

No. 25-

IN THE
Supreme Court of the United States



TREMANE WOOD,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

APPENDIX VOLUME 3 OF 3

JON M. SANDS
Federal Public Defender
AMANDA BASS CASTRO-ALVES
Counsel of Record
KEITH J. HILZENDEGER
ALISON Y. ROSE
Assistant Federal Public Defenders
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
(602) 382-2700 voice
amanda_bass-castroalves@fd.org

Counsel for Petitioner

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

TREMANE WOOD,
Petitioner,

vs.

STATE OF OKLAHOMA,
Defendant.

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)
)
)CASE NO. CF-2002-46
)MORNING PROCEEDINGS
)
)

TRANSCRIPT OF EVIDENTIARY HEARING

HAD ON THE 8TH DAY OF APRIL, 2025

HEARD BEFORE

THE HONORABLE SUSAN STALLINGS

DISTRICT JUDGE

* * * * *

Reported By:

Elliott Thompson, CSR
Official Court Reporter
321 W. Park
Suite 800
Oklahoma City, Oklahoma 73102
(405) 713-1468

1 (With all parties present, the following proceedings were
2 had in court.)

3 THE COURT: We're back on the record in State
4 Oklahoma versus Tremane Wood. When we last were here I
5 believe Ms. Bass, you were going to call your next witness.

6 MS. BASS: Yes, Your Honor. Petitioner would call Wayna
7 Tyner.

8 THE COURT: Good morning. Would you raise your right
9 hand please.

10 WAYNA TYNER,
11 called as a witness, after having been first duly sworn,
12 testified as follows:

13 THE COURT: Please have a seat. Once you get
14 situated pull that microphone around in front of you. And
15 that water's for you. You're going to have speak into the
16 microphone.

17 You may inquire.

18 DIRECT EXAMINATION

19 BY MS. BASS:

20 Q. Good morning.

21 A. Good morning.

22 Q. Can you please state your name for the record.

23 A. Yes, my name is Wayna Tyner. W-A-Y-N-A; T-Y-N-E-R.

24 Q. Thank you. And what is your occupation?

25 A. Well, I'm still a member of the bar. I'm a lawyer but I

1 no longer practice. I'm currently working at Target.

2 Q. You previously practiced law and you represented someone
3 named Zjaiton Wood, correct?

4 A. Yes.

5 Q. Before getting into that can you tell me a little about
6 your legal trajectory? So when did you become a member of the
7 Bar?

8 A. I became a member of the Bar in September of 1997 having
9 graduated the May before.

10 Q. And what type of law did you practice after graduating?

11 A. I did Public Defender work but mainly death penalty.
12 Specializing in death penalty work.

13 Q. And where did you practice death penalty work? What
14 organization or office did you work for?

15 A. Yes, I worked for the Oklahoma Indigent Defense System in
16 our capital trial division. Originally in our Tulsa division
17 located in Sapulpa, Oklahoma and then transferring to our
18 Norman division.

19 Q. For how long were you in the Tulsa division of OIDS?

20 A. I started there in February of 2000 and I was there until
21 I transferred to Norman and in about the fall of 2003.

22 Q. And then when you represented Zjaiton Wood what charges
23 was he facing?

24 A. Murder one, felony murder. I believe attempted robbery
25 with a dangerous weapon, and a conspiracy.

1 Q. And Zjaiton Wood had co-defendants, correct?

2 A. Yes.

3 Q. And do you recall who those co-defendants were?

4 A. Brandy Warden, Lanita Bateman, and his brother Tremane
5 Wood.

6 Q. And who were the prosecutors in the case against your
7 client, Zjaiton Wood?

8 A. Fern Smith and George Burnett.

9 Q. Did you have experience litigating against them
10 previously before representing Zjaiton Wood?

11 A. Not them personally. I had had prior experience with
12 that office. Actually it was under the Bob Macy. I started
13 in a case, the Ronnie Lott case that was brought during the
14 end of Bob Macy's term and then -- but I know Fern Smith and
15 George Burnett worked under that office. But it was with Wes
16 Lane.

17 Q. Okay. Now, at some point after you had begun
18 representing Zjaiton Wood you became aware that his
19 co-defendant, Brandy Warden, had a pending deferred felony out
20 of Payne County; is that correct?

21 A. Yes.

22 Q. Okay. And how did you learn that information?

23 A. Going through the discovery. I came into Zjaiton's case
24 not at the beginning. It was originally assigned to our
25 Norman office. And I can't recall when exactly I entered an

1 appearance in Zjaiton's case. But I would have -- I know I
2 got discovery passed on from my Norman office. And so going
3 through the discovery, reviewing it, I came across an NCIC.
4 Usually in Oklahoma City we would get an NCIC report on the
5 involved people.

6 And so I saw -- so as I'm reviewing discovery I'm making
7 notes of things that I need or whatever. And so her's I
8 believe it was a larceny from a house. And I can't remember
9 what the disposition said but either way I'm going to get the
10 court documents and have those. So that's how I would have
11 found out and knew about it.

12 Q. And that discovery would have been provided to you by
13 whom?

14 A. You know, I probably got the hand over from Norman.

15 Q. Okay.

16 A. I'm sure I received some more discovery from the State
17 but the bulk of it was from the beginning. And I want to say
18 at the time Oklahoma City always had, like, the homicide
19 division would have, like, a blue book and in it would be that
20 NCIC.

21 Q. Okay. So that would come from the prosecutor's office?

22 A. Yes, and I think it was to the Norman division that
23 represented him originally and then to me.

24 Q. Okay. Now, you said that you were going through the
25 discovery and you're looking at those NCIC reports, you see

1 that larceny of a house charge on Brandy Warden's NCIC report.
2 You're going to get the court records and look into that. Can
3 you tell me why that is?

4 A. Well, I want to know the outcome. Well, I want to know
5 all about that charge. So I'm going to pick up the
6 information. Most of the court documents in that file. I
7 want the information, the affidavit of probable cause,
8 whatever I can get from it, and the J and S. And if there had
9 been any motions to accelerate filed and if so what the
10 results were. And to know what her sentence was. Was she
11 still on probation. Was it a completed sentence. So those --
12 I want to know all about that offense. And I want to know her
13 part in that offense.

14 Q. And why is that information -- why was that information
15 relevant to your defense of Zjaiton Wood's case?

16 A. Well, number one, if she had a conviction and she
17 testified we would be able to use that as impeachment. If it
18 was a felony conviction we could use that to impeach her
19 testimony and ask for the judge to provide the jury with an
20 instruction showing that she had a felony conviction and that
21 they could use that to determine her believability. And any
22 time a witness takes the stand -- any time -- and at that
23 point I think I knew that she was a witness. Any time a
24 witness takes the stand their credibility is immediately at
25 issue.

1 I also wanted to know was she under probation. I wanted to
2 know -- because I'm sure by that time I knew that she was --
3 she had already had a deal set up with the State to testify in
4 my case against my client. I wanted to know, and we were
5 entitled to know what that deal was in Oklahoma County. But I
6 also wanted to know whether she got a deal in Payne County.

7 And also, I mean, the reason to know these deals is that if
8 she's under probation at the time she's arrested she, like any
9 other suspect that is arrested, there is a motivation if
10 there's others involved to fabricate their story and get to
11 the -- you know, talk to the Government. Cut a deal. And so
12 as I later find out that she's still under probation I find
13 that very relevant. That she was at jeopardy from the -- you
14 know, early on.

15 Q. Thank you. Now, you mentioned you found out that at some
16 point that Ms. Warden was going to be a witness in your case
17 against your client for the prosecution. Did you recall -- or
18 do you recall receiving a copy of Ms. Warden's Oklahoma County
19 plea agreement?

20 A. I'm sure I did. I knew what her plea agreement was. At
21 least at the time she testified. Now, I want to say, it's
22 been so long, that I was also concerned about a potential
23 motion to modify her J and S. And I don't know if that
24 happened before she testified in my case. It's been a long
25 time but I remember that also being a concern of mine. That

1 -- and the timing of when the motion to modify J and S would
2 have occurred. Such as would it have been after she testified
3 the first time against one co-defendant and then she has a
4 motion to modify, which again keeps providing this motivation
5 to testify favorably for the government.

6 THE COURT: Ms. Tyner, can you tell me when your
7 trial was?

8 THE WITNESS: It was I want to say February of 2005.
9 In fact I believe jury selection started on Valentine's Day
10 that year.

11 THE COURT: You would have remembered something like
12 that. Okay.

13 BY MS. BASS:

14 Q. So you mentioned a few times your concerns and you talked
15 about what those concerns are. So just to make sure I
16 understand. So you were aware that Ms. Warden had had that
17 felony deferred out of Payne County, that she was still on
18 that deferred when she was cooperating with the State against
19 your client?

20 A. Yes.

21 Q. And you were interested in what was happening with that
22 deferred and whether or not it would be accelerated to a
23 conviction; is that fair to say? Because then that could be
24 used as impeachment against her at your client's trial?

25 A. Right. It could be. And I also wanted to know if she

1 was getting another deal. This was part of the deal that I
2 wasn't -- that was not being disclosed. Not just for me to
3 know for but for a jury ultimately to determine what kind of
4 weight to give her testimony.

5 MS. BASS: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MS. BASS:

8 Q. I've handed, Ms. Tyner, what's in evidence as
9 Petitioner's Exhibit 7, which is Brandy Warden's Oklahoma
10 County guilty plea. And please take your time reviewing that
11 document.

12 A. Okay.

13 Q. Now, if you will turn to the last page of that document.
14 So the date of that document is February 19, 2003, correct?

15 A. Yes.

16 Q. So in early 2003 you would have received a copy of this
17 document; is that correct?

18 A. Yes, I would have either obtained it on my own at the
19 courthouse because these are usually filed. Yes, so I don't
20 know. I got it. I received it. Either on my own or through
21 the State.

22 Q. Okay. And that's what would have informed you that Ms.
23 Warden was a cooperating witness for Oklahoma County in the
24 prosecution of your client, Zjaiton Wood?

25 A. Yes.

1 Q. Okay. Did Fern Smith or George Burnett ever disclose to
2 you in the course of your representation of Zjaiton Wood that
3 Ms. Warden's cooperation agreement in Oklahoma County included
4 anything having to do with her Payne County deferred felony?

5 A. No.

6 Q. Did they at any time disclose to you that they had a
7 standing agreement with prosecutors in Payne County that if a
8 defendant like Ms. Warden on a deferred sentence in Payne
9 County was charged with serious crimes in Oklahoma County,
10 Payne County would wait and see what Oklahoma County wanted
11 them to do before deciding how to act on that deferred
12 sentence?

13 A. No, I don't recall anybody telling me anything.

14 Q. Did you at some point inquire with Payne County about why
15 Ms. Warden's deferred sentence wasn't being accelerated even
16 after she had pled guilty to felonies in Oklahoma County?

17 A. Yes, I reached out. I called the Payne County DA's
18 office. I wanted to know what was going on. I also knew
19 that, and it was I'm sure in my discovery, that the probation
20 -- that her probation and parole officer had written a
21 violation report that was sent to the Payne County DA's office
22 advising the Payne County District Attorney's office of her
23 arrest on murder charges. And nothing had happened. So I
24 contacted the Payne County DA's office to find out what was
25 going on. I knew that her probation had not -- you know, her

1 probation had not expired.

2 THE COURT: Do you know about what time you
3 contacted?

4 THE WITNESS: I can't other than I --

5 THE COURT: Was it prior to the beginning of your
6 trial?

7 THE WITNESS: Yes, ma'am. And it was while I was
8 still in Sapulpa. So it had to have been prior to, you know,
9 at the latest fall of '03.

10 BY MS. BASS:

11 Q. And you said you would have called over to the Payne
12 County DA's office to find out why aren't you-all acting on
13 the acceleration. Do you recall whether or not you spoke to
14 anyone?

15 A. I don't think I did. Because my -- the way I remember it
16 is I got a big -- I got no information from anybody. Not the
17 Payne County DA's office, not Oklahoma County DA's office.
18 And that is why I eventually had to put on the record
19 requesting the Court to order any details to be revealed to
20 us.

21 THE COURT: And when did that happen?

22 THE WITNESS: I believe it was in a motion hearing.
23 I think it was a little bit before her probation had expired.
24 Like, I want to say Septemberish of '03. We had filed a
25 motion called requesting that the Court to order the

1 Government to reveal all deals. And I remember Judge Elliott
2 making a little funny about deals being a legal phrase. But I
3 wanted to put on the record the steps I had done to find that
4 out so that a record would be made for this purpose.

5 MS. BASS: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MS. BASS:

8 Q. Ms. Tyner, I've handed you what's in evidence as
9 Petitioner's Exhibit 17.

10 A. Yes.

11 Q. And this is a Motion to Reveal All Deals filed in the
12 District Court of Oklahoma County on August 6, 2003. Can you
13 turn to the second page of that document?

14 A. Yes.

15 Q. Is that your signature?

16 A. Yes, ma'am.

17 Q. Okay. So is this the motion to reveal all deals that you
18 would have filed after not getting answers from the Payne
19 County District Attorney's Office or from the Oklahoma County
20 District Attorney's Office about whether this deferred
21 sentence was part of Brandy Warden's deal?

22 A. Yes.

23 Q. And to make sure I understand you filed this because you
24 were getting no information?

25 A. Correct.

1 Q. So you would have then called the Payne County DA's
2 office before August 6, 2003?

3 A. Yes, and I wanted to make sure, and I did, I put on the
4 record when this was heard the steps that I had taken because
5 it smelled to me. And so as a defense lawyer many times
6 you're stuck with an answer but you think there's something
7 there. So my job -- part of my job is to make a record.

8 Q. And did anyone ever get back to you after you called to
9 inquire?

10 A. No.

11 MS. BASS: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MS. BASS:

14 Q. And, Ms. Tyner, I've handed you what's in evidence as
15 Petitioner's Exhibit 15. If you could please take a look at
16 the note on the bottom of that document. It says Wayna Tyner,
17 Sapulpa OIDS.

18 A. Yes.

19 Q. State's witness PG on accessory after the fact. That
20 number 918-248-9026, do you recognize that number?

21 A. Yes, that was my contact information at the Sapulpa
22 office. That was our office number.

23 Q. Okay. So the fact that this information is on a note on
24 -- it's a violation report related to Brandy Warden and her
25 Payne County deferred sentence, would this have been, if you

1 know, and if you don't that's fine, a response to you calling
2 and inquiring?

3 A. I think --

4 MR. LOCKETT: Objection, Your Honor.

5 THE COURT: Based on?

6 MR. LOCKETT: She doesn't have the adequate knowledge
7 to answer that.

8 THE COURT: Okay. Well, calls for speculation.
9 Do you have any personal knowledge?

10 THE WITNESS: I recall that I had it as part of my
11 discovery.

12 THE COURT: No, we're asking about the note.

13 THE WITNESS: Oh, no ma'am. I apologize.

14 BY MS. BASS:

15 Q. So when you -- going back to when you called the Payne
16 County District Attorney's office did you leave a message?

17 A. I would have. I would have left a detailed message on
18 the phone what my call was in reference to.

19 Q. Okay. Thank you. And this is not your handwriting, is
20 it?

21 A. No.

22 Q. Okay. Now, going back to your concerns around whether
23 Ms. Warden's Payne County deferred was part of her agreement
24 in the Oklahoma County murder case and why that mattered, if
25 Fern Smith and George Burnett had disclosed to you that they

1 had an agreement with Ms. Warden that included her Payne
2 County deferred felony and ensuring that it wouldn't be
3 accelerated to a conviction why would that information have
4 mattered?

5 THE COURT: Well, counsel, hang on a second.

6 Did you have that conversation with them?

7 THE WITNESS: I had to have, yes. I mean, I was
8 asking everybody for it.

9 THE COURT: I'm talk specifically about any deals
10 with the Payne County office.

11 THE WITNESS: Right. Did I speak to who? I'm sorry.

12 THE COURT: Either Ms. Smith or Mr. Burnett.

13 THE WITNESS: I don't recall the specific
14 conversation with them but I had to have asked them. I was
15 asking everybody.

16 THE COURT: Right. But do you have any recollection
17 of the response was if any to any Payne County deal?

18 THE WITNESS: No. I mean, there wasn't one. I mean,
19 nobody told me anything.

20 MS. BASS: And I'm sorry, Your Honor. My question
21 was a hypothetical.

22 BY MS. BASS:

23 Q. If that had been disclosed why would that have mattered
24 if that happened?

25 A. Well --

1 Q. If there was this agreement why would that have mattered
2 to you?

3 A. Well, the jury was entitled to know number one so that
4 they could evaluate her credibility and what she was
5 receiving. You know, again, the concern as a defense lawyer
6 with a witness that received a deal is there is the concern
7 that the witness in trying to curry favor with the Government
8 so that they can have -- so that in return they can have less
9 punishment. And so to try to curry favor with the Government.
10 And it also is a motivation to testify falsely.

11 But in addition to that when she testified she testified in
12 my case, and mine was the last to go to trial, that she no
13 prior felony convictions. Again, a felony conviction -- if a
14 witness has a felony conviction my client is entitled and the
15 judge would instruct the jury that this witness has a felony
16 conviction and you can use it for impeachment purposes.
17 Whether this client -- or whether this witness is being
18 truthful or not. Are they coloring their testimony. Our jury
19 -- my jury nor did Tremane's never received that instruction.

20 Q. Now, if Ms. Warden's Oklahoma County plea agreement had
21 included information about working out -- the prosecutors
22 working out the Payne County deferred sentence for her is that
23 something you would have questioned her about --

24 A. Yes.

25 Q. -- when she testified about the agreement?

1 A. Right. Because we -- I know that I'm sure I crossed her
2 on what she did receive from Oklahoma County that was
3 disclosed. And I -- I'm sorry. Can you repeat the question?

4 Q. Yes, so if Ms. Warden's Payne County felony and it's
5 nonacceleration was included in the written plea agreement
6 that she executed with the prosecutors in the Oklahoma County
7 murder case and you knew that fact and it was all there, she
8 got this deferred not accelerated, 45 years to accessory to
9 murder, 10 years to conspiracy to commit robbery to run
10 concurrent, if that was all laid out what would you have done
11 with that information?

12 A. So right. We would have brought it out to the jury like
13 we did with her plea agreement with Oklahoma County. Again,
14 we would have had an instruction from the Court of how to
15 evaluate that testimony. The other thing is I wasn't entitled
16 to bring that occurrence up at all. So, I mean, even after I
17 had tried --

18 THE COURT: What occurrence?

19 THE WITNESS: Well, her prior larceny of a house.

20 THE COURT: Right. Her deferred sentence.

21 THE WITNESS: Excuse me?

22 THE COURT: Her deferred sentence.

23 THE WITNESS: Right. And, which also could have
24 combated some of the State's theory of trying to -- and again,
25 I observed and read all of the trials so I'm not so sure if it

1 played so much in my case as it did in others because I just
2 can't recall, separate it out. But the State, what their
3 theory would be or what they would argue to the jury is that
4 Brandy Warden has no reason to testify falsely. You know,
5 that she's this good mother and she's this and that. Part of
6 this is I couldn't even bring up that evidence.

7 BY MS. BASS:

8 Q. And you started to just talk about the State's theory of
9 this crime and how it happened and how the State theorized and
10 argued Brandy's role in the crimes. Do you recall what
11 Brandy's role was in these crimes? What she did?

12 A. In the instant case?

13 Q. Yes, in the Oklahoma murder case where she was testifying
14 against your client?

15 A. Right. She was probably the first person arrested. She
16 -- her name was on the -- I think she gave her photo ID at the
17 motel. The young man that survived, I believe Arnold
18 Kleinsasser or Kleinsasser, I can't remember how to pronounce
19 his name, could identify Brandy. Again, she left her photo
20 ID. She had -- the surveillance camera in the motel lobby has
21 her and Ms. Bateman, and the two young -- Mr. Wipf and Mr.
22 Kleinsasser. And Brandy, I mean, what I can -- what I recall
23 that surveillance tape she seems very much in control in what
24 she's doing. But anyway but she is I think the first one
25 arrested and then she identifies my client and his brother as

1 being the two masked and gloved perpetrators.

2 Q. And so -- and what was the relevance of Ms. Warden's
3 identification of your client as one of those masked
4 perpetrators?

5 A. It was the only thing to identify him with. There was no
6 biological evidence, no finger prints, no -- and, again, the
7 men that came in were masked and gloved.

8 Q. You mentioned a few moments ago that you weren't allowed
9 to get into the details of Ms. Warden's Payne County deferred
10 felony at Zjaiton Wood's trial, correct?

11 A. Correct.

12 Q. You did try to question her, Ms. Warden that is, about
13 the facts of her Payne County deferred sentence, correct?

14 A. Right.

15 Q. And do you recall what happened when you tried to do
16 that?

17 A. The Court shut me down. And I get that on a felony
18 conviction normally a lawyer isn't entitled necessarily to go
19 into the underlying facts of that case to the jury. But I
20 wasn't -- but in our case that jury didn't know anything about
21 her prior history. Didn't know a conviction. So then I tried
22 when I couldn't of course get it under a felony conviction
23 because it wasn't I tried to get it in as prior bad act of
24 dishonesty because it was a larceny from a house and thought
25 it would be relevant for that purpose. I was shut down.

1 THE COURT: And you're talking by Judge Ray Elliott.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay.

4 THE WITNESS: Yes, I'm sorry. Yes, ma'am.

5 BY MS. BASS:

6 Q. And by the time Ms. Warden testified against your client
7 Zjaiton Wood her Payne County deferred sentence had expired
8 and had been dismissed and expunged, correct?

9 A. Yes.

10 Q. Do you recall whether when you tried to get into the
11 facts of Ms. Warden's Payne County deferred felony the
12 prosecutor objected?

13 A. Yes.

14 Q. And you were not allowed to bring out of the fact of Ms.
15 Warden's deferred felony before the jury --

16 A. Right.

17 Q. -- in Zjaiton Wood's case?

18 A. Right. And I still kick myself for not making a better
19 record that I believe that jury was entitled to know what all
20 the deals that she got and -- by testifying. And I believed
21 that the jury was entitled -- not only the jury but my client
22 was entitled to an instruction from the Court letting that
23 jury know that they could use that information in evaluating
24 her testimony. That they could -- that it could be
25 impeachable. And, again, I don't know if it happened so much

1 in my case as it did in some of the others, it would have
2 blunted or at least, you know -- the State, their theory that
3 this young woman was this innocent young mother telling the
4 truth. And so it was a misleading -- it was mislead the jury.

5 Q. And then just looking to the death penalty phase was your
6 client's case. How do you think Ms. Warden's testimony, how
7 would you have used the facts of the deferred sentence in
8 defending you client at the death penalty phase?

9 A. Well, again, showing what all she received. Also they --
10 the State, and, again, I don't know if they did it so much in
11 my case as the others, the State, again, in their theory that
12 this was a young mother that was kind of bullied into this by
13 the men. And so all of those things are kind of aggravating
14 circumstances and I just think it was very misleading.

15 Q. Do you recall whether a Cleveland County pizza robbery
16 was used against your client --

17 A. Yes.

18 Q. -- in the death penalty phase?

19 A. Right. That was evidence in one of the aggravators. And
20 so, again, Brandy -- that's right. I'm sorry. Testified in
21 that regard about that case. And she was the only person -- I
22 mean, she testified that it was her, Ms. Bateman, and the Wood
23 brothers that were involved and everybody was charged in that
24 case except Ms. Warden. And --

25 THE COURT: Was there an actual Cleveland County case

1 filed?

2 THE WITNESS: Yes, and, you know, it's been a long
3 time since I've done death penalty work. I think that, you
4 know, they didn't do anything in our case either because I
5 want to say, and it's been a long time since I've done death
6 penalty law, but I kind of think that when the State used that
7 in my client's -- as an aggravator, evidence of an aggravator,
8 that maybe --

9 THE COURT: It was prior bad acts?

10 THE WITNESS: Or a continuing threat or something.
11 Anyway he was -- that case was never -- he never was punished
12 or tried in that case. But I'm just saying that -- and I
13 think it had to do with the death penalty nuances since they
14 brought in the evidence in the continuing threat. But my
15 point is is that she testified in that second stage about that
16 case. And, again, the other three are charged and she's not.
17 She was a very savvy witness.

18 MS. BASS: Thank you. I don't have any further
19 questions, Your Honor.

20 THE COURT: I have a question.

21 THE WITNESS: Yes, ma'am. And forgive me for being
22 obtuse. I've only had this case just over a week. It is my
23 understanding that your client testified in his brother's
24 trial; is that correct?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: And I don't know the answer to this. Was
2 any of that testimony allowed in at his trial? Your client's
3 trial.

4 THE WITNESS: Yes, ma'am. What -- yes. And I submit
5 to you as we did to our jury and to the Judge trying to limit
6 a bunch of that, our client was taking up for his big brother.
7 And most of it -- I would not have wanted to sponsor that
8 testimony as a lawyer. As an officer of the court.

9 THE COURT: I assume it was done against your advise?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay.

12 THE WITNESS: And it didn't have a lot of indicia of
13 reliability. But anyway so, yes.

14 THE COURT: So it was not only Ms. Warden's testimony
15 but your client's own testimony that put in the room that
16 night; would that be a fair statement?

17 THE WITNESS: That put who in the room?

18 THE COURT: Your client.

19 THE WITNESS: Yes. But, again, I would submit that
20 his motivation to testify was to protect his brother and he
21 felt as an older brother he felt responsible for his brother.

22 THE COURT: Absolutely. All right. Thank you so
23 very much for clearing that up for me.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: All right. Now, cross examination.

1 MR. LOCKETT: Yes, Your Honor.

2 **CROSS EXAMINATION**

3 BY LOCKETT:

4 Q. Good morning, Ms. Tyner.

5 A. Good morning.

6 Q. In preparation for the testimony here today were you
7 provided with any documents that you reviewed?

8 A. Yeah, I have reviewed the State's opening and closing of
9 all three phases of my trial. The case I was involved in.

10 Q. So that would be Zjaiton Wood's?

11 A. Zjaiton Wood's case, yes. And I also reviewed a copy of
12 the State's response to Zjaiton Wood's motion to prohibit the
13 State from using inconsistent theories in our case. And I
14 also reviewed the State's response to Zjaiton Wood's motion to
15 -- what was the other one.

16 Q. Would it have been the motion to disclose all deals?

17 A. I know I've done that, yes. But I thought there might
18 have been one more. I know you told what those were.

19 Q. Yes, we did speak on the phone.

20 A. But I'm kind of blanking. I think that's everything.

21 Q. I understand. A long time go ago. Lots of different
22 documents. Did that copy that you've reviewed of the State's
23 response to the motion of disclose all deals, do you recall if
24 it had a hand notation on the lower left hand corner of it?

