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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

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STATE OF MINNESOTA,

Plaintiff,

vs.

Court File 19HA-CR-15-2478

TROY MICHAEL WIERSON,

Defendant.  
-----

The above-entitled matter came on for hearing before the Honorable JAMIE CORK, one of the judges of the above-named court, at the Dakota County Judicial Center, Hastings, Minnesota, on the 20th day of March, 2018.

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A P P E A R A N C E S

PAUL BEAU MATER, Esq., County Attorney's Office, Dakota County, Hastings, Minnesota, appeared on behalf of the Plaintiff.

ANTHONY HO, Esq., Apple Valley, Minnesota, appeared with and on behalf of the defendant, TROY WIERSON.

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1 STATE v. TROY WIERSON

2 Court File No. 19HA-CR-15-2478

3 March 20, 2018

4 (WHEREUPON, the following proceedings were duly  
5 had, of record, to wit:)

6 THE COURT: Are we all set?

7 MR. BEAUMASTER: We are ready.

8 THE COURT: All right. This is State of Minnesota  
9 versus Troy Wierson. File number 19HA-CR-15-2478.

10 Just before we get started, we did have a conversation  
11 in chambers. One of the jurors had a family emergency  
12 overnight and is unable to come back in. I just want to put  
13 on the record that it is my understanding from both of the  
14 attorneys that you are willing to proceed with the 12 jurors  
15 that are left.

16 We had seated 13 yesterday, so there was an  
17 alternative. We will have 12 seated today. Is that  
18 correct, Mr. Beaumaster?

19 MR. BEAUMASTER: Yes.

20 MR. HO: That's correct. I was going to raise  
21 this. I don't know if the Court -- did you swear the jury  
22 yesterday?

23 THE COURT: We did.

24 MR. HO: Did we do that?

25 THE COURT: Yes, at the very end of the day.

1 Before the officer took the stand, because we were going to  
2 start testimony yesterday, so we did swear them.

3 MR. HO: Okay. Sorry.

4 THE COURT: Then we did the offer of proof and  
5 decided not to complete the testimony, but we did swear them  
6 in yesterday.

7 MR. HO: I was just thinking about that --

8 THE COURT: Yes.

9 MR. HO: -- and wanted o make sure. I was  
10 thinking about that yesterday, if we did do that.

11 THE COURT: Anything else?

12 MR. HO: No.

13 THE COURT: All right. Then could you both note  
14 your appearances, for the record?

15 MR. BEAUMASTER: Paul Beaumaster on behalf of the  
16 State.

17 MR. HO: Anthony Ho with Mr. Wierson, who also  
18 appears.

19 THE COURT: Good morning, Mr. Wierson.

20 THE DEFENDANT: Good morning.

21 THE COURT: Are you ready to proceed?

22 MR. HO: We are.

23 THE COURT: All right. Could you please bring the  
24 jury in?

25 MR. BEAUMASTER: Your Honor, could we re-swear the

1 officer? I think he was sworn yesterday.

2 THE COURT: I will remind him that he is under  
3 oath -- well, I will have her re- swear him, just because it  
4 is a new day.

5 (Pause in proceedings.)

6 (Jury enters courtroom at approximately 9:14 a.m.)

7 THE COURT: All right. You may be seated.

8 (Individuals comply).

9 THE COURT: Good morning, everyone, and welcome  
10 back. Thank you for coming back. We do have one juror that  
11 was unable to return today, and so I just want to give you a  
12 little bit of head's up that it is real important that each  
13 one of you make sure to be back here because we are now  
14 missing one of the juror and will be for the remainder of  
15 the trial.

16 We are ready to proceed, Mr. Beaumaster.

17 MR. BEAUMASTER: We would recall Kyle Linscheid to  
18 the stand.

19 THE CLERK: If you step forward and be sworn.

20 Just raise your right hand.

21 (Witness complies).

22 THE CLERK: You do swear the testimony you give  
23 here today will be true, so help you God?

24 THE WITNESS: Yes.

25 THE CLERK: Please have a seat.

1 (Witness takes stand).

2 THE CLERK: For the record, please state your full  
3 name, spelling your first and last name.

4 THE WITNESS: Kyle Linscheid. K.Y.L.E. Last name  
5 is L-I-N-S-C-H-E-I-D.

6 THE CLERK: Thank you.

7 THE COURT: You remember all the instructions I  
8 gave you about testifying today?

9 THE WITNESS: Yes.

10 THE COURT: All right. Thank you.

11 Mr. Beaumaster, you may proceed.

12 **KYLE LINSCHIED**

13 Having been previously called to testify as a  
14 witness is the above-entitled proceeding, having been  
15 re-sworn, now continues his testimony, which began on March  
16 19th, 2018.

17 **DIRECT EXAMINATION**

18 **BY Mr. BEAUMASTER: (Cont'd)**

19 Q Where do you work?

20 A City of Hastings.

21 Q In what capacity?

22 A I'm currently a Sergeant on patrol.

23 Q How long have you work worked the City of Hastings?

24 A Nine and a half years.

25 Q Any place before that?

1 A No.

2 Q I should have added have you worked anywhere before that, as  
3 a police officer?

4 A No.

5 Q Are you a licensed peace officer?

6 A Yes.

7 Q How long have you been licensed then?

8 A Nine and a half years.

9 Q And with regard to your licensing, do you take -- have to  
10 educational courses, in order to ascertain your degree, and  
11 also take courses to maintain your degree?

12 A Yes.

13 Q And you do take courses, is that correct?

14 A Yes.

15 Q Would you tell the jury a little bit about that?

16 A Yes. The minimum requirement is a two-year degree. I  
17 received a bachelor's degree from Winona State. I graduated  
18 in May of 2007, with a criminal justice degree, with an  
19 emphasis on law enforcement.

20 And then in the fall of 2007, I went to what is  
21 called a Skills Program. It is, essentially, what people  
22 would understand as a generalized academy for people who  
23 want to become a police officer in the State of Minnesota.

24 And I completed that in December of 2007, and  
25 passed the post-exam, which is the final test to have your

1 license ready to be activated, in February of 2008. And  
2 then in August of 2008, I was hired by the City of Hastings.

3 Q And what was your initial position with the City of  
4 Hastings?

5 A A patrol officer.

6 Q And did you receive training from the City of Hastings, as  
7 well?

8 A Yes.

9 Q And could you tell the jury about that?

10 A Yes. We have a Field Training Program where you are  
11 partnered up with -- at that time, it was three officers on  
12 day shifts and night shifts, for about a four-week rotation,  
13 followed by a shadow phase.

14 And we covered general policy and procedures  
15 within the Department. And as part of the training, as you  
16 are learning on-the-job and getting used to remembering as  
17 much as you can, the laws and guidelines.

18 Q And how long were you in that position?

19 A A patrol officer, for two-and-a-half years.

20 Q And in your ongoing duties as a police officer, there is  
21 training involved in that?

22 A Yes.

23 Q Yearly training?

24 A Yes, we have annual Firearms and Defensive Tactics, along  
25 with legal updates that we have to attend.

1 Q Now, after your initial training and your position as a  
2 patrol officer, what did you do next?

3 A I was assigned to the School District as the School Resource  
4 Officer.

5 Q And how long did you do that?

6 A Three years.

7 Q And what did you do after that? Were you given a new  
8 assignment?

9 A Yes. In February of 2014, I was assigned to the Dakota  
10 County Drug Task Force.

11 Q And how long were you on the Dakota County Drug Task Force?

12 A Three-and-a-half years.

13 Q Just recently left?

14 A Yes. In August of 2017, I came back to patrol as a  
15 Sergeant.

16 Q Now, I'm going to draw your attention to late June of 2015,  
17 early July. Were you then with the Dakota County Drug Task  
18 Force?

19 A Yes.

20 Q And what, exactly, is the Dakota County Drug Task Force?

21 A It is a group of several officers from all the agencies  
22 within the County that work together to work as what is  
23 called a Violent Crime Enforcement Team. So, the primary  
24 focus is narcotics, but we also apprehend violent offenders,  
25 as well.

1 Q Now, in that late June, early July time period of 2015, did  
2 you have opportunity to come in contact with an  
3 investigation dealing with the defendant?

4 A Yes.

5 Q How did that come about? Can you tell the jury?

6 A Yes, we had an anonymous tip that Troy Wierson --

7 MR. HO: Your Honor, I'm do going to object at  
8 this point to hearsay.

9 THE COURT: Sustained.

10 THE WITNESS: I can continue?

11 THE COURT: No.

12 THE WITNESS: No? Okay.

13 MR. BALUSTER: Your Honor, can I be heard on that?

14 THE COURT: Yes.

15 MR. BEAUMASTER: Your Honor, he is simply  
16 indicating what brought him to investigate. It is not being  
17 put forward for any truth of the matter; simply where this  
18 officer took his next step from.

19 MR. HO: Your Honor, I'm going to object, also,  
20 that it assumes facts not in evidence.

21 THE COURT: I will allow the officer to testify as  
22 to the investigation, what led up to getting there. So, I  
23 will overrule and let him just -- but, he cannot go into,  
24 specifically, what was said.

25 **BY Mr. BEAUMASTER:**

1 Q Officer --

2 THE COURT: And let me clarify that because that  
3 wasn't very clear. You did just say that there was an  
4 anonymous tip. You cannot go into, specifically, what was  
5 said, but you can go on about what your investigation was.

6 THE WITNESS: Yes, your Honor.

7 THE COURT: Mr. Beaumaster could assist you.

8 **BY Mr. BEAUMASTER:**

9 Q With that tip, who and where did that lead you to?

10 A 219 Tiffany Drive, involving Troy Wierson.

11 Q And were you able to identify who Troy Wierson was?

12 A Yes.

13 Q And is Mr. Wierson in the courtroom here today?

14 A Yes.

15 Q And can you identify him?

16 A He is seated next to the defense attorney.

17 Q Can you identify what he is wearing?

18 A He is wearing a blue shirt and plaid tie, similar in color,  
19 black pants and it looks like black shoes, from here.

20 MR. BEAUMASTER: Your Honor, may the record  
21 reflect he has identified the defendant?

22 THE COURT: The record will so reflect.

23 **BY MR. BEAUMASTER:**

24

25

1 Q. What did you do once you found out that there was  
2 possibly drug activity there?

3 A. An investigative tool, we can do what is called a  
4 trash pull. I was able to figure out what day the  
5 garbage collection was for that address and I arranged  
6 to have the trash pulled from the residence and I  
7 searched through the garbage to look for drug  
8 evidence.

9 Q. And was that successful?

10 A. Yes.

11 Q. What did you find?

12 A. I found two pieces of tubular glass, which in my  
13 training and experience was consistent with  
14 methamphetamine use, and several baggies that were  
15 also, in my experience, more consistent with use of  
16 methamphetamine.

17 Q. What did that tell you?

18 A. It indicated to me that there was narcotics use and/or  
19 sales taking place at the residence.

20 Q. Did you do any testing on those objects?

21 A. I did.

22 Q. And what occurred there?

23 A. As part of my training, I'm certified as a narcotics  
24 identification kit -- it's NIK for short -- tester. I  
25 was certified through the Drug Task Force in June of

1 2014, and then also through the BCA. And I was able  
2 to use one of those kits to take a sample from the  
3 piece of glass and place the sample into the kit and  
4 test it and it came up with a positive presumptive  
5 test for methamphetamine.

6 Q. What did you do next in your investigation?

7 A. After I tested the -- after I received the positive  
8 presumptive test for methamphetamine, I drafted a  
9 search warrant.

10 Q. And what was the search warrant for?

11 A. The search warrant was for the address of 219 Tiffany  
12 Drive and Troy Wierson.

13 Q. And did you execute that search warrant?

14 A. I did.

15 Q. And where did you execute the search warrant at?

16 A. 219 Tiffany Drive.

17 Q. That's here in Hastings, Minnesota, Dakota County?

18 A. Yes, it is.

19 Q. What day did you do that on?

20 A. July 2nd.

21 Q. Was this trash pull several days before?

22 A. It was a week before.

23 Q. Upon executing this search warrant, can you tell the  
24 jury how that occurred and what happened?

25 A. Yes. So with a narcotics search warrant, they're all

1 considered high risk. And as a part of that, with our  
2 training and standard procedure, we have a minimum of  
3 eight people, eight officers, that go to the  
4 residence. And this warrant was a knock and announce  
5 search warrant, so I knocked and announced, "Police,  
6 search warrant, come to the door," several times.

7 I didn't hear an answer or any sound of movement,  
8 so at my request Agent Hermerding used the ram and we  
9 forced entry into the home and secured two people and  
10 secured the residence so we could begin searching.

11 Q. Who were the two people that you secured?

12 A. Nichelle Wierson and Robert Schmelzer. Nichelle was  
13 his wife and Robert was either a stepson or a  
14 biological son of Nichelle.

15 Q. And with regard to the child, how old was that child?

16 A. Seven years old.

17 Q. Do you recall the date of birth?

18 A. I don't.

19 Q. Does 7-12-2008 sound familiar?

20 A. Yes.

21 Q. With that -- where was the child located in the home?

22 A. I believe in the upstairs bedroom, across from  
23 Michelle's bedroom.

24 Q. Where was she located?

25 A. I believe she was coming out of that bedroom as we

1           made entry into the home.

