

1 stipulates it was a search conducted without a warrant,  
2 Judge.

3 *THE COURT:* All right. So you've got the  
4 burden then.

5 *MR. LESLIE:* That's correct, Judge.

6 *THE COURT:* Would you call your first?

7 *MR. NEWMAN:* They're also going to stipulate  
8 to standing.

9 *MR. LESLIE:* Yes, we also stipulate his client  
10 does have standing to contest the search.

11 *THE COURT:* Okay. Call your first witness.

12 *MR. LESLIE:* State calls Deputy Smidt.

13 *THE COURT:* Come on up, Deputy.

14 *(Witness sworn.)*

15 *THE COURT:* If you would, please state and  
16 spell your name for my court reporter.

17 *THE WITNESS:* Gary Smidt, G-A-R-Y, last name  
18 S-M-I-D-T.

19 *THE COURT:* And you may proceed, Mr. Leslie.

20 **GARY SMIDT,**

21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 Q. *(BY MR. LESLIE)* Deputy Smidt, how did you get  
24 involved with the case that's in issue here today?

25 A. We were dispatched to the location to retrieve

1 evidence.

2 Q. And was that location 10200 Old Bammel North  
3 Houston Road, Meridian Apartments, No. 803?

4 A. Yes, it was.

5 Q. And do you remember what day that was that you were  
6 dispatched to that location?

7 A. Saturday, November 17th, 2012.

8 Q. And approximately what time were you sent out  
9 there?

10 A. About 9:36 in the morning.

11 Q. And why were you sent out there again?

12 A. Actually to retrieve evidence.

13 Q. And when you were -- so this scene, it's an  
14 apartment; is that correct?

15 A. It is.

16 Q. How many bedrooms are in the apartment?

17 A. One bedroom.

18 Q. And how many bathrooms? Do you remember?

19 A. One bathroom.

20 Q. When you showed up, how many people were there at  
21 the apartment?

22 A. One female.

23 Q. And were you able to identify that female?

24 A. She was identified as Aspen Cooper.

25 Q. And how did you identify her that way?

1 A. By her driver's license.

2 Q. And when you looked at her driver's license, did it  
3 have an address listed on there?

4 A. I do not recall.

5 Q. When you showed up there, was the door to the  
6 apartment open?

7 A. It was.

8 Q. So, was Ms. Cooper inside the apartment?

9 A. She was.

10 Q. And did she let you in the apartment?

11 A. She did.

12 Q. Did you see any sign of any kind of forced entry to  
13 the apartment?

14 A. No.

15 Q. What did Ms. Cooper tell you was her -- did you ask  
16 her if she lived there?

17 A. I did.

18 Q. And what did she tell you?

19 A. That she had been living there with, evidently --  
20 excuse me -- Derion. It --

21 Q. With the defendant?

22 A. With the defendant. Excuse me for his name. She  
23 had been living there for several months and she was packing  
24 up her clothes, moving out.

25 Q. And did you see any kind of evidence that she was

1 packing up her stuff and moving out?

2 A. There were, like, a couple of trash bags with  
3 clothes in them, dirty laundry basket with clothes in it  
4 that she had in the living room close to the front door.

5 Q. And why did she tell you that she had called the  
6 deputies there to the apartment that day?

7 A. Because she had found a gun in her closet.

8 Q. And did she take you and show you that gun?

9 A. She did.

10 Q. And where was the closet that -- or where was the  
11 gun located? I apologize.

12 A. In the closet, in the -- on the floor, almost in a  
13 basket of clothes.

14 Q. And the closet was in the bedroom?

15 A. In the bedroom.

16 Q. And you said there was only one bedroom in the  
17 apartment, right?

18 A. Yes.

19 Q. Was there anyone else in the apartment?

20 A. No.

21 Q. Did anyone tell you you could not go into that  
22 apartment?

23 A. No.

24 Q. Did anyone tell you that you couldn't go in the  
25 bedroom?

1 A. No.

2 Q. Did anyone tell you that you couldn't look in the  
3 closet?

4 A. No.

5 Q. Did anyone ever stop you from looking in the  
6 basket?

7 A. No.

8 Q. And did it still look like she had -- still had  
9 clothes there in the apartment besides the ones she had  
10 packed up?

