216 Va. 71
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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 740198

ALVIN J. COOK,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

APPENDIX

Reid A. Simmons, Esquire
3309 Hull Street
Richmond, Virginia 23224

Counsel for Appellant

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION .....I...

.....September 5, 1973.....
(Date)

City of Richmond, to-wit:

The GRAND JURY charges that:

On or about ...June 20,..... 19....73 in the City of Richmond, ...
..Alvin Johnson Cook.....
..... did

feloniously and unlawfully have in his possession or have under his control a certain drug, to-wit, hashish, a controlled drug,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 54-524.101:2

H. B. Carr
F. W. Johnson

Pd w/ F 2345

SEP 5 1973 INDICTMENT FOUND

Witnesses sworn and sent by the court to the Grand Jury to give evidence.

Edward S. Kidd

Clerk

001

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 3rd DAY OF January 19 74

COMMONWEALTH
vs Indictment for Controlled Drugs No. 2 (F-2345)
ALVIN JOHNSON COOK, Dft.
COMMONWEALTH
vs Indictment for Controlled Drugs No. 3 (F-2347)
ALVIN JOHNSON COOK, Dft.

The said defendant this day appeared and was set to the bar in the custody of the Sergeant of this City and was represented by Attorney Reid A. Simmons and the Commonwealth was represented by Willard H. Douglas. And the defendant having on October 29, 1973, plead not guilty to manufacturing a certain drug, to-wit: marijuana, a controlled drug, as charged in the case of Indictment No. 2, and plead not guilty to having in his possession or having under his control a certain drug, to-wit: hashish, a controlled drug, as charged in the case of Indictment No. 3, and evidence having been heard in each case and the defendant having moved the Court to suppress evidence in each case and said motion taken under advisement and these cases continued, the Court doth this day overrule the defendant's motion to suppress evidence in each case. And having heard all of the evidence and arguments of counsel, the Court finds the defendant not guilty as charged in the case of Indictment No. 2 but guilty of possessing marijuana and the Court doth find him guilty as charged in the case of Indictment No. 3 and on his motion the imposition of sentence in each case is suspended during his good behavior for the next ten years, and the defendant noted an exception to the ruling of the Court in each case. And the defendant having noted an appeal from the judgment of this Court in each case, the Court doth appoint Reid A. Simmons to assist the defendant in perfecting said appeal to

Circuit Court of the City of Richmond, Division 1,

COMMONWEALTH vs. ALVIN JOHNSON COOK page 2

the Supreme Court of Virginia. And thereupon the said defendant is remanded to jail on another charge.

JAN 3 1974 Enter: James B. Wilkinson
James B. Wilkinson, Judge

NOTICE OF APPEAL
AND
ASSIGNMENT OF ERROR

The defendant, Alvin J. Cook, having indicated to the Court his desire to appeal to the Supreme Court of Virginia a judgment rendered by this Court on December 19, 1973, after the defendant was found guilty of feloniously having in his possession Hashish a schedule one controlled drug, feloniously having in his possession burglarious tools with intent to commit larceny and possession of marijuana and was sentenced to a term of five (5) years in the Virginia State Penitentiary on the offense of feloniously possessing burglary tools and imposition of sentence suspended on the remaining two charges.

The offense hereinabove described occurred within the jurisdiction of the Circuit Court of the City of Richmond, Division I and the undersigned attorney, Reid A. Simmons, is appointed to represent the defendant on this appeal.

Counsel for the defendant files herewith the Assignments of Error upon which the defendant will rely.

1. The Court erred in refusing to suppress the evidence of the

Commonwealth due to the insufficiency of the Affidavit in support of the search warrant and as being insufficient as a matter of law.

2. The Court erred in refusing to suppress the evidence of possession of Hashish, a schedule one controlled drug, as this evidence was seized by the police during an illegal search of the defendant's automobile.

3. The Court erred in overruling the defendant's Motion to Strike the Commonwealth's evidence after the Commonwealth had rested its case in chief.

4. The Court erred in refusing to strike the Commonwealth's evidence at the conclusion of all of the evidence.

5. The Court erred in refusing to set aside the verdict of the Court as there was insufficient evidence as a matter of law to conclude that the defendant was guilty of any of the charges.

