215 Va. 161
CLERK
SUPREME COURT OF VIRGINIA
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MAR 26 1974
RICHMOND, VIRGINIA

RECORD NUMBER 730817

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

BARRY JOSEPH LEATHERWOOD,

Appellant

Versus

COMMONWEALTH OF VIRGINIA,

Appellee

APPENDIX TO THE BRIEF

Peter M. Baskin
Counsel for the Appellant
1400 North Uhle Street
Arlington, Virginia 22201

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V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

April 16, 1973

The Grand Jury charges that:

On or about the 4th day of March, 1973, in the County of Arlington, BARRY JOSEPH LEATHERWOOD did knowingly and intentionally possess a controlled substance, to-wit: Cocaine.

Sec. 54.524.101:2(a), Code of Va., 1950, as amended

Witnesses sworn and sent to the Grand Jury by the Court to give evidence:

Det. Ruth Emery, Arlington County Police Dept.

TESTE: _____
Clerk

COMMONWEALTH OF VIRGINIA

VS. C-9235

BARRY JOSEPH LEATHERWOOD

THE 6th day of June, 1973 came the Commonwealth of Virginia, by its Attorney, the Defendant pursuant to his recognizance and his Retained Attorney, Peter M. Baskin.

WHEREUPON the Defendant renewed his motion to suppress the evidence of the Commonwealth, which motion was argued by counsel.

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the said motion should be and it hereby is denied.

. . .

* PORTIONS NOT RELEVANT TO ASSIGNMENTS OF ERROR OMITTED *

THEREUPON the jury returned to its box and was instructed by the Court and after hearing closing arguments of the Attorney for the Commonwealth and counsel for the Defendant, the jury retired to its room to consider its verdict and after a time presented a question to which the Court responded and after a further period returned into Court and presented the following verdict, to-wit:

We the Jury find the Defendant "Guilty" of "Possession of a Controlled Substance, to-wit: Cocaine", as charged in the indictment, and fix his punishment at conf. in jail, 12 months, and fine of $250.00.

June 6, 1973	/s/ R. F. Pavelka
Date	Foreman

. . .

* PORTIONS NOT RELEVANT TO ASSIGNMENTS OF ERROR OMITTED *

WHEREUPON the Court being of the opinion that the verdict of the jury is right and proper doth hereby find the Defendant "Guilty" of "Possession of a Controlled Substance, to-wit: Cocaine" as charged in the indictment herein.

IT IS THEREFORE the Judgment of the Court, pursuant to the verdict of the jury, that the Defendant be and he hereby is sentenced to confinement in the Arlington County Jail for a period of twelve (12) months and ordered to pay a fine of $250.00 and the costs of these proceedings.

. . .

* PORTIONS NOT RELEVANT TO ASSIGNMENTS OF ERROR OMITTED *

AND the Defendant is hereby remanded to jail.

Entered this 12th day of June, 1973.

Charles S. Russell
JUDGE

A COPY,
TESTE: H. BRUCE GREEN, Clerk

BY Henry E. Hudson
Deputy Clerk

ASSIGNMENTS OF ERROR

1. The Trial Court erred in overruling the Defendant's Motion to Suppress the evidence of the Commonwealth introduced at trial because said arrest was illegal and by the admission of record of the Commonwealth was accomplished as the result of invalid null and void Arrest Warrant and said arrest was without probable cause.

2. The Trial Court erred in overruling the Defendant's Motion to Suppress the evidence introduced by the Commonwealth because said evidence was obtained by the police authority as the result of an illegal search and seizure conducted pursuant to a Search Warrant which the Commonwealth conceded on the record in the Trial Court to have been invalid and not having been issued pursuant to the existence of probable cause.

3. The Trial Court erred in overruling the Defendant's objection to certain evidence which it permitted the Commonwealth to introduce at trial, concerning other crimes alleged to have been committed by the Defendant, which crimes were pending in the County and Circuit Courts of Arlington County, thereby erroneously and prejudicially introducing into the Commonwealth's case, in chief, the bad character of the Defendant.

4. Withdrawn.*

5. The Trial Court erred in its failure to grant the Defendant's Motion to Strike the Commonwealth's evidence because said evidence was not sufficient as a matter of law to sustain a conviction in that the evidence failed to show that the Defendant knowingly and consciously possessed the contraband because the only evidence thereon was an inference drawn solely from evidence of other contraband substances also found in the Defendant's car at the time of his arrest, which contraband was not shown by the Commonwealth's evidence to be in his knowledgeable possession, to-wit the Court permitted a pyramiding of inferences in order to arrive at a conviction.

6. Withdrawn.*

[Transcript: May 10, 1973
P. 9, Line 6 to P. 24, Line 18
Officer Henry T. Trumble, Jr.]

[Transcript: June 6, 1973
P. 5, Line 6 to P. 22, Line 3
Officer Henry T. Trumble, Jr.]

[P.22, Lines 1-3; Hon. Charles S. Russell]

[Transcript: June 6, 1973
P. 71, Line 10 to P. 140, Line 5]

[Officer Trumble: P. 71, Line 10 to P. 111, Line 23]

[Officer James R. Kogle: P. 112, Line 21 to P. 124, Line 9]

[Bench Conference: P. 124 to P. 126]

[Detective Ruth Emery: P. 127, Line 2 to P. 140, Line 5]

[Transcript: June 6, 1973
P. 142, Line 12 to P. 144, Line 23]

[Dr. Eugene Reichenbecher and Bench Conference]

[Transcript: June 6, 1973
P. 151, Lines 2-8
Question of a Juror answered by the Court]

[Transcript: May 10, 1973
P. 9, Line 6 to P. 24, Line 18
Officer Henry T. Trumble, Jr.]

Whereupon,

HENRY T. TRUMBLE, JR.

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

DIRECT EXAMINATION

BY MR. SHEVLIN:

Q Please state your name and occupation.

A Officer T. H. Trumble, Arlington County Police Department.

Q Officer Trumble, are you acquainted with Mr. Leatherwood?

A Yes, sir, I am.

Q Did you place him under arrest for a violation of probation recently?

A Yes, sir, I did.

Q What was the date?

A On the 4th of March.

Q What was the time you and Mr. Leatherwood saw each other on that day?

A Pardon me, sir?

Q When did you first see Mr. Leatherwood on that day?

A The first time I saw him on that particular day was approximately 10:30 in the rear of the 2300-block 11th Street, in the rear of the apartment adjacent to the tennis courts and between

11th Street and Fairfax Drive.

Q What was the activity in that area at that time?

A We had received a complaint of fireworks in the area, describing a quote group of kids next to the tennis courts unquote. I responded along with Officer Kogle and found Mr. Leatherwood among the group of kids who were there. They were questioned about whether they had fireworks or not. They said they didn't, so they were asked to leave due to the excessive noise they were making at that time of night.

Q When did you next see Mr. Leatherwood?

A He left. When I asked him, Mr. Leatherwood drove off. He drove around the parking lot in the direction of Barton Street. I waited until the rest of the group left. Then I proceeded out 11th Street to Barton Street and turned right to come to the station. When I — just as I approached the intersection of 12th Street, a skyrocket went across -- went over the top of Barton Street toward the playground . From 12th Street, I stopped the scout car and backed up. I couldn't see anything on account of the smoke. So I waited for the smoke to clear somewhat so I could see to drive. And I drove up the hill in the direction the skyrocket had come from. I noted Mr. Leatherwood's car parked toward the side to my right. But I didn't see anybody in it. So I went around the block and came back to check the car. And I noted his passenger,

Mr. Porro, was peering up over the back of the seat of the car. At that time, I approached the car, assisted by Officer Kogle and asked for identification from both subjects to check them for "Wanted".

Q Did you make that check?

A Yes, sir, I did.

THE COURT: You asked for identification and what?

THE WITNESS: To check for a "Wanted".

THE COURT: To check for a "Wanted"?

THE WITNESS: Yes, sir, a radio message to see if they were wanted. I can't remember exactly the time involved but we were called back and told that Mr. Leatherwood was wanted, for a violation of probation, Arlington County Court paper.

Mr. Porro, the other subject, was not wanted. So we approached — I approached the car then and told Mr. Leatherwood he was under arrest for violation of probation and asked him to get out of the car. Mr. Porro got out on the passenger side on his own. Mr. Leatherwood got out. As Mr. Leatherwood was getting out, there was a green rug that was used — I assume for a seat cover — laying on the seat. It was either green or blue. It was a rug like a throw rug laying on the seat. When Mr. Leatherwood got out of the car on my request, the opposite corner of the rug twisted up. The rug twisted on the seat and exposed the handle and most of the

barrel of a pistol.

When he did get out, he began to tell me that the paper was not good, that he had been released from probation, etcetera. And I told him that that was possible but that he would still have to go with me because I didn't know that for a fact.

So I placed the handcuffs on him. He became slightly aggitated over the fact that he had to go. He's pretty good sized and I was concerned over the fact that we might have more trouble with him. So I asked Officer Kogle to put him in the police car. It was my opinion that when Officer Kogle got him by the arm and started back to the car with him --

MR. BASKIN: Object to the opinion, Your Honor.

THE COURT: No, I think for the purpose of a probable cause hearing that is admissible. The objection is overruled.

THE WITNESS: I thought that when Officer Kogle got him by the arm and started walking him back to the scout car that he would have trouble with him still. So I assisted Officer Kogle and walked him almost to the car. And the door, the rear door, of the scout car was open. Kogle took him around the car and I went around the door of the police car to put him in the back seat.

I walked back to his car to get the pistol which I was concerned with. His passenger, Mr. Porro was -- had walked along with Leatherwood back to the police car. And he made a statement

just as Mr. Leatherwood was getting in the car that he was going to take the car.

MR. BASKIN: I object to that, Your Honor.

THE COURT: Overruled. I am interested in all the information that came to him in order to understand his state of mind at the time, regardless of whether information that was received was truthful or not.

MR. BASKIN: Well —

THE COURT: So statements made by by-standers, opinions of the people involved, I think are admissible.

MR. BASKIN: Well, my only question is whether, after a man is patted down for weapons and he is in custody, and at that point unless he shows he has probable cause to believe that contraband was in that car, he — he can't due anything without a warrant. The law is clear on that. And so, we have him in the car. The relevance or bearing was — any fact about what he may have heard about somebody else —

MR. SHEVLIN: When he saw the gun, the passenger was still next to the car.

THE COURT: The objection is overruled.

THE WITNESS: Mr. Porro made the statement that he — "Can I take the car? Barry" And Mr. Leatherwood replied in the affirmative. At that time, Mr. Porro was approaching the passenger

door of the Oldsmobile which had been left open.

So I advised Mr. Porro to stay away from the car.

THE COURT: The Oldsmobile --

THE WITNESS: Mr. Leatherwood's car; yes, sir.

I instructed Mr. Porro not to get in the car, to stay away from the car. My concern being the pistol that was laying on the seat. Porro complied and backed away from the car. I reached in with one hand on the floor to pull the rug back to get the pistol. At that time, I felt a paper bag with a plastic bag inclosed. When I looked down, I saw what appeared to me to be hashish. It was black cubes of -- dark brown in color, lumps of something.

BY MR. SHEVLIN:

Q Where were these located in the car?

A These were in the left, right in the very front in the left-hand corner of the passenger -- of the driver's side, under the seat. I put my hand on the floor to reach into the car and get the pistol and the bag. And when I looked down from my position I could see -- looking back over the edge of the seat -- I could see the stuff in a plastic bag that was inclosed within the brown bag. I took that in one hand and the pistol in the other. As I started to get out of the car, I noticed the hammer was back on the pistol. It was not -- I thought then that the pistol was loaded. I am

familiar with that type of pistol and it requires two hands to clear it if it is loaded. So I laid the pistol back on the -- just laid it on the seat right in front, put the bag on top of the car, so I would have two hands to unload the pistol. When I put the bag up on top of the car, Mr. Leatherwood made the statement to the effect that, "Be careful of that, that's good stuff", or something like that he said.

