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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 7238

In the Supreme Court of Appeals of Virginia at Richmond

JOHN HENRY HOWARD, JR.

v.

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7238

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 29th day of April, 1969.

JOHN HENRY HOWARD, JR., Defendant in error.

against

COMMONWEALTH OF VIRGINIA, Plaintiff in error,

From the Hustings Court of the City of Richmond
W. Moscoe Huntley, Judge

Upon the petition of John Henry Howard, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Hustings Court of the City of Richmond on the 25th day of April, 1968, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

AFFIDAVIT

I, John Henry Howard, Jr., do hereby certify that I am indigent and unable to pay or secure to be paid the cost of printing the record, the writ tax and the binding fee, in my appeal to the Virginia Supreme Court of Appeals from the judgment of the Hustings Court of the City of Richmond, Virginia.

John Henry Howard, Jr.

Subscribed and sworn before me this 19th day of May, 1969.

LeRoy Kyle Hardy
Notary Public

Recd 6-27-69
HGT

* * * * *

CERTIFICATE

I, W. Moscoe Huntley, Judge of the Hustings Court of the City of Richmond, Virginia, do hereby certify that I have investigated the matter of the indigency of John Henry Howard, Jr., and I am of the opinion that he is unable to pay or secure to be paid the cost of printing the record, writ tax, and binding fee in his appeal to the Virginia Supreme Court of Appeals from the judgment of this Court.

W. Moscoe Huntley
Judge

Recd 6-27-69
HGT

26 June 1969

* * * * *

page 3 }

* * * * *

Pleas at the Courthouse of the City of Richmond, before

the Hustings Court of said City, on the 23rd day of October, 1968.

Be it remembered that heretofore, to-wit: on the 1st day of April, 1968, the following order was entered:

M. D. Nunnally, Jr., Foreman, Irving H. Wainwright, Sylvester Harris, Chas. B. Carter, Jr., James Paul and A. Lee Hunt, were this day sworn a Special Grand Jury of inquest in and for the City of Richmond, and having received their charge were sent out of Court and after some time returned and presented,

"Commonwealth vs. John Henry Howard, Jr., an indictment for a felony, a true bill",

* * * * *

page 4 }

* * * * *

MOTION TO SUPPRESS

Comes now the defendant, John Henry Howard, Jr. by counsel and moves this Honorable Court to suppress as evidence any and all articles seized from the defendant on the day of his arrest on the basis that such articles were seized from the defendant as the result of an *unlawfull* arrest of the defendant by officers of the Richmond Police Department in violation of the defendants rights under the Constitution of the United States.

John Henry Howard, Jr.

By Counsel
R. R. Ryder

Filed 4/24/68 BTC

* * * * *

page 6 }

* * * * *

And at the same Hustings Court held for the City of Richmond, at the Courthouse, on the 25th day of April, 1968, the following order was entered:

* * * * *

The said defendant this day again appeared and was set to the bar in the custody of the Sergeant of this City and also came his counsel and that of the Commonwealth as of record and the jurors sworn on April 24, 1968, for the trial of this case appeared according to their adjournment. And having heard all of the evidence and arguments of counsel the jurors retired to their room in the custody of the Sergeant of this City to deliberate upon a verdict in this case. And after some time they returned into Court and presented a verdict in the following words, to-wit:

"We, the jury, find the accused guilty as charged in the indictment and fix his punishment at five years in the State Penitentiary." M. Stuart Inglehart, Foreman.

And thereupon the said defendant by counsel moved the Court to set aside the verdict of the jury as being contrary to the law and to the evidence and grant him a new trial, which motion the Court doth overrule and to which action of the Court in overruling his said motion the said defendant notes an exception and time is allowed him not to exceed sixty days in which to file his bills of exceptions.

Whereupon it being demanded of the said defendant if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing further being offered or alleged in delay thereof, it is the judgment of this Court that the said John Henry Howard, Jr., be confined in the State Penitentiary for a term of five years, this being the period by the jury ascertained. And it is ordered that the Sergeant of this City do, when required so to do, deliver the said defendant from the jail of this City to the Superintendent of the Penitentiary, in said Penitentiary to be confined and treated in the manner prescribed by law; said term to be credited by the time spent in jail awaiting trial.

And thereupon the said defendant by counsel moved the Court to suspend the execution of the said sentence to allow him to appeal his case to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas*, which motion the Court doth grant and the execution of the said sentence is suspended to June 25, 1968, and bond is set at ten thousand dollars. And it is further ordered that the gun used as evidence in this case be confiscated to the Commonwealth.

And in default of said bond the said John Henry Howard, Jr., is remanded to jail.

* * * * *

page 8 } INSTRUCTION NO. 1

The burden is upon the Commonwealth to prove by the evidence beyond a reasonable doubt every material and necessary element of the offense charged against the defendant. It is not sufficient that the jury may believe his guilt probable, or more probable than his innocence. Suspicion or probability of guilty, however strong, will not authorize a conviction, but the evidence must prove his guilt beyond a reasonable doubt. The jury shall not speculate or go outside of the evidence to consider what they think might have taken place, but you are to confine your consideration to the evidence introduced by the Commonwealth and the defense and unless you believe, upon a consideration of all the evidence before you, that guilt of the defendant has been proved beyond a reasonable doubt as to every material and necessary element of the offense charged against him, then you shall find the defendant not guilty.

The burden resting upon the Commonwealth to prove guilt of the defendant beyond a reasonable doubt does not require that such guilt be proven beyond every imaginable, conceivable or possible doubt, but only beyond a reasonable doubt. The jury must limit its consideration to the evidence *intorduced,* and you are not to go outside the evidence to hunt up doubts, nor must you entertain doubts which are speculative or conjectural. And if, upon a consideration of all the evidence you are satisfied of the guilt of the defendant beyond a reasonable doubt, then you shall find him guilty.

WMH 4/25/68

page 9 } INSTRUCTION NO. 2

The Court instructs the jury that the credibility of witnesses is a question exclusively for the jury, and in determining the weight to be given to the different witnesses in this case, they are authorized to consider the relationship of the witnesses to the parties, if the same is proven; their interest, if any, in the result of the trial; their temper, feeling or bias, if any has been shown; their demeanor while testifying; their apparent intelligence; and their means of information; and to give such credit to the testimony of such witnesses as under all the circumstances such witnesses seem to be entitled to.

WMH 4/25/68

page 10 } INSTRUCTION NO. 3

When the Commonwealth relies upon circumstantial evidence in order to secure a conviction, it is the duty of the jury to scan such evidence with great care and caution; and unless the circumstances proven are of such a character and tendency as to produce in the mind of the jury a moral conviction of guilt of the defendant beyond a reasonable doubt, then you must find the defendant not guilty.

WMH 4/25/68

page 11 } INSTRUCTION NO. 4

The defendant is presumed to be innocent of the offense with which he is charged and this presumption of innocence goes with him through the entire case and applies at every state thereof and is sufficient to require you to find the defendant not guilty unless and until the Commonwealth upon whom the burden rests, proves his guilt beyond a reasonable doubt, and the Court further tells you that it is not sufficient that facts and circumstances proved be consistent with the every reasonable hypothesis consistent with the innocence of the defendant.

WMH 4/25/68

page 12 } INSTRUCTION NO. 5

Proof of a witnesses' prior conviction of a felony, or crime of moral turpitude, may be considered by the jury as affecting his credibility, but it does not render the witness incompetent to testify.

WMH 4/25/68

page 13 } INSTRUCTION NO. 6

The Court instructs the jury that while they must be convinced of the guilt of the defendant beyond a reasonable doubt, from the evidence in the case, yet the proof need not be direct evidence; the acts constituting the crime may be proved by all the facts and circumstances in the case.

WMH 4/25/68

page 14 } INSTRUCTION NO. 7

Where the Commonwealth has established a *prima facie* case and the defendant relies upon the defense of alibi, the burden is upon him to prove it, not beyond a reasonable doubt nor by a preponderance of the evidence but by such evidence and to such a degree of certainty as will, when the whole evidence is considered, create and leave in the mind of the jury a reasonable doubt as to the guilt of the defendant.

WMH 4/25/68

page 15 } INSTRUCTION NO. 8

The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that the accused is guilty of robbery as charged in the indictment, then you should find him guilty and fix his punishment at death, or by confinement in the penitentiary for life or for any term not less than five years.

The Court further instructs the jury that the form of verdicts in this case are as follows:

1. GUILTY

We, the jury, find the accused guilty as charged in the indictment and fix his punishment at five years in the State Penitentiary.

M. Stuart Inglehart
Foreman

2. NOT GUILTY

We, the jury, find the accused not guilty.

Foreman

WMH 4/25/68

page 16 } INSTRUCTION NO. B

Where the Commonwealth undertakes to prove the guilt of the defendant by circumstantial evidence, it must not only prove the circumstances relied upon, but it must overcome the presumption of innocence of the defendant and establish his guilt beyond a reasonable doubt. All necessary circumstances proved must be consistent with guilt and inconsistence with innocence. It is not sufficient that the circumstances

proved created a suspicion of guilt, however strong, or even a probability of guilt, but they must exclude every reasonable hypothesis except that of guilt. The chain of circumstances must be unbroken and the evidence as a whole must be sufficient to satisfy the jury that guilt of the defendant has been proven to the exclusion of any other reasonable hypothesis.

Refused WMH 4/25/68

* * * * *

page 18 }

ASSIGNMENTS OF ERROR

Comes now the defendant, John Henry Howard, Jr., by his Court appointed counsel, and assigns as error the following:

1. The Court erred in denying the defendant's Motion to Suppress.
2. The Court erred in denying the defendant's requested Instruction #B.

JOHN HENRY HOWARD, JR.

By: R. R. Ryder
Counsel

Received & filed Oct. 23, 1968, Hustings Court Clerk's Office, L. S., Deputy Clerk.

page 20 }

* * * * *

And at another Hustings Court held for the City of Richmond, at the Courthouse, on the 15th day of July, 1968, the following order was entered:

* * * * *

It appearing to the Court that the said defendant is now without funds to employ counsel, the Court doth now appoint R. R. Ryder, a competent attorney practicing before this Court, to assist in appeal, said counsel having been privately employed for trial of this case.

* * * * *

Arthur T. Carroll

page 4 }

* * * * *

ARTHUR T. CARROLL, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Ryder:

Q. Officer, would you state your name and occupation please?

A. Arthur T. Carroll, Patrolman, City of Richmond, K-9 Corps.

Q. Were you so employed on January the 27th,
page 5 } 1968?

A. Yes, sir, I was.

Q. On that date, Officer Carroll, did you have an occasion to stop a taxicab in which the defendant John Henry Howard was riding?

A. Yes, sir, I did.

Q. What time did this take place, sir?

A. Approximately three to 3:05 a.m.

Q. Were you uniformed?

A. Yes, sir, I was.

Q. Where did you effect the stopping of the taxicab?

A. On Lombardy Street in front of Virginia Union just south of Brook Road.

Q. Why did you stop the taxicab?

A. Because a suspect that we were looking for who had committed a robbery at 1501 Robin Hood Road an hour and a half to two hours before that time, had abandoned a car in that area.

Q. Now, when you say in that area, where had the car been abandoned?

A. On Sherwood Street just east of Northumberland.

Q. Sherwood Street?

A. Yes, sir.

page 6 } Q. Now, how far is that in blocks from the point where you stopped the taxicab?

A. Approximately three and a half or four blocks.

Q. Three and a half or four blocks?

A. Yes, sir.

Q. Prior to the time of stopping the taxicab, what had—had you participated in the investigation of the—

Arthur T. Carroll

A. Yes, sir, I had.

Q. Would you tell the Court just what happened from the time you stopped the taxicab, what you said and what was done?

A. When I stopped the taxicab, the dri—I asked the driver to get out, I asked the driver up—whereabouts he had picked up his passenger, he said 2501 Northumberland, then asked him whereabouts he was taking *taking* the passenger, he said to the eleven hundred block West Marshall. I then asked the driver to have a seat and I asked Mr. Howard, I did not know the man's name at that time,

Q. I understand, sir.

A. if he would mind stepping out so that I could talk to him.

page 7 } Q. Now, then, Mr. Howard stepped out of the automobile?

A. Yes, sir, he did.

Q. At your command?

A. Yes, sir.

Q. Now, then, at that moment, if Mr. Howard had not stepped out of the automobile, what would you have done, sir?

A. I would have asked the driver if he would have mind waiting until somebody else could have come there—

Q. Would you have allowed Mr. Howard to leave the scene?

A. I believe I would have followed Mr. Howard.

Q. You would not have allowed him to escape or get away from your sight or custody, is that correct?

A. Not out of my sight.

Q. Now, then, after he stepped out of the automobile, what did you do?

A. I asked him his name, his address and his occupation.

Q. And what did you tell him then?

A. What did I tell him?

Q. Yes?

page 8 } A. I didn't tell him anything.

Q. Did you tell the driver of the vehicle that he was operating or that was operating—the taxicab driver anything?

A. I explained the reason why I stopped his cab.

Q. Did you tell him or Mr. Howard that you wanted them to wait until the detectives got there?

A. I cannot swear to that, Mr. Ryder.

Q. Did you call the detectives?

Arthur T. Carroll

A. Officer Camden did.

Q. Officer Camden, was he with you at the time you stopped the vehicle?

A. Yes, sir, he was sitting in the front seat, he never left the car.

Q. And Officer Camden called the detectives?

A. On the radio, yes, sir, I asked him to.

Q. You did not allow the taxicab to proceed after the driver got back in and after Mr. Howard got back in, is that correct?

A. Mr. Howard did not get back into the cab.

page 9 } Q. All right, sir. How long was it before the detectives got there?

A. Fifteen, twenty minutes.

Q. Officer Carroll, is it fair to say that during that fifteen or twenty minute interval you would not have allowed the defendant to have left the scene, is that correct?

A. I wouldn't have allowed him to leave my sight, not the scene, though.

Q. Well, now, then, let's assume for just a minute that he told the taxicab driver to leave, what would you have done?

A. Followed.

Q. Suppose he had walked off, what would you have done?

A. Followed.

Q. You would not have allowed him out of your sight at any time, is that—

The Court: He's answered that three times—

Mr. Ryder: All right, sir, I'm sorry.

Q. Now, the officer that was with you is who, sir?

A. Officer C. E. Camden.

Q. Camden?

A. Yes, sir.

page 10 } Q. Is he here now.

A. No, sir, because he didn't participate in the actual talking to Mr. Howard or he did not dismount.

Q. Now, the detectives arrived at the scene about fifteen minutes after you stopped the taxi, is that right?

A. I believe so, yes, sir.

Q. Now, what detectives appeared?

A. It was Sergeant Johnson in the eight to four relief.

Q. Now, when Sergeant Johnson appeared, was anyone with him, if you can recall, sir?

Arthur T. Carroll

A. There was—I believe there was a driver with him.

Q. Now, when Sergeant Johnson appeared, what did he do?

A. He asked Mr. Howard if he would have a seat where it was warm in his car, because Mr. Howard just had shirt sleeves on.

The Court: Speak up a little louder, please, sir.

A. Excuse me, Your Honor, he asked Mr. Howard if he would have a seat in the police car because it
page 11 } was cold out and Mr. Howard just had a shirt on and no coat or jacket or anything.

Q. Then did Mr. Howard get into the

A. Yes, sir.

Q. police car?

A. Yes, sir.

Q. Were you able to observe or hear what took place after he got in the car?

A. No, sir.

Q. That's all the questions I have of Officer Carroll at this time, Your Honor.

CROSS EXAMINATION

By Mr. Bareford:

Q. All right, Officer Carroll, had you been called to this area?

A. Yes, sir, when the robbery first occurred.

Q. And you were called because you had a dog, is that right,

A. Yes, sir.

Q. K-9 Patrol?

A. Yes, sir.

page 12 } Q. And so they brought the dog around to see if they could locate the man with the dog?

A. Yes, sir, well, not to locate the man with the dog in the beginning, we respond on any felony-in-progress call like that, but one of the other officers pursued the car and the man abandoned the vehicle and ran and that is a tracking assignment for the dogs.

