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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 761249

LARRY DALE PATTY

Plaintiff in Error

vs.

COMMONWEALTH OF VIRGINIA

Defendant in Error

APPENDIX

FARLEY & HARRINGTON
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INDICTMENT

RETURNED JUNE, 1975 TERM

COMMONWEALTH OF VIRGINIA	)	
	)	
COUNTY OF PRINCE WILLIAM	)	To-wit:
	)	
IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY	)	

The grand jurors of the Commonwealth of Virginia, in and for the body of the County of Prince William, and now attending the Circuit Court of said County, upon their oaths present:

That Larry Dale Patty on the 11th day of February, 1975, in the County of Prince William, did unlawfully, feloniously, knowingly, and intentionally possess with intent to sell, give or distribute a controlled substance, to-wit: Cannabis Sativa L (Marijuana), a Schedule I substance without authority, against the peace and dignity of the Commonwealth, in violation of Section 54-524.101:1 (a) of the 1950 Code of Virginia, as amended.

EXCERPTS FROM TRANSCRIPT

The notation SM refers to the Motion to Suppress Transcript, the designation TR refers to the Trial Transcript and the designation ST refers to the Sentencing Transcript.

JAMES R. FISHER BY MR. HARRINGTON

(SM 13) Q. And, summarizing this, we want to put you at the station, I believe the Commonwealth and the Defendant have already stipulated as to what went on on the telephone conversation and it was Mr. Green, Jr., is that correct, leading up to your getting there to -- and Sgt. Russell getting up to the gas station?

A. Yes,I didn't speak to Mr. Green, Jr. unitl I arrived at the gas station.

Q. When you arrived at the gas station, who was the first person you talked to?

A. Mr. Green, Jr.

Q. And, you ascertained that he was the one who actually was present when the trunk lid popped opened, is that right?

A. Yes, sir, that is correct.

Q. And, then you yourself did some further investigation as to what they really saw in there?

A. Yes, sir.

Q. And, I believe Mr. Green, Jr. told you that he had been to a lecture in high school on marijuana and had seen marijuana at the high school lecture, isn't that also correct?

A. Yes, Sir.

Q. Now, in addition to that, did you make further investigation with either Mr. Green, or anybody else at the

gas station who had seen what was purported to be marijuana in the trunk?

(SM 14) A. Yes, sir, I also spoke to Mr. Heck and a Mr. Noble, and both of them described to me the contents they had seen in the trunk.

Q. Did you do anything further, how did they describe it:

A. They described it as being a green plant material packaged in a combination of brown wrapping paper packages and some packages being packaged in plastic containers or plastic wrappers.

Q. Plastic wrapping?

A. Yes, sir, and they also stated that some of the packages had broken open and they observed the material plus large quantities of seeds.

Q. How many packages had broken open that you saw, one or two on the top?

A. I don't recall the exact amount. I believe there were four or five packages that had been opened.

Q. Now, they also told you that they hadn't actually removed or touched or in any handled that particular marijuana, isn't that correct?

A. That is correct.

Q. And, that it was exactly the same when you arrived there, that was the same way as they saw it, they hadn't disturbed it or touched it at all?

A. That is correct.

(SM 15) Q. And, then you took photographs, is that correct?

A. Yes, sir.

Q. But, photographs were taken?

A Yes, sir.

Q. Okay. Now, other than the verbal description, did that convince you or did you make other tests in addition to the verbal description?

A. Based on the verbal description, also in addition to the fact that Mr. Green, Jr. pointed out to me or told me rather that the car had air shocks on it, the car did not appear to have a load and also he stated that as he was jacking the car up, in his estimation, the car contained a heavy load in the trunk area.

****

(SM 16) Q. Also, I believe you testified earlier at the preliminary hearing that you also had pictures drawn by one or more of the witnesses, is that right?

A. Yes, Mr. Heck drew me a picture of what the seeds that he saw looked like.

Q. In other words, you had that Mr. Green had seen it and Mr. Heck had seen it and Mr. Noble had seen it and they all said it was green plant like material?

A. Yes.

Q. And, that Mr. Green had had a high school lecture on it and he said he recognized it as marijuana from the high school lecture he had because he had seen it then?

A. Yes.

Q. And, they said that there were seeds that had a point on it, is that right?

A. Right.

Q. Did he draw a picture of the leaf and the seeds?

A. No, he drew a picture of it to aid his verbal description of what the seed looked like.

Q. Do you have those drawings with you?

Did you keep those drawings?

A. No, sir, I really don't recall whether I kept it or not. It was on a piece of scratch paper and he drew what he thought was one seed.

I may have it with my field notes. I just really don't recall.

Q. Could you draw on this piece of paper what he drew for you.

A. I could try, somtehing like that.

(witness makes drawing.)

Q. Did he draw one seed like that?

A. Approximately like that indicating somewhat of a fat round seed with a sharp point on one end.

MR. HARRINGTON: I would move to introduce this.

THE COURT: This will be admitted as Defendant's Exhibit No. 1.

(The document, a drawing was marked for identification as

Defendant's Exhibit No. 1 and

was received in evidence.)

(SM 18) Q. Now, do you recall during the time you were there if, from say just before three until the Defendant arrived and I believe they arrived at ten past eight, is that correct?

A. Yes, sir.

Q. Do you recall during that period of time whether anybody had any discussions regarding whether or not they should get a search warrant.

Do you think we should get a search warrant?

A. I was not involved in any such conversation, nor did I overhear such a conversation.

Q. Do you ever become aware at a later time that such a conversation was carried on by Sgt. Russell or somebody else?

A. The only thing I recall, and I remember hearing, I believe Sgt. Dean testified to the effect that perhaps he and Sgt. Russell did have a conversation, that is the only thing I am aware of.

Q. Now then, at a later time of course, a car does drive up and two male subjects get out and go on over to the automobile, is that correct?

A. More than two got out.

Q. But, I mean just two went toward the car?

A. That is correct.

Q. I believe it was Mr. Patty, you identified

him as the one who got in the car to try to attempt to start the car?

A. Yes, sir.

Q. And, it was within less than a minute from the time he got in there until the time that everybody arrived on the scene to make the arrest?

A. That is correct, yes, sir.

****

Q. And, then I believe you and Sgt. Russell were the two that pried open the trunk lid, is that right?

A. Yes.

Q. And, I believe you have previously testified it took you a couple of minutes to get the trunk lid open?

A. Yes.

****

CROSS-EXAMINATION OF FISHER BY MR. MURPHY

(SM 20) Q. Did anyone else other than you actually question the parties that had seen the marijuana and had talked with the people that had called in?

A. Not face to face, no, sir, I believe investigators did previously by telephone.

Q. But, you were the only one that interviewed them at the station regarding what they had seen and what the parties had called in to say about the car, is that correct?

A. Yes, Sir.

****

(SM 21) A. Approximately 3 p. m.

Q. Approximately 3 p. m.?

A. Yes, sir.

Q. All right. Now, did you relay this information to Sgt. Russell?

A. Yes, sir, via telephone.

Q. When did you do that?

A. I don't recall the exact time. It was somewhat after I arrived at the gas station, probably in the neighborhood of 3:20 to 3:30.

Q. Where was Sgt. Russell then?

A. I don't know.

Q. Did he call you or you call him?

A. I attempted to get in touch with him. I believe he was returning a call to me.

Q. It was your understanding he was in the area at that time?

A. Yes, sir.

Q. And, did you have any instructions at that time or make any decisions on your own about whether or not you were going to approach the car?

A. We briefly discussed that. We decided it would be best not to approach the car at all, due to the fact we did not know who the people were coming back to the car, when they would arrive. We were fearful if we

approached the car, they might come back and see us there and abandon the car.

Likewise, we were also fearful they might come back and observe the car before coming back to make sure everything was okay.

****

(SM 22) RE-DIRECT EXAMINATION OF FISHER BY MR. HARRINGTON

Q. I beleive you testified earlier at another hearing of course, that it had taken you anywhere from one, usually a minimum of one hour and maximum of maybe six hours to get a search warrant in your experience of all of the search warrants you have got?

A. I believe I said one to eight hours.

Q. If there were an emergency situation to get a search warrant, what do you think the fastest you could get a search warrant would be?

A. Written search warrant?

Q. Yes, it has to be written, instead of having it typed up, a handwritten --written in by hand, what do you think the shortest period of time would be?

A. I believe an hour.

****

Q. And, one final question, none of the people were your informants, right, in other words, you hadn't worked with any of these people. This was the first time you had met any of them?

(SM 24) A. That is correct.

Q. And, the other two, Heck and Noble, they had had no sepcialized training with marijuana?

A. Not that they indicated, no, sir.

****

RE-CROSS EXAMINATION OF FISHER BY MR. MURPHY

Q. How far were you from the nearest Magistrate's office?

A. At that time, I believe the nearest Magistrate would have been Mr. Barber, we were in Gainsville, I would say approximately a fifteen minute drive.

Q. Fifteen minutes one way?

A. Yes, sir.

****

(SM 26) SAMUEL B. RUSSELL BY MR. HARRINGTON

****

Q. Okay. Now, what time did you personally arrive on the scene?

A. I never arrived on the scene at the gas station until such time as the arrest was made.

Q. What time did you talk to Fisher near the scene then?

A. I dispatched him out there around 2:30, I believe it was, gave him instructions.

Then, I talked to him on the telephone later that day.

I went out in that area after lining up other

help.

Q. Now, when you were there, did you have any discussion with Investigator Dean about whether or not a search warrant -- you should get a search warrant?

A. We had -- Sgt. Dean and myself had a lot of discussions.

As far as pinning it down as to whether to get a search warrant or not, not as such, due to the fact that the information I was getting -- I talked to Officer Fisher on the phone once and most of the information I got was from Investigator Bennett who I had relaying messages from myself to Officer Fisher and back.

Sgt. Dean and I spent considerable amount of time together that evening, sometimes for a few minutes he would be in the car with me and sometimes separately, it would be separate ways.