I then took the pistol, took the clip out of it and cleared it by pulling the slide back. As it was, there was no round in the chamber. That's simply the way the gun works, the hammer is back all the time.

Then I had the pistol, took the clip out of it -- the pistol. At that time the wagon, paddy wagon, arrived with the warrant, the violation of probation paper. And Mr. Leatherwood was taken out of the back of the police car then and given his copy of that particular paper and placed in the wagon for transport. The car was impounded as was the gun and bag of hashish.

Q Did you ask Mr. Porro for identification?

A Yes, sir, I did.

Q Was he able to produce a driver's license?

A No, sir, he wasn't.

Q Would you have allowed Mr. Porro to take the car?

A No, sir. I neglected to mention that. When I asked him

to back away from the car, he said, "I want to take the car." I said, "Do you have a driver's license?" And he said, "No." And I said, "You couldn't take the car anyway." I had no intention of letting him take the car in the first place but that was mentioned.

Q What then was done with the car?

A The car was impounded. It was taken to the police-impounding lot, followed by Officer Kogle. Our intention was to keep the car under observation and in a protective chain of custody while it was at the Property Yard.

MR. SHEVLIN: Off the record.

(Whereupon, an off the record discussion was had by Court and counsel.)

(Thereupon, the following proceedings were had on the record.)

MR. SHEVLIN: It is stipulated that subsequent to the arrest that the car was impounded and a search warrant was obtained which search warrant was invalid. And pursuant to that warrant, in the impounding lot, the car was searched and cocaine was found in the trunk of the car, along with fireworks. I believe that's another charge. That's all the questions I have.

THE COURT: Is that satisfactory?

MR. BASKIN: Yes.

THE COURT: All right, sir, would you examine then? Do you

wish to examine?

CROSS-EXAMINATION

BY MR. BASKIN:

Q How long was it that you detained Mr. Leatherwood at the scene before you got the radio call back that there was a warrant for a violation of probation?

A I would estimate 15 minutes.

Q Fifteen minutes?

A Yes, sir.

Q And then you went up to the car and announced that he was arrested for that. Correct?

A Yes, sir.

Q Then you asked him to step out of the car?

A Yes, sir.

Q And you frisked him for weapons?

A Yes, sir.

Q Found none?

A Other than what I saw on the seat; yes, sir.

Q Well now, Mr. -- the other gentleman in the front seat, he was sitting next to Mr. Porro, right?

A Yes, he had been. Yes, sir. When I asked Mr. Leatherwood to get out, Mr. Porro also got out. Mr. Porro got out first. When he began to get out of the car, Mr. Porro was not in the car. But he

had been in the passenger seat.

Q At that point, you had no idea whose weapon that was, did you?

A When I first observed it?

Q Yes.

A No, sir, I didn't.

Q You didn't also announce your purpose in arresting him for a concealed weapon?

A Not in that particular — I didn't make a mention of a weapon when I first observed it. No, sir.

Q You didn't feel at that time it was contraband, is that correct?

A I felt it but I didn't, I didn't —

Q You didn't, did you? You didn't act upon the fact that it was contraband at that moment, did you?

A Well, at that particular —

Q You were not arresting him for carrying a concealed weapon?

A At that particular moment I had control over neither one of those guys.

Q I beg your pardon? You what?

A At that particular moment, as Mr. Leatherwood was getting out of the car, I had control over neither one of those people. They were both walking around the car and I didn't think — I didn't feel

it was a good idea for me to make an issue of the pistol. If they wanted to let it slide, it w s fine with me. My feeling was if I had mentioned it, if I had said something about the pistol, maybe they would have made a try for it or something.

Q Well, didn't I understand you to testify in response to Mr. Shevlin's question that the basis of their getting out of the car was their submitting to your arrest, especially Mr. Leatherwood? You said he was under arrest.

A That's true.

Q But not for a concealed weapon?

A No, sir, he wasn't getting out of the car for a concealed weapon; no, sir.

Q You didn't arrest him for possessing that contraband or that —

A Not at that particular instant; no, sir.

Q And then you put him in handcuffs, is that correct? Or somebody else did.

A Yes, sir, I did.

Q And then you removed him from your car?

A Yes, sir.

Q How far was it from the car?

A Approximately the distance from me to you.

Q Okay. Were the windows rolled up in the car?

A In my car?

Q Yes.

A Yes, sir — no, I'm sorry. I take that back. They were down.

Q I see.

And when you put him in the car, did you put him in the back seat?

A Yes, sir.

Q Did you close the door to your car?

A I believe so; yes, sir.

Q Did you leave the radio on?

A Did I leave the radio on? Yes, sir, it was on.

Q And then you went back into the car?

A Into Mr. Leatherwood's Oldsmobile; yes, sir.

Q To get the gun?

A Right.

Q But you didn't announce at that time — did you announce at that time, absolutely, that he was under arrest for concealed weapon at that point?

A When I first took him out of the car?

Q Yes.

A After I had put the bag on top of the car and picked up the gun and took the clip out of it, then I told Mr. Leatherwood that,

"You're also under arrest for this."

Q For what?

A I was referring to the pistol and the bag of what I suspected was hashish.

Q And when did you see that in relation to the bag of hashish, in relation to seeing the gun?

A I saw the gun first. I saw the hashish when I reached for the gun.

Q Did you see the hashish or feel it?

A I felt it first. I leaned down and put my hand on top of it.

Q Where was it?

A It was — the biggest majority of it was under the seat in the front left-hand corner.

Q Was it on the driver's or passenger's side?

A On the driver's side in the front left-hand corner, the farthest point forward and the farthest point to the left of the car under the seat.

Q Okay. And did you announce that he was under arrest for that?

A Yes, sir.

Q You did.

Then what did you do? You took the car to the station or you took him to the station?

A I took him. At that time, the wagon pulled up. I had called for the wagon to bring the paper to the scene, the violation of probation. We got him out of the car. I had his pistol in here (indicating) and I had the bag in my hand. I read the paper to him, placed him in the wagon, gave him his copy, put him in the wagon and had Officer Kogle stand by the Oldsmobile with the intention of preserving the chain of custody when the crane came to take the car from that particular place to the Property Yard.

Q Okay. Did you obtain the search warrant?

A Yes, sir.

Q You swore to the affidavit for that warrant?

A Yes, sir.

Q Did you conduct the search of the vehicle?

A I was —

Q Did you execute the warrant?

A Yes, sir.

Q You found fireworks in the trunk?

A Yes, sir.

Q And cocaine in the glove compartment?

A Well, I was assisted in the search of the vehicle. I took part in the search but I was — I was not by myself, if that is what you mean.

Q Did you see any of those two items just mentioned?

A The fireworks, yes.

Q Did you see, from your own personal knowledge, who seized and from where they seized the cocaine?

A Detective Emery seized the cocaine. I can't say for sure where.

Q Well, was she standing next to you while you were looking through the trunk or was she inside the car?

A I was taking the fireworks out and removing them from the trunk of the car to the side, so I could lay them out in order, because I knew I would have to write down what I had taken.

Q Where was she at the time?

MR. SHEVLIN: Your Honor, I think that has also been stipulated.

MR. BASKIN: As to where they were found in the car?

MR. SHEVLIN: I don't think that's important. They were found in the car. The car was impounded —

THE COURT: Well, he wasn't there. I doubt if he could give very good answers on it. Probably one of the other witnesses could.

BY MR. BASKIN:

Q Officer Trumble — that's all the questions I have. Thank you.

THE COURT: Do you have anything more, Mr. Shevlin?

MR. SHEVLIN: No, sir; no further evidence, Your Honor.

THE COURT: Do you wish to call any of these other witnesses, Mr. Baskin?

MR. BASKIN: Your Honor, to save time, I believe Mr. Shevlin has a stipulation.

MR. SHEVLIN: We stipulate that the cocaine was found in the glove box and the trunk, suitcase in the trunk. Two different quantities.

THE COURT: Some found in the glove compartment and some found in the trunk.

MR. SHEVLIN: Yes.

THE COURT: Can you stipulate whether either or both were locked?

MR. SHEVLIN: Is that relevant?

THE COURT: I don't know. I'd just like to get it on the record.

MR. SHEVLIN: The trunk was locked and the glove box was unlocked, but both were closed.

MR. BASKIN: If Your Honor please, I am prepared to argue at this time, if I may.

It's clear from the officer's testimony, Your Honor, that he didn't feel at the time that the gun was concealed or he could have arrested him at that moment. And he didn't do it. I think that

[Transcript: June 6, 1973
P. 5, Line 6 to P. 22, Line 3
Officer Henry T. Trumble, Jr.]

MR. BASKIN: He was, Your Honor.

THE COURT: So what you're doing, in effect, is extending your cross-examination of him?

MR. BASKIN: If I may.

THE COURT: Yes, go ahead.

CROSS EXAMINATION (Resumed)

BY MR. BASKIN:

Q Officer Trumble, you are the officer that testified in this matter on -- the last time it was before the Circuit Court about two weeks ago. Is that correct?

A Yes, sir.

Q And the events which you testified concerning occurred on the 4th day of March, 1973?

A Yes, sir.

Q Now, on that day, sir, when you first encountered Mr. Leatherwood on the parking lot of Lee Gardens, at that time, sir, did you have a probable cause to believe that he had committed a felony?

A No, sir.

Q Did you actually see him commit a misdemeanor in your presence?

A No, sir.

Q All right.

Now, your next encounter was some minutes later up the road at 12th and Barton Street, or in that vicinity, right?

A Yes, sir.

Q And at that time you had no probable cause to believe that he had committed a felony, had you?

A No, sir.

Q Did you see him commit a misdemeanor in your presence at that point when you first encountered him?

A I didn't see him, no, sir.

Q Okay.

Now, you asked him to present to you his operator's license and registration. Is that correct?

A Yes, sir.

Q And he showed you proper credentials. Isn't that correct?

A Yes, sir.

Q At that point had he committed a misdemeanor in your presence?

A I didn't see him commit a misdemeanor.

Q And you, at that point, still had no probable cause to believe he had committed a felony. Is that correct?

A That's correct.

Q Now, when you radioed to see if he was wanted, prior to doing so, you asked him if he was. Isn't that correct?

A Yes.

Q And he said he was not. Right?

(No response.)

Q That turned out to be a truthful answer. Isn't that correct?

A In a manner of speaking, yes, sir.

Q Okay.

If you have any reason to believe --

THE COURT: (Interposing) Didn't you have a report that later turned out to be incorrect?

THE WITNESS: Yes, Your Honor. It was reported he was wanted. The next day in court it was decided that he was not. At that particular time he wasn't wanted.

BY MR. BASKIN:

Q Now, when you made this radio call, sir, you had in your possession his registration and operator's license. Isn't that correct?

A Right.

Q Was he free to leave at that point?

A No, sir.

Q As a matter of fact, he would have committed the misdemeanor of driving without a license and without registration if he had left.

A Yes, sir.

Q You told him to remain there?

A Yes, sir.

Q Officer, what would you have done if he tried to leave?

MR. SHEVLIN: I object. I don't think that is really relevant what he would have done if he tried to leave.

THE COURT: Objection sustained.

BY MR. BASKIN:

Q In any event he was not free to leave.

A Yes, sir.

Q And the detention persisted for 15 minutes. Is that correct?

A It took approximately 15 minutes for the return, yes, sir, on the radio, yes, sir.

Q Now, up to the time that the radio message came back that there was an outstanding violation of probation warrant, you didn't have probable cause to believe that he

was discharging fireworks, did you?

A I believed he had discharged the fireworks, yes, sir.

