

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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RESPONDENT,
S.C. Supreme Court

THE STATE,

V.

ERIC DANTZLER,

APPELLANT

Appeal from Horry County

Steven H. John, Circuit Court Judge

Opinion No. 2011-UP-343

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Eric Dantzler,

Appellant.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2011-UP-343
Submitted June 1, 2011 – Filed June 29, 2011

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Deputy Attorney General Christina J.
Catoe, all of Columbia; and Solicitor J. Gregory
Hembree, of Conway, for Respondent.

PER CURIAM: Eric Dantzler appeals his conviction for trafficking in cocaine in excess of ten grams but less than twenty-eight grams. On appeal, Dantzler contends the trial court erred in denying his motion for a directed verdict because the State failed to prove Dantzler exercised dominion and control over the area where the drugs were found. We disagree.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." Id. "When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate." Id. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury." Id. at 292-93, 625 S.E.2d at 648. "Before a person may be convicted of the offense of trafficking, the State must prove the person knowingly possessed ten or more grams of cocaine. A person's mere presence, where the drugs are present, would not be sufficient to convict, without more." State v. Scott, 303 S.C. 360, 363, 400 S.E. 2d 784, 786 (Ct. App. 1991) (internal citation and quotation marks omitted).

The State produced evidence of Dantzler's dominion and control over the vehicle and glove box where the drugs were found: Dantzler was seated in the front passenger seat at the time of the traffic stop, approximately one foot from the glove box containing the cocaine. He was unusually nervous and agitated while the police considered towing and taking inventory of the vehicle, he made repeated attempts to control the disposition of the vehicle, and he fled immediately upon seeing the glove box opened. Thus, viewing the evidence in the light most favorable to the State, the evidence supported submitting the case to the jury.

AFFIRMED.¹

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 214, SCACR.

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Appeal from Horry County

Steven H. John, Circuit Court Judge

Opinion No. 2011-UP-343

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Eric Dantzler petitions the Court for rehearing. Counsel respectfully submits that this Court overlooked the fact that Dantzler was not the owner or driver of the car in which the cocaine was found, the glove compartment where the cocaine was found was locked and there was no evidence that Dantzler ever had access to the keys to the glove compartment. While there was testimony that Dantzler had been seen in this car on previous occasions with Maria Rodrigues, his girlfriend and co-defendant, the officer testified that the girlfriend was in the process of buying the car from the owner and this was not the first time the officer had seen the girlfriend with the car. (R. p. 68, lines 6-8). Also, upon her arrest police seized a large amount of cash from the girlfriend's purse. (R. p. 13, lines 9 – p. 14, lines 1-13). The

State's evidence against Dantzler is insufficient to establish that he constructively possessed the cocaine found in the locked glove compartment of the car his girlfriend was going to buy and in which he was merely a passenger.

The jury convicted Dantzler of trafficking cocaine based on 12.17 grams of cocaine found in the locked glove compartment of a car in which Dantzler was a passenger. Officer Gibson with the Myrtle Beach Police Department stopped the car based on a report from an unrelated incident that took place at the Noisy Oyster. (R. p. 2, lines 3-24). Officer Gibson testified that Maria Rodriquez was the driver and appellant, Dantzler was a passenger. (R. p. 2, lines 4-10). Rodriquez was arrested for the unrelated incident at the Noisy Oyster. (R. p. 3, lines 21-25). The officer testified that although Dantzler produced a valid South Carolina identification card, he did not have a valid driver's license. (R. p. 4, lines 18 – p. 5, lines 1-11). Based on the fact that the driver had been arrested and Dantzler did not have a valid driver's license, the car was towed. According to the officer, Dantzler asked them not to tow the car. (R. p. 4, lines 22 – p. 5, line 1).

Officer Pearce, another officer from the Myrtle Beach Police Department, testified that once the decision to tow the car was made, he did an inventory search. (R. p. 82, lines 9-25). Officer Pearce testified that the glove compartment was locked so he took the keys out of the ignition and unlocked the glove compartment. (R. p. 82, lines 17-23). Officer Pearce testified that he found plastic bags with a white powdery substance inside the glove compartment. (R. p. 82, lines 23-25). The white powdery substance field tested positive for cocaine. (R. p. 12, lines 13-25). A chemist later analyzed the white powdery substance and determined that it was 12.17 grams of a cocaine mixture. (R. p. 192, lines 8-21). According to Officer Gibson, Dantzler began to walk away from the car when it was clear that it was going to be towed. (R. p. 7, lines 20-25). Officer Gibson testified that Dantzler then ran from the scene without getting his identification card back. (R. p. 7,

lines 1-17). Dantzler later turned himself in at the police station. (R. p. 74, lines 13-14). In addition to the cocaine, Officer Gibson also seized one thousand seven hundred and thirty dollars (\$1, 730.00) from the co-defendant driver Rodriques' purse. (R. p. 13, lines 9-15).

At the close of the State's case, Dantzler moved for a directed verdict. Dantzler argued that he was merely present and the State failed to prove that Dantzler knew the cocaine was in the locked glove compartment. Dantzler argued that the case was a constructive possession case and the State failed to prove that Dantzler was in control of the car. (R. p. 174, lines 21 – p. 221, lines 1-11). The judge denied the motion. The judge said:

All right. Once again in this matter - - and I'm not going to review the directed verdict standard because I've already done that. This being a constructive possession case, the defendant, Eric Dantzler, was the passenger, front passenger, and occupied the front passenger seat of this vehicle. Immediately in front of the front passenger seat the drugs were found in a glove box. It appears the glove box was locked, the keys were in the vehicle, the defendant had access to the keys and the locked glove box.

Further, there has been evidence submitted by the State as to the defendant's actions when it was apparent that he was not going to be able to exercise control of the car. He made efforts to exercise control over the car, asking that the car not be towed by the police, asking that the police not retain custody of the car, suggesting alternatives to them so that the police would not have custody of the car.

When it became apparent that this was not going to take place the defendant chose to leave the scene where the drugs were found immediately in his – or near his vicinity, in a manner which would suggest actual knowledge of the presence of the drugs, but once again, it's not my job to judge the weight of the evidence, only whether or not it exists. In this case evidence clearly exists that the defendant knew about the drugs, and that he was in constructive possession of the drugs, therefore, your directed verdict motion is denied.

(R. p. 175, lines 12 – p. 176, lines 1-12).

In affirming the conviction, this Court wrote:

The State produced evidence of Dantzler's dominion and control over the vehicle and glove box where the drugs were found: Dantzler was seated in the front passenger seat at the time of the traffic stop, approximately one foot from the glove box containing the cocaine. He was unusually nervous and agitated while the police considered towing and taking inventory of the vehicle, he made repeated attempts to control the disposition of the vehicle, and he fled immediately upon seeing the glove box opened. Thus, viewing the evidence in the light most favorable to the State, the evidence supported submitting the case to the jury.

State v. Dantzler, No. 2011-UP-343 (Ct.App. filed June 29, 2011).

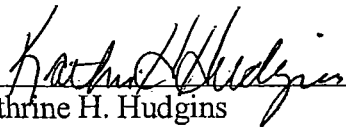
On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Morgan, 282 S.C. 409, 319 S.E. 2d 335 (1984); State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498 (Ct.App.1993). The motion should be granted if the evidence merely raises a suspicion of the defendant's guilt. Barksdale, 428 S.E.2d at 501. However, if the State presents any evidence which reasonably tends to prove defendant's guilt, or from which defendant's guilt could be fairly and logically deduced, the case must go to the jury. State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993). On appeal from the denial of a motion for directed verdict, this court must view the evidence in a light most favorable to the State. State v. Schrock, 283 S.C. 129, 322 S.E. 2d 450 (1984).

In order to prove constructive possession, the "State must show a defendant had dominion and control, or the *right to exercise dominion and control* over the [illegal substance]." State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) (emphasis added). Further, the State may establish constructive possession by either circumstantial or direct evidence. Id. The defendant's knowledge and possession may be inferred if the substance was found on premises under his *control*. State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987) (emphasis

added). Mere presence is insufficient to prove constructive possession. State v. Tabory, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973).

The State failed to present any evidence that reasonably tends to show that Dantzler exercised dominion and control or had the right to exercise dominion and control over the cocaine in the glove compartment. Knowledge can not be inferred from Dantzler's mere presence as a passenger in the car. Dantzler's nervous behavior and fleeing the scene, without more, does not establish that Dantzler had knowledge of the cocaine or that he exercised dominion and control over the vehicle and glove compartment where the cocaine was found. Dantzler was not the owner or driver of the car in which the cocaine was found, the glove compartment where the cocaine was found was locked and there was no evidence that Dantzler ever had access to the keys to the glove compartment. The trial judge erred in refusing to direct a verdict of acquittal when the State's evidence failed to establish that Dantzler constructively possessed cocaine found in the locked glove box of the car in which he was merely present as a passenger. See State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006). Counsel respectfully seeks rehearing.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

This 14th day of July, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC DANTZLER,

APPELLANT

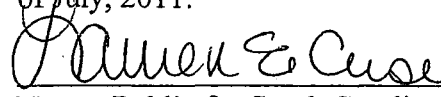
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Christina J. Catoe, Esquire, this 14th day of July, 2011.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 14th day
of July, 2011.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Eric Dantzler,

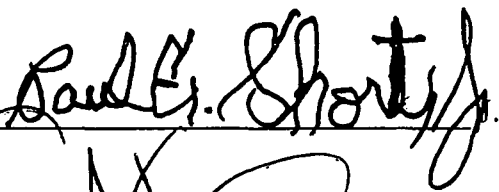
Appellant.

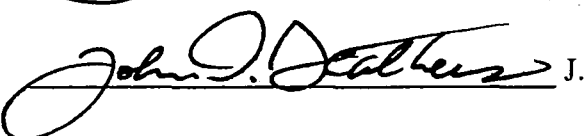
The Honorable Steven H. John
Horry County
Trial Court Case No. 2008-GS-26-01538

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.



AKO J.


J.

FILED

August 23, 2011

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

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NOV 22 2011

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RECORD ON APPEAL

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1. attention to all of the witnesses in the case.

2. Thank you.

3. THE COURT: All right, Solicitor, your first witness,
4. please sir.

5. MR. DeBUSK: Thank you, Your Honor.

6. The State calls Pfc. Bishop Gibson of the Myrtle Beach
7. Police Department.

8. THE COURT: All right, sir. Please come around to be
9. sworn.

10. BISHOP LEE GIBSON, being first duly
11. sworn, testifies as follows:

12. DIRECT-EXAMINATION BY MR. DeBUSK:

13. Q. Officer Gibson, who is your employer?

14. A. City of Myrtle Beach.

15. Q. How long have you been with the City of Myrtle Beach?

16. A. I've been with the Myrtle Beach Police Department for
17. about ten years now.

18. Q. And what are your duties with the City of Myrtle Beach?

19. A. My duties, to answer calls, look for suspicious
20. activities, monitor the radio, do reports, case files, various
21. tasks.

22. Q. Are you a patrol officer?

23. A. Yes sir.

24. Q. Okay. How about on December of 2007, what were you
25. duties then?

1 A. That night I was assigned to midnight patrol.

2 Q. Again, what night ---

3 A. It was December 22nd, '07, around 1:30 A.M. -- I was on
4 duty -- I was in uniform -- I was driving a marked police
5 patrol car -- and about that time I received a dispatch to
6 1101 North Kings Highway, which is a bar called Noisy Oyster,
7 in reference to a unrelated incident.

8 Q. About what time was that, Officer Gibson?

9 A. It was about 1:28, 1:30 A.M..

10 Q. Okay. And what did you do when you went the that
11 scene?

12 A. Upon my arrival to the parking lot of the bar I see a
13 silver Buick just leave the bar, and made a right turn onto
14 North -- on Kings Highway, traveling northbound, and having a
15 reasonable suspicion that the occupants of this care were
16 involved for the unrelated incident back at the bar Officer
17 Pearce, who was on beach patrol, who was in a separate
18 vehicle, and I, initiated a traffic stop on this vehicle.

19 Q. Where did that stop occur? Where, exactly, did the
20 stop occur?

21 A. Right outside, in front of the bar. I activated my
22 blue lights. The car came to a complete stop at the Filly
23 House, which is located at 201 North Kings Highway. It
24 stopped in a parking lot there.

25 Q. I hate to ask you an obvious question, but what county

1 is that location in?

2 A. Horry County.

3 Q. Okay. And what happened when you made a stop?

4 A. I approached the vehicle, along with Officer Pearce.
5 The vehicle was being driven by Maria Rodriques. The front
6 seat passenger was Eric Dantzler. There was nobody else
7 inside this vehicle. We separated the two. I escorted Maria
8 Rodriques to my patrol car to interview here, and Officer
9 Pearce stayed with Eric Dantzler to interview him about what
10 happened back at the bar.

11 Q. Just to be precise, Officer Gibson, these two
12 individuals, Eric Dantzler and Maria Rodriques, are they
13 present in the courtroom?

14 A. Yes sir.

15 Q. Where are they?

16 A. Maria -- Maria Rodriques is a female. She's wearing
17 the white sweater, long dark hair. Eric is standing next to
18 him -- or her. He's wearing blue shirt with white lines,
19 white strips.

20 Q. Thank you. And what happened next?

21 A. I spoke to Maria Rodriques, and also spoke to Eric
22 Dantzler briefly. I also spoke to several other officers that
23 were on the scene back at the bar, and it was -- further
24 investigation, it was determined that Maria Rodriques should
25 be arrested for the unrelated incident.

1 At that time I put her in handcuffs, placed her inside
2 my patrol car. I went and talked to Corporal Garrett and
3 Officer Bernie Devoid, and also Officer Pearce about what to
4 do with the car that we just stopped.

5 Q. You told us there were two people in that car. Were
6 there any more?

7 A. No.

8 Q. Just two people in that car?

9 A. Right.

10 Q. Who was the car registered to? Well, let me ask you
11 this -- this way. Was it registered to either one of those
12 two people?

13 A. No.

14 Q. Okay. Was it registered to a third party?

15 A. Correct.

16 Q. Was that person present at the scene?

17 A. No.

18 Q. Okay. What did you do with the car?

19 A. Well, because Maria Rodriques -- she's the only one
20 that had a valid drivers license, but she was going to jail.
21 Eric Dantzler had -- presented a green South Carolina I.D.
22 card. He does not have a valid drivers license. He was
23 wanting the car not to be towed. He was asking if the car
24 could stay there in the parking lot, which was legally parked,
25 and he also asked if -- if a friend of his could come over and

1 drive the car, rather than the vehicle being towed.

2 MR. DeBUSK: Court's indulgence one moment while we
3 mark an exhibit.

4 (I.D. CARD OF ERIC DANTZLER MARKED STATE'S EXHIBIT
5 NUMBER 1, FOR IDENTIFICATION ONLY.)

6 Q. Officer Gibson, let me show you what's been marked for
7 identification as State's Exhibit 1. Ask you if you can
8 identify that.

9 A. This is Eric Dantzler's South Carolina I.D. card. It
10 has a picture of him, with his name, address on there.

11 Q. Thank you.

12 Now, what is the regular procedure when you tow a
13 vehicle in circumstances like this?

14 A. We do what is called a tow report. It's to inventory
15 the car for any valuable items, money, jewelry, any kind of
16 property in there, or if we are going to take property out it
17 will be on the tow report, the condition of the car, who the
18 car is registered to, the name, the year of the car, incident
19 number. The total report is to document valuables in the car.
20 That's standard procedures.

21 Q. And do you search the car as part of this preparation
22 for towing?

23 A. Yes. We look underneath the seats, we will check the
24 glove box, we will check the console for any kind of valuable
25 items.

1 Q. Now, was such a search done in this situation?

2 A. Yes.

3 Q. Who did it?

4 A. Officer Pearce and I did it.

5 Q. Okay. Tell me what happened during that search.

6 A. As I was standing by my patrol car with Eric -- or with
7 Maria Rodriques inside in the back seat Corporal Garrett
8 decided that this car will be towed because there is no valid
9 driver on the scene. The car is not registered to neither
10 Eric or Maria, and we decided to do the tow. Officer Pearce,
11 at that time, he was -- he was the main one doing the tow, or
12 the inventorying. He was on the passenger side. He opened up
13 the glove box, and inside that glove box he presented -- he
14 called out for Officer Bernie. He said, Bernie, who was on
15 the scene, and I saw in Officer Pearce's hand, several bags
16 that contained numerous other small baggies with like a white
17 powder substance in it.

18 Q. Where was Maria Rodriques during this time?

19 A. She was in my patrol car, in handcuffs.

20 Q. Where was Eric Dantzler at this time?

21 A. Eric Dantzler, once he realized that the car was going
22 to be towed, he was walking away, like side-stepping away,
23 further and further away from the traffic stop location.

24 Q. How far away did he get?

25 A. He was about ten or twelve feet away, and when Officer

1 Pearce located the baggies, and called for -- Officer Bernie's
2 name, I looked over and saw Eric in a full sprint, running
3 away from the traffic stop.

4 Q. Let me ask you -- this item being identified as State's
5 -- or was marked as State's Exhibit 1 for identification.
6 Where was that?

7 A. When we saw the Defendant running, like -- that was
8 clipped to my pen or my handcuff key, on my uniform.

9 Q. So the Defendant did not stop to ask to get his I.D.
10 back or anything?

11 A. No.

12 Q. Now, why did you have his I.D., just to be clear for
13 the jury?

14 A. What we usually do is, we run people for warrants
15 through N.C.I.C., local checks, or for warrants. That's why I
16 was in possession of his I.D... Also, he presented it to me
17 upon request.

18 Q. And when Mr. Dantzler began sprinting away what did you
19 do?

20 A. Once I realized he was running I chased after him. We
21 were running north, on the sidewalk, toward another bar called
22 Melons. He had about a thirty, forty yards or so head start.
23 It was very quick. He ran toward the north side of Melons,
24 around the corner, out of my sight. I followed him cautiously
25 around the corner, and once I went around the corner I

1 couldn't find him. He just disappeared. I don't know where
2 he went to.

3 Other officers -- I was calling it out over the radio,
4 what was going on, for other officers to get there to help to
5 search for Eric Dantzler, which we did not find.

6 Q. Did any of the other officers that were at the scene of
7 the stop with you, did they -- anybody else pursue him as
8 well?

9 A. Officer Pearce, Officer Bernie, some other officers
10 from Waterfront Division, and some officers stayed there at
11 the traffic stop.

12 Q. Okay.

13 A. Officer Garrett stayed with the traffic stop, with the
14 car.

15 Q. Did everyone else chase Mr. Dantzler?

16 A. Yes.

17 Q. Who else?

18 A. Officer Pearce.

19 Q. Okay. Now, when you couldn't locate -- were you able
20 to locate Mr. Dantzler that evening?

21 A. No.

22 Q. Did you return to the scene?

23 A. Yes. I returned back to the patrol car. I advised
24 Corporal Garrett that I still have his I.D. in my possession.
25 We finished up with the tow. Officer Harper transported Eric

1 Dantzler -- or, I'm sorry -- Officer Harper transferred Eric -
2 - excuse me -- Maria Rodriques to jail. I stayed with Officer
3 Pearce to finish the tow report.

4 Auto Body does the tow for us. They came on scene.
5 They towed the car. They get a copy of the tow report.

6 And I met with Officer Pearce later on at the Police
7 Department.

8 Q. Did you seize any evidence from that car?

9 A. Yes. I seized numerous baggies that contain a white
10 power substance. I also seized the I.D. ---

11 Q. Well, let's just do it one at a time.

12 A. Okay.

13 Q. That's -- that -- you say numerous bags. Let me show
14 you what I'm going to mark as State's Exhibit 2 for
15 identification, and ask if you recognize this.

16 (LARGE PHOTO MARKED STATE'S EXHIBIT NUMBER 2 FOR
17 IDENTIFICATION ONLY.)

18 Let me show you again what's been marked as State's
19 Exhibit 2, and ask if you recognize this.

20 A. Yes.

21 Q. What is that?

22 A. It's two plastic bags, sandwich bags, and it contains
23 more small baggies that have a white powder substance.

24 Q. Where was that picture taken?

25 A. This was -- this picture was taken at the traffic stop

1 site.

2 Q. Is that the item that was found in the glove
3 compartment of that vehicle?

4 A. Yes sir.

5 Q. Let me ask, is that a fair and accurate representation
6 of the state of that item on the night that you seized it?

7 A. Yes.

8 MR. DeBUSK: Your Honor, at this time the State would
9 move this item into evidence.

10 THE COURT: Any objection? Mr. Taylor?

11 MR. TAYLOR: No objection, Your Honor.

12 THE COURT: Any objection, Ms. Wilson?

13 MS. WILSON: None, Your Honor.

14 THE COURT: All right. State's 2 is in evidence
15 without objection.

16 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
17 2.)

18 MR. DeBUSK: Your Honor, at this time -- one -- one --
19 Court's indulgence one moment.

20 THE COURT: Yes sir.

21 Q. Officer Gibson, is this I.D. card in substantially the
22 same condition as the night you seized it?

23 A. Yes sir.

24 Q. Once you seized it what did you do with it?

25 A. Went back to Police Department, tested it, and weighed

1 the substance.

2 Q. No, I mean the card.

3 A. Oh, this card here. I put it in this -- I heat-sealed
4 it, and dropped it off as evidence.

5 Q. Okay.

6 MR. DeBUSK: Your Honor, at this time we would move
7 State's Exhibit 1 into evidence.

8 THE COURT: Any objection, Mr. Taylor?

9 MR. TAYLOR: If I could just take a look at it.

10 THE COURT: Yes sir.

11 Any objection, Mr. Taylor?

12 MR. TAYLOR: None, Your Honor.

13 THE COURT: Any objection, Ms. Wilson?

14 MS. WILSON: No, Your Honor.

15 THE COURT: All right. State's 1 is in evidence
16 without objection.

17 (I.D. OF ERIC DANTZLER ADMITTED INTO EVIDENCE AS STATE'S
18 EXHIBIT NUMBER 1.)

19 Q. Let me show you what's been marked as State's Exhibit
20 3, and ask you if you recognize that.

21 A. This is the Best Evidence sample Testing packet that I
22 did. On top of the envelope there is the small bags of
23 plastic that contain a white powder substance.

24 Q. Explain to the jury, if you would, what is a Best
25 Evidence bag.

1 A. It's a control number to it, and it's paperwork needs
2 to be done by S.L.E.D. for chain of custody, and also to be
3 dropped off in a best packet to be submitted for further
4 testing.

5 Q. In this case did you prepare such a Best Evidence Kit
6 for this evidence?

7 A. Yes.

8 Q. And is that a picture of it before it went into the
9 kit?

10 A. Yes.

11 Q. Okay. Did you alter it in any way before you put it in
12 that Best Evidence Kit?

13 A. I did open some of these small baggies and tested the
14 suspected substance in there.

15 Q. What sort of tests did you do?

16 A. I did a chemical test, a cocaine chemical test.

17 Q. And what results did you get?

18 A. It turned a bluish color, which means there is a
19 presence of cocaine. It's a positive presence of cocaine.

20 Q. That's what is known as a field test?

21 A. Yes sir.

22 Q. Okay. Once you completed that field test what did you
23 do with these items?

24 A. I put these -- I heat-sealed these, put it in the Best
25 packet, sealed it, and dropped it off in the drug drop box,

1 which is in our jail, as evidence.

2 Q. Okay. Now, other than doing that field test, did you
3 alter these small bags in any way before you put them in that
4 Best Kit?

5 A. No. I might have opened them up to get to the
6 substance for testing, and to ---

7 Q. Other than that, did you alter them in any way?

8 A. No. No.

9 Q. Okay. Did you seize any other evidence?

10 A. I also seized money that was ---

11 Q. Where did you find this money?

12 A. The money was in Maria Rodriques's purse, which she had
13 on her during the arrest.

14 Q. What was the amount of that money?

15 A. One Thousand Seven Hundred and Thirty Dollars.

16 Q. I notice you are referring to a piece of paper there.
17 Would you tell the jury what that is, just so they will know?

18 A. This here is a Myrtle Beach Police Department Incident
19 Report that I completed.

20 Q. So that's your report from that night?

21 A. Yes sir.

22 Q. Okay. What did you do with this money that you seized
23 from her purse?

24 A. During the booking procedures I -- which is at the jail
25 -- it was known that Maria Rodriques had a lot of cash on her,

1 and because -- because of the charge, trafficking in cocaine,
2 it was reasonable to believe that that was the money connected
3 to trafficking in cocaine, and I seized it as -- her money as
4 evidence. A receipt was done.

5 Q. Okay. And what did you do with the money itself?

6 A. I seized it and dropped it off as evidence.

7 Q. You put that in evidence?

8 A. Yes sir.

9 Q. And you prepared a receipt as well?

10 A. Yes.

11 Q. What did you do with that receipt?

12 A. She was given one copy, and our copy is kept as
13 evidence.

14 Q. Okay. First let me ---

15 MR. DeBUSK: I believe we are at State's 4.

16 (LARGE PHOTO MARKED STATE'S EXHIBIT NUMBER 4 FOR
17 IDENTIFICATION ONLY.)

18 Ask if you recognize this.

19 A. Yes.

20 Q. What is it?

21 A. This is a picture of all the money that was in her
22 purse. It's also a picture of Eric Dantzler's I.D., and also
23 Maria's drivers license, and also the bags of cocaine.

24 MR. DeBUSK: Court's indulgence one money, Your Honor.

25 THE COURT: Yes sir.

1 MR. DeBUSK: These heat-sealed bags are difficult to
2 deal with sometimes.

3 Q. Let me show you what's been marked as State's Exhibit 5
4 and ask if you recognize that.

5 A. This is the money receipt, with my signature on there,
6 with the dollar amount that was seized.

7 Q. Okay. Let me ask you, is that in substantially the
8 same condition as when you prepared it?

9 A. Yes. There's a couple of copies that would have been
10 on top.

11 Q. As to State's Exhibits 3 and 4, are those fair and
12 accurate representations of the items as you testified about?

13 A. Yes.

14 MR. DeBUSK: Your Honor, at this time the State would
15 move these three items into evidence.

16 THE COURT: Any objection, Mr. Taylor?

17 MR. TAYLOR: If I could just take a look at them.

18 THE COURT: Yes sir.

19 MS. WILSON: Your Honor, there is an objection to one
20 of the items.

21 THE COURT: All right. Which one is that?

22 MS. WILSON: This would be State's Exhibit 4, Your
23 Honor, for I.D..

24 THE COURT: All right. Is there any objections to 3
25 and 5?

1 MS. WILSON: None, Your Honor.

2 THE COURT: All right. All right. So State's 3 and 5
3 are in evidence without objection.

4 Would y'all come up and talk to me for just one second,
5 please?

6 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, if you would go to your jury room for about two or three
9 minutes and I will call you back in.

10 Thank you.

11 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
12 JURY.)

13 THE COURT: All right, Ms. Wilson, you want to put your
14 objection on the record.

15 MS. WILSON: Yes sir, Your Honor, I do. Your Honor, I
16 am objecting to the photo with -- of the -- I think it's
17 State's Exhibit Number 4 for I.D. purposes -- on the basis
18 that I feel that my client's photo I.D. is in close proximity
19 in a photo with Ms. Rodriques's, and the drugs, and the money
20 that was seized in this case. There is nothing logically to -
21 - between my client and the seizure of this money, yet
22 everything is -- that they seized on the scene is in that
23 photograph, and I think that, cumulatively, it will have a
24 negative effect as far as my client is concerned, because as
25 the jurors progress, and as the case progresses, my -- the

1 jury is going to see my client in a light as being as involved
2 with certain parts of the evidence seized that he actually has
3 no connection to, and I don't think that it's appropriate that
4 it should be allowed into evidence as it is.

5 Now, if there were a picture with the drugs and Ms.
6 Rodriques's I.D. and my client's I.D., I don't think that I
7 would object as strenuously. I still wouldn't like it, but
8 certainly with the money being in the picture as well it
9 suggests that all of the items are directly related to these
10 people, or can be connected, and I don't believe that that's
11 the case here, even by the testimony given by the witness that
12 we have on the stand currently, Officer Gibson.

13 THE COURT: All right. As I see it you've got the I.D.
14 card of Mr. Dantzler is in evidence, the photo of the bags of
15 what is allegedly to be the cocaine in this case is in
16 evidence, the photo -- State's 3 -- what is in State's 3?

17 MR. DeBUSK: Your Honor, I believe it's pictures of the
18 individual bags, separated out.

19 THE COURT: Okay. All right. Very good. And then
20 State's 5 is the money receipt?

21 MR. DeBUSK: Yes, Your Honor.

22 THE COURT: Do you have a picture of the money itself?

23 MR. DeBUSK: No, Your Honor. There is no picture of
24 the money, other than that one you are holding.

25 THE COURT: All right.

1 **MS. WILSON:** Excuse me, Your Honor, if I might. There
2 are pictures of money because I have it in my discovery. Now
3 it may not be a picture where it shows money and drugs, but I
4 have photocopies of pictures of money in my discovery.

5 **THE COURT:** Okay. Spread out, or separated out such as
6 this that's in State's 4?

7 **MR. HAZZARD:** Court's indulgence, Your Honor.

8 **MS. WILSON:** Your Honor, I think it's on a few pages,
9 listing all the bills individually so that you can read the
10 serial numbers on the bills, Your Honor, so there are actually
11 multiple pages of pictures of money.

12 **THE COURT:** Do you have ---

13 **MS. WILSON:** There's at least eight pages.

14 **THE COURT:** ---Ms. Rodriques's drivers license
15 somewhere also, Solicitor?

16 **MR. DeBUSK:** Court's indulgence for one moment.

17 **THE COURT:** All right. I'll let you look for the
18 photos first.

19 **MR. DeBUSK:** Your Honor, I believe that there is
20 photocopies of all those -- the money. There is not another
21 photograph containing the drivers license of Ms. Rodriques.

22 **THE COURT:** Y'all don't have her drivers license?

23 **MR. DeBUSK:** No. She needs the drivers license in
24 evidence.

25 Your Honor, the drivers license is not in the evidence.

1 **THE COURT:** Okay. What I'm going to do is allow you to
2 -- I assume there would be no objection -- substitute copies
3 of the money that you have, photos of the money that you have,
4 for Number 4. At this point in time I'm not going to allow 4
5 into evidence. At this point in time I will allow you to make
6 a motion to reintroduce it at some other time during your
7 presentation of your case, or before you close, and I will
8 revisit the issue at that point in time.

9 **MR. DeBUSK:** Your Honor, at this time I would ask if
10 the defense would stipulate that this is the money that was
11 seized, these photocopies represent the money ---

12 **THE COURT:** Which one -- well, how about show them.

13 **MR. DeBUSK:** ---The photocopies represent the money
14 that was seized from Ms. Rodriques's purse.

15 **MR. TAYLOR:** Sorry. I was just making sure there
16 weren't duplicates. We have no objection from my side.

17 **THE COURT:** All right. Any objection, Ms. Wilson?

18 **MS. WILSON:** None, Your Honor.

19 **THE COURT:** All right. Very good. So if you want to
20 have those marked by the Court Reporter, please.

21 **MR. DeBUSK:** Your Honor, if I might ask Madame Clerk if
22 she has a staple to ---

23 **THE COURT:** Stapler.

24 **MR. DeBUSK:** ---Secure these together.