(SM 27) We had a lot of discussions, but as far as such as to calling the shot on getting a search warrant, we couldn't call the shot. I was getting more information fed to me as time went on, you might say.

Q. Did you have some discussions, somebody did talk that night about whether or not a search warrant -- sometime during that period of time, somebody had some conversation with you, isn't that correct?

A. I had some conversation. The nature of my conversation was due to the fact I had reason to believe

that they had the car under surveilance as well as we did.

There was never a final decision made until the minute of the arrest.

Q. How about as far as arrest warrants go. Did anybody discuss whether or not you should get a warrant of arrest?

A. In those words, I can't, we had no idea who we were waiting for or anything else.

Q. Have you ever gotten a John Doe warrant in all of your experience on the police department, when you know somebody had committed a crime and you don't know his name. Have you ever gotten a John Doe warrant?

A. Yes, but with more information than I had on this.

I have never gotten a John Doe warrant with -- well, without a description. Every John Doe warrant I have gotten always had a physical description on it.

Q. In other words, you didn't have enough information to get it?

A. No, sir, I didn't feel the Magistrate would even issue one.

Q. Do you recall some discussion regarding who disabled the car. I believe somebody pulled the ignition coil wire out of the car, do you recall some discussion between Investigator Bennett about having done that?

A. No, sir, in fact I didn't know about that until we were up here last week on a similar situation. I

learned about it the day before. I learned about this one day last week.

Q. Did you learn whether it was Investigator Bennett that pulled the ignition coil out of the car?

A. The information I had was that it had nothing to do with the case. It was to insure payment of the bill.

We thought it was one of our men, but it wasn't our doings.

Q. This is another point that just came on line, I believe the car was disabled about 7:00 o'clock, somebody, (SM 29) I think it was Mr. Green, Sir. -- there was some testimony that Investigator Bennett had done it, but now everybody agrees it was probably Mr. Green, Sr. that pulled the ignition coil out of the car about 7:00 o'clock.

THE COURT: Was that to insure the non-movement of the automobile until the bill was paid?

Mr. HARRINGTON: Yes, sir.

THE COURT; About 7:00 o'clock in the evening?

MR. HARRINGTON: That is what I understand.

MR. MURPHY: We will stipulate to that.

BY MR. HARRINGTON:

Q. Now, in your experience on the police department, how many search warrants have you gotten?

A. Many.

Q. If there is an emergency situation, do you

get cooperation from the Commonwealth Attorney's office and Magistrates and everything, if there is an emergency situation:

A. If it is justifiable, yes.

Q. What is the fastest search warrant you have ever gotten where there is an emergency situation and you have got to have a search warrant?

A. I have never gotten a fast search warrant.

Q. Never in your entire career?

(SM 30) A. No, sir.

Q. Not one?

A. No, sir, and I have been in police work in this county since 1959. I have never gotten a fast search warrant.

Q. Is that because of the people preparing the search warrant or because of the lack of cooperation?

A. I think it is, as time goes on, personal opinion is as time goes on, the Magistrates seem more skeptical all of the time. The more information has to be furnished --

Q. Do you feel it is easier to conduct a search without a warrant than with a warrant.

A. I have always taken the stand and as being the Supervisor of Intelligence Bureau, I always teach the men that any time you can get a search warrant.

I am even against consent searches. I would rather come to Court with a search warrant.

Q. There was no consent on this case?

A. No, sir, no, sir. We would rather take a search warrant-route.

Q. How long does it take you to physically type in the blanks on the search warrant, how long does it take to do that?

A. That doesn't take too long, it is the affidavit.

Q. How long does it take to type in the affidavit, there are just four paragraphs.

A. Well, it all depends, I have had affidavits as high as thirteen pages right before this Court.

****

(SM 31) THE COURT: IT IS YOUR WITNESS:

(SM 32) MR. HARRINGTON: I understand it is my witness, but it is hardly not an adverse witness.

MR. MURPHY: It is still direct examination.

THE COURT: The Court overrules the objection.

BY MR. HARRINGTON:

Q. It it correct it would take --

A. Yes, sir, even Officer Fisher who was getting all of the information, it wasn't even feasible for him to swear one out or send a man there.

Q. How far were you from the nearest Magistrate's Office?

A. Thirteen miles.

Q. Time wise, approximately how long would it take?

A. Time wise?

Q. Yes.

A. Driving time or otherwise?

Q. Well, driving time, how long would it take you:

A. Fifteen minutes.

Q. Sometime after that to draft the language and possibly confer with the Commonwealth's Attorney's Office.

A. Yes, in fact, the Magistrate we had to go to will not even issue a search warrant unless the Commonwealth Attorney approves it.

(SM 33) Q. And, when did you expect the people to come to claim the car?

A. Any minute, in fact, I sent Officer Fisher when I dispatched him on the double and advised him to meet Investigator Maybee and have Investigator Maybee to drop him off on foot. I based that on the information I was given by several phone calls.

Q. After you got Investigator Fisher there and communicated with him as to what was going on, do you know approximately what time that was?

A. I met each -- I requested from Patrol Division people and Special Operations Division and Detective Bureau, I requested people. I met all of those people and sent them to locations before I ever talked to Fisher on

the telephone. I would estimate around 5:00 o'clock.

Q. Could it have been earlier that you talked to Fisher?

A. Yes, it could have between four and five. It was, a couple of hours lapsed.

Q. After you got your operation setup and found out what was going on after Fishers personal investigation, did you feel you had sufficient time to go get a search warrant before the people might arrive?

(SM 34) A. No, sir, I didn't feel we could obtain the information on the car, as to what is needed in reference to describing the car. I didn't feel we could get that properly. I also didn't feel it was proper to pull Fisher out. He was in the gas station and I didn't feel he could come out to swear to this and no one else could swear to it.

Q. In other words, you were dealing with a situation in which you had unknown people about to come back to claim contraband?

A. That is exactly right.

Q. And, you didn't know exactly when they were coming back, is that correct?

A. They were past due then from the nature of the phone call.

Q. Now, at some point in the evening apparently the people arrived and there was a call to all of the parties, all of the police officers in the area that you were in the process of an arrest, is that correct?

A. I stationed Officer Exon across the street. He was at the Texaco station. He was to notify us who weren't in sight. He was in an old car with a radio to notify us when the car was approached, by radio. He in turn did notify us when the car was approached, by radio. He in turn did notify me. I in turn gave word to the others to move in.

(SM 35) Q. When you moved in on the scene, what did you observe?

A. I moved in on the scene and as soon as I pulled up, there were several people standing around.

Mr. Patty here slid under the wheel of the vehicle.

At that time, I placed him under arrest myself and asked him to step out of the car, placed him under arrest for possession with intent to distribute marijuana.

Q. Did you find a key on him or get a key from him?

A. Yes, he gave me the key. I asked him for a key to the car.

Q. What did you do then?

A. Went around and saw it didn't open the trunk and asked him where the trunk key was and he said he didn't have it.

Q. All right. Then, you pried open the trunk and found the marijuana inside of it?

A. Yes.

MR. HARRINGTON: That is all of the questions I have.

THE COURT: Cross Examination.

CROSS-EXAMINATION BY MR. MURPHY

Q. Did the keys fit the car?

A. Yes, sir.

Q. Did you use the key to start the car yourself?

(SM 36) A. No, I didn't start the car. I did ascertain it was the right key. I later turned the key over to Officer Fisher.

Q. How did you ascertain it was the right key?

A. Turned the switch.

Q. You did check the key?

A. Yes.

Q. What is needed in a search warrant to describe the car?

MR. HARRINGTON: Your Honor, I object to that. I think it is a legal question.

THE COURT; Overrule the objection.

BY MR. MURPHY

Q. What is needed to describe a car?

A. Physical description of the automobile, anything that stands on it such as tag number, serial number, so as it can be described in Court as being no doubt the right vehicle.

Q. You had no problem with doing that?

A. Yes, I did, I did, yes.

Q. Would Officer Fisher have?

A. There is no way in my opinion he could obtain the serial number without approaching the vehicle. We did not want to approach the vehicle because in my exeprience it is not uncommon for the suspect to keep cars under surveilance.

(SM 38) Q. Was the car locked or unlocked during this period of time?

A. The car was locked to my knowledge.

Q. Well, you are not really sure, are you Sergeant, because Mr. Green who was there, as you may recall, testified the car was unlocked. He unlocked it.

A. Let me say this, on any case I have been on, I have been ruled out. I haven't heard any of the testimony. The information I got on the telephone was that the car was locked. There was no key left with it, was the reason he had to jack it up in the location it was sitting.

****

(SM 39) Q. You weren't about to let anybody drive off in the car?

A. No, sir, no way.

Q. And, you weren't going to let anybody get out with that car, and at the time it couldn't be driven because somebody had the ignition coil?

A. I had no knowledge of that whatsoever.

Q. But, still, even after these Defendants were

placed under arrest, you still did not get a search warrant, that is the only question I am asking?

(SM 40) A. No, sir, I didn't get a search warrant. We had as many Defendants as we had police officers. I had no one to leave them with. The station was closing, it wasn't feasible at all.

Q. And, it was you and Investigator Fisher who took the crowbars and pried open the trunk?

A. That is correct.

THE COURT: Step down, call your next witness.

(Witness excused.)

****

(SM 58) THE COURT; The Court would deny the motion to suppress. Counsel may note objections of that. This case is set for trial --

MR. MURPHY: Monday, Your Honor.

HAROLD RONALD GREEN, SR. BY MR. MURPHY:

* * * *

(TR 7) Q. State your name and occupation, please.

A. Harold Ronald Green, Sr., Greenville Mobil Service Center.

Q. Did you operate that Mobil Service Center On the 11th day of February, 1975?

A. Yes, sir.

Q. Is that located in Prince William County?

A. Yes, sir.

Q. Now, did there come a time when you discovered that a yellow Pontiac bearing Texas license plates had been left on the service station parking lot?

(TR 8) A. Yes, sir.

