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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

3

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 810412

JOHN WILLIAM RHODES,

Appellant,

v.

COMMONWWEALTH OF VIRGINIA,

Appellee.

JOINT APPENDIX

J. Ronald Lynch
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Alexandria, Virginia 22314

Counsel for Appellant

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Assistant Attorney General
Attorney General's Office
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COMMONWEALTH OF VIRGINIA

/79 vs.

JOHN WILLIAM RHODES, IV

INDICTMENT FOR A FELONY
(Manufacture or Produce
a Controlled Drug)
#8495

THE GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of Prince William and now attending the Circuit Court of said County this 4th day of June, 1979, upon their oaths present that on or about the 16th day of September, 1978, in the County aforesaid, one JOHN WILLIAM RHODES, IV did unlawfully and feloniously grow, cultivate, produce or manufacture a Schedule II substance, to-wit: Phencyclidine, and that he did cultivate, produce or manufacture the Schedule II substance without authority against the peace and dignity of the Commonwealth in violation of Section 18.2-248 of the 1950 Code of Virginia, as amended.

A TRUE BILL
~~NOT A TRUE BILL~~
(Strike out one)

FOREMAN

WITNESSES summonsed by the Commonwealth, sworn and sent to testify before the Grand Jury:

TROOPER R. A. DYER

Presented By:

PAUL B. EBERT
Attorney for the Commonwealth
County of Prince William

009

INSTRUCTION NO. 1

THE COURT instructs the Jury that the Defendant is charged with the crime of manufacturing Phencyclidine, which is a Schedule II controlled substance. The Commonwealth must prove beyond a reasonable doubt that the Defendant manufactured Phencyclidine.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt the above element of the crime as charged, then you shall find the Defendant guilty and fix his punishment at confinement in the penitentiary for not less than five (5) nor more than forty (40) years and a fine of not more than $25,000.00.

If you find that the Commonwealth has failed to prove the above crime beyond a reasonable doubt, then you shall find the Defendant not guilty of manufacturing.

INSTRUCTION NO. 2

THE COURT instructs the Jury that the defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been indicted and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

INSTRUCTION NO. 3

THE COURT instructs the Jury that you are the judges of the facts, the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements. While you have no right to arbitrarily disregard believable testimony of any witness, you do have a right to discard or accept in whole or in part the testimony of any witness which you think is proper to discard or accept when you consider it in connection with the other evidence in the case. You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

INSTRUCTION NO. A

Denied PRJ

Knowledge that the drug manufactured is a controlled substance is an element of the crime of manufacturing. Thus, you may not find the defendant guilty of such crime unless you believe beyond a reasonable doubt that he was aware that the substance he manufactured was a controlled substance. It is not necessary, however, for you to find that the defendant was aware that the very act of manufacturing phencyclidine was against the law.

W/ Drawer

INSTRUCTION NO. B

To knowingly and intentionally possess a controlled substance means that a person is aware of the presence and character of the substance and has actual physical possession or constructive possession. Actual physical possession means that the substance is found on the person. Constructive possession means that the person has dominion or control over the substance. Mere proximity is not enough.

Possession need not be exclusive; it may be shared with another. The length of time of the possession is not material.

Ownership or occupancy of the premises in which a controlled substance is found does not create a presumption that the owner or occupant either knowingly or intentionally possessed such substance. Such ownership or occupancy is a fact which may be considered with other evidence.

Possession may be proven by acts, declarations or conduct of the defendant from which it may be fairly inferred that he was aware of the presence and character of the substance at the place found.

INSTRUCTION NO. 6

W/ Drawn pg 7

The defendant is charged with the crime of manufacturing phencyclidine which is a Schedule II controlled substance. The Commonwealth must prove beyond a reasonable doubt that the defendant manufactured phencyclidine.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt the above element of the crime as charged, then you shall find the defendant guilty and fix his punishment at confinement in the penitentiary for not less than five (5) years nor more than forty (40) years and a fine of not more than $25,000.00.

If you find that the Commonwealth has failed to prove the above crime beyond a reasonable doubt, then you shall find the defendant not guilty of manufacturing.

P79

INSTRUCTION NO. 4

The fact that the defendant has been indicted by a grand jury is not evidence against him and you should not consider it.

INSTRUCTION NO. 6

The defendant does not have to testify, and his failure to do so cannot be considered by you.

NOTICE

TO: Paul Ebert
Commonwealth Attorney
Prince William County
Manassas, Virginia 22110

Please take notice that on the 19th day of December, 1980, the Defendant, by counsel, will present arguments in support of the motion set out below.

JOHN WILLIAM RHODES, IV
By Counsel

J. RONALD LYNCH
Davis, Gillenwater, Lynch & Doane
6801 Whittier Ave.
McLean, Virginia 22101
Counsel for Defendant

MOTION TO SET ASIDE VERDICT
AND FOR A NEW TRIAL

COMES NOW the Defendant, John William Rhodes, IV, by counsel, and moves to set aside the verdict heretofore rendered against him in the trial in this cause and for a new trial, and as his grounds states as follows:

1. The evidence of other crimes was improperly and prejudicially admitted at the trial in this cause.

2. There was no proof produced at the trial of this cause that the drug in question, to wit: phencyclidine, has a "depressant effect on the central nervous system" as is required in Title 54 of the Code of Virginia, § 524.84:6(e)(5).

3. The Defendant specifically preserves his continuing objection to the admissibility at the trial of this cause of evidence or fruits thereof, pertaining to the drugs and apparatus seized on the date of the alleged offense, on the ground that the search and seizure involved violated the rights of the defendant pursuant to the Fourth Amendment of the United States Constitution.

JOHN WILLIAM RHODES, IV
By Counsel

J RONALD LYNCH
Davis, Gillenwater, Lynch & Doane
6801 Whittier Ave.
McLean, Virginia 22101
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice and Motion to Set Aside Verdict and for a New Trial was mailed, postage prepaid to Paul Ebert, Commonwealth's Attorney, Prince William County, Manassas, Virginia 22110 this 26th day of November, 1980.

#8499

FELONY - MANUFACTURE OR PRODUCE
PHENCYCLIDINE

The 19th day of December, 1980, came the Attorney for the Commonwealth and the defendant, JOHN WILLIAM RHODES, IV, (DOB - 3/4/50), who stands convicted of a felony, to-wit: MANUFACTURE OR PRODUCE PHENCYCLIDINE, appeared before the bar of the Court in the custody of the deputy sheriff. And came also J. Ronald Lynch, attorney at law, appointed by the Court to represent the defendant.

Thereupon, the Court Reporter was sworn.

This case came on this day for a hearing on the defendant's post-trial motions and the report of the Probation Officer and sentencing of the defendant.

Whereupon, the defendant, by counsel, moved the Court to set aside the verdict of the jury rendered on July 30, 1980, to which motion the Attorney for the Commonwealth objected. The Court, after hearing argument of counsel, doth deny said motion.

Thereupon, the defendant, by counsel, moved the Court to incorporate the acquittal order in case number 8496 into this case, and the Court doth grant said motion.

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

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

Whereupon, the Court taking into consideration all of the evidence in the case, the report of the Probation Officer, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant be and he is hereby sentenced to confinement in the penitentiary of the Commonwealth for a term of twenty (20) years. It is further Ordered that the defendant is to pay a fine in the amount of $25,000.00, and that the Commonwealth of Virginia do recover against the defendant its costs by it about its prosecution in this behalf expended with interest at the rate of eight percentum per annum until paid in full.

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 orders that the prisoner be allowed credit for the time spent in the jail of this Court awaiting trial.

The Court proceeded to advise the defendant of his right to appeal from the sentence heretofore imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with an appeal paid for him in the event he is financially unable to pay the same. And the Court doth appoint J. Ronald Lynch, an able and competent attorney at law, to represent the defendant in seeking said writ of error, if the defendant elects to seek said writ.

Thereupon, the defendant, by counsel, advised the Court he would like to appeal his conviction in this case.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant for which services he is allowed an attorney's fee of $ 400.00.

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

JUDGE

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT GRANTING DEFENSE INSTRUCTION NUMBER A WHICH READ AS FOLLOWS:

> KNOWLEDGE THAT THE DRUG MANUFACTURED IS A CONTROLLED SUBSTANCE IS AN ELEMENT OF THE CRIME OF MANUFACTURING. THUS YOU MAY NOT FIND THE DEFENDANT GUILTY OF SUCH CRIME UNLESS YOU BELIEVE BEYOND A REASONABLE DOUBT THAT HE WAS AWARE THAT THE SUBSTANCE HE WAS MANUFACTURING WAS A CONTROLLED SUBSTANCE. IT IS NOT NECESSARY, HOWEVER, FOR YOU TO FIND THAT THE DEFENDANT WAS AWARE THAT THE VERY ACT OF MANUFACTURING PHENCYCLIDINE WAS AGAINST THE LAW.

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR DENYING RHODES HIS RIGHTS UNDER U.S. CONSTITUTION, AMENDMENT V, DOUBLE JEOPARDY CLAUSE AND UNDER THE DOCTRINE OF RES INTER ALIOS ACTA IN PERMITTING THE COMMONWEALTH TO INTRODUCE AT THE MANUFACTURING TRIAL EVIDENCE SHOWING THAT RHODES WAS FOUND DRIVING A MOTOR VEHICLE APPROXIMATELY TWO TO THREE MILES FROM THE ALLEGED PLACE OF MANUFACTURING, AND THAT CONTAINED IN THE VEHICLE WHICH HE WAS OPERATING WAS A PLASTIC BAG CONTAINING PHENCYCLIDINE-DIPPED CIGARETTES, PARTICULARLY SO WHEN RHODES HAD BEEN PREVIOUSLY CHARGED UNDER A SEPARATE INDICTMENT OF POSSESSION OF PHENCYCLIDINE-DIPPED CIGARETTES AND ACQUITTED BY A JURY.

III. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT GRANTING A MOTION TO STRIKE MADE BY THE DEFENSE AT THE END OF THE COMMONWEALTH'S CASE AND AT THE END OF ALL THE EVIDENCE ON THE GROUND THAT THE COMMONWEALTH FAILED TO PROVE THAT PHENCYCLIDINE HAD A "DEPRESSANT EFFECT ON THE CENTRAL NERVOUS SYSTEM," PARTICULARLY WHERE THE COMMONWEALTH"S EXPERT TESTIFIED THAT HE DID NOT BELIEVE THAT PHENCYCLIDINE DID HAVE SUCH DEPRESSANT EFFECT.

IV. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN REFUSING TO GRANT DEFENSE INSTRUCTION NUMBER K WHICH READ AS FOLLOWS:

> THE COURT INSTRUCTS THE JURY THAT THE COMMONWEALTH MUST PROVE THAT PHENCYCLIDINE HAS A DEPRESSANT EFFECT ON THE CENTRAL NERVOUS SYSTEM.

V. THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO CONVICT RHODES OF THE CRIME OF MANUFACTURING PHENCYCLIDINE.

VI. A SEARCH WARRANT DIRECTING THE SEARCH OF "A THREE STORY FRAME DWELLING HOUSE LOCATED AT 2400 LOUDOUN DRIVE, HAYMARKET,VIRGINIA, PRINCE WILLIAM COUNTY, ALL PREMISES AND OUTBUILDINGS," DID NOT AUTHORIZE THE SEARCH OF VARIOUS MOTOR VEHICLES ON SAID PROPERTY.

VII. THE SEARCH WARRANT DIRECTING THE SEARCH OF A THREE STORY FRAME DWELLING HOUSE LOCATED AT 2400 LOUDOUN DRIVE, HAYMAR-

KET, VIRGINIA, PRINCE WILLIAM COUNTY, ALL PREMISES AND OUTBUILDINGS," DID NOT PROVIDE SUFFICIENT DESCRIPTION OF THE PROPERTY TO BE SEARCHED WHEN THE ONLY DWELLING HOUSE LOCATED ON THE PROPERTY WAS A ONE AND ONE-HALF FRAME STORY DWELLING HOUSE.

VIII. THERE WAS INSUFFICIENT PROBABLE CAUSE ESTABLISHED BY THE AFFIDAVIT FOR ISSUANCE OF A SEARCH WARRANT BECAUSE OF THE FACT THAT IT STATED PARTIALLY OLD INFORMATION, PARTIALLY CONCLUSIONARY INFORMATION, AND PARTIAL INFORMATION FROM SOURCES NOT NAMED NOR CIRCUMSTANCES STATED TO SHOW RELIABILITY OR THE OPPORTUNITY FOR OBSERVATION AND PARTIALLY IRRELEVANT INFORMATION.

IX. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING COMMONWEALTH'S INSTRUCTION NUMBER 5 SPECIFICALLY WITH REFERENCE TO THE LAST SENTENCE, PRIOR TO THE JURY COMMENCING ITS DELIBERATIONS, WHICH INSTRUCTION PROVIDED:

> THE COURT INSTRUCTS THE JURY THAT IF YOU FIND THE DEFENDANT GUILTY, YOU SHOULD IMPOSE SUCH PUNISHMENT THAT YOU FEEL IS JUST UNDER THE EVIDENCE AND WITHIN THE INSTRUCTIONS OF THE COURT. YOU ARE NOT TO CONCERN YOURSELVES WITH WHAT MAY HAPPEN AFTERWARDS.

1 V I R G I N I A

2 IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

3 ----------x

4 COMMONWEALTH OF VIRGINIA, :

5 Plaintiff, :

6 vs : CRIMINAL DOCKET NO. 8496

7 JOHN WILLIAM RHODES, IV, :

8 Defendant. :

9 ----------x

10 Manassas, Virginia

11 Thursday, April 17, 1980

12 The above-entitled cause came on to be heard before

13 the Honorable Percy Thornton, Jr., Judge of the Circuit

14 Court of Prince William County, in the courthouse, Manassas,

15 Virginia, beginning at 10:00 o'clock a.m.

16 APPEARANCES:

17 On behalf of the Commonwealth of Virginia:

18 PAUL B. EBERT, ESQUIRE
Commonwealth Attorney

19

On behalf of the Defendant:

20

J. RONALD LYNCH, ESQUIRE
21 DAVIS, GILLENWATER & LYNCH
6801 Whittier Avenue
22 McLean, Virginia 22101

23

AUDREY J. RUDIGER REPORTING SERVICE
CERTIFIED VERBATIM REPORTERS
3859 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030
591-3136

1 C O N T E N T S

2 WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
3 TROOPER S. E. GRAY	47	58	63	--
4 TROPPER R. A. DYER	64	73	79	--
5 DR. KARL E. HEPNER, JR.	80	84	--	--
6 MARGARET RHODES	98	105	114	--
7 BEN J. IVY	116	122	135	--

8 ----------

9 E X H I B I T S

10 COMMONWEALTH'S NO.	FOR IDENTIFICATION	IN EVIDENCE
11 1 (cigarettes)	55	71

12 ----------

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23

1 THE CLERK: In Criminal Number 8496: The Grand
2 Jurors of the Commonwealth of Virginia, in and for the
3 body of the County of Prince William and now attending
4 the Circuit Court of said County this 4th day of June,
5 1979, upon their oaths present that on or about the 16th
6 day of September, 1978, in the County aforesaid, one John
7 William Rhodes, the Fourth, did unlawfully, feloneously,
8 knowingly and intentionally possess or have under his control
9 a controlled substance, to-wit, phencyclidine, a Schedule
10 II substance, without authority against the peace and
11 dignity of the Commonwealth in violation of Section 18.22-250
12 of the 1950 Code of Virginia, as amended, how do you plead?
13 THE DEFENDANT: Not guilty.
14 THE COURT: Let's proceed to impanel the jury,
15 please.
16 THE CLERK: As I call your names, come have a seat
17 in the jury box in the same order as your name is called:
18 June Davis.
19 Catherine Arrington.
20 Joseph Belanger.
21 Carolyn Jackson.
22 Donna Seymour.
23 Edward Schorner.

1 very substantial amount of testimony in defense of Mr.
2 Rhodes in the manufacturing case.
3 However, as the Court heard me in opening statement,
4 Mr. Rhodes will not be taking the stand in the possession
5 case. So, I said, among other things, that would put Mr.
6 Rhodes in an awkward position. He would have to testify
7 in the defense in the manufacturing and stop dead in his
8 tracks as to the possession charge if they were tried to-
9 gether.
10 Judge Sinclair said, very well, he has continued
11 the manufacturing case generally.
12 Now, what I am getting to, Your Honor, is I noticed
13 yesterday that the Commonwealth has subpoenaed Trooper
14 Gray and Trooper Dyer, and there was some indication that
15 there were some people -- One gentleman from the FBI, I
16 believe Mr. Whittaker, who is coming in to testify about
17 fingerprints.
18 Now, I do know this much, Your Honor, that, if
19 in fact the Commonwealth intends to go into those witnesses,
20 then they are intending to go into what was found or what
21 went on at the farm; and I would say, Your Honor, that this
22 should be precluded.
23 Now, it might be helpful to the Court if I could

1 just be allowed to run over the facts as I believe the
2 Commonwealth intends to prove.
3 The State Police had a search warrant to go out
4 to the home of Mrs. Rhodes, the mother of Jacky Rhodes.
5 There were some automobiles out there. They were either
6 abandoned or unused.
7 There had been a stakeout for, I believe, some
8 roughly 12 to 24 hours before September 16th. In fact,
9 on September 15th, Mr. Rhodes was seen going to a store
10 with another person and coming out with some buckets they
11 bought at the K-Mart. Then he went back to his mother's
12 farm with these buckets, and that's all that was seen that
13 day.
14 The next day, the police were again out on a stake-
15 out out around this farm, and Trooper Dyer had, in fact,
16 got a search warrant to search the premises of Mrs. Rhodes.
17 He was on the way to the farm to execute the search warrant
18 when Trooper Gray, who was at the farm, radioed Trooper
19 Dyer -- Well, he observed some things first.
20 He observed Mr. Rhodes pull in the driveway in a
21 yellow Mustang. He observed him get out and go with another
22 person I believe by the name of Justice to one of these
23 vehicles and open the trunk, and then look in.

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1 I am not sure what he is going to say, if he is
2 going to say he took something out of the trunk or he just
3 looked in, but -- Because there is a little variation
4 between the preliminary and the suppression hearing, but
5 either way, he was eventually seen by Trooper Gray with
6 a white object in his hand, what looked like an envelope.
7 He radioed. And, then he saw Rhodes get back in
8 the Mustang and take off. He radioed this information out
9 on the airwaves.
10 The evidence turns out that Trooper Dyer got
11 the message. He was, in fact, heading towards 2400 Loudoun
12 Road, where Mrs. Rhodes lived. He spotted the vehicle
13 and followed it, and it pulled into a country store here
14 in the County; and when he stopped them, he then conducted
15 a search of the car and certain alleged PCP items were in
16 the car.
17 There was, I think, 10 or 12 PCP dipped cigarettes
18 which were in a plastic bag in the back portion of the car
19 Mr. Rhodes was driving. The evidence, of course, will be
20 that the car is not Mr. Rhodes'. It belongs to somebody
21 else.
22 There were two other people in the car, one in
23 the back seat, one in the front.

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1 Now, today -- So, therefore, the Commonwealth
2 charged him with possession of PCP meaning the PCP found
3 in the car as a result of Trooper Dyer's search.
4 On the other hand, they are also charging him
5 with manufacturing of PCP because of the items they found
6 at the farm, which were quite numerous, I think. There
7 were over 53 items they found there. They found 40 pounds
8 of cyanide. They found chemicals that he had used to make
9 up the PCP, and that is the other charge that is not being
10 heard today.
11 Now, so, that we have really two cases. We have
12 two sets of facts. Now, true, they are closely connected.
13 Now, I have researched the law to quite an extent,
14 Your Honor, because when I noticed yesterday from the file
15 that those witnesses were coming in, I anticipated that
16 that is what the Commonwealth is going to do, is to put
17 in this evidence about what went on out at the farm and
18 all of this stuff that was there at the farm.
19 Now, Your Honor, I submit, basically, the general
20 rule is that the Commonwealth can't prove one criminal
21 act by proving another. There are exceptions. Some of
22 the exceptions are just as well known as the general rule
23 is, and that is that they can prove evidence of other crimes

1 to show intent, knowledge, motive or scheme.

2 Now, in this particular case, I would agree with

3 the Commonwealth that they have to show that Mr. Rhodes

4 knowingly and intentionally possessed the PCP that was in

5 the motor vehicle, and I believe Mr. Ebert is going to take

6 the position, and I am being bold in presuming this, that

7 Commonwealth can introduce this evidence at the farm to

8 show intent and knowledge on his part, Mr. Rhodes' part,

9 that he knew this stuff was in the back seat of the Mustang.

10 Now, there are three reasons, Your Honor, why I

11 submit to the Court that the Court must exclude this

12 evidence from anything to do with the farm.

13 Number one is, of course, that that evidence would

14 certainly be prejudicial in bringing that into play today.

15 That would be prejudicial against him as to what really

16 the essence of this charge is and that is possession of

17 the item in the Mustang.

18 If evidence came in that they found all the cyanide

19 and the stuff in the trunks of cars, it would certainly

20 have a prejudicial inference against Mr. Rhodes as to the

21 guilt or innocence of this charge.

22 Secondly, I'm put in a position where I am coming

23 here today, I'm not defending one case, I am defending two.

1 I might as well try them both together.

2 But, as I said before, I can't try them both

3 because of the absence of this escapee, but I will be put

4 in that position. I have to defend Mr. Rhodes on the manu-

5 facturing charge.

6 Thirdly, Your Honor, there was something bothering

7 me about this, and I couldn't put my finger on it, and

8 then it dawned on me. That's why -- I apologize to the

9 Court. -- I was a little late today because it dawned on

10 me what it was that was bothering me as to why this evidence

11 shouldn't be allowed.

12 The Court is certainly aware of the case decided

13 by the Supreme Court of Virginia. It came out of Fairfax,

14 and I believe, Judge, while you were still sitting in

15 Fairfax. Judge Morris heard the case. He tried the case.

16 The Supreme Court of Virginia reversed Judge Morris. It

17 was a bad check case, and Judge Morris had convicted the

18 defendant, and the evidence was that when the bad check

19 was presented, a person that presented a check -- I mean,

20 the check and the license, the clerk in that case said:

21 I can't identify the defendant sitting here today, but

22 whoever it was that presented the check, his name was on

23 the license, and that picture was on the license, but I

1 can't identify the defendant.

2 So, the trial court ruled that there could be an

3 inference in this regard. But the thrust of that case is,

4 and Virginia is definitely a minority State in this regard,

5 that you cannot build an inference on an inference, and

6 that's what it was that was bugging me about why this

7 evidence shouldn't be admitted, that is, the evidence from

8 the farm and the items in the truck, that the Commonwealth

9 would be presenting evidence which would have certain

10 inferences on the farm.

11 First of all, the evidence will be fairly clear,

12 I believe, Your Honor, that Mr. Rhodes doesn't own the

13 farm. Mr. Rhodes doesn't live at the farm, or didn't live

14 at the farm. He stayed there occasionally, but it was not

15 his home.

16 The cars, as I said, were not his. I don't believe

17 any of the cars were registered in his name. He was seen

18 at the place, almost inferentially he was seen going to

19 the trunk of this one car and I guess it would be inferred

20 that he got something out of the trunk, and then if the

21 items come into evidence that were found in the trunk, it

22 would be inferred that he put it there, and inferring

23 that he had knowledge that it was there.

1 Then, all of these inferences on that case would
2 have to be admitted one on top of another for the Common-
3 wealth to show by way of inference that he must have known
4 of the presence and had the intention to control and have
5 dominion over the items that were found in the cars.
6 So, therefore, what I am saying, thirdly, Your
7 Honor, and the most viable reason for this is, I am saying
8 we have to exclude any evidence about the farm and what
9 was done out there as this would be an inference on an
10 inference upon inference ad infinitum, and that would be
11 most definitely prejudicial to Mr. Rhodes.
12 As I have said the first two things that would be
13 prejudicial to him, if all that evidence does come in,
14 because they say, well, the jury may conclude while he is
15 out there manufacturing, he most certainly possessed it
16 knowingly and intentionally in the Mustang.
17 And, as I said, if Mr. Ebert is allowed to put
18 this evidence in today, I am fighting two cases. I might
19 as well try the two cases, and I can't. I can't try them
20 both.
21 THE COURT: Mr. Ebert, let's go back to this
22 matter of the items being destroyed. What is your position
23 on that?

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1 MR. EBERT: If it please the Court, I think this
2 case, it should be up to the Court and the jury whether
3 they believe that any substance was received. Whether it
4 was analyzed and later turned out to be the illegal substance
5 charged. There is no requirement that the exact evidence
6 be -- As the Court well knows, the item itself is destroyed
7 in the process of analyzing it, so it is not absolutely
8 necessary that the physical item be introduced as long
9 as there is testimony or satisfactory testimony that the
10 item seized was in fact examined and did turn out to be
11 the illegal substance.
12 So I feel that the mere fact that that is missing,
13 I think --
14 THE COURT: I would have to deny your motion on
15 that, to exclude the testimony of the expert. I would have
16 to see what the evidence is, the chain of custody, and so
17 forth on this, but that would have to be denied at this
18 point.
19 Let's go to the other matter, the farm and the
20 manufacture of PCP.
21 MR. EBERT: Your Honor, I can proffer to the Court
22 I don't intend to go into all the details of the manufacture,
23 but I do think it is absolutely necessary for the Commonwealth

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1 to show some of the events leading up to the arrest.

2 For this reason, I think the Court is well aware,

3 you just can't draw a line and say, wham, here he was with

4 this, particularly when one of the elements, and the major

5 elements of the crime, is knowledge and intent.

6 What I propose to do is show that the defendant

7 was seen at the area which was being staked out, and that

8 a search warrant had been issued for the search of that

9 premises, that during the course of this stakeout strong

10 odors of what was believed to be by the trained officer to

11 be PCP were emanating from the area where the defendant

12 was seen going from one place to another, that he was

13 seen leaving with an object in his hand and getting into

14 the car and leaving.

15 With that, the one trooper radioed ahead to the

16 other trooper saying that he had left the premises with an

17 object, and he believed that he was taking some of the

18 evidence away, that that was the basis for the arrest.

19 I think Judge Sinclair has already ruled the arrest

20 was valid.

21 When the other trooper approached the vehicle, he

22 smelled PCP emanating from the vehicle, and that is as far

23 as I am going to go.

1 I don't intend to introduce, unless it be by way
2 of rebuttal, I don't know what kind of evidence will be
3 coming from the defendant, but I don't intend to introduce
4 the quantity that was found at the farm, the physical
5 makeup of what makes up the items, but I would intend, and
6 I think it is absolutely material for us to show, a certain
7 amount of what led up to this to show knowledge and intent
8 on the part of the defendant.
9 THE COURT: Let me ask you this. I don't know any
10 of the details. Was the defendant arrested prior to the
11 execution of the search warrant?
12 MR. EBERT: Yes, sir.
13 THE COURT: Then it would seem permissible to me
14 that you would have to lead up to events leading up to the
15 arrest, but you cannot go behind the arrest for this charge.
16 I think that is fair.
17 MR. LYNCH: Your Honor, are you ruling -- Let me
18 understand you. Mr. Ebert says he intends to get into
19 evidence --
20 THE COURT: What he is going to put into evidence
21 is they had the place under stakeout,and a search warrant
22 had been issued, and I think you could leave it at that
23 point without going into detail as to whether it was executed

1 or not.

2 MR. LYNCH: Would that not --

3 THE COURT: He has got to show some reasonable

4 basis.

5 MR. LYNCH: Your Honor, if the evidence comes in

6 to these 12 folks on the jury, and they are intelligent

7 people, but they are not lawyers, and they may think, well,

8 when a search warrant was issued, something must be fishy

9 right here.

10 But the search warrant wasn't connected with

11 Rhodes. It was to search the premises of Mrs. Rhodes, his

12 mother.

13 THE COURT: As I understand the testimony the

14 testimony of the officer will be that they saw him at these

15 premises, observed what he was doing at this premises, and

16 saw him leave.

17 MR. LYNCH: I can't quarrel with that. They would

18 see that, but I think if the Court allows Mr. Ebert to --

19 For the trooper to say, "We were there to execute a search

20 warrant for that premises.", I think that's going to hurt.

21 I would tend to agree that maybe the trooper could

22 say, "I was there. I saw Mr. Rhodes in and about the

23 premises, and I saw him leave." He has got to get into that

1 naturally.

2 But as to the search warrant being issued, Your

3 Honor, I think that is highly prejudicial to the defendant

4 because they may think, well, they already have a case.

5 THE COURT: Let me ask you this, Mr. Ebert: Does

6 it prejudice your case to say that the place was simply --

7 That they had reason to have the place under surveillance

8 without getting into the search warrant bit?

