

1 (Jury seated)

2 THE COURT: Mr. Leslie, please call your
3 next witness.

4 MR. LESLIE: State would recall Deputy
5 Smidt back to the stand.

6 THE COURT: Come on back, Sergeant. You
7 know the drill.

8 And you may proceed.

9 MR. LESLIE: Thank you, Judge.

10 **GARY SMIDT,**
11 having been previously duly sworn, was recalled to
12 testify as follows:

13 **DIRECT EXAMINATION**

14 Q (BY MR. LESLIE) Sergeant, I just want to go
15 back to November 17th of 2012 just to refresh all our
16 memories. You were the officer who went to Aspen Cooper
17 and the defendant's apartment on that day, correct?

18 A Correct.

19 Q And remind us why you were there.

20 A To recover a gun.

21 Q And when you went into that apartment, did you
22 document the scene?

23 A With photographs.

24 Q And did you actually document -- where was the
25 gun recovered from?

1 A In a plastic hamper inside a closet.

2 Q And did you take any pictures of the closet
3 and the hamper and the gun before you recovered it?

4 A I did.

5 Q Did you take any pictures of the gun to
6 document it as you recovered it right there at the
7 scene?

8 A I did.

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

11 THE COURT: You may.

12 Q (BY MR. LESLIE) Showing you what has been
13 marked as State's Exhibits 59, 60, 61, 62 and 63, do you
14 recognize these?

15 A Yes, sir. These are photographs of the gun.

16 Q And are these the photographs that you took?

17 A They are.

18 Q And are these -- were these taken on the scene
19 by you on the day that you recovered the gun?

20 A They were.

21 Q And are these a fair and accurate depiction of
22 the gun as you recovered it?

23 A Yes, sir, they are.

24 MR. LESLIE: At this time State tenders
25 to opposing counsel and offers State's Exhibits 59

1 through 63.

2 MR. NEWMAN: Your Honor, I would enter
3 the same objection as we had in an earlier proceeding,
4 that these are taken as a result of an illegal entry and
5 an illegal search.

6 THE COURT: And those objections are
7 overruled. 59 through 63 will be admitted.

8 Q (BY MR. LESLIE) I am showing you State's
9 Exhibit 61. Does that photograph indicate the serial
10 number of the weapon that you recovered on that day?

11 A It does.

12 MR. LESLIE: Deputy, can you clear this?

13 THE BAILIFF: It's clear.

14 Q (BY MR. LESLIE) Showing you now what has been
15 previously marked as State's Exhibit No. 139, if you
16 could take a look at that. Can you tell us, does the
17 serial number on this gun match the serial number on the
18 gun in the photograph that you recovered on that day?

19 A They do.

20 Q When you collected this, did you collect it
21 with the clip?

22 A I did. There was a clip inside.

23 Q Did you clear the weapon?

24 A I didn't. My partner did.

25 MR. LESLIE: Judge, at this time the

1 State would offer State's Exhibits 139 and 140.

2 MR. NEWMAN: Again, Your Honor, defense
3 would object for the reasons from the previous hearing
4 and the predicate has not been established and it has
5 also not been affirmatively linked as being the one that
6 he recovered from the apartment, and we do maintain that
7 was a result of an illegal search as well.

8 THE COURT: Okay. Tell me what your
9 predicate objection is. Your other two objections are
10 overruled, but tell me what is lacking.

11 MR. NEWMAN: He has not established what
12 the serial number was, Your Honor.

13 THE COURT: Mr. Leslie, you want to
14 respond?

15 MR. LESLIE: I apologize, Judge. What
16 was the predicate objection?

17 MR. NEWMAN: That the serial number was
18 not fully identified. And also the chain of custody,
19 Your Honor.

20 THE COURT: Go ahead.

21 MR. LESLIE: Permission to approach the
22 witness again, Judge.

23 THE COURT: You may.

24 Q (BY MR. LESLIE) Can you go ahead and read the
25 serial number from the photograph?

1 A The serial number is EA4726710399.

2 Q And can you read the serial number on State's
3 Exhibit No. 139?

4 A It's EA4726710399.

5 Q And other than these markings up at the top
6 and the addition of the State's Exhibit sticker, has
7 this been tampered with or changed in any way from the
8 time that you first saw it?

