56:25 22 MR. SPENCE: It's a probation violation on the case,
15:56:28 23 but he doesn't represent her on the underlying case. She
15:56:30 24 violated her probation three years later.

15:56:32 25 MR. MEGARO: This is not the entire court file?

15:56:34 1 MR. SPENCE: No, it is.

15:56:34 2 MR. MEGARO: Oh, okay.

15:56:34 3 MR. SPENCE: But if you're trying to say he
15:56:37 4 represented her at some time on -- as a co-defendant in this
15:56:40 5 case, that's not true.

15:56:41 6 MR. MEGARO: I'm just going to ask.

15:56:42 7 **CROSS-EXAMINATION BY MR. MEGARO**

15:56:42 8 Q. Mr. Fulcher, I'm going to ask you to take a look at
15:56:46 9 the official court file: Docket Number 14 CRS -- I believe
15:56:52 10 that's 50380. Did I get that number correct?

15:56:56 11 A. Yes.

15:56:56 12 Q. Okay. I'm actually going to ask you -- well, go
15:57:01 13 ahead. I'm sorry. Take a look at that and just let me know
15:57:03 14 when you're done.

15:57:04 15 (Mr. Fulcher examines documents.)

15:57:07 16 THE WITNESS: Yes. I understand.

15:57:09 17 BY MR. MEGARO

15:57:09 18 Q. I'm going to ask you, on the outside of the file in
15:57:12 19 front of the file, the file jacket, there's a handwritten space
15:57:17 20 or name of a defendant, and that contains the name Heather
15:57:19 21 Kennon?

15:57:20 22 A. It does.

15:57:21 23 Q. And to the right of that file, it contains a last name
15:57:25 24 of an attorney?

15:57:25 25 A. Mr. Suggs.

15:57:26 1 Q. And next to Mr. Suggs' name is the name Fulcher, but
15:57:28 2 that's crossed out, correct?

15:57:30 3 A. That's correct.

15:57:30 4 Q. Okay. Have you ever represented Heather Kennon?

15:57:33 5 A. I did. I just represented her at the first of this
15:57:36 6 year on this probation violation in which she was to enter into
15:57:40 7 a rehab center, and she did and I believe has almost completely
15:57:44 8 successfully completed it, when I spoke to her probation
15:57:47 9 officer.

15:57:47 10 Q. Had you ever represented Heather Kennon, prior?

15:57:52 11 A. It's -- not to my -- I don't believe I have. I know
15:57:55 12 in this case I did not. I never spoke to her about this case
15:57:59 13 before.

15:58:00 14 Q. About a prior case?

15:58:02 15 A. I don't remember if I have. Nothing that would have
15:58:05 16 been involved with Mr. Warren.

15:58:07 17 Q. Well, whether it was involving Mr. Warren or not?

15:58:09 18 A. I don't -- I don't recall if I ever represented her
15:58:12 19 before.

15:58:12 20 Q. Okay. Now, you testified earlier that Mr. Warren was
15:58:18 21 adamant about going to trial?

15:58:20 22 A. He was.

15:58:21 23 Q. And is it safe to say he was adamant about going to
15:58:24 24 trial from day one?

15:58:25 25 A. Yes.

15:58:28 1 Q. You also talked about a difference of opinion: Your
15:58:31 2 opinion as to how to attack the case would be to attack the
15:58:34 3 Prosecution's evidence?

15:58:35 4 A. Correct.

15:58:35 5 Q. And his opinion was to attack the credibility of the
15:58:38 6 Prosecution's witnesses?

15:58:40 7 A. Once we found out that Heather Kennon was going to
15:58:42 8 testify against him, yes. But before that, it was just the
15:58:46 9 evidence that was before us, and that was only the officers
15:58:49 10 involved and what was found at the site at Atlantic Beach.

15:58:55 11 Q. Okay. And when he talked about attacking credibility
15:58:58 12 of the witnesses, one of those -- one of his thought processes
15:59:00 13 was to file a motion to suppress evidence, correct?

15:59:04 14 A. Correct.

15:59:05 15 Q. Was a motion to suppress evidence ever filed in this
15:59:07 16 case?

15:59:08 17 A. Yes, it was.

15:59:08 18 Q. Was there a hearing on that motion?

15:59:10 19 A. Yes. Judge Alford heard it.

15:59:13 20 Q. And after that suppression hearing, you knew a little
15:59:16 21 bit -- is it safe to say a little bit -- knew a little bit more
15:59:18 22 about the case since you had seen witnesses testify?

15:59:20 23 A. We knew at that point that, certainly, our case was
15:59:25 24 not going to be dismissed. The information concerning what the
15:59:27 25 SBI officers found at the site was going to be allowed. Our

15:59:31 1 motion to suppress was denied, and we were moving forward with
15:59:33 2 the State's case.

15:59:36 3 Q. Did you ever obtain the services of an expert to
15:59:40 4 examine the laboratory testing procedures or to independently
15:59:43 5 test the substances that were found?

15:59:44 6 MR. SPENCE: Objection. That's not even alleged as a
15:59:46 7 ground.

15:59:47 8 THE COURT: Overruled. You may answer.

15:59:49 9 THE WITNESS: No.

15:59:50 10 BY MR. MEGARO

15:59:50 11 Q. And that's because it wasn't seriously in dispute as
15:59:53 12 to what the composition of the chemical substances were going to
15:59:56 13 be, right? I mean, in other words, you weren't going to
15:59:59 14 challenge that this was actually drugs or precursors to
16:00:02 15 methamphetamine, right?

16:00:03 16 A. There was never any question what was found at the
16:00:07 17 site.

16:00:07 18 Q. Okay. So it wasn't a question of what was the
16:00:13 19 substance, was it a controlled substance or precursors or not;
16:00:16 20 it was more a question of, whose was it, correct?

16:00:20 21 A. That's correct.

16:00:20 22 Q. And from day one, Mr. Warren told you that it was not
16:00:25 23 his stuff, he was not in possession of it, and he had no
16:00:30 24 knowledge of it, correct?

16:00:31 25 A. That's correct.

16:00:31 1 Q. So then the question really was, was who had access to
16:00:35 2 that room, and who was the person that actually possessed those
16:00:38 3 substances; not whether it was really drugs or not, correct?

16:00:40 4 A. Correct.

16:00:43 5 Q. Okay. Now, you knew that there were only two people
16:00:47 6 charged in this case?

16:00:47 7 A. Correct.

16:00:48 8 Q. Heather Kennon and Dustin Warren, right?

16:00:50 9 A. That's correct.

16:00:51 10 Q. And certainly, not the first co-defendant case you've
16:00:54 11 had?

16:00:54 12 A. No.

16:00:55 13 Q. And you've certainly been in circumstances where
16:00:58 14 co-defendants have pointed the finger -- pointed the finger at
16:01:01 15 each other and said, "That person had it. I didn't have it,"
16:01:03 16 and vice versa?

16:01:05 17 A. That's correct.

16:01:06 18 Q. And in this particular scenario, you knew that that
16:01:09 19 could be a possibility, even from day one, right?

16:01:12 20 A. Possibly.

16:01:14 21 Q. There came a point in time before trial where you
16:01:17 22 realized that Heather Kennon had signed a plea-arrangement with
16:01:20 23 the District Attorney and was going to testify against
16:01:24 24 Mr. Warren in exchange for leniency?

16:01:28 25 A. And that was very close to before trial, and that was

16:01:30 1 when Mr. Warren said, "We need X, Y and Z to testify against her
16:01:35 2 credibility."

16:01:35 3 And that's why I came in and made my motion. Let's
16:01:38 4 bring those in, even though the people that he brought to my
16:01:41 5 attention -- I told him, I said, "You know, their credibility is
16:01:45 6 going to be at risk, because they're all -- one or all in prison
16:01:47 7 or in custody, and two have records as long as my left leg."

16:01:53 8 Q. Safe to say it's not the first time you've had a
16:01:55 9 situation where a potential defense witness had a criminal
16:01:58 10 history, right?

16:01:58 11 A. Correct.

16:01:59 12 Q. And we all know that you can't choose your witnesses,
16:02:02 13 right?

16:02:02 14 A. That's correct.

16:02:03 15 Q. Neither can the Prosecution?

16:02:04 16 A. That's correct.

16:02:05 17 Q. Sometimes their witnesses have records longer than
16:02:08 18 your entire left side?

16:02:10 19 A. That's true.

16:02:10 20 Q. Okay. And that was more or less the case with Heather
16:02:13 21 Kennon, right?

16:02:14 22 A. Heather -- Heather had a bad record as well.

16:02:20 23 Q. Okay. So prior to trial, you knew that Heather Kennon
16:02:22 24 was going to get up and testify and then it would really hinge
16:02:25 25 on her credibility, whether the jury believed her or not?

16:02:28 1 A. That's what he and I discussed. I said, "It's going
16:02:30 2 to come down to her -- her belief -- her testimony of what
16:02:34 3 happened and your testimony of what happened."

16:02:37 4 Q. And it's fair to say that Mr. Warren had told you
16:02:40 5 prior to trial that Mr. Elps, Ms. Flowers, and Mr. Thomas would
16:02:47 6 give evidence that would cast out on Heather Kennon's
16:02:51 7 credibility?

16:02:52 8 A. Late -- late in the game he did.

16:02:53 9 Q. Okay. And cast out on her credibility in general, and
16:02:57 10 cast out on specific portions of her testimony?

16:03:01 11 A. He did. And that is why we -- when we listed all the
16:03:05 12 witnesses, the ones who I actually called were the ones who
16:03:08 13 could refute the things that she said, and where he was at, and
16:03:12 14 where she was at, who had the most credibility, like Anique
16:03:15 15 Pittman and the other two witnesses.

16:03:17 16 Q. Is it safe to say you never spoke with Mark Thomas
16:03:20 17 prior to trial?

16:03:21 18 A. Never spoke with him.

16:03:22 19 Q. And it's safe to say you never spoke with Cassie
16:03:24 20 Flowers either?

16:03:26 21 A. That's correct.

16:03:26 22 Q. And never spoke to Mr. Elps?

16:03:29 23 A. That's correct. I would say that I had represented
16:03:33 24 Mr. Elps in the past before.

16:03:35 25 Q. You had been -- represented Mr. Elps?

16:03:36 1 A. Yeah. But nothing -- not in this case.

16:03:38 2 Q. In what kind of case?

16:03:41 3 A. A criminal case. So I was familiar with his criminal
16:03:44 4 history.

16:03:44 5 Q. Okay. Did you ever tell Mr. Warren that you'd
16:03:49 6 represented Mr. Elps in the past?

16:03:51 7 A. Yes.

16:03:51 8 Q. And what was his response?

16:03:53 9 A. He said, "Well, he needs to be called to refute how
16:03:55 10 she, in the past, has caused other people -- lied on other
16:03:59 11 people."

16:04:05 12 Q. You would agree with me that criminal history is just
16:04:07 13 one factor in deciding whether --

16:04:10 14 A. A huge factor.

16:04:11 15 Q. -- a witness is credible?

16:04:12 16 A. A huge factor.

16:04:13 17 Q. Okay. But it's just one of among many, correct?

16:04:15 18 A. One among many, and especially on the cases that I
16:04:18 19 knew these people were convicted with dealt with dishonesty and
16:04:20 20 felonies, which made it that much more a problem.

16:04:25 21 Q. And is it fair to say that you'd made the decision,
16:04:28 22 after you knew these people, these folks' criminal history, not
16:04:32 23 to call them as a witness? You made that decision prior to
16:04:35 24 trial?

16:04:37 25 A. I had it in the back of my mind. I called those

16:04:40 1 people -- we had those people subpoenaed, and I was going to
16:04:42 2 speak with those when they came. I just wanted to see what they
16:04:47 3 had to say, if it was anything credible. I didn't know what
16:04:50 4 they were going to say.

16:04:51 5 But part of me was not going to say -- I guess what I'm
16:04:54 6 saying is, I figured I could do the same thing and get the same
16:05:00 7 evidence, in effect, that was more credible, with Anique
16:05:02 8 Pittman, than I could with Mark Thomas or Cassie Flowers,
16:05:06 9 knowing their history and what both -- what they were going to
16:05:09 10 say, and what Mr. Warren said they were going to testify to.

16:05:12 11 But as for what they were actually going to say, I
16:05:14 12 don't know. Only what he told me they would testify to.

16:05:37 13 MR. MEGARO: Bear with me one moment.

16:05:37 14 (Mr. Megaro confers with his client.)

16:05:37 15 BY MR. MEGARO

16:05:37 16 Q. Mr. Fulcher, Anique Pittman testified at trial?

16:05:42 17 A. She did.

16:05:43 18 Q. That -- and she testified that she and Dustin Warren
16:05:45 19 were together in her house and had gone to sleep at
16:05:49 20 approximately 11, 12 p.m. the night before the arrest?

16:05:54 21 A. That's correct.

16:05:54 22 Q. And because she had gone to sleep, she did not know it
16:05:57 23 occurred between the time she went to sleep and the following
16:06:01 24 morning, correct?

16:06:01 25 A. I believe that's what she testified to.

16:06:04 1 Q. And Mr. Warren was arrested at approximately
16:06:06 2 10:00`a.m., 9:30, 10:00`a.m. the next morning?

16:06:09 3 A. I believe that may be about right.

16:06:11 4 Q. So there's roughly a 10-hour gap of time that Ms.
16:06:15 5 Anique Pittman could not fill in, correct?

16:06:18 6 A. I believe it was her testimony that she was going to
16:06:20 7 say he was there, and Mr. Thomas was there, and I think -- I
16:06:31 8 don't remember anything else about Cassie, but I just remember
16:06:32 9 that -- I think Mr. Thomas was there and that he had been in an
16:06:34 10 argument with his wife. But any further than that --

16:06:38 11 Q. But as far as she knew, she went to sleep at around
16:06:41 12 11, 12 o'clock, and that was all she knew?

16:06:43 13 A. She was adamant that he was in that house.

16:06:45 14 Q. Okay.

16:06:45 15 A. And that's why I used her testimony.

16:06:47 16 Q. And you, from speaking to Mr. Warren, you knew that
16:06:52 17 Mr. Thomas was up, and up for at least part of the night and
16:06:57 18 could account for Heather Kennon's whereabouts and actions after
16:07:01 19 Ms. Pittman had gone to sleep, correct?

16:07:03 20 A. That is what he -- he told me he was going to say, or
16:07:08 21 testify, I should say.

16:07:10 22 Q. And you actually -- one week prior to trial you
16:07:14 23 applied for writs of habeas corpus ad testificandum to bring the
16:07:17 24 two to court?

16:07:18 25 A. As soon as I was informed of all the people that

16:07:21 1 Mr. Warren wanted brought to testimony, I signed, filed
16:07:24 2 subpoenas, and had Judge Alford sign the witness -- and the
16:07:27 3 writs to bring those two people back.

16:07:30 4 Q. And those people were never produced, correct?

16:07:34 5 A. They never showed up.

16:07:34 6 Q. All right.

16:07:34 7 A. Well, some of the people that will be test -- we
16:07:37 8 subpoenaed showed up. Mr. Warren -- I mean, Mr. Thomas and Ms.
16:07:42 9 Flowers were in the DAC, and they were not brought back.

16:07:45 10 Q. Okay. And what about Mr. Elps?

16:07:50 11 A. I don't -- I have -- I do not know -- I know he was in
16:07:51 12 custody. And at trial they said he was -- I chose not to bring
16:07:56 13 Mr. Elps over to testify.

16:07:58 14 Q. After Mr. Thomas and Ms. Flowers had not been produced
16:08:00 15 by Corrections, did you make any further efforts to secure their
16:08:05 16 attendance?

16:08:06 17 A. We were -- well, when -- when we found out they
16:08:09 18 weren't here, it was -- we were in -- we were in the trial.

16:08:11 19 Q. Okay.

16:08:11 20 A. And that -- at the beginning of that trial I made a
16:08:15 21 subsequent motion to continue this case, because my witnesses
16:08:19 22 weren't here, and it was denied.

16:08:21 23 Q. Did you request a secondary writ of habeas corpus to
16:08:26 24 get them?

16:08:26 25 A. I did not, because we were told we were going to trial

16:08:28 1 that day.

16:08:29 2 Q. Did you request an order to show cause to --

16:08:32 3 A. I did not.

16:08:32 4 Q. -- the Department of Adult Corrections?

16:08:34 5 A. I did not.

16:08:35 6 Q. Did you reach out to either of the witnesses at

16:08:38 7 Corrections, ask to set up a legal call or come visit --

16:08:41 8 A. I did not that day. No.

16:08:43 9 Q. Prior to trial, you did make a motion to withdraw?

16:08:45 10 A. I did.

16:08:47 11 Q. And that was based upon?

16:08:50 12 A. That was based upon the fact that, you know, upon his

16:08:52 13 request that he wanted to hire another attorney, and the fact

16:08:55 14 that we were going in different directions in which way to

16:08:56 15 handle the -- handle the case.

16:08:59 16 Q. And that application was denied, obviously, right?

16:09:02 17 A. That's correct.

16:09:02 18 MR. MEGARO: Bear with me one moment.

16:09:07 19 THE COURT: Yes, sir.

16:09:07 20 (Mr. Megaro confers with his client.)

16:09:09 21 BY MR. MEGARO

16:09:09 22 Q. I'm sorry. Did there come a point in time where

16:09:32 23 Mr. Warren turned over some letters that Heather Kennon had sent

16:09:36 24 to him before trial with you?

16:09:37 25 A. He had mentioned that, but I -- I don't recall that.

16:09:40 1 But I know everything that he spoke to me -- because he was
16:09:43 2 continually giving me notes and whispering in my ear during the
16:09:46 3 trial, if I thought it would -- I cross-examined the officer --
16:09:48 4 mainly, it was Heather, things he was telling me -- and I
16:09:52 5 cross-examined her on everything that we -- that she had
16:09:54 6 introduced that was introduced into evidence. I -- it's been
16:09:57 7 four years. I can't remember that -- I don't recall getting any
16:10:00 8 letters from her.

16:10:03 9 Q. Did there come a point in the time of the trial where
16:10:06 10 Heather Kennon testified that she had created methamphetamine
16:10:11 11 both at the Seashore hotel and at Anique Pittman's home?

16:10:17 12 MR. SPENCE: I'd let the transcript of whatever it
16:10:24 13 reveals speak for itself.

16:10:27 14 THE COURT: If he knows, he may answer.

16:10:30 15 THE WITNESS: I -- I don't recall.

16:10:30 16 BY MR. MEGARO

16:10:44 17 Q. Did Mr. Warren ever ask you to cross-examine Heather
16:10:47 18 Kennon with a discrepancy between her testimony where she said
16:10:51 19 that she had made methamphetamine at Anique Pittman's home when
16:10:57 20 all the precursors and chemicals were still at the hotel?

16:10:59 21 A. I recall now that there was some questioning, and I
16:11:02 22 argued in closing that if this material that was made in one
16:11:07 23 place -- I can't remember where it was made -- was being
16:11:09 24 manufactured there and it was so volatile, how it could have
16:11:13 25 been transferred from one place to the motel room.

16:11:15 1 And that was one of my arguments at closing, that that
16:11:20 2 was not capable, because the State "FBI" analyst and expert said
16:11:25 3 it was very volatile. And that was part of my closing, was, to
16:11:28 4 the jury, is it believable that this was manufactured in one
16:11:32 5 place and moved to another place? So, yes, that was -- that
16:11:35 6 was -- that was addressed at closing.

16:11:36 7 Q. But you never confronted Heather Kennon with that --
16:11:39 8 with those facts, correct?

16:11:40 9 A. I think that was -- I think that question was asked to
16:11:42 10 the "FBI" agents -- agent, and that it was argued at closing in
16:11:47 11 my closing argument.

16:11:49 12 Q. Well, what I mean to say is, you never asked Heather
16:11:51 13 Kennon, "If you say that you created meth at Anique Pittman's
16:11:54 14 house --

16:11:55 15 A. No.

16:11:55 16 Q. -- how could that be, when all the chemicals and
16:11:57 17 the" --

16:11:58 18 A. I don't know if I actually asked her that, but I
16:12:00 19 did --

16:12:00 20 Q. Okay.

16:12:00 21 A. -- bring that up for -- when it come to credibility
16:12:03 22 and believability, when I asked my closing statement.

16:12:05 23 MR. MEGARO: Thank you. No further questions for
16:12:06 24 Mr. Fulcher, Your Honor.

16:12:08 25 MR. SPENCE: A couple, Rodney.

16:12:09 1

16:12:09 2 **REDIRECT EXAMINATION BY MR. SPENCE**

16:12:09 3 Q. The only two people who had any possible involvement
16:12:13 4 with this meth lab at the Seashore were Dustin Warren and
16:12:16 5 Heather Kennon; is that correct?

16:12:18 6 A. That's correct.

16:12:18 7 Q. Now, Anique Pittman was able to provide a complete
16:12:23 8 alibi for -- for Defendant Dustin Warren, correct?

16:12:26 9 A. That's correct.

16:12:27 10 Q. So regardless of whether Mark Thomas could get up here
16:12:31 11 and say whatever he said, if -- if the jury believed Anique
16:12:33 12 Pittman, you know, it wouldn't have been Dustin Warren, right?

16:12:39 13 A. That was my -- that was my reason for calling her.

16:12:41 14 Q. So calling Mark Thomas really wouldn't achieve
16:12:45 15 anything that you had already achieved with a witness with no
16:12:47 16 record?

16:12:48 17 A. That was why I had Anique Pittman to what she
16:12:51 18 testified, that she could get into evidence what Mr. Warren
16:12:55 19 wanted testified to in a more credible way than Mr. Thomas or
16:12:59 20 Brandon Elps.

16:13:00 21 Q. Okay. And if Mark Thomas and Cassie Flowers had been
16:13:04 22 pulled over here in orange jumpsuits, based on what you knew the
16:13:07 23 evidence was, based on their records, would you have put them on
16:13:10 24 the stand anyway?

16:13:11 25 A. Absolutely not.

16:13:12 1 (State's Exhibit MAR Number [4] marked for
16:13:12 2 identification.)

16:13:12 3 BY MR. SPENCE

16:13:13 4 Q. And the last question is -- I'm going to mark -- I
16:13:16 5 have marked for identification State's MAR [4]. This is the --
16:13:23 6 this is part of the MAR Mr. Megaro filed, Affidavit of Dustin
16:13:30 7 Warren. If you could read -- have you seen that before?

16:13:34 8 A. Yes.

16:13:35 9 Q. And I provided you with that as part of the MAR last
16:13:38 10 week, or --

16:13:38 11 A. Yes, you did.

16:13:39 12 Q. -- early this week?

16:13:41 13 A. Correct.

16:13:41 14 Q. And did you read paragraph one of that -- of
16:13:44 15 Mr. Warren's affidavit?

16:13:45 16 A. I did.

16:13:45 17 Q. Is it something regarding the Motion to Suppress?

16:13:48 18 A. Yes.

16:13:49 19 Q. Would you read that and tell us if that's true or not.

16:13:51 20 A. "Number one: When my trial lawyer -- lawyer filed a
16:13:54 21 motion to suppress the evidence it was because I drew it up and
16:13:57 22 told him to file it. It was supposed to be a joint motion by my
16:14:00 23 lawyer and the lawyer for Heather Kennon. When the State
16:14:02 24 figured this out, Heather Kennon immediately was offered full
16:14:05 25 immunity to testify against me at trial, and that allowed her to

16:14:20 1 change her story for a third time. I was told that if I refused
16:14:23 2 to take a plea, Heather Kennon was going to throw me under the
16:14:26 3 bus."

16:14:27 4 Q. Okay. But just the first sentence, did Dustin Warren
16:14:30 5 draft a motion to suppress in this case?

16:14:32 6 A. No.

16:14:32 7 MR. SPENCE: Offer State's MAR [4].

16:14:43 8 THE COURT: Any objection?

16:14:44 9 MR. SPENCE: That statement in it.

16:14:47 10 MR. MEGARO: I mean, I have no objection. It's part
16:14:48 11 of the record, Your Honor, so --

16:14:50 12 THE COURT: Okay.

16:14:50 13 MR. MEGARO: And it's in the court file, so --

16:14:54 14 THE COURT: Okay. The Court receives it.

16:14:56 15 (State's Exhibit MAR Number [4] received in
16:14:56 16 evidence.)

16:14:56 17 MR. SPENCE: That's all I have of Mr. Fulcher.

16:14:58 18 THE COURT: Anything further?

16:15:02 19 MR. MEGARO: One moment please.

16:15:03 20 THE COURT: Sure.

16:15:03 21 **RE-CROSS-EXAMINATION BY MR. MEGARO**

16:15:04 22 Q. Mr. Fulcher, did Mr. Warren ever send you a
16:15:20 23 handwritten -- a handwritten letter concerning suppression --
16:15:27 24 sorry -- concerning notes on the suppression motion?

16:15:32 25 A. He sent me some information that he thought was

16:15:34 1 relevant, but the -- to be honest with you, the motion to
16:15:38 2 suppress was myself and Mr. Suggs, who was the co-defendant at
16:15:41 3 the time. We were kind of working together, because we were --
16:15:43 4 thought we were going to have a double trial -- worked together
16:15:47 5 on that motion to suppress.

16:15:47 6 Q. And the documents that Mr. -- Mr. Warren had sent you
16:15:52 7 included citations to case law, a draft motion for speedy trial,
16:16:00 8 statutes on conspiracy, and appears to be some pages from a
16:16:09 9 practice treatise regarding --

16:16:13 10 A. Mr. Warren was always sending me information, so he
16:16:16 11 very well could have sent that. As I said, the motion to
16:16:19 12 suppress was -- was actually drafted by me and Mr. Suggs with
16:16:23 13 jointly talking about the case and things that he had discovered
16:16:27 14 and I discovered, and there were some things that Mr. Warren had
16:16:30 15 brought to my attention. But, no, he did not personally draft
16:16:32 16 the motion to suppress.

16:16:34 17 Q. Is it safe to say that at least part of what
16:16:36 18 Mr. Warren gave to you made its way into the suppression motion?

16:16:39 19 A. Some of the things that he put on there, yes, that
16:16:42 20 were relevant.

16:16:42 21 MR. MEGARO: Thank you. Nothing further, Your Honor.

16:16:43 22 THE COURT: You may stand down.

16:16:44 23 (The witness stepped down from the witness
16:16:44 24 stand.)

16:16:44 25 MR. SPENCE: That's all I have. I have Chris Suggs,

16:16:46 1 very briefly.

16:17:06 2 (The witness was duly sworn and took the witness
16:17:06 3 stand.)

16:17:06 4
16:17:06 5 **CHRIS SUGGS,**

16:17:06 6 having been first duly sworn, at 4:17 p.m. was called as a
16:17:06 7 witness on behalf of the State and testified as follows:

16:17:06 8 **DIRECT EXAMINATION BY MR. SPENCE**

9 Q. State your name for the record, please.

16:17:09 10 A. Chris Suggs.

16:17:10 11 Q. And, Mr. Suggs, you're a member of the State Bar in
16:17:12 12 North Carolina; is that correct?

16:17:13 13 A. That's correct.

16:17:14 14 Q. And you practice in Carteret County. When was the
16:17:16 15 date that you first started practicing here, approximately?

16:17:21 16 A. Approximately six years.

16:17:23 17 Q. Okay. Did you represent Heather Kennon, the
16:17:25 18 co-defendant in this particular case?

16:17:27 19 A. I did.

16:17:28 20 Q. And were you present when she testified at trial?

16:17:32 21 A. I was.

16:17:32 22 Q. And she had a plea-agreement with the State to plead
16:17:36 23 to something lesser and testify truthfully; is that correct?

16:17:39 24 A. That's correct.

16:17:40 25 Q. And after -- when watching her testify, did you have

16:17:43 1 some concerns about whether that plea-agreement would hold up
16:17:46 2 based on the way she performed on the stand?

16:17:49 3 A. I was concerned during her testimony that she may not
16:17:55 4 get the benefit of the agreement that we made, because her
16:18:00 5 testimony was, I would say, very poor, hard to believe, hard to
16:18:05 6 follow.

16:18:05 7 Q. Okay. Did she, several times in her testimony, openly
16:18:09 8 admit that she was under the influence of drugs during this
16:18:11 9 whole time?

16:18:12 10 A. She did.

16:18:13 11 Q. And had a hard time remembering things?

16:18:15 12 A. She did.

16:18:15 13 Q. And all that came out in the State's case and defense
16:18:18 14 case?

16:18:18 15 A. As I recall, that's correct.

16:18:19 16 Q. Okay. And how was she -- how did the State refer to
16:18:24 17 her during their closing argument? As a co-defendant, or
16:18:28 18 something else?

16:18:29 19 A. I remember during your closing, Mr. Spence, you
16:18:33 20 referred to my client, Ms. Kennon, as more of an exhibit than a
16:18:37 21 witness; an example of what drugs might do to a person,
16:18:40 22 something along those lines.

16:18:42 23 Q. As opposed to a credible witness about believing her?

16:18:45 24 A. That's correct.

16:18:51 25 Q. Again, she took advantage of this and she pled guilty;

16:18:54 1 is that correct?

16:18:55 2 A. I believe so.

16:18:56 3 Q. And is no longer in the court system, as far as you
16:19:00 4 know?

16:19:00 5 A. As far as I know.

16:19:01 6 Q. Okay. Let me ask you this: You practice law. Do you
16:19:08 7 know Rodney Fulcher?

16:19:09 8 A. I do.

16:19:10 9 Q. And do you know his reputation as a criminal defense
16:19:13 10 lawyer here in Carteret County?

16:19:14 11 A. I'm familiar with Mr. Fulcher's reputation.

16:19:15 12 Q. Is there anything that you know about this case and
16:19:18 13 your involvement in the case, watching the trial, watching the
16:19:21 14 witnesses -- and you've been here for this entire hearing; is
16:19:23 15 that correct?

16:19:24 16 A. That's correct.

16:19:25 17 Q. Do you feel that Mr. Fulcher was deficient in not
16:19:29 18 calling Cassie Flowers --

16:19:30 19 MR. MEGARO: I'm going to object to the question, Your
16:19:31 20 Honor.

16:19:31 21 MR. SPENCE: -- and Mark Thomas?

16:19:31 22 THE COURT: Sustained. That's a question for the
16:19:33 23 Court.

16:19:33 24 MR. SPENCE: No further questions.

16:19:34 25 THE COURT: That's -- that's a question for the Court

16:19:34 1 to answer.

16:19:34 2 MR. SPENCE: No further questions.

16:19:40 3 THE COURT: Any cross-examination?

16:19:43 4 **CROSS-EXAMINATION BY MR. MEGARO**

16:19:43 5 Q. Mr. Suggs, were you appointed or hired by Ms. Kennon?

16:19:49 6 A. I was appointed by the Public Defender's office.

16:19:52 7 Q. Okay. And were you the first attorney on her case?

16:19:56 8 A. I don't recall. I believe so. The Public Defender,

16:20:00 9 Mr. Wallace, may have represented her briefly before I was

16:20:05 10 assigned, but I'm not aware of any lengthy representation prior

16:20:10 11 to my appointment.

16:20:11 12 Q. Do you know whether Mr. Fulcher represented her on

16:20:13 13 this case prior to you entering?

16:20:15 14 A. I'm not aware of that, no.

16:20:19 15 Q. Now, as Ms. Kennon's attorney, did you look into her

16:20:25 16 criminal background?

16:20:27 17 A. I would have at the time, yes.

16:20:28 18 Q. And that's to determine whether she would be a good

16:20:30 19 witness at trial, or determine what her possible sentencing

16:20:33 20 exposure would be if she were to negotiate a plea?

16:20:36 21 A. There's a multitude of reasons I would look into my

16:20:40 22 client's criminal background, yes.

16:20:41 23 Q. And had you ever represented her prior to this case?

16:20:44 24 A. I don't believe I had, no.

16:20:45 25 MR. MEGARO: Thank you. Nothing further for

16:20:47 1 Mr. Suggs.

16:20:47 2 THE COURT: You may stand down.

16:20:49 3 (The witness stepped down from the witness
16:20:49 4 stand.)

16:20:49 5 MR. SPENCE: That's the State's evidence.

16:20:50 6 (The State rests.)

16:20:50 7 THE COURT: I'm glad to hear you in closing arguments.

