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SUPREME COURT OF VIRGINIA
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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

Record No. 780596

IRAN JAMES WASHINGTON — APPELLANT

v.

COMMONWEALTH OF VIRGINIA — APPELLEE

JOINT APPENDIX

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TABLE OF CONTENTS

		PAGE
1.	Robbery Indictment	1
2.	Use of Firearm Indictment	2
3.	Motion to Suppress	3
4.	Relevant Portions of Transcript:	
	a. Horace Hawkins (Transcript pages 11-33)	4-26
	b. Ronald Volley (Transcript page 55)	27
	c. Patrolman Steven Tedder (Transcript pages 62-89)	28-55
	d. Officer J. B. Hill (Transcript pages 90-103)	56-69
	e. Detective R. K. Harless (Transcript pages 106-107)	70-71
	f. Argument on Motion to Suppress (Transcript pages 107-133; 137-140)	71-101
5.	Conviction Order	102-103
6.	Judgment and Sentencing Order	104-105
7.	Assignment of Error	106

In the Circuit Court of the County of Henrico

JANUARY 3, 1978

The grand jury charges that:

On or about November 29, 1977, in the County of Henrico, Iran James Washington did rob one Horace C. Hawkins of one television set, one receiver and one .38 caliber pistol,

against the peace and dignity of the Commonwealth of Virginia. Virginia Code Section 18.2-58

R. K. Harless

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

Margaret B. Baker, Clerk

A TRUE BILL

FOREMAN

Presented - January 3, 1978

8

VIRGINIA } In the Circuit Court of the County of Henrico

JANUARY 3, 1978

The grand jury charges that:

On or about November 29, 1977, in the County of Henrico, Iran James Washington did use, or attempt to use or display a firearm in a threatening manner while committing a felony, to-wit: robbery,

against the peace and dignity of the Commonwealth of Virginia. Virginia Code Section 18.2-53.1

✓ R. K. Harless

Witnesses sworn and sent by the Court to the Grand Jury to give evidence. Margaret B. Baker, Clerk

A TRUE BILL

FOREMAN

Presented - January 3, 1978

7

V I R G I N I A :

IN T(. CIRCUIT COURT OF THE COU(: OF HENRICO

COMMONWEALTH OF VIRGINIA,	)
Plaintiff,	)
v.	)
IRAN WASHINGTON,	)
Defendant.	)

MOTION TO SUPPRESS

Comes now defendant Iran Washington by counsel and says as follows:

1. Defendant is charged with robbery.

2. Upon information and belief, the Commonwealth will attempt to offer into evidence against him either written and/or oral statements made by the defendant.

3. Such statements were made while defendant was being held as a result of an illegal arrest and therefore said statements are not properly admissible into evidence.

WHEREFORE, defendant moves to suppress any and all written and/or oral statements made by him pursuant to Rule 3:A-28 of the Rules of the Supreme Court of Virginia.

IRAN WASHINGTON

By: Robert P. Geary
Counsel

Robert P. Geary, Esquire
McGRATH & GEARY
2300 East Main Street
Richmond, Virginia 23223

C E R T I F I C A T E

I hereby certify that a true and exact copy of the foregoing Motion to Suppress was mailed to Judson Collier, Esquire, Commonwealth's Attorney for the County of Henrico, at his address of Post Office Box 27032, Richmond, Virginia 23273 on this 26th day of January, 1978.

Robert P. Geary
Robert P. Geary

Filed - January 26, 1978

16

COPY

1 in exclusion is now leaving the court-
2 room. Sheriff. At least you learned
3 somethin' different in that training
4 school you just got back from, haven't
5 you? Let's start. Go ahead, Mr.
6 Commonwealth.
7 MR. NANCE: Thank you, sir.
8 DIRECT EXAMINATION: Mr. Hawkins by Mr. Nance
9 Q Mr. Hawkins, I'd appreciate it if you'd direct your
10 answers to his Honor, Judge Hening, please. Mr. Hawkins,
11 state your full name, please.
12 A Horace Clyde Hawkins.
13 Q Mr. Hawkins, could you speak up a little bit, please.
14 A Horace Clyde Hawkins. Can you hear that?
15 Q Mr. Hawkins -
16 THE COURT: Off-side. Just talk to me.
17 Q Mr. Hawkins, where do you live, sir?
18 A 2442 North 23rd Street.
19 Q What County is that residence in?
20 A Henrico.
21 Q What do you do for a living, sir?
22 A. Apprentice.
23 Q Apprentice what?
24 A Apprentice on a press.
25 THE COURT: Apprentice?

WITNESS: Yeah, apprentice. It's printin'.

THE COURT: Printin'.

WITNESS: Right.

Q How old are you, Mr. Hawkins?

A 28.

Q Were you living at that address on or about November 29, 1977?

A Yes, I was.

Q Did you have an occasion to be there on the evening of November 29, 1977?

A Yes, I was.

Q Who was there with you at your house, if anyone?

A Two friends - it was two friends of mines, Ronnie and Edward.

Q What are their full names, do you know, please?

A Ronnie is Ronnie Volley and Edward, I don't know know Edward last name.

Q Ronnie Volley?

A Volley, right.

Q V-o-l-l-e-y?

A Right.

Q And the other gentleman's name is Edward?

A Yeah, well, we call him T.

Q You call him what, sir?

A T.

COPY

1 Q T?
2 A Yeah.
3 Q What were you all doing at your house that evening?
4 A Playing chess.
5 Q Now, Mr. Hawkins, did there come a time in the evening when
6 someone else was at your house?
7 A My girlfriend. She be there. And -
8 Q All right. Any others?
9 A Ah - and her son.
10 Q And other than your girlfriend -
11 A And her -
12 Q Mr. Hawkins, I don't think you have to lean down in the
13 microphone, I think - I think it'll be fine.
14 A All right. Okay.
15 Q Just speak up, I think it'll pick you up.
16 A All right.
17 Q Other than your girlfriend, did you have an occasion to see
18 anybody else at your house that evening?
19 A Yeah, later on that night.
20 Q Okay. Approximately what time did you see these people?
21 A It was somethin' to 10. Approximately somethin' to 10.
22 Q Something to 10?
23 A Yeah. Somethin' to 10.
24 Q All right. Could you tell the court, please, under what
25 circumstances you saw the other people at your house. What

COPY

occurred?

A Well, like I said, we were sittin' playin' chess and - ah - someone knocked at my door and - ah - I asked who it was and he gave a name but I didn't understand who - you know- I didn't understand exactly what it was and then when I opened the door, all I could see was shotgun barrels was comin' in the door.

Q Who was there, do you know?

A Who was at my house?

Q Yes, sir.

A It was Ronnie, T and myself.

Q No, I'm sorry. Who was at the door, excuse me.

A It was - It was - it was three - ah - three men at the door.

Q Were they white men, black men?

A Black.

Q Did you know any of them?

A No.

Q You simply saw a shotgun barrel, what do you mean? Tell the court, please.

A Well, like - by me not understandin' the name and then like my girlfriend, she was in and out going to the laundrymat, then I thought it was her in a sense and but then somethin' still said like - I just cracked the door and then when I cracked it, I cracked it enough just - they could stick the barrels between the door, then they forced their way in.

COPY

Q Had you expected anybody at your house that way?

A No.

Q Had you invited anybody that way?

A No.

Q When they got in, how many of them were there?

A Three.

Q What did they do?

A Well, first, they forced their way in and then when they came in, one of them fired a shot and told everybody to get on the floor and then - ah - they was kicking me around on the floor.

Q Were you on the floor then?

A Yeah.

Q Where was Mr. Volley and T?

A On the floor.

Q All right, sir. What room of the house was that?

A In the living room. As soon as you open the door, you in the living room.

Q Okay. After you were on the floor and they were kicking you, what happened?

A All right, then - ah - one of 'em asked me - said "Where your money at?" and - ah - I told 'em - ah - I'd get it for him, you know, that it was upstairs and then the one who took me upstairs -

Q One of them took you upstairs?

COPY

A Yeah, I mean, you know, told me go upstairs and I was back - in the front/and he was behind of him me leading me up, you know, up the steps and - ah - when I got -

Q Was there any weapon with that person, did you see?

A Yeah.

Q What kind of weapon was that?

A That - I'm not definitely sure. It was some kind of rifles. Looked like a rifle of some kind, I'm not sure.

Q Rifles.

A Yeah, I'm not sure -

Q How about the weapons of the others that you saw? What kind of weapons were they, do you remember?

A Definitely - to tell you, you know, exactly what it - what it was, I don't know. It was a rifle or shotgun of some kind -

Q Everybody have a rifle or shotgun?

A Looked like one of 'em had a pistol. Looked like it was a pistol.

Q One had a pistol?

A Yeah, it looked like it was a pistol.

Q Did you go upstairs?

A Yes, I went upstairs.

Q What occurred up there, Mr. Hawkins?

A Then I went up the steps and then when I stepped into my bedroom - bedroom, I turn around and I slammed the door but

COPY

he caught the door before I could get it closed and then we got to tussling with the door and then the whole door came off the hinges and I pushed him back with the door toward the steps and that's when he hollered downstairs and called his friend there - he called his friend name by his name was Claude.

THE COURT: His name was what?

WITNESS: Claude.

THE COURT: Claude.

A Yeah, the one that took me upstairs, he called - called Claude to come upstairs ' cause I was backin' him back with the door and then when I - when Claude came upstairs, I just fell down to the floor, you know.

Q What happened when you fell down to the floor, Mr. Hawkins?

A Ah - then they came up and I fell back. The door fell on me and then they came, they kicked the door off me and they told me they ought to blow my brains out and everything, you know. Then I told 'em "Wait a minute, I'd get it" and I got up off the floor and I gave my Army coat to 'em and they snatched that out and they started looking all through the pockets and they said there weren't no money there, you know, and I said "Yeah, it is", you know. Then I took the coat and I looked in it and then - ah - I started looking through my drawers, you know, and then when I was looking - I had a .38 pistol in my top drawer and then when I opened the

COPY

1 top drawer, he saw the pistol and he reached across there
2 and grabbed it, then he took that - he turned around and
3 point that in my face and told me again he was goin' to
4 kill me, you know he ought to -
5 Q Now, who took the pistol, was that the one you knew as
6 Claude or was that the other man?
7 A No, his name was - was Lorenzo.
8 THE COURT: Was what?
9 WITNESS: Lorenzo Dinkins.
10 Q You didn't know him at that time, did you?
11 A No, I just know his name now by Court. It was Lorenzo
12 Dinkins.
13 THE COURT: Lorenzo?
14 WITNESS: Yeah.
15 THE COURT: What's his last name?
16 WITNESS: Dinkins. Somethin' like that.
17 THE COURT: Jenkins?
18 WITNESS: Dinkins.
19 THE COURT: Dinkins.
20 WITNESS: I'm not sure, I'm - you know, I'm -
21 THE COURT: I see.
22 WITNESS: Lorenzo.
23 Q Was anybody upstairs to your knowledge at that time, Mr.
24 Hawkins, other than yourself and the two men who were there
25 taking your money?

COPY

A Yeah. Yeah. There was a kid upstairs.

Q A kid?

A Yeah. My girlfriend's son, he was there.

Q All right. Now, after they recovered your pistol, what happened?

A All right and then it sound like the one that was downstairs, he was saying something to them about he heard somebody, let's go or something and then - ah - about this time - well, he started out - seemed like he started out, he stopped and I had a color t.v. layin' up on - sittin' on my dresser -

Q And who was that?

A That was Lorenzo.

Q Okay.

A And - ah - so like he pulled the aerial down on it to unplug it to take it loose, then he left it - then he act like he went, then he came back, he just picked it up and went on down the steps with it. And after he went down the steps, you know, then -ah - they went out of the house. They were gone.

Q Now, how many shots did you hear again?

A I heard two.

Q Two?

A I can remember two -

Q You heard one you said when they came in -

COPY

1 A Right.
2 Q When did you hear the other one?
3 A The other one seemed like when they was leavin' like it
4 seemed like, you know, when they was leavin'.
5 THE COURT: Heard when?
6 WITNESS: When they was like leavin'. Seems like
7 they fired a shot.
8 Q Now, Mr. Hawkins, did you at any time give anybody per-
9 mission to take any of the things that were at your house?
10 A No.
11 Q What was missing from your house after these people came?
12 A A receiver, .38 pistol and a color t.v..
13 Q Now, a receiver, what do you mean by that?
14 A A Sony. A Sony - it was a Sansui receiver.
15 Q That's like stereo equipment?
16 A Right.
17 Q And, Mr. Hawkins, at this time, I'll just ask you to
18 identify this item. With the Court's permission, I'm not
19 going to have it introduced into evidence because of other
20 court proceedings that will take place, but I'd like for
21 him to identify it, please.
22 A I see.
23 Q And what is that?
24 A A .38 pistol.
25 Q Do you know whose pistol that is?

