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1 it's safer to just stop the car where it was stopped so
2 that from a seated position in the vehicle either one of us
3 could still look out of the vehicle and have a good line of
4 sign on both of those cars. If we had stopped at an angle,
5 we may be able to see that females, not Mr. Hewins or vice
6 versa.

7 Q. Thank you. I have nothing further.

8 A. Yes, ma'am.

9 THE COURT: All right. Thank you. You may step
10 down, Officer Hall.

11 THE WITNESS: Thank you.

12 THE COURT: Any other witnesses from the State?

13 MS. MONTS: Not on this issue, Your Honor.

14 THE COURT: Anything from the Defense?

15 MR. HARBIN: Yes, sir, Judge. The Defense would
16 call Officer Cothran to the stand.

17 THE CLERK: Officer Cothran, if you would come
18 forward to be sworn in, please.

19 Do you solemnly swear or affirm that the testimony
20 you're about to give is the truth, the whole truth and
21 nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. You may be seated. Would
24 you please state your name for the record?

25

B. H. COTHRAN

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. HARBIN:

4 Q. Good morning, Officer Cothran.

5 A. Good morning.

6 MR. HARBIN: Judge, may I approach the witness?

7 THE COURT: You may.

8 Q. Do you recognize this document?

9 A. Yes, sir.

10 Q. Can you tell the Court what that is?

11 A. It appears to be a copy from the CAD report, Computer
12 Assisted Dispatch, that our agency uses.

13 Q. And from that document, can you read it and tell me
14 when Office Gardner and Officer Hall arrived on scene?

15 A. It appears to be double-oh thirty-six.

16 Q. Okay. And that same document, does it have your name
17 on it? Does it say when you arrived on the scene?

18 A. Yes, sir.

19 Q. And what time was that?

20 A. Double zero forty-eight.

21 Q. So that would be twelve thirty-six and twelve forty-
22 eight for us civilians?

23 A. Yes, sir.

24 Q. Okay. Officer, did you bring with you today a copy of
25 your police report?

1 A. Yes, sir.

2 Q. And have you had -- well, let me ask you this. Do you
3 recollect the night of, I believe, August 9, 2010, this
4 incident date?

5 A. Yes, sir.

6 Q. Okay. And can you tell for the Court what you
7 observed when you first arrived on scene?

8 A. When I arrived on ---

9 Q. If you recall?

10 A. Yes, sir. When I arrived on scene I observed the
11 Impala that was being utilized for the APU car that night

12 parked out in the middle of the parking lot. There were

13 two cars to its right. One was of a black Lexus that had

14 been backed in and at the driver's side was a dark Toyota

15 Camry that had been pulled in. I observed Detective

16 Gardner making contact with the occupant, appeared to be

17 the occupant of the Lexus. I observed Officer Hall sitting

18 in the vehicle with the door open. It appeared that she

19 was trying to retrieve information from the NDB.

20 Q. Okay. And you're welcome to refer to your report if

21 your memory is lacking. But as I read your report, it

22 appears and you can tell me if this is correct, that when

23 you arrived you spoke with Officer Gardner, he kind of gave

24 you the skinny, he kind of told you in short detail what

25 was going on. And part of that information that he gave

1 you was that my client had told them that he was there to
2 visit someone in room two thirty-seven?

3 A. Yes, sir.

4 Q. And as a result of that conversation, I believe your
5 report indicates that you actually went to management,
6 hotel management, to see whether or not there indeed was
7 somebody in room two thirty-seven?

8 A. Yes, sir.

9 Q. And after receiving that information, it's my
10 understanding from your report that you went and actually
11 verified that there was somebody in two thirty-seven, and
12 made contact with them?

13 A. Yes, sir.

14 Q. Okay. And after you were able to confirm that someone
15 was in two thirty-seven, I believe that it said that you
16 reported back to -- well, I won't say report back, but you
17 arrived back in, I guess, the direct area, the direct
18 vicinity of Officer Gardner. Is that your recollection? I
19 mean, in other words, you came back downstairs?

20 A. Well, I don't recall if I went -- after I left -- when
21 I returned from the front desk to find out the information
22 from room two thirty-seven, of whether I went there
23 immediately or if it was -- there was a few minutes
24 between. I don't recall.

25 Q. Okay. I would ask you to refer to your police report

1 because I'm going to ask you some direct questions about
2 your recitation of what happened that night. And if you
3 don't have a copy, I do, that you can refer to.

4 A. Okay.

5 Q. But it says, I responded to 50 Orchard Park Drive, the
6 Clarion Inn ---

7 MS. MONTS: Objection, Your Honor. We ask for a
8 question, not reading the officer's reports.

9 MR. HARBIN: I'm asking him to compare this to
10 his recollection.. He said he didn't recall.. So I'm asking

11 ---

12 THE COURT: Just ask him a question about whether
13 the statement is accurate.

14 MR. HARBIN: Well, that's -- I'm sorry, Judge. I
15 thought that's what I was doing.

16 THE COURT: Put it in question form, if you
17 would, Mr. Harbin.

18 MR. HARBIN: Yes, sir.

19 Q. Your report seems to indicate, and I'm asking if it's
20 true, that after you visited with management, confirmed
21 that there was someone in two thirty-seven, actually made
22 contact with two thirty-seven, and then came downstairs.
23 At that point, you observed Officer Gardner conduct a Terry
24 frisk for weapons and the subject placed into handcuffs.
25 Is that correct?

1 A. My report states that I went to the front desk to
2 inquire about the resident of two thirty-seven. I obtained
3 the resident's name and date of birth and returned to the
4 area. Quote unquote, returned to area and checked
5 Henderson for NCIC and warrants. I would have done that in
6 my vehicle. I did not make contact with the resident of
7 the room before that.

8 Q. Okay. I understand. So you didn't necessarily go
9 upstairs. You went to the management and then you went and
10 check based on the information that you had?

11 A. Yes, sir.

12 Q. Okay. I've got you. Your report indicates that at
13 that time, you then witnessed Officer Gardner conduct the
14 Terry frisk for weapons?

15 A. Yes, sir.

16 Q. Do you recall that?

17 A. Yes, sir.

18 Q. Okay. So you arrived and talk to Officer Gardner and
19 he gets you enough information for you to be of assistance,
20 which that assistance being to go check on this room two
21 thirty-seven information. After checking on that
22 information, then you go -- well, I'm sorry. After
23 receiving the information from management, you then run
24 that information on your computer as best you can, I guess
25 back in your unit. Is that what you were intending to ...

1 A. Yes, sir.

2 Q. And then you went to check on two thirty-seven and
3 then you used that information to go check that through
4 y'all's ability to check in your system, I guess; right?

5 A. Yes, sir.

6 Q. Okay. Then after you do that, then you witness
7 Officer Gardner performing the Terry frisk of my client,
8 Mr. Hewins?

9 A. Yes, sir.

10 MR. HARBIN: One moment, Judge. That's all I
11 have.

12 Thank you, Office Cothran. I appreciate it.

13 THE COURT: Cross-examination.

14 **CROSS-EXAMINATION**

15 **BY MS. MONTS:**

16 Q. Officer, do you know if you talked with Detective
17 Gardner prior to your arriving at the hotel, if you recall?

18 A. I don't believe so.

19 Q. And do you know if you spoke to Officer Gardner before
20 going to management?

21 A. Yes, ma'am.

22 Q. Do you know if the Terry frisk could have occurred
23 prior to you going to management?

24 A. I don't recall.

25 Q. And based on where the cars were parked, could the

1 A. In my patrol unit, yes, sir.

2 Q. Okay. And then after you do that, then you witness
3 Officer Gardner Terry frisk the suspect?

4 A. Yes, sir.

5 Q. Okay. Now, your report also indicates that when you
6 arrived you observed the suspect, Mr. Hewins, standing next
7 to a black Lexus. Is that correct?

8 A. Yes, sir.

9 Q. Okay. So by the time that you arrive on scene, twelve
10 minutes after the initial contact, Mr. Hewins was already
11 standing outside his vehicle; correct?

12 A. When I arrived I observed Mr. Hewins standing beside
13 his vehicle.

14 Q. Okay. And ---

15 A. I ---

16 Q. I apologize.

17 A. The CAD does show the time. Whether that's the time
18 that I actually arrived or if that's just the time that it
19 documented that I called out on scene, I am unsure.

20 Q. Okay. Let's leave the time be for now, the exact
21 time. According to your report you arrived, you saw Mr.
22 Hewins standing outside his vehicle. Then you spoke with
23 Office Gardner, getting enough information for him to
24 basically say, hey, can you go check on two thirty-seven?

25 Is that a fair description?

1 Clarion Hotel? And you can also reference these two
2 pictures that the State provided, as well, if that helps?

3 A. Yes, sir.

4 Q. And is that where you recall the -- all the cars being
5 parked to the best of your recollection and approximately
6 which spaces they were in?

7 A. Yes, sir.

8 Q. All right. Thank you.

9 MR. HARBIN: Judge, at this time I would like to
10 move the CAD report and the map into evidence for purposes
11 of this hearing only.

12 THE COURT: I think you've seen both of those?

13 MS. MONTS: Yes, Your Honor.

14 THE COURT: All right. They will be marked as
15 exhibits.

16 (WHEREUPON, Defendant Exhibit Numbers 2 and 3 were
17 admitted for purposes of the hearing only.)

18 MR. HARBIN: Nothing further from this witness,
19 Judge.

20 THE COURT: All right. Thank you. You may step
21 down, Officer Cothran.

22 THE WITNESS: Thank you.

23 MR. HARBIN: Judge, I've got a witness in the
24 hall if I could go get them?

25 THE COURT: All right.

1 Defendant and the other vehicle have left their location?

2 Was this Officer's car -- was Officer Gardner's car
3 blocking them in or was there room?

4 A. There was plenty of room for either vehicle to leave
5 the area.

6 Q. And where did you place your vehicle?

7 A. If I remember correctly, I pulled in at an angle to
8 where the front of my car was approximately one or two
9 places from the end of the Toyota Camry.

10 Q. Thank you.

11 MS. MONTS: Nothing further.

12 THE COURT: Any redirect?

13 MR. HARBIN: Yes, sir. One question.

14 **REDIRECT EXAMINATION**

15 **BY MR. HARBIN:**

16 Q. I believe that we had previously marked this right
17 here. I had asked Officer Gardner to mark where he
18 believed my client's car and the other car was on location
19 and where his patrol car was. Do you mind putting a mark
20 where you believe your car was in relation to the patrol
21 car?

22 A. Yes, sir.

23 Q. Okay. Now, I didn't ask you specifically, but is this
24 a representation to your -- an accurate representation to
25 your recollection of the setup of the parking lot and the

1 MR. HARBIN: Judge, I think she may have stepped
2 in the bathroom, but I can go ahead and call Mr. Hewins.

3 THE COURT: All right.

4 THE CLERK: Mr. Hewins, if you would come forward
5 to be sworn in, please. Please place your left hand on the
6 bible and raise your right.

7 Do you solemnly swear or affirm that the testimony
8 you're about to give is the truth, the whole truth and
9 nothing but the truth, so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Thank you. You may be seated. Would
12 you please state your name for the record?

13 THE WITNESS: Erick Eton Hewins.

14 ERICK HEWINS,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. HARBIN:

18 Q. Mr. Hewins, do you recall August 9th, 2010?

19 A. Yes, sir.

20 Q. And that night do you recall the incident -- your
21 arrest incident at the hotel Clarion Inn?

22 A. Yes, sir.

23 Q. Okay. What were you doing prior to the arrival of
24 Officer Gardner and Officer Hall?

25 A. Sitting in my car talking to Taylor and Megan.

1 Q. Okay. And what had you been doing prior? Why were
2 you at the Clarion specifically?

3 A. I was seeing Michelle.

4 Q. Who is Michelle?

5 A. The girl that was staying in two thirty-seven.

6 Q. Okay. So you were there to see someone staying in
7 room two thirty-seven?

8 A. Yeah.

9 Q. Okay. And why had Megan and Taylor come to meet you
10 at the Clarion?

11 A. To follow me to -- Taylor was going to take the car I
12 was in and I was going to pick up a truck.

13 Q. Okay. So basically you had one car and you needed to
14 move two cars and you needed somebody to basically do you a
15 favor?

16 A. Yes, sir.

17 Q. And how long had you been sitting there before Officer
18 Gardner and Officer Hall arrived, talking to Megan and
19 Taylor?

20 A. A couple of minutes.

21 Q. Do you recall -- it's August 9th. What was the
22 weather like?

23 A. Hot.

24 Q. And what do you remember was your attire? What were
25 you wearing?

1 A. A shirt and a pair of shorts.

2 Q. What kind of shirt and what kind of shorts? If you
3 recall. If you don't ...

4 A. I know it blue jean shorts and probably a red T-shirt.

5 Q. Okay. So you're sitting there in the car. Now,
6 describe how your car was positioned in relation to how
7 Megan and Taylor's car was positioned?

8 A. The girl in two thirty-seven, she had went to the
9 store. She backed the car in. I was just leaving. So I
10 went out to get in the car and it was backed in. But
11 Taylor and Megan was already down there waiting on me. And
12 Taylor had texted the word, ~~busted~~, because she seen a girl
13 come out of two thirty-seven, which I had told her that she
14 wasn't in the room. But when they pulled up, they saw the
15 girl walk out the room. So she texted the word, busted, to
16 the phone. And then by the time I get downstairs and get
17 in the car, me and her and Megan was talking about where I
18 was going to take them to and pick up the truck. And
19 Taylor was going to take the Lexus. About that time ---

20 Q. So basically you were kind of telling them where you
21 were going, where you were headed, and what you needed them
22 to do?