25 **THE COURT:** Do you want to mark those as 4(A)? I

1 assume you have already marked others, like as 6, 7, and 8 or
2 something?

3 COURT REPORTER: I don't have a 7 yet. Do you want to
4 mark this 7, or 4(A)?

5 THE COURT: Do you have a ---

6 MR. DeBUSK: I would prefer 4(A), Your Honor.

7 THE COURT: So we are clear, let's just do 4(A), so we
8 will do that as 4(A).

9 (LARGE PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
10 NUMBER 4(A).)

11 THE COURT: You will have to let the Court Reporter
12 keep 4 for right now.

13 MR. DeBUSK: Yes, Your Honor. I just wanted to make
14 clear ---

15 THE COURT: All right. State's 4(A) is in evidence
16 without objection, photo -- photos of money.

17 All right.

18 MR. DeBUSK: Your Honor, just to be clear to the jury,
19 may I substitute it on the record when the jury is present?

20 THE COURT: Very good. That's fine. That's fine.
21 That's not a problem.

22 All right. If you are keeping any other witnesses,
23 Solicitor, if you wanted to -- if you wanted to release them,
24 because I'm sure that we are not going to get any further than
25 this particular witness today.

1 All right. Just so that ---

2 MR. DeBUSK: May I have just a moment, Your Honor.

3 They may have ridden together, so I'm not sure if ---

4 THE COURT: All right, Solicitor, are you ready to go?

5 MR. DeBUSK: The State is ready, Your Honor.

6 THE COURT: All right. Ask the jury to come back in.

7 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right, Solicitor, you may continue.

10 MR. DeBUSK: Thank you, Your Honor.

11 Your Honor, at this time the State would withdraw
12 Exhibit 4 and ask to substitute Exhibit 4(A) as evidence in
13 this case. That's stipulated to be photocopies of the
14 evidence -- of the money seized.

15 THE COURT: All right, sir. As I understand there is
16 no objection from the Defendant, Rodriques; is that correct?

17 MR. TAYLOR: I'm sorry, Your Honor.

18 THE COURT: There's no objection from the Defendant ---

19 MR. TAYLOR: No objection, Your Honor.

20 THE COURT: Okay. And there is no objection from the
21 Defendant, Dantzler; is that correct?

22 MS. WILSON: None, Your Honor.

23 THE COURT: Very good. So State's 4(A) is in evidence
24 without objection.

25 You may proceed.

1 BY MR. DeBUSK CONTINUED:

2 Q. Officer Gibson, I'm going to give you State's Exhibit 3
3 in evidence, and what's been marked for identified as State's
4 6, and ask you if you recognize State's 6.

5 A. Yes. This is the S.L.E.D. Drug Analysis security
6 envelope, part of the Best packet.

7 Q. And how is that -- does it have a unique identification
8 on it, that S.L.E.D. Best pack?

9 A. It has the agency, Myrtle Beach Police Department, the
10 date sealed, which is 12/22/07, with my name on there, and
11 signature.

12 Q. And does it have a tracking number as well?

13 A. Up top it has City of Myrtle Beach Police Department.

14 Q. I just asked you, does it have a unique number?

15 A. 27611, and it has a file number on there, 0107107632.

16 Q. And does that correspond to the case we are in court
17 today on?

18 A. Yes. The control ---

19 Q. Now ---

20 A. Also on here it has Control Number B196042.

21 Q. Okay. Now, the contents of that bag, are they the same
22 as what you put into evidence, or have they been altered in
23 some way?

24 A. They have been altered somewhat, because I submitted
25 the bags in it's baggies. Apparently they have been taken out

1 -- the substance has been taken out of the bags and put into
2 another baggie in here, a plastic bag ---

3 Q. But what ---

4 A. ---And the plastic is separated from the substance.

5 Q. Once again, is that the Best Evidence Kit you submitted
6 into evidence?

7 A. Yes.

8 MR. DeBUSK: Please answer any questions defense
9 attorneys might have.

10 THE COURT: All right, Mr. Taylor.

11 MR. TAYLOR: Thank you, Your Honor. If it please the
12 Court.

13 CROSS-EXAMINATION BY MR. TAYLOR:

14 Q. Good afternoon, Officer Bishop -- excuse me -- Mr.
15 Gibson.

16 Let's start from the point in time that you get my
17 client, Ms. Rodriques, out the car. You have her out the car,
18 she's placed under arrest, you realize that there's two
19 licenses there. When do you run the registration on the
20 vehicle?

21 A. I believe I ran it after she was taken out the car, and
22 standing next to -- near my car.

23 Q. And who does the registration come back to?

24 A. It came back to a Bill Thompson out of Surfside Beach.
25 It was a 2000 Buick, with a South Carolina tag of 491 OCU.

1 Q. Okay. And did you contact Mr. Thompson?

2 A. No sir.

3 Q. Why?

4 A. There on scene we don't have time to locate owners of
5 vehicles.

6 Q. Okay. Does anybody at the Myrtle Beach Police
7 Department contact Mr. Thompson concerning a trafficking
8 weight of cocaine found in his vehicle?

9 A. To my knowledge, no, nobody has contacted him to answer
10 questions.

11 Q. Why not?

12 A. I felt that the cocaine belonged to Eric and Maria.

13 Q. Okay. And this is cocaine found in the -- it's my
14 understanding, from your testimony, it was found in the glove
15 compartment?

16 A. Right.

17 Q. It wasn't in my client's direct possession, was it? It
18 wasn't in her purse or her pocket?

19 A. No. It was not in her purse nor pocket.

20 Q. It wasn't in Mr. Dantzler's pocket or anything as far
21 as a bag belonging to him, was it?

22 A. Are you asking about the cocaine -- the ---

23 Q. The cocaine.

24 A. No. It was not in his pocket.

25 Q. All right. Are you psychic?

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1 A. Am I psychic?

2 Q. Uh huh (indicating positive)

3 A. No sir.

4 Q. Okay. So how do you automatically assume it belongs to
5 my client or to the co-defendant?

6 A. Because she was driving the car. She's -- she has
7 control over the car, and also Eric Dantzler ran as soon as
8 the cocaine was found.

9 Q. Let me ask you a different question. It's pertinent to
10 this. It may not seem so at first. Your vehicles that you
11 drive, Myrtle Beach Police Department, do you take your
12 vehicle home, or do you share vehicles with other officers?

13 A. We share vehicles.

14 Q. You share vehicles. How long is your shift, normally?

15 A. Ten hours.

16 Q. Okay. During lunch breaks do any of your officers go
17 to the gym?

18 A. I don't know what they do during ---

19 Q. Have you ever gone at lunch and bought a birthday
20 present, bought a Christmas present -- this was around
21 Christmas time -- bought Christmas presents, and put it in the
22 trunk of your police car while on break, or while on your
23 lunch break?

24 A. No. When I buy presents usually it's -- I have done
25 that, but not too -- I never put it in the glove box or put it

1 in the trunk.

2 Q. But I mean, you've gone and bought presents and stuck
3 them in the trunk of your car?

4 A. No. I -- the presents that I bought were small, and I
5 would have hold onto them in the bag -- in my bag in the front
6 seat.

7 Q. Let's just -- let me ask you this question. If you
8 left one of these presents in the truck or the glove
9 compartment of your vehicle, would the officer that picks up
10 the next shift realize what you had left in the trunk or in
11 the glove compartment?

12 A. What we are suppose to do at beginning and end of the
13 shift is to check the cars.

14 Q. Okay.

15 A. We check the seats where the arrestee would be at. We
16 check the oil. We check for the lights, the radio, and we
17 check the trunk for anything that might have been left behind.

18 Q. Okay. Do you check the glove compartment?

19 A. It's a part on it, yes.

20 Q. Do you check the glove compartment? Every time you get
21 in the car you open the glove compartment to see if the
22 officer left something from the shift before, every single
23 time?

24 A. Not every time, no.

25 Q. But if somebody did leave one of these presents you

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1 would have no idea if it was in the car, would you?

2 A. If somebody left it and I didn't check?

3 Q. Yes.

4 A. No.

5 Q. Now, you say you've been an officer for ten years,
6 correct?

7 A. Yes.

8 Q. All right. And on occasion do you -- or regular
9 occasion, do you stop people who are driving vehicles that do
10 not belong to them?

11 A. Yes.

12 Q. Okay. That's not an unusual occurrence, is it?

13 A. To stop somebody who is not ---

14 Q. Is driving somebody else's vehicle.

15 A. Sometimes it does happen, yes.

16 Q. Okay. Now, let's just say that that person that was
17 stopped -- let's say that you stopped them for speeding and
18 they had a suspended drivers license. You would arrest them
19 on spot, wouldn't you?

20 A. Sometimes I have them park the car, depending on where
21 the traffic stops at. I have had people part the car and just
22 give them a citation and ---

23 Q. Do you arrest people that have warrants for their
24 arrest, while driving? Whenever you stop them for whatever
25 the charge may be, do you sometimes have occasion to arrest a

1 person because they have a warrant outstanding?

2 A. Yes.

3 Q. Okay. Now, if, as you have testified, these people
4 were driving somebody else's car, would they have reason to
5 know what is in the trunk or in the glove compartment, or in
6 the center console if it is not their vehicle?

7 A. If they -- say again. I ---

8 Q. Okay. If a person borrows somebody else's vehicle, a
9 neighbor borrows another neighbor's vehicle because his car is
10 in the shop, while driving he gets stopped by you, and he has
11 a warrant outstanding for him for unpaid traffic tickets, and
12 you arrested him, searched the vehicle, would he have
13 knowledge of what was in his neighbor's car?

14 A. I don't know what kind of knowledge he would have. I'm
15 -- I don't ---

16 Q. But it's not his vehicle, correct?

17 A. Sometimes it is, sometimes it's not. No. No.

18 Q. But I'm not talking about when it is his vehicle. I'm
19 talking about when he's borrowed his neighbor's vehicle, or if
20 somebody -- I'm sure during your ten years you've arrested
21 somebody that's driving somebody else's vehicle, haven't you?

22 A. Yes. Right.

23 Q. Now, would that person driving somebody else's vehicle
24 not -- have a chance -- maybe not know what the person who
25 owns the vehicle put in the car?

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1 A. I don't know what they are going to know and don't
2 know. I mean, I don't ---

3 Q. I mean, it could happen to where they do not realize
4 what's in the vehicle. Let me ask you this.

5 A. Could it happen ---

6
7 Q. I'll change my question. Have you ever borrowed
8 somebody else's vehicle that's not a Myrtle Beach police
9 officer's car? You ever borrowed a neighbor's car, friend,
10 family, whatever, because you were having ---

11 A. Yes sir.

12 Q. ---Or it's in the shop. Okay. Whenever you borrow
13 that car, and you got the keys from them, did you
14 automatically go outside, check the trunk, check the glove
15 compartment, check the center console, look under the seats,
16 flip open the back seat, and make sure that there was nothing
17 in there that could get you in trouble?

18 A. No. No.

19 Q. You didn't do that, did you? That's not a normal
20 course of activity, is it?

21 A. No.

22 Q. Okay. So, now, given that situation, you have
23 somebody's, other than these two parties here, who are stopped
24 in the vehicle, doesn't belong to them, and you don't even
25 bother to go and ask the person who owned the vehicle why

1 there are a trafficking weight amount of drugs in the car? I
2 believe it was fifteen grams, is what -- what you are talking
3 about.

4 A. Yes.

5 Q. Okay. You don't bother -- nobody at the Myrtle Beach
6 Police Department bothers to go talk to this Bill Thompson?
7 Nobody feels that this is ---

8 A. Not that I know of, no.

9 Q. Okay. Does anybody get an arrest -- or excuse me, not
10 an arrest warrant -- a search warrant to go to my client, Ms.
11 Rodriques's apartment, or house, to check to see if there's
12 any drug activity going on there? In other word, you have
13 arrested her with a trafficking amount of weight, as you
14 claim. Do you think maybe it's pertinent to go check her
15 house to see if there are, you know, mixing devices for mixing
16 cocaine, if there are weighing devices for weighing the
17 cocaine, if there are baggies -- these are -- these cocaine
18 packets are in little baggies -- any evidence in her house
19 that would link her to further activity? Does anybody do
20 that?

21 A. They may do it? No, they -- no, they didn't.

22 Q. Why not?

23 A. I felt that the charge that we had, and the cocaine we
24 had there was enough, and I ---

25 Q. Not -- that was enough?

1 A. Right. I ---

2 Q. But, you know, wouldn't you agree that it's kind of
3 like going to a crime scene and seeing a dead body, and seeing
4 a gun there, and seeing somebody over on the sidewalk here,
5 but not taking any further action in terms of what really
6 happened there that night, that that's not really doing the
7 full job, the full investigation; wouldn't you agree, in your
8 ten years of law enforcement experience?

9 A. I suppose we could have searched her house.

10 Q. You could have done more, couldn't you?

11 A. Right.

12 Q. And you -- in doing more, you could have actually
13 gotten a warrant for Bill Thompson, to go search his vehicle
14 since -- or his house, since his vehicle has trafficking
15 weight amount of cocaine. You could have done that, couldn't
16 you?

17 A. I could have done that.

18 Q. Okay. And -- but nobody took that action to do that?

19 A. No.

20 Q. You just automatically assumed that my client was
21 guilty of trafficking in cocaine?

22 A. No. I didn't assume, no.

23 Q. Well, now you testified earlier that you assumed that
24 it was her drugs. So did you assume it was her drugs, or did
25 you make a mistake in not going further to Bill Thompson's

1 house?

2 A. No, I didn't make a mistake.

3 Q. And how do you know?

4 A. The drugs were in the glove box, she's driving the car,
5 she's -- has control of the car.

6 Q. Okay. But ---

7 A. She's responsible for whatever -- whatever is found in
8 that car she's responsible for.

9 Q. Okay. In your experience, of ten years experience,
10 have you ever had this type of case? You have this on a
11 regular occasion, don't you?

12 A. Not with trafficking, no.

13 Q. No. Well, you have drugs found in a car?

14 A. Yes.

15 Q. Okay. Let me ask you this. You have had occasion, in
16 your ten years experience, where you actually searched the
17 vehicle at the end of your shift and you find drugs in between
18 the back seat that have occurred during the night, through
19 people that have basically dumped the drugs in their back
20 pocket into the crack in the seat, and then when you found --
21 at the end of the night you've found drugs, haven't you?

22 A. No.

23 Q. You've never had that happen in the history of Myrtle
24 Beach?

25 A. No, not to me, no.

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1 Q. No. I'm not asking just you, I'm asking, anybody who
2 works at the City of Myrtle Beach, has that happened where
3 drugs have been found?

4 A. I have heard of that happening.

5 Q. You have heard of that. Now, let's assume that you
6 didn't check the seat, and that the next day somebody gets
7 stopped for a traffic ticket and you find drugs in the back
8 seat after you've searched the vehicle. Are you automatically
9 going to assume that it's that person, or could it be somebody
10 else's? It could be somebody else's, couldn't it, in that
11 scenario? Could be?

12 A. It could. Anything is possible.

13 Q. Okay. And in this case, with a vehicle that does not
14 belong to my client, does not belong to the co-defendant,
15 drugs are found in a vehicle that they borrowed obviously from
16 somebody that is registered in somebody else's name, it could
17 be his drugs, couldn't it?

18 A. She was -- they were in the car. He was in the
19 passenger seat. She was in the driver's seat. She ---

20 Q. Could it, or could it not have been? You've made an
21 assumption without following up any further, didn't you?

22 A. No, it's -- it's their drugs.

23 Q. One hundred percent ---

24 A. That's why Eric -- that's why Eric ran.

25 Q. Okay. Now, I'm going to get to Eric, this alleged

1 running by Eric. How long are you there -- let's get to that
2 further along. How long is this entire process, from the
3 point in time that you stopped the vehicle till the close of
4 this case? How long does that happen, as far as -- other
5 words, blue lights go on, the vehicle is towed off, my client
6 has already been taken to jail, but from the point in time the
7 blue lights go on till the car is towed away, how long has
8 that occurred?

9 A. From the time of this traffic stop to ---

10 Q. Yes.

11 A. ---When the car is towed?

12 Q. Correct.

13 A. You can please ---

14 A. I have to -- have to check. I want to say maybe within
15 the hour ---

16 Q. An hour?

17 A. ---Thirty minutes. I have to check.

18 Q. How long, from the point in time the blue lights came
19 on, till my client is arrested?

20 A. I say fifteen, twenty minutes.

21 Q. At the most?

22 A. Yes.

23 Q. Okay. Now, you testified that your -- the officer that
24 was backing you up on the scene there had -- the co-defendant,
25 Mr. Dantzler, had his I.D. here, in hand, in ---

1 A. At one time he had it in his hand and he handed it to
2 me.

3 Q. All right. And now, you also testified that he was not
4 able to drive, because this here says this is an
5 identification card, Department of Motor Vehicles. This is
6 not a drivers license, so he was not able to drive, was he?

7 A. No.

8 Q. Okay. So based on that you were going to tow the car?
9 You testified to that; you had to tow the car because he
10 couldn't drive.

11 A. Right. He couldn't drive. The owner wasn't there.

12 THE COURT: Wait. Mr. Taylor, let him fully answer the
13 question, please.

14 MR. TAYLOR: I'm sorry, Your Honor. I got ---

15 THE COURT: Go ahead.

16 A. There was no valid drivers license there. The owner
17 wasn't there, and Eric doesn't have a drivers license.

18 Q. Okay. You also were not going to allow one of his
19 friends to come and tow the car because he didn't own the
20 vehicle, correct?

21 A. Right.

22 Q. So therefore you allowed him to go?

23 A. No, he ran.

24 Q. Okay. But before we get to the running part -- let's
25 talk about that. Let's back up some ---

- 1 A. Okay.
- 2 Q. ---So that the jury can understand the picture of what
3 all is going on here. There was -- there were officers at
4 Noisy Oyster for an unrelated matter. My client is stopped,
5 in the vehicle she is driving about a -- maybe a block away?
- 6 A. Yes.
- 7 Q. Okay. How far is Melons from where the vehicle was?
- 8 A. I'd say about fifty yards.
- 9 Q. Fifty yards?
- 10 A. Fifty, sixty yards.
- 11 Q. Okay. You testified earlier today, because of this
12 situation, the vehicle being towed, Mr. Dantzler not being
13 able to drive the vehicle, you not being able to allow some --
14 one of his friends or whoever to come drive the vehicle, that
15 he was walking away, and that he -- he had a distance where he
16 had walked away from you.
- 17 A. Right. Once he realized that the car was going to be
18 towed ---
- 19 Q. Okay.
- 20 A. ---He was wanting it to be not towed ---
- 21 Q. He started to walk away from you?
- 22 A. ---He started walking away, and once realized -- once
23 he realized we were going to do an inventory of that vehicle.
- 24 Q. Okay. Let me stop you there. Now, how many officers
25 are at -- a block away at Noisy Oyster?

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1 A. I don't know.

2 Q. You don't know? You can look at your report there.

3 A. There were several officers. There was ---

4 Q. Five. Say there's five or six?

5 A. The exact number, I don't know.

6 Q. Could there have been around that amount, five or six?

7 A. I don't -- I know there was at least one officer on
8 there.

9 Q. Okay. And you testified -- from my understanding of
10 your testimony there was at least three to four officers on
11 scene with the vehicle that was being towed, correct?

12 A. Yes.

13 Q. Okay. So we've got -- basically within a block radius
14 we have ten officers?

15 A. I don't know how many officers there at the scene -- at
16 the -- at the bar.

17 Q. Would you estimate -- would you agree that it's close
18 to around ten, probably?

19 A. Ten officers, altogether, involved? Yes.

20 Q. All right. So you are telling me that Mr. Dantzler
21 just, poofed, and disappeared, within a ten foot, twelve foot,
22 fifty yard, and nobody, as far as these ten officers on scene
23 there, could find him in any way, that he just disappeared.

24 A. There weren't ten officers there at the traffic stop
25 site. There was other officers at the bar. At the traffic

1 stop site there might have been three, four, five officers.
2 Q. Okay. So five officers at the traffic site?
3 A. Around that, ye.
4 Q. Okay. And more officer a block away at the Noisy
5 Oyster?
6 A. Yes.
7 Q. How many officers, at that time of night, are usually
8 on duty, in the area, that area where you were at?
9 A. Say around twenty.
10 Q. Twenty. Okay.
11 A. Twenty, twenty-five. It varies.
12 Q. Now these -- all of these twenty officers weren't on
13 the scene?
14 A. No.
15 Q. No. They were -- but they were in the area?
16 A. Uh huh (*indicating positive*)
17 Q. Okay. So twenty officers in this short area ---
18 A. For the whole -- I'm talking about for the whole entire
19 City.
20 Q. Whole entire City? Okay.
21 A. Twenty, twenty-five officer for the whole city.
22 Q. Okay. So you've got half the police force right there?
23 A. There's at least three to five police officers there at
24 the traffic stop site. I don't know how many there were at
25 the bar, which is a few blocks away.

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1 Q. But you had estimated earlier, I believe, to close to
2 ten officers there?

3 A. At the -- at the bar?

4 Q. Just in that area where you were, between the two to
5 three block radius.

6 A. Okay.

7 Q. Right there where you were during this incident.

8 A. When he ran he ran opposite of where the officers were.

9 Q. I'm not asking that, where he ran to.

10 A. Okay.

11 Q. I'm asking how many officers were there. You testified
12 it's about ten, right? It's about half your police force.

13 A. There at the traffic stop, about five officers.

14 Q. So, you have half the police officers for the Myrtle
15 Beach Police Department on duty that night, and within a block
16 radius you lose a man. How does that happen?

17 A. It was quick. He ran behind a building that had --
18 there was woods back there. There's dumpsters. It's night
19 time. It's not uncommon sometimes to lose somebody who is
20 running from the police.

21 Q. Okay.

22 A. It's not the first time I lost somebody.

23 Q. Okay.

24 A. And also, for safety reasons, it's not wise to go into
25 woods to look for suspects, especially when I have his I.D.

1 card in my possession.

2 Q. Had you already searched him when you pulled him out --
3 I mean, this is one o'clock at night. I mean you -- for
4 safety reasons, had you already frisked him to make sure he
5 didn't have weapons?

6 A. I believe he was patted down.

7 Q. Okay. So he was patted down, so you know he didn't
8 have a weapon on him?

9 A. I'm not too sure. I wasn't the one that patted him
10 down.

11 Q. What really happened that night is that you ---

12 Okay. What really happened that night is that you
13 allowed him to walk away, didn't you, because you weren't
14 going to initially arrest him?

15 A. No. I didn't allow him to walk away.

16 Q. You did not let him walk away?

17 A. No. He ran away.

18 Q. Okay. All right. So maybe I'm confused. You
19 testified initially that you were not going to let him drive
20 the vehicle. You testified that you weren't going to allow
21 somebody else, and you were not going to arrest him, had not
22 arrested him at that point, and you testified, in your
23 testimony that I have notes here, that he was walking away
24 because of that fact, and now all of a sudden after you have
25 allowed him to walk away he just takes off running. He was

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1 actually ---

2 A. We were -- we were ---

3 Q. And let me finish with my question. He was actually
4 out of the area, and you didn't know where he was. He didn't
5 actually run, did he?

6 A. Yes, he ran.

7 Q. He ran.

8 A. Yes.

9 Q. Okay.

10 MR. TAYLOR: Court's indulgence, Your Honor.

11 THE COURT: Yes sir.

12 Q. Now, there's money found in my client's purse, you
13 said, and you testified that it was over a Thousand Dollars.
14 Did you talk to my client about where this money came from?
15 Did you ask her how did -- why do you have a Thousand Dollars
16 or over a Thousand Dollars in your purse?

17 A. Yes. I talked to her briefly at the Police
18 Department ---

19 Q. Okay.

20 A. ---In an interview room, and she didn't want to talk
21 about it.

22 Q. Okay. Have you had occasion in your ten years
23 experience in law enforcement where you've arrested people
24 that do not have bank accounts?

25 A. Do not have what?

1 Q. Bank accounts.

2 A. I don't know if they have banking accounts or not.

3 Q. Well, have you asked them?

4 A. Do I ask people?

5 Q. Uh huh (*indicating positive*)

6 A. No. I don't ask people if they have bank accounts.

7 Q. Okay. So you don't ask them why they would have a
8 Thousand Dollars if they don't want to maybe leave it at home,
9 you don't ask them the circumstances. You just automatically
10 assume, like you did about the drugs, that it must be drug
11 related?

12 A. Based upon the drugs being found, and the purse, the
13 money, you know, the purse containing the money, it's not
14 uncommon ---

15 Q. But the drugs weren't found in the purse, were they?

16 A. Sir?

17 Q. The drugs were not found in the purse? Money was found
18 in the purse?

19 A. Right.

20 Q. Okay. So if the drugs are found in any vicinity any
21 money has to be drug related; is that your assumption?

22 A. Well, it was found in her purse, and she was in the
23 car, she had the purse on her during the arrest.

24 Q. Let me ask you this. Do you have a -- let me -- just
25 assume something with me. If you did not have a bank account

1 what would you do with your money? What would you do with
2 your money if you didn't have a bank account?

3 A. I would keep it at the house.

4 Q. All right. Well, what if you had a situation where you
5 couldn't keep it at the house, or you didn't feel it was safe
6 there, would you carry it with you?

7 A. No, I wouldn't carry it with me. Maybe small amounts,
8 but not all my money on me.

9 Q. Okay. So if a person has no bank account, and not a
10 safe place to keep it, they would only carry a portion of the
11 money?

12 A. I don't know what they are going to do. I would.

13 Q. But I mean, my point is, is that just because somebody
14 has money on them doesn't automatically mean it's drugs, does
15 it?

16 A. In this case, I would say so.

17 Q. You would say so because the drugs are found in the
18 vehicle of somebody else? All right.

19 MR. TAYLOR: Court's indulgence, Your Honor.

20 THE COURT: Yes sir.

21 MR. TAYLOR: Your Honor, I have no further questions.

22 THE COURT: Ms. Wilson.

23 MS. WILSON: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MS. WILSON:

25 Q. Good afternoon, Officer Gibson.

1 A. Hello.

2 Q. Let me -- I want to back up a little bit. You

3 testified earlier that you had Mr. Dantzler's I.D. clipped, I

4 believe you said, up here?

5 A. Yes.

6 Q. Where would you have it clipped, exactly? I mean, do

7 you have something that you just stick it to or ---

8 A. Yes. I could show you. I have my drivers license.

9 Q. Okay. So you just slide it onto under whatever pen is

10 there, that you've got?

11 A. Yes. It's secure in there.

12 Q. Okay. And let me ask you this. So when you clipped an

13 I.D., is that your normal course of behavior when you ---

14 A. I do so I know where it's at. If I start ---

15 Q. Right.

16 A. ---Putting it in my pockets, or laying it around I'm

17 going to lose somebody else's drivers license.

18 Q. I understand. And isn't it something that maybe they

19 taught you at the Academy, or when you were learning, that you

20 want to take an I.D. and maintain control of it when you make

21 a stop, and you ask someone for their I.D. so you can run it

22 and check it?

23 A. Right.

24 Q. That's what they -- that's what you are suppose to do?

25 A. He ---

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1 Q. You are suppose to take control of that I.D. and ---

2 A. We -- when I ask for an I.D. they present it, and I
3 hold onto it, might run it through local N.C.I.C., check for
4 warrants, or go back to my patrol car, run it through the
5 computer.

6 Q. Yes sir. Okay. So that actually leads me to my next
7 question, because you say you ran his I.D., you ran Eric's
8 I.D., you ran it ---

9 A. Yes. At one time, yes.

10 Q. One time. You only ran it once?

11 A. I ran it. Yes. I know I -- I don't know if somebody
12 else -- somebody else might have ran it, but I know I -- I ---

13 Q. Did you give his I.D. to someone else to run?

14 A. No. Officer Pearce had it, and he handed it to me.

15 Q. So you are not sure if Officer Pearce ---

16 A. Officer Pearce may have ---

17 Q. Run it before?

18 A. Right.

19 Q. So did you -- do you guys normally check with one
20 another to see if the other one has run the I.D.?

21 A. Well, we were separated. We want to keep them
22 separated, so he might have run the I.D. at one time while I'm
23 talking to Maria.

24 Q. So you guys were kind of doing good cop/bad cop, or
25 double-teaming, or switching-off?

1 A. No, not good cop/bad cop, no.

2 Q. Okay.

3 A. No.

4 Q. So you admit to running his I.D. at least once?

5 A. Yes.

6 Q. And after you ran it what did you discover?

7 A. That he wasn't wanted.

8 Q. Right. So Mr. Dantzler, Eric Dantzler, had no
9 warrants?

10 A. Right. Right.

11 Q. Right. So at that point in time what did you do with
12 the I.D.?

13 A. I had it on my clip, and we are still discussing what
14 happened back at the club, at the bar.

15 Q. Okay. Now, at this point in time -- and I'm trying to
16 make sure I'm clear, because my understanding is that, from
17 what you said, my client was not under arrest?

18 A. No, not at the time. We are still -- it was still
19 being investigated, what happened back at the bar.

20 Q. And so he wasn't under arrest, you still had his
21 license, or his I.D., correction -- excuse me -- you still had
22 his I.D., you had already run his I.D., there were no
23 warrants, kept his I.D. because, why?

24 A. We were still determining what happened back -- if he
25 was involved back at the bar, was he involved in kind of

1 unrelated incident back at the bar, and he also ---

2 Q. So at this point -- I'm sorry.

3 A. ---He also stood around and was asking about that car.

4 Q. He was asking about the car?

5 A. Yes. He was asking if he could leave the car there.

6 He was asking if somebody else could come pick it up. He was
7 asking if that car was going to be towed or not.

8 Q. Okay. And actually that's an interesting point as
9 well, because at this point Christina Rodriques is actually --
10 I mean, excuse me -- Maria Rodriques is actually in custody;
11 am I correct?

12 A. She was. She was in ---

13 Q. And she was in custody because you had -- you all had
14 decided to arrest her, and you knew, correct, that my client
15 was not in control of the vehicle, and had no license?

16 A. Well, he was -- he was in the vehicle.

17 Q. He was in the vehicle.

18 A. Right.

19 Q. But he was not in control of the vehicle, was he?

20 A. As far as driving it, no.

21 Q. Right.

22 A. No, he wasn't driving.

23 Q. He could not drive it, could he?

24 A. No, not legally.

25 Q. Because he had an I.D. and not a drivers license.

1 A. Right.

2 Q. Correct. So at this point in time Ms. Rodriques is in
3 custody, so it wasn't really a matter of determining exactly
4 what had happened, because you had already ascertained that
5 she needed to be arrested; am I correct?

6 A. For her, right. I didn't know what involvement Eric
7 had back at the bar ---

8 Q. Well, you ---

9 A. Because there were -- other officers were there, back
10 at the bar. They might have been gathering more information.
11 I'm not too sure what kind of questions, and what they were
12 doing. They came -- some came on scene. Some of them spoke
13 to on the radio, and it was determined that Maria should be
14 arrested. I was standing by her, put her in handcuffs, put
15 her in the back seat of the car, went over to Corporal Garrett
16 and the other officers to talk about what we were going to do
17 with the vehicle there that Maria was driving.

