CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 78-0213

FLOYD A. HARGRAVES,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

JOINT APPENDIX

James R. Corbett
HOYLE, CORBETT, HUBBARD & SMITH
11048 Warwick Boulevard
Newport News, Virginia 23601
Counsel for Appellant
By Court Appointment

Marshall Coleman
Attorney General
900 Fidelity Building
830 East Main Street
Richmond, Virginia 23219
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APPENDIX

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INDICTMENT NO._____

VIRGINIA:

In the Circuit Court for the City of Newport News at its criminal term commencing September 12, 1977

The Grand Jury charges that:

On or about the 7th day of July, 1977, in the City of Newport News, FLOYD A. HARGRAVES, feloniously did rob Leonard F. Moore, employee of White Cab Company of currency of the United States in the amount of Five Dollars ($5.00) by use of a deadly weapon.

Virginia Code: 18.2-58 (Robbery)

A true bill

Not a true bill

_____
Foreman

Witnesses:

Det. A. L. Gaskins

INDICTMENT NO. _____

VIRGINIA:

In the Circuit Court for the City of Newport News at its criminal term commencing September 12, 1977

The Grand Jury charges that:

On or about the 7th day of July, 1977, in the City of Newport News, FLOYD A. HARGRAVES, feloniously did use or display a firearm during the commission of a felony, to-wit: Robbery

Virginia Code: 18.2-53.1 (Use or display of firearm during commission of a felony)

A true bill

Not a true bill

_____
Foreman

Witnesses:

Det. A. L. Gaskins

VIRGINIA: Circuit Court of the City of Newport News, Friday, the 7th day of October, 1977.

PRESENT: The Honorable ROBERT T. ARMISTEAD, Judge Designate.

Indictment No. 3212-77 Commonwealth	)	Indictment for Va. Code 18.2-58 Robbery
Vs	)	A Felony
Floyd A. Hargraves	)	A true bill. D. B. Seward, Jr., Foreman. September 12, 1977 Grand Jury

This day came the Attorney for the Commonwealth, Kenneth Murov, and James Corbett, court appointed attorney for the accused, and the accused was led to the bar in the custody of the Sheriff (and as such jailor), and Halcyon Jones of the Schneider Reporting Company, court appointed, was sworn in open Court to record verbatim the evidence and incidents of the trial of this cause, and arraignment being waived by the accused, the accused after conferring with his attorney, in his own voice, plead not guilty to the within Indictment, and with the consent of the accused, his attorney, and the concurrence of the Commonwealth's Attorney, and of the Court entered now of record, the Court proceeded to hear and determine this cause without the intervention of a jury, and the evidence being heard for the Commonwealth, the accused by his attorney, moved to strike the evidence of the Commonwealth on the grounds that the Commonwealth has not presented a prima facias case, which motion the Court doth overrule, to which ruling of the Court the accused by his attorney noted his exception, and the Commonwealth moved to reopen case for further evidence, to which motion the Court doth grant and to which motion the accused by his attorney doth object, and the evidence being heard for the Commonwealth, the accused by his attorney, moved to renew his motion to strike the evidence for reasons previously stated at the bar, which motion the Court doth overrule which motion the accused by his attorney doth

object, and the evidence being heard for the accused, the accused by his attorney renews his motion to strike the evidence for same reasons, which motion the Court doth overrule, and the accused by his attorney noted his exception, and the Court doth find the said Floyd A. Hargraves GUILTY of the within Indictment.

On motion of the defendant this cause is referred to the Parole and Probation Officer of this District for an investigation and report to the Court on November 15, 1977 at 10:00 A.M. whether or not the said Floyd A. Hargraves is a proper person for parole.

It is further ordered that the record made by the Court Reporter of the proceedings herein is filed as [illegible] of the record in this case. And further ordered that Morris Schneider prepare the transcript of this case.

And the said Floyd A. Hargraves is remanded to jail.

[illegible]

Book 35 to 26

A COPY. TESTE: GEORGE D. DeSHAZOR, Clerk

BY [illegible] D. C.

VIRGINIA: Circuit Court of the City of Newport News, Friday, the 7th day of October, 1977.

PRESENT: The Honorable ROBERT T. ARMISTEAD, Judge Designate.

Indictment No. 3213-77

Commonwealth	)	Indictment for Va. Code 18.2-53.1 (Use or display of a Firearm during commission of a Felony)
Vs	)	A Felony
Floyd A. Hargraves	)	A true bill. D. B. Seward, Jr., Foreman. September 12, 1977 Grand Jury

This day came the Attorney for the Commonwealth, Kenneth Murov, and James Corbett, court appointed attorney for the accused, and the accused was led to the bar in the custody of the Sheriff (and as such jailor), and Halcyon Jones of the Schneider Reporting Company, court appointed, was sworn in open Court to record verbatim the evidence and incidents of the trial of this cause, and arraignment being waived by the accused, the accused after conferring with his attorney, in his own voice, plead not guilty to the within Indictment, and with the consent of the accused, his attorney, and the concurrence of the Commonwealth's Attorney, and of the Court entered now of record, the Court proceeded to hear and determine this cause without the intervention of a jury, and the evidence being heard for the Commonwealth, the accused by his attorney, moved to strike the evidence of the Commonwealth on the grounds that the Commonwealth has not presented a prima facias case, which motion the Court doth overrule, to which ruling of the Court the accused by his attorney noted his exception, and the Commonwealth moved to reopen case for further evidence, to which motion the Court doth grant and to which motion the accused by his attorney doth object, and the evidence being heard for the Commonwealth, the accused by his attorney, moved to renew his motion to strike the evidence for reasons previously stated at the bar,

which motion the Court doth overrule which motion the accused by his attorney doth object, and the evidence being heard for the accused, the accused by his attorney renews his motion to strike the evidence for same reasons, which motion the Court doth overrule, and the accused by his attorney noted his exception, and the Court doth find the said Floyd A. Hargraves GUILTY of the within Indictment.

On motion of the defendant this cause is referred to the Parole and Probation Officer of this District for an investigation and report to the Court on November 15, 1977 at 10:00 A.M. whether or not the said Floyd A. Hargraves is a proper person for parole.

It is further ordered that the record made by the Court Reporter of the proceedings herein is filed as part of the record in this case. And further ordered that Morris Schneider prepare the transcript of this case.

And the said Floyd A. Hargraves is remanded to jail.

A COPY. TESTE: GEORGE D. DeSHAZOR, Clerk
BY ..... D. C.

VIRGINIA: Circuit Court of the City of Newport News, Tuesday, the 15th day of November, 1977.

PRESENT: The Honorable ROBERT T. ARMISTEAD, Judge Designate.

Indictment No. 3212-77

Commonwealth	)	Indictment for Va. Code 18.2-58 Robbery
Vs	)	A Felony
Floyd A. Hargraves	)	A true bill. D. B. Seward, Jr., Foreman. September 12, 1977 Grand Jury

This day came again the attorney prosecuting for the Commonwealth and the accused Floyd A. Hargraves, (who was represented by James R. Corbett, attorney heretofore appointed by the Court), was led to the bar in the custody of the jailer of this Court, and Sylvia Clifton, Court appointed Court reporter, was sworn to faithfully and accurately take down and transcribe the proceedings herein. And investigation having been made by the Parole and Probation Officer of this Court, this case came on again to be heard in the presence of the accused and his attorney and the accused having been advised of the contents of said report and having been given the right to cross examine the said Parole and Probation Officer and present any additional information he desired, and said report of said Parole and Probation Officer having been filed as part of the record in this case, the Court after hearing the Parole and Probation Officer and all other testimony herein, and the Court having on October 7, 1977, found the said Floyd A. Hargraves guilty as charged in said indictment, to-wit: Robbery, doth now fix and ascertain his punishment to be imprisonment in the State Penitentiary for the term of twenty (20) years. Thereupon, it being demanded of the prisoner if anything he had or knew to say why this Court should not now proceed to pronounce judgment against him, according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said Floyd

A. Hargraves be imprisoned in the State Penitentiary for the term of twenty (20) years, the term of his imprisonment therein, by the Court herein fixed and ascertained there to be kept imprisoned and treated in the manner directed by law for the term aforesaid, or until he be otherwise discharged by due course of law, and that the Commonwealth recover against the said Floyd A. Hargraves the cost of this prosecution. The defendant, by counsel, moved the Court to set aside the verdict on the grounds that the Commonwealth had not proved beyond a reasonable doubt that it was the defendant who committed the crime and further that error was made in allowing the Commonwealth to reopen their case after they had rested, which motion the Court doth overrule, and to which action of the Court in overruling the said motion, the defendant, by counsel, excepted. And the said Floyd A. Hargraves is remanded to jail. The Court advised the defendant that he had a right to appeal to the Supreme Court of Virginia if he so desired. And the record made by the Court reporter herein of the said proceedings is filed as part of the record in this case. The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant. It is further ordered that James R. Corbett be appointed to perfect the appeal to the Supreme Court of Virginia on behalf of the defendant. It is further ordered that the said Floyd A. Hargraves be allowed 83 days in jail in conjunction with this charge.

JUDGE DESIGNATE

Ord. Bk. 30 Pg. 421

A COPY, TESTE: GEORGE D. DeSHAZOR, Clerk

BY ..... D. C.

1 copy mailed to State Penitentiary 1-9-75

VIRGINIA: Circuit Court of the City of Newport News, Tuesday, the 15th day of November, 1977.

PRESENT: The Honorable ROBERT T. ARMISTEAD, Judge Designate.

Indictment No. 3213-77 Commonwealth	)	Indictment for Va. Code 18.2-53.1 Use or display of firearm during commission of a Felony
Vs	)	A Felony
Floyd A. Hargraves (DOB 12-24-57)	)	A true bill. D. B. Seward, Jr., Foreman. September 12, 1977 Grand Jury

This day came again the attorney prosecuting for the Commonwealth and the accused Floyd A. Hargraves, (who was represented by James R. Corbett, attorney heretofore appointed by the Court), was led to the bar in the custody of the jailer of this Court, and Sylvia Clifton, Court appointed Court reporter, was sworn to faithfully and accurately take down and transcribe the proceedings herein. And investigation having been made by the Parole and Probation Officer of this Court, this case came on again to be heard in the presence of the accused and his attorney and the accused having been advised of the contents of said report and having been given the right to cross examine the said Parole and Probation Officer and present any additional information he desired, and said report of said Parole and Probation Officer having been filed as part of the record in this case, the Court after hearing the Parole and Probation Officer and all other testimony herein, and the Court having on October 7, 1977, found the said Floyd A. Hargraves guilty as charged in said indictment, to-wit: Use or display of firearm during the commission of a Felony, doth now fix and ascertain his punishment to be imprisonment in the State Penitentiary for the term of one (1) year. Thereupon, it being demanded of the prisoner if anything he had or knew to say why this Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it

is considered by the Court that the said Floyd A. Hargraves be imprisoned in the State Penitentiary for the term of one (1) year, the term of his imprisonment therein, by the Court herein fixed and ascertained there to be kept imprisoned and treated in the manner directed by law for the term aforesaid, or until he be otherwise discharged by due course of law, which sentence shall not run concurrently with any other sentence, and that the Commonwealth recover against the said Floyd A. Hargraves the cost of this prosecution. The defendant, by counsel, moved the Court to set aside the verdict on the grounds that the Commonwealth had not proved beyond a reasonable doubt that it was the defendant who committed the crime and further that error was made in allowing the Commonwealth to reopen their case after they had rested, which motion the Court doth overrule, and to which action of the Court in overruling the said motion, the defendant, by counsel, excepted. And the said Floyd A. Hargraves is remanded to jail. The Court advised the defendant that he had a right to appeal to the Supreme Court of Virginia if he so desired. And the record made by the Court reporter of the said proceedings is filed as part of the record in this case. The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant. It is further ordered that James R. Corbett be appointed to perfect the appeal to the Supreme Court of Virginia on behalf of the defendant.