Q. All right, now, and this was all within a three or four block area

A. Yes,

Q. you stopped?

A. yes, sir, the dog tracked to the exact block where the defendant called the cab to.

Q. All right, now, had the police requested the cab companies at this time to report any pickups of people at this hour of the night?

A. It was put on the air if the Dispatcher would please notify cab companies making any pickups on their own or receiving any orders in that area, whether it was done or not, I don't know.

Q. And so when you saw this cab make the pickup in this area, that's why you stopped the cab, is that right?

A. Yes, sir, I did.

Q. All right, that's all.

page 13 } REDIRECT EXAMINATION

By Mr. Ryder:

Q. Well, now, you didn't see the cab make the pickup in this area there, is that correct?

A. I saw it—when I came up I came up Overbrook Road

Q. I understand, sir.

A. and as I passed Northumberland, the cab was coming like away from a curb down the street behind me.

Q. You didn't see it pick up a passenger?

A. No, but he had that light out on the top which signifies that he does have a fare.

Q. Yes, sir, I understand. That's all the questions I have.

Witness Stood Aside.

page 14 } M. W. JOHNSON, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Ryder:

Q. State your name and occupation, please?

A. Sergeant M. W. Johnson, Bureau of Police, Richmond, Virginia.

Q. You are a member of the Detective Division?

A. Yes, sir.

Q. Sergeant Johnson, did you participate in the investigation on January the 27th, 1968, wherein the defendant, John Henry Howards, Jr., was arrested?

M. W. Johnson

A. Yes, sir.

Q. During the course of your participating in that investigation, did there come an occasion when you went to a spot where Officer Camden or Officer Carroll had a taxicab stopped?

A. Yes, sir.

Q. How did you know to go to that scene?

A. He called for my assistance there.

page 15 } Q. What did he say to you on the radio?

A. I don't remember the exact words other than he wanted a detective to meet him there.

Q. Did he say why?

A. No, he did not.

Q. He didn't tell you why on the tel—on the radio?

A. No.

Q. Now, then, you arrived at the scene, when you arrived at the scene, what did Officer Carroll tell you?

A. I don't remember the exact words, but I was notified that John Howard whom he had stopped in the cab—

Q. Now, did he—now, is this what he related to you?

A. I said I don't remember word for word

Q. I understand—

A. what he said,

Q. I understand, sir.

A. but he said that John Howard was there and he wanted me to talk with him in regards to the robbery.

page 16 } Q. And you got to the scene, what did you do upon arriving at the scene after you talked to Officer Carroll?

A. I talked with—first of all, it was very cold—

Mr. Ryder: May I—Your Honor, the witness is obviously referring to some notes, may I see what he's referring to?

The Court: Very well.

(Pause)

Q. Officer, the paper that you have handed me here is a typewritten piece of paper, when did you make this?

A. About a week ago.

Q. About a week ago?

A. Yes.

Q. What did you make it from?

A. My original notes.

M. W. Johnson

Q. Where are your original notes?
A. In my pocket.
Q. You have them in your pocket now,
A. I do.
Q. is that correct?
A. I do.
page 17 } Q. May I see your original notes?
A. You may.
(Pause)

Q. Now, when you arrived on the scene, Officer, did there come an occasion when you had Mr. Howard to sit in your police vehicle?
A. Yes, sir.
Q. Who was in the vehicle besides you and Mr. Howard?
A. Detective Duke—Detectives Duke and Wood.
Q. Did you begin questioning Mr. Howard at that time?
A. I asked him some questions.
Q. Now, prior to the time that you asked him any questions, did you warn him of any Constitutional rights?
A. I did not.
Q. Now, then, what questions did you begin asking him?
A. I asked him what he was doing out that time of morning.
Q. Let me ask you this, before you go on, sir, did anyone else in the automobile, Detective Duke or any of
page 18 } the other officers, they did not warn him either, is that correct?
A. He was not advised of any rights when we first started to talk to him.
Q. All right, sir, now relate to the Court what you talked to him—what you said to him and what he said to you?
A. I asked him what he was doing out that time of night and he said he had visited a friend, Mr. Johnson, in the neighborhood. I asked him what direction he came from when he went to Mr. Johnson's home, he first told me that he came from the direction of Chamberlayne Avenue. Later he said he came from the direction of Brook Road, completely reversed. I could see his front pockets bulging with something, I asked him—
Q. Now, Officer, at that time—

The Court: Allow the Officer to
Mr. Ryder: I will—

The Court: answer your question, please.
Mr. Ryder: All right, sir, if I might, I just wanted to get—
The Court: He should be allowed to answer the question.

page 19 } Q. Go ahead, sir.
A. I asked him what he had in his pocket and he said nothing. I stated to him that I could see that he had something in his pocket, if he did not mind I wish he would pull it out and let me see what he had in his pocket.

Mr. Ryder: May I ask him one questions right here, sir?
The Court: All right.

Q. At that time and after he got in your vehicle, what would you have done had he attempted to get out of the vehicle?
A. I couldn't have stopped him, he would have had to have gone, I guess.
Q. You wouldn't even have attempted to stop him?
A. I had no right to stop him, I don't think.
Q. All right, sir, then what did you do—go ahead and relate what conversation—
A. So he pulled his money out of his pocket, pulled out a total of five hundred and six dollars and bent over in the cab and I could see what appeared to be a pistol in
page 20 } his right rear pocket, I reached behind him and caught this pistol and pulled it out of his pocket and at this time, Detective Duke adv—told him he was under arrest for the robbery of the Holiday Inn and advised him of certain rights. I—the pistol was unloaded in the cab, there were three chrome plated bullets in the thirty-eight revolver. When I—

Mr. Ryder: Your Honor, I have no objection for him going on, but that's all the questions I wanted to ask him, sir.

CROSS EXAMINATION

By Mr. Bareford:
Q. But you knew about the robbery that had already taken place at the Holiday Inn, didn't you,
A. Yes, sir.
Q. Sergeant Johnson? So you knew that this man was the suspect of that robbery when you responded to Lombardy Street?

M. W. Johnson

A. Yes, sir.
Q. Where the cab was stopped, is that right?
A. Yes, sir.
Q. And the questions that you asked him were perfunctory questions—

page 21 } Mr. Ryder: Now, Your Honor, I object, he's asking the witness—
The Court: You are leading the witness.
Mr. Bareford: All right, sir.

Q. Well, the questions that you asked him were to establish what, sir?
A. Was investigation.
Q. All right, sir, and as soon as you stopped your investigation, what happened?
A. He was advised of his rights.
Q. All right, sir, that's all.

REDIRECT EXAMINATION

By Mr. Ryder:
Q. But when you responded to the scene, as you stated, the defendant at that time was a suspect in the robbery?
A. That's true.
Q. And when you questioned him, he was a suspect in the robbery?
A. That's so, too.
Q. Now, then, you, as a Richmond Police Officer,
page 22 } are not in the habit of allowing suspects in major crimes to leave the scene—

The Court: Now, he's answered that three or four times, Mr. Ryder, he told you that he wouldn't arrest the man—if he had to let him go, he would have let him go.
Mr. Ryder: Well, may I ask—
The Court: He's answered that three times and I don't see any use in going over and over it.

Q. Have you ever previously allowed a suspect in a major crime to leave the scene where you stopped him?
A. You asking me that question?
Q. Yes, sir?
A. Certainly, many a time.
Q. Would you name one?

A. Rooftop Charlie.
Q. He was a suspect and you let him leave?
A. That's right.
Q. That's all the questions—

page 23 } RECROSS EXAMINATION

By Mr. Bareford:
Q. Did this—did this man make any attempt whatso—did you restrain him in any way, did he make any effort to leave?
A. None in the world.
Q. All right, sir.

RE-REDIRECT EXAMINATION

By Mr. Ryder:
Q. Well, at the time, there were five police officers either in the car or out of the car surrounding him, was there not?
A. Wouldn't give the exact amount there, as I stated in my previous statement in the cab was Detec—was Detective Duke, Wood and myself.
Q. That's right.
Q. And Officer Carroll and Officer Camden were there in the Police cruiser, were they not?
A. I don't *remeber* exactly where they were, they were there on the scene in the area, I'll say, at the time, I don't remember exactly where they were.

* * * * *

page 48 }

* * * * *

ALBERT L. HURT, JR., introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bareford:
Q. State your full name, please, sir, and address?
A. Albert Lee Hurt, Jr., 7007 Thornrose Avenue, Apartment 3.

Albert L. Hurt, Jr.

page 49 } Q. All right, sir, what is your occupation, Mr. Hurt?

A. I work part-time at the Holiday Inn as a night auditor.

Q. Now, were you so employed on January the 27th, 1968?

A. Yes, I was.

Q. And were you working that night?

A. Yes, I was.

Q. Did anything—where is this Holiday Inn located?

A. On Robin Hood Road.

Q. Is that in the City of Richmond?

A. Yes, it is.

Q. All right, sir, did anything unusual happen on the night or early morning of January 27, 1968?

A. Yes, sir, it did.

Q. Would you tell us what happened, please?

A. That night I was setting at my desk in the back office making up my report and also my deposit when I looked up and I saw a man with a red ski mask on and dark clothes pointing a pistol at me, motioning me to come in the front, at the same time he was reaching in a drawer page 50 } where we keep spare till for the cash register. When I came in the front, he asked me where the rest of the money was, I told him it was in the cash register, he motioned for me to get it. I went to the cash register, opened it and went to get the money out, I asked him where to put it, he said put it in a paper bag, I said what paper bag, he then reached under the counter and got a white cardboard ice bucket, told me to put it in there. I then put the money in there and at the same time, he emptied the till which was in the drawer. He then turned and went back into the office where I was working, collected the money off of the desk, there were at least three bundles of fifty one's which were wrapped, they'd come from the Bank like that, he also put those in the—in the bucket with the rest of the money. He then turned and went out the restaurant door, through which door he had entered. I immediately picked up the phone to call the Police, as I got the Dispatcher at Police Headquarters, I noticed car lights turn on, I went to the door to try to see what kind of car it was, I noticed it was a white Pontiac, I did not know the year or the license number and as he left, he headed towards Sherwood Avenue.

Q. All right, sir, I'm going to hand you an item and ask you if you can identify that, sir?

A. (pause) Yes, sir.

page 51 } Q. And what is that?
A. Ice bucket that the money was put in or similar to it.

Mr. Ryder: I didn't hear the last part of that.
The Court: Speak up, please, sir.

A. It was the same type of ice bucket the money was put in.
Q. All right, now, this money that was on the desk in the office, what were you doing with that money?

The Court: This supposed to be introduced?
Mr. Bareford: Judge, I don't think he could possibly identify this.
The Court: All right.

Q. What were you doing with the money on the desk in the office?
A. That was to be made up for the deposit to go to the bank.
Q. All right, and was it loose?
A. Some of it was loose, some of it had binders on it which it had come from the bank like that—
Q. All right—
page 52 } A. the one—the one's a bundle in groups of fifty, they come from the bank like that.
Q. Now, which bank do you use, sir?
A. Wait, I got a wrapper—Central National Bank.
Q. And what branch, do you know?
A. The branch used is the one on Chamberlayne Avenue.
Q. And is that a wrapper that you use in your business, sir?
A. Yes, sir, this is the way they come from the bank.
Q. All right.

Mr. Bareford: Judge, I'd like to introduce that wrapper, if I could.
Mr. Ryder: May I see it?
Mr. Bareford: Oh, excuse me.

(pause)

The Court: It will be Commonwealth's Exhibit No. 1.
Mr. Bareford: Yes, sir.

Q. Now, how much money was taken on the night of January the 27th, Mr. Hurt?

Albert L. Hurt, Jr.

page 53 } A. Eight hundred and forty-four dollars and eithty-two cents.

Q. Now, how was this man dressed, do you know?

A. Yes, sir, he had on a red ski mask, had on dark pants, a dark type of sweater and also had on black pointed shoes which looked like they had grease on them, they weren't glossy, they were very dull finish.

Q. Now, how big a man was he?

A. He was approx—I couldn't give you the exact size, he stayed bent over the whole time, I'd say he was approximately five, seven.

Q. All right, do you have any idea what his—did you give a description to the police that night?

A. Yes, I did.

Q. Would you tell the Jury please, sir, the description that you gave the police for this man?

A. I said between five, five and five, eight, approximately a hundred and forty pounds.

Q. All right, did you say anything about his complexion?

A. Yes, sir dark.

Q. All right, now, how long was he in your place of business?

page 54 } A. Approximately ten minutes.

Q. Now, you said something about a gun, what type of gun was it?

A. It was a snub nosed '38.

Q. Were any shots fired?

A. No, sir.

Q. And did he say anything other than make a demand for the money?

A. No, sir, just where to put it.

Q. Told you where to put it?

A. Yes, sir.

Q. And what time of night was this?

A. I'd say it was between one and two—I can give you the exact time.

Q. Does that mean a.m.?

A. Yes, sir.

Q. Who was on duty out there that night besides you?

A. I was the only one except for the restaurant manager who was upstairs, he had closed up the restaurant and was doing some work upstairs.

Q. Well, who was in the immediate vicinity where you were?

A. I was the only one.

Albert L. Hurt, Jr.

page 55 } Q. All right, sir, now, what—what time did you call the police?

A. As soon as it—as soon as it happened—the exact time?

Q. Well, how long after he left did you call?

A. Immediately, as soon as he went through the doors of the restaurant I called the police.

Q. All right, sir, now, when you say the doors of the restaurant, are the other doors there?

A. Yes, sir, the doors are right there as you come into the main lobby but I had those locked, I was under the assumption that the doors of the restaurant were locked, but they had been failed to have been locked that night.

Q. All right, sir, now, what did you tell the police when you called them, sir?

A. I told them that there had been a robbery.

Mr. Ryder: Now, Your Honor—that's all right, never mind, I withdraw the objection, I'm sorry.

Q. Go ahead, what did you tell the police when you called them?

page 56 } A. I told them that there had been a robbery, where it had been and that—what kind of—approximate—the—it was a white car, it was a Pontiac and I didn't know the year.

Q. All right, sir, is that all you know about it?

A. Yes, sir.

Q. All right, sir, answer Mr. Ryder.

CROSS EXAMINATION

By Mr. Ryder:

Q. Mr. Hurt, you are certain that there was eight hundred and forty-four dollars and eighty-two cents taken from you, is that correct, sir?

A. That is the figure after we audited the books after the robbery, yes, sir.

Q. And that's the amount that was taken by the robber?

A. Yes, sir.

Q. Now, that was in currency, is that correct?

A. Coin also.

Q. How much in coin?

page 57 } A. I don't know the exact amount, it would be no way to determine the exact amount of coin.

Albert L. Hurt, Jr.

Q. Well, do you have any idea?
A. I wouldn't even want to make an approximation.
Q. Well, was there more than eighty-two cents in coin?
A. Oh, yes, sir.
Q. Could you give the Jury any idea of how much coin?
A. Well, there was—
Q. Were there any rolls of coin?
A. There was some rolls of quarters, I think it was approximately—
Q. Do you know how many rolls there were?
A. I think it was approximately about three rolls of quarters and they are in ten-dollars each roll.
Q. So that would be about thirty dollars?
A. Uh, huh.
Q. Any other coins that you can recall?
A. A couple of rolls of dimes.
Q. How much are they, five dollars?
page 58 } A. Five dollars, nickels two dollars, pennies fifty cents.
Q. Would it be fair to say, sir, that approximately eight hundred dollars currency was taken from you?
A. No, sir.
Q. Then you are saying that you believe that more than forty-four dollars and eighty-two cents in change was taken from you?
A. Yes, sir.
Q. Now, I don't mean to belabor the point, sir, but could you give the—was there as much, do you think, as a hundred and forty-four dollars worth of currency taken—coins taken?
A. Very well could have been.
Q. Could it have been more than seven hundred dollars in currency?
A. Seven hundred in currency?
Q. Yes?
A. I wouldn't want to say.
Q. Well, now, you took an audit, you said, after the robbery occurred, is that not correct?
A. That is correct.
Q. And you can't tell the Jury how much in
page 59 } coin or how much in currency you had there that the robber took, is that correct?
A. I can only give you the total amount.
Q. I understand, sir, and are you saying that you think

Albert L. Hurt, Jr.

the robber took as much as a hundred and forty- four dollars in change?