16:20:54 8 MR. MEGARO: Certainly. Your Honor, just so the Court
16:20:57 9 is aware, I'm not only an appellate post-conviction attorney,
16:21:01 10 I'm also a trial attorney. And I'm certainly well aware and
16:21:06 11 very sensitive to the every-day realities of practicing for the
16:21:11 12 defense.

16:21:11 13 I'm certainly well aware and sensitive to dealing
16:21:16 14 with sometimes very difficult clients, who insist upon a course
16:21:19 15 of action that I may disagree with and that may insist upon a
16:21:24 16 course of defense that I disagree with.

16:21:25 17 However, I think we would not be here today if
16:21:30 18 Counsel had spoken to the witnesses, because I -- frankly, I
16:21:33 19 would probably have very little grounds to go on that would
16:21:35 20 probably not even warrant a hearing.

16:21:37 21 And what I do know and what I have learned over the
16:21:40 22 years is that it is better to not leave a stone unturned and to
16:21:47 23 at least speak to the witnesses, or at least go through the
16:21:51 24 crime scene, or take your own photographs, you take your own
16:21:54 25 measurements, and never to simply size something up and rely on

16:21:59 1 it at face value, because sometimes people with very lengthy
16:22:04 2 records can make the most credible witnesses over people without
16:22:06 3 any records, and sometimes even over law enforcements officers.

16:22:09 4 And there's only one way to determine whether a
16:22:11 5 witness would make a credible witness, a valuable witness or
16:22:15 6 not, and that's to sit down with that witness, interview them
16:22:18 7 face to face, and ascertain their own body language and the
16:22:21 8 manner in which they tell you the story, and to compare that to
16:22:26 9 what other witnesses would say, compare that to other evidence
16:22:29 10 in the case.

16:22:29 11 There is a long line of cases that -- and this is all
16:22:35 12 over in the Federal system as well -- that essentially stand for
16:22:38 13 the proposition that failure to investigate can only be
16:22:43 14 justified when there would be no legitimate reason to
16:22:47 15 investigate.

16:22:47 16 And courts are generally loath to endorse a failure
16:22:51 17 to at least speak with a witness, especially when one is
16:22:55 18 certainly available. And on the one hand, and as I told my
16:22:59 19 client, coming -- before coming here today, on the one hand, we
16:23:04 20 all want perfect witnesses. We all want witnesses that are the
16:23:08 21 most moral, upright people that have no motive to lie and no
16:23:13 22 skeletons in their closet, but you have to play the hand that
16:23:16 23 you're dealt.

16:23:17 24 And this is true if you're the prosecution; this is
16:23:19 25 true if you're the defense. Witnesses come with baggage just

16:23:23 1 like everyone else. And it's frequently much simpler to get a
16:23:28 2 witness to come to court who is incarcerated than one who is out
16:23:32 3 on -- at liberty.

16:23:33 4 And as the Court, I'm sure, is well aware, we did
16:23:37 5 submit an affidavit from a witness who chose not to be here
16:23:41 6 today, for personal reasons, that would have added something to
16:23:44 7 this case. The simple reality of the fact is, it's easier for
16:23:49 8 me to secure the attendance of Cassie Flowers and Mark Thomas
16:23:55 9 because they're relatively low-hanging fruit.

16:23:58 10 For that reason, I think it's incumbent upon an
16:24:01 11 attorney to at least get on the phone with a witness or to bring
16:24:06 12 them to court ahead of time and speak to them and size them up
16:24:09 13 for themselves.

16:24:09 14 In this particular case, these witnesses would have
16:24:12 15 offered something more in addition to Anique Pittman's
16:24:15 16 testimony. And I understand Anique Pittman is, on her face, is
16:24:20 17 the better witness. But in this particular case, Counsel knew
16:24:23 18 from day one that this was not going to be a question of whether
16:24:26 19 this was drugs or not, which is very common in drug cases,
16:24:31 20 whether -- the question is whether this is actual drugs or
16:24:34 21 whether this is the threshold way to sustain this level of
16:24:37 22 charge.

16:24:37 23 The question more often is one of possession and
16:24:42 24 knowledge. And the question is not whether this was
16:24:44 25 methamphetamine; the question was whether it was his

16:24:48 1 methamphetamine or someone else's.

16:24:49 2 This is especially so where the co-defendant is
16:24:56 3 offered a very sweet deal, probation, even given her criminal
16:25:02 4 history, in order to testify that Mr. Warren was involved. So
16:25:06 5 her credibility became even more heightened.

16:25:09 6 These witnesses would have added more to the
16:25:13 7 testimony than -- of Anique Pittman. First, we have Mr. Elps
16:25:17 8 who would have testified that this is a person who sets people
16:25:21 9 up and gets people into trouble and acts in her own -- is
16:25:25 10 generally not a trustworthy and truthful person. So generally,
16:25:31 11 we can attack her credibility and say that she's not a
16:25:35 12 trustworthy and helpful person, to a jury.

16:25:35 13 Now, there's an argument that could be made and then
16:25:39 14 there would be evidence to support that argument. But
16:25:42 15 additionally, Anique Pittman's testimony leaves a big hole,
16:25:45 16 about nine or 10 hours, because she goes to sleep and she
16:25:48 17 testifies that she doesn't see anybody until the following
16:25:52 18 morning.

16:25:53 19 Mr. Thomas can account and fill in the blanks, so to
16:25:56 20 speak, and add additional testimony that shows that this witness
16:26:00 21 not only had access to his car, which would account for the
16:26:06 22 presence of a hotel key, but the witness had been lying about
16:26:10 23 several other key things.

16:26:11 24 Cassie Flowers, for whatever her faults may be, would
16:26:15 25 have also testified that this witness had been specifically

16:26:18 1 lying about certain key events. And there would have been --
16:26:23 2 and I would submit that her testimony would have been very
16:26:26 3 credible, because as an ex-girlfriend of this person, she would
16:26:29 4 have less of an incentive to help him. And her credibility that
16:26:34 5 she disliked his -- what she might perceive as his current
16:26:39 6 girlfriend or new girlfriend would be even more credible,
16:26:41 7 despite her -- her background.

16:26:42 8 And again, all of these witnesses would have
16:26:45 9 complemented each other and corroborated each other and been
16:26:49 10 corroborated by other evidence, including my client's testimony.

16:26:51 11 So there's a synergistic effect. It's not just -- we
16:26:55 12 can't just look at this in a vacuum; we look at the defense as a
16:26:58 13 whole. And how would this have filled in blanks and
16:27:02 14 strengthened the rest of the defense? And it's clear to me that
16:27:05 15 it would have.

16:27:06 16 When we talk about the two prongs of Strickland we
16:27:08 17 talk about deficient performance and then prejudice. And I
16:27:13 18 believe and I think the case law supports the contention that it
16:27:17 19 is objectively deficient for an attorney to not even speak to a
16:27:22 20 witness, and not even examine the evidence.

16:27:23 21 But the prejudice comes in -- exactly what I believe
16:27:26 22 the State's going to argue which is, "So what? These witnesses
16:27:31 23 wouldn't have added anything. There's still a period of time
16:27:33 24 that Dustin Warren could have cooked this meth in that
16:27:38 25 laboratory."

16:27:38 1 And without the testimony of Mark Thomas who
16:27:43 2 testified that he spoke to my client, would have corroborated
16:27:47 3 his testimony that all he was doing was dropping this young
16:27:52 4 woman off at this motel, and he was going to go back at an
16:27:55 5 earlier time before she said that she went back to the house and
16:27:59 6 that she was not in his presence for that entire night, the
16:28:03 7 prejudice is that Counsel no longer has the evidence to make
16:28:07 8 those arguments to the jury.

16:28:08 9 And, in addition, the prejudice is that Counsel no
16:28:13 10 longer has the ability or has less of an ability to make the
16:28:18 11 argument falsus in uno, falsus in omnibus, which defense
16:28:22 12 attorneys love to make. If you can't trust this person as to
16:28:25 13 one thing, you're free to disregard her testimony as to
16:28:28 14 everything.

16:28:29 15 There would have been evidence and testimony in the
16:28:32 16 record that was supported by other evidence that that witness
16:28:35 17 had testified falsely about certain material facts; that that
16:28:39 18 would have given Counsel the opportunity to make that argument
16:28:43 19 at trial.

16:28:43 20 And I believe that the case -- and I believe the case
16:28:47 21 law supports that, and the more evidence the better. And the
16:28:50 22 more strength that a defense lawyer has to make these arguments
16:28:55 23 as disposed to a jury, especially when there's a jury trial, the
16:28:57 24 higher the degree of prejudice.

16:28:59 25 So I would ask the Court to grant the Motion for

16:29:02 1 Appropriate Relief, search through the record -- I believe there
16:29:06 2 are plenty of instances that are in the record that support the
16:29:09 3 arguments that I make here today -- and vacate my client's
16:29:13 4 convictions and order a new trial.

16:29:15 5 And if the Court has any questions, I'm happy to
16:29:17 6 answer them.

16:29:18 7 THE COURT: Thank you, sir.

16:29:21 8 MR. SPENCE: Judge, I'll try to be brief. You can
16:29:23 9 boil this all down to simply one question: Was it
16:29:27 10 deficient when Mr. Fulcher did not call Mark Thomas or Cassie
16:29:32 11 Flowers to testify?

16:29:33 12 Under Strickland, was it deficient not to call those
16:29:37 13 two witnesses with extremely horrific criminal histories, and
16:29:44 14 also given the fact that both were active drug addicts during
16:29:52 15 the time?

16:29:57 16 To put it another way, I have done this job for
16:30:00 17 almost 27 years. And I -- if it would have been legal, I'd have
16:30:03 18 almost paid Mr. Fulcher to put them on, because I could have
16:30:07 19 made so much more hay with those two on the stand in advancing
16:30:12 20 my case -- I could have tied just their character to this
16:30:16 21 defendant, the fact they were associates of his -- than I could
16:30:21 22 have ever done.

16:30:21 23 The jury heard from Heather Kennon. They heard all
16:30:25 24 her faults, all her inadequacies. They heard from Anique
16:30:30 25 Pittman, a clean witness, who gave a complete alibi to Dustin

16:30:34 1 Warren.

16:30:34 2 Again, I'm sure Mr. Warren doesn't think this was a
16:30:40 3 good performance, because he didn't win. And sometimes, there
16:30:45 4 are defendants who believe they just simply have the right to
16:30:48 5 prevail on their own terms.

16:30:50 6 I'm sure Your Honor, in looking at this case, would
16:30:54 7 look at your career as a defense lawyer and think -- and what
16:30:57 8 you've heard -- would you call those two people, given what you
16:31:00 9 know about them, the way they testified, what they said under
16:31:03 10 oath today, contradicting each other even today?

16:31:07 11 Your Honor, the cases Mr. Megaro -- I actually didn't
16:31:12 12 hear any cites -- but there's a -- there's a string of cases in
16:31:14 13 North Carolina which found it not ineffective to either call,
16:31:20 14 prepare or investigate certain witnesses, in one case 22
16:31:23 15 witnesses. That's State versus Swann.

16:31:26 16 Again, the cases I would cite, and I can pull those
16:31:29 17 for you, are State versus Gary, 348 N.C. 510, 1998; State versus
16:31:37 18 Swann, 322 N.C. 666; State versus Miller, 142 N.C. App. 435;
16:31:45 19 State versus Blackwell, 133 N.C. App. 31; State versus Braswell,
16:31:51 20 312 N.C. 553, all dealing with a counsel's failure to include
16:31:57 21 witnesses on the list, subpoena them, interview them or call
16:32:00 22 them. And the court, in all those cases, said it's a strategic
16:32:04 23 decision and it was not unreasonable, under Strickland, to -- to
16:32:08 24 not do that.

16:32:12 25 Again, if you do find that that was unreasonable not

16:32:17 1 to call these people, I certainly don't see any -- any
16:32:20 2 prejudice. Actually, I believe this case was much better
16:32:25 3 without those two people. And I have given those reasons and
16:32:28 4 put them in my -- my written response in this case.

16:32:30 5 Again, I would argue that Mr. Megaro's burden is by a
16:32:35 6 preponderance of the evidence. This was a violation of a
16:32:38 7 constitutional right to have a lawyer prepared, under the
16:32:41 8 Strickland standards. I submit the transcripts will bear that
16:32:45 9 out, and the law in North Carolina will bear that out.

16:32:48 10 And again, I would ask you to deny this motion which
16:32:52 11 is basically just a Hail Mary, again, griping about some -- some
16:32:57 12 minor details.

16:32:58 13 These witnesses would not have challenged anything in
16:33:02 14 the case except minor details, which again, would not affect the
16:33:07 15 jury's decision in this case whatsoever.

16:33:09 16 Judge, I'd ask you deny the motion. Thank you.

16:33:12 17 THE COURT: All right. I make decisions by e-mail.
16:33:16 18 Will the parties stipulate that the Court may rule out of term
16:33:20 19 and out of County?

16:33:21 20 MR. MEGARO: Yes.

16:33:23 21 THE COURT: Very good.

16:33:23 22 MR. SPENCE: Yes, sir.

16:33:24 23 THE COURT: Pmegaro@halscottmegaro.com?

16:33:27 24 MR. MEGARO: Yes, sir.

16:33:29 25 THE COURT: All right. And I have Mr. Spence's.

16:33:30 1 Thank you for your preparation and your presentation. I'll
16:33:34 2 endeavor to get it to you as soon as I possibly can. But
16:33:39 3 there's a little bit of material that I feel like I need to go
16:33:41 4 through, and I will.

16:33:42 5 MR. MEGARO: Just a little.

16:33:44 6 THE COURT: Very good. Thank you. That concludes the
16:33:46 7 hearing.

16:33:46 8 (At 4:33 the proceedings were concluded.)

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CERTIFICATE

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Jean Speights, RMR, do hereby certify that said Transcription, pages 1 through 157, is a true, correct, and verbatim Transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

Given under my hand this 8th day of March, 2019.



Jean Speights, RMR
Official Court Reporter
Second Trial Division

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EXHIBIT 5

NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
) COUNTY OF CARTERET
V)
DUSTIN JAMAL WARREN,) 14 CRS 50372, 50376, 50377
Defendant)

TRANSCRIPT, Volume I of I

June 11, 2020

Carteret County Superior Court, Criminal Session,
Honorable Joshua W. Willey, Judge Presiding.

APPEARANCES:

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

2 **THURSDAY, JUNE 11, 2020, CARTERET COUNTY SUPERIOR COURT,**
3 **CRIMINAL SESSION HONORABLE JOSHUA W. WILLEY, JUDGE**
4 **PRESIDING.**

5 THE COURT: Here for an evidentiary hearing on
6 an MAR that was filed by Dustin Warren, in Carteret
7 County file numbers 14 CRS 50372, 50376 and '77; is that
8 correct?

9 MR. SPENCE: That's correct, Judge.

10 Judge, if I could just give you couple of opening comments.

11 Your Honor, this case again State versus Dustin
12 Warren, the court file that you have up there should contain the
13 following items, and I would ask that the court file in its
14 entirety be admitted into evidence, and I think Mr. Megaro would
15 not oppose that, but he can speak for himself.

16 Your Honor, the first thing in the court file that you
17 will see is a complete trial transcript, should be three or four
18 bound volumes, and the testimony at the trial. I don't think
19 the opening statements were recorded, but all the witness
20 testimony of course was recorded, closing arguments were
21 recorded, and it's extremely important that when you hear these
22 Motions For Appropriate Relief based on ineffective assistance
23 of counsel that the Court reads, and you may have already read,
24 the complete trial transcript, because if there is some sort of
25 counsel error in this case, which the State does not admit there

1 is, this all comes down to a reasonable probability that but-for
2 the counsel's errors the result or the jury's verdict would have
3 been different, would have been different. So reading that
4 trial transcript is certainly an essential part of your
5 determination in this particular hearing.

6 Also in that file should be the Court of Appeals'
7 opinion. If it's not in there I have a copy of it in one of my
8 files.

9 Also in there is a transcript from a Motion For Appropriate
10 Relief, the exact same motion that we are hearing today was
11 heard here by Judge Alford on June 4th, 2018; and I won't go
12 into detail but I told Judge Alford since he was going to retire
13 two months later that he needed to do an order in this case, and
14 I reminded him up until the day he had his retirement ceremony.
15 That did not happen.

16 I imagine at some point, actually I know at some
17 point that Lynn Holton, your assistant, myself and
18 Mr. Megaro were willing to stipulate that that prior
19 transcript be used by your Honor or whoever heard this
20 case to basically make a decision based on nothing but
21 the trial transcript -- I'm sorry, the MAR hearing
22 transcript.

23 The School of Government I believe advised everyone
24 that we had to have live testimony and re-do this. So
25 that's why we're here today.

1 THE COURT: I checked with the School of
2 Government on that, and they said, well it's a
3 credibility question and you can't resolve those unless
4 you're able to observe the demeanor of the witnesses.

5 MR. SPENCE: Yes, sir. But again that's a
6 valuable resource also, and it's probably very rare that
7 you have a prior MAR hearing on the same issues with the
8 exact same witnesses already before you. So I would ask
9 that be made part of the record, the prior transcript.

10 Also in the court file, your Honor, is the MAR filing by
11 Mr. Megaro, the affidavit supporting that which are required.

12 In the file also is the State's Answer which
13 contained attachments. The attachments were essentially
14 the full criminal histories of the witnesses that
15 Mr. Megaro will be calling, and I attached those so I
16 wouldn't have to fully explore those at a hearing.

17 The people who testify today: Mark Thomas and Dustin
18 Warren, their criminal histories have not changed. Ms.
19 Flowers', who is in the courtroom and I would ask she not be in
20 here while evidence is being presented. Since she's going to be
21 a witness today, I would ask that she be sequestered. Her
22 criminal history has changed, not for the better.

23 So I will be asking her about the additional things
24 in her criminal history.

25 Also in the file is an exhibit list from the trial, and I

1 think that's also contained in the trial transcript. So all the
2 matters I just talked about, Judge, I would ask to be made part
3 of a record of this hearing and that be considered by your Honor
4 in making your decision.

5 Judge, I'll turn it over to Mr. Megaro now. This is his
6 motion and his burden of proof.

7 THE COURT: Good morning, Mr. Megaro, how are
8 you?

9 MR. MEGARO: Good morning, your Honor. How are
10 you. Nice to meet you.

11 THE COURT: Nice to meet you. First let me ask,
12 do you have any objection to the Court considering the
13 transcript of the trial itself, the transcript of prior
14 MAR hearings, and the various exhibits referenced by the
15 State?

16 MR. MEGARO: I don't find myself saying this
17 often, but I have to agree with the prosecution in this
18 one, that would be 100 percent proper for the Court to
19 take notice of its own record, so yes.

20 THE COURT: All right.

21 MR. MEGARO: Not only that, I would probably be
22 seeking to use part of the trial transcript to make my
23 points anyway.

24 I have no problem with Ms. Cassie Flowers, who
25 is in the courtroom. She's going to be a witness. If

1 she's going to be sequestered while the other witnesses
2 are testifying, would just ask that the same apply to
3 any witnesses the State calls. I believe what's good
4 for one is good for the other.

5 THE COURT: The Court would order that all
6 prospective witnesses with the exception of the
7 defendant would be sequestered, and not only would they
8 not be present in the courtroom during the testimony of
9 the witnesses, they would have no communication with the
10 other witnesses, or with counsel concerning the
11 testimony of those witnesses.

12 MR. MEGARO: Okay. And I'll just direct
13 Ms. Flowers, if you wouldn't mind just hanging outside,
14 and we'll come get you when it's time.

15 Okay. So Ms. Flowers is stepping out in the
16 hallway, nor could she have any contact with Mr. Thomas
17 who I intend to call is incarcerated. My client is the
18 incarcerated. So with that being said I think that
19 covers just about everything.

20 And my first witness would be Mr. Mark Thomas, who is here
21 on a writ. Since he's on the county's dime, I would like to try
22 and get him on or off as quickly as possible to minimize cost
23 and disruption to the staff.

24 THE COURT: All right. Let's get Mr. Thomas in.

25 MR. SPENCE: Your Honor, Ms. Flower's mother is

1 in the courtroom. I do not want her in the courtroom
2 because there's a chance that she will hear stuff and
3 relate to her daughter, who she's certainly able to talk
4 to. She's not a witness in the case. Not a party in
5 the case at all. I ask she be removed from the
6 courtroom, at least sequestered with her daughter.

7 MR. MEGARO: I believe Ms. Sylvia Flowers is
8 going to stay in the courtroom throughout the
9 proceedings. She did watch the last MAR hearing, and
10 dare I say I don't think we're going to stray too far
11 from the transcript of the last case.

12 If, if it makes the Court or Mr. Spence I guess
13 more at ease, I'm perfectly happy with the Court
14 directing her not to violate the Court's sequestration
15 order. I don't think she will, but I'm sure she would
16 happily comply with any court directed issue not --

17 MR. SPENCE: Why is she here?

18 MR. MEGARO: She's a member of the public. She
19 does have a right to be here.

20 MR. SPENCE: And she paid your fee, didn't she?

21 MR. MEGARO: That's neither here nor there,
22 whether she paid my fee or not but --

23 MR. SPENCE: Do you represent her?

24 MR. MEGARO: I do not represent Ms. Sylvia
25 Flowers.

1 MR. SPENCE: She's not a witness, not a party
2 and related to one of the witnesses. I'd ask she be
3 sequestered.

4 THE COURT: The Court in its discretion would
5 sequester her until after her daughter testifies.

6 MR. MEGARO: Until -- I'm sorry?

7 THE COURT: After her daughter testifies.

8 MR. MEGARO: Then after that she may remain in
9 the courtroom.

10 Do you mind stepping out? Thank you.

11 All right. That being said we're ready to
12 proceed.

13 THE COURT: All right. With Mr. Thomas?

14 MR. MEGARO: Yes.

15 THE COURT: Mr. Megaro, you may call your first
16 witness.

17 MR. MEGARO: Thank you. Defendant would call
18 Mr. Mark Thomas.

19 **MARK THOMAS,**

20 Being first duly sworn or affirmed to tell the truth,

21 was examined and testified as follows:

22 **DIRECT EXAMINATION BY MR. MEGARO:**

23 THE COURT: You may proceed.

24 Q. Good morning Mr. Thomas, how are you?

25 A. I'm doing good, you?

1 Q. I'm going to ask you to keep your voice up, because you
2 may remember from last time, I'm a little bit hard of hearing.

3 A. Microphone don't work.

4 Q. I've got my good ear facing you.

5 A. All right.

6 Q. Mr. Thomas, are you currently incarcerated?

7 A. Yes, sir.

8 Q. And where are you currently incarcerated?

9 A. Bertie Correctional.

10 Q. And are you incarcerated with Dustin Warren?

11 A. No.

12 Q. Have you ever been incarcerated with Dustin Warren?

13 A. No.

14 Q. What is your current release date?

15 A. September the 24th of this year.

16 Q. Okay. And Mr. Thomas, what are you currently serving a
17 sentence for?

18 A. Robbery with a dangerous weapon.

19 Q. And is that pursuant to a guilty plea or a plea of no
20 contest?

21 A. Guilty plea.

22 Q. Okay. Thank you, sir.

23 Now, Mr. Thomas, do you know Dustin Warren?

24 A. Yes.

25 Q. How do you know him?

1 A. He's a friend of mine.

2 Q. You knew each other from before you were incarcerated?

3 A. Yes, sir.

4 Q. Okay. And how long have you been friends with him?

5 A. I think I met Dustin in 2011.

6 Q. Okay. Did you socialize regularly?

7 A. Fairly, little bit. I'm back and forth from
8 here to High Point. So we hung out a little bit. I
9 wouldn't say a whole lot.

10 Q. Okay. Did you have some of the same group of friends?

11 A. Oh, yeah. Yeah. Yeah. All the same friends.

12 Q. Okay. Is that how you met him through other friends?

13 A. Yeah, I was friends with his brother. That's
14 how I met him.

15 Q. Now Mr. Thomas I want to draw your attention to January
16 29, 2014; were you in Mr. Warren's company that day?

17 A. Yes, sir. Yes, sir.

18 Q. And what time -- when did you -- did there come a point
19 in time you left his company on January 29, 2014?

20 A. No.

21 Q. And did there come a point in time when he was arrested
22 on January 29, 2014?

23 A. I thought we got arrested on the 30th.

24 Q. Okay. And were you both arrested together?

25 A. Yes.

1 Q. And where were you arrested?

2 A. Atlantic Beach at the -- I think it's called the
3 Seashore Motel.

4 Q. In front of the motel?

5 A. Yeah.

6 Q. Okay. Were you arrested on the same charges or
7 different charges?

8 A. Different charges.

9 Q. All right. And what were you arrested for?

10 A. Possession of a stolen motor vehicle.

11 Q. And whatever happened with that arrest; did it result in
12 a conviction?

13 A. Dismissed. It was dismissed.

14 Q. And did that, your charge did that have anything to do
15 with what Mr. Warren was charged with?

16 A. The one I'm in prison for?

17 Q. No. No. The one you were arrested for January 29th or
18 30th?

19 A. Neither of one of them.

20 Q. Okay. Now was that the last time that you saw Dustin
21 Warren?

22 A. The last time I actually saw him was the last
23 time we had court.

24 Q. Okay.

25 A. Prior to that it would have been the date that

1 we got arrested.

2 Q. Okay. So if I got you correct the last time you saw
3 Dustin Warren was January 29th or 30th, 2014; and the next time
4 you saw him was when we were back in the same courtroom about
5 two years ago?

6 A. Yeah.

7 Q. And in that two years have you seen Dustin Warren?

8 A. No.

9 Q. Have you spoken with him?

10 A. No.

11 Q. Have you and I had contact?

12 A. No.

13 Q. And now were you released the same day you were arrested
14 or incarcerated?

15 A. Yes. I was arrested -- I mean I was released
16 that day.

17 Q. Okay. Were you incarcerated during the month of
18 September of 2014 when Mr. Warren's trial was --

19 A. (Interrupting). Yeah, yes, sir.

20 Q. And do you remember where you were incarcerated?

21 A. I was in Guilford County jail, in High Point.

22 Q. Okay. And did you have charges pending at that point?

23 A. Yes, sir.

24 Q. And were you incarcerated under your, the name Mark
25 Thomas with the same date of birth?

1 A. Yes, sir.

2 Q. Did you use an alias or a false date of birth on that
3 arrest?

4 A. No.

5 Q. Have you ever used an alias or false date of birth?

6 A. No. No.

7 Q. And I understand you have a criminal record, correct?

8 A. Yeah.

9 Q. In any of those arrests did you use false names or fake
10 names or fake dates of birth or any other identifying
11 information?

12 A. I may have gave them a fake name once or twice.

13 Q. Okay. When was the last time did you that?

14 A. It's -- 2006 maybe? Seven? Maybe before that.

15 Q. But since then have you always used your true and
16 correct name?

17 A. Yeah. And I straightened that up incident out.
18 It didn't take long for them to figure out that it
19 wasn't me.

20 Q. Okay. I get it.

21 Are you familiar with person name Ann Scadden,
22 s-c-a-d-d-e-n?

23 A. I know who she is, yes.

24 Q. Okay. And who is she?

25 A. She was the -- she was something to do with

1 Rodney Fulcher. I don't know she was the investigator
2 or if she was the secretary? She was who I spoke to --
3 I spoke to her a couple days after his arrest.

4 Q. Couple of days after...?

5 A. Dustin's arrest.

6 Q. Do you know who she worked for?

7 A. Rodney Fulcher.

8 Q. And how did it come to be that you spoke with Ms. Ann
9 Scadden?

10 A. Say that again.

11 Q. How did you speak with her? She came to you?

12 A. No. I came up here and spoke to her. I think
13 she had an office behind the courthouse -- behind the
14 courtroom over here.

15 Q. Had you made contact with her or she make contact with
16 you?

17 A. I made contact with her.

18 Q. Okay. And when you spoke with her in her office did she
19 ask you questions about what you knew regarding Dustin Warren's
20 case?

21 A. I'll be honest with you. I don't remember right
22 now. That's been six and a half years ago. I don't
23 remember the details. I think I tried to tell her my
24 version of the story, and she told me that somebody
25 would --

1 MR. SPENCE: Objection what she said.

2 THE COURT: Sustained.

3 MR. MEGARO: Don't tell us what she said. If
4 you remember tell us what you told her.

5 A. I think I attempted to give her my story of the
6 events that happened that night.

7 Q. Okay.

8 A. That day.

9 Q. Okay. And after you spoke with Ms. Scadden, did anybody
10 else from --

11 A. (Overlapping.) Never.

12 Q. Dustin Warren -- let me finish. Anyone from Dustin
13 Warren's defense team contact you?

14 A. No.

15 Q. And when was the first time you spoke with a lawyer
16 regarding Dustin Warren's case?

17 A. The day of his last hearing I spoke to you.

18 Q. Okay. And prior to that had you spoken --

19 A. (Interrupting.) Yeah. We spoke on the phone.

20 You notified me as sometime in 2017 we were supposed to
21 be having a court date then, but it got continued.

22 Q. Okay.

23 A. I remember speaking to you on the phone. I was
24 at Nash Correctional then.

25 Q. Okay. Now did there ever come a point where Dustin

1 Warren sent you any information to review regarding his case?

2 A. He sent me like maybe two or three pages of his
3 transcripts from his original trial.

4 Q. Okay. And do you remember when that was?

5 A. That was probably... it would have had to have
6 been 2015.

7 Q. Okay.

8 A. Yeah. I was at Pender Correctional then. I was
9 only at Pender from June of '15 until about August of
10 '16. So it was in that period of time.

11 Q. Did Mr. Warren ask you to do anything when he sent you
12 those transcripts?

13 A. Nothing specific, no.

14 Q. Did Mr. Warren ever tell you to write an affidavit or to
15 contact his attorney or anything like that?

16 A. No.

17 Q. Did Mr. Warren ever tell you what to say if you were to
18 be contacted by an attorney or anyone else?

19 A. (Overlapping.) No. No. No.

20 Q. So now I want to draw your attention back to the night
21 before your arrest with Dustin Warren. Do you recall that
22 night?

23 A. Yes, sir.

24 Q. Okay. What happened that night?

25 A. I'm -- I don't know where to start.

1 That night after --

2 MR. SPENCE: What night?

3 MR. MEGARO: Referring to the night prior to the
4 arrest?

5 MR. SPENCE: Okay.

6 A. Yeah. That was the night I thought you asked
7 me.

8 Really I didn't really have a lot to do with Dustin. He was
9 in the bedroom asleep pretty much that whole night.

10 He -- I got picked up in Newport by his girlfriend.

11 MR. MEGARO: Okay.

12 A. I showed up at the apartment probably around
13 four o'clock, maybe five o'clock at the latest.

14 Q. Let me kind of take this down bit by bit. How did it
15 come to be that you were hanging out with Dustin Warren that
16 night? Where had you been prior to hanging out with Dustin
17 Warren?

18 A. Me and Dustin wasn't hanging out that night. I
19 was in Newport at another friend's house. I called
20 Dustin and asked him, me and my wife had been arguing,
21 so I asked Dustin if he could come pick me up and I
22 could hang out with him.

23 And instead his girlfriend picked me up, because
24 she was already close by, she was right down the street.
25 She picked me up. We went to her apartment. Dustin

1 came in. We hung out tops an hour. We ate, and he went
2 to bed.

3 Q. Okay. And whose house were you staying at?

4 A. Anique Pittman's.

5 Q. Okay. And did you ever eat at any point during that
6 evening?

7 A. Yeah. We had hot dogs and drank some beer, hung
8 out maybe an hour, or two hours.

9 Q. And this was at Anique Pittman's house.

10 A. Yes, sir.

11 Q. A-n-i-q-u-e, right?

12 A. Yes.

13 Q. Okay. And, okay. And approximately what time did
14 Dustin Warren go to bed that night?

15 A. I would say probably seven - eight o'clock. It
16 was early.

17 Q. That evening were you ever in the company of a woman
18 named Cassie Jean Flowers?

19 A. No.

20 Q. Do you know her?

21 A. No, not really.

22 Q. Have you ever seen her or acquainted with her at all?

23 A. We're friends on Facebook, but I've never hung
24 out with Cassie. I've never -- I don't even recall
25 being in the same room with Cassie, period.

1 Q. Have you ever been to Cassie Flowers' home or anyone's
2 home in her family?

3 A. I've been to her father's house on Atlantic
4 Beach.

5 Q. Okay. What for?

6 A. To do some work. My uncle owns a roofing
7 business and we had to replace some shingles on his
8 house.

9 Q. Okay. And while you were there were you hanging out
10 with her?

11 A. No. I don't even think she was there.

12 Q. Now, on the night of January 29th, 2014, the night
13 before your arrest, did you at any point go with Dustin Warren
14 to Cassie Flowers' house?