30 10 423

JUDGE DESIGNATE

A COPY. TESTE: GEORGE D. DeSHAZOR, Clerk

BY ..... D. C.

ASSIGNMENTS OF ERROR

1. The trial court erred when it failed to sustain Defendant's motion to strike at the conclusion of the Commonwealth's evidence, and before the Commonwealth was permitted to reopen it's case and put on additional evidence.

2. The trial court erred when it permitted the Commonwealth, over objection from Defendant's counsel, to reopen it's case and put on additional Commonwealth's evidence after counsel for Defendant had already made a motion to strike and stated the reasons therefor.

3. The trial court erred when it did not grant the renewal of Defendant's motion to strike after the Commonwealth reopened and put on an additional witness.

4. The trial court erred when it did not sustain Defendant's motion to set aside the verdict as being contrary to the law and the evidence, and for error committed by not granting Defendant's motions to strike, and for permitting the Commonwealth to reopen and put on additional evidence.

Commonwealth were called and duly sworn.)

COURT: First witness.

MR. MUROV: Mr. Moore, your Honor.

COURT: All right, would the remainder of you step outside, and the Sheriff will call you as you are needed.

(At this time, the witnesses were excluded from the Courtroom.)

- - -

LEONARD E. MOORE, called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MUROV:

Q Would you state your name for the Court, please?

A Leonard E. Moore.

1 Q Mr. Moore, are you employed?
2 A Yes, I am.
3 Q What do you do?
4 A Drive a taxi.
5 Q How long have you been driving a
6 cab?
7 A Thirty years.
8 Q All right, sir. Were you driving a
9 taxi for a taxi cab company on the 7th of July, 1977?
10 A Yes, I was.
11 Q What company were you working for
12 on that day?
13 A "White" Taxi Company.
14 Q All right, sir. Turning your atten-
15 tion to the early morning hours of the 7th of July, did
16 anything unusual happen to you on that day?
17 A Yeah, I had a call to come to
18 4729 Marshall Avenue. And when I arrived, the passenger
19 hesitated about coming out. When -- after he came out, he
20 started to get in the front, then he got in the back. He
21 asked me --
22 COURT: I'm sorry,
23 I'm not -- the passenger hesi-
24 tated about coming out and then
25 when he came out, what happened?

A He started to get in the front seat, then he got in the back seat.

COURT: All right.

A And he asked me to take him to 1147 - 27th Street. When I got to 27th and Marshall, he told me to carry him to the twelve hundred block of Jeb's Place. And after I arrived in the twelve hundred block of Jeb's Place, he said, "Pull over here." I pulled over. He drew a gun on me. He say -- he say, "Give me what you have." I hadn't run -- I hadn't run but two trips. I go to work at 12 o'clock at night, so I gave him what I had. I only had about five dollars. Then he asked me to -- to give me your gun. I told him I didn't have a gun. He said, "If you don't give me your gun, I'll blow your brains out." He snapped the gun; I grabbed the gun. Him and I tussled. And somehow or another, he got away, and I called the cab stand, to tell the lady to send the police down there. I'd been robbed. So, in the meantime, two officers came down there. And then a little later on, Sergeant Jones came down there, Detective Jones.

BY MR. MUROV:

Q Did the person who got in your car -- there was only one person who got into your automobile?

A One person.

Q Was that person white or black?

A It was a black person.

Q All right. Would you describe -- give us some -- a general description of this person?

A He was kind of light-skinned and his hair was braided, but I cannot identify his face for that.

Q Could you give us an estimate of his age?

A Well, I estimated him to be from twenty to thirty years old.

Q What about his height?

A I'd say -- I'd say about five foot seven, something like that.

Q How tall are you?

A Five foot five and a half.

Q Is he taller or shorter than you?

A Taller than I am.

Q How much do you estimate his weight to be?

A Maybe around from one hundred fifty to one hundred seventy-five, something like that.

Q What length of time passed, Mr. Moore, from the time you picked up this fare on 30th Street and Marshall, until the time this incident took place -- pardon me, picked up the fare at 4729 Marshall until this

incident itself took place? What length of time passed?

A I'd say about twenty minutes.

Q And was it daytime or nighttime when all of this took place?

A At night.

Q Do you remember what time of the evening it was or the morning?

A Well, he called the place at 12:45.

Q The call to you to come pick up this person?

A Yes.

Q How -- how was the money that you gave him? Was it a five-dollar bill or was it -- how was it arranged?

A Two one-dollar bills and about -- about three -- maybe three -- three dollars and a half in change, something like that.

Q And this Jeb's Place, where all this took place, is that in the City of Newport News?

A Yes, it is.

Q Can you identify the person who took this money from you and pointed this gun at you?

A No, I cannot.

MR. MUROV: Would you

answer Mr. Corbett's questions, please.

CROSS EXAMINATION

BY MR. CORBETT:

Q Mr. Moore, what do you mean by the person hesitated before he came out?

A Well, he came out and then he held a conversation with someone before he got in the cab. That's why I say that.

Q Well, when -- when you pulled up, was this a residence, a house where you were going to pick this fare up?

A Yeah, it's in a parking lot.

Q And -- and when you pulled up, could you see any persons or were they inside or somewhere?

A They was inside.

Q Did you toot your horn or blow your horn or something?

A Well -- well, we don't do too much blowing that time of morning. We -- we might toot the horn one time and we tell the dispatcher that the peoples is not coming out. So, they give us five minutes to stay there.

Q But by hesitating, do you mean the

1 person started out of the door or something and then went
2 back in or --
3 Q No, they -- he just didn't come out
4 right then, after I got there.
5 Q How was the person dressed that you
6 picked up?
7 A I -- I really don't know. I
8 couldn't tell you.
9 Q This would have been hot weather,
10 right, back in July?
11 A Yes.
12 Q Did the person come out of the house
13 and come over to your cab on the driver's side or on the
14 passenger side of your vehicle?
15 A Came over on the passenger side.
16 Q Passenger side?
17 A Yes.
18 Q How far did that person have to walk
19 from where he came out of the building, to your cab?
20 A I'd say -- I'd say as far as from
21 here to that second row of seats out there (indicating).
22 MR. CORBETT: Was it
23 dark --
24 COURT: He's indicating
25 a distance of probably twenty to

1 twenty-five feet.
2 MR. CORBETT: Yes
3 sir.
4 BY MR. CORBETT:
5 Q Was the area lighted?
6 A Not too light; some parts of it.
7 Just -- just -- just the one that had the front lights on.
8 That's all.
9 Q But it's fair to say that it was
10 pretty dark out there that night, that time of night?
11 A Right.
12 Q So you really didn't get a chance
13 to see the person walking up to your cab good enough to see
14 what kind of clothes he had or how tall he was or how much
15 he weighed or this type thing?
16 A I don't know. Well, him and I
17 tussled. I know that.
18 Q But you were in the car sitting down
19 when this little tussle came about, weren't you?
20 A Well, when we were tussling, I was
21 reaching to the back, in the back seat.
22 Q But you were in the car, weren't you?
23 A Yeah, I was in the car, quite natu-
24 rally.
25 Q So, I mean, it's fair to say that

1 the most you really know about the fare that you picked up
2 that night, it was a young black male. That's all you could
3 really tell about the person, isn't it?
4 A That's right.
5 Q And you're sure in your own mind that
6 this fare told you to go to 28th Street?
7 A I didn't say 28th Street. I said
8 27th.
9 Q Told you to go to 27th Street?
10 A That's right.
11 Q Do you remember the number?
12 A Eleven forty-seven.
13 Q And if I understand you correctly,
14 after you got to 1147 - 27th Street, this person told you
15 to go to some other address?
16 A We didn't get there. When I got
17 to 27th Street to make the turn, he asked me to carry him
18 to the twelve hundred block of Jeb's Place.
19 Q How much farther is Jeb's Place from
20 27th Street, in terms of say, city blocks?
21 A I would say -- let's see. I'd say
22 around seven blocks.
23 Q Are you sure that there's a twelve
24 hundred block of Jeb's Place?
25 A I'm positive.

Q Now, what happened when you got to Jeb's Place? Did you come to a stop when this man said something to the effect, "Give me what you've got"?

A Yeah, he asked me to pull over and stop.

Q And where -- was this person sitting directly behind you in the rear seat or on the passenger side of the rear seat?

A He was sitting on the -- sitting on the passenger side.

Q Were you looking directly at the person when this person said, "Give me what you have"? Did you see a gun right at that point in time?

A I saw it and felt it too, in the back of my head.

Q Felt it in the back of your head?

A Right.

Q And you could see it too?

A Yeah.

Q Was it right straight in the center part of the back of your head or over on one side or --

A Pointed right at my head (indicating).

COURT: He's indicating right behind his right ear.

BY MR. CORBETT:

Q And when the person told you to -- to give him what you had, did you just -- where was the money at? Was it in your pocket or --

A In my pouch, in my money pouch (indicating).

Q Little pouch?

A Yes.

Q And best you can remember, it was about two one dollar bills and some change?

A Yeah, that's all was in there. I hadn't made but two trips.

Q What time had you started to work that night?

A Twelve o'clock.

Q Do you have any money in your pouch when you start, when you come on duty?

A Two or three dollars.

Q Two or three dollars?

A Um hum.

Q Now, how did this tussle come about?

A Well, he -- he snapped -- that gun snapped. When that gun snapped, that's when I grabbed the gun and him and I tussled.

Q Do you recall how you grabbed the

gun? Did you reach up and grab it with your left hand or --

A I grabbed it with this hand (indicating).

Q With your right hand?

A Yes.

Q What, did you turn around in the seat, like this (indicating)?

A I just reached right up behind him like this, behind my head and grabbed it, and it snapped (indicating).

Q And how did this tussle take place? You grabbed the gun; were you actually holding on to the gun?

A I was holding on to the hand -- to his hand that had the gun. I couldn't -- I couldn't get ahold to the gun.

Q You couldn't tell -- really tell that it was a gun, then, but you had him by the hand?

A Yes, it was -- it was a gun.

Q Okay. But you had the hand?

A Yeah, I held hold to the hand that had the gun. It was a gun.

Q And -- well, what happened? Was he able to pull the gun away from you or --

A Somehow or another, he got out the car and run.

