

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

---

Case Nos. 2009-CP-26-1281  
2009-CP-26-3127  
2009-CP-26-3128

---

J. Gregory Hembree, Solicitor, Fifteenth Judicial Circuit, on behalf of the Horry County Police Department,.....Respondent,

v.

Taurus 38 Special Pistol, SN: SF53109; 1994 Monaco RV, SN: VIN: 1RF120611R1010972; and One Thousand Eight Hundred Forty-Seven Dollars (\$1,847.00), U.S. Currency, Defendant Property, and Michael James Albin,.....Defendant,  
Of whom Michaela Albin, as the personal representative of the estate of Michael James Albin, is the Appellant.

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RECORD ON APPEAL

---

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Attorney for Appellant

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(843) 662-5000  
Attorney for Respondent

Donna Earls Elder  
PO Box 1276  
Conway, SC 29528  
843-915-8643  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

ORIGINAL

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

---

Case Nos. 2009-CP-26-1281  
2009-CP-26-3127  
2009-CP-26-3128

---

J. Gregory Hembree, Solicitor, Fifteenth Judicial Circuit, on behalf of the Horry County Police Department,.....Respondent,

v.

Taurus 38 Special Pistol, SN: SF53109; 1994 Monaco RV, SN: VIN: 1RF120611R1010972; and One Thousand Eight Hundred Forty-Seven Dollars (\$1,847.00), U.S. Currency, Defendant Property, and Michael James Albin,.....Defendant,  
Of whom Michaela Albin, as the personal representative of the estate of Michael James Albin, is the Appellant.

---

RECORD ON APPEAL

---

David J. Canty, Bar No. 1122  
4612 Oleander Drive  
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(843) 662-5000  
Attorney for Respondent

**RECEIVED**

NOV 06 2012

**SC Court of Appeals**

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STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

FILED

2009 SEP 23 AM 8:50 CASE #: 2009-CP-26-3128

MELANIE WELCH  
CLERK OF COURT

J. Gregory Hembree, et al

Michael James Albin

VS.

PLAINTIFF(S)

DEFENDANT(S)

**ORDER  
DISPOSITION OF MOTIONS**

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

AND IT IS SO ORDERED.

  
CHIEF ADMINISTRATIVE JUDGE

DATED AT CONWAY, SOUTH CAROLINA THIS 22<sup>nd</sup> DAY OF SEPTEMBER, 2009.

Donna E. Elder

David J. Canty

PLAINTIFF'S ATTORNEY(S)

DEFENDANT'S ATTORNEY(S)

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
) )  
J. GREGORY HEMBREE ON- )  
BEHALF OF HORRY COUNTY )  
POLICE DEPARTMENT )  
PLAINTIFF )  
) )  
V. )  
) )  
TAURUS .38 SPECIAL SN:sg53109 )  
1994 MONACO RV )  
VIN: 1RF120611R1010972 )  
AND ONE THOUSAND EIGHT )  
HUNDRED AND FORTY FIVE )  
DOLLARS (\$1,845.00) )  
DEFENDANT PROPERTY )  
) )  
MICHAEL JAMES ALBIN )  
DEFENDANT )  
\_\_\_\_\_ )

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

FINAL ORDER

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREFORE IT IS ORDERED:**

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

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

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

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

And it is so ordered.

Conway South Carolina

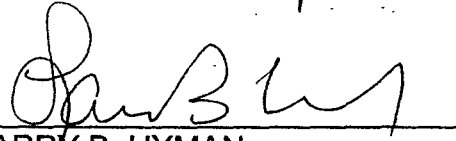
Dated: 8-12-2011



Judge Larry Hyman



AND IT IS SO ORDERED this 5<sup>th</sup> day of April, 2012.



LARRY B. HYMAN  
COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
CASE NO: 2008-CP-26-\_\_\_\_\_

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

PLAINTIFF, )

V. )

TAURUS 38 SPECIAL PISTOL )  
SN: SG53109, )

DEFENDANT PROPERTY, )

MICHAEL JAMES ALBIN, )

DEFENDANT. )

COMPLAINT  
2008 FEB 10 PM 3: 25  
MELANIE HUGHES  
CLERK OF COURT  
HORRY COUNTY

Plaintiff would respectfully allege as follows:

I.

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

II.

Defendant property is described as follows:

TAURUS 38 SPECIAL PISTOL  
SN: SG53109

III.

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

IV.

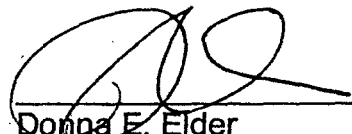
That the Defendant Property is property which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation or trafficking of various controlled substances as defined in Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976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

V.

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

WHEREFORE, the plaintiff prays that:

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

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

Date: 2/9/09

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )  
J. Gregory Hembree, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Michael J. Albin, )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
CASE NO. 09-CP-26-1281

**ANSWER**

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

1. That any and all material allegations of the Complaint not hereinafter admitted, qualified or explained are hereby denied and strict proof is demanded thereof.
2. That paragraph 1 is admitted.
3. That paragraph 2 of the Complaint requires no response.
4. That paragraph 3 of the Complaint is denied in that the Defendant property was not seized pursuant to statute nor is it subject to seizure pursuant to statute.
5. That paragraph four of the Complaint is denied.
6. That paragraph five of the Complaint is denied.

**Wherefore** Defendant prays that this Honorable Court inquire into the matters herein alleged and:

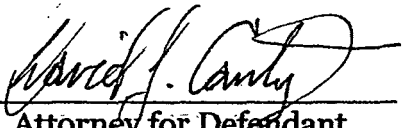
- a.) Dismiss the Complaint with prejudice;
- b.) Return the Defendant property to the Defendant;

HORRY COUNTY  
09 JUN -1 AM 11:08  
WILLIE HUGGINS  
CLERK OF COURTS

- c.) Award Defendant his costs and a reasonable attorney's fee; and
- d.) Grant such other and further relief as this Honorable Court deems just and proper.

DAVID J. CANTY, P.A.

Myrtle Beach, S.C.  
May 27, 2009

by:   
Attorney for Defendant  
4612 Oleander Drive  
Myrtle Beach, S.C. 29577  
(843) 449-6304  
mbcounsel@verizon.net

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
CASE NO: 2009-CP-26-\_\_\_\_\_

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

PLAINTIFF,

V.

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

DEFENDANT PROPERTY,

MICHAEL JAMES ALBIN,

DEFENDANT.

COMPLAINT  
CLERK OF COURT  
HORRY COUNTY  
MAR 27 AM 10:20

Plaintiff would respectfully allege as follows:

I.

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

II.

Defendant property is described as follows:

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

III.

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

IV.

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

V.

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

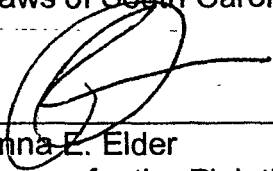
VI.

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

WHEREFORE, the Plaintiff prays that:

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

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



---

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

Date:

3/25/09

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Horry )  
 )  
 J. Gregory Hembree, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 One Thousand Eight Hundred )  
 Forty-Seven Dollars (\$1847.00) )  
 U.S. Currency )  
 )  
 Defendant Property, )  
 )  
 Michael J. Albin, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO. 09-CP-26-3127

FILED  
 JUN 22 AM 11:38  
 MELANIE HUGHES  
 CLERK OF COURT  
 Horry County

**ANSWER & COUNTERCLAIM**

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

For a First Defense

1. That any and all material allegations of the Complaint not hereinafter admitted, qualified or explained are hereby specifically denied and strict proof is demanded thereof.
2. That that portion of paragraph 1 of the Complaint which alleges that the Plaintiff is the Fifteenth Circuit Solicitor is admitted and the remaining allegations therein are denied and strict proof is demanded thereof.
3. That although the allegations of paragraph 2 of the Complaint allege the sum of One Thousand Eight Hundred Forty Seven & 00/100 (\$1,847.00) Dollars the Plaintiffs agents in fact seized a sum in excess of Fifteen Thousand Five Hundred Eighty

Five & 56/100 (\$15,585.56) Dollars.

4. That paragraphs 3, 4, 5 & 6 of the Complaint are hereby expressly denied and strict proof is demanded thereof.

For a Second Defense and Counterclaim

(Conversion)

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

6. That on or about January 24, 2009 agents of the Plaintiff came to Defendant's premises and appropriated to themselves the sum of Fifteen Thousand Five Hundred Eighty Five & 56/100 (\$15,585.56) Dollars in cash with the intent and effect of depriving the Defendant of dominion and control thereof.

7. That the said misappropriation was willful and intentional and perpetrated with knowledge of the Defendant's rights in the property.

8. That the said misappropriation was perpetrated with a conscious indifference to and reckless disregard of Defendant's rights therein.

9. That Defendant is informed and believes that he is entitled to Judgment against the Plaintiff in the full and just sum of Fifteen Thousand and Five Hundred Eighty Five & 56/100 (\$15,585.56) Dollars plus pre-judgment interest at the highest legal rate.

**WHEREFORE** Defendant prays that this Honorable Court inquire into the matters herein alleged and :

- a.) Dismiss the Complaint with prejudice;
- b.) Grant Judgment in favor of the Defendant against the Plaintiff in

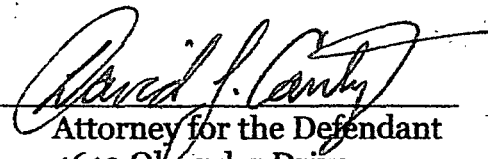
the full and just sum of Fifteen Thousand Five Hundred Eighty Five  
& 56/100 (\$15,585.56) Dollars plus pre-judgment interest, costs  
and a reasonable attorney's fee;

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

DAVID J. CANTY, P.A.

Myrtle Beach, S.C.  
June 4, 2009

by:



Attorney for the Defendant  
4612 Oleander Drive  
Myrtle Beach, S.C. 29577  
(843) 449-6304  
mbcounsel@verizon.net

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS

CASE NO: 2009-CP-26- 3128

J. GREGORY HEMBREE, SOLICITOR, )  
FIFTEENTH JUDICIAL CIRCUIT, ON )  
BEHALF OF THE HORRY COUNTY )  
POLICE DEPARTMENT, )  
 )  
PLAINTIFF, )  
 )  
V. )  
 )  
1994 MONACO RV TAN IN COLOR, )  
VIN: 1RF120611R1010972, )  
 )  
DEFENDANT PROPERTY, )  
 )  
MICHAEL JAMES ALBIN, )  
 )  
DEFENDANT. )  
 )  
\_\_\_\_\_ )

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

Plaintiff would respectfully allege as follows:

I.

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

II.

Defendant property is described as follows:

1994 MONACO RV TAN IN COLOR  
VIN: 1RF120611R1010972

III.

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

IV.

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

V.

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

VI.

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

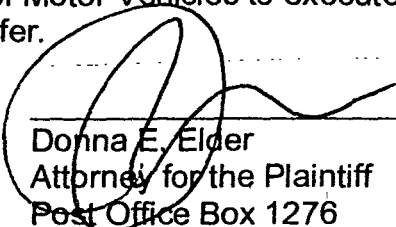
VII.

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

WHEREFORE, the Plaintiff prays that:

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

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



---

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

Date: 3/25/09

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
CASE NO. 09-CP-26-3128

J. Gregory Hembree, )  
 )  
Plaintiff, )

vs. )

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

Michael J. Albin, )  
 )  
Defendant. )

**ANSWER & COUNTERCLAIM**

2009 JUN 22 PM 1:58  
MELANIE HUSGINS  
CLERK OF COURT

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

For a First Defense

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

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

For a Second Defense and Counterclaim

(Conversion)

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

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

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

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

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

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

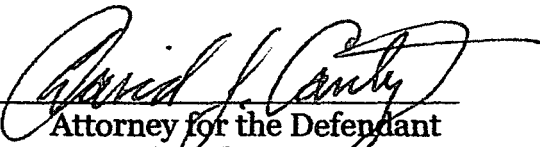
- a.) Dismiss the Complaint with prejudice;
- b.) Grant Judgment in favor of the Defendant in the full and just sum of Ninety Four Thousand & 00/100 (\$94,000.00) Dollars actual

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

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

DAVID J. CANTY, P.A.

