1 settled in, if you would state and spell your name for
2 my court reporter.
3 THE WITNESS: Sergeant Gary Smidt,
4 G-a-r-y, S-m-i-d-t.
5 THE COURT: You may proceed.
6 MR. LESLIE: Thank you, Judge.
7 **GARY SMIDT,**
8 having been previously duly sworn, testified as follows:
9 **DIRECT EXAMINATION**
10 Q (BY MR. LESLIE) Deputy, where do you work?
11 A Harris County Sheriff's Department, District
12 2, nights.
13 Q And I apologize, you're sergeant now, correct?
14 A It is now.
15 Q How long have you worked for the Sheriff's
16 Office?
17 A Sixteen years.
18 Q And you are a sergeant now?
19 A I am now.
20 Q You weren't in November of 2012?
21 A No, sir. I was a field training officer.
22 Q So as a field training officer, are you
23 assigned to a regular patrol job?
24 A I am. At the time I was assigned to District
25 1, which is northwest Harris County.

Q And what were your day-to-day duties?
A Answering calls for service and training rookie deputies.
Q So on November 17th of 2012, did you have a partner?
A I did.
Q And was that a trainee?
A It was.
Q What was his name?
A Ricky Coughran.
Q And the two of you patrol in uniform?
A We do.
Q In a marked vehicle?
A Correct.
Q And how did you get involved with this case that we're here about today?
A We were dispatched to an address to pick up a gun.
Q And was that on November 17th, 2012?
A Yes, sir.
Q Do you remember approximately what time that was?
A Can I look at my notes?
Q Yes.
A We were dispatched about 9:36 in the morning.

Q And what was the address that you were dispatched to?

A 14180 Tomball Parkway. I'm sorry. We were dispatched to 10200 Old Bammel North Houston.

Q Were you dispatched to a specific apartment?

A Apartment 803.

Q And is that a ground-level apartment or second-floor apartment?

A It's a first-floor apartment.

Q Do you remember how many bedrooms were in the apartment?

A One bedroom.

Q And what happened once you showed up there at the scene?

A We met a reportee.

Q And did she identify herself to you?

A Aspen Cooper.

Q And what relation did she tell you that she had to this case?

A That she was the girlfriend or ex-girlfriend of the defendant.

Q And why did she call you out to that apartment that day?

A She was moving her things out of the apartment and she found a gun.

Q What did you do once she told you that?
A We took some photographs of the apartment where the gun was located and then recovered the gun.
Q You didn't call any detectives or anything like that?
A We were actually sent out by homicide. So we were notified by a homicide sergeant to recover the gun or sent out there in reference to the gun. We did, through my sergeant at the time, contact him to see if he wanted a crime scene unit or us and he advised us to recover the gun.
Q When you recover a gun, how do you make sure that it is marked and identified so that you can be sure it's the same gun that's in court?
A It's packaged up in a sealed plastic bag, labeled with a property tag and then submitted.
Q Do you put any kind of labels on the gun itself?
A No.
Q What was the condition of the apartment when you approached it? Was the door open?
A The door was open.
Q Was Ms. Cooper inside the apartment or outside the apartment?
A Inside.

Q And what was the general condition of the interior of the apartment?

A It seemed to be in disarray.

Q Showing you what has previously been admitted as State's Exhibit No. 51, is that the apartment that you entered, the one on the right?

A It is.

Q And at the time did you notice that the door was not on its hinges?

A Looking at the photograph now, yes, sir.

Q But at the time did you notice that?

A I don't believe I paid attention to it.

Q Did Ms. Cooper indicate to you that she lived at that apartment?

A She did.

Q Did you see belongings or items in the apartment that would indicate that a female lived there?

A Female clothing.

Q And did she seem familiar and comfortable with the apartment as though she did live there?

A She did.

Q And did she tell you that she lived there?

A She did.

Q Did you get a consent to search form from her?

A I believe I did, yes.

Q Did you explain to her -- when you give somebody a consent to search form --

MR. NEWMAN: Your Honor, I'm going to object to the leading.

THE COURT: Please don't lead your witness.

Q (BY MR. LESLIE) When you give someone a consent to search form, what do you explain to them along with that?

A Well, that they have authorization to actually give the consent. That they live there, that they're not a visitor to the apartment. That they actually reside there.

Q Did she indicate to you that she had a key?

A I didn't ask.

Q Did you ask her to identify herself by using a driver's license or some other form of identification?

A She did identify herself with a driver's license.

Q And do you remember, was this address, Apartment 803, was that listed on her driver's license?

