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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO 741203

DAWSON ANDREWS

v.

COMMONWEALTH OF VIRGINIA

APPENDIX

WILLIAM P. ROBINSON, JR
MASON, MOORE & ROBINSON, LTD.
419 LAW BUILDING
NORFOLK, VIRGINIA 23510

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Brief for Appellant

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

May 1, 1974
DATE

The Grand Jury charges that; On or about March 8, 1974, in the City of Norfolk, Dawson Andrews, Jr. knowingly, intentionally and unlawfully did possess with intent to distribute Heroin, a controlled substance.

Va. Code Section 54-524.84:4; 54-524.101:1

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK, on the 13th day of August in the year 1974.

COMMONWEALTH OF VIRGINIA

v.

DAWSON ANDREWS, JR.

Attorney for the Commonwealth: Gene A. Woolard

Attorney for the defendant: William P. Robinson, Jr.
(X) Of defendant's own choosing

FELONY SENTENCING ORDER

This day again came the Attorney for the Commonwealth and the attorney for the defendant, as aforesaid, and came as well the defendant in person, who stands convicted of Violation of Title 54-524.101:2 of the Code of Virginia of 1950, as amended, possession of a controlled substance, to-wit, Heroin.

Thereupon the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open Court with a written report, a copy of which has been delivered to counsel for the defendant. Whereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case. Whereupon the Court taking into consideration all of the evidence in the case, the report of

the Probation Officer and such additional facts as were presented by the defendant, doth now fix the defendant's punishment at confinement in the Penitentiary for the term of Five Years.

Whereupon it being demanded of him if anything for himself he had or knew to say why the Court should not here and now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant be and he is hereby sentenced to confinement in the Penitentiary of this Commonwealth for the term of Five Years, subject to a credit of time spent in jail awaiting trial, and that he be required to pay the costs of his prosecution. Thereupon the defendant, by counsel, moved the Court for time in which to apply for a writ of error to the foregoing judgment, which motion being fully heard and determined by the Court, is sustained, and the execution of the foregoing judgment is hereby postponed for the period of Thirty Days, or until the Supreme Court of Virginia shall deny said writ of error if prior thereto, and bail bond is fixed in the sum of ten thousand dollars, with sufficient surety.

And the defendant was allowed to continue on previous bail bond executed, under the terms of his recognizance.

(Court reporter - Richard N. Cheshire)

(Dawson Andrews, Jr., B/M DOB 11/1/50, SSN 230 68 5175, F869-74)

/s/
Alfred W. Whitehurst, Judge

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA	)
	)
	)
v.	)
	)
	)
DAWSON ANDREWS	)

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

NOW COMES the defendant, Dawson Andrews, by counsel pursuant to Rules 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 City of Norfolk of August 13, 1974, wherein the defendant herein having been indicted and tried for possession of heroin with intent to districute, was found guilty of same and was sentenced to serve 5 years in the Virginia State Penitentiary.

ASSIGNMENTS OF ERROR

1. The trial Court erred in admitting into evidence the fruits of an illegal search of luggage, conducted without adequate probable cause.

2. There was insufficient evidence to establish the defendant's possession of the narcotics in question.

3. There was insufficient evidence to sustain a conviction for possession for heroin with intent to distribute.

DAWSON ANDREWS

By: /S/
Counsel

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Appeal and Assignments of Error was mailed this 15 day of August, 1974 to Gene Allen Woolard, Assistant Commonwealth's Attorney, 902 City Hall Bldg., Norfolk, Virginia 23510.