15 A. No.

16 Q. Did -- are you familiar with a woman named Heather
17 Kennon?

18 A. Yes.

19 Q. K-e-n-n-o-n?

20 A. Yes, sir.

21 Q. Did you see her on the night of January 29, 2014?

22 A. Yes, sir.

23 Q. Where did you see her?

24 A. At Anique's.

25 Q. Okay. And was she already there when you got to Anique

1 Pittman's house, or did she come at a later point in time.

2 A. She came later.

3 Q. And when she came, did she come alone or with somebody
4 else?

5 A. She came -- when she came in she came alone.

6 Q. Okay.

7 A. But she was brought there by Dustin, I think.

8 She was outside. Dustin told me that she was outside
9 waiting for somebody to pick her up.

10 Q. Okay. Did you see her waiting outside?

11 A. No.

12 Q. Did she come inside the house?

13 A. Yeah. She came in after Dustin was already in
14 the bed.

15 Q. After Dustin was already in bed?

16 A. Yeah.

17 Q. Okay. And what did you see Heather Kennon doing inside
18 Anique Pittman's house?

19 A. She was hanging out with me. We was getting
20 high. We did.

21 Q. Okay. And did there ever come a point in time when you
22 saw Heather Kennon leave the inside of the house?

23 A. Yeah. Multiple sometimes.

24 Q. Okay. When you say multiple times, what she was
25 something?

1 A. She kept leaving and coming back. Leaving and
2 coming back.

3 Q. Go outside smoke a cigarette or what?

4 A. I thought she was leaving to leave, like her
5 ride. She was waiting for somebody to come get her. So
6 I thought she was leaving. But every time I thought she
7 left she would come back.

8 Q. Did she explain anything or just walk in and out?

9 A. No. No, not really.

10 Q. Did there come a point in time where you actually locked
11 the door?

12 A. Yes.

13 Q. Why is that?

14 A. Well the, at the apartment the door, the little
15 lock mechanism on the door, if you did not twist the
16 handle it wouldn't stick itself out back out and lock
17 the door. So if you just went out without doing that,
18 the door would swing itself open.

19 So when she kept going in and out, in and out, I
20 explained to her how to shut the door. She wouldn't
21 listen. So every time she would leave out the door
22 would be wide open. So I'd hear the door banging
23 because the wind was blowing it around. I'd go back,
24 fix the door, little bit of time goes by she comes back
25 in, she leaves back out, does the same thing. So

1 finally about maybe one, two o'clock I locked the door.

2 I locked her out.

3 Q. Got tired of it?

4 A. Yeah. Yeah.

5 Q. Did she try to come back in?

6 A. No.

7 Q. All right.

8 A. If she I didn't -- if she did she didn't knock
9 or anything.

10 Q. Okay. Now, so is it safe to say that after you locked
11 that door one or two o'clock in the morning you didn't see or
12 hear from Heather Kennon again?

13 A. I didn't see from...

14 Q. And at that point in time did you go to sleep or did you
15 stay up?

16 A. I might have nodded off a little bit, but I was
17 pretty much up most of the night.

18 Q. Now, I want to draw your attention to the following
19 morning. Did there come a point in time where you woke up and
20 the sun came up?

21 A. Yeah. I mean came a time I got up. It was
22 about, I don't know, nine o'clock I got up.

23 Q. Okay. Do you know where Dustin Warren was at that
24 point?

25 A. He was still in the bed.

1 Q. One second. I want to draw your attention back to that
2 door. Was there anything next to the door, to the front, to
3 that front door?

4 A. Yeah.

5 Q. What was next to that front door?

6 A. That was where the key rack was.

7 Q. Okay. And were there keys on that key rack?

8 A. Yes.

9 Q. Do you know whose keys were on that key rack?

10 A. There was multiple keys on there, one of them
11 was Dustin's car key.

12 Q. Okay. And where was Dustin's car parked?

13 A. If you're looking out the apartment it was in
14 the parking lot facing away from us on the opposite side
15 of the parking lot.

16 Q. Okay. And anybody passing by front door would have
17 access to that key rack?

18 A. Yes.

19 Q. Did you ever see Heather Kennon take the keys?

20 A. No. I don't remember seeing her take the keys.

21 Q. Okay. Were you paying attention?

22 A. No.

23 Q. All right. Let's go down to the next morning. Go
24 ahead, I'm sorry.

25 A. I do know the key got gone.

1 Q. When you say the key, talking about Dustin Warren's key?

2 A. Yeah.

3 Q. How do you know that?

4 A. Heather was wanting a ride, wanting me to give
5 her a ride. That's when I tried to wake Dustin up
6 because I don't have a license. I tried to get him to
7 give her a ride, I'm trying to get rid of her, you know
8 what I mean; and he told me if I wanted to take his car
9 the keys was right there, go ahead and take his car give
10 her a ride whatever. I didn't, I never did that but the
11 keys were gone.

12 Q. You mean to say you didn't want to leave the house --

13 A. (Overlapping.) No, I didn't want to take his
14 car and I didn't want to drive her, you know.

15 Q. Of course. Now, the following morning when you wake up,
16 did you see where Dustin Warren was?

17 A. He was still in the bed when I first got up.

18 Q. Okay and to your knowledge -- where were you sleeping
19 that night?

20 A. On the couch.

21 Q. And is the couch in the living room?

22 A. Yes, sir.

23 Q. And is the living room right next to the front door?

24 A. No. It's, it's a hallway probably from here to
25 that picture (indicating). Twenty feet.

1 Q. Go ahead.

2 A. Twenty foot away from the front door.

3 Q. From the couch did you have a view of the front door?

4 A. Yeah. Yeah.

5 Q. Okay. And at any point in time --

6 A. (Interrupting.) If I was looking in that
7 direction. I mean the couch faces this way and the door
8 was that way (indicating). But I could see it.

9 Q. After you went to sleep that night did you notice anyone
10 else coming and going inside that door?

11 A. No.

12 Q. And the next morning when you woke up was that door
13 still locked?

14 A. Yes.

15 Q. Now, did there come a point in time where Dustin Warren
16 finally woke up?

17 A. Yeah.

18 Q. Do you know approximately what time it was?

19 A. Right after I did, because it was pretty much
20 about the same time.

21 Q. Did you wake him up?

22 A. No. No. He got up on his own.

23 Q. Did there come a point in time where you two agreed to
24 leave the place?

25 A. Yes.

1 Q. For what purpose?

2 A. Get breakfast. Go to the store.

3 Q. And after you leave whose car did you leave in?

4 A. Dustin's car.

5 Q. When you got out into Dustin's car did you make any
6 observations about the interior of the car?

7 A. Yes.

8 Q. What did you notice?

9 A. It was a mess. It looked like somebody had been
10 hanging out partying in his car. It was trash
11 everywhere, and the windows rolled down, and...

12 Q. Was that the same car that you had rode to Anique
13 Pittman's house in?

14 A. No, sir. Rode in Anique's car to her house.

15 Q. Okay. Was the car in that condition when you first saw
16 it?

17 A. That was the first time I saw it.

18 Q. Okay. Now, what, you said there was some trash inside
19 the car, did you notice anything else inside the car?

20 A. The hotel key. Hotel key.

21 Q. And did there come a point in time where you and Dustin
22 went to go get breakfast?

23 A. Yeah.

24 Q. Where did you go?

25 A. We never made it. That's where we was heading.

1 We pulled into the Scotchman. We pulled into the
2 Scotchman first, and you could see all the lights over
3 there at the motel, and that's when Dustin went he was
4 worried about Heather. He thought that Heather was over
5 there. So that's where we went. As soon as we pulled
6 in they swarmed us.

7 Q. Why did you go to Scotchman's first?

8 A. I was going to get some cigarettes. I ran out
9 of cigarettes.

10 Q. And scotchman's right across the street from the motel?

11 A. Diagonal, yes.

12 Q. All right. So when you go to Scotchman you see the
13 police there, what do you and Dustin do next?

14 A. We go to the motel.

15 Q. Walk across?

16 A. No, we drove.

17 Q. Okay.

18 A. We drove over there.

19 Q. And when you pull up to the motel what happens?

20 A. We didn't -- as soon as we pulled in they ran
21 around us.

22 Q. Okay. Now, I want to ask you a question about the
23 January 29th, 2014, at any point in time during that date, did
24 you, Dustin Warren and Anique Pittman ever participate in the
25 manufacturing of methamphetamine?

1 A. No sir.

2 Q. Did you ever combine any chemicals together?

3 A. No, sir.

4 Q. Any mixing of any chemicals?

5 A. No, sir.

6 Q. Did you try to obtain any chemicals?

7 A. No.

8 Q. One moment please. Now, did there ever come a point in
9 time you had a conversation with Dustin Warren about Heath
10 Kennon on the morning of January 30th, 2014?

11 A. We didn't really conversate about it. He said
12 he was going to go pick her up.

13 Q. Okay. Did you ever speak to Dustin Warren where Heather
14 Kennon was, or he was with Heather Kennon on January 29th, 2014?

15 A. No. No.

16 Q. At any point in time when you were in Dustin Warren's
17 company on January 29th, 2014, until the next date, did you ever
18 see Dustin Warren go into a motel room with Heather Kennon?

19 A. No.

20 Q. You mentioned about the weather being cold, can you
21 describe the weather on January 29th, 2014, and January 30th,
22 2014?

23 A. It was snowing, had been snowing off and on,
24 snow on the ground.

25 Q. That make driving conditions difficult?

1 A. Yes. Little bit.

2 Q. And you were referring to the front door swinging open
3 and closed, was there a screen door on the other side?

4 A. I don't think so.

5 Q. So when the front door swung open would that let cold
6 air in?

7 A. Oh, yeah. Yeah. Yeah.

8 Q. Was that part of your annoyance --

9 A. (Interrupting.) Yeah. Yeah. I mean you could
10 hear the door open and closing, and you could feel the
11 draft where I was at on the couch.

12 Q. Okay. All right. Thank you. I have no further
13 questions for Mr. Thomas your Honor.

14 THE COURT: Mr. Spence.

15 **CROSS-EXAMINATION BY MR. SPENCE:**

16 Q. So what would you have testified to at trial that would
17 have helped your buddy Dustin Warren?

18 A. I would have just spoke anything y'all asked me
19 I would have answered any question you gave me.

20 Q. But specifically, what are you here to tell the Court.
21 What's the problem with not calling you as a witness?

22 A. I have no idea.

23 Q. If you were a lawyer you wouldn't call you as a witness,
24 would you, with your record?

25 MR. MEGARO: Objection.

1 THE COURT: Overruled.

2 A. I'm not a lawyer.

3 MR. SPENCE: How big is that condo?

4 A. I'm a carpenter, so happen to know square
5 footage. I'd say it's probably about eight hundred
6 square foot. It's small. Really small.

7 Q. How many rooms are in it?

8 A. Two bedrooms.

9 Q. Did you go Anique Pittman's bedroom any time that night?

10 A. Yeah.

11 Q. Did you go every room of the house?

12 A. No.

13 Q. You go in any of the bathrooms?

14 A. Yes.

15 Q. All the bathrooms?

16 A. No.

17 Q. And what drugs were you consuming that night?

18 A. I had done some meth that night.

19 Q. Tell me when the first time that whole day, talking
20 about that whole day of January 29th, what's the first time you
21 did drugs that day?

22 A. I mean I probably did something earlier. I
23 smoke weed constantly.

24 Q. So you smoke weed that day?

25 A. Yes.

1 Q. Where?

2 A. I mean I smoke weed constantly.

3 Q. Constantly.

4 A. Yeah.

5 Q. It doesn't affect your memory, does it?

6 A. No.

7 Q. Good for you?

8 A. I don't know. It's medical induced now, so
9 could be.

10 Q. Okay. What's the first time you took meth that day?

11 A. I don't -- I don't remember doing any until
12 around Heather, I got around Heather.

13 Q. Okay. You didn't do any until you got to Anique
14 Pittman's house, correct?

15 A. After I got to Anique's, yes.

16 Q. Where did you get the meth?

17 A. I had it. I already had it.

18 Q. You brought it from home?

19 A. Yeah.

20 Q. What did you bring it in?

21 A. In my pocket.

22 Q. In a bag?

23 A. Yes.

24 Q. Was it crystal meth?

25 A. I mean it was powdery, yeah.

1 Q. Did you make it?

2 A. No, I didn't make it.

3 Q. Who did you buy it from?

4 MR. MEGARO: Objection your Honor.

5 THE COURT: Overruled.

6 A. I bought it from a friend.

7 Q. What's the friend's name?

8 A. Walt Richardson.

9 Q. Who is in prison now for drugs?

10 A. Walt's out now.

11 Q. Okay. Did he make it?

12 A. I don't know where he got it from.

13 Q. Okay.

14 A. I don't think he made it though.

15 Q. You know Dustin Warren's brother Brandon Hobbs?

16 A. I sure do.

17 Q. You know he cooks meth, don't you?

18 A. I've heard.

19 Q. You know Josh Dixon?

20 A. Yeah.

21 Q. Friend of yours?

22 A. Not really.

23 Q. He cooks meth, doesn't he?

24 A. I've heard he does, yes.

25 Q. How many people you know cook meth?

1 A. Personally, none. I don't know anybody --

2 Q. (Interrupting.) You just told me two.

3 A. I don't hang out with them guys.

4 Q. Except when you want the meth?

5 A. No. I've never done methamphetamines with
6 Brandon Hobbs or Josh Dixon ever.

7 Q. What's your drug of choice? Meth?

8 A. Marijuana.

9 Q. Okay. What other drugs were you doing at the time?

10 A. That's it. Drink some beer.

11 Q. Did you give Heather Kennon some your meth?

12 A. No.

13 Q. She had her own meth?

14 A. Yes.

15 Q. Where did she get it?

16 A. I can't speak for where she got it from.

17 Q. Okay. Now let me just go over, you said a bunch of
18 stuff. You testified that Dustin Warren's car was a complete
19 mess when you got into that that next day, correct?

20 A. Yes, sir.

21 Q. But you hadn't seen it before that, have you?

22 A. No. But I got enough sense to know that Dustin
23 would not ride around Atlantic Beach with his car in the
24 condition it was in.

25 Q. Unless he had a met lab in the back; is that true?

1 A. No. That wasn't a lab. It was somebody had
2 been using meth.

3 Q. There was meth in the car too, wasn't there?

4 A. I didn't ever see meth in his car.

5 Q. When was the last time you saw that car before that
6 night?

7 A. A month before.

8 Q. A month?

9 A. Yeah. Maybe.

10 Q. So you don't know how long it had been a mess, do you?

11 A. No. But speaking I can tell you that nobody
12 would ride around anywhere with the stuff that was
13 laying in his seat like that, especially Atlantic Beach.

14 Q. Who would do that? Who would ride around in a car like
15 that?

16 A. Nobody.

17 Q. Who? Somebody obviously did. It's his car.

18 A. No. Obviously from my interpretation it looked
19 like somebody was using his car as a hangout in the
20 parking lot.

21 Q. Is he going to tell us who that person might be?

22 A. He don't have to tell you. I know who it was.

23 Q. Who is it?

24 A. It was Heather.

25 Q. Okay. The car keys, you said the car keys were gone at

1 some point?

2 A. Yes. They wasn't on the --

3 Q. (Interrupting.) When did you notice that?

4 A. When we woke up. When we got ready to go to the
5 store the keys was not on the rack?

6 Q. Where were they?

7 A. They was in the car. That's where they was
8 found at was in the car.

9 Q. Okay. What did his keys look like?

10 A. A key chain with like three little keys on it.

11 Q. How many keys were on that rack?

12 A. On the rack by the door?

13 Q. Yes.

14 A. I don't know, maybe three different sets.

15 Q. And you specifically saw his keys on there?

16 A. Yeah.

17 Q. When's the last time you saw his keys?

18 A. When he told me to use his car to give Heather
19 Kennon the ride.

20 Q. Did you take the keys off the rack?

21 A. No, I did not.

22 Q. Did you go up to take them off the rack to look at them?

23 A. No. I seen them there. I knew where they was
24 at. I seen them when Dustin put them there before he
25 went to sleep.

1 Q. The room key that was in the car, that was room number
2 ten at Seashore, wasn't it?

3 A. I don't remember the room number I don't
4 believe.

5 Q. Was it Seashore Hotel keys?

6 A. I didn't know it was Seashore Motel key, no. I
7 thought we was going to Havelock. I thought when he
8 said he had to pick up Heather I thought she was in
9 Havelock. I don't know what made me think that. Dustin
10 never told me where we was going. My intentions that
11 morning were to go to the Scotchman to get some
12 cigarettes and get some breakfast from McDonald's.

13 I didn't -- I don't like Heather. I didn't care
14 for her at the time. I don't care. I didn't really
15 like hanging out with her, none of that.

16 Q. And your testimony is you got over to Anique's between
17 five and six that night, correct?

18 A. No. It was earlier than that.

19 Q. You said at least five o'clock?

20 A. Four/five. It was still daylight.

21 Q. Okay.

22 A. It was daylight. The end of January I's say it
23 gets dark around five, 5:30, so it was well before that,
24 four, 4:30, five.

25 Q. You can't give us a time can you?

1 A. I just gave it to you.

2 Q. What? Five, four, 4:30 what was it?

3 A. Between four and five o'clock.

4 Q. Okay. Could have been five o'clock.

5 A. I don't think so.

6 Q. Was Dustin there when you got there?

7 A. No.

8 Q. Did he come later?

9 A. About thirty, forty-five minutes later.

10 Q. Got there 5:30, 5:45, correct? Is that what you're
11 saying?

12 A. In between 4:30, 5:30 yes.

13 Q. And you didn't see anything he did between noon that day
14 4:30 to 5:45 that day; is that correct?

15 A. No, I didn't.

16 Q. How long have you known Anique Pittman?

17 A. At that -- not long.

18 Q. Was she your girlfriend?

19 A. No. She was Dustin's girlfriend.

20 Q. Why were you over there that night at her house?

21 A. She picked me up.

22 Q. Why did you have to leave your house?

23 A. Because I was arguing with my wife.

24 Q. She kicked you out?

25 A. She didn't kick me out. I decided to leave.

1 Q. So you called her?

2 A. I called Dustin and asked Dustin to come pick me
3 up.

4 Q. Who picked you up?

5 A. Anique picked me up because she was already
6 right there where I was at.

7 Q. Okay. Where is Anique Pittman right now?

8 A. Right now?

9 Q. Yeah.

10 A. I have no clue. I've been in prison six and a
11 half years.

12 Q. Okay. You don't know that she's in jail for trafficking
13 in meth?

14 A. (Overlapping.)

15 MR. MEGARO: Objection.

16 THE COURT: Overruled.

17 (Reporter interruption.)

18 MR. SPENCE: And you said that Ann Scadden
19 worked for Rodney Fulcher.

20 A. His first lawyer was James Wallace or Rodney
21 Fulcher -- the public defender.

22 Q. Okay.

23 A. I think he ended up hiring Rodney Fulcher. It
24 was James Wallace was the original lawyer.

25 Q. Okay. So did Ann Scadden work for James Wallace or

1 Rodney Fulcher?

2 A. I'm pretty sure that it was James Wallace. I
3 think. This is all six and a half years ago, you know.

4 Q. Right. Exactly.

5 A. Probably would have been better to ask these
6 questions six and a half years ago.

7 Q. It would have been.

8 A. Exactly.

9 Q. So you don't know what you told her, do you?

10 A. Yeah. I know what I told her. I told her
11 everything I just told you.

12 Q. Did you write it down?

13 A. No.

14 Q. Did she write it down?

15 A. I don't think so. She may have taken some
16 notes. I don't -- I can't really be specific and
17 remember that.

18 Q. Was the bridge closed that night because of snow?

19 A. Yes, it was. That night. But it was not closed
20 that day when I crossed it. I --

21 Q. So if Dustin Warren and Heather Kennon had to go to
22 Cassie Flowers' house in Morehead City before 5:30 that night
23 the bridge would have been open, correct?

24 A. I think the bridge was closed from six to six,
25 if I'm not mistaken.

1 Q. Okay. You came over it about five o'clock.

2 A. I came over it between four and five o'clock,
3 and it was open.

4 Q. Okay. Do you know when it closed?

5 A. I think the bridge was closed between six p.m.
6 and six a.m.

7 Q. Do you know when it was closed?

8 A. No, I don't know when it was closed.

9 Q. Okay.

10 A. Not specifically. I do know that the bridge was
11 closed that night, possibly the night before, because I
12 mean you talking below freezing weather.

13 Q. I got it. My question is if Dustin Warren and Heather
14 Kennon had gone to Cassie Flowers' house at any time before they
15 came over to Anique Pittman's house, the bridge would have been
16 open, right?

17 A. If they would have come over there before they
18 came to her house, possibly yes.

19 Q. So if Cassie Flowers says the bridge was closed that's
20 incorrect.

21 A. Depend on what time she's saying the bridge was
22 closed.

23 Q. Do you know Cassie Flowers?

24 A. I know who she is.

25 Q. You like her?

1 A. I don't know Cassie.

2 Q. You don't know her at all?

3 A. No.

4 Q. You Facebook with her?

5 A. Facebook, yes. I got six hundred people on my
6 Facebook. I do tattoos. I don't know half them people.

7 Q. You are serving a sentence for armed robbery?

8 A. Yes, sir.

9 Q. And let's see, you got arrested here on the 30th of
10 January for the stolen car, right?

11 A. Possession, yes.

12 Q. And other warrants were served on you, correct?

13 A. No, just that charge.

14 Q. And you committed the armed robbery in Greensboro or
15 Guilford County in March of 2014, about three months later,
16 correct?

17 A. Yes.

18 Q. How many armed robberies were there? Three? Four?

19 A. No, two.

20 Q. Who did you rob?

21 A. Two convenient stores.

22 Q. With a gun?

23 A. No.

24 Q. What did you have?

25 A. Knife.

1 Q. Why did you do that?

2 A. That's a whole another situation there. I was
3 going through a lot of stuff mentally. I just lost both
4 my grandmothers, my father passed away about six days
5 before that. I was pretty out there. I was messed up
6 mentally.

7 Q. And if you testified at Dustin Warren's trial you would
8 have testified, the jury would have known you had been convicted
9 of armed robbery, correct?

10 A. At the time the armed robbery came after
11 Dustin's -- I mean it came after the event with Dustin.
12 It would have been, I don't think I got convicted of it
13 until October of 2014.

14 Q. Okay. His trial wasn't until 2015.

15 A. Then I guess.

16 Q. Did you know that?

17 A. No.

18 Q. So when you got on the witness stand I would be asking
19 you and the jury would hear about your armed robbery conviction.

20 A. I think you're mistaken. I think his trial was
21 in 2014. In fact I'm pretty sure. That's a fact.

22 Q. Okay. Your criminal record that's not the only thing
23 your criminal record, is it?

24 A. No. I've got --

25 Q. (Interrupting.) Multiple felony convictions.

1 A. Yes.

2 Q. Habitual felon.

3 A. No.

4 Q. Charge?

5 A. No. Not until this charge right here.

6 Q. And since you've been in prison you been behaving
7 yourself?

8 A. Ehh.

9 Q. Not really have you?

10 A. I try to.

11 Q. Trying your best?

12 A. Yeah.

13 Q. Let me show you your list of infractions from 2015 to
14 2020. You see that list?

15 A. Yeah.

16 Q. This is State's MAR Exhibit 1. Do you see the list? Is
17 that a complete list of your infractions?

18 A. Yeah. Yeah. Yeah.

19 Q. You were -- you had infractions for disobeying orders,
20 correct?

21 A. Yes, sir.

22 Q. Having illegal sheets or linens, correct?

23 A. Yeah.

24 Q. Contraband.

25 A. Yes, sir.

1 Q. Selling -- misuse of medications.

2 A. Yes, sir.

3 Q. Involvement with a gang.

4 A. Yes, sir.

5 Q. What gang?

6 A. That's --

7 Q. (Interrupting.) What gang are you in?

8 A. I'm not in a gang. I'm not in a gang.

9 Q. What gang were you involved in?

10 A. I'm not in a gang. That's -- you don't have to
11 actually do things that they charge you with. I got a
12 write up because some gang material got found in my room
13 that I didn't put there, and some stuff written on the
14 wall. They use that to validate me for Folk Nation.

15 Q. Folk Nation.

16 A. Folk Nation.

17 Q. Tattoos you got on, what do they represent?

18 A. They don't represent Folk Nation.

19 Q. What is that one under your eye?

20 A. Sad man.

21 Q. Is it a tear drop?

22 A. It is a tear drop.

23 Q. That means you got blood on your hands, right?

24 A. No. It's wrong side.

25 Q. Got to be on the other side to be a murder. What does

1 that mean over here?

2 A. Just means I done a lot of time, man.

3 Q. What's the horn on the side?

4 A. That's a whole different story.

5 Q. Tell me about that one.

6 A. I don't think you would understand.

7 Q. Okay. Infraction for weapon possession, correct?

8 A. Yes.

9 Q. Sub -- again another substance possession.

10 A. Yes.

11 Q. Class B offense, Class A offense, what are those?

12 A. If you see it says an attempt, it's just -- the

13 penitentiary has about a way, man, keeping you down.

14 They charge you with anything they can just to, just --

15 I don't know. I don't understand why they do things

16 they do.

17 Q. You are a Cassie Flowers Facebook, correct?

18 A. I'm friends with her on Facebook, yeah.

19 Q. And she made a post on December -- I'm sorry January

20 29th, 2014, the date this happened or the --

21 A. Yeah.

22 Q. She said, "dodged that bullet. I'm glad I ditched you."

23 Who is she talking about?

24 MR. MEGARO: Objection --

25 A. -- I have no idea --

1 THE COURT: -- overruled --

2 MR. SPENCE: -- (all overlapping.) Did she use
3 to date Dustin Warren?

4 A. Yes, they dated.

5 Q. Okay. And you made comments on that post, didn't you?
6 Why don't you look at some of these comments?

7 A. You have to show me that I don't remember
8 commenting on --

9 Q. (Interrupting.) Read those. Says "Mark Thomas." That
10 State's MAR Exhibit 2.

11 A. Ah, yeah, man, I don't -- yeah. This is some
12 crazy stuff here.

13 Q. Okay. Who are you talking about?

14 A. I have no -- I'm talking to some dude on there
15 that was talking junk to me. I'm talking junk to him.
16 It's nothing between --

17 Q. -- who --

18 A. -- me and Cassie never speak on there.

19 Q. This is -- you made this post, correct?

20 A. Yeah. I was talking to that dude whoever that
21 dude is, his name should be on there too.

22 Q. And that's on her Facebook, correct?

23 A. This dude right here, Jeff Abbott.

24 Q. You're talking to Jeff Abbott.

25 A. I believe so.

1 Q. Who is he?

2 A. I have no idea.

3 Q. And you say, you talking to Jeff Abbott and you say:

4 "Sorry fag boy. You misunderstood. Around
5 here pussy gets thrown on us hillbilly fucks. I
6 know you're probably used to either taking it or
7 paying for it. Oh, that's right, you don't even
8 like pussy, you prefer dick. My bad."

9 You taking about that Abbott guy?

10 A. Yeah.

11 Q. How much of the transcript did you read?

12 A. Just those three pages.

13 Q. You read the three pages that Dustin Warren picked out
14 and mailed to you, correct?

15 A. He just yes -- yes. Dustin -- somebody sent
16 them to me.

17 Q. You didn't read the other four hundred pages, did you?

18 A. No.

19 Q. You weren't at the trial?

20 A. No.

21 Q. You don't know what anybody said.

22 A. Mm-mmm.

23 Q. You don't know what you could add or not add to anything
24 that was said at the trial, do you?

25 A. Only my testimony.

1 Q. So there were four people in Anique Pittman's condo that
2 night. There was Anique Pittman, you, Dustin Warren, and
3 Heather Kennon, correct?

4 A. Yes, sir.

5 Q. Three of those people testified at trial did you know
6 that?

7 A. No.

8 Q. Okay. And again I ask you, what could you add to the
9 trial testimony --

10 MR. MEGARO: Objection.

11 MR. SPENCE: -- that would be helpful to
12 Mr. Warren?

13 THE COURT: Overruled.

14 MR. MEGARO: -- that's going for a conclusion.

15 A. What could I add? Just my testimony. That's
16 the only thing I can possibly add. I can't speak for
17 what anybody else said or anything that anybody else
18 did. I can only tell you what I seen, and that's it.

19 Q. That's all I have.

20 THE COURT: All right. Redirect.

21 **REDIRECT EXAMINATION BY MR. MEGARO:**

22 Q. If you were called as a witness in Dustin Warren's
23 September 2014 trial, would you have told the jury exactly what
24 you told this court here today?

25 A. Yes, sir.

1 Q. Now, I want to ask you, asking you questions on
2 cross-examination about the condition of Dustin Warren's car.

3 A. Yes, sir.

4 Q. Did you observe Dustin Warren's reaction or his demeanor
5 when you entered the car that morning on January 30th, 2014?

6 A. I would say he was -- I don't know how to word
7 it, he was kind of shocked. He was like -- he was
8 shocked, angry, because he started picking stuff up,
9 cleaning the car up.

10 Q. Okay.

11 A. You could tell he was frustrated over it.

12 Q. Okay. Now if Heather Kennon testified at trial that she
13 and Dustin Warren went to Cassie Flowers house at 2 a.m.,
14 between January 29th and January 30th, of 2014, would that have
15 been true or untrue based on --

16 MR. SPENCE: -- objection. That's not in the
17 transcript.

18 A. If she would have said that --

19 THE COURT: -- overruled. I don't know what's
20 in the transcript. I'll be reading that.

21 A. No. That would be false.

22 Dustin never left from the time -- from the time
23 Dustin got with me, we hung out, he went to bed. He
24 never left that apartment until the next morning with
25 me, and there was no way that they went -- I don't know

1 if they blocked off the bridge how the closing of the
2 bridge works, but the bridge was closed at night for
3 sure.

4 MR. MEGARO: If she -- if Heather Kennon had
5 said that she and Dustin Warren had gone to Cassie
6 Flowers' house the night before that Dustin Warren and
7 you were arrested on January 30th, 2014, talking about
8 the night before?

9 A. Yeah.

10 Q. Would that had been true or false?

11 A. It still would have been false.

12 Q. How do you know that?

13 A. The bridge was closed. The bridge was closed
14 every night for about at least three or four nights in a
15 row while it was snowing.

16 Q. During the time that you arrived at Anique Pittman's
17 house approximately four, 4:30, and the time that Dustin got
18 there, approximately thirty minutes after you arrived, did
19 Dustin ever leave that house with Heather Kennon?

20 A. No.

21 Q. Okay. By the way how many hours were you in Heather
22 Kennon's company January 29th, through January 30th, 2014?

23 A. Off and on three hours. From nine -- well, five
24 hours tops. Off and on.

25 She might have came in, the first time she came in might

1 have been around nine, ten o'clock.

2 Q. That night.

3 A. Yeah, that night, and I locked the door no later
4 than two o'clock.

5 Q. Okay. And when you say on and off, were you in the same
6 room with her --

7 A. (Interrupting.) She was in the living room with
8 me but she kept leaving. She kept going out of
9 apartment. I didn't go out of apartment.

10 Q. Okay? You were also asked some questions on
11 cross-examination about your meeting with Ann Scadden.

12 A. Yes, sir.

13 Q. Do you recall those questions?

14 A. Yes, sir.

15 Q. Everything you told Ann Scadden, is that the same thing
16 you testified to in court today?

17 A. Yeah.

18 Q. You were asked questions about your robbery conviction
19 that you are currently serving sentence for.

20 A. Yes, sir.

21 Q. The robbery conviction, did that occur after Dustin
22 Warren's trial?

23 A. I'm pretty sure I didn't get convicted until
24 October.

25 Q. October 2014?

1 A. His trial was in September.

2 Q. So approximately one month after his trial ended you
3 pled guilty?

4 A. Yes, sir.

5 Q. And the prison infractions you were asked about, those
6 occur before September 2014 or after September 2014?

7 A. After. I didn't get my first one -- I didn't
8 get my first write up until December 31st of '15.

9 Q. So approximately a year and a couple months after Dustin
10 Warren's trial was the first time you got a prison write-up,
11 right?