Q. What was the condition of that Pontiac when you first saw it?

A. It was broke down.

Q. How do you know it was broke down?

A. It was jacked up in the rear.

Q. Could you visually see whether there appeared to be anything wrong with the car?

A. The right rear axle was out of the car.

Q. Well out of the car?

A. About "yea" far.

Q. And had you seen the car before?

A. No, sir.

Q. Had you worked on it before?

A. No, sir.

Q. Had anyone brought it in for repair that day?

A. No, sir.

Q. Did you receive a call with reference to the car?

A. Yes, sir.

Q. What time frame was that?

A. A little after 7:00.

Q. And would you tell the Court, do you know who that call was from?

(TR 9) A. All I know it was a man.

Q. A man?

A. Yes, sir.

Q. And -- but it was with reference to the car?

A. Yes, sir.

* * * *

Q. As a result of the phone conversation, did you go ahead and fix the car?

(TR 10) A. Yes, I did.

* * * *

(TR 11) Q. Were you in -- as a result of your repair of the automobile, were you able -- are you able to formulate an expert opinion as to the cause of this problem, of all of the problems?

A. Yes, sir.

Q. What was that?

A. Well, the axle bearing went bad, and it was burned out. The brake shoes and wheel cylinder were burned out.

Q. You say the axle wheel went bad. Are you familiar with the symptoms of an axle bearing going bad on this car?

A. Yes, sir.

Q. What would this be?

A. A pinging noise would be made, and it would heat up.

Q. And would this be noise that would be audible to someone driving the car?

A. Yes, sir.

(TR 12) Q. Now, did there come a time when -- or let me ask this: what time did you finish the repairs on the automobile?

A. A little before 2:00.

Q. Was the car locked at the time you had it?

A. When it was first left.

Q. Yes, sir, did you have to get into the car to repair it?

A. Yes, sir, we did.

Q. Did you lock the car back up after you finished your repairs?

A. No, sir.

Q. You say you didn't lock back up?

A. No, sir.

Q. Not the door?

(TR 13) A. No, sir.

Q. Not the inside door?

A. No, sir.

Q. Did there come a time -- was the trunk closed on the car when you started it?

A. Yes, sir.

Q. Did there come a time when the trunk was opened?

A. Yes, sir.

Q. How did it come open?

A. When we finished, we were letting down the bumper, and the trunk lid flew up.

Q. Did you observe the contents of the trunk at that time?

A. Yes, sir.

Q. What did you see?

A. Bags of what appeared to be marijuana.

MR. HARRINGTON: I have to object to that.

THE COURT: Sustained.

BY MR. MURPHY:

Q. I show you these two pictures. Had you ever seen them before?

A. The pictures?

Q. Do they accurately portray what you saw?

(TR 14) A. Yes, sir.

Q. These both do?

A. Yes, sir.

MR. MURPHY: I would offer these in evidence.

MR. HARRINGTON: No objection.

THE COURT: They will be admitted as No. 1 and 2 for the Commonwealth.

(The photographs referred to were marked Commonwealth's Exhibt Nos. 1 &2 for identification and received in evidence.)

****

CROSS EXAMINATION BY MR. HARRINGTON:

Q. Mr. Green, I believe you testified earlier at trial last week, on Thursday; is that right?

A. Yes, sir.

Q. Did you testify, or is your testimony still the same as to getting there about 6:00 in the morning, about 6:00 a. m.?

A. Yes, sir.

Q. And you said that this telephone call that you received, I believe your testimony was sometime after 7:00?

A. Yes, sir.

Q. Now, for how long a period of time was the trunk actually opened?

A. Not more than about three minutes.

Q. About three minutes.

A. About that.

Q. Do you remember testifying at the trial last Thursday as to how long the truck was open?

A. Yes, sir.

Q. And wasn't there an experiment conducted as far as start and stop?

A. Yes, sir.

Q. And did you take part in that experiment?

(TR 16) A. Yes, sir, as far as the estimating of the time.

Q. As the estimating of the time.

A. Yes, sir.

Q. If I told you that in a few seconds to start, could you reestimate the time for us, how long the trunk was open, if I tell you you can start right now.

* * * *

(TR 19) Q. All right, Mr. Green. I will give you a go and you tell me where to stop.

Go.

A. Stop.

Q. For the record, that would be about 13 seconds, which was about the same time.

Now, I believe your former testimony was

also that the car was disabled about 3:30 p.m.; is that correct?

A. Yes, sir.

Q. Did you disable it or did Officer Bennett disable it?

A. Neither one.

Q. Who did that?

A. My son.

* * * *

(TR 20) Q. All right.

May I have those pictures.

Now, you said these pictures represent the trunk exactly as you saw it when the trunk popped open?

A. Yes, sir.

Q. And 13 seconds later, you shut the trunk back, whatever it was?

A. Yes, sir.

Q. And it stayed shut until the officers again opened it.

A. Yes, sir.

Q. Of course, these pry marks weren't on the trunk lid when you closed it; isn't that right?

A. No, sir.

* * * *

REDIRECT EXAMINATION BY MR. MURPHY:

(TR 21) Q. Who all were present at the time, during the time that the trunk was open?

A. Myself, my son, Mr. Hecht and Mike Noble.

Q. Do you recall where everybody was about the time that the trunk came open?

A. To my knowledge, everybody was around the car.

Q. Is it possible that Mr. Hecht was taking the jack back to the service station?

A. It was a very good possibility.

Q. And he had to come back to the car to look into it?

A. Could have been.

Q. Did anyone touch it?

A. Mr. Hecht did.

Q. Mr. Hecht did.

A. Yes, sir.

Q. And what did he do with it?

A. He told us it was marijuana.

* * * *

JACOB HECHT BY MR. MURPHY:

(TR 23) A. Gainesville Mobil.

Q. And do you recall there being a yellow Pontiac with Texas license plates on it?

A. Yes, sir.

Q. What time did you arrive at work that day?

A. 12:00 noon.

Q. Was that car being worked on at that time?

A. Being worked on, yes, sir.

Q. Did there come a time when you saw the contents of the trunk of the car?

A. As they were finishing up, finishing the bearings and putting it back together, I took the roll-away jack which we use for safety purposes, which was hedged somewhere between the car and the building about halfway, when I heard a sort of a pop or noise, and I turned around and seen the trunk lid was up.

Q. How far were you from the car at that time?

A. Oh, I would say a distance of maybe 50 feet, something like that at the most.

Q. What happened then?

A. You mean what happened did it pop?

Q. What happened after you saw the trunk lid pop?

A. Somebody hollered and I went back to the car and I seen a contents, and it was one package.

(TR 24) Q. What was on the contents of it?

A. The contents?

Q. Describe the contents you saw.

A. There was one package on the top that was opened, and definitely it was marijuana.

MR. HARRINGTON: I object, Your Honor.

BY MR. MURPHY:

Q. Did you touch the contents of the car?

A. Did I touch them?

Q. Yes.

A. Just merely to put my fingers on it, and I said, Yes, this is it. Somebody asked the question.

MR. HARRINGTON: Objection, Your Honor, unless he lays the foundation.

THE COURT: Sustained.

BY MR. MURPHY:

Q. What was the nature of the material that you saw?

A. Well, the leaves and the seeds in it and so forth.

Q. If you would just describe, in other words, what you saw. In other words, don't give your opinion to what you thought it was, just the type of material that you saw.

A. The packages in there looked like they were neatly packed on top of each other.

(TR 25) Q. What kind of packages were they?

A. Plastic containers.

Q. Plastic or paper?

MR. HARRINGTON: Objection. He is giving the answer to the witness.

THE COURT: Sustained.

BY MR. MURPHY:

Q. I show you two pictures and ask if that accurately portrays what you saw in the car at that time?

A. That is right.

Q. Is that right?

A. That is right.

Q. Now, these lighter colored packages --

MR. HARRINGTON: I think he ought to point out to the Court what he is pointing to.

THE COURT: You can hold it up from there.

BY MR. MURPHY:

Q. These lighter colored packages, what kind of material were they wrapped in?

A. Well, they were wrapped in a very light transparency type -- I would say it was plastic. It could have been paper.

Q. Did you feel it; did you feel the packages?

(TR 26) A. No, sir, I did not.

Q. Was there a package open like this?

A. There was one opened. That is the one I wet my finger with.

Q. Describe the material that you saw, the way that you saw it.

A. Well, it was loose in the package. It was slit across the top, the opening.

Q. Okay. What did it feel like?

A. It felt like -- I don't know how to say it. It felt like marijuana.

MR. HARRINGTON: Objection.

THE COURT: Sustained.

BY MR. MURPHEY:

Q. Have you ever seen marijuana?

A. Yes, sir.

Q. Where?

A. In my home, my boy.

Q. Your son?

A. My son.

Q. Has he ever been convicted of a drug offense?

A. No, sir, not convicted of a drug offense, but was on the verge.

(TR 27) MR. HARRINGTON: I can't hear that.

THE WITNESS: On the verge of facing trial.

BY MR. MURPHY:

Q. Had he been previously tried?

A. Yes, sir.

Q. Why do you say he was on the verge of facing trial?

A. The next day he was --

MR. HARRINGTON: I don't see where any of this is relevant, on the verge of facing trial.

MR. MURPHY: I am trying to go into this, Your Honor, the fact that he had seen marijuana.

THE COURT: The Court would overrule the objection and let him attempt to lay the foundation for the conclusions to be testified by the witness.

THE WITNESS: The following day --

BY MR. MURPHY:

Q. Go ahead.

A. Go ahead.

Q. Let me ask questions and you try and respond. You say you believe you have seen marijuana before?

A. Yes, sir.

Q. And where have you seen it?

A. In my home.

(TR 28) Q. Who had it?

A. Yes, sir, my son.

Q. What made you believe it was marijuana at that time?

A. Because he used it, smoked it, used it in a pipe.

Q. Is that against your will?

A. Yes, sir, very much so.

Q. How did you know it was marijuana that he was using?

A. Well, as far as that goes, I couldn't definitely say that I knew it was marijuana. I have seen it. It was called marijuana.

