

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.

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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 **RECROSS-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
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Notary Number 19941960051

My commission expires: July 23, 2024