Myrtle Beach, S.C.  
June 4, 2009

by:   
Attorney for the Defendant  
4612 Oleander Drive  
Myrtle Beach, S.C. 29577  
(843) 449-6304  
mbcounsel@verizon.net

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF Horry

2009-CP-26-1281  
2009-CP-26-3128  
2009-CP-26-3127

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

-vs-

MICHAEL JAMES ALBIN, )  
Defendant. )

July 28, 2011

B E F O R E:

HONORABLE LARRY B. HYMAN

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1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 9:25 a.m.).

3 THE COURT: All right, good morning, Mr.  
4 Canty.

5 MR. CANTY: Good morning, Your Honor.

6 THE COURT: Good to see you.

7 Miss Elder.

8 MS. ELDER: Good morning, Your Honor.

9 THE COURT: All right. This is, I believe,  
10 Hembree versus Albin, is that correct?

11 MS. ELDER: Yes, sir.

12 THE COURT: Looks like three cases, three  
13 separate cases. Is that also correct?

14 MS. ELDER: Yes, sir.

15 THE COURT: All right. Are we ready?

16 MS. ELDER: Yes, sir.

17 THE COURT: Do you want -- why don't you make  
18 a little brief opening remarks to me so I will  
19 understand what we have here.

20 MR. CANTY: Your Honor, we do have a pretrial  
21 brief.

22 THE COURT: Certainly. Thank you very much  
23 for doing that.

24 MR. CANTY: And we also have a motion to  
25 sequester and also a motion in limine.

1 THE COURT: All right. Why don't I take  
2 those up after I have heard a little argument about  
3 the case, okay, so I will be familiar with it.

4 All right, Miss Elder.

5 MS. ELDER: Your Honor, this is a case that  
6 was initiated in January of 2009. SLED at the time  
7 had received some tips over their phone line  
8 anonymously about some gambling activity in a  
9 location here in Horry County known as Putters. It  
10 was being operated by the defendant in this case  
11 and some of his employees. Based on the tip SLED  
12 received regarding the gambling they initiated an  
13 investigation insofar as the gambling, Your Honor.  
14 They were able to send in agents under cover with  
15 wires to perform the gambling transaction, to play  
16 the machines that were located in the  
17 establishment, to get the payout, to get payout.

18 During the course of their investigation they  
19 did learn, and there was some investigation when  
20 they talked to employees there at that location  
21 that there were also, there was also a drug element  
22 to it, in particular marijuana. They did  
23 successfully purchase, after some conversation with  
24 the bartender there, Mr. Baker, they did purchase  
25 some marijuana from him at the bar at that

1 location. There was some discussions about Mr.  
2 Albin and his involvement in that, in that  
3 basically he was undercutting Mr. Albin's sales of  
4 marijuana, he could sell it cheaper.

5 He then -- Mr. Albin had some discussions  
6 with our undercover officers in regards to selling  
7 marijuana. I believe it was the following day he  
8 was going to sell it to them but first he wanted to  
9 take them out to the RV and smoke marijuana with  
10 them first before he made the sale. The agents did  
11 not go out to the RV at that time, they went and  
12 got a search warrant based on the gambling case and  
13 based on the drug transaction they went and got a  
14 search warrant from I believe Judge Blanton and  
15 they executed that the next day.

16 Your Honor, SLED is here, they searched the  
17 Putters' inside in reference to the gambling.

18 THE COURT: Was that like a residence or  
19 something?

20 MS. ELDER: It was a bar, restaurant type  
21 thing, Your Honor.

22 THE COURT: All right.

23 MS. ELDER: They searched the inside, they  
24 seized several equipment or gambling machines, they  
25 seized, I believe, some monies from that search

1 warrant and some other things listed on their  
2 return.

3           At the same time, Your Honor, pursuant to  
4 that search warrant Horry County searched the RV.  
5 When they were in the RV, Your Honor, they did  
6 discover five separate baggies of marijuana at that  
7 time I believe in a closet. They also discovered,  
8 located a weapon. The weapon is under seizure, the  
9 RV that it was in is under seizure and the  
10 additional monies were found several days later.  
11 The RV was towed and impounded to Horry County  
12 Police Department. Captain Rutherford, after it  
13 was impounded, had gone out to the RV because there  
14 was a possibility of some items that were fungible  
15 and could be, would be destroyed out in the heat,  
16 obviously, which would be the refrigerator. There  
17 was a refrigerator in the unit. He went out to  
18 check the refrigerator, when he did he discovered a  
19 sixth bag of marijuana and approximately, I believe  
20 it was \$1,800, Your Honor, that is also under  
21 seizure.

22           THE COURT: All right.

23           MS. ELDER: \$1,847, to be exact.

24           THE COURT: Okay. And, Mr. Canty, the  
25 defendant's position, and it would appear that

1 there are three cases here.

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

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

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

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

17 THE COURT: I don't know.

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

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

25 MR. CANTY: Absolutely they should be tried

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

3 THE COURT: All right.

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

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

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

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

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

7 THE COURT: All right.

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

10 MR. CANTY: Yes, Your Honor.

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

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

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

23 MR. CANTY: 520(H).

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

1           MR. CANTY: And it says whenever a seizure of  
2 any property, if such a seizure is accomplished as  
3 a result of a joint effort by more than one law  
4 enforcement agency the law enforcement agency  
5 initiating the investigation is considered to be  
6 the agency making the seizure.

7           Now, both detectives' testimony at the  
8 preliminary hearing and the report indicate that  
9 this was a SLED case, Horry County Police  
10 Department was called upon to assist SLED in the  
11 execution of the search warrant. There is  
12 substantial property, approximately \$15,000 in cash  
13 as well as a laptop computer and various other  
14 items that were seized by SLED. We have  
15 counter-claimed for that property and the Solicitor  
16 takes the position SLED is not a party to this  
17 action, that is not a proper subject for the Court  
18 to hear today.

19           Our position is that under that statute as  
20 well as judicial economy that they have no choice  
21 but to defend the alleged seizure of these funds in  
22 this action. Now, the question for the Court to  
23 decide is does the counter-claim include the other  
24 cash that was seized. Their position is that it  
25 does not, we can only litigate the \$1,500 that

1 Horry County Police found reportedly some six days  
2 after they had seized the RV.

3 THE COURT: Wasn't that like \$1,700, about  
4 \$1,800?

5 MR. CANTY: \$1,800, yes.

6 THE COURT: Okay.

7 MR. CANTY: But there is a total of  
8 approximately \$15,000 and this includes my client's  
9 penny jar in his bedroom, it includes \$110 in  
10 rolled quarters in the microwave oven in the  
11 restaurant, and the testimony would be, Your Honor,  
12 that SLED ordered all the patrons in the restaurant  
13 present to pay their tab and then seized that  
14 money, which is indefensible under the gambling  
15 statute. That is the subject of our counter-claim  
16 and it is the Solicitor's position they need not  
17 defend that in this case.

18 THE COURT: I will hear from you, Miss Elder.

19 MS. ELDER: Your Honor, that's correct, that  
20 has always been our position. We, the monies, my  
21 understanding, the monies that were seized by SLED  
22 were seized pursuant to the gambling case and there  
23 is a separate and distinct provision regarding  
24 forfeitures of gambling funds in the gambling  
25 statute, in the criminal statute. This case that

1 we've got is a result of the drug case. The drug  
2 case was made by Horry County, the warrants were  
3 signed by Horry County in relation to the drugs.

4 Therefore, Your Honor, our position is that  
5 this is an Horry County case. SLED did not come to  
6 me and request nor did they request of the Attorney  
7 General to file an action for gambling. I can't  
8 force them to do that, Your Honor, I can't force  
9 the seizure, I'm representing an agency. The  
10 agency in this case as a result of their warrant  
11 went forward on a seizure based on their drug case.

12 THE COURT: So, if I understand it, your  
13 position is that you're proceeding under 520, which  
14 is the drug statute?

15 MS. ELDER: That's correct.

16 THE COURT: And you are seizing the vehicle  
17 pursuant to that section as having been used to  
18 transport, facilitate?

19 MS. ELDER: And as a container, Your Honor.

20 THE COURT: And as a container?

21 MS. ELDER: Yes, sir.

22 THE COURT: Potentially that is your reason  
23 for proceeding against the vehicle, and as to the  
24 drugs, I mean the monies, it was money found in  
25 proximity to illegal contraband?

1 MS. ELDER: That's correct, it was found in  
2 the RV, Your Honor, it was not found inside where  
3 they took the monies from the gambling case.

4 THE COURT: Okay. Now, who has the money for  
5 the gambling case?

6 MS. ELDER: That would be deposited with  
7 SLED, Your Honor.

8 THE COURT: You are not proceeding under  
9 that?

10 MS. ELDER: No, sir.

11 THE COURT: The only funds that are relevant  
12 to this, these particular actions are \$1,847 found  
13 within the motor home or RV?

14 MS. ELDER: That's correct.

15 THE COURT: And your basis for that is the  
16 drug case, and Horry County is the only agency that  
17 is involved in the drug case?

18 MS. ELDER: They initiated the warrant on  
19 that drug case, Your Honor, they charged the  
20 defendant.

21 THE COURT: Horry County warrants?

22 MS. ELDER: Yes, sir. They are not SLED  
23 warrants nor were they SLED citations. SLED did  
24 issue some citations in regard to the gambling,  
25 Your Honor.

1 THE COURT: And they made some seizures that  
2 there has been nothing done with but it is nothing  
3 you are proceeding on?

4 MS. ELDER: That's correct, they did go to  
5 the magistrate's office, I believe, I have a court  
6 order, they applied for destruction of the  
7 machines, I wasn't involved in that action, that  
8 was done before the magistrate. There was an order  
9 for destruction --

10 THE COURT: Under that scenario did the  
11 magistrate make a summary finding it is a gambling  
12 device and can be destroyed?

13 MS. ELDER: Yes, sir. There was a portion of  
14 that order that did indicate the gambling funds  
15 were to be held at some point until an order of the  
16 competent jurisdiction awarded something regarding  
17 the gambling funds. He also then said, there was  
18 approximately \$500 or something like that, that  
19 would be given to SLED from those funds once they  
20 were ordered, I assume for the cost of destruction,  
21 Your Honor.

22 THE COURT: All right. Mr. Canty, Miss Elder  
23 tells me as to the drug statute and the drug  
24 statute violation they are proceeding as the  
25 initiating agency or the seizing agency. The one

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Okay.

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

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

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

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

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

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

1 MS. ELDER: Yes, sir.

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

10 MR. CANTY: No, Your Honor.

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

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

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

19 MR. CANTY: Yes.

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

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

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

5 THE COURT: I understand.

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

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

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

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

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

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

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

1 motion for summary judgment, is that correct?

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

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

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

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

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

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

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

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

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

17 MR. CANTY: There was no drug buy.

18 THE COURT: Correct.

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

21 THE COURT: What do you say about that?

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

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

3 THE COURT: Absolutely.

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

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

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

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

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

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

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

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

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

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

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

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

9 Do you have it, Mr. Canty?

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

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

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

21 MR. CANTY: No, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1   allege both?

2           MS. ELDER: Yes, sir.

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

5           MS. ELDER: Yes, sir.

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

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

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

17           MR. CANTY: The motion to suppress?

18           THE COURT: Yes.

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

23           THE COURT: Okay.

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

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

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

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

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

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

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

12 THE COURT: All right. I understand that.

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

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

20 MR. CANTY: Yes.

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

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

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

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

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

23 MR. CANTY: There was no drug buy.

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

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

4 MR. CANTY: Yes, Your Honor.

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

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

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

1 John said and what Judge John intended and what  
2 Judge John would have allowed. It is simply my  
3 opinion here that is now the law of the case, I am  
4 bound by the ruling, the prior ruling of my  
5 colleague. If that had never come before Judge  
6 John I think it would be up to me and as I said,  
7 agree with it or not, I may have reached a  
8 different or a contrary ruling on that.