12 A. Um-hum.

13 Q. Okay. Is that a yes?

14 A. Yes, sir.

15 Q. Now you were asked some questions about Facebook posts,
16 right?

17 A. Yes.

18 Q. Do you mean to say that you were arguing with a complete
19 stranger on Facebook about nothing?

20 A. Stupid, yes, I was.

21 Q. No one's ever done that before, right?

22 A. No.

23 Q. Okay. No further questions for Mr. Thomas, your Honor.

24 THE COURT: Additional cross?

25 **RECROSS-EXAMINATION BY MR. SPENCE:**

1 Q. Absolutely.

2 You were on the couch that night at Anique Pittman's
3 house.

4 A. Yes.

5 Q. What were you doing?

6 A. For the majority of the time I was on Facebook
7 on her laptop going back and forth with my wife.

8 Q. Talking to your wife on the cell phone.

9 A. No. We was doing it mostly through the Facebook
10 Messenger.

11 Q. What time did you get to sleep?

12 A. Probably three, four o'clock.

13 Q. And she, you said Heather Kennon kept going in and out
14 of the house.

15 A. Yeah. Before, I locked the door about two
16 o'clock.

17 Q. Because it got -- it got -- it just bothered you?

18 A. Yes, it bothered me.

19 Q. How often she come in and out?

20 A. I know it bothered me that she was leaving the
21 door open and the cold air's coming in, the door's
22 banging back and forth. That's what bothered me. It's
23 not my house I can't say --

24 Q. (Interrupting.) What was she doing out there?

25 A. I mean from what I think she was doing -- I

1 thought she was out there waiting for a ride. I thought
2 she had left.

3 Q. So she didn't take Dustin Warren's car at any time, did
4 she?

5 A. She took his keys. I don't know if she took his
6 car.

7 Q. You're in that apartment, where's his car parked?

8 A. If I'm in that apartment the couch faces this
9 way. The front door is that way. The car is on the
10 other side of the parking lot to my left.

11 Q. How far down?

12 A. I don't... fifty feet from the, from the
13 entrance of the apartment.

14 Q. Can you hear the cars come in?

15 A. No. No.

16 Q. So you cannot tell the Court that she ever got in that
17 car and drove it, can you?

18 A. No.

19 Q. That's all I have.

20 MR. MEGARO: Nothing your Honor.

21 THE COURT: All right. You may step down.

22 Thank you, sir.

23 Mr. Megaro, call your next witness.

24 MR. MEGARO: Defense would call Cassie Flowers.

25 MR. SPENCE: Can he go back to DAC?

1 MR. MEGARO: I have no more questions to ask him
2 unless the State has anything.

3 THE COURT: He may be transported back.

4 **CASSIE FLOWERS,**

5 Being first duly sworn or affirmed to tell the truth,

6 was examined and testified as follows:

7 **DIRECT EXAMINATION BY MR. MEGARO:**

8 Q. Good morning, Ms. Flowers, how are you?

9 A. Good morning. Good.

10 Q. Now, you know that I'm a little hard of hearing. So I'm
11 just going to ask you to keep your voice up a little bit.

12 A. Yes, sir.

13 Q. Now, where are you currently living?

14 A. Currently living in Morehead City, down Old Farm
15 Road.

16 Q. And you're living with your mom?

17 A. Yes, sir.

18 Q. And your mother is Sylvia Flowers; is that right?

19 A. Yes, sir.

20 Q. And were you recently released from custody of the North
21 Carolina Department of Adult Corrections?

22 A. Yes, sir.

23 Q. How long ago?

24 A. September 2nd, last year.

25 Q. And after you were released did you obtain employment?

1 A. Yes, sir.

2 Q. What did you do?

3 A. I worked full time for a yacht company, a boat
4 company on the beach. I like working around boats and
5 stuff. So I was doing that.

6 Q. Okay. Until when?

7 A. Until the Corona Virus stuff happened, and then
8 people were kind of laid off and I started working for
9 the family doing like accounting stuff and taxes for the
10 family business.

11 Q. And what business does your family own?

12 A. It's Flowers Development. There's a couple of
13 different kind of entities in there that pay us rent and
14 things. I'm just kind of keeping track of the money
15 flow.

16 Q. Doing books?

17 A. Yes, sir.

18 Q. Okay. And have you been doing that full time since you
19 were laid off from your other job at the boat company?

20 A. Yes, sir.

21 Q. Now, do you know Dustin Warren?

22 A. Yes, sir, I do.

23 Q. And how long have you known Dustin Warren for?

24 A. I met Dustin Warren back in September of 2013.

25 Q. Okay. And did you have a romantic relationship with

1 Dustin Warren in 2013?

2 A. Yes, sir, for about four months, until
3 December-ish.

4 Q. Okay. And there came a point in time your relationship
5 terminated in 2014?

6 A. Yes, sir.

7 Q. After your relationship terminated did you continue
8 speaking with him?

9 A. No, sir.

10 Q. Is it safe to say that the relationship did not end on
11 the best of terms?

12 A. Safe to say that.

13 Q. Okay. Were you speaking -- were you on speaking terms
14 with him in January or February of 2014?

15 A. No, sir.

16 Q. Okay. Do you know a young lady named Heather Kennon?

17 A. Yes, sir, I know of her.

18 Q. You say you know of her. Are you acquainted with her?
19 Are you friends with her?

20 A. No, sir.

21 Q. Have you met her before?

22 A. No, I've never met her. Never been around her.

23 Q. Do you know some of the people that she hung out with
24 back in 2013-2014?

25 A. Yes, sir. They were kind of scummy people.

1 Q. Okay.

2 MR. SPENCE: Kind of what?

3 A. Scummy. Low-life.

4 MR. SPENCE: Scummy and low lifes.

5 A. Yes.

6 MR. MEGARO: Did you hang out with those same
7 people that she hung out with?

8 A. No, sir.

9 Q. Now, come to January of 2014, did you have any
10 relationship with Heather Kennon at all during that month?

11 A. No, sir.

12 Q. Now I want to draw your attention to the evening of
13 January 28th, through January 29th, 2014, and then we'll get to
14 January 30th, 2014.

15 Do you recall where you were living back then?

16 A. Yes, sir.

17 Q. Where were you living?

18 A. In Willis' trailer park in Morehead City.

19 Q. And you own or rent?

20 A. I was renting.

21 Q. And were you living alone or with anybody else?

22 A. I was living alone.

23 Q. Was anybody else in your trailer with you, human or
24 non-human?

25 A. I had a chocolate lab.

1 Q. That the same dog I met last night?

2 A. Yes.

3 Q. And the dog's name is?

4 A. Rusty.

5 Q. Now in January -- how old is Rusty now?

6 A. I'd say he's twelve years old.

7 Q. So, in January of 2014 it would have been about five and
8 a half, six, roughly?

9 A. Yes.

10 Q. And had you had him since he was a pup?

11 A. Yes, sir.

12 Q. Was and he was living with you back in January of 2014?

13 A. Yes, sir.

14 Q. And how did the dog behave, or how does the dog still
15 behave when people come and ring the doorbell and knock on the
16 front door?

17 A. Oh, well you saw him last night. He's the first
18 one at the door. Barks very loud.

19 Q. Does he do that -- has he done that consistently in the
20 time you've had him?

21 A. Yes, sir.

22 Q. Now, on the evening of January 28th into early morning
23 hours of January 29th, 2014, did anyone ever come to your house
24 on those two days?

25 A. No, sir.

1 Q. And what were the weather conditions like?

2 A. I remember we were snowed in on those particular
3 days.

4 Q. Okay. And the bridge going from Morehead City in to
5 Atlantic Beach, what was the status of that bridge?

6 A. The bridge was closed.

7 Q. Do you have any experience in driving in the snow?

8 A. No, sir.

9 Q. Did you have a four-wheel drive vehicle at the time?

10 A. Not at the time I did not.

11 Q. I can't hear. Say that again.

12 A. Not at the time I did not.

13 Q. Okay. Were you able to drive in the snow with the
14 vehicle that you had?

15 A. No, sir.

16 Q. Now let's talk about the keys to your trailer. Did
17 anyone else have keys to that trailer?

18 A. No, sir.

19 Q. Where did you keep your keys?

20 A. In my pocket at all times.

21 Q. Did you have a routine with respect to your keys and
22 your wallet and personal stuff like that?

23 A. I'm pretty OCD about it. My money and my keys
24 always in my pocket.

25 Q. Phone in another pocket?

1 A. Yes.

2 Q. Okay. Now did there come a point in time in 2014 you
3 learned that Dustin Warren had been arrested?

4 A. Yes. It was -- I was arrested on January 30th
5 for some simple assault charge with an ex boyfriend, and
6 I was released from jail a week later, and that's when I
7 learned that Dustin had been arrested. It was on the
8 news and in the paper.

9 Q. Now when you stopped talking to Dustin Warren in
10 December of 2013, when was the next time you had any contact
11 with him?

12 A. It was -- he sent a Christmas card in December
13 of 2014.

14 Q. Okay. And did he include anything with that Christmas
15 card?

16 A. There was some transcripts from his trial and I
17 was in prison during that serving a sentence, and he
18 said, hey, Heather Kennon had said these things about
19 you. Just want you to be aware of that.

20 Q. Okay. Did you review those transcripts?

21 A. Yes, sir.

22 Q. What observations did you make after you observed those
23 transcripts?

24 A. I observed that she was lying about me and said
25 that she had gone to my house on the days that I was

1 there, and nobody came.

2 Q. Did she ever go to your house, ever in your life?

3 A. No. It would have been weird for her to be
4 there.

5 Q. Why is that?

6 A. Because I don't know her like that. We don't
7 particularly I mean care for each other, really.

8 Q. Okay. And would you have ever let her in your house?

9 A. No, sir.

10 Q. At any point in time on the evening of January 28th,
11 2014, or January 29th, 2014, did Dustin Warren ever come to your
12 home and ask you for anything?

13 A. No, sir.

14 Q. And I think you said were you even on speaking terms
15 with him on January 28th or 29th, 2014?

16 A. No, sir.

17 Q. Now, I think you said before you were incarcerated for a
18 period time in 2014, when were you released on that particular
19 sentence?

20 A. Let's see. I was released November 22nd, 2015.

21 Q. Okay. Say that date again. I'm sorry?

22 A. November 22nd, 2015.

23 Q. Okay. So that would have been roughly a year and eight
24 months after your arrest?

25 A. Yes, sir.

1 Q. Okay. And do you remember where you were incarcerated
2 during that entire time of 2014 to 2015?

3 A. Yes, sir, I do.

4 Q. Where were you incarcerated?

5 A. I was in Raleigh for the first year, and then I
6 was sent to minimum security in Maury, North Carolina,
7 at the time there was a women's facility there.

8 Q. Okay. And you mentioned before this -- this is about an
9 arrest that occurred early 2014. What was date you were
10 arrested?

11 A. Let's see I was arrested January 30th, but then
12 I made bond a week later, and I went in for two, ten
13 months sentences on February 14th, 2014.

14 Q. Okay. So you were sentenced, if I have understand you
15 correctly you were sentenced on February 14th, 2014.

16 A. Yes, sir. And released on November 22nd, 2015.

17 Q. Okay. Thank you. When you were incarcerated on that
18 sentence, were you incarcerated under the name Cassie Jean
19 Flowers?

20 A. Yes, sir.

21 Q. This may sound a crazy question; is that your true name?

22 A. Yes, sir.

23 Q. Have you ever used any other name than your true name?

24 A. No, sir.

25 Q. Did you ever use any other identifying information other

1 than your correct date of birth?

2 A. No, sir.

3 Q. And when you were incarcerated and were you incarcerated
4 under the same name and same date of birth you had your whole
5 life?

6 A. Yes, sir.

7 Q. Now, at any point in 2014, did anyone identifying
8 themselves as a lawyer or an investigator from Dustin Warren's
9 defense team ever speak with you or interview you about the
10 case?

11 A. No, sir.

12 Q. Did anyone ever request that you call them on the phone
13 or call into the women's prison to speak with you?

14 A. No, sir.

15 Q. Anyone ever write you any letters?

16 A. No, sir.

17 Q. Has anyone -- prior to June 6th, 2018, the last MAR
18 hearing, had anybody ever had you transported to court to
19 testify as a witness for Dustin Warren's case?

20 A. No, sir.

21 Q. When was the first time that anyone from a lawyer's
22 office or law firm contacted you about Dustin Warren's case?

23 A. After I was released from prison I think
24 December 15th or December of 2015.

25 Q. Would that have been me?

1 A. Yes, sir.

2 Q. And after you and I spoke, did there come a point in
3 time later where you received a draft affidavit from me?

4 A. Yes.

5 Q. And I want to go prior to that. Had you ever drafted an
6 affidavit for Dustin Warren before you and I had spoken?

7 A. Yes, sir.

8 Q. Who told you to do that?

9 A. Well, when I was in prison I had mentioned to
10 some of the girls in there that this guy I knew was
11 going through an MAR because of an injustice that was
12 done, and I was standing up as a friend to help him, and
13 people in there, I mean you'd be surprised how many
14 people in prison think they have a law degree. So they
15 were helping me with it, and this is how you do an
16 affidavit. I learned what an affidavit was, and you
17 know they had all kinds of things to help me you do it
18 like this, number one, number two, number three, I mean
19 I just stated the facts and they helped me write it.

20 Q. Don't worry. Nobody in this room is surprised as to how
21 many people think they have law degrees in prison.

22 Did Dustin Warren ever direct you what to put into
23 that affidavit?

24 A. No, sir. Just said the facts of the case.

25 Q. And did people that you are talking about at the prison,

1 are those what are commonly called "jail house lawyers"?

2 A. Yes, sir.

3 Q. Okay. After you and I spoke and I sent you that draft
4 affidavit, did you have the opportunity to review it?

5 A. Yes, sir.

6 Q. And did the draft affidavit that I sent you, was that
7 consistent or inconsistent with what you had previously written
8 on your own?

9 A. It was consistent. My version was little more
10 longwinded, but I think you had narrowed it down.

11 Q. Okay. Thank you.

12 Now, if you had been called to testify as a witness for
13 Dustin Warren at his trial in September of 2014. Would you have
14 told the Court and that jury anything different than what you
15 have said here today in court?

16 A. No, sir.

17 Q. Would you have said the same exact thing that you told
18 this court?

19 A. Yes, sir.

20 Q. And had you've been contacted by anyone from
21 Mr. Warren's defense team in 2014, would you have told that
22 lawyer or that investigator anything differently than what
23 you've said here in court?

24 A. No, sir.

25 Q. Bear with me one moment.

1 Nothing further for Ms. Flowers at this time your Honor.

2 THE COURT: Mr. Spence.

3 **CROSS-EXAMINATION BY MR. SPENCE:**

4 Q. Ms. Flowers, you've been in this courtroom a good bit,
5 haven't you?

6 A. Yes, sir, I have.

7 Q. Tell us about this meeting last night with Mr. Megaro.
8 Where did that occur?

9 A. At my mother's house.

10 Q. Where's that?

11 A. Down Old Farm Road, in Morehead City.

12 Q. What's the address?

13 A. 1716 Old Farm Road.

14 Q. What time did he get there?

15 A. About eight p.m.

16 Q. And what how long did he stay?

17 A. He stayed the night.

18 Q. He spent the night with you?

19 A. In our guest room. It's cheaper than a hotel.

20 Q. Who paid his fee for this Dustin Warren MAR?

21 MR. MEGARO: Objection your Honor.

22 THE COURT: Sustained.

23 MR. SPENCE: Did your mother pay it?

24 MR. MEGARO: Objection.

25 THE COURT: Sustained.

1 MR. SPENCE: Did y'all go out to eat?

2 A. No, sir.

3 Q. Did y'all cook there at the house?

4 A. No, sir.

5 Q. Have drinks?

6 A. No, sir. I don't drink.

7 Q. Let me ask you a couple of things since you testified
8 last time your criminal record has changed from that time,
9 hasn't it?

10 A. Yes, sir. I plead guilty to some charges about
11 a month or two after that.

12 Q. Okay. Let me go over these things that are not in your
13 prior criminal history, which the court has copy of.

14 You were convicted on February 15th, 2017 with
15 misdemeanor possession of Schedule IV controlled
16 substance, correct?

17 A. Yes, sir.

18 Q. In Carteret County, right?

19 A. Yes, sir.

20 Q. What was the Schedule IV?

21 A. Probably marijuana.

22 Q. Marijuana is not Schedule IV. What kind of pills is
23 that?

24 A. Probably Xanax then.

25 Q. You have a prescription for that?

1 A. I apologize. No, sir.

2 Q. Okay. And you were convicted on a second count of
3 simple possession Schedule IV controlled substance. That must
4 be a different Schedule IV, what was that?

5 A. Maybe another pill. I'm not sure.

6 Q. What kind of pill?

7 A. Valium or Clonopin.

8 Q. You take some of those?

9 A. I did in the past.

10 Q. Okay. You have a prescription for those?

11 A. No, sir.

12 Q. Where did you get the pills?

13 A. I do not recall.

14 Q. You don't know how you got the pills?

15 A. No, sir.

16 Q. Did you buy them?

17 A. I don't know.

18 Q. Somebody give them to you free?

19 A. Could have been they left them in my car. I'm
20 unsure.

21 Q. You're telling the Court you don't know, under oath you
22 don't know who gave you the pills.

23 A. What was the date on that?

24 Q. The date of offense was October 24, 2016 on both cases.
25 Who would have given you the pills?

1 A. I'm sorry. I thought we were talking about my
2 prior record like ten, twelve years ago. I'm sorry.

3 Q. I said 2017 is what I told you about.

4 A. The Schedule IV, that was methamphetamine.

5 Q. Methamphetamine is not Schedule IV.

6 A. Then it was Xanax.

7 Q. You know the schedules.

8 A. It was Xanax I'm sorry.

9 Q. What was the other Schedule IV?

10 A. There was a one Valium.

11 Q. Again where did you get those pills?

12 A. Sir, I do not know.

13 Q. They just happen to fall in your hands?

14 A. I do not know.

15 Q. Did you get them from somebody?

16 A. I could have.

17 Q. You were convicted on November 6th, 2018 with possession
18 with intent to manufacture, sell and deliver methamphetamine,
19 correct?

20 A. Yes, sir.

21 Q. And that was a felony and you also convicted on that
22 same date, 11/6/2018 for PWISD marijuana, correct?

23 A. Yes, sir.

24 Q. And convicted on that same date of selling
25 methamphetamine, correct?

1 A. Yes, sir.

2 Q. Did you, did you make that methamphetamine?

3 A. No, sir.

4 Q. Where did you get it from?

5 A. I do not recall, sir.

6 Q. Who did you get your meth from?

7 A. I do not recall, sir.

8 Q. Were you addicted to meth?

9 A. Yes, sir. I was.

10 Q. Where did you get it when you needed it?

11 A. I do not recall, sir.

12 Q. Did you get it from Brandon Hobbs?

13 A. No, sir.

14 Q. And you got another conviction on 11/6/2018 for PWISD
15 methamphetamine, a second date of offense; is that correct?

16 A. Yes, sir.

17 Q. And then, two things that may not have shown up were
18 Craven County convictions 2014, for obtaining property by false
19 pretense. You pled guilty to that felony, correct?

20 A. Yes, sir.

21 Q. And also pled guilty in Craven County to assault with a
22 deadly weapon on 6/27/14; is that correct?

23 A. Yes, sir.

24 Q. You know Josh Dixon?

25 A. I know of him.

1 Q. You know him, don't you?

2 A. I know of him.

3 Q. You've never hung around him?

4 A. Maybe he had been in the same place as me one or
5 two other times.

6 Q. You know Brandon Hobbs?

7 A. I know of him.

8 Q. You ever hung around him?

9 A. A handful of time.

10 Q. John Doyle, do you know him?

11 A. Yes, sir.

12 Q. And Dustin Warren, you know him.

13 A. Yes, sir.

14 Q. Okay. You don't know Heather Kennon, though, do you?

15 A. Umm.

16 Q. Let me rephrase that, have you ever talked to Heather
17 Kennon ever in your life?

18 A. Not directly.

19 Q. Have you ever been around her?

20 A. No, sir.

21 Q. So you don't know anything about her, do you,
22 personally?

23 A. Well, I know that she didn't like me.

24 Q. Did she tell you that?

25 A. Through a boyfriend of hers, yes.

1 Q. And she's the one that hangs around the scummy and low
2 life, correct?

3 A. Well, at that point in my life, yes.

4 Q. How about you?

5 A. I agree, sir.

6 Q. Now you testified here under oath that that bridge was
7 closed the 29th and 30th, the one Morehead to Atlantic Beach,
8 correct?

9 A. Yes, sir.

10 Q. It was ice and they just closed it.

11 A. Yes, sir.

12 Q. So there was really no way they could have gone to your
13 house from Atlantic Beach could they?

14 A. No, sir.

15 Q. And if Mark Thomas testified that the bridge wasn't
16 closed that's just not correct, is it?

17 MR. MEGARO: Objection, your Honor.

18 THE COURT: Overruled.

19 MR. SPENCE: If Mark Thomas said the bridge was
20 not closed until a certain time on the night of 1/29
21 that's not true, is it?

22 A. Well, sir, I remember the bridge being closed
23 because of the sleet and the snow and the ice.

24 Q. Okay. So you're testifying under oath that it was
25 closed.

1 A. To my knowledge, yes, sir.

2 Q. Okay. How long had you lived at Willis Trailer Park?

3 A. Not very long.

4 Q. When did your lease start?

5 A. Sir, I can't remember. I maybe lived there for
6 eight months.

7 Q. When did your lease start?

8 A. I don't know.

9 Q. When did you date -- was Dustin Warren ever living there
10 with you?

11 A. No, sir.

12 Q. So when did your lease start? You lived with Dustin
13 Warren for a period of time, didn't you?

14 A. No, sir. I did not.

15 Q. Did he ever sleep there?

16 A. Maybe one time.

17 Q. Were y'all going together when you lived at that
18 trailer?

19 A. Yes, sir.

20 Q. Okay. And y'all hung out every day, didn't you?

21 A. Just about, yes sir.

22 Q. So he was over there a lot, wasn't he?

23 A. Yes, sir.

24 Q. So how do you know he didn't have an extra key?

25 A. I know this. I'm very OCD about my doors always

1 being locked.

2 Q. Okay. I understand that, but you don't know if he
3 didn't take your key and get a copy, do you?

4 A. He didn't do that.

5 Q. You don't know that, do you?

6 A. He'd have to go in my pocket.

7 Q. Exactly. It's possible, isn't it?

8 A. No, sir, not.

9 Q. It's impossible that he could have gotten your key while
10 you dated or you given him your key at some time and he went and
11 copied it; is that correct?

12 A. No, sir.

13 Q. It's not possible.

14 A. It's not.

15 Q. Did you read the transcript that he sent you in the mail
16 with the Christmas card?

17 A. Yes, sir.

18 Q. How many pages was it?

19 A. I think he had cut out just the excerpt of
20 Heather saying things about me.

21 Q. Okay. Tell me exactly what was said that you're here to
22 rebut. What did she say about visiting you?

23 A. Well, sir, she said that she came by my house.

24 Q. She said that she came by.

25 A. That her and Dustin both, I'm sorry, came by my

1 house --

2 Q. (Interrupting.) Did she say she got out of the car?

3 A. No, sir. She said she came by and got some
4 chemicals to make drugs with --

5 Q. (Interrupting.) Did she say she did that?

6 A. She said her and Dustin did that.

7 Q. (Interrupting.) That she came by and got chemicals?

8 A. Yes, sir.

9 Q. Not Dustin. She?

10 A. That her and Dustin both.

11 Q. Who came to the house? Who came to the house? Who did
12 she say came in the house?

13 A. She said that her and Dustin came to the house.

14 Q. And she say she went with Dustin to the house?

15 A. I believe she sat in the car she said.

16 Q. She sat in the car, didn't she?

17 A. No one ever came by, sir.

18 Q. If Dustin had had a key you wouldn't have no idea.

19 A. I'm telling you that I was home, sir.

20 Q. You said you don't know what a cold pack is?

21 A. At the time I did not know what a cold pack was.

22 Q. You know now, don't you?

23 A. Yes, sir. I do.

24 Q. What's it used for?

25 A. It's used for -- well, supposed to put it on

1 injuries.

2 Q. Supposed to?

3 A. Yes. They use it to make drugs.

4 Q. Yes.

5 A. Yes, sir.

6 Q. When you don't have ammonium nitrate you use the cold
7 pack, correct?

8 A. Yes, sir.

9 Q. So you're saying that you didn't -- that nobody came to
10 your house means nothing happened to alert you that anybody came
11 to your house, correct?

12 A. I'm saying nobody was there, yes, sir. That's
13 correct.

14 Q. You were home the whole time?

15 A. Yes, sir.

16 Q. You did not leave one time?

17 A. Did not. I was snowed in.

18 Q. Okay. And you're testifying about how your dog would
19 react to every situation.

20 A. If somebody was knocking on the door or came in
21 the driveway. Yes, sir.

22 Q. Okay. How many times had Dustin Warren played with your
23 dog?

24 A. A lot.

25 Q. Did he bark at Dustin?

1 A. Yes. Every time someone knocks on the door he
2 can't see the person, so he's barking.

3 Q. So the bottom line is the facts you know nobody came to
4 your house, the only way you know that is based on what your dog
5 didn't tell you, correct?

6 A. Nobody came by my house, sir.

7 Q. Because your dog didn't bark, that's how you know.

8 A. I was there.

9 Q. How would you know if somebody drove up to your house?

10 A. Well, they would have come to inside to get
11 these chemicals to make drugs, correct?

12 Q. How do you know?

13 A. Because I was home, and nobody came by.

14 Q. What was your drug of choice back in January of 2014?

15 A. I was Xanax and methamphetamine, sir.

16 Q. How often would you take it? Every day?

17 A. All day every day, sir.

18 Q. All day every day?

19 A. Yes, sir.

20 Q. Does that affect your, your ability to remember things
21 or your ability to hear things?

22 A. Maybe somewhat.

23 Q. Who came to your house to give you the methamphetamine?

24 A. I don't recall, sir.

25 Q. You didn't leave, did you?

1 A. I did not leave.

2 Q. But somebody had to give you the methamphetamine,
3 correct?

4 A. Probably lasted me a while.

5 Q. How much did you have?

6 A. I don't recall at that time, sir, but enough.

7 Q. And what did you get that from?

8 A. Sir, I don't recall.

9 Q. You're not going to tell the judge, are you?

10 A. I honestly don't recall.

11 Q. You do not know who you paid money for methamphetamine?

12 A. I don't, sir.

13 Q. Can you tell us anybody who ever told you any drugs.
14 Tell us one name?

15 A. No, sir.

16 Q. That's all I have.

17 THE COURT: Redirect.

18 **REDIRECT EXAMINATION BY MR. MEGARO:**

19 Q. Yes, please. Bear with me one moment.

20 Ms. Flowers, he asked you questions about prior drug
21 use. Using drugs now?

22 A. No, sir, I'm not.

23 Q. And you've gone through addiction several times in your
24 life; is that right?

25 A. Yes, sir.

1 Q. Have you gone through rehab programs?

2 A. Yes, sir. I went to a rehab program in Costa
3 Rica. It was a 90-day program, but I stayed there for
4 five months.

5 Q. And while you were an addict and using drugs on a daily
6 basis, are you getting drugs from lots of different people?

7 A. Lots of time they are free. People just come by
8 and just use them. There's no buying necessary.

9 Q. So drugs passed around in a social setting?

10 A. Yes, sir.

11 Q. And sometimes you're buying them from people you don't
12 really know; is that correct?

13 A. Yes, sir.

14 Q. And all that -- left that all behind now, right?

15 A. Yes, sir.

16 Q. Thank you.

17 You're asked questions about convictions in 2017-2018, none
18 of those convictions occurred prior to Dustin Warren's trial; is
19 that right?

20 A. Yes, sir.

21 Q. And all those incidents occurred well after Dustin
22 Warren's September 2014 trial.

23 A. Yes, sir.

24 Q. Now, while you were dating Dustin Warren -- let me
25 withdraw that and go back. You were asked some questions about

1 the possibility that Dustin had a key to your trailer. How big
2 was that trailer?

3 A. It was small.

4 Q. And if anyone pulled up in front of the trailer and you
5 were inside the bedroom, that trailer, would you have been able
6 to hear it?

7 A. Well sir, as soon as they pulled up and they got
8 out of the car and the car door would shut, Rusty would
9 then jump up and just start barking.

10 Q. Okay. And if anybody tried to open the door or come in
11 would you have been in a position to hear that?

12 A. Yes, sir.

13 Q. Is that because the interior of the trailer was that
14 small?

15 A. Yes, sir.

16 Q. On January 28th, 2014 and January 29th, 2014, did you
17 ever hear anybody pull up to that trailer?

18 A. No, sir.

19 Q. If they had come in the house would you have been in a
20 position to hear it?

21 A. Yes, sir.

22 Q. As you sit here today are you completely certain that no
23 one ever came into your house?

24 A. Yes, sir.

25 Q. On those dates?

1 A. Yes, sir.

2 Q. Are you completely certain you never gave anybody any
3 cold packs on those dates?

4 A. Yes, sir.

5 Q. Thank you. I have no further questions for Mr. Flowers.

6 THE COURT: Mr. Spence.

7 **REXCROSS-EXAMINATION BY MR. SPENCE:**

8 Q. So the only thing that you're going to add to this case,
9 is that you're going to say that Heather Kennon and Dustin
10 Warren didn't come to your house, that's it, essentially, right?

11 A. Well sir, yes. I'm here to that say that if I
12 would have been brought to the original trial.

13 Q. Right.

14 A. Then I believe my testimony would have made a
15 difference because Heather did in fact lie about me.

16 Q. And the jury would believe you.

17 MR. MEGARO: Objection as to what the jury
18 believes.

19 THE COURT: Well sustained.

20 MR. SPENCE: Do you know that your criminal
21 convictions would be asked in front of the jury?

22 A. Yes, sir, I'm aware of that.

23 Q. You said you got some of these things for free; is that
24 correct?

25 A. Yes, sir.

1 Q. Did you ever use sexual favors to get drugs?

2 A. Never, sir.

3 Q. Never?

4 A. Never.

5 Q. Okay. Why were they given free?

6 A. Well I mean we're just hanging out. I mean
7 passing the bowl around.

8 Q. Friends?

9 A. Yeah.

10 Q. Okay. Who -- you don't even know the name of those
11 friends?

12 A. Sir, I just don't understand why it would be
13 relevant to know --

14 Q. (Interrupting.) You said you didn't know who it was,
15 not that it wasn't relevant, you didn't know. You do know,
16 don't you?

17 A. No, sir. I don't recall.

18 Q. You don't know the friends' names?

19 A. No, sir.

20 Q. That's all I have.

21 MR. MEGARO: Nothing further.

22 THE COURT: You may step down

23 MR. MEGARO: Given that Ms. Flowers has
24 completed her testimony, I'm more than happy to release
25 her unless the State wants to call --

1 MR. SPENCE: -- fine.

2 THE COURT: -- you may be released.

3 MR. MEGARO: And may her and her mother remain
4 in the courtroom at this point?

5 THE COURT: Yes.

6 MR. SPENCE: Fine. It's like 11 o'clock. Time
7 for a morning break?

8 THE COURT: All right. We'll take 15 minutes.
9 (A recess was taken.)

10 THE COURT: Ready to proceed. You may call your
11 next witness.

12 MR. MEGARO: Call my client, Dustin Warren.

13 **DUSTIN WARREN,**

14 Being first duly sworn or affirmed to tell the truth,
15 was examined and testified as follows:

16 ***DIRECT EXAMINATION BY MR. MEGARO:***

17 Q. It Mr. Warren where are you from?

18 A. I'm housed at Pamlico Correction.

19 Q. And I guess it's no secret while we're all here today.

20 (Interruption by reporter.)

21 Do you know the two witnesses who just testified?

22 A. Yes, sir, I do.

23 Q. And did there ever come a point in time in the last
24 couple of years where you asked either one of them to assist you
25 in this Motion For Appropriate Relief?

1 A. Yes, sir, I did.

2 Q. And did you send them any documents to review?

3 A. Yes, sir, I did.

4 Q. Did you send them -- what did you send them?

5 A. I sent them partial transcript excerpts to that
6 specifically pertained to things that regarded them,
7 that was in trial that they couldn't testify to against.

