

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case Nos. 2009-CP-26-1281

2009-CP-26-3127

2009-CP-26-3128

(Court of Appeals Case No. 2014-001344)

RECEIVED

MAR 05 2015

SC Court of Appeals

J. Gregory Hembree, on Behalf of the Horry County Police Department,
Respondent,

v.

Taurus .38 Special SN: sg53109 1994 Monaco RV VIN: 1RF120611R1010972 and
One Thousand Eight Hundred and Forty Five Dollars (\$1,845.00) Defendant Property,

Michaela Albin, Individually and as Personal Representative of the Estate of Michael J. Albin,
Appellant.

RECORD ON APPEAL

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Other Counsel of Record

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2009 SEP 23 AM 6:55 CASE #: 2009-CP-26-3128

MELANIE JOGGINS
CLERK OF COURT

J. Gregory Hembree, et al

Michael James Albin

VS.

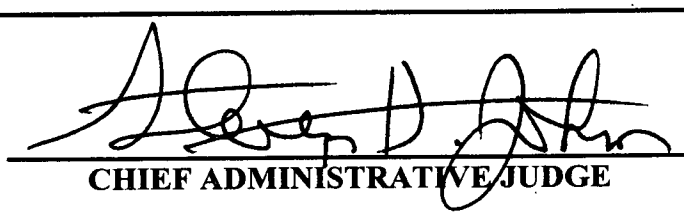
PLAINTIFF(S)

DEFENDANT(S)

ORDER
DISPOSITION OF MOTIONS

Defendant's Motion for Summary Judgment is GRANTED as to paragraph seven (7) and
DENIED as to the remaining portion of the Complaint.

AND IT IS SO ORDERED.


CHIEF ADMINISTRATIVE JUDGE

DATED AT CONWAY, SOUTH CAROLINA THIS 22nd DAY OF SEPTEMBER, 2009.

Donna E. Elder

David J. Canty

PLAINTIFF'S ATTORNEY(S)

DEFENDANT'S ATTORNEY(S)

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

J. GREGORY HEMBREE ON)
BEHALF OF HORRY COUNTY)
POLICE DEPARTMENT)
PLAINTIFF)

V.)

TAURUS .38 SPECIAL SN:sg53109)
1994 MONACO RV)
VIN: 1RF120611R1010972)
AND ONE THOUSAND EIGHT)
HUNDRED AND FORTY FIVE)
DOLLARS (\$1,845.00))
DEFENDANT PROPERTY)

MICHAEL JAMES ALBIN)
DEFENDANT)

IN THE COURT OF COMMON PLEAS
CASE NO: 2009-CP-11-1281/2009-CP-11-3128/2009-CP-
26-3127

FINAL ORDER

FILED
HORRY COUNTY
2011 AUG 12 PM 2:34
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter is before the Court on plaintiff's complaint for civil forfeiture of the defendant properties and defendant's counterclaim for damages as a result of the property seizure.

The plaintiff appeared through their attorney Donna Elder, the defendant appeared with his attorney David Canty.

Prior to the trial of this matter the Court heard several pretrial motions made by the defendant.

The defendant made a motion to dismiss the plaintiff's complaint as it related to the 1994 Monaco RV (defendant property) based upon the State's admission that the weight of the illegal controlled substances found on defendant property was less than one pound of marijuana as prescribed by South Carolina Code of Laws as amended, section 44-53-520 (a)(6). This motion was previously before Judge Steven John and the Court at that time ruled that the State was not precluded from going forward against the RV (defendant property) under the other items of that statutory section specifically 44-53-520 (a)(3) and (4). There was no appeal of that ruling nor a subsequent motion for reconsideration filed. The Court believes that ruling is now the law governing this case and declines to rule differently at this time.

The parties consent that all three matters pending against the defendant should be consolidated for purposes of one trial.

The defendant made a motion and also counterclaimed to have other monies that were seized by the State Law Enforcement Division a part of this trial. The Court declines that motion because they were not properly named a party in this matter. However the Court does hold that the defendant is not barred at this time from filing an appropriate action to seek the return of those funds if necessary.

The State called several agents and officers from both the State Law Enforcement division and Horry County Police Department as well as introduced several pieces of evidence to include illegal controlled substances. The officers and agents testified that they were investigating gambling violations at a business owned by the defendant. During the course of this investigation officers received information that the defendant may also be involved in the distribution and possession of marijuana from the RV (defendant property) parked directly behind the business.

A search warrant was obtained for the business to include the RV. Officers testified that upon initial search of the RV they located 4 bags of marijuana, items of paraphernalia and a Taurus .38 special (defendant property). The RV was towed to the Horry County Police Department. Upon subsequent entry for asset preservation an officer testified that he located an additional bag of marijuana and One Thousand Eight hundred dollars (\$1,845.00) in the RV refrigerator. Officers seized the RV based upon its use as a container for illegal controlled substances and as property used to facilitate distribution as provided by statute. The weapon was seized as property used to facilitate distribution of illegal narcotics and/or traceable to an exchange or proceeds from an exchange and the monies were seized as being in close proximity to the illegal drugs.

The defendant presented testimony and financial documents showing legitimate sources of income. The defendant did admit to purchasing and distributing marijuana in the RV (defendant property). Defendant testified that when he provided marijuana to others he did not receive money. The defendant also testified and provided incident reports as to the reason behind the purchase of the Taurus .38 special. The defendant acquired the weapon as protection after several burglaries and larcenies from his business.

Based upon the testimony and evidence presented by both parties the Court makes the following findings:

1. The Horry County Police Department had probable cause under Section 44-53-520 to seize the defendant properties;
2. The defendant did by legal definition distribute marijuana and use marijuana from and in the RV defendant property. Marijuana was located in the defendant property as well;
3. The plaintiff did present sufficient evidence to establish probable cause to seize the Taurus .38 special however the defendant did rebut the plaintiff's case by a preponderance of the evidence that the weapon was not connected to illegal narcotics;
4. The plaintiff did present sufficient evidence to establish probable cause to seize the monies (\$1,845.00) from the RV however the defendant did rebut the plaintiff's case by a preponderance of the evidence and show that the monies came from legitimate income sources;

WHEREFORE IT IS ORDERED:

- a. The plaintiff shall return One Thousand Eight Hundred and Forty Five dollars (\$1,845.00) to the defendant;
- b. The plaintiff shall return the Taurus .38 special weapon after proper verification that defendant can legally possess such weapon;
- c. That Horry County Police Department is the seizing agency and that the 1994 Monaco RV was used as a container and in the facilitation of the distribution of illegal substances and should therefore be forfeited under Section 44-53-520 (a)(3) and (4) to the seizing agency and the

South Carolina Department of Motor Vehicles shall issue the proper title documents to accomplish this transfer;

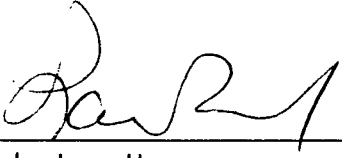
d. If the RV defendant property is further reduced to proceeds then it shall be distributed as follows by statute:

- i. The first One thousand dollars to the seizing agency;
- ii. Thereafter Seventy Five percent (75%) to the seizing agency, Twenty Percent (20%) to the 15th Judicial Circuit Solicitor's Office and Five Percent (5%) to the State of South Carolina.

And it is so ordered.

Conway South Carolina

Dated: 8-12-2011



Judge Larry Hyman

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CASE NOS: 2009-CP-26-1281
2009-CP-26-3127
2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

V.

ONE THOUSAND EIGHT HUNDRED
FORTY-SEVEN DOLLARS (\$1,847.00),
U.S. CURRENCY; 1994 MONACO RV,
SN: VIN: 1RF120611R1010972; AND A
TAURUS 38 SPECIAL PISTOL,
SN: SG53109,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

ORDER

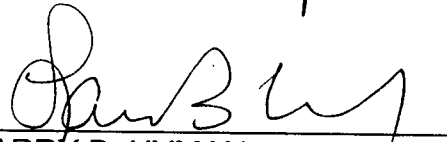
FILED
HORRY COUNTY
2012 APR 10 AM 9:32
MELANIE HUGGINS-WARD
CLERK OF COURT

The Defendant filed a Motion for Reconsideration of the Court's Order dated August 12, 2011. The Motion was heard before the Court on January 11, 2012.

After review of the arguments presented by the defense and the material filed for the Court's review, the Court declines to reverse the decision made on August 12, 2011.

WHEREFORE, all matters contained in the Order of the Court dated August 12, 2011 shall remain as previously ordered and the defense Motion for reconsideration is hereby denied.

AND IT IS SO ORDERED this 5th day of April, 2012.

A handwritten signature in black ink, appearing to read "Larry B. Hyman", written over a horizontal line.

LARRY B. HYMAN
COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT
09-CP-26-1281, 3127, 3128

J. Gregory Hembree, as Solicitor,)
of the Fifteenth Judicial Circuit,)
o/b/o Horry County Police)
Department,)

Plaintiff,)

v.)

Michael James Albin,)
Defendant.)

TEMPORARY ORDER

FILED
HORRY COUNTY
2013 DEC -2 PM 2:29
MELANIE HUGGINS-WARD
CLERK OF COURT

NOT ADGQUATLY
refused to
This matter came before me for a damages hearing on November 12, 2013. After hearing
the Defendant's evidence and part of the Plaintiff's evidence it became apparent that neither side
had admissible expert testimony regarding the value of the motor home. Further, the Plaintiff has
NOT ADGQUATLY refused to respond to Defendant's discovery dated October 16, 2013. Finally, Michaela Albin is
substituted as Defendant in her capacity as Personal Representative of the estate of her father,
Michael Albin. It is, therefore,

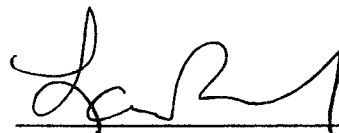
Ordered that this matter be rescheduled before me in thirty days, and it is

Further Ordered that Plaintiff fully respond to all outstanding discovery in a timely
manner and any additional discovery shall be answered within fifteen (15) days, and it is

Further Ordered that Michaela Albin as personal representative of the estate of Michael
Albin be substituted as Defendant, and

It Is So Ordered.

Cowley, S.C.
November 21, 2013



Larry B. Hyman, Jr.
Judge of the Court of Common Pleas
of the Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
J. GREGORY HEMBREE ON)
BEHALF OF HORRY COUNTY)
POLICE DEPARTMENT)
PLAINTIFF)

V.)

TAURUS .38 SPECIAL SN:sg53109)
1994 MONACO RV)
VIN: 1RF120611R1010972)
AND ONE THOUSAND EIGHT)
HUNDRED AND FORTY FIVE)
DOLLARS (\$1,845.00))
DEFENDANT PROPERTY)

MICHAELA ALBIN, INDIVIDUALLY)
AND AS PERSONAL)
REPRESENTATIVE OF THE)
ESTATE OF MICHAEL JAMES)
ALBIN)
DEFENDANT)

IN THE COURT OF COMMON PLEAS

CASE NO: 2009-CP-11-1281/2009-CP-11-3128/2009-CP-
26-3127

FINAL ORDER

2014 MAY 15 PM 2:31
CLERK OF COURT

This matter is before the Court following remitter by the Court of Appeals for determination of the value of the 1994 Monaco RV to be paid by the plaintiff's to the defendant.

On January 24, 2009 Horry County Police Department (hereinafter HCPD) in conjunction with other law enforcement agencies conducted an undercover operation involving gambling and illegal drugs at a local establishment. At the conclusion of that investigation the defendant Michael Albin was arrested. In conjunction with the arrest for the illegal drugs, HCPD seized the defendant property under the civil forfeiture statute.

On September 22, 2009, Judge Stephen John heard a motion for summary judgment filed by the defendant. At that hearing the State agreed to withdraw the cause of action alleging forfeiture based upon the weight of the narcotics. As to the other causes of action, the Court declined to grant summary judgment.

Judge Larry Hyman conducted a bench trial on this matter July 28, 2011. A final order was issued August 12, 2011, granting seizure of the 1994 Monaco RV to the plaintiff.

The defendant through his attorney filed a motion to reconsider on August 26, 2011. The Court heard this motion January 11, 2012 and issued an Order denying the motion on April 10, 2012. A notice of appeal was filed by the defendant on April 26, 2012.

The Court of Appeals heard oral arguments on April 11, 2013 issuing an Order reversing the award of the 1994 Monaco RV on June 12, 2013. Remittitur followed on July 2, 2013.

HCPD in the interim had sold the 1994 Monaco RV and were not able to return the property to the defendant when remittitur was received.

Defendant requested a hearing for a determination of damages to include attorney fees.

A hearing was scheduled November 12, 2013. Partial testimony was received from both the defense and the state. The Court concluded that expert testimony was needed to determine the value of the vehicle and suspended the trial allowing both parties to seek out additional witnesses in this regard and issued an order requiring the State to produce certain items to the defendant.

The Court reconvened on January 31, 2014 and heard additional testimony from both parties and this Order follows.

After review of the testimony and exhibits the Court makes the following determinations:

1. The most credible evidence of value for the motor home comes from the testimony of Daniel Knight, Sales Manager for Camping World. He reviews values of motor homes on a regular basis. He used the NADA guide for a period of January through April 2009, which is inclusive of the actual seizure date;
2. The retail value of a forty (40) foot three-hundred (300) horsepower Crown Royal series by Monaco Coach Corporation was Fifty Six thousand ninety dollars (\$56,090.00). The options to add value are the tow package (valued at \$1000.00), Custom Signage (valued at \$500.00), and the CB radio (valued at \$50.00), added together bring the total amount to Fifty Seven Thousand Six Hundred and Forty dollars (\$57,640.00). Defendants testimony regarding additional options were incorrect and the Court declines to give any added value to these;
3. Attorney fees to the defendant are not appropriate in this case. Under South Carolina Code Section 15-77-300, Defendant would be entitled to reasonable attorney fees upon showing each of the following: that the State's actions were without substantial justification, defendant was the prevailing party and there are no special circumstances that would make the award of attorney's fees unjust. Defendant is the prevailing party and argument may certainly be made that the actions of the state in seizing the motor home lacked substantial justification. However, equally a persuasive argument may be made that the state acted with substantial justification. An agency's loss on the merits does not create a presumption that its position was not substantially justified. The Court looks to the agency's position in litigating the case to determine whether it is one which has a reasonable basis in law and fact (Video Gaming Consultants, Inc, v. S.C. Department of Revenue, 2004 WL 884833, S.C. App, 2004);
4. The Court does not need to determine substantial justification because the defendant's claim for attorney's fees fails on the issue of existence of special circumstances. Seizure was the result of the defendant's use of the motor home to distribute and/or use illegal drugs. The mere fact that the defendant was able to dispose of his criminal charge through an intervention program is of no importance to the Court. It is undisputed that the defendant invited undercover agents

who were investigating defendant's illegal gambling into the motor home to use and/or buy marijuana.

WHEREFORE IT IS ORDERED,

- a. HCPD shall pay to the defendant the sum of Fifty Seven Thousand six hundred and forty dollars representing the value of the 1994 Monaco Motor Home no longer in their possession.

And it is so ordered.

Conway South Carolina

Dated: 5-12-14



Judge Larry Hyman

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2008-CP-26-_____

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

V.

TAURUS 38 SPECIAL PISTOL
SN: SG53109,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

FILED
HORRY COUNTY
2009 FEB 10 PM 3:25
MELANIE HUGGINS
CLERK OF COURT

COMPLAINT

Plaintiff would respectfully allege as follows:

I.

Plaintiff is the Circuit Solicitor of the Fifteenth Judicial Circuit of the State of South Carolina on behalf of the Horry County Police Department and is authorized by §44-53-530 of the Code of Laws of South Carolina 1976 as amended, to initiate this Complaint for the forfeiture of the Defendant Property.

II.

Defendant property is described as follows:

TAURUS 38 SPECIAL PISTOL
SN: SG53109

III.

That on January 24, 2009, Horry County Police Department Narcotics Agents assisted SLED with the service of a search warrant at 8950 Hwy707, Myrtle Beach, SC, 29588. During the service of the warrant, agents found five separate bags of a green leafy substance which field tested positive for THC, the active ingredient in marijuana, weighing 137 grams in a cabinet, and the Defendant Property in an RV on the cartilage of the property that was listed on the warrant. During the investigation, it was determined that the RV was being used to facilitate the sale and use of marijuana. This information was acquired through the use of an undercover agent. The Defendant Property was seized pursuant to statute.

IV.

That the Defendant Property is property which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation or trafficking of various controlled substances as defined in Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976 as amended.

V.

That the Defendant Property is property of value furnished or intended to be furnished by any person in exchange for a controlled substance, or property traceable to any exchange.

WHEREFORE, the plaintiff prays that:

1. The Defendant Property be declared forfeited to the State of South Carolina pursuant to §44-53-520 of the Code of Laws of South Carolina 1976, as amended;
2. The Horry County Police Department be declared the seizing agency;
3. The Court transfer the Defendant Property to the seizing agency pursuant to §44-53-520 of the Code of Laws of South Carolina 1976, as amended.



Donna E. Elder
Attorney for the Plaintiff
Post Office Box 1276
Conway South Carolina 29528
(843) 915-8643

Date

2/9/09

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2009-CP-26-_____

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

V.

ONE THOUSAND EIGHT HUNDRED
FORTY-SEVEN DOLLARS (\$1,847.00),
U.S. CURRENCY,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

COMPLAINT
J. GREGORY HEMBREE
FIFTEENTH JUDICIAL CIRCUIT
HORRY COUNTY
MAR 27 AM 10:20

Plaintiff would respectfully allege as follows:

I.

Plaintiff is the Circuit Solicitor of the Fifteenth Judicial Circuit of the State of South Carolina on behalf of the Horry County Police Department and is authorized by §44-53-530 of the Code of Laws of South Carolina 1976, as amended, to initiate this Complaint for the forfeiture of the Defendant Property.

II.

Defendant property is described as follows:

ONE THOUSAND EIGHT HUNDRED FORTY-SEVEN DOLLARS
(\$1,847.00), U.S. CURRENCY.

III.

That on January 30, 2009 while searching the refrigerator inside the Defendant's 1994 Mona Model SIG6 recreational vehicle, a white plastic bag was found containing approximately 38 grams of a green leafy substance which field tested positive for THC the active ingredient in marijuana. Beside the white plastic bag was a container which contained the Defendant Property. The Defendant property was seized pursuant to statute.

IV.

That the Defendant Property is monies furnished or intended to be furnished in an exchange for a controlled substance or is proceeds traceable to an exchange in violation of Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976, as amended.

V.

That the Defendant Property is monies in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances in violation of Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976 as amended.

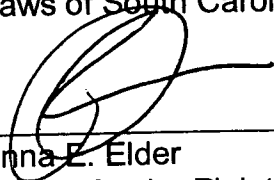
VI.

That the Defendant Property is property which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation or trafficking of various controlled substances as defined in Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976 as amended.

WHEREFORE, the Plaintiff prays that:

1. The Defendant Property be declared forfeited to the State of South Carolina pursuant to §44-53-520 of the Code of Laws of South Carolina 1976, as amended;
2. The Horry County Police Department be declared the seizing agency;

3. The Court transfer the Defendant Property to the seizing agency pursuant to §44-53-520 of the Code of Laws of South Carolina 1976, as amended.



Donna E. Elder
Attorney for the Plaintiff
Post Office Box 1276
Conway South Carolina 29528
(843) 915-8643

Date:

3/25/09

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CASE NO: 2009-CP-26-

3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

V.

1994 MONACO RV TAN IN COLOR,
VIN: 1RF120611R1010972,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

COMPLAINT

HORRY COUNTY
09 MAR 27 AM 10:21
MELANIE HUGGINS
CLERK OF COURT

Plaintiff would respectfully allege as follows:

I.

Plaintiff is the Circuit Solicitor of the Fifteenth Judicial Circuit of the State of South Carolina on behalf of the Horry County Police Department and is authorized by §44-53-530 of the Code of Laws of South Carolina 1976 as amended, to initiate this Complaint for the forfeiture of the Defendant Property.

II.

Defendant property is described as follows:

1994 MONACO RV TAN IN COLOR
VIN: 1RF120611R1010972

III.

The Defendant is the title owner of the Defendant Property and there are no lienholders.

IV.

That on January 24, 2009, Horry County Police Department Narcotics Agents assisted SLED with the service of a search warrant at 8950 Hwy 707, Myrtle Beach, SC, 29588. During the service of the warrant, agents found five separate bags of a green leafy substance which field tested positive for THC, the active ingredient in marijuana, weighing 137 grams in a cabinet, and the Defendant Property in an RV on the cartilage of the property that was listed on the warrant. During the investigation, it was determined that the RV was being used to facilitate the sale and use of marijuana. This information was acquired through the use of an undercover agent. The Defendant Property was seized pursuant to statute.

V.

That the Defendant Property is property which is used or which has been positioned for use as a container for property described in Article 3 Chapter 53, Title 44 of the South Carolina Code of Laws, 1976 as amended.

VI.

That the Defendant Property is property which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation, or trafficking in controlled substances described in Article 3, Chapter 53, Title 44 of the South Carolina Code of Laws, 1976 as amended.

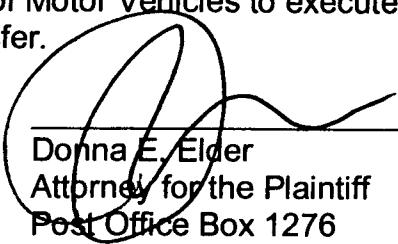
VII.

That the Defendant Property is a conveyance which is used or intended for use unlawfully to conceal, contain or transport or facilitate the unlawful concealment, possession, containment or transportation of controlled substances and their compounds as defined in Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976 as amended.

WHEREFORE, the Plaintiff prays that:

1. The Defendant Property be declared forfeited to the State of South Carolina pursuant to §44-53-520 of the Code of Laws of South Carolina 1976, as amended;
2. The Horry County Police Department be declared the seizing agency;
3. The Court transfer the Defendant Property to the seizing agency pursuant to §44-53-520 of the Code of Laws of South Carolina 1976, as amended.

4. The Court directs the Department of Motor Vehicles to execute the documents necessary for this transfer.



Donna E. Elder
Attorney for the Plaintiff
Post Office Box 1276
Conway South Carolina 29528
(843) 915-8643

Date: 3/25/09

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CASE NO. 09-CP-26-3128

J. Gregory Hembree,)
)
Plaintiff,)

vs.)

1994 Monaco RV)
VIN: 1RF120611R1010972)
)
Defendant Property,)

Michael J. Albin,)
)
Defendant.)

ANSWER & COUNTERCLAIM

FILED
HORRY COUNTY
2009 JUN 22 PM 12:58
MELANIE HUGGINS
CLERK OF COURT

The Defendant, Answering the Complaint of the Plaintiff, would respectfully show unto this Honorable Court as follows:

For a First Defense

1. That any and all material allegations of the Complaint not hereinafter admitted, qualified or explained are hereby denied and strict proof is demanded thereof.
2. That that portion of paragraph 1 of the Complaint which alleges that the Plaintiff is the Solicitor of the Fifteenth Judicial Circuit is admitted and the remaining allegations therein are denied *in toto* and strict proof is demanded thereof.
3. That paragraph 2 of the Complaint requires no response.
4. That that portion of paragraph 3 of the Complaint which alleges that Defendant is the owner of the subject property is admitted and the remaining allegations therein are denied *in toto* and strict proof is demanded thereof.

5. That paragraphs 4, 5 and 6 of the Complaint are denied *in toto* and strict proof is demanded thereof.

For a Second Defense and Counterclaim

(Conversion)

6. That all of the foregoing allegations are hereby incorporated herein by reference as if fully set forth verbatim.

7. That on or about January 24, 2009 agents of the Horry County Police Department seized and removed from Defendant's premises the subject property herein.

8. That the said seizure was unlawful, without legal process and in defiance of the Defendant's legal right to exercise dominion and control over the subject property.

9. That despite demand the said agency and the Horry County Solicitor's Office have failed and refused to return the said property to the Defendant nor to pay the taxes, insurance and debt service thereon during their unlawful possession.

10. That as a direct and proximate consequence of the Plaintiff's tortious conduct the Defendant has suffered the loss of use thereof and other damages in the full and just sum of Ninety Four Thousand & 00/100 (\$94,000.00) Dollars actual damages for which the Defendant is informed and believes that he is entitled to Judgment against the Plaintiff.

WHEREFORE, having Answered the Complaint of the Plaintiff, the Defendant prays that this Honorable Court inquire into the matters herein alleged and

- a.) Dismiss the Complaint with prejudice;
- b.) Grant Judgment in favor of the Defendant in the full and just sum of Ninety Four Thousand & 00/100 (\$94,000.00) Dollars actual

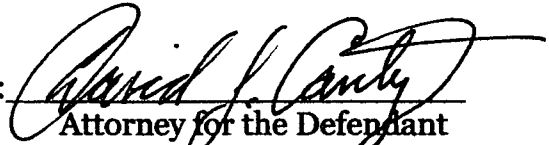
damages, plus costs and a reasonable attorney's fee;

- c.) Grant such other and further relief as this Honorable Court deems just and proper.

DAVID J. CANTY, P.A.

Myrtle Beach, S.C.
June 4, 2009

by:



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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

2009-CP-26-1281

2009-CP-26-3128

2009-CP-26-3127

J. GREGORY HEMBREE O/B/O)
HORRY COUNTY POLICE DEPARMENT,)

-vs-

MICHAEL JAMES ALBIN,)
Defendant.)

July 28, 2011

B E F O R E:

HONORABLE LARRY B. HYMAN

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

DONNA ELDER, Esquire
Attorney for the Plaintiff

DAVID J. CANTY, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

I-N-D-E-X

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1 there are three cases here.

2 Miss Elder, is there any significance to the
3 fact you filed this -- is it three or four?

4 MS. ELDER: It was three, Your Honor. Back
5 in '09 it was our understanding that we had to file
6 separate actions for each separate piece of
7 property because we had currency, we had a weapon
8 and we had a vehicle.

9 THE COURT: Okay. And are we, is it your
10 understanding that we're going to approach these
11 matters today under consolidation of the three
12 cases?

13 MS. ELDER: Yes, sir, Your Honor, and I made
14 a mistake. We had some motions I believe in front
15 of Judge John at one time. I thought that had been
16 addressed but may not have been.

17 THE COURT: I don't know.

18 MS. ELDER: We had, I believe, a summary
19 judgment motion by Mr. Canty that we dealt with and
20 I thought we had dealt with the consolidation at
21 that time but, yes, sir, the same facts and
22 circumstances would support each seizure.

23 THE COURT: Tell me about that, Mr. Canty,
24 what is your position on this so I will know?

25 MR. CANTY: Absolutely they should be tried

1 together for purpose of judicial economy, they
2 should have been filed as one action as well.

3 THE COURT: All right.

4 All right, Mr. Canty, just briefly tell me
5 what your position is in this matter.

6 MR. CANTY: Well, Your Honor, with regard to
7 the transaction, the perpetrator of that was a
8 gentleman by the name Michael Baker and on the
9 audio recordings of that transaction he says
10 repeatedly that he did not get this marijuana from
11 my client.

12 With regard to the agents' discussion of
13 buying marijuana from my client, that is indeed in
14 their report. However, when you listen to the
15 audio tape upon which the report is based you do
16 not find that. The search warrant that was
17 executed was defective on its face, it was premised
18 upon a search warrant statute found in the animal
19 cruelty chapter of Title 47 and it is noteworthy
20 that although SLED contends this was a drug
21 investigation, at the time they went to Judge
22 Blanton for the warrant their affidavit makes
23 absolutely no mention of drugs.

24 Further, and I think most significant, the
25 General Assembly in its wisdom has stated very

1 clearly and very specifically that in order to
2 seize a motor vehicle you must have one pound or
3 more of marijuana, and I believe it is undisputed
4 there is nowhere close to half a pound of marijuana
5 involved in this case and that alone is fatal to
6 the RV seizure.

7 THE COURT: All right.

8 Okay, Miss Elder, I believe we have some
9 motions, is that correct?

10 MR. CANTY: Yes, Your Honor.

11 THE COURT: All right, Mr. Canty, they are
12 your motions.

13 MR. CANTY: First of all, with regard to the
14 motion in limine, the caption of this case
15 indicates the plaintiff is J. Gregory Hembree,
16 Solicitor, Fifteenth Judicial Circuit, on behalf of
17 the Horry County Police Department. These actions
18 are all premised upon the forfeiture statute found
19 in Chapter 53, Title 44 of the South Carolina Code,
20 and as I mentioned in my pretrial brief, the
21 statute says --

22 THE COURT: And this the 44-53 --

23 MR. CANTY: 520(H).

24 THE COURT: All right. I just happen to be
25 looking at that. Okay.

1 thing that does give me a little concern, and I
2 think that certainly they may do that and for that
3 reason I believe that part of your argument fails
4 but, Miss Elder, I look at (A)(6) under 44-53-520,
5 and it says no motor vehicle may be forfeited to
6 the State under this item unless it is used,
7 intended for use or in a manner facilitating
8 violation of 44-53-370(A) involving at least one
9 pound or more of marijuana, and then it goes on.

10 I assume we're just talking about marijuana,
11 is that correct?

12 MS. ELDER: That's correct, Your Honor.

13 THE COURT: It could be as little as ten
14 grams of cocaine but if we're talking about
15 marijuana, it says at least one pound or more of
16 marijuana. Tell me how that comes into play under
17 44-53-520, which is again (A)(6). Mr. Canty says
18 you didn't get a pound, so this property is not
19 subject to seizure as a matter of law as stated in
20 the statute, and that does give me a little bit of
21 concern. Talk to me about that, how much marijuana
22 did you get?

23 MS. ELDER: Your Honor, it was --

24 THE COURT: That does not affect the money,
25 there is nothing about the money, but that is, the

1 Legislature says, you know, that is all
2 conveyances, all trailers, aircraft, motor
3 vehicles, water-going vessels intended for the
4 unlawful use, excuse me, unlawfully to conceal,
5 contain, transport import, facilitate the unlawful
6 concealment, possession, containment, again that is
7 the container statute, manufacture or
8 transportation of controlled substances and their
9 compounds except otherwise provided, must be
10 forfeited to the State. No motor vehicle may be
11 forfeited to the State under this item unless it is
12 used or intended for use or in a manner facilitates
13 a violation of 44-53-370 and involves at least one
14 pound of marijuana, and it goes on to name
15 different amounts for other types of drugs.

16 How does that come into play here? How do
17 we get past, you have to get past, you have to have
18 a pound of marijuana, as the Legislature says. I
19 mean, there might be something else in there and I
20 rely on you to point that out to me, how do we get
21 around that particular statute?

22 MS. ELDER: Yes, sir. To address the first
23 question, Your Honor, the drug report, there are
24 five bags equaling weight of 26 grams and there was
25 one bag of 33 grams, a little less than a pound.

1 We did actually argue this before Judge John on Mr.
2 Canty's motion for summary judgment. I did as a
3 result of that, Your Honor, because --

4 THE COURT: Mr. Canty, that's a pound.

5 MR. CANTY: That's four ounces, Your Honor.

6 THE COURT: I'm sorry, 28 to the ounce.

7 MS. ELDER: Yes, sir. We argued this, Your
8 Honor. As a condition, in the summary judgment
9 motion, I did agree on the record with Judge John
10 to strike Section 7 of our complaint, which deals
11 with that particular Subsection 6.

12 THE COURT: Okay. All right. Then how do we
13 go back to a vehicle on this, then?

14 MS. ELDER: Because, Your Honor, as I argued
15 in that motion, and Judge John didn't grant summary
16 judgment motion for this very reason, because of
17 statutory construction on Number 6, Your Honor, the
18 language that Your Honor read about halfway through
19 that statute, it says no motor vehicle may be
20 forfeited to the State under this item. Item
21 refers to Number 6 only. It does not refer to the
22 section, it does not refer to the chapter, it does
23 not refer to the title, Your Honor, it specifically
24 says item.

25 THE COURT: Okay.

1 MS. ELDER: And the legislative intent, Your
2 Honor, I cannot proceed under item Number 6 for a
3 vehicle but that does not preclude me from
4 proceeding under the other seven that are listed.

5 THE COURT: All right. Which one is that?
6 Which one are you proceeding under?

7 MS. ELDER: Your Honor, we're proceeding
8 under Number 3, container, and Number 4, any manner
9 used to facilitate.

10 THE COURT: Well, what do you say about that,
11 Mr. Canty?

12 MR. CANTY: Under the Solicitor's theory,
13 Your Honor, the one pound limitation is meaningless
14 and would never apply. Every container is not
15 necessarily a motor vehicle.

16 THE COURT: I understand, and I'm not really,
17 I might not necessarily agree with the Solicitor's
18 interpretation or Judge John's interpretation, I
19 mean, I may not agree to that. I may agree with it
20 after further research. It is sort of a novel
21 approach to the statute but this is what gives me a
22 problem here. That was raised in a summary
23 judgment motion, okay, Judge John apparently made a
24 finding that 44-53-520(A)(6) does not preclude her
25 from proceeding under 44-53-520(3) or 44-53-520(4).

1 MS. ELDER: Yes, sir.

2 THE COURT: Doesn't that make that the law of
3 the case? How can I, if Judge John has made that
4 ruling and said she can go under three or four and
5 for that reason the summary judgment is denied, as
6 I said, I don't know that I would have made that
7 ruling but am I not bound by it? He is a circuit
8 judge and he has said this is the law of the case.
9 Was it appealed?

10 MR. CANTY: No, Your Honor.

11 THE COURT: Well, tell me how I'm going to
12 deal with that, Mr. Canty, how do I step around
13 that, how do I override Judge John's order?

14 MR. CANTY: Your Honor, it's a different
15 issue before you here today. That was a motion for
16 summary judgment.

17 THE COURT: I understand. Based on this
18 statute, though, was it not?

19 MR. CANTY: Yes.

20 THE COURT: Okay. Well, are you not asking
21 me essentially to give you another bite at the
22 apple? Isn't this a motion for summary judgment
23 based on the statute and hasn't Judge John already
24 ruled on it?

25 MR. CANTY: Your Honor, I would submit that

1 if he had granted it in part or if it had been the
2 Solicitor's motion that was granted, then I think
3 that would have an effect on the trial here today.
4 It was a defense motion that was denied.

5 THE COURT: I understand.

6 MR. CANTY: Now, with regard to the
7 application of Subsection 3, again, as I said, if
8 that is the law, then the General Assembly's
9 legislation you must have a pound is rendered
10 meaningless, void and of no effect because every
11 motor vehicle is a container.

12 THE COURT: And I'm somewhat inclined to
13 believe that it was put in there for a reason and
14 that is what it means but I'm back where I started.

15 Has anybody got a copy of the order for me,
16 Judge John's order?

17 MS. ELDER: I don't have an order, I have
18 never seen an order from that hearing, Your Honor.

19 THE COURT: Has anybody got a copy of the
20 motion, anybody got anything like that?

21 MR. CANTY: I believe I have a copy of the
22 motion and I don't think a transcript was ever
23 ordered.

24 THE COURT: But there seems to be no doubt
25 that this same issue, I mean, you're making a

1 motion for summary judgment, is that correct?

2 MR. CANTY: This is a motion in limine, Your
3 Honor.

4 THE COURT: Okay, what do you want me to
5 limit? You didn't tell me.

6 MR. CANTY: Well, I have a written motion
7 that was here just a second ago. Here it is. This
8 is in the file. As to, first as to the identity of
9 the plaintiff, Second, as to the subject matter of
10 the jurisdiction. And third, as to the
11 applicability of the minimum, statutory minimum, so
12 in effect it would be a motion for summary judgment
13 and if I may be heard further, Your Honor, she's
14 relying also on Subsection 4, and a close reading
15 of Subsection 4, property which is used to
16 facilitate production, manufacturing, distribution,
17 sale, importation, exportation or trafficking.

18 Now, the testimony was unequivocal by the
19 Horry County detective at the preliminary hearing
20 that with regard to my client there was no drug
21 buy, there was no distribution. My client, none of
22 the other people that have been charged were
23 charged with distribution. There is a fellow named
24 Michael Baker who is not here today, Your Honor,
25 who they charged with possession with intent to

1 distribute marijuana or distribution of marijuana,
2 they subsequently dismissed that charge, and as I
3 said, on the tape Mr. Baker says more than once, "I
4 got it from somebody else, I did not get it from
5 Mikie." They simply have no evidence of a sale.
6 There is evidence of smoking marijuana in the RV
7 but there is no evidence of sale, and Subsection 4
8 applies to manufacturing, distribution,
9 trafficking, et cetera. You can't seize property
10 for use of marijuana.

11 THE COURT: All right. Let's take about a
12 two minute break.

13 (Recessed at 9:50 a.m.).

14 (Resumed at 9:58 a.m.).

15 THE COURT: You were telling me, I believe,
16 when I left --

17 MR. CANTY: There was no drug buy.

18 THE COURT: Correct.

19 MR. CANTY: And smoking marijuana does not
20 form a legal basis for seizure of the RV.

21 THE COURT: What do you say about that?

22 MS. ELDER: Your Honor, Mr. Canty raises a
23 couple points I wanted to address. First of all
24 distribution does not have to be for money.
25 Distribution is I can pass you a marijuana Blunt,

1 cigarette or whatever else and I'm distributing,
2 you do not have to pay me for it.

3 THE COURT: Absolutely.

4 MS. ELDER: So, if you were smoking marijuana
5 and you are providing it to other individuals you
6 are distributing if you offer to provide it to
7 other individuals.

8 THE COURT: Isn't there an inference that you
9 have something with the intent to distribute if you
10 have more than an ounce?

11 MS. ELDER: That is correct, Your Honor, and
12 there were other items located in that RV that were
13 taken, Your Honor, that certainly there was a
14 grinder, I believe, and some other things that
15 would indicate, we would be able to use as
16 presumptive on the PWID, Your Honor. He was in
17 fact charged with PWID.

18 Insofar as the statute, Your Honor, I do
19 disagree with Mr. Canty. He says that anything,
20 that Number 6 would never be applicable. The same
21 thing applies, Number 4, if we had to, if we looked
22 at this statute, even though it says under this
23 item, which is Number 6 only, if we looked at it,
24 that we would have to have a gram, a pound,
25 whatever else it may be, then you're basically

1 saying that Number 4 is also limited to those
2 weights.

3 Let's give an example, Your Honor. In
4 narcotics you buy, you come to the location 15
5 times in the same vehicle, you sell half a gram
6 each time. Well, guess what, it is not PWID weight
7 but you're still distributing. So, under Mr.
8 Canty's argument I would never be able to seize
9 that vehicle because the guy is smart enough not to
10 sell more than a gram at a time.

11 That is simply not what that statute is
12 written for, Your Honor. Throughout our entire
13 Code you can look at the statute, they specifically
14 say this section. When they refer to the entire
15 section, just like they do for every other criminal
16 offense we have, every other statute we have in
17 this book, I could find probably fifteen that say
18 applies to this section. They did not do that,
19 Your Honor, and they did it for a reason and we
20 have got to apply it as they wrote it and they
21 wrote it for this item.

22 THE COURT: But what about, there again, I
23 think we're just speaking semantics, you've got the
24 specific statute and you've got the general
25 statute, okay? Obviously you wouldn't even need

1 Section 6 to cover motor vehicles because under
2 Section 3 it says a container. I think that is
3 what you're going under. And Number 4, any
4 property, real or personal, knowingly used to
5 facilitate production, manufacture, transportation,
6 sale, importation, exportation or trafficking of
7 various controlled substances as defined in this
8 article.

9 When we get down to item Number 6 they speak
10 specifically, specifically about a conveyance and
11 they say specifically a vehicle used to contain
12 marijuana. It doesn't have to be used to transport
13 or anything, it just says to contain, and it says
14 that it is, refers to under this item, refers to
15 under this item -- well that is specific.

16 There again, I would probably not necessarily
17 rule as Judge John did but I can't see how, if this
18 issue was raised and Judge John has ruled and it
19 was not appealed, and I'm looking for Mr. Canty's
20 motion to see whether it was raised, I'm just
21 trying to figure out what we have. I have here an
22 order signed May of 2009, May 27th, 2009, that I
23 signed and that order says a motion to dismiss was
24 withdrawn. It is simply a slip order but I don't
25 have the motion or anything else in this file and I

1 don't know why these matters are not in the file.
2 I don't see any order from Judge John, so I'm
3 somewhat confused. Everybody seems to agree that
4 Judge John addressed the issue. I just want to see
5 a copy of the motion to satisfy myself that that
6 was the basis or something raised in his
7 determination of the previous motion for summary
8 judgment.

9 Do you have it, Mr. Canty?

10 MR. CANTY: I will look for it, Your Honor.

11 THE COURT: I have looked and I'm going
12 through all these files, perhaps it was just filed
13 one time. This is what I have. I have found an
14 order, a memorandum, this is what Judge John
15 ordered, he said defendant's motion for summary
16 judgment is granted as to Paragraph 7 and is denied
17 as to the remaining portion of the complaint. That
18 was September 22nd of 2009.

19 Now, let's see what Paragraph 7 was. I don't
20 know. Are the complaints identical?

21 MR. CANTY: No, Your Honor.

22 MS. ELDER: No, Your Honor. Paragraph 7 was
23 the one that I agreed on record to strike and that
24 was item six.

25 THE COURT: Okay. I see here he has made a

1 note on the complaint, it says struck by plaintiff,
2 it says that the defendant's property is a
3 conveyance which is used or intended for unlawful,
4 for use to unlawfully conceal, contain or transport
5 or facilitate the concealment, possession,
6 containment or transportation of controlled
7 substances and their compounds as defined in
8 Article 3, Chapter 53, Title 44 of the South
9 Carolina Code of Laws. What did he do? Isn't
10 that, isn't that Paragraph 6.

11 MS. ELDER: Yes, sir. This was a summary
12 judgment motion on the RV, Your Honor. We agreed
13 to strike Paragraph 7 at that motion. We argued
14 the same thing that we're arguing here today about
15 the statutory construction of this particular
16 section and item, and he denied their motion for
17 summary judgment on five and six of that complaint.

18 THE COURT: But how did we get Paragraph 7
19 struck?

20 MS. ELDER: I consented, Your Honor, because
21 I consented that this was not over a pound.

22 THE COURT: All right. Your Paragraph 5 says
23 that it's property used as a container, okay.

24 MS. ELDER: Yes, sir. That's equivalent to
25 520(3).

1 THE COURT: Tell me, Mr. Canty, was your
2 motion for summary judgment that it could not be
3 seized under the container or the motor vehicle
4 section, which is (A)(6)?

5 MR. CANTY: Your Honor, now that the
6 Solicitor has clarified it, I think it is clear
7 that this Court is free to rule on the question of
8 whether the specific controls over the general.
9 What she did was strike that portion of her
10 complaint. We cannot appeal her decision to strike
11 that portion of her complaint. That has no effect,
12 however, on how the law reads. What the law says,
13 motor vehicle, one pound.

14 THE COURT: But did you argue that even for
15 Number 5 as you have, or subsection number, I think
16 it is Number 4, (A)(4), that says it is a container
17 -- no, that's Number 3, (A)(3). Did you argue to
18 him that (A)(6) which limits seizure to vehicles in
19 which there was a pound found, did you argue to him
20 that that being the more specific, it would prevent
21 a seizure under the container?

22 MR. CANTY: I did, Your Honor, and she
23 withdrew that.

24 MS. ELDER: Your Honor, that is exactly
25 right. In that order you've got in front of you he

1 granted the summary judgment motion based on my
2 striking of Subsection 7 as indicated in his order
3 and he denied their summary judgment motion as to
4 those other two paragraphs. So he did hear it, he
5 did rule on it and he denied his motion based on
6 the --

7 THE COURT: It would appear to me, Mr. Canty,
8 that the only reasonable explanation, as Judge John
9 said, okay, I'm ruling that she can't go under
10 (A)(6) but I'm denying your motion as it pertains
11 to (A)(3) which is a container. It does not
12 preempt (A)(3) and does not prevent her from
13 proceeding under (A)(3).

14 Now, in that regard Judge John has made a
15 ruling that she can still go under (A)(3). Now
16 that, in my mind, is now the law of the case and
17 for me to rule otherwise would be essentially
18 preempting what Judge John had ruled on a summary
19 judgment. Judge John has said, yes, you can go
20 forward on Number 3.

21 Mr. Canty, I don't think (A)(6) prevents her
22 from going forward on (A)(3). I mean, isn't that
23 what he ruled?

24 MS. ELDER: (A)(3) and (A)(4), Your Honor.

25 THE COURT: Or (A)(3) and (A)(4), do you

1 allege both?

2 MS. ELDER: Yes, sir.

3 THE COURT: Okay. That would be the
4 container or property used to facilitate?

5 MS. ELDER: Yes, sir.

6 THE COURT: Okay. Apparently Clare has found
7 it on the electronic filing, or Michelle has it.
8 Okay, I have it right here, I have a copy. I have
9 it right here.

10 All right, I find as a preliminary matter
11 that Miss Elder has had this matter litigated and
12 ruled upon by Judge John and that has become the
13 law of the case.

14 Now, as to what you want to eliminate or
15 suppress in this hearing, again, Mr. Canty, that
16 was what? What evidence?

17 MR. CANTY: The motion to suppress?

18 THE COURT: Yes.

19 MR. CANTY: Your Honor, my understanding is
20 they are going to offer evidence of marijuana.
21 We're certainly going to contest every bit of that.
22 We're not conceding any of those points.

23 THE COURT: Okay.

24 MR. CANTY: But, Your Honor, I'm gravely
25 troubled, I do not find an order from Judge John in

1 my file which could have been appealed and we
2 certainly don't want to be precluded from appealing
3 that issue. Can the Court clarify exactly, I don't
4 have Judge John's order --

5 THE COURT: The only order that I see here,
6 and I'm basing a lot of my information on what you
7 tell me you argued and what Miss Elder tells me was
8 before the Court, and that is, I have an order here
9 that says defendant's motion for summary judgment
10 is granted as to Paragraph 7 and denied as to the
11 remaining portion of the complaint, which leaves
12 this in those portions of the complaint upon which
13 the State seeks recovery under 44-53-520(A)(3) and
14 (A)(4).

15 Now you tell me that now, you tell me that
16 you argued (A)(6) which prevented any recovery
17 under those sections or the language of those
18 sections because (A)(6) limits seizures of
19 automobiles or vehicles to those that contained at
20 least a pound of marijuana and both of you tell me
21 that was what was argued before Judge John and that
22 Judge John ruled no, she may, (A)(6) does not
23 prevent her from going forward on (A)(3) and
24 (A)(4). If Judge John ruled that way, then I am
25 bound by it and I must allow her to proceed under

1 (A) (3) and (A) (4).

2 Isn't that what occurred, Mr. Canty?

3 MR. CANTY: At the hearing, the purpose of my
4 motion was to effectuate the plainly expressed
5 intent of the General Assembly that in order to
6 seize a motor vehicle you must have one pound of
7 marijuana or more in the vehicle. Now, what Miss
8 Elder did was at that hearing amend her complaint
9 to withdraw that allegation of the complaint, so at
10 that point she was no longer proceeding under that
11 section.

12 THE COURT: All right. I understand that.

13 MR. CANTY: That does not preclude us from
14 arguing that as a matter of law if she proceeds
15 under three or four and she doesn't have a pound of
16 marijuana, that the intent of the Legislature is
17 defeated.

18 THE COURT: But didn't you argue that before
19 Judge John?

20 MR. CANTY: Yes.

21 THE COURT: And isn't that the part of your
22 summary judgment which he says he denied in his
23 written order?

24 MR. CANTY: Based on what you tell me, yes.
25 I do not have that order in my file.

1 THE COURT: I will be happy to show it to you
2 here, filed September 23rd, 2009, and it says
3 defendant's motion for summary judgment is granted
4 as to Paragraph 7, which is the section that
5 applied to 44-53-520(6), and denied as to the
6 remaining portion of the complaint, so obviously
7 there were other sections of the complaint were
8 addressed and from what you're telling me it was
9 obviously (A)(3) and (A)(4). Would you agree with
10 me that she can proceed in a seizure under any of
11 the six, seven, actually eight, eight subsections
12 of Subsection A, she could proceed on any of them
13 under the appropriate circumstances?

14 MR. CANTY: Well, I think the key is under
15 the appropriate circumstances. Our position is if
16 it's a motor vehicle there has to be a pound of pot
17 regardless of what subsection she proceeds on.
18 Now, she gave an example of someone driving an
19 expensive car, selling half a gram of cocaine.
20 Well, we've got no sale in this case, Your Honor.

21 THE COURT: Well, if it was ten grams she
22 could have done it.

23 MR. CANTY: There was no drug buy.

24 THE COURT: Let me simply ask you this. When
25 you were before Judge John, if Judge John was ready

1 to try this case as soon as the motions were heard
2 would Judge John's ruling not have allowed her to
3 go forward?

4 MR. CANTY: Yes, Your Honor.

5 THE COURT: All right. Since that was Judge
6 John's ruling and he said she can go forward under
7 Subsections (A)(3) and (A)(4) am I not in that
8 exact situation in that a circuit judge has ruled
9 on it and says she can do it? Like it or not,
10 agree with it or not, am I still not bound by what
11 Judge John ruled and what he intended, if you just
12 told me if the case had been immediately tried
13 after Judge John's ruling Judge John would have
14 said (A)(6) doesn't preempt her from going forward
15 under three and four, she's perfectly okay, let's
16 try the case, that's what I'm getting at, if Judge
17 John said that's the law of this case how can I
18 change it?

19 MR. CANTY: But, Your Honor, after the
20 hearing on the merits, our concern is we do not
21 want to be precluded from appealing this issue. We
22 understood Judge John's ruling.

23 THE COURT: And I understand and I think the
24 appellate issue is this, whether or not I am bound
25 by Judge John. Everybody seems to agree what Judge

1 John said and what Judge John intended and what
2 Judge John would have allowed. It is simply my
3 opinion here that is now the law of the case, I am
4 bound by the ruling, the prior ruling of my
5 colleague. If that had never come before Judge
6 John I think it would be up to me and as I said,
7 agree with it or not, I may have reached a
8 different or a contrary ruling on that.
9 Nevertheless, it was ruled upon by a circuit judge
10 having the same jurisdiction that I have and my
11 issue here is I believe, and this is your appellate
12 issue, I'm bound by Judge John's ruling.

13 Thank you.

14 MR. CANTY: Your Honor, there is one matter
15 on the subject of the counter-claim. I have a copy
16 of Judge Blanton's order and the Solicitor
17 represented to the Court that Judge Blanton had
18 ruled that machines would be seized and the money
19 that was seized by SLED, and as I have indicated
20 previously the amount is approximately \$15,000 and
21 I would like to offer for the record a copy of
22 Judge Blanton's order, and he finds that \$439
23 seized by SLED should be retained by them for that
24 purpose, not the \$15,000, and I would also add that
25 my information, I'm informed and believe, she's got

1 Attorney General's opinion on that, if I may
2 approach, 09-336.

3 THE COURT: I don't think you're precluded by
4 what happens here. I believe that you can bring
5 claim and delivery against SLED saying, "You've got
6 our money, we want it back."

7 MR. CANTY: But, Your Honor, our position,
8 and it is bolstered by that interpretation by the
9 Attorney General, our position is that the State of
10 South Carolina raided my client's premises and
11 seized various items of personalty. Subsequently
12 the State of South Carolina pursuant to the
13 forfeiture statute brought a forfeiture action
14 against my client. My client counter-claimed
15 against the State of South Carolina for personal
16 property that was converted by the agents of the
17 State of South Carolina from his premises.

18 Our position is that that puts that money
19 within the jurisdiction of this Court and that the
20 Solicitor's decision to disregard section
21 44-53-520(A), which says the initiating agency is
22 the agency making the seizure, her decision to
23 disregard that and not name SLED and name Horry
24 County Police Department, despite that tactic
25 employed by her, when we counter-claimed we

1 specifically asked for those funds that were seized
2 by SLED and there is extensive correspondence back
3 and forth between the Solicitor and myself. She is
4 an agent of Gregory Hembree and as Your Honor knows
5 Gregory Hembree is not an agent of Horry County, he
6 is an agent of the State of South Carolina, he is a
7 deputy in effect of the Attorney General of South
8 Carolina, which is who the statute says is to bring
9 the action and the statute says the initiating
10 agency. It's undisputed that SLED is the
11 initiating agency.

12 THE COURT: Yes, but doesn't 44-53-520(B) say
13 any property subject to forfeiture under this
14 article may be seized by the department having
15 authority upon warrant issued by any court having
16 jurisdiction over the property?

17 MR. CANTY: SLED got the warrant, Your Honor.

18 THE COURT: Well, Miss Elder is telling me
19 that Horry County issued its own warrant or
20 received some warrants on the drugs.

21 MR. CANTY: If I may speak to that, Your
22 Honor, the four ounces of marijuana that were found
23 in the motor home were found the night of the raid
24 and there is an audio recording of one of these
25 SLED agents, or two of these SLED agents after the

1 raid occurs and they are not present, they are
2 wired for sound and they are on the telephone
3 saying, "We got the RV, we got the RV." Not Horry
4 County police officers, SLED agents, "We got the
5 RV," and what the Solicitor is doing, this is my
6 view, is in order to evade all the factual issues
7 surrounding SLED's conduct that night, is bringing
8 this in the name of the Horry County Police
9 Department. What we have done under this statute,
10 it's the State of South Carolina, we have
11 counter-claimed for everything that was taken from
12 the premises regardless of which agency took it.

13 THE COURT: Well, it sounds to me like you
14 want your cake and eat it, too. You are saying,
15 "Horry County can't sue me but I can sue Horry
16 County and I have included everybody."

17 MR. CANTY: I'm sorry, I don't understand.

18 THE COURT: Well, you seem to have an issue
19 with the fact that Horry County has brought this
20 action and generally and specifically that Mr.
21 Hembree is the representative who has brought it in
22 the name of Horry County, okay? But there again,
23 you tell me you have counter-claimed for recovery
24 of property not at issue in the county's action but
25 that you believe is held by SLED and that one is

1 don't know if he, if Mr. Canty is still insistent
2 on that.