18 Q. So you had determined that my client had no warrants,
19 that at that point in time he was not going to be arrested,
20 that Ms. Rodriques was to be arrested ---

21 A. Right.

22 Q. ---And you had actually taken steps to do so ---

23 A. Right. He was inquiring if he could leave the car
24 there. Once we determined that the car was going to be towed,
25 that's when Eric started stepping away, creating distance from

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1 us, and once Officer Pearce went inside the glove box, showed
2 the baggies out like this, and called for Officer Bernie
3 Devoid, that's when Eric ran.

4 Q. And let's just follow that one thought.

5 A. It just happened just that quick.

6 Q. I understand. So he ran, and you are at the Philly
7 House, which is right next door to Melons, correct?

8 A. It's close by, yes.

9 Q. Actually it's right next door, isn't it? It's not
10 close by, it is -- the Philly House here and Melons here; am I
11 correct?

12 A. The Philly House. We are at the Philly House, and we
13 are near the back of the Philly House, like on the south
14 parking lot, the south back rear of the Philly House.

15 Q. I understand.

16 A. The -- the Melons is north of the Philly House, and
17 it's also -- at the back of Melons there's a wooden -- there's
18 a fence line that surrounds the parking lot. It's a high
19 fence there, so when he -- when he took off running he ran
20 toward the front of the Philly House, on the sidewalk, in
21 front of Melons, and then on the north side of Melons. Here's
22 Melons, here's the Philly House. He ran from here, down the
23 sidewalk, toward the north side of Melons. When I got back
24 there, I don't know where he went to. I didn't see him. I
25 lost sight of him.

1 Q. And I'm actually, you know -- you've actually provided
2 me a lot more information than I was searching for, but
3 actually I'm glad you did. So you are telling me that the
4 Philly House is here ---
5 A. Uh huh (*indicating positive*)
6 Q. ---Right next door to it is Melons; am I correct ---
7 A. Right.
8 Q. ---Right next door. It's not down the block, it is ---
9 A. If you -- if you ---
10 Q. I'm sorry. It's not down the block. It is not, you
11 know, a fifty foot sprint away from the Philly House. He ran,
12 according to you, from the parking lot of the Philly House to
13 the next parking lot, next door at Melons; am I correct?
14 A. I would say he ---
15 Q. This is a yes or no answer.
16 A. He ran about -- about fifty yards.
17 Q. Fifty yards?
18 A. About -- approximately fifty yards ---
19 Q. So it's fifty ---
20 A. ---In a full sprint, running.
21 Q. So it's fifty yards from the parking lot.
22 A. Approximately.
23 Q. It's approximately ---
24 A. Right, about ---
25 Q. ---Fifty yards from the parking lot ---

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1 A. ---From where ---

2 THE COURT: Ms. Wilson, please, if -- if you can not
3 interrupt him while he's answering the question. Thank you,
4 Ma'am.

5 MS. WILSON: Yes sir.

6 THE COURT: Go ahead.

7 Q. Please continue.

8 A. From where he ran, to where I lost sight of him, it's
9 about fifty yards.

10 Q. So you are telling me that it is fifty yards from the
11 parking lot of the ---

12 A. Fifty yards from where he -- where he ran, to where I
13 lost sight of him.

14 Q. Okay. So ---

15 A. Even though the parking lots in back might run
16 together, there was a fence there, so then my -- you know,
17 they are adjacent, but to run where he ran it was about fifty
18 yards.

19 Q. Okay. So for the sake of argument, let's say that you
20 are correct and it was fifty yards. The Philly House is right
21 here. Next door, in the next parking lot, the next lot over,
22 separated by a fence, is Melons.

23 A. Right.

24 Q. Let's just say it is fifty yards from where he was to
25 where you say he ran to, am I correct in saying that Melons is

1 surrounded, on three sides, by a fence?

2 A. On the back side there's -- there's a fence line that
3 runs three sides. That's on the back and sides of Melons, not
4 in the front.

5 Q. Correct. So there is no fence in the front, but there
6 is certainly a fence on the left side, on the right side of
7 Melons, as well as in the back of Melons?

8 A. Right.

9 Q. So you are claiming that Eric Dantzler ran away, fifty
10 yard sprint, to get away from the cops, that he ran around the
11 right side of Melons, and that he just, poof, disappeared,
12 when there is practically a seven foot fence all the way
13 around the back and the sides?

14 A. I don't know how he did it, but he did. He -- couldn't
15 find him.

16 Q. Did he have stilts?

17 A. No.

18 Q. Maybe those things that help you jump when you run, so
19 you can get elevation?

20 A. There was also bushes, tress back there. It was dark.
21 Dumpsters. There was another business just north of Melons.
22 He could have ran back in there.

23 Q. What -- and I'm sorry ---

24 A. I don't know where he went.

25 Q. I do want to stop you there, because he couldn't have

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1 run somewhere else because that's not what you said. You did
2 say, correct me -- and correct me if I'm wrong -- but you
3 didn't say -- you testified earlier under oath that he ran
4 around the right corner of Melons ---

5 A. Right.

6 Q. ---Not the building next to Melons ---

7 A. Right.

8 Q. ---Or the parking lot next to it, it was around the
9 right front corner of Melons; am I correct in that?

10 A. Right. He ran to the north side of Melons, out of
11 sight, and around the corner.

12 Q. And he disappeared.

13 A. (NODS HEAD AFFIRMATIVE)

14 Q. And you pursued him, along with what other officers?

15 A. There was Officer Pearce, there was Officer Platten,
16 there were several other officers that responded, and we tried
17 to set up like a -- like a cordon. Some officers were looking
18 for him more than others. Some went back to the scene. I
19 don't know where he went to. Like I say, he disappeared.

20 Q. And he disappeared, according to you, because he ran
21 away, not because you had run his I.D., possibly another
22 officer had run his I.D., determined he had no warrants, and
23 you had decided to allow him to leave, is that what you are
24 telling me?

25 A. I didn't allow him to leave. He ran away once those

1 baggies were found by Officer Pearce.

2 Q. He just ran away. And he got away from a multitude of
3 officers on the scene.

4 A. (NODS HEAD AFFIRMATIVE)

5 Q. You were armed that night?

6 A. Yes.

7 Q. Were the other officers armed?

8 A. Yes.

9 Q. So you told -- you testified earlier, I believe during
10 cross, that you didn't pursue Mr. Eric Dantzler behind Melons
11 because it could have potentially been a dangerous situation?

12 A. Could have been, yes.

13 Q. But you had already patted him down, so you knew he
14 wasn't armed.

15 A. I didn't pat him down.

16 Q. Who did?

17 A. I believe Officer Pearce did.

18 Q. But you do recognize that when you stop -- and correct
19 me if I'm wrong -- protocol would suggest that he would have
20 been, unless someone was being remiss in their duties; am I
21 correct?

22 A. We don't pat everybody down, you know, sometimes people
23 aren't -- it depends on what the incident is.

24 Q. So you are telling me that, at 1:30 in the morning you
25 are stopping a vehicle and you are not going to pat down the

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1 people inside the car?

2 A. No, I didn't say that. I didn't say I'm not going to
3 pat him -- depends on the incident, depends on if I see, you
4 know, the fidgeting around, if I see bulges in their pockets,
5 if they are -- their demeanor, if they are hostile, that's
6 when I might do a pat-down, and also the incident that I
7 respond to.

8 Q. Well ---

9 A. I don't pat, you know, everybody down that I speak to
10 when I'm working.

11 Q. Did you not testify earlier that you did do a pat-down
12 of the two people arrested here?

13 A. I don't believe I patted down Dantzler. I don't
14 believe so.

15 Q. Oh, so you were just testifying as to Ms. Rodriques?

16 A. Yes.

17 Q. Okay. So -- so you don't know, you just -- you don't
18 know if you did or didn't?

19 A. I don't know if he did. I believe Officer Pearce did.

20 Q. Okay. For clarification sake, you didn't find the
21 drugs on Mr. Dantzler, did you? Were they on his person?

22 A. They were in the glove box, and he was ---

23 Q. Were they on ---

24 A. ---Sitting in the front seat of the car, and the glove
25 box is directly in front of him.

1 Q. Were they on his person?

2 A. They weren't in his pocket or shoe or anything like

3 that, no.

4 Q. So that would mean they were not on his person,

5 correct?

6 A. He -- no, he had constructive possession. It was in

7 the glove box, and it was -- and the glove box was in front of

8 him, and he was the front passenger.

9 Q. But he was not in actual possession of this substance,

10 was he?

11 A. No.

12 Q. And his fingerprints were not on the bag that the drugs

13 were in, correct?

14 A. I don't know. We didn't print. We didn't do a

15 fingerprint on the baggies.

16 Q. You could have, couldn't you?

17 A. I'm not a crime scene expert, and I've dealt with -- on

18 other calls, when crime scene has come out. They told me that

19 the best kind of surface for them to lift fingerprints we be

20 like ---

21 MR. HAZZARD: Objection.

22 THE COURT: Mr. Hazzard, you are objecting to a

23 question that your counsel asked, and the answer to the

24 question that your co-counsel asked?

25 MR. DeBUSK: Your Honor, I'm going to ---

1 MR. HAZZARD: I'm objecting to the answer that he's
2 giving.

3 THE COURT: No sir. She asked the question. He can
4 respond to the question. It's your co-counsel. Thank you
5 very much.

6 MR. HAZZARD: Thank you, Your Honor.

7 A. They told me that the best kind of surface for them to
8 lift fingerprints would be like a flat surface, a flat, smooth
9 surface like glass, or a table like this. I have never
10 submitted, like a sandwich bag, for fingerprint lifts.

11 Q. But you could have, couldn't you?

12 A. I'm not a crime scene expert. I guess they could have.
13 I don't know. I was told that the best kind of surface for
14 fingerprints to be lifted would be like a flat surface like
15 glass, smooth surfaces.

16 MS. WILSON: Okay.

17 Q. Mr. Dantzler was not in control of the vehicle,
18 correct?

19 A. He was not driving, no.

20 Q. Was the car registered to him?

21 A. No.

22 Q. Did he somehow manage to assert control over the
23 vehicle?

24 A. All I know was, he was the front seat passenger in this
25 vehicle.

1 Q. So he was just riding, is what you are saying?

2 A. Just riding, I don't -- I know he was in the front seat
3 passenger.

4 MS. WILSON: Thank you.

5 Your Honor, Court's indulgence.

6 THE COURT: Yes Ma'am.

7 MS. WILSON: I have a couple of additional questions,
8 Your Honor.

9 Q. How many police officers would you say showed up on
10 scene? You can give me the number in the number of officers
11 present, or in the number of vehicles that were present.

12 A. I'd say there were about five officers. There was, I
13 believe, two beach patrol vehicles, and there was my patrol
14 car, and I believe there was a second patrol car, so two
15 patrol cars, two beach patrol cars.

16 Q. At the Philly House?

17 A. Yes.

18 Q. Two patrol cars and about five officers?

19 A. Yes.

20 Q. Okay. And out of those two vehicles no one had any
21 video?

22 A. No.

23 Q. Did you blue-light the car that Ms. Rodriques was
24 driving ---

25 A. Yes.

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1 Q. ---Mr. Dantzler was a passenger in? Did you blue-light
2 that car?

3 A. Yes.

4 Q. And isn't it typically the case that, when a blue light
5 occurs, or when an officer initiates a blue light on a
6 vehicle, that the camera typically starts?

7 A. There's settings on these in-car cameras. They have to
8 be turned on and -- to activate these -- the in-car camera.
9 You can activate it by a mike-pack, which is on the officer
10 himself, or you can activate it with the blue lights. That
11 day my car in-car camera was not working. There's no video of
12 the traffic stop.

13 Q. Did you know that the camera -- I'm sorry. Did you
14 have something else you wanted to say?

15 A. I work the midnight patrol. When I come on other newer
16 police cars are being used by evening shift, so the midnight
17 patrol units, we usually get the left over older cars.
18 Sometimes these cars don't have radar, sometimes they don't
19 have in-car cameras, sometimes they don't have the computers
20 mounted in them. We usually get stuck with the older cars.
21 If I had an in-car camera showing the traffic stop it would
22 have been presented as evidence.

23 Q. When you went out that night did you realize your car
24 didn't have a camera functioning?

25 A. I believe so. I believe there's -- it's been -- this

1 is December, '07, so it's been a while.

2 Q. So there is some reason you are not remembering very
3 quick?

4 A. I do know there's no in-car camera either for -- the
5 in-car camera wasn't working properly, or it might not have
6 been activated.

7 Q. Would you normally have to do some kind of a check list
8 for your car before you leave?

9 A. Yes.

10 Q. You don't remember doing one that night?

11 A. Yes, I -- I did one.

12 Q. You do think you did one?

13 A. Right.

14 Q. You believe you did one?

15 A. Yes, I do.

16 Q. You do remember that?

17 A. Uh huh (**indicating positive**) Right.

18 Q. But you just can't recall specifically whether or not
19 you noticed that particular issue?

20 A. Right. I -- the in-car camera wasn't working, if it
21 was, it would have been a tape of -- for you to look at.

22 **MS. WILSON:** All right. No further questions, Your
23 Honor.

24 **THE COURT:** Redirect, Solicitor.

25 **MR. DeBUSK:** Thank you, Your Honor.

1 REDIRECT-EXAMINATION BY MR. DeBUSK:

2 Q. Mr. Taylor questioned you extensively about the owner
3 of the car, and whether you investigated him. Had you ever
4 seen that car before that night?

5 A. Yes, I have.

6 Q. When, in time, relative to this, was that?

7 A. I've seen that car earlier this year, with previous
8 incidents.

9 Q. I'm sorry. Is that earlier in 2007 ---

10 A. Yes.

11 Q. Okay.

12 A. ---Involving Eric Dantzler and Maria Rodriques.

13 MR. TAYLOR: Your Honor, I object to any previous
14 incidents that involve these -- we are not on trial for any
15 previous incident. I think that that's completely irrelevant
16 and improper here to bring up previous incidents regarding ---

17 THE COURT: I'm going to allow the Officer to testify
18 as to whether or not he observed the car earlier, and in whose
19 possession the car may have been in.

20 We will limit it to that, Solicitor.

21 MR. DeBUSK: Yes, Your Honor. Thank you.

22 Q. Now, at that time when you saw that car previously, did
23 anyone claim ownership of that car?

24 A. Yes.

25 Q. Who?

1 A. Maria Rodriques.

2 Q. And how long was that before this incident?

3 A. Several months.

4 Q. Now is there a difference between an assumption,
5 assuming something, and determining something from the
6 evidence?

7 A. Yes.

8 Q. Okay. Would you say you -- did you assume that the
9 money was associated with the drugs when you took it out of
10 the purse?

11 A. No. No. No, I did not. No, I didn't assume.

12 Q. Did you determine that based on the evidence that you
13 had?

14 A. Right.

15 Q. And about the drugs, did you assume that the drugs
16 belonged to the Defendants?

17 A. No.

18 Q. Did you determine from the evidence that you felt that
19 the drugs belonged to the Defendants?

20 A. Yes.

21 Q. Now, the I.D. card, you had that in your possession,
22 right?

23 A. Yes.

24 Q. What would you have done with it if Mr. Dantzler hadn't
25 run off -- run away?

1 A. If he did not run away?

2 Q. Yes.

3 A. He would have been arrested.

4 Q. But let's say, for instance, you hadn't found any
5 drugs, and Mr. Dantzler didn't run away.

6 A. If I did not find any drugs on him?

7 Q. And Mr. Dantzler didn't run away ---

8 A. Didn't run away.

9 Q. ---What would you have done with the I.D. card?

10 A. Give it back to him.

11 Q. Now, when Mr. Dantzler ran away, what was happening
12 right at that precise moment when he ran?

13 A. Officer Pearce was inventorying the car. He was on the
14 passenger side. He just opened up the glove box and he turned
15 around like this, and called for Officer Bernie Devoid, and
16 said, Bernie, and I saw two plastic bags, and it had all kind
17 of other smaller bags in there with the white powder in it.

18 Q. Now, you said -- or you testified that the Defendant
19 was moving away from the car when that search was being done.
20 How far did he move?

21 A. He was trying to persuade us not to tow the car. Once
22 he realized the car was getting towed he was moving from --
23 from like six or seven feet away to ten, fifteen feet away.
24 He was side -- like side-stepping, backing up, getting away
25 from this traffic stop site.

1 Q. Was he walking away, or was he just sort of taking a
2 step every now and then?

3 A. He appeared -- he was nervous.

4 Q. Okay. But was he walking in the direction away from
5 the car, or was he just sort of stepping away?

6 A. He was walking -- he was stepping away from it.

7 Q. He wasn't just walking purposely away from the car?

8 A. No. He was -- he was stepping away from the vehicle.

9 Q. Now when he left the scene, how did he leave the scene?

10 A. Full sprint, running. I used to be in track. I was in
11 military, and he -- he took off running.

12 Q. Okay. Were you able to keep up with him, or overtake
13 him?

14 A. No. I lost sight of him. I have about twenty, twenty-
15 five pounds of gear on me. It's kind of -- sometimes it's
16 difficult to run ---

17 Q. I hate to beat a dead horse, but how far had he gone
18 when you lost sight of him?

19 A. He ran about fifty feet, about fifty yards or so.

20 Q. And how many police officers were out there to help you
21 look for him?

22 A. About three -- five other officers were different areas
23 trying to set up a -- like a team, like a cordon.

24 Q. Despite your best efforts in searching for him, and
25 creating a perimeter, were you able to find him?

1 A. No.

2 Q. Could it be that he was hiding?

3 A. Yes.

4 Q. Now you said -- Ms. Wilson asked you if the Defendant
5 was in possession of the car. Was he in possession of the
6 car? Was he driving the car?

7 A. Eric Dantzler, no, he was not driving.

8 Q. Mr. Dantzler, yes, correct, Eric Dantzler. Did Mr.
9 Dantzler attempt to get into possession of the car?

10 A. I believe so, yes, he did. He did not want us to tow
11 that car. He wanted another friend to tow the car. He wanted
12 us not to tow the car. He was asking, you know, if the car
13 was going to get towed or not.

14 Q. So he was trying to control what was coming to that
15 car?

16 A. Right. Right. He did not want that car towed. It was
17 -- it was parked. He was asking if the car could be left
18 there on that private parking lot.

19 Q. And finally, are you required to have a working camera
20 in your car before you can go on patrol?

21 A. No.

22 Q. At that time, was that the policy of the Myrtle Beach
23 Police Department?

24 A. We still have cars that need to go to the shop and have
25 in-car cameras that are ---

1 Q. But you can still go on patrol?

2 A. Yes. You can still go on patrol without an in-car
3 camera. In fact, our Lieutenants and Captains have cars
4 without cameras. Our beach patrol cars have -- don't have
5 cameras.

6 Q. There were two beach patrol cars on the scene that
7 night, weren't there?

8 A. Yes.

9 Q. Did they have cameras?

10 A. No.

11 MR. DeBUSK: Thank you.

12 THE COURT: All right, Mr. Taylor, on those questions
13 asked by the Solicitor.

14 MR. TAYLOR: Just briefly, Your Honor, just on some new
15 information.

16 RECROSS-EXAMINATION BY MR. TAYLOR:

17 Q. Officer Gibson, you testified that you had seen my
18 client in possession of that vehicle previously. How many
19 times did you see her in possession of that vehicle? Are you
20 okay?

21 A. I would say twice.

22 Q. Twice. And did you stop her on those two occasions,
23 give her a ticket?

24 A. Did I give her a ticket? No, it's for other incidents.
25 That car was around. That car was involved in one other

1 incident.

2 Q. Okay. And did you run the vehicle registration at that
3 time, on those previous incidents?

4 A. Yes.

5 Q. And it came back again to Bill Thompson as being the
6 owner?

7 A. I believe so, yes sir.

8 Q. Okay. And it certainly, the night in question, came
9 back, registration being in possession of Bill Thompson?

10 A. Yes.

11 Q. Did you find any Bill of Sale in that vehicle where
12 in -- through your inventory, through any of your officers,
13 that showed where my client ---

14 A. I don't -- I don't -- I don't ---

15 Q. ---Did not, did you?

16 A. I don't remember.

17 Q. You don't remember.

18 A. I don't remember a Bill of Sale. We can run the tags
19 through the computer and it comes back as who owns it.

20 Q. Did you have an indication the car was stolen?

21 A. No.

22 Q. So basically it was borrowed then?

23 A. (NODS HEAD AFFIRMATIVE)

24 Q. Obvious from the -- as you testified in -- being to --
25 in the re-examination by the Solicitor, the evidence

1 presented, you insinuated a results, and that was that this
2 vehicle, number one, belonged to Bill Thompson, two, was not
3 stolen, and three, my client obviously had possession of the
4 vehicle by some type of authorization from Bill Thompson; do
5 you agree?

6 A. My understanding from the previous incident was that
7 she was going to buy that car from the owner. This is not the
8 first time that I've seen her with that car.

9 Q. You've been under cross-examination for an hour now,
10 and after an hour you have just feel that it would be
11 important or imperative that you say that my client -- all of
12 a sudden, after an hour, maybe a little bit more, was going to
13 buy this vehicle.

14 A. From the previous incidents earlier that year, she
15 indicated that she was going to buy that car ---

16 Q. Okay, but you thought of that ---

17 A. ---And she claimed ownership of that car.

18 Q. Let me start something here. I'm going to ask a
19 question, and when I fully answer -- or ask the question, then
20 you can answer, and then I'm going to let you fully answer,
21 then I ask the question. That way we are not overlapping one
22 another, okay.

23 THE COURT: All right. Mr. Taylor ---

24 MR. TAYLOR: Yes sir.

25 THE COURT: ---If you have a problem ---

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1 MR. TAYLOR: Yes sir.

2 THE COURT: ---With how the witness is responding to
3 your question ---

4 MR. TAYLOR: Yes sir.

5 THE COURT: ---You will direct that to the Court. You
6 will not give instructions to the witness. Do you understand?

7 MR. TAYLOR: All right. I'm sorry, Your Honor. I was
8 just trying to keep us from overlapping one another.

9 THE COURT: I understand that.

10 MR. TAYLOR: Yes sir.

11 Q. All right. So, again, no Bill of Sale, you agree?

12 A. I don't remember a Bill of Sale.

13 Q. Now, regarding this vehicle not being towed, what -- or
14 the average cost -- because there's a rotation -- what's the
15 average cost to have a car towed, and what's the average cost
16 to have it stored?

17 A. I'm not too sure about that.

18 Q. Not sure?

19 A. No.

20 Q. Do you have any idea?

21 A. I know Auto Body does out tow ---

22 Q. Uh huh (indicating positive)

23 A. ---For the City. They have a contract with the City.

24 Q. So if Mr. Dantzler and -- as well as my client, they
25 are in possession of another person's car, they would

1 naturally be responsible if -- for the cost of towing the
2 vehicle, as well as the cost of storage. Wouldn't that give
3 them reason to not have it towed, or ask that it not be towed,
4 or ask that somebody else come and pick it up? Wouldn't that
5 be a good, valid reason, not insinuate illegal conduct? Would
6 you agree?

7 A. I have had that request asked before.

8 Q. Sir?

9 Q. You are asking if somebody else ---

10 Q. I'm asking, is that a valid request for Mr. Dantzler?

11 A. Yes, that's valid, yes. I've had that before.

12 Q. And regarding -- one last question. Regarding why you
13 did not hand back the I.D. to Mr. Dantzler, have you had
14 occasion in your ten years of experience where you pop a
15 license underneath your little thing there, badge, and forget
16 to give it back to the person that you stopped?

17 A. I've had it fall out before.

18 Q. Okay. And that ---

19 A. ---Getting in a car with the seatbelt.

20 Q. And that person who drove away, did that mean that they
21 were trying to avoid you in any way?

22 A. No. I always gave back their property there on scene.

23 Q. Now, I'm sorry, I had one last question. I have one
24 more. There was -- your testimony probably five or six
25 officers on scene, as far as the vehicles that pulled up to

1 this incident, correct, your testimony.

2 A. The traffic stop, or back at the ---

3 Q. Well, the traffic stop, as well as the call, whenever
4 the call came in to pursue Mr. Dantzler.

5 A. Yes. I said there was about -- at least three to five
6 officers there present.

7 Q. And they arrived in their own vehicles?

8 A. There was two beach patrol cars, and I know of two
9 patrol cars.

10 Q. And out of all of these cars, you are telling me that
11 there is not one single camera that worked that night?

12 A. At the traffic stop site, no.

13 Q. Well, past the traffic site, whenever they -- everybody
14 was looking for Mr. Dantzler, and they pulled up to the scene,
15 are you telling me that none of those vehicles had a camera
16 that worked?

17 A. There was four patrol cars there. There was two patrol
18 cars, two beach patrol cars, and as far as I know there was no
19 in-car tape working. If there was an in-car tape working we
20 would -- it would be presented.

21 MR. TAYLOR: All right. Thank you.

22 THE COURT: Ms. Wilson, questions on the questions that
23 the Solicitor asked.

24 MS. WILSON: Yes sir.

25 RECROSS-EXAMINATION BY MS. WILSON:

1 **MS. WILSON:** Officer Gibson, just a couple of brief
2 questions.

3 **Q.** The Solicitor asked you, and you stated that you felt
4 that my client attempted to become, or attempted to have
5 control over the drugs that were found in the car. I guess my
6 question, very specifically is, did he actually have control
7 of the car before you discovered the drugs?

8 **A.** He was in the passenger seat in this car, and the drugs
9 were in the glove box in front of him.

10 **Q.** But he was not the driver of the car?

11 **A.** He was not driving, no.

12 **Q.** And he never became in control of the drugs or the car
13 after the drugs were discovered; am I correct?

14 **A.** In control of the car, no, because he ran.

15 **Q.** So he never got to drive the car away?

16 **A.** No, because he ran. He ran away.

17 **Q.** He couldn't drive the car away, could he?

18 **A.** No legally, no.

19 **Q.** And you didn't hand the drugs to him, did you?

20 **A.** No.

21 **Q.** Okay. And my final question is, you indicate that Eric
22 ran. You have been saying it, he ran, he ran, he ran. My
23 question to you, very specifically is, you claim he ran, but
24 isn't it true he turned himself in, after he discovered that a
25 warrant was out for his arrest for these drugs?

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1 A. I've heard that he ran again from officers the
2 following day, and it wasn't till several days later that he
3 turned himself in, after he got an attorney.

4 Q. And you hear this ---

5 A. From other officers.

6 Q. Do you have an affidavit to that effect?

7 A. No. Here with me, no.

8 MS. WILSON: Court's indulgence.

9 THE COURT: Thank you, Ma'am.

10 Q. Who were those officers that you heard from?

11 A. It's been so long ago I can't remember.

12 Q. So are we just to assume then that ---

13 A. You have to ask Brenda Christy on that. She works
14 warrants.

15 Q. So Brenda Christy is one of the people who told you
16 that he fled?

17 A. No. I said she might know more about that, about --
18 she's -- she's the one that served the warrant on Eric, Brenda
19 Christy, at -- when he turned himself in several days later.

20 Q. I'm sorry. What was that?

21 A. Brenda Christy, Officer Brenda Christy is the one that
22 served the warrant on Eric Dantzler when he turned himself in
23 at the police department.

24 Q. So you don't have any way to substantiate what you
25 heard, do you?

1 A. I have to ask around, back at the police department,
2 who told me that.

3 Q. So as of right now we can just assume that this is --
4 this means nothing, because you cannot prove what you are
5 saying?

6 A. I have to talk to the other officers about that.

7 Q. Okay. But back to my original question, which is very
8 specific, were you aware that he turned himself in after
9 hearing about the warrant? Did you go out and arrest him?

10 A. No.

11 Q. Did someone that you are aware of in your department
12 that went out and arrested him?

13 A. No. I've heard he turned himself in at the police
14 department..

15 MS. WILSON: Thank you very much.

16 No further questions, Your Honor.

17 THE COURT: All right, sir. You may step down.

18 All right, ladies and gentlemen, we are going to end for
19 the evening. I know that we have kept you here a little bit
20 longer than I may have wanted to, but I've always found it
21 best not to try and piecemeal the testimony of a particular
22 witness. It's always important to have their testimony from
23 beginning to the end, so that is why I continued on until we
24 were concluded with the testimony of this particular witness.

25 I'm going to have you come back tomorrow morning. Be in

1 your jury room tomorrow morning at 9:30. There are other
2 matters that I will have to attend to in the courtroom prior
3 to that, so I will not be able to start the trial before
4 tomorrow morning at 9:30. Please be in your jury room
5 tomorrow morning at 9:30.

6 Now, when you go home tonight and you happen to see your
7 friend, boyfriend, girlfriend, husband, wife, whomever it
8 might be, do not talk about this case, because unintentionally
9 they will give you their opinion about this case. They don't
10 have one. You should not have one at this point in time. You
11 should not express an opinion about this case, and I'm going
12 to ask you not to talk about this case among yourselves until
13 you have heard all the evidence in the case and I have given
14 you the law that you will apply to the facts as you know them
15 to be in this particular case, so don't allow anybody to talk
16 to this case -- talk to you about this case. Don't talk to
17 anybody about this particular case.

18 Further, you have to decide this case solely on the
19 evidence you have heard in this courtroom. You can't do any
20 research on your own. You can't look up anything on the
21 internet, find -- find out things on your own. You are not
22 allowed to do that. You must decide the case solely on the
23 evidence presented in the courtroom. So, with that, I'll see
24 you back tomorrow morning in your jury room, 9:30.

25 Thank you very much.

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right. A couple of things before we
4 conclude for the evening here.

5 Mr. Hazzard, I appreciate the fact that you want to
6 assist Ms. Wilson in the defense of Mr. Dantzler. She is the
7 one that is appointed to defend Mr. Dantzler. You may lend
8 all assistance that you would like to in conversations with
9 Ms. Wilson, but unless, with the permission of the Court, she
10 relinquishes control of this case to you you will not make any
11 presentations. You are not allowed to make objections. You
12 are not allowed to cross-examine witnesses. Ms. Wilson is the
13 attorney who has been appointed by the Public Defender's
14 Office to represent Mr. Dantzler. You may assist her in all
15 her matters, but you may not make presentations to the Court.

16 Thank you very much.

17 All right, regarding this particular matter the Clerk
18 handed to me the Clerk of Court's file that has certain
19 documents and attachments. The Clerk of Court had
20 paperclipped to the Clerk's file a cassette tape. This
21 cassette tape has a sticky note on it, and it says, copy of
22 911 tape.

23 The Clerk has no idea if this tape pertains to this
24 particular case or not.

25 Gentlemen, and Ms. Wilson, I will leave it to y'all to

1 investigate this matter with the Clerk of Court, and y'all can
2 listen to it before you leave the courtroom here this evening
3 to see if it has anything to do with this case, but the
4 custody of it may not leave your possession, Madame Clerk.

5 Thank you very much.

6 MR. DeBUSK: Your Honor, if I might, I believe that
7 tape pertains to the assault charge from the ---

8 THE COURT: I don't know, and I'm just telling you what
9 the Clerk has, so y'all can figure it out.

10 I will see y'all back tomorrow morning, 9:30.

11 Thank you very much.

12 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, JANUARY 6,
13 2009, OUTSIDE THE PRESENCE OF THE JURY.)

14 THE COURT: All right. Before we bring the jury out,
15 Solicitor, is there anything from the State at this time?

16 MR. DeBUSK: Your Honor, the one item is, we listened
17 to that tape that you brought to our attention yesterday. I
18 was blank.