23 A. Right. Right.

24 Q. Now, do you recall the moment at which Officer Gardner
25 and Officer Hall arrived?

1 A. Yes, sir.

2 Q. Okay. And can you describe for the court exactly how
3 they arrived. Were they walking, driving?

4 A. No, they pulled up in an unmarked vehicle.

5 Q. Where did they pull up?

6 A. Directly in front of us.

7 Q. Okay. When you say -- well, why do you say directly
8 in front of us?

9 A. Behind Megan and them car and directly in the front of
10 my car.

11 Q. --So the length of his car was effectively in front of
12 your car and Megan's car at the same time?

13 A. Yes, sir.

14 Q. How close was his car to your car?

15 A. I mean, like they said, they did have enough room to
16 open up the car door, but if one of us actually wanted to
17 leave, we would have hit their patrol car. I mean,
18 unmarked car.

19 Q. And so did you, in fact, have the ability to start
20 your car, turn the wheel and go out, leave out?

21 A. No, sir.

22 Q. Now, after the car parks in front of you, what do you
23 observe Officer Gardner do?

24 A. A male officer coming around, coming around the
25 unmarked car towards my car. I thought it was someone I

1 knew until I actually -- until he actually got directly in
2 view where I could see the police vest and the badge.

3 Q. Okay. So you saw his vest and his badge. Was he
4 wearing a gun at the time?

5 A. I can't -- I mean, I'm pretty sure he was, but I
6 wasn't really just paying that no attention.

7 Q. All right. Did you notice whether or not Officer Hall
8 got out at the same time Officer Gardner did?

9 A. She did not.

10 Q. And so she remained in the vehicle?

11 A. Yes, sir.

12 Q. Okay. When Officer Gardner approached you, can you
13 tell the Court where -- how he approached you, where he was
14 standing?

15 A. He was standing like directly at my window. But his
16 exact words was that this is a heavy hitters area and what
17 are y'all doing out here? And I was like, heavy hitters?
18 I don't know nothing about no heavy hitters. And then he
19 went on to explain car break-ins and drugs. And then I was
20 like, well, I don't know nothing about no car break-ins or
21 no drugs.

22 Q. Can you describe how close your vehicle was parked to
23 Megan and Taylor's vehicle?

24 A. We was close because we was in parking spaces right
25 beside each other.

1 Q. So would it be fair to say that your car was properly
2 parked in the middle of your parking space and so were they
3 were in the middle of theirs?

4 A. Right.

5 Q. So whatever the ordinary distance between two cars
6 are?

7 A. Right.

8 Q. Okay. So it wasn't unusually close or unusually far
9 away?

10 A. No. No, sir.

11 Q. Okay. Did you have enough room to open your door to
12 get out of the car?

13 A. Yes, sir.

14 Q. Okay. Now, and Megan the same, I suppose?

15 A. Right. Right.

16 Q. You were parked -- were you windows side-by-side?

17 A. Right.

18 Q. Okay. And I guess when -- who was driving the other
19 vehicle?

20 A. Megan.

21 Q. Megan. So when Megan pulled in, she was able to roll
22 her window down and y'all were essentially side-by-side at
23 that point?

24 A. Yes, sir.

25 Q. Now, when Officer Gardner walked to you, you said he

1 was between your vehicle and Megan's vehicle. Is that
2 correct?

3 A. Yes, sir.

4 Q. Okay. How close does that make him to -- if you can
5 guesstimate for the Court, try to give him the best idea
6 you can, how close was he standing to you and how far away
7 or close was he from Megan's car and your car?

8 A. I mean, he was close to both. I mean, you know.
9 Like, I guess, at a normal position as, you know, someone
10 would walk up to your car and be talking to you.

11 Q. Okay. Well, let me ask you this. Was he standing
12 close enough -- well, could you open your door?

13 A. No, not if I -- no. Not while he was standing there
14 talking to me, no, I couldn't open the door.

15 Q. And why couldn't you open your door while he was
16 standing there talking to you?

17 A. Because I would have hit him with my car door.

18 Q. Okay. Now, after he approached you, he made a comment
19 about a heavy hitters area.

20 A. Yeah.

21 Q. And you said you didn't know what that means, and he
22 went on to explain what he meant by that. Is that what you
23 just described to the Court? In other words, when he said

24 ---

25 A. Yeah. He said something about drugs and break-ins.

1 Q. And what was his follow-up question after you said you
2 didn't know what that was?

3 A. Do I have my driver's license or ID.

4 Q. ID. So he asked for ID?

5 A. He said, do you have a ID. Yeah, do you have our ID.

6 Q. And what was your response?

7 A. I think I said something along the line, I'm not
8 driving so why did you ask me for my ID and my driver's
9 license?

10 Q. And what did he say?

11 A. And then he said something about to identify me or
12 something. And that's when he took everybody information
13 and relayed it back to the female officer.

14 Q. Okay. How long did all of that take? A minute and a
15 minute and a half?

16 A. I mean, they kept telling me that my name wasn't
17 coming back, so I guess, thirty minutes.

18 Q. Okay. Thirty minutes?

19 A. Something like that. I know it seemed long because, I
20 mean, they just kept saying my name ain't coming back.
21 They thought I was giving them the wrong name, you know.

22 Q. Okay. Officer Gardner, and you heard Officer
23 Gardner's testimony. He said that you were touching your
24 pocket and that he asked you to stop touching your pocket.

25 Do you recollect that?

1 A. I don't recall him asking me nothing about no stop
2 touching my pocket. All that's fabricated. I never was
3 touching my pocket. I was sitting in my car complying with
4 his questions.

5 Q. What kind of car were you driving?

6 A. A black Lexus.

7 Q. What kind of Lexus?

8 A. It's a little 300.

9 Q. A sedan?

10 A. Yeah. I guess, yes.

11 Q. Okay. You're sitting in your driver's seat. Was the
12 car on?

13 A. Sir?

14 Q. Was the car turned on?

15 A. I don't recall it being turned on. I think I was
16 actually parked, but we was about to leave. But I don't
17 think that it was on.

18 Q. Were the interior lights in your car on?

19 A. No, sir.

20 Q. Okay. Was Officer Gardner shining a flashlight into
21 the car?

22 A. No, sir.

23 Q. So was it ---

24 A. He, after, -- I think sometime after he done got me
25 out of the car -- no, while I was sitting in the car as a

1 matter of fact. Yeah. Yeah, him and some more officers
2 kept walking around the car with flashlights, yeah, sure
3 did.

4 Q. Now, let's be clear about this because initially it's
5 just Officer Gardner and Officer Hall, okay?

6 A. Right. Some other officer, some other officer was
7 there too. I can't remember. I can't recall who -- his
8 name. But I know another officer was at the back of my
9 car.

10 Q. Okay. Well, I'm asking you what you specifically
11 remember. So you do or don't remember Officer Gardner
12 himself flashing -- using a flashlight to look into the
13 vehicle?

14 A. Yeah. He was.

15 Q. Okay. Was that before or after he got you out of the
16 car?

17 A. Before.

18 Q. Okay. He was using a flashlight to shine into your
19 vehicle?

20 A. (Affirmative nod.)

21 Q. Now, once -- now, do you recall being sweaty?

22 A. No, sir.

23 Q. Do you recall being nervous?

24 A. I mean, they kept telling me that my name wasn't
25 coming back. I kind of knew what they was trying to get

1 at, you know. I probably was a little bit nervous about my
2 name not coming back. Or at least they was saying my name
3 not coming back, you know.

4 Q. I understand. Okay. Now, at some point Officer
5 Gardner decided to take you out of the car; right?

6 A. Right.

7 Q. Now, it's his testimony that he immediately frisked
8 you?

9 A. No.

10 Q. No?

11 A. Uh-uh, (negative). He didn't frisk me at all.

12 Q. Tell me what he did?

13 A. He got me out the car, another officer was standing at
14 the back of my car. I'm asking that officer why y'all out
15 here harassing me? The Officer there, Gardner, he had done
16 went upstairs. He told me to stand at the back of my car
17 and at the front of Taylor's car. So he'd done went
18 upstairs and told the other officer that was standing at
19 the back of the car with me, to watch me. So when he come
20 back from upstairs, then he asked me, I mean -- yeah. He
21 ask me, he said, what is that in your pocket? And I told
22 him I had some money in my pocket. He said, dude, do you
23 mind if I see it? At that time, I pulled out the money. I
24 handed it to him. He laid it on top of my car. And then
25 he asked me what was the other items in my pocket. And I

1 told him, cigarettes, lighter. And he said, take that out
2 and lay it on the hood of Taylor's car. So that's what I
3 did. And then after that, he shied up to me and put his
4 hand down in my pocket.

5 Q. What did you do when he put his hands in your pockets?

6 A. I asked him why was he putting his hands in my pocket.
7 And then he said that I was under arrest and they put me in
8 handcuffs.

9 Q. So his response to why he was putting his hands in
10 your pockets was that you were under arrest?

11 A. Yes, sir.

12 Q. Okay. Did you see him come out of your pocket with
13 those pills that he said were there?

14 A. No, sir.

15 Q. So he didn't pull them out and show them to you?

16 A. No, sir.

17 Q. Okay... So to be clear, you did or did not give him
18 permission to go into your pocket?

19 A. I did not give him consent to go in my pocket.

20 Q. Okay. And how long did it take him to go upstairs and
21 come back down while you were standing outside your car, to
22 come back and reach into your pocket?

23 A. I guess about five, ten minutes.

24 Q. So describe what you're doing when he's gone. You're
25 standing there by yourself?

1 A. Standing by myself, me and Taylor -- I mean, Taylor --
2 me and Taylor pretty much talking. I'm trying to read her
3 lips. She's trying to read my lips. But ---

4 Q. Okay. So Taylor and Megan are actually looking at
5 you, sitting facing you?

6 A. Right.

7 Q. You could see them?

8 A. Right.

9 Q. They hadn't been pulled out of the car yet?

10 A. No.

11 Q. Okay.

12 MR. HARBIN: May I approach the witness, Judge?

13 THE COURT: Yes, sir.

14 Q. See what's been previously marked as Defendant's
15 Exhibit Number 2. Is this an accurate depiction of that
16 parking lot to the best of your knowledge?

17 A. Yeah, I guess. I mean ---

18 Q. Well, you see the "Xs" right here?

19 A. Yeah. Yeah.

20 Q. Does that appear to be approximately where you
21 remember your car parked and Taylor's car parked?

22 A. Right.

23 Q. Okay. Now, there's two other "Xs" there. One appears
24 to be right in front of those two "Xs". Is that where you
25 recollect his patrol vehicle was parked?

1 A. Right in there, I guess.

2 Q. Well, and in reference to where he put the "X", is
3 that an accurate depiction of where the car was parked,
4 where that "X" marks the spot?

5 A. Yeah.

6 Q. Okay. So that's basically positioned in front of your
7 two cars?

8 A. Right.

9 Q. All right. And your testimony is that you did not
10 feel that you could remove -- excuse me -- you couldn't
11 leave?

12 A. No, because the car was too close.

13 Q. Okay.

14 A. No, I mean, I couldn't leave, I mean, if I wanted to.
15 I mean, I would have tore up that car, tore up mine, one.

16 MR. HARBIN: Judge, if I can have one second.

17 Q. Erick, at any time did you give permission for Officer
18 Gardner, Officer Hall, or any of the other responding
19 officers to search your person or your car?

20 A. No, sir.

21 MR. HARBIN: No further questions.

22 THE COURT: You may cross-examine.

23 **CROSS-EXAMINATION**

24 **BY MS. MONTS:**

25 Q. Mr. Hewins, did you have a driver's license on you?

1 A. No.

2 Q. Were you driving under suspension when you drove
3 there?

4 A. Probably was.

5 Q. And didn't you previously testify that the pills that
6 you had on you, you were giving to someone?

7 A. Yes, ma'am.

8 MS. MONTS: Thank you. Nothing further.

9 MR. HARBIN: No further questions, Judge.

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

11 MR. HARBIN: Judge, our last witness is Megan
12 Newman.

13 THE CLERK: Ms. Newman, if you would come forward
14 to be sworn in, please. Please place your left hand on the
15 bible and raise your right.

16 Do you solemnly swear or affirm that the testimony
17 you're about to give is the truth, the whole truth and
18 nothing but the truth, so help you God?

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Thank you. You may be seated. Would
21 you please state your name for the record?

22 THE WITNESS: Megan Elizabeth Newman.

23 MEGAN NEWMAN,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. HARBIN:

2 Q. Ms. Newman, do you recall the night in question,
3 August 9, 2010?

4 A. Yes, sir.

5 Q. And were you, in fact, in the car sitting beside Mr.
6 Hewins ---

7 A. Yes, sir.

8 Q. --- at the time the officers arrived?

9 A. I was driving the other car.

10 Q. You were driving the other car. So that means that
11 your door was right beside his door. Is that right?

12 A. Yes, sir.

13 Q. Your window was rolled down?

14 A. Yes, sir.

15 Q. His window was rolled down?

16 A. Yes, sir. We were talking.

17 Q. Okay. Just sitting in the parking lot talking. Do
18 you recall when the officers pulled up?

19 A. Yes, sir.

20 Q. Okay. Can you tell the Court where the officers
21 pulled up and how?

22 A. Erick was backed in. There was like a stairwell to
23 Erick's passenger side door where he was backed in at. He
24 was backed in and we had pulled in right beside him.

25 Because when we pulled in, he wasn't outside. So we pulled

1 in. We seen his car. We pulled in beside his car. And
2 then she called him to come down or whatever and then she
3 all --

4 Q. She being?

5 A. Taylor.

6 Q. Taylor. What relationship does Taylor have to my
7 client? Were they seeing each other?

8 A. Yeah.

9 Q. Okay. And why were y'all at the Clarion that night?

10 A. To meet him to go get the truck so she could get the
11 Lexus that he just bought her.

12 Q. Okay. So back to my original question. What did you
13 witness when -- or what did you observe when you saw
14 Officer Gardner and Officer Hall pull up?