9 MR. EBERT: Well, Your Honor, it would seem to me

10 that -- I guess I would have to tell the trooper not to

11 mention the fact that he was armed with a search warrant,

12 that he was coming to the premises --

13 THE COURT: I think the other officer would say

14 he smelled the odor of PCP emanating from that without

15 getting into this matter of the search warrant.

16 MR.EBERT: What I am going to have to do is to

17 caution him not to mention it.

18 THE COURT: Let's see if we can't do it that way,

19 leave out the search warrant, but they had the premises

20 under surveillance, saw the defendant at these premises,

21 they smelled the odor of PCP, what he believed to be PCP.

22 He radioed another officer that he left, and the

23 arrest resulted from that. Is that within the framework that

1 you think you could live with?

2 MR. LYNCH: Yes, sir.

3 THE COURT: I think that's fair.

4 MR. EBERT: May the Court permit me to caution

5 the officers?

6 THE COURT: You may do so right now before we

7 start.

8 MR. EBERT: All right, sir.

9 THE COURT: Let me say, also, and in regard to

10 this, in all fairness, Mr. Lynch, I think in regard to the

11 matter of the substance being destroyed, the evidence will

12 have to stand on the custody and examination and analysis

13 and so forth, but I am not going to permit you to argue

14 before the jury as to why the substance is not here.

15 Do you understand?

16 MR.LYNCH: That's why I thought we should take

17 it up now. You've ruled, and now I know, so I won't.

18 THE COURT: You will not be permitted to argue.

19 I think it is totally unfair to say, "Why don't we have the

20 substance here?" They have to make the decision on the

21 evidence before them.

22 MR. LYNCH: I am just raising the objection for the

23 record. I will not go into it.

1 to come back with a reasonable doubt as to the guilt of
2 Jacky Rhodes on this charge.
3 I thank you.
4 THE COURT: All right, Mr. Ebert, you may call your
5 first witness.
6 Whereupon,
7 TROOPER S. E. GRAY,
8 a witness, was called for examination by counsel on behalf
9 of the Commonwealth, and, having been duly sworn by the
10 Clerk of the Court, was examined and testified as follows:
11 DIRECT EXAMINATION
12 BY MR. EBERT:
13 Q. Trooper Gray, would you state your full name, and
14 give your place of employment?
15 A. S. E. Gray, Virginia State Police.
16 Q. How long have you been so employed?
17 A. Approximately six years.
18 Q. In what capacity are you now assigned?
19 A. Narcotics investigation.
20 Q. How long have you been assigned to narcotics
21 investigation?
22 A. Going on four years.
23 Q. Have you received special training in that field?

1 A. Yes, I have.

2 Q. What type of training have you received?

3 A. Various types of drugs. I have had special

4 training in PCP as far as the manufacturing process.

5 Q. Directing your attention to on or about the 16th

6 day of September, 1978, did you have occasion to be present

7 in Prince William County on that date?

8 A. Yes, I was.

9 Q. Where were you physically located?

10 A. I was located on or near 2400 Loudoun Drive in

11 Prince William County, Virginia.

12 Q. Where is that located within Prince William County?

13 Just generally give us the --

14 A. It's located on Route 15, just south of the Loudoun

15 County line.

16 Q. That would be in the northwestern portion of Prince

17 William County?

18 A. Yes, that's correct.

19 Q. On the day in question, how long had you been in

20 that position?

21 A. I had been in that position since the prior evening

22 at about 8:30 or 9:00 o'clock.

23 Q. While you were in that position, did you have

1 occasion to smell anything?

2 A. Yes, I did.

3 Q. What did you smell?

4 A. I smelled a chemical odor being emitted from the

5 general direction of 2400 Loudoun Drive. This odor that

6 I smelled --

7 THE COURT: Speak a little bit louder, if you could,

8 Trooper Gray.

9 THE WITNESS: I smelled a chemical odor coming from

10 the general area of 2400 Loudoun Drive. This odor that

11 I smelled has been associated with prior manufacturing, PCP

12 manufacturing, processes in the past.

13 BY MR. EBERT:

14 Q. Did you smelled what you believed to be phencycli-

15 dine or PCP?

16 A. Yes, I did.

17 Q. Had you smelled that substance prior to the time

18 that you conducted this surveillance?

19 A. Yes, I had.

20 Q. Is there any question in your mind that's what the

21 odor was that you smelled?

22 MR. LYNCH: I object. Mr. Ebert is leading the

23 witness an awful lot.

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1 THE COURT: You are leading him. I would have to
2 agree with him.
3 BY MR. EBERT:
4 Q. On how many other occasions had you smelled that
5 substance?
6 A. Probably 70 - 80 times.
7 Q. Did there come a time when you had occasion to see
8 the defendant on the premises?
9 A. Yes, I did.
10 Q. Approximately what time was that?
11 A. Approximately 4:42 p.m. on the 16th of September,
12 1978.
13 Q. How did he arrive?
14 A. He arrived in a yellow Mustang.
15 Q. Was that Mustang registered to him, or do you know?
16 A. No, sir, it was not registered to him.
17 Q. Was anyone else in the car with him?
18 A. There was one female and one male.
19 Q. Did you later learn the identity of these persons?
20 A. Yes, I did.
21 Q. What was their identity?
22 A. Mary Jane McDaniel, and a guy by the first name
23 of Gino Tirado, I believe was his last name. I am not

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1 sure on the pronunciation.

2 Q. Was anybody in that car the registered owner of

3 the car, to your knowledge?

4 A. No, sir, he was not.

5 Q. Upon the arrival of the car, tell the ladies and

6 gentlemen of the jury what you observed?

7 A. Okay. Shortly after the arrival of the Mustang,

8 there was arrival of another yellow Pinto, and a subject

9 who was known to me to be Charlie Justice was driving the

10 Pinto.

11 At this time, Mr. Justice and Mr. Rhodes walked

12 over to an old abandoned vehicle, Chrysler, which was in

13 my view. I observed Mr. Rhodes and Mr. Justice, and I

14 observed Mr. Rhodes unlock the trunk, open it up, and I

15 observed him leaning over and looking inside the trunk of

16 the vehicle.

17 At this point, they stayed there approximately a

18 minute, two minutes.

19 Q. When the trunk opened, were you able to smell any-

20 thing at that time?

21 A. Yes. At the point the trunk was opened, the odor

22 became very strong, stronger than at any point during the

23 night and during the day that I had smelled it. There was

1 an emittance of a very strong odor, the same chemical odor
2 associated with the manufacturing of PCP.
3 At this point, they shut the trunk on the vehicle,
4 and they walked from my viewpoint, stayed from my viewpoint
5 a short period of time, then I heard the slamming of another
6 door, to what vehicle, I do not know.
7 Q. Would you describe for the ladies and gentlemen
8 of the jury the condition of the premises you are speaking
9 of?
10 A. Okay. The premises is a big farm area, farm house
11 looking area, that's got, in relation to where the Chrysler
12 was, there was a van located approximately 15 or 20 feet
13 to the left side of the Chrysler. At this point, when
14 they left the Mustang, I did not know whether they went to
15 the van or not. They went in that general direction. I
16 could not see the van from my viewpoint.
17 Q. Were there any other vehicles there?
18 A. There were several other vehicles there, but that
19 was the only -- The Chrysler was the only one that I could
20 see.
21 Q. Was it operable or describe what type of vehicle
22 it was.
23 A. The vehicles, most of them were not operable. They

1 did not have all four tires, windows were broken out, grass
2 was growing up around them. It was obvious that they had
3 not been moved in quite some time. It appeared that they
4 were being used for some kind of storage.
5 Q. Then what did you observe?
6 A. I observed Mr. Rhodes and Mr. Justice walk back
7 to the Mustang. I observed Mr. Rhodes carrying a white
8 looking object. From my viewpoint, I could not tell
9 exactly what it was. It could have been an envelope, or
10 it could have been a plastic bag with white substance in it.
11 I couldn't tell.
12 Q. Did you later see that object?
13 A. Yes, I did.
14 MR. LYNCH: I object to that question because he
15 can't say what it was that he saw in the first place. How
16 is he going to say what he saw later?
17 THE COURT: I am inclined to agree with that. I
18 think there has to be more foundation.
19 MR. EBERT: It goes to the weight of the testimony,
20 if he wants to attack him on this, but all he can say is
21 what he believes he saw rather than the admissibility of
22 the evidence.
23 THE COURT: I'm not so sure. If he says a white

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1 object -- Did you later identify the object?

2 THE WITNESS: I later saw another object that

3 appeared to be similar to the same one I saw at the farm.

4 THE COURT: Let it stand at that then. Okay.

5 BY MR. EBERT:

6 Q. Where was it you later saw this object?

7 A. That was at Orndoff's Garage and Restaurant in

8 Haymarket, Virginia. The object had been taken from the

9 vehicle that Mr. Rhodes was operating.

10 Q. In whose possession was it when you first saw it?

11 A. At the time at Orndoff's?

12 Q. Yes.

13 A. Trooper Dyer had already taken possession of the

14 substance, of the plastic bag.

15 Q. Did you get a close up look at that object at

16 Orndoff's?

17 A. Yes, I did.

18 Q. What was the object as best you can describe it?

19 A. It was a plastic bag, and it had regular cigarettes,

20 factory made cigarettes, that appeared to be very damp

21 enclosed in a plastic bag, and they were sort of lined up

22 in the plastic bag.

23 Q. Can you describe the plastic bag of cigarettes as

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1 a facsimile of what you observed?

2 A. What is --

3 MR. LYNCH: May I ask which time he is talking

4 about?

5 THE COURT: He is talking about the time at

6 Orndoff's, is the way I understand; later.

7 THE WITNESS: Yes, except it was not a Ziploc

8 Baggie, it was like a regular sandwich bag. The top was

9 rolled down, but it was similar to this.

10 MR. EBERT: I ask that that be marked for identifi-

11 cation.

12 THE COURT: Mark it as Commonwealth's No. 1 for

13 identification.

14 (The object referred to above
was marked Commonwealth's Exhi-
15 bit No. 1 for identification.)

16 BY MR. EBERT:

17 Q. Getting back to what you observed at the area

18 which you described as a farm, what did you observe then?

19 A. I observed Mr. Justice and Mr. Rhodes converse

20 for a short period of time, and, then, Mr. Rhodes entered

21 the vehicle. At this point, Mr. Justice spoke to Mr. Rhodes

22 and says, "Be careful, Bear.", and that was the last words

23 that I --

1 Q. "Be careful, Bear."?

2 A. Right.

3 Q. Do you know whether or not Mr. Rhodes has a nick-

4 name?

5 A. Yes, Mr. Rhodes' nickname is Bear.

6 Q. Then what happened?

7 A. Mr. Rhodes then departed the area in the Mustang.

8 At this point --

9 Q. Was anybody in the car with him at that time?

10 A. The same two subjects were in the car.

11 Q. What did you do when he left the area?

12 A. I conversed over the radio, the walkie-talkie

13 radio, that I had in my possession to the surveillance unit

14 that was set up in the area around the 2400 Loudoun Drive

15 area on Route 15.

16 At this point, I told them that the vehicle was

17 leaving and what I had observed during the time that Mr.

18 Rhodes had been at the farm house, and about the old Chrysler,

19 and the statement that I heard Mr. Justice make to Mr.

20 Rhodes.

21 Q. After that, how long was it before you went to the

22 area which has been described as Orndoff's restaurant?

23 A. It took me approximately, probably, ten to twelve

1 minutes to reach the vehicle, my vehicle, from my observa-
2 tion point.
3 Q. Where was your vehicle parked?
4 A. Well, it was actually picked up by another member
5 of the surveillance team who had come up to the old church
6 which sits adjacent to the farm. So, it's approximately
7 100 - 150 yards from the farm, farm line.
8 Q. And, then, did you go directly from there to
9 Orndoff's?
10 A. Yes.
11 Q. Were you in radio contact with Officer Dyer?
12 A. Yes, I was.
13 Q. What you observed all occurred in Prince William
14 County?
15 A. Yes, sir, it did.
16 Q. When you saw the object, which is similar to what
17 has been marked for identification purposes as Exhibit No.
18 1, was the defendant present at that time?
19 A. Yes, he was.
20 MR. EBERT: That's all I have of this witness.
21 THE COURT: You may cross examine.
22
23

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1 CROSS EXAMINATION

2 BY MR. LYNCH:

3 Q. Trooper Dyer, you say you have smelled PCP 70 or

4 80 times, I believe that is what you said on direct?

5 A. Yes.

6 Q. In your police training, of course, you're not

7 trained in any chemical analysis or anything, are you? You

8 are not a chemist or have any chemical training?

9 A. No, sir.

10 Q. Have you ever smelled burning plastic?

11 A. Yes.

12 Q. Out there, where this took place on Loudoun Drive,

13 it's kind of out in the country, isn't it?

14 A. Yes, sir, it is.

15 Q. Across the road from where -- Did you determine

16 that this property that you were observing actually was

17 the property of Mrs. Rhodes, was it not, Jacky Rhodes'

18 mother?

19 A. Yes, that's correct.

20 Q. And the cars that we are talking about, you didn't

21 determine any of them specifically belonged to Jacky Rhodes,

22 did you?

23 A. I didn't determine that they belonged to him, but

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1 statements from --

2 Q. My question was --

3 MR. EBERT: Your Honor, just a minute. He asked

4 if he determined who they belonged to, and I think he can

5 say whether he did or not and how he did it.

6 MR. LYNCH: I would assume that he meant that he

7 determined it through -- The way of introducing evidence,

8 the way of proper introduction of evidence --

9 MR. EBERT: He is the one that asked the question.

10 THE COURT: Rephrase your question, Mr. Lynch.

11 BY MR. LYNCH:

12 Q. Did you seek to obtain from the Division of Motor

13 Vehicles through your efforts the ownership of these

14 various cars?

15 A. Not through the Division of Motor Vehicles, no,

16 sir.

17 Q. Now, as far as the location of the farm is concerned,

18 is there not across the road from Mrs. Rhodes' property a

19 prison farm for the County?

20 A. Yes. It's near. I wouldn't say it's directly

21 across the road.

22 Q. I am talking across the road and back aways?

23 A. Yes, sir.

1 Q. And down the roads is -- You would be at Mrs.
2 Rhodes' property facing Loudoun Drive. Down the road to
3 the right, about a quarter or half-a-mile, is a chemical
4 factory, is there not?
5 A. I would say it was down the road to the left.
6 Q. If you are coming out the lane, you would turn
7 right to get to the chemical factory, wouldn't you?
8 A. Yes, that's correct.
9 Q. That's about a half-a-mile away, quarter to half-
10 a-mile away?
11 A. Approximately. I didn't really measure it.
12 Q. When you were out there, would you say that the
13 odor that you observed fluctuated; as the wind would blow,
14 the odor would get stronger; as the wind died down, the
15 odor would recede?
16 A. Yes, sir.
17 Q. This object that you said you saw Mr. Rhodes have
18 in his hand, you have testified here today -- May I have
19 Commonwealth Exhibit?
20 Well, let me back up a minute.
21 How far away was Mr. Rhodes when you first saw him
22 with this object in his hand or whatever the object was?
23 A. Probably 35 yards, maybe a little more, maybe a

1 little less.

2 Q. Was the weather clear?

3 A. Yes, it was.

4 Q. At this time of day, it would have been daylight,

5 is that right?

6 A. That's correct.

7 Q. When you radioed ahead to whoever -- It turned out

8 Trooper Dyer got the message, you said, did you not that

9 it was a white object like a white envelope?

10 A. Yes, that's correct.

11 Q. When Mr. Ebert asked you the question did you later

12 see the object that Mr. Rhodes had in his hand, what you

13 are telling these folks is you saw Mr. Rhodes with a white

14 object in his hand?

15 A. That's correct.

16 Q. At the farm?

17 A. That's correct.

18 Q. Later on, Trooper Dyer had already made the search

19 of the car, and he showed you this plastic -- Or not this

20 plastic bag, but a bag similar to this, with cigarettes

21 in it, and that's what he showed you, Trooper Dyer?

22 A. That's right.

23 Q. So, all you are telling these folks is Trooper Dyer

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1 showed me a bag with some cigarettes in it, and I saw a
2 white object out there at the farm?
3 A. Yes.
4 Q. But in fairness to you and to these folks, you
5 are not saying that definitely what Mr. Rhodes had at the
6 farm was what Trooper Dyer showed you?
7 A. I said that it appeared to be similar to that. I
8 could not swear it was exactly the same one, no, sir.
9 Q. When you saw Mr. -- I believe you said Mr. Justice
10 was out there at the farm when you saw Jacky go over to
11 the trunk of the car. There was a man named Justice with
12 him, is that correct?
13 A. Yes, sir.
14 Q. I don't believe it was your testimony that you
15 saw Jacky get this white object out of the trunk. That's
16 not your testimony, is it?
17 A. No, sir. I didn't see it, but at all times -- Not
18 at all times could I see the front of Mr. Rhodes. There
19 were points of time where he had his back turned to me as
20 when he was walking. Even when I saw this, I only got an
21 angle.
22 Q. I understand, but in fairness to Mr. Rhodes, you
23 are not saying that he got whatever that white object was

1 out of the trunk?

2 A. I could not see him get it out of the trunk, no,

3 sir.

4 MR. LYNCH: Thank you.

5 THE COURT: Do you have any further questions.

6 REDIRECT EXAMINATION

7 BY MR. EBERT:

8 Q. Where was he when you first saw this white object

9 in question?

10 A. He was going back to the car.

11 Q. Where was he with relation to the trunk that he

12 had looked into?

13 A. He was probably about 25 feet from the car. He

14 had to walk in-between a building, a building was in-between

15 the car, or in-between my viewpoint of the old Chrysler

16 and his car.

17 Q. And you were hidden, I assume, from observation, is

18 that correct?

19 A. That's correct.

20 Q. Is there any question in your mind from where these

21 smells were emanating?

22 A. No, sir, not at that point.

23 MR. EBERT: That's all I have of this witness.

1 THE COURT: May this witness be excused, or should
2 he standby for recall?
3 MR. EBERT: I may have to recall him.
4 THE COURT: All right, Trooper, will you remain
5 outside, sir, subject to the same admonition that I gave
6 you before.
7 MR. EBERT: Trooper Dyer.
8 Whereupon,
9 TROOPER R. A. DYER,
10 a witness, was called for examination by counsel on behalf
11 of the Commonwealth, and, having been duly sworn by the
12 Clerk of the Court, was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. EBERT:
15 Q. State your full name and give your place of em-
16 ployment.
17 A. Trooper R. A. Dyer, Virginia State Police.
18 Q. How long have you been so employed?
19 A. Eight-and-a-half years.
20 Q. In what capacity are you now employed with the
21 Virginia State Police?
22 A. Narcotics investigation.
23 Q. How long have you been involved in narcotics inves-

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1 A. It was in Prince William County at the intersection
2 of Route 234 and Route 15.
3 Q. Were you familiar with the area where Trooper
4 Gray was located at the time he transmitted this message to
5 you?
6 A. Yes, sir, I was.
7 Q. How far was the area where you first observed Mr.
8 Rhodes from that area?
9 A. Approximately two miles.
10 Q. Upon observing Mr. Rhodes, what did you do?
11 A. I fell in behind a surveillance team consisting
12 of two other vehicles which was behind Mr. Rhodes and followed
13 it down Route 15, which I guess would be east towards
14 Haymarket.
15 Q. When you say surveillance team, do you know who
16 these individuals were?
17 A. Yes, sir. It was Investigator T. P. Clark and
18 Investigator R. D. Fish.
19 Q. Then what happened?
20 A. We followed the vehicle to Orndoff's truck stop
21 which is the intersection of 50 and 15 in Prince William
22 County at Haymarket.
23 Q. What route did the vehicle take prior to going there?

1 A. It took Route 15 to 50.

2 Q. Would you describe to the ladies and gentlemen of

3 the jury the action of the car?

4 A. At the time I saw it, it was speeding, or appeared

5 to be speeding. It was going over 55 miles an hour when

6 I saw it.

7 Q. Did it go directly to Orndoff's?

8 A. When I observed the vehicle, it was going directly

9 to Orndoff's.

10 Q. Then what happened?

11 A. When I arrived at Orndoff's, it pulled into the

12 parking lot between two rows of cars, and I took my vehicle

13 to the front and blocked the vehicle, and got out and

14 approached the yellow Mustang.

15 Q. And then what occurred?

16 A. As I approached the vehicle, I detected an odor,

17 as I was approaching from the front of the Mustang. I

18 was about three to five feet away, and I detected an odor

19 which appeared to be PCP.

20 I went to the passenger's side and got two

21 passengers out of that side. Investigator Fish went to the

22 driver's side and got Mr. Rhodes out of that side.

23 Q. And did you have occasion to smell, when you went

1 in the car, did you smell anything?

2 A. As I was approaching it, I smelled what appeared

3 to be PCP; and when I got to the vehicle, I could still

4 smell the strong odor emitting from the inside of the

5 vehicle.

6 Q. Did you take anything from the vehicle?

7 A. Yes, I did.

8 Q. What did you take?

9 A. I took a plastic bottle with some plant material

10 in it, a plastic bag with 12 cigarettes, and a hypodermic

11 syringe.

12 Q. Where did you get those items from?

13 A. The small plastic bottle was on the right, front

14 floorboard. The plastic bag was on the console, or hump,

15 for the drive shaft just behind the front seat on the side

16 of the hump or console; and the syringe was laying on the

17 floorboard.

18 Q. Which floorboard?

19 A. Right, front.

20 Q. Where were the other passengers located?

21 A. The young lady, Mary Jane McDaniels, in the right,

22 front passenger seat; and Eugene Tirado was in the right,

23 rear passenger seat.

1 Q. And the substance which you described as being
2 the pastic bag with cigarettes in it, was that within
3 reach of the defendant?
4 A. Yes, sir.
5 MR. LYNCH: He is leading the witness, and it is
6 a conclusion on his part.
7 THE COURT: Agreed.
8 BY MR. EBERT:
9 Q. How far away was the item you mentioned from the
10 defendant?
11 A. The seats in the front of the Mustang were bucket
12 seats with an opening between the bucket seats, and,
13 sitting in the bucket seat, it would have been right behind
14 the bucket seat. It would be within reach of anyone.
15 Q. I show you what has been marked as Commonwealth's
16 Exhibit No. 1 for identification purposes and ask if you
17 can tell the ladies and gentlemen of the jury whether or
18 not that is similar to the item which you have described?
19 A. Yes, sir, it is. With the one exception of the
20 cigarettes that I found appeared be soaked in something.
21 They were wet. That's the only difference in the way it
22 looks.
23 Q. How about the bag itself? Is the bag the same, or

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1 what was it like?

2 A. The other bag, the bag I found, was a plastic

3 sandwich bag which was sealed at the top.

4 MR. EBERT: I would offer this into evidence,

5 realizing, of course, it is just a facsimile of what he

6 has testified to. It's a piece of demonstrative evidence,

7 not the evidence itself.

8 THE COURT: Do you have any objection for the

9 demonstrative viewpoint?

10 MR. LYNCH: No, Your Honor.

11 THE COURT: It will be allowed to come in as not

12 the actual evidence, but to demonstrate, and for that

13 purpose only.

14 (The object heretofore marked

15 Commonwealth's Exhibit No. 1 for identification was received in

16 evidence.)

17 BY MR. EBERT:

18 Q. With regard to the exhibit you mentioned or the bag,

19 what did you do with it?

20 A. At the time, I took all of the evidence out and

21 put it on the top of the vehicle. I then sealed it in a

22 brown evidence envelope; and on the outside of it, I put the

23 defendant's name, where it was found, my name, and the

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1 location, date and time that it was sealed.

2 I then placed all of the evidence in the trunk of

3 the vehicle I was driving which belongs to the Department

4 of State Police, and I'm the only one who has a set of keys

5 to that vehicle.

6 The envelopes were kept in that trunk until

7 September the 20th, 1978, when I took it to the Consolidated

8 Lab in Merrifield, Virginia, and turned it over to Dr.

9 Hepner.

10 Q. From the time you received it until the time you

11 turned it over to Dr. Hepner was it in your sole and exclu-

12 sive possession?

13 A. Yes, sir.

14 Q. Was a number assigned to it when you turned it

15 over to him?

16 A. When I took it to the lab, the secretary issued

17 a number, and she put it on the form I turned in, and then

18 Dr. Hepner wrote it on each one of the bags.

19 Q. Did you personally deliver this to Dr. Hepner?

20 A. Yes, I did.

21 Q. Do you know what number was assigned to that exhibit

22 by the secretary?

23 A. From the records, I could state that, yes, sir:

1 It is 78-N-2098.

2 Q. Did you have an occasion to receive that exhibit

3 back at a later date?

4 A. Yes, sir, I did.

5 Q. From whom did you receive it and when?

6 A. It was Dr. Hepner on April the 5th, 1979.

7 Q. Did you have an occasion to cause that exhibit

8 to be destroyed at a later date?

9 A. Yes, sir, I did.

10 Q. When was that?

11 A. I don't have the notes on the exact date. It was

12 within about a month-and-a-half ago.

13 Q. Getting back to the time that you took these items

14 from the car, did you see any license plate in the car?

15 A. No, sir.

16 Q. This all occurred in Prince William County?

17 A. Yes, sir, it did.

18 MR. EBERT: That's all I have.

19 THE COURT: You may cross examine.

20 CROSS EXAMINATION

21 BY MR. LYNCH:

22 Q. Were you looking for a license plate?

23 A. No, sir.

1 Q. You are not saying that the license plate was not
2 in there, you are saying you didn't see it?
3 A. I am saying I did not see any license plate, sir.
4 Q. But there could have been one in there in a white
5 envelope?
6 A. Might have been. I didn't see one.
7 Q. After you made the arrest of Jacky Rhodes, you
8 empounded the car, didn't you?
9 A. I had it towed for safe keeping until it was
10 turned over to the owner.
11 Q. How long have you been with the drug enforcement
12 part of the State troopers?
13 A. Approximately four-and-a-half years.
14 Q. Has Trooper Gray been there longer or shorter than
15 you in the drugs?
16 A. I don't know.
17 Q. And, you say you smelled PCP on at least 25 times?
18 A. Yes, sir.
19 Q. And it has an unique odor?
20 A. Yes, sir.
21 Q. Rotten eggs has a unique odor, does it not?
22 A. Yes, sir.
23 Q. Are you aware of what is used to make PCP, what

1 chemical?

2 A. Some of the items, yes, sir.

3 Q. Is not ether one of the items that is used to make

4 PCP?

5 A. Yes, sir.

6 Q. Are you aware of the chemical factory that is up

7 the road from Mrs. Rhodes' house?

8 A. I think I know the building you are talking about,

9 but I don't know what type of building it is or what it

10 does.

11 Q. The car that Mr. Rhodes was operating was a Mustang,

12 correct?

13 A. Yes, sir.

14 Q. Tell the jury, please, what your understanding

15 of a floorboard is. What is a floorboard?

16 A. A floorboard?

17 Q. Floor or floorboard.

18 A. Of a vehicle?

19 Q. Yes.

20 A. It would be anything other than the seats, anything

21 that would be covered with carpet I would say would be a

22 floorboard.

23 Q. You testified at Mr. Rhodes' preliminary hearing

1 as to the location, did you not, of this white object that
2 you found in the car?
3 A. I am sure I testified to it.
4 Q. And that was back in May of 1979?
5 A. I am not sure of the date, sir.
6 Q. Well, certainly, the preliminary hearing was quite
7 awhile ago, before today?
8 A. Yes, sir, it was.
9 Q. And you just testified today, through Mr. Ebert's
10 questions, that this item that you found was within easy
11 reach of Mr. Rhodes on this console?
12 A. Yes, sir.
13 Q. Do you recall testifying previously that, in fact,
14 it was on the floor of the car in back of Mr. Rhodes?
15 A. I don't remember how I testified before, sir.
16 Q. Trooper Dyer, Mr. Ebert -- The preliminary hearing
17 transcript, page 35, Your Honor, that would be dated May
18 15, 1979, page 35.
19 MR. EBERT: I wasn't provided a copy of that
20 transcript, Your Honor.
21 THE COURT: You can use ours.
22 BY MR. LYNCH:
23 Q. Page 35, the question was presented to you, do you

1 recall this question at the preliminary hearing? The
2 question to you, I believe, was by the Commonwealth Attorney:
3 Did you find any near where the defendant was sitting in
4 the car?
5 Answer: The plastic bag with the cigarettes was
6 behind him on the seat on the floor.
7 Do you remember that answer?
8 A. No, sir, I don't remember on the seat, on the
9 floor.
10 Q. There was a dash, on the seat, dash, on the floor.
11 Do you recall saying at the same preliminary hearing that
12 it was on the floorboard behind the defendant?
13 A. I may have.
14 MR. EBERT: Where are you referring to, sir?
15 MR. LYNCH: I want to ask him if he recalls saying
16 that. I am referring to page, Mr. Ebert, page 48.
17 MR. EBERT: Ask your question.
18 BY MR. LYNCH:
19 Q. The question was to you on page 48: You said,
20 I believe, that you found, let's take the back seat, you
21 said in back of Rhodes. I assume you meant the back seat.
22 Answer: On the floorboard behind Mr. Rhodes.
23 Do you recall that answer?

