

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Catawba County</u>
)	19-CRS-53701-02; 20-CRS-1227
JOSHUA JEZREEL DUNCAN)	
)	

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Joshua Jezreel Duncan respectfully petitions this Court to issue its writ of certiorari, pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure, to review the trial court’s denial of his motion to suppress in case numbers 19-CRS-53701-02 and 20-CRS-1227. This Court should issue the writ because (1) given Mr. Duncan’s unconditional guilty plea in this case, there is no appeal of right pursuant to *State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979), and (2) the trial court wrongly denied Mr. Duncan’s motion to suppress evidence obtained as a result of substantial violations of North Carolina law governing knock-and-announce warrant executions.

STATEMENT OF PERTINENT FACTS

1. This petition for writ of certiorari is being filed with the Court simultaneously with the Defendant-Appellant’s Brief in No. COA 22-906.

2. Mr. Duncan was indicted for possession with intent to manufacture, sell, or deliver cocaine; two counts of trafficking in heroin; maintaining a dwelling for controlled substances; and possession of a firearm by a convicted felon. (A¹ pp 1-3)

3. Mr. Duncan's pretrial motion to suppress all evidence came on for hearing at the 28 March 2022 Criminal Session of Superior Court in Catawba County. (T² p 1)

4. The trial court denied Mr. Duncan's motion to suppress orally on 28 March 2022, (T pp 98-99), in a ruling memorialized by a written order entered on 1 April 2022, (A pp 4-14).

5. Mr. Duncan pled guilty to all charges on 29 March 2022. (A pp 15-18) Mr. Duncan's plea agreement did not explicitly preserve Mr. Duncan's right to appeal the denial of his motion to suppress. (A pp 15-18)

6. On 29 March 2022, the trial court entered judgment and sentenced Mr. Duncan. (A pp 19-22)

7. Mr. Duncan's trial counsel filed a written notice of appeal on 7 April 2022. (A pp 23-24) The notice stated that Mr. Duncan was appealing from both the judgement following the guilty plea and from the written order denying Mr. Duncan's motion to suppress. (A pp 23-24)

¹ "A" refers to the Appendix filed with this Petition.

² "T" refers to the trial court transcript dating from 28 March 2022.

8. Appellate Entries were entered in this case on 11 April 2022.
(A pp. 25-26)

9. The undersigned counsel was appointed to represent Mr. Duncan on his direct appeal on 21 June 2022. (A pp. p 27)

REASONS WHY THE WRIT OF CERTIORARI SHOULD ISSUE

This Court should issue a writ of certiorari in this case to permit appellate review of the trial court's denial of the motion to suppress because law enforcement substantially violated North Carolina's knock-and-announce requirements in executing the warrant at issue here.

When defendants plead guilty, their ability to appeal as a matter of right from the denial of a motion to suppress is limited. "[W]hen a defendant intends to appeal from a suppression motion denial pursuant to G.S. 15A-979(b), he must give notice of his intention to the prosecutor and the court before plea negotiations are finalized or he will waive the appeal of right provisions of the statute." *Reynolds*, 298 N.C. at 397, 259 S.E.2d at 853. As Mr. Duncan did not make his guilty plea contingent upon retaining the right to appeal the denial of the motion to suppress, he does not have an appeal as of right.

In such instances, however, a defendant "may petition the appellate division for review by writ of certiorari." N.C. Gen. Stat. § 15A-1444(e). Petitioner must do so "without unreasonable delay[.]" N.C. R. App. P. 21(c).

As the Supreme Court recently reiterated, this Court has broad jurisdiction to issue writs of certiorari in its discretion. *State v. Killette*, 381 N.C. 686, 691, 873 S.E.2d 317, 320 (2022). This includes instances where a “defendant failed to notify the State of his intent to appeal prior to the entry of his plea agreement[.]” *Id.* at 688, 873 S.E.2d at 318. In exercising this discretion, our state appellate courts have looked to whether petitioner has made a “reasonable show of merit[],” as well as whether issuing a writ of certiorari will promote “the ends of justice[.]” *King v. Taylor*, 188 N.C. 450, 450, 124 S.E. 751, 751 (1924).

As a threshold matter, the Petitioner has expeditiously sought the writ, doing so contemporaneous with filing his merits brief at this Court. *See, e.g., State v. Patterson*, 269 N.C. App. 640, 642, 644, 839 S.E.2d 68, 71, 72 (2020) (issuing writ of certiorari when petition filed with appellant brief).

Turning to the merits, this Court should issue the writ because, as argued in the brief filed contemporaneously with this petition, the trial court erred in denying Mr. Duncan’s motion to suppress. North Carolina General Statutes §§ 15A-249 and 15A-251, with an exception not applicable here, require law enforcement to clearly identify themselves and their purpose before forcibly entering a home to execute a warrant. Body worn camera footage makes plain law enforcement failed to abide by these requirements, in

so doing obtaining evidence as a result of a no-knock warrant in substantial violation of the law. This requires suppression.

The warrant execution at issue violated North Carolina's statutory knock-and-announce requirements. The interests of justice thus require that this Court issue its writ of certiorari and hear Mr. Duncan's meritorious appeal.

CONCLUSION

For the foregoing reasons, Joshua Jezreel Duncan respectfully requests that this Court issue its writ of certiorari to allow merits review of the issue argued in his appellate brief filed contemporaneously with this petition.

Respectfully submitted this the 6th day of March, 2023.

PATTERSON HARKAVY LLP

Electronically submitted

Christopher A. Brook

N.C. Bar No. 33838

100 Europa Dr., Suite 420

Chapel Hill, NC 27517

Tel: 919-942-5200

Fax: 866-397-8671

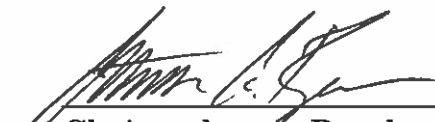
Email: cbrook@pathlaw.com

Counsel for Defendant-Appellant

VERIFICATION

The undersigned, Christopher A. Brook, being duly sworn, deposes and says that he is the attorney for Petitioner, that he has read the foregoing petition and the same is true to his knowledge except upon matters therein alleged upon information and belief, and, as to those matters and things, he believes them to be true.

This the 28th day of February, 2023.


Christopher A. Brook

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

Sworn and subscribed before me,
this the 28th day of February, 2023.


Notary Public Beverly L. Olson



My Commission expires on
May 12, 2024.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the original Petition for Writ of Certiorari has been filed pursuant to Appellate Rule 26 with the Clerk of the North Carolina of Appeals by electronic submission.

I further certify that a copy of the above and foregoing Petition for Writ of Certiorari has been duly served pursuant to Appellate Rule 26 upon the following by email:

Scott Stroud
Special Deputy Attorney General
Post Office Box 629
Raleigh, NC 27602
ststroud@ncdoj.gov

This the 6th day of March, 2023.

Electronically submitted
Christopher A. Brook

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
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v.)	<u>From Catawba County</u>
)	19-CRS-53701-02; 20-CRS-1227
JOSHUA JEZREEL DUNCAN)	
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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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In addition to these attachments, Mr. Adams incorporates by reference the Record on Appeal and the transcripts which have previously been filed with the Court in this case, COA 22-906, and his appellate brief.

STATE OF NORTH CAROLINA

- 1 -

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

CATAWBA COUNTY

File No.

20 CR 001227

Film No.

STATE VERSUS

FILED

DEFENDANT

Joshua Jezreel Duncan
B / M 07/13/1989
202 West D St Apt A Newton NC 28658

2020 MAR 17 A 10:58

INDICTMENT

CATAWBA CO., C.S.C.

