CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 800929

LARRY HUGH HAMBY,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

JOINT APPENDIX

J. D. Morefield, Esquire
Browning, Morefield, Schelin
and Arrington, P.C.
200 East Main Street
Abingdon, Virginia 24210

Counsel for Appellant

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Assistant Attorney General
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Richmond, Virginia 23219

Counsel for Appellee

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

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Indictment for

Distribute Controlled Substance

The grand jury charges that Larry Hugh Hamby

on or about the 7th day of June, 19 79, in the County of Washington, Virginia, in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did possess with intent to sell, give or distribute Cocaine, listed and included in Section 54-514.86.6 of the Code of Virginia, 1950, as amended, as a Schedule II controlled substance.

Witnesses: ~~Tpr. T. J. Bolling, VSP.~~

Sp Agent - C. G. Wyatt

A True Bill.

Case No. 10-79-16

W. R. Cox
Foreman

October 9, 1979
(date)

Commonwealth of Virginia
Department of General Services
Division of Consolidated Laboratory Services
BUREAU OF FORENSIC SCIENCE

CERTIFICATE OF ANALYSIS
June 20, 1979

Western Laboratory
920 S. Jefferson Street
Room #219
Roanoke, Virginia 24016

Tel. No. (703) 982-7192

D: Virginia State Police
Box 98
Abingdon, VA 24210

RE: DRUG ANALYSIS

Attention: T.J. Boll

WASHINGTON COUNTY COURT
FILED
7-2-79
DATE
Joyce J. Wright
Deputy CLERK

Your Case # ---

FS Lab # 78W4618

Victim(s): ---

Examiner: Cheryl Metzler

Suspect(s): CROTTS, Hobart Junior
HAMBY, Larry Hugh

Date Received 6/11/79

Evidence Submitted By: Certified Mail #583882

DESCRIPTION OF SAMPLE:

One (1) large sealed yellow envelope which contained the following items:

Item #1 One (1) sealed white envelope which contained one (1) clear plastic bag which contained a white powder.

Item #2 One (1) sealed yellow envelope which contained one (1) clear plastic bag which contained a white powder.

RESULTS:

Item #1 The white powder from the clear plastic bag was identified as containing Cocaine, a Schedule II controlled substance. Weight of sample submitted: 27.0 grams. Quantitive analysis revealed the Cocaine content of the white powder to be 23.5%.

COMMONWEALTH'S EXHIBIT #3

(Continued on Next Page)

FILED
October 9, 1979
Bobbie W. Keen
Dep. CLERK
CIRCUIT COURT
WASHINGTON COUNTY, VA.

IN FUTURE CORRESPONDENCE REFERENCE THIS MATTER PLEASE REFER TO THE FS LAB # ABOVE

HCLS FS 006-W (REV. 5-78) A COPY * TESTE: Bobbie W. Keen, Deputy, Clerk

Item #2 The white powder from the clear plastic bag was identified as containing Cocaine, a Schedule II controlled substance.
Weight of sample submitted: 27.3 grams.
Quantitive analysis revealed the Cocaine content of the white powder to be 24.4%.

CM/ph

Cheryl Metzler
Chemist

OF VIRGINIA
COUNTY OF Roanoke, to-wit:

This day personally appeared before me, Carol M. Moseley, a notary public, in and for said city/county in the Commonwealth and Cheryl Metzler, who signed the foregoing Certificate of Analysis, before me, and after being duly sworn, made oath that he performed the analysis and/or examination the results of which are herein contained, (2) that said analysis and/or examination was performed in a laboratory operated by Division of Consolidated Laboratory Services of the Commonwealth or authorized by such Division to conduct such analysis and/or examination and (3) that this Certificate of Analysis is true and correct.

Given under my hand this 20 day of June, 19 79.

Carol M. Moseley Notary Public

My commission expires June 19, 19 82

Page 2 Of 2

DCS 007AP (REV. 7-74)

Commonwealth of Virginia
Department of General Services
Division of Consolidated Laboratory Services
BUREAU OF FORENSIC SCIENCE

CERTIFICATE OF ANALYSIS
June 20, 1979

Western Laboratory
920 S. Jefferson Street
Room #219
Roanoke, Virginia 24016

Tel. No. (703) 982-7192

D: Virginia State Police
Box 98
Abingdon, VA 24210

Attention: T.J. Bolling

RE: DRUG ANALYSIS

WASHINGTON COUNTY COURT
FILED
7-2-79
DATE
Joyce J. Wright
D.C. CLERK

our Case # ---

ictim(s): ---

FS Lab # 78W4618

Examiner: Cheryl Metzler

Suspect(s): CROTTS, Hobart Junior
HAMBY, Larry Hugh

Date Received 6/11/79

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COMMONWEALTH'S EXHIBIT #4

(Continued on Next Page)

FILED
October 9, 1979
Belvie N. Keen
Dep. CLERK
CIRCUIT COURT
WASHINGTON COUNTY, VA.

IN FUTURE CORRESPONDENCE REFERENCE THIS MATTER PLEASE REFER TO THE FS LAB # ABOVE.

CLS FS 006-W (REV. 5-78)

A COPY * TESTE: Belvie N. Keen, Deputy, Clerk

tem #2

The white powder from the clear plastic bag was identified as containing Cocaine, a Schedule II controlled substance.
Weight of sample submitted: 27.3 grams.
Quantitive analysis revealed the Cocaine content of the white powder to be 24.4%.

CM/ph

Cheryl Metzler
Chemist

: OF VIRGINIA
COUNTY OF Roanoke, to-wit:

THIS day personally appeared before me, Carol M. Moseley, a notary public, in and for said city/county in the Commonwealth ginia, Cheryl Metzler, who signed the foregoing Certificate of Analysis, before me, and after being duly sworn, made oath at he performed the analysis and/or examination the results of which are herein contained, (2) that said analysis and/or examination was performed in a laboratory operated e Division of Consolidated Laboratory Services of the Commonwealth or authorized by such Division to conduct such analysis and/or examination and (3) that this Certificate of ysis is true and correct.

Given under my hand this 20 day of June, 19 79.

Carol M. Moseley Notary Public

My commission expires June 19, 19 82

Page 2 Of 2

S FS 007AP (REV. 7-74)

FILED

JAN 25 1980

Deputy CLERK
CIRCUIT COURT
WASHINGTON COUNTY, VA.

MOTION

Comes now your defendant, Larry Hamby, by counsel, and hereby moves the Court to suppress as evidence against him in any criminal proceeding, which evidence was unlawfully seized by undercover Virginia State Troopers and other persons unknown to him on or about June 7, 1979.

Larry Hamby, by counsel, states that said evidence was unlawfully seized as a result of an unlawful search in violation of the Constitution of the United States of America and the Constitution of the State of Virginia.

Said evidence which is being requested to be suppressed is alleged to be two (2) packets or containers allegedly containing cocaine, pursuant to Certificate of Analysis filed in the above-styled matter now pending before this Court.

LARRY HAMBY

By Counsel

BROWNING, MOREFIELD, SCHELIN, CODY
& ARRINGTON, P. C.
200 East Main Street
Abingdon, Virginia

By _____
J. D. MOREFIELD
COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I, J. D. Morefield, counsel for Larry Hamby, do hereby certify that I have this day mailed a true copy of the foregoing Motion to Daniel M. Hall, Esq., Commonwealth's Attorney, 120 Court Street, S. E., Abingdon, Virginia.

This 25th day of January, 1980.

J. D. MOREFIELD

400-LL-64

VIRGINIA: IN THE CIRCUIT COURT OF WASHINGTON COUNTY

COMMONWEALTH V. LARRY HUGH HAMBY AND COMMONWEALTH V. HOBART JR. CROTTS	)	A FELONY: POSSESS, WITH INTENT TO DISTRIBUTE COCAINE, A SCHEDULE II CONTROLLED SUBSTANCE

TRANSCRIPT OF TRIAL

Reported by: Ms. Jo Crewey
Court Reporter
Route 2, Box 128
Marion, Virginia 24354

APPEARANCES:

Daniel Hall, Attorney for the Commonwealth

J. D. Morefield, Attorney for defendant Larry Hugh Hamby

Howard McElroy, Attorney for defendant Hobart Jr. Crotts

Larry Hugh Hamby, in person and by his counsel

Hobart Jr. Crotts, in person and by his counsel

T. K. Bolling

D. F. Dean

Cecil G. Wyatt

Cheryl Metzler

I N D E X

	Dr.	Cr.	Redr.	Recr.
T. K. Bolling	8	15	17	
Recalled	40			
D. F. Dean	18	24		
Recalled	45			
Cecil G. Wyatt	29	35	39	
Cheryl Metzler	56			

E X H I B I T S

Commonwealth Exhibit #1, Certified mail receipt	P 13
Commonwealth Exhibit #2, Return mail receipt	P 13
Commonwealth Exhibit #3, Certificate of analysis	P 13
Commonwealth Exhibit #4, Certificate of analysis	P 43

This matter came on to be heard on Monday, January 28th, 1980, before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia.

Mrs. Jo Crewey, Court Reporter, was duly sworn in the manner prescribed by law.

THE COURT: The first matter on the docket is Commonwealth v. Larry Hugh Hamby, are you ready for the Commonwealth?

DANIEL HALL: We're ready for the Commonwealth.

J. D. MOREFIELD: Your Honor, Mr. McElroy represents Mr. Crotts and it is a companion case. We would like to try these together.

THE COURT: I have no objection. Do you have any objection?

DANIEL HALL: To trying the cases together?

THE COURT: Yes.

DANIEL HALL: No.

THE COURT: Are you ready in Commonwealth v. Hamby?