MR. HARRINGTON: Objection to what it was called.

THE COURT: Sustained.

THE WITNESS: For me to sit here and say I know exactly what marijuana is, it would have to be determined what -- from somebody with more authority than me, I would say. It was used and classified as marijuana, as far as I knew.

Q. Who classified it?

A. Well, let me put it this way; my son was killed last November in an automobile accident. And the following day he was to go before the Grand Jury on charges of possession, manufacturing, possession with the intent to sell.

Q. Did your son tell you this material he had was marijuana?

(TR 29) A. Sir?

Q. Did he tell you that the material he had was marijuana?

MR. HARRINGTON: Your Honor, I object again.

THE COURT: Objection sustained.

MR. MURPHY: I think it is against his son's interest if he told him it was marijuana.

THE COURT: I don't think that is a conclusion the Court can make. There is no way for the Court to determine his expertise of marijuana. But the witness can testify to what he saw. I think the witness can testify to what he actually observed. That is as far as the witness goes.

BY MR. MURPHY:

Q. Let me ask you this: did this material, did it bear any resemblance to the material that your son had?

A. Yes, sir, definitely.

Q. In which way or how did it resemble --

A. The color of it.

Q. What was the color of it?

A. Sort of a brownish green.

Q. Brownish green?

A. Yes, and the seeds in it.

Q. What kind of seeds were in it?

(TR 30) A. I don't know what kind of seeds, other than the seeds I had seen in the same stuff that my son had had.

Q. What kind of leaves did it have?

A. The brownish green looking -- mostly green looking leaves.

Q. All right. What happened, did you have occasion to touch that material?

A. Yes, sir. I wet my finger and touched it. On one occasion in my home, I had seen what I thought was marijuana in a little pile on the table, and I have never smoked it. I wet my finger and tasted it.

Q. Was there any odor to the material in the trunk.

A. Yes, sir.

Q. What kind of odor?

A. the same odor I smelled in my home.

Q. On what occasion?

A. On the occasions when my boy had been smoking it and also when the smell of it had been there before it had been smoked.

Q. So what happened after you touched the material in there?

A. That is all I did. I said, yes, this is -- I said it to Mr. Green; to my knowledge, I think it was Mr. Green, that it was marijuana, and he shut the trunk.

(TR 31) Q. All right. The police arrived after that?

A. Sir.

Q. Did the police arrive after that?

A. Sometime later.

Q. Is that Investigator Fisher that arrived?

A. Yes, he was.

Q. Did he question all of you?

A. Yes.

Q. Who all was present during the time that the trunk was open?

A. Mr. Green, his son and I, those three. I don't know if ther was anyone else there or not. I know we three were there.

Q. What about Mr. Noble, was he there?

A. I don't know whether he was there at that present moment or come shortly after that.

Q. Do you know if he was there before the trunk was closed?

A. I am not sure of that, sir.

* * * *

CROSS EXAMINATION BY MR. HARRINGTON:

(TR 32) Q. Mr. Hecht, your testimony is that you saw something that you thought was marijuana on one occasion.

A. On different occasions.

Q. How many different occasions?

A. Numerous.

Q. Would you say a hundred; would you say three?

A. Well, let me put it this way. There was an awful lot of traffic in my home, and that is what my son and I were having difficulty with. And I would say that It wouldn't be unreasonable in a period of months, that it was a hundred occasions, yes.

Q. A hundred occasions you saw marijuana or a hundred occasions when you saw people coming in?

A. People coming in. On occasion I seen marijuana was less than that, sir.

Q. A lot of people were coming in and out of your house. You might have suspected whay they were coming in and out of your house. They didn't go over and show you the marijuana they bought and walk out the door, did they?

A. Show it, come and show it to me when they went out the door? No, sir. Some of them had it in their hands in the plastic bag but they didn't come to me and show it to me, no, sir.

(TR 33) Q. You thought it was marijuana?

A. Yes, sir.

Q. You said on one occasion you tasted it.

A. Yes, sir.

Q. When was this, what month and year would that have been?

A. Well, this was back sometime last -- not this summer but last summer.

Q. The summer of '74?

A. Yes.

Q. You tasted it one time?

A. I did. I seen some, like I say, left on the table after they had gone out, and I never smoked it. And I just did like this to see if there was any particular -- anything that you could tell that was distinct from anything else.

Q. How big of a pile was on the table?

A. Just a little pile.

Q. You say you could smell it. Did you have to get right down next to it to smell it?

A. No, sir. I wasn't concerned about the smell. It was the taste.

(TR 34) Q. Have you ever smelled it?

A. Yes, sir.

Q. When you smelled it on prior occasions, did you get down next to it to smell it?

A. Are you talking about smelling it in the raw or smelling it when it was being smoked?

Q. Smelling it in the raw.

A. In the raw.

Q. Right.

A. I have smelled it after it had been packaged in a closed room that was his.

Q. You walked in and smelled an odor, but you really don't know what the odor came from unless you got down and smelled it?

A. Right.

Q. Do you know what alfalfa smells like?

A. Yes, sir.

Q. Do you know what timothy and fescue smells like?

A. I know what timothy smells like, clover and alfalfa.

Q. How about fescue, what does that smell like?

A. No.

Q. How about bird's foot trifoil, do you know what that smells like?

(TR 35) A. No.

Q. How about melitotus clover, do you know what that smells like?

A. No, sir.

Q. Do you know what any of those taste like?

A. I know what alfalfa tastes like. I know what clover tastes like.

Q. Have you ever heard of killer weed?

A. No, sir.

Q. Then, if you don't know what it tastes like, for all you know, the taste could have been any of those; isn't that correct, if you don't know what it tastes like. It tastes the same; isn't that a fair statement?

A. I guess you would call it a fair statement. If I may be permitted to say this.

Q. I just asked if that is a fair statement.

A. Yes, sir.

Q. And the same as far as the smell goes. If you don't know what any of those smell like, is it a fair statement that any of those could have been the same?

A. Which ones you mean? I said yes to alfalfa.

Q. Alfalfa --

A. I know what it smells like.

(TR 36) Q. And how about timothy when it is cut and packaged and that particular type package and dried, would it smell something similar to marijuana like cut grass?

A. Well, let me say this, that what I smelled when and tasted, was different from anything else that I have ever smelled and tasted.

Q. You were not sure what you were smelling and tasting. As you said, some expert would have to do that?

A. May I say in my behalf, I am a broken hearted father, but let me say this, when you get 10 and 12 boys or 6 or 8 young people down in a room at a time, just sitting in there smoking for a half hour at a time, then that door, that closed door pops open. After that

particular happening happens time after time, I feel it puts anyone that happens to be in the living room watching television or something and see that and smell that, puts him in a pretty good position to say what is going on, and they're smoking. It is the same thing. The smell was identical.

MR. HARRINGTON: That is all.

THE COURT: Redirect.

REDIRECT EXAMINATION OF HECHT BY MR. MURPHY

Q. Was the smell that you smelled on those occasions when the room popped open, the people were in there, did it in any way resemble the smell of the substance that you saw on that day?

(TR 37) A. Well, let me put this clear, like I say, I drank alfalfata. I have never smelled alfalfa other than in a hay barn that was burning. I have never smelled it burning under any other circumstances, so I wouldn't know what alfalfa smells like.

Q. Did it smell anything like what your son had?

A. I haven't smelled that much alfalfa burning. When it comes to the taste of it, I am in a little better position to say.

Q. My question was: you say you smelled something on the day the trunk of the car popped open; is that correct?

A. Yes, sir.

Q. Was that smell like that what you smelled in your house when your son was smoking it?

A. The smell in the back of the car when the trunk popped open, to me was identical to that that I had smelled after my son had been busy packaging.

Q. Busy what?

A. Packaging.

Q. What do you mean packaging?

(TR 38) A. Well, like I say, he was up at the time of his death on charges of possession with intent to sell and manufacture.

Q. Had you ever seen him package any of the material that you felt was marijuana?

A. I have seen the scales. I have seen the plastic bags. And on one occasion, I actually seen him.

****

(TR 40) Q. What happened at that time?

A. A Maryland car - - that is a car bearing Maryland plates, a small foreign station wagon had pulled into the pumps, nearest to the State Route 29-211. And I observed it was occupied by four adult males and an adult female and a small child. And all of the adults, all persons in that car as they pulled up to the pumps were noticed to look toward a suspective vehicle which was the Pontiac with Texas license plates. And all four persons were interested in that car. It was apparant they were the persons we were waiting on.

I did notice that two of the adult males--

MR. HARRINGTON: I object to his

characterization that they showed interest in the car. I think he can say they looked toward the car, but I don't think he can say they were interested in the car.

MR. MURPHY: I think he can. In other words, did they make a casual glance over towards the car.

THE COURT: The Court would overrule the objection.

BY MR. MURPHY:

Q. All right. What did you notice the two individuals do at that time?

A. Two adult males exited the car with the Maryland tags and walked towards the suspect vehicle opening the right front or the driver's side door. And one person got in behind the wheel and the other person was standing outside of the car between the open door and the car itself.

****

(TR 43) Q. Did you have occasion to count the number of packages that you placed in the property room:

A. We were counting primarily out of curisoity as we removed them from the trunk, because there was a great number of them.

Q. Approximately how many were there?

A. One hundred and seventy-eight.

****

(TR 45) MR. MURPHY: In order to obviate our bringing some 400-and-some-odd pounds of this plant material over, counsel stipulate that although the plant material is

not physically present, it is symbolically present for the purpose of indentification.

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EXAMINATION OF RALPH BENNETT BY MR. HARRINGTON

(TR 47) Q. And you said you arrived at 3:00 o'clock. Were other investigators there?

A. Officer Fisher.

Q. Was Sgt. Russell?

A. Sgt. Russell was on the stakeout, but parked at a private parking lot at Bull Run Farm, which is on Route 619, approximately a half mile from the Mobil Station.