3 MR. CANTY: Yes, sir, we certainly would
4 expect it to be applied to both sides.

5 THE COURT: All right. Solicitor, sequester
6 the witnesses. Your lead officer may stay.

7 MS. ELDER: Your Honor, the State would call
8 Agent Gainey.

9 THE COURT: All right, Agent Gainey, come
10 around.

11 CHRISTINA BROWN GAINNEY, after being first duly
12 sworn, testified as follows:

13 THE CLERK: Please be seated and state your
14 name for the Court, please.

15 THE WITNESS: Christina Brown Gainey.

16 DIRECT EXAMINATION BY MS. ELDER:

17 Q Agent Gainey, where are you employed?

18 A I work for the South Carolina State Law
19 Enforcement Division.

20 Q And what do you do there?

21 A I'm a field agent.

22 Q And as a field agent do you work on various
23 investigations throughout the state?

24 A Yes, I do.

25 Q How long have you been with SLED?

1 MR. CANTY: Objection, hearsay, Your Honor.

2 MS. ELDER: I'm not asking that.

3 THE COURT: You just asked if she had
4 conversation.

5 MR. CANTY: Yes.

6 BY MS. ELDER:

7 Q Did it turn to Mr. Albin?

8 A Yes.

9 Q And did you subsequently have a conversation
10 with Michael Albin?

11 A Yes.

12 Q And what was the extent of that conversation
13 in regards to any kind of illegal substances?

14 A If we could purchase a bag of marijuana and
15 he mentioned something about smoking in the RV.

16 Q And did he indicate whether or not he would
17 agree to sell you a bag of marijuana?

18 A He said he would.

19 Q Did he require or inquire to you and your
20 other female agent to go to the RV first?

21 A Yes.

22 Q Did you go to the RV at that time?

23 A No.

24 Q And tell me about -- did you see the RV on
25 the property?

1 A No.

2 Q You did not return after that conversation
3 with Mr. Albin, is that correct?

4 A I believe we possibly played some machines
5 some more. I would have to look back to recall
6 that. When the establishment was raided we went
7 with it so our cover was not burned.

8 MS. ELDER: I have no further questions, Your
9 Honor.

10 THE COURT: All right.

11 CROSS EXAMINATION BY MR. CANTY:

12 Q Were you present for the raid?

13 A Yes.

14 Q You were within the restaurant when the raid
15 occurred?

16 A I believe so, yes.

17 Q Okay. Do you know which SLED agent ordered
18 the patrons to pay their tabs, bar tabs?

19 A No. We were ordered to the ground, everyone.
20 When the raid happened officers came in and told
21 everyone to, you know, get down, put your hands
22 behind your back. We were handcuffed and
23 immediately taken out.

24 Q And you were unhandcuffed as soon as you were
25 taken out?

1 A Correct.

2 Q You were still wearing a wire at that point,
3 correct?

4 A Possibly, correct.

5 Q And you and Agent Bass were driving a vehicle
6 with an ounce of marijuana, is that correct?

7 A Yes.

8 Q And there was discussion on the tape about,
9 "We don't have any credentials, what is going to
10 happen if we get stopped with this marijuana," you
11 said, "I've got my driver's license." Do you
12 remember that?

13 A I would have to hear it. That has been a
14 while ago.

15 Q And did you make the phone call to another
16 SLED agent or was it Agent Bass?

17 A I believe that was Agent Bass.

18 Q And do you remember her saying, "We got the
19 RV, we got the RV"?

20 A I can't say I recall that.

21 Q Okay. Now --

22 MR. CANTY: If I may approach the witness,
23 Your Honor?

24 THE COURT: Certainly.

25 Q Is this the statement that you wrote?

1 A Yes, that would be my statement.

2 Q And tell the Court, please, what you ment in
3 your statement with regard to drugs.

4 A This was in regards to the gambling only, the
5 statement, from what I understand it.

6 Q So, you gave a statement after that, you
7 didn't make any mention of marijuana, drugs of any
8 description?

9 A I wasn't talking about that in this
10 statement, no.

11 Q Okay. And have you read the affidavit in
12 support of the search warrant that was prepared in
13 order to conduct the raid?

14 A Just briefly glancing over it, it looks like
15 it's talking about gambling.

16 Q Tell the Court, please, what if anything is
17 mentioned in that affidavit about marijuana or
18 drugs of any description.

19 A I don't see anything.

20 Q All right. Now, you had a conversation with
21 Michael Baker, is that correct?

22 A Myself and Agent Bass had a conversation.

23 Q I think your testimony was that -- refresh my
24 recollection. Exactly what did my client say to
25 you with regard to selling marijuana?

1 A Something to the extent of he could provide
2 it.

3 Q Now, the Solicitor has the audio recording of
4 that, is that correct?

5 A Correct.

6 Q All right. Now let me show you a transcript
7 and you tell the Court, please, if you view that
8 transcript as accurately reflecting the
9 conversation.

10 A What was your question, is this --

11 Q Does that accurately represent the
12 conversation?

13 A Possibly.

14 Q And Michael Albin doesn't say he is going to
15 sell you any pot in that transcript, does he?

16 A I don't see that.

17 Q Okay.

18 MS. ELDER: Your Honor, may I take a look at
19 the document he's referring to?

20 THE COURT: Certainly.

21 MR. CANTY: Certainly.

22 BY MR. CANTY:

23 Q Did you ever go into the RV?

24 A No.

25 Q Other than the machines, the alleged gambling

1 THE WITNESS: I have never seen this.

2 MR. CANTY: Your Honor, her earlier testimony
3 was that Michael Baker said that Mikie Albin was
4 selling marijuana, or would sell marijuana, and
5 this is a statement from --

6 THE COURT: Did this witness say that?

7 MS. ELDER: Absolutely not, Your Honor,
8 because he objected to hearsay to anything Mr.
9 Baker said, now he is trying to get it in.

10 MR. CANTY: I will withdraw it.

11 THE COURT: I think that is right. That is
12 how I remember it, Mr. Canty.

13 MR. CANTY: I will withdraw it.

14 BY MR. CANTY:

15 Q Was there any discussion about getting the RV
16 before the raid, among the SLED agents?

17 A I don't recall.

18 Q Do you know why Agent Bass would say, "We got
19 the RV, we got the RV"?

20 A I'm not Agent Bass.

21 Q So you don't know, then?

22 A Well, I don't know why people say what they
23 say. I'm not quite sure --

24 Q What we want you to do is tell the Court what
25 was the discussion, prior to the raid, about

1 Q And that's on the wire?

2 A It should be.

3 Q And where was he going to smoke it with you
4 at?

5 A To the RV.

6 Q And during the course of the investigation
7 had you heard anything about the RV before this
8 day?

9 MR. CANTY: Objection, hearsay.

10 MS. ELDER: A yes or no question, Your Honor,
11 had you heard.

12 THE COURT: I think it goes a little further
13 than that. If you had said have you heard or if
14 you knew about an RV that would be one thing, but
15 you went a little far on that. Think it is more
16 leading than it is hearsay.

17 BY MS. ELDER:

18 Q The document that Mr. Canty showed you, can
19 you start at the very top of that?

20 A "Agent: Well, it wouldn't be a little smoke,
21 you got to give me a little more than little
22 because I'm a little bigger. Mikie: Okay. Agent:
23 Don't need to try to -- Mikie: Oh, I don't know,
24 we're going to the bus, if you want to go. Agent:
25 Okay. Mikie: I don't know if you know what that

1 means. Agent: I know what that means, laughing."

2 Q Thank you.

3 MS. ELDER: I don't have any further
4 questions, Your Honor.

5 THE COURT: Mr. Canty?

6 MR. CANTY: Nothing further, Your Honor.

7 THE COURT: All right. You may step down.
8 (Witness excused).

9 THE COURT: Get your next witness up, I will
10 be right back.

11 (Brief recess).

12 DOUGLAS R. ROGERS, III., after being first duly
13 sworn, testified as follows:

14 THE COURT: All right, Miss Elder, go ahead.

15 DIRECT EXAMINATION BY MS. ELDER:

16 Q Could you give the Court your name, please?

17 A Douglas R. Rogers, III.

18 Q Agent Rogers, where are you employed?

19 A The South Carolina Law Enforcement Division.

20 Q And in what capacity?

21 A At this point I'm in the PeeDee criminal
22 region. At that time I was in the PeeDee criminal
23 unit but operating as a vice agent.

24 Q And when you say at that time, you're talking
25 about January of '09?

1 Q The search warrant was upheld by the judge
2 who heard it that day. Can you be any more
3 specific?

4 A No, sir, I cannot because I was not there.

5 Q You don't have any personal knowledge that
6 the search warrant was upheld by anyone?

7 A Yes, sir. I was told by the Soclicitor's
8 office that it was upheld.

9 Q Upheld where, when, by whom?

10 A I don't remember the exact day but I was told
11 by Lieutenant David Roper at the time, it was
12 Lieutenant David Roper at SLED, he said, "Did we
13 get any notification?" I said, "No, I have not
14 received notice of a hearing." He said, "I have
15 not heard anything about a hearing." He said, "The
16 Solicitor's office told me there was a problem with
17 the statute in the search warrant." I said, "It
18 was a typographical error if there was one," I
19 said, and I looked at it, I said, "Yes, sir,
20 absolutely there is a problem." I said, "But I had
21 the correct statute further in the search warrant
22 and I testified to Judge Blanton that the reason we
23 were getting the search warrant for the premises
24 was based on gambling."

25 MR. CANTY: Your Honor, have they put the

1 affidavit in the record?

2 THE COURT: Yes.

3 BY MR. CANTY:

4 Q There is actually more than one problem with
5 your affidavit, is there not, not just that it is
6 based on the animal, livestock and poultry Title in
7 the Code? Is there another rather large problem
8 with your affidavit?

9 A No, sir. You will have to tell me what
10 you're addressing other than we have already talked
11 about what is wrong with my affidavit. I stated
12 why we were there.

13 Q Well, look at your affidavit and where does
14 it say you want to search?

15 A Putters Lounge and the 1994 RV but as I
16 stated, in the search warrant it was for monies
17 dealing with gambling.

18 Q And so that there is no question about it,
19 you went to Judge Blanton to get this warrant and
20 this was after your agent wired for sound had
21 talked about the marijuana with Michael Baker?

22 A Yes, sir, I knew about that, yes, sir.

23 Q Okay. And there is no mention of drugs in
24 your warrant, in your affidavit?

25 A No, sir.

1 Q Okay. Now, you testified you never went into
2 the RV. Is that correct?

3 A Yes, sir, I did not.

4 Q Any SLED agents go in the RV?

5 A Yes, sir, there was some. I did not and I
6 can't tell you which ones did. I do not think that
7 there was but one out there in that RV but I'm not
8 for sure.

9 Q And SLED took some money out of the RV,
10 didn't they?

11 A Yes, sir. If we listed it in the return it
12 was taken, listed where it was taken from.

13 Q Let me show you SLED seizure report dated
14 January 24th.

15 A Yes, sir.

16 Q Does that look familiar?

17 A Yes, sir.

18 Q And it says that SLED took \$1,200 in cash out
19 of the RV. Is that correct?

20 A Yes, sir.

21 Q And \$162 in coins. Is that correct?

22 A It just says currency on here. If there is
23 something somewhere saying coins, that is something
24 else.

25 Q And this says that -- you're Agent Rogers,

1 correct?

2 A Yes, sir.

3 Q This says it was served by you?

4 A Yes, sir.

5 Q On the 24th of January, it says \$1,200 in
6 currency and \$162.78 in coins?

7 A Okay. That's not my handwriting, that is
8 agent Williamson's, I couldn't read it but it is
9 coins.

10 Q She is not here today?

11 A No, sir. But I stood next to her when we
12 inventoried it because I'm responsible for it, I
13 stood next to her, I can attest that that money was
14 there.

15 Q And what was the basis for SLED seizing the
16 money from the RV?

17 A Based on the gambling investigation, the
18 money was transacted in the building and the owner
19 Mr. Albin was the proprietor of the business, we
20 wanted to search for any and everything that had to
21 do with any gambling material and/or monies.

22 Q Did you feel that you were entitled to any
23 money you found on the premises?

24 A Sir, that was for a court to decide, not me

25 Q All right.. This \$162.78, that was a penny

1 A Yes, sir. I'm the one that has to try the
2 case, yes, sir.

3 Q The one against Michael Albin has been
4 dismissed and expunged, is that right?

5 A He went to PTI, yes.

6 Q And the ones against --

7 A You're telling me -- again, as far as I am
8 aware, they are still awaiting court. There was a
9 court date set on the tickets, I'm the one that
10 picked the court date out to have it set and they
11 requested jury trial and I have not heard anything
12 else from those tickets. That is the Court's
13 responsibility to notify me on that.

14 Q Now, there was a tow truck that came to the
15 scene, is that right?

16 A Yes, sir.

17 Q And you arranged for the tow truck in
18 advance, correct?

19 A No, sir. That happened that night. We had
20 trucks, at the time I had a truck through SLED, it
21 has since, it's no longer in my possession, the
22 transmission failed, we don't drive it anymore. I
23 had a truck, we had trucks to haul machines away,
24 David Roper said, "Why don't we just call," once we
25 got there, he said, "Why don't we call a tow truck

1 pursue that, so that should take care of that
2 issue. We're here only about the money allegedly
3 seized as a result of drug activity by the Horry
4 County Police Department.

5 All right, do we all understand?

6 MR. CANTY: Yes, Your Honor.

7 THE COURT: That should shorten this up or
8 help us with this particular cause. The seizure of
9 the RV, as I understand it, was a result, is not in
10 possession of SLED, that property, it was not
11 seized pursuant to a gambling charge, it was seized
12 pursuant to a drug charge and that is what we're
13 talking about, as was the firearm. Is that my
14 understanding?

15 MS. ELDER: Correct.

16 THE COURT: Miss Elder, the State understands
17 this may result in a subsequent action being
18 brought concerning any monies that SLED might have?

19 MS. ELDER: Yes, Your Honor, and the agent
20 that does the investigation, after the break
21 actually indicated he would get with me the
22 beginning of next week. Apparently the person over
23 him, Mr. Roper, had left SLED right after this.

24 THE COURT: I understand Mr. Roper is out at
25 Coastal Carolina now.

1 MS. ELDER: That would be correct, Your
2 Honor. I believe he is the chief out there. When
3 he left, these items, they assumed he had taken
4 care of those items and had filed the proper
5 paperwork and they had not been.

6 THE COURT: All right. Okay, Miss Elder.

7 MS. ELDER: Yes, sir. Your Honor, we would
8 call Officer Derrick Ard.
9 DERRICK ARD, after being first duly sworn,
10 testified as follows:

11 THE CLERK: Please state your name for the
12 Court.

13 THE WITNESS: Derrick Ard.

14 DIRECT EXAMINATION BY MS. ELDER:

15 Q Officer Ard, where are you currently
16 employed?

17 A Horry County Police Department.

18 Q In what capacity?

19 A Patrol.

20 Q The patrol unit?

21 A Yes, ma'am.

22 Q Back in January, '09 -- how long have you
23 been with Horry County?

24 A Approximately 13 years.

25 Q Back in '09 you were with the Department at

1 evidence, to keep the chain?

2 A Yes, ma'am.

3 Q And was that your job that day as well?

4 A Yes, ma'am, it was.

5 Q And did you go out into the RV at some point
6 in time?

7 A Yes, I did.

8 Q And what was your purpose for going out
9 there?

10 A My purpose for going out there, I had been
11 advised that some illegal narcotics, some illegal
12 narcotics had been found in the RV, at which time,
13 like I said, they would have been left in place and
14 I would have been there to collect that evidence.
15 I was advised they had found some illegal narcotics
16 in the RV.

17 Q And did you in fact collect those?

18 A Yes, ma'am, I did.

19 Q And I believe you also collected some other
20 items from that RV as well, is that correct?

21 A Yes, ma'am. There was some drug, what I
22 would refer to as drug paraphernalia, things of
23 that nature.

24 (List of items taken from RV marked as
25 Plaintiff's Exhibit Number 3).

1 BY MS. ELDER:

2 Q If you will, take a look at what has been
3 marked Plaintiff's Exhibit 3.

4 A Yes, ma'am.

5 Q Is that the list of items you took from the
6 RV?

7 A Yes, ma'am, it is.

8 Q And could you read those off for us, please?

9 A Rolling papers, grinder, it could be a
10 marijuana grinder, roach clip, pipe, roller, green
11 leafy substance which was a total of 137 grams,
12 believed to be marijuana in five separate bags and
13 one. 38 Taurus pistol.

14 MS. ELDER: Your Honor, I would like to
15 introduce Plaintiff's Exhibit 3.

16 THE COURT: Have you seen this, Mr. Canty?

17 MR. CANTY: Your Honor, I was just looking
18 for that. Let me have a look so I can ascertain.

19 Yes, Your Honor, I have seen that. No
20 objection.

21 THE COURT: Without objection, then,
22 Plaintiff's 3.

23 (Plaintiff's Exhibit 3 was received in
24 evidence).

25 BY MS. ELDER:

1 Q Did you photograph the items?

2 A Yes, ma'am.

3 Q Will you take a look at the two pages marked
4 Plaintiff's Exhibit 4?

5 A Yes, ma'am.

6 Q What does that depict?

7 A That depicts the items that were found in the
8 motor home.

9 Q And I believe there is a bag. Was that the
10 drugs?

11 A Yes, ma'am. The five separate baggies
12 containing, like I said, a total weight of 137
13 grams, five separate bags. Those bags did contain
14 the marijuana or the green leafy substance.

15 Q And what else?

16 A I've got a grinder with some residue in it, a
17 plate with marijuana residue in it and we did
18 photograph the weapon.

19 Q What is the grinder for?

20 A The grinder, they utilize it to grind the
21 marijuana up, I guess to make it more convenient to
22 roll into a joint. Also sometimes if you're
23 selling specific weights and you want to make a bag
24 at a specific weight, with marijuana being, if
25 you've got buds, instead of breaking little pieces

1 of buds up, you can grind a small portion to add to
2 get that specific weight, so to speak.

3 Q Okay.

4 MS. ELDER: Your Honor, I would like to
5 introduce Plaintiff's Exhibit 4.

6 MR. CANTY: Without objection.

7 (List of items from RV marked and received
8 in evidence as Plaintiff's Exhibit 4).

9 MS. ELDER: Your Honor, one moment.

10 BY MS. ELDER:

11 Q Officer, did you collect the evidence
12 depicted in that picture?

13 A Yes, ma'am.

14 THE COURT: Hold on one second. Mr. Canty,
15 would you stipulate that the items contained in the
16 box she has are marijuana and a firearm as shown on
17 Plaintiff's Exhibit Number 4? That might avoid us
18 having to pass it all around, if we could just
19 enter that?

20 MS. ELDER: I do have the analysis, Your
21 Honor, that corresponds to the weight and detection
22 of drugs here as well.

23 THE COURT: I think we can all concede that
24 for purposes of appeal that the only way it would
25 be significant would be it is under a pound, right,

1 and we can agree on that?

2 MR. CANTY: Yes, Your Honor.

3 THE COURT: Do you have any doubt as to the
4 fact it was marijuana? Have you seen the drug
5 report? I mean, we can go through all that if you
6 wish.

7 MR. CANTY: Your Honor, if I may --

8 THE COURT: It doesn't seem like that is the
9 real issue here.

10 MR. CANTY: I do have an issue, if I can
11 briefly summarize my understanding of the facts,
12 this raid was conducted on the 24th of January.
13 There were four ounces of marijuana found at that
14 point in time. That's not the basis for the
15 seizure. What they are claiming is that six days
16 later, she said a different detective from, the
17 fellow who swore out the warrant, the fellow who
18 testified at the preliminary, I certainly intend to
19 go into that on cross, she says they found
20 marijuana in the refrigerator.

21 THE COURT: Another bag.

22 MR. CANTY: Next to money, and that is very
23 much in dispute, Your Honor, not only the existence
24 of that marijuana, but the drug report itself. But
25 as far as what is shown there, and the only thing

1 that concerns me is what the Solicitor has done
2 with regard to that exhibit is she's got three
3 photographs of marijuana and a fourth photograph of
4 the pistol and I think it is particularly important
5 to point out there are no photographs of both the
6 marijuana and the pistol. In other words, looking
7 at that page, it has left with you the impression
8 that the marijuana and the pistol are together but
9 if you look at the photograph of the pistol you
10 will see it is in the bottom dresser drawer and the
11 marijuana was elsewhere.

12 THE COURT: All right. Well, we can go, I
13 was just trying to avoid the usual chain of
14 custody, the identification.

15 MR. CANTY: With regard to the other pot that
16 they say they found six days later, absolutely
17 everything is contested.

18 THE COURT: Okay, but how about as to the
19 first?

20 MR. CANTY: No, Your Honor.

21 THE COURT: Okay. So, can we stipulate that
22 when this officer -- is it lieutenant?

23 THE WITNESS: Corporal, Your Honor.

24 THE COURT: -- corporal went in there was
25 green leafy substance in the amount of

1 approximately four ounces that was found in the
2 motor home?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: And that that is the drugs that
5 are in -- do you have them segregated?

6 MS. ELDER: Your Honor, yes. Now, I want to
7 make sure that I'm not, when we do this, Your
8 Honor, this bag right here contains five separate
9 baggies --

10 THE COURT: All right.

11 MS. ELDER: -- that were found at that time.

12 MR. CANTY: I'm not challenging the chain,
13 I'm not challenging, at this hearing, I'm not
14 challenging the analysis, I'm willing to stipulate
15 that that was five bags of marijuana.

16 MS. ELDER: At 26 grams apiece.

17 THE COURT: 26 apiece that make up about four
18 ounces, and that that is what you've got in your
19 hand and that that was taken out of the vehicle.
20 I'm just trying to save you having to do a complete
21 chain of custody on that marijuana. What is at
22 issue is what was found with the money and whether
23 or not anything was found with the firearm, so at
24 this time I'm going to admit it for what it is,
25 four ounces of marijuana, approximately, and five

1 bags that were found on the date the search warrant
2 was issued by Corporal Ard or his men, it has been
3 analyzed, that it is marijuana and it's in
4 evidence.

5 Okay, fair enough, Mr. Canty?

6 MR. CANTY: Yes, Your Honor.

7 THE COURT: Okay, fair enough. That may save
8 you some witnesses.

9 That's a fair statement as far as law
10 enforcement, Corporal Ard?

11 THE WITNESS: Yes, sir.

12 (Baggies marked and received in evidence as
13 Plaintiff's Exhibit Number 5).

14 BY MS. ELDER:

15 Q Corporal Ard, Plaintiff's Exhibit 5 is the
16 five separate baggies we're talking about?

17 A Yes.

18 Q They were located in the RV?

19 A Yes, ma'am.

20 Q Do you recall where?

21 A I would have to refer back. I'm pretty sure
22 they were in the kitchen area, about midway of the
23 RV.

24 Q Okay. And they were contained, the packaging
25 in here, the baggies they were contained separately

1 in?

2 A Yes, ma'am.

3 THE COURT: I note here, Mr. Ard, there
4 appears to be a marijuana cigarette bud or roach in
5 there. Was that yours or something you seized?

6 THE WITNESS: That was something contained --
7 it was not mine. The packaging has been cut for
8 purposes of testing.

9 THE COURT: Yes.

10 THE WITNESS: It was packaged in the manner
11 in which we found it.

12 THE COURT: Okay.

13 THE WITNESS: The evidence technician that
14 would test it would remove everything from the
15 packaging.

16 THE COURT: So there was still a little roach
17 or bud there?

18 THE WITNESS: Absolutely.

19 THE COURT: We don't need to open that.

20 Okay.

21 BY MS. ELDER:

22 Q If you will, take a look at Plaintiff's
23 Exhibit 6.

24 A Yes, ma'am.

25 Q Is that the paraphernalia you were describing

1 earlier?

2 A Yes, ma'am.

3 Q That would be -- could you tell me again?

4 A That would be the additional items. We have
5 a grinder, rolling paper, we have one pipe that
6 does have some residue in it, and this is what I
7 river to as a roller. It is a little cigarette
8 roller, I guess that assists you --

9 THE COURT: Was that likewise found in the
10 mobile home?

11 THE WITNESS: Yes.

12 THE COURT: Any problem with that?

13 MR. CANTY: Your Honor, I believe that was
14 found in the microwave, is that correct?

15 THE WITNESS: I would have to refer to the
16 note, but I believe so. It was all in the kitchen
17 area. I would have to refer back to see that.

18 MR. CANTY: Well, I'll examine him later.

19 THE COURT: Do you want to look at them, Mr.
20 Canty? It appears to be a pipe and roller and
21 grinder and rolling papers and probably a roach
22 clip. Is that right?

23 THE WITNESS: Yes Your Honor, I believe it
24 is.

25 THE COURT: Yes.

1 A Yes, ma'am.

2 Q Do you recall what the warrant was for?

3 A If I'm not mistaken, I believe it was for
4 PWID, possession with intent to distribute.

5 Q Marijuana?

6 A Yes, ma'am.

7 Q All right. Do you know what happened to that
8 charge?

9 A Actually I do not.

10 Q Is that the warrant that you -- I believe
11 that was the defendant we're talking about here and
12 the warrant?

13 A Yes, ma'am, it appears to be.

14 Q And do you know what happened, can you tell
15 by that what happened?

16 A Apparently he has went through PTI in
17 reference to the charge.

18 MS. ELDER: Your Honor, I have no further
19 questions.

20 THE COURT: Mr. Canty.

21 MR. CANTY: Thank you, Your Honor.

22 CROSS EXAMINATION BY MR. CANTY:

23 Q Now, you testified at the very beginning that
24 SLED was there for a gambling investigation?

25 A Yes, sir.

1 A Yes, sir.

2 Q And paraphernalia was found -- do you list
3 all the paraphernalia you found?

4 A I did not collect every piece of marijuana
5 paraphernalia that was in the vehicle. It was
6 throughout. What we collected, we collected these
7 items which were in plain view.

8 Q And those items that are in evidence there,
9 they are associated with smoking marijuana. Is
10 that correct?

11 A Uh-huh, yes, sir. Yes, sir.

12 Q Tell the Court, if you would, please, whether
13 or not you found any scales?

14 A I don't recall finding scales.

15 Q Did you find any extraordinary number of
16 plastic baggies?

17 A Other than what they were packaged in, not
18 particularly.

19 Q Did you find any record of sales of
20 marijuana?

21 A I did not.

22 Q So, the whole basis for possession with
23 intent, then, was based on the four ounces of
24 marijuana?

25 A Well, based on the separate baggies also, and

1 the baggies, they were not indiscriminate baggies,
2 they were a specific weight, so someone had to had
3 a set of scales.

4 Q Okay. If someone smoked marijuana, say a
5 cancer patient --

6 A Yes, sir.

7 Q -- and they bought marijuana for the purpose
8 of smoking it, then each time they bought it it
9 would constitute a separate offense, is that right?

10 A Yes.

11 Q All right. So that if you bought a quarter
12 of an ounce rather than one ounce, then you would
13 have to buy it far less frequently, one-fourth as
14 often?

15 A Yes.

16 Q And in your I believe five years of
17 experience have you ever known anyone who smoked
18 marijuana for whatever reason, who would have four
19 ounces for their personal consumption?

20 A For personal consumption, I mean, that would
21 be speculation on experience, no, not really.

22 Q Well, if somebody wanted to avoid committing
23 the crime of purchasing marijuana by doing it less
24 frequently they would do it by buying more at a
25 time. Is that correct?

1 A That's what you're saying and I understand
2 the point you're saying. I couldn't testify that I
3 have seen that in my experience.

4 Q And did you testify in the preliminary
5 hearing?

6 A No, sir, I don't believe I did.

7 Q Okay. With regard to Mikie Albin, is it safe
8 to say that there was no drug buy?

9 A I was not aware of a drug buy from Mr. Albin.

10 Q Okay. And there are no scales?

11 A No, sir.

12 Q And is there a scene log for this raid?

13 A I'm sorry, a scene log?

14 Q A scene log, crime scene. Large crimes, a
15 lot of personnel involved, frequently there is a
16 scene log where agents, officers log in and log out
17 at the scene.

18 A There is not a crime scene log. This was not
19 deemed a crime scene, it was an area of operation.

20 Q Now, did you take possession of the .38
21 revolver?

22 A Yes, sir, I did.

23 Q And this was found in the back of a bottom
24 bedroom drawer next to his bed?

25 A I believe it was, yes, it was.

1 it. It would be the fact that he was armed and in
2 possession of that amount of marijuana in multiple
3 bags.

4 Q Okay. So it is possession?

5 A Yes, as I just stated.

6 Q All right. Now can we talk about production,
7 manufacturing, distribution, sale, importation,
8 exportation, trafficking?

9 A Okay.

10 Q First of all do you have any evidence that
11 Mr. Albin was involved in any of that?

12 A Other than in possession --

13 Q Just possession.

14 A -- of that amount of marijuana, in multiple
15 baggies, with paraphernalia throughout the vehicle.
16 He was also armed at the time.

17 Q He wasn't charged with distribution?

18 A There was no drug buy from Mr. Albin.

19 Q Okay. You say he was armed. There is no
20 question this pistol was in the back or bottom
21 bedroom dresser drawer, night table drawer?

22 A Yes.

23 Q In the RV?

24 A Yes.

25 Q And is there any question but that at the

1 time that law enforcement entered the premises on
2 this raid that Mr. Albin was sitting in the bar?

3 A Uh-huh (Affirmative).

4 Q So, how far would you say he was from the
5 pistol at that point?

6 A I don't know. He was, the pistol was by his
7 bed in the RV.

8 Q Okay. Now, you found cash in the motor home.
9 Right?

10 A I believe they did. I did not take
11 possession of cash from that motor home.

12 Q Okay. And it was a restaurant and bar so you
13 would assume there is cash flow, cash revenue from
14 the restaurant and bar, correct?

15 A I could assume, yes, sir.

16 Q And people who hold large amounts of cash
17 might need security, wouldn't they?

18 A Sure, yes, sir.

19 Q And Mr. Albin has never been convicted of a
20 crime in his life, has he?

21 A I do not remember. Mr. Albin was very nice.

22 Q And as a citizen of the United States he is
23 entitled to possess a revolver in his bedroom, is
24 he not?

25 A Yes, sir.

1 monitor it?

2 THE WITNESS: No, Your Honor, I did not.

3 THE COURT: Okay. Thank you.

4 MS. ELDER: I have no further questions.

5 THE COURT: You may step down.

6 (Witness excused).

7 WILLIAM RUTHERFORD, after being first duly sworn,
8 testified as follows:

9 THE CLERK: Please state your name for the
10 Court.

11 THE WITNESS: William Rutherford,
12 R-u-t-h-e-r-f-o-r-d.

13 DIRECT EXAMINATION BY MS. ELDER:

14 Q Captain Rutherford, where are you employed?

15 A Horry County Police Department.

16 Q In what capacity?

17 A At present I'm a divisional commander,
18 uniform patrol division, southern precinct.

19 Q Back in January, '09, were you employed with
20 the Department?

21 A Yes, ma'am, as the divisional commander for
22 the narcotics and vice section.

23 MR. CANTY: Your Honor, if I may, Agent
24 Rutherford, I don't have recollection of this
25 witness being named in response to discovery, if I

1 may have just a moment to verify he was listed but
2 I don't believe he was.

3 THE COURT: Will, the only discovery I have
4 in the file, of course it doesn't have to be in the
5 file, was your request to admit, to which there was
6 a response but I don't have the benefit of
7 interrogatories or responses, so I don't know.

8 MR. CANTY: Yes, Your Honor, I'm aware of
9 that but I had prepared cross-examination for every
10 named witness. I do not have prepared cross for
11 this witness and my thinking is that the only
12 reason for that would be that he was not named as a
13 witness, and assuming that he was not named, then
14 we would object to his testimony.

15 MS. ELDER: Your Honor, Mr. Rutherford, or
16 Captain Rutherford, did a subsequent search that
17 Mr. Canty has referred to as the six day search
18 after this incident and he's referred to it
19 frequently throughout this trial. Mr. Rutherford,
20 Captain Rutherford was the one who actually located
21 the marijuana that he has a question about and the
22 money that is under seizure.

23 THE COURT: Wouldn't that be on the report
24 that was provided to you of the search and the
25 return?

1 MS. ELDER: Your Honor, this was not pursuant
2 to a search warrant. It was done --

3 THE COURT: Inventory.

4 MS. ELDER: Yes, sir.

5 THE COURT: Is it in the chain?

6 MS. ELDER: I don't know.

7 THE COURT: That would have certainly been
8 provided.

9 MR. CANTY: Your Honor, apparently he had not
10 been named as a witness. My recollection is it was
11 another officer, not this officer, who claimed to
12 have six days later found marijuana.

13 THE COURT: Where did you get that
14 information?

15 MS. ELDER: Your Honor, Danny Furr is a
16 narcotics agent with the department. He prepared
17 the affidavit on behalf of Captain Rutherford
18 because Mr. Furr, Agent Furr was an agent at the
19 time more familiar with preparing the paperwork for
20 the affidavit for the seizure. Captain Rutherford,
21 at his direction Agent Furr prepared the affidavit
22 for the seizure.

23 MR. CANTY: Your Honor, I have the list of
24 her answers to interrogatories where she lists her
25 witnesses, Captain Rutherford is not named. We

1 object to him as it's a surprise.

2 THE COURT: Mr. Canty, did you know the
3 circumstances of the seizure? I mean, you knew
4 what we're talking about?

5 MR. CANTY: Your Honor, the circumstances
6 seemed highly suspicious to us and in fact my
7 client's testimony will be that there was no
8 marijuana.

9 THE COURT: Will, I'm giving great latitude
10 as to what you do and it is 12:30 right now, I'm
11 going to break for lunch and I'm going to give you
12 the lunch time or lunch period in which to examine
13 this witness or discuss the matter with him.
14 Afterward, if there is anything that takes you by
15 surprise I might consider an additional sanction.

16 All right?

17 MR. CANTY: Thank you, Your Honor.

18 THE COURT: Okay, let's break.

19 MS. ELDER: Your Honor, just to make sure I
20 clarify, I have the analyst for the remaining
21 marijuana. Do I need to have him back, Your Honor?

22 THE COURT: Well, let's just ask Mr. Canty.
23 Do you have any doubt as to the fact that this was
24 the marijuana?

25 MR. CANTY: Your Honor, we have doubt of the

1 MR. CANTY: Your Honor, after this morning's
2 developments, I have elected not to call my
3 client's wife and daughter.

4 THE COURT: Okay.

5 MR. CANTY: Just for the record, they would
6 corroborate his testimony, so it will be just the
7 client.

8 (Unrecorded bench conference).

9 All right, Miss Elder, call your witness.

10 MR. CANTY: Your Honor, if I may, I want to
11 make a proffer for the record with regard to
12 Captain Rutherford.

13 THE COURT: Certainly.

14 MR. CANTY: And I have the plaintiff's
15 answers to interrogatories and supplemental answers
16 to interrogatories and if the Solicitor will
17 stipulate Captain Rutherford has never been named
18 as a witness in this case?

19 Further, there are the documents associated
20 with the second search, unquote-quote, and these
21 include an Horry County police follow-up report,
22 two pages, an affidavit for seizure. It looks like
23 I've got two copies of the follow-up report, let me
24 make sure they're identical. Yes.

25 And what these documents show is that with

1 regard to this second search the only evidence that
2 has been provided by the prosecution, by the
3 plaintiff in this case is that this search was
4 conducted by Danny Furr, supervised by Craig
5 Hutchinson, Mr. Furr signed the affidavit in
6 support of the seizure.

7 There was also a subsequent search warrant
8 issued, an affidavit in support of that search
9 warrant was signed by -- the Court's indulgence one
10 second. Someone other than Captain Rutherford, by
11 Derrick Ard.

12 Now, I think it is incumbent upon the State,
13 we object to this witness' testimony, I think it is
14 incumbent upon the State to make some showing as to
15 why halfway through the trial she produces a
16 witness who has never been identified before not
17 only in her discovery responses but also in all the
18 documents associated with this case.

19 Now, my file is probably seven or eight
20 inches thick, there is voluminous documentation,
21 including all the officers present at the time of
22 the raid, numerous follow-up reports. Nowhere is
23 there any mention of Captain Rutherford. The
24 Solicitor has given no information as to any basis,
25 any reason for failing to name him as a witness and

1 absent a showing I think it is incumbent on the
2 Court to exclude him as a witness. This is a
3 surprise and the record would tend to imply that it
4 was intended to be a surprise.

5 THE COURT: Well, this Court has discretion
6 in determining whether or not to exclude or admit
7 the evidence or testimony of a witness that has not
8 been named. Cumming versus Vaughn indicates that
9 the State must offer a reason that it was not
10 provided earlier. New information, the purpose, if
11 the new information is prejudice to the other party
12 or the opposing party the State must do it. Tell
13 me about that, Miss Elder, why wasn't this witness
14 named, what is the purpose of this witness and
15 let's talk about the prejudice to the opposing
16 party, tell me about that.

17 MS. ELDER: Your Honor, this information, Mr.
18 Canty was aware and there is records indicating on
19 January 30, 2009, while searching for perishables
20 on the defendant's recreational vehicle the
21 refrigerator was found to contain marijuana and
22 money, approximately 38 grams of marijuana and
23 \$1,847. So, he is certainly aware of the, what we
24 are talking about. Mr. Furr, Officer Furr who is
25 on his way in here prepared the seizure affidavit,

1 he prepared the drugs for packaging and submitted
2 them into evidence. When I was preparing Mr. Furr,
3 Officer Furr yesterday, late yesterday afternoon,
4 it was probably around 3:30, I believe that I ended
5 up calling Captain Rutherford, Officer Furr said,
6 "I didn't physically locate them, I did take
7 possession of them, I did not physically locate
8 them, that was Captain Rutherford."

9 THE COURT: Did the information you provided
10 tell where they were located, when they were
11 located, how they were located?

12 MS. ELDER: Yes, sir, Your Honor.

13 THE COURT: Was that information provided to
14 you, Mr. Canty?

15 MR. CANTY: Your Honor, what was provided to
16 us indicated repeatedly that someone other than
17 Captain Rutherford found --

18 THE COURT: That Mr. Furr found them?

19 MR. CANTY: Yes.

20 THE COURT: But did it describe the time,
21 place, condition of the items?

22 MR. CANTY: The date only.

23 THE COURT: Okay. Did it describe to you the
24 circumstances under which this other property was
25 found?

1 would have the documents that were filed by the
2 police department which are the same as basically
3 the criminal file, Your Honor, it would have the
4 incident report, it would have the evidence sheet,
5 it would have the drug reports once we received
6 them, those type things, Your Honor. Everything
7 you would receive in a criminal discovery pretty
8 much is attached to that seizure packet.

9 THE COURT: Mr. Canty, do you represent Mr.
10 Albin in the criminal matter as well?

11 MR. CANTY: Yes, sir.

12 THE COURT: You know, I'm not certain of the
13 sufficiency of serving someone with a document in
14 that setting would serve or be enough in the civil
15 setting but I'm thinking about the issue of
16 surprise. Does your criminal Rule 5 package, does
17 it contain chain of custody, things of that nature?

18 MR. CANTY: No. We have the affidavit for
19 seizure, we have the search warrant that was
20 obtained three days after this second search, we
21 have the incident report, as I indicated, and we
22 have a lab report. We do not have the chain of
23 custody.

24 THE COURT: Do you have anything indicating
25 that Mr. Rutherford was involved in the

1 investigation?

2 MR. CANTY: No, Your Honor. For the record,
3 I would have noted that.

4 THE COURT: All right, Miss Elder, let's see
5 what we have.

6 BY MS. ELDER:

7 Q Captain Rutherford, you had an opportunity
8 after this RV in question was seized -- where was
9 it parked after it was towed?

10 A It was in the rear impound lot of the Horry
11 County Police Department.

12 Q Tell me about that impound lot.

13 A Approximately an acre, acre and a half in
14 size, holds 200 plus vehicles, secured with an
15 eight foot chain link fence with concertina wire at
16 the top, access by designated personnel only and
17 that is where all vehicles, as in this particular
18 case, seized vehicles are held until disposition.

19 Q And after it was towed from the location did
20 you have a reason or opportunity to enter into the
21 RV once it was in the impound lot?

22 A Yes, ma'am. As part of my responsibilities
23 as the section commander, the seizure paperwork,
24 tow logs, keys, things of that nature are secured
25 in my office until disposition comes from the civil

1 proceedings and one of the things that I have
2 learned the hard way is when you bring these
3 vehicles in sometimes it takes a great length of
4 time before there is a disposition on the case and
5 we, I go out and prep these vehicles to make sure
6 the windows are rolled up, there is nothing that
7 has been overlooked in the vehicles, to basically
8 guarantee that they are secure and that if we do
9 have to give them back at the end of the
10 disposition we try to give it back to the people
11 that they were seized for in the best condition
12 possible.

13 Q And is that the reason you went out to the RV
14 several days after it was towed from the location
15 of Putters?

16 A Yes, ma'am. During the course of talking
17 with the investigating agents a couple things were
18 determined. One, that it was a possible residence,
19 people had been living in it prior to it being
20 towed.

21 And two, that there was no charging cord or
22 plug-in cord brought with it to the impound lot to
23 try to keep the batteries charged. The main reason
24 to go out the day that I did was to make sure that
25 there were not, wasn't anything in it that was

1 I learned the hard way. We have had to pay when we
2 have had to return vehicles and they are not in the
3 same shape when we turn them back to people after a
4 year or so, we have had to pay for the damages and
5 stuff.

6 Q Vandals, stuff like that?

7 A Yes, ma'am.

8 Q When you went out to the vehicle to determine
9 the cord that was necessary for the charger and to
10 look for perishables did you locate anything?

11 A Other than, like I said, it was obvious
12 someone had lived in it and in the refrigerator was
13 a white, what I would describe as a kitchen garbage
14 bag with a green leafy substance resembling
15 marijuana, a substantial amount of U. S. currency
16 and some personal checks.

17 Q And did you -- what did you do with those
18 items?

19 A Secured them, took them back into the police
20 department. The first investigator I encountered
21 was Detective Furr, I asked him to take possession
22 of them and prepare the seizure paperwork to
23 include them in the gambling case investigation.

24 Q If you will, take a look at what is marked as
25 Plaintiff's Exhibits 8 and 11.

1 A Yes, ma'am.

2 Q Would you tell me what those are?

3 A Those are two separate Horry County Police
4 Department evidence records. The first one
5 indicates 184 -- I'm sorry -- \$1,847 U. S. currency
6 and four checks. The second one is green leafy
7 substance with stems, approximate weight 38 grams.
8 These are evidence sheets where I initially took
9 custody of these items and turned them over to
10 Detective Furr January 30, 2009.

11 Q Exhibit 9, is that a photograph of the money?

12 A Yes, it is.

13 Q And Plaintiff's Exhibit 10, what is that
14 document?

15 A That is a currency denomination sheet. This
16 particular one, based on what someone, it appears
17 to be the denomination breakdown, \$1,847, that
18 Detective Furr took from me and turned in.

19 MS. ELDER: Your Honor, I will introduce
20 these.

21 THE COURT: They are already in. Mr. Canty
22 asked they be provided.

23 MR. CANTY: Your Honor, please note my
24 objection. Those have never been produced.

25 THE COURT: All right.

1 THE COURT: Show them to Mr. Canty first.

2 MR. CANTY: Objection, never seen them
3 before, Judge, never seen the document that she
4 describes as the evidence record. This is the
5 first that we have heard that they are in
6 possession of any checks.

7 MS. ELDER: Your Honor, in his brief he talks
8 about checks, even asks the SLED agent about checks
9 that were taken.

10 MR. CANTY: Yes, that is absolutely correct,
11 Your Honor, we wondered what happened to the checks
12 because we never received anything indicating that
13 there was a record of possession of the checks or
14 what they had done with the checks. We knew that
15 SLED took checks. This is the first that we have
16 heard that Horry County took checks, this is all
17 news to us.

18 THE COURT: Are you saying these are
19 different checks?

20 MR. CANTY: Your Honor, we have never seen
21 them before. If I may --

22 THE COURT: Were you asking about some other
23 checks or did you know about these checks?

24 MR. CANTY: We were asking about the checks
25 that were taken from the restaurant, from the cash

1 register in the restaurant.

2 THE COURT: Okay. I thought that is what you
3 were doing.

4 (Checks marked and received in evidence
5 as Plaintiff's Exhibit Number 13).

6 MS. ELDER: Your Honor, all this has been in
7 evidence from day one. If Mr. Canty had gone to
8 the police department to look at the evidence which
9 he is completely entitled to do he could have seen
10 all of this.

11 MR. CANTY: Your Honor, may it please the
12 Court, when we serve requests for production of
13 documents requesting all documents that the
14 Solicitor intends to introduce in trial and the
15 Solicitor responds to that discovery request and
16 she omits these documents and we have no other
17 reference to these documents I would submit that
18 the argument is disingenuous.

19 MS. ELDER: Your Honor, this is evidence, it
20 is in evidence, Mr. Canty knew it was in evidence
21 or at least could have known had he bothered to go
22 look.

23 THE COURT: I understand that but the civil
24 rule requires -- did you serve a motion for
25 production?

1 MR. CANTY: Absolutely, Your Honor.

2 THE COURT: I see here Plaintiff's Supplement
3 Answer to Defendant's Request for Production, the
4 Answers to Interrogatories, the Plaintiff's Answers
5 to Interrogatories attached, number one and number
6 two. All right. That is the response.

7 MS. ELDER: Your Honor --

8 THE COURT: All right. When she responded
9 she says tapes and items previously provided as
10 shown and listed on attached copy of discovery
11 provided July 23rd, complete copy of case file,
12 copy of video and audio, disc copy of video and
13 audio disc, copy of video and audio disc, copy of
14 video and audio disc and copy of pictures taken
15 during search warrant. She says she is enclosing a
16 complete copy of the case file.

17 What attachment did she provide to you? And
18 she says, "Everything in my case file is attached."
19 I would assume that is what it is.

20 Have you got a copy of your original response
21 there, Miss Elder?

22 MS. ELDER: I may have.

23 MR. CANTY: Your Honor, I understood her
24 argument to be that I could have gone to the police
25 department and looked, and we requested copies of

1 documents which she indicated would be introduced
2 as evidence at trial.

3 THE COURT: It says, "In response to your
4 discovery request please find," or excuse me,
5 "enclosed please find copies of the following," and
6 she says discovery provided, attached, enclosed, a
7 complete copy of the case file, a copy of a video
8 disc from January 15th, one from January 19th, one
9 from January 23rd, one from January 24th, all of
10 2009, copy of pictures taken during the search
11 warrant, one disc.

12 And you told me you didn't have the pictures,
13 you didn't have anything else. Now --

14 MR. CANTY: Your Honor --

15 THE COURT: It would seem to me here that she
16 has given it to you. Show me what she did give
17 you. I mean, it says complete copy of the case
18 file was sent to you.

19 MR. CANTY: Your Honor, obviously that is not
20 true and as an officer of the court I represent to
21 the Court that those three documents and those
22 checks have never been produced.

23 THE COURT: Well, I've got Miss Elder telling
24 me she sent them. What am I supposed to do with
25 that? I mean, Miss Elder, does that include these

1 other than Rutherford.

2 THE COURT: I don't know who it was. It is
3 just on the narrative of the report, of the charge.
4 Are you saying, Mr. Canty, that the Horry County
5 Police didn't take \$1,800 out of your client's
6 refrigerator?

7 MR. CANTY: No, Your Honor. That is not the
8 issue. The issue is the second find of marijuana.
9 We have an affidavit for seizure, we have the
10 incident report, both of which have the names of
11 Ard and Furr but absolutely no mention of
12 Rutherford. The document which the Solicitor has
13 just handed you, there is three pages there, as an
14 officer of this Court, I have never seen, before
15 never been produced to me and one of the reasons we
16 are in trial here today is because they had no
17 chain of custody on that marijuana.

18 Now, the Solicitor says she turned over her
19 entire case files. That is what she put in her
20 response to request for production of documents.
21 How are we to know that what we received was not
22 the entire case file? We would have no way of
23 knowing that.

24 THE COURT: Well, she says she did and this
25 is what sort of confuses me, Mr. Canty. If you're

1 denomination sheet?

2 A Yes, ma'am.

3 Q And that was again pursuant to why you were
4 in there?

5 A Preparing the vehicle for the extended time
6 that it was going to be in our custody and to
7 remove items that were going to damage or possibly
8 damage the vehicle while it was in our custody.

9 Q And all these items you just testified to
10 were found in the same refrigerator?

11 A Yes, ma'am.

12 MS. ELDER: I have no further questions, Your
13 Honor.

14 THE COURT: All right, Mr. Canty, you can
15 cross.

16 CROSS EXAMINATION BY MR. CANTY:

17 Q Would you tell the Court what perishables you
18 found in the refrigerator?

19 A I believe there was some food in a white
20 styrofoam container, if I'm not mistaken.

21 MR. CANTY: Your Honor, may I see those
22 documents --

23 THE COURT: Certainly.

24 MR. CANTY: -- that have been admitted into
25 evidence?

1 BY MR. CANTY:

2 Q Plaintiff's Exhibit 13 is an evidence bag.

3 Correct?

4 A It appears to be, yes, sir.

5 Q This came from your agency, did it not?

6 A It resembles evidence bags our agency
7 possesses, yes, sir.

8 Q Sir, you're the one offering this in
9 evidence. Please tell the Court if that is your
10 evidence bag or not.

11 A Like I said, it resembles evidence bags that
12 our agency has, it has a case number on it which I
13 would assume would be associated with these checks,
14 yes, sir.

15 Q And on the front of that evidence bag is a
16 preprinted form for chain of possession?

17 A Yes, sir.

18 Q There is no names on that chain of possession
19 form, is there?

20 A No, sir. The names are on the, the evidence
21 chain of custody is on the evidence sheet.

22 MR. CANTY: Again note my objection for the
23 record to Number 8 and Number 9.

24 THE COURT: All right.

25 MR. CANTY: To Number 10 and to Number 11.

1 BY MR. CANTY:

2 Q So, you allege that you found this marijuana
3 six days after the initial seizure?

4 A I'm not alleging, I did find it six days
5 after, Mr. Canty.

6 Q All right. And you were alone when you found
7 it?

8 A Yes, sir, I was.

9 Q Did you photograph it when you found it?

10 A No, sir, I didn't.

11 Q Where physically were you when you handed the
12 marijuana to Detective Furr, or did you send him
13 out to the RV to get it?

14 A Where was I physically at?

15 Q Yes.

16 A Inside the narcotics and vice section at the
17 police department.

18 Q So, in the narcotics and advice section of
19 the police department you handed Mr. Furr a bag of
20 marijuana?

21 A Yes, sir.

22 Q And this is the basis for seizing the \$1,857,
23 approximately?

24 A Yes, sir.

25 Q And do I understand your testimony to be that

1 either the marijuana was laying on top of the money
2 or the money was laying on top of the marijuana,
3 which was it?

4 A I don't believe I have testified to either
5 one of those. As I recall, they were in the
6 refrigerator. Whether one was on top of the other,
7 I don't recall.

8 Q And in the incident report, do you know of
9 any reason why Detective Ard would do an incident
10 report and it would have the name of a supervisor
11 on it and would describe the discovery of this
12 marijuana six days after the seizure and make no
13 mention whatsoever of your name?

14 A No, sir, I don't.

15 Q And subsequently that would be four days
16 later or ten days after the seizure Detective
17 Derrick Ard signed an affidavit for a search
18 warrant? Do you know about that?

19 A I'm vaguely aware of that, yes.

20 Q So, there was a subsequent search warrant
21 issued?

22 MR. CANTY: If I may approach, Your Honor?

23 Q Let me show you this affidavit.

24 A Yes, it appears there was one issued February
25 the 3rd.

1 Q Do you know of any reason why four days after
2 you found this pot an affidavit would be issued for
3 a search warrant and it would make no mention of
4 the fact you found this pot?

5 A No, sir. I'm not the affiant on this.

6 Q Is there any question that Detective Ard
7 makes no mention of finding this, of you finding
8 this pot four days earlier in the RV?

9 A Is there any question in my mind?

10 Q Yes.

11 A I didn't read the affidavit, sir. It makes
12 no mention of that being found but it goes into
13 reasons for why this search warrant was applied
14 for.

15 Q And, so, four days after you say that you
16 found this ounce of pot subsequent search warrant
17 was obtained and the affidavit to support that
18 search warrant didn't make any mention of I finding
19 that pot. Is that correct?

20 A Yes, sir.

21 Q And in executing that second search warrant
22 nothing was seized, is that correct?

23 A The second search warrant you're referring to
24 that Detective Ard requested and obtained?

25 Q Yes.

1 A Yes, sir.

2 Q And the return, nothing was taken?

3 A Yes, sir.

4 Q Now let me show you Plaintiff's Exhibit 11.
5 Are you familiar with something called SLED Initial
6 Custody Form?

7 A In my experience I probably have seen one
8 before but I'm not exactly comfortable with what
9 you're referring to, Mr. Canty.

10 Q Quotation marks, Initial Custody Form, SLED
11 Initial Custody Form, does that not sound familiar
12 to you?

13 A Like I said, it sounds like something I'm
14 familiar with but I don't know exactly what you're
15 referring to.

16 Q There is no SLED Initial Custody Form for
17 this marijuana, is there?

18 A This is the initial custody evidence form?

19 Q SLED has never seen this marijuana?

20 A SLED has never seen it?

21 Q Yes.

22 A I don't think so, sir. If I'm not mistaken,
23 we tested this in house.

24 MR. CANTY: That's all I have.

25 THE COURT: Miss Elder?

1 MS. ELDER: I don't have any other questions,
2 Your Honor.

3 THE COURT: All right, you may step down.
4 (Witness excused).

5 MS. ELDER: We call Officer Danny Furr.
6 DANNY L. FURR, after being first duly sworn,
7 testified
8 as follows:

9 THE CLERK: Please be seated and state your
10 name for the Court, please.

11 THE WITNESS: My name is Danny L. Furr, spell
12 last name F-u-r-r.

13 DIRECT EXAMINATION BY MS. ELDER:

14 Q Officer Furr, where are you currently
15 employed?

16 A Horry County Police Department.

17 Q In what capacity?

18 A As a senior detective with the narcotics and
19 vice section.

20 Q And were you employed there in January of
21 '09?

22 A Yes, I was.

23 Q And who was your captain at the time?

24 A Captain Rutherford.

25 Q And do you have an occasion to recall an

1 report that you had received the items from Captain
2 Rutherford. Is that correct?

3 A Yes.

4 Q Is there a specific reason, were you trying
5 to mislead something by not putting it in your two
6 sentence follow-up?

7 A No. I think it was on the evidence form, I
8 had already had Captain Rutherford sign
9 relinquishing the evidence to me to put into
10 evidence, and the follow-up report, so to speak,
11 was done after the evidence sheet. I knew it was
12 already indicated on the evidence form itself.