15 A. Well, when they first pulled in, I didn't know who
16 they were. I was like, you know, who is this pulling in
17 behind us because we couldn't leave. And then when he
18 walked up to the car and I seen the back of his vest, it
19 said, like, I guess sheriff or something on the back. I
20 don't know what it said. But you could see that he was a
21 police officer once he walked up to the car.

22 Q. Okay. And when you say he walked up to the car, where
23 did he walk up?

24 A. He walked up to Erick.

25 Q. Okay. And how close was your door to Erick's door,

1 your window to Erick's window?

2 A. A foot and a half, if that. I mean ...

3 Q. So how close was Officer Gardner to you and what you
4 eventually saw, how close was he to Erick basically?

5 A. Mostly, all I could see was his backside. But he was
6 closer to Erick's car than he was to my car.

7 Q. Okay. And how much -- can you either, by using, you
8 know, foot, inches or a yard or by showing us with your
9 hands how far he was away from your car and how close he
10 was to Erick's car?

11 A. He was probably this far from my car. And probably
12 like this far from Erick's car.

13 Q. And what you're indicating is a little more than
14 shoulder width away from your car and no less than shoulder
15 width from Erick's car?

16 A. Yes, sir.

17 Q. Could you open door to leave your car if you wanted to
18 while Officer Gardner was standing there?

19 A. No, I would have hit him.

20 Q. Okay. And based on what you were able to observed,
21 could the car door -- the driver's door of Erick's vehicle
22 been opened without ---

23 A. No. He really would have hit him. I may could have
24 like shimmied my way out of there because I'm little, but
25 ...

1 Q. Okay. And you were driving. Did you feel as if you
2 could maneuver the car around or through or outside or
3 anything, could you move your car because of the patrol car
4 position?

5 A. No.

6 Q. Okay. How close was that patrol car to your car?

7 A. Well, if we were back like, say, this was us backed
8 into the parking space and this was their car, probably
9 like this.

10 Q. All right. Now, obviously, cars are much bigger than
11 those pieces of paper?

12 A. Well, yes.

13 Q. Was there enough room for Officer -- I believe Officer

14 Hall ---

15 A. If I would have backed out, I would have took out
16 their back bumper and the back panel of their car.

17 Q. Okay. Just to be as specific as we can. Officer Hall
18 had enough room to open her door, or no?

19 A. Yeah.

20 Q. Okay. So she had enough room to open her door. Did
21 she have any more room than to open her door?

22 A. No. I mean, if they would have parked any closer,
23 when she opened her door she would have at least hit
24 Erick's car.

25 Q. All right. Now, were you able to hear the actual

1 words being spoken by Erick and/or by Officer Gardner when
2 he was interviewing Erick outside ---

3 A. Not everything but most of it, just because I did have
4 somebody else in the car with me who was distracting some
5 of my attention, but most of it -- I mean, we were
6 watching.

7 Q. Okay. And before I ask about that, do you recall
8 whether or not Erick's car was on and whether or not there
9 were lights inside his car?

10 A. No, his car was not on. We had maybe been there for
11 -- we waited in the parking lot longer than we got to talk
12 to him before they pulled up.

13 Q. And that would have been how many minutes?

14 A. How long I was there or how long all of us sat there?

15 Q. How long you were there prior to the police pulling
16 up?

17 A. I was there probably about four to five minutes before
18 they pulled up. But sitting there talking maybe a minute
19 or two before they pulled up.

20 Q. And what, if anything, were you able to actually hear?
21 Not just mumbling but what words or what conversation did
22 you actually hear -- actually able to hear between Officer
23 Gardner and Mr. Hewins?

24 A. I know he did ask all of us what we were doing there
25 and we all told him the same thing.

1 Q. Which was?

2 A. That we were there to get -- well, we needed three
3 people because there was going to be three vehicles. So in
4 order for that somebody had to move every car. What was
5 the question again?

6 Q. What you were able to hear specifically Officer
7 Gardner say?

8 A. He asked us what we were doing there and we told him
9 what we were doing there. And I know they got all of our
10 information and we came back. And then he kept telling
11 Erick, you know, your name's not coming back. Your name's
12 not coming back, or whatnot. And then I believe it was
13 probably about four or five minutes afterwards he asked
14 Erick to step out of the car.

15 Q. Okay. And what did you see Erick and/or Officer
16 Gardner do once he was asked to step out of the car?

17 A. He moved Erick to the front of my car, like in the
18 back of Erick's car. They were like ...

19 Q. So was he on the -- was he in the parking lot or by
20 that time is there a sidewalk that he's standing ---

21 A. He was on the sidewalk underneath the awning of the
22 hotel.

23 Q. Okay. And what did you observe, if anything, after
24 Officer Gardner moved Mr. Hewins to the front of your car?

25 A. I know he was asking him some questions, but the only

1 thing that I really heard out loud because they were in
2 front of my car by then, was why the H-E-L-L are you going
3 in my pocket.

4 Q. Okay. And was there some passage of time between the
5 why are you going in pocket statement and him actually
6 moving him around ---

7 A. Oh, yeah. Erick was in the front of the car for a
8 good five or six minutes.

9 Q.- Okay. And what was he physically doing? Was he
10 standing, sitting?

11 A. Standing there looking mad at Taylor.

12 Q. Okay. Where were his hands, if you recall? If you
13 don't, it's okay.

14 A. I don't recall.

15 Q. And was there someone standing beside him? Was
16 Officer Gardner standing beside him the whole time or was
17 anyone standing beside him at any point in time?

18 A. I believe somebody was. I'm not positive if it was
19 him because he's looks a little different than I remember.
20 But I can't remember exactly who was there with him, but I
21 know there was somebody standing with him.

22 Q. So your recollection is that Mr. Hewins was asked out
23 of the car and then for a period of five or six minutes or
24 whatever is standing in front of your vehicle prior to what
25 you heard, why in the heck are you going in my pocket?

1 A. Yes, sir.

2 Q. And were you able to hear anything else? Were you
3 able to understand -- there's obviously a windshield
4 between you and Mr. Hewins.

5 A. Uh-huh (affirmative).

6 Q. So were you able to hear anything else?

7 A. I mean, I could see hand gestures and movements, but
8 mostly I couldn't hear anything. The only reason I heard
9 that was because he got very loud with it.

10 MR. HARBIN: One second, Your Honor. No further
11 questions. Thank you, Judge.

12 And thank you, Ms. Newman.

13 THE COURT: You may cross-examine the witness,
14 Solicitor.

15 **CROSS-EXAMINATION**

16 **BY MS. MONTS:**

17 Q. Ms. Newman, what's your age?

18 A. I am nineteen.

19 Q. So at this time you were seventeen?

20 A. Yes, ma'am.

21 Q. And how old was Taylor?

22 A. Eighteen.

23 Q. So how old was she at that time?

24 A. She was eighteen then, she's like twenty-something
25 now.

- 1 Q. Okay. So you were seventeen and she was eighteen?
- 2 A. Yes, ma'am.
- 3 Q. And whose car were you driving?
- 4 A. I was driving her car.
- 5 Q. Why were you driving her car?
- 6 A. Because I don't have a car.
- 7 Q. Why wasn't she driving her car?
- 8 A. She asked me to drive her car.
- 9 Q. Did she have a driver's license?
- 10 A. Uh-huh (affirmative).
- 11 Q. And what is your relationship with Erick Hewins?
- 12 A. He knows my dad.
- 13 Q. Isn't it true you would communicate with him?
- 14 A. Yeah. He knew my dad. He's a family friend.
- 15 Q. Well, wasn't it true you would communicate with him
- 16 late at night?
- 17 A. What do you mean by that?
- 18 Q. Texting, phone calls, meeting?
- 19 A. Yeah. I mean, he was a family friend.
- 20 Q. Okay. And he was dating Taylor?
- 21 A. Uh-huh (affirmative).
- 22 Q. And Taylor's a good friend of yours?
- 23 A. Oh, yeah.
- 24 Q. And how old is Erick Hewins?
- 25 A. I don't know his age exact.

1 position the car so that I can see everything from the car,
2 when they, in fact, didn't even act until they had other
3 backup there.

4 So my first point being that he is detained at the
5 instant that they blocked him in. As argument B to
6 argument A, the involuntary -- or the not being free to
7 leave, and this is based on everyone's -- this is
8 uncontradicted testimony that Officer Gardner walks between
9 both vehicles. Now, I think the common ordinary knowledge
10 of everybody in here of how close vehicles are apart,
11 they're, you know, whatever that measurement is, we all
12 know that they're basically designed to make sure you have
13 just enough room to open your door so you don't ding the
14 next person over. And if somebody, especially the size of
15 Officer Gardner, stands in between you, you can't open your
16 door. And the reason I'm addressing this specifically is
17 only because in the previous trial, officer -- excuse me
18 -- Judge Hyman actually brought it up himself saying, he
19 could have just opened the door and walked away. And I
20 thought that was a good point to bring up, because I don't
21 believe he could. I believe as soon as two officers roll
22 up, they block you in, they're wearing guns and badges.
23 And Officer Hall testified that her gun definitely would
24 have been showing because she wouldn't have had her shirt
25 draped over her gun. And her badge is showing, vests are

1 I've heard arguments -- I mean, I've heard statements
2 from the officers about how close they were and how close
3 they weren't. But I don't think that it is a reasonable
4 explanation that the positioning of that car is intended to
5 do anything other than intimidate and literally physically
6 trap someone in, in a vehicle. You heard testimony from
7 both officers that the car was positioned directly in front
8 of, not just one car, but both cars. You also heard
9 testimony that they were definitely not blocking them in
10 because that was an officer safety matter. And it just
11 seems absurd to me that their safety protocol requires them
12 to park in front of the very moving -- potentially moving
13 vehicles that they say they're in fear of. And they've
14 also testified that the parking lot is entirely empty. So
15 they chose this exact location on purpose. They could have
16 parked anywhere else. And, in fact, if the exhibits are to
17 be looked at, they could have parked just a little bit
18 before. There's actually a median where you couldn't get
19 to them. You know, they couldn't have been run over,
20 anything like that.

21 As far as whether or not you could see from the car,
22 the officers reported themselves that he didn't pull --
23 excuse me -- Officer Gardner. His testimony was he did not
24 pull Hewins out of the car until his backup arrived. So
25 it's a contradictory statement to say that we need to

1 We're going to preserve any argument about chain of custody
2 until, I guess, it's ---

3 THE COURT: Right. I'm going to study that and
4 maybe y'all can, too, over lunch. I'll make a -- oh, yeah.
5 The chain of custody is going to be reserved until the
6 evidence comes in. As far as the cell phone, I'm reserving
7 judgment on that over lunch. If we proceed with the trial
8 based on the suppression hearing, opening statements and
9 any testimony should not talk about the cell phones yet.

10 MR. HARBIN: Judge, if I may, I've just provided
11 the State with a copy of a case I'm -- two cases I'm going
12 to be referring to. If I could approach the bench and
13 deliver them to you.

14 THE COURT: Okay. Now, we're focusing on the
15 suppression; right?

16 MR. HARBIN: Yes, sir.

17 THE COURT: All right.

18 MR. HARBIN: Judge, as I see it, this case -- and
19 I'll refer back to these cases, but to give you an overview
20 of the argument, if my client is sitting in a car and he's
21 sitting in a car, presumably about to leave, and officers
22 pull up and their vehicle, to a plain and ordinary person
23 and understanding, is blocking him in, I don't think at
24 that moment -- I think as soon as they pull in front of him
25 that my client is not free to leave.

1 me that the matter at hand is whether or not he possessed
2 crack cocaine in excess of ten grams on the arrest, for the
3 arrest. And I'm not sure where the direct ---

4 THE COURT: But isn't knowledge one of the
5 elements?

6 MR. HARBIN: Well, it certainly is. You're
7 certainly right.

8 THE COURT: Knowingly and willingly, doesn't that
9 go toward the knowledge?

10 MR. HARBIN: Judge, I'm trying my best to ---

11 THE COURT: Okay. I'm just -- I'm going to do
12 some more study about that. I don't know who your witness
13 -- I don't know if you've got any other case law, other
14 than the -- I guess the *Banda* case was just procedurally.
15 *Franks versus Delaware* seems to be the criterion that I
16 would have as to that, but maybe -- I'll do a little more
17 research on that. If we get the trial started you can
18 forego anything on that. I guess the witness that you
19 would address that with, I don't know if that'll be your
20 first witness or not, but we'll certainly take a break
21 before you elicit any testimony on that, Ms. Monts. I'll
22 study that a little more.

23 I'll be glad to hear from you about the suppression
24 hearing, Mr. Harbin.

25 MR. HARBIN: And, Judge, just so I'm clear.

1 call your first witness.

2 MS. MONTS: And, Your Honor, I did want to add
3 that since this was tried in September of last year in
4 front of Judge Hyman, that we did go through all of these
5 motions. So there is a transcript from the previous trial.
6 And I understand we are going to go forward and redo that
7 suppression motion.

8 THE COURT: Correct.

9 MS. MONTS: Your Honor, the State would call
10 Officer Scott Gardner.

11 THE CLERK: Officer Gardner, if you would come
12 forward to be sworn in, please. Please place your left
13 hand on the bible and raise your right.

14 Do you solemnly swear or affirm that the testimony
15 you're about to give is the truth, the whole truth and
16 nothing but the truth, so help you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Thank you. You may be seated.

19 SCOTT GARDNER,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 MS. MONTS: Your Honor, if we may, we're just --
22 Mr. Harbin is asking whether we should do the search
23 warrant on the cell phone at the same time. It would be an
24 issue at the end.

25 THE COURT: Are there other witnesses that are

1 And the third issue we would have is a -- and this
2 will depend on what the State's response to what they
3 intend to present during trial -- is that we believe we
4 have a chain of custody matter in the previous trial. And
5 this is only going by what they did in the previous trial,
6 Judge, that they did not present -- all of the folks that
7 were in the chain of custody, they did not present them in
8 person. We're going to have an objection to that.

