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APPENDIX

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 730465

FRANK CLINTON ANDERSON

V.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT FOR THE CITY OF WINCHESTER

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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

Record No. 730465

FRANK CLINTON ANDERSON,

Plaintiff in Error

v.

COMMONWEALTH OF VIRGINIA,

Defendant in Error

FROM THE CORPORATION COURT FOR THE CITY OF WINCHESTER

Robert K. Woltz, Judge Designate

TABLE OF CONTENTS

	Page
Indictment	1
Judgment Order	1
Notice of Appeal and Assignments of Error	4
Transcript	7
Certificate of Service	40

IN THE CORPORATION COURT FOR THE CITY OF WINCHESTER, VIRGINIA:

OCTOBER 24, 1972

COMMONWEALTH OF VIRGINIA

CITY OF WINCHESTER, to-wit:

The Grand Jury for the October Term, 1972, of said Court charges that:

COUNT I

On or about June 30, 1972, in the City of Winchester, Virginia, Frank Clinton Anderson did distribute a controlled drug known as Marihuana, and classified in Schedule I of the Drug Control Act of Virginia, against the peace and dignity of the Commonwealth:

Virginia Code Section 54-524.101.

CRIMINAL DOCKET #4245
ORDER

On the 26th day of February, 1973, came the accused in person in response to his recognizance bail bond with his retained attorney, and came also the attorney for the Commonwealth who prosecutes in this behalf; and the accused having previously been found guilty by verdict of the jury for the felony of distributing marijuana,

classified in Schedule I of the Drug Control Act of Virginia, and by said verdict sentenced to five (5) years in the State Penitentiary, this case came on to be heard upon argument of the motion of the accused to set aside the verdict of the jury and [sic] being contrary to the law and evidence and without evidence to support it, a court report [sic] being present and duly sworn to record truly the proceedings herein.

Whereupon, the court did hear argument of counsel and denied the motion; and

Whereupon, the court did inquire of the accused if he had anything to say why judgment and sentence should not now be imposed, and the accused answered in the negative; and

Thereupon, the court doth adjudge and order that in accordance with the verdict of the jury, the said Frank Clinton Anderson is guilty of feloniously distributing marijuana, as charged in the indictment against him, and the court doth fix his punishment by confinement in the State Penitentiary for a period of five (5) years, and the said Frank Clinton Anderson shall pay the costs of this prosecution.

Whereupon, the accused, by counsel, did move the court to apply for a Writ of Error to suspend all or part of the sentence herein imposed against the accused, and the court did hear argument of counsel; and

Thereupon, the court doth adjudge and order that the motion of the accused to suspend all or part of the sentence this day imposed against him is hereby overruled and denied, to which motion the accused did note his exception; and

Whereupon, the accused, by counsel, did file with the court an affidavit signed by the accused stating his indigency and request for the court to appoint an attorney to represent him in the preparation of his application for a Writ of Error in this case, and also a motion in writing was filed on behalf of the accused for the preparation of the transcript of the evidence by the court reporter at the expense of the Commonwealth; and

Thereupon, the court doth adjudge and order that Douglas M. Swift, Jr. is hereby designated and appointed to represent the accused for the application of a Writ of Error to the judgment rendered in this case; and

Whereupon, the accused, by counsel, did move the court to suspend the execution of the sentence this day imposed against the accused for a period of time sufficient for the accused to make application to the Supreme Court of Virginia for a Writ of Error and the judgment rendered herein, and the court did hear argument of counsel; and

Thereupon, the court doth adjudge and order that

the motion of the accused to suspend the execution of the sentence this day imposed against him is hereby overruled and denied, to which ruling of the court the accused did note his exception.

The said Frank Clinton Anderson, 26 years of age, is hereby remanded to the custody of the Sheriff and Jailor of the City of Winchester to await transfer to the proper State Penal Authorities to commence the serving of the sentence herein imposed; the said Frank Clinton Anderson being entitled to 0 days credit upon the serving of such time herein imposed against him for that time spent incarcerated awaiting the disposition of this charge.

/s/ Robert K. Woltz
Judge Designate

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Defendant, Frank Clinton Anderson, gives Notice of Appeal from the judgment of the Court rendered herein on the 26th day of February, 1973, and assigns the following errors as required by Rule of Court 5:6.

1) The Court erred in overruling Defendant's objection to admission into evidence of testimony of the Commonwealth's witness, Spence, regarding statements made

by Finley Whitlock while Whitlock, Steven Kremer and Defendant were in Spence's automobile on the ground that such statements amounted to hearsay.