6. For other reasons apparent on the face of the evidence.

The defendant has not received a copy of the transcript in this case.

Respectfully submitted,

ALVIN J. COOK

BY: Reid A. Simmons
Of Counsel

Reid A. Simmons, p.d.
RYDER, NANCE, SIMMONS & GUILL
3309 Hull Street
Richmond, Virginia, 23224

CERTIFICATE

I hereby certify that I have delivered the original of the foregoing Notice of Appeal and Assignment of Error to the Clerk of this Court for filing and have mailed a true copy of same to Aubrey M. Davis, Jr., Esquire, Commonwealth's Attorney for the City of Richmond, at his offices located at Room 320, Courts Building, 1001 E. Broad Street, Richmond, Virginia, on this the 21st day of January, 1974.

Reid A. Simmons

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8 THE COURT: Well, this is reliability: He can
9 tell him that there's a man there by the name of Cookie,
10 living there, and so they go there and personally ob-
11 serve --. He says this: The informant gives a -- boy
12 named Cook and a girl named Jean reside at 3412 Park
13 Ave., Apartment A. Observation has been set up on this
14 location by myself and a male subject seen entering and
15 leaving this apartment is one Alvin Johnson Cook, alias
16 Cookie. The subject's name is on the mail box of this
17 apartment along with that of J. H. Burrows. So they've
18 been (inaudible). I'll overrule your motion.
19 MR. SIMMONS: I take exception to His Honor's
20 ruling.
21 THE COURT: Yes, sir. All right, continue,
22 Officer.
23 Q All right, now, you indicated that you had se-
24 cured a search warrant on the date in question, what time was

1 it served and executed?

2 A. It was executed at approximately 3:15 P.M.

3 Q. All right. And where was it executed?

4 A. It was executed at the defendant's address,

5 3412 Park Ave., Apartment A.

6 Q. Is that location north of the James River in

7 the City of Richmond?

8 A. Yes, sir, it is.

9 Q. All right. And what happened upon the execution

10 of the warrant?

11 A. When we went up to the apartment, I had been

12 there earlier in the day, the defendant's car was outside.

13 When we got back with the search warrant, the defendant was not

14 at home. We gained entry through a -- there was a window open.

15 The apartment has two entrances to it, one is from the hallway

16 inside the building, the second from a set of steps on the side

17 of the building. It goes to a door into the kitchen. The win-

18 dow next to this door was open. We reached inside there, un-

19 locked the back door and went in. No one was home at this time.

20 We proceeded at this time to search the apartment for the nar-

21 cotics we were looking for. We recovered in this search (pause)

22 --

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2 A. Recovered in the search was a pot on the rear
3 porch of the apartment. This pot contained what appeared at
4 the time to be marijuana plants growing in same. This rear porch
5 has no entrance to it from the outside. The only way you can
6 gain entry to the rear porch is from inside of the apartment
7 itself. There was also recovered a green and brown sportcoat with
8 the initials A.J.C. monogrammed in the inside pocket of same.
9 Inside of this pocket was a plastic baggie which contained a
10 greenish-brown plant material.
11 Q. Where was that item found?
12 A. That coat was found in the closet in the second
13 from the rear bedroom of this apartment.
14 Q. How many bedrooms were in the apartment?
15 A. Two.
16 Q. All right. And what else did you find?
17 A. As we had concluded -- well, we did find a ring
18 of keys --
19 MR. SIMMONS: I object to what "WE" did. I don't
20 object to what "HE" did, but I do object to what "WE" did.
21 A. I also recovered a ring of keys from this same
22 closet that this sportcoat was in with the initials A.J.C.
23 THE COURT: Where are these apartments?
24 A. It's 3412 Park Ave. On the corner of Park --

