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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

In The

SUPREME COURT OF VIRGINIA

Record No. 731065

Jim Edward Warlick — Appellant

v.

Commonwealth of Virginia — Appellee

Appendix

Enos Richardson, Jr.
518 Caroline Street
Fredericksburg, Vriginia 22401
Counsel for Appellant

James E. Kolp
Asst. Attorney General
Office of the Attorney General
Supreme Court Bldg.
1101 East Broad Street
Richmond, Virginia 23219
Counsel for Appellee

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INDICTMENT

February 12,1973

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Fredericksburg, now attending the Circuit Court of said city, upon their oaths present:

That on November 27th, 1972, in the nighttime, in the City of Fredericksburg, Virginia, Jim Edward Warlick feloniously did break and enter that certain storehouse located at 316 Amaret Street, Fredericksburg, Virginia, owned by Tuckahoe Warehouse Corporation and occupied by Elmic Corporation t/a Metro Drug Store, with intent to commit larceny therein, and sundry boxes, vials, drugs and syringes of the goods and chattels of Elmic Corporation trading as aforesaid did take, steal and carry away against the peace and dignity of the Commonwealth, and in violation of Section 18.1-89 of the Code of Virginia.

Upon the testimony of Richard E. Arline and Sgt. A. S. Kendall.

/s/ Jake A. Maynard.

MOTION TO SUPPRESS COMMONWEALTH'S EVIDENCE

February 21, 1973

And the defendant, Jim Edward Warlick, alleges as follows:

1. That on November 27, 1972, Richard E. Arline, a Fredericksburg, Virginia police officer, appeared before William B. Catlett, Justice of the Peace in Spotsylvania County, Virginia, and upon such appearance did submit an affidavit for a search warrant;

2. That as a result of such affidavit the said William B. Catlett did issue a search warrant to any police officer of Spotsylvania County, Virginia, to search a two-story brick townhouse located at Bragg Hill Townhouses near Route 95 and 639, specifically the townhouse whose address is noted as 117 Hickok Circle;

3. That the affidavit and search warrant set forth various drugs as the objects to be seized as a result of such search, to-wit: Demaroling, Demarol, Bephetamine, Dapalsac and other drugs;

4. That in the early morning of November 27, 1972, pursuant to the search warrant, a sheriff of

Spotsylvania County conducted a search of the premises known as 117 Hickok Circle, Bragg Hill Townhouses, in Spotsylvania County, Virginia;

5. That as a result of the said search various chattels generally characterized as drugs were seized, and as a result of such seizure, the defendant pursuant to Title 18.1-88 of the Code of Virginia, as amended, was arrested and charged with breaking and entering the premises of Metro Drug Store in the City of Fredericksburg, Virginia;

6. That on February 12, 1973, the defendant was indicted for the offense set forth above and is presently awaiting trial for the said offense;

7. That the defendant, Jim Edward Warlick, alleges that the search was conducted without probable cause and adequate justification for the following reasons:

(a) That the persons who gave the affiant, Richard E. Arline, "reliable information" are in no way identified and the affidavit contains no factual support for the affiant's conclusion that these informants were in fact reliable;

(b) That the affidavit fails to describe the underlying circumstances necessary to enable a neutral magistrate to find that there would be probable cause to issue a search warrant of the designated premises;

8. That the affidavit being insufficient to show probable cause for the issuance of a search warrant, therefore the search of the premises of 117 Hickok Circle, in Spotsylvania County, Virginia, was invalid and illegal. Such search, being invalid and illegal therefore violated the rights of the defendant as defined in the Fourth Amendment of the United States Constitution;

BY REASON of such an illegal search, the defendant, Jim Edward Warlick, moves the Court to suppress all evidence of whatsoever nature and kind, that was obtained as a result of the said illegal search and seizure of the premises known as 117 Hickok Circle in Spotsylvania County, Virginia.

JIM EDWARD WARLICK
By Counsel

_____
Counsel for Defendant

ORDER

February 28, 1973

This day came the defendant, Jim Edward Warlick, in person and by counsel, upon two motions duly filed in the Circuit Court of the City of Fredericksburg, Virginia, asking the Court to suppress any and all evidence resulting from an illegal search of the premises known as 117 Hickok Circle, Bragg Hill Townhouses, Spotsylvania County, Virginia, and asking the Court to quash the indictment against the defendant on the grounds that the procedure used at a preliminary hearing held in the Municipal Court of the City of Fredericksburg, Virginia, on December 4, 1972, prejudiced the defendant and violated his rights under due process of law, and was duly argued by counsel;

And it appearing to the Court that the affidavit for a search warrant obtained by one Richard E. Arline is insufficient and therefore the search warrant obtained by Richard E. Arline was invalid, it is hereby ORDERED that all evidence obtained as a result of the illegal search of the premises known as 117 Hickok Circle

in Spotsylvania County, Virginia, be excluded at the trial of the defendant, Jim Edward Warlick;

And further, upon motion of the defendant's counsel to withdraw the motion to quash the indictment, it is ORDERED that such motion is hereby dismissed.

John A. Jamison, Judge

ORDER

July 27, 1973

This day came the Attorney for the Commonwealth and Jim Edward Warlick, age 19, who stands indicted of a felony, to-wit: felonious breaking and entering with intent to commit larceny, appeared in Court according to the condition of his recognizance, after having had a preliminary hearing; and came also Enos Richardson, Jr., attorney for the accused. In compliance with Section 17-30.1 of the Code of Virginia, as amended in 1964, the Court Reporter was sworn.

The accused was duly arraigned and after private consultation with his attorney pleaded not guilty to felonious breaking and entering with intent to commit larceny as charged in the indictment, which plea was tendered by the accused in person and in the presence of his attorney. Thereupon, the accused, after having first been advised by his attorney, waived trial by a jury, and with the concurrence of the Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence doth find the accused, Jim Edward Warlick, guilty of felonious breaking and entering with intent to commit larceny as charged in the indictment.

On motion of the defendant, by counsel, the Court, before fixing punishment or imposing sentence, doth direct the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law.

The Court certifies that at all times during the trial of this case the accused was personally present. And the prisoner is remanded to jail.