19 THE COURT: Very good.

20 MR. DeBUSK: Thank you, Your Honor. Nothing else.

21 THE COURT: All right. Good deal.

22 All right. From the Defendant, Rodriques, Mr. Taylor?

23 MR. TAYLOR: Nothing, Your Honor.

24 THE COURT: All right. From the Defendant, Dantzler,
25 Ms. Wilson.

1 MS. WILSON: No motions, Your Honor.

2 THE COURT: All right. Very good.

3 Ask the jury to come in, please.

4 MR. TAYLOR: Your Honor, actually I do have one -- I
5 just realized that there were other officers -- unless that's
6 the next officer.

7 MR. DeBUSK: He's the next witness.

8 MR. TAYLOR: Okay. Just making sure, Your Honor.

9 THE COURT: Very good. Not a problem.

10 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
11 JURY.)

12 THE COURT: Good morning, ladies and gentlemen. I hope
13 that you have had everything to your satisfaction in the jury
14 room this morning, and we will now continue on with the trial
15 of this case.

16 All right, Solicitor, your next witness, please sir.

17 MR. DeBUSK: Thank you, Your Honor.

18 The State calls P.f.c. David Pearce, of the Myrtle Beach
19 Police Department.

20 THE COURT: All right, sir, please come around and be
21 sworn.

22 DAVID L. PEARCE, being first duly
23 sworn, testifies as follows:

24 DIRECT-EXAMINATION BY MR. DeBUSK:

25 Q. Officer Pearce, who is your employer?

1 A. Myrtle Beach Police Department.

2 Q. And how long have you been so employed?

3 A. Thirteen years.

4 Q. What are your duties at this time?

5 A. I am currently assigned to the Waterfront Division,
6 which, basically, I'm a waterfront police officer.

7 Q. How about in December of 2007? What were your duties
8 then?

9 A. I was assigned to the Beach Patrol Division.

10 Q. How were your duties different, or were they different?

11 A. My primary assignment was working the beach, mainly.

12 Q. Did you respond to other calls as well?

13 A. As -- in a backup capacity, yes.

14 Q. Could you tell me, on December 22, were you on duty, of
15 2007, December 2nd, 2007?

16 A. Yes, I was. I was on an evening shift, basically from
17 six P.M. till four in the morning.

18 Q. Did you have a call to go to the area of the Noisy
19 Oyster that night?

20 A. I heard the call come over the radio, and I responded
21 in a backup capacity to help other road units with that call.

22 Q. What does it mean to be a backup capacity for -- for
23 the jury?

24 A. Not the primary officer, just there to assist in
25 anything they need.

1 Q. What did you do when you responded as a backup officer
2 at that location? Well, let me ask you this, what time --
3 about what time was that?

4 A. I don't recall exactly what time the call came out.

5 Q. Okay. Do you have your report?

6 A. It's actually up there.

7 01:28.

8 Q. Okay. What did you do at that time?

9 A. I conducted a traffic stop on the -- on a Buick
10 LaSabre.

11 Q. Were any other officers working at that time as well,
12 or working that traffic stop?

13 A. There were several officers respond, Officer Bishop,
14 Gibson, and myself.

15 Q. Who was the primary officer at that stop?

16 A. The primary officer was Officer Gibson. I assisted in
17 the stop.

18 Q. And tell us what you did.

19 A. When I approached the vehicle I got the -- the black
20 male was sitting in the passenger seat. I got him out of the
21 vehicle. I obtained his I.D., identified who he was.

22 Q. Who was he?

23 A. Eric Dantzler.

24 Q. Okay. What did you do after that?

25 A. I ran his name through the computer, via dispatch.

1 Basically what that is is an N.C.I.C. check, and checked for
2 warrants, and everything came back clear on the warrants.

3 Q. I show you what's been marked as State's Exhibit 1 and
4 ask you if you recognize that.

5 A. Yes. That's the I.D..

6 Q. What did you do with that I.D. after you ran it for
7 warrants?

8 A. I turned it over to Officer Gibson.

9 Q. Okay. And what did you do next?

10 A. I stood by with Eric Dantzler, just asking him what
11 happened at the Noisy Oyster, if he had knew anything about
12 it, and he stated he didn't have any involvement, and he
13 didn't know anything was going on there.

14 Q. What was the stop about? Was it about drugs?

15 A. No. It was unrelated.

16 Q. Okay. Go on. What happened next?

17 A. At that point he -- once we determined that the female
18 part who was driving, which was going to be arrested for
19 unrelated charge, he was consistently asking if someone can
20 come get the vehicle, if -- he can't drive the vehicle because
21 he didn't have a drivers license, if someone could come pick
22 the vehicle up, and I told him that normally we usually tow
23 vehicles in this circumstance.

24 Q. What was his demeanor?

25 A. He seemed kind of nervous, really anxious about wanting

1 to get the car -- not letting us in the car.

2 Q. Okay. What did you do next?

3 A. At that point we just stood by. I stood by with him,
4 and just kind of kept my eye on him, and then I asked Corporal
5 Garrett what we were going to do next, if we were going to tow
6 the vehicle. After we decided -- or they decided they were
7 going to arrest the female path Corporal Garrett said, yes, we
8 are going to tow the vehicle.

9 And at that point I conducted inventory of the vehicle
10 to assist Officer Gibson.

11 Q. Why do you conduct an inventory?

12 A. This is normal procedure when we tow, because if we tow
13 a vehicle we are responsible for what's in that vehicle, so we
14 right down everything on a tow log, so if anything turns up
15 missing we can refer back to that tow log.

16 Q. Okay. And what happened next?

17 A. At that point, once we determined we were going to tow
18 the vehicle and I was going to do an inventory I reached into
19 the glove box mainly to get vehicle information, or anything
20 else that may be in there, just for purposes of inventory, at
21 that point the glove box was locked, so I reached over and
22 pulled the keys out of the ignition to unlock the glove box,
23 and when I unlocked the glove box I saw two plastic baggies
24 which contained several other plastic little baggies with a
25 kind of white powdery looking substance.

1 Q. Let me show you what's been marked as State's Exhibit
2 2, and ask if you recognize that.

3 A. Yes, I do. That was in the glove box.

4 Q. I'm sorry. What was that?

5 A. That was in the glove box.

6 Q. Okay. And what happened next?

7 A. At that point I called out for my partner, Officer
8 Devoy, to detain Mr. Dantzler, and at that point when I looked
9 up I saw Officer Gibson running around the corner, running
10 after Mr. Dantzler.

11 Q. What did you do?

12 A. I helped with the run -- I helped with the chase. I
13 ran after him also. At that point I never actually saw him
14 run. I just saw Officer Gibson chasing after him. And we ran
15 around behind Melons Restaurant. At that point we lost sight
16 of him, and we just -- after we realized we couldn't find him
17 I returned back to the vehicle and secured the drugs.

18 Q. Were you able to locate him?

19 A. No.

20 Q. And what -- what did you do when you returned to the
21 vehicle?

22 A. When I returned to the vehicle the contents were still
23 in the glove box. There were other officers on scene.
24 Corporal Garrett was still there. There were a couple of
25 other officers there securing the vehicle to make sure nothing

1 would happen to it, and I automatically pulled the drugs out
2 of the glove box, and I turned everything over to Officer
3 Gibson.

4 Q. Did you do anything further?

5 A. No. I just stood by with him, and I helped out with
6 the inventory after -- inventory of the vehicle once we
7 determined we couldn't find him.

8 Q. Once again, the item in State's Exhibit 2, who did you
9 turn that over to?

10 A. Officer Bishop Gibson.

11 Q. How long was it in your custody and control?

12 A. By the time it took for me to pull it out of the glove
13 box and hand it to him.

14 Q. Did you alter it in any way or change it in any
15 fashion?

16 A. No sir. No sir.

17 Q. Okay.

18 MR. DeBUSK: Please answer any questions the Defendants
19 might have.

20 THE COURT: All right. Mr. Taylor.

21 CROSS-EXAMINATION BY MR. TAYLOR:

22 MR. TAYLOR: Good morning, Mr. Pearce.

23 A. Good morning.

24 Q. Mr. Pearce, the night this happened, how long were you
25 at the scene?

1 A. Approximately twenty to thirty minutes.

2 Q. Twenty to thirty minutes. Okay. And that was from the
3 point -- whenever you got to the scene you said you were the
4 person that actually stopped the vehicle?

5 A. Yes sir.

6 Q. And so it was thirty to thirty minutes from the time
7 that you stopped till the time that the car was actually
8 towed?

9 A. Approximately.

10 Q. Now, let's kind of go backwards from your testimony
11 from -- I'll go back from where you ended to where you began.
12 You testified that the drugs were in the glove compartment; is
13 that correct, and you did not take the drugs out of the glove
14 compartment until you gave them to Officer Gibson.

15 A. Correct.

16 Q. Was that after he came back from this chase, where he
17 was trying to detain Mr. Dantzler over here?

18 A. Yes, that's when he came back.

19 Q. So he actually never saw the drugs until he came back?

20 A. Not as far as I know.

21 Q. In other words, before Mr. Dantzler left the scene you
22 didn't actually have them in your hand and you showed him and
23 say, here are the drugs. You didn't do that, did you?

24 A. No sir.

25 Q. Okay. Now, describe -- from the distance between Noisy

1 Oyster to where the vehicle was stopped, what is the distance,
2 please?

3 A. From the Noisy Oyster to -- the Noisy Oyster is about
4 First Avenue North ---

5 Q. Okay.

6 A. ---Approx -- I think it's about First Avenue North, and
7 Noisy Oyster is Second Avenue North.

8 Q. It's a block away?

9 A. About a block away.

10 Q. And you said maybe at the most, maybe a hundred yards?

11 A. A little more than a hundred yards.

12 Q. Okay. And can you describe where the actual vehicle --
13 where was it actually stopped? Was it stopped in the roadway,
14 or was it in a parking ---

15 A. It was in a parking space on the south side of the
16 Philly House.

17 Q. Okay. And so the vehicle was actually going North,
18 correct ---

19 A. Northbound, yes.

20 Q. ---On Business 17. And Philly House is on the left if
21 you are going North, correct?

22 A. The Philly House is on the East side of Kings Highway.

23 Q. East side of Kings Highway?

24 A. I'm sorry, the West side of Kings Highway.

25 Q. West side. Okay. So it's on the left.

1 A. It's on the West side.

2 Q. All right. Can you please describe the parking lot
3 where the vehicle was stopped, as far as the businesses as
4 well.

5 A. The business actually faces Kings Highway ---

6 Q. Okay.

7 A. ---And if you go up Second Avenue North, if you are
8 going westbound on Second Avenue North, the parking lot is on
9 your right side. It's just right along the building.

10 Q. And so if you are looking at the business, being Philly
11 House, Melons next to it, okay, what is on the other side of
12 Melons?

13 A. On the other side of Melons?

14 Q. Uh huh (*indicating positive*)

15 A. I'm not quite sure what's on the side of Melons. I
16 don't recall.

17 Q. Okay. Did you go behind Melons and -- or behind Philly
18 House during your investigation that night?

19 A. We went behind Melons.

20 Q. Okay. Behind Melons. And describe the parking lot
21 behind Melons.

22 A. It was vacant. There was a -- it looked like a picket
23 fence on the right, and there's another fence kind of like on
24 the back of it.

25 Q. Okay. And those are wooden fences, correct?

1 A. Wooden fences, yes.

2 Q. And they are probably about yeah tall, maybe ten feet
3 tall, probably?

4 A. Approximately.

5 Q. Ten feet tall. And they are wood? Made out of wood?

6 A. Made out of wood.

7 Q. Okay. And they are three-sides, so there is basically
8 nowhere to go other than those -- you've got the building,
9 you've got the back fence, side fence, and then the alleyway
10 that goes to -- toward the back, correct?

11 A. That's correct.

12 Q. Okay. And was there anything else behind there?

13 A. After we checked the back parking lot there was no cars
14 back there. We saw a fence line. It looked like -- part of
15 the wooden fence looked like it was pushed out, that somebody
16 could have got through there.

17 Q. All right. Now, let's go back to the car being towed.
18 Mr. Dantzler was not able to drive because he did not have a
19 valid drivers license, correct?

20 A. That's correct.

21 Q. And he asked you, please let me allow somebody to come
22 and pick up this vehicle ---

23 A. Yes, he did.

24 Q. ---Or, you know, can you just not tow it.

25 A. Right.

1 Q. Is that an unusual request, that, in and of itself?

2 A. Not really, no.

3 Q. Because if the car is towed there is an expense to
4 that, correct?

5 A. Yes, there is.

6 Q. And average, in your experience, having to tow cars
7 that time of night, D.U.I.s and unrelated arrests, usually
8 range around a Hundred and Fifty to a Hundred and Seventy-Five
9 Dollars just for the tow itself, correct?

10 A. That I'm not sure.

11 Q. Now, whenever the car is stored there, while the person
12 is in jail, or whatever the situation may be, there is also a
13 storage fee for the car being there, correct?

14 A. Yes, there is.

15 Q. So if somebody had possession of a vehicle, and they
16 are responsible for it, they would naturally not want to incur
17 those expenses of having that car towed and stored, wouldn't
18 that be reasonable?

19 A. That's dependant on the person.

20 Q. Now, how long have you been a police officer?

21 A. Thirteen years.

22 Q. Thirteen years. When you stop somebody, and the blue
23 lights are there, surrounded by -- most people's natural
24 reaction, wouldn't you say, in your experience, that they are
25 a little nervous about having a police officer in their face

1 with a flashlight, just natural reaction, wouldn't it be?

2 A. Yes.

3 Q. Okay. So they ---

4 THE COURT: Officer, could you pull that microphone a
5 little bit closer to you so as -- great, thank you.

6 Go ahead.

7 Q. So it wouldn't be unreasonable if Mr. Dantzler was a
8 little nervous that night, would it, being the fact that you
9 just testified that that's not an unreasonable response to
10 most people you stop.

11 A. No, it's not.

12 Q. Okay. Now, let's talk about the glove box. The glove
13 box was -- you testified the glove box was locked?

14 A. Yes, it was.

15 Q. Okay. Where was the key?

16 A. The keys were in the ignition.

17 Q. Okay. Did you find anything else in the car, other
18 than what was in the glove box?

19 A. No sir.

20 Q. Okay. Was there any indication -- well, let me ask you
21 this, did you run the registration in the vehicle? Did you
22 determine ---

23 A. I, personally, did not run the registration. The other
24 officers on the scene did.

25 Q. Officer Gibson, did he run the registration?

1 A. I believe he did.

2 Q. Okay. And did he tell you, since he's here in the
3 courtroom -- did he tell you what the registration came back
4 as?

5 A. At that time I didn't know who the car came back to.

6 Q. Do you know at this point who the car ---

7 A. At this point, yes, I do.

8 Q. Okay. Who did the car come back to as being the owner?

9 A. It comes back to a Phillip Thompson in the Surfside
10 area.

11 Q. All right. And did anybody contact -- are you aware if
12 anybody contacted Bill Thompson of any -- in any way?

13 A. No, I'm not.

14 Q. Okay. Did anybody decide to go back to either of the
15 co-defendants' residents to determine whether or not there was
16 any other drug activity, or any criminal activity of any kind
17 at their residence, since they had just be arrested, given
18 these circumstances?

19 A. That I don't know.

20 Q. Okay. Why was that not done?

21 A. I don't know why that wasn't done?

22 Q. Okay. Now you say you've been a police officer for
23 thirteen years?

24 A. Yes sir.

25 Q. Okay. Have you ever arrested somebody in a situation

1 like this before where the person was driving somebody else's
2 vehicle and was arrested?

3 A. Yes, I have.

4 Q. Okay. And have you ever had a situation where the
5 person that was arrested driving somebody else's vehicle,
6 given the circumstances here, where they had absolutely no
7 knowledge whatsoever about what was in the vehicle?

8 A. I don't know what somebody else is thinking.

9 Q. Sir?

10 A. I don't know what somebody else is thinking. When I'm
11 pulling somebody over I don't know what -- what knowledge they
12 have in the vehicle and what ---

13 Q. No, no, I'm -- that -- I'm sorry. Let me rephrase that
14 question. Given the circumstances that we have here today,
15 for which we are in the trial for, in your experience of
16 thirteen years as a police officer, have you ever arrested
17 somebody, you, yourself, your Department, where you have
18 arrested somebody, given these setting, where the person had
19 absolutely no idea what was in the vehicle that was illegal?

20 A. I'm sure it's happened.

21 Q. Sure it's happened. Okay. So could it have happened
22 today, for this situation for which we are here?

23 A. Possibly.

24 Q. Possibly. Now, given that possibly these drugs that
25 were in the vehicle, in a locked glove compartment, and that

1 my client or the co-defendant had -- Mr. Dantzler, had no
2 idea, wouldn't it be prudent to go and talk to this Mr.
3 Thompson to determine why he had cocaine in his glove
4 compartment in a locked vehicle (s.i.c.), and why his car,
5 being that it was not stolen, obviously, was in the possession
6 of these two individuals?

7 A. I didn't -- like I said, I was there for backup, and I
8 didn't make that determination.

9 Q. What about the Corporal that was on scene, Corporal
10 Garrett, did he make that determination?

11 A. I don't know.

12 Q. Okay. What about the investigator that got this case
13 after it was closed out by the officers, the Detective that it
14 was given to? Did he -- do you have any knowledge whether he
15 went and talked to ---

16 A. I don't have any knowledge.

17 Q. Okay. In your thirteen years in law enforcement do you
18 feel that that was probably a prudent thing to do, to talk
19 to -- at least have a conversation with Mr. Thompson to
20 determine why cocaine was in his vehicle, and why these two
21 individuals had the vehicle?

22 A. I guess due to the Defendants actions ---

23 Q. Okay.

24 A. ---We determined that most likely the drugs belonged to
25 him, so maybe we felt it wasn't necessary to go to that ---

1 Q. So their actions being that my client was driving the
2 vehicle, and that the co-defendant was in the vehicle, those
3 actions. So let me ask you this before I go there. Mr.
4 Dantzler was not able to drive his vehicle, so therefore he
5 had no other choice but to walk away, correct?

6 A. He had no other choice but to walk away?

7 Q. Yes. He had no other choice. In other words, he was
8 not going to be able to drive that vehicle that night. You
9 had told him and Officer -- Corporal Garrett had told him that
10 he was not going to be able to drive that vehicle, didn't he?

11 A. Yes, we did.

12 Q. Okay. And you testified that you did not see him run
13 away.

14 A. I was in the vehicle at the time.

15 Q. Okay. So you never saw him run away. Now, before the
16 cocaine was ever found it was obvious that the car was going
17 to be towed, correct?

18 A. It was obvious to us.

19 Q. Okay. And it was obvious to Mr. Dantzler over here
20 that the car was going to be towed because you told him that
21 he couldn't drive, because you told him that he couldn't have
22 somebody come pick up the car, and you told him that you
23 couldn't leave the car there, for obvious reasons. Myrtle
24 Beach Police Department did not want to be liable if something
25 -- the car was stolen.

DAVID L. PEARCE - CROSS BY TAYLOR

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1 A. Uh huh (indicating positive)

2 Q. But you told him that, didn't you? That's the policy
3 of your Department?

4 A. That we were going to tow the vehicle, yes. Whether he
5 obviously knew or not, I don't ---

6 Q. I mean, he was told that, because that's your policy,
7 isn't it, that Myrtle Beach Police Department does not want to
8 be responsible for this vehicle because it's left there, and
9 you either have to have somebody who owns it drive it, or you
10 have to have it towed. That's your policy, correct?

11 A. Correct.

12 Q. And he was told that, so it's natural that he had no
13 other option but to walk away, leave the area?

14 A. I don't know whether he walked or -- all I know is,
15 when -- he was there when I went into the vehicle, when I
16 looked up he wasn't there.

17 Q. Well, let me ask you this. From the point in time that
18 you told him -- what was the time frame from the point in time
19 you told him that he could not drive this vehicle, it was
20 going to be towed?

21 A. He was adamant. He kept asking me, and then he went to
22 Corporal Garrett, and he was asking him also.

23 Q. But from the time that you stopped the vehicle to the
24 time you told him that it was going to be towed, what was the
25 time frame on that?

1 A. I don't know.

2 Q. Don't know. Okay. What was the time -- how long was
3 it between then -- how long did it take you to start the
4 inventory of the car after you had a conversation with
5 Corporal Garrett about the car being towed? When did you
6 start the ---

7 A. It was immediate. As soon as I asked Corporal Garrett
8 if we were towing the vehicle, he said yes, I immediately went
9 into the vehicle.

10 Q. Okay. Did you have any -- did you know the location of
11 Mr. Dantzler at the time that you started your inventory?

12 A. He was behind me on the passenger side of the vehicle.

13 Q. Okay. How far away was he?

14 A. That I really don't know.

15 Q. Was he walking away, or were you paying attention to
16 what he was doing?

17 A. At the time he was just standing.

18 Q. Okay. How could you know if he was standing if --
19 standing there, not walking away, if you were inventorying the
20 car, with your back toward him?

21 A. I saw him for about a split second. I looked back, I
22 saw him, and then I went toward the car.

23 Q. Okay. And -- okay.

24 MR. TAYLOR: Court's indulgence.

25 THE COURT: Yes sir.

1 MR. TAYLOR: I have no further questions.

2 THE COURT: All right. Thank you very much.

3 All right, Ms. Wilson.

4 MS. WILSON: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MS. WILSON:

6 MS. WILSON: Good morning. How are you?

7 A. All right. How are you doing?

8 Q. Officer Pearce, I want to clarify something. You
9 testified that you did not see Eric Dantzler run away from the
10 scene, that what you saw was Gibson, Officer Gibson running.

11 A. Yes.

12 Q. And when you went around the side of the building, the
13 side of Melons, I believe, correct ---

14 A. Right.

15 Q. ---You did not see him?

16 A. No, I did not.

17 Q. It was a fenced in area though, correct?

18 A. In the back parking lot, yes.

19 Q. On three sides, correct?

20 A. That's where I was told he went.

21 Q. But he just wasn't there?

22 A. He wasn't there, no.

23 Q. Now, you said that you arrived on the scene as a backup
24 officer?

25 A. Yes.

1 Q. And as a backup officer, would you have performed a
2 pat-down of Eric Dantzler?

3 A. If we had reason to.

4 Q. Did you do it in this case?

5 A. No, I did not.

6 Q. Would it be normal for a pat-down not to occur?

7 A. Maybe. Depending on the situation.

8 Q. So in this particular situation do you know if one was
9 performed?

10 A. That I don't know.

11 Q. Now, after you gave chase to Officer Gibson, who
12 claimed that he was giving chase to my client, Mr. Dantzler,
13 and you didn't find him, he just disappeared around the corner
14 of Melons, did you ever attempt to make contact with Eric
15 Dantzler after the night of December 22nd?

16 A. No, I did not.

17 Q. And why would that be?

18 A. I didn't follow up on it. Like I said, that night --
19 that was the end of my involvement that night.

20 Q. Okay. Are you -- you are not aware of anyone else
21 trying to follow up on it, are you?

22 A. The only thing that occurred after we cleared the scene
23 that night, I checked the area that night looking for him.

24 Q. Did it ever come to your attention that Eric Dantzler
25 turned himself in after he was informed -- I believe a call

1 was made, informing him that a warrant was out for him?

2 A. I did not know that.

3 Q. Would it surprise you?

4 A. Would it surprise me?

5 Q. Uh huh (**indicating positive**)

6 A. I don't know Eric Dantzler.

7 Q. Okay. Now, you say you went into a locked glove box to
8 inventory, ostensibly, for vehicle information, things of that
9 sort. Isn't it true that you, in fact, already had the
10 registration for the vehicle?

11 A. That I don't know, whether -- whether registration or
12 not. We normally go into the glove box to see what was in
13 that vehicle just for inventory purposes.

14 Q. Now, Eric Dantzler was not the driver of this car, was
15 he?

16 A. No, he was not.

17 Q. The car was not registered to him, was it?

18 A. Now that I know that, it was not registered to him.

19 Q. He wasn't driving it, it didn't belong to him, he
20 wasn't able to exercise any control over that vehicle, was he?

21 A. He was in the passenger side of the vehicle. He was in
22 the vehicle with the co-defendant.

23 Q. But was he able to exercise any control over that
24 vehicle?

25 A. I don't know how long he's had that vehicle, if he had

1 the vehicle -- I don't know how long he's had that vehicle.
2 All I know there was -- he was sitting in the passenger seat,
3 he had access to that glove box.

4 Q. He had access to a locked glove box. Did he have a
5 key?

6 A. The key was in the ignition.

7 Q. So then he wasn't the driver, correct?

8 A. He wasn't the driver, no.

9 Q. So then he didn't have hold of the keys either?

10 A. As far as I understand it they were together.

11 Q. In the car?

12 A. Other than being there. Other information I got
13 they've actually -- together.

14 Q. Okay. So the keys are in the ignition, the car is on,
15 or at least the keys are sitting there ---

16 A. Uh huh (**indicating positive**)

17 Q. ---There is a driver, Eric Dantzler is a passenger, but
18 he had access to the keys?

19 A. He could get access to the keys.

20 Q. Okay. But did he?

21 A. At that particular time, no.

22 Q. Okay. And after the stop, did he gain custody of the
23 keys? He didn't, did he?

24 A. No. He wasn't allowed to go back in that vehicle. We
25 had him outside the vehicle talking to him.

1 Q. Okay. Now, you do say you never saw Eric Dantzler run.

2 A. I, personally, never saw him run.

3 MS. WILSON: Court's indulgence, Your Honor.

4 THE COURT: Thank you, Ma'am.

5 MS. WILSON: No further questions, Your Honor.

6 THE COURT: Redirect.

7 MR. DeBUSK: Nothing, Your Honor.

8 THE COURT: You may step down, sir.

9 MR. DeBUSK: Ask that this witness be excused from his
10 Subpoena, Your Honor.

11 THE COURT: Is there any reason this witness should not
12 be excused, Mr. Taylor?

13 MR. TAYLOR: None, Your Honor.

14 THE COURT: Ms. Wilson?

15 MS. WILSON: No, Your Honor.

16 THE COURT: You are excused, sir, to go back to your
17 regular duties.

18 MR. DeBUSK: Your Honor, may I ask Officer Pearce to
19 send in Corporal Garrett, please ---

20 THE COURT: All right. Please.

21 MR. DeBUSK: ---Corporal James Garrett, Myrtle Beach
22 Police Department.

23 THE COURT: Come forward to be sworn, sir.

24 JAMES L. GARRETT, being first duly
25 sworn, testifies as follows:

1 DIRECT-EXAMINATION BY MR. DeBUSK:

2 Q. Corporal Garrett, who is your employer?

3 A. Pardon me?

4 Q. Who is your employer?

5 A. Myrtle Beach -- City of Myrtle Beach Police Department.

6 Q. And how long have you been with them?

7 A. Seventeen years.

8 Q. And what are your duties at this time?

9 A. I'm the midnight patrol supervisor.

10 Q. How about in December of 2007, what were your duties at
11 that time?

12 A. I was the same, midnight patrol supervisor.

13 Q. What are your responsibilities as a patrol supervisor?

14 A. Supervise the guys that work the Patrol Division on the
15 night shift, the night shift.

16 Q. Now, in the early morning hours of December 22nd, 2007,
17 did you have cause to be in the vicinity of the Noisy Oyster?

18 A. Yes, I did.

19 Q. Explain that situation to us, if you would.

20 A. A call came out of some kind of incident that happened
21 at the Noisy Oyster, and the car was stopped in the vicinity.
22 It had something to do with the call. And I came -- pulled up
23 on it shortly afterwards.

24 Q. Who was already there when you ---

25 A. Officer Pearce and Officer Devoy.

1 Q. Did they have any suspects or witnesses on hand?

2 A. Yes.

3 Q. Who were they?

4 A. They had -- both the Defendants were on the scene.
5 They were out of the vehicle.

6 Q. Okay. What did you do when you got there?

7 A. I just observed what they were doing. One of the
8 Defendants was arrested on an unrelated charge, from another
9 incident.

10 Q. Which one was that?

11 A. Ms. Rodriques.

12 Q. Okay. What happened after that?

13 A. And they were -- I believe she was the driver of the
14 vehicle, and the other Defendant was the passenger.

15 Q. Okay.

16 A. They had them exit the vehicle. They had both their
17 I.D.s. She was arrested for another charge, and there was
18 some debate over towing the vehicle.

19 Q. Who was debating?

20 A. Mr. -- the other Defendant.

21 Q. Okay. What was he saying?

22 A. He was -- well, the car -- the car -- he didn't have a
23 drivers license. All he had was an identification card.
24 Neither one of them were the registered owner of the vehicle,
25 so we were going to tow the vehicle, and he was acting real

1 nervous and asked -- he got on his cell phone and said,
2 please, can I just call somebody to come get this vehicle
3 rather than tow it.

4 Q. And what was his demeanor?

5 A. He was acting real nervous.

6 Q. Was he unusually nervous for ----

7 A. Unusually nervous, like, for some reason he didn't want
8 us to tow the vehicle.

9 Q. Okay. What happened next?

10 A. Officer Devoy and Officer Pearce were going to
11 inventory the vehicle for it to be towed, and all of a sudden
12 he ran off.

13 Q. Who made the decision to tow the vehicle?

14 A. I did.

15 Q. Okay. And what was happening? You say he ran off.
16 Describe that.

17 A. He just ran off toward -- I believe it's north.

18 Q. Was he walking?

19 A. No, he was running.

20 Q. Was he sprinting, or just jogging?

21 A. Hauling butt.

22 Q. Okay. Where did he go?

23 A. I don't know.

24 Q. Did you see him run away?

25 A. I seen him run away.

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- 1 Q. Did anyone pursue?
- 2 A. Officer Pearce, Officer Devoy, and I believe Officer
3 Gibson ran after him.
- 4 Q. Were they able to catch him?
- 5 A. No.
- 6 Q. Did they continue searching?
- 7 A. Yes. And other officers, like, heard the call, and
8 heard him run -- you know, heard that he ran away from the
9 vehicle, and they were coming to the area looking for him, and
10 finally I said, we know who he is; we've got his
11 identification cards, don't -- I don't want to get anybody
12 hurt, so don't worry about it.
- 13 Q. So did you call off the search?
- 14 A. I called off the search, yes.
- 15 Q. How long did they search before you called it off?
- 16 A. Five, ten, fifteen minutes. I'm not sure of the exact
17 time. It wasn't long.
- 18 Q. Okay. And let's go back to right when he ran. What
19 was happening right at that moment?
- 20 A. Right then Officer Pearce was searching the passenger
21 side of the vehicle and he opened the glove compartment and
22 there was some white powdery substance in baggies in the glove
23 compartment, and that's -- I believe that's the same time he
24 ran off.
- 25 Q. Believe, or was that the same time he ran off?

1 A. About the same time.

2 Q. Okay.

3 A. When -- when -- when he initiated the search -- when he
4 opened that door -- I don't remember whether it was exactly
5 when the glove compartment -- that's when he ran off.