Q. You testified you saw a car drive up, and two individuals got out of the car and went over to try to start the car.

A. I saw a car drive up with three, four adults; two adult males exited and walked towards the Pontiac. One entered the seat behind the wheel, the driver's area of the car. And one was standing outside of the Pontiac, between the opened driver's door and the interior of the car. And it would be the driver that I observed.

Q. Did it appear that the guy that got in the car was attempting to start the car? Did that appear to you to be what he was doing? He was behind the wheel.

A. I think that would be a conclusion, and I can only say he was behind the wheel.

****

(TR 48) Q. You knew the car wouldn't start; is that right.

A. There had been some conversations earlier. The station's policy of removing a coil -- this is due to the people -- they had an idea that the people would come and take the car without paying the bill.

Q. You knew it was disabled, didn't you?

A. I knew it would not start, yes.

Q. As a matter of fact,a very short period of time elapsed from the time the car arrived until, I think you were the first one to say, "Stay where you are, don't anybody move," something to that effect?

A. Yes, sir.

Q. And I believe the guy had, who was behind the car, just had one foot on the pavement, and he hadn't gotten out of the car. The door was open; he hadn't quite made it out of the car when you said, "Freeze"; is that correct?

A. I coundn't state whether he had a foot outside or both feet inside or both feet outside. I don't know.

Q. You don't recall whether or not he just -- well, it doesn't make any difference. In other words, the total amount of time from the time the car got in there until the time of the arrest was approximately seconds, as I believe you estimated earlier?

A. That weould be a fair estimate, yes.

MR. HARRINGTON: That is all.

****

EXAMINATION OF SAMUEL B. RUSSELL BY MR. MURPHY

Q. Would you tell the Court where he was at the time or immediately prior thereto the arrest?

A. Yes, sir. He sat down in a Pontiac automobile at the Gainesville Mobil Station at the intersection of 55, 29-211. I arrested him, asked him to get out of the car, which he did. I placed him under arrest for intent to distribute marijuana.

Q. Did you search him at the time that you arrested him?

A. After he got out of the car and I told him to put his hands on top of the car, I patted him down and asked for the keys to the car, which he gave me.

Q. Where did he have the keys to the car?

A. He handed them to me. I didn't take them away from him. He handed them to me at my request.

Q. Did you do anything with the keys to the car?

A. Yes, sir. I put it -- I attempted to check to see if it worked the switch.

Q. Did it?

A. One key did. Then I went to the trunk of the vehicle. This was after patting him down. I did take his wallet.

Q. The keys worked the vehicle?

A. There was no key that operated it, the trunk.

****

(TR 53) CROSS-EXAMINATION BY MR. HARRINGTON

Q. I believe your former testimony was that you and Investigator Fisher pried the trunk open?

A. Yes, sir.

Q. How long did that take you, a minute, couple of minutes?

A. Three or four minutes at the most. I would say three or four minutes.

Q. Now, when you arrived, you know, you were there to arrest Mr. Patty; is that correct?

A. Yes.

Q. Investigator Bennett was right on the scene with a shotgun; is that correct?

(TR 54) A. Yes, he was on the opposite side.

Q. Anybody else next to you? Was Investigator Fisher right there?

A. No, sir.

Q. Who else was there besides you?

A. Sgt. Dean was closeby.

Q. Did he place anybody under arrest?

A. He and Mr. Carroll, who he placed under arrest, were behind the driver's door near the rear of the car.

****

Q. Could you agree with the statement that the driver's side door was open when the arrest was made? Did you notice the driver's side door was open?

A. When I arrested him?

Q. Yes.

A. Oh, yes, it was open.

Q. Had he completely gotten out of the car or one foot out of the car when Bennett yelled freeze?

(TR 55) A. I don't know, I wasn't there at that time. I came in, down Route 55 and came into the gas station in front of the vehicle and immediately went to the vehicle. I got the call as they were approaching the car. At least that was my radio message.

Q. I believe you testified earlier that you told him to get out of the car?

A. I did.

Q. The door was open and he was already out, wasn't he?

A. He was sitting in the car.

Q. He didn't have to open the door?

A. He wasn't on the way out. I don't know. I can't say what previous instructions he had been given or who had hollered what. I immediately upon getting out of my car, which was directly in front of theirs, got out of my car and placed him under arrest.

Q. I am saying the door was open?

A. Yes, sir.

* * * *

JAMES R. FISHER BY MR. MURPHY:

(TR 57) Q. Investigator Fisher, directing your attention to the 11th of February, 1975, did you have occasion to go to the Gainesville Mobil Station?

A. Yes, sir, I did.

Q. What was your purpose in going there at that time?

A. Under assignment to Sgt. Russell for purposes of investigating an alleged offense of possession of marijuana.

Q. Did you talk to Mr. Green, Sr., Mr. Hecht, among others, about what they had seen?

A. Yes, sir, I did.

* * * *

(TR 58) Q. All right. What happened then outside?

(TR 59) A. The gentleman who we later identified as Mr. Patty, who is the Defendant in this case, walked over to the car with Mr. Carroll. Mr. Patty opened the driver's side door of the car and got in behind the wheel. He left the door open and Mr. Carroll positioned himself between the opened door and the body of the car as though he was looking into the car.

Q. Then, what happened?

A. As the station wagon arrived, Investigator Bennett proceeded to drive his vehicle which was stationed alongside of the service station to a point which was between and in front, between the two vehicles and somewhat to the front of the suspect vehicle. He got out

and pointed the shotgun in the direction of the suspect vehicle.

Just a few seconds thereafter, Sgt. Dean and Russell arrived at the suspect vehicle and subdued Mr. Patty and Mr. Carroll.

* * * *

(TR 60) Q. I show you this, a blue -- a small piece of blue paper bearing the number 3018792257, where did you get that?

A. I removed this from Mr. Patty's wallet at 5:30 p.m. on the 13th day of February, this year.

Q. During that time, you had it in your sole and exclusive possession?

A. Yes, sir.

Q. I show you another large piece of paper and ask if you can identify that?

A. Likewise, I removed this at 5:30 on the 13th day of February, from Mr. Patty's wallet.

MR. MURPHY: I would offer these inevidence, Your Honor.

THE COURT: Any objection?

MR. HARRINGTON: Yes, sir. Unless he ties them in. They are just pieces of paper. That is fine. I have no objection. If these were pieces of paper, that is fine, found in a wallet.

(TR 61) MR. MURPHY: Your Honor, at the time, and at this time, I would ask the Court to take judicial

notice that 301 is the area code for Maryland, State of Maryland, the area telephone code for the State of Maryland.

MR. HARRINGTON: I don't know if the Court could take judicial notice of the area code.

THE COURT: I think the Court could on the area code numbers.

The Court would admit them as 4 and 5.

MR. HARRINGTON: Note my exception.

(Two pieces of paper were marked Commonwealth's Exhibit Nos. 4 & 5 for identification and received in evidence).

MR. MURPHY: On No. 5, Your Honor, and I would ask counsel, perhaps counsel could come up here while I am pointing this out.

THE COURT: Would the Defendant come up here?

MR. MURPHY: This bears a column of figures which adds up apparently to 174,175; and it says equals 383.65. And there is another column of figures which adds up to 53,330; and another subtotal adding up to the large columns, 227,505; and 501 circled here. On the back is another sum, 113,095 is equal to 249.1; another sum adding up, with some notation on it.

I would ask the Court to take judicial notice of the fact that they equal 174,175 equals 383.645, it is

the same ratio of grams to pounds. That is 483.59, is the number of grams in a pound and rounded off to 484 comes out to that exact equation. The same equation comes out in this sum here. And 501, and this equation of 113,095 to 249.1.

(TR 62) THE COURT: Any objection?

MR. HARRINGTON: Yes, Your Honor. I don't think the Court could take judicial notice on the last thing. All that is on that is 301. That could be an area code. No question it could be. It could be a lot of other things. 301 people for all he knows.

THE COURT: Wouldn't that go to the weight, 301 is the Maryland code?

MR. HARRINGTON: It could be an area code, and it is not in his own handwriting, the Defendant's. It was found in the Defendant's wallet with a 301. It would go to the weight that the Court would place on it.

That has not been shown to be the Defendant's handwriting and has any bearing to anything.

(TR 63) THE COURT: What is the purpose for the ratio grams?

MR. MURPHY: Grams to pounds. I would note that I would have further testimony as to the weight of the material found in the car. It's off, I would say, some 20 pounds from the figure 501 on there. And I would also have further evidence which I can get into right after this, that of kilogram scale weights.

THE COURT: The Court at this time is going to refuse which is offered as No. 5, and you then you may reoffer it once you tie it in. As of now, I have nothing to connect it with anything. Because of the number of pounds as alleged is different from the 501 as stated on here. And I have got no way to tie it in with the substance or anything else.

MR. MURPHY: Marked for identification.

THE COURT: Marked as No. 5 for identification.

MR. MURPHY: Would the Court take judicial notice of the grams?

THE COURT: Grams per pound. I think the Court on that can take judicial notice.

THE WITNESS: 453.56.

BY MR. MURPHY:

Q. 453.56.

A. There are 2.2 pounds in one kilogram approximately.

(TR 64) Q. Did there come a time when you made a further search of the car, Investigator Fisher?

A. Yes, sir.

Q. When was that?

A. This is after the vehicle had arrived at the police station and the same night after I had completed a booking process.

Q. What was your purpose at the time of making the search of the car?

A. For inventory of the interior. There were many items of personal nature in the vehicle; clothing, luggage, et cetera.

Q. Did you look in the glove compartment of the car?

A. Yes, sir, I did.

Q. I show you this birth certificate, Larry Dale Patty. Did you find that in the glove compartment?

A. Yes, sir, I did.

MR. MURPHY: I offer this in evidence.

MR. HARRINGTON: Yes, Your Honor, as long as it is offered for the purpose that it is a piece of paper, that is it; not for what it says, Your Honor. I don't think that it is in the proper format to bring it in front of this Court. I believe it has to be under triple seal, so I would object to any conclusion stated on it; like the date of birth, name of father, name of mother, place of birth, their birth places, their occupations. I just don't mind it coming in for what is is worth.