13 Q All right. When you turned the Plaintiff's
14 Exhibit 12 in you turned it in to evidence, is that
15 correct?

16 A Yes.

17 Q For testing?

18 A Yes.

19 MS. ELDER: I don't have any other requests,
20 Your Honor.

21 THE COURT: All right.

22 Mr. Canty?

23 CROSS EXAMINATION BY MR. CANTY:

24 Q Mr. Furr, is this your report?

25 A Yes, it is.

1 Q Would you tell the Court, please, where you
2 indicate that someone other than you found that
3 marijuana?
4 A It is not on this report.
5 Q Can you tell the Court, please, where on that
6 report it indicates that you found checks?
7 A It don't state that in the narrative.
8 Q Was anybody else present when you received
9 this marijuana?
10 A Myself and Captain Rutherford were the only
11 ones in the office at the time.
12 Q Okay. And where exactly did that occur?
13 A Where did the --
14 Q You got possession of this marijuana from
15 Captain Rutherford?
16 A Yes.
17 Q And that happened in the narcotics office?
18 A Yes, it did.
19 Q And there was no one else present?
20 A There was not.
21 Q And your report doesn't say Captain
22 Rutherford anywhere on it?
23 A No, not in the narrative, no, it does not.
24 Q And you didn't go to the refrigerator to
25 look?

1 A No. I did not enter the recreational
2 vehicle.

3 Q It was actually Detective Ard some four days
4 later --

5 A I don't know, I wasn't there.

6 Q Have you ever been in the RV?

7 A I have not.

8 Q There are some documents somewhere that says
9 where the marijuana went from your possession. Did
10 you just testify to that?

11 A Yes. The evidence record.

12 Q Evidence record? I'm looking for that. Can
13 you find that for me? Is that in evidence?

14 A There is actually two evidence forms.

15 Q It went from you to whom?

16 A Myself to evidence locker.

17 MR. CANTY: Your Honor, the other marijuana
18 is --

19 Q Would you agree this marijuana and this
20 marijuana, Plaintiff's 5 and Plaintiff's 12, are
21 dissimilar, it appears, Detective?

22 A Are you speaking on the texture? I don't
23 know. It feels like plastic to me, it's in a
24 plastic bag. But appearance, same color, it's the
25 same form. I mean, it's marijuana.

1 MR. CANTY: No objection.

2 THE COURT: Okay.

3 Miss Elder?

4 MS. ELDER: He is getting my next witness.

5 JOHN R. CAULDER, after being first duly sworn,
6 testified as follows:

7 THE CLERK: Please be seated and speak your
8 name for the Court and spell your last.

9 THE WITNESS: John R. Caulder, C-a-u-l-d-e-r.

10 DIRECT EXAMINATION BY MS. ELDER:

11 Q Officer Caulder, where are you employed?

12 A The Horry County Police Department.

13 Q In what capacity?

14 A As a senior investigator within the crime
15 scene unit.

16 Q And were you employed there in January of
17 2009?

18 A Yes, ma'am.

19 Q And also I believe in October of 2010?

20 A Yes, ma'am.

21 Q And as a crime scene officer do you perform
22 marijuana analysis?

23 A Yes, ma'am, that is one of my duties.

24 Q Did you receive particular training to do
25 that?

1 class one, schedule one substance.

2 Q You had five separate baggies that tested
3 exactly the same weight?

4 A Yes, ma'am.

5 MS. ELDER: Your Honor, at this times we
6 would move State's Exhibit 12 into, I'm sorry,
7 Plaintiff's Exhibit 12 into evidence.

8 MR. CANTY: Continuing objection.

9 THE COURT: All right. I'm going to admit
10 it.

11 (Analyst report marked and received in
12 evidence as Plaintiff's Exhibit 12).

13 MS. ELDER: I have no further questions.

14 THE COURT: Before Mr. Canty starts, would
15 you know how much a bag of marijuana costs now, an
16 ounce of marijuana?

17 THE WITNESS: No, sir, I'm not familiar.

18 CROSS EXAMINATION BY MR. CANTY:

19 Q Is that weighed with or without the bag?

20 A It is weighed without the bag. You only
21 weigh the part, the analysis has to be weighed on
22 its own without any, without anything added.

23 MR. CANTY: If I may approach, Your Honor.

24 Q Now, with regard to Plaintiff Number 5, you
25 weighed the contents of those bags and measured it

1 to 1/100th of an ounce, is that correct?

2 A That's correct.

3 Q And five out of five came back to within
4 10/100ths of an ounce at 0.91?

5 A That is correct.

6 Q And in Plaintiff's Exhibit 12, that was
7 actually 1.16 ounces, is that correct?

8 A 1.16, yes, sir.

9 Q All right.

10 MR. CANTY: That's all I have.

11 MS. ELDER: Your Honor, I have no further
12 questions.

13 THE COURT: You may step down. Thank you.

14 MS. ELDER: I would ask he be excused, Your
15 Honor.

16 MR. CANTY: No objection.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness excused).

19 MS. ELDER: Your Honor, that would be the
20 State's presentation, I'm sorry, the plaintiff's
21 presentation.

22 THE COURT: All right.

23 Mr. Canty?

24 MR. CANTY: Your Honor, very briefly, with
25 regard to the pistol, we think the State has failed

1 really heard anything to suggest that the pistol
2 may have been used to facilitate this. If it had
3 been found with the money or drugs I would have had
4 perhaps a different opinion but it seems to have
5 been in the bedroom where it would not be
6 convenient to someone who was defending himself
7 while selling marijuana because that was in the
8 living room, or the kitchen, excuse me.

9 MS. ELDER: Well, Your Honor, as Your Honor
10 pointed out, and I believe Officer Ard testified
11 to, we're talking about, we're not talking about a
12 normal house or even a mobile home, we're talking
13 about an RV and as Your Honor indicated you could
14 probably put your hand on the refrigerator and that
15 marijuana and on the compartment beside the shower
16 probably at the same time. We're talking about a
17 very small location, Your Honor.

18 We're also talking, as Officer Ard testified,
19 that the paraphernalia, including the grinders, the
20 rollers, the other items were found actually
21 throughout the RV and not just in one designated
22 location. "We seized a weapon, as we typically do,
23 weapons are not very clear under the seizure
24 statute," as Ard testified. It is basically --

25 THE COURT: It sounds like that is what we

1 do.

2 MS. ELDER: It is one of those things, Your
3 Honor, it is common practice for people who either
4 are maintaining amounts of dope or maintaining cash
5 as a result thereof arm themselves with weapons, so
6 it is our position that having weapons in proximity
7 to distribution amounts of dope and/or money would
8 be used to help facilitate that process even more,
9 and that was testified to, Your Honor. This is,
10 you know, this is a very unusual, forfeiture is a
11 very unusual proceeding for civil court. The
12 purpose of the forfeiture hearing is for the Court,
13 all the State has to do actually is, the hearing is
14 to confirm the the State has probable cause to
15 seize the property. Once that probable cause is
16 found that's all we have to prove, Your Honor. It
17 then reverts to their duty to show by preponderance
18 of the evidence that this is used for some other
19 purpose and he's not provided any testimony to that
20 at this point, anyway.

21 MR. CANTY: Your Honor, I appreciate the
22 Solicitor's comment with regard to proximity but I
23 think she is bound by her pleadings and she is not
24 proceeding on a proximity theory in her pleadings,
25 she alleges that it was furnished or intended to be

1 furnished by a person in exchange for a controlled
2 substance. There's absolutely no evidence of that.
3 Or alternatively, that it was knowingly used to
4 facilitate manufacturing, distribution, sale,
5 trafficking, importation. No evidence of that.

6 THE COURT: We had just sort of forgotten
7 about the firearm during this. I'm going to give
8 you the firearm back, Mr. Canty.

9 MR. CANTY: Thank you, Your Honor.

10 MS. ELDER: I assume, Your Honor, that would
11 be subject to running his criminal record.

12 THE COURT: Absolutely. If it could not be
13 given back to him, if it could not be given back to
14 him he will have to convey it to someone else, he
15 can provide you information on that and that person
16 may claim it. Certainly we're not going to turn it
17 back over to him under court order if he is
18 disqualified from ownership.

19 All right, Mr. Canty.

20 MR. CANTY: Your Honor, for the record, to my
21 knowledge, he is in no way disqualified.

22 THE COURT: Okay.

23 MR. CANTY: I would call Mr. Michael Albin to
24 the stand.

25 MICHAEL ALBIN, after being first duly sworn,

1 testified as follows:

2 THE CLERK: Please state your name for the
3 Court.

4 THE WITNESS: My name is Michael James Albin.

5 DIRECT EXAMINATION BY MR. CANTY:

6 Q And what is your address?

7 A My current address?

8 Q Yes.

9 A 8374 Cherrywood Drive.

10 Q And how old are you, sir?

11 A I will be 66 the end of August.

12 Q And where were you born?

13 A I was born in Summerset, Pennsylvania.

14 Q And did you go to high school there?

15 A Yes, sir.

16 Q What did you do after high school?

17 A I went into the military.

18 Q How old were you when you enlisted?

19 A Seventeen.

20 Q And how long were you in the military?

21 A A little over twenty years.

22 Q Did you serve in Vietnam?

23 A Yes, sir.

24 Q More than once?

25 A Yes, sir.

1 Q After you retired from the military where did
2 you locate?

3 A I located at 5730 Highway 707, lot number 12.

4 Q And what year was that?

5 A 1983.

6 Q And have you lived in Horry County since
7 1983?

8 A Yes, sir.

9 Q Do you have any criminal convictions?

10 A No, sir.

11 Q Have you been arrested for anything since
12 this raid?

13 A No, sir.

14 Q And what business are you in?

15 A At the present time I own Putters Restaurant.

16 Q Have you been in other businesses?

17 A Yes. I owned an ice cream business for
18 twenty years.

19 Q And did you advance your education after you
20 retired from the military?

21 A Yes, I did.

22 Q What degrees did you obtain?

23 A I got an associate degree in hotel, motel,
24 restaurant manager, and associate degree in data
25 processing.

1 Q And did you then go into business?

2 A Pardon me?

3 Q Did you then go into business?

4 A Yes.

5 Q Tell the Court about what businesses you had
6 from 1983, forward.

7 A Prior to 1983?

8 Q 1983, forward. Are you hard of hearing?

9 A Yes, sir.

10 Q Are you wearing hearing aids?

11 A I've got them on now.

12 Q Are you having difficulty understanding?

13 A Sometimes.

14 Q Okay. Well, that is what my wife says. What
15 sort of business have you been involved in?

16 A I owned a mobile ice cream business with six
17 trucks for approximately twenty years.

18 Q Did you start that from scratch?

19 A Yes, I did, 1984.

20 Q And did you sell that business when it was up
21 to six trucks?

22 A I gave it away, gave it to my ex-partner.

23 Q And what other businesses have you been
24 involved in?

25 A I owned a chicken wings business in Surfside

1 in 1984, 1985, called Fat Jack's.

2 Q And did you sell that business?

3 A Yes, I did.

4 Q And any other businesses?

5 A Putters is the only thing, only other
6 business, other than the ice cream business and
7 chicken wings business.

8 Q Do you have cash income from Putters?

9 A No.

10 Q Do the patrons at the restaurant pay in cash?

11 A Oh, do I have cash? I thought you said did I
12 get paid cash. Yes, they pay in cash or checks.

13 Q Do you make bank deposits, proceeds from
14 business deposits?

15 A Yes, I do.

16 Q And back in 2009, in January, 2009, how often
17 were you making those bank deposits?

18 A Once a week.

19 Q Approximately how much were those deposits?

20 A Approximately 3,000 to 3,500 dollars.

21 Q All right. Now, you provided your bank
22 statements to me?

23 A Yes, I did.

24 Q And do they reflect your monthly deposits for
25 Putters, Incorporated?

1 A Yes, they do.

2 Q Do they also reflect your \$1,171 montly
3 payments on the note for this RV?

4 A Most of them do. I do pay out of my personal
5 account sometimes.

6 Q And are you still paying the \$1,171 a month?

7 A Yes, I am.

8 Q For the RV?

9 A Yes, I am.

10 Q Are you paying also the insurance and the
11 registration and the property taxes?

12 A Yes, sir.

13 Q And has that been the case the last two and a
14 half years?

15 A Yes, sir.

16 Q Have you had the use or possession of that RV
17 in the two and a half years?

18 A No, sir.

19 MR. CANTY: Your Honor, we would offer this
20 bank statement for purpose of showing two things.
21 First, the amount of deposits to the business
22 account on a monthly basis at the time this raid
23 occurred and also the defendant's debt service on
24 the promisory note for the RV.

25 THE COURT: All right.

1 have named the lien holder.

2 THE COURT: I don't see a lien holder here,
3 Mr. Canty. It looks like this title was issued,
4 well, a duplicate title, it's difficult for me to
5 see, I can't tell when it was issued -- yes, I do.
6 It was issued 6/30/2008, and that was what, a year
7 before the seizure?

8 MR. CANTY: Six months, seven months.

9 THE COURT: Okay. It looks like it was
10 registered to Mr. Albin without lien.

11 Okay.

12 MR. CANTY: I have not seen this, Judge, my
13 client may very well have a different title.

14 THE COURT: Miss Elder didn't offer it. Miss
15 Elder provided it pursuant to my request to
16 determine whether or not there was a lien.

17 Okay.

18 BY MR. CANTY:

19 Q And tell the Court what income you have, at
20 the time of this raid what was your income?

21 A \$60,000 a year.

22 Q And what was the source of that \$60,000 a
23 year?

24 A Social Security, military disability and
25 military retirement check.

1 Q Aside from any revenues associated with
2 Putters?

3 A No, I did not, no, I did not get any revenue
4 from Putters.

5 Q Excluding Putters, it was \$60,000?

6 A Yes, it was.

7 Q So, without getting out of bed in the morning
8 you had \$60,000 in annual income?

9 A Yes.

10 Q Now, were you losing money on Putters or
11 making money or breaking even?

12 A Pretty much breaking even once I paid my help
13 and everything. I tried to keep my prices low so
14 the people could afford it.

15 Q And your daughter worked there?

16 A Yes, she does.

17 Q Your wife worked there?

18 A Yes, she does.

19 Q And other family members, other relatives or
20 their relatives?

21 A A stepdaughter.

22 Q That provides employment for those people?

23 A Yes, it does.

24 Q Now, have you ever had any trouble with
25 burglaries?

1 A Yes, I have.

2 Q How many -- how long have you owned Putters?

3 A Since 2001.

4 Q And how many times has it been burglarized?

5 A Seven.

6 Q And tell the Court, please, as a result of
7 those several burglaries who did you call to
8 investigate the complaint?

9 A Horry County Police.

10 Q Tell the Court, please, on how many of those
11 seven occasions they apprehended the perpetrator?

12 A Zero.

13 Q Tell the Court, please, what you know about
14 any investigations conducted by the Horry County
15 Police?

16 A They just said there wasn't enough evidence
17 to investigate.

18 Q Was there occasion when you requested that
19 they dust for fingerprints when someone came
20 through a window?

21 A Yes, there was.

22 Q Tell the Court whether or not that occurred.
23 Did they dust for prints?

24 A No, they didn't.

25 Q Are these incident reports associated with

1 some of those burglaries?

2 A Yes, it is.

3 Q If you would, review those.

4 A Yes, I see the incident reports.

5 MR. CANTY: We would offer those in evidence,
6 Your Honor.

7 MS. ELDER: I don't understand the relevance,
8 Your Honor, but --

9 THE COURT: I will let them in.
10 (Incident reports marked and received in
11 evidence as Defense Exhibit Number 1).

12 BY MR. CANTY:

13 Q As a consequence of that did you locate the
14 motor home --

15 A Yes, I did.

16 Q -- at the restaurant?

17 A Yes, I did.

18 Q As a consequence of that you bought the
19 pistol, correct?

20 A Right.

21 Q And tell the Court what weapons you were
22 trained with in the military?

23 A M16, M1 and .45 pistol.

24 Q What about a .38 revolver?

25 A No. I was trained with a .45. The .38 was

1 never fired.

2 Q The weapon that was seized had never been
3 fired?

4 A No, sir.

5 Q Tell the Court why you had that pistol,
6 again?

7 A Because I'm going to move the vehicle and I
8 was robbed so many times I wanted to protect
9 myself.

10 Q Now, did you smoke marijuana in the RV?

11 A Yes.

12 Q Did you sell marijuana in the RV?

13 A No.

14 Q Tell the Court where, if anywhere, you ever
15 sold marijuana?

16 A I never sold marijuana.

17 Q Why did you have so much of it in the RV?

18 A Because two nights before they came an
19 individual came to me and said, "I have this X
20 amount I will let you have for near nothing," and I
21 said, well, being a cancer patient, my doctor said
22 it wouldn't be a bad idea to smoke, get my appetite
23 back, because I was on radiation treatments.

24 Q What about the money they found in the RV,
25 where did that money come from?

1 A One bag was from my receipts that I was going
2 to deposit that week, I kept them all in the top of
3 the refrigerator and I made one deposit and that is
4 when gas went over four dollars and I saw no reason
5 to go back and forth every day.

6 Q And your bank statements are going to reflect
7 the amount you were depositing on a monthly basis
8 from Putters Restaurant, correct?

9 A Yes, they do.

10 Q And it is in excess of the amount taken by
11 the police?

12 A I'm sorry, I didn't understand that question.

13 Q It's more than the amount taken by the
14 police?

15 A Oh, yes.

16 Q And that included what SLED took, what Horry
17 County Police Department took as well?

18 A Yes, sir.

19 Q So, tell the Court, please, on the day of the
20 raid, when the RV was taken, what amount of
21 marijuana was in your refrigerator?

22 A I don't recall any in my refrigerator.

23 Q All right. Let me show you this evidence,
24 Plaintiff's Exhibit Number 12, and ask you if that
25 looks at all familiar to you?

1 A It looks like marijuana. I couldn't tell if
2 it was mine but it looks like it.

3 Q It looks like marijuana?

4 A I would say. I can smell it.

5 Q Was there money in your refrigerator?

6 A Yes.

7 Q Tell the judge why you had money in the
8 refrigerator.

9 A I stored all my weekly deposits in the top of
10 the freezer and I made one deposit a week.

11 Q And tell the judge whether or not there was
12 marijuana next to, on top of or adjacent to or
13 anywhere near that deposit in the freezer.

14 A No, there wasn't.

15 MR. CANTY: All right, please answer any
16 questions that Miss Elder has.

17 THE WITNESS: All right.

18 THE COURT: All right, Miss Elder.

19 MS. ELDER: Thank you, Your Honor.

20 CROSS EXAMINATION BY MS. ELDER:

21 Q Mr. Albin, when did you buy the RV?

22 A Gosh, I want to say 2006.

23 Q So that would have been, if the title history
24 indicates May 9th, 2006, would you agree with that?

25 A If that is what it says, yes, ma'am.

1 A A couple patrons, yes.

2 Q So you all would go out there and smoke and
3 you would be the one that would give them some of
4 your stuff. Is that correct?

5 A I wouldn't give it to them, we would smoke it
6 together, if that's what you mean.

7 Q Did you sell it to them or did you just give
8 it to them?

9 A I never sold any.

10 Q You gave it to them out of your stash?

11 A Yes.

12 Q And when you purchased this marijuana just
13 prior, two days prior to the raid where did you get
14 the money to purchase it?

15 A I have money, I have money in my bank
16 account.

17 Q Okay.

18 A I carry cash with me all of the time, it is
19 part of being a business man.

20 Q You had cash out in your RV?

21 A Yes.

22 Q Is that some of the cash you used to purchase
23 the marijuana?

24 A The money I had in the RV, no.

25 Q Where did the cash come from that you used to

1 purchase two days prior?

2 A In my wallet.

3 Q So, where did you get that money from? Did
4 you get it from the business, did you go to the
5 ATM?

6 A I keep my money in the credit union and I
7 would go down and make cash withdrawals.

8 Q You didn't bring any records showing where
9 you withdrew that two days prior, did you?

10 A Oh, I probably withdrew it more than two days
11 prior because I like to carry about a thousand
12 dollars on me at all times.

13 Q Why do you carry that much cash, Mr. Albin?

14 A You never know when you can come up with a
15 good deal of buying something for the business or
16 whatever.

17 Q Aren't you concerned, since you have had
18 supposedly all this rash of incidences, that by
19 keeping that much cash and that much marijuana out
20 in your RV that is just asking for burglaries or
21 people breaking in?

22 A No. I thought it was very good deterrent to
23 keep people from coming there because they always
24 knew I was in it and they wouldn't burglarize my
25 premises.

1 the money because it is in close proximity. There
2 is no question, assuming that the officer testified
3 that is where he got it, he got it from the
4 refrigerator and it did test positive for
5 marijuana. I understand Mr. Canty is indicating
6 the money was there, the checks were there but the
7 marijuana was not there.

8 THE COURT: Let me just ask you one question
9 about the money, Miss Elder. Did you hear any
10 testimony, any testimony at all that would indicate
11 that Mr. Albin, plenty of testimony he was
12 distributing as that term is defined under the law,
13 but was there any testimony indicating he was
14 selling?

15 MS. ELDER: No, sir, Your Honor, not for
16 money.

17 THE COURT: Did he offer free marijuana, to
18 go out and smoke with the agents?

19 MS. ELDER: He offered, now, Agent Gainey did
20 in fact testify that he had offered to sell some
21 marijuana, she did testify to that, but as far as
22 conducting an undercover operation for the actual
23 sale itself, no, Your Honor.

24 THE COURT: Was there any information they
25 received before they went in on this gambling tip?

1 I understand they initiated that investigation, the
2 initial investigation solely because of complaints
3 about gambling, right?

4 MS. ELDER: That's correct.

5 THE COURT: And after they got in there Agent
6 Gainey engaged him in some conversation or he
7 engaged her or someone got engaged in the
8 conversation that led to information that he was
9 smoking marijuana in the trailer, or the RV.

10 MS. ELDER: Your Honor, that is correct.
11 They also, of course that is not part of the record
12 but there is, their officers did receive
13 information through the course of this, it wasn't a
14 one day investigation, obviously, as Your Honor
15 heard, it was over several times, during the course
16 of their discussions with employees, the specific
17 employee in there, the question about Mr. Albin's
18 involvement with marijuana in that particular RV
19 came to their attention. That is how they
20 developed, then made conversation with him in
21 regards to smoking marijuana, purchasing marijuana,
22 because they had received that information through
23 their discussions with another person.

24 THE COURT: All right.

25 MS. ELDER: And, Your Honor, if I could go

1 back to the money itself, we have petitioned for
2 that based on the close proximity, that basically
3 there is no innocent owner attached to that. The
4 statute is real clear when you argue under that and
5 what we have done is basically when drugs are in
6 close proximity they are in fact seizable. There
7 is no, I don't think that there is any indication
8 that they were not in close proximity, they were in
9 close proximity to what was found in the
10 refrigerator. If Mr. Albin, as he has indicated,
11 agrees that the money was in there and agrees that
12 the other five bags were in there, even taking out
13 the marijuana bags in the refrigerator, there were
14 still five other bags of marijuana in that RV, so I
15 don't know how you can get past that it was not in
16 close proximity.

17 THE COURT: I'm past that, I'm past that.
18 What gives me concern is the portion of Section 8
19 that says if the person from whom the money was
20 taken can establish to the satisfaction of the
21 Court that the monies seized were not product of
22 illegal acts the monies must be returned pursuant
23 to court order. Now, that's the reason I was
24 asking.

25 MS. ELDER: The only thing he established,

1 Your Honor, and the burden is on him --

2 THE COURT: I want to know what we have to
3 show he was selling. The statute says seize it if
4 it's in close proximity.

5 MS. ELDER: That's correct.

6 THE COURT: It switches back. He is saying,
7 "It was my receipts and that is where I kept my
8 money."

9 Okay. I want to know if there was anything
10 about this investigation that would show otherwise
11 or would indicate otherwise to me.

12 MS. ELDER: The agents had information that
13 Mr. Albin was in fact selling. They did not go
14 through the process.

15 THE COURT: Didn't do a buy or anything like
16 that?

17 MS. ELDER: No, Your Honor, they went ahead
18 and did the search warrant the next day.

19 THE COURT: Didn't offer to buy or anything.

20 MS. ELDER: Actually Agent Gainey did
21 indicate they had a conversation with Mr. Albin
22 about purchasing marijuana, he said he wanted to
23 smoke it first, I believe that was her testimony,
24 "Come out to the RV and smoke with me first," and
25 then they left, they didn't, they said they will be

1 back tomorrow, I believe is what they said, and
2 tomorrow was the search warrant.

3 THE COURT: Okay.

4 All right, Mr. Canty?

5 MR. CANTY: Thank you, Your Honor. I think
6 it is significant that first of all those bank
7 records demonstrate this bar and restaurant
8 generated substantial income in the form of cash
9 and checks. The testimony is that the cash and
10 checks that were found were proceeds from business
11 conducted in the restaurant, providing food and
12 beverage, and there has been no evidence to the
13 contrary. The sole basis for the Solicitor's
14 seizure of those funds is proximity, and as Your
15 Honor has pointed out, once the defendant
16 establishes that the monies seized are not the
17 product of illegal acts the money must be returned
18 pursuant to court order.

19 We heard the Solicitor say over and over
20 again he smoked marijuana, he smoked marijuana with
21 other people. Agent Gainey said that she thought
22 that at some point in the future he would sell
23 marijuana. I would point out two things. First of
24 all with regard to this marijuana, Plaintiff's 5,
25 each of these bags was within 1/100th of an ounce

1 in weight of the other bags. The investigating
2 detective who received all of this stuff was
3 unequivocal, there were no scales. I would submit
4 Mr. Albin's testimony that it came that way must be
5 true. He did not repackage it for distribution.
6 We have no evidence of him selling marijuana.

7 Most troubling, as I have raised in my brief,
8 there are constitutional issues here as well to do
9 with burden of proof, to do with the right to a
10 pre-seizure hearing. As was indicated he has been
11 paying \$1,171 a month for debt service, plus
12 insurance, plus property taxes, plus registration
13 fees for an RV he has not had the use of for two
14 and a half years. Aside from the constitutional
15 issues, what this Court has to find is that this RV
16 was used as a container, and again we have the one
17 pound minimum.

18 Your Honor has ruled on that, I'm not arguing
19 with the Court on that. If it can be a container
20 and less than a pound and it can be seized, the
21 General Assembly engaged in a pointless act in
22 enacting that legislative provision in the one
23 pound minimum.

24 The same thing would apply with regard to the
25 facilitation. We don't have a sale, we don't have

1 a drug buy, we don't have any evidence that any of
2 the money found was the proceeds of a drug
3 transaction. There is none, there is nothing in
4 the record. We've got no scales.

5 What we do have is a couple law enforcement
6 agencies that showed up with a tow truck, that
7 after the raid commenced the SLED agent says, "We
8 got the RV, we got the RV," and I would submit that
9 in view of the plainly expressed intent of the
10 Legilative Assembly, in view of the evidence that
11 has been presented regarding this particular
12 defendant, his financial circumstances, the
13 circumstances under which he owned this vehicle,
14 that the forfeiture of this vehicle, you can see
15 the promisory note for \$69,000, it is plainly a
16 valuable vehicle, the forfeiture of this vehicle is
17 disproportionate to the wrong. What they are
18 claiming is that his possession of marijuana and
19 his smoking of marijuana justifies them seizing his
20 home, a very valuable RV. It is disproportionate
21 and I would submit that it is not fair and it is
22 not just.

23 Thank you.

24 THE COURT: Mr. Canty, Miss Elder, I want to
25 address first the issue of the RV. I have reviewed

1 fully the prior summary judgment motion which was
2 filed by counsel for the defense as well as the
3 memorandum he filed in support, I have listened to
4 both of your statements concerning what occurred at
5 that summary judgment hearing. What you have told
6 me is consistent with the motion for summary
7 judgment as well as the memorandum. It is clear
8 and undisputed that the plaintiff moved for summary
9 judgment on the ground that 44-53-520(A)(6)
10 requires the motor vehicle seized to have contained
11 at least one pound of marijuana and that the
12 specific language of that specific item preempts
13 seizure under the remainder of the article, that is
14 44-53-520, and specifically Subsection (A)(3),
15 which refers to the container issue, container used
16 for the property, or in (4), which is all property,
17 this is what Subsection 4 says, all property, both
18 real and personal which in any manner is knowingly
19 used to facilitate production, manufacturing,
20 distribution, sale, distribution and sale,
21 importation, exportation or trafficking in various
22 controlled substances as defined in this article.

23 It is equally clear to me that Judge John
24 granted the motion as to (A)(6) but found that it
25 did not preempt forfeiture under (A)(3) and (A)(4).

1 Now, I have looked at the statutes and I
2 would specifically call your attention to
3 Subsection G, comments under that on 266, and Drug
4 Litigation in South Carolina, which seems to state
5 that it does preempt, so I'm not saying that I
6 particularly agree with Judge John's ruling but
7 there has been no motion to reconsider, no motion
8 of appeal, no notice of appeal, and it is clear to
9 me that Judge John's ruling is the law of the case.

10 The law of this case is that this property,
11 regardless of what is said in (A)(6) is seizable
12 under (A)(3) and (A)(4). In that regard I look at
13 (A)(3), which speaks of the seizure of a container
14 for property which would be contraband or the
15 equipment, things used to make it in. I don't know
16 whether it comes under container or not. I would
17 certainly have difficulty with that. But if (A)(4)
18 applies there is no question that this is personal
19 property. It was in some manner knowingly used to
20 facilitate at the very least distribution as that
21 term is defined in this state of marijuana.
22 Distribution does not mean sale, distribution is
23 simply the passing or providing of the marijuana
24 from one person to the other.

25 Now, as to the firearm, I have already ruled.

1 I just don't see any nexus between the two. Had
2 the firearm been in the area of the RV where the
3 drug transactions may or may not have taken place I
4 would be more concerned about it but I'm not going
5 to find that it is subject to seizure.

6 The money is different. The statute very
7 clearly says in Subsection (A)(8) that all monies
8 seized in close proximity to forfeitable controlled
9 substances, drug manufacturing or distribution,
10 distributing paraphernalia or in close proximity to
11 forfeitable records of the importation,
12 manufacturing or distribution of controlled
13 substances, that money seized at the time of arrest
14 or search involving violation of this article can
15 be seized. However, it goes on to say if the
16 person from whom the monies were taken can
17 establish to the satisfaction of the court of
18 competent jurisdiction that the monies seized were
19 not a product of illegal act the monies must be
20 returned pursuant to court order.

21 There are several things that I have looked
22 at in this case. First of all I have looked at the
23 amount. There was some four, perhaps five ounces
24 of marijuana. There is an inference at least in
25 the criminal law of this state, statutory inference

1 that possession of more than one ounce creates a
2 rebuttable inference of possession with intent to
3 distribute.

4 I have also looked at the nature of the
5 packaging. It was five or six packages containing
6 up to an ounce. There was proximity to some cash,
7 of these drugs. There was an offer by, an admitted
8 offer by Mr. Albin to use his RV to smoke
9 marijuana. There were several checks, I asked him
10 about those, in odd amounts, \$30, \$20, \$15. It has
11 been the Court's experience from other cases that
12 sometimes that translates to quarter ounces. I
13 don't know. There has been no testimony, otherwise
14 I asked one of the officers but he could not tell
15 me.

16 All these are things that I considered.
17 However, I am swayed by the fact that there was,
18 that this investigation was initiated for an
19 entirely different purpose, that is, unlawful
20 gambling. Apparently there was no complaint about
21 any marijuana use prior to the initiation of the
22 investigation for gambling. Mr. Albin says that
23 that money was the fruits of his lawful business,
24 Putters. I'm inclined to believe him due to the
25 fact that although one of the officers said

1 something about he might intend to sell some
2 marijuana in the future, it was very vague. There
3 is no evidence that this money came from any such
4 sale, there is just no evidence even to suggest
5 that there had ever been a prior sale and I'm going
6 to find that he has established to my satisfaction
7 that the monies seized were not from illegal acts
8 and I'm going to return the money.

9 But again, as to the RV, under the law of
10 this case I'm going to find that it is forfeited.

11 Thank you.

12 MR. CANTY: Thank you, Judge.

13 MS. ELDER: One other item, just for
14 clarification for the record. In the RV complaint,
15 Your Honor, Mr. Canty filed a counter-claim in
16 reference to the unlawful seizure of that, in which
17 he --

18 THE COURT: I have already ruled and I want
19 it to be clear to everyone that Mr. Canty is
20 protected in that regard, Mr. Canty has the right
21 to pursue those funds against SLED, SLED has the
22 right to seize those.

23 MS. ELDER: I'm not talking about the funds,
24 Your Honor.

25 THE COURT: All right.

1 MS. ELDER: He claimed \$15,000, that was in a
2 different complaint. I'm talking about the one
3 that he attached in his answer and response to the
4 RV, he asks for damages in that, I believe \$90,000
5 as a result of us taking the RV. Just for the
6 record, Your Honor.

7 THE COURT: Well, that goes out the window
8 when I grant you relief.

9 MS. ELDER: I just wanted to make sure, Your
10 Honor.

11 THE COURT: I've granted you relief, which
12 would not entitle him to relief. I think that goes
13 without saying but I have said it now, so we'll see
14 what the Supreme Court does with this when it comes
15 around.

16 MS. ELDER: Thank you, Your Honor.

17 MR. CANTY: Thanks.

18 (Hearing Concluded).
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25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY

COURT OF COMMON PLEAS

J. GREGORY HEMBREE O/B/O)
HCPD

PLAINTIFF,)

v.)

MICHAEL J. ALBIN,)

DEFENDANT.)

TRANSCRIPT OF RECORD

09-CP-26-1281

09-CP-26-3127

09-CP-26-3128

November 12, 2013
Conway, South Carolina

BEFORE :

THE HONORABLE LARRY B. HYMAN, JUDGE

APPEARANCES:

DONNA ELDER, ESQ.
Attorney for the Plaintiff

DAVID J. CANTY, ESQ.
Attorney for the Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

1 THE COURT: This is Gregory Hembree versus
2 Albin. Mr. Canty, bring me back up to speed on this
3 please. I remember it vaguely, but tell me where we
4 are.

5 MR. CANTY: Your Honor, if I may approach,
6 I have the opinion of the Court of Appeals.

7 THE COURT: I have it right here. Well,
8 no, I don't. I have a remittitur and, but I do
9 recall.

10 Mr. Canty.

11 MR. CANTY: Your Honor, this was, it is a
12 forfeiture action that was brought in the name of
13 the Solicitor on behalf of the Horry County Police
14 Department and Your Honor may recall that.

15 THE COURT: Involving an RV?

16 MR. CANTY: Correct, Your Honor. This is
17 a top of the line. Originally I think it was
18 300,000-dollars. My client bought it when it was 13
19 years old. And it was seized by the Horry County
20 police after they discovered just over four ounces
21 of marijuana in it, and the court at that time
22 labored under the misapprehension that Judge John's
23 summary judgment motion ruling was controlling with
24 regard to whether or not the statutory minimum
25 amount of marijuana disqualified this particular

1 vehicle from seizure. And the Court of Appeals
2 agreed with us that, in fact, the statute means what
3 it says and if you don't have a pound you don't
4 forfeit the motor vehicle. So they reversed that
5 particular finding and remanded, and we are here at
6 this point — and if I may, I'm informed by the
7 Solicitor that the Department has sold the RV, and I
8 was puzzled as to how they could do that so I wrote
9 to the Department of Motor Vehicles and obtained a
10 title history and I have those documents and we'll
11 be offering them into evidence.

12 THE COURT: Okay.

13 MR. CANTY: And apparently at some point
14 in 2012 someone signed a document saying that the
15 Horry County Police Department was, in fact, the
16 owner of this vehicle and sent it to the DMV. They
17 in turn sent a title in the name of Horry County.
18 And the Solicitor has informed me through
19 correspondence that the Department subsequently sold
20 the vehicle.

21 THE COURT: Who signed that?

22 MR. CANTY: I can't say, Your Honor.
23 Perhaps the Solicitor could enlighten us. I have
24 the DMV certified copy of the document right here.
25 We assert and —

1 THE COURT: It's just not something you
2 can read.

3 MR. CANTY: —wonder how they can make
4 such a representation. Here's the DMV copy and I'll
5 provide a copy to the Solicitor as well. The
6 signature is about two thirds of the way down that
7 page.

8 THE COURT: Well, here, I just want to
9 make sure it wasn't me.

10 MR. CANTY: I feel very confident that it
11 was not Your Honor.

12 THE COURT: Does anyone have a copy of the
13 opinion?

14 MS. ELDER: I do, Your Honor.

15 MR. CANTY: I do, Your Honor.

16 (Document tendered to the Court.)

17 THE COURT: Thank you.

18 MR. CANTY: They simply reversed the
19 forfeiture.

20 THE COURT: Okay. All right, I was just
21 wondering, do you still have outstanding
22 counterclaims?

23 MR. CANTY: That's correct, Your Honor.
24 And if I may approach, we have a pretrial brief.

25 THE COURT: All right. What's the status

1 of those? I know I dismissed the ones that were
2 brought against SLED.

3 MR. CANTY: And that was affirmed.

4 THE COURT: Okay. And what about the ones
5 against — or were there some against the, against
6 Horry County?

7 MR. CANTY: Only with regard to the RV.

8 THE COURT: Okay. All right, so we're
9 here for a damages hearing. What did I do with that
10 I guess? I ruled in favor of this.

11 MR. CANTY: You ruled in forfeit and —

12 THE COURT: And by indication against you
13 on counterclaim.

14 MR. CANTY: That the seizure was in effect
15 validated. What Your Honor did was validate the
16 seizure and the — confirm the forfeiture I think is
17 the technical term.

18 THE COURT: Now let me procedurally try to
19 get a grip on what we're doing here. You're here
20 today then on a damages hearing. Did the State or
21 the County answer with any other defenses your
22 counterclaims? I just wonder if we, if there should
23 be a hearing on the counterclaim, or is it just
24 damages? Just from a procedural standpoint.

25 MR. CANTY: It's a two paragraph reply,

1 and it says: One, plaintiff denies all allegations
2 not specifically admitted or denied herein; and two,
3 plaintiff specifically denies the allegations
4 contained in paragraph 6 through 10, wherefore,
5 having fully answered.

6 THE COURT: Well, wouldn't there have to
7 be a trial then on the liability issue of the
8 counterclaim?

9 MR. CANTY: Your Honor, my understanding
10 is —

11 THE COURT: They were not in default, they
12 raised defenses, I mean —

13 MR. CANTY: I do not think there's —

14 THE COURT: You know much more about this
15 case than I do, Mr. Canty. I'm sure you recall much
16 more than I do. Can you tell me why we would hop
17 over the liability issue, or is there something
18 controlling in my ruling or the court, or the
19 Supreme Court's ruling concerning that issue?

20 MR. CANTY: Title was in my client.

21 THE COURT: I understand.

22 MR. CANTY: It was seized by Horry County.

23 THE COURT: I understand that.

24 MR. CANTY: This court confirmed the
25 forfeiture. And after that point, Your Honor, is

1 when apparently they got a title and they sold the
2 vehicle while the appeal was pending. Now the Court
3 of Appeals reversed the confirmation of the
4 forfeiture.

5 THE COURT: Okay.

6 MR. CANTY: And remanded it. So it is my
7 client's vehicle except they don't have the vehicle.

8 THE COURT: Okay. But wouldn't you need
9 to then move for summary judgment on your
10 counterclaims?

11 MR. CANTY: I don't believe so, Your
12 Honor. And I would direct the Court also to the
13 specific language of the reply. I understand that
14 the Solicitor does not practice the law in common
15 pleas; but since 1986 the law in this State has been
16 a general denial is insufficient, and this is
17 nothing but a general denial, nothing more.

18 THE COURT: Okay, all right. Let me hear
19 from Ms. Elder procedurally as to what we should be
20 doing here.

21 MS. ELDER: Your Honor, our position is
22 that when the Court of Appeals reversed Your Honor's
23 ruling insofar as the affirmation of the seizure
24 which is what in effect you did, that is what is
25 required under the seizure statute. It is not a

1 case of a normal civil case, Your Honor. This case
2 only requires that the court in a seizure action
3 affirm the probable cause basis to take the asset,
4 then the burden shifts over to the defendant. We
5 had a hearing on that. The Court of Appeals
6 reversed that portion of it. Your Honor, it's my
7 understanding that you specifically dismissed all
8 counterclaims during your proceeding. Now I don't
9 see anything in the court of—

10 THE COURT: I think I only dismissed the
11 ones as to SLED, didn't I, or did I?

12 MR. CANTY: That's correct, Your Honor.

13 MS. ELDER: Everything was dismissed, Your
14 Honor.

15 MR. CANTY: Your Honor, you dismissed the
16 counterclaim for the laptop computer, the cash, the
17 other items of personalty outside of the money that
18 Horry County admitted that they took. They admitted
19 they took some. They said SLED took the rest. They
20 said you can't sue us for what SLED did. That's
21 what the Court of Appeals affirmed. There's no
22 doubt that the County took the RV.

23 MS. ELDER: Your Honor, when we, we
24 consolidated all these things. We consolidated the
25 pistol, the County portion of what they took money

1 wise, and the RV. And there was all of those things
2 were rolled up into what Your Honor heard. Your
3 Honor dismissed the counterclaims, then affirmed the
4 seizure on the RV. Now when I read the Court of
5 Appeals opinion there's nothing in that other than
6 them reversing the finding that there was PC to
7 seize this vehicle. Our position is, had the County
8 not sold the vehicle pending the appeal process, we
9 would return the RV, and this, we wouldn't even be
10 in front of Your Honor.

11 THE COURT: That's correct I think.

12 MS. ELDER: And right now we're prepared
13 to go forward. We know that we have to make the
14 defendant back whole because we don't have the
15 vehicle anymore. That arose after Your Honor's
16 hearing prior to the Court of Appeals.

17 THE COURT: So we all agree on that. Is
18 that right, Mr. Canty?

19 MR. CANTY: We're here for a damages
20 hearing, and that's what she indicated to us in her
21 correspondence, that we're entitled to a damages
22 hearing. That's what we came for.

23 THE COURT: So that satisfies everyone; is
24 that correct?

25 MR. CANTY: Yes, Your Honor.

1 THE COURT: All right. Okay, Mr. Canty,
2 you'll be moving.

3 MR. CANTY: We will call the defendant.
4 Now Your Honor, by way of substitution the defendant
5 Michael Albin died during the pendency of the
6 appeal, and his daughter Micaela (ph) Albin has been
7 appointed as personal representative of the estate
8 and just parenthetically I would point out that she
9 is the principal beneficiary of the estate as well
10 as the PR.

11 THE COURT: Is the estate still open?

12 MR. CANTY: Yes, sir.

13 THE COURT: So she has authority then to
14 maintain this action in his stead?

15 MR. CANTY: Yes, Your Honor.

16 THE COURT: You want to move to
17 substitute?

18 MR. CANTY: Move to substitute, Your
19 Honor. I believe the Court of Appeals has already
20 done that and they have remanded the matter.

21 THE COURT: Let me look at the order of
22 remand and see if they did that.

23 MR. CANTY: Your Honor, I think I handed
24 up the opinion, and the opinion has Micaela and even
25 has a footnote that says that she's the PR.

DW - M. ALBIN - DIRECT

1 THE WITNESS: I have that —

2 MR. CANTY: She's substituted and they
3 draw no distinction between the two.

4 THE COURT: I have in the caption —

5 MR. CANTY: It's footnote one.

6 THE COURT: We will not differentiate
7 between Michael Albin and Micaela Albin. Let's
8 substitute Micaela Albin just for housekeeping
9 purposes as personal representative of Michael Albin
10 so we won't have an issue down the road, okay?

11 MR. CANTY: Very good, thank you.

12 THE COURT: Any objection, Ms. Elder, I
13 think from you?

14 MS. ELDER: No, sir, Your Honor.

15 THE COURT: We need to do that for
16 housekeeping matters, okay.

17 THE CLERK OF COURT: If you would raise
18 your right hand.

19 WHEREUPON,

20 **MICAELA ALBIN,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK OF COURT: Please be seated.
24 If you would, please state your name and spell your
25 last name for the record.

DW - M. ALBIN - DIRECT

1 THE WITNESS: It's Micaela Albin,
2 A-L-B-I-N.

3 MR. CANTY: May it please the Court, Your
4 Honor.

5 **DIRECT EXAMINATION**

6 BY MR. CANTY:

7 Q Tell the Court where you reside.

8 A Where I reside?

9 Q Yes.

10 A 5730 Highway 77, Myrtle Beach.

11 Q And what was your relationship with Michael
12 Albin?

13 A I'm his daughter.

14 Q And what is your relationship with the estate of
15 Michael Albin?

16 A I'm personal representative.

17 Q Are you familiar with a 1994 Monaco recreational
18 vehicle?

19 A Yes, sir.

20 Q Called a motor home?

21 A Uh-huh.

22 Q I wonder if you could describe that vehicle to
23 the Court please?

24 A It was like 42 foot. It was a driving motor home
25 with couch, a queen bed in the back, all appliances

DW - M. ALBIN - DIRECT

1 relationship with your father. How often did you
2 see him, —

3 A Every day.

4 Q —under what circumstances?

5 A Every day.

6 Q Under what circumstances?

7 A Either work related or lunch.

8 Q Were you employed by him?

9 A Yes, sir, for 11 years.

10 Q And between 2006 and 2009 how often, if at all,
11 did you go into this RV?

12 A At least four or five times a week.

13 Q All right. And prior to the raid when was the
14 last time you were in the RV?

15 A The day before.

16 Q And what did it look like?

17 A It was in excellent condition, besides normal
18 living conditions, but it was in great state.

19 Q Now tell the Court, if you know, whether or not
20 your father went anywhere in the RV between 2006 and
21 2009?

22 A One trip.

23 Q And the rest of the time where did it stay?

24 A It resided behind Putters. It was set up to
25 stabilize there.

DW - M. ALBIN - DIRECT

- 1 Q And how much did he pay for the RV, if you know?
- 2 A I want to say 69,000.
- 3 Q What is that based on?
- 4 A He put 4,000-dollars cash and he borrowed 65,000.
- 5 Q All right.
- 6 A On a promissory note.
- 7 Q Tell the Court where he lived after his RV was
- 8 taken?
- 9 A Days Inn in Surfside.
- 10 Q And what did he pay in rent, if you know?
- 11 A Twenty-five dollars a night.
- 12 Q And how much is that a month?
- 13 A That's 750 I believe.
- 14 Q Now how long, if you remember, was this case
- 15 actually pending before it went to trial and up on
- 16 appeal?
- 17 A A couple of — two-and-a-half years maybe.
- 18 Q And what about the registration fees, the
- 19 insurance, the tags, the taxes on the vehicle?
- 20 A My father paid that.
- 21 Q And do you have any figures as to how much he
- 22 paid?
- 23 A On the insurance he paid was 950 a year.
- 24 Q For how many years? Did you make — did you
- 25 write up the total? Do you have that on a piece of

DW - M. ALBIN - DIRECT

1 paper?

2 A I do have it, yes, sir.

3 Q It's —

4 A It was 3100. Yeah, 3,372-dollars, and then the
5 taxes and stuff. And property taxes and tags was
6 around 296 dollars for both in the years that he
7 didn't have it.

8 Q And what about the loss of use?

9 THE COURT: I want to know how much taxes
10 and insurance were from the time of seizure.

11 THE WITNESS: That's what it is, sir, 3
12 thousand —

13 THE COURT: It was no longer insured then.
14 Three thousand one hundred what?

15 THE WITNESS: No, 3,372.

16 MR. CANTY: 3372.50 I understood her
17 testimony to be.

18 THE WITNESS: 3372.50.

19 BY MR. CANTY:

20 Q And 296-dollars for taxes and tag?

21 A Is the property taxes and tags.

22 Q Okay. And what about the rent, how many months
23 until he died?

24 A Yeah, he died June 11th, 2012.

25 Q Would that be 42 months?

DW - M. ALBIN - DIRECT

1 A Yeah. It's at 750. That's 31,000-dollars.
2 31,500.

3 Q Okay. Now at my request, or rather, did I on
4 your behalf communicate with the South Carolina
5 Department of Motor Vehicles to ascertain the status
6 of the title to this vehicle?

7 A I believe I asked you to do that, sir.

8 Q Okay. And are these certified copies of the
9 documents that they produced in response? If I may
10 approach, Your Honor.

11 A Yes, sir. I mean, they're copies. They're
12 not — but they're correct.

13 Q Are they certified on the back, stamped —

14 A Uh-huh.

15 Q —and sealed by the DMV?

16 A Yes, sir.

17 MR. CANTY: We offer these, Your Honor.
18 She has a copy, Your Honor.

19 THE COURT: Any objection?

20 MS. ELDER: No. To the showing that
21 the — I'm sorry, if I could see what they're
22 talking about.

23 THE COURT: I think these are documents
24 from the Department of Motor Vehicle.

25 MR. CANTY: It's a title history and the

DW - M. ALBIN - DIRECT

1 plate history. It's a bill of sale, the certified
2 copies produced in response to my request.

3 THE WITNESS: And the promissory note I
4 believe.

5 THE COURT: And you're offering these?

6 MR. CANTY: Yes, this will be Defense 1.

7 MS. ELDER: Is that the promissory note
8 that's in there, Your Honor? If I could see the
9 entire packet that he's trying to offer I can
10 probably —

11 THE COURT: Well, we probably need to
12 separate this out so that we can see, these
13 documents can be referred to individually.

14 MR. CANTY: Very well.

15 THE COURT: Ms. Elder, you want to look at
16 it? I see it ends in 2011. Where did it go after
17 the County and where did it go then?

18 MR. CANTY: That's what they sent me,
19 Judge. I have not handled it then in any way. That
20 question might be directed to the Solicitor.

21 (Ms. Elder reviews documents.)

22 THE COURT: Any objection?

23 Mr. Canty, would you come around and
24 please give them in the order that you would like to
25 have them marked to the court reporter so that she

DW - M. ALBIN - DIRECT

1 can have them entered into evidence.

2 (WHEREUPON, Defendant Exhibits
3 Nos. 1, 2, and 3 were marked for
4 identification and admitted into
5 evidence.)

6 MR. CANTY: Your Honor, Plaintiff's [sic]
7 1 will be the bill of sale, Michael Albin, dated May
8 9, 2006. Plaintiff's 2 would be a title history,
9 two pages, prepared by DMV on the 7th of October of
10 this year. And Defendant's 3 would be five pages.
11 This is copies of titles and title applications from
12 the DMV, and they're all sealed, signed and sealed,
13 as records of the DMV. And that is dated 17th, one
14 is dated the 17th of July, 2012. These were
15 actually produced, received at the same time as the
16 other document which is dated 7th of October, 2013.

17 THE COURT: And those are the documents in
18 evidence transactions between Luckman, Albin, and
19 the category —

20 MR. CANTY: Correct, Your Honor.

21 THE COURT: Nothing else?

22 MR. CANTY: Correct. To my knowledge, at
23 least far as the 7th of October of 2013 title
24 remained in Horry County although I have
25 correspondence from the Solicitor saying they've

DW - M. ALBIN - CROSS

1 sold it, but at that point the DMV —

2 THE COURT: It could have been sold out of
3 state.

4 MR. CANTY: That's correct, Your Honor.
5 And it could have been less than 45 days since the
6 transaction, and therefore, it not been recorded.

7 THE COURT: Okay.

8 MR. CANTY: Now if I may approach the
9 witness.

10 BY MR. CANTY:

11 Q I show you this document and ask you if you can
12 identify.

13 A That's the registration for the RV.

14 Q And what year is that registration for?

15 A 2012. 2011/2012.

16 Q And it was seized in 2009; is that correct?

17 A Yes, sir.

18 MR. CANTY: We would offer this as well.

19 MS. ELDER: I don't have any objection.

20 MR. CANTY: That would be Plaintiff's 4.

21 THE COURT: So it was seized in 2009?

22 MR. CANTY: That's correct, Your Honor.

23 And that reflects payment registration from
24 2011/2012 tag.

25 THE COURT: That will be four or five

DW - M. ALBIN - CROSS

1 years after acquisition by Mr. Albin.

2 MR. CANTY: He acquired it in 2006 in May,
3 so five years.

4 THE COURT: Okay, five years. All right.
5 (WHEREUPON, Defendant Exhibit No. 4 was
6 marked for identification and admitted
7 into evidence.)

8 MR. CANTY: I think that's all that I have
9 with this witness, Your Honor.

10 THE COURT: Ms. Elder.

11 **CROSS-EXAMINATION**

12 BY MS. ELDER:

13 Q You indicated that you were aware that your
14 father had driven this once; is that correct?

15 A One time, yes, ma'am.

16 Q Do you know what date, year that was?

17 A It was — I'm gonna assume probably about six
18 months after he got it and he went to Culpepper,
19 Virginia.

20 Q So the last time he drove it was in 2007?

21 A Yes, he stayed at — it was his home at behind
22 Putters.

23 Q Okay, so it set parked for two years before the
24 County seized it?

25 A Yes, ma'am.

DW - M. ALBIN - REDIRECT

1 THE COURT: All right, without objection.
2 (WHEREUPON, Plaintiff Exhibit No. 1
3 was marked for identification and admitted
4 into evidence.)

5 MS. ELDER: I don't have any other
6 questions, Your Honor.

7 THE COURT: You may step — well,
8 Mr. Canty.

9 MR. CANTY: Very briefly, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. CANTY:

12 Q Your father know when he went to jail that night
13 that they were taking the RV?

14 A Yes, sir.

15 Q So he knew that when he got out of jail his home
16 wouldn't be there; didn't he?

17 A Yes, sir, he watched them.

18 Q And he didn't have any other place to go, did he?

19 A He had my address where I —

20 Q Do you know what your father did in the air force
21 for 22 years?

22 A He was a mechanic for the air, for aircraft.

23 Q Well, let me ask you about this motor home. Was
24 it a diesel engine, do you know?

25 A I want to say it was a diesel.

DW - L. HILL - CROSS

1 my husband knew this guy Todd Luckman that was
2 selling one, and so they are talking about it and he
3 decided to buy it. But the bank was gonna loan him,
4 charge you 12 percent interest, and I said I'll loan
5 you the money for 9 percent so.

6 Q So did you write a check for 65,000?

7 A Yes.

8 Q And to whom did you deliver that check and to
9 whom who was it payable?

10 A Tom Luckman.

11 Q And he's the seller for the RV?

12 A Yes.

13 Q And does that note call for monthly payments in
14 the amount of 1171-dollars and 66 cents?

15 A Yes, sir.

16 Q And tell the Court please whether or not
17 Mr. Albin made all those payments.

18 A Made every one.

19 Q And how long before his death did he make the
20 last one?

21 A Probably just a few weeks.

22 Q Very good. That's all I have.

23 MR. CANTY: We move that into evidence,
24 Your Honor. It'll be Plaintiff's 5 — Defendant's
25 5.

DW - M. ALBIN - CROSS

1 this testimony, I don't know.