_____
John A. Jamison, Judge

NOTICE OF APPEAL

AND

ASSIGNMENT OF ERROR

The defendant, Jim Edward Warlick, gives Notice of Appeal from the judgment of the Court rendered herein on July 27, 1973, and assigns the following errors as required by Rule of Court 5:6:

1. The Court erred in overruling the defendant's motion to quash the confession offered into evidence by the Commonwealth's Attorney in this case, on the following grounds:

(a) Such confession was obtained because of an illegal search.

(b) Such confession was made by the defendant involuntarily and under duress.

The defendant, Jim Edward Warlick, would note that the transcript of the trial will be filed in proper manner after this Notice of an Appeal.

JIM EDWARD WARLICK

BY_____
Counsel

C E R T I F I C A T E

I hereby certify that a copy of the foregoing Notice of Appeal and Assignment of Error has been mailed to J.M.H. Willis, Jr., Esquire, Commonwealth's Attorney for the City of Fredericksburg, Virginia, this 12th day of September, 1973.

_____
Counsel for Defendant

TRANSCRIPT OF FEBRUARY 26,1973

[Page 2] THE COURT: All right, you want to make a motion here, Mr. Richardson?

MR. RICHARDSON: Your Honor, I filed two motions with the Court, one concerning the procedure that was used in the Municipal Court.

THE COURT: Which one do you want first? Is that the one that you want?

MR. RICHARDSON: I would think the issues are important in the illegal search and seizure of the evidence.

MR. WILLIS: Your Honor, I hate to interrupt, but I can ease the Court's burden I think considerably. One motion goes to the sufficiency of the affidavit to support the search warrant and the affidavit is insufficient and I will concede that point.

THE COURT: All right.

THE CLERK: Do you want to arraign him?

[Page 3] MR. WILLIS: No.

THE COURT: That's the one I see. That's the longer of the two, is it not? Does that motion pertain to anything else except the search warrant?

MR. RICHARDSON: That's to the insufficiency of the affidavit, Your Honor, and if that is going to be conceded by the Commonwealth, I will withdraw that first motion regarding the

procedure that was used in Municipal Court of the preliminary hearing.

THE COURT: So on recommendation of the Commonwealth I will sustain the first motion and the second one you want to withdraw, is that right?

MR. RICHARDSON: Yes, Your Honor. Now,--

MR. WILLIS: Just so we don't have any misunderstanding, the motion, as I understand, was to quash the search warrant---

THE COURT: On the insufficiency of the affidavit.

MR. RICHARDSON: Excuse me. The motion I filed was to suppress all evidence as to the affidavit being insufficient for the search warrant, to suppress all evidence as a result of that. Now, it may be that I will have to file another motion. I don't know quite what the [Page 4] Commonwealth will now present as evidence. They may have evidence that has not resulted from the search itself. That would or may entail another motion.

THE COURT: Well, I don't suppose you intended to prevent him from filing any other probative motions?

MR. WILLIS: No, sir. With the quashing of the search warrant all suppression of evidence resulting from that search warrant, it doesn't suppress other evidence.

MR. RICHARDSON: Your Honor, under the doctrine of the fruits of the poisonous tree I dare say all the evidence presented in this case I will move to have suppressed.

THE COURT: Well, that may be, but it will still have to be the only poisonous tree is the tree that grew up as a result of the insufficiency of the affidavit and the search warrant. You may have other evidence that you don't know about. I don't think there is any problem.

MR. WILLIS: Your Honor, I think you can handle that adequately if you just set a trial date.

THE COURT: All right.

MR. WILLIS: And I will just leave the [Page 5] search warrant out of it and everything that results from the search warrant.

TRANSCRIPT OF JULY 27, 1973

[Page 3] MR. RICHARDSON: Your Honor, this case involves an illegal search and which the Court has ruled upon that the search was conducted was illegal and so the [Page 4] defense is going to raise an objection to a confession that the Commonwealth obtained as well as any other evidence after that search was conducted and I would like at this time to raise that motion to suppress this confession. I think we can hear that. I don't think these two witnesses have anything to do with that, with that confession, so I think we could hear that if the Commonwealth is agreeable to such.

THE COURT: Well, you are not tying the confession to the evidence that has been suppressed in any way, are you?

MR. RICHARDSON: Yes, sir, that's what we are doing. We are saying that that evidence is the direct result of the illegal search.

* * * *

[Page 13] What say you, guilty or not guilty?

DEFENDANT WARLICK: Not guilty.

* * * *

[Testimony of Jim Edward Warlick, Page 16] Q. Now, on that date did the police come to your house?

A. Yes, sir.

Q. What time did they arrive there?

A. It was about four o'clock in the morning.

Q. In the morning?

A. Yes, sir.

Q. Do you know who the policemen were that arrived there?

[Page 17] A. No, sir, I didn't know them.

Q. Were they Fredericksburg policemen?

A. Yes, sir, and I believe one was from Spotsylvania County.

Q. How many of them were in the group?

A. Three I believe.

Q. Now, where were you at the time they arrived?

A. I was in bed.

Q. In bed?

A. Yes, sir.

Q. And where is that bed located?

A. It's upstairs in a bedroom upstairs.

Q. You were in your bedroom then?

A. Yes, sir.

Q. All right, what did the police do when they arrived?

A. They were talking to my father when they came in and I believe they were searching the car, my car, and my mother came upstairs and told me that the police were there.

[Page 18] Q. And at that time were you awake?

A. No, sir.

Q. Your mother woke you up?

A. Yes, sir.

Q. Then what did you do?

A. Then I went down stairs to where my mother was and the policemen were talking to her.

Q. And did you converse with the policeman?

A. Yes,sir.

Q. At that time?

A. Yes, sir.

Q. And what did you tell the policeman?

A. They were asking my father if he had driven the car that night and they said there had been a breaking in and his car had been sighted and I told them that he hadn't driven the car; that I drove it that night.

Q. Did they tell you where the break in occurred?

A. No sir.

Q. Not at that point?

A. No, sir.

[Page 19] Q. Then what did they discuss with you?