1 I don't know what the side street is.
2 THE COURT: Do they have a name on them?
3 A. I don't recall, Your Honor. I don't believe they
4 do.
5 THE COURT: Is it just one apartment house or --
6 A. It's just one building, sir.
7 THE COURT: One building?
8 A. Yes, sir.
9 THE COURT: Oh, all right. 3412 Park?
10 A. Yes, sir.
11 Q. All right. And is that the --
12 THE COURT: Excuse me. That's up there by
13 Hill School?
14 A. Yes, sir. Across the street.
15 THE COURT: It's just east of Hill School,
16 I believe.
17 A. It's just east -- it's one block east of Thomp-
18 son.
19 THE COURT: Okay. I just wanted to find out.
20 A. This is the ring of keys that I recovered from
21 the closet.
22 MR. SIMMONS: Judge, I would further object to
23 testimony about these keys. The search warrant doesn't
24 mention a thing in the world other than marijuana, can-

1 nabis and amphetamines and a general search warrant
2 is no good and they went in there and picked up every-
3 thing.
4 THE COURT: Well, the Court takes the position
5 that they're lawfully there, if they find contraband,
6 they can take it.
7 MR. SIMMONS: Yes, sir, if it's contraband
8 (inaudible) contraband. I think it ought to be some
9 foundation laid though as to why he knows this is
10 contraband.
11 Q. Why did you --
12 THE COURT: Common sense, Mr. Simmons, will
13 tell you what they are.
14 MR. SIMMONS: This is a set of keys.
15 Q. Why did --
16 THE COURT: It's a little large key ring, too,
17 isn't it?
18 MR. SIMMONS: Yes, sir.
19 Q. Why did you confiscate those keys, Officer?
20 A. Due to the number of keys that are on it, and
21 there's several here that appeared at the time to be --
22 MR. SIMMONS: I object to what it appeared. I
23 mean they're either on there or they're not.
24 THE COURT: Introduce your key ring and the

1 Court will use its common sense to find out what they are.
2 MR. DOUGLAS: All right. We would move to
3 introduce the ring of keys, Judge.
4 MR. SIMMONS: Well, I would object to the in-
5 troduction of the keys for the reason previously stated.
6 THE COURT: All right, sir. The Court overrules
7 your objection.
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12 EXHIBIT: Commonwealth's Exhibit No. 1,
13 a ring of keys found in the apartment at 3412
14 Park Ave. when it was searched by Det. Johnson.
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19 MR. SIMMONS: And now, before I forget it, I
20 introduce that affidavit as Defense Exhibit No. 1.
21 THE COURT: Yes, sir.
22 MR. SIMMONS: The search warrant.
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1 NOTE: Defendant's Exhibit No. 1,
2 the affidavit and search warrant the police
3 obtained to search the apartment at 3412 Park
4 Ave.
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9 Q. Have you had any observations as to any of those
10 keys on the -- that ring?
11 A. Yes, sir, I have.
12 Q. And what was that, sir?
13 A. About an hour ago I took them upstairs and opened
14 the Coke Cola machine on the 3rd floor of this building.
15 Q. What did you do with the plant and the green-
16 ish-brown substance that you found in the coat pocket that had
17 the initials A.J.C.?
18 A. These articles along with the articles that
19 were seized out of the defendant's automobile were turned
20 over --
21 MR. SIMMONS: I object as to what was seized
22 out of the defendant's automobile until a proper founda-
23 tion is laid as to why they're in the automobile.
24 THE COURT: Well, that might be a good point.

1 Why were you in the automobile?

2 A. As we were preparing to leave the defendant's
3 residence, the defendant arrived at home. We waited inside the
4 apartment and he came in and he was advised at that time of his
5 -- he was placed under arrest for the marijuana plant.
6 The plant recovered in the partment. And advised of his rights
7 at this time. Then I went out to his automobile which he had
8 driven up in, outside, a white Chevrolet. I looked inside the
9 auto --

10 MR. SIMMONS: Judge, at that point right there,
11 I would object. He's under arrest and this is not a
12 search incident to a lawful arrest.

13 THE COURT: You're right. Well, I'll hear what
14 he says and see if I'll exclude it or not, Mr. Simmons.
15 All right, Officer.