2           Q.   And what did you do after securing those individuals?

3           A.   We searched the residence.

4           Q.   And when you say -- can you describe how a search is  
5           done for the jury?

6           A.   So we have assignments, and there is an agent that is  
7           assigned as a writer.  Essentially that is data entry.  
8           So we have a mobile computer system that's set up with  
9           an Internet connection to our evidence processing  
10          program, and the writer inputs where items were found  
11          and anybody who is searching a specific area and finds  
12          an item brings that to the writer and tells them what  
13          it is and where it was located.  And they place it in  
14          a bag until we're done searching essentially, and then  
15          we clear the scene whenever it's appropriate.

16          Q.   With regard to photos, do you photograph the scene  
17          prior to --

18          A.   Yes.  Prior to doing any searching, residence or  
19          whatever, we are searching, if it's a vehicle or a  
20          residence or a shed, it doesn't matter, before we  
21          begin moving anything and actually searching we  
22          photograph the conditions of the home as they were  
23          when we entered.

24          Q.   Now, what was it that you found during that search?

25          A.   There were narcotics and drug paraphernalia and

1 documents primarily, and there was one weapon, a  
2 switch blade knife.

3 Q. And can you describe where you found these different  
4 items?

5 A. The methamphetamine primarily was located in a tool  
6 chest in the garage, along with some documents, both  
7 in Michelle's name and Troy Wierson's name, within the  
8 same toolbox in the garage. That's also where there  
9 was a digital scale and small baggies as well as the  
10 switch blade was found in the toolbox was well.

11 Q. Did you find anything anywhere else in the home?

12 A. There was -- there were pills that were found in the  
13 upstairs bedroom. Bedroom number one is what we  
14 indicated as the bedroom that Nichelle Wierson was  
15 coming out of and believed to have been staying. And  
16 that's all I can recall at this point.

17 Q. So after the evidence is gathered, was it -- where was  
18 it taken to?

19 A. It was taken to the Dakota County Drug Task Force and  
20 put in a temporary evidence locker.

21 Q. And then what happened to it?

22 A. I responded back to the Dakota County Drug Task Force  
23 and I tested the items with the same process with a  
24 NIK identification kit, up until a weight that got to  
25 a first degree charge, and then I sealed the bags and

1           initialed with my badge number and initials, and then  
2           I placed them back into a temporary locker, where our  
3           evidence technician comes back and permanently places  
4           them in a separate evidence room.

5           Q.   And do those eventually get sent to the BCA for  
6           testing?

7           A.   Yes.

8           Q.   And did that happen here?

9           A.   Yes.

10          Q.   And then do you get a report back?

11          A.   Yes.

12          Q.   Did that happen here?

13          A.   Yes.

14          Q.   You said you did those NIK tests.  Were they positive  
15          then?

16          A.   Yes.  For methamphetamine.

17          Q.   Can you explain how you know that, I mean how the test  
18          works, to the jury?

19          A.   Specific for the methamphetamine test, it's a small  
20          pouch that has three glass ampoules that are filled  
21          with chemicals.  And on the pouch for those tests,  
22          they have instructions that you have to break the  
23          ampoules from left to right after you've placed a  
24          sample in.  So when you place a small amount of  
25          whatever suspected narcotic into the test, and you

1 break the first ampoule, you have to agitate it, so  
2 just basically tapping it back and forth to have the  
3 suspected narcotics mix with the chemicals, and then  
4 you do the second ampoule, do the same process, and  
5 the third. And with methamphetamine it turns a, what  
6 they call a flash blue. And in this case, it -- they  
7 turned blue, as I indicated, that it was a presumptive  
8 test for methamphetamine.

9 Q. Now, you said there were photos taken.

10 THE CLERK: Exhibits 1 to 31 marked for  
11 identification.

12 *(Exhibit Numbers 1 to 31 were marked*  
13 *for identification.)*

14 BY MR. BEAUMASTER:

15 Q. Showing you what's been marked for identification as  
16 Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,  
17 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,  
18 27, 29, 30, and 31. Do you recognize those? Take a  
19 moment to look at them.

20 A. They're photos that were taken of the residence and  
21 the locations in which documents and narcotics were  
22 found.

23 Q. Those are pictures of the narcotics?

24 A. Yes.

25 MR. BEAUMASTER: Your Honor, at this time I

1 would offer Exhibits 1 through 31, I believe, minus  
2 28.

3 MR. HO: No objection.

4 THE COURT: All right. The Court will  
5 accept into evidence Exhibits 1 through 31, with the  
6 exception of Exhibit 28.

7 (Exhibits 1 to 27 and 29 to 31 were  
8 received into evidence.)

9 MR. BEAUMASTER: Your Honor, I do intend on  
10 publishing these. I'll note that I need to warm up  
11 the screens. Prior to that, I have no questions I  
12 could ask while that's being done.

13 THE COURT: Yes. I think that will take  
14 some time to set that up.

15 BY MR. BEAUMASTER:

16 Q. Officer, I'm going to show you what's been marked for  
17 identification as Exhibit 28. Do you recognize that?

18 A. Yes.

19 Q. What is that?

20 A. This is a report from the BCA on the examination of  
21 physical evidence for the items that we sent for  
22 definitive testing.

23 Q. In this case?

24 A. Yes.

25 Q. Now, did you actually take the drugs from -- or are

1 the drugs with you today that you took from the  
2 garage?

3 A. Yes.

4 Q. Can you bring those out?

5 A. *(Witness complies.)*

6 *(Exhibit Numbers 32 to 34 were marked*  
7 *for identification.)*

8 THE CLERK: Exhibit 32 to 34 marked for  
9 identification.

10 BY MR. BEAUMASTER:

11 Q. Showing you Exhibits 32, 33, 34, can you tell the jury  
12 what those are?

13 A. Yes. Exhibit 34 is item number one that was  
14 collected. That was five small baggies of a crystal  
15 substance that tested positive for methamphetamine.  
16 Item three, which is Exhibit 33, is another small  
17 plastic baggie that contained a brown kind of  
18 rock-like substance in there. And then number four --  
19 I'm sorry Jury Exhibit 32 is item number four. There  
20 was a Ziplock bag that contained a crystal substance  
21 in there as well.

22 Q. Are these the items that you referred to testing, NIK  
23 testing?

24 A. I don't recall if number three or four were tested.  
25 I know number one was tested.

1 Q. Can you explain --

2 A. That I tested.

3 Q. Can you explain that to the jury, why was one tested,  
4 one not?

5 A. Basically you test to reaching a certain threshold  
6 level of crime. So with this amount here, and when I  
7 reach a first degree amount, there's no need to test  
8 any further and use a test kit. We've already  
9 reached -- or gone beyond a threshold for a charging  
10 level.

11 Q. And that's based on the weight?

12 A. Yes.

13 Q. Now, there seems to be a lot of bags there. Can you  
14 explain that?

15 A. Yes. At the time we would collect five bags as one  
16 item. That's what happened here. So with each  
17 individual bag within item number one, I labeled each  
18 bag, 1A, 1B, and so on, and with each bag, 1A, 1B  
19 through 1E, I weighed it with the bag, so it's a gross  
20 weight, and then a net weight, where you empty the  
21 contents of the baggie into a boat on a digital scale  
22 and get the weight without the baggie. So what's used  
23 for charging is the net weight. We don't use the  
24 weight of the bags. It's the raw product.

25 Q. And why are -- talking about the bags, there seems to

1 be a lot of writing on those bags. Can you explain  
2 that?

3 A. Yes. So my initials are on each individual bag that  
4 contains the original bags. So because item one had  
5 five plastic bags and I broke them down to 1A, 1B and  
6 so on. Each item had to be separated within the  
7 original item number one bag. So item number 1B, for  
8 example, has the original baggie that the narcotics  
9 were found in, placed inside a slightly bigger bag to  
10 separate it, and then each one is placed inside item  
11 one.

12 Q. Do you seal those?

13 A. Yes. We use a heat sealer. And we check the  
14 plastic -- like pull this apart and make sure it's  
15 sealed up. And each bag, I used my badge number and  
16 initials every time, across the length of the seal.

17 Q. Does it appear that it's been tampered with in any  
18 way?

19 A. No. However, it does appear that the BCA has opened  
20 the bottom. I can tell because the initials here are  
21 not mine. And it's a similar practice, they would  
22 open each one individually as well, and if -- I don't  
23 know if we would need to examine it, but on each bag  
24 there are my initials and a BCA personnel's initials  
25 as well.

1 Q. As far as the the testing of those items then, 28 is  
2 the report from the BCA who tested those?

3 A. It looks like 27.556 were four of these bags analyzed.

4 MR. HO: Object to his testifying regarding  
5 a report that was issued by the BCA. No foundation,  
6 hearsay.

7 THE COURT: Sustained.

8 BY MR. BEAUMASTER:

9 Q. Officer, I simply ask is that the report from the BCA  
10 regarding those drugs?

11 A. Yes.

12 Q. Thank you.

13 MR. BEAUMASTER: Your Honor, may I approach  
14 to retrieve the photos?

15 THE COURT: You may.

16 MR. BEAUMASTER: I think they're up there.

17 THE COURT: I think so.

18 BY MR. BEAUMASTER:

19 Q. What is that a photo of?

20 A. The numbers 219 from the front of the house at 219  
21 Tiffany Drive. And the partially opened garage door  
22 and the front door.

23 Q. And that's where you went in?

24 A. We went in the main house door.

25 Q. How do you get into that garage? Is it accessible

1 from inside the house?

2 A. Yes.

3 Q. Was that door open?

4 A. It was unlocked.

5 Q. You could go back and forth?

6 A. Yes.

7 Q. There seems to be some children's toys around?

8 A. Yes.

9 Q. Was access prohibited in any way?

10 A. No.

11 Q. Showing you a photo marked Exhibit Number 2, what is  
12 that a photo of?

13 A. That is the inside of the garage. And it shows the  
14 tool chest from the inside where the narcotics were  
15 found. And the documents as well.

16 Q. And when you -- when you're talking about the tool  
17 chest, you're talking about the big --

18 A. Yes. The big, red tool chest right in the center of  
19 the photo there.

20 Q. There seems to be a lot of tools laying about. Is  
21 that fair to say?

22 A. Yes.

23 Q. Showing you what's been marked for identification as  
24 Exhibit 9. What is that?

25 A. That is a picture of a citation that was issued to

1 Troy Wierson, with 219 Tiffany Drive as the address.

2 Q. And is that how you saw it on that day?

3 A. That is how it was photographed as it was before it  
4 was collected.

5 Q. Collected. Showing you what's been marked for  
6 identification, or which is marked as Exhibit 10, and  
7 entered. What is that photo of?

8 A. Based on my training and experience, that is a  
9 homemade meth bong.

10 Q. And can you explain what that is? I mean how that  
11 works?

12 A. Well, not really actually. I can tell by looking at  
13 it with the bent glass at the bottom here -- maybe I  
14 would be better -- there's another photo that has the  
15 liquid that is still in it. And it's most common with  
16 the colored liquid to be used with methamphetamine.

17 It add -- they can add flavoring to it, which is  
18 inconsistent with a marijuana make-shift bong.

19 Q. So that's how you identify what it's used for?

20 A. Yes.

21 Q. And I'll show you what's been marked as, what has been  
22 marked as Exhibit 11. Is that the same?

23 A. It appears to be the same bong, same bottle, and the  
24 liquid was still in it at that point. You can see the  
25 pink liquid.

1 Q. Right?

2 A. Right about here (indicating) that is the pink colored  
3 liquid. And another indication is the torch that is  
4 in the drawer. Methamphetamine has to be heated at a  
5 high temperature. And it's most often used with some  
6 type of torch as opposed to a regular lighter.

7 Q. And that's one of the reasons this photo was taken?

8 A. Yes.

9 Q. Those objects had significance?

10 A. Yes.

11 Q. Exhibit Number 12, what does that show?

12 A. That is a photograph of Troy Wierson and a child.

13 Q. And was that on the toolbox?

14 A. Yes.

15 Q. Exhibit Number 13, what does that show?

16 A. That is on the left side, there are several plastic  
17 baggies that appear to be empty. And then this, this  
18 here, appears to be the back of the switch blade  
19 knife.

20 Q. Showing you Exhibit Number 14. What does that show?

21 A. It's a wooden box with small pieces of what appears to  
22 be marijuana.

23 Q. That was in the toolbox as well?

24 A. Yes.

25 Q. Showing you Exhibit Number 15.

1 A. That is another small container with a ripped plastic  
2 bag and what appears to be marijuana along with  
3 flavored rolling papers, the "Juicy" that you see  
4 there, next to the box with suspected marijuana is  
5 flavored rolling papers.

6 Q. Exhibit Number 16?

7 A. That is a photo back view of the same items described  
8 as the box that is just farther up. The previous  
9 picture was a closeup of that and this is just a  
10 zoomed-out view.