Q Well, isn't it a fact that you testified in the county court -- and I quote you -- "I could not swear that he did it"?

A You didn't ask me to swear, you just asked me what I believed.

Q I asked, did you think he did it, and that was your voluntary answer.

A I thought he did it. I couldn't swear that he did it.

Q But that's exactly what you have to do in order to get a warrant for his arrest, is it not?

A Yes, sir.

THE COURT: Didn't you testify previously, Officer, that a skyrocket came out of a bush aimed more or less at your patrol car?

THE WITNESS: Across the road in front of the car, yes, sir.

THE COURT: Was he in the vicinity of the area in which that skyrocket emanated?

THE WITNESS: Yes, sir, he was.

MR. BASKIN: He also testified, Your Honor, that he was first in a crowd at Lee Gardens among which Mr. Leatherwood was a member.

THE COURT: I understand.

BY MR. BASKIN:

Q How many people did you disperse at Lee Gardens?

A I would estimate a dozen.

Q A dozen.

And you were there to investigate a complaint of fireworks, among other things, or disorderly conduct, loud noise, et cetera?

A Yes, sir.

Q And this rocket went off how soon after you dispersed that group?

A Five minutes, between five and ten minutes.

Q It could have come from any one of those 12 at Lee Gardens?

A With the exception of -- well, half of the group, most definitely, it could not have come from because I followed them out and they made a turn in the opposite direction. There were some in the group that could have went that way.

Q Six other individuals by your own estimate?

A Yes.

Q Okay.

Now, was there anything in the reason that you stopped him and asked him if he was wanted? Was that in any way related to the reason you were in the vicinity, specifically to fireworks?

A I don't understand the question exactly.

Q Well, when you were investigating whether or not he was wanted for anything, that wasn't specifically relevant to the fireworks, was it? Or was it related to it?

A It was my intention to discuss the fireworks with him but I -- first though I thought it would be a good idea to check him and see if he was wanted for something much more serious.

Q That was your subjective thought. You didn't announce that, right? You say -- you didn't say, "Wait, wait a minute. I want to discuss these fireworks." That was just in your mind. It was not articulated, right?

A No, I didn't tell him at that time, no.

Q Okay.

So -- so when you asked him to remain while you

held his permit and registration you were not investigating anything in particular, were you, as to why you were there that night, related to why you were there that night?

A Well, perhaps I didn't make myself clear the first time.

When I approached his car it was my intention to discuss the fireworks with him and, in particular, to ask him if he had, in fact, shot off the rocket. But, first, I would like to know if he was wanted for something much more serious before I take the time to discuss with him on the roadside something like fireworks.

Q But, in actual fact, you never announced that. That was just your subjective intention in your mind, Correct, as far as --

A Right, the fireworks hadn't been discussed, right. It was my intention to discuss them but they never came up. The other --

Q As far as you were concerned the question of whether or not he was wanted was an independent matter, independent of the fireworks.

A Independent of the fireworks, but it was a matter I would like to get cleared up.

Q Okay.

Is there any particular thing about what -- about what Mr. Leatherwood did or about any information that you had that would have prompted you to ask him is he wanted for anything? You do that in every case when you stop somebody and ask them for license and registration and they show it to you? Doyyou do that in every case?

A Not in every case, no, sir.

Q Did you articulate before any facts or circumstances or knowledge that you had at the time, either from Mr. Leatherwood or independently, at that time, that would prompt you to ask him -- to ask him that question?

A Not firsthand knowledge, no, sir.

Q Secondhand knowledge?

A I had been told around that Mr. Leatherwood was involved in narcotics.

Q Okay.

But other than that rumor, or hearsay, nothing?

A Right.

Q Nothing tangible, nothing that you could write down on paper.

A Right.

THE COURT: I take it you knew him, Officer?

THE WITNESS: I knew who he was, yes, sir. I had never spoken to him but I recognized him when I saw him.

BY MR. BASKIN:

Q Do you work pretty regularly with the narcotics squad?

A No, sir.

Q Does the narcotics squad discriminate information as to who they think is trafficing to officers like yourself on routine patrol?

A Not sir. Not generally they don't, no, sir.

Q Okay.

Did they do it in this particular case?

A No, sir.

Q Where did you get the idea then that he may be wanted for -- or be trafficing in narcotics?

(No response.)

Q You didn't get any that night. You didn't get any from the narcotics squad. You don't work with them.

A Right.

Q Where did you get it from?

THE COURT: Well, I don't think he should have

to disclose any -- just to find out if it's within the police department. Is that what you want to know?

MR. BASKIN: Or if it came from any of the sources enumerated. If he wants to say it comes from, you know, classified information that's fine. But I specifically ask for, from those three sources. Does he work with them? Does the information get disseminated to the squad rooms from the narcotics squad or did he get any that night?

THE WITNESS: In response to those three questions the answer is no.

BY MR. BASKIN:

Q Okay.

Now, Officer Trumble, when, that night, did you place Mr. Leatherwood under arrest?

A You are asking me in the chain of events or the time?

Q Yes, in the chain of events in the circumstances.

A When -- when I asked him to get out of the car, and he did, and I placed the handcuffs on him. After I had patted him down that's when --

Q It was after you patted him down that he was under arrest and put the handcuffs on?

A No. He was,,in my mind, under arrest when he got out of the car.

Q He was?

A Yes.

Q Not before?

A No.

Q All right.

Isn't it a fact, Officer Trumble, that you testified in the County Court, sir, that he was under arrest only after you put the handcuffs on him?

A Well, when he got out of the car the first thing I did was ask him to put his hands on top of the car and he did. Then I patted him down and put the handcuffs on him. That's when he was under arrest.

Q Not before?

A No, sir.

Q All right, sir.

And I presume, before you put the handcuffs on him, that you spread-eagled him on the car, as you say, feet and legs spread and his hands up against the car?

A Well, he put his hands on top of the car. That was enough.

Q He wasn't arrested at that point?

MR. SHEVLIN: Objection. That calls for a legal conclusion.

THE WITNESS: Yes, I think it does.

BY MR. BASKIN:

Q Well, let me ask you this, Officer Trumble. How many people do you spread-eagle on the side of your car and search down for weapons that aren't under arrest?

MR. SHEVLIN: Objection. It's not relevant.

THE COURT: You might ask whether the officer considered him under arrest.

MR. BASKIN: That's the question he just objected to.

THE COURT: No, you had, was he under arrest?

MR. BASKIN: I'll abandon that line of inquiry at the moment, Your Honor.

BY MR. BASKIN:

Q What was the precise statement made by you, sir, when you told him to get out of the car? I think I wrote it down. Let me refresh your memory.

A Okay.

Q Did you not say, Officer Trumble, "Get out of the car, you'll have to go with me"?

A Yes, sir, that's what I said.

Q That's when you got the radio call back. Is that correct?

A I got the radio message just prior to that, yes.

Q Okay.

And in response to that radio message that's precisely your words. Is that correct?

A Right.

Q Now, at that point, sir, when you placed him under arrest, at that very moment before he moved, before he did anything other than listen to your words, did you see him commit a misdemeanor in your presence?

A I didn't see him, no, sir.

Q Did you have probable cause to believe he had committed a felony?

A No, sir.

Q It was only after that in response to your command that he kicked the blanket off the gun which prompted you to arrest him or which prompted you, after you arrested him, to go back and get the weapon that resulted in everything else?

A Yes, sir.

Q Now, Officer Trumble,-- Your Honor, I will touch on this very briefly even though it may appear to be

violating the Court's provision to not go into anything. I think it's relevant. It's only going to cover two questions concerning the search -- Officer Trumble, you participated in the search. Is that correct?

A Of the car you're referring to?

Q Yes.

A Yes, sir.

Q And in company with how many other persons?

A Three.

Q Would you name them, please?

A Officer Kogle, Detective Emery and Ice.

Q The two detectives, Ice and Emery, are narcotics detectives?

A Emery, yes, sir. Yeah, they are narcotics agents.

MR. BASKIN: May I have the Court's indulgence to review my notes? There has been testimony twice downstairs and I have got them on two separate pads.

BY MR. BASKIN:

Q Officer Trumble, when the inventory or search of the car took place where was the defendant?

A Where was the defendant?

Q Yes.

A He was at that time incarcerated.

Q Away from the car?

A Yes, sir.

Q Going back to the fireworks, sir, when you were going up the hill after the smoke had cleared, I gather from your testimony that you had trouble seeing anything. There was a vast amount of smoke in the area where the fireworks were discharged. Is that correct?

A Yes, sir.

Q Now, do you recall testifying in the County Court, or did you not say -- let me put it to you this way. And tell me if this is a correct quote from yourself, sir -- "Whoever must have shot it off must have been on foot." That is what you were thinking at the time?

A Yes, right, that was my thought at the time.

Q And that's what you stated it to be in the County Court, all right.

And it's a fact, is it not, that Mr. Leatherwood was arrested, or first encountered by you in his automobile?

A Yes, sir.

Q There was no question in your mind, was there, that these credentials were proper, his operator's License

and registration?

MR. SHEVLIN: I will stipulate that it was.

MR. BASKIN: Okay.

BY MR. BASKIN:

Q Okay.

And you held it all during the time after you initially stopped him until you arrested him in your physical possession. Right?

A Yes.

Q Now, just one final question, Officer Trumble.

Did you not say, in response to a question in this regard from me downstairs, that your thought, after you took Mr. Leatherwood away in the wagon, did you not say this, sir, "The proper thing to do was to get a warrant"? That was your thought anyway.

MR. SHEVLIN: Would you clarify what kind of a warrant?

MR. BASKIN: A search warrant.

MR. SHEVLIN: I object to that. It's not relevant since it has already been testified in this Court that it was an inventory search. So whether or not he needed to get a warrant or whether or not he thought he needed to get a warrant is irrelevant.

THE COURT: I think that's correct. You stipulated the search warrant was based on an invalid affidavit and didn't rely on it anyway.

MR. BASKIN: No further questions.

MR. SHEVLIN: No questions.

I would like the record to note that I would incorporate Officer Trumble's former testimony. I would like the record to reflect that there was other testimony that should be considered in light of this motion.

THE COURT: Well, the record should show that this is, in effect, a continuation of the previous hearing on a motion to suppress and the record should be read together. This is done by leave of the Court because Mr. Baskin requested permission to amplify the testimony.

MR. BASKIN: Yes, sir.

Just as a point of information, has Your Honor prohibited me from arguing or stating in the record additional research that I have made that concerns the Court's earlier ruling? Is that a prohibition, if the Court please?

THE COURT: No, sir. If you want to add anything that's new go ahead.

[Transcript: June 6, 1973
P. 71, Line 10 to P. 140, Line 5]

[Officer Trumble: P. 71, Line 10 to P. 111, Line 23]

[Officer James R. Kogle: P. 112, Line 21 to P. 124, Line 9]

[Bench Conference: P. 124 to P. 126]

[Detective Ruth Emery: P. 127, Line 2 to P. 140, Line 5]

to acquit this man of that charge for the reason that the Commonwealth has failed to prove his guilty

THE COURT: First witness.

MR. SHEVLIN: Officer Trumble.

Whereupon,

HENRY T. TRUMBLE, JR.,

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

DIRECT EXAMINATION

BY MR. SHEVLIN:

Q Please state your name and your occupation.

A Officer Henry Trumble, Arlington County Police Department.

Q How long have you been with the police department, Officer Trumble?

A About three and a half years.

Q Officer Trumble, do you know the defendant in this case, Barry Leatherwood?

A Yes, sir, I do.

Q Did you have occasion to see him on March the 4th, 1973?

A Yes, I did.

Q Under what circumstances did you first see him that evening?

A Approximately 20 minutes after 10:00 that night, the night of the 4th. I responded to a call -- a radio call -- as a result of a complaint by a citizen of disorderly kids and fireworks being shot off in the rear of the 2200 block of North 11th Street, the apartments. I responded along with another officer to that location. Mr. Leatherwood was present in the group that was there and --

Q Would you please identify Mr. Leatherwood?