J. D. MOREFIELD: Yes sir.

THE COURT: Alright, have Mr. Hamby come around. Mr. Hamby, if you'll remain standing and give attention to the Court, please. (Reading) "Virginia, in the Circuit Court of Washington County. The Grand Jury charges that Larry Hugh Hamby on or about the 7th day of June, 1979, in the County of Washington, Virginia, in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did possess with intent to sell, give or distribute

cocaine, listed and included in Section 54-514.86.6, Code of Virginia, 1950, as amended, as a Schedule II Controlled Substance. A True Bill, W. R. Cox, Foreman".

Now, Mr. Hamby, your name is Larry Hugh Hamby?

A. Yes sir.

Q. And what is your age?

A. 42.

Q. And where do you live?

A. In North Carolina.

Q. And you are presently at large on bond?

A. Yes sir.

Q. And I believe I see here that the Court has heretofore appointed an attorney, Mr. Morefield, to represent you, is that correct?

A. Yes.

Q. And Mr. Morefield is presently representing you by appointment?

A. Yes sir.

Q. Alright, and has Mr. Morefield consulted with you in connection with the charge which the Court read to you?

A. Yes.

Q. And has he explained to you the seriousness of the charge and the possible punishment you could receive if convicted?

A. Yes sir.

Q. Has he explained to you and do you, yourself, understand you have a right to enter a plea of not guilty; to have a jury hear the evidence; the jury will

determine your guilt or innocence and the jury fix your punishment?

A. Yes sir.

Q. Do you also understand you have a right to enter a plea of not guilty and providing the Attorney for the Commonwealth and the Judge consent, you may enter a plea of not guilty; the Judge will hear the evidence; determine your guilt or innocence and fix your punishment?

A. Yes sir.

Q. Do you also understand you have a right to enter a plea of guilty?

A. Yes sir.

Q. Alright, in event you enter a plea of guilty, do you understand that the only appeal you will have from this Court is on the grounds that the Court makes a mistake as to the law as it applies to your case?

A. Yes sir.

Q. Do you have any complaints against Mr. Morefield and his representation of you?

A. No sir.

Q. Any complaints against the Sheriff's Department of Washington County; the State Police, or any other law enforcement agency of the Commonwealth of Virginia?

A. No sir.

Q. Are there any witnesses you desire present today who are not present?

A. No sir.

Q. Are you ready for trial at this time?

A. Yes sir.

Q. Alright, gentlemen, have there been any negotiations or plea bargaining in this matter?

A. There has not. (By J. D. Morefield).

Q. And what is your plea to the charge which the Court read to you?

HAMBY: Not guilty.

Q. Not guilty. Do you desire a trial by jury?

A. No sir.

Q. Alright, for the record, Mr. Hall, do you waive trial by jury and consent for the Court to hear it?

HALL: We do.

THE COURT: Alright, and for the record, the Court will hear this matter without a jury. Alright, your attorney indicated that there is a companion case of the Commonwealth v. Hobart Junior Crotts. Do you have any objection to the Court hearing the two cases together?

HAMBY: No sir.

THE COURT: Alright, you may be seated. Alright, in Commonwealth v. Hobart Junior Crotts, are you ready for the Commonwealth?

HALL: We're ready for the Commonwealth.

THE COURT: Mr. McElroy, are you ready?

HOWARD MCELROY: We're ready.

THE COURT: Alright, Mr. McElroy, you indicated that you desired to hear these two matters together?

HOWARD MCELROY: Yes sir, Your Honor.

THE COURT: Alright, Mr. Crotts, if you'll stand up and give attention to the Court. Do you have any objection to your case being heard with the case of Commonwealth v. Hamby?

A. No sir.

Q. Now, your correct name is Hobart Junior Crotts?

A. Yes sir.

Q. And where do you live?

A. Lexington, North Carolina.

Q. And you are presently at large on bond?

A. Yes sir.

Q. And I see here where the Court has heretofore appointed Mr. McElroy to represent you. Is he still representing you by that appointment or have you employed him?

A. Employed him.

Q. You have employed him?

A. Yes sir.

Q. Alright, and has he discussed this matter with you, the charge which....did I read the charge to him? I haven't, have I?

CROTTS: Beg pardon?

THE COURT: I didn't read the charge to you, did I?

CROTTS: No sir.

THE COURT: Alright, give attention to the Court for the charge, Mr. Crotts. (Reading) "Virginia: In the Circuit Court of Washington County. The Grand Jury charges that Hobart Junior Crotts on or about June

7, 1979, in the County of Washington, Virginia, in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did possess with intent to sell, give or distribute cocaine, listed and included in Section 54-514.86.6, Code of Virginia, 1950, as amended, as a Schedule II Controlled Substance, A True Bill, W. R. Cox, Foreman". Now, Mr. Crotts, how old are you?

A. 44.

Q. And you indicated you live in Lexington, North Carolina, and you are free on bond at this time and you have employed Mr. McElroy to represent you?

A. Yes sir.

Q. And has he discussed with you the charge which the Court read to you?

A. Yes sir.

Q. Has he explained to you the seriousness of this charge and the possible punishment you could receive if convicted?

A. Yes sir.

Q. Has he explained to you, and do you, yourself, understand you have a right to enter a plea of not guilty; to have a jury hear the evidence; the jury will determine your guilt or innocence and the jury will fix your punishment?

A. Yes sir.

Q. Do you also understand you have a right to enter a plea of not guilty and providing the Attorney for the

Commonwealth and the Judge agree, the Judge may hear the matter on a plea of not guilty, determine your guilt or innocence and fix your punishment?

A. Yes sir.

Q. Do you also understand you have a right to enter a plea of guilty?

A. Yes sir.

Q. In event you enter a plea of guilty, do you understand that the only appeal you will have from this Court is on the grounds that the Court makes a mistake as to the law as it applies to your case?

A. Yes sir.

Q. Do you have any complaints against Mr. McElroy and his representation of you?

A. No sir.

Q. Any complaints against the Sheriff's Department; the State Police Department, or any other law enforcement agency of the Commonwealth?

A. No sir.

Q. Are there any witnesses you desire present today who are not present?

A. No sir.

Q. Are you ready for trial at this time?

A. Yes sir.

Q. Have there been any negotiations or bargaining in this matter?

DANIEL HALL: No sir.

THE COURT: Is that correct, Mr. McElroy?

HOWARD MCELROY: That's correct, Your Honor.

THE COURT: Alright, and what is your plea to the charge which the Court read to you?

A. Not guilty.

Q. Alright, do you desire a jury trial?

A. No sir.

Q. You want the Court to hear it without a jury?

A. Yes sir.

Q. Alright, Mr. Commonwealth, do you agree that the Court hear it?

DANIEL HALL: Yes sir.

THE COURT: Alright, and for the record, the Court will agree to hear this matter without a jury. You may be seated.

(Thereupon, Howard McElroy requested that the rule be applied and all witnesses were sequestered).

J. D. MOREFIELD: Your Honor, we have a motion to suppress. Does the Court wish to hear us now, or how does the Court want to proceed on that?

HOWARD MCELROY: We would join in that motion.

THE COURT: Alright, since I'm hearing it without the jury, you may make your objections, and we'll hear it along with the evidence.

T. K. BOLLING,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: DANIEL HALL:

Q. For the record, Mr. Bolling, would you give us your full

name and your address and your occupation?

A. T. K. Bolling, I'm assigned to the Wytheville office of the Virginia State Police.

Q. What were your duties in June of 1979?

A. In June of 1979, I was assigned to the Division of Drugs, on special assignment to deal with narcotics.

Q. And in the course of your duties in June of 1979, did you have any transactions involving the defendants in this case...Mr. Hamby and Mr. Crotts?

A. I did not have any transactions personally with them. I got acquainted with them on June 7th, 1979.

Q. What did you do on that date involving the two defendants?

A. The first time I saw the two defendants on this day was approximately 4:00 P.M. I saw the two defendants on State Route 620, three miles North of Abingdon, near the old saw mill. The first time I saw these two defendants, both of them were laying on the ground with their faces down. At this particular time, I searched Mr. Crotts and I found what was alleged to be an ounce of cocaine on Mr. Crotts in his right front pants' pocket, on this day, along with $632.21 in cash. I also found $720.00 in cash in Mr. Crotts' left front pocket, and some checks and money orders in his billfold.

HOWARD MCELROY: Your Honor, I move that that evidence be suppressed for reasons that will appear on cross-examination.

THE COURT: Let the record show that these matters were set for trial some while ago and the defendant was

indicted on October 9th, 1979, and The Court was not aware that a motion for suppression had been made, and the reason the Court wasn't aware that a motion was pending, was because it was filed on January 25th, 1980, which was last Friday, the last work day before today.

DANIEL HALL: The Commonwealth has not been served with a copy of that motion, Your Honor.

THE COURT: You may not have received it yet, but I say that for the record.

HOWARD MCELROY: Your Honor, I refer the Court to the Rules which state that that motion can be made at any time during the trial.

THE COURT: Alright, but I just want the record to show that the Court was not advised of this, Mr. McElroy. Proceed, Mr. Hall.

BY: DANIEL HALL:

Q. Did you take any material from Mr. Crotts, other than the cash?

A. Not at this particular time, Sir.

Q. What happened after that? Did you place him under arrest?

A. He was placed under arrest at this time and taken to the jail here in Abingdon.

Q. Okay, was he warned of his rights?

A. Yes sir, he was.

Q. Where was he warned?

A. At the jail.

Q. Where?

A. No sir, I take that back. He was warned of his rights at the site of the old saw mill.

Q. Okay, did he say anything after being given his rights?

A. Mr. Crotts did not make any statements, no sir. Mr. Hamby did.

Q. Was he further searched at the jail?

A. Yes sir, to the best of my knowledge.

Q. And I believe you testified that you found an ounce of cocaine in his right front pocket....or an ounce of something in his right front pocket? Would you describe the item that you found?

A. A plastic bag containing a white powder material.

Q. What did you do with that plastic bag containing the white powder material?

A. I took this plastic bag with the white powder material along with another plastic bag of white powder material that Investigatory Wyatt gave me.....