11 Q. And 17?

12 A. That is an overall photo of the toolbox. And it looks  
13 like the insurance card for Nichelle Wierson.

14 Q. Exhibit Number 18?

15 A. That's a closeup of the citation previously mentioned.  
16 Looks like a men's watch and a citation issued to Troy  
17 Wierson, with an address of 219 Tiffany Drive.

18 Q. And 19?

19 A. Same photo, excluding the watch.

20 Q. And 20?

21 A. That is a picture of empty plastic baggies, some  
22 pills, and a weight used for calibrating a digital  
23 scale. That is the same photo, just a different  
24 angle, so the same plastic baggies and the metal  
25 weight used for the calibration of the -- of a scale.

1 That is a zoomed-out view. In the corner up here, you  
2 can see the same baggies and the metal weight. This  
3 is the citation as mentioned with the men's watch.  
4 Can't see with the glare exactly what is in this  
5 photo, but that is where the five baggies, item number  
6 one, were located. This is a piece of glass with a  
7 razor blade, and a line of suspected narcotics.  
8 Baggie here, also containing a crystal substance and a  
9 digital scale there. And you can see --

10 Q. I'm sorry, Officer.

11 A. Another torch down here at the bottom, the tool chest  
12 on the ground. That is a closeup of the portion of  
13 the previous photo. The top left is the edge of the  
14 piece of glass that has the line next to the razor  
15 blade. This is a photo of the plastic baggie  
16 containing a crystal substance.

17 Q. Is that typically what meth looks like?

18 A. Yes. And that is a -- from the top photo of the five  
19 baggies that you can see there, containing  
20 methamphetamine.

21 Q. And there is a dollar bill in there?

22 A. Yes.

23 Q. Is that normal?

24 A. It's not uncommon. Methamphetamine can be ingested  
25 either with a needle, smoking it, or chopping it up in

1 a line and snorting it.

2 Q. What do they snort it with?

3 A. Sometimes dollar bills. And sometimes you can do what  
4 is called a hot rail. It's lining up the meth, and  
5 then taking a piece of the bubble pipe or even just a  
6 tube of glass, and heat that up to a really hot  
7 temperature, and then as you snort it, it vaporizes,  
8 and you essentially smoke it while you're snorting it.

9 Q. With regard to the dollar bill, how do they use that  
10 for snorting? Can you explain that to the jury?

11 A. You roll it up, put it in your nose, snort it off  
12 whatever you have it laying on.

13 Q. You make a straw basically?

14 A. Yes. That is a digital scale. And it appears to have  
15 some specks of methamphetamine on it. That is another  
16 photo of the same overall shot.

17 Q. And that is Exhibit 26?

18 A. In that photo, you can see the glass tubes here  
19 (*indicating*) along the left side of the drawer on the  
20 glass.

21 Q. And Exhibit 27, what does that show?

22 A. That looks like another meth bong. You can tell the  
23 difference in this one a little bit better because of  
24 the glass bubble right here (*indicating*) that is bent  
25 and connects into the bong there. In my experience, a

1 bubble pipe almost is exclusively used for  
2 methamphetamine. And it's because of the shape and  
3 the temperature that you need to get it to to smoke  
4 it.

5 Q. Is there anything else in that photo?

6 A. Not that I see.

7 Q. And 29, what is that a picture of?

8 A. It's a picture of the upstairs living room and dining  
9 room area and a photo of Troy and Nichelle on the wall  
10 with two children.

11 Q. And Exhibit 30, what does that show?

12 A. That is a photo of the living room, that is Nichelle  
13 Wierson after she's been secured, and just a general  
14 lower view of the condition of the home at the time.

15 Q. And 31?

16 A. That is a photo of the -- a dresser drawer inside  
17 bedroom number one, which is where Nichelle came from.  
18 And that shows a digital scale and a belt buckle and  
19 what appears to be a men's watch up here, right by the  
20 sock there.

21 Q. And I'm going to show you Exhibit 8. What is that?

22 A. Exhibit 8 is a photo of evidence item number four,  
23 with methamphetamine inside.

24 Q. And three?

25 A. That is a picture of evidence number one, with the

1 five baggies of methamphetamine.

2 Q. And that shows your signatures -- or your initials?

3 I'm sorry.

4 A. Yes. And that is evidence item number three.

5 Q. That is Exhibit 4?

6 A. Yes. 33?

7 Q. Marked for identification as 33, but the photo was  
8 Exhibit 4?

9 A. Is this the photo? I'm sorry.

10 Q. It's my fault.

11 A. Number three.

12 Q. I went it too fast. Number four correlates with 33  
13 for identification?

14 A. Oh, for the photo. Yes. I'm sorry. I was looking at  
15 the bag, not the number four. Sorry.

16 Q. And I'm just identifying the exhibit that's in  
17 evidence as number five.

18 A. That is the back side of number three. That also has  
19 my initials on the baggie, along with -- you can see  
20 more clearly on here the difference of -- the same for  
21 me every time is 1902. That was my badge number at  
22 the Task Force at the time, with my initials. These  
23 are not my initials. That's after it came back from  
24 the BCA laboratory.

25 Q. And Exhibit 6?

1 A. That is a photo of a different view of item number  
2 one.

3 Q. And, again, your initials?

4 A. Yes. My initials and initials from the BCA  
5 laboratory.

6 Q. And 7?

7 A. Another back side view of number four, also with my  
8 initials. And it doesn't appear that there are --  
9 that this was tested by the BCA lab.

10 Q. Now, the general layout of that house, would the child  
11 have been free to go into their garage?

12 A. There was nothing restricting access to the garage.

13 Q. Were there toys and other children's objects in that  
14 garage?

15 A. Yes. I remember a child's bicycle was in the garage.

16 Q. What, taken together, with the items that you found,  
17 did you determine was going on at that residence?

18 A. Based on the items that I found, factoring in the  
19 scale, the baggies that were pre-packaged, along with  
20 empty baggies, I believed that there was, in addition  
21 to the meth bong, there was use and sales taking place  
22 out of the residence.

23 Q. And so as far as the general condition of the house,  
24 it was mostly in the garage you found things?

25 A. Yes.

1 Q. You did find a scale upstairs?

2 A. Yes.

3 Q. Did you find any other drug items anywhere else in the  
4 house?

5 A. There were pills also found that were not tested.

6 Q. With regard to all of the methamphetamine, though, was  
7 that solely in the garage?

8 A. Yes.

9 Q. Now, back in 2015, July, July 2nd, 2015, do you know  
10 the approximate value of the methamphetamine in that  
11 garage?

12 A. From what was measured, the 31 point -- pardon?

13 Q. Yes.

14 A. Oh. From what was measured, the 31.91 grams that were  
15 tested, an ounce was 28.4 grams, and, at the time,  
16 with narcotics deals, the more you buy, the cheaper  
17 you pay per gram, so if 31 grams were broken down to,  
18 for sale for one gram at a time, you could get around  
19 \$100 per gram. At that time an ounce of  
20 methamphetamine could go for around \$1,200 The prices  
21 vary because of who the supplier is and who the buyer  
22 is. It's all individual. It just depends on who's  
23 who and how they're connected. Typically, if you  
24 don't know somebody you might charge a little bit  
25 more. If you know them you could cut deals. It's

1 really at the discretion of whoever is dealing. But,  
2 on average, \$100 per gram. And if you think about a  
3 sugar packet, that's about a gram's worth of  
4 methamphetamine. So in that perspective, \$100 for a  
5 sugar packet worth of methamphetamine per gram.

6 Q. So you more than double your money by breaking it  
7 down?

8 A. You could.

9 Q. If you bought it all in one big bulk deal, you get a  
10 deal?

11 MR. HO: Your Honor, I'm going to object.  
12 This is speculative.

13 THE COURT: Sustained.

14 BY MR. BEAUMASTER:

15 Q. Officer, with regard to your training and experience  
16 with the Drug Task Force, do you learn the values of  
17 drugs?

18 A. Yes.

19 Q. How do you learn those values?

20 A. We learn the values a couple of different ways. The  
21 DEA sends out intelligence briefings annually, but the  
22 most relevant way locally is through either the use of  
23 undercover officers purchasing narcotics or  
24 informants. That's what best educates us on -- at the  
25 time and in our area.

1 Q. And at that time were you aware of what the values  
2 were?

3 A. Yes.

4 Q. And I think you said \$100 a gram?

5 A. Yes.

6 Q. If you bought an ounce, it was approximately how much?

7 A. It could be around \$1,200.

8 Q. So that would be 28 grams?

9 A. Yes.

10 MR. BEAUMASTER: I have no further questions  
11 at this time, Your Honor.

12 THE COURT: Mr. Ho.

13 MR. HO: Thank you.

14 **CROSS EXAMINATION**

15 **BY MR. HO:**

16 Q. Morning, Sergeant.

17 A. Morning.

18 Q. Just to be clear, this search of this location was in  
19 2015, correct?

20 A. Yes.

21 Q. So at the time you were a licensed police officer for  
22 approximately six years?

23 A. Seven and a half, I think.

24 Q. Okay. And you had only been on the Drug Task Force  
25 since February of 2014, so about a year on the Task

1 Force when this search occurred?

2 A. Little over a year, yup.

3 Q. Okay. And you've filed police reports from this  
4 incident back in 2015, correct?

5 A. Yes.

6 Q. Now, when you arrived at the residence to execute a  
7 search warrant, Mr. Wierson here was not located at  
8 the residence, is that correct?

9 A. Yes.

10 Q. Mr. Wierson was not present at the residence at any  
11 time that day, is that correct?

12 A. At any time that day, while I was there, correct.

13 Q. And according to your reports, you yourself did not  
14 surveil this residence prior to the search warrant  
15 being executed, is that correct?

16 A. Correct.

17 Q. So you cannot say, and you have not seen Mr. Wierson  
18 at this residence prior to the execution of the search  
19 warrant, correct?

20 A. Yes.

21 Q. And, just to be clear, at no point in time prior to  
22 the execution of this search warrant had you observed  
23 Mr. Wierson at this residence?

24 A. That's correct.

25 Q. And you didn't find any of these drugs on his person

1 in any capacity, correct?

2 A. Correct.

3 Q. You didn't find them in a backpack or a wallet or a  
4 briefcase owned by Mr. Wierson, correct?

5 A. Correct.

6 Q. And Mr. Wierson didn't admit or confes to you that he  
7 sold or possessed illegal narcotics, correct?

8 A. Correct.

9 Q. Now, these packages that you found -- or the narcotics  
10 that you found, it appeared that some were in  
11 packaging?

12 A. Yes.

13 Q. And some was not?

14 A. Yes.

15 Q. Okay. As far as the packaged narcotics, were those  
16 labeled with Mr. Wierson's name on it?

17 A. No.

18 Q. Given that you didn't surveil this property prior to  
19 the search warrant, would it be fair to say that you  
20 weren't aware of other people who entered in this  
21 residence or this garage?

22 A. Yes.

23 Q. Okay. So, in other words, other people could have  
24 entered this home or this garage, you weren't aware of  
25 it?

1 A. Yes.

2 Q. Correct?

3 A. Correct.

4 Q. Now, you talked about the sale of narcotics and  
5 various pricing. Isn't it common place in drug  
6 enforcement to use informants or other officers to  
7 conduct what are called controlled buys?

8 A. Yes.

9 Q. And a controlled buy is basically putting an officer  
10 or informant in a situation with your target who would  
11 then engage in this purchase of narcotics or sale of  
12 narcotics with your target, correct?

13 A. Yes.

14 Q. And in this case there is no controlled buy involving  
15 Mr. Wierson, correct?

16 A. That's correct.

17 Q. So we don't have any observation of Mr. Wierson  
18 engaging in the sale of drugs?

19 A. Correct.

20 Q. Or the purchase -- or the sale or receipt of drugs?

21 A. Correct.

22 Q. Now, because you hadn't surveilled this location prior  
23 to the search warrant, is it fair you don't know how  
24 these drugs came into this address? Fair?

25 A. Yes.

1 Q. You don't know who, in fact, put these drugs in this  
2 house, correct?

3 A. In fact, I do not.

4 Q. And you don't know when these drugs came into this  
5 house?

6 A. No.

7 Q. And certainly, given that we don't know exactly who  
8 has been in this house or this garage, it's possible  
9 that some other person brought these drugs into this  
10 house?

11 A. Yes.

12 Q. It's possible that somebody other than Mr. Wierson or  
13 Nichelle Wierson purchased these drugs and put them in  
14 that house?

15 A. It's possible.

16 Q. When you arrived at the scene to conduct this search,  
17 you indicated in testimony that Nichelle Wierson was  
18 found at the house?

19 A. Yes.

20 Q. And ultimately Nichelle Wierson was arrested, wasn't  
21 she?

22 A. Yes.

23 Q. And ultimately Nichelle Wierson was charged with a  
24 felony drug offense?

25 MR. BEAUMASTER: Your Honor, I would object

1 at this point as to relevance.

2 THE COURT: Could I have the parties, the  
3 attorneys, approach?

4 (Discussion at the bench out of the  
5 hearing of the jury and the court  
6 reporter.)

7 THE COURT: Just for the record, I am going  
8 to sustain further line of questioning in regards to  
9 that. If you could move on, Mr. Ho.