By: /S/
Counsel

William P. Robinson, Jr.
MASON, MOORE & ROBINSON, LTD.
419 Law Building
Norfolk, Virginia 23510

1 (Opening statement presented by Mr. Robinson.)
2 (Officer Scott called to the witness stand by
3 the Commonwealth.)
4 * * *
5 Officer H. W. Scott, Witness
6 called by the Commonwealth,
7 having been first duly sworn,
8 was examined and testified as
9 follows.
10 * * *
11 DIRECT EXAMINATION
12
13 BY MR. WOOLARD:
14 Q Will you state your name and occupation?
15 A H. W. Scott, Norfolk Police Department, pre-
16 sently assigned to the Narcotics Squad.
17 Q How long have you been assigned to the Nar-
18 cotics Squad?
19 A Approximately five years.
20 Q Were you so employed on March 8, 1974?
21 A Yes, I was.
22 Q On or about that time, did you have occasion
23 to investigate and be involved in an investigation with Lillian
24
25

1 Marie Peguese and Dawson Andrews?

2 A Yes.

3 Q How did this originate?

4 A On 3/6/74, I received information from a re-
5 liable informant who had proved himself reliable in the past.

6 MR. ROBINSON: Objection. That goes to probable
7 cause. What the informant may have said is not
8 substantive evidence. Since this is a case before
9 the Court, we object to this hearsay testimony.

10 THE COURT: It is true it goes to probable cause.
11 Is probable cause an issue in the case or not?

12 MR. ROBINSON: No, sir. It's not.

13 THE COURT: It would be material if probable cause
14 is an issue. If it is not, it wouldn't be mater-
15 ial.

16 * * *

17 BY MR. WOOLARD:

18 Q What information did you receive from this
19 informant?

20 MR. ROBINSON: That is the subject of our ob-
21 jection. This is hearsay. If the Commonwealth
22 wants the informant's information, they should

1 have him here to testify.
2 THE COURT: Once again, the hearsay is material
3 in reference to probable cause. Arrest or search.
4 If we don't have that issue, then it's not a
5 factor.
6 MR. WOOLARD: I'm not sure I understand the
7 Court's ruling. Am I not allowed to pursue
8 this issue any further?
9 THE COURT: Again, if it is an issue, hearsay
10 can come in but only for that issue. Do we
11 have anything about a probable cause to search
12 or arrest, I think is the test. Hearsay evi-
13 dence is competent evidence in those issues.
14 And it comes in sort of collaterally. If that
15 is not an issue, it's not material evidence to
16 guilt or innocence.
17 MR. WOOLARD: I don't know if it will be an is-
18 sue yet or not. Perhaps we can come back to
19 this.
20 * * *
21
22 BY MR. WOOLARD:
23 Q Pursuant to information, what did you do in
24
25

1 regard to any investigation that may have centered around Miss
2 Peguese or Mr. Andrews?
3 A On 3/6/74, I set up surveillance of all in-
4 coming flights from New York City, at the Norfolk Regional
5 Airport. On 3/7/74, 12:59 P. M., Mr. Dawson and Miss Peguese
6 came off flight 79 from New York City on Piedmont. As they
7 were walking down the foyer, Miss Peguese looked up and saw
8 me. I walked up to them and advised them they were under ar-
9 rest for investigation for a felony. I carried them to a cor-
10 ner, where I searched Mr. Dawson. I went through Miss Peguese's
11 bag. She had two tickets for flight 79. One with the defen-
12 dant, Dawson; and the other with the name of Lillian Hathaway.
13 Q Where were the tickets to and from?
14 A From New York City, and purchased on 3/4/74.
15 I carried them both downtown to the Narcotics Squad office.
16 I strip searched both defendants. I had a policewoman strip
17 search Miss Peguese. On their possession, they didn't have
18 anything. They didn't have any claim check tickets or any
19 drugs in their possession at all. I made out a cell sheet
20 on both of them and I released them.
21 MR. ROBINSON: I couldn't hear the last.
22 A I made out an information sheet and then I
23
24
25