COPY

1 A Yeah.
2 Q Whose is it?
3 A (Inaudible).
4 THE COURT: The Court can't hear you.
5 A Lewis. This was a friend of my sisters. It was his pistol.
6 Q Was this pistol at your house on that day?
7 A Yes, it was.
8 Q Is that the pistol that was removed?
9 A Yeah.
10 Q Now, the t.v. set that you talked about -
11 A Right.
12 Q Did you have the occasion to see that t.v. set since the
13 night of the robbery?
14 A Yeah. Well, like I - I've gotten the t.v. back.
15 Q All right. Where did you see it next after the robbery?
16 MR. GEARY: Judge, I'm going to object to that. If
17 he's going to make some kind of identi-
18 fication of the t.v., I have no oppor-
19 tunity to cross-examine if the t.v.'s
20 not here.
21 THE COURT: Well, ah - you'll have a right on cross-
22 examination, will you not?
23 MR. GEARY: To ask him about what he's going to
24 testify to, but not actually to be able
25 to look at the t.v. to ask him how he

COPY

makes his identification and - and things of that nature without having the television here.

THE COURT: Well, he can certainly make such description as he's capable of making.

MR. NANCE: Yes, sir, that - I'm going to ask him that.

MR. GEARY: I'll withhold any objection, then, Judge.

THE COURT: All right, sir.

Q Where is that - where is the t.v. now?

A At home.

Q And it's the same home that you were in -

A Yeah.

Q On November 29?

A Yes.

Q After the t.v. left your home on November 29, when did you see it again?

A In the police station.

Q On what - what time and what day?

A I'm - I'm not sure about the date,but, ah, the Detective told me, you know, like I could pick that up.

Q Did you go to the t.v. station?

A No, I went to -

THE COURT: T.V. Station?

Q Excuse me, excuse me, did you go to the police station?

A Yeah, Detective Harless, he called me and I was talking to

COPY

him on the phone and he told me I could come in the next morning to see a Sergeant. I forget his name.

Q All right. Did you see a television station at the police station?

A Did I see a what now?

Q Did you see a television set at the police station?

A Yes. Yeah.

Q Excuse me, your Honor, it's been a long night. Did you recognize the television -

A Yeah.

Q Set?

A Yes, I did.

Q How did you recognize it?

A Because, ah, well, it's just like anything you have for a while, you know, you see it and you know it's yours, you know, and I just - it was a RCA XL-100, you know. It was portable, you know, it had -

Q Did it look any -

A It had - ah - the knobs, they were all in the same place, the color of it, you know, everything. The antenna, the one he went to push down, that was bent and ah, one was missin' like when he - when he went to take it up, he just took and he just mashed 'em down and then the one of 'em bent off and the other one is still bent.

Q And did you take that t.v. set from the police station?

COPY

1 A Yes, I did.
2 Q It's at home now?
3 A Yes.
4 Q And I'll show you this item just for identification, please,
5 Mr. Hawkins, and ask you what that is?
6 A It's a Sansui 2000 receiver.
7 Q All right. Now, the receiver that left your home on the
8 29th, did you have an occasion to see that again?
9 A Yes.
10 Q When did you see that?
11 A At the same time when I went to pick up my t.v., I also
12 picked up my receiver.
13 Q All right. Where is that receiver now?
14 A At home.
15 Q The receiver is at home?
16 A Yeah.
17 Q When did you next see this pistol?
18 A Um -
19 Q After it left your home on the 29th?
20 A The next time I - the last - after it left my home, the next
21 time I saw it was in court.
22 Q Was -
23 A I didn't - I didn't really see it. This really the first
24 time seein' it -
25 Q All right.

COPY

1 A Seein' it. (Unintelligible) seein' it.
2 Q Did you see those items go out your door? When they were
3 carried - when -
4 A Two of 'em.
5 Q When - and what did you see leave -
6 A My pistol and my t.v.
7 Q You saw what?
8 A My pistol and the t.v., I saw. The receiver I didn't see.
9 Q Now, Mr. Hawkins, how long did you own your t.v.?
10 A I guess it was about 6 - months, I guess. About
11 6 - 7 months.
12 Q 6 or 7 months prior to November 29?
13 A Yeah.
14 Q And how about the receiver?
15 A Um - about a month - a month more. I got them both within
16 about a month's time, about a month's difference.
17 Q And when you saw your receiver, could you identify it?
18 A Yes.
19 Q And how did you identify it?
20 A Well, because I - well, I could look at the back of it, you
21 know, and read the back of it, the way it's set up and then
22 like - um - they don't make too many 2000 Sansui receivers
23 over here - in America. It's like a overseas receiver and
24 - ah - I could tell by the panel, you know, the way it
25 looked.

COPY

1 Q Now, Mr. Hawkins, after the three people left your house,
2 what did you do?
3 A All right. I hollered downstairs to ask was my friends -
4 see was they all right, was they okay and they said they
5 was okay and I came - I came downstairs and they was okay
6 and I left because I wanted to see if it was possible for
7 me to catch 'em some kind of way and, ah, I came out and I
8 walked through the parking lot and about this time my girl-
9 friend she was coming towards the house. She saw three
10 mens running across the parking lot and she -
11 MR. GEARY: Objection, Judge.
12 THE COURT: All right.
13 Q After she talked to you -
14 THE COURT: Ah - receivable only with the exception of
15 the hearsay rule is that where the con-
16 versation is the result of which he did
17 something and not proof of the fact.
18 Q After you talked to your girlfriend, what did you do?
19 A Okay - about this time like I didn't go nowhere - about this
20 time the maintenance man at the apartments I lived at, he
21 called the police 'cause he seen somebody running with -ah-
22 you know, t.v.'s and you know, and he the one that called
23 the police. I didn't call 'em and by the time I got down-
24 stairs and went out and walked around, well, he had saw 'em
25 when they left and he called the police and about this time the

COPY

1 police was comin' in and - ah - you know, he told - you
2 know they asked me what happened and everything and I told
3 'em -
4 Q Do you - do you know an Officer or Patrolman Steven G.
5 Tedder - T-e-d-d-e-r - of Richmond City Police?
6 A Well, it was - ah - Richmond - ah - Police that stopped
7 'em -
8 Q All right.
9 A Um - I'm - I ain't sure what his name was.
10 Q Okay. Did you talk to some Richmond Police about the robbery?
11 A Yeah.
12 Q Did you tell them about the robbery?
13 A Yes, I did.
14 Q Prior to Mr. - your seeing Officer Tedder?
15 A Yeah. They, um, one officer asked me -
16 Q All right, that's - you don't have to say what he said.
17 After you talked to the police, what did you do , sir?
18 A All right, um - he took me around the street 'cause they
19 had stopped somebody and he took me around the street -
20 ah - around to see if I could identify 'em as being the
21 people that came in my house but it wasn't - it wasn't the
22 people.
23 Q All right, and after you did that, what did you do?
24 A I came back to the house and I was talkin' to two friends
25 of mines and you know, they - everybody was asking what was

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1 happenin' and ah, then, um - I was tellin' 'em what
2 happened and by - the one that was upstairs, he called the
3 other, he called Claude's name out and I was describin' it
4 to 'em and they said they got a good idea who it could be
5 and we rode around and like, ah, we rode to like to their
6 houses where they lived at 'cause he know - he know the houses
7 he know where they lived at and weren't nobody home and
8 when we was leavin', ah, Claude's, where Claude supposed to
9 live when we was leavin' his house, I was on my way back
10 home, we saw them comin' down the street in a car.
11 Q And when you say "saw them", who did you see, Mr. Hawkins?
12 A Well, like it was a group of people in the car and I
13 couldn't say, you know, like, identify, you know, like who
14 was in the car 'cause it was at night, but -
15 Q All right.
16 A The friend of mines, you know, like, he the one that say,
17 like, "That's them right there in the car".
18 Q All right, and what happened after that?
19 A And we followed 'em and you know, like - and then we saw a
20 policeman up on, ah, at Colter and Moseby Street 'cause we
21 had followed 'em back off of Williamsburg Road all the way
22 back over Church Hill until I saw a policeman and, ah, I - I
23 caught his attention and he came - he followed me up the
24 hill up until Fairfield and Mechanicsville Pike which is the
25 light at the intersection and I was about two cars behind

1 him and the red light had caught them. They was in the
2 front and, um, I got out of the car and I told the police-
3 man what had happened and he swerved around and he pulled
4 'em on the other side of the intersection.
5 Q What did you tell the policeman?
6 A I told him that I - that, uh, they had robbed me.
7 Q How many people were in the car at that time?
8 A Five.
9 Q How many people had robbed you?
10 A Three.
11 Q Could you identify any of the people in the car then?
12 A I could identify two.
13 Q And who - which two could you identify?
14 A Lorenzo and Claude.
15 Q Lorenzo and Claude?
16 A Right.
17 Q Now, the Defendant, Mr. Washington, was he in that car?
18 A Yes.
19 Q At that time, could you identify him?
20 A No.
21 Q Now, Lorenzo and Claude, they were the ones that were up-
22 stairs in your bedroom -
23 A Right.
24 Q Or wherever you were?
25 A Right.

COPY

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Q Was that room lighted when you were up there?

A Yes.

Q How long did you spend with them when they were in your room?

A Let's say - the majority of the time they was in my house, they were with me -

Q And how far away -

A Upstairs. How far away they were from me?

Q Yes. When you were in your room?

A It was like from me to right here.

Q All right. Is that -

THE COURT: You have pointed to what distance?

WITNESS: Yes.

THE COURT: What distance - to where?

WITNESS: No farther'n me 'bout from here to here.

THE COURT: Almost as far as you can reach, three feet as it would seem to indicate by his gestures. Is that satisfactory to counsel?

MR. NANCE: Yes, sir.

MR. GEARY: Yes, sir.

THE COURT: All right.

Q When you - when you stopped the officer and told him that the people in front of you were the ones that robbed you -

A Yeah.

1 Q And he stopped them, what did you do?
2 A Well, he stopped'em and he made 'em get out the car and
3 then like I get - I got out and I, you know, stood on the
4 side of the street, you know, and, ah, he asked the person
5 that was drivin' the car for the key to the trunk and, um,
6 it seemed like, um, the key got gone or something or there
7 weren't no key or something, and they didn't have no means
8 of opening - of them open the trunk.
9 Q At that time, did you see Mr. - the one you know as Lorenzo
10 and the one that you know as Claude?
11 A Yeah.
12 Q Did you tell - make any comments to the officer about those
13 two?
14 A Did I make any comments?
15 Q After he stopped them?
16 A Well, I - I told him, you know, like they had robbed me.
17 You know, he didn't ask me nothin' else.
18 Q Okay. Now, after - do you know what that officer's name was,
19 Mr. Hawkins, by chance?
20 A The only one that I can remember is - ah - the Henrico -
21 Q All right.
22 A Because -
23 Q You don't remember what his name was, just offhand - the
24 the officer that you stopped?
25 A That I stopped, no.

COPY

COPY

1 Q And how long did you stay at that scene, Mr. Hawkins?
2 A Um -
3 Q Where the officer stopped the parties?
4 A I'm going to say an hour or more. It seemed that long. I'm
5 not sure. I stayed out there until the tow truck came and
6 got the car, you know. He was coming to get the car to
7 carry it down to the station.
8 Q Did you go with the automobile to the station?
9 A I went with the policeman. He took me down.
10 Q You went with the policeman?
11 A Right.
12 Q Which one did you go with, do you remember?
13 A Yeah. It was - he's not in here. He was sittin' right
14 there - um -
15 Q Black policeman -
16 A Yeah.
17 Q Or white one? Black policeman?
18 A Black policeman. From Henrico -
19 Q Henrico County -
20 A Henrico -
21 Q or City?
22 A Henrico.
23 Q All right. And your apartment is in Henrico County?
24 A Yes.
25 Q You're telling the court that you in fact don't recognize

1 Mr. Washington from being in your house that night?
2 A No, I can't say I recognize him. No, I cannot.
3 MR. NANCE: That's all I have at this time, your
4 Honor.
5 THE COURT: Cross-examination?
6 MR. GEARY: Yes. Thank you.
7 CROSS-EXAMINATION: Mr. Hawkins by Mr. Geary
8 Q Mr. Hawkins, the -ah- the place where you live at 2442 N.
9 23rd Street, are you still living there now?
10 A Yes.
11 Q Is that an apartment building or a single-family house or
12 duplex or what?
13 A Apartments.
14 Q Apartments?
15 A Right.
16 THE COURT: What kind of apartment?
17 WITNESS: A building, you know, apartments together.
18 Q Is it a - how many stories are on - how many floors in the
19 building?
20 A Two -two-story apartments.
21 Q Okay. Are these a number of two-story apartments or one or
22 two? How many apartments are there approximately?
23 A Um - I'm goin' to say anywhere from 75 - 100 or more, I
24 guess.
25 Q Okay. It's an apartment complex then?