OFFENSES

1. Possession with the Intent to Manufacture,
Sell, or Deliver Cocaine

OFFENSE CODES

BY 3556

DATE OF OFFENSE ON OR ABOUT

07/26/2019

OFFENSE IN VIOLATION OF G.S.

90-95(a)(1)

1. Possession with the Intent to Manufacture, Sell, or Deliver Cocaine

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did possess with the intent to manufacture, sell, or deliver cocaine, a controlled substance classified in Schedule II of the North Carolina Controlled Substances Act. This act was in violation of the law referenced above.

SIGNATURE OF PROSECUTOR

WITNESSES

Scism, CCSO

Witnesses marked with an "X" were sworn by the undersigned Foreperson of the Grand Jury. After hearing testimony, this bill:

Was found to be A TRUE BILL by twelve or more grand jurors, and I, the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

Was found to be NOT A TRUE BILL.

DATE

SIGNATURE OF GRAND JURY FOREPERSON

3-16-2020

Stephen G. M. [Signature]

JAP - OCA #: 19-1477

STATE OF NORTH CAROLINA
 IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 CATAWBA COUNTY

File No. 19 CRS 53701
 Film No.

STATE VERSUS

FILED

DEFENDANT

Joshua Jezreel Duncan
 B / M 07/13/1989
 202 West D St Apt A Newton NC 28658

2020 MAR 17 A 10:58

INDICTMENT

OFFENSES

OFFENSES	OFFENSE CODES	DATE OF OFFENSE ON OR ABOUT	OFFENSE IN VIOLATION OF G.S.
I. Possession of a Firearm by a Convicted Felon	5224 X33	07/26/2019	14-415.1

I. Possession of a Firearm by a Convicted Felon

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did possess a Taurus .9 mm semi-automatic handgun, a firearm. The defendant had previously been convicted of the felony of Trafficking Opium by Sale, Class F felony with a maximum punishment of 84 months imprisonment. This felony was committed on September 13, 2011 and the defendant was convicted of the felony on July 23, 2012 in the Superior Court of Lincoln County, North Carolina in file number 11 CRS 2531 and was sentenced to 70 to 84 months confinement in the NC Department of Adult Corrections.

SIGNATURE OF PROSECUTOR

WITNESSES

Scism, CCSO

Witnesses marked with an "X" were sworn by the undersigned Foreperson of the Grand Jury. After hearing testimony, this bill:

Was found to be A TRUE BILL by twelve or more grand jurors, and I, the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

Was found to be NOT A TRUE BILL.

DATE	SIGNATURE OF GRAND JURY FOREPERSON
3-16-2020	<i>Hepten G M [Signature]</i>

JAP - OCA #: 19-1477

STATE OF NORTH CAROLINA
 IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 CATAWBA COUNTY

- 3 -

File No.

19 CRS 53702

Film No.

STATE VERSUS

FILED

INDICTMENT

DEFENDANT

Joshua Jezreel Duncan
 B / M 07/13/1989
 202 West D St Apt A Newton NC 28658

2020 MAR 17 A 10:58

OFFENSES

CATAWBA CO. OFFENSE CODES

C.S.C. DATE OF OFFENSE ON OR ABOUT

OFFENSE IN VIOLATION OF G.S.

I. Trafficking in Heroin by Possession	3531		90-95(h)(4)
II. Trafficking in Heroin by Transportation	3531	07/26/2019	90-95(h)(4)
III. Maintaining a Dwelling for Controlled Substances	9968		90-108(a)(7)

I. Trafficking in Heroin by Possession

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did traffic by possessing between 14 to 28 grams of heroin, a controlled substance classified in Schedule I of the North Carolina Controlled Substances Act. This act was in violation of the law referenced above.

II. Trafficking in Heroin by Transportation

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did traffic by transporting between 14 to 28 grams of heroin, a controlled substance classified in Schedule I of the North Carolina Controlled Substances Act. This act was in violation of the law referenced above.

III. Maintaining a Dwelling for Controlled Substances

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did intentionally keep and maintain a dwelling, 202 West D Street Apartment A Newton NC, which was used for the keeping and selling of controlled substances, heroin and cocaine, in violation of the North Carolina Controlled Substances Act. This act was in violation of the law referenced above.

SIGNATURE OF PROSECUTOR

WITNESSES

Scism, CCSO

Witnesses marked with an "X" were sworn by the undersigned Foreperson of the Grand Jury. After hearing testimony, this bill:

Was found to be A TRUE BILL by twelve or more grand jurors, and I, the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

Was found to be NOT A TRUE BILL.

DATE

SIGNATURE OF GRAND JURY FOREPERSON

3-16-2020

Stephen M. Gurd

JAP - OCA #: 19-1477

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19CRS53701-02, 20CRS1227

STATE OF NORTH CAROLINA

v.

Joshua Jezrell Duncan,
Defendant

**ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS**

FILED
2022 APR - 1 11:03 AM
CATAWBA COUNTY, NC
BY

THIS MATTER COMING on to be heard on the 28th Day of March 2022, before the undersigned Judge Presiding pursuant to the Defendant's Motion to Suppress and after considering the Defendant's Motion to Suppress, and the evidence presented at the hearing, the Court finds the following facts:

1. On July 25, 2019, on or about 4:03 PM, Investigator D. Scism (Affiant) of the Newton Police Department applied for and was properly granted a search warrant based upon ongoing narcotic sales activity involving co-Defendant Lacy Neil Smyre III (target) on or about the premises of 202 West D Street Apartment A, Newton, North Carolina in Catawba County (target residence), by the Honorable Superior Court Judge George Bell.
2. The specific facts establishing probable cause presented by Affiant to the Honorable Superior Court Judge George Bell included the following:

"Within the past month of the application of this search warrant at the above listed address (202 West D Street Apartment. A Newton, NC) a confidential source of information was able to purchased illegal narcotics, specifically cocaine, from Lacy Neil Smyre (target). I was able to observe Lacy Neil Smyre exit the pictured above residence utilizing the left door on the North side of the target location to sell cocaine to our confidential source of information who has proven trusted and reliable.

Within the past 72 (Seventy-Two) hours of the application of this search warrant an additional controlled purchase was conducted at the above listed address

(202 West D Street Apartment. A Newton, NC) a confidential source of information was able to purchase illegal narcotics, specifically cocaine, from Lacy Neil Smyre (target). I was able to observe Lacy Neil Smyre exit the pictured above residence utilizing the left door on the North Side of the target location to sell cocaine to our confidential source of information who has proven trusted and reliable.

On or about the date of June 19th, 2019 I received a phone call about a potential overdose victim that may have purchased heroin from a black male inside of the city limits of Newton. After meeting with the overdose victim at a neighboring counties hospital, I asked where in Newton, the victim purchased the heroin. The victim stated they had purchased heroin from a black male by the name of Neil Smyre (later identified as our suspect whose real name is Lacy Neil Smyre III). The victim stated that Neil Smyre lived in an apartment duplex near Lil Caesar's Pizza inside the city limits of Newton.

After further investigation I was able to locate Lacy Neil Smyre by using a confidential source of information.

On July 19th, 2019 I received a phone call from a Catawba County Sheriff's deputy who stated they had just cleared an overdose call where a victim overdosed told the deputy they had bought the heroin from Neil Smyre and was able to describe the listed above target location as being a brick ranch style duplex near Dixie's Fish and Chicken Restaurant in the city of Newton."

