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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

[redacted]

In The

SUPREME COURT OF VIRGINIA

740126

RICHARD PAUL SCHAUM
Appellant

v.

COMMONWEALTH OF VIRGINIA
Appellee

APPENDIX

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Commonwealth of Virginia
to-wit:
City of Portsmouth

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

The Grand Jury charges that:

On or about October 31, 1972, Richard Paul Schaum did break and enter in the nighttime at the dwelling house of A. L. Nicora with intent to commit Larceny, and did steal one stereo and speakers, one tape recorder, one color television, one Biretta pistol and one Bulova watch, having a total value of approximately $1,045.00, against the peace and dignity of the Commonwealth of Virginia.

SECOND COUNT

The Grand Jury charges that:

On or about October 31, 1972, in the City of Portsmouth, Richard Paul Schaum did steal one stereo and speakers, one tape recorder, one color television, one Biretta pistol and one Bulova watch, valued at $100.00 or more, and having a total value of approximately $1,045.00, belonging to A. L. Nicora.

18.1-86, 18.1-100, 101

VIRGINIA: AT THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH
HELD ON THE 25TH DAY OF APRIL, 1973

COMMONWEALTH OF VIRGINIA	)	
		Upon an Indictment for Burglary
v.	)	and Grand Larceny
		Criminal Docket No. 25232
RICHARD PAUL SCHAUM	)	April term, 1973

Richard Paul Schaum, born on January 29, 1954, who stands convicted of Statutory burglary on February 21, 1973, was this day again led to the bar in custody of the jailer of the Court, and came also Richard D. Mattox, attorney for the said Richard Paul Schaum, said attorney being of the prisoner's own choosing, and came as well the Attorney for the Commonwealth and the Probation Officer, who filed in open Court in the presence of the prisoner who was advised of its contents, his report as prescribed by Section 53-278.1 of the Code of Virginia, which said report is ordered filed as a part of the record in this case; and thereupon, the prisoner, by counsel, advised the Court that he did not wish to cross-examine the said Probation Officer as to any matter contained therein; and did not wish to present any additional argument; and the Court having considered all of the evidence in the case and the report of the Probation Officer, doth deny probation; and thereupon, it being demanded of the said Richard Paul Schaum, if anything for himself, he had or knew to say, why the Court here should not now proceed to pronounce judgment against him according

to law, and nothing being offered or alleged in delay of judgment, it is ordered that the said Richard Paul Schaum be confined in the State Penitentiary for the term of three (3) years, but the Court doth order that this sentence is to run CONCURRENTLY with the sentence this day imposed against the said Richard Paul Schaum in Indictment No. 24817, the period by the Court in its judgment ascertained; and it appearing to the Court that the said Richard Paul Schaum has been held in the jail of this City no days, awaiting the trial of this case, it is ordered that he be credited with no time spent by him upon his sentence aforesaid; whereupon, the Court advised the said Richard Paul Schaum that he has a right to apply for an appeal from this decision to the Supreme Court of Virginia and was also advised that counsel would be appointed for that purpose if requested. And the Clerk of this Court is directed to forthwith transmit a copy of this order to the Superintendent of the State Penitentiary in Richmond, Virginia.

And the prisoner, Richard Paul Schaum, is remanded to jail.

The Court certifies that the prisoner and his counsel were present in person at every stage of the proceeding.

* * * * * * * * * * * * * * *

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA,		:
	Plaintiff	:
v.		:
RICHARD PAUL SCHAUM,		:
	Defendant	:

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

NOW COMES the defendant, Richard Paul Schaum, by counsel, pursuant to Rule 5:6 of the Rules of Court and files his Notice of Appeal and Assignments of Error to the judgment of the Circuit Court of the Cith of Portsmouth of April 25, 1973, wherein the defendant herein having been indicted and tried for breaking and entering in the nighttime and grand larceny, was found guilty of statutory burglary under Indictment No. 25232, and was sentenced for three years in the Virginia State Penitentiary, said sentence to run concurrent with other sentences imposed by the Court.