8 Q. And are you referring to just the portions of the trial
9 transcript of which they would have personal knowledge?

10 A. Yes, sir.

11 Q. Thank you. Did you ever direct Mark Thomas or Cassie
12 Flowers on what to say in the affidavits or what to say to me as
13 your attorney?

14 A. No, sir. Mainly knowing that these types of
15 situations people don't even want to get involved, I
16 just was adamant in asking them to stick to the facts
17 and speak the truth.

18 Q. And did you ever tell either one of them to tell
19 anything other than the truth to me or to the court?

20 A. No, sir. I was adamant about just speaking the
21 facts.

22 Q. Now you know Heather Kennon in this case, correct?

23 A. Yes, sir.

24 Q. And when you were arrested on January 30th, 2014 was she
25 arrested as well?

1 A. No, sir.

2 Q. When was she arrested?

3 A. I have no idea.

4 Q. Was she subsequently arrested?

5 A. I think so, yes, sir.

6 Q. And were you two charged together?

7 A. At first we were considered co-defendants and
8 they were trying to treat as a co-defendant case.

9 Q. And did there come a point in time where that changed?

10 A. Yes, sir, it did.

11 Q. When?

12 A. That was directly after the suppression motion
13 got filed. Mr. Fulcher told me that the State offered
14 her full immunity to testify against me, and he
15 immediately came to me and told me that if I didn't take
16 the plea, which was 57 months, that I would be thrown
17 under the bus.

18 Q. Let's go back in time to right after your arrest in this
19 case. Was Mr. Rodney Fulcher your first attorney or was he not
20 your first attorney?

21 A. No, sir. I was arrested January 30th, 2014, and
22 I was assigned James Wallace III as my court appointed
23 lawyer, along with his lead detective Ms. Ann Harris
24 Scadden, who was also, like I said, did talk to
25 witnesses and obtained information, and even though she

1 was an officer of the court we subpoenaed but she wasn't
2 served.

3 Q. Okay. Now, when you first started, when you first were
4 represented by Mr. Wallace did you discuss the facts of the case
5 with him?

6 A. I did briefly, only had a little bit of time to
7 work together. I was really trying to just get a paid
8 lawyer in that situation, but at the time I was waiting
9 on my tax money to come in actually.

10 Q. Referring to a tax, income tax refund?

11 A. Yes, sir.

12 Q. And did you do speak with Ms. Scadden about the case?

13 A. I did. I did briefly. I sure did.

14 Q. Did you give either Mr. Wallace or Ms. Scadden the names
15 of Cassie Flowers and Mark Thomas among others?

16 A. Well, the thing about it, with Cassie Flowers,
17 we didn't even know she was involved because she didn't
18 come out until the third or fourth version of Heather's
19 narrative, but... at that time. But I did tell her
20 about Mark Thomas. I did explain about Kathy Roberts.
21 I explained about a bunch of aspects of the case that he
22 was well aware of, and, you know, Anique Pittman, and a
23 bunch of people.

24 Q. And did your knowledge did Ms. Scadden interview Mark
25 Thomas?

1 A. To my knowledge I think he did come to speak to
2 her personally, because he wanted to -- I don't think
3 she went specifically to go get him, but he did come to
4 her and talk about specifics of the case and give her
5 information on the case.

6 Q. Now, how long after your arrest did you hire Mr. Fulcher
7 to represent you?

8 A. That would have been March 2nd, 2014. I was
9 referred to Mr. Fulcher as an affordable lawyer, and I
10 did contact him, and asked him could he would he please
11 represent me. He let me know that he was currently
12 court appointed to represent Ms. Heather Kennon, was her
13 lawyer, but if I could get him \$2,500 he would finagle
14 some things and come off her case and take my case.

15 Q. Did Mr. Fulcher ever discuss with you possibility of a
16 conflict of interest with respect to his representation of
17 Heather Kennon and you?

18 A. You know, I kind of figured it was by that
19 simple fact, but I just really wanted to pay a lawyer
20 and he was all I could afford, be honest with you.

21 Q. Do you know what a conflict of interest is?

22 A. I know there's different aspects of conflict of
23 interest, and I mean I understand certain points of it.
24 I mean --

25 MR. SPENCE: Judge, I object. There's nothing

1 in the Motion Appropriate for Relief alleging any
2 conflict of interest in the lawyer, and I just, I simply
3 if you'll show me where Mr. Fulcher represented her I
4 would appreciate it. It's not even in your motion.

5 MR. MEGARO: It may not be in the motion but if
6 the testimony comes to pass may be an opportunity for me
7 to amend the motion. But this is not coming as a
8 surprise, because as Mr. Spence knows this did come up
9 two years ago.

10 I did have a portion of the court file here of Heather
11 Kennon's case which reflects that Mr. Fulcher did represent her,
12 albeit as a point in time his name was crossed off the court
13 file and the name Mr. Suggs was written in next to it, and
14 Mr. Suggs did represent Ms. Kennon during the proceedings
15 involving both of them, and Mr. Fulcher did represent Ms. Kennon
16 subsequently on a violation of probation on the same case.

17 But my client's testimony is bearing this out. This would
18 certainly bear on the credibility of Mr. Fulcher, and not only
19 that it completes the narrative as to aside from independent
20 grounds for Motion For Appropriate Relief this completes the
21 narrative as to exactly how it came to be that my client
22 retained Mr. Fulcher.

23 MR. SPENCE: My problem is if you're going to
24 represent to the Court as an officer of the court that
25 Mr. Fulcher represented Ms. Kennon, and actually was appointed

1 her case and was assigned that case, you need to produce that.

2 MR. MEGARO: I'm bringing through my client's
3 testimony --

4 MR. SPENCE: (Interrupting.) I don't want him.
5 I want the public record.

6 MR. MEGARO: You may not want it. This is
7 what I got.

8 THE COURT: I will allow the testimony, and I
9 will give it the weight to which I think it's entitled.

10 MR. MEGARO: Sorry. Proceed.

11 A. He, as soon as he took my money he just lost all
12 interest in my case. He didn't show any due diligence.
13 He didn't talk to any witnesses. He didn't go analyze
14 evidence. I asked him to go get simple exculpatory
15 evidence, like the video footage at the resort hotel,
16 that would have showed that I was not there three days
17 with Heather Kennon. I was actually there one day with
18 a woman that I met her by chance.

19 Would have showed if he talked to the security
20 worker because he had a free room for three days there
21 that Heather was partying with for those three days,
22 would have shown that and he would collaborated that.
23 He didn't do anything that would help me. He just
24 basically took my money and that's it. He didn't do
25 anything to help me.

1 Q. Okay. All right. So going back to my other question.
2 Did Mr. Fulcher ever discuss with you the possibility of a
3 conflict of interest?

4 A. No, sir.

5 Q. Now during your initial, the initial part of the case
6 when Mr. Fulcher started representing you, you said just before
7 you discussed with him some of the facts of the case, right?

8 A. Yes, sir.

9 Q. And if I heard you correctly you gave him some leads to
10 follow as far as building a defense.

11 A. Yes, sir.

12 Q. Did one of those leads include the name Mark Thomas?

13 A. Most definitely. Most definitely.

14 Q. And from day one of your representation of Mr. Fulcher,
15 what did you tell him as to whether the drugs or chemicals found
16 inside that hotel room whether they were yours or not, whether
17 you possessed them or not?

18 A. I was adamant that I didn't know anything was in
19 that bag. I didn't possess those bags, knowingly
20 possess those bags that what was found, and he knew
21 that.

22 Q. When we're talking about bags you're referring to the
23 bags found by law enforcement inside that hotel room?

24 A. Yes, sir. Yes, sir.

25 Q. That was a bag with some sort of chemicals and products

1 and that sort of thing?

2 A. (Overlapping.) Yes, sir. Yes, sir.

3 Q. What did you specifically tell Mr. Fulcher about the bag
4 and the contents of that hotel room and the contents of that bag
5 found inside that hotel room?

6 A. I told him specifically it was not mine.

7 Q. Did you tell Mr. Fulcher where you had been the 24 hours
8 plus preceding your arrest?

9 A. Most definitely, and that's why I asked him to
10 go get the exculpatory evidence of the video footage.
11 It was very readily to him at that motel room. He could
12 have got the video footage and seen my whole comings and
13 goings, who I was with and everything, and it would have
14 greatly impeached Ms. Heather Kennon.

15 Q. Okay. Did there ever come a point in time where you
16 gave Mr. Fulcher Mark Thomas' contact information?

17 A. Yes, sir. Yes, sir.

18 Q. And did there come a point in time later when you gave
19 him Cassie Flowers' contact information?

20 A. Yes, sir. He was well aware of how important
21 they were.

22 Q. Okay. So now before you were talking about multiple
23 versions of Heather Kennon's statements?

24 A. Yes, sir.

25 Q. What specifically are you referring to?

1 A. Well, she -- early on she came up with a version
2 and that's one of the things he kind of failed me at
3 because he didn't use the discovery, because her first
4 recorded version was totally different from her last
5 version, and it was kind of crazy because her first
6 vision that's why I had the other witnesses to impeach
7 her. So it made me look stupid in trial when I had them
8 and then she changed her whole story up. So it was
9 almost like she already had a heads up what was going
10 on.

11 Yes. She changed her versions. At first she said we was at
12 the motel for three days. Then she said we left there with a
13 live meth lab and went to the Seashore Inn, where she was
14 obviously arguing with people about the room not being adequate,
15 and the heat this and that, she says we were tending to a meth
16 lab then. She claims she left the store for thirty, forty
17 minutes while I made drugs. That was her first version.

18 Then she started changing her story up. Then all of a
19 sudden she claims that we went across a bridge that was shutdown
20 at two o'clock in the morning across Atlantic to go to Cassie's
21 house to get chemicals to make these drugs with.

22 She added Cassie's name in. The stories kept
23 changing and every time I would come and have an
24 impeachment defense for this, they would come with
25 another version.

1 I had to ask Mr. Fulcher, are you going telling the
2 DA our defense here? Because I'm getting narrowed down
3 in a corner. I can't defend myself.

4 And I eventually just stopped talking to Fulcher
5 about the defense because he was basically going back
6 and telling the State our defense mechanism and I
7 couldn't defend myself. They basically gave her full
8 immunity to tailor her story three or four times.

9 Q. Now, prior to trial did you discuss with Mr. Fulcher a
10 defense strategy?

11 A. We never, we never discussed defense strategy.
12 He was never prepared to go to trial. There was never
13 any -- he just kept saying 57 month plea, you better
14 take this plea. He did everybody in his power -- he did
15 not prepare in any aspect -- no due diligence, he didn't
16 discuss trial strategy. We didn't talk any kind of
17 aspects of the case. He didn't weigh any evidence. He
18 didn't talk to any witnesses. There was no preparation
19 at all. He was definitely forced to go to trial and he
20 was not prepared.

21 And I think you have a copy of the thing he wrote the appeal
22 people where he was claiming he wasn't even prepared for trial.
23 He was forced to trial.

24 Q. Now, did there come a point in time when Mr. Fulcher
25 filed a Motion to Suppress on your behalf?

1 A. Yes. He -- I was -- this was shortly after I
2 got incarcerated for this, and he right after -- he
3 started to -- I started looking at the evidence and
4 there was books that I had access to and it kind of
5 seemed to me that it was a warrantless search seemed to
6 me, seemed that it was contaminated the evidence. Seem
7 expectation of privacy laws that got violated at
8 Heather's motel room, and I wrote up of a layman's
9 suppression motion, and I asked him to, you know, to
10 take what I had. I actually have the notes that I wrote
11 on that here today if the Court would like me to submit
12 that, but I wrote a layman's suppression motion.

13 That's really the only thing he did was to take
14 what I wrote and turn it into a more legal friendly
15 version of that.

16 Q. Did Mr. Fulcher send you a copy of the motion while --
17 you were incarcerated I'm sorry?

18 A. I was in the county jail at that time.

19 Q. Okay. Thank you. And did Mr. Fulcher send you a copy
20 of the motion?

21 A. He did. He did send me a copy. I thought it
22 was well written. I did think he did good job on that.
23 I mean he did. It was well written I thought. It had
24 everything that I had, you know, wrote up in it.

25 Q. Along with that motion that Mr. Fulcher writes you a

1 cover letter explaining what was going on with the case.

2 A. Yes.

3 Q. And in that letter did Mr. Fulcher tell you that if your
4 motion to suppress was denied you will have to take a plea?

5 A. I would like to say this, you know, I had
6 witnessed come try to talk to this man, and he kept
7 turning them away. He told me wasn't going to talk to
8 my witnesses until after the suppression motion was
9 decided on, and nobody knew about this, you know, how
10 the court's proceeding works, or the motion, or how this
11 thing -- we didn't know the suppression motion was going
12 to happen right before trial.

13 So he never had any intentions to talk to any of
14 the witnesses, and yes, he kept throwing -- he kept
15 telling me "you better take the plea. You better take
16 the plea." Even when we talked about the judge, him not
17 liking the judge. The judge not liking him. I better
18 take this plea or I'm going to lose. I'm going to lose.

19 That's all he kept -- he never wanted to prepare
20 for trial.

21 Q. My question is did he write you a letter saying you have
22 to take this plea?

23 A. Yes, he did. Yes, sir, he did.

24 Q. And what he said in the letter is the same thing he told
25 you in person?

1 A. Many times and many different aspects of the
2 case.

3 Q. When he would tell you you have to take this plea, what
4 was your response?

5 A. I told him I'm not taking any plea. I told him
6 that I wanted him to defend me and that's what I asked
7 him to do. I wasn't going to plead to something I
8 wasn't guilty of.

9 I told him I wasn't taking the plea and he kept
10 reminding me that I hadn't paid him enough. But see
11 when I gave him my money he knew that was all the money
12 I had. We had no contract for any extra fees or
13 anything. He just took what I had. That was all I
14 read, and he never expressed to me there would be any
15 more fees.

16 Q. When did you tell Mr. Fulcher that Cassie Flowers might
17 be a potential witness in your case?

18 A. Well, that was about the last version that
19 Heather came at us with that, you know, she was claiming
20 that, you know, we went across the bridge and went to
21 Cassie's and these chemicals in that bag was used to
22 make these drugs. They were saying we got some of the
23 chemicals from Cassie; and you know, I was kind of
24 shocked because, you know, she didn't have anything to
25 do with any of this narrative or anything, and I hadn't

1 talked to her, and I didn't know what was going on. It
2 was really scary.

3 Q. Were you even on speaking terms with Cassie?

4 A. No, sir, not at all. Not at all. You know, we
5 broke up and she texted me a few times. We broke up it
6 was kind of hard, and we wasn't talking at all. I
7 wasn't, we wasn't communicating.

8 Q. And when she would text you or call you after you broke
9 up did you return the calls --

10 A. (Interrupting.) No, sir, not at all. We had a
11 bad falling out.

12 Q. Okay. So, is it safe to say the last time you spoke or
13 texted or communicated with Cassie Flowers was December of 2013?

14 A. Yes, sir.

15 Q. And the next time that you communicated with her in any
16 way was when?

17 A. Was actually around like December 13th, it was
18 2014, but and the next time I talked with her, well the
19 next time I reached out with her was like 2014 when I
20 reached out to her through a Christmas card. Had no
21 contact.

22 Q. Is that when you sent her a copy of the transcripts?

23 A. Through a Christmas card, yes, sir.

24 Q. Okay. And the last time you saw Cassie Flowers after
25 December of 2013 was when?

1 A. That was at the evidentiary hearing we had two
2 years ago.

3 Q. Okay. And have you seen her between two years and now?

4 A. No. I haven't seen her since two years ago,
5 since we went to the evidentiary hearing.

6 Q. She looks like a different person now than she did two
7 years ago?

8 A. Man, she looks amazing. I can tell she's living
9 the good life.

10 Q. Good. Okay. So at the time of your trial, do you know
11 where Ms. Flowers was?

12 A. She was incarcerated.

13 Q. That would have been in the North Carolina Department of
14 Adult Corrections?

15 A. Yes, sir.

16 Q. Did you ever tell Cassie Flowers or Mark Thomas what to
17 say in an affidavit? What to say to the lawyer?

18 A. No, sir, I was adamant. I was adamant that I
19 just wanted the facts.

20 Q. Do you know an individual named Brandon Elps?

21 A. Yes, sir.

22 Q. How do you know Mr. Elps?

23 A. I know of him. I had met him -- when I was in
24 the county jail I had contacts, and sometimes I would go
25 and clean my contacts, and he was out there what they

1 call a crab pot, which was away from the population.

2 So I would go out there and he would start talking
3 to me, and come to find out that he was Heather Kennon's
4 boyfriend.

5 And I begin to tell him about my situation, and that's when
6 I realized him and Heather Kennon were actually locked in jail
7 on a secret indictment for selling meth, or methadone to school
8 property, and that's one of the reasons why I wanted him there.
9 He was willing to testify about that, and that's one of the
10 reasons I asked for Daniel Black, and I actually have a copy of
11 that secret indictment here I'd like to put on the record too.
12 But he's got also statements about him and Heather where she had
13 lied on him, but he would have testified to her pattern behavior
14 and character, and he was willing to talk about how she lied on
15 him and, you know, the things that she was involved in, making
16 drugs, doing drugs, this lifestyle she was in, you know, about
17 her being red flagged, you know about being red flagged at
18 hospitals, not only Carteret County but in surrounding counties
19 for lying to get drugs for her injuries. He would testify for
20 that.

21 Q. Did you pass all this information along to Mr. Fulcher?

22 A. Yes. And Mr. Fulcher, you know, he was there
23 the day at the county jail. I know Mr. Fulcher did sign
24 for the subpoenas. He didn't file the correct way for
25 prisoner (indiscernible) but he did do a regular

1 subpoena on him and he did have a chance to ask him for
2 an offer proof, but he just didn't do it. I don't know
3 why.

4 Q. Now--

5 MR. SPENCE: Again this Brandon Elps thing,
6 that's not in the MAR. You did not allege that in the
7 MAR. So I object to it even being brought up.

8 THE COURT: Well overruled, I'll give the weight
9 it's entitled to.

10 MR. MEGARO: Did -- prior to your trial did you
11 ever have a conversation with Mr. Fulcher as to whether
12 he had spoken with any of those witnesses: Brandon
13 Elps, Cassie Flowers, Mark Thomas.

14 A. Yeah. We had that conversation when he came to
15 tell me that they were being forced to go to trial.
16 That was probably September 1st, or 2nd, 2014 he came to
17 me, brought me down from the county jail, he said, look
18 man, we're being forced to go to trial.

19 I said, well, this is -- is this right? I said
20 you haven't even talked to any of the witnesses. We're
21 not prepared. You haven't did anything. You haven't
22 got any evidence.

23 He's like, yeah. I know.

24 I said, isn't my witnesses supposed to have two
25 weeks notice prior to be prepared?

1 He's like yeah, usually do, but probably won't
2 be in this case.

3 And I said well, what are we -- are my
4 witnesses -- how are we going to get my witnesses there
5 because they told us on the second of September that we
6 were going to trial on the 8th, which is four working
7 days.

8 And I said how's my witness going to be there?

9 He said, I don't think they are going to be
10 there.

11 And I was like, well that isn't right.

12 He's like, yeah. You don't need to go in front
13 of this judge either. He's like, I don't like this
14 judge and he don't like me. We have a bad relationship.
15 And you know, he said the Honorable Benjamin Alford was
16 a bias judge. He said he was did want not want to go in
17 front of him at all, and if I went in front of him I
18 would lose.

19 And I told him, I said, based on your
20 relationship with him you need to continue this case so
21 that we can get a judge that you have a better
22 relationship with.

23 And he's, he's like I can't do that. He said
24 it's out of my hands.

25 I said every other paid lawyer -- person with a

1 paid lawyer does that.

2 Well, this is out of my hands, the prosecution
3 wants you.

4 And I was like well you haven't prepared for
5 trial. You haven't talked to any of my witnesses. You
6 haven't got any due diligence. You haven't got any
7 evidence. Things I've told you, you've done absolutely
8 nothing but take my money, and now want me to take a
9 plea.

10 This was crazy. He reminded me I hadn't paid
11 him enough.

12 I said, you know what, how about you withdraw
13 from my case.

14 He said, you know what, that might give you more
15 time, and that's when we went to the double withdraw
16 hearing.

17 MR. MEGARO: That was going to be my next
18 question. Did Mr. Fulcher in fact ask to be relieved as
19 your attorney by the Court?

20 A. Yes, sir. That was like the next day or the day
21 after that.

22 We had a double withdraw hearing. He got up in front of
23 court, Honorable Benjamin Alford and told the Court one, he said
24 that he didn't feel like he could zealously defend me; two, he
25 said that we wasn't seeing eye to eye; and three, he said

1 that -- which he lied to the court which he did many times in
2 this courtroom. He lied to the courtroom said I hadn't finished
3 paying him, and that's when the judge asked me said well is
4 there anything you would like to say Mr. Warren?

5 I said, yes, sir. It is. I stood up in court. I
6 said I feel like I was being railroaded. I said my
7 lawyer has been incompetent. He has not been effective.
8 He's not been adequate in any aspect. All he's done is
9 took my money and not did anything. He hasn't talked to
10 any of my witnesses. I said this in open court at that
11 hearing.

12 I said that he is basically, and why I'm sitting
13 here talking about this man he hasn't did anything in my
14 case, or got any evidence, I'm looking down at this man,
15 he's turning red, he's turning purple. He is angry.
16 He's embarrassed, and really by the Court asking me to
17 tell how I felt about this situation, it caused a
18 conflict. I don't know if you would call it a conflict
19 of interest. But it was conflict of interpersonal
20 relationship between us, and it was anger there and
21 resentment and ever since that point in time he never
22 objected to anything he was supposed to object to. He
23 never pounced on exculpatory evidence that came out in
24 the hearing that was hidden.

25 The Kotex tampons that we didn't get a chance to

1 analyze or test, or basically just came out of nowhere,
2 and he didn't do anything. He little them slaughter me,
3 and basically I went to trial without a lawyer.
4 He subtilely, and he subtilely and sometimes evening
5 cunningly and sometimes even brazenly harmed me through
6 his actions, due to this relationship based on this.

7 Q. I was going to ask you after that hearing what was your
8 relationship like with Mr. Fulcher from that point on?

9 A. It was animosity. It was hatred. It was not
10 good at all. It was a total different frequency between
11 us, and he was very embarrassed by what I said in open
12 court that day, and we did, we did get turned down for
13 that, and that's when he asked for the continuance
14 afterwards, but we did get turned down for that.

15 I think he thought he was coming off.

16 Q. When, when he told the Court that you two didn't see eye
17 to eye, do you know what he was referring to?

18 A. I most definitely do. He was, he was basically
19 wanting me to take a 57-month plea bargain from the
20 beginning and that's all he wanted to do.

21 He wanted, you know, witnesses come to talk to him
22 he turn them away, say, hey, I'll talk to you after the
23 suppression motion is decided.

24 And he's telling me, sending me letters when the
25 suppression motion gets decided on you have to take this

1 plea bargain. You know, you haven't paid -- you haven't
2 paid me enough to go to trial.

3 Constantly telling me words and telling me about the judge
4 having me scared to go in front of this judge, had a bad
5 relationship, this judge was biased. I went in front of him I
6 was going to lose. Constantly scaring me. I did not feel
7 confident with this man. He was not preparing in any with a
8 talking about any kind of trial strategy, trying to get any
9 simple evidence that would greatly impeach Ms. Heather Kinnon.
10 Nothing.

11 Q. Now, I want to turn to the day that you started trial on
12 September 2014.

13 A. Yes, sir.

14 Q. Did it ever come to your attention that witnesses,
15 possible defense witnesses did not show up to court?

16 A. Well, I had a feeling they wasn't going to be
17 there and I went to, I asked Mr. Fulcher that morning.

18 Q. When you say "they" who are referring to?

19 A. My witnesses. I two court ordered writs for
20 Cassie and Mark. Also had other witnesses, like I have
21 a subpoena here for Kathy. She was served second day of
22 my trial. They didn't take anything serious for my
23 trial.

24 Q. When you say Kathy referring to --

25 A. (Interrupting.) And she's, she's bed ridden and

1 got Crohn's disease couldn't even make it here, and
2 that's the time lapse she can't give her testimony
3 because of this time lapse, but yes, I didn't think my
4 witnesseses could be there, and asked him said "are my
5 witnesses here?" I really should have just took the
6 plea bargain. Really I was, it's not been worth this
7 situation. This stressful thing. Sucked the life out
8 of me. I should have went in there and asked him I said
9 where's my witnesses? Are they here?

10 He in turn asked the Madam Clerk, the clerk said
11 no, they are not here. The sheriff forgot to serve the
12 writs. He did not object to it at all.

13 Q. Did you have a conversation with them --
14 (Interruption by the reporter.)

15 Did you have a conversation with him about getting the
16 witnesses to court?

17 A. Yes. He knew definitely knew the importance of
18 these witnesses. That's why he went to the judge and
19 filed for the writs. He definitely knew the importance
20 of this. That's why he filed there. He didn't fail me
21 not getting them there, the State failed to bring them.
22 Where he failed me is not objecting when they wasn't
23 there.

24 Q. That was going to be my next question, did he bring it
25 up to the Court and ask that they either be forced to court or

1 continuance granted?

2 A. No, sir. Due to our conflict he just let them
3 just mow over me. I just basically went to trial
4 without a lawyer or any witnesses or anything and even
5 the witnesses I did have were basically focused on an
6 aspect of Heather Kennon's versions, one of her versions
7 her stories and that made them -- made me look stupid.

8 Q. Now let's talk about Heather Kennon for a moment. While
9 your case was pending prior to your trial, did she write you any
10 letters?

11 A. Yes, sir. This was, she started writing me
12 letters directly after at -- this was early pretrial
13 period when we were basically considered co-defendants.
14 She wrote me like five letters.

15 Four of them I gave to Mr. Fulcher early on. In
16 these letters she was talking about you know asking me
17 not to talk to the police. Please don't talk to any
18 kind of investigators. Telling me that she was going to
19 tell the truth. Everything just for me to stay calm and
20 she was sorry for all this situation.

21 I gave these letters to him early on, and if the
22 Court would please review the trial transcript page 284
23 and 285, the trial transcripts, they will see that
24 Mr. Fulcher did ask her on the stand, did you write
25 these letters?

1 She said, yes sir, I did.

2 He is like, well she knew the impact of these
3 letters. She said I was cloudy-minded when I did write
4 them.

5 The State objected because he basically failed me because --

6 Q. Go ahead. I'm sorry.

7 A. Yeah, he failed me because he improperly I think
8 due to my opinion, due to our relationship problems, he
9 improperly filed these, submitted these, this great
10 evidence, this strong evidence of these letters. He
11 improperly filed them and then they, because the State
12 didn't get a chance to analyze it, the judge didn't
13 analyze it, and it got dismissed, they got rejected.

14 Q. I know you got a lot to say. Let me unpack this a piece
15 at a time.

16 A. Yes, sir.

17 Q. Okay. Now the letters that Heather Kennon wrote you
18 prior to trial, did they contain information that was helpful to
19 you but embarrassing or harmful to her?

20 A. It would have, would directly impeached her. It
21 would have blew her testimony out of the water.

22 Q. Did you direct her or pay her or force her or coerce her
23 into writing these letters? Did she do it on her own?

24 A. No. But I did correspond back with her because
25 she was in the county jail sending me letters, you know,

1 back and forth, but yes. I did correspond with her, you
2 know, because I had a feeling something bad was going to
3 happen behind us because she was telling me not to talk
4 to the officers and investigators, and telling me she
5 was going to tell the truth. I had a bad feeling that's
6 why I turned them over to Mr. Fulcher, and I was just
7 reviewing those.

8 Q. When did you turn them over to Mr. Fulcher?

9 A. As soon as I got like the first like three
10 letters and I think the other, I gave them one after
11 that. I gave him like three at one time and then one
12 came after that.

13 Q. Give me a time frame.

14 A. It was probably I would say, would have to have
15 been around March-April, no April and May, have to have
16 been the April and May area. I'm not exactly sure on
17 the timetable, but itw as early on when we were
18 considered co-defendants, because there was a time when
19 the State, after we filed the suppression motion, they
20 went, the State went directly to Heather Kennon offered
21 her full immunity to testify against me, we wasn't
22 co-departments anymore.

23 Q. I think I can help you narrow this down.

24 The Motion to Suppress was filed in August of 2014, and the
25 letters were provided to you in advance of August 2014?

1 A. Way before then.

2 Q. Okay. So.

3 A. Yeah. I'm pretty sure it was April or May area.

4 Q. Okay. Just so that I'm clear, the letters were provided
5 to you at least three to four months prior to your September
6 trial?

7 A. Yes, sir, well before that, yes, sir.

8 Q. And when you received those letters how long did it take
9 for you to turn them over to Mr. Fulcher?

10 A. I -- I corresponded with her. I would say --
11 very soon. I gave him like three letters at one time
12 and then I gave him like one after that.

13 Q. And you gave him those, if I heard you right before you
14 gave him those letters prior to the motion to suppress being
15 filed?

16 A. Yes, sir. I reviewed his transcripts and he was
17 talking about I just got this information. He lied to
18 the court about that. He did not just get that
19 information. He had had that information well before,
20 well before, and it hurt me.

21 Q. How did you get those letters to Mr. Fulcher, by hand or
22 send them by the mail?

23 A. I would send them by mail. I would send them to
24 Anique and Anique would take them to him by hand.

25 Q. Okay. All right. Did there come a point in the trial

1 where the district attorney successfully objected to
2 introduction of those letters?

3 A. Yes. They objected because they didn't get a
4 chance to analyze it. He improperly submitted it, which
5 I feel like he did on purpose, malfeasance.

6 Q. All right. Is it safe to say that Brandon Elps, Mark
7 Thomas and Cassie Flowers did not testify at your trial,
8 correct?

9 A. That is correct. Nor did Kathy Roberts. She
10 was even subpoenaed the second day of my trial.

11 Q. Okay. And during your trial was there any physical
12 evidence introduced by the district attorney?

13 A. Yes, there was.

14 Q. What was that physical evidence?

15 A. I would say that would have been the bag.

16 Q. And what was in that bag?

17 A. Well, I didn't know what was in the bag until
18 the SBI Agent Farrell got up there and started running
19 down the contents of that bag.

20 Q. When you say "got up there" you mean the same seat that
21 you're sitting in now?

22 A. Yes, sir. Yes, sir.

23 Q. Okay. Was that bag opened in court and the contents
24 removed?

25 A. No. I never seen it in court. Was a hazmat

1 situation. I even asked for him to do a DNA test on the
2 syringes and stuff that they found. I never shot up.
3 But it was all destroyed because of hazmat.

4 Q. Now during the trial when the testimony the bag, or the
5 contents of the bag were being discussed, what did you learn was
6 in the bag?

7 A. Well, she went through a couple of items, and
8 then she went down and all of a sudden she says some
9 Kotex tampons. I think this is on the trial transcript
10 page 142.

11 MR. SPENCE: Judge, if he is just testifying
12 about what was testified at trial, I'm going to object
13 because we have a transcript. If he is going to talk
14 about how bad his lawyer was, that's fair.

15 MR. MEGARO: I'm simply asking about background
16 questions. The next question going to ask --

17 THE COURT: All right. Let's move along.

18 MR. MEGARO: Go ahead.

19 A. Well, they come out there was some Kotex tampons
20 in the bag, and I was just shocked because I looked at
21 my lawyer, and he's looking out in space at the lady. I
22 look at the DA, he had his jaw open. He obviously
23 didn't know about it. I looked at the jury. I looked
24 at the judge. I'm like what's going on. Will somebody
25 please help me because we never had a chance to analyze

1 this evidence. It was hidden in our inventory. Never
2 had a chance to analyze it. Never had a chance to test
3 the weight of it. It should have been the centerpiece
4 of our defense, because all along, Judge, was this, had
5 to have been who does this bag belong to? Whose was
6 this bag?

7 I definitely wouldn't have been walking around with
8 no tampons in the bag. If I had known they were there I
9 definitely would have been screaming about it. I didn't
10 know and we didn't have a chance to analyze it and my
11 lawyer, the way what we're trying to say is he failed to
12 even pounce on it due to our problems we had, he just
13 let stuff like that go. He didn't pounce on nothing.
14 He let stuff evidence there, this should have been the
15 centerpiece of our defense.

16 Q. Okay. Now, when you learned that these feminine hygiene
17 products had been inside that bag, what did you tell Mr. Fulcher
18 at that point?