9 Nevertheless, it was ruled upon by a circuit judge  
10 having the same jurisdiction that I have and my  
11 issue here is I believe, and this is your appellate  
12 issue, I'm bound by Judge John's ruling.

13 Thank you.

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

1 a copy, if I may approach, Judge?

2 THE COURT: But that money is not even at  
3 issue here, is it?

4 MS. ELDER: No, sir.

5 MR. CANTY: We have filed a counter-claim for  
6 the money that was seized during the raid.

7 THE COURT: But isn't it true that Horry  
8 County doesn't even have that?

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

10 THE COURT: Did you file a third-party  
11 complaint naming SLED?

12 MR. CANTY: No. We relied on the statute,  
13 the forfeiture statute, and if I may approach also  
14 with regard to the opinion of the Attorney General,  
15 this is opinion number 09 dash --

16 THE COURT: I will be happy, if you prevail,  
17 to order Horry County to turn over that money if  
18 Horry County has it but without SLED being made a  
19 party or having been given notice that you intend  
20 to proceed against funds in their possession, and  
21 obviously you had notice of that, how can I rule on  
22 that? Doesn't SLED have the right to be made a  
23 party? Don't they have to bring an action, SLED  
24 has to bring an action to retain those monies?

25 MR. CANTY: Yes, Your Honor. There is an

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the other, that is, by asking the county to return  
2 it you're asking SLED to return it. Well, is  
3 everybody suing you or, or if you want to  
4 counter-claim, doesn't that have to be the case?  
5 How can you counter-claim against a non party.

6 MR. CANTY: Your Honor, the State of South  
7 Carolina is the plaintiff. SLED is the State  
8 agency, Gregory Hembree is a state employee, he is  
9 a state agent.

10 THE COURT: Do you doubt his authority, then,  
11 to bring seizure actions?

12 MR. CANTY: Not at all, Your Honor. What I'm  
13 saying, Your Honor, under the statute the  
14 initiating agency is the agency making the seizure  
15 and that it is just undisputed --

16 THE COURT: Isn't Mr. Hembree bringing it?  
17 You just told me Mr. Hembree could bring it, he has  
18 authority to bring it, so Mr. Hembree is basically  
19 bringing it, or I think the actual caption is OBO,  
20 what does that mean, Miss Elder, tell him.

21 MS. ELDER: Your Honor, on behalf of.

22 THE COURT: On behalf of?

23 MS. ELDER: On behalf of.

24 THE COURT: There you go, Mr. Hembree on  
25 behalf of Horry County Police Department, which is

1 also a subdivision of the State.

2 MR. CANTY: Yes, Your Honor.

3 THE COURT: If you were bringing a civil  
4 action, this is a civil action, if you were  
5 bringing a civil action for, let's say you wanted  
6 to bring it because of an automobile accident that  
7 occurred as a result of a defect in a roadway, who  
8 do you sue? Would it be the Department of  
9 Transportation? Certainly it would be. You would  
10 not sue the State of South Carolina, you would sue  
11 the department that is in charge. You bring it  
12 under the D.O.T. The D.O.T. regularly brings  
13 condemnation actions on behalf of the State. All  
14 state agencies at some time or another are called  
15 upon to bring an action on behalf of or as  
16 representative of the State of South Carolina.  
17 Doesn't that occur every day here in civil courts?

18 MR. CANTY: Your Honor, I would point out  
19 there is a distinction to be drawn between a wreck  
20 case and a forfeiture action brought pursuant to  
21 statute. It is a penal statute which must be  
22 strictly construed against the State. It provides  
23 whenever when it is subject to seizure as a result  
24 of joint effort by more than one law enforcement  
25 agency the law enforcement agency initiating the

1 investigation is considered to be the agency making  
2 the --

3 THE COURT: Penal in what regard? It doesn't  
4 provide for any incarceration or fine or penalty  
5 against the person who owns the property. It is  
6 against the property, it is an action --

7 MR. CANTY: Your Honor --

8 THE COURT: How can it be penal?

9 MR. CANTY: It is forfeiture of my client's  
10 property, I view that as penal.

11 THE COURT: Well, I'm going to deny your  
12 motion.

13 Anything further?

14 MR. CANTY: Not from the plaintiff, Your  
15 Honor, or the defendant, I'm sorry.

16 THE COURT: All right. Miss Elder, are you  
17 ready?

18 MS. ELDER: Yes, sir.

19 THE COURT: Okay, call your witness.

20 MS. ELDER: Your Honor, we call -- he had  
21 made a motion, Your Honor, I don't know if we  
22 addressed it, about the sequestration.

23 THE COURT: You know, I normally grant that  
24 but I have it as to both sides.

25 MS. ELDER: I didn't raise it, Your Honor. I

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

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

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

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

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

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

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

15 THE WITNESS: Christina Brown Gainey.

16 DIRECT EXAMINATION BY MS. ELDER:

17 Q Agent Gainey, where are you employed?

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

20 Q And what do you do there?

21 A I'm a field agent.

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

24 A Yes, I do.

25 Q How long have you been with SLED?

1 A Almost four years.

2 Q And you were employed with them back in  
3 January of '09?

4 A That is correct.

5 Q Did you have an opportunity to act as an  
6 undercover officer in an investigation here in  
7 Horry County?

8 A Yes, I did.

9 Q Tell me about what you did in relation to  
10 that investigation.

11 A We had received a complaint, as you stated  
12 earlier, there was some gambling going on at the  
13 establishment so we went in to see if we could  
14 determine if that was factual.

15 Q And when you went in were you wearing any  
16 kind of device at the time?

17 A Yes, ma'am. I had, I think it is called a  
18 button.

19 Q Was it -- would it record?

20 A Yes, it would.

21 Q And when you went in -- do you recall the  
22 date you all --

23 MS. ELDER: I'm sorry. Are they going to  
24 testify?

25 MR. CANTY: Oh, excuse me. You folks have to

1 A Yes, we did.

2 Q How many times did you go in there?

3 A Two or three.

4 Q Okay. And during the course of the  
5 investigation did you at some point have an  
6 opportunity to talk to a Mr. Baker?

7 A Yes, I did.

8 Q And was he an employee there?

9 A He was the bartender, slash -- he wore  
10 several hats, he was a cook, a bartender,  
11 electrician, whatever they needed.

12 Q And this place, do you recall the name of it?

13 A Putters.

14 Q Putters, that is here in Horry County?

15 A I believe it's off 707, yes, ma'am, in Horry  
16 County.

17 Q And when you, when you encountered Mr. Baker  
18 did you at some point in time, you and the other  
19 agent, did you have an occasion to purchase any  
20 kind of narcotics from him?

21 A Yes, we did purchase a ziplock bag of  
22 marijuana.

23 Q And after you purchased that did you all have  
24 a conversation where your interest there, your  
25 investigation turned to Mr. Albin?

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

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

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

5 MR. CANTY: Yes.

6 BY MS. ELDER:

7 Q Did it turn to Mr. Albin?

8 A Yes.

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

11 A Yes.

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

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

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

18 A He said he would.

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

21 A Yes.

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

23 A No.

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

1 A I did.

2 Q How closely connected was it to the Putters  
3 establishment?

4 A You could walk out a couple yards and it was  
5 directly behind, like maybe catty-cornered to the  
6 back door.

7 Q Okay. And you all, after you had the  
8 conversation with Mr. Albin that day did you leave  
9 after that?

10 A I believe we did, yes.

11 Q And at some subsequent point I believe you  
12 gave a statement, wrote a statement out. Is that  
13 correct?

14 A I wrote a statement in regards to the  
15 gambling.

16 Q The gambling? And when you left the -- I  
17 believe you executed a search warrant the next day  
18 after this conversation, is that correct?

19 A I believe so.

20 Q And this was still within the few weeks that  
21 you initiated the gambling investigation?

22 A Correct.

23 Q Okay. Now, were you involved in the search  
24 warrant, did you search or assist in the serving of  
25 the search warrant?

1 A No.

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

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

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

10 THE COURT: All right.

11 CROSS EXAMINATION BY MR. CANTY:

12 Q Were you present for the raid?

13 A Yes.

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

16 A I believe so, yes.

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

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

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

1 A Correct.

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

4 A Possibly, correct.

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

7 A Yes.

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

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

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

17 A I believe that was Agent Bass.

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

20 A I can't say I recall that.

21 Q Okay. Now --

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

24 THE COURT: Certainly.

25 Q Is this the statement that you wrote?

1 A Yes, that would be my statement.

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

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

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

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

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

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

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

19 A I don't see anything.

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

22 A Myself and Agent Bass had a conversation.

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

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

2 Q Thank you.

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

5 THE COURT: Mr. Canty?

6 MR. CANTY: Nothing further, Your Honor.

7 THE COURT: All right. You may step down.

8 (Witness excused).

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

11 (Brief recess).

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

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

15 DIRECT EXAMINATION BY MS. ELDER:

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

17 A Douglas R. Rogers, III.

18 Q Agent Rogers, where are you employed?

19 A The South Carolina Law Enforcement Division.

20 Q And in what capacity?

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

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

1 A Yes, ma'am.

2 Q And during that time period did you receive  
3 information that initiated an investigation here in  
4 Horry County?

5 A Yes, ma'am. We have, people call in  
6 anonymously and give complaints. This patron of  
7 Putters Bar called continuously about he was losing  
8 all his money, there was gambling, he was paying,  
9 you know, they were paying out but he was losing  
10 all his money, wanted something to be done, wanted  
11 something to be done, kept calling repeatedly. I  
12 eventually talked to him one time so I know it was  
13 a male but other than that I don't know his name or  
14 anything else. He wouldn't give me any more  
15 information and most of the, excuse me, most of the  
16 times he talked to my supervisor David Roper,  
17 Lieutenant David Roper, that is who initially got  
18 it.

19 Q And did you begin an investigation?

20 A Yes, ma'am.

21 Q And tell me just briefly how that, how you  
22 went about doing an investigation for the gambling.

23 A The complaint was video poker machines in the  
24 back room and that they were paying out, you took a  
25 ticket up to the, I say clerk, the lady who is at

1 the bar, cashier, bartender at the time and she  
2 would cash in maybe \$5 a ticket, \$10 a ticket, I  
3 can't exactly remember right now what it was but  
4 you get cash value for that ticket, which that  
5 constitutes gambling, and what we did is we sent in  
6 two undercover agents, Agent Christina Gainey and  
7 Agent Kathy Bass. They were both wired with video  
8 and audio equipment and they made various buys on  
9 several different dates and we shut it down on -- I  
10 can't remember the date, but in January, 2009, is  
11 when it was shut down.

12 Q Okay.

13 A But I solely investigated gambling.

14 Q So, did they go in several times into this  
15 establishment?

16 A Yes, ma'am.

17 Q We're talking -- do you recall the name of  
18 the establishment, the bar?

19 A Putters.

20 Q Putters?

21 A Yes, ma'am.

22 Q And they went in there a couple times. When  
23 they went in there did they gamble each time?

24 A Yes, ma'am.

25 Q And did they get payouts each time?

1 A Yes, ma'am. That was their sole purpose in  
2 being in there.

3 Q And they were under wire at that time?

4 A Yes, ma'am.

5 Q Now, you applied for a search warrant?

6 A Yes, ma'am.

7 Q I believe -- do you recall the magistrate  
8 that issued that?

9 A Judge Blanton.

10 MS. ELDER: If we can mark this as  
11 Plaintiff's Number 1.  
12 (Search warrant marked as Plaintiff's  
13 Exhibit Number 1).

14 BY MS. ELDER:

15 Q Agent Rogers, if you will, take a look at  
16 what has been marked as Exhibit 1. Is that the  
17 search warrant you applied for?

18 A Yes, ma'am, it is.

19 Q And what was the basis of that search  
20 warrant?

21 A Gambling.

22 Q And from your interactions, prior  
23 interactions?

24 A Yes, ma'am, the previous buys, going in and  
25 the agents making buys with, or being paid out from

1 was addressed previously it was upheld, is that  
2 correct?