9 THE COURT: Solicitor, is there any other issues
10 that you know of? Is there any statements or *Jackson Denno*
11 or *Biggers* hearings, lineups, anything else? I just want
12 to make sure we get everything out of the way before our
13 jury comes in.

14 MS. MONTS: Yes, sir. Your Honor, just that the
15 -- and I'm not -- the property and evidence sheet was
16 redacted in the first trial. That's a minor issue.
17 Because the marijuana that was found in the car next door
18 was on that same P&E sheet, so I did redact out the
19 marijuana from that. And just -- and I believe you and Mr.
20 Harbin and I did discuss what wording to use as far as the
21 prior testimony so that we don't let out that there had
22 been a prior trial. And that we would just say, refer to
23 prior testimony or prior hearing.

24 THE COURT: Prior hearing, prior testimony, prior
25 proceeding. Just don't say prior trial. Okay. You can

1 showing. It's a show of force. At some point, they're
2 shining flashlights into the car. This is not a consensual
3 type thing. At no point is he ever told, you know, you're
4 free to leave. We're just asking some questions. He's
5 physically blocked in, in his person. And he's physically
6 blocked in, in his vehicle.

7 Judge, I'd also say, and I'm familiar with the case
8 law establishing articulable -- or establishing the
9 requirement, rather, that there be articulable facts to
10 amount to what an officer would call reasonable suspicion,
11 giving him an opportunity to frisk someone under the Terry
12 doctrine. I think that in this particular case, number
13 one, the factors are just weak. They're just plain out
14 weak. Says he's nervous. Well, I think the courts have
15 recognized that every ordinary citizen is nervous, and
16 appropriately so, when officers are present. He's backed
17 into a spot. We've heard testimony, number one, he didn't
18 back the car in himself. I don't follow that rationale
19 whatsoever, that backing into a spot -- I back into a spot
20 every day at my office and I'm not trying to hide anything.
21 Let's see, the other factors. I believe he said he was
22 touching his pocket. I've got two issues with that.
23 Number one, I have no idea what that means in relation to
24 drug dealing. Number two, I don't know how he sees all
25 this because one of the first things he says is this is a

1 poorly lit parking lot. And I've elicited testimony that
2 the interior of the car was not lit. So how all of this
3 was being witnessed, I'm not sure. Now, to address Officer
4 Hall's testimony, I believe that nothing that she observed
5 is pertinent to the Terry frisk and the reasonable
6 suspicion argument because she never communicated that to
7 Officer Gardner. And I believe this argument should be
8 limited to what his -- you know, obviously an officer has
9 to make a decision for his own safety and that of his
10 fellow officers. So if he observed something, that's
11 something we talked about, if another officer observes
12 something but does not communicate that to Officer Gardner,
13 then he has no way of knowing that that exists. So the
14 fact that she may or may not have seen him sweat or touch
15 his pocket or anything, I don't think that -- I'm not
16 saying it's true or untrue. I'm just saying for purposes
17 of this argument, I don't think it applies because she
18 admitted that she does not remember actually speaking to
19 Officer Gardner and telling him about those particular
20 movements.

21 Judge, the cases that I handed up, one of them has to
22 do with -- and I'll address the Foster cases, what I
23 believe they labeled furtive movements. And this is the
24 closest case, Judge, that I could find that would analogize
25 kind of the touching of the pocket or this involuntary

1 movement or just basing a suspicious -- or suspicion,
2 rather, on movements. In the Foster case, I believe the
3 officer leaves the restaurant. He's eaten dinner with his
4 wife. He looks into a car and recognizes somebody and then
5 sees the passenger, who he believes to have recognized him,
6 kind of raise his arms and do something out of the
7 ordinary, which raises suspicion. That case stands for the
8 proposition that that alone is just simply not -- it's
9 simply not enough. So a furtive movement -- and I believe
10 I'm using that vocabulary correctly -- is not enough. So I
11 think that in this case, if you have what is essentially a
12 meaningless statement that he's nervous because law
13 enforcement is there. And I know that case law will tell
14 you that you have to consider the education of the client,
15 the time of night, how many officers were there, whether or
16 not they've had any show of force. And I would argue that
17 having a gun and wearing a badge is certainly a show of
18 force, that that doesn't amount -- or excuse me.
19 Nervousness is appropriate. Sweating, it's August 9th,
20 Judge. And I don't know if you've noticed, but my client
21 is a large man. And there was testimony from Officer
22 Gardner that he was comparing his size to my client. And
23 Officer Gardner is a large man, as well. Now, that being
24 said, one person can sweat and another person can't. But
25 if you are sweating on August 9th, I think you're just

1 humid. So they have nervousness and sweating, along with
2 some movement that the court has said is not, alone in
3 itself, enough. Back then, and which I still don't
4 understand -- and then they try to piggyback this idea that
5 he's given the wrong information, that his name is not
6 coming back. But they will readily admit that the
7 information he gave them came back. So I mean, whether
8 it's operator error or a scrivener's error, whatever that
9 is, that is not attributable to my client. Stuttering is,
10 you know, part of being nervous and I think that's
11 appropriately so.

12 Judge, I believe that the *Massenburg* case, along with
13 the *Foster* case, when I read them, I read them to find that
14 the courts have become a little dismayed at the collection
15 of what I believe is termed as otherwise innocent facts,
16 cobbled together to form suspicious activity or to form the
17 illusion of suspicious activity. I don't believe that
18 anything taken by itself, and I don't believe the
19 collection of these things rises to the level of reasonable
20 suspicion whatsoever.

21 Finally, I will say that if you assume that those
22 factors put together would give a reasonable officer, in
23 this case, Officer Gardner, reasonable suspicion to remove
24 my client and to pat him down for drugs -- or excuse me --
25 for weapons, for safety, then I think Officer Cothran's

1 testimony directly contradicts whether or not that is
2 possibly true. We have a CAD report that reports Officer
3 Cothran and -- excuse me -- Officer Gardner and Officer
4 Hall arrive at twelve thirty-six A.M. That same CAD report
5 -- well, excuse me. And I don't need the CAD report to be
6 accurate. But the CAD report indicates that Officer
7 Cothran arrives twelve minutes later. But his own
8 testimony, whether or not that CAD report is down to the
9 millisecond of when he came, his own testimony says when he
10 arrived Mr. Hewins was standing outside of his car. And I
11 think this is the most important part of this argument if
12 we don't get to the first part of the argument. Mr. Hewins
13 is standing outside of his car. He then speaks to Officer
14 Gardner, and he has to have spoken to Officer Gardner,
15 because Officer Gardner gave him the information about my
16 client's statement, he was visiting room two thirty-seven.
17 Upon receiving that information, and however long it takes
18 to have that conversation, Officer Cothran then goes all
19 the way to the management office, however long it takes to
20 walk to the management office, speak to that management
21 officer to find out what information is available about the
22 occupant of two thirty-seven. Go back to his vehicle --
23 this is all his testimony exactly -- run that information
24 presumably on his computer or through dispatch, then come
25 back to the scene where then he sees my client being

1 frisked.

2 So my point is this, if you remove someone out of the
3 car, if they're sitting there and they're free to leave and
4 then you decide at some point, okay, maybe I need to frisk
5 them down because this is an officer safety matter. If it
6 is truly an officer safety matter and that is why you are
7 frisking him, which is the only legitimate reason to frisk
8 him, I would argue, then you do not leave him standing
9 there for however many minutes it takes for all of that
10 activity from Officer Cothran to occur. There's no
11 explanation for justifying a Terry frisk based on your
12 safety, to remove him from a car and then he make him stand
13 there for minutes at a time. Of course, that testimony was
14 also reiterated by both my client and Ms. Newman.

15 Judge, I will cede the floor to Ms. Monts unless we
16 need further argument.

17 THE COURT: Ms. Monts, be glad to hear from you.

18 MS. MONTS: Your Honor, it's the State's position
19 that the officers on routine patrol pulled into this area
20 due to the fact that there were lots of auto break-ins and
21 other crime in this area. That's specifically what they
22 were looking for. When they pull into this complex they
23 see the only cars close by, these two cars, and they were
24 immediately alerted based on several factors. And these
25 factors led to the reasonable suspicion.

1 be that he was continuously patting his pocket. He did get
2 the Defendant out of the vehicle and we do believe that
3 that is a totality of circumstances argument; in addition
4 to the fact that the Defendant did give the officer
5 consent. Your Honor, once the officer had found the pills,
6 he was under arrest and the search of the vehicle was
7 incident to that arrest, at which time the large amount of
8 crack cocaine and the crack rocks in the smaller bottle
9 were found.

10 We believe that the search is valid, Your Honor.

11 THE COURT: Mr. Harbin?

12 MR. HARBIN: Well, Judge, I don't know how to
13 address the consent argument. On one hand, the State wants
14 you to believe that the officer using commonsense, like
15 everybody would, would certainly not allow a Defendant to
16 ever go in his own pocket, because that's just commonsense.
17 But they don't want you to think that my client has any
18 commonsense because if, in fact, there are drugs in his car
19 and if there are, in fact, pills in his pocket, what
20 reasonable person would assume -- he's like, yeah, go
21 ahead, go ahead in my pocket. Especially the second time.
22 That's -- it borders on insulting that anybody would think
23 that you would really give consent to that. But let's go
24 back to the beginning. The fact that the car blocked those
25 two cars in, and there's no legitimate other explanation,

1 other than the fact that they intended to keep them there
2 at least long enough to talk to them. That is a detention,
3 period. And once that detention occurs, that is the
4 unreasonable detention. They should be free to leave.

5 Now, the second detention becomes when he goes -- he
6 chooses not to go to the passenger side window, which is
7 what -- well, every speeding ticket I've gotten, they go --
8 they walk around the passenger's side, then they might come
9 up to mine. But he's physically blocking my client in.

10 He's physically not free to leave. Whether perceived to be
11 so or not, he literally cannot leave. Now, the statement
12 that the Solicitor made, and I think that we can argue
13 about whether or not the collective nature of these little
14 innocent details actually amounts to reasonable suspicion.

15 And I am doing that. I'm contending that all of that
16 doesn't amount to a hill of beans. However, my stronger
17 argument, and I think the one that is document, whether or
18 not the Solicitor likes it, is that this officer said he
19 pulled my client out of his car for safety. And that is
20 exactly what he said. He said that collection of facts
21 said that he felt unsafe. This other officer, contrary to
22 what Ms. Monts told you was asked, are you sure that's what
23 you did in that order? And he confirmed that. He didn't
24 say he wasn't sure. He knew exactly what he did. He came
25 to Officer Gardner. He was reported what he needed to do.

1 He went and did what he needed to do, and then his report
2 exactly, at that time I saw Mr. -- Officer Gardner pat Mr.
3 Hewins down. My argument, Judge, is that what they were
4 doing is fishing. They had him stand around while they
5 tried to collect evidence and that is exactly what Officer
6 Cothran's testimony proves, that he was standing around
7 waiting on something to happen. So he was not frisked for
8 safety. And if he wasn't frisked for safety, then he was
9 unconstitutionally frisked.

10 MS. MONTS: Your Honor, I'd just like to add two
11 points?

12 THE COURT: Yes.

13 MS. MONTS: Your Honor, the officers both drew on
14 the picture that Mr. Harbin put up about where their cars
15 were parked, that there was room for the Defendant to leave
16 there. Also, the officer testified that he was standing in
17 the A-frame of the door for his safety, not blocking the
18 door. But I just wanted to clarify that.

19 MR. HARBIN: And one minor point, Judge. As to
20 whether or not the -- because I think otherwise it would be
21 a significant point. As to whether or not my client was
22 giving false information. Ms. Monts points out that it
23 would be their subjective impression of what was going on
24 as to whether or not his name was coming back. And I think
25 that's a legitimate argument. However, the problem with

1 that is that because they admitted that the information he
2 gave them came back, it was the correct information, they
3 can't benefit from their own typo or their own computer
4 failure. They can't create their own suspicion. And
5 that's what that would amount to. So I don't believe it
6 would be appropriate -- with their admission that the
7 information he gave them was correct, I don't believe it
8 would be appropriate to consider that fact, Judge.

9 THE COURT: Well, I've tried to listen carefully
10 as the testimony was given. Obviously, as always, there
11 will be contradictions in the testimony. Different people
12 observing things in a different way. As far as the timing
13 and so forth, I briefly had a chance to read the *Foster*
14 case that you submitted, Mr. Harbin. Particularly, that
15 case cites the *Sprinkle* case. Our Supreme Court last week
16 talked about that and the *Linder* case in its analysis in
17 *State v. Taylor*. I believe the facts that I derive from
18 the *Foster* case are just distinguishable from the facts in
19 this case. As far as I know, there was nothing in this
20 case about prior criminal record that there was in the
21 *Foster* case, nothing about a crouched position or frenzied
22 arm movement, the furtive movement, I didn't hear anything
23 relating to that. The cases cited by our Supreme Court in
24 the *Taylor* case, I think is well articulated, certainly,
25 you know, a divided decision, but they articulated the

1 Q. And where did you have to go to check them out to
2 bring them to court?

3 A. You have to go back down to property and evidence
4 during the hours that they're open, again, before four-
5 thirty. And I requested them and they gave them to me. I
6 have to sign them out into my custody and then I brought
7 them in.

8 Q. And when this trial started yesterday, did you check
9 them out yesterday?

10 A. I did check them out yesterday.

11 Q. And did you keep it in your custody until today?

12 A. I did.

13 Q. And describe how secure the property and evidence area
14 is? Who has access?

15 A. Only property and evidence employees themselves. No
16 officers, no deputies, nobody's allowed back there except
17 the few people that have access to it.