1 released both of them. I then called the Airport and talked
2 to the ticket office to see if there were any bags left from
3 flight 79. At this time, I was told that --
4 MR. ROBINSON: Objection as to what he was told.
5 THE COURT: Sustained.
6
7 * * *
8 BY MR. WOOLARD:
9 Q Did you find out if anything remained?
10 A Yes, I did.
11 Q What action did you take at that time?
12 A At that time, Officer Spencer and myself went
13 back to the Regional Airport and set up surveillance on three
14 bags. During this surveillance, Mr. Dawson and Miss Peguese
15 came back to the Airport. They had changed clothes.
16
17 Q What time period are you talking about now?
18 A This would be approximately 4:15 P. M. when
19 both subjects returned to the Airport.
20 Q This is the same day they arrived?
21 A This is the same day they arrived.
22 Q What happened at that time?
23 A Mr. Dawson came down toward the bags. Just
24 walked around, looked at them and left. At approximately
25

6:20, both subjects were seen at the Airport again. They then left again.

MR. ROBINSON: Objection, unless he was there personally or there is a witness in Court today to testify that he saw them .

THE COURT: Sustained.

* * *

BY MR. WOOLARD:

Q What happened after this?

A Then both subjects left. At approximately 10:30, we were advised that the baggage room would be closing down approximately 11:30 or 12:00. I then got a search warrant for the three bags in question.

Q Do you see these bags in the courtroom today?

A Yes, they are.

MR. ROBINSON: Are we going into the evidence now?

MR. WOOLARD: Yes.

MR. ROBINSON: Do you have the affidavit? Your Honor, we would object to the sufficiency of the affidavit for the search warrant.

(Affidavit presented to the Court by Mr. Robinson.)

1 Mr. Robinson: The basis of our objection
2 is that the reliability of the informant
3 is not satisfied under the two-pronged test
4 of Aguilar and Spinelli.
5 The first part is established, the affidavit
6 recites the informant is reliable and has
7 given information in the past. The second
8 prong is not satisfied, in that there is
9 no information contained in the affidavit
10 stating how the informant came upon the
11 information or how his information in this
12 particular case is reliable, or whether
13 or not this information is the subject
14 of rumor or conjecture or wild guess.
15 Mr. Woolard: I don't think it would be
16 necessary in this situation. In regard
17 to the reliability and how the inform-
18 ant gets the information. We have the
19 information which the informer himself
20 gave to Detective Scott.
21 Secondly, in regard to credibility,
22 we have the surveillance itself, which
23 further substantiates the information
24 given by the
25

1 informant. I think taking both of these
2 together, the credibility is certainly established.
3 MR. ROBINSON: While Mr. Woolard's argument
4 is cogent and logical, I don't think it
5 answers the problem of Aguilar and
6 Spinelli.
7 THE COURT: I follow what is being said. It
8 is true that the information of the informer,
9 so that he didn't pick up hearsay in a barroom
10 or something like that, is what the cases
11 have reference to. How did he get his
12 information. But it does seem to me that the
13 cases have gone pretty far in that if an element
14 perhaps is missing and a search warrant
15 or probable cause for arrest, where part of
16 it is acted out. Now, here it says that a
17 black male was coming from New York with a large
18 quantity, and his name. Well, it is somewhat
19 like the Draper case.
20 They didn't give a name. They described the
21 person.
22 When the facts are acted out or the officer sees
23
24
25

1 them verified, even if a search warrant
2 perhaps may be defective, when they see
3 parts of it verified - in other words,
4 it can replace the reliability that may
5 be missing.
6
7 MR. ROBINSON: It's a question of how
8 much is enough to replace. What I'm sug-
9 gesting to the Court is that there isn't
10 enough here. The fact that the Defendants
11 arrived on a flight from New York during
12 the two day period under which the sur-
13 veillance had been established, I would
14 submit it's not enough to bridge the gap
15 and satisfy the two-prong test.
16
17 THE COURT: Statements such as this, where
18 the reliability of the informant is unproved,
19 can be considered in supporting the evidence
20 for probable cause and is supported by cor-
21 roborated facts. And the Officer in another
22 case observing a person and making two daily
23 trips to a particular apartment, and so forth.
24 I follow the point you're making and under
25