3 A Yes, ma'am, it was upheld.

4 MS. ELDER: Your Honor, I would like to  
5 introduce State's Exhibit 1.

6 THE COURT: Have you shown that to Mr. Canty?

7 MR. CANTY: I've got it, I have a copy.

8 THE COURT: All right.

9 (Plaintiff's Exhibit 1 having been previously  
10 marked, was received in evidence).

11 BY MS. ELDER:

12 Q Now, you conducted a search warrant of  
13 Putters, is that correct?

14 A Yes, ma'am.

15 Q And you were involved in that?

16 A Yes, ma'am.

17 Q And what part of that particular location  
18 were you involved in?

19 A I was involved only in the inside. I never  
20 went -- you know, of course I knew where it was, I  
21 could see it from the outside but I never went in  
22 the RV at all.

23 Q It was on curtilage on the same piece of  
24 property?

25 A Yes, ma'am.

1 Q Was that covered by your search warrant?

2 A Yes, ma'am.

3 Q Do you know who conducted the search part on  
4 the RV?

5 A Horry County Police Department.

6 Q If you would, take a look at what has been  
7 marked Plaintiff's Exhibit Number 2.

8 A Yes, ma'am. This is the return of the search  
9 warrant that I did.

10 Q And that is from inside only?

11 A Yes, ma'am.

12 Q Okay. I believe, did you -- well, let me  
13 hand that back to you and could you just go down  
14 and tell us what items SLED took from inside the  
15 establishment?

16 A Two Monkey Lamp machines, one Slingo GT 2004  
17 machine, one GT 2003 Ford Test Challenge machine,  
18 one Gone Fishing machine. All those were basically  
19 in a back room, they were what initiated the whole  
20 investigation from the beginning, those were the  
21 machines that were paid out to the SLED undercover  
22 agents.

23 Q All right.

24 A Miscellaneous records, briefcase,  
25 miscellaneous gambling tools, white binder

1 containing records, blue folder containing records,  
2 five dice, playing cards, numerous gambling chips,  
3 \$6,977.78 in cash, one Hewlett Packart laptop  
4 computer, serial number CNF536626600. And a  
5 Cingular Aircard and charger and charger cable.

6 Q Those are all the items seized by SLED?

7 A Those are the only things SLED seized.

8 Q And the money that is indicated --

9 MS. ELDER: Your Honor, I would like to  
10 introduce Plaintiff's Exhibit 2.

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

12 MR. CANTY: I believe I have, Your Honor.

13 THE COURT: All right.

14 THE COURT: The return?

15 MS. ELDER: Yes, sir.

16 (Search warrant return marked and received  
17 in evidence as Plaintiff's Exhibit 2).

18 BY MS. ELDER:

19 Q In the 6,000 some odd dollars did you recover  
20 any of your marked money?

21 A Yes, ma'am. It was all turned over to SLED  
22 afterward.

23 Q Do you know if Mr. Albin was on scene, by  
24 chance?

25 A Yes, ma'am, he was.

1 Q Did you cite him for gambling?

2 A Yes, ma'am.

3 Q Did you prepare warrants on any kind of other  
4 drug offenses?

5 A No, ma'am. I didn't handle anything doing  
6 with drugs.

7 MR. CANTY: Your Honor, I did not hear that  
8 last response.

9 THE COURT: He did not do anything pertaining  
10 to drugs, I think was the response, is that  
11 correct?

12 A I did not handle anything pertaining to it,  
13 yes, sir.

14 MS. ELDER: Your Honor, I have no other  
15 questions.

16 THE COURT: All right, Mr. Canty.

17 CROSS EXAMINATION BY MR. CANTY:

18 Q You say the search warrant was upheld?

19 A Yes, sir.

20 Q By whom?

21 A The judge. As I have already said, I was not  
22 there, so the judge who heard it that day, I don't  
23 know.

24 Q The judge who heard it that day?

25 A Yes, sir.

1 affidavit in the record?

2 THE COURT: Yes.

3 BY MR. CANTY:

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

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

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

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

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

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

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

25 A No, sir.

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

3 A Yes, sir, I did not.

4 Q Any SLED agents go in the RV?

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

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

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

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

15 A Yes, sir.

16 Q Does that look familiar?

17 A Yes, sir.

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

20 A Yes, sir.

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

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

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

1 correct?

2 A Yes, sir.

3 Q This says it was served by you?

4 A Yes, sir.

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

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

10 Q She is not here today?

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

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

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

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

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

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

1 jar in the bedroom, wasn't it?

2 A Sir, I did not go in there, I can't attest to  
3 where it came from.

4 Q Can you testify the \$162.78 in coins in the  
5 RV and the currency were proceeds from gambling?

6 A No, sir, I cannot.

7 Q Okay. Has SLED given this money back?

8 A Again, that's not for me to decide.

9 Q My question is has SLED given this money  
10 back?

11 A Given it back, has SLED given it back, no,  
12 sir.

13 Q And in the two and a half years since you  
14 took it has SLED brought forfeiture action?

15 A No, sir, not that I'm aware of.

16 Q And is it SLED's intention to just keep this  
17 money and hope nobody says anything?

18 MS. ELDER: Objection, Your Honor. Your  
19 Honor, this money is not subject to this action.

20 THE COURT: And I understand that. He has  
21 brought a counter-claim, you all don't have the  
22 money, I don't know he has brought it against the  
23 right party but I'm going to let him answer the  
24 question.

25 Have you all done anything with the money?

1 THE WITNESS: No, sir.

2 BY MR. CANTY:

3 Q Do you plan to?

4 A Yes, sir. Apparently we need to file the  
5 right paperwork. Nobody has stated to me anything  
6 about it but we will.

7 Q Okay. And did you know that you had to do  
8 that within a reasonable time?

9 A Yes, sir. I thought it had been but  
10 apparently it has not.

11 Q Okay. Now, you wrote tickets --

12 A Yes, sir.

13 Q -- for gambling?

14 A Yes, sir.

15 Q One to Mr. Albin's daughter?

16 A Yes, sir.

17 Q And one to Shawn Wetherman who works behind  
18 the Bar?

19 A Yes, sir.

20 Q And that was January 24th of 2009?

21 A Yes, sir.

22 Q Tell the Court, please, why those cases have  
23 never come to trial.

24 A Sir, I don't know why they have not come to  
25 trial. I'm not a judge. I haven't done anything

1 with those cases.

2 Q They're your cases, aren't they?

3 A Yes, sir, but jury trials sometimes take a  
4 long time. I have had one in Camden that was made  
5 eight years ago and it is still awaiting court but  
6 I don't make it a practice of calling judges and  
7 telling them you've got to try my case.

8 Q Now, SLED charged Michael Baker with  
9 distribution of marijuana. Correct?

10 A No, sir, it did not.

11 Q The SLED agents made the buy from Michael  
12 Baker, correct?

13 A Yes, that's correct.

14 Q And that SLED agent did not bring the  
15 criminal case?

16 A No, sir, but that is not uncommon for us to  
17 work with other agents and agencies and they bring  
18 the charges.

19 Q Well, sir, was the testimony accurate that  
20 Horry County Police Department was asked to assist  
21 SLED in executing this search warrant?

22 A They were asked by Lieutenant David Roper,  
23 not me.

24 Q To assist SLED in executing this search  
25 warrant?

1 Q Including the wire worn by Bass and Gainey?

2 A Huh?

3 Q That's Horry County's equipment?

4 A Yes, sir.

5 Q SLED does not have a wire?

6 A They do but in this particular instance we  
7 used the DEU's.

8 Q All right. Now, in the video does it not  
9 depict bundles of currency, bundles of currency  
10 with paper clips on it next to where the agent  
11 hopes to be a bag of marijuana?

12 A I don't know. I have not seen it. I do  
13 think I have possession of that video. I think  
14 that was in connection with the drug end of it, I  
15 don't recall having that video.

16 Q So if that money was seized in connection  
17 with the drug end of it and it was seized on the  
18 24th of January and not the 30th of January at an  
19 inventory search for perishables, then Horry County  
20 police got that money?

21 A To be honest with you, I have the money that  
22 I put on my seizure report, that's all I can attest  
23 to, I don't know about any other money.

24 Q So, who is the agent that seized the money  
25 from the RV?

1 A The SLED agent that seized the money as to  
2 the RV? It had to have been Steven Howell, the  
3 only agent that was assigned even to be outside.

4 Q Now --

5 A Agent Howell, he is not here today?

6 A No, sir.

7 Q How many SLED agents were there altogether?

8 A Six or seven that I can recall.

9 Q All right.

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

11 Q Do you know who drew this diagram?

12 A Kathy Bass, Agent Kathy Bass.

13 Q And does it have a list of what law  
14 enforcement officers were in which position at the  
15 time of the raid?

16 A Yes, sir, but that is subject to change at  
17 any given moment but this was the general plan of  
18 what we were supposed to do, yes, sir.

19 Q So, there are six SLED agents. How many  
20 Horry County Police Department or DEU officers?

21 A Can you hand that back?

22 Q Sure.

23 A Let's see. It says HCPD, I don't know,  
24 parking lot, HCPD, I don't know who that was, but  
25 it's three named.

1 Q Roper is David Roper with SLED?  
2 A Lieutenant David Roper.  
3 Q Rogers is you?  
4 A Yes.  
5 Q Williamson is Pam Williamson?  
6 A Uh-huh (Affirmative).  
7 Q And Dickson and Truss?  
8 A Yes, sir.  
9 Q Who are they?  
10 A SLED agents. Wait a minute. Randy Truss is  
11 a SLED agent, Dickson was, is with the South  
12 Carolina Department of Revenue, if I'm not  
13 mistaken.  
14 Q Five more names up at the top, are those SLED  
15 or Horry County?  
16 A Cannon, Wood and Will are HC, Horry County  
17 Police Department. Howell is SLED, Neil is with  
18 Horry County, too.  
19 Q And Fallon and Thomason?  
20 A Fallon is SLED, Thomason is, he was at the  
21 time DEU.  
22 Q Okay. And Horry County K9, who is the dog  
23 handler?  
24 A Sir, I don't know, you have to ask Horry  
25 County officers..

1 A Yes, sir.

2 Q No question you seized all the money in the  
3 cash register?

4 A Yes, sir.

5 Q Tell the Court what happened to the checks.

6 A What checks?

7 Q The checks that were seized by SLED.

8 A Sir, there is no, I have no recollection of  
9 any checks being seized.

10 Q Who usually handles forfeiture cases for SLED  
11 in Horry County?

12 A The Solicitor's office.

13 Q Any particular assistant?

14 A No, sir, not I'm aware of.

15 Q In your experience who has represented SLED  
16 in forfeiture cases?

17 A The Solicitor's office.

18 Q Who in the the Solicitor's office?

19 A This is the first one I have ever dealt with  
20 and it has been Miss Elder.

21 Q So, you have, you testified that Horry County  
22 Solicitor's office handles SLED forfeitures but you  
23 never had one?

24 A No, sir. Are you asking me have I ever had  
25 one down here? No, sir.

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

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

5 A He went to PTI, yes.

6 Q And the ones against --

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

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

16 A Yes, sir.

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

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

1 and have it taken away."

2 Q The tow truck came to tow the RV, didn't it?

3 A Yes, sir, from my understanding it did.

4 Q And the same one that Agent Gainey or Agent  
5 Bass is saying, "We got the RV," the same RV?

6 A Again, I'm assuming you're talking about  
7 something that was said. I'm assuming they said it  
8 but not while they were in the building, and that  
9 is all I was concerned with.

10 Q Now, do you, did you check the lease to see  
11 which side of the building was leased to Mr. Albin?

12 A All I checked was who the alcohol license  
13 name was in, that is all that really pertained with  
14 what we were doing at the time.

15 Q In fact, there were two Chess Challenge  
16 machines, not four, is that correct?

17 A Yes, sir. I'm going to be honest with you,  
18 it has been so long, we ended up, at the time South  
19 Carolina had an appeal on Chess Challenge machines,  
20 it was called Chess Challenge Two. We gave those  
21 two machines back to the machine operator. Now,  
22 they have since been ruled illegal by the State of  
23 South Carolina but that has been since. They were  
24 in litigation at the time.