25 A. I believe I've seen that but I don't have it. And I

1 can't recall what that was.

2 Q. Okay.

3 A. What that handwriting -- what it says.

4 Q. I want to take back to the early representation of
5 Zjaiton Wood and your experience with him. I think you stated
6 you were not the first attorney to have the case?

7 A. Correct.

8 Q. Do you know who that would have been?

9 A. I believe it was Mike Wilson and Mary Bruehl in our
10 Norman division at the time.

11 Q. So two attorneys there. And then what are the
12 circumstances of how you came to have the case?

13 A. It just -- I don't know why they assigned it. It's just
14 an agency thing. I don't know if it was caseloads or what.
15 But I was assigned it and I was lead counsel. I believe Lynn
16 Burch also had it from the moment -- because I had it from the
17 moment it came into our Tulsa division. And I believe Lynn
18 Burch also was with me from the beginning. And then we kind
19 of had Johnny Dalton helped on the case at a time. And then
20 at the end Wayne Woodward.

21 Q. Okay.

22 A. But Lynn and I I think had it from the beginning that it
23 came into our Tulsa division.

24 Q. What sentences was your client facing in that trial?

25 A. Well, murder one so it was death penalty case. And then

1 I know he had a second page. So what was -- the big sentence
2 was the death penalty.

3 Q. There were other crimes I think you mentioned?

4 A. Right. Like attempted -- I think it was an attempted
5 robbery with a dangerous weapon and conspiracy.

6 Q. Did those carry excessive sentences as well?

7 A. Yeah, he had a second page as well so I think he was
8 looking at even if I think if they didn't find everything he
9 was looking up to life in addition to the death sentence.

10 Q. I see. The three other co-defendants in your client's
11 case, were they also facing the same charges?

12 A. Yes, I believe so.

13 Q. And were they also facing similar serious sentences?

14 A. The bill of particulars was only filed against the young
15 men.

16 Q. Okay. Do you happen to know what the high end of the
17 sentences might have been for the two females then?

18 A. I think Lanita Bateman got at least 100 years on an
19 85 percent crime.

20 Q. Okay.

21 A. For -- I think that was one of them. I don't know if it
22 stacked with the others. I can't recall.

23 Q. I see. Do you recall if Lanita Bateman had any prior
24 felony convictions?

25 A. I don't recall. She was -- I think she was the youngest

1 out of the four.

2 Q. Okay. And Ms. Warden, do you recall what sentences she
3 might have specifically been facing?

4 A. Well, originally it was the same. I mean, they didn't
5 file a bill of particulars but I believe she was charged -- I
6 think all four of them were charged with the same three
7 offenses originally with the bill of particulars being filed
8 in the young men. With her plea agreement the murder one was
9 amended to accessory after the fact. I think there may have
10 been one other. I can't remember now what the -- but she got
11 45 in a non 85 percent crime.

12 Q. Correct. She later did. But at the time -- at the start
13 of this case potentially facing some life sentences?

14 A. Yes.

15 Q. I believe you noted that you received in either discovery
16 and also through the handing over of the files from the other
17 attorneys in OIDS you received some documentation that
18 informed you that Brandy Warden had a deferred sentence out of
19 Payne County, correct?

20 A. Yes.

21 Q. Did you communicate with the prosecution team in
22 Zjaiton's case -- and maybe before I go there, it was Fern
23 Smith and George Burnett; is that correct?

24 A. Yes, sir.

25 Q. Did you communicate with them during the course of your

1 representation of Mr. Wood?

2 A. Yes.

3 Q. Was that communication -- how would you characterize it?
4 Was it fairly frequent? Was it --

5 A. I probably did most of my communication with George.

6 Q. Okay.

7 A. In fact I know I did.

8 Q. Was there any specific reason for that?

9 A. He's more accessible. It was more productive.

10 Q. Okay. You said more accessible. Is that because he may
11 have been less busy or he was just more likely to respond?

12 A. You know, it was my experience, Fern Smith was difficult.
13 She wasn't a big communicator to me. But, you know, I did --
14 as a lawyer you ask the questions, you do what you have to do,
15 and then you realize who is it that you're going to get more
16 communication with and that was George.

17 Q. I see. Did you recall speaking with anyone else from the
18 Oklahoma County District Attorney's office in association with
19 the case?

20 A. I don't believe so. I don't recall.

21 Q. Ms. Tyner, do you have a general recollection of the
22 State's evidence against your client?

23 A. Yes, it's been awhile. But, yes.

24 Q. It has. In your opinion did the State attempt to hide
25 the fact in any way that Brandy Warden was on a deferred

1 sentence out of Payne County?

2 A. There was something there. It smelled. I mean, and as a
3 lawyer when you come across those things, which happened,
4 you're not getting any answers. I mean, this was a person on
5 probation for a felony and she's picked up on a murder one
6 count charge and nothing happens. It smells. That's why all
7 I could do as a defense lawyer is to ask and make a record so
8 that one day if my client was still alive and on death row it
9 would be there so that one day a record was made.

10 Q. I see. But my question was specifically to simply the
11 fact that she had a deferred sentence. Did the State attempt
12 to limit you from understanding that in any way or knowing
13 that?

14 A. No.

15 Q. Okay. And I think you stated earlier you wanted to know
16 everything you could about that charge and that sentence out
17 of Payne County?

18 A. Correct.

19 Q. And I think you also stated because that would be
20 impeachment evidence that you could use to your client's
21 benefit in his own trial?

22 A. Right. If she testifies. I just think it's good that
23 when you have a witness you know as much about that witness as
24 possible.

25 Q. Okay. I think the Court may have broached this issue

1 with you in some questioning but do you recall ever asking
2 Fern or George apart from at the motion hearing itself, do you
3 recall asking them, hey, what's going with this Payne County
4 deal?

5 A. I know I had to have. For me to have made a phone call
6 to Payne County I know had to have asked Oklahoma County. I
7 just don't have a specific recollection of that. But I had to
8 have. In fact it wouldn't surprise me if I made a phone call
9 to the probation officer to find out from the report that we
10 received.

11 Q. Is it a possibility that you potentially reached out to
12 Payne County because you heard that there was nothing there
13 from the Oklahoma County District Attorney's office?

14 A. I don't know. I think -- I don't know. But I think I
15 would have just reached out to them.

16 Q. So if they had responded to you and stated, hey, either
17 Fern or it sounds like George was the one you were speaking
18 with so if George had said we don't have anything here would
19 that have then also caused you to reach out to Payne County?

20 A. I would have reached out at some point anyway.

21 Q. Okay.

22 A. I just don't have a -- I just do not have a recollection
23 of our actual conversation with Oklahoma County.

24 Q. I believe you stated you called the Payne County District
25 Attorney's office itself, yes?

1 A. Yes.

2 Q. Do you recall who you spoke with?

3 A. No, and I, you know, again, no, I don't.

4 Q. Did you also reach out to the probation officer?

5 A. See I don't know. I don't know. It wouldn't surprise me
6 if I had but I just can't recall.

7 Q. You discussed earlier during your questioning this motion
8 in the associated motion hearing that you had on your motion
9 to disclose all deals and the State's response; do you recall
10 that questioning?

11 A. Yes, and actually that reminds me. That's what I
12 reviewed. That was the other document I reviewed. I
13 apologized. That just reminded me. Sorry. I'm old.

14 Q. So just to circle back to that. You think that is the
15 entire universe of everything you looked at? Everything you
16 stated earlier plus the motion hearing?

17 A. That I -- yes. In preparation for this, yes.

18 Q. You looked at your motion just a moment ago with opposing
19 counsel. Do you still --

20 MR. LOCKETT: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. LOCKETT:

23 Q. Mr. Tyner, I'm going to pull out and hand to you State's
24 Exhibit 3A. I know the Petitioner provided you copy of that.
25 It's a fairly straight forward and short motion; is it not?

1 A. Correct.

2 Q. And the basic gist of it is, hey, if there's a deal here
3 I want to know about it?

4 A. Yes.

5 Q. And do you recall receiving a response from the State?

6 A. I'm sure I did. I think the State -- I can't recall but
7 I want to say that they tended to file responses. I'm not for
8 sure.

9 MR. LOCKETT: May I approach again, Your Honor?

10 THE COURT: You may.

11 BY MR. LOCKETT:

12 Q. Ms. Tyner, I'm handing you -- I'll take that back from
13 you, State's Exhibit 3B. And does that appear to be the State
14 response?

15 A. Yes.

16 Q. Who filed that response, Ms. Tyner?

17 A. Looks like Fern Smith.

18 Q. And it's equally short in length. Pretty straight to the
19 point?

20 A. Correct.

21 Q. What's the content of the State's response?

22 A. That it's moot and the State has fully complied.

23 Q. So the --

24 A. And will continue to disclose.

25 Q. So taking that document for what it's worth is that an

1 affirmance by the State that, yes, we complied and disclosed
2 all deals?

3 A. Yes.

4 Q. Was there an associated hearing with that motion?

5 A. Yes.

6 MR. LOCKETT: May I approach again, Your Honor?

7 THE COURT: I may.

8 BY MR. LOCKETT:

9 Q. Take that one back from you. Ms. Tyner, I'm handing you
10 State's Exhibit 1B. And I'll ask you to flip to page 92 of
11 that document. I guess before I have you flip, on that front
12 cover what does that document appear to be?

13 A. Transcript of motion hearings.

14 Q. Okay. And do you recall a hearing on this motion and the
15 State's response that we were discussing taking place on
16 September 3, 2003?

17 A. I thought that was about when it was.

18 Q. Okay. Flip back over to page 92 if you would please.

19 A. Yes.

20 Q. And if you would just read I believe page 92 through 94
21 to refresh your memory.

22 A. Okay.

23 Q. Ms. Tyner, what was the Judge's ruling upon your motion?

24 A. Well, he sustains my motion.

25 Q. Did he direct the Oklahoma County District Attorney's

1 Office to do anything in response?

2 A. To disclose any and all deals this DA's office has made
3 with any other basically DA's office anywhere in the world
4 with reference to this witness must be disclosed.

5 Q. So the State was instructed at that motion hearing they
6 were to disclose any agreements that they had with any
7 witnesses and any other individual or offices; is that
8 correct?

9 A. Yes.

10 Q. Did the Judge say anything as to whether saying Payne
11 County District Attorney's Office if they wanted to not
12 accelerate Brandy Warden, was that something that he wanted
13 disclosed if that was something they did of their own
14 discretion?

15 A. Yes. I mean, to me it's kind of a confusing order.
16 Because he first says he's sustaining my motion, which means
17 to reveal all deals. And then he says if Payne County DA on
18 their own discretion decided not to accelerate her and they
19 haven't agreed or talked to them in reference to them then so
20 be it. But any and all deals with any other and all other DA
21 offices anywhere in the world in reference to any witness must
22 be disclosed. So --

23 Q. Did the Oklahoma County DA's office subsequent to that
24 hearing disclose to you the existence of any deals between
25 it's office and Payne County?

1 A. I received no information about a deal.

2 Q. Ms. Tyner, would a party be capable of disclosing to the
3 opposing party a piece of evidence that did not exist?

4 A. If it didn't exist, no. You're right.

5 Q. And I think you stated earlier in kind of characterizing,
6 and correct me if I'm wrong, in characterizing your thoughts
7 about what was going on here Brandy Warden's deferred sentence
8 I think you said something along the lines of it smelled
9 fishy; is that accurate?

10 A. Yes.

11 Q. Do you have any documented evidence that shows an
12 agreement existed between Oklahoma County and Payne County?

13 A. No, other than she was on probation. Most counties --
14 many counties will file a motion to accelerate a person if
15 they don't pay their court costs. In this case she was
16 arrested for murder in the first degree and nothing happened.
17 She was able to successfully complete that probation. You
18 know, that smells.

19 THE COURT: I agree with you, dear. But the question
20 was do you have any documented evidence that there was a deal.

21 THE WITNESS: No, ma'am.

22 THE COURT: Thank you.

23 BY MR. LOCKET:

24 Q. So is it -- it's your suspicions and your thoughts that,
25 hey, this doesn't quite add up? That's what you're going off?

1 A. Right. That's why I made a record.

2 Q. Okay. Turning to the trials was the defendants in this
3 case, did you attend the trial of Lanita Bateman?

4 A. I may not have been at all of it but I think -- I know I
5 was at some of it if not most.

6 Q. Which ones do you remember being at?

7 A. All of them.

8 Q. Okay. So you attended the trial of Tremane Wood and that
9 would have occurred I believe in --

10 A. I think it was '04. It was before my case in '05.

11 Q. Late March, early April of '04; does that sound right?

12 A. I don't remember the months but my case was, like,
13 February of '05 so it was in '04 sometime.

14 Q. And is it your recollection from that trial that the
15 State portrayed Warden, I think you used the words as maybe
16 innocent or bullied into this crime? I don't want to
17 mischaracterize your statements.

18 A. That she was less culpable in that she was kind of -- the
19 men were kind of bullying her into doing this.

20 Q. Okay. So the State -- I just want to make sure. Did the
21 State make out that she was entirely innocent of these crimes?

22 A. The least culpable out of all of them.

23 Q. Okay. In your opinion did the State have a strong case
24 against Tremane Wood?

25 MS. BASS: I object, Your Honor. That's speculation.

1 THE COURT: Well, okay. Based on your training and
2 experience as a death penalty qualified attorney, if you have
3 the ability to sit through all of Mr. Tremane Wood's trial, do
4 you have an opinion as to whether or not the State had a
5 strong case?

6 THE WITNESS: It was wasn't weak but it boiled down a
7 lot to Brandy Warden.

8 BY MR. LOCKETT:

9 Q. Did -- I think you discussed it earlier perhaps with Ms.
10 Bass, did your client testify at Tremane Wood's trial?

11 A. Yes, as I testified.

12 Q. What do you recall the content of Zjaiton's testimony at
13 Tremane's trial being?

14 A. Beyond. It was not -- it was over the top. It was --

15 THE COURT: And I'm sorry. What do you mean by that?

16 THE WITNESS: Well, a few things that I remember was
17 he said it was him and a white man named Alex, last name
18 unknown doing some, excuse me, Crip shit. I'm sorry.

19 THE COURT: That's all right.

20 THE WITNESS: And I want to say that's kind of how it
21 started. And then it went on to my client making graphic
22 sexual characterizations on -- it was over the top. My
23 client, as his lawyer and what we argued to our jury, felt
24 deeply responsible for his brother.

25 BY MR. LOCKETT:

1 Q. But you're getting into your trial though. I just want
2 to know --

3 A. Yes, but this is why it was over the top. And it was a
4 young man that was testifying trying to take responsibility
5 for his brother being in trouble.

6 Q. Okay. Well, did Zjaiton Wood, did he implicate himself
7 in the murder of Ronald Wipf?

8 A. Yes, he did.

9 Q. He did. Did he implicate Brandy Warden and Lanita
10 Bateman?

11 A. You know, that I can't remember. I remember all the
12 stuff -- it was him and Alex. A White guy named Alex. And I
13 really can't recall.

14 Q. So did Zjaiton Wood and Alex, did they -- in Zjaiton's
15 testimony did they go to this hotel and enter the room and
16 then kill Ronnie Wipf?

17 A. I remember -- again, I don't remember all of it. What I
18 remember was my client saying it was him and Alex. And the
19 things that I really remember are the things where my client
20 says how he himself plunges the knife in Mr. Wipf and had some
21 kind of sexual pleasure from that. You know, those were the
22 main things that I -- and I remember Ms. Smith going over I
23 want to say every one of the aggravating circumstances. So
24 there was a lot and those are the things that I can recall.

25 Q. It sounds like the things that you took away from

1 Zjaiton's testimony in Mr. Tremane Wood's trial were those
2 items that perhaps were going to be issues for you later on?

3 A. Yes.

4 Q. But whatever your recollections, I mean, the transcript
5 of Tremane's trial would bear out what actually Zjaiton Wood
6 testified to, correct?

7 A. Correct. Because I've got to tell you there was a lot
8 going on. And as his lawyer right in front of -- I actually
9 sat right in front of him next to the jury and those were some
10 -- so I don't remember a lot. It was a painful piece of
11 evidence for me to hear.

12 Q. Do you recall the verdicts in Tremane Wood's trial?

13 A. As a death penalty lawyer I kind of just remember the big
14 ones. He was found guilty of murder one. I'm sure of the
15 other counts as well and he got a death sentence.

16 Q. All right. Based upon all those items that Judge
17 Stallings just mentioned to you earlier did you feel those
18 verdicts were incorrectly rendered given that you sat through
19 the entire trial?

20 A. Well, as a death penalty lawyer I have real problems just
21 as a death penalty lawyer how his case his resolved and how it
22 was prepared for and how it was tried.

23 Q. So would you have perhaps those same issues in any death
24 penalty case in which --

25 A. Can you again ask the question?

1 Q. Yeah, I think I asked based upon the fact that you sat
2 and heard the evidence in Tremane Wood's trial did you feel
3 that the verdict in that case -- or the verdicts were
4 incorrectly rendered in light of the evidence?

5 A. Well, considering my client got a sentence less than
6 death and he admitted to all of those crimes I don't know. I
7 mean, I don't know if I'm the right person to ask.

8 Q. I see. I believe you discussed briefly the pizza robbery
9 in association with the Wood case earlier?

10 A. Yes.

11 Q. Did other witnesses -- trying to figure out which trial.
12 Let me ask you about your trial. The one where you
13 represented Zjaiton Wood. Were there other witnesses that
14 testified to the pizza robbery? In particular the owner of
15 the pizza restaurant?

16 A. I've got to tell you I don't remember a whole lot about
17 it. It's really weird the things you remember and the things
18 you don't over 20 years.

19 Q. Absolutely.

20 A. In fact I mean it was good to refresh my memory with some
21 of the stuff that I did. But some things really stand out but
22 I can't remember. The alleged victim may have testified. But
23 I really can't recall.

24 Q. Okay. And I know you just said this but I'm going to
25 have to ask specifically to Tremane Wood's case though. Do

1 you recall the owner of the pizza restaurant testifying?

2 A. I don't recall.

3 Q. Do you recall if Zjaiton Wood implicated himself and the
4 others in the pizza robbery during the Tremane Wood's trial?

5 A. He may have. I really can't recall. Really once --
6 sometimes you just kind of have to let some of it go. When my
7 client testifies about plunging a knife into somebody and
8 having a sexual gratification I kind of --

9 Q. That sticks with you, doesn't it.

10 A. Yeah. And then, again, going over the aggravating
11 circumstances. Because like you said, I did focus on the
12 things for my case. But, yes, there were a lot of things
13 going on in that testimony and I just don't -- those are the
14 big things that stand out that I can recall.

15 Q. Did Brandy Warden testify at the trial of Tremane Wood?

16 A. Yes.

17 Q. Did Brandy Warden testify at the trial of Zjaiton Wood?

18 A. Yes.

19 Q. Did you seek to impeach Brandy Warden based upon her plea
20 agreement that she entered with the State in this case?

21 A. Yes, and I -- unfortunately again what stands out the
22 most, and I told you before, is like I kind of have always
23 kicked myself for not making a better record on those priors
24 so I can't recall a whole lot --

25 Q. I see.

1 A. -- of my cross with her.

2 Q. Do you believe Brandy Warden's motivation to testify for
3 the State would have been any greater had she also been
4 accelerated on that deferred sentences?

5 A. Well, I believed from the beginning she was in jeopardy
6 and she knew that. She gets arrested early. She's on
7 probation. These are my concerns as a lawyer. And that she
8 has a motivation from the very beginning knowing she's on
9 probation to curry favor and -- which can be a motivation to
10 testify falsely or to give misleading statements. So that was
11 my concern.

12 Q. But I think we talked earlier and you said that she was
13 facing some very serious charges and potential sentences; was
14 she not? Just in the case alone.

15 A. Right. And I remember I was even still concerned, like I
16 said earlier, that, you know, of even, like, a motion to
17 modify for her testimony.

18 Q. But that came after after Tremane Wood's case; did it
19 not?

20 A. I can't recall. I may have crossed her. I remember a
21 motion to modify being a concern for me.

22 THE COURT: And, counsel, I believe for the record,
23 the modification happened in 2004. She's testified her
24 client's trial was in 2005.

25 MR. LOCKETT: Correct. I'm sorry.

1 BY MR. LOCKET:

2 Q. I know we keep going back and forth. Based upon what the
3 record would reflect if the record did show that the
4 modification came in 2004 -- later in 2004 -- let me just
5 stop.

6 A. I'll just say the only reason why it comes in my mind is
7 maybe I crossed her on it. I remember that kind of being an
8 issue. But every time there's a possibility -- anyway, it was
9 a concern.

10 Q. That makes sense, yes. So you stated that Brandy
11 Warden's plea agreement was discussed in Zjaiton Wood's trial.
12 Was the jury provided with an impeachment instruction
13 regarding her plea agreement?

14 A. I can't recall. I know -- I remember we got an
15 accomplice instruction.

16 Q. Okay. What would that accomplice instruction have
17 consisted of? What would it have told the jury?

18 A. It has been a long time since I've practiced law and
19 looked at the law. That her testimony must be corroborated I
20 believe was big part of it.

21 THE COURT: Counsel, for the record I just reviewed
22 the jury instructions for Zjaiton Wood. There's was an
23 accomplice instruction. There was the standard credibility of
24 witnesses instruction. There was no impeachment instruction.

25 MR. LOCKETT: Thank you, Your Honor.

1 BY MR. LOCKETT:

2 Q. I think you stated you attempted to get the details of
3 Brandy Warden's deferred sentence in at your client's trial;
4 is that right?

5 A. As a prior bad act of dishonesty or truthfulness.

6 Q. Okay. And you were shut down on that front; is that
7 right?

8 A. Yes, sir.

9 Q. In your opinion if the deferred sentence has been
10 accelerated and the jury in Zjaiton Wood's trial had heard
11 that she had a prior felony conviction out of Payne County
12 would the result of that trial been any different in your
13 mind?

14 A. The problem is is the jury not being instructed. I'm not
15 a finder of fact.

16 MS. BASS: And, Your Honor, I would object. He's
17 asking the witness to speculate about the results of the
18 proceeding.

19 THE COURT: Well, again, based on her training and
20 experience as a qualified death penalty attorney if she has an
21 opinion she may offer it.

22 THE WITNESS: And, again, I guess I'm just a lawyer
23 in my bone. That it is up for a jury to be properly
24 instructed and to have -- you know, jury instructions are
25 pretty important. As a lawyer I realized -- a trial lawyer

1 that juries really take in what a judge tells them. And tells
2 them what they can do with what they've heard. And so, again,
3 I don't -- I believe the jury was entitled to know some of
4 that and to be able to evaluate her credibility when making those
5 determinations.

6 BY MR. LOCKETT:

7 Q. So would it be fair -- do you have no opinion then on my
8 question?

9 A. On whether he'd be convicted?

10 Q. Had they known the fact that she had a prior felony out
11 of Payne County for larceny from a house.

12 MS. BASS: Your Honor, objection. That's
13 speculation. She's already said she believes the jury was
14 entitled to have the information to make that assessment
15 themselves as a finder of fact, which Ms. Tyner is not the
16 finder of fact.

17 THE COURT: Objection overruled. If you have an
18 opinion as to whether or not the fact that Ms. Warden -- had
19 the grand larceny been accelerated, had she had that prior
20 felony conviction do you have an opinion as to if that in and
21 of itself would have changed the course of that trial? And if
22 you don't have an opinion then you don't have an opinion.

23 THE WITNESS: I guess it's just the lawyer in me. I
24 just -- I mean, I don't practice but I just -- if I practiced
25 that way maybe none of my cases would go to trial. I mean, I

1 just don't know that.

2 BY MR. LOCKETT:

3 Q. Are you saying you have no opinion on that?

4 A. I'm not in the position to make that opinion.

5 Q. What would you have asked Brandy Warden about her prior
6 Payne County conviction had you been granted that ability to
7 do so?

8 A. Number one, if I remember right it was kind of similar in
9 the way that she had a co-defendant. And I think her -- like,
10 I may have found from her plea agreement -- I can't remember
11 what all I had from that. But she also kind of in that case
12 such as ours shirked her own -- any responsibility and placed
13 it on somebody else.

14 Q. Brandy Warden you mean?

15 A. That's the way I recall in that Payne County.

16 Q. You said she shirked responsibility. Did she also enter
17 a plea though?

18 A. Yeah. Yes.

19 Q. So she did admit guilt in association with that?

20 A. Right.

21 Q. Would you have been allowed to get into the specifics of
22 the crime had it been accelerated?

23 A. It would be up to the judge. But I could at least --
24 well, if it was accelerated, no. Bring it in under a prior
25 felony conviction, which then the jury -- or we would be

1 entitled to an instruction of -- that she could be impeached.
2 That that's why that was brought in. Since I wasn't allowed
3 to because there was no conviction that's when I attempted to
4 bring it in as a prior bad act involving truth and dishonesty.
5 And, again, to obtain that instruction.

6 Q. In your client's trial did you believe Brandy Warden's
7 credibility was seriously called into issue?

8 A. You know, obviously not. Are you saying --

9 Q. I think your response is on the basis of what the jury
10 rendered. Did you think that Brandy Warden had credibility
11 issues?

12 A. I believe that not everything she said was truthful.

13 Q. I don't believe that answer necessarily goes to the
14 question.

15 A. Okay. Ask it again. I'm sorry.

16 Q. Do you believe Brandy Warden had credibility issues in
17 your client's case?

18 THE COURT: In Zjaiton Wood's case?

19 MR. LOCKETT: Yes, in Zjaiton Wood's case.

20 THE WITNESS: Yes, she --

21 BY MR. LOCKETT:

22 Q. What was that based on?

23 A. She had a reason to color her testimony, which in a death
24 penalty case it's not only about the underlying facts of the
25 case. But it also goes to eventually, if my client is found

1 guilty of murder one, then it also goes to a death penalty
2 issue.

3 Q. You said she had reason to color her testimony. What was
4 the basis for coloring her testimony?

5 A. To try to stay out of prison. To have a lesser sentence.
6 A lighter sentence.

7 Q. So essentially her plea agreement in that was her reason
8 to color her testimony; is that what you're saying?

9 A. That and she did from the very beginning because she was
10 under probation.

11 Q. But the jury in Zjaiton Wood's didn't know that though.

12 A. Right.

13 MR. LOCKETT: I have no further questions, Your
14 Honor.

15 THE COURT: Any redirect?

16 MS. BASS: Yes, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. LOCKETT:

19 Q. Ms. Tyner, you where asked on cross examination about the
20 motion to reveal all deals that you filed in August of 2003.

