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NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

* * * * *

STATE OF NORTH CAROLINA

vs

CARTERET COUNTY

DUSTIN WARREN,

14 CRS 50372; 76; 77

Defendant.

* * * * *

MOTION FOR APPROPRIATE RELIEF
Volume 1 of 1
Wednesday, July 6, 2018

* * * * *

Transcript of proceedings in the General Court of Justice,
Superior Court Division, Carteret County, North Carolina, at
the June 4, 2018, Criminal Session, before the Honorable
Benjamin G. Alford, Judge Presiding, heard in the North Carolina
Superior Court at Beaufort.

APPEARANCES:

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1 (The afternoon session of Superior Court is
2 called to order.)

13:30:50 3 THE COURT: Thank you, sheriff.

13:30:52 4 SHERIFF: Yes, sir, Judge.

13:30:52 5 MR. SPENCE: Your Honor, we're here on a Motion for
13:30:55 6 Appropriate Relief.

13:30:55 7 Mr. Megaro, you can come up here if you'd like and
13:30:59 8 bring your client with you, whoever else you need to assist.

13:31:02 9 Your Honor, Patrick Megaro is the counsel filing --
13:31:06 10 had filed this license in North Carolina -- filed this back in
13:31:10 11 2016. Both of us filed Answers, and Your Honor decided, after
13:31:16 12 much deliberation, that an evidentiary hearing would be
13:31:20 13 something that probably needed to be had in these kind of cases.

13:31:23 14 Judge, the File Number is, again, State versus --
13:31:27 15 State of North Carolina versus Dustin Warren, a Carteret County
13:31:30 16 Case of 14 CRS 50372, 50376 and 50377.

13:31:36 17 Judge, if I can hand up a couple things that you may
13:31:41 18 not have. There is a -- this case is here because there were
13:31:47 19 some Ineffective Assistance motions that were attempted to be
13:31:50 20 raised, and were raised to some extent on direct appeal.

13:31:54 21 And I have circled the conclusions of the court and
13:31:58 22 the limitations on, really, what -- what was heard in the Court
13:32:02 23 of Appeals without prejudice. That appears on the last page.
13:32:06 24 The discussion really isn't that important. But it's sort of
13:32:11 25 limited to --

13:32:12 1 (Documents tendered to the Court.)

13:32:13 2 MR. SPENCE: -- to three things: Was -- was the trial
13:32:16 3 counsel ineffective in not calling either Brandon Elps, not
13:32:22 4 calling Mark Thomas, not calling Cassie Flowers to testify, or,
13:32:27 5 as to -- and to challenge the credibility of State's witness
13:32:33 6 Heather Kennon, who was also a co-defendant at the time.

13:32:36 7 I believe there's nothing filed in Mr. Megaro's
13:32:43 8 motion regarding Mr. Elps, so I would assume that has been
13:32:47 9 abandoned. And so, really, we're down to whether Mr. Fulcher
13:32:51 10 was ineffective under the Strickland standard by not calling
13:32:58 11 Cassie Flowers and Mark Thomas to challenge parts of her
13:33:03 12 testimony.

13:33:03 13 And again, if -- Mr. Megaro, if I have incorrectly
13:33:08 14 stated that, please correct me. But that's at least what my
13:33:12 15 understanding is, why we're here, and the limitations on -- on
13:33:17 16 what can be presented or argued.

13:33:18 17 THE COURT: First of all, let me ask Counsel, for the
13:33:21 18 record, simply to identify themselves and whom they represent.

13:33:25 19 MR. SPENCE: David L. Spence, State of North Carolina,
13:33:28 20 Bar Number 9477. And I'm Assistant DA in Carteret County.

13:33:33 21 THE COURT: Okay.

13:33:33 22 MR. MEGARO: Good afternoon, Your Honor. I'm Patrick
13:33:35 23 Michael Megaro -- M-E-G-A-R-O -- Bar ID Number is 46770, on
13:33:40 24 behalf of Dustin Warren.

13:33:41 25 With the Court's permission, my associate, Robert

13:33:45 1 Bynther -- it's B-Y-N-T-H-E-R -- is present at counsel table.
13:33:49 2 He is not admitted in the State of North Carolina; he is
13:33:52 3 admitted in the State of Florida. And I simply brought him
13:33:55 4 along, simply to observe --

13:33:56 5 THE COURT: Welcome.

13:33:57 6 MR. MEGARO: -- could learn something from this.

13:33:59 7 THE COURT: Welcome.

13:33:59 8 MR. BYNTHNER: Thank you, Your Honor.

13:33:59 9 MR. MEGARO: Thank you, Your Honor. Your Honor, with
13:34:02 10 respect to the motion, there were three essential -- three main
13:34:05 11 claims raised in the motion regarding Ineffective Assistance,
13:34:06 12 and that was failure to call Brandon Elps. And in that motion I
13:34:12 13 didn't address that, because that was addressed on direct appeal
13:34:15 14 as well.

13:34:15 15 And the other two prongs of the motion was with
13:34:18 16 respect to Ms. Cassie Flowers and Mr. Mark Thomas. Mr. Mark
13:34:24 17 Thomas is currently serving an active state prison term, and he
13:34:28 18 has been brought over here today. I did meet with him earlier
13:34:32 19 today.

13:34:32 20 Ms. Cassie Flowers is presently incarcerated in this
13:34:36 21 county on pending charges. Her counsel is present here in
13:34:39 22 court, and I have had the chance to speak with him earlier
13:34:43 23 today.

13:34:43 24 Mr. Elps's whereabouts are currently unknown because
13:34:48 25 he has been released from the Department of Adult Corrections,

13:34:49 1 and I have made efforts to locate him, but he's no longer here.

13:34:54 2 Nevertheless, with respect to that claim, I would be
13:34:57 3 relying upon the official record in this case, because there was
13:35:01 4 a proffer as to what his testimony would have been that was made
13:35:06 5 on the record by trial counsel --

13:35:07 6 MR. SPENCE: No --

13:35:08 7 MR. MEGARO: -- if I recall --

13:35:09 8 MR. SPENCE: -- that was -- no. There was no proffer
13:35:10 9 made. He was not brought over even for a proffer.

13:35:15 10 MR. MEGARO: Very well.

13:35:17 11 THE COURT: Well, the record is what the record is.

13:35:18 12 MR. SPENCE: The Court of Appeals addressed that. He
13:35:21 13 was not brought over for a proffer.

13:35:24 14 THE COURT: All right.

13:35:26 15 MR. MEGARO: But in any event, there is an issue that
13:35:30 16 I think we should probably address before the case moves
13:35:34 17 forward.

13:35:35 18 One of the witnesses that I had proposed to call
13:35:38 19 would have been Ms. Cassie Flowers, who is, as the Court's
13:35:41 20 aware -- is aware, is present here. Her counsel has -- and she
13:35:47 21 had submitted an affidavit in 2016 when this motion was filed
13:35:52 22 prior to the advent of her current charges.

13:35:56 23 She has since been charged, and her counsel,
13:35:59 24 Mr. James Upton[sic], is present here in court. And it's my
13:36:05 25 understanding that -- and I can't fault Counsel for this: He

13:36:12 1 does not want to endanger her situation with respect to her
13:36:16 2 testimony. If she were to give testimony that would be
13:36:19 3 considered unfavorable to the State, that potentially could
13:36:23 4 impact any plea negotiations that she may have.

13:36:28 5 I have discussed this matter with my client, and he
13:36:33 6 has asked me to move forward with Ms. Flowers as a witness. But
13:36:37 7 I would remind the State that she does have pending charges, and
13:36:41 8 not that I'm advocating for her, but I would not seek to elicit
13:36:45 9 any information concerning her pending charges. And she, I
13:36:47 10 believe, would have an absolute right to have her counsel
13:36:50 11 present and advise her and invoke the Fifth Amendment as to
13:36:54 12 those matters, notwithstanding her testimony on other matters.
13:36:59 13 So --

13:36:59 14 THE COURT: Okay.

13:37:02 15 MR. SPENCE: Mr. Lupton can address that better. I
13:37:05 16 think that he is going to advise her not to testify in the
13:37:09 17 matter because she is -- again, I'll say on the record, whatever
13:37:13 18 she says here is not going to affect any plea negotiations I
13:37:17 19 have on her pending cases with Mr. Lupton. I'm not going to do
13:37:20 20 that.

13:37:20 21 However, I don't think Mr. Lupton wants her on the
13:37:23 22 stand to possibly maybe commit another crime under oath,
13:37:27 23 testifying under oath, or for whatever reason. I'll let him
13:37:31 24 talk -- speak to Your Honor about that situation. And he's
13:37:34 25 advised Mr. Megaro exactly, I think, what his stance is. Is

13:37:38 1 that correct, Jim?

13:37:39 2 MR. LUPTON: Your Honor, may I?

13:37:40 3 THE COURT: Yes, sir.

13:37:41 4 MR. LUPTON: Your Honor, thank you. Ms. Flowers was
13:37:42 5 brought over earlier today, and I did speak with her and
13:37:45 6 explained to her that if she is called to testify, certainly,
13:37:48 7 the Prosecutor's duty is to impeach or attempt to impeach her as
13:37:54 8 to her credibility.

13:37:54 9 As he does that, he'll be permitted to speak to her
13:37:58 10 of bad conduct that would be admissible regarding her
13:38:03 11 credibility, which could include conduct for which she is now in
13:38:09 12 this Superior Court for felony charges.

13:38:13 13 I have advised her that should she testify, she would
13:38:17 14 be subject to discuss, potentially, charges that are now
13:38:21 15 pending, which could affect my ability to defend her, which
13:38:25 16 also, I think, in fairness, could affect -- if the State felt
13:38:30 17 that or perceived that what she was saying was not honest
13:38:35 18 admissions -- might affect how they view the case, not to
13:38:37 19 conform to what the State is asking her, but could affect their
13:38:41 20 view of her and could affect, again, the strength in my ability
13:38:45 21 to defend her.

13:38:45 22 And therefore, I strongly have instructed her to
13:38:49 23 invoke her Fifth Amendment to not testify, if called.

13:38:53 24 THE COURT: Well, I'm certainly not going to let
13:38:55 25 Mr. Megaro or Mr. Spence inquire into any matters for which the

13:39:00 1 charges are currently pending. But to say that she doesn't want
13:39:04 2 to testify because if she testifies inaccurately the State may
13:39:11 3 have some repercussions in the way of perjury, that's not a good
13:39:15 4 enough reason not to testify.

13:39:16 5 But I am going to order, Mr. Spence, and Mr. Megaro,
13:39:18 6 do not get into anything for which this woman is currently
13:39:24 7 charged in Carteret County or in any other county.

13:39:27 8 And I don't think they intend to do that. I think
13:39:30 9 they intend to reserve their questioning as to anything that she
13:39:34 10 knew about the case involving Mr. Warren.

13:39:39 11 MR. MEGARO: That's correct, Your Honor. My -- my
13:39:40 12 intention is to confine her testimony probably exclusively to
13:39:46 13 the four corners of the affidavit that was submitted in this
13:39:48 14 Motion for Appropriate Relief.

13:39:50 15 THE COURT: But I do want, Mr. Lupton, if you would,
13:39:52 16 can you be here and stay? And if you feel like there's
13:39:55 17 something that's being asked that calls upon her to comment, in
13:39:59 18 any way, on any charges that are pending against her anywhere,
13:40:04 19 to intercede with an objection and give me the reason why.

13:40:10 20 MR. LUPTON: Your Honor, I thank you for that. And
13:40:11 21 I'd also ask if I would be allowed to speak to her when she
13:40:14 22 comes over, because Mr. Spence did share to me -- with me how he
13:40:19 23 may impeach her. And I'd like to advise her about that and just
13:40:24 24 speak to her --

13:40:25 25 THE COURT: Sure.

13:40:25 1 MR. LUPTON: -- before she takes the stand.

13:40:26 2 THE COURT: Absolutely.

13:40:27 3 MR. LUPTON: And I will stay in here.

13:40:29 4 MR. SPENCE: Again, I will avoid all that stuff. I
13:40:31 5 wasn't intending on getting into it. However, I have some
13:40:34 6 things from her Facebook account which I pulled off yesterday.
13:40:36 7 And just now finding out she will be testifying, that might lead
13:40:42 8 her to testify in contravention of her affidavit.

13:40:48 9 THE COURT: Well --

13:40:49 10 MR. SPENCE: And, again, if I could -- if I could
13:40:50 11 share that with Mr. Megaro, because, again, I just pulled it off
13:40:53 12 the computer just as an abundance of caution. But I'll be glad
13:40:56 13 to share that with him.

13:40:59 14 THE COURT: As it potentially impeaches her affidavit,
13:41:00 15 it's fair game.

13:41:02 16 MR. SPENCE: Yes, sir. I knew that. But in fairness,
13:41:04 17 I would like to at least show this to him. I've shown it to Mr.
13:41:07 18 Lupton this morning also, and found it yesterday on her
13:41:07 19 Facebook.

13:41:09 20 THE COURT: Is Ms. Flowers over here, back in the
13:41:12 21 back?

13:41:12 22 SHERIFF: I will bring her right now.

13:41:14 23 THE COURT: Yes. Please bring her so that Mr. Lupton
13:41:17 24 can have a conference with her.

13:41:18 25 THE SHERIFF: Yes, sir.

13:41:19 1 THE COURT: And if you would share that with Mr.
13:41:20 2 Megaro --
13:41:22 3 MR. SPENCE: I will.
13:41:23 4 THE COURT: -- and give him a moment to look at it.
13:41:25 5 (Mr. Spence and Mr. Megaro confer.)
13:43:49 6 MR. SPENCE: Ann Scadden, who is with -- Dustin
13:43:49 7 Warren's affidavit -- has some documentation that I told you
13:43:49 8 about.
13:43:49 9 MR. MEGARO: Right.
13:43:49 10 MR. SPENCE: Ann, you can come up with that. Make
13:43:49 11 sure I've got the right ones. Let me see the notes. She can
13:43:49 12 just show you what she has --
13:43:51 13 MR. MEGARO: Sure.
13:43:51 14 MR. SPENCE: -- real quickly.
13:43:52 15 (Ms. Scadden tenders documents to Mr. Megaro.)
13:43:52 16 MR. SPENCE: Ann, could you leave those with me, so I
13:43:52 17 can --
13:43:52 18 MS. SCADDEN: This?
13:43:52 19 MR. SPENCE: Yes.
13:43:52 20 MS. SCADDEN: You have them.
13:43:52 21 MR. SPENCE: I know that.
13:45:34 22 MS. SCADDEN: I'll make copies. Yeah.
13:45:36 23 (Rodney Fulcher is present in the courtroom.)
13:48:36 24 MR. SPENCE: Your Honor, if I could address a couple
13:51:33 25 preliminary matters. I don't want to interrupt your reading.

13:51:37 1 THE COURT: Yes, sir.

13:51:37 2 MR. SPENCE: Before we start back, before I forget it,
13:51:39 3 mainly, the State would -- for purposes of this hearing, move to
13:51:45 4 introduce the entire court file which contains the transcript of
13:51:48 5 the court proceedings, and ask that be made -- made part of the
13:51:52 6 record on this motion.

13:51:53 7 I also have obtained from Ms. Speights a transcript
13:51:59 8 of the continuance motion made by Mr. Fulcher a month before,
13:52:03 9 and some of the things that were said in there by Mr. Warren,
13:52:07 10 and his -- his -- his intentions. And I have sent a copy to Mr.
13:52:12 11 Megaro last night by email, and I'll hand up -- this is -- it's
13:52:16 12 basically a two-page colloquy --

13:52:18 13 (Documents tendered to the Court.)

13:52:18 14 MR. SPENCE: -- maybe even before Your Honor in the
13:52:23 15 August session, prior to the September trial session.

13:52:30 16 THE COURT: Judge Paul Jones heard this.

13:52:32 17 MR. SPENCE: Okay.

13:52:33 18 THE COURT: But it's part of the record, and the Court
13:52:35 19 will receive it.

13:52:35 20 MR. SPENCE: Yes, sir, it is. And also, in the court
13:52:38 21 file, of course, I filed a motion -- I filed a response, and a
13:52:42 22 lot of my response was dealing with the credibility of the
13:52:46 23 witnesses that were intended to be called. And I attached their
13:52:50 24 criminal histories.

13:52:51 25 In order to maybe save some time, when they take the

13:52:55 1 stand, I'd just let Your Honor know, the criminal histories are
13:52:59 2 available inside the file and I have them here if you need to
13:53:02 3 look at them.

13:53:05 4 I think the relevant criminal histories in this
13:53:07 5 particular case are what I could have cross-examined them on in
13:53:15 6 2014, the 10-year window, because that was -- that was the
13:53:19 7 calculation by trial counsel, whether to call them or not with
13:53:21 8 what they could be cross-examined about at that time.

13:53:24 9 I think, in addition, this hearing, which takes place
13:53:27 10 a little over three and a half years later, if they have
13:53:30 11 anything additional, it affects their credibility at this
13:53:33 12 hearing.

13:53:34 13 So I would ask for that window, which is a little bit
13:53:36 14 more expansive than the 8C 10-year limitation should apply at
13:53:41 15 this hearing. And, again, I would just leave that up to
13:53:44 16 Your Honor, but let you know that the actual records are in my
13:53:49 17 Answer.

13:53:49 18 THE COURT: Okay. Well, I'll deal with it if it comes
13:53:52 19 up at the hearing. Mr. Megaro, is Ms. Flowers intending to be
13:54:09 20 your first witness?

13:54:10 21 MR. MEGARO: Yes, Your Honor. I would -- since she's
13:54:12 22 on the County's time and Mr. Lupton's time, I would call her
13:54:16 23 first, and then --

13:54:16 24 THE COURT: Okay.

13:54:16 25 MR. MEGARO: -- I would intend to call Mr. Mark Thomas

13:54:19 1 second, since he's on also the County's time, and call my client
13:54:22 2 last.

13:54:23 3 THE COURT: Okay.

13:54:23 4 (The Court confers with his bailiff.)

13:54:52 5 MR. MEGARO: Your Honor, does the Court permit laptops
13:54:53 6 at counsel table?

13:54:56 7 THE COURT: Absolutely.

13:54:57 8 MR. MEGARO: I always have to ask.

13:54:58 9 THE COURT: I can't imagine, with that sort of
13:55:00 10 technology available to us -- and I think that we have wi-fi in
13:55:04 11 the Carteret County Courthouse, which you can access.

13:55:07 12 MR. MEGARO: Thank you. You'd be surprised.

13:55:09 13 THE COURT: I probably would.

13:55:10 14 (An unrelated matter was heard before the Court.)

13:56:04 15 (Ms. Flowers is present in the courtroom with her
14:00:22 16 counsel, Mr. Lupton.)

14:00:33 17 MR. SPENCE: Judge, if I could have one moment to tidy
14:00:36 18 up some loose ends here.

14:00:38 19 (Mr. Spence exits the courtroom, returns
14:00:40 20 momentarily and tenders documents to Mr. Lupton.)

14:03:39 21 THE COURT: Are the parties ready to proceed? Is the
14:03:59 22 State ready?

14:04:01 23 MR. SPENCE: I'm ready.

14:04:03 24 MR. LUPTON: Your Honor, Mr. Spence just gave me some
14:04:05 25 more information; he just now handed it to me. If I could have

14:04:07 1 a moment to share this with Mr. Flowers. Thank you.

14:04:10 2 (Mr. Lupton and Ms. Flowers exit courtroom and
14:04:14 3 return after several minutes.)

14:07:35 4 THE COURT: Mr. Megaro, you may call your first
14:07:37 5 witness.

14:07:38 6 MR. MEGARO: Thank you, Your Honor. The defense would
14:07:41 7 call Ms. Cassie Jean Flowers.

14:07:43 8 (The witness was duly sworn.)

14:07:49 9 (The witness took the witness stand.)

14:07:53 10 MR. MEGARO: Your Honor, would the Court require me to
14:07:55 11 stand when questioning the witness or be seated? It's up to
14:07:58 12 you.

14:07:59 13 THE COURT: The State rules provide that questioning
14:08:01 14 is done by Counsel from the counsel table in a seated position.

14:08:05 15 MR. MEGARO: Thank you.

14:08:06 16 THE COURT: Yes, sir.

14:08:06 17

14:08:06 18 **CASSIE JEAN FLOWERS,**

14:08:06 19 having been first duly sworn, at 2:08 p.m. was called as a
14:08:06 20 witness on behalf of the Defendant and testified as follows:

14:08:07 21 **DIRECT EXAMINATION BY MR. MEGARO**

14:08:08 22 Q. Good afternoon, Ms. Flowers. How are you?

14:08:10 23 A. I am doing -- doing good. How are you?

14:08:12 24 Q. Can you speak into the microphone? I'm having a
14:08:13 25 little -- hard time --

14:08:15 1 THE COURT: The microphone doesn't work. Just speak
14:08:17 2 up.

14:08:17 3 BY MR. MEGARO

14:08:17 4 Q. Speak up.

14:08:17 5 A. All right.

14:08:18 6 Q. I just want to make clear, as we get started, I do not
14:08:21 7 want to ask you and I do not want you to answer anything about
14:08:24 8 any pending charges in any county right now. Okay?

14:08:28 9 A. Yes, sir.

14:08:29 10 Q. All right. Thank you. How do you know Dustin Warren?

14:08:33 11 A. I met him in September of 2013, and we dated for a
14:08:36 12 couple months up until about Christmas.

14:08:38 13 Q. Okay. Christmas of 2013?

14:08:41 14 A. Yes. Yes, sir.

14:08:41 15 Q. And did there come -- is that when your relationship
14:08:45 16 terminated?

14:08:46 17 A. Yeah. For the -- yes. I tried calling him and
14:08:48 18 texting him and he wouldn't answer my calls.

14:08:52 19 Q. After your relationship terminated, were you on
14:08:54 20 speaking terms, or not at all?

14:08:56 21 A. No.

14:08:58 22 Q. Did you know a young lady named Heather Kennon?

14:09:01 23 K-E-N-N-O-N.

14:09:04 24 A. Yes, sir. I know of her. And --

14:09:05 25 Q. And what is -- what -- in late 2013, what was your

14:09:09 1 relationship with Ms. Kennon?

14:09:11 2 A. Me and Heather never got along. We -- she was -- I
14:09:14 3 believe she was jealous of me --

14:09:16 4 MR. SPENCE: Objection.

14:09:16 5 THE COURT: Overruled.

14:09:20 6 BY MR. MEGARO

14:09:20 7 Q. Now, did you have any relationship with Heather Kennon
14:09:23 8 in January of 2014?

14:09:26 9 A. No -- not at all.

14:09:27 10 Q. Did you ever associate with her or hang out with her,
14:09:30 11 socialize?

14:09:32 12 A. No.

14:09:34 13 Q. Now, I want to draw your attention to the evening of
14:09:37 14 January 28th and January 29th, 2014. Do you recall where you
14:09:42 15 were?

14:09:43 16 A. The 28th and 29th? Yes, sir. I do.

14:09:45 17 Q. And where were you that day?

14:09:47 18 A. I was snowed-in at my place in Morehead City.

14:09:50 19 Q. Who were you living with at the time?

14:09:52 20 A. I was by myself. I had my dog there too.

14:09:56 21 Q. Is that a chocolate Labrador?

14:09:58 22 A. Yeah. That's Rusty.

14:10:00 23 Q. Did the dog ever alert you as to whether people were
14:10:04 24 being -- approaching the house?

14:10:05 25 MR. SPENCE: Objection to what the dog did.

14:10:08 1 THE COURT: Overruled.

14:10:08 2 BY MR. MEGARO

14:10:09 3 Q. Would the dog bark if someone came up to the front --

14:10:11 4 MR. SPENCE: Objection.

14:10:12 5 THE WITNESS: Yes.

14:10:12 6 THE COURT: Overruled.

14:10:13 7 BY MR. MEGARO

14:10:13 8 Q. Okay. On January -- on the evening of January 28th
14:10:17 9 and January 29th of 2014, did anyone come to your house on
14:10:23 10 either of those days?

14:10:24 11 A. No one came by. I couldn't even leave my house
14:10:27 12 because I -- no one came by.

14:10:28 13 Q. And that was going to be my next question: Did you
14:10:30 14 leave your house at any time during those two days?

14:10:32 15 A. No. I have a two-wheel drive vehicle, and I did
14:10:34 16 not -- I couldn't leave the house. I didn't even have dog food
14:10:37 17 there.

14:10:37 18 Q. Okay. Did anyone have the key to your home other than
14:10:40 19 yourself?

14:10:41 20 A. No. Definitely not.

14:10:43 21 Q. At any point during the time -- evening of
14:10:46 22 January 28th to January 29th, 2014, did you ever hear your dog
14:10:51 23 barking to alert you?

14:10:55 24 A. Not -- not once.

14:10:56 25 Q. Did there come a point in time when you learned that

14:10:59 1 Dustin Warren had been arrested?

14:11:01 2 A. Yes. Yes, sir.

14:11:02 3 Q. When was that?

14:11:03 4 A. That was after I got out of jail. After I was
14:11:08 5 arrested for some assault charges, I saw his face on the paper.

14:11:13 6 Q. Okay.

14:11:13 7 A. In the -- on the news.

14:11:15 8 Q. All right. Now, when was the next time that you heard
14:11:20 9 from Dustin Warren?

14:11:22 10 A. Let's see. I was in prison -- it was, like, two years
14:11:24 11 later. December of 2015 I believe he sent me a Christmas card
14:11:31 12 and showed me some trial transcripts that Heather Kennon said
14:11:33 13 stuff about me in court that was not true.

14:11:38 14 Q. All right. And when you say "trial transcripts,"
14:11:41 15 you're referring to Ms. Kennon's testimony?

14:11:44 16 A. Yes, sir.

14:11:44 17 Q. Okay. And did you review those transcripts?

14:11:46 18 A. Yes, sir. I did.

14:11:50 19 Q. What did you notice about the content of those
14:11:52 20 transcripts?

14:11:54 21 A. I noticed that she lied and said --

14:11:56 22 MR. SPENCE: Objection.

14:11:57 23 THE COURT: Overruled.

14:11:59 24 THE WITNESS: I noticed that she said that she had
14:12:01 25 been by my house, and that's the day that it snowed, and I was

14:12:05 1 snowed in. And I know for a fact no one came by. No one at
14:12:08 2 all.

14:12:08 3 BY MR. MEGARO

14:12:09 4 Q. Would you have allowed her into your home --

14:12:10 5 A. No, I would not have.

14:12:11 6 Q. -- in January of 2014?

14:12:14 7 A. No. No, sir.

14:12:14 8 Q. At any point in time on the evening of January 28th,
14:12:16 9 2014, or at any point in time on January 29th, 2014, did Dustin
14:12:23 10 Warren ever come to your home and ask you for a cold pack or any
14:12:28 11 other items in order to make drugs?

14:12:30 12 A. No, sir.

14:12:37 13 Q. And as of January 28th, 2014, to January 29th, 2014,
14:12:40 14 were you even on speaking terms with Mr. Warren?

14:12:43 15 A. No, no. We weren't talking.

14:12:47 16 Q. Now, you mentioned that you were incarcerated for a
14:12:49 17 period of time in 2014, right? I just need you to answer out
14:12:54 18 loud for me.

14:12:54 19 A. What did you say? I'm sorry. I couldn't --

14:12:56 20 Q. You mentioned earlier that you were incarcerated for a
14:12:58 21 period of time in 2014?