A It was not.

Q Do you remember what address was listed on her driver's license?

A Her address listed on her license was 9603

Whitepost.

Q Did you ask her about that, the fact there was a different address listed on her driver's license than the one of the apartment you were at?

A I did not.

Q Did you go to the apartment leasing office or anything to verify if she was a listed tenant in that apartment?

A No, sir.

Q Did she sign the consent to search form?

A She did.

Q And did you actually search the apartment?

A No.

Q What did you do after she signed the consent to search form?

A We recovered the gun.

Q Where was the gun located?

A In a closet in the bedroom.

Q Was it just sitting in the closet?

A It was like in a hamper of clothes.

Q And were there clothes on top of it or anything like that?

A Not when we got there. It was visible.

Q Showing you State's Exhibit No. 58.

A Yes.

Q Did you take this photograph?
A Yes.
Q And is that an accurate depiction of the gun and the way you found it?
A It is.
MR. LESLIE: Could I have the bailiff clear this?
THE COURT: Please.
THE BAILIFF: It's clear, Judge.
THE COURT: Thank you.
MR. LESLIE: Permission to approach the witness, Judge.
THE COURT: You may.
Q (BY MR. LESLIE) Showing you now what has been marked as 147, 139 and 149. Do you recognize these items?
A Yes, I do.
Q How do you recognize them?
A It's the gun recovered from the hamper in the closet.
Q And how do you know that this is the same gun that you recovered from the closet?
A Because this is the way it was packaged, that we packaged it and submitted it to the laboratory.
Q And did you put any kind of unique markers or

identifying characteristics on the bag to show that this is the same gun?

A I'm trying to see. This has been repackaged. The date here -- well, I want to say, no, I can't. When we seal the bag, we put our initials, and this has been repackaged.

Q In your report did you make any kind of annotation of the serial number of the firearm that you recovered?

A In the supplement report, no.

Q Did anybody make any kind of -- in the report you did not annotate the serial numbers on the firearm?

A In the report, no.

Q Anywhere in your notes did you annotate the serial number of the firearm you recovered?

A No, there's not.

Q When you say that the bag has been opened and resealed, how can you tell that?

A Because when we seal the bag, we put our initials on the seal once it's been placed in the bag.

Q And why would a bag, once it's been sealed and initialed by you who collected it, why would it ever be opened by someone else?

A Because it's sent to the firearms lab for testing, ballistic testing.

1 Q And how do they maintain the chain of custody
2 to show that once they're done processing it, that it's
3 the same firearm that you collected and it's the same
4 firearm that's here in court?
5 MR. NEWMAN: Objection to speculation,
6 Your Honor.
7 THE COURT: Sustained.
8 A Yeah, I can't speak for the firearms lab.
9 MR. NEWMAN: I would object to
10 speculation.
11 THE COURT: And I sustained that
12 objection.
13 MR. LESLIE: At this time State would
14 offer State's Exhibits 139 and 149, the handgun and the
15 clothing.
16 MR. NEWMAN: Your Honor, the defense
17 would object for a multitude of reasons. Number one --
18 THE COURT: Your objection is sustained.
19 MR. LESLIE: Pass the witness, Your
20 Honor.
21 MR. NEWMAN: Your Honor, defense would
22 actually ask for an instruction to the jury that they
23 disregard any evidence that they viewed, since it's not
24 placed into evidence, the gun and any testimony
25 regarding it, since it has not been admitted into

1 evidence.
2 THE COURT: And that will be denied.
3 **CROSS-EXAMINATION**
4 Q (BY MR. NEWMAN) I did want to talk to you
5 briefly, Deputy Smidt. You were dispatched the
6 following morning at 9:36, correct?
7 A Correct.
8 Q And the person that you met there was Aspen
9 Cooper?
10 A Correct.
11 Q And she identified herself to you as being the
12 apartment owner's ex-girlfriend, correct?
13 A Correct.
14 Q And that's how you documented it in your
15 offense report?
16 A Correct.
17 Q And you would agree with me that when she
18 indicated that she was his ex-girlfriend, she was
19 telling you she was no longer his girlfriend, correct?
20 A Yes.
21 Q And that she was in no relationship with him
22 anymore?
23 A Well, can I answer that or --
24 Q Well, she said she was his ex-girlfriend,
25 correct?

A Sure, but I took it as to mean as of now, you know.

Q Okay. But you in this situation, when you learn that there is something that is tangible to or relevant to an investigation inside a person's home, you have actually the necessity to get a warrant or get a consent to search from an authorized person to go into that home, correct?