1 Aguilar certainly the reason for that is where
2 the informer gets his information, what part
3 did he play, in a sense of the word. But
4 where the probable cause perhaps has a pro-
5 blem, and the Draper case, they didn't know
6 the man's name. It was a pretty good des-
7 cription and he actually didn't come in on
8 that particular train. He came in on another
9 train. It seems to me with that information
10 and the fact the man did arrive on that night,
11 the corroboration of it, so to speak, I'm go-
12 ing to rule that it does meet the test.
13 MR. ROBINSON: Note our exception.
14 MR. WOOLARD: Could I have these marked C1
15 and C2?
16 THE COURT: C1 and C2.
17 MR. WOOLARD: C3 and C4.
18 THE COURT: C3 and C4.
19 MR. WOOLARD: If I might, I don't want to
20 carry these to the bench. If I could have
21 the large plaid bag marked C5 and the little
22 green one marked C6.
23
24
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1 THE COURT: Mark them with this red pencil,
2 then.
3 (The bags marked by Mr. Woolard.)
4 MR. WOOLARD: C-7.
5 THE COURT: Marked C-7.
6
7 * * *
8 BY MR. WOOLARD:
9 Q Detective Scott, this green bag is marked
10 C-6. Can you identify that? Do you want a closer examin-
11 ation?
12 A Yes, sir. I can. This is the bag that came
13 in on flight 79 on 3/7. It has my initials on it. H. W. S.
14 Q Is this one of the bags you have been testi-
15 fying about?
16 A Yes, it is.
17 Q Do you want to step down and can you identify
18 C-5?
19 (The witness left the witness stand and
20 examined the bags.)
21 A Yes, sir. I can. It came in on the same
22 flight. Flight 79. It has my initials on the back, H.W.S.,
23 3/7/74.
24
25

1 Q Is that also one of the bags to which you have
2 been referring during your testimony?
3 A Yes, sir. It is.
4 (The witness returned to the witness stand.)
5 Q And can you identify C-4?
6 A Yes, I can. It's a notation on the front in
7 my handwriting. Also my signature is on the front. Also on
8 the seam in the back. The notation on the front of Dawson
9 Andrews, Jr., and Lillian Peguese. The charge is 54-524.109
10 of the State Code. Place is Piedmont Airline Baggage Room.
11 The date is 3/8/74, time 2:15 A.M. The contents are two
12 brown bags of white powder, suspected milk sugar, one pound
13 each; and one bag suspected milk sugar, one pound each. All
14 three bags of the suspected milk sugar were taken out of the
15 large bag.
16 Q Are you referring to C-5?
17 A Yes, I am.
18 Q Can you identify C-2?
19 A Yes, sir. It bears my initials on the back,
20 HWS. On the front it is addressed to Mr. Steven W. Sigel,
21 Bureau of Forensic Science, Tidewater Regional Laboratory,
22 401A Colley Avenue, Norfolk, Virginia.
23 Q C-2, where was it removed from?
24 A From the green bag inside the blue tennis shoe.
25

1 Q I'm holding C-6. Is this the bag you're
2 talking about?
3 A Yes, it is.
4 Q Both C-2 and C-4, did you take possession of
5 the contents of these bags?
6 A Yes, sir. I did.
7 Q What did you do with them?
8 A I kept them in my possession until I turned
9 them over to the chemist at the lab.
10 Q Were these sealed and initialed by yourself?
11 A Yes, sir.
12 Q And given to the chemist?
13 A Yes, sir.
14 Q Can you identify C-1?
15 A Yes, sir. It's the lab report from the Div-
16 ision of Consolidated Laboratories Services. The lab report has
17 down, to H. W. Scott, Norfolk Police Department. Subjects are
18 Dawson Andrews, Jr. and Lillian Peguese. The sample was one
19 sealed brown envelope containing one sealed white envelope con-
20 taining one cardboard box containing one glassine envelope con-
21 taining a tan powder.
22 Q Would you go through the results as to - what
23 is the number on this laboratory report?
24 A The number is 73T-1627.
25