10 BY MR. HO:

11 Q. Officer, you were the lead investigator in this case,  
12 is that correct?

13 A. Yes.

14 Q. And so the -- ultimately as the lead investigator  
15 you're going to be in charge of the overall posture of  
16 the investigation and what happens?

17 A. Yes.

18 Q. So you indicated that in a search warrant you obtained  
19 a, some glass out of the garbage, is that correct?

20 A. Yes.

21 Q. Did you test that for fingerprints?

22 A. No.

23 Q. With respect to the various items that you have  
24 referenced here, including -- including all of the  
25 items you tested here, or that you outlined in the

1 photographs, had you tested any of them for  
2 fingerprints?

3 A. No.

4 Q. With respect to any of the evidence in this case, did  
5 you engage in a DNA test or swab to ascertain DNA with  
6 respect to the evidence you recovered?

7 A. No.

8 Q. Did you try?

9 A. No.

10 Q. And it's fair to say that you at no point in time  
11 observed the defendant in physical possession of any  
12 of the narcotics that were found at the scene?

13 A. Yes.

14 Q. Let me be clear. You did not observe the defendant,  
15 Mr. Wierson?

16 A. That is correct.

17 Q. Okay. Thank you. And you are unaware and unable to  
18 say whether the defendant had personal knowledge of  
19 the drugs you found at this residence; is that fair to  
20 say?

21 A. I'm not able to say.

22 Q. You're not able to say he had personal knowledge of  
23 the drugs that were found at the residence?

24 A. That's correct.

25 Q. You are -- officer, when you came to the residence you

1 observed Nichelle Wierson at the residence, is that  
2 correct?

3 A. Yes.

4 Q. And she ultimately had to be hospitalized, is that  
5 correct?

6 A. Yes.

7 Q. And at the time when you searched this residence, you  
8 were not aware of the current marital situation  
9 between Nichelle Wierson and Mr. Wierson, were you?

10 A. No.

11 Q. You were not aware that these parties were separated?

12 MR. BEAUMASTER: Objection, Your Honor.  
13 Calls for facts not in evidence.

14 THE COURT: Sustained.

15 BY MR. HO:

16 Q. So you weren't aware as to the present circumstances  
17 at that time between these two individuals in terms of  
18 their marriage?

19 A. Correct.

20 Q. It's fair to say, isn't it, Officer, that you were not  
21 aware as to where Mr. Wierson was living at that time?

22 A. I believe I developed probable cause and had proof or  
23 at least evidence that he was living there.

24 Q. You testified that you had not seen him at this  
25 residence at any time?

1 A. That's correct.

2 Q. So it's fair to say that you can't state with any  
3 certainty that he was actually residing there at the  
4 time of that search?

5 A. With certainty, no.

6 Q. With respect to the child located at the residence,  
7 his last name is Schmelzer, is that correct?

8 A. Yes.

9 Q. And you -- are you aware that Mr. Schmelzer is -- or  
10 that Mr. Wierson is not the father of Mr. Schmelzer?

11 A. I was not.

12 Q. Isn't it fair to say that you weren't aware of the  
13 custody arrangement regarding Mr. Schmelzer?

14 A. Correct.

15 Q. But would it be apparent to you that Mr. Schmelzer,  
16 the child at the scene, has a different name than  
17 Mr. Wierson?

18 A. It was apparent.

19 Q. So would that suggest to you that Mr. Wierson would  
20 not be the father of Mr. Schmelzer?

21 A. Biological father?

22 Q. Correct.

23 A. Yes.

24 Q. But it's fair to say you were not aware of the current  
25 circumstances regarding custody of Mr. Schmelzer at

1           that time?

2           A.    Correct.

3           Q.    Is it fair to say, because you hadn't made any  
4           observations of this residence, is it fair to say you  
5           weren't aware of whether Mr. Schmelzer was living  
6           there full time or part time? You couldn't really  
7           make that conclusion, could you?

8           A.    Part time or full time?

9           Q.    Either way.

10          A.    Part time, I believe it would be reasonable. He had a  
11          room. Full time, no.

12          Q.    But basically you're not really aware of the exact  
13          circumstances there?

14          A.    Correct.

15          Q.    In your experience doing drug enforcement, have you  
16          known women or females to use narcotics?

17          A.    Yes.

18          Q.    Have you had experience with women or female  
19          defendants who have been charged with committing the  
20          crime of sale of narcotics?

21          A.    Yes. Can I be clear where I wasn't the case agent,  
22          but involved in cases as an agent and a team leader.

23          Q.    So, in other words, it's not necessarily uncommon for  
24          both men and women to be involved in drug use and drug  
25          sales?

1 A. Yes.

2 Q. With respect to your investigation, Officer, you have  
3 no evidence to present that any specific person  
4 brought the drugs into this house, is that correct?

5 A. As far as a specific person bringing them in?

6 Q. Right.

7 A. Correct.

8 Q. And I believe I may have asked this, and I apologize,  
9 but it's possible that any number of other individuals  
10 brought drugs into this house, correct?

11 A. It's possible.

12 Q. It's certainly possible that the drugs that were found  
13 in this house were also potentially used by  
14 individuals other than Mr. Wierson?

15 A. It's possible.

16 Q. Did you conduct any DNA or fingerprint analysis  
17 regarding the bongs that you say you found at the  
18 scene?

19 A. No.

20 Q. And with respect to the fluid that you found in the  
21 bong -- I don't believe you testified to this, but --  
22 and I don't believe I saw any documentation -- but did  
23 you test the fluid that was in the bong?

24 A. No.

25 Q. So we're assuming it was a bong because of how it

1 looked?

2 A. Yes.

3 Q. But we don't know for sure what it was used for?

4 A. Definitely, no.

5 Q. And we don't know who used it?

6 A. Correct.

7 Q. And with respect to the specific items you referenced,  
8 there was a dollar bill located at the scene, correct?

9 A. Yes.

10 Q. Now, of you have no specific knowledge or information  
11 that that dollar bill was used for any sort of drug  
12 related purpose?

13 A. That specific dollar bill, no.

14 Q. As far as the torches that were found, is it fairly --  
15 would you agree it's common place to find a torch in a  
16 garage, or those kinds of torches?

17 A. Yes.

18 Q. Okay. And with respect to the watch that was found,  
19 Officer, you didn't do a DNA or fingerprint analysis  
20 of that watch to ascertain whose watch that might be?

21 A. Correct.

22 Q. Now, you also testified there were some documents in  
23 the name of Nichelle Wierson that were found in the  
24 garage, is that correct?

25 A. Yes.

1 Q. And you probably don't know how they came to be in  
2 that garage, correct?

3 A. Correct.

4 Q. Documents you found in the name of Mr. Wierson were  
5 found, is it fair to say you don't know how those came  
6 to be in the garage?

7 A. Yes.

8 Q. In the course of your investigation, did you ever  
9 observe Mr. Wierson at this house engaged in the sale  
10 of narcotics?

11 A. No.

12 Q. In the course of your investigation did you ever  
13 observe Mr. Wierson at this house in the use of  
14 narcotics?

15 A. No.

16 Q. Now, Officer, I believe you testified that you  
17 ultimately took the items found at the scene and you  
18 personally delivered them to the Dakota County  
19 Sheriff's Office?

20 A. No.

21 Q. That was -- you did not?

22 A. No. Agent Luchsinger did.

23 Q. So your part in this investigation ended at the scene  
24 of this search?

25 A. No.

1 Q. Okay. Let me rephrase that. As far as the gathering  
2 of this evidence or the drugs and so forth, the last  
3 time you handled them was at the scene?

4 A. No.

5 Q. Who -- restate for me who delivered them from the  
6 scene.

7 A. Agent Luchsinger brought them from the scene to the  
8 Dakota County Drug Task Force.

9 Q. That's what you believe happened?

10 A. Yes.

11 Q. Okay. Those drugs were later tested, is that correct?

12 A. Yes.

13 Q. And in your experience drugs have to be formally  
14 tested by a lab to confirm exactly what they are?

15 A. Yes.

16 Q. Because isn't it also a fact, Officer, that your NIK  
17 test is not a final analysis or an exact analysis,  
18 which is why it needs to be finally fully tested,  
19 correct?

20 A. It's a presumptive test, yes.

21 Q. All right. But you yourself, obviously, are not  
22 involved in the final full testing of any particular  
23 narcotic?

24 A. Correct.

25 Q. In your investigation of this case, did you -- is it

1 fair to say that you didn't arrive at any information  
2 that Mr. Wierson engaged in any agreement with some  
3 other people to sell drugs? Is that fair to say?

4 A. I don't know how to answer that.

5 MR. BEAUMASTER: Your Honor, could we  
6 approach?

7 THE COURT: You may.

8 (Discussion at the bench out of the  
9 hearing of the jury and the court  
10 reporter.)

11 THE COURT: Okay. Mr. Ho.

12 MR. HO: Thank you.

13 BY MR. HO:

14 Q. Just to be clear, Sergeant, in all of this  
15 investigation, it basically involved the search of  
16 this residence, correct? That was the corpus of your  
17 investigation was the search of this residence?

18 A. Yes.

19 Q. With respect to your investigation -- I just want to  
20 be clear -- but in all aspects of any item found, you  
21 never engaged in the use of fingerprint evidence or  
22 fingerprint analysis, correct?

23 A. Correct.

24 Q. You never engaged in the use of DNA analysis, correct?

25 A. Correct.

1 Q. And it wasn't a question of whether you attempted to  
2 do those tests, you just never tried, correct?

3 A. Correct.

4 MR. HO: Your Honor, I have nothing further  
5 at this time.

6 THE COURT: Mr. Beaumaster, redirect?

7 MR. BEAUMASTER: Yes, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY MR. BEAUMASTER:**

10 Q. Counsel asked you about certainty that Mr. Wierson was  
11 connected to the methamphetamine found in the garage.  
12 By the end of the search did you have certainty of his  
13 connection?

14 A. Yes.

15 Q. And that was based upon all of the information that  
16 you had, is that correct?

17 A. Yes.

18 Q. Now, counsel asked if you ever saw Mr. Wierson at --  
19 during the search or at the house. Did you try to  
20 find him or did you assign someone to try to find him?

21 A. Yes.

22 Q. And were they ever able to get ahold of him?

23 A. Agent Luchsinger was able to contact him via phone.

24 Q. And did he have an opportunity to talk to him?

25 A. Yes.

1 Q. And did he ask him --

2 MR. HO: Your Honor, I object on hearsay.

3 THE COURT: Sustained.

4 BY MR. BEAUMASTER:

5 Q. So Mr. Wierson was made aware that you were looking  
6 for him?

7 A. Yes.

8 Q. With regard to the child that counsel asked you about,  
9 it was clear the child was living there?

10 A. Yes. To me it was.

11 Q. And you know for a fact the child was there on July  
12 2nd of 2015, is that correct?

13 A. Yes.

14 Q. And how do you know that?

15 A. He was there.

16 Q. Would it be normal for you to be looking for  
17 fingerprints and looking for DNA given the information  
18 that you had in this case and what you had obtained by  
19 the end of that search warrant?

20 A. No.

21 Q. And as far as the chain of custody, I think you said  
22 Dave Luchsinger brought them from the house to -- it  
23 wasn't the sheriff's office, was it?

24 A. No.

25 Q. Where was it?

1 A. Dakota County Drug Task Force office.

2 Q. And what does he do with them there?

3 A. He brought them in a temporary evidence locker and  
4 maintained custody of the key. And when I arrived  
5 back at the office, he gave me the key to the locker  
6 and I removed the items for testing and sealing before  
7 I placed them back into the locker for permanent  
8 placement in evidence storage.

9 Q. So he drove them from the house to the evidence  
10 locker, put it in there, gave you the key?

11 A. Yes.

12 Q. And you were shortly behind him?

13 A. Yes.

14 Q. Is that normal procedure?

15 A. It's not uncommon.

16 Q. With regard to what you found in the totality of all  
17 of the evidence you seized and photographed, did you  
18 come to a conclusion that there was drug sales going  
19 on there?

20 A. Yes.

21 Q. And can you tell the jury a little bit about why that  
22 evidence shows that?

23 MR. HO: Your Honor, I object. It calls  
24 for a narrative.

25 THE COURT: Sustained.

1 BY MR. BEAUMASTER:

2 Q. And in detail, with regard to those photos and the  
3 items found, let's start with the baggies, what does  
4 that tell you?

5 A. Based on my training and experience, the baggies  
6 pre-packaged contained methamphetamine, next to empty  
7 baggies, next to a scale, indicated to me  
8 pre-packaged, ready for sale or ready to be packaged  
9 for sale.

10 Q. Production process?

11 A. Yes.

12 Q. As far -- counsel asked you about delivery of the  
13 drugs. Would that be normal to find invoices for  
14 methamphetamine deliveries?

15 A. No.

16 Q. Would it be normal that there would be scheduled  
17 deliveries?

18 A. No.

19 Q. As far as the items found in the garage, is there any  
20 indication that tool chest for those drugs belonged to  
21 anyone else?