19 A. I said, I told you it wasn't my bag. I said, I
20 told you that wasn't my bag.

21 Q. Mean to tell this court that you don't carry around
22 feminine hygiene products?

23 A. No, sir.

24 Q. What did he do with that information?

25 A. He didn't do absolutely nothing. He just let it

1 go, and I was so upset about it. I'm sitting there
2 about to cry, I'm about to scream and I'm just sitting
3 there this man is just letting this stuff go down, and
4 my life's as stake, you know.

5 Q. Now what did you know about Heather Kennon's past prior
6 to going into trial?

7 A. I knew it was extensive. In talking with
8 Brandon Elps which he would have testified --

9 MR. SPENCE: Objection what Brandon Elps said.

10 THE COURT: Well sustained.

11 MR. MEGARO: Don't tell us what Brandon Elps
12 said.

13 A. I knew it was pretty extensive and I asked my
14 lawyer to pull her driving record, her criminal record
15 and her medical records would have showed she was red
16 flagged. It all would have testified to her pattern of
17 behavior and character.

18 Q. One moment your Honor, I'm sorry.

19 (Reporter relocated to hear easier.)

20 Was it ever your trial strategy not to call Cassie
21 Flowers or Mark Thomas?

22 A. No, sir. There was never a trial strategy.
23 Like I said, Mr. Fulcher knew the importance of these
24 witnesses, very early on, especially with Cassie's
25 situation, when we finally found out this version

1 contained Cassie's, you know, place in it but he knew
2 early on about the importance of these witnesses.
3 That's why he asked the judge to file for the writs.
4 They were not brought there but not because of trial
5 strategy, they were not brought there because the State
6 forgot to bring them. His reason for he failing me was
7 not objecting to it.

8 He, at the like at the continuance, you know. When he asked
9 for the continuance, the whole question has been the State is
10 trying to that say these witnesses were deficient, they would
11 have hurt me worse than anything. That they weren't calling
12 them.

13 When we went to the evidentiary hearing the last
14 time, he said, well, you know he tried to collaborate
15 with the State. He said well the State, you know, they
16 were deficient. I wouldn't have called these people.

17 Well, when he got up on the stand at continuance,
18 when asking for a continuance, he said, quote, right
19 here in this courtroom, these witnesseses are material.
20 This is on page 7 of the trial transcripts. He said
21 they are material. He said too. He said it would
22 greatly prejudice Mr. Warren if these witnesses are not
23 there.

24 Then he went on to warn the Court and said they
25 were not here it would be a greater burden to go ahead

1 and reschedule the case, and then that's when you,
2 Mr. Spence stood up and said your Honor, said we talked
3 about this last week. Some of these witnesses we have
4 them here. We have them in custody, and he said they
5 will be here.

6 He said the other witnesses, he said Mr. Fulcher
7 knew about them, basically saying he should have talked
8 to them, which he did not talk to them at all, and based
9 on your promises that they have would be there I was
10 denied the continuance.

11 So I basically went to trial without any witnesses.

12 Q. Where did Mr. Fulcher get the idea that Cassie Flowers
13 and Mark Thomas were material and important to the defense?
14 Where he get that idea from?

15 A. He got that from me and from other aspects of
16 the case. From them, you know, from Mark, you know, he
17 could have talked with them at any time, and would have
18 known the weight of their evidence, because there's a
19 lot of time period, these witnesses would not have gave
20 the same testimony at all.

21 Cassie doesn't even belong in the narrative. How
22 is she going to give the same testimony as Anique? But
23 all she can say is I never got any chemicals. I didn't
24 go there to her house. What she's saying this is
25 Heather's alibi, not mine; you know, and Mark, he had

1 what like ten hours with her, five hours? I don't know.
2 I mean he could have testified of her behaviors and
3 stuff. All I could do is attack her story. That's all
4 I could attack.

5 Q. We cover everything?

6 A. Sir?

7 Q. Did we cover everything?

8 A. Yeah, if there's anything like the discovery, or
9 anything that I would like, the Judge would like me to
10 submit. I mean I have a bunch of stuff to submit that
11 would collaborate with this testimony. But I think we
12 covered it all.

13 Q. No further questions.

14 THE COURT: Cross-examine.

15 **CROSS-EXAMINATION BY MR. SPENCE:**

16 Q. Where are those letters you keep talking about?

17 A. I gave them to Mr. Fulcher.

18 Q. You didn't keep copies?

19 A. No sir. They don't make copies in the county
20 jail.

21 Q. You gave them to Anique Pittman, didn't you?

22 A. Yes, sir.

23 Q. And she took them .

24 A. Yes, sir.

25 Q. And she actually went on your behalf to visit Heather

1 Kennon when Heather was locked up, correct?

2 A. I think she did one time.

3 Q. And try to talk her into not testifying against you,
4 didn't she try that?

5 A. I don't think it went like that.

6 Q. Okay. Let me just try -- let me just try to narrow this
7 down as simply as I can. What you're telling this judge that if
8 Cassie Flowers, who you just heard.

9 A. Yes, sir.

10 Q. And Mark Thomas, who you just heard, if they had
11 testified that the verdict would probably be not guilty.

12 A. I think so, sir.

13 Q. Okay. That's -- is Ms. Roberts here?

14 A. She's not here because she's bedridden in
15 Maryland. She's got Crohn's disease.

16 Q. Was she in the last MAR hearing?

17 A. She was still sick then. That's why she
18 couldn't make it.

19 Q. Did you subpoena her?

20 A. I did want her down here but she couldn't make
21 it. We tried to do everything we could to go get her.
22 She's got all these tanks and stuff. She's dying.

23 Q. Where's Christopher Elps today?

24 A. You know that's one of the problems, you know, I
25 wish we would have got it on the record when we had a

1 chance to because he's been very hard to secure.

2 Q. Why didn't Mr. Megaro try to get him here?

3 A. He has. He's done everything he could.

4 Q. Did he try to get him here?

5 A. Yes, sir.

6 Q. Where is he? You know where Christopher Elps is, don't
7 you?

8 A. I don't know.

9 Q. He's in prison.

10 A. I didn't know that.

11 Q. Well, you've had two years since the last MAR hearing to
12 get him here, haven't you?

13 A. It's really, it's really deliberating when
14 you're in a prison situation, and you, you really can't
15 do but so much.

16 Q. Okay. Was he here in the first hearing?

17 A. Yes.

18 Q. Brandon Elps was not here, was he?

19 A. You are talking about the trial, first trial.

20 Q. Was he here at the next MAR hearing?

21 A. No, he wasn't.

22 Q. He's never testified even after your conviction you've
23 had two hearings and he hadn't been here?

24 A. But my lawyer failed me by not calling for an
25 offer proof. He should have called him when he was

1 here, when he was willing to testify.

2 Q. Why didn't you bring him in today and tell the judge, or
3 have him tell the judge what he would have testified to? Why
4 didn't you have an offer of proof?

5 A. Sir, if I had known he was in prison I would
6 definitely do it. I got paperwork right here that shows
7 all kinds of stuff that with Christopher Elps I would
8 like to submit to the court.

9 Q. He is in prison for being a habitual felon; did you know
10 that?

11 A. No, sir, I don't.

12 Q. And your criminal history is up in that court file, you
13 are a habitual felon, aren't you?

14 A. No, sir. I'm not.

15 Q. You qualify didn't you?

16 A. I probably do. Yes, sir.

17 Q. You're a career criminal.

18 A. I wouldn't call it a career criminal.

19 Q. How old are you?

20 A. I am forty-two.

21 Q. How long have you been in prison since you were eighteen
22 years old?

23 A. I would say I've done probably about eighteen
24 years.

25 Q. Eighteen years out of the twenty-two years that you've

1 been in prison?

2 A. (Overlapping.) Yes, sir. Yes, sir.

3 Q. That's where you learned all your law, right?

4 A. I did, I do like law. I have a respect for it.

5 Yes, sir.

6 Q. Okay. Now what you sent to Cassie Flowers and Mark
7 Thomas were two or three pages from the transcript correct?

8 A. (No audible response.)

9 Q. You sent them two or three pieces of paper from the
10 transcript?

11 A. Yes, sir. Yes, sir.

12 Q. You didn't send them the whole thing, did you?

13 A. No, sir. It was too much.

14 Q. You didn't send the testimony of the motel owner and the
15 motel cleaning lady, did you?

16 A. No, sir.

17 Q. You know Josh Dixon?

18 A. I know of him.

19 Q. Who is he?

20 A. He's a member of Carteret County Community.

21 Q. What does he do?

22 A. I don't know. I think a mechanic.

23 Q. Does he cook meth?

24 A. I don't know.

25 Q. You know Brandon Hobbs?

1 A. Yeah. It's my brother.

2 Q. Does he cook meth?

3 A. I've never seen him cook meth.

4 Q. Has he been in prison for cooking meth?

5 A. I don't know.

6 Q. What was your drug of choice back then?

7 A. Probably marijuana and beer. Really wasn't I
8 was a social smoker, really I've grown out of all that.

9 Q. Never take any illicit drugs?

10 A. Been sober for a long time.

11 Q. Of course, you're in your prison, you're supposed to be
12 sober.

13 A. Believe me it's everywhere there.

14 Q. Okay. You testified at your trial, correct?

15 A. Sir?

16 Q. You testified at your trial, correct?

17 A. Yes, sir.

18 Q. You got up here and you actually carried your own Bible
19 up there, didn't you?

20 A. I did.

21 Q. And you told this jury everything that they needed to
22 know, correct?

23 A. I told them everything that I was allowed to
24 tell them. I couldn't tell them certain aspects because
25 Mark wasn't there and everything I heard was hearsay,

1 hearsay, hearsay because my witnesses weren't there.

2 Q. Okay. Anique testified right?

3 A. She did.

4 Q. Where's she now?

5 A. I don't know.

6 Q. You know she's in prison?

7 A. Yeah, I heard you say that earlier.

8 Q. For meth?

9 A. Really?

10 Q. Yeah. For ten years.

11 A. Wow.

12 Q. Richard Willis testified for you, right?

13 A. Right.

14 Q. Lisa Turner testified for you.

15 A. Yeah, they were kind of based on Ms. Heather
16 Kennon's like one of her crazy versions, and it really
17 didn't matter when they got there. That's why you were
18 like, why do these people matter? You're right. It
19 didn't matter because she changed her story.

20 Q. Where do you come up with these versions? Are they
21 written down somewhere?

22 A. Well, I kept, my lawyer, Mr. Fulcher kept giving
23 me these versions.

24 Q. But they weren't written, were they?

25 A. Of course not, (indiscernible) but we do have

1 her first statement which was on record that he failed
2 to use which would have greatly impeached her too.

3 Q. When was that statement given?

4 A. I don't know you should have it in your file.

5 Q. I do right here.

6 A. You have her recorded statement? You have her
7 recorded statement?

8 Q. You've seen is this discovery, haven't you?

9 A. I don't think that was recorded statement.

10 Q. This is a report?

11 A. Yes. She as reported statement --

12 Q. (Interrupting.) It's an interview.

13 A. I'm sure you have it.

14 Q. Okay. But the other versions you talk about that's just
15 something your lawyer told you.

16 A. Yes, sir. You're right about that.

17 Q. You don't even know what they were then, do you?

18 A. I just went by trusting my lawyer. That's what
19 I paid him for.

20 Q. But you testified that the court -- that Heather Kennon
21 had given three or four different versions, didn't you?

22 A. My lawyer brought me three or four different
23 versions, yes sir. Every time I would --

24 Q. (Interrupting.) In writing?

25 A. No, it was passed on. I guess he was talking to

1 you.

2 Q. And you said she got full immunity?

3 A. Sir? Yes, sir.

4 Q. Tell the Court what full immunity is.

5 A. I'll tell the court what full immunity is. It's
6 giving her the right to tailor her story over and over
7 and over to, to convict me of a charge I'm not guilty
8 of.

9 Full immunity is having this indictment here, this
10 secret indictment that I have with her of selling drugs
11 on a school property, and it being dropped for her
12 testifying against me, a man that didn't do what you're
13 telling me that I did.

14 Q. What is full immunity?

15 A. Full immunity is giving her a right to just give
16 me a life sentence. That's what a full immunity is.

17 Q. No. Immunity has nothing to do with that. Immunity
18 applies to her. What does she get out it?

19 A. What did she get out it?

20 Q. You tell me. You're claiming she got immunity.

21 A. Tell me what you charged her with --

22 Q. (Interrupting.) She get convicted?

23 A. What did you charge her with?

24 Q. You tell me. You know it all.

25 A. No. I'm asking you.

1 Q. You tell me. Did not she plead guilty to charges and
2 agree to testify against you; is that true?

3 A. Well, I know Mr. Fulcher who will get up here
4 and testify and say that she was given immunity a plea
5 bargain, a sweet plea bargain deal to testify against
6 me.

7 Q. Wasn't the transcript of her plea introduced in your
8 trial?

9 A. Sir?

10 Q. Are you hard of hearing?

11 A. Your voice is kind of -- I can't understand what
12 you're saying. It's gravelly.

13 Q. Didn't we introduce the transcript of her guilty plea in
14 your case?

15 A. I don't think so.

16 Q. If it's in the court file we did, correct?

17 A. If it's in the court file then you're correct,
18 sir. Yes, sir.

19 Q. Now you said this bag was burned as far as being a part
20 of a meth lab.

21 A. Sir?

22 Q. The bag that was in the room that had the meth stuff in
23 it, was that burned?

24 A. No, sir.

25 Q. What happened to it?

1 A. I don't know what happened to it.

2 Q. What happened to all the stuff in the room?

3 A. Oh, the hazmat people destroyed it. That's why
4 I was trying to get a DNA test of the syringes and stuff
5 and spoons in there because I didn't never shoot up --

6 Q. (Interrupting.) When are you going to get a DNA test if
7 it's destroyed?

8 A. That's what I'm telling you, it's destroyed.

9 Q. And how soon after the crime was it destroyed?

10 A. You know we were supposed to get certain kind of
11 papers and inventory sheets and stuff, I mean aside from
12 the evidence that got hidden from us, but we were
13 supposed to get certain sheet because we could have
14 actually told them to hold that. I didn't know that.

15 Q. You know they have to destroy those rooms?

16 A. Well, I don't --

17 Q. (Interrupting.) They have to destroy meth labs.

18 A. Right.

19 Q. They have to.

20 A. We didn't have the opportunity to even analyze
21 that stuff.

22 Q. How about the tampons? Were they burned up too?

23 A. I guess they were destroyed too.

24 Q. How were you going to get some DNA off the tampons?

25 A. I didn't ask for DNA off the tampons.

1 Q. What did you want?

2 A. I think it was enough DNA just knowing the
3 tampons were there.

4 Q. And it came out in court the tampons were there, didn't
5 it?

6 A. Yeah. It was blindsighted. It really should
7 have been centerpiece of our defense. We should have
8 had time to analyze it. Like you should have had time
9 to analyze letters. You rejected that but we didn't get
10 a chance to analyze it.

11 Q. Right. I'm sorry about that. Now Mr. Fulcher his
12 closing argument he talked about the tampons, didn't he?

13 A. He very touched on it. I know they came up on
14 page 142 of the trial transcripts and he touched on it,
15 but he didn't pounce on it.

16 And really we didn't get a chance to analyze it or test a
17 way to put our trial strategy into it, which I don't think he
18 would have did that anyway, but no sir. We didn't get a chance.
19 It was very, very, weighty. I don't think anything would have
20 been more of a red flag of who that bag belonged than a box of
21 tampons being in a bag.

22 Q. Sounds like you'd been better off just representing
23 yourself?

24 A. I think that would have been really stupid.
25 Because I'm way out of my league here, and I basically

1 went to trial by myself, I mean with that lawyer.

2 Q. And your projected release date is 2035, isn't it?

3 A. Yeah. Basically a life sentence behind this.

4 Q. Okay. That's all I have.

5 THE COURT: Redirect.

6 **REDIRECT EXAMINATION BY MR. MEGARO:**

7 Q. You were asked some questions about some feminine
8 hygiene products; is that the meat and potatoes of why we're
9 here today?

10 A. No, sir.

11 Q. Is that just one piece of the puzzle?

12 A. It's a cumulative effect. A snowball effect.

13 Q. Real essence of our claim is what?

14 A. I wasn't, I wasn't represented fully,
15 adequately, competently. I wasn't given a good defense,
16 and I was basically forced to go to trial without
17 witnesses that I think would have made a great impact.
18 They would have added to the story, a collaboration. It
19 would have added more realism to my story.

20 Because when I got up there by myself, it was
21 hearsay this, hearsay that, I couldn't even tell the
22 story about what Mark said, or Mark did this because it
23 limited me to the story, and made me look bad. The
24 witnesses that I did have were just based on a version
25 that Heather had, and then when she changed her story up

1 they are like what are they here for. It made me look
2 very bad. It was a bad showing.

3 Q. Would Mark Thomas and Cassie Flowers have corroborated
4 your alibi as to whether you were in that hotel room, whether
5 you possessed those drugs?

6 A. Mark would have colloborated to the fact of
7 Heather's I think of her behavior, and what was going on
8 with her, and also would kind of explained what the key
9 was going on in my car.

10 But Cassie was more like Heather's alibi because
11 I've never -- she don't belong in the story at all. I
12 agree with that. I truly, I agree with the State on
13 that.

14 Q. Nothing further. Thank you.

15 MR. SPENCE: Nothing further.

16 THE COURT: You may step down.

17 Mr. Megaro, any additional witnesses?

18 MR. MEGARO: No, your Honor. At this time the
19 defense would rest and I guess I'll save my arguments
20 about the contents of the transcripts and how they
21 pertain to the claims later in argument if that's all
22 right.

23 THE COURT: Mr. Spence.

24 MR. SPENCE: I've got Mr. Fulcher. We're coming
25 up close on a lunch break.

1 THE COURT: We are.

2 MR. SPENCE: Come back at 1:30 or 1:45?

3 THE COURT: Why don't we come back at 1:45.

4 We'll recess until 1:45, Sheriff.

5 (A lunch recess was taken.)

6 THE COURT: I believe when we broke for lunch
7 the defendant had rested with his evidence, and
8 Mr. Spence is the State going to be presenting evidence?

9 MR. SPENCE: Yes, sir, call Rodney Fulcher.

10 **RODNEY FULCHER,**

11 Being first duly sworn or affirmed to tell the truth,

12 was examined and testified as follows:

13 **DIRECT EXAMINATION BY MR. SPENCE:**

14 Q. State your name for the Court please.

15 A. Rodney Fulcher.

16 Q. And Mr. Fulcher, how are you currently employed?

17 A. I'm an attorney.

18 Q. Are you in private practice?

19 A. I am.

20 Q. And how long have you been licensed by the North
21 Carolina to be an attorney?

22 A. Since April of 1999.

23 Q. That would be twenty-one years?

24 A. Yes, sir.

25 Q. And during that time -- was there time during the

1 twenty-one years that you did not handle criminal cases to some
2 extend?

3 A. No.

4 Q. How long have you been on the court appointed list here
5 in Carteret County?

6 A. Probably close to twenty, twenty years.

7 Q. And in those twenty years have you taken cases,
8 appointed cases in district court and superior court?

9 A. Yes, sir.

10 Q. And have you tried jury trials in superior court?

11 A. I have.

12 Q. As a criminal defense lawyer?

13 A. Yes.

14 Q. And did you grow up in Carteret County?

15 A. I did.

16 Q. And when you're doing your job as a criminal defense
17 lawyer is your knowledge of Carteret County and juries in
18 Carteret County, is that something you take into consideration
19 in trying to advise clients?

20 A. Absolutely.

21 Q. And also your past experience, is that something you
22 pass on to them as far as what a jury might do, what a judge
23 might do?

24 A. Always.

25 Q. Let me first straighten something out. Did you ever

1 represent Heather Kennon in the case in the drug case against
2 her that we tried in the same case where this defendant was
3 charged?

4 A. No. Mr. Christopher Suggs represented her.

5 Q. You never represented her at all, did you?

6 A. No.

7 Q. Why would your name ever appear on a file on one of her
8 files?

9 A. I'm not certain. Sometimes they try to appoint
10 us cases and then say, oh, we made a mistake. But I
11 never spoke with her concerning this matter.

12 Q. Did you represent her on a later probation violation
13 that she got charged with?

14 A. (Overlapping.) I did. I did.

15 Q. And that was a violation of her probation actually in
16 the case she got convicted?

17 A. I'm not sure what the case was that she was, the
18 underlying charge, but it was several years after this
19 case.

20 Q. Okay. And you testified in the hearing back here in
21 last June 4th of 2018; is that correct?

22 A. Correct.

23 Q. And were you served or given a copy of the Motion For
24 Appropriate Relief filed by Mr. Megaro?

25 A. I believe I -- yes.

1 Q. Do you know who gave you that copy of that motion?

2 A. (Interrupting.) You did. Your office did.

3 Q. Okay. And do you know about when that you received that
4 or do you know when it was filed?

5 A. I can pull my file here.

6 Let's see, it says it was filed December the 12th, 2016.

7 Q. Okay. And during the time this motion has been pending
8 has Mr. Megaro ever called you about this case?

9 A. No.

10 Q. Has he ever asked to interview about this case?

11 A. No.

12 Q. Has he ever asked you if he can look at your court file?

13 A. No.

14 Q. So he's made no attempt to look at your file to
15 investigate the allegations he put in his motion, has he?

16 A. No.

17 Q. Mr. Fulcher, would you tell, I'll try to limit at least
18 the contention here, there are two people that testified today,
19 one is Cassie Flowers and one is Mark Thomas. You're aware of
20 both of those two people, correct?

21 A. Absolutely.

22 Q. And would you tell his Honor if you -- whether or not
23 you made a strategic or tactical decision on deciding whether to
24 call those two witnesses to testify in support of Dustin Warren?

25 A. I did.

1 Q. And would you tell the Court what went through your --
2 what calculations you made or what you thought of when you
3 decided whether to put them on the stand and subject them to
4 cross-examination in the case you were trying where you
5 represented Mr. Warren?

6 A. Yes, your Honor, when, when I was considering
7 the list that Mr. Warren had given me, there were two of
8 the names listed, currently at the time Mr. Warren was
9 on obviously for drug charges. Mr. Thomas was currently
10 in custody for drug charges, and certainly I know that
11 Ms. Flowers had had a history of seeing her in and out
12 of court with drug charges, in and out custody with
13 that.

14 I, in my opinion it would have been disastrous to open up
15 their reputation with Mr. Spence if it came to that, because
16 like I said, it was a drug trial, and they were both known
17 defendants that were known for drug charges.

18 Q. You did call Anique Pittman to testify; is that correct?

19 A. I did.

20 Q. And did she testify to almost all the things that, that
21 Ms. Flowers or Mr. Thomas would have testified to?

22 A. She did.

23 Q. She was one of those at the house, this Place At the
24 Beach condo with Heather Kennon, Dustin Warren, and, and Mark
25 Thomas.

1 A. She was living -- she was the girlfriend of
2 Mr. Warren at the time, and was living there. So I
3 figured she had firsthand knowledge, and at the time had
4 a decent record as far as drug charges and was a lot
5 more credible witness to call at the time.

6 Q. And I believe from the transcript she had some
7 misdemeanor convictions, or some low level drug charges,
8 possession, but nothing to the extent of the other two
9 witnesses; is that correct?

10 A. Correct. And she was not in custody at the
11 time.

12 Q. Okay. And Mr. Warren testified in that trial; is that
13 correct?

14 A. He did.

15 Q. And did he testify with your consent or against your
16 advice?

17 A. It was against my advice. That was part of the
18 differing points of view that he and I had toward
19 handling the case. I knew that once he -- he had a
20 record, once he got up to testify you would be able to
21 cross-examine and bring up practically everything he'd
22 ever been convicted of.

23 Q. And again, there are certain strategic and tactical
24 considerations that attorneys ethically have to advise their
25 clients on; is that correct?

1 A. Absolutely.

2 Q. The decision whether a defendant testifies, who's
3 decision is that -- solely decision is that?

4 A. I usually run it by my client and give them the
5 pros and cons, and then tell them my advice on it. It
6 was my decision not to call the witnesses that I did not
7 call. I had advised Mr. Warren I did not think he
8 needed to testify, but he demanded to do it and so I
9 called him.

10 Q. In other words the decision to testify is the
11 defendant's decision solely.

12 A. Correct.

13 Q. You can advise.

14 A. Absolutely.

15 Q. But you cannot prevent.

16 A. Correct.

17 Q. And you can't control when they get up there how they
18 present themselves; is that correct?

19 A. Absolutely not.

20 Q. And they are sort of at the mercy of the
21 cross-examination.

22 A. Which was one of the other factors that I
23 considered.

24 Q. Okay. Heather Kennon testified in the case; is that
25 correct?

1 A. She did.

2 Q. And you cross-examined her.

3 A. We did.

4 Q. At length.

5 A. We did.

6 Q. And extensively.

7 A. I did.

8 Q. About her testimony and brought out the inconsistencies
9 with her testimony.

10 A. I did.

11 Q. Is that correct?

12 A. Yes.

13 Q. And in your closing argument you re-iterated those
14 things?

15 A. I did.

16 Q. And the transcript can speak for itself, but again, it
17 was a lengthy cross-examination about her.

18 A. Correct.

19 Q. You got her to admit that she was doing drugs most of
20 the time and probably didn't remember half of what she testified
21 to; is that correct?

22 A. That's correct.

23 Q. You also brought out the plea agreement and talked her
24 through that.

25 A. That's correct.

1 Q. And brought it out in front of the jury that she was
2 getting a benefit --

3 A. (Interrupting.) Absolutely.

4 Q. -- for testifying.

5 A. And that was one of the reasons we were trying
6 to hang our hat on that.

7 Q. Some other witnesses, Richard Willis and Lisa Turner who
8 testified and corroborated things that Dustin Warren was going
9 to testify to; is that correct?

10 A. Correct and to corroborate some of the things
11 that Ms. Anique Pittman said.

12 Q. Would you just tell the Court your experience with
13 Mr. Warren during the period you represented him?

14 Like did you make a motion to withdraw? Why did
15 you do that? And just explain the things that went on
16 in that week before the trial actually took place?

17 A. Well Mr. Warren is a very intelligent person,
18 and he was really a lot of helpful of different things
19 that we had that we planned.

20 As a matter of fact we drafted a Motion to
21 Suppress. He certainly helped me in that with ideas and
22 things we put into it we drafted it.

23 He is the one who actually gave me the list of
24 several of the witnesses. Where the problem came back
25 was when after speaking with Mr. Spence and finding out

1 that Heather Kennon, the co-department was going to
2 plead, and was going to testify against him, based upon
3 the fact that several of the witnesses that he had were
4 very unbelievable, the difference of opinion that he and I
5 had together was further forward with the trial because
6 I thought that it was not -- he did not -- it was so
7 much to risk Mr. Spence give us a plea offer, it was
8 rejected, and we went our separate ways in our thoughts
9 after that point. The ideas that he wanted I did not
10 think would, I did not think would fly in front of a
11 jury in this county.

12 My idea of how to defend it at this point since he demanded
13 that it go forward was different than he did. So we have a
14 difference -- no longer had a meeting of the minds, and I
15 thought it was best for me to get out, and he asked me to
16 withdraw because he wanted to hire other counsel.

17 That was my motion to withdraw at the time, and
18 certainly when it was denied we went forward with what
19 the two of us -- we spent a whole day over at the jail
20 coming up with ideas and thoughts.

21 But it was a difference of opinion of which
22 direction to go of the trial which really I think was a
23 difference there between the two of us.

24 Q. And I believe the motion to withdraw was heard the week
25 of September 1st, about a week before trial; is that correct?

1 A. It was. It was.

2 Q. After that was denied what was -- can you relate to the
3 Court your experience with trying to work with Mr. Warren after
4 the motion was denied?

5 A. Mr. Warren had give me an exhaustive list of
6 questions that he wanted me to ask Ms. Flowers,
7 Mr. Thomas, Mr. Elps, Ms. Pittman, some of those
8 questions I thought were relevant, some weren't.

9 I usually combine some those with my thoughts at
10 trial to use, but many of those were not relevant and
11 would have certainly sustained an objection on that
12 case, and I didn't were relevant going to help one way
13 or the other.

14 The idea of him testifying, absolutely not. As I
15 said I knew from his record I really did not know what
16 he would say once he got up here, and then of course I
17 believe he actually took his own Bible up here against,
18 that he swore out on that I was kind of against.

19 Q. During that week after the motion to withdraw, did he
20 indicate to you he was trying to hire another lawyer?

21 A. He did.

22 Q. Did he ever tell you to back off, I'm hiring another
23 lawyer, and I'm going my separate way?

24 A. He did. He wanted another attorney. Attempted
25 to get Mr. Pittman to pay somebody. I don't think they

1 had the funds to do it, and of course by then Judge
2 Alford had denied any court appointed attorneys in the
3 case because he already had one.

4 Q. And in the trial he denied the motion to withdraw and
5 the trial --

6 A. (Overlapping.) Correct.

7 Q. -- was going to go on the next week?

8 A. That's correct.

9 Q. So was Mr. Warren cooperative with you in the week
10 before, after the motion to withdraw and week before the trial?

11 A. In some things, and in other things, not.

12 Q. How long did he -- and when you talked to him how many
13 times did he talk about hiring another lawyer?

14 A. Usually when I brought up the fact that I really
15 thought that he should have taken the plea offer that
16 you give me, he said I need to get another attorney
17 that's going to be working for me, and then when I would
18 say, well, I really don't think we should call that
19 particular person. They are over in custody, you know,
20 they have a record. I don't think we should go that
21 route, it would usually say, I would really -- I truly
22 need another attorney to kind of follow along with that.

23 Q. He wanted an attorney to do what he said.

24 A. I think ultimately, yes.

25 Q. And when did you find out how soon -- as far as the

1 trial goes, how long before that trial did you even know Heather
2 Kennon was going to testify against him and had been offered a
3 plea agreement?

4 A. I think it was maybe a day or two ahead of time
5 that you let -- because originally we were going to join
6 the trials, Heather was going to be tried at the same
7 time, and when we found out he had rejected the plea
8 offer going forward, at that point Mr. Suggs approached
9 me and told me, hey, we're working out an plea and part
10 of it is to testify against Mr. Warren.

11 Q. And I believe that there was testimony by Anique Pittman
12 that she actually made trips to the state prison system to meet
13 with Heather Kennon and tell her things about testifying.

14 A. She did.

15 Q. On Dustin's behalf.

16 A. She did.

17 Q. And I believe Miss Kennon ended up pleading to
18 conspiracy or something like that, a felony?

19 A. She did.

20 Q. And she had spent a significant amount of time in jail;
21 is that correct?

22 A. That's correct.

23 Q. Is there anything that you did or didn't do in this case
24 that, that you normally do in any other criminal case you
25 handle?

1 A. No.

2 Q. Do you -- does every thought, if you're representing
3 someone, does everything you think or how many times you think
4 about the case do you document that?

5 A. No.

6 Q. You actually work in your head a lot, like a lot of us
7 do, that we may not write anything down but we're thinking about
8 the case, and thinking about defenses, and thinking about
9 strategy; is that the case in this case?

10 A. Absolutely. One hundred percent.

11 Q. And you knew what the risk was and it was serious case,
12 correct?

13 A. That was the main reason I continued to
14 reenforce that there was a difference between what
15 possibly would come from this, what I had already read
16 the facts, knew what was coming.

17 The Heather Kennon thing came near the end, but
18 from the facts of the case knew it was loser case from
19 the beginning. There was no way we could win.

20 Q. And how long did you work with Judge Alford or in front
21 of Judge Alford in your career?

22 A. My entire career.

23 Q. And there are ways that judges view cases and there are
24 ways that judges sentence cases; is that correct?

25 A. Absolutely.

1 Q. Is that an analysis or is that a factor in the way you
2 advised Mr. Warren?

3 A. Absolutely. I knew that with Judge Alford he
4 was, to my opinion, one of the stricter judges to go in
5 front of, and when he took into consideration the record
6 of my client, the facts of the case, if he was found
7 guilty it would be a very long sentence.