1 Q Have you ever been convicted of a
2 felony, Mr. Moore?
3 A No, I haven't.
4 Q Have you ever been convicted of a
5 misdemeanor involving moral turpitude?
6 COURT: I doubt
7 if he would know that. Have
8 you ever been convicted of
9 stealing or lying?
10 A No, I haven't.
11 (At this time,
12 Mr. Corbett and the De-
13 fendant conferred.)
14 MR. CORBETT: I have
15 no further questions, your Honor.
16 MR. MUROV: Two ques-
17 tions, your Honor.
18
19 REDIRECT EXAMINATION
20
21 BY MR. MUROV:
22 Q First of all, Mr. Moore, how many
23 other fares did you take or pick up from Jeb's Place, that
24 block that night?
25 A I didn't pick up any because I knocked

1 off.

2 Q All right, sir. The other question

3 is do you recall what hand your -- the person who was pointing

4 this gun at you, was holding the gun in? Do you recall which

5 hand?

6 A I don't know what hand he was holding

7 it in.

8 Q All right, sir. Did you ever see

9 the gun?

10 A Yeah, I saw it.

11 MR. MUROV: No fur-

12 ther questions.

13 COURT: All right.

14 Any further need for the wit-

15 ness? You may be excused.

16 You may be seated in the Court-

17 room, leave whenever you wish.

18 MR. MUROV: Sergeant

19 Brown, your Honor.

20 COURT: Let me ask

21 you this one question. Is

22 this person -- could he be

23 the party? I mean is he --

24 A Could be; I couldn't say definitely.

25 COURT: All right.

1 You may be seated in the Court-
2 room, leave whenever you like.
3
4 - - -
5
6 DETECTIVE JAMES W. BROWN, called as
7 a witness by the Commonwealth, being duly sworn, testified
8 as follows:
9
10 DIRECT EXAMINATION
11
12 BY MR. MUROV:
13 Q Would you state your name for the
14 Court, please?
15 A I'm James W. Brown.
16 Q Are you with the Newport News Police
17 Department?
18 A Yes sir, I'm a Detective Sergeant
19 with homicide, robbery and rape.
20 Q All right, sir. Did you have an
21 occasion to investigate a robbery complaint arising out
22 of 7 July of 1977, early morning hours?
23 A Yes sir. On -- my part started on
24 August 24th, 1977, at approximately four p.m., at which time
25 I arrested the Defendant, Mr. Hargraves.

Q Without going into any hearsay testimony, how did the Defendant's name come up to you in the course of this investigation? How did you find out about him?

A Through a telephone call from an anonymous individual.

Q All right, sir. And what action did you take after this phone call?

A Detective E. E. Smith and I went to the seven hundred block of 25th Street, in Newport News, where we observed the Defendant standing on the street, on the north side of the street. At which time, we approached him and advised him we had warrants for his arrest, and he more or less indicated that he knew there was a warrant or warrants out for him. At this time, we took him back to our police car, which was only a few steps away, seated him in the back, along with myself. At this time, Detective Smith advised him of his rights.

Q Were you present when his rights were advised?

A Yes sir, I was.

Q Would you state to the Court what rights you heard Detective Smith advise this man?

A That he had the right to remain silent. That anything that he said would be used against him in Court.

He had a right to an attorney and have the attorney present, prior to any questions by the police. If he could not afford an attorney, then one would be appointed by the Court and he indicated that he did understand those rights.

Q Did he tell -- did he say whether or not he wanted to talk to you?

A At that particular time, he was talking -- he started talking with us, in reference to the incident with the cab driver.

Q What time of the day did all of this rights advisement and this conversation with the Defendant take place? What time was it?

A This was at approximately 4:15 p.m., on August 24th.

Q All right. What did he tell you about this incident on the 7th of July?

COURT: Before going -- did you wish to examine him concerning the circumstances under which the statement was obtained?

MR. CORBETT: No sir, your Honor.

COURT: All right.

BY MR. MUROV:

Q What did this man tell you about this

1 incident on the fourth -- on the 7th of July, 1977?
2 A This he told me after we had arrived
3 at police headquarters. We were in the Bay Room of the In-
4 vestigative Branch on the third floor. After Detective Smith
5 had advised him again of his rights, he said that he was
6 in the Newsome Park section of Newport News, at his girl
7 friend's, and that she had called a taxi for him. That he
8 had been drinking quite heavily and that the taxi arrived,
9 and he told the taxi that want to go to the eleven hundred
10 block of 28th Street. But instead of arriving at the
11 eleven hundred block, he stated that he momentarily passed
12 out or blacked out and when he woke up, the cab driver had
13 him on Jeb's Place, off of 16th Street. And at that time,
14 they started arguing with the taxi driver and refused
15 to pay the bill, stating that he did not ask to go to Jeb's
16 Place and he wasn't going to pay for just riding around.
17 And at that time, after the argument, he jumped out of the
18 cab and ran.
19 Q Can you identify the person who
20 told you this information?
21 A Yes sir, it's Floyd Hargraves that's
22 seated by Mr. Corbett, in the red shirt, the black male (in-
23 dicating).
24 MR. MUROV: Your Honor,
25 for the record, I'd ask that the --

COURT: Let the record show he identified the accused.

MR. MUROV: Your Honor, I have no further questions of Sergeant Brown.

CROSS EXAMINATION

BY MR. CORBETT:

Q Sergeant Brown, did I understand you to testify that you arrested him on the -- was it the 28th of August?

A Twenty-fourth of August, sir.

Q Twenty-fourth of August. At that time, did you recognize Mr. Hargraves when you would see him and did you know him when you saw him?

A I knew him by the tatoo under his eye, and I had seen him in the past. I didn't know him personally.

Q And -- but you were aware that there was at least one warrant out for his arrest that had nothing to do with this incident that we're in Court on today?

A I was aware of that only after we had arrested him on the charges that we had here today.

1 Q Did he indicate to you during your
2 conversation with him that that's why he thought that you
3 were there, why you arrested him on that warrant?
4 A He indicated to me that he thought
5 there was a warrant out for him. And I'm trying to recall
6 now; it was something to do with Lincoln Park, but I -- this
7 was when we first arrested him. I don't recall exactly
8 what he thought the warrant was for, no.
9 Q And you -- you use the terminology
10 there that he told you that he momentarily blacked out or
11 something. Is it fair to say that his comment was to you
12 that he dozed off or something to that effect?
13 A Yeah, the emphasis that he put on
14 this, I would appear to take was from the alcoholic beverages
15 that he had consumed.
16 Q And do you recall specifically that
17 Mr. Hargraves told you that he told the cab driver to take
18 him to 28th Street?
19 A Yes, that's what the Defendant told
20 me.
21 Q In fact, Mr. Hargraves lived on
22 28th Street, at the time, didn't he?
23 A Yes, he does.
24 Q And he did, in fact, live in the eleven
25 hundred block of 28th Street?

A Yes, he did.

Q Did you ask him, in the course of your conversation or interrogation with him, if he had a gun that night?

A Yes, and he denied having a gun.

Q So, is it fair to say that he admitted that he was in a cab that night?

A Yes, he did.

Q Did he know whether or not the particular cab that he was in was the cab that was operated from White's Cab, by Mr. Moore?

A He indicated that the cab was a White's Cab but he didn't know who the operator was.

Q And his indication to you was then that in his mind, the cab driver did not take him where he told him to, so he simply got out of the cab without paying?

A Right; that he was not going to pay for just being rode around.

(At this time, Mr. Corbett and the Defendant conferred.)

MR. CORBETT: No further questions.

MR. MUROV: One question, your Honor.

REDIRECT EXAMINATION

BY MR. MUROV:

Q Did the Defendant indicate to you what time these events took place on the 7th of July?

A It was in the early morning hours. He didn't know the exact time that he left Newsome Park in the cab.

MR. MUROV: No further questions, Judge.

COURT: Did he know the date?

A He indicated that this was the 7th of July or in that area. He --

COURT: You asked him about the 7th day of July?

A Right; right.

COURT: And he replied that --

A He was in the taxi on that date.

COURT: On that date?

A That his girl friend --

COURT: In the early morning hours?

1 A Yes sir.
2 COURT: That it was
3 a "White" Cab?
4 A White's Cab.
5 COURT: White's Cab.
6 And that he was picked up at
7 what address?
8 A He was picked up in the Newsome Park
9 section, your Honor. He didn't specify an address. He says
10 his girl friend called the taxi for him.
11 COURT: Newsome Park.
12 I'm trying to recall did the address
13 that the other person stated, was
14 it the six hundred block of Marshall
15 that he --
16 MR. MUROV: I believe
17 it was -- your Honor, if I recall
18 the testimony, and I'd ask Counsel
19 to correct me if I'm wrong; I be-
20 lieve the testimony was 4729 Mar-
21 shall Avenue.
22 COURT: Forty -- that
23 sounds right, 4729.
24 MR. CORBETT: That's
25 what my notes indicate.

1 COURT: Is 4729
2 Marshall in Newsome Park?
3 A Yes, it is, your Honor.
4 COURT: How large an
5 area is Newsome Park?
6 A Newsome Park is bordered by 39th
7 Street. It runs north from 39th Street to approximately
8 the Briarfield area, Warwick Gardens area, and east to the
9 city limits, and then west over to the Jefferson Avenue
10 area. So you are talking about approximately twenty-block
11 area in this cubical, that is considered Newsome Park.
12 COURT: How large
13 a street is -- what is it,
14 Jeb's Place?
15 A Jeb's Place, your Honor, is just a
16 small street that runs off of 16th Street, to the south. And
17 it's in the Stuart Gardens subdivision or apartment complex.
18 It's -- only has the 11th and twelve hundred block to Jeb's
19 Place.
20 COURT: All right.
21 MR. CORBETT: No fur-
22 ther questions.
23 MR. MUROV: Your Honor,
24 that's the Commonwealth's case.
25 We rests.