16 A. I went out to the automobile and looking into
17 it from outside of the automobile, I observed a brown paper
18 bag laying in the passen -- in the front floorboard on the
19 passenger's side. This brown paper bag had a mask similiar
20 to a light flimsy plastic mask. Similiar to those that you --

21 MR. SIMMONS: I object to what it's similiar
22 to. He can testify to what he saw. He's drawing a con-
23 clusion, "it's similiar to."

24 THE COURT: Yeah, but, Mr. Simmons, I believe

1 Terry v. Ohio, Officer McFadden, was allowed to act on
2 his experiences as a police officer --
3 MR. SIMMONS: Just to stop and frisk for weapons,
4 not to search.
5 THE COURT: Well, he's not searching yet, he's
6 just looking inside the car. He hasn't touched the car.
7 Your eyes are not a search, are they? What you see with
8 your eyes if you're a law officer?
9 MR. SIMMONS: If you got a flashlight and that's
10 what it takes, it's a search.
11 THE COURT: There's no evidence here he had a
12 flashlight. He was standing outside the car and he
13 looked in and he saw this object.
14 MR. SIMMONS: Bag. A brown paper bag.
15 THE COURT: Yes, sir.
16 A. I observed this plastic face-mask which appeared
17 to be similiar to the type which is used to give a person oxy-
18 gen. I have had previous dealings with the defendant.
19 MR. SIMMONS: Objection as being irrelevant
20 and immaterial.
21 THE COURT: Well, I don't know whether it's
22 irrelevant and immaterial.
23 MR. SIMMONS: Well, previous dealings. Even
24 if they were previous crimes it couldn't be allowed to

1 come in. Obviously that's the reason --
2 THE COURT: He didn't say crimes, he said deal-
3 ings.
4 MR. SIMMONS: Well, if it wasn't prejudicial
5 to my client he wouldn't be testifying about it, I don't
6 think.
7 THE COURT: Well, if he brings in other crimes,
8 I'll let you object. We don't have a jury, so I would
9 hear it outside the presence of a jury. So, I'll hear
10 it now and decide whether it's admissible or not. All
11 right, sir, go ahead.
12 A. In December of 1972, I had occasion to see the
13 defendant and he was in the company of some people that were
14 using a mask identical to this to smoke marijuana at this time.
15 I was aware of the fact that the defendant had been --
16 MR. SIMMONS: Judge, how much of this are we go-
17 ing to let come in by circumstantial evidence? Other
18 offenses in order to convict him?
19 THE COURT: Well, there hasn't been any other
20 offenses. He said he was in the company, and that's the
21 Duval case. That's doesn't necessarily make him guilty
22 of the offense, would it --
23 MR. SIMMONS: Well, I think if you ask him, he'd --
24 THE COURT: Well, I'm not going to ask him. He

1 hasn't said anything about charging him with another
2 offense. He said he just saw him in the company of
3 people using similiar masks which gave knowledge to him
4 that it was used in smoking marijuana.
5 MR. SIMMONS: It could have been.
6 THE COURT: Now, he's acting on probable cause
7 to search the automobile, I assume.
8 MR. SIMMONS: I assume so, too. I submit it's
9 not a search incident to a lawful arrest.
10 THE COURT: It's probable cause to search the
11 automobile.
12 MR. SIMMONS: I don't think it's been established
13 yet by the Commonwealth why he went in the automobile.
14 THE COURT: He said he drove up, and when he
15 came up, they arrested him and advised him of his rights
16 and went down to his automobile. I guess common sense
17 would tell you why he went down to the automobile.
18 MR. SIMMONS: I don't know. I don't know why
19 he went to the automobile. An officer has a right to
20 stop and ask for license and identification. I don't
21 know that an officer has a right to go up and look in
22 an automobile when it's parked on the street.
23 THE COURT: Well, the reason he went to look in
24 the automobile is to find exactly what he's found so

1 far.

2 MR. SIMMONS: Well, if that's the purpose for

3 which he went there, he should have got a search war-

4 rant.

5 THE COURT: Maybe he should have. All right,

6 go on, Officer.

7 A. Based on my observations of this plastic face-

8 plate, I reached inside of the automobile and picked up this

9 brown paper bag. Inside of the paper bag was the plastic face

10 plate. It had a plastic hose on it and that was what appeared

11 to me to be residue where it had been used for smoking marijuana.