25 Q Well, there was a hearing, was there not?

1 A No, sir.

2 Q There was no hearing?

3 A No, sir.

4 Q So the two Chess Challenge machines that were  
5 found to be legal and returned to the owner, your  
6 testimony is there was no hearing and they are in  
7 fact illegal?

8 A At the time there was litigation. The lawyer  
9 for that case contacted myself, said, "We have,  
10 that we're not connected with Mr. Albin in any way,  
11 shape or form, all we want is, since this is an  
12 injunction, we want our two machines back, we're  
13 not contesting the illegality of the other  
14 machines." Those particular two machines were  
15 taken outside in the common area, well, the bar at  
16 Putters. The other machines were in the back, in a  
17 secondary room.

18 Q Did the Solicitor ever advise you we had  
19 counter-claimed for the money seized by SLED?

20 A Yes, I heard about it but only, I know today,  
21 and if beforehand it was Monday at the earliest I  
22 have heard about it.

23 Q Were there any video poker machines?

24 A Yes.

25 Q There were?

1 THE COURT: What I'm going to do at this  
2 juncture is this, that in order to proceed on a  
3 counter-claim against the monies that were seized  
4 and in possession of SLED, as the testimony clearly  
5 indicates, I think it is \$6,900, is that right?

6 MS. ELDER: Your Honor, that is how much is  
7 indicated on the return. Mr. Canty counter-sued  
8 for some \$15,000.

9 THE COURT: Whatever.

10 MS. ELDER: I don't know where it came from.

11 THE COURT: Whatever, whatever that amount  
12 is, whatever that amount is, those monies in  
13 possession of SLED, whatever the amount, are not  
14 properly before the Court. However, Mr. Canty is  
15 not prejudiced. The testimony indicates that SLED  
16 still has that money, no action has been brought,  
17 Mr. Canty is free to pursue those funds. The only  
18 monies we're talking about here is eighteen-hundred  
19 and change, right, Miss Elder, that is all you're  
20 here on, right?

21 MS. ELDER: \$1,847, Your Honor.

22 THE COURT: \$1,847. I want it very clear  
23 that, I think, yes, \$1,847, Mr. Canty is not  
24 prejudiced by the fact your counter-claim has been  
25 filed, SLED has not been served, he is free to

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

5 All right, do we all understand?

6 MR. CANTY: Yes, Your Honor.

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

15 MS. ELDER: Correct.

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

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

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

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

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

7 MS. ELDER: Yes, sir. Your Honor, we would  
8 call Officer Derrick Ard.

9 DERRICK ARD, after being first duly sworn,  
10 testified as follows:

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

13 THE WITNESS: Derrick Ard.

14 DIRECT EXAMINATION BY MS. ELDER:

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

17 A Horry County Police Department.

18 Q In what capacity?

19 A Patrol.

20 Q The patrol unit?

21 A Yes, ma'am.

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

24 A Approximately 13 years.

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

1 that time?

2 A Yes, ma'am.

3 Q In what capacity?

4 A I was a detective for narcotics and vice  
5 section.

6 Q And did you have an opportunity to be  
7 involved in an investigation at Putters in Horry  
8 County?

9 A Yes, ma'am.

10 Q And could you briefly -- I want to take you  
11 back to the day of January 24. Were you present at  
12 that location?

13 A Yes, ma'am, I was.

14 Q Did you assist in any kind of search pursuant  
15 to a search warrant?

16 A Yes, ma'am.

17 Q Could you briefly describe what your  
18 involvement was at that time?

19 A Initially I was assigned to search the bar  
20 area or -- correction, inside the structure of  
21 Putters, I was initially assigned to search the  
22 kitchen area at which point I did, which I was also  
23 one of the case agents or on call agents, so it  
24 was, it was with the understanding that if an  
25 additional case was made at that point in time that

1 I would be assuming that case.

2 Q When you say additional case, are you  
3 referring to narcotics?

4 A Yes, ma'am, I am.

5 Q And SLED was there as another agency, is that  
6 correct?

7 A Yes, ma'am.

8 Q And do you know what capacity they were  
9 investigating in?

10 A The best of my recollection it was in  
11 reference to gambling.

12 Q So, your position was for any kind of drug  
13 case that that may come up?

14 A Yes, ma'am.

15 Q In that -- do you know if other things on the  
16 property were searched in conjunction with the bar?

17 A Yes, ma'am, I do. There was, the biggest  
18 item I remember was a motor home that was parked in  
19 very close proximity to the bar itself, the  
20 structure. It was actually immediately out the  
21 kitchen, the back kitchen door, to the right, and  
22 that was searched also.

23 Q And let me ask you, when you do  
24 investigations, narcotics investigation, do you  
25 typically have one person assigned to collect the

1 Q Did you photograph the items?

2 A Yes, ma'am.

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

5 A Yes, ma'am.

6 Q What does that depict?

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

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

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

15 Q And what else?

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

19 Q What is the grinder for?

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

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

3 THE WITNESS: Yes, Your Honor.

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

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

10 THE COURT: All right.

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

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

16 MS. ELDER: At 26 grams apiece.

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

1 A Yes, ma'am.

2 Q Do you recall what the warrant was for?

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

5 Q Marijuana?

6 A Yes, ma'am.

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

9 A Actually I do not.

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

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

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

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

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

20 THE COURT: Mr. Canty.

21 MR. CANTY: Thank you, Your Honor.

22 CROSS EXAMINATION BY MR. CANTY:

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

25 A Yes, sir.

1 Q Not a drug investigation?

2 A I was not, I was not in the know specifically  
3 as to what they had. SLED referred to us they were  
4 there in reference to a gambling investigation.  
5 There had been some, throughout this investigation  
6 there had been some indication of drugs but that  
7 was their primary purpose.

8 Q You reviewed your report -- do you have the  
9 report there in front of you?

10 A I do not.

11 Q If you would, read the first sentence of your  
12 report.

13 A "Based on complaints, SLED initiated an  
14 investigation in reference to gambling and drug  
15 activity."

16 Q So, SLED was investigating drugs?

17 A I don't know what SLED was investigating, you  
18 would have to ask SLED.

19 Q Well --

20 A Based on what SLED told me, they were there  
21 in reference to gambling and during the gambling  
22 investigation there had been indications of drug  
23 activity.

24 Q Now, Jesse Ard, someone other than you -

25 A That's me.,

1 Q Okay.

2 A Jesse being my first name.

3 Q All right. How many officers were there in  
4 the RV on the night of the raid?

5 A I do not know the exact number.

6 Q Two, three, four, five, six?

7 A I can speculate, yes, I would say something  
8 to that nature.

9 Q And what agencies were represented in the  
10 search of the RV?

11 A There were Horry County personnel and SLED  
12 personnel.

13 Q And the search of the RV was based upon the  
14 search warrant that had been issued to SLED?

15 A Yes, sir, I believe so.

16 Q All right. You didn't have any other basis  
17 to be in the RV other than that search warrant?

18 A Not that I'm aware of, no, sir.

19 Q Did Horry County make all the drug charges as  
20 a result of this raid?

21 A I would have to double check. I believe so,  
22 I'm not sure. I believe so, the ones that were  
23 brought to my attention.

24 Q Are you the one that got the warrant for  
25 Michael Baker for distribution?

1 A I don't believe I am the one that got the  
2 warrant for Michael Baker.

3 Q Do you know who wrote that warrant?

4 A It has been awhile, I'm not sure. I mean, I  
5 could refer to, I would have to refer to the  
6 original case file.

7 Q Do you know whether that charge was  
8 dismissed?

9 A I do not.

10 Q Do you know whether anybody has ever been  
11 convicted of any drug offense as a result of this  
12 raid?

13 A No, I'm not sure.

14 Q Do you know whether anybody has ever been  
15 convicted of any offense as a result of this raid?

16 A I'm not sure.

17 Q Now, with regard to the marijuana you  
18 described, which was found in a cabinet in the  
19 shower, or near the shower, is that right?

20 A I believe so. It has been awhile. The  
21 mobile home, correction, the RV is set up kind of  
22 tight so it is in fairly close proximity to each  
23 other.

24 Q And marijuana residue was found in the  
25 microwave?

1 A Yes, sir.

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

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

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

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

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

14 A I don't recall finding scales.

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

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

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

21 A I did not.

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

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

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

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

6 A Yes, sir.

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

10 A Yes.

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

15 A Yes.

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

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

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

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

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

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

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

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

10 Q Okay. And there are no scales?

11 A No, sir.

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

13 A I'm sorry, a scene log?

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

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

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

22 A Yes, sir, I did.

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

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

1 Q Now, can you tell the Court, please, how --  
2 let me get the exact language -- how that revolver  
3 facilitated the production, manufacture,  
4 distribution, sale, importation, exportation or  
5 trafficking of marijuana?

6 A Okay. In my experience many persons that I  
7 have dealt with who have sold an illegal substance,  
8 marijuana, per se, tend to arm themselves, given  
9 the illegal nature of the activity, so it is fairly  
10 common to, when we're dealing with someone who is  
11 selling and/or purchasing an illegal substance,  
12 that they arm themselves, considering the nature of  
13 the substance being illegal and also the amount of  
14 money that changes hands.

15 Q So, as I understand your testimony, not  
16 speaking in hypothetical terms, speaking in  
17 specific terms of Michael Albin and this case, tell  
18 the Court how the pistol facilitated the  
19 production, manufacture, distribution, sale,  
20 importation, exportation, trafficking of marijuana.

21 A Other than him possessing it?

22 Q Yes.

23 A And the marijuana?

24 Q Yes.

25 A I would say that would be how it facilitated

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

4 Q Okay. So it is possession?

5 A Yes, as I just stated.

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

9 A Okay.

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

12 A Other than in possession --

13 Q Just possession.

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

17 Q He wasn't charged with distribution?

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

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

22 A Yes.

23 Q In the RV?

24 A Yes.

25 Q And is there any question but that at the

1 Q So there is absolutely nothing unlawful about  
2 Mr. Albin's possession of that pistol?

3 A No, sir.

4 Q Were you there when -- did you say you did  
5 see the penny jar by his bed?

6 A Sir, I do not recall a penny jar.

7 Q You don't know who took the penny jar?

8 A I didn't take the penny jar. I don't know  
9 who took the penny jar.

10 Q Were you ever in the restaurant itself?

11 A I did move through the restaurant a couple  
12 times.

13 Q Did you see anyone ordering the patrons to  
14 pay their tab?

15 A I did not. I was primarily in the kitchen  
16 area but I did not see that.

17 Q Are you familiar with the statute that says  
18 to seize a motor vehicle for marijuana it has to be  
19 a pound?

20 A I'm somewhat.

21 Q You were a narcotics officers for five years,  
22 right?

23 A Yes, sir.

24 Q During that time did you participate in the  
25 seizure of vehicles?

1 A Yes, I did.

2 Q And for marijuana?

3 A I mean, I would have to look back. I'm  
4 assuming, yes, sir.

5 Q You knew there was a minimum of one pound to  
6 seize a vehicle?

7 A Yes, sir.

8 Q Is there any question in your mind there was  
9 not a pound of marijuana in this RV?

10 A No, sir, I did not see a pound.

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

12 MS. ELDER: Just one quick question.

13 REDIRECT EXAMINATION BY MS. ELDER:

14 Q Did you charge possession with intent to  
15 distribute, not simple possession?

16 A Yes, ma'am, I did.

17 Q And I believe on your affidavit of seizure,  
18 when you check off what you're seizing you put the  
19 basis for your seizure?

20 A Yes, ma'am.

21 Q You didn't check off that section to deal  
22 with one pound, did you?

23 A No, ma'am.

24 MS. ELDER: I don't have any further  
25 questions.

1 monitor it?

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

3 THE COURT: Okay. Thank you.

4 MS. ELDER: I have no further questions.

5 THE COURT: You may step down.

6 (Witness excused).