J. D. MOREFIELD: .....I'm going to note my motion for suppression so that I'll save the point.

THE COURT: Alright. You may answer.

DANIEL HALL:

Q. What did you do with the bag containing the white powder material?

A. I sent this bag to the laboratory in Roanoke, which is the State Laboratory, by Certified Mail 583882.

Q. That is the certificate number?

A. Yes sir, by certified mail and I did receive a return

receipt on it.

Q. You have that return receipt?

A. Yes sir.

Q. Have you received a report of the examination of the material mailed to that laboratory?

A. Yes sir, I do.

Q. Do you have that certificate with you?

A. Yes sir, and a certificate has also been filed.

Q. Alright. May I have that certificate and the certified mail receipts? Did you file the certificate?

A. Yes sir, I did.

THE COURT: The record will show that the certificate was filed on October 7th, 1979, in the Clerk's Office of this Court.

DANIEL HALL: I would move at this time to have that certificate and the mailing receipts entered into evidence.

J. D. MOREFIELD: Judge, I would object to that at this time because of my motion to suppress....until the Court has ruled on my motion to suppress. This certificate is part of our motion to suppress and I don't think it is admissible at the present time until the Court has established that this material was analyzed according to the certificate under the laws and constitution of the State of Virginia.

THE COURT: Alright, the certificate for certified mail will be Exhibit #1; the return receipt will be Exhibit #2, and the certificate of analysis, filed in

the file will be Exhibit #2.

(Thereupon, Commonwealth Exhibits #1, #2, and #3, were marked for identification and filed).

THE COURT: They will be considered if the Court does not grant your motion to suppress.

BY: DANIEL HALL:

Q. You also received some material from Officer Wyatt?

A. Yes sir.

Q. Can you describe what that was?

A. The material I received was already in an envelope. I did not see the material personally.

Q. What did you do with that envelope.

J. D. MOREFIELD: Judge, I'm going to object to this too.

THE COURT: Objection sustained.

BY: DANIEL HALL:

Q. At the scene of the arrest, was this the first time that day you had seen the defendant?

A. yes sir, to the best of my knowledge, at least to where I recognized them.

Q. How did you arrive at the scene?

A. With Trooper Bellinger of the Virginia State Police, out of Bristol, in his vehicle.

Q. Where was the scene of arrest with relation to Abingdon?

A. Relation to what?

Q. Relation to the Town of Abingdon?

A. You go out Route 75, I believe it is Route 75, out by Hardy's; that would be going under the Interstate where Exit 8 is; you go out, I believe it is the second road

From where the Interstate is and take a right, and you go up that road until you pass a livestock market on your left, and you go on up and, I believe, you bear to your left and there is an old saw mill on the left hand side of the road.

Q. Could you state approximately how far this is from the Interstate?

A. Approximately three miles North of Abingdon.

Q. Which direction?

A. North of Abingdon, to the best of my knowledge. I'm not familiar with how North, East, South or West runs in Abingdon.

Q. But you went out Highway 75, under a bridge at Exit 8, and continued in that direction?

A. Yes sir, to the second road just a little ways past the Interstate and took a right.

Q. To the livestock market?

A. You go up by the livestock market.

Q. And what caused you to go in that direction on that day?

A. Some other members and myself were on surveillance and had the knowledge of the possibility of a drug transaction going down.

J. D. MOREFIELD: Judge, I'm going to object to any further testimony along this line.

THE COURT: He may state what he did.

BY: D. HALL:

Q. What information did you receive on this transaction?

J. D. MOREFIELD: I'm going to object to that too, Your Honor.

THE COURT: Objection sustained.

BY: D. HALL:

Q. Did you have personal knowledge of the transaction?

A. Not personal to myself, no sir.

Q. But you had been given certain information on that day?

A. Yes sir.

Q. What was your plan?

J. D. MOREFIELD: Judge, I'm going to object again. He's got to establish some kind of a .....

THE COURT: ...he may not quote anybody out of the presence of these people, Mr. Hall.

DANIEL HALL: No other questions.

CROSS EXAMINATION:

BY: J. D. MOREFIELD:

Q. Officer Bolling, you indicated on direct examination that when you first arrived at this scene, these two suspects that you identified sitting to my left here were laying face down?

A. Yes sir, the best I can recall.

Q. In relationship to their automobile, where were they laying face down?

A. The automobile was parked on the left hand side of the road; they would have been up in front of the vehicle and over to the left of it a little bit. It may not have been that far to the left.

Q. They were in front of their automobile?

A. Yes sir.

Q. Laying face down on the ground?

A. Yes sir.

Q. And in this prone position they were in, how far were they from being able to get into the automobile... say the car door, or having access to the automobile?

A. Just to guess a distance, maybe 25 feet, or close to that. I'm just guessing.

Q. That would be your estimate of their distance from their automobile to where they were laying down?

A. Yes sir, give or take a few feet either way.

Q. I don't have any other questions at this time, Your Honor. I'd like to reserve the right to recall Trooper Bolling.

CROSS EXAMINATION:

BY: HOWARD MCELROY:

Q. I have a couple of other questions. When you searched Mr. Crotts, Trooper Bolling, you didn't have a search warrant, did you?

A. No sir, I did not.

Q. Mr. Crotts did not consent to your search of him, did he?

A. I didn't ask him if he wanted to be searched or not.

Q. You didn't ask him and he didn't consent?

A. That's correct.

Q. Did you say, Trooper Bolling, that you made the arrest of Mr. Crotts?

A. I don't know if I was the one that told him he was

1 under arrest or not. It could have been Trooper
2 Dean. I'm not real sure.
3 Q. It could have been you that made the arrest, is that
4 right? You're not sure if it was you or Trooper Dean?
5 A. I'm not sure which one told him he was under arrest.
6 Q. Okay. When the arrest was made, what information did
you have to believe that he had committed a crime?
7 A. Okay, I was on surveillance on this day, and I.....
8 J. D. MOREFIELD: ...Judge, I'm going to object to that.
9 THE COURT: What did you arrest him for?
10 TROOPER BOLLING: Possession of cocaine with the intent to
11 distribute. I don't know if I'm the one who arrested
him or not.
12 HOWARD MCELROY: I would withdraw that question at this
13 time, Your Honor. I have no further questions.
14 REDIRECT EXAMINATION:
15 BY: DANIEL HALL:
16 Q. Trooper Bolling, when you arrived at the scene, there
17 was no doubt that the defendant was physically
restrained and was subject to arrest at that time,
18 and under arrest when you searched him?
19 A. They were physically restrained...
20 J. D. MOREFIELD: ....I'm going to object. He's asking
21 for a conclusion, Judge. I think that's a conclusion
22 that will have to be drawn by the Court.
23 THE COURT: Not whether they were under arrest or not.
24 J. D. MOREFIELD: If he knows.
25 HOWARD MCELROY: He's already testified to that, Your Honor.

DANIEL HALL: No other questions at this time.

D. F. DEAN,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: DANIEL HALL:

Q. Mr. Dean, would you give us your name, your address and your occupation?

A. D. F. Dean; I work out of the Wytheville office, and I am a State Trooper.

Q. What were your duties on June 7th, 1979?

A. I was working as a narcotics undercover agent with the Virginia State Police.

Q. And where were you on June 7th, 1979?

A. In Abingdon. I was in Abingdon, setting on Hardee's parking lot, which is in Abingdon, Virginia.

Q. Is that in Washington County?

A. Yes sir.

Q. And what did you see or hear with regard to the two defendants at that time?

A. I was setting at the parking lot and....

J. D. MOREFIELD: ...I'm going to object, Judge, unless he establishes some basis for having the opportunity to hear something.

THE COURT: He may tell what he observed, but what he heard is a different thing.

BY: DANIEL HALL:

Q. What did you observe or hear yourself at that stage?

J. D. MOREFIELD: I'm going to object unless he can

establish some basis for hearing it.

THE COURT: Mr. Hall, he may relate what he observed and any conversation with the defendant he may relate that, but if somebody else made a statement, this is not admissible.

TROOPER DEAN: I was setting at the Hardee's parking lot watching a vehicle parked across the road from me at Stuckey's parking lot. I was watching it and had it under observation and the subjects in this vehicle at this location. After approximately three minutes of watching this vehicle, another vehicle arrived and two gentlemen were in this vehicle. Both gentlemen got out of the vehicle; one went to the vehicle where the two participants that I was observing were; one of the gentlemen in this vehicle, the driver, got out and with the gentleman went to the side of Stuckey's; the other gentleman sitting at the end of the table here, went into a phone booth.

THE COURT: Do you know those people, and if you do, call them by name.

TROOPER DEAN: I only know them by their faces, Your Honor, not their names.

BY: DANIEL HALL:

Q. And which one went to the phone booth?

A. The gentleman at the end of the table here in the brown coat.

Q. And let the record show that he has gestured toward the defendant.

J. D. MOREFIELD: I'm going to object to that, Judge. Mr. Hall hasn't been sworn in.

THE COURT: The Court will indicate that he is gesturing toward the defendant Crotts at the end of the table and Mr. Hamby in the green jacket.

BY: DANIEL HALL:

Q. Now, again, who went to the rear of the building?

A. The gentleman in the green coat.

Q. He has been identified as Mr. Hamby?

A. Yes sir.

HOWARD MCELROY: I object, Your Honor, he doesn't know.

BY: DANIEL HALL:

Q. Who did he go to the rear of the building with, again, please?

A. The driver of the vehicle which I had under observation.

Q. And how long were they there...could you see them at the rear of the building?

A. No sir, they went out of my signt.

Q. And how long were they out of your sight?

A. Approximately ten minutes.

Q. Did they return?

A. Yes sir, they did.

Q. Okay. Approximately what time of day was this at the present time, or at the time all four of them were here?

A. It was approximately 3:00 P.M., in that neighborhood.

Q. Can you state why you had the first car under surveillance?

A. Yes sir, I can. The vehicle was under surveillance due to supposedly a drug transaction coming down...

J. D. MOREFIELD: ...I'm going to have to object to that, Judge. He hasn't established any basis about how he knows any drug transaction was coming down.