1 MR. WOOLARD: I think Mr. Robinson will take
2 notice that C-2 is also marked 73T-1627.
3 Q Are these the contents analyzed by C-1?
4 A Yes, sir.
5 Q What were the results?
6 A The tan powder responded positively to the
7 qualitative test for heroin diacetyl- morphine, a schedule
8 one control drug. Found was 4.9 grams of 4% heroin.
9 Q Can you identify C-3, please. Particularly
10 by number.
11 A C-3 is a lab report and the lab report number
12 73T-1628. The results is the white powder in each of the
13 three bags was negative for commonly abused substances and
14 responded positively to the qualitative tests for sugars.
15 Found was 1.4 kilograms of sugar.
16 Q Is the number on C-4 also the same as the
17 laboratory report?
18 A Yes, it is.
19 MR. WOOLARD: Your Honor, I have talked to
20 Mr. Robinson earlier and I think we have
21 reached an agreement earlier as to the qual-
22 ifications of the chemist. I think he will
23 stipulate they are qualified chemists and
24
25

they have run the tests and the results are accurate.

MR. ROBINSON: That is correct. We did so stipulate with the Commonwealth Attorney yesterday.

MR. WOOLARD: I would like to introduce these in evidence.

MR. ROBINSON: Subject to our prior objection regarding the legality of the search and the sufficiency of the affidavit, we have no objection.

* * *

BY MR. WOOLARD:

Q C-2 is the heroin, is that correct?

A Yes, sir.

Q That was found in this suitcase?

A Yes, sir. It was.

Q Can you identify C-7?

A Yes, sir. I can. By serial number, which is 787748. It's a 38 clip revolver. It was found in the green suitcase inside of a tennis shoe.

Q It was also found in C-6?

1 A Yes, sir.
2 Q What did you do with the revolver, C-7?
3 A I turned it over to Sgt. John Reid, who is
4 with the Detective Bureau in the Fingerprint Section, for
5 fingerprinting.
6 MR. WOOLARD: Your Honor, I would like to in-
7 troduce C-7 in evidence.
8 THE COURT: So received.
9 MR. ROBINSON: Again, Your Honor, subject to the
10 same objection.
11 MR. WOOLARD: We have one further stipulation in
12 regard to C-7. I discussed this with Mr. Robin-
13 son. C-7 was turned over to Sgt. Reid of the
14 Norfolk Police Department, who has testified
15 many times in this Court in regard to finger-
16 print analysis. Sgt. Reid ran fingerprint tests
17 on this weapon and compared one fingerprint he
18 found on the cylinder of the weapon, with the
19 known print of Dawson Andrews. He found that
20 the fingerprint on the gun was the same as the
21 known print of Dawson Andrews. Is that right,
22 Mr. Robinson?
23
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MR. ROBINSON: That is our understanding, Your Honor. We had the opportunity to observe the testimony of the fingerprint analyst in Police Court, and we believe his testimony will be substantially the same here as it was then. We have agreed to stipulate as to that testimony.

THE COURT: All right.

MR. WOOLARD: I move to enter C-7 in evidence.

THE COURT: So received.

* * *

BY MR. WOOLARD:

Q Detective Scott, what else did you find in the suitcases?

A There were two boxes of sleeping pills inside of the green bag also. There were clothes inside the bag. Inside the large green bag was a rabbit skin coat, brown and white in color. Also inside the green suitcase, there was a set of clothes. Green and white checked shirt and a pair of burgundy pants, which the Defendant wore in New York.