A. Some--I think that two of them went upstairs.

Q. Do you know which two went upstairs?

A. It was Officer Arline.

Q. The colored policeman?

A. Yes, sir, and another city policeman.

Q. Do you know his name?

A. No, sir.

Q. So they went upstairs. Did you follow them upstairs?

A. No, sir.

Q. What then transpired?

A. I was downstairs talking to my parents and the policeman from Spotsylvania--

Q. Would you speak up a little bit so we can hear.

A. I was downstairs talking to my parents and the policeman from Spotsylvania and they asked me if--They told me there had been a break in at Metro Drug Store.

[Page 20] Q. Now, at this time who told you there had been a break in?

A. Yes, sir.

Q. The one downstairs from Spotsylvania?

A. Yes, sir.

Q. And at that time he mentioned specifically Metro Drug Store?

A. Yes, sir.

Q. And during that conversation there were two policemen upstairs?

A. Yes, sir.

Q. All right, tell the Court what happened next.

A. Then they asked me what I knew about it and asked where I had been that night and I told them that I had gone to Falmouth to see my sister and came home around twelve o'clock.

Q. Do you have a sister who lives in Falmouth?

A. Yes, sir.

[Page 21] Q. All right, proceed.

A. Then the officer, Arline, that was upstairs, came downstairs and he had two bottles of drugs that he had found.

Q. He had two bottles of drugs. Could you describe those bottles to the Court.

A. Yes, sir, they were small bottles of pills.

Q. And did you recognize those bottles?

A. Yes, sir.

Q. You did recognize them? Had you seen those bottles before?

A. Yes, sir.

Q. Where had you seen them before?

A. They were in my room.

Q. They were in your room? Did you put them in any specific place?

A. Yes, sir, I put them in a closet in my coat pocket in my closet.

Q. And they were the same two bottles that Officer Arline had when he came down the steps?

[Page 22] A. Yes, sir.

Q. What transpired between you and the police at that point?

A. They asked me if I knew where they came from and they told me they had labels on them and I told them at that time that I didn't know where they had come from.

Q. Would you speak up a little bit.

A. They asked me where they came from and at this time I told them that I didn't know where they came from.

Q. All right, then what happened?

A. Then my mother told them that she didn't know whether I had brought them up here from Texas or not and they told me that I would have to go to the police station.

Q. Now, at that point how did they explain to you what you must do next? Did they tell you you had to go to the police station?

A. Yes, sir.

[Page 23] Q. They didn't ask you if you wanted to go to the police station?

A. No.

Q. And how many police were there?

A. Three.

Q. All right, what did you do next?

A. Well, they told me to go outside and get into the back seat of the police car.

Q. What did you do?

A. I went and got in the police car.

Q. Pardon?

A. I went and got into the police car.

Q. You got into the police car? Where did you get in?

A. I got in the back seat on the right side.

Q. The right rear seat?

A. Yes, sir.

Q. And did the police get into the car?

A. Yes, sir.

[Page 24] Q. Where were they seated in the car?

A. There were two in the front and one in the back.

Q. One in the front?

A. One.

Q. And how many in the back?

A. One.

Q. And where did the other policeman go?

A. There were two cars there and one drove, got into a car and drove.

Q. And you got into the police car. Then what did you do next?

A. They started going to--coming down town to the police station.

Q. Started bringing you to the police station?

A. Yes, sir.

Q. Did they bring you to the police station?

A. Yes, sir.

Q. Where in Fredericksburg did they bring you?

[Page 25] A. Down Princess Anne Street to the police station.

THE COURT: Just a minute. There will be no laughing in this court room.

Q. Now, did you have any conversation with the police on the way to the police station?

A. Yes, sir.

Q. What did you tell the police?

A. Officer Arline told me how harmful drugs were and he asked me where I got them and I told him that I didn't know.

Q. That you didn't know anything about the drugs?

A. Yes, sir.

Q. Did he still have those two bottles with him at that time?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. Did he have any other drugs with him?

[Page 26] A. No, sir.

Q. All right, so on the way to the police station they asked you about the drugs.

A. Yes, sir.

Q. And you denied knowing anything about them?

A. Yes, sir.

Q. All right, you reached the police station. What then happened?

A. Then my father and I got out of the police car.

Q. Did your father go to the police station with you?

A. Yes,sir.

Q. How did he get to the police station?

A. He drove his car.

Q. Were there any policemen with him in his car?

A. No,sir.

Q. He was by himself?

A. Yes, sir.

[Page 27] Q. All right, and then what happened?

A. And we entered the police station and I went-- Officer Arline took me into a room.

Q. Did all the police enter the station with you at that time?

A. Yes, sir.

Q. They all came in together?

A. Yes, sir.

Q. And you say when you got into the police station you went into a room?

A. Yes, sir.

Q. What was the nature of that room?

A. It was a fairly small room, had a desk in it.

Q. Did it have any windows in it?

A. No, sir.

Q. Would you speak up so the Judge can hear.

A. No, sir.

Q. Did it have just four walls?

[Page 28] A. Yes, sir, as well as I can remember.

Q. And what kind of furniture did it have in it?

A. Just had a few wooden chairs and a desk. It had about three desks in it, I believe.

Q. About three desks?

A. Yes, sir.

Q. In other words, a large room.

A. Yes, sir.

Q. All right, you say Officer Arline took you into that room.

A. Yes, sir.

Q. Did anybody else go in with you?

A. No, sir.

Q. Just you and he?

A. Yes, sir.

Q. Did he close the door?

A. Yes, sir.

Q. All right, tell the Court what happened.

A. Officer Arline he took the drugs and put them on the desk.

[Page 29] Q. That's those same two bottles of drugs?

A. Yes, sir.

Q. That you had seen him come down the stairs with?

A. Yes, sir.

Q. And he put them on the desk?

A. Yes, sir.

Q. Where were you sitting?

A. I was sitting right in front of the desk, I believe, or right beside it.

Q. Where was he sitting?

A. He was sitting behind the desk.

Q. All right, the desk separated you from him.

A. Yes, sir.

Q. Tell the Court what happened.

A. He asked me what I knew about the drugs and asked me where they came from and I told him that I didn't know and he asked me if I had taken drugs before and I told him no.

[Page 30] Q. And how long were you in there with Officer Arline?

A. About fifteen or twenty minutes.

Q. And were those two bottles on that desk the whole time?

A. Yes, sir.

Q. Then what happened?

A. Then Sergeant Kendall came into the room and he was asking me--Well Officer Arline was talking to me about some more drugs that were taken and I told him that I didn't know what he was talking about.