14:13:00 22 A. Yes, sir.

14:13:00 23 Q. Okay. Do you remember the date of your arrest?

14:13:03 24 A. When I got arrested?

14:13:05 25 Q. Yes.

14:13:05 1 A. On January 30th --

14:13:07 2 Q. 2014?

14:13:08 3 A. -- for the assault -- or when I went to prison?

14:13:11 4 Q. When did you go -- well, let's start with that. When

14:13:13 5 did you go to prison in 2014?

14:13:15 6 A. It was February 14th, 2014.

14:13:18 7 Q. Okay.

14:13:21 8 A. '15? Or, was it '15?

14:13:23 9 Q. Some time in mid-February --

14:13:26 10 A. Yeah.

14:13:26 11 Q. -- of 2014? And did you remain incarcerated

14:13:28 12 throughout the rest of the year?

14:13:29 13 A. Yes, sir.

14:13:30 14 Q. Okay. And do you remember where you were

14:13:33 15 incarcerated?

14:13:34 16 A. I was incarcerated at Raleigh. I did about a year

14:13:37 17 there, and then I went to minimum security in Maury, North

14:13:41 18 Carolina.

14:13:42 19 Q. When you were incarcerated, were you incarcerated

14:13:44 20 under your current name, Cassie Jean Flowers?

14:13:46 21 A. Yes, sir.

14:13:47 22 Q. And did you use any alias or any different dates of

14:13:49 23 birth or any identifying information?

14:13:51 24 A. No, sir.

14:13:54 25 Q. At any point in time in 2014, did anyone identifying

14:13:59 1 themselves as a lawyer from Mr. Dustin Warren or an investigator
14:14:05 2 for Mr. Warren's defense team ever come to interview you?

14:14:08 3 A. No, sir.

14:14:09 4 Q. Did anyone ever request that you call them on the
14:14:11 5 phone or make a phone call to the women's prison and speak to
14:14:17 6 you regarding the facts of the case?

14:14:18 7 A. No, sir.

14:14:19 8 Q. When was the first time that anyone had contacted you
14:14:22 9 to speak to you about the facts of Mr. Warren's case?

14:14:26 10 A. When I got the Christmas card --

14:14:28 11 Q. Okay.

14:14:28 12 A. -- I guess. Well, he didn't -- he just said, "Look
14:14:31 13 what Heather says. She -- she's lying about you."

14:14:33 14 And obviously, it was lies, but he didn't say anything
14:14:37 15 at the time --

14:14:38 16 Q. Okay.

14:14:38 17 A. -- about stating the truth or anything. I didn't know
14:14:41 18 who was -- all this was going to happen.

14:14:45 19 Q. Did there come a point in time when you and I spoke
14:14:48 20 regarding the facts of the case?

14:14:49 21 A. Yes, sir.

14:14:49 22 Q. All right. And is that when you submitted the
14:14:51 23 affidavit?

14:14:52 24 A. Yes, sir.

14:14:52 25 Q. Okay. And the affidavit that you submitted, that was

14:14:59 1 signed and dated October 3rd, 2016; is that right?

14:15:01 2 A. Yes, sir.

14:15:02 3 MR. MEGARO: Thank you very much, ma'am. No further
14:15:04 4 questions for Ms. Flowers.

14:15:06 5 THE COURT: Cross-examination, Mr. Spence?

14:15:08 6 MR. SPENCE: Yes, sir.

14:15:08 7 **CROSS-EXAMINATION BY MR. SPENCE**

14:15:08 8 Q. Ms. Flowers, where were you when you signed this
14:15:10 9 affidavit?

14:15:11 10 A. What's the date on that affidavit?

14:15:13 11 Q. October 3rd, 2016.

14:15:17 12 A. I was released from prison. I was -- I don't know
14:15:22 13 where I got it notarized at, but I was home.

14:15:26 14 Q. How did you get this? Did you type this up?

14:15:30 15 A. I wrote it out, and then it was edited.

14:15:34 16 Q. Okay. You wrote it long-hand?

14:15:36 17 A. Yes, sir.

14:15:36 18 Q. And who did you send it to?

14:15:38 19 A. I sent it to my mother.

14:15:41 20 Q. Okay. And --

14:15:43 21 A. And edited it.

14:15:44 22 Q. Did you have instructions for her to give it to
14:15:46 23 somebody?

14:15:48 24 A. No, sir.

14:15:48 25 Q. Okay. So you -- where is that piece of paper? Does

14:15:53 1 your mother still have it?

14:15:56 2 A. No -- what do you mean?

14:15:58 3 Q. Why did you fill -- why did you even write out a piece
14:16:02 4 of paper about what happened? Why did you do that?

14:16:04 5 A. Because I was sent the trial transcripts where Heather
14:16:07 6 Kennon lied.

14:16:07 7 Q. Okay. Who sent you those?

14:16:09 8 A. Dustin sent me those.

14:16:10 9 Q. From jail?

14:16:11 10 A. Yes.

14:16:13 11 Q. Did he tell -- did Dustin tell you what to put -- put
14:16:15 12 to write down?

14:16:16 13 A. No, he didn't tell me what to write down.

14:16:18 14 Q. He just sent you those transcripts; there was no
14:16:20 15 instruction, and no talk about what you should mention in this
14:16:24 16 letter?

14:16:25 17 A. No.

14:16:25 18 Q. So you just -- you just made -- you just figured on
14:16:28 19 your own to draft a document and give it to your mother?

14:16:32 20 A. Well, I wrote down facts about the case.

14:16:35 21 Q. Why?

14:16:37 22 A. With help.

14:16:38 23 Q. Who?

14:16:40 24 A. With Dustin.

14:16:41 25 Q. With Dustin's help?

14:16:42 1 A. Yes.

14:16:42 2 Q. Okay. Were you-all in the same prison area?

14:16:45 3 A. No. No.

14:16:45 4 Q. Communicating, though, by letter?

14:16:47 5 A. Yes.

14:16:48 6 Q. From prison to prison?

14:16:50 7 A. Yes.

14:16:50 8 Q. And Dustin would tell you things to put, and you would

14:16:54 9 write them down?

14:16:54 10 A. No, he never asked me to lie or anything like that.

14:16:56 11 Q. I know that.

14:16:57 12 A. I'm only here to state the truth. Yes, sir.

14:16:59 13 Q. I understand that. Because you're a truthful person.

14:17:02 14 But did Dustin tell you what you should mention in your letter?

14:17:06 15 A. The facts that I need to mention, yes, sir.

14:17:08 16 Q. He told you -- he suggested things you should mention?

14:17:11 17 A. I'm not -- I wouldn't never say anything that I

14:17:13 18 wouldn't say by myself.

14:17:14 19 Q. You weren't here for the trial, correct?

14:17:16 20 A. Correct. I was not.

14:17:17 21 Q. You had nothing to do and you have no idea what

14:17:19 22 happened on January 28th or 29th, 2014, by your own testimony,

14:17:23 23 correct?

14:17:25 24 A. 2014?

14:17:26 25 Q. The date this happened?

14:17:28 1 A. Yeah.

14:17:29 2 Q. The date Dustin was arrested.

14:17:31 3 A. I was not there when he was arrested.

14:17:32 4 Q. Exactly. You don't know anything about what happened
14:17:35 5 dealing with that meth lab, do you?

14:17:37 6 A. No, I don't -- I don't know about the meth stuff, but
14:17:40 7 I can tell you that I was home at that time and no one came by
14:17:43 8 my house. That's what I'm here saying.

14:17:43 9 Q. Okay. So the only thing you know about is the cold
14:17:45 10 packs?

14:17:46 11 A. I didn't know what a cold pack was at the time, but
14:17:49 12 now I do.

14:17:52 13 Q. Okay. So anyway, your testimony is limited to one
14:17:55 14 thing: That either Dustin or Heather didn't come by your house,
14:18:00 15 or you didn't see them come by your house on that one day?

14:18:02 16 A. Yes, sir.

14:18:02 17 Q. That's the only thing you can possibly add to this
14:18:05 18 case, right?

14:18:06 19 A. That no one came by my house.

14:18:08 20 Q. Right. Okay. Did you leave your house at all by
14:18:11 21 foot?

14:18:11 22 A. No. No, sir.

14:18:12 23 Q. It was a bad snow, wasn't it?

14:18:13 24 A. Yes, sir. Yes, sir.

14:18:14 25 Q. As a matter of fact, that highrise bridge from

14:18:15 1 Atlantic Beach to Morehead was closed, wasn't it?

14:18:18 2 A. Yes, sir.

14:18:18 3 Q. It was. You couldn't get over it, could you?

14:18:21 4 A. No, sir.

14:18:24 5 Q. Where did you live in Morehead City?

14:18:26 6 A. Actually, it was Wilson's(sic) Trailer Park.

14:18:29 7 Q. Okay.

14:18:29 8 A. I had a trailer there.

14:18:30 9 Q. And who -- was that your trailer?

14:18:32 10 A. Yes, sir. Well --

14:18:32 11 Q. In your name?

14:18:33 12 A. I was renting it in my name. Yes, sir.

14:18:35 13 Q. Okay. And what was your rent there?

14:18:39 14 A. Like, 4- or \$500 a month.

14:18:41 15 Q. Okay. You have a lot of friends that come visit that

14:18:43 16 trailer, right?

14:18:44 17 A. Yes, sir.

14:18:44 18 Q. And did any of them happen to stop by that day?

14:18:48 19 A. No. No, sir. Nobody came by at all.

14:18:50 20 Q. You just couldn't get around to Morehead City?

14:18:52 21 A. No, I couldn't. I didn't -- I was sleeping.

14:18:54 22 Q. Okay. Did you have Internet access?

14:18:58 23 A. I'm pretty sure my phone did.

14:19:01 24 Q. TV?

14:19:02 25 A. Yeah. Yes, sir. Yes, sir.

14:19:02 1 Q. Okay. What did -- what did you do -- you testified
14:19:04 2 that you were there all day the 28th and 29th. What did you
14:19:08 3 have for lunch the day of the 28th?

14:19:10 4 A. Cereal and Ramen noodles.

14:19:12 5 Q. Okay.

14:19:14 6 A. I was -- yeah.

14:19:15 7 Q. How about for dinner?

14:19:18 8 A. I don't remember.

14:19:18 9 Q. What time did you go to bed?

14:19:20 10 A. I probably slept all those two days. You know,
14:19:23 11 sleeping, waking up.

14:19:24 12 Q. Okay. At that time, you were addicted to drugs,
14:19:27 13 weren't you?

14:19:28 14 A. Yes, sir.

14:19:29 15 Q. What drugs?

14:19:33 16 A. Xanax. Methamphetamine.

14:19:36 17 Q. Methamphetamine. And do you know a person named
14:19:40 18 Brandon Hobbs?

14:19:41 19 A. Yes, sir.

14:19:41 20 Q. How do you know him?

14:19:43 21 A. I know him.

14:19:44 22 Q. How do you know him?

14:19:46 23 A. I know him from outside.

14:19:48 24 Q. I know that. How?

14:19:50 25 A. From Facebook.

14:19:52 1 Q. Have you ever met him, or are you just on Facebook
14:19:54 2 with him?

14:19:55 3 A. I've met him.

14:19:55 4 Q. And you hung around him, haven't you?

14:19:57 5 A. Yes, sir.

14:19:57 6 Q. Hung around him and Dustin?

14:19:59 7 A. Yes, sir.

14:19:59 8 Q. Where do they live?

14:20:01 9 A. I do not recall. I think at the Beach.

14:20:03 10 Q. You ever been to Dustin's house when you were dating
14:20:05 11 him?

14:20:06 12 A. One time.

14:20:06 13 Q. Only one time? Would he come to your house all --
14:20:09 14 most of the time?

14:20:10 15 A. Yes, sir.

14:20:11 16 Q. You dated him how long?

14:20:14 17 A. Briefly. About four months.

14:20:15 18 Q. So again, four months at a time. How many times did
14:20:18 19 he come to your house?

14:20:19 20 A. Um, numerous times.

14:20:21 21 Q. You go to his house more than once, ever?

14:20:25 22 A. No. No, sir.

14:20:26 23 Q. Did Brandon live with him?

14:20:28 24 A. No, sir. No. No, sir.

14:20:29 25 Q. Where did Brandon live?

14:20:30 1 A. I'm not sure about Brandon at that time.

14:20:32 2 Q. Okay. You know what Brandon does, don't you? You

14:20:35 3 know what he -- he's involved in drugs?

14:20:36 4 A. Yes, sir.

14:20:37 5 Q. Cooks it. Cooks meth, doesn't he?

14:20:39 6 A. No, sir. Not that I'm aware of.

14:20:40 7 Q. You don't know about that?

14:20:41 8 A. No, sir.

14:20:41 9 Q. Who did you get your meth from?

14:20:44 10 A. On the street.

14:20:45 11 Q. Who?

14:20:47 12 A. Just -- I don't know.

14:20:48 13 Q. Same people?

14:20:49 14 A. I don't know.

14:20:49 15 Q. Tell us who you bought meth from, to -- you're a meth

14:20:52 16 addict; you bought meth, right?

14:20:54 17 A. I would get it from my friends.

14:20:56 18 Q. Who? Give us some names.

14:20:58 19 A. I don't recall.

14:20:59 20 MR. LUPTON: Objection.

14:20:59 21 THE COURT: Sustained.

14:21:07 22 BY MR. SPENCE

14:21:14 23 Q. So where were you when this trial occurred in

14:21:17 24 September of 2014? Were you incarcerated?

14:21:25 25 A. Yes. What date was it?

14:21:28 1 Q. September of 2014.

14:21:29 2 A. September, I don't believe I was.

14:21:38 3 Q. Did you have pending charges then from -- different

14:21:40 4 pending charges -- not these -- but different ones at that time

14:21:42 5 that had been resolved?

14:21:44 6 A. Yes. I had pending charges.

14:21:46 7 Q. Okay. Who was your lawyer in those cases?

14:21:48 8 A. Jim Lupton.

14:21:50 9 Q. On the cases that were pending in 2014?

14:21:52 10 A. Yes, sir.

14:21:53 11 Q. Okay. And you had no idea what was said at the trial,

14:21:58 12 who testified to what at the trial, or anything like that, did

14:22:00 13 you?

14:22:01 14 A. Well, I did receive the transcripts, but that's --

14:22:03 15 that's --

14:22:04 16 Q. I'm talking first-hand knowledge.

14:22:06 17 A. No, sir.

14:22:13 18 Q. Okay. When did you first hear from Mr. Megaro about

14:22:19 19 filing this affidavit?

14:22:23 20 A. Well, I had -- I wrote up some stuff while I was in

14:22:26 21 prison, but I -- after I got out, that's when I spoke with him.

14:22:29 22 Q. Okay. Now, you said you wrote it up in prison; you

14:22:32 23 gave it to your mother?

14:22:32 24 A. Yes.

14:22:33 25 Q. Do you know what she was supposed to do with it?

14:22:35 1 A. Just to edit it, look for mistakes.

14:22:37 2 Q. How would she know?

14:22:38 3 A. I mean, like, you know, punctuation and stuff.

14:22:40 4 Q. Okay. And when did you receive this typed affidavit?

14:22:44 5 A. Um, I received that while I was in prison.

14:22:49 6 Q. Okay. And did the things you write -- wrote in your
14:22:52 7 handwritten letter, are they exactly the same as here, the
14:22:55 8 facts?

14:22:55 9 A. Yes. And some of the stuff wasn't necessary so they
14:22:58 10 left that out.

14:22:59 11 Q. What was that stuff?

14:23:00 12 A. I don't remember, but the -- I don't remember. It
14:23:03 13 wasn't factual.

14:23:04 14 Q. Well, what was it?

14:23:05 15 A. I can't recall.

14:23:09 16 Q. Did it have to do with what you were talking about,
14:23:11 17 the case and the transcript?

14:23:12 18 A. No, sir.

14:23:14 19 Q. Dustin told you to write about the transcript, right?

14:23:17 20 A. Yes, sir.

14:23:17 21 Q. And you wrote some stuff in there?

14:23:18 22 A. Yes.

14:23:19 23 Q. And then somebody -- you took it out?

14:23:22 24 A. We're just sticking to the facts. The facts, just to
14:23:24 25 keep it simple.

14:23:25 1 Q. Okay. Now, your criminal history, if I could just go
14:23:35 2 over your criminal convictions. I think they're all less than
14:23:40 3 10 years old. And just tell me, yes or no, whether these -- you
14:23:43 4 were convicted of those crimes. You're Cassie Jean Flowers;
14:23:47 5 date of birth 2/21/89?

14:23:51 6 A. Yes, sir.

14:23:53 7 Q. Convicted in Carteret County in May of 2007,
14:23:56 8 Misdemeanor Larceny?

14:23:59 9 A. Yes, sir.

14:24:01 10 Q. Speak up, please. Guilty on -- convicted on
14:24:04 11 January 28th, 2008, Resisting a Public Officer?

14:24:09 12 A. Yes, sir.

14:24:10 13 Q. Possession of Malt Beverage Under Age in -- on
14:24:14 14 August 2007?

14:24:15 15 A. Yes, sir.

14:24:20 16 Q. Possession of Stolen Goods, misdemeanor version, on
14:24:23 17 October 8th, 2008, in Carteret County?

14:24:25 18 A. Yes, sir.

14:24:29 19 Q. Assault Inflicting Serious Injury, convicted on
14:24:32 20 12/12/2008, in Carteret County?

14:24:34 21 A. Yes, sir.

14:24:37 22 Q. Another Misdemeanor Larceny conviction in Carteret
14:24:38 23 County on 10/10 -- I mean, I'm sorry -- 10/1/2010; is that
14:24:43 24 correct?

14:24:44 25 A. Yes, sir.

14:24:45 1 Q. And Mr. Lupton represented your whole entire history
14:24:49 2 in court, correct?

14:24:50 3 A. Yes, sir.

14:24:54 4 Q. Convicted of Shoplifting in Carteret County,
14:24:57 5 April 1st, 2013?

14:24:59 6 A. Yes, sir.

14:25:01 7 Q. Convicted of Possession of Drug Paraphernalia on
14:25:07 8 May -- I'm sorry -- April 1st, 2013?

14:25:11 9 A. Yes, sir.

14:25:14 10 Q. Convicted on -- of Maintaining a Vehicle or Dwelling
14:25:17 11 for the Purpose of Storing, Using or Selling Controlled
14:25:20 12 Substances, on October 9th, 2012?

14:25:24 13 A. Yes, sir.

14:25:27 14 Q. Convicted of Felonious Possession of Stolen Goods in
14:25:31 15 Carteret County on October 9th, 2012; correct?

14:25:34 16 A. Yes, sir.

14:25:37 17 Q. Felonious Breaking or Entering conviction, 4/16/2014,
14:25:39 18 in Carteret County?

14:25:44 19 A. Yes, sir.

14:25:44 20 Q. And you got a 10-to-12-month sentence; is that
14:25:46 21 correct?

14:25:47 22 A. Yes, sir.

14:25:47 23 Q. So that's what you would have been in jail on in
14:25:49 24 September of 2014, correct?

14:25:51 25 A. Yes, sir.

14:26:01 1 Q. Another conviction for Maintaining a Dwelling or
14:26:04 2 Vehicle for the Purpose of Using, Possessing or Selling
14:26:07 3 Controlled Substances, April 16, 2014?

14:26:11 4 A. Yes, sir.

14:26:12 5 Q. And at some point, you went down to Costa Rica; is
14:26:16 6 that right?

14:26:17 7 A. Yes, sir.

14:26:17 8 Q. When did you go down to Costa Rica?

14:26:20 9 A. I went to Costa Rica October 23rd -- was it 2016?

14:26:27 10 Q. And how long did you stay down there?

14:26:29 11 A. I stayed down there until February 3rd.

14:26:32 12 Q. February 3rd, 2017?

14:26:35 13 A. (Witness nods her head).

14:26:35 14 Q. And what would -- why did you go to Costa Rica?

14:26:38 15 A. I went to Costa Rica to get clean.

14:26:41 16 Q. Okay.

14:26:41 17 A. In a 90-day drug program.

14:26:43 18 Q. Okay. So you were a drug addict or drug user during
14:26:51 19 September of 2014, of course, right?

14:26:54 20 A. Yes, sir. I was in active addiction.

14:26:57 21 Q. And how often would you use?

14:27:00 22 A. All day, every day.

14:27:01 23 Q. All day, every day. And you said it was Xanax and
14:27:03 24 meth?

14:27:04 25 A. Yes, sir.

14:27:04 1 Q. And what effect would it have on your ability to
14:27:07 2 recall things?

14:27:09 3 A. Quite a lot.

14:27:10 4 Q. And you said you slept most of the time?

14:27:13 5 A. Yes, sir.

14:27:13 6 Q. So if somebody had come by your house -- and just come
14:27:15 7 by your house -- you wouldn't have heard it, but you said your
14:27:20 8 dog would have heard it?

14:27:21 9 A. Yes, sir. My doors are always locked.

14:27:24 10 Q. Okay. Again -- I understand that. But you're -- what
14:27:29 11 you're saying is that since the dog didn't wake you up, you
14:27:33 12 concluded that no one came by, correct?

14:27:36 13 A. Yes. Nobody came by my house. I'm a hundred percent
14:27:39 14 sure.

14:27:39 15 Q. Why is that, if you were asleep?

14:27:42 16 A. I would have woken up. That's for sure.

14:27:45 17 Q. Why would you have woken up?

14:27:46 18 A. Because they would have knocked at the door, my dog
14:27:48 19 would have(demonstrating). He would have started barking.

14:27:50 20 Q. Okay. So essentially, you're relying on the dog to
14:27:53 21 wake you up if someone's at your door; is that your testimony?

14:27:55 22 A. Well, dog or not, I would have woken up.

14:27:58 23 Q. Okay. Did they say -- did the transcript say they
14:28:00 24 pounded on your door?

14:28:02 25 A. No, sir.

14:28:02 1 Q. Did they say they knocked on your door?

14:28:03 2 A. They said they came in the house.

14:28:05 3 Q. They said they came in?

14:28:06 4 A. My doors are definitely locked. This is Willis's

14:28:08 5 Trailer Park we're taking about.

14:28:12 6 Q. So it was a trailer?

14:28:13 7 A. Yes.

14:28:14 8 Q. Dustin ever have a key to it?

14:28:15 9 A. No, definitely not.

14:28:17 10 Q. Ever?

14:28:17 11 A. No, sir.

14:28:18 12 Q. Ever use a key?

14:28:18 13 A. No, sir.

14:28:18 14 Q. Never used it?

14:28:19 15 A. No, sir.

14:28:20 16 Q. Ever use your car?

14:28:21 17 A. Yes. He used my car.

14:28:22 18 Q. Was your -- was your house key on the -- on the key

14:28:24 19 ring?

14:28:24 20 A. No. No, sir.

14:28:25 21 Q. It was a separate key?

14:28:26 22 A. Yes. I kept it in my pocket at all times.

14:28:28 23 Q. Okay. Now, when you came back, why did -- why did you

14:28:30 24 come back from Costa Rica?

14:28:32 25 A. Well, I came back to -- to spend my birthday with my

14:28:37 1 family, and my father passed away that day.

14:28:42 2 Q. What, on the 3rd?

14:28:43 3 A. Yes, sir.

14:28:44 4 Q. And so his funeral arrangements were done the
14:28:47 5 subsequent week; is that correct?

14:28:49 6 A. Yes, sir.

14:28:49 7 Q. And so you just got back to Carteret County, and you
14:28:54 8 were -- you actually got new charges and pled guilty to those
14:28:58 9 charges while you came back for that short period of time,
14:29:00 10 correct?

14:29:01 11 A. What were those charges?

14:29:02 12 Q. Well, they were Simple Possession of a Schedule-IV
14:29:05 13 Controlled Substance, a date of offense -- well, actually,
14:29:09 14 pending warrants. 2/15 of 2017 you took care of that with
14:29:14 15 Mr. Lupton in court, correct?

14:29:15 16 A. Yes, sir. That happened before I went.

14:29:16 17 Q. Okay.

14:29:16 18 A. I didn't take care of it until after.

14:29:18 19 Q. Okay.

14:29:18 20 A. I remember.

14:29:19 21 Q. I got it. So while you were here, you took care of
14:29:22 22 these court dates?

14:29:23 23 A. Yes, sir.

14:29:28 24 Q. And you have a conviction out of Craven County for
14:29:33 25 Obtaining Property by False Pretenses that occurred on

14:29:36 1 6/26/2014, correct?

14:29:38 2 A. Yes, sir.

14:29:39 3 Q. And a District Court conviction for Assault with a
14:29:43 4 Deadly Weapon, conviction date 6/27/2014, correct?

14:29:48 5 A. Yes, sir.

14:29:49 6 Q. So you're in jail; they brought you back to plead to
14:29:52 7 those while you were in jail?

14:29:54 8 A. Yes, sir.

14:29:54 9 MR. SPENCE: That's all I have.

14:30:12 10 THE COURT: Any redirect?

14:30:13 11 MR. MEGARO: Your Honor, before Mr. Spence concludes
14:30:16 12 his cross-examination, my client just handed me photocopies that
14:30:20 13 he had in his folder of the handwritten statement of
14:30:22 14 Ms. Flowers. It's not signed. And I also have one from
14:30:26 15 Mr. Thomas. I didn't have these prior. And I think in all
14:30:29 16 fairness, Mr. Spence should be allowed to look at them. Like I
14:30:32 17 say, there doesn't appear to be anything materially different
14:30:35 18 other than just long-windedness, but I'll hand these up.

14:30:38 19 THE COURT: He can take a look at them while you
14:30:40 20 conduct any redirect that you want to conduct.

14:30:43 21 MR. MEGARO: Thank you.

14:30:43 22 THE COURT: And then I'll let you re-cross if you find
14:30:46 23 it's necessary.

14:30:47 24 MR. SPENCE: Yes, sir.

14:30:48 25 MR. MEGARO: One moment, please.

14:30:48 1 (Mr. Megaro confers with his client.)

14:30:50 2 MR. MEGARO: Judge, I have no redirect for
14:30:58 3 Ms. Flowers. But if Mr. Spence has additional questions based
14:31:01 4 on these of pieces of paper, I'm fine with it.

14:31:04 5 THE COURT: Thank you, sir.

14:31:04 6 (Mr. Spence examines documents.)

14:31:13 7 MR. SPENCE: Is it back to me?

14:31:41 8 THE COURT: Yes, sir.

14:31:41 9 (State's Exhibit MAR Number [1] marked for
14:31:41 10 identification.)

14:31:41 11 **EXAMINATION BY MR. SPENCE**

14:31:41 12 Q. Ms. Flowers, I'm going to mark for identification this
14:31:46 13 handwritten document -- I think it's four pages -- as State's
14:31:51 14 Exhibit [1] -- State's MAR Exhibit [1]. I'm going to hand you
14:32:14 15 this and ask you if you can identify that.

14:32:17 16 A. Yes. This is my handwriting. I wrote this.

14:32:20 17 Q. And when did you write that?

14:32:23 18 A. Let's see. I don't know the exact date, but while I
14:32:27 19 was incarcerated.

14:32:28 20 Q. Okay. Hand that back. But this is your handwriting?

14:32:32 21 A. Yes, sir.

14:32:32 22 Q. And did you -- is this -- is this the handwritten
14:32:38 23 thing you wrote?

14:32:39 24 A. Yes, sir.