A He is the defendant, the gentleman in the white checkered, flowered shirt.

Q Let the record reflect that the witness identified the defendant.

Please go ahead.

A When we first arrived on the scene there were, I would estimate, a dozen kids or more standing around sitting and laying on cars. I asked -- and, generally, to no one particularly -- "Who had the fireworks?" Nobody answered. So I told them that they would have to leave, that they were disturbing the people who lived in the apartment. This was complied with, and the whole group --

the entire group -- got in their cars and went their various ways. Mr. Leatherwood was there at that time seated in his car, his Oldsmobile. He was, I believe, one of the first -- his car was the first car to leave. I remained there and waited to make sure that the rest of the group would comply with my wish that they leave the area. The wait was approximately five minutes, I guess. I waited until they all left.

At that time, I came out, drove up 11th Street to Barton Street, made a right on Barton Street to come to the station. As I approached 12th Street, a skyrocket -- a fireworks -- crossed the road in front of the car and went over the hood of the car, the scout car. I immediately stopped the scout car and looked to my left in the direction that the skyrocket had come from. At that precise instance I would see nothing, due to the smoke that the rocket had left. I sat there a second or so until the smoke cleared enough that I could see. And I turned onto 12th Street and drove up the hill, slightly up the hill, in the direction that the skyrocket had come from.

As I drove through the smoke I noticed the car, that I had seen Mr. Leatherwood in previously, parked on

the right-hand side of the road, but at that time I didn't notice anyone seated in it.

Q Did you look to see if anyone was?

A I glanced to the right, yes, sir, into the car as I came through the smoke. It appeared rather suddenly on the side. I glanced at the car and I saw no one sitting inside the car.

Q Now, precisely, at what point is this that the car is located?

A It was just beyond the first driveway. I would say --

Q Just the intersection would be close enoggh.

A 12th and Barton Street, North 12th Street in Arlington County.

Q Go ahead.

A As I drove by Mr. Leatherwood's car and I glanced over the side, it didn't appear that anyone was sitting in it. So I continued down 12th Street, the first block, thinking that possibly whoever had set the skyrocket off had ran and would naturally be running in that direction.

As I approached the first block, the end of the first block, I than realized that if they had have been

running they wouldn't have had a chance. There wasn't time for them to have run that far. So I then thought I must have missed them, so I went around the block, went down to Fairfax Drive, and turned right, went up to Barton, and turned right and came back. This is the first immediate block. I turned onto 12th Street the second time, pulled up off toethe right behind Mr. Leatherwood's car.

Q Had the car been moved?

A No, sir, it didn't appear to have been moved.

I shined the spotlight on the rear of Mr. Leatherwood's car and I noticed the passenger who had slumped down in the seat was looking back over the seat toward the light, toward me. It was then that I noticed the second person sitting behind the driver's seat. He was also slid -- he had also slid down in the seat. I could see the very top portion of the head. At that time I got out of the scout car, walked up to the driver's side of the automobile andquestion -- Mr. Leatherwood's Oldsmobile -- and asked both Mr. Leatherwood and his passenger for identification. They both got out of the car, one on either side, and Mr. Leatherwood showed me his driver's license and his registration card. The car was an

Oldsmobile. I can't recall the model but it was listed, according to the registration, to Mr. Leatherwood.

At that time I asked Mr. Leatherwood if he was wanted by anyone in any of the various jurisdictions around and he said he wasn't. I then asked him -- told him to have a seat in the car, that I intended to check over my radio to see if he was, inffact, wanted by anyone. This he complied with. He sat back in the car, as did his passenger. I took both identifications in the form of driver's licenses and ran wanted checks over the -- let me correct that, Mr. Leatherwood had a driver's license, the other subject did not. I believe he had -- the best I can recall, a social security card. I called over the radio and asked for wanted checks on both subjects. In a matter of time they called me back. I received a radio message that Mr. Leatherwood was wanted in Arlington County for violation of probation, the warrant being -- the detention order being signed by his probation officer. The passenger, Mr. Forro, was not, according to our records, wanted for anything.

At that time I approached -- again approached Mr. Leatherwood's car.

MR. BASKIN: May I interrupt the officer, Your

Honor, and approach the bench with counsel?

(Whereupon, the following proceedings were had at the bench by Court and counsel out of the hearing of the Jury.)

MR. BASKIN: I overlooked in my earlier objection on the record, Your Honor, that any reference to this violation of probation, if the Court please, is an improper suggestion to the Jury that this man has a previous record. And I do object to it and incorporate it into my earlier objection for that reason.

The officer may continue. I'm not going to make any more noise than that on the subject.

MR. SHEVLIN: I can clarify that to the Jury by saying, "Did the information turn out to be erroneous?"

MR. BASKIN: It still shows that he was on probation, Your Honor.

MR. SHEVLIN: No, it doesn't.

MR. BASKIN: Oh, it doesn't? What does it show?

MR. SHEVLIN: It could mean they had a wrong name.

THE COURT: I think he's entitled to develop all the circumstances that led up to this.

MR. BASKIN: For the record, I would like to note

that objection, Your Honor. Thank you.

(Thereupon, the following proceedings continued in the hearing of the Jury.)

BY MR. SHEVLIN:

Q The information you received concerning the probation violation, did you subsequently find out whether that was accurate?

A Yes, sir, I did. The following day Mr. Leatherwood appeared in county court in front of Judge Dodge, and it was established at that time that the --

Q Was it accurate or inaccurate?

A He was not, in fact, wanted.

Q Nonetheless, you did effect an arrest at that point, did you not?

A Yes, sir, I did.

Q Now, did you ask Mr. Leatherwood ---what procedure did you take in arresting Mr. Leatherwood?

A I approached Mr. Leatherwood's car and informed Mr. Leatherwood that he would have to go with me and to get out of the car. At that time he asked, "Why?" as I was opening the car door. I told him we had a warrant for him for violation of probation. He, by that time, had gotten out of the car. I asked him to place his hands on top of

the car, and I patted him down for weapons, placed handcuffs on him and escorted him back to the police car to have a seat in the rear. I was assisted in this by Officer Vogle who was also on the scene.

Q Again, what time of day was this?

A This must have been I would guess 20 minutes to 11:00, 25 minutes to 11:00.

Q In the evening?

A Yes, sir, at night.

Q How far, or what was the relationship of your car to Mr. Leatherwood's? Where was the position relative to his?

MR. BASKIN: Your Honor, if this is for the purpose of showing the chain of custody I have no reason to hear that evidence. I will stipulate that.

MR. SHEVLIN: This is not for that purpose.

MR. BASKIN: Okay.

THE WITNESS: I would say the procedure is slightly offset. The middle portion of my car is even with his left taillight so that my car offsets or blocks the traffic that would come while I was standing beside the door.

BY MR. SHEVLIN:

Q Why is that?

A Pardon me?

Q Why is that done?

A Why is it done, you say? Well, the idea is to allow the scout cars to take up enough of the inside lane to allow me an area of protection should cars come up behind the police car while I'm standing at the passenger side of the stopped vehicle.

Q How far away was your car from him?

A It was in that location approximately five to six feet, I would imagine, to the rear of his car.

Q What was the distance between the, say the back seat of your car and the front seat of Mr. Leatherwood's car?

A I would guess ten feet, ten or twelve feet.

Q There were five feet separating the cars?

A Yes, sir.

Q Well, couldyou estimate again? That means there was only three and a half feet from the back of his car to the front door, three and a half feet from the front of your car to the back door. Is that correct?

A Well, that's not very accurate. I would have to

increase that. I would say 15 feet then, I guess.

Q What were the lighting conditions at that scene?

A There is a light on Barton Street, on the opposite side of Barton Street at 12th, which is 150 feet.

Q The closest light 150 feet?

A To my knowledge, yes, sir. The headlights were on on my police car and the spotlight was on on his car. There was another scout car on the scene that also had its headlights on.

Q Now, did there come a time when you looked into the car?

A Yes, sir, there did.

Q Was this before or after Mr. Leatherwood was removed from the car?

A It was after.

Q Confining the area to the left front seat, was anything found?

A Yes, sir, I found a brown paper bag containing three plastic bags, and contained inside the plastic bags were round lumpy substances which I believed to be "hash."

Q Hash, meaning what?

A The marijuana, the Schedule One substance.

It's a condensed version of marijuana.

Q Could you specifically describe where in the car they were found?

A In the front-most and left-most corner underneath the seat, the driver's side. It would have been the driver's side, to his left and up in the front, very front part of the seat.

Q Were they fully under the seat?

A No, sir, they were not. They were protruding slightly from under the seat.

Q What was protruding?

A The brown bag had apparently been rolled up and had come unrolled. The bag part was open facing the front of the car, and one of the three plastic bags was in the mouth of the brown bag, the brown lumpsy substance being in the corner of the plastic bag and right at the mouth of the brown bag.

Q So how diligently did you have to search?

MR. BASKIN: If Your Honor please, may I note my continuing objection to counsel suggesting answers to the witness, please? Thank you.

THE COURT: That particular objection is overruled. I don't see anything leading about that.

Goahhead.

BY MR. SHEVLIN:

Q How diligently did you have to search?

A I leaned in the car and saw it, looked down and saw it.

Q You say, "looked down"?

A Yes, sir.

Q Be more specific than that, please.

A There was -- I leaned in the car with the intention of checking the seat just to the right of --

Q Checking for what?

A Weapons. I was looking for weapons.

When I leaned in the car to check for the weapons I was in the process -- I had my hat on, had to duck my head -- when I ducked my head, when my head went down, I naturally looked at the floor and that's when I saw the bag.

Q Where was Mr. Porro at this time?

A Mr. Porro was at that time -- was walking. He had been right in the general area. At that time he was walking on 12th Street towards Barton at my request.

Q He was not arrested. Is that correct?

A Right.

Q Was the car accessible to him about the time of your search or just prior to it?

A Just prior to it, yes, sir, it was. He got out of the car at the same time Mr. Leatherwood did,and did not get back in it but remained in the general area of the car until I asked him to leave.

Q Had you ever seen hashish before?

A Yes, sir, I have.

Q Approximately, how many times?

A Two separate cases that I can recall and the two different schools that I have attended. They had examples of heroin that were contained in displays for that purpose.

MR. BASKIN: Your Honor, I will stipulate that the substance was hashish,as described.

BY MR. SHEVLIN:

Q What did you do with the bag that you found under the driver's seat?

A I removed it from under the seat, fromthhe car, rolled it up and put it in my pocket.

Q Well, did you do anything with it prior to putting it in your pocket?

A I don't understand.

Q You took it out from under the front seat, apparently under the front seat. What was the next thing you did with it?

A With the bag?

Q Yes.

A Well, naturally I looked in it to see if there was more or what else was in it. I opened it up, and looked in it, and I could see then that it was what I had determined, that there was not only one, there were also two additional ones in the bottom half of the bag. I then rolled it up and put it in myppocket.

Q Was there any comment by Mr. Leatherwood at this time?

A Mr. Leatherwood at that time was seated in the rear of my police car.

As I withdrew from the car with the bag in my hand, Mr. Leatherwood made a statement to the effect that, "Be careful, that's good stuff," or words to that effect. I can't recall exactly.

Q Did you have anything else in your hand at that time?

A No, sir, I did not.

Q Was the bag in view of the rear of your car?

A Yes, sir, it was.

Q And was the comment made to you? Do you know?

A Was it made to me, sir? I assumed that it was, yes, sir.

Q Where was Officer Kogle at the time?

A Officer Kogle was, as I remember, was to my right. I thought he was at the door -- was in the vicinity of my scout car, I believe.

Q Now, at this point, Mr. Porro has departed. Is that your testimony?