18 Q. So Detective, you brought State's Exhibits 3, 4, 5, 6,
19 7, and 8 to court with you?

20 A. Yes, ma'am.

21 Q. Have you worked with Officer Hall since this incident?

22 A. Yes, I have.

23 Q. And on the date of the incident, was the other vehicle
24 that was next to Mr. Hewins, was that car investigated?

25 A. It was also investigated, just due to the fact that

1 they were there and we found narcotics in one, we received
2 consent to search her vehicle also. Inside we found some
3 more marijuana.

4 Q. And is the person that you arrested on August 9th of
5 2010 for possessing the pills in his pocket and for
6 possessing the crack cocaine or cocaine base inside his
7 vehicle, in the courtroom?

8 A. Yes, ma'am.

9 Q. Where is he?

10 A. That's Mr. Erick Hewins.

11 MS. MONTS:--No further questions.

12 THE COURT: You may cross-examine the witness,
13 Mr. Harbin.

14 MR. HARBIN:--May it please the Court.

15 **CROSS-EXAMINATION**

16 **BY MR. HARBIN:**

17 Q. Good afternoon, Officer?

18 A. Yes, sir.

19 Q. I believe your exact quote when Ms. Monts asked you,
20 was you weren't sure exactly who had keys to the P&E room.
21 Is that accurate?

22 A. That's not something that I would know.

23 Q. You're not exactly sure who all has access. You just
24 know you don't?

25 A. That's -- yes, sir.

1 Q. And your responsibility is to get it to the drop box.
2 Realistically, after it goes into the drop box you can't
3 testify as to what happens to it?

4 A. That's also correct.

5 Q. Going back to the beginning of this, you're on routine
6 -- what I assume to be routine patrol with Officer Hall?

7 A. Yes, sir.

8 Q. Okay. And you decide to go check out the Haywood area
9 and drive into the Clarion Hotel parking lot?

10 A. Yes, we did.

11 Q. And upon driving into the hotel parking lot, you see
12 Mr. Hewins' car and another car parked side-by-side?

13 A. Yes, sir.

14 Q. Okay. And you notice immediately that Mr. Hewins is
15 an older black man and there are two younger white females
16 in the adjacent car. Is that correct?

17 A. I noticed that he was older and that there were two
18 young females, yes, I did.

19 Q. You didn't notice that he was black?

20 A. I did. But that's not an indicator to me, sir.

21 Q. And you did or did not notice the ethnicity of the two
22 women in the car?

23 A. I did notice they were white.

24 Q. Okay. Now, when you pulled up to -- you decided it
25 was something you wanted to check out; correct?

1 A. Yes, sir. There was enough indicators that needed my
2 attention, sir.

3 Q. And to go over those indicators again, it was because
4 the Clarion Inn is a high crime neighborhood or area and
5 that he was backed into a space -- I'm sorry, Mr. Hewins'
6 car was backed into a space, and it was nighttime. At that
7 point when you drove up, are those the three indicators
8 that you had?

9 A. Yes.. That it was night, and the time of night that it
10 was, in a high crime area and the fact that he was backed
11 in, yes.

12 Q. Okay. Do you recall the layout of the parking lot,
13 what it appeared to be and exactly how much space there was
14 between parking spacings and adjacent -- or excuse me. I
15 guess it would be across the driveway. You have one row of
16 parking spaces and then another row of parking spaces that
17 you can drive through; correct?

18 A. Yes, sir.

19 Q. I'm going to show you a picture and you let me know if
20 you can identify this picture?

21 A. Yes, sir.

22 Q. And can you describe what that picture is a picture
23 of?

24 A. It's a picture of the Clarion Inn, with appears to be
25 four Xs on it where vehicles were parked at.

1 Q. And specifically, the Xs, could you describe what you
2 believe those Xs to be representative of?

3 MS. MONTS: Objection, Your Honor. This is ---

4 MR. HARBIN: Judge, I'm just asking about ---

5 MS. MONTS: He can only testify about what he
6 knows and not what others have done.

7 THE COURT: Okay.

8 MR. HARBIN: Well, I'll be happy to ask him
9 again.

10 THE COURT: Do you have another ...

11 MR. HARBIN: I do not.

12 THE COURT: Okay.

13 MR. HARBIN: But he volunteered the Xs.

14 MS. MONTS: Your Honor, we can get him another
15 copy of that.

16 THE COURT: Well, ---

17 MR. HARBIN: Actually, Judge, if you'll give me
18 one second I may have something else.

19 Q. Do you recognize this picture?

20 A. It appears to be the Clarion.

21 Q. Okay. And this is substantially in the same condition
22 as far as the parking lot layout as it was on the evening
23 that you encountered my client?

24 A. It appears so. It's only partial of the building, so
25 I can't tell you.

1 Q. Well, as far as the immediate area surrounding where
2 you were parked and where they were parked at the time, it
3 appears to be accurate?

4 A. It does appear to be, yes, sir.

5 Q. And can you identify in this picture where you recall
6 Mr. Hewins' car being parked and the two girls that were
7 parked beside him, where they were parked?

8 A. The only reason I can't sir, is the fact I can't see
9 the entire building. That's kind of how I judged on the
10 other picture.

11 Q. Okay. So based on this picture, you are unable to
12 tell me where approximately you were parked and where
13 approximately they were parked?

14 A. Yes, sir. Just because I can't see the whole
15 building, sir.

16 Q. Okay. All right. Fair enough. I'll ask you to take
17 a look at this. Can you tell what that is a picture of?

18 A. Again, it appears to be the Clarion Inn.

19 Q. And is there anything identifying that that helps you
20 identify -- that would tell you that that looks like --
21 that that's the Clarion Inn?

22 A. It's very -- but yes, just the mere fact that that's
23 McPrice Court right there. I know that road right there,
24 sir.

25 Q. Okay. So you're fairly comfortable saying that is an

1 aerial view of the hotel?

2 A. Yes, sir.

3 Q. Now, from your recollection of where you pulled in and
4 where they were parked, can you point to the section on
5 that picture as to what area the cars were parked in
6 relation to which side, front, back, left or right side of
7 the hotel?

8 A. Yes, sir. You want me just to point it out to you,
9 sir?

10 Q. If you wouldn't mind making a mark where you believe
11 Mr. Hewins' car was parked and the other vehicle was parked.
12 and then if possible where your car was parked in relation
13 to those two vehicles.

14 A. (Indicating.)

15 Q. Thank you. All right. So your testimony earlier was
16 that you saw the two cars and then you pulled up and you
17 pulled up directly in front of each car, effectively being
18 -- I guess your bumper is front of one car and your
19 headlights are essentially in front of both cars, not just
20 one car at a time. Is that correct?

21 A. Yes.

22 Q. Okay. And your testimony was that you pulled in but
23 you did not block them in?

24 A. No, we did not.

25 Q. And that you pulled in front of them, directly in

1 front of both of them, but that there was enough room for
2 officer safety. Is that right?

3 A. Yes, sir.

4 Q. And your testimony was that the parking lot was
5 completely empty?

6 A. Yes.

7 Q. Okay.

8 A. That I can remember, yes, sir.

9 Q. Okay. Well, you don't recall seeing any ---

10 A. No, I do not.

11 Q. --- obstructions to parking anywhere else in that
12 parking lot?

13 A. No.

14 Q. So you could have parked anywhere in the parking lot
15 because there were no other cars, or to your recollection?

16 A. I would say not safely, sir.

17 Q. Not safely?

18 A. No, sir.

19 Q. Okay. And please tell me why it's not safe?

20 A. In our line of work there are just susceptible
21 dangers. And the way that we articulate that and the
22 reason why we stopped there is I put my vehicle in front of
23 their vehicle, but far enough away where when Officer Hall
24 exited, if they decided to drive off, she's not going to be
25 hit. The reason we would not pull into a parking space or

1 anything like that is because we would lose sight of one
2 whole car. And the fact -- and to that point is we can
3 dodge a car that's driving at us a lot easier than us
4 losing site of a vehicle and then we wouldn't be able to
5 see it. And we wouldn't be able to dodge the bullet.
6 That's the articulation on it.

7 Q. So your testimony is that it's easier to dodge a car
8 that's coming directly at you rather than being beside a
9 car ---

10 A. And involved in ---

11 Q. Before it came at you? Okay. So, you weren't
12 blocking them in, but you were parked directly in front of
13 both vehicles?

14 A. Yes, sir.

15 Q. And then I believe the testimony is you got out and
16 approached the occupants of the vehicles?

17 A. Yes, we did.

18 Q. Could you tell the jury where you were standing in
19 relation to the cars, the car doors and the occupants
20 themselves?

21 A. If Mr. Hewins was facing this way and the other
22 vehicle was facing this way, I stood between the vehicles
23 so I could keep an eye on both suspects or both
24 individuals. And I stood behind the A-frame of Mr. Hewins'
25 door. That's common practice in law enforcement. And so

1 that way I can see down into his vehicle and see his hands.
2 Because that's what's going to hurt us as law enforcement
3 officers. And I stood more to the side so that way I could
4 also keep eye on these individuals over here if I needed
5 to. But, yeah, that's why we stand by the A-frame.

6 Q. So at this point are you already suspicious of them
7 being dangerous?

8 A. It's just good officer safety, sir. It's something
9 you practice all the time.

10 Q. Well, you've already said that you parked a certain
11 because they might charge at you with the car. And now you
12 stood a certain way because -- I'm not exactly sure why.

13 Perhaps there is some kind of danger. What would they be
14 in danger of doing as you're standing outside of the car?

15 A. Any number of things. Anyone could have a weapon or
16 anything like that. It's prior planning is what keeps us
17 safe. And that's why we just ahead and stand in the A-
18 frame and make ourselves as readily -- have an advantage
19 the best we can.

20 Q. So at this point you are worried about the potential
21 for danger from the people that you approached; right?

22 A. Yes, sir.

23 Q. Because they didn't approach you, you approached them?

24 A. That is correct.

25 Q. And as you approached them, had they committed any

1 criminal violations?

2 A. Not that I could see.

3 Q. Did you have any specific information that night about
4 any criminal activity or drug activity in the parking lot
5 of Clarion Hotel?

6 A. No, we did not.

7 Q. Had you received any complaints or calls for service
8 at that location?

9 A. Not that I remember.

10 Q. To be fair you would have remembered ---

11 A. Exactly.

12 Q. Surely, you would have remembered if ---

13 A. I thought you meant -- I apologize, I thought he
14 meant as a whole department. I didn't know if there was.

15 But, no, specifically I had not heard anything or I did not
16 receive a call.

17 Q. And you had mentioned that one of the things you're
18 looking for is that they're at a hotel at night. It is not
19 illegal, of course, to be in, to be in a parking lot of a
20 hotel; correct?

21 A. No, it's not.

22 Q. And you had mentioned that the nature of the parking,
23 the backing in of Mr. Hewins' car, was somehow suspicious
24 because it may be hiding a stolen license plate or hiding a
25 license plate, indicating a stolen car. There wasn't, in

1 fact, any information gathered that led you to believe the
2 car was actually stolen?

3 A. No. Again, that's just one small indicator.

4 Q. And he got out of the car and you ID'ed yourself as a
5 police officer. You approached them and you're in between
6 both cars; right?

7 A. Yes, sir.

8 Q. And were the cars, other than being back in, which
9 apparently that's against some ordinance; other than being
10 backed in, were they essentially appropriately parked
11 within the lined spaces of the parking lot?

12 A. I would say so, yes, sir.

13 Q. So they are what would be described as just a plain
14 and ordinary distance from one another?

15 A. Yes, sir.

16 Q. So they weren't extremely close and they weren't
17 extremely far away?

18 A. That's correct.

19 Q. And I believe your testimony was that their windows
20 were down and they were actually communicating with each
21 other back and forth?

22 A. That is correct.

23 Q. So you walk up to them, you're standing, I guess, at
24 some point you stop ---

25 A. Yes, sir.

1 Q. --- you're standing in between the two cars and you
2 ask all of them for their identification?

3 A. Yes, sir.

4 Q. Now, it is your testimony, I believe, that they could
5 have both driven off?

6 A. Yes, they can.

7 Q. And they were capable of both having been able to
8 drive off?

9 A. Yes.

10 Q. Because your car was not blocking the egress of their
11 vehicles?

12 A. That's true.

13 Q. So what happens -- what would you do if they had just
14 simply driven off?

15 A. I would go back to my car and went after them.

16 Q. So you get -- do you gather their information or does
17 Officer Hall gather their information?

18 A. Officer Hall gathered it.

19 Q. Okay. But you asked the questions?

20 A. I believe initially. But Officer Hall, being the
21 officer that was going to run the information in the
22 computer, then she took over.

23 Q. So did she get out immediately with you?

24 A. Yes, she did.

25 Q. And where was she standing?

1 A. I don't specifically remember. I believe that she
2 might have been -- I can't remember exactly where she was
3 standing.

4 Q. She wasn't standing beside you, though? She wasn't in
5 between the two vehicles?

6 A. I could not answer that, sir.

7 Q. So you don't recall whether she was in between the two
8 vehicles with you getting the information?

9 A. I cannot recall that. I know at one point she did
10 walk in between there and get the information, but
11 initially, I don't know what she did.

12 Q. So you're talking with Mr. Hewins and he had already
13 given his information to Officer Hall. So had the other
14 two occupants of the other vehicle. And I believe your
15 testimony was that he touched his pocket?

16 A. Continuously, yes, sir.

17 Q. Continuously touched his pocket. And that indicated
18 to you that that was -- that was an indicator that he may
19 have a weapon?

20 A. Again, that's one indicator. But, yes, it is an
21 indicator.

22 Q. And I believe that you indicated that it took some
23 time for the information to come back through your
24 computer, through Officer Hall's computer. So I assume
25 that the reason you know that is because Officer Hall, it

1 took some time for Officer Hall to come -- for you to be
2 informed by Officer Hall that she, in fact, had found his
3 information in the computer?

4 A. Yes, that is correct. Sometimes the computer just
5 runs slow.

6 Q. Okay. But, in fact, the information he gave you did,
7 in fact, turn up. It took a little while but it was the
8 correct information. Is that your understanding?