1 MR. CORBETT: If your
2 Honor please, at this time, I'm
3 going to move the Court to strike
4 the Commonwealth's evidence on
5 the basis that what has been shown
6 to this Court by the Commonwealth's
7 evidence is that Mr. Moore, who
8 apparently does drive a White's Cab,
9 on the summer of July the seventh
10 or thereabouts, picked up a fare
11 in the Newsome Park area, speci-
12 fically his address was 4729 Marshall
13 Avenue. And that at some point during
14 the journey there, he said that the
15 fare he picked up told him to take
16 him specifically to 27th Street.
17 But when he arrived -- before he
18 made the turn onto 27th, the fare
19 he had told him to take him to Jeb's
20 Place.
21 When he got to Jeb's
22 Place, somebody whipped out
23 a gun and in effect, took four or
24 five dollars from him. The statement
25 introduced by the Commonwealth,

1 taken from this man, Floyd Har-
2 graves, that is the Commonwealth's
3 evidence, indicates that apparently
4 somewhere on or about the 7th of
5 July, this man was in a cab that he
6 thinks was a "White" Cab. We have
7 no way of knowing whether it was
8 the same cab that was operated
9 by Mr. Moore or not. Mr. Moore
10 indicated he couldn't identify the
11 person in his car. The statement
12 introduced by the Commonwealth in-
13 dicated that this man didn't know
14 who the driver was or couldn't identify
15 the driver of the car he was in.
16 We have no way of knowing whether that
17 cab that was robbed and the cab that
18 this man told the police that he was
19 in, which he denies in that statement
20 of having robbed anybody.
21 He said the man took him
22 to the wrong place and he got out
23 without paying. And that's certainly
24 too much conflict in the Commonwealth's
25 evidence, at this point in time, to

1 even, looking at the evidence
2 in the light most favorable to
3 the Commonwealth, to tie this
4 man to that crime. I'm going
5 to ask the Court to strike the
6 evidence.
7 MR. MUROV: Your Honor,
8 the testimony of Mr. Moore is
9 straight forward and clear.
10 Of crucial importance to the
11 Commonwealth's case is the De-
12 fendant's own statements when
13 he was arrested. The Common-
14 wealth saw fit to introduce
15 those statements this after-
16 noon for the following reasons.
17 Number one: It shows an oppor-
18 tunity to have committed the
19 crime. That we are talking about
20 the same incident is clear from
21 the Court's own questions to Ser-
22 geant Brown. A White's Cab is
23 involved, the date is at or about
24 the same time, the same streets
25 are involved, Newsome Park was

1 referred to by the Defendant.
2 Mr. Moore gives us more detailed
3 information in saying Marshall
4 Avenue. That is within Newsome
5 Park. The crucial street is
6 Jeb's Place. That's where both
7 stories end up. Mr. Moore tes-
8 tified that he had no other fares
9 on the 7th of July. He came to
10 work at midnight that night and
11 he had no other fares, picked up
12 or taken to Jeb's Place. This
13 was the only one. Continuing
14 your Honor --
15 COURT: Now, this is --
16 this is the thing that concerns
17 me.
18 MR. MUROV: Yes sir.
19 COURT: How many White's
20 Cabs are there? It could be a
21 dozen "White" Cabs. All right.
22 MR. MUROV: Well, we're
23 talking about a narrow time frame,
24 your Honor.
25 COURT: I'm really wondering

if -- I'll tell you, I see it's one o'clock and I don't think you have really thought this thing through. If -- if there's one "White" Cab or if someone from "White" Cab would say that's the only time we went to Newsome Park, I think maybe you have something. But if there are a million "White" Cabs, you don't have anything. And this is the factor that you haven't gotten into evidence because I don't know. The "White" Cab could be as large as Yellow Cab. Newsome block is -- Newsome area is twenty square blocks. There might have been one hundred calls that evening. It seems like to me that this is within your ability to answer and haven't done so. Also, I would think and I don't know if it's essential, that the address of his girl friend could have been ascertained. But certainly unless I know how many

1 "White" Cabs there are and how
2 many calls were answered in the
3 Newsome block, it just isn't
4 here.
5 MR. MUROV: The Com-
6 monwealth didn't think it was
7 necessary to go into that, your
8 Honor, because of the narrow
9 time frame involved. The man,
10 by his own statement, said this
11 occurred sometime shortly after
12 midnight. Mr. Moore was even
13 precise --
14 COURT: Well, let's
15 say, is it unreasonable to assume
16 that sometime that night, that
17 another cab went to Newsome Park,
18 which is twenty square blocks
19 and ended up at "Jeb" Street,
20 which is some twenty blocks away.
21 MR. MUROV: Your Honor,
22 I would argue that it is -- it
23 is, from the Commonwealth's evi-
24 dence taken as a whole right now,
25 it does present a prima facie case

1 because they both say he was --
2 COURT: Well, let me
3 say this. I'll go ahead and
4 take a break for lunch. I'll
5 give you an opportunity to
6 think of it. But unless you can
7 resolve that problem --
8 MR. MUROV: If the
9 Court isn't going to allow me
10 to put on any more evidence,
11 which I think I can't.
12 COURT: No, I didn't
13 say -- why do you think you
14 can't?
15 MR. MUROV: Well, if
16 the Court is going to allow me
17 to put on more evidence, I think
18 I -- I may be able to resolve --
19 COURT: Certainly you're
20 entitled to reopen your case. I
21 mean, that's discretionary. I
22 think you've just overlooked the sa-
23 lient point. Surely the person
24 who handles the White's Cab would
25 know how many people she sent to

1 it and how many cabs there are.
2 MR. MUROV: Yes sir.
3 COURT: And to me, it
4 makes a lot of difference whether
5 there's one cab or whether there's
6 ten thousand.
7 MR. MUROV: Yes sir.
8 COURT: If there's ten
9 thousand cabs, you haven't got
10 anything. If there's one cab or
11 two cabs, I don't know if you can
12 pin it down. Maybe you have as
13 closely as that. I just don't
14 think you have thought it through.
15 How long do you usually
16 take for lunch?
17 MR. MUROV: Your Honor,
18 generally, an hour. It can be
19 less time, if the Court sees fit.
20 MR. CORBETT: It really
21 makes no difference at all.
22 COURT: Well, let's take,
23 say, forty-five minutes --
24 MR. MUROV: Yes sir.
25 COURT: If that's agreeable;

be back at 1:45.

(At this time, the Court declared a recess, after which the Court reconvened.)

(Following the recess, the Defendant was present in the Courtroom, seated by his Counsel.)

COURT: Did you wish to reopen your case?

MR. MUROV: Yes sir.

COURT: I'll permit you to do so. Call your first witness.

MR. MUROV: Dora Fletcher. She has not been sworn, your Honor.

MR. CORBETT: If your Honor please, for the record, I would like to make a short objection to the Commonwealth reopening the case, on the basis that my understanding of the law is and I realize that the Court does have discretion in the order of evidence

and I certainly wouldn't take issue with that. However, I feel that if this was some newly acquired evidence that came about after the Commonwealth had finished his case and was new evidence, then certainly and rightfully it should be reopened. That evidence should be made available to the Court. But any evidence that the Commonwealth is going to put on, on this motion to reopen his case, is evidence that he knew or reasonably should have known prior to resting his case, and I would note my exception -- my objection.

COURT: Well, quite obviously, I gather by putting her on, he realizes that perhaps he should have put her on before. We don't dispose of cases on that basis. I'll permit her to testify. Note your exception.

(At this time, the Commonwealth's witness was

1 called forward and duly
2 sworn.)
3
4 - - -
5
6 DORA FLETCHER, called as a witness
7 by the Commonwealth, being duly sworn, testified as follows:
8
9 DIRECT EXAMINATION
10
11 BY MR. MUROV:
12 Q Would you state your name for the
13 Court, please?
14 A Miss Dora Fletcher.
15 Q Mrs. Fletcher, are you employed by
16 White's Cab?
17 A Yes, I am.
18 Q How long have you worked there?
19 A Approximately seven months, now.
20 Q All right. Were you working there on
21 the 7th of July, 1977?
22 A Yes, I were.
23 Q What time did you come to work that
24 night?
25 A My shift is from twelve to eight;

1 twelve midnight to eight o'clock in the morning.
2 Q What do you do at White's Cab?
3 A Dispatcher.
4 Q In the course of your duties as a
5 dispatcher, do you prepare what is commonly known in the
6 cab business as a manifest?
7 A Dispatch sheet, that's right.
8 Q All right. Do you have the dispatch
9 sheet that you entered and worked with on the early morning
10 hours of July 7th, 1977?
11 A Yes, I do.
12 Q May I have that, please?
13 A Um hum.
14 (At this time,
15 the document was handed
16 to Mr. Murov, by the wit-
17 ness.)
18 (At this time,
19 Mr. Murov exhibited the
20 document to Mr. Corbett.)
21 MR. MUROV: Your Honor,
22 I would have this document marked
23 for identification as Commonwealth
24 Exhibit One, I believe.
25 COURT: All right, just ask

her is -- is that the manifest which you kept, the dispatch sheet that you kept on that date?

A We keeps all the dispatch sheets from month to month. We just --

COURT: But is this yours, did you keep this one?

A Yes, right.

COURT: All right, I'll admit it into evidence.

MR. CORBETT: If your Honor please, I would appreciate it being admitted or marked for identification subject to my cross examination.

COURT: Well, certainly, you may cross examine her right now on the admissibility of it.

MR. CORBETT: There's just one or two questions that I would like to ask her with regard to that. Could I see it,

1 your Honor?

2 COURT: Surely; hand

3 it there to him, please.

4

5 CROSS EXAMINATION

6

7 BY MR. CORBETT:

8 Q You say you prepared this?

9 A Yes, I took over from the dispatcher

10 who came in from four to twelve, and I starts over from --

11 if she has any space on the dispatch sheet, I starts from

12 there and work up another one.

13 Q Do you keep this in your possession?

14 A No, we keeps them in the office. We

15 files them from month to month.

16 Q How did you happen to have this here

17 with you today?

18 A Mr. Leonard Moore needed this dispatch

19 sheet for evidence over here. We pulled it from the files

20 for him to bring.

21 Q So this was not in your possession?

22 A At all times, no; it was at the

23 office, 2701 Marshall, "White" Cab stand.

24 Q When you arrived over here earlier

25 today, you received this from Mr. Moore, did you not?

A Right, I did.

MR. CORBETT: I have no objections to it being admitted.

COURT: All right. I'll admit it, Commonwealth's Exhibit One.

(At this time, the document was received and marked, Commonwealth's Exhibit Number One.)

REDIRECT EXAMINATION

BY MR. MUROV:

Q Mrs. Fletcher, what was the first call you received after you came on and started working with the manifest, on the 7th of July?

A The first call I received was 3616 Marshall.

Q Okay. Who -- how many cabs did White's have out on the street after midnight that night?

A Two cabs.

Q Who was operating those cabs?

A Mr. Leonard Moore and Mr. David

1 Saunders.

2 Q All right. Then, can -- are both of

3 those gentleman in the Courtroom?

4 A Yes, they are.

5 Q Can you point them out for the

6 Court?

7 A Right back there. Mr. Moore is on

8 the right, Mr. Saunders on the left (indicating).

9 COURT: This other

10 gentleman, if you expect him

11 to testify, I think he should

12 be excluded.

13 MR. MUROV: Your Honor,

14 I don't anticipate needing --

15 COURT: All right,

16 that's up to you.

17 MR. MUROV: All right.

18 BY MR. MUROV:

19 Q Did -- were there any other cabs

20 besides Mr. Saunders' and Mr. Moore's cabs on the street?

21 A No, there wasn't.

22 Q All right, sir. Now, what number

23 was Mr. Moore's cab?

24 A Number four.

25 Q What number was Mr. Saunders' cab?

A Number six.

Q Okay. Tell me all the calls that four got? Tell the Court about those calls?

A Well, the first trip he checked on was 3616 Marshall. He vacated that on Madison. The next trip came --

Q Tell me the times of each of these calls.

A All right. The call came in exactly twelve o'clock for 3616 Marshall.

Q What kind of fare was received for that call?

A One fifteen.

Q Okay.

A The next trip came up was 1162 Garden Drive, which came in at 12:05. I told the lady when she called it would be five or ten minutes before I could get her a cab because we was busy that night. When he went there, he didn't get anybody. That's a DT.

Q What does "DT" mean?

A No trip, dead trip.

Q All right.

A The next trip was at 12:12, which was 2408 Chestnut Avenue. He went there and didn't get anybody. That was a DT. So, this call came in for 26th and Jefferson,

which is a regular call every night.

Q What time did that come in?

A That came in at 12:35.

Q Okay.

A He picked that up and vacated with a one twenty-five.