Q. Did Officer Arline ever tell you about a break in at Metro Drug Store?

A. Yes, sir.

Q. While he was interrogating you in that room?

A. Yes, sir.

Q. Did he explain to you that the two bottles had come from Metro Drug Store?

A. Yes, sir.

[Page 31] Q. He did?

A. Yes, sir.

Q. All right, now when Sergeant Kendall came in what transpired next?

A. Officer Arline was talking to me when Sergeant Kendall came in and they were both--

Q. Speak up so the Court can hear.

A. They were both questioning me.

Q. Both questioning you?

A. Yes, sir.

Q. About what?

A. About the drugs. Asked me where some more drugs were that were taken and I told him that I didn't know and Sergeant

Kendall asked me if I had ever had any trouble with drugs before or been in trouble and I told him that I had and I told him that I had a drug problem before.

Q. All right, then what happened?

A. And Sergeant Kendall took me into another room.

Q. Where was that room?

[Page 32] A. It was connected to the room that I was in. It was off of the room that I was previously in.

Q. Describe that room.

A. It was a small room.

Q. Smaller than the one you were already in?

A. Yes, sir.

Q. And what did it have?

A. It had a desk--a small desk and two chairs I believe.

Q. Small desk and two chairs and any windows or anything in it?

A. No, sir.

Q. Well lighted?

A. Yes, sir.

Q. And Officer Kendall took you in that room. Did he close the door?

A. Yes, sir.

Q. Was anybody else in there besides you and Officer Kendall?

A. No, sir.

[Page 33] Q. All right, tell the Court what happened.

A. He asked me about the drug problem I had before and I told him that I had had one before and he told me--he asked me if I would tell him where the drugs were.

Q. Did he mention what drugs he was talking about?

A. No, sir.

Q. Did he mention Metro Drug Store?

A. Yes, sir.

Q. Are they the drugs he was talking about?

A. Yes, sir.

Q. All right, so what did you say to that?

A. I again denied it and told him that I didn't know where any were and then he told me that he had a son about my age and he told me that he would like to help me as much as he could.

Q. He said he would like to help you as much as he could?

A. Yes, sir.

[Page 34] Q. Did he ever explain that?

A. Yes, sir, he asked me how long I had taken drugs and I told him that I had taken them for some time off and on and he asked me if--that he could possibly get me into the hospital is what he was talking about and I asked him if I would go to Court for it.

Q. He was talking about you going to court?

A. Yes, sir.

Q. Did he explain what you would go to court for?

A. Yes sir.

Q. What was that?

A. For breaking and entering.

Q. The Metro Drug Store?

A. Yes, sir.

Q. What was this about the hospital?

A. He said that he would like to help me; that possibly I could go to the hospital.

Q. Before you went to court?

A. Yes, sir.

[Page 35] Q. And at that time were you still denying the fact that you had broken into Metro Drug Store?

A. Yes, sir.

Q. Then what happened?

A. Then he asked me if I would tell him where the other drugs were and he asked me--told me that he could find them but it would involve a lot of time. He asked would I help him. Then he asked me how would I like it if some small child got a hold of the drugs and at that time I told him that I would tell him where the rest of the drugs were.

Q. And did you at that time tell him where the rest of the drugs were?

A. Yes, sir.

Q. And they were the drugs from Metro Drug Store?

A. Yes, sir.

Q. And did you at that time actually admit you had broken into Metro Drug Store?

A. No, sir.

[Page 36] Q. You just told him where the other drugs were?

A. Yes, sir.

Q. Were there other drugs besides those two bottles?

A. Yes, sir.

Q. And did you go with the police to find those drugs?

A. Yes, sir.

Q. And did you lead the police to the spot?

A. Yes, sir.

Q. And at that spot did they get some additional drugs?

A. Yes, sir.

Q. Did you recognize those drugs?

A. Yes, sir.

Q. Were they the drugs that came from Metro Drug Store?

A. Yes, sir.

MR. RICHARDSON: All right, would you answer any questions that the Commonwealth may have.

[Page 37] CROSS EXAMINATION BY MR. WILLIS:

Q. Mr. Warlick, you said your father told the police that you had been driving the car that night?

A. No, sir, I told them.

Q. You told them but your father also told them, did he not?

A. Yes, sir.

Q. And as a matter of fact, that was the truth, you had been out driving the car that night.

A. Yes, sir.

Q. Now, did the police execute an arrest warrant on you at your home?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Didn't they serve a yellow warrant on you at your home?

A. No, sir, they served one on my father.

Q. Didn't they serve one on you?

[Page 38] A. No, sir.

Q. Now, you did not make any confession in this thing until you got down to police headquarters.

A. Yes, sir.

Q. And before you made that confession you had been advised of your rights, hadn't you, by Sergeant Kendall?

A. Yes, sir.

Q. He told you that you did not have to make any statement.

A. Yes, sir.

Q. And anything you said could be used against you.

A. Yes, sir.

Q. He told you you had a right to have a lawyer present.

A. Yes, sir.

Q. That if you couldn't afford a lawyer, one would be appointed to represent you free of charge.

A. Yes, sir.

[Page 39] Q. And he told you that if you started talking and wanted to stop at any time that you could.

A. Yes, sir, I believe so.

Q. Did you understand all that?

A. Yes, sir, I understood it but--

Q. Did the police abuse you in any way?

A. No, sir.

Q. Did they threaten you, coerce you in any way?

A. No, sir.

Q. Now, when you finally agreed to take them to the stash, you did that of your own free will, didn't you?

A. Yes, sir.

Q. And the reason you did it was that when they mentioned to you the danger of some small children getting into these drugs and what could happen you realized how important it was to forestall that, didn't you?

A. Yes, sir.

[Page 40] Q. And you elected to make the sacrifice, you might say, of opening up to the possibility of small children getting the drugs, didn't you?

A. Yes, sir.

Q. And you took them to the place where the drugs were.

A. Yes, sir.

Q. And then you did later admit your part or admit the break in, didn't you?

A. Yes, sir--No--

Q. Did the police--

THE COURT: I think he wanted to say something.