22 A. Aside from the defendant?

23 Q. Yes.

24 A. Yes.

25 Q. And who was that?

1 A. Nichelle Wierson.

2 Q. So there is indication that the Wiersons, both Troy  
3 and Nichelle, were in possession of that  
4 methamphetamine?

5 A. Yes.

6 Q. And by the end of the search, you were certain they  
7 were?

8 A. Yes.

9 MR. BEAUMASTER: Nothing further, Your  
10 Honor.

11 THE COURT: Mr. Ho?

12 MR. HO: Thank you.

13 **CROSS EXAMINATION**

14 **BY MR. HO:**

15 Q. It's not uncommon, Officer, to incorporate the use of  
16 fingerprint analysis or DNA in criminal investigations  
17 in this day and age, would you agree with that?

18 A. Yes.

19 Q. And I believe you stated that you would agree that  
20 there is a number of possibilities that other people  
21 have been in this house and have been in that garage  
22 that you can't dispute?

23 A. I stated it was possible, yes.

24 Q. Right. And by virtue of the fact that you have made  
25 no surveillance of this location, you can't state with

1 any certainty who's been in and out of that house by  
2 the time, when you came to search that house? Fair to  
3 say?

4 A. Yes.

5 Q. And when you -- when you indicated to Mr. Beaumaster's  
6 question you concluded drug sales, but the fact of the  
7 matter is, Officer, you haven't got evidence of an  
8 observed drug sale, correct?

9 A. Can you clarify observed?

10 Q. What you found in this location was various amounts of  
11 narcotics, correct?

12 A. Yes.

13 Q. And you are -- fair to say you're assuming drug sales  
14 because there's no specific -- you have no specific  
15 observed drug sale here, correct?

16 A. So this is -- I want to be cautious with how I answer.  
17 Can you clarify observed drug sale?

18 Q. Did you observe Mr. Wierson engage in a drug sale?

19 A. Physically?

20 Q. Yes.

21 A. No.

22 Q. And you concluded at the end of the case, I think in  
23 response to Mr. Beaumaster's question, was that you  
24 believed my client and Nichelle were in possession of  
25 drugs?

1 A. Yes.

2 Q. And certainly you believed that because Nichelle was  
3 present at the scene when you came to the house?

4 A. Are you asking if I'm using that as a sole basis for  
5 that conclusion?

6 A. No. I didn't ask that.

7 Q. I'm -- Nichelle was present at the scene when you  
8 searched the house?

9 A. Yes, she was.

10 Q. So your conclusion that she was involved in the  
11 possession of drugs, pretty obvious? Would you agree  
12 with that? She was present, correct?

13 A. She was present.

14 MR. HO: I have nothing further, Your  
15 Honor.

16 THE COURT: Mr. Beaumaster, do you have  
17 anything further relating to the cross examination?

18 MR. BEAUMASTER: Yes, Your Honor.

19 **REDIRECT EXAMINATION**

20 **BY MR. BEAUMASTER:**

21 Q. Following up on counsel's question on information you  
22 had regarding sales out of that house, by the end of  
23 your investigation you had information there were  
24 sales?

25 A. Yes.

1 Q. Multiple people?

2 A. Yes.

3 Q. You didn't have specific names, though?

4 MR. HO: Your Honor, objection. This is  
5 speculation. It is also getting into hearsay.

6 MR. BEAUMASTER: I'm confirming counsel's  
7 question.

8 MR. HO: Move to strike.

9 MR. BEAUMASTER: Can we approach, Your  
10 Honor?

11 THE COURT: Stop. Okay. I am going to  
12 sustain the line of questioning. I believe that he's  
13 already answered so I'm going to sustain further  
14 questioning.

15 BY MR. BEAUMASTER:

16 Q. Counsel asked you about did you know any of the  
17 individuals buying drugs from that house. And you  
18 answered no, is that correct?

19 A. Yes.

20 MR. HO: Your Honor, may we approach?

21 THE COURT: You may.

22 (Discussion at the bench out of the  
23 hearing of the jury and the court  
24 reporter.)

25 THE COURT: You may proceed, Mr. Beaumaster.

1 MR. BEAUMASTER: Thank you.

2 BY MR. BEAUMASTER:

3 Q. Officer, you didn't feel the need for any DNA or  
4 fingerprints in this case, is that correct?

5 A. Yes.

6 Q. And that was based on the totality of your  
7 investigation?

8 A. Yes.

9 Q. You felt you had sufficient information regarding  
10 the --

11 MR. HO: Objection. Leading.

12 BY MR. BEAUMASTER:

13 Q. Why is that?

14 THE COURT: Sustained.

15 BY MR. BEAUMASTER:

16 Q. Why was that?

17 A. Can you repeat the question?

18 Q. With regard to why you didn't do DNA or fingerprinting  
19 in this case.

20 A. Based on the information that I had, I didn't think it  
21 was warranted.

22 Q. Had you gathered the information you needed regarding  
23 sales?

24 A. Yes.

25 Q. And in response to counsel's answer regarding names,



1                   *(Jury entered the courtroom.)*

2                   THE CLERK: Please raise your right hand.

3                   **AMANDA HEMMINGSEN-JAEGER,**

4                   **Being duly sworn, was examined and testified as follows:**

5                   THE WITNESS: I do.

6                   THE CLERK: Please have a seat.

7                   THE WITNESS: Thank you.

8                   THE CLERK: You're welcome. For the record,  
9 please state your full name, spelling your first and  
10 last name.

11                  THE WITNESS: My name is Amanda  
12 Hemmingsen-Jaeger. First name A-M-A-N-D-A, last name  
13 H-E-M-M-I-N-G-S-E-N, hyphenated, J-A-E-G-E-R.

14                  THE CLERK: Thank you.

15                  THE COURT: Thank you. And before we get  
16 started, I just want to go over a couple of things  
17 with you. Be sure to speak into the microphone. My  
18 court reporter is taking everything down. So you may  
19 be facing the jury, if she can't hear you then she  
20 can't get everything down. So if you can be sure to  
21 do that. Additionally, if you hear an objection, and  
22 I sustain it, you do not answer the question. If I  
23 overrule it, then you would continue forward answering  
24 the question. Mr. Beaumaster.

25                  MR. BEAUMASTER: Thank you, Your Honor.

**DIRECT EXAMINATION**

**BY MR. BEAUMASTER:**

1 Q. Where do you work?

2 A. I work for the Bureau of Criminal Apprehension, often  
3 called the BCA.

4 Q. And what do you do there?

5 A. I'm a forensic scientist II, in the drug chemistry  
6 section.

7 Q. How long have you worked there?

8 A. I have worked for the BCA since February of 2011.

9 Q. And in what capacity, as far as your specific line of  
10 work?

11 A. I worked for drug chemistry since about 2013.

12 Q. Have you had other jobs there?

13 A. Correct.

14 Q. What have those been?

15 A. Before drug chemistry, I was a forensic scientist in  
16 the mitochondria DNA lab.

17 Q. Now, to be employed in that field, do you have to have  
18 any training or expertise?

19 A. Yes. I have a bachelor's and a master's degree. And  
20 I have also gone through the in-service training at  
21 the BCA. I have also obtained a specialty training  
22 through the drug enforcement administration and the  
23 McCrone Institute in Chicago.  
24  
25

1 Q. Can you just kind of summarize that training, what it  
2 trained you to do, why it is important to have that  
3 training?

4 A. Sure. My training at the BCA encompassed analyzing  
5 all types of evidence, from crystal material to  
6 powders, to plant materials to synthetic drugs. We  
7 are also trained in courtroom testimony, trained in  
8 the handling and receiving of evidence, and that's it.

9 Q. As far as your duties go, can you kind of explain the  
10 process of what you do?

11 A. My duties can be summarized as it's my job to receive  
12 and analyze items of evidence for the presence or  
13 absence of controlled substances.

14 Q. And how long have you been doing that? You've been  
15 doing it since 2013 in your current position, but you  
16 were with the BCA since when?

17 A. 2011.

18 Q. Did you have employment before that?

19 A. Yes.

20 Q. What did you do then?

21 A. Prior to the BCA, I was the clinical lab scientist in  
22 the Department of Cytogenetics at the University of  
23 Minnesota Medical Center, Fairview.

24 Q. I'm going to draw your attention to your current  
25 duties. Can you explain the intake process for the

1 jury, on how you end up with the substances to test?

2 A. Sure. Items of evidence can be received at the BCA  
3 through US Certified Mail, or they can be hand  
4 delivered. Once they come into our intake section,  
5 our intake personnel, our specialists, will take them  
6 in, analyze them, make sure they have proper seals,  
7 and assign them a unique identification, a bar code.  
8 From there they are tracked electronically throughout  
9 the entire laboratory, location and person. They are  
10 stored in the central evidence vault. Then once  
11 they're ready to be analyzed by myself, they come up  
12 to our drug specific vault. Then when I take custody  
13 of them, I take them from the vault to my bench and  
14 proceed with the analysis.

15 Q. Approximately how many cases a year does the BCA do?

16 A. I don't have that number.

17 Q. Thousands?

18 A. Yes.

19 Q. How many do you do a year?

20 A. Per year, the number I have right now is I've done  
21 about 900 cases since I started doing case work in  
22 about 2014.

23 Q. Have you testified before?

24 A. Yes, I have.

25 Q. Can you tell the jury a little bit about then once you

1 take them to your station, what you do?

2 A. Sure. So once I have taken custody of the evidence, I  
3 open up a case notes file. It's done all  
4 electronically on my computer. I observe the  
5 evidence, noting proper seals, any sort of  
6 identification markings that the packaging may have,  
7 noting all of my observations as I go.

8 Then I open the package, I take a weight, and  
9 record that, I do a round of preliminary or  
10 presumptive testing, followed by a round of  
11 confirmatory testing.

12 Once that's all complete, I put all of my  
13 conclusions into a report, which is then technically  
14 administrative reviewed before it's released.

15 Q. Now, in this particular case dealing with the  
16 defendant Mr. Wierson, Troy Wierson, did you do an  
17 exam?

18 A. Yes.

19 Q. And you brought a report with you today?

20 A. Yes.

21 *(Exhibit Number 35 was marked for*  
22 *identification.)*

23 THE CLERK: Exhibit 35 marked for  
24 identification.

25 BY MR. BEAUMASTER:

1 Q. Can you tell me what that is?

2 A. This is a copy of the report that I issued.

3 Q. Now, in order to generate that report, you had to  
4 receive the drugs. And did you receive drugs in this  
5 matter?

6 A. Yes.

7 Q. Are they there with you?

8 A. Yes.

9 Q. Can you take them out, please?

10 A. *(Witness complies.)*

11 Q. These have been previously identified as Exhibits 33,  
12 34, and --

13 THE COURT: Yes, 32, 33, 34.

14 BY MR. BEAUMASTER:

15 Q. With regard to those items, which ones did you test?

16 A. I tested Exhibits 33 and 34.

17 Q. How do you know that?

18 A. I can tell by the bar code number. These are our BCA  
19 bar codes. I also have my initials signifying that I  
20 took custody of them. On the interior, I noticed that  
21 the bags on the inside are all sealed with my  
22 initials, except for item three, which I did not open  
23 and did not analyze.

24 Q. Now, with regard to the process that you explained  
25 earlier, did you do all that with these?

1 A. Yes.

2 Q. Were there any broken seals?

3 A. No.

4 Q. Any concerns at all with the integrity of the  
5 evidence?

6 A. No.

7 Q. Can you explain now the testing process for the jury  
8 that you did with these items?

9 A. Sure. So the first testing that I did was preliminary  
10 or presumptive testing. This was done by two color  
11 tests. The first color test was a marquee, which when  
12 a substance is added to it, if it turns orange it  
13 indicates that the substance is from the amphetamine  
14 family. It could be indicative of amphetamine or  
15 methamphetamine.

16 The second color test I did was a sodium nitrate  
17 test. When a substance is added to that, if it has a  
18 specific molecular structure that is found in  
19 methamphetamine, it will turn blue.

20 So those two color tests, put together, indicate  
21 the presence of methamphetamine. So then I went  
22 forward using a confirmatory test using our  
23 instrumentation, gas chromatography-mass spectrometry,  
24 which is abbreviated GCMS.

25 Q. What exactly does that do?

1 A. Gas chromatography-mass spectrometry, or GCMS, is the  
2 instrument that we use for confirmatory testing. It's  
3 a two kind of house instrument that's an all-in-one  
4 package. The first will separate out all the  
5 components that are found in the substance. The  
6 second part will bombard it with a whole bunch of  
7 electrons, breaking it into all of its molecular  
8 pieces, and from those molecular pieces, they offer  
9 varied signature data printouts, which I can compare  
10 and issue a conclusion.

11 Q. And in this case, you performed all those tests?

12 A. Yes.

13 Q. And are those accepted in the scientific community?

14 A. Yes, they are.

15 Q. And with regard to that acceptance, are you a  
16 certified lab?

17 A. Yes, we are accredited.

18 Q. And what does that mean?

19 A. So we are accredited by the American Society of Crime  
20 Lab Directors Laboratory Accreditation Board. It's  
21 abbreviated ASCLD/LAB. And this is a program where we  
22 are assessed using over four hundred criteria that  
23 evaluates our management system, as well as our  
24 technical procedures and policies.