A Yes, sir.

Q And Mr. Leatherwood is in the rear of your scout car?

A Yes, sir, in the left rear.

Q What then happened? Where was Mr. Leatherwood taken?

A Mr. Leatherwood was -- at that time the wagon arrived with the papers, with the violation of probation paper. He was taken out of the police car, read the violation of probation paper. He was given a copy of it, and then he was placed in the paddy wagon and transported to the station. The car was impounded.

Q Would you please describe to the Jury the

process of impounding a car when the driver is taken from it?

A Yes, sir.

When a driver --

MR. BASKIN: I'll stipulate to the chain of custody if that's what this is offered to show.

MR. SHEVLIN: It is not offered to show a chain of custody.

THE COURT: All right, go ahead.

BY MR. SHEVLIN:

Q Go ahead.

A The procedure is that we call one of the crane -- a crane service in the county, the county being divided up into service districts. Where there is no preference, or in a case of a driver arrested, where there obviously is no preference, whoever's district that that particular incident occurs in is called and they respond with a crane to take the car from that -- from the scene to the property yard down at South Arlington, off Arlington Mill Drive.

Q Are any precautions taken while that is being done?

A Any precautions?

Q Yes.

A Yes, sir. It is either gone through then for valuables,or it is observed and followed tbrthe property yard and then gone through for valuables

Q Do you know what was done in this case?

A Yes, sir, I do.

At my request, Officer Kogle remained with the car until the crane arrived. The crane hooked up the car and took it to the property yard, followed by Officer Kogle, and it was deposited at the property yard and watched by Officer Kogle until my arrival.

Q And that was the time they searched the car then?

A Yes, sir, they did.

Q By whom was it searched?

A It was searhhed by myself,and Officer Kogle, Detective Emery and Detective Ice.

Q And the purpose for the search was what?

A The purpose of the search was --

MR. BASKIN: If the Court please, may I approach the bench?

MR. SHEVLIN: I withdraw the question.

MR. BASKIN: Okay. Thank you.

BY MR. SHEVLIN:

Q Did you personally find anything additional in the car?

A I found a large quantity of fireworks in the trunk of the car.

Q Did you find any narcotics?

A No, sir.

Q MR. SHEVLIN: That's all the questions I have, Your Honor.

CROSS EXAMINATION

BY MR. BASKIN:

Q You found no narcotics in the trunk?

A I found no narcotics in the trunk, yes, sir.

Q Were any found in the trunk?

A Yes, sir, there was.

Q The -- which narcotic drug was found in the trunk, sir?

A I believe the Cocaine was found in the trunk, but I'm not aware that -- the fireworks were very bulky. I removed those from the trunk and began to order them, to put them in a list so I could keep track of them. The other officer continued the search.

Q Is it a fact, sir, that Detective Emery found the

Cocaine in the glove compartment?

A It may have been, yes, sir. I can't recall. I can't say exactly. My back was turned to the car during that part of it.

Q Okay.

Now, how many disorderly kids did you disperse?

A I would estimate a dozen.

Q Okay.

And Mr. Leatherwood left in his Oldsmobile. Is that correct?

A Yes, sir, he did.

Q Give us the make -- I'm sorry, the model and year of that car, please.

A I believe it's a '65. I can't recall exactly.

Q You had the registration in your possession, didn't you?

A Yes, sir, I did.

Q You can't tell exactly what it is?

A No, sir, I can't.

Q About a '65?

A Yes, sir.

Q Was there any occasion, or did you get any information as to whether or not Mr. Leatherwood was the

first original owner of that car or could he have been a subsequent owner of that car, the second or third owner, maybe the fourth or fifth?

A Yes, sir, he could have been.

Q The first encounter -- the second encounter you had with Mr. Leatherwood, he was, as you suggested, hiding in his car. Is that correct?

A He was sqrunched down in the driver's seat, yes, sir.

Q That's not against the law, is it?

A No, sir.

Q Okay.

Now, the gentleman named Forro. He was sqrunched down with Mr. Leatherwood, is that correct?

A Yes, sir.

Q He was occupying the front passenger seat. Is that correct?

A Yes, sir.

Q Was he with Mr. Leatherwood when you initially dispersed them over there at the Lee Gardens?

A I believe he was, yes, sir.

Q OKAY.

As far as you know, he had been in that car with

Mr. Leatherwood for quite some time. Is that correct?

A As far as I know, yes, sir.

Q Now, when you stopped Mr. Leatherwood after you found him in his car and you asked him if he was wanted for anything, he gave you a truthful answer, didn't he? He was not wanted for anything, in fact.

A Well, he gave me an answer that turned out to be truthful, yes, sir.

Q Thank you.

The fact that the radio communication said he was wanted for the violation of probation was a mistake by the police, was it not?

A Well, there was a mistake, yes, sir.

Q Yes. Thank you, Officer.

The driver's license that he showed you and the registration that he showed you were in order. Isn't that correct?

A Yes, sir, they were.

Q Now, when you pulled up behind, Officer Trumble, this man's car, and you got out, you say you were how many feet away your car was?

A I tried to leave a span of five to six feet between the rear of his car and the front of my car.

Q And you had your headlights on?

A Yes, sir.

Q Did you have your emergency equipment on?

A No, sir.

Q You had your radio on, didn't you?

A Yes, sir.

Q Was your engine running?

A Yes, sir.

Q And this gentleman was seated in it. Is that correct?

A He was seated in the rear.

Q And you had him in cuffs?

A Yes, sir.

Q And you say he made a comment to you, "Be careful." Is that correct?

A Yes, sir. He made a statement, "Be careful, that's good stuff," or words to those effect.

Q Now, you found a pistol in that car also. Is that correct?

A Yes, sir, I did.

Q The ownership of which is not determined. Isn't that correct?

(No response.)

Q You do not -- you have not determined --

MR. SHEVLIN: I would like the witness to have time to answer the question. I think he was thinking about a response.

MR. BASKIN: Fine, take your time, Officer.

THE WITNESS: Are you asking -- I don't understand. Maybe you'd better repeat the question. I don't understand.

BY MR. BASKIN:

Q Unless the Reporter corrects me for making a mistake, the question was, you had not determined the ownership of that pistol, had you?

A The pistol is not registered to Mr. Leatherwood, no, sir.

Q Isn't it a fact he told you he had been shooting that day, taking target practice with that pistol? Isn't that correct, earlier that day?

A Yes, he made that statement, yes, sir.

Q And there is nothing just on the face of that statement, the fact that someone is shooting at targets with a pistol, there is nothing inherently illegal in that, is there?

A Not if it's done in the proper place, no, sir.

Q Now, would the noise of the engine -- and I presume your radio was on at the time, was it, so that you could receive police calls while you were attending Mr. Leatherwood?

A The radio is turned on the entire time the car is in operation. It's not always -- there is not always a conversation on the radio.

Q And when there's not a conversation does it give out a noise of some kind?

A No, sir, it's quiet.

Q So it's just the sound of the engine running. Is that correct?

A Yes, sir.

Q And you could hear the sound of the engine outside where you were, as well as he could hear it inside where he was. Isn't that correct?

A I assume he could hear it, yes, sir.

Q Now, check your recollection carefully, Officer Trumble, and tell us whether or not the -- Mr. Leatherwood actually told you, in fact, to be careful of that gun because he had been shooting that day and it was loaded. Isn't that correct? It wasn't his reference to the --

A He made two references. I took the gun out of the

car, secondly --

Q Yes, but --

MR. SHEVLIN: I would like to hear the answer very much.

THE COURT: The objection is sustained. Let him finish his answer.

MR. BASKIN: He should answer yes or no and then explain. That's a --

THE COURT: Well, you didn't ask for a yes or no answer and I'll let him go ahead and answer it in his own way.

THE WITNESS: The first reference -- the statement Mr. Leatherwood made to me from the rear of the car while I was standing outside his was in reference to the -- "Be careful with that, it's good stuff," or words to that effect.

The second answer that he gave was in reference to the gun that I took out of the car.

BY MR. BASKIN:

Q I see. Over the sound of the engine, with Mr. Leatherwood being inside that police car and you standing outside, with that engine running, you could distinctly hear him say that?

A Yes, sir, I could.

BY THE COURT:

Q What did he say with reference to the gun?

A To the best of my recollection it was, "That's my" -- "Be careful, it's loaded," or words to that effect. He made reference to the fact that the gun was loaded.

Q Now, were these remarks that -- both the one as to the paper bag and the one as to the gun -- were these volunteered by him or were they in answer to some question that you or somebody else asked him?

A There were no questions asked him by me, Your Honor, and I don't believe Officer Kogle asked him any questions.

Q Where was the gun located?

A The gun was located on the seat under the rug that was being utilized for a seat cover. It was directly to the right of the passenger, between the passenger and the driver's side, but closer to the driver's side than the passenger side, if you separate the seat in half, Your Honor, underneath a rug.

Q This is a bench type seat, not a bucket seat.

A Right, a bench seat, yes, sir.

Q And the gun was concealed from view under a rug?

A It was hidden under a rug. I didn't see the weapon until I asked Mr. Leatherwood to get out of the car. In his body motion in getting out of the car he pulled the rug over off of the gun and I saw the gun just prior to his -- or while he was getting out of the car.

BY MR. BASKIN:

Q At that point Mr. Porro was also in the car, too, right?

A Mr. Porro was getting out. He had been in the car, yes, sir; he was getting out.

Q You didn't have any information to indicate that that was not Mr. Porro's gun, did you?

A No, sir.

Q Sitting on the front of this bench seat, he could have reached the position where you found it. Couldn't he have reached over and reached that gun?

A He would have to grab it by the barrel, but he could have reached it, yes, sir.

Q But you -- you distinctly recall him saying, "Be careful." Is that correct?

A With reference to the gun, yes, sir, and the drugs.

Q Now, Mr. Porro was in reach of the ash tray,

wasn't he, in the front seat of the car?

A I believe so, yes, sir.

Q And he was within reach of the glove compartment, wasn't he?

A Yes, sir.

Q Throughout the entire transaction that you have testified to, Officer Trumbee, you did not see any narcotic drugs in the actual physical possession of Mr. Leatherwood, did you?

A I found no drugs on him, in his pockets, and his coat and shirt.

Q Only in that car, either at the scene or sometime later.

A Under the seat of the car, yes, sir.

Q Scattered about in various parts of that car.

A Yes, sir.

Q The car was inventoried, you say, by four detectives -- I'm sorry, how many people?

A Four officers, yes, sir.

Q And two of them were narcotics detectives, is that correct?

A They are assigned to the vice unit of the police department, yes, sir.

Q Officer Trumble, you had hold of Mr. Leatherwood's operator's permit, did you not?

A Yes, sir, I did.

Q You had it about 15 minutes, did you not?

THE COURT: What's that got to do with this?

BY MR. BASKIN:

Q Do you know what Mr. Leatherwood's age is from that operator's license?

THE COURT: What's that got to do with it?

THE WITNESS: Do I --

MR. BASKIN: I withdraw it.

BY MR. BASKIN:

Q Now, isn't it a fact, Officer Trumble, that you had difficulty getting Mr. Porro to leave the scene of this arrest?

A Yes, sir, that's a fact.

Q You tried to get him to leave several times and he remained there. Is that correct?

A I asked him once to leave and he did not. The second time I asked him to leave -- I told him to leave, he left.

Q And aside from watching Mr. Porro and knowing that he was there, your physical activity was confined to

keeping this man in custody and putting him in the car. Is that correct?

A Yes, sir.

Q You had your eye on Mr. Porro at the same time when you were doing that, sir?

A No, sir, not at all times.

Q Having seen hashish before, Officer Trumble, do you have any idea, just looking at that stuff, if you can tell how old it is?

A How old it is?

Q Yes, sir.

A No, sir, I have no idea.