BY: DANIEL HALL:

Q. Were you provided any information on that transaction: just answer yes or no?

HOWARD MCELROY: I object, Your Honor, he has no information that...

THE COURT: He may answer that.

TROOPER DEAN: Yes sir, I did.

BY: DANIEL HALL:

Q. Who provided that information to you?

A. It was provided to me by Investigator Cecil Wyatt, who is my boss.

Q. Was your reason for being there to conduct the surveillance you were on that day?

A. Yes, that's correct.

Q. What was told to you about the drug transaction?

J. D. MOREFIELD: I'm going to object to that, Judge. It's hearsay.

THE COURT: Sustained.

BY: DANIEL HALL: May it please the Court, the more recent decisions in Virginia establish the fact that where it is not offerred for being the truth of the matter, but for the reasons something was done, it is admissible.

THE COURT: Objection sustained. You may proceed.

BY: DANIEL HALL:

Q. What happened immediately after the two people returned from the rear of the Stuckey building?

A. The two gentlemen that I had under observation started their vehicle; the other two gentlemen got into their vehicle; they then proceeded from Stuckey's parking lot and made a right turn and went under the Interstate and proceeded out of Abingdon.

Q. On what highway?

A. On Route 75.

Q. Okay. Were you at this time able to hear persons in either of the vehicles?

A. Yes, I was.

Q. Who were you able to hear?

A. One, the passenger, the reliable source.

Q. He was in the first vehicle you had under surveillance?

A. Yes sir.

Q. Did you hear anything from the time...what did you do after the two vehicles left?

A. After giving them time to get out of sight, I then proceeded to follow them.

Q. How were you able to hear the person in the first vehicle?

A. There was a bugging device on one of the persons in the vehicle.

Q. Were you able to hear anything from the time you left the Stuckey area until you made the arrest...the place of the arrest?

A. Yes sir.

Q. Did you know when the two vehicles stopped?

A. Yes, I did.

Q. How could you tell?

A. From the talk that was among the persons in the vehicle and the other car.

Q. Are you saying then that you could hear more persons than those in the first car?

A. Yes sir.

Q. Could you recognize any of the voices?

A. Yes sir.

Q. As a result of what you heard, what happened?

J. D. MOREFIELD: Judge, I'm going to object to that unless we know what he heard, and, of course, that would be hearsay.

THE COURT: He may tell what he did.

TROOPER DEAN: I followed them up...

DANIEL HALL: I'll withdraw that question. What did you hear?

J. D. MOREFIELD: That's hearsay, Judge.

BY: DANIEL HALL:

Q. I'll go back to the previous question. What did you do as a result of what you heard?

A. After I had heard what I did over the device, I then stated to the other members who were on this assignment with me to move in. Trooper Blevins and myself, who was with me, then proceeded to the location where these two vehicles were stopped. Upon arriving,

Trooper Blevins and I got out and identified ourselves, and I observed four males, the two gentlemen here as well as the two occupants of the other vehicle. I told the gentlemen to get to the ground, spread-eagle, which they did and I began to search the gentleman in the green coat and at this time, Trooper Bolling arrived and helped me with the search.

Q. Were there any other officers at the scene at that time?

A. Yes sir, there were several officers on the scene just after what I said happened.

Q. And who did you search?

A. I searched the gentleman in the green coat.

Q. Did you find anything?

A. No, I did not.

Q. Did you search the vehicle?

A. I did not.

Q. Do you know who searched the vehicle?

A. Mr. Wyatt, Investigator Wyatt did.

Q. Did you handle, or otherwise take care of taking into custody any of these people?

A. No sir.

Q. No other questions.

CROSS EXAMINATION:

BY: J. D. MOREFIELD:

Q. Trooper Dean, you say that when you arrived at the scene, that the two persons that you observed, that you identified as Mr. Hamby and Mr. Crotts and the two

other individuals that you recognized, one of whom would be the wired informant, all four of these individuals were outside of the automobiles, out standing in the road or beside the road?

A. Yes sir.

Q. Alright, were the car doors open or shut on the two vehicles involved?

A. To my recollection, they were shut.

Q. Okay, and you say..do you recall what kind of automobile Mr. Hamby and Mr. Crotts were driving?

A. It was a Ford.

Q. Do you recall what kind of automobile the other two subjects were driving?

A. It was a Lincoln.

Q. Okay, so the automobile the informant was in was a Lincoln, is that correct?

A. That's correct.

Q. Now, when you arrived, which automobile were they closest to, the Lincoln or the Ford?

A You're referring to...

A. ...yes, the four persons there?

A. They were...well, the two vehicles were still going in the same direction with the rear one...his front to the rear of the front one, and they were both facing in the same direction. They were to the left of these two vehicles, more to the center of the two vehicles.

Q. Okay, what you're saying is both cars were pulled off to the side of the road, heading in the same direction?

A. That's correct.

Q. And they were out of the automobiles and had met, more or less, in the center area, or between these two automobiles, is that what you're saying?

A. They were more to the left of the center of the two vehicles. They were not standing in between them, but to the left.

Q. To the left, but they had met about where the area between the two vehicles is, is that correct?

A. Yes sir, that's correct.

Q. Okay, do you recall which vehicle was in front and which vehicle was behind?

A. Yes, I do.

Q. Okay, which vehicle was parked in front?

A. The Lincoln.

Q. Okay, so that was the automobile that the informant was in, is that correct?

A. Yes sir.

Q. And then the Ford which the two defendants were in, they were parked behind that vehicle?

A. Yes sir.

Q. And you and Trooper Blevins, I believe, were the first two police officers on the scene, is that correct?

A. Yes sir.

Q. And you and Trooper Blevins, I believe, upon arriving, immediately ordered them to lie down on the ground?

A. Yes.

Q. How much distance was between the two vehicles?

A. Two feet approximately.

Q. And you stated that upon arriving there you searched the defendant that you identified as the gentleman in the green coat, who is Mr. Hamby?

A. That's correct.

Q. And you didn't find anything?

A. No, I did not.

Q. After searching Mr. Hamby, what did you do?

A. At the time I searched him, of course, Trooper Bolling was on the scene and he searched the other gentleman, and I observed what was taken from the other gentleman, and then they were placed under arrest.

Q. Well, did you put the cuffs on them there on the ground?

A. I don't know if they were placed on them on the ground or after they stood up. I think they were placed on the ground.

Q. And then you escorted them to your police cruiser.... your automobile, or.....

A. ...they were placed in a marked police vehicle.

Q. Okay. At that time, had, to your knowledge, had a search been conducted of the vehicle that the two defendants were riding in?

A. At the time they were placed in the car?

Q. Yes.

A. The search of the vehicle was made during placing them in the vehicle as well as when they were in the police vehicle.

Q. But after you arrived at the scene as you described it, these gentlemen did not have an opportunity to get back into their vehicle, did they?

A. No, they did not.

Q. You were not worried about them getting back in their vehicle after you got there were you?

A. Not once they were placed on the ground, no sir.

Q. And they were both on the ground immediately upon your arrival?

A. That's correct.

Q. That's all.

CROSS EXAMINATION:

BY: HOWARD MCELROY:

Q. Trooper, in response to some of Mr. Morefield's questions, you said "...and then the defendants were placed under arrest". They were placed under arrest by whom?

A. By Trooper Bolling.

Q. And this was after they had gotten up off the ground?

A. No sir, this was based on what was found on the gentlemen.

Q. So, the arrest was made then after the search of the two gentlemen, is that correct?

A. That's correct.

Q. After some material had been found on Mr. Crotts, is that correct?

A. To the best of my knowledge, yes sir.

Q. I have no other questions.

1 CECIL G. WYATT,

2 having first been duly sworn, testified as follows:

3 DIRECT EXAMINATION:

4 BY: DANIEL HALL:

5 Q. Mr. Wyatt, would you give us your full name, your address and your occupation?

6 A. Cecil G. Wyatt, Wytheville, Virginia, Investigator

7 for the Virginia State Police.

8 Q. And what were your duties on June 7th, 1979?

9 A. I was working as a drug coordinator with the Division

10 of Investigation, Fourth Division, Wytheville.

11 Q. And were you a part of the group of State Police who

12 were participating in the offense concerning the defendants, in Abingdon, Virginia, on June 7th, 1979?

13 A. Yes sir.

14 Q. Where were you when you first saw the defendants?

15 A. Outside of Abingdon, near the old saw mill and the

16 defendants were laying on the ground.

17 Q. Were you with another officer?

18 A. Yes sir.

19 Q. Who was it?

20 A. Trooper Lilly.

21 Q. Where had you been prior to the arrest of these defendants?

22 A. I was parked at the Kentucky Fried Chicken above

23 Stuckey's in Washington County?

24 Q. That is what Town?

25 A. Abingdon.

Q. Where is that located in the highway system? Were both places in Abingdon?

A. Yes sir.

Q. About how far away were you from the telephone booth at Stuckey's?

A. I don't know that exactly. Maybe a hundred yards or so.

Q. What was your purpose for being there?

A. To observe a narcotics violation that we were advised that was....

HOWARD MCELROY: ...I object to that, Your Honor, what he was advised of. He can talk about what he saw, not what he heard.

BY: DANIEL HALL:

Q. What was your assignment in being there?

A. To investigate a narcotics iolation.

Q. What did you see when you first arrived there?

A. At the location where I was, and where these vehicles were, I could not see anything.

Q. What caused you to leave that area?

A. I was advised to....

J. D. MOREFIELD: ...objection, Your Honor, he's getting into the realm of hearsay again.

THE COURT: Objection sustained.

