

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

JUL 18 2018

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL DARREN DUNCAN,

APPELLANT

APPELLATE CASE NO. 2017-001252

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 17-19, 2017	1
<u>JACKSON V. DENNO HEARING</u>	28
TESTIMONY	
DEPUTY DAVID STIPE	28
INVESTIGATOR HEATH DAVIS	43
MOTION TO SUPPRESS	64
TESTIMONY	
INVESTIGATOR JASON PRICE	70
DETECTIVE ALAN HENDRIX	90
INVESTIGATOR HEATH DAVIS	120
OPENING STATEMENT BY MS. PRICE	146
OPENING STATEMENT BY MR. SMITH	148
DEPUTY DAVID STIPE	150
DETECTIVE RONALD WOOD	208
INVESTIGATOR HEATH DAVIS	227
DETECTIVE ALAN HENDRIX	272
MEREDITH LANFORD	309
MOTION FOR DIRECTED VERDICT	331
CLINT MACOMSON	333
JOSEPH SURDAK	336

DETECTIVE KREIG MARZOFF	350
MOTION FOR DIRECTED VERDICT	378
CLOSING ARGUMENT BY MS. PRICE	383
CLOSING ARGUMENT BY MR. SMITH	397
VERDICT	432
SENTENCING	437
MOTION TO RECONSIDER DENIAL OF MOTION TO SUPPRESS FILED MAY 1, 2017	439
ORDER DENYING MOTION TO RECONSIDER MOTION TO SUPPRESS FILED MAY 8, 2017	447
STATE'S EXHIBIT NO. 2 (SEARCH WARRANT)	448
INDICTMENT AND SENTENCING SHEET	453
CERTIFICATE OF COUNSEL	456

State of South Carolina
County of Anderson

Court of General Sessions

State of South Carolina)
)
) Transcript of Record
 v.) 2016-GS-04-00815
)
 Michael Darren Duncan)
)
 Defendant.)

April 17, 2017
Anderson, South Carolina

B E F O R E:

The Honorable Scott Sprouse, Judge, and jury.

A P P E A R A N C E S:

Lauren Price, Assistant Solicitor
Attorney for the State

Don Smith, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

DEPUTY DAVID STIPE

Jackson v. Denno by Ms. Price.....	28, 40
Jackson v. Denno by Mr. Smith.....	33, 41
Direct examination by Ms. Price.....	150
Cross-examination by Mr. Smith.....	174
Redirect examination by Ms. Price.....	206
Recross-examination by Mr. Smith.....	206

INVESTIGATOR HEATH DAVIS

Jackson v. Denno by Ms. Price.....	43
Jackson v. Denno by Mr. Smith.....	50
Proffer examination by Ms. Price..	120, 137
Proffer examination by Mr. Smith..	128, 137
Direct examination by Mr. Price.....	227
Cross-examination by Mr. Smith.....	246
Redirect examination by Ms. Price.....	265
Recross-examination by Mr. Smith.....	269

INVESTIGATOR JASON PRICE

Proffered examination by Ms. Price..	70, 87
Proffered examination by Mr. Smith..	75, 88

DETECTIVE ALAN HENDRIX

Proffered examination by Ms. Price..	90, 115
Proffered examination by Mr. Smith..	103, 118
Direct examination by Ms. Price.....	272

Cross-examination by Mr. Smith.....291

Redirect examination by Ms. Price.....303

Recross-examination by Mr. Smith.....304

DETECTIVE RONALD WOOD

Direct examination by Ms. Price.....208

Cross-examination by Mr. Smith.....219

MEREDITH LANFORD

Direct examination by Ms. Price.....309

Cross-examination by Mr. Smith.....321

Redirect examination by Ms. Price.....324

Recross-examination by Mr. Smith.....324

CLINT MACOMSON

Direct examination by Mr. Smith.....333

Cross-examination by Ms. Price.....335

JOSEPH SURDAK

Direct examination by Mr. Smith.....336

Cross-examination by Ms. Price.....345

Redirect examination by Mr. Smith.....346

DETECTIVE KREIG MARZOFF

Proffered examination by Mr. Smith.....350

Direct examination by Mr. Smith.....363

Cross-examination by Ms. Smith.....376

Certificate of Reporter.....438

- - -

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	State's - Miranda rights card		X
10	State's - glass pipe		X
8	State's - revolver and rounds		X
11-13	State's - pictures		X
13-26	State's - pictures		X
7	State's - driving record		X
14	State's - picture		X
15	State's - picture		X
22	State's - picture		X
23	State's - picture		X
16, 17	State's - pictures		X
18, 19	State's - pictures		X
20, 21	State's - pictures		X
24, 25	State's - pictures		X
33, 34	State's - pictures		X
3, 4	State's - pictures		X
1, 2	Defendant's - pictures		X
9, 35	State's - drug evidence kits		X
5, 6	State's - methamphetamine		X
1	Court's - question from jury		X

- - -

P R O C E E D I N G S

* * * * *

THE COURT: All right. Good afternoon, ladies and gentlemen. I'm Judge Sprouse, one of your resident Tenth Circuit judges. I understand you had Judge Houston this morning to qualify you and ask you a whole bunch of questions. Unfortunately, I have to ask you a bunch of questions as well, but they will be a little bit different.

As you learned this morning, this is a term of General Sessions Court. General Sessions means criminal court. You are called to hear a case as a juror and serve on a jury in this case. It means you will hear a case in which a person has been charged with a crime.

The first case before the Court is the *State of South Carolina v. Michael Darren Duncan*. The defendant is charged with trafficking in methamphetamine. The defendant has pled not guilty to this charge. So you are called to form the pool from which the jury for this case will be drawn.

Now, the indictment simply is the document by which the case is brought to court. It is not evidence and cannot be considered as evidence to the charge to which it contains. The State has the

1 burden of proving the elements of the offense beyond
2 a reasonable doubt.

3 If you sit on the jury and the State fails to
4 meet that burden, you will find the defendant not
5 guilty. If the State does meet the burden, then you
6 will find the defendant guilty. And I will go into
7 that if you serve on the jury in much more detail.

8 But as I told you, we're going to ask you some
9 more questions. These are not to pry into your
10 private life, but to ensure that both the defense
11 and the State receive a fair and impartial jury to
12 hear the case.

13 So the first order of business, I would like
14 each -- well, first of all, Mr. -- Mr. Clerk, why
15 don't you swear the pool again. I know you were put
16 under oath this morning, but there's been a gap in
17 time. Let's go ahead and put you under oath again.

18 THE CLERK: Ladies and gentlemen, if I could
19 ask you to stand and raise your right hands, please.

20 PROSPECTIVE JURORS: (Complying.)

21 THE CLERK: Do you and each of you solemnly
22 swear or affirm that you will provide truthful
23 answers to the questions asked of you? If you will,
24 say "I do."

25 PROSPECTIVE JURORS: (Collectively:) I do.

1 THE CLERK: Have a seat.

2 PROSPECTIVE JURORS: (Complying.)

3 THE COURT: Our first matter of business, I
4 would like each attorney to introduce themselves and
5 any attorneys or staff that will be assisting them
6 in the case.

7 MS. PRICE: Thank you, Your Honor. May it
8 please the Court?

9 My name is Lauren Price. I'm a Senior
10 Solicitor with the Tenth Circuit Solicitor's Office.

11 Seated with me today is Investigator Alan
12 Hendrix. He's with the Anderson County Sheriff's
13 Office.

14 For jury selection, seated with my is our
15 solicitor, David Wagner.

16 MR. SMITH: Ladies and gentlemen, my name is
17 Don Smith. I'm a sole-proprietor here in Anderson
18 and I represent Michael Duncan in this matter.

19 THE COURT: Okay.

20 MS. PRICE: Your Honor? May we?

21 THE COURT: Yes.

22 (Sidebar discussion.)

23 THE COURT: Is any member of the jury panel
24 related by blood or marriage or has a close personal
25 or social relationship with a party or one of the

1 attorneys involved in the case? If so, please
2 stand.

3 PROSPECTIVE JURORS: (No responses.)

4 THE COURT: Okay. There are none.

5 Has any member of the jury panel been
6 represented by one of the attorneys involved in this
7 case or had that attorney represent someone against
8 you in court? If so, please stand.

9 PROSPECTIVE JURORS: (No responses.)

10 THE COURT: There are none.

11 Now, the following is a list of potential
12 witnesses. Bear with me, ladies and gentlemen, my
13 witness list has vanished. Okay. There it is.
14 These are the potential witnesses that have been
15 submitted in this case:

16 David Stipe, Alan Hendrix, Ronald Wood, Brad
17 McGuire, Meredith Lanford, Heath Davis, Nathan
18 Mitchell, Gene Culbertson, Kreig Marzoff, Blair
19 Hill, J.R. Nubern, Chris Wilson, Belinda Lee, Pansy
20 Allen, Jelon Stone, Toby Jordan, Jason Price, Caleb
21 McCarley, D.L. Mattison, Houston Jones, Sean Proner,
22 Captain Scott White, Patrick Smith, Amanda Sanders,
23 Clinton Macomson, and Joseph Surdak.

24 Is any member of the jury panel related by
25 blood or marriage or has a close personal or social

1 relationship with any of those witnesses, please
2 stand.

3 PROSPECTIVE JURORS: (No responses.)

4 THE COURT: There are none.

5 This incident was alleged to have happened on
6 October 15, 2015, in Anderson County, South
7 Carolina.

8 Does any member of the jury panel have any
9 prior knowledge from any source about the facts of
10 this case? If so, please stand.

11 PROSPECTIVE JURORS: (No responses.)

12 THE COURT: There are none.

13 Does any member of the jury panel know of any
14 other reason why he or she could not be fair and
15 impartial if called to serve as a juror in this
16 case? If so, please stand.

17 PROSPECTIVE JUROR: (Standing.)

18 THE COURT: Yes, sir. Your number?

19 PROSPECTIVE JUROR: Eight.

20 THE COURT: Juror No. 8. Mr. Blackstone, do
21 you feel that you could be fair and impartial if
22 selected?

23 PROSPECTIVE JUROR: I'm against drugs
24 altogether.

25 THE COURT: Well, that wasn't my question,

1 Mr. Blackstone. My question is: Do you feel that
2 you could be fair if called to serve as a juror?

3 PROSPECTIVE JUROR: I would sit down and weigh
4 it out, but I probably already know what I'd say.

5 THE COURT: All right. Well, Mr. Blackstone,
6 I'm going to have you be seated. Thank you. Thank
7 you for that.

8 PROSPECTIVE JUROR: (Complying.)

9 THE COURT: Okay. Anything further?

10 PROSPECTIVE JURORS: (No responses.)

11 THE COURT: Okay. Any further voir dire
12 questions from the State?

13 MS. PRICE: Nothing from the State, Your Honor.

14 THE COURT: Any further voir dire questions
15 from the defense?

16 MR. SMITH: No, sir.

17 THE COURT: Okay. Ladies and gentlemen, what
18 happens now is the clerk generates a random sheet.
19 This selection process involves the computer. Used
20 to be, they had a hopper that they drew names out of
21 the hopper, but it will take just a moment. The
22 clerk is going generate a random sheet.

23 THE CLERK: Please the Court?

24 THE COURT: Yes, sir.

25 THE CLERK: Ladies and gentlemen, what we're

1 going to do now is, this is a little bit different
2 than Common Pleas Court. I'm going to call your
3 name as a potential juror, and I will ask that you
4 come and stand before me and turn around and face
5 the audience. Okay?

6 So our first potential juror is Number 11,
7 Billie S. Boseman.

8 PROSPECTIVE JUROR: (Approaching.)

9 THE CLERK: What say you for the prosecution?

10 MS. PRICE: Please present the juror.

11 THE CLERK: What say you for the defense?

12 MR. SMITH: Please seat the juror.

13 THE CLERK: All right. Ms. Boseman, you've
14 been appointed to the jury, so you go this way
15 (indicating). And did you have anything with you?

16 PROSPECTIVE JUROR: No, sir.

17 THE CLERK: Okay. When you do come forward if
18 you are picked, we need for you to go to the jury
19 box, so bring possessions with you that you have
20 with you. Okay?

21 Our next potential juror is Number 138, Thomas
22 A. Ross.

23 PROSPECTIVE JUROR: (Approaching.)

24 THE CLERK: What say you for the prosecution?

25 MS. PRICE: Please present the juror.

1 THE CLERK: What say you for the defense?

2 MR. SMITH: Please excuse the juror.

3 THE CLERK: You can have a seat back in the
4 audience.

5 PROSPECTIVE JUROR: (Complying.)

6 THE CLERK: Our next potential juror is Number
7 45, Timothy S. Farmer.

8 PROSPECTIVE JUROR: (Approaching.)

9 THE CLERK: What say you for the prosecution?

10 MS. PRICE: Please present the juror.

11 THE CLERK: What say you for the defense?

12 MR. SMITH: Please excuse this juror.

13 THE CLERK: You can have a seat in the
14 audience.

15 PROSPECTIVE JUROR: (Complying.)

16 THE CLERK: Our next potential juror is Number
17 116, Kimberly D. Pace.

18 PROSPECTIVE JUROR: (Approaching.)

19 THE CLERK: What say you for the prosecution?

20 MS. PRICE: Please present the juror.

21 THE CLERK: What say you for the defense?

22 MR. SMITH: Please seat this juror.

23 THE CLERK: You can have a seat.

24 PROSPECTIVE JUROR: (Complying.)

25 THE COURT: Our next potential juror is Number

1 9, Allen M. Bolden.

2 PROSPECTIVE JUROR: (Approaching.)

3 THE CLERK: What say you for the prosecution?

4 MS. PRICE: Please present the juror.

5 THE CLERK: What say you for the defense?

6 MR. SMITH: Please present the juror.

7 THE CLERK: Please take a seat in the jury box.

8 PROSPECTIVE JUROR: (Complying.)

9 THE CLERK: Next potential juror is Number 67,
10 Benjamin J. Hanley.

11 PROSPECTIVE JUROR: (Approaching.)

12 THE CLERK: What say you for the prosecution?

13 MS. PRICE: Please present the juror.

14 THE CLERK: What say you for the defense?

15 MR. SMITH: Please seat this juror.

16 THE CLERK: Okay. Thank you.

17 PROSPECTIVE JUROR: (Complying.)

18 THE CLERK: Next is Number 30, William B.

19 Christopher.

20 PROSPECTIVE JUROR: (Approaching.)

21 THE CLERK: What say you for the State?

22 MS. PRICE: Please present the juror.

23 THE CLERK: What say you for the defense?

24 MR. SMITH: Please present this juror.

25 THE CLERK: That way (indicating) please, sir.

1 PROSPECTIVE JUROR: (Complying.)

2 THE CLERK: Next juror is 146, Montorio T.

3 Smith.

4 PROSPECTIVE JUROR: (Approaching.)

5 THE CLERK: What say you for the State?

6 MS. PRICE: Please excuse this juror from the
7 trial of this case.

8 THE CLERK: You can have a seat back out there.

9 POTENTIAL JUROR: (Complying.)

10 THE CLERK: Next is 158, Michael L. Tiland.

11 PROSPECTIVE JUROR: (Approaching.)

12 THE CLERK: What say you for the prosecution?

13 MS. PRICE: Please present the juror.

14 THE CLERK: What say you for the defense?

15 MR. SMITH: Please excuse this juror.

16 PROSPECTIVE JUROR: (Complying.)

17 THE CLERK: Next is Number 54, Leah H. Geer.

18 PROSPECTIVE JUROR: (Approaching.)

19 THE CLERK: What say you for the prosecution?

20 MS. PRICE: Please present the juror.

21 THE CLERK: What say you for the State -- I
22 mean, defense?

23 MR. SMITH: Please excuse this juror.

24 THE CLERK: You can have a seat in the
25 audience, please.

1 PROSPECTIVE JUROR: (Complying.)

2 THE CLERK: Next is 164, Pascal M. Vambe.

3 PROSPECTIVE JUROR: (Approaching.)

4 THE CLERK: What say you for the State?

5 MS. PRICE: Please present the juror.

6 THE CLERK: What say you for the defense?

7 MR. SMITH: Please seat the juror.

8 THE CLERK: That way (indicating), Mr. Vambe.

9 PROSPECTIVE JUROR: (Complying.)

10 THE CLERK: Next is Number 53, Charles O.

11 Gambrell.

12 PROSPECTIVE JUROR: (Approaching.)

13 THE CLERK: What you for the State?

14 MS. PRICE: Please excuse the juror from the

15 trial of this case.

16 THE CLERK: You can have a seat in the

17 audience.

18 PROSPECTIVE JUROR: (Complying.)

19 THE CLERK: Juror No. 117, Amanda H. Patterson.

20 PROSPECTIVE JUROR: (Approaching.)

21 THE CLERK: What say you for the State?

22 MS. PRICE: Please present the juror.

23 THE CLERK: What say you for the defense?

24 MR. SMITH: Please seat the juror.

25 THE CLERK: That way (indicating),

1 Ms. Patterson. Thank you...

2 PROSPECTIVE JUROR: (Complying.)

3 THE CLERK: Juror No. 6, Cheryl S. Bequette.

4 PROSPECTIVE JUROR: (Approaching.)

5 THE CLERK: What say you for the State?

6 MS. PRICE: Please present the juror.

7 THE CLERK: What say you for the defense?

8 MR. SMITH: Please seat the juror.

9 THE CLERK: That way (indicating), please,
10 ma'am.

11 PROSPECTIVE JUROR: (Complying.)

12 THE CLERK: Juror No. 16, Akeitha N. Brown.

13 PROSPECTIVE JUROR: (Approaching.)

14 THE CLERK: What say you for the State?

15 MS. PRICE: Please present the juror.

16 THE CLERK: What say you for the defense?

17 MR. SMITH: Please seat the juror.

18 THE CLERK: Go to the box, please, ma'am.

19 PROSPECTIVE JUROR: (Complying.)

20 THE CLERK: Juror No. 108, William B. Nalley.

21 PROSPECTIVE JUROR: (Approaching.)

22 THE CLERK: What say you for the State?

23 MS. PRICE: Please present the juror.

24 THE CLERK: What say you for the defense?

25 MR. SMITH: Please present this juror.

1 THE CLERK: That way (indicating), Mr. Nalley.

2 Thank you.

3 PROSPECTIVE JUROR: (Complying.)

4 THE CLERK: Juror No. 13, Debbie E. Bridwell.

5 PROSPECTIVE JUROR: (Approaching.)

6 THE CLERK: What say you for the State?

7 MS. PRICE: Please present the juror.

8 THE CLERK: What say you for the defense?

9 MR. SMITH: Please seat this juror.

10 THE CLERK: That way (indicating), please,

11 ma'am.

12 PROSPECTIVE JUROR: (Complying.)

13 THE CLERK: Juror No. 128, Leah R. Reynolds.

14 PROSPECTIVE JUROR: (Approaching.)

15 THE CLERK: What say you for the State?

16 MS. PRICE: Please present the juror.

17 THE CLERK: What say you for the defense?

18 MR. SMITH: Please seat this juror.

19 THE CLERK: That way (indicating), please,

20 ma'am.

21 PROSPECTIVE JUROR: (Complying.)

22 THE CLERK: That's 12. And we'll have one

23 alternate?

24 THE COURT: One alternate.

25 MS. PRICE: One alternate should be fine.

1 THE CLERK: All right. Our next potential
2 juror is Number 42, Robert T. Ebernickle.

3 PROSPECTIVE JUROR: (Approaching.)

4 THE CLERK: What say you for the State?

5 MS. PRICE: Please excuse the juror from the
6 stat trial in this case.

7 THE CLERK: You can have a seat back in the
8 audience, Mr. Ebernickle.

9 PROSPECTIVE JUROR: (Complying.)

10 THE CLERK: Juror No. 93, Paul A. Lachac.

11 PROSPECTIVE JUROR: (Approaching.)

12 THE CLERK: What say you for the State?

13 MS. PRICE: Please present the juror.

14 THE CLERK: What say you for the defense?

15 MR. SMITH: Please excuse this juror.

16 THE CLERK: You can have a seat.

17 PROSPECTIVE JUROR: (Complying.)

18 THE CLERK: Juror No. 18, Samantha A. Brown.

19 PROSPECTIVE JUROR: (Approaching.)

20 THE CLERK: What say you for the State?

21 MS. PRICE: Please present the juror.

22 THE CLERK: What say you for the defense?

23 MR. SMITH: Please seat the juror.

24 THE CLERK: You'll be our alternate.

25 PROSPECTIVE JUROR: (Complying.)

1 THE CLERK: Your Honor, there are 12 jurors and
2 an alternate.

3 THE COURT: Thank you. Are there any motions
4 or exceptions to the jury panel from the State?

5 MS. PRICE: Nothing from the State, Your Honor.

6 THE COURT: Are there any motions or exceptions
7 to the jury panel from the defense?

8 MR. SMITH: None from the defense, Your Honor.

9 THE COURT: Mr. Clerk, would you swear our
10 jury?

11 THE CLERK: Ladies and gentlemen, if I could
12 have you stand and raise your right hands, please.

13 THE JURORS: (Complying.)

14 THE CLERK: Do you and each of you solemnly
15 swear or affirm that you shall well and truly try
16 and a true deliverance make between the State of
17 South Carolina and the defendant whom you shall have
18 in charge and a true verdict rendered according to
19 the law and the evidence? If you will, say "I do."

20 THE JURORS: (Collectively:) I do.

21 THE CLERK: Have a seat.

22 THE JURORS: (Complying.)

23 THE COURT: Okay. To the remainder of our jury
24 pool, this will conclude your duty for today. Call
25 the number that the clerk gave you after six o'clock

1 each evening and it will give you instructions. So
2 tonight after six o'clock, call that number and it
3 will tell you when you need to report again. So
4 thank you for your attendance today. Mr. Shirley
5 has a handout for you.

6 THE CLERK: This is the telephone number right
7 here (indicating). It's an answering machine. It's
8 more than likely got my voice on it and it will say,
9 "It is Monday evening, April 17th." And you'll know
10 that you're hearing the most recent message. And it
11 will tell you what to do.

12 PROSPECTIVE JUROR: After 6:00?

13 THE CLERK: After 6:00. And it will tell you
14 come back tomorrow or call back tomorrow night after
15 6:00.

16 (At 2:33 p.m., unselected jurors were excused.)

17 THE COURT: Ladies and gentlemen, before we
18 start, let me explain our rules in this trial. I am
19 the judge of the law; you are the judges of the
20 facts. As the judge of the facts, you will have the
21 duty to evaluate the evidence that is presented.
22 You also must apply the law as I give it to you.

23 Evidence is sworn testimony from the witness
24 stand, plus any exhibits that may have been entered.
25 You and you alone determine the credibility of the

1 witnesses and how much weight to give their
2 testimony.

3 Each attorney will have the opportunity to make
4 opening statements to you and also make closing
5 arguments at the end. Keep in mind that what the
6 attorneys say is not evidence but merely tools that
7 they use to help explain their perspective position.

8 The State has the burden of proof in this
9 trial. They must prove beyond a reasonable doubt
10 that the defendant is guilty of the offense charged.
11 If the State fails to meet that burden, then you
12 must find the defendant not guilty.

13 On the other hand, if the State does meet its
14 burden and proves its case beyond a reasonable
15 doubt, then you must find the defendant guilty. The
16 defendant is presumed innocent and has no burden of
17 proof in this trial. A reasonable doubt is defined
18 as a doubt that would give a reasonable person a
19 cause to hesitate to act.

20 A few more things. This is not an endurance
21 contest. We will take breaks as we go along. We're
22 getting ready to take our first -- first break. But
23 at any time during this trial if you get distressed
24 and you need a break, let your bailiff know and we
25 will do our best to accommodate you.

1 I'm going to give you three instructions that
2 are very important. There are going to be times in
3 the trial where you are sent outside the courtroom
4 and we're getting ready to have our first one, but
5 there's three things you are absolutely forbidden
6 from doing, and the first is independent
7 investigation. With this era of smart phones and
8 internet access, it's easy to research the law and
9 the facts. You are not allowed to do that. You
10 cannot conduct your own investigation.

11 You may not take notes during the proceeding.
12 Some judges allow notes. I do not. And the reason
13 for that is, some people are good note takers,
14 others are not. I don't want your deliberations at
15 the end to be a contest between those of you who
16 take good notes and those who do not. Also, the
17 demeanor of witnesses may be something that's
18 important during the case. And if your head is
19 buried in a note pad, you may miss something in the
20 trial, so that's why I mention that.

21 Now, the second thing you are prohibited from
22 doing is deliberating. Deliberating means that you
23 discuss the case amongst yourselves when you're
24 outside of the jury room -- when you're outside the
25 courtroom. When you're in the jury room or when

1 you're at lunch or elsewhere, if you see each other,
2 you can talk about anything you want to talk about
3 except this case. You can -- you will not
4 deliberate until I instruct you to do so at the end.

5 And the last thing is, and this is -- this is
6 the hard one, you can't talk about it with third
7 parties. When you go home, your family is going to
8 want to know what you're doing up here and they're
9 going to ask you questions about it. You cannot
10 talk about this case with third parties. If someone
11 comes up to you trying to discuss the case with you,
12 you let the bailiff know, and they will bring that
13 to me and I will tend to that, but you are
14 prohibited from talking about the case with third
15 parties.

16 Now, again, you'll be sent to the jury room at
17 points during the trial. There may come times where
18 we have to take up issues of law outside of your
19 presence, and we're getting ready to do our first
20 one. That's not to hide things from you. That's
21 just to ensure that each side receives a fair trial.

22 And in that same line, there may be objections
23 during the case. One attorney may ask a question or
24 seek to put in a piece of evidence that the other
25 attorney objects to. I will make a ruling on that.

1 The fact that I ruled one way or the other should
2 not be interpreted to mean that this Court favors
3 one side or the other. Again, it's just to ensure
4 that each side receives a fair trial.

5 So I'm going to send you to the jury room for
6 your first order of business and that is to elect a
7 foreperson. This is the juror who will preside over
8 your deliberations at the end when I ask you to
9 deliberate. This is also the juror that will
10 communicate with the Court if there are any issues
11 that needs the Court's attention. And any
12 communication with the Court should be by the form
13 of a written note.

14 So, Mr. Bailiff, would you take our jury to the
15 jury room?

16 THE BAILIFF: (Complying.)

17 (At 2:40 p.m., jurors exited the courtroom.)

18 THE COURT: Okay. Any exceptions to my
19 preliminary instructions from the State?

20 MS. PRICE: None from the State.

21 THE COURT: Any exceptions from the defense?

22 MR. SMITH: No, sir.

23 THE COURT: And, Mr. Smith, when -- when would
24 you like the bailiff to bring your client out?

25 MR. SMITH: He can come in now based on the

1 fact that the jury is not even around through this
2 process.

3 THE COURT: Okay. I understand you didn't want
4 him brought out while he was in his jail clothes,
5 but this is my plan. My plan is to find out from
6 the jury who the foreperson is and then release them
7 for the day.

8 MR. SMITH: Yes, sir.

9 THE COURT: So I'm just going to leave that up
10 to you when you want your client out -- out here.

11 MR. SMITH: After -- after they're done.

12 THE COURT: Okay. Okay. All right. We'll
13 take a -- we'll take a short recess, and this
14 shouldn't take them long to do this. I'll get them
15 dismissed, and then we'll go right into the motion
16 to suppress.

17 MS. PRICE: Yes, sir.

18 (From 2:41 to 2:50 p.m., a recess was taken.)

19 THE COURT: I received a note from the jury and
20 Juror No. 177 -- 117, Ms. Patterson, is going to be
21 the forelady.

22 So, Mr. Bailiff, would you get our jury,
23 please?

24 THE BAILIFF: (Complying.)

25 THE COURT: And then, Mr. Smith, as I

1 understand it, you want your client brought out
2 after I dismiss the jury?

3 MR. SMITH: Yes, sir.

4 THE COURT: Okay. Okay. Thank you.

5 (At 2:51 p.m., jurors entered the courtroom.)

6 THE COURT: Okay. Ladies and gentlemen, I have
7 received your note indicating that, Ms. Patterson,
8 you are our forelady?

9 THE FORELADY: Yes, sir.

10 THE COURT: So, ma'am, you will always sit
11 where you're seated right now.

12 THE FORELADY: Okay.

13 THE COURT: And then, madam alternate, you'll
14 always sit there (indicating).

15 THE ALTERNATE: Okay.

16 THE COURT: Now, ladies and gentlemen, as I
17 told you before, we have some matters of law we're
18 going to take up. And the first of those will be
19 somewhat lengthy, so I'm going to go ahead and send
20 you home for the day. We will begin the case at
21 nine o'clock tomorrow, so be back in the jury room
22 by 8:45 tomorrow morning.

23 So I hope everyone has a good evening.
24 Remember the three instructions: No independent
25 research, no deliberations, and no discussion of the

1 case with a third party. I hope everybody has a
2 good evening. I'll see you tomorrow.

3 (At 2:52 p.m., jury was excused for the day,
4 and a recess was taken until 2:59 p.m.)

5 THE COURT: All right. Let's go on the record.
6 We're back on the record in *State v. Duncan*. I
7 understand there are some motions in the case.

8 MS. PRICE: Your Honor, the State has a very
9 brief *Jackson v. Denno*. That's the only motion from
10 the State -- or the only hearing from the State.

11 THE COURT: All right. Let's do the *Jackson v.*
12 *Denno* first, and then Mr. Smith you have -- do you
13 have motions?

14 MR. SMITH: To suppress, yes, sir.

15 THE COURT: Okay. Then we'll do the motion to
16 suppress. All right. Let's do the *Jackson v. Denno*
17 first.

18 MS. PRICE: Thank you, Your Honor. The State
19 calls David Stipe to the stand.

20 (Witness approached.)

21 THE CLERK: Right here please, sir. Stand
22 right here (indicating) and raise your right hand.

23 THE WITNESS: (Complying.)

24 THE CLERK: Do you solemnly swear or affirm the
25 testimony you'll give the Court today in this case

1 will be the truth, the whole truth, and nothing but
2 the truth?

3 THE WITNESS: Yes, sir.

4 THE CLERK: If you would take the witness stand
5 please, sir, and state your name and spell your last
6 name for the reporter, please.

7 THE WITNESS: David Stipe. Last name,
8 S-t-i-p-e.

9 DEPUTY DAVID STIPE,
10 having been produced and first duly sworn as a
11 witness on behalf of the State, then testified as
12 follows:

13 JACKSON V. DENNO EXAMINATION

14 BY MS. PRICE:

15 Q. Deputy Stipe, who do you work for?

16 A. Anderson County Sheriff's Office.

17 Q. And what's your title with them?

18 A. I work road patrol.

19 Q. Okay. Are you a deputy?

20 A. Yes, ma'am.

21 Q. Okay. In your capacity as deputy, did you have
22 occasion to come into contact with Michael Duncan on
23 October 15, 2015?

24 A. Yes, ma'am.

25 Q. Okay. When you came into contact with him, did

1 you speak with him?

2 A. Yes, ma'am.

3 Q. Did he say anything to you?

4 A. No, ma'am.

5 Q. Okay. Did he -- he didn't make any statements
6 to you?

7 A. He did. He -- he made a statement that he had
8 returned home -- or when he returned to the
9 residence, the vehicle was in his driveway.

10 Q. Okay. So when -- when you spoke with
11 Mr. Duncan, did you go over his rights with him?

12 A. Yes, ma'am.

13 Q. Okay. Did you do that prior to speaking with
14 him?

15 A. Yes, ma'am.

16 Q. How did you do that?

17 A. Under the advisory rights form which we have at
18 the Sheriff's Office.

19 Q. Okay. Did you bring a copy of the form that
20 you used that day with you to court?

21 A. Yes, ma'am.

22 Q. Okay. And I'm showing you what's been marked
23 as Court's Exhibit No. 1 for the purposes of this
24 hearing only. Do you recognize that?

25 A. Yes, ma'am.

1 Q. And what is it?

2 A. It's an advisory rights form.

3 Q. And is that the form that you brought to court
4 today?

5 A. Yes, ma'am.

6 Q. Is that the form that you used to go over the
7 rights that the defendant had with the defendant?

8 A. Yes, ma'am.

9 Q. Okay. Can you tell me what the rights are that
10 you read to him as you read it to him that day?

11 A. Yes, ma'am. "You have the right to remain
12 silent. Anything you say must be used against you
13 in court.

14 "You have the right to speak to a lawyer for
15 advice before we are -- before you are asked any
16 questions and have him with you during questioning.

17 "If you cannot afford a lawyer, one will be
18 appointed for you before any questioning if you
19 wish.

20 "If you decide to answer questions now without
21 a lawyer, you will still have the right to stop
22 answering questions at any time.

23 "You also have the right to stop answering at
24 any time until you speak to a lawyer."

25 Q. And did he seem to understand his rights?

1 A. Yes.

2 Q. Okay. Did he appear to be under the influence
3 of anything at the time you met with him?

4 A. No.

5 Q. Okay. Was he in custody ---

6 A. No, ma'am.

7 Q. --- at that time? I'm sorry.

8 A. No, ma'am.

9 Q. Okay. Was he in handcuffs?

10 A. No, ma'am -- yes, ma'am, he was.

11 Q. He was in handcuffs?

12 A. Yes, ma'am.

13 Q. Okay.

14 A. He was detained.

15 Q. All right. Was anyone else with you when you
16 spoke with him?

17 A. No, ma'am.

18 Q. Okay. And were you in uniform?

19 A. Yes, ma'am.

20 Q. Did you have a weapon?

21 A. Yes, ma'am.

22 Q. Was it visible?

23 A. Yes, ma'am.

24 Q. When you were speaking with Mr. Duncan, did you
25 make any threats or promises to get him to speak to

1 you?

2 A. No, ma'am.

3 Q. Did he ask for anything -- food, drink, water?

4 Did you deny him anything?

5 A. No, ma'am.

6 Q. Okay. Did he appear to be as comfortable as

7 one can be in handcuffs when he was speaking with

8 you?

9 A. Yes, ma'am.

10 Q. Okay. And did you have him sign that form?

11 A. No, ma'am.

12 Q. Okay. Did you ask him any questions about

13 things you found on the property?

14 A. Yes, ma'am.

15 Q. Okay. And were those questions asked after he

16 had been Mirandized?

17 A. Yes, ma'am.

18 Q. Okay. Did he appear to be speaking with you

19 freely and voluntarily?

20 A. Yes, ma'am.

21 Q. Did he ask for a lawyer and you continued to

22 question him?

23 A. No, ma'am.

24 Q. Okay. And did he give you verbal statements

25 that day?

1 A. The one that I mentioned about returning home
2 to the vehicle being in the driveway.

3 Q. Okay. Did you ask him about the possession of
4 any items?

5 A. Yes, ma'am. He did not advise. He said it was
6 not in his possession.

7 Q. Okay. And did you ask him about multiple items
8 that you found that day, and did he deny possession
9 of those?

10 A. Yes, ma'am.

11 Q. Okay. Was that done after he had been
12 Mirandized?

13 A. Yes, ma'am.

14 Q. And at any point in time did he ask for an
15 attorney?

16 A. No, ma'am.

17 MS. PRICE: Okay. Thank you. Please answer
18 any questions that Mr. Smith has for you at this
19 time.

20 THE COURT: Mr. Smith.

21 MR. SMITH: May it please the Court?

22 BY MR. SMITH:

23 Q. So this -- this nice sheet here, the advisory
24 rights sheet, I see it has witness statements.

25 Who's -- who's that for to sign?

1 A. Witnesses.

2 Q. Such as?

3 A. Anyone that was available.

4 Q. How many law enforcement agents do you believe
5 were on that property at that time? 20?

6 A. There were several. I don't have a number.

7 Q. Enough that you may've had a witness?

8 A. I'm sorry?

9 Q. It was -- it wasn't signed? This form wasn't
10 signed?

11 A. It was just something that I read.

12 Q. It wasn't signed at all?

13 A. No, sir.

14 Q. How did Michael Duncan get to the detention
15 center?

16 A. That I can't advise. It wasn't by me. I'm
17 sorry. I don't have the transporting deputy's name.

18 Q. Did he go by himself?

19 A. Again, I can't ---

20 MS. PRICE: Judge, I'm going to object. I
21 don't see how it goes to the voluntariness of the
22 statement.

23 THE COURT: Overruled. Go ahead.

24 BY MR. SMITH:

25 Q. So Mr. Duncan, you didn't see him leave?

1 A. He left the scene, but I was not aware of who
2 transported him to the jail.

3 Q. Did he go in a car or a van or what did he go
4 in?

5 A. Again, I -- I can't recall who transported him.

6 Q. I'm not asking about who now. I'm just asking
7 about how he got transported.

8 A. It could've been either a patrol car or a van.
9 I'm not sure which one he got in.

10 Q. Could it have been a van that had taken two or
11 maybe three of the individuals away?

12 A. Possibly.

13 Q. And then turned around and came back and got
14 him?

15 MS. PRICE: Objection, Your Honor. It calls
16 for speculation.

17 THE COURT: Rephrase the question, Mr. Smith.

18 BY MR. SMITH:

19 Q. Do you know if the vehicle that took the
20 alleged defendants or the defendants to jail, do you
21 know if that came back and got Mr. Duncan?

22 A. I do not.

23 Q. Where were you positioned?

24 A. I was positioned in the driveway -- I mean,
25 right behind a vehicle, a pick-up truck.

1 Q. How often do you get this document signed?

2 A. How often?

3 Q. Yeah.

4 A. It's something that I -- not very often. It's

5 something that I actually just use to read off of.

6 Q. What's its purpose? Just to read off of it?

7 A. Yes, sir.

8 Q. But it's got a place to sign, right?

9 A. Yes, sir.

10 Q. Wouldn't it make it easier to illustrate that

11 someone had waived rights and so forth if you have

12 them sign it?

13 A. Yes, sir.

14 Q. Are you sure you presented this to Mr. Duncan?

15 A. Yes, sir. All four individuals.

16 Q. You did all four of them?

17 A. Yes, sir.

18 Q. What point did you leave?

19 A. I don't have the exact time frame. Before the

20 search warrant was obtained.

21 Q. Where was Mr. Duncan when the search warrant

22 was obtained?

23 A. That I don't know.

24 Q. How long were you there?

25 A. I'd say over an hour.

1 Q. And you stayed located in one spot?

2 A. In the general area of the yard. Yes, sir.

3 Q. And you're not sure if a "paddy wagon" -- you
4 know that term "paddy wagon"?

5 A. Yes, sir.

6 Q. You don't know if that was how they transported
7 everybody?

8 A. I wasn't involved with that.

9 Q. Why -- why did you read the advisory rights to
10 him?

11 A. To question him about a crime.

12 Q. Which crime?

13 A. There was a stolen 2015 Chevrolet in his
14 driveway that was reported stolen through Anderson
15 County.

16 Q. And who was the first person on the scene?

17 A. Deputy-wise would be me.

18 Q. Oh, it was you?

19 A. Yes, sir.

20 Q. How did you learn of the stolen vehicle?

21 A. I had a call from dispatch that they -- that
22 OnStar was tracking a stolen 2015 Chevrolet. It was
23 showing in the area of [REDACTED] South Main Street
24 Extension.

25 Q. That's where it was stopped?

1 A. Yes, sir.

2 Q. Did it -- was it following the whole time
3 leading up to [REDACTED] South Main?

4 MS. PRICE: Judge, again, I'm going to object.
5 I don't know that this has anything to do with the
6 voluntariness of the statement that was taken.

7 MR. SMITH: Your Honor, if I may? Speaking of
8 his credibility, I want to know how much he knows
9 because this sheet's not signed. My client didn't
10 sign the waiver, so it's all about what he --
11 his credibility.

12 THE COURT: You -- you can ask him why he was
13 there, but let's -- let's tie this -- let's tie this
14 in.

15 MR. SMITH: Yes, sir. Yes, Your Honor.

16 BY MR. SMITH:

17 Q. So you were following OnStar?

18 A. Yes, sir. They advised it was at this
19 location.

20 Q. Do you know where it originated?

21 A. I do not have the address in front of me. It
22 was in Anderson County.

23 Q. So when you pulled up there, your whole purpose
24 was to get that truck and you found it?

25 A. Yes, sir. The truck was showing stolen. It

1 was being reported in this area. I got on the scene
2 and confirmed it.

3 Q. And you were privy to conversations that were
4 had with Joey Surdak and Amanda Sanders and Clinton
5 Macomson, right?

6 A. Yes, sir.

7 Q. At any time did any one of them say that
8 Michael Duncan stole that truck?

9 A. No, sir.

10 Q. In fact, Amanda Sanders told you that Macomson
11 had taken it; is that right?

12 A. No, sir. I don't believe she told me.

13 Q. She didn't tell you?

14 A. No, sir.

15 Q. Did she tell anybody?

16 A. I can't -- I'm not sure.

17 Q. How close was everybody would you say the
18 duration of the perimeter of all the people that
19 were there?

20 A. When you say "everyone," are you speaking of
21 officers or ---

22 Q. Yes. Yes.

23 A. They were all within 30, 40 yards of each
24 other.

25 Q. Thirty or 40 feet or 30 or 40 yards?

1 A. I'd say from one end of the yard to the other
2 is yards.

3 MR. SMITH: I can't think of anything else
4 right now, Your Honor.

5 THE COURT: Ms. Price, anything further of this
6 witness?

7 MS. PRICE: Just briefly.

8 BY MS. PRICE:

9 Q. Deputy Stipe, were you interrogating Mr. Duncan
10 or any of these witnesses?

11 A. No, ma'am.

12 Q. Were you asking preliminary questions to
13 ascertain how the truck arrived at the property?

14 A. Yes, ma'am.

15 Q. Okay. And at a later time when additional
16 items were found on the property and you had
17 occasion to ask questions about those before you
18 placed Mr. Duncan under arrest for possession,
19 simple possession, were you interrogating him?

20 A. No, ma'am.

21 Q. Okay. And do some deputies carry a card with
22 them that has the Miranda advisement on it?

23 A. Some deputies do.

24 Q. Okay. And that's what they use; is that
25 correct?

1 A. Yes, ma'am.

2 Q. Okay. And you simply have been in the practice
3 of using an advisement of rights form?

4 A. Yes, ma'am.

5 Q. Okay. And even though there are places for
6 signatures, you weren't in a formal interrogation
7 setting; is that correct?

8 A. Correct. This is something I read off of.

9 MS. PRICE: No further questions.

10 MR. SMITH: Briefly, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. SMITH:

13 Q. The -- you weren't interrogating and you
14 weren't an investigator; is that right?

15 A. I'm sorry?

16 Q. You weren't the one asking questions? There
17 was investigators asking questions?

18 A. There was investigators there. Yes, sir.

19 Q. So why would you need to advise anyone of their
20 rights if you're not going to ask questions?

21 A. I was the first deputy on the scene initially.
22 It was a stolen truck there. And, again, I was
23 trying to ascertain if anyone had any information.

24 Q. Yes, sir. And the hour that you were there, at
25 what point in that hour did you advise Mr. Duncan of

1 his rights?

2 A. This was immediately as soon as I got on the
3 scene.

4 Q. But you said that he was in handcuffs?

5 A. Yes, sir.

6 Q. And you were the first one there. Was he in
7 handcuffs at the very beginning of Anderson County
8 getting on that property?

9 A. Yes, sir.

10 Q. But you were the one who was asking him
11 questions?

12 A. Initially, I had some questions about the
13 truck.

14 Q. But you didn't get this signed, despite the
15 fact that you have the ability to have him sign it?

16 A. Yes, sir.

17 Q. So he didn't waive his rights, did he?

18 A. He didn't sign the -- it wasn't -- I didn't
19 have anyone sign it.

20 MR. SMITH: Yes, sir. Nothing further.

21 MS. PRICE: That's it.

22 THE COURT: Thank you, Officer. You can step
23 down.

24 THE WITNESS: Yes, sir.

25 (Witness excused.)

1 THE COURT: Ms. Price.

2 MS. PRICE: Your Honor, at this time the State
3 calls Investigator Heath Davis for the *Jackson v.*
4 *Denno* hearing.

5 (Witness approached.)

6 THE CLERK: Can please raise your right hand?

7 THE WITNESS: (Complying.)

8 THE CLERK: Do you solemnly swear or affirm the
9 testimony you'll give this Court today in the case
10 be the truth, the whole truth, and nothing but the
11 truth?

12 THE WITNESS: Yes, sir.

13 THE CLERK: You'll take the witness stand;
14 please, sir, and state your name and spell your last
15 name for the reporter, please.

16 THE WITNESS: Bradley Heath Davis, D-a-v-i-s.

17 INVESTIGATOR HEATH DAVIS,
18 having been produced and first duly sworn as a
19 witness on behalf of the State, then testified as
20 follows:

21 JACKSON V. DENNO EXAMINATION

22 BY MS. PRICE:

23 Q. And who do you work for and in what capacity?

24 A. For the Anderson County Sheriff's Office, and
25 right now I'm assigned to the major crimes unit.

1 Q. And were you assigned to that unit in
2 October 15th of 2015?

3 A. At that time I was a criminal investigator, a
4 property crime investigator.

5 Q. Property crimes investigator?

6 A. Yes, ma'am.

7 Q. Did you have occasion to speak with the
8 defendant in this case?

9 A. Yes.

10 Q. And was that on October 15th of 2015?

11 A. Yes.

12 Q. Okay. Was he arrested and in custody when you
13 spoke with him?

14 A. At the time I spoke with him, he was detained
15 on the scene.

16 Q. Was he in handcuffs?

17 A. He was.

18 Q. Had he been Mirandized?

19 A. He had.

20 Q. Had you Mirandized him?

21 A. No, ma'am. That was done by Deputy Stipe.

22 Q. Okay. And how many people were present when
23 you were speaking with him?

24 A. At the time I spoke to him, he was seated in a
25 chair over to the side, and it was just me and him

1 when we spoke.

2 Q. Okay. Other people were on the property?

3 A. Yes, ma'am.

4 Q. But no one was witnessing your interview with
5 him?

6 A. No, ma'am.

7 Q. Okay. Did he speak with you freely and
8 voluntarily?

9 A. He did.

10 Q. Did you ask him questions?

11 A. I did.

12 Q. Okay. And were -- did he waive his rights and
13 say that he would speak with you?

14 A. He did agree to speak with me.

15 Q. Did he ever request an attorney?

16 A. No, ma'am.

17 Q. Okay. Were you in uniform?

18 A. I was.

19 Q. And is that a typical uniform, or is this a
20 special looking uniform?

21 A. This is more of a typical uniform for the
22 investigator. That day we were doing a saturation
23 of crime areas, and I was wearing my greens that
24 day.

25 Q. Okay. So it was a little more of an Army look,

1 but still a uniform, correct?

2 A. Yes. It had Sheriff on -- on -- a Sheriff
3 badge and Sheriff on the back.

4 Q. No mistaking that you were with law
5 enforcement?

6 A. Huh-uh.

7 Q. Okay. Did you have a weapon?

8 A. I did.

9 Q. Was it holstered?

10 A. It was.

11 Q. Okay. During the time that you spoke with him,
12 you said the defendant was seated ---

13 A. Yes.

14 Q. --- is that right? Did he appear comfortable?

15 A. He did. And if I recall, he was actually
16 handcuffed in the front when I was speaking with
17 him.

18 Q. Okay. Did he ask you for anything?

19 A. He did not.

20 Q. If he had asked you for anything, food or
21 drink, would you have denied him that?

22 A. No.

23 Q. Okay. Did he appear to be rational and
24 responsive?

25 A. He did.

1 Q. Okay. His appearance, the content of his
2 conversation, mannerisms, left no question in your
3 mind about his ability to understand what you were
4 discussing with him?

5 A. Not at all.

6 Q. Okay. Did you threaten him or make any
7 promises to get him to speak with you?

8 A. No, ma'am.

9 Q. Okay. You didn't tell him that you would let
10 him go if he spoke with you, make any promises
11 whatsoever?

12 A. No, ma'am.

13 Q. Okay. Did he ever ask for an attorney while he
14 was speaking with you?

15 A. He did not.

16 Q. Okay. And did he indicate he wanted to speak
17 with you?

18 A. He did.

19 Q. And did he give you a statement?

20 A. He did.

21 Q. Okay.

22 A. A verbal statement.

23 Q. Pardon?

24 A. A verbal statement.

25 Q. He gave you a verbal statement. And what was

1 that statement?

2 A. I inquired about the Chevy truck that was
3 sitting there in the driveway and the trailer had a
4 motorcycle on it and inquired what his knowledge of
5 those were. And he told me that he left to go to
6 the store for a few minutes. And while he was gone,
7 he left Joey Surdak and a girl named Nicole, is all
8 we knew, there at his residence.

9 And as he come back from the store, the truck
10 was there on scene. Amanda Sanders and Clint
11 Macomson was there at the time he got back, and they
12 were not there when he left.

13 Q. And you're talking about the scene. Is it your
14 understanding that that is Mr. Duncan's residence
15 where all this is taking place?

16 A. Yes, ma'am. That's where I knew him to live.

17 Q. Pardon?

18 A. That's where I knew him to live.

19 Q. And did you know him to live there for a
20 particular reason?

21 A. Yes. I have -- back when I was on road patrol,
22 I have responded there for calls and I knew him to
23 live there.

24 MR. SMITH: Objection. I object to -- that is
25 prior bad acts. That's what I'm saying, he's ---

1 THE COURT: Overruled.

2 BY MS. PRICE:

3 Q. Did you speak with him at that property at his
4 residence about any other matters that occurred that
5 day?

6 A. No, ma'am. I was more concerned with the
7 stolen truck there on scene and the other property
8 we had found outside there. So I was more focused
9 on the property side of it, so that's where my
10 questions were.

11 Q. Because you were a property crimes
12 investigator?

13 A. Exactly.

14 Q. Did you charge this defendant with anything?

15 A. No, ma'am.

16 Q. Okay. Do you know if he was charged with
17 anything that day?

18 A. I do.

19 Q. Okay. And what was he charged with?

20 A. He was charged with trafficking methamphetamine
21 and I believe he had a large quantity of pills on
22 him, controlled substances.

23 Q. Okay. And when he spoke with you, had he
24 already been placed under arrest for anything?

25 A. No, ma'am. He was just detained at that time.

1 MS. PRICE: Okay. Thank you. Answer any
2 questions that Mr. Smith has for you.

3 THE COURT: Mr. Smith.

4 MR. SMITH: May it please the Court?

5 BY MR. SMITH:

6 Q. How long were you at that scene?

7 A. Sir?

8 Q. How long were you at the scene?

9 A. It was several hours.

10 Q. Several hours. Was Officer Stipe with you at
11 that time?

12 A. When I first arrived, he was already there.

13 Q. About how long was he there?

14 A. Probably an hour and a half, two hours. I know
15 he -- he stayed on scene until we needed people to
16 be transported.

17 Q. At what point during the -- several -- several
18 hours you said you were there?

19 A. I was.

20 Q. At what point did Mr. Duncan go in cuffs?

21 A. When I arrived on scene, Deputy Stipe had four
22 individuals there detained.

23 Q. Was he in cuffs?

24 A. Yes.

25 Q. At what point did he make a phone call to

1 Amanda Sanders' mother?

2 A. I have no clue.

3 Q. Do you think he'd be able to do that if he had
4 his cuffs on?

5 A. If he's cuffed in the front, yes.

6 Q. When you cuff them, do you -- do you check them
7 for anything?

8 A. They do.

9 Q. Is it likely he has a phone at that point?

10 A. It's very possible.

11 Q. Where did Mr. Duncan go according to your
12 discussion with him?

13 A. He said the store. He didn't say which store.

14 Q. All right. And what -- who is all left at his
15 place?

16 A. He advised me that Joey Surdak, Joseph Surdak,
17 and a girl named Nicole were the only people there
18 when he left to go to the store.

19 Q. Okay. So -- and so Nicole was there when you
20 got there then?

21 A. No, sir.

22 Q. Okay. So Nicole and Joseph Surdak were hanging
23 out at that residence prior to him getting back,
24 prior to you getting there?

25 A. According to him, yes.

1 Q. And you definitely had a conversation with
2 Michael Duncan?

3 A. I did on scene.

4 Q. Where was that in respect to -- respect to his
5 abode, his house?

6 A. Where was what?

7 Q. Your discussion with him.

8 A. He was seated right there under the -- there's
9 like an awning that hangs in front of the house, and
10 there's a chair over to the side that he was seated
11 in when I spoke to him.

12 Q. What kind of chair was it?

13 A. Just your typical chair. I don't recall that.

14 Q. Is it a lawn chair?

15 A. I don't recall that.

16 Q. Was he on the porch? Was he on the porch?

17 A. There is an awning that hangs off his residence
18 there, and he was right around that area.

19 Q. Okay. So there's no porch?

20 A. There's an awning is all I can tell you.

21 Q. How many chair were there?

22 A. I don't recall that.

23 Q. Got an idea?

24 A. I remember specifically seeing a recliner and
25 whatever chair he was seated in at the time.

1 Q. He wasn't seated in the recliner; is that yes
2 or no?

3 A. No, sir.

4 Q. Who all was talking to Mr. Duncan?

5 A. I can only speak for myself. I personally
6 spoke to him trying to figure out about the truck
7 and trailer.

8 Q. So that's all you're talking to him about?

9 A. Yes, sir.

10 Q. And you also talked to Amanda Sanders, right?

11 A. Later on after we cleared the scene.

12 Q. And she, of course, told you that ---

13 MS. PRICE: Objection Your Honor. We're
14 talking about the voluntariness of the defendant's
15 statement.

16 THE COURT: Sustained. Stick to this
17 defendant.

18 MR. SMITH: Yes, sir.

19 BY MR. SMITH:

20 Q. What again did Mr. Duncan tell you? You can't
21 remember.

22 A. I walked over to Mr. Duncan and advised him why
23 we were there. And I said, "I need to know about
24 this white truck parked here in the driveway and
25 this trailer, this utility trailer with the

1 motorcycle on it."

2 And he specifically said, "Joseph Surdak and
3 Nicole were here at my residence, and I left to go
4 to the store. When I returned, this white truck,
5 this trailer, and this motorcycle were here.
6 Clinton Macomson and Amanda Sanders were not here,
7 and Clint was trying to get me to buy the trailer
8 and motorcycle from him."

9 Q. Did Mr. Duncan know Clinton Macomson?

10 A. As far as acquaintances maybe, but as far as
11 personally, I can't testify to that.

12 Q. The time that you were there, who all spoke to
13 Mr. Duncan?

14 A. For sure I know I did. That's all I can tell
15 you.

16 Q. How -- how big of an area were all law
17 enforcement?

18 A. The front of his residence is a big asphalt
19 area. You could fit several people out there.

20 Q. Would you say that the -- the length of the
21 front of the -- of his place is 40 feet?

22 A. I didn't measure it.

23 Q. How many -- was there garage doors there? I
24 mean, how -- how long -- can you give me an estimate
25 about how long from the building it is?

1 MS. PRICE: Judge, again, I'm going to object.
2 I don't know what this has to do with the
3 voluntariness of this defendant's statement.

4 THE COURT: Overruled. I'll let you ask this
5 question.

6 THE WITNESS: Would you state the question
7 again?

8 BY MR. SMITH:

9 Q. About -- about how long was the front of the
10 building?

11 A. I know it's a concrete building. It has a
12 couple of garage doors on the front of it and a
13 couple of doors from what I recall. So if you say a
14 garage door is 10 feet long, 10, 20, probably over
15 40 feet or right at it.

16 Q. Was everyone that was participating in this
17 event, were they all within that -- the 40 to
18 50 foot in front of the building, whether it be out
19 here or like ---

20 A. We had several people doing different things.
21 Some people were photographing, some people were
22 questioning other witnesses, but we were all there
23 within that area.

24 Q. You had -- did -- did he or anyone else you
25 spoke to tell you that something came out of that

1 house?

2 A. Not that I recall.

3 Q. Did he or anyone else tell you that something
4 went in the house?

5 A. Not that I recall.

6 Q. From your discussion as well as those of your
7 fellow officers in doing this investigation, was
8 there any belief that Michael Duncan had anything to
9 do with that truck?

10 A. The truck was still missing a dirt bike that
11 was in it when it was stolen.

12 Q. So is that the one that they found, or you're
13 saying there's another one?

14 A. There was another one that was in the back of
15 that truck when it was stolen. And at the time of
16 us getting on scene, it was missing.