Q Just as it is possible for him to have been subsequentlowner of the car, that narcotic could have been there for some time also. Isn't that correct, either the hashish or those narcotics? Is that correct?

A Yes, sir, I guess you could say that.

Q How many hours after the car was removed from the scene, Officer Trumble, was the cocaine found pursuant to the search -- or, I should say, inventory or inventory search?

A I would estimate two hours, between two hours and two and a half hours.

Q And during that two hours the car was either in transit to the impounding lot or in the custody of another police officer. Is that correct?

A Yes, sir.

Q When you impounded the car at the site, put it on the crane, was it locked?

A Was it locked?

Q Did you lock it? Let's put it that way.

A No, sir, I did not lock it.

Q Did you see someone else lock it?

A When I left the scene the keys to the car were in the ignition. I got the key -- took the keys out of the ignition, rolled up the driver's side window, and asked Officer Kogle to secure the car.

Q In that regard, Officer Trumble, if the keys were in the ignition at that point how about before? Did you order Mr. Leatherwood to remove the keys when you arrested him,or did you take them yourself, or did you do neither?

A To the best of my recollection, the keys were in that ignition. They were never discussed; they were never mentioned.

Q To your knowledge, they were never removed until -- were they in the ignition at the time that Mr. Porro was

on the scene?

A Well, yes, sir.

Q Is there any particular reason why you didn't detain or arrest Mr. Porro for any one of these charges that arose out of either the drugs, or the weapon, or the fireworks, or any of that sort, or any of the other pieces of contraband that you found?

A I didn't believe they belonged to Mr. Porro.

Q I see.

You didn't believe they belonged to Mr. Porro?

A I didn't believe they were his, yes, sir.

Q There was nothing on the items themselves that would indicate to the contrary, was there, that they belonged to anyone exclusively?

A No. On the items that I have examined closely, no, sir.

Q How about the items that were found subsequent to the search that you participated in? Did any of those items have any indications on them that they belonged to one person as opposed to somebody else?

A Not that I am aware of, no, sir.

Q They were just found in that car?

A Yes, sir.

Q Officer Trumble, do you have any idea why it took four officers to inventory this car?

MR. SHEVLIN: Objection. I don't think it's particularly relevant.

THE COURT: Why it took four officers to inventory the car?

MR. BASKIN: Or search it.

THE COURT: I don't really see that it makes any difference if they had one man or several.

MR. BASKIN: All right, Your Honor, I withdraw the question.

Thank you, Officer Trumble. No further questions.

REDIRECT EXAMINATION

BY MR. SHEVLIN:

Q Officer Trumble, did you ask Mr. Porro if he had a driver's license?

A Yes, I did.

Q What did he say?

A He said he didn't have one.

Q I tried to stay away from the gun issue. I am sorry, I have to get into it now.

You took two things out of that car, didn't you?

A Yes, sir, I did.

Q What was the first thing you took out?

MR. BASKIN: Your Honor, again, he's suggesting answers to the witness.

THE COURT: The objection is overruled.

MR. SHEVLIN: He has already testified he took two things. I am just trying to get back into that area of questioning.

THE COURT: Your inquiry was to the order in which he took them out and I can't see anything leading about that.

BY MR. SHEVLIN:

Q Which was the first one you took out, Officer Trumble?

A The first item that I removed from the car was the drugs, was the brown bag containing what I believed were drugs.

Q Where was the gun at this point?

A The gun -- when I reached into the car to get -- to pull the rug back and saw the gun, the gun was, in my opinion, loaded and cocked. The hammer had been pulled back.

Q I'll have to go into this with more detail now. When was the fi[illegible] time you saw the gun?

A When Mr. Leatherwood got out at my request.

Q And you requested him to get out for what purpose?

A Well, I originally asked him to get out due to the radio message, that he was going to have to go with me.

Q That he was wanted?

A Yes, sir.

Q And in getting out, what did he do?

A What did he --

Q In getting out of the car.

A In getting out of the car he pulled the rug off the gun. When he twisted to get out of the car, the rug -- the opposite corner of the rug came up, flipped up over the top of the gun, exposing it to my view.

Q Was that the first time you had sight of the gun?

A Yes, sir.

Q Describe the position of the gun, if you would, handle and barrel. Which side?

A The barrel was facing the right rear of the car. The handle was closest to the driver as if someone had set it like this (indicating) on the seat.

Q And Mr. Leatherwood was then removed from the car?

A Yes, sir.

Q And placed where?

A All right.

When he immediately got out of the car I had him come around and placed his hands on top of the car. Then I patted him down to see if he had any additional weapons in his pockets or hidden about his person somewhere. I found none. I placed the handcuffs on him. And myself and Officer Kogle walked him back to the scout car.

Q And then you went to the car. Is that correct?

A Yes, sir.

Q What was your purpose in going back to the car?

A To get the gun.

Q Describe to the Jury, please, how you went in to get the gun.

MR. BASKIN: The point that he's trying to make has been covered. I don't see the relevance in the remainder of the questions along that line.

THE COURT: Well, he didn't mention this gun in direct examination at all and you brought it out in cross-examination. It seems to me he can now develop it, get it in context.

The objection is overruled.

MR. BASKIN: The context was confined to the comments later on in reference --

THE COURT: I understand and I know what the defendant's contention is with respect to that. He has a different contention and I think each of you has a right to develop your own version of it.

The objection is overruled.

MR. SHEVLIN: If Your Honor please, I would like to explain my position if I may.

I tried to stay away from the gun because of the inflammatory nature of that testimony. But when it was brought out, I don't want the Jury now to think that I am hiding something, that I misled Officer Trumble through all the discussions --

THE COURT: All right.

MR. SHEVLIN: -- on direct. I would like them now to know the true facts, exactly what happened.

BY MR. SHEVLIN:

Q In going to get the gun, how did you do it?

A The door -- the passenger side -- the driver's side door had never had -- had remained open and I just reached inside the car, put my hand on the floor in front of the seat to enable me to reach into the car to get the

gun.

Q This is when you looked down and saw the bag?

A Right, then I saw the brown bag.

Q On seeing the bag what action did you immediately take?

A What?

Q Or next take?

A When I saw the bag a portion of my hand was resting on the bag. I pulled the bag slightly out of the seat. My intention was at this time to take them both, just take the bag in my left hand and the gun in my right hand. But when I saw that the gun was cocked and -- I have had some experience with that type weapon. If it is cocked and there is a round in the chamber, it takes two hands to unload it. It takes one hand to hold the slide to pull it back and the other to hold the frame. So I thought it best at that time just to empty my left hand. So I took the bag out and placed it in my pocket. And then went back with two hands to get the gun.

Q Was there a comment made when you took the bag out first?

A Yes, sir. That was when Mr. Leatherwood stated, "Be careful with that stuff, it's good stuff."

Q And then what did you do after that?

A Then I reached back into the car and took the pistol. And I took the clip out of the pistol. It contained the bullets -- the part that contained the bullets -- pulled the slide back to see if there was a round in the chamber. The gun was --

Q Was there any conversation at that point?

A Well, this was done as I was leaning in the car. When I straightened up with the gun was when Mr. Leatherwood stated, "Be careful with that, it's loaded." And then there was some reference made to target shooting.

Q In fact, was it loaded?

A There were rounds in the clip that were in the gun, yes, sir.

Q MR. SHEVLIN: Thank you, that's all I have.

RECROSS EXAMINATION

BY MR. BASKIN:

Q In connection with your statement, Officer Trumble, that the gun was in the position as though someone had laid it down by the handle, someone unfamiliar with the handling of a pistol could just as easily have grabbed it by the barrel and laid it down in the same

position, couldn't they?

MR. SHEVLIN: I object. That calls for a conclusion of the witness.

MR. BASKIN: Well, if the Court please, he speculated on how it was laid down to begin with in response to Mr. Shevlin's question. Certainly --

THE COURT: Your question is, could it have been laid down by the barrel as well as by the handle?

MR. BASKIN: Yes, by someone inexperienced in handling weapons.

THE COURT: The answer is obvious. It could have been laid down upside down or any way.

MR. BASKIN: Exactly.

Thank you, Officer, that is all.

MR. SHEVLIN: I have no further questions.

THE COURT: All right.

Will either of you want Officer Trumble any later in the case?

MR. SHEVLIN: I don't believe so, Your Honor.

THE COURT: How about you, Mr. Baskin?

MR. BASKIN: No, I don't think so.

THE COURT: Fine. You are excused. Thank you very much.

(Witness excused.)

THE COURT: Gentlemen, we will recess for an hour for lunch. Please don't discuss the case or permit it to be discussed in your presence. And don't come to any final conclusions about it. If you should hear any conversation concerning this matter by any bystanders in the elevator, or in the hall, or anywhere else don't hesitate to cut it off by telling them that you are on this Jury, you are not supposed to overhear anything concerning the case.

The Court will recess until a quarter to 2:00.

(Whereupon, at 12:40 o'clock p.m., the trial was recessed to reconvene at 1:45 o'clock p.m.)

AFTERNOON SESSION

(Whereupon, the Court reconvened at 1:56 o'clock p.m.)

(Whereupon, the Jury returned to the box at 1:57 o'clock p.m.)

Whereupon,

JAMES R. KOGLE,

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

DIRECT EXAMINATION

BY MR. SHEVLIN:

Q Officer, please state your name and your occupation.

A James R. Kogle, police officer, Arlington County, Virginia.

Q On March 3, 1973, what was your assignment on that day?

A March 4th?

Q I mean March 4th, excuse me, 1973.

A On March 4th I responded initially at approximately, oh a little after 10:00 o'clock in the evening, to the area of 12th and Barton Street at the park there. They had had some complaint of fireworks being set off. I patrolled the area. Officer Trumble at that time went in with me, of course, in his own cruiser.

Q You are in different cruisers?

A Yes. And at that time I found nothing.

Q Did there come a time subsequently when you were in the presence of -- when you and Officer Trumble arrested this defendant, Mr. Leatherwood?

A Yes, sir.

Q After the arrest were you present when

Mr. Leatherwood was transported via police vehicle away from that scene?

A I remained on the scene. I was present when Officer Trumble effected the arrest. I was his back up unit at that time.

Q What was done with the car after the arrest was made?

A After the arrest was made the keys were turned over to me.

Q Who turned them over?

A Officer Trumble.

I secured the vehicle, rolled up the windows, locked it up, and like that.

MR. BASKIN: Sorry, I couldn't hear you.

THE WITNESS: Oh, I secured the vehicle. I made sure the windows were rolled up, the doors were locked and that the keys were in my possession. Birchell's crane responded, hooked up with their crane to the vehicle and took the vehicle to the property yard in the impounding lot.

Q BY MR. SHEVLIN:

Q Was the trunk locked at this time? Do you know?

A Yes, it was, sir.

Q And did this vehicle escape your sight?

A No, it did not. I followed directly behind the crane at all times.

Q Approximately, how long thereafter was the search made of the vehicle?

A Approximately, I'd say, an hour and a half to two hours, maybe.

Q And during the span of time, that hour and a half to two hours, where were you in relation to the vehicle?

A My cruiser was parked right behind it. I kept the vehicle under constant observation.

Q When the search was made where were the keys?

A The keys were in my possession.

Q To whom did you turn them over?

A To Officer Trumble.

Q And was that when the car was first unlocked?

A No, I unlocked the car at, I'd say, approximately 1:00 o'clock in the morning. Officer Trumble contacted me by radio and requested the vehicle identification number from the vehicle. I had to open the driver's side door and the vehicle identification number was affixed to a plate that is mounted right inside of the frame. I copied the number, gave it to Officer

Trumble over the radio and then locked the vehicle up. And it was not opened again until Officer Trumble responded.

Q And who was with Officer Trumble when he did respond?