BY: DANIEL HALL:

Q. What did you do? Did you observe the defendants from your position?

A. No sir.

1 Q. When did you leave the area?
2 A. Upon receiving radio information.
3 Q. About what time of day was this?
4 A. It was about somewhere around 3:00 o'clock.
5 Q. What did you do when you left the area?
6 A. Went out Route 620 to an old saw mill in Washington
7 County and observed two vehicles parked on the left
8 hand side of the road. The two subjects were laying
9 on the ground.
10 Q. Okay, where was this in relation to Abingdon?
11 A. About three miles South of Exit 8 off, I believe, Route
12 75. I turned off to the right and took a narrow road
13 to a saw mill on an inclined road on the left hand side
14 of the road.
15 Q. What did you do after you arrived at this scene?
16 A. At that time, the two subjects were under arrest.
17 They left the scene, the vehicle was impounded and the
18 vehicle was searched at that time for inventory pur-
19 poses before it was stored.
20 Q. Did you search the vehicle?
21 A. Yes sir.
22 Q. What did you find?
23 A. I found a black briefcase on the back seat which
24 contained....
25 J. D. MOREFIELD: ....Judge, I'm going to object. This is
getting to the heart of our suppression motion once
again.
THE COURT: Overruled.

WYATT: I found a black briefcase on the left rear seat which contained a white powder material in a plastic bag.

Q. Do you know whose briefcase it was?

A. Not at that time, I didn't.

Q. Do you know now whose briefcase it was?

A. Mr. Hamby has admitted when we asked him if it was his in the Washington County Jail, he advised that it was his.

J. D. MOREFIELD: Judge, I'm going to note a continuing objection to this line of questioning. It goes to the heart of our suppression.

THE COURT: Alright.

HOWARD MCELROY: We join in that motion, Your Honor.

BY: DANIEL HALL:

Q. You say you found a bag containing a white powder substance?

A. Yes sir.

Q. What did you do with it?

A. The evidence at that time was sealed and turned over to Trooper Bolling and there is a creceipt on the envelope and I guess he...

Q. ...you turned it over to Trooper Bolling?

A. Yes sir.

Q. Is he the one who processed the evidence?

A. He mailed it off to...

Q.. ....well, you don't need to tell us. Did he handle it after that?

1 A. Yes sir.
2 Q. Did you talk to either of the defendants after you
3 arrived at the scene?
4 A. Not any interrogation. I filled out the arrest records
5 and information such as that.
6 Q. Did you talk to them at the Washington County Jail?
7 A. Just in filling out the arrest records.
8 Q. You did talk to them there?
9 A. Yes sir.
10 Q. What was said to you at that time?
11 A. Well, when I had the black briefcase....
12 THE COURT: ...just a minute. Had these people been
13 warned of their rights and what warning had they been
14 given before any statement was made.
15 J. D. MOREFIELD: Judge, he has to have some knowledge as
16 to whether the rights were read to them or not.
17 THE COURT: I understand. If he did it, he can tell.
18 WYATT: I did not advise them of their rights.
19 THE COURT: Well, had they been advised?
20 WYATT: Yes sir.
21 THE COURT: Did you hear it?
22 WYATT: No sir.
23 DANIEL HALL: There is previous testimony as to their ad-
24 vice, Your Honor.
25 THE COURT: You may proceed, Mr. Hall. I'll be the
judge of that, not you.
DANIEL HALL: I don't intend it that way, Your Honor.
I'm just pointing out that we have covered this

1 previously.

2 THE COURT: I disagree with you as to Mr. Hamby.

3 BY: DANIEL HALL:

4 Q. Do you know that they had been advised of their

5 rights when you talked to either one of the defendants

6 at the....

7 J. D. MOREFIELD: ...Judge, I'm going to object. He said

8 he didn't know.

9 THE COURT: Objection sustained.

10 DANIEL HALL: Which of the defendants did you talk to?

11 J. D. MOREFIELD: I'm going to object to that too, Judge.

12 THE COURT: He may answer that.

13 BY: DANIEL HALL:

14 Q. Which of the defendants....

15 A. ...both of them. I filled out arrest records on them.

16 Q. Alright, what did Hamby say...

17 J. D. MOREFIELD: ...I'm going to object again, Judge.

18 THE COURT: Objection sustained.

19 BY: DANIEL HALL:

20 Q. What did Mr. Crotts say to you?

21 HOWARD MCELROY: I object, Your Honor.

22 THE COURT: Overruled.

23 HOWARD MCELROY: Your Honor, he doesn't know if his rights

24 were read to him or not.

25 THE COURT: The testimony is that he was advised.

BY: DANIEL HALL:

Q. What did Mr. Crotts say?

A. I didn't talk to him about anything outside of the

1 arrest records.
2 Q. Oh, just personal information?
3 A. Yes sir.
4 Q. You didn't question him at all about anything other than personal information?
5 A. No sir.
6 Q. No other questions.
7 CROSS EXAMINATION:
8 BY: J. D. MOREFIELD:
9 Q. Officer Wyatt, I believe that you advised the Court
10 that when you arrived upon the scene, these two individuals
11 were laying spread-eagle on the ground?
12 A. Yes sir.
13 Q. Where were they in relationship to their automobile or the automobile that you presumed was their automobile?
14 A. To the left front, off the pavement approximately 15 feet.
16 Q. How far were they from the automobile?
17 A. They were right at the front.
Q. In other words there were at the front grill?
19 A. The car was setting like this and they were off to the left front.
20
21 Q. Okay, and you say they were under arrest at that time when you arrived there?
22 A. Yes sir, I assume they were.
23 Q. Now, you testified, upon your arrival they were under
24 arrest and that you impounded their car, is that correct?
25 A. No sir, I didn't impound it.

1 Q. What exactly happened? You got there and the two
2 defendants were spread-eagle on the ground and they
3 were apparently under arrest. What did you do?
4 A. At this time, I just observed the two other officers.
5 Trooper Bolling was taking care of the searching.
6 They were placed...I believe handcuffs were placed on
7 them, and they were placed in the police vehicle at
8 that time. The vehicle was seized. I was told to
9 store the vehicle and so the vehicle was inventoried
10 at that time.
11 Q. Now, who..hold on for a minute..who told who that the
12 vehicle was seized or impounded?
13 A. The Commonwealth Attorney for Washington County was
14 contacted at that time by phone by..I don't know if
15 it was Trooper Bolling or what officer...and I was
16 advised by phone at that time.
17 Q. Now, we're talking about an abandoned saw mill site.
18 Was there a telephone there handy?
19 A. No sir.
20 Q. Well, where did he go and use the telephone?
21 A. At the Washington County Jail, which a phone was used
22 at that time and I was standing by my vehicle waiting
23 for this call to come back.
24 Q. Let's see if we can reconstruct this. The arrests were
25 made. The men were handcuffed, put into the police
cruiser and taken to the jail, is that correct?
A. Yes sir.
Q. And you stayed at the scene?

1 A. Yes sir.
2 Q. And at some point in time, Trooper Bolling called the Commonwealth's Attorney from the jail, you assume?
3 A. Yes sir.
4 Q. Then, based on...and I don't want to know what was
5 said...but based on these conversations, what action
6 did you take later?
7 A. Well, I searched the car at that time, inventoried it.
8 Q. Was this after you received communication from Trooper
9 Bolling or someone else?
10 A. At the time, I don't know if we told them the car would be impounded or not, or whether we waited for the
11 Commonwealth's Attorney, but the vehicle was searched
12 after everybody left and we were waiting there.
13 Q. In other words, what happened after they were arrested...
14 after they were arrested and put in the police cruiser
15 and taken off to jail, you, and I don't know who...
16 several other Troopers were still at the scene, is
17 that correct?
18 A. Trooper Lilly, and Sgt. Duff and myself.
19 Q. Okay, and while you all were all waiting, after they took these two individuals to jail, you searched the
20 car?
21 A. The vehicle was searched. I'm not sure whether they
22 were told the car was impounded at that time or not,
23 but it was searched after they found out the car was
24 being confiscated...it was searched.
25 Q. In other words, when you arrived at the scene, that

1 automobile was not within their direct control, was it?
2 A. No sir, they were laying on the ground.
3 Q. And you remember a conversation with either of the
4 defendants concerning the driving of the car to the
5 jail or anything?
6 A. Yes sir, I believe I talked to the owner, Mr. Hamby,
7 and he said the car belonged to him and that is why
8 I'm pretty sure they were told the car was being im-
9 pounded because I remember asking him if he wanted it
10 drove in or towed in and he told us at that time to
11 drive it in. Then when I told him the car was impounded,
12 the Commonwealth attorney was contacted at the jail
13 and they called back and said the car would be impounded
14 and we went ahead and searched it. We were going to
15 anyway under the circumstances, and then he verified it
16 later.
17 Q. Did he consent to allow you to search the car? You
18 said he consented to let you drive the car in; did he
19 say anything about "go ahead and search my car", or
20 anything like that?
21 A. No, we didn't ask him.
22 Q. Okay, now you keep talking about an inventory search.
23 What do you mean by an inventory search?
24 A. Well, the car..any car that is impounded, confiscated,
25 we are required to inventory all articles in the
26 vehicle as a precaution to protect the defendant or the
27 owner that everything is there and nothing is missed.
28 Q. Did you inventory that car at the scene or wait until

you brought it to the jail?