17 Q. You're not saying it was under his bed, were
18 you?

19 A. I'm not saying where it was. That was an item
20 that was missing when we got on scene.

21 Q. But you later learned it was at Dean Wells or
22 Wiles? Who was it?

23 A. Sir?

24 Q. Amanda Sanders told you where it was, right?

25 A. During the interview after we left?

1 Q. Sure.

2 A. It's possible. I'm sure I asked her. She was
3 not questioned about that on scene.

4 Q. You didn't have any reason to believe the
5 motorcycle was in his house, right?

6 A. I get on scene with a stolen vehicle and we got
7 another trailer that was stolen. I had reason to
8 believe that it might be in there. Yes.

9 Q. All right. And you, of course, said that
10 Nicole was there the whole time?

11 A. I did not say that.

12 Q. You said she was with Joseph Surdak, right?

13 A. When he left to go to the store.

14 MR. SMITH: All right. Thank you, sir.

15 Nothing further.

16 MS. PRICE: Nothing further.

17 THE COURT: Okay. Thank you, Officer. You can
18 step down.

19 (Witness excused.)

20 THE COURT: Anything further?

21 MS. PRICE: There are no further witnesses and
22 no further statements made by the defendant that the
23 State intends to introduce.

24 THE COURT: Okay. Mr. Smith.

25 MR. SMITH: May it please the Court, Your

1 Honor.

2 They have an advisory of rights here which
3 would've shown that he had been advised of his
4 rights and that he had waived them, but they didn't
5 use this so I would ask that anything he said be
6 kept out.

7 THE COURT: Ms. Price, do you wish to be heard
8 on the issue?

9 MS. PRICE: Your Honor, that wasn't an
10 interrogation per se. As you heard, Mr. Duncan was
11 detained. He was later placed under arrest. He had
12 been Mirandized. That was when -- when he
13 volunteered information to Heath Davis.

14 He was in handcuffs, but Deputy Stipe had to
15 separate four people with the help of only one other
16 individual. And -- and that is customary to do that
17 for the safety of all officers and so people don't
18 run away.

19 I don't think we heard any testimony that they
20 coerced or mislead the defendant to elicit any
21 statements from him, and I believe they're also, for
22 the most part, self-interesting statements.

23 THE COURT: All right. Well, let me -- let me
24 just make sure that I have the statements that
25 you're seeking to enter. You're seeking to put in

1 from Officer Stipe a statement that he alleges was
2 made by the defendant to the effect that the
3 defendant returned home and the vehicle was in his
4 driveway and that the stolen items were not in his
5 possession; is that -- is that correct?

6 MS. PRICE: Yes.

7 THE COURT: And then you have the statement
8 from Officer Davis that he alleges the defendant
9 stated, "When I returned, the truck trailer with the
10 motorcycle were here and Amanda Sanders and Clinton
11 Macomson were there," and then Macomson tried to get
12 him to buy the truck. Is that -- do I have those
13 statements correct?

14 MS. PRICE: Yes, sir.. Additionally,
15 Detective -- or Deputy Stipe asked the defendant on
16 scene whether or not he was the possessor of some
17 methamphetamine that was found on the property
18 outside of the home, and he said no.

19 And whether or not he possessed any of the
20 other items that were found out there that were
21 stolen and the defendant said no. He denied
22 possession.

23 THE COURT: Okay. I think he test -- he didn't
24 testify to meth. He said the items not in his
25 possession, so all right.

1 MS. PRICE: I can recall him, Your Honor, if
2 you want him to say ---

3 THE COURT: No. He said -- that's what's in
4 the report?

5 MS. PRICE: Sir?

6 THE COURT: Is that in the report that was
7 provided to the defense?

8 MS. PRICE: Yes.

9 THE COURT: Okay.

10 MS. PRICE: That he denied possession of the
11 methamphetamine.

12 THE COURT: He denied possession of any -- any
13 of those items.

14 MS. PRICE: Yes, sir.

15 THE COURT: Okay. All right.

16 MS. PRICE: And, Your Honor, that's
17 specifically to the methamphetamine found outside of
18 the building. It is not to the methamphetamine that
19 was found inside the building which is the basis for
20 the trafficking charge. He was not asked about
21 that. He had been transported off scene.

22 THE COURT: And he was not charged with the
23 methamphetamines outside?

24 MS. PRICE: He was, in fact, yes, sir. He was
25 charged with simple possession, as were the three

1 other individuals who were on scene.

2 Joseph Surdak has pled guilty to that charge.

3 THE COURT: Is that -- but that's not the
4 charge you're proceeding under today?

5 MS. PRICE: No, sir. We're proceeding under
6 methamphetamine that was found inside this
7 defendant's residence.

8 THE COURT: Okay. All right. After -- after
9 conducting an in camera hearing based on the
10 standards set forth in *Jackson v. Denno*, after
11 hearing the testimony and reviewed the evidence
12 presented, I find that the statements given by the
13 defendant to law enforcement as have been set forth
14 on the record were custodial.

15 I further find that the defendant knowingly and
16 intelligently waived his Miranda rights when he gave
17 the statements in question. The Court considered
18 the totality of the circumstances, which include the
19 location, the length of interrogation, the lack of
20 coercion, the physical condition of the defendant
21 with regards to him being seated, that they
22 handcuffed in the front so as to not make him
23 uncomfortable. I find no evidence that there were
24 threats, violence, promises of leniency.

25 So I find that considering the totality of the

1 circumstances that these statements are voluntary
2 for admissibility purposes; therefore, the motion to
3 suppress these statements would be denied.

4 So let's go to Mr. Smith's motions.

5 MS. PRICE: Your Honor, before we begin this,
6 the State's understanding that in order to be
7 entitled to a suppression hearing, the defense must
8 first articulate on the record specific legal
9 findings or beliefs that entitle him to the
10 suppression hearing under *State v. Patton*, 472
11 S.E.2d 245, and *State v. Banda*.

12 He would have to allege on the record the
13 conduct that was violated of the defendant's
14 Constitutional rights, and then keep the hearing
15 specifically addressing that allegation.

16 THE COURT: All right. Mr. Smith.

17 MR. SMITH: Your Honor, basically this all
18 relates to a stolen truck allegedly, and the OnStar
19 found the truck, found the motorcycle, found the
20 trailer, and the police came there.

21 They were not instructed of -- I don't believe
22 it was an OnStar on that motorcycle so -- it wasn't
23 a motorcycle. He -- he got a search warrant to go
24 in my client's house based on a stolen truck that
25 they learned of by OnStar and they found it outside.

1 It wasn't in one of the garage stalls. It was
2 outside. The motorcycle was outside.

3 The -- we maintain that the -- excuse me. I
4 withdraw that.

5 Mr. Sanders -- Ms. Sanders and Mr. Macomson
6 brought the truck over, brought the motorcycle.
7 Ms. Sanders told the police at the scene at the
8 house that they had taken the truck, that they
9 arrived with the truck and with the motorcycle.

10 There was no allegation that Mr. Duncan knew
11 about it, no allegation that he -- that he
12 participated, that Joey Surdak was there and Joey
13 Surdak, in fact, because of Mr. Duncan not knowing
14 Mr. Macomson told Amy to get it out of here with
15 this property. He just showed up with a truck and
16 then he's trying to sell it and he can't operate --
17 he can't operate the truck because its shut down.

18 Mr. Macomson and Ms. Sanders were trying to --
19 from the interviews, trying to rub of any
20 fingerprints and getting rid of things because they
21 knew they couldn't move the stolen vehicle.

22 And the police did find a small baggy of meth
23 as well as a pipe and gun. They were underneath one
24 of the vehicles that was on the property. Well,
25 that in and of itself says that they have no idea

1 whose property it was, so they arrested everybody.

2 And then they came to the Court with an
3 affidavit that is scant on any -- anything that --
4 may I approach, Your Honor?

5 THE COURT: Yes, sir.

6 MR. SMITH: What the affiant seeks to keep.

7 THE COURT: So, Mr. Smith, you're challenging
8 the sufficiency of the search warrant?

9 MR. SMITH: Yes, sir.

10 THE COURT: Okay. And state to seek the
11 grounds for which you believe the search warrant
12 failed or why is it effective?

13 MR. SMITH: There's no evidence whatsoever that
14 things -- stolen things or any other items went into
15 the house.

16 On the same token, there is no evidence that
17 things came out of the house. Everything was --
18 they were there because of the OnStar. The OnStar,
19 of course, found the stolen vehicle which was
20 outside -- at first it was outside.

21 The meth that they found was underneath
22 something outside. And then they say it was -- they
23 didn't know whose it was.

24 So taking that into consideration, they can't
25 then go into Mr. Duncan's house. They didn't know

1 it was his, so there's no fair probability that
2 there's something inside, you know, that
3 Mr. Macomson and Ms. Sanders were trying to get rid
4 of things on the stolen truck so it wouldn't be
5 associated to them.

6 I suggest that the pipe and methamphetamine
7 that were found outside underneath something were
8 not Mr. Duncan's. Mr. Duncan lived there. He had
9 no reason to throw things out in the yard.

10 The bottom line is, there's no probable cause
11 to go in the house when there is no -- there's
12 nothing that shows that anything might've been in
13 there. There's no fair probability that there's
14 something in there that relates to why they're
15 there. They're there for a truck, a stolen truck,
16 and we'll testify to that. They weren't there for
17 methamphetamine.

18 They found some little baggy from people that
19 were scared to death that their truck and motorcycle
20 they had stolen were soon in the hands of the police
21 and that they would be at fault. There's no
22 evidence that they've provided me that says
23 Mr. Duncan was participating in any -- any act --
24 any illegal act. There's nothing to get in the
25 house. Nothing.

1 THE COURT: Okay.

2 MR. SMITH: That's it. That's all I have.

3 THE COURT: Thank you, Mr. Smith. All right.

4 Ms. Price.

5 MS. PRICE: Your Honor, in fact, stolen items
6 were found inside the house, and -- and so that was
7 provided to Mr. Smith.

8 The theory and -- would be that those items
9 were traded for methamphetamine that these people
10 were using on the property because Mr. Duncan is a
11 meth dealer, and so there is -- there are items
12 inside the home which were brought there that were
13 from the two other incidents that were charged.
14 Clint Macomson was charged with that.

15 But as far as the sufficiency of the warrant
16 goes, very specific to that, Your Honor, no one on
17 scene -- this -- this methamphetamine is found
18 underneath a vehicle, which is within close
19 proximity to the four individuals who were on scene
20 with David Stipe who you heard from pulled on scene.

21 In fact, the young woman who was present,
22 Amanda Sanders, this is not Nicole who Mr. Smith has
23 mentioned, who was gone. Amanda Sanders is seated
24 in one of the chairs on the property in this
25 photograph. You can see her there.

1 And Detective Wood with the Anderson County
2 Sheriffs Office went over to speak with Ms. Sanders,
3 kneeled down, which is totally reasonable and -- and
4 looks like you would have to do that to have a
5 conversation with her based on the pictures that
6 were taken of where she's seated, and turns around
7 and sees a loaded gun underneath the truck that's
8 near these folks.

9 He doesn't see the drugs at this point. He
10 sees a loaded gun. He calls Deputy Stipe over and
11 says, "Deputy, I see a gun." This is an officer
12 safety issue.

13 Deputy Stipe looks over there. Not only does
14 he see a gun, but about a foot away from that he see
15 what appears to be methamphetamine along with a pipe
16 used for smoking methamphetamine.

17 At that time Deputy Stipe, as you heard, asked,
18 "Who -- whose methamphetamine is this?"

19 All four people deny that it's their
20 methamphetamine. He charges all of them based on
21 the fact that they were all in proximity to it at
22 that time.

23 Because they found methamphetamine in addition
24 to stolen property, they find the truck which you
25 heard had been tracked by OnStar to that location.

1 That truck, its horn was going on, its lights were
2 flashing. And that was still happening when Deputy
3 Stipe arrived on scene.

4 So to say that he was not aware that something
5 was going on with this vehicle, is a little bit
6 absurd, but it's locked down. They can't drive it.
7 There's a trailer with a motorcycle on it.

8 They search the truck because they determine
9 that it's the stolen truck and find paperwork
10 belonging to an individual. And they also figure
11 out that the truck, the motorcycle, and trailer
12 belong to someone else's registered address.

13 So they search that address. They get in touch
14 with that property owner. He goes and sees that his
15 place has been broken into and there are things that
16 are missing.

17 So we have two victims, the owner of the Chevy
18 truck and the owner of the trailer and the
19 motorcycle. Still missing are multiple items from
20 both of these homes or residences I should say.
21 Both of these victims are still missing stolen
22 property.

23 So a search warrant is obtained looking for
24 additional stolen property. And because drugs are
25 found on the property that belongs to this

1 individual, they seek a warrant looking for not only
2 stolen property, but also narcotics.

3 THE COURT: Okay. All right. Are you
4 proffering testimony?

5 MS. PRICE: I will absolutely be happy to do
6 that.

7 THE COURT: Could you tell me what the
8 magistrate signed this?

9 MS. PRICE: Judge White, sir.

10 THE COURT: Judge White. All right. Why don't
11 you proffer the testimony.

12 Mr. Smith, I understand your motion and we'll
13 proceed.

14 MR. SMITH: Thank you.

15 MS. PRICE: Thank you, Your Honor. I'm going
16 to start with the affiant, Jason Price. The State
17 calls Jason Price.

18 (Witness approached.)

19 THE CLERK: Good afternoon, Mr. Price. Just
20 need you to raise your right hand.

21 THE WITNESS: (Complying.)

22 THE CLERK: Do you solemnly swear or affirm the
23 testimony you'll give the Court today in this case
24 will be the truth, the whole truth, and nothing but
25 the truth?

1 THE WITNESS: I do.

2 THE CLERK: If you'll take the witness stand,
3 please, sir, and state your name and spell your last
4 name for the reporter, please.

5 THE WITNESS: Jason Price, Anderson County.
6 Last name, P-r-i-c-e.

7 INVESTIGATOR JASON PRICE,
8 having been produced and first duly sworn as a
9 witness on behalf of the State, then testified as
10 follows:

11 PROFFERED EXAMINATION

12 BY MS. PRICE:

13 Q. And you work for Anderson County in what
14 capacity?

15 A. Investigator of criminal investigations.

16 Q. Were you involved in the obtaining of a search
17 warrant for the residence of Michael Duncan at
18 [REDACTED] -- [REDACTED] South Main Street Extension?

19 A. I was.

20 Q. Okay. I'm going to show you what's been marked
21 as State's Exhibit 2 or Court's Exhibit 2 for the
22 purposes of this hearing only. Are you familiar
23 with that item?

24 A. I am.

25 Q. And what is it?

Proffered examination of Investigator Price by Ms. Price

71

- 1 A. It's a search warrant I drafted on that day.
- 2 Q. You drafted it?
- 3 A. I did.
- 4 Q. Do you recall what the date was?
- 5 A. October 15th.
- 6 Q. Okay. And what year?
- 7 A. 2015.
- 8 Q. Okay. And are you familiar with that?
- 9 A. I am.
- 10 Q. And how are you familiar with it?
- 11 A. I typed the search warrant on scene.
- 12 Q. You wrote it?
- 13 A. I did.
- 14 Q. Who is the issuing judge for the search
- 15 warrant?
- 16 A. Judge White.
- 17 Q. Okay. Looking at the search warrant, is there
- 18 a description of the promises you provided to the
- 19 magistrate that was to be searched?
- 20 A. Yes.
- 21 Q. Okay. Could you read that out and publish to
- 22 the Court, please?
- 23 A. The property is located at [REDACTED] South Main
- 24 Street Extension. The building is further described
- 25 as a white front with yellow sides and rare in color

1 concrete brick building.

2 Q. And looking at the search warrant again, is
3 there a description of the property that was to be
4 seized?

5 A. Yes.

6 Q. And could you read that to the Court, please?

7 A. Stolen Honda dirt bike; set of keys with a red
8 tab; any drugs or drug paraphernalia; papers and
9 records to prove ownership.

10 Q. Okay. And did you provide the information set
11 out in a probable cause section of the search
12 warrant to the issuing magistrate after you were
13 sworn?

14 A. Yes.

15 Q. Okay. And can you read that to the Court,
16 please?

17 A. Yes. "On October 15, 2015, a stolen truck,
18 trailer, and motorcycle and some identification were
19 recovered from a known property. These items are
20 from three different burglary and larceny cases.
21 Known items missing from these cases are a Honda
22 dirt bike and a set of keys with a red tab. It is
23 this investigator's belief that the evidence
24 recovered from the above-referenced location will
25 further assist in the investigation of these cases.

1 "Also found outside on the property was a small
2 baggy with a crystal-like substance that field
3 tested positive for methamphetamine and a glass pipe
4 known to be used for smoking methamphetamine."

5 Q. Was all of the information you provided to the
6 magistrate true and correct?

7 A. It was.

8 Q. Okay. So according to your statement, it was
9 your belief and the belief of your co-law
10 enforcement agents that additional stolen property
11 was going to be found inside the residence of
12 Mr. Duncan?

13 A. Yes.

14 Q. And that was based on the fact that you found
15 stolen property on his property; is that correct?

16 A. Yes. Yes.

17 Q. Okay. And according to your search warrant,
18 you were still missing known items; is that right?

19 A. We were.

20 Q. Okay. And those items were taken at least in
21 your belief at the same time that the items that you
22 recovered that day were taken?

23 A. I believe.

24 Q. Okay. Did you execute the return?

25 A. I did not. I did not.

- 1 Q. Who did that?
- 2 A. Investigator Heath did.
- 3 Q. Okay. Did Alex Hendrix also execute the
- 4 return?
- 5 A. He's listed on the return, but he's not the
- 6 signing executing officer.
- 7 Q. Okay. Investigator Price, were you present on
- 8 scene when this incident was taking place?
- 9 A. The execution?
- 10 Q. No. Not execution. Were you present for
- 11 execution? Did you assist in execution?
- 12 A. I did assist.
- 13 Q. And was additional stolen property found in
- 14 that home?
- 15 A. I did not locate any.
- 16 Q. You did not locate any?
- 17 A. I did not.
- 18 Q. And you don't recall ---
- 19 A. I do not.
- 20 Q. But you didn't sign the return; is that right?
- 21 A. Correct.
- 22 Q. Okay. Were you present when stolen property
- 23 was found on the property prior to this search
- 24 warrant. ---
- 25 A. Yes.

Proffered examination of Investigator Price by Ms. Price

75

1 Q. --- being sought?

2 A. Yes.

3 Q. You were. Were you present when
4 methamphetamine was found on the property belonging
5 to this defendant?

6 A. Yes.

7 Q. Prior to seeking the search warrant?

8 A. Prior to, yes.

9 MR. SMITH: Objection. That's facts not in
10 evidence. They were his. That's what you said.

11 MS. PRICE: I'm sorry. I don't understand.

12 THE COURT: Re -- rephrase -- rephrase the
13 question. I don't know that I understand the
14 objection. Ask the question again.

15 BY MS. PRICE:

16 Q. Were you present on scene when methamphetamine
17 was found on the residence, the property which also
18 holds the residence of this defendant?

19 A. Yes.

20 MS. PRICE: Okay. I have no further questions
21 of this witness.

22 THE COURT: Mr. Smith.

23 MR. SMITH: May it please the Court?

24 BY MR. SMITH:

25 Q. The key with the red tab?

- 1 A. Excuse me?
- 2 Q. The key with the red tab ---
- 3 A. Yes.
- 4 Q. --- that's Mr. Duncan's keys to his house,
- 5 right?
- 6 A. I'm not certain.
- 7 Q. Well, you did the search warrant, right?
- 8 A. I was advised the key with a red tab. I can't
- 9 advise where it goes.
- 10 Q. Excuse me?
- 11 A. I can't advise where it goes.
- 12 Q. So if you don't know where it goes, why would
- 13 you be looking for it?
- 14 A. Because I was advised it was stolen property or
- 15 missing.
- 16 Q. You went in his house, right?
- 17 A. Uh-huh.
- 18 Q. How did you guys in get in his house?
- 19 A. The door was -- I did not gain entry, so I
- 20 can't testify to that.
- 21 Q. Where were you when entry was gained?
- 22 A. I went through an open roll-up door I believe.
- 23 Q. So was it locked?
- 24 A. I can't advise.
- 25 Q. Well, it was a roll-up door, was it locked?

Proffered examination of Investigator Price by Mr. Smith

77

1 A. I did not -- if it was locked, I can't advise.

2 Q. Did someone unlock it in front of you?

3 A. In front of me, no.

4 Q. So according to your knowledge, it was
5 unlocked?

6 A. I couldn't tell you if it was locked or
7 unlocked.

8 Q. You think you'd be able to pull it up if it was
9 locked?

10 A. I didn't do -- I didn't pull it up, sir.

11 Q. Can you give me one thing, one bit of evidence
12 that would make you believe that there was something
13 inside the home? Did somebody tell you that there
14 was something in there?

15 A. I didn't interview the people on scene.

16 Q. So there's no testimony or no statements by
17 anybody saying, "Hey, there's stuff at the house,"
18 right?

19 A. I went by what I -- what I saw on scene and
20 what officers on scene told me.

21 Q. Okay. You found the -- the truck. Tell me,
22 when did you talk to the victim?

23 A. The victim?

24 Q. Yes, sir.

25 A. Which one?

1 Q. The one for the truck.

2 A. Did I return the truck? I don't talk to him.

3 I didn't return the truck.

4 Q. The truck was there. You didn't ---

5 A. There was a truck there, yes.

6 Q. And it was the one that was stolen, right?

7 A. I believe -- if it was, I don't recall at this
8 time because I don't think it's listed.

9 Q. What information did you have that there was
10 something stolen that the investigation of this
11 theft or this -- the three burglaries and larcenies
12 that you're talking about, what information did you
13 have that anything related to that was in that
14 house? Anything?

15 A. Well, this -- from what I understand this was
16 his residence.

17 Q. Yes, sir.

18 A. And items were found that were stolen -- at his
19 house that were stolen.

20 Q. And do you have an idea of when those things
21 arrived at his place?

22 A. I don't.

23 Q. Do you have an idea as to who brought them
24 there?

25 A. I don't.

1 Q. Do you have any belief whatsoever that

2 Mr. Duncan brought them there?

3 A. I believe that it's his residence.

4 Q. Do you have any information that he brought

5 them there?

6 A. Direct evidence?

7 Q. Yes.

8 A. No.

9 Q. How long were you at the scene?

10 A. I couldn't give you an exact time.

11 Q. What time did you get there?

12 A. It was during daylight hours.

13 Q. Were you there a couple of hours?

14 A. I hesitate to be specific because I don't know.

15 Q. So you don't know. Who was all there?

16 A. Myself, Investigator Wood, Deputy Stipe,

17 Investigator Marzoff, and Investigator Hendrix.

18 And there was some other non-law enforcement

19 individuals, but I couldn't tell you their names.

20 Q. When did Officer Hendrix get there?

21 A. I don't recall.

22 Q. Can you tell me which order these people

23 arrived?

24 A. I cannot because I arrived after they did.

25 Q. How long do you think Deputy Stipe had been on

1 the scene?

2 A. I couldn't tell you, sir.

3 Q. Did you talk to any of the individuals that
4 were at that residence?

5 A. Non-law enforcement or law enforcement?

6 Q. Mr. Surdak, did you speak to him? Were you in
7 his vicinity where you could hear the discussion?

8 A. Not that I recall.

9 Q. Amanda Sanders, were you in a vicinity where
10 she was?

11 A. I'm sure I was around her, but I couldn't tell
12 you.

13 Q. About how long is that or is that residence
14 from the -- taking into consideration the garage
15 doors all the way to the end, how long do you know
16 is that?

17 A. It was quite long, but, again, I couldn't tell
18 you. It's equivalent to maybe a single-wide
19 trailer.

20 Q. Sixty to 70 feet?

21 A. Possibly.

22 Q. Was everybody that was at that location in
23 front of the building?

24 A. If you consider that the front. I don't think
25 anybody was behind it.

Proffered examination of Investigator Price by Mr. Smith

81

- 1 Q. So everybody's on the same side?
- 2 A. I believe so.
- 3 Q. Where was Deputy Stipe?
- 4 A. In front somewhere.
- 5 Q. Where were you at?
- 6 A. I pulled my car at the driveway at the road.
- 7 Q. Where is Officer Wood?
- 8 A. He was with me in the car.
- 9 Q. Did you guys take Joey Surdak and talk to him?
- 10 A. I did not, no.
- 11 Q. Did Officer Wood?
- 12 A. I did not keep track of Officer Wood on the
- 13 scene.
- 14 Q. I thought you were together?
- 15 A. We rode together to the scene.
- 16 Q. How'd you leave?
- 17 A. I left to go get the search warrant.
- 18 Q. Did you take the car?
- 19 A. My vehicle, yes.
- 20 Q. Did Officer Wood go with you?
- 21 A. No.
- 22 Q. When you came back, did he leave with you at
- 23 the end of the day?
- 24 A. I imagine he did.
- 25 Q. You're not sure though?

1 A. Being 2015, I can't recall if he stayed there
2 on scene or left with me.

3 Q. Take any contemporaneous notes?

4 A. Did I take notes? I did not.

5 Q. You're an investigator?

6 A. I typed this on scene and I was not charged
7 with interviewing anybody, so there was not any
8 notes on my behalf.

9 Q. So there were four individuals. Who
10 interviewed who?

11 A. Again, I couldn't tell you.

12 Q. Do you know anything from this particular
13 situation?

14 A. I know I just tried to get the search warrant.

15 Q. All right. Was there any belief that there
16 were drugs in that house based on finding one little
17 baggy that no one knew whose it was?

18 A. I believe you could believe that there would be
19 drugs in the house if the drugs are found with him,
20 but I can't testify to that, that they were found
21 actually on him.

22 Q. Right. They weren't found on him, were they?

23 A. I don't know.

24 Q. You don't know?

25 A. I didn't find them.

1 Q. Where were you at when they were found?

2 A. I was on scene, but, again, I can't tell you
3 where.

4 Q. Were you near Officer Wood?

5 A. Well, near is subjective. I'm sure he was on
6 scene.

7 Q. What about when he was talking to Amanda
8 Sanders, were you near him then?

9 A. I don't know when he talked to her.

10 Q. You were in a position where you could hear
11 everyone that was talking there; isn't that right?

12 A. But I did not hear everyone talking.

13 Q. You didn't hear anybody? Do you have a hearing
14 issue?

15 A. No.

16 Q. Is there anything specific in your aff -- do
17 you have your affidavit?

18 A. I do, sir.

19 Q. All right. Is there anything specific in there
20 that tells you why there's going to be stuff located
21 in the house?

22 A. Well, like I said, I said this to the judge,
23 these particular items and especially that roll-up
24 door that I specifically talked about a minute ago,
25 you could easily push a motorcycle in there. And

1 with methamphetamine testing positive that day in
2 his residence, it's not unreasonable to believe that
3 there might be something in the residence.

4 Q. Because the door was easy to pull up and down?

5 A. I can't testify to the ease of the door.

6 Q. But it was easy when you pulled it up?

7 A. I did not pull it up.

8 Q. You didn't?

9 A. I told you earlier I did not.

10 Q. Well, how did it get open then?

11 A. I wasn't there when the door was opened. I was
12 not in front of the door when it was opened.

13 Q. Where were you at do you think?

14 MS. PRICE: Judge, asked and answered. He's
15 already answered.

16 THE COURT: Sustained. Move on, Mr. Smith.

17 BY MR. SMITH:

18 Q. The door that you're speaking of, where was it
19 in the building? Is it the far left? the far right?
20 was it in the middle?

21 A. If you're looking straight at the building,
22 it's on the right side.

23 Q. So you would've been at the left side?

24 A. The right side.

25 Q. When it happened, went up and everything, you

Proffered examination of Investigator Price by Mr. Smith

85

1 would've been on the left side?

2 A. Either at the left side or the front door.

3 It's a rather long building.

4 Q. Did Amanda Sanders say that Michael Duncan put
5 some stuff in the house?

6 A. I never spoke to her.

7 Q. So she didn't say that he brought some drugs
8 out or anything like that?

9 A. I did not speak to her.

10 Q. All right. Clint Macomson, was there any doubt
11 in your mind that he took the truck?

12 A. I didn't speak to Clint or Mr. Macomson.

13 Q. But it's a team effort over there at Anderson,
14 right? You work together?

15 A. We do.

16 Q. So was there -- in your discussion with your
17 fellow officers, he -- he was the only one that
18 stole the truck, right?

19 A. I can't say, sir.

20 Q. So Amanda Sanders sat on that porch and said
21 everything, didn't she?

22 A. That's news to me.

23 Q. Other than this affidavit, do you know anything
24 else?

25 A. No, sir.

1 Q. What kind of car were you and Officer Wood in?

2 A. A Crown Victoria.

3 Q. What color?

4 A. Black.

5 Q. How long did it take you to get that search

6 warrant signed?

7 A. From the time -- I don't understand the time

8 frame.

9 Q. When you left the scene, you had to go to the
10 magistrate, right?

11 A. I would think maybe 20, 30 minutes maybe.

12 Q. What day of the week would it have been?

13 A. I don't have it listed on the exact day of the
14 week, so I can't recall at the time.

15 Q. So you would've took 20 or 30 minutes to get
16 the warrant signed?

17 A. That's very possible.

18 Q. Who all was there when you got back?

19 A. The same people that were there when I left.

20 Q. Initially, the van or paddy wagon, if you will,
21 came and got Clinton, Amanda, and Joseph Surdak;
22 isn't that right?

23 A. I don't recall the paddy wagon.

24 Q. No. Not any?

25 A. Not by me.

Proffered examination of Investigator Price by Ms. Price

87

1 Q. But this is the extent of your knowledge right
2 here?

3 A. Yes, sir.

4 Q. Did someone say something that a motorcycle had
5 been taken in there?

6 A. Excuse me?

7 Q. That motorcycle, did someone say it had been
8 there or taken in the house?

9 A. To me, no.

10 Q. To anyone?

11 A. You'd have to ask the other officers.

12 Q. You don't have any knowledge of it?

13 A. (Nonverbal response.)

14 MR. SMITH: Nothing further.

15 THE COURT: Anything further of this witness?

16 BY MS. PRICE:

17 Q. You didn't -- or Investigator Price, did you
18 oversee the execution of the search warrant?

19 A. I didn't.

20 Q. Was it your responsibility to make entry into
21 this property?

22 A. It was not.

23 Q. Did that duty fall on another individual?

24 A. Yes.

25 Q. Okay. Or multiple individuals?

1 A. Yes.

2 Q. When you typed the basis for the search
3 warrant, was there any doubt in your mind that what
4 you were typing was your belief and was true and
5 accurate when -- when you typed it?

6 A. No doubt in my mind.

7 Q. Would you even consider misleading a judge?

8 A. No.

9 Q. So when you presented this to the magistrate
10 two years ago when it was fresh in your mind, would
11 you say that the reason for your belief at that time
12 is represented accurately here?

13 A. Yes.

14 MS. PRICE: Thank you. No further questions.

15 MR. SMITH: Your Honor, if I may.

16 BY MR. SMITH:

17 Q. So this was your belief, right, and it's -- my
18 question is: The red tab key, you know, the key
19 that gets into Mr. Duncan's house ---

20 A. Okay.

21 Q. --- why is that a description of property
22 sought and given to you in those files?

23 A. I have the known items at that time missing
24 from the cases listed are a Honda dirt bike and a
25 set of keys with a red tab.

Proffered examination of Investigator Price by Mr. Smith

89

1 Q. And what do those keys go to?

2 A. I think I -- I think I answered it before that
3 I don't know.

4 Q. You don't have -- so you don't know, but yet
5 you're putting keys on that search warrant?

6 A. I didn't go to the other scenes. This is what
7 I'm advised by officers that were there.

8 Q. So you're telling me the judge signed something
9 you don't even know about in your affidavit?

10 A. That's what I was told by the officers ---

11 Q. But you didn't ---

12 A. --- and I have no reason to believe they would
13 lie to me.

14 MR. SMITH: Nothing further at this time.

15 THE COURT: Okay. Thank you, Officer. You can
16 step down.

17 THE WITNESS: Thank you, sir.

18 (Witness excused.)

19 THE COURT: Let's take a short -- just a short
20 break.

21 (From 4:11 to 4:18 p.m., a recess was taken.)

22 THE COURT: Ms. Price.

23 MS. PRICE: Your Honor, at this time the State
24 calls Detective Alan Hendrix.

25 (Witness approaching.)

1 THE CLERK: Just need for you to raise your
2 right hand.

3 THE WITNESS: (Complying.)

4 THE CLERK: Do you solemnly swear or affirm the
5 testimony you will give the Court today in this case
6 to be the truth, the whole truth, and nothing but
7 the truth?

8 THE WITNESS: I do.

9 THE CLERK: If you will take the witness stand,
10 please, sir, and state your name and spell your last
11 name for the reporter, please.

12 THE WITNESS: My name is Alan Hendrix. It's
13 H-e-n-d-r-i-x.

14 DETECTIVE ALAN HENDRIX,
15 having been produced and first duly sworn as a
16 witness on behalf of the State, testified as
17 follows:

18 PROFFERED EXAMINATION

19 BY MS. PRICE:

20 Q. Detective Hendrix, who do you work for?

21 A. I work for Anderson County Sheriff's Office.

22 Q. And in what capacity do you work for them?

23 A. I'm a narcotics detective.

24 Q. Were you involved with the obtaining of a
25 search warrant for the residence of Michael Duncan

Proffered examination of Detective Hendrix by Ms. Price

91

1 at [REDACTED] South Main Street Extension?

2 A. I was.

3 Q. Okay. Did you type the affidavit for that
4 search warrant?

5 A. I did not.

6 Q. Okay. Do you know who did?

7 A. I believe it was Jason Price.

8 Q. Okay. And were you present for the development
9 of the basis for obtaining that affidavit?

10 A. I was.

11 Q. Okay. And did you, after the search warrant
12 was obtained, assist or direct execution of that
13 search warrant?

14 A. I did.

15 Q. Okay. Did you oversee a portion of the
16 execution of that search warrant?

17 A. I oversaw the narcotics portion of the
18 execution.

19 Q. Okay. And when was the search warrant
20 executed?

21 A. October the 15th, 2015.

22 Q. And how close to getting the search warrant
23 signed by the judge was it executed in time?

24 A. Total from start to finish?

25 Q. Sure.

1 A. An hour maybe.

2 Q. Okay. So same day?

3 A. Yes, ma'am.

4 Q. In fact, within a matter of hours?

5 A. Correct.

6 Q. Okay. So there was no dramatic wait from the
7 time the search warrant was signed to when it was
8 executed?

9 A. No, ma'am.

10 Q. Okay. And I'm going to show you what's been
11 marked as State's Exhibit 2, Court exhibit for the
12 purposes of this hearing. Are you familiar with
13 that?

14 A. I am.

15 Q. Okay. What is it?

16 A. It is a search warrant.

17 Q. Okay. Do you know what search warrant that is
18 in particular?

19 A. It is for [REDACTED] South Main Street Extension.

20 Q. Does that appear to be the search warrant that
21 you executed on October 15, 2015?

22 A. It is.

23 Q. Okay. What time was that search warrant
24 executed?

25 A. It says 3:34 p.m.

Proffered examination of Detective Hendrix by Ms. Price

93

1 Q. Okay. And what, according to the return or
2 your portion of the return, was collected in your
3 inventory?

4 A. Approximately, 73 grams of --

5 MR. SMITH: Your Honor, objection. This is a
6 suppression hearing. Keep saying stuff that they
7 found, so why is that relevant?

8 THE COURT: All right. I'll overrule the
9 objection.

10 THE WITNESS: It's approximately 73 grams of a
11 crystal-like substance.

12 BY MS. PRICE:

13 Q. Anything else?

14 A. There is a loose crystal substance in the black
15 bag; 42 blue pills inside of an orange medicine
16 bottle; three 12-gauge shot shells from the bed; a
17 Ziploc bag that contained a small amount of
18 crystal-like substance; an orange medicine bottle
19 containing 33 white pills; an orange medicine bottle
20 containing 110 green pills, 4 white pills, and 2
21 yellow pills; an orange medicine bottle containing 1
22 peach colored pill, 2 or 3 pills, and 30 blue pills;
23 orange medicine bottle containing 28 pink pills and
24 34 green pills; a green medicine bottle containing a
25 loose crystal substance, and 30 blue pills; and a

1 black digital scale.

2 Q. Okay. And how did you make entry to execute
3 the search warrant?

4 A. I used a key to unlock a padlock that was on a
5 door.

6 MS. PRICE: Okay. Beg the Court's indulgence.

7 BY MS. PRICE:

8 Q. Detective, I'm showing you what's been marked
9 as State's Exhibit 3 for Court exhibit for the
10 purpose of this hearing. Are you familiar with the
11 item in that photograph?

12 A. I am.

13 Q. Okay. And what is that?

14 A. A set of keys.

15 Q. Okay. Are you familiar with that specific set
16 of keys?

17 A. Those appear to be the same keys I used to
18 unlock the door.

19 Q. Okay. And where did you obtain those keys?

20 A. Those keys were either on a table that he was
21 sitting near or on his person. And I want to say it
22 was on his person when I removed them to use those
23 keys to unlock the door.

24 Q. Okay. And who is "he"?

25 A. That would be Mr. Duncan.

1 Q. Okay. And in that photograph, do they appear
2 to be in someone's lap?

3 A. They do.

4 Q. Okay. Do you remember what Mr. Duncan was
5 wearing?

6 A. I don't remember specifically what he was
7 wearing that day.

8 Q. Okay. Is it possible you took them from his
9 person?

10 A. It is possible.

11 Q. Okay. Or from his area?

12 A. That's correct.

13 Q. Okay. And you said you entered a locked door?

14 A. I entered a locked door on the left. If you're
15 facing the building, I entered a door -- a locked
16 door and a chain running through the door with a
17 padlock. That was on the left-hand side of the
18 building.

19 Q. Okay. Was anything else outside that door that
20 would indicate somebody didn't want anyone to go in
21 that door?

22 A. There was actually dogs that -- that scared me
23 when I walked up because I wasn't anticipating a dog
24 that was on a chain to the left there and it started
25 barking and actually ran toward us on the chain.

1 Q. Okay. And after you made entry, did you find
2 the items that were in court for today that you just
3 went over?

4 A. I did.

5 Q. Okay. And what led you to believe that you
6 would find items of the nature that you were seeking
7 before the search warrant was obtained?

8 A. Prior to the search warrant, I was standing in
9 the area. Again, I can't recall her name. She was
10 sitting in a recliner. Detective Wood was speaking
11 to her and I heard him mention something to the
12 effects of, "What is that?"

13 And I had Deputy Stipe go over to what he
14 believed was a gun -- the butt of a gun under a
15 Jeep. Deputy Stipe goes over there and found the
16 gun and finds a small baggy that field tested
17 positive for meth and also a plastic pipe under this
18 Jeep.

19 Based on that, it was believed that there may
20 be more drugs inside of that residence.

21 Q. Okay. Is it common to find drugs in multiple
22 areas of a property in your experience?

23 A. In my experience it is very common for that.

24 Q. And it was finding those drugs in close
25 proximity to the residence which led you to believe

Proffered examination of Detective Hendrix by Ms. Price

97

1 there may be more drugs on the property; is that

2 right?

3 A. That's right.

4 Q. Did you assist in recovering the stolen

5 property?

6 A. I did not.

7 Q. Okay. Who executed that portion of the search

8 warrant?

9 A. Investigator Davis.

10 Q. Okay. And did you two do separate inventories?

11 A. I wrote down on a -- on a pad. And I can't

12 remember if it was the complete inventory, but I was

13 writing things down. I know on my end, I don't

14 think I did the inventory for the stolen property.

15 Q. Okay. And you were both signed on that search

16 warrant?

17 A. Yes, ma'am.

18 Q. Okay. As turning in the terms; is that

19 correct?

20 A. That's correct.

21 Q. Okay. When did the return get done?

22 A. It says November the 4th, 2015.

23 Q. How many days after issuance is that?

24 A. That would be 21 I believe.

25 Q. Yes.

1 A. Just right off the top of my head.

2 Q. Okay. And do you have a reason for a delay in
3 getting the return turned back into the magistrate?

4 A. I'm not sure about a specific incident why that
5 on that particular day. It could be that we were
6 busy. It's summertime and it's usually our busiest
7 time of the year. I don't know.

8 The judge -- Judge White is often in and out of
9 the area. Sometimes it's hard to reach him. Other
10 than that, I don't know, but I do know that
11 summertime being a busy area that it possibly
12 could've been busy. The judge is in and out a lot.
13 He mainly goes out to the jail, that's it. He's in
14 court on different days.

15 Q. I see that your inventory is typed. Did you do
16 that on scene?

17 A. No, ma'am. That was done afterwards. The
18 space allotted for the return sometimes is not big
19 enough or allows enough room to write everything
20 down. That's why it is typed.

21 Q. Okay. And did you type that yourself?

22 A. I did.

23 Q. Okay. You waited until the search warrant was
24 returned -- was brought back to the scene by
25 Investigator Price before executing it; is that

1 correct?

2 A. That's correct.

3 Q. Okay. And narcotics were the specific thing
4 that you were assisting in searching for; is that
5 correct?

6 A. That's correct.

7 Q. And you found narcotics, which is what you were
8 searching; is that right?

9 A. That is right.

10 Q. So you had a good faith belief that you would
11 find narcotics; is that right?

12 A. That's right.

13 Q. Based on narcotics that had already been
14 found ---

15 A. Correct.

16 Q. --- is that right?

17 A. That's right.

18 Q. And then they were found in fact?

19 A. They were.

20 Q. Okay. And where were they found specifically
21 inside?

22 A. If you walk into the door to the left of the
23 building, immediately to the right was a black bag.
24 There was a lot of stuff in this area. There was a
25 black IBM bag to the right. I opened that black IBM

1 bag up and discovered methamphetamine inside of it.

2 Q. Can you describe the interior of that residence
3 for me?

4 A. It was very hard to walk inside of it. There's
5 stuff everywhere. There was a very limited path.
6 You had to crawl over things to get to other areas.
7 Very cluttered would be the word I would use.

8 Q. Is there a dividing partition in the property
9 at all?

10 A. There appears to be a dividing area around the
11 bed. There's a bed that we discovered in there.
12 Appears to be a dividing area there.

13 Q. Did you search both sides of that partition, or
14 did you split up in groups?

15 A. We split up. I know I went to the left with
16 Forensics Investigator Wilson. I know other
17 investigators went to the right. I'm not sure who
18 this was, but I went to the right.

19 Q. Are you aware that stolen property was found?

20 A. Yes.

21 Q. And was -- it was indeed?

22 A. Well, I know there was stolen property found
23 outside of the residence.

24 Q. Okay.

25 A. Inside I'm not sure.

1 Q. Okay. That was not your part of the search
2 warrant; is that correct?

3 A. That's correct.

4 Q. You were specifically involved with narcotics?

5 A. Correct.

6 Q. Okay. When you're mentioning the partition,
7 was the methamphetamine found on the side that you
8 mentioned that has a bed?

9 A. It was.

10 Q. Did you observe any markings near or around
11 that bed?

12 A. There was a ---

13 MR. SMITH: Objection as to leading.

14 THE COURT: Overruled.

15 THE WITNESS: There was writing on the wall
16 that said something along the fact of "Hack's place"
17 or something like that or -- and then there was
18 writing under it that had "Hack, we visited you."
19 We know that to be a nickname of Michael Duncan.

20 MS. PRICE: Okay.

21 MR. SMITH: Objection as to relevance.

22 THE COURT: What is it? What's the exhibit?

23 MS. PRICE: Your Honor, I'll approach.

24 THE COURT: Mr. Smith, come up here, please.

25 (Sidebar discussion.)

1 BY MS. PRICE:

2 Q. Detective, I'm showing you what's been marked
3 as State's Exhibit 4. Are you familiar with what's
4 depicted in this photograph?

5 A. I am.

6 Q. Okay. And what is that?

7 A. It's a picture of a wall in the bedroom area.

8 Q. Okay. Is there any writing on that wall?

9 A. It says, "I love you, Hack. Carol was here
10 chilling with Hack, 2015."

11 Q. Okay. And when was the search warrant
12 executed?

13 A. It was executed on October 15, 2015.

14 Q. So the same year?

15 A. That's correct.

16 Q. Okay. And that writing indicates that this
17 defendant was in that property that very year?

18 A. That's correct.

19 Q. In the bedroom area; is that correct?

20 A. That's correct.

21 Q. Okay. And did you have any indication that
22 anyone other than Mr. Duncan had access to this
23 building?

24 A. I did not.

25 MS. PRICE: Okay. Thank you. I have no

Proffered examination of Detective Hendrix by Mr. Smith

103

1 further questions.

2 THE COURT: All right. Mr. Smith.

3 MR. SMITH: May it please the Court?

4 BY MR. SMITH:

5 Q. You had a good-faith belief that there would be
6 drugs found in the residence, right?

7 A. Yes, sir.

8 Q. And you based -- based that on the assessment
9 that you didn't know whose drugs were outside,
10 right?

11 A. Right.

12 Q. So you don't know if they're Michael Duncan's;
13 you don't know if they're Amanda Sanders; don't know
14 if they're Clinton Chisolm's; don't know if they're
15 Joey Surdak's, but by golly you know that there's
16 going to be drugs inside?

17 A. Well, I didn't know for sure at the time.

18 Q. Right. Until you got inside, huh?

19 A. That's right.

20 Q. Yeah. Dog was on his -- on the chain?

21 A. Yes, sir.

22 Q. All right. How long were you there? When'd
23 you get there?

24 A. Let's see, I was there probably a couple hours.
25 Deputy Stipe and a couple other deputies were

1 already there before I got there.

2 Q. How long had they been there when you get
3 there?

4 A. You know, just -- just taking a guess, it would
5 be 20 or 30 minutes before I got there.

6 Q. You do a lot of larceny and burglaries?

7 A. I don't.

8 Q. Why were you there?

9 A. Well, we were working a saturation area. I
10 heard the dispatch of the call go out, so I headed
11 that way to see if they needed any assistance.

12 Q. Where were you located on the property when you
13 were there?

14 A. I mostly either sat in my truck or I stood up
15 against a wall near that -- where that recliner is.

16 Q. What were you doing?

17 A. I was just hanging out.

18 MR. SMITH: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 BY MR. SMITH:

22 Q. Those are Michael Duncan's keys?

23 A. I assume so.

24 Q. Yeah. He took those out because you had him
25 take them out?

Proffered examination of Detective Hendrix by Mr. Smith

105

1 A. No. I can't remember if -- when I got there,
2 he was sitting behind the table with a little
3 umbrella, so I can't remember if they come off that
4 table or I got them off his person, but I'm
5 confident or I lean towards that I got off his
6 person.

7 Q. And they all had colored tabs, right? Green?
8 Red? Yellow?

9 A. I don't remember that. I remember a -- kind of
10 a thick key that fit a master lock.

11 Q. All those people that were there, did anybody
12 have a body cam or whatever those things are?

13 A. Like a body cam?

14 Q. Sure.

15 A. No, sir.

16 Q. So you knew you were going to go take an
17 inventory of what was on the property, right?

18 A. Yes, sir.

19 Q. But nobody took a video camera to show what you
20 did?

21 A. No. We're not issued body cameras if that's
22 your question.

23 Q. But you knew you needed one, didn't you, if you
24 did inventory?

25 A. Do I need a body camera? Is that what you're

1 asking?

2 Q. Or in general, like a video.

3 A. Sir, about four years as a narcotic
4 investigator, I've never videotaped any scene.

5 Q. You don't have any video, you can't really
6 question about it, can you?

7 A. (No response.)

8 Q. Mr. Sanders -- I mean, Mr. Duncan, was he in
9 cuffs when you got there?

10 A. He was.

11 Q. How long did he remain in cuffs before he got
12 his ride?

13 A. It was probably 45 minutes or so.

14 Q. And what did he go to the detention center in?

15 A. I remember the paddy wagon came and picked him
16 up.

17 Q. Is that an appropriate label?

18 A. That's what I refer to it as, a van.

19 Q. Is that a van?

20 A. It's a van. Yes.

21 Q. And he wasn't in there initially. They had to
22 come back and get him, right?

23 A. I don't remember that.

24 Q. Mr. Duncan made two phone calls. Do you let
25 people make phone calls when they're cuffed?

1 A. I generally don't, but I wasn't with
2 Mr. Duncan. I was over here (indicating) at the
3 recliner, so I don't know if he made a phone call or
4 not.

5 Q. Well, where was Mr. Duncan? I thought he was
6 in the recliner.

7 A. Yeah, they were all in that same area. There
8 was a female sitting in the recliner if I remember
9 right. A female was sitting in the recliner. I was
10 standing up against the wall just -- just standing
11 there, and Detective Wood was talking to this
12 female.

13 Q. Okay. And so where was Mr. Duncan?

14 A. If I remember right, he was off to the left.
15 Well, that's reversed. If you're facing the
16 building, he would be to the right of the recliner.

17 Q. All right. So he was over to the right and --
18 beg the Court's indulgence.

19 Who was -- who was talking to Mr. Duncan?

20 A. I don't know, sir.

21 Q. Did anybody talk to Mr. Duncan?

22 A. I know I did not talk to Mr. Duncan, but I
23 don't know who -- who did.

24 Q. But I thought your vantage point, you were just
25 watching everybody?

1 A. Well, I could see everybody, but I don't know
2 who was talking -- I don't remember that, who was
3 talking to him.

4 Q. The stolen vehicle was found by OnStar, right?

5 A. That's correct.

6 Q. And so everybody is still there for the stolen
7 vehicle?

8 A. Yes. It was dispatched out over the radio that
9 in the area of [REDACTED] South Main, OnStar was pinging
10 this stolen vehicle.

11 Q. And when you arrived, how loud were the -- how
12 loud was the siren?

13 A. That wasn't on whenever I arrived.

14 Q. How did they get that turned on?

15 A. From my understanding, OnStar can turn that on
16 and off. I'm not sure if they did it or the
17 detective or deputy or somebody like that, but it
18 was not on when I arrived.

19 Q. The drugs that were found, how much was found
20 and where was it found?

21 A. Which incident are you ---

22 Q. Outside.

23 A. Outside.

24 Q. Yeah.

25 A. Approximately, .3 grams in a little small

1 plastic bag.

2 Q. And the pipe was -- looked to be dark in the
3 pictures. That means it was used a few times,
4 right?

5 A. It appeared that way.

6 Q. And so Macomson was driving that truck; is
7 that -- is that understood?

8 A. I don't know, sir.

9 Q. Didn't know that?

10 A. I did not know that.

11 Q. You were close enough to Amanda Sanders in one
12 of the chairs. She told everything, didn't she?

13 A. Sir, I didn't listen in on the conversation.
14 Although, I was close enough probably to hear it,
15 but I did not listen in on the conversation. I
16 don't recall anybody saying that or specifically her
17 saying it.

18 Q. Did you have any knowledge that Mr. Duncan
19 wasn't in the area when they arrived?

20 A. No. I didn't know that until after the fact
21 when I spoke to Heath Davis.

22 Q. So Heath Davis knew that he wasn't there?

23 A. Yeah, from what I gathered when we went to
24 execute the search warrant, Heath and I had a
25 conversation about it at my truck. And Heath had

1 made mention to me that, you know, that Mr. Duncan
2 was claiming that he wasn't here and that kind of
3 thing.

4 Q. You heard Officer Price testify, right?

5 A. Yes, sir.

6 Q. And he said that one time he said that he
7 opened up the -- that door, rolling door -- or what
8 are those doors called?

9 A. The roll-up door? The garage door?

10 Q. Yeah, it just rolls up?

11 A. Yes.

12 Q. And then he said he didn't open it. Who opened
13 that door?

14 A. I don't know, sir. I went to the left-hand
15 side of that building. I did not go to the
16 right-hand side.

17 Q. And you said that when you open the door, there
18 was a bag, IBM?

19 A. It was a black IBM bag in this trailer.

20 Q. It was full of pills and what have you?

21 A. The pills, the handgun, and methamphetamine.

22 Q. One -- one location?

23 A. Yes, sir.

24 Q. And the sirens had already gone off?

25 A. Yes, sir.

Proffered examination of Detective Hendrix by Mr. Smith

111

1 Q. And OnStar had stopped whoever was driving that
2 vehicle right in that driveway, right?

3 A. I don't know, sir.

4 Q. The person who drove it wouldn't get away,
5 would they?

6 A. I don't know.

7 Q. There was no indication that drugs would be in
8 that house, was there?

9 A. Well, yes, because there were drugs found
10 outside, and it's common to find drugs outside and
11 inside the residence.

12 Q. Okay.

13 A. But I don't know for sure. I can't say
14 100 percent that, yes, I will find drugs in the
15 house. I don't know that until I execute the search
16 warrant.

17 Q. Right. But how'd you get the search warrant?

18 A. I didn't obtain the search warrant. The
19 investigators at that scene, based on there's stolen
20 property, finding these drugs, they obtained the
21 search warrant. I assisted them with that search
22 warrant.

23 Q. But you weren't looking -- there were no
24 diamond rings? You were looking for a truck? Found
25 it. Motorcycle? Found it. And there was no

1 indication that there was another motorcycle there,
2 was there?

3 A. When -- while they were -- while the
4 investigators were there, they were asking if
5 anybody -- or they had made mention to me that there
6 is a dirt bike missing that they're looking for and
7 also parts to this motorcycle.

8 Q. Really? Parts?

9 A. Yes.

10 Q. Did you find those in the house?

11 A. I don't recall, sir.

12 Q. How about I say you didn't. Would you argue
13 that?

14 A. I don't know, sir.

15 Q. Okay. All right. But the whole thing was
16 about a stolen vehicle?

17 A. Yes, sir.

18 Q. You saw a little bit of meth that you don't
19 know was Michael Duncan's. So you don't know if
20 it's ever been in that house, but yet you think you
21 should get in the house; is that right?

22 A. Well, in my experience as a narcotics
23 investigator, stolen property with drugs kind of go
24 hand-in-hand. Sometimes drugs are traded for stolen
25 property, and so it would be reasonable to believe

Proffered examination of Detective Hendrix by Mr. Smith

113

1 that you find drugs on the ground, that they
2 could've been traded for dope, and further drugs
3 would be found inside the residence.

4 Q. Could be? Maybe?

5 A. Could be.

6 Q. Independent knowledge that you have that -- the
7 only independent knowledge is that there was the
8 little baggy you found outside?

9 A. Yes.

10 Q. That you charged four people with?

11 A. Yes. I believe Deputy Stipe charged them with
12 that.

13 Q. All right. So -- so that would indicate that
14 you can now go over to Joey Surdak's house, Clinton
15 Macomson's house, and Amanda Sanders, and go in
16 their houses because they could've been theirs,
17 right?

18 A. Well, if I was at their house and I found drugs
19 outside, that would be a different situation. I was
20 at Mr. Duncan's house when the drug were found.

21 Q. You're not trying to tell us that you -- you
22 find drugs laying on the ground outside these houses
23 and you say that there's normally drugs in the
24 house? You don't normally find the drugs in the
25 driveway, do you?

1 A. There's been occasions where I've -- I've
2 executed other search warrants whereas people has
3 thrown drugs on the ground or I've seen drugs
4 around. Yes, I've found drugs on the ground and
5 found drugs inside the house.

6 Q. But on this day, the only thing you had was the
7 fact that the drugs were there by one of four
8 people?

9 A. Yes.

10 Q. You were here for Heath's testimony, right?

11 A. Yes, sir.

12 Q. Did he say that there was stolen property found
13 in the house?

14 MS. PRICE: Objection, Your Honor. He can't
15 testify about somebody else's testimony. He's just
16 sitting here as the lead investigator.

17 THE COURT: Sustained.

18 BY MR. SMITH:

19 Q. No doubt about the dog being on the chain?

20 A. Correct.

21 Q. And where did you -- what was your
22 understanding of where Mr. Duncan may have been?

23 A. I'm sorry. What?

24 Q. Immediately prior to your arrival ---

25 A. Yes.

Proffered examination of Detective Hendrix by Ms. Price

115

1 Q. --- it's understood that he wasn't there; is
2 that right?

3 A. Yes.

4 Q. Where do you understand that he was?

5 A. I don't know, sir.

6 Q. You said that you believe it was a good-faith
7 belief that there was something in the house?

8 A. Yes, sir.

9 Q. But there was no name or anything that said it
10 was Michael Duncan's stuff outside, right?

11 A. No, sir.

12 Q. You had no belief that it was his?

13 A. Well, I wasn't sure.

14 MR. SMITH: I don't have anything further, Your
15 Honor.

16 MS. PRICE: Briefly.

17 BY MS. PRICE:

18 Q. You mentioned the dog and it came up again and
19 a heavy lock on a door. In your experience as a
20 narcotics investigator, when you find narcotics on a
21 property and you see things like heavy chains and
22 locks or handguns or dogs that are chained up to
23 guard a place, does it raise suspicion in your mind
24 that there may be things on that property that are
25 illegal?