8 Q. And if I'm not mistaken wasn't your client also indicted
9 as a habitual felon, facing that also?

10 A. He was. He was.

11 Q. Your Honor, that's all I have at this point in time.

12 THE COURT: All right Mr. Megaro.

13 **CROSS-EXAMINATION BY MR. MEGARO:**

14 Q. Mr. Fulcher, when did you first start representing
15 Dustin Warren?

16 A. Sometime in early '14, like around March of
17 2014.

18 Q. And the case did not go to trial until September of
19 2014; correct?

20 A. That's correct.

21 Q. So that would have been roughly six months time --

22 A. (Overlapping.) Correct.

23 Q. -- correct? Is it safe to say that from day one of your
24 representation with Dustin Warren, from the first time you spoke
25 with him in the county jail, he was adamant about a couple

1 different things, correct?

2 A. He was.

3 Q. And one of the things he was adamant about was that he
4 did not knowingly, or otherwise possess any chemicals or any
5 drugs inside that hotel room.

6 A. He continually, continually said that.

7 Q. And the other thing he was adamant about was that he was
8 not going to plead guilty to something he felt he did not do,
9 and he would go to trial if necessary, correct?

10 A. He did say that sometimes, correct.

11 Q. And is it safe to say that he did not consider a plea
12 offer at any point in time during your...

13 A. I don't know if that's a hundred percent truth.
14 When we finally got the plea offer and I delivered it to
15 him, I think he was saying "no." And then when I began
16 to explain what he was looking at, the time that was
17 hanging over his head, that's kind of when -- there was
18 different points of view there, but at that point he was
19 saying he was still considering going to trial.

20 Q. And you filed a Motion to Suppress in this case,
21 correct?

22 A. We did.

23 Q. That would have been filed sometime in early August of
24 2014?

25 A. Correct. That's correct.

1 Q. And you knew if that motion was successful that would
2 have been dispositive of the case, drugs would have been
3 suppressed --

4 A. (Overlapping.) That certainly would have gone
5 way towards directing the final of the case. Correct.

6 Q. And if it was not granted, then it's one of two choices
7 at that point: Plead guilty or go to trial --

8 A. (Overlapping.) Absolutely.

9 Q. -- correct? And isn't it a fact that you continuously
10 advised Mr. Warren to accept the plea bargain in this case?

11 A. I advised him to consider it, because we still
12 had not heard at that point a ruling on the Motion to
13 Suppress.

14 Q. Did you ever tell him that he had to take the plea?

15 A. I never told him he had to take the plea.

16 I always give my client's the option and tell them
17 it's your decision to take the plea. I advise you one
18 way or the other, but it ultimately is your decision
19 because they are the one who has to live with it.

20 Q. Your Honor, may I have this marked as Defendant's
21 Exhibit A for identification please?

22 THE COURT: Yes.

23 EXHIBIT MARKED FOR IDENTIFICATION

24 Defendant's Exhibit A - 6/9/2014 letter

25 MR. MEGARO: Can we stick with letters, your

1 Honor, or should I re-number it?

2 THE COURT: Up to you. Typically we use
3 numbers.

4 MR. MEGARO: Okay. Sorry. May I show this to
5 the witness please.

6 THE COURT: You may.

7 MR. MEGARO: Please take a look at Defendant's
8 Exhibit A for identification; just look up when you're
9 done.

10 A. It's a letter that I wrote to Mr. Warren when he
11 was in custody, dated June the 9th.

12 Q. And there appears to be an original signature in blue
13 ink on the bottom of that letter; is that your letter? Is that
14 your signature? I'm sorry.

15 A. It does.

16 Q. And is that the original letter that you sent to
17 Mr. Warren on June 9th, 2014?

18 A. Appears to be.

19 Q. I would offer Defendant's Exhibit A marked for
20 identification into evidence, your Honor.

21 THE COURT: Defendant's A shall be admitted.

22 Q. If could you please read the body of that letter to the
23 court?

24 A. (Reading.) Said:

25 Follow-up to your court date. The case

1 continued to July 22nd. I've spoken with
2 Heather's attorney. We're both going to file a
3 Motion to Suppress in both cases. I'll send you
4 a copy of it after I meet with him. We win the
5 motion we should be in good shape. If we lose,
6 have to take a plea.

7 Q. You will "have" to take a plea.

8 MR. SPENCE: Objection, it said "we" not "you".

9 MR. MEGARO: "We will have to take a plea,"
10 correct?

11 A. That's what it says.

12 Q. And when you say "we" you're referring to the defense,
13 but it's really him?

14 A. Correct.

15 Q. Not you may consider a plea bargain, right?

16 A. The letter doesn't say that, but in speaking
17 with him I would have told him the option. I always do
18 that.

19 Q. I'm asking about the letter.

20 A. The letter does say that.

21 Q. Doesn't say anything you may consider a plea bargain or
22 you may consider going to trial?

23 A. The letter does say, short and sweet.

24 Q. Now after the Motion to Suppress is denied, Mr. Warren
25 is definitely going to trial at that point, correct?

1 A. Correct.

2 Q. And in fact the Motion to Suppress was heard immediately
3 before trial, correct?

4 A. It was.

5 Q. Prior to trial you moved to be relieved on the case.

6 A. I did.

7 Q. And as part of that motion to be relieved you told the
8 judge that you and Mr. Warren did not see eye to eye?

9 A. Absolutely.

10 Q. When you say you did not see eye to eye what were you
11 referring to?

12 A. With the idea that he, in light of everything if
13 we were to lose, if the judge did not rule in our favor
14 in this and we went to trial, I still thought he should
15 take this plea offer, and he was adamant that he was
16 going to take the chance, go forward with it.

17 I actually -- actually had drawn up an offer that
18 Mr. Spence had him sign that he was going to record in
19 writing that he rejected the plea offer, and was
20 subjecting himself to an extreme amount of time in
21 custody.

22 Q. And there's two decisions that a defense lawyer cannot
23 make for a client, correct?

24 A. Correct.

25 Q. One of them is whether to testify or remain silent at

1 trial, correct?

2 A. Right.

3 Q. And one of them is to plead guilty or go to trial,
4 correct?

5 A. That's correct.

6 Q. So would you agree with me that when you have a client
7 that is insisting from day one that he or she wants to go to
8 trial, will not plead guilty to something they said they did not
9 no, that being -- and the case is not dismissed, that means you
10 have no other obligation but to get ready for trial.

11 A. No, I would not agree with that. Because at
12 that point he had not heard the plea offer. We had not
13 gone over every facts of the case. I don't think he was
14 making an informed decision.

15 But yes, ultimately he can make that decision, but
16 I think in this situation, "no".

17 Q. Ultimately before trial started Dustin Warren was given
18 the 57 month plea offer, correct?

19 A. He was.

20 Q. He rejected that offer on the record.

21 A. That's correct.

22 Q. He rejected that offer against your advice.

23 A. Absolutely.

24 Q. And he was at that point you know you're going to trial
25 because the Motion to Suppress has already been denied.

1 A. Right.

2 Q. And at that point in time you know that you have to
3 defend him at trial, correct?

4 A. No. That was at the point that I offered -- he
5 was still wanting me out of the case, and I would ask
6 the judge if I could -- also he could get counsel that
7 would follow his desires.

8 Q. And you recall testifying back on June 6th, 2018 in this
9 matter, correct?

10 A. I remember coming in here to testify, yes.

11 Q. And you do recall being asked this question about the
12 same time giving this answer, and I'm on page 115 the
13 transcript, lines 13 through 25.

14 Do you have a copy of the transcript?

15 A. I do not.

16 Q. Your Honor, may I approach the witness and give him a
17 copy --

18 THE COURT: Yes, sir.

19 MR. SPENCE: Just ask him if he said it and read
20 it to him.

21 MR. MEGARO: Okay. Do you want a copy to read
22 along?

23 A. You can read it.

24 MR. MEGARO: (Reading.)

25 QUESTION: Okay. Tell the members, tell His

1 Honor, and we can limit this to
2 August-September, during the time this is being
3 prepared for trial, your relations and what you
4 did or what Mr. Warren asked you to do regarding
5 this case?

6 ANSWER: Beginning in August we were, we
7 knew at that point Mr. Warren was going,
8 certainly was going to reject any plea offers,
9 and I think your Honor put them in even made
10 that clear to us.

11 So shortly after that we began to -- we met
12 several times over in the jail, down by the
13 fingerprinting room, and began to discuss, hey,
14 what is our plan to go.

15 You do recall being asked that question?

16 A. I do and I do not deny that I said that.

17 That was...

18 Q. All right. So my point is you know in the beginning
19 August 2014 trial's about a month away, this case is going to
20 trial. He's not pleading guilty. The only thing left to do for
21 you is either prepare for trial or get off the case, right?

22 And after you make a motion to be relieved and that
23 motion is denied a week prior to trial, you know that
24 you're going to have to trial this case for better or
25 worse --

1 A. (Overlapping.) Correct.

2 Q. -- Correct? Now, prior to the trial starting Mr. Warren
3 had told you that there were several people that were potential
4 witnesses that could assist in his defense, correct?

5 A. Correct.

6 Q. And those witnesses included: Brandon Elps, Cassie
7 Flowers and Mark Thomas, correct?

8 A. Yes.

9 Q. Had you ever represented Brandon Elps prior to
10 Mr. Warren's trial in September of 2014?

11 A. I don't remember if I did. I know that I've
12 done some things for him after this.

13 But nothing that... Mr. Elps' reputation preceded
14 him before this, and that was the main reason why I did
15 not want to call Mr. Elps, because he was always in
16 custody for some type of problem.

17 Q. You hadn't represented Mr. Elps in the past, correct?

18 A. I said I don't remember if I have. It's been --
19 I have represented him since this particular event.

20 Q. Now, again I'm going to draw your attention back to the
21 evidentiary hearing on June 6th, 2018, and I'm at page 131, line
22 22. Do you recall being asked this question and giving this
23 answer?

24 QUESTION: And you never spoke to Mr. Elps?

25 ANSWER: That's correct. I would say that I had

1 represented Mr. Elps in the past before.

2 QUESTION: You had been representing Mr. Elps?

3 ANSWER: Yeah. But nothing -- not in this case.

4 QUESTION: In what kind of case?

5 ANSWER: A criminal case. So I was familiar
6 with his criminal history.

7 Do you recall being asked those questions --

8 A. (Interrupting.) I do not recall those, but if I
9 said that I would stand by my statement.

10 Q. I guess the transcript would speak for itself, your
11 Honor.

12 Now, prior to the trial starting in September of 2014, is it
13 true that you did not speak with Mr. Brandon Elps, Ms. Cassie
14 Flowers or Mr. Mark Thomas?

15 A. Absolutely did not speak to either the three of
16 them.

17 Q. And your testimony was that you are aware that all three
18 of them had criminal histories, correct?

19 A. Yes.

20 Q. And aside from the law enforcement agents in this case
21 or the civilian witnesses from the hotel, everyone else in this
22 case involved in this case had a criminal record; is that
23 correct?

24 A. If they did I didn't know it to the extent of
25 those three; and those three were in custody.

1 Q. Okay. Heather Kennon certainly had a criminal record,
2 correct?

3 A. She did. But I did not Heather Kennon.

4 Q. I'm sorry?

5 A. I didn't call Heather Kennon as one of my
6 witnesses.

7 Q. But she was in custody?

8 A. She was.

9 Q. And of course, Dustin Warren was in custody, correct?

10 A. He was.

11 Q. He had a criminal record as well?

12 A. He did, which is why I didn't want to him to
13 testify.

14 Q. And Anique Pittman also had a criminal record?

15 A. I was not aware of how extensive her record was.
16 She was not in custody, and was probably of all the
17 witnesses that I had been handed, was the most reliable
18 and the least troublesome that I would have to deal with
19 on a cross-examination with Mr. Spence.

20 Q. And you knew that because you had spoken with Anique
21 Pittman prior to calling her as a witness, correct?

22 A. That's correct.

23 Q. You would agree with me that if you hadn't spoken to the
24 other witnesses you could not assess how good they would be as
25 witnesses or how bad they would be as witnesses apart from their

1 criminal record?

2 A. I would -- I did not -- I had made a strategic
3 decision that I was not going to call them so I didn't
4 really have any idea what they were going to say,
5 because I knew the damage that would inflicted by
6 Mr. Spence on a cross-examination would destroy any
7 credibility they had.

8 Q. Now did you ask for writs of habeas corpus to be issued
9 for both --

10 A. (Interrupting.) Because Mr. Warren demanded
11 them to be brought here.

12 Q. Okay. But at the end of the day you're the lawyer,
13 right?

14 A. Correct. Whether I would called them on it I
15 had not made that decision, but he asked to have them
16 brought here by writ and I did.

17 Q. And you know that those two decisions that a lawyer
18 cannot make for a client, lawyer is free to make other
19 decisions, correct?

20 A. That's correct.

21 Q. You're free to decide who and who not to the call?

22 A. Correct.

23 Q. And you're not bound to ask questions that a client
24 tells you to ask a witness as you did not do, right?

25 A. That's correct.

1 Q. You're not bound to introduce certain pieces of evidence
2 you may feel may harm the client.

3 A. That's correct.

4 Q. And you're not bound to call any witnesses that your
5 client demands you answer if you don't feel in your professional
6 judgment that they would help the case.

7 A. That's correct.

8 Q. Now, in this particular case your defense strategy prior
9 to going into trial was based on what?

10 A. When we found out there was an SBI lab, agents
11 that were coming down, my movement in this case was to
12 try to show that they -- it was not Mr. Warren was not
13 physically at the place, at the motel room; and based
14 upon the evidence that they had in this discovery my
15 defense was to say that it was impossible for what they
16 were arguing to happen that he could do.

17 Nobody had a testimony they smelled any meth cooking. They
18 didn't see anything in there, any of that. That was our defense
19 to say, hey, he didn't do it, and that we haven't proof that he
20 was physically there doing it.

21 Q. But you also know that when the State or the SBI entered
22 the hotel room nobody was in the hotel room, neither Mr. Warren
23 nor Ms. Kennon nor anyone else, correct?

24 A. That's correct.

25 Q. You knew the State was proceeding not on a theory of

1 actual possession, but on a theory of constructive or joint
2 possession, correct?

3 A. That's correct.

4 Q. And Mr. Warren doesn't have to be physically present to
5 be in constructive or joint possession, correct?

6 A. Correct.

7 Q. And as you said before, your strategy was to prove that
8 he himself or to show that he meaning, Dustin Warren, did not
9 jointly --

10 MR. SPENCE: (Interrupting.) I object to that
11 constructive possession. He does have to be present. At
12 least somewhere near it. You just can't arrest somebody
13 for possession if they're nowhere near the crime scene.

14 THE COURT: Well overruled.

15 MR. MEGARO: I'm sorry lost my train of thought.

16 Anyway let me rephrase that question.

17 Your defense strategy was to show that Dustin Warren was not
18 present, and therefore he could not have possessed those drugs
19 whether jointly, constructively or actually.

20 MR. SPENCE: Objection. That's just not the
21 law.

22 MR. MEGARO: Not asking whether that's the law.

23 THE COURT: Well, overruled.

24 A. We also had the problem that they found the
25 hotel key on Mr. Warren.

1 Our defense was that Anique Pittman was going to
2 testify that she was with him in the car at the time, if
3 my memory -- it's been seven years, at this point I
4 don't remember all the facts of the case; but she was
5 going to be one of the witness that did that. When he
6 demanded to testify he was going it testify to some of
7 that.

8 Once again Elps, Ms. Flowers, none of those people would
9 have had any bearing on that particular part and their
10 credibility in my opinion would have not been considered by the
11 jury as credible.

12 MR. MEGARO: The alibi -- I'm sorry -- the defense
13 that you were putting together was sort of an alibi defense,
14 correct?

15 A. Sort of.

16 Q. That he was not in the hotel room. He was not in
17 possession of the bag. He did know what the contents of the bag
18 was, and the bag belonged to Heather Kennon not he.

19 A. Correct. Correct. And sort of impossibility
20 when it was allegedly began in one motel and was moved
21 to another place.

22 Q. Okay.

23 A. And we argued that, you know, certainly if this
24 was so volatile being moved, how could it have been
25 moved from one place to the other without anybody seeing

1 it, hearing it, or being smelled on anybody.

2 Q. And the whole notion that this meth lab was moved, that
3 was based solely on Heather Kennon's testimony, correct?

4 A. I think that was one of the things that the
5 State alleged.

6 Q. In other words, there was no other independent evidence
7 other than Heather Kennon --

8 A. (Interrupting.) And the SBI agents' testimony.

9 Q. The SBI agent's testimony was that there was a meth lab
10 in this particular hotel at this particular time --

11 A. Correct.

12 Q. -- right?

13 A. Correct.

14 Q. Heather Kennon's testimony went beyond that. She said
15 that they were together for three days, and had been over here,
16 and then moved to this hotel were resultingly found?

17 A. That was part of my angle on cross-examination
18 with her.

19 Q. And my point is that Heather Kennon's testimony that
20 this lab that existed, albeit in another place, there was no
21 other evidence to corroborate that testimony other than her
22 word, correct?

23 A. To the best of my knowledge I believe that's
24 right, like I said, it's been all these years since I've
25 studied all the facts of the case.

1 Q. Okay. When it became apparent to you that Heather
2 Kennon was going to turn State's evidence and testify against
3 Dustin Warren, became -- her credibility became all the more
4 important at that point, correct?

5 A. That's correct.

6 Q. Because without her testimony placing Dustin Warren in
7 the hotel room at the time that meth was being cooked, there was
8 no other evidence that he knowingly possessed, whether
9 constructively or jointly or actually --

10 A. (Interrupting.) That was one factor to
11 consider, but it was also the factors of the testimony
12 of the -- I'm trying to remember, I think it was the
13 maid, the manager of the motel and somebody who found
14 the key that fell out of their car to the motel room.

15 Q. And it was not going to be your defense in this case the
16 chemicals were not going to be used for cooking meth because
17 there was no precursors to meth, this was not a meth lab,
18 correct?

19 A. Correct.

20 Q. So it all came down to whether the jury believed him,
21 Dustin Warren, or Heather Kennon?

22 MR. SPENCE: That's absolutely wrong.

23 A. No.

24 THE COURT: He's answered the question.

25 A. No. That was just one factor to consider, and I

1 thought on cross-examination we came to the point that
2 her credibility was out because she was highly
3 intoxicated at the time, which I thought really dealt a
4 death blow to her testimony.

5 But the key I think was the hotel owner, the maid
6 and then the SBI analysts who came in testified that it
7 was actually found there and what they found. The
8 combination of the three I think was the nail in the
9 coffin for us.

10 MR. MEGARO: If you take Heather Kennon's
11 testimony out of the case, what other evidence is there
12 that Dustin Warren knowingly possessed the contents of
13 the bag?

14 A. The motel manager, the lady who was working the
15 room, and whoever the SBI agent showing it was there.

16 Q. I'm sorry?

17 A. Heather Kennon's testimony only showing that it
18 began in one other place and was moved to the Showboat
19 Motel I believe is what it was.

20 Q. Heather Kennon's testimony was also that Dustin Warren
21 knowingly possessed these items with her, correct?

22 A. I believe so, yes.

23 Q. And you would agree with me that building an alibi for
24 Dustin Warren would have also necessarily included accounting
25 for his whereabouts?

1 A. And that was what Anique Pittman's testimony was
2 for.

3 Q. But Anique Pittman was not with Dustin Warren the entire
4 time the day before, correct?

5 A. I can't remember.

6 Q. And Anique Pittman was not with Heather Kennon the
7 entire night prior to Dustin Warren's arrest, correct?

8 A. I -- I can't remember. I don't remember that
9 part of it.

10 Q. Would you say, would you agree with me that Heather
11 Kennon's credibility was a key consideration in this case?

12 A. I thought that her -- from what she testified
13 to, what I cross-examined was probably damaged whatever
14 testimony she had.

15 I think the nail in the coffin, once again which I
16 said from the beginning, was the fact that hotel manager
17 testified they were there, staying there, the maid had
18 been there, and the SBI agents had found in the room
19 they were staying, and he had the key. They were the
20 major problems I had from the very beginning of the
21 trial.

22 Q. When you applied for the writs of habeas corpus for
23 Cassie Flowers and Mark Thomas, did you represent to the Court
24 that they were material witnesses? That you needed them there,
25 they were very important?

1 A. We had told Judge Alford, because he had already
2 denied our motion, and I told him there were three
3 witnesses that he really wanted, and Judge Alford signed
4 those that day and they were put out.

5 Now, how they got here I really can't tell how fast they got
6 there, but I told him they were witnesses that he wanted.

7 Q. Is it true that you told the Court:

8 They're material witnesses prejudices his
9 case if they are not here. So it would
10 certainly, I would certainly ask to continue it
11 to have those here. I think the burden, the
12 prejudice to him would be a whole lot worse than
13 it would be any burden on the State --

14 A. (Interrupting.) He wanted those witnesses here,
15 so I tried everything I could to get it continued so I
16 could physically get those people here.

17 However, once again, I'm going to say it again, I was not
18 going to call Mark Thomas or Christopher Elps at that time,
19 because they were in custody for the exact -- pretty much the
20 charges that he was being tried for; and once again I said that
21 was a decision I stood on, and I would make again today if I had
22 it to do over again.

23 Q. Will you represent to the court that these are material
24 witnesses you're representing that you believe they were
25 material witnesses and that was an accurate statement --

1 A. (Interrupting.) He wanted those here.

2 Q. Did you tell the Court, well Judge, my client wants
3 these witness here. I don't believe they are material --

4 A. -- Put on the record --

5 (Interruption by the reporter.)

6 Q. Sorry. When you tell the Court these are material
7 witnesses did you also add in these are people my client wants
8 to call, but I have no intention of calling them --

9 A. (Interrupting.) No, I did not say that. He
10 wanted them here, and I was trying my best to get them
11 here.

12 Q. For what reason?

13 A. He wanted them here. He was very demanding what
14 he wanted.

15 Q. Wanted them here to do what? To watch or to testify?

16 A. He wanted them to testify. But once again, I
17 was not going to call them. But he wanted them called
18 so I called them to try to have them writted here.

19 Q. You represented Heather Kennon in violation of probation
20 on the same matter that she pled guilty and agreed to testify
21 against Dustin Warren?

22 A. It was -- I don't remember what it was for, but
23 she just needed somebody to stand in for her because she
24 had been in rehab and she needed somebody to let the
25 judge know that, and she did, and I think they extended

1 her probation for her to be in rehab. That was pretty
2 much the extent of the...

3 Q. Were you retained or assigned?

4 A. Retained.

5 Q. And that was the first time you represented --

6 A. Yes.

7 Q. -- Heather Kennon?

8 A. Correct.

9 Q. One moment please.

10 I apologize, did it come to your attention that Heather
11 Kennon had given a recorded statement to law enforcement prior
12 to Dustin Warren's trial?

13 A. I don't remember.

14 Q. Do you recall ever using that recorded statement to
15 impeach her?

16 MR. SPENCE: Judge, I'm not aware of it. I
17 never heard any statement.

18 A. Only thing I had --

19 THE COURT: Talk one at a time.

20 And Mr. Fulcher is the witness, Mr. Spence.

21 A. I would say the only evidence I had was whatever
22 Mr. Spence gave me in the State's discovery.

23 MR. MEGARO: Did that include any prior
24 statements that Heather Kennon had made to law
25 enforcement?

1 A. That I don't remember. I don't have that in
2 front of me now.

3 Q. And did Mr. Warren ever give you any letters that
4 Heather Kennon had written to him prior to trial?

5 A. I don't remember. He gave me lots of notes that
6 he had written telling me anything.

7 Q. Do you remember ever asking Heather Kennon about letters
8 she had written to Mr. Warren prior to trial?

9 A. Something, part of me remembers something about
10 some letters, but usually everything I would have I
11 would have talked to Mr. Suggs about.

12 Q. And what investigation did you do into Heather Kennon's
13 prior criminal history in order to prepare --

14 A. -- we had record and information that
15 Mr. Spence -- everything that Mr. Spence gave us and the
16 information that Mr. Suggs had said at that point,
17 because originally were on the same page we were going
18 forward to trial together.

19 It was near the very end that we decided, that it
20 was decided that she was going to testify against us.
21 So we had to kind of move quickly to move forward on
22 that.

23 Q. Aside from the information that was provided to you in
24 discovery, or by co-counsel, what other information did you have
25 or gain about Heather Kennon's past?

1 A. Nothing.

2 Q. One moment.

3 No further questions for Mr. Fulcher at this time.

4 THE COURT: All right. Mr. Spence.

5 **REDIRECT EXAMINATION BY MR. SPENCE:**

6 Q. Let me start with this letter up here, and Mr. Megaro
7 wants to harp on the words "we." If you'll look at this, you're
8 talking about both defendants, and the other defendant's
9 attorney when you're saying "we," aren't you?

10 A. Correct.

11 Q. Because at that time you and Mr. Suggs were working
12 together for both these people?

13 A. (Overlapping.) We were. That's correct.

14 Q. And what are the chances that I could convict your
15 client and Ms. Kennon without having Heather Kennon testify at
16 all in this case?

17 A. I pretty much thought you could convict my
18 client without it.

19 Q. And Heather Kennon?

20 A. Correct.

21 Q. Because Mr. Megaro apparently hasn't read the
22 transcript, Scott Way and Carla Thomas were the manager and
23 housekeeper, correct?

24 A. That's correct.

25 Q. And on this particular day the only car and the only

1 room being rented at that entire small motel was the one rented
2 by -- by Mr. Warren.

3 A. That's what the discovery said.

4 Q. And Heather Kennon.

5 A. Correct.

6 Q. And they testified that they had cleaned the room the
7 day before, and that Mr. Warren came up in his gold car, that
8 Ms. Kennon got out of the car, rented the room for two people
9 for one night for \$40?

10 A. Correct.

11 Q. And at this small motel it was absolutely vacant except
12 for this car and this one room. They were able, they knew that
13 these two people, Mr. Warren and Ms. Kennon, had checked into
14 the room and they were in the room from about noon until about
15 five o'clock?

16 A. That's correct.

17 Q. And at one time they asked for blankets because they
18 were cold; is that correct?

19 A. That's correct.

20 Q. And the blankets were brought to them and at the time
21 the blankets arrived apparently they were no longer cold because
22 they wouldn't open the door.

23 A. That was what came out at trial.

24 Q. And their testimony also at this motel where there was
25 one guest, or two guests and one car, that they never saw them

1 leave, that the car left at five o'clock on the 29th and never
2 came back until the next morning.

3 A. That's correct.

4 Q. And when they checked the next morning before Mr. Warren
5 had come back over there, they found this homemade meth lab.

6 A. Correct.

7 Q. And they called the SBI to come down and deal with it.

8 A. That's correct.

9 Q. Mr. Warren drove up, was detained, and the key to the
10 room fell out of his pocket.

11 A. That's absolutely right.

12 Q. So the only two people who had any connection with that
13 room were Heather Kennon and this defendant.

14 A. That's correct.

15 Q. And that's what you had to defend against.

16 A. Absolutely. And thus my reason for the decision
17 that I made, and why I was adamant about my decision.

18 Q. And Heather Kennon wasn't even a decent witness, was
19 she?

20 A. No.

21 Q. And you cross-examined her at length.

22 A. I did.

23 Q. And brought out everything.

24 A. We did.

25 Q. And the jury was able to judge the credibility of

1 Ms. Kennon, Mr. Warren, the officers, the people who worked at
2 the motel, and also Anique Pittman, Richard Willis and Lisa
3 Turner.

4 A. Absolutely.

5 Q. And the jury decided to believe the testimony of the
6 State's witnesses at least enough to convict him based on the
7 law that applied to the case.

8 A. Correct.

9 Q. And you've practiced long enough to know when you read a
10 file like that you sort of know that's not good, is it?

11 A. Absolutely.

12 Q. And trying to mitigate your client's damages or mitigate
13 bad decisions is part of your job as an attorney?

14 A. You do the best with what you've been handed.

15 Q. And how many times have you had somebody saying they are
16 innocent and they ain't pleading guilty and they end up pleading
17 guilty?

18 A. More often than not.

19 Q. When you get twelve people in the box, and they've stood
20 on this not guilty, sometimes it changes, doesn't it?

21 A. It does.

22 Q. And Mr. Warren got to say everything he wanted to say.

23 A. He did.

24 Q. And you didn't want Cassie Flowers or Mark Thomas up
25 there because a jury looks at somebody who associates with drug

1 criminals, they will put them in the same pot?

2 A. Unfortunately, yes.

3 Q. You brought out Heather Kennon's criminal history. You
4 cross examined her on that, correct?

5 A. Correct.

6 Q. You made arguments, closing arguments about it, correct?

7 A. Correct.

8 Q. The tampons that surprised everybody, you made hay about
9 those, didn't you?

10 A. We did.

11 Q. That's all I have.

12 THE COURT: All right. Additional cross?

13 **RECROSS-EXAMINATION BY MR. MEGARO:**

14 Q. Very very brief.

15 If I heard you right, Mr. Fulcher, Scott Way and Carla
16 Thomas, the two people from the hotel, their testimony proved
17 that Dustin Warren knew and jointly possessed what was inside
18 the bag with the Kotex in it?

19 A. Not alone, but went a long way towards it.

20 Q. What they, their testimony was, was that Dustin Warren
21 had been in the room at some point in time, not what he was
22 doing in the room, correct?

23 A. Which was part of my argument. The only thing
24 that we had to go for, yes, they knew he was there, but
25 they never said, never saw him physically with it, which

1 is the direction I wanted to go.

2 Q. I'm sorry. Go ahead.

3 A. Which was the direction that I was trying to go
4 on cross, and all of my questions was did anybody
5 actually ever see him with his possession doing it, and
6 nobody ever answered yes to that.

7 But the combination of their testimony, the SBIs
8 and everybody is what did us in.

9 Q. Only two people know whether Dustin Warren jointly
10 possessed the stuff inside that bag and what he was doing in
11 that room, right?

12 A. He knows whether he did it or not.

13 Q. And Heather Kennon, correct?

14 A. If she was in the room with him, yes.

15 Q. And I think Mr. Spence asked this question, I may have
16 written it down wrong, but in some substance the jury looks at
17 someone who associates with known drug criminals and they put
18 them in the same pot, right, words to their effect?

19 A. I think they are instructed not to, but human
20 nature says that birds of a feather flock together.

21 Q. Especially if someone like Heather Kennon testifies that
22 me and Dustin Warren were doing all this together.

23 A. They would have even more than so if the
24 witnesses that he wanted called were called, then I
25 think it would have been even worse. But I'm sure that

1 was one thing they considered that she was under the
2 influence during the time and was doing drugs as well.

3 Q. You said would have been worse, if the other witnesses
4 said what Heather Kennon testified to is lying and completely
5 factually impossible?

6 A. They would not have believed one word that came
7 out of their mouth any more than I think they would have
8 said on what they believed -- on what she believed.

9 Q. And that was based upon your interview with those
10 people?

11 A. That was based upon me knowing what the records
12 were and what they were in custody for.

13 MR. SPENCE: Nothing further your Honor.

14 **REDIRECT EXAMINATION BY MR. SPENCE:**

15 Q. I got one other question. Did I not sometime during
16 that trial jokingly tell you that I would pay you if you put
17 them on the stand.

18 A. You did. You wanted me to call those two.

19 Q. Yes. Because you know what would happen.

20 A. Absolutely.

21 Q. That's all I have.

22 THE COURT: Mr. Megaro.

23 MR. MEGARO: Nothing further.

24 THE COURT: You may step down.

25 Will the State be calling any additional --

1 MR. SPENCE: No, sir. I'm sorry. That's the
2 State's case.

3 THE COURT: You identified a couple of exhibits.

4 MR. SPENCE: I would ask they be admitted into
5 evidence. MAR Exhibit Number 2 is his Facebook post
6 that Mark Thomas read from or looked at. The other is
7 MAR Number 1 which is the infractions that he had been
8 convicted of.

9 THE COURT: All right. State's MAR Exhibits 1
10 and 2 are admitted, and I think we already admitted
11 Defendant's Exhibit A, if not that will be admitted.

12 MR. MEGARO: Thank you.

13 THE COURT: Any rebuttal evidence from the
14 defendant?

15 MR. MEGARO: No, your Honor. The only other
16 thing I would ask that the Court take judicial notice of
17 the court file regarding the State versus Heather
18 Kennon.

19 I asked the clerk bring that up here. That is the
20 court's record. As well as not just the contents but
21 the file jacket as well, and I guess I'll state my
22 reasons why I believe that's relevant.