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

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

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

13 DIRECT EXAMINATION BY MS. ELDER:

14 Q Captain Rutherford, where are you employed?

15 A Horry County Police Department.

16 Q In what capacity?

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

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

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

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

1 testified as follows:

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

4 THE WITNESS: My name is Michael James Albin.

5 DIRECT EXAMINATION BY MR. CANTY:

6 Q And what is your address?

7 A My current address?

8 Q Yes.

9 A 8374 Cherrywood Drive.

10 Q And how old are you, sir?

11 A I will be 66 the end of August.

12 Q And where were you born?

13 A I was born in Summerset, Pennsylvania.

14 Q And did you go to high school there?

15 A Yes, sir.

16 Q What did you do after high school?

17 A I went into the military.

18 Q How old were you when you enlisted?

19 A Seventeen.

20 Q And how long were you in the military?

21 A A little over twenty years.

22 Q Did you serve in Vietnam?

23 A Yes, sir.

24 Q More than once?

25 A Yes, sir.

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

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

4 Q And what year was that?

5 A 1983.

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

8 A Yes, sir.

9 Q Do you have any criminal convictions?

10 A No, sir.

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

13 A No, sir.

14 Q And what business are you in?

15 A At the present time I own Putters Restaurant.

16 Q Have you been in other businesses?

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

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

21 A Yes, I did.

22 Q What degrees did you obtain?

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

1 Q And did you then go into business?

2 A Pardon me?

3 Q Did you then go into business?

4 A Yes.

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

7 A Prior to 1983?

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

9 A Yes, sir.

10 Q Are you wearing hearing aids?

11 A I've got them on now.

12 Q Are you having difficulty understanding?

13 A Sometimes.

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

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

18 Q Did you start that from scratch?

19 A Yes, I did, 1984.

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

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

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

25 A I owned a chicken wings business in Surfside

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

2 Q And did you sell that business?

3 A Yes, I did.

4 Q And any other businesses?

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

8 Q Do you have cash income from Putters?

9 A No.

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

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

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

15 A Yes, I do.

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

18 A Once a week.

19 Q Approximately how much were those deposits?

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

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

23 A Yes, I did.

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

1 A Yes, they do.

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

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

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

7 A Yes, I am.

8 Q For the RV?

9 A Yes, I am.

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

12 A Yes, sir.

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

15 A Yes, sir.

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

18 A No, sir.

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

25 THE COURT: All right.

1 MS. ELDER: Your Honor, the bank statements I  
2 have don't start until February 2nd, 2009, after  
3 the time of the raid, so I don't have any objection  
4 to them but we need to be clear that these do not  
5 show in January what his deposits were. They start  
6 in February.

7 THE COURT: Well, is there a lien on this  
8 vehicle?

9 MR. CANTY: We have a promisory note, we'll  
10 put that into evidence right now.

11 THE COURT: I asked if there was a lien.

12 MS. ELDER: That, I do not know. We checked  
13 under the statute, because of the rather bizzare  
14 problem about service of process in this case, in  
15 order to ascertain the address on the registration,  
16 we have that, but I do not have the title.

17 THE COURT: Who holds the note?

18 MS. ELDER: It is not registered, Your Honor.

19 THE COURT: That is not where I was going.  
20 We're a title state. Is there any lien shown on  
21 the certificate of title?

22 MS. ELDER: No, sir, not to my knowledge. I  
23 will get that for you. That's the title, Your  
24 Honor. We check the title, Your Honor, on any  
25 vehicle we seize. When we check the title it would

1 have named the lien holder.

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

8 MR. CANTY: Six months, seven months.

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

11 Okay.

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

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

17 Okay.

18 BY MR. CANTY:

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

21 A \$60,000 a year.

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

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

1 Q Aside from any revenues associated with  
2 Putters?

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

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

6 A Yes, it was.

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

9 A Yes.

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

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

15 Q And your daughter worked there?

16 A Yes, she does.

17 Q Your wife worked there?

18 A Yes, she does.

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

21 A A stepdaughter.

22 Q That provides employment for those people?

23 A Yes, it does.

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

- 1 A Yes, I have.
- 2 Q How many -- how long have you owned Putters?
- 3 A Since 2001.
- 4 Q And how many times has it been burglarized?
- 5 A Seven.
- 6 Q And tell the Court, please, as a result of  
7 those several burglaries who did you call to  
8 investigate the complaint?
- 9 A Horry County Police.
- 10 Q Tell the Court, please, on how many of those  
11 seven occasions they apprehended the perpetrator?
- 12 A Zero.
- 13 Q Tell the Court, please, what you know about  
14 any investigations conducted by the Horry County  
15 Police?
- 16 A They just said there wasn't enough evidence  
17 to investigate.
- 18 Q Was there occasion when you requested that  
19 they dust for fingerprints when someone came  
20 through a window?
- 21 A Yes, there was.
- 22 Q Tell the Court whether or not that occurred.  
23 Did they dust for prints?
- 24 A No, they didn't.
- 25 Q Are these incident reports associated with

1 some of those burglaries?

2 A Yes, it is.

3 Q If you would, review those.

4 A Yes, I see the incident reports.

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

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

9 THE COURT: I will let them in.

10 (Incident reports marked and received in  
11 evidence as Defense Exhibit Number 1).

12 BY MR. CANTY:

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

15 A Yes, I did.

16 Q -- at the restaurant?

17 A Yes, I did.

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

20 A Right.

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

23 A M16, M1 and .45 pistol.

24 Q What about a .38 revolver?

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

1 never fired.

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

4 A No, sir.

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

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

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

11 A Yes.

12 Q Did you sell marijuana in the RV?

13 A No.

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

16 A I never sold marijuana.

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

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

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

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

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

9 A Yes, they do.

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

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

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

15 A Oh, yes.

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

18 A Yes, sir.

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

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

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

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

3 Q It looks like marijuana?

4 A I would say. I can smell it.

5 Q Was there money in your refrigerator?

6 A Yes.

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

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

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

14 A No, there wasn't.

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

17 THE WITNESS: All right.

18 THE COURT: All right, Miss Elder.

19 MS. ELDER: Thank you, Your Honor.

20 CROSS EXAMINATION BY MS. ELDER:

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

22 A Gosh, I want to say 2006.

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

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

1 A I lived in it.

2 Q Okay. You indicated that just coincidentally  
3 a couple days before this raid someone came to you  
4 and offered to sell you marijuana?

5 A Yes, ma'am.

6 Q And who was that that came to you?

7 A His name was Cosner.

8 Q I'm sorry?

9 A Cosner, I only know him by his last name,  
10 Cosner.

11 Q Was it a male or female?

12 A Male.

13 Q And where did he come to you at?

14 A In my RV.

15 Q Where did you purchase your marijuana?

16 A In my RV.

17 Q Approximately two days prior to them seizing  
18 it?

19 A Yes, ma'am.

20 Q How much did you pay for it?

21 A \$300.

22 Q And that was in the equal bags that we have  
23 talked about here today?

24 A Yes, ma'am.

25 Q And did you smoke marijuana out there as well

1 as buying it from out there in the RV?

2 A Yes, ma'am.

3 Q Was that the first time you purchased  
4 marijuana from that RV?

5 A No, ma'am.

6 Q You purchased it before out of there?

7 A Purchased it?

8 Q Yes sir.

9 A For my own consumption, yes, ma'am.

10 Q You purchased it there in your RV?

11 A Yes, ma'am.

12 Q And you also smoked it out there as well, is  
13 that correct?

14 A Yes, ma'am.

15 Q And do you recall the prior, just the day  
16 prior to this offering to allow some undercover  
17 agents to come out there with you to smoke?

18 A Yes, ma'am.

19 Q Okay. So, you were not only going to smoke  
20 it yourself but you were going to supply it to them  
21 to smoke as well, is that correct?

22 A If that is what they wanted to do, yes,  
23 ma'am.

24 Q Did you supply it to others to smoke out  
25 there with you?

1 A A couple patrons, yes.

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

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

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

9 A I never sold any.

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

11 A Yes.

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

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

17 Q Okay.

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

20 Q You had cash out in your RV?

21 A Yes.

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

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

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

1 Q The money that was found in your RV that is  
2 the subject of this action, the \$1,847, was located  
3 in your refrigerator, correct?

4 A Yes, ma'am.

5 Q And you don't deny that at least five  
6 packages of marijuana were located in that RV, do  
7 you?

8 A No, I don't.

9 Q And you don't deny that you purchased  
10 marijuana in your vehicle?

11 A No, I don't.

12 Q And you don't deny supplying it to other  
13 people to smoke in that vehicle?

14 A Smoke with me, yes.

15 MS. ELDER: No other questions, Your Honor.

16 MR. CANTY: Just very briefly, Your Honor.

17 REDIRECT EXAMINATION BY MR. CANTY:

18 Q Looking at Plaintiff's Number 5, you heard  
19 the testimony about this being identical weight  
20 bags, down to 1/100ths of an ounce, each of these  
21 bags is identical in weight?

22 A Uh-huh (Affirmative).

23 Q Tell the Court, please, did you separate them  
24 into these bags or did they come that way?

25 A They came that way.

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

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

15 MS. ELDER: No, sir, Your Honor, not for  
16 money.

17 THE COURT: Did he offer free marijuana, to  
18 go out and smoke with the agents?

19 MS. ELDER: He offered, now, Agent Gainey did  
20 in fact testify that he had offered to sell some  
21 marijuana, she did testify to that, but as far as  
22 conducting an undercover operation for the actual  
23 sale itself, no, Your Honor.

24 THE COURT: Was there any information they  
25 received before they went in on this gambling tip?

1 fully the prior summary judgment motion which was  
2 filed by counsel for the defense as well as the  
3 memorandum he filed in support, I have listened to  
4 both of your statements concerning what occurred at  
5 that summary judgment hearing. What you have told  
6 me is consistent with the motion for summary  
7 judgment as well as the memorandum. It is clear  
8 and undisputed that the plaintiff moved for summary  
9 judgment on the ground that 44-53-520(A)(6)  
10 requires the motor vehicle seized to have contained  
11 at least one pound of marijuana and that the  
12 specific language of that specific item preempts  
13 seizure under the remainder of the article, that is  
14 44-53-520, and specifically Subsection (A)(3),  
15 which refers to the container issue, container used  
16 for the property, or in (4), which is all property,  
17 this is what Subsection 4 says, all property, both  
18 real and personal which in any manner is knowingly  
19 used to facilitate production, manufacturing,  
20 distribution, sale, distribution and sale,  
21 importation, exportation or trafficking in various  
22 controlled substances as defined in this article.

23 It is equally clear to me that Judge John  
24 granted the motion as to (A)(6) but found that it  
25 did not preempt forfeiture under (A)(3) and (A)(4).

1           Now, I have looked at the statutes and I  
2 would specifically call your attention to  
3 Subsection G, comments under that on 266, and Drug  
4 Litigation in South Carolina, which seems to state  
5 that it does preempt, so I'm not saying that I  
6 particularly agree with Judge John's ruling but  
7 there has been no motion to reconsider, no motion  
8 of appeal, no notice of appeal, and it is clear to  
9 me that Judge John's ruling is the law of the case.

10           The law of this case is that this property,  
11 regardless of what is said in (A)(6) is seizable  
12 under (A)(3) and (A)(4). In that regard I look at  
13 (A)(3), which speaks of the seizure of a container  
14 for property which would be contraband or the  
15 equipment, things used to make it in. I don't know  
16 whether it comes under container or not. I would  
17 certainly have difficulty with that. But if (A)(4)  
18 applies there is no question that this is personal  
19 property. It was in some manner knowingly used to  
20 facilitate at the very least distribution as that  
21 term is defined in this state of marijuana.  
22 Distribution does not mean sale, distribution is  
23 simply the passing or providing of the marijuana  
24 from one person to the other.

25           Now, as to the firearm, I have already ruled.

1 that possession of more than one ounce creates a  
2 rebuttable inference of possession with intent to  
3 distribute.

4 I have also looked at the nature of the  
5 packaging. It was five or six packages containing  
6 up to an ounce. There was proximity to some cash,  
7 of these drugs. There was an offer by, an admitted  
8 offer by Mr. Albin to use his RV to smoke  
9 marijuana. There were several checks, I asked him  
10 about those, in odd amounts, \$30, \$20, \$15. It has  
11 been the Court's experience from other cases that  
12 sometimes that translates to quarter ounces. I  
13 don't know. There has been no testimony, otherwise  
14 I asked one of the officers but he could not tell  
15 me.