2 MR. CANTY: Our position is that as the
3 personal representative and beneficiary of the
4 estate that she is competent to testify.

5 THE COURT: But we're talking about two
6 years down the road.

7 MR. CANTY: That's correct, Your Honor.

8 THE COURT: Okay, I'll hear her testimony.
9 I'll let Ms. Elder cross-examine her, but I will
10 give it such weight as I think it should be given.
11 I'll just hear it, then I'll make a ruling later,
12 okay?

13 BY MR. CANTY:

14 Q Would you please tell the Court in your opinion
15 what difference in value, if any there was, between
16 this RV at 13 years of age and at 15 years of age?

17 A I don't believe there was any.

18 Q All right. And on January 24th of 2009 then
19 please tell the Court what your opinion of the value
20 of it was?

21 A 69,000.

22 Q That's all I have.

23 **CROSS-EXAMINATION**

24 BY MS. ELDER:

25 Q And you base that on what?

PW - S. RUTHERFORD - DIRECT

1 THE COURT: Okay, you may step down.

2 THE WITNESS: Thank you.

3 THE COURT: All right. I'll hear from the
4 State.

5 MS. ELDER: Your Honor, we would call
6 Deputy Chief Scott Rutherford.

7 MR. CANTY: Your Honor, our objection is
8 set forth in the pretrial brief. She's never named
9 him as a witness. I understand he testified at the
10 first trial, but he still has not been named as a
11 witness.

12 THE COURT: All right.

13 WHEREUPON,

14 **W. SCOTT RUTHERFORD,**
15 having been duly sworn by the Clerk of Court,
16 testified as follows:

17 THE CLERK OF COURT: Please be seated and
18 please state your name. And please spell your last
19 name for the record.

20 THE COURT: Mr. Canty, did you file
21 discovery motions in this matter?

22 MR. CANTY: Yes, Your Honor. We filed
23 discovery interrogatories, requests for production
24 of documents, requests to admit. The Solicitor
25 answered before the first trial. In the first trial

1 A Yes, ma'am, approximately.

2 Q About 200, at least 270 or thereabouts?

3 A Two hundred plus vehicles over the
4 nine-and-a-half years, yes, ma'am.

5 Q And you looked at values and assessed those
6 values on all of those vehicles?

7 A Yes, ma'am.

8 MS. ELDER: Your Honor, I believe I've
9 established a foundation that he could give his
10 opinion.

11 THE COURT: You're qualifying him as an
12 expert, is that what you're offering?

13 MS. ELDER: Yes, sir.

14 MR. CANTY: She doesn't get around rule
15 26(e), Your Honor.

16 THE COURT: And what about that if you're
17 offering him as an expert, did you have to name him
18 as an expert ---

19 MS. ELDER: Your Honor.

20 THE COURT: ---in response to discovery?

21 MS. ELDER: Your Honor, I do not think --
22 this is not a trial; this is a damages hearing.

23 THE COURT: Yeah, it is. It is a trial.
24 It's a trial; it's a civil trial. Look, let me tell
25 you where I'm, what I see this as, guys. First of

1 all, what Mr. Albin paid for this two-and-a-half
2 years before seizure is not an indication of value.
3 What it was sold for three years after seizure and
4 at a distressed sale is not an indication of value.
5 I haven't heard from anybody what the value of this
6 was at the time of seizure, and that's the key here,
7 time of seizure. There's no one testifying to that
8 here.

9 What I'm gonna do is I'm gonna carry this
10 over for 30 days and let you come back, and I want
11 to hear from somebody that can tell me what the
12 value was at the time of seizure. It's got nothing
13 to do with what it may have been sold for later,
14 what it may have been bought for earlier, has
15 nothing to do with it. I want to know what at the
16 seizure is. Failing that, the Court is gonna call
17 witnesses, one of the two. I want to carry this
18 over for 30 days to make sure you exchange the names
19 of any persons who are gonna come in and testify as
20 experts as to the value on January 24th, 2009.
21 That's the date of the take and that's the date that
22 we're gonna have to introduce for value.

23 Mr. Canty?

24 MR. CANTY: Your Honor, just two matters.
25 When we return after 30 days I'll be permitted to

1 cross-examine this witness?

2 THE COURT: I will. I'm gonna let her put
3 him back up.

4 MR. CANTY: Okay.

5 THE COURT: And if she can qualify him as
6 an expert.

7 MR. CANTY: Secondly, Your Honor, I would
8 direct the Court's attention to the Solicitor's
9 discovery response which is in the Court's file;
10 it's a clocked copy. And I would ask the Court to
11 make a ruling on her discovery response. I think
12 it's dated, time stamped the 4th of November. If
13 Your Honor — I'll find it in the Court's file. I'm
14 sure it is right here. Here we are. Here's my
15 copy.

16 THE COURT: Discovery responses are
17 generally not filed with the court.

18 MR. CANTY: Your Honor, not only is that
19 the case but discovery responses are generally not
20 served by fax; and in this instance, Ms. Elder
21 clocked the discovery response in the Court's file
22 and then faxed me a copy and has never mailed me a
23 copy. But I would ask the Court to review that
24 discovery response and please instruct the Solicitor
25 as to her duties with regard to discovery.

1 THE COURT: Well, it's set out in the
2 rule, and I'm gonna require full responses to the
3 discovery. They do apply here. Interrogatories and
4 requests. You filed requests to admit?

5 MR. CANTY: Yes, Your Honor.

6 THE COURT: Well, requests to admit and
7 interrogatories have to be answered. I want them
8 answered within 15 days.

9 MR. CANTY: Very good.

10 THE COURT: We'll schedule after 30 days
11 and I want to hear specific evidence from both sides
12 as to the value on the date of seizure. That's the
13 day we're looking for, okay.

14 MR. CANTY: Very good.

15 MS. ELDER: And Your Honor, these ---

16 THE COURT: You may use value at the time
17 of purchase, you may use value at the time of sale
18 if you have someone who can tell me how those values
19 relate to the value at the time of seizure.
20 Depreciation, appreciation, whatever you want to
21 call it, you may address those. But I don't think
22 what I'm hearing, values I'm hearing, have any
23 relevancy to the value on January the 24th of 2009.
24 That's what I want to hear. All right.

25 MS. ELDER: And Your Honor, in reference

STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO: 09-CP-26-1281,
3127, 3128

B E F O R E: The Honorable Larry Hyman
January 31, 2014

J. GREGORY HEMBREE, as Solicitor of the Fifteenth
Judicial Circuit, o/b/o Horry County Police

Department,

Plaintiff,

vs.

MICHAEL JAMES ALBIN,

Defendant.

 **ORIGINAL**

APPEARANCES:

Donna Elder, Esq.
For the Plaintiff.

David J. Canty, Esq.
For the Defendant.

Court Reporter:
Natalie Dahl, RPR

THE COURT AND ATTORNEYS

1 on cross.

2 THE COURT: I'm sorry, Mr. Canty?

3 MR. CANTY: We expect to be referring to the
4 transcript on cross.

5 THE COURT: All right. Very well.

6 MS. ELDER: I assume we're talking about the
7 initial hearing?

8 THE COURT: Yes. Is that right?

9 MR. CANTY: Yes, Your Honor.

10 THE COURT: Mr. Rutherford, if you will come
11 around and we'll see what we have.

12 (WILLIAM S. RUTHERFORD, having been duly
13 sworn, testified as follows:)

14 THE CLERK: State your name.

15 THE WITNESS: William S. Rutherford,
16 R-U-T-H-E-R-F-O-R-D.

17 MS. ELDER: Before we begin, the NADA document
18 that Mr. Canty provided to the State with the value
19 from the 2009 that we talked about in chambers last
20 week --

21 THE COURT: Right. Yes.

22 MS. ELDER: We, after talking and consulting
23 with our person, we would stipulate that Mr. Canty's
24 document indicating the NADA value of this particular
25 RV indicates a value between \$41,609 and \$56,090. We

THE COURT AND ATTORNEYS

1 would not stipulate that that is the value that should
2 be addressed by the Court, but we stipulate that is
3 the correct NADA value for 2009.

4 THE COURT: All right. Why don't we just go
5 ahead and admit it then, okay.

6 MR. CANTY: Your Honor, there is several
7 aspects that I need to address. First of all, what
8 was discussed in chambers had an attachment.

9 THE COURT: I understand, but we're just
10 talking about the base price sheet. Isn't that what
11 you had of the date of the seizure? It had a base
12 price, and we all agreed it was a 1994 Monaco Crown
13 Royal series?

14 MR. CANTY: 40-foot, 300 horsepower.

15 THE COURT: Right. And I understand you will
16 be offering information concerning add-ons and
17 accessories and that type of thing?

18 MR. CANTY: Correct. The total number of
19 pages of -- starting with the cover of the NADA,
20 January through April 2009, is 12, and there is two
21 pages attached.

22 THE COURT: And we'll get to that, but she's
23 saying that she stipulates as to the first sheet
24 identifying the base price.

25 MS. ELDER: I have no objection to the whole

WILLIAM RUTHERFORD - DIRECT-EXAMINATION

1 document so we can all refer to it and it be complete.

2 THE COURT: All right.

3 MR. CANTY: We discovered errors in the latter
4 two pages, and we'll go over those in detail in reply.
5 I appreciate the Solicitor offering to stipulate. Our
6 position is that the motor home was worth more than
7 that.

8 THE COURT: She wants to offer that. Do you
9 have any objection to that? You have a right to
10 cross-examine as to it and offer other evidence.

11 MR. CANTY: Not as to those 12 pages.

12 MS. ELDER: I'm taking those two optional
13 pages off.

14 THE COURT: Is that your understanding?

15 MR. CANTY: I can only accept the Court's
16 word.

17 THE COURT: I think it is No. 3.

18 (Exhibit No. 3 marked.)

19 THE COURT: On receipt for exhibits it shows
20 that Plaintiff has two. You may continue.

21 DIRECT-EXAMINATION

22 BY MS. ELDER:

23 Q Just a few more questions, Deputy Chief
24 Rutherford. We had gone through a series of questions
25 about the RV that Horry County seized; do you recall

WILLIAM RUTHERFORD - DIRECT-EXAMINATION

1 that prior testimony?

2 A Yes, ma'am.

3 Q And I believe this vehicle was sold; is that
4 correct?

5 A Yes, ma'am.

6 Q What mechanism was it sold through?

7 A Govdeals.

8 Q And tell me a little bit about govdeals.

9 A Govdeals.com is a private entity that sells
10 vehicles.

11 Q Do you put all of your vehicles on that?

12 A Yes, ma'am. All seized vehicles that we sell,
13 that is the business that we entertain to sell them,
14 yes, ma'am.

15 Q And preparing this particular RV for sale, did
16 you all do anything in preparation for sale? Had it
17 been cleaned or left as it was?

18 A We didn't have it professionally cleaned due to
19 the price that was quoted, so we did the best we could
20 in-house and cleaned it, yes, ma'am.

21 Q And I believe there were photographs taken when
22 it was placed on govdeals that represented its status
23 in 2012 when it was sold; is that correct?

24 A Yes, ma'am, by the procurement section.

25 MS. ELDER: I'll mark these as a group, and

WILLIAM RUTHERFORD - DIRECT-EXAMINATION

1 Mr. Canty has a copy of those.

2 (Exhibit No. 4 marked.)

3 THE COURT: Have you had an opportunity to see
4 these photographs?

5 MR. CANTY: Your Honor, I didn't want to get
6 into that issue yet. You know we've had discovery
7 problems with this case. Among the documents we asked
8 them to produce were all of the documents that
9 pertained to the sell of this motor home. We didn't
10 receive any. The photographs she's offering are
11 photographs that we provided that we obtained through
12 govdeals.com, so we stipulate those are authentic,
13 but --

14 THE COURT: They are offered to show the
15 condition three, four years after seizure.

16 MR. CANTY: I think it would have to be
17 developed as to exactly when --

18 THE COURT: Okay. All right. They were taken
19 sometime after seizure, and you are familiar with the
20 photographs?

21 MR. CANTY: Yes, sir.

22 THE COURT: You provided them to them?

23 MR. CANTY: Correct.

24 THE COURT: I'm admit them.

25 (Exhibit No. 4 admitted.)

WILLIAM RUTHERFORD - DIRECT-EXAMINATION

1 Q (MS. ELDER) Will you look at what is marked as
2 Plaintiff's Exhibit 4?

3 A (Witness examines document.)

4 Q The photographs in Exhibit 4, do they appear to
5 be the State of the vehicle after it was cleaned in
6 2012?

7 A Yes, ma'am.

8 Q And did you go into the vehicle --

9 THE COURT: How many photographs are there?

10 MR. CANTY: Let me say this. I assumed when
11 we had this discussion a moment ago that those were
12 photographs that we provided. I'm not entirely
13 certain that they are.

14 (A brief pause in the proceedings.)

15 MR. CANTY: These do look like them, yes, sir.

16 THE COURT: All right. Okay. I understand
17 what they are. How many are there?

18 MS. ELDER: I can count them.

19 THE COURT: They are attached, Natalie. If
20 you can have them marked as one exhibit.

21 COURT REPORTER: Yes, sir.

22 Q (MS. ELDER) Did you go into the vehicle shortly
23 after the seizure in 2009?

24 A Yes, ma'am.

25 Q And I believe you conducted somewhat of a search.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 A I don't think so, no, ma'am.

2 MS. ELDER: No other questions.

3 MR. CANTY: May we approach?

4 THE COURT: Yes. We don't have a jury, you
5 can just --

6 (Whereupon, a bench conference was had.)

7 (A brief pause in the proceedings.)

8 THE COURT: Oh, are you ready, I'm sorry?

9 MR. CANTY: No, I'm sorry.

10 CROSS-EXAMINATION

11 BY MR. CANTY:

12 Q With regard to the seizure of this motor vehicle,
13 whose decision was it to seize it?

14 A I'm not sure. I wasn't there the night it was
15 seized.

16 Q Has there been any discussion between you and
17 anyone other than counsel regarding the decision to
18 seize it, and has the person who made the decision to
19 seize it been identified to you?

20 A There's been no discussion previous to what we're
21 having right now, to the best of my knowledge, of
22 whether or not we should have seized it.

23 Q So your testimony, at present, is you don't know
24 who is responsible for the seizure of the motor
25 vehicle?

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 THE COURT: I think we can stipulate it is
2 Horry County, they brought the action for seizure. So
3 isn't that the only relative issue here?

4 MR. CANTY: Your Honor, with regard to the
5 record in the case, we have a DVD of audio recording
6 of two SLED agents, and it came up in the original
7 trial. On that recording, after the bust, the raid of
8 the restaurant, the SLED agents are still being
9 recorded even though they are outside of the
10 restaurant. In that recording one of them makes the
11 phone call, I believe, to Agent Roper to inquire about
12 the status of the RV. Subsequently, there is another
13 call back and the SLED agent says, We got the RV. We
14 got the RV.

15 Now, subsequently, the action was brought by
16 Horry County. We counterclaim -- one of the issues
17 that went to the Court of Appeals is that SLED and
18 county police are two different critters. The
19 evidence produced in discovery is that SLED seized the
20 RV, which would preclude Horry County bringing this
21 action, but Horry Country brought this action and
22 denied any liability for SLED's claims. This
23 gentleman is the deputy chief -- I believe he was the
24 captain at the time -- and my inquiry is what does he
25 know about who decided to seize it? Obviously, there

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 was no legal basis to seize it. Someone made the
2 decision to seize it, and we want to know if he knows
3 who it is.

4 THE COURT: Okay. Go ahead, but I think he
5 said he didn't know. Do you know, Mr. Roper (sic)?

6 THE WITNESS: No, sir, I don't know.

7 Q (MR. CANTY) In the govdeals advertisement, it
8 mentions that it was driven 2 miles to Horry County
9 Police Department; is that accurate, to your
10 knowledge?

11 A I don't know what reference you are making to as
12 far as being driven 2 miles. The procurement lot at
13 the intersection of 319 and 701 would be approximately
14 2 miles from the Horry County Police Department. That
15 is where the vehicle was transferred to prior to it
16 being sold on govdeals.

17 Q Did you drive it?

18 A No, sir.

19 Q Who did?

20 A I'm not sure.

21 Q Would that person have any knowledge of the
22 functionality of the motor home, its road worthiness,
23 et cetera, the person who last drove it from Horry
24 County?

25 A I couldn't answer that question without knowledge

WILLIAM RUTHERFORD - CROSS-EXAMINATION

- 1 of who actually drove it.
- 2 Q Have you made an inquiry to find out who drove
3 it? Have you made any inquiry to find out who drove
4 it?
- 5 A No, sir.
- 6 Q It was towed to Horry County Police Department,
7 correct?
- 8 A I'm not sure. I wasn't there that night,
9 Mr. Canty.
- 10 Q So you have no knowledge how it arrived at the
11 Horry County Police Department?
- 12 A That is correct.
- 13 Q Now, who was responsible for the maintenance of
14 this vehicle while it was in Horry County's custody?
- 15 A Safe to say that Horry County would be
16 responsible for the upkeep of it.
- 17 Q What person or persons was responsible for the
18 maintenance of this vehicle?
- 19 A Don't know that there was a particular person
20 assigned to it.
- 21 Q Do you remember your testimony back in 2011?
- 22 A No, sir.
- 23 Q Do you remember testifying at that time that it
24 was your responsibility?
- 25 A I don't recall it, sir.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 MR. CANTY: Court's indulgence, Your Honor.

2 Q (MR. CANTY) Let me refer you -- if I may approach
3 -- 137 of the transcript of that trial, Page 137.
4 Starting on Line 22 of that page, if you would, please
5 review that, through Line 12 of Page 138.

6 MR. CANTY: Your Honor, I have a record for
7 the Court's review.

8 THE COURT: That's all right, I'll just
9 listen.

10 Q (MR. CANTY) Who did you indicate was responsible
11 for the RV back in 2011?

12 A I think my testimony back then, Mr. Canty,
13 indicates that the section commander, which at that
14 time was myself, was responsible for the seizure
15 paperwork, tow logs, keys, things of that nature. Did
16 I make particular reference to the RV? No, sir, I
17 didn't. As the sectional commander, it is my
18 responsibility.

19 Q And I think you testified, not only on that page,
20 but also later, that you learned the hard way, that
21 sometimes there is a great length of time before there
22 is a disposition in the case; do you remember that?

23 A Yes, sir. Yes, sir.

24 Q And that you had to pay when you returned the
25 vehicle after a year or so, Page 140; do you remember

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 that testimony?

2 A Yes, sir.

3 Q And how much did you have to pay and to whom?

4 A I'm not sure, sir.

5 Q Where would that record be?

6 A If, in fact, there is documentation of it, it
7 probably would be at the county police department.

8 Q You testified that you had to pay for failing to
9 maintain a vehicle that had been seized previously,
10 correct? Did we understand that correctly? Was that
11 your testimony?

12 A We've had to pay when we've had to return
13 vehicles and they are not in the same shape they were
14 when we turned them back to the people after a year or
15 so.

16 Q To the best of your knowledge, was anyone
17 disciplined as a failure to maintain those vehicles?

18 A No, sir.

19 THE COURT: Wouldn't the value -- I mean the
20 measure of damage be valued at the time of seizure?

21 MR. CANTY: Yes, sir, Your Honor.

22 THE COURT: So does it make any difference in
23 the world what transpired after the seizure or what it
24 was sold for some years ago; does that really make any
25 difference?

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 MR. CANTY: Your Honor, we take the position
2 it does under 15-77-300, that is the statute that
3 deals with the award of attorney's fees in
4 state-initiated actions. Under that statute, one of
5 the considerations is the reason for the State's
6 conduct in the litigation. This case is five years
7 old. This vehicle was sold two-and-a-half-years ago.
8 The county has the money. As we stand here today,
9 there is no jury in the box, and the Court of Appeals
10 decided this case in June, the opinion was handed
11 down. The offer as we stand here today is zero.

12 Now, this is the third time that we've come to
13 court just for the damages. The inquiry in the award
14 of attorney's fees is what is the reason for the State
15 doing what it is doing in this action, and I would
16 submit to the Court -- and I would mention
17 parenthetically that the Court of Appeals ruled
18 against us on the issue of the money, we filed suit
19 against SLED, and that case was settled within a
20 matter of weeks.

21 We are here today for the third time on
22 damages, and the offer is zero. Liability is clear,
23 and what we need to ascertain for the purposes of
24 attorney's fees is the reason that we're here today.

25 THE COURT: All right.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 MR. CANTY: Thank you, Your Honor.

2 Q (MR. CANTY) Was there any maintenance scheduled for
3 the vehicle?

4 A No, sir.

5 Q Do you know where the custom China set that came
6 with the RV is located?

7 A No, sir.

8 Q Do you know where Mr. Albin's DVDs are?

9 A No, sir.

10 Q Tell the Court where the rest of the personal
11 property that was inside the motor home is presently?

12 A I have no idea, sir.

13 Q In your exhibits -- if I may approach -- the
14 photographs of the vehicle, I'll direct you to Page 8
15 of that exhibit, the photograph in the lower, left
16 corner, do you see the boxes on the sofa there?

17 A I see a white square object, can't confirm it is
18 a box. It appears to be a cardboard box.

19 Q Does it contain Mr. Albin's personal property?

20 A I have no idea, Mr. Canty.

21 Q Do you recall your testimony at the earlier
22 trial, and I'll call your attention to Page 155 of the
23 transcript? I apologize, it is not Page 155 in the
24 transcript. These are my notes from the November
25 session of the damages hearing.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 Do you remember testifying at that time that you
2 boxed up the contents of the motor vehicle?

3 A No, sir, I don't recall that.

4 Q Did you or did you not box up the contents of the
5 motor vehicle?

6 A I don't recall that, sir.

7 Q And do you have any recollection of those boxes
8 shown on the sofa there on that picture?

9 A Other than what I'm seeing in this photograph,
10 no, sir.

11 Q Can you tell the Court what happened to any of
12 the personal property that was inside the motor
13 vehicle when it was seized?

14 A No, sir, I'm not aware of what happened to it.

15 Q Now, would you agree that there is extensive
16 water damage and mold damage to the interior of the
17 vehicle?

18 A I know there was some mold damage as a result of
19 the skylight busted or not secured to the point water
20 got in, but to what extent, no, sir, I don't know.

21 Q Isn't there damage to the floor and ceiling from
22 water leaking in?

23 A Again, sir, I don't know to what extent.

24 Q Those photographs speak for themselves, don't
25 they? Do they or don't they?

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 A The quality of them is, like I said, I can't tell
2 what extent the damages is, so as far as speaking for
3 them, I can't answer it.

4 Q You can tell looking at the bathroom that it is
5 covered in mold, you can tell that, can't you? You
6 can't?

7 A Which photograph are you referring to, Mr. Canty?

8 Q All of them on Page 1. Page 14 in the lower,
9 left corner. Page 17 in the upper, left corner. How
10 did it get that mold? How long did it --

11 A I don't know that that is mold, sir. I see a
12 dark discoloration, but I'm not an expert in mold. I
13 don't know that that is mold.

14 Q Who was responsible for the response to the
15 inquiry on govdeals.com?

16 A Once the vehicles are determined to be sold at
17 govdeals.com, they are turned over to the procurement
18 department of Horry County Government, and they take
19 responsibility as far as the sale from that point
20 forward.

21 Q So let me show you -- and I'll offer this. I'll
22 show you this and see if that represents
23 govdeals.com's transaction of the sale of this motor
24 vehicle?

25 A Yes, sir, it does.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 Q And you see that there are inquiries from bidders
2 posting questions, and somebody has responded to those
3 questions, correct?

4 A Yes, sir.

5 Q It says, "Contact Frank Russell." Who is Frank
6 Russell?

7 A He's an employee of the procurement section.

8 Q Do you know Mr. Russell?

9 A Yes.

10 Q Did you discuss this case with him?

11 A Yes, sir.

12 Q Recently?

13 A I think when we were originally notified that we
14 were going to be in -- after we mistakenly sold it,
15 yes.

16 THE COURT: Let me ask you this, Mr. Canty.
17 Am I gathering from this that you and your client knew
18 that it was being sold?

19 MR. CANTY: Absolutely not. We had no
20 information.

21 THE COURT: That is all I wanted to know. You
22 had the inquiries and all, and I was wondering if you
23 knew.

24 MR. CANTY: We learned from an E-mail from
25 Ms. Elder, I believe, in September or October that --

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 of 2013 that it had been sold the year before.

2 THE COURT: Okay. I thought that would be
3 relevant, and I think it would be relevant, but you
4 cleared it up.

5 MR. CANTY: Thank you.

6 Q (MR. CANTY) Did anyone do an inventory of the
7 contents of the motor home?

8 A It would -- I'm not sure, Mr. Canty.

9 Q Now, the Horry County case, as distinguished
10 against the SLED case against Mr. Albin, involved
11 narcotics; is that correct?

12 A I think it was the original understanding that
13 SLED was going to investigate and/or follow-up on the
14 gambling, and that Horry County was following up on
15 the narcotics part of it.

16 Q And you are now deputy chief, but previously you
17 were a captain and then a lieutenant, and your
18 responsibilities included narcotics; is that correct?

19 A Yes, sir.

20 Q And you also testified that during your 25 years
21 in law enforcement, that you had been involved in the
22 seizure of vehicles and the valuation of vehicles; do
23 you recall that?

24 A Yes, sir.

25 Q And I'm going to assume for the sake of argument

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 that you knew that there was a 1-pound minimum of
2 marijuana to seize the vehicle; were you aware of that
3 statutory provision from your experience?

4 A Yes, sir.

5 Q And you knew that there was not a pound of
6 marijuana in this motor home?

7 A I was not the investigating agent. I honestly
8 couldn't tell you the amount of drugs that were taken
9 from the vehicle.

10 Q Mr. Albin, the criminal charges against him were
11 dismissed ultimately; isn't that correct?

12 A I'm not aware of the outcome of them, sir.

13 Q On the three separate forfeiture cases, he
14 actually prevailed in all three of those cases; isn't
15 that correct?

16 A I'm not sure, sir.

17 Q You are not sure?

18 A Yes, sir.

19 Q Tell the Court, if you would, whether there may
20 be ill-will towards Mr. Albin or his family as a
21 result of him opposing these criminal charges
22 successfully, opposing the forfeiture cases
23 successfully, any ill-will towards Mr. Albin?

24 A Ill-will on behalf of the county police
25 department towards Mr. Albin?

WILLIAM RUTHERFORD - CROSS-EXAMINATION

- 1 Q Or any person acting on their behalf.
- 2 A No, sir.
- 3 Q No ill-will?
- 4 A No, sir.
- 5 Q Tell the Court, if you would, please, whether or
- 6 not anyone ever has been disciplined in any way for
- 7 the failure to maintain this motor home?
- 8 A Not to my knowledge, no, sir.
- 9 Q Now, you testified in the original trial that you
- 10 entered the motor home and you found marijuana; is
- 11 that correct?
- 12 A I believe so, yes, sir.
- 13 Q And was Ms. Elder with you in your presence when
- 14 you entered the motor home at that time?
- 15 A I don't believe so, no, sir.
- 16 Q You don't believe so?
- 17 A No, sir, I don't believe so. I don't believe she
- 18 was present with me when I entered and found the
- 19 marijuana.
- 20 Q Can you look at Page 133 of the transcript -- you
- 21 still have your copy, I assume -- towards the bottom
- 22 of the page. I think it says that you entered the
- 23 motor home and then Ms. Elder says, We entered the
- 24 motor home. So your testimony is that she was not
- 25 with you personally at that time?

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 A If I'm reading my testimony correct, Ms. Elder
2 says, We found both.

3 Q And two lines above that, what does it say?

4 A He found both.

5 Q And two lines later she said "we found"?

6 A That's what she said. I didn't, she did.

7 Q So it is your testimony that she was or was not
8 with you?

9 A My testimony is that she was not with me.

10 Q Regarding the sale, tell the Court who decided to
11 sell the motor home?

12 A Who decided to -- that it was going to be placed
13 on govdeals.

14 Q Who decided to sell the motor home?

15 A If you are referring to it being placed on
16 govdeals to be sold, that would be me.

17 Q What was the reason for that?

18 A We dispose of seizure assets that way.

19 Q Were you aware that there was an appeal from the
20 order for seizure?

21 A No, sir, I wasn't.

22 Q When did you become aware that there was an
23 appeal from the order for seizure?

24 A Sometime after the vehicle was sold.

25 Q I believe your testimony was that the DMV

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 application for title was signed by a lieutenant in
2 your department; is that correct?

3 A I believe so, yes, sir.

4 Q And that assertion that Horry County was the
5 lawful owner of the motor vehicle was actually
6 incorrect, ultimately?

7 A Unfortunately, yes, sir.

8 Q Tell the Court, please, what disciplinary action,
9 if any, has been taken against any person as a result
10 of the sale of this motor home?

11 A None, to the best of my knowledge, sir.

12 Q The \$13,105, what account was that money
13 deposited into?

14 A It still remains in an account that when the sale
15 of these vehicles are finished, it's put into a
16 holding account in finance.

17 Q So Horry County Finance has a separate holding
18 account which has these funds in it?

19 A To the best of my knowledge, yes, sir.

20 Q And how long after the vehicle was sold did you
21 become aware of the fact that the county had no right
22 to title the vehicle and no right to sell the vehicle?

23 A I don't know the exact date that I was notified
24 that the vehicle was under appeal or the seizure of
25 the vehicle was under appeal.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 Q Assume that the vehicle was sold on or about
2 November 13, 2012, and that the oral arguments and the
3 appeals were held in April of 2013. Did you know
4 before the oral argument that there was an appeal?

5 A I don't know what date I was notified, Mr. Canty.

6 Q And when the Court of Appeals handed down their
7 decision in June of 2013, at that point were you aware
8 that there was an appeal?

9 A I'm not sure of the date that I was notified that
10 there was an appeal, Mr. Canty.

11 Q So the money remains there today, correct?

12 A Yes, sir.

13 Q And it was there from November of 2012 until at
14 least June of 2013, correct?

15 A It's my understanding that once that money was
16 put into that account, it remains there until present.

17 Q All right. Now, you relied on Judge Hyman's
18 order in order to sell the motor vehicle, correct,
19 ignorant of the fact that it was appealed?

20 A I'm not sure whose name was on the final
21 disposition paperwork, but that's what we relied on to
22 sell the vehicle, yes, sir.

23 Q You were aware that Judge Hyman signed an order
24 and very specifically stated where the money goes if
25 the vehicle is sold?

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 A No, sir, I'm not aware of that.

2 Q You are not aware of that?

3 A No, sir.

4 Q So if Judge Hyman ordered that the money be split
5 75 percent to the Horry County Police Department, and
6 20 percent to the 15th Circuit Solicitor's Office,
7 your testimony is that that never happened?

8 A The 75/25 split is -- that happens with all of
9 our seizures, unless it is a thousand dollars or less,
10 75 to the seizing agency, 25 to the Solicitor's Office
11 and 5 percent to the State.

12 Q I'm going to ask that you answer my question.
13 Isn't it true that what Judge Hyman ordered with
14 regard to the disposition of these proceeds never
15 happened?

16 A I'm not aware of what his order was, Mr. Canty.

17 Q So aside from the 5 percent that went to the
18 State, like the sales tax, the interest in this motor
19 vehicle was your county police department, you are the
20 deputy chief, correct?

21 A Yes, sir.

22 Q And Ms. Elder's office, correct?

23 A The interest?

24 Q The 75 percent and the 20 percent, that interest
25 in the proceeds of the sell of the motor vehicle,

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 pursuant to Judge Hyman's order, that money was going
2 to you and your department, and to Ms. Elder and her
3 office; is that correct?

4 A Those proceeds go to the seizing agency and the
5 Solicitor's Office. It doesn't go to me personally or
6 her personally, no, sir.

7 Q So your answer is that is where the money goes?

8 A To the seizing agencies, yes, sir.

9 Q When did you learn that you had to return the
10 motor vehicle?

11 A I'm not sure of the exact date, sir.

12 Q Approximately.

13 A I'm not sure, sir.

14 Q Was it before the 2nd of November of last year?

15 A I'm not sure.

16 Q Who informed you that you had to return the motor
17 vehicle?

18 A I'm not sure.

19 Q And what action did you take in response to being
20 advised that you would have to return the motor
21 vehicle?

22 A I think I consulted with the Solicitor's Office
23 knowing that the motor home had already been sold
24 trying to identify what would be our best course of
25 action.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 Q Now, in discovery we requested all of the
2 documents that would show your inquiries as to the
3 value of this motor home. None of them predate the
4 2nd of November of last year. Tell the Court, if you
5 would, please, whether or not you or anyone acting on
6 behalf of Horry County, to the best of your knowledge,
7 made any effort to ascertain the value of the motor
8 home prior to November the 2nd of last year?

9 A I don't have any knowledge of that effort, no,
10 sir.

11 Q So tell the Court what Horry County did between
12 June when the opinion was handed down and November to
13 try to rectify the situation?

14 A Waiting on instruction from the courts as far as
15 when and where to show up.

16 Q And that is it?

17 A Yes, sir.

18 Q Did you ever offer to give Ms. Albin the \$13,105
19 back?

20 A To the best of my knowledge, no, sir.

21 Q And there is no question but that since the
22 decision of the Court of Appeals, Horry County has no
23 right to that money, correct?

24 A Could you rephrase your question?

25 THE COURT: Wouldn't it be a legal conclusion,

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 Mr. Canty?

2 MR. CANTY: Your Honor, I think he's answered
3 the question. I'll move along.

4 Q (MR. CANTY) Do you know whose decision it was not
5 to return that money?

6 A I don't know that it ever got to the point of a
7 decision being made on whether returning the money --
8 we obviously sold a vehicle that we shouldn't have,
9 and through the Solicitor's Office and through the
10 courts, we, as an agency, are hoping for the direction
11 of satisfying a wrong that we did, but, you know, that
12 is going to be left up to the courts.

13 Q So is it accurate to say that you or Horry County
14 or anyone acting on its behalf never made any offer to
15 make Ms. Albin whole?

16 A Not to the best of my knowledge no, sir.

17 Q What is the reason for that, if you know?

18 A The reason for not contacting her and making an
19 offer?

20 Q Correct.

21 A Like I said, allowing the court to handle this.

22 Q You got a written opinion from a fellow named
23 Danny Knight, is that correct, regarding the value of
24 the motor home?

25 A Yes, sir.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 Q Is this him?

2 A Yes, sir.

3 Q Is he in any relation to the former county
4 administrator?

5 A I have no knowledge of that, sir.

6 Q You have no knowledge of that?

7 A He could be, could not be, I've never had the
8 conversation with him regarding that.

9 Q Where does he work?

10 A Camping World.

11 Q Where did you get the charging cord for the motor
12 vehicle?

13 A This individual works at Camping World on Highway
14 544 Surfside. The charging cord we got was from
15 Camping World on Highway 501 in Myrtle Beach.

16 Q And he gave an opinion that the motor home was
17 worth, like, \$14,000; is that correct?

18 A I think he gave a trade-in value of somewhere
19 between \$18,000 and \$23,000.

20 Q And do you recall your testimony on the value
21 back in November?

22 A Excuse me?

23 Q Do you recall your testimony as to the value of
24 the motor home back in November?

25 A No, sir.

WILLIAM RUTHERFORD - CROSS-EXAMINATION

1 Q So you don't remember what you said it was worth?

2 A No, sir.

3 Q And tell the Court, then, as of today, what do
4 you think the motor home was worth when it was seized?

5 A I don't think I'm qualified to make that
6 assumption.

7 THE COURT: I found that, Mr. Canty.

8 MR. CANTY: My recollection is that he
9 attempted to qualify himself as an expert witness.

10 THE COURT: But he didn't, and you objected
11 and I wouldn't let him. Deputy Chief Rutherford is
12 like me, he's a police officer, he doesn't sell these
13 things, he doesn't know.

14 MR. CANTY: Your Honor, that wasn't his
15 testimony last time.

16 THE COURT: All right.

17 MR. CANTY: With the Court's indulgence, I
18 think I'm almost finished.

19 (A brief pause in the proceedings.)

20 MR. CANTY: That is all I have.

21 REDIRECT-EXAMINATION

22 BY MS. ELDER:

23 Q You were in narcotics for a significant period of
24 time; is that correct?

25 A Yes, ma'am.

WILLIAM RUTHERFORD - REDIRECT EXAMINATION

1 Q And is it relating to this RV?

2 A Yes, ma'am.

3 Q So he was the seizing agent for this particular
4 piece of property?

5 A Yes, ma'am, the seizing document.

6 Q Mr. Canty also asked you about a pound of
7 marijuana. You are familiar with the reasons that the
8 property can be seized as well, are you not?

9 A Yes, ma'am.

10 Q There is -- are there other ways that property
11 can be seized other than the weight?

12 A Yes, ma'am.

13 Q Do you know that if property is involved in the
14 assistance or used to facilitate distribution of
15 controlled substances, that they can be seized?

16 MR. CANTY: Your Honor, I have two objections.
17 One is to the leading of the witness, and the other is
18 the Court of Appeals has decided this legal issue and
19 she is --

20 THE COURT: I understand. I think what
21 Ms. Elder is trying to establish is that the county
22 acted in good faith. Good faith doesn't mean that you
23 are right, and you understand that, Mr. Canty, and I
24 think that is the point she's just trying to make.

25 MS. ELDER: Yes, sir. He made a point going

WILLIAM RUTHERFORD - RECROSS-EXAMINATION

1 Q How many law enforcement agents entered the motor
2 vehicle between the time of the raid and the time you
3 inspected it, and I believe you testified it was 24
4 hours later, how many law enforcement officers were
5 inside that motor home?

6 A I have no idea.

7 Q Tell the Court about the search --

8 THE COURT: I understand that they probably
9 went and ransacked it. I just wanted to know if he
10 knew anything specific about the general condition
11 being below or above average, and what I got from him
12 is that it is average, okay.

13 MR. CANTY: Thank you.

14 MS. ELDER: I would like this witness to be
15 excused.

16 THE COURT: Any objection?

17 MR. CANTY: No, Your Honor.

18 THE COURT: You may be excused.

19 MR. CANTY: If we did not put the govdeals
20 printout into evidence, we intended to.

21 MS. ELDER: No objection.

22 (Exhibit No. 4 admitted.)

23 MS. ELDER: Defense calls Daniel Knight.

24 (DANIEL KNIGHT, having been duly sworn,
25 testified as follows:)

DANIEL KNIGHT - RECROSS-EXAMINATION

1 A There is no driver's door.

2 Q Well, Mr. Knight, you just testified that that
3 was standard.

4 A I skipped one, I apologize.

5 Q You skipped one?

6 THE COURT: Wait. Wait a minute. It doesn't
7 have a door?

8 THE WITNESS: Driver's side door. Typically,
9 no diesel coach has a driver's side door.

10 MR. CANTY: He testified that everything on
11 this list was standard and shouldn't be included as an
12 extra value.

13 THE COURT: Were you including it as an extra
14 value?

15 MR. CANTY: As I said, Your Honor, we
16 discovered inaccuracies, and one of them -- once we
17 got the photographs, there was no driver's door.
18 There was a recollection that there was a driver's
19 door, that is why it was on the list. He's just
20 testified don't count any of that as an option because
21 it is all standard, and there is no driver's door.
22 That is all I have.

23 THE COURT: So it was a non-option. All
24 right.

25 MS. ELDER: Nothing further. We ask that he

MICHAELA ALBIN - DIRECT EXAMINATION

1 be excused.

2 THE COURT: Any need for this witness?

3 MR. CANTY: None, Your Honor.

4 MS. ELDER: The State would have no additional
5 information.

6 THE COURT: Let's take a break.

7 (A recess was taken.)

8 THE COURT: Mr. Canty.

9 MR. CANTY: I call Michaela Albin to the
10 stand.

11 (MICHAELA ALBIN, having been duly sworn,
12 testified as follows:)

13 THE CLERK: State your name for the Court and
14 spell your last.

15 THE WITNESS: Michaela Albin, A-L-B-I-N.

16 DIRECT-EXAMINATION

17 BY MR. CANTY:

18 Q You testified earlier in this trial regarding the
19 value of the RV and the loss of use, et cetera?

20 A Yes, sir.

21 Q You heard the testimony of Mr. Rutherford and Mr.
22 Knight?

23 A Yes, sir.

24 Q And since the last time you testified, we had
25 acquired photographs of the motor home; is that

MICHAELA ALBIN - DIRECT EXAMINATION

1 Q (MR. CANTY) Ms. Albin, could you tell -- looking at
2 the photographs on Page 1, you made notes. First, in
3 the upper, right corner there is an advertisement on
4 the back?

5 A Yes, sir. My daddy had his business placed back
6 there.

7 Q Do you know what that sign had cost?

8 A \$550.

9 Q Now, the next photograph, lower, left corner, you
10 have a note, "awnings on all windows"; is that
11 correct?

12 A Yes, sir.

13 Q And that is listed as an option?

14 A Yes, sir.

15 Q Now, the lower, right corner, the tow package,
16 what do you know about that?

17 A My dad personally bought that so he could put his
18 SUV when he traveled.

19 Q And that is for the purpose of towing a smaller
20 vehicle behind?

21 A Yes. He used to travel.

22 Q Do you know what that had cost?

23 A I believe he paid anywhere from 900 to a thousand
24 dollars.

25 Q All right. The next page also depicts awnings on

MICHAELA ALBIN - DIRECT EXAMINATION

1 all of the windows; is that correct?

2 A Yes, sir.

3 Q The following page, more awnings?

4 A The outside light.

5 Q Was that an option, to your knowledge?

6 A It was an option, to my knowledge.

7 THE COURT: Let me ask this. Let's qualify
8 her as to what options -- I mean what information she
9 has as to what came on a Crown Royal Signature series
10 as original equipment. Is she qualified to testify to
11 that, or do you have someone who could testify as to
12 what constitutes a Crown Royal Signature 300
13 horsepower motor home?

14 MR. CANTY: Your Honor, her testimony is that
15 these are all options with additional value. We heard
16 Mr. Knight's testimony. We also heard that he said
17 the driver's door was standard, and there is no
18 driver's door on this vehicle. So I think his
19 credibility is in question, at a minimum. She's going
20 to testify that these are all options.

21 THE COURT: What is the basis of her
22 knowledge? I mean, it would be nice if we had someone
23 from the manufacturer showing what comes with the
24 Crown Royal series. The witness who testified, Mr.
25 Knight, said these are the things that come with it.

MICHAELA ALBIN - DIRECT EXAMINATION

1 I understand about the door, but --

2 MR. CANTY: We respectively disagree with Mr.
3 Knight.

4 THE COURT: And I'm asking you, can you tell
5 me from this witness -- do we have anything that shows
6 that these were not the original equipment on the
7 Crown Royal Signature? I mean, like you can buy a
8 Chevrolet truck or you can pay a little more and you
9 can get -- I got one -- what do you call it?

10 MR. POSTAL: Z-71?

11 THE COURT: Yeah, or something like that.

12 THE CLERK: Eddie Bauer.

13 THE COURT: And it comes with much more stuff
14 on it than what you get when you buy the other
15 package. What I'm interested in knowing is can anyone
16 testify as to what you get more on a Crown Royal
17 Signature over the -- I think the other was the
18 Executive series or Dynasty series, what more comes
19 with it? Do we have a manufacturer's list, anything
20 that tells me what more you get when you step up? I
21 know the valuations are quite different. There is
22 about, if I'm right, Mr. Canty, about \$14,000
23 difference on the value if we look at that Executive
24 series. Am I saying that right? Was it an Executive
25 series, the lower level? I imagine you would get the

MICHAELA ALBIN - DIRECT EXAMINATION

1 Executive series, which was the lower end for the
2 40-foot, it would only be like a \$46,700 used retail
3 value. The Crown Royal series, if we look at the 300
4 horsepower in it, 40-foot, it is \$56,000. So there is
5 over \$10,000 difference in the basic motor coach and
6 the Crown Royal series. I would assume that that has
7 to do with additional equipment. Wouldn't that make
8 sense, Mr. Canty, that the reason it is \$10,000 more
9 is because it is the nicer coach? I mean, wouldn't
10 that make sense?

11 MR. CANTY: Not to split hairs, but less than
12 \$10,000.

13 THE COURT: Well, it is close to \$10,000.

14 MR. CANTY: Yes, Your Honor, that would make
15 sense; however, I would argue that the Court has to
16 consider Mr. Knight's testimony in light of the fact,
17 A, the circumstances which he was here and, B, his
18 unequivocal testimony that everything except the CB
19 radio on the list was standard; that is what he said.
20 On that list was the driver's door, and he said under
21 oath that that was standard.

22 THE COURT: I understand.

23 MR. CANTY: Plainly, it doesn't even exist.

24 THE COURT: I understand.

25 MR. CANTY: At least with regard to the CB and

MICHAELA ALBIN - DIRECT EXAMINATION (CONT.)

1 bought an Executive series and you bought a Crown
2 Royal series in 1994, how much more stuff would have
3 been on yours than mine?

4 A No, sir, I don't.

5 THE COURT: Okay. All right. Mr. Canty.

6 DIRECT-EXAMINATION (continued)

7 BY MR. CANTY:

8 Q Do these photographs show any personal property
9 of your father's in the motor home?

10 A Everything is gone.

11 Q Does it show boxes sitting on a sofa?

12 A Yes, sir, it looks like boxes.

13 Q And do you remember Mr. Rutherford's testimony
14 that your father's personal property was boxed up?

15 A Yes, sir.

16 Q Tell the Court whether or not he received those
17 boxes of personal property.

18 A No, sir, we didn't receive anything.

19 Q Now, did this motor home come with custom China
20 in the cabinet?

21 A Yes. If you look -- wait a minute.

22 THE COURT: I don't even see that on the
23 options.

24 A Tenth page on the bottom corner.

25 THE COURT: Tenth page?

MICHAELA ALBIN - DIRECT EXAMINATION (CONT.)

1 THE WITNESS: The bottom, there is a China
2 cabinet; it's empty.

3 THE COURT: I was looking at the list.

4 MR. CANTY: At this point we're seeking to get
5 testimony of her from her personal knowledge of
6 personal property that belonged to her father that was
7 in the motor home at the time it was seized and never
8 been delivered or accounted for.

9 THE COURT: Do we know what was in there?

10 THE WITNESS: Yes, sir, I do.

11 Q (MR. CANTY) To your knowledge, what personal
12 property of your father's was in the motor home that
13 was never recovered?

14 A His personal clothes, the China, a DVD player,
15 his Steeler's watch.

16 MR. CANTY: Pittsburg.

17 THE COURT: Oh, okay.

18 A A comforter in the back -- on the back bed. I
19 think it is missing a mattress, too. There was two
20 mattresses on that bed.

21 Q (MR. CANTY) Can you tell the Court the value of the
22 personal property that was never returned?

23 A About 250 for the China. The comforter I bought;
24 it was 150. The DVDs, I would say, about \$75. He had
25 a bunch of DVDs we bought throughout the years, I

MICHAELA ALBIN - DIRECT EXAMINATION (CONT.)

1 would say about a hundred, 150, and his watch was
2 \$300.

3 Q How much does that come to?

4 A And his personal clothes, I didn't value that.

5 Q What is the total of the personal property?

6 THE COURT: Things you just named.

7 THE WITNESS: Okay. Got you.

8 (A brief pause in the proceedings.)

9 THE WITNESS: About \$1,200.

10 Q (MR. CANTY) Was there any leak in the motor home at
11 the time that it was seized?

12 A No, sir. My father lived in it.

13 Q Was there any water damage to the interior of the
14 motor vehicle?

15 A No, sir.

16 THE COURT: Help me, Ms. Albin, would you say
17 it was at least in average condition?

18 THE WITNESS: It was average. It was lived
19 in. He had it cleaned every two weeks.

20 Q (MR. CANTY) Who did the cleaning?

21 A His ex-wife.

22 Q They had a very good relationship?

23 A They did.

24 MR. CANTY: Answer any questions Ms. Elder may
25 have.

MICHAELA ALBIN - CROSS-EXAMINATION

CROSS-EXAMINATION

1

2 BY MS. ELDER:

3 Q How often did you go in the RV?

4 A Did I?

5 Q Uh-huh.

6 A Almost every day.

7 Q Do you know -- you weren't, I assume -- prior to
8 this hearing, initially your father testified in the
9 prior hearing?

10 A I've been to every hearing with my father.

11 Q And were you with him constantly?

12 A I worked with him every day.

13 Q But he could have made phone calls and things
14 like that outside of your presence?

15 A I'm sure, yeah.

16 Q So you can't be a hundred percent sure if the
17 police department called him and offered him an
18 opportunity to pick up his personal belongings, can
19 you?

20 A He usually told me everything.

21 Q But you can't be a hundred percent sure?

22 A They told him to pick up his gun, and that was
23 the only thing I knew.

24 Q Do you know if he ever went to the police
25 department to inquire about his personal belongings?

MICHAELA ALBIN - CROSS-EXAMINATION

- 1 A Yes, when he picked up his gun.
- 2 Q Were you with him?
- 3 A No. His wife was.
- 4 Q But you -- so you are relying on --
- 5 A I saw the gun and the paperwork.
- 6 Q You are relying on what you were told by your
- 7 father?
- 8 A He showed me the paperwork he signed for the gun.
- 9 I'm not saying if they offered him to pick up the rest
- 10 of the stuff.
- 11 Q You indicated previously that you traveled with
- 12 him in this RV?
- 13 A No, I didn't say that.
- 14 Q You never went anywhere?
- 15 A He did. I did not go.
- 16 Q Where did he go?
- 17 A Culpeper.
- 18 Q Where is that?
- 19 A Virginia.
- 20 Q How far is that?
- 21 A About a 600-mile trip.
- 22 Q How many times did he go there?
- 23 A Once.
- 24 Q The towing package you indicated in the
- 25 photographs, how did you reach the valuation of the

MICHAELA ALBIN - CROSS-EXAMINATION

1 thousand dollars?

2 A I probably wrote the check for him.

3 Q So that is not -- that was --

4 A He bought that special. It didn't come with the
5 RV.

6 Q So it didn't --

7 A No, ma'am.

8 Q Who did he buy it from?

9 A Someone at McBee (phonetic). I think it was
10 Brown's RV in McBee.

11 Q When did he purchase that?

12 A Right after he bought it, ma'am.

13 Q So that would have been in?

14 A There is two RVs. He bought that one in June.

15 Q Of what year?

16 A 2007.

17 Q Okay. The slide-out door you have in your
18 photographs, auto slide door for the generator, do you
19 know that that was not functioning at the time it was
20 seized?

21 MR. CANTY: Objection. That is not in
22 evidence. The evidence is that it wasn't functioning
23 some years later when it was sold.

24 THE COURT: And I understand. She's just
25 asking her -- as far as I know, this was an average

MICHAELA ALBIN - CROSS-EXAMINATION

1 motor home. That is all the evidence I have whenever
2 it was taken. It had an average value. Now,
3 Ms. Elder is simply asking this witness if she knew if
4 there was a problem with the generator at that time.

5 MR. CANTY: I didn't hear the question that
6 way. My objection was as to the form.

7 THE COURT: I think she merely is asking her
8 did you know at the time it was seized that the
9 generator was not functioning.

10 MR. CANTY: That was the question, and I
11 object because there is no evidence of that.

12 THE COURT: There may be from this lady if she
13 asked her. If this lady knows or not, then she'll
14 have to establish how much that would be a reduction
15 if that was the case. It may or may not be relevant,
16 let's see. Okay.

17 Do you know, Ms. Albin, if the generator was
18 working? Do you know?

19 THE WITNESS: No, sir, I don't.

20 THE COURT: There you go.

21 Q (MS. ELDER) Do you know if the microwave was
22 working?

23 A Yes, ma'am.

24 Q How do you know that?

25 A I cooked in it.

MICHAELA ALBIN - CROSS-EXAMINATION

1 Q When was the last time you cooked in it?

2 A Probably a week before it was seized.

3 Q What about the refrigerator and the --

4 A I went grocery shopping for my father.

5 Q So you knew he kept marijuana in there?

6 A I didn't know he kept that in there.

7 Q So you never saw that?

8 A No, sir. He didn't share that.

9 Q And you were there all the time?

10 A I didn't rummage through. I put up the
11 groceries. I don't have anything to do with the
12 marijuana.

13 MR. CANTY: Again, I'm going to object to the
14 form. Your Honor presided at the trial of the
15 forfeiture case. There was 4 ounces of marijuana,
16 which Mr. Albin --

17 THE COURT: That has nothing to do with Ms.
18 Albin.

19 MS. ELDER: She is testifying that she was in
20 this RV on a regular basis. I have a right to
21 question her about how often for credibility.

22 THE COURT: I'm not going to impugn Ms. Albin
23 with any marijuana that her father may have had.

24 MS. ELDER: I'm asking if she saw it, Your
25 Honor.

MICHAELA ALBIN - REDIRECT EXAMINATION

1 within 30 days we'll file a motion with supporting
2 documents as to attorney's fees.

3 THE COURT: This is what I want you to do. I
4 find that the value of the motor home -- the only
5 credible testimony I have is that the base value of
6 this motor home -- there is nothing to indicate it was
7 anything other than an average condition Crown Royal
8 series, 300 horsepower, 40-foot motor home that the
9 value is \$56,090, and that it has at least two
10 add-ons -- or I find there is credible evidence that
11 there is two add-ons, one being the tow package at a
12 thousand dollars, the other being 43 actually -- \$40
13 for CB and 550 as to the sign.

14 Now, what I want you to each do is hand up
15 proposed orders for me. I want you to provide me -- I
16 want you to brief in those proposed orders or discuss
17 in those orders the applicability and the fairness in
18 applying 15-77-300 as to whether or not I'll grant
19 attorney's fees. If I deny the grant of attorney's
20 fees, I will -- that will be my final order. If I
21 grant attorney's fees in general, I'll have a hearing
22 on that issue. Do you understand, Mr. Canty?

23 MR. CANTY: Yes, Your Honor.

24 THE COURT: All right. Thank you.

25 THE CLERK: How many days for the orders?

MICHAELA ALBIN - REDIRECT EXAMINATION

1 THE COURT: I would like you to have the
2 orders in ten days, that should be adequate for this
3 matter.

4 (Whereupon, the proceedings concluded.)
5
6
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Horry County Police Department

**Special Operations Division
Narcotics and Vice Section**

Evidence Section

Chain of Custody

Incident Type: PWID marijuana

Case Number: 09-007673

Victim: State of S.C.