2) The Court erred in overruling Defendant's objection to admission into evidence of testimony of Trooper Spence regarding statements made by Steven Kremer prior to the time Defendant became a passenger in the Spence vehicle on the ground that such statements amounted to hearsay.

3) The Court erred in overruling Defendant's objection to admission into evidence of testimony by Trooper Spence regarding the sale of a substance, later indentified as marijuana, by Steven Kremer to Trooper Spence prior to the time Defendant became a passenger in the Spence vehicle on the ground that it was irrelevant, immaterial and not germane to the issue.

4) The Court erred in overruling Defendant's objection to admission into evidence of Trooper Spence's testimony regarding chemical analysis of the material in the baggie sold to him by Steven Kremer and in admitting the certificate of analysis into evidence on the ground that it was irrelevant, immaterial, not germane to the issue and could only serve to prejudice the Defendant's case.

5) The Court erred in overruling Defendant's

motion to strike the Commonwealth's evidence and enter a verdict for Defendant at the conclusion of the Commonwealth's evidence, as it appears from the record that the evidence of the Commonwealth was legally insufficient to make out a prima facie case against Defendant.

6) The Court erred in overruling Defendant's motion to set aside the verdict as contrary to the law and the evidence and to enter judgment finding Defendant not guilty as it appears from the record that the evidence was legally insufficient upon which the jury could return a verdict of guilty of the offense charged in the indictment.

Defendant, Frank Clinton Anderson, intends to file a transcript and other incidents of the case.

FRANK CLINTON ANDERSON

By /s/ Douglas M. Swift, Jr.
Counsel

* * * * *

TRANSCRIPT
[Page 28]

WILLIAM D. SPENCE

was called as a witness on behalf of the Commonwealth, and after having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WATTS:

Q. Will you state your name, please, sir?

A. William D. Spence.

Q. And your occupation?

A. Trooper for the Virginia State Police.

Q. Were you so employed in the spring, summer and fall of 1972?

A. Yes, sir. I was .

Q. And, were you assigned to the Winchester area at that time?

A. Yes, sir. I was.

* * * * *

Q. And, what were your duties?

A. I was an undercover narcotics investigator in the City of Winchester.

* * * * *

[Page 29]

Q. Now, while you were here...and you were in town on the 30th of June, 1972?

A. Yes, sir. I was.

Q. Did you see the defendant, Frank Clinton Anderson, while in town on that day?

A. Yes, sir. I did.

Q. Where did you see him?

A. I saw him in the City of Winchester in the vicinity of Cartwright's Recreation on Kent Street, that's when I first saw him.

Q. All right, sir. And, what were the circumstances? Were you with anyone?

* * * * *

A. I was in my vehicle that day and I had subject Finley Whitlock and Stephen Creamer in my vehicle with me and they directed me from the Firestone parking area up off of Valley Avenue to Cartwright's Recreation Center. And, they advised me they were looking for...

MR. SWIFT: Objection, Your Honor. That is heresay, not admissible.

THE COURT: Objection sustained.

* * * * *

[Page 30]

* * * * *

Q. Did they have...did Stephen have any other name that he was known by?

A. Yes, sir. Giggie Creamer.

Q. Now, when you saw Mr. Anderson, what happened?

A. Mr. Anderson was standing on the street at Cartwright Recreation Center and I came over to my vehicle and got into my vehicle at that time.

Q. And, all right. Where did he get into the vehicle?

A. He got into the front seat of my vehicle.

Q. And, where were the others?

A. Finely Whitlock and Giggie Creamer were in the back seat. Finely Whitlock was on the left back and Giggie Creamer was on the right backseat.

Q. All right, sir. And, then just relate what transpired then.

A. From there we rode to the downtown portion of [Page 31] Winchester and on Boscawen Street.

Q. Anything occur as you came downtown?

A. Yes, sir. Mr. Anderson was talking to Mr. Creamer and Mr. Whitlock about selling dope. And, he was talking directly to them. I hadn't seen him personally prior to this date. And, he told them he would like to sell all of the "weed" that day. And, he asked them how much they sold. And in reply Mr. Whitlock...

MR. SWIFT: Objection, Your Honor.

MR. WATTS: In the presence of the accused.

THE COURT: Statement made in the presence of the accused. It would be admissible.

* * * * *

MR. SWIFT: The statement would be admissible if I were to have an opportunity or if he were to testify to it in chief if the person attributed with making the conversation were available to be cross-examined by me. But, certainly if Trooper Spence were to relate a conversation that some third party stated it would be inadmissible under the hearsay rule.