Q Where did he vacate that call?

A Eight twenty-two twenty-six.

Q And you said he got a dollar twenty-five?

A Right.

Q Okay. What's the next one that four, which is Mr. Moore, what's the next call he gets after that one?

A The call came in at quarter to 12.

Q Where was the pickup?

A Quarter to one, sorry. That was 12:45. Lady called from 4729 Marshall Avenue.

Q And where was the -- tell us about this call.

A Well, when the call came in, she asked me did I have any cabs on the stand and I told her not right then. It should be about five minutes. So, she say, "Well, okay, send it to 4729 Marshall." Okay. I told four, after he vacated -- Mr. Saunders was on an OD;

1 that means he didn't know exactly where he was going with
2 the trip he had. I said, "Pick up at 4729 Marshall after
3 you vacate." He gave me a ten-four. And about three to five
4 minutes later, I called back into unit four. I say, "White
5 four, have you picked up yet?" He say, "The guy is coming
6 out the house now. As soon as he get in the cab, I'll let
7 you know where I'm going." So, about three to five more
8 minutes afterwards, I called, I said, "Four, do you know
9 where you're going?" He say, "I'm going to the eleven
10 hundred block of 27th. I said, "Well, all right." I wrote
11 that down. Then when he got around there, he called back
12 and he say, "White four, this trip is going to be OD, con-
13 tinued." I said, "Where you going from there?" He said,
14 "I'm going to probably vacate twelve -- twelve hundred
15 block of Jeb's Place."
16 Q How do you spell -- you say -- how
17 are you spelling the street you just said?
18 A Jeb's Place?
19 Q Yeah, how is that spelled?
20 A J-E-B.
21 Q All right. Go ahead.
22 A So, I say, "Well, ten-four." And
23 in between that time, my base station, it sits on the right
24 side of me, and I heard this funny noise come in on the base
25 station. I was startled because I didn't know what exactly

1 what was the noise. So, the -- the mike was released. About
2 five minutes later, the same noise come back, but it stayed
3 on about five -- between five and ten minutes. Sound like
4 a bunch of foreigners talking. I couldn't understand a
5 word they was saying. So, then, six was getting ready to
6 vacate his trip. So in between that time, Mr. Leonard Moore
7 came -- got back on the radio and he "loud". He say,
8 "White four to base." I said, "Go ahead four." He say,
9 "Call the police." I said, "What's wrong?" He said, "The
10 guy just tried to rob me." He was all out of breath. So,
11 I say, "Exactly where are you at?" He say, "I'm still in
12 the twelve hundred block of Jeb's Place." I say, "Well,
13 hang on." So I have a phone that we use on the left hand
14 side of me, and I called over town to the police station
15 and told them that one of my cab drivers needed a "cab" right
16 away, that he had been robbed. So, I told the policeman
17 to hold on because he was asking me a description of the
18 party who tried to rob Mr. Moore. And I told him to hold
19 on, he could hear it from the driver himself. So, Mr. --
20 MR. CORBETT: If your
21 Honor please, I think that we're
22 kind of getting away from what
23 this witness was put on the stand
24 for. And I really don't see where
25 the witness is adding anything relevant --

1 COURT: Well, I --
2 I agree. It's not the point
3 which I addressed. Of course,
4 I don't say -- it doesn't make
5 it inadmissible because the
6 Commonwealth can present his
7 view as well as mine.
8 A So, as I was saying, he -- so, when
9 the policeman got there -- he said, "Well, tell him we
10 got an officer on the way." And when a policeman got there,
11 six called in on the base, "I'm going around to see can I
12 give four any assistance." But when he got around there,
13 everything was over with.
14 BY MR. MUROV:
15 Q Okay. Now, let's start back at
16 midnight and very, very briefly, but in a detailed way,
17 tell me about what kind of calls number six had? Now,
18 who was operating number six?
19 A Mr. David Saunders.
20 Q Okay. Now, tell us about where he
21 went to that night.
22 A Well, he had a call at Paramount
23 Restaurant at 12:05. And he vacated his trip, forty-five
24 hundred block of Washington, with a one fifteen fare. Then,
25 he picked up at eight thirty-nine twenty seven, which came

in at 12:20. He went all the way to the bus station. So, he come -- he come back and picked up at 12:55, at 3802 Roanoke. And he vacated at twenty-two hundred block of Oak, and that's when it all began to happen, right there.

Q Okay. And what about after -- after -- what time was that last call you were talking about? What time did he vacate?

A He vacated at 1:05.

Q Okay. And when -- when did you talk to Mr. Moore in relation to that call? When was the most recent time you talked to him?

A Before I got the call for 3802 Roanoke?

Q Right.

A The last time I talked to him was twelve -- was in between quarter to one.

Q Okay. Now, if you could run your finger and briefly look at the rest of this manifest, could you tell me if Mr. Saunders, operating cab six, had any pickups on Marshall Avenue that night? Did he pick up anybody?

A No.

Q Did he vacate anybody on Jeb's Street that night?

A No.

Q You're certain of that?

A I'm positive. We don't have but what, two cabs that night. And I had to know exactly -- when I got two cabs, I have to tell my drivers when I get -- exactly let me know where they at, at all times. I have a radio check every fifteen minutes.

Q And the handwriting from twelve o'clock on down to the bottom of the page, that's your handwriting (indicating)?

A That's correct.

Q Do you see any alterations of your handwriting on this document, Commonwealth Exhibit One (indicating)? Has anyone fiddled with it in any way?

A No, they haven't.

MR. MUROV: Your Honor, I don't have any other questions of Mrs. Fletcher.

MR. CORBETT: No questions.

COURT: Any further need for the witness?

MR. MUROV: No sir.

COURT: All right, you may be excused. Next witness.

MR. MUROV: If the Court

1 could give me just a minute,
2 sir. Your Honor, I don't have
3 any additional evidence, Judge,
4 to put on.
5 MR. CORBETT: If your
6 Honor please, I just simply renew
7 the motion to strike for the rea-
8 sons previously stated to the
9 Court. I still feel the Common-
10 wealth has failed to put this
11 man in that automobile where that
12 driver alleges he was robbed on
13 the night in question.
14 COURT: Well, it's
15 true, the Commonwealth, I don't
16 think, has quite responded to
17 my suggestion. Namely, I wanted
18 to know if there were any other
19 pickups at Newsome Park. Which,
20 of course, this -- this is the
21 thing he doesn't -- you don't
22 seem to understand. The witness
23 admits that he was there in New-
24 some Park. So, you would have
25 to exclude Newsome Park. However,

1 he has excluded Jeb's Street.
2 MR. MUROV: Judge, may
3 I -- may I say something?
4 COURT: Surely.
5 MR. MUROV: The streets,
6 and I stand to be corrected by
7 Counsel, many of those streets
8 you're listening to there are
9 in Newsome Park. A twenty-
10 block cube or square as Sergeant
11 Brown testified, encompasses
12 a great portion of the East End.
13 And I don't know that that is
14 significant testimony under any
15 circumstance. I think the cru-
16 ial testimony is with respect
17 to Jeb's Place.
18 COURT: I agree; I
19 think Jeb's Street is probably
20 enough. This is what I was
21 going to say. The man's state-
22 ment, as I understand, is two
23 things. One, he admits that in
24 the early morning hours of July
25 the 7th, he was picked up by a

1 cab in Newsome Park and that
2 he was discharged at Jeb's
3 Street. So, if there were
4 only two cabs and there's no
5 other discharge on Jeb's Street,
6 this would seem to me that at
7 least it put him in the scene.
8 Now, you've got the
9 fact of his statement. The
10 Commonwealth isn't bound by
11 his statement because there
12 was a statement that is con-
13 tradicted by the cab driver.
14 I mean, it's true, ordinarily,
15 if you put in the accused state-
16 ment, and it's not contradicted,
17 you're bound by it. But you
18 aren't bound by where he is
19 contradicted. So, it would
20 seem to me that now that they
21 have put on evidence showing
22 that there were only two cabs,
23 that while one of these other cabs
24 may have picked up in Newsome Park,
25 none other discharged on Jeb's

1 Street, that this would be suf-
2 ficient to put him on the scene.
3 I must say, it isn't a crystal
4 clear case, but I'd overrule the
5 motion, and note your exception.
6 MR. CORBETT: Note my
7 exception, your Honor. Give me
8 just a moment, please.
9 COURT: All right.
10 MR. MUROV: Your Honor,
11 these witnesses have been kind
12 enough to come in here on short
13 notice; may they be excused, Mrs.
14 Fletcher and Mr. Saunders?
15 COURT: Certainly, you
16 may -- certainly, they're excused.
17 You may remain if you wish, leave
18 whenever you like.
19 (At this time,
20 Mr. Corbett and the De-
21 fendant conferred.)
22 MR. CORBETT: If your
23 Honor please, I call the Defen-
24 dant to the stand.
25 COURT: All right.

MR. CORBETT: I don't think he's been sworn yet.

COURT: Swear the witness.

(At this time, the Defendant was called and duly sworn.)

- - -

FLOYD A. HARGRAVES, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q State your name, please.

A Floyd Hargraves.

Q How old are you, Floyd?

A Nineteen.

Q Where do you live, sir?

A Eleven forty-six and a half twenty-eighth Street.

Q Is that in the City of Newport News?

A Yes sir.

Q Floyd, you've heard the evidence here today. Somewhere on or about July the 7th of this year, did you have occasion to ride in a White's Cab?

A Yes sir.

Q And do you recall specifically whether it was July the 7th or not?

A I don't know what day it was.

Q Where -- what time of day or night did you catch a cab?

A I don't remember.

Q Was it after midnight?

A About a little bit before.

Q And where were you at when the cab picked you up?

A Forty-seven twenty-nine Marshall Avenue.

Q Okay. And what was the purpose of calling a cab? Where were you going to go to?

A Eleven forty-six and a half twenty-eighth Street.

Q And that's where you live?

A Yes sir.

Q And when you got into that cab on that particular night, is that what you told the cab driver?

A Yes sir.

Q To take you to eleven forty-six and a half twenty-eighth Street?

A 28th Street.

Q And is that where the cab driver took you?

A No sir.

Q Where did he take you?

A Well, after I got in the cab, I kind of dozed off. So, when I came to and I woke up, I was in the eleven hundred block of Jeb's Place.

Q Eleven hundred block?

A Jeb's Place.

Q Is that where you'd wanted to go?

A Huh-uh.

Q And when you woke up and saw where you were at, what happened?

A I refused to pay him.

Q And was there any conversation between you and the particular cab driver of that cab?

A He told me -- I said take me to -- take me to -- I asked him to take me there. But I told him -- then I told him to take me to the eleven hundred block of 28th Street.

Q Well, after you saw that you were

in the eleven hundred block of Jeb's Place, rather than on 28th Street, did you ask the cab driver to take you to 28th Street?

A No, I just jumped out and ran.

Q Did you rob anybody?

A No.

Q Did you have a gun?

A No.

Q Is this cab driver that you saw testify here today, is that the cab driver that was in -- driving the cab that you were in?

A I'm not sure.

Q You don't know?

A I don't know.

Q Whatever what cab you were in on that particular date, you're telling this Court that you did not rob or attempt to rob any cab driver?