6 Q. Okay. Now you said that Officer Pearce and Officer
7 Gibson both pursued.

8 A. Yes sir.

9 Q. What happened to the car and contents while they were
10 gone?

11 A. I secured the car.

12 Q. Okay. Was -- that item that was in the glove
13 compartment, was it altered or changed, or moved in any way?

14 A. Nobody went in the car. Nobody did nothing to the car
15 till they returned.

16 Q. So ultimately who went in there in that glove box and
17 got those baggies?

18 A. Pearce and Gibson. They went on with the inventory of
19 the car to tow it, and they seized the white powdery substance
20 that was in the glove compartment.

21 Q. Okay. And right before the Defendant, Dantzler, ran
22 away, what was he doing?

23 A. He was on his cell phone trying to get somebody to come
24 get the car, I believe, that's what he told me was, I can get
25 somebody to come get the car, just don't tow it, please.

1 MR. DeBUSK: Okay. Please answer any questions the
2 defense might have.

3 THE COURT: All right, Mr. Taylor.

4 MR. TAYLOR: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. TAYLOR:

6 MR. TAYLOR: Good morning, Officer Garrett.

7 A. Good morning.

8 Q. Mr. Garrett, there's been a lot of talk this morning, a
9 lot of questions of previous officers, as well as yourself,
10 concerning vehicles being towed. What is your policy whenever
11 a car is stopped and somebody is arrested? What is your
12 policy with the Myrtle Beach Police Department?

13 A. It depends what the circumstances involved. What are
14 you referring to, this incident?

15 Q. Well, what would be your policy if a person is stopped
16 and they are being arrested? What would be the policy?

17 A. The car is towed, unless it's legally parked.

18 Q. Okay.

19 A. But in this incident there was no -- they -- neither
20 one of the Defendants were registered to the vehicle, I mean,
21 it wasn't their car.

22 Q. So that's why you -- that's why you were definitely
23 going to tow it, even though it was legally parked, because it
24 was in a parking spot, wasn't it?

25 A. No. I believe it was like sideways in a parking lot.

1 Q. Okay.

2 A. I mean, but -- I mean, it wasn't their car, that's why
3 we towed it.

4 Q. Did you try and make any contact with the owner of the
5 vehicle to determine if he wanted to come get the car?

6 A. No. We don't have time for that in Myrtle Beach. We
7 don't have time to contact the owner to come, and wait -- tie
8 up an officer to be sitting with a car for two hours to -- to
9 come get a vehicle. It wasn't stolen. It was ran. It wasn't
10 stolen ---

11 Q. Right.

12 A. ---So we towed it.

13 Q. Okay. Would it be unreasonable for -- given the
14 circumstances of drugs found in a car that belonged to
15 somebody to go and have a conversation with that person to
16 determine why he had drugs in his vehicle?

17 A. No, because -- I mean, if he wasn't driving it how did
18 he know -- you know, if other people are driving his vehicle
19 why would he know that drugs are in his vehicle?

20 Q. Okay. Well, would you have gone and talked ---

21 A. I don't understand your question.

22 Q. Okay. This car is owned by somebody other than the
23 people that are on trial here today.

24 A. Right.

25 Q. Drugs are found in that vehicle, and the car is not

1 stolen. That's where we are at this point, correct?

2 A. Right.

3 Q. Okay. And in your seventeen years experience you don't
4 feel that it's any way a need to discuss with the owner of
5 that vehicle why he had cocaine in a locked glove compartment
6 in his car?

7 A. There was prior knowledge that these Defendants had
8 been driving that car for some time. If you've been driving a
9 car for some time I think you would know whether there's drugs
10 in it.

11 MR. TAYLOR: I would -- I would object to you
12 testifying to that, about the prior knowledge, unless you -- I
13 would object to that because ---

14 THE COURT: Do you want to ask him a question, or are
15 you raising an objection to the Court?

16 MR. TAYLOR: I'm raising an objection to the Court,
17 Your Honor.

18 THE COURT: Overruled. Continue.

19 MR. TAYLOR: Okay.

20 Q. Now, regarding towing the vehicle, since you are the
21 midnight supervisor, you have vehicles that are towed on a
22 regular basis, correct?

23 A. Yes sir.

24 Q. Okay. And do you ever have an individual who has a car
25 towed who is -- tries to talk you out of having the car towed,

1 in other words, can I have somebody come get it, can I just
2 leave it here till tomorrow, but ---

3 A. Sometimes.

4 Q. Sometimes.

5 A. Usually there's a reason they don't want the car towed.

6 Q. Okay. So if a person is arrested for D.U.I. they don't
7 want the car towed?

8 A. You need to give me -- I mean, there's -- everything is
9 a different circumstance.

10 Q. Sure.

11 A. You are just raising a general question. You need to
12 be specific in what you are asking me.

13 Q. Okay.

14 A. If a guy is drunk we tow his car to get it off the
15 highway, and we secure it.

16 Q. I understand that. Okay. Here's my general question.
17 Are people that you arrest, or that you have the car towed, do
18 they try and talk you out of it to try and avoid the expense
19 of having it towed and the expense of having it stored?

20 A. Sometimes, sometimes not. Sometimes they are not in a
21 condition to make any ---

22 Q. Well, people that are not -- I'm not talking about the
23 people that are under the influence, arrested for D.U.I.. I'm
24 talking about the people that are arrested that sober. Are
25 they excited about paying a Hundred and Seventy-Five Dollars,

1 or whatever the cost is for the tow, are they excited about
2 the fact that they've got to pay for storage? That's my
3 general question.

4 A. Some are, some not.

5 Q. Okay.

6 A. But the tow bill wouldn't be -- the owner would have to
7 come get the car, not ---

8 Q. Okay. But it wouldn't be unreasonable that if a person
9 was in possession of somebody else's car that they had been
10 loaned, and now it's being towed, that they possibly would be
11 responsible for the tow bill. Wouldn't that be -- that's not
12 an unreasonable ---

13 A. No. They wouldn't be responsible for the tow bill. It
14 would be the owner. The owner is responsible. It's his car.

15 Q. All right. I understand that. But if a person borrows
16 a car from somebody, and because of whatever circumstances in
17 them borrowing that vehicle it gets towed, and now the owner
18 has to pay for the tow cost and the storage, don't you think
19 that the person who owns the vehicle would be looking at the
20 person that he lent the car to to say, hey, you owe me some
21 money for the tow?

22 A. Possibly.

23 Q. Possibly.

24 A. Yes.

25 Q. Okay. But there is no certainty with any of your

1 answers, is there?

2 A. What do you mean, certainty?

3 Q. Okay. Never mind. I'll withdraw that question.

4 A. I don't understand your question.

5 Q. I'll withdraw that question.

6 Now, at what time did you show up on scene to -- to this
7 situation? Were you -- how long did it take from the point in
8 time that the stop occurred to the point in time when you
9 arrived?

10 A. Approximately three or four minutes, five minutes.

11 Q. Okay. Did anybody make any effort to go and search my
12 client or the co-defendant's residence to determine if there
13 was any evidence of any drug activity at their residence?

14 A. No.

15 Q. Why not?

16 A. That's not my call. I don't even know where they
17 lived, except for the address they had on their
18 identification.

19 Q. Okay. Well, there's an address ---

20 A. We forward the case to the Narcotics Division. They
21 would have had to follow that up.

22 Q. Okay. Well, let me ask you this, if drugs are -- if a
23 person is in the drug trade they are going to have a phone
24 call whenever they get to the police department?

25 A. Correct.

1 Q. And they would then be able to call back to whatever
2 residence that they live at to warn them, the police may be
3 coming there because I just got arrested, wouldn't they?

4 A. If they had drugs at their house, I guess so.

5 Q. So it wouldn't be unreasonable then, given your
6 experience of seventeen years, that you would automatically
7 want to get over to that house to determine if there was
8 something else there, wouldn't? That's normally in your
9 experience ---

10 A. Not necessarily.

11 Q. Not necessarily.

12 A. No, because I run a patrol shift. We are not the
13 Detective Division, we are not the Narcotic Division. We
14 respond to calls. I only have so many people to work with on
15 the night shift. If it was busy I wouldn't have them tied up
16 for that. We already had the drugs and the money ---

17 Q. Okay.

18 A. ---Why would I want to ---

19 Q. All right. You have narcotics and detectives that work
20 at night, don't you, at the City of Myrtle Beach?

21 A. No. They are on call.

22 Q. They are on call.

23 A. Well, a detective is on duty till about three o'clock,
24 and Narcotics are on call.

25 Q. Okay. So Narcotics are pretty much on call at any

1 given time given the circumstances, correct?

2 A. Correct. The D.E.U. is on call.

3 Q. All right. So given the circumstances the Solicitor's
4 Office is also on call at the time that any -- in other words,
5 on a weekly basis the Solicitor that's on duty has a pager
6 which you can call across Horry County if you have an incident
7 like this, to get advice on what to do, isn't there?

8 A. Correct.

9 Q. Okay. So you have the Solicitor at hand, you have
10 Narcotics at hand, and you have a deputy -- I mean, excuse me,
11 not a deputy -- a detective working till three in the morning,
12 and this is way before three, but you don't determine to call
13 any of those people to say, maybe we should go search this
14 house in Surfside for the owner of this vehicle, or maybe we
15 should go search these two people that we just arrested, or
16 tried to arrest, as far as Mr. Dantzler, to determine if there
17 is any evidence there that link them to the drugs that were
18 found in the vehicle that neither one of them owns. Why is
19 that not done?

20 A. I don't have time for that, sir. I can't do every --
21 we only do so much at night. I mean, we are limited. We have
22 limited capabilities at night.

23 Q. How many people are working on your shift at this time?

24 A. Right now?

25 Q. No, no. At this time, at night, whenever this

1 occurred? Is there about twenty officers that were on duty?

2 A. Totally, yes. Maybe twenty, a little bit more so.

3 Q. And ---

4 A. On my shift there's anywhere from five to six working.

5 Q. So on that night are you -- this is December, end of
6 the year, not tourist time, there's really not a lot going on
7 in the City of Myrtle Beach, is there?

8 A. No.

9 Q. Okay.

10 A. Well, it depends. You can get real busy in ---

11 Q. Okay. But on average there's really not a lot going on
12 at that time of night, is there?

13 A. Some nights there are not, sometimes there area.

14 Q. Okay. So in this situation then, given the fact that
15 it is December, not tourist season, you have the detective on
16 call to you, Narcotics on call to you, the Solicitor on call
17 to you, nobody makes the determination in your seventeen years
18 of experience, to make any further investigation that might
19 have shown that these people were completely innocent?

20 A. I don't believe they are innocent. I mean, we caught
21 them with the drugs in their car. Why should I go any
22 further? Caught them with the money in her purse. Why should
23 I go any further?

24 Q. Okay. Let me ask you this. Let's give you a different
25 scenario that may shed light on that. If your best friend

1 lent you his vehicle, and you were stopped in that vehicle,
2 and he had a pound of marijuana in the trunk, would you be
3 responsible for the pound of marijuana in the trunk?

4 A. Yes, I would, because I'm in possession of it. It's
5 called custodial possession.

6 Q. So you would be guilty, and you would be looking at
7 going to prison because of drugs?

8 A. Probably would be better than the glove compartment.

9 Q. Well, but let's say that it was in the glove
10 compartment.

11 A. I wouldn't borrow any vehicle -- anybody's vehicle
12 without searching it, or it was a -- I mean, being sure there
13 wasn't nothing in the vehicle.

14 Q. Okay. Let me ask you this. So you would search your
15 best friend's vehicle, bumper to bumper, before you drove it?

16 A. My best friends don't do drugs, so -- I don't hang
17 around drug -- they wouldn't have drugs in their car anyway.

18 Q. How do you know what they do at home when you are not
19 around?

20 A. Pardon me?

21 Q. How do you know what they do at home when you are not
22 around?

23 A. I don't know what they are doing.

24 Q. So you don't know if they sold drugs, do you?

25 A. Nothing is ---

1 Q. You would have no idea, because you are not psychic,
2 are you?

3 A. I'm not -- I would never say I have -- I would think
4 they wouldn't.

5 Q. You would think they wouldn't, but given the scenario,
6 if you were in a situation, and you were stopped, and for some
7 unknown reason your wife had not paid the insurance, and you
8 were now arrested driving without vehicle insurance, search
9 incident to arrest they search the glove compartment and find
10 cocaine in the glove compartment that belonged to your best
11 friend, would you be guilty of it?

12 A. Yes.

13 Q. And you would be willing to go to prison for drugs that
14 you had no knowledge of?

15 A. I believe they had knowledge of the drugs because
16 that's why he didn't want the car towed. That's what I
17 believe.

18 Q. Okay.

19 A. Why he was real nervous about having -- even getting
20 near that vehicle.

21 Q. You believe that anybody you arrest, and given in this
22 situation, has to be guilty because you arrested them, isn't
23 that true?

24 A. I didn't say that.

25 Q. Okay. All right. Thank you.

1 THE COURT: Ms. Wilson.

2 CROSS-EXAMINATION BY MS. WILSON:

3 Q. Good morning, Corporal Garrett.

4 A. Good morning.

5 Q. Now, Corporal Garrett, Mr. Dantzler was not the driver
6 of the car, was he?a

7 A. He was the passenger.

8 Q. He did not have the keys either, did he?

9 A. No. I don't believe he did. I wouldn't know. He took
10 off.

11 Q. He took off?

12 A. He ran away from the vehicle.

13 Q. And you did not participate in the search for him; is
14 that correct?

15 A. No. No Ma'am. I was just standing back there
16 answering questions.

17 Q. But the search for someone that was not under arrest,
18 correct?

19 A. It was an inventory of the vehicle when we was getting
20 ready to tow it, Ma'am. It wasn't a search. It was an
21 inventory.

22 Q. I understand, but I suppose my point is, Eric Dantzler
23 was not under arrest, correct?

24 A. No, he wasn't under arrest. His I.D. had been run,
25 negative for warrants, correct?

1 A. Correct.

2 Q. And he's standing there, correct?

3 A. Pardon me?

4 Q. He's just standing there?

5 A. Real nervous, jumpy.

6 Q. What does real nervous mean? Is anybody ---

7 A. Can't sit still, talking on his cell phone, why have
8 you got to tow the vehicle. That's real nervous to me.

9 Q. All right. And are people ever not nervous when
10 stopped by the police?

11 A. Some are, some aren't. It depends on the person.

12 Q. Well, more to the point, have you ever had someone who
13 was happy to have their car towed?

14 A. Oh, no, no.

15 Q. So generally speaking, no one is ever happy to have
16 their car towed?

17 A. Oh, no, I guess not.

18 Q. And no one ever wants to have their car towed?

19 A. No.

20 Q. That's not a request that you receive, please tow this
21 car, is it?

22 A. No.

23 Q. So then it's not unreasonable to say that -- it's not
24 unusual that Mr. Dantzler did not want the car towed? That's
25 not out of the ordinary.

- 1 A. But I -- it wasn't his car, so I mean ---
- 2 Q. I understand that, but my ---
- 3 A. He didn't want us to tow the car.
- 4 Q. Right. But I'm asking you, and you just stated, under
- 5 oath, that you don't typically have requests to have a car
- 6 towed.
- 7 A. No, we don't.
- 8 Q. Yes sir.
- 9 A. I mean, yes, we do, from the owners. Yes, we --
- 10 there's scenarios where people want their car towed.
- 11 Q. So -- or just a few minutes ago you said that that's
- 12 not a request you receive but now it is, sometimes.
- 13 A. I'm saying, we get people that we've located their
- 14 stolen car, and they said, tow it. They don't come get it.
- 15 Q. This car wasn't ---
- 16 A. The car wasn't stolen, no.
- 17 Q. Yes sir. Right. This car was not stolen, correct?
- 18 A. No.
- 19 Q. So in this instance where -- and generally speaking,
- 20 where you do not have a car that's stolen, do people request
- 21 to have their cars towed?
- 22 A. No.
- 23 Q. So it's not unusual that Eric Dantzler did not desire
- 24 to have this car towed?
- 25 A. No.

1 Q. Okay. And so we've established that Eric Dantzler was
2 not under arrest. We have established that he was probably no
3 more nervous than any other person who was stopped by the
4 police, and we've established that hurry -- what you have
5 testified to so far, that Devoy and Pearce, and Officer
6 Garrett -- excuse me -- Officer Gibson ---

7 A. Correct.

8 Q. ---Pursued Eric Dantzler.

9 A. Yes. I believe it was Gibson and Pearce.

10 Q. For sure?

11 A. For sure.

12 Q. Okay. So two, and possibly three officers, pursue --
13 allege that they pursue Eric Dantzler around the corner of
14 Melons; is that correct?

15 A. Oh, as -- I saw him run off. I don't think that's
16 alleged.

17 Q. Well ---

18 A. Running in the direction he was running.

19 Q. Okay. So they say that they followed him, and on --
20 with a building that is surrounded on three sides by a fence
21 he just, poof, disappears. Did you see him back there?

22 A. I didn't see him running to -- I saw him run down the
23 street, I mean, run down the alley, or I don't know where he
24 ran to, Ma'am. I just saw a flash and he's gone. It was a
25 northerly direction. I can't say where he ran between two

1 buildings in a fenced in area, I don't know. I just saw a
2 flash and he was gone.

3 Q. So you really don't know where he went then?

4 A. No. I don't know where he went. I know he left in a
5 northerly direction.

6 Q. Okay. Okay. Now the vehicle was not registered to Mr.
7 Dantzler, was it?

8 A. No.

9 Q. He had no control over the vehicle, did he?

10 A. He was in possession of the vehicle. He was riding in
11 it.

12 Q. By virtue of being a passenger, you mean?

13 A. Yes. He was a passenger, I guess, passenger. He
14 wasn't driving. He was sitting in the passenger seat when it
15 was stopped, I believe.

16 Q. So he was not driving?

17 A. No.

18 Q. Couldn't make a left turn if he chose to?

19 A. Pardon me?

20 Q. Couldn't make a left turn in the car if he chose to,
21 because he wasn't driving the car?

22 A. What do you mean couldn't ---

23 Q. He was not in control of the car?

24 A. He wasn't driving the car; he was riding in the car ---

25 Q. Right.

1 A. ---In the passenger seat.

2 Q. Okay.

3 MS. WILSON: Court's indulgence.

4 THE COURT: Yes Ma'am.

5 Q. One final question, Corporal Garrett.

6 A. Yes Ma'am.

7 Q. You tell me that you came onto the scene, and when you
8 arrived there were three other officers already there, at
9 least, correct?

10 A. At least three, yes.

11 Q. Namely being Officer Gibson.

12 A. I mean, Gibson, Pearce and Devoy was there.

13 Q. They were on the scene when you arrived?

14 A. On the scene, yes Ma'am.

15 Q. And how -- was it about five minutes after they had
16 arrived that you got there, or was there a large amount ---

17 A. I can't say five minutes. I can't say four minutes. I
18 said shortly after they got there. I didn't time myself going
19 there. I mean, shortly after they pulled over the car I
20 showed up.

21 Q. And four officers on scene, two people in a car, one
22 whom you guys decid -- you police officers decided to arrest,
23 and one who has no -- you have no basis for an arrest. Did
24 anyone try to cuff Eric Dantzler?

25 A. No.

1 Q. Did anyone try to put him in a police cruiser to keep
2 him from moving around, being anywhere?

3 A. No. No Ma'am. We had his identification card.

4 Q. Uh huh (**indicating positive**) And did anyone do
5 anything that would suggest that he couldn't just walk away?

6 A. No. He didn't walk away. He ran away.

7 Q. He could have sprinted. He could have jogged. He
8 could have skipped. The question is, did anyone do anything
9 to stop him from being able to leave?

10 A. No. He wasn't -- he wasn't under arrest.

11 **MS. WILSON:** Thank you, sir. No further questions.

12 **THE COURT:** Redirect.

13 **MR. DeBUSK:** Thank you, Your Honor.

14 **REDIRECT-EXAMINATION BY MR. DeBUSK:**

15 Q. Corporal Garrett, until those drugs were found, did
16 anybody have any probable cause to arrest Eric Dantzler?

17 A. No. We didn't -- we didn't have any reason to arrest
18 him, or even detain him.

19 Q. But the instance those drugs were found, did you have
20 probable cause to arrest Eric Dantzler?

21 A. Yes, we did. He was in possession, right one foot away
22 from the drugs in the glove compartment.

23 Q. Why didn't you arrest him?

24 A. Cause he ran.

25 Q. But if he was walking you could have caught up with

1 him, couldn't you?

2 A. The officers we had chasing him are all runners. Two
3 of them, I know, are runners. They could have chased him. I
4 was -- I'm fifty-five years old, or fifty-four then. I wasn't
5 going to chase him, not with them young guys. They could have
6 easily caught him if he was walking.

7 Q. If he was walking away those runners would have caught
8 him.

9 A. If he walked away I could have walked up to him and
10 arrested him myself.

11 Q. And if he was jogging those runners probably would have
12 caught him too.

13 A. Easily.

14 Q. Was he walking, or jogging, or sprinting?

15 A. I believe he was running as hard as he could.

16 Q. Now you said he was nervous when you made the decision
17 and threatened to tow the vehicle. Was that the kind of
18 nervousness you usually associate with someone who doesn't
19 want their car towed because of the expense of towing it?

20 A. No.

21 Q. Was it beyond that?

22 A. It was beyond that. In my seventeen, or -- I've
23 basically got about twenty-seven years in law enforcement. He
24 was -- he didn't want us to get in that car for some reason.

25 Q. Now, talking about the ongoing investigation here, or

1 whether there was one, at that time you had two Defendants
2 that were in that car; is that correct?

3 A. That's correct.

4 Q. You had one Defendant who ran off precisely at the
5 moment that the drugs were found; is that right?

6 A. Yes sir.

7 Q. And you had one Defendant that had a large amount of
8 money in her possession, didn't you?

9 A. Yes sir. In her purse.

10 Q. And that Defendant had the -- was driving that vehicle,
11 and had the keys, right?

12 A. Yes sir.

13 Q. You had a large amount of drugs in that vehicle; is
14 that correct?

15 A. Yes sir.

16 Q. And the Defendant, Eric Dantzler, he was at large,
17 wasn't he?

18 A. Yes sir.

19 Q. So he could have gone to his house, possibly, or
20 anywhere else?

21 A. He could have went anywhere. He ---

22 Q. Did you need more information to complete your case at
23 that point?

24 A. No. We had his identification card. Another officer
25 knew him from a prior incident.

1 **MS. WILSON:** Your Honor, I'm going to object to that
2 statement.

3 **THE COURT:** The jury will disregard the last portion of
4 the statement made by the witness.

5 Continue on, Solicitor.

6 **Q.** You also had information that -- or one of your
7 officers had information that those individuals had been in
8 possession of that car for a while; is that correct?

9 **A.** Yes sir.

10 **Q.** Let me get back to a hypothetical Mr. Taylor was asking
11 you about. If you are a passenger in a car, and you had no
12 idea what's in that car, and the driver is arrested, and you
13 are just standing around, and they went to open the trunk,
14 would you just run away as fast as you could?

15 **A.** I wouldn't. I would just stand there and wait.

16 **Q.** Now, if you knew there was something in -- if you knew
17 there was marijuana in there, and you had possession of it,
18 would you run away then?

19 **A.** I would run.

20 **MR. DeBUSK:** Thank you.

21 No further questions, Your Honor.

22 **THE COURT:** Mr. Taylor, any questions on the questions
23 asked by the Solicitor?

24 **MR. TAYLOR:** Briefly, Your Honor.

25 **RECROSS-EXAMINATION BY MR. TAYLOR:**

1 Q. Mr. Garrett, there are times when people make bad
2 decisions just because they are scared.

3 A. I'm sure there is.

4 Q. Okay. And if a younger person, not with as much
5 experience as you -- I believe you said you are fifty-four
6 years old. Given your life experience, if a younger person
7 who was scared sees that there is cocaine found in a car that
8 he doesn't own, and he didn't know about, and he runs away,
9 does that automatically mean that he is guilty of that, that
10 offense, of possession -- of trafficking in cocaine?

11 A. Can you repeat the question? You said he knows about
12 the cocaine, and then you said he doesn't.

13 Q. I'll rephrase it.

14 A. Okay.

15 Q. If a person who is young ---

16 A. Right.

17 Q. ---Riding in a vehicle, doesn't own the vehicle, person
18 driving the vehicle doesn't own the vehicle, and cocaine is
19 found in the vehicle after they are stopped by a police
20 officer, that they have no knowledge of the cocaine, but they
21 see it once the car is inventoried by police officers, have
22 you ever, in your seventeen years' experience, had somebody
23 make a bad decision and flee the scene?

24 A. On this instance he couldn't have seen the cocaine. He
25 ran before they -- it was in the glove compartment. He was,

1 like, on the other side of the car. He couldn't even have
2 seen what we found in the glove compartment.

3 Q. You were there on scene, weren't you?

4 A. Yes. I mean, we -- we didn't say, we found cocaine,
5 run.

6 Q. It was Officer Pearce that was searching the vehicle --
7 -

8 A. Right.

9 Q. ---And it was Officer Pearce that unlocked the glove
10 compartment, correct?

11 A. Well, I believe to open it he had to unlock it.

12 Q. And it was -- he was the one -- Officer Pearce was the
13 one that was actually keeping track of where Mr. Dantzler was.

14 A. Mr. -- he wasn't where he could see in the glove
15 compartment, Mr. Dantzler wasn't, I don't believe.

16 Q. But you don't really ---

17 A. I don't believe he could see that we pulled -- I don't
18 believe he pulled it out and went like this, I found cocaine.
19 I believe he just looked and saw there was cocaine and that's
20 when he ran. But I mean, he wouldn't have known what we found
21 in the glove compartment if he didn't know about it. You
22 understand what I'm saying?

23 Q. Not really.

24 A. Can you rephrase your question? I just -- I don't see
25 where you are trying to get ---

1 **THE COURT:** Let's move along, Mr. Taylor. Why don't
2 you just move along. Ask your next question.

3 **MR. TAYLOR:** All right.

4 Q. So you weren't aware that Mr. Dantzler over here was
5 standing directly behind Officer Pearce? You are saying that
6 that did not happen. You are saying he was on the other
7 side ---

8 A. I don't know exactly where he was standing, but I
9 believe he was standing where he couldn't see what was in the
10 glove compartment.

11 Q. But you are not sure that he couldn't see what was in
12 the glove compartment?

13 A. I'm not sure. I mean, I'm not sure.

14 Q. Now, let me ask you another question. You say that
15 there is about your car, Officer Pearce's car, Officer
16 Devoid's car, Officer Gibson's car. Is that -- just four cars
17 on the scene, right?

18 A. Might have been even more.

19 Q. Okay. Why has there been no video tape of anybody
20 showing this scene?

21 **MR. DeBUSK:** Your Honor, I would object. This is
22 beyond the scope of direct.

23 **THE COURT:** It is.

24 **MR. TAYLOR:** Okay.

25 **THE COURT:** You could have asked that on your first

1 cross-examination.

2 MR. TAYLOR: Thank you, Your Honor. I have no further
3 questions.

4 THE COURT: Ms. Wilson.

5 MS. WILSON: No further questions for this witness,
6 Your Honor.

7 THE COURT: Do you wish this witness to be excused,
8 Solicitor?

9 MR. DeBUSK: Yes, Your Honor.

10 THE COURT: Any objection to that, Mr. Taylor?

11 MR. TAYLOR: No sir, Your Honor.

12 THE COURT: Ms. Wilson.

13 MS. WILSON: None, Your Honor.

14 THE COURT: All right, sir. You are excused, and you
15 may go back to your regular duties.

16 Who is your next witness, Solicitor?

17 MR. DeBUSK: Your Honor, the State calls Christina
18 Vanhouten of the Myrtle Beach Police Department.

19 THE COURT: All right. Come around and be sworn,
20 please Ma'am.

21 CHRISTINA VANHOUTEN, being first
22 duly sworn, testifies as follows:

23 DIRECT-EXAMINATION BY MR. DeBUSK:

24 Q. Ms. Vanhouten, who is your employer?

25 A. City of Myrtle Beach Police Department.

1 Q. How long have you been working for them?

2 A. Ten years.

3 Q. And what's your -- what are your duties?

4 A. I'm a Property in Evidence Custodian. I am responsible
5 for collecting evidence and found property also, from lock
6 boxes located in the Police Department, entering the
7 information in the computer, and storing the evidence in the
8 vault.

9 Q. Were your duties the same in December of 2007?

10 A. Yes.

11 Q. And since?

12 A. Uh huh (**indicating positive**)

13 Q. Okay. Let me show you what's been marked as State's
14 Exhibit 6, and ask if you are able to identify this.

15 A. Yes. Those are ---

16 Q. How can you identify it?

17 A. There is a bar code in the upper right corner, but more
18 importantly, the control number on the drug package, it's
19 called a S.L.E.D. Best Package, and it's to contain drugs, and
20 it's a very secure package, so the control number and the bar
21 code.

22 Q. Now we've heard about Best Packages before. Could you
23 tell us -- how are those kept track of?

24 A. How are those what?

25 Q. How do you keep track of those?

1 A. By the control number (B) -- in this case, B196042.
2 That appears on the package here, and also on a manilla
3 envelope when I retrieve it from the drug drop, when it's
4 dropped by an officer.

5 Q. Explain to the jury a little bit about how the drug
6 drop works, please.

7 A. Okay. In the detention area, the jail, there is a
8 counter with a slot in it, and that is -- and then on the side
9 there's a locked steel door that has a keyhole. The officers
10 drop the drugs -- and also money is dropped through there --
11 but the officers drop the drugs through the counter. It has a
12 slot. And as the door on the side is locked once they drop
13 the drugs then they cannot retrieve the drugs themselves.

14 I have a key in my office, and I have access to,
15 obviously, the key, and another co-worker, and we retrieve the
16 key in the mornings, we go to the drug drop and open the door
17 and take out whatever property is inside, and then take it
18 back to our office.

19 Q. Now did you ever take this particular Best Kit out of
20 the drug drop?

21 A. Yes, I did.

22 Q. When did that occur?

23 A. That was December 26th, 2007, and that would be in the
24 morning when I -- shortly after I get to work.

25 Q. Now you probably handle tons of evidence every year,

1 don't you?

2 A. Quite a lot.

3 Q. Tell me, how do you know that specific thing happened
4 on that day?

5 A. Well, the -- all property is accompanied by a property
6 sheet, filled out by the officer. The Best Package that is
7 listed on the property sheet matches the control number on the
8 drug package, and the property sheet lists the drug drop box,
9 and I signed immediately below it, and I put drug drop because
10 that's where I received it from, and I write my date.

11 Q. Now, when you took it out of the drug drop what did you
12 do with it after filling out that sheet?

13 A. I take it back to my office. I enter the information
14 in the computer from the property sheet and I lock -- I file
15 the property sheet away in the file cabinet, and I put the
16 drugs on a shelf in the drug vault.

17 Q. Now is that drug box, is it secure? The drug drop box,
18 is it secure?

19 A. Yes. The drug drop box is secure.

20 Q. And is the storage where you keep drugs, is that
21 secure?

22 A. Yes, it is. It's a combination door.

23 Q. And from the time you took it out of the drug drop and
24 you put it in there did you alter it or change it in any way?

25 A. No.

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1 Q. Did you open the package in any way?

2 A. Only the -- only the outside envelope, and took out the
3 contents. It would be the property sheet and -- the property
4 sheet and the drug package.