14:32:39 25 Q. Why did you put this caption on it, this legal

14:32:42 1 caption, on some handwritten note that you did?

14:32:45 2 A. I'm not sure. Just to make it look like a court
14:32:48 3 document.

14:32:48 4 Q. Make it look official?

14:32:50 5 A. Yes, sir. I guess.

14:32:55 6 Q. And, again, let me just go down there. And you
14:33:03 7 said -- you said, "I, Cassie Jean Flowers, being at least 18
14:33:08 8 years of age and of sound mind, after first being duly sworn,
14:33:12 9 does depose and state the following:" Did you write that?

14:33:15 10 A. Yes, sir.

14:33:15 11 Q. Why did you write those words if you were just going
14:33:18 12 to write a letter about what happened?

14:33:19 13 A. To make it look like a court document.

14:33:21 14 Q. Did you -- well, did you know those words?

14:33:24 15 A. Yes.

14:33:24 16 Q. "After being fully -- being duly sworn does depose and
14:33:31 17 state the following." You knew how to put that down in a
14:33:34 18 letter?

14:33:34 19 A. Yes, sir.

14:33:34 20 Q. You say, "I am currently incarcerated at the North
14:33:40 21 Carolina Department of Corrections located at Maury, North
14:33:43 22 Carolina"?

14:33:44 23 A. Yes, sir.

14:33:44 24 Q. You wrote that down? Did you write all these numbers
14:33:47 25 down and these paginations and margins, stuff like that, all

14:33:51 1 that by yourself?

14:33:52 2 A. Just little paragraphs and numbers. Yes, sir.

14:33:54 3 Q. So this is how it went to Dustin's mother, just like
14:33:57 4 this?

14:33:57 5 A. To my mother, yes.

14:33:59 6 Q. To your mother?

14:34:01 7 A. Yes.

14:34:01 8 Q. So this was the only thing -- there's not another
14:34:04 9 writing anywhere that went to your mother about this?

14:34:08 10 A. No. No, sir.

14:34:08 11 Q. Okay. It says, "I am and was a willing witness in
14:34:12 12 Dustin Warren's case, but I was not given the opportunity to
14:34:15 13 testify at the trial despite a court order writ of habeas corpus
14:34:19 14 that was issued by the judge to have me brought to trial from
14:34:21 15 the Department of Corrections." You wrote that?

14:34:24 16 A. Yes, sir.

14:34:24 17 Q. How did you learn all this legal language?

14:34:27 18 A. It's a prison. There's plenty of legal help there.

14:34:30 19 Q. So did you -- did you use someone to guide you?

14:34:33 20 A. Yes.

14:34:34 21 Q. What -- and who gave you that?

14:34:35 22 A. The other girls there, the women there that had been
14:34:38 23 through the same thing.

14:34:38 24 Q. The same thing what?

14:34:40 25 A. The same -- this kind of -- a Motion of Appropriate

14:34:42 1 Relief and --

14:34:42 2 Q. Trying to help somebody else out?

14:34:45 3 A. Yes.

14:34:45 4 Q. So they told you how to write an affidavit up?

14:34:48 5 A. Yes, sir.

14:34:48 6 Q. Did they tell you what to say in it?

14:34:50 7 A. No, that's -- that was me.

14:34:51 8 Q. Okay. You've had no communication with Dustin Warren

14:35:05 9 since December of 2013, correct?

14:35:09 10 A. Yes, sir.

14:35:10 11 Q. But he communicated with you in December of 2014?

14:35:12 12 A. In 2015, when I was in Raleigh in prison.

14:35:18 13 Q. 2015 or '14?

14:35:20 14 A. It was '15. Whatever that says.

14:35:22 15 Q. This says '14.

14:35:24 16 A. Does it? Well, that's when he commun -- he sent me a

14:35:26 17 Christmas card with some transcripts.

14:35:30 18 Q. Well, the trial was in September. Did he have the

14:35:32 19 transcripts before then?

14:35:34 20 A. Well, he had them at that time.

14:35:56 21 Q. So you were home alone, and if anyone had come to your

14:35:59 22 house, your dog Rusty would have barked to warn you?

14:36:03 23 A. Yes, sir. I would have woken up. Yes, sir.

14:36:05 24 Q. Okay. You write -- or you said in this that, "There's

14:36:12 25 never been any ingredients to make homemade drugs in your home."

14:36:16 1 Is that correct?

14:36:17 2 A. That's correct. Not for the use of making drugs.

14:36:19 3 Yes, sir.

14:36:22 4 Q. But there have been drug ingredients in your home,
14:36:25 5 paraphernalia?

14:36:27 6 A. Paraphernalia.

14:36:27 7 Q. Okay. Are you familiar how meth is made?

14:36:33 8 A. No, sir. Not at that time.

14:36:38 9 Q. It says, "Sleet, snow and ice, because subzero
14:36:41 10 temperatures made travel extremely dangerous in the hours of
14:36:44 11 January 29th, 2014." Is that correct?

14:36:46 12 A. Yes, sir.

14:36:47 13 Q. Said, "And the bridge was closed," right?

14:36:48 14 A. Yes, sir.

14:36:48 15 Q. You knew where Mark Thomas lived at that time?

14:36:51 16 A. No, sir.

14:36:52 17 Q. So it would not have been possible for him to drive
14:36:56 18 his car from Morehead to Atlantic Beach on those days, would it?

14:36:59 19 A. Not unless he was already at the Beach.

14:37:02 20 Q. You couldn't get over the bridge, right?

14:37:04 21 A. Yes, sir.

14:37:04 22 Q. So if he says he drove from Morehead to Atlantic Beach
14:37:07 23 on those two days to visit Anique Pittman, that would not be
14:37:13 24 true, would it?

14:37:13 25 A. If he was already from Morehead to the Beach?

14:37:17 1 Q. Yes. If he -- if he drove over there on those days
14:37:20 2 when the bridge was closed.

14:37:22 3 A. Maybe -- maybe if he had a two -- a four-wheel-drive
14:37:25 4 vehicle. But I know I wasn't going to take my two-wheel-drive
14:37:26 5 over it.

14:37:26 6 Q. Okay. But you said -- you said the bridge was closed.

14:37:32 7 A. Yes. There's people who would still drive over it,
14:37:36 8 but it was closed.

14:37:37 9 MR. SPENCE: Offer State's MAR [1] into evidence, just
14:37:44 10 to --

14:37:44 11 THE COURT: Any objection?

14:37:44 12 MR. MEGARO: No, Your Honor.

14:37:46 13 MR. SPENCE: -- corroborate whatever it was.

14:37:48 14 THE COURT: It is received. Madame Clerk will make a
14:37:50 15 copy so that the defendant may get another copy.

14:37:54 16 (State's Exhibit MAR Number [1] received in
14:37:54 17 evidence.)

14:37:55 18 MR. MEGARO: Thank you.

14:37:59 19 MR. SPENCE: That's all.

14:37:59 20 THE COURT: Any redirect?

14:37:59 21 MR. MEGARO: No, Your Honor. Thank you.

14:38:01 22 THE COURT: Thank you, ma'am. You may stand down.

14:38:02 23 (The witness stepped down from the witness
14:38:02 24 stand.)

14:38:02 25 THE COURT: Call your next witness.

14:38:04 1 MR. MEGARO: Defense would call Mark Thomas.

14:39:14 2 THE COURT: All right. If you would, please, Madame
14:39:15 3 Clerk, swear the witness.

14:39:17 4 (The witness was duly sworn.)

14:39:27 5 (The witness took the witness stand.)

14:39:27 6 THE COURT: You may inquire.

14:39:27 7 MR. MEGARO: Thank you, Your Honor.

14:39:27 8

14:39:27 9 **MARK THOMAS,**

14:39:27 10 having been first duly sworn, at 2:39 p.m. was called as a
14:39:27 11 witness on behalf of the Defendant and testified as follows:

14:39:27 12 **DIRECT EXAMINATION BY MR. MEGARO**

14:39:42 13 Q. Mr. Thomas, are you currently incarcerated?

14:39:44 14 A. Yes, sir.

14:39:45 15 Q. In which prison are you currently housed in?

14:39:48 16 A. I'm in Marion. Marion Correctional.

14:39:52 17 Q. Now, I want to -- by the way, what is your release
14:39:56 18 date of your current sentence?

14:39:59 19 A. January 31st, '21.

14:40:02 20 Q. Thank you. Mr. Thomas, how do you know Dustin Warren?

14:40:09 21 A. He's a good friend of mine. I really don't know
14:40:13 22 Dustin all as much as I do his brother. I was -- his brother
14:40:16 23 was, like, my best friend. That's how I came to meet Dustin.
14:40:20 24 We had a brief relationship. I have only known him maybe a
14:40:25 25 year, year and a half.

14:40:26 1 Q. Okay, sir. I want to draw your attention now to
14:40:30 2 January 29th, 2014. Were you in the company of Mr. Warren on
14:40:34 3 that date?

14:40:35 4 A. Yes, sir.

14:40:35 5 Q. Okay. And when did you leave his company on
14:40:41 6 January 29th, 2014?

14:40:44 7 A. I'm assuming it would be when we got arrested.

14:40:47 8 Q. You were both arrested together?

14:40:49 9 A. Yes, sir.

14:40:49 10 Q. And was it at that point that you two were separated?

14:40:51 11 THE COURT: Hold on one second. There's somebody back
14:40:55 12 there talking.

14:40:57 13 THE SHERIFF: I think it's -- they're working on
14:40:58 14 the --

14:40:58 15 THE COURT: Oh, it is?

14:40:58 16 THE SHERIFF: Yeah. I think they're up --

14:41:00 17 THE BAILIFF: I think they're in the attic.

14:41:02 18 THE COURT: All right. I beg your pardon. You may
14:41:04 19 continue, sir.

14:41:05 20 BY MR. MEGARO

14:41:05 21 Q. Since January 29th -- I'm sorry. Were you arrested on
14:41:13 22 January 29th, 2014, or January 30th, 2014?

14:41:19 23 A. I'm not -- no --

14:41:19 24 Q. Okay.

14:41:19 25 A. -- 100 percent sure neither. The same day -- whatever

14:41:21 1 date Dustin was arrested. We was both arrested at the same
14:41:25 2 time. Different charges, but the same time.

14:41:26 3 Q. All right. What were you arrested for on that date?

14:41:28 4 A. Um, Larceny of a Motor Vehicle, or Possession of a
14:41:34 5 Stolen Motor Vehicle.

14:41:35 6 Q. Possession of a?

14:41:36 7 A. Stolen Motor Vehicle.

14:41:37 8 Q. Okay. Just, if you could, keep your voice up.

14:41:40 9 A. Yes, sir.

14:41:40 10 Q. I'm having a little trouble hearing you. And did
14:41:44 11 whatever you were arrested for, did that have anything to do
14:41:47 12 with what --

14:41:47 13 A. Nothing at all.

14:41:48 14 Q. -- Mr. Warren was arrested for?

14:41:49 15 A. Nothing at all.

14:41:50 16 Q. Were you ever charged with anything that Mr. Warren
14:41:53 17 had been --

14:41:53 18 A. No, sir.

14:41:53 19 Q. -- arrested and charged with?

14:41:56 20 A. Nothing.

14:41:58 21 Q. When was the last time -- when was the next time that
14:42:00 22 you saw Dustin Warren?

14:42:01 23 A. Today.

14:42:02 24 Q. So you haven't seen him since January 2014 until
14:42:05 25 today?

14:42:06 1 A. No.

14:42:09 2 Q. Mr. Thomas, when you were arrested on January 29th or
14:42:13 3 30th, 2014, were you incarcerated for the remainder of that
14:42:17 4 year?

14:42:18 5 A. No. I --

14:42:21 6 Q. -- were you released --

14:42:21 7 COURT REPORTER: I'm sorry. I didn't hear you.

14:42:21 8 THE WITNESS: No, I -- I was not.

14:42:21 9 BY MR. MEGARO

14:42:21 10 Q. Okay.

14:42:23 11 A. I got out. I got out that same day.

14:42:26 12 Q. All right.

14:42:26 13 A. And I was re-arrested in March. I have been locked up
14:42:29 14 since March.

14:42:30 15 Q. March of 2014?

14:42:31 16 A. 2014.

14:42:32 17 Q. And is that for the sentence that you're currently
14:42:34 18 serving?

14:42:35 19 A. Yes, sir.

14:42:36 20 Q. So if you were arrested in March of 2014, were you
14:42:39 21 incarcerated in September of 2014?

14:42:43 22 A. Yeah.

14:42:43 23 Q. Were you incarcerated? Do you know?

14:42:47 24 A. September, I think I was in Pender.

14:42:50 25 Q. Pender?

14:42:50 1 A. No, no. I was sent -- I was -- I was still in
14:42:52 2 Guilford County Jail.

14:42:53 3 Q. At the Guilford County Jail?

14:42:55 4 A. Yes, sir. In September of 2014.

14:42:56 5 Q. Did you have charges pending?

14:42:57 6 A. Yes.

14:42:58 7 Q. All right. Did you ever have the opportunity to speak
14:43:03 8 with a Ms. Ann Scadden regarding Dustin Warren?

14:43:08 9 A. Yes, I did.

14:43:08 10 Q. And was it your understanding that Ms. Scadden was an
14:43:12 11 investigator from Mr. Warren's defense attorney?

14:43:14 12 A. Yes.

14:43:14 13 Q. When you spoke with Ms. Scadden, did you give her
14:43:17 14 information regarding the case?

14:43:18 15 A. Yes.

14:43:19 16 Q. And did she ask you questions about what you knew?

14:43:24 17 A. I vaguely remember that. I don't -- she didn't ask
14:43:27 18 very much. She said that somebody would be getting back in
14:43:30 19 touch with me.

14:43:30 20 Q. Okay. Did anyone ever get back in touch with you?

14:43:34 21 A. No.

14:43:34 22 Q. Did anyone visit you at the Guilford County Jail --

14:43:37 23 A. No.

14:43:37 24 Q. -- prior to September 2014, other than Ms. Scadden, to
14:43:42 25 speak to you regarding your --

14:43:43 1 A. No.

14:43:43 2 Q. -- information? Where did you meet with Ms. Scadden?

14:43:47 3 A. Here at the Public Defender's Office.

14:43:49 4 Q. Okay.

14:43:50 5 A. Or somewhere right here in the back of the courthouse.

14:43:52 6 Q. Okay. So at this building, you believe?

14:43:54 7 A. Yeah.

14:43:55 8 Q. And when was that; do you remember?

14:43:58 9 A. Within two or three days of Dustin being arrested.

14:44:00 10 Q. Okay. Did you ever speak -- other than Ms. Scadden,

14:44:07 11 did you ever speak with any attorneys regarding Dustin Warren's

14:44:11 12 case?

14:44:11 13 A. No.

14:44:12 14 Q. Did anyone ever contact you by letter, by telephone,

14:44:16 15 or send a message through somebody else --

14:44:18 16 A. No.

14:44:19 17 Q. -- that they needed to speak to you about this?

14:44:21 18 A. No.

14:44:22 19 Q. Who was the first attorney that you spoke to regarding

14:44:24 20 Dustin Warren's case?

14:44:25 21 A. You.

14:44:26 22 Q. And do you recall when that was?

14:44:27 23 A. Today.

14:44:28 24 Q. Prior to today?

14:44:29 25 A. Yeah. I mean, you sent me notifications that we had

14:44:34 1 the trial or we might be coming for this hearing or whatever.

14:44:37 2 Q. Okay.

14:44:38 3 A. But as far as speaking to you personally? Today.

14:44:41 4 Q. Did there come a point in time when Dustin Warren sent
14:44:46 5 you any information as to -- to review anything regarding this
14:44:50 6 case?

14:44:50 7 A. Yes.

14:44:51 8 Q. And when was that, if you recall?

14:44:57 9 A. It would probably be in 2015.

14:45:00 10 Q. All right.

14:45:01 11 A. Maybe when I was -- I was at Burgaw. I was at Pender
14:45:05 12 Correctional then.

14:45:05 13 Q. All right.

14:45:05 14 A. I think this is after he had already acquired you.

14:45:08 15 Q. After -- I'm sorry?

14:45:09 16 A. After he had already spoke with you. He had you in
14:45:12 17 his -- in his case or whatever.

14:45:13 18 Q. Okay. Did -- and what did Mr. Warren ask you to do?

14:45:16 19 A. He just asked me, would I be willing to testify to
14:45:20 20 what happened that night, you know what I mean. The events and
14:45:23 21 everything that happened.

14:45:24 22 Q. And can you tell the Court what happened that night
14:45:26 23 that you were in Mr. Warren's company?

14:45:29 24 A. Yeah.

14:45:30 25 Q. Go ahead.

14:45:31 1 A. Um, well, it started out, I called Dustin. Because me
14:45:36 2 and my wife was arguing, I needed a place to stay. So I called
14:45:39 3 him up, and I don't know what he was doing. He was busy. He
14:45:44 4 was doing something. But he has his girlfriend come and pick me
14:45:47 5 up. She picked me up in Newport around -- I think it was
14:45:51 6 Paradise East. I was at another friend's house. She picked me
14:45:54 7 up, and we went to her apartment or condo -- it's called A Place
14:45:59 8 At The Beach on Atlantic Beach -- and waited for Dustin to show
14:46:04 9 up.

14:46:04 10 Before we got there we stopped at the Harris Teeter
14:46:08 11 right there in Morehead City, and we bought some food and we
14:46:10 12 bought hot dogs, chips, drinks, stuff like that. And we went
14:46:15 13 back to her condo, waited for Dustin. He got there -- I don't
14:46:20 14 know, maybe an hour later, something like that. We cooked, hung
14:46:24 15 out for a little bit, that was it. I mean, he went to bed. I
14:46:28 16 hung out in the living room.

14:46:34 17 Q. Were you ever in the company of the young lady named
14:46:36 18 Cassie Jean Flowers on that evening?

14:46:38 19 A. No.

14:46:39 20 Q. Do you know who that person is?

14:46:40 21 A. I don't personally know her at all. I mean, I have
14:46:43 22 seen her around, but I don't know her.

14:46:45 23 Q. Okay. You're acquainted with her, or --

14:46:48 24 A. Not really.

14:46:49 25 Q. -- exchange words with her? Hello? Anything?

14:46:51 1 A. No. I mean, we're Facebook friends, but I mean,
14:46:54 2 that's pretty-much it.

14:46:54 3 Q. Have you ever socialized with her?

14:46:57 4 A. No.

14:46:58 5 Q. Hung out? Have you ever been to her home?

14:47:00 6 A. I -- I have, but not for her. I do construction work,
14:47:03 7 and I actually replaced some shingles on her house for her dad,
14:47:07 8 you know what I mean.

14:47:08 9 Q. Okay. But that was in a professional capacity?

14:47:11 10 A. Yeah. Yeah.

14:47:11 11 Q. So, not like you were hanging out with her?

14:47:14 12 A. Yeah. See, I don't even think she was there.

14:47:16 13 Q. Okay.

14:47:16 14 A. I don't even think she was there.

14:47:18 15 Q. On the night of January 29, 2014, did you at any point
14:47:21 16 in time go with Dustin Warren to Cassie Flowers's --

14:47:23 17 A. No.

14:47:23 18 Q. -- home? At any point in time on December -- I'm
14:47:27 19 sorry. Are you familiar with the woman named Heather Kennon?

14:47:31 20 A. Yes.

14:47:33 21 Q. Did you see her on January 29th, 2014?

14:47:35 22 A. Yes.

14:47:36 23 Q. Can you tell the Court how you -- under what
14:47:38 24 circumstances you saw her?

14:47:42 25 A. She came in. Dustin and Anique was already in the

14:47:46 1 bedroom, and Dustin had told me she was outside. I guess she
14:47:49 2 was waiting for somebody to come pick her up.

14:47:52 3 Q. By the way, where was this?

14:47:53 4 A. A Place At The Beach, Anique's condo.

14:47:55 5 Q. Anique's condo?

14:47:56 6 A. Yes, sir.

14:47:56 7 Q. Okay. Go ahead. I'm sorry.

14:47:58 8 A. And I was in -- I was in the living room, Dustin and
14:48:00 9 Anique was in the bedroom, and Heather came in. We talked a
14:48:05 10 little bit, you know what I'm saying. She was -- she was
14:48:08 11 wanting me to do something for her, like, she was having
14:48:11 12 problems.

14:48:12 13 She was -- we -- we was -- me and Heather was doing
14:48:14 14 drugs, and she was having a problem with hers or whatever. And
14:48:17 15 so she asked me to do her a favor and I wouldn't, so she left.

14:48:23 16 And I just continued. I was on the -- on the phone,
14:48:24 17 arguing back and forth with my wife. I guess -- I don't know.
14:48:28 18 A little bit of time went by, an hour maybe. She came back in.
14:48:32 19 She kept going in and out, in and out.

14:48:35 20 Q. And when you say she kept going in and out, are you
14:48:38 21 referring to leaving --

14:48:39 22 A. Yeah --

14:48:39 23 Q. -- the condo?

14:48:39 24 A. -- leaving -- leaving the condo.

14:48:40 25 Q. Okay.

14:48:40 1 A. She kept, like, because the night -- the door, if you
14:48:45 2 didn't turn the handle to the door, it would open itself. You
14:48:47 3 know what I'm saying. Like, the little catch, the lock, would
14:48:49 4 not lock. You had to actually twist it to get it to lock. And
14:48:53 5 she kept running in and out, and she wouldn't twist the door, so
14:48:56 6 that the door would swing open.

14:48:57 7 I mean, it was January 29th. So it was -- it was
14:49:00 8 snowing. It had been showing for, like, two or three days. It
14:49:03 9 was cold. And I kept hearing the door banging, banging,
14:49:06 10 banging. So I'd go back over there and I'd shut the door, and
14:49:09 11 then I'd come back in, she would run back in, you know what I'm
14:49:12 12 saying, and she would leave out again, she'd leave the door open
14:49:15 13 again. So finally, I locked the door.

14:49:16 14 Q. What time was that?

14:49:17 15 A. 1, 2`o'clock.

14:49:22 16 Q. A.M.?

14:49:23 17 A. Yeah. Yeah. Maybe -- probably about 2`o'clock.

14:49:25 18 Because I think she had -- yeah. She had -- she had asked me to
14:49:28 19 take her somewhere. I don't have no license, you know, so I
14:49:31 20 woke Dustin up. I was trying to get rid of her, you know what
14:49:35 21 I'm saying. She was getting on my nerves. You know what I
14:49:36 22 mean. She was pretty-much on her own. She was doing her own
14:49:39 23 thing. Nobody was really associating with her. You know what I
14:49:41 24 mean. Dustin and Anique was in the bedroom. I was in the
14:49:43 25 living room arguing back and forth on the phone with my wife.

14:49:46 1 So, I mean, I was just trying to get rid of her.

14:49:50 2 Dustin told me to take her wherever she wanted to go, but I

14:49:53 3 didn't want to drive, you know what I mean. So I just told her

14:49:56 4 I couldn't do it.

14:49:56 5 Q. Okay. And after you locked the door between 1 or -- 1

14:50:02 6 or 2:00`a.m., did you hear from Heather Kennon again?

14:50:06 7 A. No.

14:50:06 8 Q. Okay.

14:50:08 9 A. I went to sleep a little bit after that.

14:50:10 10 Q. All right. What was the next thing you knew when you

14:50:14 11 woke up?

14:50:15 12 A. I got up that morning; Dustin was still asleep. I

14:50:20 13 woke up, and I was in there by myself, smoked my last cigarette.

14:50:24 14 And finally Dustin got up. When he got up I asked him to take

14:50:28 15 me to the store to get some cigarettes, and I told him I'd buy

14:50:31 16 his breakfast. I offered to buy breakfast for us.

14:50:34 17 Q. Okay.

14:50:34 18 A. And we left. We went to the -- we went to the store,

14:50:38 19 but that's when we seen the incident at the Seashore Motel. And

14:50:43 20 so we went across the street to see what was going on. That's

14:50:45 21 when I -- I didn't even know that's where she was at.

14:50:48 22 I remember he said, you know, there was a motel key

14:50:51 23 laying in his car seat, and we -- first of all, when we left

14:50:54 24 to -- the apartment that morning to go to McDonald's, when we

14:50:58 25 walked out there, the passenger's side window where I was

14:51:01 1 getting in was probably about halfway down, and, I mean, the car
14:51:05 2 looked like somebody had been having a little party in there,
14:51:07 3 you know what I mean. And there was a motel key, whatever, and
14:51:11 4 so Dustin said we needed to go pick up Heather. After we --
14:51:15 5 after we eat breakfast we need to go pick up Heather. Because
14:51:17 6 it's only, like, 9`o'clock, you know what I mean. Hotel, I
14:51:19 7 think, check-out time is, like, 11 or something like that.

14:51:22 8 So we get in the car. After he cleans up a little bit
14:51:26 9 we get in the car and we're going down the road, we pull into
14:51:29 10 the Kangaroo -- I think it's Kangaroo -- it might be a Scotch
14:51:32 11 Man. I don't know. But we pulled in there to get cigarettes
14:51:34 12 and we seen all the commotion across the street at the -- at the
14:51:37 13 motel.

14:51:38 14 And that's when I found out that the motel Heather was
14:51:42 15 at was that -- at the Seashore. And so we pulled over there to
14:51:45 16 check on her. You know, he was checking -- he was worried about
14:51:49 17 her he seemed like, and that's when everything just -- we got
14:51:53 18 swarmed.

14:51:54 19 Q. Okay. At any pint in time on January 29th, 2014, did
14:52:02 20 you, Dustin Warren, and Anique Pittman ever participate in
14:52:05 21 manufacturing methamphetamine?

14:52:06 22 A. No. No.

14:52:08 23 Q. Combining chemicals together?

14:52:09 24 A. No.

14:52:09 25 Q. Mixing chemicals? Anything like that?

14:52:12 1 A. No.

14:52:14 2 Q. Was Heather Kennon at the condo when you woke up the
14:52:18 3 next morning?

14:52:19 4 A. No.

14:52:19 5 Q. Did you see her or hear from her at any point in time
14:52:22 6 from the time that you locked the front door at 2:00`a.m. --

14:52:25 7 A. No.

14:52:25 8 Q. -- until the following morning when you were picked up
14:52:27 9 by the police?

14:52:28 10 A. No.

14:52:29 11 Q. All right. Now, going back to the night before, did
14:52:40 12 Dustin ever call you to tell you he was on his way over to
14:52:44 13 Anique Pittman's condo?

14:52:50 14 A. I can't say for sure. I called him and asked him to
14:52:55 15 come -- if I could come stay with him. And like I said, I don't
14:52:58 16 know what he was doing, but Anique was right down the road from
14:53:02 17 where I was at. So she was close -- closer to picking me up
14:53:05 18 than he would have been. So he's like, "I'm going to send
14:53:08 19 Anique to pick you up," he's like, "and I'll be there shortly."

14:53:10 20 I think -- I'm -- I'm pretty sure we -- we did have
14:53:13 21 some kind of contact afterwards, maybe at the grocery store when
14:53:15 22 we was getting something to eat. I might have called and asked
14:53:18 23 him what he wanted, you know, or something like that. I don't
14:53:19 24 know.

14:53:19 25 Q. Well, let me ask you, would reviewing your affidavit

14:53:23 1 refresh your memory as to the content of your conversation with
14:53:26 2 Dustin Warren before you saw him on the night of January 29th,
14:53:29 3 2014?