A. I never told them that I broke into it, just took them to the drugs.

Q. Just took them where the drugs were?

A. Yes, sir.

Q. Well, you told him that those were the drugs that came out of Metro Drug Store, didn't you?

A. Yes, sir.

[Page 41] Q. Now, didn't the police tell you that you had been seen at the scene of Metro where this happened?

A. No, sir.

Q. They told you your car had been seen.

A. Yes, sir.

Q. And you already admitted to them being in the car.

A. Yes, sir.

Q. They told you they had a description of the car and the license number.

A. Yes, sir.

Q. As a matter of fact, that's how they described the thing to you. Didn't they tell you that?

A. Yes, sir, I believe so.

Q. Well, actually what happened so far as this confession is concerned is the police through the car traced back out to you or to your home your father and then you and your father told them you had been driving the car and that put the finger on you, didn't it?

A. Yes, sir, I suppose so.

[Page 42] Q. And they brought you down to headquarters and after advising you of your rights proceeded to question you and when they finally made this point about the small children you decided to talk, isn't that right?

A. Yes, sir.

Q. And that's the reason you decided to talk because you wanted to avoid the danger of small children getting the drugs, isn't that right?

A. Yes, sir, I knew I was in trouble so I--

Q. Well, you knew they had the hands on you, didn't you?

A. Yes, sir.

Q. As a matter of fact, you raised the point that you have a younger brother I believe.

A. Yes, sir.

Q. Now, it was something said about your going to the hospital. Have you ever asked the Court, either of the Courts at any time to send you to the hospital?

[Page 43] A. No, sir.

Q. You never made that motion?

A. No, sir.

Q. Do you feel that you need hospitalization?

A. Not now.

MR. WILLIS: That's all I want to ask him, Your Honor.

* * * *

[Page 43] MR. RICHARDSON: Your Honor, the Defense moves to suppress the confession on two grounds. First,[Page 44] this confession was the direct possible result of that illegal search and that has been before this court. The search was ruled illegal. Now, for a long time the illegal search,the problem of whether it could be used in state courts,shown by the state court in Ohio,any evidence obtained as the result of an illegal search is inadmissible, and that doctrine was applied to the state in Mapp v. Ohio and the doctrine itself was--came way back in 1920 in West v. United States, and it was some question as to the doctrine pertaining to physical evidence or oral evidence. The Supreme Court in 371 U.S. 471,Wong v. United States, has carried this doctrine to oral statements as well as physical tangible evidence. In that case the Court says: "The

exclusionary prohibition extends as well to the indirect as the direct products of such illegal invasion." The Fourth Amendment may protect against the overhearing of verbal statements as well as against the more traditional seizure of papers and effects." And the Court went on to say: "Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officer's action in the present case is no [Page 45] less the fruit of official illegality than the more common tangible fruits of the unwarranted intrusion." In this case, Your Honor, this is a verbal statement and that statement came as a direct result of that search. The police arrived at the house at Hickok Circle, went into the house, went upstairs and got two vials of drugs from the coat of this defendant, took those drugs with them at the same time on the basis of that. Took the defendant here, when they allegedly had gone to the house to arrest the father; took the vials of drugs with the defendant, took them to the police station, took them into a room, took out the drugs and put them on the table and set them right before the defendant and proceeded to question him. Finally after some questioning, which he denied it, then an officer came in. Another officer came in and took the defendant into an adjoining room and proceeded to question him further and at that time obtained this confession. Now, that proding of the officers, without any break, until the final confession was made so on that basis--if I may, Wong v. United States goes one step further, the

question [Page 46] before the Court is, rather the more apt question, the Court said: "In such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exportation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Now, this confession by any stretch of the imagination had to come from that search of finding the, to-wit, of drugs in this defendant's coat in the bedroom--

THE COURT: What year is that case?

MR. RICHARDSON: I think it's 1965, Your Honor.

THE COURT: All right.

MR. RICHARDSON: I am not exactly sure. It's in the '60's. * * * * *

[Page 51] THE COURT: All right, gentlemen, I have in considering the defendant's explanation, and following very carefully and having it elicited from him by the Commonwealth's Attorney that he was given all of his Miranda warnings, then he elected to make this confession. The question then is whether or not this confession is directly or sufficiently close results of the illegal search. The Court has suppressed the fruits [Page 52] of the search on the previous hearing in this case, but it seems to me that while there could be a conceivable connection between the confession and the entry into the house. I don't believe it is such a sufficiently direct result as would taint the confession and I feel that the confession should be admitted and I so rule.

MR. RICHARDSON: Defense excepts to the Court's ruling.

* * * *

[Testimony of Robert Parker, Page 53]

Q. Tell the Court your name and where you live.

A. My name is Robert Parker. I live in Fredericksburg, 212 Mayfield Avenue.

Q. Mr. Parker, directing your attention back to November 27, 1972, were you employed anywhere in [Page 54] the vicinity of the Metro Drug Store?

A. Yes sir, Pitts' Gulf.

Q. Pitts' Gulf.

A. Yes, sir.

Q. Where is Pitts' Gulf located?

A. 2610 Princess Anne Street.

Q. How far is that from the Metro Drug Store?

A. I would say approximately half a block, near as I can get.

Q. Were you on duty the night of November 26 after midnight of the 27th?

A. Yes, sir, I was on duty.I came in at 10 o'clock.

Q. Tell the Court if anything unusual happened on that night.

A. Well,that evening I say between 5:30--I'd say 6:00 as near as I can get at it, that I was on the front waiting on a car and I saw a car pull in the driveway parking and got out

and came on down, and went around to the [Page 55] men's room. So I didn't pay too much attention to it, you know. It was a young looking gentleman. I didn't pay too much attention.

THE COURT: Speak a little louder.

A. So he took and went around to the back of the station and went back to his car. He pulled on. I finished waiting on the car I was waiting on and he pulled up to the tanks and asked me to give him fifty cents worth of gas, which I did, and after I gave him the gas he drove on off. I didn't pay too much attention to it, you know. So later on in the night the traffic was getting slow and I saw this same car just riding by. Once in a while it would go in the shopping center. Nobody would get out. It would just make a circle and come back down Princess Anne Street. Sometime it would go around the A&P. I don't know which way. I couldn't swear. Later on that night I kept seeing this same car go by. I mentioned it to my boss. He was in the back doing some work. We had had several break ins. We thought it was somebody going to do that. One time he went like to the [Page 56] telephone to make a telephone call.