25 Q. And with regard to your testing here, did you arrive

1 at an opinion?

2 A. Yes.

3 Q. What was that opinion?

4 A. I concluded that items one and two contained  
5 methamphetamine.

6 Q. And you put that in your report?

7 A. Yes.

8 Q. Methamphetamine is an illegal street drug?

9 A. Yes.

10 Q. Unlawful to possess in Minnesota?

11 A. Yes.

12 Q. Do you weigh the items?

13 A. Yes, I do.

14 Q. And did you weigh these items?

15 A. Yes.

16 Q. How much did they weigh?

17 A. May I refer to my report to make sure?

18 Q. You may if it would refresh your recollection.

19 A. So the total weight of the four of the five bags I  
20 analyzed, for item one was 27.556, plus or minus 0.01  
21 grams. The weight of item two was 1.693, plus or  
22 minus 0.005 grams.

23 Q. Now, what does that mean, minus? Does it mean it's  
24 wrong?

25 A. No.

1 Q. What does that mean?

2 A. The plus or minus is our calculation of uncertainty.

3 Q. So you're not certain?

4 A. I am certain about the weight. The calculation of  
5 uncertainty is a way for us to assign a number that  
6 encompasses the true weight of a substance. The true  
7 weight of the substance can be altered by humidity or  
8 if the sun is shining or the -- or where the weight is  
9 placed on the balance at that particular time. It's  
10 our way to try to encompass where the true weight  
11 actually lies.

12 Q. Now, you said you didn't test all of the items. Why  
13 is that?

14 A. To our knowledge, the 25 grams was the highest  
15 threshold for a first degree possession, so any weight  
16 beyond that would be -- would not affect the charges  
17 at all.

18 Q. So you test to the maximum charge?

19 A. Yes.

20 Q. And you said you issued a report that you brought with  
21 you today. Is that in front of you, marked as Exhibit  
22 Number 35?

23 A. Yes.

24 Q. Is that a true and accurate copy of it?

25 A. Yes.

1 MR. BEAUMASTER: Your Honor, at this time we  
2 would offer Exhibit 35 and ask to publish.

3 MR. HO: No objection.

4 THE COURT: All right. Exhibit 35 will be  
5 received into the record and may be published to the  
6 jury.

7 (Exhibit No. 35 received into evidence.)

8 BY MR. BEAUMASTER:

9 Q. What does that show?

10 A. So this is the top or the first part of my report.  
11 You can see that it's a report on the examination of  
12 physical evidence. This report was issued on November  
13 18th, 2016. And then the rest describes the evidence  
14 with information that was taken at intake, including  
15 our case number.

16 Q. And then on page two, what does that show?

17 A. The top part shows the results of the examinations,  
18 which I described earlier. Item one, with the weight  
19 and the descriptor that four out of the five bags are  
20 analyzed, item two, with the weight and conclusion,  
21 and, item three, signifying no analysis.

22 Q. Now, when you were talking about the weighing of it  
23 and the minus 0.010 and the minus 0.05 grams, what  
24 again? I mean why would they be different? Are you  
25 using a different scale or?

1 A. So because item one actually contained five smaller  
2 bags, I did individual weights of each of those. And  
3 each bag had its own uncertainty of 0.005. When I put  
4 them all together, add them together, to get the  
5 27.556 grams, that uncertainty must be expanded to  
6 include for those, which is why the uncertainty is a  
7 little larger at 0.010.

8 Q. Now, there was nothing else unusual in this matter  
9 then?

10 A. No.

11 MR. BEAUMASTER: I have nothing further at  
12 this time, Your Honor.

13 THE COURT: Mr. Ho.

14 MR. HO: Can I have one second?

15 *(Off the record.)*

16 MR. HO: May I approach --

17 THE COURT: You may.

18 MR. HO: -- to provide an exhibit? Thanks.

19 **CROSS EXAMINATION**

20 **BY MR. HO:**

21 Q. Good morning.

22 A. Good morning.

23 Q. Just a couple questions. Did you issue more than one  
24 report on this case?

25 A. Yes.

1 Q. Did you issue a report -- let me back up. The report  
2 on examination that you just testified to is dated  
3 November 18th of 2016.

4 A. Okay.

5 Q. Did you also -- did you issue a report on November  
6 24th of 2015?

7 A. Yes.

8 Q. Is there a reason for two different reports?

9 A. The reports all came -- contain the same results. The  
10 first report had only one principal identified.  
11 Through a phone conversation later, it was became  
12 known that a second principal needed to be added,  
13 which resulted in issuing a second report.

14 Q. So when you -- the initial report in this case, from  
15 November 24th, when you say principal, who was the  
16 principal on your initial report?

17 MR. BEAUMASTER: Your Honor, I'm going to  
18 object at this time. Can we approach?

19 THE COURT: You may.

20 (Discussion at the bench out of the hearing  
21 of the jury and the court reporter.)

22 BY MR. HO:

23 Q. Is it Ms. Hemmingsen-Jaeger?

24 A. Yes.

25 Q. Now, in your role you are purely engaging in the

1 science of analyzing narcotics? That's exclusively  
2 your role? You're not investigating who possesses  
3 what in a given case?

4 A. No.

5 Q. Okay. And I just want to be clear, when you test a  
6 substance, so, for example, if you're giving -- given  
7 a substance and it's 27 grams, for example, of  
8 methamphetamine, or suspected meth, do you test the  
9 entire sample or the entire amount that you're given  
10 or you're testing a part of it?

11 A. We -- I weigh the entire sample. And then I take a  
12 part of it to do my testing.

13 Q. Okay. So when your conclusions in this case -- and  
14 let me just -- I'm sorry. Give me a minute. You  
15 concluded in this case that the amount in question was  
16 27 and a half grams with respect to item one, correct?

17 A. Correct.

18 Q. And then with respect to item two, it was 1.6,  
19 correct?

20 A. Correct.

21 Q. Okay. So for a total of 28.1, approximate, grams,  
22 adding those two together?

23 A. It would be closer to 29.1.

24 Q. I'm sorry. 29. Yeah. But when you test this  
25 substance, you're not testing 29 grams?

1 A. Correct.

2 Q. How much are you testing?

3 A. We don't quantitate it, but we use, the color test,  
4 you can visualize about the end of a toothpick for  
5 each color test. Then for the instrumental part,  
6 probably three or four toothpicks.

7 Q. Three or four?

8 A. End of the toothpick.

9 Q. How much would that be, approximately?

10 A. It's hard to assign a number or a weight to that.

11 Q. Okay. Significantly less than the actual amount that  
12 you're given to test?

13 A. It is less than the amount that we're given to test.

14 Q. And so do you then extrapolate that, based upon the  
15 testing of this tiny amount, that the entire amount  
16 then contains a particular substance?

17 A. There's no extrapolation. The weight is accurate for  
18 the weight of the substance. And we test a portion of  
19 it so that some is left over, but we also -- that is  
20 why in our report we write "containing", not that the  
21 entire sample is.

22 Q. Okay. So your conclusion as to the weight and the  
23 actual, the drug itself that you've -- that you test,  
24 it contains some amount of the illegal controlled  
25 substance?

1 A. Yes.

2 Q. Okay. So your test conclusions are not that the 29  
3 grams is all methamphetamine? You're saying it's 29  
4 grams of -- is an amount that contains meth?

5 A. Yes. Our understanding of the statute is that the  
6 substance must not be completely identified as a  
7 controlled substance, rather that the weight must  
8 include a controlled substance.

9 Q. And that would take into account for things like cut  
10 or mixtures that are not necessarily controlled  
11 substances?

12 A. Could you repeat that one more time?

13 Q. Let me rephrase. So what you're basically testifying  
14 is that the amount of substance that you receive,  
15 you're testing -- your conclusions are that some part  
16 of that amount contains a controlled substance?

17 A. Yes.

18 Q. You're not concluding that all of it is a controlled  
19 substance?

20 A. Yes.

21 MR. HO: Okay. I have nothing further.

22 THE COURT: Mr. Beaumaster, any redirect?

23 MR. BEAUMASTER: Yes, Your Honor.

24 **REDIRECT EXAMINATION**

25 **BY MR. BEAUMASTER:**

1 Q. Following up on counsel's question, do you test for  
2 purity?

3 A. Our lab does test for purity.

4 Q. Is that a normal procedure?

5 A. No. Purity is reserved for our federal cases.

6 Q. In Minnesota, it's a mixture that you test for?

7 A. Yes.

8 Q. Counsel alluded that there is sometimes cut or filler  
9 material. Is that oftentimes what you see?

10 A. Yes.

11 Q. Do you test the filler?

12 A. Our instrument readout will show if there's any sort  
13 of extra substances there, in addition to the  
14 controlled substance.

15 Q. So it's not -- your instruments aren't confused if  
16 they cut in baby formula or something?

17 A. No, they're not.

18 Q. Is there any question that this was methamphetamine, a  
19 mixture of methamphetamine?

20 A. No question.

21 Q. And that it's greater than 25 grams?

22 A. Correct.

23 Q. It's a little over an ounce?

24 A. I don't remember that conversion off the top of my  
25 head.

1 Q. With regard to the reports that you prepare, you  
2 generally will prepare reports for each person  
3 involved in a case?

4 A. Yes.

5 MR. BEAUMASTER: I have nothing further,  
6 Your Honor.

7 THE COURT: Mr. Ho?

8 MR. HO: Nothing further.

9 THE COURT: Thank you. You're excused.

10 MR. BEAUMASTER: Your Honor, I will step out  
11 and see if my next witness is ready to go.

12 THE COURT: All right. Thank you.

13 *(Off the record.)*

14 THE CLERK: Please step forward to be sworn.  
15 Please raise your right hand.

16 **DAVID ANTHONY LUCHSINGER,**

17 **Being duly sworn, was examined and testified as follows:**

18 THE WITNESS: I do.

19 THE CLERK: Please have a seat. For the  
20 record, please state your full name, spelling your  
21 first and last name.

22 THE WITNESS: It's David, D-A-V-I-D, Anthony  
23 Luchsinger L-U-C-H-S-I-N-G-E-R.

24 THE CLERK: Thank you.

25 THE COURT: Before we get started, or

1 Mr. Beaumaster starts asking you questions, I would  
2 ask that you please talk into the microphone and  
3 clearly, so my court reporter can take it down. Also  
4 not too fast. I know sometimes you're going to look  
5 towards the jurors, so it's important that she's able  
6 to hear you. Additionally, if there's an objection  
7 and I sustain it, don't answer any further. If I  
8 overrule it, you can continue to answer.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: You may proceed.

11 **DIRECT EXAMINATION**

12 **BY MR. BEAUMASTER:**

13 Q. Where do you work?

14 A. I'm employed by the Burnsville Police Department.

15 Q. How long have you worked there?

16 A. I've worked there for about ten years.

17 Q. And in what capacity?

18 A. I started there as a patrol officer. I did that work  
19 for about seven years. And then I was assigned to the  
20 Dakota County Drug Task Force as a narcotics  
21 investigator. And I'm currently assigned as a  
22 detective for general investigations.

23 Q. Now, as a Burnsville police officer and now a  
24 detective, do you have to be licensed?

25 A. I do.

1 Q. Do you have to have an education?

2 A. I do.

3 Q. Could you explain a little bit about your licensing  
4 and your education?

5 A. Sure. I attended college at Minnesota State  
6 University, Mankato, where I got a four-year degree.  
7 I also attended a skills program, which is -- there is  
8 various programs in the state that are certified by  
9 the state. It's basically like a police academy. And  
10 then to obtain -- to become eligible for a license, I  
11 took an exam issued by the Peace Officer and Standards  
12 and Training Board for the State of Minnesota. I  
13 passed that. And then my license was activated upon  
14 being hired by the Burnsville PD.

15 Q. So Burnsville is your first job?

16 A. As a full-time police officer, yes.

17 Q. Do you have experience as a part-time peace officer?

18 A. I did.

19 Q. Where was that?

20 A. It was for the Mankato Police Department while I was  
21 in college.

22 Q. Now, you said you were with the Drug Task Force. What  
23 were the years you were with them?

24 A. It was from December 2014 through September 2016.

25 Q. And in your duties as a Drug Task Force agent, can you

1 explain what you did?

2 A. Sure. Our primary responsibilities included  
3 investigating drug crime, gun crime, and things  
4 associated with that. A lot of our work involved  
5 performing different types of investigative techniques  
6 that would provide us information about the people  
7 that were involved in drug possession and sales and  
8 the places that they utilized to conduct those kinds  
9 of transactions, as well as vehicles, things like  
10 that.

11 Q. And with regard to your duties, and performing those  
12 duties, I'm going to draw your attention back to July  
13 2nd of 2015. Were you working with the Drug Task  
14 Force that day?

15 A. Yes, sir, I was.

16 Q. And what were you doing?

17 A. I was assisting Investigator Linscheid and other  
18 agents from the Task Force with executing a search  
19 warrant.

20 Q. And what were your assigned duties at that time?

21 A. I was assigned to, once evidence was collected by the  
22 agents that were searching, I was assigned to collect  
23 all of that evidence.