1 A. It does.

2 Q. Did it in this case?

3 A. It did.

4 Q. And you did not cover the property side of this
5 search warrant, but you did -- you were aware that
6 stolen property was found in addition to these
7 drugs?

8 MR. SMITH: Objection, Your Honor. There was
9 no testimony to my knowledge that there's been
10 stolen property found. Other than the stuff
11 outside, there was ---

12 THE COURT: Well, that's what you're referring
13 to, Ms. Price?

14 MS. PRICE: I'm referring to the stolen
15 property outside.

16 THE COURT: I think that answers your concern.

17 THE WITNESS: I'm sorry. Can you repeat the
18 question?

19 MS. PRICE: I can try.

20 THE WITNESS: Yes. I knew that there was
21 stolen property outside and drugs found.

22 MS. PRICE: Okay.

23 THE WITNESS: Does that answer your question?

24 BY MS. PRICE:

25 Q. Yes. So the totality of those two things, just

Proffered examination of Detective Hendrix by Ms. Price

117

1 to clarify, did they lead you to believe in -- I
2 think that you mentioned this, that there's a
3 possibility of an exchange of goods for other goods
4 that had taken place?

5 A. That's correct.

6 Q. In fact, drugs for stolen property?

7 A. Yes, ma'am.

8 Q. So it was possible that both of those things
9 were not only outside the property, but also inside?

10 A. That's correct.

11 Q. And is it your understanding that both of those
12 things were, in fact, found inside?

13 A. I knew drugs were found inside.. I'm not sure
14 if stolen property was found inside.

15 Q. If it's listed on the return, would you say
16 that your fellow officer had listed things that were
17 being sought?

18 MR. SMITH: Objection.

19 THE COURT: Overruled.

20 BY MS. PRICE:

21 Q. Would you say that if Heath Davis, who is also
22 your co-executor ---

23 A. Yes, ma'am.

24 Q. --- of this warrant, that the things that he
25 listed, if he was seeking them as stolen property,

1 that they were, in fact, stolen?

2 A. Yes.

3 Q. All right. But you did not assist in that
4 recovery?

5 A. I did not.

6 Q. But you personally found the trafficking weight
7 of methamphetamine?

8 A. I did.

9 Q. In Michael Duncan's property; is that correct?

10 A. That's correct.

11 MS. PRICE: Okay. Thank you. No further
12 questions.

13 BY MR. SMITH:

14 Q. And then you had no knowledge of drugs being in
15 that house prior to the search warrant?

16 A. Correct.

17 Q. No one told you that some may be found in there
18 or no reliable source told you that there was
19 something in there?

20 A. No, sir.

21 MR. SMITH: Nothing further.

22 THE COURT: Anything further from this witness?

23 MS. PRICE: Only one question.

24 BY MS. PRICE:

25 Q. You had a reasonable belief, although you

1 didn't know with certainty; is that correct?

2 A. That is correct. I had a reasonable belief to
3 believe that there were drugs in that house.

4 MS. PRICE: Thank you, Judge. No further
5 questions.

6 THE COURT: Anything in response to that
7 question?

8 MR. SMITH: Nothing further.

9 THE COURT: Thank you, Officer. You can step
10 down.

11 (Witness excused.)

12 MS. PRICE: Your Honor, the State calls Heath
13 Davis.

14 (Witness approached.)

15 THE CLERK: Raise your right hand.

16 THE WITNESS: (Complying.)

17 THE CLERK: Do you solemnly swear or affirm the
18 testimony you give the Court today in this case to
19 be the truth, the whole truth, and nothing but the
20 truth?

21 THE WITNESS: Yes, sir.

22 THE CLERK: If you'll take the witness stand
23 please, sir, and state your name and spell your last
24 name for the reporter, please.

25 THE WITNESS: Bradley Heath Davis, D-a-v-i-s.

1 INVESTIGATOR HEATH DAVIS,
2 having been produced and first duly sworn as a
3 witness on behalf of the State, then testified as
4 follows:

5 PROFFERED EXAMINATION

6 BY MS. PRICE:

7 Q. Detective Davis, were you involved in obtaining
8 a search warrant for a residence at [REDACTED] South
9 Main Street Extension within Anderson County?

10 A. Yes, ma'am.

11 Q. Okay. Did you type the affidavit?

12 A. I did not.

13 Q. Who did that?

14 A. Detective Jason Price.

15 Q. Okay. Did you consult with Jason Price prior
16 to his drafting that affidavit?

17 A. I did.

18 Q. And did you tell him what you believed would be
19 found on that property?

20 A. I did.

21 Q. Okay. And what was that?

22 A. We were specifically searching for a dirt bike
23 that was in the back of the stolen Chevy truck when
24 it was stolen, and also a set of keys with a red tag
25 on them. Those were the specific items when we were

Proffered examination of Investigator Davis by Ms. Price

121

1 on scene, and he was typing up the search warrant.

2 Q. Was there any mention of drugs as well?

3 A. Yes. As you heard earlier, we found -- Deputy
4 Stipe had found a small baggy of meth on the ground,
5 along with a gun and a meth pipe. And we included
6 drugs and drug paraphernalia on the search warrant.

7 Q. Okay. Based on that discovery ---

8 A. Yes.

9 Q. --- of those drugs outside?

10 A. Yes.

11 Q. Okay. I'm going to show you what's been marked
12 as State's Exhibit No. 2. Are you familiar with
13 that?

14 A. Yes, ma'am. This is the search warrant that
15 was typed up that day.

16 Q. Okay. And the return as well?

17 A. Yes, ma'am.

18 Q. Okay. And when was the search warrant
19 executed?

20 A. On the return, I have that it was executed on
21 October the 15th, 2015, at 1534.

22 Q. Okay. And was that the same day that the
23 search warrant was obtained?

24 A. Yes, ma'am.

25 Q. Okay. Who was the issuing judge for the search

1 warrant?

2 A. Judge White.

3 Q. Okay. And you mentioned a dirt bike and a set
4 of keys I believe that you were trying to recover as
5 property investigator?

6 A. Yes, ma'am.

7 Q. Were those items reported to you as being
8 stolen?

9 A. Yes.

10 Q. Okay. Did they belong to one of the victims
11 who was associated with the truck at the scene or
12 with the motorcycle and trailer or both?

13 A. I do believe that I'm for sure the motorcycle
14 and the dirt bike they were looking for was in the
15 back of the truck, and I believe that the set of
16 keys were missing off the truck as well.

17 Q. And what side of the building did you assist or
18 direct the execution of the search warrant?

19 A. If you're standing directly in front of the
20 building looking at it, there's a whole right side
21 of the building that appeared to be more of a garage
22 area. And it was when we got inside, it was slap
23 full of property.

24 And that's what I was more there for was the
25 stolen property, so I took that side overseeing what

Proffered examination of Investigator Davis by Ms. Price

123

1 was searched over there, running serial numbers and
2 stuff. And it was slap full of stuff -- mopeds,
3 dirt bikes, all kind of lawnmowers.

4 MR. SMITH: Objection as to relevance.

5 THE COURT: Overruled.

6 THE WITNESS: It was slap full of other items
7 that we had to run on the side, so I took that side.
8 Investigator Alan Hendrix took the other side, which
9 turned out to be the side that the defendant lived
10 on.

11 BY MS. PRICE:

12 Q. And did you recover any items and inventory
13 them?

14 A. Yes, ma'am.

15 Q. Can you tell me what you inventoried, please?

16 A. A chrome valve cover, a chrome air breather, an
17 L-rod carburetor, a plastic bag of rags, a
18 registration to the '98 Dodge truck for Monte Wiles
19 which was the victim of the burglary, an Allstate
20 insurance book, and a brady bag, are all
21 specifically the items that I documented here on the
22 return.

23 Q. And you said the victim of the burglary was
24 Monte Wiles?

25 A. Yes, ma'am.

1 Q. And was there property belonging to Monte Wiles
2 that was found outside of the property prior to the
3 execution of the search warrant?

4 A. Both outside and interior when it was executed.

5 Q. Okay. What was found outside prior to the
6 search warrant being obtained?

7 A. From the best I remember, the bag of rags, the
8 registration to his Dodge truck was found, the
9 Allstate insurance book, and the brady bag was all
10 the stuff that should've been inside that stuff --
11 let me back up. You specifically said for Monte
12 Wiles?

13 Q. Yes.

14 A. Outside that was -- should've been the -- and
15 this should also be listed on our property sheet for
16 when we returned the items to each property owner,
17 but I believe the plastic bag of rags, the
18 registration to the Dodge truck, and these other
19 three items, the chrome valve breather, the chrome
20 air breather, and the L-rod carburetor, those were
21 found inside the residence.

22 Q. So you found property belonging to Monte Wiles
23 both inside and outside?

24 A. Yes, ma'am.

25 Q. And some of the property that you found outside

Proffered examination of Investigator Davis by Ms. Price

125

1 was what led you to seek entrance into the property;
2 is that right?

3 A. Yes, ma'am. Stuff that he was missing, plus
4 the truck owner was still missing.

5 Q. Okay. When was the return completed and signed
6 by the judge?

7 A. I returned the search warrant on November 4,
8 2015.

9 Q. How many days is that after it was executed?

10 A. I believe 21.

11 Q. Okay. And, technically, you're supposed to
12 return it within ten days. Do you have a reason for
13 the delay in this case?

14 A. Yes, ma'am. We decided on scene at that time
15 it was the practice of the narcotics investigators
16 to when they had a large quantity of items, they
17 take things back to the office and package it up for
18 the return so everything's neatly organized.

19 I was waiting on the return to come back to me
20 at that time for the narcotics portion for the
21 basis. And when we got that, we have to make sure
22 that we can catch the judge at the office. I
23 believe at that time Judge White was not permanently
24 at the office here downtown. He was only at the
25 jail every so often, so it was the fact of catching

1 him there, along with other things that we were
2 doing.

3 Q. Investigator Davis, as a property crimes
4 investigator, based on what you saw outside of the
5 residence that led you to seek a search warrant, did
6 you have a theory about why you thought you might
7 find additional items inside the residence?

8 A. We did. Originally, when this was drafted,
9 this first search warrant, we were still receiving
10 information from -- at that time, we had the victim
11 of the truck responding to our location to take
12 possession of his things because we were definitely
13 going to give that back to him on scene there. And
14 we were still getting information from Mr. Wiles as
15 we're there executing the search warrant of stuff
16 that he was still missing.

17 And that's when we found the chrome -- the
18 chrome valve breather, the chrome air breather, and
19 the L-rod carburetor on the resident side of
20 Mr. Duncan's residence.

21 And we saw those items and we figured they
22 belonged to Mr. Wiles and we were not going to leave
23 them on scene. And I felt it best to document what
24 we did take here on the search warrant, so that's
25 why we provided them, but not technically in what we

Proffered examination of Investigator Davis by Ms. Price

127

1 were searching for there.

2 Q. And Mr. Duncan spoke with you on scene; is that
3 right?

4 A. He did.

5 Q. And he denied knowledge of the stolen property;
6 is that correct?

7 A. That's correct. The only thing he told me was
8 that Clinton Macomson tried to sell him the trailer
9 and motorcycle. That's the only thing he mentioned.

10 Q. Are you aware if any currency was found on
11 Mr. Duncan when he was placed into custody?

12 A. No, ma'am. I did not handle that part.

13 Q. Okay. Did you find any drugs in the sides that
14 you were overseeing the execution of the search
15 warrant for?

16 A. No, ma'am.

17 Q. Did you find anything not listed in the
18 inventory that was stolen?

19 A. I do not believe we did.

20 Q. Okay. So your return as you inventoried it, is
21 true and accurate and you presented it to the
22 magistrate; is that correct?

23 A. Yes, ma'am.

24 MS. PRICE: Okay. One moment. I have no
25 further questions. Thank you. Please answer any

1 questions of Mr. Smith.

2 THE COURT: Mr. Smith.

3 MR. SMITH: May it please the Court?

4 BY MR. SMITH:

5 Q. The truck was stolen and driven by Clinton

6 Macomson?

7 A. Sir?

8 Q. The truck was stolen and driven by Clinton

9 Macomson; is that right?

10 A. That's what we were getting on scene. Yes,

11 sir.

12 Q. And so your investigation took you over to his

13 house about when?

14 A. About when?

15 Q. Yeah, about when I did you go over there?

16 A. When I heard on the radio that OnStar was

17 tracking a stolen vehicle.

18 Q. No. No. I'm talking about Clinton Macomson's

19 place since he stole that -- since he burglarized.

20 When did you go over there?

21 A. We did not go to Clint Macomson's house.

22 Q. So the person you know stole the truck and the

23 motorcycle, and you got a lot of information from

24 Amanda Sanders, didn't you?

25 A. Are you asking what we done after this day or

Proffered examination of Investigator Davis by Mr. Smith

129

1 this day?

2 Q. From this day and beyond.

3 A. That day we did not go to Clint Macomson's
4 house. No, sir.

5 Q. Well, why not? He stole the truck.

6 A. We were handling things on scene there. I had
7 stolen property, a truck, a burglary also involved,
8 and a search warrant to do.

9 Q. You had no information that Michael Duncan
10 broke into any place, stole anything, right? You
11 had none?

12 A. Not at that time.

13 Q. You didn't have any information that he did
14 that. So tell me, what are you doing in his house?
15 What are you getting a search warrant for? You got
16 the truck. You got the motorcycle. Those are the
17 things that were stolen. Those are the things you
18 had knowledge of, right?

19 A. Right. Including another motorcycle that
20 you're missing.

21 Q. Well, that was -- that was over at Dean Wile's
22 house or Dean somebody, right?

23 A. Nobody knew that on scene.

24 Q. But no one told you that someone slipped a
25 motorcycle in -- under the clutter in the garage,

1 did they?

2 A. That is true. That is the purpose for the
3 search warrant.

4 Q. Yeah, but you didn't have any reason to believe
5 it was in there. No one told you that. You didn't
6 see any trail -- tire marks, any of the -- any of
7 the house or any of the garage. There was no
8 information that you just maybe, could be, right,
9 take a possibility, right?

10 A. There was a great possibility.

11 Q. Did you find a motorcycle in there?

12 A. We did not.

13 Q. What was the great possibility?

14 A. We had a freshly stolen vehicle that arrived on
15 scene, should have still had a dirt bike in the back
16 of it when it was stolen and is now gone, and I had
17 statements from Mr. Duncan when he got on scene that
18 said Clint Macomson already tried to sell him the
19 trailer and the other motorcycle. So, yes, I did
20 have a reason to believe that it might be in there
21 and he was just scared to tell me.

22 Q. The victim, he was unaware that his house had
23 been broken in; isn't that right?

24 A. Sir?

25 Q. He did not know his stuff was stolen yet, did

Proffered examination of Investigator Davis by Mr. Smith

131

1 he?

2 A. Which victim are you're referring to?

3 Q. The one on the motorcycle.

4 A. Which motorcycle are you referring to?

5 Q. The one you found.

6 A. With the utility trailer?

7 Q. That's right.

8 A. He did not realize that his house had been
9 broken into. Him and his wife were at work at that
10 time.

11 Q. Uh-huh. So when was it stolen again?

12 A. What's that?

13 Q. Well, the stuff, when was it stolen? Do you
14 know when it was stolen?

15 A. Some time early that morning from them leaving
16 their house to go to work, between the time we
17 arrived on scene.

18 Q. How many hours do you think that might be?

19 A. I don't know when they went to work, but I know
20 they were both at work when we were on scene.

21 Q. Did they have two motorcycles?

22 A. Who's this?

23 Q. The couple that lost their motorcycle in the
24 truck.

25 A. I only know the one. I did not go down to the

1 house. I sent two detectives down there.

2 Q. So the motorcycle could've been dropped off
3 obviously, right?

4 A. I don't know that.

5 Q. But you don't have -- you didn't have any
6 independent knowledge that anything from that
7 burglary or the burglary theft of the truck,
8 anything related to it had gone in the house?

9 A. We did have reason to believe that.

10 Q. No. No. Did you have any independent
11 knowledge?

12 A. The fact that the motorcycle was missing and I
13 was still missing stuff from the truck.

14 Q. What were you missing from the truck?

15 A. The motorcycle and the set of keys, but also on
16 scene we found multiple items that had been taken
17 out of the truck and brought over to the area -- the
18 large bag of change, the tag that was supposed to be
19 on the truck were all laying over there where the
20 four individuals were first detained.

21 So I had -- I had stuff that had already been
22 taken out of the stolen truck and dropped over to
23 the same area where all four individuals were, so,
24 yes, I did have reason.

25 Q. Did you go outside and talk to the cohorts

Proffered examination of Investigator Davis by Mr. Smith

133

1 about how are the -- the situation with the late
2 return was filed?

3 A. Sir?

4 Q. Yeah, your description of the return talked
5 about the delay being because Judge White is here
6 and there and so forth. Did you guys talk about
7 that?

8 A. Did me and who?

9 Q. You and maybe Officer Hendrix or maybe somebody
10 else out there, maybe Mr. Price.

11 A. I do remember speaking with Detective Hendrix
12 about needing the -- the type up of their copy of
13 what they seized completed so I could get it back to
14 Judge White.

15 Q. When did their sirens go off? When did they
16 get turned off?

17 A. I don't know what you're talking about.

18 Q. The sirens that were going off on the truck,
19 when -- when did they get turned off? Was that by
20 OnStar or was that by the victim?

21 A. I don't work for OnStar.

22 Q. But you got there right when Officer Stipe got
23 there, right?

24 A. It was a few minutes later.

25 Q. Okay. And so there was the truck, the sirens

1 were going off as OnStar does, right?

2 A. If you say so.

3 Q. Gosh, that would be something you could hear,
4 right?

5 A. You would think.

6 Q. You'd think, but you didn't hear them?

7 A. No, sir.

8 Q. Drugs were found in one spot and one spot only;
9 is that right? So you don't know anything about the
10 drugs, correct?

11 A. Which drugs?

12 Q. This one.

13 A. Would you be more specific?

14 Q. Who reported the motorcycle stolen?

15 A. There were two motorcycles.

16 Q. And who -- who reported them stolen?

17 A. We have one victim that had the truck that was
18 stolen that morning and the motorcycle, the dirt
19 bike, and then we had the victim of the burglary.

20 Q. Well, didn't OnStar tell you that it was
21 stolen, or was it the victim telling you it was
22 stolen?

23 A. I think you're getting the victims confused.

24 Q. Okay. The truck, who told you the truck was
25 stolen? OnStar?

Proffered examination of Investigator Davis by Mr. Smith

135

1 A. A deputy went out and took the report from the
2 victim that morning when his truck was stolen. And
3 when it was stolen, it had a dirt bike in the back
4 of it.

5 Q. Mr. Duncan, didn't he make a phone call to
6 Amanda Sanders' mother?

7 A. I do not recall that.

8 Q. Did he make a call to Lloyd Nance to get his
9 dog, make sure his dog was taken of?

10 A. I do not recall that.

11 Q. He didn't get cuffed until he got taken off to
12 jail; isn't that right?

13 A. He was handcuffed when I got on scene.

14 Q. The dog that you saw ---

15 A. Sir?

16 Q. --- the dog, he wasn't -- he wasn't leashed,
17 was he?

18 A. I think there were a couple of dogs on scene,
19 but I don't remember which dog was where.

20 Q. So there was a couple, but they weren't leashed
21 then, right?

22 A. I don't recall that.

23 Q. You don't recall if they were leashed?

24 A. I don't recall anything about the dogs other
25 than there being a couple of dogs there.

1 Q. What kind of dogs did you see?

2 A. I don't recall that. I'd have to look at
3 photos.

4 MR. SMITH: Beg the Court's indulgence.

5 BY MR. SMITH:

6 Q. Did Mr. Duncan have an American Bulldog?

7 A. Sir?

8 Q. Did he have an American Bulldog?

9 A. I don't know.

10 Q. Would you have been concerned about that? Are
11 those dogs mean?

12 A. Sir?

13 Q. Those dogs mean?

14 A. I don't have one of those dogs.

15 Q. Were you scared of that dog in any way?

16 A. I never got around a dog while I was out there.

17 Q. Were you anywhere near Mr. Hendrix?

18 A. We obviously crossed paths several times that
19 day.

20 Q. You don't remember an American Bulldog?

21 A. I remember some dogs on scene. That is all I
22 remember.

23 MR. SMITH: Nothing further, Your Honor.

24 MS. PRICE: Briefly, Your Honor.

25 BY MS. PRICE:

Proffered examination of Investigator Davis by Ms. Price

137

1 Q. Were you the first individual on scene?

2 A. No, ma'am. Not after the call was dispatched.

3 Q. Okay. Is it possible that sirens and horns
4 were going off in the vehicle prior to your arrival?

5 A. It's very possible.

6 Q. Okay. Particularly, if they were heard by
7 Deputy Stipe who was the first on scene?

8 A. Yes, ma'am.

9 Q. Okay. Is it true that you supervised one side
10 of this execution and Detective Hendrix supervised
11 another?

12 A. That is true.

13 Q. Is it possible that the side of the building
14 that Detective Hendrix was executing a warrant for,
15 there could have been a dog that he encountered that
16 you did not encounter?

17 A. It is very possible.

18 MS. PRICE: Thank you. No further questions.

19 MR. SMITH: Just a couple.

20 BY MR. SMITH:

21 Q. The -- the victims, you said they were at work,
22 right?

23 A. The victims of the burglary. Yes, sir.

24 Q. So they weren't around when the truck and the
25 motorcycle were stolen? Who reported the things

1 gone? OnStar?

2 A. You're going to have to be more specific.

3 Q. I'm sorry.

4 A. There were two different victims.

5 Q. Sorry. I was confused. Talking about the

6 OnStar truck.

7 A. Yes, sir.

8 Q. Those people were at work?

9 A. Mr. Houston had filed that report that morning
10 about his truck being stolen.

11 MR. SMITH: All right. Thank you.

12 THE COURT: Thank you, Officer. You can step
13 down.

14 (Witness excused.)

15 MS. PRICE: Your Honor, that's the State's
16 witnesses as to this issue.

17 THE COURT: All right. I'll be happy to hear
18 from the attorneys.

19 MR. SMITH: My witnesses are downstairs.

20 THE COURT: Oh, okay.

21 MR. SMITH: It will be brief.

22 THE COURT: Okay. All right. Well, which?

23 MR. SMITH: Amanda Sanders or Joey.

24 MS. PRICE: May it please the Court?

25 THE COURT: Yes, ma'am.

1 MS. PRICE: Before anyone's brought upstairs, I
2 want to make sure that since they're being brought
3 over from the jail, I'm not calling them as
4 witnesses nor have I been in contact with their
5 attorney. I feel like it's incumbent on me to at
6 least make sure that someone has spoken with their
7 attorney according ---

8 THE COURT: Do they have pending charges?

9 MS. PRICE: They do. And, in fact, they
10 have -- I don't know who he intends to call right
11 now. One of them has charges still pending
12 pertaining to this incident.

13 THE COURT: Okay. Who represents them?

14 MS. PRICE: Your Honor, Amanda Sanders is
15 represented by Lee Cole. She is currently waiting
16 to have a competency evaluation done.

17 THE COURT: Okay. All right. Now, how many --
18 you have Amanda Sanders? Who's the other one?

19 MR. SMITH: Joe Surdak.

20 THE COURT: And who represents him?

21 MS. PRICE: Your Honor, Austin McClain
22 represents Joey Surdak now. He has pled guilty to
23 the charges pertaining to this incident. And at
24 that time, he was represented by Jennifer Johnson.

25 THE COURT: So he -- he no longer has pending

1 charges regarding this incident?

2 MS. PRICE: That's correct.

3 THE COURT: Okay. All right. I'll allow you
4 to call him. If you want to talk to Mr. Cole this
5 evening, and -- well, let's -- call your other
6 witness and then we'll go ahead.

7 MR. SMITH: Yes, sir. Joey Surdak.

8 THE COURT: I don't -- frankly, I don't see
9 what the other witness is going to be able to
10 testify if she has pending charges.

11 MR. SMITH: I was under the impression from my
12 discussions that they pled guilty to all charges,
13 that's why they're no longer simple possession
14 charges.

15 MS. PRICE: That charge is still pending
16 actually.

17 THE BAILIFF: Your Honor, neither one was
18 transported.

19 THE COURT: Okay. Well, that's -- that's the
20 one they called though.

21 Okay. All right. Well, let's do this, let's
22 recess. Inquire with the Department of Corrections
23 because I know I've signed the transport order, but
24 it's -- they were supposed to be here at what time?
25 It was supposed to be nine o'clock.

1 And in the meantime, again, if they have
2 pending charges as to this incident, I can't imagine
3 their attorney wishing them to testify in this case,
4 but you can talk with their attorneys, but I
5 certainly don't want either one of them being called
6 as a witness without their attorney being in total
7 agreement with that with the opportunity to consult
8 with their clients if they have pending charges.
9 Again, I can't imagine an attorney acquiescing that.

10 MR. SMITH: I wasn't aware there was a pending
11 charge in this case for Joey Surdak.

12 THE COURT: Okay.

13 MS. PRICE: And, Your Honor, he is not in SCDC.
14 Joey Surdak is here in Anderson County. Clinton
15 Macomson is in SCDC.

16 THE COURT: Is Surdak here now?

17 MR. SMITH: He's in Anderson. Yes, sir.

18 THE COURT: But, I mean, has he been -- he's
19 not been transported?

20 THE BAILIFF: No, sir.

21 THE COURT: All right. Well, we'll recess this
22 until nine o'clock in the morning.

23 MR. SMITH: Yes, sir.

24 MS. PRICE: Your Honor, for the sake of -- I
25 guess, he's not required to tell us this, but we

1 have a multitude of officers outside that Mr. Smith
2 has under subpoena. And I don't know if he requires
3 all of them present first thing tomorrow morning. I
4 don't.

5 But if there's anybody he is prepared to say
6 definitely needs to be here present, needs to be
7 here, I hate to have half of Anderson County waiting
8 outside.

9 THE COURT: Okay. Mr. Smith, do you have any
10 guidance you could give us on that?

11 MR. SMITH: Sure. I already told them who was
12 going to be called and who wasn't going to be
13 called.

14 MS. PRICE: And, Your Honor, for that matter,
15 he -- he never provided me with the witness list. I
16 heard from the Court that the three prior
17 codefendants were on his list, but he never provided
18 me with a specific list of individuals he claims to
19 call. I believe he's required to do that.

20 THE COURT: Okay. Well, look right now.
21 You've got 23 State's witnesses all through
22 tomorrow. It looks like all but two are marked.

23 Mr. Smith, which one of these do you plan to
24 call?

25 MR. SMITH: Stipe. I have Wood, McGuire. I'll

1 give you the numbers -- 1, 2, 3, 4, 6, 7, 9, and 16.

2 THE COURT: And all of those will be called for
3 your motion to suppress?

4 MR. SMITH: Oh, yes, sir.

5 THE COURT: Okay. All right. So the other
6 officers do not need to be here in the morning?

7 MR. SMITH: Not -- not for me, sir.

8 THE COURT: Okay. All right. Does that answer
9 your question, Ms. Price?

10 MS. PRICE: Yes, sir.

11 THE COURT: All right. We'll recess until nine
12 o'clock tomorrow.

13 MS. PRICE: That older gentleman that I
14 mentioned, he's not going to be available after
15 tomorrow. I'll -- I'll work around this. I don't
16 know if there's a way to accommodate that. If the
17 Court can think about a way to accommodate that. If
18 he has ---

19 THE COURT: Well, we're -- we're going to get
20 started right at 9:00 and we're going to get the
21 thing moving in the morning.

22 MS. PRICE: Okay. Thank you, Judge.

23 (The proceedings concluded at 5:22 p.m.)

24 - - -

25

State of South Carolina
County of Anderson

Court of General Sessions

State of South Carolina)
)
)
 v.)
)
 Michael Darren Duncan)
)
 Defendant.)

Transcript of Record
2016-GS-04-00815

April 18, 2017
Anderson, South Carolina

B E F O R E:

The Honorable Scott Sprouse, Judge, and jury.

A P P E A R A N C E S:

Lauren Price, Assistant Solicitor
Attorney for the State

Don Smith, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

Volume II

P R O C E E D I N G S

* * * * *

THE COURT: Let's go on the record. Is there anything before we bring the jury in from either party?

MS. PRICE: Nothing from the State, Your Honor, except I'm looking at something that was laid on my ---

THE COURT: All right.

THE BAILIFF: We're short one juror.

THE COURT: We're short one juror. Okay.

Let's -- let's stand down for a second.

Ms. Price, what were you saying?

MS. PRICE: The defendant has given me a witness list now that's substantially longer than what they provided us with at the outset of the trial. I don't see any duplicates -- I mean, I don't see anything but duplicates of my own witness list that I provided to the Court, so the jury has -- has been questioned. I just want to make sure.

THE COURT: So there's no issue with that?

MS. PRICE: I don't see any.

THE COURT: Okay. All right. While we're waiting, Mr. Macomson is here from the Department of

1 Corrections. He's under your subpoena, Mr. Smith.

2 Ms. Price, you're not -- are you planning on
3 calling Mr. Macomson?

4 MS. PRICE: No, sir.

5 THE COURT: All right. Because the question
6 that I have received from the Sheriff's Department
7 is what do they do with him? Do they send the
8 Department of Corrections personnel back and just
9 keep him overnight here at Anderson?

10 MR. SMITH: Yes, sir. That's my understanding.

11 THE COURT: Okay. All right. That answers
12 your questions.

13 THE BAILIFF: Thank you.

14 (At 1:14 p.m., jury entered the courtroom.)

15 THE COURT: All right. Ladies and gentlemen, I
16 hope everybody had a good break. We are ready to
17 proceed with opening statements. Ms. Price?

18 MS. PRICE: Thank you, Your Honor. May it
19 please the Court?

20 Good afternoon, ladies and gentlemen of the
21 jury. As I told you before, my name is Lauren Price
22 and I'm an Assistant Solicitor with the Tenth
23 Circuit Solicitor's Office here in Anderson County.
24 That means it's my job to prosecute folks who have
25 been charged with violating the laws of our state.

1 I want to thank you all for coming back this
2 afternoon. I recognize that you all have lives
3 outside of this courtroom, so I appreciate you
4 taking time out of your lives to assist us with this
5 case this afternoon.

6 It's an important case. It's important to the
7 State. It's important to the defendant, and I hope
8 you'll find, if even briefly, it's important to you
9 today as well.

10 I want to briefly go over three things with you
11 in the opening: What this case is about, what we're
12 required to and what we intend to prove, and how we
13 intend to prove it.

14 Ladies and gentlemen, you heard earlier from
15 the judge that this defendant, Michael Duncan, is
16 charged with trafficking methamphetamine. That's
17 what we're going to prove to you today.

18 You heard from the judge that we're required to
19 prove it beyond a reasonable doubt. That's simply a
20 doubt that would cause a reasonable and prudent
21 person to hesitate to act. It doesn't mean beyond
22 all doubt. It means that you're firmly convinced
23 that this defendant's guilt at the close of the
24 State's case.

25 Now, today you're going to hear that on

1 October 15th of 2015, deputies receive a call from
2 dispatch who had received a call from OnStar and
3 they were tracking a stolen truck. They tracked it
4 to this defendant's home.

5 On scene, the deputies found not only the
6 truck, but additional stolen property and a small
7 quantity of methamphetamine. That led them to
8 obtain a search warrant. They executed that search
9 warrant, which means that they acted it out. They
10 went in the defendant's home, and inside they found
11 67.67 grams of methamphetamine which in South
12 Carolina is considered trafficking level weight.

13 Now, we're going to prove this to you today
14 through the testimony of law enforcement officials,
15 an expert witness and other witnesses, and by the
16 presentation of physical evidence. And I submit to
17 you that at the close of the State's case that you
18 will be convinced, firmly convinced beyond a
19 reasonable doubt, of this defendant's guilt, and you
20 won't hesitate to act to bring back the justice --
21 the justice that the verdict of guilty requires.
22 Thank you so much.

23 THE COURT: All right. Mr. Smith.

24 MR. SMITH: May it please the Court?

25 Ladies and gentlemen, of course my name is Don

1 Smith and I have the task of representing Mr. Duncan
2 in this trafficking case.

3 You were chosen based on your life experiences.
4 I have a general idea of what you do and what your
5 spouse or significant other has done, so I recognize
6 that y'all have come from different walks of life
7 and have a lot to offer here. But all of you
8 understand right and wrong, truth, not truth, and
9 you're the ones that get to see the witnesses who
10 get up on the stand and offer what they know and
11 don't know.

12 Biggest -- biggest thing here, it's all about
13 credibility, not necessarily just from the
14 defendant's side, but from the police as well.
15 Credibility relates to both telling the same story
16 over and over again and knowledge. Look how many
17 times "I don't know" is a response. I'll get back
18 up here at the end and we'll talk about it again.
19 Thank you very much.

20 THE COURT: All right. Ms. Price, call your
21 first witness.

22 MS. PRICE: Thank you, Your Honor. The State
23 calls Deputy Stipe to the stand.

24 (Witness entered.)

25 THE CLERK: If you'd please raise your right

Direct examination of Deputy Stipe by Ms. Price

150

1 hand, please, sir.

2 THE WITNESS: (Complying.)

3 THE CLERK: Do you solemnly swear or affirm the
4 testimony you'll give the Court today will be the
5 truth, the whole truth, and nothing but the truth?

6 THE WITNESS: Yes, sir.

7 THE CLERK: If you'll take the witness stand,
8 please, sir, and state your name and spell your last
9 name for the reporter, please.

10 THE WITNESS: Deputy Stipe, S-t-i-p-e.

11 DEPUTY STIPE,
12 having been produced and first duly sworn as a
13 witness on behalf of the State, then testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. PRICE:

17 Q. Deputy Stipe, who do you work for?

18 A. Anderson County Sheriff's Office.

19 Q. And in what capacity do you work for them?

20 A. I work for uniform road patrol.

21 Q. Okay. And you're a deputy?

22 A. Yes, ma'am.

23 Q. Okay. How long have you been in law
24 enforcement?

25 A. Right at three years.

Direct examination of Deputy Stipe by Ms. Price

151

1 Q. And prior to that?

2 A. I worked for a paid and volunteer fire
3 department.

4 Q. Okay. Were you working for the Anderson County
5 Sheriff's Office in 2015?

6 A. Yes, ma'am.

7 Q. And what position were you in with them at that
8 time?

9 A. Road patrol.

10 Q. Were you assigned to a certain area?

11 A. Homeland Park.

12 Q. Okay. And for those that don't know your
13 assignment area, what does that mean?

14 A. It's an area that you're designated to stay in
15 and patrol throughout the remainder of your shift.

16 Q. Okay. What sort of duties and
17 responsibilities, in addition to patrolling, were
18 associated with your position or are still
19 associated with your position as deputy?

20 A. Yes, ma'am. Answering calls for service is
21 our -- what we do on a day-to-day basis.

22 Q. Okay. So does a call for service come from
23 someone else to you?

24 A. Yes, ma'am. From dispatch.

25 Q. Okay. And you get that on a radio?

1 A. Yes, ma'am.

2 Q. Okay. Did you respond to a call on October 15,
3 2015, that's required you to be in court today?

4 A. Yes, ma'am.

5 Q. Okay. What was the nature of that call?

6 A. The nature of the call was, I received a call
7 from dispatch stating that OnStar was tracking a
8 stolen vehicle from Anderson County, and it was
9 tracking in the area of [REDACTED] South Main Street
10 Extension.

11 Q. Okay. And what county is that located?

12 A. In Anderson County.

13 Q. Approximately, what time did you receive that
14 call?

15 A. It was around 12:30.

16 Q. At night or in the daytime?

17 A. Daytime.

18 Q. Was anyone with you when you responded to that
19 property?

20 A. I was in my patrol vehicle by myself. Right
21 behind me was my captain -- my patrol Captain White.

22 Q. Did you -- what were you doing right before you
23 responded to the property?

24 A. I was driving down the road. I actually met
25 Captain White in the church parking lot on South

Direct examination of Deputy Stipe by Ms. Price

153

1 Main Street Extension.

2 Q. Okay. And you all responded together then?

3 A. Yes, ma'am.

4 Q. But in separate vehicles?

5 A. Yes, ma'am.

6 Q. Okay. Was anyone else on scene when you
7 arrived who was from law enforcement?

8 A. Law enforcement, no, ma'am. I was the only
9 one.

10 Q. So you were the first responder?

11 A. I was the first deputy. Yes, ma'am.

12 Q. Okay. Was there anyone on scene at [REDACTED] South
13 Main Street Extension that was nonenforcement
14 related?

15 A. Yes, ma'am. There were four individuals
16 sitting in front of the residence that were
17 identified as Michael Duncan, Joseph Surdak, Clinton
18 Macomson, and Amanda Sanders.

19 Q. Okay. And what did you observe about the scene
20 when you arrived, if anything?

21 A. It was an older style. It looked like a
22 building that was turned into a residence. It was
23 fenced in. There was a couple of cars in the
24 driveway. A lot of, like, burning, like, wood that
25 was piled up in the yard. It had two garage doors.

1 Q. Did you observe the truck that you were looking
2 for?

3 A. Yes, ma'am. Immediately as I pulled into the
4 driveway, I had information that the vehicle that I
5 was looking for that was a stolen was a white
6 Chevrolet 2500. It was still -- it's a white
7 Chevrolet 2500 sitting in the driveway. The horn
8 was blowing and the lights were flashing.

9 Q. Do you know why?

10 A. I was advised due to ---

11 MR. SMITH: Objection, Your Honor. Hearsay.

12 THE COURT: Sustained.

13 BY MS. PRICE:

14 Q. Okay. The lights were flashing and the horn
15 was honking?

16 A. Yes, ma'am.

17 Q. Was anyone in the vehicle?

18 A. No, ma'am.

19 Q. No one was doing that?

20 A. No -- no, ma'am. That was coming from OnStar.

21 MR. SMITH: Objection, Your Honor.

22 Speculation.

23 THE COURT: Move on.

24 BY MS. PRICE:

25 Q. There was no one in the vehicle when you

Direct examination of Deputy Stipe by Ms. Price

155

1 responded; is that right?

2 A. Yes, ma'am.

3 Q. Okay. And did you observe any other vehicles?

4 A. Yes, ma'am. There was an older-style truck in
5 front of the residence.

6 Q. Okay. Anything else?

7 A. There was another white pickup truck that was
8 also on scene.

9 Q. Okay. What did you do after you arrived?

10 A. Immediately as I arrived, due to the
11 information that the vehicle was reported stolen and
12 the four individuals who I don't know at the time,
13 they were separated and detained by myself and
14 Captain White.

15 Q. And did you speak with them?

16 A. Briefly. All four were detained into handcuffs
17 due to the information that we had, separated. I
18 initially asked them if they knew anything about the
19 truck, and no one stated they knew anything about
20 the truck.

21 Q. Did you Mirandize them?

22 A. Yes, ma'am.

23 Q. Okay. How did you Mirandize them?

24 A. I Mirandized them from an advisory rights form
25 that I keep in my vehicle. I read that from the

1 paper.

2 Q. I'm showing you what's been marked as State's
3 Exhibit 1. Are you familiar with this exhibit?

4 A. Yes, ma'am.

5 Q. What is it?

6 A. It's our advisory rights form from the Anderson
7 County Sheriff's Office.

8 Q. Did you bring that with you to court?

9 A. Yes, ma'am.

10 MS. PRICE: Your Honor, at this time the State
11 moves to have State's Exhibit 1 admitted into
12 evidence.

13 MR. SMITH: Without objection.

14 THE COURT: State's Exhibit No. 1 is admitted
15 without objection.

16 (States's Exhibit No. 1, Miranda rights card,
17 was admitted into evidence.

18 BY MS. PRICE:

19 Q. Okay. Could you please read out the rights as
20 you read them to the individuals on scene?

21 A. Yes, ma'am. It says, "You have the right to
22 remain silent. Anything you say may be used against
23 you in court.

24 "You have the right to speak to a lawyer for
25 advice before we -- before we -- before you are

Direct examination of Deputy Stipe by Ms. Price

157

1 asked any questions and have him with you during
2 questioning.

3 "If you cannot afford a lawyer, one will be
4 appointed for you before any questioning if you
5 wish.

6 "If you decide to answer questions now without
7 a lawyer present, you will still have the right to
8 stop answering questions at any time.

9 "You also have the right to stop answering at
10 any time until you speak to a lawyer."

11 Q. And did you speak with the individuals on scene
12 after you read them these rights?

13 A. Yes, ma'am.

14 Q. Okay. And did any of them say anything to you?

15 A. No one knew much information about the vehicle.

16 Mr. Michael Duncan made the comment that when he
17 returned back to the residence, the vehicle was on
18 his property with Clinton Macomson and Amanda
19 Sanders.

20 Q. Okay. So this defendant told you that the
21 vehicle had not been on his property initially?

22 A. Yes, ma'am.

23 Q. Okay. Did other law enforcement arrive on
24 scene?

25 A. Yes, ma'am.

1 Q. Do you remember who?

2 A. A few that I remember would be myself, Captain
3 White, Investigator Hendrix was there, Investigator
4 Heath Davis was there, Investigator Kreig Marzoff
5 was there, Deputy Jordan Nubern was there, Sergeant
6 Matthew McCardy was there. That's all that I
7 remember.

8 Q. Okay. Did they speak with any of the
9 individuals on scene?

10 A. And also Investigator Wood was there, and I
11 know Investigator Wood spoke to one of the
12 individuals.

13 Q. Oh, okay. And what did you do -- do you
14 remember the individual who Investigator Wood was
15 speaking to?

16 A. Well, yes, ma'am. When I -- after they were
17 separated and Miranda was issued, Investigator Wood
18 began to speak to Amanda Sanders who was on the
19 scene -- one of the individuals who was on scene.
20 He started talking to her.

21 Q. Okay. Do you remember where he was when he was
22 speaking with her?

23 A. Yes, ma'am. She was sitting in a chair, and he
24 was kneeled down talking to her.

25 Q. Okay. And what did you do next? Did something

Direct examination of Deputy Stipe by Ms. Price

159

1 occur while ---

2 MR. SMITH: Objection. Leading.

3 MS. PRICE: What did you do next?

4 THE COURT: Rephrase the question.

5 BY MS. PRICE:

6 Q. What did you do next?

7 A. Next, after they were separated, they start
8 talking to Amanda Sanders. Investigator Wood
9 brought it to my attention that he located
10 something --

11 MR. SMITH: Objection. Hearsay.

12 MS. PRICE: Your Honor, there's *State v.*
13 *Thompson*.

14 THE COURT: Overruled.

15 THE WITNESS: It was brought to my attention
16 that Investigator Wood had located something. He
17 said that he located the firearm under an abandoned
18 vehicle that was directly beside these four
19 individuals.

20 I immediately went to that direction and
21 observed a black handgun laying on the ground. And
22 upon looking at it closer, I observed a couple of
23 other items -- a pair of brass knuckles, a glass
24 pipe, and also a clear bag that had a clear
25 crystal-like substance inside of it.

1 Q. Okay. Did you retrieve those items at that
2 moment?

3 A. No, ma'am. Not at that moment. Forensics was
4 called over to photograph the items. After that, I
5 retrieved the items.

6 Q. Okay. Do you recall what the gun looked like?

7 A. Yes, ma'am. It was a black revolver.

8 Q. Was it loaded or unloaded?

9 A. It was loaded.

10 Q. Okay. Were all of those items directly on top
11 of each other?

12 A. No, ma'am. The -- when I went over and looked
13 at them, the black handgun was sitting to the right
14 of them approximately a foot away from the other
15 items that were found.

16 Q. Okay. Did you retrieve those materials after
17 they were documented by photograph by forensics?

18 A. Yes, ma'am.

19 Q. Okay. Personally?

20 A. Yes, ma'am.

21 Q. What did you do with those items?

22 A. Retrieved the items, the glass pipe and the --
23 as well as the clear bag with crystal-like
24 substance. The crystal-like substance was field
25 tested and it actually field tested positive for

Direct examination of Deputy Stipe by Ms. Price

161

1 methamphetamine and it was retrieved and documented
2 as well as put in place in my patrol vehicle.

3 Q. What is a field test? Can you please explain
4 that to the folks who may not know?

5 A. Yes, ma'am. A field test is a test obviously
6 done in the field. Anytime we're going to suspect
7 something of being any type of drugs, we have to put
8 it inside of a container and it will turn a certain
9 color. In this case, it turned blue representing it
10 was methamphetamine.

11 MR. SMITH: Your Honor, based on the fact that
12 he's not a chemist and unable to explain exactly why
13 it's changing.

14 THE COURT: Lay some foundation.

15 MS. PRICE: Your Honor, it's just present sense
16 impression.

17 THE COURT: Lay some foundation about the field
18 test.

19 BY MS. PRICE:

20 Q. Are you familiar with how field tests work?

21 A. Yes, ma'am.

22 Q. Okay. Is the field test a formal laboratory
23 test that's done by a chemist?

24 A. No, ma'am. It's something we do in the field.
25 It's just a preliminary -- it's a preliminary test

1 that we do. Basically, you put the substance inside
2 the container and it turns a certain color, and then
3 it's later tested in a lab.

4 Q. Okay. So you didn't know for certain at that
5 point in time, but you suspected it was a drug?

6 A. It was suspected to be methamphetamine. It was
7 later sent to the lab to be confirmed.

8 Q. Okay. After you found what you suspected it to
9 be, a controlled substance, what did you do next?

10 A. The substance -- the substance as well as the
11 gun was retrieved. I ran the serial number on the
12 gun. It came back clear, not -- as being not
13 stolen, and they were placed in my vehicle.

14 Q. Did you ask anyone on scene, any of the lay
15 people that you mentioned earlier, whether or not
16 they knew anything about the suspected narcotic?

17 A. I did. All four individuals denied having
18 knowledge of the -- of the items that were found,
19 even though they were in close proximity to all four
20 individuals.

21 Q. Okay. So when you pulled up, how close were
22 those individuals to the item that you found that
23 you suspected to be a narcotic?

24 A. Yes, ma'am. When I pulled up, the four
25 individuals were sitting in a chair in front of the

Direct examination of Deputy Stipe by Ms. Price

163

1 residence. To the left was the abandoned vehicle.
2 It was a very close proximity. If I had to guess, I
3 would say 6 to 7 feet.

4 Q. Okay. And you said you ran the gun?

5 A. I ran the serial number on the gun, but it did
6 not come back stolen at the time. It was loaded.

7 No one claimed it. And it was also an officer
8 safety issue just being laying in the driveway.

9 Q. Is that why you collected it?

10 A. Yes, ma'am.

11 Q. Okay. Did you make any charges against anyone
12 based on your discovery?

13 A. Yes, ma'am. Due to the evidence of the
14 crystal-like substance that actually field tested
15 positive for methamphetamine and the individuals who
16 were sitting right next to the substance and
17 evidence, they were placed under arrest for less
18 than one gram of meth. -- It was approximately .7
19 grams.

20 The gun was retrieved; however, it was on
21 property and not in a moving vehicle that way there
22 was -- no one was charged with a gun.

23 Q. So you weighed the substance?

24 A. Yes, ma'am.

25 Q. Okay. And they were placed under arrest?

1 A. Yes, ma'am.

2 Q. Did you transport them yourself?

3 A. No, ma'am. I did not.

4 Q. Okay. Do you know if they were transported?

5 A. They were all four transported to the jail, not
6 by me, but by other deputies who were on scene.

7 Q. Okay. Did you search anyone incident to arrest
8 in this case?

9 A. Yes, ma'am. I particularly searched Clinton
10 Macomson, inside of his pockets. Search incident to
11 arrest was I know for one being a Cabella's gift
12 card that the victim of the stolen truck identified
13 as being stolen from the area of report.

14 MR. SMITH: Objection. Hearsay.

15 THE COURT: Overruled.

16 BY MS. PRICE:

17 Q. What else did you do on scene?

18 A. I remained on scene. There was several other
19 deputies getting on scene, investigators. As
20 always, the scene, due to information that we have,
21 stolen property as well as the narcotics that was
22 located, the scene was turned over to Investigator
23 Hendrix for narcotics as well as Investigator Heath
24 Davis for property crimes.

25 Q. So you turned the -- turned your scene over

Direct examination of Deputy Stipe by Ms. Price

165

1 formerly to -- to individuals who have a little more
2 experience than you and who are in investigations;
3 is that right?

4 A. Yes, ma'am. That's typical for road patrol,
5 turn investigations over to investigators.

6 Q. Okay. Did you take any photographs while you
7 were there?

8 A. I did.

9 Q. Were you present or did you assist in the
10 execution of a search warrant for this property?

11 A. I did not. I had already left the scene.

12 Q. Okay. What did you do after you left the
13 scene?

14 A. After I left the scene, I responded to evidence
15 and I placed the evidence that I located and
16 photographed into our evidence locker.

17 Q. Okay. What's an evidence locker?

18 A. It's a secure building that we keep where it
19 has limited access. It's inside of a locked box or
20 something inside over at the Sheriff's Office.

21 Q. Okay. And that's where it remains?

22 A. Yes, ma'am.

23 Q. Aside from testifying today, did you have any
24 further involvement on scene?

25 A. I responded to the magistrate judge and had

1 gotten arrest warrants for possession of less than
2 one gram of methamphetamine.

3 MS. PRICE: Okay. Beg the Court's indulgence.

4 BY MS. PRICE:

5 Q. Deputy, I'm handing you what's been marked as
6 State's Exhibit 9. Can you please open it, look
7 inside of it. Don't remove what's inside, but tell
8 me if you recognize what you see.

9 A. (Complying.) Yes, ma'am. This is a -- what I
10 collected from the scene. It's a clear crystal-like
11 substance that field tested positive for meth.

12 Q. Okay. Does it look similar, substantially
13 similar, to the way it looked when you collected it?

14 A. Yes, ma'am.

15 Q. Okay. And you took that to evidence?

16 A. Yes, ma'am. I did.

17 Q. And you logged it in?

18 A. Yes, ma'am.

19 Q. Did you request that a lab analysis be done on
20 it?

21 A. Yes, ma'am, it was. Information was documented
22 for it to be sent to be tested in the lab.

23 Q. Okay. I'm showing you what's been marked as
24 State's Exhibit 10. Can you please open that, look
25 inside, and tell me if you recognize what's in

Direct examination of Deputy Stipe by Ms. Price

167

1 there?

2 A. (Complying.) Yes, ma'am. This is a glass
3 pipe, and through my training and experience is
4 commonly used as a meth pipe. It's commonly used
5 for smoking narcotics.

6 Q. Okay. And is that the pipe you retrieved on
7 October 15, 2015?

8 A. Yes, ma'am.

9 MS. PRICE: Okay. Your Honor, at this time the
10 State seeks to admit Exhibit 10 into evidence.

11 THE COURT: Any objection?

12 MR. SMITH: No, sir.

13 THE COURT: State's Exhibit No. 10 would be
14 admitted without objection.

15 (State's Exhibit No. 10, glass pipe, was
16 admitted into evidence.)

17 BY MS. PRICE:

18 Q. Okay. If you'll replace that, please. And ask
19 you to open State's Exhibit No. 8. And once again,
20 look in there, see if you recognize that exhibit.

21 A. (Complying.) Yes, ma'am. It's the black
22 revolver that was retrieved on that incident date.

23 Q. Okay. And you recognize it?

24 A. Yes, ma'am.

25 Q. Okay. Is there anything else?

1 A. Yes, ma'am. There's five live rounds that was
2 located inside the handgun.

3 Q. Inside what?

4 A. Inside -- it was with the handgun. It was a
5 loaded handgun.

6 Q. Okay. So it's been unloaded?

7 A. Yes, ma'am.

8 Q. Okay. Did you unload it?

9 A. Yes, ma'am.

10 Q. Okay. Describe what unload is.

11 A. For one, it's officer safety issue. And number
12 two, any time we put anything into evidence, it has
13 to be unloaded.

14 MS. PRICE: Okay. Your Honor, at this time the
15 State seeks to have State's Exhibit 8 into evidence.

16 THE COURT: Any objection?

17 MR. SMITH: No, sir.

18 THE COURT: State's Exhibit No. 8 will be
19 admitted without objection.

20 (State's Exhibit No. 8, a revolver and five
21 live rounds, was admitted into evidence.)

22 BY MS. PRICE:

23 Q. Deputy, if you'll replace that. Actually,
24 Deputy, can you hold that up so that the jury can
25 see it?

Direct examination of Deputy Stipe by Ms. Price

169

1 A. Yes, ma'am.

2 Q. Thank you, Deputy.

3 A. (Publishing.)

4 Q. Deputy, I'm handing you what's been marked as
5 State's Exhibit 11 through 13 and 26 through 32.

6 Can you please take your time, look at each one of
7 those individually, and then tell me if you're
8 familiar with what's depicted in those photographs?

9 A. Yes, ma'am. These are pictures that I had
10 taken that day.

11 Q. Did you take all of those or did you take some
12 of those?

13 A. Some of those.

14 Q. Okay. But are you familiar with everything
15 that's depicted in all of those photographs?

16 A. Yes, ma'am.

17 Q. And they are pictures from the scene that day?

18 A. It is.

19 MS. PRICE: Okay. Your Honor, at this time the
20 State seeks to admit 11 through 13 and 26 through 32
21 and would request permission to publish to the jury.

22 THE COURT: Any objection?

23 MR. SMITH: Can I see those?

24 MS. PRICE: Yes.

25 MR. SMITH: I have no objection.

Direct examination of Deputy Stipe by Ms. Price

170

1 THE COURT: State's Exhibit 11 through 13 and
2 26 through 32 would be admitted without objection.

3 (State's Exhibit Nos. 11 through 13 and 26
4 through 32, pictures, were admitted into evidence.)

5 BY MS. PRICE:

6 Q. Thank you. Deputy, if you'll step down for me,
7 please.

8 A. Yes, ma'am.

9 Q. And looking -- actually, if you'll come over
10 here, you can look with me.

11 A. Yes, ma'am.

12 Q. And we'll let everybody else look up there.

13 Can you tell me what's depicted in this photograph?

14 THE COURT: Ms. Price, tell what number you are
15 referring to.

16 MS. PRICE: Oh, I'm sorry, sir. This is
17 Exhibit 11.

18 THE WITNESS: Yes, ma'am. This is a ---

19 BY MS. PRICE:

20 Q. Can you tell me what's depicted?

21 A. It's a clear bag with a crystal-like substance.
22 That's what had field tested positive for meth.

23 Q. And that's what you found on October 15th?

24 A. Yes, ma'am.

25 Q. Okay.. State's Exhibit 12.. Can you tell me

Direct examination of Deputy Stipe by Ms. Price

171

1 what we're looking at?

2 A. Yes, ma'am. This is a picture of our scale.

3 It shows an approximate weight of 0.7 grams.

4 Q. And this is your weighing of the item that you
5 found?

6 A. Yes, ma'am.

7 Q. Okay. State's Exhibit 13.

8 A. Yes, ma'am.

9 Q. Tell me what we're seeing.

10 A. This is the black revolver handgun that was
11 found on scene the day it -- on that -- on the scene
12 that day, as well as five rounds with also a glass
13 pipe.

14 Q. Okay. And the pipe is what we looked at a
15 moment ago?

16 A. Yes, ma'am.

17 Q. Okay. Looking at State's Exhibit 29. Can you
18 tell me what we're looking at here?

19 A. Yes, ma'am. This is the vehicle that was --
20 abandoned vehicle that was directly to the left of
21 the individuals that was sitting in chairs.

22 Underneath, this is what I located. There's a
23 black revolver handgun laying to the right. To the
24 left beside the tire is a silver brass knuckles.
25 There's a glass pipe. There's a clear bag that

1 was -- that later had been field tested. It test
2 positive for meth.