MR. WATTS: Your Honor, it's a reply directed to the question asked by the defendant concerning the charge of which he is under indictment.

[Page 32] THE COURT: Objection overruled.

MR. SWIFT: Please note my exception, sir, on the ground that it's subject to the hearsay rule.

BY MR. WATTS:

A. And the answer from Mr. Whitlock was that he had sold one hundred and forty dollars ($140.00) worth at that time. Mr. Anderson then told Giggie Creamer and Finely Whitlock that they should be able to sell the rest of the "pot" at the Firestone area or at the park.

Q. Now, you have been dealing with undercover work and people dealing in drugs for some time, Mr. Spence?

A. Yes, sir.

Q. As of this date, you had been?

A. Yes, sir. I had.

Q. The word "weed" and "pot" have any specific connotation among those persons?

A. Yes, sir. Normally in the drug culture it's referred to Marihuana when "weed" and "pot" are in relation to Marijuana.

Q. All right, sir. Then what occurred thereafter?

A. We were...we went down to the downtown area on Boscawen Street and in the vicinity of the Stone Age on Boscawen Street Mr. Creamer advised me to stop. There was a subject, Larry Wallace, standing on the street there and I did stop when Mr. Creamer asked...

MR. SWIFT: Objection, Your Honor, on the ground that this is heresay and inadmissible.

* * * * *

[Page 36]

THE COURT: Objection overruled.

MR. SWIFT: Please note my exception.

* * * * *

Q. Go ahead, then. What did he say?

A. Mr. Creamer asked Mr. Wallace did he want to buy some Marijuana. And, then at this time Mr. Wallace got into the car and we left that location and rode around

the block and went over to Cameron Street. And during this time Mr. Wallace was criticizing the quality of the Marihuana and at this time Mr. Anderson told Mr. Wallace that was good "weed". That, either he wanted to buy some or he didn't. And during this trip around the block Mr. Wallace did purchase and ounce of Marijuana from Creamer for twenty dollars ($20.00).

Q. Now, did you see the Marihuana?

A. Yes, sir. I did.

Q. And, how was it contained?

A. It was contained in a plastic bag similar to the sandwich baggies.

Q. And, who had it?

A. Mr. Creamer had it.

Q. And, what did he do with it?

A. He gave it to Mr. Wallace.

Q. And, what did Mr. Wallace...to whom did he... you say he gave some money?

A. Yes, sir. He gave twenty dollars ($20.00) to Mr. Creamer.

[Page 37]

Q. And, what did he do with that and what did Mr. Creamer do with that money? Do you know?

A. Mr. Creamer gave the money to Finely Whitlock.

Q. All right. Now, what then occurred?

A. I rode around the block and back to the vicinity of the Stone Age where Mr. Wallace got out of the vehicle and I left that location and we preceeded toward the Firestone. Mr. Anderson had conversation with Mr. Creamer and Finely Whitlock and he told them not to take any shit from these people. That if they wanted to buy the "pot", okay, but if they didn't fuck them and also told them to be careful when selling to a spade.

* * * * *

Q. Now, did he leave the vehicle?

A. Yes, sir. He went to the Firestone area and stayed there for a few minutes and then I took Mr. Anderson [Page 38] back to the vicinity of Cartwright's Recreation Center where he got out of the vehicle.

Q. Now, had you Mr. Creamer on this date prior to your going up to Kent Street with him?

A. Yes, sir. I had.

Q. Where had you seen him first?

A. I saw Mr. Creamer first in the Winchester Recreation Park where he flagged me down.

Q. And, about what time was this?

A. This was approximately 6:25 P.M. that same date.

Q. What did he ask? Did he give any reasons for flagging you down?

A. Yes, sir. He asked me at that time if I wanted to buy some "pot", that he had some ounces for twenty dollars ($20.00).

Q. And, did he get in the car?

A. Yes, sir. He got in my vehicle at that time and asked me to take him to his residence, which is on Woodstock Street.

* * * * *

A. Driving from the park to Woodstock Lane Mr. Creamer took three baggies, plastic baggies, with a green [Page 39] substance in it that appeared to be Marihuana out of his pocket and placed them on the front seat and told me to choose the one I wanted. And when we got to his residence at Woodstock Lane...

MR. SWIFT: If Your Honor please. I would registar, I don't want to interrupt Trooper too much. I would ask the Court to note my objection to any evidence of statements or conversations by third parties on the grounds that I have previously assigned. It's hearsay testimony and if the records could reflect that with reference to any further testimony of Mr. Spence that would save me in interest of interrupting.