A Yes sir.

Q You didn't take any money from anybody?

A No sir.

Q You did not have a gun?

A No sir.

Q How were you dressed on that night?

A I had on a cut-out shirt above my

navel and a pair of blue jeans.

Q "A cut-out shirt", you mean a T-shirt or something that the bottom portion of it has been cut off?

A Yes sir.

Q And a pair of blue jeans?

A A pair of blue jeans.

Q Did you have money to pay the cab driver?

A I had about three dollars.

Q Well, why didn't you pay him?

A Because he didn't take me where I asked him.

Q And where did you go from there?

A From Jeb's Place? I went home. I ran all the way home.

Q On the date when Detectives Brown and Smith arrested you, did you know why they were arresting you?

A I thought they had a warrant out for me for an assault and battery charge.

Q For an assault and battery charge?

A Yes sir.

Q Was there an assault and battery warrant served on you along with the charges for which you're here today?

1 A Right after I got them, yes sir.
2 Q Who lives at that 4729 Marshall
3 Avenue, where the cab picked you up?
4 A A girl name Wanella.
5 Q Did you have her call the cab for
6 you?
7 A Yeah, I told her.
8 COURT: What is
9 the girl's name?
10 A Wanella.
11 COURT: Wanella?
12 A Yes sir.
13 MR. CORBETT: Answer
14 any questions that the Common-
15 wealth's Attorney has.
16
17 CROSS EXAMINATION
18
19 BY MR. MUROV:
20 Q You had had a -- something to drink
21 at Wanella's house?
22 A No sir.
23 Q Had you been drinking that night?
24 A Before.
25 Q When did you start drinking on the

6th of July? I assume you started drinking on the 6th, is that correct, the day before?

COURT: Before midnight, he means.

BY MR. MUROV:

Q Did you start drinking before midnight?

A Yeah -- I mean, yes sir.

Q When did you start drinking?

A Around about ten, 10:30.

Q What were you drinking?

A Wine.

Q Out of a bottle?

A Out of a bottle.

Q What -- what kind of wine was it?

A Wild Irish Rose.

Q How many bottles of Wild Irish Rose had you had to drink at the time the cab came?

A None.

Q Pardon me?

A How many had I drunk?

Q How many bottles had you had to drink?

A A bottle and a half.

Q You were feeling pretty good? You

1 were high, weren't you?
2 A Yes sir.
3 Q And your testimony is that you did
4 not have a weapon on you?
5 A Yes sir.
6 Q When did you express -- when did
7 you tell the cab driver that you were unhappy with him not
8 taking you where you asked him? When did you first tell him
9 that?
10 A When I came to at Jeb's Place. When
11 I woke up.
12 Q And your testimony to the Judge, here,
13 is that you didn't ask this cab driver to take you to Jeb's
14 Place, but he took you there anyway?
15 A I asked him to take me to the eleven
16 hundred block of 28th Street.
17 Q You didn't ask him to take you to
18 Jeb's Place?
19 A Huh-uh.
20 Q Did you ask him to take you back
21 to 28th Street when he said -- when you told him you didn't
22 want to go to Jeb's?
23 A No sir.
24 Q You just got in an argument with him
25 right there?

A I just jumped out and ran.

Q You didn't have --

A I told him I won't going to pay him and I jumped out and ran.

Q Did you have any words with him?

A I just said -- I told him I won't going to pay him and I jumped out and ran.

Q Did you cuss him?

A No.

Q Prior to the 7th of July, when was the last time you worked?

A Beg your pardon?

Q When was the last time you had a job prior to the 7th of July?

A Been a good little while.

Q How long had you been unemployed?

A I don't remember.

Q One month, two months, three months, how long?

A I don't remember.

Q You can't -- can't stretch your memory and just try to recall how long you were unemployed before July 7th?

A Huh-uh.

Q You can't tell the Court that?

1 A Huh-uh.
2 Q Have you ever been convicted of
3 any crimes involving stealing or lying?
4 A Have I what?
5 Q Have you ever been convicted of a
6 crime involving stealing or lying?
7 COURT: Why don't
8 you ask him the precise offense?
9 This foolish rule that the Supreme
10 Court laid down only applied in one
11 instance, and that was a murder.
12 There's no way in the world you
13 could ask a witness about moral
14 turpitude. Do you have -- do you
15 have some offense?
16 MR. MUROV: Yes.
17 COURT: Why don't
18 you ask him what it is.
19 BY MR. MUROV:
20 Q Well, have you ever been convicted
21 of shoplifting or concealment?
22 A Once.
23 Q Have you ever been convicted of any
24 felonies?
25 A No.

1 Q Do you know what a felony is?
2 A Yes, I know what a felony is.
3 Q Where did you run to? You said you
4 ran home?
5 A Yeah.
6 Q Where is home?
7 A Eleven forty-six and a half twenty-
8 eighth Street.
9 Q What assault and battery are you
10 talking about that you knew was outstanding for you?
11 A For Harold Upchurch.
12 Q Pardon me?
13 A For Harold Upchurch.
14 Q You're saying in the five weeks,
15 from the 7th of July until the time you were arrested, you
16 didn't know anything about a robbery warrant being out for
17 you?
18 A No sir.
19 Q You have what you call -- tell me
20 if this is a fair statement. You have what you call an afro
21 haircut, don't you?
22 A That's right.
23 Q When you take -- to take care of
24 your hair, isn't one thing that's good for it, to braid it?
25 A What you mean, it's two kinds.

1 Q You know, like -- you know, winding
2 the hair so that it makes it puff out more. Isn't that one
3 thing that helps it?
4 A Braiding is cornrow.
5 Q Oh, well, I'm not familiar with the
6 terminology but --
7 COURT: What he
8 means is at night, don't
9 you plait it in some way
10 so --
11 A Yes sir.
12 BY MR. MUROV:
13 Q You had it plaited when you were at
14 Wanella's house and when you called this cab that night, didn't
15 you?
16 A When I did what?
17 Q Your hair was plaited that night when
18 you had -- when you were at Wanella's house, and you called
19 the cab? When you got in the cab, your hair was plaited,
20 wasn't it?
21 A I don't remember.
22 Q It could have been, then?
23 A It could have been.
24 MR. MUROV: Judge, I
25 don't have any more questions.

1 COURT: You say that
2 when the officer arrested you,
3 he told you he had an assault
4 and battery charge against you?
5 A He said he had a warrant out for me.
6 COURT: He said he
7 had a warrant. Did he say
8 he had a warrant for assault
9 and battery or what did he
10 say?
11 A He just said he had a warrant out
12 for me.
13 COURT: And what
14 did you say?
15 A I said, "I know it."
16 COURT: And then he started
17 asking you about what happened on
18 July 7th, didn't he?
19 A He was telling me about an armed
20 robbery.
21 COURT: I'm sorry,
22 I didn't get your answer.
23 A He was telling me about some armed
24 robbery.
25 COURT: On July 7th?

A Yes sir.

COURT: And you were telling him that on July 7th, you only got out of the cab without paying?

A Yes sir.

COURT: What day was July 7th, what day of the week?

A Was you referring to me?

COURT: Yes. Do you know?

A No sir.

COURT: But you remembered -- do you remember that it was on July 7th that you left this cab without paying a fare?

A I'm not sure what day it was.

COURT: Well, when the officer asked you about July 7th, did you tell him then that you didn't know what day it was?

A Yes sir.

COURT: You told him you didn't know what day it was or --

A Sir?

COURT: You told him you didn't know what day it was? When he asked you about what happened on July 7th, did you say you didn't know what day this other event occurred?

A No sir.

COURT: Well, did it occur the first part of July?

A I don't remember.

COURT: You don't remember. When did the officer first tell you about this assault and battery warrant?

A Across town. He didn't tell me, but another officer say we had another warrant downstairs for him.

COURT: That was after you got to the police station?

A Yes sir.

COURT: Any further questions of the witness?

MR. CORBETT: No sir, your Honor.

1 MR. MUROV: I have
2 one question, your Honor,
3 concerning the assault and
4 battery --
5 COURT: All right.
6 MR. MUROV: Situation.
7 BY MR. MUROV:
8 Q Was the assault and battery warrant
9 issued against you before you had this experience with the
10 cab driver or after?
11 A Before or after?
12 MR. CORBETT: If your
13 Honor please, I have no objec-
14 tion to the witness answering,
15 if he can, but I'd like to clarify
16 that if he knows of his own know-
17 ledge when the warrant was issued,
18 because that's something that he
19 wouldn't necessarily know.
20 MR. MUROV: I should
21 rephrase the question.
22 COURT: Did the assault
23 and battery occur --
24 MR. MUROV: Yes sir.
25 COURT: Did this fight

1 occur before the incident with
2 the cab driver or after?
3 A I don't remember.
4 BY MR. MUROV:
5 Q If you could just take a moment and
6 try to remember. You really -- you really -- you don't
7 know?
8 A No.
9 Q How did you know there was one out-
10 standing?
11 A How did I what?
12 Q How did you know there was an assault
13 and battery warrant outstanding?
14 A See, they told me that they were
15 going to take a warrant out, Harold.
16 Q Who is "they"?
17 A Harold and his partner.
18 Q Pardon me?
19 A Him and his partner.
20 Q Who is "him and his partner"?
21 A Harold and David Branch.
22 Q Was it in 1977 that this took place?
23 Was it this year or was it 1976?
24 A '77.
25 Q Did it happen in Newport News?

A Yes sir.

Q And did the Court dismiss it? Did the Court nol pros the charge against you?

A Yes sir.

Q When was that done? Was that done in 1977?

A Yes sir.

Q Was it done after the cab driver incident or before the cab driver incident?

A Before.

Q Why did you think there was an outstanding assault and battery warrant against you, when you were talking to Sergeant Brown, if it had already been dismissed?

A Oh, this was after I went to Court that they nol prossed the assault and battery charge. I went for all that at the same time.

Q This was when the preliminary hearing in this case was heard, the assault and battery was dismissed? Is that what you're telling the Court?

A Yes sir.

Q And you don't remember when that assault and battery took place?

A No.

MR. MUROV: I don't

have any other questions.

MR. CORBETT: No questions.

COURT: All right. You may be excused.

MR. CORBETT: Defense rests, your Honor.

COURT: One thing that did occur to me, I'd like to ask you something, the lady who was dispatcher.

(At this time, Miss Dora Fletcher came forward and stood before the Court.)

COURT: How long would it take you to look through your record and see if you had any other calls to the address of 4729 Marshall Avenue, say during the first part of July, first two or three weeks?

MISS D. FLETCHER: It wouldn't take long.

COURT: Well, I'd like

for you to look through the month of July and see if there were any other calls for that specific address, forty-seven two nine Marshall.

MISS D. FLETCHER: Your Honor, I already looked.

COURT: You've already looked through the month of --

MISS D. FLETCHER: Right. This address, forty-seven twenty-nine, is a new address. We don't usually pick up, up in that area. It was new. But normally, when a new address like that come out at night, I don't usually send them out. But when that young lady called and said she wanted a cab, I went on and sent it.