ASSIGNMENTS OF ERROR

Indictment No. 25232

1. The Court erred in admitting the Commonwealth's exhibits into evidence because said exhibits were seized pursuant to illegal search and seizure as prohibited by the 4th and 14th Amendments of the Constitution of the United States.

2. The Trial Court erred in refusing to strike the Commonwealth's evidence on the grounds of the insufficiency of same.

3. The Trial Court's verdict was contrary to the law and the evidence.

RICHARD PAUL SCHAUM

BY: /s/
Counsel
W. P. Robinson Jr.

William P. Robinson, Jr.
William T. Mason, Jr.
MASON & ROBINSON, LTD.
419 Law Bldg.
Norfolk, Virginia 23510

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal and Assignments of Error was mailed this 30th day of July, 1973, to George Talbot, Esq., Assistant Commonwealth's Attorney, City of Portsmouth, Virginia.

BY: /s/
Counsel

* * *

SAMUEL GIBSON

[page 6]

Q. Would you state your name and address,

please?

A Samuel Gibson. Right now, I live in Churchland.

Q Where were you living on or about October 31, 1972?

A 210 Mayflower Road. Portsmouth.

Q That is in the City of Portsmouth?

A (Nods.)

Q Mr. Gibson, on that night, did you have occasion to notice anything out of the ordinary?

A Well, I guess it was about 9:00 or 9:30, something like that, I was walking my dog in front of my house, and I noticed a car come by the house, and it had its lights off.

I didn't pay much attention to it, but a few minutes later, it came driving back by, and it drove back and forth several times, real slow, and so I went in the house, and my next door neighbor called my house and talked to my mother, and she said that -

MR. MATTOX: Objection.

THE COURT: Sustain the objection. You can't tell what conversation your mother had.

A Well, it had something to do - she said -

MR. WEISE: No.

THE COURT: It is hearsay evidence. You can't

give that.

MR. WEISE:

Q What happened after you got the phone call? After the phone call came in your house?

A I went next door, but she said that she heard somebody prowling around the house, and her son was out there. I went out there and talked to him.

MR. MATTOX: Objection, Your Honor.

THE COURT: Who were you talking to?

MR. MATTOX: A neighbor.

A My neighbor.

THE COURT: You can't tell the conversation you had with your neighbor. You cannot repeat that.

MR. WEISE:

Q After you met with the neighbor's son, -

THE COURT: As a result of the conversation, you can tell what you did, etc.

MR. WEISE:

Q After you met with the neighbor's son, what happened then?

A I went back in the house, and she called the police up, and they came by and I was standing out in the front yard, and he shined the light through all the yards, and he asked me what I was doing in my yard, and I told him that -

MR. MATTOX: This is the conversation between the police officer, now?

THE COURT: This is the report he made to the police.

MR. MATTOX: He is being interrogated by the police. Anyway, it would be hearsay.

THE COURT: This is perfectly proper. What report was made to the police is perfectly proper.

MR. MATTOX: That is not what he was saying.

THE COURT: The police were there.

MR. MATTOX: No, sir. The police said, "What are you doing here?" But that is not reporting to the police.

THE COURT: I overrule you.

A He asked me what I was doing here.

THE COURT: You can't tell now what you concluded that you don't know. You see that is the objection to hearsay. You are testifying to something somebody else told you is not admissible.

THE WITNESS: See, that is why I wondered why I was here.

THE COURT: I understand that is why you were there.

Q. What did you state to the policeman?

A. That I saw a car driving up and down the road, driving real slow with its lights off. That is it.

* * *

* * *

J. H. SIMPSON

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Q. Would you state your name and capacity with the Portsmouth Police Department, please?

A. J. H. Simpson, Jr., Detective, assigned with the Youth Bureau.

Q. Detective Simpson, on or about October 31, 1972, did you have an occasion to answer a call - I believe it was in report #5549-

Mr. Mattox: Your Honor, is it too late to ask that the witnesses be separated?

The Court: No, it is not too late. You can separate the witnesses.

All witnesses will have to go outside until you are called.

(witnesses leave courtroom.)

Mr. Talbot: Your Honor, we would ask that Detective Sergeant Wood be allowed to remain.

The Court: You can have him here.