(TR 65) MR. MURPHY: It is purported to be a birth certificate found in his automobile.

THE COURT: A piece of material found in the automobile itself.

MR. HARRINGTON: It is hard for the Court not to look at what it says.

THE COURT: Without a jury, the conclusions, just like a death certificate, the conclusions contained

would not be admissible.

MR. HARRINGTON: I have no objection to is saying that he was born, but that is all.

THE COURT: It would be admitted as No. 6.

MR. HARRINGTON: For the limited purposes.

(The birth certificate referred to was marked as Commonwealth's Exhibit No. 6 for identification and received in evidence).

BY MR. MURPHY:

Q. I show you what purports to be apparently a sales ticket for a Pontiac, yellow, black coupe, 1969, and ask if you found that in the glove compartment, also?

(TR 66) A. Yes, sir.

Q. What is the name of the individual purchaser, Larry Dale Patty?

A. Yes, sir.

MR. MURPHY: I would offer this in evidence.

MR. HARRINGTON: Same objection as to the previous document. The fact that he is trying to introduce this for proof of what is contained on here, and I object to that piece of hearsay as to what it contains on it.

THE COURT: Mr. Murphy.

MR. MURPHY: Your Honor, I offer it -- in other words, apparently it is a sales ticket and has notations, work done at the time, which would be admissible. It was found in the car, for what is on there, being the purchaser's name, Larry Patty.

THE COURT: The Court would admit it for the limited purpose, again, as an item found in the glove compartment of the car as part of the inventory of the automobile.

(The sales ticket referred to was marked as Commonwealth's Exhibit No. 7 for identification and received in evidence).

BY MR. MURPHY:

(TR 67) Q. I show you a map of the United States and ask if you found this in the car?

A. Yes, sir, I did.

Q. Where did you find that?

A. It was either in the glove compartment or in the front section. I don't recall precisely which.

MR. MURPHY: I offer this in evidence.

MR. HARRINGTON: Your Honor, I would like to know for what purpose counsel is offering a map of the United States.

MR. MURPHY: Officer Fisher, did it have

this notation I-30 to Texarkana, Little Rock, Memphis; I-40, Nashville, Knoxville, Bristol, Roanoke and Staunton; and 250 and so forth at the time you found it?

THE WITNESS: Yes, sir, it did.

BY MR. MURPHY:

Q. Did it have these various places underlined or circled between Texas and Virginia at that time?

A. Yes, sir, it did.

MR. MURPHY: I offer it in evidence, Your Honor.

MR. HARRINGTON: I don't see what relevance it is. If counsel is trying to tie it into my client, that is one thing. As I understood counsel's case, Mr. Carroll was the driver of the car and not Mr. Patty.

(TR 68) THE COURT: There is no evidence for the Court to assume that Mr. Carroll was the operator of the vehicle. The only information before the Court now is the time of the arrest of this Defendant, the Defendant had the keys that fit the ignition.

MR. HARRINGTON: It is my understanding that the Commonwealth will later introduce evidence from the Holiday Inn. If it would save time, I would be willing to stipulate Mr. Carroll was the driver of the car and drove it into the Mobil Station, and plus I know they have airline tickets and airline parking things. And I would even stipulate that my client did take a plane that particular night, that is shown, did land in Baltimore.

MR. MURPHY: I am not prepared to stipulate to that, Your Honor.

The Commonwealth is not prepared to stipulate who drove the car, because I think it is a matter of circumstances.

THE COURT: The Court would admit the map as No. 8 for the Commonwealth.

(The map referred to was marked Commonwealth's Exhibit No. 8 for identification and received in evidence).

(TR 69) BY MR. MURPHY:

Q. Investigator Fisher, did you later help --

MR. HARRINGTON: Excuse me. I am going to object to the map. There is no handwriting, nothing to connect it to the Defendant.

THE COURT: The Court would admit it as No. 8.

* * * *

(TR 74) Q. In the course of your investigation, have you ever had occasion in your arrests in other investigations to see bulk marijuana?

A. Yes, sir, I have.

Q. Have you ever seen the methods in which it is often packaged?

A. Yes, sir.

Q. How is that?

A. Kilobricks or pound bricks which have been opened -- they are frequently packaged in various sorts of trash bags, plastic trash bags.

Q. Now, did you find anything else in this bag with the plastic trash bags?

A. Yes, sir, I did. I believe there were five weights. These are five weights. Three of them which are kiloweights and two which are half kiloweights, five hundred gram weights.

Q. That was in the same bag with the plastic trash bags?

A. Yes, sir.

* * * *

(TR 79) A. Your Honor, If I may, we have a copy of it on the desk, a green piece of paper.

Q. This is the same as in the Court file that was filed with the warrant?

A. Yes, sir, it is. This is a CCRE Form which is a standard booking form for certain felonies.

Q. Did you inquire of the Defendant's name?

A. Yes, sir.

Q. Larry Dale Patty?

A. Correct.

Q. Did you inquire of his home address.

A. Yes, sir, he stated that was on West Lola Street, in Austin, Texas. He wasn't sure of the precise

number; however he stated it was in the 300 block. I believe his reasoning was that he had just moved to the area and wasn't certain of the exact address.

Q. Did you inquire of the date of birth?

A. Yes, sir, I did. He indicated that it was December 10, 1949. And the place of birth was Marshall, Texas.

Q. I don't know if I need to introduce that. That is part of the Court's records. I will unless there is a stipulation to those facts.

MR. HARRINGTON: I am going to object to that statement.

CROSS EXAMINATION BY MR. HARRINGTON:

(TR 81) Q. Do you recall my question to you regarding any statements made by this Defendant at the preliminary hearing?

A. Yes, sir, I do.

Q. What was your answer as far as this Defendant was concerned towards giving you a statement? Didn't you answer no?

A. Yes, sir, I did.

Q. You have investigated this case from the very start; is that correct?

A. Yes, sir.

Q. You were really the chief officer on this more than any other single officer.

A. Yes, sir.

Q. And you testified earlier that you arrived at the Mobil station between -- before 3:00 o'clock on the day of the offense and began to investigate -- or excuse me, Investigator Bennett got there by 3:00 o'clock.

A. I got to the gas station within two or three minutes of 3:00 o'clock.

Q. Investigator Bennett pulled up shortly after that?

A. Approximately 3:30.

Q. Now, when you questioned these people that were here today, they gave you all of the information that you knew about; the marijuana, including one of the drawings that I believe has already been introduced in Court; is that correct?

(TR 82) A. Yes, sir.

Q. And are you familiar with alfalfa seeds? Do you know what they look like?

A. No, sir.

Q. How about as far as fescue seeds, do you know what they look like?

A. No, sir.

Q. Do you know what timothy seeds, do you know what they look like?

A. No.

Q. Bird foot trifoil, are you familiar with that particular type of weed?

A. No, sir.

Q. How about melilotus clover?

A. No, sir.

Q. So as far as you know, they could have been describing any one of those as well as marijuana?

A. With the exception of alfalfa.

Q. With the exception of alfalfa?

A. Yes, sir.

(TR 83) Q. As far as the others are concerned, they could have been?

A. Yes, sir.

Q. I believe you testified it was a greenish colored plant like material is what was told you?

A. Yes, sir.

Q. As a weed type plant with little balls of stuff on it?

A. I am sorry.

Q. A weed type of plant with little balls of stuff on it, that was also described to you?

A. I don't know if it was in those exact words.

Q. How long were you physically present at the station from the time that you arrived until the time the Defendants pulled in the car?

A. Approximately five hours and ten minutes.

* * * *

(TR 85) Q. All right. Now, did your investigation also reveal a parking lot ticket from Mr. Patty?

A. Yes, sir.

Q. Did you find that or did somebody else find it?

A. I found it.

Q. Do you have that with you?

A. I don't have it with me. I believe it is in the Court records for another case.

Q. You don't have a copy of it?

A. I don't know whether I have a copy. I copied some things. I don't know whether I copied that or not.

Q. That particular ticket, I guess it was introduced in the Carroll case?

A. It was not actually introduced. It was offered but rejected.

Q. Do you remember the date and time on that particular ticket?

(TR 86) MR. MURPHY: I object. I don't think he can testify to that document. It is hearsay.

THE COURT: The best evidence would be the document itself.

MR. HARRINGTON: That is not in my possession. The Commonwealth has that.

THE COURT: The Commonwealth can produce it.

MR. MURPHY: I believe it is here.

MR. HARRINGTON: I didn't see that.

MR. MURPHY: It wasn't admitted.

BY MR. HARRINGTON:

Q. Is that the ticket you found in Mr. Patty's wallet; is that right?

A. Yes, sir, it is.

Q. And that states, what does it state?

A. It says 1833, FE 10.

Q. February 10?

A. Yes, sir.

Q. 1833 would be what time?

A. 6:33. It also states 1836, February 18.

* * * *

(TR 92) Q. All right. Did Mr. Hecht tell you at the time about having tasted the marijuana at the time that he was at the Mobil Station when you first investigated it?

A. I don't recall that.

* * * *

(TR 96) Q. By the way, you didn't mean to tell the Court that on that ticket it said February 18th, did you?

A. If I said that, I didn't mean that. I meant February 10th.

Q. February 10th, right?

A. Yes, sir.

MR. HARRINGTON: We would introduce this as Defendant's Exhibit No. 1.

THE COURT: Any objection.

MR. MURPHY: Not if it is his exhibit, Your Honor.

THE COURT: It will be admitted as Defendant's Exhibit No. 1.

* * * *

DR. EUGENE REICHENBECKER BY MR. MURPHY:

(TR 97) Q. State your name and occupation, please.

A. Eugene Reichenbecker, forensic chemist.

Q. How long have you been so employed?

A. About four and a half years.

Q. As a forensic chemist?

A. Yes, sir.

(TR 98) Q. Who are you employed by?