THE COURT: Further testimony you object to any statements made by third parties?

MR. SWIFT: That is correct, Your Honor. And I presume the Court's ruling to be the same. And I would note my exception to the Court's ruling.

MR. WATTS: That is so, Your Honor. Did you overrule the objection?

THE COURT: He is making objection, wants to state ...

MR. WATTS: But, I mean as to this question.

THE COURT: No. This evidence is in.

MR. SWIFT: Yes, sir.

MR. WATTS: All right, sir.

BY MR. WATTS:

Q. Now, you say you saw three baggies?

A. Yes, sir.

Q. And, they call those baggies what?

A. Ounces.

[Page 40]

Q. And, have you had training in observing of the texture and appearance of Marihuana?

A. Yes, sir. I have.

Q. And, and from your observation of the substance in these baggies what did it appear to be?

A. It appeared to be Marihuana.

Q. And, you got there to the house and what did you do?

A. I choose one of these baggies at 6:30 P.M. and gave Mr. Creamer twenty dollars ($20.00).

MR. SWIFT: Objection, Your Honor, on the ground that this is irrelevant, immaterial and not germane to the issue of the charges against the defendant at all. My understanding of the trooper's testimony is he is describing something that Mr. Creamer did, and of course, the accused hasn't been charged with something that Mr. Creamer did.

MR. WATTS: If I may say for the benefit of the Court, here again, it's the principle in the first degree and it's leading up directly in closeness in time to the transaction we have testified to. And, we think it's admissible.

THE COURT: Do I understand, is this correct, that this was on the same day, but prior to the incident involving Wallace?

MR. WATTS: Yes, sir. Within one hour and ten minutes prior thereto. And, if I may approach the bench.

THE COURT: All right.

* * * * *

WILLIAM D. SPENCE

* * * * *

THE COURT AT THE BENCH: I could instruct them that they not consider this transaction as a charge of distribution by the defendant, by the accused. In other words, they are two separate distributions. And, don't think required to defend two at one time. So, I can instruct them that they shall not consider this evidence as a separate charge of distribution against the accused, if you want me to.

MR. SWIFT: Well, I think that is a step in the right direction, Your Honor. I would still object to the admission into evidence of the testimony with reference to this first transaction in general on the grounds that I have previously assigned. And I don't want to waive that objection.

* * * * *

[Page 47]

* * * * *

BY MR. WATTS:

Q. Now, Mr. Spence, you were there in front of Giggie's house at 918 Woodstock Lane, is that correct?

A. Yes, sir.

Q. There were three baggies of greenish-brown plant material there on the front seat?

A. Yes, sir. It was.

Q. Between you and he put them there?

A. Yes, sir.

Q. And, you took one of them?

A. Yes, sir.

Q. What did you do with that one?

A. I placed it in my pocket, my left pants' pocket

[Page 48] where it remained until, oh, later that day when I had it analyzed.

Q. What happened to the other two?

A. He took the two back and placed them back in his coat pocket.

Q. All right, sir. Then what did he do?

A. He got out and went inside of his residence and after about two minutes he came out with the subject, Finnely Whitlock.

Q. And what did they do?

A. They got back into my vehicle and asked me to take them to the Firestone area.

* * * * *

Q. Mr. Spence after Giggie got back in your

[Page 49] vehicle did you observe him in possession of anything thereafter?

A. Yes, sir.

MR. SWIFT: Same objection, Your Honor.

THE COURT: Objection overruled.

MR. SWIFT: Note my exception, please on the grounds it's a leading question.

BY MR. WATTS:

A. Yes, sir. When I went to the Firestone area Mr. Creamer tried to make a sale of Marihuana at this area.

Q. Of what kind?

A. Of the same kind of material, plastic baggie with the green plant material in it and which he did not make a sale.

Q. What happened then? Did he get back in his car?

A. Yes, sir. We stayed there for a few minutes and they got back in the car and they advised me at that time to take them downtown to Cartwrights. They were looking for Frank Anderson.

Q. Now, thereafter, Mr. Wallace got in the car you saw what was handed to him by Mr. Creamer?

A. Yes, sir. I did.

Q. And what was that?

A. It was similar plastic bags with green plant material in this bag.

Q. And, that was handed by Mr. Creamer to Mr. Wallace?

A. Yes, sir.

Q. All right, sir. Now, with regard to it, and

[Page 50] that was similar to what the baggie you had gotten from Mr. Creamer?