5 Q. Is there a paper part and a plastic part to this
6 package?

7 A. Just the plastic bag that's inside that sealed plastic,
8 and then the property sheet.

9 Q. So that the plastic bag remains sealed?

10 A. Is in -- was intact, yes.

11 Q. Did there come a time when you or anyone else took it
12 out of the secure storage unit?

13 A. Yes.

14 Q. When was that?

15 A. That was on April 9th, 2008. I was requested to take
16 the drug package to the Horry County Drug Lab to be tested.

17 MR. TAYLOR: Your Honor, I'm sorry to interrupt. I
18 have a matter I need to take up with the Court.

19 THE COURT: All right. Very good.

20 Ladies and gentlemen of the jury, if you would go to the
21 jury room for a little bit, please.

22 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
23 JURY.)

24 THE COURT: All right, Mr. Taylor.

25 MR. TAYLOR: Your Honor, I -- in looking through my

1 discovery -- which I was waiting for this witness to come to
2 court this morning before I ever made this motion -- I have no
3 -- in compliance with Rule 6, and the Chain of Custody, I have
4 no notarized documentation of nothing concerning Ms.
5 Vanhouten. I believe I've -- I want to make sure I pronounce
6 her name correctly -- Ms. Vanhouten showing where she picked
7 up these drugs, and where she took them to. I have nothing
8 from Lisa Floyd, who tested them, tested the drugs, showing
9 that she received the drugs from Ms. Vanhouten, or that Lisa
10 Floyd took the drugs and gave them back to Ms. Vanhouten, or
11 that Lisa Floyd, herself, returned them back to the Myrtle
12 Beach Police Department. I don't believe that he's able to
13 prove this chain of custody, her testifying ---

14 **THE COURT:** Well, he hasn't gotten done with his
15 testimony yet. I mean, I assume that's what this witness is
16 being called about. She ---

17 **MR. TAYLOR:** I understand.

18 **THE COURT:** Just because you don't have it in the
19 written record -- the Rule 6 says about not then having the
20 chain -- prove the chain of custody if you don't call all the
21 witnesses. Apparently he's calling all the witnesses.

22 **MR. TAYLOR:** Okay.

23 **THE COURT:** So you don't have to have that information.
24 They then have to prove it through their witnesses. He has to
25 prove it to this witness that the drugs went to Ms. Floyd, she

1 kept it under whatever control she had. She's going to have
2 to testify what she did about it. She's going to have to
3 testify what she did about it. She's going to have to
4 testify, you know, who she gave it back to, how they came back
5 to the Myrtle Beach Police Department. They are going to have
6 to present that testimony.

7 MR. TAYLOR: Well, I -- and I understand, Your Honor,
8 and I respect that, but then why are the officers that make
9 the arrest, why do they have to form out -- why do they even
10 have to fill out these Chain of Custody reports if the ---

11 THE COURT: Because there is the potential that they
12 would not have to then be called as witnesses to prove the
13 chain of custody.

14 MR. TAYLOR: Okay.

15 THE COURT: All right. Under Rule 6 you can use the
16 Rule, and how it is set forth, to not have to prove the chain
17 of custody. In this particular case it is apparent that the
18 Solicitor is proving the chain of custody through the
19 witnesses, so it's an alternative. It's either/or..

20 MR. TAYLOR: Okay. All right.

21 THE COURT: So the Solicitor is going to have to prove
22 the chain of custody through his witnesses.

23 MR. TAYLOR: Sorry, Your Honor.

24 THE COURT: Not a problem.

25 Since we sent the jury out we'll take a break for five

1 minutes.

2 Ma'am, while you are off the witness stand you may not
3 talk to the Solicitor.

4 Thank you.

5 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
6 THE PRESENCE OF THE JURY.)

7 THE COURT: Corporal Garrett, if you want to come back
8 and resume the witness stand, please.

9 MR. DeBUSK: Vanhouten.

10 THE COURT: I mean Ms. Vanhouten. I'm sorry. That's
11 right. Ms. Vanhouten. What am I talking about. I was looking
12 -- didn't look far enough down my notes.

13 I'm sorry, Ma'am.

14 Mr. Taylor ---

15 MR. DeBUSK: He's standing right outside, Your Honor.

16 THE COURT: Very good.

17 Before we call the jury back in, Mr. Taylor, I wanted to
18 be clear about what I was saying to you. I'm not saying that
19 you can't object to the chain of custody in this case. I'm
20 just telling you, now is not the time to raise that issue.
21 Certainly when the Solicitor rests his case, and you think
22 there are some issues that you need to bring to my attention,
23 I invite you to do so at that point in time.

24 MR. TAYLOR: I will.

25 THE COURT: Just now is not the time to do that.

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1 MR. TAYLOR: Sure.

2 THE COURT: All right.

3 MR. TAYLOR: My only concern was, Your Honor, was the
4 fact that the officer that wrote the -- that took the drugs,
5 and dropped them in a drop box, that there was a secondary
6 person, so anyway, we got past that.

7 THE COURT: And I appreciate that, I appreciate that,
8 but once again, now is not the time.

9 MR. TAYLOR: Yes sir. Yes sir.

10 THE COURT: When the Solicitor gets done putting up
11 everybody he's going to put up, and you think there's a
12 problem, then bring it to my attention at that point in time,
13 okay.

14 MR. TAYLOR: Yes sir.

15 THE COURT: Very good.

16 All right. Ask the jury to come back in.

17 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
18 JURY.)

19 THE COURT: All right, Solicitor, you may continue,
20 sir.

21 MR. DeBUSK: Thank you, Your Honor.

22 BY MR. DeBUSK CONTINUED:

23 Q. Ms. Vanhouten, I believe when we left off the drugs
24 were in the storage, secure storage. Did you remove them from
25 there, and when?

- 1 A. Yes, I did. I removed them on April 9th, 2008.
- 2 Q. And what did you do with them?
- 3 A. I took them -- I had an armed officer accompany me, and
- 4 I took them to the Horry County Police Department -- well, to
- 5 the lab, I mean, to the Horry County Lab.
- 6 Q. Now, during the time -- after you took them from the
- 7 drug drop box, after you processed them, while they were in
- 8 secure storage, and while you took them to Horry County Police
- 9 Department, were they altered or changed in any way?
- 10 A. No.
- 11 Q. Did that plastic bag remain sealed?
- 12 A. Yes.
- 13 Q. What did you do with them when you got them to the
- 14 Horry County Police Department?
- 15 A. I signed them over -- took them in to Lisa Floyd's, the
- 16 chemist's lab, and she signed them over from me, and I left
- 17 them with her.
- 18 Q. Again, we are referring to State's Exhibit 6. Did
- 19 there come another time when you handled that item?
- 20 A. When I brought them back from the lab.
- 21 Q. And who did you retrieve them from there?
- 22 A. Lisa Floyd.
- 23 Q. And what did you do with them when you retrieved from
- 24 Lisa Floyd?
- 25 A. Of course, had another armed officer accompany me, and

1 brought the drugs back to my office, changed the computer
2 notation to show that they were back in my custody, and put
3 them -- bar-coded them, and bar-coded the property sheet --
4 it's a way of keeping up with them -- and put them back in the
5 storage vault.

6 Q. Okay. Did you remove them from that storage vault
7 again?

8 A. Yes.

9 Q. When was that?

10 A. That was yesterday, when I brought them to court.

11 Q. And what did you do with them yesterday? Did you turn
12 them over to the court?

13 A. Yes. They were turned over to the court.

14 Q. When you retrieved them from Lisa Floyd till when you
15 turned them over to the court, were they altered or changed in
16 any way?

17 A. No, not at all.

18 Q. Did the plastic bag remain sealed during that time?

19 A. Yes.

20 Q. Okay. So, once again, you retrieved those -- that bag
21 from -- the Best Kit from the drug drop box, correct?

22 A. When?

23 Q. Originally, in December, 2007.

24 A. Originally, they came from the drug drop box.

25 Q. And you processed them and stored and secured them; is

1 that correct?

2 A. That's correct.

3 Q. And then you turned them over to Lisa Floyd; is that
4 correct?

5 A. Yes, had them in my custody until they went over to the
6 chemist.

7 Q. Then you retrieved them from her and stored them until
8 they were brought to court; is that correct?

9 A. Yes.

10 Q. And during that whole time were they altered or changed
11 in any way?

12 A. No.

13 Q. Did that plastic bag remain sealed while you had them?

14 A. Yes, it was sealed.

15 Q. Okay.

16 MR. DeBUSK: Thank you. Please answer any questions
17 defense counsel ---

18 Oh, if I might, Your Honor ---

19 THE COURT: Yes sir.

20 MR. DeBUSK: ---There is one other item.

21 Q. I show you State's Exhibits 4 and 5 for I.D..

22 A. Uh huh (indicating positive)

23 Q. I would ask you if you recognize those.

24 A. Yes. They are part of the property that I brought over
25 yesterday.

1 Q. Okay. Let me just ask you quickly. When you receive
2 cash, what do you do with it?

3 A. I count it. I have a second person verify the count
4 immediately, and it goes in the -- of course that information
5 gets entered in the computer, and then it gets stored in the
6 vault.

7 Q. Now is it recorded in any way, photographed or ---

8 A. I don't record it myself.

9 Q. And ---

10 A. But I do -- I take it out of the envelope, or whatever
11 it's in. It could be in sealed plastic. I count it and put
12 it back in the envelope and put it in the vault.

13 Q. Now the receipt here, who prepared that receipt?

14 A. I don't know.

15 Q. Okay.

16 MR. DeBUSK: Thank you.

17 A. Uh huh (indicating positive)

18 MR. DeBUSK: Please answer any questions defense might
19 have.

20 A. Okay.

21 THE COURT: All right, Mr. Taylor.

22 MR. TAYLOR: Thank you, Your Honor.

23 CROSS-EXAMINATION BY MR. TAYLOR:

24 Q. Good afternoon.

25 A. Hey.

1 Q. Other than yourself, are there any other employees that
2 work doing your job, your position, with Myrtle Beach Police
3 Department?

4 A. There are two property in evidence custodians.

5 Q. Would those other two people -- would they have
6 anything to do with this case in any manner?

7 A. No, not now, I mean, not with this case.

8 Q. Okay. So whenever the -- in other words, whenever the
9 drugs are dropped into the drop box, whoever picks up the
10 drugs, they have control over the drugs throughout the whole
11 transaction, and these other two individuals that work there
12 in your capacity, they do not handle or touch these drugs in
13 any manner?

14 A. Whoever picks up the drugs signs the property sheet for
15 them. If I happen not to be there that day there is one --
16 only one other employee that can -- that has access to the
17 drug vault, and the drug drop box.

18 Q. All right. For the matter that we are here today, the
19 drugs that were here, which are sitting -- I believe sitting
20 in front of you ---

21 A. Uh huh (indicating positive)

22 Q. ---Has there been anybody else that's dealt with the
23 drugs, other than yourself?

24 A. No.

25 Q. Okay. Now these drugs were picked up by you on which

1 date again, for clarification?

2 A. 12/26/2007.

3 Q. Okay. And what was the reason that they sat there for
4 almost a four-day period of time, in the drug drop box? Is
5 that because there was a ton of drugs in the drop box and
6 you ---

7 A. I don't know. It could have been a weekend. I don't
8 know, but that's when I picked them up.

9 Q. And on average, on a daily basis, how many drops are
10 made in this drop box?

11 A. I have seen two -- two -- drugs dropped on two separate
12 occasions. I always check the drugs first thing in the
13 morning, which would be eight o'clock, and then if it's a busy
14 season I will go back in the afternoon and sometimes there are
15 drugs dropped then.

16 Q. Okay. What's the most you've ever seen dropped in the
17 drug drop box?

18 A. Fifty or sixty pieces maybe, and that could be during
19 bike week.

20 Q. Okay. Now, you -- I believe your testimony was that
21 you did not take the drugs from the evidence to have them
22 tested till April of 2008. That's because your -- safe to say
23 you are backlogged, you have a huge overflow?

24 A. I don't take drugs to the lab until they are requested
25 to be tested.

1 Q. And so they were not requested to be tested for --
2 until almost four months later?

3 A. I guess that's correct, yes.

4 Q. Okay. How big is the evidence room where you have all
5 of these drugs stored at Myrtle Beach Police Department?

6 A. Let me see. It's maybe ten feet by -- maybe ten by
7 ten.

8 Q. So not -- not a very big room?

9 A. No, it's small. It's cramped.

10 Q. And presently what is the capacity of that -- of that
11 room, as far as the different packaging, individual packaging
12 of drugs for individual cases? In other words, say -- maybe I
13 can just make that easier. How many pending cases do you have
14 presently with Myrtle Beach Police Department?

15 A. How many cases what?

16 Q. How many cases regarding drugs, that you handle, or
17 that -- and your co -- co-workers?

18 A. Probably thous -- a couple of thousand, I guess. I
19 mean ---

20 Q. Two thousand?

21 A. Approximately. I don't know. I mean, I ---

22 Q. Maybe three thousand?

23 A. I'm not sure.

24 Q. Okay. Is it possible that you have three thousand?

25 A. Yes, it's possible.

1 Q. So that's basically a thousand pieces of drugs per
2 person that's working in the evidence room?

3 A. Are you speaking just of the drug vault?

4 Q. Yes Ma'am.

5 A. Yes, there's probably a couple of thousand, two to
6 three thousand.

7 Q. Per person?

8 A. Well, I'm the -- I work in there most of the time.
9 There is a back-up person, but she has other duties.

10 Q. So really it's -- mainly you are the one that's
11 handling these close to three thousand pieces of drugs that
12 are in this vault?

13 A. Yes.

14 Q. Okay. And what type of quality control do you have as
15 far as keeping track of all those?

16 A. Well, there is a computer. There is computer
17 information. There is some paper, property sheet, and then
18 there is an audit that is done once a month by an I.A.D.
19 officer, and ---

20 Q. And who is this I.A.D. officer that does the audit? Is
21 it somebody from Myrtle Beach Police Department?

22 A. It's Myrtle Beach Police Department.

23 Q. And what is their training in order to do this audit?

24 A. What is their training?

25 Q. Yes Ma'am.

1 A. He's a Lieutenant.

2 Q. I mean, what is his training as far as doing the audit
3 itself, in other words, going through and doing the -- going
4 through each individual piece to make sure that it's marked
5 properly, logged properly?

6 A. You are asking about the proced -- what is the
7 procedure, the audit procedure?

8 Q. Yes Ma'am.

9 A. Okay. He -- I make copies of any current -- I make
10 copies of the property sheets of any current drugs that come
11 in ---

12 Q. Yes Ma'am.

13 A. ---And ---

14 Q. And let me just -- and I hate to interrupt you, I
15 don't mean to be rude, but I have to ask these questions. The
16 drugs in question here that were brought and dropped in
17 weighed fifteen point three grams; is that correct?

18 A. I don't ---

19 Q. Should be right there on your sheet.

20 A. The weight is not on here.

21 Q. Okay. Are you aware of the weight? In other words,
22 when the weight comes in you mark it down and you have it in
23 the computer, don't you?

24 A. The weight is -- does not routinely occur on the
25 property sheet, in fact, it is not suppose to be included on

1 the property sheet, so I'm not aware of the weight at all.

2 Q. Okay. So ---

3 A. Unless it's put on the property sheet by mistake, and
4 then I have the officer come in and correct it.

5 Q. All right. So whenever the drugs come in originally
6 you don't weigh them to make sure that ---

7 A. No, no, I don't.

8 Q. No. Okay. Have you ever had any drugs that were lost?

9 A. No. I don't think so.

10 Q. Have you ever had any drugs that are mixed up, and not
11 tested, and what-not?

12 A. No.

13 Q. No. Never happened. Okay.

14 A. What do you mean, mixed up?

15 Q. In other words, John Smith has -- he's charged with
16 possession of heroin ---

17 A. Uh huh (**indicating positive**)

18 Q. ---Jane Smith over here, unrelated, is charged with
19 possession of heroin, and we've mixed them up because the
20 last names are the same.

21 A. No.

22 Q. This never happened?

23 A. No.

24 Q. Okay. All right.

25 **MR. TAYLOR:** I have no further questions. Please

1 answer any opposing counsel may have.

2 THE COURT: Ms. Wilson.

3 MS. WILSON: Thank you, Your Honor.

4 CROSS-EXAMINATION BY MS. WILSON:

5 Q. Good morning, Ms. Vanhouten.

6 A. Morning.

7 Q. You said -- you were talking earlier about I.A.D..
8 What does I.A.D. mean?

9 A. I don't -- I'm not sure what the letters stand for, but
10 it is the person that's over -- oh, it's Internal Affairs
11 Department. Excuse me.

12 Q. Okay. And who is the I.A.D. Officer?

13 A. Lieutenant Gary Cockworf.

14 Q. Cock ---

15 A. Lieutenant Gary Cockworf.

16 Q. Okay. Let me just -- really I have one more question.
17 You weren't on scene at the time of this stop, were you?

18 A. No.

19 Q. So you have no knowledge of anything that occurred at
20 the stop?

21 A. No, not at all.

22 MS. WILSON: No further questions. Thank you, Your
23 Honor.

24 THE COURT: Any redirect?

25 MR. DeBUSK: Briefly, Your Honor.

1 REDIRECT-EXAMINATION BY MR. DeBUSK:

2 Q. Now you do handle a fairly large volume of drugs in
3 your job, don't you?

4 A. Yes, that's correct.

5 Q. You have procedures set up to keep those separate and
6 in order?

7 A. Yes.

8 Q. Does that include sealing them in Best Kits?

9 A. The high court drugs are sealed in Best Kits.
10 Marijuana is sealed in manilla envelopes ---

11 Q. And these ---

12 A. ---Or plastic baggies.

13 Q. The high court drugs, does that include what we are
14 dealing with here today?

15 A. Yes sir.

16 Q. And is that Best Kit identified with a unique number?

17 A. Is it what?

18 Q. Identified with a unique number?

19 A. Yes, it is. It has a control number.

20 Q. And so that's how you keep track of so many different -
21 --

22 A. Yes.

23 Q. ---Cases?

24 A. Yes.

25 MR. DeBUSK: Thank you.

1 THE COURT: Anything on those questions, Mr. Taylor?

2 MR. TAYLOR: I have none, Your Honor.

3 THE COURT: Ms. Wilson?

4 MS. WILSON: No, Your Honor.

5 THE COURT: All right. Do you wish this witness to be

6 excused?

7 MR. DeBUSK: Yes, Your Honor.

8 THE COURT: Any objection?

9 MR. TAYLOR: No objection, Your Honor.

10 MS. WILSON: None, Your Honor.

11 THE COURT: All right, Ma'am, you are released from

12 your Subpoena. You may go back to your regular duties. Thank

13 you.

14 A. Thank you.

15 MR. DeBUSK: Your Honor, the State would call Lisa

16 Floyd of the Horry County Police Department. She's outside in

17 the hallway.

18 THE COURT: Now, were there any exhibits that she had?

19 MR. DeBUSK: There is one sitting on the ---

20 THE COURT: How about return that back to the Court

21 Reporter, please.

22 MR. DeBUSK: Yes, Your Honor.

23 LISA FLOYD, being first duly sworn,

24 testifies as follows:

25 DIRECT-EXAMINATION BY MR. DeBUSK:

1 Q. Ms. Floyd, who is your employer?

2 A. The Horry County Police Department.

3 Q. And what are your duties?

4 A. I'm a Forensic Chemist. I run the Drug Analysis Lab.

5 Q. How long have you been employed in such a capacity?

6 A. Since September of 2002.

7 Q. Could you explain briefly to the jury what your
8 qualifications and training are for carrying out your duties?

9 A. Yes. I have a Bachelor of Science Degree in Bio-
10 Chemistry from Clemson University, and approximately twenty-
11 four hours toward a Masters in the same, also from Clemson.

12 I went through a fourteen week training process with
13 another forensic chemist that runs the Spartanburg Sheriff's
14 Office Lab as well.

15 Q. And what facilities do you have for testing drugs?

16 MS. WILSON: Excuse me. Your Honor ---

17 THE COURT: Yes Ma'am.

18 MS. WILSON: ---I'm sorry to interrupt.

19 I would be willing to stipulate to ---

20 MR. TAYLOR: I, as well, Your Honor.

21 MS. WILSON: ---This witness's qualifications.

22 THE COURT: All right. Thank you.

23 MR. DeBUSK: In that case, Your Honor, the State moves
24 to have her qualified as an expert in Forensic Chemical
25 Analysis.

1 THE COURT: Any objection to that, Mr. Taylor?

2 MR. TAYLOR: No sir, Your Honor.

3 THE COURT: Ms. Wilson?

4 MS. WILSON: No sir, Your Honor.

5 THE COURT: All right. She is qualified to give her
6 opinion in the field of Forensic Chemistry.

7 Q. Ms. Floyd, let me show you what has been marked as
8 State's Exhibit 6, and ask if you recognize this item.

9 A. Yes, I do.

10 Q. Now what is that item? What does the plastic packaging
11 there represent?

12 A. This is what I labeled my lab number, L080227, and it
13 corresponds to a Myrtle Beach case with the control number
14 B196042.

15 Q. And explain to the jury, what is a Best Kit?

16 A. A Best Kit is what you see inside this outer packaging
17 here. It's the -- the envelope with the white center and the
18 blue around the edges, and the green adhesive at the top, and
19 it's actually folded in half. The back side shows through, or
20 shows the other side to you.

21 A Best Kit is simply a way that we insure that evidence
22 is not tampered with, and if you look at the edges of this --
23 it's called a security envelope, which is what they put the
24 drugs in, there is a little design all around the edges, to
25 make sure that it's not been pulled, or tried to be opened in

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1 any way, or that the evidence has been tampered with.

2 And what I do when I receive it is, take a look at that,
3 take a look at the adhesive at the top, and make sure that
4 there is no evidence of tampering whatsoever before I even
5 open it to test it.

6 And assuming that everything is correct, which this was,
7 I write my initials, the letters okay, and the date that I
8 opened it, and that is present on this particular kit.

9 Q. So is that packaging tamper indicative?

10 A. Yes, it is, and there was no evidence of tampering in
11 this case.

12 Q. If there had been, what would you have done?

13 A. It would have been returned to the agency and not
14 tested.

15 Q. Now, when did you first come in possession of this
16 item?

17 A. I'll have to refer to the chain. I received it on
18 April 9th of 2008.

19 Q. Now you probably deal with many different such packages
20 in your line of work, do you not?

21 A. Yes, I do.

22 Q. How do you keep track of it?

23 A. When I receive the packages from the agencies they are
24 all logged immediately, and given a lab number, which I
25 referred to earlier.

1 Q. Now, what did you do with that item when you originally
2 took custody of it?

3 A. If it's not tested immediately it's stored securely in
4 the laboratory.

5 Q. Did you test it?

6 A. Yes, it was tested..

7 Q. When you tested it I take it you opened the packaging.

8 A. I'm sorry. Say again.

9 Q. When you test it you open the Best package?

10 A. Yes, that's correct.

11 Q. Okay. Now, were the drugs packaged in the same manner
12 within the Best package? Were they packaged in the same
13 manner when you got them as they are now?

14 A. Not quite no. Inside there were -- there were thirty-
15 three small, what are called corner baggies, like the corners,
16 they are snipped off of another bag, and those bags are inside
17 here, but the evidence itself was repackaged by myself in a
18 larger bag, and I used the red top zip-locs so that I know
19 which packaging is mine.

20 Q. Now, why do you take it out of it's original packaging?

21 A. It has to be removed for testing, and also a weight is
22 obtained of the substance.

23 Q. How did you test those substances?

24 A. Initially I use what's called presumptive tests. In
25 this case it's a two-part color test, and it gives me a basic

1 field weight is obtained, does that include packaging, a field
2 weight?

3 A. I can't answer for every case. Often the officer will
4 give a total package weight.

5 Q. But when you obtain your final weight, that's just the
6 powder substance?

7 A. That's correct.

8 Q. And you found, I'm sorry, what weight again?

9 A. It was twelve point one seven grams, or one eighty-
10 seven point seven eight grains.

11 Q. Did you prepare a report outlining your results?

12 A. Yes, I did.

13 Q. Do you have a copy of that?

14 A. I do.

15 MR. DeBUSK: I would like to have it marked for
16 identification.

17 (REPORT OF DRUG LAB MARKED STATE'S EXHIBIT NUMBER 7, FOR
18 IDENTIFICATION ONLY.)

19 Q. Now, is this a fair and accurate representation of the
20 results of your analysis?

21 A. Yes, it is.

22 MR. DeBUSK: Your Honor, we would move this into
23 evidence as State's Exhibit 7.

24 THE COURT: All right, Mr. Taylor, any objection?

25 MR. TAYLOR: I have no objection at this time.

1 THE COURT: Ms. Wilson.

2 MS. WILSON: No objection, Your Honor.

3 THE COURT: All right. State's 7 is in evidence
4 without objection.

5 (DRUG REPORT ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
6 NUMBER 7.)

7 Q. After you tested this substance what did you do with
8 it?

9 A. After testing the substance it is repackaged in what I
10 referred to earlier, that red topped zip-loc bag. I use a box
11 so that the evidence is secure inside here, and there is no
12 chance that any powders might escape out into this package,
13 and then I use what's called a K-Pack. It's a very thick
14 plastic. It's also re-puncture resistant, temperature
15 resistant -- you can boil it, whatever -- then I write the lab
16 number again, and my date, and the initials, that it was
17 tested and sealed, into that package, and it's heat-sealed on
18 top of that, so there's no way that can ever be removed.

19 Q. Has that item been altered in any way since it left
20 your custody?

21 A. Aside from a City of Myrtle Beach bar code placed on
22 it, no.

23 Q. Okay. And what did you do with it when you finished
24 with it?

25 A. It was returned to Christina Vanhouten from Myrtle

1 Beach.

2 MR. DeBUSK: Your Honor, at this time the chain --
3 testimony of the chain being complete the State would move
4 State's Exhibit 6 into evidence.

5 THE COURT: All right. Mr. Taylor, any objection to
6 that?

7 MR. TAYLOR: I have no objection, Your Honor.

8 THE COURT: Ms. Wilson.

9 MS. WILSON: No objection, Your Honor.

10 THE COURT: All right. So State's 6 is in evidence
11 without objection.

12 (DRUGS PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 6 FOR
13 IDENTIFICATION NOW ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 6.)

15 MR. DeBUSK: Thank you. Please answer any questions
16 defense might have.

17 THE COURT: All right, Mr. Taylor.

18 MR. TAYLOR: Thank you, Your Honor.

19 THE COURT: Yes sir.

20 CROSS-EXAMINATION BY MR. TAYLOR:

21 MR. TAYLOR: Good morning, Ms. Floyd.

22 A. Good morning.

23 Q. Ms. Floyd, I would like to ask you some questions
24 regarding this testing procedure which we really didn't get
25 into. Have you ever seen pure, absolute pure cocaine?

1 A. Truthfully, I wouldn't know.

2 Q. No. I'm talking about in your testing procedure. I'm
3 not talking about in any way. Have you ever tested it to
4 where the cocaine that comes into your possession to test is
5 one hundred percent pure cocaine?

6 A. Again, I really wouldn't know. I do not do any type of
7 purity analysis on the drugs. There are certain adulterants
8 that will not show up with the type of testing that I use.

9 Q. So basically, if the weight comes to you, and it
10 shows -- and it's got cocaine in it, it's going to show up as
11 being cocaine?

12 A. That's correct.

13 Q. Okay. Now, let's forget about, for example, this --
14 this twelve point seventeen in your report. I just want to
15 give you a number, and have you go through the testing
16 procedure, so that the jury will understand how the testing is
17 done. Let's say three point two grams, which is commonly
18 referred to as an eight-ball on the street, comes into your
19 possession as far as Myrtle Beach brings it over to you to
20 test, tell me how does that test go through? In other words,
21 what do you do with it once you receive it, to determine
22 whether or not it's cocaine?

23 A. Okay. Assuming that, again, it hasn't been tampered
24 with in any way, then the Best Kit is opened, the substance
25 would be removed from it's packaging, and a presumptive test

1 would be done, be it color test, or I have other instruments
2 that can do presumptive analysis as well -- color tests are
3 typically what I use though -- and depending on the results of
4 that, again, I would move forward with a particular extraction
5 method for that particular substance, and then it be run on
6 the G.C.M.S., or gas chromatograph with mass-selective
7 detector.

8 Q. Okay. Now, if three point two grams were given to you
9 to test, you actually have to, in essence, destroy a little
10 bit of it, I guess, in order to test it, correct?

11 A. That is correct.

12 Q. Of those three point two grams, how much of that would
13 be destroyed, in your experience, given -- I believe you said
14 that you've been doing this since 2002; is that correct?

15 A. That's correct. I couldn't really give you a weight.
16 It would be very little, based on the size of the -- or the
17 amount of the substance that is present, then I would take
18 random samples throughout that substance, if it was in one
19 package like that.

20 Q. You really don't use a lot of the drug itself to test
21 to come up with a sample, do you?

22 A. No, I don't.

23 Q. All right. Now, regarding the packaging, you said that
24 you always dump it out of the packaging so that it's -- you
25 weigh just the drugs itself, correct?

1 A. That is correct.

2 Q. And the packaging usually really doesn't weigh that
3 much because it's usually cellophane of some sort?

4 A. It varies.

5 Q. Okay. All right. But I mean, if it comes in -- like
6 for example in our case it appears that -- in looking at the
7 photographs that were taken, that it was cellophane that was
8 wrapped -- you said the bags of -- corner bags of some type of
9 cellophane?

10 A. I would say probably it's like plastic sandwich
11 baggies.

12 Q. Okay. But it really doesn't weigh a lot, does it?

13 A. Compared to ---

14 Q. Okay. For example, in this case, would there have been
15 a couple grams of bags that were used?

16 A. Probably not, no.

17 Q. Okay. All right. Then here's my question to you then.
18 Fifteen point three grams is what was taken, is what was found
19 in the glove compartment, but your drug ---

20 MR. DeBUSK: I object to that, Your Honor. He's
21 testifying to item not in evidence.

22 MR. TAYLOR: Actually it was in evidence.

23 THE COURT: Gentlemen, don't argue about it. You can
24 ask your question, Mr. Taylor. Go ahead.

25 MR. TAYLOR: Thank you.

1 Q. The initial officer that found these drugs that field
2 tested and it tested for -- and what was on the warrant and
3 the indictment, was fifteen point three grams. What you've
4 tested has come back at twelve point seventeen grams. That is
5 three point two grams difference. Is that something that
6 causes you concern?

7 A. No, it's not. Typically the field officer's weight is
8 a lot different. Their scales are typically not scales that
9 have been certified or -- or there can be more packaging that
10 I didn't necessarily get that could be placed into evidence.

11 Q. Let me ask you this. If I brought three scales and
12 they are laying up there in front of the jury, and I certified
13 two of them and I didn't certify the third one, would the
14 third one not work as well as the two that were certified?

15 A. I couldn't answer that question.

16 Q. Okay. A scale is a scale, isn't it?

17 A. As long as it's been certified I would use it, but ---

18 Q. Okay. Your scale at your house that you got on, as
19 long as it's correct it would work, right?

20 A. As long as someone had taken weights and certified it,
21 then I would assume it's accurate, yes.

22 Q. Well, if you went and you bought a scale at, I don't
23 know, Home Goods, you would assume that it would work, right,
24 when you stood on it?

25 A. I would hope.

1 Q. You would hope. Okay. So an individual, Joe Doe, over
2 here buys the same scale, it's going to be pretty much right
3 there on point with one another, isn't it?