A. He could have very possibly.

Q. Well, now, you've listed, I believe, thirty dollars in quarters, that's three rolls?

A. Uh, huh.

Q. You've listed two dollars in dimes, two rolls of dimes, that's ten dollars, and some other loose change?

A. Yes, sir.

Q. Now, are you saying that he took a hundred dollars worth of loose change?

A. Now, this is a total now, now the total I'm giving you is only what I know that I took out of the drawer myself, now, this was only out of one cash drawer. There was another cash drawer plus the money that was in the back of my desk.

Q. Well, do you—

A. It could have been as much as two hundred dollars in coins.

page 60 } Q. It could have been as much as two hundred dollars in coins?

A. Yes, sir.

Q. Well, now, this would have had to have been about a hundred and some dollars in loose coins, would it not?

A. Yes, sir.

Q. Well, now, where did you take the loose coins from?

A. Where did he take them from?

Q. Yes?

A. Off the desk out of the cash till that he himself emptied and out of the one that I emptied.

Q. What did he do with the loose coins?

A. Put it in the ice bucket.

Q. And you think he put approximately a hundred dollars worth of loose coins in the ice bucket?

A. He could have very well, yes, sir.

Q. But you don't know one way or another, is that what you are saying?

Mr. Bareford: I think, Judge, he's saying he doesn't know the exact amount.

The Court: Been over it two or three times.

page 61 } Q. Now, then, do I understand you to say that the robber was in there about ten minutes and that the only thing you recall him saying to you was to give you or give you the money or something of this nature?

Albert L. Hurt, Jr.

A. Give him—he asked me where the money was, where the rest of the money was, I told him and he told me where to put it.

Q. Well, now, where was the rest of the money?

A. There was some in the cash register and the rest of it was in the back on the desk.

The Court: Been over this two or three times, Mr. Ryder.

Mr. Ryder: I know we have, Your Honor, I don't mean to belabor it, sir, but I think it's rather important.

Q. Well, did you then go back to the back and get the money and put it in the box or

A. No, sir, I did not.

Q. the ice bucket?

A. No, sir, I did not.

Q. Who did?

A. The robber did.

Q. He went back and got the money?

page 62 } A. Yes, sir.

Q. And put it in the bucket?

A. Yes, sir.

Q. Well, now, were you working at that desk prior to the time the robber came in?

A. Yes, sir.

Q. And you were in the process of counting money, is that correct?

A. Yes, sir, I was making up a report and the deposit, sir.

Q. Well, now, when you make up the report, sir, is it a written report?

A. Yes, sir, it is.

Q. Do you put down on that written report the amount of currency and the amount of coin that you have there?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Well—and you can't tell the Jury how much coin you had on that tale?

A. No, sir.

Q. Could you have had on the table as much as a hundred dollars in loose change?

page 63 } A. It would be doubtful.

Q. Now, then, when the robber left, did I understand you to say that you picked up the phone and dialed the police?

Albert L. Hurt, Jr.

A. Yes, sir.

Q. Now, you then ran out to the front door, is that right?

A. Yes, sir.

Q. How far did you have to go from where you were dialing to the front door?

A. It would have been approximately twenty-five yards, twenty-five yards at the most.

Q. And you left the phone off the hook?

A. Yes, sir.

Q. Now, when you got to the front door, the individual who had robbed you, you assumed, was going away in a white car you thought was a Pontiac?

A. Yes, sir.

Q. Now, you didn't see the person that robbed you get in the Pontiac, did you?

A. No, sir.

Q. Now, then, he didn't—did the Pontiac leave fast, slow or how?

A. Fast.

page 64 } Q. Very fast rate of speed?

A. Well, he was setting still, I mean he accelerated from the point that he was setting still at.

Q. He accelerated rapidly, did he?

A. Yes, sir.

Q. Then you went back to the telephone?

A. Yes, sir.

Q. Now, what did you say on the telephone when you went back?

A. Told the police there had been a robbery, where had it been.

Q. Now, what did you say on the telephone before you went to the door?

A. Before I went to the door?

Q. Yes, sir?

A. The Dispatcher, or whoever picked up the phone said Police Department, I said hold on.

Q. And that's all you said?

A. That's all I said.

Q. Now, then, when you were at the front door, how long did you look at the automobile that was leaving?

A. I just got a glance at it because it was leaving.

Q. Well, now, the last time you saw the automo-

page 65 } bile, where was it?

A. Where was it?

Albert L. Hurt, Jr.

Q. Yes?
A. It was leaving towards Sherwood Avenue.
Q. Had it gotten onto Sherwood Avenue?
A. No, sir, I can't see Sherwood Avenue from where I'm at.
Q. Had it gotten off of the Holiday Inn parking lot?
A. No, sir.
Q. Now, then, you said, I believe, and correct me if I'm wrong, sir, that the robber had on a red mask,
A. Yes, sir.
Q. ski mask?
A. Ski mask.
Q. Dark pants?
A. Yes, sir.
Q. A dark sweater?
A. Yes, sir.
Q. And pointed shoes?
A. Yes, sir.
page 66 } Q. Now, are those all the articles of clothing that you observed upon the robber?
A. Yes, sir.
Q. Now, you are certain that there were no other articles of clothing that you observed upon the robber?
A. No, sir.
Q. You mean no, sir, you are not certain or no, sir, you are?
A. No, sir, that's all I observed,
Q. That's all you observed?
A. he could have had other clothes on, but that's all I observed.
Q. Well, if he had had on a sport coat, would you have seen that?
A. Yes, sir.
Q. And he didn't have on a sports coat?
A. No, sir.
Q. If he had had on an overcoat, would you have seen that?
A. Yes, sir, I—
Q. And you didn't see an overcoat?
A. No, sir.
Q. If he had had a jacket over his sweater, would you have seen that?
page 67 } A. More than likely, yes, sir.
Q. Did you see a jacket over his sweater?
A. No, sir.
Q. Was there any type of hat that the individual had on?

Albert L. Hurt, Jr.

A. No, sir, just a red ski mask.

Q. Now, then, when you—did you fill the bucket up or did he, the robber?

A. Both, he and I both did it.

Q. Both he and you. Did—how did he carry it out of the establishment?

A. In one hand.

Q. In one hand?

A. Yes, sir.

Q. Did he have the gun in the other hand?

A. Yes, sir.

Q. Now, you are certain that a part of the currency that the robber got was three bundles of fifties, I mean of ones, fifty ones, is that correct?

A. I know of three bundles.

Q. Well, at least three bundles?

A. Yes, sir.

page 68 } Q. If you were shown a wrapper coming from some money, would you be able to identify it as money that was in your business establishment?

A. I would be able to say it was one like—that comes to our business establishment.

Q. But from that branch bank it's quite probable that many, many thousands of dollars go to various and sundry establishments wrapped just like that, isn't it?

A. Yes, sir.

Q. Now, the white cardboard ice bucket that was shown you, you cannot say that that bucket came from the Holiday Inn, can you?

A. No, sir, I could not say, because I don't—it could be fifty million of them just like it,

Q. I understand that, sir.

A. but we use that—we use that type.

Q. The money that you were going to deposit that night, is that money, did I understand you to say, that came from the Central National Bank?

A. The money I was going to deposit?

Q. Yes, sir?

A. The one—some of it does, yes, sir, that's

page 69 } where we get our currency from to make change during the day.

Q. Well, now, do you, in your business establishment, keep these little wrappers and make up stacks yourself?

A. No, sir, we do not.

Albert L. Hurt, Jr.

Q. You do not?
A. No, sir.
Q. So then the three bundles of fifties, what you are telling the Jury, was in the same condition as it was when it came from Central National Bank?
A. Yes, sir.
Q. Never been broken open?
A. No, sir.
Q. Where do you get your change for the next day's operation?
A. Where do we get it from?
Q. Yes, sir?
A. That is done during the day, I presume they get it from the Central National Bank.
Q. And you make the night deposit, is that right?
A. I make it up, it is deposited during the day by someone else,

Q. Uh, huh?
page 70 } A. I just make it up and put it in an envelope and then it's deposited by someone else.
Q. That's all the questions I have, sir.

* * * * *

Mr. Bareford: Yes, sir, Your Honor, Commonwealth waives.

page 75 } Q. Mr. Hurt, what were the denomination of the bills that were taken, do you know?
A. That would be one's, five's, ten's and twenty's.
Q. Would there *ba* any other bills bigger than a twenty?
A. There could have been—there could have been fifty's or a hundred.
Q. All right, now, when the automobile left, you say it was going towards Sherwood Avenue, where is that in relation to—what street runs in front of the Holiday Inn?
A. Robin Hood Road, Sherwood Avenue runs behind it.
Q. All right, now, does this hotel or motel take up the full block, in other words, you can come and go out of Sherwood or Robin Hood Road?
A. Yes, sir, there's entrance and exits both.
Q. All right, sir. Now, how many automobiles left the lot at this time?
A. One.

Q. Could you see the whole parking lot?

A. I can see the front part of the parking lot.

page 76 } Q. Is that where this automobile was parked?

A. Yes, sir.

Q. And so it started—which way were you facing when you saw the automobile?

A. Which way was I facing?

Q. Yes, sir?

A. I would be—I was at the phone, which would be here, the other would be off over like this.

Q. All right, sir, I think that's all.

RECROSS EXAMINATION

By Mr. Ryder:

Q. Mr. Hurt, you said that the automobile, that only one automobile left there?

A. Yes, sir.

Q. Now, you previously testified, I believe, that the telephone where you were calling from was twenty-five or thirty yards from the front door?

A. Yes, sir.

Q. Could you see out the front door all that time?

A. Yes, sir, there's glass all the way across

page 77 } there.

Q. And you were looking out to see whether or not there was any other cars left?

A. I was looking out over the whole parking lot. I have a view, I can see because the whole front is glassed in.

Q. That's all, thank you.

Mr. Baeford: That's all.

Witness Stood Aside.

WILLARD G. WILSON, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bareford:

Q. State your name and occupation, sir?

page 78 } A. Willard G. Wilson, Richmond Police Officer.

Q. How long have you been a police officer, Officer Wilson?

Willard G. Wilson

A. Since September of '65.

Q. All right, sir, were you on duty the night or early morning of January the 27th, 1968?

A. Yes, sir, I was.

Q. All right, sir, now did—did you have an occasion to respond to the Holiday Inn on Robin Hood Road or Sherwood Avenue?

A. Yes, sir.

Q. All right, sir, tell us what time it was and what you observed, please, sir?

A. Approximately 1:50 a.m., on the 27th, I was at Chamberlayne and Brookland Park Boulevard and received a call from the Dispatcher that a robbery had just occurred at the Holiday Inn, Robin Hood Road. I acknowledged the call and proceeded on Brookland Park Boulevard to Brook Road where I made a left turn, traveled south to Sherwood, and at Sherwood I—before I made my turn I met an old model Pontiac, approximately a '56 or a '57, it was approaching the intersection of Sherwood and Brook.

Q. What color was this Pontiac?

page 79 } A. It was a light color, either a dirty white or a light green.

Q. All right, sir?

A. As I observed him—we both stopped—and as I observed him, he stared at me, the driver, and I saw that he was—had a red stocking cap or ski mask pulled up on his head and a dark windbreaker, possibly black or navy blue, so he then proceeded still east on Sherwood and I turned and proceeded after him. He went approximately a block and a half, which is between Northumberland and Seminary and I was gaining on him then, he pulled to the right curb and jumped out the passenger's side and ran through some residential yards.

Q. Did you see him?

A. Yes, sir.

Q. Describe him please, sir?

A. I couldn't tell too much about his height, he was running in a crouched position, but he was a small build and he was wearing a red stocking cap and a dark windbreaker and light colored pants and he looked to be about twenty-five to thirty, colored male, and about five, seven.

Q. Did you pursue him?

A. No, when I got to the car, up to where the page 80 } car was, I just put on an all-unit direction of

Willard G. Wilson

travel and description, I didn't follow him in the yards because there was a lot of shrubs and everything and—

Q. All right, did you respond to his automobile?

A. Yes, I stopped at his automobile and—

Q. What did you observe?

A. Well, there was—I went up to it and—on the passenger's side—and there was a bill—there was two bills in sight, one was a five and one was a ten, and I don't know which bill was laying at which place, but one was in the gutter by the passenger door and the other was on the front seat.

Q. Five and ten dollar bills?

A. Yes.

Q. All right, and then what did you do?

A. And then I come back to the radio and I gave his route of travel and got a registration check on the automobile.

Q. Who was the automobile registered?

A. I don't remember, it was stolen, it was registered to some lady in the south side.

Q. All right, sir, now, did—what route of travel did you give?

page 81 } A. I said he ran south through the yards between Northumberland and Seminary, through the back yards.

Q. All right, sir, and what time was that?

A. It was between 1:50 and 2:00 o'clock.

Q. Anything else?

A. No, I can't think of anything—

Q. Did any units respond to where you were?

A. The K-9 wagon, I don't remember the unit, Officer A. D. Carroll responded and another officer came and stood by the car and I went in—on down and took the report.

Q. All right, sir, answer Mr. Ryder.

CROSS EXAMINATION

By Mr. Ryder:

Q. Officer, you were close enough to the individual to see that he had a dark windbreaker and a red stocking cap on, is that correct?

A. Yes, sir.

Q. Now, when the individual jumped out of the

page 82 } automobile after it stopped and ran, how far away from the individual were you then?

A. I would say approximately a half a block.

Willard G. Wilson

Q. Did the individual, when he ran from the automobile, have anything in his hands?

A. I couldn't say, he was running in a crouched position.

Q. And you couldn't see anything in his hands?

A. I couldn't see his hands.

Q. Could you sorta demonstrate to the Jury how you remember him running in a crouched position?

A. To the best of my recollection when he—he come from the car he never straightened up, he was running like this.

Q. Running like that? Now, were you on the side, front or rear of him?

A. I was following him, I was on the—in the rear of him.

Q. Now, you say he had—the man that you saw running from the car had on light-colored pants?

A. Yes.

Q. And dark windbreaker?

A. That's correct.

page 83 } Q. And a red ski cap?

A. Yes, sir.

Q. Officer, what is a ski cap to you?

A. It's a knitted cap, same thing as a stocking cap, it's a knitted cap that pulls down, it doesn't have any brim or anything, with a opening, eye opening, and some have a nose and mouth opening.

Q. Now, the man you saw had on a red ski cap of this nature?

A. Yes.

Q. Officer, how—you said you were at Chamberlayne and Brookland Park Boulevard when you got this call?

A. Yes, sir.

Q. From Chamberlayne and Brookland Park Boulevard to the entrance to Sherwood Road where you turned in, how many blocks is that?

A. Approximately four.

Q. Approximately four blocks?

A. Yes, sir, two of them are short—from Chamberlayne to Brook, there's Seminary and Northumberland run between that, quite short blocks.

Q. At what speeds did you travel from Cham-

page 84 } berlayne and Brookland Park Boulevard to the entrance to Sherwood Road?

A. Well, I couldn't say, I wasn't looking at the speedometer but—

Q. Going right fast?

Willard G. Wilson

A. Fast as I could go, yes, sir.

Q. Now, how far is it from the entrance to Sherwood Street to the parking lot of the Holiday Inn?

A. Maybe—I can say two blocks, two-tenths of a mile, I *reallly* couldn't say.

Q. You have been using your notes there, is that correct, to refresh your recollection?

A. Beg your pardon?

Q. Have you been using the notes that you had in your hand there?

A. Yes, sir.

Q. May I see them, please? (pause) Now, Officer, from the time you saw this Pontiac automobile, whether it was light green or white, until you saw a man run from a Pontiac automobile, did you have this automobile in your sight at all times?

A. Yes, sir.

Q. Did he at any time disappear from your view?

A. You mean the person—

page 85 } Q. The automobile—

A. the driver of the car?

Q. The automobile itself?

A. No, sir.

Q. Well, now, Officer, did you chase the vehicle immediately upon seeing it?

A. As soon as he proceeded east on Sherwood I proceeded after him.

Q. And at no time did he disappear from your sight?

A. No, sir.

Q. Officer, did you make these notes at the time you—the night that you did this?

A. Yes, sir.

Q. Would you read at the top of your little page two here to the Jury the statement that you have in your notes in your handwriting? (pause) The top of what you have numbered page two there, sir?