12 Also in this paper bag were eight foil packets in a second paper

13 bag. There was one paper bag inside of a second paper bag. In-

14 side of the second paper bag was eight foil packets of what ap-

15 peared to me at that time to be hashish. There was also in this

16 second bag a plastic bottle containing a greenish-brown plant ma-

17 terial and another foil containing what I, at that time, suspected

18 to be hashish. There were also two other pipes which appeared to

19 contain residue, and two packs of cigarette rolling paper and one

20 wire screen inside of this. Based on this, I returned to the

21 apartment and charged the defendant with the possession of hash-

22 ish and advised him of his rights again.

23 Q. Did he make any statement?

24 A. When we were preparing to leave - he was living

1 with another party there - I asked him --

2 MR. SIMMONS: I object as it is a conclusion

3 unless he can testify that he saw this other party.

4 Q. Well, just tell us what he said, Officer.

5 A. I asked him to leave a note for Miss Burrows

6 and to advise her that he was going to be downtown with us

7 and for her to come on down to the Vice Division and to get

8 in touch with Det. Carr and I, that we wanted to speak with her

9 in reference to the drugs that were found in the apartment.

10 And at that time Mr. Cook told us --

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8 Q. What was his statement after you told him to
9 leave the note for Jean Burrows?
10 A. I advised him to leave the note and notify her
11 that he would be in the office with us, for her to get touch
12 with myself or Det. Carr, and he told us at that time, "Don't
13 mess with her, she's straight" - or she doesn't know anything
14 about the stuff.
15 Q. All right, what did you -- I believe you indi-
16 cated earlier that you took everything that you found there
17 What did you do with it, sir?
18 A. The articles that were seized there, the special
19 narcotics, were labeled and sealed by myself and they were
20 turned over the following day, the 21st of June, 1973, at 2:31
21 P.M., in the State drug Lab, to one of the chemists, Joseph
22 Starkes. They remained in my custody, or in my locked drawer,
23 until this time.
24

Q. You did arrest the defendant when he came into his apartment -- came to the apartment?

A. For the narcotics charges, yes, sir. Not for the keys.

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9 Q. The car was sitting some distance away from the
10 house, wasn't it?
11 A. Right outside.
12 Q. What do you mean "right outside?"
13 A. The door that the defendant came in was the side
14 door as you would come in off the side street, the car was parked
15 on this side street right at the curb in front of the door.
16 About where the stairway was.
17 Q. And you searched the car and found the bag under
18 the right front seat?
19 A. No, sir. I looked in the car and saw it laying
20 there right in front of the seat in the floorboard. I reached
21 inside --
22 Q. What did you see?
23 A. I saw a brown paper bag about the size of an
24 ordinary lunch bag.

1 Q. And you went in the car?
2 A. Yes, sir, then I went in there and retrieved
3 it.
4 Q. You knew it was Alvin Cook's car?
5 A. Yes, sir.
6 Q. Did he have the keys to the car on him?
7 A. I assume so, he had just driven up in it.
8 Q. Well, you weren't afraid of it going anywhere?
9 A. He had a key to an apartment and someone else
10 had a key to it; I didn't know whether his girlfriend had a key
11 to his car or not.
12 Q. Well, did you know it was his car?
13 A. Yes, sir.
14 Q. So, when you looked in the car, the only thing
15 you saw was a brown bag?
16 A. No, sir.
17 Q. When you opened the car?
18 A. I saw this brown bag and this mask there also.
19 The end of this mask.
20 Q. But it was in this brown bag?
21 A. A portion of it was.
22 Q. That you had to open up?
23 A. No, sir. A portion of it was in the bag and a
24 portion of it was laying there exposed?