3 Q. Okay. Can you point out the bag to the jury?

4 A. Yes, ma'am. The bag is right here (indicating)
5 beside the brass knuckles.

6 Q. And the gun, will you point that out, please?

7 A. The gun is located right here (indicating).

8 Q. Okay. It's the same shot?

9 A. Yes, ma'am.

10 Q. And you said they were approximately a foot
11 apart?

12 A. Yes, ma'am.

13 Q. And that is where they were when you found
14 them? They had not been moved?

15 A. Correct.

16 Q. Okay.

17 A. There's also the black handgun.

18 Q. That's State's Exhibit 26. And the last
19 exhibit was State's Exhibit 25.

20 A. That's a zoomed-in shot of the black revolver
21 handgun that day.

22 Q. Okay. And finally State's Exhibit 27?

23 A. That's actually the same. It's closer to
24 looking at the brass knuckles, the glass pipe, looks
25 like paint -- some type of pepper spray and a clear

Direct examination of Deputy Stipe by Ms. Price

173

1 bag.

2 Q. Okay. All right. Thank you. Please take the
3 stand again.

4 A. (Complying.)

5 Q. Okay. Deputy Stipe, actually -- I'm sorry.
6 Come on back.

7 A. Yes, ma'am.

8 Q. Going to ask you briefly a few more questions.
9 Looking at State's Exhibit 30, who is that?

10 A. She was identified as Amanda Sanders.

11 Q. And is that where she was sitting when she was
12 speaking with Detective Wood?

13 A. Yes, ma'am.

14 Q. Okay. And that is where he was when he pointed
15 out the gun to you?

16 A. Yes, ma'am.

17 Q. Okay. Looking at State's Exhibit 31. Is this
18 what it looked like when you responded to the
19 property, minus additional law enforcement?

20 A. Yes, ma'am. The -- this is the property.
21 There's another vehicle. The stolen vehicle was to
22 the right over here (indicating). This is how it
23 looked when I arrived on scene.

24 Q. Okay. And can you point out the vehicle under
25 which you found methamphetamine?

Cross-examination of Deputy Stipe by Mr. Smith

174

1 A. It was under this vehicle right here
2 (indicating) in the front.

3 Q. All right. And looking at State's Exhibit 32.
4 Can you tell me what that sign says?

5 A. The sign says "Beware of dog and owner."

6 MS. PRICE: Okay. Thank you, Deputy. Now you
7 can take the stand.

8 THE WITNESS: Yes, ma'am.

9 MS. PRICE: Deputy Stipe, thank you. Please
10 answer any questions that Mr. Smith has for you at
11 this time.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Mr. Smith.

14 MR. SMITH: May it please the Court?

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q. Officer Stipe, you and I have talked before
18 this week, right?

19 A. Yes, sir.

20 Q. And do you remember when I asked you who all
21 was on the scene?

22 A. Who all was on the scene?

23 Q. Yes, sir.

24 A. Yes, sir.

25 Q. Do you recall what you said?

Cross-examination of Deputy Stipe by Mr. Smith

175

1 A. Yes.

2 MS. PRICE: Judge, I'm going to object. And we
3 probably need to take a matter outside the
4 courtroom.

5 THE COURT: Could you take our jury to the jury
6 room, Mr. Bailiff?

7 THE BAILIFF: (Complying.)

8 (At 1:46 p.m., the jury exited the courtroom.)

9 THE COURT: Okay. Ms. Price.

10 MS. PRICE: May it please the Court?

11 Your Honor, I don't know what he's about to
12 show the witness or quote from. I certainly haven't
13 been provided a copy of it. And if he's going to
14 ask him about prior testimony from the suppression
15 hearing, the rules in suppression hearings are a
16 little bit different than the rules are for open
17 court. So I have some concerns about what he's
18 about to ask this witness.

19 I think he can ask him the same -- the
20 questions that he asked during the suppression
21 hearing, and if he gets or elicits a different
22 response from our deputy, then he can impeach him
23 with his prior transcript. Of course, I would
24 insist that I be provided a copy of whatever he has.

25 THE COURT: Mr. Smith, are you referring to the

1 suppression hearing? I was under the impression
2 that you had spoken to the officer at some other
3 point.

4 MR. SMITH: I was -- I was referring to his
5 testimony where he stated previously.

6 THE COURT: Okay. Do you have a transcript of
7 that?

8 MR. SMITH: I certainly do. I got it last
9 night.

10 THE COURT: Okay. Do you have a copy that you
11 could provide to Ms. Price?

12 MR. SMITH: I believe I do.

13 THE COURT: Okay.

14 MR. SMITH: This is Officer Price. My bad.
15 Although, I've had the cross-examination, I don't
16 know what I did wrong there, sir.

17 THE COURT: Okay. If you have a specific
18 question, why don't you point out to her exactly
19 what you're asking him out of the transcript so she
20 can look at it.

21 MR. SMITH: Your Honor, I don't know if I'm
22 using that. I -- I don't ---

23 THE COURT: Okay.

24 MR. SMITH: I'm sorry.

25 MS. PRICE: If -- yeah, if he wants to show it

Cross-examination of Deputy Stipe by Mr. Smith

177

1 to me prior to asking.

2 THE COURT: Okay. All right.

3 MS. PRICE: I'm sorry. Your Honor, if he wants
4 to -- if he wants to show me specifically what he's
5 going to show the deputy prior, I'll -- of course,
6 I'll try to be flexible.

7 THE COURT: Take a minute, Mr. Smith, and show
8 her what you're going to ask because I don't want to
9 have to send the jury out again if we have another
10 issue with this.

11 MR. SMITH: All right. I'll just do like live.
12 I don't have anything written.

13 THE COURT: Okay. You don't -- you don't know
14 what questions that you're going to ask the witness?

15 MR. SMITH: No. It will come to me as I -- as
16 I question him.

17 THE COURT: Okay. All right. Well, ask the
18 witness your question ---

19 MR. SMITH: Yes, sir.

20 THE COURT: --- and then we'll just deal with
21 it question by question.

22 And, again, if you're going to ask him
23 something in the transcript, you need to point out
24 in the transcript to Ms. Price what you're asking,
25 okay, because she -- she has the right to look at

1 what you're asking him out of the transcript if
2 that's the question.

3 MR. SMITH: Okay. I'll just leave the
4 transcript.

5 (At 1:51 p.m., the jury entered the courtroom.)

6 MR. SMITH: May it please the Court?

7 THE COURT: Yes.

8 BY MR. SMITH:

9 Q. What all did you review before this trial
10 started?

11 A. Before this trial started?

12 Q. Yes, sir.

13 A. I looked at my incident report.

14 Q. Did you look at any other materials?

15 A. I looked at my incident report, supplementals,
16 the other reports that related to this, a stolen
17 vehicle report.

18 Q. What -- would you say that you know more now
19 today than you did yesterday at this time?

20 A. No, sir. It's the same from two years ago.

21 Q. Yes, sir. How many people were at the scene,
22 law enforcement?

23 A. I didn't get an exact number. There was
24 several deputies as well as investigators that day.

25 Q. Didn't you just name off ten?

Cross-examination of Deputy Stipe by Mr. Smith

179

1 A. I'm sorry?

2 Q. Did you just name off ten?

3 A. I named off several that was -- I remember
4 seeing that day. Yes, sir.

5 Q. Did you -- when I asked you the question --
6 question previously, did you remember all of those
7 names?

8 A. Can you rephrase the question?

9 Q. When I asked you the question previously, did
10 you remember names and -- about ten names or eight
11 names?

12 A. I mean, as I think back, I can remember names
13 of who was there that day.

14 Q. So you remember more today than yesterday?

15 A. I don't know if you'd say that or not. I just
16 remember who I seen that day, the day that I
17 responded to the incident. And it's just the same
18 people that I remember seeing. I don't know any
19 more or less.

20 Q. Yes, sir. You got there. You pulled straight
21 in. Where did you park?

22 A. I pulled into the driveway. I parked behind
23 the vehicle that was reported stolen.

24 Q. And where were the individuals?

25 A. They were sitting in front of the residence.

1 Q. All right. In what order?

2 A. I don't have the exact order. There was four
3 that were -- that I named off that were sitting
4 there. But like I said, I don't remember the order
5 they were in. They were sitting chair to chair.

6 Q. Well, Ms. Sanders, I believe, we know where she
7 was sitting, right?

8 A. Uh-huh. In that green chair.

9 Q. Okay. So where were the other ones in relation
10 to her?

11 A. Again, I don't remember the exact order they
12 were sitting.

13 Q. Was she on the far end?

14 A. She was -- to the best of my knowledge, she was
15 on the left -- left-hand side.

16 Q. And you said -- I think you said that you
17 cuffed them all?

18 A. Yes, sir. They were detained.

19 Q. You cuffed two and Mr. White cuffed two?

20 A. Yes, sir. My captain pulled in directly behind
21 me. All four were detained, and I detained two and
22 he detained two.

23 Q. Who did you cuff?

24 A. To the best of my knowledge, I remember cuffing
25 Clinton Macomson as well as Joseph Surdak.

Cross-examination of Deputy Stipe by Mr. Smith

181

1 Q. Captain White, does he -- is he a road officer?

2 A. He's a patrol captain. At the time he was the
3 captain for all four shifts ---

4 Q. So ---

5 A. --- over uniform patrol.

6 Q. --- does he stay in the office? Does he stay
7 in the office now?

8 A. No, sir.

9 Q. He has -- just like you, he's out with a black
10 vest and everything?

11 A. Yes, sir.

12 Q. But he -- he ran four different -- what did you
13 say?

14 A. I'm sorry?

15 Q. Four groups he was over?

16 A. At the time. Yes, sir.

17 Q. And so he -- he cuffed the other two
18 individuals, right?

19 A. He did. Yes, sir.

20 Q. How long were they cuffed?

21 A. I don't have the exact time frame of how long
22 they were cuffed.

23 Q. When were they uncuffed?

24 A. They were detained. I know Clint Macomson was
25 sat by the back of my vehicle. He just got out and

1 readjusted and were put in the front. They were
2 taken off and put back on because we were there for
3 an excessive amount of time.

4 Q. How long were you there again?

5 A. I was there, myself, I know for over an hour.

6 Q. And you said Clinton Macomson was cuffed when
7 you got there, right?

8 A. Yes, sir.

9 Q. And did he have his cuffs off, other than to be
10 adjusted, to the rest of the time they were there?

11 A. Not -- not to my knowledge.

12 Q. Mr. Surdak told you that Macomson had driven
13 the car onto the property; isn't that right?

14 A. No, sir.

15 Q. Who did he talk to? Who did Mr. Surdak talk
16 to?

17 A. He stood with my captain for the majority of
18 the time.

19 Q. Did Captain White talk to him?

20 A. If he talked to him, I don't know. I didn't
21 ever get with him to see. I didn't -- it was turned
22 over to investigations. They may have talked to
23 him.

24 Q. How long is the front of the house, garage, the
25 building? How -- how long is that?

Cross-examination of Deputy Stipe by Mr. Smith

183

1 A. I didn't measure the actual building. I know
2 there was two garage doors there on the left side.

3 Q. So would you agree with me that essentially it
4 was two garage doors?

5 A. Yes, sir.

6 Q. And then roughly the same length on the -- on
7 the side of the garage doors. So the distance
8 between the two garage doors and then the distance
9 between the two garage doors, right next to it, is
10 that about ---

11 A. It was close to that. Yes, sir.

12 Q. Do you recall how -- how -- how far away was
13 law enforcement? How -- how big of -- excuse me,
14 please. How big of an area were all of the
15 participants in this occurrence?

16 A. I didn't measure the yard. It was a fenced-in
17 yard so we had limited access, but it was, I'd say,
18 40 yards across.

19 Q. Ten yards is, what, 30 feet?

20 A. Yes, sir.

21 Q. And a garage door is, what, 12 foot across?

22 A. To the best of my knowledge. I don't know
23 exactly about garage doors.

24 Q. Everybody that stayed was in the front of the
25 building; is that right?

Cross-examination of Deputy Stipe by Mr. Smith

184

1 A. Everybody stayed on the front side. Yes, sir.

2 Q. And, basically, between the end of -- each end
3 of the building straight out, everybody was in that
4 area, right?

5 A. Yes, sir.

6 Q. All right. So the front of the building was
7 50, 60 feet?

8 A. Again, I didn't measure it. I don't have an
9 exact number.

10 Q. Thirty to 40 yards is 90 to 120 feet?

11 MS. PRICE: Objection, Your Honor. He's asked
12 him the same question now several times and he's
13 answered it.

14 THE COURT: All right.

15 MS. PRICE: He's asking about the ---

16 THE COURT: Overruled. Ask the question. Move
17 on.

18 MR. SMITH: Yes, sir.

19 BY MR. SMITH:

20 Q. Is that -- is 30 to 40 yards, that's a bit
21 much, isn't it?

22 A. That was the best that I could tell you as far
23 as the yardage of where the front yard was in front
24 of the building.

25 Q. Yes, sir. The horn -- you said the horns and

Cross-examination of Deputy Stipe by Mr. Smith

185

1 lights were on when you got there?

2 A. When I pulled into the driveway, the horn was
3 blowing on the vehicle -- on the stolen -- that were
4 later confirmed stolen. The horn was blowing and
5 the lights were flashing.

6 Q. Did you talk to anyone there? Who all did you
7 talk to from non-law enforcement perspective?

8 A. I talked to four individuals who were sitting
9 in the chairs after they were detained and
10 Mirandized and asked them if they knew how the truck
11 got here, who was in possession of it, things of
12 that nature.

13 Q. And Joey Surdak didn't tell you that Clinton
14 Macomson drove the truck in?

15 A. No, sir. The comment that was made to me was
16 Michael Duncan stated that when he returned to his
17 residence and returned to the property, the vehicle
18 was there with Clinton Macomson and Amanda Sanders.

19 Q. And -- and based on your questioning and so
20 forth, do you have anything that contradicts that
21 story?

22 A. No, sir.

23 Q. The Jeep, that's where the pipe was found, is
24 that right, underneath it?

25 A. Yes, sir.

1 Q. Was it underneath anything else or was it just
2 thrown under there?

3 A. It was -- the picture that we had seen, it was
4 a glass pipe, a clear bag, and a set of silver brass
5 knuckles, as well as the handgun that was found to
6 the right of them.

7 Q. And by getting that pipe, whose pipe was it?

8 A. I do not know.

9 Q. It's a glass pipe, right?

10 A. Yes, sir.

11 Q. Can you get fingerprints from glass?

12 A. From glass?

13 Q. Yes.

14 A. Yes, sir.

15 Q. Is that a fairly easy place to get
16 fingerprints?

17 A. I'm not in forensics, but I know that you can
18 get fingerprints from glass. Yes, sir.

19 Q. Did you -- what did you find out when he asked
20 for fingerprints?

21 A. The glass pipe was actually not fingerprinted.
22 Through my training and experience, I know that a
23 glass pipe has to be -- a glass pipe that's used for
24 narcotics, it has to be heated which would destroy
25 any type of evidence.

Cross-examination of Deputy Stipe by Mr. Smith

187

1 Q. What part of the pipe?

2 A. The glass pipe would be heated.

3 Q. Right.

4 A. You have to have heat and it would actually
5 destroy any type of fingerprint evidence.

6 Q. Where do you put your lips?

7 A. I'm sorry?

8 Q. Could you put your lips on that pipe since it's
9 so hot?

10 A. Yes, sir. I'm not sure. I've never been
11 around somebody who's ---

12 Q. How does one -- how does one use any sort of
13 pipe?

14 A. Well, I guess you have to smoke it.

15 Q. Is there another way?

16 A. Again, I'm not ---

17 Q. So you have to hold it?

18 A. Correct.

19 Q. And the heated part is going to be down at the
20 end so you don't burn yourself, right?

21 A. Correct.

22 Q. So fingerprints are going to be there, right?

23 A. Possibly. Again, it was laying on the ground.

24 It was in dirt.

25 Q. So what heat are we talking about that's going

1 to take away fingerprints?

2 A. From a lighter. Some sort of -- some sort of
3 lighter.

4 Q. Okay. So nothing was done to find out whose
5 pipe it was, right?

6 A. Correct. I collected it and placed it in
7 evidence.

8 Q. And the -- the -- the drugs you found, were
9 they -- they were in a plastic bag?

10 A. Yes, sir.

11 Q. How easy to get fingerprints from that?

12 A. I'm not -- I can't say. I've never had to take
13 fingerprints from a plastic bag.

14 Q. Do you know if they even tried?

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

16 Q. Do you have any understanding as to whether
17 Mr. Duncan knew that the truck was coming?

18 A. I'm sorry. Can you rephrase the question?

19 Q. Do you have any understanding as to whether
20 Mr. Duncan knew that the truck was coming, the
21 stolen truck?

22 A. No, sir, I do not.

23 Q. So the drugs were found underneath the Jeep
24 which was basically in the middle of the building;
25 is that right?

Cross-examination of Deputy Stipe by Mr. Smith

189

1 A. It was to the left of their chairs. I believe
2 it was near the middle of the building. Yes, sir.

3 Q. All right. So if you're -- so this is kind of
4 in the middle?

5 A. I would say it's in the middle. Yes, sir.

6 Q. And Mr. Duncan was located where?

7 A. He was sitting down in the chair in the front
8 of the residence.

9 Q. He wasn't under the umbrella to the -- to the
10 right if you're facing the building?

11 A. All four individuals were sitting side by side
12 in chairs.

13 Q. Did anybody move the chairs?

14 A. If they did, it was not to my knowledge.

15 Q. Could you come down here with me, please?

16 A. Yes, sir.

17 Q. All right. Could -- could you show me where
18 they were sitting?

19 A. Yes, sir. This (indicating) is the vehicle.
20 There were chairs here (indicating), here
21 (indicating), and in front of that -- front of
22 that ---

23 THE COURT: What exhibit are you referring to?

24 MR. SMITH: This is -- I'm sorry. This is
25 Exhibit 3 -- 31, 31, 31.

1 THE COURT: Okay.

2 BY MR. SMITH:

3 Q. All right. So the chair -- is that -- was that
4 the first chair?

5 A. I don't know which order they were in. I just
6 know they were sitting right here (indicating) in
7 front of his residence.

8 Q. Okay. Well, I'm -- I'm not seeing any other
9 chairs, so that would've been the first chair maybe?

10 A. Again, I don't know if that was the first chair
11 or not.

12 Q. All right. Where was Mr. Duncan sitting?

13 A. All four were sitting right here (indicating)
14 in front of -- in this area right here (indicating).

15 Q. Okay. And they were -- they were not in front
16 of each other, right? They were in front of the --
17 they're not -- they're not in a line coming out of
18 the building, right?

19 A. Correct. They were side by side.

20 Q. Okay. This way (indicating). And so the
21 chairs would've went here (indicating) right in
22 front of here (indicating) under the awning?

23 A. Yes, sir.

24 Q. All right. And the drugs you found were
25 underneath this (indicating)?

Cross-examination of Deputy Stipe by Mr. Smith

191

1 A. Yes, sir. They were in the front right by
2 that -- the tire that was seen in the other
3 photograph.

4 Q. Yes, sir.

5 A. On the ground right there (indicating).

6 Q. All right. So anyone down here could've done
7 that, right, because they couldn't have got through
8 the tire?

9 A. Well, if you're sitting down in a chair, you've
10 got easy access to the ground to see. All four were
11 in a close proximity to where these were located.

12 Q. How far do you think it is from this part of
13 the awning to underneath that Jeep?

14 A. Within ten feet. I don't have an exact
15 footage.

16 Q. Was the pipe broke? cracked?

17 A. No, sir.

18 Q. Thank you, sir.

19 A. Yes, sir.

20 Q. Looking at State's Exhibit No. 30. Now, that's
21 Amanda Sanders?

22 A. Yes, sir.

23 Q. And that's one of the chairs, right?

24 A. It was.

25 Q. Where -- these are two of the chairs that they

1 were sitting in. Where are the other two?

2 A. I would ---

3 Q. To the right?

4 A. Yes, sir.

5 Q. So out here (indicating)?

6 A. To the right. Yes, sir.

7 Q. Is Ms. Sanders handcuffed?

8 A. Looks like, actually, yes. You can see the
9 handcuffs. You can see the handcuff from that
10 picture.

11 Q. Agreed. Very good. When do you believe that
12 was put on?

13 A. I'm sorry?

14 Q. When was that put on?

15 A. Immediately all four were detained and
16 handcuffs behind the back when I pulled on scene and
17 observed the vehicle flashing with the horn blowing.

18 Q. At what point did you take the cuffs off and
19 let her smoke?

20 A. I didn't.

21 Q. Somebody else did that?

22 A. I mean, you -- some people can actually smoke
23 with their hands in the handcuffs.

24 Q. Yes, sir. I believe it's 31. You see that dog
25 there (indicating)?

Cross-examination of Deputy Stipe by Mr. Smith

193

1 A. I do.

2 Q. Was he ever leashed?

3 A. I do not -- cannot recall.

4 Q. Did you -- did you see him?

5 A. I -- I seen him in the photograph. I don't
6 remember him that day that I was there.

7 Q. So he didn't bite anybody?

8 A. Not to my knowledge.

9 Q. Did you hear him bark at all?

10 A. I don't remember him barking.

11 Q. Did you hear any dogs bark?

12 A. Again, I don't remember.

13 Q. Yes, sir. Thank you. I don't have anymore
14 pictures for the moment.

15 Do you have the advisory sheet?

16 A. Yes, sir.

17 Q. This advisory sheet, what is its purpose?

18 A. To read Miranda before questioning someone
19 about a crime.

20 Q. And I see a lot of spaces to write in?

21 A. Yes, sir.

22 Q. What do -- what does that do?

23 A. That form in particular is for witnesses and
24 signatures.

25 Q. Where is the completed form from this day?

- 1 A. Yes, sir. That day -- I don't actually carry
2 Miranda cards. Some officers have a card they keep
3 in their wallet. I actually keep that in the trunk
4 of my car. I pulled it out that day in front of
5 Captain White, and I read Miranda based off of that
6 from word for word from that paper.
- 7 Q. But you -- did anybody sign it for you?
- 8 A. No, sir. I didn't have anyone sign it.
- 9 Q. Meaning you didn't ask them to sign it or they
10 wouldn't sign it?
- 11 A. I didn't ask them. It was a verbal. I read it
12 from the paper. It wasn't where it was laid down
13 for them to sign.
- 14 Q. Well, don't you think it's kind of important?
- 15 A. It could be. I was just issuing Miranda.
- 16 Q. All right. But you didn't have them sign so
17 they acknowledge voluntarily have waived their
18 rights? That's what this is about, right?
- 19 A. Correct.
- 20 Q. But you didn't have them sign it?
- 21 A. I did not.
- 22 Q. The black handgun, you said it was stolen?
- 23 A. It was not.
- 24 Q. Whose gun was it?
- 25 A. It was not stolen, so I can't -- if it would've

Cross-examination of Deputy Stipe by Mr. Smith

195

1 come back to somebody in particular. It wasn't --
2 the gun was not registered to anyone, so I don't --
3 I don't remember who -- I never found out whose gun
4 it was -- who it belonged to.

5 Q. Would that be something that you'd fingerprint?

6 A. I didn't have it fingerprinted.

7 Q. Didn't anybody have it fingerprinted?

8 A. No, sir.

9 Q. By the end of your time there, you said an
10 hour, hour and a half; is that right?

11 A. I was there a little over an hour.

12 Q. Did you go away from there knowing that Clinton
13 Macomson had stole that truck?

14 A. I'm sorry?

15 Q. Did you go away from there knowing that Clinton
16 Macomson had stole the truck?

17 A. I turned that over to Investigator Heath Davis.

18 Q. Did you leave the scene knowing that Clinton
19 Macomson had stole the truck?

20 A. No, sir.

21 Q. Amanda Sanders didn't say that to you?

22 A. She -- I didn't -- I didn't talk to her as far
23 as the vehicle being stolen.

24 Q. You said that everybody was in the front of
25 that building?

1 A. Yes, sir.

2 Q. And you -- you did not have the opportunity to
3 hear anyone say that Clinton Macomson was driving?

4 A. No, sir.

5 Q. Joseph Surdak was cuffed twice, right?

6 A. Yes, sir.

7 Q. The first time he was cuffed why?

8 A. Again, when I pulled on scene, all four
9 individuals were handcuffed. That is the reason due
10 to the vehicle being stolen. I didn't know who
11 these individuals were, if they belonged here.
12 That's why they were put in handcuffs.

13 Q. So Surdak got his cuffs off at some point?

14 A. Yes, sir.

15 Q. But Clint Macomson did not get his cuffs off?

16 A. To my knowledge -- to my knowledge, he did not.

17 Q. They're your cuffs, right?

18 A. Yes, sir. But, again, I believe I cuffed
19 Joseph Surdak.

20 Q. So Joseph Surdak had his cuffs off. What made
21 you put them back on?

22 A. Well, through investigation, Investigator Wood
23 located some items that caught my attention. We
24 found the items up under the vehicle that we
25 actually seen in the photograph. These four

Cross-examination of Deputy Stipe by Mr. Smith

197

1 individuals were in close proximity to the items
2 that were found, the suspected meth that field
3 tested positive. Due to close proximity of the --
4 the items that were found, no one was claiming it,
5 sitting in chairs where you could easily see this,
6 they were placed under arrest.

7 Q. How close to the front of the Jeep was the pipe
8 and the -- and the methamphetamine?

9 A. Can you rephrase the question?

10 Q. Yes, sir. They were up front, right?

11 A. Yes, sir.

12 Q. So you could -- you could see them from the end
13 of the building?

14 A. Yes, sir.

15 Q. They weren't ---

16 A. You could see the handgun.

17 Q. They weren't between the wheels?

18 A. The other items were close, but you could
19 actually see from where they were sticking.

20 Investigator Wood actually seen it and brought it to
21 my attention because he was talking to Amanda
22 Sanders.

23 Q. Hadn't he talked to Joseph Surdak already?

24 A. I'm sorry?

25 Q. Hadn't the officer ---

1 A. That I don't know.

2 Q. In State's Exhibit 29, that picture is taken
3 from the front of the Jeep; is that right?

4 A. Yes, sir.

5 Q. All right. And the -- the materials, other
6 than the gun right there, are all next to the tire?

7 A. Yes, sir.

8 Q. Anyone sitting at the end of the building could
9 not have seen that, would you agree with that?

10 A. Yes, sir.

11 Q. So who would've been able to throw like a curve
12 ball and get it around the tire from that side?

13 A. That I don't know.

14 Q. You believe all of them could've thrown the
15 curve ball and got it around the tire?

16 A. I believe all of them had knowledge that there
17 was a handgun and these items were there. Due to
18 law enforcement arriving on scene, I feel like --
19 due to the knowledge, I feel like they had
20 knowledge. They could easily see the handgun.
21 Officer Investigator Wood seen it. These items were
22 right next to it.

23 Q. Officer Wood saw it because he -- he was
24 kneeling, right?

25 A. Yes, sir.

Cross-examination of Deputy Stipe by Mr. Smith

199

1 Q. Had you seen it before that?

2 A. No, sir. I was not kneeling.

3 Q. How did the individuals get transported to the
4 detention center?

5 A. By other deputies who were on scene.

6 Q. Did they go in individual cars or go in a van?

7 A. There was a van and there was also a patrol
8 vehicle.

9 Q. So they all went in the van or they went in the
10 patrol vehicles as well?

11 A. Separate. I mean, I don't know which one was
12 transported where. I wasn't the transporting
13 deputy. I couldn't tell you who transported which
14 one.

15 Q. Had the investigators gone in the building
16 prior to you leaving?

17 A. No, sir.

18 Q. Had all of the individuals left the property
19 and non-law enforcement people, had they left before
20 you left?

21 A. Yes, sir. They were transported.

22 Q. You parked like directly behind the -- the
23 white truck that was stolen?

24 A. Yes, sir.

25 Q. And that was to the right -- facing the

1 building that was to the right?

2 A. Yes, sir.

3 Q. How far over to the left did you go?

4 A. How far did I walk?

5 Q. On the building. Yes, sir.

6 A. I walked to the front door near where the
7 individuals were.

8 Q. Were there any other doors?

9 A. I didn't walk to the back. It was the front
10 door.

11 Q. Yes, sir. Did you see anybody go in that door?

12 A. No, sir.

13 Q. So you spoke to everyone after you did Miranda,
14 right?

15 A. Yes, sir.

16 Q. All right. And what did Mr. Surdak tell you?

17 A. I asked him about the truck. He denied
18 knowledge of the truck as well as the other three
19 individuals, meaning they didn't -- they couldn't
20 tell me how it got there or anything about who it
21 belonged to.

22 Q. Mr. Duncan told you it was -- it was there
23 already?

24 A. He made the comment it was there when he
25 returned.

Cross-examination of Deputy Stipe by Mr. Smith

201

1 Q. Who'd he return with?

2 A. I -- I don't know.

3 Q. He didn't tell you who he was with?

4 A. He just said when he returned to the property,
5 the vehicle -- the white pickup truck was there with
6 Clinton Macomson and Amanda Sanders in the yard.

7 Q. All right. Didn't have a chance to talk to
8 Mr. Surdak though?

9 A. Sir?

10 Q. Mr. Surdak, you didn't talk to him?

11 A. No, sir.

12 Q. When you talked to Ms. Sanders after the
13 Miranda, what did she tell you?

14 A. She said that she never talked to
15 investigator -- not to me. She didn't admit
16 knowledge to me about anything as far as the truck
17 being stolen. And that's when Investigator Wood
18 went and talked to her.

19 Q. When you cuffed Mr. Surdak again, what did you
20 tell him he was being cuffed for?

21 A. Possession of meth.

22 Q. And that -- that's constructive possession,
23 right?

24 A. Yes, sir.

25 Q. And what is constructive possession?

1 A. It's when you have -- when you're in close
2 proximity to items that you can easily access.

3 Q. Like arm's reach?

4 A. Yes, sir. They could all easily access the
5 items.

6 Q. Did you cuff anybody else for that matter?

7 A. The other individuals were handcuffed.

8 Q. Was Ms. Sanders cuffed at that time?

9 A. Yes, sir.

10 Q. Did you make people move or did they move --
11 meaning Mr. Duncan and the other individuals, did
12 you make them move or did they move on their own?

13 A. Well, when I arrived on scene, they were
14 actually moved by me and Captain White.

15 Q. They were moved out of the chairs?

16 A. Some was moved. They were all separated, so
17 they couldn't hear each other.

18 Q. Where did you move Mr. Duncan?

19 A. I actually did not move Mr. Duncan. He was --
20 he was moved, but not by me.

21 Q. Where did he move to?

22 A. It was near the right side of the property away
23 from the residence.

24 Q. Did you have a list of the things that were
25 stolen?

Cross-examination of Deputy Stipe by Mr. Smith

203

1 A. I'm sorry?

2 Q. The burglary -- the burglary. Did you have a
3 list of the items that were taken?

4 A. No, sir.

5 Q. So when you saw the truck and the motorcycle,
6 you believed that you had found all of the things
7 that had been stolen; is that right?

8 A. No, sir.

9 Q. No?

10 A. I actually did not know about the -- the other
11 items until the investigation began.

12 Q. What did you know yourself regarding what had
13 been taken when you got there?

14 A. The only thing that I knew that was stolen was
15 a white Chevrolet 2500. It was verified through the
16 VIN on the vehicle in the dash that it was sitting
17 in front of my patrol vehicle.

18 Q. So you got it? Was it -- did you have any idea
19 of anything else that had been taken?

20 A. No, sir.

21 Q. So that was the end of the story, right?

22 A. Well, the investigation, as always, was turned
23 over to investigators. My role -- I had a limited
24 role that day.

25 Q. Was Michael Duncan close enough to be in

1 constructive possession of that methamphetamine?

2 A. Yes, sir.

3 Q. How far away was he again?

4 A. I'd say 6 to 7 feet.

5 Q. I thought he was 10 feet to the right?

6 A. The 10 feet was to the vehicle, but all four
7 individuals were approximately 6 to 7 feet.

8 Q. They were all the same distance?

9 A. No, sir. It was less than 10 feet. It was 6
10 or 7. They were in eyesight and close proximity.

11 Q. Could you come down one more time?

12 A. (Complying.)

13 Q. Looking at State's Exhibit 32. That's a chair;
14 is that right?

15 A. Yes, sir.

16 Q. The other chairs are to the right of that based
17 on people standing there, right?

18 A. Correct.

19 Q. And we just looked at a picture where the pipe
20 and the methamphetamine were on the inside of this
21 (indicating) front tire.

22 A. Yes, sir.

23 Q. Yeah, and Mr. Duncan was over here
24 (indicating); is that right?

25 A. He was over in this (indicating) area, so in

Cross-examination of Deputy Stipe by Mr. Smith

205

1 front of the white pickup truck.

2 Q. Okay. There was a chair here (indicating).

3 The chairs on top of each other?

4 A. Beside each other.

5 Q. Okay. So they had to be out -- going out this
6 way (indicating)?

7 A. Correct.

8 Q. And you're saying that Mr. Duncan had
9 constructive possession of something inside the --
10 inside of the wheel; is that right?

11 A. Neither four -- these four individuals failed
12 to advise me that there was a handgun laying there.
13 All of them could easily access this, that's why
14 they were all charged for the items that were found.
15 The items -- the clear bag was actually found right
16 beside these items that you see in the other
17 picture.

18 Q. Within arm's reach?

19 A. This is not within arm's reach. No, sir.

20 Q. Okay. That chair isn't, and any chairs to this
21 side certainly aren't, right?

22 A. Right.

23 MR. SMITH: I have nothing further. Thank you,
24 sir.

25 Thank you, Your Honor.

1 MS. PRICE: Brief redirect.

2 REDIRECT EXAMINATION

3 BY MS. PRICE:

4 Q. Deputy Stipe, you don't know when the
5 methamphetamine and the gun were placed there, do
6 you?

7 A. I do not.

8 Q. And you don't know if before you arrived on
9 scene someone stood up, walked over, and placed it
10 underneath the vehicle, do you?

11 A. I do not.

12 Q. Okay. You are only aware of where they were
13 seated when you pulled up; is that right?

14 A. That's correct.

15 Q. Okay. And in your opinion, were they all close
16 enough to easily access the items that gave you
17 concern and the suspected drugs for which you
18 brought charges against these individuals?

19 A. Yes, ma'am.

20 MS. PRICE: Thank you. No further questions.

21 MR. SMITH: One more question, Your Honor.

22 RECROSS-EXAMINATION

23 BY MR. SMITH:

24 Q. Did you see Mr. Duncan move from the right to
25 the left during the time that you were there?

Recross-examination of Deputy Stipe by Mr. Smith

207

1 A. No, sir.

2 Q. So he's always to the right?

3 A. Yes, sir.

4 MR. SMITH: I have nothing further, Your Honor.

5 THE COURT: All right. Anything further from
6 this witness?

7 MS. PRICE: No, sir, Your Honor.

8 THE COURT: Thank you. Thank you, Officer.
9 You may step down.

10 MS. PRICE: Your Honor, may this witness be
11 excused from his subpoena?

12 THE COURT: Any objection?

13 MR. SMITH: No, sir.

14 THE COURT: All right. Officer, you are
15 excused.

16 THE WITNESS: Thank you, sir.

17 (Witness excused.)

18 MS. PRICE: Your Honor, the State calls Ronald
19 Wood to the stand.

20 (Witness entered.)

21 THE CLERK: Right here, please, sir. Just need
22 you to raise your right hand.

23 THE WITNESS: (Complying.)

24 THE CLERK: Do you solemnly swear or affirm the
25 testimony you give the Court today in this case to

1 be the truth, the whole truth, and nothing but the
2 truth?

3 THE WITNESS: I do, sir.

4 THE CLERK: If you would take the witness
5 stand, please, sir, and state your name and spell
6 your last name for the reporter, please.

7 THE WITNESS: Ronald Wood, W-o-o-d.

8 DETECTIVE RONALD WOOD,
9 having been produced and first duly sworn as a
10 witness on behalf of the State, then testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. PRICE:

14 Q. Thank you. And, Detective Wood, who do you
15 work for?

16 A. I work -- I'm a narcotics investigator for the
17 Anderson County Sheriff's Office.

18 Q. Okay. How long have you been with law
19 enforcement?

20 A. I started out in dispatch in 1998. Left
21 dispatch and went to the Anderson County Park
22 Police. Did the county ordinances for Anderson
23 County Park Police. Got absorbed by Anderson County
24 Public Safety. In 2010, Anderson County Public
25 Safety got absorbed by Anderson County Sheriff's

Direct examination of Detective Ronald Wood by Ms. Price

209

1 Office, so 19 years give or take.

2 Q. So you've been absorbed in that department, but
3 you've been with law enforcement for 19 years?

4 A. Yes, ma'am.

5 Q. Okay. And were you working as a narcotics
6 investigator in 2015?

7 A. No, ma'am. At that time I was a criminal
8 investigator with Anderson County Sheriff's Office.

9 Q. Were you assigned to a specific area with
10 them?

11 A. That went back and forth. I was mainly a
12 property crimes investigator where I got assigned
13 grand larcenies and burglaries and whatever else
14 they assigned me.

15 Q. And what sort of duties and responsibilities
16 were associated with your position in 2015?

17 A. Like I said, during that time I mainly got
18 burglaries and grand larcenies. My duty was to
19 investigate the incident to determine who committed
20 the crime that got assigned to me and also to
21 recover property.

22 Q. Did you respond to a call on October 15, 2015,
23 that led you to be in court today?

24 A. Yes, ma'am, I did.

25 Q. And can you tell me what you were doing when

1 you responded to that call?

2 A. That day we got together as investigators and
3 we teamed up with another investigator and we
4 saturated certain areas within the county.

5 Q. What -- what do you mean by "saturated"?

6 A. Proactive patrol got out, looked for people
7 who'd been trafficking, and I was assisting in
8 answering calls about suspicious people, whatever
9 needs to be done. Out and about in the community,
10 answering calls.

11 Q. Do you remember what area you were assigned to
12 that day?

13 A. At first, we started out in Townville, and then
14 we moved down into the Homeland Park area.

15 Q. And do you remember the nature of the call that
16 you responded to that day that's led you to be in
17 court?

18 A. Yes, ma'am. Channel one on dispatch, we got a
19 report of a possible stolen vehicle, a white 2015
20 Chevy 2500. OnStar stated it was in the area of
21 [REDACTED] South Main Street Extension.

22 Q. Okay. And in what county is that located?

23 A. That's in Anderson County.

24 Q. And do you recall what time you responded to
25 that property?

Direct examination of Detective Ronald Wood by Ms. Price

211

1 A. Yes, ma'am. It was around lunchtime, 12:30.

2 Q. Was anyone on scene from law enforcement when
3 you arrived?

4 A. Yes, ma'am. Deputy Stipe; Deputy Nubern;
5 Corporal McCardy; myself; I was with Detective
6 Price; Captain Scott White. Right off hand, it's
7 all I remember were there.

8 Q. Okay. Was anyone on scene at that time that
9 were non-law enforcement related that you remember?

10 A. Yes, ma'am. Amanda Sanders, Joseph Surdak,
11 Clinton Macomson, and Michael Duncan.

12 Q. And what did you observe about the scene when
13 you arrived?

14 A. When I got there, I walked up the driveway. I
15 seen the truck matching -- matching the description
16 of the stolen truck there. Sent the road patrol in.
17 All four people, detained two. Clinton Macomson and
18 Joseph Surdak was in the back of the patrol cars.
19 Amanda Sanders was sitting near a canopy-like tent
20 there in front of the building with Michael Duncan
21 sort of near her. Some abandoned property and some
22 wood laying around. It's about it.

23 Q. Okay. What did you do once you ---

24 A. When I got there, I met Deputy Stipe. Deputy
25 Stipe advised me that Amanda Sanders would likely

1 talk about the incident.

2 I walked over to Amanda Sanders. Like I said,
3 she was sitting there in the front of the building
4 underneath the canopy tent. She was sitting down.
5 I went to her right. I squatted down to talk to
6 Amanda. And I looked over to my right and observed
7 a firearm laying up under an abandoned vehicle
8 there. That was in close proximity to the defendant
9 and the other suspects.

10 Q. Okay. And what did you do when you seen the
11 weapon?

12 A. When I seen the weapon, I got Deputy Stipe's
13 attention and advised him that there was a firearm
14 up under the vehicle.

15 Q. What did he do?

16 A. He went up to it and discovered the firearm and
17 other materials there.

18 Q. Do you recall what the gun looked like?

19 A. Oh, yes, ma'am. It was a black revolver.
20 Appeared to be black and rusty like it had been out
21 in the elements, hadn't been there for a long time.

22 Also, you could see since it's a revolver,
23 there was ammunition in the cylinder which was a
24 safety concern knowing that it was possibly loaded.

25 Q. Okay. And did you observe Deputy Stipe collect

Direct examination of Detective Ronald Wood by Ms. Price

213

1 the items?

2 A. No, ma'am. He documented with photos and then
3 collected it.

4 Q. Okay. Did you wind up taking a statement from
5 Ms. Sanders?

6 A. No, ma'am. I did not.

7 Q. Okay. Do you know if a statement was ever
8 taken from Ms. Sanders?

9 A. It was. She did not want to talk on scene, so
10 therefore, Detective Davis took her statement from
11 her at the Anderson County Sheriff's Office.

12 Q. Okay. Did you do anything else while you were
13 on scene?

14 A. Once the search warrant was obtained, I
15 assisted him in searching the property, looking for
16 stolen property, and I did not find anything of
17 evidentiary value.

18 Q. You did not personally collect any evidence
19 that day?

20 A. No, ma'am. I did not.

21 Q. Okay. Do you have another job that you
22 currently work?

23 A. Yes, ma'am. I'm a volunteer fire chief at
24 Homeland Park Fire Department.

25 Q. Okay. And does that cover the area where this

1 defendant lives?

2 A. Yes, ma'am, it does.

3 Q. Okay. Have you come in contact with the
4 resident of the property of this defendant before
5 this date of October 2015?

6 MR. SMITH: Objection, Your Honor. May we
7 approach?

8 THE COURT: Yes, sir.

9 (Sidebar discussion.)

10 BY MS. PRICE:

11 Q. Detective, I'm going to repeat my question.
12 Does your area cover the residence that Mr. Duncan
13 lives at, [REDACTED] South Main Street Extension?

14 A. Yes, ma'am. The fire department address [REDACTED]
15 South Main Street Extension is in Starr, a little
16 area of Starr.

17 Q. Have you come into contact with Mr. Duncan on
18 that property before?

19 A. Yes, ma'am, I have.

20 Q. Okay. And had you before October 15th of 2015?

21 A. Yes, ma'am, I have.

22 Q. Do you know him to be the resident of that
23 property?

24 A. We've responded to several fire calls there,
25 and he has been there each time.

Direct examination of Detective Ronald Wood by Ms. Price

215

1 Q. So you met him before?

2 A. Yes, ma'am, I have.

3 Q. Do you know if he has nickname?

4 A. He goes by Hack.

5 Q. Can you spell that for me, please?

6 A. H-a-c-k.

7 Q. That's the best of your guess?

8 A. To the best of my guesstimation.

9 Q. Okay. And can you please point out the
10 individual that you know to be Michael Duncan who
11 lives at that property and describe what he's
12 wearing for the record?

13 A. Yes, ma'am. The gentleman right here with the
14 white blue-gray striped shirt and beard. I
15 can't -- I can't see exactly what he has on.

16 Q. Okay. And as part of this case, did you pull
17 the defendant's driving record?

18 A. Yes, ma'am, I did.

19 Q. Okay. And did you check his address?

20 A. Yes, ma'am, I did.

21 Q. Okay. I'm going to show you what's been marked
22 as State's Exhibit 7 which is a certified copy,
23 self-authenticating, of the defendant's driving
24 record. Can you tell me what his listed address is
25 now?

1 A. Now it is [REDACTED] Wrightsville Road in Anderson.

2 Q. When did that change?

3 A. It changed 11/28 of 2016.

4 Q. Okay. What was it prior to that change?

5 A. [REDACTED] South Main Street in Anderson.

6 Q. So that was his listed address of his
7 residence; is that correct?

8 A. Yes, ma'am.

9 Q. Okay. And that is where you responded the day
10 of this incident?

11 A. Yes, ma'am.

12 MS. PRICE: Okay. Your Honor, at this time the
13 State seeks to admit -- State seeks to admit
14 Exhibit 7 into evidence.

15 THE COURT: Any objection?

16 MR. SMITH: No, sir.

17 THE COURT: State's Exhibit No. 7 will be
18 admitted without objection.

19 (State's Exhibit No. 7, driving record, was
20 admitted into evidence.)

21 BY MS. PRICE:

22 Q. Detective, aside from what you testified to
23 today and coming to court today, have you had any
24 further involvement or role in this case?

25 A. No, ma'am.

Direct examination of Detective Ronald Wood by Ms. Price

217

1 Q. Okay. I'm going to ask that you step down if
2 you will, please.

3 A. Okay.

4 Q. I'm going to show you some photos that have
5 already been admitted into evidence. I'm showing
6 you State's Exhibit 30. It's already been admitted
7 into evidence.

8 Do -- where were you standing when you were
9 speaking with Ms. Sanders?

10 A. To her right. That's probably about where this
11 gentleman's feet is.

12 Q. Okay. So you squatted down?

13 A. I did.

14 Q. Okay. And showing you what's been marked
15 State's Exhibit 32.

16 A. Okay.

17 Q. Where were you in this photo in relation to
18 where you just pointed out?

19 A. Basically -- well, in this photo I'm right
20 behind where I just pointed out, but basically where
21 I'm at here, give or take where this other deputy
22 is, is where I was. And I squatted down and seen
23 the gun up under this (indicating) vehicle.

24 Q. Okay. So you had to crouch to see it?

25 A. I did.

1 Q. Okay.

2 A. I didn't want to stand over her. She was
3 sitting down, so I got down at her level to talk to
4 her and happened to see the gun.

5 Q. Okay. And, again, the gun was underneath
6 where?

7 A. This blue vehicle up under the front-passenger
8 side.

9 Q. Okay. All right. Showing you State's
10 Exhibit 28. It's already been admitted into
11 evidence. Are you familiar with what we're looking
12 at here?

13 A. I am.

14 Q. Okay. What is that?

15 A. That's the revolver that I seen as I was fixing
16 to talk to Amanda Sanders.

17 Q. Okay. And can you point that out for me?

18 A. Oh, sure (complying).

19 Q. Okay. And if you will, just take the stand
20 again, please.

21 A. Okay.

22 Q. Detective Wood, you just told me you couldn't
23 see the weapon when you were standing; is that
24 right?

25 A. I did not see it standing. When I walked there

Cross-examination of Detective Ronald Wood by Mr. Smith

219

1 and she was there, turned around, and I squatted
2 down to talk to her and seen it then.

3 Q. So it appeared to be hidden?

4 A. Right.

5 Q. Okay. If you wanted somebody to find
6 something, would you leave it out to be found?

7 A. No, ma'am, you wouldn't.

8 Q. If you didn't want somebody to find something?

9 A. If you didn't want somebody to find something,
10 you would throw it and hide it, put it to where
11 somebody might not be looking.

12 MS. PRICE: All right. Thank you. Please
13 answer any questions that the Mr. Smith has for you
14 at this time.

15 THE COURT: Mr. Smith.

16 MR. SMITH: May it please the Court?

17 CROSS-EXAMINATION

18 BY MR. SMITH:

19 Q. Officer, you had the opportunity to speak to
20 Amanda Sanders?

21 A. Sir?

22 Q. Amanda Sanders, you talked to her?

23 A. No, sir. I did not talk to her. As I got
24 beside her to talk to her, I seen the gun. Due to
25 officer safety, Deputy Stipe went to the gun. I did

1 not talk to her.

2 Q. Did you think somebody was going to get injured
3 if you talked to her?

4 A. Sir?

5 Q. Yeah.

6 A. Did I think anybody would get injured talking
7 to her?

8 Q. Yeah.

9 A. No. I was more worried about officer safety,
10 worried about the gun. I didn't need to talk to her
11 at that point in time.

12 Q. Well, I thought you said that Officer Stipe
13 took care of that?

14 A. He -- he documented it, photoed it. And then
15 you don't know, if you've got one gun hidden, there
16 could be other things hidden also. Like I said,
17 Detective Davis is -- spoke to her at the Anderson
18 County Sheriff's Office.

19 Q. Right. But she'd already given information
20 prior to that, right?

21 A. Not to me. No, sir. I did not talk to her.

22 Q. No. But you didn't ---

23 A. I -- I went to her to talk to her. And as I
24 squatted down, I seen the gun. I didn't talk to
25 her.

Cross-examination of Detective Ronald Wood by Mr. Smith

221

1 Q. All right. So she did not say to anyone at the
2 scene that Clinton Macomson had drove that truck?

3 A. She did not tell me that.

4 Q. Okay.

5 A. I can't speak for everybody else. She did not
6 tell me that.

7 Q. Did you watch the interview?

8 A. No, sir, I did not.

9 Q. You would agree with me that the brass
10 knuckles, the pipe, and the methamphetamine are
11 right next to the tire, right?

12 A. Right next to ---

13 Q. The tire on the Jeep.

14 A. It's in the front part of it. If you want me
15 to come look at the picture.

16 Q. Please. Please do. It's Number 28.

17 A. Okay. This -- yeah, this little back sort of
18 toward the back there. Yes, sir.

19 THE COURT: Hit the button so we can see.

20 BY MR. SMITH:

21 Q. All right. So this (indicating) is the front
22 of the Jeep?

23 A. This is the front of the Jeep.

24 Q. And this is the front right front passenger
25 tire?

1 A. It is.

2 Q. And this is directly on the side -- inside of
3 that tire?

4 A. It's towards the -- sort of towards the back,
5 but right there inside the tire. Yes, sir.

6 Q. Okay. If you are over -- where was Amanda
7 Sanders in this?

8 A. Over here. I didn't see these. I seen the
9 gun.

10 Q. Oh.

11 A. I testified to the gun. I did not see the
12 pipe, the drugs, or whatever else is in that
13 picture. I seen the gun. He went to the gun.

14 Q. Yes, sir. All right. Fantastic. Thank you.
15 Ms. Sanders was in the chair. And then going from
16 left to right, Ms. Sanders was the very first
17 individual that was non-law enforcement, right?

18 A. Very ---

19 Q. That's kind of confusing. The -- where -- you
20 were kneeled down next to Amanda in a chair. And
21 then all other -- the other three people were on the
22 other side of Amanda; isn't that right?

23 A. Actually, Joe -- Joseph -- or Surdak and Clint
24 was in the back of the truck.

25 Q. They were being -- they were being talked to;

1 is that right?

2 A. I don't know. I said when I got there, they
3 were in patrol cars. Amanda was -- if I was -- was
4 sitting here (indicating), Michael Duncan was sort
5 of to her left. I came in. And between the Jeep
6 and where she's sitting and squatted down beside her
7 and seen the gun.

8 Q. Could you come down here, please.

9 A. Yes (complying).

10 Q. This is State's Exhibit 31.

11 A. I walked up in here (indicating) up under this
12 little whatever, and I squatted down where this --
13 basically where this (indicating) guy is standing.
14 And when I squatted down, I seen the gun. I walked
15 in between, coming up the drive, I walked up there
16 between there..

17 Q. All right. So you walked up between -- up in
18 between here as you say, and Amanda was under the
19 awning?

20 A. Amanda was sitting pretty much where he is -- I
21 mean, up under the awning. Yes. And Mr. Duncan's
22 over here (indicating). I mean, you can't see him
23 in this picture, but he's to her left.

24 Q. Are they still there at this point in this --
25 in this picture?

1 A. Is who still there? I'm not -- I'm not sure
2 when that picture was taken.

3 Q. Right. Because I don't -- I don't see anybody
4 other than police officers.

5 A. Okay.

6 Q. Do you see anybody there?

7 A. Well, you asked me was Amanda.

8 Q. Right.

9 A. When I walked up, like I said, Amanda was
10 sitting in this chair, Mr. Duncan was over here
11 (indicating), and I stooped -- I squatted down right
12 here (indicating) and seen the gun.

13 Q. Now, the only way you see that is to look
14 over -- back over your shoulder; is that right?

15 A. I did.

16 Q. Is there a reason you looked back over your
17 shoulder?

18 A. No.

19 Q. All right. But you -- you saw the gun?

20 A. I did see the gun.

21 Q. But you did not see the drugs?

22 A. Did not see the drugs.

23 Q. And Mr. Duncan was over here (indicating)?

24 A. Mr. Duncan is under the tent somewhere over
25 here (indicating). Yes, sir.

Cross-examination of Detective Ronald Wood by Mr. Smith

225

1 Q. Not under this (indicating) one, but under this
2 (indicating) one?

3 A. No, sir. Up under...

4 Q. All right. So if you can't see it from here
5 (indicating), he clearly can't see it from there?

6 A. I don't know. I wasn't over there with him. I
7 don't know which angle he had. I mean, if I see the
8 gun -- if that's the gun and I see the gun here
9 (indicating), if I move over here (indicating), I
10 can still see the gun. I don't know his viewpoint.

11 Q. Understood. Do you think he could've -- it was
12 possible that he could've thrown the drugs around
13 the tire?

14 A. I don't know where he was when I -- when they
15 first got there. I can't speak to that.

16 Q. So the only time you saw him, he's over here
17 (indicating) to the ---

18 A. When I got there, he was here (indicating)
19 detained, and Amanda Sanders is right here
20 (indicating).

21 Q. Yes, sir. And then the dog, the dog, was he
22 violent?

23 A. I don't remember a dog.

24 Q. No? So you didn't see him?

25 A. I don't remember. Not saying I didn't see him.

1 I don't remember.

2 Q. Did you know of a dog over here (indicating) on
3 the right on the other side of the building?

4 A. Don't remember a dog.

5 MR. SMITH: All right. Very good. Thank you.

6 THE WITNESS: Uh-huh.

7 MR. SMITH: I have nothing further.

8 THE COURT: Anything further from the witness?

9 MS. PRICE: No, sir. Not from the State.

10 THE COURT: Thank you, Officer. You can step
11 down.

12 THE WITNESS: (Complying.)

13 MS. PRICE: Your Honor, may this -- may this
14 witness be excused?

15 THE COURT: Any objection?

16 MR. SMITH: No, sir.

17 THE COURT: Thank you, Officer. You are
18 excused.

19 (Witness excused.)

20 THE COURT: Take the jury to the jury room.

21 We're going to take a short break.

22 (At 2:44 p.m., jury exited the courtroom.)

23 THE COURT: We'll be in recess.

24 (From 2:45 to 2:55 p.m., a recess was taken.)

25 THE COURT: All right. Mr. Bailiff, would you

Direct examination of Detective Davis by Ms. Price

227

1 get our jury, please?

2 THE BAILIFF: (Complying.)

3 (At 2:55 p.m., jury entered the courtroom.)

4 THE COURT: All right. Ms. Price, call your
5 next witness.

6 MS. PRICE: Thank you, Your Honor. The State
7 calls Heath Davis.

8 (Witness entered.)

9 THE CLERK: Right here please, sir. Just need
10 for you to raise your right hand.

11 THE WITNESS: (Complying.)

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you give the Court today in this case to
14 be the truth, the whole truth, and nothing but the
15 truth?

16 THE WITNESS: Yes, sir.

17 THE CLERK: If you'll take the stand, please,
18 sir, and state your name and spell your last name
19 for the reporter, please.

20 THE WITNESS: Bradley Heath Davis, D-a-v-i-s.

21 INVESTIGATOR HEATH DAVIS,
22 having been produced and first duly sworn as a
23 witness on behalf of the State, then testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MS. PRICE:

2 Q. And who do you work for and in what capacity?

3 A. I work for the Anderson County Sheriff's
4 Office, and right now I'm assigned to the major
5 crimes unit.

6 Q. Okay. And were you assigned to the major
7 crimes unit in October of 2015?

8 A. No, ma'am. At that time I was a criminal
9 investigator assigned to property crimes.

10 Q. Okay. And what's your current title?

11 A. Current title?

12 Q. Uh-huh?

13 A. I'm a -- I'm a detective under the major crimes
14 unit.

15 Q. Okay. How long have you been in law
16 enforcement?

17 A. Approximately, six-and-a-half years.

18 Q. What sort of duties and responsibilities were
19 associated with your position as investigator in
20 2015?

21 A. At that time I was assigned to property crimes.
22 We get burglaries, larcenies, missing persons,
23 crimes against persons, armed robberies, things like
24 that.

25 Q. Okay. Do you recall what you were doing in

Direct examination of Detective Davis by Ms. Price

229

1 your capacity as investigator on October 15th of
2 2015?