A. Yes, sir. It looked the same in appearance to me.

Q. All right, sir. And, what did you do with the baggie that you had obtained from him?

A. I had it analyzed at the drug laboratory in Richmond, Virginia.

Q. And did you receive back a certificate of analysis of that?

A. Yes, sir. I did.

Q. This is the certificate that you received back?

A. Yes, sir. It was.

Q. Does that indicate what the analysis of the substance in the baggie that you obtained from Mr. Creamer was?

A. Yes, sir. The results were...

MR. SWIFT: Your Honor, please. I would object to the admission into evidence of any testimony relating to the information contained in this certificate and would further object to the introduction of the certificate as the Commonwealth's exhibit on the ground that it is

immaterial, irrelevant, and not germane to the issue in this case because we are talking about an analysis of the substance which was given or sold or something, to Trooper Spence by another subject, at a time prior to the time that the defendant had entered the scene and therefore, can only tend to confuse this matter in the minds of the jury.

THE COURT: Objection overruled.

MR. SWIFT: Please note my exception.

[Page 51]

BY MR. WATTS:

Q. What did that certificate of analysis indicate the subject was in that baggie?

A. The results of the analysis was a brown-green plant material in the clear plastic bag responded positively to the qualitative test for Marihuana, a Schedule I controlled substance.

MR. WATTS: Like to introduce this into evidence as Commonwealth's Exhibit Number One.

MR. SWIFT: Your Honor, please. I may have stated my objection prematurely. Will state at this time for the same reasons as defined previously.

THE COURT: Ladies and gentlemen, you should not consider the last testimony concerning the transaction

between the witness and Creamer, nor the certificate as to the contents of the bag testified to by the witness, you should not consider that with reference to this case as being a distribution or the distribution with which the accused is charged. Under this case he is not charged with that particular distribution and the jury should not consider this evidence as evidence of a distribution to the witness by the accused as principle in the second degree. Any further questions?

* * * * *

CROSS-EXAMINATION

[Page 52]

BY MR. SWIFT:

Q. Trooper Spence, had you met the accused, Mr. Anderson, previously to June 30th, 1972?

A. No, sir. I hadn't met him.

Q. What time did you first meet Mr. Creamer, who I believe has been identified both as Giggie Creamer and Stephen Creamer, what time of the evening on the 30th did you first run into him?

A. Approximately 6:23 P. M.

Q. And, where did you meet him?

A. In the Winchester Recreation Park.

Q. Now, if my recollection of your testimony is

correct he had three baggies, is that correct?

A. He showed me three baggies, yes, sir.

Q. And, those are commonly known in drug parlance as ounces?

A. Yes, sir.

Q. Worth twenty dollars?

Q. He then offered to sell you one of these baggies?

A. That is correct.

[Page 53]

Q. And, you purchased one of these baggies?

A. Yes, sir.

* * * * *

Q. What kind of clothes was Mr. Creamer wearing at the time?

A. He was wearing a sports jacket and levis.

Q. And, where did he produce these baggies from?

A. From his coat pocket in his sports jacket.

* * * * *

Q. And whose home is on Woodstock Lane? Whose home was it you went to?

A. That is Mr. Creamer's residence there.

[Page 54]

Q. That is his residence?

A. Yes, sir.

Q. At that time he left the vehicle and he put the baggies in his pocket?

A. Yes, sir.

Q. How long did he leave the vehicle? How long was he gone?

A. Less than five minutes. It was just a short period of time.

Q. But, in enough time so that anything could have happened to those baggies that were in his coat pockets, isn't that correct?

A. Yes, sir.

Q. He was out of your sight?

A. Yes, sir.

Q. He went...he was inside of the home?

A. Yes, sir.

Q. You don't know what happened in there?

A. No, sir.

Q. He then emerged from the home five minutes later. Did he emerge with the Whitlock boy?

A. Yes, sir.

Q. They got into this truck, or station wagon you all were driving?

A. Yes, sir.

Q. About what time did you depart from the Woodstock Lane residence, if you know?

A. Approximately 6:35.

* * * * *

Q. Now, from 6:25 until the time that they asked you to take them to the Firestone and Burger Chef areas, those two were the only two that you were in company with?