21 A. Yes.

22 Q. Okay. You filed that motion because you were getting no
23 answers from Fern Smith or George Burnett to your inquiry
24 about whether Ms. Warden's agreement included her Payne County
25 deferred felony; is that accurate?

1 A. Right. We thought -- it's a motion that I file in most
2 cases to make sure we know everything. I did the additional
3 putting it on the record my steps of trying to find out what
4 happened. I mean, that is a motion that I would file in most
5 of my cases. But, again, I don't ordinarily have to put on
6 the record the steps that I've taken and I my concerns.

7 Q. Right. And you were taking those steps putting it on the
8 record, taking that affirmative action because you were not
9 getting answers from George Burnett or Fern Smith, correct?

10 A. Right.

11 Q. You were asked on cross examination about the transcript
12 of the September 3, 2003, hearing where you're putting your
13 concerns about this deal on the record for Judge Elliott?

14 A. Yes.

15 Q. In the transcript that Mr. Lockett asked you to read did
16 George Burnett, who was at that status conference, ever say,
17 Your Honor, there's no deal here. Did he ever avow there's no
18 deal here, Your Honor, in what you read on the transcript?

19 A. No, not that I recall.

20 Q. The State -- Mr. Lockett asked you about your assessment
21 of the strength of the State's case against Tremane Wood and
22 your opinion about the strength of that evidence. The State
23 put Brandy Warden on the stand at Mr. Wood's trial, correct?

24 A. Correct.

25 Q. And Ms. Warden was the State's only witness who

1 identified Tremane Wood and Zjaiton Wood as the masked men who
2 entered that motel room, correct?

3 A. Correct.

4 Q. Do you recall if the State talked about Ms. Warden's
5 testimony in argument to the jury at Mr. Wood's trial either
6 at the guilt phase or at the death penalty phase?

7 A. Yeah, and that's where I kind of get -- all the trials
8 kind of come together of what I remember. I can't separate
9 them out. But I want to say the State argued a lot in one or
10 all the trials that Brandy, they made her to be a much more
11 sympathetic person. She's this mother and the men are making
12 her do these things.

13 Q. Okay. And sitting through Tremane Wood's trial you did
14 not see that Ms. Warden was asked by Johnny Albert, Mr. Wood's
15 lawyer, about the Payne County deferred felony?

16 A. I don't remember.

17 Q. Okay. You were asked by Mr. Lockett on cross examination
18 whether in you opinion the verdicts in Tremane Wood's case at
19 the guilt and penalty phases were correct. In your opinion
20 and based on your training and experience as a capital defense
21 lawyer are verdicts that are unconstitutional ever correct?

22 A. No.

23 Q. Okay. You were also asked you opinion by Mr. Lockett on
24 cross examination about the trial result and what your
25 assessment was of the case that the State brought against

1 Tremane and his trial overall. What's your assessment of the
2 quality of the representation that Tremane received sitting
3 through that trial and watching that trial and that --

4 MR. LOCKETT: Objection, Your Honor. I think this is
5 irrelevant to the issues we're here to discuss.

6 MS. BASS: Respectfully, Your Honor -- I'm sorry.

7 THE COURT: I think you opened the door, Mr. Lockett.

8 MR. LOCKETT: Okay.

9 THE COURT: Could you repeat your question please.

10 MS. BASS: Yes, Your Honor.

11 BY MS. BASS:

12 Q. What -- having sat through Tremane Wood's trial and death
13 penalty phase and watched what went on what is your assessment
14 and your opinion of the quality of representation that Tremane
15 Wood got?

16 A. With all due respect to Mr. Albert -- I know he's --

17 THE COURT: He's passed away.

18 THE WITNESS: -- passed away, it was wholly lacking.
19 I don't think -- it didn't appear to be a whole lot of
20 investigation. In death penalty work, you know, from the day
21 you get assigned a case you're not only investigating the
22 facts -- underlying facts of the case, you are investigating
23 your client's whole life. And and that starts from day one.
24 And so there didn't seem to be a lot of that. In my case my
25 client even went so far as waiving mitigation. And yet we put

1 on the record everything that we -- had we been entitled to
2 put on what we would -- who we would have called to testify
3 and what we expected for them to say. And I just don't think
4 Mr. Albert did a lot of investigation.

5 BY MS. BASS:

6 Q. And do you recall whether or not at the penalty phase of
7 Mr. Wood's death penalty trial Mr. Albert -- you said you
8 prepared a lot of mitigation to present on behalf of your
9 client. Did you see that come through at the penalty phase
10 that you saw in Mr. Wood -- Mr. Tremane Wood's case?

11 A. No, and I'll also say that sometimes, you know, in these
12 cases, and I know I did in this case, we, you know, had
13 brothers. So they had the same family. I mean, they grew up
14 in the home. So I know that we would at times I think -- I
15 know I had provided him with some information. Like, contacts
16 or whatever.

17 But, no. I think he had his -- their mother testify
18 briefly. Dr. Hand. But anyway it was -- the jury didn't hear
19 all about Tremane Wood, which is what a death penalty lawyer
20 is supposed to provide in a death penalty case. So that that
21 jury once again can evaluate the crime and the person before
22 they sentence someone to death. And that's what the law
23 requires.

24 Q. Now your client, Zjaiton Wood was sentenced to life
25 without parole?

1 A. Yes.

2 Q. Okay.

3 A. And could I also say, you know, on the question of Mr.
4 Albert's representation, it was not -- now, it was against Mr.
5 Albert's advice on the record that he, that the defense, that
6 Tremane Wood's defense present my client in his case. The
7 client, Mr. Tremane Wood wanted it over Johnny's advice. So I
8 know Johnny Albert presented my client's testimony. And I
9 find that to be a fatal flaw. I think that the jury saw
10 exactly what I saw. And that was an older brother sticking up
11 for his younger brother. And juries don't like to be lied to.
12 And I think they punished Tremane. So anyway.

13 Q. Now, you were asked about your assessment of the
14 likelihood of a correct verdict on cross examination having
15 sat through Tremane Wood's trial. In your professional
16 experience and training do you think that there is a
17 probability that one juror might have decided differently on
18 the question of life and death if Brandy had been impeached
19 with her deferred felony in Payne County?

20 A. Yes, that's why there are instructions. That's why these
21 laws are there is because juries are entitled to know that. We
22 don't make those decisions ahead of time of what we think.

23 Q. And what is in your opinion and experience and
24 professional training the significance of that impeachment
25 instruction to jurors coming from the court?

1 A. Because it, again, they take what a judge tells them and
2 they take those instructions seriously. It really is their
3 roadmap. And I also believe that jurors, if one juror in that
4 deliberation room doesn't necessarily believe that witness and
5 there's an instruction that says you're entitled not to
6 believe all that witness says, you know, that helps them in
7 their deliberations with other -- with their fellow jurors. I
8 mean, what a judge instructs them really is their roadmap and
9 I truly believe that jury instructions are important.

10 MS. BASS: Thank you. No further questions, Your
11 Honor.

12 THE COURT: All right. Any cross examination based
13 on those questions?

14 MR. LOCKETT: Just a few, Your Honor.

15 **RECROSS EXAMINATION**

16 BY MR. LOCKETT:

17 Q. Ms. Tyner, I think you stated a moment ago that you did
18 not get an answer from Fern and George -- or I guess Fern
19 wasn't there. You didn't get an answer from George at the
20 hearing --

21 THE COURT: Okay. Counsel, let's use last names.
22 George Burnett.

23 MR. LOCKETT: I'm sorry. My apologies again.

24 BY MR. LOCKETT:

25 Q. Let me start again. I believe you stated that you did

1 not get a response at the hearing from Mr. Burnett regarding
2 whether there was any plea agreement that involved Brandy
3 Warden's deferred sentence; is that accurate?

4 A. Again, I don't recall. I really do not recall an actual
5 interaction of Mr. Burnett and I speaking about it. On the
6 record he didn't. I don't recall. He made a comment and I
7 just really don't remember specifically talking to them. I
8 had to have talked to them about it. I mean, I was asking
9 anybody I could what was going on.

10 Q. Did you receive a response in the form of the State's
11 response to your motion though?

12 A. Right. That it was moot. Right. That you showed me.
13 Yes, sir.

14 Q. The District Court sustained your motion; did it not?

15 A. Correct.

16 Q. So would it have mattered if Mr. Burnett had made any
17 comment there to basically disavow the fact that there was an
18 agreement in Payne County?

19 A. Can you repeat that? I'm sorry.

20 Q. The District Court sustained your motion so would it have
21 actually mattered if Mr. Burnett had said anything one way or
22 the other on that issue?

23 A. Right. All I was left with was Oklahoma County's DA
24 office is telling me there isn't one or we don't have an
25 agreement with Payne County. That was my recollection. Is

1 that there isn't one. Or there's -- I've been given all the
2 information, which is the Oklahoma County deal. I was just --
3 it just doesn't sound right. It didn't seem right. That's
4 why I put it on the record.

5 Q. Did whether Brandy Warden had a plea agreement in this
6 case that incorporated her deferred sentence in Payne County,
7 did that have any bearing on the quality of Tremane Wood's
8 representation at his trial?

9 A. Can you say that one more time? Repeat that.

10 Q. Did whether Brandy Warden had a plea agreement in this
11 case that incorporated her deferred sentence in Payne County,
12 would that have had any bearing on the quality of the
13 representation that Mr. Tremane Wood received?

14 A. I mean, I guess it would depend on if Mr. Albert -- which
15 I don't have reason not to believe that he wouldn't have asked
16 her about it on cross.

17 Q. Do you have believe that you provided Zjaiton Wood
18 competent representation in his murder trial?

19 A. You know, there are many mistakes you can look back on as
20 a lawyer I but I feel very good about the work that we did on
21 Mr. Wood's case.

22 Q. Knowing what you knew about Brandy Warden and the Payne
23 County deferred issue were you able to actually get anything
24 into evidence at Zjaiton Wood's trial that would have let the
25 jury know that she had that deferred sentence out there?

1 A. Again, since it wasn't accelerated, no, I was not able to
2 get that before my jury.

3 Q. And then my final question. I don't know exactly what
4 you might have been privy to in Tremane Wood's trial just
5 before his brother testified but if the record reflected that
6 Mr. Albert sought to exclude Zjaiton's testimony at Tremane's
7 trial but was overruled by his client's wishes would that be
8 reflective of competent representation?

9 A. Well, as a death penalty lawyer you -- when I mentioned
10 earlier that on day one you start investigating those two
11 tracks, the crime and who your client is, you're also from day
12 one establishing rapport with your client. And rapport, you
13 get that by visiting your client, by visiting their family, by
14 doing work. When you go into court you are doing your job but
15 you're also showing your client that you're working on their
16 behalf. And you know what, now, I was unable to do it in this
17 case because I also advised my client, Zjaiton Wood, not to
18 testify.

19 Q. In Tremane Wood's case, right?

20 A. Right. But what I'm saying is most of the time I can't
21 think of any time other than this time with my client, who was
22 bent on testifying for his brother. You know, when you
23 establish rapport with your client your client trusts you.
24 And so when you say to your client or you advise them -- I
25 mean, you advise them the way to proceed. Whether to testify

1 on there own behalf or not. Because you've done your work and
2 your client trusts you they take -- other than this time I
3 can't think of a time that a client has not really taken my
4 advice. And I truly believe it comes down to doing your job,
5 your client seeing you do your job, trusting you. And that
6 wasn't there in this case.

7 Q. This case being --

8 A. Tremane Wood's. I'm sorry. That my client -- so when
9 you said that would it surprise me, no, I remember Johnny
10 Albert putting on the record that it was against his advice to
11 to present Zjaiton Wood. And what I'm saying -- and that it
12 was over his advice because Tremane wanted Zjaiton to testify.
13 And what I'm saying is and -- I believe it was a fatal flaw --

14 Q. It was a fatal flaw to have Zjaiton testify; is that
15 right?

16 A. Yes, to Tremane Wood's jury. And that, again, you hope
17 as a lawyer that you've done the work that your client will
18 take your advise. In this case it didn't happen. And quite
19 frankly I believe that -- I mean, I'll never know. There
20 could be all sorts of reasons why my -- Zjaiton Wood's jury
21 spared his life. But I do believe part of it was they saw
22 that Zjaiton Wood had humanity. He was -- and part of showing
23 humanity was that he tried to step up and take up for his
24 brother. He suffered death over his brother.

25 Q. I see. But just to clarify, Ms. Tyner, it sounds like

1 you advised Zjaiton not to testify in Tremane's trial?

2 A. Right. That's what I'm saying. That's the one time --

3 Q. And he went ahead and testified anyway.

4 A. Yes, it's the one time.

5 Q. And it sounds like Johnny Albert tried to convince
6 Tremane not to let Zjaiton Wood testify; is that right?

7 A. Right. He made a record of that, yes.

8 Q. And Zjaiton testified anyway?

9 A. Correct.

10 MR. LOCKETT: I have no further questions, Your
11 Honor.

12 THE COURT: All right. Ms. Tyner, we're done. Ms.
13 Tyner, thank you so very much for coming down this morning.
14 You are excused.

15 THE WITNESS: Thank you. May I sit and watch some of
16 it?

17 THE COURT: Sure. In fact it's 10:34. We're going
18 to take our midmorning break. I want you back here at 10:50.

19 Anything for the record before we take our midmorning
20 break?

21 MR. LOCKETT: No, Your Honor.

22 THE COURT: We're in recess.

23 (A brief recess was had.)

24 THE COURT: We're back on the record. All parties
25 are present.

1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

2
3 TREMANE WOOD,

4 Petitioner,

5 vs.

CASE NO. CF-2002-46

6 STATE OF OKLAHOMA,

7 Respondent.

8 STATE OF OKLAHOMA)

9) SS. CERTIFICATE OF COURT REPORTER
10 COUNTY OF OKLAHOMA)

11 I, Elliott Thompson, Certified Shorthand Reporter, within
12 and for the State of Oklahoma, duly appointed and qualified
13 reporter in the District Court of Oklahoma County, State of
14 Oklahoma, do hereby certify that I took down by machine
15 shorthand the proceedings as described on Page 1 herein, and
16 the foregoing is a true, complete and accurate record of my
17 shorthand notes so taken of said proceedings.

18 IN WITNESS WHEREOF, I hereunto set my hand and official
19 seal this 9th day of April, 2025.

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22 Elliott Thompson, CSR #2021
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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY,
STATE OF OKLAHOMA

TREMANE WOOD,	)	
	)	
Petitioner,	)	
vs.	)	CASE NO.: CF-2002-46
	)	
STATE OF OKLAHOMA,	)	(Afternoon proceedings)
	)	
Respondent.	)	

* * * * *

TRANSCRIPT OF THE EVIDENTIARY HEARING
HELD ON THE
8TH DAY OF APRIL, 2025,

BEFORE THE HONORABLE SUSAN STALLINGS,
DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,
OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY:
Kristin L. Taylor, CSR, RPR
Official Court Reporter
321 West Park Avenue, Suite 811
Oklahoma City, Oklahoma 73102
(405) 713-1105

1 THE WITNESS: Thank you so much, your Honor. Does
2 that mean I can -- I have a subpoena from --

3 THE COURT: All right. Can we release her from
4 all subpoenas?

5 MS. BASS: Yes. Yes.

6 MR. LOCKETT: She may be released.

7 THE WITNESS: I can -- I can go home?

8 THE COURT: You can stay or you can go home, it's
9 your choice.

10 All right. Counsel, it's almost 3:00. We're
11 going to take our mid-afternoon break.

12 MS. BASS: Okay. Thank you.

13 THE COURT: We'll be in recess until 3:15.

14 (A recess was taken.)

15 (After the recess, the following
16 occurred in open court with all parties
17 present.)

18 THE COURT: We are back on the record. All
19 parties are present.

20 Ms. Bass, you may call your next witness.

21 MS. BASS: Thank you, your Honor. The Petitioner
22 would call Mr. George Burnett.

23 THE COURT: Good afternoon. Would you raise your
24 right hand, please?

25 (George Burnett was sworn.)

1 THE COURT: Please have a seat. And there's some
2 water there for you.

3 Counsel, you may inquire.

4 MS. BASS: Thank you, your Honor.

5 THE WITNESS: Hear me okay?

6 THE COURT: Yes.

7 THE WITNESS: It's hard for me to tell. I should
8 probably tell you, Judge, I have tinnitus now so it's really
9 hard for me to hear sometimes.

10 THE COURT: Okay. I mean, she's going to use the
11 microphone.

12 THE WITNESS: We'll see how it goes.

13 THE COURT: All right.

14 GEORGE BURNETT,
15 was called as a witness, after having been first duly sworn,
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. BASS:

19 Q Will you please state your name again for the record?

20 A My name and what?

21 Q Can you please state your name for the record again,
22 please?

23 A Yes, George Burnett.

24 Q And what is your occupation, Mr. Burnett?

25 A I'm a sheep farmer.

1 Q And before you became a seed (sic) farmer, what did you
2 do?

3 A Oh, I practice -- I have a law license. I practice
4 law.

5 I was a prosecutor 30 years. Retired from the
6 AG's Office in 2016. I do a little bit of civil work and a
7 little bit of criminal work, very little. Just kind of
8 those cases come up. Lot of it's kind of pro-bono. In
9 fact, last time I was in court I testified against the
10 Attorney General's Office.

11 Q And at some point did you work in the Oklahoma County
12 District Attorney's Office?

13 A Yes, I worked there two stints; from '86 to '92, and
14 then from '96 to 2006.

15 Q Okay. And you would have worked in the Oklahoma County
16 District Attorney's Office under Wes Lane and Bob Macy; is
17 that accurate?

18 A Correct.

19 Q Okay. Now what types of cases did you prosecute in the
20 Oklahoma County District Attorney's Office?

21 A Everything.

22 Q Okay.

23 A At some point or another I was on every team. But -- I
24 mean, I prosecuted everything but I didn't do much juvenile
25 work here. I did juvenile work in other districts.

1 Q Among the cases that you prosecuted, you prosecuted
2 capital cases; is that correct?

3 A Correct.

4 Q Okay. Now did you start out prosecuting capital cases?
5 Or tell me how you got to that point if not.

6 A Oh, it -- you evolve, you know, in cases because
7 they're obviously cases you want experience on and I
8 worked -- oh, this was -- in fact, Wood was one of my first
9 capital cases that I got. I was working here -- well, I was
10 working on the seventh floor as team leader and that case
11 was assigned to me.

12 Q And what is a team leader?

13 A You supervise the floor. And it -- it changes over
14 time. But at that time you supervise the floor, so there
15 were, I don't know, two -- two or three judges on that floor
16 that were criminal. And so I supervised the attorneys on
17 that floor and did -- did murder cases. I kinda was
18 semi-responsible for the murder cases. They may -- somebody
19 else may do some of them, but I was responsible for them.

20 Q And how many people did you supervise as the team
21 leader for the seventh floor?

22 A We were in teams and so there were, like, two or three
23 lawyers in every courtroom.

24 Q Now you were interviewed by the Office of the Oklahoma
25 Attorney General earlier this year about your work on

1 Tremane Wood's case; correct?

2 A Correct.

3 Q And that interview was recorded?

4 A Maybe. I don't know. It's -- you know, it's -- it's
5 like this case is 20 years old. He may have recorded that.
6 I can't recall.

7 Q Do you recall that I asked you for an interview about
8 your work on Mr. Wood's case?

9 A Yes.

10 Q And you did not meet with me to discuss your work on
11 Mr. Wood's case; correct?

12 A Correct.

13 Q Did you receive a motion to quash the document
14 subpoenas that I issued in this case?

15 A Motion to quash?

16 Q A motion to quash the document subpoenas that I issued
17 in this case.

18 A You sent me a subpoena asking me if I had any
19 documents. And then I -- the day -- the reason I didn't
20 meet with you, the day after I got a motion to quash from
21 the AG's Office saying -- and so at the point I didn't know
22 what was going on so I just didn't do anything.

23 Q Okay. And that motion to quash listed all of the
24 witnesses from whom I subpoenaed information?

25 A I don't know. I didn't -- I didn't -- I just looked at

1 the -- I didn't spend a lot of -- I looked at if I had any
2 documents and then I didn't really pay much attention.
3 There was a motion to quash that -- that the AG had done
4 and -- about some documents or something, and I didn't --
5 after that I didn't look real close at it. After that point
6 I was, like, oh, well, something's going on. I just decided
7 to stay out of it.

8 Q Okay. Have you spoken with anyone other than the
9 investigators at the Office of the Attorney General about
10 your work on this case in preparation for your testimony
11 today?

12 A No.

13 Q Okay.

14 A No, I mean, people been walking by in the hall saying:
15 Why are you here? And I was, like: Well, you know, it's
16 the Woods (sic) deal back again. And I just -- you know,
17 you kinda -- something simple like that. But I didn't -- I
18 haven't talked to anybody.

19 AG's Office called me a couple times about some
20 signatures or some print -- something, and you guys about
21 something I wrote. And that's -- that's been about it.

22 Q Okay. Do you know Tom Lee? Do you know a Tom Lee?

23 A Yes.

24 Q How do you know Tom Lee?

25 A I didn't know him during Woods (sic). After I -- and I

1 can't remember exactly a time, but he got to be the DA up in
2 Guthrie -- Guthrie and Stillwater. And that's -- I kind of
3 met him -- and I may been at the AG's Office then. I didn't
4 know him -- I didn't know him until he -- I may have seen
5 him at some conference or something, but I didn't really
6 know him until he become the elected DA up in Stillwater.
7 And I can't remember what -- when that was.

8 Q All right. Do you know Vincent Antonioli?

9 A Yes.

10 Q And how do you know Vincent Antonioli?

11 A We worked together at the AG's Office from '11 -- 2011
12 until he left. And then he and I bounced around together.
13 He was -- he was the first assistant in Guthrie a little
14 before that. And I went up there as a special prosecutor
15 and did some cases for him. And then before that -- God,
16 I've been around a long time -- we -- he was a public
17 defender down here and I was a DA and we, you know, butted
18 heads every once in awhile.

19 Q Do you know what year Mr. Antonioli would've been the
20 first assistant for, you said, Guthrie?

21 A Before 2011. He got to the AG's Office a little bit
22 before me. So it'd be, you know, '09 or '10, some --
23 somewhere along in there, I guess. Probably when Rob Hudson
24 was -- was first assistant at the AG's Office, he probably
25 came about then.

1 Q Okay.

2 THE COURT: Okay. You keep saying "AG." Do you
3 mean DA's Office?

4 THE WITNESS: No, the -- no. No. Rob was the --
5 Rob Hudson was the DA -- elected DA in Stillwater. And he
6 resigned and became the first assistant at the Attorney
7 General's Office. And then he recruited Lesley March and
8 Vince Antonioli out of the Guthrie DA's Office. And then he
9 recruited me out of Mashburn's office. So he's to blame for
10 a lot of this.

11 THE COURT: Okay.

12 Q (By Ms. Bass) So did you -- just to make sure I'm
13 understanding the time line you're describing. So you --
14 you knew Mr. Antonioli when he was in the Payne County DA's
15 Office, or no?

16 A Yes. He -- we all worked together down here. He was a
17 public defender and I was a DA. He switched over to the DA
18 system. I can't -- you know, late tens I guess. Late --
19 that'd be late '90s I guess. And then he worked for -- for
20 Rob up there. And then -- so I would've known him when he
21 was up there.

22 Q Now you testified a little bit ago that Tremane Wood's
23 case would've been your first capital case; is that correct?

24 A Along in there. I mean, there might have been another
25 -- we might've filed a Bill on something else. I had two or

1 three kinda going at the same time, so pretty -- relatively
2 new.

3 Q And you prosecuted Mr. Wood and three other
4 co-defendants for the first-degree murder of Ronnie Wipf?

5 A Yes.

6 Q Okay. And that was in 2002, that you brought those
7 charges against all four of them?

8 A Sounds about right, yes.

9 Q Okay.

10 MS. BASS: Your Honor, may I approach?

11 THE COURT: You may.

12 Q (By Ms. Bass) Mr. Burnett, I've handed you
13 Petitioner's Exhibit 4 which is the Amended Information
14 filed in Mr. Wood's case, which the Court has taken judicial
15 notice of. Could you please turn to Page 2 of that
16 document?

17 A (Witness complies.)

18 Q Do you recognize the signature on the second page of
19 that document?

20 A There's two signatures, and I recognize both of them.

21 Q Okay. And the signatures that you recognize on that
22 second page, are they yours?

23 A Yes. Well, as Assistant District Attorney, that's
24 mine.

25 Q Now, this Amended Information reflects that you charged

1 Mr. Wood and his co-defendants all with the exact same
2 crimes initially; correct?

3 A Correct.

4 Q But you pursued the death penalty for Mr. Wood and
5 Zjaiton Wood, his older brother; correct?

6 A For Tremane, T-E-R-M-A-N-E (sic), and Zjaiton,
7 Z-J-A-I-T-O-N, yes.

8 Q Thank you.

9 By the time you began prosecuting Mr. Wood and his
10 co-defendants, would you say it's fair that you had a lot of
11 experience at that time, or how -- how would you
12 characterize your experience as a prosecutor at the time?

13 A Oh, yes, I had -- I started in '86, so, what, 15 -- 15
14 years I guess.

15 THE COURT: I went to law school, not math school.

16 THE WITNESS: I know. See, you're asking me a lot
17 of numbers.

18 Q (By Ms. Bass) Now in prosecuting a death penalty case,
19 would it be important for you to have an understanding of
20 the prior convictions and charges against the people you
21 prosecuted?

22 A That's true of every case, not just -- I mean, that's a
23 routine examination of the -- in the criminal justice system
24 to know people's records.

25 Q And why is that routine?

1 A Well, because obviously you can enhance punishment for
2 any offender if they have records. And then at the same
3 time you can use that for the determination of whatever kind
4 of plea agreement or plea bargaining you may want to do in a
5 case.

6 Q Could you also use a defendant's priors or pending
7 charges -- I'm sorry. Could you use a defendant's prior
8 convictions to impeach them if they were to testify in -- in
9 a case you were prosecuting?

10 A Yes, I mean, if he -- if he takes the stand you could
11 obviously use it for impeachment evidence.

12 MS. BASS: Your Honor, may I approach?

13 THE COURT: You may.

14 Q (By Ms. Bass) Mr. Burnett, I've handed you what's in
15 evidence as Petitioner's Exhibit 23, which is a case record
16 from your district attorney files in this case. Do you
17 recognize this document?

18 A Yes, it's a blue -- what we commonly refer to as a blue
19 sheet. It's just the first page of it though.

20 Q And -- and what is the blue sheet and how -- how did it
21 get to your files?

22 A It's an organizational structure put together by the
23 District Attorney's Office which requires police departments
24 to synthesize information in a standardized form so that
25 charges could be expeditiously prosecuted.