3 A. Yes, ma'am.

4 Q. And what was that?

5 A. That particular day, we were in the middle of a
6 satur -- saturation patrol. We went out to the high
7 crime areas and were working to officer presence,
8 reduce crimes in those areas.

9 Q. Do you remember what areas you were saturating?

10 A. There were multiple. We split up into teams
11 that day, and I do remember that myself and
12 Detective Marzoff were paired together and we were
13 in the Homeland Park area.

14 Q. And by paired together, were you in the same
15 vehicle?

16 A. Yes.

17 Q. Okay. And did you respond to a call that day
18 that's led you to be in court today?

19 A. Yes, I did.

20 Q. Was that follow-up to a property in the
21 Homeland Park area?

22 A. Yes, it was.

23 Q. Do you remember where you responded?

24 A. Yes, ma'am. The physical address there is [REDACTED]

25 [REDACTED] South Main Street Extension in Anderson.

1 Q. Okay. What was the nature of the call?

2 A. We heard on the radio that OnStar was actively
3 tracking a stolen vehicle that had been stolen
4 earlier that morning and had been reported with the
5 Sheriff's Office and put in NCIC. They were
6 tracking it in that area, and it came to a rest
7 somewhere in the area of South Main Street
8 Extension.

9 We heard that Deputy Stipe was in the area. He
10 got out of his vehicle at that address, and we
11 responded. And it was a few short minutes later we
12 got out with him there.

13 Q. And who was the lead investigator for that
14 case?

15 A. I -- me and Detective Marzoff arrived and I
16 kind of took over the lead on the investigation for
17 the stolen vehicle being there on the property.

18 Q. Is that typical?

19 A. Yes.

20 Q. It's typical for an investigator to take an
21 investigation over from a road deputy?

22 A. Yes. Very typical, especially if they -- they
23 need help with things going on.

24 Q. Okay. And when you responded, do you remember
25 what time you got there?

Direct examination of Detective Davis by Ms. Price

231

1 A. I don't know the exact time, but I know it was
2 after lunch and it was midafternoon.

3 Q. To the best of your recollection, who else was
4 on scene when you arrived?

5 A. When I arrived, I do remember at the time
6 Captain Scott White who was over road patrol and
7 Deputy Stipe.

8 Q. Do you remember anyone else being present?

9 A. Not when I first arrived. People started
10 arriving when we got on scene because of the nature
11 of the call.

12 Q. Okay. So Deputy Stipe, Captain White,
13 yourself, and ---

14 A. Detective Marzoff.

15 Q. Okay. And what did you observe about the scene
16 when you arrived?

17 A. When I pulled up, I -- they had already gave a
18 description of the stolen truck over the radio, and
19 I saw it sitting there in the driveway.

20 I saw that Deputy Stipe had four people there
21 that were not law enforcement and he had all of
22 those detained and separated.

23 Q. And did you identify those individuals?

24 A. Yes, ma'am, we did.

25 Q. Who -- who were they?

1 A. They were Clinton Macomson, Amanda Sanders,
2 Joey or Joseph Surdak, and Michael Duncan.

3 Q. Okay. I what did you do after you arrived?

4 A. After we arrived, we went over and checked the
5 VIN number on the truck to confirm that it was the
6 stolen truck that we were looking for just as --
7 when I first arrived, we looked around and we seen a
8 utility trailer sitting there with a motorcycle on
9 the back of it. Looked kind of out of place.

10 The license plates was visible where it was.
11 We ran the license plate, and it came back to an
12 address, I believe [REDACTED] McElrath Road down in Starr.

13 Things weren't really adding up with that, so
14 we sent Detective Nathan Mitchell and Detective
15 Culbertson down to that address and they located
16 a -- what they believed to be a fresh burglary to a
17 garage down there at that residence.

18 They contacted the homeowners who were both at
19 work at the time. And the female responded down to
20 the house and confirmed that the house had been
21 broken into and that they were missing a motorcycle
22 and a utility trailer.

23 Q. Did they list additional missing items from
24 that property?

25 A. They -- they were doing an inventory at some

Direct examination of Detective Davis by Ms. Price

233

1 point. Mr. Wiles had to come home and find exactly
2 everything that was missing, but all that was done
3 later on.

4 Q. Okay. Did you speak with any of the non-law
5 enforcement individuals who were on scene at the
6 time?

7 A. Yes, ma'am.

8 Q. Okay. Who did you speak with?

9 A. I walked up and spoke to Michael Duncan.

10 Q. Okay. And what did he tell you at that time?

11 A. Michael told me -- I inquired to him that I
12 was, you know, there for the stolen truck and
13 possibly the utility trailer. We were looking for
14 information on that.

15 He agreed to speak with me and told me that
16 when he was first at his residence, that a Joey
17 Surdak was still on scene with a girl named Nicole
18 were there with him. He left to go to the store.
19 When he came back, the white truck, the trailer, and
20 the motorcycle were now on scene.

21 Clinton Macomson was there and Amanda Sanders
22 was there who were not there when he left. Also,
23 Clint tried to sell to him the utility trailer and
24 the motorcycle.

25 Q. Okay. Had he been Mirandized when he told you

1 that?

2 A. Yes, ma'am. I was -- when I first got on scene
3 there, I did make contact with Deputy Stipe to see
4 what he had going on. And he advised me that he had
5 separated all four people and Mirandized each one of
6 them.

7 Q. Were they in handcuffs?

8 A. Yes.

9 Q. Okay. Was Mr. Duncan in handcuffs?

10 A. He was.

11 Q. Were you in uniform when you spoke with him?

12 A. Yes, I was..

13 Q. Did you have a weapon?

14 A. I did.

15 Q. Was it holstered?

16 A. It was.

17 Q. Did you make any threats or promises to give
18 you a statement?

19 A. No, ma'am.

20 Q. Okay. Was it given freely and voluntarily?

21 A. It was.

22 Q. Okay. Do you see the man in the courtroom
23 today that you spoke with who identified himself as
24 Michael Duncan?

25 A. Yes, ma'am.

Direct examination of Detective Davis by Ms. Price

235

1 Q. Okay. Can you point him out and describe what
2 he's wearing for the record?

3 A. It's the white man sitting here (indicating)
4 besides Mr. Smith with the plaid shirt on and the
5 beard.

6 Q. Okay. Did you speak with any of the other
7 suspects on scene?

8 A. I briefly spoke with Amanda Sanders to try to
9 corroborate Mr. Duncan's story, and she did not want
10 to speak with me at the scene. She agreed to speak
11 with me at the Sheriff's Office, so she was
12 transported directly from the scene and put in the
13 holding cell at the Sheriff's Office.

14 Q. Okay. And did you speak with her after she had
15 been removed from the scene?

16 A. I did. After we finished everything at the
17 scene, I later on spoke with her at the Sheriff's
18 Office.

19 Q. Okay. But that occurred after you left the
20 scene?

21 A. Yes, ma'am.

22 Q. Did that occur after the execution of the
23 search warrant?

24 A. Yes, ma'am.

25 Q. Okay. One moment. You said that you found

1 some property at the scene that did not belong to
2 the individuals who were found on the scene
3 initially; is that right?

4 A. We did.

5 Q. Do you remember what you found?

6 A. The -- the stolen truck itself, of course,
7 didn't belong there. When that truck was stolen
8 that morning it had a dirt bike in the back of it.

9 During the inventory of the truck before we
10 gave it back to the owner, we actually found that
11 another set of keys were missing from that truck,
12 plus the stolen dirt bike at the time because we
13 didn't have it there on scene.

14 And, also, as the scene progressed, we were
15 getting more information from Mr. Wiles on stuff
16 that he was missing from his garage.

17 Q. Were you present when Detective Stipe found
18 what he believed to be narcotics on scene?

19 A. Yes, ma'am. I was on scene..

20 MR. SMITH: Objection. Leading.

21 THE COURT: Excuse me?

22 MR. SMITH: I said objection. Leading.

23 THE COURT: Overruled..

24 BY MS. PRICE:

25 Q. Were you present when Detective Stipe found

Direct examination of Detective Davis by Ms. Price

237

1 what he believed to be narcotics on scene?

2 A. Yes, ma'am. I was present.

3 Q. Okay. And as a result of finding stolen
4 property on the scene and Deputy Stipe finding what
5 he believed to be narcotics on the scene, did you
6 take another step in your investigation?

7 A. We did. Like I said, we were still missing the
8 dirt bike out of the back of the stolen truck on the
9 scene and the set of keys that was, at the time we
10 determined to do a search warrant on that building.
11 The size of the building, of course, we could see
12 outside the property, but could not see inside the
13 building.

14 And Mr. Duncan had already told me that he
15 tried to buy -- or tried to sell the utility trailer
16 and the one motorcycle to him, so I had reason to
17 believe that that stolen dirt bike may be inside.
18 At the time we decided to type up a search warrant
19 for the building.

20 Q. Okay. And you believed that because Mr. Duncan
21 told you that Mr. Macomson had tried to sell him
22 stolen property?

23 A. That's correct.

24 Q. Okay. Did you get a search warrant?

25 A. We did.

1 Q. Okay. And once you got the search warrant, did
2 you execute the search warrant?

3 A. I did. I did assist in executing the search
4 warrant.

5 Q. What does executing a search warrant mean?

6 A. Executing a search warrant is after it is
7 presented to a -- typed up, it is presented to a
8 magistrate for probable cause.

9 If the judge finds probable cause, they sign
10 it. It's brought back to the scene and handed over
11 to a certain detective, and that was me that day.

12 Myself and Detective Alan Hendrix then took
13 over executing the search warrant. That is
14 physically going inside the property that you want
15 to search and physically looking through things.

16 Q. Okay. And you took over one portion of the
17 search?

18 A. Yes, ma'am.

19 Q. And what was your portion of the search
20 addressing?

21 A. The structure is basically broken up into two
22 different sides. When greatest -- went through one
23 door and saw multiple items -- mopeds, lawnmowers,
24 all kind of stuff. It was a big room with a lot of
25 items.

Direct examination of Detective Davis by Ms. Price

239

1 And at that time since I was more on the side
2 of the stolen property, I took that side of the
3 building.

4 Q. Okay. And who's the other individual that was
5 executing the search warrant with you?

6 A. Detective Alan Hendrix.

7 Q. Were other members of law enforcement assisting
8 in the search as well?

9 A. Yes, ma'am.

10 Q. Okay. And were you overseeing the search?

11 A. Yes, ma'am. On that one side -- particularly
12 that one side of the building.

13 Q. Did you keep track of the items that were found
14 pursuant to that search?

15 A. Yes, ma'am.

16 Q. Okay. Did you find the dirt bike or set of
17 keys?

18 A. No, ma'am. We did not.

19 Q. Did you find any additional stolen property?

20 A. We did. Again, as -- as the scene progressed,
21 we kept getting information from one of the victims,
22 the victim of the burglary. And he started giving
23 off names of things and describing things to us that
24 was missing.

25 We did locate a chrome air breather, a

1 carburetor, and a few other things that we
2 positively identified as being his property, and
3 that was located inside the building.

4 Q. That was located inside the building?

5 A. Yes.

6 Q. Okay. What else did you do on scene?

7 A. On my side, we ran multiple serial numbers on
8 things to confirm that they were not stolen also. I
9 documented everything that was brought out and
10 brought to me. I documented on the return of the
11 search warrant.

12 Q. Okay. Did you have occasion to look at both
13 sides of that building or only one side of the
14 building?

15 A. After we felt confident on the side that I was
16 over, that nothing else had been stolen, I did after
17 Detective Alan Hendrix was done with their side,
18 I -- I did walk through that side of the building,
19 which I found that be that was the side he was
20 living on.

21 Q. Okay. And did you find any items in there?

22 A. That is where the chrome air breather and the
23 carburetor and I believe one other item was located.

24 Q. Okay. And those were stolen?

25 A. Those were stolen from the burglary.

Direct examination of Detective Davis by Ms. Price

241

1 Q. Okay. And the burglary occurred when?

2 A. The -- the residents of the house on [REDACTED]
3 McElrath Road, they left to go to work that morning.
4 I'm not exactly sure what time they left to go to
5 work, but it was between the time of them leaving to
6 go to work and us getting on scene there, so a
7 little after lunchtime.

8 Q. Okay. Once you returned to the Anderson County
9 Sheriff's Office, what did you do?

10 A. Myself and Detective Marzoff retrieved Amanda
11 Sanders from the holding cell downstairs. Took her
12 upstairs to our interview room which is audio and
13 video recorded and took a statement from her.

14 Q. Okay.. Did anyone of the suspects on scene
15 admit to possessing the stolen property or to
16 possessing the suspected narcotics?

17 A. No, ma'am.

18 Q. No one claimed any of that?

19 A. Not on scene.

20 Q. Not on scene? Okay. Did they later?

21 A. Not to my knowledge.

22 Q. Okay. Did you interview this defendant again
23 after you left the scene?

24 A. Michael Duncan?

25 Q. Yes.

1 A. No, ma'am.

2 Q. So you only spoke with him once?

3 A. Yes, ma'am.

4 Q. Okay. Aside from testifying today and what
5 you've already mentioned, do you have any additional
6 involvement on scene that you can recall?

7 A. No, ma'am.

8 Q. Okay. One moment, please. Detective, I'm
9 going to show you some exhibits that are marked 22,
10 23, 15, and 14, for the State. Can you take a look
11 at each of those? Tell me if you recognize what is
12 shown on those photographs.

13 A. (Complying.) In picture 14, this is the side
14 of the garage that I was overseeing searching.
15 There's multiple items in here you can see. And
16 everything we can get to, we ran the serial number
17 to see if it was stolen or not.

18 This is another photo. Number 15, also another
19 shot of the garage, the side that we were searching.

20 Number 23 is a photo of the chrome air breather
21 and it looks like the carburetor there that was
22 positively identified as being one of the victims.
23 And that was located on the side that Mr. Duncan
24 lives on.

25 Number 22 is a further back shot of also the

Direct examination of Detective Davis by Ms. Price

243

1 chrome air breather and the carburetor.

2 Q. Okay. Thank you. Do they look altered in any
3 way? Does this appear as it did on October 15th of
4 2015?

5 A. It appears the same.

6 MS. PRICE: Your Honor, at this time the State
7 moves to admit State's Exhibit 14, 15, 23, and 22.

8 THE COURT: Any objection?

9 MR. SMITH: Oh, no. Not at all.

10 THE COURT: Mr. Smith, I can't hear you. Any
11 objection?

12 MR. SMITH: No, sir. Not at all.

13 THE COURT: Okay. State's Exhibits 14, 15, 22,
14 and 23 would be admitted without objection.

15 (State's Exhibit Nos. 14, 15, 22, and 23 were
16 admitted into evidence.)

17 MS. PRICE: Okay. Your Honor, we request
18 permission to publish.

19 THE COURT: Yes, ma'am.

20 BY MS. PRICE:

21 Q. Detective, can you step down with me for a
22 minute?

23 A. (Complying.)

24 Q. We're looking at State's Exhibit 14. Can you
25 tell me what we're looking at?

1 A. Yes, ma'am. This is a -- I believe there was a
2 door that went straight into this area of the
3 building that faced the front of -- front side where
4 we're all out in the parking lot. And this is just
5 another review before you walk in of -- of all the
6 property in there.

7 Q. Is that the side of the building that you
8 initially oversaw the search in?

9 A. Yes, ma'am.

10 Q. Okay. State's Exhibit 15.

11 A. Again, just another shot, I believe a
12 further -- a little further to the left to show what
13 all was in -- in that side of the building.

14 Q. Okay. And I'm going to show you what's been
15 previously admitted as State's Exhibit 31. That
16 room that we just looked at, can you show me what
17 side of the building that was on?

18 A. It's on -- it's on this half of the building
19 over here, and it should be through this door right
20 here.

21 Q. Okay. And the -- the sleeping quarters I
22 guess ---

23 A. Yes, ma'am.

24 Q. --- are located where?

25 A. It would be over to this side, the left side of

Direct examination of Detective Davis by Ms. Price

245

1 the building.

2 Q. Okay. Going to show you what's been marked as
3 State's Exhibit 32. Can you see the -- the second
4 portion of that building in the photograph?

5 A. Yes, ma'am. There is a door over here on this
6 left-hand side that goes straight into that side of
7 the building. And from what we could tell, those
8 two garage doors here (indicating) stay closed all
9 the time.

10 Q. Okay. Can you tell me what that signs says?

11 A. Where's it at?

12 Q. On the left-hand side of the building.

13 A. "Beware of dog and owner."

14 Q. Okay. And can you see the door that you're
15 talking about in this photograph?

16 A. No, ma'am. Not from this picture.

17 Q. Okay. So is it on the side of the building
18 then?

19 A. Yes, ma'am. Just as soon as you walk around
20 this corner, right where that beware of dog and
21 owner is, it's right there.

22 Q. Okay. And that -- that's how you get into
23 Mr. Duncan's sleeping quarters?

24 A. Yes, ma'am. The side he lived on.

25 Q. Okay. And I'm showing you State's Exhibit 22.

1 Can you tell me what we're looking at?

2 A. This is the side that he actually lived in.

3 And this is a -- a far back shot of where the chrome
4 air breather and carburetor which were parts missing
5 from that burglary on McElrath Road.

6 Q. Okay. So that was part of the stolen property
7 you recovered after executing the search warrant?

8 A. Yes, ma'am.

9 Q. Okay. And then State's Exhibit 23.

10 A. That is a closer-up shot to show what was --
11 what was in that tub there, and particularly what we
12 were looking for there.

13 MS. PRICE: All right. Thank you very much.
14 Please take the stand again and answer any questions
15 that Mr. Smith has for you.

16 THE WITNESS: (Complying.)

17 THE COURT: Mr. Smith.

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q. Come back down here, Officer.

21 A. (Complying.)

22 Q. Now, looking at Exhibit 22. What do we see
23 here (indicating)?

24 A. This is when you first walk in, they usually --
25 if we find something of particular interest, the

Cross-examination of Detective Davis by Mr. Smith

247

1 guys will take a far back shot and then they'll take
2 a closer up shot. This here is the chrome air
3 breather and the carburetor that we confirmed to be
4 stolen from the burglary on McElrath Road.

5 Q. You mean the people that were at work?

6 A. Correct.

7 Q. So they don't know it was stolen from their
8 house. The only reason they knew about the stolen
9 vehicle was because of OnStar, right?

10 A. It's two separate victims.

11 Q. This one right here (indicating)?

12 A. They were at work. Yes, sir.

13 Q. Okay. So they didn't know that was gone, did
14 they?

15 A. When we notified them, they did. Yes, sir.

16 Q. You notified -- you notified who?

17 A. The owners of the property when I sent the two
18 detectives down there to the house.

19 Q. And you told them that this was missing or was
20 stolen?

21 A. We had them come to the house and they
22 confirmed that the garage had been broken into.

23 Q. What time -- what time did they get there?

24 A. I didn't handle that portion. I sent two
25 detectives down there.

1 Q. They're going to testify, right?

2 A. If you say so.

3 Q. Okay. All right. And you know it's theirs
4 because of the serial number you took down, right?

5 A. No, sir.

6 Q. Well, do you have picture?

7 A. They were not -- I don't believe there was a
8 serial number on that chrome air breather.

9 Q. So how do we know it was theirs?

10 A. They positively identified it.

11 Q. At what point did they do that?

12 A. Sir?

13 Q. When did they do that?

14 A. It was during the execution of the search
15 warrant.

16 Q. So they came over to here (indicating)?

17 A. At one point Mr. Wiles and I believe his
18 brother responded to take back his property.

19 Q. Oh, the brother of the person who alledgedly it
20 was stolen from?

21 A. Yes, sir.

22 Q. But not the people it was stolen from?

23 A. Not that I recall.

24 Q. All right. And we don't have anything that
25 identifies it as theirs, do we?

Cross-examination of Detective Davis by Mr. Smith

249

1 A. Not at this time. Other than them positively
2 identifying it, that's -- that's all I know.

3 Q. And those are only -- that's not the only one
4 that was made, right?

5 A. I'm sure plenty were made.

6 Q. All right. And this was from the motorcycle
7 and the truck people, right?

8 A. The trailer -- utility trailer and the
9 motorcycle.

10 Q. And the truck?

11 A. No, sir. That's another victim.

12 Q. Amanda Sanders told you Clinton Macomson stole
13 that truck, right?

14 A. Sir?

15 Q. Amanda Sanders told you that Clinton Macomson
16 stole that truck?

17 A. During her interview at the Sheriff's Office,
18 yes, sir.

19 Q. You talked to her before that? You talked to
20 her at the scene?

21 A. She did not want to talk to me on the scene.

22 Q. So when we watched the interview, okay, you
23 tell her that you were pretty sure of the
24 information she gave at the scene; isn't that right?

25 A. I don't recall that.

1 Q. All right. When you left the scene, who is
2 your -- who did you recognize as the person that
3 stole the truck?

4 A. (No response.)

5 Q. Who stole the truck?

6 A. After I got back to the Sheriff's Office and
7 formally interviewed Amanda Sanders, I knew who
8 stole the truck.

9 Q. But you talked to Mr. Duncan?

10 A. I did.

11 Q. And Mr. Duncan told you that when he got back
12 to the -- to his residence, that was on there,
13 right?

14 A. That's correct.

15 Q. Do you have anything whatsoever that is in
16 conflict with that story?

17 A. That Clinton Macomson drove that stolen truck
18 there?

19 Q. Yes.

20 A. Not at the time.

21 Q. Mr. Surdak didn't offer you that?

22 A. I did not interview Mr. Surdak.

23 Q. Number 32, State's Exhibit. So did you go over
24 to where that beware of dog sign is?

25 A. At one point I did. Yes, sir.

Cross-examination of Detective Davis by Mr. Smith

251

1 Q. Okay. And the other dog, what kind of dog was
2 it?

3 A. I do not recall that.

4 Q. You don't recall another dog, do you?

5 A. I know there were a couple of dogs on scene,
6 but I can't describe them. I can't tell you what
7 they were.

8 Q. Well, it doesn't say "Beware of dogs," does it?

9 A. It says "Beware of dog and owner."

10 Q. Right. But that's one dog, right?

11 A. According to this sign, it says "Beware of dog
12 and owner."

13 Q. So we believe that there's one dog, right?

14 A. There could be multiple dogs.

15 Q. Was there?

16 A. I don't recall that. My focus was not dogs
17 that day.

18 Q. Did you see a dog?

19 A. I do remember seeing at least one dog.

20 Q. What color?

21 A. I do not recall that.

22 Q. Where was -- where were the people seated in
23 relation to this right here (indicating)?

24 A. In relation to this truck?

25 Q. Yes.

1 A. When I arrived on scene, he had multiple people
2 already separated. I remember actually right
3 through here (indicating), you can still see Amanda
4 Sanders and that's where she was seated.

5 Over here (indicating) further to the right,
6 but you can't see in this picture, that's where I
7 spoke with Mr. Duncan.

8 Q. So Michael Duncan was at the far end of the
9 house or the structure?

10 A. When I arrived. Yes, sir.

11 Q. And did he move at any point toward the center
12 of the structure that you saw?

13 A. I was not overseeing security on the scene at
14 the time. That's why we still had deputies on the
15 scene.

16 Q. So to your knowledge, you never saw him move to
17 the center?

18 A. I don't recall that.

19 Q. And you're aware of the drugs being found on
20 the inside of this Jeep?

21 A. Yes, sir. I'm aware of that.

22 Q. On the inside of the tire?

23 A. Yes. It was more up toward, I believe, the
24 front of the Jeep up here (indicating).

25 Q. Yes, sir. And Officer Wood happened to see the

Cross-examination of Detective Davis by Mr. Smith

253

1 gun, right?

2 A. I believe that's correct.

3 Q. But he did not see the drugs, right?

4 A. If you say so.

5 Q. Okay. If -- if the drugs and the pipe are on
6 the inside of the passenger front tire, and
7 Mr. Duncan, according to you, is all the way over
8 here (indicating), he could not see the drugs, could
9 he?

10 A. Could he see them?

11 Q. Yeah.

12 A. I can't testify to that.

13 Q. No. Could you see through a tire if you were
14 sitting there?

15 A. I can't testify to that.

16 Q. Can you see through tires?

17 A. Depending on which position you are here, yes,
18 you probably could see it at some point.

19 Q. So you think you could see it from the end of
20 the building through the tire?

21 A. Which side of the building?

22 Q. Mr. Sanders' side -- not Mr. -- Mr. Duncan's
23 side. Excuse me. You said at the end, right, way
24 down here (indicating)?

25 A. More over here (indicating) where he was

1 seated.

2 Q. Right.

3 A. Could he see those from here?

4 Q. Could he see the drugs through the tire?

5 A. I would have to go out here and stand and look
6 and see if I could see it. I can't testify to that.

7 Q. Well, what's your -- what's your guess with all
8 your experience?

9 MS. PRICE: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. SMITH:

12 Q. Nicole -- Mr. Duncan told you that he went to
13 the store and Nicole was left there; is that right?

14 A. There was a female named Nicole. That's all I
15 know.

16 Q. Mr. Duncan took her to probation; isn't that
17 right?

18 A. I didn't get that specific.

19 Q. Did Amanda tell you there was other people
20 there?

21 A. During our interview at the Sheriff's Office?

22 Q. Right. The interview at the Sheriff's Office.

23 A. I know she -- she spoke of what all happened up
24 until they arrived there because I was very
25 specific ---

Cross-examination of Detective Davis by Mr. Smith

255

1 MS. PRICE: Objection, Your Honor. This a
2 hearsay.

3 THE COURT: Sustained.

4 BY MR. SMITH:

5 Q. Okay. We'll get to that. Could you go back to
6 the stand?

7 A. Yes (complying).

8 Q. Thank you, sir. What patrol car was Joseph
9 Surdak in? Which patrol car?

10 A. When I arrived?

11 Q. Yes.

12 A. I don't recall that.

13 Q. Do you know at any time what patrol car he was
14 in?

15 A. No, sir. Not specifically.

16 Q. Do you know anyone he spoke to?

17 A. Yes, sir.

18 Q. Who did he speak to?

19 A. Mr. Surdak?

20 Q. Yes.

21 A. He say interviewed by Detective Marzoff..

22 Q. And he told Detective Marzoff that Clinton
23 Macomson drove the truck on the property, didn't he?

24 A. Mr. Surdak was there when Mr. Macomson and
25 Ms. Sanders arrived on the truck pulling the trailer

1 and the motorcycle.

2 Q. So you know that?

3 A. Sir?

4 Q. You knew that?

5 A. After he was interviewed I knew it.

6 Q. Mr. Surdak was on the scene. He was
7 interviewed?

8 A. Yes, sir.

9 Q. So you knew that Macomson brought that truck on
10 the property at the scene, right?

11 A. This was a developing scene, and I do not know
12 at which time he was pulled to the side and
13 interviewed versus us making the decision to get the
14 search warrant.

15 Q. Where was Mr. Macomson? What patrol car?

16 A. Mr. Macomson was definitely placed in the back
17 of a marked patrol car.

18 Q. Which one?

19 A. If I told you which officer, I would be -- I'm
20 not going to guess. I know it was a marked patrol
21 car.

22 Q. How were they transported to the detention
23 center?

24 A. At one point, I believe we did call for a
25 transport van to come. And who all got on that van

Cross-examination of Detective Davis by Mr. Smith

257

1 and left the scene, I cannot testify to. I did not
2 handle that part.

3 Q. But it's a small area, right?

4 A. What's that?

5 Q. You saw everybody leave, didn't you?

6 A. No, sir. I did not handle that part. I can
7 assure you I was not paying attention to who left in
8 what.

9 Q. So all four people were separated?

10 A. When I arrived on scene, yes, sir.

11 Q. Where were they located?

12 A. Particularly, Ms. Sanders was in the chair
13 where I showed you.

14 Q. Yes.

15 A. And she stayed there for a while.

16 And then Mr. Duncan was over further to the
17 right where I spoke with him.

18 I know that Mr. Macomson was placed in the back
19 of a patrol car. I saw that physically when I got
20 on scene.

21 And as far as Mr. Surdak, I do not recall
22 exactly where he was, but all four parties were
23 separated from each other.

24 Q. Mr. Macomson never got out of his cuffs, did
25 he?

1 A. Out of his handcuffs?

2 Q. Yes.

3 A. Did we let him out? I don't -- I don't

4 understand the question.

5 Q. Were they removed from his wrists?

6 A. I did not personally ever remove his handcuffs.

7 Q. Did you see them removed?

8 A. No, sir.

9 Q. Joey Surdak had just gotten out of jail, hadn't
10 he?

11 A. I don't know that information.

12 Q. You didn't know what had been stolen or what
13 was missing from the victims at the time you pursued
14 the search warrant, did you?

15 A. Sir?

16 Q. You didn't know what might be missing when you
17 pursued the search warrant?

18 A. Yes, sir. I knew I had stolen property still
19 missing from the stolen truck.

20 Q. And what was that?

21 A. The dirt bike and the set of keys.

22 Q. A set of keys?

23 A. Yes, sir.

24 Q. You knew that from Mr. Wiles?

25 A. No, sir. The other victim of the stolen truck,

Cross-examination of Detective Davis by Mr. Smith

259

1 he actually came to the scene. The truck was
2 inventoried, and he was still missing those items.
3 And on the police report, the truck had a dirt bike
4 in the back of it when it was stolen that morning.

5 Q. All right. Do you have pictures of that? You
6 got pictures that you took of -- of the property?

7 A. Which property?

8 Q. The property that was taken and luckily
9 recovered it.

10 A. Sir?

11 Q. The property you recovered, do you have
12 pictures of it?

13 A. We did not recover a dirt bike from the scene.

14 Q. Any other property than what we saw there?

15 A. That's the only pictures I'm familiar with of
16 the carburetor and the chrome air breather because
17 it was actually taken out of the residence.

18 Q. Those didn't go to that motorcycle, did they?

19 A. Sir?

20 Q. They didn't go to that motorcycle, did they?

21 A. I don't think that belongs on a motorcycle.

22 Q. Regarding the truck, the victim was not at
23 home, right?

24 A. When is this?

25 Q. The truck -- the truck that was stolen.

1 A. The stolen truck?

2 Q. Yeah, the victim wasn't home?

3 A. When?

4 Q. When it was stolen.

5 A. I'd have to refer to the police report. I did
6 not take that report.

7 Q. What did you do?

8 A. I was there on scene when OnStar was actively
9 tracking the stolen vehicle, and Deputy Stipe and
10 Captain White arrived and found it there. I arrived
11 on scene a few minutes later and confirmed that it
12 was the stolen truck.

13 Q. So did you have a list from the victims about
14 what was stolen?

15 A. At some point I did.

16 Q. At what point?

17 A. I already knew that we were missing a stolen
18 dirt bike or a dirt bike out of the stolen truck
19 because it was not there when we recovered the
20 truck.

21 Q. But there wasn't a motorcycle on there, right?

22 A. When the truck was originally stolen, there was
23 a dirt bike in the back of it.

24 Q. And you learned that from the people that were
25 there?

Cross-examination of Detective Davis by Mr. Smith

261

1 A. It's on the police report, plus we made contact
2 with the victim of the truck. He actually came to
3 the scene and we inventoried his truck.

4 Q. What made you believe that there was a
5 motorcycle in that place?

6 A. I had already spoken to Mr. Duncan on the
7 scene, and he stated that Clinton Macomson already
8 tried to sell him a trailer and the other stolen
9 motorcycle.

10 Q. Okay. So what gave you the thought that
11 motorcycle was in there?

12 A. Exactly what I said.

13 Q. I don't understand how that gave you the
14 thought that the motorcycle was in there.

15 A. He was already trying to sell him stolen items,
16 and I'm still missing a dirt bike out of the back of
17 the truck.

18 Q. Okay. Tried means didn't, right?

19 A. He didn't particularly, the trailer or the
20 motorcycle.

21 Q. Okay. Did you have any knowledge -- you had
22 knowledge of something going in the house, in the
23 residence?

24 A. Independent knowledge?

25 Q. Yeah.

- 1 A. On scene that day?
- 2 Q. Anything, yeah.
- 3 A. Not at the time.
- 4 Q. And you never got that information, did you?
- 5 A. What's that?
- 6 Q. That knowledge.
- 7 A. That something definitely for sure went inside
- 8 that house?
- 9 Q. Right.
- 10 A. No, sir. That's the purpose of the search
- 11 warrant.
- 12 Q. Certainly. So what did you believe you were
- 13 going to find?
- 14 A. A stolen dirt bike and set of keys. And we
- 15 also -- before we typed up the search warrant, of
- 16 course, as you heard from Detective Wood -- located
- 17 a gun which led to the finding of the bag of
- 18 methamphetamine which did field positive for meth on
- 19 scene.
- 20 Q. Right. Which was not visible from the
- 21 building.
- 22 A. We've already covered that.
- 23 Q. Right. But Nicole didn't go to probation that
- 24 day. She was there at the -- at the place, right?
- 25 A. When he first -- according to his statement,

Cross-examination of Detective Davis by Mr. Smith

263

1 when he first left to go to the store, she was still
2 there with Joey Surdak.

3 Q. He didn't give a you statement, did he?

4 A. Sir?

5 Q. He didn't give you a statement, did he?

6 A. Who's that?

7 Q. Mr. Duncan.

8 A. A verbal statement, yes, sir, he did.

9 Q. So he told you that Nicole did not go to
10 probation, or he failed to say that she went to
11 probation and said that she was at his residence?

12 A. I can tell you exactly what she told me.

13 Q. I know what you can tell me.

14 A. Okay.

15 Q. When did Mr. Culbertson and Mr. Mitchell go out
16 to see the victim?

17 A. Mr. Wiles?

18 Q. Sure. Yes.

19 A. After we saw the utility trailer and the other
20 motorcycle there on the trailer, the license plate
21 was visible. We ran the license plate and it came
22 back to his address.

23 Q. They didn't know at that point?

24 A. We had reason to believe because of everything
25 that was going on there, but we did not know for

1 sure until I sent them down to the residence.

2 Q. What time did they arrive?

3 A. I don't have that in front of me.

4 Q. Isn't that part of your report?

5 A. Sir?

6 Q. Isn't that part of your report?

7 A. What time they arrived?

8 Q. Yes.

9 A. It's not part of my report. No, sir.

10 Q. Isn't it a collective effort?

11 A. I don't understand the question.

12 Q. Collective means all of the police department
13 working together.

14 A. Everybody on scene was working together. Yes,
15 sir.

16 Q. So all of the reports would be part of your
17 report, wouldn't they?

18 A. Part of my individual report?

19 Q. I think I said that.

20 A. Again, I don't understand what you're needing.

21 Q. Like you said, Amanda did not tell you anything
22 at the scene?

23 A. She wanted to speak with me away from the
24 scene.

25 MR. SMITH: May we approach, Your Honor?

Redirect examination of Detective Davis by Ms. Price

265

1 THE COURT: Yes, sir.

2 (Sidebar discussion.)

3 MR. SMITH: I have nothing further, Your Honor.

4 MS. PRICE: Your Honor, I have brief redirect.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION

7 BY MS. PRICE:

8 Q. Detective Davis, just so there's no confusion,
9 how many victims of property crimes did you assist
10 that day?

11 A. The original victim of the stolen truck which
12 OnStar tracked to that location which led us there.

13 Q. Okay.

14 A. And then once we got on scene, we see the
15 utility trailer with the motorcycle on it, run the
16 license plate. It comes back to a totally different
17 address at [REDACTED] McElrath Road, which was not the
18 victim of the stolen vehicle which led us there. So
19 I have two different victims. I sent two detectives
20 down there to see what we have going on.

21 Q. Down there?

22 A. To [REDACTED] McElrath Road in Starr.

23 Q. And that is the address of the motorcycle?

24 A. That we had on scene ---

25 Q. Okay.

1 A. --- that was ---

2 Q. All right.

3 A. --- sitting on the utility trailer.

4 Q. And the owner of the truck came to the scene?

5 A. He did.

6 Q. And the two detectives who discovered the
7 break-in, which was the second property crime that
8 you investigated ---

9 A. Yes, ma'am.

10 Q. --- they made contact with those victims?

11 A. Yes. They were both at work.

12 Q. Who went to their property; is that correct?

13 A. That's correct.

14 Q. And then you received a -- information about
15 additional items?

16 MR. SMITH: Your Honor, I object. She's
17 leading.

18 THE COURT: Don't lead ---

19 MS. PRICE: Did you ---

20 THE COURT: Don't lead the witness.

21 MS. PRICE: Yes, sir.

22 THE COURT: Rephrase the question.

23 BY MS. PRICE:

24 Q. Did you receive additional information after
25 the victims had responded to their own property?

Redirect examination of Detective Davis by Ms. Price

267

1 A. Yes, ma'am. After making the decision to get
2 the search warrant and having it signed and brought
3 back to the scene, it was still a progressing scene
4 and we were constantly receiving information. And
5 some of the information received from Mr. Wiles was
6 that those items were located during the search
7 warrant.

8 Q. So those were not specified in the search.
9 warrant, but you determined that they were stolen?

10 A. Yes, ma'am. During the search warrant.

11 Q. And you recovered them?

12 A. We did.

13 Q. And returned them to their rightful owner?

14 A. They did and we put all that on our property
15 sheets.

16 Q. And those items from the break-in to the owner
17 of the motorcycle and trailer, they were found
18 inside the residence of this defendant?

19 A. A few of those items were. Yes, ma'am.

20 Q. So there were stolen items found outside as
21 well as inside; is that right?

22 A. Yes.

23 Q. Okay. Can you step down one more time?

24 A. (Complying.)

25 Q. You worked as a property crimes investigator

1 before you joined the major case unit; is that
2 right?

3 A. Yes, ma'am.

4 Q. Does this trailer look like it's mobile right
5 now?

6 A. Not mobile at the minute.

7 Q. Is it hooked to anything that can move it?

8 A. No, ma'am.

9 Q. And it -- when you arrived on scene, was it
10 hooked to anything that could move it?

11 A. It was exactly like that.

12 Q. Okay. Does it appear to be stopped?

13 A. Yes, ma'am. It's got two -- looks like it has
14 two logs in front of it to maybe keep it from
15 rolling down the hill.

16 Q. Okay. And is this the item that Mr. Duncan
17 said that Clint Macomson tried to sell him?

18 A. Yes, ma'am.

19 Q. And it was stolen?

20 A. Yes, ma'am.

21 Q. Does it appear to be on its way off his
22 property?

23 A. No, ma'am.

24 Q. It appears to be stopped there?

25 MR. SMITH: Objection. Leading.

Recross-examination of Detective Davis by Mr. Smith

269

1 THE COURT: Rephrase the question.

2 MS. PRICE: I have no further questions. Thank
3 you.

4 THE COURT: Mr. Smith, anything in response to
5 her redirect?

6 MR. SMITH: Yes, sir. It will be short.

7 RECROSS-EXAMINATION

8 BY MR. SMITH:

9 Q. The owner didn't come to -- come to the
10 property, right?

11 A. Sir?

12 Q. The owner did not come to the property?

13 A. The owner of?

14 Q. The truck.

15 A. The stolen truck?

16 Q. Yeah.

17 A. He did.

18 Q. Where?

19 A. The owner of the stolen truck came to the
20 property.

21 Q. Not his brother?

22 A. I don't know his brother.

23 Q. Progress means the investigation is moving?

24 A. Progress means the investigation is moving?

25 Q. What does progress mean to you?

1 A. It means continuing something, getting
2 somewhere.

3 Q. All right. The fingerprints that you got off
4 the carburetor and the stuff you found in the
5 structure, whose fingerprints were they?

6 A. On what?

7 Q. The goods that you found and gave back to the
8 owner.

9 A. Yes, sir.

10 Q. What fingerprints did you get off there?

11 A. I did not personally get any fingerprints off
12 there.

13 Q. Were there any fingerprints on there?

14 A. Not to my knowledge.

15 Q. So you -- you come -- or you came to the
16 conclusion that Mr. Duncan took those?

17 A. Sir?

18 Q. Yeah, did you come to a conclusion that
19 Mr. Duncan took them and didn't need to do any
20 forensic on that?

21 A. That he took them?

22 Q. Yeah.

23 A. No, sir. I did not charge him with stolen
24 property.

25 Q. So you don't know how they got in there, right?

Recross-examination of Detective Davis by Mr. Smith

271

1 A. I have a belief.

2 Q. No. No. Do you know?

3 A. Personally?

4 Q. Yes.

5 A. At the time, no, I did not know.

6 Q. And you didn't do any fingerprints to -- to
7 investigate and find out who did it?

8 A. Me, personally, I did not take any
9 fingerprints. No, sir.

10 Q. Do you have any knowledge that fingerprints had
11 been taken?

12 A. No, sir. Not to my knowledge.

13 MR. SMITH: I have nothing further.

14 THE COURT: Any objection to this witness being
15 excused?

16 MS. PRICE: None from the State.

17 MR. SMITH: No, sir.

18 THE COURT: Thank you, Officer. You are
19 excused.

20 (Witness excused.)

21 THE COURT: Call your next witness.

22 MS. PRICE: Your Honor, the State calls
23 Detective Alan Hendrix.

24 (Witness entered.)

25 THE CLERK: Right here, sir. Just need you to

1 raise your right hand.

2 THE WITNESS: (Complying.)

3 THE CLERK: Do you solemnly swear or affirm the
4 testimony you'll give the Court today in this case
5 to be the truth, the whole truth, and nothing but
6 the truth?

7 THE WITNESS: I do.

8 THE CLERK: If you'll take the witness stand
9 please, sir. State your name and spell your last
10 name for the reporter, please.

11 THE WITNESS: My name is Alan Hendrix,
12 H-e-n-d-r-i-x.

13 DETECTIVE ALAN HENDRIX,
14 having been produced and first duly sworn as a
15 witness on behalf of the State, then testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. PRICE:

19 Q. Detective Hendrix, who do you work for and in
20 what capacity?

21 A. I work for Anderson County Sheriff's Office as
22 a detective in the narcotics division.

23 Q. And how long have you worked for them?

24 A. I worked for the Sheriff's Office for 14 years.

25 Q. Were you working for the Sheriff's Office in

Direct examination of Detective Hendrix by Ms. Price

273

1 October of 2015?

2 A. I was.

3 Q. Okay. And were you working that same position
4 in October of 2015?

5 A. Yes, ma'am.

6 Q. Okay. What sort of duties and responsibilities
7 are associated with your current position that you
8 also had in 2015?

9 A. I oversee narcotics investigations. I start a
10 narcotics investigation and see it through from
11 start to finish on the investigation.

12 Q. Do you recall what you were doing in your
13 capacity as the narcotics detective on October 15th
14 of 2015?

15 A. On that particular day, we were working a --
16 what they call a saturation of areas. I was
17 assigned to the Homeland Park area to assist with
18 calls or stop cars, that -- that nature on that day.

19 Q. Okay. And did you respond to a call that day
20 that's led you to be in court today?

21 A. I did.

22 Q. What was the nature of that call?

23 A. It was dispatched over the radio as a stolen
24 vehicle that OnStar was pinging in the area of [REDACTED]
25 South Main Street Extension in Anderson, which is in

1 the Homeland Park area.

2 Q. And is that also in Anderson County?

3 A. It is.

4 Q. Was Anyone on scene when you arrived from law
5 enforcement?

6 A. There were several deputies and investigators
7 there when I arrived.

8 Q. Okay. Do you recall who any of them were?

9 A. I remember Investigator Davis was there, Wood,
10 Investigator Wood, Deputies Stipe and Nubern. And I
11 know there were several others, but I can't remember
12 right off the top of my head.

13 Q. Do you remember any non-law enforcement related
14 individuals being present?

15 A. I do.

16 Q. Who were they?

17 A. They were Michael Duncan, Joey Surdak, Clint
18 Macomson, and Amanda Sanders.

19 Q. Okay. Tell me what you remember observing
20 about the scene when you arrived?

21 A. When I arrived on it, there was a couple of
22 patrol cars behind a white pickup truck.

23 These other individuals, I remember Amanda
24 Sanders and Michael Duncan sitting kind of separate
25 from each on this kind of awning thing. A couple of

Direct examination of Detective Hendrix by Ms. Price

275

1 deputies standing around in that area.

2 And then off to my left was a motorcycle on a
3 trailer.

4 Q. Do you remember seeing a white truck?

5 A. I actually remember seeing two white trucks.
6 There was a newer-style truck, a Chevrolet, and then
7 an older style. I can't remember what it was, but
8 it was -- they were kind of -- one was parked this
9 way and one was parked that way.

10 Q. Okay. What does the property look like?

11 A. It's a yellow building. It looks -- if you're
12 looking at it, it looks kind of like a shop, what it
13 looked like, like you would work on a car or
14 something.

15 Q. Okay. What did you do once you arrived?

16 A. I stood around. I consulted with Heath briefly
17 and he tried to fill me in on what was going on
18 about the stolen truck and everything. And I ---

19 Q. Let me interrupt. When you say "Heath," do you
20 mean ---

21 A. I'm sorry. Investigator Davis. I apologize.

22 Q. Okay.

23 A. Investigator Davis kind of filled me in on what
24 was happening. I stood off beside Investigator Wood
25 who was kneeling down and speaking with a female. I

1 stood there and I moved back to my pick-up truck and
2 sat in my pickup truck.

3 Q. Okay. And what did you do after that?

4 A. After that, Investigator Price came back with a
5 search warrant that I helped execute the search
6 warrant.

7 Q. Okay. What's the basis for a search warrant?

8 A. The basis was they were looking for a
9 motorcycle or a dirt bike and a set of keys because
10 there was a stolen truck there, and also they had
11 discovered that there was a stolen motorcycle and
12 trailer off to the left.

13 And then they found a small bag of crystal
14 substance that field tested positive for meth. They
15 placed that glass pipe they found along with the
16 meth and then the stolen property into the property
17 room.

18 Q. Okay. And when Jason Price returned with the
19 search warrant, what did you do?

20 A. I actually went to the left side of the
21 building.

22 Prior to that, I had removed a set of keys from
23 Mr. Duncan. I used those keys to unlock a lock that
24 was secured with a thick chain, but I used that key.
25 I remember it being kind of a thick key. It wasn't

Direct examination of Detective Hendrix by Ms. Price

277

1 like a normal house key. It was like a -- if I
2 remember right, it was a master lock key. I used
3 that key to unlock that lock and went inside that
4 door.

5 Q. Where was the door that you entered?

6 A. If you're facing the building, that door would
7 be to the left -- left side of the building.

8 Q. Okay. Can you see it if you're looking
9 straight at the building?

10 A. If you look at the building, you cannot see
11 that door.

12 Q. Okay. So it's on the side?

13 A. Yes, ma'am.

14 Q. Okay. If you're looking at the building, what
15 side of the building is the door? If you're looking
16 at the building head on.

17 A. If you're looking at the building head on, the
18 door is to the left-hand side of the building.

19 Q. Okay. Did you oversee part of the execution of
20 that search warrant?

21 A. I oversaw the narcotics portion of it.

22 Investigator Davis was overseeing the stolen
23 property part of it, and I oversaw the narcotics
24 part of it.

25 Q. You said you took a set of keys that opened the

1 lock from Mr. Duncan?

2 A. Yes.

3 Q. Okay. And was there any other entry made that
4 you were a part of?

5 A. That I was, no. The only entry that I made was
6 on the left-hand side through that door.

7 Q. Okay. And on that door in particular, you had
8 to have a key to open the lock?

9 A. Yes, ma'am. There was a thick chain running
10 through the door and a padlock on it.

11 Q. Okay. And did you determine who lived at that
12 property?

13 A. It was determined that Mr. Duncan lived at that
14 property.

15 Q. Do know a nickname that Mr. Duncan goes by?

16 A. I know him as the nickname of Hack.

17 Q. Okay. Did you see anything on the -- if you're
18 looking at it straight on the left-hand side of the
19 residence in that area while you were approaching
20 the door?

21 A. As I was approaching this door to the left-hand
22 side, a dog on a chain started barking and it
23 actually startled me. It scared me because I didn't
24 know that it was on a chain. It was actually
25 running toward me and the chain stopped it, but that

Direct examination of Detective Hendrix by Ms. Price

279

1 did startle me as I went towards that door to unlock
2 it.

3 Q. Right. And when you were executing your
4 portion of the search warrant, did you find
5 anything?

6 A. I did.

7 Q. What did you find?

8 A. Inside of a black IBM bag, I found
9 approximately 73 -- 73 grams of crystal substance
10 that field tested positive for meth. There was also
11 a handgun and I believe a digital scale inside of
12 that bag.

13 Q. Did you find any other items?

14 A. There were several medicine bottles with an
15 assortment of pills.

16 Q. Okay. Were the suspects on scene when you
17 executed the search warrant?

18 A. They were.

19 Q. Okay. Did anyone of them admit to possession
20 of that methamphetamine or stolen property while you
21 were there?

22 A. No, ma'am.

23 Q. Okay. What did you do with this bag of
24 methamphetamine and other items that you found?

25 A. I retrieved the bag. I took it outside and I

1 sat down and actually went through the bag again.

2 When I first made contact with the bag, we
3 photographed it and then I removed it from inside
4 and went outside, and that's where I field tested
5 the methamphetamine.

6 Q. Okay. And you said it field tested positive?

7 A. It did.

8 Q. Okay. What did you do with the drugs after you
9 left the scene?

10 A. I took the drugs, secured them in a bag, and
11 placed them in evidence.

12 Q. And what's evidence?

13 A. Evidence is a building at the Sheriff's Office
14 where it's under lock and key. You have to have
15 access to that building.

16 I actually -- there's a locker -- once you walk
17 in the door there to the building, you buzz yourself
18 in, there's a lock that locks. As soon as you buzz
19 it, you cannot gain access to that again. Only an
20 evidence technician can access that.

21 Q. So once you place something into evidence,
22 there's limited access to it so it can't be tampered
23 with?

24 A. That's correct.

25 Q. Okay. Would you describe evidence as a safe

Direct examination of Detective Hendrix by Ms. Price

281

1 and secure location?

2 A. It is.

3 Q. Did you interview this defendant at any pint in
4 time before or after you left the scene?

5 A. No, ma'am.

6 Q. Okay. Did you make any charges against anyone
7 based on the things you found during the execution
8 of the search warrant?

9 A. I did make a charge against Michael Duncan for
10 trafficking methamphetamine.

11 Q. Okay. Do you see the man you charged with
12 trafficking methamphetamine in the courtroom today?

13 A. I do.

14 Q. And can you point him out and describe what
15 he's wearing for the record?

16 A. He is sitting to the -- to my left of
17 Mr. Smith, and he's wearing a white and blue plaid
18 shirt and has a salt and pepper beard.

19 Q. Okay. Detective, I'm going to present you with
20 what's been previously marked at State's Exhibit 35.
21 Can you take a look at that exhibit and tell me if
22 you recognize that?

23 A. I do.

24 Q. And what is it?

25 A. This appears to be what we call a best kit.

1 Q. And what is inside the best kit?

2 A. Best kit -- inside the best kit would be a
3 crystal substance and an assortment of pills.

4 Q. Okay. Do you recognize it from collecting it?

5 A. I do.

6 Q. Okay. Is it a -- is it in the same or
7 substantially the same condition as when you
8 collected it?

9 A. That's correct.

10 Q. Okay. And did you review it again at evidence
11 prior to you testifying in court?

12 A. I did.

13 Q. Okay. Had it been tested by the lab prior to
14 your reviewing it to come to court?

15 A. It had been.

16 Q. Okay. Did you have those pill bottles
17 processed for prints?

18 A. Yes, I did.

19 Q. And were any prints found?

20 A. It was negative results on prints.

21 Q. Okay. And did you open that bag?

22 A. I did. I opened this bag on 2/3 of '17.

23 Q. Okay. To review that evidence?

24 A. For trial prep. That's correct.

25 Q. Okay. And did you indicate where you opened it

Direct examination of Detective Hendrix by Ms. Price

283

1 and signed it and sealed it?

2 A. I did.

3 Q. Okay. Did you submit a lab analysis request to
4 the lab?

5 A. I did.

6 Q. Is it common practice to do that in order to
7 have suspected narcotics tested?

8 A. It is.

9 Q. All right. Handing you State's Exhibits 34,
10 25, 24, 21, 20, 19, 18, 17, 16, and 33. Can you
11 take a look at those and tell me if you are
12 familiar -- without telling me what's in them --
13 tell me if you're familiar with what's depicted in
14 those photographs?

15 A. Yes, ma'am, I am.

16 Q. Okay. And how are you familiar with those?

17 A. Some of these I actually took the photographs
18 myself; others I was actually there when they were
19 taken.

20 Q. Okay. And what do those pictures depict in a
21 general sense?

22 A. Depicts an outside-inside of the residence and
23 inside the black bag.

24 Q. Whose residence?

25 A. The residence of Michael Duncan.

1 MS. PRICE: Okay. Your Honor, at this time the
2 State seeks to admit exhibits 34, 25, 24, 21, 20,
3 19, 18, 17, 16, and 33 into evidence.

4 THE COURT: Any objection?

5 MR. SMITH: No, sir.

6 THE COURT: All right. State's Exhibit 16, 17,
7 18, 19, 20, 21, 24, 25, 33, and 34 are admitted
8 without objection.

9 (State's Exhibit 16, 17, 18, 19, 20, 21, 24,
10 25, 33, and 34, were admitted into evidence.)

11 MS. PRICE: Your Honor, we request permission
12 to publish.

13 THE COURT: Yes, ma'am.

14 BY MS. PRICE:

15 Q. Detective, if you'll step down with me, please.

16 A. (Complying.)

17 Q. Okay. I'm showing you what's been marked as
18 State's Exhibit 33. Can you tell me if you see the
19 defendant in that photograph?

20 A. Yeah, that appears to be the defendant sitting
21 here (indicating).

22 Q. Okay. Showing you what's been marked as
23 State's Exhibit 16. Can you tell me what we're are
24 looking at?

25 A. This would be the bedroom area of Mr. Duncan's.

Direct examination of Detective Hendrix by Ms. Price

285

1 Q. Okay. Can you tell me if you see any
2 writing ---

3 A. I do ---

4 Q. --- above -- okay.

5 A. Right here (indicating), it says Hacks or Hack
6 or Hackie Sack.

7 Q. Okay. Is that above a bed?

8 A. It is.

9 Q. Have ever heard of a bed referred to as a sack?

10 A. I have.

11 Q. Okay. And you said that this defendant's
12 nickname is what?

13 A. Hack.

14 Q. Here's another. This is State's Exhibit 17.

15 A. Yes. Here's another picture of the bed.

16 Q. Okay. And what side was that photograph taken
17 on of the property?

18 A. If you're facing the building, that would be to
19 the left where I entered.

20 Q. Showing you State's Exhibit 34. Same area?

21 A. Again, the same area of the bedroom.

22 Q. Okay. I'm showing you State's Exhibit 25.

23 A. Okay. This will be the picture of the black
24 bag. That black bag is here (indicating).

25 Q. Okay. And what -- what is the significance of

1 that black bag?

2 A. Inside this black bag was the crystal-like
3 substance along with the pills.

4 Q. Okay. And where is it in relation to the
5 bedroom?

6 A. Okay. This is before you get to the bedroom.
7 This black bag was located inside the door. As soon
8 as you walk into the door, it was to the right of
9 the door. Then -- then you would continue on into
10 the bedroom.

11 Q. Okay. The same side of the property?

12 A. It'll be on the same side, the left-hand side
13 of it.

14 Q. The residence area?

15 A. That's correct.

16 Q. Okay. And when you say "inside the door," are
17 you talking about the door that you mentioned that
18 had a large chain and lock?

19 A. That's correct.

20 Q. Okay. State's Exhibit 24. What are we looking
21 at?

22 A. This is an open picture of the same black bag.
23 There is a picture of crystal substance inside of a
24 Ziploc bag, and these are the assortment of pills.

25 Q. State's Exhibit 21.

Direct examination of Detective Hendrix by Ms. Price

287

1 A. The set of digital scales are in this picture,
2 and I'm not sure what this silver container
3 contains.

4 Q. Okay. But that's a digital scale?

5 A. But that is a digital scale from the black IBM
6 bag.

7 Q. What are digital scales used for?

8 A. Those scales are used to weigh out
9 methamphetamine or any other type of drug that you
10 have.

11 Q. State's Exhibit 18.

12 A. Again, inside picture. Crystal substance in
13 this bag here (indicating). There appears to be a
14 crystal substance inside this medicine bottle and
15 then there's another picture of a medicine bottle
16 there.