A. The Northern Branch of the Bureau of Forensic Science, Commonwealth of Virginia.

Q. What is your educational background?

A. I have a Bachelor's and Master's and Ph.D in chemistry.

Q. Have you -- what is the nature of your duties as a forensic chemist with the laboratory you are presently working with?

A. To analyze suspected narcotics and dangerous drugs.

Q. Have you ever testified before in this Circuit as an expert in the analysis of narcotic drugs?

A. Yes, I have.

* * * *

(TR 99) Q. Dr. Reichenbecker, did you have occasion to receive a substantial sum of marijuana from Investigator Fisher and Bennett?

A. Yes, sir, I did.

Q. And do you recall how much, how many packages you received from them?

A. I believe my count showed 176 packages.

Q. Now, did you analyze all these packages?

A. Yes, I did.

Q. Did you know if the was 176 or 178?

A. A couple of them were partially broken open. My count was 176 packages.

Q. Is that wrapped packages?

A. Wrapped paper and/or plastic wrapped packages.

Q. Does that include the ones partially broken open?

A. That was the total or a couple that was hard to distinguish, whether it might have originally been one package or two, and they were counted as one package perhaps.

Q. Did you conduct an analysis on the material of each of these packages?

A. Yes, I did.

* * * *

(TR 100) Q. Now, did you take a sample from every package to conduct your analysis on?

A. Yes, I did.

Q. After the results of your analysis, did you reach any conclusions as to the contents of the material in each package?

A. Yes, I did.

Q. What is your opinion to the contents of each package?

A. One hundred and seventy-five of the packages, I concluded that the packages contained marijuana. There was one package which contained a non-marijuana plant material, which was not identified.

* * * *

DR. EUGENE REICHENBECKER BY MR. HARRINGTON:

(TR 102) Q. What did you actually run on it; what in the name of the test, the beam test?

A. No, there are several tests that we'll run. The first one was the microscopic examination of each sample, the Duquenois Levine Test.

Q. Which test?

A. Duquenois Levine was run on portions of each sample.

* * * *

Q. And then, would you explain the test, what test you went through to determine that it was what you have said it was? How did you determine the chemical test, how do you do it?

(TR 103) A. The chemical testing is the Duquenois Levine Test, which is a color test which responds to cannabioids

that are present in marijuana.

Q. How many Duquenois Levine Tests did you do?

A. The Duquenois Levine Test was performed on each of the 175 samples, so 176. I do believe that I tested the non-marijuana sample, 176.

Q. Would you explain to the Court how much of the sample used, how much of the chemical did you use; did you use petroleum ether?

A. No , this petroleum ether is sometimes used as to extract material when one has a young plant or a moldy plant material to get a concentrate, to concentrate the active ingredients. In this case, the raw plant material was usable and you can use the Duquenois Levine Test directly.

Q. What chemical did you mix with the samples?

A. The Duquenois -- it was a liquid solution which is added to the sample.

Q. Do you know what the name of the Duquenois agent is?

A. What is in it?

Q. Yes.

A. Vanillin, alcohol and acetaldehyde.

(TR 104) Q. Acetaldehyde?

A. Yes.

Q. What did you do after you added the solution, after adding the solutions? What was the reagent; what was the next thing you did?

A. The second step of the Duquenois Test is to add concentrated hydrochloric acid to the container with the Duquenois reagent and the sample material.

Q. First of all, about how many milligrams of the sample did you use?

A. I would say a little less than a tenth of a gram which may be one hundred milligrams of material.

Q. About how much of the reagent did you add, the Duquenois reagent?

A. Approximately one milliliter.

Q. And then, I presume you mixed it or shook it.

A. Let is set until it soaks the chemical up.

Q. How much of the hydrochloric acid did you use?

A. Approximately one milliliter.

Q. Then, what did you do?

A. I waited a few moments.

Q. How long did you wait?

A. This, I don't have any data as to this effect. What one is waiting for is the development of a purple color which is two to three minutes generally.

(TR 105) Q. Go ahead, and then what did you do?

A. This completes the Duquenois Test. The next part of the test is the Levine Modification, the addition of chloroform to the Duquenois hydrochloric acid mixture.

Q. And how much chloroform did you add?

A. Approximately a milliliter.

Q. And then, what happens after you have -- what do you add the chloroform to?

A. The results of the Duquenois Test, which is the plant material, the Duquenois reagent, the hydrochloric acid. This is mixed altogether.

Q. And then, how long do you wait? What do you do when you add the chloroform?

A. You shake or agitate the sample vial.

Q. And what happens?

A. For the presence of marijuana and its active ingredient and one or two other cannabioids, there is a purple color that is developed. And the Duquenois Test is extracted through the lower chloroform layer which is heavier than water.

Q. And you see a purplish color; is that right?

A. That is right.

* * * *

(TR 109) Q. How about the two core samples? In other words, all of the -- whatever you want to call it -- looked the same; and didn't you say two of the tests, it didn't turn out to be marijuana?

A. I didn't say that material. That material did not look like marijuana, the one block package contained material which did not look like marijuana. It's unknown to me. It is still undefined.

* * * *

Q. Doctor, somebody drew a picture like that you, that picture right there. Can you see that? (Referring to Defendant's Exhibit No. 1 from the Motion to Supress the Evidence hearing).

A. Yes.

Q. In addition to that, they told you that the material that they saw was green, greenish colored plant like material. It was a weed type plant with little balls of stuff on it.

Could you conclude from that what kind of chemical it was or what kind of weed it was or substance it was from that kind of description, including that picture.

A. Excuse me. Is the picture to represent --

Q. That is a picture of a seed.

(TR 111) A. A seed.

Q. And looking at that particular picture and saying that is a seed, saying what the shape of the seeds were in; and in addition to that the description was a greenish colored plant like material, it was a weed type plant with the little balls of stuff on it. That information together with that picture, could you conclude what the substance was?

MR. MURPHY: Objection. I don't think that is a proper question and it is irrelevant. I know what he is trying to get at.

THE COURT: You mean could he conclude as an expert witness?

MR. HARRINGTON: As an expert witness.

THE COURT: The Court would let him respond if he could or could not.

BY MR. HARRINGTON:

Q. Just from that description.

A. I can recognize marijuana seeds per se, if they are out of their hulls, but I would not want to conclude on a visual examination of a plant fragment without a microscopic examination of what in fact the material was.

Q. From that kind of description, it could have been any one of 100 different types of green plant materials; isn't that correct? I mean, you have a general picture of a seed, green plant like material with little balls of stuff on it. That could answer to a 100 different species of plants; isn't that a fair statement?

(TR 112) A. I am not a botanist. I know there are many, many types of seeds having looked at catalogs on seeds, some which bear resemblance to marijuana and some do not. I would assume that there are many, many plants with small seeds.

Q. Where were all these tests performed for the analysis?

A. What do you mean?

Q. The chemical analysis, where were they all performed?

A. Where within the laboratory?

Q. Yes.

A. At or near my desk.

Q. And who performed them?

A. I examined it; I did the microscopic examination on each test. I observed the results of the putting of the chemical together on each of the Duquenois Tests. I observed the results of the gas chromatography.

Q. How many of the Duquenois Tests did you do yourself?

A. All of the microscopic, I observed the results on the Duquenois Tests. These were done for me by a new chemist that did the weighing of samples and who actually put some of the material into the test tubes for the further addition of the chemicals. I did observe the purple coloration in each of the Duquenois Tests under my direction and supervision.

(TR 113) Q. You say you did the actual microscopic analysis?

A. I looked at each of the 175 samples.

Q. And actually, as far as weighing the material, the young chemist weighed all this material?

A. He weighed in packages, four or five bricks at a time, of the material, yes.

Q. And would you classify color of marijuana as greenish or greenish brown in the state in which you received it?

A. It will generally vary from sometimes a

golden color down to a greenish brown to brown to green.

Q. Green?

A. Any -- excuse me.

Q. What color was this?

A. Wasn't it greenish brown material?

Q. Greenish brown material.

A. Greenish brown material. I think it is quite possible there was some golden brown and some more totally brown material mixed in with it. That is the usual case.

Q. You did agree with my statement that from the description of little balls of stuff, it could have been one of many, many plants; wasn't that your eventual answer?

(TR 114) A. Well, I would agree that I could be one of many plants from a very general description, yes.

* * * *

REDIRECT BY MR. MURPHY:

(TR 117) Q. In response to counsel's questions about whether you could reach a conclusion based on the description he gave you and the picture of the seed that he gave you, and I believe you responded you couldn't reach any conclusion from that information, correct?

A. From a very small amount of material, no, it depends entirely on the state of the sample.

Q. Now, when you were talking about conclusion, you were talking about an expert conclusion or a general

rough conclusion?

A. This would be a rough layman's conclusion; really, I would want to do as an expert a microscopic examination of the material.

Q. To reach any conclusion?

A. Yes.

* * * *

RECROSS EXAMINATION BY MR. HARRINGTON:

Q. One last thing. You stated you were the chemist, and it is up to the botanist that deals with the leaves and different plants as far as the other type plants go in examining plants, trifoil, et cetera; isn't that correct? In other words, you are a chemist, not a botanist?

(TR 118) A. I am a chemist. I am, because of the nature of the work, the determination of the marijuana is based not just on chemical but also on scientific observation of the material, botanical part of the plant as well.

Q. But your expertise is not in botany; it is in chemistry. That is where your Master's and Doctorate is?

A. Yes.

* * * *

RICHARD SCHMINSKY BY MR. HARRINGTON:

(TR 126) Q. And do you recall being present at a Mobil gas station in Gainesville on a certain day that a drug bust was made?

A. Yes, I was.

Q. Was that the same day you met Mr. Patty, that particular day?

A. Earlier in the morning or early afternoon.

Q. And where did you meet him?

A. At a bar.

Q. And where was the bar located, what city and state?

A. Baltimore, Rosedale.

Q. And did there come a time that you and Mr. Patty and certain other people got in your car and went somewhere?

A. Yes. Later that evening, Mr. Hill had asked me if I could drive him down to pick up a friend's car. And I said, "Well", you know, "sure", because I have known the guy.