3. On July 26, 2019, Investigator Scism lead a pre-search warrant execution meeting advising those present of the target, the target residence location, and the operation plan.
4. The operation plans did not specifically mention exigent circumstances, but included safety issues.
5. Investigator Scism requested the S.T.A.R team's assistance in the execution of the search warrant due to safety concerns, and because the Catawba County S.T.A.R team is a specialized unit trained in the entry of homes in the execution of search warrants such as the one issued in this case.
6. On or about 6:46 AM members of the Newton Police Department, the Catawba County S.T.A.R team, and various other law enforcement agencies arrived at the target residence for the execution of the search warrant.
7. The target residence is a brick duplex apartment or single story brick veneer ranch style duplex. The target residence is within blocks of a Little Caesar's Pizza and a Dixie's Fish

& Chicken.

8. Investigator Scism arrived at the target location with the search warrant in his possession.
9. Investigator Scism did not know if anyone, including children, were inside the residence prior to arrival.
10. The Catawba County S.T.A.R team is a multi-agency tactical unit that is trained for and deployed in high-risk situations such as search warrant executions involving narcotics, assisting in searches or serving arrest warrants for dangerous, wanted individuals, and hostage situations.
11. S.T.A.R team member Deputy Hewitt was assigned to the use of a "halogen" for entry into the dwelling on July 26, 2019.
12. Deputy Hewitt was unaware if anyone was present inside the residence that morning prior to arriving at the target residence.
13. The S.T.A.R team upon arrival at the residence exited their truck and approached the North door (front door) of the residence.
14. Deputy Hewitt was at the front of the entry team line up. He opened the unlocked screen door, and then knocked on the door loudly three times, then announced in a loud voice, "Sheriff's Office, Search Warrant, Open the Door." Deputy Hewitt repeated the knock and announcement two (2) more times.
15. When no one answered, Deputy Hewitt reasonably believed entry was being denied, or reasonably delayed, and thus the door was then breached with a "Halogen" battering ram. Fifteen (15) seconds elapsed between the last knock and announcement, and the entry being made.
16. When executing search warrants involving narcotics the general concerns of Deputy

Hewitt are guns, because guns and illegal narcotics go hand-in-hand, and safety concerns for law enforcement and people inside as well as outside the residence.

17. S.T.A.R team member Investigator Stobbe was assigned as an entry team member on July 26, 2019 and was in the middle of the lineup.
18. Investigator Stobbe was also unaware if anyone was present inside the residence that morning prior to arriving at the target residence.
19. Investigator Stobbe has been a member of the S.T.A.R team for five (5) years and has been involved in somewhere between 40 to 50 search warrant executions.
20. Investigator Stobbe heard Deputy Hewitt knock and announce prior to the door being breached.
21. Investigator Stobbe, after entering the residence, first cleared the bathroom, then went to the rear bedroom where he encountered a black male with dreads at the South door (back door), and a black female in the bed. The male was later identified as the Defendant and the female as co-Defendant Misher.
22. When executing a search warrant involving narcotics Investigator Stobbe's general concerns are firearms, the possibility of evidence destruction, and the safety of everybody.
23. S.T.A.R team member Investigator Uribe was assigned as an entry team member on July 26, 2019 and was the last one out of the truck that day.
24. Investigator Uribe was unaware if anyone was present inside the residence that morning prior to arriving at the target residence.
25. Investigator Uribe has been a member of the S.T.A.R team for three (3) years.
26. Investigator Uribe also heard Deputy Hewitt knock and announce prior to the door being breached.

27. Upon entering the residence, Investigator Uribe heard another S.T.A.R team member request assistance in the back bedroom. When Investigator Uribe entered the bedroom he observed a black female in the bed (later identified as co-Defendant Misher) and a black male (later identified as Defendant) walking towards the South door (back door) with a clear baggy of brown powder substance. The black male was secured at that time.
28. When executing a search warrant involving narcotics Investigator Uribe's general concerns are safety and destruction of evidence.
29. Each S.T.A.R team member that testified did not recall the exact time they arrived, but that it was in the morning.
30. C. Reid was the S.T.A.R. team lead person.
31. Immediately prior to the S.T.A.R. team's entry into the residence using the North door (front door), Investigator Scism and Investigator Langer, who were positioned on the South side of the residence with a marked police car, observed a black male peer through a window toward them, and then the same black male (later identified as the Defendant) opened the door on the South side of the residence which led to a porch (back door), and threw out two (2) baggies of suspected narcotics into the yard, and opened up a third bag of suspected narcotics and dump it on the ground.
32. Investigator Scism, Investigator Langer, and other unidentified law enforcement officials yelled for the Defendant to stop, but he went back inside the residence. Scism and Langer ran to the back door and entered the residence where they then observed the Defendant and co-Defendant Misher being detained by S.T.A.R team members.
33. No officers collected the evidence thrown by the Defendant in the yard at this time.
34. Investigator Scism did not hear the knock and announce happening on the North side of

the residence due to the fact he was focused on the activity occurring with the Defendant on the South side of the residence.

35. Investigator Scism has almost 8 years of law enforcement experience, and he has been involved in at least 60 search warrant executions.
36. Investigator Scism's number one concern when executing a search warrant for narcotics is safety of every individual, and his number two concern is evidence destruction.
37. The narcotics mentioned in the search warrant was cocaine, and that cocaine comes in a powder form and is easy to destroy.
38. Investigator Scism did not contact the City of Newton to disconnect water prior to executing the search warrant. That was not something he did, nor a requirement for the Newton Police Department.
39. As law enforcement walked up the steps at the back door, they observed a white powder substance in the door way, on the door frame and on the screen door outside the South door (back door), where Investigator Scism observed the Defendant attempting to destroy evidence.
40. Upon an initial search and sweep of the target residence by the S.T.A.R team, all occupants were detained and taken outside. The house was then deemed secured for the search team.
41. Prior to the search team beginning, Investigator Scism read the search warrant out loud to the target. Also present for the reading was the Defendant and co-Defendant Misher.
42. Investigator Scism provided a copy of the search warrant to the target.
43. Law enforcement then began the search of the target residence.
44. During the search warrant execution the interior of the residence, individuals inside the residence, and the outside of the residence were searched.

45. Law enforcement collected two bags of evidence that Investigator Scism had observed the Defendant throw outside the residence.
46. Law enforcement searched the Defendant's room and found the following: men's clothing, men's shoes, the Defendant's cell phone and wallet, a vehicle title and registration with this Defendant's name and the target residence address on them, a loaded Taurus .9mm semi-automatic handgun located on top of documents with this Defendant's name on them, cash, a bag of suspected cocaine, and a bottle of Benefiber commonly used as cut narcotics for larger volume sales.
47. Law enforcement searched the residence and found a digital scale in the kitchen area of the residence that they associated with this Defendant's narcotic activity.
48. Law enforcement was able to determine, and Defense agreed, that the Defendant was not legally entitled to possess a weapon due to prior felony convictions.
49. As a result of the search warrant execution on July 26, 2019, the Defendant in this case was charged with Felony Trafficking in Heroin by Possession, Felony Trafficking in Heroin by Transportation, Maintaining a Dwelling for Controlled Substances, Possession with the Intent to Manufacture, Sell, or Deliver Cocaine, and Possession of Firearm by Felon.
50. Defendant timely filed a Motion to Suppress accompanied with a brief in support of the motion on August 24, 2021.
51. Defendant claims the following legal arguments in his Motion to Suppress: (1) there was no probable cause to support the issuance of the search warrant, and (2) that statutory violations of N.C.G.S. 15A-249, 15A-251, and 15A-252 occurred, and as a result the evidence must be suppressed pursuant to N.C.G.S. 15A-974(2).