17 Q. Okay. And you said there's a weapon?

18 A. And -- yes. It's hard to see on this picture,
19 but you see the butt of it right there (indicating).

20 Q. State's Exhibit 19.

21 A. This is a plastic bag, a Ziploc bag that was
22 removed from this black bag. And this crystal
23 substance here (indicating) field -- field tested
24 positive for methamphetamine.

25 Q. Okay. And State's Exhibit 20.

1 A. Again, these are two bags removed from the
2 black IBM bag, a smaller bag here (indicating), and
3 a larger bag here (indicating). Both of those were
4 field tested positive for methamphetamine.

5 Q. One moment. Looking at State's Exhibit 32
6 that's been previously admitted. Point out to me
7 the area where you entered.

8 A. Okay. I entered over here (indicating) to the
9 left of this "beware of dog and owner" sign.
10 There's a door that would be facing over to this
11 area here (indicating). And that's where I entered
12 at, and it goes back into this area here
13 (indicating).

14 Q. Where's the dog?

15 A. The dog would be off to the left of this little
16 wood pile here (indicating). It would off in that
17 general area over there (indicating).

18 Q. Okay. And early on in the investigation, what
19 area were most people standing in and setting in?

20 A. When I arrived, they were sitting in this area
21 here (indicating).

22 Q. Take a look at these two pictures and tell me
23 if you're familiar with what they depict.

24 A. I am.

25 Q. Okay. And what are they?

Direct examination of Detective Hendrix by Ms. Price

289

1 A. This picture here is a picture of a ---

2 MS. PRICE: Oh, and Your Honor, I'm sorry.

3 He's looking at State's Exhibit 3 and 4.

4 THE WITNESS: This picture here is a picture of
5 a lap and a set of keys and camouflage pants.

6 And this picture here is a picture of the
7 inside of the bedroom with some writing on the wall.

8 BY MS. PRICE:

9 Q. Okay. And are you familiar with those?

10 A. Yes. These keys ---

11 Q. And is those ---

12 A. These keys here appear to be the same keys that
13 I used to unlock the lock that was to the left-hand
14 side.

15 Q. Okay. And do you recall where that writing
16 was?

17 A. This writing was in the bedroom. It says "Kara
18 was here chilling with Hack."

19 Q. Is it dated?

20 A. It is dated 2015.

21 Q. Okay.

22 A. Also to the left of 2015, it says "I love you,
23 Hack."

24 Q. Okay. And that was where?

25 A. This was inside the bedroom.

1 MS. PRICE: Okay. Your Honor, at this time the
2 State seeks to admit Exhibit No. 3 and Number 4 and
3 move them into evidence.

4 THE COURT: Which -- which is which? Which
5 ones ---

6 MS. PRICE: I'm sorry. Your Honor, Exhibit 3
7 is the keys; Exhibit 4 is writing.

8 THE COURT: Any objection?

9 MR. SMITH: No, sir.

10 THE COURT: All right. State's Exhibit No. 3
11 and Number 4 will be admitted without objection.

12 (State's Exhibits Nos. 3 and 4 were admitted
13 into evidence.)

14 MS. PRICE: And, Your Honor, we request
15 permission to publish.

16 THE COURT: Yes, ma'am.

17 BY MS. PRICE:

18 Q. So, again, can you point out the keys that you
19 used to open the door?

20 A. These keys here (indicating).

21 Q. And this photo was taken on scene that day?

22 A. It was.

23 Q. And show me the writing that you mentioned.

24 A. This here, Kayla or Kara, it looks like maybe
25 like a Kayla. "Kayla was here chilling with Hack,

Cross-examination of Detective Hendrix by Mr. Smith

291

1 2015." Off to the left of this knife that was stuck
2 on the wall, "I love you, Hack."

3 Q. Okay. Thank you so much. You can take the
4 stand.

5 A. (Complying.)

6 Q. Aside from testifying today and describing your
7 involvement in the investigation on the 15th of
8 October 2015, have you had any additional
9 involvement in this case?

10 A. No, ma'am.

11 MS. PRICE: Okay. Thank you. Please answer
12 any questions that Mr. Smith has for you at this
13 time.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Mr. Smith, your witness.

16 MR. SMITH: May it please the Court?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q. The -- do you remember the first time you were
21 on the stand on Monday -- yesterday?

22 A. Yes, sir.

23 Q. And what did you tell me about the dog then,
24 the first time?

25 A. It was chained up.

1 Q. Didn't you say that it -- it startled you,
2 jumped up, but then you noticed it was on a leash?

3 A. Yeah, I testified to that today actually.

4 Q. Oh.

5 A. There was actually two dogs there. I believe
6 one was running free and one was chained up.

7 Q. But you didn't say that the first time you
8 testified. You just said the one dog was leashed,
9 right?

10 And then -- and then correct me if I'm wrong,
11 then you said you -- there was confusion. There was
12 a dog leashed and a dog running free; is that right?

13 A. You're talking about testifying yesterday or
14 today?

15 Q. In secession. The first time you said that
16 there was a dog that scared you that was on a leash,
17 but then I pointed out that there was a -- the
18 second time that there was a dog running free and
19 that's when you said there's two dogs, right?

20 A. I testified yesterday that there were two dogs.
21 Fact -- in fact, what I said was -- I'll clear this
22 confusion up -- that there was a dog on a chain and
23 there was a dog running free. The dog on the chain
24 was to the left of the building.

25 Q. So there is no doubt that there was a dog on a

Cross-examination of Detective Hendrix by Mr. Smith

293

1 leash on the "beware of the dog" end of the
2 building?

3 A. Yes, sir.

4 Q. What kind of dog? What kind of dog?

5 A. I don't know. It was some kind of brown dog if
6 I remember right.

7 Q. No one else saw that dog. I mean, you've been
8 here for everybody's testimony, right?

9 A. That's correct.

10 Q. Nobody knows of that dog but you?

11 A. But I was also the first one around the
12 building.

13 Q. Well, it's an aggressive dog barking and such?

14 A. It was barking. Yes.

15 Q. How far did it extend? Where was his leash
16 planted in the ground?

17 A. I don't know that, sir.

18 Q. Well, how far can he reach on his leash?

19 A. I don't know that.

20 Q. Well, you're the one that was startled, right?

21 A. Yes.

22 Q. Mr. Duncan has an American Bulldog, right?

23 A. I'm not sure what type of dog he has, sir.

24 MR. SMITH: May I approach the witness, Your
25 Honor?

1 THE COURT: Yes, sir.

2 MS. PRICE: Your Honor, I don't know if this
3 has been marked.

4 THE COURT: Yes, sir. Are you going use these?

5 BY MR. SMITH:

6 Q. So we're looking at Defense Exhibit 1, Defense
7 Exhibit 2. Can you tell us what Defense Exhibit 1
8 is?

9 A. Yes, sir. It's a picture of a white pickup
10 truck with a patrol car behind it and a brown dog.

11 Q. And that was the dog that was running free?

12 A. Yes, sir.

13 Q. And the other picture is the beware of the dog
14 end of the building?

15 A. Yes, sir. It's kind of an overall. There's an
16 older -- looks like a Ford truck and then another
17 vehicle with a tarp over it. And then a picture of
18 the building, and then a picture of the motorcycle
19 and trailer.

20 Q. Could you -- could you bring those down?

21 A. Yes, sir (complying).

22 Q. So that's the dog, right?

23 A. Yes, sir. It's hard to see on that one, but,
24 yes, it's a little easier over here, but you can see
25 a dog right here (indicating).

Cross-examination of Detective Hendrix by Mr. Smith

295

1 Q. All right. So that's perhaps an American
2 Bulldog?

3 A. Perhaps.

4 Q. All right. And this is the end of the building
5 that you say you were startled, right?

6 A. Yes, sir.

7 Q. And I see a lot of open area there. Where was
8 the dog?

9 A. Yeah, this picture is a little bit deceiving
10 because there is a large pile of woods -- wood right
11 here (indicating) looks like to be split, but, yeah,
12 you can walk in between this (indicating) pile of
13 wood and this (indicating) building. And it -- in
14 this area, actually, it would be a little bit more
15 that way (indicating).

16 Q. All right. And there is no doubt there was a
17 dog there?

18 A. Yes, sir.

19 Q. All right. With regard to State's Exhibit 4 I
20 believe.

21 A. Uh-huh.

22 Q. What are we looking at there?

23 A. This is a picture of the wall in a bedroom.

24 Q. All right. And -- and it denotes that people
25 have been there?

1 A. Yes, sir.

2 Q. Do you know when?

3 A. It says 2015.

4 Q. And do you know when in 2015?

5 A. No, sir.

6 Q. This is State's Exhibit 32. Where is
7 Mr. Duncan located?

8 A. When I arrived, he was in this (indicating)
9 area over here (indicating) somewhere.

10 Q. All right. And did he move from that area
11 while you were there?

12 A. I do not recall that.

13 Q. Do you believe that you could see through a
14 tire?

15 A. No, sir.

16 Q. The pictures that you've seen, the pipe and the
17 methamphetamine were behind the tire, weren't they?

18 A. That's correct.

19 Q. And, in fact, Officer Wood could not see them
20 from right here (indicating). You can see the gun
21 from, like I said, it's about right here
22 (indicating), right?

23 A. Okay. If you're actually looking at this
24 picture, it's a picture of me standing there in all
25 my glory, and I could not see that gun standing up.

Cross-examination of Detective Hendrix by Mr. Smith

297

1 That gun was located at the end of this Jeep right
2 here (indicating).

3 Q. Yes, sir. I understand that and Officer Wood
4 could see the gun from right here (indicating), and
5 that's how he saw it.

6 A. But if you look past my arm right here
7 (indicating), there's a picture -- or there's what
8 appears to be that female. He was kneeling down in
9 that area there (indicating).

10 Q. Right. My point is, he could not see the
11 methamphetamine through the tire, but he could see
12 the gun ---

13 MS. PRICE: Objection, Your Honor. This
14 witness can't testify as to what another witness
15 saw.

16 THE COURT: Rephrase your question ---

17 MR. SMITH: Yes, sir.

18 THE COURT: --- Mr. Smith.

19 MR. SMITH: Yes, sir.

20 BY MR. SMITH:

21 Q. Do you know if -- you've heard Officer Wood
22 testify. Do you know whether he was able to see the
23 drugs from his vantage point?

24 A. I do not know that.

25 Q. Could you see them from your vantage point?

1 A. No, sir.

2 Q. Do you have any reason to believe that
3 Mr. Duncan over here (indicating) could see them?

4 A. In this position over here (indicating)?

5 Q. Yes.

6 A. I can't say.

7 Q. So Officer Wood, but not -- but Duncan maybe?

8 A. I don't know, sir.

9 Q. Okay. All right. Thank you. With regard to
10 the IBM bag and let's see here. I'm sorry. This is
11 State's Exhibit 22. Is that the IBM bag?

12 A. No, sir.

13 Q. Okay. Where's the IBM bag?

14 A. I do not see it in this picture.

15 Q. All right. I guess it's State's Exhibit 25.
16 Where is the IBM bag?

17 A. It's right here (indicating).

18 Q. And that just happens to be right next to the
19 alleged stolen court -- or stolen car stuff, right?

20 A. Yes, sir.

21 Q. All right. So you didn't take fingerprints on
22 the pipe. You didn't take fingerprints on the -- on
23 the motor vehicle part. Didn't try to take a print
24 of the baggy, but you did try to take prints off
25 the -- the pill bottles?

Cross-examination of Detective Hendrix by Mr. Smith

299

1 A. That's correct.

2 Q. And you didn't get anything from them?

3 A. That's correct.

4 Q. So whose pills were they?

5 A. Well, they were inside this black bag inside of
6 Michael Duncan's residence, so I'm going to say
7 they're Michael Duncan's pills.

8 Q. Okay. Can you -- that's just -- okay. Could
9 you take your seat again? Thank you.

10 A. (Complying.)

11 Q. So we assumed that the car parts were Michael
12 Duncan's acquisition of stolen goods, right?

13 A. Yeah. I didn't see any -- oversee anything in
14 the stolen properties. I only oversaw the drugs.

15 Q. No question there's been other people in that
16 residence?

17 A. I didn't understand your question. What's
18 that?

19 Q. There's no question there's been other people
20 in that residence according to their signatures on
21 the wall, right?

22 A. Yes. According to that signature on the wall,
23 there's at least been one other person in there.

24 Q. And Clinton Macomson stole that truck, right?

25 A. I do not know that, sir.

1 Q. You don't know that?

2 A. No.

3 Q. Didn't he plead guilty to it?

4 A. That's my understanding. Yes.

5 Q. And the trailer that is separated from the
6 truck, you let the truck owner leave with this
7 truck, didn't you?

8 A. Again, I didn't handle anything with the stolen
9 property. That was tasked by Investigator Davis. I
10 was tasked with handling the narcotics portion of
11 it.

12 Q. Of course, but you would agree it's a small
13 area right there (indicating)?

14 A. Yes, sir.

15 Q. And the truck wasn't there when you got done
16 with your investigation on the scene, right?

17 A. You're asking if the truck was there when I
18 left?

19 Q. Right.

20 A. The truck was turned over to the owner.

21 Q. Right. But the trailer did not belong to the
22 owner of the truck, right?

23 A. No.

24 Q. So it had to be detached so he could leave with
25 the truck? In other words, you, meaning Anderson

Cross-examination of Detective Hendrix by Mr. Smith

301

1 County, detached the trailer?

2 A. That's inaccurate. The trailer was already
3 detached when I arrived at the scene.

4 Q. Did you do an incident report?

5 A. Yes, sir.

6 Q. Does it talk about the detached trailer?

7 A. My incident report -- report refers to
8 narcotics only.

9 Q. Did anybody talk about how Michael was carrying
10 the black IBM bag around?

11 A. No, sir. I didn't interview anybody.

12 Q. So it is an assumption then that it's his?

13 A. Well, I used his set of keys to unlock his lock
14 at his residence.

15 Q. That's not the -- the keys that the -- the lock
16 you're talking about is the beige door, right?

17 A. No, sir.

18 Q. Officer Price, he was the affiant for the
19 search warrant?

20 A. Yes, sir.

21 Q. And he said there was a roll-up door. Could
22 you see that?

23 A. No, sir. I didn't go. That was on -- he's
24 referring to the right side. I did not go to the
25 right side of that building.

1 Q. Okay. So you know the roll-up, but you didn't
2 go over to that side?

3 A. Yes.

4 Q. Is the driver -- the truck driver, is he going
5 to be testifying on behalf of the State?

6 A. I don't know, sir.

7 Q. So you determined that it was Hack's black bag
8 just like Officer Davis found that the property was
9 the victim's property, right? There was no
10 forensic -- don't you do forensic a lot?

11 A. Do I do forensics?

12 Q. No. Does your -- your office do a lot of
13 forensic-type work?

14 A. Yes.

15 Q. What forensic work did you do in this case?

16 A. I submitted for fingerprints on the pills -- on
17 the pill bottle -- correction -- on the pill bottles
18 is what I submitted for fingerprints.

19 Q. Was there any printing on the pill bottles?

20 A. No. All the printing was removed. The bottles
21 were -- there was no printing on the outside at all.

22 Q. And you don't know how far the aggressive dog
23 reached toward the end of that building?

24 A. No, sir.

25 MR. SMITH: Nothing further.

Redirect examination of Detective Hendrix by Ms. Price

303

1 MS. PRICE: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. PRICE:

4 Q. The keys that you used to unlock the lock and
5 get inside, you took them off of who?

6 A. Michael Duncan.

7 Q. Okay. Did you take anything off of him
8 additionally?

9 A. No. I didn't remove anything else from him
10 except the keys.

11 Q. Okay. Did you find any currency while you were
12 out there?

13 A. Yes. Inside of his wallet was -- if I remember
14 right, it was \$960, but I remember it was in the
15 900's.

16 Q. Okay. And where was his wallet?

17 A. It was in his back pocket. If I remember
18 right, he had a chain. It was connected to his belt
19 or his belt loop.

20 Q. So you took the keys from him?

21 A. Yes.

22 Q. And someone removed the currency?

23 A. Well, I actually removed the currency. Let's
24 back up. Yes. I did remove the wallet and the keys
25 from him because my department handles the seizure

1 of money, so I took -- I took possession of that and
2 the set of keys.

3 Q. Okay. And a seizure of money occurs if there
4 are narcotics found and someone's charged with that?

5 A. That's correct.

6 Q. Okay. And so you found the narcotics first; is
7 that right?

8 A. Found the narcotics first and then the money
9 was removed from him afterwards.

10 Q. Nine hundred some-odd dollars?

11 A. I want to say \$966, -65, -67, or something like
12 that.

13 MS. PRICE: Thank you. No further questions.

14 MR. SMITH: May it please the Court?

15 THE COURT: Yes.

16 RECROSS-EXAMINATION

17 BY MR. SMITH:

18 Q. Didn't you testify before that the keys were on
19 the table?

20 A. I couldn't remember if I removed them from his
21 person. I testified that I couldn't remember if I
22 pulled them off the table, but I'm 99 percent sure
23 that I removed them off his person. So I'm
24 99 percent sure that I removed them off his person.

25 Q. Okay. So when did that knowledge come to you?

Recross-examination of Detective Hendrix by Mr. Smith

305

1 A. I testified to that yesterday as that being on
2 the table because he sitting around the table, but I
3 was 99 percent sure that I removed them from his --
4 from his person.

5 Q. So you're saying you thought they were at the
6 table, but I don't understand.

7 A. Yeah, I mean, we're talking two years ago. I
8 do remember him sitting at a table when I made
9 contact with him with the keys, but I wasn't sure if
10 I removed them off the table or removed them off his
11 person, but I was 99 percent sure that I removed
12 them off his person.

13 MR. SMITH: Thank you, sir. I have nothing
14 further.

15 THE COURT: Thank you, Officer. You can step
16 down.

17 THE WITNESS: (Complying.)

18 THE COURT: Counsel approach.

19 (Sidebar discussion.)

20 THE COURT: Okay. Ladies and gentlemen, in
21 discussion with the attorneys, it appears that the
22 next witness is going to be a lengthy -- relatively
23 lengthy witness.

24 It's right at 4:30, so I'm going to go ahead
25 and let you go for the day. I know it's been a long

1 day for you, so I'm going to let you go. Be back in
2 your jury room at 8:45 in the morning. We're going
3 to start at nine o'clock.

4 Remember your three things: No deliberation,
5 no independent investigation, and no discussion of
6 the case with third parties. I hope everyone has a
7 good evening and we'll see you in the morning.

8 (At 4:25 p.m., jury was excused for the day.)

9 THE COURT: All right. We'll go into recess
10 until nine o'clock tomorrow.

11 MS. PRICE: Thank you, Judge.

12 MR. SMITH: Thank you, sir.

13 THE COURT: The Defendant's Exhibit 1 and 2
14 were admitted without objection; is that correct?

15 MS. PRICE: Yes, sir, Your Honor. No
16 objection.

17 THE COURT: That will be noted for the record.

18 (Defendant's Exhibit Nos. 1 and 2 were admitted
19 into evidence.)

20 MR. SMITH: Thank you, Your Honor.

21 (The proceedings concluded at 4:28 p.m.)

22

23

24

25

State of South Carolina)
County of Anderson) Court of General Sessions

State of South Carolina)
)
)
 v.) Transcript of Record
) 2016-GS-04-00815
)
 Michael Darren Duncan)
)
)
 Defendant.)

April 19, 2017
Anderson, South Carolina

B E F O R E:

The Honorable Scott Sprouse, Judge, and jury.

A P P E A R A N C E S:

Lauren Price, Assistant Solicitor
Attorney for the State

Don Smith, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

Volume III

P R O C E E D I N G S

- - -

THE COURT: Anything -- anything before we bring our jury in from either parties?

MS. PRICE: Nothing from the State, Your Honor.

MR. SMITH: Nothing from defense.

THE COURT: Okay. Mr. Bailiff, would you get our jury, please?

THE BAILIFF: (Complying.)

(At 9:16 a.m., the jury entered the courtroom.)

THE COURT: All right. Good morning, ladies and gentlemen. I hope everyone had a good evening.

Before we get started, did any third parties attempt to contact you about the case, any deliberations, or did you do any independent research?

THE JURORS: (Collectively:) No, sir.

THE COURT: Let the record reflect there are no positive responses. Very good. We are ready to proceed. Ms. Price.

MS. PRICE: Thank you. Your Honor, the State calls Meredith Lanford.

(Witness entered.)

THE CLERK: If you'll raise your right hand.

THE WITNESS: (Complying.)

Direct examination of Meredith Lanford by Ms. Price

309

1 THE CLERK: Do you solemnly swear or affirm the
2 testimony you give this Court is the truth, the
3 whole truth, and nothing but the truth?

4 THE WITNESS: Yes, I do.

5 THE CLERK: Thank you. If you'll please have a
6 seat.

7 THE WITNESS: (Complying.)

8 THE CLERK: Please state your full name for the
9 record and spell your last name.

10 THE WITNESS: Meredith Lee Lanford,
11 L-a-n-f-o-r-d.

12 MEREDITH LANFORD,
13 having been produced and first duly sworn as a
14 witness on behalf of the State, testified as
15 follows:

16 BY MS. PRICE:

17 Q. Thank you, Ms. Lanford. By whom are you
18 employed?

19 A. I am employed with the Anderson Oconee Forensic
20 Laboratory.

21 Q. And what do you do for those folks?

22 A. I am a forensic chemist.

23 Q. Okay. And how long have you worked there?

24 A. I've worked there for 11 years.

25 Q. And have you held that position the entire time

1 you've worked there?

2 A. I have.

3 Q. What sort of training and education did you
4 receive to become a forensic chemist?

5 A. I graduated from Clemson University with a
6 bachelors of science degree in chemistry. I went on
7 to complete the forensic science certificate program
8 at Greenville Technical College.

9 I was trained and certified by a forensic
10 chemist with my previous laboratory at the
11 Charleston City Forensic Lab, as well as my current
12 laboratory. I received training in the area of
13 forensic drug chemistry from the Drug Enforcement
14 Administration, and I am a member of the American
15 Chemical Society as well as the clandestine
16 laboratory investigating chemist.

17 And each year I have to perform and pass a
18 proficiency test as well as training seminars in the
19 area of forensics.

20 Q. And what sort of tasks do you perform as a
21 forensic chemist?

22 A. My primary job function is to take in evidence
23 that's brought to the lab and analyze it for
24 suspected controlled substances.

25 Q. And in how many cases have you been asked to

Direct examination of Meredith Lanford by Ms. Price

311

1 test for chemical substances since you've been
2 working for Anderson Oconee Forensic Lab?

3 A. I've probably analyzed over 8,000.

4 Q. And in how many cases have you analyzed a
5 chemical substance that turned out to be
6 methamphetamine?

7 A. Probably about 70 percent of those cases.

8 Q. How many times have you testified in court
9 about the results of a chemical analysis that you've
10 performed?

11 A. I've testified 27 times.

12 Q. And in which courts have you testified?

13 A. Both State and Federal court.

14 Q. Have you ever been qualified by a Court as an
15 expert in chemical analysis?

16 A. Yes, I have.

17 Q. And how many times?

18 A. Twenty-seven.

19 MS. PRICE: Okay. Your Honor, at this time the
20 State moves to have Ms. Lanford qualified as an
21 expert in the chemical analysis of drugs.

22 THE COURT: Any objection?

23 MR. SMITH: No, sir.

24 THE COURT: This witness will be qualified as
25 an expert in the chemical analysis of drugs.

1 MS. PRICE:

2 Q. Ms. Lanford, were you asked to analyze any
3 chemical substances in this case against Michael
4 Duncan?

5 A. Yes, I was.

6 Q. Okay. How do substances make their way to you
7 for testing?

8 A. They are brought to our laboratory by an
9 evidence technician and I log them in. And once I
10 have them logged in, I place them in our evidence
11 locker until it's ready for me to analyze.

12 Q. Okay. What is an evidence locker?

13 A. It's our storage location. I have -- only I
14 have a access to. I have a key for it. And that's
15 where I store active cases until I'm ready to
16 analyze them.

17 Q. Is the process you described the way that you
18 received chemical substances to test in this case?

19 A. Yes, it is.

20 Q. Do you recall who brought those chemical
21 substances to you for testing from property and
22 evidence?

23 A. Yes. It was brought by Melissa Lee, the
24 evidence technician for our Sheriff's Office.

25 Q. And when was the substances for testing in this

Direct examination of Meredith Lanford by Ms. Price

313

1 case brought to your lab?

2 A. They were brought on November 4, 2015.

3 Q. Okay. Ms. Lanford, I'm presenting you with
4 State's Exhibit 35 and with State's Exhibit No. 9.

5 State's Exhibit No. 9, can you look in there
6 and tell me what it is, please, if you recognize it?

7 A. Yes. This is our drug evidence kits that we
8 ask the officers to place their evidence in.

9 Q. And do you recognize it as a sample that you
10 tested for this case?

11 A. Yes, I do.

12 Q. Okay. Presenting you with State's Exhibit 35.
13 If you look at those materials and tell me if you
14 recognize them.

15 A. Yes, I do.

16 Q. And how do you recognize them?

17 A. I have our -- my initials and date of when I've
18 taken in the case as well as I have assigned it a
19 laboratory number.

20 Q. And is that the -- something that you tested in
21 conjunction with this case as well?

22 A. Yes.

23 MS. PRICE: Okay. Your Honor, at this time the
24 State would move to have State's Exhibit 35 and 9
25 admitted into evidence.

1 THE COURT: Any objection?

2 MR. SMITH: No, sir.

3 THE COURT: State's Exhibit No. 9 and 35 would
4 be admitted without objection.

5 (State's Exhibit Nos. 9 and 35 were admitted
6 into evidence.)

7 BY MS. PRICE:

8 Q. Ms. Lanford, can you open the bag that contains
9 State's Exhibit 35, please?

10 A. Do you have scissors?

11 MS. PRICE: Oh, I'm sorry. I thought you had
12 scissors. Beg the Court's indulgence. One moment,
13 Your Honor.

14 (Brief recess.)

15 MS. PRICE: Thank you, Your Honor. Thank you,
16 Ms. Lanford. That'll make it easier to open I
17 think.

18 THE WITNESS: Do you have any gloves? Sorry.

19 (Brief recess.)

20 BY MS. PRICE:

21 Q. Thank you, Ms. Lanford. How many packages are
22 in that exhibit?

23 A. There are -- there are three large packages,
24 evidence bags, that the officer sealed the evidence
25 in.

Direct examination of Meredith Lanford by Ms. Price

315

1 Q. And did you test each of those individually?

2 A. Yes, I did.

3 Q. Okay. Is there another package in there as
4 well that you didn't test?

5 A. There is.

6 Q. Okay. And what is that package?

7 A. This is a package of different prescription
8 bottles filled with different types of pills that I
9 did not analyze.

10 Q. It was included in the package, but you tested
11 only those three individual bags; is that correct?

12 A. That's correct.

13 Q. With the crystal-like substance?

14 A. Yes.

15 Q. Okay. When did you analyze the substances in
16 each of these exhibits? First Exhibit 9.

17 A. This smaller case?

18 Q. Yes. Yes, ma'am.

19 A. I analyzed that on January 21, 2015.

20 Q. And when did you analyze the other three bags
21 that were in State's Exhibit 35?

22 A. I analyzed it on June 6, 2016.

23 Q. Okay. How did you analyze those substances?

24 A. The first thing I do is remove all the
25 packaging from the substance and I take a weight of

1 just the substance itself to get the net weight.

2 I then perform two screening tests to narrow
3 down what controlled substance may be present.

4 And then I perform two tests on our instruments
5 in the lab in order to ID what particular substance
6 it is, if it is a controlled substance or not.

7 Q. How much material are you required to perform
8 on those tests?

9 A. Usually around 1 to 2 milligrams.

10 Q. So you had an adequate amount in your expert
11 opinion to perform the tests in this case?

12 A. Yes, I do.

13 Q. Okay. How -- were the bags packaged to you,
14 and how many total bags when they came to you ---

15 A. Okay. I had a total ---

16 Q. --- for 35 first.

17 A. Okay. I had a total of four bags in that case.

18 Q. And do you see four bags today?

19 A. Yes.

20 Q. And in State's Exhibit 9?

21 A. One bag.

22 Q. And did you test each bag individually?

23 A. Yes, I did.

24 Q. Okay. What did your analysis reveal the
25 substances to be?

Direct examination of Meredith Lanford by Ms. Price

317

1 A. Methamphetamine.

2 Q. In all of the bags that you tested?

3 A. In every bag that I tested. Yes.

4 Q. What is the composition of methamphetamine?

5 A. Methamphetamine is a man-made drug and it
6 usually comes in either crystal form, but it can
7 also be a powder or a rock substance. And it could
8 be any kind of color, just depends on how the person
9 makes it.

10 Q. Does it occur naturally?

11 A. No, it does not.

12 Q. After you analyzed the material, did you
13 document what examinations were conducted and your
14 results?

15 A. Yes, I did.

16 Q. How did you do that?

17 A. Through our lab report.

18 Q. Is the lab report kept in the course of
19 regularly conducted business at the Anderson Ocone
20 Forensic Lab?

21 A. Yes, it is.

22 Q. And is it your regular practice to use and
23 document your finding in the lab report when you
24 analyze substances from property in evidence?

25 A. Yes, it is.

1 Q. Okay. Before you do that, document your
2 results, do your results go through any peer review
3 process?

4 A. Yes. All of our analyses has to be peer
5 reviewed first, and then I go back and I do another
6 review of it.

7 Q. Ms. Lanford, I'm showing you State's Exhibit 5
8 and 6. Can you look at those and tell me if you
9 recognize them?

10 A. Yes, I do.

11 Q. And how do you recognize them?

12 A. It has our lab name on the front as well as our
13 label.

14 Q. Does it have any markings from you yourself?

15 A. Yes, it does. It has my electronic signature.

16 MS. PRICE: Okay. Your Honor, at this time the
17 State would move to have Exhibits 5 and 6 admitted
18 into evidence.

19 THE COURT: Any objection?

20 MR. SMITH: No, sir.

21 THE COURT: State's Exhibit 5 and State's
22 Exhibit 6 would be admitted without objection.

23 (State's Exhibit Nos. 5 and 6 were admitted
24 into evidence.)

25 BY MS. PRICE:

Direct examination of Meredith Lanford by Ms. Price

319

1 Q. Ms. Lanford, looking at the lab report, can you
2 tell me for State's Exhibit 9 [sic] how much meth --
3 methamphetamine was in that bag?

4 A. 0.43 grams.

5 Q. Okay. And does your lab report indicate who
6 the officer was that collected that methamphetamine?

7 A. It was Officer David Stipe.

8 Q. Okay. And looking at State's Exhibit 6. Can
9 you look at each of the bags that you weighed and
10 tell me what their individual weight was, please?

11 A. Item one, I found methamphetamine at
12 19.10 grams.

13 And item two, I found methamphetamine at
14 46.27 grams.

15 And item three, I found methamphetamine at
16 0.96 grams.

17 And then the last one, is methamphetamine found
18 at 1.34 grams.

19 Q. And do you know the total weight of those items
20 together?

21 A. I have the total weight at 67.67 grams.

22 Q. Of methamphetamine?

23 A. Of methamphetamine.

24 Q. Okay. After you analyzed the material, what
25 did you do with it?

1 A. I seal it up -- and this is what we call a
2 "K pack." And I seal it and I put the date that I
3 sealed it with my initials.

4 It then goes into my completed evidence locker
5 until the evidence technician from the agency comes
6 back to pick it up.

7 Q. And is State's Exhibit 35 in substantially the
8 same condition as when you analyzed it?

9 A. Thirty-five?

10 Q. Yes, ma'am.

11 A. It does appear that someone has cut into it.
12 This would not be here. It would just be like this.

13 Q. Okay. So it's possible that someone reviewed
14 it after your lab potentially for coming to court?

15 A. It would have been after I returned it back to
16 the agency. Yes.

17 Q. And are you certain that you sealed it before
18 you put it back into property and evidence?

19 A. Yes, I do.

20 Q. And how can you be certain?

21 A. Because it has my signature and date.

22 Q. So all of the material was secure up unto the
23 point that you tested it?

24 A. Correct.

25 Q. And you are 100 percent certain that the

Cross-examination of Meredith Lanford by Mr. Smith

321

1 substances that you tested were methamphetamine?

2 A. Yes, I am.

3 Q. Ms. Lanford, since you have the glove, would
4 you mind holding up each of those substances that
5 you tested and showing them to the jury for me?

6 A. (Complying.) This contains the three bags of
7 methamphetamine, and this is the last bag of
8 methamphetamine.

9 Q. And it appears to be a crystal-like substance?

10 A. Yes.

11 Q. In all of the bags?

12 A. Yes.

13 Q. And you're certain that's what you tested?

14 A. Correct.

15 MS. PRICE: Okay. Thank you, Ms. Lanford.

16 Please answer any questions that Mr. Smith has for
17 you at this time.

18 THE COURT: Mr. Smith.

19 MR. SMITH: May it please the Court?

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. You -- the two pages you have of up there, what
23 are those?

24 A. These are our lab reports.

25 MR. SMITH: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. SMITH:

4 Q. Can you tell me with the document that you
5 currently have, can you tell me who the four
6 individuals who were at the house?

7 A. For Deputy Stipe's case, I have the suspect
8 listed as Michael Duncan.

9 Q. Is that what it says?

10 A. Yes.

11 Q. Right here (indicating), ma'am?

12 A. Suspect name is Michael Duncan.

13 Q. Oh, my bad. Who are the suspects on this one,
14 do you recall, or do I need to give it to you?

15 A. Yes.

16 Q. What suspects are on here?

17 A. The four suspects on David Stipes's case, I
18 have Michael Duncan ---

19 Q. There you go.

20 A. --- Joseph Surdak, Clint Macomson, And Amanda
21 Sanders.

22 Q. Is that the full names?

23 A. Well, I did not do them.

24 Q. Please -- please read what's there.

25 A. Joseph Anthony Surdak, Clint Howard Macomson,

1 Michael Howard Duncan, and Amanda Sanders.

2 Q. And you're confident those are the four people?

3 A. That was the people that were listed on the
4 analysis.

5 Q. Any reason to believe that that's wrong?

6 A. That's what's written on the paperwork, so
7 that's what we record.

8 Q. Thank you, ma'am. Anything on there with
9 fingerprints of the defendant -- defendants?

10 A. Not that I know of. I did not do any kind of
11 fingerprint analysis. Our job is only to analyze
12 the drug evidence.

13 Q. Is there any indication that the
14 methamphetamine that you found is different in any
15 way? There's four different containers, right?

16 A. Right.

17 Q. Okay. Is any of the methamphetamine different
18 from one container to the other?

19 A. Not that I'm aware of. No.

20 Q. Who placed them there, the methamphetamine at
21 the scene? Do you know anything about that?

22 A. I do not know.

23 Q. Do you know how long it had been in the -- in
24 the place it was found?

25 A. No, I do not.

1 Q. Do you know how old the methamphetamine was?

2 A. I do not know.

3 Q. Is there a way of testing for that?

4 A. No, there's not.

5 MR. SMITH: I have nothing further, Your Honor.

6 THE COURT: Anything further from this witness?

7 MS. PRICE: Only one thing.

8 REDIRECT EXAMINATION

9 BY MS. PRICE:

10 Q. I believe I asked you who the deputy was on the
11 lab report for Exhibit No. 9. But for Exhibit 35,
12 can you tell me the corresponding lab report who the
13 assigned officer was? Sorry. This will help.

14 A. The assigned officer for this is Alan Hendrix.

15 MS. PRICE: Okay. Thank you. No further
16 questions.

17 MR. SMITH: May I approach with a question,
18 Your Honor?

19 THE COURT: Question to her response for her
20 redirect?

21 MR. SMITH: Yes, sir.

22 RECROSS-EXAMINATION

23 BY MR. SMITH:

24 Q. This report right here (indicating), is the
25 name on here different than the name here

Recross-examination of Meredith Lanford by Mr. Smith

325

1 (indicating)?

2 A. Yes, it is.

3 Q. How is it different?

4 A. The middle name on the Alan Hendrix report is
5 Michael Darren Duncan, and the name given on David
6 Stipe's report is Michael Howard Duncan.

7 Q. Are those the same people?

8 A. I cannot answer that.

9 MR. SMITH: I have nothing further, Your Honor.

10 THE COURT: Any objection to this witness being
11 excused?

12 MS. PRICE: Nothing from the State, sir.

13 MR. SMITH: No, sir.

14 THE COURT: Thank you, ma'am. You are excused.

15 (Witness excused.)

16 MS. PRICE: Your Honor, at this time the State
17 renews its motion to have Exhibits 2 through 35
18 admitted, and the State rests.

19 THE COURT: Those are already in evidence.

20 MS. PRICE: Yes, sir. Just out of an abundance
21 of caution.

22 THE COURT: Okay. Those are already in
23 evidence, Exhibits 2 through 35.

24 MS. PRICE: Yes, sir.

25 THE COURT: Okay. State has rested.

1 Mr. Bailiff, would you take our jury to the jury
2 room, please?

3 THE BAILIFF: (Complying.)

4 (At 9:39 a.m., the jury exited the courtroom.)

5 THE COURT: Okay. Any motions?

6 MR. SMITH: Defense renews its motion to
7 suppress. The main part of the search warrant
8 affidavit is that they found drugs outside, and of
9 course they charged everyone with them.

10 However, the law is pretty clear about what
11 constructive possession is. And the people that
12 testifying -- testified that Mr. Duncan was to the
13 far right and the methamphetamine pipe were next --
14 inside the tire.

15 Detective -- I guess it's Detective Wood --
16 could not see it from 2 foot away crouched. The
17 idea that Mr. Duncan could see it and know it was
18 there from -- to the -- to the right, let's say 10
19 feet, through a tire is impossible. So there's no
20 proof that he knew anything about what was inside of
21 that tire. Without that, there's no drug
22 allegation.

23 And then the stolen property, the stolen
24 property that was brought to the premises, and there
25 was no evidence that showed that it was in there.

1 It was a guess, but there was no -- there's no
2 statement, there's no hard evidence, there's no
3 emptiness on the motorcycle, or something had been
4 moved or taken inside. The people that were at the
5 house that had the truck did not know the theft of
6 the truck until OnStar told them it was stolen; so,
7 therefore, there was no list of things that had been
8 taken. They hadn't been home yet.

9 With that in mind, the search warrant was
10 premature at best. There's no drug relation here
11 because Mr. Duncan was not near -- was not near the
12 drugs, so you cannot assume that he knew that they
13 were there. That's what they're trying to do.

14 There's no evidence that he was given. With
15 that lack of knowledge, lack of ability to possess,
16 you can't construct the possession any other way.

17 And once again, the material was found after.
18 The search warrant should be suppressed based on the
19 fruit of the poisonous tree.

20 THE COURT: I've heard the evidence and I've
21 seen nothing further in the court to make me change
22 its previous motion, so I would deny your motion.
23 Do you have anything further?

24 MR. SMITH: I don't.

25 THE COURT: Mr. Duncan -- Mr. Smith, would you

1 have your client stand, please?

2 THE DEFENDANT: (Complying.)

3 THE COURT: Madam clerk, would you put the
4 defendant under oath?

5 THE CLERK: Please raise your right hand.

6 THE DEFENDANT: (Complying.)

7 THE CLERK: Do you solemnly swear or affirm the
8 testimony you give this Court is the truth, the
9 whole truth, and nothing but the truth?

10 THE DEFENDANT: Yes.

11 THE CLERK: Thank you.

12 THE COURT: Mr. Duncan, at this time I'm going
13 to explain to you some of your rights. If you do
14 not understand anything I say, please let me know
15 and I will explain it in more detail. If you answer
16 the question, I will assume that you understood the
17 question. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You need to speak up so that I can
20 hear you.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: We have reached the stage in the
23 trial where you may present your defense. You have
24 the right to claim the protections given to you by
25 the Fifth Amendment of the Constitution of the

1 United States.

2 This is as it states in part: No person shall
3 be compelled in any criminal case to be a witness
4 against himself. This means that you cannot be
5 required to testify in this case.

6 On the other hand, you have the right to
7 testify on your own behalf if you choose to do so.
8 However, no one can make you testify. This is a
9 personal right, and no one can waive this right
10 except you.

11 If you decided to testify, you will be subject
12 to the same rules that govern other witnesses, and
13 you may be examined and cross-examined on any
14 relevant issue in this case.

15 In addition, if you have any convictions
16 involving dishonesty or false statement or for
17 crimes punishable by imprisonment for more than a
18 year and this Court determines that the probative
19 value in admitting this evidence outweighs its
20 prejudicial effect to you, the Solicitor will be
21 able to introduce your record to attack your
22 credibility.

23 If you decide to testify, this decision on your
24 part must be freely, voluntarily, and intelligently
25 made with the knowledge and protections given to you

1 by the Fifth Amendment and the consequences of your
2 decision to testify.

3 If you decide not to testify, I will instruct
4 the jurors that they cannot give the fact that you
5 did not testify any consideration whatsoever, and
6 that there is to be absolutely no privilege to you
7 because you did not testify.

8 It is left entirely up to you whether or not to
9 testify. You may talk to your attorney, your
10 family, friends, or anyone else, but the final
11 decision will be left entirely up to you. Do you
12 understand what I've explained to you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions about
15 what I've explained to you?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. We are going to take a
18 break, give Mr. Smith an opportunity to talk with
19 his client. And we'll go off the record in this
20 case right now.

21 (From 9:45 to 10:01 a.m., a recess was taken
22 and upon which other matters were heard.)

23 THE COURT: Mr. Duncan, have you had an
24 opportunity to speak to your attorney?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you decided whether or not
2 you're going to testify?

3 THE DEFENDANT: I am not.

4 THE COURT: All right. Mr. Smith, your client
5 has indicated he does not wish to testify. Let's
6 talk about the -- well, first of all, are you going
7 to call any other witnesses?

8 MR. SMITH: Yes, sir.

9 THE COURT: Okay. All right. Well, let's --
10 let's get our jury back in. Anything?

11 MR. SMITH: Yeah, I'd like move for a directed
12 verdict on the simple possession charge,
13 constructive possession, of course with all of the
14 drugs present. No one up there said anything other
15 than the fact that they -- well, I'm pretty sure
16 that they knew that, and he was sitting over there
17 when I got there, but I don't know previous to that.
18 So that says that they don't know if he ever saw it,
19 so if he ever had knowledge on top of that.

20 He clearly didn't have the ability to have
21 dominion and control over these at the end of the
22 building. Officer Wood was right there. He did not
23 see it. He could not have possessed it without
24 Officer Stipe coming over and getting underneath the
25 truck. There's no proof of knowledge. There's no

1 evidence of knowledge. All he said is speculation.
2 With that in mind, there's no constructive
3 possession.

4 THE COURT: Mr. Smith, I've heard the evidence
5 in the case and I think your argument is going
6 toward the weight of the evidence rather than the
7 existence. So I -- I think there is sufficient
8 evidence to make this a jury question, and so I will
9 deny your motion for directed verdict.

10 All right. Anything further before we bring
11 our jury back in?

12 MS. PRICE: Nothing from the State, Your Honor.

13 MR. SMITH: No, sir.

14 THE COURT: Okay. Mr. Bailiff, if you'll get
15 our jury, please, sir.

16 THE BAILIFF: (Complying.)

17 (At 10:06 a.m., jury entered the courtroom.)

18 THE COURT: Mr. Smith.

19 MR. SMITH: May it please the Court? Defense
20 calls Clinton Macomson.

21 (Witness entered.)

22 THE CLERK: If you would please raise your
23 right hand.

24 THE DEFENDANT: (Complying.)

25 THE CLERK: Do you solemnly swear or affirm the

Direct examination of Clint Macomson by Mr. Smith

333

1 testimony you give this Court is the truth, the
2 whole truth, and nothing but the truth?

3 THE WITNESS: I do..

4 THE CLERK: Thank you. If you would please
5 have a seat.

6 THE WITNESS: (Complying.)

7 THE CLERK: If you would please state your full
8 name for the record and spell your last name.

9 THE WITNESS: Clinton Macomson,
10 M-a-c-o-m-s-o-n.

11 MR. SMITH: May it please the Court?

12 CLINT MACOMSON,
13 having been produced and first duly sworn as a
14 witness on behalf of the defense, then testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. SMITH:

18 Q. Mr. Macomson, you came from SCDC; is that
19 right?

20 A. Correct.

21 Q. What are you there for?

22 A. You're talking about my charges?

23 Q. Yes, sir.

24 A. Burglary, grand larceny, possession of meth,
25 financial bank fraud.

1 Q. That's good.

2 A. Yeah.

3 Q. With regard to those charges, do those charges
4 relate to October 15, 2015?

5 A. Yes.

6 Q. Did you arrive at [REDACTED] South -- [REDACTED] South Main
7 Street in a ---

8 A. A 2015 Chevy 2500. It had a trailer with a
9 motorcycle on the back, a 2002 Honda Shadow.

10 Q. The trailer, did you take that off the truck?

11 A. Yes, I did. I pushed it to the left side of
12 the building. If you're looking to the building, it
13 would've been on the left side.

14 Q. Was that related to your inability to get the
15 vehicle started?

16 A. Could you rephrase that?

17 Q. Could you start the truck?

18 A. I could not start the truck.

19 Q. Did you take the trailer off because you
20 couldn't start the truck?

21 A. Yes, sir.

22 Q. Was Michael Duncan ---

23 A. He was not present when I arrived.

24 Q. So -- so you surprised him, would be a safe
25 bet?

Cross-examination of Clint Macomson by Ms. Price

335

1 A. He didn't even know I was coming.

2 Q. Do you know if he had any of the parts related
3 to you bringing the truck and the motorcycle?

4 A. I had got some parts out of the truck whenever
5 I was loading the trailer.

6 MR. SMITH: Yes, sir. I have nothing further,
7 Your Honor.

8 THE COURT: All right. Ms. Price?

9 CROSS-EXAMINATION

10 BY MS. PRICE:

11 Q. Mr. Macomson, did you place 67.67 grams of
12 methamphetamine inside his home?

13 A. I did not go in the home.

14 Q. You never went in his home?

15 A. I didn't go in the home.

16 MS. PRICE: Okay. No further questions.

17 THE COURT: Anything further from this witness?

18 MR. SMITH: No, sir.

19 THE COURT: Thank you, Mr. Macomson.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT: Mr. Smith, call your next witness.

23 MR. SMITH: The defense calls Joey Surdak.

24 (Witness entered.)

25 THE CLERK: If you would please step forward

1 right here and raise your right hand.

2 THE WITNESS: (Complying.)

3 THE CLERK: Do you solemnly swear or affirm the
4 testimony you give this Court is the truth, the
5 whole truth, and nothing but the truth?

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Thank you. If you would please
8 have a seat in the chair.

9 THE WITNESS: (Complying.)

10 THE CLERK: Please state your full name for the
11 record and spell your last name.

12 THE WITNESS: Joseph Surdak, S-u-r-d-a-k.

13 MR. SMITH: May it please the Court?

14 JOSEPH SURDAK,

15 having been produced and first duly sworn as a
16 witness on behalf of the Defendant, then testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. SMITH:

20 Q. Mr. Surdak, have you -- how long have you known
21 Mr. Duncan? Do you know Mr. Duncan?

22 A. Yes, sir.

23 Q. How long have you known him?

24 A. About five years.

25 Q. In those five years, did he reside at [REDACTED]

Direct examination of Joseph Surdak by Mr. Smith

337

1 South Main Street?

2 A. Yes, sir.

3 Q. And over the years, have you been to his place
4 more than once?

5 A. Yes, sir.

6 Q. Does he have a dog?

7 A. Yes, sir.

8 Q. What kind?

9 A. It's like a Pit Bull-type dog. It's like a
10 Pit.

11 Q. How -- how friendly is that dog?

12 A. I mean, it was friendly. It comes up to
13 people. I've petted it before. It's come up to me.

14 Q. All right. Was he leashed?

15 A. No. No. He runs around.

16 Q. Do you know of any dog, other than that dog you
17 just spoke of, he's ever possessed in the five years
18 you've known him?

19 A. No, sir. No, sir.

20 Q. Has there ever a dog posted onto the side where
21 it says "Beware of the dog"?

22 A. No. No, sir.

23 Q. With regard to December 15, 2015, do you recall
24 being there?

25 A. Yes, sir.

1 Q. Why were you there?

2 A. Mr. Duncan was going to take my girlfriend
3 Nicole to a probation hearing.

4 Q. And did he do that?

5 A. Yes, sir.

6 Q. About what time?

7 A. I think she had to be there about 9:00, 9:30,
8 in that area.

9 Q. So when did they leave?

10 A. Around nine o'clock, 8:45, nine o'clock,
11 somewhere around there.

12 Q. Did Mr. Duncan return?

13 A. Yes, sir. He did.

14 Q. What -- what were you guys doing that morning?

15 A. His niece's car, the clutch went out. We was
16 messing with it. I was chopping a little firewood.

17 Q. Did Mr. Duncan bring by any parts from the
18 store?

19 A. Yes, sir.

20 Q. How long was Mr. Duncan there before he went
21 back to pick up Nicole?

22 A. Not long, about 20 -- 20 to 30 minutes.

23 Q. Do you know about when he left to pick up
24 Nicole?

25 A. It was around ten o'clock maybe, about ten

Direct examination of Joseph Surdak by Mr. Smith

339

1 o'clock.

2 Q. Did -- did he go to the store after he dropped
3 Nicole off?

4 A. That first time?

5 Q. Yes, sir.

6 A. Yes, sir. He did.

7 Q. So he dropped Nicole off and then grabbed some
8 parts?

9 A. I believe so. Yes, sir.

10 Q. He returned. He was there for a short
11 duration?

12 A. Yes, sir.

13 Q. Then he left?

14 MS. PRICE: Objection, Your Honor. Leading.

15 THE COURT: Sustained. Rephrase your question.

16 BY MR. SMITH:

17 Q. Why don't you tell us what happened.

18 A. Well, I went to Mr. Duncan's that morning about
19 eight o'clock, and Nicole come up there about 8:30
20 maybe. She got ready and Mr. Duncan took her to
21 probation and dropped her off to the probation
22 hearing.

23 He came -- we had been messing with his niece's
24 car. The clutch went out and he was working on her
25 car. And he went back to go get Nicole from the

1 hearing and came back, and I sat there and waited.

2 And while he was gone, this guy Clint and a
3 girl Amanda pulled up with a truck and a motorcycle
4 hooked to the back of it wanting gas. They was
5 messing with that, and then Mr. Duncan come back
6 with Nicole.

7 And Nicole, she told me -- she stayed there
8 about five or ten minutes and then she told me, she
9 was like, "Let's go. I got a bad feeling."

10 I was like, you know, I said, "Go on. I'll
11 meet you at the house." I was gonna hangout there
12 for a little bit and help him finish with the car
13 and stuff.

14 Well, OnStar shut the truck down because the
15 truck was stolen, and a cop pulled up across the
16 street and sat there for about 10 or 15 minutes and
17 came up to Mr. Duncan's property wanting to know who
18 was driving the truck.

19 And I told him, you know, and I had told him I
20 had been there all morning, that I wasn't driving
21 it.

22 The guy Clint, he wouldn't own up to it, so
23 they -- a bunch of detectives started coming and
24 they locked us up for drugs they had found up under
25 the vehicle.

Direct examination of Joseph Surdak by Mr. Smith

341

1 Q. Yes, sir I appreciate that. When they arrived,
2 who all got handcuffed?

3 A. Me and Mr. Clint got handcuffed at first. And
4 then Amanda, she got handcuffed. They found a gun
5 in her recliner where she was sitting.

6 Q. And the drugs, they found a pipe; is that
7 right?

8 A. A pipe?

9 Q. Yes.

10 A. Yeah, a meth pipe. Yeah, and a bag of
11 methamphetamine up under the vehicle.

12 Q. Did you end up getting charged, or did you
13 plead to any of the charges related to that day?

14 A. Yeah, I did. I pled to possession of less than
15 a gram. They charged all of us with it, and they
16 offered me probation so I took it.

17 Q. Well, where was ---

18 MR. SMITH: May I approach the witness, Your
19 Honor.

20 THE COURT: Yes, sir.

21 BY MR. SMITH:

22 Q. Could you step down?

23 A. (Complying.)

24 Q. First thing I'm going to show you is State's

25 29. Are those the items that you pled to?

1 A. Yes. I believe it is. Yes, sir.

2 Q. All right. And so turning now to State's
3 Exhibit 32. This is the vehicle under which they
4 were found; is that right?

5 A. Yes, sir. And we -- we was -- the law pulled
6 up, they pulled up right there (indicating). We was
7 sitting right there (indicating). Amanda was in a
8 recliner right there (indicating), and I was right
9 beside her. Clint was over here (indicating), and
10 Mr. Duncan was up there (indicating).

11 Q. So the drugs are under here (indicating), and
12 they were inside the tire; is that right?

13 A. Yes, sir.

14 Q. Meaning?

15 A. They was up under the vehicle. I don't know
16 exactly where they were.

17 Q. All right. You saw the State's 29. And they
18 took pictures before they started grabbing things,
19 the police; is that right?

20 A. Yes, sir. They handcuffed me as soon as they
21 found it. They handcuffed me and put me in the back
22 of the van, the paddy wagon van.

23 Q. How many times did you get cuffed that day?

24 A. Twice.

25 Q. All right. The first time was when they --

1 they showed up?

2 A. Yeah, about the truck.

3 Q. Had you gotten out of prison recently?

4 A. Yes, sir.

5 Q. What did you get out of prison for?

6 A. Possession of a stolen vehicle.

7 Q. All right. So you were cuffed and Clinton
8 were -- were cuffed initially?

9 A. Yes, sir.

10 Q. At what point did they take off your cuffs?

11 A. After I gave a statement about who was driving
12 the truck.

13 Q. Is there any doubt that you told them that
14 Clinton was driving the truck?

15 A. No. There's no -- I did tell them that he was
16 driving it.

17 Q. All right. Could -- could you return, please?
18 Thank you.

19 A. Yes, sir (complying).

20 Q. So you told them that Clinton had pulled in
21 with the truck?

22 A. Yes, sir.

23 Q. And they took your cuffs off?

24 A. Yes, sir.

25 Q. And then did they put them back on for what?

1 A. When they found the drugs up under the vehicle,
2 they put them back on.

3 Q. And you had said that you were at the -- if
4 you're facing the building, you were at the far left
5 of the awning. Right? There was an awning there
6 and the chairs were under the awning; is that right?

7 A. Yes, sir.

8 Q. And so you and Amanda were at this -- at the
9 left end of the awning and Mr. Duncan was to the
10 right of the awning?

11 A. Yeah. Well, I went around the back of the shop
12 and I came around this way (indicating). This is
13 right before the police pulled up. I had squatted
14 down right there (indicating) by Amanda, and then
15 the cop pulled up.

16 Q. So Officer Stipe, he cuffed you when he got
17 there because the truck was stolen and maybe because
18 you'd been in trouble before?

19 A. Yeah.

20 Q. Then he cuffs you again for the drugs because
21 he recognized that you were next to Amanda over
22 there by the drugs, right?

23 A. Yes, sir. And Clint was beside her and Hack
24 was beside Clint.

25 Q. So it went Joey, Amanda, Clint, Michael?

Cross-examination of Joseph Surdak by Ms. Price

345

1 A. Yeah. Yes, sir.

2 Q. Did you see Michael Duncan take anything into
3 his residence that morning after he returned with
4 Nicole?

5 A. Not that I noticed. No, sir.

6 Q. Did he bring anything out when -- after he
7 returned with Nicole?

8 A. No, sir.

9 Q. And he's only had one dog; isn't that right?

10 A. Yes, sir. That I know of.

11 MR. SMITH: No further questions.

12 THE COURT: All right. Ms. Price.

13 MS. PRICE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. SMITH:

16 Q. Mr. Surdak, you said you're friends with
17 Michael Duncan?

18 A. Yes, sir -- I mean, yes, ma'am.

19 Q. It's okay.

20 A. I'm sorry. I'm sorry.

21 Q. It's all right. Okay. So you're friendly with
22 him?

23 A. Yes, ma'am.

24 Q. You've known him for a long time?

25 A. Yes, ma'am.

1 Q. Okay. Did you meet with his attorney before
2 testifying today?

3 A. Yes, ma'am.

4 Q. Okay. And you spoke with him about this case
5 and about what you were going to testify to today?

6 A. Yes, ma'am.

7 Q. Okay. Mr. Surdak, did you place 67.67 grams of
8 methamphetamine in his home?

9 A. No, ma'am.

10 Q. You did not?

11 A. No, ma'am.

12 Q. Okay.

13 A. I did not.

14 MS. PRICE: No further questions.

15 THE COURT: All right. Anything further of
16 this witness?

17 MR. SMITH: Yes, sir. May it please the Court?

18 REDIRECT EXAMINATION

19 BY MR. SMITH:

20 Q. The 67 grams that were discussed, the side of
21 the -- the door -- the side where the "beware of
22 dog" sign is at, where is the door to get inside?