14:53:30 4 A. Yeah. I mean, that should -- that would be fine.

14:53:32 5 MR. MEGARO: Your Honor, may I approach the witness?

14:53:34 6 THE COURT: You may.

14:53:35 7 BY MR. MEGARO

14:53:40 8 Q. And if you can, please take a look at this document.

14:53:43 9 I'm going to direct your attention to paragraph number four.

14:53:46 10 Just take a look at it and look up when you're done.

14:53:50 11 A. Oh, yeah, yeah, yeah. Yeah.

14:53:51 12 Q. Okay.

14:53:51 13 A. That's right. He did -- we did -- I don't know if he
14:53:54 14 called me or if I called him. That was probably when we was at
14:53:56 15 the -- at the grocery store.

14:53:58 16 Q. Okay.

14:53:58 17 A. You know, and he did say he had to drop her off.

14:54:01 18 That's right.

14:54:01 19 Q. When you say "he" you're talking --

14:54:03 20 A. Yeah. Dustin said he had to drop Heather off at the
14:54:06 21 motel first, and then he would meet us there, at Anique's condo.

14:54:09 22 Q. Okay. Did he -- during that conversation, did he ever
14:54:13 23 tell you that he was going -- tell you anything about going into
14:54:16 24 the room with Heather or doing --

14:54:17 25 A. No.

14:54:17 1 Q. -- anything inside the room with her?

14:54:19 2 A. No. He just said he had to drop her off and he'd be
14:54:23 3 right there.

14:54:23 4 Q. Okay. And how long after you spoke to Dustin did you
14:54:25 5 see him over at Anique Pittman's condo?

14:54:28 6 A. It couldn't have been long. I mean, it was -- all
14:54:30 7 this happened, it was still -- I want to say it was still
14:54:33 8 daylight.

14:54:34 9 Q. Okay.

14:54:35 10 A. From the time she picked me up and we went to the --
14:54:37 11 she picked me up in Newport, we came through Morehead, stopped
14:54:40 12 at the grocery store and went straight to her apartment. Dustin
14:54:42 13 was right behind us, maybe 30, 45 minutes at the most.

14:54:47 14 Q. Do you recall about what time it was?

14:54:49 15 A. Like I said, it was still daylight. So this time of
14:54:52 16 year, it would have to be before 5`o'clock.

14:54:54 17 Q. Okay. Do you recall whether the bridge to Atlantic
14:54:57 18 Beach was open or closed?

14:54:59 19 A. It was -- it was definitely opened. I mean, we didn't
14:55:01 20 go all the way to Emerald Isle to come back around. We went
14:55:05 21 from Morehead City straight across the bridge.

14:55:07 22 Q. Did you see any other cars on the bridge when you
14:55:09 23 passed over the bridge?

14:55:10 24 A. That, I can't tell you. I mean, it's been a long
14:55:12 25 time. But I can tell you that we went across the bridge.

14:55:15 1 MR. MEGARO: Okay. Thank you. No further questions
14:55:21 2 for Mr. Thomas, Your Honor.

14:55:23 3 THE COURT: Cross-examination, Mr. Spence?

14:55:25 4 MR. SPENCE: Yes, sir.

14:55:25 5 **CROSS-EXAMINATION BY MR. SPENCE**

14:55:25 6 Q. What were you -- what's -- what were you serving a
14:55:27 7 sentence for? What are you serving a sentence for right now?

14:55:30 8 A. I'm serving a sentence for Robbery with a Dangerous
14:55:33 9 Weapon.

14:55:34 10 Q. Out of Guilford County?

14:55:35 11 A. Yes, sir.

14:55:35 12 Q. How many different robberies? Three?

14:55:37 13 A. No, sir.

14:55:38 14 Q. One?

14:55:39 15 A. One robbery. One Robbery With a Dangerous Weapon, and
14:55:44 16 one Attempted Robbery with a Dangerous Weapon.

14:55:47 17 Q. Okay. So two different places?

14:55:50 18 A. Yes, sir.

14:55:51 19 Q. With a gun?

14:55:52 20 A. No.

14:55:54 21 Q. With a knife?

14:55:55 22 A. Yeah.

14:55:59 23 Q. So Anique Pittman came and picked you up in Newport?

14:56:01 24 A. Yes, sir.

14:56:02 25 Q. And what kind of car did she have?

14:56:06 1 A. I could not tell you. It's a little hatchback. I do
14:56:09 2 know that.

14:56:09 3 Q. Okay. And you -- the roads were clear enough, or she
14:56:16 4 could drive you from Newport all the way to Atlantic Beach?

14:56:18 5 A. Yeah.

14:56:19 6 Q. The roads weren't closed?

14:56:20 7 A. No.

14:56:21 8 Q. Weren't icy?

14:56:23 9 A. No.

14:56:24 10 Q. There was other traffic on the road?

14:56:25 11 A. Oh, yeah, yeah. There was plenty of traffic on the
14:56:26 12 road.

14:56:27 13 Q. Plenty of traffic?

14:56:27 14 A. Yeah.

14:56:27 15 Q. And no reason somebody couldn't drive around Morehead
14:56:30 16 City at the time, could they?

14:56:32 17 A. No.

14:56:32 18 Q. Okay. And what did you do -- the day of the 28th,
14:56:35 19 where did you spend that day?

14:56:42 20 A. I'm -- I'm not sure about the dates.

14:56:43 21 Q. Well, the day before you got arrested.

14:56:44 22 A. Okay. The day before I got arrested I was in Newport
14:56:49 23 at a friend's house, and me and my wife were -- had been
14:56:52 24 arguing, so I didn't want to stay there with her and the -- and
14:56:56 25 the friend. That's the night that we went to -- I went to

14:56:59 1 Anique's.

14:57:00 2 Q. Were you arguing the whole day?

14:57:02 3 A. Yeah. Unfortunately.

14:57:02 4 Q. About what?

14:57:04 5 A. Ask her.

14:57:05 6 Q. What was she mad about?

14:57:08 7 A. Everything.

14:57:08 8 Q. Were you doing drugs?

14:57:09 9 A. No, no. We -- that's a different -- totally different

14:57:13 10 story.

14:57:13 11 Q. Okay.

14:57:13 12 A. That's -- me and my wife, you know what I mean, we --

14:57:15 13 that's just the way we are.

14:57:17 14 Q. Were you addicted to drugs at the time?

14:57:19 15 A. No, I wouldn't say addicted to drugs.

14:57:20 16 Q. Using drugs?

14:57:21 17 A. Yeah. Now, hold on. Slow down a little bit. Um, at

14:57:26 18 the time that me and my wife were arguing? What are you saying?

14:57:29 19 Q. No.

14:57:29 20 A. What are you asking?

14:57:30 21 Q. This period of time.

14:57:31 22 A. And what are you asking?

14:57:32 23 Q. Were you a drug user during this period of time?

14:57:34 24 A. I had used drugs, yes.

14:57:36 25 Q. During this period of time, were you using drugs?

14:57:38 1 A. At that moment?

14:57:40 2 Q. No.

14:57:41 3 A. During that time period?

14:57:42 4 Q. During the time that week. How about the week of

14:57:43 5 January 28, 29?

14:57:45 6 A. I'm sure that I might have used some drugs that week.

14:57:46 7 Q. And what was your drug of choice?

14:57:49 8 A. Marijuana is my drug of choice.

14:57:50 9 Q. Okay. What were you using, though? Methamphetamine?

14:57:52 10 A. I may have, yes.

14:57:53 11 Q. And did you get that from Brandon Hobbs?

14:57:56 12 A. I couldn't have got it from Brandon Hobbs, because I'm

14:57:59 13 pretty sure he was in jail.

14:58:00 14 Q. He was in jail?

14:58:01 15 A. Yeah.

14:58:01 16 Q. But if he wasn't in jail, you'd probably gotten it

14:58:03 17 from Brandon, wouldn't you?

14:58:05 18 A. Maybe not.

14:58:05 19 Q. But he cooks some good meth, doesn't he?

14:58:07 20 A. Nah.

14:58:08 21 Q. He doesn't?

14:58:10 22 A. As a matter of fact, Brandon Hobbs was arrested and

14:58:12 23 put in jail before I ever moved back to Carteret County. I

14:58:15 24 didn't move back to Carteret County from High Point until

14:58:18 25 December the 10th.

14:58:20 1 Q. Okay. You know Brandon Hobbs --

14:58:21 2 A. I do know Brandon Hobbs.

14:58:21 3 Q. -- you know him to cook meth?

14:58:24 4 A. I don't know about his action, but I know Brandon

14:58:25 5 Hobbs.

14:58:27 6 Q. Where would you get your meth from?

14:58:28 7 A. I mean, from meth dealers.

14:58:31 8 Q. Who?

14:58:32 9 A. Is that something -- I don't know. Specific names?

14:58:35 10 Q. Yeah. Names.

14:58:37 11 A. I don't know if I -- I -- if I can tell you names

14:58:39 12 right now.

14:58:40 13 Q. Why not?

14:58:40 14 A. I mean, that's --

14:58:41 15 Q. Under oath. Be honest.

14:58:42 16 MR. MEGARO: Your Honor, I object. I think --

14:58:44 17 THE COURT: Overruled. If he knows. If he doesn't

14:58:46 18 know, he can say he doesn't know, but if you know, answer the

14:58:48 19 question.

14:58:48 20 BY MR. SPENCE

14:58:48 21 Q. Give me some names.

14:58:51 22 A. Let's see. I really don't know. I really don't know.

14:58:59 23 Q. Are they anonymous people or friends you'd call up?

14:59:02 24 A. They'd be friends.

14:59:02 25 Q. Okay. The names of your friends who would sell meth

14:59:06 1 to you?

14:59:06 2 A. Okay. I would buy it from Troy Brown sometimes.

14:59:09 3 Q. Okay. Who else?

14:59:10 4 A. Troy Brown. Walt Richardson. You know.

14:59:13 5 Q. Okay.

14:59:13 6 A. Those are the -- those are the two main people that I
14:59:15 7 messed with. Those -- those were friends.

14:59:17 8 Q. Okay. Would they make it or just sell it?

14:59:19 9 A. They sold it.

14:59:20 10 Q. Okay.

14:59:21 11 A. I don't think either one of them ever made it.

14:59:24 12 Q. Okay. And Dustin Warren is Brandon Hobbs' brother,
14:59:26 13 correct?

14:59:26 14 A. Half-brother, yeah.

14:59:27 15 Q. Okay. Used to live together?

14:59:30 16 A. Excuse me?

14:59:30 17 Q. Did they used to live together?

14:59:32 18 A. Nah. I mean, growing up, I would assume they -- they
14:59:36 19 lived together. At that time that -- that I knew Dustin he had
14:59:40 20 his own home.

14:59:41 21 Q. Okay. When did you first get involved with this
14:59:45 22 particular proceeding here, as far as writing documents, filing
14:59:48 23 affidavits, anything like that?

14:59:50 24 A. I immediately tried to get involved in it when I heard
14:59:55 25 that Heather was trying to say that everything was Dustin --

14:59:59 1 Dustin was doing this, Dustin was doing that. I tried to talk
15:00:03 2 to his attorney within days of him getting locked up.

15:00:06 3 Q. Okay. And what information were you trying to give
15:00:09 4 him? Because you weren't even there at the motel, were you?

15:00:12 5 A. No, I was at Anique Pittman's house with him where he
15:00:15 6 was at.

15:00:16 7 Q. Okay. So the only thing you can testify about is the
15:00:18 8 things that happened at Anique Pittman's house, correct?

15:00:20 9 A. Yes, sir.

15:00:20 10 Q. And then getting arrested a few moments later?

15:00:23 11 A. Yup. Not a few moments. The next day.

15:00:25 12 Q. Okay. But as far as when the lab was constructed or
15:00:27 13 when it was checked in or what happened at the Seashore or who
15:00:31 14 saw what at the Seashore, you don't have any knowledge of that,
15:00:33 15 do you?

15:00:34 16 A. No. I was never at the Seashore.

15:00:36 17 Q. And you don't know what happened during that period of
15:00:38 18 time before, in the evening of 1/29, correct?

15:00:43 19 A. On 1/29 Dustin was with me at Anique's house.

15:00:46 20 Q. I got that. But before that, the day before that, you
15:00:49 21 have no idea what was going on at the Seashore, were you?

15:00:53 22 A. No. If the day before --

15:00:56 23 Q. Okay. Let me -- what time did you get to Anique's
15:00:59 24 house, and what time was Dustin at Anique's house with you?

15:01:04 25 A. I'm not sure what day. The day before we got

15:01:06 1 arrested. I'm not sure what day it was, whether it was the 29th
15:01:08 2 or the 30th. If you can refresh my memory --

15:01:11 3 Q. Okay.

15:01:11 4 A. -- what day that we got arrested.

15:01:13 5 Q. The day before you were arrested, you were at Anique's
15:01:15 6 house that evening?

15:01:17 7 A. All afternoon. All night.

15:01:18 8 Q. Okay. When did Dustin show up?

15:01:20 9 A. Maybe 30 minutes after I got there.

15:01:22 10 Q. What time?

15:01:23 11 A. I would say 5`o'clock. 4, 4:30, 5`o'clock.

15:01:27 12 Q. So --

15:01:27 13 A. It was daylight. It was daylight.

15:01:29 14 Q. Okay. But it was in the afternoon?

15:01:31 15 A. Yes, sir.

15:01:31 16 Q. So the entire day of that -- before that, the entire
15:01:35 17 time before that of the 29th, you had no idea what was going on
15:01:38 18 at that motel, did you?

15:01:41 19 A. I don't know what day it was that -- whether it was
15:01:43 20 the 29th or the 28th. No, I don't know what happened at that
15:01:46 21 motel. I was not at that motel.

15:01:48 22 Q. Right. So you could not have known what evidence was
15:01:51 23 there, what the cops found, or who did what?

15:01:54 24 A. No. No.

15:01:54 25 Q. Had you -- have you ever read the transcript of this

15:01:56 1 case?

15:01:56 2 A. No.

15:01:57 3 Q. It was never sent to you?

15:01:59 4 A. Yeah. A piece of it was sent to me.

15:02:01 5 Q. Who sent it to you?

15:02:02 6 A. I think Mr. Megaro.

15:02:06 7 Q. Okay. And how did you end up drafting these

15:02:08 8 affidavits?

15:02:09 9 A. That's my written statement. I drew those up.

15:02:12 10 Q. This typed-up one is not your written statement?

15:02:14 11 A. No, I wrote those. A handwritten -- there should be a

15:02:17 12 handwritten somewhere that was notarized by me.

15:02:20 13 Q. Okay. We'll talk about that in a second. But the

15:02:22 14 typed one, how did that get done?

15:02:27 15 A. I -- Mr. Megaro had it typed up.

15:02:29 16 Q. Okay. And he sent it back to you to sign?

15:02:32 17 A. No, it was already -- yes. Yes. He sent it back to

15:02:35 18 me to have it notarized.

15:02:36 19 Q. Okay. And the handwritten one, is that something you

15:02:39 20 did yourself?

15:02:40 21 A. Yes.

15:02:40 22 MR. SPENCE: May I approach?

15:02:40 23 THE WITNESS: Yup.

15:02:43 24 THE COURT: Yes, sir.

15:02:44 25

15:02:44 1 (State's Exhibit MAR Number [2] marked for
15:02:44 2 identification.)

15:02:44 3 BY MR. SPENCE

15:02:44 4 Q. What I have got marked as State's MAR [2], would you
15:02:47 5 look at this and see if that is the document you're referring
15:02:51 6 to?

15:02:51 7 A. Yes, that's my handwriting.

15:02:52 8 Q. Okay. And did you do all this stuff?

15:02:54 9 A. Yeah.

15:02:55 10 Q. Now, this has got a legal caption on it, correct?

15:02:58 11 A. I got that information.

15:02:59 12 Q. From where?

15:03:00 13 A. From Dustin.

15:03:01 14 Q. So he gave it to you?

15:03:02 15 A. From his attorney.

15:03:03 16 Q. Okay. Wait a second. The information for this, who
15:03:05 17 did you get it from?

15:03:06 18 A. Which -- the information at the top, his name and the
15:03:09 19 case number?

15:03:10 20 Q. This legal caption. Yes, sir.

15:03:11 21 A. Yeah. I got all that from his attorney. That's
15:03:14 22 the -- that was what I was told, the legal way to do it.

15:03:17 23 Q. What -- what -- what instruction did his attorney give
15:03:19 24 to you about drafting this?

15:03:20 25 A. He just asked me to write my statements of what

15:03:22 1 happened that day, as I could remember them.

15:03:24 2 Q. And did he tell you to put a caption on it like this?

15:03:26 3 A. No. He didn't tell me to put it like that. I took
15:03:30 4 that upon myself.

15:03:30 5 Q. Okay. And all these statements in here, it says, "I,
15:03:32 6 Mark Thomas, being at least 18 years of age and of sound mind,
15:03:35 7 after first being sworn, does depose and state the following."
15:03:37 8 Did you write that?

15:03:38 9 A. Yes.

15:03:39 10 Q. Did you make that up out of your own head?

15:03:41 11 A. No. That was jailhouse attorneys. I mean, we -- you
15:03:44 12 know, I'm in prison. I got all kinds of people helping me out.

15:03:48 13 Q. So is there a standard form down there for doing these
15:03:51 14 things at the jails?

15:03:52 15 A. No, I wouldn't assume.

15:03:52 16 Q. Have you seen -- have you seen the one Cassie did?

15:03:55 17 A. No.

15:03:59 18 Q. So you've got all this legal language here, and that's
15:04:01 19 just -- that's -- who advised you?

15:04:04 20 A. Um, the -- just talking with people that filed motions
15:04:07 21 for their selves[sic] in prison.

15:04:09 22 Q. Okay.

15:04:09 23 A. I mean, that's a pretty standard thing for an
15:04:12 24 affidavit.

15:04:12 25 Q. Have you ever done one of these before?

15:04:14 1 A. No.

15:04:14 2 Q. Okay.

15:04:16 3 A. Not that I can recall.

15:04:16 4 Q. But do you recognize this as your -- as something that

15:04:19 5 you signed and submitted?

15:04:21 6 A. Yes, sir.

15:04:21 7 Q. It's your handwriting?

15:04:22 8 A. It definitely is.

15:04:23 9 Q. All that print?

15:04:24 10 A. Yes, sir.

15:04:24 11 MR. SPENCE: Okay. Move to admit State's MAR [2] to

15:04:29 12 corroborate his testimony.

15:04:32 13 THE COURT: Thank you, sir. It is admitted, without

15:04:32 14 objection.

15:04:32 15 (State's Exhibit MAR Number [2] received in

15:04:32 16 evidence.)

15:04:32 17 COURT REPORTER: Counselor, I didn't hear what you

15:04:32 18 said.

15:04:36 19 MR. MEGARO: I said "without objection." Sorry.

15:04:39 20 BY MR. SPENCE

15:04:39 21 Q. So you have not read the transcript, have you?

15:04:44 22 A. No, sir.

15:04:44 23 Q. You don't know what Anique Pittman testified to, do

15:04:47 24 you?

15:04:47 25 A. No.

15:04:47 1 Q. You don't know if she didn't testify to the same
15:04:49 2 things you would have testified to, do you?

15:04:51 3 A. No. I don't know. I don't know what she testified
15:04:53 4 to.

15:04:54 5 Q. So without knowing that, you have no idea what you
15:04:56 6 could possibly have added to this case, do you?

15:04:59 7 A. No.

15:04:59 8 Q. Okay. Your criminal history is pretty lengthy,
15:05:03 9 correct?

15:05:04 10 A. You could say that.

15:05:06 11 Q. Well, let's go over it, then. We'll let the Judge
15:05:08 12 decide. Were you -- you are Mark Alan Thomas, and your date of
15:05:13 13 birth, 6/3/1980?

15:05:15 14 A. Yes, sir.

15:05:16 15 Q. Let me ask if you were convicted of the following
15:05:18 16 crimes: Communicating Threats, September in 2011 in Carteret
15:05:21 17 County?

15:05:24 18 A. Yeah.

15:05:25 19 Q. Yes or no?

15:05:25 20 A. Yes.

15:05:27 21 Q. Second Degree Trespass, 9/22/11, Carteret County; yes
15:05:30 22 or no?

15:05:31 23 A. I don't recall that Trespassing, but --

15:05:32 24 Q. Could be?

15:05:33 25 A. -- it could be.

15:05:35 1 Q. Hard to remember sometimes, right?

15:05:37 2 A. Sure.

15:05:38 3 Q. Misdemeanor Larceny, March of 1987?

15:05:41 4 A. Yes.

15:05:45 5 Q. Two counts of that?

15:05:48 6 A. Sounds correct.

15:05:50 7 Q. Felonious Breaking or Entering in Carteret County,

15:05:52 8 1999. Were you put on probation for 60 months?

15:05:57 9 A. Yes.

15:06:03 10 Q. Several counts of that, right?

15:06:07 11 A. No.

15:06:08 12 Q. Not just one break-in; there were several?

15:06:09 13 A. No. It was just one.

15:06:10 14 Q. Just one?

15:06:11 15 A. Yeah. Just one.

15:06:13 16 Q. Fictitious Information to an Officer, 2003, in

15:06:15 17 Carteret County?

15:06:16 18 A. I don't recall that.

15:06:18 19 Q. July 1st, 2003, Carteret County, Fictitious

15:06:21 20 Information to an Officer. You got credit for time served after

15:06:24 21 you pled guilty?

15:06:26 22 A. I must have.

15:06:27 23 Q. Okay. PWISD Counterfeit Controlled Substance, 2004?

15:06:33 24 A. Yeah.

15:06:34 25 Q. What was that controlled substance?

15:06:36 1 A. Obviously, it was counterfeit.

15:06:37 2 Q. I know that.

15:06:39 3 A. It was --

15:06:39 4 Q. What's it supposed to be?

15:06:41 5 A. Counterfeit cocaine.

15:06:42 6 Q. You told somebody it was cocaine?

15:06:44 7 A. Yes, sir.

15:06:44 8 Q. Okay. That was a lie, right? That wasn't true, was

15:06:48 9 it?

15:06:48 10 A. No. It wasn't cocaine.

15:06:49 11 Q. Did they give money?

15:06:50 12 A. Yes. Yeah.

15:07:01 13 Q. Possession of -- Felonious Possession of Stolen Motor

15:07:02 14 Vehicle, Forsyth County, of 2006?

15:07:09 15 A. Yup.

15:07:09 16 Q. Possession of Drug Paraphernalia, Guilford County,

15:07:11 17 2005?

15:07:14 18 A. Yeah.

15:07:19 19 Q. Attempted Felonious Hit-and-Run, Guilford County,

15:07:22 20 1999?

15:07:27 21 A. Yeah.

15:07:27 22 Q. DWI, Guilford County, 2000?

15:07:31 23 A. Yup.

15:07:31 24 Q. Assault on a Female, Guilford County, 2001?

15:07:35 25 A. Yup.

15:07:45 1 Q. Soliciting to Obtain Property by False Pretenses,
15:07:48 2 Guilford County, 2003?

15:07:54 3 A. I don't -- I don't recall that.

15:07:58 4 Q. Might be?

15:08:00 5 A. I --

15:08:00 6 Q. Could be?

15:08:02 7 A. I don't remember ever being charged with a Soliciting
15:08:04 8 to Obtain Property by False --

15:08:06 9 Q. That was what you were pled to. You were charged with
15:08:08 10 Obtaining by False Pretense. It was knocked down to a
15:08:10 11 misdemeanor and you pled guilty, right?

15:08:12 12 A. May -- yes.

15:08:13 13 Q. Got put on probation?

15:08:15 14 A. Yes.

15:08:16 15 Q. Had that revoked. Communicating Threats in 2005 in
15:08:22 16 Guilford County?

15:08:23 17 A. Yeah.

15:08:24 18 Q. DWI; another DWI, level I, 2005, in Guilford County?

15:08:28 19 A. Yes.

15:08:32 20 Q. Resisting a Public Officer, 2006, Guilford County?

15:08:34 21 A. Yes.

15:08:36 22 Q. Drug Paraphernalia, Guilford County, 2006?

15:08:38 23 A. Yes.

15:08:40 24 Q. Drunk and Disruptive, Guilford County, 2007?

15:08:43 25 A. Yup.

15:08:44 1 Q. Common Law Robbery, Guilford County, 2007?

15:08:48 2 A. Yup.

15:08:49 3 Q. So that was the Armed Robbery reduced to Common Law,
15:08:52 4 right?

15:08:54 5 A. Yes.

15:08:55 6 Q. So it's another Armed Robbery?

15:08:56 7 A. Uh-huh.

15:08:57 8 Q. That's three. Was that a gun?

15:08:59 9 A. No.

15:08:59 10 Q. Knife?

15:08:59 11 A. No.

15:09:00 12 Q. What?

15:09:01 13 A. A bottle.

15:09:02 14 Q. A bottle. Okay. And again, you've got -- looks
15:09:11 15 like -- looks like two convictions for Robbery with a Dangerous
15:09:14 16 Weapon -- actually, one for Attempted, which is the same crime,
15:09:16 17 and one for Robbery; is that right? 2014?

15:09:19 18 A. Yup.

15:09:20 19 Q. Okay. Who's Charles Jarvis?

15:09:26 20 A. That is -- old friend, associate.

15:09:34 21 Q. You saw him on the 29th, didn't you?

15:09:39 22 A. I would assume it would be the 28th.

15:09:41 23 Q. Okay. Did you see him on the 28th?

15:09:43 24 A. Yes.

15:09:44 25 Q. Where did you see him?

15:09:47 1 A. At Anique's.

15:09:47 2 Q. Okay. Did you ever use his car that day?

15:09:52 3 A. Yes.

15:09:55 4 Q. And was he the one that charged you with unauthorized

15:09:57 5 use --

15:09:57 6 A. Yes.

15:09:58 7 Q. -- of his car that day?

15:09:59 8 A. Yes.

15:09:59 9 Q. And where did you take his car?

15:10:04 10 A. I took his car to Newport.

15:10:07 11 Q. From where, the Beach?

15:10:09 12 A. From the Beach.

15:10:10 13 Q. You were at the Beach on the 28th?

15:10:12 14 A. I think this one was -- I think this was two days

15:10:14 15 before we got arrested, so it would be the 27th.

15:10:17 16 Q. Okay. You took his -- you wrecked it somewhere,

15:10:20 17 right?

15:10:20 18 A. No, I did not wreck it.

15:10:21 19 Q. Didn't wreck it on 20th Street?

15:10:23 20 A. No. I told him I wrecked it.

15:10:24 21 Q. But that was false, right?

15:10:25 22 A. That was false. That was false.

15:10:28 23 Q. So where was it?

15:10:29 24 A. It was parked at Wal-Mart.

15:10:33 25 Q. Why did you tell him you wrecked it?

15:10:35 1 A. Okay. Um, the whole thing is, Jarvis stole my money
15:10:40 2 while I was asleep.

15:10:42 3 Q. What, that night?

15:10:43 4 A. The night before.

15:10:44 5 Q. At Anique's house?

15:10:45 6 A. Yes.

15:10:45 7 Q. Was he at Anique's house that weekend?

15:10:47 8 A. No.

15:10:48 9 Q. Okay.

15:10:48 10 A. This was two days before we got arrested. Two -- two
15:10:51 11 days prior to any of this happening with Dustin. And so when
15:10:56 12 he -- he stole my money, I borrowed his car. He had loaned me
15:11:03 13 his car, you know what I mean. And so as a pay-back to him for
15:11:07 14 stealing my money, I kept his car longer than I was supposed to.