16 All these are things that I considered.  
17 However, I am swayed by the fact that there was,  
18 that this investigation was initiated for an  
19 entirely different purpose, that is, unlawful  
20 gambling. Apparently there was no complaint about  
21 any marijuana use prior to the initiation of the  
22 investigation for gambling. Mr. Albin says that  
23 that money was the fruits of his lawful business,  
24 Putters. I'm inclined to believe him due to the  
25 fact that although one of the officers said

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO: 09-CP-26-3127  
09-CP-26-1281  
09-CP-26-3128

J. Gregory Hembree, Solicitor, )  
Fifteenth Judicial Circuit, obo )  
The Horry County Police )  
Department, )  
Plaintiff, )

vs. )

One Thousand Eight Hundred, )  
Forty-Seven Dollars (\$1,847.00), )  
U.S. Currency, 1994 Monaco )  
RV and Taurus .38 pistol, )  
Defendant Properties, )

Michael James Albin, )  
Defendant. )

**NOTICE OF MOTION AND  
MOTION IN LIMINE**

HORRY COUNTY  
11 FEB 23 PM 1:16  
CLERK OF COURT

**To: The State of South Carolina** and Donna E. Elder, Esq., its Solicitor

**You Will Please Take Notice** That the Defendant abovenamed, by and through his undersigned counsel, will move before this Honorable Court ten (10) days hence, or as soon thereafter as the matter may be heard, for this Honorable Court's Order in limine to determine issues as set forth below.

**I. Identity of Plaintiff**

Plaintiff brings these actions as set forth supra. It is anticipated that Plaintiff will take the position at trial that cash, a laptop computer, checks and other items of personalty seized by officers of the State Law Enforcement Division at the time and place of the raid during which the In Rem Defendants herein were seized are outside the scope of the instant litigation. Compelling policy reasons as well as statutory and common law compel the opposite result.

**II. Subject Matter Jurisdiction of Counterclaims**

Defendants Counterclaims are for, inter alia, cash seized as described supra. Plaintiff may

take the position that separate actions are necessary to determine the validity of those seizures. Defendant specifically counterclaims for all sums seized regardless of whether such seizures were made pursuant to Title 44, Chapter 53 of the Code or pursuant to the Gambling Statute, Section 16-19-80.

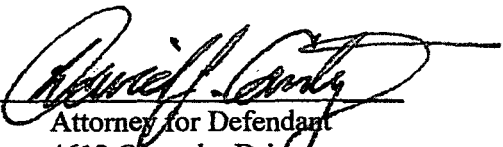
**III. Applicability of the Statutory Minimum Quantity  
of Marijuana for seizure of a Motor Vehicle**

The legislature has imposed a statutory minimum quantity of one pound of Marijuana to justify the seizure of a motor vehicle. Section 44-53-520 (A)(6) S.C. Code Ann. (1976) as amended. Plaintiff herein seized Defendant's motor vehicle and seeks to have it declared forfeit despite the admitted fact that the quantity of Marijuana claimed found is far less than half the statutory minimum. Plaintiff's premise is that the recreational vehicle (valued by Plaintiff at \$80,000.00) is a "container" as described in 44-53-520 (A)(3) and therefore, somehow, the statutory limit is inapplicable.

This Motion is made pursuant to Rules 7(B), 16(A)(7), 18(C), 19(A,C), 21 and 25(C) SCRPC, is made in furtherance of justice and is not intended for delay. The undersigned hereby certifies that he has communicated in writing with Plaintiff's counsel in an attempt to resolve this matter by agreement, without success.

**David J. Canty, P.A.**

Myrtle Beach, S.C.  
January 21, 2011

by:   
Attorney for Defendant  
4612 Oleander Drive  
Myrtle Beach, S.C. 29577  
Office (843) 449-6304  
Fax (843) 449-4249  
mbcounsel@frontier.com

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
CASE NO. 09-CP-26-3128

J. Gregory Hembree, )  
 )  
Plaintiff, )

vs. )

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

Michael J. Albin, )  
 )  
 )  
Defendant. )

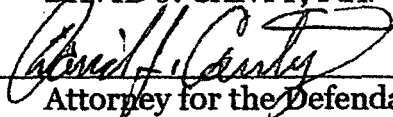
**NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT**

2009 JUN 22 PM 12:57  
MELANIE RUGGERS  
CLERK OF COURT  
COURT

**TO: J. GREGORY HEMBREE, ESQ.**

**YOU WILL PLEASE TAKE NOTICE** that the Defendant above named will move before this Honorable Court ten (10) days hence, or as soon thereafter as the matter may be heard, for this Honorable Court's Order granting Summary Judgment in favor of the Defendant and against the Plaintiff as to all issues. This Motion is based upon the Discovery herein, the statutory, constitutional and common law of the State of South Carolina and the South Carolina Rules of Civil Procedure, is made in furtherance of justice and is not intended for delay. Consultation with opposing counsel is not required.

Myrtle Beach, S.C.  
June 19, 2009

DAVID J. CANTY, P.A.  
by:   
Attorney for the Defendant  
4612 Oleander Drive  
Myrtle Beach, S.C. 29577  
(843) 449-6304  
mbcounsel@verizon.net

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

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

J. Gregory Hembree, as Solicitor )  
of the Fifteenth Judicial Circuit, o/b/o )  
Horry County Police Department, )  
Plaintiff, )  
 )  
vs. )  
 )  
Michael James Albin, )  
Defendant. )

NOTICE OF MOTION AND MOTION  
TO AMEND JUDGMENT

FILED  
CLERK OF COURT  
Horry County  
MAY 11 2009 26 PM 1:00

To: J. Gregory Hembree, Solicitor and Horry County Police Department and Donna Elder, Esq., their  
counsel

**You Will Please Take Notice** that the Defendant above-named, by and through his undersigned counsel, will move before this Honorable Court ten (10) days hence, or as soon thereafter as the matter may be heard, for this Honorable Court's Order amending its Judgment in the following particulars, to wit:

- I. Allowing the forfeiture of a conveyance absent the statutory minimum defeats plainly expressed legislative intent.

Plaintiff concedes that the quantity of marijuana found in Defendant's motor home is a less than half the statutory minimum for seizure of a conveyance found in Section 44-53-520(A)(6). Defendant moved for Summary Judgment on this issue, resulting in a pre-trial ruling striking Plaintiff's claim under (A)(6) but allowing Plaintiff to go forward under subsections (A)(3)(container) and (A)(4)(facilitation).

The General Assembly plainly established a minimum quantity of one pound of marijuana to justify or support the seizure of a motor vehicle:

"No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 44-53-370(A), involving at least one pound or more of marijuana, ..."

Section 44-53-520(A)(6). Plaintiff contends that the use of the term "this item" frees him to seek forfeiture under subsection (A)(3) in that the motor vehicle is a "container" of the marijuana. Such an interpretation plainly defeats the legislative intent in that all motor vehicles are "containers" and therefore the legislated minimum quantity would never have effect. A plainly absurd result.

Plaintiff next contends that he may prevail because the motor vehicle was used to "facilitate" distribution of marijuana. Plaintiff concedes there was "no drug-buy" from the Defendant and bases his claim on the testimony of a SLED agent that at some future time Defendant would smoke marijuana with her in the motor home. Here it is noteworthy that despite the seizure of a large number of items of personalty from the motor home, including rolling papers, a pipe, a cigarette rolling device, etc. no scales were found nor baggies for packaging marijuana for redistribution.

In the subsection containing the statutory minimum, (A)(6), is set forth its applicability:

"All...motor vehicles...which are used or intended for use unlawfully to...facilitate the unlawful concealment, possession, containment, manufacture or transportation of... at least one pound or

more of marijuana..."

Accordingly, "facilitation" is included in the provision requiring a one pound minimum quantity of marijuana. As in the case of a "container" to hold that the minimum quantity does not apply plainly defeats the legislative purpose and renders the enactment meaningless.

- II. Earlier denial of Defendant's Motion for Summary Judgment does not Preclude the Trial Court from enforcing the statutory minimum.

Defendant's Motion for Summary Judgment as to the Monaco RV was denied by the Hon. Steven H. John after a Motion hearing in 2009. Such a ruling does not preclude the Trial Court from addressing the enforceability of the statutory minimum. An order denying Summary Judgment is not immediately appealable. Olson v. Faculty House of Carolina, Inc. 354 S.C. 161, 580 S.E.2<sup>d</sup> 440 (2003), citing Wilkins v. Bishop 276 S.C. 156, 276 S.E.2<sup>d</sup> 310 (1981). Further, denial of summary judgment is not reviewable even in an appeal from final judgment. Raino v. Goodyear Tire 309 S.C. 255, 422 S.E.2<sup>d</sup> 98 (1992), Holloman v. McAllister 289 S.C. 183, 345 S.E.2<sup>d</sup> 728 (1986).

The Trial Court's characterization of Judge John's ruling as "the law of the case" is misplaced. The concept of "the law of the case" is premised upon an unappealed, appealable ruling. Here there was no ruling appealable by the Defense and therefore "the law of the case" does not apply.

- III. Defendant's Counterclaims should not have been dismissed.

Undisputed testimony indicated that Horry County Police Department assisted the State Law Enforcement Division in the execution of a search warrant following the initiation of the investigation by SLED. The forfeiture statute under which Plaintiff proceeds, Section 44-53-520, expressly provides in subsection (H):

"For the purposes of this section, whenever the seizure of any property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure."

(emphasis added). This fact is corroborated by the narrative reports of both agencies, testimony of agents of both agencies, the search warrant itself and the affidavit in support thereof.

Defendant alleges Sled seized ten times the sum of money sued for in this raid. Defendant counterclaimed for these funds more than two years prior to trial. Plaintiff represents SLED in forfeiture matters in the Fifteenth Judicial Circuit. SLED, despite the passage of two and one half years, has never sought to confirm the forfeiture. It merely took the money (including the Defendant's penny jar in his bedroom) and walked away.

The Attorney General of South Carolina, Plaintiff's superior and counsel to all State agencies, unequivocally opined that money seized pursuant to the gambling statutes must be confirmed by an action pursuant to the instant forfeiture statute. See. Op. Attorney General # 09-336, January 2, 2009. Plaintiff is SLED's agent in these matters as well as an agent of the State. It is disingenuous of Plaintiff to ignore Defendant's counterclaim while simultaneously refusing to comply with the Attorney General's directive.

- IV. "Unclean hands" precludes Plaintiff's recovery.

As is more fully set forth in Defendant's Pre-Trial Brief, which is incorporated herein by reference, Plaintiff willfully and repeatedly violated the applicable statutes regarding service of process and willfully violated this Honorable Court's discovery rules, barring recovery.

- V. Proportionality dictates that Plaintiff's claim fail.

Plaintiff contends it is entitled to an RV which sold for \$300,000.00 new and was valued by Defendant At \$80,000.00 (Plaintiff has offered nothing to contradict the value) based upon the presence of far less than one half the statutory minimum amount of marijuana. The elated cries of the female SLED agent following the raid ("We got the RV! We got the RV!") tend to indicate that its seizure was a primary goal of the raid.

The U. S. Supreme Court in Austin v. United States 113 S. Ct. 2801 (1993) held that civil forfeitures must be considered in light of the Eighth Amendment prohibition of excessive fines, Rejecting the government's argument that such statutes are remedial the Court declared that they are punishment, Id. At 2812. Given the punitive nature of Plaintiff's claim it therefore becomes necessary to consider 1.) the inherent gravity of the offense 2.) sentences imposed for similar offenses in this jurisdiction, and 3.) sentences imposed for the same crime in other jurisdictions.