COURT: And you've already looked at your log call to that --

MISS D. FLETCHER: Yes, I looked -- I looked up from the first on up to the 7th, and no

1 address --
2 COURT: Well, I
3 understand up to the 7th,
4 but I'm talking about after
5 the 7th.
6 MISS D. FLETCHER:
7 After the 7th, we had checked
8 the record plainly, over and
9 over again; state that was a
10 new address.
11 COURT: And you've
12 checked it through the month
13 of July?
14 MISS D. FLETCHER:
15 Right.
16 COURT: Did you
17 want to cross examine her?
18 MR. CORBETT: No sir.
19 COURT: All right;
20 you can leave. Anything that
21 you want to say concerning it?
22 MR. CORBETT: I would,
23 if your Honor please, renew the
24 motion to strike and ask the
25 Court to enter up judgment for

1 acquittal on the basis that
2 even if we make the assump-
3 tion that the cab that Mr.
4 Moore was driving on the night
5 of July the 7th is, in fact,
6 the cab that Floyd Hargraves
7 was in, that it's just as be-
8 lievable that the fact occurred
9 as indicated by Mr. Hargraves as
10 it is indicated by the facts given
11 by Mr. Moore. To me, it boils
12 down to one simple question. If
13 we assume for the moment that the
14 cab was one and the same, the
15 occupants were one and the same,
16 it boils down to a simple ques-
17 tion of whether Mr. Hargraves had
18 a firearm or didn't, and whether
19 he robbed him or whether he didn't.
20 Mr. Moore says that the
21 man that was in his cab had a gun,
22 in effect took four dollars or there-
23 abouts from his person, and absconded
24 after some slight tussle. Of course, Mr.
25 Hargraves' version of what happened

1 in the cab in which he was in
2 is the fact that some cab driver
3 took him to the wrong place and
4 he refused to pay and ran and
5 that's all there was to it.
6 Mr. Moore has testi-
7 fied that the person that he
8 picked up asked to be taken to
9 the eleven hundred block of
10 27th Street, which is incon-
11 sistent with what Mr. Hargraves'
12 statement and Mr. Hargraves has
13 testified that he told the driver
14 that picked him up; he asked in
15 effect, to be taken to eleven
16 forty-six and a half twenty-eighth
17 Street, which is his residence.
18 Mr. Moore indicates that the person
19 that he picked up, he took to the
20 twelve hundred block of Jeb's Place.
21 Mr. Hargraves' statement as given
22 to the police officer and his tes-
23 timony here today indicates that
24 he wound up in the eleven hundred
25 block of Jeb's Place. And I think

that the Commonwealth has failed to carry the burden of proving the two charges before the Court today. First that -- that this man sitting here, Floyd Hargraves, by force or violence or use of a firearm, did take anything from anybody. And I think that they failed to even show that as to Floyd Hargraves, that on the night in question, in the cab in question, there's further evidence that this man had a firearm. I feel that based on that, even if we assume for the moment that the cab was one and the same, the Court should strike the evidence and enter up judgment of acquittal.

On the other hand, too, there's some question in my mind, after hearing this evidence, as to whether it's the same cab on the same date and in the same place or not. The addresses are different. One man wanted to go to

1 28th Street. The driver -- the
2 driver said 27th Street. One man
3 is talking about the twelve hundred
4 block of Jeb's Place, another is
5 talking about the eleven hundred
6 block. And I -- I find it some-
7 what incredible too, to believe
8 that Mr. Moore, with his physical
9 build, I think as I noticed from
10 the stand, that the man could be
11 holding a firearm to the back of
12 his head, he can feel the firearm
13 and see it at the same time. And
14 I certainly don't think that the
15 position that he indicated the gun
16 was held to his head, if there was
17 in fact, a gun, that he demonstrated
18 to the Court, behind his right ear,
19 that he could have seen that gun.
20 And he said he heard a click or
21 something. I don't know what that
22 click was. Don't know whether it
23 was a firearm or not. But I think
24 it is certainly serious doubt as
25 to whether this man has done anything

1 or not, regardless of whether he
2 was in that particular cab or not.
3 I'm going to ask the Court to strike
4 the evidence.
5 MR. MUROV: If it pleases
6 the Court, your Honor, there's two --
7 two issues, two questions to be
8 resolved. Number one, is the inci-
9 dent Mr. Moore describes, the same
10 incident as the Defendant describes.
11 And number two, who's telling the
12 truth, Mr. Moore or the Defendant.
13 The first question, we have the
14 following facts. It is not mere
15 coincidence that the Defendant's
16 girl friend lives at 4729 Marshall
17 Avenue and that at some time --
18 and he says he doesn't remember
19 if it's the 7th of July or not,
20 but he does remember it's in early
21 July. At some time around or after
22 midnight, he has his girl friend
23 call for a cab. Mrs. -- the dis-
24 patcher's testimony, Mrs. Fletcher,
25 she testifies that a female asked

1 for a cab to come to this particu-
2 lar address, at forty-seven twenty-
3 nine. It is in Newsome Park, accord-
4 ing to Sergeant Brown's testimony.
5 And it is true that there are other
6 addresses on that manifest that are
7 in Newsome Park. But the distinguishing
8 feature is that both versions, the De-
9 fendant's and Mr. Moore's story, have
10 us leaving this particular passenger
11 or have him heading towards Jeb's Place.
12 Apparently, eleven hundred
13 "Jeb" in one case, twelve hundred "Jeb"
14 in another. Note Mr. Moore's descrip-
15 tion. Mr. Moore says, black male, light-
16 skinned, twenty to thirty, five foot
17 seven, one hundred and thirty-five
18 pounds, braided hair. The Defendant
19 says could have had plaited hair that
20 night, doesn't remember. It was one
21 of the many things he didn't remember.
22 He did remember not having a gun. He
23 did remember not robbing the guy, but
24 he's very vague on many, many other
25 things.

1 Your Honor, the
2 crucial testimony is the mani-
3 fest that the Court has before
4 it at this moment, Commonwealth
5 Exhibit One. Mrs. Fletcher's
6 testimony precisely excluding
7 the possibility that Mr. Saunders,
8 operating cab six, could have
9 gone to Marshall Avenue, could have
10 gone to Jeb's Place and showing the
11 scenario or the development of the
12 pickup of -- by Mr. Moore of the
13 Defendant. Is the Defendant --
14 is the -- pardon me, is Mr. Moore
15 going to fabricate? Is it plausible
16 that he would fabricate an armed
17 robbery and call it in, saying, "Get
18 the police for me. I've just been
19 robbed." It's not plausible. We
20 think the answer to the first ques-
21 tion is we're talking about the same
22 incidents. We don't think there is
23 any doubt about that, your Honor.
24 And we realize it's a circumstantial
25 evidence case, but that evidence can be-

1 taken and considered just as
2 well as direct evidence, and
3 the Court, of course, knows
4 this.
5 Secondly, all we --
6 who's telling the truth, the
7 Defendant or Mr. Moore. I
8 touched upon this second idea
9 a few moments ago. The Defen-
10 dant's statementsare self-
11 serving. When it's convenient,
12 he remembers. When it's not
13 convenient, he doesn't remember.
14 Mr. Moore's testimony, cab driver
15 for thirty years. The Defendant
16 is unemployed, doesn't even remember
17 how long he'd been unemployed. I'd
18 say that's an answerable question.
19 And I don't accept the fact he can't
20 remember. I don't know why he wouldn't
21 answer it, but he refused to answer.
22 The Defendant, convicted of a crime
23 involving concealment, by his own ad-
24 mission from the witness stand. Mr.
25 Moore, I ask this Court, is it plausible,

1 is it reasonable that he would
2 fabricate -- that he would fabri-
3 cate this armed robbery. I don't
4 think it is reasonable. The Court
5 has had an opportunity to observe
6 his demeanor on the witness stand
7 and observe the Defendant's de-
8 meanor. And I think that Mr.
9 Moore appeared to the Commonwealth
10 as a man of responsibility and a
11 man of truth. We ask the Court to
12 answer both of these questions
13 the following way. That we are
14 talking about the same incidents,
15 and secondly, that the Defendant's
16 credibility does not stand up against
17 Mr. Moore's. Mr. Moore's version is
18 the correct version.
19 COURT: Let me say this.
20 I can't imagine Mr. Moore dreaming
21 up this matter. So, certainly his
22 version sounds plausible but the
23 dispatcher corroborates in detail
24 that she heard the buzzer go on
25 and she heard this babble of voices

1 that sounded like foreigners, and
2 she couldn't understand anything.
3 And then a moment later, she got a
4 cry that he'd been robbed and send
5 the police, and the police went over
6 there. That he gave a description
7 of his assailant. I might say, his
8 description isn't in the record,
9 but I -- I think -- I can note now that
10 he is light-skinned and does --
11 he does have the afro, which, of
12 course, he said it was plaited.
13 And that he was approximately --
14 yes, I think he stated himself,
15 that he would be twenty years old
16 this December. And the victim
17 said that he could be the person.
18 He said that he just couldn't be
19 positive. But as I see it, this
20 is something that started off
21 pretty weak, but as time goes by,
22 it's gotten tighter and tighter.
23 It seems a strange coin-
24 cidence to me that at 12:45, it
25 would appear on the log the address

1 "four two nine" Marshall Avenue.
2 And in truth, instead of being
3 eleven hundred block, 28th Street,
4 it's eleven hundred block, 27th
5 Street. But I think that's pro-
6 bably an honest difference be-
7 tween the party, whether the
8 driver misunderstood him or
9 whether he misunderstood the
10 driver. I don't believe that
11 is too important.
12 The important fact in
13 the case now is this is the only
14 call that she has on her log to
15 that address. And there's only
16 two cabs. Now, whether there were
17 two cabs or four, she said she had
18 examined all of her records and that
19 there is no other call to that num-
20 ber. And ordinarily, they do not
21 send cabs to strange numbers that
22 hour of the night for security reasons.
23 And that certainly it makes sense.
24 But the girl, from her voice or some-
25 thing persuaded her to send it there.