MR. ROBINSON: Objection, unless Mr. Scott went to New York and saw these clothes on

1 the Defendant and they conducted a scientific
2 analysis to say these definitely are Mr. An-
3 drews' clothing, I would object to the tes-
4 timony.
5 MR. WOOLARD: Perhaps if he is given an oppor-
6 tunity to explain himself in more detail in
7 relation to this matter, it would be more
8 clear.
9 THE COURT: He can testify to what is within
10 his knowledge.
11
12 * * *
13 BY MR. WOOLARD:
14 Q You are talking about this male clothing?
15 A Yes, sir.
16 Q What was found in the suitcases?
17 A There is a burgundy shirt in the suitcase
18 and burgundy pants. Men and womens clothes combined in the
19 large green suitcase. On 3/6, when I was talking to Dawson
20 in the office, he had in his possession a picture, and in the
21 picture he had on a pair of burgundy pants and a shirt that
22 was burgundy over a white T-shirt, and a pullover hat. There
23 was a black male sitting by him. I asked him whether the
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1 picture was taken in New York, and he said yes. At that time,
2 he had on a different set of clothes. I went in the large
3 plaid suitcase. The set of clothes in the picture which Daw-
4 son had on in New York in the picture, were in the suitcase.
5 Q The same color and description?
6 A Yes, sir.
7 Q As the picture you had seen of him?
8 A Yes, sir.
9 Q Did you see anything in the large plaid suit-
10 case, C-5, that you can identify?
11 A Yes, sir. The rabbit skin coat that is on
12 top.
13 Q Do you see that now?
14 A Yes, sir.
15 Q Am I holding it?
16 A Yes, sir. You are.
17 Q What is it?
18 A This is a rabbit skin coat which I have seen
19 the - one like it - the Defendant has worn numerous times.
20 Miss Peguese. When I opened the suitcase in the office, I
21 asked her about it and she stated it wasn't her coat, at that
22 time.
23 Q But you have seen Miss Peguese wearing a coat
24
25

1 like this in what respect?

2 A Numerous times. Daily. Within the Church and
3 Brambleton area.

4 Q How many times did you personally see Mr. Daw-
5 son Andrews at the Airport on the day of his arrival or any-
6 time after?

7 A Including his arrival, I saw him three times.
8 When he arrived, I saw him. Approximately 4:15, I saw him.
9 At approximately 6:20, I saw him.

10 Q At 6:20, was there someone else who saw him
11 also, or did you personally see him?

12 A I personally saw him.

13 Q Was there another officer there at the time?

14 A Yes, sir.

15 Q Who was it?

16 A Officer Spencer.

17 Q Did you ever see him again thereafter, at the
18 Airport?

19 A No, sir.

20 Q How about Miss Peguese?

21 A No, sir. I did not.

22 Q What times did you see her?

1 A Next time I saw Miss Peguese would be 8:45
2 A. M. the following morning.
3 Q Where was she?
4 A At her home. I believe the address is 1749
5 Buckroe, or 1449.
6 Q Did all this happen in the City of Norfolk?
7 A Yes, sir. It did.
8 MR. WOOLARD: Your Honor, I move to introduce
9 C-5 and C-6 in evidence. I believe all the
10 other evidence is in evidence.
11 THE COURT: So received.
12 MR. ROBINSON: Subject to the same objection,
13 Your Honor, we have no further objection.
14 MR. WOOLARD: C-7 also. May I have the affi-
15 davit marked C-8?
16 THE COURT: Marked C-8.
17 * * *
18 BY MR. WOOLARD:
19 Q Is C-8 the affidavit which was filed in re-
20 lation to the search warrant?
21 A Yes, sir. It is.
22 MR. WOOLARD: I would like to put C-8 in
23
24
25

1 evidence, Your Honor.

2 THE COURT: So received.

3 Q Answer Mr. Robinson.

4 * * *

5 CROSS EXAMINATION

6 BY MR. ROBINSON:

7 Q When you arrested Mr. Andrews and Miss Pe-

8 guese upon their arrival at the Norfolk Airport, they had

9 committed no offense in your presence that you could observe?

10 A No, sir. They had not.

11 Q You arrested them only on the basis of sus-

12 picion. You call it euphemistically investigation of a felony?

13 A Yes, sir. Tied in with what the informant

14 said.

15 Q There had been no breach of the peace in your

16 presence at that time?

17 A No, sir.

18 Q Did you determine later that Mr. Andrews' car

19 was parked at the Airport?