A. Right there, sir.

Q. You didn't move it or anything and just after the defendants were taken away, you searched the car?

A. It was after they left.

Q. How long after the arrest was made did you search the vehicle?

A. Ten or fifteen minutes.

Q. The vehicle was under your control, wasn't it?

A. Yes sir.

Q. You weren't worried about the vehicle getting away or somebody stealing it or anything like that?

A. No sir.

Q. Now, this black briefcase that you mentioned, where did you find that briefcase?

A. On the left rear seat...left side, rear seat.

Q. Was it zipped up?

A. Yes sir.

Q. In other words, you had to open it to see what was in it?

A. Yes sir.

Q. Mr. Hamby never admitted to you that any cocaine seized at this site was his, did he?

A. No sir.

CROSS EXAMINATION:

BY: HOWARD MCELROY:

Q. Trooper Wyatt, you didn't search the car...or at the time you searched the car with the briefcase, you

1 didn't have a warrant, did you?
2 A. No sir.
3 Q. So there was never any indication to you that the
4 briefcase that you searched or the car that you searched
5 belonged to Mr. Crotts, was there?
6 A. No sir.
7 Q. I have no further questions, Your Honor.
8 REDIRECT EXAMINATION:
9 BY: DANIEL HALL:
10 Q. Was the briefcase locked?
11 A. No sir.
12 Q. Could you describe the briefcase?
13 A. It was a black leather with leather handles; had two
14 zippers...one goes in one direction and one goes in
15 the other.
16 Q. No other questions.
17 T. K. BOLLING,
18 having previously been sworn, was recalled and testified as
19 follows:
20 DIRECT EXAMINATION:
21 BY: DANIEL HALL:
22 Q. You have previously testified?
23 A. Yes sir.
24 Q. When you went back to the jail after the arrest of the
25 defendants here, did you contact the Commonwealth's
Attorney?
A. Yes sir, I did.
Q. What did you contact him about?

A. I contacted him with reference to confiscating the car and confiscating the money that was fround on Mr. Crotts.

Q. Were you instructed to do it?

A. Yes sir, I was instructed to do it. I was also instructed to run copies of the $468.84 worth of checks and a $300.00 money order I had found on him and to give those back to him.

Q. What did you do after that?

A. I filled out a form to seize the vehicle, which one of the Deputies at the Sheriff's Department signed when I confiscated the car. I copied the checks and the money order and these were given back and I got Mr. Crotts to sign...we both signed a receipt that I did take the cash off him and Mr. Hamby and I also signed a receipt that I had taken a briefcase that was found in the car.

Q. Did you contact anyone about the seizure of the vehicle?

A. I talked to the Commonwealth's Attorney, is the only one.

Q. Did you inform anyone at the scene this had been done?

A. Which scene are you talking about?

Q. The scene of the arrest?

A. Not that I can recall. It is possible, but I can't recall.

Q. Where was the vehicle when you were instructed to seize it? Was it at the scene or was it at the jail?

A. I had intentions of seizing it at the scene, but to the best of my knowledge...well, after I talked to Mr. Brown, I was instructed to seize it and I can't remember...it has been a long time ago.

Q. As a result of the search of the vehicle, did you receive any evidence in this case.

A. I received some evidence from Investigator Wyatt.

Q. What did you receive?

J. D. MOREFIELD: Judge, I'm noting my continuing objection.

THE COURT: You may.

BY: DANIEL HALL:

Q. What did you receive from him?

A. I received an envelope.

Q. Can you describe it for the record?

A. It was a common envelope. The rest would be hearsay.

Q. Had he placed something in it? Was it an evidence envelope?

A. Yes sir.

Q. What did you do with it?

A. This was sent with the white powder I found on Mr. Crotts to the laboratory in Roanoke.

Q. How did you send it?

A. Certified mail.

Q. Did you get a receipt.

A. Yes, these have already been introduced to the Court.

Q. It was in the same envelope as previously testified to?

A. Yes sir.

Q. Did you receive back a report of the analysis dealing with that package?

A. Yes sir.

Q. Did you file that certificate?

A. Yes sir, I have.

Q. I move that that certificate be admitted into evidence, Your Honor. Have copies been provided to counsel?

A. Yes sir.

THE COURT: The record will show that the report has been filed in this case with the Clerk on October 9th, 1979. That will be Exhibit #4.

J. D. MOREFIELD: Judge, I would assume that the same ruling would apply to Exhibit #4 as applied to number 3, subject to the suppression motion?

THE COURT: Yes.

BY: DANIEL HALL:

Q. Did you talk to either or both of the defendants?

A. Yes sir, I did.

Q. Did you advise them of their constitutional rights prior to talking to them?

A. Yes sir, as I recall, I advised Mr. Crotts of his constitutional rights at the scene and Trooper Dean advised Mr. Hamby of his at the scene and I overheard him giving him his rights.

Q. Where did you talk to the two defendants?

THE COURT: What did you advise him? I want to know.

DANIEL HALL: Can you state what rights you advised him?

BOLLING: Yes sir, I always read them their rights.

I'll pull it out and read it to the Court. "You have the right to remain silent. Anything you say can and will be used against you in court. You have a right to talk to a lawyer and have him present while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you without cost before questioning if you desire one." Then I ask, "Do you understand each one of these rights as I have explained to you", and then I ask, "Having these rights in mind, do you wish to waive them and talk to me now".

Q. Did you hear...was this the same form that Trooper dean used?

A. Yes sir, to the best of my knowledge.

Q. Where did you talk to the defendants?

A. I talked to them at the scene; talked to them on the way down to the jail, and I talked to them at the jail.

Q. Did they make any statement with regard to this matter?

A. The only two statements they made that were pertinent were...

J. D. MOREFIELD: ...I'm going to object. I don't know who said what.

THE COURT: Just state who said it.

BOLLING: Mr. Hamby said the briefcase was his and Mr. Hamby talked to Mr. Crotts and told him that he had learned his lesson in making a fast buck.

Q. These were all the statements?

A. Yes sir.

Q. Has the vehicle been released?

A. I don't know sir.

Q. No other questions.

HOWARD MCELROY: I have no questions, Your Honor.

J. D. MOREFIELD: No questions.

D. F. DEAN,

having previously been sworn, was recalled and testified as follows:

DIRECT EXAMINATION:

BY: DANIEL HALL:

Q. It has been testified here that you advised one of the defendants of his constitutional rights. Could you tell us who you advised and what you advised him?

A. Yes sir. I advised the gentleman in the green coat and I have...he was given his rights, his Miranda warnings..."You have a right to remain silent; anything you say can and will be used against you in court. You have the right to talk to a lawyer and have him present while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you without cost before any questioning if you desire one. Do you understand each of these rights I have explained to you? Having these rights in mind do you wish to waive them and talk to me now?"

Q. No other questions.

HOWARD MCELROY: I have no questions, Your Honor.

J. D. MOREFIELD: No questions.

BY: DANIEL HALL:

Q. You have testified previously that prior to the arrest you could overhear conversations involving an informant by means of a listening device, is that correct?

A. Yes sir.

Q. Was there any set of prearranged signals that were being used?

A. Yes sir.

Q. What set of signals had you prearranged?

A. If the reliable source observed the drug, he was supposed to say, "That's some good looking stuff". That was one.

Q. What other signals?

A. Sir?

Q. What other signals did you have?

A. If he didn't say that, of course, we knew not to move in, and then just if he had the chance to say something... whisper it...to where I could hear, if he was out of the range of hearing of anyone else around him, but the main thing was as far as the drug was, "That's some good looking stuff".

Q. Was that signal received by you?

A. Yes, it was.

Q. What did you do when you received that signal?

A. I then radioed the other members of the department to move in, as well as myself.

Q. And what was to be the subject matter of the transaction...the prearranged transaction?

J. D. MOREFIELD: I'm going to object, Judge, unless he has some specific knowledge of what, personal knowledge, of what was...

THE COURT: Overruled.

BY: DANIEL HALL:

Q. What was to be the subject matter of the transaction you were monitoring?

A. It was a drug deal which was to be set up involving two pounds of cocaine and a large amount of marijuana. The reliable source also had a large amount of money with him while I was listening to the bugging device.

HOWARD MCELROY: I object to that, Your Honor. It calls for a conclusion.

THE COURT: Overruled.

BY: DANIEL HALL:

Q. What other...did the signals indicate that the expected materials were at hand?

J. D. MOREFIELD: Judge, I'm going to object. He's asking for hearsay and now he is just coming in the back door.

THE COURT: Objection sustained.

BY: DANIEL HALL

Q. What did you conclude about the prearranged transaction when you received that signal?

J. D. MOREFIELD: Judge, I'm going to object again, on the basis that it is hearsay.

THE COURT: That is a conclusion you're objecting to and it is sustained.

1 BY: DANIEL HALL:

2 Q. Did you know if the method of payment was to be in-
3 cluded in this transaction you were monitoring?

4 J. D. MOREFIELD: Judge, I'm going to object unless he has
5 personal knowledge.

6 THE COURT: Well, if he knows, he may state it.
You may answer that question.

7 DEAN: It was involving cash.

8 BY: DANIEL HALL:

9 Q. Was cash to be transacted at the time this transaction
10 was being monitored?

11 A. Yes sir. Your Honor, if I may, I'd like to rephrase
12 that. The cash was available to the transaction,
13 but it was not going to be exchanged for the drug.
14 That was one of the reasons we were going to make the
15 arrests on the spot because we would not let a large
amount of money get away from us.