4 A. Well, I would assume, yes.

5 Q. Okay. So the scale -- certifying is basically just a
6 term. In other words, it's the same as a court interpreter.
7 One can be certified to speak Spanish, but somebody that's
8 born in Mexico can speak Spanish just the same, correct?

9 A. I would have to answer no to that question regarding
10 the scales simply because how they are sent out from the
11 manufacturer, they may not be accurate as they are sent out.
12 That's why we have an outside company come in, take weights
13 that have already been determined to be a certain weight, and
14 make sure that my scale is reading accurately.

15 Q. So are you saying then that all of the scales across
16 the Myrtle Beach Police Department that are on the street are
17 absolutely wrong, being three point two grams off?

18 A. I couldn't say absolutely anything.

19 Q. All right. As far as the numbering that come in, when
20 somebody brings something in, how do you keep track of the
21 numbering to make sure that -- of all the thousands of items
22 that you test, how do you keep track of the number?

23 A. How do I keep track of the ---

1 Q. The numbering on the individual packaging, so you -- if
2 you have twelve individual packages of drugs that are
3 contained, how do you keep track of them, to know who belongs
4 to who?

5 A. When you say individual packages, you mean the Best
6 Kits, or inside the Best Kits?

7 Q. The Best Kits, yes Ma'am, the Best Kits that come as
8 far as -- you've got twelve Best Kits that come in with
9 weight, how do you keep track of that?

10 A. When I receive evidence from an agency everything is
11 logged into a Microsoft Excel Spread Sheet, which as -- see if
12 I can remember everything -- my lab number that I assign to
13 it, the control number that is on that bag that is a pre-
14 printed number, it's also double-checked with the number
15 that's on the outside as well, to make sure that it matches,
16 the agency's case number, the defendant's name, the incident
17 date. All of that must match.

18 Q. Okay. How many people work in your officer with you?
19 Are you the only person that conducts this type of work?

20 A. I am the only person.

21 Q. The only person. And you do all of the testing for
22 Horry County?

23 A. That's correct.

24 Q. How many items of property, or how many Best Kits do
25 you test on a yearly basis?

1 A. I think last year it was approximately eight hundred,
2 roughly.

3 Q. Eight hundred. And have you ever mis-keyed something?

4 A. In ---

5 Q. In labeling one Best Kit versus another?

6 A. No, not that I'm aware of.

7 Q. Okay. But could it have happened?

8 A. Sure.

9 Q. Could this Best Kit that we have here be somebody
10 else's Best Kit?

11 A. No.

12 Q. But it could happen?

13 A. Not as far as being -- I mean, what I thought you were
14 asking me was, could I write a wrong number, like a wrong case
15 number or something like that, and sure that could happen, but
16 everything is checked and double-checked, and then I review
17 everything again at the end, and that's what that other
18 sticker on the outside is, to make sure that all those numbers
19 match.

20 Q. And it doesn't give you concern at all that there is
21 three point two grams difference between what was alleged to
22 have been found and what was tested?

23 A. No, it does not.

24 Q. If -- would it give you concern if there were three
25 point five grams found on the street, but only point eight

1 that were introduced into court?

2 A. I can't really say as to how the officer obtains his
3 weight, so it is what it is when I get.

4 Q. All right.

5 MR. TAYLOR: Court's indulgence.

6 THE COURT: All right.

7 MR. TAYLOR: Your Honor, I have no further questions.

8 THE COURT: Ms. Wilson.

9 MS. WILSON: Thank you, Your Honor.

10 CROSS-EXAMINATION BY MS. WILSON:

11 Q. Good morning, Ms. Floyd.

12 A. Good morning.

13 Q. Just a quick question. You weren't on scene -- well,
14 actually two questions. You weren't on scene at the stop,
15 were you?

16 A. No.

17 Q. So you have no knowledge -- firsthand knowledge of
18 anything that occurred at the stop?

19 A. No, I do not.

20 Q. And you said that you -- the drugs were stored
21 securely. Exactly what does that mean?

22 A. They are in the laboratory, which is a secure facility.
23 It's actually built the same as the evidence room in our
24 police department, and I'm the only person who has access to
25 that room.

1 Q. And there is a locked door, or I mean ---

2 A. It's a key card, where you have to use your -- I'm the
3 only one who is keyed to get in that door.

4 Q. So no one else has access to it but you?

5 A. That's correct.

6 MS. WILSON: Okay. Thank you.

7 No further questions, Your Honor.

8 THE COURT: Redirect.

9 MR. DeBUSK: Thank you, Your Honor.

10 REDIRECT-EXAMINATION BY MR. DeBUSK:

11 Q. Now you keep careful track of these items when they
12 come into your possession, don't you?

13 A. Yes, I do.

14 Q. In fact, you keep track as many as three different
15 control numbers on these items?

16 A. Yes. I use the lab number that I assign, the control
17 number on the package, and the agency's case number.

18 Q. Let me ask you, if you were using certified scales, and
19 you weighed this item and it's packaging, and then used
20 certified scales to weigh that item, just the white powder in
21 that picture, would it be possible for the weight to differ by
22 as much as three grams?

23 A. It would be close to that, yes. There is an outer
24 baggie that would weigh approximately a gram, plus thirty-
25 three pieces of baggie.

1 MR. DeBUSK: Thank you.

2 No further questions, Your Honor.

3 THE COURT: Any questions on those questions asked by
4 the Solicitor, Mr. Taylor?

5 MR. TAYLOR: Yes sir.

6 RECROSS-EXAMINATION BY MR. TAYLOR:

7 Q. Were you there when these were tested?

8 A. When I tested them?

9 Q. Were you there when these drugs were field-tested?

10 A. No, I was not.

11 Q. And whenever you test drugs you come -- they come to
12 you in a packaging, correct?

13 A. That's correct.

14 Q. And the first thing you do is take it outside of this
15 outer package, correct?

16 A. That's correct.

17 Q. So naturally it would assume that this officer, with
18 over ten years' experience, before he weighed it, would have
19 taken it outside of this outer packaging as well, correct?

20 A. I can't speak to how the officer would do anything.

21 Q. That's what you would do, wouldn't you?

22 A. That's what I would do, yes sir.

23 Q. And you have a lot of experience in testing and
24 weighing drugs?

25 A. Yes, I do.

1 Q. As well as you would assume him, and ten years'
2 experience, would have the same?

3 A. Not necessarily.

4 Q. Okay.

5 MR. TAYLOR: I have no further questions, Your Honor.

6 THE COURT: Ms. Wilson.

7 MS. WILSON: No further questions, Your Honor.

8 THE COURT: You may step down.

9 Do you wish this witness to be excused?

10 MR. DeBUSK: Yes, Your Honor.

11 THE COURT: Any objection, Mr. Taylor?

12 MR. TAYLOR: No sir, Your Honor.

13 THE COURT: Ms. Wilson.

14 MS. WILSON: None, Your Honor.

15 THE COURT: All right, Ma'am, you are released from
16 your Subpoena. You may go back to your regular duties. Thank
17 you.

18 THE COURT: All right. Who is your next witness,
19 Solicitor?

20 MR. DeBUSK: Court's indulgence one moment, Your Honor.

21 THE COURT: Yes sir.

22 MR. DeBUSK: Your Honor, I've got to confer with the
23 Reporter for just one moment, Your Honor, make sure everything
24 is in evidence.

25 THE COURT: Yes sir.

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1 **MR. DeBUSK:** Your Honor, at this time the State rests.

2 **THE COURT:** All right. Mr. Taylor; Ms. Wilson, do you
3 have some matters of law for the Court at this point in time?

4 **MR. TAYLOR:** Yes sir, Your Honor.

5 **MS. WILSON:** Yes sir, I do, Your Honor.

6 **THE COURT:** All right. Very good.

7 All right. Ladies and gentlemen, I have some matters of
8 law that I have to discuss with the attorneys. Looking at the
9 time it would probably be an appropriate time to send y'all to
10 lunch, and I will take care of those matters in your absence,
11 and obviously I'm going to then need to give them some time to
12 go to lunch, so if y'all will be back in your -- back in your
13 jury room at 1:45, please. Be back in your jury room at 1:45,
14 please.

15 Thank you very much.

16 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
17 **JURY.)**

18 **THE COURT:** All right, Mr. Taylor, I'll be glad to hear
19 from you, sir.

20 **MR. TAYLOR:** Thank you, Your Honor.

21 Your Honor, I would move for a directed verdict at this
22 time. My client was arrested on 12/22/2007 for an unrelated
23 incident which had nothing to do with this case whatsoever.
24 Upon being arrested they searched a vehicle that she did not
25 own. There has been no testimony to prove that the vehicle was

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1 stolen, showing that she had any type of ownership interest in
2 it, or possessory interest in it from that standpoint as an
3 owner, there was no bill of sale in the car, there was no
4 documentation, the car was not reported as being stolen. This
5 was a car that she had borrowed from somebody, obviously. It
6 belonged to a guy named Bill Thompson, which was verified that
7 he lives down in Surfside. Nobody bothered to go and talk to
8 him concerning the drugs found in his car, nobody bothered to
9 get a warrant in any way to show maybe he was the one that had
10 possession of these drugs that were found in his car in a
11 locked compartment.

12 There has been no evidence that -- or testimony that my
13 client is a known drug dealer. There has been no testimony
14 that my client had her house searched, and that there was any
15 evidence of drug activity in her house, she made no statement
16 upon being arrested, or any incriminating action whatsoever,
17 other than the fact that she was driving a car for which she
18 didn't own, and drugs were found in a part of the car which
19 she had -- was not near. In other words, she was not in the
20 immediate area. She was driving this car, and this was just a
21 car that had been borrowed, no connection whatsoever. Your
22 Honor, I could lend you my car, and it could have ten pounds
23 of heroin in the trunk, if you needed a ride, which I would
24 gladly do if you didn't have a car, Your Honor, but that
25 wouldn't mean that you would be guilty of trafficking heroin

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1 if, you know, you were stopped and the car was deemed stolen
2 out of North Carolina. That's what we have, Your Honor. We
3 have a case where the vehicle is not in the ownership of my
4 client, drugs found in an area that is in a locked
5 compartment. I just don't see where the State has risen to
6 the -- to the burden that they have to meet to show that my
7 client is guilty beyond a reasonable doubt, and would ask that
8 you render a directed verdict in our favor, dismissing all
9 these charge -- or this charge against my client.

10 THE COURT: All right, sir. Thank you.

11 As to the directed verdict standard the -- I'm charged
12 with being concerned with the existence of evidence and not
13 with it's weight, and if there is any direct evidence, or
14 substantial circumstantial evidence reasonably tending to
15 prove the guilt of the accused it is my job to find the case
16 that there is -- if that does exist, to send the case to the
17 jury. I should grant a directed verdict motion when a jury
18 would be merely speculating as to the guilt of the accused, or
19 where evidence is sufficient only to raise the mere suspicion
20 of guilt.

21 In this particular matter possession of the drugs can be
22 proven by the State, either by actual or constructive
23 possession. The Court looks at the evidence that has been
24 presented under the guise of constructive possession, meaning
25 that the Defendant had dominion and control, or the right to

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1 exercise dominion and control over either the drugs or the
2 property upon which the drugs were found.

3 In this particular matter the Defendant, Ms. Rodriques,
4 was the driver of the automobile. The drugs were in the glove
5 compartment of the automobile she was driving. Though the
6 drugs were in a locked glove compartment the keys to the
7 locked glove compartment were in the car, to which anyone in
8 the car had access to those keys. The car's ownership is not
9 the question. It's who had dominion and control, or who had
10 the potential to have dominion and control over the items that
11 were seized from the car. There is sufficient evidence by the
12 State in this case to prove constructive possession as against
13 the Defendant, Maria Isabel Rodriques. Once again, I'm not
14 concerned with the weight of the evidence, only it's
15 existence. It does exist in this case, and therefore your
16 motion for a directed vehicle is denied.

17 Further motions from the Defendant, Rodriques?

18 **MR. TAYLOR:** I have no further motions at this time.

19 **THE COURT:** Very good.

20 Ms. Wilson.

21 **MS. WILSON:** Thank you, Your Honor. Your Honor, I, as
22 well, as making a motion for a directed verdict at this time,
23 on the basis that, by virtue of the testimony of the officers
24 who took the stand, my client was not in control, in any
25 aspect, of the vehicle, could not drive the car, could not

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1 take it away, was never in any direct contact with the drugs.
2 And I understand the argument about this being a constructive
3 possession case, but his merely being there is simply not
4 enough, and all the officers have testified that they felt
5 that he was responsible simply by being present in the car.

6 Not one person has been able to substantially, or in any
7 real way, substantiate that my client knew that the drugs were
8 there. There has not been one bit of testimony to the effect
9 that he knew that the drugs were in the car, and on that
10 basis, Your Honor, we are requesting a directed verdict in
11 this matter.

12 **THE COURT:** All right. Once again in this matter --
13 and I'm not going to review the directed verdict standard
14 because I've already done that. This being a constructive
15 possession case, the Defendant, Eric Dantzler, was the
16 passenger, front passenger, and occupied the front passenger
17 seat of this vehicle. Immediately in front of the front
18 passenger seat the drugs were found in a glove box. It
19 appears the glove box was locked, the keys were in the
20 vehicle, the Defendant had access to the keys and the locked
21 glove box.

22 Further, there has been evidence submitted by the State
23 as to the Defendant's actions when it was apparent that he was
24 not going to be able to exercise control of the car. He made
25 efforts to exercise control of the car, asking that the car

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1 not be towed by the police, asking that the police not retain
2 custody of the car, suggesting alternatives to them so that
3 the police would not have custody of the car.

4 When it became apparent that this was not going to take
5 place the Defendant chose to leave the scene where the drugs
6 were found immediately in his -- or near his vicinity, in a
7 manner which would suggest actual knowledge of the presence of
8 the drugs, but once again, it's not my job to judge the weight
9 of the evidence, only whether or not it exists. In this case
10 evidence clearly exists that the Defendant knew about the
11 drugs, and that he was in constructive possession of the
12 drugs, therefore, your directed verdict motion is denied.

13 Thank you very much.

14 Further motions on behalf of the Defendant, Eric
15 Dantzler.

16 MS. WILSON: Oh, no sir, Your Honor.

17 THE COURT: Thank you very much.

18 All right, Solicitor, anything else at this point in
19 time?

20 MR. DeBUSK: Not at this point, Your Honor.

21 THE COURT: All right.

22 Now, Mr. Taylor and Ms. Wilson ---

23 MS. WILSON: Yes, Your Honor.

24 THE COURT: ---Regarding the potentiality of your
25 clients testifying in this case, have you discussed that with

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1 to come in?

2 MR. DeBUSK: Yes, Your Honor.

3 THE COURT: Defense.

4 MR. TAYLOR: Yes sir, Your Honor.

5 MS. WILSON: Yes sir, Your Honor.

6 THE COURT: Very good.

7 Ask the jury to come in, please.

8 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
9 JURY.)

10 THE COURT: All right, ladies and gentlemen, it's now
11 my responsibility to give you the law that you are going to
12 apply to the facts as you so find them to be in this
13 particular case.

14 In this particular case -- and as I told you at the very
15 beginning, one of your jobs was to judge the credibility and
16 the believability of the facts of this case. In that you can,
17 in looking at the witnesses that have testified before you,
18 and the evidence that's been presented in this matter, you can
19 believe one witness against several, several against one, you
20 can believe a portion of what a witness says, and disregard
21 the remaining portion of what the witness says. If you've got
22 good and sound reason for doing so you could disregard in it's
23 entirety the testimony of a particular witness.

24 In looking at the testimony of witnesses you look at
25 whether or not the witness has exhibited to you any kind of

1 interest, bias, prejudice, motive that they might have in
2 giving you the testimony that they gave you from the witness
3 stand. You, in fact, can consider the demeanor of the
4 witness, that is, how did they appear before you when they
5 testified. Of course you consider the opportunity for
6 knowledge, how did they come about that information that they
7 gave you from the witness stand. Your job, ladies and
8 gentlemen, is to find the truth. That is your job. That is
9 your responsibility, to find the truth of this matter based
10 upon the testimony and evidence that has been presented to
11 you. If you think about it for a second, looking at
12 credibility and believability, it's something you do every
13 single day of your life. When somebody tells you something
14 you are automatically judging whether or not you believe them.
15 And how do you do that? Use your good common sense, your good
16 judgment that you use in conducting your own affairs, and
17 that's exactly what we are asking you to do here today, use
18 your good common sense, your good judgment, apply it to the
19 facts in evidence in this case, find the facts in evidence in
20 this case that you believe are true in this matter, and then
21 apply it to the standard of proof, and I'll talk about that
22 standard of proof that I told you about at the very beginning
23 in this matter.

24 You don't have any friends to reward, you don't have any
25 enemies to punish. Your verdict can't be the result of any

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1 kind of passion, prejudice or sympathy. It's an examination
2 of the facts and finding that evidence which convinces you of
3 it's truth.

4 In this particular case I qualified one witness to give
5 her opinion. Sometimes it's called an expert witness. Just
6 because I qualify somebody to give their opinion does not give
7 them any special status. Normally we don't allow people to
8 give their opinions about anything. They've got to testify
9 about what they know, the facts of the case. But sometimes,
10 by a person's experience, education, knowledge, training,
11 their particular job experience, they are allowed to give
12 their opinion, and once again, I've told you, that doesn't
13 give them any special status. You judge all the evidence the
14 same. You look at all the evidence the same, finding that
15 evidence which convinces you of it's truth.

16 There are two types of evidence that have been presented
17 in this case, and presented in virtually every case that's
18 tried. That's called direct and circumstantial evidence.
19 Direct evidence, that's the testimony of a person who asserts,
20 or claims to have actual knowledge of a fact. Circumstantial
21 evidence is proof of a chain of facts and circumstances
22 indicating the existence of a fact. The law doesn't make any
23 distinction between those two. The law doesn't require a
24 greater degree of proof of one over the other. You weigh all
25 the evidence in the case, and you find that evidence which

1 convinces you of it's truth.

2 In this case the Defendants did not testify. I instruct
3 you, and I emphasize to you, the fact that the Defendants did
4 not testify is not, and I repeat, not a factor in this case.
5 It is not to be considered by you in any way in your
6 deliberations. You may not even talk about it in your jury
7 room. It is not part of this case. Every defendant charged
8 with a crime, no matter what that may be, has certain
9 Constitutional Rights, among those called the right to remain
10 silent. The assertion of this right cannot be used against
11 them in any way. You can draw no conclusion from this. A
12 defendant is never required to prove him or herself innocence,
13 and I told you that at the very beginning. the State has the
14 burden of proof. The State must prove the Defendants guilty
15 beyond a reasonable doubt. Defendants have nothing to prove
16 to you.

17 I told you at the very beginning, the Defendants pled
18 not guilty to the indictment, the charge against them, and
19 that put that burden of proof upon the State of South Carolina
20 to prove the Defendants guilty beyond a reasonable doubt.
21 This is an important rule of law, no matter what the
22 seriousness of the crime may be, or what crime a person is
23 charged with. This presumption of innocence did not end at
24 the start of the trial. It hasn't ended now. It only ends
25 when you, collectively, are convinced from the evidence

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1 presented by the State that there is sufficient evidence to
2 convict the Defendants of the crime charged, beyond a
3 reasonable doubt. The presumption of innocence is likened to
4 a robe of righteousness that's placed upon the shoulders of
5 the defendant at the start of the trial, and it remains upon
6 the shoulders of the defendant until it is stripped from the
7 shoulders of the defendant by evidence which convinces you of
8 it's truth. This presumption is not some legal theory. It's
9 not a legal phrase. It's a Constitutional right to which
10 every defendant is entitled, unless you, the jury, are
11 satisfied from the evidence of the Defendant's guilty beyond a
12 reasonable doubt.

13 So, what's a reasonable doubt? Reasonable doubt is the
14 kind of doubt that would cause an ordinary, reasonable person
15 to hesitate to act. Proof beyond a reasonable doubt is proof
16 that leaves you firmly convinced of the defendant's guilt.
17 Now, there's very few things that we can know with absolute
18 certainty, and the law doesn't require the State to prove
19 that, or have that degree of proof for you. What is required
20 is, if, based upon your view of the evidence that's been
21 presented you are firmly convinced that the Defendant is
22 guilty of the crime charged, you must find the Defendant
23 guilty. On the other hand, based upon your view of the
24 evidence, if you are not firmly convinced that the Defendant
25 is guilty of the crime charged you must give the Defendant the

1 benefit of the doubt and find him or her not guilty.

2 Both Defendants in this matter have been charged with
3 the offense of trafficking. Regarding this offense, the State
4 must prove, beyond a reasonable doubt, that the Defendant
5 knowingly sold, manufactured, cultivated, delivered,
6 purchased, brought into this State, provided financial
7 assistance, or otherwise aided, abetted, attempted, or
8 conspired to sell, manufacture, deliver, purchase, or bring
9 into this State, or was in actual or constructive possession,
10 or knowingly attempted to become in actual or constructive
11 possession of cocaine.

12 Proof of constructive possession requires a showing that
13 the accused had knowledge of, and dominion or control over
14 either the drugs or the premises upon which the drugs were
15 found. Mere presence where the drugs are found does not
16 constitute constructive possession. Constructive possession
17 is proven by -- or can be proven by circumstantial evidence.
18 Now, regarding possession, to prove possession the State has
19 to prove, beyond a reasonable doubt, that the Defendant had
20 both the power and intent to control the disposition or use of
21 the cocaine. And again, possession can either be actual or
22 constructive. Actual possession means that the cocaine was
23 actually in the physical possession of a person. Constructive
24 possession means the Defendant had dominion and control, or
25 the right to exercise dominion or control over either the

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1 cocaine itself, or the property on which the cocaine was
2 found. Again, mere presence at the scene where drugs are
3 found is not enough to prove possession. Now, actual
4 knowledge of the possession of the cocaine is evidence of the
5 defendant's intent to control it's disposition or use. The
6 defendant's knowledge and possession can be inferred when a
7 substance is found on property under the defendant's control;
8 however, this is simply an evidentiary fact to be taken into
9 consideration by you, along with all the other evidence in the
10 case, and to be given what weight, if any, you decide it
11 should have. And I tell you, two or more persons may have
12 joint possession of a drug.

13 Also in this particular matter to prove trafficking,
14 besides what I've just charged you, the State must prove,
15 beyond a reasonable doubt, that the amount of the cocaine, or
16 any mixture containing cocaine, was ten grams or more, but
17 less than twenty-eight grams.

18 Now, in this particular matter there are two Defendants,
19 each of whom is charged with trafficking powder cocaine, more
20 than ten grams but less than twenty-eight grams. The case of
21 each Defendant, and the evidence and law concerning that
22 Defendant should be considered separately, and individually.
23 Your verdict does not have to be the same for both Defendants.
24 The fact that you may find one Defendant guilty or not guilty
25 should not control, just by that fact, your verdict as to the

1 other Defendant. Where more than one person is charged with a
2 crime, if the evidence warrants, based upon your view of the
3 evidence, you may convict one and acquit the other, or you may
4 acquit both, or you may convict both. It will depend upon
5 your view of the testimony and the evidence. You must take
6 each Defendant and consider the evidence as to that Defendant,
7 along with my instructions on the law, and then you decide
8 whether or not the State had proven that Defendant guilty,
9 beyond a reasonable doubt, of the crime charged, and then
10 obviously you enter that verdict for each individual
11 Defendant.

12 Now, to assist you in arriving at the verdict -- or
13 writing down the verdict in this matter, we have two verdict
14 forms, and they are virtually identical, except for the names
15 of the Defendant, so with one you have, the State of South
16 Carolina versus Maria Isabel Rodriques, trafficking powder
17 cocaine, more than ten grams, less than twenty-eight grams.
18 On the charge of trafficking in powder cocaine, more than ten
19 grams, less than twenty-eight grams we, the jury, by unanimous
20 consent, find the Defendant -- and there's two choices -- I've
21 put one before the other -- obviously don't assign anything to
22 that -- I've got to put one before the other -- not guilty or
23 guilty.

24 And then, regarding Mr. Dantzler, the form is the same,
25 trafficking powder cocaine, more than ten grams but less than

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1 twenty-eight grams, on the charge of trafficking powder
2 cocaine, more than ten grams but less than twenty-eight grams
3 we, the jury, by unanimous consent, find the Defendant -- and
4 once again, two choices -- not guilty or guilty.

5 Now, Mr. Foreman, when your jury has well and truly
6 deliberated each case, and made it's unanimous decision on
7 each case, you will take the separate verdict forms, you will
8 check the appropriate block, whatever it might be, you will
9 sign your name and put today's date, indicating that that,
10 indeed, is the unanimous verdict of the jury in that
11 particular case.

12 Now, I have said unanimous I don't know how many times.
13 It means exactly what you think it means. It means everybody
14 agrees. The verdict in this case is twelve zero on each case.
15 It's not eleven one, ten two, any combination thereof. When
16 you check that block, Mr. Foreman, and you write your name,
17 you know every single member of that jury agrees that's the
18 verdict on that particular case.

19 All right. That's the law that you are going to take
20 and apply to the facts as you so find them to be, and to judge
21 that against the burden of proof that the State of South
22 Carolina has in each case.

23 What I'm going to ask that you do, Mr. Foreman is, you
24 take your jury back to your jury room. Do not begin your
25 deliberations until the bailiff hands to you the two verdict

1 forms and the exhibits. When the bailiff hands to you the
2 verdict forms and the exhibits then you may begin your
3 deliberations.

4 Madame alternate, if you will remain in the courtroom
5 with us.

6 Mr. Foreman, take your jury to the jury room, please.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right. My memory -- is it Buffkin,
10 Ma'am?

11 A. Yes sir.

12 THE COURT: All right. As the alternate in this case
13 it's your job to step in the shoes of one of the regular
14 members of the jury should they not be able to go forward with
15 their responsibilities in this case. While it now appears
16 that they are all ready, willing and able to do so, we have
17 not received a verdict in both of these cases, therefore I
18 cannot release you, but I also can't send you in there because
19 you cannot be part of those deliberations unless, for one
20 reason, I have to remove one of those jurors.

21 So what you are going to have to do is go to a separate
22 jury room, and be by yourself for a little while, while that
23 jury deliberates. I promise we won't forget about you and
24 keep you there any longer than is absolutely necessary, but I
25 need to keep you until, obviously, they return a verdict in

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1 this matter.

2 So you can find her a separate jury room, please. Thank
3 you.

4 All right. Any exceptions, deletions or additions to
5 the charge, from the State?

6 MR. DeBUSK: No, Your Honor.

7 THE COURT: From the Defendant, Rodriques?

8 MR. TAYLOR: None, Your Honor.

9 THE COURT: From the Defendant, Dantzler?

10 MS. WILSON: None, Your Honor.

11 THE COURT: Thank you very much.

12 Solicitor, Mr. Taylor, Ms. Wilson, I want to thank you
13 for your service in this matter. The effort that you put
14 forth on behalf of your respective clients in this matter --
15 and I appreciate the way that each of you represented your
16 clients and tried this case.

17 Thank you very much.

18 MS. WILSON: Thank you, Your Honor.

19 MR. TAYLOR: Thank you, Your Honor.

20 THE COURT: If you would please get with the Court
21 Reporter, make sure we've got the proper exhibits to go to the
22 jury.

23 (AT THIS TIME THE EXHIBITS WERE REVIEWED BY COUNSEL FOR
24 THE STATE AND COUNSEL FOR BOTH DEFENDANTS. ALL APPROVED THE
25 EXHIBITS AND THE EXHIBITS WERE PASSED INTO THE JURY ROOM. THE

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1 JURY WAS INSTRUCTED TO BEGIN DELIBERATION AT 3:20 P.M.)

2 (THE JURY DELIBERATED AND THE FOLLOWING TAKES PLACE AT
3 4:40 P.M.)

4 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
5 JURY.)

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen, I appreciate the fact we had -- we've changed the
8 courtrooms. I'll just let you know that the Sheriff was the -
9 - given his oath of office as he must after his recent
10 election. All elected officials, once they are re-elected or
11 elected, have to have their oath of office, and it was a
12 rather large gathering and the main courtroom was the only
13 place that that could comfortably be held, so I certainly
14 allowed, and wanted to Sheriff to be able to use that
15 courtroom, so I appreciate y'all accommodating us and coming
16 down here.

17 Mr. Foreman, in the matters regarding Ms. Rodriques and
18 Mr. Dantzler, has your jury reached a verdict on both cases?

19 MR. FOREMAN: Yes sir.

20 THE COURT: Very good. Could you hand the verdict
21 forms to the Clerk, please sir.

22 All right, Madame Clerk, if you would, publish the
23 verdicts in both cases, please Ma'am.

24 DEPUTY CLERK OF COURT: The State of South Carolina
25 versus Eric Dantzler, (2008-GS-26-1538), trafficking powder

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1 cocaine, more than ten grams, less than twenty-eight grams.
2 On the charge of trafficking powder cocaine, over ten grams,
3 less than twenty-eight grams we, the jury, by unanimous
4 consent, find the Defendant guilty.

5 Leon Johnson, Foreperson.

6 As to the State of South Carolina versus Maria Isabel
7 Rodrigues, (2008-GS-26-1201), trafficking powder cocaine, more
8 than ten grams, less than twenty-eight grams. On the charge
9 of trafficking powder cocaine, more than ten grams, less than
10 twenty-eight grams we, the jury, by unanimous consent, finds
11 the Defendant guilty.

12 Leon Johnson, Foreperson.

13 Ladies and gentlemen of the jury, as to those verdicts,
14 if this is your verdict, so signify by raising your right
15 hand.

16 (EACH AND EVERY JUROR RAISED HIS OR HER RIGHT HAND.)

17 THE COURT: The jury, having affirmed their verdict,
18 does the State wish the jury polled in this particular matter?

19 MR. DeBUSK: No, Your Honor.

20 THE COURT: Does the Defendant, Rodrigues, wish the
21 jury polled in this matter?

22 MR. TAYLOR: Yes sir, Your Honor.

23 THE COURT: Very good.

24 Madame Clerk, if you would poll the jury.

25 (AT THIS TIME THE JURY WAS POLLED INDIVIDUALLY AND EACH

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1 AND EVERY JURY AFFIRMED THE VERDICT AS PUBLISHED.)

2 THE COURT: All right, the jury having been polled and
3 affirmed the verdict, is there any further business as to the
4 jury, from the Defendant, Rodriques?

5 MR. TAYLOR: None, Your Honor.

6 THE COURT: As to the jury, from the Defendant,
7 Dantzler?

8 MS. WILSON: None, Your Honor.

9 THE COURT: Thank you, Ma'am.

10 All right, ladies and gentlemen of the jury, and Madame
11 alternate, I want to thank you for your service in this
12 particular case. You did exactly what the Court asked you to
13 do, and that is to render a true and just verdict in this
14 matter, and by your verdict and your examination of the
15 evidence you have done that.

16 It -- as I told you, there probably would be other
17 business that the ---

18 Yes sir.

19 MR. DeBUSK: Your Honor, may we approach ---

20 THE COURT: Sure.

21 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

22 THE COURT: I'm sorry. Was there one juror who was not
23 polled?

24 A. Yes sir.

25 THE COURT: Please stand, Ma'am. Tell me your name.

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1 A. Linda Clum.