Mr. Weise: Q. relating to suspicious automobile on

* * *

Mayflower?

A Yes, sir.

Q Would you tell the Court what happened when you arrived on the scene, please?

THE COURT: What place was this, Mr. Simpson?

A I arrived at 220 Mayflower.

Q 220?

A Yes, sir. This was the address, 220. I went to the house, parked the car in the driveway next door, and went behind the house and started looking for anybody I could find.

I noticed there were some lights on inside, and the back bedroom window had been broken out, and I found a crowbar type of - well, not a crowbar, a tire tool on the ground underneath of the window.

I searched further and found no people there. I did find Mr. Gibson outside. This was right after I went around the back of the house. He was walking towards 220 from the west side of 220.

He made a statement to me regarding what he had seen previous to my arrival.

I went in the house through the back door. It was cracked open about an inch. That is the door that leads into the garage, attached garage. Went in through the back door, inside, and started looking for anything

that might have been taken or any people. There was no one there.

I noticed that the building, or the house was ransacked in certain rooms. The den, living room, bedroom, and it was obvious that certain articles had been removed.

From information I received, I put a description on the radio of a dark blue Valiant.

MR. MATTOX: Your Honor, I don't know how I can cross examine from information furnished.

I think that I am going to object to his testifying about any description of any automobiles unless he actually saw this automobile or they produce the witness who supplied him with the information.

THE COURT: He got it over the radio. I presume it came from police headquarters.

MR. MATTOX: He is supplying some information, I think he said dark green. I wasn't listening.

THE COURT: Blue.

A Yes, sir.

MR. MATTOX: I object to this on the basis it is hearsay.

THE COURT: Furnished by whom?

A An eye witness on the scene.

* * *

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Q. Continue, Sergeant.

A. I was told by the eye witness, who is Samuel J. Gibson, that he observed-

Mr. Mattox: Go ahead.

The Court: I don't know what he is going to say. I haven't any idea.

Mr. Mattox: Go ahead. I just want to be ready.

A. He observed a dark blue automobile.

* * *

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* * *

A. I gave a description over the air of this blue automobile, and I was told that it had green and white license plates on the back of it.

The Court: By the same witness?

A. By Samuel J. Gibson, the only witness that was there.

And after I did that, I continued looking through the house, and I found an empty cardboard box which was used to hold a pistol, and it was written on the box that it was a Biretta, the serial number of this gun was

on the box, and I assumed it was taken in this burglary, so I also put that serial number over the air.

Mr. Mattox: I object to this, Your Honor, and move that it be stricken. I don't think the Sergeant can deal with assumption.

* * *

All he can say is what he found. Not what he didn't find.

THE COURT: Well, -

MR. WEISE:

Q Let's clarify that. What did you do as a result of your finding the pistol, or finding the pistol box and the case?

A I simply put the serial number over the air in case it was spotted. If somebody found the gun, they would know the serial number and where it came from, if it was found.

Q Why did you do this?

A I assumed it was taken in the burglary because the box was empty. That was all.

Q Okay. Continue.

A There was also in the den a portable television stand which had been moved from what appeared to be its original place sort of in the center of the floor, and a set of antennas on top were thrown on the floor, or were on the floor. They were not sitting flat. They just appeared to be dropped.

I also put that on the air, that possibly a television had been taken as well as this stereo tape player that was in the living room. The 3 items I put on the radio. I had - the serial number of the tape player

* * *

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was also put on the radio.

The Court: Where did you get that?

A. There was a guarantee slip on the floor of the chest.

Q. Wasn't anybody in this house at all when you got there?

A. Empty.

* * *

Adeline Nicora

[Page 26]

Q. Would you state your name, please?

A. Adeline Nicora.

Q. Where do you live?

A. 220 Mayflower Drive, Portsmouth, Virginia.

Q. Were you living there on October 21, 1972.

A. Yes, sir.

Q. Were you present at home on that date?

A. No, sir.

Q. When had you left your home?

A. This following Sunday, the 5th of November.

Q. The 5th of November? Do you know the Defendant, Richard Schaum?

. No, sir.