Plaintiff does not dispute that the RV was Defendant's residence when it was seized, nor its value. Defendant, a cancer patient receiving radiation therapy at the time of his arrest, would not have been subject to criminal prosecution at all in eighteen states. The Attorney General of the United States has stated that federal authorities would not prosecute marijuana cases that did not constitute a violation under State law. A typical sentence for possession of marijuana in this State or adjacent states is a small fine. Plaintiff's claim violates the Eighth Amendment.

### Conclusion

Permitting Plaintiff to prevail defeats plainly expressed legislative intent. An unappealable prior ruling does nothing to alter that fact. Defendant's counterclaim should not have been dismissed and Plaintiff should not be permitted to disregard the directive of his immediate superior with impunity. Plaintiff's unclean hands and the Eighth Amendment dictate that Defendant prevail.

Wherefore, Defendant moves for an amendment of this Honorable Court's Order providing that the Plaintiff's forfeiture claim fails for lack of the statutory minimum quantity of marijuana.

David J. Canty, P.A.

Myrtle Beach, S.C.  
August 26, 2011

By: 

Attorney for Defendant  
4612 Oleander Drive  
Myrtle Beach, S.C. 29577  
Office (843) 449-6304  
Fax (843) 449-4249  
mbcounsel@frontier.com

**STATE OF SOUTH CAROLINA**

**HORRY COUNTY  
SOUTH CAROLINA**

**140**

**SEARCH WARRANT**

**DATE:  
January 23, 2009**

**Special Agent Douglas Ray Rogers III**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AFFIDAVIT

Personally appear before me, one Special Agent Douglas Ray Rogers III being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 47-1-150 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

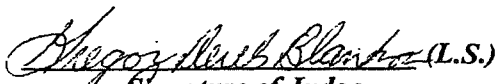
**DESCRIPTION OF PROPERTY SOUGHT  
DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED**

8950 Highway 707 Myrtle Beach South Carolina located within Horry County. Leaving South Strand Complex go left on Scipio Lane and travel .5 miles to Holmes Town Road. Turn right travel 1.2 miles to a four-way stop which will be Hwy 707. Turn right and travel down Hwy 707 .6 miles to intersection at Bay Road. Go through red light and travel approximately 1 mile to Putter's Lounge on left. 8950 Highway 707 is described as a one story building that has gray siding with white shutters. A pink and green awning is attached to the building. A white awning with Putter's on it is also attached to the building. Facing the building from Hwy 707 a white and tan 1994 RV (tag # 604VDU) is on the right side of the building located within the curtilage of the property.

**REASON FOR AFFIANT'S BELIEF THAT THE  
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

On January 15, 2009, Agents with the State Law Enforcement Division conducted an investigation of allegations of gambling of Putter's, Inc. This investigation revealed that located within Putter's Inc. were seven video poker machines that were being used as devices for illegal gambling. All this information was obtained by uncover SLED Agents through visual and video observation. Agents also played the machines by putting money in the machines, then received tickets which were turned in to the Putter's employees and received a cash pay out. The cash pay out was take from a brief case with a John Deere logo on the front of the case. Monies were also cashed out of the register to make the correct change. The purpose of this warrant is to secure any and all evidence related to gambling.

Sworn to and Subscribed before me  
This 23th day of January, 2009

  
Signature of Judge

11:38 AM



S/A Douglas Ray Rogers III  
AFFIANT  
P.O. Box 56  
Effingham, South Carolina 29541  
843-662-6245

STATE OF SOUTH CAROLINA }  
COUNTY OF HORRY }

**SEARCH WARRANT**

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR  
OF THE MUNICIPALITY OF *HORRY COUNTY, SOUTH CAROLINA*.

It appears from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PROPERTY SOUGHT**

Any and all video poker machines, materials used to operate the machines such as but not limit to; tickets, logs, notebooks, receipts, computers, cdrom disc and monies that are associated with the benefit of the machines. All financial documents related to distribution of monies and collections by Putter's, Inc. Any other items of evidentiary value related in whole and part to the crime of gambling (16-19-40).

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED**

8950 Highway 707 Myrtle Beach South Carolina located within Horry County. Leaving South Strand Complex go left on Scipio Lane and travel .5 miles to Holmes Town Road. Turn right travel 1.2 miles to a four-way stop which will be Hwy 707. Turn right and travel down Hwy 707 .6 miles to intersection at Bay Road. Go through red light and travel approximately 1 mile to Putter's Lounge on left. 8950 Highway 707 is described as a one story building that has gray siding with white shutters. A pink and green awning is attached to the building. A white awning with Putter's on it is also attached to the building. Facing the building from Hwy 707 a white and tan 1994 RV (tag # 604VDU) is on the right side of the building located within the curtilage of the property.

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This Search Warrant shall not be valid for more than ten days from the date of issuance. A written inventory of all property seized pursuant to this Search Warrant shall be made to, Judge Derek Banton, 9630 Scipio Lane, Myrtle Beach, SC 29588 within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as practicable; in the event the identity of the person in charge is not know or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Horry County, South Carolina.  
January 23, 2009

*Gregory Derek Banton* (L.S.)  
Signature of Judge

*11:38 AM*

RETURN

I received the attached Search Warrant on Daniel Roper, and have executed it as follows: On 1-27-09, 2009 at 7 p.m. o'clock P M, I searched (the Person) described in the warrant and (the premises)

I left a copy of the warrant with Michaela Albin  
Name of person searched or "at the place of search" with.  
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- ① 2 Monkeyland machines, 1 Slingshot GT 2004, 1 GT 2003, 4 Chess Challenge machines, 1 Gone Fishing Machine
- ② Misc records seized from briefcase, misc gambling pools; white binder containing records, blue folder containing records
- ③ 5 die, 4 packs playing cards numerous gambling chips
- ④ \$6,977.<sup>78</sup> in cash
- ⑤ 1 Hewlett packard laptop computer s/w CNF53626120 w/one circular X aurcard + charge cable and plug.

This inventory was made in the presence of \_\_\_\_\_

AND

I swear that this Inventory is true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 27th  
Day of January, 2009

J. West Blome (L.S.)  
Signature of Judge

D. D. Roper  
(Signature of Officer Executing Warrant)

11:55 AM



# Horry County Police Department

Special Operations Division

Narcotics and Vice Section

## Evidence Section

### Chain of Custody

---

Incident Type: PWID marijuana

Case Number: 09-007673

Victim: State of S.C.

Location: Putters Bar 8950 Hwy 707 Myrtle Beach S.C. 29588

Suspect: Michael James Albin

Date and Time: 1-24-09 2000

Officer: Ard

Item(s):

1. rolling papers
2. grinder
3. Roach clip
4. pipe
5. roller
6. green leafy substance in five separate baggies (137 g)
7. 1 Taurus 38 special pistol SN SG53109
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.

---

Item Number: 1-7

Relinquished By: Ard  
Received By: evidence  
Date: 1-24-09  
Purpose of Change: test, hold for court

Item Number:  
Relinquished By:  
Received By:  
Date:  
Purpose of Change:

---

**HORRY COUNTY POLICE DEPARTMENT  
VEHICLE IMPOUNDMENT AND INVENTORY RECORD**

Date: 1.24.09

Case Number: 09-007673

Year	Make	Model	Color	Body Type	Tag No.	Yr.	State	Owner Notified Date & Time Contacted	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
1994	MONACO	CROWN ROYAL-E	TAN	RV	604VDU	07	SC	1.24.09 740PM	

LOCATION VEHICLE TOWED FROM <u>POTTER'S BAR Hwy 707 Sweetside 8950</u>	VEHICLE IDENTIFICATION NUMBER <u>LRFL2061LR1010972</u>
NAME & ADDRESS OF GARAGE TAKEN TO <u>HCPD IMPOUND</u>	REGISTERED OWNER (Name and Address) <u>MICHAEL JAMES ALBIN</u>
DATE & TIME TOWED <u>1.24.09 /</u>	REASON <u>SEIZURE</u>
HOLD FOR: (Individual authorized hold) <u>NO OWNER SEIZURE</u>	OPERATOR'S NAME
OFFICER'S NAME: <u>ARD / COOPER</u>	ADDRESS
	OPERATOR: <input type="checkbox"/> Incarcerated <input type="checkbox"/> Yes <input type="checkbox"/> No
	CHARGES:
	Ticket No. _____

**PROPERTY INVENTORY TAKEN BY OFFICERS (CHECK APPROPRIATE ITEMS)**

Radio <input type="checkbox"/>	Spare Tire <input type="checkbox"/>	C.B. Radio <input type="checkbox"/>	Air Conditioner <input checked="" type="checkbox"/>
Tape Deck <input type="checkbox"/>	Hub Caps <input type="checkbox"/>	Mag Wheels <input checked="" type="checkbox"/>	<input type="checkbox"/>

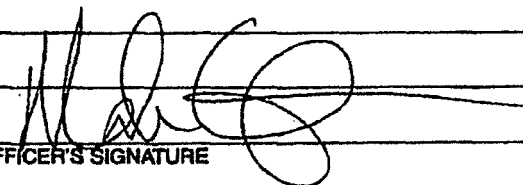
Miscellaneous Property in Vehicle (Tools, Clothes, Jewelry):

PERSONAL BELONGINGS  
TV

**INVENTORY TAKEN**

Items Seized From Vehicle:

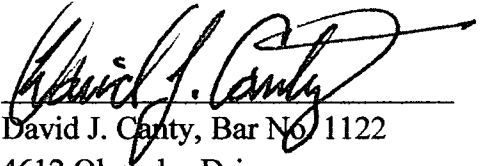
MARIJUANA - APPROX 5 PZ  
MONEY - \$  
PISTOL - TAURUS 38 SPECIAL SERIAL # SG 53109

  
OFFICER'S SIGNATURE

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 23, 2012



David J. Canty, Bar No. 1122  
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Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

OCT 26 2012

APPEAL FROM Horry COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Larry B. Hyman, Circuit Court Judge

Case Nos. 2009-CP-26-1281  
2009-CP-26-3127  
2009-CP-26-3128

J. Gregory Hembree, Solicitor, Fifteenth Judicial Circuit, On Behalf of the Horry County Police Department, ..... Respondent,

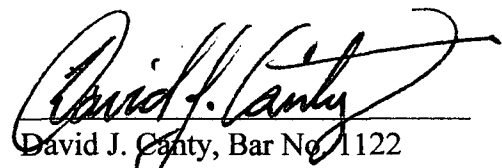
v.

Taurus 38 Special Pistol, SN: SF53109; 1994 Monaco RV, SN: VIN: 1RF120611R1010972; and One Thousand Eight Hundred Forty-Seven Dollars (\$1,847.00), U.S. Currency, Defendant Property, and Michael James Albin,.....Appellant,  
Of whom Michaela Albin, as personal representative of the estate of Michael J. Albin, is the Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Donna E. Elder, Esq. by depositing a copy in the United States Mail, postage prepaid, on October 23, 2012, addressed to the attorney of record, David P. Caraker, Jr., Esq., P.O. Box 1770, Florence, S.C. 29503.

October 24, 2012



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM Horry COUNTY  
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

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Case Nos. 2009-CP-26-1281  
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2009-CP-26-3128

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v.

Taurus 38 Special Pistol, SN: SF53109; 1994 Monaco RV, SN: VIN: 1RF120611R1010972; and One Thousand Eight Hundred Forty-Seven Dollars (\$1,847.00), U.S. Currency, Defendant Property, and Michael James Albin, ..... Appellant,  
Of whom Michael Albin, as personal representative of the estate of Michael J. Albin, is the Appellant.

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PROOF OF SERVICE

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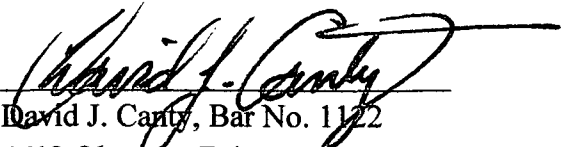
I certify that I have served the Record on Appeal on Donna E. Elder, Esq. by depositing a copy in the United States Mail, postage prepaid, on November 5, 2012, addressed to the attorney of record, David P. Caraker, Jr., Esq., P.O. Box 1770, Florence, S.C. 29503.

November 5, 2012

**RECEIVED**

NOV 05 2012

**SC Court of Appeals**



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