Location: Putters Bar 8950 Hwy 707 Myrtle Beach S.C. 29588

Suspect: Michael James Albin

Date and Time: 1-24-09 2000

Officer: Ard

Item(s):

1. rolling papers
2. grinder
3. Roach clip
4. pipe
5. roller
6. green leafy substance in five separate baggies (137 g)
7. 1 Taurus 38 special pistol SN SG53109
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.

Item Number: 1-7

Relinquished By: Ard

Received By: evidence

Date: 1-24-09

Purpose of Change: test, hold for court

Item Number:

Relinquished By:

Received By:

Date:

Purpose of Change:



South Carolina Department of Motor Vehicles

BILL OF SALE

(Must be Typed or Printed in Black Ink)

4031
(Rev. 02/12)

FOR DEPARTMENT USE ONLY

Check One:

- ☐ Purchase License Plate
☐ Transfer License Plate

1. Horry County Government

1301 2nd Avenue
Street

Conway
City

SC
State

29526
Zip Code

state that on the 13 day of November Yr. 2012 The following vehicle:

MAKE Monaco MODEL SI66 BODY TYPE MH YEAR 1994

VEHICLE IDENTIFICATION NO. 1RF120611R1010972 LICENSE NO. _____

was sold to Don or Jeannie Walker
Buyer

133 Hillside Dr.
Street

Jonesborough
City

TN
State

37659
Zip Code

And the above vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle: \$13,105.00
Less trade-in: —
Taxable Total: \$13,105.00

Federal and State law requires that you state the mileage in connection with transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads 87,744 (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

STOP! DO NOT check one of the following unless it applies.

- I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

WARNING: Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Don Walker 11/13/12
Signature(s) of Buyer(s) Date

Don Walker
Hand Print Name(s) of Buyer(s)

Barbara Bellamy 11/13/12
Signature(s) of Seller(s) Date

BARBARA BELLAMY For Horry County Gov't
Hand Print Name(s) of Seller(s)

Return to: South Carolina Department of Motor Vehicles
PO Box 1498
Blythewood, SC 29016-0024

ANY ALTERATIONS OR ERASURE VOIDS THIS DOCUMENT
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT





South Carolina Department of Public Safety

BILL OF SALE (Must Be Typed or Printed in Black Ink)

FOR DEPARTMENT USE ONLY

Check One:

- ☐ Purchase License Plate
☐ Transfer License Plate

I, THOMAS LUCKMAN
Seller
6345 LONGWOOD DR. MURRELLS INLET SC 29576
Street City State Zip Code
state that on the 9TH day of MAY Yr. 2006 the following vehicle:
MAKE MONACO MODEL SIGNATURE BODY TYPE AUTHM YEAR 1994
VEHICLE IDENTIFICATION NO. 1RE120611R1010972 LICENSE NO. 100262965
was sold to MICHAEL ALBIN
Buyer
5730 HWY 707 LT 12 MYRTLE BEACH SC 29588
Street City State Zip Code

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle \$ 65,000.00
Less trade-in \$
Taxable Total \$ 65,000.00

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads 86348 (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

STOP! DO NOT check one of the following unless it applies.

1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

WARNING: Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

MOJALL 05-09-06
Signature(s) of Buyer(s) Date

Thomas Luckman 5/9/06
Signature(s) of Seller(s) Date

MICHAEL J. ALBIN
Hand Print Name(s) of Buyer(s)

THOMAS LUCKMAN
Hand Print Name(s) of Seller(s)

Return to: South Carolina Department of Public Safety
Division of Motor Vehicles
P.O. Box 1498
Columbia, S.C. 29216-0024

ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.



TITLE HISTORY

VIN: 1RF120611R1010972
New/Used: USED

Year: 1994 Make: MONA
Empty Weight: 99999

Model: SIG6

BS: MH

Title Number: 770760250805396

Status: CURRENT TITLE

Purchase Date: 08/12/2011

Issue Date: 07/17/2012

Dup:N

Print Date: 07/23/2012

Odometer: 87744

Legend: ACTUAL MILEAGE

Salvage %: 0

Vehicle Brands:

None.

Owner Number: 17834145

Owner Name: COUNTY OF HORRY

Owner Address: 1301 2ND AVE CONWAY SC, 295265209

Mailing Address: PO BOX 296 CONWAY SC, 295280296

Title Number: 770940193259477

Status: CANCELLED: CVS

Purchase Date: 05/09/2006

Issue Date: 06/23/2008

Dup:Y

Print Date: 06/30/2008

Odometer: 86348

Legend: ACTUAL MILEAGE

Salvage %: 0

Tax Credit: \$0.00

Tax Exemption: N/A

State Tax Paid:

Vehicle Brands:

None.

Owner Number: 22034894

Owner Name: ALBIN, MICHAEL JAMES

Owner Address: 8374 CHERRYWOOD DR MYRTLE BEACH SC, 295887528

Title Number: 770740159668590

Status: CANCELLED - NEW TITLE ISSUED: SC

Purchase Date: 05/09/2006

Issue Date: 05/17/2006

Dup:N

Print Date: 05/22/2006

Odometer: 86348

Legend: ACTUAL MILEAGE

Salvage %: 0

Sale Price: \$65,000.00

Trade In Amount: \$0.00

Sales Tax Number: 0

Vehicle Brands:

None.

Owner Number: 22034894

Owner Name: ALBIN, MICHAEL JAMES

Customer No: 17834145 Customer Name: COUNTY OF Horry

Owner Address: 8374 CHERRYWOOD DR MYRTLE BEACH SC, 295887528

End of Report

224

STATE OF SOUTH CAROLINA				
CERTIFICATE OF TITLE				
OF A VEHICLE				
VEHICLE ID NUMBER	YEAR	MAKE	MODEL	NEW/USED
IRF120611R1010972	1994	MONA	SIG6	USED
BODY STYLE	DATE ISSUED	ODOMETER	WEIGHT	TITLE NUMBER
MH	06-30-2008	86,348	99999	770940193259477
VEHICLE BRAND(S) ***DUPLICATE***DUPLICATE***DUPLICATE***DUPLICATE***				
ACTUAL MILEAGE				
DUPLICATE CERTIFICATE, SUBJECT TO THE ORIGINAL				
FULL NAME OF OWNER(S)			CUSTOMER NUMBER: 022034894	
ALBIN, MICHAEL JAMES				
5730 HIGHWAY 707 LOT 12				
MYRTLE BEACH SC 295887301				
THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH. MARCIA S. ADAMS EXECUTIVE DIRECTOR MARK SANFORD GOVERNOR				
KEEP IN A SAFE PLACE. ANY ALTERATION OR ERASURE VOIDS THIS TITLE.				

039420921

**SCDMV****Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home**

Form 400 (Rev.1/05)

For more information, visit our website at www.scdmvonline.com or call our Customer Call Center at (803)896-5000.Check the box next to the type of transaction you need. Please enclose the required documents and fees with your completed and signed application. For expedited services (within 3 business days) include an additional \$20.00 fee. Please print or type in black ink only. **DO NOT SEND CASH.**

☐ NEW TITLE & REGISTRATION 1) Manufacturer Statement of Origin (MSO) or Title. 2) Paid Property Tax Receipt 3) \$15.00 title fee and regular registration fee. 4) Sales Tax (5% of selling price or \$300.00 max.) 5) Insurance Information	☐ TITLE AND PLATE TRANSFER 1) Manufacturer Statement of Origin (MSO) or Title. 2) List Previous Tag # 3) Previous registration in owner's name. 4) \$15.00 title + \$10.00 transfer fee 5) Sales Tax (5% of selling price or \$300.00 max.) 6) Insurance Information	☐ MOBILE OR MANUFACTURED HOME 1) Manufacturer Statement of Origin (MSO) or Title. 2) Consumer Insurance Report required for \$300.00 sales tax cap, if mobile home is energy efficient. 3) \$15.00 title fee	☒ TITLE ONLY 1) Manufacturer Statement of Origin (MSO) or Title. 2) \$15.00 title fee 3) Sales Tax (5% of selling price or \$300.00 max.) ☐ DUPLICATE TITLE 1) Lost Stolen or Destroyed Title 2) \$15.00 title fee.	☐ LEASED VEHICLE 1) Do not complete Section 3. Complete Section 4 and all other applicable sections. MAIL YOUR APPLICATION TO: SCDMV P.O. Box 1488 Blythewood, SC 29016-0024

SECTION 1 - VEHICLE INFORMATION

VEHICLE IDENTIFICATION NUMBER 1RF120611R1010972	MAKE MONA	YEAR MAKE 1994	BODY STYLE MH	MODEL SIG6	EMPTY WEIGHT 99999	GVW

SECTION 2 - ODOMETER MILEAGE

FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

I STATE THAT THE ODOMETER NOW READS 87744 (NO TENTHS) AND TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED:

DO NOT CHECK ONE OF THE FOLLOWING UNLESS IT APPLIES.

☐ EXEMPT☐ I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.☐ I CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE, WARNING ODOMETER DISCREPANCY.

202 Count order 15/76 WSE

SECTION 3 - OWNER INFORMATION Your complete legal name must be used on all title and registration documents.

OWNER COMPLETE LEGAL NAME (LAST, FIRST, MIDDLE) County of Horry		CUSTOMER NO., DRIVER LICENSE NO., SOC. SEC. OR FEIN NO.		DATE OF BIRTH
CO-OWNER COMPLETE LEGAL NAME (LAST, FIRST, MIDDLE)		SHARED OWNERSHIP ☐ AND ☐ OR		CUSTOMER NO., DRIVER LICENSE NO., SOC. SEC. OR FEIN NO.
RESIDENCE STREET ADDRESS (APT. NO. IF APPLICABLE) 1301 2nd Ave		CITY Conway	STATE SC	ZIP CODE 29526
MAILING ADDRESS (IF DIFFERENT FROM ABOVE) PO Box 296		CITY Conway	STATE SC	ZIP CODE 29528
ADDRESS WHERE VEHICLE IS HOUSED (IF DIFFERENT FROM ABOVE)		CITY	STATE	ZIP CODE
DAYTIME TELEPHONE NUMBER 843-915-53508		TEMPORARY ADDRESS (IF APPLICABLE)		EXPIRATION OF TEMPORARY ADDRESS

SECTION 4 - LEASING INFORMATION Complete only for a leased vehicle.

LEASING COMPANY NAME		PHONE NO.	CONTACT PERSON	CUSTOMER NO.	
ADDRESS		CITY	STATE	ZIP CODE	
NAME OF LEASEE (PERSON LEASING VEHICLE)		DRIVER LICENSE NO., SOC. SEC. NO. OR FEIN NO.		DATE OF BIRTH	
RESIDENCE STREET ADDRESS (APT. NO. IF APPLICABLE)		CITY	STATE	ZIP CODE	COUNTY
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)		CITY	STATE	ZIP CODE	COUNTY
ADDRESS WHERE VEHICLE IS HOUSED (IF DIFFERENT FROM ABOVE)		CITY	STATE	ZIP CODE	COUNTY

SECTION 5 - LIEN INFORMATION

CUSTOMER NO. OR FEIN NO.	LIENHOLDER NAME (FIRST LIEN)	DATE OF LIEN	CONTACT PERSON	TELEPHONE NUMBER
MAILING ADDRESS		CITY	STATE	ZIP CODE
CUSTOMER NO. OR FEIN NO.	LIENHOLDER NAME (SECOND LIEN)	DATE OF LIEN	CONTACT PERSON	TELEPHONE NUMBER
MAILING ADDRESS		CITY	STATE	ZIP CODE

TITLE SECTION MAY 29 2012

SECTION 6 - SATISFACTION OF LIEN**SATISFACTION OF FIRST LIEN**

THIS IS TO CERTIFY THAT THE LIEN AGAINST THE VEHICLE HAS BEEN FULLY SATISFIED ON:

DATE _____

NAME OF LIEN HOLDER _____

CERTIFIED BY _____

TITLE _____

SATISFACTION OF SECOND LIEN

THIS IS TO CERTIFY THAT THE LIEN AGAINST THE VEHICLE HAS BEEN FULLY SATISFIED ON:

DATE _____

NAME OF LIEN HOLDER _____

CERTIFIED BY _____

TITLE _____

SECTION 7 - SALES TAX EXEMPTION

Complete this section if you are entitled to a sales tax exemption.

VEHICLE PURCHASED FROM INDIVIDUALS AND TITLED IN SOUTH CAROLINA ARE SUBJECT TO SALES TAX UNLESS EXEMPT. THE TAX IS 5% OF THE SALES PRICE UP TO A MAXIMUM OF \$300.00. (MOBILE HOMES ARE CALCULATED DIFFERENTLY.)

- ☐ THE VEHICLE WAS TRANSFERRED FROM: ☐ MY PARENT ☐ MY SPOUSE ☐ MY CHILD ☐ MY BROTHER/SISTER ☐ MY GRANDPARENT ☐ MY GRANDCHILD
- ☐ THE VEHICLE WAS TRANSFERRED TO ME AS: ☐ LEGAL HEIR ☐ BENEFICIARY ☐ DISTRIBUTE
- ☐ I AM NON-RESIDENT MILITARY PERSONNEL ☐ THE VEHICLE WAS A BONAFIDE GIFT

SECTION 8 - ADDITIONAL INFORMATION

DATE OF PURCHASE 08-12-12		DATE FIRST OPERATED IN S.C. N/A	ENERGY EFFICIENT MANUFACTURED/MOBILE HOME? ☐ YES ☒ NO	
NEW OR USED? USED	PRIOR TITLE NUMBER 770940193259477		PRIOR TITLE STATE South Carolina	
THE VEHICLE DESCRIBED ON THIS APPLICATION IS: ☐ REBUILDABLE ☐ NON-REBUILDABLE				
THE VEHICLE SUSTAINED THE FOLLOWING DAMAGE: ☐ COLLISION ☐ FIRE ☐ WATER ☐ STOLEN (RECOVERED) ☐ STOLEN (UNRECOVERED)				
AGENCY REFERENCE NUMBER		Calculate the Salvage Percentage: Predamaged Value _____ Estimate for Repairs _____ Percentage _____		

SECTION 9 - SELLER INFORMATION

SELLER OR DEALER NAME Albin, Michael, James		SC DEALER/WHOLESALE NUMBER	SC SALES TAX NUMBER	SALES PRICE	
ADDRESS 8374 Cherrywood Dr			CITY Myrtle Beach	STATE SC	ZIP CODE 29588

SECTION 10 - INSURANCE CERTIFICATION

A VEHICLE MUST BE INSURED WITH LIABILITY INSURANCE COVERAGE WHEN IT IS REGISTERED AND IT MUST REMAIN INSURED WHILE REGISTERED, WHETHER OR NOT IT IS OPERATED, OR THE UNINSURED MOTORIST FEE MUST BE PAID. PENALTIES ARE SEVERE FOR VIOLATION OF THIS REQUIREMENT.

UNDER PENALTIES OF PERJURY, I (WE) DECLARE THAT THIS VEHICLE IS INSURED BY A LIABILITY INSURANCE POLICY ISSUED THROUGH AN INSURANCE COMPANY LICENSED TO DO BUSINESS IN SOUTH CAROLINA AND IT WILL REMAIN INSURED THROUGHOUT THE REGISTRATION PERIOD.

NAME OF INSURANCE COMPANY _____

SECTION 11 - GIFT OF LIFE TRUST FUNDDO YOU WISH TO DONATE AN ADDITIONAL \$1.00 OR MORE TO THE GIFT OF LIFE TRUST FUND? ☐ YES ☐ NO AMOUNT \$ _____**SECTION 12 - SIGNATURE OF OWNER**

UNDER PENALTIES OF PERJURY, I DECLARE THAT I AM THE OWNER OF THIS VEHICLE AND REQUEST THAT A SOUTH CAROLINA CERTIFICATE OF TITLE AND/OR REGISTRATION BE ISSUED. I FURTHER CERTIFY THAT THE INFORMATION ON THIS APPLICATION IS CORRECT TO THE BEST OF MY KNOWLEDGE. THE VEHICLE IS SUBJECT TO THE LIENS NAMED AND NO OTHERS.

SIGNATURE OF OWNER (S) - MUST BE SIGNED IN INK BY OWNER OR AUTHORIZED AGENT (ATTACH POWER OF ATTORNEY IF APPLICABLE)

DATE : 8-28-12

DISCLOSURE STATEMENT

56-3-240 (SOUTH CAROLINA CODE OF LAWS) - THE DEPARTMENT SHALL OBTAIN THE FEDERAL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WHEN A VEHICLE IS REGISTERED WITH A GROSS VEHICLE WEIGHT OF MORE THAN 26,000 POUNDS OR A BUS COMMON CARRIER. THE DRIVER PRIVACY PROTECTION ACT OF 1994 (DPPA), 18 USC SECTION 2721-2725 RESTRICT THE DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN OUR RECORDS.

PENALTY FEESFAILURE TO REGISTER WITHIN 45 DAYS OF THE DATE OF PURCHASE WILL RESULT IN PENALTY FEES IN ADDITION TO REGULAR TITLE AND/OR REGISTRATION FEES. THE LATE PENALTY FEE SCHEDULE IS AS FOLLOWS:
46 - 60 DAYS LATE - \$10.00 61 - 75 DAYS LATE - \$25.00 76 - 135 DAYS LATE - \$50.00 OVER 135 DAYS LATE - \$75.00**THIS SECTION FOR DMV USE ONLY**

STAMP VEHICLE BRANDS		
RATED BY	TRANSACTION FEES	
OFFICE/OFFICE NUMBER	EXPEDITED FEE	WEIGHT INCREASE
PLATE NUMBER	LICENSE FEE	TRANSFER
EXPIRATION DATE	UNINSURED FEE	TITLE
PLATE CLASS	USE OR SALES TAX	GIFT OF LIFE FUND
SUSPENSE REASON	PENALTY	TOTAL

2
REMOVE SIDE EDGES FIRST
THEN SLIDE FINGER UNDER LONG EDGE TO OPEN

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

ASSIGNMENT OF A VEHICLE

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

NOTICE: ANY ALTERATIONS OR ERASURE VOIDS THE ASSIGNMENT

ASSIGNMENT(S) MUST BE MADE IN DARK INK

The undersigned hereby certifies that title to the vehicle described herein has been transferred on this _____ day of _____ year _____ to _____ and is subject to the following lien

Name _____ Street _____ City _____ State _____ Zip Code _____

Name of Lienholder _____ Address _____ Date of Lien _____

I certify to the best of my knowledge that the odometer reading is the ACTUAL mileage of the vehicle unless one of the following statements is checked:

STOP! DO NOT check one of the following unless it applies.

Odometer Reading (no tenths) _____

☐ 1. The mileage stated is in excess of its mechanical limits.

☐ 2. The odometer reading is not the actual mileage.

WARNING: ODOMETER DISCREPANCY

Date of Sale	_____
Sales Price	\$ _____
Less Trade-In	\$ _____
Taxable Total	\$ _____

I am aware of the above odometer certification made by the seller(s)

Signature(s) of Buyer(s) _____

Signature of Seller(s) _____

Hand Print Name(s) of Seller(s) _____

Hand Print Name of Buyer(s) _____

Address _____

ASSIGNMENTS BY DEALER/WHOLESALE/AUCTION

The undersigned hereby certifies that title to the vehicle described herein has been transferred on this _____ day of _____ year _____ to _____ and is subject to the following lien

Name _____ Street _____ City _____ State _____ Zip Code _____

Name of Lienholder _____ Address _____ Date of Lien _____

I certify to the best of my knowledge that the odometer reading is the ACTUAL mileage of the vehicle unless one of the following statements is checked: STOP! DO NOT check one of the following unless it applies.

Odometer Reading (no tenths) _____

☐ 1. The mileage stated is in excess of its mechanical limits.

☐ 2. The odometer reading is not the actual mileage.

WARNING: ODOMETER DISCREPANCY

Dealer/Wholesaler

Auctions License Number _____

I am aware of the above odometer certification made by the seller(s)

Signature(s) of Buyer(s) _____

Signature of Seller(s) _____

Hand Print Name(s) of Seller(s) _____

Hand Print Name of Buyer(s) _____

Address _____



SP567 14547-3

The undersigned hereby certifies that title to the vehicle described herein has been transferred on this _____ day of _____ year _____ to _____ and is subject to the following lien

Name _____ Street _____ City _____ State _____ Zip Code _____

Name of Lienholder _____ Address _____ Date of Lien _____

I certify to the best of my knowledge that the odometer reading is the ACTUAL mileage of the vehicle unless one of the following statements is checked: STOP! DO NOT check one of the following unless it applies.

Odometer Reading (no tenths) _____

☐ 1. The mileage stated is in excess of its mechanical limits.

☐ 2. The odometer reading is not the actual mileage.

WARNING: ODOMETER DISCREPANCY

Dealer/Wholesaler

Auctions License Number _____

I am aware of the above odometer certification made by the seller(s)

Signature(s) of Buyer(s) _____

Signature of Seller(s) _____

Hand Print Name(s) of Seller(s) _____

Hand Print Name of Buyer(s) _____

Address _____

NO ADDITIONAL RE-ASSIGNMENT PERMITTED - LAST ASSIGNEE MUST RETITLE BEFORE DISPOSAL

S.C. DOCUMENT OF REGISTRATION
S.C. DEPARTMENT OF MOTOR VEHICLES

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

PLATE NUMBER ERZ640
PLATE CLASS RP1
ISSUE DATE 05/13/2010
PLATE EXP. 05/2012
DECAL EXP. 05/2011
VIN 1RF120611R1010972
YEAR 1994
MAKE MONA
BODY MH
MODEL SIG6
VEHICLE TYPE 1
EMPTY / GVW 99999 / 0

TITLE 770940193259477
EQUIPMENT NO.
COUNTY 26
VEHICLE NO. 18733715
FLEET NUMBER

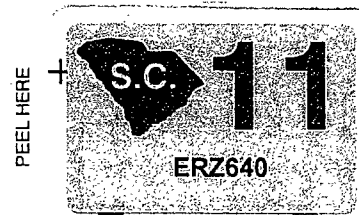
CUSTOMER NO. 22034894
ALBIN, MICHAEL JAMES

8374 CHERRYWOOD DR
MYRTLE BEACH

SC 295887528

APPLICATION INSTRUCTIONS

1. Clean plate thoroughly and dry plate completely.
2. Remove backing paper by bending over finger at scoreline face up, pull decal slowly.
3. Position on clean and dry plate as shown below.
4. Firmly press and rub decal and edges down with thumb.



PLEASE NOTE: Make sure all information is correct before placing license plate or decal on your vehicle.

South Carolina Code of Law 23-3-460 requires a person convicted of a sex offense to register with the county sheriff within 10 days of establishing residency in this state.

PAT. NO. 5,755,175

PLACEMENT INSTRUCTIONS
ON REVERSE

491 AV

ALBIN, MICHAEL JAMES
8374 CHERRYWOOD DR
MYRTLE BEACH, SC 295887528

PROMISSORY NOTE

RE: 1994 MONARCH MOTOR HOME

MICHAEL J. ALBIN
PUTTERS INC.

FOR VALUE RECEIVED, \$65,000⁰⁰ SIXTY FIVE THOUSAND, a corporation, having an address at 8950 HWY 707 MYRTLE BEACH, SC, 29588 (which corporation and its successors and assigns are collectively called the "Maker"), covenants and promises to pay to LINDA HILL, having an address at 6571 WELLINGTON DR. MURRELLS INLET SC (the "Payee"), or its order, the principal sum of _____, in payments of 1,176.66 on the first day of each month from the date hereof until paid, bearing interest at the rate of 9% percent (_____) plus principal.

Should Maker fail to pay the principal amount hereof on or before the maturity date hereof, such unpaid principal amount shall bear interest from and after such maturity date at the highest rate allowed by law.

All payments of principal and interest on this Note shall be payable in lawful money of the United States at 6571 WELLINGTON DR. MURRELLS INLET SC or such other address as Payee may from time to time designate to Maker by ten (10) days' written notice.

If any action or proceeding by the Maker or Payee shall arise out of or in connection with this Note, the prevailing party shall be entitled to receive from the losing party its reasonable attorneys' fees incurred in connection therewith.

This Note may not be changed orally, but only by an agreement in writing and signed by the party to be charged therewith.

All parties to this Note, whether Maker, principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor.

Executed this 16 day of MAY, 2006.

Witnessed By:

[Signature]
[Signature]

By:

[Signature]
[Signature]
Linda M Hill



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Vehicle Information

David J. Canty – Attorney for Michaela Albin
1994, Monaco, Crown Royale Series, Signature 300hp

NADA

OLDER RECREATION VEHICLE APPRAISAL GUIDE

The Older Recreation Vehicle Guide of the
National Automobile Dealers Association

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Donald D. Christy, Jr.
Publisher

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INTRODUCTION

The information contained in this "Value Guide" has been obtained from manufacturers and dealers representing every phase of the recreation vehicle industry. The purpose of this publication is to assist all recreation vehicle related industries in reaching an average market value for Used Recreation Vehicles, and for the purpose of financing and insuring. The prices and market values contained in the **NADA OLDER RECREATION VEHICLE GUIDE** reflect the most current information available.

The Used Wholesale and Retail Values listed are based on the assumption that each unit is "ready for resale". When appraising any used RV, the cost of "get ready" must be taken into consideration before arriving at a firm wholesale and retail value. It is also important to note the difference between individual State Building Code Requirements. Check with your State Building Code Inspector when appraising any out-of-state unit not familiar to you, as bringing some out-of-state units up to "code" can be very costly.

•PUBLISHER'S NOTE•

In certain instances, no sales values have been reported. In this event, the Editor has relied on market research and other sources to determine current market values. We cannot assume responsibility for errors or omissions.

The values and specifications contained in this publication are subject to change without prior notification. All values contained within this guide are the opinions of NADA Appraisal Guide's editorial staff. NADA Appraisal Guides, Inc., its subsidiaries and affiliated entities, make no warranty express or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose and they assume no responsibility for the accuracy of the values or other information published herein. NADA Appraisal Guides, Inc., its subsidiaries and affiliated entities, will not be liable for any special, incidental or consequential damages resulting from any use of this publication, including, without limitation, lost profits.

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Please use this guide as it has been intended, as a guideline only.

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• **IMPORTANT** •

The NADA Older Recreation Vehicle Appraisal Guide lists 20 years of used values. The values listed represent standard equipped units in average condition that are "ready for resale". When appraising a recreation vehicle, you must take into consideration the overall condition of the unit. If the unit is in a condition other than average, you must adjust the book value accordingly. You may want to add for any Optional Equipment not considered standard. If you need to add for Optional Equipment, refer to page C-1 (gray pages located toward the back of the book).

• **NOTE** •

By following the step by step instructions on Page A-8, you will find this publication an easy and effective tool for your use.

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HOW TO USE THE NADA OLDER RECREATION VEHICLE GUIDE

- 1) Identify the RV by type (Truck Camper, Motor Home, Etc.), Manufacturer, Year and Model.

NOTE: Should you know the model name but not the name of the manufacturer, you may refer to the **MODEL TO MANUFACTURER CROSS REFERENCE SECTION** (gray pages located toward the back of the book).

- 2) Turn to the correct section of the guide. (Truck Campers = TC-1, Motor Homes = MH-1, etc.) Using the alphabetical listings, locate the corresponding manufacturer.
- 3) Find the proper year, and follow down to the correct model.
- 4) Read across the page to get the used wholesale trade-in and retail values.
- 5) Once you have determined these values, you may turn to the Optional Equipment Section on page C-1 (gray pages located toward the back of the book).

• REMEMBER •

The values listed in this guide are for
average units in average condition.

If the unit is in a condition
other than average, you must adjust
the book value accordingly.

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MOTOR HOME EXPLANATION

This section of the book will include four basic types of Recreation Vehicles - Motor Homes, Mini Motor Homes, Micro Mini Motor Homes and Van Motor Homes. The definition of a Motor Home is a coach body specifically designed to be built as a permanent and integral part of a truck or van chassis.

HEADING EXPLANATION

MODEL - The name or model number used to designate the individual unit.

COACH DESIGN - We have included this column to specifically identify each coach. The descriptive terms have been abbreviated as follows:

MH-Motor Home (Class A)

MMH-Mini Motor Home (Class C)

MMM-Micro Mini Motor Home (Class C)

VMH-Van Motor Home (Class B)

FLOOR PLAN - This column will also help you to identify individual motor homes. The descriptive terms have been abbreviated as follows:

ALL = Covers all floor plans	RD = Rear Dinette
BH = Bunk House	RE = Rear Entrance
CB = Center Bathroom	RG = Rear Gaucho
CK = Center Kitchen	RK = Rear Kitchen
CM = Chair Model	RL = Rear Lounge
DB = Double Beds	SB = Side Bathroom
DD = Double Dinette	SD = Side Dinette
FB = Front Bathroom	SG = Side Gaucho
FD = Front Dinette	SK = Split Kitchen
FK = Front Kitchen	SL = Side Lounge
FL = Front Lounge	TB = Twin Beds
KB = King Bed	TG = Twin Gaucho
QB = Queen Bed	TL = Twin Lounge
RB = Rear Bathroom	TLS = Tri-Level Stand-Up

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MOTOR HOME EXPLANATION (con't)

SELF-CONTAINED - This column will inform you as to whether the individual unit is self-contained or not.

NOTE: Any R.V. listed as self-contained normally includes the following components as standard equipment: LPG Oven & Stove, Refrigerator, Pressurized Water System, Toilet Facilities, and Sleeping Accommodations.

SUGGESTED LIST - The value listed in this column reflects the approximate price of the unit when it is brand new. The prices listed are furnished by the manufacturer and are assumed to be correct. The list price does not include freight charges.

USED WHOLESALE - TRADE-IN - (Low Book) This column reflects the average wholesale value of a used unit "ready for resale". This may also be considered a trade-in value.

USED RETAIL - (High Book) This column reflects the average retail value of a used unit "ready for resale".

NOTE: If you need to add for any item not included as standard, please refer to the Optional Equipment Section on page C-1 (gray pages located toward the back of the book).

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MOTOR HOMES	MODEL	LGTH.	COACH DESIGN	FLR PLAN	SELF CONT.	SUGG LIST	USED W/S-TRADE-IN	USED RETAIL
	1979 MOBILE TRAVELER (CONT)							
	M-21	21'	MMH	ALL	YES	16290	800	1200
	M-22	22'	MMH	ALL	YES	16700	800	1200
	M-22-1/2	22½'	MMH	ALL	YES	17990	800	1200
	M-22-1/2 D	22½'	MMH	ALL	YES	21000	800	1220
	- 1978 -							
	M-17-1/2	17½'	MMH	ALL	YES	11290	800	1200
	M-18-1/2	18½'	MMH	ALL	YES	13310	800	1200
	M-21	21'	MMH	ALL	YES	16000	800	1200
	M-22	22'	MMH	ALL	YES	16310	800	1200
	M-22-1/2	22½'	MMH	ALL	YES	16500	800	1200
	M-22-1/2 D	22½'	MMH	ALL	YES	19500	800	1200
	- 1977 -							
	M-17-1/2	17½'	MMH	ALL	YES	11090	800	1200
	M-18-1/2	18½'	MMH	ALL	YES	12630	800	1200
	M-21	21'	MMH	ALL	YES	15020	800	1200
	M-22	22'	MMH	ALL	YES	17110	800	1200
	- 1976 -							
	M-17-1/2	17½'	MMH	ALL	YES	10100	800	1200
	M-18-1/2	18½'	MMH	ALL	YES	11610	800	1200
	M-21	21'	MMH	ALL	YES	12700	800	1200
	M-22	22'	MMH	ALL	YES	15000	800	1200
	- 1975 -							
	M-17-1/2	17½'	MMH	ALL	YES	8790	800	1200
	M-18-1/2	18½'	MMH	ALL	YES	10010	800	1200
	M-21	21'	MMH	ALL	YES	11710	800	1200
	M-22	22'	MMH	ALL	YES	12790	800	1200
	MOBILE VILLA							
	MAYFLOWER TRAVEL TRAILERS							
	PO BOX 430, 19 INDSTRAL AV, WELLINGTON, KS 67152							
	NOTE: NO LONGER PRODUCING MOTOR HOMES.							
	- 1987 -							
	M-240 COUNTRY VILLA	24'	MMH	RB	YES	33339	2320	3500
	M-240 MARK V	24'	MMH	RB	YES	40750	2990	4400
	M-262 COUNTRY VILLA	26'	MMH	CK	YES	35159	2480	3720
	M-260 COUNTRY VILLA	26'	MMH	RB	YES	35159	2480	3720
	M-260, 262 MARK V	26'	MMH	RB	YES	42650	3160	4610
	- 1986 -							
	M-240-FBS,FBD	24'	MMH	DB	YES	37182	2420	3780
	M-260-FBS,FBD	26'	MMH	DB	YES	39029	2610	4010
	- 1985 -							
	M-240-RB,FB	23½'	MMH	RB	YES	32445	1910	3080
	M-260-RB,FB	26'	MMH	RB	YES	34265	2050	3270
	MONACO							
	MONACO COACH CORPORATION							
	P.O. BOX 465, WAKARUSA, IN 46573 -- (800) 650-7337							
	NOTE: FOR NEWER YEAR PRICING INFORMATION, PLEASE REFER TO THE							
	NADA RECREATION VEHICLE APPRAISAL GUIDE.							
	- 1994 -							
	CROWN ROYALE SERIES							
	SIGNATURE 300HP	38'	MH	ALL	YES	289900	40220	54110
	SIGNATURE 370HP	38'	MH	ALL	YES	316400	44070	59330
	SIGNATURE 300HP	40'	MH	ALL	YES	299900	41690	56090
	SIGNATURE 370HP	40'	MH	ALL	YES	326400	45530	61300
	DYNASTY SERIES							
	CUMMINS 190HP	30'	MH	ALL	YES	128900	17160	23330
	CUMMINS 230HP	32'	MH	ALL	YES	153900	20780	28220
	CUMMINS 230HP	34'	MH	ALL	YES	158900	20840	27890
	CUMMINS 250HP	36'	MH	ALL	YES	165900	21850	29250
	CUMMINS 250HP	38'	MH	ALL	YES	173900	23000	30810
	EXECUTIVE SERIES							
	CUMMINS 300HP	36'	MH	ALL	YES	214000	32210	42840
	CUMMINS 300HP	38'	MH	ALL	YES	229000	33590	44660
	CUMMINS 300HP	40'	MH	ALL	YES	238000	35080	46700
	- 1993 -							
	CROWN ROYALE SERIES							
	SIGNATURE 300HP	38'	MH	ALL	YES	279900	37790	50310
	SIGNATURE 330HP	38'	MH	ALL	YES	300700	40480	53890
	SIGNATURE 300HP	40'	MH	ALL	YES	289900	38970	51910
	SIGNATURE 330HP	40'	MH	ALL	YES	310700	42590	56700

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JANUARY THROUGH APRIL 2009.
DEDUCT FOR REPAIRS

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The Power of
Vehicle Information

Enlargement of previous page.

- MOTOR HOMES - MODEL	LGTH.	COACH DESIGN	FLR PLAN	SELF CONT.	SUGG LIST	USED W/S-TRADE-IN	USED RETAIL

MONACO

MONACO COACH CORPORATION

P.O. BOX 465, WAKARUSA, IN 46573 - - (800) 650-7337

NOTE: FOR NEWER YEAR PRICING INFORMATION, PLEASE REFER TO THE
NADA RECREATION VEHICLE APPRAISAL GUIDE.

- 1994 -

- 1994 -

CROWN ROYALE SERIES

SIGNATURE 300HP	38'	MH	ALL	YES	289900	40220	54110
SIGNATURE 370HP	38'	MH	ALL	YES	316400	44070	59330
SIGNATURE 300HP	40'	MH	ALL	YES	299900	41690	56090
SIGNATURE 370HP	40'	MH	ALL	YES	326400	45530	61300

DYNASTY SERIES

CUMMINS 190HP	30'	MH	ALL	YES	128900	17160	23330
CUMMINS 230HP	32'	MH	ALL	YES	153900	20780	28220
CUMMINS 230HP	34'	MH	ALL	YES	158900	20840	27890
CUMMINS 250HP	36'	MH	ALL	YES	165900	21850	29250
CUMMINS 250HP	38'	MH	ALL	YES	173900	23000	30810

EXECUTIVE SERIES

CUMMINS 300HP	36'	MH	ALL	YES	214000	32210	42840
CUMMINS 300HP	38'	MH	ALL	YES	229000	33590	44660
CUMMINS 300HP	40'	MH	ALL	YES	238000	35080	46700

- 1993 -

- 1993 -

CROWN ROYALE SERIES

SIGNATURE 300HP	38'	MH	ALL	YES	279900	37790	50310
SIGNATURE 330HP	38'	MH	ALL	YES	300700	40480	53890
SIGNATURE 300HP	40'	MH	ALL	YES	289900	38970	51910
SIGNATURE 330HP	40'	MH	ALL	YES	310700	42590	56700

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The Power of
Vehicle Information

OPTIONAL EQUIPMENT EXPLANATION

When appraising any recreation vehicle, all optional equipment **not included as standard** must be considered. On the following pages we have included a comprehensive list of options available for recreation vehicles from 1975-1994. Add for any item not considered standard unless otherwise noted. If any of the items listed in the Optional Equipment Section are already included in the price of the RV, do not add for them.

NOTE: Any recreation vehicle listed as self-contained normally includes the following components as standard equipment: LPG Oven & Stove, Refrigerator, Pressurized Water System, Toilet Facilities, and Sleeping Accommodations.

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The Power of
Vehicle Information

OPTIONAL EQUIPMENT SECTION

Equipment	USED W.S. Trade-In	USED Retail
1994-1989		
GENERATORS		
6500 Watt	520	660
5000 Watt	440	560
4000 Watt	385	480
2500 Watt	330	400
10,000-12,500 WATT	125	170
6-8 KW DIESEL	820	1080
7-8 KW GAS	625	820
AIR CONDITIONING AND HEATING		
Automotive (26,000-32,000 BTU)	175	200
Automotive (10,000-15,000 BTU)	75	175
Automotive (Roof Mt. Condenser)	60	70
110 Volt - 13,500 BTU (Roof Mount)	115	150
110 Volt - 12,000 BTU (Roof Mount)	95	125
110 Volt - 10,000 BTU (Roof Mount)	75	95
110 VOLT - 15,000 BTU (Roof Mount)	50	100
7,000 BTU	105	135
11,000 BTU	120	155
13,500 BTU	130	180
15,000 BTU (NON-CENTRAL NON-DUCTED)	165	210
15,000 IPO 13,500	35	50
Furnace (10,000-12,000 BTU)	20	35
Furnace (13,000-17,000 BTU)	35	45
Furnace (21,000-28,000 BTU)	55	70
Swamp Cooler	45	65
APPLIANCES		
3-Way Refrigerator	65	85
5 CU FT	225	300
8 C.U.	325	430
10 C.U.	380	505
Central Vacuum Cleaner	45	55
Dishwasher	100	130
Garbage Disposal	25	35
Gas Grill Cook Top	210	275
12 Volt Rec Toilet	50	100
Flushing Toilet/Holding Tank	50	100
Waste Water Holding Tank	50	100
Microwave Oven	25	35
Microwave/Convection Combo	75	95
Microwave/Hood Combo	95	125
Refrigerator 4-Door W/Ice Maker (Luxury)	330	435
Refrigerator Side by Side Upgrade	75	95
Washer/Dryer Combo	230	300
Water Heater 10 Gallon Gas/Elec	50	65
Water Heater 10 Gallon Gas/Elec w/DSI	75	100
Water Heater 6 Gallon Gas/Elec	35	45
Water Heater 6 Gallon Gas/Elec w/DSI	60	85
Washer	115	150
Dryer	105	135
Ice Maker	40	60

JANUARY THROUGH APRIL 2000

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The Power of
Vehicle Information

OPTIONAL EQUIPMENT SECTION

Equipment	USED MSRP	USED MSRP
1994-1999 (continued)		
APPLIANCES		
REFRIGERATOR ADDS FOR NON-		
SELF-CONTAINED UNITS		
Chest Frig. 7 cu. ft.	195	240
Chest Frig. 6 cu. ft.	170	225
Chest Frig. 4 cu. ft.	155	200
Chest Frig. 3 cu. ft.	95	125
ENTERTAINMENT		
10" Color TV	25	30
15" Color TV	45	60
18" Color TV	65	85
27" Color TV	85	115
4-PM Car Stereo	20	35
4M FM CD Stereo	60	75
CD Player (Multiple)	85	110
DVD Player	65	85
Radio-Dash With Manual Paint	80	105
Radio-Dash without Receiver	60	75
TV Antenna w/Booster	20	25
VCR/VCR	50	70
JACKS AND LEVELING SYSTEMS		
Air Levelling System	135	180
Electric Jacks	145	190
Electric Rear Levelling	80	105
Electric Front Jacks/Fifth Wheel Trailers	50	100
Front Power Levelling Jacks	45	60
Hydraulic Jacks (4) (Each Corner)	40	60
Hydraulic Levelling Jacks (Motor Homes)	275	340
Hydraulic Levelling System (Automatic)	580	735
Hydraulic Levelling System (Manual)	375	490
Mechanical 4-Corner Jacks	40	55
Portable Camper Jacks	25	30
Power High Jack	35	50
Power Lift	75	95
Power Tongue Jacks	50	100
Scissor Steer Jacks (Each)	45	60
Steer Jacks-Grate Down (Each)	45	55
ENGINE AND SUSPENSION SYSTEMS		
Air Hydraulic Brakes	520	685
Anti-Lock with Park and Level	120	160
Power Center Steering System	100	135
Steering Control Sys (Class A)	50	100
Steering Control Sys (Class C)	50	100
Bridge, Over, 6000, Ford, Int. Harv.		
Large Horsepower Engine Etc.		
Max-Hydr. Suspension System	95	125
Self-Steer Slip Aid	80	100
MISCELLANEOUS		
5 Way Power Seat (Each)	85	110
6 Way Power Seat (Each)	135	180
Aluminum Wheels (Set of 4)	310	405
Auxiliary Battery	15	20

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The Power of
Vehicle Information

OPTIONAL EQUIPMENT SECTION

Base Price	Used Price	Used Price
1994-1989 (continued)	1994-1989	1994-1989
MISCELLANEOUS		
Auxiliary Gas Tank	50	100
Awning 10' - 12' (Each)	105	135
Awning 13' - 14' (Each)	115	155
Awning 15' - 16' (Each)	130	170
Awning 17' - 19' (Each)	155	200
Awning 20' - 22' (Each)	175	230
Awning 23' - 24' (Each)	195	260
Awning 25' (Each)	220	285
Awning 8' - 12' (Self Storage)	35	40
Awning For Slide-Out (Bedroom)	35	50
Awning For Slide-Out (Coach)	30	100
Awning	115	150
Battery Chgr. w/Voltage Converter	50	60
Bay Window (Each)	85	110
Cabinetry Upgrade (Deluxe)	410	545
CB Radio	30	40
Cedar Siding	255	335
Ceiling Fan	25	30
Cruise Control	20	25
Driver Side Door w/Power Window	105	140
Driver's Side Door	95	125
Electric Step	25	30
Fiberglass Exterior 30' and Under	330	445
Fiberglass Exterior 31' and Over	435	575
GPS Navigation System	770	1010
Inverter (1000 WATT)	170	220
Inverter (2000 WATT)	290	380
Inverter (600 WATT)	85	110
LP BOTTLES w/AUTO CHANGEOVER	40	50
2-305 OR 2-10		
LPG Conversion	135	175
Luggage Rack and Larkier	25	30
Mental Slide-Out (Bedroom)	130	175
Mental Slide-Out (Coach)	310	410
Micron (Power W/Deluxe)	50	65
Monitor Panel	25	30
Outside Shower	20	25
Power Roof Vent	35	45
Power Slide-Out Room (Bedroom) (Each)	290	360
Power Slide-Out Room 14' (Each)	495	615
Power Slide-Out Room 16' (Each)	555	685
Power Slide-Out Room 8' (Each)	505	660
Power Slide-Out Room 8' (Each)	500	735
Rear Vision Camera/Monitor	235	310
Roof Mount Storage Box	50	100
Satin	60	80
Screen Room 10' (Each)	25	45
Screen Room 11' (Each)	40	55
Screen Room 12' (Each)	45	60
Screen Room 7' (Each)	25	35
Screen Room 8' (Each)	25	35
Security System (Basic)	55	65

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1994

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The Power of
Vehicle Information

OPTIONAL EQUIPMENT SECTION

Equipment	USED W/S Trade-In	USED Retail
1994-1989 (continued)		
MISCELLANEOUS		
Security System (Deluxe)	320	420
Shower Enclosure (Glass)	35	50
Skylight	45	60
Slide-Out Tray Full Pass Through	185	235
Slide-out Tray One Side	105	135
Solar Battery Charger	120	155
Solar Panel (Each)	75	95
Spare Tire and Carrier	25	30
Spot Light (Remote)	45	60
Storm Windows	55	70
Tile Upgrade Bathroom/Kitchen	85	115
Tilt Wheel	20	30
Tip-out Room 8'	115	145
Tip-Out room 12'	230	300
Tip-Out 10' Front	165	220
Trailer Hitch	25	30
Two Wheel Car Tow	220	285
Water Purifier w/Dispenser	25	35
Weather Barrier-Sheathing	50	100
Window Awning 3' (Each)	30	40
Window Awning 4' (Each)	35	45
Window Awning 5' (Each)	35	50
Window Awning 6' (Each)	40	55
Window Awning 7' (Each)	45	60

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JANUARY THROUGH APRIL 2005

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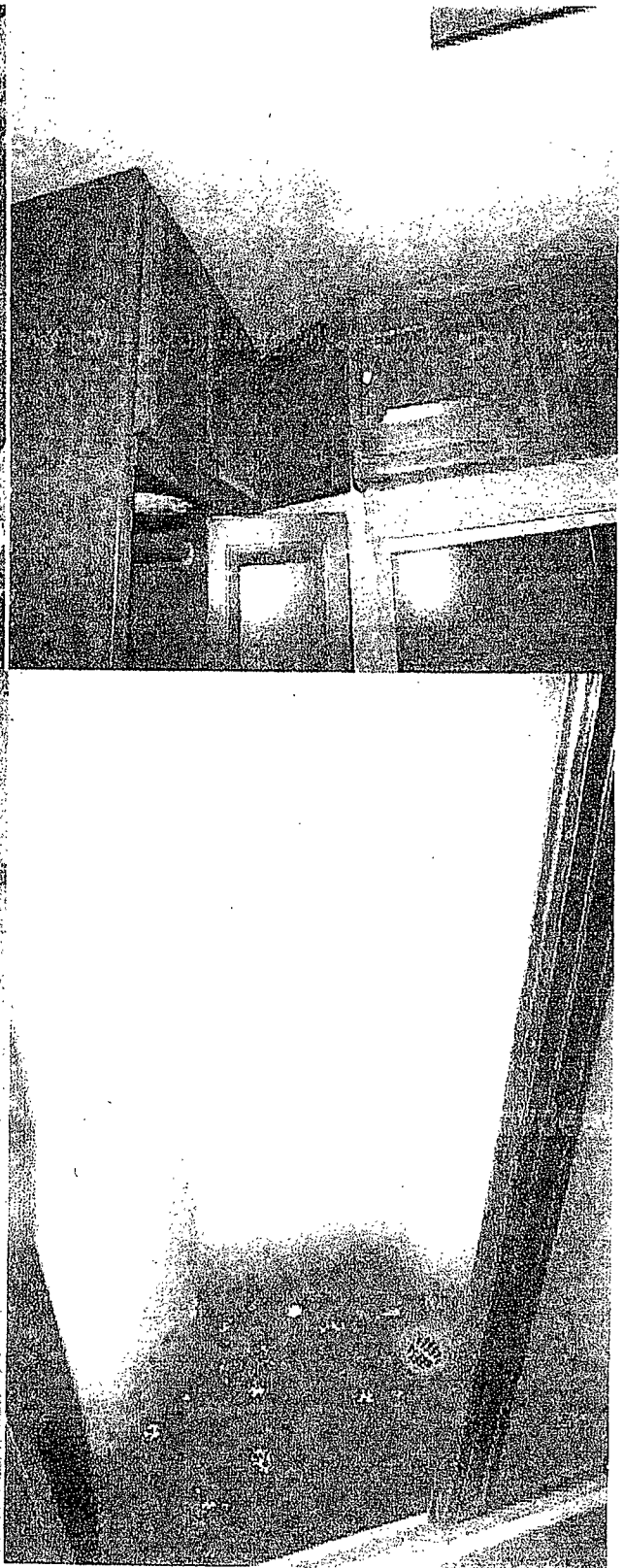
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NADA Guides
Optional Equipment

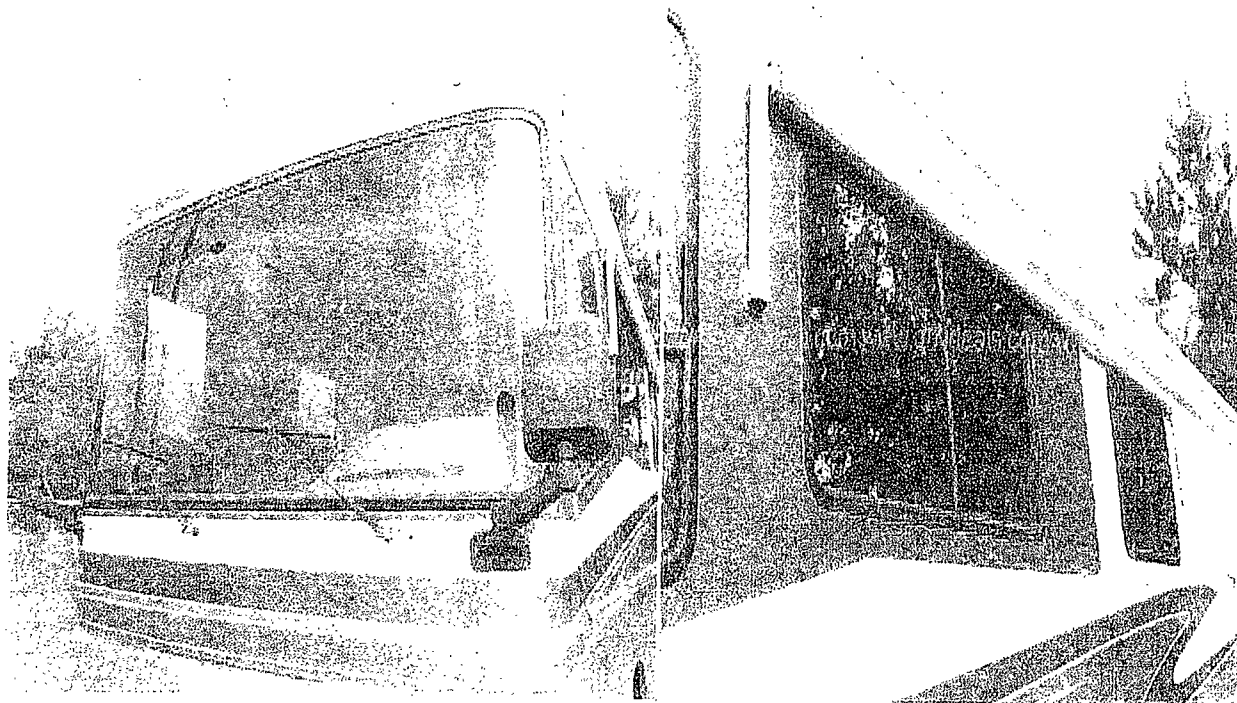
	LIST	WHOLESALE TRADE-IN	RETAIL
1994 Crown Royale Signature 40' 300HP	289,900	40,200	54,110
6-8 KW Diesel Generator		820	1,080
21-28 K BTU Furnace		55	70
15,000 BTU Ducted		165	210
10 CU. FT. Refrig		380	505
Gas Grill Cook Top		210	275
12 Volt Rec. Toilet		50	100
Flushing Toilet, Holding Tank		50	100
Wastewater Holding Tank		50	100
Microwave/Hood Combo		95	125
Water Heater 10 Gallon Gas/Elec. w/DSI		75	100
Ice Maker		40	60
Gas/Elect. 7 Cu. Ft.		195	240
27" Color TV		85	115
TV Antenna w/Booster		20	25
AM/FM Cassette Stereo		20	55
AM/FM/CD Stereo		60	75
DVD Player		65	85
VCR/VCP		50	70
Hydraulic Leveling System (Automatic)		580	765
Air/Hydraulic Brakes		520	685
Air ride with Park & Level		120	160
6 Way Power seats (2)		85 (x2)	110 (x2)
Aluminum Wheels		310	405
Auxiliary Battery		15	20
Auxiliary Gas Tank		50	100
Awning 8' - 12' (Self Storage)		35	40
Cabinetry Upgrade (Deluxe)		410	545
CB Radio		30	40
Ceiling Fan		25	30
Cruise Control		20	25
Driver's side door w/power window		105	140
Electric Step		25	30
Inverter 2000 Watt		290	380
LP Bottles w/auto Changeover		40	50

Luggage Rack & Ladder	25	30
Mirrors (Power w/defrost)	50	65
Power Roof Vent	35	45
Rear Vision Camera/Monitor	235	310
Roof Mount Storage Box	50	100
Security System (Basic)	65	85
Shower Enclosure (Glass)	35	50
Sky Light	45	60
Spare Tire & Carrier	25	30
Spot Light (Remote)	45	60
Storm Windows	55	70
Tile Upgrade Bathroom/Kitchen	85	115
Tilt Wheel	20	30
Trailer Hitch	25	20
Window Awning 3' each	30	40
Window Awning 4' each	35	45