Q. Did you give him permission to go in your house?

A. No, sir.

Q Did you give him permission to take any articles from your house?

A No, sir.

MR. MATTOX: Objection, Your Honor. There is no evidence at this point that the Defendant has been in her house.

MR. TALBOT: I will tie it up, Judge.

THE COURT: Well, go ahead, sir.

MR. TALBOT:

Q When you say you returned on the 5th?

A Yes, sir. On Sunday.

Q Of November?

A Yes, sir.

Q Did you - was anything missing from your house when you returned?

A Yes, sir, there was.

Q Would you tell the Court what was missing?

A The Sansui AM-FM receiver, 2 speakers, a Sony tape recorder, Sylvania T-V, the Biretta pistol, a Bulova watch, white gold, and a Sekor watch, gold, and a few half dollar bills that were in a cigarette box.

Q Had you given anyone permission to take these articles from the house?

A No, sir.

MR. TALBOT: Judge, I think it would be easier

if she came down. There are some right bulky items here, but I have some items -

THE COURT: All right. Let her go over there. I can see them from here.

(Witness comes down.)

MR. TALBOT:

Q I show you this Biretta pistol, and ask you if you can identify that?

A It looks like - and belongs to this box. It looks like the one I had. I put it in a drawer, and it has been there for years.

MR. MATTOX: Objection, Your Honor. I don't think that is sufficient identification.

MR. TALBOT:

Q Do you have the serial number?

A #65148.

Q Would you check to see if they match?

A Yes, sir.

THE COURT: Yes, sir, what?

A They do match.

Q Now, that box you have in your hand, was that in your house at home when you got there?

A It was when I returned.

Q It was?

A Yes, sir.

THE COURT:

Q And that, did you keep your pistol in that box?

A Yes, sir.

THE COURT: All right, sir.

MR. TALBOT:

Q Was the pistol in the box when you left?

A Yes, sir.

Q Was it there when you returned?

A The box was in my kitchen.

Q And the pistol was missing?

A Yes, sir.

THE COURT: That is the same serial number as appears on the box, appears on the pistol, as I understand it, is that correct?

MR. TALBOT: Yes, sir, Judge.

THE COURT: Anything else?

MR. TALBOT: Yes, sir. There are some other articles.

MR. TALBOT:

Q I ask you if you can identify this receiver?

A I have to check the serial number.

Q All right.

MR. WEISE: The plate on the left hand side.

Q I show you this Sony tape recorder, and I ask you if you can identify that?

A I have no serial number for that, but I have the box that tape belongs to, and I had recalled breaking the lead and that the tape on the reel was sort of twisted. I had just left it. I never did get around to repairing it, but I do not have a serial number.

All I have are instructions and I do have a cover that goes to this, at home.

THE COURT: Can you identify that as being yours? And how?

A This I recall was being twisted, which I did not have time to repair prior to my leaving, and this is a lead that goes on that I had torn accidentally, that belongs to this tape, and if that is the tape that was on when I left, it should belong to this box.

MR. MATTOX: I am going to object for the record, because I don't think that it has been sufficiently identified.

THE COURT: I overrule your objection.

MR. MATTOX: Except.

MR. TALBOT: Judge, we have this television also.

THE COURT: Do you have a serial number on

that?

MR. TALBOT:

Q Do you have the serial number for the television?

A I have a repair bill which has the serial number. I did identify it because I remembered dropping some wax on it, some candle wax that had not been cleaned off.

THE COURT: You can identify it by that, too? What kind of television is it?

MR. MATTOX: Let me suggest this. Mr. Cornwell has the number. If they check out, that is all right.

THE COURT: I asked what kind it was.

A Sylvania.

(Witness checks her number with Sheriff Cornwell's.)

The serial number that is on my repair bill is #3343228. Now whether this is the same or not -

MR. MATTOX: It is not the same. I will have to object.

A (Witness checks with television.)

There is candle wax on here that I had not wiped off.

MR. MATTOX: Have you found it?

A You can feel it on there.

THE COURT: You are positive that is your television?

A It looks like my television, and the wax on it, sir.

Q I mean you identified it as being yours?

A Yes, sir.