1 Q Do you recognize the handwriting in this document?

2 A I'm not sure whose handwriting it is.

3 Q Okay. If you look at the box that says "charges," the
4 second box on the page --

5 A Yes.

6 Q -- it might be a little hard to see, but under -- under
7 principal investigator it says M. Veasey?

8 A Right.

9 Q Would that be the investigating detective on the case?

10 A That'd be probably one of them.

11 Q One of them.

12 A I mean, there's typically two assigned.

13 Q Okay. And would the -- the investigating detectives
14 would typically then fill out the case record and then
15 provide it to the District Attorney's Office, or how would
16 that work?

17 A It -- sometimes. I mean -- yeah, lot of times they
18 did. And sometimes they're typed, you know, they come in
19 all forms, you know, depending on how -- what's going on in
20 a case sometimes, you know? If it's -- if it's -- you know,
21 if there's some -- it all depends on that -- that
22 circumstance of that case that they're trying to get charges
23 on somebody. I mean, it -- you know, things come in the
24 DA's Office fast and furious. There's no standardized way
25 that things come.

1 Q And would this case record have come to you early in
2 the case or later on?

3 A No, the case record's the first thing. The blue
4 sheet's usually first thing that comes through. And
5 they'll -- they'll -- detectives bring cases and they'll
6 start talking to somebody, particularly on homicides or
7 something that's serious or severe. They may want to come
8 and -- there's a give and take that goes back and forth
9 giving legal advice or legal -- getting some concept of what
10 the District Attorney would do with a set of facts. And so
11 it's -- it's a fluid moment on charges, and then they're
12 not -- there's not a standardized way to do it.

13 Q Okay. Now this case record, which I've handed you,
14 lists the charges and the prior convictions of Tremane Wood,
15 Zjaiton Wood, Brandy Warden and Lanita Bateman; correct?

16 A Yes.

17 Q And so this case record would have informed you that
18 Ms. Warden, who is defendant number 3 on this list, had a
19 prior felony for larceny of a house out of Payne County; is
20 that correct?

21 A It's listed here, yeah.

22 Q It's listed.

23 A I'm always hesitant because without an NCIC you never
24 know really what anybody's got, you know? You just -- it's
25 kind of a first start.

1 Q And what does the case record say about her -- her
2 larceny of a house, former conviction on the case record?

3 A It doesn't have a -- it doesn't have any kind of
4 sentence on here.

5 Q So what would that have told you, if anything?

6 A Nothing.

7 Q Okay. Would it have told you that she hasn't been
8 sentenced on it?

9 A It says she's got a case. It says that there's a
10 conviction. There's a date on here which might mean a
11 conviction, might not. You know, I don't know what her
12 sentence is.

13 Q Okay. And the date of the conviction listed there for
14 Ms. Warden is October 21st, 2000?

15 A Yes.

16 Q You mentioned NCIC. Can you tell me a little bit about
17 what NCIC was at this time?

18 A It's the Feds. There's always an acronym for
19 everything. It's like National Crime Information Center, or
20 something like that. It's a comprehensive record that's
21 compiled by various agencies sending in fingerprints and
22 convictions on offenders in order to have an interstate
23 record of criminal activity by a given person that's
24 verified by fingerprints.

25 Q And would you routinely run NCIC reports on defendants

1 you were prosecuting?

2 A Yes. Typically -- the typical file would have that
3 done for us at the beginning of the -- at the beginning of
4 the process. Typically they'll run NCIC.

5 Q They being the investigating detectives in the case?

6 A Right. Typically police will run the NCIC and present
7 that material to us when they're -- when they are bringing
8 the charges on everything, all kinds of cases, not just
9 murders.

10 MS. BASS: Your Honor, may I approach?

11 THE COURT: You may.

12 Q (By Ms. Bass) Mr. Burnett, I've handed you what's in
13 evidence as Petitioner's Exhibit 38. Do you recognize this
14 document at all or....

15 A Yes.

16 Q And what is this?

17 A It's an OLETS record.

18 Q Okay. And can you explain what an OLETS record is?
19 That's the first page you're looking at; correct?

20 A Yeah. Yeah. It's O-L-E-T. It's Oklahoma Law
21 Enforcement -- I can't remember what the T stands for now.
22 But it's kind of like a driving -- kind of like -- kind of
23 like the first part of a driving record.

24 Q Could you turn to the fifth page of this document,
25 which is -- has a little writing in the bottom corner, 239?

1 A (Witness complies.)

2 Yes.

3 Q And do you recognize that document?

4 A Yes, that's an NCIC.

5 Q And that's an NCIC on Brandy Warden; correct?

6 A Yes.

7 Q Now this NCIC on Brandy Warden would've told you that
8 she had a three-year deferred on her Payne County felony
9 larceny starting October 21st, 2000; is that correct?

10 A It's -- she got a three-year deferred. I think that
11 date might be the date of conviction but I'm a little
12 hesitant. Probably. I would say might be, or it might be
13 reported that day. I don't know exactly how they do those.

14 Q Okay. And if it was the date of conviction her
15 deferred would be three years from -- it would run through
16 October of 2003; correct?

17 A Correct.

18 Q Okay. Would this NCIC on Ms. Warden have also told you
19 that she had restitution to pay in connection with her Payne
20 County deferred felony?

21 A Maybe.

22 Q Okay.

23 A I'm always hesitant. NCIC -- you start getting -- you
24 start getting third, fourth parties putting information in.
25 And I'm always a little hesitant to know exact -- say

1 exactly she was ordered to pay restitution. But there was
2 an indication of that in this particular file.

3 Q Okay.

4 A Or document.

5 Q Now at some point in your prosecution of Mr. Wood and
6 his co-defendants you determined, given the evidence in the
7 case, that it would be better for your prosecution to have a
8 cooperating witness; correct?

9 A Yeah, strategic choice. Yeah. Yes.

10 Q Okay. And you determined that Brandy Warden would make
11 the best cooperating witness?

12 A Yes.

13 Q And you deemed her testimony essential to your death
14 penalty prosecution of Mr. Wood; correct?

15 A I wouldn't say essential. I'd say it helped. I mean,
16 we had other -- other evidence in the case and it helped
17 from that standpoint. But, you know, when you evaluate
18 evidence, you know, we're all -- you know, as I like to say,
19 hindsight makes the greatest of fools seem wise. Trying
20 this case we -- you don't know exactly how your evidence is
21 going to go and play, so you look at what is the best
22 evidence that you can put. And we compromised with her
23 rather than -- you know, we gave her a technical life
24 sentence rather than giving her a life sentence.

25 Q Okay.

1 MS. BASS: Your Honor, may I approach?

2 THE COURT: You may.

3 Q (By Ms. Bass) Mr. Burnett, I've handed you
4 Petitioner's Exhibit 79 which is marked for identification,
5 which is a transcript of your interview with Agent Rieves
6 from the Oklahoma Attorney General's Office about this case.

7 A Okay.

8 Q Can you please turn to Page 14?

9 A (Witness complies.)

10 Q And starting at lines 3 through 8, can you take a
11 moment to read that?

12 A (Witness complies.)

13 THE COURT: Counsel, what page did you say?

14 MS. BASS: I'm sorry. Page 14, lines 3 through 8.

15 Q (By Ms. Bass) I'm sorry. I directed you to the wrong
16 page. Can you go to Page 8, lines 15 through 22?

17 A Page 8?

18 Q Page 8, yes, of the same exhibit.

19 THE COURT: And which lines?

20 MS. BASS: Lines 15 through 22.

21 Q (By Ms. Bass) Now there, Mr. Burnett, lines 21 through
22 you state: That's why her testimony was essential
23 against them. Referring to Brandy Warden; correct?

24 A Uh-huh. Yes.

25 I'm sorry. Sorry. If anybody knows better, it's

1 me.

2 Q At the time you determined that Brandy Warden would
3 make the best essential cooperating witness for your
4 prosecution of Mr. Wood you were aware she was on a deferred
5 felony out of Payne County; correct?

6 MS. BURNS: Objection, your Honor; form of the
7 question. He never indicated that she was an essential
8 witness.

9 THE COURT: Well, he just pointed out in the
10 testimony he said she was essential.

11 MS. BURNS: She did not -- I don't believe she
12 asked him that though.

13 THE COURT: All right. Rephrase your question.

14 Q (By Ms. Bass) Mr. Burnett, was Ms. Warden an essential
15 witness in your prosecution of Mr. Wood?

16 A No. I mean, we could've -- we could've tried that case
17 and won it without her, but we wanted the certainty of
18 conviction. So you make -- make decisions in cases. We got
19 the case bound over. We were looking at -- and, you know,
20 it's 20 years, I hadn't looked at this case. So, you
21 know -- in fact, when I was talking to the Attorney
22 General's agent, you know, I'm just talking cold off the top
23 of my head after 20 years. I could barely remember -- I
24 didn't remember Brandy Warden's name at the time. So I was
25 trying to -- trying to struggle through that.

1 But when you're trying to reach certainty of
2 conviction you're reaching for evidence necessary that you
3 think is a -- is good evidence. And we -- I looked at
4 Brandy and -- you know, personally I thought she looked --
5 she'd look sympathetic to a jury. That was my -- kinda
6 my -- didn't matter -- her and Lanita both were same with
7 culpability, but she just had a face that I thought juries
8 would believe her. That's why I wanted to use her. I don't
9 know if -- you know, I mean, I don't know -- I don't know if
10 that makes sense or not. Just looking at her I thought she
11 looked more like a kid. She probably -- jury might feel
12 sorry for her a little bit listening to her testimony, and
13 that's -- I thought she -- her physical characteristics were
14 what's critical, not so much -- you know, she's going to
15 tell the same story that we thought we had at the time that
16 Bateman could tell, you know?

17 Q And Ms. Warden's testimony was essential; correct?

18 A No. You want me to explain why?

19 Q Well, I -- no, I'm actually just wanting to refer you
20 to where in your interview with the Oklahoma Attorney
21 General's Office you described her as essential; correct?

22 A Yeah. Yeah. Twenty years later I'm -- probably
23 it's -- it was good to have, you know, to have in that case.
24 Now, you know, when you say "essential," would this case had
25 not gone to a jury without her? No, it would've went to a

1 jury without her. Of course, after what Zjaiton did, she
2 kind of became a side piece, you know?

3 Q You testified a moment ago that you wanted the
4 certainty of a conviction and that's why you selected
5 Ms. Warden as a cooperating witness; correct?

6 A Every piece of evidence helps you. You know, you're --
7 when you're on the prosecution side you're looking for
8 what -- what -- what's the most bang I can get for my buck
9 with any case as far as DNA or whatever, you know? You're
10 just trying to put a case together, get it done and go on to
11 the next one.

12 Q Now at the time you picked Brandy as the cooperating
13 witness for your case, you were aware she had this deferred
14 felony out of Payne County; correct?

15 A Yes.

16 Q And you were also aware that she had cooperated with
17 the State against her co-defendant in that case; correct?

18 A The larceny from a retailer case? The larceny case? I
19 don't think I knew anything about that. The larceny case?

20 Q The felony larceny from a residence -- from a home.

21 A I don't -- that doesn't ring a bell at all.

22 Q Okay.

23 MS. BASS: Your Honor, may I approach?

24 THE COURT: You may.

25 Q (By Ms. Bass) Mr. Burnett, I've handed you what's been

1 admitted in evidence as Petitioner's Exhibit 28-2, which is
2 a copy of Brandy Warden's Payne County guilty plea to felony
3 larceny of a house. And this plea agreement was obtained
4 from your district attorney files in this case. If you
5 could please turn to the third page.

6 A (Witness complies.)

7 THE COURT: Counsel, could you give me that
8 exhibit again?

9 MS. BASS: I'm sorry?

10 THE COURT: Could you give me that exhibit again?

11 MS. BASS: Twenty-eight-two.

12 Q (By Ms. Bass) And the third page.

13 A Yes, what question number you looking?

14 Q Item number 20, that sets forth Brandy Warden's plea
15 agreement in the Payne County larceny case --

16 A Yes.

17 Q -- states three years deferred, two years under DOC,
18 court costs, testify against Sheneda Davis.

19 A Okay.

20 Q Now being that this was obtained from your district
21 attorney files in this case, this would've told you what
22 Brandy Warden pleaded guilty to in the felony larceny case;
23 correct?

24 A Yes.

25 Q Okay. And being that Brandy was on a deferred sentence

1 at the time you prosecuted her for murder in Oklahoma
2 County, that would have been significant leverage to get her
3 to cooperate with your prosecution; correct?

4 A Okay. Say that to me again.

5 Q So you have previously testified that you were aware
6 that Ms. Warden was on this deferred sentence out of Payne
7 County at the time you prosecuted her for murder in Oklahoma
8 County. And given that that was the case, would the fact
9 that she had this outstanding deferred felony have been
10 leverage to get her to cooperate with you as you're looking
11 for a witness in this murder case?

12 A I doubt it.

13 Q Okay.

14 A I mean, she looking at -- she looking at life, life
15 without parole. And, you know, she can do ten years on a
16 larceny of a house. I mean, that -- I don't see that -- she
17 was in huge trouble down here.

18 The other thing about that, along about this time,
19 you know, we got into this deal of co-defendants taking the
20 responsibility and -- on cases and we started putting in
21 plea deals, you'll testify against the other person, you
22 know, or you -- you don't take -- you'll -- there was kind
23 of a period of time when we had some of that discussion
24 going on around the state about people pleading and taking
25 the fall for -- to keep somebody else out of trouble. And

1 we kinda did some routine -- you know, somebody -- the other
2 person did it with you, didn't they? And they either had to
3 put it in a summary of facts or put it in testimony and
4 stuff.

5 And so that might have been what was going on
6 here. I don't know. I don't remember for sure. I don't
7 remember ever seeing this till now.

8 Q So after identifying Brandy Warden as the best
9 cooperating witness for your case against Mr. Wood, you
10 approached her attorney about a deal; correct?

11 A Probably. I mean, I -- I don't remember all the
12 details about how we did that. I think it was -- was it
13 Janet Cox? Was Janet Cox her -- probably I -- probably
14 me -- me or Fern probably sat down and said, you know, is
15 she interested, or something to that effect.

16 MS. BASS: Your Honor, may I approach?

17 THE COURT: You may.

18 Q (By Ms. Bass) Mr. Burnett, I've handed you what's been
19 marked for identification as Petitioner's Exhibit 79, which
20 is a transcript of your interview with the Attorney
21 General's Office about your work on Mr. Wood's case. And if
22 you could please turn to Page 6.

23 A Six?

24 Q Page 6, lines 16 through 22.

25 A Page 6?

1 Q Lines 16 through 22. There you state, starting at line
2 20 -- I'm sorry, starting a little bit above that, line 18.
3 So we -- based upon just the criteria of who looked like
4 might make the best witness, we selected Brandy Warden and
5 made her defense attorney an offer to cooperate and testify
6 for the State of Oklahoma. Correct?

7 A Yes.

8 Q So you did approach Brandy and her lawyer about an
9 offer?

10 MS. BASS: Your Honor, may I approach?

11 THE COURT: You may.

12 Q (By Ms. Bass) Mr. Burnett, I've handed you what's in
13 evidence as Petitioner's Exhibit 7 which is your written
14 plea agreement with Ms. Warden in the Oklahoma County case.

15 A Yes.

16 Q Can you please turn to the last page?

17 A (Witness complies.)

18 Q Now this plea agreement with Ms. Warden was signed and
19 dated February 19th, 2003; correct?

20 A Yes.

21 Q And so you would have -- you and Ms. Smith would've
22 approached Brandy Warden's attorney about making a deal with
23 her before February 19th, 2003; correct?

24 A Yes.

25 Q And your discussions with Janet Cox, Ms. Warden's

1 attorney, would have been very involved?

2 A Yes.

3 Q Okay. There would've been negotiations and
4 conversations about working out the parameters of this deal
5 for Ms. Warden; correct?

6 A Yes.

7 Q And those very involved negotiations and conversations
8 occurred because Brandy Warden and Ms. Cox needed to weigh
9 the risks and benefits to cooperating with you and Ms. Smith
10 in the Oklahoma County murder case; correct?

11 A Who knows. I mean, I don't -- I don't -- I mean, it's
12 obviously a serious deal to her. I don't know what -- what
13 went back and forth between her and her lawyer. I mean, I'd
14 be speculating to be honest with you.

15 MS. BASS: Your Honor, may I approach?

16 THE COURT: You may.

17 Q (By Ms. Bass) Mr. Burnett, I've handed you what's been
18 admitted for identification as Petitioner's Exhibit 79 which
19 is a transcript of your interview with the Oklahoma Attorney
20 General's Office about your work on this case. Can you
21 please turn to Page 7?

22 A (Witness complies.)

23 Q Lines 21 through 25 you state: And Janet then -- then
24 approached her and, you know, there's all kinds of
25 discussions and negotiation that takes place in these

deals -- in those deals. It's a very involved conversation because they have to weigh their risk/benefit analysis.

Correct?

A Yeah, I think that happens in every case. I mean, defense attorneys got to talk to their client and talk them into -- you know, nobody's happy with these deals. Defense attorney's not. Victim's not. Everybody's -- you know, Court's well aware; true comp

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

TREMAN WOOD,
Petitioner,

vs.

STATE OF OKLAHOMA,
Defendant.

)
)
)
)CASE NO. CF-2002-46
)MORNING PROCEEDINGS
)
)

TRANSCRIPT OF EVIDENTIARY HEARING

HAD ON THE 9TH DAY OF APRIL, 2025

HEARD BEFORE

THE HONORABLE SUSAN STALLINGS

DISTRICT JUDGE

* * * * *

Reported By:

Elliott Thompson, CSR
Official Court Reporter
321 W. Park
Suite 800
Oklahoma City, Oklahoma 73102
(405) 713-1468

APPEARANCES

FOR THE PETITIONER:

MS. AMANDA BASS CASTRO ALVEZ
MR. CARY SANDMAN
MS. ALISON ROSE
850 WEST ADAMS STREET, STE. 100
PHOENIX, AZ 85007

FOR THE RESPONDENT:

MR. JOSHUA LOCKETT
MS. CHRISTINA BURNS
313 NE 21ST STREET
OKLAHOMA CITY, OK 73102

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EXHIBITS

PETITIONER'S EXHIBIT:

82-3

20

1 (With all parties present, the following proceedings were
2 had in court.)

3 THE COURT: We're back on the record. All parties
4 are present.

5 Ms. Bass, you may recall Mr. Burnett.

6 MS. BASS: Thank you, Your Honor. If I could just
7 initially take up the offer of proof that we filed in this
8 matter this morning. Putting on the record that we have
9 offered the attached exhibits and ask the Court to admit those
10 exhibits into evidence and to allow us to question Mr. Burnett
11 about those documents because of their relevance and their
12 probative value in assessing Mr. Burnett's credibility, his
13 motives, his plan to omit from written plea agreements with
14 cooperating witnesses for the State the full extent of the
15 benefits they were getting in exchange.

16 That's relevant as we explained in our offer of proof to
17 assessing the credibility of what we anticipate his testimony
18 to be. That the full extent of his agreement with Ms. Warden
19 in Mr. Wood's case was limited to the four corners of the
20 written plea agreement. Because the plea agreement that Mr.
21 Burnett entered into with Coleman Givens, who was a witness
22 for the prosecution in Mr. Wood's case, is not limited to the
23 four corners of his plea agreement with that witness as the
24 exhibits that we have proffered demonstrate.

25 THE COURT: All right.

1 MS. BURNS: Your Honor, I have a response to that.
2 Number one, the State would say that this is not -- these
3 exhibits are not relevant. Number one, again --

4 THE COURT: Well, hang on a second. 82-3 we admitted
5 that yesterday with Ms. Smith.

6 MS. BASS: Did we admit that, Your Honor?

7 THE COURT: Hang on. Okay. No, it was not admitted.

8 MS. BURNS: Again, the State would take the position
9 that none of these exhibits are relevant because primarily
10 they go beyond the scope of the OCCA's remand order in this
11 case.

12 But second of all, even if they were to be admitted the
13 State's Exhibit 82 -- or Petitioner's Exhibit 82-3 is not
14 evidence of any sort plea agreement in the same sense in that
15 Brandy Warden entered into an official plea agreement with the
16 State of Oklahoma. I believe that Ms. Smith testified
17 yesterday that this particular conversation in 82-3 regarding
18 and OR that they were discussing being given to Coleman Givens
19 because he had been threatened by the Defendant in the time
20 leading up to the preliminary hearing stage of these
21 proceedings.

22 That is completely different. It is not a plea agreement.
23 It is not an official agreement. It was something that they
24 felt was necessary that they needed to do in order to
25 preserve, not only the integrity of their case, but also

1 protect this particular witness.

2 Additionally, the State would argue that these are not --
3 this is not proper impeachment. This constitutes extrinsic
4 evidence of impeachment that Petitioner's counsel is
5 attempting to introduce, which the State takes the position
6 that that's improper, at least at this point under 26.08,
7 subsection B. And that's at Title 12 of the Oklahoma Evidence
8 Code.

9 With respect to State's Exhibits 85-1, 84-4, 85-3 -- I'm
10 sorry. Petitioner's Exhibits. I'm sorry, Your Honor. Those
11 particular exhibits, again, there is no connection between
12 that particular agreement was Mr. Givens entered into in
13 either of those cases and the OR bond that he may have been
14 granted by the Oklahoma County District Court in reference to
15 what the incident that happened leading up to the preliminary
16 hearing.

17 Again, this is just another incident that -- incidents of
18 an inference that Petitioner cannot particularly substantiate
19 as far as showing that this particular prosecutor in the
20 Oklahoma County District Attorney's Office entered into a
21 specific plea agreement in exchange for Mr. Givens' testimony.
22 This is just not relevant.

23 THE COURT: Okay. What the Court is going to do is
24 I'm going to hold my ruling in abeyance. I want you, through
25 Mr. Burnett, to lay a little more foundation. You know, ask

1 him some more questions about some of these documents and then
2 I'll make my ruling. For example, 82-3 that involved Mr.
3 Givens' attorney and Ms. Smith. I don't see how that's
4 relevant to Mr. Burnett. Now, I know, you know, he signs the
5 OR bond.

6 MS. BASS: Yes, Your Honor.

7 THE COURT: You can ask him about that.

8 MS. BASS: Thank you so much. And what I anticipate
9 doing is asking Mr. Burnett with the Court's permission
10 whether the handwriting in that document with pretrial
11 conditions is his handwriting.

12 THE COURT: Sure.

13 MS. BASS: Okay.

14 THE COURT: You can ask him anything you want about
15 that.

16 MS. BASS: Okay. Thank you, Your Honor.

17 THE COURT: So at this time I'm going to hold my
18 ruling in abeyance.

19 MS. BASS: Petitioner would call Mr. --

20 THE COURT: Recall Mr. Burnett.

21 MS. BASS: -- Burnett.

22 THE COURT: Good morning, Mr. Burnett. Take your
23 seat.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: I remind you you're still under oath.

1 You may inquire.

2 MS. BASS: Thank you, Your Honor.

3 **DIRECT EXAMINATION**

4 BY MS. BASS:

5 Q. Good morning, Mr. Burnett.

6 A. Morning.

7 Q. When we left off yesterday I had asked you about your
8 plea agreement with Brandy Warden in the Oklahoma County
9 murder case. Can you tell me what you disclosed to Mr. Wood's
10 attorney, Johnny Albert, about your agreement with Ms. Warden?

11 A. It would be in the cooperation memorandum. I haven't
12 seen it in 20 years. The gist of it was that she would
13 testify truthfully and she'd receive a 45 year sentence on
14 accessory I think it was. I can't remember now. Something
15 similar to that. But there's several other conditions and
16 just don't recall all of them.

17 MS. BASS: Okay. Your Honor, may I approach?

18 THE COURT: You may.

19 BY MS. BASS:

20 Q. And, Mr. Burnett, I've handed you what is in evidence as
21 Petitioner's Exhibit 7, which is Brandy Warden's written plea
22 agreement in the Oklahoma County murder cases. Is that what
23 you're referring to as the cooperation memorandum --

24 A. No.

25 Q. -- or was it something else?

1 A. It's something else.

2 Q. And what is that?

3 A. It's a document that we produce that said Brandy would
4 testify in this case with conditions about -- I don't know.
5 I'd have to -- but, you know, the gist of it would be a 45
6 year sentence plus testify truthfully and cooperate. And if
7 she made bond get -- you know, stay in touch with her bondsman
8 and things like that.

9 THE COURT: Would that have been something your
10 office typed up?

11 THE WITNESS: Yes.

12 BY MS. BASS:

13 Q. And once you had typed up that cooperation memorandum who
14 would that go to?

15 A. It stayed in our file.

16 Q. With her Oklahoma County District Attorney file?

17 A. Should be in the DA's file.

18 Q. Okay. Did you -- did you disclose that cooperation
19 memorandum to Mr. Albert?

20 A. As far as I know. I can't remember the details about how
21 we handled -- I mean, he knew that she was cooperating and
22 what she was giving, yeah. I mean, I don't remember all the
23 process that we did for that.

24 Q. Okay. Because Ms. Warden's plea agreement, which is
25 Petitioner's Exhibit 7, was filed in the criminal case. Was

1 -- the cooperation memorandum would not have been filed?

2 A. It's not -- I don't think it would have ever have been
3 filed.

4 Q. Okay. Wayna Tyner, do you know who that is?

5 A. Yes.

6 Q. In the fall of 2003 do you recall that she was probing
7 the question of whether there was a deal between you-all and
8 Payne County over the nonacceleration of Ms. Warden's deferred
9 sentence?

10 A. I don't remember that.

11 MS. BASS: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MS. BASS:

14 Q. Mr. Burnett, I've handed you what is in evidence as
15 Petitioner's Exhibit 82-1, which is a copy of Wayna Tyner's
16 Motion to Reveal All Deals that was obtained from your
17 District Attorney files in this case.

18 A. Yes.

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. And the handwriting on this document, sustained at the
22 top and then sustained as to Oklahoma County, not any other DA
23 offices, is that your handwriting?

24 A. Yes.

25 Q. Now, there's a note that says, sustained as to Oklahoma

1 County. What was your understanding -- what was the meaning
2 of that? Sustained as to Oklahoma County?

3 A. I don't know. I think the judge -- I just wrote -- what
4 I was doing is they would flip through a motion and I'd just
5 write down what the judge was saying. I didn't really pay --
6 I mean, other than what I wrote I don't have any recollection
7 of anything else.

8 Q. Okay. So do you recall whether this motion had to do
9 with Ms. Tyner's effort to get information about a deal
10 involving Brandy Warden's Payne County deferred sentence?