A Correct.

Q And you had the option of getting a warrant, getting a search warrant, and going into that home, correct?

A Correct.

Q You made some phone calls before seeing if that was necessary, correct?

A Well, I didn't make phone calls to see if a warrant was necessary.

Q Okay. You just went in? You got a consent to search from Aspen Cooper?

A Correct.

Q Now, Aspen Cooper was there and identifying herself as his ex-girlfriend, correct?

A Correct.

Q Now, what type of method -- let me rephrase that. You didn't take any additional steps to confirm

that she had the authority to be in that home, did you?
A No.
Q You looked at her driver's license and it had a completely different address, didn't it?
A Correct.
Q It's a Saturday morning at this point, correct?
A Yeah, if you say so, I'll agree with you.
Q Okay. Saturday, November 17th.
A Correct.
Q Now you're making me doubt it.
A It is.
Q You would agree with me that that apartment complex does have business open hours on both Saturday and on Sunday, the front office?
A I'm unaware. I don't doubt it. I'm just unaware.
Q Did you make any attempt to see at the front office whether or not Aspen Cooper was an authorized person on that lease?
A No.
Q That is something you could have done, correct?
A That is possible.
Q But you did not?

A No.

Q And you previously testified, have you not, that there were no signs of forced entry into that home, into that apartment, correct?

A I previously testified that I didn't recall or was not sure.

Q You said there was no signs of forced entry?

A I don't recall.

MR. LESLIE: I object. He's mischaracterizing the evidence. I believe the officer testified he didn't notice any signs of forced entry.

THE COURT: Sustained.

Q (BY MR. NEWMAN) You would agree with me that a door off its hinges can be a sign of forced entry?

A I agree.

Q And other than Aspen Cooper telling you that she was the ex-girlfriend of the apartment owner, you had no other basis of belief for that other than you saw women's clothes?

A Correct.

Q You would agree with me that inside that apartment it appeared to have been ransacked?

A You could say that, yeah.

Q And you have no idea whether or not that that was done by Ms. Cooper or anybody else who had been in

that apartment, do you?

A I have no idea.

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

THE COURT: Mr. Leslie?

MR. LESLIE: Briefly, Judge.

REDIRECT EXAMINATION

Q (BY MR. LESLIE) Have you worked a lot of burglaries?

A Yes.

Q Have you ever seen a burglary where they stacked the beds up as though they were about to move?

MR. NEWMAN: Objection to relevance and leading.

THE COURT: Please don't lead your witness.

MR. LESLIE: Judge, I don't think that's leading. It's not a question that suggests an answer. It's a yes-or-no question.

THE COURT: All right. Go ahead.

Q (BY MR. LESLIE) Have you ever seen a burglary scene where people stack their beds up like that?

A No.

Q Have you ever had a burglar call you in the middle of the burglary to report found evidence?

A No.

MR. LESLIE: Pass the witness, Your Honor.

THE COURT: Mr. Newman?

MR. NEWMAN: Nothing further, Your Honor.

THE COURT: May this witness be excused?

MR. NEWMAN: Yes.

MR. LESLIE: Yes, Your Honor.

THE COURT: Thank you, Deputy. You are free to go.

Call your next witness, please.

MR. LESLIE: Judge, the State calls Porsha Dirden.

Your Honor, may we have a short break? The witness was here. I'm not sure where she stepped out to.

THE COURT: Maybe Steve can find her.

(Brief pause)

THE COURT: Come right up here, please, ma'am. Did you take the oath yesterday?

THE WITNESS: Yes, ma'am.

THE COURT: Sorry. There were a ton of people out in the audience and I just couldn't see.

Have a seat. Would you please state and spell your name for my court reporter?

THE WITNESS: Porsha Dirden. First name, P-o-r-s-h-a; last name, D-i-r-d-e-n.

THE COURT: And you may proceed.

MR. LESLIE: Thank you, Judge.

PORSHA DIRDEN,

having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

Q (BY MR. LESLIE) Ms. Dirden, where do you work?

A Currently?

Q Currently.

A I do deliveries. I work at Fast Track Transportation.

Q How old are you?

A Twenty-two.

Q And where were you working in November of last year?

A I was working at Security Nationwide.

Q What is that?

A A security company.

Q And what was your job with them?

A I was a commissioned officer. I would basically go to my post and walk around, make sure everything was okay, no broken windows, broken lights. Make sure people were in the houses after curfew.

Q And you said that you were a licensed