A. This is in the middle of a paragraph, do you want me to start or just read what you said?

Q. Read—

The Court: Read the entire paragraph.

Q. Read the entire paragraph will be all right.

page 86 } A. This is where proceeded east on Sherwood.

William I. Johnson

We went approximately a block and a half and he pulled to the curb and bailed out the passenger's side, and ran south through some back yards. I didn't give chase because by the time I brought my vehicle to a stop he had disappeared, I put an all-unit on with a description and route of travel.

Q. That's all the questions I have.

REDIRECT EXAMINATION

By Mr. Bareford:

Q. That means that he disappeared after he got out—

Mr. Ryder: Now, Your Honor, I object to counsel asking the witness what something means.

Mr. Bareford: Well, now, Judge, he's got—

Mr. Ryder: It's up to the Jury to determine what it means.

The Court: One second, Gentlemen, one at a time.

page 87 } Q. When did you first lose sight of the man—

A. When he bailed out the car and ran in the yards.

Q. That's all, thank you, sir.

Witness Stood Aside.

WILLIAM I. JOHNSON, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bareford:

Q. Would you state your full name and address, please?

A. William I. Johnson, III, 2514 Northumberland Avenue.

page 88 } The Court: Speak a little louder, please.

Q. You will have to speak up a little bit please, 2514 Northumberland?

A. That's right.

Q. Now, is that in the City of Richmond, Mr. Johnson?

A. Yes, it is, in the north side area.

Q. North side area, now, how far is that from Seminary?

A. One block.

William I. Johnson

Q. How far is it from Brook Road?
A. One block.
Q. And so it's the one right between Brook Road and Seminary, is that right?
A. Right.
Q. All right, sir, now, on the night of January—or early morning of January the 27th, 1968, did you see the defendant, John Henry Howard, Jr.?
A. I saw him when he came to my door and rang my bell.
Q. All right, sir, now, what time was this?
A. I don't know exactly, but I would say it was after one o'clock.
page 89 } Q. It was after one o'clock?
A. I would say.
Q. All right, sir, that's a.m.?
A. Right.
Q. Now, do you know him?
A. Yes, I know him.
Q. Do you know him well?
A. Well, I don't know him too well, but I know him.
Q. How do you know him?
A. He's been around my house before with my nephew.
Q. With your nephew?
A. Yes.
Q. Does your nephew live with you?
A. No, he doesn't.
Q. Was your nephew visiting when he came with him.
A. No—you mean when he came—no, he wasn't, he was by hisself.
Q. All right, I don't mean the night of—the morning of the 27th—
A. Oh, he came—yes, he came with my nephew.
page 90 } Q. And how many times has he been over there?
A. Oh, I'd say maybe about two or three times.
Q. All right, sir, so it's no question in your mind that this is the man that came to your door, is that right?
A. No, it's no question.
Q. All right, sir, now, tell us what he did when he knocked on your door please?
A. Well, he rang the bell, I came downstairs and looked out the window, I couldn't think of his name.

The Court: Speak up please, sir, so these Gentlemen can understand you.

William I. Johnson

A. I could not think of his name, but I peeped out of the window and I saw who it was and he knew that I lived there and I knew him so I opened the door. He told me that he had had trouble with his car and he would like to call a cab, so knowing him, I let him in and showed him where the phone was, so he went over and used the phone and called the cab. While he was waiting for the cab he asked to use the rest room which I showed him where it was, he went page 91 } there and he came back, walked back into the room, walked to the window and looked, then came on over and sat down and I mean him and I just carried on a general conversation, 'cause time the cab came up, I told him the cab was there because I was down there with him. When the cab came up he saw it, so he started out to the door and as he went out to the door, he just cut the light switch off and went on out and got in the cab and I shut the door, I think it was about a few minutes after that the officers came, and that's all that I know.

Q. Now, this light switch you say he cut off, what did that —what light did that control?

A. The front porch.

Q. All right, now, he cut the front porch light off before he went out?

A. On his way out—on his way out the door.

Q. Well, do you have steps at the front?

A. Yes, I have.

Q. How many of them?

A. About four or five steps.

Q. And he cut the light out before he went down the steps?

A. Yes, sir, on the way out the door.

page 92 } Q. All right, sir, now, how long—excuse me—how long was he there, sir?

A. I don't know, I would just guess at it, I would say approximately near a half hour—

The Court: Speak up please, sir.

Q. Speak up—

A. Nearly a half an hour, between a half hour and forty-five minutes, somewhere roughly.

Q. Now, how was he dressed when he came to your house?

A. Well, to be honest with you, I didn't even notice.

Q. You don't know?

A. No, sir.

Q. All right, sir. Answer Mr. Ryder.

William I. Johnson

CROSS EXAMINATION

By Mr. Ryder:

Q. Did you see anything unusual about his dress?

A. No, I didn't.

Q. It was right cold outdoors at that time?

A. It was a little cold, yes.

page 93 } Q. Now, you didn't see anything at all unusual about his dress, did you?

A. No, sir.

Q. Now, you said he was there for a half hour or forty-five minutes and you all just carried on a general—

A. Just talked in general, that's right.

Q. Casual conversation, wasn't anything ab—unusual?

A. No, nothing—

Q. Was his physical appearance unusual in any way that you recall?

A. No, it wasn't.

Q. Now, the light switch that you say he turned out as he went out to get in the cab, where is that located with reference to your front door?

A. Right on the side, the wall by the door.

Q. Had you turned that light on when you come downstairs?

A. Yes, I had.

Q. And you had turned it on for him?

A. Yes, I did.

page 94 } Q. And he walked out and got in the cab and left?

A. That's right.

Q. Do you know him by any name other than Johnny—or John Henry Howard?

A. No, I don't, that was the only—

Q. Do they call him Flash Howard?

A. I don't know.

Q. You don't know that he is a professional boxer?

A. I know that, yes, sir, 'cause my nephew is.

Q. That's all the questions I have.

REDIRECT EXAMINATION

By Mr. Bareford:

Q. Did he tell you where his car was parked?

A. No, sir, I didn't ask—I didn't go into any detail with him—

Q. He didn't go into any de—just said car trouble?

A. He told me had had trouble with his car, he wanted to use the phone and that was all.

page 95 } Q. He didn't tell you the nature of the trouble?

A. No, sir.

Q. All right, sir, thank you, that's all.

Witness Stood Aside.

WILLIE MAYO, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bareford:

Q. State your name and occupation?

A. Name Willie Mayo, Jr., I drive Manhattan Cab, part time.

page 96 } The Court: Speak up so these Gentlemen can understand you, please.

A. Willie Mayo, Junior, part time driver for Manhattan Cab Company.

Q. Now, were you driving a cab for Manhattan on January the 27th, 1968?

A. I was.

Q. And did you respond to 2514 Northumberland Avenue?

A. Yes, sir.

Q. What time was it?

A. I would say it was approximately three o'clock.

Q. About three o'clock, that's in the morning?

A. Yes, sir.

Q. Now, did you pick up a fare there, Mr. Mayo?

A. Yes, sir.

Q. And was it the defendant, John Henry Howard, Jr.?

A. I would think it was, yes, sir.

Q. All right, sir, now, where did he tell you he wanted to go?

page 97 } A. The best I can remember was 1110 West Marshall, I believe.

Q. Had you—did you get to 1110 West Marshall?

Willie Mayo

A. No, sir.

Q. What happened?

A. Officer stopped me just as I crossed over Brook Road going towards Leigh Street.

Q. How far had you driven with Mr. Howard in your cab?

A. The meter was reading sixty-five cent when they stopped me.

Q. And what does it start with, fifty-five?

A. Fifty-five.

Q. So that meant you had gone a quarter of a mile?

Mr. Ryder: Well, Your Honor, I object on the basis he is leading the witness.

Q. All right, well, how far had you gone to get a ten cent fare?

A. Well, the meter suppose to be set up to go a quarter of a mile the first fifty-five cents,

Q. Uh, huh?

page 98 } A. and ten cents each additional quarter of a mile.

Q. All right, so after you go a quarter of a mile it trips, is that right?

A. Yes, that should be right, yes, sir.

Q. Uh, huh, and so it tripped once?

A. It tripped one time, yes, sir.

Q. How far is that in blocks, do you know from the twenty-five hundred block Northumberland to—where did—what street did they stop you on?

A. Lombardy at—just across Brook Road on Lombardy,

Q. All right?

A. heading towards Broad Street.

Q. So how far is—how many blocks would that be, Mr. Mayo?

A. I would think it would be around six or seven blocks.

Q. Six or seven blocks, all right, now, how was Mr. Howard dressed, do you know?

A. He had on a shirt and a pair of pants, I can't remember the exact color of the pants, but I taken it to be a white shirt, but I wasn't sure, being dark, I—

Q. No jacket, no sweater, no nothing?

page 99 } A. No, sir.

Q. All right, sir, and how about the weather

conditions on January the 27th, do you know what they were, sir?

A. It was cold.

Q. All right, where did he sit in the cab?

A. In the front seat.

Q. Did—did he tell you why he wanted the cab?

A. Not that I can remember.

Q. He just told you where he wanted to go, is that all he said?

A. Told me he wanted to go to, I believe it was 1110 West Marshall.

Q. All right, that's all, answer Mr. Ryder.

CROSS EXAMINATION

By Mr. Ryder:

Q. When the police officer stopped you, how many police officers stopped you?

A. It was two in the car that stopped me.

page 100 } Q. What did they say to you?

A. Well, when I seen the red lights flashing—

Q. They stopped you with the flashing of red lights?

A. Yes, sir.

Q. And then you pulled over, is that right?

A. That's right.

Q. Was there a siren going?

A. I don't think so, I—

Q. You just think it was red lights?

A. I think it was red lights.

Q. And you pulled over in response to the red lights?

A. Yes, sir.

Q. Now, when he got—when the police officer stopped you, did you get out of your car or what did you do?

A. I did, I got out.

Q. And what did he tell you?

A. Well, when I—when he stopped me I got out and walked back to—started back to his car.

page 101 } Mr. Bareford: Judge, I think any statement that he would make would be hearsay—

Q. Well, now, let me ask you this, did the police officer tell you not to leave 'til the detectives got there?

A. The police officer told me—he first told me—

Willie Mayo

Q. Well, the Commonwealth's Attorney is objecting that it's hearsay.

Mr. Bareford: I don't care—I don't care.

Q. Just answer this, did he at any time tell you not to leave the scene—the police officer?

Mr. Bareford: Well, now, wait a minute, I think it would be better if he asked him what he told him, Judge, I—

Mr. Ryder: Well, Judge, he's objected to the hearsay and I—

The Court: Rephrase the question.

Mr. Ryder: Yes, sir.

Q. Were you ordered by the police officer at any time not to leave the scene?

Mr. Bareford: Well, now, Judge, he's putting words in the man's mouth and the answer—

page 102 } Mr. Ryder: He's on cross examination.

Mr. Bareford: I understand that, but by the same token we want to know what the police officer said, Judge, and I think—

The Court: Just ask him what the police officer said.

Q. What did the police officer say to you with respect to your leaving the scene or not leaving the scene, anything?

A. He—the best I can remember when I went back to see what was wrong or why he was stopping me—

Q. Well, now let me interrupt you right here, did the police officer, during the course of the conversation, at any time tell you to leave or not leave the scene, tell you whether you could or couldn't leave the scene?

A. He told me that there has been a robbery committed in this area within a certain period of time, he did tell me, and then he said we think we lost the suspect in this general area, say, I think there's someone who can identify him, he said I hate to hold you up this time of morning because I know it's a busy, 'cause I used to drive a cab myself, he said, but I don't want to take any chances.

page 103 } Q. Did he tell you then not to leave?

A. No, sir, he wouldn't let me go.

Q. He wouldn't let you go?

Willie Mayo

A. Well, I'll say not exactly he wouldn't let me go, but he wouldn't let me take the suspect.

Q. He wasn't going to let you—he wasn't going to let you take the man that was in the cab away from there?

Mr. Bareford: Well, now, I object to that, Judge, he doesn't know what the police officer would do.

A. I don't know—

Mr. Bareford: Wait just a minute, he's testified that the police officer didn't hold him.

The Court: I don't see how he'd know what the police officer would do.

Mr. Bareford: No, sir.

Q. Why did you say that the police officer wasn't going to let you take the suspect away from there?

A. Well, I wouldn't say—

Mr. Bareford: He's asking for an opinion, Judge.

page 104 } A. In other words, as I say, he told me I hate to hold you up—

Mr. Bareford: I'm going to make an objection to this as to opinion as to what the police officer was going to do.

The Court: Calls for an opinion.

Mr. Ryder: Your Honor, I'm not asking for an opinion, he stated—

The Court: Rephrase the question, Mr. Ryder.

Q. Why did the—

Mr. Ryder: He stated a while ago that the police officer wasn't going to let him leave the scene with a suspect and what I'm trying to find out is how he knows that.

The Court: Well, I don't see how he would know,

Mr. Ryder: Sir?

The Court: if the officer—

Mr. Ryder: Well, perhaps possibly I could prod his memory into testifying that the police officer told him not to leave the scene.

Willie Mayo

page 105 } Mr. Bareford: Well, now, I think what he—Judge, if we are going to have an argument, I don't think we ought to do it in front of the Jury, but I don't want him to put words in the witness' mouth.

Mr. Ryder: Well, may I ask him why he said that while ago?

The Court: All right, sir.

Q. Why did you say a while ago that the police officer wasn't going to let you leave the scene with the suspect?

A. Well, when he stopped me, he asked me where did I pick the passenger up and I told him and he said well, where is he going, I told him, then he went to the car, I never did get back in the cab, he went to the car and he talked to this fellow, so he came back to me, said this fellow is supposed to be a professional boxer and I believe he had some identification to that effect, probably gave—or something, then he went back—

Q. Do you mean the police officer had this man's identification when he came to you?

A. The best I can remember,

Q. All right, sir?

A. yes, sir, and—

page 106 } Q. Did he ever give the—Mr. Howard the identification back that you saw?

A. I don't know—

Q. Did you see him give the identification back?

A. At one time I remember he asked him to get out of the cab and he walked back to the police car with the officer and I believe he asked him for a *restoration* to the car and, if I'm not mistaken, he told him something about a car, but he was looking for something in his billfold or concerning a car or something of that nature.

Q. Did you ever see the police officer give the identification back to the defendant?

A. I can't say I did.

Q. Why didn't you leave the scene after the police officer stopped you?

A. Well, all indications showed that I—that he was going to hold me there because he wanted to get some witnesses or eye-witnesses from whoever he thought had seen the suspect.

Q. And that's the reason he was holding you there?

Willie Mayo

Mr. Bareford: Well, now, I object to that, Judge, the man didn't say the police officer was holding him.

page 107 } A. He told me that I hate to hold you up, those are the words he told me.

Q. Did he tell you that he wanted to bring some witnesses to the scene to see if they could identify this defendant?

A. He said that there are some people who are supposed to have seen him and I guess it must have been the detective that he was speaking of because they are the only ones that I seen that came to the scene after he went back to his radio or have the other officer who was driving probably called in on it or whatever the case was.

Q. That's all the questions I have.

REDIRECT EXAMINATION

By Mr. Bareford:

Q. Did you try to leave?

A. I never made any attempt to leave.

Q. When they stopped you, you just got out of the cab and stood by and watched, didn't you?

Mr. Ryder: Now, Your Honor, he's putting words in the witness' mouth—it's his witness.

Q. Well, what did you do?

The Court: Rephrase the question.

page 108 } Q. What did you do?

A. Well, after they stopped me, I got out, as I say, and when the officer was talking to the suspect, well, I never did get back in the cab, I don't think, until after the suspect had—he had taken the suspect out of the car and I got back in, I called my dispatcher to let her know why I was —you know—what the case was.