11 A. I don't know. I don't know what she did. I don't know
12 if she talked to somebody up in Payne County. Like I said
13 yesterday, I didn't get involved in their deals. I did my
14 case and let everybody else do their own.

15 MS. BASS: Your Honor, may I approach?

16 THE COURT: You may.

17 BY MS. BASS:

18 Q. Mr. Burnett, I've handed you Petitioner's Exhibit 32,
19 which is an excerpt of a transcript of a motion hearing in
20 State versus Tremane Wood and Zjaiton Wood on September 3,
21 2003. Can you please turn to page 83.

22 A. Okay.

23 Q. And if you take a looks at line eight it states that the
24 State is present by ADA George Burnett, correct?

25 A. Yes.

1 Q. Now, if you could please turn to page 94. Well, if you
2 start at the bottom of page 93, line 25. I'm sorry.

3 A. Yeah, this threw me off there for a second.

4 Q. I'm sorry. Yeah, it starts in the middle of a sentence
5 from the last page so for context. So the Court states
6 starting on page 93, line 25, "Any and all deals and/or
7 agreements that the DA's Office of Oklahoma County has with
8 any witnesses must be disclosed. I'm sustaining that. If
9 Payne County DA on their own discretion decides not to
10 accelerate or haven't agreed to talk to them in reference to
11 that so be it. But any and all deals that this DA's Office
12 has made with any other and all other DA's offices anywhere in
13 the world in reference to any witness must be disclosed. If
14 they haven't made a deal they can't disclose anything. So
15 witnesses -- any and all witnesses including those mentioned
16 in reference to any other deals will be sustained."

17 So does that refresh your recollection about this motion to
18 reveal all deals?

19 A. Well, it doesn't say that. It doesn't -- kind of.

20 Q. Okay.

21 A. I mean, I'm reading it here. It appears that if we had
22 entered into an agreement with Payne County then we'd have to
23 reveal it.

24 Q. Okay. Right. That's what Judge Elliott held?

25 A. Right. If my office -- if I'd have asked Payne County to

1 do something I should tell them that I did something.

2 Q. Right. Now going back to your note on the Motion of
3 Reveal All Deals. You write, "sustained as to Oklahoma
4 County. Not any other DA office's."

5 So was your understanding that you, as Oklahoma County, had
6 to disclose deals with Brandy Warden, not deals involving
7 other DA offices?

8 A. I can't -- I don't remember. I mean, I just stuck that
9 note at the bottom down there. You know, Judge was going
10 through them fast. And I just sort of -- it was sort of a
11 summary of I guess what was in this record here. I mean,
12 that's the best -- I don't remember any of that.

13 MS. BASS: Your Honor, may I approach?

14 THE COURT: You may.

15 BY MS. BASS:

16 Q. Mr. Burnett, I've handed you what is in evidence as
17 Petitioner's Exhibit 5-1, which is a copy of the State's
18 Response to Defense Motion to Reveal All Deals obtained from
19 your District Attorney files in this case. Do you recognize
20 this document?

21 A. Yes.

22 Q. And do you recognize the signature on this document?

23 A. Yes.

24 Q. And who's signature is that?

25 A. Fern Smith.

1 Q. And do you recognize the handwriting at the bottom of the
2 document, Brandy Warden E/S in Payne County?

3 A. Yes.

4 Q. Now, you wrote this note down because Brandy Warden's
5 deferred sentence in Payne County was relevant, correct?

6 A. I don't know. I mean, I wrote it at the bottom here. I
7 don't know. I don't know if something was said at the motion
8 hearing or what. But just I know I wrote that on there.

9 Q. And you don't remember why you wrote that?

10 A. No.

11 Q. You would have been aware that Ms. Warden's deferred
12 sentence expired in October of 2003, correct?

13 A. I don't know that -- I don't remember that I remember --
14 I don't know that I paid much attention to that.

15 Q. You would have had information in your files --

16 A. Yes, it would have been in the file. But I knew she had
17 a deferred and that, you know, at the time we filed it she was
18 on paper. But as far as keeping track of her deferred I
19 probably wouldn't have been paying attention after that.

20 Q. But the NCIC report on Brandy Warden that you would have
21 had in your files would have shown that her expired in
22 October of 2003?

23 A. It could have. I mean, typically they do. I think --
24 did we see something yesterday. I don't know if we had the
25 NCIC yesterday or not. I mean, sometimes they had those dates

1 on there, sometimes they don't. They're not always -- because
2 NCIC also does stuff by finger print and they may not have it
3 done. You know, they may -- sometimes they're accurate and
4 sometimes they're not. They just put you on notice that
5 there's a case. You know, that's the biggest thing they do.

6 MS. BASS: Your Honor, may I approach?

7 THE COURT: You may.

8 BY MS. BASS:

9 Q. Mr. Burnett, I've handed you what's in evidence
10 Petitioner's Exhibit 98-3, which is a copy of Brandy Warden's
11 Deferred Judgment and Sentence, which was obtained from your
12 District Attorney files in this case. Do you recognize this
13 document?

14 A. Yes.

15 Q. And there in the third paragraph where it begins, "It is
16 therefore ordered, adjudged, and decreed by the Court of
17 imposition of judgment and sentence against the defendant be
18 deferred during good behavior of said defendant and that she
19 be placed on probation with the Department of Corrections for
20 a period of three years until the 24th day of October, 2003,
21 right?"

22 A. Correct.

23 Q. So this being in you files would have informed you that
24 Ms. Warden's deferred sentence expired in October 24, 2003,
25 correct?

1 A. I don't know that this document was in my file. I'm not
2 seeing -- because we -- I numbered the pages. Either me or my
3 secretary would number the pages on the bottom and I don't see
4 any numbers on here.

5 Q. There was testimony previously that this is a true and
6 accurate copy of the document obtained from your District
7 Attorney files?

8 A. Okay. If it's -- I mean, I'm just saying all I can do is
9 tell you what I see and it does have that. I would say the
10 other thing about that they were always on us to turn in the
11 fingerprint cards. NCIC won't list what happened unless the
12 fingerprint cards are turned in to make sure that it's the
13 same person is the person convicted.

14 So our NCIC may or may not be complete depending on whether
15 Payne County turned in those finger print cards. That's
16 standard procedure for them. And, you know, we were always
17 getting chewed up if we didn't turn the cards in. So I
18 remember that.

19 MS. BASS: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MS. BASS:

22 Q. Mr. Burnett, I've handed you what's been marked for
23 identification as Petitioner's Exhibit 32, which again is a
24 transcript of the motions hearing on Motion to Reveal All
25 Deals from September 3, 2003, at which you were present. Can

1 you please turn to page 92 of that transcript?

2 A. Okay.

3 Q. And if you take a look starting at lines 23 through 25,
4 Ms. Tyner states, "Your Honor, I'd like to put on the record
5 I'm concerned that Ms. Brandy Warden does have an accelerated.
6 Yet she's still on a deferred judgement."

7 And if you flip the page to 93, "sentence out of Payne
8 County that does not expire until sometime in October of this
9 year," correct?

10 A. Yes.

11 Q. So you were at this motions hear and would have been
12 aware from what Ms. Tyner also put on the record that Ms.
13 Warden's deferred sentence expired in October of that same
14 year, correct?

15 A. I was at the hearing. I don't remember much about it. I
16 mean, she makes -- I guess she said this.

17 Q. Okay. At any time after this hearing in September 2003,
18 did you communicate with Vincent Antonioli over in the Payne
19 County DA's Office about Ms. Warden's deferred sentence?

20 A. I don't remember doing that.

21 Q. Okay. Did you communicate with anyone over in the Payne
22 Count DA's Office about Ms. Warden's deferred sentence after
23 this September hearing?

24 A. No, I don't think I ever talked to anybody from Payne
25 County about all this. It's just not ringing any bells.

1 Q. Mr. Burnett -- well, let you back up.

2 MS. BASS: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MS. BASS:

5 Q. Mr. Burnett, I've handed you what has been marked for
6 identification as Petitioner's Exhibit 82-3. Do you recognize
7 this document?

8 A. Kind of. I got showed this -- somebody showed this to me
9 last week maybe or something. I just kind of -- one of those
10 -- it's another one of those three or four things that was
11 thrown in front of me and asked about some handwriting.

12 Q. Okay. Do you recognize any of the handwriting in this
13 document?

14 A. Can I see my handwriting and I think that's Fern's down
15 here. I'm not sure who the other is.

16 Q. And where is your handwriting in the document?

17 A. There's a X X and then underneath it I wrote W/pretrial
18 conditions.

19 Q. So the X X and the with pretrial conditions is your
20 handwriting?

21 A. I don't know if I did the X X. With pretrial conditions
22 looks like my handwriting.

23 Q. And do you recognize any of the other handwriting in this
24 document?

25 A. Yes, there's I think -- looks like Fern's right here on

1 the next three lines below that. There's some questions.

2 Q. And can you read what you recognize as Fern Smith's
3 handwriting?

4 MS. BURNS: Objection, Your Honor.

5 THE COURT: Based on?

6 MS. BURNS: This hasn't been admitted, Your Honor.
7 It's also hearsay.

8 MS. BASS: And, Your Honor, I'm just asking him to
9 identify what he recognizes as his handwriting.

10 THE COURT: He's already identified that he believes
11 it was Fern's handwriting. He's not going to read it into the
12 record until it's been admitted.

13 MS. BASS: Well, Your Honor, respectfully I'd move to
14 admit Petitioner's Exhibit 82-3 into the record given that Mr.
15 Burnett has identified it.

16 MS. BURNS: Judge, he's partially identified a
17 portion of it as his handwriting. We would also object to it
18 being hearsay.

19 THE COURT: All right. Your objection is overruled.
20 Petitioner's 82-3 will be admitted over State's objection.

21 BY MS. BASS:

22 Q. Now, Mr. Burnett, going back to your plea agreement with
23 Ms. Warden in the Oklahoma County murder case is it your
24 testimony that you're written plea agreement with Ms. Warden
25 memorialized the full extent of your agreement with her in the

1 Oklahoma County murder case?

2 A. Yes.

3 Q. Do you always put the full extent of your agreement with
4 cooperating witnesses in the four corners of the plea
5 agreement?

6 A. Yes.

7 MS. BASS: Your Honor, may I approach.

8 THE COURT: You may.

9 BY MS. BASS:

10 Q. Mr. Burnett, I've handed you what's been marked for
11 identification as Petitioner's Exhibit 85-3.

12 MS. BURNS: Judge, I apologize. I wanted to object
13 to this line of questioning. I believe this is improper
14 impeachment if that's what she's intending to do with this
15 exhibit.

16 THE COURT: Okay. I'm sorry. A preemptive
17 objection?

18 MS. BURNS: Yes, Your Honor. I can renew my
19 objection if you want her to lay further foundation.

20 THE COURT: Then let's let her ask the question
21 first.

22 MS. BURNS: Yes, Your Honor.

23 THE COURT: Okay. So you said 85-?3.

24 MS. BASS: 85-3. Yes, Your Honor.

25 THE COURT: Got it.

1 BY MS. BASS:

2 Q. Mr. Burnett, I handed you Petitioner's Exhibit 85-3,
3 which has been marked for identification. Do you recognize
4 this document?

5 A. To start with this piece of paper -- these papers you
6 handed me are not marked for identification.

7 Q. Yeah, it's -- I took out the folder where it's marked as
8 Exhibit 82. I apologize.

9 A. I have a folder with 82-3 but I don't have a folder --

10 Q. Yeah, this is the same exhibit. Yeah, 82-3 is the
11 exhibit. It's been marked.

12 THE COURT: Okay. The long piece of paper he has is
13 85-3, correct?

14 MS. BASS: Yes, ma'am. I'm sorry. I misspoke.
15 85-3.

16 THE COURT: Okay. All right.

17 THE WITNESS: There's no exhibit exhibit sticker on
18 85-3.

19 MS. BASS: This is.

20 THE WITNESS: Well, there's a piece -- there's a
21 cardboard with 85-3 but there's no way to identify this
22 record.

23 THE COURT: Okay. They are identifying that as 85-3.

24 MS. BASS: 85-3. I'm sorry. This is the cover sheet
25 for that. I just took it out of the folder.

1 BY MS. BASS:

2 Q. So, Mr. Burnett, I've handed you what's been marked for
3 identification as Petitioner's Exhibit 85-3. Do you recognize
4 this document?

5 A. I don't remember very much about -- I don't remember
6 anything about this. I guess I did sign it. I guess I did
7 this plea. Yes, I did this plea.

8 Q. And this plea was with who?

9 A. Coleman Givens.

10 Q. And who was Coleman Givens?

11 A. Pardon?

12 Q. And who was Coleman Givens?

13 A. I think he was a witness in our case.

14 Q. In your case against Mr. Wood?

15 A. Yes.

16 Q. Can you please turn to the last page of this document?

17 A. Yes.

18 Q. Is that your signature on the last page?

19 A. Yes.

20 Q. Under Assistant District Attorney?

21 A. Yes.

22 Q. And this plea agreement with Mr. Givens was entered on
23 July 8, 2004?

24 A. Yes.

25 Q. So that would have been three months after Mr. Wood was

1 sentenced to death if you recall?

2 A. I can't remember.

3 Q. Okay. Now, if you could please turn to the second page
4 under item 21?

5 A. Yes.

6 Q. What -- this states that you agreed to dismiss case
7 number CF-01-1865. And in case number 02-5891 you agree to
8 reduce that to a one year deferred with costs and restitution;
9 do you recall that?

10 A. I don't have a lot of recollection of it. I mean, I see
11 it's on this document.

12 Q. But that would have been the agreement you entered into
13 with Mr. Coleman.

14 MS. BURNS: Objection. It has no relevance, Your
15 Honor.

16 THE COURT: Well, the document speaks for itself.

17 THE WITNESS: Right. I mean, I don't have a lot of
18 recollection other than what's on this document.

19 BY MS. BASS:

20 Q. Do you recall what -- strike that. According to this
21 document what was Mr. Givens required to do in exchange for
22 these benefits in his felony cases?

23 A. I don't see anything -- I don't see anything in here
24 about any -- I don't see anything in here about what he's
25 required to do and I don't have any independent recollection

1 of it.

2 MS. BASS: Your Honor, may I approach?

3 THE COURT: I may.

4 BY MS. BASS:

5 Q. Mr. Burnett, I've handed what has been marked for
6 identification as Petitioner's Exhibit 84-4. Do you recognize
7 your signature on this document?

8 A. Yes.

9 Q. And in this document you are agreeing to have Mr. Givens'
10 pending felony cases continued, correct?

11 A. Yes, looks like we continued the case to April.

12 Q. And it was continued until April 1, 2004, because Mr.
13 Givens was to testify at Mr. Wood's trial in March of 2004?

14 A. I don't know. Maybe. I don't remember.

15 Q. Okay.

16 A. I don't remember any of this.

17 Q. So the date of this document is December 8, 2003, when
18 you would have signed it, correct?

19 A. It looks like I filed it on -- looks like I signed it on
20 the 8th of December.

21 Q. And then it was filed on December 9, 2003, correct?

22 A. I think so.

23 Q. And Mr. Wood's death penalty trial began in March of
24 2004, correct?

25 A. I can't remember. I don't remember what date it started.

1 Q. Okay. Was your plea agreement with Mr. Givens in his
2 felony cases that we just went over, was he given that
3 agreement because he cooperated with your prosecution of Mr.
4 Wood?

5 A. I don't remember. I don't remember much about Coleman
6 Givens. I don't -- it's not -- I vaguely remember him
7 testifying. That's about all I remember.

8 Q. And -- one moment. Mr. Givens did testify against Mr.
9 Wood, correct?

10 A. I vaguely -- I think so. I haven't seen or done anything
11 with this in 20 years. I think he did testify but that's the
12 best of my recollection at this time.

13 MS. BASS: Okay. Your Honor, may I have moment to
14 confer?

15 THE COURT: Sure.

16 (Attorneys for the Petitioner confer.)

17 MS. BASS: Your Honor, may I approach?

18 THE COURT: You may.

19 BY MS. BASS:

20 Q. Mr. Burnett, I've handed you what's been marked for
21 identification as Petitioner's Exhibit 82-3, which is the
22 handwritten communication we went over previously. So in this
23 communication you and Ms. Smith are communicating about
24 getting Mr. Givens OR, correct?

25 A. There's some notes here to that effect.

1 Q. Okay. And what does OR mean?

2 A. Own recognizance.

3 Q. And you were getting Mr. Givens OR on his own
4 recognizance for what if you recall?

5 A. I don't remember this guy much to be honest with you.
6 It's not ringing any bells. I mean, I know I wrote this
7 pretrial conditions down here. But that's -- I have a vague
8 recollection of him being involved. That's the best I can
9 give you.

10 MS. BASS: Your Honor, may I approach?

11 THE COURT: I may.

12 BY MS. BASS:

13 Q. Mr. Burnett, I've handed you what has been marked for
14 identification as Petitioner's Exhibit 84-2, which is a
15 certified copy of an order of release filed in one of Mr.
16 Givens' felony Oklahoma County case. Can you turn to the
17 second page of that document.

18 A. Okay.

19 Q. Do you recognize your signature on this document?

20 A. Yes.

21 Q. So isn't it true that you -- you had Mr. Givens released
22 on his own recognizance in his criminal felony case number
23 01-1865 on July 26, 2002?

24 A. Yes.

25 MS. BASS: Your Honor, may I approach?

1 THE COURT: You may.

2 BY MS. BASS:

3 Q. Mr. Burnett, I've handed you Petitioner's Exhibit 84-1,
4 which has been marked for identification as such.

5 THE COURT: Did you say 84-1?

6 MS. BASS: Yes, ma'am?

7 BY MS. BASS:

8 Q. Which is a certified copy of the information in
9 CF-01-1865 for which you had Mr. Givens released on his own
10 recognizance on July 2, 2002. Does this refresh your
11 recollection about the charge Mr. Givens was facing in that
12 felony case?

13 A. Yes.

14 Q. And what was that charge?

15 A. I wrote a \$54.76 hot check.

16 Q. Okay. And that was criminal -- that was a felony,
17 correct?

18 A. Yes.

19 Q. Do you recall that when you had Mr. Givens released on
20 his own recognizance for this bogus checks felony that he
21 picked up a second felony charge?

22 A. I don't remember.

23 MS. BASS: Your Honor, may I approach?

24 THE COURT: You may.

25 BY MS. BASS:

1 Q. Mr. Burnett, I've handed you what has been marked for
2 identification as Petitioner's Exhibit 85-1, which is a
3 certified copy of the information charging Mr. Givens with a
4 felony on September 2, 2002. Do you recognize this document
5 or does this refresh your recollection about the second felony
6 charge Mr. Givens picked up while you had him released on his
7 own recognizance?

8 A. I don't remember this. I mean, it looks like it's been
9 filed. I don't remember any details about it.

10 Q. And that criminal felony for Mr. Givens was CF-02-5891,
11 right?

12 A. Could you repeat that?

13 Q. I'm sorry. So the criminal felony, second information
14 charges against Mr. Givens in 2002 is CF-02-5891?

15 A. Yes.

16 MS. BASS: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MS. BASS:

19 Q. Mr. Burnett, I've handed you what has been marked for
20 identification as Petitioner's Exhibit 84-4.

21 A. Yes.

22 Q. And you previously testified that you recognize your
23 signature on this document, correct?

24 A. Correct.

25 Q. Now, at the top this is pertaining to Mr. Givens' 2001

1 and 2002 felony cases, correct?

2 A. Yes.

3 Q. And it's a minute entry that reflects that you agreed to
4 continue the PHC in both of his criminal felony cases until
5 April 1, 2004, correct?

6 A. Yes.

7 Q. And that's because he was set to testify in a murder
8 trial, one set in March, one set in April, correct?

9 A. That's what the minute reflects. I don't have a lot of
10 independent knowledge of it.

11 Q. Okay. What does PHC stand for if you know?

12 A. It's a preliminary hearing conference.

13 Q. So this would reflect that you had both of the
14 preliminary hearing conferences in Mr. Givens' 2001 and 2002
15 felony cases continued until after he with have testified for
16 Mr. Wood, correct? Or I'm sorry. Testified for you against
17 Mr. Wood, correct?

18 A. I think so. I can't remember the exact trial dates.

19 MS. BASS: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MS. BASS:

22 Q. Mr. Burnett, I've handed you what's been marked for
23 identification as Petitioner's Exhibit 85-3, which is your
24 written plea agreement with Coleman Givens in his 2002 felony
25 case.

1 A. Yes.

2 Q. Can you please turn to Page two?

3 A. Yes.

4 Q. Now, you previously testified that this written plea
5 agreement with Mr. Givens does not reflect that he has to do
6 anything according to this written plea agreement, correct?

7 A. There's not anything on the document about him having to
8 do anything.

9 Q. And so do the documents that we just went through refresh
10 your recollection about whether you entered into this written
11 agreement with Mr. Givens to have one of his criminal felony
12 cases dismissed and the second felony case reduced to
13 misdemeanor with a one year deferred sentences because he had
14 testified against Mr. Wood?

15 A. Like I said, I barely remember the guy. I don't remember
16 any of this. I just don't. I remember -- the part I remember
17 was the -- he would -- he was in -- we were -- seems like we
18 were doing a prelim he was threatened by the Wood guys saying,
19 you know, you didn't see anything. I remember that. And
20 that's about -- that's the biggest context I have of my memory
21 of that. It was unusual.

22 MS. BASS: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MS. BASS:

25 Q. Mr. Burnett, I've handed you what has been marked for

1 identification as Petitioner's Exhibit 82-3, which is the
2 handwritten communication that you identified your handwriting
3 in. You previously testified that you had Mr. Givens OR'd
4 because he had been threatened by both Mr. Wood and his
5 brother, correct?

6 A. I don't remember. I just don't remember about all that.

7 Q. But this note reflects that only one of the Wood brothers
8 had actually threatened Mr. Givens, correct?

9 A. I don't remember. I think the document says that but I
10 just don't have any recollection of it.

11 Q. Okay. Did you ever disclose to Mr. Wood's trial lawyer,
12 Johnny Albert, that Mr. Givens was going to get these
13 significant benefits in both of his criminal cases in exchange
14 for testifying against Mr. Wood?

15 A. I don't recall whatever conversations I had about all
16 this. I just barely remember this guy. I don't remember any
17 of the details of this thing other than what I've told you.

18 Q. Do you recall that Mr. Givens testified at the guilt
19 stage of Mr. Wood's case?

20 A. No.

21 Q. Do you recall that Mr. Givens testified that he heard
22 black voices on the night of the crime outside of his hotel
23 room?

24 A. It barely registers with me. I don't really remember
25 this part of the case.

1 Q. Do you recall that Mr. Givens testified that he was
2 threatened by the wood brothers in the county jail?

3 A. I remember something about a threat during a prelim.
4 That's the best of my recollection.

5 MS. BASS: Your Honor, may I have a moment?

6 THE COURT: You may.

7 (Counsel for the Petitioner confer.)

8 BY MS. BASS:

9 Q. Now, Mr. Burnett, Brandy Warden in accordance with her
10 agreement with you in the Oklahoma County murder case
11 testified for you against Mr. Wood, correct?

12 A. Yes.

13 Q. She also testified against her other co-defendants,
14 correct?

15 A. Yes.

16 Q. And isn't it true that Ms. Warden's testimony helped you
17 secure Mr. Wood's guilty verdict?

18 A. I don't know. You know, you put that evidence on. You
19 know, I don't have any idea whether the -- you got to remember
20 Zjaiton turned Tremane's upsidedown. I mean, that was a
21 totally different dynamic. You know, how often do you see a
22 guy charged and facing the death penalty get on the stand and
23 confess. You know, it was the most unusual death penalty case
24 I think -- you just don't see stuff like that happen. That
25 turned that case upsidedown.

1 Q. But Ms. Warden testified --

2 A. I mean, she testified. I don't know if the jury -- I
3 don't know how much -- I mean, you know, when Zjaiton takes
4 the stand and admits to all the elements of the crime with the
5 exception of his brother's identification that's more
6 compelling than probably all of our other witnesses. I mean,
7 he was there. He's an -- he's adverse to the case and he's
8 confessing to it. I mean, that was a huge turn around in that
9 case.

10 Defense attorneys were in the back. IODs -- you know, it
11 was crazy. You know, the OIDS lawyers were all in the back
12 and Wayna Tyner was trying to talk her client out of it. And,
13 you know, we're just sitting there putting on our case because
14 we didn't know what direction this thing was going to go in.
15 So I can't tell you that Brandy had any effect on it. You
16 know, she may have become just another witness for the jury.
17 You know, I remember how the jury was just compelled with this
18 guy taking the stand and confessing to killing the guy.

19 Q. Isn't it true that Ms. Warden's testimony helped you
20 secure Mr. Wood's death sentence?

21 A. Maybe. Like I said, it's not -- this was a peculiar
22 trial. I don't know that our cooperating -- we had to put our
23 case on to get our case bound over from a legal standpoint.
24 After that I don't know what the dynamics were that compelled
25 the jury to convict him, you know.

1 Q. Isn't it true that Ms. Warden's testimony helped you
2 secure a 101 year sentence against Lanita Bateman?

3 A. Yeah, I mean, that was a different case. And so her
4 testimony would have helped for that I guess.

5 Q. And Lanita Bateman, do you recall she was 19 years old at
6 the time of the crime?

7 A. Yeah, I guess. She was young. I can't remember exactly.

8 Q. And she had no criminal record whatsoever at the time?

9 A. I don't -- not that I recall.

10 Q. And, Mr. Burnett, Ms. Warden's testimony also helped you
11 secure a guilty verdict against Zjaiton Wood?

12 A. Yes. Well, I don't know. I mean, you know we put his
13 testimony on in his case. His testimony probably was the
14 convincing factor in that. You know, when you get up there
15 and confess to it in open court in front of everybody we could
16 have probably rested after that, you know. But we put her on
17 I think because of an abundance of caution.

18 Q. And Ms. Warden's testimony also helped you secured a life
19 without parole sentence for Zjaiton Wood, correct?

20 A. Like I said, maybe. And that's kind of speculative as to
21 whatever a jury -- like I said, Zjaiton took control of this
22 whole thing. You know, everybody's other than Lanita
23 Bateman's. I mean, his testimony was -- I mean, it was
24 compelling in Tremane's trial and probably had the profound
25 effect to everybody's lives in this deal.

1 Q. Now, you previously testified that you always put the
2 full extent of your agreement with cooperating witnesses in
3 the four corners of the written plea agreement, correct?

4 A. No.

5 Q. You did not previously testify to that?

6 A. No, not in the plea agreement. It's in a memorandum.

7 Q. Is it true that your plea agreement, your written plea
8 agreement with Mr. Givens does not document the full extent of
9 your agreement with him?