16 Q. I have no further questions.

17 J. D. MOREFIELD: No questions.

18 HOWARD MCELROY: I have no questions.

19 DANIEL HALL: We have nothing further, Your Honor.

20 THE COURT: Commonwealth rests, gentlemen.

21 J. D. MOREFIELD: Judge, at this time I would renew my
22 motion to suppress the cocaine that was taken from
23 the person of Mr. Crotts and the cocaine that was
24 alleged to have been taken from the alleged briefcase
25 of Mr. Hamby and in support of that, I would cite to
the Court United States v. Joseph A. Chadwick, and

1 I have a copy of that decision for the Court to review,
2 and State of Arkansas v. Sanders...
3 THE COURT: ...I don't care about Arkansas, Mr.
4 Morefield.
5 J. D. MOREFIELD: Well, these are cases cited by the United
6 States Supreme Court, Your Honor.
7 THE COURT: Alright.
8 J. D. MOREFIELD: I think they would be controlling in this
9 Court. One case, the Chadwick case, is right on point
10 and it involves footlockers taken under circumstances
11 exactly like this briefcase was taken and the Supreme
12 Court ruled that after the dominion or control of that
13 footlocker had been obtained by the police, the
14 protection of the Fourth Amendment applied and a
15 search warrant was required to go into that footlocker.
16 The Arkansas case, another case on point, involved a
17 suitcase. The Supreme Court ruled that after that
18 suitcase had come into the dominion and control of the
19 police, that the Fourth Amendment right to search
20 warrant applied and these searches were unlawful....
21 without first obtaining a valid search warrant; that
22 there was no indication whatsoever that the evidence
23 would have been destroyed otherwise and that in a
24 situation such as that, the individuals involved were
25 entitled to the protection of the Fourth Amendment,
and excluded that evidence or reversed the cases upon
which the convictions arose. In this case, the only
evidence we have is that these gentlemen, by the

1 admission of every State Trooper that's come through
2 here, were spread-eagled in front of their car.
3 Investigator Wyatt testifies that he was not worried
4 about the car being stolen or any evidence being
5 destroyed; it's just a situation where they didn't
6 obtain a search warrant. The briefcase was zipped
7 up; there was nothing in plain view; there are no
8 exceptions to where a search without a warrant would
9 apply and, of course, the Court is well aware that
10 Mr. Hall was trying to make an exception since the burden
11 is upon him to show that. I would respectfully move
12 that the cocaine be suppressed as a violation of these
13 individual's Fourth Amendment constitutional right.
14 HOWARD MCELROY: Your Honor, we have several motions to
15 make at this time. First of all, we join in part with
16 Mr. Morefield's grounds on the motion to suppress the
17 evidence...the substance found in the briefcase. On
18 the evidence found in the briefcase, we say, first of
19 all, that the search, and I think the Court will have to
20 separate the search of the car and the search of the
21 briefcase, and certainly the search of the briefcase
22 was unconstitutional. In addition, on the grounds that
23 Mr. Morefield set out for the Court, I would say....
24 THE COURT: ...don't cover the same grounds he has.
25 As to the evidence received from the person, I believe
that is what you're concerned with, isn't it?
HOWARD MCELROY: Yes sir. First of all we move that that
evidence received from the person...we don't know

1 whether my client possessed the substance found in
2 the briefcase. I first of all would move that
3 that evidence be suppressed as it may be held against
4 my client because, first of all, it is clear from the
5 evidence that the car belonged to Mr. Hamby and the
6 briefcase belonged to Mr. Hamby. There is no evidence
7 from any of these witnesses that....
8 THE COURT: ....Mr. Morefield went into that, so...
9 HOWARD MCELROY: ...Your Honor, we're talking about the
10 evidence that was received from Mr. Crotts' person.
11 First of all, I think the Court will recall from the
12 testimony that Trooper Bolling was the one who searched
13 Mr. Crotts. Mr. Bolling's own testimony was that he
14 didn't know whether he or someone else had arrested
15 Mr. Crotts. He just said that he made the search.
16 Trooper Dean's testimony was that, yes he searched
17 him before...well, Trooper Dean testified that Mr.
18 Crotts was searched before he was arrested and that
19 the arrest was made based on that search. That's the
20 evidence the Commonwealth has presented. In addition
21 to that, it is clear there was no warrant, no search
22 warrant...no warrant of any kind...no search warrant,
23 no arrest warrant, there was no consent for Mr. Crotts
24 to be searched. I would argue first of all that this
25 is not a search incident to arrest. By the Commonwealth's
26 own evidence, the arrest was made based on the results
27 of the search, not the search incident to the arrest.
28 I would say secondly that there has been no evidence

1 introduced by the Commonwealth to support any probable
2 cause to make the arrest.
3 THE COURT: Now, you're right at the issue of the
4 thing, Mr. McElroy, and that's, in the Court's opinion,
5 the only ground that you have to support your motion.
6 So, if you'll address yourself to that point, whether
7 or not there was probable cause for the arrest, you'll
8 be right on the issue.
9 HOWARD MCELROY: I think we can dispose of the testimony
10 of Trooper Bolling, Trooper Dean and Trooper Wyatt.
11 The only thing they know is they arrived at the scene
12 and they were spread-eagled on the ground and they took
13 the action they took. There is no testimony why they
14 were there and they had no independent knowledge...
15 THE COURT: ...maybe you and I didn't hear the same
16 evidence then.
17 HOWARD MCELROY: I believe we did, sir.
18 THE COURT: Then we don't interpret it the same.
19 HOWARD MCELROY: I believe of the evidence that would
20 indicate probable cause for the arrest, most of the
21 evidence came from Trooper Dean and he was talking
22 about the prearranged wire thing and that's the only
23 evidence I feel that could make probable cause, and
24 the other testimony, Trooper Dean's testimony, was
25 about the statement he received that this was some good
looking stuff. This information was based on a report
from we don't know who it was. He did testify that
it was from a reliable informant. No disclosure of

1 identity. We have no basis to know when he made the
2 conclusion that the informant was reliable; no past
3 history of tips that turned out to be true; nothing
4 but a bald statement that he was a reliable informant.
5 Secondly, I think most importantly, there is no basis
6 for his conclusion that the information given by the
7 informant was reliable. He gave no testimony whatso-
8 ever on that point and both of them are needed to make
9 out a probable cause to make an arrest. So, we move,
10 as a result of that, we move that the evidence that
11 was found on Mr. Crotts' person be suppressed and in
12 addition, Your Honor, I make one other motion. I move
13 that the charges against Mr. Crotts and Mr. Hamby be
14 stricken because of the fact that the certificate of
15 analysis, and the certificate of analysis...I'm reading
16 from the copy filed with the Court..lists the results
17 in Item one and Item two..the results and they are
18 identified as bags containing, and I quote, "Cocaine,
19 A Schedule II Controlled Substance". This is exactly
20 what Mr. Crotts and Mr. Hamby have been charged with
21 ...the possession of Cocaine, A Schedule II Controlled
22 Substance, with the intent to distribute. I think
23 the certificate of analysis establishes a prima facie
24 case that the substance possessed was Cocaine,
25 Schedule II, however, and I'm referring now to
Virginia Code Section 54-524.84:6, that Schedule II
as it was in effect at the time of this offense, up
to July 1, 1979...no where in that schedule is

cocaine. So, what this analysis has failed to do is to establish a prima facie case that what was possessed was a controlled substance. It does, in fact, establish a prima facie case that what was possessed was cocaine, but not that the cocaine was a controlled substance, Schedule II, and I refer the Court to that Code Section. No where in it is cocaine listed.

DANIEL HALL: First off, we would say that if there is a defect in the indictment in regard to the schedule, we would move to amend it.

THE COURT: I haven't heard anybody mention the indictment.

HAROLD MCELROY: I'm not talking about the indictment, Your Honor...As far as the cocaine is concerned. I'm talking about if it is controlled.

DANIEL HALL: On the question of the search, as to the Hamby search, counsel made reference to the Chadwick case. I would like an opportunity to read that, however there are two distanct and.....

THE COURT: ...Mr. Hall, you have to read those before, because it is before the Court now and the Court has got to rule on it.

DANIEL HALL: Then I further state as to the Chadwick situation, and it is very important...first, the evidence here is that the search was incident to seizing the vehicle, where the question is different in the Chadwick case. Secondly, in the Chadwick case, there were locked items which were not subject to

1 change..they were still under control. In this case,
2 it was not a locked briefcase; it was in a car being
3 seized; it was going to be impounded and some account-
4 ing had to be made and this puts the situation in a
5 different framework than in the Chadwick case. Now,
6 on the Crotts situation, the probable cause, I think,
7 is clear. They were looking for cocaine; they had a
8 prearranged schedule for announcing this cocaine was
9 there and they went on in and they found cocaine.
THE COURT: Alright, gentlemen, in the Court's opinion,
10 your motion to suppress is based entirely on whether
11 there was probable cause for arrest. So, I will
12 address the Crotts case first. It would appear to me
13 from all the facts that have come out that the officers
14 did have probable cause for arrest and in the Court's
15 opinion, since the two defendants were, as I understand
16 the evidence, together, working in concert, they had
17 probable cause to arrest both of them. Now, then we
18 come to whether or not they had authority to search
19 what was in the vehicle and I'm of the opinion that
20 after the arrest, they had the right to search the
21 vehicle and I'm of the opinion that they had the right
22 to search the contents therein, and since the two were
23 working in concert, both motions to suppress are
24 denied. Now, you gentlemen may proceed with your
25 evidence.
J. D. MOREFIELD: Judge, I would like to note an exception
to the Court's ruling on the motion to suppress on

the basis that the search of the automobile as earlier indicated by the...

THE COURT: ...you've given your reasons, so just note your exception for the reasons heretofore stated.

J. D. MOREFIELD: ...as a violation of Mr. Hamby's Fourth and Fourteenth Amendment rights.

HOWARD MCELROY: I would like to note my exception and ask for clarification by the Court.

THE COURT: The Court has ruled. You may proceed. The Commonwealth has established a prima facie case at this time and your motion to suppress is denied.

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J. D. MOREFIELD: Judge, I have no further evidence. At this time, I would move to strike the Commonwealth's evidence and would renew my motion to suppress the cocaine found in Mr. Hamby's briefcase.