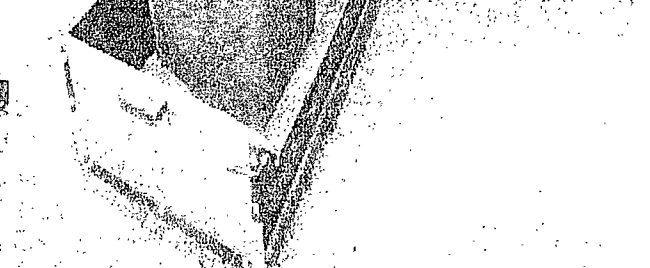
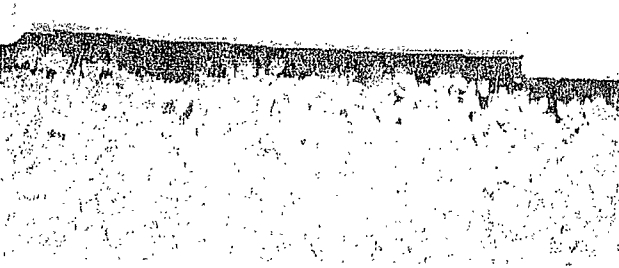
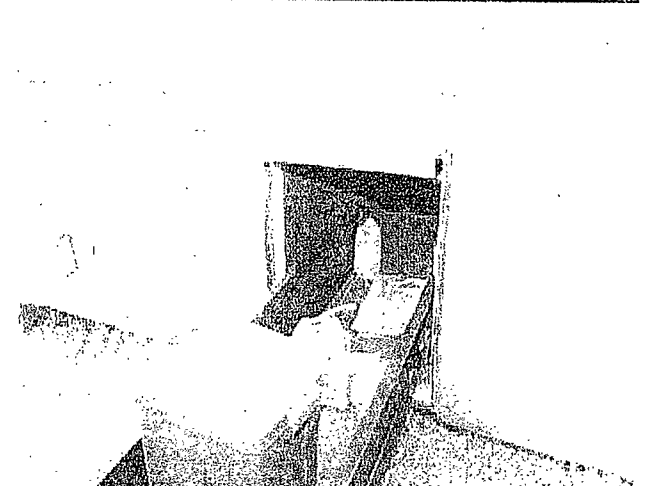
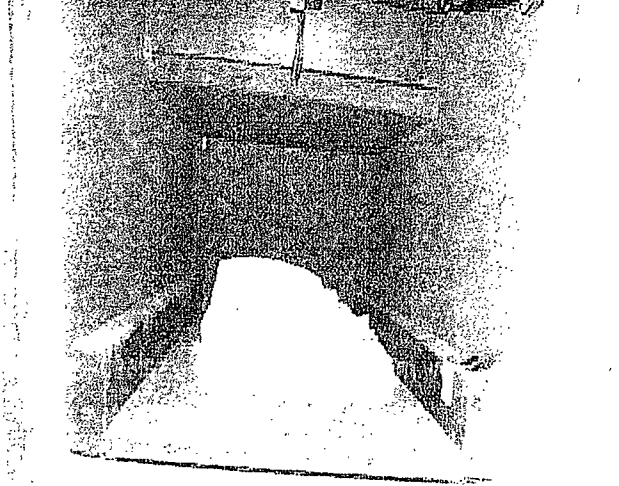
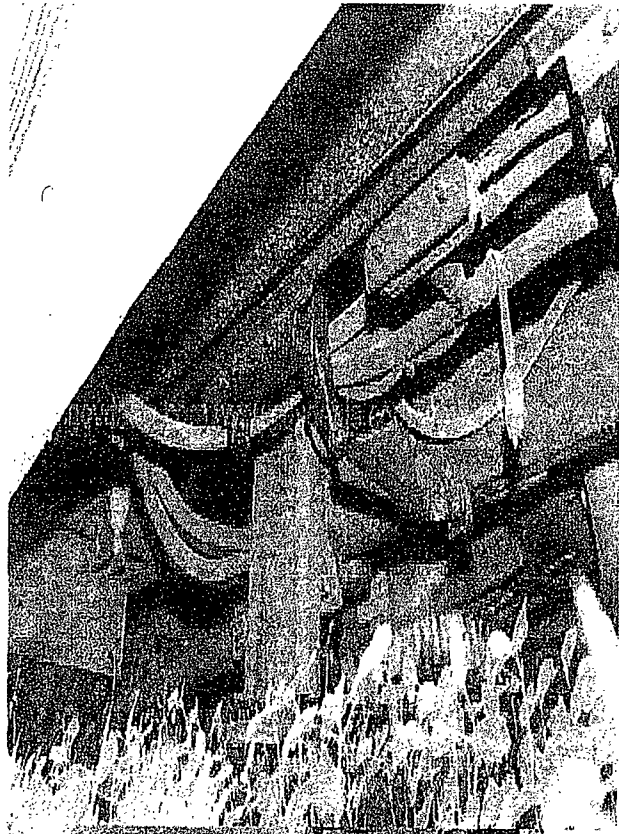
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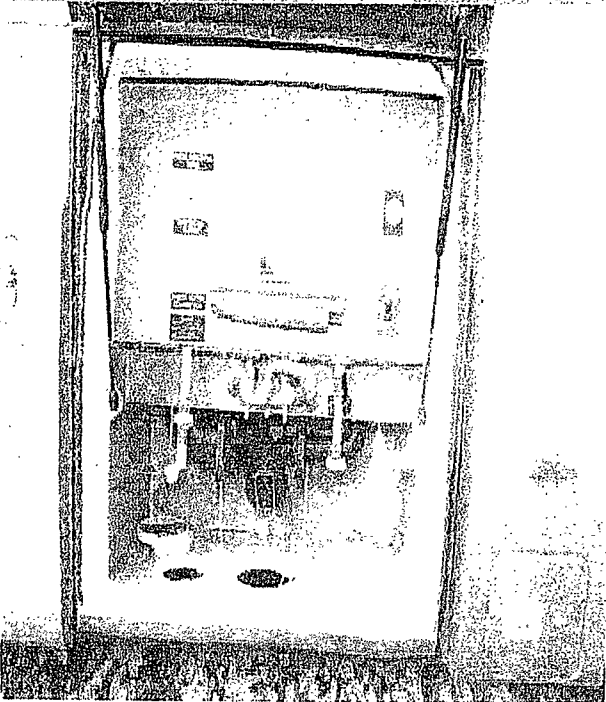
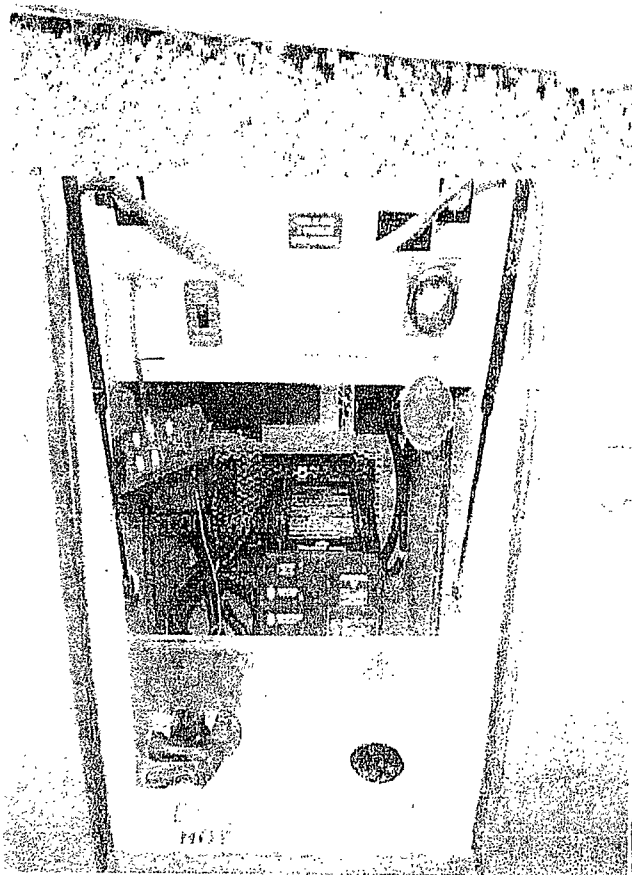
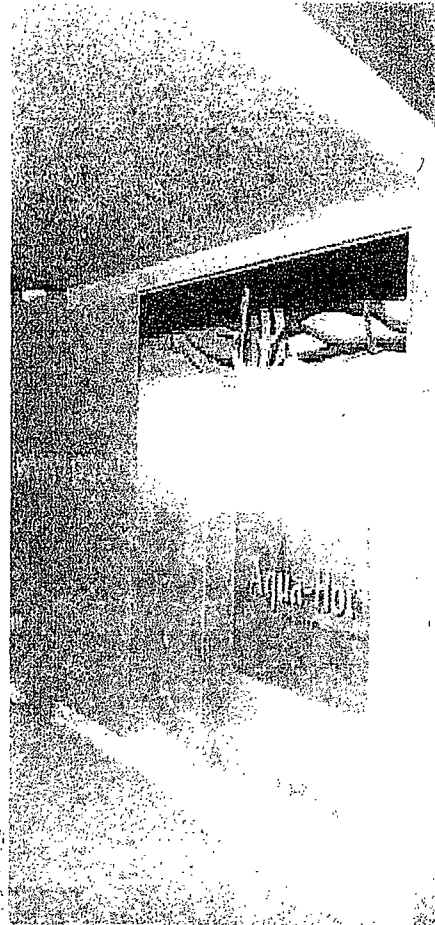
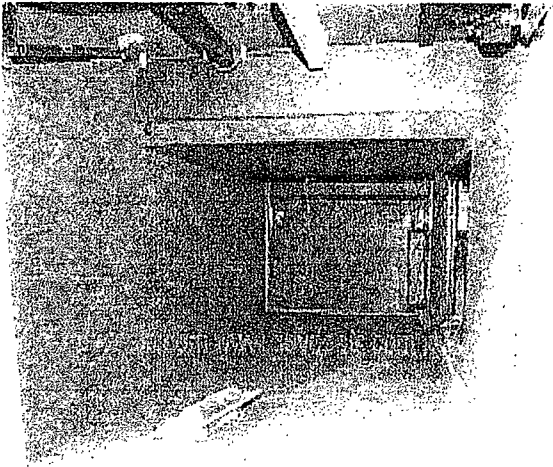


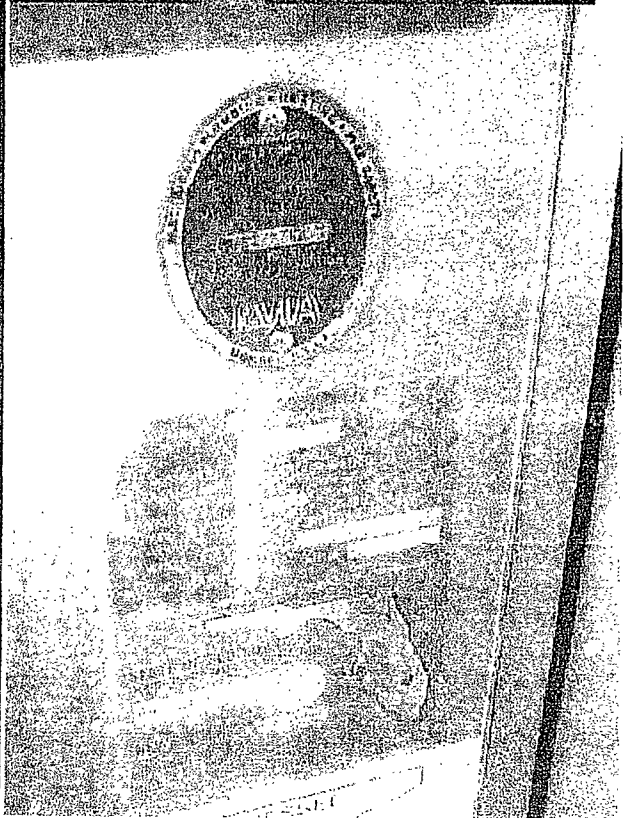
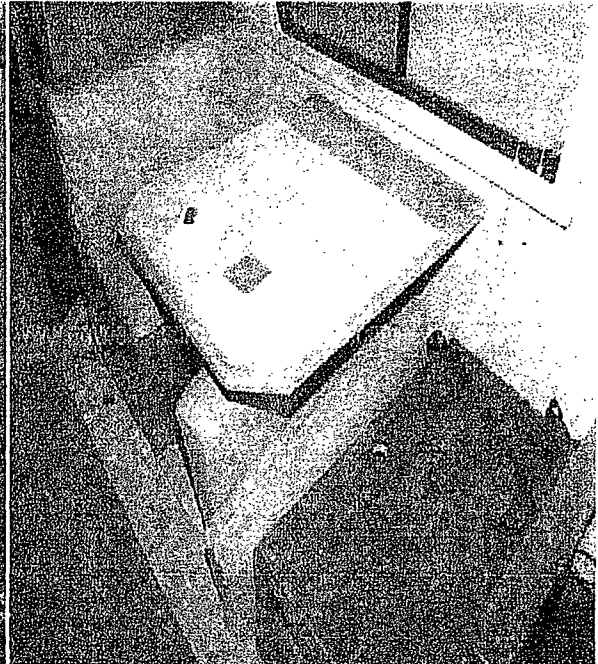
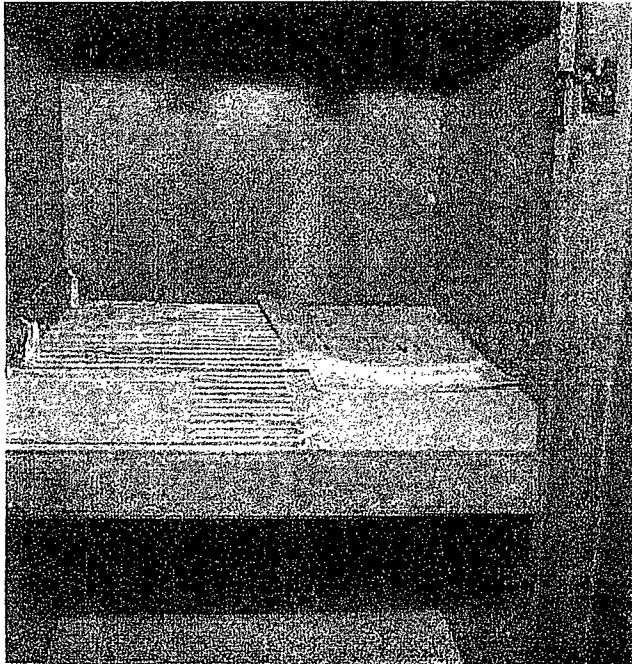


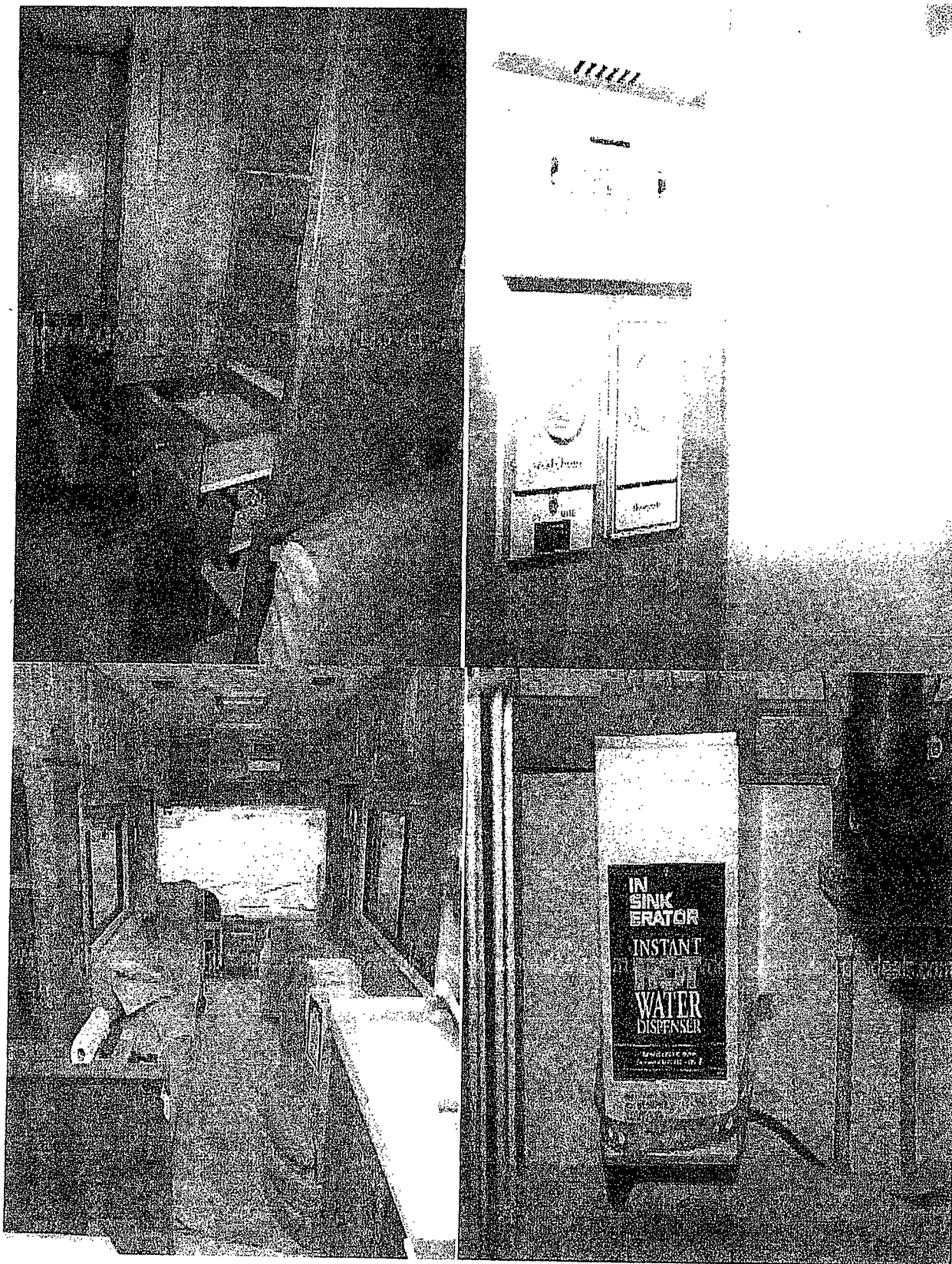


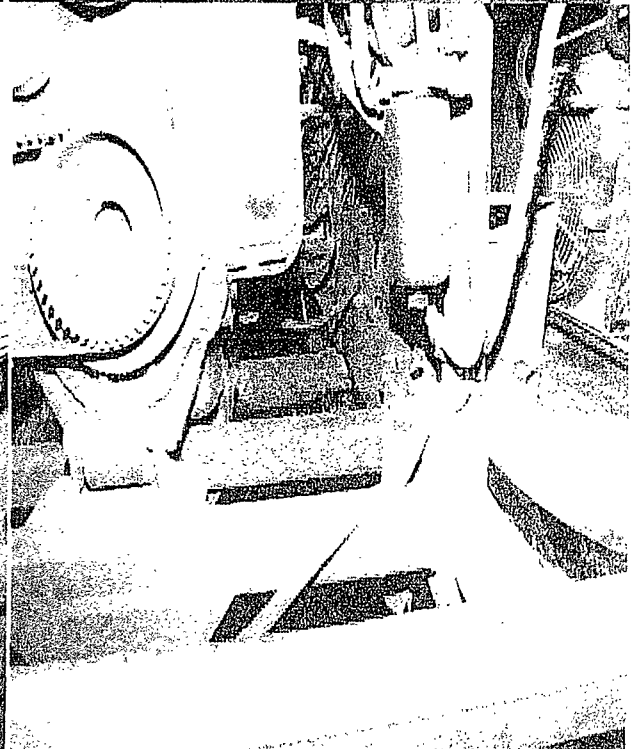
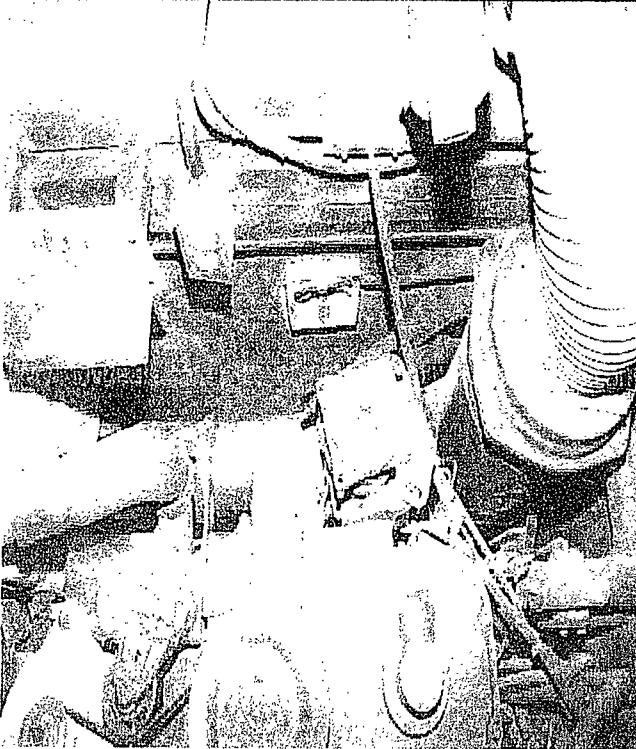
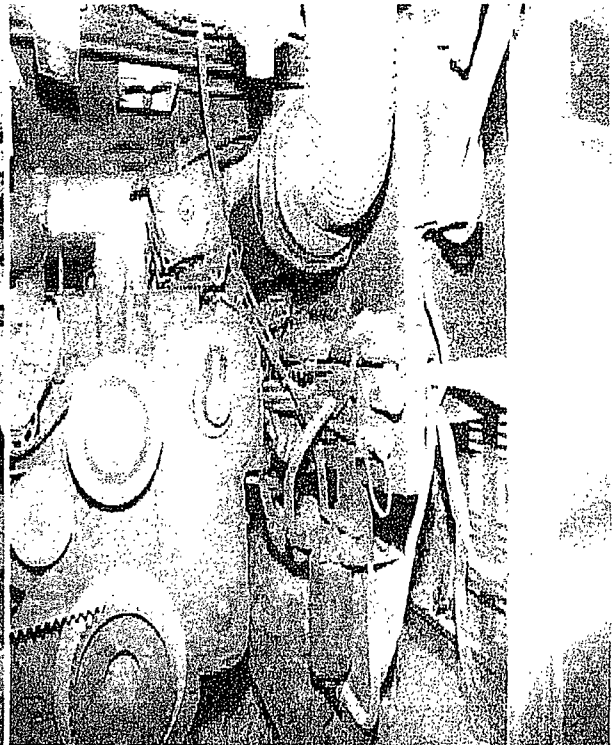
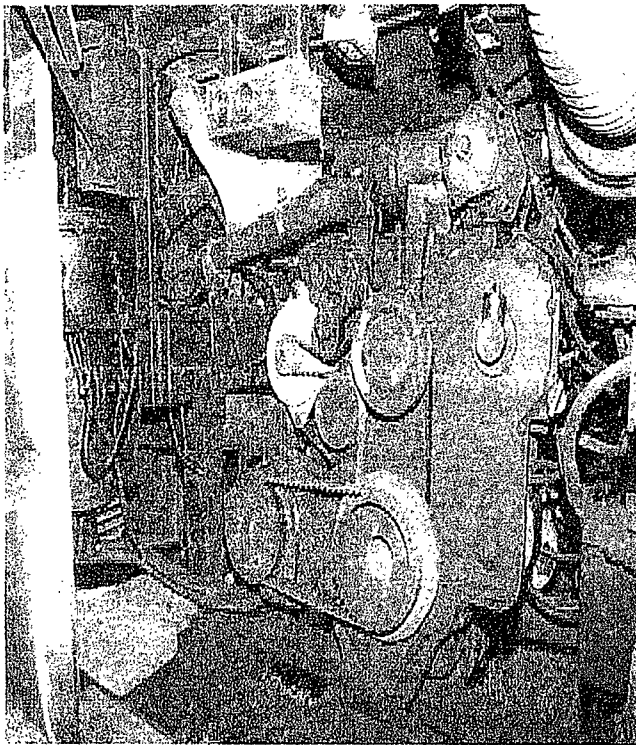


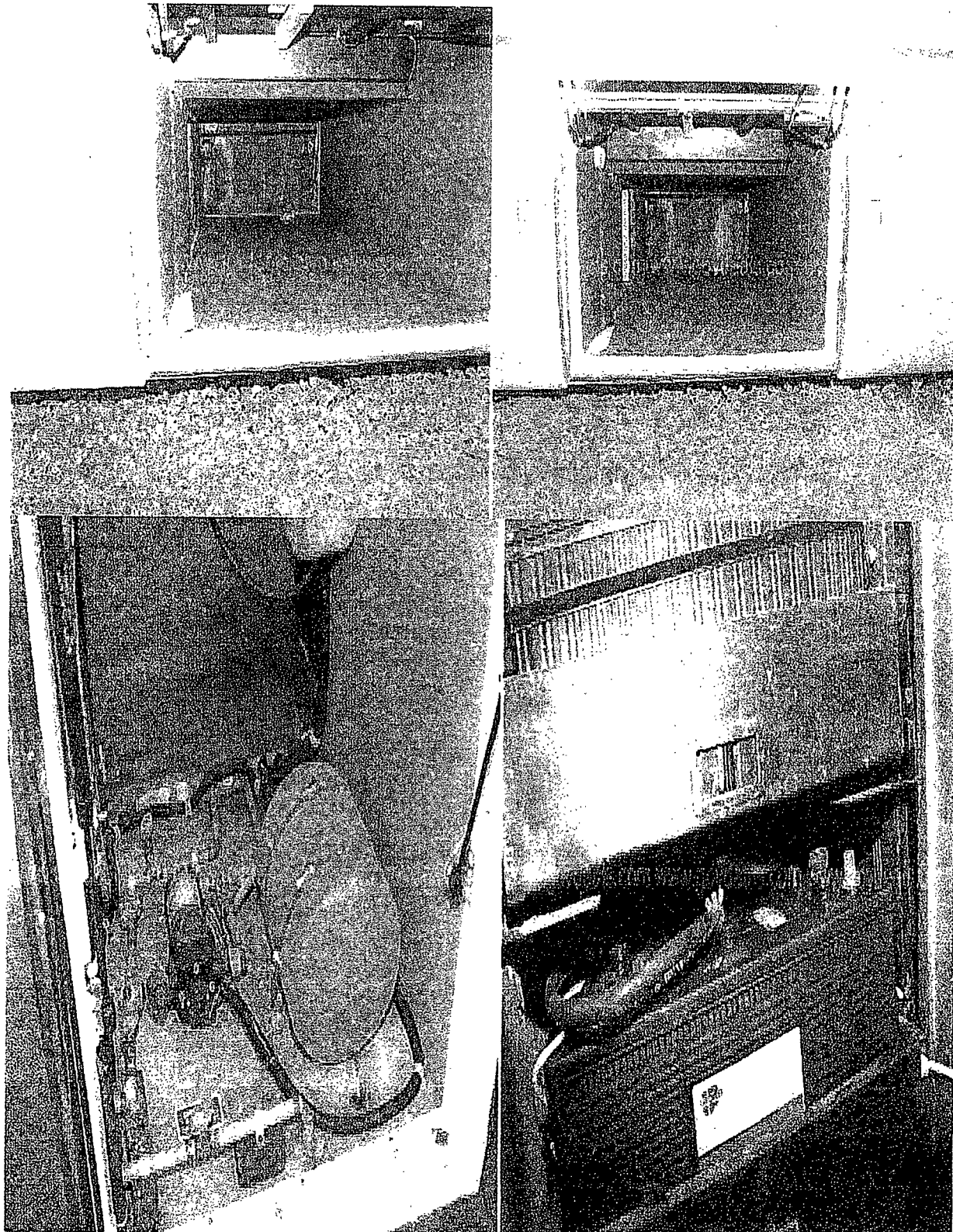


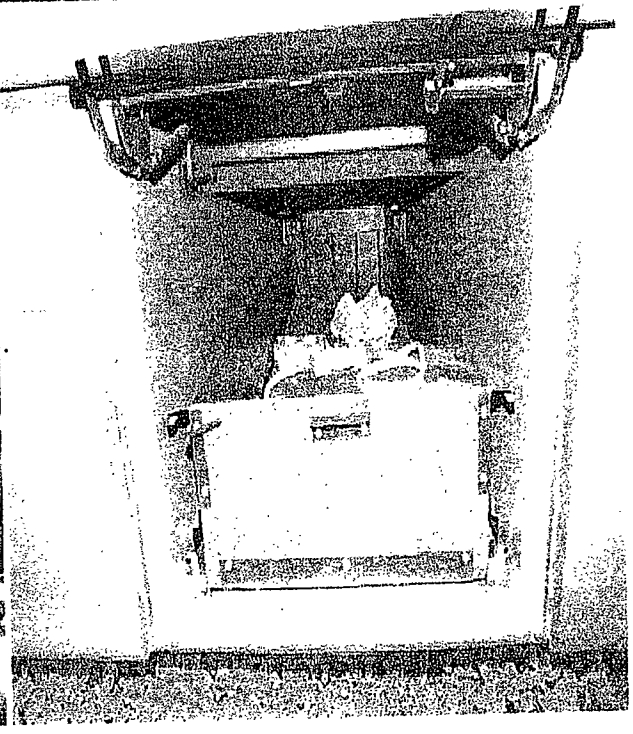
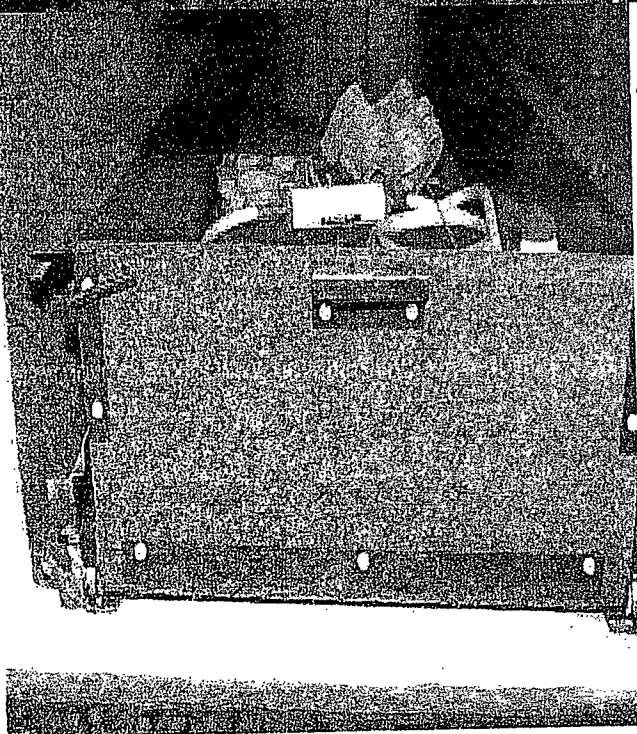
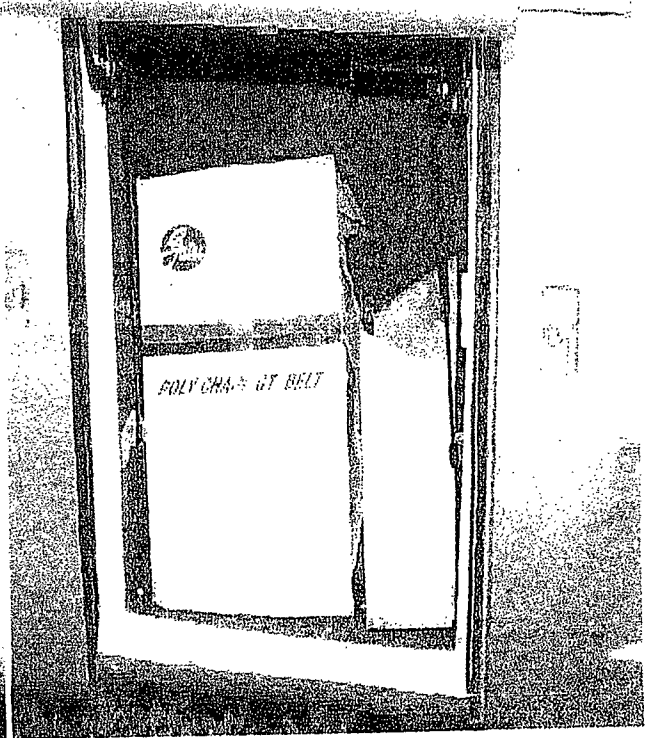
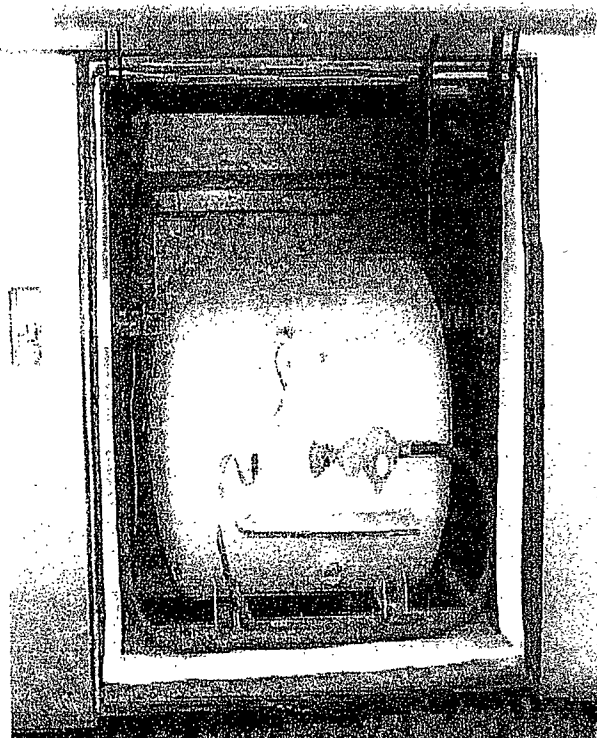


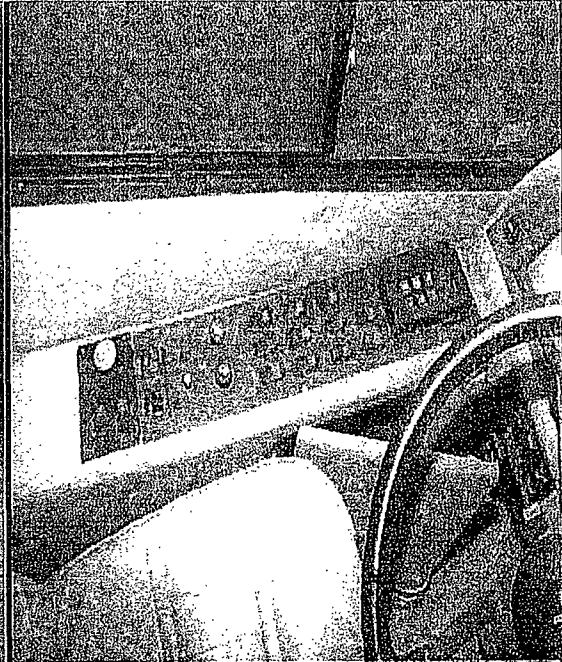
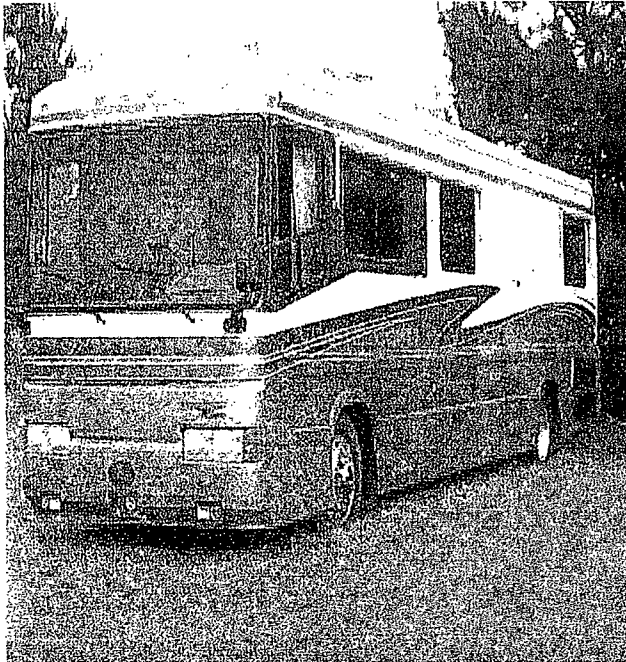


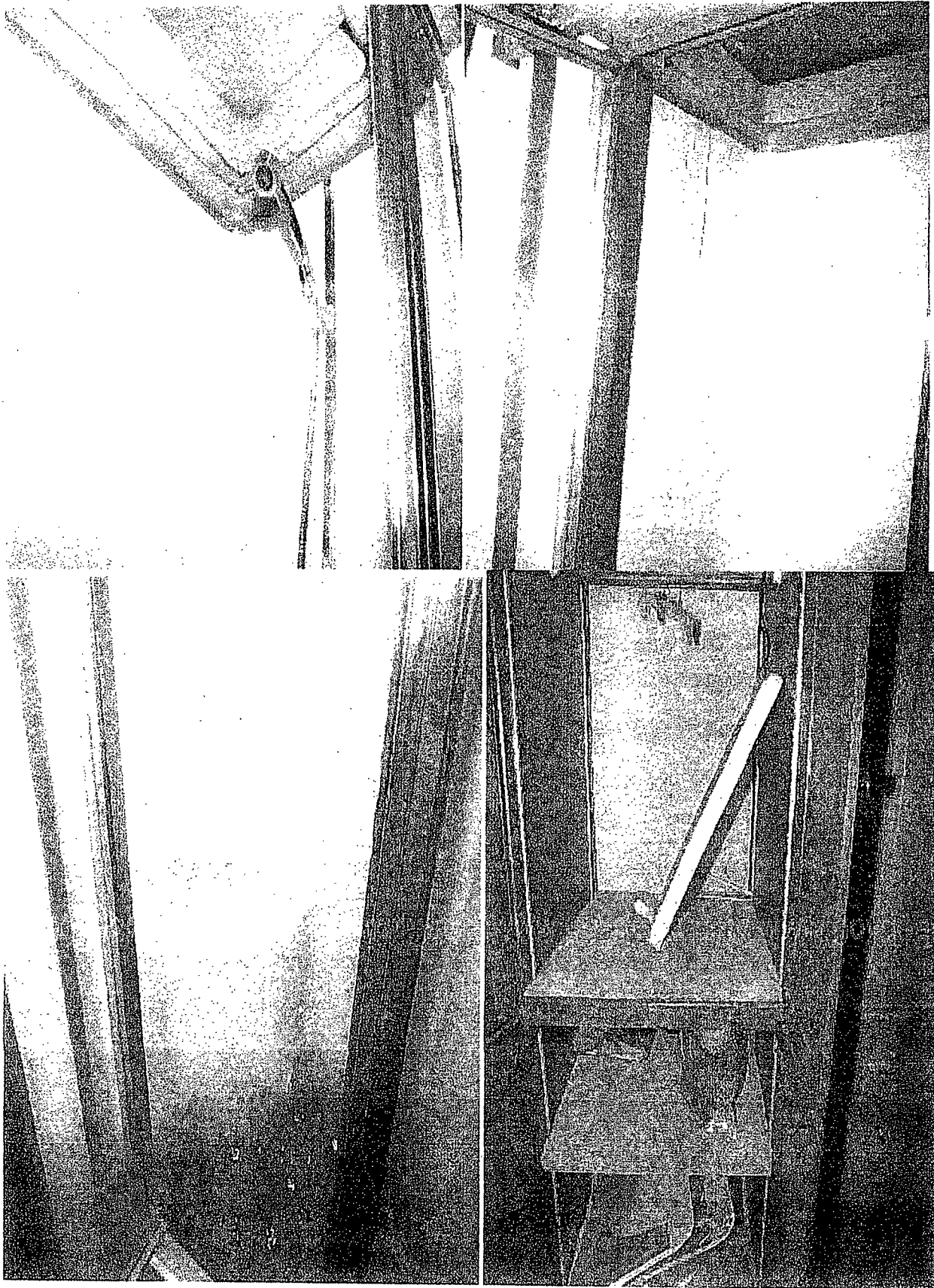


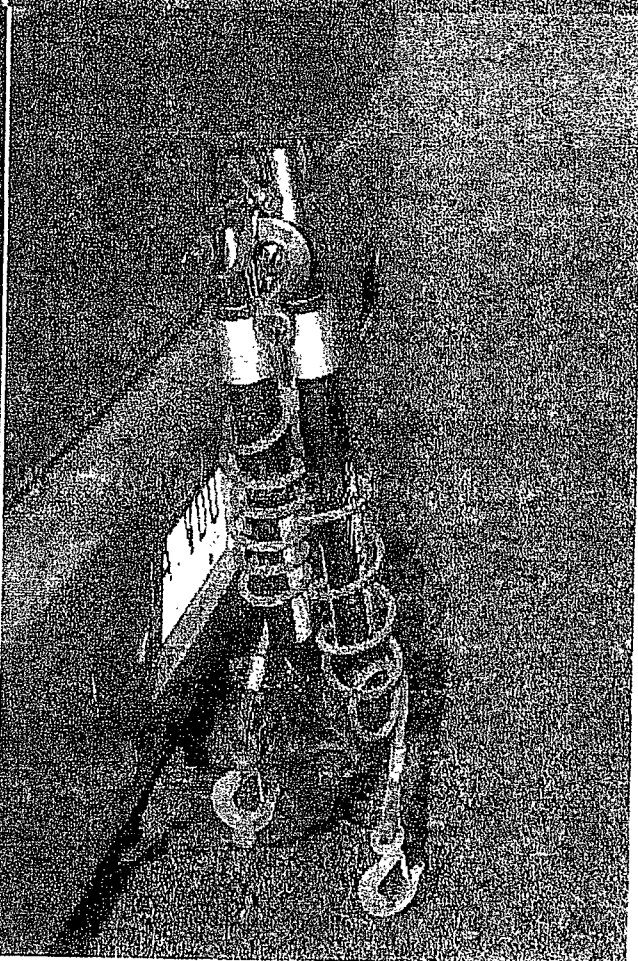
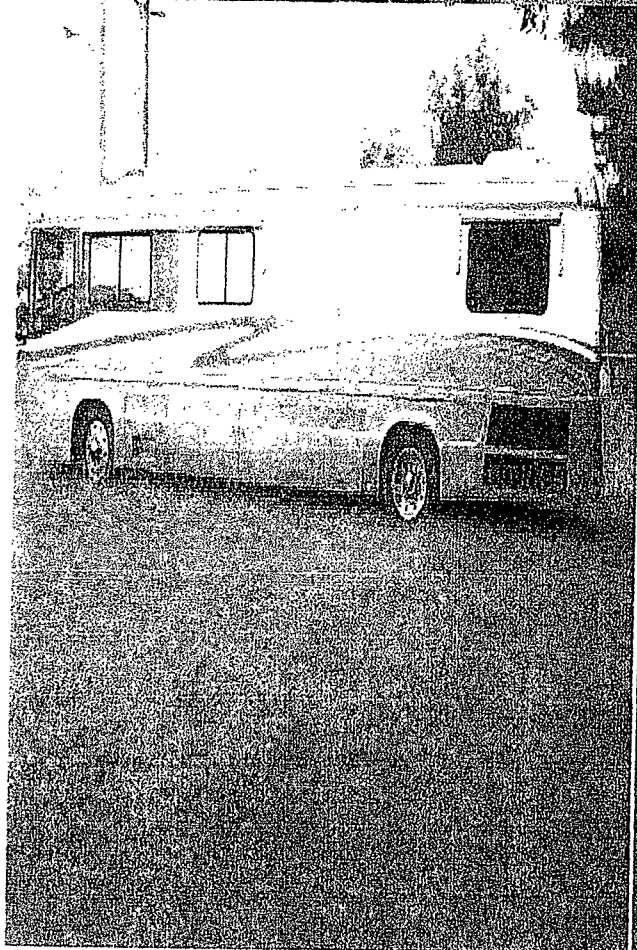
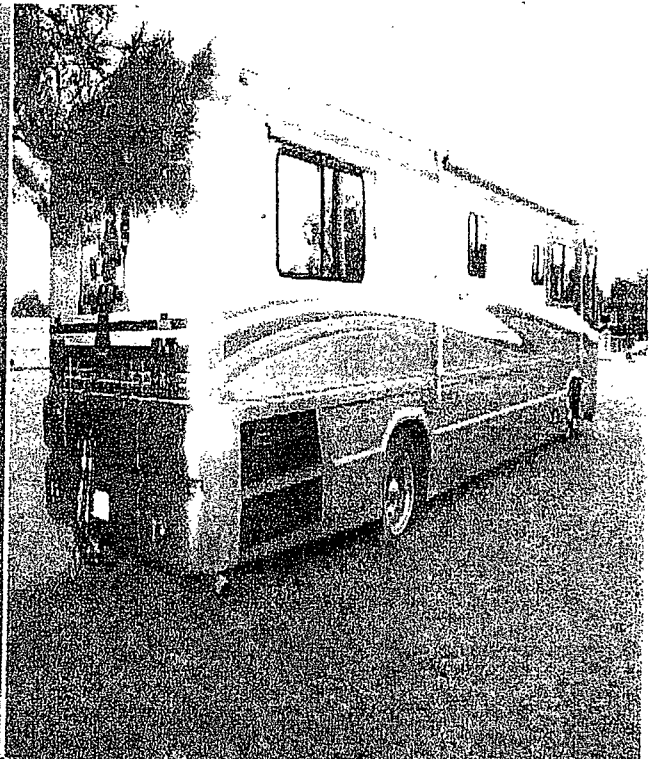


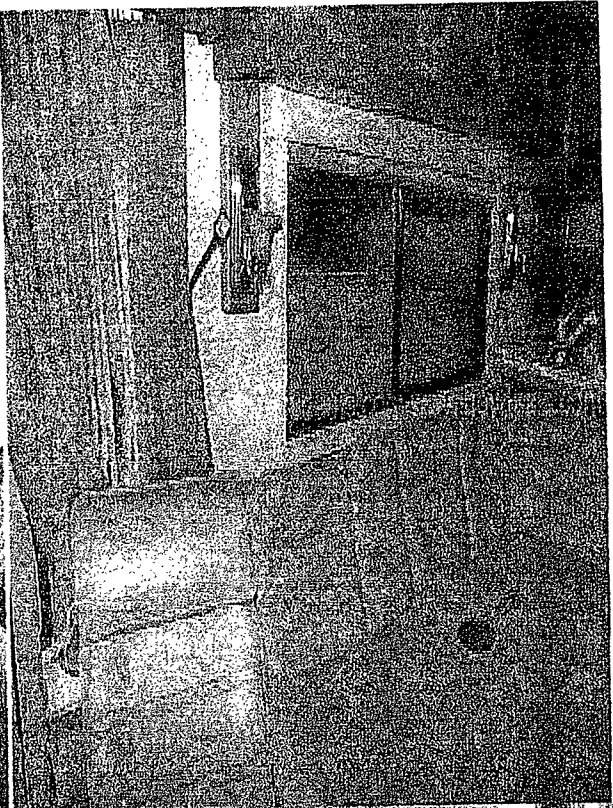


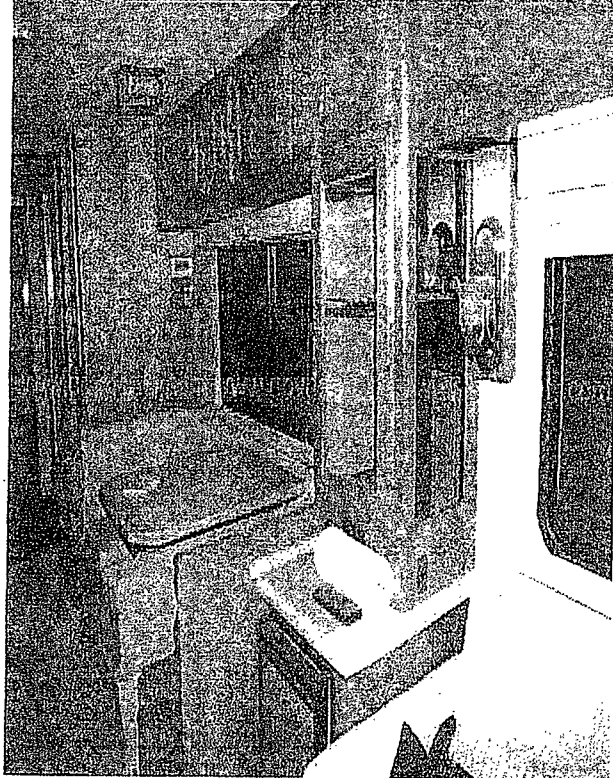
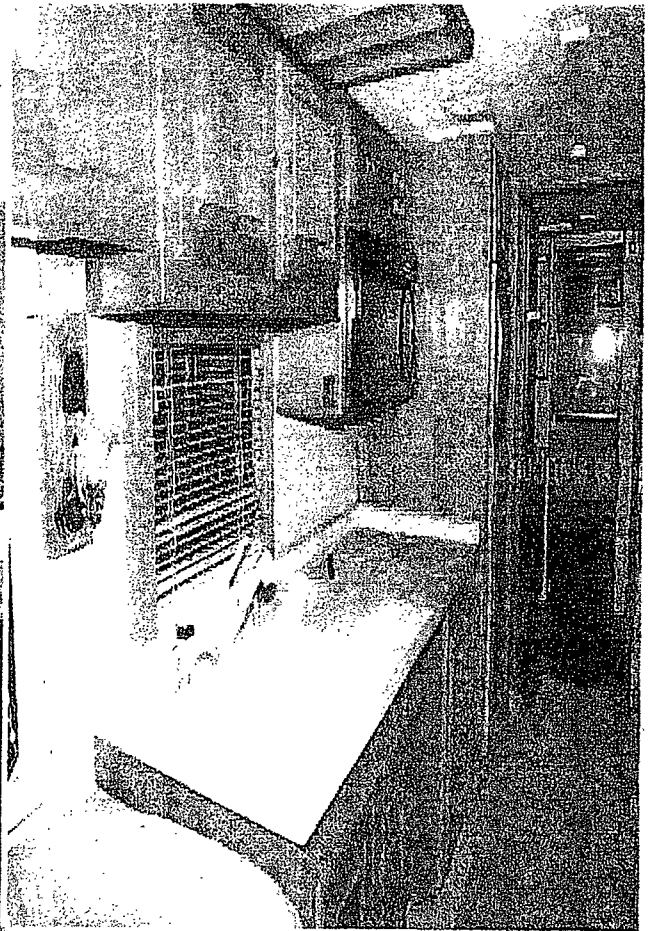
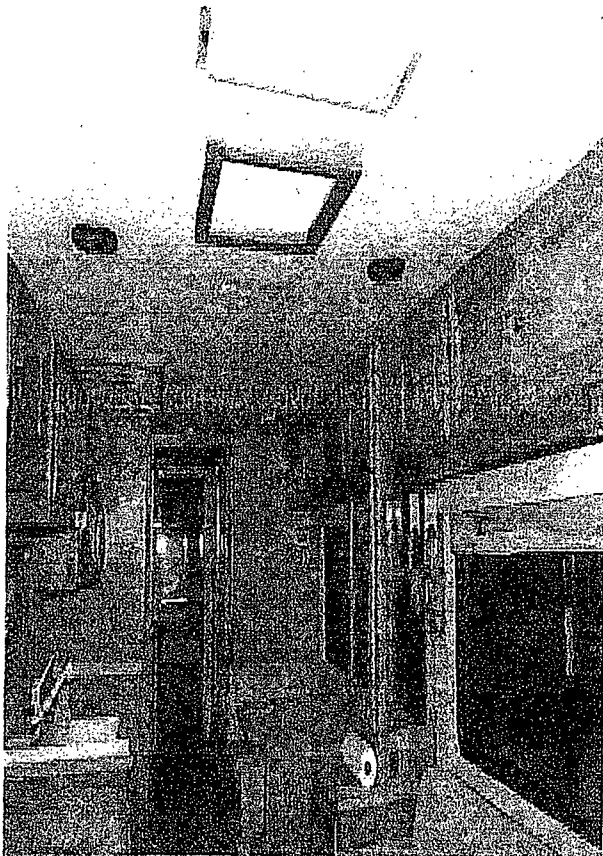