10 A. Like I said, I don't remember Givens hardly and I don't
11 know what we did with him.

12 Q. So is it your testimony today that Ms. Warden's
13 cooperation agreement as distinct from her written plea
14 agreement may have information about her agreement that is not
15 in the written plea agreement?

16 A. Okay. Are we talking about Givens or are we talking
17 about Warden because you're going back and forth here and it's
18 hard for me to keep track.

19 Q. Ms. Warden. Ms. Warden.

20 A. Her cooperation memorandum has conditions of her
21 testimony. And there's a summary of that in her plea
22 agreement that she'll agree to testify. I'd have to look at
23 the papers again but I'm thinking it's there.

24 Q. So then her written plea agreement is not the full extent
25 of the agreement you had with Ms. Warden?

1 THE COURT: Counsel, do you have copy of the
2 cooperation memorandum?

3 MS. BASS: I've never seen --

4 THE COURT: State, do you have it?

5 MS. BURNS: No, Your Honor.

6 THE COURT: All right.

7 MS. BASS: I've never seen a cooperation memorandum.

8 BY MS. BASS:

9 Q. So, Mr. Burnett, is it your testimony that Ms. Warden's
10 cooperation agreement would include parts of your agreement
11 with her that are not reflected in the written plea agreement
12 filed in the case?

13 A. Say that to me again.

14 Q. Is it your testimony that the cooperation agreement that
15 you referred to for Ms. Warden --

16 A. Yes.

17 Q. -- would include parts of her -- your agreement with her
18 in the Oklahoma County murder case that are not reflected in
19 her written plea agreement?

20 A. The plea agreement just has a statement about cooperating
21 I think. You know, there were other things that she had to do
22 in the memorandum.

23 Q. That are not reflected --

24 A. The memorandum should be in the State's file. I mean,
25 there's a file for Brandy Warden. There's a file for every

1 witness and thee should be a copy of that memorandum in the
2 file.

3 THE COURT: Mr. Burnett, let me ask you this. Would
4 Ms. Janet Cox, Ms. Warden's attorney, would she have a copy of
5 the cooperation memorandum?

6 THE WITNESS: Yeah, should be copy in her file.

7 THE COURT: So it would possibly be -- and she was a
8 public defender at that time?

9 THE WITNESS: Correct.

10 THE COURT: So there's a possibility it might be in
11 the Public Defender's file?

12 THE WITNESS: Correct.

13 THE COURT: All right.

14 THE WITNESS: There's a possibility it's on the
15 --

16 THE COURT: Microfiche?

17 THE WITNESS: Microfiche, yeah. That stuff. You
18 know, because they scanned all those files in after we got
19 done with them.

20 THE COURT: And you don't know if the DA would still
21 have access to that, do you? Today's DA?

22 THE WITNESS: Surely they didn't throw away our
23 discs.

24 THE COURT: All right.

25 THE WITNESS: I mean, I know -- we probably can't

1 find a piece of equipment that would run it but that's another
2 story.

3 THE COURT: All right.

4 BY MS. BASS:

5 Q. So then the plea agreement with Ms. Warden would include
6 the written plea agreement that is in evidence as Petitioner's
7 Exhibit 7 that you saw and identified and the -- this
8 cooperation memorandum that would entail the full extent of
9 the agreement?

10 A. Well, like I said, those cooperation -- you know, the
11 cooperation memorandum is just to get them -- you know, the
12 gist of it is testify truthfully. You know, and then she gets
13 this sentence, which is what she got. And then the rest of it
14 is -- I don't know how germane -- stay in touch with her
15 lawyer, don't get in trouble.

16 You know, it's kind of a contract. You know, we revoke
17 this deal. It's a very common -- you know, it's almost a fill
18 in the blank document really. And so there'd be, like, copies
19 of it. You know, it's a form that we used. I don't even know
20 if I've got -- trying to think if I've got some old forms
21 somewhere on one of those little zip things. I'm not real
22 computer generated. But it's a form that the DA's office
23 uses.

24 Q. And so just to make sure I'm understanding your
25 testimony, so Ms. Warden's written plea agreement in the

1 Oklahoma County murder case would not reflect the full extent
2 of the agreement that you had with her for the Oklahoma County
3 murder case?

4 A. The gist of her agreement, testify truthfully, you get
5 45 years, and it was accessory would be in the summary of
6 facts and it would be in that plea agreement. Everything else
7 is just, you know, stay out of trouble and stay in touch with
8 your lawyer. You know, it's not the agreement. The agreement
9 was 45 years, testify truthfully. That was the agreement. Is
10 that helping any?

11 I can't -- you know, everything else is just kind of
12 standard language to get -- to make sure, you know, that they
13 know they need to cooperate. You know, if we need to talk to
14 you, you know, we call your lawyer. You come in and you talk
15 to us. You know, it's to manage them as a witness basically.
16 You know. It's not the gist of what she's going to get or what
17 she's going to testify to. It's just mostly managing her as a
18 witness.

19 Q. And is it also your testimony that your written plea
20 agreement with Coleman Givens would not have been the full
21 extent of your agreement with him?

22 A. I don't remember what we did with him. I mean, I haven't
23 -- I'm seeing some documents for the first time that I signed.
24 I just don't remember that guy that much. I don't know that
25 he was -- I don't remember him being a big deal in the trial

1 to be honest with you. I barely remember -- I think he
2 testified. That's basically all. He didn't really have much.

3 MS. BASS: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MS. BASS:

6 Q. Mr. Burnett, I've handed you what has been marked for
7 identification as Petitioner's Exhibit 84-6, which is a
8 certified copy of a Motion to Dismiss Coleman Given's 2001
9 felony on July 23, 2004. Do you recognize this document?

10 A. I mean, I know what it is. I don't -- yeah.

11 Q. Do you recognize your signature on the document?

12 A. That's not my signature on the document.

13 Q. And do you know who's signature that is?

14 A. I don't know. I don't remember any -- I don't remember
15 anybody writing like that. That's why I don't like signature
16 that look like --

17 THE COURT: Counsel, it says right before the
18 signature, for.

19 MS. BASS: Oh, I see that. I'm sorry. I just saw
20 that.

21 BY MS. BASS:

22 Q. Underneath the signature line it states, George F.
23 Burnett, correct?

24 A. Yes.

25 Q. Is that you?

1 A. Yeah.

2 Q. You're George F. Burnett?

3 A. Yes.

4 Q. Okay. So is this a document that would have been signed
5 on your behalf?

6 A. Yeah, apparently it was.

7 Q. And this document is one in which you dismiss Mr. Givens'
8 2001 felony without costs and with his restitution paid,
9 correct?

10 A. That's what it says, yes.

11 Q. And that would have been on July 23, 2004, correct?

12 A. Yes.

13 Q. Which would have been three months after Mr. Wood was
14 sentenced to death in April of 2004, correct?

15 A. I think so.

16 MS. BASS: Your Honor, may I have one moment?

17 THE COURT: You may.

18 (Counsel for the Petitioner confer.)

19 MS. BASS: Your Honor, I would ask to admit into
20 evidence Petitioner's Exhibits 82-3, 84-2, 84-1, 85-1, 84-4,
21 85-3, and 84-6, what are certified copies of the court records
22 that I just went over with Mr. Burnett related to his written
23 plea agreement with Coleman Givens in his 2001 and 2002 felony
24 cases. And 82-3 is the handwritten communication --

25 THE COURT: I've already admitted that over State's

1 objection.

2 MS. BASS: Oh, thank you, Your Honor.

3 THE COURT: Everything else the Court's already taken
4 judicial notice of because it's been filed in the case.

5 MS. BASS: Okay. Thank you, Your Honor. I have no
6 further questions.

7 THE COURT: Cross examination. Hang on a second.
8 It's almost 10:30. Let's take a break. Okay. So it's 10:21.
9 I want you back here at 10:35.

10 (A brief recess was had.)

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1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

2
3 TREMANE WOOD,

4 Plaintiff,

5 vs.

CASE NO. CF-2002-46

6 STATE OF OKLAHOMA,

7 Defendant.

8 STATE OF OKLAHOMA)

9) SS. CERTIFICATE OF COURT REPORTER
10 COUNTY OF OKLAHOMA)

11 I, Elliott Thompson, Certified Shorthand Reporter, within
12 and for the State of Oklahoma, duly appointed and qualified
13 reporter in the District Court of Oklahoma County, State of
14 Oklahoma, do hereby certify that I took down by machine
15 shorthand the proceedings as described on Page 1 herein, and
16 the foregoing is a true, complete and accurate record of my
17 shorthand notes so taken of said proceedings.

18 IN WITNESS WHEREOF, I hereunto set my hand and official
19 seal this 10 day of April, 2025.

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22 Elliott Thompson, CSR #2021
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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY,
STATE OF OKLAHOMA

TREMANE WOOD,	)	
	)	
Petitioner,	)	
vs.	)	CASE NO.: CF-2002-46
	)	
STATE OF OKLAHOMA,	)	(Partial morning and
	)	afternoon proceedings)
	)	
Respondent.	)	

* * * * *

TRANSCRIPT OF THE EVIDENTIARY HEARING
HELD ON THE
9TH DAY OF APRIL, 2025,
BEFORE THE HONORABLE SUSAN STALLINGS,
DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,
OKLAHOMA CITY, OKLAHOMA

* * * * *

REPORTED BY:
Kristin L. Taylor, CSR, RPR
Official Court Reporter
321 West Park Avenue, Suite 811
Oklahoma City, Oklahoma 73102
(405) 713-1105

1 (With all parties present, the following
2 proceedings were had in court.)

3 THE COURT: All right. We are back on the record.
4 All parties are present.

5 Ms. Burns, you may cross-examine.

6 MS. BURNS: Yes, your Honor.

7 Before -- before I start my cross-examination,
8 Judge, given that it looks like the Court and both parties
9 have been given actual copies of the cooperation agreement,
10 we would move to admit this as Court's Exhibit 1 for a joint
11 exhibit if that is -- if I can, Judge.

12 THE COURT: Any objection?

13 MS. BASS: No objection, your Honor.

14 THE COURT: All right.

15 MS. BURNS: And I'm going to -- may I approach,
16 your Honor? I'm going to show the witness that.

17 THE COURT: Yes.

18 CROSS-EXAMINATION

19 BY MS. BURNS:

20 Q Mr. Burnett, if you want to take a minute to look at
21 that, it's Court's Exhibit 1 that you're looking at.

22 THE COURT: Counsel, would you like to borrow my
23 copy so you can question him about it?

24 MS. BURNS: Sure.

25 Q (By Ms. Burns) Now, Mr. Burnett, I believe that you

1 testified on direct that Ms. Warden's plea agreement would
2 have been memorialized in what you termed as a cooperation
3 memorandum. Do you recall testifying to that?

4 A Yes.

5 Q And what I showed you is what's been admitted as
6 Court's Exhibit 1. Do you know what that is?

7 A Yes.

8 Q And what is it?

9 A It's a cooperation memorandum.

10 Q And is that the cooperation memorandum that you were
11 previously testifying about that would have been in
12 reference to Ms. Warden's case?

13 A Yes.

14 Q Do you recall when this cooperation memorandum was --
15 was put together? Was there a policy at the Oklahoma County
16 DA's Office as to how these particular agreements come
17 into -- come into being?

18 A I think it was a practice -- I don't know that there
19 would -- I don't know that I would phrase it as a policy. I
20 think it was a -- it was a trial practice that was done
21 probably in murder cases. I don't know, it might not have
22 been done in a -- in a shoplifting case, you know?

23 Q Okay.

24 A I don't remember.

25 Q Would you agree with me that these are done in

1 particularly serious cases?

2 A Correct.

3 Q And do you recall at the time that this particular
4 agreement was executed if there were copies that were made
5 or how it was stored or anything like that?

6 A I -- I'm sure we made copies. I don't know what we --
7 I don't know how we did them.

8 Q Do you remember if you had testified previously about
9 where these cooperation agreements would have been kept?

10 A They'd been kept in Brandy's file.

11 Q And would that also have been located in the State's
12 file?

13 A Right. You take the State's file -- you got your court
14 file, and then you start -- with a -- with a complex case,
15 you start adding files to it. A file per witness, and then
16 sometimes files per evidence, and then there's a motion file
17 and a -- you know, on and on and on.

18 Q Okay. And can you explain to the Court exactly what
19 this cooperation agreement indicates?

20 A It looks like on the 4th day of February Brandy Warden,
21 Wes Lane, DA, they agreed in plea negotiations Brandy
22 would -- was charged with murder 1, robbery, and conspiracy
23 to commit a felony on the 1st day of January of '02, and
24 that she would be offered a term of 35 years in the
25 Department of Corrections.

1 And then we were going to have to amend it down
2 from murder 1 because it doesn't carry 35. And so -- then
3 the offer's conditioned on Brandy's interview with Glenn
4 Ring from the DA's Office. And then it's -- we tape record
5 it and then Brandy would -- that we would not -- in the
6 event that our deal fell through it would not be used
7 against her; and that she would testify truthfully; and that
8 the terms of the agreement are held in this document.

9 And we were going to move her out of -- she'd
10 gotten some death threats, and so we were going to move her
11 out of Oklahoma County somewhere where she'd be a little bit
12 safer.

13 Q And, Mr. Burnett, is there anywhere in this particular
14 cooperation agreement any reference to any other cases out
15 of any other counties?

16 A No, there's nothing to any other counties.

17 Q Is there any reference to a Payne County deferred
18 sentence?

19 A No.

20 Q Is there any reference that the State of Oklahoma or --
21 I'm sorry, the Oklahoma County DA's Office agreed to not
22 accelerate Ms. Warden's deferred sentence as part of this
23 particular plea agreement for this case?

24 A No, we wouldn't have that power. We don't have the
25 power to do that. That's -- that's in another county. We

1 don't have the power to tell another county what to do.

2 Q I want to back up a little bit and talk about if you
3 can recall -- do you remember the particular reasoning as to
4 why you and Ms. Smith decided to approach Ms. Warden as a
5 potential witness for the State in this case?

6 A We just thought -- my -- I can't -- I don't know what
7 all -- I can't tell you what all Ms. Smith was thinking, but
8 I was thinking that she'd make the best witness, just
9 looking at her, that she had that kid -- kid -- I don't know
10 what's a -- kind of -- little bit of a child-like
11 appearance.

12 And so, you know, if you look -- she had the look
13 of someone that if she'd got -- that's got overwhelmed in a
14 deal that was more than what she ever intended. She
15 could -- she could present that to a jury. That was my main
16 focus on her.

17 Q Would it be fair to say that your perception of
18 Ms. Warden was that she may have been in the wrong place at
19 the wrong time for this incident and gotten caught up in it?

20 A Well, she -- yeah, I mean, she was -- they -- you know,
21 I always had the feeling Zjaiton set this deal up and that
22 -- you know, that she just kinda went along with some idea.
23 You know, they were -- they were all kids, all four of them,
24 you know, back then.

25 Q And I think that you testified yesterday that the way

1 that a witness presents herself -- himself or herself is
2 important, especially in a homicide case. And why is that?
3 And why is that so important in your consideration as to who
4 to call or who to approach as a witness?

5 A Well, you want -- you always want to look at the
6 believability of a witness. You know, the -- how -- how a
7 witness presents itself. I mean, you know, if you can --
8 you know if you -- you know, if you got -- think about
9 flipping a witness and there's some, you know, whacked out
10 crack head, they're not going to present well in front of a
11 jury. You want to present a witness that has the best --
12 the most -- what felt like the most compelling thing. You
13 can deal with the rest of it. It's murder.

14 Like I said the other day, seen murder cases where
15 there's a pound of cocaine laying on the table, nobody --
16 not a word was said about it during a trial because it's
17 murder. They're gonna -- the jury's going to focus on the
18 compelling evidence of this person's statement, what they're
19 saying, and is this true. You know, that's what the jury's
20 going to focus on. They're not going to care about all this
21 other stuff that takes place. There's usually bad things
22 happening in all cases. That's why they got in a situation
23 where somebody got killed.

24 Q And based on -- on your recollection of this particular
25 case, it was your opinion that Brandy Warden would be able

1 to present most effectively for the State at this point?

2 A That was -- that was my -- my feeling as far as
3 flipping a witness. I just felt like she could testify --
4 we were going to flip Lanita Bateman probably and she might
5 have been the same thing. You know, it didn't matter.
6 Either -- either one of them -- we just kinda picked Brandy
7 as the potential witness.

8 Q I want to talk a little bit about the Payne County case
9 that's been discussed with respect to Brandy Warden. Do you
10 recall when you became aware of that prior deferred that she
11 had, if you can remember?

12 A Oh, probably -- it was on the blue sheet. Probably,
13 you know, when I got the case and I saw there, it was listed
14 on the blue sheet. So that's probably when I became aware
15 of it.

16 Q And kind of a side question, on the blue sheets do you
17 recall, with those particular sheets, who typically puts
18 those together?

19 A Oh, most of the time police officers put them together.
20 They might get some help -- I've done them for other -- you
21 know, had troopers come that -- they're not -- they can't --
22 they don't -- they don't -- they -- I'm going to be nice.
23 They're not adept at that type of work in Oklahoma County
24 because it's not done in any other county. And so --
25 although they got introduced to it -- when all of us

1 ex-Oklahoma County people went to other districts, they got
2 introduced to blue sheets.

3 Q And do you remember if everyone involved in Oklahoma --
4 in the Oklahoma County case -- I'm talking about, if you can
5 remember, you Ms. Smith, Ms. Cox, who was Ms. Warden's
6 attorney, were you all under the impression that either this
7 particular deferred sentence had either already expired or
8 was about to expire?

9 A I don't remember much -- we didn't -- it wasn't a big
10 deal.

11 Q Okay.

12 A You know, I mean, I -- I assumed -- you know, when
13 you're facing a murder and a robbery case, you know, whether
14 you got another few years on a larceny from a house, I
15 don't -- just kind of more of a nuisance, I guess, than
16 anything else. Like I said, defense attorneys worked those
17 things out. I don't -- I don't do those things. You know,
18 I do my case. I let everybody else do their own case.

19 Q Would you agree with me that Ms. Warden -- that the
20 underlying charge in Ms. Warden's deferred sentence was a
21 trivial matter to this particular case?

22 A Right. Larceny from a house, you know, I don't know if
23 she's -- what'd she do? Steal a couple shirts or a
24 videotape or -- you know, I mean, it's -- it's kind of a
25 flaky -- larceny of a house case is usually a flaky

1 burglary. Something -- something happening -- going on, I
2 mean, it's at the low end of the felony spectrum and
3 oftentimes pled to misdemeanors.

4 Q In your training and experience as a prosecutor, when
5 someone has a deferred sentence from another county and they
6 plan to testify for the State in a different county, do
7 you -- do you know what typically happens in that situation
8 with respect to how that witness is handled -- that witness'
9 case is handled in the other county?

10 A I -- I think -- I don't -- the first question, whether
11 they even know about it. You know, lot of times on those --
12 you don't even know -- people don't -- somebody picks up
13 another case and the people with the deferred never really
14 knows about it. I don't know that they're ever handled any
15 different than any other case.

16 They -- they may just -- they might wait and see
17 what happens in the new case and use it to accelerate, or
18 they may work out their case and do something, or may bring
19 them back and accelerate them, you know? If they have
20 other -- oftentimes somebody reoffends, they've got other
21 conditions and they can just go ahead and accelerate them on
22 those, you know? They can kind of do whatever they want.

23 Q Okay.

24 A Most the time, though, they're going to let the person
25 stay in their own county. Nobody wants to go through all

1 that work and bring somebody back and then do that when
2 there's another case that's probably going to dispose of
3 that person.

4 And then they can either dismiss theirs or run it
5 CC or -- you know, that's the typical deal when there's a
6 pending application is they'll let the new case work itself
7 out and then just come back and bring them back and CC their
8 case. You know, that's pretty standard stuff. Or dismiss
9 it. Some places won't even bring them back, you know?

10 Q Can you explain a little more why when a particular --
11 when a probationer in one county is arrested on a more
12 serious crime in another county, in your training and
13 experience why would that other county want to hold off
14 potentially on taking any action in the probation case?

15 A Like I said, there's another county that's going to do
16 the heavy lifting, you know? And they're going to let that
17 other county do all of that work and then they'll do --
18 decide what they want to do with theirs. If somebody got a
19 significant amount of time they probably -- they probably
20 just dismiss it or not -- or if they wanted to add a
21 conviction or if they needed to -- if they knew they weren't
22 going to get -- you know, the restitution for a victim
23 becomes a -- is a compelling thing in most cases on a
24 revocation. If it's, well, she didn't report or she didn't
25 pay her court costs, they're not going to -- they're not

1 going to worry too much about it.

2 Q Based on that, would it surprise you that Payne -- in
3 Ms. Warden's Payne County case that Payne County did not
4 take any action in filing an acceleration or a motion to
5 accelerate in that case?

6 A No, because like -- you know, she's charged with murder
7 down here. They're not -- they're not going to want to get
8 involved in our murder case. They're not going to come up
9 there and use my murder -- I would never go get in another
10 prosecutor's murder case and use all their witnesses in an
11 acceleration hearing and have them testifying without the
12 control of the -- of the DA in that other county because
13 he -- you know, they make a prior inconsistent statement,
14 then you mess up some murder case, that's not a great --
15 great practice for the State of Oklahoma. I would -- I
16 would never do that to another DA.

17 Q To your recollection in -- in this particular case
18 when -- when this cooperation memorandum was -- was being
19 compiled or being worked out, did anyone in Oklahoma County
20 have any contact with Payne County regarding the
21 acceleration or non-acceleration of Brandy Warden's deferred
22 sentence?

23 A I didn't. I mean, I didn't have any contact with
24 anybody up there. And it was my case, so I don't think
25 anybody else would be -- be trying to make phone calls on my

1 case.

2 Q So that would be your sole discretion to either not
3 take any action or take action?

4 A It's my case. I mean, nobody's -- nobody's going to
5 mess with my case. Because I'd been assigned it -- I was
6 floor leader on the seventh floor and it'd been assigned to
7 me.

8 Q I believe that you were asked a bit yesterday about any
9 concerns about whether or not accelerating Ms. Warden's
10 deferred sentence would have affected her credibility in
11 this particular case regarding her testimony. Do you
12 remember being asked about that a little bit?

13 A Say that to me again.

14 Q Do you remember being asked about whether there were
15 concerns about accelerating Ms. Warden's deferred sentence
16 and whether or not that would affect her credibility in this
17 case?

18 A I don't -- I don't remember. I'm -- I wasn't worried
19 about her -- I wasn't worried about her case or her.

20 Q And why weren't you?

21 A Well, like I said, it's a murder case. And whether she
22 had a suspended or a deferred and if -- you know, if the
23 other side wanted to -- wanted to impeach her as a -- as
24 a -- you know, a crime of moral turpitude, they had the
25 power to talk to the judge, you know, do a motion and --

1 they could've -- and try to impeach the deferred or they
2 could impeach the -- if it'd been suspended.

3 Because of the nature of the deal they -- they
4 knew she had that record and they were -- they were -- had
5 the ability to impeach her if they wanted to.

6 Q In your training and experience as a prosecutor, is --
7 is a material witness -- would you consider a material
8 witness important to your case?

9 A Generally speaking they are.

10 Q Would you consider the term "material" to be -- let me
11 rephrase that question.

12 Do you know what "material" means with respect to
13 what we -- what we call *Brady* material?

14 A I mean, a material -- materiality is they know they
15 have something -- they got -- they know something about the
16 case. I mean, that's my interp- -- materiality.

17 Q And material --

18 A And as far as *Brady* material, I mean, you put the
19 witness on and they can see the witness testify on the
20 statements made.

21 Q I think that might've been a bad question, so let me
22 ask you this: With respect to materiality, would you agree
23 with me that a material witness has the potential to
24 potentially affect the outcome of a case?

25 A Yes.

1 Q In your review of the evidence in this particular case,
2 did you think that Ms. Warden was a material witness in this
3 case?

4 A Before or after the trial?

5 Q Before trial.

6 A Before, yes. You know, before -- like I said, Tremane
7 (sic) turned this trial upside down. Before she was a
8 material witness and we put her on, you know, because we had
9 to get past demurrer then, you know? I still remember the
10 jury just drawn up when he testified and he's up there
11 admitting this stuff, you know? It was -- it was compelling
12 testimony.

13 Q And so after Mr. Zjaiton Wood testified, was it your
14 opinion that Ms. Warden's testimony was no longer material?

15 A Well, I mean, it's material, but I don't think -- you
16 know, he confessed to all the elements of the crime. So
17 when you're trying to prove a case he confessed to all the
18 elements, the only issue we had was identification of
19 Tremane.

20 And, you know, we had pictures of Tremane buying
21 gloves. You know, I think the most compelling piece of
22 evidence was the pictures of Tremane at Walmart buying
23 gloves out of -- and some other -- mask -- gloves and mask,
24 I think it was, hours -- just hours before the case, you
25 know?

1 And then every -- all the players in this case
2 were involved and at the scene and, you know, one testified
3 and -- well, two of them testified in his trial. And the
4 only question for the jury is, well, did this guy stay with
5 them or was it this some other guy that -- that Zjaiton
6 talked about.

7 Q And it seems like what you're saying is that the
8 evidence in this case showed that there was no evidence of
9 some other individual other than Mr. Tremane Wood being
10 involved in this.

11 A All we had was just Zjaiton saying that some other dude
12 did it.

13 Q Do you recall if Ms. Warden's testimony was
14 corroborative of any of the other evidence that was produced
15 in this case?

16 A Yes. I mean, like I said, the Walmart videos and
17 stuff, Kleinsasser -- the things that Kleinsasser said about
18 the trial, she corroborated those things. You know, she
19 puts time, place and manner on -- on the other evidence that
20 we had.

21 Q When you were asking -- if you can recall, when you
22 were asked yesterday about in your preparation and review of
23 the witnesses and the co-defendants in this case, you would
24 typically take a look at everyone's criminal history; is
25 that right?

1 A Right. Generally speaking, you'd look at -- I mean,
2 you want to be prepared to argue. You know, somebody had a
3 prior conviction, you know, because then you'd have to make
4 a 609 argument -- 2609 argument or -- you know, you just
5 kinda -- that's just kinda general trial prep.

6 Q And would you generally gain that information from
7 looking at what you called an NCIC?

8 A Yes. That's -- it'd be part of it. Sometime --
9 it's -- it's an OCPD case they list -- they list stuff like
10 that in their police reports. And on -- like I said, on the
11 blue sheet or on the NCIC. You always run NCICs on a
12 witness.

13 You know, I helped write the discovery code. And
14 NCIC doesn't want you to give those documents away. So we
15 had to figure out a way around that. You know, these things
16 are all public record. You know, the defense attorney had
17 -- they can run an ODCR check on any one of our -- most of
18 our witnesses because they're in Oklahoma.