52. The State argued (1) the search warrant was valid and was based upon probable cause, and (2) there were no statutory violations, but if they were deemed violations, they were not to be considered substantial enough to require suppression due to exigent circumstances, a lack of nexus between the point of entry and evidence found, and the fact the evidence would have been inevitably discovered regardless of any violations.
53. The State called four (4) witnesses: Deputy Hewitt, Investigator Stobbe, Investigator Uribe, and Investigator Scism.
54. The Defense presented no witnesses.
55. The Defense played the body camera video of Investigator Langer in support of their argument of statutory violations. The contentions of the defense in regard to the body cam footage were taken from a distance and the contentions of the defendant as to what the body cam depicted were speculative and conclusory, and not reliable.
56. Narcotics investigators at the Newton Police Department are not required to wear body camera pursuant to Newton Police Department body camera policies.
57. The Defense presented no evidence that Defendant lived at the residence or helped financially with the residence. The Defense argued the Defendant was merely an overnight guest at the residence.
58. The State argued Defendant failed to show he had standing to contest the search warrant because the Defendant failed to show he had a reasonable expectation of privacy in the property or premise to be searched.

CONCLUSIONS OF LAW

Based upon the findings of fact and evidence presented to the court during the hearing held on March 28, 2022 the Court based on a totality of the circumstances further finds as fact and

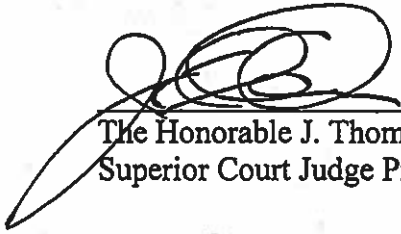
concludes as a matter of law as follows:

1. Pursuant to *State v. Arrington*, 311 N.C. 633 (1984), the information in the affidavit was sufficient to establish probable cause and to support the issuance of the search warrant for the target and target residence. The information included in the search warrant and considered as a whole by the Honorable Judge Bell provided a substantial basis to conclude that there was probable cause to believe illegal narcotics would be found at the target residence, and upon the target himself.
2. The search warrant was properly issued to search the target premises on July 25, 2019 on the basis of on-going drug activity on or about the target premises and involving the target.
3. There was no violation of N.C.G.S. 15A-249, "Officer to give notice of identity and purpose." Members of the entry team properly provided the occupants of the target residence notice of their identity and purpose prior to entry. The Defendant's own actions as a result of the knock and announcement further support the conclusion that proper notice was given to the occupants.
4. There was no violation of N.C.G.S. 15A-252 "Service of search warrant." Investigator Scism read the search warrant to the target with the other occupants present. Investigator Scism left a copy of the search warrant with the target. Both of these events happened before any search or seizure of evidence occurred.
5. There was no violation of N.C.G.S. 15A-251 "Entry by force." A breaking and entering occurred by the entry team only after approximately 15 seconds from the last knock and announce and after an appropriate compliance with N.C.G.S. 15A-249. The Members of the entry team entered the target residence after they reasonably believed either their admittance was being denied or unreasonably delayed.

6. If, however, there was a violation of N.C.G.S. 15A 249 or N.C.G.S. 15A-251, the Court finds those violations to not be substantial and thus do not require suppression pursuant to N.C.G.S. 15A-974(2). Relying upon *State v. Sumpter*, 150 N.C. App. 431 (2002), the approximately 15 seconds of notice was sufficient based upon the circumstances of this case. There was no indication of anyone at the target premises objecting to the entry. The nature of the narcotic search warrant was inherently dangerous as there was a high likelihood of occupants being armed which causes safety concerns to not only law enforcement, but occupants of the target residence, and those in surrounding homes. There was also a concern for evidence destruction as narcotics are easily disposed of. The entry into the target residence in this incident did in fact prevent an attempted destruction of evidence by the Defendant. The actions of the Defendant on July 26, 2019 in his attempt to exit the residence and destroy evidence further support the short notice and reduce any substantiality of violations. As such, actual exigent circumstances developed early in the search warrants execution supporting the actions by law enforcement to secure the scene quickly.
7. Additionally, pursuant to *State v. White*, 184 N.C. 519 (2007), the Court finds the search warrant at issue was valid, that there is no causal relationship between the potential statutory violations and the evidence found, and that regardless of any violations the evidence would have been found due to the Defendant's own actions in response to the knock and announcement by coming out of the house throwing evidence and attempting to destroy evidence.

IT IS THEREFORE ORDERED that the Defendant's Motion to Suppress is denied.

Rendered the March 28, 2022, and signed this the 31 day of March, 2022.



The Honorable J. Thomas Davis
Superior Court Judge Presiding

STATE OF NORTH CAROLINA

CATAWBA County

File No.

19CR53701, 19CR53702

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

Name Of Defendant

JOSHUA JERREEL DUNCAN

TRANSCRIPT OF PLEA

DOB Age Highest Level Of Education Completed

7/13/89

G.S. 15A-1022, 15A-1022.1

NOTE: Use this section ONLY when the Court is rejecting the plea arrangement.

The plea arrangement set forth within this transcript is hereby rejected and the clerk shall place this form in the case file. (Applies to plea arrangements disclosed on or after December 1, 2009.)

Date Name Of Presiding Judge (type or print) Signature Of Presiding Judge

The undersigned judge, having addressed the defendant personally in open court, finds that the defendant (1) was duly sworn or affirmed, (2) entered a plea of guilty guilty pursuant to Alford decision no contest, and (3) offered the following answers to the questions set out below:

Answers

- 1. Are you able to hear and understand me? (1) YES
2. Do you understand that you have the right to remain silent... (2) YES
3. At what grade level can you read and write? (3) 12th
4. (a) Are you now using or consuming alcohol... (4a) NO
(b) When was the last time you used or consumed any such substance? (4b) YES
(c) How long have you been using or consuming this medication or substance? (4c) N/A
(d) Do you believe your mind is clear... (4d) YES
5. Have the charges been explained to you by your lawyer... (5) YES
6. (a) Have you and your lawyer discussed the possible defenses... (6a) YES
(b) Are you satisfied with your lawyer's legal services? (6b) YES
7. (a) Do you understand that you have the right to plead not guilty... (7a) YES
(b) Do you understand that at such trial you have the right to confront... (7b) YES
(c) Do you understand that by your plea(s) you give up these... (7c) YES
8. Do you understand that, if you are not a citizen... (8) YES
9. Do you understand that upon conviction of a felony you may forfeit... (9) YES
10. Do you understand that following a plea of guilty... (10) YES
11. Do you understand that your plea of guilty may impact how long... (11) YES

(Over)

12. Do you understand that you are pleading guilty guilty pursuant to Alford no contest to the charges shown below? (Describe charges, total maximum punishments, and applicable mandatory minimums for those charges.) (12) YES

PLEAS										
✓	Plea*	File Number	Count No.(s)	Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	F/M	CL.	‡Pun. CL.	Maximum Punishment
		19-CRS53701	1	Possess Firearm by Felon	7/26/2019	14-415.1	F		G	97
		19-CRS-53702	2	Trafficking Heroin -	7/26/2019	90-95(h)(4)	F		E	120
			3	Maintain Dwelling ^{Transportation}	7/26/2019	90-108(a)(7)	F		I	24
		20CRS1227	1	PWMSD Cocaine	7/26/2019	90-90(a)(1)	F		H	35
		19CRS53702	1	Trafficking Heroin - Possession	7/26/19	90-95(h)(4)	F		E	120

See attached AOC-CR-300A, for additional charges.