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1 you?
2 A He told me not to move or he would pull the trigger.
3 MR. NANCE: Your Honor, that's all I have of this
4 witness.
5 CROSS-EXAMINATION: Mr. Volley by Mr. Geary
6 Q Mr. Volley, you testified - what time did you get to Mr.
7 Hawkins's house?
8 A Oh, I was there - I got there about 8:00, I guess.
9 Q Okay, and you were playing chess when the men came in?
10 A Yes.
11 Q Okay. Could you tell us what time that was when the men
12 came into the house?
13 A It was - it was approximately 9, between 9 and 9:30.
14 Q After the robbery was over, did you stay at Hawkins's house
15 or did you leave?
16 A I stayed there until the police came.
17 Q You didn't drive around with Hawkins later on that evening?
18 A No.
19 Q All right. Did the policeman - did you give a statement to
20 the policemen when they came?
21 A Yes.
22 MR. GEARY: That's all the questions I have, Judge.
23 WITNESS: Excuse me, I didn't give the statement
24 until the next day.
25 Q But you talked to the policeman when he came?

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1 A Steven G. Tedder.
2 Q Patrolman Tedder, you work for what organization, sir?
3 A Richmond Bureau of Police, Patrol Division.
4 Q You worked the midnight shift last night, did you?
5 A Yes, I did.
6 Q Patrolman Tedder, were you so employed on or about November
7 29, 1977?
8 A Yes, I was.
9 Q And what was your assignment - your beat area?
10 A Patrol Division assigned to the East end of Richmond.
11 Q Officer Tedder, did you all have an occasion to see a
12 gentleman that evening by the name of Mr. Horace C. Hawkins?
13 A Yes, I did.
14 Q Would you relate to the Court, please, under what circum-
15 stances you saw Mr. Hawkins.
16 A The first time I saw him, it was about 9:30 that night.
17 We received a call of a robbery in Mr. Hawkins house on
18 N. 23rd Street. We responded there. We - at the time, we
19 thought it was in the City and we responded there and
20 talked to Mr. Hawkins about the robbery and when we found
21 out it was actually Henrico, we notified Henrico Police.
22 Q Did you determine from your investigation, how many people
23 had allegedly been involved in that robbery when you first
24 responded to Mr. Hawkins' residence?
25 A He advised us there had been three.

1 Q All right, and you were aware that the robbery had
2 occurred?
3 A Right.
4 Q Were you made aware of whether it was an armed robbery?
5 A He told us that the parties were armed with either a sawed-
6 off shotgun or a rifle and a handgun.
7 Q Now, Officer Tedder, did you have an occasion to see Mr.
8 Hawkins later that evening?
9 A Yes, I did.
10 Q Approximately what time was it?
11 A It was approximately twelve, twenty minutes til twelve.
12 Q All right, and where did you see him, sir?
13 A I saw him at the intersection of Littlepage and Moseby
14 Streets.
15 Q And where was that, in the City?
16 A Yes, it was.
17 Q And under what circumstances did you see him?
18 A I was eastbound on Littlepage, Moseby runs north and south,
19 he was northbound on Moseby and he waived me down. He was
20 in a car, and he advised me that the people that had robbed
21 him was in a car right in front of him and he was following
22 'em and I fell in behind him and followed him until he
23 could point out the car to me.
24 Q All right. When he pointed out the car, what did you do
25 then, sir?

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A I got behind the car that he told me was the one that had the people in it and followed it for approximately two blocks. I turned my red lights and siren on and they stopped approximately two blocks later.

Q Two blocks after you turned the red light and siren on?

A Yes, sir.

Q Did you determine who the driver of the vehicle was?

A The Defendant, Mr. Washington.

Q Is the man that you know as Mr. Washington and was driving in this courtroom?

A Yes, he is.

Q Point him out, please.

A That's him right there.

Q And after the - this two blocks with your lights and siren on, did you have an occasion to stop them?

A Yes, I did.

Q What occurred immediately after you stopped them?

A As soon as I got out of the car, the passenger on the right front of the car got out and made motions as if he was gonna run -

Q What did you do, sir?

A I drew my revolver and told him if he's gonna run, I's gonna blow his head off.

Q All right. Now, did you determine who that passenger was at a later time?

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1 A It was Claude Alexander Fleming.
2 Q And you were by yourself at this time?
3 A Yes, I was.
4 Q And there were how many individuals in the vehicle that you
5 stopped?
6 A There was five. There was three in the back seat and two
7 in front.
8 Q Mr. Washington was in the front driving?
9 A Right.
10 Q And Mr. Fleming was a passenger in what - the front or
11 back?
12 A The front.
13 Q In the front. After you -
14 THE COURT: Just a minute, now. Let me get in my
15 notes who was where.
16 MR. NANCE: All right, sir.
17 THE COURT: Would you mind repeating that, please?
18 WITNESS: Yes, sir. Mr. Washington was driving
19 and Mr. Fleming was a passenger in the
20 right front seat.
21 THE COURT: Mr. Washington here, the one that's
22 before the court today was driving?
23 WITNESS: Yes, sir, he was.
24 THE COURT: And who is it you're referring to?
25 WITNESS: Claude Alexander Fleming was in the

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1 right front seat.
2 THE COURT: All right, now, did you identify any
3 further people at this time?
4 WITNESS: Yes, sir. There was three other people
5 in the car.
6 THE COURT: All right. I believe they're the names
7 I was catchin' up on in my notes on the
8 basis -
9 MR. NANCE: All right, sir. I'm sorry, your Honor.
10 THE COURT: Of the Commonwealth Attorney's questions,
11 so you can go ahead from there.
12 MR. NANCE: All right.
13 THE COURT: Which one was it that you did identify
14 that got out and act like he was gonna
15 run or whatever remark -
16 WITNESS: Mr. Fleming.
17 THE COURT: All right, sir. Go ahead.
18 MR. NANCE: Thank you, sir.
19 Q Officer Tedder, the other individuals in the vehicle, did
20 you have an occasion to identify them at a later time?
21 A Yes, I did.
22 Q And what were their names?
23 A Junius Powell, Lorenzo Lee Dinkins and Maverick Davis.
24 THE COURT: Maverick Davis?
25 WITNESS: Yes, sir.

1 THE COURT: And how did Lorenzo's last name spelled?
2 WITNESS: Dinkins. D-i-n-k-i-n-s.
3 THE COURT: Thank you, sir.
4 Q Officer Tedder, after you stopped the vehicle, did you have
5 occasion to get the people out of it?
6 A Yes, I did. I had 'em all get out and spread their hands
7 and legs up against the car.
8 Q All right. And did you have an occasion to talk to any of
9 those individuals with regard to where they had been that
10 evening?
11 A Well, I waited until my back-up , my assisting unit got
12 there.
13 Q All right.
14 A Then we separated them into two groups.
15 Q Did you have an occasion to talk to anybody that evening?
16 A Yes, I did.
17 Q Who did you talk to, sir?
18 A I spoke to - well, I spoke to all five of them.
19 Q All right. Did you have an occasion to talk to Mr.
20 Washington?
21 A Yes, I did.
22 Q Did you have an occasion to talk to Mr. Dinkins?
23 A Yes, I did.
24 Q Did you have an occasion to talk to the man known as Claude
25 Alexander Fleming?

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1 A Yes, I did.
2 Q Did you determine from Mr. Washington where he had been?
3 MR. GEARY: Objection, your Honor.
4 MR. NANCE: What ground?
5 MR. GEARY: Well, the - Officer Tedder has testified
6 that Mr. Hawkins told them "These are
7 the men that robbed me". Okay. They're
8 stopped. They're being interrogated. I
9 think the Commonwealth's got to lay a
10 little ground work before they can offer
11 any statement that Mr. Washington gave.
12 THE COURT: Specifically, the Miranda warnings.
13 THE COURT: Well, we don't know what stage we're at
14 yet. Ah, it's still in investigatory
15 instead of accusatory apparently as I
16 view it at this stage.
17 MR. GEARY: Your Honor, Mr. Hawkins has testified
18 that he told Officer Tedder that "those
19 were the men that robbed me", at least
20 as far as he was concerned it was in the
21 accusatory stage.
22 Q Did you advise Mr. Washington and Mr. Dinkins and the other
23 parties of their rights at this time, Officer Tedder?
24 A I didn't advise them then, no.
25 Q When did you advise them of their rights?

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A I didn't myself. The Henrico police officer advised them.

Q All right. You, in fact, had not placed anybody under arrest at this time, had you?

A No, I hadn't.

Q In fact, you had, to your own personal knowledge, did you have -

MR. GEARY: Judge, I'm going to object to the leading questions.

Q Did you have any personal knowledge of Mr. Washington's involvement in the alleged robbery?

A No, I didn't.

Q Had Mr. Hawkins identified anybody to you as being actual participants in the robbery?

A Yes, he had.

Q And who did he identify?

A Claude Fleming and Lorenzo Dinkins.

Q That was two of the parties, and you were aware that there were how many actually involved in the robbery?

A Three.

Q And in your talking to Mr. Powell, Mr. Davis and Mr. Washington, you were enabling to determine - attempting to determine -

MR. GEARY: Objection, Judge, that's a leading question.

Q Why did you talk to Mr. Powell, Mr. Davis and Mr. Washington?

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1 A I wanted to find out if they were with the other two at
2 the time of the robbery.
3 Q And what did they tell you? What did Mr. Washington tell
4 you?
5 MR. GEARY: Objection.
6 MR. NANCE: Your Honor, I don't think that question
7 is objectionable. This is a police
8 officer. He knows two people have been
9 involved and he knows there is a third
10 one. Two people have already been
11 identified. He's stopped a car with
12 five people and he hasn't placed anybody
13 under arrest. What he's doing at this
14 time is simply an investigatory function
15 which he well ought to do. In fact he'd
16 be derelict in his duty if he didn't.
17 He had to find out perhaps if anybody
18 else was involved in this matter.
19 MR. GEARY: Judge, Officer Tedder knew from what Mr.
20 Hawkins told him earlier in the evening
21 that there were three people involved in
22 the robbery and he's testified here
23 apparently that before he began questioning
24 the men he knew from what Mr. Hawkins
25 told him at the scene that Claude and

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Lorenzo were two of the five men. At that point, there's no question that - that one of the other three parties is a suspect for being a third party in the robbery and I think at that point these men are in custody. Maybe no technical arrest has been made but as he indicated, a gun was drawn. They were spread-eagled on top of - at the car with their hands and feet spread. They were separated into two cars. Certainly they had no right to leave at that point and once being in custody and being a suspect, I think they had to be advised of their Miranda rights. Until the Commonwealth lays that foundation, Officer Tedder indicates he didn't advise them, then he had no right to question them and can't offer any statement they made as evidence.

THE COURT: All right. Do you have any further foundation?

MR. NANCE: No, sir, your Honor. Other than I can - I can only say I do not think at this time, once he talks to them he - I - as

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1 Officer Tedder testified, once he talked
2 to Mr. Hawkins, he knew, in fact, knew
3 that Mr. Lorenzo Jenkins -Dinkens
4 rather, and Mr. Claude Alexander Fleming
5 were two parties who were actually at
6 the robbery. Now he's got three other
7 people there and I think it's, you know,
8 incumbent on him to inquire of them as
9 to their whereabouts. There's no reason,
10 we've got an hour and a half, maybe two
11 hours passing. They could have picked
12 up 10,000 other people in the interim.
13 I think it would be probably, perhaps in
14 his case, bad police work just to arrest all five -
15 MR. GEARY: Judge, I -
16 MR. NANCE: Knowing at the time -
17 MR. GEARY: Judge, I have no question about the bad
18 police work or good police work, but I
19 don't think in terms of investigation
20 you can - you can talk to somebody who
21 may be imminently connected with a
22 robbery and then attempt to offer that
23 statement into evidence when there's no
24 Miranda warnings given. I think that's
25 the whole purpose of the Miranda warnings.

Once somebody's in custody, you've got to advise them.

THE COURT: Well, I don't know which - you've got of course the fact that, ah, when the five - when the car was stopped, there were five people in it. He got 'em out and went through the usual procedures of having them spread- eagle over - their hands and feet across the top of the vehicle -

MR. NANCE: And I might add that -

THE COURT: That's to keep 'em from runnin' away, for security perhaps. Now, ah, it's not exactly clear to me, but in any event, at some stage, apparently the officer got Mr. Hawkins to identify two of 'em. Namely, Lorenzo Dinkins and Claude Fleming. Now, at that stage, I don't know who he talked to next or what in the way of preliminary, ah, questions he gave to them or not. There's got to be more background laid before I can rule on it at all.

MR. NANCE: All right, sir.