THE COURT: All right.

MR. MATTOX: I object to it basically that the serial number she has does not correspond with the serial number on the television which I think is the best evidence.

A I will have to check with Bob's T-V. They took it from the home.

MR. MATTOX: But the serial number on this television -

A Well, maybe there is another description.

MR. MATTOX: - is #2178750, T343118.

THE COURT: Some of those you have to take the whole back off to find the numbers.

A (Checking with television now.)

Here's more candle wax back here, sir

Q You have wax there?

A Yes, sir, there is wax here.

MR. MATTOX: Did you know that wax was there before today?

A Yes, sir. I have a candle that spilled on it.

Q I mean on the back of that T-V?

A Yes, sir, back here, and here. And I did wipe some of it off.

SERGEANT WOOD: There are all kind of numbers on here. Here's one, #853063, #2178750.

MR. TALBOT: That matches the number.

MR. MATTOX: Not the number Mrs. Nicora has as her serial number.

SERGEANT WOOD: There is another number in here.

THE COURT: Sometimes you have to take the whole back off to read the numbers.

SERGEANT WOOD: Chassis numbers.

A This number said serial number. I am assuming the repair people took it from there. Whether it is one of theirs, whether it is one of the repair company's -

THE COURT: But you are satisfied in your mind that that is yours?

A Yes, sir.

THE COURT: That is yours?

MR. MATTOX: I am still objecting, Your Honor,

this incident, and by way of the radio, received a description of a dark blue Valiant, bearing blue and white plates.

I was familiar with a vehicle of that type. I was familiar with the subject who might be operating a vehicle of that type, and I had an idea where the subject driving that vehicle might go.

I stationed myself in the Cavalier Manor area, in front of a subject who is known to me to be a fence, a dealer in stolen goods.

After I had been there approximately 5 minutes - this would have been approximately 10 minutes after we received the report of the burglary - this blue Valiant bearing North Carolina plates pulled up in front of the house on Cavalier Boulevard.

It was a '66 blue Valiant bearing license number LD6422, which I knew to be registered to a Gary Neil Ellis.

As I watched, I saw Mr. Schaum, Mr. Ellis, and 2 other individuals exit from this car. Mr. Schaum went to the front door of this subject. The other subjects stood outside on the sidewalk.

Mr. Schaum came back from the house, got back into the car, and at this point I attempted to turn around to get in pursuit of the vehicle, and I lost the

car from sight.

I again put out a description of the vehicle, giving the license number and the occupants. I asked that if this car was seen, to stop and hold occupants for a further investigation.

MR. WEISE: That is all the questions I have.

MR. MATTOX: Do you understand why I am objecting after Sam Gibson's testimony, Your Honor?

THE COURT: You go ahead, sir.

CROSS EXAMINATION

EXAMINED BY MR. MATTOX:

Q This information was furnished to you that there was a blue Valiant, identified to you as a Valiant to you by radio in the police, right?

A Yes, sir.

Q And it was a blue and white license plate on that car, right?

A This was the information I received, yes, sir.

Q By radio, from the police department, by radio, there was a blue and white license plate?

A As I recall.

Q And the car you saw that pulled up in front of the fence's in Cavalier Manor had blue and white license on it?

A It had North Carolina license, which are that color.

Q And it was a car that you knew, as you said?

A Yes, sir.

Q So the description given to you by radio was really of no significance because you knew which car you would be looking for, didn't you?

A When I heard this description, then I knew which car I might be looking for, sir.

Q And this is the description that you learned through your investigation was furnished by Sam Gibson, wasn't it?

A No, sir. I had not talked with Sam Gibson at that time. As a matter of fact, I had not even been to 220 Mayflower.

Q Didn't your investigation reveal that this information was supplied to Sergeant Simpson by Sam Gibson?

A I did not know who Simpson received his information from. I received a description of the car over the police radio.

Q Who were the other 2 people?

A They were 2 juveniles.

Q You don't know their names? Male or female?

A They were male.

Q 2 males?

A Yes, sir. They were unknown to me at the time.

Q Unknown, did you say?

A Yes, sir.

Q Did all 4 people get out of the car?