19 The reason that we talked about -- we put OLETS in
20 the discovery code was because we were not bound by NCIC
21 rules that way. It was more of a matter of convenience.
22 And so we would run NCIC or OLETS to see if there -- we'd
23 run NCIC to see if there was stuff out in other states, put
24 the defense on notice that, hey, he's got a conviction in
25 Pennsylvania. And he can go look -- you know, they can go

1 look it up or we can go look it up or -- it's more-- it was
2 a way around NCIC. So we turned over OLETS but we didn't --
3 but we used NCIC to just see if there was anything out there
4 so defense attorneys and prosecutors didn't have to go and
5 do a state-by-state search. That's -- that was the purpose
6 of it in the discovery code.

7 And so that's what we tried to do is we just tried
8 to put everybody on notice about what was out there, you
9 know, which is what the law required, just to get
10 everybody -- us and the defense attorneys -- to know that
11 there was things out there that could -- you know, if there
12 was an out-of-state deal. And then you'd go look it up
13 yourself.

14 Q And to your recollection was -- was the discovery code
15 followed in this case?

16 A Yes. I mean, we -- we turned over everything we had.

17 Q Okay.

18 MS. BURNS: May I approach, your Honor?

19 THE COURT: You may.

20 Q (By Ms. Burns) Mr. Burnett, I'm going to show you
21 what's been previously admitted as State's Exhibit 3B.

22 A Yes.

23 Q Do you recall previously seeing that?

24 A Yes.

25 Q And I think that on direct examination you were also

1 asked about this document. Do you recall that?

2 A Yes.

3 Q And in the bottom -- I think it's the left-hand corner
4 you had previously affirmed that you -- that was your
5 handwriting, you had taken that particular note; correct?

6 A Yes.

7 Q And do you recall testifying on direct that you're not
8 exactly sure exactly why you wrote that?

9 A Yes.

10 Q Could it have been that you had jotted that down
11 because of the representation that Wayna Tyner made on the
12 record on September 3rd during the hearing that this
13 occurred at a -- that this motion was taken up in?

14 MS. BASS: Your Honor, I object as leading.

15 THE COURT: Cross-examination. Overruled.

16 THE WITNESS: It could've been. I mean, I'm --
17 probably -- I was probably writing it down during that --
18 those motion hearings. I'm starting to -- I mean, the other
19 -- you know, this has been part of those motion hearings so
20 I'm -- I was making notes on the bottom of stuff and that's
21 probably -- probably when I wrote it.

22 Q (By Ms. Burns) Does this particular handwritten note
23 in any way indicate that there was some sort of agreement to
24 not accelerate Brandy Warden's deferred sentence in Payne
25 County?

1 A No.

2 Q I want to talk a little bit about -- and I can take
3 that back from you. Thank you, Mr. Burnett.

4 I want to talk a little bit about Coleman Givens
5 given that defense counsel did go into this. And you said
6 that you -- you don't particularly remember a whole lot
7 about this particular witness; is that correct?

8 A Correct.

9 Q Do you remember anything about Mr. Givens or the events
10 that occurred prior to Mr. Givens testifying at the
11 preliminary hearing in this case at all?

12 A Not a lot. I mean, I remember about -- he was shackled
13 with these guys and there was a threat, and I guess it was
14 Joan Lopez. Trying to remember. I think Joan was worried
15 about him. He knew something about the case. I mean,
16 that --

17 THE COURT: It was Joan Lopez, his attorney.

18 THE WITNESS: I think so.

19 THE COURT: Identifying her for the record.

20 THE WITNESS: Oh, I'm sorry. Yeah, Joan Lopez I
21 think was -- was his attorney.

22 MS. BURNS: May I approach, your Honor?

23 THE COURT: You may.

24 Q (By Ms. Burns) Mr. Burnett, I'm going to show you
25 what's been previously admitted as Petitioner's Exhibit

1 82-3.

2 A Yes.

3 Q Do you remember looking at that earlier?

4 A Yes.

5 Q Okay. Is it possible that this particular exchange in
6 82-3 occurred as a result of Mr. Givens' -- or the incident
7 that you testified that Mr. Givens was threatened prior to
8 preliminary hearing?

9 A Could -- yes, I mean, could be.

10 Q Do you recall at all?

11 A Much -- I don't have a whole lot of -- I remember
12 something happening and I remember Joan being involved
13 and -- he seemed like he may known something about it and I
14 guess -- I guess we made a deal with him. I mean, I seen
15 some documents here that suggests that we had something
16 that -- I just don't remember much about this guy to be
17 honest with you.

18 Q Understood. Thank you, sir.

19 I believe that you were also asked on direct
20 examination if -- and you were shown -- do you recall being
21 shown a series of documents -- it looks like they were
22 pleadings and court minutes regarding Coleman Givens'
23 Oklahoma County cases.

24 A Yes.

25 Q And to your recollection, was Mr. Givens ever given any

1 sort of consideration from the State of Oklahoma in exchange
2 for his testimony in this case?

3 A I -- I -- I don't remember much about this guy. I
4 mean, I don't know -- did I -- did I -- did I work him? I
5 don't remember -- I don't remember much about this guy. I
6 mean, he -- I'm -- I want to guess here -- well, I can't
7 guess. Best of my recollection he must been Fern Smith's
8 witness because I don't remember -- I don't remember dealing
9 with him. I don't know if I could even identify him to be
10 honest with you. Even if he walked in here now I don't
11 think I could.

12 Q Mr. Burnett, I want to ask you a few questions. And I
13 have a transcript -- transcript up there. It is marked as
14 State's Exhibit 1-E. If you wouldn't mind grabbing that for
15 me.

16 A (Witness complies.)

17 Q Does this appear to be a transcript of Mr. Tremane
18 Wood's jury trial from March 31st, 2004?

19 A Yes.

20 Q And if you look at Page 2, do you see Coleman Givens on
21 that page as a witness?

22 A Yes.

23 Q And does it appear that his testimony begins on Page
24 225?

25 A Yes.

1 Q Would you turn to that -- to that particular page for
2 me?

3 A Yes.

4 Q And then would you flip to Page 236 and take a look at
5 the bottom of Page 236 and up through Page 237. And just
6 let me know when you're done reading that.

7 A 236 -- where at?

8 Q Bottom of 236 and then the top of Page 237.

9 A Okay.

10 Q And does it say -- was Mr. Givens asked a question,
11 quote: As a result of you getting a lawyer and testifying
12 in court for the State, did we do something to help you in
13 your bogus check case?

14 A Yes.

15 Q And what was Mr. Givens' response? If you can flip to
16 the next page.

17 A Oh. Let's see. As a result of you getting a lawyer
18 and testifying do we do something to help you in your bogus
19 check case? Answer was: No, ma'am.

20 Q Okay. And the next question was: Did you pay
21 restitution on the checks that you owed?

22 A Yeah. And the answer's: Yes, ma'am.

23 Q And the next question was: Did you pay it all off?

24 A Answer's: No, I have got to do that today or in the
25 morning.

1 Q And then the next question was: And are you still
2 paying on that?

3 A And the answer is: Yes.

4 Q I'm going to ask you to turn to Page 242, please.

5 A (Witness complies.)

6 Q And on line 3, do you see that question?

7 A Forty-two (sic), line 3?

8 Q Yes.

9 A Yes.

10 Q It says: Did you get what they call an OR bond, own
11 recognizance?

12 A Yeah. The answer is: Yes.

13 Q And the question -- next question was: Did you get
14 that because you testified?

15 A The answer is: I don't know why I got it. I'm just
16 glad I got it.

17 Q If you could flip to Page 251, please.

18 A (Witness complies.)

19 Q And on line 10 the question was: Have you heard the
20 defendant in this case, Mr. Tremane, speak?

21 A Answer: Yes, I have.

22 Q And then the next question was: When did you hear
23 Mr. Tremane speak?

24 A Since when they handcuffed me in between them.

25 Q And the next question is: Is that when you came over

1 to testify against him at the preliminary hearing against
2 the two girls?

3 A Answer is: Yes.

4 Q And the next question is: All right. It was after
5 that that you got out of jail on an OR bond; is that right?

6 A And the answer's: Yes.

7 Q Okay. And you can put that transcript down. Those are
8 the last questions I've got for you on that one.

9 A (Witness complies.)

10 Q Mr. Burnett, in your vast experience as a prosecutor,
11 have you ever thought that a case was important enough to
12 risk your professional reputation?

13 A Oh, my gosh. Listen, I started this courthouse
14 downstairs working for Jack Parr. I didn't know nothing
15 about law. I just went to law school. And he taught me:
16 George, no case is worth your credibility. And I've lived
17 my life by that. He always said -- and I had a sign in my
18 office, doing the right thing -- doing the right thing is
19 not always easy but it's always right.

20 I never cheated on a case. I tried cases fair. I
21 fought with lawyers. Johnny Albert did the case. He's a
22 hell of a lawyer. I've lost murder cases to him. He'd pick
23 a theme and he'd drive that theme into the jury and he could
24 win cases doing it. He won 19 cases when I came back down
25 here from Blain County. And we -- it was a war between us

1 all the time. I respected him as an attorney.

2 And -- and -- but I would never cheat on a case to
3 win. I would never stake my professional life on any case
4 because this murder case was just another one of five or six
5 on my desk any given day in the District Attorney's Office.

6 You know, I can't tell you much more than that. I
7 mean, no case is worth your credibility. We do this for a
8 living. We just go put on cases. We do this one, we go to
9 the next one. Live 16 years down here doing that. You
10 know, can't tell you anything other than that.

11 MS. BURNS: One moment, your Honor?

12 (Counsel for the State confer.)

13 MS. BURNS: I will pass the witness, Judge.

14 THE COURT: Okay. Redirect?

15 MS. BASS: Yes, ma'am.

16 REDIRECT EXAMINATION

17 BY MS. BASS:

18 Q Mr. Burnett, you were asked about the cooperation
19 agreement marked as Court's Exhibit 1.

20 A Yes.

21 Q You were also asked about whether there was a policy or
22 a practice around these cooperation agreements; correct?

23 A Correct.

24 Q And was the policy or practice that cooperation
25 agreements would be disclosed to the defense?

1 A I can't remember. I mean, I don't -- I don't -- I
2 don't remember -- I don't know -- I don't remember how we
3 handled those documents. It's mostly to enforce -- it's
4 mostly to remind the defendant show up to court, talk to
5 their lawyer and do their -- do their -- do their case, you
6 know? I mean, their lawyers knew that that witness was
7 cooperating.

8 Q Right. So then this cooperation agreement would have
9 been something Brandy Warden's lawyer would have had in her
10 file but it would not have been something that you would
11 have disclosed to Mr. Wood's counsel?

12 A I can't -- I can't remember how we did those. I can't
13 -- really don't remember. I really don't remember if that
14 was in the discovery stuff or not.

15 MS. BASS: Your Honor, may I approach?

16 THE COURT: You may.

17 Q (By Ms. Bass) And Mr. Burnett, I've handed you what
18 has been marked for identification as Petitioner's Exhibit
19 36-1 which is your closing argument at the guilt stage in
20 Mr. Wood's case. If you could please take a look at Page
21 147?

22 A (Witness complies.)

23 MS. BASS: I'm sorry, your Honor, can I have just
24 one moment?

25 THE COURT: Sure.

1 (Counsel for the defendant confer.)

2 Q (By Ms. Bass) Thank you, Mr. Burnett. If you take a
3 look at Page 147, line 9. There you're beginning your
4 closing argument at the first stage of --

5 A Yes.

6 Q -- Mr. Wood's trial.

7 Okay. Can you please turn to Page 152?

8 A (Witness complies.)

9 Yes.

10 Q And if you could review lines 11 through 14.

11 A (Witness complies.)

12 Yes.

13 Q And there you are arguing to the jury that Brandy
14 Warden was not some big co-conspirator in these crimes;
15 correct?

16 A I wouldn't say that. I mean -- I mean, I'm arguing
17 that she's happy.

18 THE COURT: Sorry. Say that again.

19 THE WITNESS: I'm arguing that she's happy.

20 THE COURT: Happy.

21 THE WITNESS: She's enjoying her pictures. She's
22 there in the photographs and she's smiling. And you watch
23 the tape, she's enjoying the events.

24 Q (By Ms. Bass) Are you not arguing here that she's not
25 some big co-conspirator in all of this?

1 A I'm saying -- I said: You tell me that she's a big
2 conspirator. That was -- I was arguing that she was not a
3 big conspirator.

4 Q I'm sorry, can you say that one more time?

5 A I'm arguing that she's not a big conspirator.

6 Q Exactly. That she's not a big conspirator in all of
7 this.

8 A Right.

9 Q Right. Exactly.

10 Can you please take a look at lines 22 through 24?

11 A (Witness complies.)

12 Q In there you're saying Ms. Warden knew one rule and
13 that rule was you do what Tremane Wood tells you to do;
14 correct?

15 A I'm -- I'm -- yeah, I'm arguing that she did what
16 Tremane told her to do.

17 Q Right. Thank you.

18 If you could please turn to page 161.

19 A (Witness complies.)

20 Q I'm sorry -- yes, line (sic) 161 starting at line 17.

21 A Seventeen. Okay. Brandy Warden. Yes.

22 Q And there you're telling the jury that Ms. Warden has
23 sacrificed half of her life; correct?

24 A I said she's convicted of a criminal offense and that
25 she sacrificed half her life for those kids, 45 years.

1 Q Okay. If you could please turn to the next page.

2 A (Witness complies.)

3 Q Starting at line 4 through 11, please. Lines 3 through
4 5 you tell the jury that Brandy has come into the courtroom
5 and told the truth to the jury; correct?

6 A I was arguing that her testimony was truthful.

7 Q And then finally can you turn to Page 187, Mr. Burnett?

8 A (Witness complies.)

9 Q And then there, lines 7 through 13, you tell the jury
10 that Ms. Warden has no other felony convictions; correct?

11 A Correct.

12 MS. BASS: I have no further questions, your
13 Honor.

14 THE COURT: All right. Any recross based on those
15 questions?

16 MS. BURNS: No, your Honor.

17 THE COURT: Mr. Burnett, I have a question for
18 you. Was there any DNA evidence in this trial to your
19 recollection?

20 MS. BASS: I'm sorry, your Honor, I have one more
21 question. I'm so sorry.

22 THE COURT: Well, you can wait until he answers
23 mine.

24 MS. BASS: Okay. Thank you.

25 THE COURT: Was there any DNA evidence to your

1 recollection?

2 THE WITNESS: Best of my recollection is I know we
3 -- I think we did some DNA testing and I'm trying to
4 remember if we put it on. And I want to say there was --
5 maybe there was a mix.

6 THE COURT: Do you recall if it was, like -- it
7 was blood in the room? Was it an article of clothing?

8 THE WITNESS: There was -- there was blood in the
9 room. Blood on some clothing. I mean, we had some -- we
10 had some physical evidence from that standpoint.

11 THE COURT: Do you know if a DNA expert testified?

12 THE WITNESS: I can't remember.

13 THE COURT: All right. Fair enough.

14 THE WITNESS: I can't remember. I know -- I know
15 we were -- I remember us really, you know, before
16 preliminary hearing we were, like: Boy, we really need to
17 get some forensic evidence in this case, we -- because we
18 had a messy crime scene and the other kid ran out and hid
19 behind a dumpster. I know -- I know we did -- I'm sure we
20 did forensic work. I just don't remember what the results
21 were at this stage.

22 THE COURT: Thank you so much.

23 Ms. Bass?

24 MS. BASS: Thank you, your Honor.

25 REDIRECT EXAMINATION

1 BY MS. BASS:

2 Q Mr. Burnett going back to Exhibit 36-1 which is the
3 transcript of your closing argument in the first stage of
4 Mr. Wood's case, Page 161 --

5 A Okay.

6 Q -- lines 21 through 22.

7 A Yes.

8 Q You state that Ms. Warden -- you tell the jury that
9 Ms. Warden sacrificed half of her life with those kids, 45
10 years.

11 A Yes.

12 Q And that that was her agreement in the Oklahoma County
13 murder case; correct?

14 A Correct.

15 MS. BASS: Your Honor, may I approach?

16 THE COURT: You may.

17 The Court's Exhibit's already up there.

18 MS. BASS: Oh, it is. Okay.

19 Q (By Ms. Bass) Mr. Burnett, I'm handing you Court's
20 Exhibit 1, the cooperation agreement --

21 A Yes.

22 Q -- executed with Brandy Warden.

23 A Yes.

24 Q Isn't it true that this cooperation agreement states
25 that Brandy Warden is offered a term of 35 years?

1 A Yes.

2 Q And that's ultimately what she got after her sentence
3 was modified down; correct?

4 A Yeah.

5 Q And the 35 years that she was promised according to
6 this cooperation agreement is not in the written plea
7 agreement; correct?

8 A Correct. Never underestimate my -- my ability to say
9 something stupid to a jury. I mean, I -- I've made a
10 mistake probably, best I can tell.

11 MS. BASS: Thank you. No further questions, your
12 Honor.

13 THE COURT: All right. Based on the Court's
14 question and Ms. Bass' questions, does the State have any
15 questions?

16 MS. BURNS: Yes, your Honor.

17 May I approach, Judge?

18 THE COURT: You may.

19 MS. BURNS: Thank you.

20 RECROSS-EXAMINATION

21 BY MS. BURNS:

22 Q Mr. Burnett, I think that you -- in response to the
23 Court's questions you had indicated you weren't particularly
24 sure about DNA evidence. Do you remember that?

25 A Correct.

1 Q Would reviewing the trial transcript help refresh your
2 recollection?

3 A Yes.

4 Q All right. I'm going to direct you to State's Exhibit
5 1-G, Page 40. If you could take a look at Page 40 and 41,
6 and let me know when you're done.

7 A (Witness complies.)

8 Yes.

9 Q And based on the question, was there actually DNA in
10 this case?

11 A Yes.

12 Q And what was that DNA evidence?

13 A It looks like we put on some samples from the scene and
14 I think from the gloves maybe. And there was a DNA mix,
15 which would not be unusual because you had brothers. You
16 know -- I mean, it'd be -- and he could not be eliminated as
17 a potential contributor from the DNA found in the gloves.

18 Q Okay. And that was the evidence that was presented to
19 the jury?

20 A Yes.

21 MS. BURNS: I have no further questions, your
22 Honor.

23 THE COURT: Court has another question.

24 All right. Evidence has been submitted that
25 Ms. Warden did enter a plea to 45 years.

1 THE WITNESS: Okay.

2 THE COURT: And then afterwards, about a year
3 later, she filed a motion to -- for a sentence modification.
4 Do you recall that?

5 THE WITNESS: I don't remember -- no, I don't
6 remember that.

7 THE COURT: Okay. I am going to hand you what
8 I've marked as Court's Exhibit Number 2. I know you guys
9 have it. It is the order granting the modification. So I
10 don't know what your numbers are, this is my number.
11 Court's Exhibit Number 2.

12 Would you take a look at that?

13 THE WITNESS: Okay. (Witness complies.)

14 Wow. Looks like I threw a fit.

15 THE COURT: Well, hang on. Hang on. Do you
16 recognize that?

17 THE WITNESS: Yes.

18 THE COURT: What is that?

19 THE WITNESS: That's an order granting
20 modification of her sentence after hearing.

21 THE COURT: Okay. Do you recall that hearing?

22 THE WITNESS: Yeah. Yes, I think I'm -- this is
23 starting to ring some bells.

24 THE COURT: Okay. Well, I notice that there is an
25 underline and some initials in that document. Do you

1 recognize those?

2 THE WITNESS: Yes.

3 THE COURT: What is that?

4 THE WITNESS: That's my handwriting. That's my --
5 I regularly initialed stuff down here at that time with that
6 funny looking GB.

7 THE COURT: And what exactly did you underline?

8 THE WITNESS: Strenuous objection from the State.

9 THE COURT: All right. So is it a fair statement
10 then that you objected to her sentence being modified from
11 45 years?

12 THE WITNESS: Yes.

13 THE COURT: Okay. Why did you object?

14 THE WITNESS: Because that -- because -- because
15 of what we're doing here today. I mean, we wanted to -- you
16 know, you present your case and you try to set this thing
17 out and then all of a sudden, you know, you're -- you know,
18 somebody thinks there's some wink-wink deal, and then all of
19 a sudden you're in a mess, just like we're in here today.
20 And so I'm sure that's why I threw a fit at that deal.

21 THE COURT: All right. Does that Court's
22 questions raise any questions with the Petitioner?

23 (Counsel for the defendant confer.)

24 MS. BASS: Your Honor, I actually withdraw that.
25 I don't have further questions.

1 THE COURT: Does the Court's question --

2 MS. BURNS: No, your Honor.

3 THE COURT: All right. Mr. Burnett, I believe you
4 are done.

5 THE WITNESS: One other -- I'd like to make one
6 other thing for the record.

7 THE COURT: Sure.

8 THE WITNESS: I was not properly served by either
9 side, so I was here voluntarily today. I didn't receive a
10 witness fee or a mileage check from either side and would
11 request the Court, help them comply with the State statute.
12 I'm here of my own volition today. I came because of the
13 Court and not because of them.

14 THE COURT: All right. You will be compensated
15 for your travel.

16 MS. BASS: Yes.

17 THE COURT: All parties understand?

18 MR. LOCKETT: Absolutely, your Honor.

19 THE COURT: All right. Thank you, sir, very much.

20 Ms. Bass, you may call your next witness.

21 Mr. Sandman.

22 MR. SANDMAN: We have a final witness and it's
23 almost a quarter to 12:00.

24 THE COURT: And you don't want to get started?

25 MR. SANDMAN: Well, whatever pleases the Court

1 C E R T I F I C A T E

2 STATE OF OKLAHOMA)
3) SS:
4 COUNTY OF OKLAHOMA)

5 I, KRISTIN L. TAYLOR, a Certified Shorthand
6 Reporter within and for the State of Oklahoma, DO HEREBY
7 CERTIFY that as such reporter, I reported in machine
8 shorthand on the ____ day of _____, _____, the
9 proceedings had in CF-2002-46 and that the foregoing pages
10 of typewriting constitute a full, true, correct and complete
11 transcript of said proceedings.

12 WITNESS my hand and seal of office on this _____
13 day of _____, 2025.

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Kristin L. Taylor, CSR, RPR

2367/1295

CF01101740

IN THE DISTRICT COURT, IN AND FOR OKLAHOMA COUNTY, STATE OF OKLAHOMA

State of Oklahoma

VS.

COLEMAN EARNEST GIVENS

AKA: COLEY GIVENS,

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

PLAINTIFF,

INFORMATION

MAR 27 2001

By PATRICIA [Signature]
Deputy

DEFENDANT.

CF-2001-1865

Black

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OKLAHOMA, COMES NOW
ROBERT H MACY THE DULY ELECTED, QUALIFIED AND ACTING DISTRICT ATTORNEY IN
 AND FOR OKLAHOMA COUNTY, DISTRICT NO. 7, STATE OF OKLAHOMA, AND ON HIS OFFICIAL OATH INFORMS THE
 DISTRICT COURT THAT

COUNT

1: ON OR ABOUT THE 23RD DAY OF AUGUST, 2000, A.D., THE CRIME OF OBTAINING
 MONEY OR PROPERTY BY MEANS OF A FALSE AND BOGUS CHECK WAS FELONIOUSLY
 COMMITTED IN OKLAHOMA COUNTY, OKLAHOMA, BY COLEMAN EARNEST GIVENS,
 WHO, WILFULLY, KNOWINGLY AND WITH THE INTENT TO CHEAT AND DEFRAUD
 OBTAINED FIFTY FOUR DOLLARS AND 76/100 (\$54.76) IN CASH OR MERCHANDISE FROM
 KOETTER CONSTRUCTION SUPPLY, BY MEANS OF A FALSE AND BOGUS CHECK AS SET
 OUT BELOW: WHICH DEFENDANT KNEW WAS DRAWN ON A CLOSED ACCOUNT,
 CONTRARY TO THE PROVISIONS OF SECTION 1541.1 AND 1541.2 OF TITLE 21 OF THE
 OKLAHOMA STATUTES, AND AGAINST THE PEACE AND DIGNITY OF THE STATE OF

COLEMAN E. GIVENS
 PH. 405-412-6109
 P. O. BOX 2232
 EDMOND, OK 73063-2232

1204
 86-225/1030

08-23-00 Date

Pay to the Order of Koetter Construction Supply

ACCOUNT CLOSED

Fifty Four Dollars & 76/100 \$54.76

For cash 103003467

1204 5077389 0000005476

STATE OF C
 I,
 THE STATE
 OF MY KNO

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS 22nd DAY OF MARCH 2001

MY COMMISSION EXPIRES: 6/16/2003

BY Shannon [Signature]
NOTARY PUBLICCERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

APR 04 2025

RICK WARREN COURT CLERK
Oklahoma County

I HAVE EXAMINED THE FACTS IN THIS CASE AND RECOMMEND THAT A WARRANT DO ISSUE, (22 O.S.: 231).

ROBERT H MACY

DISTRICT ATTORNEY, DISTRICT NO. 7
OKLAHOMA COUNTY, OKLAHOMA

BY Martha M. Macy
ASSISTANT DISTRICT ATTORNEY

NAME OF WITNESSES

CITIZENS BANK OF EDMOND CUSTODIAN RECORDS
1 EAST 1ST ST.
EDMOND, OK 73034

RICH MALIN
2756 BROCE DR. -KOETTER CONSTRUCTION SUPPLY-
NORMAN, OK 73072

IN THE DISTRICT COURT OF OKLAHOMA COUNTY)
 STATE OF OKLAHOMA V.)
)
 STATE OF OKLAHOMA)
)
 COUNTY OF OKLAHOMA) SS.

AFFIDAVIT
 OF PROBABLE
 CAUSE

The undersigned affiant, who after being duly sworn by me, on oath, makes the following statement:

I have good reason to believe and do believe that
Coleman Givens, hereinafter called the accused,
 (checkwriter's name)

whose Oklahoma Drivers License or State I.D.
 issued from (circle one)

7446 and date of birth
 did commit the offense of passing a
 bogus check. My belief is based on the following facts, as
 shown by the appropriately checked blocks:

On 8-23-00, in the city of Edmond,
 (date of check) (where transaction occurred)

Oklahoma County, Oklahoma, the accused passed check
 number 1204 in the amount of \$ 54.76 in exchange for
 property or U.S. Currency to:

() _____, an employee of _____
 (person who accepted check) (name of business)

who received such check in the regular course of
 business and who personally told me all of the
 foregoing facts;

(X) Rich Malin, an employee of Koetter Const. Supply, Inc.
 (person who accepted check) (name of business)

who received such check in the regular course of such
 business as shown by its business records and by the
 said check, both of which I have personally examined.