A. Yes, sir.

Q. By that I mean Mr. Anderson wasn't present at the time?

A. No, sir.

Q. Now, did you proceed to the Firestone-Burger Chef area?

A. Yes, sir.

Q. How long did you remain there?

A. I would say approximately fifteen to twenty minutes. I don't know the time that I spent there.

* * * * *

[Page 56]

* * * * *

BY MR. SWIFT:

Q. Now, Mr. Spence, what reasons were given for going to Cartwright's Recreation Center? Who's idea was that?

A. This was Mr. Whitlock's and Mr. Creamer's idea. They asked me to take them there. They were looking for Mr. Anderson, Frank Anderson.

Q. Did, to your knowledge, did he spend alot of time at Cartwright's Recreation Center or do you know?

A. I don't know.

Q. Then what happened?

A. Well, we went to Cartwright's and at this time Mr. Anderson was standing in the vicinity of Cartwright's Recreation Center and I stopped my vehicle and he came [Page 57] over to it at that time.

Q. And, what time was that, sir?

A. Approximately 7:30.

Q. Now, an hour had elapsed and at that time had anybody else entering the picture in terms of passengers or people accompanying you other than Creamer and Whitlock?

A. No, sir.

Q. I think, as I understand, you picked up Mr. Anderson?

A. Yes, sir.

Q. And, proceeded to the Stone Age or in the area of the Stone Age, in the area of Boscawen Street?

A. Yes, sir.

Q. At which point you met Wallace, at what time?

A. Approximately 7:45 P.M., 7:45 P.M.

Q. Now, at that point, and this, I want to get straight in my own mind, at this point who was seated where in your vehicle?

A. Mr. Anderson was in the passenger side of the front seat and Mr. Creamer was in the right rear seat and Mr. Whitlock was in the left rear.

* * * * *

[Page 58]

* * * * *

Q. Well, did the transfer, was Wallace in the car at the time of this transaction?

A. Yes. He was.

Q. Where was he seated in it?

A. The back seat on the left side.

Q. So, really Whitlock was in the middle, is that correct? He wasn't on the left side of the back seat?

A. Let me correct that. Mr. Wallace got in the right side of the car in the back.

Q. So, Creamer was in the middle?

A. Yes, sir.

Q. So, you got Creamer in the middle and Wallace on the righthand side and Whitlock on the righthand side in the rear and Anderson sitting up beside you on the front seat?

A. Yes, sir.

Q. Did this transaction take place while the vehicle was in motion?

A. I don't recall whether we were in motion, or not at that time. I do recall seeing the transaction occur. I can't say whether it was in motion or not.

Q. If it was you were driving and observing the transaction at the same time, isn't that true?

A. Yes, sir.

Q. Okay. Now, as I understand your testimony, a plastic bag was given by Creamer, who was seated in the [Page 59] middle, to Wallace, who was seated in the right back seat?

A. Yes, sir.

Q. Wallace, in return, paid twenty dollars to Whitlock and had to reach over Creamer to get to Whitlock to pay him this money?

A. No, sir. He gave the money to Mr. Creamer and in turn Mr. Creamer gave it to Mr. Whitlock.

Q. I see. Went from Creamer to Whitlock and Mr. Anderson was seated up front at this time?

A. Yes, sir.

Q. Trooper Spence none of it, none of the substance that was transferred from Creamer to Wallace was ever analyzed to make a determination whether, in fact,

it was Marihuana or not, was it?

A. No, sir.

Q. And, other than a view of it by yourself you are not really in a position to testify unequivocally that it was Marihuana?

A. No, sir.

MR. SWIFT: I have no further questions.

REDIRECT-EXAMINATION

BY MR. WATTS:

Q. The participants referred to it as Marihuana at that time, did they not?

A. Yes, sir.

MR. WATTS: That is all.

RECROSS-EXAMINATION

[Page 60]

BY MR. SWIFT:

Q. Trooper Spence, how much experience in terms of years have you had dealing with the drug scene and can you tell the jury a little bit about how familiar with it and...

MR. WATTS: Well, if Court please. I think this is out of place and time as to cross-examination. Making him his own witness.

MR. SWIFT: If Your Honor please, it has a direct

bearing on the question of what was said and what the indentity of the substance was.

THE COURT: Objection overruled.

BY MR. SWIFT:

Q. How long have you been involved in the investigation of drug cases and what training have you had in terms of both time and in terms of subject matter?

A. I have been in the narcotics investigation specifically for approximately one year, and prior to this investigation assignment I had training in the State Police Training School in Richmond, specifically dealing narcotic paraphernalia and drugs and the language and the attire of drug people.

Q. And, how long was that, how long did that course last?

A. The school lasted, of a week and prior to this I had some familiarization with the laws and also with identification of drugs.