2 THE COURT: All right. You must have skipped over her.

3 A. Sixty-three.

4 DEPUTY CLERK OF COURT: I'm sorry. I'm sorry.

5 Is this your verdict?

6 A. Yes.

7 DEPUTY CLERK OF COURT: And is this still your verdict?

8 A. Yes.

9 THE COURT: Very good.

10 Thank you, counsel, for bringing that to my attention.

11 Again, is there anything further as to the jury from the
12 State?

13 MR. DeBUSK: No, Your Honor.

14 THE COURT: From the Defendant, Rodriques?

15 MR. TAYLOR: None, Your Honor.

16 THE COURT: From the Defendant, Dantzler?

17 MS. WILSON: Nothing, Your Honor.

18 THE COURT: Very good.

19 (AT THIS TIME THE JURY WAS DISMISSED FROM FURTHER
20 PARTICIPATION IN THE TRIAL OF THIS PARTICULAR CASE.)

21 THE COURT: All right. Mr. Taylor ---

22 MR. TAYLOR: Yes sir.

23 THE COURT: ---Any motions or matters from the
24 Defendant, Rodriques?

25 MR. TAYLOR: Your Honor, I would like to just renew my

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1 motion for a directed verdict, just to preserve the record on
2 that. I didn't make any other motions throughout the trial
3 that I would need to renew now that I'm aware of, so just to
4 renew that motion.

5 **THE COURT:** Very good. As I indicated in your previous
6 motion for a directed verdict, I did find, and I still do
7 find, that there was more than sufficient evidence, if that
8 evidence was so believed by the jury, to sustain a verdict of
9 guilty on the offense charged. I do find that there was
10 substantial circumstantial evidence as to the Defendant, Maria
11 Isabel Rodriques as to the charge. The jury, by their
12 verdict, must so have believed that evidence in rendering
13 their verdict, and therefore I respectfully decline to grant
14 your motion for a directed verdict, and I would also include
15 with that that I reaffirm my previous ruling that the lesser
16 included charge that you requested was not proper in this
17 case, that the only possible matter that the jury could have
18 considered was trafficking, due to the undisputed evidence as
19 to the weight and the Supreme Court and the Court of Appeals
20 Decisions that I cited previously in the record.

21 Anything else, Mr. Taylor?

22 **MR. TAYLOR:** No sir.

23 **THE COURT:** Thank you very much.

24 **MR. TAYLOR:** Yes sir.

25 **THE COURT:** All right, Ms. Wilson.

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1 **MS. WILSON:** Yes sir. Thank you, Your Honor.

2 Your Honor, at this time I would renew all prior motions
3 made throughout the course of the trial, and in addition, Your
4 Honor, I would move for a new trial, as well as moving for an
5 order in arrest of judgment in this case. My basis for these
6 requests is that I feel that the jury's verdict was in
7 opposition to what I think the weight of the evidence
8 suggested, which is that my client had no control or dominion
9 over the substance or the vehicle in which the substance, the
10 illegal substances were found, and that, as to his
11 responsibility, or his ability to control, he did not have
12 control, nor did, at any point in time, did he become in
13 control. I think the weight of the evidence goes along with
14 that, and I think that the jury's decision is in direct
15 opposition to what I think the weight of the evidence
16 supported.

17 In addition, Your Honor -- and I know that I actually
18 mentioned this in part in support of the motion that I made at
19 the conclusion of the presentation of the State's case, as
20 well as our decision not to present a case, but I would just
21 reiterate that none of the testimony from the officers
22 suggested that my client had control or dominion, and they --
23 all they could prove was that he was there. There was nothing
24 else about knowledge presented.

25 **THE COURT:** Thank you, Ma'am. Regarding your motion

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1 for a directed verdict, your motion for a new trial, your
2 motion in arrest of judgment, I would respectfully decline to
3 grant those. The evidence -- though a view of the evidence
4 could have been such as you suggested, however, there was more
5 than sufficient evidence that the Defendant, because of his
6 position in the vehicle, because of his attempts to exercise
7 custody and control of the vehicle once the Defendant,
8 Rodriques had been detained, his actions when his control over
9 the vehicle that he attempted to exert was being denied by the
10 police officers, and they were going to exercise control over
11 the case, his actions in fleeing the scene, all of those can
12 be taken into consideration, and are substantial
13 circumstantial evidence which indicates knowledge, control,
14 possession of the drugs in question, therefore, I would
15 respectfully decline to grant your motions as set forth, and
16 also, as I indicated to Mr. Taylor regarding the matter to
17 include a lesser included charge I find that that was not
18 proper and reaffirm my previous ruling in that particular
19 matter.

20 MS. WILSON: Thank you, Your Honor.

21 THE COURT: Thank you very much.

22 All right, Solicitor, are you prepared to proceed with
23 the sentencing in this matter?

24 MR. DeBUSK: Your Honor, I do not have sentencing
25 sheets at the moment.

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1 THE COURT: All right, sir. Well ---

2 MR. DeBUSK: I can get them in about ten minutes if I
3 go in the back or ---

4 THE COURT: Well, I definitely want you to go get it.

5 MR. DeBUSK: Certainly.

6 THE COURT: I tell you what, we will be at ease for ten
7 minutes, and then we will come back and proceed with
8 sentencing in this matter.

9 Thank you very much.

10 (THE FOLLOWING TAKES PLACE AFTER A BREAK.)

11 THE COURT: All right, Solicitor, are you prepared to
12 go forward with sentencing in these matters?

13 MR. DeBUSK: Yes, Your Honor.

14 THE COURT: All right, sir, I'll be glad to hear from
15 you.

16 As I understand it -- and let's cover this now, so that
17 there is no question about that.

18 The State has presented sentencing sheets regarding
19 Maria Isabel Rodriques regarding trafficking in cocaine base -
20 - cocaine -- I'm sorry -- trafficking in cocaine, weight ten
21 to twenty-eight grams, second offense, and that is based on
22 what, Solicitor?

23 MR. DeBUSK: Your Honor, she actually has two prior
24 convictions for that from 2003, for P.W.I.D. cocaine, and
25 P.W.I.D. marijuana, and from a month later for possession of

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1 cocaine. I was the Solicitor who originally indicted this
2 charge to indict her for P.W.I.D. -- Your Honor, I'm sorry --
3 trafficking second, and I have not changed it, so she's
4 indicted for a second.

5 **THE COURT:** All right, the -- just so that you know,
6 the sentencing sheet, y'all have it for traf -- it's set forth
7 for trafficking cocaine base. This is trafficking in cocaine.

8 **MR. DeBUSK:** I apologize, Your Honor. The C.D.R. code
9 got me again.

10 **THE COURT:** And what I will do is correct that on the
11 sentencing sheet, correct the C.D.R. code, and then let's see
12 about the Code Section. I will need to correct the Code
13 Section also, to reflect the -- it's correct on the
14 indictment. It's just incorrect on the sentencing sheet.

15 All right. Mr. Taylor, is there any challenge to that
16 regarding trafficking in cocaine, ten to twenty-eight grams,
17 second offense?

18 **MR. TAYLOR:** None, Your Honor.

19 **THE COURT:** All right, sir.

20 And is there any objection to the Court amending the
21 sentencing sheet to reflect the proper Code Section and the
22 proper C.D.R. code?

23 **MR. TAYLOR:** No objection, Your Honor.

24 **THE COURT:** All right. Very good.

25 All right, Mr. Taylor, I'll be glad to hear from you,

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VERDICT/MOTIONS/SENTENCING

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1 sir.

2 MR. TAYLOR: Thank you, Your Honor. If it please the
3 Court, Your Honor, my client before you, Ms. Rodriques here is
4 thirty-eight years old. She has two children. One is -- I
5 believe they are both boys -- one is nineteen and one is four
6 years old. She does not have custody of them. They are with
7 some of her family members. She has a tenth grade education.
8 After leaving school she obtained her G.E.D.

9 Her parents are both from Puerto Rico, where she was
10 born, and Panama, and then after being born she moved to the
11 United States with her parents. She lived in the Charleston
12 area. She has been in the Horry County area for about two
13 years now.

14 She was working at the time of her arrest actually at
15 Melons, as a bartender. That, I believe, is why she was in
16 such close proximity to that place. They had just been over
17 at Noisy Oyster and there was an incident there that you are
18 well aware of.

19 Your Honor, she has been in jail now for about a month
20 as a result of the Bench Warrant that was issued for her, and
21 then the bondsman came off the bond.

22 Your Honor, this is a bad situation. I know the jury
23 has come back with the guilty verdict, and I know that you
24 have denied the motion for a directed verdict, and I know you
25 have denied motion for a new trial made by Ms. Wilson. It was

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1 a close case. It could have gone either way, but it just did
2 not go in Ms. Rodriques's favor.

3 There was drugs that were there in the car, Your Honor.
4 I believe it was twelve point seventeen grams. I don't -- do
5 not believe she was a dealer. I believe that -- in talking to
6 her the money she had she had from working at the bar, and did
7 not have a bank account. She makes, on an average shift
8 there, between Two Fifty and Three Hundred Dollars a night,
9 just in tips, and then especially bike week she makes more
10 than that, but she makes good money working there, Your Honor,
11 and unfortunately being in the bar industry it got to the
12 situation, or a lot of people do, where they start using
13 drugs, and it is what it is, Your Honor. She started using
14 drugs and unfortunately the amount they had was over the
15 threshold to make it trafficking.

16 I would ask the Court to consider giving her the minimum
17 sentence. I advised her upon -- what her rights were
18 regarding the trial. I would ask that the Court consider
19 that. As I said, I believe the case could have gone either
20 way, and did not go in favor of the defense. It went in favor
21 of the State, and I would ask the Court to consider the
22 hearing all the evidence, what was there, that the Court
23 consider giving her the minimum sentence.

24 **THE COURT:** All right. Now, regarding the matter of
25 Mr. Dantzler, Solicitor, you presented a sentencing sheet for

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1 trafficking in cocaine, weight ten to twenty-eight grams,
2 third offense. Again, it was -- the indictment is for that,
3 true-billed indictment is for that, but the sentencing sheet
4 reflects cocaine base, methamphetamine. I'm going to correct
5 the sentencing sheet to reflect the proper Code Section, and
6 the correct C.D.R. Code in this particular matter, which is
7 the -- which is as reflected on the indictment in this
8 particular matter.

9 First, is there any challenge to -- I'm sorry,
10 Solicitor. This is based upon what prior record of the
11 Defendant that's being charged as trafficking in cocaine of
12 ten to twenty-eight grams, third offense?

13 MR. DeBUSK: Your Honor, among other charges she has at
14 least three prior drug charges, from 1992, distribution of
15 cocaine, two counts, and a possession with intent, cocaine,
16 and then from 2004 -- 2003/2004, a possession of cocaine, and
17 possession with intent, marijuana.

18 THE COURT: Thank you very much.

19 All right, Ms. Wilson, is there a challenge from the
20 defense as to the indictment or the matter being presented to
21 the Court of trafficking in cocaine, ten to twenty-eight
22 grams, third offense?

23 MS. WILSON: No sir. There is no challenge..

24 THE COURT: All right. Is there any objection to the
25 Court correcting the sentencing sheet to reflect that it is

JURY TO DELIBERATE
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1 trafficking in cocaine and not cocaine base, including the
2 correct Code Section and C.D.R. Code?

3 MS. WILSON: No objection, Your Honor.

4 THE COURT: Very good. I'll be glad the hear from you.

5 MS. WILSON: Thank you, Your Honor.

6 Your Honor, Eric Dantzler is thirty-eight years old. He
7 is single. He tells me that he has three children. His
8 oldest son is eighteen years old. He has a daughter who is
9 six, and he has a son who is five years old.

10 He tells me that he is from the Charleston area
11 originally, that his mother, Sylvia, died there. His father
12 died last year of prostate cancer, but he still has many
13 relatives who live in the Walterboro area, and tells me that
14 he has lived there all of his life as well, prior to
15 relocating to this area.

16 Your Honor, my client does have a high school diploma.
17 He tells me that he doesn't have any secondary education, but
18 that he has worked as a heavy equipment operator, and as a
19 welder. In addition, he tells me that, at the time of his
20 arrest for this charge he was actually employed in, I believe,
21 Mt. Pleasant as a dockside logistics worker. He worked in a
22 warehouse in Mt. Pleasant for the past two to three years. He
23 tells me that he would come back and forth on the weekends.

24 Your Honor, certainly, as Paul Taylor has just stated,
25 this case could have gone either way. I sincerely believe

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1 that. It just has happened that the jury has decided that
2 these two people are guilty of this crime, Mr. Dantzler is
3 guilty of this crime, and as such, I'm going to ask the Court
4 to take into consideration the fact that it could have gone
5 either way, that this is not an actual possession case; this
6 is a constructive possession case. The jury has determined
7 that he did know about the drugs. We are pretty much stuck
8 with that, and we understand that, however, there is a minimum
9 in this charge -- in this case, twenty-five years, I believe
10 it is, no small amount of time for anyone to do under any
11 circumstances. It's also an eighty-five percent offense. He
12 understands that. We have discussed it, and we have discussed
13 what it means. Certainly that's a lengthy period of time. My
14 client is thirty-eight. He will be almost sixty years old --
15 yes, approximately. He will be over sixty years old if he
16 were to complete this sentence, if he were to live long enough
17 to complete this sentence, and certainly I would submit to the
18 Court that that's a long enough time for anyone. I hope the
19 Court is in agreement with me on this. We are asking the
20 Court for the minimum. I think that this is a circumstance
21 where he maintains that this was not his drugs, that he did
22 not know the drugs were there. We are -- we did ask for a
23 trial, and we are now -- we have to accept what the jury has
24 decided, and when -- we have taken all that into
25 consideration, and we are now asking the Court for any mercy

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VERDICT/MOTIONS/SENTENCING

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1 and leniency this Court can provide for us.

2 Thank you.

3 THE COURT: Thank you very much.

4 Regarding (08-GS-26-1201), the State of South Carolina,
5 County of Horry versus Maria Isabel Rodriques, regarding
6 trafficking in cocaine, weight ten to twenty-eight grams,
7 second offense, the sentence of the Court is, Defendant is
8 committed to the State Department of Corrections for a
9 determinat term of fifteen years.

10 The Defendant is given credit for the time she has
11 already served.

12 (08-GS-26-1538), State of South Carolina, County of
13 Horry versus Eric Dantzler, regarding trafficking in cocaine,
14 ten to twenty-eight grams, third offense,, the sentence of the
15 Court is, Defendant is committed to the State Department of
16 Corrections for a determinat term of twenty-five years.

17 The Defendant is given credit for the time he has
18 already served.

19 Thank you very much.

20 MS. WILSON: Thank you very much, Your Honor.

21 MR. TAYLOR: Thank you, Your Honor.

22 THE COURT: Thank you, sir.

23 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

24

25

WITNESSES

B Gibson Myrtle Beach Police Department

DOCKET NO. 2008-GS-26-1538

The State of South Carolina

County of Horry

Candice Lively

88509-1

COURT OF GENERAL SESSIONS

MAY, 2008 TERM

ARREST WARRANT NUMBER

J736564

CDR: 0147 44-53-0370(e)(2)(a)(3)

DOA: 1/4/2008

THE STATE

VS.

ERIC DANTZLER B/M
400 5TH AVENUE SOUTH, APT 1
MYRTLE BEACH, SC 29577-4038

DOB: 1970-07-04
SSN: 250-25-3253

ATTORNEY: Wilson, Kia T.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 15 2008

VERDICT

Indictment for

TRAFFICKING COCAINE(10-28 GRAMS)

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

FILED
HORRY COUNTY
2009 JAN -9 PM 3:53
MELANIE HUGGINS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 15, 2008, the Grand Jurors of Horry County present upon their oath:

FILED
 HORRY COUNTY
 2009 JAN -9 PM 3:53
 MEAGAN HUGGINS
 CLERK OF COURT

TRAFFICKING COCAINE (10 - 28 GRAMS)

CDR: 0147 44-53-0370(e)(2)(a)(3)

That **ERIC DANTZLER** did in Horry County on or about December 22, 2007, knowingly, sell, deliver, purchase or bring into this State, or did aid, abet, attempt, or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten (10) grams, but less than twenty-eight (28) grams, the same being a controlled substance, all within the meaning of Section 44-53-370, et.seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of Section 44-53-370(e)(2)(a), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

ORIGINAL
 JAN 17 2009

RECEIVED
 JAN 17 2009
 CLERK OF COURT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 10th, 2010


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
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(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC DANTZLER,

APPELLANT

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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<u>State v. Tabor</u> , 260 S.C. 355, 196 S.E.2d 111 (1973)	8

STATEMENT OF ISSUES ON APPEAL

Did the trial judge err in refusing to direct a verdict of acquittal for trafficking cocaine when the State failed to show that appellant exercised dominion and control over the cocaine that was found in the locked glove compartment of the car in which appellant was merely a passenger?

STATEMENT OF THE CASE

In May of 2008, the Horry County Grand Jury indicted Dantzler, along with his co-defendant, Maria Rodriquez, for trafficking cocaine, 10-28 grams, indictment #2008-GS-26-1538. On January 5, 2009, the cases were tried together before a jury with the Honorable Steven H. John presiding. The jury returned verdicts of guilty for both Dantzler and Rodriquez. Judge John treated the conviction as a third drug offense and sentenced Dantzler to 25 years. A timely notice of intent to appeal was filed on January 12, 2009. This appeal follows.

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal for trafficking cocaine when the State failed to show that appellant exercised dominion and control over the cocaine that was found in the locked glove compartment of the car in which appellant was merely a passenger.

The jury convicted Dantzler of trafficking cocaine based on 12.17 grams of cocaine found in the locked glove compartment of a car in which Dantzler was a passenger. Officer Gibson with the Myrtle Beach Police Department stopped the car based on a report from an unrelated incident that took place at the Noisy Oyster. (R. p. 2, lines 3-24). Officer Gibson testified that Maria Rodriquez was the driver and appellant, Dantzler was a passenger. (R. p. 2, lines 4-10). Rodriquez was arrested for the unrelated incident at the Noisy Oyster. (R. p. 3, lines 21-25). Officer Gibson confirmed that Dantzler was not under arrest at the time Rodriquez was arrested. (R. p. 3, lines 2-21). Officer Gibson testified that the car was registered to Bill Thompson. The officer admitted that Mr. Thompson was never investigated or even contacted in regard to the cocaine that was found in the glove compartment of his car. (R. p. 23, lines 21 – p. 24, lines 1-11). The officer testified that although Dantzler produced a valid South Carolina identification card, he did not have a valid driver's license. (R. p. 4, lines 18 – p. 5, lines 1-11). Based on the fact that the driver had been arrested and Dantzler did not have a valid driver's license, the car was towed. According to the officer, Dantzler asked them not to tow the car. (R. p. 4, lines 22 – p. 5, line 1).

Officer Pearce, another officer from the Myrtle Beach Police Department, testified that once the decision to tow the car was made, he did an inventory search. (R. p. 82, lines 9-25). Officer Pearce testified that the glove compartment was locked so he took the keys

out of the ignition and unlocked the glove compartment. (R. p. 82, lines 17-23). Officer Pearce testified that he found plastic bags with a white powdery substance inside the glove compartment. (R. p. 82, lines 23-25). The white powdery substance field tested positive for cocaine. (R. p. 12, lines 13-25). A chemist later analyzed the white powdery substance and determined that it was 12.17 grams of a cocaine mixture. (R. p. 192, lines 8-21). According to Officer Gibson, Dantzler began to walk away from the car when it was clear that it was going to be towed. (R. p. 7, lines 20-25). Officer Gibson testified that Dantzler then ran from the scene without getting his identification card back. (R. p. 7, lines 1-17). Dantzler later turned himself in at the police station. (R. p. 74, lines 13-14). In addition to the cocaine, Officer Gibson also seized one thousand seven hundred and thirty dollars (\$1,730.00) from the co-defendant driver Rodriguez's purse. (R. p. 13, lines 9-15).

At the close of the State's case, Dantzler moved for a directed verdict. Dantzler argued that he was merely present and the State failed to prove that Dantzler knew the cocaine was in the locked glove compartment. Dantzler argued that the case was a constructive possession case and the State failed to prove that Dantzler was in control of the car. (R. p. 174, lines 21 – p. 221, lines 1-11). The judge denied the motion. The judge said:

All right. Once again in this matter - - and I'm not going to review the directed verdict standard because I've already done that. This being a constructive possession case, the defendant, Eric Dantzler, was the passenger, front passenger, and occupied the front passenger seat of this vehicle. Immediately in front of the front passenger seat the drugs were found in a glove box. It appears the glove box was locked, the keys were in the vehicle, the defendant had access to the keys and the locked glove box.

Further, there has been evidence submitted by the State as to the defendant's actions when it was apparent that he was not going to be able to exercise control of the car. He made efforts to exercise control over the car, asking that the car not be towed by the police, asking that the police not retain custody of the car, suggesting alternatives to them so that the police would not have custody of the car.

When it became apparent that this was not going to take place the defendant chose to leave the scene where the drugs were found immediately in his – or near his vicinity, in a manner which would suggest actual knowledge of the presence of the drugs, but once again, it's not my job to judge the weight of the evidence, only whether or not it exists. In this case evidence clearly exists that the defendant knew about the drugs, and that he was in constructive possession of the drugs, therefore, your directed verdict motion is denied.

(R. p. 175, lines 12 – p. 176, lines 1-12). The judge erred. The State failed to prove that Dantzler was in constructive possession of the cocaine found in the locked glove compartment of the car in which he was a passenger.

On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Morgan, 282 S.C. 409, 319 S.E. 2d 335 (1984); State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498 (Ct.App.1993). The motion should be granted if the evidence merely raises a suspicion of the defendant's guilt. Barksdale, 428 S.E.2d at 501. However, if the State presents any evidence which reasonably tends to prove defendant's guilt, or from which defendant's guilt could be fairly and logically deduced, the case must go to the jury. State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993). On appeal from the denial of a motion for directed verdict, this court must view the evidence in a light most favorable to the State. State v. Schrock, 283 S.C. 129, 322 S.E. 2d 450 (1984).

One of the “key” factors in this case is the fact that Dantzler never had custody and control of the keys to the car. Dantzler was not the driver nor the owner of the car. While he was a passenger in the car where the drugs were found, the glove box was locked and the keys in the ignition. Dantzler could not have exercised dominion and control over the drugs in the locked glove box.

In order to prove constructive possession, the “State must show a defendant had dominion and control, or the *right to exercise dominion and control* over the [illegal substance].” State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) (emphasis added). Further, the State may establish constructive possession by either circumstantial or direct evidence. Id. The defendant's knowledge and possession may be inferred if the substance was found on premises under his *control*. State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987) (emphasis added).

The State’s case against Dantzler is based on his requests of the police to not tow the car combined with the fact that he left the scene where the cocaine was found. These factors do not establish that Dantzler exercised dominion and control over the cocaine in the locked glove compartment or that he had the right to exercise dominion and control over the cocaine. Mere presence is insufficient to prove constructive possession. State v. Tabor, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973).

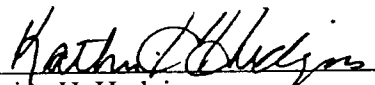
The present case is distinguished from State v. Brownlee, 318 S.C. 34, 455 S.E.2d 704 (Ct.App. 1995) because in Brownlee the State produced evidence that the defendant had control over the keys to the car where a gun and cocaine were found in the glove compartment. The South Carolina Court of Appeals found there was sufficient evidence to submit the case to the jury and wrote, “Though Officer Barry did not actually see

Brownlee open the glove compartment, he saw Brownlee seated on the passenger side of the vehicle moments before the drugs were found, engaged in some activity. In addition, Hadden [the owner of the vehicle] testified she always kept her vehicle locked, did not own a gun, and there had been no cocaine or gun kept in her car. Finally, the uncle testified he saw Brownlee run from the scene. Evidence of flight has been held to constitute evidence of guilty knowledge and intent. Dantzler's alleged flight without some evidence that he exercised dominion and control over the car is insufficient to establish constructive possession.

CONCLUSION

Based on the above argument, the conviction and sentence should be reversed and a directed verdict of acquittal entered.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

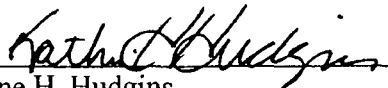
ATTORNEY FOR APPELLANT.

This 30th day of June, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 30, 2010


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

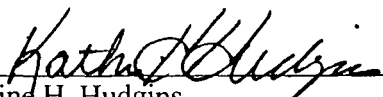
V.

ERIC DANTZLER,

APPELLANT

CERTIFICATE OF SERVICE

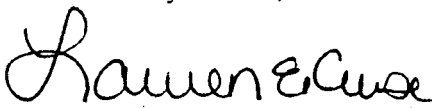
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina Catoe, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 30th day of June, 2010.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 30th day of June, 2010.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.



SCCID

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June 30, 2010

Christina Catoe, Esquire
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Eric Dantzler

Dear Christina:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH:lec

Enclosure



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Joseph L. Savitz, III, Senior Appellate Defender

June 30, 2010

Mr. Eric Dantzler, #260298
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your appeal

Dear Mr. Dantzler:

Enclosed is a copy of the Final Brief of Appellant and Record on Appeal in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH:lec

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE

RESPONDENT

v

ERIC DANTZLER

APPELLANT

FINAL BRIEF OF RESPONDENT

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<u>State v. Heath</u> , 370 S.C. 326, 635 S.E.2d 18 (2006)	5, 7
<u>State v. Hudson</u> , 277 S.C. 200, 284 S.E.2d 773 (1981)	5

STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's motion for directed verdict, where the State presented evidence supporting that Appellant was knowingly in constructive possession of the drugs.

STATEMENT OF THE CASE

Appellant was indicted in May 2008 by the Horry County Grand Jury for trafficking in cocaine, 10-28 grams. (R. p. 203-204). He was tried, along with co-defendant Maria Rodriguez, on January 5-6, 2009, before the Honorable Steven H. John. (See R. p. 1-202). The jury found both defendants guilty, and Judge John sentenced Appellant, as a third-time drug offender, to twenty-five years. (R. p. 202, lines 12-18). A Notice of Appeal was timely served and filed.

ARGUMENT

The trial court properly denied Appellant's motion for directed verdict, where the State presented evidence supporting that Appellant was knowingly in constructive possession of the drugs.

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). The trial court has a duty to deny a directed verdict motion if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Copeland, 321 S.C. 318, 326, 468 S.E.2d 620, 626 (2001). In a drug case, where the State relies upon a theory of constructive possession, the case must be submitted to the jury where the State presents direct or circumstantial evidence that the defendant knew about the presence of the drugs and that he had the right to exercise dominion and control over the drugs. State v. Heath, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006). A directed verdict should not be granted even though there is evidence that more than one person had the right to exercise control over the drugs, because constructive possession may be shared by two or more persons. See, e.g., State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980); State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 775 (1981).

The evidence presented in this case established that Appellant was knowingly in constructive possession of the drugs. Appellant was the sole passenger in a vehicle driven by his girlfriend. (R. p. 3-4; p. 80; p. 100, lines 10-13). The glove box, which was directly in front of where Appellant was sitting in the front passenger seat, contained 12.17 grams of cocaine. (R. p. 55-56; p. 124, lines 21-22; p. 157, lines 9-10). Appellant's girlfriend was driving because she was the only one of the two with a valid

driver's license. (R. p. 4, lines 19-22). However, both Appellant and his girlfriend had been in possession of that particular vehicle for several months. (R. p. 61-62; p. 68, lines 6-17; p. 109; p. 127, lines 6-9). At the time their car was stopped, the key that opened the glove box was in the ignition, within an arm's reach of Appellant. (R. p. 100, lines 2-19; p. 126, lines 7-12).

Once the car was lawfully stopped and Appellant was advised regarding the towing policy, Appellant attempted to control the disposition of the vehicle by doing everything in his power to prevent the police from towing it. (See R. p. 175, line 22 – p. 176, line 8). He made repeated entreaties to several different police officers who were present, and he also used his cell phone to try to call friends to come and pick up the vehicle. (R. p. 4-5; p. 47-49; p. 63-65; p. 81-82; p. 88-95; p. 103-105; p. 119-29). Appellant appeared unusually nervous and anxious about officers going into the vehicle. (R. p. 64, lines 1-3; p. 81-82; p. 104-105; p. 119, lines 4-8; p. 125-26).

When Appellant learned that the car was going to be towed despite his vehement protests, he began "side-stepping" away from the vehicle, creating distance between himself and the officers. (R. p. 6-7; p. 35; p. 48-49; p. 63-64). When the officer performing a routine inventory opened the glove box, Appellant immediately went into a "full sprint, running," without bothering to retrieve his state identification card back from the officers. (R. p. 7; p. 25; p. 33; p. 35; p. 39-41; p. 50; p. 64, line 10; p. 83; p. 104-105). Appellant would not have known to run at that precise moment unless he knew that drugs were in the glove box. (See R. p. 49; p. 63; p. 125-29). Appellant escaped from the officers chasing him and disappeared for several days. (R. p. 7-8; p. 50-53; p. 64, line 20 – p. 65, line 3; p. 83-88). He later turned himself in to police after hiring a lawyer. (R. p.

73, lines 1-23). Nearly two-thousand dollars in cash was found in Appellant's girlfriend's purse, which had been in the car with them. (R. p. 13-16). Appellant's girlfriend was also arrested and charged with trafficking cocaine. (See R. p. 189, lines 6-11).

The evidence described above supports that Appellant was knowingly in constructive possession of the cocaine in the glove box. Appellant fled the scene at top speed at the precise moment the officer opened the glove box, clearly illustrating his guilty knowledge of the drugs inside. Further, Appellant was in constructive possession of the cocaine. His efforts to *relinquish* control of the vehicle to a third party to avoid towing illustrated that he had the *right* to exercise dominion and control. See State v. Heath, supra. In addition, the drugs were located directly in front of him in the glove box. He could have exercised control over the drugs at any moment by simply obtaining the glove box key from his girlfriend, who was right beside him. The fact that the glove box was locked did not inhibit Appellant's right to exercise dominion and control over the drugs, where both the drugs and the key to the glove box were within his immediate reach in a car he and his girlfriend had possessed for a substantial period of time. See State v. Halyard, supra. Accordingly, the trial court correctly denied Appellant's directed verdict motion, and properly submitted the case to the jury.

CONCLUSION

Based upon the foregoing, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

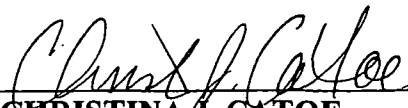
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ATTORNEYS FOR RESPONDENT

June 29, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

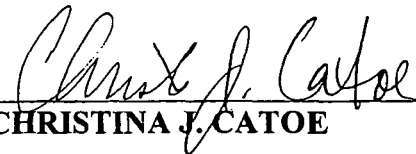
v.

ERIC DANTZLER,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


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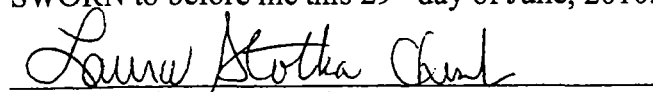
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **KATHRINE H. HUDGINS, ESQUIRE**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **29th day of June, 2010**.


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SWORN to before me this 29th day of June, 2010.


Notary Public for South Carolina.
My Commission Expires: 3-10-18