THE COURT: Ah, the time element, the time frame may

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1 or may not be pertinent, who he talked
2 to, whether they were together or in
3 the car or still out, all five with their
4 hands on - on top of the vehicle.
5 You've got to pin it down a little bit
6 more now and make it more specific than
7 it is for the Court to be able to make
8 any intelligent ruling on it.
9 MR. NANCE: All right, sir.
10 Q Officer Tedder -
11 THE COURT: And I hope that, ah, presumably that all
12 objection about that - evidently there
13 was some statement made. Ah, obviously
14 if there's no statement made, then we
15 all just wasted a bunch of time.
16 MR. NANCE: Yes, sir.
17 MR. GEARY: Why don't we go to that point? Why don't
18 you ask him first if there was a state-
19 ment made?
20 Q Did they make a statement?
21 A As to where they had been, they did.
22 MR. NANCE: Yes, sir.
23 A What, sir?
24 Q Prior to makin' that - I'm only talking about Mr. Powell
25 and Mr. Davis and Mr. Washington at this time. You stopped

1 the vehicle. Mr. Fleming gets out. You draw your revolver.
2 You place them up against the vehicle, search them down.
3 Where did Mr. Hawkins, after you did that, when were you
4 made aware from Mr. Hawkins that in fact Mr. Dinkins and
5 Mr. Fleming were parties to the robbery?
6 A When I had them spread-eagled against the car.
7 Q Were - did Mr. Hawkins implicate Mr. Washington, Mr. Powell
8 or Mr. Davis in any way?
9 A No, he didn't.
10 Q At that time?
11 A No, he didn't.
12 Q After Mr. Dinkins and Mr. Fleming had been implicated by
13 Mr. Hawkins, did you advise either Mr. Washington, Mr.
14 Powell or Mr. Dinkins of any Miranda rights?
15 A No, I didn't.
16 Q Did you advise Mr. Powell, Mr. Davis or Mr. Washington of
17 any Miranda rights at all that evening personally?
18 A Personally, I did not.
19 Q When - did you ask them any questions, Mr. Washington, Mr.
20 Davis or Mr. Powell?
21 A Yes, I did.
22 Q For what purpose did you ask those questions?
23 A I asked Mr. Washington for his driver's license and I asked
24 him where he'd come from.
25 Q Did he reply? Did he make a reply?

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1 A Yes, he did.
2 MR. NANCE: Your Honor, that's all the foundation I
3 can lie because that is the foundation.
4 And Officer Tedder is very frank.
5 MR. GEARY: Judge, may I ask a question at this
6 point?
7 THE COURT: Yes, sir.
8 MR. GEARY: I understood earlier that the Common-
9 wealth Attorney was attempting to
10 elicit from - from Officer Tedder a
11 response that Mr. Washington may have
12 made as to his whereabouts the entire
13 evening. Ah, but Officer Tedder has
14 indicated he asked him for his driver's
15 license and where had he come from. If
16 we're simply - if he's just simply asking
17 him where he'd been in the last couple
18 of minutes to lead him to this particular
19 place where they were stopped, I wouldn't
20 have any objection to that. I would have
21 objection if they were asking his where-
22 abouts on the entire evening.
23 MR. NANCE: And that's all I want to ask him.
24 THE COURT: All right.
25 Q Where did he come - did he make a reply/as to where he had just

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1 come from?
2 A Yes, he did.
3 Q Did he tell you?
4 A Yes, he did.
5 Q What did he say?
6 A He said the Convenient Food Mart on Moseby Street.
7 THE COURT: He came from where?
8 WITNESS: The Convenient Food Mart on Moseby
9 Street.
10 Q Did you have reason to question that reply?
11 A Yes, I did because I saw him pass it, drive by it.
12 Q Did you have an occasion to ask Mr. Washington any more
13 questions just in regard to his whereabouts prior to your
14 stopping him?
15 A Well, the car was registered to Mr. Davis's mother. I
16 believe it was his mother, one of his relatives. I asked
17 him why he was driving the car instead of Mr. Davis and if
18 he - and he told me that it was a friend of his.
19 MR. GEARY: Judge, I'm going to object to all this
20 now. I mean we're going into the phase
21 where it's - it's an accusatory phase.
22 He's in custody and they're asking him,
23 you know, why is he driving the car and
24 why this and why that and with no
25 Miranda rights, I don't think they can

1 do it.
2 THE COURT: I have to sustain.
3 MR. NANCE: Yes, sir.
4 Q Did you make - did you obtain any statements from any of
5 the other parties, Mr. Powell, Mr. Dinkins and Mr. Davis?
6 A Yes, I did.
7 Q Were they consistent statements?
8 MR. GEARY: Objection. It's all hearsay.
9 THE COURT: Well, there's no significance at all as
10 to - if it's being consistent with or
11 with what. If that is a question of
12 argumentative nature and comparative
13 between witnesses, I don't understand
14 either the purpose of asking or the
15 propriety of it the way it's phrased.
16 MR. NANCE: Your Honor, the purpose I would ask - the
17 reason I ask and I'll proffer it to the
18 Court and I'm not more (inaudible) by
19 what in fact was said but there was
20 certain - he inquired of the other
21 parties as to where they had come from
22 and where they'd been and I would submit
23 with his answers about - that they were
24 inconsistent, were very, very indicative
25 to this police officer that something

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1 was awry. He's already got -
2 THE COURT: Well, we all realize they weren't
3 playin' tiddly winks at this hour of the
4 night wanderin' around like they were,
5 but I mean we gotta pin it down a whole
6 lot more definitely than this and I
7 don't think that the line of approach
8 you're usin' now is the proper one.
9 MR. GEARY: Judge, I'm questioning what the rele-
10 vance, even if there were inconsistent
11 statements made by the three men in the
12 - other men in the car, what's the
13 relevancy of it all?
14 MR. NANCE: Your Honor, the relevancy of it is very
15 simple. There is a motion to suppress
16 this statement, any statement that may
17 have been given or any alleged confession
18 given by Mr. Washington at a later time
19 when he was arrested. I am simply
20 tryin' to lay the foundation as to why
21 the police thought and considered to
22 arrest Mr. Washington. The reason that
23 they -
24 THE COURT: Let me see the file.
25 MR. NANCE: I know that motion is going to have to

be answered - and that they had to have some probable cause as in any arrest. A police officer's not in it; he's got to use his wits and information that's available to him and the totality of all the circumstances have been set out in many, many cases as to why there is probable cause to arrest and it goes right to the heart, the sum and substance of why Officer Tedder or any other police officer had a right not to arrest Mr. Jenkins - Dinkins, rather - or Mr. Fleming. I don't think there's any question about that. What we're talking about now is Mr. Washington's arrest. The sum and substance of the motion that has been filed by Mr. Geary is that any confession he may have made should not be allowed because it was a product of an illegal arrest. And what I'm tryin' to do is lay the foundation for why there was probable cause and why Officer Tedder or any other police officer was justified in arresting Mr. Washington in the first place.

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1 THE COURT: Well, in view of the motion filed, I
2 think it's proper then for you to pursue
3 it to that extent, but it's not to be
4 used in consideration at this time with
5 respect to any admission, so to speak.
6 If there is any that comes out of -
7 MR. NANCE: No, sir. I am not talking about any
8 admissions. All I'm doing is laying
9 a foundation as to why he was arrested.
10 THE COURT: Well, it's sort of a mixed motion that
11 sort of ties in with was there probable
12 cause because there's some allegation
13 it may have been an illegal arrest and
14 if it was an illegal arrest, then some-
15 thin' was improper. I think you got to
16 go ahead and pursue all of the circum-
17 stances relative to what happened at the
18 time now. In other words, I think it's
19 open territory in view of it being
20 raised - of course it's being raised by
21 the motion to suppress.
22 MR. NANCE: Yes, sir, and that's the only reason
23 I've gotten into it. As far as any admissions,
24 it's totally irrelevant, but it's not
25 irrelevant as to the proper for the

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arrest and the reason for the arrest.

THE COURT: All right. We'll approach it then in that light which the court -

MR. GEARY: I don't understand, Judge. He's not offering it - Officer Tesson - over Officer Tedder's further testimony on the issue of innocence or guilt-

MR. NANCE: No, sir.

MR. GEARY: Simply on the arrest issue.

MR. NANCE: No, sir. Not at all..

MR. GEARY: I have no objections then.

Q Officer Tedder, you did take statements or make inquiries of the other three parties who were not identified by Mr.- by Mr. Hawkins as to their whereabouts prior to your stopping them, is that correct?

A Yes, it is.

Q And those statements were inconsistent as you've testified?

A Yes, they were.

Q And based on that information, did you relay that information to the Henrico authorities when they arrived?

A Yes, I did.

MR. NANCE: That's all the questions I have, your Honor.

<u>CROSS-EXAMINATION: Officer Tedder by Mr. Geary</u>

Q Officer Tedder, ah,I believe you indicated that it was

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1 approximately 11:40, ah, when Mr. Hawkins - you saw him at
2 Littlepage and Moseby, is that correct?
3 A Correct.
4 Q So I would assume it was in a few minutes you had the car
5 stopped, is that correct?
6 A Approximately two minutes after I first saw it.
7 Q What kind of car was it?
8 A 1968 Oldsmobile.
9 Q All right. You indicated that it was registered to the
10 mother of Maverick Davis, is that correct?
11 A I believe it was his mother or father. I'm quite certain
12 it was his mother.
13 Q Okay, and he was one of the occupants of the car?
14 A Yes, he was.
15 Q All right. And you had the men outside the car and they
16 had their hands and feet - hands spread on the car, is that
17 correct?
18 A That's correct.
19 Q And at some point - is it - at some point while they were standing
20 that way, Mr. Hawkins told you "This guy and that guy", is
21 that correct?
22 A Correct. That's correct.
23 Q All right, and was that before or after your back-up unit
24 arrived?
25 A That was right after my back-up unit arrived.

1 Q All right. Now, you knew because of your earlier dealing
2 with Mr. Hawkins that evening that the robbery had in fact
3 happened in Henrico County, is that correct?
4 A That's correct.
5 Q All right. Now, when your back-up unit arrived, did you
6 then proceed to arrest, ah, Claude Fleming and Dinkins on
7 the armed robbery charge?
8 A Burt - no, I did not.
9 Q All right. You were detaining them because they were gonna
10 be arrested, is that correct?
11 A Correct.
12 Q All right, and you have three other persons with them?
13 A Correct.
14 Q All right and what time was it - I believe you indicated
15 that you saw Mr. Hawkins first at about 9:30 that evening,
16 is that correct?
17 A That's correct.
18 Q Was that - that was at his apartment because you thought it
19 was in the City at the time?
20 A Correct.
21 Q Okay, and this is approximately two hours and fifteen
22 minutes later?
23 A Right.
24 Q It'd be about 11:42, 11:45?
25 A Right.

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1 Q All right. The Richmond back-up got there next. Did any
2 other police officers come to the scene?
3 A The Henrico police officers.
4 Q All right. How many Henrico officers responded?
5 A There was four units altogether from Henrico.
6 Q All right. Were Dinkins and Claude Fleming arrested by the
7 Henrico police at that time at that scene?
8 A Yes, they were.
9 Q Were they handcuffed?
10 A Yes, they were.
11 Q Who was the arresting officer?
12 A I don't know his name. I know him by face.
13 Q Was he white or black?
14 A Black.
15 Q Was it Officer Hill that's outside? That's here this
16 morning?
17 A Right.
18 THE COURT: How many did - were arrested?
19 WITNESS: He took all of 'em to police head-
20 quarters in Henrico. I assumed that they
21 were all arrested.
22 Q Did you hear Officer Hill or any other Henrico officer in
23 regard to Fleming and/or Dinkins say "You are under arrest"?
24 Were those words ever used in your presence?
25 A Not that I can recall.

1 Q All right. What kind of vehicles were used to transport
2 them from the scene?
3 A Paddy wagon and a patrol car. I didn't participate in the
4 transporting.
5 Q They were Henrico vehicles?
6 A Correct.
7 Q Two were put in one and three were put in the other?
8 A I don't recall which 'cause I didn't transport anybody.
9 Q All right. Now, you've indicated in answer to Mr. Nance's
10 questions that you made inquiries, ah, from Washington and
11 the two other men, ah, in the car, Powell and Davis, is
12 that correct? You asked them questions?
13 A Right.
14 Q All right. And the nature of the questions was, "Where have
15 you been coming from? Where were you -"
16 A "Where were you coming from then?"
17 Q All right, and Mr. Washington told you that he was coming
18 from the Convenient Food Store on Moseby Street, is that
19 correct?
20 A Correct.
21 Q All right, and you were suspicious of that because you had
22 seen them go by that store.
23 A Right.
24 Q All right. You had not seen them prior to that time, is
25 that correct? The first time you saw them was when Mr.