1 Q. A portion of what was exposed?
2 A. The mask.
3 Q. The mask?
4 A. Yes, sir.
5 Q. What about the hash?
6 A. That was in the bag?
7 Q. That you had to open?
8 A. Yes, sir.
9 MR. SIMMONS: That's all.
10
11 EXAMINATION OF THE WITNESS
12 BY THE COURT:
13 Q. Why did you go to the car, Officer Johnson?
14 A. Based on my familiarity with the defendant,
15 I had other information in regards to him in reference to nar-
16 cotics. And based on that and the information I had on --
17 MR. SIMMONS: Judge, is the Court --
18 THE COURT: I'm just finding probable cause,
19 Mr. Simmons.
20 MR. SIMMONS: But isn't the burden on the Common-
21 wealth to establish probable cause?
22 THE COURT: The burden's on the Court to see that
23 justice is done.
24 MR. SIMMONS: Yes, sir, but the burden's on the

1 Commonwealth to go forward with the evidence.

2 THE COURT: I can't try him or sentence him,

3 there's some questions in my mind. I'll resolve those

4 questions.

5 MR. SIMMONS: If there's questions in the Court's

6 mind, the burden's on the Commonwealth to prove the case

7 beyond a reasonable doubt.

8 THE COURT: It is the duty of the Court to give

9 justice.

10 MR. SIMMONS: Yes, sir.

11 THE COURT: And the only way we do justice is

12 finding out the facts.

13 Q All right, why did you go to the car?

14 A Based on my knowledge of the defendant and the

15 information I'd gotten from the informant, I felt like we had

16 not gotten all the narcotics that was supposed to have been there

17 in the apartment. He had left the apartment between the time I

18 had observed him there and the time I had gotten the search

19 warrant and come back. And I felt like the majority of the

20 narcotics that I had gone there for that he had taken it with

21 him and done something with it or that it was in the automobile.

22 I went out and looked in the car and there it was laying there.

23 Q Was the car operative?

24 A Yes, sir, it was. He had just driven it up.

1 THE COURT: All right.
2 SECOND RECROSS EXAMINATION
3 BY MR. SIMMONS:
4 Q. You say the car was operative. Did you crank
5 it?
6 A. No, sir. I --
7 Q. Well, you don't know if it was operative or not
8 then, do you? You saw him pull it up there and stop?
9 A. I've seen him drive it since then.
10 Q. At that time you didn't know whether it was
11 operative or not, did you?
12 A. I did not try to start it, no, sir.
13 MR. SIMMONS: That's all.
14 THE COURT: The car is where you found the hash-
15 ish?
16 A. Yes, sir.
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Q. State your name and occupation.

A. I'm Joseph Starkes. I work for the State of Virginia, Division of Consolidated Laboratories as a drug chemist.

MR. SIMMONS: I'll stipulate his qualifications as a drug chemist.

THE COURT: All right, sir.

Q. Directing your attention to June 21st, did you have occasion to meet with Det. Johnson?

A. Yes, sir. On June 21st I received these items, this package with five envelopes in it, from Det. Johnson and the clay pot which contains a plant, to the left.

Q. All right. What did you do with those items, sir?

A. Well, upon receiving them, I took them and locked them in the vault until I got ready to do the analysis.

1 Q. All right. Do you have the only key to the place
2 where you secured them up until that time?
3 A. Yes, I have the only combination.
4 Q. All right. What did your analysis show of the
5 items in question?
6 A. Well, in the clay pot, there were two larger
7 plants and six small seedlings. The two plants responded posi-
8 tively to the qualitative test for marijuana. And in envelope
9 B it was a plastic baggie containing a greenish-brown plant
10 material, and this substance also responded positively to the
11 qualitative tests for marijuana. In C, this was a sealed envelope
12 containing one plastic bag which contained 17 yellow coated
13 tablets. And they were identified as vitamin C, B1 and B2.
14 In D, it was a small sealed yellow envelope containing one brown
15 - plastic container - which contained a greenish-brown plant
16 material and a piece of tinfoil which contained a solid green-
17 ish-brown material. The plant material responded positively to
18 the qualitative tests for marijuana and the solid material re-
19 sponded positively to the qualitative tests for hashish. And
20 in E, it was a sealed yellow envelope containing eight pieces
21 of tinfoil containing eight solid pieces of greenish-brown
22 material. And this solid piece, all eight of them individually,
23 responded positively to the qualitative tests for hashish. In
24 F, was a large sealed envelope containing a mask-pipe, wood