11 A. I would say yes.

12 Q. And so you said the gun was there in the basket; is  
13 that correct?

14 A. Correct.

15 Q. Did you conduct any -- excuse me. What did you do  
16 once you saw the gun?

17 A. Actually photographed it and then recovered it,  
18 picked the gun up, you know, made sure that it was, you  
19 know, safe, unloaded.

20 Q. Did you ever contact your superiors to find out if  
21 you could get a warrant before you went into that apartment?

22 A. I did not contact them as far as asking for a  
23 warrant. I assumed that permission was granted,  
24 authorization was received because they're the ones that  
25 actually sent us out there to retrieve the weapon.

1 Q. Did you get a consent -- a signed consent to search  
2 form from that female?

3 A. I do not recall. It's possible, yes.

4 Q. Did anyone else -- how many officers were on the  
5 scene?

6 A. Myself and a -- one other officer.

7 Q. What was that other officer's name?

8 A. Ricky Coughran.

9 MR. LESLIE: Permission to approach the  
10 witness, Your Honor?

11 THE COURT: Sure.

12 Q. (BY MR. LESLIE) Showing you what I've marked for  
13 purposes of this hearing as State's Exhibit No. 1. Do you  
14 recognize this?

15 A. I do.

16 Q. And what is this?

17 A. This is a consent to search form.

18 Q. And is that your signature on the consent to search  
19 form?

20 A. It is.

21 Q. Were you there when this consent to search form was  
22 signed?

23 A. Yes, I was.

24 Q. And who is it that signed that consent to search  
25 form?

1 A. Aspen Cooper.

2 MR. LESLIE: Tendering to opposing counsel and  
3 State offers State's Exhibit No. 1.

4 MR. NEWMAN: No objection.

5 THE COURT: State's Exhibit 1 will be  
6 admitted.

7 Q. (BY MR. LESLIE) Did anyone else show up on the  
8 scene while you were there?

9 A. I believe one other female showed up just as we  
10 were about to leave.

11 Q. And do you know who that female was?

12 A. No, sir, I don't.

13 Q. Did it -- did she give you any indication that she  
14 lived there?

15 A. No.

16 Q. Did she tell you that you weren't allowed to be  
17 there?

18 A. No.

19 Q. Did she do anything to limit the scope of your  
20 search?

21 A. No.

22 Q. Speaking of the scope of your search, did you  
23 conduct any search other than retrieving the gun?

24 A. No.

25 MR. LESLIE: Pass the witness, Your Honor.

1                   THE COURT: Mr. Newman.

2                   MR. NEWMAN: Thank you, Your Honor.

3                   **CROSS-EXAMINATION**

4           Q.    (BY MR. NEWMAN) Is it deputy or sergeant?

5           A.    Sergeant now. Deputy at the time.

6           Q.    I was going to say, the stripes usually --

7           A.    Yeah.

8           Q.    Sergeant, congratulations on making sergeant, I  
9 guess, then.

10          A.    Thank you.

11          Q.    I spoke to you briefly just a few minutes ago. You  
12 have a copy of your supplement on this, correct?

13          A.    I do.

14          Q.    Will you refresh your memory and inform the Court  
15 what term you used to describe Ms. Cooper in relation to the  
16 suspect?

17          A.    Now ex-girlfriend.

18          Q.    Ex-girlfriend. Now, don't worry, I'm not getting  
19 too personal with this, but do you have any ex-girlfriends  
20 in your life? Ever?

21          A.    Not for some time.

22          Q.    Okay. Do those ex-girlfriends have consent to go  
23 into your house or give other people consent to search your  
24 house?

25          A.    No.



1 Q. You would agree with me that the term, by putting  
2 an "ex" in front of something, generally means that any type  
3 of privileges that might have previously existed no longer  
4 do, correct?