1 A. I don't recall it. I probably did say that. That's
2 what I've said this morning.
3 Q. Now, well, maybe the jury remembers what you said,
4 after Mr. Ebert asked you this question, that it was within
5 each reach of Mr. Rhodes, this plastic bag?
6 A. Yes, sir.
7 Q. It was within much easier reach of Mr. Tirado, who
8 was sitting in the back seat, wasn't it?
9 A. It was within the reach of everybody in the vehicle.
10 Q. It wasn't any closer to Mr. Rhodes or any easier
11 to reach for him than anybody else in the car?
12 A. No, sir.
13 Q. As far as the syringe that you found, that was
14 up next to Miss McDaniels purse, wasn't it, or in some be-
15 longing of hers?
16 A. No. I have two syringes I seized. One was on the
17 floorboard, and the other one was in her sox.
18 Q. But it was on the floorboard on her side?
19 A. Yes, sir.
20 Q. Those syringes have nothing to do with PCP, do
21 they; or did they in this case?
22 A. There was nothing found in the syringes, no, sir.
23 MR. LYNCH: That's all I have.

1 THE COURT: Do you have further questions?

2 REDIRECT EXAMINATION

3 BY MR. EBERT:

4 Q. Do you recall saying at the same preliminary

5 hearing, question, in response to a question, a further

6 question, do you recall making this answer: I am talking

7 about going from the -- For your record, Mr. Lynch, page

8 49. -- You have the carpet. This bag was laying on the

9 left-hand side behind Mr. Rhodes or the hump, beside the

10 hump. It wasn't on the bottom or up against the door. It

11 was right on the hump.

12 Do you recall saying that?

13 A. I remember talking about it being on the hump.

14 Q. Incidentally, this chemical plant that has been

15 mentioned, that wasn't near Orndoff's, was it?

16 A. No, sir.

17 MR. EBERT: That's all I have, sir.

18 THE COURT: May this witness be excused or do you

19 want him to standby?

20 MR. EBERT: He could stand by, Your Honor.

21 THE COURT: You may stand by. Let's take about a

22 five minute break. Give you a chance to stretch a little.

23 (Brief recess.)

1 THE COURT: Bring the jury in, please.

2 (The jury returned to the courtroom and resumed

3 their place in the jury box.)

4 THE COURT: You may call your next witness.

5 MR. EBERT: Dr. Hepner.

6 Whereupon,

7 DR. KARL E. HEPNER, JR.,

8 a witness, was called for examination by counsel on behalf

9 of the Commonwealth of Virginia, and, having been duly sworn

10 by the Clerk of the Court, was examined and testified as

11 follows:

12 DIRECT EXAMINATION

13 BY MR. EBERT:

14 Q. State your full name and your place of employment.

15 A. Dr. Karl E. Hepner, Junior. I am employed by

16 the Commonwealth of Virginia at the Northern Regional

17 Forensic Laboratory.

18 Q. In what capacity are you employed?

19 A. I am Forensic Chemist and Chemist Supervisor of

20 the Drug Analysis Section.

21 Q. As such, what do your duties include?

22 A. My duties include receiving specimens involved in

23 criminal investigations and examining the specimens for

1 evidentiary value.

2 Q. Have you received special education, training and

3 qualifications in that field?

4 A. Yes, I have.

5 Q. Would you tell the ladies and gentlemen of the

6 jury what that is?

7 MR. LYNCH: Your Honor, I would stipulate the

8 doctor has those qualifications.

9 MR. EBERT: I think the jury ought to hear his

10 qualifications.

11 THE COURT: Give it briefly, then, that would be

12 fine.

13 THE WITNESS: I hold a bachelor's, master's and

14 doctorate degrees in chemistry. I have graduate level

15 training in the analysis of organic drugs and the chemistry

16 of organic drugs. I completed the Bureau of Narcotics and

17 Dangerous Drugs seminar series in the analysis of dangerous

18 drugs, and a course of training with the Commonwealth of

19 Virginia upon my employment there.

20 BY MR. EBERT:

21 Q. Have you qualified as an expert prior to this date?

22 A. Yes, sir, I have.

23 Q. Did there come an occasion when you received some-

1 thing from Trooper Dyer which is the subject of this case?
2 A. Yes, sir.
3 Q. When was that?
4 A. I received some evidence from Trooper Dyer on the
5 20th of September, 1978.
6 Q. Upon receiving that evidence from him, was it
7 assigned a case number?
8 A. Yes, sir, it was.
9 Q. What case number was it assigned?
10 A. 78-N-2098.
11 Q. Did you take that evidence in your possession at
12 that time?
13 A. Yes, sir.
14 Q. What did you do with it?
15 A. The evidence was placed in my personal safe until
16 such time as it was removed for examination.
17 Q. Did anyone other than yourself have access to that
18 safe?
19 A. The Director of our laboratory has the combination
20 to the safe in the event of emergencies.
21 Q. To your knowledge, did anyone enter that safe other
22 than yourself?
23 A. No, sir; and the evidence envelopes remained sealed

1 until I removed them and unsealed them to examine the
2 contents.
3 Q. With regard to the exhibit that you examined, with
4 regard to the envelope which has been described as similar
5 to Exhibit No. 1, did you have such an exhibit?
6 A. A plastic bag containing cigarettes, yes, sir.
7 Q. How many cigarettes were in that bag?
8 A. There were 12 cigarettes.
9 Q. Did you conduct an analysis of the contents of
10 those cigarettes?
11 A. Yes, sir; an analysis was conducted on a representa-
12 tive sample of the cigarettes.
13 Q. What did your analysis reveal?
14 A. The cigarettes were found to have been treated with
15 phencyclidine, PCP.
16 Q. What type of substance is that?
17 A. PCP is an hallucinogenic substance. It's original
18 use was as an anesthetic. It has also been used to tran-
19 quilize large animals.
20 Q. What did you do with the exhibit, the remainder of
21 the exhibit, after you analyzed it?
22 A. The exhibit was replaced in the original bag. The
23 bag was sealed. My initials, case, identification number

1 were placed across the seal. It was then, in its entirety,
2 replaced into the original envelope and the envelope was
3 sealed.
4 I then replaced the envelope in my safe where it
5 remained until such time as Trooper Dyer returned, and I
6 returned the evidence to him.
7 Q. From the time that you received the exhibit until
8 the time you conducted the analysis on the contents of the
9 exhibit, was it in your sole and exclusive possession?
10 A. Yes, sir.
11 MR. EBERT: That's all I have of this witness.
12 CROSS EXAMINATION
13 BY MR. LYNCH:
14 Q. When you received this item that you examined, Dr.
15 Hepner, did you receive it directly from Trooper Dyer?
16 A. Yes, sir.
17 Q. That was on the 20th of September, I believe you
18 said?
19 A. Yes, sir.
20 Q. Of course, you have no knowledge as to how long
21 he had had it before that?
22 A. No, sir.
23 Q. Is ether part --

1 A. Excuse me, sir. There is a notation on my notes
2 Trooper Dyer indicated that the date of events was 9/16/78.
3 I stand corrected.
4 Q. Is ether part of the -- Is that used to make PCP?
5 A. Ethyl ether, yes, sir. Anhydrous ethyl ether.
6 Q. When you got this envelope, did some odor reach
7 out and hit you in the face? This container?
8 A. I have no notation of any odor being present.
9 Q. Are you aware of the smell of PCP, what is smells
10 like?
11 A. Yes, sir.
12 Q. Does it have a unique odor?
13 A. It has a heavy medicinal odor, yes, sir.
14 Q. Is there anything -- Is it some kind of rare smell
15 that only PCP smells like that in the whole world, as far
16 as you know?
17 A. I couldn't say it is totally unique to PCP. There
18 would be several chemical compounds that would have a
19 similar odor.
20 Q. Several chemical compounds that would have a similar
21 odor?
22 A. I would say yes, sir.
23 Q. One last question: You are -- I stipulated to it,

1 and Mr. Ebert wanted to prove it anyway, about your
2 expertise in the field of chemical analysis. You are
3 not a physician, is that correct?
4 A. No, sir; I am not a doctor of medicine.
5 Q. Do you know from your expertise, within the field
6 of your expertise, can you tell the jury and the Court
7 whether or not there are different kinds of PCP, first of
8 all?
9 A. I don't understand "different kinds".
10 Q. Are there different types of phencyclidine, or is
11 there just one type or kind?
12 A. No, sir. Phencyclidine is a discrete compound.
13 It has no isomeric configurations.
14 Q. Do you know if it has a depressant effect on the
15 central nervous system, from your expertise?
16 A. From my reading.
17 Q. As far as your field of knowledge, you can't say
18 one way or the other whether it has a depressant effect?
19 MR. EBERT: Your Honor, he is asking what he knows.
20 He is asking the questions. I don't know how he can say
21 whether, although I know this is an expert, whether he read
22 it or heard it. He has already said he is not a medical
23 doctor.

1 MR. LYNCH: I qualified the question "from his
2 field of expertise", and I could have read it, but that
3 doesn't make me an expert on it.
4 THE COURT: State your question again, Mr. Lynch.
5 BY MR. LYNCH:
6 Q From your field of expertise as a chemist, can
7 you testify with reasonable medical certainty that PCP has
8 a depressant effect on the central nervous system?
9 THE COURT: Wait a minute. He is not a medical
10 doctor. You are asking him in the terminology of a
11 reasonable medical certainty, probability. I don't believe
12 that is a fair question.
13 I sustain the objection.
14 MR. LYNCH: You're saying he can't answer the
15 question?
16 THE COURT: You can't put it in the words of
17 reasonable medical probability what the effects are of PCP.
18 He can only testify what the substance was.
19 MR. LYNCH: That's all I really wanted to elicit
20 from this witness, Your Honor. Thank you.
21 THE COURT: Do you have further questions?
22 MR. EBERT: I have no further questions.
23 THE COURT: Thank you, Doctor. You are excused and

1 free to go.

2 MR. EBERT: That is the Commonwealth's evidence,

3 Your Honor.

4 THE COURT: Is defense ready to go forward at this

5 time?

6 MR. LYNCH: I have some motions to make, and then

7 I have --

8 THE COURT: Let me ask the jury, if they will, to

9 retire to the jury room again, please.

10 (The jury retired from the courtroom.)

11 THE COURT: All right, sir. State your motion.

12 MR. LYNCH: Let's see if I have the right book.

13 Your Honor, it's Title 54 is what I'm looking for.

14 Your Honor, may I impose upon the Court for Title

15 54?

16 MR. EBERT: Here.

17 MR. LYNCH: Mr. Ebert has let me have his copy,

18 Your Honor.

19 THE COURT: All right.

20 MR. LYNCH: Your Honor, the indictment alleges

21 that Mr. Rhodes is charged with possession of a prohibited

22 drug listed in Schedule II of Title 54; and, so, therefore,

23 we have to look to what it is that is illegal for him to

1 possess. We have to look to 18.2-350, which is the
2 criminal section saying it shall be illegal for anyone
3 to possess any drug contained in Schedule II in Title
4 54, Section 524.84, and Schedule II is in -- under 54-524,
5 84:6.
6 Now, Your Honor, phencyclidine comes under depressants.
7 I will have to look at the Court's copy because this is not
8 updated, Your Honor.
9 THE COURT: I don't know whether that has been
10 revised or not.
11 MR. LYNCH: It has, Your Honor, but not to --
12 Here under the pocket supplement of the 1950 Code, that is
13 the '79 supplement, under Schedule II, it's broken down
14 into A, B, C, D and E, and E pertains to depressants, and
15 phencyclidine is one. It's the last of five items under
16 depressants, which, as I said, is sub-Section E.
17 Now, it says: Unless specifically excepted or
18 unless listed in another schedule, any material,compound,
19 mixture or preparation which contains any quantity of the
20 following substances having a depressant effect on the
21 central nervous system, including its salts, isomers and
22 salts of isomers whenever the existence of salts, isomers
23 and salts of isomers is possible within a specific chemical

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1 designation, colon, and it lists four other items, and the
2 fifth is phencyclidine.
3 What I am saying, Your Honor, is that it just
4 doesn't say phencyclidine. We have to incorporate in it
5 the preface, too, the following list of drugs, and it says,
6 as I said, any material, compound, mixture or preparation
7 which contains any quantity of the following substances
8 having a depressant effect on the central nervous system.
9 That's why I was asking Dr. Hepner. He doesn't
10 know, and the Commonwealth has not proven, Your Honor.
11 There is the paragraph right there [indicating].
12 There has been no proof as to the effects of
13 phencyclidine from a medical point of view. Of course Dr.
14 Hepner didn't know. He is not supposed to know. He is a
15 chemist.
16 But the Commonwealth has produced no evidence to
17 show the effect of phencyclidine, and it is just like
18 saying the Commonwealth has only proven half of its case
19 insofar as the prohibitive drug.
20 They have proven it is phencyclidine, but they
21 have not proven by any competent testimony or any testimony
22 at all that it has any depressant effect on the central
23 nervous system, and I would say, Your Honor, without that

1 proof, the Commonwealth's case must fail. It is fatally
2 lacking.
3 Secondly, Your Honor, the defendant is charged
4 with possessing the controlled drug phencyclidine. Now,
5 there has been evidence that Mr. Rhodes had a white object
6 in his hand. Now, that was at the farm. Now, Trooper
7 Gray said I cannot honestly say whether that object that
8 I saw in his hand was what Trooper Dyer showed me.
9 Now, what Trooper Dyer said he saw was a plastic
10 bag similar to the one that's been marked as Commonwealth's
11 Exhibit No. 1 with cigarettes with this odor of PCP, that
12 has this unique smell, and that is what he found in the
13 back seat.
14 Now, where was -- Whether it was on the hump or
15 on the floorboard, I don't know, but Trooper Dyer said that
16 all three occupants of the that car had equal access to
17 that bag.
18 Your Honor, as you recall, there was a person in
19 the back seat of the car who was just as close to that item.
20 Now, I'm sure Your Honor is familiar with, has
21 probably heard the case cited so often of Christman versus
22 Commonwealth and that involved three people in the back
23 seat who were hitchhikers, I believe, and three people in

1 the front seat, and some heroin was found in the back
2 seat on the floorboard, I believe, and Christman was one
3 of the three involved in the car. I believe he was not
4 the driver. He was one of the passengers, I believe.
5 He was tried and convicted on possession, and the
6 Supreme Court of Virginia, as early as that time said, that
7 this was not sufficient evidence to put him in possession
8 of that particular drug.
9 Now, also, the Commonwealth must show that not
10 only was there possession which consists of dominion and
11 control, they also must show the knowledge and intent that
12 the object was there.
13 And, I say to Your Honor first of all that they
14 have not shown a possession exclusive or constructive, and,
15 secondly, have not shown the presence of the knowledge or
16 the intent to possess this object.
17 And, as the Court knows right in the statute
18 itself, under 18.2-350, the second paragraph says that the
19 mere presence of this prohibitive drug in a home or in a
20 vehicle shall in no way be a presumption of the knowledge
21 or no presumption of possession. That is in the Code
22 Section itself.
23 So, what I am saying in the second sense, Your

1 Honor, there has not been sufficient evidence to show that
2 dominion and control by Mr. Rhodes over this PCP.
3 And, lastly, Your Honor, in the indictment, Mr.
4 Rhodes is charged with possessing this prohibitive drug,
5 and the phrase in the indictment says, it says, without
6 authority.
7 Now, I realize, Your Honor, that it is up to the --
8 That the Commonwealth does not have to negative certain
9 things that are exceptions in the drug section, but the
10 Commonwealth has gone forward to allege that Mr. Rhodes
11 possessed this without authority. The Commonwealth didn't
12 have to allege it in the first place, but the Court may
13 remember the case -- It seems to me Mr. Ebert and I were
14 arguing about the same case a long time ago. I think we
15 read a murder case.
16 There is a case authority which provides that if
17 the Commonwealth puts words into an indictment that aren't
18 necessarily elements of the crime, but in some way limits
19 or control the act or some limitation or control over the
20 act, then those elements must be proven.
21 And, the case, Your Honor, is -- It's right at
22 the tip of my tongue. I could find it in five minutes,
23 Your Honor. It was about eight to ten years ago. It involved

1 shooting into an occupied dwelling which was a felony,
2 and it went something like this, Your Honor, that the
3 defendant was convicted of shooting into the occupied
4 dwelling of John Jones, or owned and occupied by John Jones.
5 The evidence turned out it was occupied by both
6 men.
7 The Supreme Court of Virginia said that since the
8 Commonwealth had gone on to limit or qualify the indictment
9 putting in the words, in the indictment, then they were
10 precluded from -- In fact, they were compelled to go on
11 and prove what they, in fact, alleged because these words
12 had qualified or limited the offense alleged in the indict-
13 ment.
14 So, I am saying, Your Honor, that the words "without
15 authority" have been placed in the indictment, and there
16 has been no testimony one way or the other as to whether
17 or not Mr. Rhodes had the authority to possess these things.
18 Now, as I said, Your Honor, the Commonwealth
19 ordinarily wouldn't have to negative it in their case, but
20 they have alleged it. And, since they have alleged it,
21 based on the authority of the case I mentioned, they
22 haven't proven that he didn't have the authority.
23 And, I believe, Your Honor, that is the last ground

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1 for the motion to strike.

2 May I have just one moment before I sit down?

3 That concludes my motion to strike, Your Honor.

4 THE COURT: All right, Mr. Ebert, do you want to

5 reply?

6 MR. EBERT: If I can now remember all of the grounds.

7 First of all, with regard to the Christman case, I think

8 that is an entirely separate fact situation. That was

9 three hitchhikers got in the back of the car, and there

10 turned out to be some powder which was later analyzed to

11 be heroin.

12 Here we have ample evidence that he had control,

13 dominion and intention. We have a strong odor. It has

14 been described as a distinctive odor of this drug at a

15 place where the drug or at least where the defendant was

16 first seen with an exhibit which appears to be the same

17 exhibit that was an alleged illegal substance in the

18 possession or under the control of the defendant.

19 I think, or feel, that there is certainly ample

20 evidence to make that a jury question as to whether or not

21 he knowingly or intentionally possessed that substance.

22 With regard to the Federal authority, as he

23 pointed out, we don't have to negate. These drugs were not

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1 possessed with authority. There are certain drugs which
2 can be possessed by authority. And, of course, I think
3 as a matter of law, this is not one of these drugs, and I
4 don't feel that that is a well-founded motion.
5 With regard to the fact that it must be shown to
6 be a depressant, there are -- This is strictly a descriptive
7 Section within the Code which indicates what a depressant
8 is. And, as a matter of law, these items are deemed to
9 be depressants. As a result, they are under the Schedule
10 II portion of the Code, and should be punished as such.
11 I don't think it is encumbent on this Section or any other
12 Section to show, for the Commonwealth to come in and show,
13 the very nature of the effect of this drug upon an indi-
14 vidual since the effect itself may be different in many
15 cases.
16 But, nevertheless, it is a matter of law. These
17 are qualified. And, there is another Section in here which
18 allows the Board to designate certain other depressants
19 which aren't even, as a matter of law, designated.
20 And, once the Board does it without even having
21 the General Assembly adopt it, they become illegal substances
22 likewise.
23 So, I submit to the Court that on all bases that the

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1 motion should be denied.

2 THE COURT: I am going to have to deny the motion
3 on all bases. I see no grounds. After all we find the
4 Drug Control Act is actually placed in the Statutes under
5 the Board of Pharmacy, and I agree that it is just simply
6 descriptive. They could add drugs to it if they so desired,
7 as I understand the law in that respect.

8 And, in regard to possession, I agree that there
9 is enough situation and circumstances here that the case
10 should go to the jury.

11 And, without authority, I don't believe that that
12 is a sense requisite here, that he must prove that he did
13 not have any authority. I think it's almost -- It's
14 simply, as far as I'm concerned, it is simply surplusage.

15 MR. LYNCH: That is the thrust of the case I was
16 talking about. It normally would be surplusage except
17 when it limits or qualifies the necessary elements of the
18 crime.

19 THE COURT: I consider it mere surplusage, and I
20 am going to leave it at that point.

21 MR. LYNCH: Please note my objection to the Court's
22 ruling.

23 THE COURT: All right. Bring the jury in, please.

1 Are you ready to go forward at this time?

2 MR. LYNCH: I can, with one witness, Your Honor.

3 THE COURT: I understood what you said, you have

4 one witness that won't appear till later.

5 (The jury returned to the courtroom and resumed

6 their place in the jury box.)

7 THE COURT: All right, you may call your first

8 witness.

9 MR. LYNCH: I call Mrs. Rhodes.

10 THE COURT: Call Mrs. Rhodes to the stand, please.

11 Whereupon,

12 MARGARET RHODES,

13 a witness, was called for examination by counsel on behalf

14 of the defendant, and, having been duly sworn by the Clerk

15 of the Court, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. LYNCH:

18 Q. Would you tell these folks your full name, please?

19 A. Margaret Rhodes.

20 Q. Are you related to Jacky Rhodes?

21 A. My son.

22 Q. Mrs. Rhodes, where do you live now?

23 A. 2400 Loudoun Drive.

1 Q. What is it near, what town?

2 A. It's right across from the convict camp on 15-26.

3 Q. You are aware, I believe, Mrs. Rhodes, that on

4 September the 16th in 1978, your son was arrested or that

5 he was charged?

6 A. Yes.

7 Q. Were you living at the same place at that time?

8 A. Yes, sir.

9 Q. Mrs. Rhodes, who owned the premises there at that

10 time? Who was the owner of that?

11 A. We do.

12 Q. When you say "we", who is "we"?

13 A. My husband and I.

14 Q. Does Jacky have any ownership in that, or did he

15 have any then?

16 A. No, sir.

17 Q. Did he, in fact, live with you at that time?

18 A. No, sir.

19 Q. Can you tell the members of the jury, please,

20 whether or not there were some motor vehicles that were

21 out there at the premises?

22 A. I think there's about five or six out there, really

23 I think that's about how many. They are old cars that have

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1 been abandoned.

2 Q. Do you know who they belong to?

3 A. Well, let me see. I think there's one, two of

4 them is his, and I think five of them mine.

5 Q. Five of them yours?

6 A. Yes, sir.

7 Q. On this particular day, back on September 16th of

8 '78, you testified in saying where the farm was. You said

9 it was across from the convict farm. And, directing your

10 attention -- Well, which direction from the front of your

11 house, which direction is the convict farm, if you know?

12 A. Straight across in front of me.

13 Q. Would that be north?

14 A. East, I think. I'm not sure. For instance, I'm

15 sitting this way [indicating], it's across that side from

16 me.

17 Q. If you came out the front door of your house and

18 turned right and went up Loudoun Drive, what is up the

19 road on the right, if anything?

20 A. Well, right it wasn't anything. It was just more

21 of my property up to 15. That's all ours up there.

22 Q. I am not talking about your property, but can you

23 tell us whether or not you are familiar with a chemical factory --

1 A. Milky Spore? It's a Milky Spore or whatever. It's
2 a Roto-Rooter laboratory. It's where there's a laboratory
3 for grasses. Last year they got them. They weren't supposed to
4 but they did have worms down in the basement, and they
5 was testing them for something or another.
6 And they test out bugs and things like that for
7 trees that they have. Your plants and your trees and things
8 like that.
9 Q. Mrs. Rhodes, it has been testified to by Trooper
10 Gray that he noticed certain odors out there at your
11 place on the day leading up to the arrest.
12 MR. EBERT: Your Honor, may we approach the Bench
13 before we go any further?
14 THE COURT: All right, sir.
15 BENCH CONFERENCE
16 MR. EBERT: I anticipate that he is going to try to
17 introduce evidence that these odors that have been testified
18 to may have emanated from some other source, namely, this
19 chemical plant which is up the road.
20 If he going to open this up, I feel at this point,
21 the Commonwealth should be permitted in rebuttal to actually
22 go into the chemicals that were found on the premises,
23 what they smelled like, et cetera. And, I don't think it

1 is fair to the Commonwealth to limit us from mentioning
2 these items that were found on the scene which I feel are
3 material, and then to allow him to argue that, on the
4 otherhand, in effect the odor came from some other source.
5 For that reason, I would ask, if he is going to
6 open it up, that it be done with the understanding that,
7 hopefully, the Court would allow us to go into that other
8 evidence.
9 THE COURT: I understand your position. What is
10 your position?
11 MR. LYNCH: It has been testified -- That sounds
12 like Mr. Ebert. He wants to get in his evidence saying
13 that the troopers said I smelled this odor, and when I
14 was out there permeating out of the farm; and I can't ask
15 this witness whether she ever noticed a strange odor
16 herself out there. That was my next question. I can limit
17 it to that very question: Has she ever noticed any unusual
18 odors out there.
19 THE COURT: If you go to the point of stretching
20 it to some other plant located nearby, I think it would be
21 unfair to the Commonwealth to say he couldn't come back
22 on rebuttal and say what was available on the premises on
23 that day because you are opening up an area which he should

1 be entitled to rebut.

2 MR. LYNCH: I sure don't want to do that.

3 THE COURT: I agree with you, but I think he

4 would be entitled to it as a matter of law to rebut that.

5 You can't raise something that would create another option

6 and not give him a chance to tear it down. Do you understand

7 that?

8 MR. LYNCH: I'll move on to something else.

9 THE COURT: All right.

10 OPEN COURT

11 BY MR. LYNCH:

12 Q. Mrs. Rhodes, directing your attention to that

13 same day, that is, September 16, '78, before Jacky was

14 arrested, did you have an occasion to see him on that day?

15 A. Once.

16 Q. Where was that?

17 A. Well, I wasn't at home when he came in, but when

18 I got back, he was there. I noticed the telephone was

19 out of whack. So, I wanted him to call the telephone company

20 cause otherwise I have to walk to get it fixed.

21 So, I just seen him, and he came in the house, and

22 I gave him his motorcycle tags which come to the house. I

23 used to pick up all my kids tags for them. I am the go-fer,

1 and I go get tags, and I go get everything else, and I
2 give him those.
3 And, he wasn't there but just a few mintues and
4 that was it because I had a house full of company.
5 Q. Were you there when he left? Were you still at
6 the house when he left?
7 A. Yes, sir.
8 Q. Whenever he left, then, did he have the motorcycle
9 tags with him when he left?
10 A. Yes, sir.
11 Q. And tell the members of the jury, please, what the
12 tags -- How big were they?
13 A. Motorcycle tags? They was not very big. They are
14 just in a little envelope, that's all. I don't know how
15 big they are, but they are not very big. They are for the
16 motorcycle, and I had them on the icebox, and they was in
17 a white envelope, and I just gave them to him.
18 Q. Envelope and all?
19 A. Sir?
20 Q. Envelope and all?
21 A. Yes, sir, cause the registration thing is in it.
22 That a-way, if you take it out, you'll lose the registration
23 card.

1 Q. Can you tell us, please, when he went out, did
2 he have that envelope with him?
3 A. Yes, sir.
4 MR. LYNCH: That's all I have.
5 THE COURT: Cross examine.
6 CROSS EXAMINATION
7 BY MR. EBERT:
8 Q. What time did you see your son on this date?
9 A. Frankly, to be truthful to you, I cannot say.
10 Q. Did you see him on more than one occasion?
11 A. No; we only had the one time, but, like I said,
12 on the weekends at my house, we have anywhere from 14 to 30
13 people, and, frankly, I don't know what time it was. My
14 house is the gathering place for all the family, for every-
15 body.
16 Q. So you don't know what time it was?
17 A. I think it was in the afternoon, but I'm not sure.
18 Q. As far as you know, he could have been on the
19 premises on other occasions and you not seen him, is that
20 right?
21 A. Anybody can, for that matter.
22 Q. In other words, he could have been there on other
23 occasions, and --

1 A. Not that morning, no.

2 Q. This was in the morning?

3 A. Not that day. He couldn't be on the place as

4 soon as then.

5 Q. But, in the mornings, is that what you said?

6 A. I said I'm not sure. It was around noon.

7 Q. Your best recollection it was around noontime?

8 A. I think so.

9 Q. Could it have been in the afternoon, late after-

10 noon, mid-afternoon?

11 A. Possible.

12 Q. Did you say impossible?

13 A. Possibility.

14 Q. Who was with him when you saw him?

15 A. Only one person I knew who was with him. I don't

16 know who the other one was. There were three of them.

17 Q. Who was the person that you knew?

18 A. Mary Jane. I don't even know her last name.

19 Q. And there was another male with him, is that correct?

20 A. I believe there was, but he wasn't out of the car,

21 as far as I knew.