23 A. It's on the side of the shop.

24 Q. Yes, sir.

25 A. Yeah. Yes, sir.

Redirect examination of Joseph Surdak by Mr. Smith

347

1 Q. Is there a window right there that doesn't
2 lock?

3 A. Not that I know of.

4 Q. Did he have to -- did he have to get in the
5 place before?

6 MS. PRICE: Your Honor, I'm going to object.
7 This is outside the scope of what I brought up.

8 THE COURT: Sustained.

9 BY MR. SMITH:

10 Q. Mr. Surdak, did you offer any lies to the Court
11 today?

12 A. Did I offer any lies?

13 Q. Yes.

14 A. No, sir.

15 Q. Did I tell you what to say or not to say?

16 A. No, sir. No, sir.

17 MR. SMITH: Nothing further, Your Honor.

18 THE COURT: Anything further from this witness?

19 MS. PRICE: Nothing from the State.

20 THE COURT: Thank you, Mr. Surdak, you can step
21 down.

22 (Witness excused.)

23 THE COURT: Mr. Smith.

24 MR. SMITH: Detective Marzoff.

25 THE COURT: Okay.

1 MS. PRICE: Your Honor, may we approach?

2 THE COURT: Yes, ma'am.

3 (Sidebar discussion.)

4 THE COURT: If you'll take our jury to the jury
5 room, please.

6 THE BAILIFF: (Complying.)

7 (At 10:32 a.m., the jury exited the courtroom.)

8 THE COURT: All right. As I understand it,
9 Mr. Smith is seeking to present Detective Marzoff,
10 and the State has objected, and so the defense is
11 going to proffer his testimony.

12 MR. SMITH: Yes, sir.

13 THE COURT: So, Mr. Clerk, would you put the
14 witness under oath?

15 THE CLERK: Yes. Can you please raise your
16 right hand please, sir?

17 THE WITNESS: (Complying.)

18 THE CLERK: Do you solemnly swear or affirm the
19 testimony you'll give the Court today in this case
20 to be the truth, the whole truth, and nothing but
21 the truth?

22 THE WITNESS: Yes, sir, I do.

23 THE CLERK: Okay. If you would take the
24 witness stand please, sir, and state your name and
25 spell your last name for the reporter, please.

1 MS. PRICE: Your Honor, I'm sorry to interrupt
2 the proffer, but I just received a message from one
3 of the other witnesses.

4 THE COURT: Stand when you address the Court.

5 MS. PRICE: I'm sorry. I received a message
6 from one of the other witnesses that's outside that
7 I'm not calling, but that Mr. Smith may plan on
8 calling. It's Detective Nathan Mitchell.

9 He said that he believes he recognized one of
10 the jurors. He didn't want to speak to the juror,
11 but he wanted to bring it to our attention if her
12 name is Hope Patterson. We have a Hope Patterson on
13 the jury.

14 THE COURT: Well, his name was ---

15 MS. PRICE: His name was read.

16 THE COURT: His name was read and there was no
17 response from the jury.

18 MS. PRICE: I just want to make sure I
19 disclosed that to the Court.

20 THE COURT: Okay.

21 THE CLERK: Amanda H. Patterson is Juror 117.

22 THE COURT: Okay.

23 DETECTIVE KREIG MARZOFF,
24 having been produced and first duly sworn as a
25 witness on behalf of the Defendant, then testified

1 as follows:

2 PROFFERED EXAMINATION

3 BY MR. SMITH:

4 Q. Detective Marzoff, where do you work?

5 A. The Anderson County Sheriff's Office.

6 Q. And what do you do there?

7 A. I'm a detective. I investigate sex crimes and
8 homicides mainly.

9 Q. In this case, what did you -- what did you
10 investigate?

11 A. Well, we were doing a saturation patrol in the
12 Homeland Park area that day. And I was with
13 Investigator Heath Davis, and we heard a call go
14 over the radio.

15 Deputy Stipe had advised that he was looking
16 for a stolen truck and that there was an OnStar hit
17 at the incident location on South Main Street, so we
18 went there to back him up.

19 Q. Where were you doing your saturation at?

20 A. The Homeland Park area, Anderson, South
21 Carolina, 81 South, 29 South, 28 Bypass area, Key
22 Street, that general area.

23 Q. Had you been anywhere else in that saturation
24 that day?

25 A. We went to Townville initially, but there

1 wasn't any activity there.

2 Q. All right. So you came back. Everybody had
3 moved from Townville to Homeland Park?

4 A. Yes, sir.

5 Q. How soon -- were you aware that the -- the
6 vehicle had stopped based on the OnStar reading?

7 A. We heard Deputy Stipe call out his location and
8 we responded there.

9 Q. And is that -- is that Homeland Park, [REDACTED] South
10 Main Street?

11 A. Yes, sir. It would be.

12 Q. So everybody was already there?

13 A. We were in the general locate -- in the general
14 area. Yes, sir. I don't remember specifically
15 where.

16 Q. When you arrived, who was there?

17 A. When I arrived with Deputy -- or with Detective
18 Davis, I don't think anybody other than Deputy Stipe
19 was there just then.

20 Q. Captain White?

21 A. I don't recall.

22 Q. How many people ended up being there?

23 A. I remember I was there, Detective Davis was
24 there, Deputy Stipe was there, Detective Wood was
25 there.

1 Eventually, Sergeant Jordan was on scene, but
2 not initially. I don't recall what -- I know that
3 Investigator Hendrix was there.

4 Q. Umm ---

5 A. I don't recall exactly how many people were
6 there.

7 Q. I understand. You got there, you're an
8 investigator, so what did you do when you got there?

9 A. Well, when I got there, we were running the VIN
10 on the truck and confirming it was stolen, we
11 separated the witnesses that were there, and waited
12 on other folks to arrive.

13 Ultimately, it was discovered that the truck
14 was stolen. There was a motorcycle and a trailer on
15 the scene that were stolen property from a burglary
16 that hadn't been reported yet. We contacted another
17 detective to talk to the homeowner and confirm that.

18 And eventually a detective got a search warrant
19 for stolen property and for some -- let me back up a
20 second. There was a pistol and some drugs found
21 underneath of a truck that was sitting on the
22 property, and so we got a search warrant for a dirt
23 bike that was stolen from the same incident where
24 the truck was stolen with the OnStar.

25 We felt that the truck or the dirt bike might

1 be inside the building, so we got a search warrant
2 for that. And due to the presence of the drugs and
3 nobody on scene claiming them, we got a search
4 warrant for that as well.

5 Q. You said that it was an unknown burglary,
6 right?

7 A. We didn't know about it until after we
8 contacted the homeowner and verified.

9 Q. The homeowner did not know about that either,
10 did they?

11 A. The homeowner didn't know about it until we
12 contacted them. No, sir.

13 Q. Right. So it was an unknown burglary and,
14 therefore, it was unknown that it was taken from
15 that house; isn't that right?

16 A. Detective Mitchell went and talked to the
17 homeowner and found out that the trailer and
18 motorcycle were stolen from there. We suspected it
19 may be, so we ran the tag on the motorcycle. It
20 came back to the homeowner, so we went out there and
21 spoke to them and verified that it was stolen.

22 Q. Could you give me a timeline on that?

23 A. I'm sorry. I don't understand the question.

24 Q. Timeline. When did this police -- when did the
25 police arrive on the location?

1 A. I don't remember the specific time. It was
2 daytime. The sun was up. I don't remember a
3 specific time.

4 Q. If I showed you a report that said 12:30, would
5 that be -- would that be about right?

6 A. I don't want to guess at it.

7 MR. SMITH: Okay. Let me help you out here.

8 MS. PRICE: May I see it?

9 MR. SMITH: (Complying.)

10 MS. PRICE: That's not his report.

11 MR. SMITH: Is that relevant about the time?

12 MS. PRICE: I -- I'm just saying, that's not
13 his report, so I don't know if he can testify to
14 what's in this or not since it's not his report.

15 MR. SMITH: This is the report kept in the
16 normal course of business.

17 THE COURT: Well, you can ask him if he can
18 identify it.

19 MR. SMITH: Yes, sir. May I approach the
20 witness, Your Honor?

21 THE COURT: Yes, sir. Have it marked if you're
22 going use it.

23 BY MR. SMITH:

24 Q. Detective Marzoff, can you tell me what that
25 is?

1 A. This appears to be an incident report.

2 Q. Can you tell me the date and the location?

3 A. It states 10/15 of 2015, and the location is

4 [REDACTED] South Main Street Extension, Anderson.

5 Q. Would that be the incident that you were
6 involved in?

7 A. Yes, sir. I believe it is.

8 Q. Can you tell me what time that says the arrival
9 was?

10 A. It says the arrival was 12:29.

11 Q. Thank you, sir. So 12:29?

12 A. Okay.

13 Q. At that time, the homeowner does not know of
14 the burglary?

15 A. That is accurate.

16 Q. And where was the homeowner at?

17 A. I don't know. Detective Mitchell spoke with
18 them. I don't know where they were at.

19 Q. And I don't mean at that time. Do you know
20 where the home location was?

21 A. To the best of my recollection, it was in
22 Starr. I don't know the exact address.

23 Q. So Starr, that's -- how -- how far away is that
24 time-wise?

25 A. I mean, depending on the location, exact.

1 address, maybe 10, 15 minutes from where we were at.

2 Q. Yes, sir.

3 A. Not far.

4 Q. And do you know where the victims work because
5 they were at work; isn't that right?

6 A. I don't know.

7 Q. Okay. So you don't know how long it took them
8 to get home?

9 A. No, sir. I don't have any idea.

10 Q. Do you have any idea what time that a list of
11 items was presented?

12 A. No, sir. I didn't take that report. I was at
13 the scene on South Main Street.

14 Q. Can you tell me when you knew the items that
15 were missing?

16 A. The only items that I was aware of that were
17 missing were the motorcycle and the trailer that
18 were there on scene. And as I stated, we have the
19 stolen truck there, so we ran the tag on the
20 motorcycle.

21 And so once we confirmed with the homeowner
22 that they weren't supposed to be at that location,
23 we knew they were stolen.

24 Q. I'm over here, Detective. So you're not -- you
25 didn't know of any other items that were stolen

1 until after you left the scene?

2 A. As near as I know, that's what was stolen from
3 that location, but I didn't work that case. And,
4 you know, I was at the scene, and I knew the trailer
5 and the motorcycle.

6 Q. So what time did Officer Price leave to get his
7 search warrant?

8 A. I -- I don't know.

9 Q. Did you see him leave?

10 A. I don't remember seeing him leave. He did
11 leave. I just don't know when exactly.

12 Q. And he's the one that went and got the search
13 warrant?

14 A. I believe that's correct.

15 Q. You'd already been in the residence before you
16 got that search warrant; isn't that right?

17 A. No, sir.

18 Q. With regard to your involvement as an
19 investigator, who did you speak to?

20 A. I spoke to Joey Surdak on the scene. I spoke
21 to Amanda Sanders at the Sheriff's Office.

22 Q. Joey Surdak, what did he tell you?

23 A. Can you be more specific?

24 Q. Yes, sir. I'm sorry. Since you're a property
25 investigator, you asked him about that truck, didn't

1 you?

2 A. Yes, sir.

3 Q. What did he offer to you?

4 A. He told me that Clint Macomson and Amanda had
5 brought the truck there along with the trailer and
6 the motorcycle.

7 Q. So you knew that right then on the scene?

8 A. I knew it on the scene. Yes, sir.

9 Q. And right after you talked to Joey Surdak, you
10 talked to Amanda briefly, right?

11 A. Are you talking about on the scene?

12 Q. Yes. Briefly.

13 A. I don't remember whether I spoke to Amanda on
14 the scene or not.

15 Q. Okay. So ---

16 A. I know I spoke to her at the Sheriff's Office.
17 I -- I -- I don't have any recollection as to
18 whether or not I spoke to her at the scene.

19 Q. Okay. You're not sure if you said in your
20 interview that you were thankful that she had talked
21 to you at the -- at the scene, but you looked
22 forward to talking to her more in depth at the
23 office?

24 A. I don't recall.

25 Q. Who talked to Mr. Duncan?

1 A. I'm not sure. It wasn't me.

2 Q. How about on the scene? Who talked to Amanda
3 Sanders?

4 A. Again, I'm not sure.

5 Q. What was the square foot of the area in which
6 all the people were located?

7 A. I didn't measure. I couldn't answer that.

8 Q. Would you say they were all in front of that
9 building?

10 A. I know that Amanda was in front of the
11 building, and I know that Joey Surdak was in front
12 of the building. I don't remember exactly where
13 everybody was when I got there.

14 Q. Amanda was sitting in a chair in the middle of
15 the building or about the middle right under the
16 awning; is that right?

17 A. She was -- she was out in front of the
18 building. I don't remember specifically where.

19 Q. Where was the dog barking at?

20 A. I don't remember a dog.

21 Q. You don't remember barking?

22 A. No, sir. A lot of calls I go on have dogs. I
23 mean, the dog wasn't relevant. I don't remember a
24 dog.

25 Q. Do you notice that drug dealers have dogs that

1 alert them, barking dogs and stuff?

2 A. I suppose that's true some of the time, but I
3 don't remember a dog specifically in this instance.

4 Q. Did you see his English Bulldog at some point,
5 Mr. Duncan?

6 A. I don't remember a dog.

7 Q. And you don't remember where Mr. Duncan was
8 located?

9 A. He was present. I don't remember specifically
10 where he was at.

11 Q. Is it safe to say that at any point in front of
12 that house you could see anybody?

13 A. They were all at the scene. I don't remember
14 specifically where they were.

15 Q. Are you aware of ---

16 A. I know that we separated them, and I know that
17 I talked to Joey Surdak at the scene. And I don't
18 remember specifically where everybody was at.

19 Q. Was he in cuffs at that time?

20 A. When I talked to him?

21 Q. Yes, sir.

22 A. I don't believe so because he was free to go.
23 I remember I told him, you know, he didn't have to
24 talk to me. He was free to leave at any time, so I
25 don't believe he was in cuffs.

1 Q. Did you ever take the cuffs off Clinton
2 Macomson?

3 A. I don't believe that I talked to Clint
4 Macomson. I don't remember talking to him.

5 Q. Are you aware of whether his cuffs ever came
6 off during that time period?

7 A. I couldn't say.

8 Q. Did Amanda have cuffs on?

9 A. I don't recall.

10 Q. Mr. Duncan ever have cuffs on?

11 A. We're talking about at the scene?

12 Q. Yes, sir.

13 A. I don't remember.

14 Q. Well, you remember that Joey didn't because you
15 talked to him, right?

16 A. I remember talking to him, yes.

17 Q. Okay. And he didn't have cuffs on when you
18 were talking to him?

19 A. Well, I remember that I told him that he was
20 free to go. If he had had cuffs on, he wouldn't --
21 he wouldn't have been free to go. So we would've
22 been detaining him at that point, and we weren't.

23 Q. So you had a stolen vehicle there and a stolen
24 trailer, a stolen motorcycle, but Joey was free to
25 go?

1 A. Yes, sir.

2 Q. He's free to go because he was recognized that
3 Macomson had stolen that truck, right?

4 A. I believe that's what we were told. I know
5 that's what Surdak said.

6 Q. And that's -- that's what you said. You said,
7 "You're free to go," right?

8 A. Right.

9 Q. So you believed that Macomson had stolen the
10 truck and brought that trailer, right?

11 A. Yes, sir.

12 MR. SMITH: I believe that's it for a proffer,
13 sir.

14 MS. PRICE: Your Honor, all of this seems
15 cumulative to me. I don't know what specifically
16 he's trying to elicit. I don't think it's
17 objectionable, but I find it cumulative.

18 THE COURT: I'll allow him to ask these
19 questions.

20 MS. PRICE: Your Honor, the only -- the only
21 question that I found to be a little bit misleading
22 is him asking who spoke with Michael Duncan. I
23 think that the way that he's -- that he's saying it,
24 it seems like he -- I -- I'm going to have a hard
25 time responding to that. They heard testimony that

Direct examination of Detective Marzoff by Mr. Smith

363

1 Heath Davis spoke to him ---

2 THE COURT: Well, the witness testified he
3 didn't know, so...

4 MS. PRICE: Well, I don't want to burden shift.

5 THE COURT: All right. Get our jury back.

6 THE BAILIFF: (Complying.)

7 (At 10:52 a.m., jury entered the courtroom.)

8 MR. SMITH: May it please the Court?

9 DIRECT EXAMINATION

10 BY MR. SMITH:

11 Q. Detective Marzoff, do you remember the October
12 15, 2015, event at [REDACTED] South Main Street?

13 A. Yes, sir.

14 Q. And what was your involvement there?

15 A. We were conducting a saturation patrol that day
16 in the Homeland Park area. I was riding with
17 Detective Davis, and we responded to that location
18 to back up Deputy Stipe who had called out about an
19 OnStar location of a stolen vehicle at that
20 location.

21 Q. And once he made that call, did you and Officer
22 Davis go to that property?

23 A. Yes, sir. Detective Davis and I did go to that
24 property.

25 Q. When you got there, where was everybody

- 1 located?
- 2 A. Umm ---
- 3 Q. From non-law enforcement perspective.
- 4 A. (No response.)
- 5 Q. Where was Amanda?
- 6 A. She was in the front of the building.
- 7 Q. Where was Joey Surdak?
- 8 A. I believe he was also in front of the building.
- 9 Q. Where was Clinton Macomson?
- 10 A. He was on the scene somewhere, but I don't
- 11 recall exactly.
- 12 Q. And where was Michael Duncan?
- 13 A. Again, he was at the location, but I don't
- 14 recall exactly where he was.
- 15 Q. Who'd you speak to that day?
- 16 A. Joey Surdak at the scene, and Amanda Sanders
- 17 later at the Sheriff's Office.
- 18 Q. Where did you speak to Joey Surdak?
- 19 A. At the incident location in a patrol car.
- 20 Q. Okay. Where was the patrol car located?
- 21 A. In front of the building.
- 22 Q. Where in front of the building?
- 23 A. I don't remember specifically. It was parked
- 24 in front of the building.
- 25 Q. Did you use your handcuffs that day?

Direct examination of Detective Marzoff by Mr. Smith

365

1 A. I don't recall.

2 Q. When you were talking to Joey Surdak, did he
3 have cuffs on?

4 A. No, sir.

5 Q. Did he have cuffs on prior to you speaking to
6 him?

7 A. I don't recall whether he did or not.

8 Q. If you had to guess.

9 MS. PRICE: Objection, Your Honor..

10 THE COURT: Sustained.

11 BY MR. SMITH:

12 Q. Did he ever have cuffs on?

13 A. I'm sure he had cuffs on when he was arrested.

14 Q. Arrested for what?

15 A. I didn't make the charges, so I'm not a hundred
16 percent sure.

17 Q. But you do know ---

18 A. I didn't charge him with anything.

19 Q. But you did know he was arrested though, right?

20 A. Eventually, yes, sir.

21 Q. But you just can't -- can't remember what for?

22 A. I didn't arrest him. I didn't make the
23 charges.

24 Q. You were working a saturation detail, right?

25 A. Yes, sir.

1 Q. It's like a team effort?

2 A. Yes, sir.

3 Q. Do you share anything in a situation such as
4 what happened at [REDACTED] South Main? You and your
5 fellow officers, you talk to people, you come
6 together, make a -- decide what to do or, you know,
7 who to arrest? Did you do that?

8 A. I wasn't involved in the decision on who to
9 arrest.

10 Q. How long were you there?

11 A. Long enough to assist with the search of the
12 building, to wait for a search warrant to get there,
13 to interview Mr. Surdak, but I don't remember
14 exactly how long I was there.

15 Q. You have no idea how long you were there?

16 MS. PRICE: Objection, Your Honor. Asked and
17 answered.

18 THE COURT: Sustained.

19 BY MR. SMITH:

20 Q. How long did it take -- did you talk to Joey
21 Surdak?

22 A. I did.

23 Q. How long did that discussion last?

24 A. I -- I don't know exactly.

25 Q. What were the main points that you can recall

Direct examination of Detective Marzoff by Mr. Smith

367

1 from that discussion?

2 A. He said that we were ---

3 MS. PRICE: Objection, Your Honor. It's
4 hearsay.

5 MR. SMITH: Mr. Surdak testified to it.

6 MS. PRICE: Mr. Surdak did testify, so he
7 could've elicited it through Mr. Surdak.

8 THE COURT: I'll overrule the objection. Just
9 move along.

10 THE WITNESS: He was talking about the stolen
11 truck that was on the property and saying that
12 Clinton Macomson and Amanda Sanders brought it
13 there, along with the trailer and motorcycle that
14 was attached to it.

15 BY MR. SMITH:

16 Q. Then there was no doubt in your mind that that
17 was true?

18 A. I -- I believed them at the time, sure.

19 Q. And didn't you tell him he was free to go?

20 A. Yes, sir.

21 Q. You wouldn't have done that if you'd thought he
22 stole it, right?

23 A. Yes, sir.

24 Q. Clint Macomson had cuffs on, didn't he?

25 A. I don't remember.

1 Q. Do you remember anybody having cuffs on?

2 A. I don't remember anybody having cuffs on, at
3 least not until after they were arrested once the
4 investigation was complete at the scene.

5 Q. The truck had a trailer, right?

6 A. The trailer was not attached to the truck when
7 I saw it.

8 Q. Yes, sir.

9 A. There was a trailer there with a motorcycle on
10 it. There was a truck there.

11 Q. And where do you believe the -- the victims,
12 the people that had their material stolen, where do
13 you believe their residence was?

14 A. I don't recall where the gentleman that owned
15 the truck. I don't -- I don't know where he lived.
16 I don't remember. The trailer and the motorcycle, I
17 believe that gentleman lived in Starr, South
18 Carolina.

19 Q. The owner of the truck did not know his truck
20 had been stolen yet?

21 MS. PRICE: Objection, Your Honor. This is his
22 witness and he's leading.

23 THE COURT: Sustained.

24 BY MR. SMITH:

25 Q. In your investigation, who went out to see the

Direct examination of Detective Marzoff by Mr. Smith

369

1 owner of the truck?

2 A. The truck was already reported stolen, so I
3 don't -- I don't know who took the initial on that
4 one. The truck was -- we located the truck through
5 OnStar, Deputy Davis did -- or excuse me -- Deputy
6 Stipe did.

7 It had been previously reported stolen. It was
8 the trailer and the motorcycle that were found to be
9 stolen once we were on scene.

10 Q. You talked to Amanda prior to speaking to her
11 at the office?

12 A. I don't remember specifically talking with her,
13 other than at the Sheriff's Office.

14 Q. Did you see Michael Duncan in cuffs at any
15 point?

16 A. I don't recall.

17 Q. The property that had been stolen, what was
18 your knowledge on the scene that day?

19 A. I knew about the truck when we arrived because
20 the OnStar located it. And then once we got on the
21 scene, we ran the tag on the motorcycle that was on
22 the trailer due to the truck being stolen and found
23 out who the owner was. And we had dispatch contact
24 the owner and sent a detective out to talk with them
25 and found out that that trail -- that the trailer

1 and motorcycle were stolen as well.

2 Q. So at that time, is it safe to say that the
3 items that you knew to be stolen were a truck,
4 trailer, and motorcycle?

5 A. Yes, sir. There was also a dirt bike that was
6 stolen the same time as the truck was stolen, and we
7 were also aware of that.

8 Q. When did you become aware of that?

9 A. Some time prior to the search warrant being
10 obtained, but I'm not sure exactly when.

11 Q. Who told you -- who told you about it?

12 A. I don't remember. We were talking about it.
13 There were several other -- other deputies on scene,
14 and I don't recall exactly who said that.

15 Q. The dirt bike was stolen from the same place
16 the truck was stolen; is that right?

17 A. Yes, sir.

18 Q. The victims of the truck theft were both at
19 work, right?

20 MS. PRICE: Objection, Your Honor. This is his
21 witness.

22 THE COURT: Sustained. Rephrase your question.

23 MR. SMITH: Yes, sir.

24 BY MR. SMITH:

25 Q. Did you contact the victims?

Direct examination of Detective Marzoff by Mr. Smith

371

1 A. I -- I didn't contact them. No, sir.

2 Q. Did your office contact the victims?

3 A. I would assume they did at some point, but I
4 don't know. I wasn't involved in that part of
5 the -- my role was essentially helping with the
6 execution of the search warrant, backing up Deputy
7 Davis, and also interviewing Mr. Surdak and
8 Ms. Sanders.

9 Q. Did you have knowledge as to where the victims
10 were?

11 A. No, sir, I didn't.

12 Q. Did you send someone out to the victim's home?

13 A. To the victim's of the trailer and the
14 motorcycle theft. Yes, sir.

15 Q. What about the truck?

16 A. I didn't send anybody out there. No, sir.

17 Q. Did you have a list of things that had been
18 taken from both -- from both alleged victims?

19 A. I didn't personally have a list. The original
20 reason we were out there, the truck, there was an
21 incident report filed on that so we had that at the
22 scene.

23 Then we sent Detective Mitchell out to -- to
24 the other residence to talk to those folks and were
25 communicating with them by telephone.

1 Q. So did he go to their house or talk to him on
2 the phone?

3 A. Dispatch, I believe, contacted him by telephone
4 and found out those items weren't supposed to be
5 there. I believe he went out to the residence. I'm
6 not sure if we talked to him by phone or if he
7 talked to him -- I wasn't with him so I can't say.

8 Q. But he -- but he definitely went out to the
9 residence?

10 A. He definitely went to the residence. Yes, sir.

11 Q. Is that the one in Starr?

12 A. Yes, sir.

13 Q. When did he come back?

14 A. I don't know if he was ever at the scene.

15 Q. That's Heath Davis?

16 A. No. Detective Mitchell.

17 Q. Oh, Detective Mitchell. My bad.

18 A. I don't know that he was ever at -- at the
19 South Main Street location.

20 Q. I understand. Did he -- how did he relay the
21 information then to you?

22 A. We were talking on the phone.

23 Q. And can you tell me what -- what you recall was
24 stolen based on that conversation?

25 A. From the residence in Starr, what I recall was

Direct examination of Detective Marzoff by Mr. Smith

373

1 stolen was the motorcycle and the trailer that were
2 out there.

3 Q. So you didn't have any knowledge of any other
4 things that had been taken from there?

5 A. No, sir, I didn't.

6 Q. Did you tell Officer Price what to include in
7 his search warrant?

8 A. I'm not sure who told Detective Price what to
9 put on the search warrant. I don't remember doing
10 that.

11 Q. Who was the senior officer on the scene?

12 A. I mean, are you -- I don't know who the senior
13 officer would've been.

14 Q. Would there be a lead detective?

15 A. Well, no. I mean, we were pretty well working
16 together doing different things. I don't remember
17 any one person being in command or anything.

18 Q. So you don't have any knowledge of anything
19 other than what you were doing; is that right?

20 A. I was focussing on the task that I was doing.
21 Yes, sir.

22 Q. And there was no person above you that brought
23 all of these individuals who apparently only knew
24 about what they were doing? There's no senior
25 person that brought it all together?

1 A. Detective Davis was in charge of the
2 investigation, and Detective -- or Deputy Stipe was
3 the first officer on scene.

4 But as far as anybody being put in -- in charge
5 or anything like that, other than it being Detective
6 Davis' investigation, ultimately no.

7 Q. So after your discussion with Joseph Surdak,
8 who did you talk to? Who did you report to to tell
9 them what ---

10 MS. PRICE: Your Honor, may we approach?

11 THE COURT: Yes, ma'am.

12 (Sidebar discussion.)

13 BY MR. SMITH:

14 Q. Who did you report to?

15 A. I don't recall.

16 Q. Did you do a report?

17 A. No, sir, I didn't.

18 Q. Why not?

19 A. I wasn't making any charges on anyone. I
20 didn't -- didn't have a very big role in the
21 investigation. I talked to a couple of witnesses
22 and looked through some property at the scene.

23 Outside of that ---

24 Q. Wouldn't you say that everybody's involvement
25 is equal?

1 A. We were all doing different jobs.

2 Q. But they're all necessary to get to the finish
3 line, right?

4 A. I suppose so.

5 Q. What does it take to do an incident report?
6 You said you didn't do one because you weren't ---

7 A. The incident reports were done. I didn't do --
8 I didn't do a report. No, sir.

9 Q. What does it take? I mean, when are you
10 required to do an incident report?

11 A. When am I required to do an incident report?

12 Q. Yes.

13 A. I mean, I'm not really sure exactly how to
14 answer that one if I'm required to do an incident
15 report. We do reports routinely on -- on things
16 that we -- that we investigate. I'm not sure I
17 understand exactly what you're asking.

18 Q. You haven't produced an incident report. I
19 can't refresh your memory about what you said, can
20 I?

21 A. Right.

22 MR. SMITH: Nothing further, Your Honor.

23 THE COURT: Any questions for this witness?

24 MS. PRICE: Only one.

25 CROSS-EXAMINATION

1 BY MS. PRICE:

2 Q. Detective Marzoff, you were not the lead
3 investigator on this case; is that correct?

4 A. No, ma'am.

5 Q. You were assisting; is that correct?

6 A. Yes, ma'am.

7 Q. Okay. You assisted, I think you said, in the
8 execution of the search warrant; is that right?

9 A. Yes, ma'am. I assisted in searching for stolen
10 property.

11 Q. Okay. Were the statements that you took
12 recorded?

13 A. Yes, ma'am. They were.

14 Q. Okay. Do you recall having any other further
15 involvement?

16 A. No, ma'am.

17 Q. Okay. Did you give those recordings to the
18 State and the defense?

19 A. Yes, ma'am.

20 MS. PRICE: Okay. Thank you. No further
21 questions.

22 THE COURT: Thank you, Officer. You can step
23 down.

24 THE WITNESS: (Complying.)

25 MR. SMITH: Your Honor, I would ask that he be

1 excused.

2 THE COURT: Any objection to this witness being
3 excused?

4 MS. PRICE: No, sir, Your Honor. Thank you.

5 THE COURT: Officer, you are excused.

6 (Witness excused.)

7 MR. SMITH: Defense rests.

8 THE COURT: Okay. Mr. Bailiff, would you take
9 our jury to the jury room, please?

10 THE BAILIFF: (Complying.)

11 (At 11:11, the jury exited the courtroom.)

12 THE COURT: Will there be any reply testimony?

13 MS. PRICE: No, Your Honor.

14 THE COURT: Okay. Let's ---

15 MS. PRICE: I would like to ask that we release
16 the other individuals that he had under subpoena.

17 THE COURT: All right. All of the witnesses
18 would be released.

19 MS. PRICE: And, Your Honor, may the witnesses
20 be sent back, Mr. Macomson and Mr. Surdak, then as
21 well?

22 THE COURT: They will be free to be transported
23 as their role has concluded.

24 MS. PRICE: Thank you, sir.

25 THE COURT: Now, let's use this opportunity to

1 discuss the charges.

2 MR. SMITH: Your Honor, may I make a motion for
3 a directed verdict based on the property man telling
4 us that he had no knowledge of any of those stolen
5 goods, so that wasn't a reason to go in the house.

6 And the drugs that were inside the tire that
7 we're guessing that my guy knew about, that was
8 another reason to put him in the house. That's not
9 sufficient, Your Honor.

10 We would ask, once again, that the suppression
11 be revisited and the search warrant be found to
12 be ---

13 THE COURT: Mr. Smith has renewed his motion,
14 and they continue to be denied.

15 Now, let's -- let's talk about the charges. I
16 have my general -- a general charge about the roles
17 of the judge and jury.

18 I have the charge on -- the standard charge on
19 direct and circumstantial evidence; reasonable
20 doubt; credibility of witnesses; expert witness;
21 standard charge on the statement of the defendant;
22 presumption of innocence.

23 I have the standard charge on failure of the
24 defendant to testify; a charge on the intent.

25 I have the charge on the indictment not -- the

1 indictment is not evidence.

2 And then I have the statute trafficking;
3 statute on possession.

4 And then where was the -- and the standard
5 charge incorporates the case law that was submitted
6 from -- from the State. Are there any further
7 charges from the State or the defense?

8 MS. PRICE: Your Honor, I just want to make
9 clear that both of the things that I submitted are
10 incorporated in the general charge; is that correct?

11 THE WITNESS: I added the offense to the second
12 page. It's the second paragraph.

13 MS. PRICE: Thank you.

14 THE COURT: Possession -- I'll read it to
15 you ---

16 MS. PRICE: Yes, sir.

17 THE COURT: --- so each side can hear it.

18 "Possession of ten grams or more of
19 methamphetamine gives rise to permissive inference
20 of a violation of this law. Resulting implication
21 only permits rather than requires a jury to infer a
22 violation of the law. This permissive inference
23 does not relieve the State from actually proving
24 beyond a reasonable doubt the element of intent to
25 distribute.

1 "This permissive inference is simply an
2 evidentiary fact to be taken into consideration by
3 the jury, along with the other evidence in the case
4 and be given such weight as the jury determines it
5 should receive."

6 MS. PRICE: Yes, sir. Thank you.

7 THE COURT: Okay. Anything further from the
8 defense?

9 MR. SMITH: No, sir.

10 THE COURT: Okay. All right. Well, we will --
11 it's -- let's take just a short break. I'll give
12 each attorney an opportunity to gather their
13 thoughts. Ms. Price, you'll go first.

14 MS. PRICE: Yes, Your Honor. If you don't
15 mind, is there any way we can take an early lunch?
16 And then since they're going to be deliberating and
17 since the charge and our closing I anticipate will
18 be lengthy, is there any way to do that to allow
19 us ---

20 THE COURT: Well, Richard, you already ordered.

21 MS. PRICE: Since there was defense testimony,
22 I'd like to be able to address it in my closing.

23 THE COURT: The clerk's ordered them lunch.
24 Well, we can -- it's 11:15 now.

25 MR. SMITH: Can we do the charges before

1 closing?

2 THE COURT: No. I don't want to do that. We
3 can -- we can go ahead and do that if the attorneys
4 are requesting it. That would give us some down
5 time or either an hour before.

6 Can you cancel? I can send them to lunch.

7 THE CLERK: Yeah, I can check.

8 THE COURT: All right. Well, let's -- let's
9 stand down for a few minutes and then we'll find
10 that out. I anticipate the jury being -- having
11 lunch here, so the clerk was going to order them
12 lunch. So we'll just -- we'll take a short break
13 while Richard gets that answer.

14 (From 11:17 to 11:24, a recess was taken.)

15 THE COURT: All right. Mr. Bailiff, would you
16 get our jury, please?

17 THE BAILIFF: (Complying.)

18 (At 11:24 a.m., jury entered the courtroom.)

19 THE COURT: All right. Ladies and gentlemen,
20 the testimony in the case has concluded, so the next
21 stage of the trial will be closing arguments and me
22 charging you the law.

23 Now, this will be a lengthy process. So in
24 speaking with the attorneys, I've decided to go
25 ahead and send you to an early lunch. We'll resume

1 at 1:30, so be back in the jury room shortly before
2 1:30.

3 Again, don't discuss the case with any third
4 parties. Don't deliberate. Don't do any individual
5 independent investigation while you're outside the
6 courtroom. So I hope everybody has a good lunch,
7 and we'll see you at 1:30.

8 (At 11:25 a.m., jury was excused for lunch.)

9 THE COURT: We'll be in recess until 1:30.

10 (From 11:25 a.m. to 1:35 p.m., lunch recess.)

11 THE COURT: Anything before we bring the jury
12 in?

13 MS. PRICE: Your Honor, one thing. When I was
14 downstairs, I went back through the trafficking
15 charge that was presented, and what I noticed was it
16 is the one, two, three, four, fifth line of the
17 second paragraph.

18 It says, "This permissive inference does not
19 relieve the State from actually proving beyond a
20 reasonable doubt the elements of intent to
21 distribute and that's not an element of
22 trafficking."

23 So I would propose that is directly from the
24 case, but that was a case about distributing so I
25 would believe that the appropriate ---

1 THE COURT: Well, I just say -- or we can just
2 say, "proven beyond a reasonable doubt the elements
3 of the offense."

4 MS. PRICE: That -- I'm fine with that. I
5 wanted to bring it to the Court's attention.

6 THE COURT: Are you okay with that, Mr. Smith?

7 MR. SMITH: Yes, sir.

8 MS. PRICE: Thank you, Judge.

9 THE COURT: Okay. All right. Mr. Bailiff,
10 would you get our jury, please?

11 THE BAILIFF: (Complying.)

12 (At 1:37 p.m., jury entered the courtroom.)

13 THE COURT: Okay. Ladies and gentlemen, I hope
14 everyone had a good lunch. We are ready to proceed
15 with closing arguments.

16 MS. PRICE: Thank you, Your Honor. May it
17 please the Court? Mr. Smith?

18 Ladies and gentlemen of the jury, thank you for
19 your time and your patience yesterday and today.

20 The first thing I want to tell you is that you
21 have all the evidence now that you're going to be
22 able to consider in reaching a verdict in this case.
23 Sometimes jurors during deliberation ask for more by
24 way of physical evidence or testimony, but at this
25 point it's impossible to add to that. So you have

1 all the evidence, and I encourage you to take what
2 you have and spend as much time as you need
3 reviewing it and deliberating.

4 I want to take a few moments before you go to
5 your room to deliberate to summarize with you how
6 the evidence you have before you does indeed show
7 beyond any reasonable doubt that this defendant is
8 guilty of the charge that he's been -- the crime
9 that he's been charged with.

10 You've been hearing that the defendant comes
11 into the courtroom innocent, and that's absolutely
12 true. The State completely agrees with that. We
13 embrace our burden of having to prove these charges
14 beyond a reasonable doubt. It's a fundamental
15 concept of American law and our civil liberty, and
16 we should be held accountable for that burden.

17 But I ask that you keep in mind that the burden
18 of reasonable doubt does not mean beyond all doubt.
19 The burden means that you're firmly convinced, and
20 the judge will tell you that in his charge I believe
21 later today.

22 It simply means that you're firmly convinced,
23 and the burden of beyond a reasonable doubt is the
24 same for every crime. It's the same for the most
25 serious offenses like murder, down to speeding

1 tickets. So if that was an insurmountable burden,
2 if that was an impossible burden for the State to
3 carry, then there would never be any convictions.
4 It simply means that you're firmly convinced.

5 So if a person has been convicted, it means
6 that a group of citizens like you came together,
7 looked at what was put before you, and decided that
8 the State had met their burden. I submit to you
9 that we have met our burden. I'm going to go
10 through the law and tell you why I believe that we
11 have met that burden.

12 Now, you haven't heard yet from the Court all
13 of the law that you're going to consider in this
14 case. I am required to go briefly through the law
15 with you now, but the judge is going to charge you
16 on the law. So if anything that I say during this
17 closing argument or anything that Mr. Smith says
18 when speaking to you about the law is different than
19 what the judge tells you, you absolutely have to go
20 with what the judge tells you. He is giving you the
21 law as you are to apply it.

22 But having said that, I have to go through it
23 with you briefly now. And the defendant has been
24 charged with trafficking methamphetamine, so what
25 does the law tell us about that, what it means in

1 terms of the law?

2 Well, the State has to prove beyond a
3 reasonable doubt that the defendant knowingly sold,
4 manufactured, cultivated, delivered, purchased,
5 brought into the state, provided financial
6 assistance, or otherwise aided, abetted, attempted,
7 or conspired to sell, manufacture, cultivate,
8 deliver, purchase, or bring into this state, or --
9 and this is the part that I want you to pay
10 attention to -- was knowingly in actual or
11 constructive possession, knowingly attempted to
12 become in actual or constructive possession of
13 methamphetamine.

14 The State also has to prove in addition to what
15 I just told you and beyond a reasonable doubt, that
16 the amount of methamphetamine in this case was
17 between 28 grams and 100 grams.

18 Now, I want to go back. To prove possession,
19 the State must prove beyond a reasonable doubt that
20 the defendant had both the power and the intent to
21 control the disposition or use of the
22 methamphetamine. I told you a moment ago that it
23 could be either actual or constructive possession.
24 And what does that mean?

25 Actual possession means that the

1 methamphetamine was in the actual physical custody
2 of the defendant. Constructive possession means
3 that the defendant had dominion and control or the
4 right to exercise dominion or control over either
5 the methamphetamine itself or over the property on
6 which the methamphetamine was found.

7 Mere presence at the scene where the drugs were
8 found is not enough to prove possession. Actual
9 knowledge of the presence of the methamphetamine is
10 strong evidence of the defendant's intent to control
11 its disposition or use.

12 Now under the law, the defendant's knowledge
13 and possession may be inferred when a substance is
14 found on the property under the defendant's control.
15 However, this inference is simply an evidentiary
16 fact to be taken into consideration by you, along
17 with the other evidence in the case, and to be given
18 the weight you as the jury decides it should have.

19 The law says that two or more people may have
20 joint possession of a drug, and it also states that
21 possession of more than 28 grams of methamphetamine,
22 such as in this case, give rise to a permissive
23 inference of a violation of the law against
24 trafficking.

25 This permits you the jury to infer that the

1 defendant violated the law if you choose; however,
2 it does not relieve the State's burden of proving
3 this case beyond a reasonable doubt.

4 Now, there are two types of evidence which are
5 generally presented during a trial, direct evidence
6 and circumstantial evidence.

7 Direct evidence is the testimony of a person
8 who claims to have actual knowledge of a fact, such
9 as an eyewitness. It's evidence which immediately
10 establishes the fact to be proven.

11 Then you have something called circumstantial
12 evidence which is proof of the chain of facts and
13 circumstances indicating the existence of a fact.
14 It's evidence which immediately establishes
15 collateral facts from which a main fact can be
16 inferred. Circumstantial evidence is based on
17 inference and not on personal knowledge or
18 observation.

19 The law makes absolutely no distinction between
20 the weight or value to be given to either direct or
21 circumstantial evidence, nor is a greater degree of
22 certainty required of circumstantial evidence than
23 direct evidence. You should weigh all the evidence
24 in this case. And after weighing all the evidence,
25 if you're not convinced of the guilt of the

1 defendant beyond a reasonable doubt, you must find
2 the defendant not guilty.

3 Necessarily, you must determine the credibility
4 of the witnesses whose testified in this case, and
5 credibility simply means believability. It becomes
6 your duty as jurors to analyze and to evaluate the
7 evidence and determine which evidence convinces you
8 of its truth.

9 Now, I know that's a mouthful. And, again, the
10 judge is going to go over the law with you. And
11 whatever he tells you, if it's different from what I
12 just told you, go with what the judge tells you when
13 you apply the law to the facts that were presented
14 in this case.

15 I know you've been very patient, but I do want
16 to summarize how the evidence that the State has put
17 up supports the law and proves the elements of the
18 crime with which this individual is charged.

19 To put things in the simplest terms, having
20 knowledge and possession of a certain weight of
21 methamphetamine is all that's needed for someone to
22 be found guilty of trafficking. I submit to you
23 that the defendant had constructive possession of
24 the drugs in this case. They were not on his
25 person, but they were in his home. And the law says

1 that you can infer that Michael Duncan had knowledge
2 and possession of this methamphetamine because it is
3 found on his property and under his control.

4 Ladies and gentlemen, people don't just leave
5 methamphetamine laying around. It's a commodity.
6 It's bought and sold. It has value. People who
7 keep it in great amounts such as what was found,
8 guard them. No one abandons the drugs behind a
9 locked door in this defendant's home.

10 There's no question that the methamphetamine
11 was found in his home. You heard from multiple
12 sources that this was his residence. There was no
13 evidence presented that contested that fact.

14 You heard from Detective Woody -- Wood that his
15 experience as a fire chief in the area where this
16 individual lives has given him knowledge and, in
17 fact, personal knowledge that that is the
18 defendant's residence.

19 In addition, you will have in evidence -- you
20 do have in evidence his driving record from the DMV.
21 The address that he provided the DMV with is the
22 address that was at issue in this case. That comes
23 directly from the defendant himself.

24 Mr. Duncan also had his name or his nickname
25 written on the wall inside the bedroom area. You

1 may remember me asking several witnesses, and you
2 may have wondered at the time why I was asking the
3 witnesses that question. Well, I'm asking them
4 because it's important that this is his residence.
5 This is his bedroom. His name is on the wall. He
6 was here. And not only was he here, he was here in
7 2015, and that's the year in which this offense
8 occurred.

9 Now, the lock on the door you heard was in
10 Mr. Duncan's possession. You heard that from
11 Detective Hendrix. Detective Hendrix didn't
12 remember if it was on the table in front of him or
13 if it was on his person, but he took the key from
14 Michael Duncan. You didn't hear any testimony that
15 gave those keys or put those keys in anyone else's
16 possession but Mr. Duncan.

17 You heard that there was a lock on the door and
18 that there was a chain on the door. It was secured.
19 Clearly, he had the key. There's a lock and key.
20 Under the law, he has the right to exercise dominion
21 and control over his bedroom and over anything
22 inside of it.

23 And, ladies and gentlemen, that's where the
24 drugs were found. This prompts you to constructive
25 possession. He knew the drugs were there. You can

1 infer that fact. No one else left the drugs in
2 Mr. Duncan's bedroom behind a lock and key.
3 Mr. Duncan put them there.

4 Now, 67.67 grams of methamphetamine is what was
5 found. That's all you need, the weight of the
6 drugs, if you decide to infer that Mr. Duncan was
7 trafficking. You heard testimony from Ms. Lanford,
8 the forensic analyst. There's no doubt the
9 substance found in his bedroom was methamphetamine.
10 No one's brought up any alternative theory there.
11 No one challenged her testimony.

12 And she told you that the total weight was
13 67.67 grams. You heard no testimony that
14 contradicted hers', and you heard from her that this
15 was a manmade substance. It didn't occur in actual
16 thin air. It didn't just appear. It didn't come
17 out of thin air. Someone made it and someone put it
18 there in packaging.

19 Now, let's talk about the packaging. Along
20 with the weight of the drugs in this case, you have
21 the packing which indicates that he was distributing
22 the drugs. There were three individually packaged
23 separate amounts. The amounts are ready to be sold.

24 Think about it like a pack of gum. You've got
25 three different sticks of gum ready to be handed out

1 when people come with the cash and they want to pay
2 for it. It's ready to be distributed. It's ready
3 to be sold.

4 . You also have a digital scale that you saw in
5 the photograph that was found. A scale can be used
6 to measure out amounts of methamphetamine prior to
7 packaging it for buyers.

8 . I would say consider this like a deli where you
9 go in the grocery store and someone's weighing out
10 slices of cheese or slices of meat and then coming
11 up with an amount that you charge for that amount.
12 That's how drugs are typically sold. You get a
13 weight and then someone gives you the cost based on
14 that weight. You saw the scale. He had a way to
15 measure it for sale.

16 Now, you heard testimony from Detective Hendrix
17 that he found approximately \$900 in cash on this
18 defendant's person. Drug transactions are typically
19 handled in cash. They're not usually handled by a
20 swipe of the credit card. That's a great deal of
21 cash, and I submit to you that he had it from
22 previous transactions.

23 And you heard testimony that property taken
24 from victims that morning that were stolen that very
25 day was also found in this defendant's home. You

1 heard a small amount of methamphetamine was found
2 outside the defendant's home, but on the property.

3 A reasonable conclusion you could make as the
4 jury is that before law enforcement arrived, Clint
5 Macomson, the man you heard from who was testifying
6 for the defendant, admitted to having stolen
7 property, traded some of that stolen property for a
8 small amount of methamphetamine that was found
9 outside of the home.

10 Ladies and gentlemen, the circumstantial
11 evidence in this case was to be given the same
12 amount of weight as the direct evidence in this
13 case. That's what the law says.

14 Now, you're inside the courtroom with me today.
15 We don't have any windows. We can't see outside.
16 But you walk outside after we're all done here and
17 you see that everything is wet, you know, the cars
18 are wet, the ground is wet, and you see people
19 shaking off umbrellas, well did it rain or is there
20 a super sprinkler that came out of the sky? What is
21 the logical conclusion? Take the facts as you know
22 them, apply your common sense, and reach the
23 conclusion that's accurate.

24 You know it from evidence put before you that
25 this defendant is guilty of trafficking

1 methamphetamine. Ask yourselves what makes logical
2 sense. You heard no testimony that anyone else was
3 in possession of the methamphetamine found inside
4 Mr. Duncan's home. No one else had access to his
5 home. You heard me ask both Clint Macomson and
6 Joseph Surdak if they put the methamphetamine in his
7 home. They both said no.

8 You also heard Mr. Macomson say without
9 hesitation that, yeah, he had the stolen property.
10 But when I asked him about the methamphetamine
11 inside the home, he said, "That's not me." You've
12 heard no testimony that anybody other than this man
13 had a key to that home.

14 The stolen property and drugs were found
15 outside the home. And along with that, there was
16 additional stolen property that was still missing
17 that was reported to law enforcement that same day.
18 That's what led the detectives to execute a search
19 warrant on this home. They couldn't see inside.
20 They had additional items that were missing, a
21 reasonable conclusion that they drew and that a
22 judge agreed with, is that there was a likelihood
23 that stolen property and some drugs may be inside
24 Mr. Duncan's home.

25 And guess what? They were. There was stolen

1 property inside the home. There was narcotics found
2 inside the home. The only person who had access to
3 the big door with the big chain with a big lock was
4 Michael Duncan, and he's the only one who could
5 assert control over what was inside. This man
6 sitting right over here is the only person who had
7 access to the trafficking weight of methamphetamine
8 found in his bedroom.

9 You heard multiple times, and I'm sure
10 Mr. Smith is going to bring this up, that there's a
11 sign reading "Beware of dog and owner" over by the
12 door that had the lock and the key. Chains, locks,
13 sign, a dog that's on a chain, which again has been
14 brought up multiple times. But all of that outside
15 of a drug stash, that's not accidental. That's
16 somebody guarding their product.

17 And speaking of Mr. Smith bringing up the dog
18 repeatedly and bringing up the truck repeatedly,
19 bringing up handcuffs repeatedly, Mr. Duncan is not
20 on trial for the truck. Mr. Duncan is not on trial
21 for the little bit of drugs that was found outside
22 of his property. Mr. Duncan is on trial today for
23 the massive amount of methamphetamine that was found
24 in his bedroom. That's it.

25 So all of these other things that Mr. Smith

1 keeps bringing up are meant to distract you from the
2 one charge that we're here to decide. Don't let him
3 do a smoke and mirrors on you. Keep your focus on
4 the one thing that you're here to evaluate.

5 You've seen all the evidence that you need to
6 convict this defendant of trafficking
7 methamphetamine. I ask that you do justice this
8 afternoon and bring back a verdict of guilty. Thank
9 you.

10 THE COURT: All right. Mr. Smith.

11 MR. SMITH: May it please the Court?

12 Ladies and gentlemen, I appreciate your
13 patience as well as opposing counsel and the Court.
14 It's a very big deal here, a very big deal for
15 Michael Duncan.

16 The system that we have is the best there is,
17 except for one minor problem, human element. If it
18 wasn't for the humans, it would be perfect. But
19 humans have different ways of interpreting things
20 and seeing things. So if someone has a bone to
21 pick, an ax to grind, well then they see it a little
22 bit differently than someone else perhaps.

23 If you watch CSI or any other police show, they
24 are like, "Where were you on Thursday night?"

25 "Oh, I can't remember."

1 First -- first point that, you know, they're
2 not telling you the truth, "I can't remember this
3 and I can't remember that." Every single officer
4 that took the stand, "I don't remember that. I
5 didn't do that. That wasn't a task I was supposed
6 to do. I don't remember it."

7 Bottom line is, nobody could remember anything.
8 Who is that? They don't know who the leader is, who
9 the one bringing everything together.

10 Officer Stipe got on the stand and admitted
11 that he did not see the drugs. It was Detective
12 Wood. When Officer Stipe saw the drugs, he's the
13 one that collected them and he collected them
14 because Officer Wood told him there's a gun there.
15 Drugs are not visible to Officer Wood. Despite the
16 fact he was kneeled down and looking down at the
17 front of the Jeep. He could see the gun, but he
18 couldn't see the drugs doing that.

19 Now, Michael Duncan, there's no testimony
20 offered other than the fact that he was at the far
21 end of the building or under the awning. There is
22 no question that drugs were on the other side of the
23 tire. Officer Stipe refused to admit to the fact
24 that you can't see through a tire.

25 He said that -- you heard Joey Surdak who got

1 arrested for constructive possession of the drugs.
2 Constructive possession, there's two parts to it.
3 You have knowledge of drugs and then you have the
4 ability to grab them or have the ability to exert
5 control over them.

6 Well, the officer that testified told us that,
7 oh, Michael Duncan, he was at the end when we got
8 there. That's what they all said. But the drugs
9 were moved one would think. Where they were put
10 there at some point, but bottom line is you can't
11 tell us what Michael Duncan was thinking. You don't
12 know his knowledge. You don't know if he conceded.
13 And they said that he -- that they couldn't say that
14 he couldn't see there, but Officer Wood was five
15 foot away did not see it.

16 Michael Duncan was half a building away, let's
17 say 20 feet, 15 feet, and they want to try to say
18 that he had the ability to control that; he had
19 either -- he had knowledge of its existence. They
20 didn't have knowledge of its existence until Officer
21 Wood saw the gun. So if he doesn't see the gun,
22 then the drugs don't come up, but they did.

23 Constructive possession is knowledge of them
24 and the ability to move and exert power over it.
25 You can't do that from 12 feet away. Can't do it.

1 You can't prove that he had knowledge of their
2 existence. How do you prove that knowledge? You
3 can't assume it beyond a reasonable doubt.

4 Assume that he had knowledge, that's what they
5 said, so they said they got the search warrant.
6 There's a stolen truck out there. Could be a stolen
7 something else in there in the house. Because some
8 guy drove a stolen truck with a stolen trailer on
9 his property, they got in his house.

10 The drug pipe that was found underneath the
11 vehicle, glass as we all know is quick to accept
12 fingerprints, but they didn't check for
13 fingerprints. They didn't check for fingerprints
14 because they don't want to know whose pipe it is.
15 If they know whose pipe it is, they can't get in his
16 house unless it's his. That's the whole thing.
17 They said that the drug pipe they found could mean
18 that there's drugs inside.

19 The solicitor told us that Macomson could've
20 just come in there and traded for the black and the
21 meth -- the methamphetamine. Could have got it
22 right then for the 1966. Of course, could've been a
23 1968 Barracuda that he sold, but I didn't hear any
24 evidence regarding that.

25 Mr. Macomson drove onto that property.

1 Mr. Duncan was not there. There's no evidence to
2 the contrary. There's no evidence that they were
3 friends or even knew each other. But he drove on
4 the property, and because of that the police came on
5 the property.

6 They didn't -- they cuffed Clinton Macomson.
7 Joey Surdak said that, in fact, he told them. More
8 importantly, Kreig Marzoff, the last detective told
9 us that Joey told him that. And all the other
10 witnesses say that nobody told them who -- who stole
11 the truck. Why is that? Once again, this lack of
12 knowledge was presented to a magistrate to get in
13 the house. Maybe there's something else stolen in
14 there.

15 Mr. Marzoff told us specifically, "I only know
16 of the motorcycle, the trailer, and the truck."
17 They found those right off the top, but yet they
18 still went in his house. The Fourth -- Fourth
19 Amendment provides safety from such breaches.
20 Someone drives on your property, stole the car, you
21 haven't done anything, they're going to come in your
22 house.

23 Ironically, the drugs that they found at the
24 scene allegedly were in a black bag and the silver
25 whatever it was, the -- the parts to the vehicle or

1 I don't know what they are, but they were in the
2 same vicinity, probably this (indicating) far apart,
3 a foot and a half maybe apart from each other.