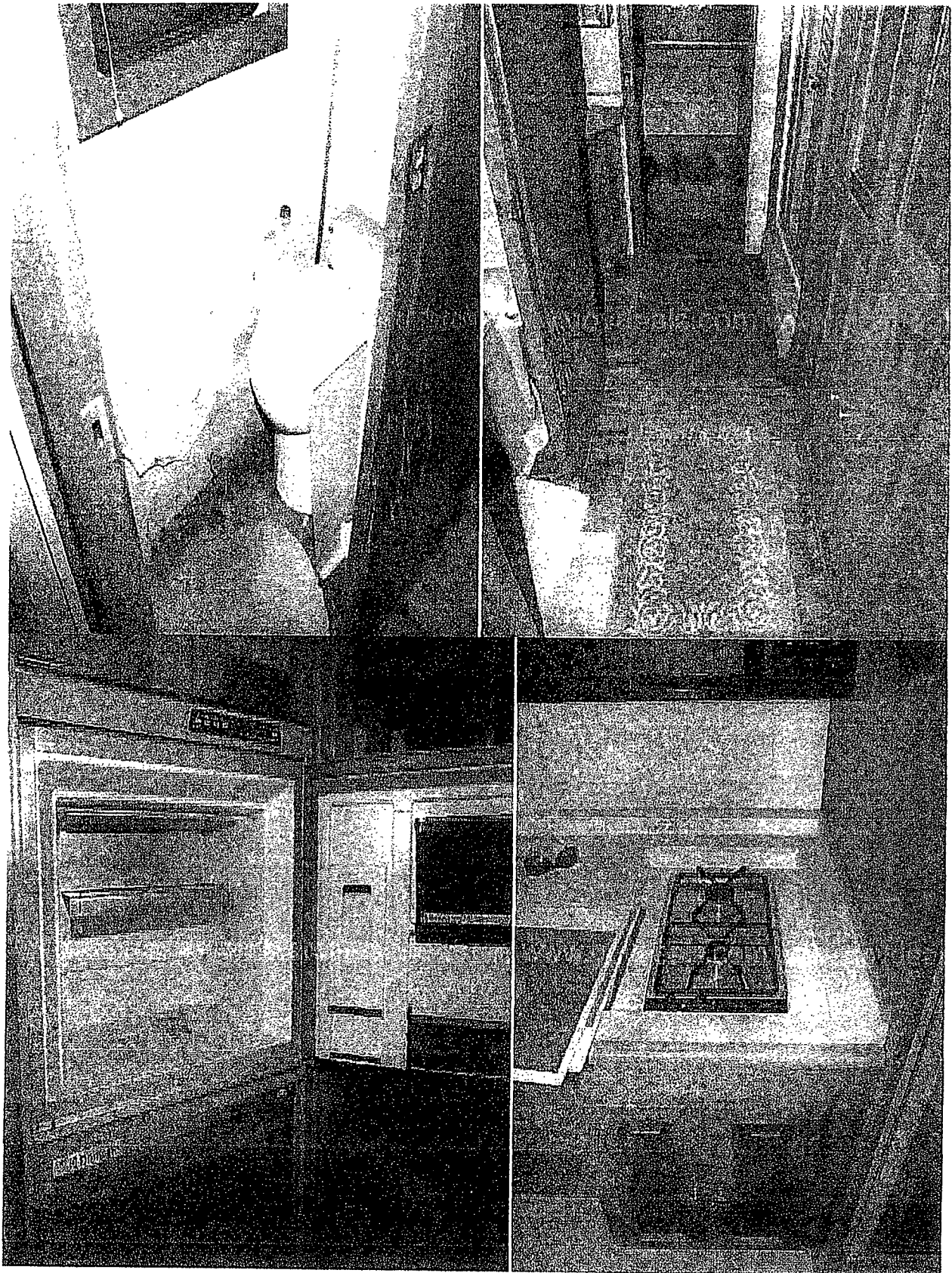


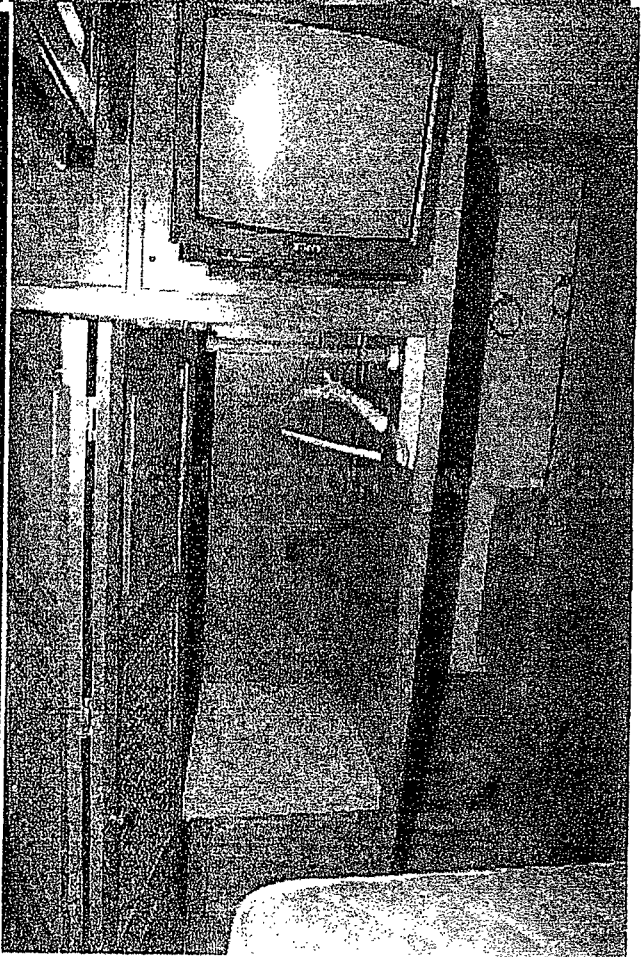
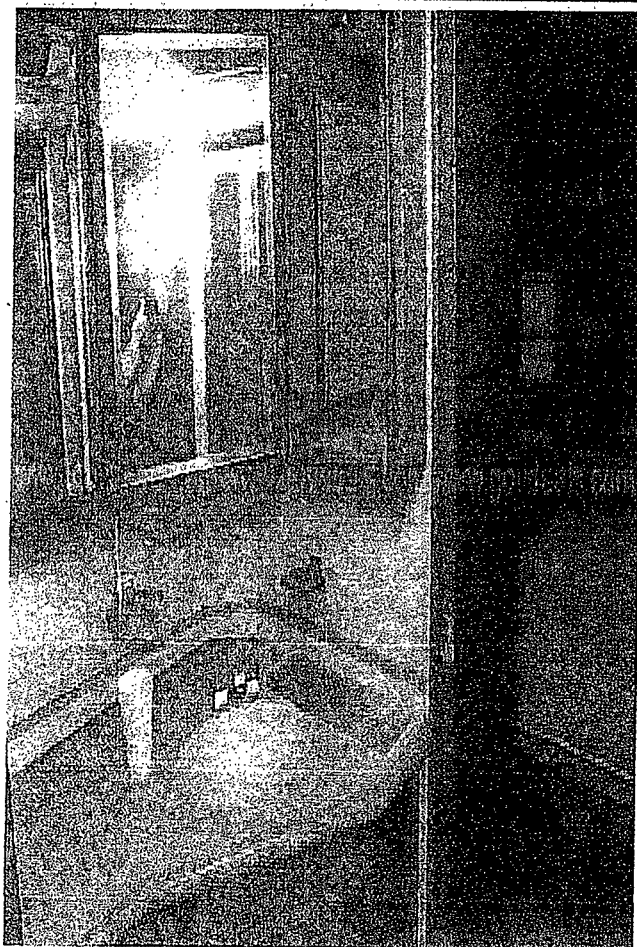
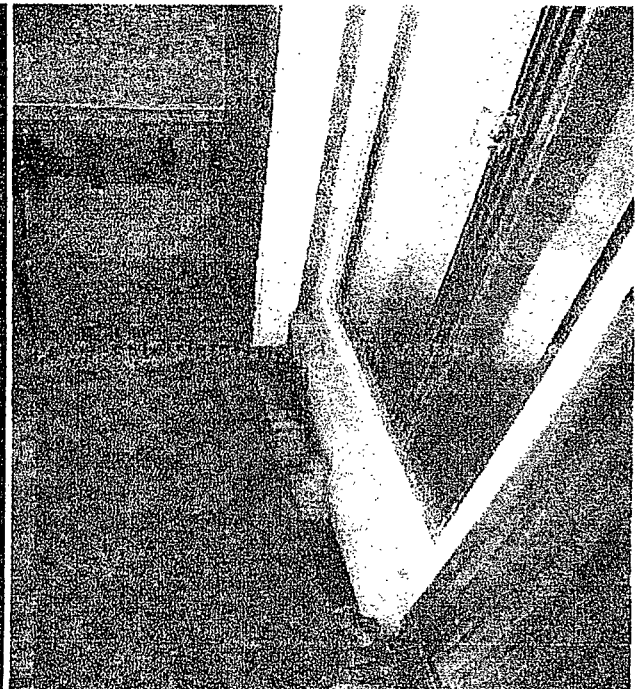
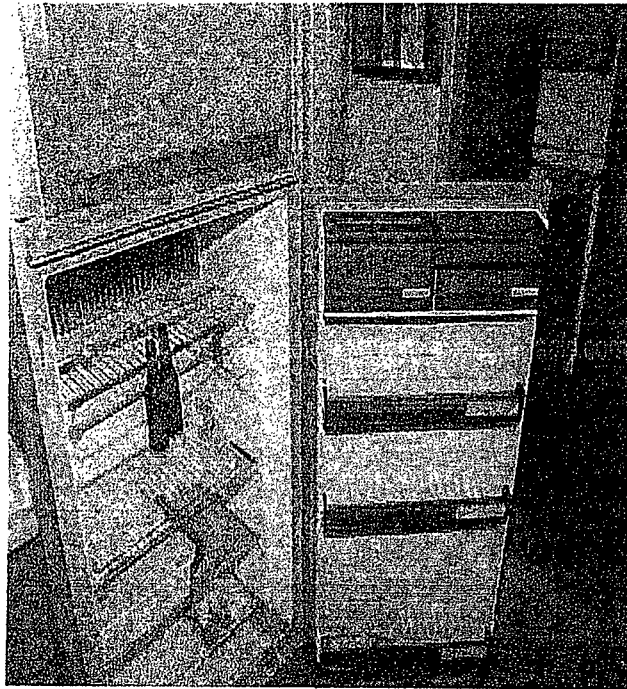


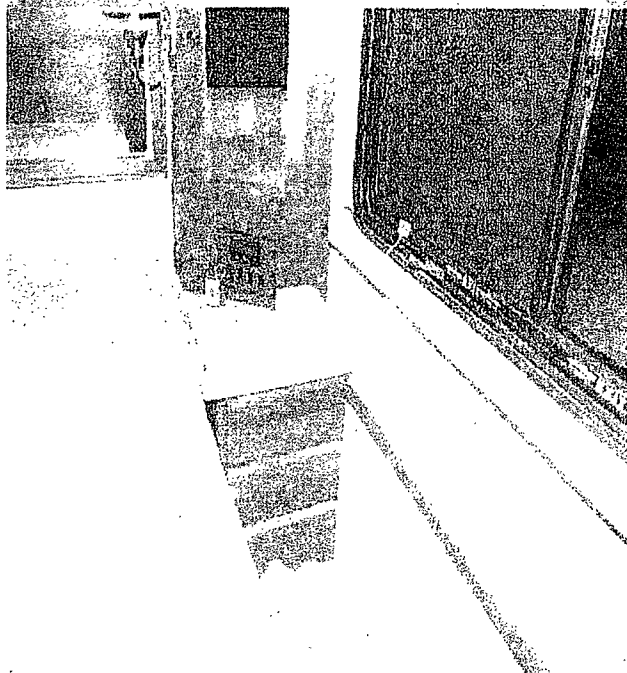
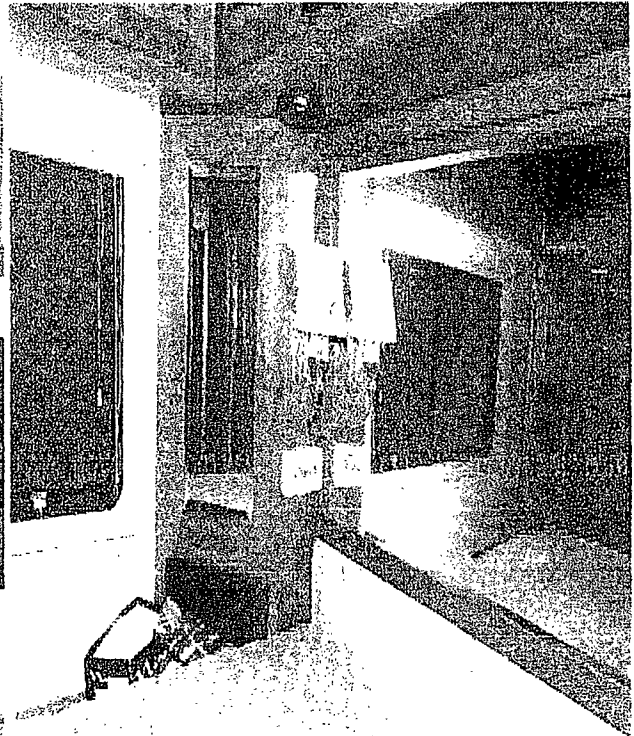
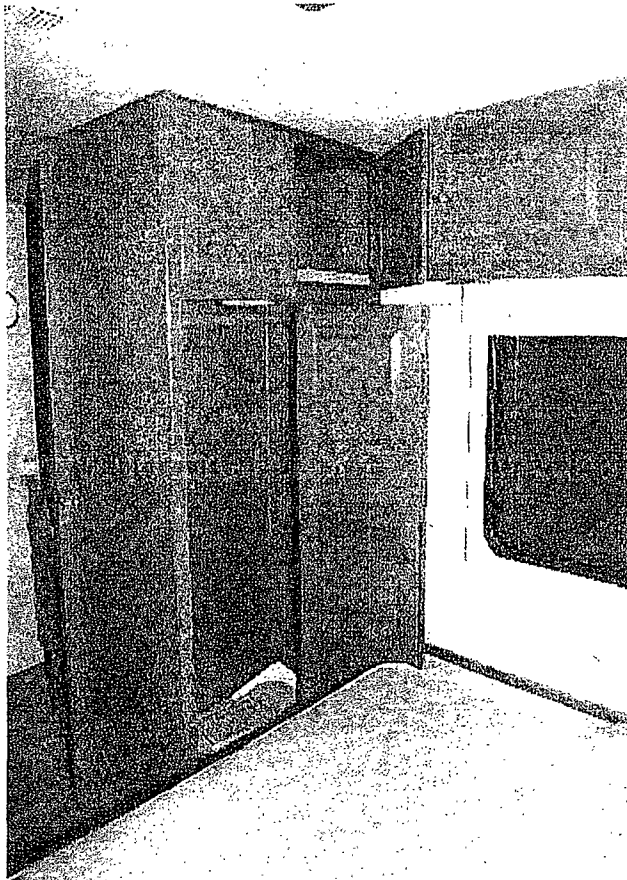














1994 Monaco Motor Home



[More media](#)

Auction Closed

High Bidder: d*****3

Sold Amount: **\$13,105.00**

Total Price: **\$13,105.00**

[View Bid History](#)

[Terms and Conditions](#)

8,143 visitors

Year	Make/Brand	Model	VIN/Serial	Miles	Title Restriction
1994	Monaco	S1G6	1RF120611R1010972	87,744 (Accurate?: Unknown)	No

Condition	Category	Inventory ID
See Description	Motor Homes	Narc-10-22-12 / 1338

County #1338 (Procurement)

1-1994 Crown Royal Monaco Motor Home, 35000 lbs.. This is a Police confiscated item and is sold AS/IS. Comes with a clear title.

There are no identifying placards or owner manuals to provide information on: engine size, equipment or options. INFORMATION STATED IN THIS AUCTION IS ALL WE HAVE TO OFFER REGARDING THIS VEHICLE (Number of photographs on this auction is at the limit) SO Horry County RECOMMENDS ON-SITE INSPECTION.

Motor Home has water damage to interior, dirt and mold issues. May have other damage not visible or known. No guarantee any equipment on this vehicle works correctly.

RV is parked with the battery disconnected as there may be a problem in shutting off the water heater and a exhaust fan.

This Motor Home was in storage for several months and the batteries has been replaced with a new ones. This vehicle was driven to this location.

This vehicle is used and sold AS/IS. Horry County cannot guarantee the working condition of this vehicle at any given time!

Seller added the following information on 10/23/2012 8:45 AM:

The RV is approximately 40 feet long. This is an estimated measurement.

Seller added the following information on 10/31/2012 3:51 PM:

During an inspection there was an attempt to open the generator compartment. When the button was activated the generator slid out a few inches and then stopped. The slide will not open all the way or slide back in flush. REASON IS UNKNOWN. Please take this into consideration.

»Seller Information



Seller Name: Horry County, SC [\[view seller's other assets\]](#)

Asset Contact: Frank Russell (Phone: 843-915-5380)

Asset Location: 3230 Highway 319 E
OFFICE OF PROCUREMENT

Conway, South Carolina 29526-5425

[Map to this location](#)

Q Inspection

Most items offered for sale are used and may contain defects not immediately detectable. Bidders are encouraged to inspect the property prior to bidding. Bidders must adhere to the inspection dates and times indicated in the item description or call for an appointment. Please contact Frank Russell (843) 915-5380 office – (843) 365-9861 fax or e-mail: russellf@horrycounty.org

\$ Payment

Payment in full is due not later than 5 business days from the time and date of the Buyer's Certificate. Acceptable forms of payment are: Credit Card (Mastercard and Visa) or Cashiers Check (made payable to Horry County). We no longer accept money orders.

Ⓜ Removal

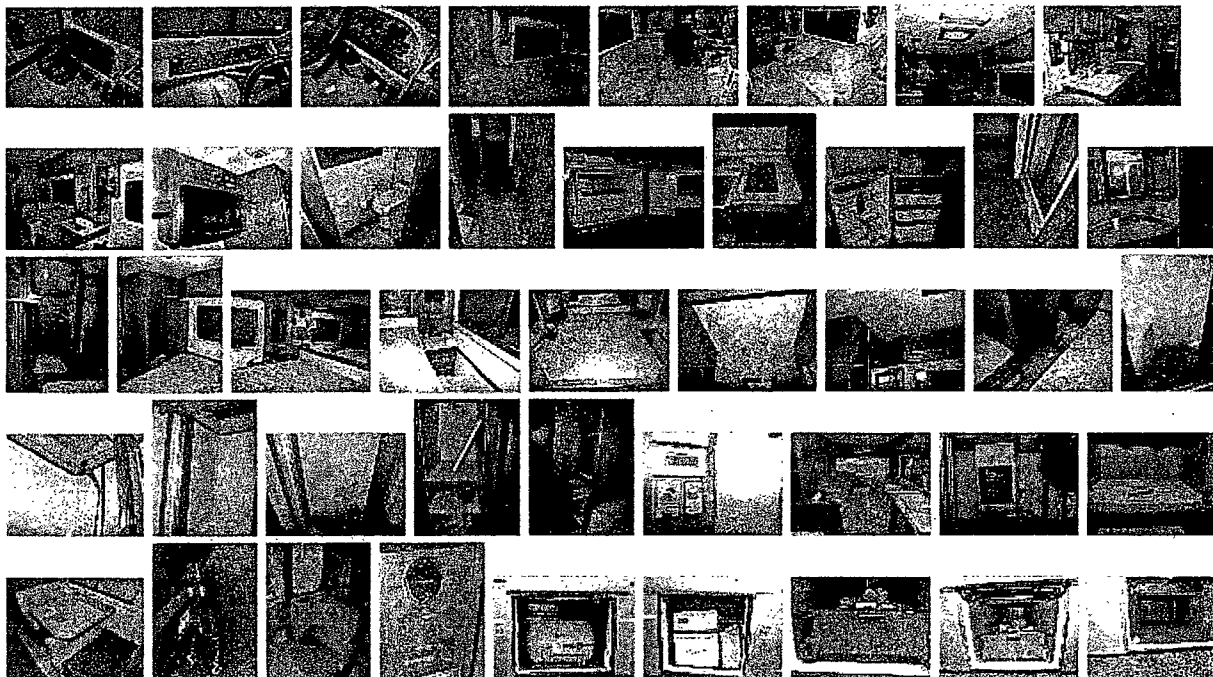
PERSON(S) AND OR TRANSPORT COMPANIES REMOVING ITEM(S) MUST HAVE A COPY OF THE BUYERS CERTIFICATE WITH THEM WHEN THEY ARRIVE. ITEM(S) WILL NOT BE RELEASED WITHOUT A BUYERS CERTIFICATE, NO EXCEPTIONS!

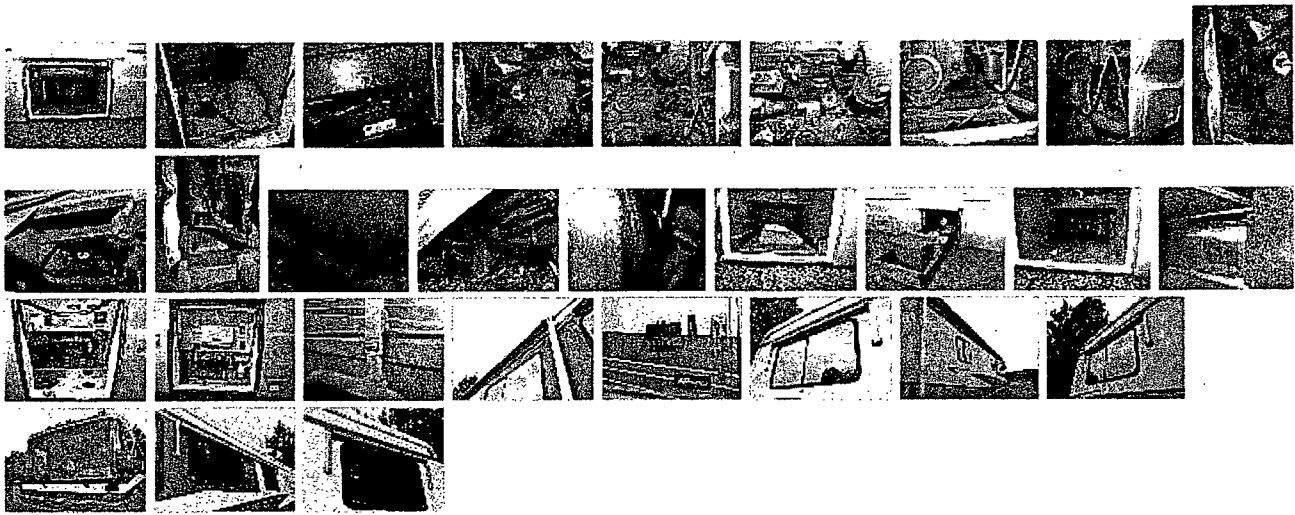
Buyers, Transport services, and anyone who removes the auction items must understand and follow pickup and loading instructions. This includes the ability to operate, drive and load heavy equipment and any and all types of vehicles.

All items must be removed within 10 business days from the time and date of issuance of the Buyer's Certificate. Purchases will be released only upon receipt of payment as specified. Property may be removed between the hours of 9:00 am. and 3:00 pm., Monday through Thursday only, excluding legal holidays.

Removal and Pickup. Horry County reserves the right to refuse the pickup and removal of item(s), at the buyer's expense, if the pickup and removal instructions are not followed.

📷 Media





Special Instructions

HORRY COUNTY RESTRICTS AUCTIONS TO UNITED STATES BIDDERS ONLY!

All items must be removed within 10 business days from the time and date of issuance of the Buyer's Certificate. Purchases will be released only upon receipt of payment as specified. Property may be removed between the hours of 9:00 am. and 3:00 pm., Monday through Thursday only, excluding legal holidays.

Full payment and pickup instructions are in the Terms and Conditions.

?Questions and Answers

Q: How long is the RV, AND how many miles does it have on it? (10/22/12 6:59 PM)

A: Please see description. INFORMATION STATED IN THIS AUCTION IS ALL WE HAVE TO OFFER REGARDING THIS VEHICLE (10/23/12 8:47 AM)

Q: How did the water damage occur? It appears there may be a leak in the roof. (10/23/12 1:52 AM)

A: Please see description. INFORMATION STATED IN THIS AUCTION IS ALL WE HAVE TO OFFER REGARDING THIS VEHICLE (10/23/12 8:48 AM)

Q: Is there a leak coming from the roof? Is any of the floor rotten from the water damage or just molded? (10/23/12 6:56 AM)

A: Please see description. INFORMATION STATED IN THIS AUCTION IS ALL WE HAVE TO OFFER REGARDING THIS VEHICLE (10/23/12 8:48 AM)

Q: what make and modle is the engine,does it have a generator,does the title for veh have any kind of a restriction on it do to the water damage (10/23/12 7:31 AM)

A: Please see description. INFORMATION STATED IN THIS AUCTION IS ALL WE HAVE TO OFFER REGARDING THIS VEHICLE. (10/23/12 8:49 AM)

Q: will it drive back to lou. ky. without breaking down (10/29/12 3:35 AM)

A: This vehicle is used and sold as/is. Horry County cannot guarantee the working condition of this vehicle at any given time.
(10/29/12 1:24 PM)

Q: Does it appear that the motorhome has been used for manufacturing drugs such as meth? (10/29/12 3:51 PM)

A: No known meth manufacturing was done on this motorhome. Seizure was due to sales of Marijuana. (10/30/12 10:23 AM)

Q: Is this is the same monoco motorhome that was for sale several months ago? Was the frame and subfloor damage repaired? (10/29/12 8:21 PM)

A: No, this is the only time this motorhome has been offered for auction. There has not been any repairs done to this motorhome. Pictures show the condition as/is. (10/30/12 10:20 AM)

Q: Ad states that the coach was driven to its current location. Did it appear to drive well? How far was it driven? (10/30/12 7:38 PM)

A: The RV was driven approximately 2 miles to our location. It was driven by someone from another department and they did not make any comments of how the vehicle handled. Vehicle is sold used and AS/IS. (10/31/12 8:09 AM)

Q: HAS SANDY CAUSED ANY ADDITIONAL DAMAGE NOT SHOWN ON THIS SITE? (10/31/12 1:46 PM)

A: The effects of hurricane Sandy was very minimal in our area, light rain and wind. No additional damage known to have occurred. (10/31/12 2:06 PM)

Help Desk Hours: Monday - Friday, 8 am - 7 pm ET.
Contact us with any questions, comments or concerns.
Copyright © 2013, GovDeals, Inc. All Rights Reserved. [Site Map](#)

**Liquidity
Services Inc.**

**Government
Liquidation**
A LIQUIDITY SERVICES MARKETPLACE

Liquidation.com
A LIQUIDITY SERVICES MARKETPLACE

Network
INTERNATIONAL
A LIQUIDITY SERVICES MARKETPLACE

TruckCenter.com
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**GoIndustry
DoveBid**
A LIQUIDITY SERVICES MARKETPLACE



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

v.

1994 MONACO RV
VIN: 1RF120611R1010972,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

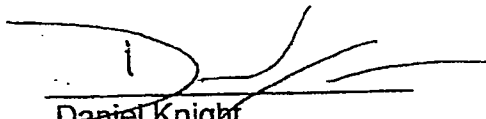
DEFENDANT.

AFFIDAVIT
OF
DANIEL KNIGHT

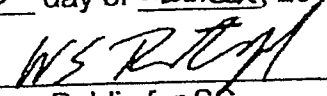
PERSONALLY appeared before me the undersigned who first being duly sworn and placed under oath states as follows:

1. The undersigned is over the age of eighteen (18).
2. The herein affidavit is based upon personal knowledge.
3. The Affiant is the Sales Manager at Camping World and as such reviews the values of RV's on a regular basis;
4. That it is common to base trade in values on NADA values.
5. That he at the request of Deputy Chief Scott Rutherford/HCPD ran the NADA trade in values on the RV vehicle described in the attached, which in included herein by reference. The stated value therein was \$18,410.00.

6. Based on his experience this would be a fair and accurate value range for a trade in and resale of this vehicle. This value may be decreased based on the condition of the RV at the time however.


Daniel Knight
Sales Manager

SWORN to before me on this the
0 day of November, 2013

 (L.S)
Notary Public for SC
My commission expires: 5/3/2021

IN THE COURT OF COMMON PLEAS
CASE NO: 2008-CP-26-1281

PLAINTIFF,

V.

PLAINTIFF'S ANSWERS
TO DEFENDANT'S
INTERROGATORIES

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

TO THE ABOVE NAMED DEFENDANT:

The Plaintiff would appear and respond to the Defendant's request for answers to Interrogatories as further limited by the South Carolina Rules of Civil Procedure, Rule 33, follows:

Plaintiff asserts that the Defendant is limited in his request for Answers to Interrogatories to the standard list of Interrogatories provided by South Carolina Rules of Civil Procedure Rule 33, and Plaintiff would further answer those standard Interrogatories herein. Plaintiff further declines to answer any question outlined in Defendant's request for answers to Interrogatories not provided by said Rule:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

272

- (a) Narcotics Detective Jesse Ard
Horry County Police Department
2560 North Main Street
Conway, South Carolina 29526
Detective Ard generated a copy of the incident report. Copy attached.
 - (b) Narcotics Detective Mark Cooper
Horry County Police Department
2560 North Main Street
Conway, South Carolina 29526
No written or recorded statements have been made by this officer.
 - (c) Chemist Lisa Floyd
Horry County Police Department
2560 North Main Street
Conway, SC 29526
Chemical analysis of drugs in written form in custody and control of the Horry County Drug Lab.
 - (d) Agent Kathy Bass
South Carolina Law Enforcement Division
Post Office Box 56
Effingham, SC 29541
No written or recorded statements have been made by this agent.
 - (e) Michael Baker
Myrtle Beach, South Carolina
Copy attached.
2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.
- (a) Photograph of the weapon seized is in possession of the Horry County Police Department. Copy attached.
3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.
- Inapplicable. Not a case involving personal injury.

4. Set forth the names and addresses of all insurance companies which liability coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Inapplicable. Not a case where insurance coverage is an issue.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Inapplicable. No request for damages on the part of Plaintiff has been asserted

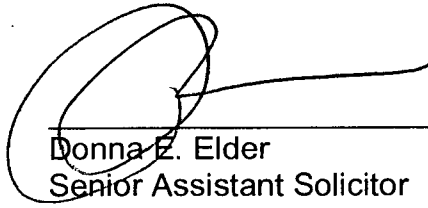
6. List the names and addresses of any expert witnesses whom the party purposes to use as a witness at the trial of the case.

(a) Chemist Lisa Floyd
Horry County Police Department
2560 North Main Street
Conway, SC 29526

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

See response to Number 1 above and attachments.

The Plaintiff having answered all standard Interrogatories allowable under the South Carolina Rules of Civil Procedure Rule 33 would respectfully submit the above responses.



Donna Z. Elder
Senior Assistant Solicitor
Post Office Box 1276
Conway South Carolina 29528

Dated: 4/6/09
Conway South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CASE NO: 2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
 FIFTEENTH JUDICIAL CIRCUIT, ON
 BEHALF OF THE HORRY COUNTY
 POLICE DEPARTMENT,

PLAINTIFF,

V.

1004 MONACO RV
 VIN: 1RF120611R1010972,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

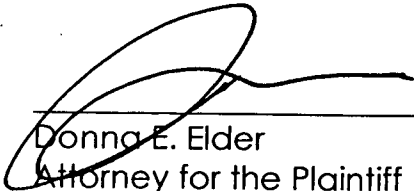
AFFIDAVIT FOR PUBLICATION

HORRY COUNTY
 09 APR 15 PM 9:41
 15TH JUDICIAL
 CIRCUIT
 CLERK OF COURT

Donna E. Elder, Attorney for the Plaintiff, would respectfully show unto this Court
 the following:

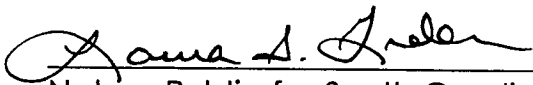
1. This is an action for forfeiture pursuant to Section 44-53-530 of the Code of Laws of South Carolina, 1976, as amended, for property that was seized pursuant to that statute by an authorized police agency.
2. Although a due diligence search has been made for the above-mentioned Defendant, the Plaintiff has been unable to locate him.
3. The Plaintiff is informed and believes that it is necessary to obtain jurisdiction of the Defendant by service by publication and requests that this Court issue an Order authorizing such service.
4. The Plaintiff is informed and believes that the Myrtle Beach Herald, a newspaper of general circulation within Myrtle Beach, South Carolina, will most likely give notice to the Defendant, MICHAEL JAMES ALBIN.

WHEREFORE, Plaintiff prays that this Court issue an Order authorizing service of the Summons and Notice of Filing of the Complaint upon the Defendant, MICHAEL JAMES ALBIN, by publication, in the Myrtle Beach Herald for a period of time not less than once a week for three consecutive weeks.



Donna E. Elder
Attorney for the Plaintiff

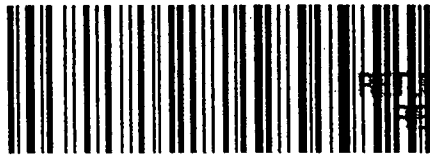
Sworn to before me this
8th day of April, 2009.



Notary Public for South Carolina
My Commission Expires: 03/14/15

CERTIFIED MAIL™

OFFICE OF THE SOLICITOR
P. O. Box 1276
Conway, SC 29526



RETURN SERVICE
REQUESTED

7008 1140 0004 4309 5484



UNITED STATES POSTAGE
EAGLE
PITNEY BOWES
02 1M \$ 09.79⁰
0004253621 APR 01 2009
MAILED FROM ZIP CODE 29526

*NSM
RIS*

Mr. Michael James Albin
8950 Hwy 707, Lot 2
Myrtle Beach South Carolina 29588



2958887952 R015
2952801276

NIXIE 292 5C 1 08 04/04/09

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD

BC: 29528127576 *1154-11132-01-37



MYRTLE BEACH Herald

9.3127

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Michael Szwed, of the Myrtle Beach Herald, County of Horry, State of South Carolina states that:

1. Affiant is an employee of the Myrtle Beach Herald a newspaper of general circulation, printed, published, and circulated in the County of Horry, and State of South Carolina.
2. The original or renewal of the **Summons — J. Gregory Hembree, Solicitor, on behalf of the Horry County Police Department vs. Michael James Albin (1,847.00) — Case No. 2009-CP-26-3127**, a true copy of which is attached hereto, was published in said newspaper on the following dates:

PUBLISHED DATES:

April	2, 2009
May	1, 2009
May	8, 2009

And the publication was made in the newspaper proper and not in a supplement.

Dated: May 8, 2009

Signed: Michael Szwed
Michael Szwed

On May 8, 2009, Michael Szwed personally appeared before me and executed his signature on this instrument.

George J. Geddings
George J. Geddings
Notary Public for South Carolina
My Commission expires: 6/24/2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON
PLEAS
CASE NO. 2009-CP-26-3127
J. GREGORY HEMBREE, SO-
LICITOR, FIFTEENTH JUDICIAL
CIRCUIT, ON BEHALF OF THE
HORRY COUNTY POLICE
DEPARTMENT
PLAINTIFF
VS.
MICHAEL JAMES ALBIN
DEFENDANT
SUMMONS
TO: THE ABOVE-NAMED
DEFENDANT AND ANYONE
CLAIMING AN INTEREST IN THE
ABOVE-DESCRIBED DEFENDANT
PROPERTY:
YOU ARE HEREBY SUMMONED
and required to answer the
Complaint in this action, a copy
of which is herewith served
upon you, and to serve a copy of
your Answer to said Complaint
on the undersigned at the Office
of the Solicitor, Post Office Box
1276, Conway, South Carolina,
29528, within thirty (30) days of
the service thereof, exclusive of
the day of such service; and if
you fail to answer the Complaint
within the time aforesaid,
judgment by default will be ren-
dered against you for the relief
demanded in the Complaint.
Donna E. Elder
Attorney for the Plaintiff
Post Office Box 1276
Conway South Carolina 29528
(843) 915-8643
3TC 4/24 5/1 5/8

~~P.O. Box 2309~~, Myrtle Beach, South Carolina 29578

843.626.3131 • Fax: 843.448.4860 • ²⁷⁸www.myrtlebeachherald.com

MYRTLE BEACH
Herald

9.3128

**AFFIDAVIT OF
PUBLICATION**

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Michael Szwed, of the **Myrtle Beach Herald**, County of Horry, State of South Carolina states that:

1. Affiant is an employee of the Myrtle Beach Herald a newspaper of general circulation, printed, published, and circulated in the County of Horry, and State of South Carolina.
2. The original or renewal of the **Summons — J. Gregory Hembree, Solicitor, on behalf of the Horry County Police Department vs. Michael James Albin (1004 Monaco RV) — Case No. 2009-CP-26-3128**, a true copy of which is attached hereto, was published in said newspaper on the following dates:

PUBLISHED DATES:

April 2, 2009
May 1, 2009
May 8, 2009

And the publication was made in the newspaper proper and not in a supplement.

Dated: May 8, 2009

Signed: Michael Szwed
Michael Szwed

On May 8, 2009, Michael Szwed personally appeared before me and executed his signature on this instrument.

Joyce J. Geddings
Joyce J. Geddings
Notary Public for South Carolina
My Commission expires: 6/24/2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON
PLEAS
CASE NO. 2009-CP-26-3128
J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL
CIRCUIT, ON BEHALF OF THE
HORRY COUNTY POLICE
DEPARTMENT,
PLAINTIFF
V.
MICHAEL JAMES ALBIN,
DEFENDANT.
1004 MONACO RV,
VIN: 1RF120611R1010972
DEFENDANT PROPERTY
MICHAEL JAMES ALBIN,
DEFENDANT.
SUMMONS
TO: THE ABOVE-NAMED
DEFENDANT AND ANYONE
CLAIMING AN INTEREST IN THE
ABOVE-DESCRIBED DEFENDANT
PROPERTY.
YOU ARE HEREBY SUMMONED
and required to answer the
Complaint in this action, a copy
of which is herewith served
upon you, and to serve a copy of
your Answer to said Complaint
on the undersigned at the Office
of the Solicitor, Post Office Box
1276, Conway, South Carolina,
29528, within thirty (30) days of
the service thereof, exclusive of
the day of such service, and if
you fail to answer the Complaint
within the time aforesaid,
judgment by default will be ren-
dered against you for the relief
demanded in the Complaint.
Danna E. Elder,
Attorney for the Plaintiff
Post Office Box 1276
Conway South Carolina 29528
(843) 915-8643
JTC 4/24/5/1 5/8

P.O. Box 2309, Myrtle Beach, South Carolina 29578

843.626.3131 • Fax: 843.448.4860 • www.myrtlebeachherald.com

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CASE NO: 2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

V.

1994 MONACO RV
VIN: 1RF120611R1010972,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

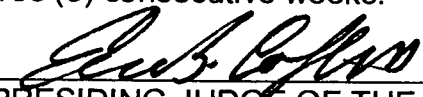
ORDER OF PUBLICATION

HORRY COUNTY
09 APR 16 AM 9:41
JAMES HUGGINS
CLERK OF COURT

Having read the attached Affidavit for Publication from Donna E. Elder, Attorney for Plaintiff, it appears that this is an action for forfeiture pursuant to Section 44-53-530 of the Code of Laws South Carolina, 1976, as amended, of the Defendant Property aforementioned seized in Horry County, South Carolina, by the above-named police agency.

Further the above-mentioned Defendant cannot, after due diligence, be located in his home County and State.

THEREFORE, IT IS, ORDERED that service in this matter be made upon the above mentioned Defendant by publishing a copy of the Summons and Notice of Filing Complaint in a paper of general circulation in Horry County, South Carolina, once weekly for three (3) consecutive weeks.


PRESIDING JUDGE OF THE
FIFTEENTH JUDICIAL CIRCUIT

Dated: 4/14/09
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CASE NO. 09-CP-26-3128

J. Gregory Hembree,)
)
Plaintiff,)

vs.)

1994 Monaco RV)
VIN: 1RF120611R1010972)
)
Defendant Property,)

REQUESTS TO ADMIT

Michael J. Albin,)
)
Defendant.)

TO: THE PLAINTIFF J. GREGORY HEMBREE, ESQ.

You are hereby requested, pursuant to Rule 36 South Carolina Rules of Civil Procedure, to admit the truth of the following statements or opinions of fact or of the application of law to fact, including the geniuses of any documents described herein and attached hereto. The matters herein will be deemed admitted unless within thirty (30) days after service hereof you serve upon the undersigned a written, signed, answer or objection addressed to the matter. If objection is made the grounds therefore shall be stated.

You may not give lack of information or knowledge as a reason for failure to admit or deny unless you have made a reasonable inquiry to ascertain the truth of the matter.

1. That substantially less than one (1) pound of marijuana is alleged to have been discovered in the subject property.

2. That Defendant has previously requested return of the subject property to him.

3. That Plaintiff's agents who seized the subject property are cognizant of the provisions of Section 44-53-320 (6) of the South Carolina Code of Laws.

4. The genuineness of the following attached documents:

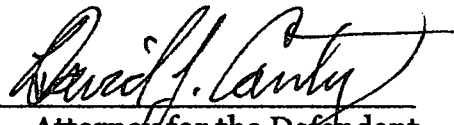
A.) Affidavit, Search Warrant and Return (4pp.);

B.) Horry County Police Department Vehicle Impoundment & Inventory Record (1p.).

DAVID J. CANTY, P.A.

Myrtle Beach, S.C.
June 5, 2009

by:



Attorney for the Defendant
4612 Oleander Drive
Myrtle Beach, S.C. 29577
(843) 449-6304
mbcounsel@verizon.net

STATE OF SOUTH CAROLINA

COUNTY OF HORRYIN THE COURT OF COMMON PLEASJ. GREGORY HEMBREE☐ Plaintiff

v.

MICHAEL J. ALBIN☐ Defendant.**PAID**

CASE NO.

09 - CP - 26 - 3128MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

DONNA E. ELDER, Bar No. _____Address: P.O. B. 1276
CONWAY, S.C. 29528phone: 915-5460 fax: 915-6461

e-mail: _____ her: _____

Defendant's Attorney:

DAVID J. CANTY, Bar No. 1122Address: 4612 OLEANDER DR.
MYRTLE BEACH, S.C. 29577phone: 449-6304 fax: 449-4249e-mail: MBCCOUNSEL@VERIZON.NET☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: SUMMARY JUDGMENTEstimated Time Needed: 10 MINS Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☒ Defendant6/19/09
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE _____

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
CASE NO. 09-CP-26-3128

J. Gregory Hembree,
Plaintiff,

vs.

1994 Monaco RV
VIN: 1RF120611R1010972

Defendant Property,

Michael J. Albin,

Defendant.

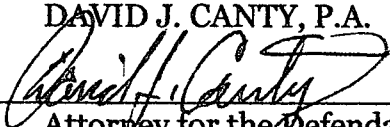
**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

FILED
HARRIS COUNTY
2009 JUN 22 PM 12:57
MELANIE HOGGINS
CLERK OF COURT

TO: J. GREGORY HEMBREE, ESQ.

YOU WILL PLEASE TAKE NOTICE that the Defendant above named will move before this Honorable Court ten (10) days hence, or as soon thereafter as the matter may be heard, for this Honorable Court's Order granting Summary Judgment in favor of the Defendant and against the Plaintiff as to all issues. This Motion is based upon the Discovery herein, the statutory, constitutional and common law of the State of South Carolina and the South Carolina Rules of Civil Procedure, is made in furtherance of justice and is not intended for delay. Consultation with opposing counsel is not required.

Myrtle Beach, S.C.
June 19, 2009

DAVID J. CANTY, P.A.
by: 
Attorney for the Defendant
4612 Oleander Drive
Myrtle Beach, S.C. 29577
(843) 449-6304
mbcounsel@verizon.net

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

v.

1994 MONACO RV
VIN: 1RF120611R1010972,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

PLAINTIFF'S ANSWERS TO
DEFENDANT'S REQUESTS
TO ADMIT

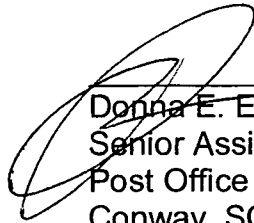
TO: THE ABOVE NAMED DEFENDANT.

The Plaintiff would appear and respond to the Defendant's Requests to

Admit as follows:

1. Approximately 137 grams of marijuana is the initial basis for the seizure in this matter.
2. Defendant filed an Answer dated June 4, 2009.
3. Plaintiff's attorney is cognizant of the provisions of 44-53-320.

4. The attached documents are records of the Horry County Police Department.



Donna E. Elder
Senior Assistant Solicitor
Post Office Box 1276
Conway, SC 29528

Date: 7/22/05
Conway, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

v.

1994 MONACO RV
VIN: 1RF120611R1010972,

DEFENDANT PROPERTY,

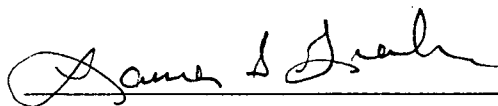
MICHAEL JAMES ALBIN,

DEFENDANT.

CERTIFICATE OF MAILING

I, Laura S. Graham, an employee of the Fifteenth Judicial Circuit Solicitor's Office, hereby certify that I have mailed a copy of the Plaintiff's Answers to Defendant's Requests to Admit by placing such copy in the U.S. Mail, on July 22, 2009, to the attorney for the Defendant above named at the mailing address below:

Mr. David J. Canty
Attorney at Law
4612 Oleander Drive
Myrtle Beach, SC 29577


Laura S. Graham

July 22, 2009
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CASE NO: 2009-CP-26-1281

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

V.
TAURUS 38 SPECIAL PISTOL
SN: SG53109,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

PLAINTIFF'S ANSWERS TO
DEFENDANT'S REQUEST
FOR PRODUCTION

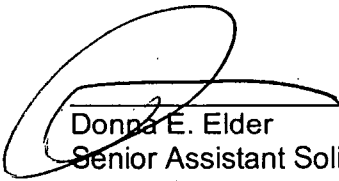
HORRY COUNTY
09 AUG -4 PM 2:05
MELANIE HUGGINS
CLERK OF COURT

TO THE ABOVE NAMED DEFENDANT:

The Plaintiff would appear and respond to the Defendant's Request for Production as further limited by the South Carolina Rules of Civil Procedure, Rule 34, follows:

1. See Plaintiff's Answers to Interrogatories and attachments.
2. See Plaintiff's Answers to Interrogatories and attachments.
3. Not relevant to action and not subject to production by Rule 34.
4. Not relevant to action and not subject to production by Rule 34.
5. Not relevant to action and not subject to production by Rule 34.

The Plaintiff having answered all Requests for Production allowable under the South Carolina Rules of Civil Procedure Rule 34 would respectfully submit the above responses.



Donna E. Elder
Senior Assistant Solicitor
Post Office Box 1276
Conway South Carolina 29528
843-915-8657

Dated: 7/30/07
Conway South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CASE NO. 09-CP-26-3128

J. Gregory Hembree,)
)
Plaintiff,)

vs.)

1994 Monaco RV)
VIN: 1RF120611R1010972)
)
Defendant Property,)

DEFENDANT'S MEMORANDUM

Michael J. Albin,)
)
Defendant.)

This case involves a motor vehicle seized by the Horry County Police on January 24, 2009 after it was found to contain just over 4.5 ounces of marijuana. The owner is a 63 year old, honorably discharged retired U.S. Air Force veteran with no prior criminal record. Mr. Albin served two tours of duty in Viet-Nam and, at the time of his arrest, had radioactive seeds implanted to treat his cancer. This Motor Home served as his residence at the time of its seizure.

Sections 44-53-520 and 530 of the Code control this case as they are the only legal authority under which Plaintiff proceeds. Since subsection (a)(6) of Section 520 plainly requires a conveyance to contain one pound or more of marijuana in order to be subject to seizure, Plaintiff's claim must fail.

The Solicitor has indicated to defense counsel that she relies upon subsection (a)(3) of Section 520 on the theory that the motor home is a "container" of a controlled substance. Subsection (a)(6), requiring one pound or more of marijuana in order to

subject a motor vehicle to forfeiture specifically refers to a "...motor vehicle,...used...to...contain...or facilitate the...containment...of controlled substances...".

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Secondly, numerous cases hold that "the specific controls over the general" in interpreting statutes. Capco of Summerville, Inc. v. J.H. Gayle Construction Co., Inc., 368 S.C. 137, 628 S.E. 2^d 38 (2006).

The Solicitor's reasoning would render subsection 6 meaningless. The one pound limitation would never apply because the Solicitor need merely contend that a conveyance is a "container" under subsection 3 and thereby defeat the plainly expressed legislative intent.

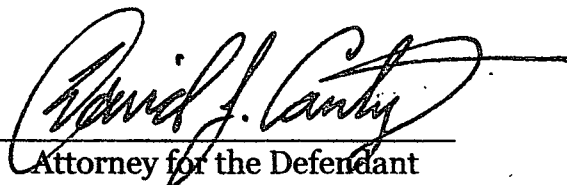
Accordingly, Defendant is entitled to summary judgment as a matter of law.

Defendant respectfully requests a subsequent hearing on damages.

Respectfully Submitted,

DAVID J. CANTY, P.A.

by:



Attorney for the Defendant
4612 Oleander Drive
Myrtle Beach, S.C. 29577
(843)449-6304
mbcounsel@verizon.net

Myrtle Beach, S.C.
September 21, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT
09-CP-26-3128

J. Gregory Hembree, as Solicitor
of the Fifteenth Judicial Circuit, o/b/o
Horry County Police Department,
Plaintiff,

vs.

Michael James Albin,
Defendant.

NOTICE OF MOTION AND MOTION
TO AMEND JUDGMENT

FILED
CLERK OF COURT
2011 AUG 26 PM 1:00
FIFTEENTH JUDICIAL CIRCUIT
HORRY COUNTY

To: J. Gregory Hembree, Solicitor and Horry County Police Department and Donna Elder, Esq., their
counsel

You Will Please Take Notice that the Defendant above-named, by and through his undersigned counsel, will move before this Honorable Court ten (10) days hence, or as soon thereafter as the matter may be heard, for this Honorable Court's Order amending its Judgment in the following particulars, to wit:

- I. Allowing the forfeiture of a conveyance absent the statutory minimum defeats plainly expressed legislative intent.

Plaintiff concedes that the quantity of marijuana found in Defendant's motor home is a less than half the statutory minimum for seizure of a conveyance found in Section 44-53-520(A)(6). Defendant moved for Summary Judgment on this issue, resulting in a pre-trial ruling striking Plaintiff's claim under (A)(6) but allowing Plaintiff to go forward under subsections (A)(3)(container) and (A)(4)(facilitation).

The General Assembly plainly established a minimum quantity of one pound of marijuana to justify or support the seizure of a motor vehicle:

"No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 44-53-370(A), involving at least one pound or more of marijuana, ..."

Section 44-53-520(A)(6). Plaintiff contends that the use of the term "this item" frees him to seek forfeiture under subsection (A)(3) in that the motor vehicle is a "container" of the marijuana. Such an interpretation plainly defeats the legislative intent in that all motor vehicles are "containers" and therefore the legislated minimum quantity would never have effect. A plainly absurd result.

Plaintiff next contends that he may prevail because the motor vehicle was used to "facilitate" distribution of marijuana. Plaintiff concedes there was "no drug-buy" from the Defendant and bases his claim on the testimony of a SLED agent that at some future time Defendant would smoke marijuana with her in the motor home. Here it is noteworthy that despite the seizure of a large number of items of personalty from the motor home, including rolling papers, a pipe, a cigarette rolling device, etc. no scales were found nor baggies for packaging marijuana for redistribution.

In the subsection containing the statutory minimum, (A)(6), is set forth its applicability:

"All...motor vehicles...which are used or intended for use unlawfully to...facilitate the unlawful concealment, possession, containment, manufacture or transportation of... at least one pound or

more of marijuana..."

Accordingly, "facilitation" is included in the provision requiring a one pound minimum quantity of marijuana. As in the case of a "container" to hold that the minimum quantity does not apply plainly defeats the legislative purpose and renders the enactment meaningless.

II. Earlier denial of Defendant's Motion for Summary Judgment does not Preclude the Trial Court from enforcing the statutory minimum.

Defendant's Motion for Summary Judgment as to the Monaco RV was denied by the Hon. Steven H. John after a Motion hearing in 2009. Such a ruling does not preclude the Trial Court from addressing the enforceability of the statutory minimum. An order denying Summary Judgment is not immediately appealable. Olson v. Faculty House of Carolina, Inc. 354 S.C. 161, 580 S.E.2^d 440 (2003), citing Wilkins v. Bishop 276 S.C. 156, 276 S.E.2^d 310 (1981). Further, denial of summary judgment is not reviewable even in an appeal from final judgment. Raino v. Goodyear Tire 309 S.C. 255, 422 S.E.2^d 98 (1992), Holloman v. McAllister 289 S.C. 183, 345 S.E.2^d 728 (1986).

The Trial Court's characterization of Judge John's ruling as "the law of the case" is misplaced. The concept of "the law of the case" is premised upon an unappealed, appealable ruling. Here there was no ruling appealable by the Defense and therefore "the law of the case" does not apply.

III. Defendant's Counterclaims should not have been dismissed.

Undisputed testimony indicated that Horry County Police Department assisted the State Law Enforcement Division in the execution of a search warrant following the initiation of the investigation by SLED. The forfeiture statute under which Plaintiff proceeds, Section 44-53-520, expressly provides in subsection (H):

"For the purposes of this section, whenever the seizure of any property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure."

(emphasis added). This fact is corroborated by the narrative reports of both agencies, testimony of agents of both agencies, the search warrant itself and the affidavit in support thereof.

Defendant alleges Sled seized ten times the sum of money sued for in this raid. Defendant counterclaimed for these funds more than two years prior to trial. Plaintiff represents SLED in forfeiture matters in the Fifteenth Judicial Circuit. SLED, despite the passage of two and one half years, has never sought to confirm the forfeiture. It merely took the money (including the Defendant's penny jar in his bedroom) and walked away.

The Attorney General of South Carolina, Plaintiff's superior and counsel to all State agencies, unequivocally opined that money seized pursuant to the gambling statutes must be confirmed by an action pursuant to the instant forfeiture statute. See. Op. Attorney General # 09-336, January 2, 2009. Plaintiff is SLED's agent in these matters as well as an agent of the State. It is disingenuous of Plaintiff to ignore Defendant's counterclaim while simultaneously refusing to comply with the Attorney General's directive.

IV. "Unclean hands" precludes Plaintiff's recovery.

As is more fully set forth in Defendant's Pre-Trial Brief, which is incorporated herein by reference, Plaintiff willfully and repeatedly violated the applicable statutes regarding service of process and willfully violated this Honorable Court's discovery rules, barring recovery.

V. Proportionality dictates that Plaintiff's claim fail.

Plaintiff contends it is entitled to an RV which sold for \$300,000.00 new and was valued by Defendant At \$80,000.00 (Plaintiff has offered nothing to contradict the value) based upon the presence of far less than one half the statutory minimum amount of marijuana. The elated cries of the female SLED agent following the raid ("We got the RV! We got the RV!") tend to indicate that its seizure was a primary goal of the raid.

The U. S. Supreme Court in Austin v. United States 113 S. Ct. 2801 (1993) held that civil forfeitures must be considered in light of the Eighth Amendment prohibition of excessive fines, Rejecting the government's argument that such statutes are remedial the Court declared that they are punishment, Id. At 2812. Given the punitive nature of Plaintiff's claim it therefore becomes necessary to consider 1.) the inherent gravity of the offense 2.) sentences imposed for similar offenses in this jurisdiction, and 3.) sentences imposed for the same crime in other jurisdictions.

Plaintiff does not dispute that the RV was Defendant's residence when it was seized, nor its value. Defendant, a cancer patient receiving radiation therapy at the time of his arrest, would not have been subject to criminal prosecution at all in eighteen states. The Attorney General of the United States has stated that federal authorities would not prosecute marijuana cases that did not constitute a violation under State law. A typical sentence for possession of marijuana in this State or adjacent states is a small fine. Plaintiff's claim violates the Eighth Amendment.

Conclusion

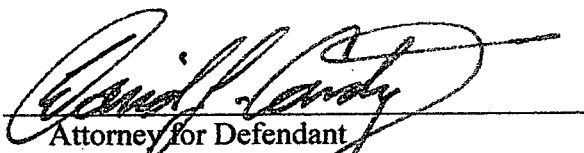
Permitting Plaintiff to prevail defeats plainly expressed legislative intent. An unappealable prior ruling does nothing to alter that fact. Defendant's counterclaim should not have been dismissed and Plaintiff should not be permitted to disregard the directive of his immediate superior with impunity. Plaintiff's unclean hands and the Eighth Amendment dictate that Defendant prevail.

Wherefore, Defendant moves for an amendment of this Honorable Court's Order providing that the Plaintiff's forfeiture claim fails for lack of the statutory minimum quantity of marijuana.

David J. Canty, P.A.

Myrtle Beach, S.C.
August 26, 2011

By:


Attorney for Defendant
4612 Oleander Drive
Myrtle Beach, S.C. 29577
Office (843) 449-6304
Fax (843) 449-4249
mbcounsel@frontier.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT

09-CP-26-1281
09-CP-26-3127
09-CP-26-3128

J. Gregory Hembree, as Solicitor)
of the Fifteenth Judicial Circuit, o/b/o)
Horry County Police Department,)
Plaintiff,)

vs.)

Michael J. Albin, \$1,847.00)
U.S. Currency, 1994 Monaco)
RV and Taurus .38 pistol,)
Defendants.)