22 Q. What kind of car was it?

23 A. That I could tell you either.

1 Q. Did you see him get out of a car?
2 A. Who?
3 Q. Your son?
4 A. No, he was out of the car when I got home.
5 Q. Where was he physically located when you got home?
6 A. Standing out in the driveway.
7 Q. Did he go in the house with you?
8 A. Yes, sir.
9 Q. And you gave him the tags and he left, is that
10 right?
11 A. Yes, sir.
12 Q. Did Mary Jane come in the house, too?
13 A. No, sir, I don't think so.
14 Q. Did the other individual come in the house, too?
15 A. No, sir.
16 Q. Was anyone else there that you were aware of on
17 this occasion?
18 A. Who was there?
19 Q. Yes.
20 A. You mean people who was there? There was --
21 Q. His friends, other than those people?
22 A. I think Charlie Justice come up there before they
23 left. Yeah, he did. He come up there.

1 Q. Do you know what time that was?

2 A. No.

3 Q. How long was it after you gave him this envelope

4 before Charlie Justice arrived?

5 A. Wasn't neither one of them there very long. I

6 really don't know.

7 Q. I understand that, but he was in the driveway when

8 you got home?

9 A. Charlie Justice? No, sir, he come afterwards.

10 Q. I mean, you son.

11 A. My son, yes.

12 Q. So, you and he went into your home, is that correct?

13 A. Yes.

14 Q. And you gave him this envelope that you mentioned,

15 is that correct?

16 A. Yes, sir.

17 Q. And, then, sometime later, whatever time you tell

18 it, Charles Justice arrived, and I assume he was in the

19 car?

20 A. Yes, sir.

21 Q. Where was your son when Charles Justice arrived,

22 if you know?

23 A. They was fixing to leave.

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1 Q. Was he in the car at that time?

2 A. No, I don't think so.

3 Q. He was not?

4 A. Like I said, I couldn't swear to it, but I don't

5 think so.

6 Q. Where were you?

7 A. I was standing out there, but, like I said, there

8 was a crowd, a lot of people, there, and I don't pay any

9 attention to one certain person.

10 Q. You went inside and got the envelope and then came

11 back outside, is that what you're telling us?

12 A. Like I said, I wasn't there. Naturally, I come

13 up in the wagon, I get out and go in the house. I talked

14 to him, and say, "Hi.", to him. As I said, we got a bunch

15 there.

16 Q. Please answer my question, ma'am.

17 A. You asked me what I was doing.

18 Q. If I'm wrong, you can say I'm wrong. You came

19 home and your son was in the driveway, is that right?

20 A. Yes.

21 Q. And Charles Justice was not in the driveway at that

22 time?

23 A. No.

1 Q. You and he went into the house, is that right?
2 A. Right.
3 Q. Where was the tag located, again?
4 A. On top of the icebox in the kitchen.
5 Q. So you and he went into the kitchen, is that right?
6 A. Yes, we went in there. Whether we went anywhere
7 else, I don't know.
8 Q. And, at some point, you took the tag from the top
9 of the refrigerator and gave it to your son, is that
10 correct?
11 A. When he came in, I said, "Your tags are here.
12 Here's your tags.", and I gave them to him.
13 Q. Just answer my question. At some point, you
14 reached on top of the refrigerator, took the tags, and
15 handed them to your son, is that right?
16 A. Right.
17 Q. That was in the kitchen, is that right?
18 A. Right.
19 Q. And, I would assume there were a number of other
20 people in the home or around the home at that time, is that
21 right?
22 A. Right.
23 Q. Then, later on, your son left, is that right? Left

1 the kitchen, left the house, and went outside, is that
2 right? And, did you accompany him outside?
3 A. I don't know whether I accompanied him or not,
4 but I went out behind him.
5 Q. Did you follow him outside?
6 A. I went out, yes.
7 Q. What did you do after you got outside?
8 A. Standing there, running my mouth with everybody
9 else.
10 Q. How long was it, to the best of your recollection,
11 before Charles Justice arrived?
12 A. Just a few minutes. It wasn't much, I don't think
13 so.
14 Q. Would you say five minutes?
15 A. I don't know.
16 Q. Ten minutes?
17 MR. LYNCH: Your Honor, if the witness says she
18 doens't know --
19 THE COURT: All right.
20 THE WITNESS: I don't know because there were
21 people around there. I don't have any recollection of the
22 time.
23

1 BY MR. EBERT:

2 Q. Could it have been as long as an hour?

3 A. No, no.

4 Q. Did you see your son and Charles Justice go over

5 to one of these junked cars, if I may use that term, and

6 look in the trunk?

7 A. No.

8 Q. You didn't see that?

9 A. No.

10 Q. You were there, weren't you?

11 A. Sure, I was there.

12 Q. Are you saying he didn't do it, or you just didn't

13 see it?

14 A. I just said I didn't see him around my house.

15 Q. So you --

16 MR. LYNCH: Your Honor, that answers Mr. Ebert's

17 question. "Did you see him?", and she said no.

18 THE COURT: She said no.

19 THE WITNESS: At my place, peoples go out behind

20 the cars and does what they have to do, and I don't watch

21 them. We don't have inside bath, in other words. And,

22 if they got to go around a car, they go ahead and do it.

23 I don't watch them.

1 BY MR. EBERT:

2 Q. In any event, for whatever reason, he wasn't

3 within your sight the entire time, is that right?

4 A. No, sir.

5 Q. The last time you saw him, he was driving away

6 in the car that he came in, is that right?

7 A. Yes, sir.

8 Q. Was Charles Justice still there at that time?

9 A. I don't believe. I think Charlie left before him,

10 I'm not sure.

11 Q. It's your testimony, then, that Charles left

12 before your son?

13 A. I believe, but I wouldn't swear to it. I think

14 he did.

15 Q. You don't have much of a recollection as to what

16 happened?

17 A. That's right. It's been a long time.

18 Q. Of course, this is your son, is it not?

19 A. I don't care whose son it is. Yes, it's my son.

20 Q. You don't want anything to happen to your son?

21 A. I don't want anything to happen to anybody.

22 MR. EBERT: That's all.

23

1 REDIRECT EXAMINATION

2 BY MR. LYNCH:

3 Q. Would you testify to a lie to protect your son?

4 A. No, sir, I won't lie for nobody.

5 MR.LYNCH: That's all I have.

6 THE COURT: You may stand aside, Mrs. Rhodes.

7 THE WITNESS: Do you need me any more?

8 THE COURT: You are free to go.

9 Ladies and gentlemen of the jury, we are going to
10 recess for a luncheon period, and I am going to give you
11 a little extra long lunch period today by reason of the
12 fact the next witness will not be here until 2:30 this
13 afternoon, so I would suggest you come back here about
14 20 minutes after 2:00, and get ready at that time, and see
15 if we can't go forward at that time, at 2:30.

16 So, you are excused for lunch, and my prior admon-
17 ishment about discussing the case amongst yourselves or
18 remaining in the presence of anyone discussing it still
19 remains.

20 Thank you.

21 You are excused for lunch.

22 (The jury retired from the courtroom.)

23 THE COURT: You have one more witness to call, as

1 I understand?

2 MR. LYNCH: Yes, and it won't be but about ten

3 minutes.

4 THE COURT: We will come back at 2:30.

5 (Whereupon, at 12:43 o'clock p.m., the Court

6 recessed to reconvene at 2:30 o'clock p.m. that same day.)

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1 AFTERNOON SESSION

2 (The Court reconvened at 2:34 o'clock p.m.)

3 THE COURT: We're ready to proceed. Bring the

4 jury back in.

5 (The jury returned to the courtroom and resumed

6 their place in the jury box.)

7 THE COURT: You may call your next witness, Mr.

8 Lynch.

9 MR. LYNCH: Your Honor, I would like to call Mr.

10 Ivy. He has not yet been sworn.

11 THE COURT: Mr. Ivy, come forward, please. Stand

12 there and be sworn.

13 Whereupon,

14 BEN J. IVY,

15 a witness, was called for examination by counsel on behalf

16 of the defendant, and, after having been duly sworn by the

17 Clerk of the Court, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LYNCH:

20 Q. Would you tell the members of the jury your full

21 name, please?

22 A. Ben James Ivy.

23 Q. Where do you work?

1 A. I work for the Greater Manassas Sanitary District,
2 Prince William County.
3 Q. How long have you worked there?
4 A. Approximately five-and-a-half years.
5 Q. I believe you just came from work, did you not?
6 A. Yes, sir, I have.
7 Q. Now, do you know Jacky Rhodes?
8 A. Yes, sir.
9 Q. Directing your attention to September the 16th of
10 1978, did you know him at that time?
11 A. Yes, sir, I did.
12 Q. Did it come to your attention that he had, on that
13 date, been arrested? Did you learn of that sometime on
14 that date?
15 A. Yeah, it was later that night.
16 Q. Just so we know the date we're talking about, now,
17 on that day, did you have an occasion to see Jacky earlier
18 in the day?
19 A. Yes, sir, I did.
20 Q. Where was it that you saw him?
21 A. It was at my shop. I had been working on his three-
22 wheeler, his trike, and it had been there for two or three
23 weeks.

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1 Q. So I understand, when you say "trike", what are
2 you talking about?
3 A. This is a custom modified Volkswagen. It has
4 a Volkswagen engine with a long front end and a customized
5 fiberglass body.
6 Q. Now, you say you had been working on this particular
7 vehicle which belonged to him?
8 A. Yes, sir.
9 Q. Do you recall his leaving there to go someplace?
10 A. Yes, sir. We had planned to go to the races in
11 West Virginia.
12 Q. Who is "we"?
13 A. Well, my two partners at that time in the motor-
14 cycle shop, and just friends; William Clark was one, and,
15 let's see, who else was there? Well, that's who it boiled
16 down to eventually because we just waited and waited and
17 finally we just got tired of waiting and everybody else
18 left.
19 Q. Was Jacky planning on going?
20 A. Yes, sir he was.
21 Q. When he left there, do you know by what means he
22 left?
23 A. Yes, sir, he left by my car.

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1 Q. Could you describe your car?

2 A. 1972 yellow Mustang, fastback.

3 Q. Now, did you know that's where he was going, or

4 where did he tell you he was going?

5 A. The original intent was he had plates, registration

6 and County sticker for his vehicle which he obtained at

7 a previous date, and had just forgotten to bring them to

8 the shop, and in order to get his motorcycle on the road,

9 you got to be legal, so we let him use my car to go to his

10 mother's place where he said they were to pick the things

11 up.

12 Q. Before Jacky got to your shop, where was your car

13 located?

14 A. Around the shop area in Nokesville.

15 Q. How long had it been there? How long --

16 A. Two or three days. Three or four days.

17 Q. Could you tell these folks, please, why it was

18 there for that length of time?

19 A. Since I work for the County, I accumulate leave,

20 and I do, or I have a hobby in a part-time motorcycle

21 shop; and, so, I take collective leave and work at the

22 shop three or four days to try to catch up.

23 I was trying to build a dragster for myself to race

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1 in West Virginia that weekend, so it would have been a
2 big push for me to get the customers' bikes as well as
3 my dragster done.
4 Q. When you left your car there at the premises, did
5 you secure or lock it in any way?
6 A. No, sir, unh-unh. Not to the point of locking the
7 doors. Never did. It was back off the road. It was in
8 Nokesville which is kind of out-of-the-way, but as far as
9 being locked up and secured, no.
10 Q. We've established, Mr. Ivy, that Jacky left and
11 then when did you next see your car again?
12 A. I would say approximately between 10:00 and 11:00 at
13 night at the Exxon station in Gainesville.
14 Q. When was that?
15 A. That was the same evening. We waited and waited
16 at the shop I'd say anywhere from four to five hours, and
17 then somebody, a friend of mine, I can't recall his name,
18 came and told me that he has seen my car being towed into
19 the Exxon station at Gainesville, and I asked him why, and,
20 of course, he didn't know.
21 And, from there, I went to the station and asked
22 them why, and, you know, they couldn't give me any why.
23 It was just a notification by the trooper that it was not

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1 to be released until the next week.

2 Q. Did there come a time when you went -- When you

3 actually got your car?

4 A. Oh, yes, sir. Yeah. We came back from the races

5 Sunday. They had not released it Monday afternoon. I

6 believe it was Tuesday before I actually got it out of

7 impound.

8 Q. Where was it that you got it from?

9 A. The Exxon station. It was in the bay locked up.

10 It had been there, I guess -- They had a rather large

11 bill on it, so I guess it had been there all week.

12 Q. You had to pay that bill?

13 A. Yes, sir.

14 Q. When you got the car, did you have a chance to look

15 inside the car?

16 A. Yes, I did.

17 Q. Can you tell the members of the jury, please, whether

18 or not -- What you found in the car when you looked in there?

19 A. Well, uniforms which were there, two motor-

20 cycle engines which were there at the time, they were in

21 the car when it was impounded. Some of my papers, some

22 of my registrations, plates, along with his registration

23 plates in a package. In other words, mine was in a white

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1 envelope just like his was, with DMV, Department of Motor
2 Vehicles, on it, which is a small one when you pick up
3 your tags and things.
4 Q. So, aside from your items, you found his plates?
5 A. Right, because Wednesday or Thursday is when we
6 put it on the road to get it inspected, and it was with
7 his plates, registration and County sticker.
8 MR. LYNCH: Thank you, Mr. Ivy. Would you answer
9 Mr. Ebert's questions.
10 THE COURT: Cross examine.
11 CROSS EXAMINATION
12 BY MR. EBERT:
13 Q. Mr. Ivy, the last time you looked in your car, was
14 there anything unusual about the interior of it?
15 A. The interior of it?
16 Q. Yes. Namely, were there any cigarettes in a white
17 bag in there?
18 A. No, sir.
19 Q. Any syringes?
20 A. No.
21 Q. Where were your keys kept, sir?
22 A. I kept one key in the ignition, and a master key
23 is on my ring, sir.

1 Q. You mean the key was in the ignition at all times?
2 A. Yes, sir.
3 Q. And the car was parked where?
4 A. It was, approximately, I would say, 50 yards from
5 the entrance of the shop at one point in time for like two
6 days, and then it was parked up to the end of the shop
7 which would be 200 yards away.
8 Q. Did anybody use the car other than yourself?
9 A. Yes. There were some trips made to the store.
10 Like I say, it was kind of a convenience thing.
11 Q. Who made those trips?
12 A. Brandy. Somebody went with Brandy to the store one
13 time I remember, and Brandy was the girl I was living with
14 at the time.
15 Q. What?
16 A. Brandy was the girl I was living with at the time.
17 Someone went with her to the store one specific time.
18 Q. Is she here now, today?
19 A. No, sir. Haven't seen her for months.
20 Q. Did you have any PCP or KW in the car that you
21 know of?
22 A. No, sir.
23 Q. Do you smoke it?

1 A. No, sir.

2 Q. How long have you known Mr. Rhodes?

3 A. A couple or three years.

4 Q. Is he a friend of yours?

5 A. I suppose so. We'd see each other on the streets.

6 Q. You say you had a motorcycle?

7 A. Yes, sir, I have a motorcycle.

8 Q. Where was it?

9 A. In the shop.

10 Q. Were you working on it?

11 A. And others, yes.

12 Q. It had been completed, is that correct?

13 A. I had several motorcycles.

14 Q. How did you plan on traveling to the races, by

15 motorcycle or car?

16 A. By car and trailer.

17 Q. Where was Mr. Rhodes' car?

18 A. I don't know.

19 Q. How did he get to your shop?

20 A. I believe he rode with some people. Like I said,

21 I don't keep track of everything when I'm there at my shop,

22 the things that go on outside and around.

23 Q. You weren't keeping track of it, is that right?

1 A. No, sir.

2 Q. All you know is he wanted to borrow you car, is

3 that right?

4 A. It was a specific reason, and why he wanted to

5 borrow my car is to go over and retrieve his registration

6 and license plates.

7 Q. Are you sure he told you he had gotten his regis-

8 tration?

9 A. Yes, sir,he did.

10 Q. Where did he get it?

11 A. Department of Motor Vehicles.

12 Q. Were you present when he got it?

13 A. No, sir.

14 Q. How did you get yours?

15 A. I went to the Department of Motor Vehicles.

16 Q. When was that?

17 A. I been to Motor Vehicles several times, sir. What

18 it is is, if you're after a registration for a certain

19 bike, at an average I go in there, probably, at least once

20 a month.

21 Q. Tell me about the registration you said was yours

22 that was found in the car later on. When did you get that

23 one?

1 A. I would say approximately three weeks before this
2 happened.
3 Q. Approximately three weeks?
4 A. A specific motorcycle was a 1963 Harley-Davidson.
5 Q. 1963 Harley-Davidson?
6 A. Yes, sir, a pan-head chopper. It was purchased
7 and rebuilt about the same time. I believe I purchased
8 it about three weeks before the races to West Virginia,
9 and that means I would have been in DMV on or about that
10 date for my specific motorcycle.
11 Q. Where are the tags that you found in your car now?
12 A. No idea, sir.
13 Q. Where are Mr. Rhodes' tags that you later found
14 in your car?
15 A. Sir, wait a minute. Which tags? First question,
16 which tags are you referring to when you say, "Where are
17 those tags?", my tags, sir?
18 Q. How many tags did you find in your car, sir?
19 A. There were three sets.
20 Q. Where are the three sets, if you know?
21 A. Two sets have been turned in to DMV, and the third
22 set were Mr. Rhodes', and I don't have any idea where they
23 are.

1 Q. You don't know where they are?

2 A. No, sir.

3 Q. Did you take them out of the car?

4 A. Yes, sir. I put them on his motorcycle.

5 Q. You put them on his motorcycle?

6 A. Yes, sir.

7 Q. Did he drive his motorcycle away later on?

8 A. It was about a week later. It was Tuesday when

9 I got my car out, and it was later on, the latter part of

10 the week, before I even saw him again.

11 Q. When were you to leave to go to the races?

12 A. Sir?

13 Q. What time were you to leave to go to the races?

14 A. We like to leave around two-three-to-four o'clock.

15 It puts us --

16 Q. Is that the time you planned on leaving?

17 A. Yes, sir. Early.

18 Q. When was it you knew Mr. Rhodes had been arrested?

19 A. Approximately between ten and eleven o'clock at

20 night actually for sure. Somebody came down the driveway and saw

21 my car being hauled into the Exxon station. So, I went

22 down to the Exxon station and asked them is when I found

23 out my car had been impounded and Mr. Rhodes had been arrested.

1 There were no details.

2 Q. Did you try to locate Mr. Rhodes around three or

3 four in the afternoon?

4 A. There was no phone at the shop. We were just

5 waiting for him. No, I did not try to locate him as such.

6 Q. So you waited until around eleven o'clock at night

7 to try and find out what happened to your car?

8 A. No. We waited around four hours, about eight-thirty,

9 nine-thirty. No, nine-thirty. It was after dark when the

10 man came in.

11 Q. Didn't you say at eleven o'clock you went to see

12 where your car was?

13 A. It was around ten, eleven when we arrived in

14 Gainesville.

15 Q. At the time you were told about your car, were you

16 told it was being towed in, or were you told Mr. Rhodes

17 had been arrested?

18 A. I was told it was being towed in to the Exxon

19 station, sir.

20 Q. That's the only knowledge you had of it, right?

21 A. Yes, sir.

22 Q. As a result of what you heard, you went to the

23 Esso station, is that where you went?

1 A. Exxon. At the corner of 29/211 and Wellington
2 Road.
3 Q. And, you arrived there at eleven o'clock?
4 A. Approximately, sir. I am saying between ten and
5 eleven. We were on our way out-of-town, and I couldn't
6 get my trikes there because I didn't have anything to tow
7 it, so I was on my motorcycle, my chopper.
8 Q. I don't mean to interrupt you. Just answer my
9 questions.
10 A. I'm sorry.
11 Q. Ten or eleven o'clock?
12 A. Yes, sir.
13 Q. You waited from three to ten or eleven o'clock to
14 leave to go to the races?
15 A. Yes, sir.
16 Q. Did you leave right after you found out where you
17 car was?
18 A. Yes, sir. Yes.
19 Q. I think you have testified you didn't know why
20 your car had been towed in, all you knew was that the State
21 Police said it could not be released, is that right?
22 A. Correct, sir.
23 Q. Did you leave directly from the Exxon station to go

1 to the races?

2 A. Yes, sir, I did.

3 Q. Did Mr. Rhodes go with you?

4 A. No, sir. I never saw him.

5 Q. And you returned on Sunday?

6 A. Yes, sir, Sunday evening.

7 Q. What day of the week was the 16th? How many days

8 were you gone?

9 A. Two days, I guess. Left Saturday, came back Sunday.

10 Left Saturday night.

11 Q. Upon your arrival, did you learn that Mr. Rhodes

12 had been arrested?

13 A. When the State Police impounded my car, there was

14 a question about why it was impounded, so I called Prince

15 William County, and at that time I requested some sort of

16 information why my car was being held at impound.

17 Q. At that time, you found out, is that right?

18 A. Yes, sir. They said Mr. Rhodes had been arrested.

19 Q. Where did you call from, sir?

20 A. The station. I mean, I was kind of upset. I

21 didn't know anything. I go down, my car has been impounded,

22 they're not going to let me -- The boy at the station

23 didn't --

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1 Q. Did you look in your car at all?

2 A. No, sir. That big dog wouldn't let me close.

3 Q. Where was it that you physicially saw his plates

4 located in your car?

5 A. They would have been down right behind the seat

6 on the right-hand side. There was a motorcycle engine

7 that had been turned over. It was laying on top of it

8 along with two or three County two-tone green uniforms,

9 but it would have been in the backseat on the right-hand

10 side of the car.

11 Q. Any beer cans in the car?

12 A. Yeah, I imagine.

13 Q. What?

14 A. Yeah, I imagine.

15 Q. Were they in there the last time you saw it before

16 it had been impounded?

17 A. I don't know.

18 Q. What?

19 A. I don't know.

20 Q. Were there engines in the trunk or the backseat?

21 A. In the backseat.

22 Q. Did you notice, the last time you saw it prior to

23 when it was impounded, did you notice an aspirin box containing

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1 white and pink capsules?

2 A. No, sir. No, sir.

3 Q. Did you notice any needles?

4 A. No, sir.

5 Q. And bags containing plant material?

6 A. No, sir.

7 Q. I will show you what has been introduced as Exhibit

8 No. 1. Did you see anything like that in the car?

9 A. No, sir.

10 Q. The envelope that you mentioned that had the tags

11 in it, did either one of them appear to look like that

12 [indicating]?

13 A. Similar.

14 MR. LYNCH: Excuse me. Are you referring to the

15 time he got the car? Naturally, it wouldn't be in the car.

16 THE WITNESS: He is asking me similarity. They

17 were approximately, then, the motorcycle plate tags that

18 I retrieved in the car, that I had gotten, Mr. Rhodes had

19 gotten from DMV,were approximately the same size.

20 BY MR. EBERT:

21 Q. Approximately the same size?

22 A. Yes, sir.

23 Q. You are familiar with a sandwich Baggie, are you

1 not?

2 A. Yes.

3 Q. Would you say that the bags are about the same

4 size as a sandwich Baggie?

5 A. No, sir. They're wider than they are high, so

6 they would not be equal square, like a sandwich bag is.

7 Q. Did the tags have any unusual odor when you retrieved

8 them from your car?

9 A. No, sir.

10 Q. Did you smell anything unusual in your car when

11 you recovered it?

12 A. Not besides the dog.

13 Q. When was the next time, after you returned from

14 the races, that you saw Mr. Rhodes?

15 A. The latter part of the week. I am not sure whether

16 it would have been a Friday or a Saturday or a Sunday.

17 Q. How did you go up to the races?

18 A. My motorcycle.

19 Q. Without the tags?

20 A. No, sir. I had my tags.

21 Q. Didn't you say that the tags that you had on this

22 chopper, Harley-Davidson '63, were found in the car after-

23 wards?

1 A. No.

2 Q. They were not?

3 A. No. I had registration and title. My tags were

4 on my motorcycle. My motorcycle was on the street, but I

5 had papers.

6 Q. What was the difference between the packet that

7 you described that belonged to Mr. Rhodes as opposed to

8 the packet that belonged to you?

9 A. Nothing. It was the same size envelope that DMV

10 gives out. Now, all I did when I extracted my tags from

11 mine, I left my title and my duplicate registration in

12 that. That's the referral to my tags.

13 His tags, my title, and there was a title for the

14 engine in the back which was a little .175.

15 Q. So you traveled some distance without a registration

16 in your possession, is that right?

17 A. No, sir. I had a registration for my motorcycle

18 and plates for my 1963 Harley-Davidson chopper.

19 Q. Why did you keep your title in the back of the car?

20 I withdraw the question.

21 THE COURT: All right. Do you have any further

22 questions?

23 MR. LYNCH: Just so we understand.

1 REDIRECT EXAMINATION

2 BY MR. LYNCH:

3 Q. Do you have more than one motorcycle?

4 A. Yes, sir, I do.

5 Q. And the tags that you had on the one motorcycle

6 you went to the races on, was that the one we're talking

7 about that Mr. Ebert said you had the registration in the

8 car?

9 A. Yes, sir, and the title. It was in the approximate

10 same size envelope as the other ones.

11 THE COURT: You are excused, sir. You are free to

12 go.

13 Call your next witness.

14 MR. LYNCH: That is the defense.

15 THE COURT: Defense rests. All right, sir.

16 Does the Commonwealth have a rebuttal witness,

17 evidence?

18 MR. EBERT: Would the Court give me 15 seconds?

19 THE COURT: All right.

20 It's a little cooler in here than it was this

21 morning. They washed it. They gave it a dose of the

22 Ivory liquid soap.

23 MR. EBERT: The Commonwealth has no rebuttal.

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1 form. Your first item of business should be to chose a
2 foreman. After you have deliberated and reached a verdict,
3 then the foreman will execute the verdict form respective
4 thereof.
5 Thank you. You may retire.
6 (The jury retired at 3:50 o'clock p.m. to consider
7 their verdict.)
8 THE COURT: The following questions have been
9 received from the jury, to-wit: We would like to see the
10 testimony of Officer Gray pertaining to the package that
11 the accused obtained at the farm, also the time that Officer
12 Dyer stopped the car and apprehended the accused.
13 Did Officer Gray, by his testimony, observe the
14 accused remove any item from the trunk of the derelict
15 car at the farm?
16 MR. EBERT: Shall we tell them they will have to
17 use --
18 THE COURT: They have to use their own recollection
19 of the evidence. We cannot furnish them any additional
20 evidence or answer any questions on the evidence. Is
21 that satisfactory?
22 MR. LYNCH: That it's not for us to decide, it's
23 for them to decide.

1 THE COURT: We can't tell them what it is.

2 MR. LYNCH: It is my understanding that -- Excuse
3 me. We had a question come up in Federal Court not too
4 long -- About two weeks ago. In fact, it was in Mr.
5 Burkhart's case where the jury wanted to do that right
6 at the outset. They wanted some testimony of one of the
7 witnesses before they even started deliberating.

8 Now, I am not citing Judge Lewis as authority
9 for you, but because I had never really heard the question
10 raised before, and Judge Lewis said I can't give it to
11 you now, more or less ruling as you are about to, but he
12 said: If it goes on, and you can't come to a conclusion,
13 we may be able to do it.

14 So, I don't know whether the Virginia State law
15 is the same or not. In other words, if they go on for a
16 long time, and still can't decide --

17 THE COURT: Let's cross that bridge when we come
18 to it.

19 MR. EBERT: I think this Court would declare a
20 mistrial before they would have a transcript prepared.

21 THE COURT: I cannot make any comment on the
22 evidence obviously. And the question as to whether they
23 would be entitled to review the evidence, raises a real

1 question in my mind. It may be, if they thought they had
2 the benefit of that evidence, we might have to have it
3 transcribed and furnish it that way.
4 But I have always taken the position they would
5 have to rely on their own recall or recollection.
6 MR. LYNCH: I think the thrust of it, in fairness
7 to the defendant and Commonwealth, they may be just looking
8 for one piece of evidence and ignore other testimony that
9 is just as important.
10 THE COURT: My reply is: No other testimony is
11 available. You will have to rely on your recall and
12 recollection of the evidence.
13 Tell them to preserve it for the record, please.
14 MR. LYNCH: Thank you, Your Honor.
15 (The jury returned at 6:05 o'clock p.m. with a
16 verdict.)
17 THE COURT: I will ask the Clerk, please, if she
18 will please read the verdict.
19 THE CLERK: Members of the jury, is this your
20 unanimous verdict?
21 THE JURORS: It is.
22 THE CLERK: We the jury find the accused John
23 William Rhodes, the Fourth, not guilty. George E. Hayward,

1 Foreman.

2 THE COURT: Is there a request to have the jury

3 polled?

4 MR. EBERT: Yes, sir.

5 THE COURT: As your name is called, if this is

6 your verdict, please answer yes.