23 MR. SPENCE: I don't object to that.

24 THE COURT: I'll do that. We'll take judicial
25 notice of the Heather Thomas (sic) file and the jackets.

1 MR. SPENCE: Heather Kennon.

2 THE COURT: Excuse me. Heather Kennon.

3 Mr. Megaro, like to be heard.

4 MR. MEGARO: Thank you. I always say this at
5 the beginning of my closing arguments in these types of
6 hearings because I am very much aware of the concept of
7 the Monday morning quarterback, and I'm very much
8 sensitive to the notion that appellate and
9 post-conviction lawyers can be the quintessential Monday
10 morning quarterback, and have the benefit of hindsight
11 to look through things. But I make this argument not
12 just in this capacity, but as someone who's also
13 conducted fifty jury trials in my career. So I've been
14 in Mr. Fulcher's shoes, and it never gives me any
15 pleasure to point the finger at a member of the bar and
16 fellow colleague and say that they committed
17 essentially, let's be honest, we're talking about legal
18 malpractice when we're talking about ineffective
19 assistance of counsel.

20 It's been, the claim has been leveled at me and I'm
21 sure I react with the same enthusiasm that any lawyer
22 that I make that claim against has reacted to it.

23 So that being the case, because of my past I know
24 full well the importance of pretrial investigation and
25 speaking with witnesses, getting out to a crime scene,

1 inspecting it with your own eyes and never relying on
2 looking through the eyes of someone else, and certainly
3 not looking through the eyes of the State's case; and
4 I've put on lots of cases defense lawyer and even put on
5 cases of plaintiff's lawyer, and one thing I do know
6 over the years is that you can never gauge somebody's
7 credibility without sitting down and speaking with them
8 and subjecting them to the same cross-examination that
9 you expect the other side to do.

10 And you cannot gauge someone's credibility simply on their
11 past alone, because certainly there are police officers, deputy
12 sheriffs, law enforcement agents, and dare I say attorneys, that
13 have no criminal history whatsoever, but sometimes make the
14 worst witnesses for a multitude of reasons; and then there are
15 certainly people with lengthy criminal histories that sometimes
16 make the best witnesses, simply because their ability to recall
17 or see or because maybe their testimony is corroborated by other
18 evidence in the case.

19 This case I think can be boiled down to a very simple and
20 narrow question, and this is not just me saying it, because the
21 Court looks at the summations by both Mr. Spence and
22 Mr. Fulcher, I think those arguments all point to the same
23 thing.

24 At heart this is a credibility contest. This is the classic
25 he-said-she-said, because the question in this case for the jury

1 was whether or not Dustin Warren knew the contents of that bag,
2 and the contents of that hotel room, and knowingly intentionally
3 possessed, jointly, or constructively, or actually, whatever
4 theory the State wanted to go on, the drugs or the precursors to
5 those drugs.

6 He said he didn't. Heather Kennon said he did.

7 And none of the other evidence in the case, if the
8 Court looks at the entire trial transcript, none of the
9 other evidence in the case pointed to that knowledge.
10 Only two people that knew what occurred inside that
11 hotel room, and what they were doing inside that hotel
12 room. One of whom says pursuant to a plea agreement
13 that yes, he did, and the other one says, no, I did not.

14 And that's why dare I say that the State probably offered
15 such a good offer to Heather Kennon.

16 MR. SPENCE: I object.

17 THE COURT: Overruled.

18 MR. MEGARO: Because without her testimony you
19 have nothing more than mere presence, really nothing
20 more.

21 What is completely clear is that Dustin Warren denies any
22 knowledge or any possession of the drugs from the moment he was
23 arrested to his first attorney, to his second attorney,
24 throughout every step of the case, all the way through the jury
25 trial and all the way to here now, almost five years later.

1 He's been consistent on that.

2 And when a lawyer is faced with the prospect of going to
3 trial with a client who is insisting "I did not do this. I am
4 not pleading guilty to something I did not do," the Motion to
5 Suppress is denied, so there goes your dispositive motion, and
6 your chance to get the case dismissed.

7 The client is not accepting guilty plea, and the
8 judge has denied your motion to withdraw for whatever
9 reason, then there's only one thing left to do, and that
10 is too prepare and zealously defend the defense --
11 prepare a defense and zealously defend your client
12 rather.

13 And when a lawyer comes into the courtroom stand up and says
14 I need the Court to enforce my client's constitutional right to
15 compel the production of witnesses who are in State custody, who
16 it costs whatever amount of dollars its does to get of a person
17 from custody here to court, expends the resources of court
18 personnel and sheriffs, and whoever else is involved in
19 transporting these people, and says, I need the court to
20 intervene and force all these people to go through this time,
21 trouble and expence because these are material witnesses.

22 That lawyer is making representation to the court that they
23 know that those people are material witnesses.

24 That is exactly what Mr. Fulcher did.

25 And certainly if he did not believe, no intention of ever

1 calling those witnesses, then to do anything of the sort would
2 not be something that I would ever recommend to another
3 attorney, that would be bordering on misrepresentation to a
4 court.

5 The other problem is that Mr. Fulcher made a determination,
6 based solely upon a piece of paper, without speaking to these
7 people, that he was not going to call as witnesses. That's what
8 he says now.

9 If he had spoken with those witnesses and decided not to
10 call them, then we probably would not be standing here today,
11 because I'm sure this hearing would not have been ordered.

12 At that point in time I would have very little in the way of
13 an argument to make that this was not a -- failed to call those
14 witnesses was not a tactical or strategic reason. But as all
15 the case law says, you can only make that determination after
16 you've done your due diligence, and that's what the case law
17 consistently stresses is due diligence, exhausting leads.

18 Now Mr. Fulcher --

19 MR. SPENCE: (Interrupting.) What case is that?

20 MR. MEGARO: A whole line of cases that I've
21 cited.

22 MR. SPENCE: Cite one.

23 THE COURT: Continue please.

24 MR. MEGARO: Nevertheless if he had made those
25 determinations based upon due diligence I wouldn't be

1 making this argument to you today.

2 And to now turn around and say several years later
3 well I never would have called them anyway because I
4 don't think they would have helped the case simply is
5 not true.

6 Two things: Number one, credibility of Heather Kennon was
7 paramount, and all you have to do is go to the summations and
8 look, and that's the first place I go to, and that's where the
9 court should go. Because that became a battle between
10 Mr. Spence and Fulcher who is telling the truth.

11 Putting all that aside it still would have helped
12 Mr. Warren's case because when you're building an alibi
13 you have to account for your client's whereabouts at
14 every possible step of the way, and these would not have
15 simply been cumulative, Mark Thomas' testimony is more
16 than alibi. He actually puts Heather Kennon outside of
17 the house and never travelling with Dustin Warren to
18 Cassie Flowers' house. Cassie Flowers specifically
19 says these people never came to my house. That, that
20 would have gone a very long way to disproving Heather
21 Kennon's story, attacking her credibility to this jury.

22 Mark Thomas' testimony also would have gone to not
23 only attacking her credibility, but also to account for
24 his whereabouts and putting him in Anique Pittman's home
25 corroborating her testimony, corroborating his

1 testimony, and also corroborating Cassie Flowers'
2 testimony.

3 All of those things put together form -- when the pieces of
4 the puzzle are put together, it creates a picture that Heather
5 Kennon is completely not telling the truth, and that's the
6 argument that could have and should have been made to the jury,
7 and that would have been based upon evidence, and it would not
8 have been simply one person's testimony against another.

9 And if the Court looks at Anique Pittman's testimony, that
10 in and of itself did not encompass Cassie Flowers' testimony.
11 It did not encompass Mark Thomas' testimony, and even though
12 Brandon Elps is not here, dare I say it would not encompassed
13 Brandon's Elps' testimony.

14 The other issue that I have is the Court looks at Heather
15 Kennon's file, and I noticed this two years ago, the name Rodney
16 Fulcher appears on the file jacket and the file jacket is
17 generated when the case is first filed.

18 MR. SPENCE: Object.

19 THE COURT: Overruled.

20 I know when court jackets are created. I
21 understand that.

22 MR. SPENCE: Yes.

23 MR. MEGARO: The first name on there is Fulcher,
24 and the second name is Suggs, and the name Fulcher is
25 crossed off.

1 I don't have any other evidence. I have my
2 client's testimony where he said that Rodney Fulcher
3 told him that he represented Heather Kennon prior.
4 Whether that's true or not I cannot say because I was
5 not there. But when I see the name on the outside of
6 the file jacket and the name crossed off, it tells me
7 that there is a possibility that Mr. Fulcher was on the
8 case, and was later taken off of the case; and since the
9 transcripts of the MAR hearing from the first go-round
10 are in the Court file, we do know that Chris Suggs was
11 not the first lawyer on the case. He's the second
12 lawyer on the case.

13 So I don't know who the first lawyer on the case
14 is. I have my suspicion, whatever that amounts to,
15 whether that amounts to a conflict of interest, whether
16 any prior representation of Brandon Elps amounts to a
17 conflict of interest, that is certainly something for
18 this Court to consider; and before I forget I would, I
19 can't remember the exact subsection of the statute,
20 statute dealing with Motions For Appropriate Relief
21 require me to make an oral motion to amend the Motion
22 For Appropriate Relief so that the pleadings conform to
23 the proof as outlined by this Court.

24 So to the extent that the court credits any
25 evidence that there may have been a conflict of

1 interest, I would ask the Court to consider that as well
2 as an amendment to my Motion For Appropriate Relief.

3 But if we look at both prongs of the Strickland
4 standard, we have deficient performance and prejudice.
5 As I said I think all the case law seems to strongly
6 stand for the proposition that failure to ever speak to
7 a witness amounts to deficient performance and I believe
8 that is objectively unreasonable conduct.

9 Then the question becomes how does this prejudice
10 the client? I think the prejudice is made out very
11 simply from the summations and the lack of arguments
12 that could have been made in summations because they
13 were not witnesses to corroborate the defendant's
14 testimony. They were not witnesses to directly
15 challenge the prosecution's witnesses' testimony, and
16 again I go right back to putting the pieces of the
17 puzzle together. This would have been the difference
18 that made the difference, especially in a contested
19 battle as to who was telling the truth.

20 So for all of these reasons I'm asking the Court to
21 grant this motion, vacate the judgment of conviction,
22 and remand this for or reinstate this case for a new
23 trial.

24 Bear with me just a moment.

25 All right. With that being said I ask the Court to review

1 the record of the transcripts of the trial and the pretrial
2 hearing and make its own determination.

3 THE COURT: Thank you. Mr. Spence.

4 MR. SPENCE: First of all I'd like to address
5 the last thing he said, to come up here from the State
6 of Florida and assert that Mr. Fulcher represented
7 Heather Kennon in this particular case is a something
8 that is quite serious an allegation. Quite serious.
9 And you shouldn't do that without evidence, and I'll be
10 contacting the State Bar because there is a duty to be
11 candid with the Court.

12 MR. MEGARO: And I just relied on my client's
13 testimony, his sworn testimony that that's what
14 happened. If that's not good faith?

15 THE COURT: All right. Let Mr. Spence --

16 MR. MEGARO: (Interrupting.) Judge, I'm not
17 going to sit here and be the target of a Bar complaint
18 when I have good faith on the record, based on my
19 client's sworn testimony. I can rely on my client's
20 good faith. I can rely on good faith what my client
21 told me and what he sworn to in this court.

22 MR. SPENCE: We'll see later.

23 MR. MEGARO: And I can rely on what's on that
24 court file.

25 THE COURT: That's not an issue for this Court

1 to determine.

2 MR. SPENCE: This is not a credibility contest.

3 It is not, and if it is it's not a credibility between
4 Heather Kennon and that defendant. They are co-defendants.

5 They are co-defendants.

6 This is a slam dunk circumstantial case, and I guess
7 Mr. Megaro doesn't understand constructive possession or
8 circumstantial evidence, because we have two witnesses who saw
9 and identified these two people go in that room, said when they
10 got there and when they left, and when they left they never came
11 back, and then when they checked the room the next morning
12 there's a meth lab in there and you can look at the exhibits.

13 There's a gas can, a trash can, a two liter bottle, a jar
14 with residue. It's a one-pot meth lab.

15 And the only thing, what Mr. Megaro is arguing is
16 basically that neither of these people, neither of these
17 people did it. He is not saying Ms. Kennon did it, he
18 is saying neither did it. It just happened. It's just
19 a mistake.

20 The acting in concert instruction in North Carolina, the
21 constructive possession instruction in North Carolina, are going
22 to put both of them and only those two in the mix.

23 And I'm telling you I can convict both of them without
24 Heather Kennon at all.

25 As a matter of fact if I'm not mistaken when I made

1 my closing argument I told the jurors that Heather
2 Kennon was not a witness, that she was in fact an
3 exhibit, an exhibit of how far down drugs can take you.

4 So I never told the jury they should believe Heather Kennon.
5 They didn't have to. All they had to believe was Scott Way, who
6 was the manager, and Carla Thomas, who was the housecleaning
7 woman.

8 Where's Brandon Elps? Not heard nothing but Brandon Elps
9 for seven years, or six and a half years. He's never been
10 produced.

11 Where is Anne Scadden? She works in this very
12 building. If she's so important where is she to testify
13 to all this stuff?

14 Why didn't Mr. Megaro talk to her prior to this
15 hearing? Why didn't he talked to Brandon Elps prior to
16 this hearing? Why didn't he investigate the facts of
17 this motion?

18 This is one of the weakest claims I have ever seen for
19 ineffective assistance of counsel.

20 Again somebody come up here from Florida and tell you that
21 if simply Cassie Flowers and Mark Thomas had been allowed to
22 testify, not that there may have been a different result, but
23 that there would have been a different result, in other words
24 would have been a not guilty verdict.

25 Now you bring a client in with horns on his head

1 and teardrop tattoo, and a record, or you bring Cassie
2 Flowers in with her horrendous record, your Honor knows
3 from representing people for a long time and defending
4 people who really didn't have a defense, sometimes you
5 have to tell them the honest truth, and you can judge
6 people without talking to them.

7 You look at a criminal history and tells you
8 everything you need to know, and if you're in Carteret
9 County when the word Cassie Flowers or the name Cassie
10 Flowers is mentioned the first thing people do is roll
11 their eyes. So in a town like this we know who the bad
12 ones are, and you know from looking at the record that
13 someone is facing armed robbery charges and has a
14 habitual felon, you're probably not going to want to put
15 them to prove some tangential point.

16 All this stuff is tangential. The meat of this
17 case is the fact that they were seen. They checked in.
18 When they checked in there was no meth lab. When they
19 checked out five hours later there was a meth lab, and
20 the only two people in the room were these two people.
21 Again the criminal history all these people are attached
22 to my Answer.

23 Again, this is not a he-said-she-said case in any
24 respect, and again Heather Kennon was smart enough to
25 take some plea deal, and he wasn't, and he's sitting in

1 jail until 2035 based on his decision.

2 Judge, you can look at somebody's performance as a criminal
3 defense lawyer, and I'm sure it's probably happened to you. You
4 get these people, you do the best you can. Sometimes they put
5 you in a situation where you have to tell them, listen, this is
6 not good. I know the prosecutor. I know the judge. My best
7 guess is you need to try to cut some deal to get out of this.

8 Again, it's lucky to have you hear this case, because you
9 have been there on that list; and you've been told to subpoena
10 people that either they didn't give you the whole name, or that
11 you wouldn't subpoena if your life depended on it.

12 So again, if you read the transcript of this trial, and all
13 the other things that we've introduced it will become clear
14 this is a -- from Scott Way's testimony and, and Carla Thomas'
15 testimony, from that point on this is an absolute slam dunk, and
16 the jury had no problem with it.

17 The only thing Cassie Flowers and Mark Thomas would have
18 done in my opinion is the jury would have knocked on that door
19 before they closed it, Judge.

20 If you'll read all these, all these transcripts and consider
21 the arguments of counsel, I contend there's no way that you can
22 contend that the failure to call these two witnesses would have
23 resulted in a not guilty verdict.

24 Thank you.

25 THE COURT: Okay. Thank y'all.

1 I will re-read the trial transcript. I skimmed through it
2 earlier, but I'll take a look at that transcript of the first
3 hearing, the attachments to both the motion and the response to
4 the motion.

5 Court reporter be preparing a transcript of this hearing for
6 me, and I will let y'all know something as soon as I've had a
7 chance to review it.

8 MR. SPENCE: Thank you, Judge.

9 MR. MEGARO: Thank you.

10 (End of State v Warren June 11, 2020.)

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NORTH CAROLINA

BEAUFORT COUNTY

Reporter's Certificate

I, Kay W. Westbrook, Registered Professional Reporter and Notary Public, do hereby certify that I stenographically recorded the verbatim minutes of the foregoing proceedings at the time and place aforesaid, and then reduced same to typewritten form; that the record appearing in the preceding 194 pages is a true and correct transcript of said proceedings to the best of my ability and understanding; that I am not related to any of the parties to this action; that I am not of counsel; and, that I am not interested in the event of this cause.

This the 22nd day of June, 2020.

Kay W. Westbrook

Kay W. Westbrook, RPR
Judicial District 3B
310 Broad Street
New Bern, NC 28560
Transcripts3b@yahoo.com

Notary Number 19941960051

My commission expires: July 23, 2024

EXHIBIT 6

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 14CRS 50372, 50376-77

STATE OF NORTH CAROLINA)
)
 vs.)
)
 DUSTIN JAMAL WARREN,)
 Defendant)

ORDER

FILED
2014 JUL 22 AM 11:23
CARTERET CO., NC


This cause coming on to be heard by the undersigned Senior Resident Superior Court Judge upon counsel for Defendant's Motion for Appropriate Relief (hereafter referred to as MAR), pursuant to N.C.G.S. §15A, Article 89.

After considering the MAR and the matters contained therein, having reviewed the record proper, the transcript of the trial and the court file and having conducted an evidentiary hearing, the Court makes the following:

Findings of Fact

1. On February 24, 2014, Defendant was indicted on the offenses of possession of precursor chemicals with intent to manufacture methamphetamine, manufacturing methamphetamine, conspiracy to manufacture methamphetamine and with having achieved the status of habitual felon.
2. Rodney G. Fulcher ("Fulcher") represented Defendant at all times relevant to this motion.
3. On September 10, 2014, Defendant was convicted by a jury of each offense with which he was charged. After the Court took the verdicts, the State dismissed the habitual felon charge.
4. The court determined the prior record points of Defendant to be 15, made no written findings because the prison terms imposed were within the presumptive range of sentences authorized, ordered that file numbers 14CRS50372 and 50376 be consolidated for judgment and sentenced Defendant for a minimum term of 127 months and a maximum term of 165 months and in case 14CRS50377 ordered that the sentence imposed run consecutively to the sentence in 14CRS503712 and 50376 and sentenced Defendant for a minimum term of 127 months and a maximum term of 165 months.

A TRUE COPY
CLERK OF SUPERIOR COURT
CARTERET COUNTY

BY 
Assistant Deputy Clerk of Superior Court

5. Defendant's direct appeal was denied by the North Carolina Court of appeals on November 17, 2015; his Petition for Discretionary Review to the North Carolina Supreme Court was denied January 28, 2016.
6. On December 12, 2016, Patrick Michael Megaro, counsel for Defendant, filed the MAR with the office of the Clerk of Superior Court of Carteret County, alleging that Defendant was denied effective assistance of counsel because his trial counsel failed to prepare for trial, failed to request the court to have a witness brought from jail to make an offer of proof, and failed to secure the attendance of two witnesses from Department of Corrections whose testimony would have contradicted that of the testifying co-defendant. The MAR was supported by affidavits of the Defendant, Cassie J. Flowers ("Flowers"), Mark Thomas ("Thomas"), and Kathleen Roberts.
7. The State filed a Response on September 22, 2017.
8. Defendant's allegations assert the following claim pursuant to N.C.G.S. §15A-1415(b): that the conviction was obtained in violation of the United States or North Carolina constitutions.
9. Defendant's allegations assert, pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984), that his counsel handled his case improperly as more particularly set forth in paragraph 6 above.
10. The Honorable Benjamin G. Alford, Superior Court Judge, determined that the showing made by the MAR and supporting affidavits was sufficient to entitle defendant to an evidentiary hearing. Judge Alford held an evidentiary hearing; however, he retired without ruling on the MAR.
11. The credibility of the proposed defense witnesses who were not called by his trial attorney was crucial to a determination of the MAR; this court felt it would not be possible to adequately judge their credibility without being able to personally observe them when they testified; therefore a second evidentiary hearing was held on June 11, 2020.
12. Defendant's motion raises two issues: (1) was trial counsel's performance deficient, and (2) if so, but for his errors, was there a reasonable probability of a different result in the proceeding.
13. At trial the State had presented the testimony of six witnesses: Scott Way and Carla Thomas ("Carla") who were employees of the Seashore Motel, SBI Special Agent Kelly Farrell, Atlantic Beach Police Department Officers David Ennis and Brian Prior, and the codefendant Heather Kennon ("Kennon"). Their testimony tended to establish the facts set forth in paragraphs 14-21 below.

14. The testimony of Way and Carla established that Kennon checked into the motel shortly before noon on January 29, 2014, Kennon arrived in a gold Buick driven by defendant and signed in for two guests. That afternoon the car left the motel once or twice for short periods of time. Between 5 and 6 p.m. Defendant and Kennon left the motel. The gold Buick was not there when Carla went to bed around 12:30 a.m. on January 30 or when she woke up around 7:30. When Carla entered the room around 9:30 a.m. to clean she observed that the beds had not been slept in, found what she thought were drug related materials, and called 911.
15. SBI agent Farrell found precursor chemicals in the motel room and evidence that meth had been manufactured there.
16. Officer Prior was the first officer to enter the room; he observed materials consistent with a meth lab; he obtained a search warrant and contacted the SBI.
17. Officer Ennis encountered the Defendant at the motel on the morning of January 30 when the Defendant drove up in the gold Buick; He approached the car because it had been identified as being at the room the prior afternoon. He observed 2 pills in plain view in the vehicle and arrested the Defendant for possession. When the Defendant got out of the Buick the key to the subject motel room fell on the ground. A piece of aluminum foil with burn marks like that used to smoke meth was found in Defendant's pocket.
18. Codefendant Kennon was addicted to opiates and meth; she would buy Sudafed or have sex in exchange for drugs. She was charged with the same substantive offenses as the defendant and had plead guilty to possession of precursor chemicals to manufacture methamphetamine but had not been sentenced at the time of trial.
19. At the time of the subject offense she had been high for several days. She had been staying at the Doubletree for 2 or 3 days. She met the defendant at the hotel on the January 28 and they spent the night together getting high on meth. They had gone to Flower's house in Morehead to get cold packs to use in the manufacture. She waited in the car while he went in to get them. Defendant had all the other materials needed to manufacture methamphetamine.
20. On the morning of January 29 they left Doubletree and went to the Seashore Motel. On the way they stopped at Lisa Willis' house. Kennon was the one who checked in the motel. While there she got high and defendant cooked more meth. The plan had been to spend the night there

but it was too cold so they left and went to Anique Pittman's condo at A Place at the Beach.

21. They spent the night at Pittman's. Mark Thomas was also there. Defendant drank some beer and went to bed. Kennon, Pittman and Thomas did meth throughout the night. In the morning the Defendant and Thomas left and were arrested.
22. At trial Defendant testified and also offered the testimony of Lisa Hill Turner ("Turner"), Richard Willis ("Willis") and Pittman. Their testimony is summarized as set forth in the following paragraphs.
23. The testimony of Turner and Willis was to the effect that at about 10 or 10:30 p.m. on January 29 Defendant and a girl came to Turner's house and stayed a couple of hours. In court Turner did not recognize Kennon as being the girl with Defendant but Willis did.
24. ~~Pittman was Defendant's girlfriend at the time. She picked up Thomas from Newport and brought him to her condo in Atlantic Beach because he and his wife were having a fight. Shortly thereafter Defendant came to her condo and spent the night. No one used or manufactured drugs in her condo. She never saw Heather Kennon. Defendant and Thomas left the next morning to get cigarettes and McDonald's. She learned Defendant was arrested at the motel.~~
25. Although Pittman did not know Kennon previously she went to visit her in the Craven jail to talk about the case.
26. Trial counsel indicated to the Court that he wished to call Brandon Elps as a witness; that Elps was in the local jail and would testify about occasions that Kennon had gotten him in trouble and been untruthful; When the Court ruled that the proposed testimony was inadmissible he declined to call the witness to make an offer of proof.
27. Defendant acknowledged being at the Doubletree on the night of January 28 to console a friend, Nicole. He ran into Kennon at the hotel. She was saying with a construction worker, getting high. He spent the night in Nicole's room, talking on the phone to Pittman. He denied using or manufacturing meth at the hotel.
28. After Nicole went to work the next morning Kennon came to his room and borrowed his car. When she returned they went to Kathy Robert's home but Kennon did not come in. They also went to Lisa Hill's house. Kennon went in.

29. Defendant further testified that he took Kennon to the Seaside at her request. She checked in and he helped get her things to the room. She was high, jittery and emotional. She was in the room alone at times. While he was there he did not use or cook any meth.
30. About 4 he and Kennon left and went to Pittman's where he spent the night. Kennon was waiting for a ride. When he was awakened at 2 am she was in the living room.
31. The next morning he and Thomas left in his car to get cigarettes and food. He saw police cars around Kennon's room at the Seashore and drove in to check on her. He was arrested there.
32. Based upon the evidence set forth in paragraphs 14-31 above the jury found defendant guilty on all counts.
33. On June 11, 2020 this Court held an evidentiary hearing on the MAR. At that hearing the Defendant testified and presented the testimony of Flowers and Thomas; the State presented the testimony of Fulcher.
34. Had he been called as a witness at trial Thomas would have testified as follows: on January 29 he called Defendant to pick him up and hangout; however Pittman picked him up instead and took him to her condo; Defendant arrived later; Kennon came with Defendant but did not enter the condo until later.
35. Defendant went to bed early but Thomas and Kennon stayed up getting high; he smoked pot, drank beer and smoked meth; he had his own meth as did Kennon; she kept going in and out looking for a ride; he locked the door around 2 and did not see her again. He offered conflicting testimony about defendant's car keys.
36. The following morning he and Defendant left to get cigarettes and food; when Defendant saw cars at Kennon's room he became worried about her and drove up to the motel where they were arrested.
37. At the time of the trial he was in jail in Guilford County under his own name. He had tried to talk to the Public Defender's Office about the case right after the arrest but was never contacted by Fulcher or his office about the case.
38. Had she been called as a witness at trial Flowers would have testified as follows: she had a romantic relationship with Defendant which ended in December 2013. They were not on speaking terms in January 2014.

39. She and her dog were living alone in Willis Trailer Park, Morehead City in January 2014; the dog would bark loudly if anyone came to her door, even if he knew the person.
40. The bridge between Morehead and Atlantic Beach was closed January 28 and 29 due to icy conditions. No one came to her home on those days.
41. She was addicted to meth in January 2014. She was using meth daily at that time, yet she was unable to name one person who had ever provided her with drugs. Her testimony lacked credibility.
42. At the time of Defendant's trial she was in prison under her true name. Neither Fulcher or anyone on his behalf contacted her to discuss her potential testimony prior to Defendant's trial.
43. Defendant was initially represented by the Public Defender. He discussed with that office the potential testimony of Pittman, Thomas and Roberts. At that time he did not know that Flowers' testimony may be relevant.
44. Defendant hired Fulcher in March 2014.
45. Defendant testified that when he hired Fulcher that Fulcher said he represented Kennon but if paid he would get out of her case; Fulcher never discussed a conflict of interest. This testimony is not supported by the court records and is not true.
46. Defendant believes that Fulcher lost interest in the case once paid and that he did not talk to potential witnesses , analyze evidence or collect exculpatory evidence like videos from the motels.
47. Fulcher recommended that he accept a plea offer which would result in a minimum sentence of 57 months. Fulcher told him he needed to take the offer if they lost the motion to suppress which they did.
48. He told Fulcher about the potential testimony of Elps, Roberts, Flowers and Thomas; however Fulcher did not interview them; he did not have Elps brought from the jail to make an offer of proof; he did not seek to delay the trial when Flowers and Thomas had not been transported from prison to testify.
49. Fulcher had been licensed to practice law and had been primarily practicing criminal law in Carteret County since 1999.
50. Fulcher never represented Kennon in the charges arising from the meth lab at the Seashore Motel; She was represented throughout by Chris

Suggs; Fulcher did represent her in a probation matter after Defendant's case was resolved.

51. Fulcher did not interview Elps, Thomas, or Flowers; Defendant did want them to testify which is why he tried to secure their appearance at court; however, even if they were there he would not have called them.
 52. He was familiar with Elps' criminal history and even if his testimony were admissible he did not believe Elps would be credible.
 53. He was familiar with the criminal backgrounds of Thomas and Flowers as well as the fact that both were then in prison; he did not consider either to be credible witnesses; he had interviewed Pittman and knew that she would testify to many of the same matters as Thomas and did not believe it to be in Defendant's best interest to call these witnesses. He believed that Pittman would be a stronger witness due to her lack of an extensive criminal record.
-
54. Although he did not interview Thomas or Flowers he made a strategic decision not to call these witnesses largely because of their criminal history and the effect it would have on their credibility.
 55. Defendant did not present the testimony of Elps or Roberts at either evidentiary MAR hearing. It is therefore impossible to say that had they testified at trial there was a reasonable probability of a different outcome.
 56. Had Thomas testified at trial his testimony would have partially corroborated that of Kennon and directly contradicted Pittman's. Pittman denied that there was any drug activity at her condo whereas both Thomas and Kennon described an all night drug party. Hence it is likely that his testimony would have strengthened the State's case and weakened that of the defense. There is not a reasonable probability that his testimony at trial would have resulted in a different outcome.
 57. As noted above, because of her feigned inability to remember a single person who supplied her drugs, the Court finds that Thomas' testimony is not credible. However had she testified she would have directly contradicted Pittman and Thomas who testified to crossing the Atlantic Beach Bridge in coming from Newport to the Pittman condo; according to Flowers the bridge was closed at all relevant times. There is not a reasonable probability that her testimony at trial would have resulted in a different result.
 58. Defendant's claim does not take into account the State's theory in this case which is that methamphetamine was manufactured at the Seashore Motel sometime between noon when Defendant and Kennon arrived at the

motel and around five when they left. The testimony of none of the additional defense witnesses contradicts the essential facts that Defendant and Kennon were at the hotel alone during those hours; remnants of a meth lab were found in there room and Defendant had the key to the room.

59. Even if Kennon's testimony were totally discredited the State still had a very strong circumstantial case.
60. At the evidentiary hearing, Defendant did not produce testimony of other attorneys in order to prove that his counsel's performance was deficient; and, nor did Defendant introduce standards of professional conduct established by the North Carolina Indigent Defense Services, American Bar Association or any other entity to prove that trial counsel's performance was deficient.
61. Defendant failed to allege or establish that his counsel's performance was so deficient that it prejudiced his defense such that but for his counsel's errors, the result of the trial would have been different.

Based upon the foregoing findings of fact, the Court makes the following:

Conclusions of Law

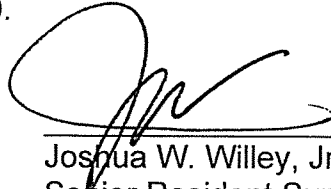
- A. Defendant has not established the necessary facts by a preponderance of the evidence.
- B. Defendant has not shown the existence of the asserted ground for relief.
- C. Defendant has not shown that counsel's performance was deficient; and that the deficient performance prejudiced the defense.

IT IS THEREFORE ORDERED:

1. That Defendant's MAR is **DENIED**.
2. That pursuant to G.S. 15A-1419(a)(1)(2)(3)(4) Defendant's failure to assert any other grounds in this motion shall be treated in the future as a **BAR** to

any other claims, assertions, petitions or motions that (he) (she) might hereafter file in this case.

This the 21st day of July, 2020.



Joshua W. Willey, Jr.
Senior Resident Superior Court Judge
3B Judicial District

CERTIFICATE OF SERVICE


The undersigned hereby certifies that on this date a copy of the foregoing Order was duly served upon the defendant by depositing same in a postpaid envelope in a post office under the exclusive care of the U.S. Postal Service, properly addressed as follows:

Dustin Jamal Warren
Pamlico Correctional Institute
601 N 3rd Street
Bayboro, NC 28515

Patrick Michael Megaro
33 East Robinson Street, Suite 210
Orlando, Fla. 32801

David Spence
Assistant District Attorney
4th Prosecutorial District
302 Courthouse Square
Beaufort, NC 28516

This the 22nd day of July, 2020.


The Honorable Joshua W. Willey, Jr.
Senior Resident Superior Court Judge