Q. All right, sir.

RECROSS EXAMINATION

By Mr. Ryder:

Q. You didn't voluntarily stay there, did you?

A. I don't know.

Q. You stayed there because the police officers you knew would have stopped you if you had a left?

Mr. Bareford: Well, now, I object, Your Honor.
The Court: That's an improper question.
Mr. Ryder: All right, sir, that's all the questions I have, Your Honor.

Witness Stood Aside.

page 109 } ARTHUR T. CARROLL, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bareford:
Q. State your name and occupation, please, sir?
A. Arthur T. Carroll, Patrolman, City of Richmond, K-9 Corps.
Q. How long have you been with the City of Richmond?
A. Since August of '64.
Q. Now, were you on duty the night of January the 27th, 1968?
A. Yes, sir, I was.
Q. And did you have an occasion to respond to Sherwood Road?
A. Yes, sir, I did.
Q. What time?
A. The first call came in at approximately 1:50 a.m., Officer Wilson put it on the air that he was behind a car leaving that scene and that the man that was in the car aban-
page 110 } doned the car and rather than going to the Hotel—

Mr. Ryder: Your Honor, we object to the conversation—

Q. All right, well, don't tell us about—

The Court: Objection sustained.

Q. As a result of this radio call, you did go to Sherwood Avenue?
A. Yes, sir.

Arthur T. Carroll

Q. All right, sir, tell us what you did. Now, when you say K-9, that means that you have a dog?

A. Yes, sir.

Q. All right, tell us what you did, please, Officer Carroll?

A. I put one man out at Lombardy Street near Overbrook Road and then came back to the car myself, took my dog out of the car, Officer Wilson pointed in the direction that the man took when he left the car and I moved my dog in that area and he picked up a track and I started tracking it.

Q. Where did you track to?

A. Through that yard, across Northumberland, through another yard on the west side into the alley between Northumberland and Brook Road, down that alley into

page 111 } the vicinity of the twenty-five hundred block of Brook and Northumberland.

Q. Did you ever locate who you were looking for?

A. Not at that time.

Q. All right, sir, how long did you stay out there?

A. We were in that area on foot for approximately forty-five minutes and then the rest of the time I had come back and I got in my car and we were in that area patrolling in the car.

Q. All right, sir, now, were you the police officer that stopped the Manhattan cab that Willie Mayo was driving?

A. Yes, sir, I was.

Q. And who was in the cab besides the driver, Mayo?

A. The defendant, John Henry Howard.

Q. All right, sir, now tell us what you did?

A. The cab come out behind me off of Northumberland and the yellow light on the top was out, indicating that he had a fare. The party that we were looking for was known to be on foot and we were looking for—

page 112 } Mr. Ryder: Well, Your Honor, I would object to the police officer interpolating the evidence and saying things like the party he was known to be on foot and this type thing, he doesn't have any knowledge of this—

Mr. Bareford: Well, now, Judge, I believe he does have knowledge of that, the police officer told him that he was out running.

The Court: He had knowledge of that.

Mr. Bareford: Yes, sir.

Q. All right, go ahead, Officer Carroll.

Arthur T. Carroll

A. And it had been put on the air that the Cab Company—

Mr. Ryder: I will object to what was put on the air.
The Court: Objection sustained.

Q. Well, don't tell us what anybody said,
A. All right.
Q. but as a result of what you heard tell us what you did?
A. When the cab came out from the vicinity of where we had been looking for the suspect—

Q. Did you see the cab take off?
page 113 } A. I could see it moving out into the—what would be a normal driving lane from—in a close proximity to the curb.

Q. All right, sir?
A. And the light was out on top indicating he had a fare, I decided at that time to check it since it was the only one I'd seen in the area prior to that, and I stopped the cab at—

The Court: Speak up, please, sir, so these Gentlemen can understand you.

A. I stopped the cab at—in front of Virginia Union University on Lombardy Street and I asked the driver if he would step out so that I could talk to him, I asked the driver where he had picked up his fare—

Mr. Ryder: Well, I object to the conversation with the driver unless the defendant was present, Your Honor.
The Court: Objection sustained.

Q. Well, don't tell us what the driver said, but as a result of talking to the driver, what did you do?
A. I asked the passenger in the car if he would mind stepping out so that I could talk to him.

Q. What did he do?
page 114 } A. He stepped out of the car, came back to the back of the car and I asked him his name, his address and his occupation.

Q. All right, sir, what did he respond, how did he respond to those questions?
A. He told me that his name was John Henry Howard, that he lived at 1110 West Marshall, 3304 East Broad, and that he was a professional boxer.

Q. All right, sir?

A. And the defendant at that time was wearing just shirt and trousers, the temperature was below thirty degrees and since I had not actually seen the man that was described, I asked Officer Camden who was sitting in the police car—

Mr. Ryder: Object to the conversation with Officer Camden.

Mr. Bareford: Well, now, Judge, he can state what he asked the officer to do, he can testify as to what he said.

The Court: What he asked the officer, certainly.

Mr. Bareford: Yes, sir.

A. If he would please notify a detective unit that was assigned with this case to respond.

page 115 } Q. All right, sir, did the Detective Unit respond?

A. Yes, sir, Sergeant Johnson was the first one there.

Q. All right, now, how long was it before Sergeant Johnson got there?

A. Approximately fifteen or twenty minutes.

Q. All right, sir, did you have any conversation with the defendant?

A. No, other than what I asked him about his name, age, occupation and address.

Q. All right, sir, anything else you know about this?

A. Just what Sergeant Johnson asked him if he would step into his car and would be seated because it was cold outside.

Q. Well, what did you do when he got into Sergeant Johnson's car?

A. I sat down in our car, I filled out my activity sheet regarding this incident and then drove off.

Q. All right, sir, answer Mr. Ryder.

page 116 } CROSS EXAMINATION

By Mr. Ryder:

Q. When you went—let me ask you this, sir. The dog that you were utilizing is trained to use his nose to trail persons, is that correct?

A. Yes, sir.

Q. Now, you trailed a person to what address?

A. No specific address.

Arthur T. Carroll

Q. Well, now, where did you lose the trail?

A. In the twenty-five hundred block in the area—

Q. Where in the twenty-five hundred block?

A. Between the—about the fifth house and the seventh house of the block.

Q. What address?

A. I can't testify, it was in the alley, the houses aren't numbered—

Q. Do you have notes there, sir?

A. Pardon?

Q. Do you have notes that you made of this incident?

A. No, not with me.

page 117 } Q. You don't have them with you?

A. No, sir.

Q. You don't have any notes with you at all?

A. No, sir.

Q. You didn't have your notes while ago when I discussed this matter with you?

A. No, sir.

Q. You don't have any notes now?

A. No, sir.

Q. Have you previously testified that you trailed the suspect to 2501 Northumberland Avenue?

A. No, sir.

Q. Never have?

A. No, sir.

Q. Now, which side of the street did your trail end on?

A. The alley between Northumberland and Brook Road.

Q. Now, which side of the street is 2514 on?

A. I would say just off-hand that I believe it's on the west side of Northumberland.

page 118 } Q. It's on the opposite of Northumberland from where your trail ended?

A. No.

Q. Are you saying it is not?

A. I am saying that where I tracked it to, where I tracked the person I was looking for was into the alley between Brook Road and Northumberland.

Q. Well, where, specifically, did you lose the scent?

A. I crossed the street and it wasn't a case of losing scent, it was a case of distraction.

Q. What was the distraction?

A. Four other dogs in that alley.

Q. Four other dogs in the alley?

A. Yes, sir.

Q. Did you then circle around and endeavor to pick up that scent at any time?

A. Yes, sir.

Q. Were you able to do so?

A. No, sir.

Q. Did you go anywhere in and around 2514 Northumberland Avenue with the dog?

A. That night at—when I got off duty at four o'clock in the morning,

page 119 } Q. But when you—

A. I went back to that area and was in that area both with and without the dog until nine o'clock the next morning.

Q. And you never picked the scent up after the distraction by the dogs?

A. No, sir.

Q. What time was it that you picked up the scent first with the dog?

A. I have to approximate it,

Q. Well, you don't keep records of these types things?

A. the call came in at 1:50 at the Motel, from the Motel, Officer Wilson called in, said he was behind the car, I left from Boulevard and Broad on the first call, was at Parker Field and came straight across to him, put it between 1:55 and 2:00 a.m.

Q. What time did you stop the taxicab?

A. Approximately three a.m.

Q. Now, when you say approximately, sir?

A. Within three minutes on either side of it.

Q. So it was approximately an hour from the time you had the dog on Northumberland to the time you

page 120 } stopped the cab?

A. Yes, sir.

Q. That's all the questions I have.

REDIRECT EXAMINATION

By Mr. Bareford:

Q. Do—do you know which way Northumberland runs?

A. North and south.

Q. How about Brook Road?

A. North and south.

Q. How far is Northumberland from Brook Road?

A. One block.
Q. Is there anything to separate those?
A. Just the alley.
Q. Now, where did this scent end?
A. In the twenty-five hundred block of the alley between Northumberland and Brook Road.
Q. All right, sir, thank you, that's all.

Witness Stood Aside.

page 121 } Note: At this time, the Court admonished the Jury and declared a recess for lunch.

Mr. Ryder: I would like to recall Officer Carroll for another question.
The Court: Very well.
Mr. Bareford: Judge, what he's going to do, I think the Court has already ruled on this, he's going to use the transcript from Police Court to try to impeach him. Of course, these transcripts are not—
The Court: Not a hundred percent accurate.
Mr. Ryder: No, sir, Your Honor, but I know this is on the tape in Officer Carroll's voice and it's extremely important to the defendant.
The Court: All right, sir.

page 122 } ARTHUR T. CARROLL, testified out of the presence of the Jury, as follows:

By Mr. Ryder:
Q. Officer Carroll, did you testify in this case in the Police Court at the preliminary hearing?
A. Yes, sir.
Q. In the Police Court at the preliminary hearing, did I ask you had not Mr. Howard responded to your command, would you have stopped him from leaving the scene, I'm not taking that out of context, you have just testified that you had stopped the taxicab and you were in uniform and I asked you the question had not Mr. Howard responded to your command would you have stopped him from leaving the scene, your response in the Police Court was I believe I would have. Now, I have asked you the same question up here on the purposes of the motion and I believe you testified up here that

you would have followed him but you would have allowed him to leave the scene, now which is correct, Officer Carroll?

A. Stating it right now, I believe the way that I would have handled it, detention is a variable thing, I wouldn't have allowed Mr. Howard to leave my sight.

page 123 } Q. And you wouldn't have allowed him to leave the scene either, would you?

A. I don't know how far he would have gotten.

Q. Well, isn't it fair to say, Officer Carroll, that you would not have allowed this man under these circumstances to leave the scene where you had him stopped?

A. I don't believe so.

Q. You don't believe it's fair or you don't believe that you would have stopped him?

A. I don't believe I would have allowed him.

Q. To leave the scene?

A. Yes, sir.

Q. That's all the questions I have, Your Honor, I have one other question I would like to ask the Officer in front of the Jury.

The Court: Sir?

Mr. Ryder: I have one other question I would like to ask the Officer in front of the Jury.

The Court: All right, sir.

page 124 } Note: At this time, the Jury returned into the Courtroom.

The Court: Gentlemen, you waive the poll of the Jury?

Mr. Ryder: Yes, sir, Your Honor.

Mr. Bareford: No, sir, Judge, I'd like to have the Jury polled.

The Court: Very well.

Mr. Bareford: There's—the question I'd like to ask the Jury, if Your Honor please, is if they discussed this case with anybody that has been in the Courtroom during the Court proceedings this morning.

The Court: Any members of the Jury discussed this case with anyone?

Note: There was no response.

The Court: Very well.

Mr. Bareford: All right, sir.

Arthur T. Carroll

page 125 } A. T. CARROLL, recalled, testified as follows:

RECROSS EXAMINATION

By Mr. Ryder:

Q. Officer Carroll, when you stopped the taxicab wherein you found Mr. Howard riding, what description did you have at that time of the person that had robbed the Motel with respect to the type clothing that he had on?

A. Sort of dark trousers, about five foot seven, medium build.

The Court: Speak up, please, sir.

A. Medium build, moustache and they said at the Hotel he had a red ski mask and a dark jacket.

Q. Now, then, did you have any description to the effect that the man had on a ski mask and he had on a blue jacket and a lighter pair of trousers.

A. That's what I said.

Q. Well, in other words, the description you had at the time was that the man had on a ski mask,

A. Uh, huh.

Q. and he had on a blue jacket and a lighter pair of trousers?

page 126 } A. Yes, sir.

Q. Where did you get that description from, sir?

A. Over the air.

Q. That's the official police radio, they gave you a description of the robber shortly after the robbery occurred?

A. Yes, sir.

Q. Now, Officer Carroll, you don't mean to tell the Jury that—

Mr. Bareford: Judge, I think he's being argumentative, I think he can ask questions, but I don't think he can argue with the witness.

Mr. Ryder: I'm sorry, sir, I apologize.

Q. Did you tell the Jury that a part of the description you got on the air was that the robber had a moustache?

A. I believe that is what I just said.

Q. Well, is that a part of the description you got, that the robber had a moustache?

A. I believe that is what came over the air that night.

M. W. Johnson

Q. Well, let me ask you this, Officer Carroll,
page 127 } does the Richmond Police Department keep tapes of the descriptions that they send out over the air?

A. I am not certain, I know that on a day to day basis, on an eight hour basis, there—the air conversation is taped, how long it is kept I have no idea.

Q. Do you—are you certain that a part of the description dealt with a moustache?

A. No, I believe it, but I won't swear to that.

Q. But you will swear that a part of the description dealt with a light—or a blue jacket and light, lighter colored pants, would you not?

A. Yes, sir.

Q. That's all the questions I have.

Mr. Bareford: That's all, thank you.

Witness Stood Aside.

page 128 } M. W. JOHNSON, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bareford:

Q. State your name and occupation, please?

A. Sergeant M. W. Johnson, Bureau of Police Richmond, Virginia.

Q. How long have you been with the Bureau of Police, Sergeant Johnson?

A. Twent-seven years.

Q. Now, were you on duty on the night of January the 27th, 1968?

A. Yes, sir.

Q. And did you have an occasion, sir, to respond to Lombardy Street in the early hours of January the 27th?

A. Yes, sir.

Q. All right, sir, what time did you respond, Sergeant?

A. It was approximately 3:30 a.m.

page 129 } Q. All right, sir, now tell us what you did and what you observed and—when you responded to Lombardy Street, sir?

M. W. Johnson

A. I responded there to meet Officer Carroll. Upon my arrival, Officer Carroll and John Howard were standing in the street. I asked John Howard to go sit in the police car with us while I talked with him. I asked him what he was doing out that time of night, he said that he had visited a friend, a Mr. Johnson, living on Northumberland Avenue. I asked him in which direction did he come in going to Mr. Johnson's home. He first told me that he came from the direction of Chamberlayne Avenue, he later told me that he came from the direction of Brook Road. I observed that his pockets were bulging, I asked him what he had in his pockets, he first said nothing, I explained that I could see something in his pocket and if he did not mind I wish he would let me see what he had in his pocket. At that time, he started to pulling currency out of his pockets and he took out of his pockets five hundred and six dollars in currency.

Q. What denominations, do you know?

A. I don't—I didn't make a record of the denominations. Detective Duke was sitting in the car with me at the time and I turned the money over to him to mark, count and so on.

Q. All right, sir?

page 130 } A. While taking this money from his pocket I observed in his right hip pocket something about the size of a pistol, I reached behind him and pulled a '38 calibre revolver out of his rear pocket. (rattling of paper) Not —

Q. Wait a minute, Sergeant, please. (rattling of paper and and other noise) Can you identify this, sir?

A. Yes, sir, I can.

Q. What is it?

A. This is a Smith & Wesson, '38 calibre revolver.

Q. All right, sir, and is that the one you took off of the defendant, Howard?

A. I'd have—to positive identification, I'd have to have more light so I could see this serial number.

Mr. Ryder: Your Honor, we would stipulate that that's the pistol that he took off of Mr. Howard.

Q. All right, now, was there anything in it—

Mr. Bareford: We'd introduce that as Commonwealth's Exhibit, Your Honor.

M. W. Johnson

page 131 } Q. Now, was there anything in the pistol?
A. Yes, sir, there were three chrome-plated bullets.