15:11:11 15 Q. Were you going -- were you going to keep it for good?

15:11:12 16 A. No. I wasn't -- I just wasn't taking it back to him.

15:11:15 17 Q. Okay.

15:11:15 18 A. I left his car parked -- I left his car parked at
15:11:20 19 Wal-Mart and told his wife, because his wife was burning my
15:11:23 20 phone up, looking for him. And he wouldn't answer the phone for
15:11:26 21 his wife, so she was -- started calling my phone, harassing me,
15:11:29 22 looking for him. So I told her where to go get his car. I
15:11:32 23 wouldn't tell him where it was at. I told him I wrecked it on
15:11:34 24 20th Street. Which was not true. The car was in perfect shape,
15:11:39 25 sitting at Wal-Mart, with more gas in it than when I took it.

15:11:44 1 Q. Okay. So that makes it all good, right?

15:11:47 2 A. No.

15:11:47 3 THE COURT: Let's -- let's move on.

15:11:49 4 BY MR. SPENCE

15:11:49 5 Q. Did Charles Jarvis call you and Anique Pittman and
15:11:54 6 talk on the phone about your car? About that car?

15:11:58 7 A. No. He called my phone.

15:11:59 8 Q. Okay.

15:12:00 9 A. He was -- he was texting me.

15:12:01 10 Q. Okay. Did he tell you to take something out of that
15:12:05 11 car?

15:12:06 12 A. I don't think -- nothing about taking --

15:12:06 13 Q. Like a plastic bag?

15:12:10 14 A. I don't -- any of that.

15:12:14 15 MR. SPENCE: That's all I have.

15:12:20 16 THE COURT: Any redirect?

15:12:20 17 MR. MEGARO: Very brief, Your Honor.

15:12:21 18 **REDIRECT EXAMINATION BY MR. MEGARO**

15:12:25 19 Q. Mr. Thomas, did you read the portion of Heather
15:12:27 20 Kennon's testimony and Mr. Warren's trial where she said that
15:12:31 21 you and her cooked meth at Anique Pittman's condo?

15:12:36 22 A. Yes, I read that page.

15:12:37 23 Q. True or false?

15:12:38 24 A. False. Also, on that, if I can, on that same page,
15:12:41 25 she said that we were all smoking and injecting drugs together.

15:12:46 1 Q. True or false? And then --

15:12:47 2 A. That's false. She even goes back to say it again on
15:12:50 3 that same page. She said it herself. That Dustin didn't even
15:12:53 4 do any drugs.

15:12:54 5 Q. Okay. Did you see in the transcripts where Ms. Kennon
15:12:56 6 testified that she was at Anique Pittman's condo the morning on
15:13:01 7 January 29th, 2014, when you woke up?

15:13:05 8 A. No, I didn't read that.

15:13:06 9 Q. Okay.

15:13:08 10 A. I don't -- I don't remember that.

15:13:12 11 Q. During the evening of January 28, 2014, into the early
15:13:18 12 morning hours of January 29, 2014, did you ever see anything --
15:13:22 13 see Dustin Warren's spare car key?

15:13:25 14 A. I didn't see it. I seen it in the seat the next
15:13:27 15 morning.

15:13:28 16 Q. When you say "in the seat?"

15:13:29 17 A. His car.

15:13:31 18 Q. In his car?

15:13:32 19 A. Yeah.

15:13:32 20 Q. And that was where the window was rolled down?

15:13:35 21 A. Yes.

15:13:35 22 Q. All right. Did Dustin ever make a comment to you
15:13:37 23 about not being able to find his spare car key?

15:13:41 24 A. It was -- it -- she had took his key off the rack by
15:13:44 25 the door.

15:13:45 1 Q. Off the key rack by the door?

15:13:46 2 A. Yes.

15:13:47 3 Q. Okay. And you mentioned earlier about her going in
15:13:49 4 and out --

15:13:50 5 A. Yeah.

15:13:50 6 Q. -- slamming the door and opening the door. Was she
15:13:53 7 going into Mr. Warren's car?

15:13:55 8 A. I would assume that's what she was --

15:13:56 9 MR. SPENCE: Objection.

15:13:57 10 THE COURT: Sustained.

15:13:58 11 BY MR. MEGARO

15:13:58 12 Q. Was Dustin Warren in your company continuously from
15:14:05 13 January 28th, 2014, from the time you met up with him at Anique
15:14:09 14 Pittman's house, until the following morning when you were both
15:14:13 15 picked up by the police?

15:14:14 16 A. Yes.

15:14:14 17 MR. MEGARO: Thank you, sir. I have no further
15:14:16 18 questions for Mr. Thomas.

15:14:17 19 THE COURT: Re-cross?

15:14:18 20 **RE-CROSS-EXAMINATION BY MR. SPENCE**

15:14:18 21 Q. You weren't with him on the 28th; you were fighting
15:14:21 22 with your wife, right?

15:14:22 23 A. On the phone at Anique's.

15:14:23 24 Q. Okay. What day did you get arrested on this charge,
15:14:28 25 on your charge? The 30th?

15:14:32 1 A. I don't -- I don't know. The same day that Dustin got
15:14:34 2 arrested. I don't know the dates. I can't remember the dates.

15:14:36 3 Q. Okay. Now, I meant -- I meant to ask you: You said
15:14:46 4 you and Heather were doing drugs at the house?

15:14:48 5 A. Yes.

15:14:48 6 Q. What? What drugs?

15:14:50 7 A. Meth.

15:14:51 8 Q. Where did you get that?

15:14:53 9 A. I just told you earlier the two names. I had had my
15:14:57 10 own. I don't know. Heather had hers. Heather had her own,
15:15:00 11 so --

15:15:00 12 Q. Okay. Have any effect on you? Yeah?

15:15:04 13 A. What I had?

15:15:05 14 Q. About your memory or anything like that you recall?

15:15:07 15 A. No.

15:15:08 16 Q. Has no effect?

15:15:09 17 A. No.

15:15:09 18 Q. What effect does it have?

15:15:10 19 A. It just keeps you up.

15:15:12 20 Q. Okay.

15:15:12 21 A. I mean, everybody -- different people do different
15:15:14 22 things, depending on how much you do.

15:15:20 23 Q. And again, you don't know what Anique Pittman
15:15:24 24 testified to?

15:15:25 25 A. No, I have -- I have no clue what Anique said.

15:15:28 1 Q. She might have said everything you're saying?

15:15:29 2 A. She might have.

15:15:30 3 MR. SPENCE: Okay. That's all I have.

15:15:31 4 THE COURT: Anything else?

15:15:32 5 MR. MEGARO: No, sir.

15:15:33 6 THE COURT: You may stand down.

15:15:35 7 (The witness stepped down from the witness
15:15:35 8 stand.)

15:15:36 9 THE COURT: You may call your next witness.

15:15:38 10 MR. MEGARO: Your Honor, I would call my client,
15:15:40 11 Dustin J. Warren.

15:16:01 12 THE COURT: Okay. Mr. Warren, step right over there
15:16:03 13 to the Bible, please, sir.

15:16:05 14 (The Defendant was duly sworn.)

15:16:12 15 (The Defendant took the witness stand.)

15:16:12 16 THE COURT: You may inquire.

15:16:12 17 MR. MEGARO: Thank you.

15:16:12 18

15:16:12 19 **DUSTIN J. WARREN,**

15:16:12 20 having been first duly sworn, at 3:16 p.m. was called as a
15:16:12 21 witness on behalf of the Defense, and testifying in his own
15:16:12 22 behalf, testified as follows:

15:16:12 23 **DIRECT EXAMINATION BY MR. MEGARO**

15:16:26 24 Q. Mr. Warren, is it safe to say you know the two
15:16:31 25 witnesses who have just testified?

15:16:32 1 A. Yes, sir, I do.

15:16:33 2 Q. Did there come a point in time in the last couple of
15:16:36 3 years where you asked either one of them to review any documents
15:16:38 4 concerning your case and to possibly help you as a witness?

15:16:40 5 A. Yes, sir, I did.

15:16:41 6 Q. And how did you approach them?

15:16:43 7 A. Um, I approached them through letters. Um, I sent
15:16:47 8 transcripts. I sent Cassie a Christmas card and I explained to
15:16:52 9 her what had happened to me.

15:16:54 10 Q. Okay. And at any point in time did you direct either
15:16:59 11 one of those witnesses as to what to say, what you wanted them
15:17:04 12 to say?

15:17:04 13 A. I was adamant, because this -- these-type situations
15:17:06 14 make people uncomfortable, so I was adamant about, all I wanted
15:17:08 15 was the truth, no matter what. And I was adamant about that.

15:17:12 16 Q. Okay. Did you ask either one of them to lie?

15:17:18 17 A. No, sir. That's been my whole defense, to have them
15:17:21 18 to be a part of this, is to ask them, you know, I just wanted
15:17:23 19 the truth.

15:17:24 20 Q. Okay. Now, in this particular case, Heather Kennon
15:17:29 21 started out as your -- as your co-defendant, or your -- was she
15:17:34 22 separately charged, or was she charged as a co-defendant in this
15:17:36 23 case?

15:17:37 24 A. She -- she was -- they were trying to treat it as a
15:17:41 25 co-defendant situation.

15:17:43 1 Q. Do you know where she got arrested and -- where she
15:17:45 2 got arrested?

15:17:46 3 A. No, I don't.

15:17:49 4 Q. After your arrest on this case, who represented you
15:17:54 5 initially?

15:17:55 6 A. When I -- when I first got arrested, which was January
15:17:58 7 the 3rd, I was assigned -- court-appointed James Wallace, III,
15:18:02 8 and given his detective, Ms. Ann Harris Scadden, as the
15:18:05 9 detective in the case as a court-appointed. He -- she did talk
15:18:12 10 to I think Mark, and did some other stuff, and that was one of
15:18:15 11 the reasons why I had her subpoenaed. But they never -- even
15:18:17 12 though she was an Officer of the Court they never brought her
15:18:21 13 forward.

15:18:22 14 Q. Okay. Did there come a point where you changed
15:18:25 15 lawyers?

15:18:25 16 A. Yes, sir. I changed -- um, between January 30th to
15:18:32 17 March 2nd, 2014, I was referred to Rodney Fulcher as an
15:18:38 18 affordable lawyer by a guy that I was in the county jail with,
15:18:42 19 said he was an affordable lawyer. I just got my tax money,
15:18:45 20 which was \$2,500.

15:18:46 21 I had approached him, asking him would you -- I let him
15:18:51 22 know my situation, that's all the money I had, would he be
15:18:54 23 willing to represent me for \$2,500, because I heard that's what
15:18:58 24 he would charge for some representations. And -- and he -- he
15:19:03 25 said at the time that he was actually court-appointed for

15:19:05 1 Heather Kennon who was the -- the -- my -- supposed to be my
15:19:09 2 co-defendant, and that he might could finagle something to make
15:19:13 3 it happen where he could come off her case and he could take my
15:19:16 4 money.

15:19:16 5 When he did take my money, he -- it just seemed like he
15:19:21 6 lost total interest in my case.

15:19:23 7 Q. I'm going to -- I'm going to stop you just --

15:19:23 8 A. Sure.

15:19:23 9 Q. -- so we can kind of --

15:19:24 10 A. Yes, sir.

15:19:24 11 Q. -- go step-by-step. You mentioned that he represented
15:19:29 12 Heather Kennon?

15:19:29 13 A. That's what he --

15:19:29 14 Q. Or he told you that he represented --

15:19:31 15 A. That's what I was told. Yes, sir.

15:19:34 16 Q. Did anyone ever go over with you a conflict of
15:19:36 17 interest waiver form or a conflict of interest rights or
15:19:40 18 anything like that?

15:19:41 19 A. No, sir. I know nothing of that.

15:19:43 20 Q. Okay. Do you know what a conflict of interest is?

15:19:51 21 A. I kind of understand the concept of it, but there's,
15:19:54 22 like, so much types of conflicts of interest. And I never
15:19:58 23 looked at it as that, being a conflict of interest, on that
15:20:01 24 issue.

15:20:02 25 Q. So kind of, sort of --

15:20:03 1 A. Somewhat.

15:20:03 2 Q. -- you're familiar with the term?

15:20:06 3 A. Yes, sir. I am familiar with the term.

15:20:08 4 Q. All right. Now, after Mr. Fulcher started

15:20:12 5 representing you, did you have conversations with him about the

15:20:14 6 facts of the case?

15:20:17 7 A. He was -- he did talk briefly about my situation, and

15:20:21 8 I asked him some things that I would like for him to talk to

15:20:24 9 witnesses, and -- and, you know, we -- I did talk a little,

15:20:27 10 briefly about -- all he wanted me to take was a 57-month plea

15:20:31 11 bargain. He wasn't really interested in doing any kind of work,

15:20:34 12 leg work.

15:20:35 13 Q. Well, let me go step-by-step.

15:20:37 14 A. Okay.

15:20:37 15 Q. Did you ever give Mr. Fulcher the name of Mark Thomas?

15:20:41 16 A. Yes. I definitely gave him -- actually, Mark Thomas,

15:20:43 17 when I had the court-appointed lawyer, James Wallace, he was

15:20:47 18 adamant about coming down, and he did talk to Ms. Ann. He was

15:20:52 19 wanting to do whatever he could to tell his side of the story.

15:20:54 20 Q. My question is, did you tell Mr. Fulcher that you had

15:20:58 21 a willing witness with Mark --

15:21:01 22 A. Yes, sir, I did.

15:21:01 23 Q. -- Thomas?

15:21:02 24 A. Yes, sir, I did.

15:21:02 25 Q. And did you give -- did you give him Mark Thomas's

15:21:05 1 contact information?

15:21:05 2 A. Yes. Yes, sir, I did. Actually, I think Mark called
15:21:09 3 down there and he was turned away. He kept saying that he would
15:21:12 4 talk with the witnesses after the suppression --

15:21:12 5 MR. SPENCE: Objection to what anybody else said about
15:21:15 6 a conversation.

15:21:15 7 THE COURT: Sustained. Sustained.

15:21:16 8 MR. MEGARO: Try to stay away from what other people
15:21:21 9 say. Just --

15:21:21 10 BY MR. MEGARO

15:21:22 11 Q. Okay. So that -- my point is, at a given point in
15:21:26 12 time, where -- Mr. Fulcher did have Mr. Thomas's information?

15:21:29 13 A. Oh, he had all his information. Yes, sir.

15:21:31 14 Q. Okay. What about Ms. Flowers?

15:21:37 15 A. I didn't really know Ms. Flowers even involved in the
15:21:39 16 case until, like, the third version of Heather's story that came
15:21:43 17 to me. She -- they kept giving me versions of the story where
15:21:46 18 she came up with. Cassie Flowers doesn't even involve in this
15:21:50 19 case, so nowhere in the narrative or anything that happened.

15:21:51 20 She was --

15:21:53 21 Q. Right. Let me stop you there.

15:21:54 22 A. But -- yes. But when this came up, I did ask him to
15:21:57 23 please get in -- it was adamant that, you know, because this is
15:21:59 24 the witness that -- actually, the State witness against me
15:22:02 25 brought forward. So, yes. Let's bring her forward and see what

15:22:06 1 she's got to say. I did.

15:22:07 2 Q. You mentioned the third statement. Are you referring
15:22:09 3 to a -- a report or statement made by Heather Kennon to law
15:22:15 4 enforcement prior to trial?

15:22:17 5 A. It was a -- it was a statement that did ask -- one of
15:22:20 6 the statements that I seen she wrote that was on a recorded
15:22:23 7 statement that I was -- I was -- I reviewed on September the --
15:22:26 8 the 2nd, 2014, prior, for a week -- the week before trial.

15:22:31 9 Q. And was this in a packet of discovery or court
15:22:35 10 documents?

15:22:36 11 A. He -- he let -- he -- he had reviewed it beforehand
15:22:39 12 but he hadn't told me, "Let me actually see it," but I -- we had
15:22:42 13 known that Cassie Flowers was involved through the witness --
15:22:45 14 the State witness. And he had a -- well-enough time to know
15:22:49 15 that she was needed in this case.

15:22:51 16 Q. When did you tell Ms. Fulcher -- I'm sorry --
15:22:54 17 Mr. Fulcher that Ms. Flowers was not -- was a potential witness
15:22:59 18 in the case?

15:23:00 19 A. As soon as he told me the version of Heather Kennon's
15:23:03 20 story, that we went and -- over that bridge and went to Cassie's
15:23:06 21 house and got cold packs.

15:23:09 22 Q. Okay.

15:23:10 23 A. And I was probably three months, four months prior to
15:23:12 24 trial.

15:23:13 25 Q. Okay. So just so I have the time period down --

15:23:17 1 A. Yes.

15:23:17 2 Q. -- several months prior to trial --

15:23:20 3 A. Several months.

15:23:20 4 Q. -- you found out that Ms. -- Ms. Kennon had implicated

15:23:23 5 Cassie Flowers. That's when you told --

15:23:26 6 A. Yes, sir.

15:23:26 7 Q. -- Mr. Fulcher?

15:23:27 8 A. Yes, sir.

15:23:27 9 Q. Okay. That's what I -- where was Ms. Flowers at the

15:23:30 10 time of your trial?

15:23:33 11 A. She was incarcerated.

15:23:34 12 Q. Okay. And did you know this? Did you know where she

15:23:36 13 was?

15:23:37 14 A. I -- I found out that she was incarcerated through a

15:23:40 15 friend, Anique, and she -- she contacted her for me, um, and

15:23:45 16 sent her a Christmas card, and I let her know what happened. I

15:23:50 17 sent some of the transcripts to let her review them.

15:23:53 18 Q. Okay.

15:23:54 19 A. And I told her that I was, you know, about -- I was

15:23:57 20 found guilty of this and that I needed her to "fight" a

15:24:02 21 affidavit, a truthful statement of what happened on that night.

15:24:07 22 Q. Are you familiar with an individual named Brandon

15:24:10 23 Elps?

15:24:12 24 A. Yes, I am.

15:24:12 25 Q. And can you tell the Court how you know Mr. Elps?

15:24:14 1 A. Um, I met Brandon Elps while I was in the county jail
15:24:18 2 here. I used to -- I had contacts then, so I would have to come
15:24:21 3 out of the blocks and go to the medical to clean my contacts
15:24:23 4 out. And they have a crab pot here, which is in the middle,
15:24:26 5 single cell that's in away from the -- away from the other
15:24:31 6 blocks. And Brandon Elps, he was out there in that single cell
15:24:34 7 and I got to talking to -- with him.

15:24:35 8 And I come to find out that he was actually in here on
15:24:38 9 charges which actually were secret indictments of him, and
15:24:41 10 Ms. -- Ms. Kennon selling meth -- methadone on a school
15:24:46 11 property, and I actually have evidence of that here. Daniel
15:24:50 12 Black was the narcotics officer.

15:24:51 13 He started telling me about her and how he -- she
15:24:54 14 got --

15:24:54 15 MR. SPENCE: Judge, I object. He's not even in this
15:24:57 16 hearing. He's not even -- there's no issue about --

15:24:57 17 THE COURT: Overruled. Go ahead.

15:24:58 18 MR. SPENCE: -- Brandon Elps' testimony or anything
15:25:01 19 else. It's not been brought forth by affidavit.

15:25:03 20 THE COURT: I'm going to allow a little bit of it.

15:25:05 21 THE WITNESS: He just told me that she had been
15:25:08 22 untruthful on him, and that she had him in trouble, and he'd be
15:25:12 23 willing to testify to her pattern of behavior at my trial, if
15:25:16 24 that happened.

15:25:16 25

15:25:16 1 BY MR. MEGARO

15:25:16 2 Q. And this information that you came by from Mr. Elps,
15:25:18 3 was that prior to your trial?

15:25:20 4 A. Oh, yes. He was -- it was prior before my trial. He
15:25:22 5 was here -- the day of my trial, he was in custody in the crab
15:25:26 6 pot here.

15:25:26 7 Q. Okay. Now, prior to trial, did you pass that
15:25:30 8 information along to Mr. Fulcher?

15:25:32 9 A. Yes. And he filed for the subpoenas. Actually, I
15:25:35 10 think he went through the wrong way of even subpoenaing a inmate
15:25:39 11 that's in jail custody. But he did try to subpoena him, and
15:25:41 12 they asked him would he -- would they be willing to offer proof,
15:25:44 13 but he didn't do it. I don't know why.

15:25:46 14 Q. Okay. At any point in time during your pretrial
15:25:52 15 proceedings up until the point of trial, did Mr. Fulcher ever
15:25:56 16 give you any information as to whether he had spoken with either
15:26:00 17 Mr. Elps, Ms. Flowers, or Mr. Thomas?

15:26:03 18 A. Mr. Fulcher did not review any evidence. He didn't
15:26:07 19 examine any evidence. He didn't talk to any witnesses. He
15:26:10 20 didn't -- he didn't do anything. All he wanted me to do was
15:26:12 21 take a plea bargain. He was not -- he kept reminding me that I
15:26:15 22 hadn't paid him enough to go to trial.

15:26:18 23 Q. Did there come a point in time when Mr. Fulcher sought
15:26:20 24 to be relieved as your attorney?

15:26:22 25 A. Yes.

15:26:23 1 Q. Do you remember when that was?

15:26:24 2 A. Yes. Okay. The -- there's a lot of things that
15:26:31 3 happened in the first process to get here. But he -- it was
15:26:37 4 right -- right -- I guess it was -- it was September the 1st or
15:26:40 5 2nd.

15:26:43 6 Q. Okay. Go ahead.

15:26:44 7 A. It was September the 1st and 2nd. And, um -- we,
15:26:48 8 um -- he came to me and the first thing he said was, "We're
15:26:54 9 being forced to trial, September 8th."

15:26:59 10 He said that -- he said that, basically, you know -- I
15:27:04 11 asked him, you know, "Is there some kind of time limit, you
15:27:07 12 know, that" -- oh, yeah. He told me that we were forced to
15:27:09 13 trial, and that -- yeah -- I needed to take this 57-month plea
15:27:12 14 bargain.

15:27:12 15 And I said, "Well," I said, "is there any time limit I
15:27:16 16 have, to notify or secure witnesses prior to a trial? I mean,
15:27:20 17 there's only a couple days."

15:27:22 18 He said -- and he said yes. I asked him. "Well, is a
15:27:26 19 three-day notification of subpoena, you know, a witness, is it
15:27:30 20 not enough time?"

15:27:30 21 And he agreed. I asked him to file a continuance
15:27:34 22 because we were not ready for trial. He basically -- he said --
15:27:38 23 I said, "Nor can my witnesses be brought, you know, in time."

15:27:42 24 He said he would but, you know, the Judge probably will
15:27:45 25 deny it. He said a lot of things with respect to the Trial

15:27:49 1 Judge, but he also said he didn't like going in front of the
15:27:52 2 Trial Judge. And I asked him, "Well, if you feel that way,
15:27:55 3 would you please ask for another Judge so we can -- that you
15:27:59 4 have a better relationship with."

15:28:00 5 He said he couldn't do that; it was out of his hands.
15:28:03 6 He said that -- I remarked that other people I knew had to pay
15:28:07 7 lawyers, they could choose their Judges. And he said, well, he
15:28:09 8 couldn't in this case, and he said that he -- he told me that
15:28:15 9 he -- the Prosecution wanted me. He advised me to take this
15:28:18 10 plea because if I didn't, he felt like I would lose.

15:28:21 11 I told him if he felt like that, then he needed to
15:28:23 12 withdraw from my case. And I told him that he had not took my
15:28:25 13 case in serious consideration; that all he did from the
15:28:27 14 beginning was assume that I would take a plea bargain. I
15:28:30 15 reminded him that he had even turned away witnesses of mine.

15:28:33 16 When I called at his office to make an appointment,
15:28:35 17 give affidavit statements, he did not respond to that but said
15:28:38 18 he would bring me before the Judge to request for withdrawal of
15:28:41 19 counsel. He said I had not paid him enough for a trial anyway.

15:28:44 20 Q. Okay. I knew you -- you're reviewing your notes.

15:28:45 21 A. Right.

15:28:45 22 Q. Are these the notes that you prepared?

15:28:48 23 A. Yes, I have. Yes.

15:28:49 24 Q. Okay.

15:28:49 25 A. It's a lot of stuff to cover.

15:28:50 1 Q. I know. Let me just kind of slow you down.

15:28:53 2 A. Okay.

15:28:53 3 Q. Take you bit by bit. And I know that the transcripts
15:28:57 4 are on file. But did there come a point in time where
15:29:00 5 Mr. Fulcher sought to be relieved in court?

15:29:02 6 A. Yes. We had -- the withdrawal hearing was the two
15:29:06 7 days after that, which was on a Friday. The Honorable Judge
15:29:10 8 asked him would he -- you know, why was he trying to withdraw
15:29:13 9 off my case. He stood up, he said, "You know, Your Honor, I
15:29:16 10 can't -- I feel like I can't zealously defend Mr. Warren."

15:29:19 11 He said he -- we didn't see eye to eye, and he said
15:29:22 12 that -- that he -- he falsely said that I hadn't finished paying
15:29:26 13 him.

15:29:26 14 Q. Okay. Let's -- we'll leave that alone for the time
15:29:31 15 being.

15:29:31 16 Did Ms. Kennon ever send you any attorneys -- I'm
15:29:35 17 sorry -- Ms. Kennon ever send you any letters while your case
15:29:38 18 was pending for trial?

15:29:39 19 A. Yes. This was at the beginning right after I hired
15:29:41 20 Mr. -- Mr. Fulcher. She began writing me letters from the jail.
15:29:47 21 She was -- there was about five letters I had. She was asking
15:29:51 22 me not -- you know, begging me not to talk to the police; saying
15:29:54 23 just to calm down, you know, everything -- she was going to tell
15:29:56 24 the truth about what happened, just trying to, you know, ease --
15:29:59 25 and every -- you know, ease me, tell me everything is going to

15:30:02 1 be all right. Just begging me not to talk to -- anything to any
15:30:05 2 officers or any investigators.

15:30:06 3 I gave four of those letters to Mr. Fulcher. One of
15:30:10 4 them wasn't -- wasn't as strong, I kept myself. And I did try
15:30:13 5 to bring those -- those letters in trial, but I was refused at,
15:30:16 6 because he failed to do some -- go through some process to get
15:30:20 7 them in.

15:30:20 8 Q. Were any of those -- that was going to be my next
15:30:22 9 question: Were any of those letters introduced at trial?

15:30:26 10 A. He had the four, and he -- she got on the stand and
15:30:29 11 she did admit to writing those letters, and when we --

15:30:31 12 THE COURT: He just asked you did any of them get
15:30:33 13 admitted into evidence. Listen to the question --

15:30:35 14 THE WITNESS: Oh, I'm sorry.

15:30:35 15 THE COURT: -- and answer just that.

15:30:36 16 THE WITNESS: Sorry. No. They wasn't unable to.

15:30:39 17 MR. MEGARO: Okay. Thank you. I'm sorry. Bear with
15:30:48 18 me just a moment.

15:30:49 19 THE COURT: Yes, sir.

15:30:49 20 (Pause in proceedings.)