7 THE CLERK: June Davis.

8 JUROR DAVIS: Yes.

9 THE CLERK: Joseph Belanger.

10 JUROR BELANGER: Yes.

11 THE CLERK: Carolyn Jackson.

12 JUROR JACKSON: Yes.

13 THE CLERK: Donna Seymour.

14 JUROR SEYMOUR: Yes.

15 THE CLERK: Edward Schomer.

16 JUROR SCHOMER: Yes.

17 THE CLERK: Barbara Bauman.

18 JUROR BAUMAN: Yes.

19 THE CLERK: Bennett Hatcher.

20 JUROR HATCHER: Yes.

21 THE CLERK: Berniece Lightner.

22 JUROR LIGHTNER: Yes.

23 THE CLERK: Rita Scartz.

1 JUROR SCARTZ: Yes.

2 THE CLERK: George Hayward.

3 JUROR HAYWARD: Yes.

4 THE CLERK: Donald Ross.

5 JUROR ROSS: Yes.

6 THE CLERK: Margaret Fatula.

7 JUROR FATULA: Yes.

8 THE COURT: Ladies and gentlemen, that concludes
9 this case. Thank you very much for your services, and you
10 are free to go. Thank you so much. I hope you have a
11 very pleasant evening.

12 Mr. Rhodes, you are discharged from this account
13 by reason of the jury found you not guilty, sir, and you
14 are free to go.

15 THE DEFENDANT: Thank you, Your Honor.

16 MR. LYNCH: Thank you, Your Honor.

17 (Whereupon, at 6:07 o'clock p.m., the hearing in
18 the above matter was concluded.)

19 ----------

20

21

22

23

② Trial

1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

3

4 - - - - - - - - - - x

5 COMMONWEALTH OF VIRGINIA :

6 -vs- : Criminal Docket No. 8495

7 JOHN WILLIAM RHODES, IV, :

8 Defendant. :

9 - - - - - - - - - - x

10 Circuit Courtroom No. 2
Prince William County Courthouse

11 Manassas, Virginia

12 Wednesday, July 30, 1980

13 The above-entitled matter came on for trial

14 before THE HONORABLE PERCY THORNTON, JR., Judge, in and

15 for the Circuit Court of Prince William County, Virginia,

16 at 10:50 o'clock a.m.

17 APPEARANCES:

18 On Behalf of the Commonwealth:

19 PAUL B. EBERT, ESQUIRE

20 On Behalf of the Defendant:

21 J. RONALD LYNCH, ESQUIRE

22

23

Circuit Court Clerk's Office
Prince William County, Va.
Filed August 22 19 80
Deborah J. Lancaster Deputy Clerk

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C O N T E N T S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
M. J. Ritchic	36	43	44	
(VoireDire-Lynch)	42			
Sam C. Gray	45	82	98,104	100
(VoireDire-Lynch)	62,67			
Lloyd Whitaker	106	113	116	
R. A. Dyer	116	127		
Karl E. Hepner, Jr.	136	151	152	

EXHIBITS

COMMONWEALTH'S	FOR IDENTIFICATION	IN EVIDENCE
1 (Photograph)	41	59
2 (Photograph)	41	59
3 (Fingerprint Card)	43	43
4 (Photograph)	48	48
5 (Photograph)	52	52
6A - I (Photographs)	60	63
7 (Photograph)	65	65
8A - E (Photographs)	66	68
9A - I (Photographs)	69	71
10 (Lab Report)	76	144

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1 THE COURT: Have I ruled on them?

2 MR. LYNCH: Yes, sir. But Mr. Ebert and

3 I argued the Motion to Suppress the evidence in this case

4 based on an illegal search and seizure and a defective

5 warrant before Judge Sinclair. He ruled on it against

6 the Defendant and we entered a plea of guilty. I just

7 want to formally renew the motion to make sure it is still

8 viable on the record.

9 THE COURT: Your motion is noted, Motion in

10 Limine and Motion to Suppress.

11 MR. LYNCH: That is as to the Motion to

12 Suppress. I want to re-institute it, re-new it on the

13 same grounds previously made. I assume your ruling would

14 be the same.

15 THE COURT: My ruling would be the same as

16 previously ruled by the Court.

17 MR. LYNCH: Please note my objection to that.

18 I don't know how Mr. Ebert intends to proceed

19 with this case. But as you will recall, there are

20 actually two cases here, a possession case, which I don't

21 know how we went to try that one first but that was the

22 PCP in the back of the car.

23 THE COURT: That is right.

1 MR. LYNCH: The manufacturing charge was
2 then pending.
3 I made a motion at that time in Limine
4 of any evidence of the manufacturing case coming in to
5 the possession charge.
6 If you recall, the officers were out there
7 waiting for the arrival of the search warrant to execute it.
8 THE COURT: I remember.
9 MR. LYNCH: At this time I would respectfully
10 move to eliminate any testimony or any evidence having
11 to do with the capture of Rhodes at Orndoff's and the
12 finding of the PCP in the car, for two reasons: number
13 one, it is a separate case; number two, if that were
14 permitted into evidence he would be more or less being
15 tried for that one all over again and it would be
16 prejudicial and I could claim somewhat of a surprise -- I
17 can't say surprise because I'm not sure whether Mr. Ebert
18 is going to do it or not. But I would move to eliminate
19 any testimony as to the facts having to do with the
20 capture at Orndoff's and the PCP being found in the car.
21 THE COURT: Mr. Ebert.
22 MR. EBERT: It please the Court, I think
23 irrespective of whether he is acquitted on that, it is

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1 relevant evidence, it could be considered by the Court,
2 by the Jury in regard to the overall picture. This is,
3 of course, possession of the substance he is charged with
4 manufacturing after the alleged manufacturing. It would
5 seem to me it would have some probative value.
6 THE COURT: It may have some probative
7 value but I don't think we can -- the mere presence of it --
8 but I don't think you can claim he actually possessed it.
9 MR. EBERT: The evidence, of course, will
10 speak for itself. It was in his car.
11 MR. LYNCH: Your Honor, if Mr. Ebert is
12 permitted to do that he's more or less got two bites at
13 the apple. He can present the evidence there was PCP
14 found in the back seat of the car, but members of the Jury,
15 we are not saying he possessed it.
16 THE COURT: I recall the testimony. I
17 believe this vehicle left the farm and was followed, wasn't
18 it?
19 MR. LYNCH: Yes.
20 THE COURT: So, I think there may be some
21 probative value. I will have to see what the tenure is
22 at that point. I will have to deny the motion at this
23 point.

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1 MR. LYNCH: Please note my objection. I
2 would say, on the further grounds it may have some probative
3 value certainly but the prejudicial effect would far
4 out weigh the probative value.
5 THE COURT: No. I have to see what the
6 totality of circumstances come into this case before I
7 make a ruling.
8 MR. LYNCH: All right, sir.
9 (The following resumed within open Court.)
10 THE COURT: Is counsel ready to proceed?
11 MR. LYNCH: Yes, Your Honor.
12 THE COURT: We will proceed with arraignment
13 then.
14 THE CLERK: You are John William Rhodes, IV?
15 THE DEFENDANT: Yes.
16 THE CLERK: Case number 8495:
17 "The Grand Jurors of the Commonwealth
18 of Virginia, in and for the body of the County of
19 Prince William and now attending the Circuit Court of
20 said County this 4th day of June, 1979, upon their
21 oaths present that on or about the 16th day of
22 September, 1978, in the County aforesaid, one JOHN
23 WILLIAM RHODES, IV did unlawfully and feloniously grow,

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1 Thank you.

2 THE COURT: Mr. Ebert, you may call your

3 first witness.

4 Whereupon,

5 M. J. RITCHIE

6 was called as a witness by and on behalf of the

7 Commonwealth, having been first duly sworn by the Clerk

8 of the Court, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. EBERT:

11 Q State your full name and give your place of

12 employment.

13 A. M. J. Ritchie. I'm a Trooper with the

14 Virginia State Police.

15 Q In what capacity are you employed?

16 A. Presently narcotics investigation.

17 Q In what capacity were you employed on or

18 about the 16th day of September, 1978?

19 A. Narcotics investigation.

20 Q Did you have occasion to be present in

21 Prince William County in the course of your employment

22 on or about that day?

23 A. Yes, sir. I did.

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1 Q Were you working in connection or in
2 concert with anyone?
3 A. Yes, sir.
4 Q Who was that?
5 A. It was our Narcotics Squad for this
6 Northern Virginia area.
7 Q Could you name those individuals involved.
8 A. Trooper Gray, Trooper Dyer, Investigator
9 Clark, Investigator Fish, Investigator Fry with Prince
10 William County, Investigator Miller with the State Police.
11 Q Did you have occasion to see the Defendant
12 on that day?
13 A. Yes, sir.
14 Q When did you first see him?
15 A. This was on the 16th?
16 Q Let's back up to the 15th.
17 A. The 15th, the first I saw the Defendant was
18 approximately 5 o'clock that evening.
19 Q Where was it you saw him?
20 A. I believe it was Wycliffe Court.
21 Q Wycliffe Court. Where is that located?
22 A. In Prince William County.
23 Q What caused you to be present at that place?

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1 A. We were setting up surveillance on an
2 address there.
3 Q. Had you been by that residence prior to
4 setting up surveillance?
5 A. Yes, sir. Ridden by it.
6 Q. Who was with you at that time?
7 A. The members I mentioned earlier.
8 Q. Did you notice anything unusual about the
9 area?
10 A. Not in particular at that time. I was
11 with the narcotics team and this was the first exposure
12 I had to this area.
13 Q. Did there come a time when you had occasion
14 to smell anything in the area?
15 A. No, sir. I can't recall.
16 Q. Upon setting up a surveillance what did
17 you do?
18 A. There was a green Dodge van driven by the
19 Defendant in that area which we set up a mobile
20 surveillance on.
21 Q. You say mobile surveillance. What do you
22 mean by that?
23 A. Moving surveillance. We followed the van in

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1 our unmarked police cars.

2 Q Did all of you follow them or did you

3 separate?

4 A I believe there was only about three of us

5 that followed.

6 Q Where did you go?

7 A I followed the van into the K-Mart Shopping

8 Center here in Prince William County.

9 Q Who was driving the van?

10 A The Defendant.

11 Q What time was it you saw him enter the van?

12 A It was around 5 o'clock that evening.

13 Q Was anyone with him?

14 A There was one other subject with him.

15 Q Did you later learn the identity of that

16 individual?

17 A Yes. I did.

18 Q What was his identity?

19 A Ronnie Willis.

20 Q Upon arriving at the shopping center what

21 happened?

22 A I personally followed both subjects. They

23 left the van and went in the K-Mart Store. I followed them

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1 inside there.

2 Q What did they do?

3 A. I observed the Willis subject purchase seven

4 plastic buckets and Mr. Rhodes purchased a large stirring

5 spoon.

6 Q What did they do after they purchased these

7 items?

8 A. They went back to the van and proceeded on

9 up Loudoun Drive, I believe is what it is. It's in Prince

10 William County up in the Haymarket area.

11 Q Did you follow them to that place?

12 A. Yes, sir.

13 Q What did they do upon arriving at the

14 Loudoun address?

15 A. I didn't go back into the house. I broke

16 off on Route 15.

17 Q You mentioned certain buckets you saw

18 purchased and I show you two photographs and ask you if

19 these photographs portray the type of buckets you

20 mentioned?

21 A. Yes. As a matter of fact, the colors are

22 the same. Two of the seven buckets were brown and five

23 white.

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1 MR. EBERT: I ask these be marked for
2 identification purposes.
3 THE COURT: Identification as Commonwealth's
4 Number 1 and 2.
5 (The two photographs
6 referred to were marked
7 for identification as
8 Commonwealth's Exhibits
9 Nos. 1 and 2.)
10 BY MR. EBERT:
11 Q Did you on the following day have occasion
12 to see the Defendant?
13 A Yes.
14 Q When was it you saw him on the following
15 day?
16 A In the evening. I can't be certain of the
17 exact time, later on in the evening, I'd say after
18 5 o'clock.
19 Q Where was he when you first observed him on
20 that day?
21 A I first observed him at Haymarket at
22 Orndoff's Restaurant and Truck Stop.
23 Q Was anyone with him at that time?

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1 A Yes, sir. There were two other subjects
2 with him.
3 Q Was he placed under arrest at that time?
4 A Yes, sir.
5 Q Had you seen him in the meantime, from the
6 time you saw him enter the address on the preceding night
7 till the time of his arrest?
8 A No, sir. I don't believe I did.
9 Q Were you present at the time he was finger-
10 printed?
11 A Yes, sir.
12 Q Who fingerprinted him?
13 A Trooper Roy Schall.
14 Q I show you certain fingerprints and ask you
15 if you can identify those as being the prints taken at
16 that time?
17 A Yes, sir. That is my handwriting. I filled
18 out the form and Trooper Schall signed it.
19 MR. EBERT: I am going to offer that into
20 evidence.
21 MR. LYNCH: I would like to ask a couple of
22 questions.
23 VOIRE DIRE

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1 BY MR. LYNCH:

2 Q Were you present when the printing was done?

3 A Yes, sir.

4 Q So, it was done in your presence by the

5 other Trooper?

6 A Schall.

7 Q And you signed this card?

8 A I filled out the information on it.

9 MR. LYNCH: I don't have any objection.

10 THE COURT: It be allowed into the record

11 then as Commonwealth's 3.

12 (The fingerprint card

13 referred to was marked

14 for identification as

15 Commonwealth's Exhibit

16 No. 3, and was received

17 in evidence.)

18 MR. EBERT: That is all I have of this

19 witness.

20 THE COURT: You may cross examine.

21 CROSS EXAMINATION

22 BY MR. LYNCH:

23 Q Trooper Ritchie, just a couple of questions

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1 on your surveillance.

2 You said a van pulled in Wycliffe Court.

3 Now, would it be correct to say Mr. Rhodes didn't get out

4 of the van and go into Wycliffe Court, did he?

5 A. I'm not really certain. I didn't see him.

6 I didn't have the eye ball on the van at that time.

7 Q. What?

8 A. I didn't have the eye ball; you know, I wasn't

9 observing the van at that time. I observed it come out

10 of there and picked up on surveillance.

11 Q. So, your surveillance at Wycliffe Court was

12 merely you saw a van pull away from Wycliffe Court?

13 A. That is correct.

14 Q. You didn't see how it got there or when it

15 got there?

16 A. No, sir. Someone else was observing the

17 residence at that time.

18 Q. Would that be Trooper Gray?

19 A. I believe so. He was on the point at that

20 time.

21 MR. LYNCH: Thank you. That is all I have.

22 THE COURT: Do you have further questions?

23 REDIRECT EXAMINATION

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1 BY MR. EBERT:

2 Q You were in radio contact with the other

3 members of your team at all times, were you not?

4 A. That is correct.

5 MR. EBERT: That is all I have.

6 THE COURT: You are excused.

7 Do you have further need of this witness?

8 MR. EBERT: No, sir.

9 THE COURT: You are free to go. Thank you.

10 (Witness excused.)

11 Whereupon,

12 SAM S. GRAY

13 was called as a witness by and on behalf of the

14 Commonwealth, having been first duly sworn by the Clerk of

15 the Court, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. EBERT:

18 Q State your full name and give your place of

19 employment.

20 A. Sam C. Gray. Virginia State Police.

21 Q How long have you been so employed?

22 A. Approximately six years.

23 Q Were you employed by the Virginia State

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1 Police on or about the 15th day of September, 1978?
2 A. Yes. I was.
3 Q. In what capacity were you employed at that
4 time?
5 A. I was a Narcotics Investigator.
6 Q. In the course of your investigation did you
7 have occasion to investigate the Defendant, Mr. Rhodes?
8 A. Yes. I did.
9 Q. When did you start your investigation with
10 him?
11 A. This particular investigation started on
12 September 15th at approximately 3 o'clock p.m..
13 Q. Did you have occasion to go to an address
14 at Wycliffe Court in Manassas?
15 A. Yes. I did.
16 Q. What address was that?
17 A. 8221 Wycliffe.
18 Q. What was your purpose in going there?
19 A. To set up surveillance on this townhouse
20 located on Wycliffe Court.
21 Q. Did you, in fact, do so?
22 A. Yes, sir.
23 Q. What did you observe while you surveyed that

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1 area?

2 A. I observed several vehicles come in and out

3 of Wycliffe Court and approximately 5:05 p.m. I observed

4 a green van bearing tag KDF 796 being operated by Mr.

5 Rhodes. Mr. Rhodes pulled up in front of the address

6 and a subject known to me as Ronnie Willis came out and

7 got into the van with Mr. Rhodes.

8 Q. What occurred then?

9 A. The van then drove away. Through radio

10 contact I had called the surveillance team who then

11 proceeded to follow the green van to the K-Mart.

12 Q. Did you stay at the area?

13 A. Yes. For about half an hour, then I left.

14 Q. Where did you go?

15 A. I then wentout to, after I had radio

16 contact with the surveillance team, I'd gone to 2400

17 Loudoun Drive in Prince William County.

18 Q. Where is Loudoun Drive located?

19 A. Located right off of Route 15, just south

20 of Loudoun County line.

21 Q. Is that near Haymarket, Virginia?

22 A. That is correct.

23 Q. What type of an area is that?

1 A. It's a country section, wide open country
2 spaces.
3 Q. Do you know -- Did you ascertain the owner
4 of the residence you just described?
5 A. Yes. It was Mr. Rhodes' parents.
6 Q. Did you have occasion to obtain an aerial
7 photograph of the place you described?
8 A. Yes. I did.
9 Q. I show you this photograph and ask you if
10 that portrays the area in question?
11 A. Yes. This is the farm which Mr. Rhodes went
12 to that day.
13 Q. Was any type of vehicles located in this
14 area?
15 A. Yes. There were several. It looked like
16 vehicles that had not been moved. Several of them did not
17 have any tires, windows, dead tags. About six or seven
18 vehicles.
19 Q. This accurately portrays the aerial view of the
20 scene?
21 A. Yes.
22 MR. LYNCH: No objection.
23 THE COURT: Be allowed as Commonwealth's

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1 Exhibit 4.

2 (The aerial photograph
3 referred to was marked
4 for identification as
5 Commonwealth's Exhibit
6 No. 4, and was received
7 in evidence.)

8 BY MR. EBERT:

9 Q Who was with you at the time you went to the
10 Loudoun address?

11 A Detective James Fry with Prince William
12 County Police Department.

13 Q Upon arriving there what did you do?

14 A We first discussed what had been seen at
15 the K-Mart with the other surveillance members and it was
16 decided to surveil the house. The first occasion that I
17 had Detective Fry and myself drove by in my State vehicle
18 and we sensed an odor coming from the general direction
19 of the farm.

20 Q You say an odor. Could you describe that
21 odor?

22 A It was an ether type odor that in the past
23 has been related to the manufacture of PCP.

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1 Q How long have you been involved in
2 narcotics investigation?
3 A Four years.
4 Q Have you yourself had occasion to
5 investigate the so-called manufacture or labs?
6 A Yes.
7 Q How many different occasions have you?
8 A Approximately fifteen or twenty.
9 Q Have you had special training in that field?
10 A Yes. I have.
11 Q What training have you had?
12 A I have actually made PCP in a controlled
13 atmosphere in a chemist's laboratory.
14 Q Did you receive narcotics investigative
15 training at the State Police?
16 A Yes. I did.
17 Q The odor that you smelled coming from the
18 area of the farm, did that mean anything to you as a
19 trained investigator?
20 A Yes. It did. It seemed to me like it was
21 the smell of manufacture of PCP.
22 Q Had you smelled anything similar to that back
23 at the Wycliffe Court address?

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1 A No, sir. I had not. No, sir.

2 Q What did you do upon smelling that?

3 A Detective Fry and myself then entered the

4 woods or the field behind the Rhodes farmhouse where we

5 stayed all that night and all the next day.

6 Q What time did you enter that premises?

7 A Approximately 10:30 p.m. on the 15th of

8 September.

9 Q What time did you eventually leave the

10 premises?

11 A Approximately 5 o'clock the next day.

12 Q You were there all through the night. Is

13 that correct?

14 A That is correct.

15 Q Upon entering the premises did you have

16 occasion to observe a cooler?

17 A Yes. Approximately 11:45 p.m. that night

18 as I was trying to get into position to surveil the

19 house I came across a cooler which contained a baggie

20 containing remanents of magnesium metal turnings, strainers

21 and other rags which had residue on them.

22 Q From your training the fact there were

23 magnesium turnings and strainers, et cetera, did that mean

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1 anything to you?

2 A. Yes. I was sure was remanents of a prior

3 manufacture of PCP.

4 Q. What do the magnesium turnings have to do

5 with that process, if you know?

6 A. It acts as sort of a stabilizer in one of

7 the processes that is necessary.

8 Q. I show you a photograph and ask you if that

9 photograph accurately portrays the cooler of which you

10 speak?

11 A. Yes. This is the one.

12 Q. Was that taken on a subsequent day?

13 A. Yes. That was taken on the 16th of

14 September.

15 Q. Where was this cooler physically located

16 with regard to the abandoned automobiles you described?

17 A. Approximately I'd say seventy-five yards.

18 MR. EBERT: I offer that into evidence.

19 THE COURT: Any objection to the photograph?

20 MR. LYNCH: No objection.

21 THE COURT: It be allowed then as

22 Commonwealth's Number 5.

23 (The photograph referred

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1 to was marked for
2 identification as
3 Commonwealth's Exhibit
4 No. 5, and was received
5 in evidence.)
6 BY MR. EBERT:
7 Q After you set up your surveillance did there
8 come a time when you had occasion to see the Defendant?
9 A Yes. The next day on the 16th of September
10 the Defendant arrived back at his residence approximately
11 4:40 p.m. on the 16th.
12 Q To your knowledge was he there when you set
13 up your surveillance?
14 A No, sir. He was not there.
15 Q By virtue of your radio contact did you
16 know he was no longer at the residence?
17 MR. LYNCH: Your Honor, I object to that.
18 That is a leading question and it is bringing in hearsay.
19 THE COURT: Yes. I have to agree. It is
20 leading.
21 BY MR. EBERT:
22 Q Let me ask you this: How do you know he was
23 not there?

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1 MR. LYNCH: Your Honor, it's the same
2 objection to the hearsay part. Whatever he knows would
3 obviously have to be what somebody told him and Mr. Ebert
4 knows it is hearsay.
5 MR. EBERT: Well --
6 THE COURT: For what his position was at
7 that point, whether he was present or not, based on
8 knowledge he received. I think that is a fair question.
9 I will let that question stand.
10 THE WITNESS: When I set up surveillance I
11 could observe Mr. Rhodes' vehicle was no longer at the
12 farmhouse and I did not observe Mr. Rhodes there at that
13 point.
14 BY MR. EBERT:
15 Q All right. Go ahead then.
16 A The next day when Mr. Rhodes arrived back,
17 approximately 4:40 p.m., at his residence on the 16th of
18 September he was driving a yellow Mustang which contained
19 two other occupants in the vehicle.
20 Q Did you later ascertain the identity of
21 these individuals?
22 A Yes. I did.
23 Q Who was that?

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1 A. It was Mary Jane McDaniels and Eugene Tirado.
2 Q. Where were you physically located at this
3 time?
4 A. I was located at the fence line, the fence
5 line, approximately I would say twenty-five to thirty
6 yards from the house, maybe a little bit farther than that.
7 Q. Were you hidden at that time?
8 A. Yes. I was.
9 Q. How did you hide yourself?
10 A. In this fence line there were trees and
11 bushes where I could see through them. There was also a
12 set of woods a little bit to the left.
13 Q. Where was Officer Fry stationed?
14 A. He was at the same location.
15 Q. Then what happened?
16 A. About the same time that Mr. Rhodes arrived
17 there was a yellow Pinto also arrived at the Rhodes
18 residence. It was driven by an individual who I personally
19 knew and I identified to be Charles Justice. The two
20 subjects got out, Mr. Rhodes and Mr. Justice. They
21 conversed and then they walked over to an old Chrysler
22 which I had an eye ball view of and Mr. Rhodes unlocked
23 the trunk. At the time the trunk was unlocked there was a

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1 strong odor, the strongest odor we had gotten all night
2 and all day.
3 Q Incidentally, while you were there did you
4 smell anything after you went on the premises?
5 A Yes. All during the night we had intermittent
6 smells of what I thought was PCP.
7 Q Once the trunk was opened what happened?
8 A There was a very strong odor, the strongest
9 odor we had received during the entire investigation.
10 Q Who unlocked the trunk?
11 A Mr. Rhodes.
12 Q Then what happened?
13 A Mr. Justice and Mr. Rhodes leaned into the
14 vehicle and appeared to be looking at something. I could
15 not tell if they were doing anything with their hands or
16 not. They stayed there just for a short period of time,
17 a few seconds. Then they slammed or shut the trunk and
18 they walked out of my eye view.
19 I then heard another door slam or trunk slam
20 and a few seconds after that Mr. Justice and Mr. Rhodes
21 walked back into view. I observed Mr. Rhodes carrying a
22 white looking object. From my standpoint I could not tell
23 exactly what it was. Mr. Rhodes then entered his vehicle.

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1 Mr. Justice then stated, Be careful, Bear.

2 Q Mr. Justice said what?

3 A Be careful, Bear, meaning Mr. Rhodes.

4 Q Do you know whether or not Mr. Rhodes has

5 a nickname?

6 A Yes. It is Bear.

7 Q Bear?

8 A Yes, sir.

9 Q Then what happened?

10 A The two subjects left in their separate

11 vehicles. I had radio contact with the surveillance team.

12 I had been reviewing what had been happening at the farm.

13 Shortly after that I think Mr. Rhodes was stopped at

14 Orndoff's Garage.

15 Q Did you have occasion to be present when a

16 search warrant was executed on the premises?

17 A Yes. I was.

18 Q Did you have radio contact with other

19 members of your team during the time you were under

20 surveillance in this area?

21 A Yes. I did.

22 Q Who brought the search warrant to you?

23 A Trooper Dyer.

1 Q Upon receiving the search warrant what did
2 you do?
3 A After the search warrant was executed on
4 the premises a search was made, the entire premises of
5 the Rhodes farm.
6 Q Did you go to the Chrysler you mentioned?
7 A Yes. I did.
8 Q What, if anything, did you find?
9 A I found a brown bucket containing white
10 crystalline like substance, found chemicals, several
11 chemicals used in the manufacturing of phencyclidine.
12 Q I show you what has been marked for
13 identification purposes as Exhibits 1 and Exhibit 2 and
14 ask you if you can identify those photographs?
15 A Yes. This photograph here is a picture of
16 the substances that was in the trunk of the Chrysler
17 which I had a view of.
18 Q This is photograph Number 2. What does
19 this photograph portray?
20 A This is also various evidence that we found
21 in the van. I believe this was a green van.
22 Q Were the buckets the substances were found
23 in contained within the trunk of that car?

1 A. Yes.

2 MR. EBERT: I'd offer these into evidence

3 at this time.

4 THE COURT: Any objection?

5 MR. LYNCH: No objection.

6 THE COURT: Be allowed into the record as

7 Commonwealth's Number 1 and Number 2.

8 (The photographs heretofore

9 marked for identification

10 as Commonwealth's

11 Exhibits Nos. 1 and 2,

12 were received in

13 evidence.)

14 BY MR. EBERT:

15 Q. With regard to the vehicles that you

16 mentioned were certain other photographs taken in your

17 presence and at your direction?

18 A. Yes, sir.

19 Q. I show you a series of photographs and ask

20 you if you can identify those for the record?

21 A. This one is a picture of the old Chrysler

22 from a rear view.

23 This picture here is a picture of the back

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1 seat.

2 MR. EBERT: Your Honor, maybe we ought to

3 mark these for identification purposes.

4 THE COURT: Maybe we should. If you want

5 to get them marked at this time and we can tell which one

6 he is referring to. Let's do that for identification

7 purposes.

8 Number 6, start marking them respectively for

9 identification.

10 MR. EBERT: Perhaps 6A, B, C.

11 THE COURT: That would be fine.

12 (The photographs referred

13 to were marked for

14 identification as

15 Commonwealth's Exhibits

16 No. 6A, 6B, 6C, 6D, 6E,

17 6F, 6G, 6H, 6I.)

18 BY MR. EBERT:

19 Q If you would when you mention the photograph

20 if you would refer to the identifying mark on the back.

21 A Exhibit 6A is a picture, a rear view

22 picture, of the old Chrysler which I had a eye ball view

23 of, that Mr. Rhodes and Mr. Justice looked into.

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1 6I is also a frontal view of the same
2 Chrysler.
3 6H is a picture of the Chrysler from the
4 side.
5 6C is a picture of the trunk showing the
6 evidence items located in the trunk of the vehicle -- or
7 the Chrysler.
8 6F is also a picture of the same items.
9 6E is also a picture of the same items,
10 except it is a closer view showing the individual items.
11 6D is a picture showing mostly the white
12 powdery substance which turned out to be sodium cyanide,
13 also located in the Chrysler.
14 6C is a picture showing the rear floorboard
15 of the Chrysler showing a strainer, some spoons in the
16 old Chrysler.
17 Q From your experience what are strainers and
18 spoons used for?
19 MR. LYNCH: Your Honor, I object to that
20 question. It's the kind of question posed to Trooper
21 Gray who is an acknowledged investigator but to say, In
22 your experience what is the spoon used for or the strainers
23 used for, you make tea with a strainer, you stir tea with

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1 a strainer.