Q. Where are the telephones?

A. Between the wash house and the corner of the drug store. I was, you know, back and forth to the pumps. I didn't pay too much attention to who the person was or nothing like that. I

saw this one particular car. So then I would say later on that night, you know, that we closed and Richard Brooks happened to be in the parking lot loading his truck, and I said to Winkie, that particular car is still riding by.

THE COURT: Just a minute. Are you getting this? (Directed to the reporter.) I am having trouble hearing.

A. So he said--

THE COURT: Don't testify what someone told you, just what you observed yourself.

A. So he said maybe somebody--

THE COURT: You are quoting what someone said. Just testify what you yourself observed.

A. So I run across the street over there and told Richard Brooks and he got in the truck and went [Page 57] around the street and parked the truck, you know, on the back street behind the A&P, and so we walked on down the station. All the lights were out then. It was dark.

THE COURT: What time was this?

THE WITNESS: Well, I'd say possibly 10:30 or 11:00. I'd say 11:00. We walked on down the side street in the dark and this one particular car was parked at the corner.

BY MR. WILLIS: (Continuing)

Q. Is that right at the corner?

A. Not right at the corner. Between the wash house and the drug store. We couldn't see nothing in the car. We didn't

see nobody get out the car and Richard said I am going to get the license number. He slid over and got the license number and we stayed in the station and I'd say possibly fifteen or twenty minutes before we saw someone and we saw someone come out and get in the car and went on, but we couldn't tell exactly who it was, and Richard he mentioned to the boss about it and the boss told me, well, you go take a look--

[Page 58] MR. RICHARDSON: Objection.

Q. Don't tell what anybody said. Did you take a look?

A. I walked over and turned around and came back.

Q. What did you see?

A. Some glass lying there.

Q. Whereabouts?

A. On the outside.

Q. Did you see the condition of the door?

A. It wasn't the door. I got as close to it as from me to you. I just saw the glass.

Q. Did you see the glass broken?

A. The glass was broken.

Q. Where was the glass that was broken?

A. On the sidewalk.

Q. Was anybody around then?

A. No, sir, three cars I think parked in the front of the A&P, but I didn't see nobody.

Q. How about the car you saw driving through there, was it gone then?

[Page 59] A. Yes, I didn't see it.

Q. What did that car look like that kept driving through?

A. Yellow with a black top.

Q. Do you remember what make car it was?

A. I believe about a '70 Ford I believe.

Q. Did the police come up to Metro?

A. Well, after I saw the glass out, I went back over and called to headquarters, yes, sir.

Q. Did the police come?

A. Yes, sir, its the black policeman came.

Q. Did you tell him what you had seen?

A. No, sir, I didn't tell him anything. Me and Richard had walked over there and standing on the corner looking and he came over.

Q. Did anybody get a description of the car?

A. Well, Richard had the license number. That's all Richard had was the license number.

Q. When that car came through the station, you say he stopped and bought some gas?

[Page 60] A. Yes, sir.

Q. Did you see the driver of the car?

A. Well, I kind of noticed but I didn't pay too much attention.

Q. Would you know him if you saw him again?

A. I think I would.

Q. Is he in the court room?

A. Yes, sir.

Q. Will you point him out to the Court?

A. I think he is the young gentleman over there, I believe. (Indicating)

Q. What time was it when you went up there and saw the glass was broken?

A. I would say approximately 11:00 I think, maybe after, near as I can get now.

* * * *

[Testimony of Richard Brooks, Page 68]

Q. Tell the Court your name and where you live.

A. Richard Brooks, 157 Longstreet Avenue, Fredericksburg.

Q. Where are you employed, Mr. Brooks?

A. Lane Auto Parts.

THE COURT: Where?

[Page 69] THE WITNESS: Lane Auto Parts.

Q. Directing your attention back to November 27,1972, were you in the vicinity of Lane Auto Parts or Pitts' Gulf Station?

A. Yes, sir.

Q. About what time did you go there?

A. I imagine I was there about 8:00 that night.

Q. Well, did there come a time that something unusual took place?

A. Just a boy across the street came across and told me a car kept riding down the street.

MR. RICHARDSON: Repeat that.

THE WITNESS: A car that kept riding up and down the street.

Q. Did you see the car?

A. Yes, sir.

Q. What kind of car was it?

A. Deed I don't remember now.

Q. Do you remember anything about what it looked like?

[Page 70] A. Yes, it was a yellow car I believe. It was a two toned car I know. The bottom was yellow.

Q. Did you watch the car at all driving by?

A. Yes, I seen it a couple of times.

Q. Go ahead and tell the Judge what you saw relating to that car.

A. You mean after--

Q. Yes, relating to the whole story.

A. It kept running up and down the street. It just looked suspicious back and forth so we got in the truck. The boy from the corner came across the street and we noticed him pull in the drug store lot and park the car. We didn't know whether he was in the car or out of the car. We couldn't tell. It was dark and the colored boy heard the glass rattle and he went over and looked. After the car left he went over and looked and the window was busted out in the front door of the drug store.

Q. Did you get the license number of the car?

[Page 71] A. Yes, sir, but I don't remember it.

Q. Did you give that information to the police?

A. Yes, sir.

* * * *

[Testimony of Richard Earl Arline, Page 77]

Q. Did you arrest the defendant at his home?

[Page 78] A. Yes, sir. The defendant was arrested on a charge of breaking and entering the Metro Drug Store.

Q. Did you bring him to police headquarters?

A. Yes, sir, he was brought to police headquarters.

Q. Was he questioned at police headquarters?

A. Yes sir, he was.

Q. By whom was he questioned?

MR. RICHARDSON: Your HonorI object to anything that has taken place after the arrest of the defendant on the grounds that the defendant was arrested because of the illegal search and seizure. Now,we had the motion for the confession that I maintained that any evidence that is presented now to the Court from the time that defendant was arrested is a result of that illegal search. The fact that he was brought by the officers to the police station is a direct result of that illegal search and therefore I move the Court to strike the evidence.

[Page 79] THE COURT: I have to overrule your motion on that. I have already ruled sufficiently to conclude the facts of arrest and the transportation to the police department so I will overrule your objection.