15:30:49 21 BY MR. MEGARO

15:30:49 22 Q. During the trial, as you've heard Heather Kennon's
15:31:00 23 testimony where she testified that you were with her all night
15:31:06 24 at Anique Pittman's house, and she had testified that she had
15:31:10 25 mixed chemicals to make meth at Anique Pittman's home, all those

15:31:15 1 other things that -- and she was with Cassie Flowers -- at that
15:31:19 2 point during the trial, did you tell her attorney that -- that
15:31:22 3 those statements were not true and that there were other
15:31:25 4 witnesses that were able to contradict those statements?

15:31:29 5 A. You say, during trial?

15:31:31 6 Q. Yeah.

15:31:31 7 A. He already knew it wasn't true. I've already
15:31:34 8 discussed this with him. That was the whole purpose of having
15:31:36 9 these witnesses there. That was the importance of it. But,
15:31:38 10 yes, he knew it was untrue.

15:31:42 11 Q. And, obviously, neither Mr. Thomas nor Mr. Elps nor
15:31:46 12 Ms. Flowers testified at your trial; would that be correct?

15:31:49 13 A. That's correct, sir.

15:31:50 14 Q. Okay. Now, did there come a point during the trial
15:32:03 15 where a bag of evidence was opened and the contents displayed to
15:32:06 16 the jury?

15:32:09 17 A. No. But the SBI agent was asked about it.

15:32:12 18 Q. Okay. And the bag of evidence, is that the evidence
15:32:16 19 which was recovered from the hotel room?

15:32:18 20 A. Yes, sir.

15:32:18 21 Q. All right. And is it safe to say that your defense at
15:32:22 22 the trial was that the contents of the hotel room were Heather
15:32:27 23 Kennon's and Heather Kennon's alone, and that you had no
15:32:30 24 involvement or no knowledge of those items?

15:32:34 25 A. Um, could you repeat the question, please?

15:32:36 1 Q. Was it your defense at trial that the contents of the
15:32:41 2 hotel room that were found, the precursors to meth --

15:32:43 3 A. Right.

15:32:44 4 Q. -- the meth lab --

15:32:45 5 A. Right.

15:32:45 6 Q. -- that those items were Heather Kennon's, Heather
15:32:48 7 Kennon's alone, and that you knew nothing about it, you didn't
15:32:51 8 possess those items?

15:32:52 9 A. I don't know who's the possessor of it, whose that
15:32:55 10 stuff was, but it wasn't mine.

15:32:56 11 Q. Okay. Did there come a point in time during the trial
15:33:01 12 that you found out that one of the items recovered from the
15:33:04 13 hotel room in that bag of evidence was a box of tampons?

15:33:08 14 A. I think they said tampons. I don't know if it was a
15:33:11 15 box, but I know that the evidence wasn't in the discovery.

15:33:15 16 Q. Okay. And the fact -- when you say that evidence
15:33:18 17 was -- wasn't in discovery, are you talking about an inventory?

15:33:22 18 A. Yes, sir. I have that at home.

15:33:23 19 Q. Tampons were not listed on the inventory?

15:33:26 20 A. No, sir.

15:33:26 21 Q. And the first time you learned of the presence of
15:33:29 22 tampons was when?

15:33:30 23 A. We were sideswiped in trial with it. It should have
15:33:33 24 been the centerpiece of the defense.

15:33:35 25 Q. Was that ever mentioned by the defense?

15:33:38 1 A. No.

15:33:38 2 Q. The tampons?

15:33:39 3 A. He just let it go. He just let it go. I -- due to
15:33:43 4 our -- our interpersonal conflict, he just -- he let -- he
15:33:44 5 just -- he let stuff like that go. He didn't pounce on it.

15:33:47 6 Q. Okay. Now, I want to draw your attention to the first
15:33:53 7 day of the trial. Did there come a point in time where you
15:33:58 8 asked Mr. Fulcher where your witnesses were, on the first day of
15:34:00 9 trial?

15:34:01 10 A. That was the first day of trial. I walked into this
15:34:04 11 courtroom and I asked Mr. -- I've had a feeling that my -- my
15:34:06 12 witness -- there was no way possible to get them here, and I
15:34:09 13 asked him first thing, "Are my witnesses here?" He asked the
15:34:12 14 Madame Clerk, "Are the witnesses here?"

15:34:14 15 And she said, "I'm sorry. But the sheriff forgot to
15:34:18 16 serve the subpoenas."

15:34:19 17 Q. Do you know what other efforts were made to bring
15:34:22 18 those witnesses to court?

15:34:24 19 A. He didn't object to it. He didn't object to it at
15:34:27 20 all. But I don't -- there was no -- there was -- there was
15:34:29 21 no -- no, sir.

15:34:31 22 Q. Okay. How well did you know Heather Kennon?

15:34:42 23 A. I met her a couple times through my brother. He used
15:34:45 24 to date her. I knew she had a son.

15:34:51 25 Q. Do you know whether Heather Kennon had any medical

15:34:53 1 issues or medical problems?

15:34:55 2 A. Well, I wanted -- I knew through Brandon Elps that,
15:34:58 3 you know, she was --

15:34:59 4 MR. SPENCE: Objection.

15:34:59 5 THE COURT: Sustained.

15:35:01 6 BY MR. MEGARO

15:35:01 7 Q. What did you personally know about -- what, if
15:35:04 8 anything, did you personally know about Heather Kennon's
15:35:07 9 condition?

15:35:07 10 A. That she -- that she was notorious for faking
15:35:10 11 injuries, and could get drugs. She had a bad record, criminal
15:35:16 12 record. Driving record, terrible driving record.

15:35:21 13 Q. Now, the part about faking injuries or going -- going
15:35:24 14 to the doctor to get drugs, did you pass that information along
15:35:27 15 to your attorney as well?

15:35:28 16 A. I asked him to -- to obtain that information. And I
15:35:32 17 had some information he didn't even use, but he didn't even make
15:35:36 18 any effort to get -- to look at that. He said that was
15:35:38 19 impossible to get.

15:35:39 20 MR. MEGARO: All right. Thank you. I have no further
15:35:52 21 questions for Mr. Warren, Your Honor.

15:35:53 22 THE COURT: Cross-examination Mr. Spence?

15:35:54 23 **CROSS-EXAMINATION BY MR. SPENCE**

15:35:54 24 Q. Mr. Warren, did you do some handwritten notes and give
15:35:58 25 them to Mr. Megaro in this case?

15:36:00 1 A. Yes, sir. Quite a bit.

15:36:02 2 Q. Where are they?

15:36:03 3 A. My handwritten notes?

15:36:04 4 Q. Yeah.

15:36:04 5 A. I think Mr. Megaro has them.

15:36:07 6 MR. MEGARO: They're --

15:36:07 7 MR. SPENCE: The handwritten ones?

15:36:12 8 MR. MEGARO: The handwritten notes are right in front
15:36:13 9 of them.

15:36:14 10 THE COURT: He's got them.

15:36:16 11 MR. SPENCE: Oh. You've got them.

15:36:17 12 BY MR. SPENCE

15:36:17 13 Q. So they haven't been introduced; they've been -- just
15:36:19 14 been up here --

15:36:21 15 A. I want them introduced. Actually, we didn't go over
15:36:23 16 everything that needed to be --

15:36:24 17 Q. So he's not really done his job, has he?

15:36:26 18 A. No. He's done a great job.

15:36:30 19 Q. Okay. Thank you. This here, what is that?

15:36:32 20 A. This is just a time line of stuff that happened.

15:36:33 21 Q. Is this something you gave Mr. Fulcher?

15:36:36 22 A. No, sir.

15:36:37 23 Q. Because it wasn't done at the time, was it?

15:36:40 24 A. I don't understand the question.

15:36:41 25 Q. When did you write this?

15:36:43 1 A. About two months ago.

15:36:44 2 Q. Okay. I'm going to call that MAR Number [4] -- I
15:36:47 3 mean, [3]. And I'm going to have to write it on there.

15:36:59 4 (State's Exhibit MAR Number [3] marked for
15:36:59 5 identification.)

15:36:59 6 BY MR. SPENCE

15:36:59 7 Q. And this is your writing?

15:37:04 8 A. Yes, sir. That's my writing.

15:37:05 9 Q. Two months ago; is that right?

15:37:07 10 A. Just about.

15:37:07 11 Q. So this is just a list of 24 things that you think
15:37:11 12 weren't done correctly, correct?

15:37:13 13 A. That's correct.

15:37:13 14 Q. Did you get them all out with Mr. Megaro up here, or,
15:37:15 15 you got something else you want to get out in front of the
15:37:19 16 Judge, of this stuff?

15:37:20 17 A. Are you willing to let me -- allow to talk about it?

15:37:23 18 Q. I'm not asking you. I'm just saying, is there
15:37:24 19 anything in there you think the Judge ought to hear about that
15:37:26 20 you didn't -- that you weren't asked about?

15:37:28 21 A. Yeah. I would like a couple things said.

15:37:29 22 Q. Go ahead.

15:37:30 23 A. I appreciate it, Mr. Spence. Thank you.

15:37:31 24 Q. Thank you.

15:37:33 25 A. I just want to say, you know, for -- you know, our

15:37:36 1 motion for a continuance, you know, after we -- you know, while
15:37:39 2 I was -- while I was there we had a withdrawal, and he was
15:37:42 3 asking me -- the Judge asked me to stand up and state my case,
15:37:45 4 how -- why did I want to withdraw for him off my case?

15:37:49 5 And, you know, when I stood up I said, you know, "He
15:37:53 6 hasn't -- he hasn't been effective. He hasn't -- he hasn't, you
15:37:54 7 know, analyzed any evidence. He hasn't -- he hasn't talked to
15:37:58 8 any of my witnesses. He's been ineffective on every account.
15:38:02 9 All he was concerned was my money."

15:38:04 10 As I'm talking, I'm looking down at Mr. Fulcher and
15:38:07 11 he's turning purple. He's very embarrassed in open court. He
15:38:10 12 was angry with me. And this -- by me having to state my -- my
15:38:13 13 complaints with this man in open court, it really caused more --
15:38:15 14 it was more than a conflict of interest: It caused a conflict
15:38:18 15 of interpersonal relationship between us. It was a gulf between
15:38:21 16 us after this.

15:38:22 17 And, you know, we -- we -- we denied -- you know, I was
15:38:24 18 denied that. You know, I was stuck with this guy to go all the
15:38:26 19 way through the trial. And there was times he should have
15:38:29 20 objected, he should have objected to, and there's things he
15:38:32 21 should have done. He just let -- like the tampons, he should
15:38:34 22 have -- you know, he should have been -- he should have pounced
15:38:35 23 on it. There was a animosity between us.

15:38:38 24 Q. Okay. Now, you're talking about the hearing in August
15:38:40 25 where all this took place?

15:38:42 1 A. The double hearing. The double withdrawal hearing.

15:38:45 2 That was part of it. Yes, sir.

15:38:45 3 Q. In August?

15:38:46 4 A. I think so. Yes, sir.

15:38:48 5 Q. And didn't you tell the Court and tell Mr. Fulcher you
15:38:50 6 were going to hire your own lawyer?

15:38:52 7 A. I wanted to. Yes, sir.

15:38:53 8 Q. Well, you told him you were going to retain a lawyer,
15:38:55 9 to hell with him, you were going to do your -- do it yourself?

15:38:58 10 A. Yes, sir.

15:38:58 11 Q. Okay. So what did you expect him to do after you told
15:39:01 12 him you were going to hire your own lawyer?

15:39:03 13 A. I was just -- I was really frustrated. I just felt
15:39:06 14 like I was being railroaded. I felt like he was not -- he was
15:39:09 15 not having my -- my best interest in mind.

15:39:11 16 Q. Okay. Did you try to hire a lawyer?

15:39:13 17 A. I was never allowed to, um, get rid of him. It was
15:39:16 18 denied.

15:39:16 19 Q. No. You're free to get rid of him.

15:39:18 20 A. No, I -- I was denied that fact. We were -- like, the
15:39:21 21 trial was coming up. I was denied that.

15:39:22 22 Q. You were denied the right to represent yourself?

15:39:25 23 A. I was told that's not wise to do.

15:39:28 24 Q. Okay. Did you -- but in August, you had a month
15:39:30 25 between August and September to hire a lawyer. Did you make an

15:39:33 1 attempt to do that?

15:39:34 2 A. Well, none of the evidence had been analyzed. None of
15:39:37 3 the witnesses had been talked to. I was still stuck, like, from
15:39:40 4 day one.

15:39:40 5 Q. Okay. The answer would be no, right?

15:39:42 6 A. Yes, sir.

15:39:42 7 Q. Okay. And you said these tampons, that was -- you
15:39:51 8 think that was just a big -- a big part of the trial?

15:39:54 9 A. It was a haymaker-type-thing. We never had a chance
15:39:56 10 to analyze it. I was wondering why it was even missing. I even
15:39:59 11 looked at you and you were flabbergasted by it. I mean, when
15:40:02 12 the jury -- I looked at the jury, I looked at my lawyer, I mean,
15:40:04 13 I looked at you and you didn't even know it -- because
15:40:06 14 evidently, you hadn't been presented with the evidence too.

15:40:08 15 And I think it should have been -- because the whole
15:40:10 16 time, this whole situation, it was of who this bag belonged to.
15:40:14 17 This woman with -- the day I picked her up, I'm at that motel.
15:40:17 18 I shouldn't have been at that motel, but I was there with a
15:40:19 19 married woman at that motel. I ran into her just by chance.

15:40:23 20 Q. Okay.

15:40:23 21 A. I wasn't -- I wasn't just -- it was -- it was a
15:40:25 22 chance. She just asked me for a ride.

15:40:27 23 Q. Okay. My question is, the tampons came out in the
15:40:29 24 trial?

15:40:31 25 A. Yes, sir.

15:40:33 1 Q. And the tampons, the presence of tampons in that, that
15:40:40 2 would not have been favorable information for the State, would
15:40:42 3 it? It's not going to hurt your case, would it? It would hurt
15:40:47 4 my case?

15:40:47 5 A. I think it would have helped my case.

15:40:49 6 Q. How?

15:40:50 7 A. I think it would have showed -- it would have gave
15:40:52 8 more direction to who -- where the bag came from.

15:40:54 9 Q. Okay. It was just you and Heather, right?

15:40:56 10 A. Um, for --

15:40:57 11 Q. They weren't your tampons, were there?

15:40:59 12 A. No, sir. They were not my tampons.

15:41:00 13 Q. So if the jury sees a woman and man together and some
15:41:02 14 tampons, they probably can do the math and figure out whose
15:41:06 15 tampons, right?

15:41:07 16 A. Yes, sir.

15:41:07 17 Q. So the tampons would show that it was Heather Kennon's
15:41:09 18 stuff, right?

15:41:10 19 A. I don't know whose -- I think she was -- really,
15:41:12 20 honestly, I think she was partying with those people at that
15:41:15 21 motel. And, I mean, that was just trashing their little party
15:41:17 22 they had. I don't -- I don't really think it was her stuff, but
15:41:19 23 it wasn't mine.

15:41:21 24 Q. Of course it wasn't yours.

15:41:22 25 A. No, sir. It was not mine.

15:41:23 1 Q. And a jury would know that?

15:41:25 2 A. I would -- I would think so. Everything got out.

15:41:27 3 Yes, sir.

15:41:31 4 Q. You testified at your trial under oath, right?

15:41:34 5 A. Yes, sir.

15:41:35 6 Q. And you were able to tell your whole story at trial?

15:41:39 7 A. Yes, sir.

15:41:43 8 Q. And Anique testified, right?

15:41:45 9 A. Right.

15:41:46 10 Q. She told her whole story under oath, right?

15:41:51 11 A. Yes, sir.

15:41:54 12 Q. Two other people testified, correct, for you?

15:41:57 13 A. Yes, sir.

15:41:58 14 Q. They told their story under oath, correct?

15:42:00 15 A. Well, the reason I had those people there is because,

15:42:02 16 one --

15:42:02 17 THE COURT: He just asked you, did they testify.

15:42:04 18 THE WITNESS: Yes, sir.

15:42:04 19 BY MR. SPENCE

15:42:04 20 Q. Okay. Is there anything Anique Pittman would testify

15:42:09 21 to that Mark Thomas could add anything to?

15:42:12 22 A. Yes, sir.

15:42:13 23 Q. What?

15:42:15 24 A. Well, the fact is, is that it's really important

15:42:18 25 that -- because Mark was up with Heather. He could see her

15:42:21 1 going in and out of the house. She took my keys, my car keys.
15:42:24 2 He can -- she can -- Mark can testify that, you know, "Hey.
15:42:27 3 There's another witness that we did not -- we were not out
15:42:30 4 partying making methamphetamine like she claimed, with six other
15:42:33 5 people."

15:42:33 6 He could -- he could claim a lot of things on that
15:42:36 7 version. Only thing I have in this -- in this case is to attack
15:42:38 8 her -- her untruthfulness and her pattern of behavior. That's
15:42:44 9 all I have.

15:42:45 10 Q. Okay.

15:42:45 11 A. That was my only angle.

15:42:46 12 Q. I got it. Now, Judge Alford did issue writs for
15:42:51 13 both -- for Mark Thomas and Cassie Flowers, correct?

15:42:53 14 A. Sir?

15:42:53 15 Q. Didn't Judge Alford issue writs during the -- for
15:42:55 16 those two people?

15:42:57 17 A. Yes, sir. He did.

15:42:57 18 Q. So Mr. Fulcher is not to blame for that, is he?

15:43:00 19 A. Well, that's the part -- I was trying to say with
15:43:01 20 the -- your rebuttal in the case of State, they're saying that
15:43:03 21 it would have been deficient to bring them. But it was never a
15:43:06 22 fact of being deficient to bring them. It was never a trial
15:43:09 23 strategy. It was the point that he knew about the importance.
15:43:11 24 He did. He filed it late, but he did file it. But it was never
15:43:15 25 really part of his -- his thing. It was the State that failed

15:43:17 1 to bring them. He failed to object to it. That was his
15:43:20 2 failure. He allowed it to happen.

15:43:22 3 Q. Allowed what?

15:43:23 4 A. He allowed them not to be there without objecting to
15:43:25 5 it. The writs were filed. The Judge did file. The State --
15:43:28 6 when I got here, they said the State had forgot to serve the
15:43:30 7 subpoenas, these writs.

15:43:31 8 Q. But the Judge who ordered the writs would have allowed
15:43:35 9 these people to come in?

15:43:35 10 A. They were in State custody. They had no way to get
15:43:38 11 down here. It was the State that had to bring them down here.

15:43:40 12 Q. So it was my fault?

15:43:42 13 A. No, sir. I don't blame you. I know you didn't have
15:43:44 14 nothing to do with this.

15:43:45 15 Q. Okay. Now, you paid Mr. -- Mr. Fulcher \$2,500?

15:43:48 16 A. Yes, sir.

15:43:49 17 Q. From a tax return?

15:43:51 18 A. That's all I had. Yes, sir. That's every bit of
15:43:54 19 money I had.

15:43:55 20 Q. Before I forget about it, let me go over your criminal
15:43:57 21 history.

15:43:58 22 A. Yes, sir.

15:43:58 23 THE COURT: We went over it in the trial. I'll take
15:44:00 24 judicial notice of it.

15:44:01 25 MR. SPENCE: Okay.

15:44:02 1 BY MR. SPENCE

15:44:02 2 Q. Who paid Mr. Megaro in this case?

15:44:07 3 A. A friend paid for --

15:44:08 4 Q. Who?

15:44:09 5 A. Ms. Silvia Flowers paid for him.

15:44:11 6 Q. So Cassie Flower's mother --

15:44:13 7 A. Yes, she did --

15:44:13 8 Q. -- paid Mr. Megaro --

15:44:13 9 A. Yes, sir.

15:44:14 10 Q. -- to help you?

15:44:15 11 A. Yes, sir.

15:44:16 12 Q. How much?

15:44:17 13 A. Is that even --

15:44:18 14 Q. Yeah --

15:44:18 15 A. Is that even --

15:44:20 16 THE COURT: I don't need to hear that. You don't have

15:44:24 17 to answer that.

15:44:25 18 THE WITNESS: Thank you, sir.

15:44:27 19 MR. SPENCE: That's all I have.

15:44:28 20 THE COURT: Anything further?

15:44:36 21 MR. MEGARO: No, Your Honor. Thank you.

15:44:37 22 THE COURT: Thank you, sir. You may stand down.

15:44:40 23 THE WITNESS: Thank you, Judge.

15:44:40 24 (The Defendant stepped down from the witness

15:44:40 25 stand.)

15:44:40 1 THE COURT: Call your next witness.

15:44:43 2 MR. MEGARO: Your Honor, at this time, we would rest.

15:44:45 3 (The Defense rests.)

15:44:45 4 THE COURT: All right. Does the State wish to call
15:44:47 5 any?

15:44:48 6 MR. SPENCE: Very briefly.

15:44:50 7 THE COURT: Please.

15:44:50 8 MR. SPENCE: Rodney Fulcher.

15:44:52 9 THE COURT: Please swear the witness, Madame Clerk.

15:44:53 10 (The witness was duly sworn.)

15:44:53 11 MR. MEGARO: Your Honor, my client brought his "card"
15:45:05 12 down, but I believe this has been admitted by the State.

15:45:06 13 THE COURT: I don't think it's been admitted.

15:45:08 14 MR. SPENCE: I didn't admit it.

15:45:09 15 MR. MEGARO: Oh, okay.

15:45:09 16 THE COURT: -- thank you.

15:45:09 17 (The witness took the witness stand.)

15:45:09 18

15:45:09 19 **RODNEY FULCHER,**

15:45:09 20 having been first duly sworn, at 3:45 p.m. was called as a
15:45:09 21 witness on behalf of the State and testified as follows:

15:45:09 22 **DIRECT EXAMINATION BY MR. SPENCE**

15:45:14 23 Q. State your name, please, for the Court, sir.

15:45:16 24 A. Rodney Fulcher.

15:45:17 25 Q. And, Mr. Fulcher, you're a North Carolina Bar member

15:45:21 1 since what year?

15:45:22 2 A. 1999.

15:45:23 3 Q. And in that time, do you take criminal appointed
15:45:26 4 cases? Criminal retained cases?

15:45:28 5 A. Both.

15:45:28 6 Q. Okay. In this case, just to clear this up, did you
15:45:31 7 ever represent Heather Kennon in this case?

15:45:34 8 A. No. I think Mr. Suggs was the one who was
15:45:37 9 representing her.

15:45:37 10 Q. Okay. So there was no conflict to even be dealt with,
15:45:40 11 correct?

15:45:40 12 A. I never spoke with Heather Kennon about anything.

15:45:42 13 Q. Okay. Tell the members -- tell His Honor -- and we
15:45:46 14 can limit this to August, September, during the time this is
15:45:49 15 being prepared for trial -- your relations and what you did or
15:45:54 16 what Mr. Warren asked you to do regarding this case.

15:45:58 17 A. Beginning in August, we were -- we knew at that point
15:46:02 18 Mr. Warren was going -- certainly was going to reject any plea
15:46:05 19 offers, and I think Your Honor put them in -- even made that
15:46:08 20 clear to us.

15:46:08 21 So shortly after that, we began to -- we met several
15:46:12 22 times over in the jail down by the fingerprinting room and began
15:46:16 23 to discuss, "Hey. What is our plan to go?"

15:46:18 24 And I had said, "Listen. The evidence in this case is
15:46:22 25 very strong against you. The risk/reward is certainly a lot

15:46:28 1 that you'd be looking at if you're convicted."

15:46:30 2 The more we went, the more adamant he was we was going
15:46:33 3 to try it, and the differences of opinion that we have was on
15:46:36 4 the evidence of the case and the direction to go on doing that.

15:46:38 5 I was of the assumption that we needed to attack the
15:46:41 6 evidence that the State had. There was a state lab official
15:46:45 7 coming; there was several officers that were to be there. And
15:46:51 8 Mr. Warren was -- seemed to be more wanting to attack
15:46:56 9 credibility at that point than attacking what the State was
15:46:58 10 going to present. That was the huge difference that we had at
15:47:01 11 the time.

15:47:02 12 Q. And did he tell you that the two witnesses that you
15:47:06 13 needed to call on his behalf were Cassie Flowers and Mark
15:47:09 14 Thomas?

15:47:10 15 A. We had talked about Cassie Flowers and Mark Thomas,
15:47:12 16 but at that point, we really did not know that Heather Kennon
15:47:15 17 was even going to testify in that case, because she was a
15:47:18 18 co-defendant, and Mr. Suggs was representing her in that case.
15:47:21 19 So at that point, we didn't know that she was going to testify
15:47:26 20 against us.

15:47:26 21 Q. She was a charged co-defendant?

15:47:28 22 A. She was a charged co-defendant.

15:47:30 23 Q. Okay. And at what point did you find out or were you
15:47:33 24 informed that she was going to actually plead guilty and testify
15:47:36 25 for the State?

15:47:36 1 A. I believe it was when we -- we rejected -- Mr. Warren
15:47:40 2 finally rejected the offer on the table, is when you let me know
15:47:45 3 and Mr. Suggs let me know, that at that point, she was going to
15:47:48 4 be a State's witness, testifying.

15:47:50 5 Q. Okay. And after that, did the names Cassie Flowers --

15:47:55 6 A. Yes.

15:47:55 7 Q. -- and Mark Thomas come up?

15:47:56 8 A. Absolutely.

15:47:57 9 Q. And did they come up -- what month or what time period
15:48:00 10 are we talking about?

15:48:01 11 A. It would be mid- to late August before -- it was very
15:48:04 12 close to trial time.

15:48:05 13 Q. Okay. And had you read all the discovery?

15:48:08 14 A. I had read all the State's discovery that we had.

15:48:11 15 Q. Okay. And in your opinion, were you prepared to try
15:48:15 16 the case based on what the State -- the open-file discovery from
15:48:19 17 the State?

15:48:19 18 A. I was prepared to try the case on what the State's
15:48:22 19 evidence was, but I was not prepared to go forward with any
15:48:26 20 information to cross-examine any of these witnesses that
15:48:31 21 Mr. Warren only had. One, I didn't know anything about them.
15:48:33 22 Two, they were all -- every one in the Department of Corrections
15:48:35 23 or in custody. And I informed him that their credibility would
15:48:39 24 be at issue.

15:48:40 25 Q. Okay. Now, how long have you known, from hanging

15:48:45 1 around Criminal Court, the name Cassie Flowers?

15:48:48 2 A. Ever since I have been practicing.

15:48:50 3 Q. And do you think that she would have made a credible
15:48:54 4 witness on the stand, given her criminal history and your
15:48:57 5 knowledge of her credibility and drug use?

15:49:00 6 A. No. And that was part of the conflict between me and
15:49:02 7 Mr. Warren.

15:49:03 8 Q. Okay. Did he insist that you call them?

15:49:04 9 A. Yes.

15:49:05 10 Q. And, of course, strategically, you're in charge of who
15:49:10 11 to call?

15:49:11 12 A. That's correct.

15:49:12 13 Q. And did you make a strategic decision not to call her?

15:49:16 14 A. I -- he insisted, and I issued the writ. Judge Alford
15:49:20 15 signed it, and we sent it.

15:49:21 16 Q. Right.

15:49:21 17 A. But it was my intention that I would not call her,
15:49:25 18 because I could get the same testimony of what he wanted to get
15:49:28 19 out of -- out of Ms. Anique Pittman, who was a lot-more-credible
15:49:31 20 witness.

15:49:31 21 Q. Okay. Ms. Pittman had no prior criminal history --

15:49:35 22 A. She did not.

15:49:35 23 Q. -- or very little?