9 A. It was the correct information.

10 Q. So at some point you became aware of circumstances
11 that led you to believe that my client may be -- may pose
12 some kind of risk to you, so you asked him out of the
13 vehicle in order to conduct what is commonly known as a
14 Terry frisk?

15 A. Yes, I did.

16 Q. And when you pulled him out of the vehicle -- now,
17 you're a large man, he's a large man, I assume that you
18 didn't -- y'all both aren't standing in this small area
19 between the cars when you did that? Or did you?

20 A. I believe we stepped more to the back of his vehicle.
21 I think that we were I would say still almost on the
22 sidewalk, right by the sidewalk, yes, sir.

23 Q. So you patted him down and when you patted him down,
24 you felt this large hard object that turned out to be
25 basically a wad of cash?

1 A. Yes.

2 Q. Now, so you patted him down but you didn't retrieve
3 the object. You said, hey, what is that, essentially? Not
4 verbatim, but that's ---

5 A. Yes, that's correct. Yes.

6 Q. And when you asked him what it was, did he respond?

7 A. He did not.

8 Q. So he did not tell you what it was?

9 A. No.

10 MR. HARBIN: One second.

11 Q. You reached down in his pocket. I'm sorry. I'm
12 skipping ahead. You felt a lump in his pocket?

13 A. Yes, sir.

14 Q. And then at that point -- a Terry frisk presumably
15 would allow you to retrieve that object, yes?

16 A. Yes, sir.

17 Q. Okay. But you didn't retrieve the object right then?

18 A. No, I did not.

19 Q. You said, hey, can I reach in your pocket and grab
20 whatever's in your pocket?

21 A. That is correct.

22 Q. And he said, yes, sir?

23 A. That's correct.

24 Q. Do you recall exactly how you asked him and exactly
25 how he answered?

1 be able to touch and figure out whether or not there's
2 something you believe could offer some kind of danger to
3 you and/or your fellow police officers?

4 A. That is correct.

5 MR. HARBIN: Excuse me, Judge.

6 Q. Now, when he -- actually, when you asked Mr. Hewins if
7 you could go into his pocket, you had stopped and basically
8 -- I would call it belts and suspenders -- you thought you
9 had at the time a right to conduct a Terry frisk based on
10 your observations, that's one way for you legally to reach
11 in his pocket per your opinion. And you also decided to
12 get his consent; correct? So basically, you're covering
13 yourself twice?

14 A. I would agree with that, yes, sir.

15 Q. Now, when you decided to get his consent, did you stop
16 and tell Mr. Hewins, now, Mr. Hewins, you don't have to
17 give me consent to do this?

18 A. No, I did not, sir.

19 Q. So you advise him of his Constitutional rights?

20 MS. MONTS: Objection, Your Honor.

21 THE COURT: What's your objection?

22 MS. MONTS: That Mr. Harbin is incorrectly
23 stating the law on search and seizure, Your Honor. There's
24 no requirement.

25 MR. HARBIN: I can -- I'll be happy to rephrase

1 A. The reason I would say the reason I said, do I have
2 consent to place my hand in your pocket, is because I
3 always ask the same question the same way. And so I
4 believe that's how I said it.

5 Q. So after you got the wad of cash out, then you thought
6 it was still appropriate to put your hand back down into
7 his pocket?

8 A. Yes.

9 Q. Describe what he was wearing, please?

10 A. Again, I believe it was blue jeans and a t-shirt, as
11 well as I remember.

12 Q. So you reach down in his blue jean pocket and pulled
13 out what you had felt before?

14 A. Yes, sir.

15 Q. Now, there are, I assume, instances of Terry frisks
16 where you pat the subject down and do not feel it necessary
17 to go any further than the pat-down because you didn't feel
18 anything; correct?

19 A. That would be correct.

20 Q. Now, if you don't feel anything you don't have a right
21 just stick your hand in his pocket; right?

22 A. I would agree, yes, sir.

23 Q. And if you don't feel anything, presumably you were
24 trained to know by touch what is there and what is not. I
25 mean, that's the whole point of the Terry frisk; right, to

1 the ---

2 THE COURT: If you'll rephrase your question.

3 Q. You did not advise him of any rights that he has as it
4 relates to his ability to refuse to consent to a search?
5 You did or did not?

6 A. No, I did not.

7 Q. Okay. Thank you. I apologize for that confusion.

8 Okay. So you've gotten Mr. Hewins out of the car. You
9 have patted him down. You found the money in his pocket.
10 And then you go back in his pocket and you find four loose
11 pills. And these appear to be the same pills?

12 A. Yes.

13 Q. Okay. And they haven't gotten any smaller over time,
14 these are the pills that you reached in and got them but,
15 the same size?

16 A. As far as I can tell, yes, sir.

17 Q. Now, I believe your testimony was that you had waited
18 before you got Mr. Hewins out of the car or -- I don't know
19 if you waited, but anyway you didn't pull him out of the
20 car until backup had arrived?

21 A. That is correct.

22 Q. And is that an officer safety issue?

23 A. That is. Just the fact that there was three of them
24 and pretty much one of myself while Officer Hall was in the
25 vehicle being able to observe us.

1 Q. Now, there's three of them, but let me be clear, at
2 this point you have no reason to believe that the two girls
3 are offering any danger. You're just noting the number of
4 people simply, three civilians and two officers; right?

5 A. I wouldn't -- I mean, I just wouldn't -- I wouldn't
6 say that, sir. I mean, until I'm proven otherwise, I've
7 always got to be careful, sir.

8 Q. Now, the Solicitor had asked you whether or not it
9 was, in fact, that there was a law against backing into a
10 parking spot?

11 A. That's correct, sir.

12 Q. And you said -- you answered affirmatively, that there
13 is some prohibition to backing into a parking spot?

14 A. Yes. There is a city ordinance.

15 Q. And I believe y'all may have covered this, but that is
16 a citation; correct?

17 A. Yes. It's a parking ticket.

18 Q. And that means that that is not a custodial arrest.
19 You're not going to handcuff somebody and arrest them for
20 parking backwards?

21 A. No, I would not.

22 Q. And at the time, I believe, you said that at the time
23 that you reached in his pocket, you found those pills and
24 that you had gotten some information, that you believed
25 those pills were prescription. I can't remember what you

1 said they were, but you can repeat that if you'd like.

2 Then you handcuffed him; correct?

3 A. That is correct. We did confirm through poison
4 control that it was a Schedule IV drug.

5 Q. All right. And then after you handcuffed him then I
6 believe you said Officer Hall was able to come and say we
7 finally found him in the system. I think -- because I
8 believe that you said she wasn't present for the frisking,
9 that she was able to, I guess, immediately after she
10 confirmed -- not immediately after -- but afterwards
11 confirmed that the information that y'all had been
12 attempting to look up, she actually did, in fact, find. Is
13 that your recollection?

14 A. Yes.

15 Q. Now, when you were -- and I apologize for skipping
16 around a little bit. I don't want to forget anything.
17 When you approached Mr. Hewins and asked him what he was
18 doing, what was his response as to why he was at the hotel
19 that night?

20 A. Again, he advised me that he was there to visit, in
21 his words, his baby mama in room two thirty-seven, two
22 thirty-seven, but that he couldn't remember her name.

23 Q. Okay. And in the course of your investigation and/or
24 the investigation of your fellow officers, did you, in
25 fact, confirm that he was visiting someone in room two

1 thirty-seven?

2 A. That is correct.

3 Q. I'm going to hand you a piece of paper. Let me know
4 if you know what this is.

5 MS. MONTS: Your Honor, may I see it?

6 MR. HARBIN: I apologize.

7 Q. Let me show this to Ms. Monts.

8 A. It appears to be a CAD report, which is what they call
9 the reports printed from our dispatch.

10 Q. Okay. And are you able to look at that piece of paper
11 and tell what time you arrived on the scene? Or does that
12 indicate what time you arrived on scene?

13 A. I'm specifically not trained to read these, sir. But
14 it appears -- it says that it opened on -- it'd be twelve
15 thirty in the morning, twelve thirty-six in the morning.

16 Q. Twelve thirty-six in the morning?

17 A. Yes, sir.

18 Q. I appreciate you giving me civilian time.

19 A. Yes, sir.

20 MR. HARBIN: Judge, I'm marking this as Defense
21 Exhibit 1.

22 (WHEREUPON, Defendant Exhibit Number 1 was marked for
23 identification.)

24 MR. HARBIN: One second, Your Honor. No further
25 questions.

1 Thank you, Officer.

2 THE COURT: Any redirect.

3 MS. MONTS: Your Honor, was that last report
4 entered into evidence?

5 MR. HARBIN: No, ma'am.

6 THE COURT: Only marked.

7 MR. HARBIN: Just marked.

8 MS. MONTS: Yes, Your Honor.

9 **REDIRECT EXAMINATION**

10 **BY MS. MONTS:**

11 Q. Officer, in your experience with CAD reports, are
12 those times sometimes off?

13 A. Yes, very much so. I don't have a lot of experience
14 in CAD reports, but it's really just what time the officer
15 was able to call out.

16 Q. And sometimes are officers called out who don't
17 actually arrive?

18 A. I believe so.

19 Q. And is it just the employee at 9-1-1 who enters times
20 based on their information?

21 A. Again, I'm not trained in that, nor have I ever worked
22 in dispatch, but I believe that's how it works.

23 Q. And regarding when you and Officer Hall counted the
24 money that was on the Defendant at the law enforcement
25 center, did you delineate or distinguish what denominations

1 of each dollar form?

2 A. Yes, we did.

3 Q. And did you make a record of that?

4 A. Yes, we did.

5 Q. Do you have that with you?

6 A. I don't have it up here, no.

7 Q. Is this a record that you wrote? Would that help you
8 refresh your memory?

9 A. Yes, ma'am.

10 Q. And can you please tell us what denominations the
11 money was in?

12 A. There was four one hundred dollar bills; there was
13 twenty twenty dollars; thirty-four ten dollar bills; fifty-
14 two five dollar bills; thirty-seven one dollar bills; and
15 then the one one hundred dollar money order.

16 Q. Thank you.

17 MS. MONTS: No further questions.

18 MR. HARBIN: Judge, just briefly.

19 THE COURT: Briefly.

20 **RECROSS-EXAMINATION**

21 **BY MR. HARBIN:**

22 Q. Although you can't verify the accuracy of the CAD
23 report, do you have any reason to believe that a dispatcher
24 would report you're on the scene to a particular address
25 before that incident actually occurred?

1 A. No.

2 Q. Thank you.

3 MR. HARBIN: No further questions.

4 THE COURT: All right. Thank you, Officer
5 Gardner, you may step down.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: You may call your next witness,
8 Solicitor.

9 MS. MONTS: Your Honor, the State calls Officer
10 Rachel Hall.

11 THE CLERK: Ms. Hall, if you would come forward
12 to be sworn in.

13 Do you solemnly swear or affirm that the testimony
14 you're about to give is the truth, the whole truth and
15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. You may be seated. Would
18 you please state your name for the record.

19 THE WITNESS: Yes. My name is Officer Rachel
20 Hall.

21 RACHEL HALL,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MS. MONTS:

25 Q. Officer Hall, can you please tell the jury where

1 you're employed and how long you've worked there?

2 A. Yes, ma'am. I work for the City of Greenville Police
3 Department. And it's just been over four years now.

4 Q. And on August 9th of 2010 were you employed at the
5 Greenville Police Department?

6 A. Yes, ma'am.

7 Q. And so at that point you had been with the police
8 department how long?

9 A. Approximately two and a half years.

10 Q. And what was your duty at that time? What were you
11 assigned to do?

12 A. Yes, ma'am. Myself and Officer Gardner were assigned
13 to a plain clothes patrol, which we call Aggressive Patrol
14 Unit. Basically, we ride in an unmarked vehicle in plain
15 clothing, which as Officer Gardner did explain, allows us
16 to get a little bit closer without being observed quite as
17 quickly. It allows us to get closer to crimes that could
18 be in progress.

19 Q. And prior to your starting at the Greenville Police
20 Department, did you go to the Criminal Justice Academy or
21 receive other training in law enforcement and safety and
22 different types of crimes?

23 A. Yes, ma'am, I did. I studied Criminal Justice at
24 Greenville Technical College. I also went to the Criminal
25 Justice Academy.

1 MS. MONTS: No further questions.

2 THE WITNESS: Thank you.

3 THE COURT: You may cross-examine the witness.

4 MR. HARBIN: May it please the Court.

5 **CROSS-EXAMINATION**

6 **BY MR. HARBIN:**

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. The information that you got from my client did, in
10 fact, eventually turn up in your computer as correct? Is
11 that right?

12 A. Yes, sir.

13 Q. And, in fact, you went back and asked him to spell his
14 last name so you could get that correct information?

15 A. Yes, sir.

16 Q. And is it possible that the spelling that you
17 originally assumed was just simply incorrect or that he
18 didn't enunciated it well enough for you to know?

19 A. You can assume that, yes.

20 Q. And he was not charged with false information?

21 A. He was not.

22 Q. And by the time you ran his information and you did
23 discovery, I believe per your testimony, that he was
24 suspended, he was already out of the car and I believe that
25 Officer Gardner had testified that by the time you reported

1 back his license status, he was already actually in
2 custody?

3 A. That is correct.

4 Q. So that was not the reason for his custodial status or
5 even to pull him out of the car, not his license status?

6 A. I'm sorry?

7 Q. The fact that he was -- his license was suspended was
8 not the reason to take him out of the car, nor the reason
9 to ---

10 A. Correct. That's correct.

11 Q. Now, you did say that when you approached the car you
12 saw my client sweating, and you saw -- you said that you
13 saw his hand touching his pocket repeatedly?

14 A. Yes.

15 Q. Okay. Do you remember if it's his right hand or his
16 left hand?

17 A. It would be his left hand.

18 Q. His left hand, okay. And I believe your testimony was
19 that that was some -- that was an indicator that you were
20 keeping in your head as to this is important to note?