5 A. Yes.

6 Q. Now, this area of town, it's the north district  
7 patrol, correct?

8 A. It is.

9 Q. And would you describe that as being a high-crime  
10 or low-crime area?

11 A. High crime.

12 Q. Are there a -- is there a lot of violence?

13 A. Yes.

14 Q. Is there a lot of burglaries?

15 A. Yes.

16 Q. So, it's not uncommon for people to unlawfully go  
17 into other people's homes or apartments, correct, in that  
18 part of town?

19 A. Correct.

20 Q. And when you showed up and you talked to the person  
21 standing at Apartment No. 803, you -- the only verification  
22 that you had to check to see if she had a right to be there  
23 was her word, correct?

24 A. Correct.

25 Q. I believe Mr. Leslie pointed out that you looked at

1 her driver's license; is that correct?

2 A. Yes.

3 Q. Okay. And what was the address on her driver's  
4 license?

5 A. I do not recall.

6 Q. Do you have your supplement with you?

7 A. Yes.

8 Q. Do you mind checking it?

9 A. And it doesn't say her --

10 Q. Is that --

11 A. Her --

12 Q. For her does it list an address of 9603 White Post  
13 in the Reportee 1 column?

14 A. Oh, yes, yeah, it does.

15 Q. And that was not the address that you were  
16 searching, was it?

17 A. No.

18 Q. So, basically you have a person standing in an  
19 apartment that's open, looks like it's being ransacked, does  
20 it not?

21 A. Yes.

22 Q. There's a bunch of piling up of items inside of it,  
23 correct?

24 A. Correct.

25 Q. And did you inquire of the lady, of Ms. Cooper, as

1 to whether or not she had permission to share that?

2 A. I did.

3 Q. To share access?

4 A. Yes.

5 Q. And despite the fact that she offered herself up as  
6 the ex-girlfriend, she told you that she did?

7 A. She did. And at the -- can I speak or --

8 Q. Please.

9 A. Yeah. I assumed she was the ex-girlfriend as of  
10 right then, whenever -- just because what had happened, you  
11 know.

12 Q. She was packing up?

13 A. She was packing up.

14 Q. And --

15 A. She was the current girlfriend, Hey, now I'm the  
16 ex-girlfriend. He's been arrested; I'm out of here.

17 Q. And I know it's going way back in your memory but  
18 when you would break off a relationship with some person,  
19 what type of grace period would you allow them to still have  
20 access to your home?

21 MR. LESLIE: I'm going to object to relevance,  
22 Judge.

23 THE COURT: Sustained.

24 A. Yeah.

25 Q. (BY MR. NEWMAN) The location that you were looking

1 at, that was -- it was an apartment complex known as the  
2 Meridian Apartments, correct?

3 A. Yes.

4 Q. And what time was it that you went by there?

5 A. 9:54 in the morning.

6 Q. Okay. Do you recall what day it was?

7 A. Saturday, November 17th.

8 Q. Now, would you describe that as being a large or a  
9 small apartment complex?

10 A. Medium size.

11 Q. Does it have a front office?

12 A. It does.

13 Q. Did you make any attempts to contact the front  
14 office to see whether or not Ms. Cooper was, in fact, the  
15 leaseholder or someone who had written permission to be on  
16 that property?

17 A. No.

18 Q. You certainly could have done that, could you not?

19 A. Probably not at 10:00 o'clock in the morning.

20 Q. On a Saturday?

21 A. On a Saturday.

22 Q. But you made no attempt?

23 A. No.

24 Q. You made no attempt to get in touch with a lady  
25 named Esmeralda Jaramillo who worked there as the apartment

1 complex manager?

2 A. No.

3 Q. As you arrived on the scene that day, what was your  
4 knowledge of the case that it was involved in?

5 A. Almost none.

6 Q. Okay. Had you not worked it the night before?

7 A. No.

8 Q. Were you aware that it was a murder case?

9 A. I -- yeah, when I got there.

10 Q. Okay.

11 A. Yeah.

12 Q. Who made you aware of that?

13 A. My sergeant, I believe.

14 Q. Okay. And would that be Sergeant Rivera?

15 A. No, that would be Martinez.

16 Q. Your patrol sergeant?

17 A. Uh-huh.

18 Q. At some point though you do indicate that you made  
19 contact with -- did you make contact with Sergeant Rivera or  
20 did Martinez do that for you?