15:49:36 24 A. She did not.

15:49:37 25 Q. Okay. And the same with Mark Thomas: At the time you

15:49:39 1 were having to bring him over, he was facing -- or he was
15:49:43 2 being -- serving time for armed robbery?

15:49:46 3 A. He was in the Department of Corrections as well.

15:49:47 4 Q. Okay. So what did you advise Mr. Warren about --
15:49:50 5 about calling Mr. Thomas as a strategic move to rebut some minor
15:49:55 6 part of Heather Kennon's testimony?

15:49:57 7 A. It was the same deal with Cassie Flowers: That she --
15:49:59 8 he would not be very credible, and the only thing that he would
15:50:03 9 be able to do would refute anything that she said. And I didn't
15:50:06 10 know that -- what she was doing to testify until you made it
15:50:09 11 known that late in the ball game.

15:50:11 12 Q. Okay. And, again, you would be calling Cassie Flowers
15:50:14 13 basically to talk about the cold packs and rebut that little --

15:50:17 14 A. That's correct.

15:50:18 15 Q. -- piece? And in order to rebut that small piece of
15:50:23 16 testimony, her whole criminal history would be -- will be
15:50:25 17 exposed?

15:50:26 18 A. That was my thinking.

15:50:26 19 Q. And also, she would become associated with the
15:50:31 20 defendant you were trying to help?

15:50:32 21 A. It was her -- be honest with you, it was her
15:50:34 22 background and her record that really bothered me, anything she
15:50:37 23 would say and testify.

15:50:38 24 Q. Okay. And the same -- same thing would apply to Mark
15:50:40 25 Thomas?

15:50:41 1 A. That's correct.

15:50:41 2 Q. Okay. In preparation for this hearing, has Mr. Megaro
15:50:46 3 ever talked to you about this case?

15:50:48 4 A. No.

15:50:48 5 Q. Has he ever tried to subpoena your file?

15:50:50 6 A. No.

15:50:50 7 Q. Ever tried to subpoena your notes?

15:50:53 8 A. No.

15:50:53 9 Q. Issued any discovery that you know of?

15:50:55 10 A. No.

15:50:55 11 Q. Has he applied for any discovery, posttrial?

15:50:58 12 A. No.

15:51:00 13 Q. When did we finally get to talk about this case?

15:51:03 14 A. Probably late last week.

15:51:05 15 Q. And did I hand you the MAR and let you read it?

15:51:08 16 A. You let me read it.

15:51:09 17 Q. Okay. Is that the first time we've even talked about
15:51:11 18 it?

15:51:11 19 A. That's correct.

15:51:12 20 Q. And what was my instruction to you after I gave the
15:51:14 21 MAR?

15:51:14 22 A. That I needed to kind of get myself familiarized with
15:51:17 23 what -- the MAR, be able to answer any questions that you need
15:51:21 24 or Megaros[sic] asked.

15:51:23 25 Q. Now, the name Brandon Elps came up. Are you familiar

15:51:25 1 with that name from coming to court?

15:51:27 2 A. I am.

15:51:27 3 Q. And was there some -- something Mr. Elps was being
15:51:31 4 asked to provide in this case?

15:51:31 5 A. Very similar situation: To refute anything that
15:51:34 6 Heather Kennon would testify to, and her credibility.

15:51:37 7 Q. Okay. And was his testimony going to be something
15:51:41 8 like, at some point in the past she tried to get him in trouble?

15:51:45 9 A. That was what Mr. Warren's -- our MO would be with
15:51:48 10 him. And, once again, he was in custody, and I was weighing the
15:51:52 11 evidence, credibility issues of what he could possibly help the
15:51:56 12 case was, and I was very much dead against that.

15:51:59 13 Q. Okay. Now, what about the tampon issue? Do you
15:52:02 14 remember that coming up at trial?

15:52:04 15 A. I don't remember that at all.

15:52:06 16 Q. Okay. It would be in the transcript if it came up and
15:52:08 17 how it came up?

15:52:09 18 A. Correct.

15:52:10 19 Q. Okay. Mr. Warren was -- testified in his own defense?

15:52:15 20 A. He did, and that was against my wishes as well.

15:52:17 21 Q. Okay. Why did you advise him not to testify?

15:52:19 22 A. I advised him that if he was to testify, that
15:52:21 23 certainly, you would delve into his criminal history.

15:52:24 24 Q. Which included convictions for Second Degree Murder?

15:52:27 25 A. Correct.

15:52:27 1 Q. And other things?

15:52:28 2 A. That's correct.

15:52:30 3 Q. And, probably not be received too well?

15:52:32 4 A. Correct.

15:52:32 5 Q. And, just based on your -- your experience working in
15:52:35 6 Carteret County, practicing law, for all this period of time?

15:52:41 7 A. It was my -- it was my thought from the very beginning
15:52:45 8 that the State had a very strong case and that we were not going
15:52:49 9 to win this case if we tried it. That was part of the reason
15:52:52 10 why I kind of moved -- pushed us towards, "Hey, taking a plea,"
15:52:56 11 because I knew the amount of time that was hanging over his
15:52:58 12 head.

15:52:58 13 Once he insisted, I moved to continue, obviously, to
15:53:02 14 get these people that he demanded that we get here, and then at
15:53:06 15 trial I cross-examined and directed, and then we called Anique
15:53:09 16 Pittman and our witnesses, because they were the only people
15:53:12 17 that could testify that I didn't think's credibility would be at
15:53:16 18 issue that could add any light to what Mr. Warren was asking.
15:53:18 19 But I thought the State had a stronger case than we did.

15:53:21 20 Q. And, again, the downside was horrific?

15:53:25 21 A. Yes.

15:53:26 22 Q. And the upside was at least manageable?

15:53:29 23 A. Correct.

15:53:31 24 Q. And also, the State has the burden of proof. Isn't it
15:53:34 25 the defense lawyer's job to sit and listen and pick a case apart

15:53:38 1 as it evolves?

15:53:39 2 A. That's correct.

15:53:39 3 Q. And how many -- how many cases have we tried together
15:53:41 4 in this court?

15:53:42 5 A. Several.

15:53:42 6 Q. Okay. Did you do anything in this case that you -- or
15:53:51 7 handle this case any differently because of the way Mr. Warren
15:53:56 8 spoke about you or spoke about you in court?

15:53:58 9 A. No. I -- when His Honor said that I was to stay in
15:54:03 10 the case, I gave it the same amount of preparation and response
15:54:07 11 to the discovery as I would have as if he'd had paid me \$10,000.

15:54:10 12 Q. Okay.

15:54:10 13 A. Because that was my -- I took an oath to uphold the
15:54:13 14 law, and that's what I did. And I tried, to the best of my
15:54:15 15 ability, what was before me.

15:54:17 16 Q. And, also, Judge Alford's been the Resident Superior
15:54:22 17 Court Judge and Chief Resident since you've been practicing?

15:54:25 18 A. He has.

15:54:25 19 Q. And you know Judge Alford, what he will do as far as
15:54:29 20 his continuances at the last moment, motions to withdraw at the
15:54:32 21 last moment, things like that; is that correct?

15:54:34 22 A. That's correct.

15:54:35 23 Q. And did you sort of know what was going to -- how it
15:54:38 24 was going to play out?

15:54:39 25 A. I knew that that late in the ball game, it would be

15:54:41 1 very hard for this case to be continued.

15:54:43 2 Q. Okay. What about Mr. Warren's expressed intent to
15:54:45 3 hire another attorney? Tell us about that briefly.

15:54:49 4 A. When we were down discussing and I really informed him
15:54:51 5 of the weakness of our case, the strength of the State's case
15:54:53 6 and that it was my opinion that the case should be pled, that's
15:54:57 7 when he said, "I guess you and I don't see eye to eye, and I
15:55:00 8 need to hire another attorney."

15:55:02 9 Q. Okay.

15:55:02 10 A. "Or I need another attorney."

15:55:03 11 MR. SPENCE: Okay. And that's all I have of
15:55:07 12 Mr. Fulcher.

15:55:08 13 THE COURT: Cross-examination, Mr. Megaro?

15:55:11 14 MR. MEGARO: Yes, Your Honor. Briefly, may I check
15:55:13 15 something with Madame Clerk?

15:55:14 16 THE COURT: Sure.

15:55:24 17 MR. MEGARO: Your Honor, may I approach the witness?

15:55:25 18 THE COURT: You may.

15:55:26 19 MR. MEGARO: Thank you.

15:55:47 20 MR. SPENCE: It's a probation violation.

15:56:22 21 MR. MEGARO: Right. But this is our whole file.

15:56:25 22 MR. SPENCE: It's a probation violation on the case,
15:56:28 23 but he doesn't represent her on the underlying case. She
15:56:30 24 violated her probation three years later.

15:56:32 25 MR. MEGARO: This is not the entire court file?

15:56:34 1 MR. SPENCE: No, it is.

15:56:34 2 MR. MEGARO: Oh, okay.

15:56:34 3 MR. SPENCE: But if you're trying to say he
15:56:37 4 represented her at some time on -- as a co-defendant in this
15:56:40 5 case, that's not true.

15:56:41 6 MR. MEGARO: I'm just going to ask.

15:56:42 7 **CROSS-EXAMINATION BY MR. MEGARO**

15:56:42 8 Q. Mr. Fulcher, I'm going to ask you to take a look at
15:56:46 9 the official court file: Docket Number 14 CRS -- I believe
15:56:52 10 that's 50380. Did I get that number correct?

15:56:56 11 A. Yes.

15:56:56 12 Q. Okay. I'm actually going to ask you -- well, go
15:57:01 13 ahead. I'm sorry. Take a look at that and just let me know
15:57:03 14 when you're done.

15:57:04 15 (Mr. Fulcher examines documents.)

15:57:07 16 THE WITNESS: Yes. I understand.

15:57:09 17 BY MR. MEGARO

15:57:09 18 Q. I'm going to ask you, on the outside of the file in
15:57:12 19 front of the file, the file jacket, there's a handwritten space
15:57:17 20 or name of a defendant, and that contains the name Heather
15:57:19 21 Kennon?

15:57:20 22 A. It does.

15:57:21 23 Q. And to the right of that file, it contains a last name
15:57:25 24 of an attorney?

15:57:25 25 A. Mr. Suggs.

15:57:26 1 Q. And next to Mr. Suggs' name is the name Fulcher, but
15:57:28 2 that's crossed out, correct?

15:57:30 3 A. That's correct.

15:57:30 4 Q. Okay. Have you ever represented Heather Kennon?

15:57:33 5 A. I did. I just represented her at the first of this
15:57:36 6 year on this probation violation in which she was to enter into
15:57:40 7 a rehab center, and she did and I believe has almost completely
15:57:44 8 successfully completed it, when I spoke to her probation
15:57:47 9 officer.

15:57:47 10 Q. Had you ever represented Heather Kennon, prior?

15:57:52 11 A. It's -- not to my -- I don't believe I have. I know
15:57:55 12 in this case I did not. I never spoke to her about this case
15:57:59 13 before.

15:58:00 14 Q. About a prior case?

15:58:02 15 A. I don't remember if I have. Nothing that would have
15:58:05 16 been involved with Mr. Warren.

15:58:07 17 Q. Well, whether it was involving Mr. Warren or not?

15:58:09 18 A. I don't -- I don't recall if I ever represented her
15:58:12 19 before.

15:58:12 20 Q. Okay. Now, you testified earlier that Mr. Warren was
15:58:18 21 adamant about going to trial?

15:58:20 22 A. He was.

15:58:21 23 Q. And is it safe to say he was adamant about going to
15:58:24 24 trial from day one?

15:58:25 25 A. Yes.

15:58:28 1 Q. You also talked about a difference of opinion: Your
15:58:31 2 opinion as to how to attack the case would be to attack the
15:58:34 3 Prosecution's evidence?

15:58:35 4 A. Correct.

15:58:35 5 Q. And his opinion was to attack the credibility of the
15:58:38 6 Prosecution's witnesses?

15:58:40 7 A. Once we found out that Heather Kennon was going to
15:58:42 8 testify against him, yes. But before that, it was just the
15:58:46 9 evidence that was before us, and that was only the officers
15:58:49 10 involved and what was found at the site at Atlantic Beach.

15:58:55 11 Q. Okay. And when he talked about attacking credibility
15:58:58 12 of the witnesses, one of those -- one of his thought processes
15:59:00 13 was to file a motion to suppress evidence, correct?

15:59:04 14 A. Correct.

15:59:05 15 Q. Was a motion to suppress evidence ever filed in this
15:59:07 16 case?

15:59:08 17 A. Yes, it was.

15:59:08 18 Q. Was there a hearing on that motion?

15:59:10 19 A. Yes. Judge Alford heard it.

15:59:13 20 Q. And after that suppression hearing, you knew a little
15:59:16 21 bit -- is it safe to say a little bit -- knew a little bit more
15:59:18 22 about the case since you had seen witnesses testify?

15:59:20 23 A. We knew at that point that, certainly, our case was
15:59:25 24 not going to be dismissed. The information concerning what the
15:59:27 25 SBI officers found at the site was going to be allowed. Our

15:59:31 1 motion to suppress was denied, and we were moving forward with
15:59:33 2 the State's case.

15:59:36 3 Q. Did you ever obtain the services of an expert to
15:59:40 4 examine the laboratory testing procedures or to independently
15:59:43 5 test the substances that were found?

15:59:44 6 MR. SPENCE: Objection. That's not even alleged as a
15:59:46 7 ground.

15:59:47 8 THE COURT: Overruled. You may answer.

15:59:49 9 THE WITNESS: No.

15:59:50 10 BY MR. MEGARO

15:59:50 11 Q. And that's because it wasn't seriously in dispute as
15:59:53 12 to what the composition of the chemical substances were going to
15:59:56 13 be, right? I mean, in other words, you weren't going to
15:59:59 14 challenge that this was actually drugs or precursors to
16:00:02 15 methamphetamine, right?

16:00:03 16 A. There was never any question what was found at the
16:00:07 17 site.

16:00:07 18 Q. Okay. So it wasn't a question of what was the
16:00:13 19 substance, was it a controlled substance or precursors or not;
16:00:16 20 it was more a question of, whose was it, correct?

16:00:20 21 A. That's correct.

16:00:20 22 Q. And from day one, Mr. Warren told you that it was not
16:00:25 23 his stuff, he was not in possession of it, and he had no
16:00:30 24 knowledge of it, correct?

16:00:31 25 A. That's correct.

16:00:31 1 Q. So then the question really was, was who had access to
16:00:35 2 that room, and who was the person that actually possessed those
16:00:38 3 substances; not whether it was really drugs or not, correct?

16:00:40 4 A. Correct.

16:00:43 5 Q. Okay. Now, you knew that there were only two people
16:00:47 6 charged in this case?

16:00:47 7 A. Correct.

16:00:48 8 Q. Heather Kennon and Dustin Warren, right?

16:00:50 9 A. That's correct.

16:00:51 10 Q. And certainly, not the first co-defendant case you've
16:00:54 11 had?

16:00:54 12 A. No.

16:00:55 13 Q. And you've certainly been in circumstances where
16:00:58 14 co-defendants have pointed the finger -- pointed the finger at
16:01:01 15 each other and said, "That person had it. I didn't have it,"
16:01:03 16 and vice versa?

16:01:05 17 A. That's correct.

16:01:06 18 Q. And in this particular scenario, you knew that that
16:01:09 19 could be a possibility, even from day one, right?

16:01:12 20 A. Possibly.

16:01:14 21 Q. There came a point in time before trial where you
16:01:17 22 realized that Heather Kennon had signed a plea-arrangement with
16:01:20 23 the District Attorney and was going to testify against
16:01:24 24 Mr. Warren in exchange for leniency?

16:01:28 25 A. And that was very close to before trial, and that was

16:01:30 1 when Mr. Warren said, "We need X, Y and Z to testify against her
16:01:35 2 credibility."

16:01:35 3 And that's why I came in and made my motion. Let's
16:01:38 4 bring those in, even though the people that he brought to my
16:01:41 5 attention -- I told him, I said, "You know, their credibility is
16:01:45 6 going to be at risk, because they're all -- one or all in prison
16:01:47 7 or in custody, and two have records as long as my left leg."

16:01:53 8 Q. Safe to say it's not the first time you've had a
16:01:55 9 situation where a potential defense witness had a criminal
16:01:58 10 history, right?

16:01:58 11 A. Correct.

16:01:59 12 Q. And we all know that you can't choose your witnesses,
16:02:02 13 right?

16:02:02 14 A. That's correct.

16:02:03 15 Q. Neither can the Prosecution?

16:02:04 16 A. That's correct.

16:02:05 17 Q. Sometimes their witnesses have records longer than
16:02:08 18 your entire left side?

16:02:10 19 A. That's true.

16:02:10 20 Q. Okay. And that was more or less the case with Heather
16:02:13 21 Kennon, right?

16:02:14 22 A. Heather -- Heather had a bad record as well.

16:02:20 23 Q. Okay. So prior to trial, you knew that Heather Kennon
16:02:22 24 was going to get up and testify and then it would really hinge
16:02:25 25 on her credibility, whether the jury believed her or not?

16:02:28 1 A. That's what he and I discussed. I said, "It's going
16:02:30 2 to come down to her -- her belief -- her testimony of what
16:02:34 3 happened and your testimony of what happened."

16:02:37 4 Q. And it's fair to say that Mr. Warren had told you
16:02:40 5 prior to trial that Mr. Elps, Ms. Flowers, and Mr. Thomas would
16:02:47 6 give evidence that would cast out on Heather Kennon's
16:02:51 7 credibility?

16:02:52 8 A. Late -- late in the game he did.

16:02:53 9 Q. Okay. And cast out on her credibility in general, and
16:02:57 10 cast out on specific portions of her testimony?

16:03:01 11 A. He did. And that is why we -- when we listed all the
16:03:05 12 witnesses, the ones who I actually called were the ones who
16:03:08 13 could refute the things that she said, and where he was at, and
16:03:12 14 where she was at, who had the most credibility, like Anique
16:03:15 15 Pittman and the other two witnesses.

16:03:17 16 Q. Is it safe to say you never spoke with Mark Thomas
16:03:20 17 prior to trial?

16:03:21 18 A. Never spoke with him.

16:03:22 19 Q. And it's safe to say you never spoke with Cassie
16:03:24 20 Flowers either?

16:03:26 21 A. That's correct.

16:03:26 22 Q. And never spoke to Mr. Elps?

16:03:29 23 A. That's correct. I would say that I had represented
16:03:33 24 Mr. Elps in the past before.

16:03:35 25 Q. You had been -- represented Mr. Elps?

16:03:36 1 A. Yeah. But nothing -- not in this case.

16:03:38 2 Q. In what kind of case?

16:03:41 3 A. A criminal case. So I was familiar with his criminal
16:03:44 4 history.

16:03:44 5 Q. Okay. Did you ever tell Mr. Warren that you'd
16:03:49 6 represented Mr. Elps in the past?

16:03:51 7 A. Yes.

16:03:51 8 Q. And what was his response?

16:03:53 9 A. He said, "Well, he needs to be called to refute how
16:03:55 10 she, in the past, has caused other people -- lied on other
16:03:59 11 people."

16:04:05 12 Q. You would agree with me that criminal history is just
16:04:07 13 one factor in deciding whether --

16:04:10 14 A. A huge factor.

16:04:11 15 Q. -- a witness is credible?

16:04:12 16 A. A huge factor.

16:04:13 17 Q. Okay. But it's just one of among many, correct?

16:04:15 18 A. One among many, and especially on the cases that I
16:04:18 19 knew these people were convicted with dealt with dishonesty and
16:04:20 20 felonies, which made it that much more a problem.

16:04:25 21 Q. And is it fair to say that you'd made the decision,
16:04:28 22 after you knew these people, these folks' criminal history, not
16:04:32 23 to call them as a witness? You made that decision prior to
16:04:35 24 trial?

16:04:37 25 A. I had it in the back of my mind. I called those

16:04:40 1 people -- we had those people subpoenaed, and I was going to
16:04:42 2 speak with those when they came. I just wanted to see what they
16:04:47 3 had to say, if it was anything credible. I didn't know what
16:04:50 4 they were going to say.

16:04:51 5 But part of me was not going to say -- I guess what I'm
16:04:54 6 saying is, I figured I could do the same thing and get the same
16:05:00 7 evidence, in effect, that was more credible, with Anique
16:05:02 8 Pittman, than I could with Mark Thomas or Cassie Flowers,
16:05:06 9 knowing their history and what both -- what they were going to
16:05:09 10 say, and what Mr. Warren said they were going to testify to.

16:05:12 11 But as for what they were actually going to say, I
16:05:14 12 don't know. Only what he told me they would testify to.

16:05:37 13 MR. MEGARO: Bear with me one moment.

16:05:37 14 (Mr. Megaro confers with his client.)

16:05:37 15 BY MR. MEGARO

16:05:37 16 Q. Mr. Fulcher, Anique Pittman testified at trial?

16:05:42 17 A. She did.

16:05:43 18 Q. That -- and she testified that she and Dustin Warren
16:05:45 19 were together in her house and had gone to sleep at
16:05:49 20 approximately 11, 12 p.m. the night before the arrest?

16:05:54 21 A. That's correct.

16:05:54 22 Q. And because she had gone to sleep, she did not know it
16:05:57 23 occurred between the time she went to sleep and the following
16:06:01 24 morning, correct?

16:06:01 25 A. I believe that's what she testified to.

16:06:04 1 Q. And Mr. Warren was arrested at approximately
16:06:06 2 10:00`a.m., 9:30, 10:00`a.m. the next morning?

16:06:09 3 A. I believe that may be about right.

16:06:11 4 Q. So there's roughly a 10-hour gap of time that Ms.
16:06:15 5 Anique Pittman could not fill in, correct?

16:06:18 6 A. I believe it was her testimony that she was going to
16:06:20 7 say he was there, and Mr. Thomas was there, and I think -- I
16:06:31 8 don't remember anything else about Cassie, but I just remember
16:06:32 9 that -- I think Mr. Thomas was there and that he had been in an
16:06:34 10 argument with his wife. But any further than that --

16:06:38 11 Q. But as far as she knew, she went to sleep at around
16:06:41 12 11, 12 o'clock, and that was all she knew?

16:06:43 13 A. She was adamant that he was in that house.

16:06:45 14 Q. Okay.

16:06:45 15 A. And that's why I used her testimony.

16:06:47 16 Q. And you, from speaking to Mr. Warren, you knew that
16:06:52 17 Mr. Thomas was up, and up for at least part of the night and
16:06:57 18 could account for Heather Kennon's whereabouts and actions after
16:07:01 19 Ms. Pittman had gone to sleep, correct?

16:07:03 20 A. That is what he -- he told me he was going to say, or
16:07:08 21 testify, I should say.

16:07:10 22 Q. And you actually -- one week prior to trial you
16:07:14 23 applied for writs of habeas corpus ad testificandum to bring the
16:07:17 24 two to court?

16:07:18 25 A. As soon as I was informed of all the people that

16:07:21 1 Mr. Warren wanted brought to testimony, I signed, filed
16:07:24 2 subpoenas, and had Judge Alford sign the witness -- and the
16:07:27 3 writs to bring those two people back.

16:07:30 4 Q. And those people were never produced, correct?

16:07:34 5 A. They never showed up.

16:07:34 6 Q. All right.

16:07:34 7 A. Well, some of the people that will be test -- we
16:07:37 8 subpoenaed showed up. Mr. Warren -- I mean, Mr. Thomas and Ms.
16:07:42 9 Flowers were in the DAC, and they were not brought back.

16:07:45 10 Q. Okay. And what about Mr. Elps?

16:07:50 11 A. I don't -- I have -- I do not know -- I know he was in
16:07:51 12 custody. And at trial they said he was -- I chose not to bring
16:07:56 13 Mr. Elps over to testify.

16:07:58 14 Q. After Mr. Thomas and Ms. Flowers had not been produced
16:08:00 15 by Corrections, did you make any further efforts to secure their
16:08:05 16 attendance?

16:08:06 17 A. We were -- well, when -- when we found out they
16:08:09 18 weren't here, it was -- we were in -- we were in the trial.

16:08:11 19 Q. Okay.

16:08:11 20 A. And that -- at the beginning of that trial I made a
16:08:15 21 subsequent motion to continue this case, because my witnesses
16:08:19 22 weren't here, and it was denied.

16:08:21 23 Q. Did you request a secondary writ of habeas corpus to
16:08:26 24 get them?

16:08:26 25 A. I did not, because we were told we were going to trial

16:08:28 1 that day.

16:08:29 2 Q. Did you request an order to show cause to --

16:08:32 3 A. I did not.

16:08:32 4 Q. -- the Department of Adult Corrections?

16:08:34 5 A. I did not.

16:08:35 6 Q. Did you reach out to either of the witnesses at

16:08:38 7 Corrections, ask to set up a legal call or come visit --

16:08:41 8 A. I did not that day. No.

16:08:43 9 Q. Prior to trial, you did make a motion to withdraw?

16:08:45 10 A. I did.

16:08:47 11 Q. And that was based upon?

16:08:50 12 A. That was based upon the fact that, you know, upon his

16:08:52 13 request that he wanted to hire another attorney, and the fact

16:08:55 14 that we were going in different directions in which way to

16:08:56 15 handle the -- handle the case.

16:08:59 16 Q. And that application was denied, obviously, right?

16:09:02 17 A. That's correct.

16:09:02 18 MR. MEGARO: Bear with me one moment.

16:09:07 19 THE COURT: Yes, sir.

16:09:07 20 (Mr. Megaro confers with his client.)

16:09:09 21 BY MR. MEGARO

16:09:09 22 Q. I'm sorry. Did there come a point in time where

16:09:32 23 Mr. Warren turned over some letters that Heather Kennon had sent

16:09:36 24 to him before trial with you?

16:09:37 25 A. He had mentioned that, but I -- I don't recall that.

16:09:40 1 But I know everything that he spoke to me -- because he was
16:09:43 2 continually giving me notes and whispering in my ear during the
16:09:46 3 trial, if I thought it would -- I cross-examined the officer --
16:09:48 4 mainly, it was Heather, things he was telling me -- and I
16:09:52 5 cross-examined her on everything that we -- that she had
16:09:54 6 introduced that was introduced into evidence. I -- it's been
16:09:57 7 four years. I can't remember that -- I don't recall getting any
16:10:00 8 letters from her.

16:10:03 9 Q. Did there come a point in the time of the trial where
16:10:06 10 Heather Kennon testified that she had created methamphetamine
16:10:11 11 both at the Seashore hotel and at Anique Pittman's home?

16:10:17 12 MR. SPENCE: I'd let the transcript of whatever it
16:10:24 13 reveals speak for itself.

16:10:27 14 THE COURT: If he knows, he may answer.

16:10:30 15 THE WITNESS: I -- I don't recall.

16:10:30 16 BY MR. MEGARO

16:10:44 17 Q. Did Mr. Warren ever ask you to cross-examine Heather
16:10:47 18 Kennon with a discrepancy between her testimony where she said
16:10:51 19 that she had made methamphetamine at Anique Pittman's home when
16:10:57 20 all the precursors and chemicals were still at the hotel?

16:10:59 21 A. I recall now that there was some questioning, and I
16:11:02 22 argued in closing that if this material that was made in one
16:11:07 23 place -- I can't remember where it was made -- was being
16:11:09 24 manufactured there and it was so volatile, how it could have
16:11:13 25 been transferred from one place to the motel room.