9 A No, sir.

10 MR. LESLIE: Judge, at this time the
11 State would reoffer 139 and 140.

12 MR. NEWMAN: Again, I would renew my same
13 objection as being the result of an illegal search.

14 THE COURT: That objection is overruled.
15 They will be admitted.

16 Q (BY MR. LESLIE) Sergeant, normally when you
17 come upon a crime scene and you come across a piece of
18 evidence, what do you do with it?

19 A Such as it's documented, photographs are
20 sometimes taken and it's logged into a report.

21 Q Do you normally put it in some sort of
22 evidence bag?

23 A Normally, yeah. In this case normally the
24 procedure would be for me to bag the property up and
25 submit it to the firearms lab.

1 Q And in your patrol car you have specially
2 designated evidence bags, correct?

3 A We do, yeah.

4 Q And when you put evidence in those bags, do
5 you normally seal it?

6 A Normally.

7 Q And do you put any sort of identifying markers
8 on the top of that evidence bag to show that it has not
9 been tampered with and that you were the officer who
10 collected it?

11 A Correct.

12 Q Did you do that in this case?

13 A It wasn't sealed in a bag, but it was secured
14 in an evidence locker.

15 Q Why did you do it that way instead of the
16 normal procedure?

17 A Instructions from Sergeant Rivera that he
18 would have crime scene pick up the gun and submit it
19 into the firearms lab.

20 Q So after you collected the gun, you took it
21 directly to an evidence locker?

22 A Correct.

23 Q Where was that evidence locker located?

24 A At the Cypresswood station.

25 Q How many people have access to that locker?

1 A Only the property deputy.

2 MR. LESLIE: Pass the witness, Judge.

3 THE COURT: Mr. Newman.

4 **CROSS-EXAMINATION**

5 Q (BY MR. NEWMAN) Deputy Smidt, you are familiar
6 with this area of town, correct?

7 A Correct.

8 Q Would you qualify it as being a high-crime
9 area?

10 A Yes, sir.

11 Q Very or a little?

12 A Very.

13 Q Is violence frequent?

14 A Yes, it is.

15 Q Are homicides frequent?

16 A Yeah.

17 Q Are burglaries frequent?

18 A Yes.

19 Q Is drug use and drug dealing, is it frequent?

20 A Yes.

21 Q Is it frequently -- frequent occurrence that
22 homes -- that apartments are burglarized?

23 A Yes, it is.

24 Q And generally when a person burglarizes an
25 apartment, they take those valuable things, like

1 electronics or easily accessible things like jewelry,
2 correct?

3 A Correct.

4 Q Firearms are also a relatively hot commodity
5 in a burglary, are they not?

6 A They are.

7 Q If someone breaks into an apartment, nine
8 times out of ten if there's a gun in view, they're going
9 to take it, correct?

10 A Correct.

11 Q And in this case when you went into Apartment
12 No. 803, did you see any TVs or electronics around?

13 A I don't recall.

14 Q Do you recall if the door was off the hinges
15 now?

16 A Correct.

17 Q As if it had been burglarized?

18 A Correct.

19 Q And do you recall Aspen Cooper saying anything
20 to you about someone had broken into the apartment and
21 had taken things?

22 A No, I don't.

23 Q Did you see any jewelry around?

24 A I wasn't paying attention to jewelry.

25 Q But there was a gun that was noticeably left

1 behind there in the apartment, correct?

2 A Yes, sir.

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

5 THE COURT: Anything further?

6 MR. LESLIE: No further questions, Judge.

7 THE COURT: May this witness be excused?

8 MR. LESLIE: Yes, Your Honor.

9 THE COURT: Is that all right,
10 Mr. Newman?

11 MR. NEWMAN: Oh, yes, Your Honor. Sorry.

12 THE COURT: Thank you. You are free to
13 go.

14 Call your next witness, please.

15 MR. LESLIE: State calls Jason Schroeder.

16 (Witness sworn)

17 THE COURT: And if you would please state
18 and spell your name for my court reporter.

19 THE WITNESS: Yes, ma'am. My name is
20 Jason Schroeder, S-c-h-r-o-e-d-e-r.

21 THE COURT: And you may proceed.

22 **JASON SCHROEDER,**

23 having been first duly sworn, testified as follows:

24 **DIRECT EXAMINATION**

25 Q (BY MR. LESLIE) Mr. Schroeder, where do you