20 A Yes, sir. It was.

21 Q You didn't permit him to drive that automobile

22 to the Norfolk Police Headquarters when you arrested them?

1 A No, sir. I did not.
2 Q You took them down in your car?
3 A Yes.
4 Q When Mr. Andrews and Miss Peguese were re-
5 leased, he did come back to the Airport to get his car, did
6 he not?
7 A I couldn't see that far. I only saw him when
8 he came to the Airport.
9 Q Did you make a check to determine that after
10 at least one of his return visits to the Airport, the car was
11 removed from the Airport?
12 A No, sir. I never went out and checked the car.
13 Q Your investigation didn't go that far?
14 A No, sir.
15 Q Did you see Mr. Andrews on the following morn-
16 ing?
17 A Yes, sir. I did.
18 Q Did you see his car?
19 A Yes, sir.
20 Q You would assume, therefore, at some point he
21 did return for his car?
22 A Yes, sir. He did.
23
24
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1 Q It was during this period of arrest where the
2 strip search was conducted where you say you saw this photo-
3 graph?
4 A Yes, sir.
5 Q But for the fact you had taken them in custody,
6 you wouldn't have seen that photograph, would you?
7 A No, sir. I would not.
8 Q You released them from custody on the same day
9 they were arrested?
10 A Yes, sir.
11 Q How long were they in custody?
12 A At the Airport at 1:05. They were brought into
13 the office at 1:30, released approximately 1:55 the same date.
14 The whole time took about an hour and ten minutes, an hour and
15 fifteen minutes.
16 Q Were they fingerprinted?
17 A No, sir.
18 Q Just held in a lock-up?
19 A They never went in a lock-up. We transported
20 them in our car, filled out a cell sheet. I had both of them
21 searched, found nothing and released them.
22 Q You found what has been identified as C-4,
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1 three bags of sugar, in this plaid suitcase?
2 A Yes.
3 Q That, of course, is C-5. Correct?
4 A What number it is, I don't know. The milk
5 sugar was found in that bag.
6 Q You found the pistol and one glassine bag, is
7 that how much it was?
8 A Yes, sir.
9 Q In C-6, in the glassine bag and the material has
10 been identified as C-2. And the pistol, of course, is C-7 and
11 they were found in this small green bag, correct?
12 A Yes.
13 Q Am I correct that the only connection that you
14 can make with the Defendant, Dawson Andrews, with the small
15 green bag which is C-6, is the fingerprint on the cylinder of
16 the 32 pistol?
17 A Yes, sir.
18 Q Were you present when the fingerprint analysis
19 was made, when the dusting went on?
20 A No, sir.
21 Q Did you handle the pistol?
22 A Yes, sir. I did. In one way or another.
23
24
25

1 Q So there is more than one person's prints on
2 that pistol.
3 A Not necessarily. It could be. I don't know.
4 Q But you handled it?
5 A Yes, sir.
6 Q So it is at least one person's prints on the
7 pistol?
8 A No, sir. I think I can handle a gun without
9 putting prints on it.
10 Q Did you use a handkerchief?
11 A I don't know how I did it, Mr. Robinson.
12 Q Do you know whether or not the gun was dusted
13 for prints other than those of the Defendant, Dawson Andrews
14 or Lillian Peguese?
15 A No, sir. I do not.
16 Q At no time did you see these two bags in the
17 possession of either of the Defendants?
18 A No, sir.
19 Q No further questions.
20 * * *
21 REDIRECT EXAMINATION
22 BY MR. WOOLARD:
23 Q What was the condition of the suitcases, C-5
24
25