16:11:15 1 And that was one of my arguments at closing, that that
16:11:20 2 was not capable, because the State "FBI" analyst and expert said
16:11:25 3 it was very volatile. And that was part of my closing, was, to
16:11:28 4 the jury, is it believable that this was manufactured in one
16:11:32 5 place and moved to another place? So, yes, that was -- that
16:11:35 6 was -- that was addressed at closing.

16:11:36 7 Q. But you never confronted Heather Kennon with that --
16:11:39 8 with those facts, correct?

16:11:40 9 A. I think that was -- I think that question was asked to
16:11:42 10 the "FBI" agents -- agent, and that it was argued at closing in
16:11:47 11 my closing argument.

16:11:49 12 Q. Well, what I mean to say is, you never asked Heather
16:11:51 13 Kennon, "If you say that you created meth at Anique Pittman's
16:11:54 14 house --

16:11:55 15 A. No.

16:11:55 16 Q. -- how could that be, when all the chemicals and
16:11:57 17 the" --

16:11:58 18 A. I don't know if I actually asked her that, but I
16:12:00 19 did --

16:12:00 20 Q. Okay.

16:12:00 21 A. -- bring that up for -- when it come to credibility
16:12:03 22 and believability, when I asked my closing statement.

16:12:05 23 MR. MEGARO: Thank you. No further questions for
16:12:06 24 Mr. Fulcher, Your Honor.

16:12:08 25 MR. SPENCE: A couple, Rodney.

16:12:09 1

16:12:09 2 **REDIRECT EXAMINATION BY MR. SPENCE**

16:12:09 3 Q. The only two people who had any possible involvement
16:12:13 4 with this meth lab at the Seashore were Dustin Warren and
16:12:16 5 Heather Kennon; is that correct?

16:12:18 6 A. That's correct.

16:12:18 7 Q. Now, Anique Pittman was able to provide a complete
16:12:23 8 alibi for -- for Defendant Dustin Warren, correct?

16:12:26 9 A. That's correct.

16:12:27 10 Q. So regardless of whether Mark Thomas could get up here
16:12:31 11 and say whatever he said, if -- if the jury believed Anique
16:12:33 12 Pittman, you know, it wouldn't have been Dustin Warren, right?

16:12:39 13 A. That was my -- that was my reason for calling her.

16:12:41 14 Q. So calling Mark Thomas really wouldn't achieve
16:12:45 15 anything that you had already achieved with a witness with no
16:12:47 16 record?

16:12:48 17 A. That was why I had Anique Pittman to what she
16:12:51 18 testified, that she could get into evidence what Mr. Warren
16:12:55 19 wanted testified to in a more credible way than Mr. Thomas or
16:12:59 20 Brandon Elps.

16:13:00 21 Q. Okay. And if Mark Thomas and Cassie Flowers had been
16:13:04 22 pulled over here in orange jumpsuits, based on what you knew the
16:13:07 23 evidence was, based on their records, would you have put them on
16:13:10 24 the stand anyway?

16:13:11 25 A. Absolutely not.

16:13:12 1 (State's Exhibit MAR Number [4] marked for
16:13:12 2 identification.)

16:13:12 3 BY MR. SPENCE

16:13:13 4 Q. And the last question is -- I'm going to mark -- I
16:13:16 5 have marked for identification State's MAR [4]. This is the --
16:13:23 6 this is part of the MAR Mr. Megaro filed, Affidavit of Dustin
16:13:30 7 Warren. If you could read -- have you seen that before?

16:13:34 8 A. Yes.

16:13:35 9 Q. And I provided you with that as part of the MAR last
16:13:38 10 week, or --

16:13:38 11 A. Yes, you did.

16:13:39 12 Q. -- early this week?

16:13:41 13 A. Correct.

16:13:41 14 Q. And did you read paragraph one of that -- of
16:13:44 15 Mr. Warren's affidavit?

16:13:45 16 A. I did.

16:13:45 17 Q. Is it something regarding the Motion to Suppress?

16:13:48 18 A. Yes.

16:13:49 19 Q. Would you read that and tell us if that's true or not.

16:13:51 20 A. "Number one: When my trial lawyer -- lawyer filed a
16:13:54 21 motion to suppress the evidence it was because I drew it up and
16:13:57 22 told him to file it. It was supposed to be a joint motion by my
16:14:00 23 lawyer and the lawyer for Heather Kennon. When the State
16:14:02 24 figured this out, Heather Kennon immediately was offered full
16:14:05 25 immunity to testify against me at trial, and that allowed her to

16:14:20 1 change her story for a third time. I was told that if I refused
16:14:23 2 to take a plea, Heather Kennon was going to throw me under the
16:14:26 3 bus."

16:14:27 4 Q. Okay. But just the first sentence, did Dustin Warren
16:14:30 5 draft a motion to suppress in this case?

16:14:32 6 A. No.

16:14:32 7 MR. SPENCE: Offer State's MAR [4].

16:14:43 8 THE COURT: Any objection?

16:14:44 9 MR. SPENCE: That statement in it.

16:14:47 10 MR. MEGARO: I mean, I have no objection. It's part
16:14:48 11 of the record, Your Honor, so --

16:14:50 12 THE COURT: Okay.

16:14:50 13 MR. MEGARO: And it's in the court file, so --

16:14:54 14 THE COURT: Okay. The Court receives it.

16:14:56 15 (State's Exhibit MAR Number [4] received in
16:14:56 16 evidence.)

16:14:56 17 MR. SPENCE: That's all I have of Mr. Fulcher.

16:14:58 18 THE COURT: Anything further?

16:15:02 19 MR. MEGARO: One moment please.

16:15:03 20 THE COURT: Sure.

16:15:03 21 **RE-CROSS-EXAMINATION BY MR. MEGARO**

16:15:04 22 Q. Mr. Fulcher, did Mr. Warren ever send you a
16:15:20 23 handwritten -- a handwritten letter concerning suppression --
16:15:27 24 sorry -- concerning notes on the suppression motion?

16:15:32 25 A. He sent me some information that he thought was

16:15:34 1 relevant, but the -- to be honest with you, the motion to
16:15:38 2 suppress was myself and Mr. Suggs, who was the co-defendant at
16:15:41 3 the time. We were kind of working together, because we were --
16:15:43 4 thought we were going to have a double trial -- worked together
16:15:47 5 on that motion to suppress.

16:15:47 6 Q. And the documents that Mr. -- Mr. Warren had sent you
16:15:52 7 included citations to case law, a draft motion for speedy trial,
16:16:00 8 statutes on conspiracy, and appears to be some pages from a
16:16:09 9 practice treatise regarding --

16:16:13 10 A. Mr. Warren was always sending me information, so he
16:16:16 11 very well could have sent that. As I said, the motion to
16:16:19 12 suppress was -- was actually drafted by me and Mr. Suggs with
16:16:23 13 jointly talking about the case and things that he had discovered
16:16:27 14 and I discovered, and there were some things that Mr. Warren had
16:16:30 15 brought to my attention. But, no, he did not personally draft
16:16:32 16 the motion to suppress.

16:16:34 17 Q. Is it safe to say that at least part of what
16:16:36 18 Mr. Warren gave to you made its way into the suppression motion?

16:16:39 19 A. Some of the things that he put on there, yes, that
16:16:42 20 were relevant.

16:16:42 21 MR. MEGARO: Thank you. Nothing further, Your Honor.

16:16:43 22 THE COURT: You may stand down.

16:16:44 23 (The witness stepped down from the witness
16:16:44 24 stand.)

16:16:44 25 MR. SPENCE: That's all I have. I have Chris Suggs,

16:16:46 1 very briefly.

16:17:06 2 (The witness was duly sworn and took the witness
16:17:06 3 stand.)

16:17:06 4
16:17:06 5 **CHRIS SUGGS,**

16:17:06 6 having been first duly sworn, at 4:17 p.m. was called as a
16:17:06 7 witness on behalf of the State and testified as follows:

16:17:06 8 **DIRECT EXAMINATION BY MR. SPENCE**

9 Q. State your name for the record, please.

16:17:09 10 A. Chris Suggs.

16:17:10 11 Q. And, Mr. Suggs, you're a member of the State Bar in
16:17:12 12 North Carolina; is that correct?

16:17:13 13 A. That's correct.

16:17:14 14 Q. And you practice in Carteret County. When was the
16:17:16 15 date that you first started practicing here, approximately?

16:17:21 16 A. Approximately six years.

16:17:23 17 Q. Okay. Did you represent Heather Kennon, the
16:17:25 18 co-defendant in this particular case?

16:17:27 19 A. I did.

16:17:28 20 Q. And were you present when she testified at trial?

16:17:32 21 A. I was.

16:17:32 22 Q. And she had a plea-agreement with the State to plead
16:17:36 23 to something lesser and testify truthfully; is that correct?

16:17:39 24 A. That's correct.

16:17:40 25 Q. And after -- when watching her testify, did you have

16:17:43 1 some concerns about whether that plea-agreement would hold up
16:17:46 2 based on the way she performed on the stand?

16:17:49 3 A. I was concerned during her testimony that she may not
16:17:55 4 get the benefit of the agreement that we made, because her
16:18:00 5 testimony was, I would say, very poor, hard to believe, hard to
16:18:05 6 follow.

16:18:05 7 Q. Okay. Did she, several times in her testimony, openly
16:18:09 8 admit that she was under the influence of drugs during this
16:18:11 9 whole time?

16:18:12 10 A. She did.

16:18:13 11 Q. And had a hard time remembering things?

16:18:15 12 A. She did.

16:18:15 13 Q. And all that came out in the State's case and defense
16:18:18 14 case?

16:18:18 15 A. As I recall, that's correct.

16:18:19 16 Q. Okay. And how was she -- how did the State refer to
16:18:24 17 her during their closing argument? As a co-defendant, or
16:18:28 18 something else?

16:18:29 19 A. I remember during your closing, Mr. Spence, you
16:18:33 20 referred to my client, Ms. Kennon, as more of an exhibit than a
16:18:37 21 witness; an example of what drugs might do to a person,
16:18:40 22 something along those lines.

16:18:42 23 Q. As opposed to a credible witness about believing her?

16:18:45 24 A. That's correct.

16:18:51 25 Q. Again, she took advantage of this and she pled guilty;

16:18:54 1 is that correct?

16:18:55 2 A. I believe so.

16:18:56 3 Q. And is no longer in the court system, as far as you
16:19:00 4 know?

16:19:00 5 A. As far as I know.

16:19:01 6 Q. Okay. Let me ask you this: You practice law. Do you
16:19:08 7 know Rodney Fulcher?

16:19:09 8 A. I do.

16:19:10 9 Q. And do you know his reputation as a criminal defense
16:19:13 10 lawyer here in Carteret County?

16:19:14 11 A. I'm familiar with Mr. Fulcher's reputation.

16:19:15 12 Q. Is there anything that you know about this case and
16:19:18 13 your involvement in the case, watching the trial, watching the
16:19:21 14 witnesses -- and you've been here for this entire hearing; is
16:19:23 15 that correct?

16:19:24 16 A. That's correct.

16:19:25 17 Q. Do you feel that Mr. Fulcher was deficient in not
16:19:29 18 calling Cassie Flowers --

16:19:30 19 MR. MEGARO: I'm going to object to the question, Your
16:19:31 20 Honor.

16:19:31 21 MR. SPENCE: -- and Mark Thomas?

16:19:31 22 THE COURT: Sustained. That's a question for the
16:19:33 23 Court.

16:19:33 24 MR. SPENCE: No further questions.

16:19:34 25 THE COURT: That's -- that's a question for the Court

16:19:34 1 to answer.

16:19:34 2 MR. SPENCE: No further questions.

16:19:40 3 THE COURT: Any cross-examination?

16:19:43 4 **CROSS-EXAMINATION BY MR. MEGARO**

16:19:43 5 Q. Mr. Suggs, were you appointed or hired by Ms. Kennon?

16:19:49 6 A. I was appointed by the Public Defender's office.

16:19:52 7 Q. Okay. And were you the first attorney on her case?

16:19:56 8 A. I don't recall. I believe so. The Public Defender,

16:20:00 9 Mr. Wallace, may have represented her briefly before I was

16:20:05 10 assigned, but I'm not aware of any lengthy representation prior

16:20:10 11 to my appointment.

16:20:11 12 Q. Do you know whether Mr. Fulcher represented her on

16:20:13 13 this case prior to you entering?

16:20:15 14 A. I'm not aware of that, no.

16:20:19 15 Q. Now, as Ms. Kennon's attorney, did you look into her

16:20:25 16 criminal background?

16:20:27 17 A. I would have at the time, yes.

16:20:28 18 Q. And that's to determine whether she would be a good

16:20:30 19 witness at trial, or determine what her possible sentencing

16:20:33 20 exposure would be if she were to negotiate a plea?

16:20:36 21 A. There's a multitude of reasons I would look into my

16:20:40 22 client's criminal background, yes.

16:20:41 23 Q. And had you ever represented her prior to this case?

16:20:44 24 A. I don't believe I had, no.

16:20:45 25 MR. MEGARO: Thank you. Nothing further for

16:20:47 1 Mr. Suggs.

16:20:47 2 THE COURT: You may stand down.

16:20:49 3 (The witness stepped down from the witness
16:20:49 4 stand.)

16:20:49 5 MR. SPENCE: That's the State's evidence.

16:20:50 6 (The State rests.)

16:20:50 7 THE COURT: I'm glad to hear you in closing arguments.

16:20:54 8 MR. MEGARO: Certainly. Your Honor, just so the Court
16:20:57 9 is aware, I'm not only an appellate post-conviction attorney,
16:21:01 10 I'm also a trial attorney. And I'm certainly well aware and
16:21:06 11 very sensitive to the every-day realities of practicing for the
16:21:11 12 defense.

16:21:11 13 I'm certainly well aware and sensitive to dealing
16:21:16 14 with sometimes very difficult clients, who insist upon a course
16:21:19 15 of action that I may disagree with and that may insist upon a
16:21:24 16 course of defense that I disagree with.

16:21:25 17 However, I think we would not be here today if
16:21:30 18 Counsel had spoken to the witnesses, because I -- frankly, I
16:21:33 19 would probably have very little grounds to go on that would
16:21:35 20 probably not even warrant a hearing.

16:21:37 21 And what I do know and what I have learned over the
16:21:40 22 years is that it is better to not leave a stone unturned and to
16:21:47 23 at least speak to the witnesses, or at least go through the
16:21:51 24 crime scene, or take your own photographs, you take your own
16:21:54 25 measurements, and never to simply size something up and rely on

16:21:59 1 it at face value, because sometimes people with very lengthy
16:22:04 2 records can make the most credible witnesses over people without
16:22:06 3 any records, and sometimes even over law enforcements officers.

16:22:09 4 And there's only one way to determine whether a
16:22:11 5 witness would make a credible witness, a valuable witness or
16:22:15 6 not, and that's to sit down with that witness, interview them
16:22:18 7 face to face, and ascertain their own body language and the
16:22:21 8 manner in which they tell you the story, and to compare that to
16:22:26 9 what other witnesses would say, compare that to other evidence
16:22:29 10 in the case.

16:22:29 11 There is a long line of cases that -- and this is all
16:22:35 12 over in the Federal system as well -- that essentially stand for
16:22:38 13 the proposition that failure to investigate can only be
16:22:43 14 justified when there would be no legitimate reason to
16:22:47 15 investigate.

16:22:47 16 And courts are generally loath to endorse a failure
16:22:51 17 to at least speak with a witness, especially when one is
16:22:55 18 certainly available. And on the one hand, and as I told my
16:22:59 19 client, coming -- before coming here today, on the one hand, we
16:23:04 20 all want perfect witnesses. We all want witnesses that are the
16:23:08 21 most moral, upright people that have no motive to lie and no
16:23:13 22 skeletons in their closet, but you have to play the hand that
16:23:16 23 you're dealt.

16:23:17 24 And this is true if you're the prosecution; this is
16:23:19 25 true if you're the defense. Witnesses come with baggage just

16:23:23 1 like everyone else. And it's frequently much simpler to get a
16:23:28 2 witness to come to court who is incarcerated than one who is out
16:23:32 3 on -- at liberty.

16:23:33 4 And as the Court, I'm sure, is well aware, we did
16:23:37 5 submit an affidavit from a witness who chose not to be here
16:23:41 6 today, for personal reasons, that would have added something to
16:23:44 7 this case. The simple reality of the fact is, it's easier for
16:23:49 8 me to secure the attendance of Cassie Flowers and Mark Thomas
16:23:55 9 because they're relatively low-hanging fruit.

16:23:58 10 For that reason, I think it's incumbent upon an
16:24:01 11 attorney to at least get on the phone with a witness or to bring
16:24:06 12 them to court ahead of time and speak to them and size them up
16:24:09 13 for themselves.

16:24:09 14 In this particular case, these witnesses would have
16:24:12 15 offered something more in addition to Anique Pittman's
16:24:15 16 testimony. And I understand Anique Pittman is, on her face, is
16:24:20 17 the better witness. But in this particular case, Counsel knew
16:24:23 18 from day one that this was not going to be a question of whether
16:24:26 19 this was drugs or not, which is very common in drug cases,
16:24:31 20 whether -- the question is whether this is actual drugs or
16:24:34 21 whether this is the threshold way to sustain this level of
16:24:37 22 charge.

16:24:37 23 The question more often is one of possession and
16:24:42 24 knowledge. And the question is not whether this was
16:24:44 25 methamphetamine; the question was whether it was his

16:24:48 1 methamphetamine or someone else's.

16:24:49 2 This is especially so where the co-defendant is
16:24:56 3 offered a very sweet deal, probation, even given her criminal
16:25:02 4 history, in order to testify that Mr. Warren was involved. So
16:25:06 5 her credibility became even more heightened.

16:25:09 6 These witnesses would have added more to the
16:25:13 7 testimony than -- of Anique Pittman. First, we have Mr. Elps
16:25:17 8 who would have testified that this is a person who sets people
16:25:21 9 up and gets people into trouble and acts in her own -- is
16:25:25 10 generally not a trustworthy and truthful person. So generally,
16:25:31 11 we can attack her credibility and say that she's not a
16:25:35 12 trustworthy and helpful person, to a jury.

16:25:35 13 Now, there's an argument that could be made and then
16:25:39 14 there would be evidence to support that argument. But
16:25:42 15 additionally, Anique Pittman's testimony leaves a big hole,
16:25:45 16 about nine or 10 hours, because she goes to sleep and she
16:25:48 17 testifies that she doesn't see anybody until the following
16:25:52 18 morning.

16:25:53 19 Mr. Thomas can account and fill in the blanks, so to
16:25:56 20 speak, and add additional testimony that shows that this witness
16:26:00 21 not only had access to his car, which would account for the
16:26:06 22 presence of a hotel key, but the witness had been lying about
16:26:10 23 several other key things.

16:26:11 24 Cassie Flowers, for whatever her faults may be, would
16:26:15 25 have also testified that this witness had been specifically

16:26:18 1 lying about certain key events. And there would have been --
16:26:23 2 and I would submit that her testimony would have been very
16:26:26 3 credible, because as an ex-girlfriend of this person, she would
16:26:29 4 have less of an incentive to help him. And her credibility that
16:26:34 5 she disliked his -- what she might perceive as his current
16:26:39 6 girlfriend or new girlfriend would be even more credible,
16:26:41 7 despite her -- her background.

16:26:42 8 And again, all of these witnesses would have
16:26:45 9 complemented each other and corroborated each other and been
16:26:49 10 corroborated by other evidence, including my client's testimony.

16:26:51 11 So there's a synergistic effect. It's not just -- we
16:26:55 12 can't just look at this in a vacuum; we look at the defense as a
16:26:58 13 whole. And how would this have filled in blanks and
16:27:02 14 strengthened the rest of the defense? And it's clear to me that
16:27:05 15 it would have.

16:27:06 16 When we talk about the two prongs of Strickland we
16:27:08 17 talk about deficient performance and then prejudice. And I
16:27:13 18 believe and I think the case law supports the contention that it
16:27:17 19 is objectively deficient for an attorney to not even speak to a
16:27:22 20 witness, and not even examine the evidence.

16:27:23 21 But the prejudice comes in -- exactly what I believe
16:27:26 22 the State's going to argue which is, "So what? These witnesses
16:27:31 23 wouldn't have added anything. There's still a period of time
16:27:33 24 that Dustin Warren could have cooked this meth in that
16:27:38 25 laboratory."

16:27:38 1 And without the testimony of Mark Thomas who
16:27:43 2 testified that he spoke to my client, would have corroborated
16:27:47 3 his testimony that all he was doing was dropping this young
16:27:52 4 woman off at this motel, and he was going to go back at an
16:27:55 5 earlier time before she said that she went back to the house and
16:27:59 6 that she was not in his presence for that entire night, the
16:28:03 7 prejudice is that Counsel no longer has the evidence to make
16:28:07 8 those arguments to the jury.

16:28:08 9 And, in addition, the prejudice is that Counsel no
16:28:13 10 longer has the ability or has less of an ability to make the
16:28:18 11 argument falsus in uno, falsus in omnibus, which defense
16:28:22 12 attorneys love to make. If you can't trust this person as to
16:28:25 13 one thing, you're free to disregard her testimony as to
16:28:28 14 everything.

16:28:29 15 There would have been evidence and testimony in the
16:28:32 16 record that was supported by other evidence that that witness
16:28:35 17 had testified falsely about certain material facts; that that
16:28:39 18 would have given Counsel the opportunity to make that argument
16:28:43 19 at trial.

16:28:43 20 And I believe that the case -- and I believe the case
16:28:47 21 law supports that, and the more evidence the better. And the
16:28:50 22 more strength that a defense lawyer has to make these arguments
16:28:55 23 as disposed to a jury, especially when there's a jury trial, the
16:28:57 24 higher the degree of prejudice.

16:28:59 25 So I would ask the Court to grant the Motion for

16:29:02 1 Appropriate Relief, search through the record -- I believe there
16:29:06 2 are plenty of instances that are in the record that support the
16:29:09 3 arguments that I make here today -- and vacate my client's
16:29:13 4 convictions and order a new trial.

16:29:15 5 And if the Court has any questions, I'm happy to
16:29:17 6 answer them.

16:29:18 7 THE COURT: Thank you, sir.

16:29:21 8 MR. SPENCE: Judge, I'll try to be brief. You can
16:29:23 9 boil this all down to simply one question: Was it
16:29:27 10 deficient when Mr. Fulcher did not call Mark Thomas or Cassie
16:29:32 11 Flowers to testify?

16:29:33 12 Under Strickland, was it deficient not to call those
16:29:37 13 two witnesses with extremely horrific criminal histories, and
16:29:44 14 also given the fact that both were active drug addicts during
16:29:52 15 the time?

16:29:57 16 To put it another way, I have done this job for
16:30:00 17 almost 27 years. And I -- if it would have been legal, I'd have
16:30:03 18 almost paid Mr. Fulcher to put them on, because I could have
16:30:07 19 made so much more hay with those two on the stand in advancing
16:30:12 20 my case -- I could have tied just their character to this
16:30:16 21 defendant, the fact they were associates of his -- than I could
16:30:21 22 have ever done.

16:30:21 23 The jury heard from Heather Kennon. They heard all
16:30:25 24 her faults, all her inadequacies. They heard from Anique
16:30:30 25 Pittman, a clean witness, who gave a complete alibi to Dustin

16:30:34 1 Warren.

16:30:34 2 Again, I'm sure Mr. Warren doesn't think this was a
16:30:40 3 good performance, because he didn't win. And sometimes, there
16:30:45 4 are defendants who believe they just simply have the right to
16:30:48 5 prevail on their own terms.

16:30:50 6 I'm sure Your Honor, in looking at this case, would
16:30:54 7 look at your career as a defense lawyer and think -- and what
16:30:57 8 you've heard -- would you call those two people, given what you
16:31:00 9 know about them, the way they testified, what they said under
16:31:03 10 oath today, contradicting each other even today?

16:31:07 11 Your Honor, the cases Mr. Megaro -- I actually didn't
16:31:12 12 hear any cites -- but there's a -- there's a string of cases in
16:31:14 13 North Carolina which found it not ineffective to either call,
16:31:20 14 prepare or investigate certain witnesses, in one case 22
16:31:23 15 witnesses. That's State versus Swann.

16:31:26 16 Again, the cases I would cite, and I can pull those
16:31:29 17 for you, are State versus Gary, 348 N.C. 510, 1998; State versus
16:31:37 18 Swann, 322 N.C. 666; State versus Miller, 142 N.C. App. 435;
16:31:45 19 State versus Blackwell, 133 N.C. App. 31; State versus Braswell,
16:31:51 20 312 N.C. 553, all dealing with a counsel's failure to include
16:31:57 21 witnesses on the list, subpoena them, interview them or call
16:32:00 22 them. And the court, in all those cases, said it's a strategic
16:32:04 23 decision and it was not unreasonable, under Strickland, to -- to
16:32:08 24 not do that.

16:32:12 25 Again, if you do find that that was unreasonable not

16:32:17 1 to call these people, I certainly don't see any -- any
16:32:20 2 prejudice. Actually, I believe this case was much better
16:32:25 3 without those two people. And I have given those reasons and
16:32:28 4 put them in my -- my written response in this case.

16:32:30 5 Again, I would argue that Mr. Megaro's burden is by a
16:32:35 6 preponderance of the evidence. This was a violation of a
16:32:38 7 constitutional right to have a lawyer prepared, under the
16:32:41 8 Strickland standards. I submit the transcripts will bear that
16:32:45 9 out, and the law in North Carolina will bear that out.

16:32:48 10 And again, I would ask you to deny this motion which
16:32:52 11 is basically just a Hail Mary, again, griping about some -- some
16:32:57 12 minor details.

16:32:58 13 These witnesses would not have challenged anything in
16:33:02 14 the case except minor details, which again, would not affect the
16:33:07 15 jury's decision in this case whatsoever.

16:33:09 16 Judge, I'd ask you deny the motion. Thank you.

16:33:12 17 THE COURT: All right. I make decisions by e-mail.
16:33:16 18 Will the parties stipulate that the Court may rule out of term
16:33:20 19 and out of County?

16:33:21 20 MR. MEGARO: Yes.

16:33:23 21 THE COURT: Very good.

16:33:23 22 MR. SPENCE: Yes, sir.

16:33:24 23 THE COURT: Pmegaro@halscottmegaro.com?

16:33:27 24 MR. MEGARO: Yes, sir.

16:33:29 25 THE COURT: All right. And I have Mr. Spence's.

16:33:30 1 Thank you for your preparation and your presentation. I'll
16:33:34 2 endeavor to get it to you as soon as I possibly can. But
16:33:39 3 there's a little bit of material that I feel like I need to go
16:33:41 4 through, and I will.

16:33:42 5 MR. MEGARO: Just a little.

16:33:44 6 THE COURT: Very good. Thank you. That concludes the
16:33:46 7 hearing.

16:33:46 8 (At 4:33 the proceedings were concluded.)

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CERTIFICATE

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

I, Jean Speights, RMR, do hereby certify that said Transcription, pages 1 through 157, is a true, correct, and verbatim Transcript of said proceedings.

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

Given under my hand this 8th day of March, 2019.



Jean Speights, RMR
Official Court Reporter
Second Trial Division

COURT REPORTER:

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MR. BYNTHER: [1] 6/7
MR. LUPTON: [7] 9/1
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THE BAILIFF: [1]
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