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1 Hawkins pointed them out to you?
2 A Correct.
3 Q All right. So you have no way of knowing if they had just
4 come around the block and in fact had just been at the
5 Moseby Food Store, is that correct?
6 A I knew for a fact that they weren't. I'd been sittin'
7 there for fifteen minutes.
8 Q All right. Mr. Powell and Mr. Davis also made statements
9 to you, is that correct?
10 A Yes, they did.
11 Q All right. And they indicated that they had come from some-
12 thing - someplace else other than this Convenient Food
13 Store?
14 A Correct.
15 Q All right. And Mr. Hawkins had told you that there were
16 three men involved in the robbery -
17 A That's correct.
18 Q Is that correct? There were not five men involved in the
19 robbery?
20 A No, he told me three.
21 Q All right, and Mr. Hawkins also told you that he was unable
22 to identify anybody but Claude and Dinkins, is that correct?
23 A That's correct.
24 Q All right. Is it fair to say that you were holding all
25 five of them until Henrico arrived because it was Henrico's

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1 robbery?
2 A That's correct.
3 Q How much time elapsed from the time that you stopped this
4 car until Henrico arrived?
5 A Approximately 20 minutes. The first Henrico unit arrived
6 at around 12:00.
7 Q All right, and I take it from the other questions that
8 you've answered that you were there when the Henrico patrol
9 car and the Henrico paddy wagon left the scene?
10 A We all left together.
11 Q All right. What time would that have been?
12 A Approximately quarter to one, twenty to one.
13 Q So, it would be a fair statement to say that you had the
14 car stopped and they - these five men were at the scene for
15 about an hour until they left?
16 A That's correct.
17 Q You had no further dealings with the case after that?
18 A That's correct.
19 Q They went to the Henrico police station. Now, who was the
20 officer that you told about the statements made to you by
21 Washington and Powell and Davis?
22 A Okay -
23 Q Who'd you tell that to?
24 A The black officer. Officer Hill.
25 Q Officer Hill. Had you made any notes on what these three

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1 men had told you?
2 A Not - not at that time. No.
3 Q Did you make them subsequent? Did you have to make an
4 Offense Report for this?
5 A No, I didn't.
6 Q Because it happened in Henrico County?
7 A That's correct.
8 Q Do you recall whether any of the men were handcuffed before
9 they left the scene?
10 A I'm certain that they were all handcuffed.
11 MR. GEARY: I have no further questions, your Honor.
12 THE COURT: Anything else from redirect?
13 MR. NANCE: No, sir, your Honor.
14 THE COURT: All right. Now, do you want to excuse
15 Mr. Tedder,counsel?
16 MR. NANCE: Your Honor, I'd like to. He's been up
17 all night.
18 THE COURT: I think he said he's had the night shift.
19 MR. GEARY: Judge, I'd like to also, but I think in
20 the present posture of it, I may have to
21 ask him to remain. I don't think it'd
22 be too much longer that he'd have to -
23 THE COURT: Well, I'm very sorry. I can't excuse
24 you, Mr. Tedder, at this time. Would
25 you mind waitin' outside and don't discuss

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1 ah, with other witnesses any questions
2 you were asked and answers you gave.
3 MR. NANCE: Officer J. B. Hill, please. Your Honor,
4 I'd relate to the Court that no questions
5 I would ask of Mr. Hill would have any-
6 thing to do with the merits of any
7 admissions made by Mr. Washington with
8 regard to the offense before the Court.
9 They all run to the merits of the arrest.
10 DIRECT EXAMINATION: Officer Hill by Mr. Nance
11 Q Officer Hill, state your full name for the Court, please.
12 A Officer J. B. Hill.
13 Q For whom do you work, sir?
14 A Henrico County Police.
15 Q You were working on or about November 29th or early morning
16 hours of November 30th, 1977, were you not?
17 A Yes, sir, I was.
18 Q Did you have an occasion to see the Defendant, Mr. Iran
19 Washington on that day, sir?
20 A Yes, sir, I did.
21 Q Approximately what time did you first see him?
22 A Ah, it was about 12:00 midnight.
23 Q All right. Is the man that you know as Iran Washington
24 that you saw on that night in this courtroom?
25 A Yes, sir, he is.

Q Would you just point him out for the record, please?

A He's sittin' there.

MR. NANCE: Your Honor, for the record, he has identified the Defendant.

Q Officer Hill, under what circumstances did you come to see Mr. Washington on that evening?

A I was dispatched to go to a call and help Richmond on a possible armed robbery which had occurred in the County. They - Richmond had responded over earlier and it was determined that the armed robbery did happen in the County and when I got there, Richmond had a carload of subjects stopped on the Mechanicsville Turnpike just - just west, no, just east of Fairfield Avenue. They had three subjects in- they were in the car. It was a '68 Oldsmobile and they had the other two subjects in a patrol car. I think it was Officer Tedder's car.

Q In which car did you see Mr. Washington that you saw him?

A Ah, he was in Officer Tedder's car.

Q All right. The other three subjects, did you know them at all?

A No, sir, I knew none of them.

Q Were you aware of any identification by a man by the name of Mr. Horace Hawkins as to any of the parties that were there at that scene?

A Yes, sir, later on - ah, after talking with Mr. Hawkins and

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1 Officer Tedder, Mr. Hawkins identified two of the subjects
2 as the ones that came into his house and robbed him.
3 Q Mr. Washington was not one of those subjects?
4 A No, sir, he was not one that was identified at the time.
5 Q Did you have an occasion to talk to Mr. Washington?
6 A Yes, sir, I did.
7 Q How about any of the other three subjects? Did you have an
8 occasion to talk to them?
9 A I asked - I talked to all of them.
10 Q Did you advise them of their rights prior to your talking
11 to them?
12 A Well, it was just a question of where they had been, where
13 they were coming from. There was no incriminating questions.
14 I was just tryin' to find out where they'd been.
15 Q You, in fact, had not placed any of those parties under
16 arrest, had you?
17 A No. No, sir, not at that time.
18 Q Did they make any statements in regard to where they had
19 come from or what they had been doin'?
20 A Well, they were all in the car together, and the ones that
21 were in the car said they'd been -
22 MR. GEARY: Objection, Judge.
23 Q Did Mr. Washington make a statement as to where he had been?
24 A I think He said he'd just come from the Convenient Store.
25 MR. GEARY: Objection, again, your Honor.

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THE COURT: But not on the merits, but in as far as guilt or innocence, but as far as the arrest aspect of it, although -

MR. GEARY: Judge, I'd like to -

THE COURT: They may have probable cause illegal arrest, I think it's admissible.

MR. GEARY: I'd like to make one statement because of what Officer Hill has just testified to. He said that he - Mr. Nance asked him if he gave them the Miranda warnings. He didn't answer the question because he said he was not going to ask them any incriminating questions, ah, and now he's gonna testify to apparently what Mr. Washington said and then try to show the inconsistency. I - I don't think that they can - they can operate that way. If there's not going to be any incriminating questions asked, then apparently you don't have to give anybody a Miranda warning. But when you claim it's not an incriminating question and then don't give the warnings, then use that as a basis to have probable cause to arrest, then you - you've - you use that as a subterfuge to

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1 get around the Miranda warnings. There
2 is - it's clear that one of the three
3 men was a suspect as a third person in
4 that armed robbery and I think that
5 without giving the Miranda warnings,
6 nothing that was responded to is
7 admissible. Either to show probable
8 cause for an arrest or admissible to
9 show guilt or innocence.
10 THE COURT: Well, at this stage, I - as I gather,
11 the background is that this witness came
12 to the scene and then talked to Officer
13 Tedder and to Horace Hawkins and ah, got
14 full background, ah, and got their infor-
15 mation regarding. Now, as far as this
16 witness says there are three subjects
17 in the '68 Oldsmobile and two subjects
18 in the patrol car. So, I see no
19 different than the Court's ruling as to
20 probable cause and ah, what he has to
21 say in relation to your claim under your
22 motion to suppress, it being a illegal
23 arrest, ah, as to what this officer found
24 out in the way of background information
25 on the scene and what basic questions he

1 may have asked with regard to the, ah,
2 proceeding with an arrest. So, I'll
3 overrule your objection although I'm not
4 accepting any of the evidence at this
5 stage as it may relate in any way to a
6 confession without further foundation
7 if there is such.
8 Q Officer Hill, at the time that you spoke to the three
9 individuals in the '68 Oldsmobile, were you aware that there
10 was a third party involved in the robbery -alleged robbery
11 of Mr. Hawkins?
12 A Yes, he said it was somebody - somebody had been downstairs
13 but he hadn't seen 'em 'cause he was upstairs in a bedroom.
14 Q Were you aware that the two other individuals hadn't been
15 identified as being part and parcel of the robbery by Mr.
16 Hawkins?
17 A Yes, sir, I had been.
18 Q And did you have any occasion to inquire of the other two
19 parties, other than Mr. Washington, as to their whereabouts
20 during that evening?
21 A Well, they were all there together and I just made a general
22 question of "Where were you coming from?".
23 Q Were their answers consistent?
24 A No, sir, they were different answers.
25 MR. NANCE: That's all I have your Honor. I'm sorry,

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in regard to that matter.

Q Officer Hill, did you have occasion to place these individuals under arrest that night?

A Yes, sir, I did.

Q And when I say "these", are you talkin' about all five?

A All five of 'em.

Q And they were transported to Henrico Police Headquarters?

A Yes, sir.

Q Did you take part in any interrogation of these individuals at all?

A I was there during the interrogation of the - of the five subjects at Police Headquarters.

Q Did you take part in it? Did you ask any questions of the individuals at Police Headquarters?

A Ah, Detective Harless did most of the questioning. I did ask a couple of questions.

Q Detective Harless was the investigating officer at Police Headquarters?

A Yes, sir, he was.

Q After you placed these men under arrest, was there any - did you inquire of them any questions without advising them of their Miranda rights?

A Well, after I placed them under arrest and ah, put the three in the wagon, I read them their rights with the - while they were in the wagon and the other two were trans-

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1 ported in the car, and I read them their rights, also,
2 before they were transported to Police Headquarters.
3 Q For what reason did you place them under arrest?
4 A For, ah, possible armed robbery of Mr. Hawkins on twenty -
5 on the Cool Lane Apartments.
6 Q And in particular, why did you place Mr. Washington under
7 arrest?
8 A Why? Because he was one of the five that were there and
9 they - their stories were conflicting. There was no way
10 that I could tell who was and who wasn't, so I took 'em all.
11 Q Did you have an occasion to try to examine the Oldsmobile
12 vehicle that was there?
13 A Yes, sir, we, ah, - we asked 'em if we could look in the
14 trunk 'cause we had information that the goods were in the
15 trunk, but they told us that the key - they didn't have the
16 key to the trunk. So, we never went any further at that
17 time. We just transported the car to Police Headquarters
18 with a wrecker.
19 MR. NANCE: Thank you, sir. That's all I have, your
20 Honor.
21 <u>CROSS EXAMINATION: Officer Hill by Mr. Geary</u>
22 Q Officer Hill, you've indicated that you arrested all five
23 of them for possible armed robbery, is that correct?
24 A For - yes.
25 Q All right. You had two good suspects because you had identi-

1 fications made from Mr. Hawkins on Mr. - on Claude and on
2 Dinkins, is that correct?
3 A Yes, sir, that is correct.
4 Q All right. And I - I'm not gonna waive my objection but I
5 believe you indicated that Mr. Washington had told you he
6 was at the Convenient Food Mart, is that correct?
7 A Yes.
8 Q What was your question to him that brought that answer?
9 A What was my question?
10 Q Yeah.
11 A I asked him where was he coming from?
12 Q All right. Now, how about Mr. Powell and Mr. Davis, what
13 did they tell you?
14 A Mr. - ah - I think they said they were comin' from Fulton.
15 Q All right, and this was - your questioning of them was after
16 midnight, is that correct? You said -
17 A I believe so.
18 Q You arrived around midnight?
19 A I - I believe so, yes, sir.
20 Q All right. How long - how long were you on the scene when
21 you asked this question of these three men?
22 A Ah, let me see. It's hard to tell, about maybe approximately
23 half an hour or so.
24 Q Okay, so what -
25 A I was tryin' to take the report at the same time.

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1 Q So, it was approximately 12:30 in the morning when you -
2 when you asked this question, approximately?
3 A Possibly. Possibly. I'm not sure 'cause I was there quite
4 a while. I was there maybe an hour, hour and a half before
5 we went to headquarters.
6 Q Did you take part in the transport to headquarters?
7 A No, sir, I didn't.
8 Q All right. Ah, and you asked the question to them about
9 12:30. What time were the - were the men transported to
10 police headquarters? Approximately?
11 A Maybe 1:00, 1:15. I believe Mr. - Detective Harless could
12 tell you better.
13 Q And I believe in response to Mr. Nance's question, the basis
14 of your arrest of these three men was that they gave con-
15 flicting stories as to where they had just come from. Two
16 said from Fulton and one said from Convenient Food Mart,
17 is that correct?
18 A No, three said from Fulton and two said from the Convenient
19 Store.
20 Q Well, I'm asking in regard to the three men other than
21 Dinkins and -
22 A Okay.
23 Q You were gonna arrest Dinkinson and Claude because of what
24 Hawkins told you?
25 A Yes, sir.