Q. For what type of training was that?

A. This was the State Police Training School, the [Page 61] basic school.

Q. So, you are specifying the general courses given to all state police officers as part of their general training, which includes field testing for Marihuana and basic identification before analysis by the

Department of Agriculture, is that correct?

A. Yes, sir.

Q. And, then you have one week of specialized training and then you went in the field after your basic training, plus one week of specialized training for undercover work, is that correct?

A. Yes, sir.

Q. You spent six months in Winchester, and I don't want to, I don't know whether any investigation previous to that had been wound up. I don't want to infringe in that area. Have you had experience in any other situations doing this type of work before without telling me the name of the city?

MR. WATTS: That is a question that should not be put to this witness. It's not relevant to this case.

MR. SWIFT: I am trying to determine the extent of his experience, Your Honor. I will ask him what experience he has had up to now.

THE COURT: Ask him what experience he has had in the actual field investigation prior to coming to Winchester, how much of it.

BY MR. SWIFT:

[Page 62]

A. I have been assigned to narcotics investigation from February of last year until the last part of April of

that year at which time I came to Winchester.

Q. Was this a similar type of operation to the operation in Winchester?

A. I didn't make any buys doing that, but it was surveillance type of investigation and dealing with these people in general, but no buys were made.

Q. Did it involve infilteration?

A. No, sir.

Q. Were any buys attempted?

A. Not by me, no, sir.

Q. Were any attempts made by any of your co-workers?

A. Yes, sir.

Q. Now, isn't it true, Trooper Spence, that being acquainted with the drug scene as you are that frequently people who purchase and sell dope, or drugs, controlled drugs, refer to something that doesn't turn out to be what it is referred to, for example; Oregano, or various types of plant material which may resemble Marihuana and are referred to as Marihuana by the person who distributes it, which tests out not to be Marihuana? Isn't that, doesn't that happen frequently? Isn't that correct?

A. No, sir. It doesn't happen too frequently. It never happened to me with a purchase of Marihuana. I was never sold any drug that was suppose to be Marihuana

that wasn't actually Marihuana.

[Page 63]

Q. But, you are acquainted with situations where people have been ripped off, to use the street nomenclature because they are sold something that wasn't Marihuana which has been called Marihuana by the seller?

A. Yes, sir.

Q. That is why you test the stuff out to determine whether or not it is a controlled drug?

A. Yes, sir.

* * * * *

[Page 70]

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FRANK ANDERSON

was called as a witness on his own behalf, and after having been first duly sworn was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. SWIFT:

* * * * *

Q. Mr. Anderson, directing your attention to the evening of June 30th, 1972, do you recall at some time in that day during the course of that evening being in an

[Page 71] automobile with Mr. Spence or Trooper Spence,

who, I believe, also was known as Ding at the time?

A. Yes, sir.

* * * * *

Q. Now, who was in the automobile with Mr. Spence at that time?

A. Finnely Whitlock and Stephen Creamer.

Q. Who is Finnely Whitlock?

A. He is the brother of the girl that I was going with for seventeen months.

* * * * *

[Page 72]

* * * * *

Q. Do you recall later on in the evening going to the Stone Age?

A. On the way back from Kent Street, Larry Wallace flagged the car down.

* * * * *

Q. What happened when he flagged the car down?

A. I didn't remember exactly whether it was Finnely Whitlock or Giggie Creamer, first of all Larry Wallace or Giggie Creamer, one of the two, I am not sure, asked if they had any Marihuana for sale.

[Page 73]

Q. He asked them?

A. Yes. I am not sure which one said the

question, but there was a question.

* * * * *

Q. Okay. Now, what happened at that point when one of them said yes, they had some Marihuana?

A. At that time I can't really recall where we rode to. I know we rode a short distance and I remember Larry Wallace was on his motorcycle and he flagged Mr. Spence's car. He parked his motorcycle and got in the car.

* * * * *

A. And, then after a short time the circular motion which Mr. Spence talked about was returned to the vicinity of his motorcycle.

Q. What went on in the meantime?

A. Mr. Wallace, Larry Wallace, purchased a bag of Marihuana from, I am not even sure which one it was.

Q. How do you know it was Marihuana?

A. Because that is what they called it, is all I know. I didn't really see it myself. I didn't touch it.

* * * * *

[Page 74]

* * * * *

Q. Do you recall any conversation with Mr. Creamer or Mr. Whitlock about how sales were going and any discussion of what either, or both, of them had made that night?