Q. Now, I hand you—are these the bullets?

A. (pause) They are similar to the bullets that I took out of this revolver.

Q. And they are chrome-plated '38?

A. Yes, sir.

Mr. Bareford: We'd introduce those, Your Honor, as Commonwealth's Exhibit No. 2.

Q. Now, go ahead, Sergeant, and tell us what you did then.

A. After taking this revolver I was in the process of unloading it and I stated there's only three bullets in this revolver, Howard said no, there are five bullets in the revolver. I showed him that there were not but three bullets in the revolver. After I took the revolver from his person, Detective Duke advised him that he was under the—under arrest for the robbery of the Holiday Inn and immediately advised him of certain rights.

Q. Were you present when he was advised of these rights?
A. Yes, sir.

page 132 } Q. Do you know how he was advised?
A. I don't understand the question how he was advised?

Q. Well, what did Detective Duke tell him when he was advised of his rights?

A. I don't remember word for word—

Q. All right, sir, well, did he make any statement?

A. Not to my knowledge.

Q. Uh, huh, now, how was he dressed at the time when he was—when you first saw him?

A. When I first saw him he was—had no hat, wearing a yellow shirt and dark trousers, black pointed toe shoes, needed a shine.

Q. Did you ask him about the money?

A. Either Duke or myself asked him where he had gotten the money and he said that he had won this money gambling.

Q. Did you ask him about how much it was?

A. I did, I asked him do you know approximately how much money that you have here and he said approximately two hundred dollars.

M. W. Johnson

page 133 } Q. All right, sir, Sergeant, did you do anything else in your investigation?

A. No, sir, that completed what I did, I think.

Q. Answer Mr. Ryder.

CROSS EXAMINATION

By Mr. Ryder:

Q. Sergeant, may I see your notes there please, sir?

A. Yes, sir.

Q. (pause) Now, Officer, what was the description broadcast on the police radio for the person who had robbed the Holiday Inn?

A. May I have my notes to refer to?

Q. Yes, sir.?

A. The description, as I received it, was a colored male, five, seven, 160 pounds, brown skin, blue jacket, light trousers, black shoes.

Q. Now, that was the official police radio description, is that correct?

A. Yes, sir.

Q. And you all were on the lookout for a man that fit that description, is that correct?

page 134 } A. We were using that description in trying to locate the individual that committed the crime.

Q. Now, in the official police radio description, was anything said about a red mask?

A. Ah—

Q. Well, look at your notes there, sir.

A. I don't have that in my notes.

Q. You don't have that in your notes?

A. That's right.

Q. Was there anything in your notes on the police radio broadcast about dark pants?

A. The radio notice said light trousers.

Q. Is there anything in your police radio official broadcast about a dark sweater?

A. Not in—I'd like to explain this, I don't necessarily have everything that was broadcasted on the police radio.

Q. Well, is there anything—

A. I may only have parts of what was—I do not have that in my notes.

Q. Well, in your notes, and your notes purport to be the description that was given you on the radio, do they not?

M. W. Johnson

A. I may not have the full description of all
page 135 } the *infromation,* I have this much information
Q. May I see your notes again, sir?
A. You may.
Q. (pause) Do your—do not your notes say that an all-car description was put out for a colored male five, seven, 160, brown skin, blue jacket, light trousers and black shoes?
A. That sounds right, you have my notes there,
Q. All right, sir.
A. sounds right.
Q. Did you subsequently ascertain the weight of this defendant?
A. Did I ascertain the weight of that defendant, what do you mean by that?
Q. Did you find out how much he weighed after you arrested him?
A. I did not.
Q. Your police records would show that, would they not?
A. Yes, they should show approximately his weight.
Q. Did you find any change on the defendant?
page 136 } A. I don't remember seeing any coins on him.
Q. And you found five hundred and sixty—five hundred and six dollars in United States currency?
A. Yes, sir.
Q. Now, then, do you have a '38 police pistol on you now?
A. I do.
Q. What sort of bullets do you have in that pistol?
A. '38 Police special.
Q. May I see one of them, sir? (pause) Now, then, with the exception of your bullet here being copper-plated, the slug, is there any difference in this slug and the three bullets that have been introduced here, if so, what is it?
A. It's rather difficult for me to answer that question, if there's any difference, I'd say that they both are the same *calbire,* if that answers your question.
Q. Well, let me ask you this, sir, is it not true that there's probably a million or more '38 slugs exactly like them three in the City of Richmond?
A. I don't know about a million, it's a lot of them all right.
Q. Yes, and a lot of police officers have them
page 137 } too, don't they?
A. They have '38 bullets.
Q. Yes, sir, and bullets just exactly like those—
A. I wouldn't say exactly alike, I don't know—

M. W. Johnson

Q. What's the difference?

A. They may be a different brand, I don't know.

Q. Well, would you look at that—those bullets and see if they are different brands?

A. I'll be glad to if you will pass them back over here, if I can see well enough, it's kind of dark in this corner to look at that small printing.

Q. I'm sorry, sir. (pause) They are Smith and Wesson, are they not?

A. These here, it has the letter RP 38 Special, I don't know what the RP stands for.

Q. You don't have any idea what the RP stands for?

A. I do not.

Q. Never seen any bullets like that before?

page 138 } A. I couldn't say that I haven't seen bullets like that before,

Q. I see,

A. I couldn't say that I have.

Q. I see, I understand. Did I understand you to say, sir, that the shoes that Mr. Howard had on that night needed a shine?

A. Yes, sir.

Q. What was the condition of the weather that night, do you recall?

A. It was extremely cold, 26 degrees.

Q. Do you recall whether or not it had rained, snowed or anything of this nature?

A. Quite a bit of snow on the ground.

Q. Quite a bit of snow on the ground?

A. Yes, sir.

Q. It wouldn't be at all unusual for a man that had his feet on the ground that night to need a shoe shine, would it?

A. If he were out in the snow long, he'd probably need a shoe shine.

Q. Now, he told you that night, when questioned by you and Duke, that he had won the money that he had in his pocket gambling that night, didn't he?

page 139 } A. Yes, sir.

Q. Now, he told you also that night, did he not, that he didn't know the exact address of the house where he had won the money gambling, but that he could take you there, did he not?

A. No, his first—he may have told Duke that—his first statement to me—

M. W. Johnson

Q. Would you look at your notes and see whether or not in your notes it says—
A. I don't have that in my notes.
Q. May I see your notes, sir?
A. I don't believe—yea, you may.

(pause)

Mr. Ryder: Your Honor, Mr. Brenan, who I anticipated using as character witness is in Court and the only reason I would use him would be for that purpose.
The Court: Well, it's the responsibility of counsel to see that the witnesses do not stay in the Courtroom.
Mr. Ryder: He came in at two o'clock, sir, and the other two witnesses are purely character witnesses, too.
The Court: That's the responsibility of coun-
page 140 } sel.
Mr. Ryder: Do you object to Mr. Brenan remaining?
The Court: You asked—it was your motion that the witnesses be excluded.
Mr. Ryder: Yes, sir, Your Honor, and I requested from the other two character witnesses be allowed to sit in the Courtroom and that was granted and Mr. Brennan is of the same thing and I didn't see him come in at two o'clock.
The Court: Well, it's your responsibility. Proceed with this witness, please, sir.
Mr. Ryder: Yes, sir, may the record show that the Commonwealth—
The Court: You may ask him to leave at the moment, if you desire.
Mr. Ryder: Mr. Brennan, would you leave.

(pause)

Q. In your notes, do you not say, sir, he said he won this money gambling, he gave a certain address as where he was gambling and Detective Duke said there was no
page 141 } such address, he said he knew where the house was but did not know the number, isn't that in your notes, sir?
A. That was not your question, I do have in my notes that he stated he had won this money gambling and that he mentioned some street or block—and Detective Duke says to him

there's no such address as that and then he shifted, well, it may have been some other place, or words to that effect.

Q. Well, now, what do your notes show that he said after Duke said that there was no such address?

A. You want me—

Q. Read your notes to the Jury.

A. All of them?

Q. Just the part where he says what—when he responded —when Duke said there was no such address, what did he tell Duke along that line?

A. All right, let me find that now.

Q. I believe it's down at the bottom of your page, sir.

A. All right, starting with that, he said he won this money gambling, he gave a certain address as where he was gambling and Detective Duke said there is no such address. He said he knew where the house was, but did not know the number.

page 142 } Q. Did—I don't want you to tell me why you did not—

A. I'd like to explain, this is not quoting him but is the meaning of what I received from what he said.

Q. And the meaning of what you received from what he said was that he didn't know the house number but he knew where the house was?

A. Yes, sir.

Q. Now, then, I'm not asking you why you didn't do so, sir, I'm merely asking you did you or Detective Duke take him to the house where he said he had been gambling that night?

A. I can answer half of that question.

Q. You didn't?

A. Me, I didn't.

Q. All right, sir. Within your knowledge, did Detective Duke?

A. Not to my knowledge.

Q. Now, did you have anything further to do with the investigation of this case, for example, did you have anything to do with endeavoring to ascertain whether there were fingerprints on this ice bucket that's been shown to the Jury?

A. No, sir.

page 143 } Q. That's all the questions I have.

The Court: Any further questions, Gentlemen?

Mr. Bareford: Yes, sir, Judge, I'd like to introduce the

bullet that Detective Johnson is his for the evidence and that will be all.

The Court: That will be Exhibit No. 3, Commonwealth.

Witness Stood Aside.

MARION C. DAVIS, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bareford:

page 144 } Q. State your name and your address, please?

A. Marion C. Davis.

Q. Now, you are going to have to speak up, Mrs. Davis, so that the Gentlemen of the Jury can hear you.

A. Marion C. Davis.

Q. Where do you live?

A. 2509 Brook Road.

Q. 2509 Brook Road. Do you know Mr. Johnson who just testified earlier?

A. Yes.

Q. All right, where does he live?

A. Back of me at the corner at 2500 Northumberland.

Q. All right, now how many houses does he live from you?

A. About the two next to him, I'm the fourth from him,

Q. You are the fourth—

A. on my side of the alley and I think there are three behind him.

Q. All right, so you all share a common alley, is that right?

A. That's right.

page 145 } Q. Now, calling your attention, Mrs. Davis, to the night of January or early morning of January the 27th, 1968, did anything unusual happen at your house?

A. Well, my doorbell rang.

Q. And what time was this?

A. Around—close to 2:30, I would say.

Q. All right, and tell us what happened when your doorbell rang?

A. Well, I went to the door, of course, I had no intention of opening it, and I talked through a large square glass and I said, "Yes", and this negro male said, "Miss, may I use your phone", I *sai*, "No", and then he went to the south of my house

to walk through my side alley through my back yard and out the gate, which way he turned I could not say.

Q. Now, do you know anything about the man that you talked to through that glass?

A. No.

Q. Well, you know it was a male?

A. Negro male.

Q. And how did you know that?

A. Well, he was dark complexioned.

Q. Could you see him?

page 146 } A. Yes, he had no coat, no hat, had, apparently, a white shirt,

Q. All right?

A. no coat and no hat.

Q. And did you notice anything else about him, was he big, little?

Mr. Ryder: Well, Your Honor, I submit he's leading the witness. The witness has already testified that she didn't know anything about the man.

Q. Could you give us any of his physical characteristics?

A. At the time, I was of the opinion he was leaning against my screen door, that's about all, I could—I couldn't see his legs.

Q. All right, now, and this was Friday night or early Saturday morning?

A. Yes.

Q. All right, did you do anything else on Saturday, Mrs. Davis, would you tell us what you did on Saturday, please?

A. Well, I will tell you what I did before the morning,

Q. All right,

A. if you would like to know.

page 147 } Q. fine, thank you, ma'm, just tell us exactly what happened?

A. Well, of course, it was a cold night, no coat and at my door at that time of the night, I became suspicious and seeing he walked through my back yard, I didn't know whether there would be any loitering, so I called the Police Department,

Q. Yes?

A. and you want to know what he said?

Q. Why did you call the Police Department, what did you—

A. I was—I was suspicious.

Marion C. Davis

Q. All right, and what did you report to the Police Department?

Mr. Ryder: Well, Your Honor, we would object to any conversation between her and the Police Department as to what she said—

The Court: Objection overruled.

Q. Tell us what you told the Police Department?

Mr. Ryder: We would except, Your Honor.

A. Just what I have related to you, that someone came to my door, rang the bell, he didn't have on a hat
page 148 } and coat and I was suspicious,
Q. All right,
A. and—
Q. then what did you do—don't tell us what the man on the telephone said, but just tell us what you did?
A. I just stayed up and walked from one room to the other.
Q. And what were you doing when you were walking from those rooms?
A. Well, I went to the front door and after I had notified—I flicked my porch lights when I saw an unmarked car that I thought police were and I flicked the porch lights to let them know this was where the complaint came from,
Q. Yes, ma'm?
A. and then I went to the back and I did see some activity.
Q. What type of activity?
A. I guess whatever lights they use from the cars, up the alley.
Q. Who is they?
A. I guess the police.

page 149 } Mr. Ryder: Now, Your Honor, we object to the guessing.

A. Well, they were lighted cars.

The Court: Beg your pardon?
Mr. Ryder: We would object to the witness testifying to what she guessed.
The Court: Objection sustained.

Marion C. Davis

Q. Well, just tell us exactly what you saw?

A. Well, there were cars in the alley and there were men on the yard next door to me, I did not see any on my yard at the time, but there were men on the yard next door with flashlights going all around looking.

Q. All right, now, did you do anything else that night, Mrs. Davis, did you do anything else after you called the police and observed the activities?

A. No.

Q. And when did you next call the police?

A. Saturday afternoon.

Q. And why did you call them this time?

A. I had an occasion to go to my garage and—because some things had been put in there that day from my old residence—

A. And where is your garage located?

page 150 } A. It's at the rear of my premises.

Q. All right, and what did—and when you went to your garage what did you do or what happened that prompted you to call the police?

A. Well, I saw to my left where I have some things stored, a pair of pants that—well, I didn't know it was pants, and I actually took them up, something that was foreign to me and I just took—I said here a pair of pants—well, I just—

Q. Can you identify that object?

A. Yes.

Q. Would you hold them up so the Jury can see them, please?

A. Well, that's the pair of pants.

Q. All right?

A. I picked up—got out of my garage.

Q. Would you hold those so the Jury can see it, please.

Mr. Bareford: We'd introduce that, Your Honor, as Commonwealth's Exhibit No. 4.

Mr. Ryder: Your Honor, the defendant would object to the introduction of that on the basis it's immaterial, sir.

The Court: I beg pardon?

page 151 } Mr. Ryder: The defendant would object to the introduction of it on the basis that it's immaterial.

The Court: Objection overruled.

Q. All right,

Marion C. Davis

Mr. Ryder: We would except, Your Honor.

Q. now, did anything else happen at your house on Saturday or in connection with the police on Saturday?

A. Well, I called the Police Department and they sent someone to pick up the trousers.

Q. All right, now, did you have an occasion to call the police on Sunday?

A. Yes, Sunday afternoon.

Q. And tell us what led up to this phone call and why you called them, please?

A. Well, when I got up Sunday, my side gate was somewhat opened and the garage door also was partially opened and I wondered whether—who had come on my premises—well, it looked like someone had come on my premises, and without my knowing it, and I didn't want to shut the door myself, so

page 152 } I called my nephew from the corner and he and I went into the garage together and when we went in at about the same spot where the trousers were the day before, my attention was called to something bright red knit, which was not in view the day before.

Q. Is that the object

A. Yes.

Q. that was bright red knit

A. Yes.

Q. that was in your garage?

A. Yes, I picked it up, I didn't know what it was so—

Q. All right, and what else was there, Mrs.—

Mr. Bareford: We'd introduce that, Your Honor.

Q. What else was there, Mrs. Davis?

A. Also—

The Court: Commonwealth Exhibit 5.

Q. Excuse me—

A. Also on this piece of stored furniture was one woolen glove and a jacket of dark color—that's the glove.

Q. All right, was there anything else?

A. I didn't see the other article,

page 153 } Q. All right,
A. but—
Q. excuse me, go ahead.