21 A. Yes.

22 Q. This is one of the indicators that Officer Gardner
23 indicated -- I'm sorry. I don't mean to use the word
24 indicate too much. One of the indicators that he notice
25 that gave him rise to believe there might be something that

1 he needed to be worried about?

2 A. Correct.

3 Q. Okay. Now, once you noticed this indicator, and I
4 believe you said he repeatedly, repeatedly, I'm not sure
5 what your verbiage was, but basically constantly was
6 rubbing his leg. Did you communicate that to Officer
7 Gardner?

8 A. I don't recall. I don't think I specifically said,
9 hey, Gardner, he keeps touching his pocket.

10 Q. Okay. So by -- in and of itself, it wasn't something
11 that you needed to stop and alert Officer Gardner to?

12 A. That's correct.

13 Q. You also said that Officer Gardner got out just a
14 little bit before you did and while he was getting out you
15 were calling in. I believe was the phrase that you used, to
16 dispatch?

17 A. Yes.

18 Q. And you do that routinely so that they know when
19 you're on the move and they know when you're stopped?

20 A. Correct.

21 Q. So they know what you're up to in case somebody needs
22 to come help you?

23 A. Yes.

24 Q. Okay. And you would concede that dispatch is going to
25 -- when you call in, do you believe that they note it? I

1 mean, do you believe that somebody's actually paying you
2 attention?

3 A. Yes.

4 Q. Okay. I hand you a piece of paper. And tell me if
5 you recognize those, please?

6 A. This does appear to be a printout of a CAD report that
7 we could get from dispatch.

8 Q. And from that printout can you tell whether or not
9 they noted your arrival on scene that night?

10 A. Yes, sir.

11 Q.. And what time would that be?

12 A. It was be twelve thirty-six, just after midnight.

13 Q. Thank you.

14 MR. HARBIN: At this time, we would move for this
15 to be admitted into evidence as Defense Exhibit 1.

16 MS. MONTS: And, Your Honor, the State would
17 object because there's no one here to authenticate what all
18 these times and dates mean. And these officers have both
19 said they were not familiar with this document.

20 MR. HARBIN: I would submit that this is a
21 business record. She's recognized what it is.

22 THE COURT: I'll allow it in over objection. It
23 may be marked and admitted and may be published to the jury
24 as Defense Exhibit 1.

25 MR. HARBIN: Thank you, Judge.

1 (WHEREUPON, Defendant Exhibit Number 1 was admitted
2 into evidence.)

3 Q. While you were up near my client and asking -- I guess
4 at the time you were asking him for his information and/or
5 clarifying that information you got previously, at anytime
6 did you direct him yourself to put his hands on the
7 steering wheel or put them where I can see them or anything
8 like that?

9 A. I don't recall.

10 Q. Thank you.

11 MR. HARBIN: No further questions, Judge. Thank
12 you.

13 THE COURT: Any redirect?

14 MS. MONTS: No, Your Honor.

15 THE COURT: All right. Thank you, Officer Hall.
16 You may step down.

17 Mr. Foreman, ladies and gentlemen, this might be a
18 good time for us to take a break. If you'll go back to
19 your jury room, I'll remind you again not to discuss the
20 case one with another in any way. We'll take about a
21 fifteen minute break and be ready to start with the next
22 witness.

23 Everyone else, please remain seated while the jury
24 retires.

25 (WHEREUPON, the jury exited the open court at

1 approximately 3:41 P.M.)

2 THE COURT: All right. Let's take about a
3 fifteen minute break.

4 MR. HARBIN: Thank you, Judge.

5 (WHEREUPON, the court stood at recess for a short
6 break.)

7 THE COURT: All right. Solicitor, are you ready
8 for your next witness?

9 MS. MONTS: Yes, Your Honor.

10 THE COURT: All right. If the jury's ready, you
11 can have them come in, Ms. Simms.

12 Before they come in, I mentioned to both of you in the
13 jury selection process that one of the jurors had been
14 projected tomorrow for a doctor's appointment, I think
15 around twelve o'clock. I'm going to mention that as they
16 leave today. I don't know if she could get other
17 arrangements made. Otherwise, we'll need to -- I don't
18 know where we'll be in the trial then tomorrow. I guess
19 we'll still be taking testimony maybe. But either we'll
20 have to take an extended lunch break or either she can
21 perhaps reschedule her doctor's appointment or we'll have
22 to go with one of the alternates. I was going to just
23 mention that today as they leave and just tell her that
24 we'll do our best to accommodate her tomorrow and maybe
25 even say I don't know if those appointments could be

1 MR. HARBIN: Thank you.

2 Q. After this incident were you -- did you continue as
3 his supervisor for some time?

4 A. I did.

5 Q. Thank you.

6 MS. MONTS: Nothing further.

7 CROSS-EXAMINATION

8 BY MR. HARBIN:

9 Q. Good afternoon, Sergeant.

10 A. Good afternoon, sir.

11 Q. It is your testimony right now that you arrived on
12 scene and immediately saw Officer Gardner conduct a Terry
13 Frisk. Is that my understanding of what testimony you just
14 gave?

15 A. Yes, sir. I observed him standing outside with
16 Detective Gardner.

17 Q. I hand you what has been previously marked as
18 Defendant's Exhibit Number 1. If you could take a look at
19 that and tell me if you know what that is?

20 A. Yes, sir. This is a copy of the CAD report from the
21 department computer system dispatch.

22 Q. From that report can you tell when Officer Gardner and
23 Officer Hall arrived on the scene?

24 A. Approximately twelve thirty-six a.m.

25 Q. From that report, can you tell when dispatch had you

1 A. No, sir. No, ma'am. Sorry.

2 Q. But have you dealt with him on other occasions?

3 A. Yes, ma'am.

4 Q. And have you been his super -- at that time had you
5 been his supervisor?

6 A. Yes, ma'am.

7 Q. And what was your procedure with him when this sort of
8 incident would occur? Perhaps if there was a Terry Frisk
9 or a consent search, is there any procedure or protocol
10 that he is to do under your tutelage?

11 A. Yes, ma'am. All officers are trained per certain
12 procedures to obtain reasonable suspicion to determine
13 whether a search, Terry Frisk, is necessary. Prior to this
14 point, I had been supervisor over Detective Gardner for
15 approximately four plus months. I had, during my ridings
16 around, had heard him initiate several traffic stops and
17 several field interviews, had arrived on scenes to assist
18 him as a contact or as a cover officer while he was a
19 contact officer. Every time he felt he had reasonable
20 suspicion to conduct a Terry Frisk or search of a vehicle
21 or a moped, he normally -- always asked ---

22 MR. HARBIN: Judge, I would object. It sounds
23 like he's attempting to bolster Officer Gardner's judgment
24 somehow.

25 THE COURT: I sustain the objection.

1 arriving on the scene?

2 A. Dispatch has me called out at twelve forty-eight.

3 Q. Twelve forty-eight. So twelve minutes after Officer
4 Hall and Officer Gardner arrived?

5 A. Yes, sir.

6 Q. Do you recall giving testimony in a separate
7 proceeding whereupon you were asked the order of events,
8 specifically relating to when you went to see management
9 and when you went to room two thirty-seven as it relates to
10 the timing of the Terry Frisk that you say you witnessed?

11 A. Yes, sir.

12 Q. And in that earlier proceeding, did you not give the
13 exact opposite recitation of the time line of events?

14 A. During the earlier testimony, I recited what was on my
15 report.

16 Q. And is your report -- when did you write that report?

17 A. It would have been that morning.

18 Q. So I guess technically it was the 9th after midnight,
19 so on the 9th as well; correct?

20 A. Yes, sir.

21 Q. Okay. And obviously you are not going to write
22 something that's false on your report. Is that correct?

23 A. Correct.

24 Q. Okay. And is your recollection better today or would
25 it have been better several hours after the incident?

1 A. It would have been better after the incident, yes,
2 sir.

3 Q. And do you dispute that your report basically has it
4 written that you arrived on scene, you saw Mr. Hewins
5 standing, not being frisked, but standing, then you made
6 contact with Officer Gardner?

7 A. Yes, sir.

8 Q. And subsequent to that contact with Officer Gardner,
9 Officer Gardner gave you information about room two thirty-
10 seven that you then investigated by going to the
11 management's office?

12 A. The report says that I made contact with Detective
13 Gardner and the next paragraph was that I went to the
14 office, yes, sir.

15 Q. And after going to the office, I believe you used that
16 information to do your own bit of investigation on your
17 computer in your car?

18 A. Yes, sir.

19 Q. Okay. Now, the only thing I'm confused about is why
20 the discrepancy on the report and what your testimony is
21 today?

22 A. As I recollected after the earlier testimony provided
23 and in reviewing my notes, the time frame seems to be out
24 of kilter. The report is not necessarily chronologically
25 -- may not be chronologically correct.

1 Q. And do you have those notes that you referred to with
2 you today?

3 A. No, sir.

4 Q. You do not?

5 A. No, sir. I don't recollect keeping any field notes
6 from that date.

7 Q. Okay. So what notes did you refer to to help you
8 recollect something that -- other than what was put on your
9 report?

10 A. The other officers' reports.

11 Q. The other officers' reports?

12 A. Yes, sir.

13 Q. So you used the other officers' reports to help you
14 recollect what was correct and not your own report? In
15 other words, not your notes, their notes?

16 A. Well, their reports, not their notes; correct.

17 Q. I'm sorry. Their reports, not your report. So
18 essentially you've convinced yourself that their report and
19 chronology is better than your chronology or more accurate,
20 yes or no?

21 A. No.

22 Q. So your chronology in your report is the truth?

23 A. Yes.

24 Q. And your report has you approaching Officer Gardner
25 while Mr. Hewins is standing, not handcuffed, not being

1 frisked, speaking to Officer Gardner, getting information,
2 going to the management, then going back to your car, then
3 coming back to report what you did or did not find out
4 about room two thirty-seven occupant, then witnessing the
5 Terry Frisk by Officer Gardner?

6 A. Yes, sir. That's what my report says.

7 Q. And that is what is true?

8 A. That's certainly the reflection of the report, yes,
9 sir.

10 Q. I'm asking you what's true, Officer?

11 A. It's been two and a half years, sir. I don't remember
12 the chronological events of the night specifically. Just
13 based on one other report from that evening.

14 Q. But you acknowledge that your report is very specific
15 in the chronology?

16 A. Yes, sir.

17 Q. And your report indicates specifically that you pulled
18 up, saw Mr. Hewins out of his car standing. And you made
19 contact with Officer Gardner while Mr. Hewins is standing.
20 Then you went to management to get information about the
21 occupant of room two thirty-seven based on the information
22 you'd gotten from Officer Gardner. Then went to you car.
23 then went all the way -- not all the way back. Then you
24 went back to Officer Gardner. Then your report says you
25 witnessed the Terry Frisk?

1 A. Yes, sir, that's what the report says.

2 MR. HARBIN: One moment, Judge. No further
3 questions.

4 Thank you, Officer.

5 THE COURT: Any reply or ---

6 MS. MONTS: No, Your Honor.

7 THE COURT: You may step down.

8 If I could see the attorneys for a moment as far as
9 scheduling for the next witness.

10 (WHEREUPON, Ms. Monts and Mr. Harbin approached the
11 bar.)

12 THE COURT: Mr. Foreman, ladies and gentlemen, I
13 think this might be the best time for us to break. We have
14 another matter that we need to take care of today. And
15 rather than keeping you waiting and have testimony later
16 this afternoon, I think we'll just break now. As far as
17 scheduling purposes, I think it would be better for you to
18 be here at nine-thirty in the morning instead of nine
19 o'clock. That's when we usually start. Based on the
20 schedule that we have now, I think nine-thirty will be
21 better. I certainly anticipate we'll be ready to start
22 with you then and not keep you waiting at nine-thirty.

23 Yesterday, during qualification, one of you I think
24 had an appointment that needed to be met and I promised
25 that juror that I would do all I could to accommodate. I

1 don't know if the appointment could be rearranged or not.
2 But if that juror does need to make that appointment,
3 perhaps a statement to that effect or sort of a chronology,
4 again, using that word as to when the break would be need
5 to be, perhaps we can -- we'll do all we can to accommodate
6 that, to break a little earlier for lunch or whatever we
7 need to do. If it can't be worked out then please let the
8 bailiffs know and just write out a little statement to that
9 effect as to what time frame it is. And we'll do all we
10 can to accommodate that if we can.

11 If you'll be back at nine-thirty in the morning, we'll
12 be ready to start. Have a good evening. I remind you
13 again not to talk about the case, not to do any kind of
14 independent research or any social media. That's against
15 your oath. You've made a high commitment. We're in the
16 middle of the trial. Everything you're going to need to
17 know to make a decision in this case is going to come in
18 this courtroom. These attorneys, I'm sure, are going to
19 give you the information you need and not some other
20 source. That's your commitment to them. I know you'll
21 fulfill that.

22 Have a good evening ladies and gentlemen. I'll see
23 you back in the morning at nine-thirty.

24 (WHEREUPON, the jury exited the open court at
25 approximately 4:41 P.M.)

1 Do you solemnly swear or affirm that the testimony
2 you're about to give is the truth, the whole truth and
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, ma'am, I do.

5 THE CLERK: Thank you. You may be seated.
6 Please state your name for the record.

7 THE WITNESS: Megan Elizabeth Newman.

8 MEGAN NEWMAN,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. HARBIN:

12 Q. Megan, good afternoon.

13 A. Good afternoon.

14 Q. It's not quite afternoon. Sorry about that. Do you
15 recall August 9th, 2010?

16 A. Yes, sir, I do.

17 Q. And were you at the Clarion Inn?

18 A. Yes, sir.

19 Q. Could you tell the jury -- I'm going to try to make
20 these as direct questions as possible. Can you tell the
21 jury approximately what time you recall, what time of night
22 were you -- did you arrive at the Clarion Inn?