2 THE COURT: Relating to the objects. I

3 assume you're showing him the photographs. I think that

4 is what he is trying to get at. I will let the question

5 on that basis stand.

6 THE WITNESS: The spoons are used to stir

7 the chemicals to make the reaction with the chemicals.

8 The strainer is used usually in the end

9 process to eliminate the waste materials and to separate

10 the actual PCP from the waste chemicals.

11 And 6B is a picture also of the rear floor-

12 board of the Chrysler.

13 MR. EBERT: I'd offer these into evidence,

14 Your Honor.

15 MR. LYNCH: Your Honor, I have no objection.

16 If I just may be allowed to ask --

17 THE COURT: I will let you voire dire.

18 MR. LYNCH: -- about one of the photographs.

19 THE COURT: All right.

20 VOIRE DIRE

21 BY MR. LYNCH:

22 Q 6A, Trooper Gray, which shows the rear of

23 the Chrysler, we are talking about apparently through some

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1 woods. Is that about where you were standing when you
2 observed John Rhodes and Mr. Justice?
3 A. No, sir.
4 Q. You're not saying you weren't that close,
5 were you? You weren't as close when you saw Mr. Rhodes
6 and Mr. Justice at the trunk and car as is shown in 6A?
7 A. No. The picture was taken pretty close to
8 the car.
9 MR. LYNCH: I have no objection.
10 THE COURT: Be allowed in then to the record
11 marked as 6A through I.
12 (The photographs heretofore
13 marked for identification
14 as Commonwealth's
15 Exhibits No. 6A, 6B, 6C,
16 6D, 6E, 6F, 6G, 6H, 6I,
17 were received in
18 evidence.)
19 BY MR. EBERT:
20 Q. Did you have occasion to search any other
21 vehicles in the area?
22 A. Yes. I did.
23 Q. What other vehicles did you search?

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1 A. There was a green Dodge van and a white, old
2 white Pontiac, and there was sort of a shell of a real
3 old black car. I don't remember the make or model of it.
4 Q. With regard to the green van where was that
5 located with relation to the Chrysler you mentioned?
6 A. It was located at an angle to the left of
7 the Chrysler.
8 Q. Had you seen the Defendant in the area of that
9 van when he was on the premises?
10 A. The Defendant had walked -- The van was out
11 of my view, blocked by a building. And he had walked in
12 that direction. I could not tell if he went to the van or
13 not.
14 Q. Did you hear anything when he was in that
15 area?
16 A. I heard a door slam.
17 Q. Did you take certain photographs of that van?
18 A. Yes. I did.
19 Q. Did you recover anything from it?
20 A. Yes. I did. Several pieces of evidence.
21 I'd have to review my notes to give you a list.
22 MR. LYNCH: Your Honor, I can't hear.
23 THE COURT: Speak a little louder, if you

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1 would.

2 MR. EBERT: He said several pieces of

3 evidence. He would have to review his notes to know. But

4 we will get into that later.

5 BY MR. EBERT:

6 Q Does this photograph show the various

7 vehicles you mentioned and their relationship with

8 regard to position?

9 A. Yes.

10 Q Where is the van located in that photograph?

11 A. It's located at an angle sort of to the left

12 front of the Chrysler.

13 MR. EBERT: I'd offer that into evidence,

14 Your Honor.

15 THE COURT: Objection to this photograph?

16 MR. LYNCH: No objection, Your Honor.

17 THE COURT: Be Number 7.

18 (The photograph referred

19 to was marked for

20 identification as

21 Commonwealth's Exhibit

22 No. 7, and was received

23 in evidence.)

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1 BY MR. EBERT:

2 Q Would you pull out the photographs showing

3 the interior of the van and what you found in the van.

4 A. These, all of these.

5 MR. EBERT: Your Honor, I'd like to have

6 these marked again in a series.

7 THE COURT: Start with 8A.

8 (The photogoraphs referred

9 to were marked for

10 identification as

11 Commonwealth's Exhibits

12 No. 8A, 8B, 8C, 8D, 8E.)

13 BY MR. EBERT:

14 Q If you would refer to them by number and

15 tell us what they portray.

16 A. 8A is a frontal view of the Dodge van that

17 was located on the Rhodes residence.

18 8B is a picture of the inside of the van

19 showing the Coleman fuel and a glass jar containing a liquid,

20 which later turned out to be phencyclidine.

21 8C contained a picture of the inside of the

22 van also and showed mainly buckets, the type of buckets

23 that are used in the manufacture of PCP.

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1 8D is showing sort of a rear view of the
2 back of the van. Inside of the van showing again also
3 Coleman cans and a cooler.
4 Q From your experience in making and training
5 what is Coleman fuel used for?
6 A. That is used as a solvent of crystalline
7 substance.
8 Q Something is placed into the fuel as a solvent?
9 A. Yes. Used as a solvent.
10 MR. EBERT: I'd offer these into evidence
11 at this time.
12 MR. LYNCH: Your Honor, again if I could
13 take the liberty to ask about one of the photographs.
14 THE COURT: All right, sir.
15 VOIRE DIRE
16 BY MR. LYNCH:
17 Q Commonwealth's Exhibit 8A, which shows the
18 van, does it not Trooper Gray?
19 A. Yes.
20 Q Now, that is not the van that you saw John
21 Rhodes operating earlier on the preceding day?
22 A. No, sir.
23 Q More or less of an inoperable vehicle?

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1 A. Yes.

2 Q. We're not talking about the same van?

3 A. No.

4 MR. LYNCH: No objection.

5 THE COURT: Be allowed to come in then

6 marked 8A through 8E.

7 (The photographs heretofore

8 marked for identification

9 as Commonwealth's

10 Exhibits No. 8A, 8B, 8C,

11 8D, and 8E, were

12 received in evidence.)

13 BY MR. EBERT:

14 Q. Did you have occasion to observe a white

15 Pontiac station wagon?

16 A. Yes. I did.

17 Q. Where was that located?

18 A. It was located on past the van. I can't

19 remember exactly. I'd have to look at the photographs

20 again. It's located on past the green van, probably a

21 little bit at a left angle.

22 Q. Did you take photographs of the contents of

23 that?

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1 A. I don't recall. We did not take any
2 inside the white Pontiac. This was the bulk of the items.
3 THE COURT: We are having a little trouble
4 hearing you. Keep your voice up.
5 THE WITNESS: We did not take pictures of
6 the white Pontiac.
7 BY MR. EBERT:
8 Q. Did you find any other items you photographed
9 in cars or in this area?
10 A. Yes. To the left of the green van we found
11 several items off into the woods and off to the side of the
12 van, other chemicals, ether cans.
13 Q. Did you take photographs of those items?
14 A. Yes. I did.
15 MR. EBERT: Again, I would like to have these
16 marked on the same basis.
17 THE COURT: We will start with 9A.
18 (The photographs referred
19 to were marked for
20 identification as
21 Commonwealth's Exhibits
22 No. 9A, 9B, 9C, 9D, 9E,
23 9F, 9G, 9H, 9I.)

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1 BY MR. EBERT:

2 Q Again, if you would identify these items.

3 A 9A are pictures of chemical cans. I believe

4 it is ether. I'm not really for sure. I think it is

5 ether, which was located in the old hull of an old black

6 car. Again, I don't remember the model or make of it.

7 THE COURT: You have to keep up your voice.

8 THE WITNESS: This is a picture of three

9 chemical cans. I believe it is ether cans. Located in

10 the hull of the old black car. I do not remember the make

11 or model. It was located at the edge of the woods on the

12 Rhodes residence.

13 BY MR. EBERT:

14 Q Is ether, in your experience, used in the

15 manufacture of PCP?

16 A Yes. It is.

17 9B is a picture of three Coleman coolers

18 which were found also in the woods to the left of the old

19 Dodge van.

20 9C is the same picture.

21 9D is a picture of a chemical can that was

22 located in the woods. I cannot identify what kind of

23 chemical can that is.

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1 9E is also a picture of one of the coolers
2 that has been opened and contained two bottles of
3 cyclohexanone, which is also a precursor chemical used
4 in the manufacture of PCP.
5 9F is a picture of a chemical can. I don't
6 recall -- cannot identify what kind of chemical can that
7 is.
8 9G is a picture of a plastic bag which
9 contains a plastic bottle or glass jar -- Excuse me -- It
10 was found in the woods to the left of the green Dodge
11 van.
12 9H is a picture of a bucket containing
13 bottles of some sort of chemicals. I do not recall what
14 the chemicals are.
15 9I is a picture of, I believe, the glass
16 jar, a glass jug, inside the trash can that was found in
17 the woods.
18 MR. LYNCH: No objection, Your Honor.
19 THE COURT: Be allowed to come in then as
20 Commonwealth's Exhibits.
21 (The photographs heretofore
22 marked for identification
23 as Commonwealth's

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1 Exhibits No. 9A, 9B,
2 9C, 9D, 9E, 9F, 9G, 9H,
3 and 9I, were received
4 in evidence.)
5 BY MR. EBERT:
6 Q Of the three coolers you found which are
7 portrayed in photographs 9B and 9C, did you open those
8 coolers?
9 A Yes. I did.
10 Q Was anything inside of them?
11 A Yes. There was.
12 Q What was that?
13 A Several chemicals, chemicals and remanents
14 of prior manufacturing process. I'd have to refer to my
15 notes. There was a lot of chemicals contained in the
16 coolers.
17 Q If you would tell us did you take possession
18 of these items at the time?
19 A Yes. I did.
20 Q Do you know Dr. Hepner?
21 A Yes. I do.
22 Q Who is he?
23 A He is a drug chemist at the Merrifield Drug

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1 Laboratory in Merrifield, Virginia.

2 Q Did he come to the scene of

3 this occasion?

4 A Yes. He did.

5 Q Is that your normal proceedure?

6 A Yes. If it's possible we like to have a

7 chemist.

8 Q If you would refer to your notes and give

9 the ladies and gentlemen of the Jury an itemized list.

10 THE COURT: Let's break for about five

11 minutes. We've been going for quite a while. Let's take

12 a break.

13 (Whereupon, a short recess was taken.)

14 BY MR. EBERT:

15 Q Would you tell us if you made a list of these

16 items you took into possession at the time?

17 A Yes.

18 Q Do you have that with you?

19 A Yes. I do.

20 Q Tell us what items, how many total items did

21 you take possession of?

22 A Fifty-two.

23 Q Tell us as quickly as you can what items you

1 took possession of and where you found them.

2 A. Found in the trunk of the Chrysler and

3 the floor board was a brown bucket with a crystal substance,

4 a large plastic bag with white substance inside, another

5 plastic bag containing white substance, another plastic

6 bag containing white substance, four white plastic

7 buckets, a brown bottle containing piperidine partially

8 full.

9 MR. LYNCH: Excuse me. You are going

10 through all the items you are naming now were in the

11 Chrysler?

12 THE WITNESS: Yes.

13 BY MR. EBERT:

14 Q. Are these numerically listed?

15 Let me show you a certificate of analysis and

16 ask you if these are numerically listed?

17 A. In the same way. Yes.

18 Q. If you would on that copy indicate which

19 items you are speaking of and if you could identify as

20 being those items from the Chrysler, et cetera.

21 A. Yes.

22 Q. Take a pencil.

23 A. Do you want me to do them individually?

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1 THE COURT: You can bracket them or whatever
2 to save a little time.
3 THE WITNESS: There is only one item,
4 Item Number Fifty-One, that we got out of there which is
5 not in numerical order.
6 THE COURT: You can write that or indicate.
7 BY MR. EBERT:
8 Q Which items, one through what, were found
9 in the Chrysler?
10 A One through fourteen, plus number fifty-one.
11 Q Indicate that on the copy you have there,
12 sir.
13 A (Indicating.)
14 Q Tell us if you would what items you found
15 in the Chrysler. One through --
16 A Okay. Items one through fourteen , plus
17 item fifty-one was found in the old Chrysler.
18 Q What other items did you find and where did
19 you find them?
20 A Items fifteen through twenty-five, plus
21 item number fifty-two was found in the green Dodge van.
22 Q Mark that accordingly.
23 A Yes.

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1 Q What other items?

2 A Items twenty-seven through thirty-three was

3 found in the woods to the left of the green van.

4 Items number thirty-four --

5 MR. LYNCH: Could you slow down, Trooper?

6 THE WITNESS: Yes.

7 MR. LYNCH: Twenty-seven through thirty-three

8 were found where?

9 THE WITNESS: Was found into the woods, the

10 left of the green van.

11 Items thirty-four through fifty, plus item

12 fifty-three was found in the white Pontiac.

13 There were fifty-three total items. I said

14 fifty-two before.

15 MR. EBERT: Your Honor, I ask the certificate

16 of analysis be marked for identification a: this time.

17 THE COURT: We will mark it 0 for

18 identification for the Commonwealth.

19 (The certificate of

20 analysis was marked for

21 identification as

22 Commonwealth's Exhibit

23 No. 10.)

1 BY MR. EBERT:

2 Q The indications you put on the items as to

3 what they contain, the spoons, baggies, et cetera, those

4 are notations you yourself made. Is that correct?

5 A Yes. That is correct.

6 Q Now, with regard to item seventeen, where

7 was that found?

8 A It was found in the Dodge van.

9 Q What is that?

10 A Found in the Dodge, green Dodge van.

11 Q What type of an item was that, sir?

12 A That was a brown paper bag containing

13 piperidine.

14 Q Piperidine?

15 A Yes.

16 Q What type of substance is that, sir?

17 A That is a precursor chemical that is used

18 primarily for the manufacturing of PCP.

19 Q With regard to item twenty-seven, where was

20 that found and what was it?

21 A Twenty-seven was found in the woods. That

22 is a glass bottle that is commonly used for the cooking

23 process.

1 Q With regard to item thirty-five, where was
2 that found and what was it?
3 A Thirty-five was found in the white Pontiac.
4 It was a cardboard box containing a beaker and two funnels
5 which is glassware that is usually used to manufacture
6 or in the manufacturing process.
7 Q With regard to number twenty-three, where
8 was that found and what was it?
9 A Twenty-three was found in the green Dodge
10 van. That was a glass jar containing residue.
11 Q Incidentally, how did you gain entry? I
12 assume the Chrysler trunk was shut when you started your
13 search. Is that correct?
14 A That is correct.
15 Q Were you able to open that trunk without the
16 use of some device?
17 A No, sir. I did not have a key.
18 Q And did you attempt to find a key or gain
19 entry to it?
20 A Yes, sir.
21 Q How did you attempt to do that?
22 A I asked Mrs. Rhodes for the key to the old
23 Chrysler and she advised me --

1 MR. LYNCH: I object, Your Honor, to what
2 she said. He is not responding to the question first of
3 all.
4 THE COURT: Objection sustained.
5 BY MR. EBERT:
6 Q After asking her for a key did she produce
7 one for you?
8 A No. She did not.
9 Q This is the same trunk you testified
10 earlier you had seen the Defendant open with a key?
11 A Yes.
12 MR. LYNCH: Your Honor, I object to that.
13 He didn't say he opened it with a key.
14 THE COURT: That is my recollection of the
15 testimony too.
16 MR. LYNCH: That he opened it with a key?
17 THE COURT: That he did not open it with a
18 key.
19 MR. LYNCH: Yes, sir.
20 MR. EBERT: I'm talking about the Defendant,
21 not the officer.
22 BY MR. EBERT:
23 Q You saw the Defendant at that vehicle earlier

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1 from your testimony. Is that correct?

2 A. That is correct.

3 Q. At that time in whose presence was he?

4 A. Mr. Charles Justice.

5 Q. How did he gain entry to that trunk?

6 A. It appeared to me he used a key.

7 Q. Of the two, which opened the trunk?

8 A. Mr. Rhodes.

9 Q. Now, how did you gain entry to it when you

10 were not able to find the key?

11 A. We had to use a tire iron and knock off the

12 lock and gained entrance by that means.

13 Q. Now, upon taking possession of these items

14 what did you do with them?

15 A. I transported them together with Dr. Hepner

16 and myself transported the drugs or the evidence to the

17 Merrifield Laboratory in Merrifield, Virginia where all of

18 the evidence was released to Dr. Hepner at this time. It

19 was approximately 10:30 at night on the 16th.

20 Q. Were these items marked and labelled and

21 delivered to him at the laboratory?

22 A. Yes. They were.

23 Q. Did there come a time when you received these

1 items back from him?

2 A. That is correct. I did.

3 Q. Where are these items now?

4 A. They were ordered destroyed by the Circuit Court

5 of Prince William County.

6 Q. They have been destroyed. Is that correct?

7 A. That is correct.

8 Q. Were they in your sole and exclusive

9 possession from the time you took possession of them on

10 the date of the alleged search and seizure until the date

11 you relinquished custody to Dr. Hepner?

12 A. Yes, sir. They were.

13 Q. This all occurred within Prince William

14 County?

15 A. Yes, sir. It did.

16 Q. When you mention Mr. Rhodes, is he present

17 in the Courtroom?

18 A. Yes. He is.

19 Q. Would you identify him for the record?

20 A. Sitting beside Mr. Lynch.

21 MR. EBERT: Let the record indicate that he

22 is identifying the Defendant.

23 That is all I have, Your Honor.

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1 THE COURT: You may cross examine, Mr. Lynch.

2 CROSS EXAMINATION

3 BY MR. LYNCH:

4 Q Trooper Gray, would it be accurate to

5 describe this area as somewhat out in the wilderness,

6 out in the country?

7 A. Out in the country. Yes, sir.

8 Q Were there any other photographs taken

9 regarding the aerial scene, other than the one that was

10 shown to you by Mr. Ebert?

11 A. Yes, sir. There were some similiar to the

12 same one. Yes, sir.

13 Q Do you have those with you?

14 A. No, sir. I don't have them.

15 Q Who does?

16 A. Either Mr. Ebert or Trooper Dyer. I'm not

17 sure.

18 Q Were you present when the photograph from

19 the airplane was taken?

20 A. No, sir. I was not.

21 Q Do you know who was?

22 A. Yes. I do.

23 Q Who was that?

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1 A. Trooper Gregory took the photograph.

2 Q. As far as the location of other photographs

3 other than the one that has been shown to the Jury by

4 Mr. Ebert you don't know where they are?

5 A. Either Mr. Ebert has them or Trooper Dyer

6 has them.

7 Q. Would you direct your attention please to

8 this blackboard here. If you don't mind, could you step

9 over to the board and could you put a diagram on there

10 please showing Loudoun Drive and if you can get somewhere

11 on there -- Was it Route 15?

12 A. Route 15.

13 Q. Route 15, the location of the house, the

14 driveway and the church next to the property.

15 A. This is basically the outline, as best I can

16 tell. I could use the picture maybe to do better.

17 Q. Could we have the photograph, one of the

18 first in the series. It is black and white.

19 Referring to Commonwealth's Exhibit 4, could

20 you orient us please, orient the photograph with the

21 blackboard.

22 A. Okay. Route 15 runs north and south.

23 Loudoun Drive, make a left off of 15; a short distance

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1 after making the left on Loudoun Drive you come to a
2 driveway which is a driveway leading to Mr. Rhodes'
3 residence. This is basically the house Mr. Rhodes' parents
4 live in. In this area here is woods, wooded area.
5 Back in here is open field, bushes and trees all along
6 here. This is an old abandoned church stationed from
7 the house up from the Rhodes' residence.
8 Q All right. Could you put basically where
9 north is on the diagram?
10 A (Indicating.)
11 Q If this is north on the diagram could you
12 put where north is on the photograph?
13 A The same.
14 MR. LYNCH: For the record, Your Honor,
15 Trooper Gray is marking at my request on Commonwealth's
16 Exhibit Number 4 an arrow indicating north.
17 THE COURT: I understand.
18 BY MR. LYNCH:
19 Q Would you step over here, Trooper, so the
20 members of the Jury can see.
21 On Route 15 as it comes off -- as Loudoun
22 Drive comes off Route 15 it goes on by the Rhodes farm
23 by this church; then it circles back on here someplace,

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1 doesn't it?

2 A. Yes, sir.

3 Q. A mile or two?

4 A. Yes, sir.

5 Q. And this is a public highway, is it not,

6 Loudoun Drive?

7 A. Yes.

8 Q. And it ends up on another public highway

9 here someplace, doesn't it?

10 A. I don't recall exactly where.

11 Q. Back in this area. I'm pointing to the left

12 of the blackboard is open field.

13 A. That is correct.

14 Q. A farm house over in here?

15 A. I don't recall houses. I know the church.

16 Q. On your diagram can you put a symbol on

17 there indicating the Chrysler, the general direction it

18 was facing?

19 A. Basically the Chrysler front going towards

20 the woods or towards the road, generally in this type of

21 position.

22 Q. Where was the Dodge van you talked about?

23 A. It is a little too much but basically that.

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1 Q Where was the other vehicle, the Pontiac?
2 You said a white Pontiac.
3 A I don't recall which way it was pointing.
4 I believe the front was pointing this direction.
5 Q All right. Still referring to the diagram
6 on the board, this is the driveway that leads up into the
7 Mr. and Mrs. Rhodes' farm, is it not?
8 A Basically. It curves a little bit more
9 than this.
10 Q These vehicles we are talking about, that
11 is the Chrysler, the van and the Pontiac, are kind of off
12 to the right of the driveway, according to your diagram?
13 A Off to the left.
14 Q As you pull up into the driveway?
15 A Yes. To the right.
16 Q The time you saw Mr. Rhodes and Mr. Justice
17 go to the Chrysler, which you said is this one here, put
18 yourself on the blackboard. Where were you located?
19 A Probably somewhere in this general vicinity.
20 Q Circle that.
21 A (Indicating.)
22 Q I believe you said you were about thirty-five
23 yards distance?

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1 A. Basically.

2 Q. Did you have any other means to observe?

3 Binoculars?

4 A. We did have binoculars.

5 Q. Did you use the binoculars when you observed

6 Mr. Rhodes go over to the Chrysler?

7 A. No, sir. I don't think I did.

8 Q. Have a seat please.

9 As far as saying that Mr. Rhodes appeared

10 to be opening the trunk with a key, did you actually see

11 the key?

12 A. No. I did not.

13 Q. So, it is more of an assumption, is it not,

14 Trooper Gray, that he opened it with a key?

15 A. Yes. On my part.

16 Q. The fact of the matter is you don't know how

17 he opened it?

18 A. He did not have a tire iron or anything like

19 that.

20 Q. You don't know he necessarily used a key to

21 open the trunk?

22 A. No, sir. I don't.

23 Q. I believe there were some fifty-three items

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1 total that were seized in the search?

2 A. That is correct.

3 Q. And as far as the particular items, the one

4 which Mr. Ebert referred to, item seventeen, which was a

5 bottle containing piperidine, I believe that was in -- the

6 bottle of piperidine was in the Dodge van?

7 A. That is correct.

8 Q. And item twenty-seven was one trash bag

9 containing a large glass bottle, found left of path. What

10 does that mean?

11 A. There was a little path in the woods to the

12 left of the green Dodge van.

13 Q. That wasn't found in any of the vehicles?

14 A. No, sir. It was not.

15 Q. Number twenty-three was one jar with traces

16 of unknown substance. That was found in the van?

17 A. That is correct.

18 Q. What was item fifty-three? I've got through

19 fifty-two.

20 A. It was a large pail containing three bottles

21 marked cyclohexanone.

22 Q. Where was that found?

23 A. That was found in the white Pontiac.

1 Q Now, would it be correct to say, Trooper
2 Gray, that when those items were put in these vehicles
3 or how they got there you do not know?
4 A No, sir. I do not.
5 Q Would it be correct to say, Trooper Gray,
6 that just to rehash or review your observation of this
7 particular case, on the 15th you saw Mr. Rhodes when he
8 left with Mr. Willis to go to K-Mart; you followed them?
9 A I didn't follow him. The surveillance team
10 followed him.
11 Q Did you see him at the Wycliffe Court address
12 on the 15th?
13 A Yes.
14 Q So, when he left there that is the last time
15 you saw him on the 15th?
16 A That is correct.
17 Q Then on the 16th you didn't see him again
18 until about 4:00 or 4:30 in the afternoon. Is that correct?
19 A Approximately 4:40.
20 Q 4:40 in the afternoon?
21 A That is correct.
22 Q What time did you go to the 2400 Loudoun
23 Drive address on the 15th?

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1 A. I got there about I would say 6:00 or 6:30.

2 Q. In the evening?

3 A. The afternoon.

4 Q. So, you were there on the 15th. Is this

5 correct. From about 6:30 in the evening till the following

6 day?

7 A. I was in the general area. Yes, sir.

8 Q. On a stake-out or whatever you guys call it?

9 A. Surveillance.

10 Q. During the course of time, from 6:15 on the

11 15th, would it be correct to say Mr. Rhodes was not there,

12 at least from your observation, until 4:30, something, on

13 the 16th?

14 A. That is correct.

15 Q. Would it be correct to say, Trooper Gray,

16 that during the night, either late night of the 15th or

17 early morning hours of the 16th you saw a vehicle pull

18 into the Rhodes' driveway and do something thereafter,

19 did you not?

20 A. Yes, sir. I did.

21 Q. It was a pick-up truck with Maryland license

22 plates on it, wasn't it?

23 A. That is correct.

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1 Q There appeared to be people moving back and
2 forth to the house, either loading or unloading?
3 A It appeared they was moving about. I
4 could not tell what they were doing. I later identified
5 those people.
6 Q Approximately how many people?
7 A Two that I could see, a man and a woman.
8 Q Neither one or none of those people you saw
9 were Mr. Rhodes?
10 A No, sir. They were not.
11 Q The next day, of course, at 4:30 in the
12 afternoon was the very next time you saw Mr. Rhodes?
13 A Yes, sir. That is correct.
14 Q On the 16th?
15 A On the 16th.
16 Q Can you tell these folks please whether or
17 not you ever saw Mr. Rhodes in your observation mixing any
18 of -- using any of the buckets?
19 A No, sir.
20 MR. EBERT: We will stipulate to that, Your
21 Honor.
22 BY MR. LYNCH:
23 Q Did you see him doing anything in the process

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1 of making PCP?

2 A. No, sir. I did not.

3 Q. And you are aware, being an expert in the

4 field of investigation of PCP, as to how you go about

5 making PCP?

6 A. Yes, sir. I am.

7 Q. I believe we've established, have we not,

8 that you didn't see Mr. Rhodes in any of the steps making

9 PCP?

10 A. No, sir. I didn't.

11 Q. You turned the fifty-three items that you

12 got in the search over to Mr. Hepner or Mr. Hepner's

13 Office, did you not?

14 A. That is correct.

15 Q. When you made the raid or the execution of

16 the search warrant of the Rhodes' residence Mr. and Mrs.

17 Rhodes were there, weren't they?

18 A. That is correct.

19 Q. John Rhodes' brother was also there, a boy

20 on crutches?

21 A. Yes. I believe he was.

22 Q. The residence ~~we are talking about~~ is not

23 John Rhodes' residence at all, is it?

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1 A. That is the address he gave when we arrested
2 him as being his residence.
3 Q. Would it be correct to say at the time, the
4 time of this raid, you knew only that Mr. Rhodes stayed
5 there on occasion?
6 A. I did not know where he stayed all of the
7 time. That was the address he gave me when he was arrested.
8 Q. You're talking about after his arrest. But
9 at the time --
10 MR. EBERT: Your Honor, he has answered the
11 question.
12 MR. LYNCH:. He hasn't answered my question.
13 MR. EBERT: He did too, as to where he
14 lived and that is the address he gave.
15 THE COURT: Rephrase your question.
16 BY MR. LYNCH:
17 Q. At the time he was arrested, just prior to
18 his arrest, you knew he stayed there on occasion?
19 MR. EBERT: He's answered that. He said he
20 didn't know.
21 THE COURT: He said he didn't know. He's
22 answered that. All he knew was his residence he gave when
23 he was arrested.

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1 BY MR. LYNCH:

2 Q But my question to you is: Prior to your

3 arrest you didn't know Mr. Rhodes lived there, did you?

4 A. I knew he had been seen there. Whether he

5 spent the night there, I did not personally ever see him

6 go to bed there. No, sir. I did not live with him.

7 Q So, to your knowledge other than him giving

8 you that address he did not --

9 MR. EBERT: I object to that question.

10 MR. LYNCH: I haven't finished the question.

11 MR. EBERT: It's a negative question.

12 THE COURT: State your question.

13 BY MR. LYNCH:

14 Q From your personal knowledge you didn't know

15 that was actually his residence, other than his telling you

16 after you arrested him?