A Officer Trumble responded by himself. And within oh, just a very short time period -- probably just a couple of minutes -- Detective John Ice and Detective Ruth Emery, of the special unit, arrived on the scene.

Q And prior to their arrival had anyone else had access to that car?

A No, sir.

MR. SHEVLIN: That's all the questions I have.

CROSS EXAMINATION

BY MR. BASKIN:

Q So when youggot on the scene was Mr. Porro still there?

A Yes, he was, sir.

Q For how long after you arrived did Mr. Porro remain around the car?

A Mr. Porro was -- well, from the time I arrived on the scene, I backed Officer Trumble momentarily after he marked out on the radio with the vehicle. Mr. Porro -- after the arrest was made of Mr. Leatherwood, Mr. Porro was

asked to leave about that time.

Q How much time elapsed from the time you got there until the time he was asked to leave?

A From the time I arrived on the scene and the time he --

Q Left.

A I'd say approximately half an hour.

Q About a half an hour.

A Approximately.

Q What were you doing at the time, assisting Officer Trumble?

A Correct.

Q And what was Officer Trumble doing? Was he putting -- patting down Mr. Leatherwood, putting the cuffs on him, putting him in the squad car?

A When I arrived Officer Trumble had basically done nothing except marked down the vehicle. He was out of his car at that time. Officer Trumble got identification from Mr. Leatherwood. I was on the passenger side of the car obtaining identification from Mr. Porro. We both returned to Officer Trumble's cruiser and --

Q You say, "we." You mean Officer Trumble and you?

A Officer Trumble.

Q Okay.

Porro didn't go back to the cruiser, did he?

A No, he remained in the car.

Q Staying in the car.

And for how long did he remain in the car, sir? until the radio message came back?

A Correct.

Q And that was about 15 minutes?

A Approximately.

Q And then it was at that point that Mr. Porro got out and Mr. Leatherwood was ordered out?

A Mr. Leatherwood got out of the vehicle and we had Mr. Porro get out of the vehicle.

Q I see.

So he was in there for a total of 15 minutes at least from the time that you arrived on the scene?

A Yes.

Q Could you tell, from listening in on the radio, what time Officer Trumble -- how much time, about how much time elapsed from when Officer Trumble initially got there and you got there?

A And I got there?

Q Yes.

A I would say only a few -- just a few minutes because I was only about three or four blocks from him.

Q So it would be 15 minutes plus hhnn Porro was on the scene, plus the few minutes of time that it took you to get there?

A Probably, yes, sir.

Q Now, when Officer Trumble was effecting the arrest, and securing the pesson of Mr. Leatherwood by handcuffs and removing him to his cruiser, what were you doing?

A I was standing in the middle of the street.

Q Wereyouullooking at anything in particular?

A I was just keeping my eyes on Mr. Leatherwood.

Q And he was outside of the car at that time spread eagle up against it, right?

A No, not at that time.

Q When he was frisked he was up against the car in that position?

A Right.

Q You were watching that?

A Yes.

Q And did you observe Officer Trumble put the cuffs

on?

A Yes, I did.

Q And did you observe him take Mr. Leatherwood back to his cruiser?

A I did.

Q Where was Porro during all this time?

A He was around the front of the vehicle, if I remember correctly.

Q And you left the passenger door open, didn't you?

A I can't recall that.

Q The window was open, wasn't it?

A I believe so but I'm not positive.

Q Mr. Leatherwood's door was open, wasn't it? He left it open when he got out.

A Again, I'm not positive.

Q So, one, possibly two doors open, probably both doors were open. The windows were open?

A It's possible.

Q Can you give us any specifics as to precisely where Porro was during all this time?

A As far as I recall, Mr. Porro was around in front of the vehicle. As soon as Mr. Leatherwood was handcuffed, Officer Trumble and I moved him to the rear of

Officer Trumble's cruiser, put him in the back seat, and he remained there at Officer Trumble's cruiser when Mr. Leatherwood and Officer Trumble went back up to the vehicle, to Mr. Leatherwood's vehicle.

Q Did Officer -- did you close Officer Trumble's door?

A Yes.

Q The door was closed?

A The back door was closed.

Q Was any door of Officer Trumble's car remaining unopened -- closed -- open?

A No, the doors were all closed.

Q What was the condition of the windows in that car?

A The driver's side window was down.

Q Was down.

The engine was running?

A I believe so, yes.

Q Headlights on?

A I believe so.

Q Emergency equipment on?

A Not at that time, no.

Q Radio on?

A Yes.

Q Now, at the time you were standing there you have a little radio strapped to your belt, too, don't you?

A Yes.

Q Was that turned on?

A Most probably.

Q Any conversation going on between you and Officer Trumble?

A Nothing specific that I recall.

Q Was there any conversation going on between you and Mr. Leatherwood?

A Not directly between us. Mr. Leatherwood made several remarks but not direct conversation.

Q Was Mr. Leatherwood's vehicle engine running?

A No, it was not.

Q MR. BASKIN: Thank you, sir, that is all.

REDIRECT EXAMINATION

BY MR. SHEVRIN:

Q Officer Kogle, what remarks was Mr. Leatherwood making?

A Well, at the time, Officer Trumble reached into the vehicle and he came out with a nine millimeter Browning high power semi-automatic pistol. Mr. Leatherwood yelled

out that it was loaded and to be careful. At that time, Officer Trumble removed the magazine from it and pulled the slide back to make sure that there was not a round in the chamber. Then Officer Trumble removed a paper bag from under the seat, and Mr. Leatherwood made the comment -- he yelloddout in a very loud voice something to the effect that, "That's good stuff," or something to that effect.

Q Were you able to clearly hear that?

A Yes. I was standing, at the most, 10 feet from him. He was in back of the police cruiser at that time and I was standing next to the cruiser watching.

Q How far was Officer Trumble from Mr. Leatherwood?

A I'd say maybe 30 feet at the most, because there was -- he was up by Mr. Leatherwood's car. There was maybe a car length between the police cruiser and Mr. Leatherwood's car.

MR. SHEVLIN: Thank you.

RECROSS EXAMINATION

BY MR. BASKIN:

Q What he was referring to in that bag was not cocaine, was it?

A I don't know at that time.

Q Well, what turned out to be the contents of that

bag was not cocaine, was it?

A No, it wasn't.

MR. BASKIN: Thank you, sir, that is all.

MR. SHEVLIN: No further questions.

THE COURT: Will either of you need him any further, gentlemen?

MR. SHEVLIN: I will not, Your Honor.

MR. BASKIN: No.

THE COURT: You are excused and free to go.

MR. SHEVLIN: Detective Emery.

MR. BASKIN: May I approach the bench with counsel?

THE COURT: Yes.

(Whereupon, the following proceedings were had at the bench by Court and counsel out of the hearing of the Jury.)

MR. BASKIN: I have reason to believe, Your Honor, that the subject matter of Miss Emery's testimony, among other things, is going to concern matters that, again, have no direct bearing on this case. Supposedly, she found a scale -- balance -- in the trunk of the car. Statute, by law, doesn't make that necessarily in and of itself paraphernalia. There is no evidence from the

subsequent laboratory report -- that will be introduced -- that it was ever analyzed and, if it was, that it contained any contraband.

And, again, the Commonwealth is attempting to do by prejudicial and non-related evidence, what it cannot do directly, and that is put the man in possession of that cocaine. It's prejudicial. It makes reference; it suggests improperly that he may be in business of selling it. He is not charged with selling. The charges are mutually exclusive of the fact that one who possesses it does necessarily mean sells it. And for the Commonwealth to suggest that by that evidence that he does is improper.

MR. SHEVLIN: That's the same objection that was made earlier and my response would be the same.

MR. BASKIN: If the Court please, the transaction -- the response that was made earlier was in connection with evidence that I was trying to keep out concerning fireworks, concerning, you know, things that are part of the -- I hate to use the word, but res gesti, you know, part of the transaction when he was arrested. This took place three hours later -- two hours later. And there is no mention of it in connection with the transaction that occurred. The gun was found; the

fireworks. The arrest was for fireworks. Hash was found in the car.

Again, I say they are still unrelated. This is part of that continuing objection. But the suggestion by the scales that the man is in the business of selling is improper in the trial of this case.

MR. SHEVLIN: It's not the suggestion I'm making. All I'm trying to do is show that, by that, by the large amount of narcotics and narcotics-related paraphernalia in that car, which was admittedly owned by the defendant, the inference can certainly be drawn that he knew about the narcotics in that car which were not in plain view. I'm introducing all of this to show, by the totality of the circumstances, that this defendant did, in fact, know and own all the narcotics in that car.

THE COURT: The objection is overruled.

MR. BASKIN: He can't even put him in possession of it, Your Honor, to begin with, the cocaine. He's got i him in possession of everything else and that's not before the Court.

(Thereupon, the following proceedings continued in the hearing of the Jury.)

Whereupon,

RUTH A. EMERY,

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

DIRECT EXAMINATION

BY MR. SHEVLIN:

Q Please state your name and your occupation.

A Ruth A. Emery, Arlington County Police Department Special Unit.

Q What does "special unit" mean, Miss Emery?

A It handles both gambling and narcotics and I'm in the narcotics section.

Q Detective Emery, on March the 4th -- I believe it was the early morning hours of March the 5th -- did you have occasion to search an automobile in the property yard that belonged to Barry Leatherwood, the defendant in this action?

A Yes, sir.

MR. BASKIN: Your Honor, I'm having trouble hearing the witness.

THE WITNESS: Yes, I did.

BY MR. SHEVLIN:

Q And what was the purpose of that search?

A I had been called in from home and Officer Trumble had stopped a car with Mr. Leatherwood in it. And the other narcotics detective and I were brought into it. A search warrant was written.

Q And was the search of the car made?

A Yes, sir.

Q The items that were found, are you the one who seized all the items in the car?

A I didn't seize all the items that were taken from the car but I seized the items that were controlled drugs, narcotics.

Q Please go through the seizure of all the narcotics that were made in that car, step by step, listing where they were found and the items that were found.

MR. BASKIN: Your Honor, I would again note my objection for the reason heretofore stated, not related to the charge of possession of cocaine. That is the charge that is before the Court.

MR. SHEVLIN: The Court has ruled on that objection twice.

THE COURT: The objection is overruled.

MR. SHEVLIN: Please go ahead.

THE WITNESS: First of all, there was --

THE COURT: I think this might -- although the defendant is not specifically requesting this instruction, I think it's time that I do say to the Jury this: evidence of other items found in this car, gentlemen, is admitted not because the defendant is on trial here for the possession of them, nor is he on trial for an intent to sell, or for any actual sale. He's on trial only for possession of cocaine in this case. These other things may or may not constitute other charges to be heard by other juries at different times. But the only purpose for which they are to be considered by you is insofar as you in any way may find that they bear on his intent or his knowledge because one who possesses a narcotic unknowingly is not guilty of any crime. And it's necessary for the Commonwealth to show a state of facts that will enable you to infer that he knew that he had the cocaine.

Well, insofar as these facts may throw light on that subject, they are for your consideration, but you are not to judge his guilt or innocence on the possession of any other substance.

All right.

MR. SHEVLIN: Please continue.

THE WITNESS: There was a pipe found in the ash try. It was a brass pipe with a clear plastic stem. And, on analysis, it had traces of marijuana in it.

BY MR. SHEVLIN:

Q Where was the ash tray located?

A It was in the ash tray in the front of the car, front seat on the dash.

Q Was it concealed in the ash tray or was the ash tray open?

A No, sir, the ash tray was open and the pipe stem was extended out from the ash tray about three inches.

Q What else did you see?

A On the seat of the car there was a 35 millimeter film can and it contained a green paste substance. On analysis from the laboratory it turned out to be Tetrahydrocannabinol -- THC.

Q Would you tell us what that is?

A It's a schedule one substance.

Q Controlled drug?