21 A. Martinez did.

22 Q. And when you contacted Sergeant Martinez, was that  
23 before or after going into the apartment?

24 A. Before.

25 Q. So, you had some hesitancy about just going in at

1 first?

2 A. No.

3 Q. Okay. Then why did you call him?

4 A. Because my question actually to him was did they  
5 want us to actually recover the weapon or, you know -- first  
6 of all, was there a weapon? And there was. Did they want  
7 us to recover it or did they want CSU to actually come out  
8 and recover it? Since it was, you know, crucial evidence, a  
9 lot of times they would have had CSU, crime scene unit, come  
10 out and actually get the weapon.

11 Q. So, at the point that you contacted him, had you  
12 made entry and actually seen the weapon?

13 A. Yes.

14 Q. Okay. And then you exited out?

15 A. No, just called him on the phone.

16 Q. Okay.

17 A. Just standing in the apartment.

18 Q. Were you made aware of the fact at the time that  
19 the leaseholder of Apartment No. 803 during -- well, was  
20 Derion Caldwell, number one. Were you made aware who the  
21 apartment belonged to?

22 A. Yeah.

23 Q. Okay. And were you also made aware of the fact  
24 that Mr. Caldwell was currently in custody, I believe, at  
25 Lockwood?

1 A. At least in custody.

2 Q. Okay. So, there wasn't any type of exigent  
3 circumstances or concerns that Mr. Caldwell was going to  
4 return and remove evidence or anything like that?

5 A. I had no concerns from that.

6 Q. Okay. So, basically the only -- you don't have a  
7 consent to search from Mr. Caldwell himself.

8 A. Correct.

9 Q. The only determination that you have that  
10 Ms. Cooper had was her word, correct?

11 A. Correct.

12 Q. And you chose to believe her, even though it very  
13 easily, looking at those circumstances, could have been  
14 someone burglarizing that apartment.

15 A. I guess that it is possible but I've never had a  
16 burglar call me and try to report anything, so.

17 Q. Aside from that fact, though, you have her picking  
18 up items, bundling them up, and moving out.

19 A. Correct.

20 Q. You would clearly agree with me that a burglar  
21 could not give you consent to search someone else's  
22 apartment?

23 A. I would agree with you on that.

24 Q. And if someone were to give consent, that person  
25 would have to have the authority to do so.

1           A.    Correct.

2           Q.    You mentioned that she was loading up articles of  
3 clothing.  What specifically did you see?

4           A.    That I recall, she had, like, trash bag of clothes  
5 that she was gathering together and setting in the living  
6 room.

7           Q.    Do you have any idea of whether or not she was  
8 exclusively taking her own items?

9           A.    No.

10          Q.    If she was taking items that did not belong to her,  
11 that would certainly be a crime, correct?

12          A.    No.

13          Q.    That would not be a crime for her to take items  
14 that didn't belong to her without permission?

15          A.    If she had standing there in the apartment, it kind  
16 of becomes a civil matter, who owns what.  I mean, I have  
17 no -- I have no reason to doubt -- I have no one complaining  
18 if -- does that make sense to you?  Yeah.

19          Q.    Well, and at the end of the day, your determination  
20 of her standing was just because she said she had it,  
21 correct?

22          A.    Correct.

23          Q.    And even her driver's license indicated she lived  
24 somewhere else?

25          A.    Correct.



1 Q. And you made no further inquiries as to whether or  
2 not she had actual standing?

3 A. Correct.

4 Q. Other than her own word as she's cleaning out an  
5 apartment?

6 A. Correct.

7 MR. NEWMAN: May I have just a moment, Your  
8 Honor?

9 THE COURT: (Nods head affirmatively.)

10 Q. (BY MR. NEWMAN) Did the fact she described herself  
11 as an ex-girlfriend give you any pause or hesitation in  
12 wanting to do some further inquiry as to whether or not she  
13 had the right to be there?