*G = Guilty GA = Alford plea NC = No Contest
 TOTAL MAXIMUM PUNISHMENT 350 MONTHS
 MANDATORY MINIMUM FINES & SENTENCES (if any) \$100,000 90 min 120 max

✓ NOTE TO CLERK: If this column is checked this is an added offense or reduced charge.

‡ NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

13. Do you now personally plead guilty guilty pursuant to Alford no contest to the charges I just described? (13) YES
14. (a) Are you in fact guilty? (14a) YES
 (b) (no contest plea) Do you understand that, upon your plea of no contest, you will be treated as being guilty whether or not you admit that you are in fact guilty? (14b) N/A
 (c) (Alford guilty plea)
 (1) Do you now consider it to be in your best interest to plead guilty to the charges I just described? (14c1) N/A
 (2) Do you understand that, upon your "Alford guilty plea," you will be treated as being guilty whether or not you admit that you are in fact guilty? (14c2) N/A
15. (Use if aggravating factors are listed below) Have you admitted the existence of the following aggravating factors: (15) No
- _____
- _____
- _____
- have you agreed that there is evidence to support these factors beyond a reasonable doubt, have you agreed that the Court may accept your admission to these factors, and do you understand that you are waiving any notice requirement that the State may have with regard to these aggravating factors agree that the State has provided you with appropriate notice about these aggravating factors?
16. (Use if sentencing points are selected below) Have you admitted the existence of the following sentencing points not related to prior convictions: offense committed while on supervised or unsupervised probation, parole, or post-release supervision offense committed while serving a sentence of imprisonment offense committed while on escape from a correctional institution, have you agreed that there is evidence to support these points beyond a reasonable doubt, have you agreed that the Court may accept your admission to these points, and do you understand that you are waiving any notice requirement that the State may have with regard to these sentencing points agree that the State has provided you with the appropriate notice about these sentencing points? (16) YES
17. (Use if No. 15 or 16 selected above) Do you understand that at a jury trial you have the right to have a jury determine the existence of any aggravating factors and any additional sentencing points not related to prior convictions that may apply to your case beyond a reasonable doubt, and that by your plea(s) you give up this constitutional right to a jury determination? (17) YES
18. Do you understand that you also have the right during a sentencing hearing to prove to the Court the existence of any mitigating factors that may apply to your case? (18) YES
19. Do you understand that the courts have approved the practice of plea arrangements and you can discuss your plea arrangement with me without fearing my disapproval? (19) YES

STATE VERSUS

File No.

19CR53701, 19CR53702

Name Of Defendant

Joshua Terrell Duncan

20. Have you agreed to plead guilty guilty pursuant to Alford no contest as part of a plea arrangement? (If so, review the terms of the plea arrangement as listed in No. 21 below with the defendant.) (20) YES No

21. The prosecutor, your lawyer and you have informed the Court that these are all the terms and conditions of your plea:

PLEA ARRANGEMENT

- The State dismisses the charge(s) set out on Page Two, Side Two, of this transcript.
- The defendant stipulates to restitution to the party(ies) in the amounts set out on "Restitution Worksheet, Notice And Order (Initial Sentencing)" (AOC-CR-611).

22. Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement? (22) YES

23. Do you now personally accept this arrangement? (23) YES

24. (Other than the plea arrangement between you and the prosecutor) has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes? (24) NO

25. Do you enter this plea of your own free will, and do you fully understand what you are doing? (25) YES

26. Do you agree that there are facts to support your plea and admission to aggravating factors and sentencing points not related to prior convictions, and do you consent to the Court hearing a summary of the evidence? (26) YES

27. Do you have any questions about what has just been said to you or about anything else connected to your case? (27) NO

ACKNOWLEDGEMENT BY DEFENDANT

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. No one has told me to give false answers in order to have the Court accept my plea in this case. The terms and conditions of the plea as stated within this transcript, if any, are accurate.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

3/29/2022

Date
3-29-22

Signature

[Signature]

Signature Of Defendant

[Signature]

Name Of Defendant (type or print)

JOSHUA TERRELL DUNCAN

- Deputy CSC
- Assistant CSC
- Clerk Of Superior Court

CERTIFICATION BY LAWYER FOR DEFENDANT

I hereby certify that the terms and conditions stated within this transcript, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charges to which the defendant is pleading, and the aggravating and mitigating factors and prior record points for sentencing, if any.

Date
3/28/22

Name Of Lawyer For Defendant (type or print)

J. EDGAR HAUSTADT III

Signature Of Lawyer For Defendant

[Signature]

CERTIFICATION BY PROSECUTOR

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated within this transcript, if any, are the terms and conditions agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charges in this case.

Date
3/29/22

Name Of Prosecutor (type or print)

J. Phillips

Signature Of Prosecutor


[Signature]

PLEA ADJUDICATION

Upon consideration of the record proper, evidence or factual presentation offered, answers of the defendant, statements of the lawyer for the defendant, and statements of the prosecutor, the undersigned finds that:

- 1. There is a factual basis for the entry of the plea (and for the admission as to aggravating factors and/or sentencing points);
- 2. The defendant is satisfied with his/her lawyer's legal services;
- 3. The defendant is competent to stand trial;
- 4. The State has provided the defendant with appropriate notice as to the aggravating factors and/or points; The defendant has waived notice as to the aggravating factors and/or points; and
- 5. The plea (and admission) is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea (and admission) is hereby accepted by the Court and is ordered recorded.

Date 3-29-22	Name Of Presiding Judge (type or print) S. Thomas Davis	Signature Of Presiding Judge 
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SUPERIOR COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT

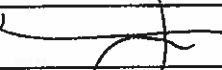
File No.	Count No.(s)	Offense(s)
20CRS 1226	1	Habitual Felon

DISTRICT COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT

File No.	Count No.(s)	Offense(s)

CERTIFICATION BY PROSECUTOR

The undersigned prosecutor enters a dismissal to the above charges pursuant to a plea arrangement shown on this Transcript Of Plea.

Date 3/29/22	Name Of Prosecutor (type or print) J. Philla	Signature Of Prosecutor 
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STATE OF NORTH CAROLINA

CATAWBA County NEWTON Seal of Court

File No.

19CRS053701

51

NOTE: [Use AOC-CR-342 for DWI offense(s).]

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

JUDGMENT AND COMMITMENT
ACTIVE PUNISHMENT - FELONY
(STRUCTURED SENTENCING)
(For Convictions On Or After Jan. 1, 2012)

G.S. 15A-1301, -1340.13

Name Of Defendant: DI'NCAN, JOSHUA, JEZREEL
Race: B Sex: M Date Of Birth: 07/13/1989

Attorney For State: JESSICA ANNE PHILLIPS
Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant: JAMES EDGAR HALSTEAD III
Appointed Retained Cr Rptr Initials: DFF

The defendant was found guilty/responsible, pursuant to plea pursuant to Afford of no contest trial by judge trial by jury, of

Table with columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., F/M, CL., *Pun. CL.
Rows: 19CRS053701, 51, POSSESSION OF FIREARM BY FELON, 07/26/2019, 14-415.1, F, G
20CRS001227, 51, PWIMSD COCAINE, 07/26/2019, 90-95(A)(I), F, H

*NOTE: Enter punishment class if different from underlying offense class...
The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 12.
Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission to this issue.
2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.