A Yes, sir.

Q And did all 4 people go to a house?

A No, sir.

Q How far did they walk away from the car?

A Just a very short distance, to the sidewalk. Mr. Schaum went to the house. I couldn't see whether he went inside or not, but he went up to the house.

Q You don't know whether anybody came to the door, by the same token?

A No, sir, I couldn't tell.

MR. MATTOX: No further questions.

THE COURT: You didn't see anything taken out of the car, did you, at the place where this fence lived?

A No, sir, I did not.

THE COURT: All right, sir.

MR. MATTOX:

Q Where were you parked? How far away in feet? I am not interested in which streets, etc., but how far were you away from the car?

A From the Valiant?

Q Yes?

A When it stopped on Cavalier Boulevard?

Q Yes?

A I would judge perhaps not quite a half block.

Q Were there any street lights in the area where these people got out of the car?

A Yes, sir.

Q Could you tell what kind of clothes he had on? The description of the clothes?

A No, sir, I don't recall what the description of the clothes were. I recognized Mr. Schaum and Mr. Ellis. I had seen them before. I knew them.

Q And you could identify them a block a way?

A I didn't say a block. I said less than a block away, sir.

Q Is there any reason why you couldn't see the doorway?

A The door of the house?

Q Yes?

A Yes, sir. I could not see it because of

cars parked in the driveway. The car in the driveway was between me and the door.

Q Were you parked on the same side of the street that this car was parked?

A No, sir. I was parked on the opposite side of the street.

Q So the whole front of the door of the building that they went up to would be in your view, would it not?

A I would be looking at the house at an angle. I was parked approximately between a quarter and a half block.

Q And there were no lights on in this house?

A Lights on in the house?

Q Yes?

A Yes, sir, there were lights on in the house.

Q But that didn't assist you in your identification?

A I said I identified Mr. Ellis and Mr. Schaum.

Q Did the lighting have anything to do with the identification?

A The fact that I had a pair of binoculars assisted a great deal.

Q Right. And did they have a certain type of illumination on them by way of a spotlight?

A There were street lights.

Q When did you receive this call, Sergeant?

A This would have been somewhere in the neighborhood of between 9:30 and a quarter to 10:00, I suppose. I first heard the radio dispatch, a car to 220 Mayflower on report of a suspected burglary.

A few moments later, I heard a description of the vehicle that had been seen in that area.

Q Where were you when you heard this report?

A Where was I? I was cruising the area.

Q Which area?

A Cruising out in Academy Park area.

Q So in response to this report of a blue and white license on a blue car, you immediately dispatched yourself to Cavalier Manor?

A Yes, sir.

MR. MATTOX: No further questions.

THE COURT: Mr. Wood, tell me. Cavalier Boulevard has a ditch that divides the two sides of Cavalier Boulevard?

A Yes, sir.

Q And you were across the ditch from them?

A Yes, sir. I would have been heading

* * *

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towards Chesapeake.

The Court:

Q. Was your car facing in the same direction that their car would have been facing? In the opposite direction, were you not?

A. Yes, sir, we would have been facing in the opposite direction.

Q. They were in the opposite direction?

A. YES, SIR.

The Court: All right, sir. That is all. Anything else, gentlemen?

Mr. Talbot: No further questions

The Court: Gentlemen, we will recess now until 2:00 o'clock. Correction, 2:15.

(Court reconvened after luncheon recess.)

* * *

D. B. GASKILL

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Q. Would you state your name and capacity with the Portsmouth Police Department, please?

* * *

A D. B. Gaskill, assigned to the Detective Division.

Q Were you so engaged on the night of October 31, 1972?

A Yes, I was.

Q Did you have an occasion to observe the Defendant on that day?

A Yes, I did.

Q Would you relate the incidents surrounding that occasion?

A He was observed at Victory and Gus Lane in a 1966 Plymouth Valiant, 2-door, dark blue in color, bearing North Carolina '72 tags, LD6422, which was the description put out by Sergeant Wood earlier.

Q What happened after you observed the automobile?

A It was him and the other occupants of the vehicle were taken to police headquarters in regards to a felony investigation.