17 MR. EBERT: Your Honor, I object.

18 THE COURT: You have asked the question

19 several times, Mr. Lynch. He's already answered.

20 Objection sustained.

21 BY MR. LYNCH:

22 Q Now, the cooler chest that you found

23 approximately -- without getting out of your seat -- where

1 was that found?

2 A. The van, where I've got the word woods --

3 Q. I'm talking about the cooler chest you

4 found when you were out there on the stake-out that night.

5 A. Where I have the word woods.

6 Q. Over in here?

7 A. Yes. Below the church a little bit aways.

8 Q. Underneath?

9 A. I would say approximately halfway inbetween,

10 a little more or a little less.

11 Q. All right. So, somewhere in this vicinity?

12 A. That is correct.

13 Q. Approximately seventy-five yards from the

14 house?

15 A. I would say seventy-five, somewhere in that

16 vicinity.

17 Q. The cooler had some shavings in it,

18 magnesium shavings?

19 A. That is correct.

20 Q. Again, you don't know how long or how that

21 cooler got there, do you?

22 A. No, sir. I do not.

23 Q. And did you submit that cooler -- Was that one

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1 of the fifty-three items you turned in?

2 A. That is correct.

3 Q. Do you know where the dividing line, the

4 boundary line, is for Mr. and Mrs. Rhodes' property?

5 A. There is a fence that runs through the woods

6 that is the property line.

7 Q. Is that why you drew this line here to

8 indicate --

9 A. I meant that to be the road to the church.

10 Q. The road up into the church?

11 A. Yes.

12 Q. Where would the fence be we are talking about?

13 A. It runs through the woods. I cannot put it

14 exactly.

15 Q. If I may, I am putting on the board in the

16 upper lefthand corner this way a line of x's. Where would

17 I start with the line of x's?

18 A. If you like I could come up there.

19 Q. If it would be easier.

20 THE COURT: It might be easier.

21 THE WITNESS: It is the same fence that runs

22 here, all the way up, except it circles up around through

23 the woods here. The cooler was found just on the other side

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1 of the fence, almost like laying against it.

2 BY MR. LYNCH:

3 Q Thank you.

4 As far as what went on at Wycliffe Court, I

5 believe we have covered it. In your observation at

6 Wycliffe you saw John Rhodes pull up in a green van, didn't

7 you?

8 A. That is correct.

9 Q Which was not the green van shown in the

10 photographs?

11 A. No, sir. It was not.

12 Q He did not get out. Willis really came

13 from the Wycliffe Court address and got in his van and left?

14 A. That is correct.

15 Q As far as this odor is concerned that you

16 observed, which you said that being trained as an expert

17 in the field of narcotics investigation, is there any

18 other -- is it a highly unique smell, that there is nothing

19 else that smells like it?

20 A. A very unique smell. Yes, sir.

21 Q It wouldn't smell like a disinfectant?

22 A. No, sir. I've never smelled one like it.

23 Q It wouldn't have some type of medicinal smell?

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1 A. Medicinal?

2 Q. Medicinal smell.

3 A. I would not think so.

4 Q. This is kind of one of a kind?

5 A. It was used as a medicine at one time. I

6 guess if it was still a medicine you could say that. Yes,

7 sir.

8 Q. But it's got this very unique smell?

9 A. Yes, sir.

10 MR. LYNCH: That is all I have, Your Honor.

11 THE COURT: Do you have further questions?

12 REDIRECT EXAMINATION

13 BY MR. EBERT:

14 Q. This process, from your experience, is there

15 a stage which is called a cooking stage?

16 A. Yes, sir.

17 Q. Does anyone have to be present at that stage?

18 MR. LYNCH: Excuse me, Mr. Ebert.

19 I haven't objected to Mr. Ebert leading through

20 most of this testimony, Your Honor, but I do object to him

21 leading his witness now. It is his witness. He's asking

22 him leading questions.

23 THE COURT: You are somewhat leading, Mr. Ebert.

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1 I have to agree with the objection. See if you can
2 rephrase the question.
3 BY MR. EBERT:
4 Q During this process is anything required?
5 A. You have your mixture, your preliminary
6 mixture of chemicals, which takes a very minute amount of
7 time, approximately forty-five minutes. The chemical
8 reaction you get from these chemicals, you do not have to
9 be present. It immediately starts crytallizing. You can
10 let these chemicals react for as long as you want. No one
11 has to be present at all after the chemicals are mixed
12 together. That is in the first stage.
13 Q And you say the substance starts to
14 crystallize. Is that correct?
15 A. That is correct.
16 Q Were any of these crystals you mention found
17 in the trunk of the Chrysler?
18 A. Yes. There was.
19 Q Do these crystals emit an odor?
20 A. Yes. They do.
21 Q From the time you were observing the area in
22 question did anyone else enter the vehicle or any of these
23 vehicles you mentioned?

1 A. No. They did not.

2 Q. And you say -- I think you were asked if a

3 pick-up with Maryland tags arrived sometime during the

4 night. Did any of these accupants go near these vehicles?

5 A. No. They did not.

6 Q. Did you later identify or make identity of

7 the occupants of that vehicle?

8 A. Yes. We did.

9 Q. Who was that?

10 A. Some relatives of Mrs. Rhodes. I don't

11 recall whether it was a sister or a brother. But it was

12 two older type individuals and I later gathered from Mrs.

13 Rhodes it was kin to them.

14 MR. LYNCH: Your Honor, I object.

15 THE COURT: Objection sustained.

16 BY MR. EBERT:

17 Q. Do you know at the time what the street

18 value of PCP was?

19 A. Approximately a hundred to a hundred and

20 thirty dollars an ounce.

21 MR. EBERT: That is all I have.

22 RECROSS EXAMINATION

23 BY MR. LYNCH:

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1 Q As far as the process, you said it could
2 mix all by itself. But it takes somebody with their
3 hands to actually mix the stuff, doesn't it?
4 A I am saying that is required in about the
5 first forty-five minutes to an hour or even less than that.
6 Q Generally, don't you start out with two
7 buckets?
8 A That is correct.
9 Q You take bucket A and bucket B and you put
10 certain chemicals in bucket A?
11 A That is correct.
12 Q I don't know what they're called. And there
13 is a certain reaction in bucket A?
14 A That is correct.
15 Q Then you take certain chemicals and put
16 them in bucket B?
17 A That is correct.
18 Q Certain things are going on in bucket B?
19 A That is correct.
20 Q At a later time you take the contents of
21 bucket A and B and mix them together?
22 A Yes.
23 Q It's kind of a three stage operation?

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1 A. All that takes approximately about forty-five
2 minutes to an hour.
3 Q. But in the process you have to take
4 bucket A and pour it in bucket B or B and pour it in A?
5 A. That is correct.
6 Q. The buckets were among the fifty-three items
7 which you obtained? The buckets were at least some of
8 them?
9 A. That is correct.
10 Q. As far as your observation of whether you
11 saw anybody else out there at the farm, you saw Rhodes
12 on the 15th at Wycliffe Court and you saw him leave
13 Wycliffe Court --
14 THE COURT: Mr. Lynch, you're going over the
15 same testimony you went over before.
16 MR. LYNCH: I am responding, Your Honor, to
17 Mr. Ebert's question, Did he see anybody at the area
18 during his observation.
19 THE COURT: You asked the question whether
20 he saw anyone go to these vehicles during his observation.
21 That was the question.
22 BY MR. LYNCH:
23 Q. When you reviewed your arrival at Loudoun

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1 Court, you got there at 6:15 at night, didn't you?

2 MR. EBERT: We've gone all through this.

3 This isn't responsive to my questions.

4 THE COURT: You are going off, Mr. Lynch.

5 I am sorry. Objection sustained. I let you come back on

6 recross but you got to limit it to strictly to redirect.

7 MR. LYNCH: What I am trying to point out,

8 Your Honor, my question is that he wasn't in a position to

9 know at all times, he wasn't stationed there at that 2400

10 Loudoun Court full time.

11 THE COURT: He was there from 6 o'clock

12 until he left there the next day as I understand his

13 testimony. Rephrase the question.

14 BY MR. LYNCH:

15 Q You got there at 6:15 on the 15th?

16 A. Approximately.

17 Q The last time you saw Rhodes was at what

18 time on the 15th at Wycliffe Court?

19 A. I'd say approximately 5:05 p.m.

20 Q Pardon me?

21 A. Approximately 5:05 p.m.

22 Q Can you tell these folks, after you got there

23 on the 15th that you had the whole area under observation?

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1 You can tell these folks you saw everything going on out
2 there from 6:15 in the morning until 4 o'clock in the
3 afternoon?
4 A. 6:15 in the morning?
5 Q. Excuse me. 6:15 in the evening on the 15th
6 until 4:00 or 4:30 in the afternoon, you had everything
7 under observation?
8 A. No, sir. I couldn't see everything that was
9 going on. I'm not capable of doing that.
10 THE COURT: You're excused, sir.
11 We are going to break for our lunch.
12 MR. EBERT: In response to that could I ask
13 him questions?
14 REDIRECT EXAMINATION
15 BY MR. EBERT:
16 Q. Could you see everything that went on
17 around the vehicles?
18 A. No, sir. I could not.
19 MR. EBERT: That is all.
20 THE COURT: May he be excused or do you
21 want him to stand by?
22 MR. EBERT: He will have to stand by.
23 THE COURT: Stand by.

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1 AFTERNOON SESSION

2 (2:35 p.m.)

3 MR. EBERT: I am going to call the

4 fingerprint expert out of order. Mr. Lynch agreed to that.

5 MR. LYNCH: That is correct, Your Honor.

6 Whereupon,

7 LLOYD WHITAKER

8 was called as a witness by and on behalf of the

9 Commonwealth, having been first duly sworn by the Clerk

10 of the Court, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. EBERT:

13 Q State your full name and give your place of

14 employment.

15 A. Lloyd Whitaker. At present retired.

16 Formerally employed.

17 Q. Where were you previously employed? Where

18 were you employed in September of 1978?

19 A. I was employed by the State of Virginia,

20 the Northern Virginia Police Laboratory in Merrifield,

21 Virginia.

22 Q. In what capacity were you employed?

23 A. As a latent fingerprint examiner.

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1 Q And do you have special education, training
2 and qualification in that field?
3 A Yes. I --
4 MR. LYNCH: Excuse me, Mr. Whitaker.
5 At whatever point Mr. Ebert wishes to stop
6 questioning I will stipulate to his qualifications as a
7 latent fingerprint expert.
8 THE COURT: All right, sir.
9 MR. EBERT: I will accept that at this time.
10 BY MR. EBERT:
11 Q And as a latent fingerprint examiner what
12 do your duties include?
13 A The examination of evidence brought to the
14 laboratory by police officers for the examination for
15 the presence of latent fingerprints.
16 Q I show you an exhibit which has been introduced
17 as Commonwealth's Exhibit No. 3 and ask you if you had
18 occasion to see that exhibit prior to this date?
19 A Yes. I have.
20 Q And with regard to that exhibit did you have
21 occasion to make any comparisons of that exhibit and other
22 latent fingerprints you had in your possession?
23 A Yes. I did.

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1 Q Did you yourself obtain these fingerprints?

2 A On this card?

3 Q No. The latent fingerprints.

4 A The latent fingerprints. Yes, I developed

5 them.

6 Q Tell the ladies and gentlemen of the Jury

7 what a latent fingerprint is.

8 A A latent fingerprint is a fingerprint that

9 is left unintentionally when you handle an object. It

10 is left because of the perspiration of the body oils and

11 chemicals in the perspiration. And when you touch an

12 object these oils and chemicals are on the surface of the

13 ridges of the fingers so they can leave the outline of

14 those ridges on the object you touch.

15 Q At all times do persons touching objects

16 leave fingerprints?

17 A No.

18 Q They occasionally do. Is that correct?

19 A It depends on a number of factors, depending

20 on how soon you may have washed your hands before touching

21 it or various factors. Some people do not leave finger-

22 prints at all.

23 Q Did there come a time you had occasion to

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1 attempt to lift latent fingerprints --

2 What process do you use --

3 Let me ask you this: What is the lifting

4 of a latent fingerprint?

5 A. Well, a latent fingerprint is developed

6 in several fashions, depending on the surface on which

7 you are working. If it's a non-absorbent surface you

8 would use powder, finely ground powder. If it's an

9 absorbent substance, such as a piece of paper or something

10 like that, you would use various chemicals to work on

11 the amino acids or the solid content of the fingerprint.

12 Those fingerprints that are lifted or that

13 are developed on hard non-porous surfaces developed by

14 means of powders we use a transparent lifting tape to lift

15 them off of whatever the object may be.

16 Q. Did you use that process on certain items

17 you received in connection with the exhibit which is

18 before you?

19 A. Yes. I did.

20 Q. I show you what has been introduced as

21 Exhibit Number 10 and ask you if you had occasion to

22 use that process on the items which are enumerated on

23 Exhibit 10?

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1 A On most of the objects, plastic, glass,
2 items of that nature, I used the powder and lifting tape.
3 The paper bags, absorbent items, chemicals were used on
4 those.
5 Q Did you make a comparison between the exhibit
6 which is Exhibit 3 and the prints which you developed
7 from the items which are enumerated in Exhibit 10?
8 A Yes. I did.
9 Q Were you able to reach a conclusion with
10 regard to Exhibit 3 and any of the items which you
11 yourself developed?
12 A There was one fingerprint on a bottle, which
13 is item seventeen, on this list.
14 Q Number seventeen?
15 A Number seventeen, that is a bottle labelled
16 piperidine.
17 Q All right.
18 A One fingerprint on a jar, which is item
19 twenty-three and it is listed on here as a jar containing
20 residue. Two fingerprints on a bottle, which is item
21 twenty-seven, listed as a large glass bottle containing
22 metal turnings and residue. And four fingerprints on a
23 measuring beaker, which is part of item number thirty-five

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1 on this list. These fingerprints I identified as
2 fingerprints of the individual whose prints appear on this
3 card and the card bears the name John William Rhodes, III.
4 Q And in the course of your examination did
5 you receive other known fingerprints to make comparison
6 likewise?
7 A Yes. I did.
8 Q How many other different individuals did
9 you attempt to compare with fingerprints that you were
10 able to develop on a latent basis?
11 A I had known fingerprints of thirteen
12 individuals and the latent fingerprints that I developed
13 in this case I compared with all thirteen individuals.
14 Q And of the thirteen how many of the finger-
15 prints were you able to link or connect with the unknown
16 with the known?
17 A There were the eight fingerprints that I just
18 listed I identified with the fingerprints of John William
19 Rhodes, III. And there were six of the latent fingerprints
20 that I identified --
21 MR. LYNCH: Your Honor, before this witness
22 proceeds may we approach the Bench?
23 THE COURT: You may.

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1 (The following was had at the Bench, and
2 was outside the hearing of the Jury.)
3 MR. LYNCH: Your Honor, I would object to
4 the witness testifying about the prints. It's going to
5 be I suppose Ronnie Willis and I object to that, because
6 the foundation has not been laid for his testifying as to
7 the prints of Ronnie Willis. Of course, Mr. Ebert has to
8 introduce the card showing the known prints of Ronnie
9 Willis and that hasn't been done. So, I object to this
10 witness responding to the prints of Ronnie Willis.
11 THE COURT: Mr. Ebert.
12 MR. EBERT: Your Honor, I would submit to
13 the Court that I assume from opening statements and
14 arguments it is going to be someone else in effect may have
15 been the producer of this. And I offer this testimony
16 not for the accuracy of it but to show, in fact, of all
17 of these fingerprints examined only two sets were able
18 to be identified on these items which were seized.
19 MR. LYNCH: I have no objection to that, that
20 it was some unknown. He can identify another set.
21 THE COURT: He's already testified to that.
22 MR. LYNCH: Being Ronnie Willis, I object to
23 that.

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1 THE COURT: I sustain the objection.

2 (The following resumed within the hearing

3 of the Jury.)

4 BY MR. EBERT:

5 Q You said of the prints, six of them you

6 were able to link with another set. Is that correct?

7 A. That is correct.

8 Q Of the remaining eleven you were unable to

9 make any identification. Is that correct?

10 A. The remaining eight.

11 Q I mean, the remaining eleven individuals.

12 A. Oh, that is correct. The remaining eleven

13 individuals.

14 Q Of course, you cannot tell us when these

15 fingerprints were left. Is that correct?

16 A. That is correct.

17 Q Your examination, of course, would consist

18 solely of the day you made the examination. Is that

19 correct?

20 A. Yes. As of that day, yes.

21 MR. EBERT: That is all I have.

22 THE COURT: You may cross examine.

23 CROSS EXAMINATION

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1 BY MR. LYNCH:

2 Q Mr. Whitaker, item number seventeen, twenty-
3 three, twenty-seven and thirty-five, which you said had
4 the latent fingerprints of Mr. Rhodes, one being a bottle,
5 another a jar, another bottle and a beaker. You have no
6 way in your field of expertise to know whether the prints
7 were put on before or after the manufacturing for which
8 Mr. Rhodes stands charged, do you?

9 A. I would assume after the manufacturing
10 process but just within a matter of six to eight months
11 I couldn't tell.

12 Q When you say assume, that is all it would
13 be?

14 A. Yes. It's an assumption.

15 Q Your expertise does not -- You are not able
16 to tell when the print is on there?

17 A. No.

18 Q And it could have just as easily been put
19 on there, could it not, before the bottle was ever used for
20 manufacturing?

21 A. It would be possible, I imagine.

22 Q You were given how many items to examine?
23 Would fifty-three be about the right number?

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1 A. Well, actually more than fifty-three items.
2 There were fifty-three items; some items were more than
3 one object.
4 Q. Of those objects, they varied anywhere from
5 plastic buckets, brown buckets, white buckets, other
6 bottles, stirers?
7 A. Yes.
8 Q. Ice chest?
9 A. Oh, yes. That is right.
10 Q. There would be other jars, other containers?
11 A. That is correct.
12 MR. LYNCH: That is all I have, Your Honor.
13 THE COURT: Do you have other questions?
14 MR. EBERT: No.
15 THE COURT: May this witness be excused?
16 MR. EBERT: Yes.
17 THE COURT: You are excused, Mr. Whitaker.
18 You are free to go.
19 MR. LYNCH: Excuse me --
20 THE COURT: Do you want to ask more questions?
21 MR. LYNCH: Yes.
22 THE COURT: Return to the stand.
23 BY MR. LYNCH:

1 Q On item twenty-three and item thirty-five,
2 which would be -- twenty-three would be a jar and
3 thirty-five would be a beaker. There were prints discernible
4 on those two items other than Mr. Rhodes, were there not?
5 A. Yes. There were.
6 MR. LYNCH: Thank you.
7 THE COURT: Any other questions?
8 REDIRECT EXAMINATION
9 BY MR. EBERT:
10 Q You were also supplied a card to make an
11 identification in connection with this case concerning
12 those two items. Is that correct?
13 A. That is correct.
14 Q That was the other individual of which you
15 spoke?
16 A. That is correct.
17 MR. EBERT: That is all I have.
18 THE COURT: You are excused. Thank you very
19 much, sir.
20 (Witness excused.)
21 Whereupon,
22 R. A. DYER
23 was called as a witness by and on behalf of the

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1 Commonwealth, having been first duly sworn by the Clerk
2 of the Court, was examined and testified as follows:
3 DIRECT EXAMINATION
4 BY MR. EBERT:
5 Q State your full name and give your place of
6 employment.
7 A Special Agent R. A. Dyer. Virginia State
8 Police.
9 Q In what capacity are you employed?
10 A Special Agent with Criminal Investigations
11 Bureau.
12 Q Are you employed in any speciality with
13 the bureau?
14 A Before July 1st of this year I was working
15 narcotics investigation.
16 Q How long did you work in that capacity?
17 A Four and a half years.
18 Q Did you have occasion to be present with the
19 investigation that conerns the case which is the subject
20 of this proceeding today?
21 A Yes, sir. I did.
22 Q Did there come a time when you had occasion
23 to see the Defendant on the 15th day, I think it was, of

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1 September?

2 A. Yes. I did.

3 Q. 1978.

4 When was it and where was it you first saw

5 him?

6 A. I first saw Mr. Rhodes driving a green

7 Dodge van in the area of Wycliffe Court in Manassas.

8 Q. What did you do at that point?

9 A. When the vehicle left the Wycliffe Court

10 area I along with the other members of the surveillance

11 team followed the vehicle to the K-Mart in Manassas.

12 Q. Upon arriving at K-Mart what happened?

13 A. I stayed in the parking lot and watched the

14 vehicle and Trooper Ritchie went inside.

15 Q. Trooper Ritchie followed the individuals

16 inside. Is that correct?

17 A. Yes, sir.

18 Q. Then what happened?

19 A. Sometime later Mr. Rhodes and Mr. Willis left

20 the K-Mart, came back to the van and left the K-Mart area,

21 went up Route 234 northbound to Route 15 and went to 2400

22 Loudoun Drive.

23 Q. Approximately what time was it he arrived

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1 there?

2 A. Approximately 5:45 p.m.

3 Q. What did the surveillance team do at that

4 point?

5 A. At that point we broke off surveillance.

6 There was no place to watch the house from on the road and

7 we came back to the Manassas area and had a meeting about

8 what we were going to do.

9 Q. Did you decide what you were going to do?

10 A. Yes, sir.

11 Q. What was that decision?

12 A. We decided to attempt surveillance on the

13 house that night to determine if the manufacturing of PCP

14 was taking place and my job was to make the affidavit for

15 the search warrant.

16 Q. Did you receive certain information from

17 individuals that enabled you to obtain the search warrant?

18 A. Yes, sir. Throughout the night of

19 September 15th and into the morning of the 16th Trooper

20 Gray, Special Agent Miller and other members of the

21 surveillance team gave me information of which I put on

22 the affidavit.

23 Q. What method did Trooper Gray use to convey

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1 information to you?

2 A. A walkie-talkie or radio.

3 Q. You were in contact with him throughout

4 that night. Is that correct?

5 A. Yes, sir.

6 Q. Did there come a time when you went to

7 obtain a search warrant?

8 A. Yes, sir. I did.

9 Q. Approximately what time was that?

10 A. The search warrant was signed on the morning

11 of September 16th, I believe it was 9:10 a.m.

12 Q. During that time did you know the whereabouts

13 of Officer Gray and Officer Fry?

14 A. Yes, sir. I did.

15 Q. Where was that?

16 A. They were in the woods somewhere behind the

17 house at 2400 Loudoun Drive.

18 Q. At what time did they start their surveillance

19 to your knowledge?

20 A. Somewhere around 10:30 p.m. the night of the

21 15th.

22 Q. Were you in contact with them from 10:30 till

23 the time you obtained the search warrant?

1 A. Yes, sir. I was.

2 Q. Upon obtaining the search warrant what did

3 you do?

4 A. I obtained a search warrant and went back

5 to the area and talked to Sergeant Martin, who was cur

6 Supervisor at the scene, and I came back to Manassas, went

7 to Wycliffe Court attempting to locate the green Dodge van.

8 And we were trying to get people together for the raid or

9 to serve the search warrant at the house. That afternoon,

10 it would have been Saturday the 16th, about 5 o'clock I

11 headed back to the 2400 Loudoun Drive with a search warrant

12 to execute.

13 Q. Did you, in fact, execute it immediately or

14 what, if anything, did you do?

15 A. No, sir. When I came to the intersection of

16 Route 15 and Route 234 in Prince William County I

17 observed the Defendant, Mr. Rhodes,driving a yellow

18 Mustang and he was southbound on Route 15 at that time.

19 Q. Where was he with relation to the Loudoun

20 Drive address you mentioned?

21 A. I'm trying to remember right now. If it

22 runs north and south, he would have, I believe, been south

23 of the 2400 Loudoun Drive, approximately two and a half

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1 miles.

2 Q. Was he going towards the Loudoun Drive

3 address or away from it?

4 A. Away from it.

5 Q. Who was with him, if anyone?

6 A. There was a young man and a young lady. I

7 determined who they were later.

8 Q. Have you since learned their identity?

9 A. Yes, sir.

10 Q. Who were they?

11 A. The young lady was Mary Jane McDaniels and

12 the young man was Geno Tirado.

13 Q. Upon observing the Defendant what did you do?

14 A. At the time I observed him he was under

15 surveillance by Investigator Fish and other members of

16 the surveillance team. And I joined in the surveillance.

17 Q. Did you receive certain information or had

18 you received certain information concerning his activities

19 prior to that time?

20 A. Yes, sir. I spoke to Trooper Gray on the

21 radio and Trooper Gray advised me --

22 MR. LYNCH: Your Honor, he asked the question

23 and now he is volunteering. I object. He said: Did you

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1 receive information? And the answer is yes and he went
2 on to say what the information was, which Mr. Ebert hadn't
3 asked yet.
4 THE COURT: I'll sustain the objection.
5 BY MR. EBERT:
6 Q Based on that information what, if anything,
7 did you do?
8 A. I stopped Mr. Rhodes at Orndoff's Truck
9 Stop in Haymarket, Virginia.
10 MR. LYNCH: Excuse me.
11 Your Honor, we might as well approach the
12 Bench at this time, if we may.
13 THE COURT: All right, sir.
14 (The following was had at the Bench, and
15 was outside the hearing of the Jury.)
16 MR. LYNCH: Your Honor, we are leading right
17 up into the area I made a motion at the beginning of the
18 trial on, the Motion in Limine. Now we are going to get
19 into the search of the car and find the bag of the PCP,
20 PCP dipped cigarettes back in the car. He's been tried
21 for that and acquitted.
22 THE COURT: I know. There is a continuity
23 of evidence and I think it does have probative value.

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1 MR. LYNCH: It certainly has probative
2 value but prejudicial.
3 THE COURT: I think the Commonwealth has the
4 right to show -- We are not talking about something
5 removed, a week later or hours later. We are talking
6 about something in time.
7 MR. LYNCH: There is very crucially missing
8 here, Your Honor -- the Trooper obviously, if you rule the
9 way you indicate you are, the package in the back seat
10 will be testified to by Trooper Dyer. But Trooper Gray, if
11 he's called back in -- he was never asked when he was on
12 the Witness Stand whether or not he saw Rhodes get any
13 white object out of the car. Trooper Gray cannot testify
14 to that, that he saw Rhodes get the white object out of
15 the car.
16 MR. EBERT: He already testified to it.
17 MR. LYNCH: He didn't say he got it out of
18 the car.
19 THE COURT: No.
20 I'm going to have to deny your motion.
21 MR. LYNCH: Please note my exception on that
22 one.
23 THE COURT: Yes, sir.

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1 (The following resumed within the hearing
2 of the Jury.)
3 BY MR. EBERT:
4 Q What caused you to stop the Defendant at
5 Orndoff's?
6 A Information I received from Trooper Gray
7 that Mr. Rhodes had taken an item away from the residence
8 that I was going to with the search warrant that I felt
9 he was taking evidence away at that time.
10 Q Did you, in fact, stop him at Orndoff's?
11 A Yes, sir. I did.
12 Q What occurred at that point?
13 A At that point I approached the vehicle from
14 the front of the vehicle; other officers approached from
15 the back and sides. Approximately five feet away from the
16 vehicle I detected an odor, chemical odor.
17 Q Were you familiar with that chemical prior
18 to that time?
19 A It smelled to me to be PCP, which I'd smelled
20 in the past.
21 Q How many other occasions had you smelled that
22 odor which you subsequently identified or connected with
23 the substance known as PCP?

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1 A. Prior to that time I had been to two PCP
2 laboratories and I had purchased PCP on the street several
3 times.
4 Q. Had you had special training in narcotics
5 investigation concerning that substance and others?
6 A. Yes, sir. I had.
7 Q. How far away were you from the car when you
8 detected that odor?
9 A. About five feet from the front of the vehicle.
10 Q. Upon approaching the vehicle what occurred
11 then?
12 A. I ordered everyone out of the vehicle and I
13 looked in the vehicle and I saw on the hump between the
14 bucket seats -- this was a Mustang with bucket seats -- there
15 was a plastic bag with cigarettes dipped in liquid which
16 appeared to be wet.
17 Q. Did you smell that bag or the contents of
18 that bag?
19 A. Yes, sir.
20 Q. Could you detect where the odor was coming
21 from you just mentioned?
22 A. The bag seemed to be the origin of the odor.
23 Q. Did you take possession of that?

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1 A. Yes, sir. I did.

2 Q. What, if anything, did you do with it?

3 A. I sealed the bag into a brown envelope and

4 took it to the Consolidated Lab in Merrifield and turned it

5 over to Dr. Hepner.

6 Q. From the time you received it to the time you

7 turned it over to him was it in your sole and exclusive

8 possession?

9 A. Yes, sir. It was.

10 Q. Did you receive that substance back from

11 Dr. Hepner?

12 A. Yes, sir. I did.

13 Q. Do you know where the substance is at this

14 time?