1 and 6, at the time you first executed the search warrant?
2 A The large plaid bag, blue one, was unlocked.
3 The small green one was locked.
4 Q Did you have to break into the green one?
5 A Yes, sir.
6 Q How long have you been a Narcotics Officer?
7 A Approximately five years.
8 Q In that time, have you come in contact with all
9 types of solutions in relation to the field of narcotics?
10 A Yes, sir. I have.
11 MR. ROBINSON: I object to this line. I don't
12 think it responds to anything brought up on
13 cross. I think it's exceeding the scope of
14 cross examination, unless Mr. Woolard is go-
15 ing to connect it up someway.
16 MR. WOOLARD: I think I will, Your Honor, it's
17 in relation to C-3. The sugar found in the
18 C-5 suitcase.
19 THE COURT: All right. If he is going to
20 connect that up, I'll allow him to proceed.
21 MR. ROBINSON: All I did was identify the items.
22 I didn't go into their substance. I think it's
23
24
25

1 Q Thank you, Detective Scott.
2 MR. ROBINSON: Move to strike.
3 THE COURT: Of course, he can testify within
4 his expertise what substances are used, not
5 precisely how these were going to be used.
6 (Detective Spencer called to the witness
7 stand by the Commonwealth.)
8 * * *
9
10 Detective Darnell Spencer, Witness called
11 by the Commonwealth, having been first duly
12 sworn, was examined and testified as follows.
13 * * *
14 DIRECT EXAMINATION
15
16 BY MR. WOOLARD:
17 Q Would you state your name and occupation?
18 A Officer Darnell Spencer, Police Officer,
19 assigned to the Tactical Squad, Norfolk Police Department.
20 Q Did you become involved in an investigation
21 with DetectiveScott?
22 A Yes, sir.
23 Q Do you recognize the Defendants in the
24 courtroom today as being part of that investigation?
25

1 A Yes, sir.
2 Q Did you proceed to Norfolk Regional Airport
3 on any number of occasions in relation to this?
4 A Yes, sir.
5 Q Would you tell the Court how many times you
6 went to the Airport and when?
7 A Twice. Once on March 7, '74.
8 Q Who did you see on March 7?
9 A Myself and Detective Scott went to the Airport
10 to meet an arriving flight from New York, and on thatflight
11 was the two Defendants.
12 Q Did you go back on another occasion?
13 A Yes, sir.
14 Q When was that?
15 A Later that afternoon on the same day, I set
16 up surveillance.
17 Q Do you recall what time that would have been?
18 A Approximately 3 or 4 in the afternoon. It
19 was in the afternoon.
20 Q Did you see anybody at that time?
21 A Yes, sir. I did.
22 Q Who did you see at that time?
23
24
25

1 A Later on that night, about --
2 MR. ROBINSON: Objection. The question is
3 who did he see at that time at 3 or 4 p. m.
4 not later on that night.
5 * * *
6
7 BY MR. WOOLARD:
8 Q Who did you see at that time?
9 A No one.
10 Q Did you see anybody later that night?
11 A Yes, sir.
12 Q Who did you see?
13 A I saw the Defendants return to the Airport.
14 Q Do you recall what time that was?
15 A Not exactly.
16 Q Did you see them anytime after later on that
17 night, at the Airport?
18 A No, sir.
19 Q Did you go to the Airport anymore after that
20 particular date, March 7?
21 A Yes, sir.
22 Q When did you return to the Airport?
23 A March 8, the following morning.
24
25

1 Q What was the status of the Airport at that
2 time?
3 A On my way to the Airport to meet Detective
4 Scott, I saw the Defendant, Dawson Andrews, leaving the Air-
5 port.
6 Q What was his mode of transportation?
7 A Car. He was in his car. I believe his pri-
8 vate car.
9 Q Answer Mr. Robinson, if he has any questions.
10 MR. ROBINSON: I have no questions, Your Honor.
11 MR. WOOLARD: You may step down. That's the Com-
12 monwealth's case. The Commonwealth rests.
13 MR. ROBINSON: First of all, Your Honor, I would
14 like to move to strike the Commonwealth's evi-
15 dence with respect to the arrest. No crime had
16 been committed in the presence of these police
17 officers. Nothing had been done in their pres-
18 ence to warrant taking them into custody and
19 searching them. Admittedly, no substantive evi-
20 dence that was introduced at the trial here
21 was found on either of the Defendants. We
22 would like to interpose an objection and move
23
24
25