14 A. No.

15 MR. NEWMAN: I'll pass the witness, Your  
16 Honor.

17 THE COURT: Mr. Leslie?

18 MR. LESLIE: I have no further questions,  
19 Judge.

20 THE COURT: I just want to make sure my notes  
21 are clear because I don't want it to be confusing. The call  
22 about the gun, to send somebody out there, came from Cooper?

23 THE WITNESS: Well, the call actually came  
24 from the detective, I believe; Sergeant Rivera contacted  
25 patrol to go there. She directly contacted Sergeant Rivera.

1                   THE COURT: That's what I meant.

2                   THE WITNESS: Yes.

3                   THE COURT: That's -- I want to make sure.  
4                   So, she calls and says, I found a gun in the apartment as  
5                   I'm getting ready to -- as I'm moving out.

6                   THE WITNESS: I'm assuming -- I have no idea.

7                   THE COURT: Of what the actual conversation  
8                   was.

9                   THE WITNESS: I'm assuming that. Yeah,  
10                  because, you know, she directly contacted the detective.  
11                  That part, I was told.

12                  THE COURT: And when you got there, she told  
13                  you that she found the gun in the apartment?

14                  THE WITNESS: Correct.

15                  THE COURT: As she was cleaning out?

16                  THE WITNESS: Correct.

17                  THE COURT: Are my notes right about that?

18                  THE WITNESS: Yes.

19                  THE COURT: Okay. Okay. Sorry. I just want  
20                  to make sure my notes were clear.

21                  Anybody have questions based on my questions?

22                  MR. NEWMAN: No, Your Honor.

23                  MR. LESLIE: No, Your Honor.

24                  THE COURT: Okay. Anything further with this  
25                  witness?

1                   MR. LESLIE: Nothing from the State.

2                   MR. NEWMAN: Nothing from the defense, Your  
3 Honor.

4                   THE COURT: Okay. Can we let him go then? Or  
5 you want to keep him around? Does he have anything to do  
6 with anything else?

7                   MR. LESLIE: No, Judge.

8                   MR. NEWMAN: I don't believe so, Your Honor.

9                   THE COURT: Okay. So, do you want -- can we  
10 let him go? Can we keep him around? Doesn't matter. I  
11 just want to know what you want me to do.

12                   MR. NEWMAN: Fine by me.

13                   MR. LESLIE: I'm fine with letting him go.

14                   THE COURT: Okay. Thanks, Deputy -- Sergeant.  
15 You're free to go. Just don't discuss your testimony.

16                   THE WITNESS: Correct.

17                   THE COURT: Because I know this case is set  
18 for trial in a couple weeks, so just make sure you don't do  
19 any of that discussion between now and then.

20                   THE WITNESS: Yes, ma'am.

21                   THE COURT: Okay. Call your next witness  
22 then.

23                   MR. LESLIE: We have no additional witnesses  
24 on this issue, at this time, Judge.

25                   MR. NEWMAN: (Sotto voce) State rests.

1                   MR. LESLIE: I don't want to rest, just to  
2 make sure --

3                   THE COURT: I thought we were doing it --

4                   MR. NEWMAN: Well, we were, Judge. I just  
5 thought we were doing them sequentially. I do have a  
6 witness in regards to the search issue.

7                   THE COURT: Okay. All right. That's what I  
8 was just wondering. I didn't know if the State was going to  
9 put on all their stuff and then you were going to put on all  
10 your stuff. Nobody told me, so I'm just --

11                  MR. LESLIE: If we are doing it sequentially,  
12 the State rests on this motion to suppress.

13                  MR. NEWMAN: And I --

14                  THE COURT: Are we doing it sequentially?

15                  MR. NEWMAN: I think it would probably be  
16 easier.

17                  THE COURT: Okay. Cool.

18                  MR. NEWMAN: It will keep the record a little  
19 more clear.

20                  THE COURT: That's fine.

21                  MR. NEWMAN: Give Carrie more business, you  
22 know, she can have two separate hearings.

23                  THE COURT: Right. Okay. So do you have any  
24 witnesses you wanted to --

25                  MR. NEWMAN: Your Honor, I do. I have