- The Court (NOTE: Block 1 or 2 MUST be checked.):
1. makes no written findings because the term imposed is: (a) in the presumptive range. (b) for a Class A felony. (c) for adjudication as a violent habitual felon, G.S. 14-7.12. (d) for drug trafficking. (e) for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5). (f) in the aggravated range, pursuant to G.S. 20-141.4(b)(1a).
2. finds the Determination of aggravating and mitigating factors on the attached AOC-CR-605.
3. adjudges the defendant to be a habitual felon to be sentenced (offenses committed before Dec. 1, 2011) as a Class C felon. (offenses committed on or after Dec. 1, 2011) four classes higher than the principal felony (no higher than Class C).
4. adjudges the defendant to be a habitual breaking and entering status offender, to be sentenced as a Class E felon.
5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months.
6. finds enhancement pursuant to: G.S. 90-95(e)(3) (drugs). G.S. 14-3(c) (hate crime). G.S. 50B-4.1 (domestic violence). G.S. 14-50.22 (gang misdemeanor). Other:
This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission.
7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one) (Class A-E felony committed prior to Oct. 1, 2013) 60 months. (Class A-E felony committed on or after Oct. 1, 2013) 72 months. (Class F or G felony committed on or after Oct. 1, 2013) 36 months. (Class H or I felony committed on or after Oct. 1, 2013) 12 months.
8. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one) a. and therefore makes the additional findings and orders on the attached AOC-CR-615, Side One. b. but makes no finding or order concerning registration or satellite-based monitoring due to a sentence of life imprisonment without parole.
9. finds the above-designated offense(s) involved the physical or mental sexual abuse of a minor. (NOTE: If offense(s) is not also a reportable conviction in No. 8 above, this finding requires no further action by the court.)
10. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
12. (offenses committed on or after Dec. 1, 2017, only) finds that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2). and that the defendant was a criminal gang leader or organizer as defined in G.S. 14-50.16A(3). This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission.
13. finds the above-designated offense(s) involved (check one) (offenses committed Dec. 1, 2008 - Nov. 30, 2017) criminal street gang activity (offenses committed on or after Dec. 1, 2017) criminal gang activity. G.S. 14-50.25.
14. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) the defendant refused to consent. (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense.
15. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
16. finds that the offense involved child abuse or assault or an act defined in G.S. 50B-1(a) against a minor. G.S. 15A-1382.1(a1).
17. imposes sentence pursuant to G.S. 90-95(h)(5a) and the Court's findings on the attached AOC-CR-618. Other:

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one)

to Life Imprisonment Without Parole for Class A Felony. Class B1 Felony. Violent Habitual Felon. in the custody of: N.C. DACJJ.

to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A. Other:

for a minimum term of: 19 months and a maximum term of: 32 months ASR term (Order No. 4, Side Two) months to Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for 0 days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

Table with columns: File No., Offense, County, Court, Date
Row: 2019CRS 53702, 51, CATAWBA, SUPERIOR, 03/29/2022

Material opposite unmarked squares is to be disregarded as surplusage. (Over)

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs \$ 0.00	Fine \$	Restitution* \$ 0.00	Attorney's fees \$ 0.00	SBM Fee \$ 0.00	Appt Fee/Misc \$ 0.00	Total Amount Due \$
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*See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

- 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
- 3. The Court finds just cause to waive costs, as ordered on the attached AOC-CR-618. Other: _____
- 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction and Juvenile Justice, then he or she will be released at the end of the ASR term specified on Side One. G.S. 15A-1340.18.
- 5. Other:
COST NOT ASSESSED IN THIS CASE

The Court recommends:

- 1. Substance abuse treatment. 2. Psychiatric and/or psychological counseling. 3. Work release should should not be granted.
- 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.
 but the Court does not recommend restitution be paid as a condition of post-release supervision. from work release earnings.

The Court further recommends:

ORDER OF COMMITMENT/APPEAL ENTRIES

- 1. It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date 03/29/2022	Name Of Presiding Judge (type or print) THE HONORABLE J THOMAS DAVIS	Signature Of Presiding Judge 
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ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified
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It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
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CERTIFICATION

I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.

- Appellate Entries (AOC-CR-350)
- Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
- Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
- Victim Notification Tracking Form
- Additional File No.(s) And Offense(s) (AOC-CR-626)
- Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)
- Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One)
- Additional Findings (AOC-CR-618)
- Convicted Sex Offender Permanent No Contact Order (AOC-CR-620)
- Other: _____

Date	Date Certified Copies Delivered To Sheriff 03/29/2022	Signature Of Clerk	<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court	SEAL
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Material opposite unmarked squares is to be disregarded as surplusage.

STATE OF NORTH CAROLINA

CATAWBA County NEWTON Seat of Court

File No. 19CRS053702 51

NOTE: [Use AOC-CR-342 for DWI offense(s).]

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

JUDGMENT AND COMMITMENT
ACTIVE PUNISHMENT - FELONY
(STRUCTURED SENTENCING)
(For Convictions On Or After Jan. 1, 2012)

G.S. 15A-1301, -1340.13

Name Of Defendant: DUNCAN, JOSHUA, JEZREEL
Race: B Sex: M Date Of Birth: 07/13/1989

Attorney For State: JESSICA ANNE PHILLIPS
Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant: JAMES EDGAR HALSTEAD III
Appointed Retained Cr Rptr Initials DFF

The defendant was found guilty/responsible, pursuant to plea (X) pursuant to Alford () of no contest () trial by judge () trial by jury, of

Table with columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., F/M, CL., *Pun. CL.
Rows: 19CRS053702 51 TRAFFICKING, OPIUM OR HEROIN 07/26/2019 90-95(H)(4) F E
19CRS053702 52 TRAFFICKING, OPIUM OR HEROIN 07/26/2019 90-95(H)(4) F E
19CRS053702 53 MAINTN VEH/DWELL/PLACE CS (F) 07/26/2019 90-108(A)(7) F I

*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).
The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be ...
2. makes no prior record level finding because none is required for Class A felony, violent habitual felon, or drug trafficking offenses.

- The Court (NOTE: Block 1 or 2 MUST be checked.):
1. makes no written findings because the term imposed is: (a) in the presumptive range. (b) for a Class A felony. (c) for adjudication as a violent habitual felon, G.S. 14-7.12. (d) for drug trafficking. (e) for which the Court finds the defendant provided substantial assistance, G.S. 90-95(h)(5).
2. finds the Determination of aggravating and mitigating factors on the attached AOC-CR-605.
3. adjudges the defendant to be a habitual felon to be sentenced (offenses committed before Dec. 1, 2011) as a Class C felon.
4. adjudges the defendant to be a habitual breaking and entering status offender, to be sentenced as a Class E felon.
5. adjudges the defendant to be an armed habitual felon to be sentenced as a Class C felon (unless sentenced herein as a Class A, B1, or B2 felon) and with a minimum term of imprisonment of no less than 120 months.
6. finds enhancement pursuant to: G.S. 90-95(e)(3) (drugs). G.S. 14-3(c) (hate crime). G.S. 50B-4.1 (domestic violence).
7. finds that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and actually possessed the firearm or weapon about his or her person.
8. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 (check only one)
9. finds the above-designated offense(s) involved the physical or mental sexual abuse of a minor.
10. finds that a motor vehicle commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV.
11. finds this is an offense involving assault, communicating a threat, or an act defined by G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.
12. (offenses committed on or after Dec. 1, 2017, only) finds that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2) and that the defendant was a criminal gang leader or organizer as defined in G.S. 14-50.16A(3).
13. finds the above-designated offense(s) involved (check one) (offenses committed Dec. 1, 2008 - Nov. 30, 2017) criminal street gang activity
14. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) the defendant refused to consent.
15. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2.
16. finds that the offense involved child abuse or assault or an act defined in G.S. 50B-1(a) against a minor. G.S. 15A-1382.1(a1).
17. imposes sentence pursuant to G.S. 90-95(h)(5a) and the Court's findings on the attached AOC-CR-618. Other:

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one)

to Life Imprisonment Without Parole for Class A Felony. Class B1 Felony. Violent Habitual Felon. in the custody of: N.C. DACJJ.

to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A. for a minimum term of: 90 months and a maximum term of: 120 months ASR term (Order No. 4, Side Two) to Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for 978 days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

Table with columns: File No., Offense, County, Court, Date

Material opposite unmarked squares is to be disregarded as surplusage. (Over)

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs	Fine	Restitution*	Attorney's fees	SBM Fee	Appt Fee/Misc	Total Amount Due
\$ 0.00	\$	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$

- *See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.
- 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.
 - 3. The Court finds just cause to waive costs, as ordered on the attached AOC-CR-618. Other: _____
 - 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction and Juvenile Justice, then he or she will be released at the end of the ASR term specified on Side One. G.S. 15A-1340.18.
 - 5. Other:
**\$355.50 COURT COST + \$100,000 FINE + \$20 INSTALL FEE + \$600 STATE CRIME LAB FEE + \$9,780 CCJ SHALL BE ENTERED AS A CIVIL JUDGMENT;
 S.A. TREATMENT WHILE IN DAC**

- The Court recommends:
- 1. Substance abuse treatment. 2. Psychiatric and/or psychological counseling. 3. Work release should should not be granted.
 - 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above. but the Court does not recommend restitution be paid as a condition of post-release supervision. from work release earnings.

The Court further recommends:

ORDER OF COMMITMENT/APEAL ENTRIES

- 1. It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
03/29/2022	THE HONORABLE J THOMAS DAVIS	

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified
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It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the agency named in this Judgment on the reverse and furnish that agency two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC
		<input type="checkbox"/> Clerk Of Superior Court

CERTIFICATION

- I certify that this Judgment and Commitment with the attachment(s) marked below is a true and complete copy of the original which is on file in this case.
- Appellate Entries (AOC-CR-350)
 - Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
 - Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
 - Victim Notification Tracking Form
 - Additional File No.(s) And Offense(s) (AOC-CR-626)
 - Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)
 - Judicial Findings And Order For Sex Offenders - Active Punishment (AOC-CR-615, Side One)
 - Additional Findings (AOC-CR-618)
 - Convicted Sex Offender Permanent No Contact Order (AOC-CR-620)
 - Other: _____

Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC
	03/29/2022		<input type="checkbox"/> Clerk Of Superior Court

SEAL

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF CATAWBA

2022 APR - 7 CASE NOS.: 19CRS53701-02, 20CRS1227

CATAWBA CO., C.S.C.

STATE OF NORTH CAROLINA, BY 

v.

NOTICE OF APPEAL

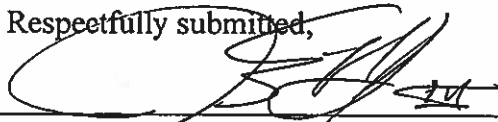
JOSHUA JEZREEL DUNCAN,

Defendant.

COMES NOW, Joshua Jezreel Duncan, Defendant herein, and files this Notice of Appeal and gives notice of appeal from the Superior Court, Catawba County, to the North Carolina Court of Appeals from the judgment entered in the above-captioned case numbers based upon Defendant's plea of guilty and the written order of the Honorable J. Thomas Davis, Superior Court Judge Presiding, entered the 1st day of April, 2022, denying Defendant's Motion to Suppress Evidence.

This the 7th day of April, 2022.

Respectfully submitted,



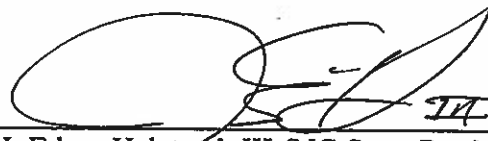
J. Edgar Halstead, III,
N.C. State Bar # 53763
The Law Offices of J. Edgar Halstead, III, PLLC
14421 South Old Statesville Road
Suite 103
Huntersville, North Carolina 28078
Telephone: (704) 464-1088
Fax: (980) 225-0218
jhalstead@ncarolinalaw.com
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned has this date served the foregoing **NOTICE OF APPEAL** upon the below by electronic mail in accordance with the North Carolina Rules of Civil Procedure:

Jessica A. Phillips
Catawba County District Attorney's Office
100 Southwest Boulevard
P.O. Box 566
Newton, NC 28658
Phone: (828) 695-6110
Fax: (828) 695-6111
jessica.a.phillips@nccourts.org
Assistant District Attorney

This the 7th day of April, 2022.



J. Edgar Halstead, III (NC State Bar No.: 53763)
The Law Offices of J. Edgar Halstead, III, PLLC
14421 South Old Statesville Road, Suite 103
Huntersville, North Carolina 28078
Phone: (704) 464-1088
Fax: (980) 225-0218
jhalstead@ncarolinalaw.com
Attorney for Defendant

STATE OF NORTH CAROLINA

CATAWBA County

File No.(s)

19CRS053701

Additional File No.(s)

20CRS001227; 19CRS 53702

In The General Court Of Justice
[] District [X] Superior Court Division

STATE VERSUS

Name Of Defendant

DUNCAN, JOSHUA, JEZREEL

Date(s) Of Trial (list all dates, from start to end)

03/28/2022-03/29/2022

Codefendant(s) If Tried Jointly

Name And Address Of Trial Prosecutor

JESSICA ANNE PHILLIPS

100 GOVERNMENT DR
NEWTON, NC 28658

Telephone No.

828-695-6190

Email Address

JESSICA.A.PHILLIPS@NCCOURTS.ORG

Name And Address Of Trial Transcriptionist

BINGHAM, DEBRA, F

131 S. HARBOR WATCH DRIVE
STATESVILLE, NC 28677

Telephone No.

828-228-5082

Email Address

DEBRA.BINGHAM@NCCOURTS.ORG

Name And Address Of Trial Transcriptionist

Telephone No.

Email Address

Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)

Date(s)

Telephone No.

Email Address

Name And Address Of Defendant's Trial Counsel

JAMES EDGAR HALSTEAD III
14421 SOUTH OLD STATESVILLE ROAD
SUITE 103
HUNTERSVILLE, NC 28078

Telephone No.

704-464-1088

Email Address

JHALSTEAD@NCAROLINALAW.COM

Name And Address Of Defendant's Trial Counsel

Telephone No.

Email Address

Name And Address Of Defendant's Appellate Counsel

[X] The Appellate Defender T: (919) 354-7210 F: (919) 354-7211
123 W. Main Street, Suite 500, Durham, NC 27701

NOTE: All indigent appeals are assigned to the Appellate Defender.

[] Retained Appellate Counsel

Telephone No.

Email Address

Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)

Date(s)

Telephone No.