DEFENDANT'S PRE-TRIAL
BRIEF

FILED
HORRY COUNTY
2011 AUG 26 PM 1:10
JANELLE HUGGINS-WARD
CLERK OF COURT

Facts

On January 24, 2009 agents of the Plaintiff raided Defendant's restaurant, known as "Putters", on Highway 707 South in Horry County. The premise for their intrusion was a Search Warrant endorsed by the Hon. G. Derek Blanton, a nearby Magistrate.

The Affidavit in support of the Warrant omitted any description of property sought. The Warrant authorized the seizure of "video poker machines". Defendant was arrested and charged with Possession of Marijuana with intent to distribute, gambling and operating a gambling house. His daughter Michaela and two other employees were also charged with gambling. Additionally, a half dozen administrative citations were issued to Defendant. Defendant was subsequently released from jail on \$3,500.00 bond.

No one has ever been convicted of any crime as a result of the raid, excepting only Plaintiff's Witness, Michael Baker, whose Distribution of Marijuana charge was dismissed and who pled guilty to Gambling in Magistrate's Court despite the fact that the Magistrate lacked jurisdiction to hear the case.

Defendant is a 65 year old disabled veteran retired from the U.S. Air Force after more than

twenty years of service, including two annual tours of duty in Vietnam, one year at Tan Son Nhut AFB and one year at Cam Ranh Bay. Defendant has no prior criminal record. While serving in the U.S. Air Force Defendant was trained and qualified with two weapons, the M-16 rifle and the .38 revolver.

At the time of his arrest Defendant was being treated with radiation therapy for prostate cancer. His business had been burglarized seven times without any suspect ever being apprehended nor any property recovered by the Horry County Police Department.

In the raid agents seized the three in rem Defendants. The State does not claim to have found more than approximately five (5) ounces of marijuana, rolling papers, a pipe, grinder, cigarette roller, roach clip and a plate with "marijuana residue". No other drugs or weapons were found. No scales were found. No box of baggies was found. There were no animals upon the premises. The State subsequently commenced these actions pursuant to Section 44-53-520 of the Code of Laws of South Carolina.

At the Preliminary Hearing Plaintiff's agent, Derrick Ard testified no field testing of the alleged marijuana was performed and that the sole legal basis for the Plaintiff's agents to be on the property was the Search Warrant issued by Judge Blanton. He further testified that SLED was the initiating agency and that the Horry County Police Department was contacted to assist in the execution of the Search Warrant. He also testified no animals were found on the property.

Facts In Controversy

Defendant alleges the State seized nearly ten times the amount of U.S. Currency it seeks in this action. Defendant will offer evidence that the State's agents seized the penny jar in his home and, after ordering all the patrons present in the restaurant to pay their bar tabs, seized that money also.

Defendant receives \$60,000 per year in guaranteed income in the form of Air Force retirement, Veteran's Disability and Social Security benefits. Additionally, Defendant has been a

full-time successful businessman for nearly thirty years, forming or buying several businesses and operating a successful business. He has also bought and sold parcels of real estate and commercial leases profitably.

Defendant will offer evidence that on each of the many occasions his business was burglarized the Horry County Police Department did nothing more than fill out an incident report, on one occasion refusing a request to dust for fingerprints when a burglar entered the restaurant through the roof. As a consequence, Defendant relocated to the Defendant motor home parked near the premises to detect and deter would be burglars.

Defendant suffered physically from the effects of his cancer and the radiation therapy.

Defendant had reduced the frequency of his restaurant bank deposits, largely because of his physical condition, and at the time of his arrest was making deposits weekly. The Defendant currency is but a small portion of the weekly business deposit seized by Plaintiff's agents.

Defendant's grandson is a middle school student who would sometimes come to the restaurant after school with his mother to do his homework on his Hewlett Packard laptop computer. Plaintiff's agents seized the laptop, yet they do not sue for it herein.

Among other things, Defendant was administratively cited for not properly displaying the statutorily required notice that possession of alcohol by minors is prohibited. He will testify that one of the agents on the raid, Pam Williamson, personally positioned the notice herself several years earlier.

Plaintiff's agents publicized the raid and news coverage was provided throughout the print and electronic media. WMBF TV 10 carried the story, reporting that Plaintiff's agents had gone in undercover and had been paid \$5.00 in winnings. The pleadings herein were served by publication.

Following his arrest Defendant promptly retained counsel who immediately served discovery motions and requested a Preliminary Hearing. Plaintiff's counsel executed an affidavit in support of her Motion for an Order for Service by Publication alleging that she was unable to locate the Defendant despite "due diligence." No bench warrant was ever issued nor did Defendant miss a General Sessions Court appearance.

Some three weeks after Defense counsel appeared in the first case (09-CP-26-1281) Plaintiff's counsel again executed an affidavit that she was unable to locate Defendant despite due diligence and the second and third Summonses and Complaints were published in the newspaper.

Subsequent to the raid Judge Blanton executed an Order for the Destruction of the alleged gambling machines seized. Counsel for the owner of the machines (not Defendant) requested a hearing and the machines seized from Defendant's side of the two unit commercial building were released to the owner because the machines were simply not illegal. No video poker machines were found in the raid.

Despite a desire to test the State's case, Defendant accepted Plaintiff's offer to enroll in the P.T.I. program, successfully completed it nearly a year ago, and has continued to this day serving as a volunteer in the Meals on Wheels program. The gambling charges in Magistrate's Court against his daughter and another employee have never been called to trial despite the passage of nearly two years. Defendant purchased the .38 revolver for protection while guarding his property following the rash of unsolved burglaries. The Defendant Motor Home sold for \$300,000.00 new and Defendant, who had owned several recreational vehicles over the years, purchased it from a distressed seller for \$69,000.00.

Defendant was allowed by the Plaintiff to retrieve his clothing from the Motor Home after posting bond and was greatly saddened by the extent of the destruction of the interior of his home.

Ten days after its seizure Plaintiff's agents had obtained a second search warrant from the Hon. Bradley Mayers for the Motor Home and made a Return stating "nothing taken." It was apparently this second search that destroyed the interior of the vehicle.

Defendant has continued to make the \$1,171.00 monthly note payment as well as paying insurance premiums, property taxes and registration fees on the Motor Home for twenty one months despite being deprived of the use of it. Defendant will testify that he does not sell marijuana, and needn't sell marijuana. Defendant's testimony will be that at the time the Motor Home was seized there was no marijuana in the refrigerator wherein Plaintiff's agent claims he found both the Defendant currency and marijuana.

Legal Issues

I. "Container" versus "Motor Vehicle"

At a hearing on Defendant's Summary Judgment Motion as to the Motor Home Plaintiff's counsel took the position that she relied upon subsection (A)(3) of Section 44-53-520 and not subsection (A)(6). (A)(3) permits the seizure of a "container" of a controlled substance while (A)(6) permits the seizure of "conveyances including...motor vehicles."

The reason for this posture is patent. In order to seize a motor vehicle for marijuana the General Assembly has mandated a threshold quantity of one pound of marijuana, which Plaintiff admittedly cannot meet and under which his claim fails.

It is black letter law that in statutory construction "a specific statute prevails over a more general one." Minus v. Alston 312 S.C. 311, 440 S.E. 2d 357 (1994). While all motor vehicles containing

controlled substances meet the definition of container relied upon by the Plaintiff, all containers plainly do not meet the definition of a motor vehicle. The one pound of marijuana threshold therefore applies and Plaintiff's claim fails.

Further, adopting Plaintiff's position would render the statutory limitation a nullity as it would never apply. The cardinal rule of statutory construction is that we are to ascertain and effectuate the actual intent of the legislature. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980); McDonald v. State Farm Mutual Auto Ins. Co., 287 S.C. 40, 336 S.E. 2d 492 (Ct.App.1985). In ascertaining this intent, statutes which are part of the same Act must be read together. Smalls v. Weed, 293 S.C. 364, 360 S.E. 2d 531 (Ct.App.1987); Busby v. State Farm Mutual Auto Ins. Co., 280 S.C. 330, 312 S.E. 2d 716 (Ct.App.1984). The court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something. See State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E. 2d 778, 782 (1964).

II. Validity of the Search

Judge Blanton's Search Warrant is premised upon the affidavit of Plaintiff's agent. In that Affidavit it is alleged that "certain property subject to seizure under provisions of Section 47-1-150 Code of Laws of South Carolina, as amended, is located on the following premises in this County:"

Under the caption "Description of Property Sought", on the form approved by the Attorney General, no property is described.

The statute reads, in pertinent part, as follows:

"(A) When complaint is made on oath...to any Magistrate...that the Complainant believes and has reasonable cause to believe that the laws in relation to cruelty to animals have been or are being violated in any particular building or place, such magistrate,....shall issue a search warrant authorizing any...police officer to search such building or place; but no search shall be made after sunset, unless specifically authorized by the Magistrate upon satisfactory cause shown."

The Affidavit makes no reference to animals, mistreated or otherwise, nor to criminal activity in the Motor Home. There is no cause shown to execute the warrant after sunset and it is undisputed that the raid occurred after sunset.

In reports prepared by Plaintiff's agents frequent reference is made to a "gambling and drugs" or "gambling and narcotics" investigation. Nowhere in the Affidavit in support of the Search Warrant is any reference whatsoever made to drugs or narcotics of any description.

Finally, the Warrant is for the search of the building itself, the Motor Home parked nearby is included as part of the description to aid in locating and identifying the building. Nowhere in the Affidavit is there any reference to illegal activity or evidence thereof in the Motor Home nor was the Motor Home occupied at the time of the raid. In State v. Harrell, 262 S.C. 273, 203 S.E.2d 671 (1974) under similar circumstances the Court found that the search of a suspect's automobile parked at the suspect's residence exceeded the scope of the warrant to search the residence (but admitted the evidence nevertheless under the "plain view" doctrine, which is inapplicable here).

The Search Warrant is fatally defective on its face and the search of the Motor Home exceeded its scope. For these reasons all Defendant property was seized in the course of an unlawful search.

III. Proper Parties

Defendant's position is that the State is the State and the Plaintiff cannot purport to sue on

behalf of one law enforcement agency participating in a raid and not the other. Plaintiff will doubtless take the position that he sues on behalf of the Horry County Police Department and not SLED and therefore Defendant's Counterclaims regarding seized money and property in SLED custody must fail.

If so, Plaintiff's assertion fails for at least two reasons. First, subsection (H) of Section 520 addresses precisely this issue and the General Assembly has stated unequivocally:

"...whenever the seizure of any property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure."

Here Plaintiff's agent testified at the Preliminary Hearing, and the documentary evidence makes it abundantly clear, that SLED initiated the investigation and the Horry County Police Department was contacted later to assist in the execution of the Search Warrant. Plaintiff's agent by Affidavit dated January 27th averred that: "HCPD Narcotics agents assisted SLED with the service of a search warrant at 8950 Hwy 707 Myrtle Beach".

Section 44-53-530(a) provides, in pertinent part, that the forfeiture action shall be brought by the Attorney General or Solicitor or his designee. Notice in the form of a copy of the Petition shall be sent to law enforcement agencies. Plaintiff's naming of the Horry County Police Department alone to exclude liability for SLED's appropriation of money, the laptop computer and other personalty cannot succeed because of the plainly expressed legislative intent. Further, the Plaintiff Solicitor is a State agent and not a County agent. SLED is a state agency.

Plaintiff's attempt to evade liability for SLED's conduct by naming the HCPD and not SLED must fail for another reason. Plainly the legislature intended that forfeiture matters be resolved in a single action covering all property seized. To hold otherwise defeats judicial economy.

Here the Plaintiff has brought three separate actions which could and should have been a single action. The purpose is unclear unless it was to further shame, embarrass and humiliate Defendant by publishing the Summonses nine (9) times in a newspaper of general circulation. Should Plaintiff's view prevail then many more lawsuits must follow regarding the SLED seizures in this case, each consuming additional judicial resources.

Finally, Defendant will be called upon to defend one lawsuit after another, unnecessarily and inequitably draining his resources as well as prosecutorial resources for no articulable benefit to the State.

IV. "Facilitation" of a drug transaction

Plaintiff may take the position that the Motor Home and pistol were used to knowingly facilitate a drug transaction under subsection (4) of the Statute. Without arguing the definition of "facilitate" it must be pointed out that with regard to these Defendants, there was no drug transaction. Viewing the evidence (which is itself likely inadmissible) in the light most favorable to the Plaintiff at best there is a mere expectancy of a possible future transaction, originating in the mind of the agent of the State with no evidence of a predisposition to that crime.

In his Affidavit for Seizure of the Motor Home dated January 27th Plaintiff's agent's basis for the seizure is that "the RV was being used to facilitate the sale and use of marijuana". Since "use" of marijuana plainly affords no basis for seizure under the statute, Plaintiff must rely exclusively upon "sale". Plaintiff's agent Jesse Ard specifically stated in his report that there was no "drug buy".

Accordingly, absent a transaction there can be no facilitation of a transaction. As a penal statute this provision must be strictly construed against the State and in favor of the Defendant. Plaintiff has no legal basis to sustain the seizure.

V. Constitutionality of the Seizure Statute

The statute under which Plaintiff proceeds is constitutionally repugnant in several respects. For the purposes of appellate review Defendant asserts that the lack of provision of a pre-seizure hearing deprives him of procedural due process. Further, the application of it under the facts of this case violates proportionality as well as substantive due process. The usual factors present in appellate analyses involve great and imminent threat to public safety, which is simply absent from these facts.

VI. Unclean Hands

Plaintiff's agents seized Defendant's penny jar from his bedroom, ordered all patrons in the restaurant to pay their tabs and then seized those funds. Plaintiff's agents charged Defendant administratively for failure to properly position a statutory notice when Plaintiff's agent herself dictated the location of the notice several years earlier. Plaintiff's agents seized Defendant's grandson's computer which he utilized to do his homework. Plaintiff's agents perpetrated these acts under the premise of a Search Warrant based upon an Affidavit prepared by Plaintiff's agents which they knew or reasonably should have known was fatally defective on its face. Plaintiff's agents plainly exceeded the scope of the Search Warrant.

After taking possession of the Motor Home Plaintiff's agents destroyed the interior thereof in a fruitless search.

Plaintiff's agent Rogers wrote Uniform Traffic Ticket numbers 249463-6DB charging Defendant, his daughter and his employees with "Gambling" under Section 16-19-40 of the Code (actually entitled "Unlawful Games and Betting") when he knew or reasonably should have known that that offense may not be charged with a UTT under Section 56-7-10 of the Code. State v. Truesdale,

345 S.C. 542, 548 S.E.2d 896 (S.C.App. 2001).

Plaintiff has sought to evade liability for the acts of one agency by bringing these actions “on behalf of” another agency in plain contradiction of the applicable statute. Plaintiff has brought multiple actions against Defendant for no apparent purpose other than to burden him with additional expense and embarrassment.

Plaintiff’s counsel received Defense counsel’s written notice of representation and discovery requests in 09-CP-26-1281 (Taurus .38 pistol seizure case) on or about March 18, 2009. She responded in writing enclosing discovery responses on April 2, 2009.

Six days later Plaintiff’s counsel executed an Affidavit for Publication in 09-CP-26-3128 (Monaco Motor Home case) averring that “Although a due diligence search has been made for the abovementioned Defendant, the Plaintiff has been unable to locate him.”

Plaintiff’s counsel’s office had been aware of Defense counsel’s representation in the General Sessions matter since the bond hearing in January, 2009. Defense counsel appeared and argued for Defendant at the Preliminary Hearing in February. Defendant, out on bond, was subject to the call of Plaintiff’s counsel’s office at any time and did not miss a General Sessions court appearance.

In reliance upon Plaintiff’s counsel’s Affidavits the Hon. Edward B. Cottingham issued this Honorable Court’s Orders of Publication on April 14, 2009. Plaintiff’s counsel made no mention to Defense counsel of the existence of the two companion cases until June, 2009 after the Summonses had each been published three times in the Myrtle Beach Herald. Section 44-53-530 (a) of the Code provides, in pertinent part:

“If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided and **service may not be made by publication.**”

(emphasis added).

In light of the conduct of Plaintiff's agents in these matters Plaintiff is equitably barred from any recovery under the equitable doctrine of unclean hands. Equity will not aid a wrongdoer.

Exhibits

Defendant will offer if necessary the promissory note for the purchase of the motor home, registration, insurance and property tax documentation and the current license plate, registration card and registration sticker. Documentation of his debt service of the Motor Home and copies of some of the incident reports regarding the burglaries of his business may also be offered. Defendant's bank statements reflecting deposits to his business account will also be offered.

Further, that documentation of Plaintiff's counsel's conduct which is not already a part of the record will be offered.

Other than correspondence to Plaintiff's counsel and discovery requests, none of these documents have been produced to Plaintiff as Plaintiff's counsel has never served any discovery requests upon Defendant in any of the three actions.

Unusual Evidentiary Problems

Although Plaintiff's claim is premised upon the drug forfeiture statute no one has ever been convicted of any drug offense as a result of this raid. Further, there are no pending drug charges against anyone as a result of this raid. Defendant promptly filed and served a Rule 5/Brady discovery request in the General Sessions matter and never received any drug test report.

Approximately fifteen months ago Defendant filed and served Requests for Production of

Documents in the instant matters seeking, inter alia, “results of scientific examinations“. None have been produced unless the Court deems admissible a fax received from Plaintiff's counsel on the afternoon of October 12 (2 days ago and 6 days prior to trial) including a single page, unsworn statement purporting to identify 1.1 ounces of marijuana. It is dated some seventeen (17) months previous, has never been properly served by mail, and is fatally defective on its face.

In criminal procedure the report is required to be served on the Defendant eleven (11) days prior to trial so that Defendant may give the State ten (10) days notice of his objection to it. In civil procedure ten (10) days notice is required for depositions and independent examination would obviously require a much longer time than six days.

No excuse has been offered as to why the State would refuse to produce the report or acknowledge its existence for seventeen months. The report must be excluded for the reasons set forth supra.

Other Unusual Question or Matters

None known to the Defendant.

Settlement Negotiations

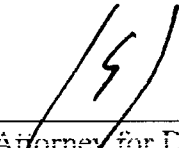
Plaintiff offered to return the Motor Home (inferably with its interior destroyed) for the sum of \$6,000.00 cash. The offer was open for ten (10) days. Similarly, Defendant offered to accept return of the Motor Home in “clean condition” to his premises plus the payment of \$6,000.00. The time to accept this offer has expired. Plaintiff will now accept \$95,000.00, dismissal with prejudice of the pending charges against his daughter and employees, Plaintiff's consent to an Order of Expungement regarding

those charges and consent to an Order Sealing the instant files, should the Court approve. If Plaintiff accepts this offer Defendant will waive his statutory claim for attorneys fees as well as prejudgment interest, costs, consequential damages under the conversion cause of action, and all remaining elective causes of action.

Respectfully Submitted,

David J. Canty, P.A.

Myrtle Beach, S.C.
October 15, 2010

by: 

Attorney for Defendant
4612 Oleander Drive
Myrtle Beach, S.C. 29577
Office (843) 449-6304
Fax (843) 449-4249
mbcounsel@frontier.com

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

J. Gregory Hembree,

Plaintiff,

vs.

Michael J. Albin,

Defendant.

IN THE COURT OF COMMON PLEAS

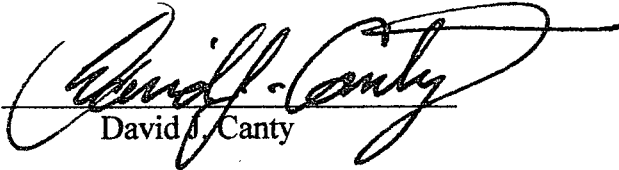
CASE NO. 09-CP-26-3128

CERTIFICATE OF SERVICE

DOCUMENT(S): Motion to Amend Judgment

I certify that a complete copy of the above was served on Donna Elder, Esq. by personal delivery, on August 26, 2011.

Myrtle Beach, S.C.
August 26, 2011


David J. Canty

FILED
CLERK OF COURT
2011 AUG 26 PM 1:10
MELANIE HUGGINS
WARD



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 02, 2013

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

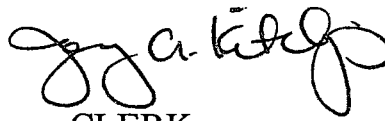
REMITTITUR

Re: J. Gregory Hembree v. \$1,847.00
Lower Court Case No. 2009CP2601281, 2009CP2603127, 2009CP2603128
Appellate Case No. 2012-211943

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

cc: Donna Earls Elder
David James Canty
David Pierce Caraker, Jr.

09 - 3128

David J. Canty, P.A.

Attorney at Law
4612 Oleander Drive
Myrtle Beach, S.C. 29577

Telephone (843) 449-6304
Fax: (843) 449-4249
Email: mbcounsel@frontier.com

July 30, 2013

Hon. Melanie Huggins
Clerk of Court of Horry County
P.O. Box 677
Conway, S.C. 29528

Re: Hembree v. Albin
Case No. 2009-CP-26-3128

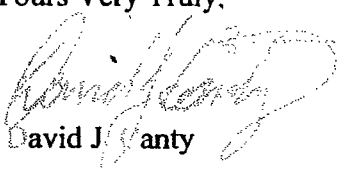
FILED
HORRY COUNTY
2013 AUG -5 AM 8:10
MELANIE HUGGINS-WARD
CLERK OF COURT

Dear Madam Clerk,

In this forfeiture action the Court of Appeals reversed the trial court's affirmation of the forfeiture of this property. The Remittitur was transmitted on July 2, 2013.

The Defendant passed away approximately one year ago. Please be so kind as to schedule a damages hearing on the counterclaim for conversion, substituting Michaela Albin as personal representative of the Estate of Michael Albin as Defendant.

Thanking You and With Best Wishes.
Yours Very Truly,


David J. Canty

cc: clt.

David Pierce Caraker, Jr., Esq.
Donna Earls Elder, Esq.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT
09-CP-26-3128

J. Gregory Hembree, as Solicitor,)
of the Fifteenth Judicial Circuit,)
o/b/o Horry County Police)
Department,)
Plaintiff,)

REQUEST FOR PRODUCTION
OF DOCUMENTS

v.)

Michael James Albin,)
Defendant.)

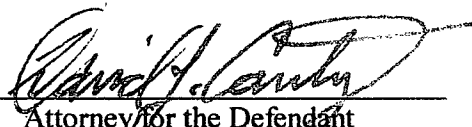
TO: THE PLAINTIFF ABOVE-NAMED

YOU ARE HEREBY served the following Requests for Production of Documents to be answered separately and in writing by the above-named party within thirty (30) days from the date of service hereof, pursuant to and in accordance with the provisions of Rule 33(b) of the South Carolina Rules of Civil Procedure.

1. All documents relating in any way to the possession, storage, maintenance or sale of the subject motor home.
2. All photographs of the subject motor home, in digital format.
3. All documents or electronic records of Plaintiff's inquiries into the fair market value of the subject motor home.

David J. Canty, P.A.

Myrtle Beach, S.C.
October 11, 2013

By: 

Attorney for the Defendant
4612 Oleander Dr.
Myrtle Beach, S.C. 29577
Office (843) 449-6304
Fax (843) 449-4240
mbcounsel@frontier.com

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT
09-CP-26-3128

J. Gregory Hembree, as Solicitor,)
of the Fifteenth Judicial Circuit,)
o/b/o Horry County Police)
Department,)
Plaintiff,)

REQUEST TO ADMIT

v.)

Michael James Albin,)
Defendant.)

TO: THE PLAINTIFF ABOVE-NAMED

The Genuineness of the attached documents:

1. Promissory Note for 1994 Monaco Motor Home.
2. Wachovia Online BillPay payment receipt to Horry County Treasurer.
3. S.C. Document of Registration for 1994 Monaco Motor Home.
4. Payment coupon to Progressive Insurance for 1994 Monaco Motor Home dated 5/10/10.
5. Payment coupon to Progressive Insurance for 1994 Monaco Motor Home dated 6/10/10.
6. Payment coupon to Progressive Insurance for 1994 Monaco Motor Home dated 7/10/10.
7. Myrtle Beach Herald Affidavit of Publication dated May 8, 2009.
8. Progressive Insurance Identification Card-South Carolina.
9. SC DMV Package Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home dated 06/23/08.
10. SC DMV Package Application for Certificate of Title and Registration for Motor

Vehicle or Manufactured Home/Mobile Home and Bill of Sale.

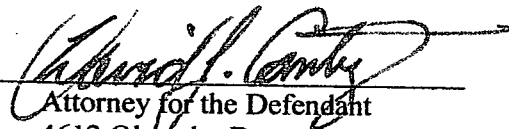
11. Package Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home dated 08/28/12.

12. SC DMV Title History-Plate History.

David J. Canty, P.A.

Myrtle Beach, S.C.
October 16, 2013

By:



Attorney for the Defendant
4612 Oleander Dr.
Myrtle Beach, S.C. 29577
Office (843) 449-6304
Fax (843) 449-4249
mbcounsel@frontier.com

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CASE NO: 2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

V.

Michael James Albin,

DEFENDANT.

PLAINTIFF'S ANSWERS TO
DEFENDANT'S REQUEST
TO ADMIT/INTERROGATORIES

TO THE ABOVE NAMED DEFENDANT:

The Plaintiff would appear and respond to the Defendant's Request to Admit and Interrogatories as follows:

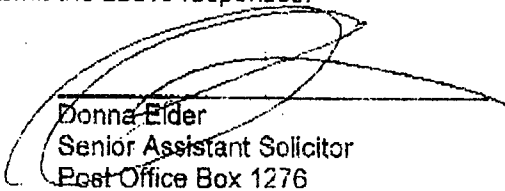
The plaintiff would deny all Requests to admit as being improper and not provided by the Rules of Civil Procedure at timely, in the alternative the plaintiff would deny all requests to admit;

The plaintiff would deny all requests for additional interrogatories as not timely as provided by the rules and improper at this point;

The plaintiff would further allege that interrogatories and all other discovery was completed at the time of case disposition before the lower Court;

The plaintiff would further allege that discovery requests are not proper under the applicable Rules during this stage of litigation;

The Plaintiff having answered all Requests allowable under the South Carolina Rules of Civil Procedure would respectfully submit the above responses.


Donna Elder
Senior Assistant Solicitor
Post Office Box 1276
Conway South Carolina 29528

Dated: November 7, 2013
Conway South Carolina

IN THE COURT OF COMMON PLEAS
CASE NO: 2009-CP-26-3128

PLAINTIFF,

V.

) PLAINTIFF'S SUPPLEMENTAL
) ANSWERS TO DEFENDANT'S
) INTERROGATORIES

DEFENDANT PROPERTY.

MICHAEL JAMES ALBIN.

DEFENDANT.

TO THE ABOVE NAMED DEFENDANT:

The Plaintiff would appear and respond to the Defendant's request for answers to Interrogatories as further limited by the South Carolina Rules of Civil Procedure, Rule 33, follows:

Plaintiff would rely on previously provided Discovery responses to Defendant and supplement as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

(a) Scott Rutherford
Deputy Chief HCPD
2560 N. Main Street
Conway, SC 29526

No written or recorded statements other than those provided during trial proceedings.

- (b) Daniel Knight
Sales Manager
Camping World
3632 Hwy 501
Myrtle Beach, SC 29579

See attached affidavit.

- (c) Tax Assessors
Lois Eargle or her designee
1301 2nd Avenue
Conway, SC 29526

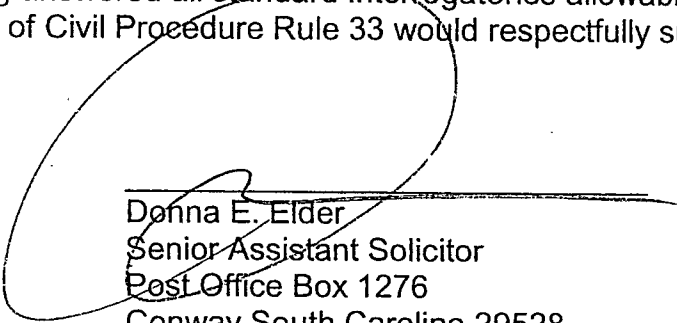
No written or recorded statements – Business records only

- (d) Thomas Luckman
6345 Longwood Drive
Murrells Inlet, SC 29576

Summary of statement attached. No written or recorded statement.

2. See previously provided item/documents and also attachment as referred to in Question One.
3. Not applicable.
4. Not applicable.
5. Not applicable.
6. See responses to Question one and those previously provided.
- 7a. Scott Rutherford. RV sale date was November 2012, at this time the NADA value of the RV is as attached. RV was sold for an estimated \$13,000.00 on gov.deal.com as per HCPD policy. Plaintiff would also include testimony previously given by witness in these proceedings.
- 7b. Daniel Knight. See attached Affidavit of Witness.
- 7c. Tax Assessor. Testify to business documents regarding tax value of RV January 2009 and how values are computed.
- 7d. Thomas Luckman. See attached documents and statement.

The Plaintiff having answered all standard Interrogatories allowable under the South Carolina Rules of Civil Procedure Rule 33 would respectfully submit the above responses.



Donna E. Elder
Senior Assistant Solicitor
Post Office Box 1276
Conway South Carolina 29528
843-915-8657

Dated: 11/18/13
Conway South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

v.

1994 MONACO RV
VIN: 1RF120611R1010972,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

AFFIDAVIT
OF
DANIEL KNIGHT

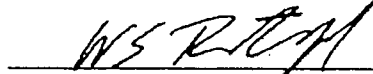
PERSONALLY appeared before me the undersigned who first being duly sworn and placed under oath states as follows:

1. The undersigned is over the age of eighteen (18).
2. The herein affidavit is based upon personal knowledge.
3. The Affiant is the Sales Manager at Camping World and as such reviews the values of RV's on a regular basis;
4. That it is common to base trade in values on NADA values.
5. That he at the request of Deputy Chief Scott Rutherford/HCPD ran the NADA trade in values on the RV vehicle described in the attached, which in included herein by reference. The stated value therein was \$18,410.00.

6. Based on his experience this would be a fair and accurate value range for a trade in and resale of this vehicle. This value may be decreased based on the condition of the RV at the time however.


Daniel Knight
Sales Manager

SWORN to before me on this the
0 day of November, 2013


_____(L.S)
Notary Public for SC
My commission expires: 5/3/2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO: 2009-CP-26-3128

J. GREGORY HEMBREE, SOLICITOR,
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE HORRY COUNTY
POLICE DEPARTMENT,

PLAINTIFF,

v.

1994 MONACO RV
VIN: 1RF120611R1010972,

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

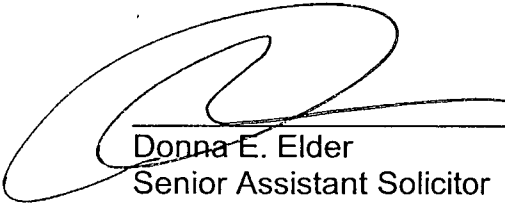
PLAINTIFF'S ANSWERS TO
DEFENDANT'S REQUESTS
TO ADMIT

TO: THE ABOVE NAMED DEFENDANT.

The Plaintiff would appear and respond to the Defendant's Requests to
Admit as follows:

1. The plaintiff cannot attest to the genuineness of the document.
2. The plaintiff cannot attest to the genuineness of the document.
3. The plaintiff cannot attest to the genuineness of the document.
4. The plaintiff cannot attest to the genuineness of the document.
5. The plaintiff cannot attest to the genuineness of the document.
6. The plaintiff cannot attest to the genuineness of the document.
7. Admitted.
8. The plaintiff cannot attest to the genuineness of the document.
9. The plaintiff cannot attest to the genuineness of the document.

10. The plaintiff cannot attest to the genuineness of the document.
11. The plaintiff cannot attest to the genuineness of the document.
12. The plaintiff cannot attest to the genuineness of the document.



Donna E. Elder
Senior Assistant Solicitor
Post Office Box 1276
Conway, SC 29528

Date: 11/18/13
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CASE NO: 09-CP-26-1281, 3127, 3128

J. GREGORY HEMBREE, as Solicitor)
Of the Fifteenth Judicial Circuit)
For Horry County Police Department)
Plaintiff)

v.)

MEMORANDUM OF LAW

Michaela Albin as Personal)
Representative for Michael Albin)
Defendant)

QUESTION PRESENTED

Does S.C. Code of Laws, §15-77-300 et al. 1976 as amended, provide for the award of attorney fees in this matter.

BRIEF ANSWER

No, the statute and case law regarding this statutory provision does not allow for the award of attorney fees in this matter. First the defendant has failed to timely file a petition for such fees with supporting affidavit within 30 days following the final disposition of this matter which would have been July 2, 2013 when the Remittitur was forwarded to the Clerk of Court. And Secondly, the statute provides for three prerequisites in order for a party to recover and the defendant has not demonstrated that those conditions exist.

FACTS OF THE CASE

The plaintiff seized an RV from the defendant as a result of a criminal investigation that resulted in gambling and drug charges against the defendant.

The plaintiff brought the seizure action based upon the conditions that the vehicle was used as a "container" for illegal narcotic/controlled substances and/or that it was personal property used to facilitate drug distribution. The lower court held that the State clearly had established that the defendant had in fact been "distributing" marijuana inside the vehicle in that he did admit under oath that he gave other parties these substances and that he had purchased these substances inside the vehicle. The Court concluded that the defendant's position that a portion of the seizure statute that precluded seizure of vehicles unless a certain weight had been obtained was not properly before the Court because that issue had been addressed by another Judge in pretrial matters and that that ruling was the law of the case.

The Court of Appeals reversed that ruling and concluded that a certain weight of illegal drugs was required in order for an agency to seize a vehicle under the drug seizure statute and that this section acted in exclusion to all other available sections. The Court also opined that the lower court had erred in concluding that the "law of the case" had been determined by another Judge in pretrial motions.

This matter was returned to the lower Court as a result of the agencies inability to return the vehicle to the plaintiff after the Court of Appeals opinion to determine the value of that vehicle to be paid as damages to the defendant.

DISCUSSION

- I. S.C. Code of Laws §15-77-310 as amended, provides that a party must file a petition within 30 days following the final disposition of the case, that the petition must be supported by an affidavit setting forth the basis for the request.

The final remittitur by the Court of Appeals was forwarded to the Clerk of Court on July 2, 2013. The defendant has failed to file a petition for attorney fees within 30 days of that remittitur. The Court held the proper calculation for determining when to start the 30 day period begins "...when the clerk of Court of Common Pleas filed the remittitur..." (Mcdowell v. South Carolina Dept. of Social Services, 300 S.C. 24, 1989)

In this matter the defendant asked for attorney fees in the original action, they were not granted and the Court of Appeals did not address this issue. The defendant has failed to file any additional petition as required under this statute and is thereby precluded from requesting those fees at this time.

- II. S.C. Code of Laws §15-77-300 and case law require three prerequisites for an award of fees under this section: The contesting party must be the “prevailing party”, the court must find that the agency acted without substantial justification in pressing its claim against the party and the court must find that there are no special circumstances that would make an award of attorney fees unjust. (City of Charleston v. Masi, 362 S.C. 505, 2005)

This matter involved the statutory construction of a particular State statute, in that it provides for specific circumstances the agency must show to have a Court confirm a seizure of property. It is clear from the transcript of the prior proceeding in this matter the Court reviewed not only the statute but attempted to get clarification from comments contained in the Drug Litigation reference book for South Carolina. In addition another Circuit Court Judge had also reviewed this issue and determined that one section did not preempt the use of the other subsections in the forfeiture statute.

Although the Court of Appeals ultimately determined that the weight section did preempt all other sections, the transcript and both lower Court reviews show that this issue was not one that was clear on its face. In fact it appears that seizures under this section had been conducted for numerous years by this agency interpreting the statute in this very way. These prior seizures were all reviewed by prior courts without question or appeal.

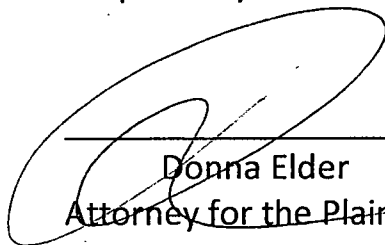
It would have been reasonable for Horry County Police Department to act upon this procedure in light of the years prior to this case in which the Courts approved seizures such as this one. In addition from the lower Courts Judges rulings on this issue it is also leads us to the conclusion that Horry County acted with substantial justification in pursuing the seizure in this matter (Substantial justification in pressing a claim, for purposes of the state action statute, means justified to a degree that could satisfy a reasonable person, Layman v. State, 376 S.C 434, 2008; Department of Revenue acted with

substantial justification in pursuing action against operator of video gaming business ..and thus operator was not entitled to attorney fees, even though it was ultimately determined that the statute was unconstitutional, Video Gaming Consultants, inc. v. South Carolina Department of Revenue, 358 S.C. 647, 2004).

CONCLUSION

The statute addressing attorney fees is clear, that a person seeking fees must file a petition with a supporting affidavit within 30 days of the final disposition on this matter. The defendant has failed to do so and should be barred from seeking fees under this section. In the alternative the agency relied on a long held interpretation of the seizure statute in allowing them to seize personal property based upon distribution, which the court determined was in fact present in this case and as a container. The interpretation was in fact reasonable at the time which is evident by the review conducted by 2 lower Court Judges. The defendant should be barred as failing to meet this requirement of the fee award statute.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Donna Elder', is written over a horizontal line.

Donna Elder
Attorney for the Plaintiff

Dated: February 6, 2014
Conway South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT
09-CP-26-1281, 3127, 3128

Jimmy Richardson, as Solicitor,
of the Fifteenth Judicial Circuit,
o/b/o Horry County Police
Department,
Plaintiff,

v.

Michaela Albin, as Personal
Representative of the Estate of
Michael Albin,
Defendant.

DEFENDANT'S REPLY MEMORANDUM

Facts

Plaintiff's predecessor in interest sued Defendant's Decedent in three (3) cases for forfeiture, later consolidated. Plaintiff failed in all three claims.

Question Presented

Is Defendant entitled to an award of reasonable attorney fees?

Discussions

Plaintiff's contention that Defendant's Petition is untimely is so absurd as not to merit discussion. Similarly, Plaintiff's apparent contention that Defendant did not prevail is laughable on its face.

The question of whether Plaintiff acted reasonably is easily answered. No reason for commencing three separate actions has ever been articulated. The inference that arises from Plaintiff's counsel's subsequent conduct is that the purpose was to harass and humiliate the Defendant, a retired combat veteran suffering from cancer and undergoing radiation therapy.

Section 44-53-530, Code of Laws of South Carolina expressly provides for service by certified mail "to the last known address as appears in the records of the governmental agency which records the title or lien." Plaintiff's counsel chose to ignore this provision and instead sent the pleadings by certified mail to a different, inaccurate address. Because of the inaccuracy of the address the letters were returned. At this point correspondence had passed back and forth between Plaintiff's counsel and Defense counsel regarding the first case, 09-26-1281. Plaintiff's counsel was well aware of Defense Counsel's representation of Mr. Albin.

Case No. 1281 had been improperly served by publication after Plaintiff's counsel

executed an Affidavit to this Honorable Court swearing that despite a diligent effort she was unable to locate the Defendant. This Affidavit was plainly false in that Defendant was out on bond for the charges against him which were ultimately dismissed. Defendant was bound by his bond to appear at the call of Plaintiff's counsel. No reason has ever been articulated for this improper service, which embarrassed and humiliated the Defendant.

After correspondence back and forth with Defense counsel regarding case no. 1281 Plaintiff's counsel then gave two more Affidavits to this Honorable Court falsely representing that, despite a diligent effort, she was unable to locate the Defendant. At the time Defendant was out on bond and Plaintiff's counsel had earlier corresponded with Defense counsel. No reason has ever been articulated for these patently false Affidavits to this Honorable Court, despite written requests for an explanation. Defendant was further embarrassed and humiliated by Plaintiff's counsel's false Affidavits to this Honorable Court and the Orders for Service by Publication resulting from Plaintiff's counsel's false Affidavits.

Defense counsel sought Plaintiff's counsel's consent to return of the motor home because of the obvious fatal flaw in Plaintiff's claim- there was nowhere near the statutory amount of marijuana present. Plaintiff's counsel's consent was not forthcoming. Accordingly, Defense counsel was required to move for Summary Judgment.

At the hearing on the Motion for Summary Judgment rather than conceding the issue Plaintiff's counsel took the unreasonable position that the motor home was a "container" under the statute and therefore the minimum quantity did not apply. Regrettably this Court was taken in by this specious argument and years of litigation resulted. The Appellate opinion makes plain the absurdity of this position.

The difficulties in procuring compliance with discovery requests made by Defense counsel to Plaintiff's counsel are a matter of record. Remarkably, Plaintiff's counsel never served any discovery requests of any description on the defense. Plaintiff's counsel's intransigence regarding discovery persisted after the appeal was decided. In a remarkable written statement, inexplicably filed with the Court, Plaintiff's counsel in essence asserted that she need not comply with discovery.

At trial Plaintiff's counsel's star witness was one whom she admittedly had failed to name in Answers to Interrogatories. Her assertion that documents had been produced (although not enumerated) that mentioned the witness' name was accepted by the Court over Defense objections. Despite this surprise testimony Plaintiff was unsuccessful in her claim based upon this witness' testimony.

Plaintiff's counsel failed to file a pre-trial brief before the 2011 trial and before the 2013/14 damages hearing. No settlement offer was ever made since before the 2011 trial.

Plaintiff's evidence was unequivocal that Plaintiff had been punished before for failing to maintain wrongfully seized vehicles. After giving this testimony Plaintiff failed to maintain the Defendant's vehicle, resulting in substantial damages thereto and a loss in value of 80%. No reason has ever been articulated for this failure.

When Plaintiff had no right to do so the representation was falsely made to the SCDMV that Plaintiff was the rightful owner of the motor home so as to procure title thereto. No reason has ever been articulated for this misrepresentation.

When Plaintiff had no right to do so Plaintiff sold Defendant's home and, upon learning of its error, kept it a secret for ten months. No reason has ever been articulated for this misconduct and secrecy.

Plaintiff's evidence was unequivocal that no person has ever been disciplined in any fashion for failing to maintain the motor home, falsely procuring the title and the unauthorized and illegal sale of the motor home. No reason has ever been articulated for this failure.

Plaintiff, with no supporting evidence, blithely asserts: "...it appears that seizures under this section [44-53-520(A)(6)] had been conducted for numerous years [sic] by this agency interpreting this statute in this very way."

Plaintiff counsel's appears to argue that because she has been so wrong for so long she is entitled to reasonably rely upon her previous errors.

Similarly, Plaintiff's counsel's contention that this was a novel question has been addressed by our Courts in the context of § 15-77-300 and rejected as a defense to a claim for attorneys fees. Cornelius v. Oconee County, 369 S.C. 531, 633 S.E. 2^d 492 (2006).

Conclusion

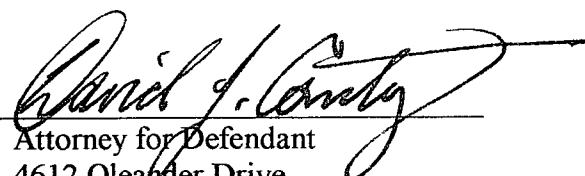
Plaintiff acted unreasonably from the outset. The fact that Plaintiff's counsel has been so wrong for so long is no defense to a claim for attorneys fees. Plaintiff's utter intransigence throughout the five years of these proceedings, misleading of this Honorable Court as to the facts and the law, and patently frivolous assertions in her memorandum emphatically underscore the need for an award of substantial attorneys fees in this matter.

Respectfully Submitted,

David J. Canty, P.A.

Myrtle Beach, S.C.
February 17, 2014

by:



Attorney for Defendant
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mbcounsel@frontier.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	09-CP-26-1281, 3127, 3128
Jimmy Richardson, as Solicitor,	)	
of the Fifteenth Judicial Circuit,	)	
o/b/o Horry County Police	)	
Department,	)	
Respondent,	)	PETITION
	)	
v.	)	
	)	
Michaela Albin, individually and	)	
as personal representative of the	)	
Estate of Michael J. Albin,	)	
<u>Petitioner.</u>	)	

The Petitioner would respectfully show unto this Honorable Court as follows:

1. That this is a civil action initiated by the Plaintiff as agent for a political subdivision of the State.
2. That the Plaintiff is not the prevailing party in that the \$1,847.00 in U.S. Currency, .38 caliber revolver and Decedent's home were all ordered returned to him.
3. The Plaintiff acted without substantial justification in pressing its claims in that it had no reasonable basis in law and fact and relied on an erroneous legal conclusion.
4. There are no special circumstances that would make an award of attorney's fees unjust.
5. That the Plaintiff did not follow any statutory or constitutional mandate but rather acted merely at his own discretion.
6. That as more fully appears in the Affidavit of Counsel attached hereto and the record as a whole Defense Counsel is an attorney in good standing of substantial experience who, in light of the nature, extent and difficulty of the case devoted a reasonable amount of time thereto and obtained a beneficial result for the Estate of Defendant's Decedent.
7. That Defense counsel's fees are at or below the customary legal fees for similar services.

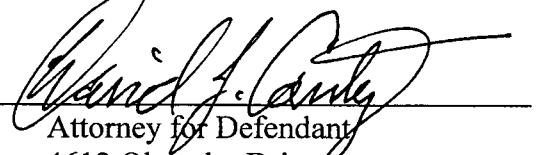
Wherefore Petitioner prays that this Honorable Court inquire into the matters herein alleged

and:

- a.) Award the Defense a suitable sum as attorneys fees; and
- b.) Grant such other and further relief as this Honorable Court deems just and proper.

Myrtle Beach, S.C.
February 26, 2014

David J. Canty, P.A.

A handwritten signature in black ink, appearing to read "David J. Canty", is written over a horizontal line.

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT
09-CP-26-1281, 3127, 3128

Jimmy Richardson, as Solicitor,
of the Fifteenth Judicial Circuit,
o/b/o Horry County Police
Department,
Plaintiff,

v.

Michaela Albin, individually and
as personal representative of the
Estate of Michael J. Albin,
Defendant.

DEFENDANT'S AFFIDAVIT
OF COUNSEL FOR ATTORNEY'S FEES

Personally Appeared Before Me David J. Canty who, being duly sworn, deposes and says:

1. That he has represented Defendant and Defendant's Decedent since the commencement of the first of these three combined actions.
2. That the Defendant has prevailed in all three combined forfeiture actions.
3. That he was admitted to the South Carolina and United States District Court bars in 1981, the Fourth U.S. Circuit Court of Appeals bar in 1982 and the United States Supreme Court bar in 2011.
4. That he is a graduate of Phillips Academy Andover, Vanderbilt University and the University of South Carolina School of Law.
5. That he was elected and re-elected to the Horry County Council and served eight years as Chairman of the Horry County Election Commission.
6. That he has successfully litigated matters in a variety of judicial and administrative fora including the Supreme Court of South Carolina and Fourth U.S. Circuit Court of Appeals.
7. That he has litigated Appellate matters before the South Carolina Appellate Courts on six (6) occasions, prevailing in four (4): Davis v. Doe, 285 S.C. 538, 331 S.E.2d 352 (1985); S.C. Ins. Co. v. Price, 315 S.C. 212, 432 S.E.2d 508 (Ct. App. 1993); Armstrong v. Atlantic Beach Mun. Election Com'n,

380 S.C. 47, 668 S.E.2d. 400 (2008); and Hembree v. One Thousand Eight Hundred Forty Seven Dollars (\$1,847.00) U.S. Currency, _____ S.C. _____, 743 S.E.2^d 864 (S.C. Ct. App. 2013).

8. That the instant action arose from the execution by SLED of a search warrant for Defendant's Decedent's premises seeking evidence of gambling.

9. That no person has been convicted of any crime as a result of the raid.

10. That he customarily bills and is paid at the rate of Two Hundred Forty & 00/100 (\$240.00) Dollars per hour.

11. That attached hereto is an itemized statement reflecting the time and costs necessarily devoted to the defense of this matter.

12. That he is informed and believes that Defendant's Decedent is entitled to an award of reasonable Attorney's Fees pursuant to Section 15-77-300, Code of Laws of South Carolina.

13. That Plaintiff has acted unreasonably from the outset of this five year long adventure in litigation.

Further the Affiant Sayeth Not.


David J. Canty

Sworn to before me this 25th
day of February, 2013


Notary Public for South Carolina
My Commission Expires: 08/06/19

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT
09-CP-26-1281, 3127, 3128

Jimmy Richardson, as Solicitor,)
of the Fifteenth Judicial Circuit,)
o/b/o Horry County Police)
Department,)
Plaintiff,)

v.)

Michaela Albin, as Personal)
Representative of the Estate of)
Michael Albin,)
Defendant.)

ORDER

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MAR 05 2015

SC Court of Appeals

This matter came before me at Conway on November 12, 2013, January 21 and 31, 2014. The Court of Appeals remitted this matter after reversing this Court's confirmation of forfeiture of Defendant's Decedent's residence, a 1994 Monaco motor home. Plaintiff sold the motor home via an online auction while the appeal was pending and is thereby unable to return the motor home. Accordingly, the parties proceeded on the issue of damages. After considering the evidence presented I hereby make the following:

Findings of Fact

Defendant's Decedent disputed the Plaintiff's seizure of his home from the very outset and without equivocation. He counterclaimed for conversion and sought the highest damages. Plaintiff was equally unequivocal in his assertion that the home was forfeit, a question ultimately decided against him without further appeal.

Plaintiff had exclusive possession of the motor home from the date of its seizure (January 25, 2009) until the date of its sale (November 12, 2012). Photographs used to sell the motor home at auction show extensive water damage, mold and mildew. The home sold for \$13,105.00 "as is."

The NADA book value of the motor home without options the month it was seized was \$56,090.00. Defendant's testimony put the value of the motor home at approximately \$63,000.00 including options. Plaintiff contended the value was close to the auction sales price, offering the testimony of two witnesses to that effect. One witness later revised his valuation upward several times after reviewing the NADA data. The same witness testified that all options were included in the base price and nothing on a defense preliminary list of options should be added to the base price because all were included. He then admitted that testimony to be inaccurate.

No pretrial brief was filed nor offer of settlement made by the Plaintiff. No offer to disgorge the auction proceeds was made. Plaintiff's own testimony established that this is not the

first time Plaintiff has had to pay damages for failure to maintain vehicles seized and held for extended periods of ultimately unsuccessful litigation. This testimony came *before* the Plaintiff's admittedly mistaken sale of the motor home. Plaintiff's witness was clear that no one had ever been disciplined in any manner for the failure to maintain the motor home, the erroneous application for title to the motor home nor for the mistaken sale. Further, after the mistaken nature of the sale became known to Plaintiff no mention of it was made to Defendant until September, 2013, ten months later. At no time was consideration given to disgorging the auction proceeds to the Defendant after the Court of Appeals had ruled and the time to appeal had expired.

Although this Court made a specific provision in its prior Order for the disposition of the proceeds of sale of the motor home, these directives admittedly were not followed, according to the Plaintiff's testimony.

Defendant testified the motor home contents seized included all her father's personalty except some clothes and personal items he recovered a few days after the seizure. She valued the personalty at \$1,750.00. She further testified her father kept making the \$1,100.00 monthly note payments until the note was paid in full the month of his death and likewise paid the insurance premiums and registration fees. The testimony regarding the note payments was corroborated by one of the note holders. Defendant also testified her father incurred \$750 monthly housing costs from the date of seizure until his date of death (June 11, 2012).

Conclusions of Law

As bailee under an involuntary bailment Plaintiff was under a legal duty to take reasonable care of Defendant's property until the issue of possession was resolved with finality. This Plaintiff failed to do. Plaintiff further had a duty not to erroneously misrepresent the status of title of the motor home to the SCDMV. This Plaintiff also failed to do. Finally, Plaintiff had a duty not to sell Defendant's motor home, which it did.

The measure of damages is that which would put the victim back in the place he would have been but for the other party's negligence and/or conversion and/or breach of an implied contract or bailment. Defendant is entitled to the fair market value of the motor home and its contents plus interest from the date of seizure, which I conclude to be \$63,000.00 plus interest to the date of entry of Judgment herein at 7.25% per annum per statute.

Defendant is further entitled to the additional housing expense incurred by her Decedent as a direct and proximate result of the Plaintiff's conduct. I conclude this sum to be \$750.00 per month from the date of seizure to the date of death, or 29 months.

It is, therefore,

Ordered that Defendant have Judgment against the Plaintiff for the sum of Sixty Three Thousand & 00/100 (\$63,000.00) Dollars plus pre-judgment interest at the statutory rate from the date of seizure the motor home, and it is

Further Ordered that Defendant have Judgment against the Plaintiff for the sum of an additional Twenty One Thousand Seven Hundred Fifty & 00/100 (\$21,750.00) Dollars for the loss of use of the motor home, without pre-judgment interest, and it is

Further Ordered that Defense counsel submit an Affidavit in Support of Attorneys Fees within thirty (30) days of the date of this Order and a hearing held thereon within thirty (30) days of such Affidavit unless the parties agree to waive such a hearing, and

It Is So Ordered.

Conway, S.C.
February ____, 2014

Larry B. Hyman, Jr.
Judge of the Court of Common Pleas
of the Fifteenth Judicial Circuit

Certificate of Counsel

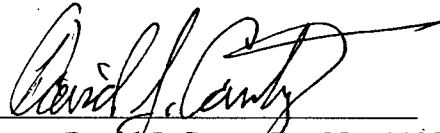
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MAR 05 2015

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 3, 2015



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 05 2015

APPEAL FROM HORRY COUNTY
Court of Common Pleas

SC Court of Appeals

Larry B. Hyman, Circuit Court Judge

Case Nos. 2009-CP-26-1281
2009-CP-26-3127
2009-CP-26-3128

J. Gregory Hembree, on Behalf of the Horry County Police Department,
Respondent,

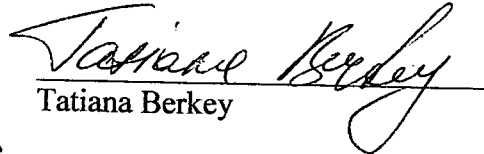
v.

Taurus 38 Special Pistol, SN: SF53109, 1994 Monaco RV, SN: VIN: 1RF120611R1010972 and
One Thousand Eight Hundred Forty-Seven Dollars (\$1,847.00), Defendant Property,

Michaela Albin, Individually and as Personal Representative of the Estate of Michael J. Albin,
Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on J. Gregory Hembree, on Behalf of the Horry County Police Department by depositing a copy of it in the United States Mail, postage prepaid, on March 3, 2015, addressed to the attorney of record, James Richard Battle, II, Esq., P.O. Box 530, 1200 Main St., Conway, S.C. 29528-0530.


Tatiana Berkey

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