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Q And the purpose of arresting the three was to bring them down to police headquarters and have one of them testify as to who the third man was if one of the three was the third man, is that correct?

MR. NANCE: Objection, your Honor. Mr. Geary is testifying.

THE COURT: He's got a right to cross-examine.

MR. GEARY: I'm askin' him a question, Judge.

THE COURT: He's got a right to cross-examine.

Q Isn't that what the purpose was, Officer Hill? To be candid about it?

A Well -

Q You suspected that one of the three was the other man. You were gonna bring all five down to headquarters. You were gonna interrogate them and find out who the third man was?

A Well, we didn't know if it was just three or more. He said he - possibly three of them. They could have been outside. We didn't know how many of 'em were involved.

Q He told you there were three, correct?

A Yes. Right.

Q He told you he didn't know that there were any others involved?

A That's right.

Q All right. So, your information is simply that there was three men involved in an armed robbery. You knew who two

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1 of 'em were. Is that correct?
2 A That's right.
3 Q And you were - you - and you suspected that the third man
4 was either Powell, Davis or Washington, is that correct?
5 A Or all of 'em were involved. It was possibly one or all.
6 We didn't know at that time.
7 Q You didn't know?
8 A That's right.
9 MR. GEARY: That's correct. I have no further questions.
10 THE COURT: All right. Anything else?
11 MR. NANCE: Nothing - no, sir.
12 THE COURT: All right. Thank you very much, Officer.
13 Do you wish him excused or wish him to
14 remain?
15 MR. NANCE: I think he may be excused, your Honor.
16 MR. GEARY: I have nothing further from him. I have
17 nothing further from Officer Tedder,
18 either, your Honor. He could be excused.
19 THE COURT: In other words, this man has just stated
20 now that he was present when he got to
21 police headquarters when the Defendant
22 was, and the others were, apparently
23 questioned by Detective Harless and that
24 he also asked a few questions. He also
25 said that before they all left the scene

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that he gave them their Miranda rights.

MR. NANCE: Yes, sir. That will not have any part in my -

THE COURT: You don't need him any further?

MR. NANCE: No, sir.

MR. GEARY: Judge, I'd also, - we could agree to dismiss Officer Tedder at this point, too. I won't be calling him.

THE COURT: You don't think you need Officer Tedder anymore?

MR. GEARY: No.

THE COURT: Is that agreeable between counsel, now?

MR. NANCE: Yes, sir.

THE COURT: All right. Then, in that event, at this stage, we can release Officer Hill, who just stepped out - who's standing here in the courtroom - and also release Officer Tedder, Steven G. Tedder, of the City Police who previously had been asked to wait.

MR. NANCE: Your Honor, the Commonwealth would call Officer R. K. Harless. Detective Harless.

THE COURT: Let me ask you all something. How much longer are you going to be on this case?

1 MR. NANCE: Well, this will be my last witness, your
2 Honor.
3 THE COURT: I've got ah -
4 MR. NANCE: I think the motion comes in at this
5 time.
6 CLERK: I need to change the tape.
7 THE COURT: Hm?
8 CLERK: I need to change the tape.
9 MR. GEARY: Judge, could we have a few minute recess
10 at this point?
11 THE COURT: All right. All right. The witness has
12 a - I mean, the clerk, excuse me, the
13 deputy clerk needs to change the
14 recording tape anyway and ah, I'm tryin'
15 to find out what the situation would be
16 about this 11:30 case I have and whether
17 we are gonna be ready to proceed before
18 lunch or after lunch.
19 MR. NANCE: Is the luncheon hour at 12:00, your
20 Honor?
21 THE COURT: Well, it's usually 12:15 to 12:30, some-
22 wheres -
23 MR. GEARY: I would assume that Detective Harless
24 would be the last witness called, your
25 Honor.

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1 MR. GEARY: Judge, I believe I have to voir dire
2 Officer - Detective Harless a few
3 questions before I do it.
4 THE COURT: Yes, sir. Do you wish to do some cross-
5 examination of this -
6 MR. GEARY: Yes, sir, at this point.
7 THE COURT: Yes, you may.
8 CROSS EXAMINATION: Detective Harless by Mr. Geary
9 Q Detective Harless, what time was it that Mr. Washington
10 made this statement to you?
11 A It was approximately 3:05 a.m., sir.
12 Q Do you know what time Officer Hill had made the arrest?
13 A No, sir, I - I received a call at 15 minutes after midnight
14 on 11/30/77 at my residence.
15 Q Okay, do you know what time Officer Tedder of the Richmond
16 Bureau of Police had made the initial stop of the car?
17 A The Incident Report for the Henrico County Police was
18 initiated at 2355 hours, 11/29.
19 Q All right, and you became the investigating officer for the
20 armed robbery, is that correct?
21 A Yes, sir.
22 Q And the men were being kept in either a patrol car or
23 paddy wagon while the questioning was going on? They were
24 brought in one at a time to talk to you?
25 A Yes, sir.

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1 Q All right, and the first time Mr. Washington was brought
2 in, he denied knowing anything about the robbery, is that
3 correct?
4 A That's correct.
5 Q All right, and later on, he made this statement to you at
6 3:05 a.m.?
7 A Yes, sir.
8 MR. GEARY: All right. That's all the questions I
9 have, Judge. I'm prepared to argue the
10 motion.
11 THE COURT: All right.
12 MR. GEARY: Your Honor, there's some language in the
13 Miranda decision at 384 U.S. 436 that
14 indicates that whatever the restric-
15 tions are upon the police by the require-
16 ments of Miranda, it doesn't deal with
17 purely voluntary statements. However,
18 in this case, the question is whether
19 the Henrico police authorities had
20 the probable cause to have Mr. Wash-
21 ington under detention at the time,
22 at 3:05 in the morning when he made his
23 statement to Detective Harless. The
24 testimony has been from Officer Tedder
25 that the stop of the vehicle was made at

about 11:42 that evening. Officer Hill of the Henrico Police said that he arrested the five persons at 12:30 in the morning. There is no question that, based on what Officer Hill was told by Mr. Hawkins that he certainly had probable cause to arrest Mr. Fleming and Mr. Dinkins. Mr. Hawkins had made an identification of those two men as two of the three men who had committed the robbery. Mr. Hawkins testified that the robbery occurred between 9:30 and 10:00 that evening. Mr. Volley, I believe, testified that he thought the robbery took place between 9:00 and 9:30 that evening. When Officer Tedder had the men stopped, he indicated that an arrest was not made until Officer Hill arrived. Officer Hill arrived and made the arrest at 12:30. We have a period of 50 minutes where the men - these five persons were being detained. In Terry v. Ohio, 329 U.S. 1 (1968), a stop-and-frisk case, the Supreme Court indicated that a momentary detention for the purposes of making

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1 an investigatory or to make an investi-
2 gation is permissible. That was based
3 on an earlier Supreme Court decision,
4 Rios v. United States. Clearly, that
5 gives the police authority to stop motor
6 vehicles to make investigation into
7 possible criminal activity. In this case,
8 the stop occurred for 50 minutes before
9 an arrest was made and the statement from
10 Mr. Washington took place three hours
11 and twenty-five minutes after Officer
12 Tedder of the Richmond Bureau of Police
13 made the initial detention, and the
14 question is whether or not Officer Hill
15 had probable cause to make the arrest of
16 Mr. Washington. I think it significant
17 that he indicated that he was making the
18 arrest for purposes of possible armed
19 robbery. They clearly had two very good,
20 very bona-fide suspects, a Mr. Fleming
21 and Mr. Dinkins. In terms of the other
22 three men, they had a car that was being
23 driven by Mr. Washington some two, two
24 and a half hours after this robbery had
25 been committed. Officer Hill testified

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1 that the only basis upon which he
2 arrested the other three men was that
3 there was an inconsistency in the state-
4 ments that they made - the men made as
5 to where they were coming from. That
6 two of them had said from Fulton and one
7 had said from the Convenient Food Market.
8 I would draw the Court's attention to
9 Wong Song v. United States, which is at
10 83 Sup.Ct. 407, Patty v. Commonwealth,
11 which was decided this past June by the
12 Virginia Supreme Court at 218 Va. 150.
13 Both of those cases deal initially with
14 the question of what a police officer
15 can do in the absence of a warrant to
16 make a felony arrest. Both courts agree
17 that the arrest has got to be made on the
18 basis of probable cause. In Patty, they
19 deal extensively with the facts in that
20 case. They had information from three
21 citizen informers and the observations of
22 a police officer. The Court concluded
23 in that case that there was probable
24 cause. In Wong Song, the famous fruit-
25 of-the-poisonous-tree case, the Supreme

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1 Court laid - the United States Supreme
2 Court - laid the guidelines for a war-
3 rantless felony arrest by a police
4 officer. And of course, the Court is
5 aware that mere suspicion will not suffice
6 for a felony arrest in the absence of a
7 warrant, that there has to be more and it
8 doesn't have to be sufficient to get a
9 conviction in a court of record beyond a
10 reasonable doubt, but it has to be much
11 more than mere suspicion. The Supreme
12 Court, in that case, and the Virginia
13 Supreme Court, in other cases, have
14 indicated that one of the ways a Circuit
15 Court can answer the question is by
16 asking whether or not the officer could
17 have had gotten a warrant for the arrest
18 based on the information he used to
19 arrest without warrant, and the question
20 is, with the information that Officer
21 Hill knew at 12:30 a.m., could he have
22 gone to a magistrate and gotten a warrant
23 for the arrest of the other three men in
24 the car? And quite clearly, your Honor,
25 I think the answer is "No". There was

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1 suspicion that two hours prior to that
2 when a robbery took place that the third
3 man would be in this car. They suspected,
4 Officer Hill suspected that that third
5 man was either Mr. Washington, Mr. Powell
6 or Mr. Davis, and I think quite clearly,
7 your Honor, there was no probable cause
8 for the arrest. Wong Song then teaches
9 that if there is no probable cause for
10 the arrest, any statement elicited
11 thereafter, even though it's consistent
12 with - it may be consistent with the
13 Miranda warnings, is not admissible
14 because it's a fruit of the poisonous
15 tree. But for the illegal arrest, there
16 would not have been any statement that
17 could be used in evidence. I believe
18 it's incumbent upon the Court's, par-
19 ticularly courts of record, your Honor,
20 in dealing with a situation like this,
21 you're called upon to deal with what some
22 newspapers called a "technicality". I
23 don't believe the right to be free from
24 a illegal arrest can be considered a
25 technicality. Justice Frankfurter, in

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his later years, was probably the most conservative man ever to sit upon the Supreme Court of the United States, who indicated that procedural rights are the glue which bind society together and give rise to our substantive rights. If there was an illegal arrest in this case, which I believe there was, then regardless of the innocence or guilt of the party being arrested, the statement that was made cannot be offered in evidence, and I would call upon the Court to follow the Supreme Court's decision in Wong Song and the Virginia Supreme Court's decision in Patty as to what the elements of probable cause are for an arrest and conclude here that the statement made at 3:05 in the morning to Detective Harless was the fruit of an illegal arrest and therefore not admissible against Mr. Washington.

THE COURT: All right, Mr. Nance.

MR. NANCE: If your Honor, please, of course, the cites as established and quoted by Mr. Geary are in fact, as his Honor knows,

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1 the classic cites in regard to probable
2 cause, the standards which the Supreme
3 Court and our own Supreme Court and all
4 the rest adhere to. What we're really
5 talking about is not really whether
6 there's probable cause, but what in fact
7 is probable cause under the totality of
8 the circumstances. The totality of the
9 circumstances has been, of course, recog-
10 nized and the Commonwealth, in cases like
11 Hollis v. Commonwealth, 216 Va. 874,
12 and Lawson v. Commonwealth, 217 Va. 354,
13 Williams v. Commonwealth, 208 Va. 724,
14 set out in the essence of what probable
15 cause was and it's simply this. Just
16 what should a reasonable and prudent man
17 under the circumstances that exist, not
18 the reasonable and prudent police officer,
19 not the reasonable and prudent magistrate,
20 just reasonable and prudent man, what
21 does he think under the totality of the
22 circumstances of sufficient cause, suf-
23 ficient facts to give rise and give
24 inference to warrant, to issue suspicion
25 that this person in fact participated in

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1 a crime such that an arrest warrant
2 could issue. We've got to look at the
3 totality of the circumstances here in
4 this case. We've got a detention albeit.
5 There's no - the Commonwealth never had
6 any argument about that. About Officer
7 Tedder, he responds to a scene. He knows
8 there's been a robbery. He knows there's
9 three armed men. He knows that robbery
10 occurred about 9:30 because he responded
11 himself to that very scene. At some
12 time, he talks to the victim. Sometime
13 later, about 11:42 in the evening, he's
14 stopped by that victim in the City of
15 Richmond, he says and he's learned from
16 that victim that "The people who robbed
17 me are in front of me in a car". Officer
18 Tedder starts out, stops that vehicle,
19 one of the persons in the vehicle gets
20 out and makes a furtive movement as if
21 he's trying to flee. Five people. He
22 knows that there are three involved at a
23 minimum. Officer Tedder stops that car
24 as he should have and detained the men as
25 he should have. He made some inquiries

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of them as he should have. He had a positive identification of two people known to be in Mr. Horace Jenkin-Hawkins' house at the time of the robbery. He knows that there is a third one and he asks of some individuals, and in particular the Defendant, "Where have you been?". "I've been at the Convenient Food Mart". Officer Tedder knows that that's an inconsistency and knows in fact that it's a lie because he's been at the Convenient Food Mart for some time and he hasn't - he saw the vehicle driven by the Defendant go right by there. He inquires of the other parties who are not identified by Mr. Hawkins and he inquires of them as to where they've been. Whatever their replies were, they were inconsistent with obviously what Mr. Washington had given. There's an overture later on when Mr. Hill comes, Officer Hill of Henrico, there's an overture made by him "What's goin' on?". He knows that two people were positively identified. He inquires. He gets the same inconsistencies.