Q Did you put him under arrest prior to taking him to police headquarters? Did you or anyone in the car with you put him under arrest prior to taking him to police headquarters?

A Not to my knowledge, he wasn't placed under arrest.

MR. MATTOX: Your Honor, I would object to this. If they took the man to police headquarters, I think inferentially he would have to be in a state of arrest or else he wouldn't have gone.

THE COURT: I don't know where it is going to lead. I don't know what they are getting at.

MR. MATTOX: They take the guy, put handcuffs on him, throw him in the car. No, we didn't arrest him.

What does it take to arrest somebody?

THE COURT: Go ahead, sir.

MR. WEISE:

Q When you apprehended them, or when you stopped the automobile, what did you do at that point? What procedure did you follow?

A I was with several uniformed cars when we stopped the vehicle. All subjects were taken to police headquarters, and the car was driven to police headquarters.

Q That is all the questions at this time.

One more question. About what time was this when this happened?

A I would say right around 10:00 o'clock. It was about 30 minutes after they gave out the

description of the car.

CROSS EXAMINATION

EXAMINED BY MR. MATTOX:

Q Mr. Gaskill, you were alone?

A No, sir, I was not.

Q Who was with you?

A Detective Nayghu was working with me that night.

Q Just the two of you in that car?

A Yes, sir.

Q You were in plain clothes? How many other cars did it take to get involved in this thing? How many other cars were involved at the time this blue car was stopped?

A Well, it was reported that the vehicle was spotted. I guess at the immediate apprehension there were approximately 4 police cars there.

Q Plus your car?

A My car and 3 others, I believe.

Q And that makes how many police officers then? Does that make 8 officers, or more?

A I do not recall. I don't recall.

Q What would you give an estimate to be? At least 5?

A I know there was 2 in my car, and there

had to be at least one in each other car.

Q Were they uniformed policemen in the other 3 cars?

A Yes, they were.

Q These were the white cars with the bubble in the top?

A I don't remember whether they were cars or trucks.

Q How many people were removed from the blue car?

A 4 people.

Q Who was the driver?

A It was Ellis, I believe. Just a minute. I will check.

Yes, it was Ellis.

Q Do you remember the seating arrangement in the car?

A No, sir, I do not.

Q Was this car stopped by one car in front or - could the car have moved after these 4 police cars came on the scene? Did you pin the car into the curb?

Let me put it this way. Did you place the police cars in a position that would have made it rather difficult for Ellis to move his car?

A There was enough police cars it would

have been difficult for him to move.

Q Were the people in that automobile physically removed from it?

A Not to any knowledge of mine.

Q Did anybody have their guns pulled?

A I did not see any guns pulled.

Q And the passengers and the driver of that car were placed in some police vehicle or police vehicles?

A Placed in police vehicles.

Q And the car was left there? None of the passengers or the driver remained in that car to continue with the escorting of it down to the police station?

A No, sir, they were not.

Q How was the automobile removed?

A Driven to police headquarters by a police officer.

Q Whom?

A I believe it was myself. It was either myself or Nayghu, but I believe it was myself drove to the police headquarters.

Q Where did you stop it?

A Victory and Gus.

THE COURT: What is your question?

MR. MATTOX: Where did you stop the automobile?

A Victory and Gus.

THE COURT:

Q Huh?

A Slamill.

Q When you stopped them and put them in another car, you took them to police headquarters?

A Yes, sir.

Q Who did you turn them over to?

A Sergeant Wood.

Q And you left then?

A No, sir.

Q What he did with them, you don't know except what you heard? You didn't stay there, did you?

A I didn't hear the interrogation. All I did was impound the vehicle and take an inventory of what was in the car.

REDIRECT EXAMINATION

EXAMINED BY MR. WEISE:

Q Did you at the time you stopped the vehicle, did you have an occasion to open the trunk or anything of that nature to observe any contents of the vehicle?

A No, sir. I had no probable cause or no search warrant.

Q And you didn't do that until you were at

* * *

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the police station?

A. Yes, sir. The impounding sheet being made to the vehicle as impounded requests that we take an inventory of everything in the car.