A. Eliminate Stephen Creamer from the picture as far as what was said to me. There was nothing involved between me and him, what so ever. But, Fynthia Whitlock's mother and Finnely's mother, their father is gone and they are separated, and she also tried to get me to do the brotherly thing toward Finnely because he wouldn't go to school and he wouldn't come in till the wee hours of the morning and what have you. And, I knew exactly, I knew what was going on between him and Giggie. I knew there was sales of Marihuana and various things being done between them. And, as for Mr. Creamer, I never discussed it with him, what so ever. As for Finnely, I tried to talk to him into going to school and stop doing exactly what he was doing. And, his mother, she kind of really pushed me to do it alot, you know.

Q. What bearing does that have on what you told him on the date in question?

A. He made a deal with me and promised me that what he was doing would be the last time he done it, but he had a purchase of Marihuana, he told me, that that he had to get rid of it and he made a promise to me, you know, that would be the last time he would do it. I told him he

[Page 75] was going to end up in jail, not going to school, and everything. And the only question

that I can recall asking him when I got in Mr. Spence's car was, you know, I asked him just exactly what he was doing and questioned basically on how close he was to ending his career he had picked.

* * * * *

Q. What, if any, profit, or anything like that, or control, did you have over the transaction in question from Whitlock and Creamer to Wallace?

A. I had no connection with it whatever.

* * * * *

Q. Uh huh. Now, there is also testimony about your making some statement to Wallace about, by it or don't buy it. What statement, if any, did you make to Wallace?

A. I recall, and I had discussed it with you on the tape recorder before in your office, and there was a proper witnesses brought back, and you know...

[Page 76]

Q. What, if anything, was said to the best of your knowledge and recollection?

A. Pertaining to what? Repeat it again.

Q. Pertaining to the question of any statements made to Wallace about either buy or don't buy it. Don't give us this baloney, or something like that.

A. I don't recall saying that at all. I do

remember, as best I can recollect, it's not really an accusation, but as best I can recollect, the purchase was trying to be pushed through by Mr. Spence. He is the one that said, buy it or don't buy it. He leaned over the back seat. I recall Wallace, I don't know, he was asking me about my opinion of it. I remember directly that I told him that I didn't know any opinion of it. That I had nothing to express any opinion of it. And, I do remember distinctly, Mr. Spence turned around and said, buy it or don't buy it, which now all boils down he was trying to get the thing over so that he could do his job.

Q. Do you remember any statements about getting approximately two pounds in Saturday by anybody that was in the car at the time?

A. No. I don't remember. You know, there might have been, but I don't remember. I know that nothing was discussed with me on any purchase like that.

* * * * *

[Page 77]

* * * * *

Q. What, if any, of this substance that was apparently given, or sold to Wallace, if any part of it came from you?

A. None of it come from me. I hadn't touched it before, during, or after the transaction.

Q. What, if any, money, did you receive from the sale of the substance which Creamer and Whitlock stated was Marijuana?

A. None during or after.

* * * * *

CROSS-EXAMINATION

BY MR. WATTS:

Q. Now, so, you were with them, Mr. Anderson, this evening when all of this occurred?

A. Yes, sir.

Q. And, at that time when you were with them, you [Page 78] knew that Finnely was involved in selling drugs?

A. Yes, sir.

Q. And, you say you may have asked him something about how far along he was in winding up his selling drugs on that occasion?

A. I asked him with the interest to see just how close he was doing what he wasn't suppose to be doing.

Q. He told you when he got rid of what he had, he was going to stop?

A. That was the deal I had made with him. That is what the promise was he made to me.

Q. So, you do admit you probably asked him how close he was to being out of the "stuff"?

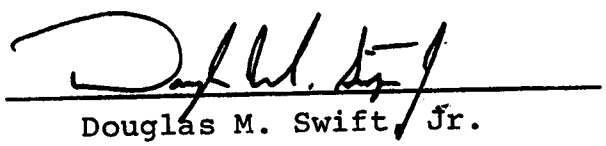
FRANK ANDERSON

A. I asked him how close he was to being out of the business.

* * * * *

CERTIFICATE

In accordance with Rule 5:49 of the Rules of the Supreme Court of Virginia, I hereby certify that I have this 4th day of December, 1973, filed 25 copies of this Appendix in the Office of the Clerk of the Supreme Court of Virginia, and have mailed three (3) copies of this Appendix to The Honorable Andrew P. Miller, Attorney General, Commonwealth of Virginia.



Douglas M. Swift, Jr.