23 A. It was after like twelve, twelve-thirtyish maybe
24 twelve-forty. I'm not sure of the exact time but it was
25 after twelve o'clock.

1 Q. So sometime late in the evening?

2 A. Uh-huh (affirmative).

3 Q. And why did you go to the Clarion Inn?

4 A. To meet Mr. Hewins to -- we needed -- it was going to
5 be three vehicles, therefore you three drivers. So I was
6 going to drive my friend Taylor's car, she was going to
7 drive the Lexus and he was going to get the truck. And he
8 was going to take the truck and we would take the other two
9 cars home.

10 Q. Let me back you up. What car did you drive to the
11 Clarion?

12 A. I drove the Toyota Camry.

13 Q. Okay. And whose Toyota is that?

14 A. My friend Taylor.

15 Q. Okay. And is Taylor your friend?

16 A. Uh-huh (affirmative).

17 Q. Well, you just said your friend. How does Taylor know
18 Mr. Hewins?

19 A. They were seeing each other at the time.

20 Q. Okay. And do you know Mr. Hewins? Now, do you call
21 Mr. Hewins Erick or do you call him Mr. Hewins?

22 A. Erick.

23 Q. Okay. So do you know Erick just through Taylor or do
24 you know him independently?

25 A. No, I met him through my father.

1 Q. Okay. So you know Erick and you know Taylor and you
2 know Erick ---

3 A. Yeah.

4 Q. Okay. So you mentioned three cars. Can you back up
5 and tell us -- you drove one car, Mr. Hewins, did he drive?

6 A. Yeah. He was in the black Lexus.

7 Q. Okay. So he was -- so he had a vehicle at the
8 Clarion?

9 A. Yeah. That was -- he was already there.

10 Q. Okay.

11 A. We went there just to meet him.

12 Q. Okay. And where does the third vehicle come into
13 play: Could you try to make sure the jury understands why
14 there's -- where the three vehicles come from?

15 A. The third vehicle was at the shop. And we were taking
16 -- we were going to follow him to go get his truck. And he
17 just bought that car for my friend. So she was getting her
18 car and then I was taking her car back to the house so she
19 could get her new car.

20 Q. So, as you said, you had three cars, you needed three
21 drivers?

22 A. Yes.

23 Q. Okay. So do you recall how you were positioned --
24 well, excuse me. When you pulled up was Mr. Hewins already
25 there?

1 A. Yeah. His car was already backed in.

2 Q. Okay. And how did you pull in, where did you park?

3 A. We pulled right beside him. And then we called him
4 when we got there.

5 Q. And did you pull in front-ways or back in like him?

6 A. No, we pulled in.

7 Q. Okay. So that means that -- well, does that mean that
8 your driver's door faced his driver's door?

9 A. Uh-huh (affirmative).

10 Q. Okay. And so he wasn't in his car when you got there?

11 A. No.

12 Q. Okay. So you said you called him, where was he?

13 A. Well, I didn't call him. She called him. But he was
14 upstairs.

15 Q. And she is?

16 A. Taylor.

17 Q. Taylor.

18 A. Yes, sir.

19 Q. And Taylor called him and he was upstairs and then
20 what happened?

21 A. He came downstairs and got in the car. And then a few
22 minutes later Officer Gardner and Ms. Hall drove up and ...

23 Q. Okay. You said a few minutes later. What are y'all
24 doing sitting in the car for a few minutes before they pull
25 up?

1 A. Talking about where we were going to get the truck.

2 Q. Okay. And I presume your windows are down?

3 A. Yes, sir.

4 Q. Now, you said that Officer Gardner and Officer Hall
5 pulled up. Can you describe where they pulled up?

6 A. Yes, sir. Directly behind our cars.

7 Q. Okay. Now, your bumper is facing which direction?

8 A. My bumper is facing their car.

9 Q. Facing the officer's car?

10 A. Yes, sir.

11 Q. Okay. And Mr. Hewins, you said, was backed in?

12 A. Yes, sir.

13 Q. Okay. So does that mean his bumper was facing the car
14 or his headlights are facing the car?

15 A. His headlights are facing the car.

16 Q. And you said that they pulled in front of both of
17 y'all. Can you describe specifically what you mean by,
18 they pulled in front of both of y'all?

19 A. Yes, sir. We were parked on the right side of the
20 parking lot. So when they drove down, they would have been
21 driving on the right side. I hope they weren't driving on
22 the wrong side of the road. But they should have been
23 driving on the right side. And they stopped directly
24 behind our cars.

25 Q. Okay. I'm going to hand you a piece of paper and let

1 me know if you know what this is?

2 A. That is the Clarion Hotel.

3 Q. Okay. And that's been marked, for the record, as
4 Defendant's Exhibit 2. How do you recognize that picture
5 particularly?

6 A. The stairwell that he came down is right here.

7 Q. Okay. And do you recognize and can you tell from that
8 picture exactly where your vehicle was parked that night?

9 A. Yes, sir. It's not the one next to the handicapped,
10 but the next one.

11 Q. Okay. And this picture, is this the same as --
12 because this is now, you know, 2013, this was a couple or
13 couple and a half years ago, is this picture the same as
14 you remember -- recall it being at the time?

15 A. Yes, sir.

16 Q. Okay. Now, I'm going to hand you a pen. Can you make
17 a mark, and I recognize that there's cars in that picture
18 that surely weren't there that night, but could you make a
19 mark where your car was?

20 A. (Witness complies).

21 Q. Do you mind denoting that with a C. We'll do that for
22 Camry.

23 A. (Witness complies).

24 Q. Can you also make a mark where you recall Mr. Hewins'
25 car was parked? If you will mark that with an L, please,

1 for Lexus.

2 A. (Witness complies).

3 Q. Okay. Now, do you recall exactly where -- okay. And
4 for the record, you've marked with an X the spots?

5 A. Yes, sir.

6 Q. Can you mark please where you remember the patrol car
7 was parked?

8 A. (Witness complies).

9 Q. Okay. If you want to put a P for patrol car, that's
10 fine. Okay. Now, specifically, do you recall exactly how
11 far away the patrol car pulled from your car?

12 A. She had enough room, Ms. Hall had enough room to get
13 out. But, I mean, if I tried to back out, I would have
14 took out the back of their car.

15 Q. Okay. Was it possible for you to back out and then
16 leave?

17 A. No.

18 Q. Could you see whether -- could you observe whether or
19 not it appeared that Mr. Hewins had any room to leave?

20 A. No, sir.

21 Q. You could not observe it?

22 A. No, I could observe it. There was no room for him to
23 leave. If you pull in front of two cars neither of them
24 can get out, you know.

25 Q. When they pulled up, what did you observe the officers

1 do, if anything, once they pulled up?

2 A. I believe Officer Gardner got out first and he came to
3 Erick's window.

4 Q. Okay. And at this time was your window still rolled
5 down?

6 A. Yes, sir.

7 Q. And was Erick's window still rolled down?

8 A. Yes, sir.

9 Q. What did you hear, if anything?

10 A. I know he asked what were we doing there. And he
11 asked for everybody's name. And -- well, he asked for our
12 license, but I guess he asked for Erick's name because he
13 didn't have Erick's license. But he got our license and
14 ran our names.

15 Q. Okay. Well, he asked you what you were doing. Did
16 you tell him what you were doing there?

17 A. Yes, sir.

18 Q. Did you hear anyone else answer his question?

19 A. Everybody answered him.

20 Q. Okay. Did anyone give a different answer that you
21 heard?

22 A. No, sir.

23 Q. So everybody told him exactly what you were doing?

24 A. Yes, sir.

25 Q. Now, the windows are down, so did he talk to y'all and

1 Erick at the same time or did he talk to you and ---

2 A. He approached Erick first.

3 Q. Okay. What can you describe, if anything. I don't
4 know if you were able to hear the entire conversations.

5 But what did you hear specifically as it regards to Mr.
6 Hewins and Officer Gardner's conversation?

7 A. I'm not too sure of what their conversation was
8 because he wasn't talking to me. So I can't say what he
9 said or what Erick said because I'm not really sure what
10 they were talking about through the car.

11 Q. Okay. At some point, Officer Gardner testified that
12 he asked Mr. Hewins to exit the vehicle?

13 A. Yes, sir.

14 Q. Do you recall him exiting the vehicle?

15 A. Yes, sir.

16 Q. Okay. And I apologize. Let me back up. Where was
17 Officer Gardner standing?

18 A. He was standing in front of Erick -- in between our
19 doors because both of our -- we were right beside each
20 other, so he was at Erick's front door and probably about,
21 I guess, where my door opens at, the crack right there
22 where it opens.

23 Q. How -- you can either, you know, use your hands or try
24 to guesstimate, but inches, feet, or yards or however long,
25 how far away was your car door from Erick's car door?

1 A. I mean, normal parking spot space. Probably about
2 like this.

3 Q. That seems awfully close. Could you have opened your
4 door to get out?

5 A. Yeah.

6 Q. Once Officer Gardner came and stood in between your
7 car and Erick's car, did you have room to open your door?

8 A. No. I mean, I may could have shimmied my way out of
9 there because I'm smaller, but no.

10 Q. And could you observe where Officer Gardner was
11 standing in relation to Erick's door and whether or not it
12 appeared that that door could have been opened? Could have
13 been opened?

14 A. He may have opened his door, but he couldn't have
15 gotten out of the car with him standing right there.

16 Q. Because he was standing right there?

17 A. Yeah.

18 Q. Okay. And do you recall when Officer Gardner got Mr.
19 Hewins out of the vehicle? Not what time but do you recall
20 that he got him out of the vehicle?

21 A. Yes, sir.

22 Q. And what did he do with Mr. Hewins or what did Mr.
23 Hewins do when he got out of the vehicle?

24 A. He brought Erick to the back of his car and to the
25 front of my -- well, Taylor's car, but the car I was

1 driving.

2 Q. Okay. And the front of your car would have been
3 facing the motel; right?

4 A. Yeah. He was on the sidewalk by then, probably about
5 right here.

6 Q. Okay. Can you put a small circle where you believed
7 him to have been standing?

8 A. (Witness complies).

9 Q. Okay. So he took Erick out of the car and then put
10 him within sight. And so you're facing Erick at this
11 point; correct?

12 A. Uh-huh (affirmative).

13 Q. Now, Officer Gardner said he took him out and frisked
14 him. Is that what you recall?

15 A. No, sir.

16 Q. What did you recall? What do you recall seeing?

17 A. I know that other officers arrived. I can't tell you
18 exactly when they arrived. But I know that Officer Gardner
19 and Erick stood here for a good while.

20 Q. But do you have any guesstimate as to what a good
21 while is?

22 A. Probably fifteen minutes or maybe a little bit more.

23 Q. What were you able to observe, if anything, other than
24 simply, you know, at some point something happened?

25 A. Yeah. The only thing that I really heard verbally was

1 Erick say why the H-E-L-L are you going into my pocket.

2 Q. Now. You say that's the only thing you heard. Why
3 did you hear that and not hear anything else?

4 A. That was pretty loud.

5 Q. So was there conversation prior to that, that -- were
6 you privy to any conversation ---

7 A. I mean, I seen hand gestures and their mouths moving,
8 but I couldn't make out what they were saying.

9 Q. And so at some point Erick said something loud enough
10 for you to hear him?

11 A. Yes, sir.

12 Q. And at that point, what do you recall seeing?

13 A. Erick being placed into handcuffs and being put in the
14 back of the patrol car.

15 Q. Okay.

16 MR. HARBIN: One second, Judge. Judge, at this
17 time, we would ask that Defendant's Exhibit 2 be moved into
18 evidence.

19 THE COURT: All right. If it's not already it's
20 -- any objection?

21 MS. MONTS: No objection, Your Honor.

22 THE COURT: All right. Exhibit 2 is admitted
23 into evidence without objection.

24 (WHEREUPON, Defendant Exhibit Number 2 was admitted
25 into evidence.)

1 MR. HARBIN: Thank you, Judge. No further
2 questions.

3 THE COURT: All right. Solicitor, you may cross-
4 examine.

5 CROSS-EXAMINATION

6 BY MS. MONTS:

7 Q. Ms. Newman, how old are you?

8 A. I'm nineteen.

9 Q. And how old were you on August 9th of 2010?

10 A. Seventeen.

11 Q. And how old was Taylor?

12 A. She was eighteen at the time.

13 Q. And how long had you known Taylor?

14 A. I've known her since elementary school.

15 Q. And you knew Taylor to be dating Erick Hewins?

16 A. Yes, ma'am.

17 Q. Had you seen them together?

18 A. Yes, ma'am.

19 Q. And who was Erick Hewins giving the Lexus to? You
20 said he was giving it to a friend?

21 A. To Taylor.

22 Q. He was giving her the Lexus?

23 A. Yes, ma'am.

24 Q. On that night what was the relationship between Taylor
25 and Mr. Hewins? Were they getting along or were they

1 fighting?

2 A. They were actually arguing because she did see him
3 walk out of another female's room, so she was a little bit
4 upset. But, I mean, they were still together.

5 Q. And isn't it true that Erick wanted her to get into
6 his car there in the parking lot?

7 A. I ---

8 Q. Weren't they arguing about that?

9 A. I think so, but I know we were -- I can't really say
10 what they were arguing about, ma'am.

11 Q. But they were arguing?

12 A. Yes, ma'am.

13 Q. And did you know that there was marijuana in the
14 vehicle you were in?

15 A. No, ma'am.

16 Q. And why did you not just leave Taylor with Erick if
17 they were going to get another car?

18 A. Because after the fact of him walking out of the
19 female's room, she didn't want to be in a car with him.
20 She just wanted to get her car and go home.

21 Q. She wanted to get a car from him, let him get another
22 car and then ---

23 A. Go home.

24 Q. So how far away did you live from Taylor?

25 A. We lived together.