I have personally examined such check that was not
 honored by the bank and on its face such check, through
 markings placed on the check by the bank, show that:

() the accused did not have sufficient funds on deposit
 with the bank for payment in full of the said check;

or
 (X) the accused did not have an account with the bank at
 the time the accused issued the check.

I personally learned the name and Drivers License or State I.D. number and date of birth of the accused:

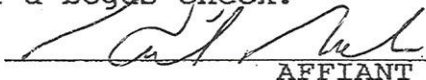
() by personally examining the said check upon which such information was written by the said recipient of the check;

(X) by personally examining ^{or} business records that were prepared by the said recipient of the check when the check was passed;

and
furthermore, as an employee of such business, I personally know that such business, in its regular course of business, requires that every passer of a check produce a valid identification (including the passer's name, drivers license number and date of birth) and that such information is routinely placed on the foregoing item by the recipient (employee of the business).

I am a resident of Oklahoma County, Oklahoma, and I am employed in Edmond, Oklahoma. (city)

WHEREFORE, the affiant states that there is probable cause to believe that the above-named accused has received money or property by means of a bogus check.


AFFIANT

SUBSCRIBED AND SWORN TO before me by the said Affiant on this 20 day of October, ~~19~~ 2000.

MY COMMISSION EXPIRES:

May 13, 2003


NOTARY PUBLIC

2367/1288
IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA
CRIMINAL COVER SHEET

CASE INFORMATION

ASSIGNED JUDGE: _____

CF _____

STATE _____

CF _____

VS. _____

PREVIOUS CASE NUMBER: _____

DEFENDENT _____

PREVIOUS JUDGE: _____

DEFENDANT INFORMATION

LAST NAME: GIVENS

FIRST NAME: COLEMAN

MIDDLE NAME: ERNIST

ADDRESS: PO BOX 2232

CITY: EDMOND

STATE: OK

ZIP: 73083-2232

ADDRESS TYPE: X H W O

TELEPHONE: 405-412-6109

DATE OF BIRTH: , 1959

DRIVERS LICENSE NUMBER: _____

DRIVERS LICENSE STATE: _____

RACE: W

GENDER: X M: F:

LANGUAGE/DIALECT: _____

ADDITIONAL DEFENDANTS: Y (N) TOTAL NUMBER OF DEFENDANTS: 1

ATTORNEY INFORMATION

(IF LICENSED IN OKLAHOMA, FILL IN ADDRESS INFORMATION ONLY IF IT IS NEW SINCE THEY WERE REGISTERED WITH THE OKLAHOMA BAR ASSOCIATION.)
(ATTACH ADDITIONAL COVER SHEETS FOR ADDITIONAL ATTORNEYS.)

LAST NAME: MACY

FIRST NAME: ROBERT

MIDDLE NAME: H.

ADDRESS: 320 ROBERT S. KERR AVE., SUITE 505

CITY: OKLAHOMA CITY

STATE: OKLAHOMA

ZIP: 73102

BAR NUMBER: 6788

TELEPHONE: 405-713-2295

E-MAIL: KRIKEA@OKLAHOMACOUNTY.ORG

OFFENSES

COUNT(S)	OFFENSES CHARGED	O.S. CITATIONS	NCIC CODE
1	BC over \$50	21 O.S. § 1541.1 + 1541.2	

DATE: 3-16-01 SIGNATURE OF (ASSISTANT) DISTRICT ATTORNEY

m. m. murray

ORDER OF RELEASE

In the District Court of the Seventh Judicial District of the State of Oklahoma sitting in and for Oklahoma County.

THE STATE OF OKLAHOMA

vs.

Coleman Glvens

CASE NO.

CF-01-1865

FILED IN THE DISTRICT COURT
OF OKLAHOMA COUNTY, OKLA.
ORDER OF RELEASE

AUG 14 2002

PATRICIA PRESLEY, COURT CLERK

by

Deputy

TO THE SHERIFF OF OKLAHOMA COUNTY:

WHEREAS, Upon the application of

Deft

in your custody, charged on an information pending in the District Court of Oklahoma County, with the commission of the crime of

Bogus Check

I have admitted said Defendant to bail as required by law, and said bail having been given and approved in the amount of \$ OR

IT IS ORDERED, That you, if said Defendant is in your custody for no other cause but this, immediately upon receipt of this order, release said Defendant from further custody.

Witness my hand this

26

day of

July 2002

NOTE:

OR Bond

7-28-02 1:30

JUDGE OF THE DISTRICT COURT

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

APR 04 2025

RICK WARREN COURT CLERK
Oklahoma County

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

BAIL ON PERSONAL RECOGNIZANCE

PATRICIA PRESLEY, COURT CLERK

THE STATE OF OKLAHOMA,

by Deputy

ss.

CASE NO.

CF-01-1865

vs. Coleman Givens

On the 26 day of July, 2002, I, Coleman Givens,

appear personally before the undersigned Judge of the District Court of Oklahoma County, Oklahoma,

and acknowledge by my signature that I am charged with the offense(s) OBTAINING MONEY
OR PROPERTY BY MEANS OF FORGED CHECK

I agree by my signature on this instrument that I shall personally appear before
Judge Hall, a Judge of the District Court of Oklahoma County, Oklahoma, at
the Oklahoma County courthouse at 321 Park Avenue, Oklahoma City, Oklahoma, on the 30 day of
July, 2002, at 1:30 o'clock pm.m., and shall personally appear thereafter from
day to day as the Court may direct, in connection with the offense(s) with which I am charged, and I
shall not depart the said Court without leave.

I further acknowledge that I have been fully informed by the Court that my failure to comply
with the terms of this personal recognizance bail will cause a warrant to be issued for my arrest and may
result in my being fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned for not more
than two (2) years, or both.

Witness my signature this 26 day of July, 2002.FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

AUG 06 2002

PATRICIA PRESLEY, COURT CLERK

by Deputy

Defendant - Accused

Address

Wayne, OK449-7222
833-3153

Services
PATRICIA PRESLEY, Court Clerk for Oklahoma
County, Okla., hereby certify that the foregoing is a
true, correct and complete copy of the instrument
herewith set out as appears of record in the District
Court Clerk's Office of Oklahoma County, Oklahoma, on
his 30 day of July, 2002.

PATRICIA PRESLEY, Court Clerk

By George F. Burnett Deputy

JUDGE



IN THE DISTRICT COURT, IN AND FOR OKLAHOMA COUNTY, STATE OF OKLAHOMA

State of Oklahoma

PLAINTIFF,

VS.

INFORMATION

COLEMAN EARNEST GIVENS

AKA: COLEY GIVENS,

CF-2002-5891

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

DEFENDANT.

OCT 25 2002

J Bass

PATRICIA PRESLEY, COURT CLERK

by [Signature]
Deputy

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OKLAHOMA, COMES NOW
C. WESLEY LANE II THE DULY APPOINTED, QUALIFIED AND ACTING DISTRICT ATTORNEY IN
AND FOR OKLAHOMA COUNTY, DISTRICT NO. 7, STATE OF OKLAHOMA, AND ON HIS OFFICIAL OATH INFORMS
THE DISTRICT COURT THAT

COUNT

1 : ON OR ABOUT THE 2ND DAY OF SEPTEMBER, 2002, A.D., THE CRIME OF MAKING A
FALSE DECLARATION OF OWNERSHIP TO A PAWNBROKER WAS FELONIOUSLY
COMMITTED IN OKLAHOMA COUNTY, OKLAHOMA, BY COLEMAN EARNEST GIVENS,
WHO WILFULLY AND KNOWINGLY DID SIGN A DECLARATION OF OWNERSHIP WHILE
PLEDGING PROPERTY TO EZ PAWN THAT HE HAD OWNED THE FINISH NAILER FOR
ONE (1) YEAR WHEN IN TRUTH AND IN FACT, THE PROPERTY HAD BEEN STOLEN FROM
MATTHEW HITES ON THE 2ND DAY OF SEPTEMBER, 2002, CONTRARY TO THE
PROVISIONS OF SECTION 1512 (C) (2) OF TITLE 59 OF THE OKLAHOMA STATUTES, AND
AGAINST THE PEACE AND DIGNITY OF THE STATE OF OKLAHOMA

C. WESLEY LANE II

DISTRICT ATTORNEY, DISTRICT NO. 7
OKLAHOMA COUNTY, OKLAHOMABY [Signature]

ASSISTANT DISTRICT ATTORNEY

PL

STATE OF OKLAHOMA, OKLAHOMA COUNTY, SS:

I, Ainslie Stanford, BEING DULY SWORN ON MY OATH, DECLARE THAT
THE STATEMENTS SET FORTH IN THE ABOVE INFORMATION, AND IN REVIEW OF THE PROBABLE CAUSE AFFIDAVIT
BY THE ARRESTING OFFICER CONTAINED IN THE COURT FILE, ARE TRUE AND CORRECT TO THE BEST OF MY
KNOWLEDGE AND BELIEF.

BY [Signature]SUBSCRIBED AND SWORN TO BEFORE ME THIS 25th DAY OF October 2002MY COMMISSION EXPIRES: 9/6/2006BY Pamela S. Littlejohn

NOTARY PUBLIC

COMM# 02014148CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

APR 04 2025

RICK WARREN COURT CLERK
Oklahoma County[Signature]



I HAVE EXAMINED THE FACTS IN THIS CASE AND RECOMMEND THAT A WARRANT DO ISSUE, (22 O.S.: 231).

C. WESLEY LANE II

DISTRICT ATTORNEY, DISTRICT NO. 7
OKLAHOMA COUNTY, OKLAHOMA

BY

ASSISTANT DISTRICT ATTORNEY

NAME OF WITNESSES

MATTEW HITES
719 COUNY LINE ROAD
TUTTLE, OK 73089

Sgt. MIGUEL RAMOS
OKLAHOMA CITY POLICE DEPT
701 N. COLCORD DRIVE
OKLAHOMA CITY OK, 73102

GREGORY GLEN RIVERA
4400 S PENN - EZ PAWN
OKLAHOMA CITY, OK 73119

IN THE DISTRICT COURT OF OKLAHOMA
STATE OF OKLAHOMA

vs.

GIVENS, COLEMAN ERNEST	)
RT. 1 BOX 79	) PROBABLE CAUSE
WAYNE, OK 73089	)

STATE OF OKLAHOMA	)
	) SS.
COUNTY OF OKLAHOMA	)

I, M. Ramos being duly sworn do hereby depose and state that I am a police officer with the Oklahoma City Police Department and have been so employed since March 16, 1990. I am currently assigned to the Larceny Detail Unit.

On 10/14/02 this detective spoke with MATTHEW HITES the victim on this case, HITES stated that on 9/02/02 he went to 4408 S.PENN IN OKLAHOMA CITY, OKLAHOMA COUNTY with the above mentioned defendant to recover the missing property at this location. While at this location the suspect in the case told the victim that he pawned the property at this location.

Victim HITES stated that while at this location he call the police and made the police report. This detective went to the Pawnshop and recovered the missing property. This detective also recovered the Pawnshop slip and was able to observe that the suspect used his Oklahoma SDL and stated that he owned the property for one year.

This detective also checked the SDL number and the SDL CAME back to the above-mentioned defendant.

Base upon the aforementioned fact I believe that State statue 59-1511 FALSA DECLARATION TO PAWN BROKER was Violated by the Defendant I therefore, request that an arrest warrant be issue for one count of FALSE DECLARATION TO PAWN BROKER in the name of COLEMAN ERNEST GIVENS. This incident took place in OKLAHOMA CITY, OKLAHOMA COUNTY.

2583/3004

Miguel Alamos
AFFIANT

Subscribed and sworn to before me this 21 day of October,
2002.

My Commission Expires:

3-9-06 02000372

Shamea L. Lock
NOTARY PUBLIC

IN THE DISTRICT COURT OF OKLAHOMA (OKLAHOMA CITY) COUNTY
STATE OF OKLAHOMA
CRIMINAL COVER SHEET

CASE INFORMATION

ASSIGNED JUDGE: _____

State of Oklahoma

VS.

CF _____

CM _____

PREVIOUS CASE NUMBER: _____

PREVIOUS JUDGE: _____

GIVENS, COLEMAN EARNEST

DEFENDANT INFORMATION

LAST NAME: GIVENS

FIRST NAME: COLEMAN

MIDDLE NAME: EARNEST

ADDRESS: RT 1 BOX 79

CITY: WAYNE

ADDRESS TYPE: ___ H ___ W ___ O

DRIVERS LICENSE NUMBER:

RACE: White

ADDITIONAL DEFENDANTS: No

STATE: Oklahoma

TELEPHONE:

GENDER: Male

TOTAL NUMBER OF DEFENDANTS: 1

ZIP: 73095

DATE OF BIRTH: [REDACTED]/59

DRIVERS LICENSE STATE:

LANGUAGE/DIALECT:

ATTORNEY INFORMATION

(IF LICENSED IN OKLAHOMA, FILL IN ADDRESS INFORMATION ONLY IF IT IS NEW SINCE THEY WERE REGISTERED WITH THE OKLAHOMA BAR ASSOCIATION.) (ATTACH ADDITIONAL COVER SHEETS FOR ADDITIONAL ATTORNEYS.)

LAST NAME: LANE II

FIRST NAME: C. WESLEY

MIDDLE NAME:

ADDRESS: 320 ROBERT S. KERR STE 505

CITY: OKLAHOMA CITY

BAR NUMBER: 5206

STATE: Oklahoma

TELEPHONE: (405) 713-1636

ZIP: 73102

E-MAIL:

OFFENSES

<u>COUNT(S)</u>	<u>OFFENSES CHARGED</u>	<u>O.S. CITATIONS</u>	<u>NCIC CODE</u>
1	MAKING FLSE DEC/OWN TO PAWN BROKER	590001512C	

DATE: 10-25-02 SIGNATURE OF (ASSISTANT) DISTRICT ATTORNEY

Printed: OCT-23-2002 08:50:54

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,
PLAINTIFF,

VS.

Coleman Earnest
DEFENDANT.

FILED IN THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLA.

CASE NO. CF

2001 - 1865

2002 5891

DEC 09 2003

JUDGE:

Hubbard

PATRICIA FRESELEY, COURT CLERK
Deputy
COURT MINUTE ORDER

ASST. D.A.: Geo. Burnett

DEF. ATTY: Joan L. Lopez

PAGE _____ OF _____

Δ needs up front money for
restitution; (Δ states he has already
pd, but no receipts)

Δ to testify in murder trial
1 set in March; 1 set in April

Case c. by agreement
to April 1, 2004 @ 9⁰⁰

ptc

J. Hubbard

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

APR 04 2005

RICK WARREN, COURT CLERK
Oklahoma County

Rick Warren

Geo. Burnett
ASST DISTRICT ATTORNEY
Defense Attorney

8 DAY OF Dec 20 03
Carol Hubbard
JUDGE



IN THE DISTRICT COURT IN AND FOR
OKLAHOMA COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
PLAINTIFF,)
VS) CF-01-1865
Coleman Earnest Givens)
DEFENDANT.)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JUL 23 2004

PATRICIA PRESLEY, COURT CLERK
by Deputy

MOTION TO DISMISS AND RECALL WARRANT

FILED: 3/21/2001

CHARGE: Obtaining Money or Property By Means of False or Bogus Check

DATE: 7/12/2004

Comes now C. Wesley Lane II the duly elected, qualified and acting District Attorney, District No. 7, Oklahoma County, State of Oklahoma, and moves the court to dismiss the above entitled cause and to recall the Arrest Warrant for the following reasons, to-wit:

Dismissed without Costs, Restitution Paid

C. WESLEY LANE II
District Attorney, District No. 7
Oklahoma County, Oklahoma

BY:
George F. Burnett
ASSISTANT DISTRICT ATTORNEY

ORDER DISMISSING CASE AND RECALLING WARRANT

Now on this ^{14th} day of July, 2004, the above entitled cause, coming on to be heard upon motion to dismiss said cause, and the Court being fully advised in the premises, finds that said motion should be sustained; and, it is therefore ORDERED, ADJUDGED, and DECREED that said cause be, and same is hereby dismissed for the reason as set forth in said motion.

IT IS FURTHER ORDERED BY THIS COURT that the Arrest Warrant issued in this case is hereby ordered cancelled, withdrawn and recalled and the Clerk of this Court is ordered and directed to serve a copy of this order on the Sheriff of Oklahoma County.

Donald L. Deason
JUDGE OF THE DISTRICT COURT

ld

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

APR 04 2025

RICK WARREN COURT CLERK
Oklahoma County

App. 700a



FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MISDEMEANOR FORM 1
Revised - 2/96

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

by Deputy

STATE OF OKLAHOMA

Plaintiff,

vs.

Coleman Owens

Defendant.

1 7446

Defendant's Social Security Number

Case Number CM-02-5891

Case Number CM-

Case Number CM-

Case Number CM-

Case Number CM-

JUDGMENT AND SENTENCE
and SUMMARY OF FACTS ON PLEA OF GUILTY
MISDEMEANOR

- Is the name just read to you your true name? YES or NO
- Is your age 45 years; and is your date of birth 59 ? YES or NO
- Is John L. Lopez your lawyer? YES or NO
- Are you taking any kind of medication?
 - If yes, what kind and when did you take it? YES or NO
 - If yes, does this medication affect your judgment now? YES or NO
- Have you been prescribed any medication that you should be taking, but that you are not taking?
 - If yes, what kind and when should you have taken it? YES or NO
 - If yes, does not taking this medication affect your judgment now? YES or NO
- Have you ever been seen by a doctor or confined in a hospital for mental illness? YES or NO
- If yes, explain:
- Counselor, do you have any reason to believe your client is not mentally competent to appreciate and understand the nature, purpose and consequences of this proceeding and to assist you in presenting any defense that may exist to any charge? (Lawyer initials) YES or NO
- Counselor, do you have any reason to believe your client was not mentally competent to appreciate and understand the nature, purpose and consequences of his or her acts at the time they were committed and out of which the charges in the Information arose? YES or NO
- Do you understand you are charged with: (for more than six charges use Plea of Guilty, Addendum 1)
 - Petit larceny
 -
 -
 -
 -
 -

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

APR 04 2025

RICK WARREN COURT CLERK
Oklahoma County

and have you and your lawyer had a copy of the charge(s)? (Defendant initials) YES or NO

- Do you understand that the range of punishment provided for the above crime(s) (is)(are) as follows:
 - Minimum of 0 to a maximum of 30 days (and)(or) a fine of \$ 6500 YES or NO
 - Minimum of to a maximum of (and)(or) a fine of \$ YES or NO
 - Minimum of to a maximum of (and)(or) a fine of \$ YES or NO
 - Minimum of to a maximum of (and)(or) a fine of \$ YES or NO
 - Minimum of to a maximum of (and)(or) a fine of \$ YES or NO
 - Minimum of to a maximum of (and)(or) a fine of \$ YES or NO

11. Do you understand that if you plead guilty, you can be sentenced to a term of imprisonment within the total of the above range(s) of punishment? YES ☒ or NO ☐
12. Do you understand that in addition to that punishment, a Victim Compensation Assessment will be imposed for each charge? YES ☒ or NO ☐
13. Do you understand that you are entitled to a speedy jury trial on the charge(s), to confront all witnesses who will testify against you at the trial(s), to remain silent, and to have your witnesses ordered to Court even at the expense of the State? YES ☒ or NO ☐
14. Do you understand that the law presumes you are not guilty of the crime(s) charged in the Information, or of any lesser-included offense(s)? YES ☒ or NO ☐
15. Do you understand that a plea of not guilty requires the State to prove each and every material allegation of the Information beyond a reasonable doubt to a jury, or to the Court if a jury is waived, and if the State can not do this, you will not be convicted? YES ☒ or NO ☐
16. Do you understand that you have the right to keep a plea of not guilty, and in doing so you keep all these rights? YES ☒ or NO ☐
17. Do you understand that by entering a plea of guilty you give up all these rights? YES ☒ or NO ☐
18. Have you talked over the charge(s) with your lawyer, do you understand your rights, and have you had your lawyer's advice in this matter? YES ☒ or NO ☐
19. Has your lawyer served you well? YES ☒ or NO ☐
20. Do you want a jury trial? YES ☐ or NO ☒
21. You stand now on a plea of not guilty. Should you change your plea to guilty, do you understand there has been a plea agreement? YES ☒ or NO ☐

What is your understanding of the plea agreement? _____

Diamin Case CF-01-1865

02-58911 years, deferred, costs, restitution
45 VCA

22. Do you want to enter your plea(s) now and be sentenced (now)(at a later date)? YES ☒ or NO ☐
23. What (is)(are) your plea(s) to the charge(s), (and to each of them)? (handwriting of Defendant only) Guilty
24. Do you plead guilty because you did the acts charged? YES ☒ or NO ☐
25. Do you plead guilty of your own free will and without any coercion or compulsion of any kind? YES ☐ or NO ☐
26. Have you been forced, abused, mistreated, threatened, or promised anything by anyone to have you enter your plea(s)? YES ☐ or NO ☐
27. Do you or your lawyer have anything more to say or do you know of any legal reason why you should not be sentenced now? (Defendant initials) YES ☐ or NO ☐
(Lawyer initials) YES ☐ or NO ☐

28. THE COURT FINDS:

- A. The Defendant is mentally competent to understand the nature, purpose and consequences of this proceeding, and further, the Defendant was mentally competent to appreciate and understand the acts he or she committed on or about the date alleged in the Information, and to realize the nature, purpose and consequences of those acts at the time they were committed.
- B. The plea agreement is fair and just to the parties and should be concurred in by the Court.
- C. The plea(s) of guilty (is)(are) knowingly and voluntarily entered.

DEFERRED SENTENCING

29. THE COURT ORDERS:

A. The plea(s) of guilty (is)(are) accepted by the Court.

B. The sentencing date is deferred until 7/7/05 at 9:00 a.m.

C. You are to pay the following to the Oklahoma County Court Clerk:

1. A fine in the amount of \$ on or before .
2. The court costs in the approximate amount of \$ on or before .
3. The Victim Compensation Assessment in the sum of \$ 45 on or before .
4. The court-appointed attorney fee amount of \$ 175 on or before .
5. A laboratory fee for the benefit of the in the amount of \$ on or before .

✓ D. You are to pay restitution according to the restitution schedule.

E. You are to pay \$ to the Department of Mental Health on or before .

SUSPENDED SENTENCE or SUSPENDED AS TO PART

29. THE COURT ORDERS:

A. The plea(s) of guilty (is)(are) accepted by the Court.

B. You are sentenced to confinement under the supervision of the Oklahoma County Sheriff for a term as follows:

- | | |
|------------------|------------------|
| a. <u> </u> | d. <u> </u> |
| b. <u> </u> | e. <u> </u> |
| c. <u> </u> | f. <u> </u> |

either, to be all suspended; (Defendant initials) ALL SUSPENDED YES or NO
or, to be suspended SUSPENDED AS TO PART YES or NO

except as to the first (months)(years) of the term(s) during which time you are to be held in the custody of the Oklahoma County Sheriff, the remainder of the sentence(s) to be suspended under the terms set forth in the Probation Guidelines found below in paragraph 30.

C. These sentences are to run (concurrently)(consecutively). NOT APPLICABLE YES or NO

D. You are to pay the following to the Oklahoma County Court Clerk:

1. A fine in the amount of \$ on or before .
2. The court costs in the approximate amount of \$ on or before .
3. The Victim Compensation Assessment in the sum of \$ on or before .
4. The court-appointed attorney fee amount of \$ on or before .
5. A laboratory fee for the benefit of the in the amount of \$ on or before .

E. You are to pay restitution according to the restitution schedule.

F. You are to pay \$ to the Department of Mental Health on or before .

TIME TO SERVE

29. THE COURT ORDERS:

A. The plea(s) of guilty (is)(are) accepted by the Court.

B. You are sentenced to confinement under the supervision of the Oklahoma County Sheriff for a term as follows:

- | | |
|------------------|------------------|
| a. <u> </u> | d. <u> </u> |
| b. <u> </u> | e. <u> </u> |
| c. <u> </u> | f. <u> </u> |

C. These sentences are to run (concurrently)(consecutively). NOT APPLICABLE YES or NO

D. You are to pay the following to the Oklahoma County Court Clerk:

1. A fine in the amount of \$ _____ on or before _____.
2. The court costs in the approximate amount of \$ _____ on or before _____.
3. The Victim Compensation Assessment in the sum of \$ _____ on or before _____.
4. The court-appointed attorney fee amount of \$ _____ on or before _____.
5. A laboratory fee for the benefit of the _____
in the amount of \$ _____ on or before _____.

E. You are to pay restitution according to the restitution schedule.

F. You are to pay \$ _____ to the Department of Mental Health on or before _____.

PROBATION GUIDELINES

30. The sentencing date of a deferred sentence may be accelerated and judgment and sentence imposed,
or, the imposition of a suspended sentence may be revoked and the entire judgment and sentence
enforced without suspension

- A. If you violate any city, state or federal law;
- B. If you illegally possess marijuana or any other narcotic drug;
- C. If you habitually associate with convicted felons;
- D. If you fail to pay any sums or amounts of money as ordered by this Court;
- E. If you fail to complete community service as agreed to in the supplemental summary of facts;
- F. If you fail to complete _____ on or before _____;
- G. Special conditions: _____
- H. Do you understand these Probation Guidelines? YES ☒ or NO _____

NOTICE OF RIGHT TO APPEAL

31. To appeal from a conviction on your plea of guilty you must file a written Application to Withdraw Plea of Guilty within ten (10) days from today. You must set forth in detail the grounds for your withdrawal and request an evidentiary hearing in the trial court. The trial court must hold a hearing and rule upon your Application within thirty (30) days from the date it is filed. If the trial court denies your Application you have ninety (90) days from the date of denial to file a Petition for Writ of Certiorari to the Court of Criminal Appeals to appeal the trial court's decision. If you are indigent, these appeals can be prosecuted at public expense, and you can have an attorney appointed to represent you.

Do you understand your right to appeal?

32. Have you fully understood the questions that have been asked?

33. Were you answers freely and voluntarily given?

DONE IN OPEN COURT this _____ day of _____, 20____. This document is to be filed in the case.

Assistant District Attorney

Judge of the District Court

Attorney for the Defendant

Court Reporter Present

Deputy Court Clerk

Having been previously sworn, I, the Defendant whose signature appears below, make the following statements under oath: 1) My attorney and I have read this Judgment and Sentence and Summary of Facts on Plea of Guilty. 2) It is a true statement of the questions asked and of my answers to them. 3) I approve this document and I do not desire to change it or add anything to it. 4) I understand that I may be prosecuted for perjury if I have made false statements to this Court.

Defendant