1 And she -- these other numbers,
2 I presume, are numbers that are
3 known to her, that she would
4 frequently send the people to
5 at that hour of the night. And
6 I think we know this is a common
7 practice among cab companies that
8 after midnight, you're pretty care-
9 ful about where you send -- send
10 your cab driver to pick up some-
11 one.
12 If that's the only address
13 that appears in the log, it's a strange
14 coincidence that his girl friend lives
15 at that address. That he, himself,
16 now acknowledges, that he picked up
17 the cab at that address. I can't
18 help but conclude he was the same per-
19 son. It couldn't have been any other
20 cab. It couldn't have been any other
21 cab, so he's bound to be the one that
22 perpetrated the offense. I must say,
23 when I went to lunch, I thought the
24 case was pretty weak. But since lunch,
25 it's -- I think usually Commonwealth

1 cases have a tendency to fall
2 apart with the passage of time.
3 This is one that definitely im-
4 proved some.
5 Did you want me to pass
6 on it, without knowing his record
7 or do you want the matter referred.
8 Do you want to talk to him con-
9 cerning it?
10 MR. CORBETT: Well, if
11 your Honor please, I'd just like
12 to say being as the Commonwealth
13 Attorney has made remarks con-
14 cerning the identification as
15 given by Mr. Moore, the cab driver,
16 and because the Court also has made
17 some reference to the identifica-
18 tion, I vouch the record of this
19 Court will not show as Mr. Murov
20 has indicated, that Mr. Moore tes-
21 tified from the stand that it was
22 a light-skinned Negro male, weighing
23 about one hundred and thirty-five
24 pounds. That's not true at all.
25 That's not what was said. Furthermore,

1 Mr. Moore did not say that the
2 man's hair was braided. My notes
3 indicate and I think I'm right from
4 having heard this matter twice, that
5 he said a Negro male, one hundred
6 and fifty to one hundred and seventy
7 pounds. There was no --
8 COURT: That's my recol-
9 lection.
10 MR. CORBETT: And there
11 was no reference made whatsoever
12 to braided hair.
13 COURT: Well, I -- I
14 recall it definitely that he said
15 he was light-skinned and had his
16 hair up in some way. He may not
17 have used the word "braided",
18 but he certainly --
19 MR. CORBETT: And I --
20 first as being as I was on a
21 motion to strike, the second
22 motion to strike, and I assume
23 from the Court's talking, that
24 the Court more or less has over-
25 ruled me on that. So, if I might

1 just continue by way of -- in
2 closing argument, so to speak --
3 COURT: Oh, I'm sorry;
4 I thought you had finished.
5 MR. CORBETT: It -- it
6 would appear to me that even if
7 the Court is right, even if --
8 as I indicated earlier, if we
9 assume that this was the man in
10 that cab, I don't know why Mr.
11 Moore might would fabricate a
12 story and I don't think that that
13 has really anything to -- to do
14 with these charges here. But this
15 man has told the police as early as
16 August, when they picked him up
17 and he's taken the stand and tes-
18 tified here today that he has not
19 seen a gun, he has not robbed any-
20 body. He hasn't had a gun. Nobody
21 has produced a gun and I'm not so sure
22 that from what Mr. Moore himself tes-
23 tified to, that it's -- could be clear
24 in anybody's mind that there was, in
25 fact, a gun. He indicated that he saw

1 a gun, but I find it kind of
2 hard to believe from his tes-
3 timony that he could, in fact,
4 see a gun if there were in
5 fact one. And even if it doesn't
6 go -- I mean, we could take a
7 stick and effectuate a robbery.
8 I'm the first to agree with that.
9 But it certainly does go to the
10 charge of use of the firearm in
11 the felony as to whether there
12 was a gun or not.
13 I just feel that the
14 Commonwealth has -- has failed
15 to tie in this man with a robbery.
16 I know that the Court has a lot
17 of latitude and a lot of discre-
18 tion in deciding the credibility
19 in portions of testimony, but
20 there's really nothing been said
21 to, in effect, discredit this
22 young man's testimony. He says
23 he didn't have a gun, he didn't
24 rob anybody.
25 COURT: Well, I think

the evidence is just overwhelming. The only question in my mind is in disposing of it. I would find him guilty of both offenses. And the -- the problem that I have to resolve is whether or not you wish the matter referred to the probation officer or not.

MR. CORBETT: Yes sir. I would like to have a presentence report.

COURT: Let me -- let me -- let's take a short recess and I'll go look at my book to see when I can get back.

(At this time, the Court declared a recess, after which the Court reconvened.)

(Following the recess, the Defendant was present, seated beside his Counsel.)

COURT: All right. How about the 15th, would that suit

1 you?

2 MR. J. W. LAMB: That's

3 fine, yes sir.

4 COURT: Mr. Corbett,

5 would November 15th be agree-

6 able?

7 MR. CORBETT: Any date

8 will be fine with me, your Honor.

9 COURT: Is that satis-

10 factory to the Commonwealth?

11 MR. MUROV: Yes sir.

12 Is that nine o'clock in the

13 morning, Judge?

14 COURT: Ten o'clock.

15 All right, sir, you may stand.

16 (At this time,

17 the Defendant complied

18 with the request of the

19 Court.)

20 COURT: The Court finds

21 you guilty of robbery of Leonard

22 Moore on July 7th, 1977, and also

23 at the same time, of displaying

24 a firearm during the commission

25 of a felony. I do not fix your

1 punishment at this time, but
2 shall refer the matter to the
3 probation officer for a report
4 on November 15th and I direct
5 that you be remanded to jail
6 until that date.
7 Now, Mr. Corbett, I
8 think this matter is certainly
9 fairly appealable and ordinarily,
10 I'd say advise him of his right to
11 appeal. I'll go even farther in this
12 case. I'd advise you to appeal.
13 Would you advise him now of his
14 right to appeal?
15 MR. CORBETT: I have
16 advised him.
17 COURT: You have so
18 advised him. Now, I'd like
19 for you to go ahead now and
20 prepare the -- have him sign
21 the affidavit of poverty, so
22 that he can appeal this matter.
23 And for you to prepare the tran-
24 script, so that it could be pre-
25 sented at the earliest possible

time, so he wouldn't be detained any longer than necessary. Do you have an affidavit that he can sign?

CLERK: Yes sir, I do.

COURT: All right. Let him sign the affidavit of poverty and prepare the -- or go ahead and prepare the transcript and we will see if we can get it going without any delay.

Does that complete the docket?

MR. MUROV: Yes sir.

(At this time, the case was then concluded.)

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

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(The Court Reporter was duly sworn.)

(The Defendant was present, seated beside his Counsel.)

COURT: Commonwealth against Floyd A. Hargraves, two cases. Is the Commonwealth ready?

MR. MUROV: Yes sir, we are.

COURT: Mr. Corbett, has he read the report of the probation officer?

MR. CORBETT: Yes sir.

COURT: Did you say that he has read the report of the probation officer?

MR. CORBETT: Yes, he has, your Honor.

COURT: Do you desire to ask the probation officer some questions?

MR. CORBETT: No sir.

COURT: Does the Commonwealth desire?

MR. MUROV: No sir, we do not.

COURT: Are there any

additional facts you wish to present, Mr. Corbett?

MR. CORBETT: No sir.

COURT: Anything that you wish to say concerning the matter, Mr. Commonwealth?

MR. MUROV: We would have a very brief argument, your Honor.

COURT: All right, sir.

MR. MUROV: Judge, there's three things that strike us about the probation report in this case. Number one, the probation report makes reference to a previous armed robbery from a person, a crime of confrontation with another individual.

Secondly, the recommendation of the probation officer, Mr. Lamb, we feel should carry some weight, after reviewing this case he recommends that a suspended sentence is not appropriate under these circumstances, and actually indicates that perhaps there is a tendency towards future

1 criminal activity on the part of
2 this particular man.
3 The third thing is the
4 evidence indicated, as the Court
5 recalls, at trial there was a gun
6 present. That was the testimony
7 of the cab driver who was the victim
8 of this incident. By no means was
9 the amount of money involved very
10 large. I believe it was four or
11 five dollars, but that is not the
12 crucial point as the Commonwealth
13 sees it. The gun was present, and
14 the testimony of the cab driver was
15 that the trigger was pulled at least
16 once, and perhaps twice, and nothing
17 happened when it was pulled. But
18 it was pulled. There could have been
19 a thin difference between a homicide
20 and an armed robbery.
21 And the Commonwealth regards
22 this as a grave and serious circumstance.
23 Because of that, Judge, our recom-
24 mendation -- and we respectfully
25 recommend to the Court is that a minimum

1 sentence of 25 years be considered
2 by this Court and we respectfully
3 submit that recommendation to the
4 Court at this time.
5 MR. CORBETT: I would just
6 like to say, if your Honor please --
7 of course, his Honor has heard the
8 evidence in the trial of the matter
9 and of course the probation report
10 speaks for itself and we don't take
11 issue with that at all. I ask the
12 Court to at least consider this
13 young man's age, he's 19 years of
14 age,and his previous background and
15 upbringing. And I'd simply ask the
16 Court to keep that in mind. Twenty-
17 five years is a little harsh under
18 the circumstances.
19 COURT: Well, I certainly
20 agree that this was a most serious
21 case. It obviously, of course, it
22 appears very likely that it was a
23 planned robbery, and when the gun
24 was produced the cab driver gave
25 him the five dollars. Then,

apparently he suspected that the cab driver had a weapon and demanded the weapon, and the cab driver was unable to produce a weapon, and then pressed the gun against his head and pulled the trigger.

I certainly see no extenuating circumstances. His record is poor. He's already filled up one page and starting on another, even if he's only 19. I say, I just don't think there is much hope for rehabilitation.

You may stand.

(At this time, the Defendant complied with the request of the Court.)

COURT: Is there anything else you wish to say? Anything further to say before the Court passes punishment on you?

MR. F. A. HARGRAVES: No sir.

1 COURT: On the charge
2 of robbery, the Court found you
3 guilty of robbery and now fixes
4 your punishment to confinement in
5 the penitentiary for a term of 20
6 years.
7 On the charge of using a
8 firearm, the Court fixes your punish-
9 ment to confinement in the penitentiary
10 for the term of one year.
11 From here you will of course
12 be taken to jail and from there to
13 the penitentiary and there to remain
14 for a term of 20 years on the charge
15 of robbery, and for the term of one
16 year on the charge of using a fire-
17 arm, a total of 21 years. And these
18 sentences shall not run concurrently.
19 You may be seated by your
20 attorney. Now, has the arrangement
21 been made for his transcript to
22 appeal this case?
23 MR. CORBETT: No sir.
24 COURT: I thought I directed --
25 MR. CORBETT: I thought

you had.

COURT: At that time that a transcript be prepared.

All right, sir. Now, he understands, of course, his right to appeal.

MR. CORBETT: Yes sir, I've explained that. And now that the final order has been entered, if your Honor please, I would like to make a motion for that record.

COURT: All right. Certainly.

MR. CORBETT: I would ask the Court to set aside the conviction as being contrary to law and the evidence, the evidence being insufficient as a matter of law, to show that this man, beyond a reasonable doubt, used a firearm or that this man, beyond a reasonable doubt, robbed one Leonard Moore.

I would also ask the

1 Court to set it aside for error
2 committed, for the record, in
3 permitting the Commonwealth's
4 Attorney to in effect reopen its
5 case after the Commonwealth's
6 Attorney had rested and the
7 Defense Counsel had moved to
8 strike the Commonwealth's
9 evidence.
10 I feel that that was
11 probably an abuse of the Court's
12 discretion to permit that at
13 that particular point in time,
14 and certainly I think the record
15 would show that the evidence was
16 insufficient, as a matter of law,
17 at least as to that first motion
18 to strike. And I would ask the
19 Court to set it aside and enter
20 up judgment of acquittal for the
21 Defendant.
22 COURT: Well, I certainly
23 agree with you that the evidence
24 was a little insufficient on the
25 first motion to strike.

1

As a matter of fact I was almost getting ready to dismiss the matter. And -- but after I permitted him to reopen the case and he called that lady who was a dispatcher, I thought the case was then from that point -- certainly it tightened up a whole lot. And I still thought the matter was perhaps appealable. And that's the reason I directed that the transcript be prepared.

I shall overrule your motion and note your exception. And I will appoint you to represent him on his appeal of the matter.

Is there anything further?

MR. MUROV: No sir.

MR. CORBETT: Nothing further, sir.

(The proceedings were then concluded.)

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