* * *

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Q. What did you uncover at the time you impounded?

Mr. Mattox: I am excepting.

The Court: Yes, sir.

A. The impounding of the vehicle was made after the subjects were charged and were arrested.

In the trunk of the vehicle, I found a Sansui solid state stereo amplifier tuner, bearing serial number 830030259.

* * *

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A. Also I found 2 Grundig speakers, one is #4160, and the other bearing serial #0128. Also found a Sony tape recorder, model TC-260, bearing serial number 50311, 2 black socks and 1 white sock.

Mr. Weise: Your Honor, do you want to go into the extraneous matter that was found?

The Court: Beg pardon, sir?

Mr. Weise: There were several other things found.

The Court: I think he can tell, if he was inventorying, what he found.

A. One Navy issue survival knife was scabbard, 1 spare tire, 1 white plastic construction helmet, one 3-foot crowbar, and one 2-inch kitchen knife.

That was the contents that was in the trunk of the car. Inside the care was clean except ragged and torn.

The Court: And this car was being driven by Mr. Ellis?

* * *

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A. Yes, sir, it was.

The Court:

Q. And these were the articles that were found in the trunk on inventory?

A. Yes, sir.

Q. And you did not use a search warrant to search the car?

A. No, sir. The car was never searched. It was

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inventoried after they had already been arrested.

Q. And these other people were just in the car, but these were in the trunk, locked up?

* * *

EDWARD HARRISON

[Page 62]

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

A. Edward Lee Harrison, 930 Apartment D, Lake Village Drive, Chesapeake.

Q. Mr. Harrison, on or about October 31, of 1972, did you have an occasion to see the Defendant, Richard Schaum at your house?

A. Yes, sir.

Q. And do you know for what reason did he come there?

A. He came to my house approximately at 11:30 at night, and asked me if I wanted to buy a television set.

The Court: What night was this?

A. Halloween night, sir, the 31st.

Q. It was the 31st.

A. Yes, sir. Halloween night.

Q. About 11:30, you say?

A. Yes, sir, approximately.

Mr. Talbot:

Q. Do you remember the type of television set?

A. It was a Zenith.

* * *

THE COURT: All right, sir. Did you see that T-V, or one like it, that looked like it?

A It looks like the same.

THE COURT: All right, sir.

(Witness back on stand.)

MR. TALBOT:

Q Did you later have an occasion to turn the T-V set and the gun over to the Portsmouth Police Department?

A Yes, sir.

Q All right. Do you remember what day or what time that was?

A Oh, about 2:00 o'clock in the morning.

Q On the?

A The next day.

Q Would that be the 1st of November?

A Yes, sir.

Q Do you remember to whom you turned the T-V set?

A Four plain clothes officers. Two of them testified here today.

THE COURT: What did you say you paid for it? Anything?

A $100.00.

Q $100.00?

* * *

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A. Yes, sir.

The Court:

Q. For both of them?

A. Yes, sir.

Q. Who did you give the money to?

A. Mr. Schaum.

Q. What hour was that you paid it to him?

A. About 11:30 sir.

Q. About 11:30?

* * *

E. L. HARRISON

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Q. Mr. Harrison, on October 31, about 11:30

MR. MATTOX:

Q In Schaum's name?

A Yes, sir.

THE COURT: Did you pay him by check?

A Yes, sir.

Q And the check was given payable to him?

A Yes.

Q Was he present?

A Yes.

Q At the time this transaction took place?

A Yes, sir.

THE COURT: All right, sir.

MR. MATTOX:

Q Why did you write the check to Mr. Schaum?

A He asked me to.

Q And was he the only one there with any identification?

A I think he said something to this nature, sir.

Q And as far as you were concerned, you were gaining ownership of a television and a gun at that time, so it was your advantage to write out the name of someone you could rely on as you are saying?

A I wouldn't put it like that, sir.

Q But Ellis was the one who struck the

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Mr. Schaum apparently did discuss -

A. Yes, sir.

Q.- the goods?

* * *

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Q. But it was your impression that that was Ellis's bargain, Ellis's goods, but Schaum was with him because he knew you?

A. Yes, sir.

* * *