Marion C. Davis

A. Well, I called—we called the same complaint desk again when we saw this.

Mr. Bareford: We'd introduce these two items.

Q. All right, go ahead.
A. Three detectives came.

Mr. Ryder: Your Honor, may the record show we object to these articles on the same basis.
The Court: Commonwealth No. 6—same grounds?
Mr. Ryder: Yes, sir, Your Honor.
The Court: Objection overruled.

Q. All right, and some detective responded?
A. Three.
Q. Three detectives responded?
A. Yes.
Q. All right, and what did you do when the detectives responded?
A. Well, I took them to the garage and they brought us the articles. One of the detectives bent over and picked up the second jacket,
page 154 } Q. All right?
A. and we also then discovered what I would consider an ice bucket that's used at places.
Q. All right. Is that the ice bucket?
A. That's the bucket because it was squeezed like—that's the bucket.
Q. All right, we'd introduce that too. Now, did you—did you accompany the Police Officers when they went to your garage?

The Court: Commonwealth's No. 7.

A. Oh, yes.
Q. And did you stay with the Police Officers while they were in your—at your premises?
A. Oh, yes.
Q. Now, did the Police Officers find anything else?
A. No, but we found something else
Q. What did find?
A. which they picked up.
Q. All right?

Marion C. Davis

A. There was two unspent bullets and a quarter on my yard about—I would say ten to twelve feet from my garage door.

Q. Were these bullets yours?

page 155 } A. No.

Q. Do you have any weapons at your house?

A. No.

Q. All right, and then what else did you do, Mrs. Davis, did you do anything else?

A. Well, I called the same number that night and asked for surveillance because I was a little upset, I burned lights—

Q. All right, answer Mr. Ryder's questions.

CROSS EXAMINATION

By Mr. Ryder:

Q. Mrs. Davis, the pants you found, that was on Saturday morning, is that correct?

A. Afternoon.

Q. Saturday afternoon?

A. Yes.

Q. Now, you found those pants in your garage,

A. Yes,

Q. is that correct?

A. Yes.

page 156 } Q. Where, with reference to what you found the next day, were the pants?

A. Well, they were to the left up on some things there.

Q. Well, were they at about the same place that the pants were?

A. Yes.

Q. Well, and you didn't see the other articles when you saw the pants, is that correct?

A. That's right.

Q. You did not?

A. No. May I tell you how my things are arranged?

Q. Yes, ma'm.

The Court: Excuse me, please, talk to these Gentlemen so they can understand you.

A. Oh. I have some stored—refrigerator, stove and things (unintelligible)

Marion C. Davis

The Court: You will have to speak up, please.

A. So there are things that are elevated and I have two rows and anyone could easily have been—

Q. Well, now, whatever you—

page 157 } Mr. Bareford: Well, now, she has to explain the answer, Your Honor.

Mr. Ryder: Now, I object to her giving a supposition as to what anyone could have done, I'm asking her to describe the physical setup in the garage.

A. Things could have been hidden between the furniture that I have easily, that would have—that really was out of my view Saturday, it was definitely not in view Saturday, but Sunday when I went in, here was the articles, here were the articles, about the same spot where the trousers were, but they were not in view Saturday.

Q. What you are saying, Mrs. Davis, is that the last articles that were introduced here, other than the pants, were not in your garage on Saturday or else they—

A. I can't say they were not in my garage, sir.

Q. Well, they were either not in your garage or they were hidden from view?

A. They were out of my view.

Q. Now, then, someone would have had to come back to your garage and put them in view, is that correct?

page 158 } Mr. Bareford: No, sir, Judge, that's not the testimony—

The Court: Now, you are trying to put words in the witness'

Mr. Ryder: Yes, sir.

The Court: mouth, so you ask the question in a different manner.

Mr. Ryder: Yes, sir.

Q. Well, is there any way—when you picked up the pants on Saturday, had the sweater and one thing and another that you see there been where you found them on Sunday, would you have seen them on Saturday?

A. They were not in view Saturday.

Q. Well, they were not in the same place Saturday that they were Sunday, is that right?

Marion C. Davis

A. Yes, I said they were elevated, you'd have to reach over and get them, really.

Mr. Ryder: May I see the articles there a moment—May I have the ice bucket?

Q. Mrs. Davis, are you saying that this ice bucket here is exactly the same condition as it was when you saw it on Sunday?
A. I would say so, it was very soiled and—
Q. Looked exactly like this?
page 159 } A. Yes, I would say—
Q. No question in your mind but what this ice bucket looked exactly
A. None.
Q. like this on Sunday?
A. None.
Q. It was smashed like this?
A. Yes.
Q. It was dirty and cruddy just like this is?
A. It was soiled.
Q. Nothing in the ice bucket, was it?
A. No.
Q. Now, then, did I understand you to say while ago, Mrs. Davis, that you saw a jacket in your garage?
A. Yes.
Q. Well, the article that is gray here, do you call that a jacket?
A. Well, I don't know what it was, I didn't pay too much attention, I know it was with the—
Q. You didn't pay too much attention, is that correct?
A. That's the article, that's the color and
page 160 } that's the material.
Q. Well, can you tell this Jury under oath, ma'm, that that is what was in your garage?
A. Yes, that's what—
Q. Well, why did you call it a jacket while ago?

Mr. Bareford: Judge, he's arguing with the witness,

A. No, I didn't—

Mr. Bareford: I think the evidence speaks for itself.
The Court: Do not argue with the witness.

H. W. Duke

Mr. Ryder: Yes, sir, well, may I ask her—

The Court: She may have a different terminology for the same article.

Mr. Ryder: I understand that—

A. I still don't know, sir, what it is, I don't know what it is, it has never been opened up to me.

Q. It doesn't look like a sweater to you?

page 161 } A. It has never been opened up to me, I really couldn't say what it is, that's the appearance of it.

Q. Did I understand you to say that Mr. Johnson lived at 2500 Northumberland?

A. Yes, at the corner.

Q. 2500 Northumberland?

A. Yes.

Q. And you are certain of that?

A. Well, I would think so, it's at the corner.

Q. Have you ever visited his home?

A. No.

Q. How do you know him?

A. Well, I know the Johnson family

Q. I see,

A. for a period of years.

Q. for a number of years?

A. Yes.

Q. That's all the questions I have.

Mr. Bareford: That's all, thank you, ma'm.

Witness Stood Aside.

page 162 } H. W. DUKE, introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bareford:

Q. You are Detective H. W. Duke, Richmond Police Department?

A. That's correct, sir.

Q. And how long have you been with the Richmond Police Department, Detective Duke?

H. W. Duke

A. I'm now in my twenty-first year.

Q. Now, were you on duty on the night of January—the early morning of January the 27th, 1968?

A. Yes, sir, I was.

Q. Now, did you have an occasion to respond to Lombardy Street on that morning?

A. Yes, sir, I did.

Q. Did you investigate this robbery at the Holiday Inn?

A. Yes, sir.

Q. Is that in the City of Richmond?

A. Yes, sir.

Q. All right, tell us what you did, sir?

page 163 } A. The initial call of the robbery was received by the Police Bureau in the radio room at approximately 1:50 a.m., on the morning of January the 27th, 1968. I was in the central area of town and I immediately acknowledged by radio that I would respond to the Holiday Inn. While enroute there, somewhere while I was on Brook Road, Officer Wilson in—who was working in at 623 at that time—

Mr. Ryder: Now, Your Honor, I would object to any conversation with Officer Wilson over the radio, sir.

The Court: Objection sustained.

Q. As a result of—

A. As a result of information received by police radio, I responded on Sherwood Avenue between Northumberland and Seminary. Acting on information received there we conducted an intense search in the twenty-seven, twenty-six and twenty-five hundred blocks of Northumberland, Seminary and Brook Road looking for a colored male.

Q. Did you have a description of the male you were looking for?

A. I had a description which had been put on by radio at that time and—

Q. Would you read the description that you had, sir?

page 164 } Mr. Ryder: Your Honor, may I look at the notes that he has there?

A. According to the official police report that was made at the time the—I will have to have that to relay the description which was actually put on at the time of the robbery, at

the time the report was taken, Mr. Hurt, who was the Manager, Night Manager of the Holiday Inn No. 2 at 1501 Robin Hood Road gave the description—

Mr. Ryder: Well, now, Your Honor, I would object to his testifying to what Mr. Hurt gave unless he heard Mr. Hurt give it, sir.

Mr. Bareford: Well, now—

A. Well, I'll put it this way, I went there to the Holiday Inn later after the report had been taken and talked with Mr. Hurt in person, he gave me a description—

Mr. Ryder: Well, now, Your Honor, I don't mean to purely —be purely technical now, but there's been, I submit, different description in this particular case,

The Court: I understand.

Mr. Ryder: and I would object to his testifying—the Commonwealth's Attorney has asked him now what

page 165 } description was put out on the radio, now, then, the description that was put out on the radio, I have no objections to his testifying to,

Mr. Bareford: All right, give us—

Mr. Ryder: but not that Mr. Hurt put it out, sir, because he didn't hear Mr. Hurt put it—give the description that was on the radio.

The Court: Very well.

Q. Give the description you got off the radio?

A. The original description that was put on the air was—the suspect was a colored male, twenty-five to thirty, five foot seven to five foot nine, a hundred and sixty to a hundred and seventy pounds, medium build, medium brown complexion, a mustache, round face, wearing a navy blue windbreaker, a red ski mask, black pointed toed shoes with a dull shine and khaki pants, armed with a '38 calibre revolver, and the subject was seen leaving the—

Mr. Ryder: Well, now, Your Honor, I would object to—

A. Well, this is part of the all-unit.

Mr. Ryder: him testifying to what the subject

page 166 } was seen doing and this type thing, sir, he merely

asked him for a description, not what the radio said the subject was doing.

The Court: Very well.

Mr. Bareford: All right, sir.

Q. All right, Officer Duke—now, where did you first respond, Detective Duke?

A. I first responded to the location on Sherwood between Seminary and Northumberland where a stolen car had been recovered.

Q. And what type automobile was it?

A. It was a 1957 Pontiac bearing 1967 Virginia license A-97427.

Q. All right, sir, what color was it?

A. The vehicle was a light colored Pontiac, either white or a beige.

Q. All right, sir, and what did you do from then on?

A. Well, when I arrived there, Officer Wilson was there, I called for a K-9 Unit to respond to the area, Officer Carroll, along with his dog, came there and I asked him to start a search with his dog to see if they could pick up a track. I observed laying on the front seat of this stolen automobile a ten-dollar bill, I looked down in the gutter right

page 167 } on the passenger's side where the door was open and the subject who had been in this car had left by this means was a five-dollar bill laying down in the gutter right by the door where was open. There was one penny laying in the floor, there was one glove laying down in—one cloth glove laying down on the—in the gutter where the five-dollar bill was laying.

Q. Now, I'm going to hand you an item and ask you if you can identify that?

A. Yes, sir, it has my initials on it.

Q. Is that the glove that was laying in the gutter?

A. Yes, sir.

Mr. Bareford: We'd introduce that, Your Honor, as Commonwealth's Exhibit 8.

The Court: Eight.

Mr. Bareford: Eight.

A. After Officer Carroll got there and started his search I continued to ride the area for a short while in trying to locate the subject who had left here. I then responded to 1501

Robin Hood Road, the Holiday Inn, where the offense had been committed. I conducted my investigation there and obtained an approximate amount of money that had been taken during the robbery, Mr. Hurt informed me that he would have to completely make an audit before page 168 } he could give me the exact amount that was taken. At the time, he estimated there was eight hundred and fifty-five dollars, however, later on that night after an audit had been made—

Mr. Ryder: Your Honor, we object to the conversation with Mr. Hurt, sir.

Q. All right, all right, sir, you determined that the robbery had taken place and what time was it?

A. At approximately 1:50 a.m.

Q. All right, sir, after you had completed your investigation at the Holiday Inn on Robin Hood Road, what did you do then?

A. I con—went back and continued to stay in the immediate area where this suspect was seen leaving the car and during the time we received a, I believe it was two or three radio calls, of prowlers in the twenty-five and twenty-six hundred block of Brook Road. At approximately, I'd say, around 3:30 a.m., maybe 3:35 a.m., I received a radio call to meet Sergeant Johnson and Patrolman Carroll at Lombardy and Brook Road, that they had a suspect. At the time I arrived there, Sergeant Johnson, and I believe it was Detective Lindsey and Officer Carroll and I believe Detective Wood, were present and had the defendant, John Henry Howard, sitting in the back of a police car. I went around page 169 } and got in the back seat of the car and the defendant, Howard, looked at me and spoke to me because I knew him from a previous occasion where I had had to visit his home

Q. Well, now—

A. to discuss something with him which was not any criminal matter.

Q. All right.

A. I spoke to him and at that time, about the same time, I noticed that his pockets were bulging as Sergeant Johnson did. Sergeant Johnson—

H. W. Duke

Mr. Ryder: Your Honor, unless the Officer is going to testify to something different from Sergeant Johnson, we will stipulate his testimony from there on to be substantially the same as Sergeant Johnson.

Q. Well, let me ask you this, can you identify that package?
A. (pause and rattling of paper) Yes, sir, this package contains six hundred and twenty-four dollars and should be one cent in the envelope over there. This lot of bills—
Q. How did you get that amount of money?
A. That was the amount of money that was taken off of the defendant, John Howard, and the bills consist of
page 170 } a hundred and seventy-four one-dollar bills, one hundred and fifteen dollars in five-dollar bills, one hundred and sixty dollars in ten-dollar bills, one hundred and sixty dollars in twenty-dollar bills, which gives you a total of six hundred and nine dollars. You will observe on the front of this stack of money is a ten-dollar bill and a five-dollar bill which was taken out of the—the ten-dollar bill off of the seat of the stolen automobile and the five-dollar bill taken out of the gutter right beside the right door where the glove and the occupant of that vehicle had left the scene and which gives a total of six hundred and twenty-four dollars that was recovered.

Mr. Bareford: All right, sir, we'd introduce that, Your Honor.

Q. I'm going to hand you (pause) were these items recovered that night, Detective Duke?
A. Yes, sir, these two money wrappers from the Central National Bank with the Finnegan Hess Service on it, was taken out of the pocket of the defendant when he was searched, after he was arrested and charged with the armed robbery.

Mr. Bareford: We'd introduce that as Commonwealth's Exhibit No. 10.

page 171 } Q. All right, go ahead. Officer Duke, tell us what you did?
A. After he had been charged with the robbery and had been advised of his certain Constitutional rights that he did not have to make any statement to me, that any statement he

made could be used in Court against him, that he had a right to remain silent, he had a right to have an attorney, had a right to have one present if and when he made a statement; further advised him that if he could not afford to employ counsel of his own choosing, that when he went to Court, the Court would appoint one for him. I asked him if he understood the rights which had been explained to him and he stated he did. I told him that he may voluntarily waive these rights and make a statement if he so desired. He said he had nothing to say, he wanted to talk to a lawyer first.

Q. All right, sir, now, and what happened then, Detective Duke?

A. He was then carried to the Police Station and carried before the Magistrate where the warrant was obtained. He again was advised by the Magistrate and his bond was set.

Q. Going back to the—when you saw him, did you ask him where he got this money?

page 172 } A. Yes, sir, I inquired about him as to where he got the money, he stated to me that he had been gambling. I asked him, I said how much money do you have, I called him by his nickname, Flash, because like I said, I previously knew him, I said Flash, how much money do you have, he said approximately two hundred dollars. We counted the money in his presence, that which we had taken off of him, I think it *ws* five hundred and some dollars previously while he was sitting in the car, and then when he was taken out of the car and completely searched, we found the balance of it to make six hundred and nine dollars.

Q. Did he tell you where he had been gambling, Detective Duke?

A. He stated some address to me and I told him at that time it was no such address and he again stated to me he would take me over there, but I felt—

Mr. Ryder: I object to the Officer's feeling.

The Court: Objection sustained.