A Controlled drug.

Q And this can, where on the front seat was it found?

A It was found, I would say, in the middle of the front seat.

Q Was it stuck between the seat or was it in plain view?

A It was in plain view and it was right against the joining of the seat from the back of the seat.

Q What else was found?

A Also found a glass vial that contained white powder. This I found in the trunk of the car in a suitcase.

Q Was that analyzed?

A Yes, sir. And it came back that it contained a white powder, was indeed cocaine, which is a scheduled two substance.

Q What else was found?

A I also found a glass tube containing unknown white powder in the glove box of the car. And, on analysis, it came back cocaine.

Q What else was found?

A I also found a one-trim-beam balance scale.

Q Will you describe what that is, please?

A Yes, it's a -- there are two platforms and you can weigh things up to even a pound. Comes in grams, tenths of -- ten grams -- hundreds of grams.

Q Where was this found?

A This was found in the trunk of the car.

Q Weroyyou present when the car was opened?

A I drove up with the other narcotics detectives and Officer Kogle had already opened the doors of the car.

Q Now, I'd like to trace beiefly the custody of these items. What did you do with them when you seized them?

MR. BASKIN: I stipulate to it, Your Honor.

MR. SHEVLIN: I'll accept the stipulation if Your Honor will be kind enough to instruct the Jury exactly what the chain of custody is and what the stipulation means.

MR. BASKIN: Once the police got it that it was properly handled by the chemist and back into Court. I have no objection. I will stipulate that it was properly done.

THE COURT: All right.

Members of the Jury, in order to -- for the Commonwealth to introduce into evidence any substance that has no distinctive markings on it, it is ordinarily necessary for the Commonwealth to prove a chain of custody. That means they must show by evidence before you that no one else had an opportunity to tamper with it or to adulterate it. Counsel have agreed here that it will

not be necessary to put on that proof. Defendant agrees that the police department properly handled it -- these various substances, I guess, up to the point of the analyses by the chemist and return here to the Court for intrdduction into evidence.

Is that correct?

MR. BASKIN: One minor correction, Your Honor. From the point of attainment to the time of analysis and then back.

THE COURT: From the time it was seized in the search?

MR. BASKIN: Yes.

THE COURT: All right.

MR. SHEVLIN: Does that mean it is not necessary to open the contents of the envelope and have them identified?

MR. BASKIN: Uh huh, it's not necessary.

THE COURT: You have stipulated to a chain of custody but you haven't stipulated to the analyses.

MR. BASKIN: I thought I did that earlier.

MR. SHEVLIN: Not the analyses. I'm just concerned about Detective Emery opening the envelopes and identifying the subjects in the envelopes as those

seized from the car. If that's stipulated to, fine. If not, I will go through that.

MR. BASKIN: I can't do that. I have never seen them.

MR. SHEVLIN: May I have these marked, Your Honor?

(The documents previously referred to were marked as Commonwealth's Exhibit #1, for identification.)

BY MR. SHEVLIN:

Q Detective Emery, there are two envelopes attached with markings, Commonwealth's Exhibit No. 1. Would you please identify the envelopes if you can and, if you can, please tell the Jury how you do it?

A All right.

This is what we call a Northern Virginia "lock jaw envelope." I placed the evidence in the envelope. After you attach the brass holdings here (indicating) it cannot be opened again. And --

Q Would you open the second envelope? It has been stipulated --

THE COURT: You don't mean it can't be opened, do you?

THE WITNESS: It can be opened, but if you, you

know, you have to break the --

THE COURT: It will show.

THE WITNESS: Right. You have to tear it at the top and it will show that it's been opened.

(Whereupon, the witness opened the envelope with a pocket knife.)

BY MR. SHEVLIN:

Q Can you identify the contents of the larger envelope? Well, the contents of the two smaller envelopes, what are they?

A Okay. This is item number one and item number two. They both have the defendant's name, Barry Leatherwood, and the date, and the time that I found them, my name.

Q What date and time are on them?

A 3/5/73 on number one; it's 1:50 hours. And number two it's 1:45 hours.

Q Would you please open those envelopes and identify the contents?

A My initials and the date are on the back.

(Whereupon, the witness opened the envelopes.)

THE WITNESS: This is item number one, which I found in the suitcase in the trunk of the car (indicating).

BY MR. SHEVLIN:

Q Would you describe that, please?

A From my experience and training, to me it looks -- a vial that would hold either cocaine -- probably cocaine, and this is what I would call a "snorting spoon" (indicating). And they take the white substance, cocaine, and would take it out of the vial, put it on the spoon, and snort it, put it up to their nostrils and breathe heavily.

Q Would you open the second envelope and identify the contents of that?

(Whereupon, the witness opened the second envelope.)

A It's a tube, a glass tube containing white powder. And I found this in the glove box of Mr. Leatherwood's vehicle.

Q Now, concerning the original tube, item number one. Was that found?

A It was found in the trunk of Mr. Leatherwood's car in a suitcase.

Q In a suitcase in the trunk?

A Yes, sir.

Q Now, what was

A That suitcase was taken to the police station and was put in the property section for safekeeping.

Q Did there come a time when it was released?

A Yes, ssir, it was released on 3/9/73 to Mr. Barry Leatherwood at 10:30 a.m. in the morning.

Q EHatSHEVLIN: That's all the questions I have.

CROSS EXAMINATION

BY MR. BASKIN:

Q You found no drugs on his person, did you?

A I wasn't at the scene when he was arrested.

Q To your knowledge, no drugs were found on his person? No cocaine. Is that correct?

A No, sir.

Q And there is nothing to associate on the face of those exhibits, themselves, anything, any indication on there to associate Mr. Leatherwood with those other than his car. Isn't that correct?

A Right. And he did get the suitcase back, yes, sir.

Q And there are no identifying markings to say that's his?

A No, sir.

Q Do you have any indication that Mr. Leatherwood

was not claiming this suitcase for somebody else?

A Would you repeat the question?

Q Let me go about it another way.

Isn't it a fact that when you impound something at the police department under my name, for example, I am the only one who can get it out of there. Isn't that correct?

A I believe so, sir.

Q Right. So you have no indication that the suitcase was Mr. Leatherwood's, other than that he picked it up out of the impounding lot pursuant to police rules. Right? It was impounded from his car. He is the man who has to get it out.

A Mr. Leatherwood did claim the suitcase.

Q Right, because that is police regulations.

Now --

MR. SHEVLIN: I don't believe she said it was by police regulations.

THE COURT: I don't believe she has answered that question.

MR. SHEVLIN: I don't care if she's asked the question but I don't think Mr. Baskin should testify.

THE COURT: Do you happen to know the answer to

that, whether such a piece of property could be retrieved by anyone else?

THE WITNESS: I believe that to get the property out of the safekeeping a letter was sent from Mr. Hassan's office on the 9th. I saw the letter, myself, and that all property was to be released to Mr. Leatherwood except a weapon.

BY MR. BASKIN:

Q Then I'll repeat my question.

So far as you know the police regulations provide that the person from whom the property is taken is the one to whom it is released to. Is that correct?

A Yes, sir.

Q Regardless what it is. Isn't that correct?

A Yes, sir.

Q Now, did I understand you to say, in answer to Mr. Shevlin's first question, that your purpose in searching this vehicle was to look for narcotics?

A We had gone there with the two uniformed men with a search warrant.

Q So your purpose was to search for narcotics?

A They hadn't done the -- what they do for impounding. They simply notified us first.

Q My question was, did I understand you to say that your purpose in searching this car was to look for narcotics? That is the question. Was that your purpose?

A Yes, sir.

MR. BASKIN: Thank you, ma'am, that is all.

MR. SHEVLIN: No further questions.

THE COURT: Will you need Miss Emery any further, gentlemen?

MR. SHEVLIN: No, Your Honor.

MR. BASKIN: No.

THE COURT: You are excused, Miss Emery.

Next witness.

MR. SHEVLIN: Dr. Reichenbecher, please.

THE COURT: Mr. Hudson, would you get those two things? Let them be marked for identification. One of them is marked item one and the other item two for identification.

(Whereupon, the Clerk marked the items.)

Whereupon,

DR. EUGENE F. REICHENBECHER,

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

[Transcript: June 6, 1973
P. 142, Line 12 to P. 144, Line 23]

[Dr. Eugene Reichenbecher and Bench Conference]

Q Would you describe for the Jury the analysis you did perform?

A The materials were suspected to contain cocaine. The first test I did was a field test. That would -- that is a class test for cocaine and several other compounds will give the same blue color with a particular reagent. This was positive. And I proceeded to do a test known as "Thin Layer Chromatography" and also Ultraviolet Spectophtometry" on the traces of white powders on the two items. These were positive, gave positive identification of the cocaine as the substance present.

Q Doctor, could you please tell us what THC is, or Tetrahydrocannabinol?

A THC is the -- are the initials for Tetrahydrocannabinol, which is the -- thought to be the primary physiologically active ingredient of the marijuana plant, Cannabis Sativa L.

Q Is it related to hashish at all?

A Hashish is a product of the marijuana plant, a concentrate which may in some cases be eight or ten times as strong as a given sample of marijuana from which it is derived.

Q What is the active ingredient common to both?

A THC, Tetrahydrocannabinol.

Q And the relevant strength of the two is?

THE COURT: Which two? You mentioned three.

MR. SHEVLIN: The ingredient that is common to each. I'm talking about marijuana and hashish.

MR. BASKIN: The man is on trial for possession of cocaine, if the Court please. I don't see the relevance of the strength or the properties, or the chemicalsproperties of anything other than cocaine, if the Court please.

MR. SHEVLIN: Well, the relevance is --

MR BASKIN: I asked Mr. Shevlin not to make any proffers intthe presence of the Jury.

THE COURT: I will see you at the bench.

(Whereupon, the following proceedings were had at the bench by Court and counsel out of the hearing of the Jury.)

MR. BASKIN: Your Honor, my objection is he is trying to, by suggestions, to show -- he is trying to convict this man of possession of cocaine on anything but evidence of his possession of cocaine and it's just improper. It's getting to the point now where it has gone around to the ridiculous. He can't try the case

directly --

THE COURT: What is the purpose of this, Mr. Shevlin?

MR. SHEVLIN: I'm just trying to have the Jury understand what the THC was that was found in the car. I'm going to show that it is a concentrated derivative or an abstract of marijuana and the hashish plant, just to show that this drug -- that the car was loaded down with narcotics.

I think it is not clear to them yet what it is and I would like to clarify that point.

THE COURT: That may be if you want to show it's a controlled substance. He has already said it is the active ingredient in marijuana and that hashish is a derivative of marijuana. But to show the relative strength of it seems to be pretty far afield.

MR. SHEVLIN: All right.

MR. BASKIN: The only purpose for which he could argue it is to inflame this jury and he's not charged with that.

The Court has instructed the jury that he will be dealt with on those other charges at another place and another time.

[Transcript: June 6, 1973
P. 151, Lines 2-8
Question of a Juror answered by the Court]

and we will have instructions later.

JUROR: Is there any relationship between hashish and cocaine? He's on trial for cocaine. It has nothing to do with hashish. Is that right?

THE COURT: The only reason that the evidence concerning the other drug is admitted is to throw some light on whether or not he had knowledge in his possession of the cocaine.

If -- the Commonwealth seeks to use this as circumstantial evidence to prove that it was not unknown possession, not accidental possession. The defendant denies that and that's an issue for you all to resolve, that you may consider along with evidence in the case bearing on his intent or his knowledge.

JUROR: Was there a measurable amount of cocaine in the vial?

THE WITNESS: I did not -- it could have been -- well, you can see for yourselves if you look at these vials. It's traces.

THE COURT: To say "measurable amount," you determined there was cocaine there but you did not measure the amount. Is that right?

THE WITNESS: Right, because I would estimate it