1 He also makes some suggestion about "How
2 about lettin' me check out the trunk?"
3 Can't open the trunk, don't have the key.
4 And on those conditions, I think the
5 time span, shortly thereafter, we're not
6 talking about much more than two or three
7 hours at the most after the robbery,
8 we're talking about approximately 12 -
9 12 - I forget exactly what Officer Hill's
10 testimony was at the time, 12:30 I
11 believe he said he placed them under
12 arrest. Not much more than some 50
13 minutes after Officer Tedder had stopped
14 them. The totality of the circumstances
15 are on the evening shift like that out
16 there, these officers can't immediately
17 have people respond and check out the
18 statements of everybody. They've already
19 checked them out once since in his own
20 mind Officer Tedder knows Mr. Washington's
21 telling him a fabrication. He knows he's
22 looking for three people and he's got
23 five. He knows two of them are positively
24 identified and he knows there's a vehicle
25 there that they can't get in the trunk.

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1 Or Officer Hill does, and I submit what
2 does the reasonable and prudent man
3 think about those certain set of
4 circumstances because that's what
5 probable cause is measured on. If he
6 had probable cause, then any statement
7 after that, if it's done pursuant to the
8 Miranda warning, can be used against you,
9 just as we - the Commonwealth will
10 attempt to use it here. The totality
11 there, I think, is available for those
12 police officers. They can't sit out
13 there and run through a myriad of people.
14 Suppose there'd been a truckful? I don't
15 know. Could they have arrested all of
16 them? But what would the reasonable and
17 prudent man do? And I submit that the
18 reasonable and prudent man and the
19 reasonable and prudent police officer
20 did exactly what he had to do in this
21 case. We can surmise as to all sorts of
22 other actions here. Surely, they could
23 have arrested the two certain suspects
24 and taken them down there and tried to
25 get some information from them or maybe

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1 explored the case further, and they
2 could have released these three, but
3 they didn't do that. They knew some-
4 thing was afoul when this man told them
5 an inconsistency about where he had been.
6 Officer Tedder knew exactly where he
7 had been. He knew that he hadn't been
8 where he told him he was. So there was
9 something afoot. Call it suspicion.
10 Call it what you want, but pursuant to
11 that and the other totality of the
12 circumstances, the closeness in time,
13 the locked trunk or whatever, Officer
14 Hill placed them under arrest, and once
15 placed under arrest, they were taken
16 appropriately to headquarters and they
17 were interviewed and there, of course,
18 Mr. Washington made a statement which we
19 would offer into evidence. Thank you.
20 THE COURT: All right. Anything else, Mr. Geary?
21 MR. GEARY: Yes, your Honor. Mr. Nance made a state-
22 ment about what the police could have
23 done, this and that. I think that what
24 could have been done, your Honor, is what
25 should have been done. They had two good

1 suspects. They could have arrested them.
2 They had access to the car. They could
3 have inventory searched it or gotten a
4 search warrant for the car. Now, what
5 that would have turned up in regard to
6 Iran Washington, I don't know, since
7 there were three other people in the
8 car, but nevertheless, the question is,
9 was there probable cause to arrest them?
10 While the Commonwealth indicates that
11 the reasonable-and-prudent-man test;
12 both the Supreme Court of the United
13 States and Virginia have also indicated
14 that one way to measure the test is
15 whether they could have gotten a warrant
16 from the magistrate. Here again, we're
17 dealing with a lot of ambiguities.
18 Officer Hill and Officer Tedder in the
19 questions "Where have you been" "Where
20 are you coming from", they indicate two
21 said one thing and three said another.
22 There's no indication here as to what
23 probable cause that leads to. If a
24 question were gonna be asked of three
25 people who were standing outside as to

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1 where you would have been coming from
2 and they had been downstairs previously,
3 two people might say I was on the first
4 floor, one might say I was on the second
5 floor. It doesn't show any inconsis-
6 tency until there are further questions
7 asked. Now, some of the responses here
8 that said "We were in Fulton". That
9 could easily mean that they were driving
10 around in Fulton. One of the responses
11 was that "We were at the Convenient
12 Food Store". That could have been the
13 last place that was stopped at. That
14 could have been done an hour, an hour
15 and a half before that time. So, the
16 observations of Officer Tedder that he
17 had been at Convenient Food Market and
18 hadn't seen that car there and the car
19 hadn't been there really doesn't tell
20 you anything. The - what the Commonwealth
21 has to show and what they have not shown here
22 is the probable cause that points out one
23 person more than the other two. There's
24 nothing here - they can't make a grand
25 scale arrest of possible subjects to

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1 winnow out who the third man in a
2 robbery is. They had no, absolutely no,
3 probable cause. Granted they had sus-
4 picion. With the identification by Mr.
5 Hawkins that they were suspicious that
6 one of the other three men in the car
7 was the one who was involved in the
8 robbery. Now, the Commonwealth also has
9 the problem of what counsel has objected
10 to earlier and that is the issue of
11 whether or not both Officer Tedder and
12 Officer Hill had to advise them then of
13 their Miranda warnings before they tried
14 to elicit these statements. Officer Hill
15 testified that he was not trying to get
16 any incriminating statement from the men
17 yet he offered that very incriminating
18 statement that they made which he termed
19 incriminating as a basis of his probable
20 cause arrest, and I don't believe the
21 Commonwealth can have it both ways. They
22 can't talk to men who are being detained,
23 and at the time Officer Hill talked to
24 them, they had been detained for 50
25 minutes. It was well beyond the Terry v.

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1 Ohio stop-and-frisk momentary investi-
2 gatory stage. They were being detained.
3 Officer Tedder said he was detaining
4 them until Henrico decided what they
5 were gonna do, and we submit that the
6 Commonwealth, one, cannot use those state-
7 ments that were made at the scene be-
8 cause no Miranda warnings were given.
9 Secondly, even if the questions and
10 answers were proper, that the answers
11 given do not rise to the level of
12 probable cause to arrest the three men.
13 Not just one, they arrested three men
14 as the third man in the robbery. They
15 had no evidence whatsoever that there
16 were more than three men involved. Mr.
17 Hawkins told them three men. They had
18 nothing whatever to think that there
19 were more than three men involved in the
20 robbery.
21 THE COURT: All right, gentlemen. I'll take a short
22 recess. I'll be back there. You may
23 step down from the witness stand.
24 (COURT RECESSED)
25 All right. We're returned to the court-

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room after another recess. The same parties are present as heretofore are the Assistant Commonwealth Attorney, Mr. Nance, defense counsel, Mr. Geary and the defendant himself. One of the possible advantages of being on the bench for a while, say 21 years, is that you see a great change here and there as to attitudes of various courts, including the Supreme Court of the United States. Of course, there was a time in my own personal view when the Warren - so-called Warren - Court went absolutely haywire on every criminal's rights, and, whether or not poor citizens had any rights at all, it was certainly almost obscure. And then we come, of course, fortunately to a change in the consistency of that Court so that under the Burger Court, we've had a decided shift back to decisions which show a good deal more reasonableness from the standpoint of trial judges who see these things in action every day and certainly reasonableness from the standpoint of the people

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1 in the community who previously used to
2 accost judges at church or in the
3 neighborhood and say "How in God's name
4 could they reach that decision to let
5 that person off?". So, we, of course,
6 likewise have been extremely fortunate
7 in Virginia in having a very perceptive
8 and conservative Court and perhaps one
9 of the better questions of the whole
10 thing is in Lawson v. Commonwealth, at
11 217 Va. 354, where in effect they are
12 really quoting from Hollis in 216 Va.
13 876-77. Now, from the evidence which
14 in accord with familiar principles is -
15 "We have viewed in a light most favorable
16 to the Commonwealth, this being a motion
17 to suppress, that the burden really almost
18 shifts to the Defendant. We conclude
19 that Cox's observation before he opened
20 the door of the Mustang was sufficient
21 to establish probable cause to search
22 the car for marijuana. As an articulated
23 legal standard, probable cause deals with
24 probabilities concerning the factual and
25 practical considerations in everyday life

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as perceived by reasonable and prudent persons. It is not predicated upon a clinical analysis supplied by legal technicians." My own paraphrase is that they are not looking back and saying in every case look back and get as technical as you possibly can and - on lawyers' knowledge and so forth and so on and try to make the everyday, hard-working policeman a genius in knowing exactly which way to go in every case of investigation. As a matter of fact, quoting from - after quoting from several cases, including Schaum v. Commonwealth, 215 Va. 498, in determining whether probable cause exists, it goes on in an opinion in Lawson v. Commonwealth, 217 Va. 358, the courts will test what the totality of the circumstances meant to police officers trained in analyzing the observed conduct for purposes of crime control, and in commenting there in the Lawson case, he also talked about the furtive conduct by the Defendant consistent with the actions of the

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1 officer. Now, in this case, it's right
2 unusual in two senses because the victims
3 in the house of the one named Horace
4 Hawkins, and Horace Hawkins placed the
5 time between 9:30 and 10:00 p.m. on
6 November 29, 1977, and the time frame
7 of that maybe lasting perhaps as much as
8 a half hour, he immediately gets the
9 word to the police, or the maintenance
10 man of the same apartment area gets the
11 word to the police. So, the police come
12 and talk to Horace Hawkins who gives
13 them all the background. Now, the back-
14 ground was given to City Officer S. G.
15 Tedder. Now let's make sure we get it
16 directed to this time, a little ole
17 matter that doesn't affect a lot of other
18 places, you know, about jurisdiction. A
19 lot of states where officers have just
20 continuing jurisdiction in one place
21 where it's called a county and another
22 place called a city. A number of states
23 are created that way and they - the
24 people overlap in one jurisdiction to the
25 other. Virginia is very clearly demarked

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1 that a county is entirely a separate
2 entity from a city and a city is an
3 entirely separate geographical entity
4 from a county and neither one fitting
5 into the other. Consequently, you get
6 into a jurisdictional situation here
7 when you get this line that goes around
8 that most all citizens don't know but
9 most officers become congruous of. When
10 Mr. Tedder gets into it and gets the
11 first report and so forth, then he finds
12 out that, after getting more detail, this
13 didn't even happen in the City of Richmond,
14 in which he is an officer and where his
15 duties are required to be used. So,
16 therefore, he calls the - in due course,
17 calls the County police people to come
18 into the picture and there you have some
19 delays. Unfortunately at the time, there
20 apparently wasn't anybody on active night
21 duty for robbery purposes. He had to
22 call a particular detective at home evidently and
23 wake him up and get him out on the scene,
24 all of which is sort of hard to under-
25 stand why they didn't put him on full-time

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1 duty for major offenses, but there is
2 all this time lag to which defense
3 counsel referred as being so vital and so
4 necessary and of course, from the juris-
5 dictional standpoint, it was necessary.
6 In other words, Mr. Tedder, of the City
7 Police, didn't have jurisdiction one to
8 be investigating anything in the County
9 of Henrico, so as a customary thing that's
10 existed for years and years, he notifies
11 the Henrico Police who in turn wake up
12 the detective and get him to come over,
13 who likewise gets the information. So
14 that delay is hardly pertinent at all and
15 is readily explainable by necessity of
16 jurisdictional authority to even do any-
17 thing, and then oddly enough, as it turns
18 out, once Horace Hawkins, who doesn't
19 want to be just an idle, silent victim
20 and do nothing, gets to thinking about
21 it and gets to talking to his friends
22 and he finds out people and he finds out
23 that he remembered a couple of names were
24 exchanged by these two - by these three
25 men that came into the house and they put