1 THE COURT: Gentlemen, the Court has already ruled on
2 that and you haven't presented another thing different
3 than when I ruled, have you?
4 HOWARD MCELROY: We will rely on the same ground we had before,
5 Your Honor. I move that that part of Miss Metzler's
6 testimony that pertains to her information about
7 whether the other substances test uniquely..that is
8 based solely on what someone else told her. I move
9 that that part of her evidence be stricken because
10 it was based on information that is not admissible
11 and has not been factually admitted into evidence
12 in this court. I rely once again on Meade v. Belcher,
13 Your Honor, and if I could have just a few seconds
14 on that case to talk about a doctor who testified in
15 that case as an expert witness. I'll read just a few
16 sentences: "The doctor obviously relied very heavily
17 on the records from his medical center to arrive at
18 the opinion concerning the cause of the loss of
19 Mrs. Belcher's leg". She relied on other information
20 to base her testimony on. She should have based her
21 opinion solely on her test results. Her own test
22 results. Not someone else's. She could not even
23 identify a document from which she had read about it.
24 We've got here the same situation, Your Honor. Her
25 answer that that part of her opinion that said, A:
these tests are uniquely based on what I've learned
from literature; that part is inadmissible. So, you
are left with only her testimony from her test results

that she could not guarantee the testing of (1) cocaine.

THE COURT: Motion denied.

HOWARD MCELROY: Exception noted, Your Honor.

THE COURT: If you care to make any statements now, you may.

DANIEL HALL: Yes, Your Honor, we believe we have proved the elements of the case. There was a plan to sell cocaine; these people appeared here in Washington County; they were arrested in Washington County; they had the substance in their possession at the time; they were apprehended in the course of attempting to sell it here in Washington County.

J. D. MOREFIELD: Judge, just in response, I would say there is no probable cause to make an arrest in this instance; there was never any testimony introduced here today to show this informant was reliable...all he said was he had information from his informant. It is up to the Commonwealth to show that this information was reliable. I think there has been a bit of testimony here today that they expected to go out and find two pounds of cocaine and a hundred pounds of pot and they went out there and they found two ounces of cocaine. I would question the reliability of that informant that gave them all this information to begin with, but more than that, I think that these gentlemen, especially Mr. Hamby, I think his constitutional rights were violated; I think there

should have been a search warrant obtained in regard to that briefcase and I just don't feel if that is properly suppressed, that the Court can convict him of anything.

THE COURT: You're arguing the same thing. I've ruled on that, Mr. Morefield.

J. D. MOREFIELD: I don't have anything further to say, Judge.

THE COURT: Alright.

HOWARD MCELROY: Your Honor, just one quick thing to say. I reiterate what I have said with regard to the probable cause to make arrest and secondly, I don't think the Commonwealth has proved beyond a reasonable doubt that what the substances were that were sent to the lab were, in fact, a controlled substance. I would note as a matter of argument to the Court, that I think the Commonwealth of Virginia has recognized the problem itself. Here I refer Your Honor to Schedule II as it appears now in that Section, 54-524.84:6, and referring the Court to subparagraph d4 under that, this is a July 1, 1979...the first part of that is the exact same language as it appeared before July 1... at the end of it, it says: "Cocaine or any salt or isomer thereof"....they recognized before 1979, in Miss Metzler's testimony, that is admissible to this Court, that doesn't prove it.

THE COURT: Alright, I find both of them guilty as charged in the indictment. Now, as to punishment, do

you gentlemen care to say anything on punishment?

J. D. MOREFIELD: If it please the Court, at this time I would request a presentence report, and pending the presentence report, would ask the Court to refrain from imposing sentence and leave Mr. Hamby out on bond.

HOWARD MCELROY: On behalf of Mr. Crotts, we make the identical same motion, Your Honor.

DANIEL HALL: We ask that adequate bond be set on these gentlemen in the amount of $100,000.00 each, and we also inform the Court that there is a fugitive warrant from Florida here and ask that bond be set on that matter at this time.

THE COURT: Alright, gentlemen, they've been found guilty. They're from outside the Commonwealth of Virginia. If I was going to release them on bond, bond would be sufficient, but I will order the Sheriff to take charge of them until presentence reports are made. They will be where you can contact them and would you expedite this matter;as soon as your reports are filed, we will fix a sentencing date. So, you may take charge of them, Mr. Sheriff. Your motion for a presentence report is granted.

THESE WERE ALL THE PROCEEDINGS HAD IN THIS MATTER ON THIS DATE

ORDER

This day came Daniel M. Hall, Esquire, Attorney for the Commonwealth, J. D. Morefield, Esquire, court appointed counsel for Larry Hugh Hamby, Howard McElroy, Esquire, counsel for Hobert Junior Crotts, Jo Crewey, Court Reporter, who was duly sworn in the manner prescribed by law; came also the defendants in obedience to their recognizance.

By agreement of all parties herein, it is ordered that these cases be heard together.

Thereupon Larry Hugh Hamby was arraigned on the charge contained in the indictment herein, to-wit: Distribute Controlled Substance, and the Court explained fully to the defendant the nature of the charges contained in the indictment against him and the possible penalty therefor upon conviction, and his right to plead not guilty and be tried by a jury which would pass upon his guilt or innocence, and if found guilty, fix his punishment; the Court further explained to the defendant the nature and effect of a plea of guilty. Thereupon the defendant, in person, entered a plea of not guilty to the charge contained in the indictment herein.

Thereupon Hobert Junior Crotts was arraigned on the charge contained in the indictment herein, to-wit: Distribute Controlled Substance, and the Court explained fully to the defendant the nature of the charges contained in the indictment against him and the possible penalty therefor upon conviction, and his right to plead not guilty and be tried by a jury which would pass upon

his guilt or innocence, and if found guilty, fix his punishment; the Court further explained to the defendant the nature and effect of a plea of guilty. Thereupon the defendant, in person, entered a plea of not guilty to the charge contained in the indictment herein.

The defendants having each waived trial by jury and the Court and the Attorney for the Commonwealth having concurred in the trial of these cases without the intervention of a jury, the Court proceeded to hear and determine these cases without the intervention of a jury. Thereupon the Court heard the evidence introduced on behalf of the Commonwealth and on behalf of the defendants. At the conclusion of all of the evidence, the Court is of the opinion to and doth find each of the defendants guilty as charged in the indictments herein.

Thereupon the defendants, by counsel, moved the Court to order a pre-sentence report prepared on the defendants, which motion the Court doth grant, and it is ordered that the said reports be prepared by a Probation Officer of this Court returnable as soon as possible.

During the course of this trial certain motions were made and objections interposed which will appear fully in the stenographic record herein made.

The Court certifies that each of the defendants were present and their attorneys were present during all stages of this proceeding.

The defendants are remanded to jail until further order of this Court.

It is ordered that Jo Crewey, Court Reporter, be allowed $ 20 ~~xx~~ 00 for her services.

ENTER: January 28, 1980

JUDGE

ORDER

This day came Daniel M. Hall, Esquire, Attorney for the Commonwealth, J. D. Morefield, Esquire, court appointed counsel for the defendant, Ellen R. Farrington, Probation Officer of this Court, Jo Crewey, Court Reporter, who was duly sworn in the manner prescribed by law; came also the defendant in the custody of the Sheriff of Washington County.

The attorney for the defendant and the defendant, in person, waived the five day period regarding the filing of the pre-sentence report as required in Section 19.2-299 of the Code of Virginia, 1950 as amended.

It appearing to the Court that the defendant was tried in this Court on January 28, 1980 and found guilty of Distribute Controlled Substance as charged in the indictment herein. The defendant, by counsel, moved the Court to order a pre-sentence report prepared on the defendant, which motion the Court granted. The said report was filed on March 19, 1980, and a copy was furnished to counsel for the defendant. The Attorney for the Commonealth and the attorney for the defendant were afforded an opportunity to examine the Probation Officer as to the contents of the report, the Attorney for the Commonwealth and the attorney for the defendant questioned the Probation Officer as to certain matters contained in the report.

Upon consideration of the pre-sentence report and the evidence adduced herein, the Court doth fix the punishment of the defendant at a term of ten (10) years in the penitentiary and a fine of $1,000.00.

Thereupon it was demanded of the defendant if anthing he had or knew to say why the Court should not sentence him according to law, nothing being said or offered in delay of judgment, it is ordered that Larry Hugh Hamby be, and he is hereby sentenced to a term of ten (10) years in the penitentiary of

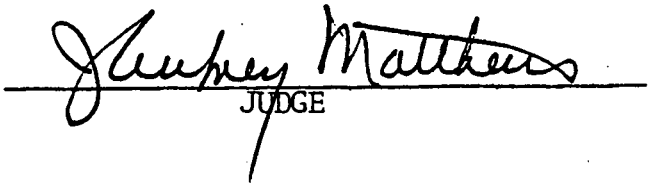
this Commonwealth and to forfeit unto the Commonwealth a fine of $1,000.00, further he is to pay the costs of this prosecution.

Thereupon the defendant, by counsel, moved the Court to suspend execution of the aforesaid sentence and to place the defendant on probation. The Court heard statements by the Attorney for the Commonwealth and the attorney for the defendant. After consideration the Court doth deny the motion for probation and the defendant is remanded to jail to await transfer to the appropriate penal institution of this Commonwealth.

The Court certifies that the defendant was present and his attorney was likewise present during all stages of this proceeding.

It is ordered that J. D. Morefield, court appointed counsel herein, be allowed $200.00 for his services.

ENTER: March 20, 1980



JUDGE

ASSIGNMENT OF ERROR

I. THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS COCAINE IN A BRIEF CASE LYING ON THE LEFT REAR SEAT IN APPELLANT'S AUTOMOBILE, WHICH WAS FOUND AS A RESULT OF A WARRANTLESS SEARCH IN VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION WHICH REQUIRES POLICE TO OBTAIN A SEARCH WARRANT IN SUCH SITUATIONS IN THE ABSENCE OF EXIGENT CIRCUMSTANCES BEFORE SEARCHING LUGGAGE TAKEN FROM AN AUTOMOBILE WHICH IS PROPERLY STOPPED AND SEARCHED FOR CONTRABAND.