Q. All right, sir, what did you do, you took him where?

A. I carried him to the Police lockup and charged him with this robbery.

Q. All right, sir.

page 173 } A. On Sunday afternoon, well, we went back—I went back over into the area after he was ar-

rested that morning and combed the alleys, looked in garages and from approximately 5:30 a.m., up until around seven o'clock, in an attempt to locate the other items of clothing and all that had been worn, without success. On Sunday afternoon, acting on a phone call from Mrs. Davis, who has previously testified before me, I responded to 2509 Brook Road and was asked to accompany her to her garage. While enroute there, I went out of her back door, and while enroute out to her garage I observed laying in the back yard, approximately ten to fifteen feet from the doorway going into her garage, I observed two '38 calibre chrome-plated bullets and one twenty-five cent piece.

Q. I'm going to hand you an item (pause)—

A. This is an envelope that I put them in, sealed them in and initialed them, there is a quarter that was in there. These bullets I realize and recognize to be similar to the three which we had taken out of the defendant's gun on Saturday morning when we arrested him and he made the statement to us that he had five cartridges in his gun when there were only three cartridges in it.

Q. Are there any markings on those bullets?

page 174 } A. I believe it's RP '38 Special, is what it appears to be.

Mr. Bareford: All right, we'd introduce those.

A. It stands for Remington Peters.

Q. Go ahead, and this was found when?

A. This was found on Sunday afternoon, on the 28th of,

The Court: Be Commonwealth's Exhibit No. 11.

A. 28th of January, approximately 4:00 p.m., in the back yard of 2509 Brook Road, picked these bullets up and then I went on to the garage with Mrs. Davis, in the garage we found the red ski mask and she described she has furniture stored in and the ski mask was laying back over where a ordinarily short person would not be able to stand right in front of it and see it, you would have to look over it.

Q. Did you get the ski mask yourself?

A. Yes, sir, I picked the ski mask up myself.

Q. What did you have to do to get the ski mask?

A. I merely had to reach over, since I am tall,

page 175 } but I say a short person would not see it standing from on the floor.

Q. All right, sir go ahead?

A. Down in between some boxes or crates I found a blue—bluish mixed sweater and a gold shirt. I learned—learned at this time talking with Mrs. Davis that—

Mr. Ryder: Well, I would object to what he learned talking to Mrs. Davis.

Mr. Bareford: Well, just a minute.

Q. I hand you an item and ask you if you can identify this, please, sir?

A. Yes, sir, that is the shirt that I—

Q. Will you hold it up so I can see the size? All right, sir, is that the shirt that you got out of her garage?

A. Yes, sir.

Q. All right, go ahead.

A. Got that, the sweater which has already been introduced, the one glove was found out there by her garage, the ice bucket and the trousers were turned over to me Saturday—Monday morning at Police Headquarters when I come in and, of course, Mrs. Davis has identified those as being the ones that she sent in on Saturday.

page 176 } Q. All right, sir, did you do anything else?

A. I believe that's all.

Q. Answer Mr. Ryder.

The Court: Take a five minute break at this time.

Note: At this time, a short recess was had, after which:

The Court: Gentlemen, you waive the poll of the Jury?

Mr. Bareford: Commonwealth waives.

Mr. Ryder: Yes, sir.

CROSS EXAMINATION

By Mr. Ryder:

Q. Officer Duke, the official police description of the suspect that you had, did not that include that the suspect was wearing khaki pants?

A. Yes, sir.

H. W. Duke

page 177 } Q. The official description that you had was that the suspect was between a hundred and sixty and a hundred and seventy pounds?

A. That was the initial report as the initial broadcast, that is correct.

Q. Did you subsequently have an occasion to ascertain the weight of this defendant?

A. Yes, sir.

Q. What did he wiegh?

A. I believe at the time he was arrested he weighed a hundred and thirty-one pounds.

Q. A hundred and thirty-one pounds. Now, then, during the course of your investigation, did you ever find, any place, a navy blue windbreaker?

A. I never found a navy windbreaker, navy blue windbreaker.

Q. Well, now, in your description, the official police description, does it not say navy blue windbreaker?

A. That is the first description that was ever put on,

Q. Well, now—

A. my subsequent investigation revealed otherwise, later on.

page 178 } Q. Well, now, you mean that the police broadcast an incorrect description on about three occasions, then, is that what you are saying?

A. That is the first broadcast that was put on the air.

Q. Where did that description come from?

A. That originally come from, I believe it was Officer Wilson, who first responded on the call and was trying in a hurry-up manner to get a description to put on of the suspect, and I later obtained additional information when I went to the Holiday Inn and talked with Mr. Hurt.

Q. And Mr. Hurt at that time told you that the man had dark pants on, didn't he?

A. No, sir, he did not tell me that he had dark pants, he said he had a mixed color pants, you could call them dark or you could call them gray.

Q. Do you have any notes showing the description that Mr. Hurt gave you on that occasion?

A. No, sir, because I just went on from my report right there and talked with Mr. Hurt and conducted my investigation.

Q. You heard Mr. Hurt testify here today and he said that they were dark pants,

A. That is correct,

page 179 } Q. did you not?

A. I heard him. As I stated, he stated that you could call them dark or you could call them a grayish dark.

Q. Uh, huh, but he testified here under oath—

A. It was dark, that's correct.

Q. Now, then, you said that you took six hundred and six dollars, I believe, in currency off of the defendant?

A. No, sir, six hundred and nine dollars.

Q. Six hundred and nine, now, if Officer Johnson said there was five hundred and six dollars taken off of him, then Officer Johnson was incorrect?

Mr. Bareford: I object to that, Your Honor.

A. I stated—

Mr. Bareford: Just a minute. He can't impeach one witness through this witness, this is a question for the Jury to determine.

Mr. Ryder: All right, sir, all right, sir, I withdraw the question.

A. I think—I think—

page 180 } Q. That's all right, I withdraw the question, sir. Now, then, did you cause the automobile, the white, the Pontiac—by the way, what color was that Pontiac automobile that you all saw?

A. I believe it was a white or a cream bottom with a dark top, either dark blue or black, I believe.

Q. Well, do you know, I mean was it light green at all?

A. No, sir, I don't think it was any green, I think it was a dirty white or a cream.

Q. Now, that automobile, did you cause the interior of it to be dusted for fingerprints?

A. Yes, sir.

Q. Did you find the defendant's fingerprints in that automobile?

A. No, sir, I found none whatsoever.

Q. The thing that's been introduced here as an ice bucket, did you cause that to be dusted for fingerprints?

A. Yes, sir, I did.

Q. Did you find the defendant's fingerprints on that?

A. No, sir.

H. W. Duke

page 181 } Q. Did you find the defendant's fingerprints on any of the currency that you seized from him?

A. It was not dusted for prints.

Q. How about in the garage where you found all of this clothing apparently, did you cause that garage to be dusted for fingerprints?

A. No, sir, after the gloves had been found at the scene, one of them at the car and the other one in the yard and the ice bucket had been dusted and it showed glove marks on the bucket, we decided it was no need to try to process further for fingerprints, 'cause all you were getting were smears with gloves.

Q. Well, then, you assume that the robber had gloves on?

A. That's correct.

Q. Well, now, you heard Mr. Hurt testify that at no time did he ever say that the robber that came in the Holiday Inn had gloves on, did he?

Mr. Bareford: Well, now, Judge, again, the Jury has heard Mr. Hurt testify and he cannot attack Mr. Hurt's testimony through Officer Duke.

The Court: It's up to the Jury.

Mr. Ryder: I'm not attempting to attack his
page 182 } testimony.

Mr. Bareford: Well, yes, you are too, the Jury's to try the facts.

Mr. Ryder: All right. That's all the questions I have, Your Honor.

REDIRECT EXAMINATION

By Mr. Bareford:

Q. Officer Duke, the money that was found, how was it, Officer Duke?

A. When the money was taken out of the—as the defendant took the money out of his pocket it was counted, it was all mixed up, twenty's, ten's, one's and five's, it wasn't separated as you would ordinarily—if you had a roll of money folded, you have your twenty's together, your ten's, your fives and ones, it was just all mixed together.

Q. Thank you, sir.

H. W. Duke

RECROSS EXAMINATION

By Mr. Ryder:

Q. Officer Duke, have you ever been in a crap game wherein you won an awful lot of money and stuffed it in one pocket and stuffed it in the other pocket?

Mr. Bareford: Well, now, Judge, I object to
page 183 } that question—to ask a police officer—

Mr. Ryder: That's all the questions I have.

Mr. Bareford: That's all.

Witness Stood Aside.

Mr. Bareford: The Commonwealth rests.

Mr. Ryder: Your Honor, I have a couple of matters I'd like to take up with the Court.

The Court: Gentlemen, will you retire from the room.

Note: At this time, the Jury retired from the Courtroom.

page 184 } The Court: Very well.

Mr. Ryder: Your Honor, at this time, to begin with, I'd like to renew the motion to suppress all the evidence as to what was taken from the defendant on this additional basis, sir: The—Officer Carroll has testified now, I believe, a change of his previous testimony, that is, that he would not have allowed the defendant to leave the scene of the crime, or the scene where he was stopped. Now, I would point out to the Court that that unquestionably shows that the defendant was under arrest. Now, the Court, as I understand the Court's ruling this morning, ruled that there was probable cause for that arrest. Now, then, even if we accept that thesis, that there was probable cause for Officer Carroll to arrest the defendant, I would point out to the Court that the questioning of this defendant which led to the discovery of the money and the gun in his pocket and led to the discovery of discrepancy in his story as testified to by the officers, was done prior to the time he was warned by any
page 185 } officers of his Constitutional rights. Now, Officer Carroll testified that he questioned him, Officer Duke and the other officer questioned him before they arrested him. They questioned him about what was in his pocket. At that time, assuming the Court's ruling to be in-

correct, I mean correct, and I do so respectfully only for the purpose of argument, the Court cannot rule that evidence admissible, because it was obtained in violation of the defendant's Constitutional rights, because he had not been warned prior to the time of the questioning in accordance with the *Miranda* decision, and I would submit that on either basis the Court should not allow any of the evidence to come in that was obtained from the defendant and I would renew the motion on that basis.

Mr. Bareford: Well, Judge, I think—I was trying to recollect as I sit here that Officer Carroll, of course, said that he didn't think he'd let the man get away from him, but now whether he was under arrest or not is something page 186 } the Court has to decide, but by the same token all Officer Carroll asked the man was his name and address and occupation, that's all he determined from him and he got the detectives there. The only thing that the detectives did different from that would be to ask him what were the bulges in his pocket, now, these—this was not evidence that was not obvious and open to them, they could see these things and they asked him if he would mind showing them what it is and then he took it out of his voluntarily and said here, it was two hundred dollars, or whatever he said, the Court heard the evidence, but these—this evidence that he's talking about, Your Honor, they took the gun away from him, the testimony was they took the gun away from him for their own safety, that in itself is a misdemeanor, to carry a concealed weapon, and the other evidence was open and obvious to them and the defendant produced it.

Mr. Ryder: Your Honor, this is the very point I'm making, sir, is if the Court's ruling is correct on the time of the arrest, and the probably cause for the arrest, the page 187 } officers had the duty of warning the defendant that he didn't have to say anything. Now, they have come in here and testified against the defendant to statements made by him, one, a discrepancy in what—where he was, where he got the money. They have testified that they caused him to empty his pockets by their questioning before all of this—before warning the defendant of anything —of any of his Constitutional rights, and I submit that by reason of that alone, the Court should not allow that evidence to come in. There's—I submit, Your Honor, to begin with, I earnestly say to the Court that the Court's ruling that the—on both bases this morning, that is, that the arrest was based upon probable cause, is based upon, and I say this respectfully, sir, an erroneous interpretation of the evidence by the

Court. Now, the testimony here, and I would vouch the record, is that they followed—the dogs followed a scent up to the alley in this block. Now, the defendant came from a house, as I understand it, not right where the dog followed the scent up to.

page 188 } Mr. Bareford: That's not the evidence, Judge.

Mr. Ryder: That's as I understand the evidence. The defendant came from—it's according to which witness you listen to, one of them said 2500 Northumberland, another one said 2514 Northumberland, but there is no evidence that the dogs tracked the man to that house, none at all, they lost the scent in the alley, but in addition to that Your Honor, even if the Court accepts that as a fact, the only real evidence that the officers had at that time was a description that came from Mr. Hurt which apparently was erroneous, or at least there was something wrong with it, that description did not fit the man that they seized, the man that they arrested, they had not one scintilla of evidence. I ask the Court to look at the thing in this light, look at the evidence in the light when Duke came up, what did they have at that time to show that this defendant had committed that robbery? I submit that they didn't have enough evidence at that moment to get an arrest warrant. There was

page 189 } not probable cause to believe that he committed the robbery. The probable cause arose when Duke arrested him, because Duke didn't even arrest him before then, the probable cause arose when they took the money and the gun out of his pocket and then is when Duke arrested him, but at the time he was first placed upon arrest by Officer Carroll when he stopped him there was not one scintilla of evidence that this defendant was the one that committed that robbery, there certainly wasn't enough evidence for the Court to have decided that a Magistrate could have issued a valid warrant based upon probable cause at the time Duke came up and that's the important time here, and I submit that the Court should not allow that evidence to go before the Jury and should strike it, sir.

The Court: The Court will overrule your motion.

Mr. Ryder: I would move the Court to strike the Commonwealth's evidence on this basis, sir: .....The only evidence here, Your Honor, is circumstantial, that's all the evidence the Commonwealth has. The Court well knows

page 190 } that the Virginia Courts have ruled many, many times, and I would cite the Court the recent decision of *Commonwealth* v. *Fred Bull,* that came out of Hustings Court, Part II, they have got to exclude every reason-

able hypothesis of innocence, if it's circumstantial evidence. Now, here, Your Honor, I submit that if the Court takes every bit of the Commonwealth's evidence, there is not sufficient evidence to allow the Jury to speculate as to whether or not this defendant is guilty and I point out these things to the Court which I think are very material: The circumstances that you have that the Commonwealth relies on, one, a description. Now, the description given by Mr. Hurt is completely contradictory to the description that was broadcast on the police radio of the man that was running, it's completely contradictory to the evidence here, which they have introdueced against the defendant as to the clothing that's involved here, I would point out that Mr. Hurt's description, and as the Court pointed out to me, I went over it a good many times, was a red mask, dark pants,
page 191 } dark sweater, and pointed shoes. And I would point out that the police radio description that emanated from the officer that chased a man from this Pontiac automobile had a dark windbreaker in it and light colored pants. The pants that have been introduced here are certainly not dark pants. Later on, a part of the description, that the official police description based upon the police officer, was khaki colored pants. Now, I submit that when you take those facts into consideration there has not been not—not proven here any clothing connected with this robbery that was similar to the clothing described by Hurt.

The testimony of Hurt was that eight hundred and I think fifty-five dollars or forty-five—forty-four dollars—

The Court: Eight hundred and forty-four dollars and eighty-two cents.

Mr. Ryder: was taken in the robbery. The only evidence here, the best evidence the Commonwealth has, is that from this defendant six hundred and nine dollars was taken. Now, there is not—Your Honor, the Jury couldn't pos-
page 192 } sibly speculate as to that being the same money that came from—from the Motel, for the reason, one, it was not the same amount, and to me this is very important, because according to the Commonwealth's theory of the case, a police officer chased this man to Mr. Johnson's house. There is not one scintilla of evidence here that any other money was ever recovered any place other than the fifteen dollars, but the money does not agree in any way, shape or form, and where did he get rid of it? Now, the Commonwealth might want the Court or the Jury to speculate that he did something else with it, but there's not one scintilla of evidence here that anything happened to any money. The

witness, Hurt, was not asked to identify the pistol that was found on the defendant. He testified that it was a snub-nosed '38, but there is no evidence that it was similar to the pistol that was found on the defendant, the pistol found on the defendant shows in itself that it's a new pistol, very obviously a new pistol, and there is no evidence here that that even compared with the pistol that was found upon or
page 193 } that Mr. Hurt said was shown to him. If you take all of the circumstances that the Commonwealth has, Your Honor, there is not sufficient evidence for this Jury to be able to say beyond a reasonable doubt that this defendant is the man that robbed that motel, and we submit that based on the lack of proving, excluding every reasonable hypothesis of innocence that the defendant has not been proven guilty as a matter of law, sir.

The Court: The Court will overrule your motion.

Mr. Ryder: We would except to both rulings, sir.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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