4 Now, the State has said that it was a bedroom.
5 It wasn't in his bedroom. He was right by the door
6 however.

7 Clinton Macomson got there and OnStar shuts it
8 down. He's not going anywhere, and so he's trying
9 to get rid of stuff. Trailer gets detached. He
10 wants to be away from the truck. He knows what's
11 going to happen. He gets a gas tank. Was he
12 putting gas in the motorcycle to get away? I don't
13 know.

14 But the bag, the black bag, there's no
15 testimony as to when, who, why. There's not a
16 single bit of evidence. It's just a black bag with
17 stuff in it.

18 Clinton Macomson wanted to get rid of stuff.
19 He did that. He did that. Mere presence is not --
20 is not guilty. Mere presence on the front porch is
21 not guilty.

22 But you heard that Joey Surdak got caught the
23 second time with the drugs in the car. Why?
24 Because he was in constructive possession. He had
25 been within reach of it. Michael Duncan was

1 arrested for that.

2 Detective Hendrix, first they told us about how
3 the dog startled him. And then the dog is on a
4 leash. Then I showed him pictures of the beige dog
5 who Mr. Surdak said was a Pit Bull just roaming
6 around the property not bothering anybody. No one
7 said the dog was barking. No one said there was a
8 dog.

9 I mean, struggle just to say that they saw this
10 beige dog, but Detective Hendrix continues with that
11 he saw the barking dog or mean dogs what drug
12 dealers have. It goes with his story, but there's
13 no picture of a dog. There's not picture of a post
14 with a leash on it. There's no testimony of a
15 barking dog. There's none of that.

16 In fact, we haven't heard anything other than
17 term inference. They're trying to prove beyond a
18 reasonable doubt that he was -- I think she used
19 about 25 verbs -- possess; cultivate; sale; trade.
20 Those are all action verbs. Did you hear of
21 Mr. Duncan doing anything? Anything?

22 They were kind enough to show us the wall where
23 people said they were there. Who all was there? We
24 know at least one more person and Mr. Duncan was
25 there or two more people.

1 Mr. Surdak said he went around the building.
2 Have no idea who or what that relates to. The point
3 is there are a lot of people coming around that
4 place. And as it was pointed out, it's been there
5 for at least five years according to Mr. Surdak.

6 Mr. Surdak got cuffed two different times.
7 Mr. Marzoff told him, "You can leave," because he
8 knew Clinton Macomson had been the person who stole
9 the truck.

10 Mr. Surdak said that Mr. Duncan wasn't there
11 and he had taken his girlfriend Nicole to probation.
12 Mr. Davis who had a difficult time understanding.
13 I'm not sure what was wrong, but he stated to us
14 that Nicole was there and that's what Mr. Duncan
15 provided to, him and Nicole was there the whole
16 time.

17 Mr. Duncan took her to probation and was not
18 there. What went on when he was not there is
19 unknown.

20 They didn't try to get fingerprints off the
21 pipe because they said metal try to get fingerprints
22 off the pill bottles because it's better to find out
23 that's his because that was found in his place. The
24 inference would be far greater than that if prints
25 on it. We don't have that information.

1 So we're supposed to assume that because the
2 black bag and other alleged stolen parts that we
3 didn't have on the incident report or anything that
4 said those were stolen parts were definitely the
5 ones taken if they were taken.

6 Remember, Marzoff said he's a property
7 investigator. He didn't say, "Oh, yeah, there's a
8 list. These are all the items." He knew of three
9 items that were outside. But they go inside because
10 there could be some more stuff based on what?
11 Circumstantial evidence.

12 Circumstantial that the drugs are in a black
13 bag and were in his place right by the door.
14 Circumstantial that Clinton Macomson was there that
15 day. He just happened to be there uninvited,
16 unknown, maybe he'll show up with stolen stuff. And
17 then whenever the truck gets stopped, he's got to
18 get rid of everything. I don't know what all he
19 brought to that place that day.

20 You all said that you didn't know any of the
21 witnesses. None of you raised your hand. How do
22 you decide to believe? Do you believe them because
23 they have a badge? They're all human beings. When
24 they sit up here and they tell you over and over and
25 over, "I don't know. I don't remember." How

1 credible is that? That's -- that's the crux of the
2 situation here.

3 All of their things that they're saying are
4 inferences or circumstances, but there's no --
5 there's nothing that has been presented to you that
6 said Michael Duncan did drugs. There's nothing that
7 said Michael Duncan did extra, nothing.

8 No one took anything into the building. Nobody
9 brought anything out of the building. So they can't
10 tell us when that black bag is going to be there.
11 They can't tell us that those were the parts. Those
12 parts could've been purchased any time. Could've
13 been purchased by Mr. Duncan. Didn't go to the
14 store. I don't know what kind of parts, but they
15 want to come up here and tell you that it's a full
16 run conclusion that the parts that they found were
17 the ones taken.

18 Is there some sort of identification that they
19 could see that? They didn't offer that. The drugs,
20 the methamphetamine, when was it put there? It
21 seemed a bit cluttered. I think that's an
22 understatement. Have any idea of that black bag
23 being thrown in there? When? Who? Why?

24 Smoke and mirrors. Talking about smoking
25 mirrors, talking about facts. The witnesses have

1 been all over. Apparently, Officer Marzoff was not
2 included in the group there, the messaging group,
3 because he told us that the only thing that he knew
4 to be stolen was those three things that were right
5 outside that they found the GPS by OnStar. So he
6 knew who stole the truck.

7 And then the drugs they tried to associate
8 Mr. Duncan to under the truck. There's no way he
9 could've seen those through that tire. That's why
10 they didn't want to know whose drugs those were so
11 they could charge everybody and say, "Oh, yeah, must
12 be drugs inside." They found a single pipe, a
13 single baggy outside.

14 A very scary notion that the police come in
15 your house based on someone stealing a truck,
16 pulling into your yard, and then unknown -- an
17 unknown person putting drugs under his truck. Come
18 in your house because obviously there's more drugs,
19 more stolen things in the house, but not related to
20 this case according to Officer Marzoff. In essence,
21 we know there are stolen things. That's what he
22 knew, but they still used that to get in the house.

23 The victims were unaware of the theft. They
24 had to send someone to Starr in order to tell them,
25 but yet and of course nobody -- Officer Marzoff, I'm

1 not sure how long was there.

2 "When did their information come back that it
3 was stolen?"

4 "I don't know."

5 "What was stolen?"

6 "I don't know. That wasn't my -- that wasn't
7 my task."

8 No question that Mr. Duncan was not there when
9 the stolen truck arrived. No question that we don't
10 know who owned the drugs that were between the tires
11 and when they were put there. They didn't
12 fingerprint any glass, any guns, nothing.

13 They just determined that the black bag was
14 Mr. Duncan's, the black bag containing the pills,
15 methamphetamine, all put in the black bag like
16 you're travelling. That is Mr. Duncan's house.
17 That's his methamphetamine in his pipe. I guess
18 safe to assume the drugs were in the house. That's
19 not reasonable. That's not reasonable.

20 The idea of Officer Stipe saying that he
21 couldn't say whether Mr. Duncan could see or not see
22 the drugs through the tire, that shows you the
23 State's motivation. They're not going to admit any
24 wrong. They're just going to continue forward,
25 despite the facts, the facts that a guy came on his

1 property with stolen stuff, had a gun. The girl had
2 a gun. And the drugs were found right by the door
3 next to the stolen stuff.

4 But there's no -- there's no information that
5 we've shared or have been given that tell us when it
6 got there. No one said, "Oh, yeah, I saw a black
7 bag go in there." Not to say it didn't go in there,
8 but it is to say we don't know how and we don't know
9 when.

10 Reasonable doubt. Relates to if you think
11 again, if it makes you think, you know, the whole
12 was in the more words of Roger Clemens, please
13 remember, that's reasonable doubt. Who knows they
14 didn't know whose drugs they were alledgedly, but in
15 order to get in that house, they said they arrested
16 everybody so that way they could get into Michael
17 Duncan's house. I don't know who was in there that
18 day or the previous week. I don't know when that
19 clutter was put in there.

20 I suggest to you that, ladies and gentlemen,
21 please take a look at what's been offered. Take a
22 look at what was on the stand, an inability to
23 remember anything unless it was against Michael
24 Duncan. That's what it comes down to. Fingerprints
25 on the tube, the pipe, could've told us whose pipe

1 it was. Maybe that would lead to who put the drugs
2 in there. I don't know.

3 Take into consideration everything that was put
4 before you and not before you, and I think you'll
5 find that you can't come to a conclusion beyond a
6 reasonable doubt. Thank you.

7 THE COURT: Ms. Price, reply?

8 MS. PRICE: Yes, sir. Briefly.

9 I mean, very briefly, ladies and gentlemen. I
10 do appreciate your patience.

11 Mr. Smith just spoke to you for 20 minutes and
12 had no explanation for why there was 67.67 grams of
13 methamphetamine found in his client's bedroom. He
14 spoke to you a lot about the things that his client
15 is not charged with, and he spoke to you a lot about
16 officers saying that they didn't remember certain
17 things. Well, ladies and gentlemen, the reason that
18 they say "I don't remember" if they don't remember
19 is because they have been told not to make things
20 up.

21 How easy would it be for them to miraculously
22 remember something? The fact that they say they
23 don't remember ought to give their -- credibility to
24 their statements, the things that they do remember.
25 If they don't remember something and they say they

1 don't remember something, then that's what they're
2 supposed to do.

3 They're not supposed to take the stand and say,
4 "Well, oh, yeah, I totally remember that. In fact,
5 I think Michael Duncan told me that he put the drugs
6 there himself." You didn't hear that from them.
7 You heard the facts from them. You heard what they
8 do remember from them. And what they don't
9 remember, they didn't say. And what is made up is a
10 conspiracy theory that they would put their jobs on
11 the line for something like this.

12 He's not charged with possession of a dog.
13 He's charged with possession of methamphetamine. So
14 pretend there wasn't a dog. The State doesn't care
15 about that. You still have enough. That's just one
16 small detail that adds to the totality of the
17 circumstances that are before you.

18 Deputy Hendrix -- I mean, Detective Hendrix
19 isn't going to jeopardize his career by making up a
20 phantom dog. I'm not asking you to believe them
21 because they have a badge. I'm asking you to
22 believe them because what they tell you is the
23 truth.

24 Mr. Smith said, "Nobody saw anybody go in
25 there, out of there." Now that may be true. And if

1 that's true, then that means the only person who had
2 been in there was Mr. Duncan because none of the
3 witnesses, he's right, said that they saw anybody
4 else go inside or anybody else come out, which means
5 that methamphetamine was there before they even got
6 there, which would also explain why he didn't want
7 the stolen truck on his property because it was
8 going to draw attention to the stuff that he had and
9 it did.

10 Ladies and gentlemen, I'm asking that you use
11 your common sense, that you listen carefully to the
12 law as given to you by the judge, and apply the
13 facts. Thank you again for your time and attention.

14 MR. SMITH: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (Sidebar discussion.)

17 THE COURT: Ladies and gentlemen, we have come
18 to the point in the trial where I instruct you on
19 the law. My instructions will be somewhat lengthy.
20 They will be in three parts:

21 First, will be instructions on the general
22 rules that define and control the jury's duties.

23 Second, the instructions that state the rules
24 of law you must apply; i.e., what the State must
25 prove to make its case.

1 And, lastly, some rules for your deliberations.

2 The general rules begin with your duties as
3 jurors. It is your duty to find the facts from all
4 the evidence in the case. To those facts, you must
5 apply the law as I give it to you. You shall not be
6 concerned with what the law should be, but what it
7 is.

8 And you must not be influenced by any personal
9 likes or dislikes, feelings, prejudices, or undue
10 sympathy. That means that you must decide the case
11 solely on the evidence before you in accordance with
12 the law, the very thing you took an oath to do at
13 the beginning of the trial.

14 It is your responsibility, and yours alone, to
15 determine the facts in this case. I would,
16 therefore, charge you that during the course of this
17 trial or during this charge you have been given or
18 left with the impression or feeling that I have a
19 personal feeling about the facts of this case or
20 that I favor one side or the other, I would
21 specifically instruct you to disregard that
22 impression.

23 Under our Constitution, I'm not allowed to have
24 an opinion about the facts of this case. You should
25 not be influenced by any objections or the Court's

1 ruling.

2 You and you alone are the judges of the facts.
3 You determine the facts by evaluating or weighing
4 the evidence that you have heard during the trial.
5 What is evidence? Evidence is the sworn testimony
6 from the witnesses and any exhibits that have been
7 entered into evidence.

8 The statements by the attorneys are not
9 evidence. What they have said in opening
10 statements, closing arguments, and at other times is
11 intended to help you determine the evidence, but it
12 is not evidence.

13 There are two types of evidence which are
14 generally presented during a trial -- direct
15 evidence and circumstantial evidence.

16 Direct evidence directly proves the existence
17 of a fact and does not require deduction.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of
20 a fact.

21 Crimes may be proven by circumstantial
22 evidence. The law makes no distinction between the
23 weight or value to be given to either direct or
24 circumstantial evidence. However, to the extent
25 that the State relies on circumstantial evidence,

1 all the circumstances must be consistent with each
2 other and when taken together point conclusively to
3 the guilt of the accused beyond a reasonable doubt.

4 If the circumstances merely portray the
5 defendant's behavior as suspicious, then the proof
6 has failed. The State has the burden of proving the
7 defendant guilty beyond a reasonable doubt. The
8 burden rests with the State regardless of whether
9 the State relies on direct evidence, circumstantial
10 evidence, or a combination of the two.

11 What is a reasonable doubt in the law? A
12 reasonable doubt is the kind of doubt that would
13 cause a reasonable person to hesitate to act. Some
14 of you may have served as jurors in civil cases
15 where you were told that it is only necessary to
16 prove that a fact is more likely true than not true,
17 such as by the greater weight or preponderance of
18 the evidence.

19 In criminal cases, the State's proof must be
20 more powerful than that. It must be beyond a
21 reasonable doubt. Proof beyond a reasonable doubt
22 is proof that leaves you firmly convinced of the
23 defendant's guilt. There are very few things in this
24 world that we know with absolute certainty.

25 And in criminal cases, the law does not require

1 proof that overcomes every possible doubt. If based
2 on your consideration of the evidence you are firmly
3 convinced of the defendant's guilt, then you must
4 find the defendant guilty.

5 If on the other hand you think there is a real
6 possibility that the defendant is not guilty, you
7 must find for the defendant and give him the benefit
8 of the doubt. A reasonable doubt may arise from the
9 evidence or from a lack of evidence. The defendant
10 is entitled to every reasonable doubt that may arise
11 in the case.

12 If upon any issue of fact essential to a
13 conviction and a verdict of guilty of an offense, if
14 you have any reasonable doubt as to how that issue
15 should be resolved, it is your duty to resolve that
16 doubt in favor of the defendant.

17 Suspicion, however strong, is not enough to
18 sustain a conviction. The evidence presented by the
19 State must be substantial evidence that tends to
20 prove the guilt of the defendant beyond a reasonable
21 doubt.

22 As the judges of the facts, you are the sole
23 judges of the credibility, that is the believability
24 of the witnesses who have testified in this case.

25 In determining their credibility, you may take

1 into consideration many things such as: The
2 appearance and manner of the witness on the witness
3 stand, sometimes referred to as the demeanor of the
4 witness.

5 Was the witness able to see, hear, and know
6 about the things which the witness testified?

7 How well was the witness able to recall and
8 describe those things?

9 Did the witness have a cause or reason to be
10 biased or prejudiced in favor of the testimony he or
11 she gave?

12 How reasonable was the witness's testimony
13 considered in the light of all the evidence in the
14 case?

15 Was the witness's testimony contradicted by
16 what the witness had said or done at another time by
17 the testimony of other witnesses or by other
18 evidence?

19 These are some of the factors you may consider
20 in whether to believe testimony. As jurors, you
21 have the right to believe the testimony of a witness
22 or all the testimony of a witness or none of the
23 testimony of a witness.

24 You have the right to believe a portion of the
25 testimony of a witness and disregard the rest.

1 You may believe the testimony of one witness
2 over the many or the many over the one.

3 Most certainly you do not determine the matter
4 of credibility by simply counting up the number of
5 witnesses who may have testified on behalf of the
6 parties in this case.

7 Ladies and gentlemen, normally a person cannot
8 give opinion testimony. Normally, a witness must
9 testify to what either they saw, heard, sensed -- or
10 sensed by smell or something of that nature.

11 However, there is an exception when someone is
12 qualified as an expert because of education or
13 experience. They are permitted to give their
14 opinion in certain areas the Court qualifies them as
15 an expert in that area. This does not mean that you
16 are required to accept that opinion. Like any other
17 choice, you may place whatever weight on this
18 person's testimony that you as the judge of the
19 facts deem appropriate.

20 A statement alleged to have been made by the
21 defendant has been admitted into evidence in this
22 case. While the Court has determined that the
23 statement is admissible, I instruct you that you
24 make the ultimate decision of whether or not the
25 defendant made the statement.

1 If the defendant did make the statement, you
2 must determine whether the statement was made by the
3 defendant voluntarily of his own freewill. This
4 means that the statement was not caused by pressure,
5 force, fear, threats, coercion, or intimidation, or
6 by hope or a promise of leniency or any reward of
7 any kind.

8 In determining whether the statement was
9 voluntary, you should consider both the
10 characteristics of the defendant and the details of
11 his questioning.

12 Some factors you must consider are: The age of
13 the defendant, the defendant's education or lack of
14 education, the defendant's mental ability or
15 capacity, the defendant's IQ or intelligence, the
16 defendant's background, environment, the place and
17 length of detention, the nature of questioning, the
18 advice or lack thereof to the defendant of his
19 Constitutional rights including but not limited to
20 the right to remain silent, that any statement could
21 be used against him in a court of law, the right to
22 have a lawyer present, that if he could not afford a
23 lawyer, a lawyer would be appointed to represent him
24 without any cost, that he could stop making the
25 statement at any time.

1 You must carefully consider all the surrounding
2 circumstances before you give any weight to an
3 alleged statement. The State has the burden of
4 proving beyond a reasonable doubt that the alleged
5 statement was voluntary.

6 If you determine it was, you may give the
7 statement any further consideration that you deem
8 proper. You must decide what weight, if any, should
9 be given to the alleged statement.

10 If you determine that the alleged statement was
11 not free and voluntary, you should not consider the
12 statement at all.

13 The defendant has pled not guilty to this
14 indictment, and that plea puts the burden on the
15 State to prove the defendant guilty. A person
16 charged with committing a criminal offense is never
17 required to prove himself innocent.

18 I charge you that it is an important rule of
19 law that a defendant in a criminal trial, no matter
20 what the seriousness of the charge may be, will
21 always be presumed to be innocent of the crime for
22 which the indictment was issued, unless guilt has
23 been proven by evidence satisfying you of that guilt
24 beyond a reasonable doubt.

25 The presumption of innocence does not end when

1 you begin your deliberations, but it accompanies the
2 defendant throughout the trial until you reach a
3 verdict of guilt based on evidence satisfying you of
4 that guilt beyond a reasonable doubt.

5 The presumption of innocence is like a robe of
6 righteousness placed about the shoulders of the
7 defendant, which remains with the defendant until it
8 has been stripped from the defendant by evidence
9 satisfying you of the defendant's guilt beyond a
10 reasonable doubt.

11 The presumption of innocence is not mere legal
12 theory. It is not just a legal phrase. It is a
13 substantial right to which every defendant is
14 entitled, unless you the jury are satisfied from the
15 evidence of the defendant's guilt beyond a
16 reasonable doubt.

17 I instruct you and emphasize that the fact that
18 the defendant did not testify is not a factor to be
19 considered by you in any way in your deliberation
20 and in your consideration on the questions of guilt
21 or innocence of the defendant. It must not be
22 considered by you in any manner whatsoever. The
23 defendant has the Constitutional right to remain
24 silent, and the assertion of this right must not be
25 considered by you in your deliberations.

1 I repeat, under your oath, you are to draw no
2 conclusion whatsoever from the fact that the
3 defendant in this case did not testify. The fact
4 that this defendant did not testify should not even
5 be discussed in the jury room.

6 The burden of proof as I have stated to you is
7 on the State. The defendant is not required to
8 prove his innocence. The burden of proof remains on
9 the State to prove guilt beyond a reasonable doubt.

10 In order to establish criminal liability,
11 criminal intent is required. For example, mental
12 state required to be proven by the State for a
13 particular crime like purpose, intent, knowledge,
14 recklessness, or criminal negligence. Criminal
15 intent must be proven by the State beyond a
16 reasonable doubt. Criminal intent is always a
17 matter that must be determined by the jury from the
18 circumstances surrounding the situation.

19 There is no way to prove intent to a
20 mathematical certainty. There's no way medical
21 science can dissect a person's brain and determine
22 what that person had in mind, so the law says that
23 criminal intent may be inferred from the
24 circumstances shown to have existed. This is how
25 you make a determination of whether or not the

1 element required intent was present.

2 It is not necessary to establish intent by
3 direct and positive evidence, but intent may be
4 established by inference in the same way as any fact
5 by taking into consideration the acts of the parties
6 and all the facts and circumstances of the case.

7 Criminal intent is a mental state, a conscious
8 wrongdoing. It is up to you to determine what the
9 defendant intended to do based on the circumstances
10 shown to have existed.

11 Criminal intent can arise from action or
12 failure to act. It may arise from negligence,
13 recklessness, or any inference or duty or the
14 consequences that is considered by the law to be the
15 equivalent of criminal intent.

16 The indictment in this case charges the
17 defendant with trafficking in methamphetamine
18 between 28 grams and 100 grams, first offense. I
19 remind you that the fact that the defendant was
20 arrested, charged, and indicted in this case is not
21 evidence in this case and cannot be considered by
22 you as evidence of guilt in this case, nor does it
23 create any presumption or inference of guilt. The
24 indictment is simply the formal written instrument
25 which contains the charge made against the

1 defendant. This is a formal document by which the
2 case is brought into court.

3 The defendant is charged with trafficking in
4 methamphetamine. The State must prove beyond a
5 reasonable doubt that the defendant knowingly sold,
6 manufactured, cultivated, delivered, purchased,
7 brought into this state, provided financial
8 assistance, or otherwise aided, abetted, attempted,
9 or conspired to sell, manufacture, cultivate,
10 deliver, purchase, or bring into this state was
11 knowingly in actual or constructive possession,
12 knowingly attempted to become in active or
13 constructive possession of 10 grams or more of
14 methamphetamine.

15 Possession of 10 grams or more of
16 methamphetamine gives rise to the permissive
17 inference of a violation of this law. The resulting
18 implication only permits rather than requires the
19 jury to infer in violation of the law. This
20 permissive inference does not relieve the State from
21 actually proving beyond a reasonable doubt the
22 elements of the offense.

23 This permissive inference is simply an
24 evidentiary fact to be taken into consideration by
25 the jury, along with other evidence in this case and

1 to be given such weight as the jury determines what
2 you receive.

3 To prove possession, the State must prove
4 beyond a reasonable doubt that the defendant had
5 both the power and the intent to control the
6 disposition or use of the methamphetamine.

7 Possession may be either actual or
8 constructive. Actual possession means that the
9 methamphetamine was in the actual physical custody
10 of the defendant.

11 Constructive possession means that the
12 defendant had dominion and control or the right to
13 exercise dominion or control over the
14 methamphetamine itself or the property on which the
15 methamphetamine was found.

16 Mere presence of the defendant at the scene
17 where the drugs were found is not enough to prove
18 possession. Actual knowledge of the presence of the
19 methamphetamine is strong evidence of the
20 defendant's intent to control its disposition or
21 use.

22 The defendant's knowledge and possession may be
23 inferred when a substance is found on the property
24 under the defendant's control. However, this
25 inference is simply an evidentiary fact to be taken

1 into consideration by you along with other evidence
2 in the case and be given the weight you decide it
3 should have. Two or more persons may have joint
4 possession of a drug.

5 Ladies and gentlemen, we're almost to the point
6 where I send you to the jury room. This has been a
7 long instruction on the law, but I leave you with
8 some final thoughts. You were chosen as jurors
9 because both sides believed that you could be fair
10 and impartial in deciding this case.

11 I instruct you to make use of your life
12 experiences, your good common sense, and your sense
13 of logic and reason in evaluating the evidence in
14 this case. You are not partisans or advocates for
15 either side. You have no friends to reward nor any
16 enemies to punish.

17 You are the judges of the facts. Your sole
18 interest is to determine whether the State has
19 proven beyond a reasonable doubt that the defendant
20 is guilty of the charge that he was indicted on.

21 Be courteous with one another. Listen to the
22 views of your fellow jurors. Take the amount of
23 time necessary for you to thoroughly evaluate the
24 evidence. This case is important to both sides, and
25 this is their only day in court.

1 Now, madam forelady, I'm going to go over the
2 verdict form. This is a one-page verdict form. And
3 it has the caption at the top. And it says -- and
4 it gives the indictment number, trafficking
5 methamphetamine 28 to 100 grams. It says, "We the
6 jury unanimously find on the Indictment No.
7 2016-GS-04815, that the defendant Michael Darren
8 Duncan is," and it gives you two options, "not
9 guilty or guilty of trafficking methamphetamine, 28
10 or 100 grams."

11 Place no significance on the order in which the
12 choices appear on the page. One simply had to go on
13 the page before the other. You will check the
14 appropriate box once the jury has reached a verdict.
15 Your verdict must be unanimous.

16 Okay. So I am going to send you to the jury
17 room. Do not begin deliberations until I send the
18 verdict form back with the exhibits.

19 So, Mr. Bailiff, would you take our jury to the
20 jury room?

21 THE BAILIFF: (Complying.)

22 (At 2:11 p.m., jury exited the courtroom.)

23 THE COURT: Any exceptions to my charges from
24 the State?

25 MS. PRICE: None from the State, Your Honor.

1 However, I did want to mention that under the
2 indictment on evidence, first offense was read out.
3 And as I understand it, we don't read whether it's
4 first, second, or third. We don't indicate that,
5 but I don't think was any harm and it is the first.

6 THE COURT: Yeah.

7 MS. PRICE: Yes, sir.

8 THE COURT: Mr. Smith?

9 MR. SMITH: No, sir.

10 THE COURT: All right. I'd like each attorney
11 to come forward and count the exhibits, make sure
12 all the exhibits are there, and then we'll -- we'll
13 send the exhibits back.

14 (A brief recess was taken.)

15 THE COURT: Mr. Clerk, would you take the
16 exhibits and the verdict form back? Tell the jury
17 they're to begin their deliberations and bring the
18 alternate.

19 THE CLERK: (Complying.)

20 (At 2:42 p.m., the exhibits and verdict form
21 were sent back and the jury began deliberating.)

22 THE COURT: All right. Madam alternate, that
23 completes your duty. Thank you for your service on
24 this jury. You're welcome to stay if you want to
25 see how it turns out; otherwise, you are free for

1 the day. Everybody has to come back in the morning,
2 so it's totally up to you. If you wish to stay, you
3 can have a seat and stay. If you have other things
4 to do, then you're free to go.

5 THE ALTERNATE: I'll go.

6 THE COURT: All right. We'll be in recess.

7 (From 2:43 to 3:39 p.m., recess while the jury
8 deliberated.)

9 THE COURT: Let's go on the record. We have
10 received a question from the jury. It says, "We the
11 jury request a copy of the points of law read to us
12 by the judge, specifically covering the definition
13 of constructive control." It's signed by the
14 forelady of the jury. And so I am going to read
15 them the entire possession charge over again.

16 Okay. So, Mr. Bailiff, would you get ---

17 THE BAILIFF: (Complying.)

18 (At 3:40 p.m., jury entered the courtroom.)

19 THE COURT: Okay. Madam forelady, I have
20 received your question, and I am going read you the
21 charge on possession again and hopefully that will
22 clear this up.

23 "To prove possession, the State must prove
24 beyond a reasonable doubt that the defendant had
25 both the power and the intent to control the

1 disposition or use of the methamphetamine.

2 Possession may be either actual or constructive.

3 "Actual possession means that the
4 methamphetamine was in the actual physical custody
5 of the defendant.

6 "Constructive possession means that the
7 defendant had dominion and control or the right to
8 exercise dominion or control over either the
9 methamphetamine itself or the property on which the
10 methamphetamine was found.

11 "Mere presence of the defendant at the scene
12 where the drugs were found is not enough to prove
13 possession.

14 "Actual knowledge of the presence of the
15 methamphetamine is strong evidence of the
16 defendant's intent to control its disposition or
17 use.

18 "The defendant's knowledge and possession may
19 be inferred when a substance is found on the
20 property under the defendant's control. However,
21 this inference is simply an evidentiary fact to be
22 taken into consideration by you along with the other
23 evidence in the case and to be given the weight you
24 decide it should have.

25 "Two or more persons may have joint possession

1 of a drug."

2 And that is the definition of possession. So
3 with that, I will have you return to the jury room
4 and resume your deliberations.

5 (At 3:42 p.m., jury exited the courtroom and
6 continued their deliberations.)

7 THE COURT: Okay. Anything before we go back
8 into recess from the State?

9 MS. PRICE: Nothing from the State.

10 THE COURT: Anything from the defense?

11 MR. SMITH: No, sir.

12 THE COURT: Let's make this note a court
13 exhibit.

14 (Court's Exhibit No. 1 was admitted into
15 evidence.)

16 THE COURT: We'll be back in recess.

17 (From 3:42 to 3:49 p.m., recess.)

18 THE COURT: I've been informed that we have a
19 verdict.

20 THE CLERK: We don't have the defendant.

21 THE COURT: Just hold on. We don't have the
22 defendant.

23 (From 3:49 to 3:53 p.m., recess for defendant.)

24 THE COURT: All right. The defendant is
25 present..

1 Mr. Bailiff, would you get our jury?

2 THE BAILIFF: (Complying.)

3 (At 3:53 p.m., the jury entered the courtroom.)

4 THE COURT: Madam forelady, I have been
5 informed that you have reached a verdict.

6 THE FORELADY: Yes, sir.

7 THE COURT: Would you hand that to the bailiff
8 please, ma'am.

9 THE FORELADY: (Complying.)

10 THE COURT: Mr. Clerk, would you publish the
11 verdict?

12 THE CLERK: If it pleases the Court?

13 This is the State of South Carolina, County of
14 Anderson, in the court of General Sessions. This is
15 Indictment No. 2016-GS-04-00815, the *State of South*
16 *Carolina v. Michael Darren Duncan*, defendant. The
17 verdict form on this indictment, trafficking
18 methamphetamine 28 to 100 grams.

19 We the jury unanimously find on Indictment No.
20 2016-GS-04-00815 that the defendant, Michael Darren
21 Duncan, is guilty of trafficking methamphetamine 28
22 to 100 grams. This is signed by the forelady in
23 Anderson, South Carolina, on April 19, 2017.

24 Ladies and gentlemen of the jury, if this is
25 your verdict, will you indicate so by raising of

1 your right hand?

2 THE JURORS: (Indicating.)

3 THE CLERK: Thank you.

4 THE COURT: All right. Anything from the State
5 before I release the jury?

6 MS. PRICE: Nothing from the State, Your Honor.

7 THE COURT: Anything from the defense before I
8 release the jury?

9 MR. SMITH: Not right now.

10 THE COURT: Ladies and gentlemen, thank you for
11 your service. We still have Thursday and Friday
12 this week, so you'll need to be back in this
13 courtroom at nine o'clock in the morning. So thank
14 you for your service on this case. You are free to
15 go.

16 Madam forelady, I need you to sign the
17 indictment.

18 Thank you, ladies and gentlemen.

19 (At 3:55 p.m., the jury was excused in this
20 case.)

21 THE COURT: We'll take a short break while I
22 get the sentencing sheet prepared.

23 MS. PRICE: Yes, sir.

24 (From 3:56 to 4:00 p.m., recess was taken.)

25 THE COURT: All right. Mr. Smith, would you

1 and your client come forward, along with the State?

2 MR. SMITH: (Complying.)

3 THE COURT: Okay. Let me hear from the State
4 anything about his record, anything the State would
5 like to present.

6 And then I'm going turn it over to you,
7 Mr. Smith, and hear anything that you and your
8 client would like to present.

9 MS. PRICE: Yes, Your Honor. Thank you. May
10 it please the Court?

11 I'm going to let Detective Hendrix tell you law
12 enforcement's perspective on this individual, and
13 then I'll give you a bit of his prior record.

14 THE COURT: Yes, sir.

15 DETECTIVE HENDRIX: Your Honor, I know
16 Mr. Duncan here to be a drug trafficker. We have
17 prior dealings with him. Myself has arrested him on
18 another charge prior to this one. We've also had a
19 confidential source that's bought drugs from this
20 individual. He has a pending trafficking charge on
21 that, as well.

22 So from my perspective, I know that he is a
23 drug dealer and that he does distribute
24 methamphetamine within our county, so just keep that
25 in mind. Thank you, sir.

1 MS. PRICE: Your Honor, as to his prior record,
2 he has a 1982, resisting, public disorderly conduct;
3 1983, auto breaking, escape, resisting arrest; 1984,
4 housebreaking, grand larceny; 1986,
5 pointing/presenting, resisting arrest, violation of
6 a gun law; 1988, DUI; 1990, disorderly conduct;
7 1991, public disorderly conduct; 1992, public
8 disorderly conduct and possession of a controlled
9 substance; 1999, CDV.

10 He recently had a trafficking case that was
11 dismissed due to a timing issue in Georgia, and he
12 has multiple drug offenses pending in our office
13 right now, including two other trafficking charges.

14 THE COURT: Thank you.

15 MS. PRICE: That's it from the State.

16 THE COURT: All right. Mr. Smith.

17 MR. SMITH: I'll begin by saying that he's got
18 other drug charges. This is the best one they had.
19 There was no evidence that he touched anything, no
20 evidence that he knew it was in the black bag, and
21 there were two dogs there, but anyway...

22 I don't know what to say other than they
23 brought their best case forward, I guess. And there
24 was nothing about him distributing, selling, or
25 anything of that sort.

1 So taking into account what his real record is
2 and not some potential record or whatever, we'd ask
3 the Court to take into account as well as the fact
4 that this happened because someone stole a truck and
5 drove it in his yard.

6 THE COURT: Anything you'd like to tell me,
7 Mr. Duncan?

8 THE DEFENDANT: No, sir.

9 MS. PRICE: And, Your Honor, just in terms of
10 best versus not, as Mr. Hendrix mentioned, we have
11 cases where we have CI's. We don't like to use
12 those CI's if we don't have to.

13 MR. SMITH: And one of them was in 2014.

14 THE COURT: How many days time served does your
15 client have, Mr. Smith?

16 MR. SMITH: A year; 363.

17 THE COURT: If there's nothing further, this
18 will be the sentence of the Court ---

19 (Brief recess.)

20 MS. PRICE: And while we're getting the
21 sentencing sheet, I had my administrative assistant
22 total up the number of jail days that he originally
23 did on this charge, plus what he's been in on
24 since -- since he was rearrested and has done time
25 up and until this trial, and the total is 367 days.

1 THE COURT: 367?

2 MS. PRICE: Yes, sir.

3 THE COURT: Okay. All right. If there's
4 nothing further, the defendant would be confined to
5 the State Department of Corrections for a term of 12
6 years, and a fine of \$50,000, provided upon 367 days
7 time served. Good luck to you, sir.

8 MS. PRICE: Thank you, Judge.

9 DETECTIVE HENDRIX: Thank you.

10 (The proceedings concluded at 4:11 p.m.)

11 - - -

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E O F R E P O R T E R

2
3 STATE OF SOUTH CAROLINA
4 COUNTY OF ANDERSON
5

6 I, the undersigned, Lisa Scott, Circuit Court
7 Reporter for the Tenth Judicial Circuit of the State
8 of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the trial of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Anderson County, South Carolina, on the
14 19th day of April, 2017.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 December 20, 2017
19

20 /s/Lisa Scott

21 Lisa Scott
22 Circuit Court Reporter
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

The State of South Carolina,) 2016-GS-04-00815

Plaintiff,

v.

MOTION TO RECONSIDER DENIAL OF
MOTION TO SUPPRESS

Michael Darren Duncan,

Defendant.

FILED-CLERKS OFFICE
ANDERSON SC

2016 NOV -1 PM 4:50

**TO: THE HONORABLE R. SCOTT SPROUSE AND ASSISTANT SOLICITOR
LAUREN DUNCAN PRICE:**

Comes the Defendant, Michael Darren Duncan, by and through counsel, and moves for this Court to reconsider its finding that Defendant was not entitled to the suppression of evidence secured by the search warrant that was issued on October 15, 2015. The Affidavit for the search warrant failed to alert the Court that the stolen truck, trailer, motorcycle, and some identification, that were located on the property, had been brought to the property when Defendant was absent, and without his knowledge. The affidavit failed to tie the stolen property to the homeowner in any way. The Affidavit did not provide any specific factual connection between the .7 grams of methamphetamine and glass pipe found abandoned under a vehicle, and drug-related activity within the residence. The insufficiencies of the two-pronged affidavit for the search warrant are fatal.

STATEMENT OF FACTS

On October 15, 2015, Joey Surdak had his girlfriend, Nicole, meet him at Michael Duncan's house because Nicole had a probation hearing that morning. Mr. Duncan took her to the courthouse, dropped her off and returned to his home. While he was gone, he had gone to

an auto parts' store because he and Joey were working on his niece's transmission. Shortly after dropping off the parts, he went to retrieve Nicole. Joey remained at the house because he believed that he may have an outstanding warrant for his arrest.

After Michael had left, a truck, with a trailer carrying a motorcycle, showed up on his property. Clinton Macomson and Amanda Sanders were apparently looking for Michael, though there was a significant police presence in the area due to the fact that law enforcement was "saturating" Homeland Park in Anderson on that particular day. Clinton would later offer to sell Michael the motorcycle found on the trailer.

When Michael returned to his place, he was puzzled by the presence of the truck and trailer. More importantly, he did not know the man offering him an unsolicited motorcycle. In no uncertain terms, Clinton Macomson was told to leave the property. Unfortunately, he could not get the engine to turn over as a result of OnStar disengaging the ability to start the vehicle. Law enforcement soon overran the property.

When Deputy Stipe ventured onto the property due to the OnStar GPS mechanism, he encountered four (4) subjects. The four subjects were found in front of the structure under an awning. Testimony of members of law enforcement placed Defendant Duncan to the far right of the four. Defendant Amanda Sanders was seated in a chair closer to the center of the building. Detective Wood knelt down to speak to Ms. Sanders.

As Detective Wood was kneeling down to speak to Ms. Sanders, he looked over his right shoulder and saw a handgun. The handgun was located under an older model jeep, in the front center. Detective Wood summoned help in collecting the gun. Deputy Stipe obliged him and retrieved the gun.

While Deputy Stipe was collecting the gun, he noticed something that was on the inside of the front passenger tire. It was close enough to the inside of the tire that Detective Wood could not see it from 3 to 4 feet, at roughly a one o'clock angle. There was no testimony other than the fact that Michael Duncan was to the far right, which was, conservatively, 12 to 15 feet to the right at roughly a two o'clock angle from the front passenger tire.

The State sought a search warrant to enter the residence of Michael Duncan. They offered to the magistrate the following:

1. On 10/15/2015 a stolen truck, trailer, motorcycle, and some identification (sic) were recovered on the above property. These items are from 3 different Burglary and Larceny cases. Known items missing from these cases are a Honda dirt bike and a set of keys with a red tab. It is the affiant's belief that evidence recover from the above referenced (sic) location will further assist in the investigation of these cases.
2. Also (sic) found outside of the property was a small baggie with a crystal like (sic) substance that field tested positive for methamphetamine and a glass pipe known to be used for smoking methamphetamine.

The State was granted a search warrant for the dwelling of Michael Duncan. Upon entering the building, a black bag was found containing sixty-seven (67) grams of methamphetamine. The trial which followed resulted in a finding of guilt, and a subsequent sentence of twelve years and \$50,000.00. This motion was brought to revisit the issue of suppression.

ARGUMENT

The United States and South Carolina have identical rights with regard to searches and seizures:

(T)he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause,

supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

This right to be secure is something that we all share. It does not matter what our reputation may, or may not, be. There are no qualifications.

The State believes that the end justifies the means. Michael Duncan's conviction and sentence are simply representative of another drug dealer removed from the streets. The State's position and objective were never more evident than when Detective Hendrix told the Court of his beliefs.

DETECTIVE HENDRIX: Your Honor, I know Mr. Duncan here to be a drug trafficker. We have (sic) prior dealings with him. Myself (sic) has arrested him on another charge prior to this one. We've also had a confidential source that's bought drugs from this individual. He has a pending trafficking charge on that, as well.

So, from my perspective, I know that he is a drug dealer and that he does distribute methamphetamine within our county, so just keep that in mind. Thank you, sir.

The search warrant that was issued offered no specificity of how Michael Duncan was involved with any illegal activity. They simply wanted to go on a fishing expedition. Unfortunately, they were given carte blanche to his home.

1. Stolen Property

The affidavit provided by the affiant did not mention that the stolen items, "recovered on the above property", were brought to the property by the thief, who was not Defendant Duncan. There was nothing to contradict this fact. This failure to offer the Magistrate this fact was done in reckless disregard for the truth. If the Magistrate would have understood that the stolen goods that were discussed by the affiant had arrived via someone other than Defendant Duncan,

when he wasn't even home, the Magistrate would have seen that there was nothing tying Defendant Duncan to the stolen goods.

If, after evidentiary hearing, defendant establishes by a preponderance of evidence that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by affiant in search warrant affidavit, and, with affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, search warrant must be voided and fruits of search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 267, 457 L.Ed.2d 667.

The affiant doesn't even attempt to associate Defendant Duncan to the stolen property. He states that, "evidence recovered from the above referenced (sic) location will further assist in the investigation of these cases". The evidence recovered had just arrived on the location as law enforcement was aware due to the use of OnStar. They knew who stole the evidence recovered. Detective Marzoff admitted to that.

Q. So (sic) you believed that Macomson had stolen the truck and brought that trailer, right?

A. Yes, sir.

(Trial Transcript, Detective Marzoff, p. 18, 1-3). Furthermore, he had *no knowledge* of any other things that were stolen from the victim whose truck was taken.

Q. So (sic) you didn't have any knowledge of any other things that had been taken from there?

A. No, sir, I didn't.

(Id., p. 28, 19-21). There was no evidence whatsoever indicating that Defendant Duncan was a thief or "moving" stolen goods.

Law enforcement was on Michael Duncan's property because someone had driven a stolen truck, along with a motorcycle and trailer, onto it when he was not at home. The police arrived a short time after the aforementioned pieces had gotten there because it was being

tracked by OnStar. Detective Marzoff knew who stole the property. Detective Marzoff knew it wasn't Michael Duncan. Detective Marzoff had *no* knowledge that anything else would be found in the residence because he was unaware of any other stolen items.

The affiant for the search warrant, Jason Price, did not have any firsthand knowledge. He swore to the magistrate that what he was saying was the truth. He stated that his knowledge of the event was in the affidavit. (Transcript, Jason Price, p. 21, 12-14). It was alleged that the red key noted on the affidavit was in fact Defendant Duncan's key. When he was asked about what the key went to, he responded, "I think I answered that before that I don't know." *Id.*, p. 23, 15-16). He didn't have a clue what was on his affidavit, yet he swore to its contents.

The State was well aware of the fact that Michael Duncan had nothing to do with the stolen property. That is precisely why they omitted the information from the Magistrate. Assuming *arguendo* that the Court does not believe that the omission is fatal to the search warrant, the lack of a common nexus of facts associating Duncan with the stolen goods, is.

2. Drugs

Deputy Stipe located .7 grams of methamphetamine and a glass pipe, when he was recovering a gun that Detective Wood had noticed while attempting to speak to Amanda Sanders. Detective Wood failed to see the drugs and related paraphernalia due to the fact that they were on the inside of the right front tire of an older model jeep. Detective Hendrix, Detective Wood and Detective Davis, testified that Michael Duncan was sitting to far right when facing the building. If Officer Wood could not see anything but the gun from his vantage point, 3 to 4 foot away at an angle of about one o'clock, it would be physically impossible for Duncan to see it at least 10 foot farther to the right.

Assuming arguendo that Mr. Duncan could see it from where he was located, it still would not make a difference. There were three other individuals who were located closer to where the materials were located by Deputy Stipe. The police arrested all of the individuals that they found on the property, indicating that they had no idea whose meth and pipe they had found.

"Criminal statutes must be strictly construed against the State and in favor of the Defendant." *Williams v. State*, 306 S.C. 89, 410 S.E.2d 563 (1991). It is undisputed that Mr. Duncan did not have drugs on his person. He was charged with possession of the .7 grams of meth on the inside of the tire. There was nothing offered at any point that somehow illustrated that Mr. Duncan knew of the drug and paraphernalia existence, other than his mere presence. There was no testimony which illustrated that he was near enough to it to exercise dominion and control over it.

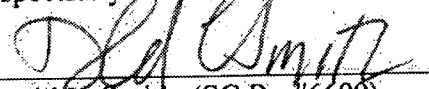
"Possession requires more than mere presence." *State v. Lee*, 298 S.C. 362, 380 S.E.2d 834 (1989). "To prove constructive possession the State must show a defendant had dominion and control, or the right to exercise dominion and control..." *U.S. v. Bethea*, 143 U.S.App.D.C. 68, 442 F.2d 790 (1971). There was no evidence that Duncan knew that the materials existed under the truck. There was no testimony elicited that he was near enough to the drugs to exercise control over the drugs. The State wanted Duncan in the worst way and charged him with a charge that they could not prove. The issuing magistrate must make practical, common-sense decision whether...there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). There was no piece of evidence found outside the home that gave anyone the slightest belief that there were things in the home.

"The assertions in the affidavit in this case contain no specific facts showing any connection between drug-related activity..." and inside the home located at 4028 S. Main Street. *State v. Thompson*, South Carolina Supreme Court (Opinion No. 27706) (February 22, 2017). The State's affidavit was insufficiently specific about why it was believed that there were stolen goods or drugs to be found in the home.

CONCLUSION

The Constitution applies to every one of us, regardless of our race, creed, religion, or criminal history. The State admittedly wanted to get into Michael Duncan's house. Therefore, they misled the Magistrate by withholding evidence, the essential facts regarding Clinton Macomson's involvement with the theft and using innuendo to let the magistrate believe that there was ongoing illegal activity going on in the house *that were related to truck for which they were on the property*. Pursuant to *Franks*, this case should be reversed; and, it should be done with prejudice.

Respectfully Submitted,



Donald L. Smith, (SC Bar#6699)

Attorney for Defendant

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9295

attorneydonaldsmith@gmail.com

Anderson, South Carolina,
May 1, 2017

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

State of South Carolina

vs.

Michael Darren Duncan,

Defendant.

IN THE COURT OF GENERAL SESSIONS

2016-GS-04-00815

ORDER DENYING DEFENDANT'S MOTION
FOR RECONSIDERATION

After review of the record, the Defendant's Motion to Reconsider Denial of Motion to
Suppress is DENIED.

AND, IT IS SO ORDERED.

RECEIVED

MAY 26 2017

SC Court of Appeals



R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Walhalla, South Carolina

May 4, 2017

A TRUE COPY

MAY - 8 2017

Richard X. Kinsley
ANDERSON CLERK OF COURT

FILED-CLERK'S OFFICE
ANDERSON SC
2017 MAY -8 AM 11:17
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA

County of Anderson

SEARCH WARRANT

STATES
EXHIBIT
#258
4/17/17
PENGAD 800-631-6989

Date: October 15th, 2015 @ 3:32 pm. *Sisnd pmd*
November 4th, 2015 @ 4:41 pm. *returned gnd*

Investigator J.K. Price

Case # 2015-19654

SCCA 513
(3-1978)

THIS IS A CERTIFIED TRUE
COPY. *[Signature]*
4/17/17

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

AFFIDAVIT

Personally appeared before me, one Investigator J.K. Price, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Stolen Honda dirt bike, set of keys with a red tab, any drugs or drug paraphernalia, papers and records to prove ownership.

DESCRIPTION OF PREMISES (PERSON OR THING) TO BE SEARCHED

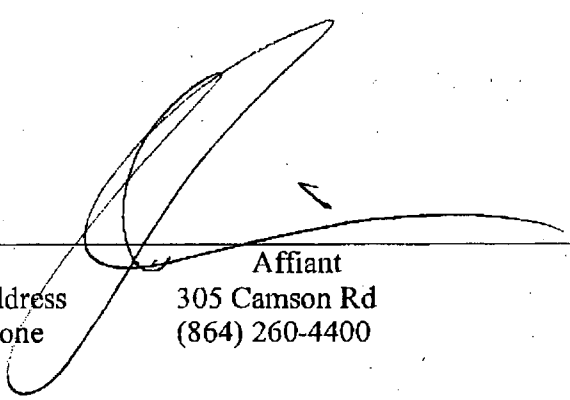
The property is located at [REDACTED] South Main Street Ext. The building is further described as a white front with yellow sides and rear in color concrete brick building. The numbers [REDACTED] appears on the front left side of said building and [REDACTED] appears on the front right side of said building. There is an aluminum fence surrounding the property. There is an off white mail box to the left of the driveway at the road. This is to include any outbuildings and/or vehicles.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On 10/15/2015 a stolen truck, trailer, motorcycle, and some identification were recovered on the above property. These items are from 3 different Burglary and Larceny cases. Known items missing from these cases are a Honda dirt bike and a set of keys with a red tab. It is this affiant's belief that evidence recovered from the above referenced location will further assist in the investigation of these cases. Also found outside of the property was a small baggie with a crystal like substance that field tested positive for methamphetamine and a glass pipe known to be used for smoking methamphetamine. This information is pursuant to Anderson County Sheriff's Office case #2015-19654.

Sworn to and Subscribed before me
15 day of October 2015


Signature of Judge


Affiant

Address
Phone

305 Camson Rd
(864) 260-4400

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF Anderson:

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON OR THING) TO BE SEARCHED

The property is located at [REDACTED] South Main Street Ext. The building is further described as a white front with yellow sides and rear in color concrete brick building. The numbers [REDACTED] appears on the front left side of said building and [REDACTED] appears on the front right side of said building. There is an aluminum fence surrounding the property. There is an off white mail box to the left of the driveway at the road. This is to include any outbuildings and/or vehicles.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

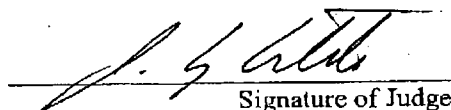
Stolen Honda dirt bike, set of keys with a red tab, any drugs or drug paraphernalia, papers and records to prove ownership.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to the issuing judge within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Anderson, South Carolina


Signature of Judge

Dated: October 15th, 2015

SCCA 513

(3-1978)

RETURN

I received the attached Search Warrant 2015-19654, and have executed it as follows:

On 10-15-15 at 15:34 o'clock P.M., I searched the (person) described in the warrant and (the premises)

I left a copy of the warrant with: The ~~Premises~~^{HO} Homeowner

Name of person searched or "at the place of search" with.

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1 Chrome valve cover breather Digital photographs
 1 Chrome air breather
 1 Edelbrock carburetor
 1 plastic bag of rags
 registration to 98 Dodge truck for Monty Wilcs
 Allstate Insurance book
 Blake & Brady bag

See attached for additional items

This inventory was made in the presence of A. Hendrix and H. Davis

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant.

Sworn to and Subscribed before me

this 4th day of November, 2015

Signature of Judge

B. Hecht Davis

(Signature of Officer Executing Warrant)

2015-19654

-Ruger 10/22 Rifle s/n 235-16413

-Stevens 12 gauge shotgun s/n E868446

-Ziploc bag containing a crystal like substance

-Small clear plastic bag containing a crystal like substance

-Small white plastic bag containing crystal like substance

-Hi-Point model C9 handgun s/n P1263485

-Black digital scale

-Ziploc bag containing 65 white pills

-Green medicine bottle containing loose crystal substance and 30 blue pills

-Orange medicine bottle containing 28 pink pills and 34 green pills

-Orange medicine bottle containing one peach in color pill, 2 green pills and 30 blue pills

-Orange medicine bottle containing 110 green pills, 4 white pills and 2 yellow pills

-Orange medicine bottle containing 33 white pills

-Ziploc bag containing a small amount of crystal substance

-Black magazine containing 2 live rounds

-Glass smoking pipe

-Orange medicine bottle containing 42 blue pills

-Loose crystal like substance from black bag

-Three 12 gauge shot shells from the bed

-Box of assorted 12 gauge shot shells

-Assorted cards belonging to Linda Evans

-White Alcatel cellphone

WITNESSES

Anderson Co. Sheriff's Office
Alan D. Hendrix

ARREST WARRANT NUMBER

2015A0410101219

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 24 2016

[Signature]
Foreperson

VERDICT

Guilty

Amanda Hope Patterson
Foreperson of Grand Jury

Date: 4-19-17

DOCKET NO. 2016-GS-04- 00815

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAY 24 2016, TERM

THE STATE

VS.

MICHAEL DARREN DUNCAN

INDICTMENT FOR

TRAFF METH/CRACK 28G BUT <100G
1ST

SC Code: § 44-53-375(C)
CDR Code: 0392

A TRUE COPY

JUL 11 2018

Richard A. Bailey
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

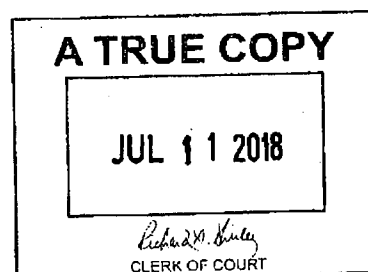
At a Court of General Sessions, convened on MAY 24 2016, the
Grand Jurors of Anderson County present upon their oath:

TRAFF METH/CRACK 28G BUT <100G 1ST

The defendant, Michael Darren Duncan, did on or about October 15, 2015, in Anderson County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of Methamphetamine as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). All in violation of 44-53-375(C) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


LAUREN D. PRICE
ASSISTANT SOLICITOR



COUNTY OF ANDERSON

STATE VS.

MICHAEL DARREN DUNCAN

AKA:

Race: White

Sex: M

Age: 51

DOB: 1965

SS#: [REDACTED]

Address: S Main St

City, State, Zip: Anderson, SC 29624-4704

DL# [REDACTED]

SID# SC00375641

INDICTMENT/CASE#: 2016GS0400815

A/W:

2015A0410101219

Date of Offense:

10/15/2015

S.C. Code §:

44-53-375(C)

CDR Code #:

0392



SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Traff Meth/Crack 28g but <100g 1st

In violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0392

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Lauren D. Price, Assistant Solicitor

77011
SC Bar #

Defendant

Attorney for Defendant

6699
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$50,000; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 367 Days 715☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning: _____

Recipient: _____

Substance Abuse Counseling ☐

*Fine: _____

\$ 50,000.00

Random Drug/Alcohol Testing ☐

\$14-1-206 (Assessments 107.5%)

\$ 53,750.00

Fine may be pd. in equal consecutive weekly/monthly

\$14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

pmts. of \$ _____ Beginning

\$14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

\$ _____ Paid to Public Defender Fund

\$56-5-2995 (DUI Assessment)

\$12

\$ _____

Other: _____

\$56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 61.6 (Public Def/Prob)

\$500

\$ _____

\$14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

\$14-1-213 (Drug Court Surcharge)

\$150

\$ 150.00

\$50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$

\$ 3,120.75

TOTAL

\$ 107,145.75

Clerk of Court/Deputy Clerk:

Court Reporter: Lisa

SCCA/217 (07/2016)

Presiding Judge:

Judge Bar ID:

Sentence Date:

Judge Code:

4-19-17

2752

A TRUE COPY

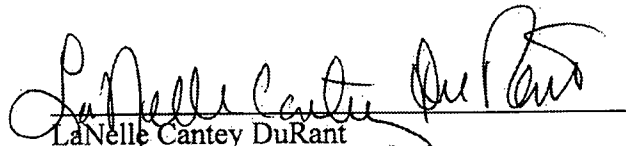
JUL 11 2018

Richard N. Kiley
CLERK OF COURT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

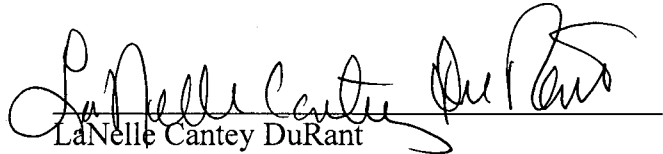
ATTORNEY FOR APPELLANT

This 18th day of July, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of July, 2018.

RECEIVED
JUL 18 2018
SC Court of Appeals