Q. Mr. Patty go down with you?

A. Yes, he did.

Q. Did Mr. Patty ever tell you that the car was his?

A. No, he didn't.

Q. Did Mr. Patty ever mention to you anything about marijuana?

A. No, he certainly didn't.

(TR 127) Q. Was there anything said regarding marijuana? I mean, did you know there was marijuana in this car?

A. No, I didn't.

Q. And did you find out from Mr. Patty where he had come from the previous evening?

A. No, I took it that he had been up with Mr. Hill, because I talked to him earlier that evening.

* * * *

Q. Did Mr. Patty tell you that he had come up from Texas?

A. Yes.

* * * *

Q. Did there come a time then that you left Maryland, Baltimore, Maryland, that area?

A. Yes, that evening.

Q. And who was with you that evening?

A. Mr. Hill, Mr. Patty, and myself.

Q. Did you stop to pick up someone else?

A. In Manassas at a hotel, the Holiday Inn.

Q. The Holiday Inn?

A. Yes.

Q. Do you remember who you picked up?

A. Butch Carroll and a young lady.

Q. Anybody else. Was there a child?

A. Yes.

Q. And where was Mr. Hill sitting in your car when you left the motel to go down to the gas station?

A. In the front.

Q. Where was Mr. Patty sitting?

A. In the back seat.

Q. Who was sitting back there with him?

A. Mr. Carroll and a young lady and her child.

Q. Why did you stop to pick up Mr. Carroll and the young lady?

A. They had been staying at the Holiday Inn.

Q. Now, I show you this package that has some bags in it -- are the weights in here?

I show you this bag here and ask if you ever saw a bag like this, if anybody put a bag like that in your car?

(TR 129) A. There was a bag in my car I later found out.

Q. Do you remember who put it back there?

A. Mr. Hill had a bag with him.

Q. And he put the bag in the back of your car?

A. Yes.

Q. Was it sealed so you couldn't -- did you know what was in there?

A. I didn't know what was in it until -- when the police searched my car.

* * * *

CROSS EXAMINATION BY MR. MURPHY:

Q. When did you first get together with Mr. Patty?

A. About 12:00 o'clock, I suppose at the bar.

Q. 12:00 o'clock noon that day?

A. Yes.

Q Was he with Mr. Hill at that time?

(TR 130) A. Yes, he was.

Q. Did you know Mr. Hill before that time?

A. Yes, I did.

Q. How did you know Mr. Hill?

A. We went to school together, grew up together.

Q. And had you seen him before 12:00 o'clock that day?

A. No, I didn't see him. I talked to him the night before.

Q. You talked to Mr. Hill the night before?

A. Yes.

Q. But you hadn't seen Mr. Hill the night before?

A. No.

Q. And of course, you hadn't seen Mr. Patty?

A. No.

* * * *

(TR 131) Q. Did you meet him by coincidence?

A. Like I was saying, getting back to the night before, I had been playing pinochle at a friend's house, and Mr. Hill, I happened to be talking to Mr. Hill. And I said, "Well, we ought to get together sometime tomorrow." I hadn't seen him. That is when we got together.

Q. In other words, you arranged at that time to meet Mr. Hill at the bar?

A. I said we will go out on the town.

Q. Now, when did there come some discussion about driving to Manassas, driving to the Gainesville

area?

A. Later on that evening, he asked if I could give him a ride.

Q. What time?

A. I guess this was about 5:00.

Q. 5:00 o'clock?

A. Yes.

Q. How long were you in the bar with Mr. Hill and Mr. Patty?

A. Oh, I guess in the late afternoon. I don't know, a little while I guess.

(TR 132) Q. Had you left the bar and gone home or anything?

A. I went home and took a shower.

Q. He called and asked you to take him to Manassas?

A. Yes.

Q. Did you pick him up?

A. Yes.

Q. Who did he have with him?

A. Mr. Carroll -- I mean Mr. Patty.

Q. Mr. Patty?

A. Yes.

Q. Where were they when you picked them up?

A. At the bar.

* * * *

Q. Did Mr. Hill have this package with him at that time?

A. Yes, I guess. Well, he had it when we went into the car, so, yes, he did.

Q. In other words, you didn't stop on the way down and pick up this package?

(TR 133) A. Not that I can recollect, no.

* * * *

Q. You don't recall if you might have stopped at the Sanitary Store after you picked up Mr. Hill?

A. He made a phone call, and that was about it.

Q. He made a phone call. At that time, did you know anything about a trunk load of marijuana coming up from Texas?

A. No, I didn't know.

Q. When did you first become aware that there was a trunk load of marijuana?

A. The night I was arrested.

Q. At the time you were arrested?

A. Yes.

Q. Did you later inquire of Mr. Hill or Mr. Patty or Mr. Carroll where did it come from?

(TR 134) A. Well, I certainly did. I was rather mad.

Q. Did Mr. Patty ever tell you where the marijuana came from?

A. No.

* * * *

Q. But you never talked to Mr. Patty about where this marijuana might have come from?

(TR 135) A. No.

Q. Did you know whose car it was?

A. Just a friend's.

Q. Did you ever talk to Mr. Patty after about whose car it was?

A. No, I didn't.

Q. Mr. Hill and Mr. Patty were together when you met them at noon; isn't that correct?

A. Yes.

Q. Were they together when you went and picked them up again?

A. Yes.

Q. Was there any discussion on the way down among you or Mr. Hill or Mr. Patty about why you were going to the area you were going to?

A. To pick up a car.

Q. That is all you knew about it?

A. A friend's car had broken down. That is all I knew.

EXCERPTS FROM SENTENCING TRANSCRIPT

(ST 28) MR. MURPHY: Your Honor, I don't think the evidence showed the Defendant to be so innocent as counsel would say. It shows he's not innocent. Of course, the Commonwealth never had any chance to cross examine him on this statement, he loaned the car out. Maybe he loaned the car out, maybe he didn't. But it wasn't the situation where he was in Texas when somebody else was caught with the marijuana in Virginia; he was right at the scene of the crime when he was caught. He had notations in his pocket on stationary which tended to indicate a group of numbers that possibly there was a larger amount.

MR. HARRINGTON: I'm going to object to that. I think the Court cannot allow those numbers in for any value at all because none of the numbers connected up with the case.

THE COURT: I think it's fair argument. Not as to guilt.

****

(ST 30) THE COURT: Mr. Patty,you have maintained your innocence throughout the trial of this. Of course, you have to do. We do have several important questions in this case. Your counsel has raised all of the issues that would protect you in an appeal of the case. Because of the important issues the Court has been faced with in reference

to the search warrant and probable cause and so forth the Court would strongly urge that you give serious consideration for an appeal of the case to the Supreme Court of Virginia because it's not the intent of the Court at any time for the Defendant to spend one day in jail if the Defendant is innocent of the charge.

Having been found guilty by the Court the Court would sentence you to seven years in the state penitentiary. The Court would suspend five years of the sentence and place you upon probation for a period of two years.

SENTENCING ORDER

VIRGINIA

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE WILLIAM

PRESENT: HONORABLE BURCH MILLSAP,JUDGE

COMMONWEALTH OF VIRGINIA

VS #5887 INDICTMENT: POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

LARRY DALE PATTY

The 25th day of May, 1976, came the Attorney for the Commonwealth and the defendant, LARRY DALE PATTY (DOB 12/10/49), who stands convicted of a felony, to-wit: Possession of Marijuana with Intent to distribute,who appeared before the bar of the Court in accordance with the condition of his recognizance. And came also P. H. Harrington, attorney at law, retained by the defendant

to represent him.

Thereupon, the Court Reporter was sworn.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation appeared in open Court with a written report, which report she presented to the Court in open Court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for the defendant.

Thereupon, 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 matters 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, the matters brought out on cross-examination of the Probation Officer, and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced 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 hereby is sentenced to confinment in the penitentiary of the Commonwealth for the term of Seven (7) years, of which term the Court doth

suspend the execution of Five (5) years upon the conditions that he keep the peace and be of uniform good behavior and that the Commonwealth of Virginia do recover against the defendant its costs by it about its prosecution in this behalf expended.

The Court being of the opinion that it is compatible with the public interest to do so, doth ADJUDGE and ORDER the defendant shall be placed on probation under the supervision of a Probation Officer of this Court for a period of Two (2) years.

It is the Order of this Court that the defendant shall comply with all of the conditions of probation as contained and shown in Form P. B. 2 of the Virginia Probation and Parole Board, which are by reference included herein and made a part of this order.

The Court proceeded to advise the defendant of his right to appeal from the sentence heretofore imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with an appeal paid for him in the event he is financially unable to pay the same.

Whereupon, the defendant, by counsel, moved the Court for a continuance of bond during the appeal period and the Court, after hearing argument of counsel, doth grant said motion.

The Court certifies that at all times during the trial of this case the defendant was personally present

and capably represented the defendant.

And the defendant is continued on bond heretofore entered into.

THE ASSIGNMENTS OF ERROR

June 9, 1976

The said LARRY DALE PATTY, Defendant in the above-styled cause will apply to the Supreme Court of Virginia for a Writ of Error to reverse the said Judgment and Decree entered on the 25th day of May, 1976, and hereafter sets forth the assignments of error, as follows:

1. The Court erred in finding that the police officers on the scene had probable cause to arrest the Defendant on the charge of possession with intent to distribute marijuana.

2. The Court erred in denying Defendant's Motion to Suppress the Evidence in that:

a) The police should have obtained a search warrant prior to their search of the car.

b) The Commonwealth's expert witness did not adequately identify the plant material as marijuana.

3. The Court erred in finding the Defendant guilty of possession with intent to distribute marijuana based on the evidence it had before it in that:

a) The evidence was insufficient to support the fact that the Defendant constructively possessed the marijuana found and, in fact, the evidence tended to show

that the marijuana found belonged to another party.

b) The presumption of innocence of the Defendant was never overcome by the Commonwealth's evidence.