24 Q. And what did you do with it?

25 A. I maintained possession of it from the location of the

1 the search warrant at the residence to the Dakota  
2 County Drug Task Force.

3 Q. What did you do with it at the Task Force?

4 A. Once I arrived at the Task Force with this evidence, I  
5 put it into a locker and retained possession of the  
6 only key for that locker until Agent Linscheid was  
7 agent to return.

8 Q. And he was the lead agent in that case?

9 A. Correct.

10 Q. And did that involve the defendant here?

11 A. It did.

12 Q. And who was that?

13 A. Mr. Troy Wierson.

14 Q. And is he here today?

15 A. He is.

16 Q. Can you identify him?

17 A. Yes. He's the gentleman seated at the defense table  
18 in the blue shirt, no jacket.

19 MR. BEAUMASTER: May the record reflect he  
20 identified the defendant, Your Honor.

21 THE COURT: The record will so reflect.

22 BY MR. BEAUMASTER:

23 Q. Now, did you do anything else related to this case on  
24 that day?

25 A. I did.

1 Q. What was that?

2 A. I was able to obtain the phone number for Mr. Wierson,  
3 and I called that number.

4 Q. Did you have an opportunity to speak with Mr. Wierson?

5 A. I did.

6 MR. HO: Your Honor, may we approach?

7 THE COURT: You may.

8 (Discussion was had at the bench  
9 out of the hearing of the jury  
10 and the court reporter)

11 (*Short break was taken.*)

12 THE COURT: Thank you. And you understand  
13 you still remain under oath?

14 THE WITNESS: I do, Your Honor.

15 THE COURT: You may proceed, Mr. Beaumaster.

16 MR. BEAUMASTER: Thank you, Your Honor.

17 BY MR. BEAUMASTER:

18 Q. Were you able to make contact with Mr. Wierson?

19 A. I was.

20 Q. How did that come about?

21 A. Through telephoning his number.

22 Q. He answered?

23 A. He did.

24 Q. And you identified him?

25 A. I did.

1 Q. And what did he tell you or what did you tell him?

2 A. I identified who he was, that I was with the Dakota  
3 County Drug Task Force, that we were at his home  
4 serving a search warrant for drugs, and asked him to  
5 come to the residence so we could speak with him.

6 Q. And did he?

7 A. He did not.

8 Q. What did he tell you?

9 A. He said, "I'm not coming home."

10 Q. And that was the end of your conversation?

11 A. It was.

12 Q. Did you have any other duties on that day?

13 A. Aside from collecting the evidence and bringing it to  
14 the Drug Task Force, maintaining possession of the key  
15 and providing it to Agent Linscheid upon his arrival,  
16 I do not recall other duties performed.

17 Q. And that would include you also trying to locate  
18 Mr. Wierson, or get Mr. Wierson to come home?

19 A. Yes.

20 Q. In addition to speaking to him on the phone?

21 A. Yes. No other duties that I recall.

22 MR. BEAUMASTER: Thank you. I have no  
23 further questions, Your Honor.

24 THE COURT: Mr. Ho.

25 **CROSS EXAMINATION**

1 **BY MR. HO:**

2 Q. Officer, did you file a police report in this case?

3 A. I did not.

4 Q. Were you at the scene the entire time the search  
5 occurred?

6 A. I was.

7 Q. And you were in charge of handling evidence?

8 A. That is correct.

9 Q. And you didn't file any kind of police report?

10 A. I didn't write a written narrative documenting all the  
11 details of that, no.

12 Q. At any time when you were at the search -- at the --  
13 excuse me, at the residence, did you observe  
14 Mr. Wierson at the residence?

15 A. I did not.

16 MR. HO: I have nothing further.

17 THE COURT: Any redirect?

18 **REDIRECT EXAMINATION**

19 **BY MR. BEAUMASTER:**

20 Q. You knew Mr. Wierson wasn't at his home, is that  
21 correct?

22 A. That's correct.

23 Q. That's why you called him?

24 A. Correct.

25 Q. And he told you he didn't want to come home?

1 A. He -- correct.

2 Q. Or that he wasn't coming?

3 A. He said, "I'm not coming home."

4 MR. HO: Objection. Asked and answered.

5 THE COURT: Sustained.

6 MR. BEAUMASTER: Nothing further, Your  
7 Honor.

8 THE COURT: Anything further, Mr. Ho?

9 MR. HO: Nothing further.

10 THE COURT: Thank you. You're excused.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Mr. Beaumaster.

13 MR. BEAUMASTER: Your Honor, perhaps we can  
14 take our noon recess at this time. I'm not certain if  
15 I have another witness at this time.

16 THE COURT: All right. We will take our  
17 lunch break at this time. What time will your witness  
18 be available?

19 MR. BEAUMASTER: Your Honor, if I do have  
20 another witness, it would be at 1:30.

21 THE COURT: All right. We are going to take  
22 our lunch break to 1:30. And I'm going to tell you  
23 yet again, you cannot talk to anyone about the case,  
24 you can't talk to each other about the case. You  
25 can't -- if you see any of us, including any of the

1 witnesses that you've now seen, or the attorneys, we  
2 cannot acknowledge you, you can't talk with us, you  
3 can't talk about the case on social media, or do any  
4 investigation on Google or any other search engine.  
5 All right. We'll report back at 1:30.

6 *(Lunch break was taken.)*

7 (The following record made without the  
8 jury present:)

9 THE COURT: We're back on the record in  
10 State of Minnesota versus Troy Wierson, File Number  
11 19HA-CR-15-2478. All parties appear back in court.  
12 And, Mr. Beaumaster, you had just called a witness.  
13 And you may proceed.

14 MR. BEAUMASTER: Your Honor, I was going to  
15 renew my motion to allow the statement of Nichelle  
16 Wierson to be allowed in and recall Kyle Linscheid to  
17 the stand, based upon counsel's questions and the  
18 answers given regarding the marital status of the two  
19 parties. I do think that there has been an opening of  
20 that door, if not an implicit waiver.

21 I also note all of the witnesses' notice to the  
22 state talk about testifying to nothing other than  
23 marital status. I don't believe you can have it both  
24 ways. You can't claim a marital privilege and then  
25 say, but I'm going to have these people testify to our

1 marital status, or our marital conversations or  
2 knowledge about our marriage between the two of us or  
3 conversations or our relationship.

4 That is precisely what the marital status  
5 prevents and that's all we've gotten notice of. So I  
6 renew again. I believe she's made statements against  
7 her penal interests regarding her unavailability, but  
8 also regarding her involvement in connection to the  
9 drugs and the defendant's objection to those drugs.

10 THE COURT: Mr. Ho?

11 MR. HO: I think I asked the officer if he  
12 was aware of the marital status of the parties to  
13 which he said he didn't know. I don't know that that  
14 opens a door to getting into her statement. So I  
15 guess I'm not entirely clear what -- we're going  
16 backwards now. But I don't think the Court allowed me  
17 to go into her marital status and I don't think we  
18 went into her marital status.

19 I just asked if he was aware whether Mr. Wierson  
20 was living at this location or if he was aware of  
21 their marital status, to which he responded no. I  
22 don't know that that opens the door that we all of a  
23 sudden are going to allow in her statement. I don't  
24 think that went anywhere near that point of which the  
25 Court indicated that I shouldn't go and I didn't go

1           there.

2                       MR. BEAUMASTER: Your Honor, I recall that  
3           he was referencing being estranged from his wife and  
4           that he wasn't living there, not a general question,  
5           but I'll let the Court rely on her memory, unless the  
6           court reporter thinks she could find that quickly.

7                       MR. HO: But --

8                       THE COURT: My recollection is Mr. Ho asked  
9           whether or not he was aware of their marital status,  
10          whether he was aware that they were separated. And I  
11          think that then there was an objection, we talked  
12          about it, and he didn't pursue further down that, but  
13          the officer said that, no, I don't know the marital  
14          status.

15                      I have had an opportunity, Mr. Ho, to look at  
16          your witness list and what they're going to be  
17          testifying to. I think that, Mr. Beaumaster, I think  
18          your motion maybe premature based on whatever it is  
19          that the witnesses testify to.

20                      MR. BEAUMASTER: That is all I have notice  
21          that they're going to testify to is all I was pointing  
22          out, Your Honor.

23                      THE COURT: Right. Right. But I think --

24                      MR. BEAUMASTER: If that is all they're  
25          going to testify to, because that is all the notice

1 that I have. I would say they're barred, not simply  
2 based on the marital privilege, but based on the fact  
3 that there is nothing relevant that they could testify  
4 to, that I am being told.

5 MR. HO: Look, I think our defense  
6 obviously is that my client wasn't where they're  
7 claiming illegal activities were happening. If  
8 somebody says he's not living there, that's relevant  
9 to our defense, and it's relevant -- or, you know.

10 THE COURT: I will say that in my research  
11 of the spousal privilege, I did find in one specific  
12 case, in State of Minnesota, *State V Lasnetski*, that  
13 it says spousal privilege may not extend to a marriage  
14 where dissolution is imminent. Basically stating that  
15 the spousal privilege is the sanctity of marriage, so  
16 that one is not testifying against the other in order  
17 to keep the marriage together is kind of the premise  
18 behind the spousal privilege. And what *Lasnetski* says  
19 and has taken from a federal case is that if the  
20 relationship is at a point of imminent dissolution,  
21 then that spousal privilege may not be extended.

22 So I'm telling you that in advance, because if  
23 that's something that comes up later, that they were  
24 separated at the time, and that they were not living  
25 together, that may be a possibility that we look back

1 at the case law and the spousal privilege.

2 MR. BEAUMASTER: I would also add, Your  
3 Honor, it has been counsel's representations and his  
4 client's representations, they have not been living  
5 together, that she does not reside at the same address  
6 as him, as noted earlier in our --

7 MR. HO: In 2015?

8 MR. BEAUMASTER: Back in -- on Friday.

9 THE COURT: Mr. Ho.

10 MR. HO: I guess I'm not -- is he saying  
11 now or in 2015?

12 THE COURT: I believe -- The Court would be  
13 looking at 2015.

14 MR. HO: Here's what I can say, as I  
15 understand, I mean they have had a rocky relationship.  
16 It's been up and down. They're still married. They  
17 still work on their marriage. So they're not pending  
18 a divorce, but, you know, there have been times in  
19 their history when, because of their circumstances,  
20 you know, he would leave or she would leave, but  
21 that -- they've not filed a divorce. There is no  
22 pending dissolution. But I think it certainly is  
23 relevant if at the time when the search occurred that  
24 he wasn't at the time residing there. I don't think  
25 that gets into a marital privilege issue. I think it

1 gets into the circumstances of where was he living?

2 I mean the officer testified he never seen him  
3 there ever. Ever. I mean I don't think this -- I  
4 guess I'm not clear what we're at this point  
5 discussing. I don't think it -- we're going to get  
6 into a marital privilege issue with a witness that  
7 would testify that at the time of the search  
8 Mr. Wierson wasn't residing at the house.

9 MR. BEAUMASTER: And I have no idea how they  
10 would have that knowledge if it wasn't Mrs. Wierson or  
11 Mr. Wierson giving that knowledge to them. I'm  
12 assuming they weren't living at the home unless they  
13 were. I don't have that information is my point. And  
14 I have a right to at least have a summary of what  
15 counsel's going to solicit.

16 I'm assuming all he knows right now is marital  
17 status information, which I do think has moved us into  
18 that marital privilege. I had no notice or any other  
19 information that they're going to testify to, any  
20 personal knowledge that they were living with these --  
21 that one of them was living with Nichelle and, you  
22 know, and Mr. Wierson wasn't there.

23 That isn't in here. That has not been told to  
24 me. I have a right to be able to prepare for  
25 cross-examination. And all I have now is they're

1 going to talk about the marital status. I don't know  
2 what -- if that is not part of the marital privilege,  
3 I don't know what would possibly be part of that  
4 marital privilege.

5 And now counsel has revealed that evidently he's  
6 going to say they were estranged, which, as the  
7 Court's indicated, counsel, would lead us into a  
8 different road of discussion.

9 But the fact of the matter is I have no notice,  
10 and these witnesses either should be barred then.  
11 There certainly shouldn't be any testimony regarding  
12 the rocky relationship the two parties have in their  
13 marriage.

14 Again, the whole idea behind the marital  
15 privilege is that we don't get to bring in -- and  
16 neither do they -- those interpersonal relationship,  
17 and the information regarding that.

18 If he's waiving that privilege, I get back to my  
19 original renewal of motion that then clearly the  
20 officers should be able to testify as to what was told  
21 him by the defendant's wife at the time.

22 MR. HO: Your Honor, I think we are able to  
23 present witnesses to testify about the living  
24 circumstances of Mr. Wierson. We obviously are not  
25 going to get into marital privileged information. I

1 understand that. But I think we can present a witness  
2 to establish where he was residing at the time. That  
3 does not get into marital privileged information.

4 MR. BEAUMASTER: Well, if I'm understanding  
5 what counsel is saying, that now he is simply going to  
6 put a witness on to say on July 2nd he was living with  
7 me at my house, an alibi witness, which I have not  
8 been notified of, nor the defense alibi been provided  
9 or noticed.