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1 it together and they begin to figure out
2 who they are. So, Hawkins gets in an
3 automobile with the two friends who were
4 able to identify these two characters
5 named Lorenzo and Claude and they go to
6 their house and they're not there, and
7 they go somewhere else, and then lo and
8 behold, by pure chance, they're riding
9 down the road and here comes a car, and
10 it is the second car ahead of 'em. And
11 there's one car between the car driven
12 by Washington and Horace Hawkins and his
13 two people who know these other people
14 and the officer, by strange coincidence,
15 Mr. Tedder, is following Hawkins' car,
16 and they all get caught on a light, and
17 Hawkins immediately jumps out, very
18 wisely and a whole lot more astutely
19 than most citizens would and says to the
20 officer, "There's the car with a couple
21 of 'em in it". So, he pulls the car up
22 and stops it and lo and behold, who's
23 drivin'? The Defendant. Now, I don't
24 think we need to bother with petty things
25 about whether or not they asked the guy

1 where he'd been and he said he came back
2 by some Convenient Market on Moseby
3 Street or whether he came from Fulton,
4 I think that's relatively immaterial and
5 I'd disregard it. And he also said it
6 took him two - Officer Tedder said - it
7 took him two blocks to get this car
8 stopped. All right, and then when he
9 got out, one guy wanted to shove off,
10 and he said, "Uh-uh. I've got the gun on
11 you. You go, I'm gonna shoot your head
12 off." And then he made them all get out
13 and put their hands on the top of the
14 cars and spread their feet, spread-eagle,
15 and then he calls Hawkins up, and Hawkins
16 says, "Yes, sir, there are two of them."
17 Now, are we gonna put an officer to the
18 stage where he's got to be the genius,
19 that he can't follow through on what a
20 normal human being and an officer, in the
21 course of his duty, should do rather than
22 subject him to a clinical analysis ap-
23 plied by legal technicians or whether we
24 are gonna allow him under the total cir-
25 cumstances to act as a reasonable police

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1 officer in saying "These people are in-
2 volved, and this one particularly that's
3 driving." The other two and one of the
4 two, Claude or Lorenzo, is sitting up on
5 the passenger seat. What could be more
6 logical? I would be, as a citizen, be
7 very much upset if I thought that the
8 officer would say, "Oh, let's forget
9 about these characters. You know, maybe
10 they were just driving down the street."
11 And all within a very close time frame
12 from the time that the three men left
13 the house, rushed out, shooting the gun
14 once more, as they took everything out
15 of the house. So, I overrule this
16 motion to suppress without any basis for
17 it for the reason stated for the record
18 and now I recall the officer to complete
19 the evidence. I might add that also,
20 that in reading 218, 150 I find nothing
21 in that case that in any way restricts
22 the Court's previous statement in the
23 reliance on Lawson and Hollis cases
24 in 217 and 216. All right.
25 REDIRECT EXAMINATION: Detective Harless by Mr. Nance

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1 Q Detective Harless, you have previously been sworn and
2 identified yourself and stated to the Court that you had
3 an occasion to interview the Defendant with regard to the
4 alleged robbery of Mr. Horace C. Hawkins, did you not, sir?
5 A Yes, sir.
6 Q And in regard to that, the Defendant executed a Rights'
7 Waiver, did he not?
8 A Yes, sir, he did.
9 Q And again, what time was that, sir?
10 A 3:05 a.m. on the 30th day of November, 1977.
11 Q Pursuant to that Rights' Waiver, did he make a statement
12 involving his actions, if any, in the alleged robbery?
13 A Yes, sir, he did.
14 Q What was that statement, sir?
15 MR. GEARY: Judge, before he begins, I want to note
16 my continuing objection to the state-
17 ment.
18 THE COURT: Yes, sir.
19 A "I, Iran James Washington, was with Claude and Yogi on
20 11/29/77. We were in Butch's momma's car. We went over
21 on North 23rd Street, and Yogi knocked on the door. The
22 guy opened the door, and I told the dude to get on the
23 floor. I had a single-shot rifle, Claude had a single-shot
24 rifle and Yogi had a pistol. Two dudes got on the floor
25 and either Claude or Yogi's gun went off. One of the dudes

1 MR. NANCE: Yes, sir.
2 THE COURT: Okay -
3 Q The television set that you described, Officer Harless,
4 what happened to that, sir?
5 A That was also - the pictures were taken of it and it was
6 notarized, the picture, and it was given back to the owner.
7 Q And those items were all - the pistol, a receiver and the
8 television set, were they subsequently identified by any
9 person?
10 A Yes, sir. They were identified by the owner, the victim,
11 Horace Hawkins.
12 MR. NANCE: Thank you, sir. That's all I have of
13 this witness, Your Honor.
14 RE-CROSS EXAMINATION: Detective Harless by Mr. Geary
15 Q Detective Harless, did you indicate that you responded to
16 the scene or did you go to the police station when you got
17 the call?
18 A I got the call at 15 after - minutes after midnight at my
19 residence. I responded to headquarters. I was advised to
20 stay at headquarters that the officers were en route.
21 Q All right. Are you familiar with the area of Fairfield
22 Avenue and Mechanicsville Turnpike?
23 A Yes, sir, I am.
24 Q All right. You, at some time, have been in the patrol
25 division in the Henrico Bureau of Police?

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1 A Yes, sir, but that is located in the City.
2 Q Would you say it's within a half mile of the County line?
3 A Somewhere -
4 Q It's very close to the County line, isn't it?
5 A Somewhere in that area, yes, sir.
6 Q It's within a half mile of the County line?
7 A Half a mile to a mile, somewhere around that area, sir.
8 Q The statement that you read into evidence from Mr. Washington,
9 at the time he made that statement, was he in a room with
10 someone else and then came out and talked to you? Who was
11 he with before he made the statement to you? Was he with
12 Powell or Davis?
13 A I believe he was with Powell, sir.
14 Q All right -
15 A Or Pollard, excuse me.
16 Q The names we got of the other two persons that were arrested were
17 Davis and you say the other one should have been Pollard,
18 not Powell?
19 A Yes, sir. The name given at that date, he gave the name
20 Powell, but it was later found out that his name was Pollard.
21 Q All right. So this Powell/Pollard person and the Davis
22 person were also still in custody when Mr. Washington made
23 the statement to you, is that correct?
24 A Yes, sir.
25 Q Now, had you indicated to him prior to his making the state-

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1 ment to you that you had the three persons you were gonna
2 place under - that you were gonna charge with the armed
3 robbery?
4 A Excuse me, sir?
5 Q Prior to his making the statement to you, the statement that
6 you read to the Court, had you informed him that you had
7 the three people who you were going to charge with the
8 armed robbery? Wasn't Davis the third person that was
9 gonna be charged?
10 A Yes, sir.
11 Q And that was because Davis's mother's car was the one
12 involved in the robbery, isn't that correct?
13 A Yes, sir.
14 Q All right. Then when you told him that Davis was going to
15 be charged, that's when he told you, "No, don't charge him,
16 I'll make a statement", isn't that correct?
17 A Ah, it was something similar to that, yes, sir.
18 MR. GEARY: Judge, at this point, I'm going to renew
19 my motion. I think it's quite clear what
20 happened. They were about to arrest the
21 wrong suspect; but for my client coming
22 forward and making a statement, he would
23 have been let go at that time. And if
24 there was an illegal arrest as we contend,
25 then that illegal arrest caused him to

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1 make the statement.
2 THE COURT: The Court takes the same position.
3 Overruled. He had the advice of the
4 Miranda rights twice read to him now.
5 Once at the scene by the officer and
6 again by this officer.
7 Q Just let me make one point clear. There's no question in
8 your mind that the intersection and just East of the inter-
9 section of Mechanicsville Turnpike and Fairfield Avenue is
10 located less than one mile from the Henrico County line?
11 A Approximately around one mile, yes, sir.
12 Q Well, can I get you to be more definite?
13 A No, sir.
14 Q Is there any question in your mind that it's less or more
15 than a mile?
16 A No, sir. I couldn't say, I -
17 Q It's in the vicinity -
18 A I've been through the area, but as far as saying in Court
19 how far distance-wise, I couldn't do it.
20 Q It's in the vicinity of one mile?
21 A Somewhere in that area, yes, sir.
22 MR. GEARY: I have no further questions.
23 THE COURT: All right.
24 MR. NANCE: No further questions, Your Honor.
25 THE COURT: All right, step down, please.

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Judge Hening

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

February 9, 1978

COMMONWEALTH

V

IRAN JAMES WASHINGTON

ORDER - CASES NO. 77F616 and 77F617

This day came the attorney for the Commonwealth, and Iran James Washington, age 20, born December 3, 1957, who stands indicted for two felonies, to-wit: robbery, in Case No. 77F616, and using or displaying a firearm in a threatening manner while committing a felony, to-wit: robbery, in Case No. 77F617, (Virginia Code Sections 18.2-58 and 18.2-53.1, respectively) appeared according to the condition of his recognizance, and came also Robert Geary, Esquire, his attorney, heretofore appointed.

Whereupon, the accused was arraigned and, after private consultation with his attorney, pleaded not guilty to each of the indictments, which pleas were tendered by the accused in person. Thereupon, after having been advised first by his attorney and by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by jury, and, with the concurrence of the attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the cases without the intervention of a jury, as provided by law. After having heard a portion of the Commonwealth's evidence, the Court heard the argument of counsel on the written Motion to Suppress, which was filed on January 26, 1978, and after having heard the arguments of counsel, the Court overruled said motion. The evidence of the Commonwealth having been heard, the attorney for the accused renewed his motion to suppress, and moved the Court to strike the Commonwealth's evidence, which motions the Court overruled. And all of the evidence and argument of counsel having been heard, the Court finds the defendant guilty of robbery in Case No. 77F616 and guilty of using or attempting to use or display a firearm in a threatening manner while committing a felony, to-wit: robbery, in Case No. 77F617, (Virginia Code Sections 18.2-58 and 18.2-53.1, respectively), as charged in each indictment.

The Court, on its own motion, before fixing punishment or imposing sentence, directs the Probation Officer of this Court to investigate thoroughly, and report to

(over)

Entered - February 9, 1978

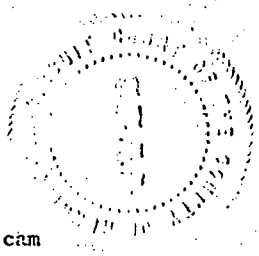
17

the Court, as provided by law, on the 17th day of March, 1978, and a hearing on the sentence to be imposed is set for the 22nd day of March, 1978, at 9:00 o'clock a.m., to which time these cases are continued.

The Court certifies that at all times during the trial of these cases the defendant was present in person and his attorney was likewise present in person and capably represented him.

The defendant is committed to jail, pending the receipt of the presentence report and sentencing hearing.

Entry



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A COPY TESTE:
MARGARET B. BAKER, CLERK
BY Brenda C. Jackson
Deputy Clerk

A COPY TESTE:
MARGARET B. BAKER, CLERK
Margaret B. Baker
CLERK

Judge Hening

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

March 22, 1978

COMMONWEALTH

V

IRAN JAMES WASHINGTON

ORDER - CASES NOS. 77F616 and 77F617

This day came again the attorney for the Commonwealth, and Iran James Washington, age 20, born December 3, 1957, who stands convicted for two felonies, to-wit: robbery, in Case No. 77F616, and using or displaying a firearm in a threatening manner while committing a felony, to-wit: robbery, in Case No. 77F617, (Virginia Code Sections 18.2-58 and 18.2-53.1, respectively) as charged in the indictments was again led to the bar in the custody of the jailer of this Court, and came also Robert P. Geary, his attorney heretofore appointed.

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

Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in these cases.

Whereupon the Court taking into consideration all of the evidence in these cases, the report of the Probation Officer, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged

(over)

Entered - March 22, 1978

25

in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced in Case No. 77F616 to confinement in the penitentiary of the Commonwealth of Virginia for the term of fifteen (15) years, with eight (8) years suspended on good behavior for life, ~~and~~ with sixty-seven (67) days credit for the time spent in jail awaiting trial and sentencing, and it is also accordingly the judgment of this Court that the defendant is hereby sentenced in Case No. 77F617 to confinement in the penitentiary of the Commonwealth of Virginia for the term of one (1) year. And it is ordered that the Commonwealth of Virginia do recover against the said defendant its costs by it about its prosecution in this behalf in the amount of $158.00.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise present and capably represented the defendant for which services he is allowed an attorney's fee of $ 225.00 in Case 77F616 and 100 in Case 77F617

And the defendant is remanded to jail to await transfer to the penitnetiary.

A COPY TESTE:
MARGARET B. BAKER, CLERK
Beverly C. Carson
Deputy Clerk

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A COPY TESTE:
MARGARET B. BAKER, CLERK
Margaret B. Baker
CLERK

26

ASSIGNMENT OF ERROR

Defendant's inculpatory statement should not have been admitted into evidence as it was the product of an illegal arrest (as it appears in the Petition for Appeal).