MR. RICHARDSON: Defense excepts.

BY MR. WILLIS: (Continuing)

Q. You say the defendant was questioned at the police headquarters concerning this offense.

A. Yes, sir, he was.

Q. Who questioned him?

A. The defendant was questioned by Sergeant Kendall at police headquarters.

Q. Were you present when that took place?

A. Before Sergeant Kendall began to question him, then I advised him of his rights.

Q. What advice did you give him?

A. I explained to the defendant he had the right to remain silent; anything that he said could be used against him in court. You have the right to consult with a lawyer before answering any questions and [Page 80] have a lawyer present during questioning. If he desired one and could not afford a lawyer, one will be provided to him free of cost.

Q. Did the defendant appear to understand what was being told to him?

A. Yes, sir, he did.

Q. Were any threats exerted against the defendant to force him to make any statement to you?

A. No, sir, there were none.

Q. Was he made any promises of favorable treatment in exchange for a statement?

A. No, sir, he was not.

Q. Were any and all statements he made freely and voluntarily of his own free will?

A. Yes, sir, it was.

Q. Well, tell the Court the course the questioning took.

A. Well, at that point Sergeant Kendall began to question the defendant, but at that time there were several other people in the room that was making quite a bit of noise so Sergeant Kendall and the defendant [Page 81] went to a separate room where he questioned him.

Q. So you were not present then.

A. No, sir, I was not.

Q. All right, did they come out of the room?

A. Yes, sir, they did.

Q. Did they go anywhere?

A. Yes, sir. After Sergeant Kendall and the defendant came out of the room, we proceeded in a police vehicle to a certain location in Spotsylvania County.

Q. Where did you go?

A. We went on Bragg Road approximately one hundred fifty feet from the new Seven-Eleven store they just erected.

Q. Where is that located with respect to the Bragg Hill Townhouses?

A. That is located in the same vicinity as the Bragg Hill Townhouses.

Q. Is that where the defendant lives, in the Bragg Hill Townhouses?

A. Yes, sir.

[Page 82] Q. You say you went to a spot on the side of the road. What was the nature of the area there?

A. After we got to the spot, the defendant got out of the police vehicle and he stepped across the fence and removed a brown paper bag that was at that location.

Q. Was the area built up there? Was it fields or woods or what?

A. No, sir, at that time it was open land with about waist high weeds. There were no trees of any size. It was mostly clear with this high grass.

Q. But this bag was over the fence in the field?

A. Yes, sir, over the side the fence beside a really small sized tree that had been growing.

Q. What did he do with the bag?

A. After he picked up the bag he brought it back to the police headquarters and turned it over to me.

Q. Did he turn it over to you at police headquarters or at the scene?

A. At the scene.

Q. You brought it back to police headquarters?

A. Yes, sir.

Q. When you got back did you look in it?

A. Yes, sir.

Q. What was in it?

A. There were several boxes and bottles with different names and different items contained in the different bottles and boxes.

Q. What did you do with the different boxes and bottles?

A. I kept them at police headquarters until I made a notation.

Q. You referred to Mr. Johnson. Is that Mr. Dwight Lamont Johnson?

A. Yes, sir.

Q. Is he here today?

A. Yes, sir, he is.

Q. Did you show him those boxes and bottles that were in that bag?

[Page 84] A. Yes, sir. Dr. Johnson came down the latter part of the day to take a look at the boxes and bottles that were contained in the bag.

Q. Were you there then?

A. Yes, sir, I was.

Q. Did he make an identification of them?

A. Yes, sir, he did.

Q. Now, did you go in the Metro Drug Store in the course of your investigation?

A. Yes, sir, I investigated. I went in Metro Drug Store after Mr. Johnson and the manager arrived.

Q. What was the situation inside the store?

A. The situation on the outside was checked to be okay. In the rear where the drugs are kept that location had been ransacked and scattered about.

* * * *

[Cross examination of Richard Earl Arline, Page 87]

Q. Now, when you went to the residence of the defendant here, you testified you put him under arrest. Did he at that time say anything to you about the drugs?

A. No, sir. The defendant was placed under arrest by Investigator Stewart by being in Spotsylvania County. He was advised of his rights at that location.

Q. Was he advised of his rights at that location?

A. Yes, sir, he was advised of his rights in the county.

Q. Did you advise him of his rights?

A. No, sir, he was arrested by Investigator Stewart of Spotsylvania County. He was there advised of his rights by Investigator Stewart.

Q. Were you present when he was advised of those rights?

A. Yes, sir, I was present along with the defendant's father and mother.

[Page 88] Q. And you say that he was advised of his rights at that time?

A. Yes, sir, the defendant was advised of his rights right at the table in the county.

Q. When did you advise him of his rights later on?

A. I did not. Sergeant Kendall advised him of his rights later on.

Q. You are denying that you had advised him of his rights at any time?

A. Yes, sir, I did. I did not at no time advise the defendant of his rights because I did not question him.

Q. You questioned him?

A. No, sir, I did not.

Q. You did not question the defendant?

A. No, sir, the defendant was questioned by Sergeant Kendall at police headquarters.

Q. Did you obtain two vials from the house?

A. Yes, sir, I did.

[Page 89] Q. Did you bring those to police headquarters?

A. Yes, sir, I brought those to police headquarters. also.

Q. And you deny that you went into a room with the defendant: You deny that when you got to police headquarters that you went into a room with the defendant?

A. Yes, sir, we went in several rooms of the house.

Q. You and the defendant?

A. At some room--at some time, you know.

Q. How many rooms did you utilize?

A. We went in every room of the house.

Q. Every room?

A. Yes, sir.

Q. What was the reason for going in every room?

A. At that time we were conducting a search of the house.

[Page 90] Q. Pardon?

A. At that time we were--

Q. No, I am talking about police headquarters.

A. No, sir, we did not go into a room at police headquarters. We merely went in one room and an adjoining room at police headquarters.

Q. Did you not get in a room and close the door with the defendant?

A. No, sir. He was brought to the booking room at police headquarters where he was questioned, questioned for the forms that I had to fill out. That was the only questions that was asked the defendant by myself.