10 MR. HO: It's not an alibi defense. This  
11 is not an alibi defense. It's a -- they've given no  
12 time line here to establish that Mr. Wierson --

13 THE COURT: So let me just state this, at  
14 this point the Court has ruled that the marital or  
15 spousal privilege applies here.

16 After defense's case, defense's testimony, if  
17 your motion's granted and you go forward with the  
18 intent and these people have foundation and they  
19 testify, the Court will revisit whether or not  
20 rebuttal testimony should be allowed and in what form.

21 MR. BEAUMASTER: And, Your Honor, as part of  
22 my motion, it was they should be barred from  
23 testifying if this is what they're going to testify  
24 to. And I -- I'm hearing it's not an alibi, so  
25 there's no testimony coming in that on July 2nd of

1 2015 Mr. Wierson was with one of these individuals.

2 I don't know what relevant information they could  
3 possibly offer to this jury in deciding the facts of  
4 this case regarding July 2nd, 2015. And that's, I  
5 guess, what -- at the very least I think I'm entitled  
6 to know what relevant information counsel is going to  
7 put witnesses on the stand to say, if it's not about  
8 the marital living arrangements or the marital status  
9 as he's noticed. Then what is the relevance?

10 THE COURT: Based upon my reading of this,  
11 and what Mr. Ho said, I believe that it is being  
12 offered as to where he was living on July 2nd, 2015.  
13 The Court does find that that is relevant.

14 Having said that, we'll revisit the other issue  
15 on rebuttal information afterwards, but that is based  
16 upon where he is living is what I believe Mr. Ho said  
17 that he would have been stating.

18 I will note that it would be the expectation of  
19 the Court that they have -- I guess I'll let  
20 Mr. Beaumaster cross-examine how he sees fit when they  
21 testify, if they testify, but I do want the attorneys  
22 to be aware of the research that I have done regarding  
23 the spousal privilege and whether or not it would be  
24 lifted based upon marital discord and whether or not  
25 it extends if, at that time, dissolution was imminent.

1           And other than that, do you have other witnesses,  
2           Mr. Beaumaster? I mean other than obviously you might  
3           have rebuttal witnesses.

4           MR. BEAUMASTER: Right. No, Your Honor.  
5           The state then would rest with that, Your Honor.

6           THE COURT: Right. And then, Mr. Ho?

7           MR. HO: Your Honor, at this time, in light  
8           of the state's resting it's case, we would make a  
9           motion for a judgment notwithstanding the verdict  
10          pursuant to Minnesota Statute -- excuse me, Minnesota  
11          Rules of Criminal Procedure 26.01, *State versus*  
12          *McCormick*, 835 NW 2d 498.

13          As the Court is aware, judgment notwithstanding  
14          the verdict is a means of assessing the state's case  
15          at the close of their case, and the Court should  
16          consider that request in a light most favorable to the  
17          state based upon the evidence that they've submitted  
18          thus far.

19          In this case, Your Honor, I know that the state  
20          at the front end of this case intended to use a  
21          witness that tied Mr. Wierson in some capacity to the  
22          offense of aiding and abetting and possession and sale  
23          and conspiracy to commit a sale.

24          And as a result of all these circumstances which  
25          we're all well aware of that witness did not testify

1 and additionally a number of other items of evidence  
2 that they were intending to rely on were not submitted  
3 to the jury.

4 So the question before the Court is in light of  
5 the case that they did present is there a sufficient  
6 basis of evidence presented on the elements that are  
7 required to be proven to a degree of proof beyond a  
8 reasonable doubt and whether that's been met here?

9 I will just begin by looking at the amended  
10 Counts 3 and 4, are both counts that are essentially  
11 inchoate type of offenses. When you're talking about  
12 aiding and abetting or conspiracy, the state has to  
13 show there was kind of agreement, tacit or otherwise,  
14 between two or more people that were engaging,  
15 knowingly, in some offense that is being charged.

16 Because of the absence of their witness, who  
17 would have potentially put Mr. Wierson in a different  
18 situation, did not testify. So that evidence did not  
19 come in. So the question here is what evidence is  
20 presented on the element of conspiracy or aiding and  
21 abetting, when there is no other person here who's  
22 implicated him in that regard? And there's no other  
23 person who has been referenced as a co-conspirator.  
24 There is no other evidence presented that he was  
25 aiding and abetting any other person in this case.

1           There's also no evidence that there was an agreement  
2           between he and anyone else that's been presented in  
3           this case.

4           Their case has relied entirely almost, almost  
5           exclusively, on the testimony of Mr., Officer  
6           Linscheid, who made it very clear in this case, Your  
7           Honor, that he had never observed Mr. Wierson ever at  
8           this residence before the search or otherwise.

9           And jurisdictionally, there's an issue there  
10          where there's no proof that's been presented  
11          sufficiently to establish that Mr. Wierson was present  
12          to have engaged in the possession or sale of drugs at  
13          this house.

14          And I mean he indicated, he also indicated he  
15          could not say because he had never seen the defendant  
16          at this house, he does not know who's been to this  
17          house and could not say that any other person could  
18          have brought drugs to this house or engaged in the use  
19          of drugs at this house.

20          There is just simply insufficient evidence to  
21          proceed, for this jury to proceed, to consider when  
22          some of the basic elements that need to be met haven't  
23          been met.

24          And I understand they had a witness who they  
25          intended to use, who was critical to their case, and

1 she didn't testify, and that evidence didn't come  
2 forth.

3 This case survived probable cause because  
4 exclusively upon the testimony and other items related  
5 to that witness. And that's why it survived probable  
6 cause. But it wasn't presented here.

7 And so in looking at the elements of these  
8 offenses, there simply hasn't been a showing that  
9 warrants this case going before a jury.

10 It's absolutely vacant with respect to putting  
11 Mr. Wierson in in connection with any of the drugs  
12 found, and certainly with respect to a sale offense.  
13 I don't think there is any evidence here that  
14 substantiates a conspiracy to sell.

15 So I ask the Court at this time to grant a  
16 directed verdict in favor of the defense.

17 THE COURT: At this time the Court is going  
18 to deny the motion to grant a directed verdict at this  
19 time based upon the information that's been put forth.  
20 In regards to Count 1 and Count 2 it is the Court's  
21 position that based upon the information that has been  
22 elicited from the officer, the photographs, the  
23 evidence, that there is enough regarding the first  
24 degree possession and the child endangerment.

25 Regarding Counts 3 and 4, the conspiracy, while I

1 understand defense's statement regarding that there  
2 hasn't been evidence involving another person, in  
3 defense counsel's questioning of the officer it was  
4 stated that Ms. Nichelle Wierson was arrested at the  
5 scene, which I believe it is the Court's position that  
6 that shows that there was another person arrested at  
7 the home.

8 And while we didn't proceed further down that  
9 avenue for that -- we didn't proceed further down the  
10 avenue with that questioning, it's the Court's  
11 position that it should go to the jury, and that it  
12 does show there was another person there, another  
13 person that was arrested.

14 In regards to the other, I think that it is up to  
15 the jury, based on jury instructions, whether or not  
16 there was constructive possession, whether or not  
17 Mr. Wierson was living at the home at the time, and  
18 that is a matter for the jury to decide. So I will  
19 deny that motion and we will proceed forward.

20 And are you ready to --

21 MR. HO: Could I have two minutes with my  
22 client?

23 THE COURT: Yup.

24 MR. BEAUMASTER: Your Honor, before we go  
25 off the record, I will note that I am asking the lead

1 agent in this case to be in the courtroom regarding  
2 the co -- or the three witnesses that we've been  
3 noticed to help me evaluate their testimony.

4 THE COURT: Is this a possibility that the  
5 lead investigator could at some point be a rebuttal  
6 witness?

7 MR. BEAUMASTER: Yes, Your Honor, but I  
8 believe under the rules the state is allowed to have  
9 the lead investigator, despite any sequestration,  
10 especially now that there has been direct testimony  
11 from him, there is no protection from sequestration  
12 for witnesses who will be called as rebuttal.  
13 Because, quite frankly, I don't know if I would have  
14 rebuttal or not with that witness, but this is the  
15 primary officer who did make attempts to speak with  
16 these individuals.

17 THE COURT: Mr. Ho.

18 MR. HO: Well, I don't -- I don't think he  
19 had a meaningful interview with these witnesses so I'm  
20 not sure why he would be able to sit in while they  
21 testify.

22 THE COURT: Well, it would be an open  
23 courtroom. My more concern was the sequestration.  
24 But if it's a rebuttal witness, I do need to -- and  
25 I'll be honest, I need to take a minute to double

1 check on that, as far as the sequestration of a  
2 possible rebuttal witness.

3 MR. HO: Well, and maybe I can have a --

4 MR. BEAUMASTER: Who has already testified,  
5 Your Honor.

6 MR. HO: I would like to maybe take a few  
7 minutes with my client and potentially all of that is  
8 resolved, so.

9 THE COURT: Okay.

10 MR. HO: Thank you.

11 THE COURT: Mr. Ho, before you leave, can I  
12 just ask you, Mr. Beaumaster, has your material  
13 witness warrant been executed yet?

14 MR. BEAUMASTER: I do not believe so, Your  
15 Honor.

16 THE COURT: Okay.

17 MR. BEAUMASTER: I have not checked since  
18 this morning. It had not this morning when I last  
19 checked.

20 THE COURT: All right. Thank you. And, Mr.  
21 Ho, will you just let the clerk know when you're  
22 ready?

23 MR. HO: Yes. Thank you.

24 *(Short break was taken.)*

25 *(The jury panel entered the courtroom.)*

1 THE COURT: Thank you. You may be seated.  
2 Mr. Beaumaster you may proceed.

3 MR. BEAUMASTER: Your Honor, at this time  
4 the state rests.

5 THE COURT: Mr. Ho.

6 MR. HO: Your Honor, at this time the  
7 defense rests.

8 THE COURT: All right. Having that both  
9 parties have rested at this time, we are going to  
10 break and adjourn for the day today. Closing  
11 arguments are going to be tomorrow morning at 10:00.  
12 I do have two hearings at 9:00, so we'll need to do it  
13 at 10:00.

14 Just so you have an idea, one of the reasons that  
15 we're not doing the closing arguments until tomorrow  
16 is because the attorneys and the Court need to go over  
17 some of the jury instructions, make sure you're  
18 getting all the information that you need, and that  
19 everything is correctly outlined, so we all need to go  
20 over that and that takes a little bit of time. And  
21 instead of having you sit here for an hour or two  
22 hours in the deliberation room, I think that all the  
23 parties agree it would be more appropriate for you to  
24 be able to go home for the day and come back tomorrow  
25 morning.

1 I plan to be starting at 10:00 or right around  
2 that time so I will let the clerks tell you what time  
3 you need to be back. I don't know if they have you  
4 come back early or not.

5 I'm going to give you the standard, of course,  
6 again, warning that you're not to talk to anyone about  
7 the case, not your family members, not friends, not  
8 each other or any of the parties involved in the case.  
9 You're not to discuss the case on social media, you're  
10 not to do any research, you're not to consider  
11 anything outside of the courtroom, you're not to do  
12 any location finding, not to be on Facebook, not to be  
13 doing searches, not to be looking up the law. Do you  
14 understand what you're not supposed to be doing?

15 All right. We are going to adjourn for the day.  
16 You'll be back here -- what time do you need them  
17 back?

18 THE CLERK: Let's say 10:00.

19 THE COURT: Okay. We'll see you back here  
20 at 10:00. I'll have Madam Clerk escort you out and  
21 tell you where to meet.

22 (Jury panel left the courtroom)

23 THE COURT: I am printing up the jury  
24 instructions now so what I told the clerk is why don't  
25 we go over them now when we're in here as long as both

1 of you are here. I don't know if everybody else needs  
2 to stay, but we're just going to go over the jury  
3 instructions that we have thus far.

4 MR. HO: Why don't you go? You don't have  
5 to sit in here. I'll let you know if you can take  
6 off. If you want to the hang around for a moment.

7 (The defendant left the courtroom)

8 (*Short break was taken.*)

9 (Proceedings were adjourned.)

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MINNESOTA  
JUDICIAL  
BRANCH

1 STATE OF MINNESOTA )  
2 ) ss:  
3 COUNTY OF DAKOTA )  
4

5 **REPORTER'S CERTIFICATE**

6 I, **MARSHA F. ANDERSON**, District Court Reporter for  
7 the First Judicial District, Dakota County, State of  
8 Minnesota, do hereby certify that I reported in Stenographic  
9 machine shorthand, the foregoing proceedings held in the  
10 above-entitled matter, before the Honorable **JAMIE CORK**,  
11 District Court Judge, on the 20th day of March, 2018, and  
12 that the foregoing is a true and accurate transcript of my  
13 shorthand notes, and of the whole thereof.

14 Dated this 16th day of March, 2018, at Hastings,  
15 Minnesota.

16  
17  
18 /s/

MARSHA ANDERSON, RPR, RMR  
Official Court Reporter  
District Court  
First Judicial District

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