Email Address

(Attach additional sheet(s) if necessary)

JUDGE'S INITIAL APPEAL ENTRIES

- 1. [X] a. The defendant has given Notice of Appeal to the N.C. Court of Appeals, or
[] b. This is a capital case appealable as of right to the N.C. Supreme Court.
2. Release of the defendant pursuant to G.S. 15A-536 is [X] denied. [] allowed upon execution of a secured bond in the amount of \$ _____ and compliance with the following additional conditions: _____
3. If not found indigent in No. 4, below, the defendant shall be responsible for ordering a transcript of any proceeding that the defendant considers necessary for the appeal, as provided in Rule 7(b) of the N.C. Rules of Appellate Procedure.
[X] 4. (NOTE: Check in all cases where defendant is indigent.) The defendant is indigent and has requested a transcript and the appointment of counsel. It is ORDERED that the defendant is allowed to appeal as an indigent and:
a. The Office of Indigent Defense Services shall pay the costs of producing a transcript, and of reproducing the record and the defendant's brief.

Original-File Copy-Transcriptionist(s) Copy-Defendant's Trial Counsel Copy-Defendant's Appellate Counsel (or Defendant if unrepresented)
Copy-Appellate Defender's Office (if Office is not appointed as defendant's appellate counsel) Copy-District Attorney
Material opposite unmarked squares is to be disregarded as surplusage.
(Over)

JUDGE'S INITIAL APPEAL ENTRIES (continued)

- b. The Appellate Defender is appointed to perfect the defendant's appeal or assign other appellate counsel pursuant to rules issued by the Office of Indigent Defense Services.
- c. Upon request, the Clerk shall furnish to the Appellate Defender, or to alternate counsel designated by the Appellate Defender, a copy of the complete trial division file in the case and, upon request, any documentary exhibits.
- 5. If a transcript has been ordered, the defendant in a non-capitally tried case shall serve a proposed record on appeal on the State within 45 days after all of the transcripts that have been ordered are delivered. If a transcript has been ordered, the defendant in a capitally tried case shall serve a proposed record on appeal on the State within 70 days after all of the transcripts that have been ordered are delivered. If no transcript has been ordered, the defendant shall serve a proposed record on appeal on the State within 45 days after the last notice of appeal is filed or given.
- 6. The State shall serve its amendments, objections or proposed alternative record on appeal on the defendant within 30 days if this is a non-capital case or 35 days if this is a capital case, after service upon it of the defendant's proposed record on appeal.
- 7. The indigent defendant does not read or speak the English language, but reads and/or speaks his or her native language of _____ . The Court therefore authorizes the services of a language translator or interpreter during the pendency of the appeal for the purposes of (1) written translation of attorney-client correspondence, assignments of error in the settled record on appeal, appellate briefs filed by the defendant and the State, and appellate opinion(s), and/or (2) verbal interpretation of attorney-client communication at each critical stage of the appellate proceedings. The Court further Orders that a language translator or interpreter with the necessary knowledge, skill, experience, training and education to perform the above services shall be selected and paid by the Administrative Office of the Courts.
- 8. If the defendant has been found indigent in No. 4, above, the Clerk shall serve a copy of these Appellate Entries on counsel for all parties, or the defendant if not represented by counsel, and on each transcriptionist, no later than 14 days after the date of the judge's signature immediately below.
- 9. In all cases, a copy of these Appellate Entries should be delivered to the Appellate Defender's Office.

Date 4/11/22 Name Of Judge (type or print) HONORABLE Nathaniel J Parry Signature Of Judge Nathaniel Parry

CLERK'S TRANSCRIPT ORDER AND CERTIFICATE

- 1. (if defendant is found indigent in No. 4) The undersigned Orders that the transcriptionist(s) named on Side One shall prepare and deliver to the parties a transcript of all portions of the proceedings in the above-captioned case, within the deadline set out in Rule 7(e)(1) of the N.C. Rules of Appellate Procedure. The undersigned certifies that a copy of these Appellate Entries was served on counsel for all parties, or the defendant if not represented by counsel, and on each transcriptionist, and that a copy was delivered to the Appellate Defender's Office, if the Office has not been appointed as the defendant's appellate counsel, on the date(s) shown below:
 personally. by mail to the listed recipients at the addresses shown on Side One.
- 2. (if defendant is not found indigent in No. 4) The undersigned certifies that a copy of these Appellate Entries was delivered to the Appellate Defender's Office on the date shown below.

Date Clerk's Transcript Order Entered And Filed 4.11.2022 Date Order Served, If Different _____ Date Order Delivered, If Different _____

Name Of Clerk (type or print) KELLY SIGMON Signature Of Clerk Kelly Sigmon Deputy CSC Assistant CSC Clerk Of Superior Court

EXTENSION OF TIME TO DELIVER TRANSCRIPT OR SERVE RECORD

- 1. Extension of time to deliver transcript: Pursuant to Rule 27(c)(1), N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, it is ORDERED that the time for delivery of the transcript is extended for 30 days.
 - 2. Extension of time to serve proposed record on appeal: Pursuant to Rules 11 and 27, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, it is ORDERED that the time for service of the proposed record on appeal is extended for 30 days.
- NOTE: Pursuant to Rule 27(c)(1), N.C. Rules of Appellate Procedure, the trial court may grant only one extension each of the deadline for delivery of a transcript and the deadline for service of the proposed record on appeal. Any motion for an additional extension of either deadline must be made to the appellate court to which appeal has been taken.

Date _____ Name Of Judge (type or print) _____ Signature Of Judge _____

TRANSCRIPTIONIST'S CERTIFICATE OF DELIVERY

I delivered the transcript, made up of _____ pages in _____ volumes, electronically to all of the parties described above
 except as to the following party(ies) who are not able to receive electronic delivery, where I have instead delivered the transcript
 personally by mail: _____ (name party(ies) not receiving transcript electronically).

Date Transcript Delivered To Parties _____ Name Of Transcriptionist _____ Signature Of Transcriptionist _____

CLERK'S CERTIFICATION

I certify this Appellate Entries form is a true and complete copy of the original on file in this case.

Date 4.11.22 Signature And Seal _____ Deputy CSC Assistant CSC Clerk Of Superior Court

Material opposite unmarked squares is to be disregarded as surplusage.

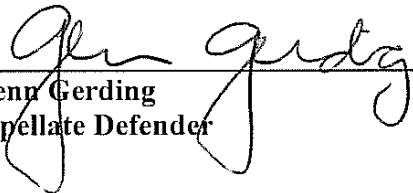
**APPOINTMENT OF APPELLATE COUNSEL
BY THE APPELLATE DEFENDER**

STATE OF NORTH CAROLINA)
)
 v.)
)
 JOSHUA JEZREEL DUNCAN)
 19 CRS 53701-02)
 20 CRS 1227)
 Catawba County)

Defendant having been convicted of a criminal offense in this action and having given notice of appeal to the North Carolina Court of Appeals, and the Trial Court having appointed the Appellate Defender as appellate counsel for the defendant, the Appellate Defender appoints the attorney named below as appellate counsel to perfect defendant’s appeal, pursuant to IDS Rules, Part 3. A copy of the Court’s Appellate Entries is attached to the copy of this Appointment Notice that has been transmitted to the appointed appellate counsel. The original of this Appointment Notice has been mailed to the Clerk of Superior Court for filing.

Appointed Appellate Counsel: Christopher Brook
Attorney at Law
Patterson Harkavy, LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
Telephone (919)-942-5200
Email cbrook@pathlaw.com

This the 21st day of June, 2022.



Glenn Gerding
Appellate Defender

In addition to the appointed appellate counsel named above, the Office of the Appellate Defender has provided a copy of this Appointment Notice to all parties as listed on the Appellate Entries, including the defendant and the court reporter(s).

ATTENTION CLERK OF COURT: File this Appointment Notice in your office. Please mail a copy of the complete court file(s), including any documentary exhibits, to Mr. Brook.