1 bowl, which contained a burned plant material; a brass pipe with
2 black stem containing burned plant material and a brown pipe
3 which contained burned plant material. All three of these pipes,
4 individually, responded positively to the qualitative tests
5 for marijuana.
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19 THE COURT: Ready? On the growing of the plant,
20 of course, this Court rules that is only possession, not-
21 withstanding the policy of the Commonwealth's Attorney's
22 Office. It's policy, not law. All right, what do you
23 have to say about the car?
24 MR. SIMMONS: Well, Judge, the search warrant

1 didn't include the car and I don't think there was any
2 evidence before the Court that there was any fleeing
3 or necessity to search the car without a search warrant.
4 Because the evidence was that the defendant got out of
5 the automobile, he came into the apartment where there
6 was search on by the police and he was placed under
7 arrest. He had the keys in his pocket, and there was no
8 chance that the car was going to get away.
9 THE COURT: Duplicate keys, Mr. Simmons.
10 MR. SIMMONS: It could have been.
11 THE COURT: I mean it's a reasonable assump-
12 tion every car has two sets of keys.
13 MR. SIMMONS: It could have been two sets of
14 keys, but there wasn't evidence of that.
15 THE COURT: The officer saw him come back in
16 the car.
17 MR. SIMMONS: Sir?
18 THE COURT: The officer saw him come back in
19 the car.
20 MR. SIMMONS: He came back in the car and park
21 the car apparently in a proper parking space.
22 THE COURT: The car was usable.
23 MR. SIMMONS: Sir?
24 THE COURT: The car was usable. I mean it would

1 run.

2 MR. SIMMONS: Yes, sir. But it had no driver.
3 They had the driver under arrest. There was no evidence
4 before the Court that anybody else was going to get in
5 that automobile and leave. The defendant had the keys
6 in his pocket.

7 THE COURT: He had a lot of keys in the closet,
8 too, didn't he?

9 MR. SIMMONS: Well, there were keys found in the
10 closet.

11 THE COURT: Well, I think the ecstacy in a sit-
12 uation justifies the officers looking in there. Of course,
13 those more serious questions, I guess the appellate
14 court should decide them anyway. I can't see -- common
15 sense tells me a man -- they see him get out the car.
16 They see him with a bag. They go to his apartment with
17 a search warrant and search. The car can be moveable.
18 Common sense tells me that there's usually more than
19 one operator in dope. And it was a reasonable search
20 under the 4th Amendment to the Federal Constitution
21 as applicable to the State 14th Amendment. I just hate
22 to see --

23 MR. SIMMONS: I don't think that the plain view
24 doctrine would apply here. Because when the officer

1 looked in, I don't think he saw --

2 THE COURT: He search the car, there wasn't

3 question about that. He searched the car. He went into

4 the car, but it was a possibility the contraband was

5 there and they had other evidence. They saw the car,

6 and it takes less circumstance for an automobile as long

7 as he has probable cause. It's distinguishing from

8 Chimel because that was right in the house and you

9 can't move a house.

10 MR. SIMMONS: Yes, sir.

11 THE COURT: They were looking for narcotics.

12 They found the narcotics in the car. I think under

13 the 4th Amendment as applicable to the State -- to

14 the 14th Amendment, it was a reasonable search and seizure.

15 MR. SIMMONS: Doesn't it come closer to being

16 Coolidge v. New Hampshire situation?

17 THE COURT: Well, they actually left the scene

18 and came back and searched the car in Coolidge.

19 MR. SIMMONS: And they held that not to be a

20 valid search.

21 THE COURT: That's right. But they left and

22 came back. They never left.

23 MR. SIMMONS: My client left to go into the

24 house.

THE COURT: I know, but the officers never left the scene of the search. I think it's only reasonable to believe that somebody else could have gotten in there. Let me see the presentence report. All right, stand up, please. The Court's found you guilty of possession of burglary tools. On the manufacture of marijuana, the Court will find you not guilty of manufacturing marijuana but guilty of possession of marijuana. On possession of hashish, the Court now finds you guilty as charged in the indictment. (Long pause). He has quite a record, Mr. Simmons, what do you have to say about that? You may have your seat, sir.