Q. Did you have those two drug vials with you during all that time?

A. Yes, sir, I did.

Q. Did you show those to the defendant?

A. They was out on the table at all times where they could be seen by myself and the defendant.

Q. They were out on the table in plain view of everybody?

[Page 91] A. They were out on the table. You had to come really close in order to observe them.

Q. Did you put them on the table?

A. Yes, sir.

Q. Now, in all your questioning of the defendant did he ever admit that he had committed the crime for which he had been arrested?

A. No, sir. During no questions I asked him did he.

Q. Who asked the defendant all these questions?

A. The defendant was asked questions by Sergeant Kendall.

* * * *

[Testimony of A. S. Kendall, Page 95]

Q. State your name and occupation.

[Page 96] A. A. S. Kendall, Sergeant, Fredericksburg Police Department.

Q. How long have you been a member of the Fredericksburg Police Department?

A. Twenty years.

Q. How long have you been a Sergeant?

A. Sixteen.

Q. Now, Sergeant Kendall, directing your attention back to the night of November 26 or early morning

of November 27, did you have occasion to see the accused?

A. Yes, sir, I did.

Q. Tell the Court when and where you first saw him and what the circumstances were.

A. It was approximately 5:15 when the accused was brought into police headquarters by Officer Arline.

Q. Is that 5:15 a.m.?

A. A.m., yes, sir, and it was in reference to the burglary charge the officer had been working. The [Page 97] accused was brought in. I took him in the booking room with several others that were there. His father was with him and I talked to him about the case.

Q. Did you advise him of his rights?

A. Yes sir. I first advised him of his rights and then started to talk to him.

Q. What advice did you give concerning his rights?

A. I advised that he had the right to remain silent. Anything he said could be used against him in court. He had the right to an attorney. He had the right to have an attorney present when he talked to me. If he did not have the money for an attorney, the Court

would appoint him one. I asked him if he understood his rights and he said that he did. I asked him would he talk to me and he said yes.

Q. Did he make any statements to you?

A. At this time I advised the defendant of what information we had pertaining to this case and I asked him would he tell me what part he played in it, [Page 98] what he did. He said no. I then asked the defendant if he would go into the interviewing room that is right beside the booking room. I asked his father did he care to go in there with us. The defendant went, the father didn't. In the interview room I asked the defendant would you show us where the drugs had been hidden that had been taken from the Metro Drug Store and first he said he didn't want to tell me anything. I then explained to him the importance of us finding those drugs before some young child got it. He didn't give any answer and I asked him if he had a younger brother. When I asked him that, he said he would take us and show us where they were. He took me on Bragg Road approximately one hundred fifty feet before you get to the Seven-Eleven Store and jumped the fence on the side of the road and came out with a brown bag that had drugs from the Metro Drug Store. I

asked the defendant why he went into the store and the statement was to get drugs.

* * * *

[Cross Examination of A. S. Kendall, Page 100]

Q. When you went in the room, was it just you and he in that room?

A. That is correct.

Q. And closed the door?

A. Yes, I did close the door.

Q. How long did you stay in that room?

A. Five to ten minutes.

Q. Prior to going in the room were there two vials of drugs sitting on some table or something, desk? Did you notice anything?

A. There was a vial on the desk. That was brought in by officers that brought the defendant in.

Q. You saw that?

A. Yes.

Q. One or two?

A. I don't recall.

* * * *

[Page 101] Q. What were the questions you asked him then?

[Page 102] A. At that time I asked him to tell me about what he knew about the burglary. I explained to him what information we had.

Q. What information did you explain to him?

A. About the description of the car, the license of the car that we had run a check to Texas and found the car to be issued to his father; that a description of that car had been found in front of his house and had been recently running because it was still hot.

Q. Did he state that he knew anything about the burglary at that point?

A. No, at that point.

Q. Did he deny it?

A. He didn't give any answer. The reason I asked him then to go into the interview room was due to the confusion of some people that had come into the booking room. Several other officers had come in and it was impossible to talk to him.

Q. When you got into the room you asked him again about the burglary?

[Page 103] A. I did.

Q. And he denied it?

A. He never denied it. He just didn't answer.

Q. He didn't answer?

A. That's right.

Q. And then you began talking about children.

A. The consequences of finding the drugs that was missing from the store.

Q. Did you ever tell the defendant you might be able to help him out.

A. No, sir.

Q. Did you ever tell the defendant that you might be able to put him in a hospital?

A. No, sir.

Q. Did you ever ask the defendant if he had a drug problem?

A. No, I didn't. The defendant volunteered the information that he had been caught in Texas on a drug charge.

[Page 104] Q. And are you denying then that you ever told the defendant that it might be possible for him to go to a hospital other than a jail?

A. I would have no reason to say that because I had finished interviewing the defendant and one of the last things he told me was that he had been in trouble in Texas on a drug charge. I had no way of knowing this boy had ever been in trouble and I do deny it.

* * * *

[Testimony of Roy Warlick, Page 118]

Q. Would you state your full name and address.

A. My name is Roy Warlick and I live at Bragg Hill at Hickok Circle at 117.

Q. Are you the father of Jim Edward Warlick?

A. Yes, sir.

Q. Were you living there on November 27, 1972?

A. Yes, sir.

Q. At that time did the police come to your home?

A. Yes, sir.

Q. Tell the Court what happened at that time.

A. Well, I was awoke---

Q. What time of day or night was this?

A. What time of night?

Q. Yes, sir.

[Page 119] A. I don't remember exactly what time of night, but it was in the early morning hours before daylight. Sometime after one o'clock--between one o'clock and morning. I don't remember the exact time. They woke us up and came to my door, and it was officers all around the house, and told me they had a warrant for my arrest and wanted to know where I had been. I said that I had been at home all night. They said we'll have to take you in. I said I guess so. I said I will get dressed and went up stairs and my son came down and said where are you carrying my daddy. They said they were carrying me with them. He said well I was the one that drove the car.

* * * *

[Page 131] MR. RICHARDSON: Your Honor, the defense can only say once again that the motion for confession and all evidence be stricken that took place at the time the police officers went to that house and forward from that point on.

[Page 132] THE COURT: Are you making a motion now or are you arguing?

MR. RICHARDSON: I am making a motion once again that that evidence be struck because the defense argues that the evidence is insufficient to find the defendant guilty as charged.

THE COURT: Your motion to strike will be denied, sir.

* * * *