15 A. That substance was destroyed.

16 Q. Why was it destroyed?

17 A. The order of the Circuit Court of Prince

18 William County.

19 MR. EBERT: That is all I have of this witness.

20 THE COURT: You may question.

21 CROSS EXAMINATION

22 BY MR. LYNCH:

23 Q. Trooper Dyer, I believe you said your

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1 information was Trooper Gray started his surveillance on
2 the 15th of September at about 10:30 at night?
3 A. The surveillance at 2400 Loudoun Drive, yes,
4 sir.
5 Q. The offense, you were the charging officer,
6 were you not? You brought the warrant for Mr. Rhodes?
7 A. Yes, sir. I did.
8 Q. And you brought warrants, both for possession
9 of whatever the item was that Mr. Ebert just referred to in
10 the car --
11 MR. EBERT: Your Honor, may I approach the
12 Bench on that?
13 THE COURT: You may.
14 (The following was had at the Bench, and
15 was outside the hearing of the Jury.)
16 MR. EBERT: Your Honor, I would assume he
17 wants to get into the fact of the possession charge that
18 was subsequently dismissed. I don't think it's relevant
19 in this matter. His testimony, we rise and fall on what
20 he says here today, not what the outcome might have been
21 on some connected charge.
22 MR. LYNCH: Mr. Ebert wants his cake and
23 wants to eat it too. He wants to get in the evidence and

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1 he doesn't want the Jury to find out what happened about
2 the disposition of it.
3 MR. EBERT: I don't think it's relevant. It
4 could have been dismissed for any number of reasons.
5 THE COURT: Objection sustained.
6 MR. LYNCH: Please note my objection on that,
7 Your Honor.
8 Your Honor, while we are up here can we
9 proffer at the Bench if I were permitted to ask Trooper
10 Dyer -- and I think I have to do this for the record -- if
11 I asked Trooper Dyer what happened to the charges brought
12 against Mr. Rhodes on the possession charge that they
13 would have been dismissed, his answer would be that they
14 were dismissed by the Jury, he was acquitted by the Jury.
15 MR. EBERT: He might not even know that.
16 THE COURT: He might not even know that.
17 I don't know whether he knows that or not.
18 I think it's clearly a matter of record the
19 charges were dismissed but I don't think it has anything to
20 do with this particular case.
21 MR. LYNCH: Your Honor, maybe there is
22 something even Mr. Ebert sees that I don't see but it
23 seems to me Mr. Ebert can slide in this evidence by way of

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1 the testimony about the bag being in the back seat of the
2 car and Trooper Dyer walks away.
3 THE COURT: You are the one who raises the
4 issue.
5 MR. LYNCH: I have to because you permitted
6 him to get into it in the first place.
7 THE COURT: That is not even an issue,
8 whether he was charged with it or not. The fact of it is
9 he was. He is presenting the evidence and I think it is
10 fair. He is charged with manufacturing.
11 MR. LYNCH: Can I put just one more thing
12 into the record, Your Honor? In the previous trial you
13 ruled that any evidence about the manufacturing would be
14 prejudicial --
15 THE COURT: I agree.
16 MR. LYNCH: -- to the possession charge. And
17 now it seems you're reversing your ruling.
18 THE COURT: No. I'm not. I don't think
19 there's any incongruity in it at all. We're talking about
20 manufacturing. The other charge was possession. I think
21 there is a basic difference, absolutely a basic difference.
22 MR. LYNCH: Might I note my objection.
23 THE COURT: Yes, sir.

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1 A. No, sir.

2 Q. Are there other smells that smell similar?

3 A. Nothing that I've ever smelled before smells

4 like PCP.

5 Q. Did you ever smell a disinfectant?

6 A. Oh, yes.

7 MR. LYNCH: That is all I have.

8 THE COURT: Do you have further questions?

9 MR. EBERT: No.

10 THE COURT: May this witness be excused?

11 MR. EBERT: I would like to keep him on call.

12 THE COURT: You are to stand by, Trooper, if

13 you will please, subject to being recalled.

14 (Witness stood aside.)

15 Whereupon,

16 KARL E. HEPNER, JR.

17 was called as a witness by and on behalf of the

18 Commonwealth, having been first duly sworn by the Clerk

19 of the Court, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. EBERT:

22 Q. State your full name and give your place of

23 employment.

1 A. Dr. Karl E. Hepner, Jr. Employed by the
2 Commonwealth of Virginia at the Northern Virginia
3 Forensic Laboratory.
4 Q. In what capacity are you employed?
5 A. I'm the Chief Drug Chemist.
6 Q. As such what do your duties include?
7 A. My duties include supervising the operation
8 of the drug laboratory at the Northern Virginia facility;
9 I receive evidence involving criminal investigations
10 concerning drugs, suspected drug compounds; analyze those
11 exhibits for evidentiary value.
12 Q. Have you received special training,
13 education and qualifications in your field of employment?
14 A. Yes, sir.
15 Q. Would you for the record tell the ladies and
16 gentlemen of the Jury what that is.
17 MR. LYNCH: Your Honor, I stipulate to his
18 qualifications as an expert in the field of drug analysis.
19 THE COURT: All right.
20 BY MR. EBERT:
21 Q. How long have you been employed as an expert,
22 Doctor?
23 A. As an expert in drug analysis, approximately

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1 six and a half years.

2 Q And you have qualified as an expert in a

3 Court of record prior to this date many times?

4 A Yes, sir. I have.

5 Q I assume you were so employed on or about the

6 16th day of September, 1978?

7 A Yes, sir.

8 Q On that date did you have occasion to come

9 to Prince William County?

10 A Yes, sir.

11 Q What was your purpose for coming to Prince

12 William County?

13 A I received a telephone call at home after

14 work hours and I was requested to meet an officer at the

15 Holiday Inn in Manassas and he would lead me to the site

16 of a suspected drug laboratory.

17 Q Did you, in fact, meet such an officer?

18 A Yes, sir. I did.

19 Q Who was that, if you recall?

20 A I do not recall.

21 Q Where did you go?

22 A Again, it was getting dark; I was unfamiliar

23 with the area. I followed the officer to a fairly seculded

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1 area. I believe it was off Route 15 but I'm not sure.

2 MR. LYNCH: I'll stipulate he went to 2400

3 Loudoun Drive.

4 THE COURT: All right.

5 BY MR. EBERT:

6 Q Doctor, I show you what has been marked for

7 identification purposes as Exhibit Number 10 and ask you

8 if you had occasion to receive the items enumerated on

9 there, when you received them and from whom you received

10 them?

11 A Yes, sir. I received these items on

12 September 16, 1978 and they were received from -- they

13 were released to me by Trooper Gray.

14 Q Is that a copy of your official analysis

15 concerning those items?

16 A Yes, sir.

17 Q After receiving them from Trooper Gray when

18 did you conduct an analysis on these substances?

19 A May I refer to my notes?

20 Q Yes.

21 A The chemical analyses were begun on 11/15/78.

22 Q That was November 15, 1978?

23 A Yes, sir.

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1 Q From the time you received them until the
2 time you conducted your analysis on them, were they in
3 your sole and exclusive possession?
4 A If I may explain, the smaller items were
5 placed in a steel evidence cabinet, which I had the only
6 key. There were a number of very large items, freezer
7 chests, cooler chests, jugs, five gallon cans, that were
8 too large to fit in the cabinet. These were sealed with
9 evidence tape and put in a storage room at the laboratory.
10 As such they were under control of the laboratory.
11 Q Anyone other than yourself and employees
12 of the laboratory have access to that area?
13 A Yes. To that area, just employees of the
14 laboratory.
15 Q That is what I say. Anyone other than
16 yourself and employees have access?
17 A No, sir.
18 Q Did you also have occasion to receive from
19 Trooper Dyer a bag containing certain cigarettes?
20 A I have received a large number of cases from
21 Trooper Dyer.
22 Q Let me show you a certificate of analysis
23 and ask you if you had occasion to receive item A2 as set

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1 forth in that exhibit?

2 A. Yes, sir.

3 Q. When did you receive that from him?

4 A. The specimens here were received from

5 Trooper Dyer on 9/20/78.

6 Q. And what did you do with that item after you

7 received it?

8 A. These items were placed in my personal safe

9 until such time as they were removed for examination.

10 Q. From the time you removed them till the time

11 you examined them were they in your sole and exclusive

12 possession?

13 A. Yes, sir.

14 Q. What did your examination of the item which

15 you received from Trooper Dyer reveal?

16 A. That would be the cigarettes?

17 Q. Yes.

18 A. Item A2 consisting of a plastic bag containing

19 twelve cigarettes, the cigarettes were found to have been

20 treated with phencyclidine.

21 Q. That is a controlled substance?

22 A. Yes, sir.

23 Q. With regard to the other items, what did your

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1 analysis of the items reveal?

2 MR. LYNCH: Your Honor, which group are you

3 referring to? From Dyer or Gray?

4 THE COURT: Gray, I believe.

5 BY MR. EBERT:

6 Q Exhibit 10.

7 A Would you re-state the question please.

8 Q Tell us what your analysis of the items

9 which are set forth of the fifty-three items there, tell

10 us what your analysis revealed with regard to those items.

11 A Briefly, a number of chemical compounds

12 were found in the items which were submitted. Several

13 of the items contained 1-piperidinocyclohexanecarbobitrile,

14 also called PCC, which is an intermediary in the

15 manufacturing of phencyclidine. Specimens were found to

16 contain sodium cyanide, another reagent used in the

17 manufacture of phencyclidine. Speicmens were found to

18 contain sodium metabisulfite, again a reagent used in the

19 manufacture of phencyclidine. Piperidine, a reagent used

20 in the manufacture of phencyclidine. Cyclohexanone,

21 another chemical reagent used in the manufacture of

22 phencyclidine. Magnesium metal, again another reagent for

23 the same substance, preparation of the same substance.

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1 Water, which is used in the preparation of phencyclidine.
2 And a number of specimens were found to contain ether
3 traces or a quantity of phencyclidine, PCP.
4 Q Do you have a copy of your official
5 analysis by letter that you performed that you prepared
6 yourself? Is that contained in Exhibit 10?
7 A Yes, sir. The report of analysis is what I
8 was reading from.
9 And there was still another page.
10 Q Go ahead and enumerate some of the items
11 you identified there.
12 A Items were found to contain sodium hydroxide,
13 also called lye, which is used in the synthesis of
14 phencyclidine. Petroleum distilate, in this case,
15 Coleman fuel, which is used in the synthesis of
16 phencyclidine. Ethyl ether, hydrochloric acid,
17 bromobenzene, which are all used in the synthesis of
18 phencyclidine.
19 There were several items which responded
20 negatively for controlled substances; several specimens
21 contained insufficient material for analysis; several
22 specimens which contained no residue for analysis and
23 several specimens which were not analyzed.

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1 MR. EBERT: Your Honor, I'd offer the copy
2 of his report into evidence.
3 MR. LYNCH: I think the testimony of the
4 witness himself, he's already testified to it.
5 THE COURT: I think this is an exhibit which
6 Investigator Gray had marked, isn't that the one?
7 MR. EBERT: Yes.
8 MR. LYNCH: I thought he was talking about
9 his analysis.
10 MR. EBERT: Exhibit 10. His analysis is
11 attached thereto.
12 MR. LYNCH: This is the one Trooper Gray
13 marked off?
14 MR. EBERT: Yes.
15 MR. LYNCH: I have no objection to that.
16 THE COURT: Be allowed to come in as Number
17 10 for the Commonwealth.
18 (The Certificate of
19 Analysis heretofore
20 marked for identification
21 as Commonwealth's
22 Exhibit No. 10, was
23 received in evidence.)

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1 BY MR. EBERT:

2 Q Specifically, Doctor, did you have occasion

3 to determine what, if anything, was found on item seventeen?

4 A Item seventeen was analyzed and found to

5 contain piperidine.

6 Q What is piperidine?

7 A Piperidine is a chemical reagent used in the

8 sysnthesis of PCP.

9 Q How about item twenty-seven?

10 A Item twenty-seven was found to contain

11 magnesium metal.

12 Q What is that used for?

13 A Magnesium metal is used in a portion of the

14 reaction to produce phencyclidine.

15 Q Item twenty-three?

16 A Item twenty-three was found to contain

17 phencyclidine.

18 Q Doctor, would you briefly describe the

19 process that is used and how these various materials are

20 used in order to form the compound or drug PCP?

21 A Yes, sir.

22 Q The manufacture of PCP is essentially a two-

23 part process. In the first part the intermediate PCC must

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1 be produced. To produce PCC merely requires two containers,
2 beakers, buckets, jugs, jars. It doesn't really matter.
3 In one container is placed piperidine, salt of cyanide or
4 potassium cyanide and water; in the second bucket is
5 placed cyclohexanone, sodium metabisulfite and water.
6 When all of the substances are dissolved the contents of
7 the two buckets are mixed, either by pouring it into
8 a third vessel or if the containers are large enough,
9 simply pouring one into the other.
10 After a period of time crystals will begin
11 to separate. These crystals are PCC. The crystals are
12 separated from the reaction mixture by skimming them off.
13 Various methods have been used, from vegetable spoons to
14 coffee filters. At any rate, the crystals are physically
15 removed from the reaction mixture. They are placed aside
16 and dried. Various methods have been used for this, from
17 air drying to putting them in an oven.
18 The one critical feature is everything must
19 be kept dry.
20 The second part of the synthesis involved is
21 what is called a gregnard reagent. This chemical reagent
22 is made by mixing the bromobenzene and magnesium metal
23 and the ethyl ether, anhydrous ethyl ether. After a period

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1 of time a reaction will begin and the compound phenyl-
2 magnesiumbromide will be produced. This is the gregnard
3 reagent.
4 The dried PCC crystals are dissolved in
5 most instances Coleman fuel because of its availability.
6 That solution is then poured into the gregnard reagent.
7 It is an amlost instantaneous reaction that begins the
8 formation of phencyclidine, PCP.
9 At this point the reaction is allowed to
10 progress for several hours. It can be heated to dry the
11 reaction more to completion.
12 There are many recipes, if you will, that
13 are used.
14 Apparently in this case not a great deal of
15 clean-up was done to the product. One of the items here
16 was found to contain white residue, a two-layer liquid
17 system consisting of an organic solvent and water solution.
18 So, the organic solution was found to contain PCP.
19 At this point the organic layer could be
20 poured off and pure PCP recovered.
21 Q What type of a drug or how do you
22 characterize the drug PCP?
23 A PCP ?

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1 Q Yes.

2 A PCP was originally produced by Parke-Davis
3 as an anesthetic and in the 1950's they were doing clinical
4 trials with it and found it was an excellent anesthetic
5 for surgery. But with humans it had a side effect. The
6 side effects would be different with different people,
7 depending on their psychology. A violent person would
8 become more violent under the influence of PCP.

9 In this stage, PCP being an excellent
10 anesthetic, the person could go one hundred per cent
11 because they literally would feel no pain.

12 Another side effect was a complete -- from
13 clinical studies the reports indicate that subjects
14 had a complete removal of their psyche from their body;
15 they felt completely divorced from their physical body.

16 You really can't call it a depressant. The
17 mode of action is still being studied and I have not read
18 any reports on exactly what the pharmacology of the
19 compound is.

20 Q Have you ever heard it characterized as a
21 hallucinogenic?

22 A I have heard that.

23 Q What method is PCP normally ingested?

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1 A. Right now smoking is in vogue. It can be
2 taken in any number of ways. It can be eaten, injected
3 or smoked.
4 Q. From your experience, how is the substance
5 smoked, if it is, in fact, a liquid?
6 A. Generally it is placed on plant material;
7 parsley seems to be the trademark for PCP. It has been on
8 occasion found on marijuana but not often, very
9 infrequently.
10 Q. What percentage of the parsley or the
11 substance which is smoked actually contains the drug itself?
12 A. That is a widely varied factor because of
13 the expertise of the manufacturer. A rough average that
14 we at the laboratory some years found and the Drug
15 Enforcement Administration also reported was approximately
16 four per cent PCP on plant material.
17 Q. So, four per cent of this substance would
18 be or four per cent of an ounce would be how much in weight?
19 Roughly.
20 A. Approximately one gram.
21 Q. And how many grams are there in an ounce?
22 A. 28.35
23 Q. Now, from the substance you examined do you

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1 have an opinion as to the amount of PCP that could be
2 produced by the items which were in your possession and
3 examined by you?
4 MR. LYNCH: Your Honor, I have the utmost
5 respect for Dr. Hepner's expertise but he would have to --
6 it would be a guess because of certain unknown elements.
7 MR. EBERT: He can ask him that if he wants
8 to question him.
9 MR. LYNCH: I don't think he can take a
10 flying guess on something.
11 THE COURT: Rephrase the question, Mr. Ebert.
12 BY MR. EBERT:
13 Q Let me ask you this, Doctor: Have you made
14 an attempt to determine the amount of PCP that could be
15 produced by the substances which you examined?
16 A Yes, sir.
17 Q And in your expert opinion how much PCP could
18 be produced from the items which you saw?
19 A Using the chemical reagent, which was found
20 in least quantity, which, of course, would be the maximum
21 amount that could be produced on the scene, would yield
22 approximately six hundred grams of PCP.
23 Q And six hundred grams would be used to treat

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1 six hundred ounces. Is that correct? Or more than that,
2 I guess.
3 A. If my calculations are correct that would
4 treat approximately fifteen kilograms of plant material.
5 Q. Fifteen kilograms?
6 A. Yes.
7 Q. How much weight is there in ounces or
8 pounds in a kilogram?
9 A. 2.2 pounds per kilogram. So, it would be
10 on the order of thirty pounds.
11 MR. EBERT: That is all I have.
12 THE COURT: You may cross examine.
13 CROSS EXAMINATION
14 BY MR. LYNCH:
15 Q. Just two questions, Doctor, basically two
16 questions.
17 Does PCP have some rare, unique odor which
18 you could classify it as unique?
19 A. That is a very good question. To me having
20 been exposed to hundreds and hundreds of chemical
21 compounds I would have to say no. I would classify it as
22 having a medicinal odor. But I could not say it is
23 unique to phencyclidine or phencyclidine alone.

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1 Q Would you compare it to a disinfectant, the
2 smell similar to a disinfectant?
3 A Yes, sir. I would say that is a true
4 statement.
5 Q I believe you did say when Mr. Ebert asked
6 you to describe PCP, I believe you said you really can't
7 call it a depressant?
8 A I believe I went on to state because of the
9 action isn't fully understood. It does act on the mid-brain
10 but exactly how I'm not sure.
11 Q But did I understand you to say you really
12 can't call it a depressant?
13 A I would not.
14 MR. LYNCH: Thank you.
15 THE COURT: May this witness be excused?
16 MR. LYNCH: As far as I'm concerned.
17 MR. EBERT: Yes.
18 But one question.
19 REDIRECT EXAMINATION
20 BY MR. EBERT:
21 Q Doctor, you say you don't feel it has a
22 unique odor. But as a chemist you are exposed to many,
23 many odors, are you not?

1 A. Yes, sir.

2 Q. Is the average police officer exposed to --

3 MR. LYNCH: Excuse me, Your Honor. This is

4 still his witness and he is leading his own witness.

5 THE COURT: You are leading, Mr. Ebert. You

6 certainly are. Restate your question.

7 BY MR. EBERT:

8 Q. Do you know from your experience whether or

9 not you experience more odors than the average person?

10 MR. LYNCH: Your Honor, I object to that

11 question.

12 THE COURT: As a chemist he probably smells

13 more odors than most people.

14 Any further questions?

15 MR. EBERT: No, sir.

16 THE COURT: You are excused. Thank you very

17 much.

18 (Witness excused.)

19 MR. EBERT: That is the Commonwealth's

20 evidence, Your Honor.

21 THE COURT: We will take a short recess,

22 ladies and gentlemen, and give you a chance to stretch

23 your legs a little bit.

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1 didn't use a crow bar. He didn't spring it. He didn't
2 have to do that like the officer did. The officer testified
3 to you he attempted to find a key. Of course, the
4 Defendant was not present at the scene at that time in
5 order to open it. But nonetheless, you have heard the
6 evidence as to when he did open it, what came out of the
7 trunk and you have seen some of the pictures involving
8 what was found. There are many pictures that are in
9 evidence; you haven't seen those. But if you spent all
10 your time looking at pictures I thought perhaps you'd
11 miss some of the testimony, which I think is very important.
12 Thereafter, you recall, the man Justice
13 said in a voice loud enough that it could be overheard
14 by the officers, Be careful, Bear. That at that time a
15 substance was seen in the hands of the Defendant, that this
16 information was relayed on out to Trooper Dyer and the
17 others and initially -- eventually he was arrested at
18 Orndoff's Restaurant some two and a half miles away, as I
19 recall the testimony, based on that information and a
20 package of cigarettes which appeared to be freshly
21 dipped in a substance known as PCP was found in the back
22 seat on the console of the car in which he and two other
23 individuals were riding.

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1 You recall that substance was subsequently
2 analyzed by Dr. Hepner and he positively identified those
3 cigarettes to have been treated with that substance.
4 Now, Dr. Hepner told you in great detail as to what his
5 analysis revealed. You have a copy of his analysis and
6 I am not going to try to bore you with repeating all of it.
7 But I would submit to you when you go to the Jury Room,
8 look at all of those items. He described to you the
9 process by which this substance is made, how it is
10 relatively simple from a chemical compound point of view
11 to make. These items are mixed together. There are
12 certain stages of production.
13 The officer testified the actual production
14 itself or the actual mixing doesn't take any more than
15 forty-five minutes. It can be done in a short period of
16 time. But there is a cooking stage that immediately these
17 crystals begin to form and they can continue to form and
18 no one has to be present at that time.
19 There is a great quantity of all types of
20 chemicals and I would ask you to use your common sense.
21 Who in their cars or on their lot would have, shall we
22 say, coolers full of Coleman oil? Who would have piperidine?
23 Who would have these other chemicals?

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1 a reasonable assumption or belief.

2 As the Court has told you, use your common

3 sense. We have the evidence which connects this man to the

4 manufacture. In fact, he was purchasing and in the

5 presence -- if not actually purchasing the buckets he

6 was certainly aiding and abetting, sharing a community of

7 criminal intent. That is the reason for the instruction

8 concerning principals in the first and second degree.

9 It doesn't really matter if he was the man

10 who actually did the stirring, as long as everybody is

11 involved in participating. They are equally guilty under

12 the law.

13 So, I would submit to you ladies and

14 gentlemen from that evidence, briefly,the evidence of the

15 initial purchase, the evidence of going to the scene,

16 the evidence of being the one who, and the only one the

17 evidence indicates, who opened the trunk where these items

18 were found, where the smells were emanating, being the

19 person who was told to be careful, being the person who

20 had the item in his hand when he left and the person who

21 eventually was arrested with certain items containing this

22 substance on his person lead to only one reasonable, and I

23 stress the word reasonable, conclusion.

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VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

COMMONWEALTH OF VIRGINIA,	
-vs-	Criminal Docket Nos. 8283, 8495, 8819.
JOHN RHODES,	
Defendant.	

Circuit Courtroom No. 2
Prince William County Courthouse
Manassas, Virginia

Friday, December 19, 1980

The above-entitled matter came on for hearing before THE HONORABLE PERCY THORNTON, JR., Judge, in and for the Circuit Court of Prince William County, Virginia, at 11:17 o'clock a.m.

APPEARANCES:

On behalf of the Commonwealth:

EDWARD L. FOX, ESQ.

On behalf of the Defendant:

J. RONALD LYNCH, ESQ.

LEO J. SCOLFORO, ESQ.

Circuit Court Clerk's Office
Prince William County, Va.
Filed Jan. 13 1981
Deputy Clerk

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1 P R O C E E D I N G S

2 (Whereupon, the Court Reporter was first

3 duly sworn by the Clerk of the Court.)

4 THE COURT: For the record we have the

5 cases of Commonwealth of Virginia versus John Robert

6 Rhodes, criminal number 8495 and 3819 and also another

7 case of 8283.

8 In criminal number 8495, it was heard before

9 this Court on the 30th day of July, 1980, a Jury trial,

10 in which he was found guilty and the Jury determined a

11 penalty of twenty years imprisonment and a twenty-five

12 thousand dollar fine.

13 Prior to imposition of sentence certain

14 Federal charges intervened and he has been in the Federal

15 penal system since that time.

16 It comes on today for certain pre-trial -- or

17 post trial motions and also further matters.

18 Do you want to argue this case first, Mr,

19 Lynch?

20 MR. LYNCH: Yes, sir.

21 THE COURT: You may argue, sir.

22 MR. LYNCH: Your Honor, to review what

23 transpired, I am sure the Court is most familiar with

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1 the saga of John Rhodes. On the day in question, if
2 the Court recalls the evidence from the preceding trial
3 at which he was acquitted, Trooper Gray was on stake-out
4 at John Rhodes' mother's farm ready to commence a search
5 when the search warrant arrived. He saw Mr. Rhodes pull
6 into the yard with three other people, Mr. Rhodes get
7 out with one of the people in the car, go over towards
8 the trunk of a car, open the trunk and then he was seen
9 by Trooper Gray with a quote, a white object. Trooper
10 Gray -- Rhodes and the other people came back to the car
11 and he took off in this -- I think it was a Mustang.
12 Trooper Gray at that point radioed down the road to
13 Trooper Dyer, who was coming with the search warrant,
14 telling him to be on the look out for Mr. Rhodes.
15 Trooper Dyer did find Mr. Rhodes, stopped
16 him, searched the car and found a baggie with PCP dipped
17 cigarettes in the back seat of the car. The car, I think
18 the evidence showed at that trial, was not Mr. Rhodes' car.
19 And at the trial of the possession I made a Motion in Limine,
20 which you sustained, to eliminate any testimony or any
21 proof about the manufacturing charge.
22 I should add that after Mr. Rhodes was
23 arrested by Trooper Dyer they then executed the search

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1 warrant at Mrs. Rhodes' farm and found all kinds of
2 buckets of lye and items used for the manufacturing.
3 So, there were two charges, the manufacturing
4 charge and the possession charge down the road.
5 Now, at the possession trial you excluded
6 any testimony about what was found at the farm. At the
7 end of the trial the Jury saw fit to acquit Mr. Rhodes
8 and then we commenced the trial of the manufacturing.
9 At that point I moved to exclude any
10 testimony about what was found in the car down the road.
11 You overruled my motion at that time, Motion in Limine.
12 And as a matter of fact, when Trooper Dyer came on to
13 testify you allowed that testimony. I will get a little
14 bit more specific in just a few minutes, Your Honor.
15 Your Honor, first of all my motion consists --
16 my Motion to Set Aside the Verdict consists of two things
17 regarding the admission of that testimony at the
18 manufacturing trial. One is the Doctrine of -- You'll
19 have to excuse my Latin -- I think it's res inter alios acta,
20 proof of other crimes are generally not admissible to
21 prove the crime in issue.
22 There are some exceptions to that, such as
23 to show motive, intent, plan, scheme, knowledge,

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1 continuity. However, before those exceptions are
2 permitted to arise there must be a causal connection
3 between the other crime that is sought to be put into
4 evidence and the crime for which he is being tried.
5 Your Honor, I have a copy of the transcript.
6 I tried to find portions in the transcript from the
7 trial. But my best recollection -- and I proffer to the
8 Court -- is that at the trial Trooper Gray, who was at
9 the stake-out, did not say, I saw John Rhodes take PCP
10 dipped cigarettes out of the trunk and get in the car
11 with them. He did not know what it was, never did know
12 what it was, except it was a white object.
13 Then, as I say, he radioed down the road
14 to Trooper Dyer. The PCP cigarettes were in the car.
15 And I submit respectfully, Your Honor,
16 there was no establishment of a causal connection that,
17 in fact, was what Mr. Rhodes carried to the car and what
18 was found in the car down the road; therefore, I would
19 say, Your Honor, the exception under which the
20 Commonwealth could proceed would not apply because of
21 the lack of proof of causal connection.
22 The other Doctrine -- or the other prong
23 of that argument about the admissibility of the

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1 possession of the dipped cigarettes in the car is this.

2 Your Honor, there is the Doctrine of

3 Collateral Estoppel which arises from Ash v Swinson made

4 applicable to the states through, I think it's, Benton

5 versus Maryland. Of course, in Ash v Swinson, it

6 consisted of -- I think it was a robbery of the members

7 of a card game and the Defendant was tried one after the

8 other. He was acquitted of robbing A and then they tried

9 him for robbing B, et cetera. And I believe that was

10 generally establishment of applying the Doctrine of

11 Collateral Estoppel to criminal cases.

12 Thereafter, in the Commonwealth of Virginia

13 there was a case of Commonwealth versus Lee. I have a

14 copy of the case, Your Honor. I don't have the cite in

15 my notes but I present the case to you. In Commonwealth

16 versus Lee the Defendant was charged with hit and run,

17 hit and run misdemeanor, and then he was later charged

18 I believe with manslaughter. At the trial of the

19 misdemeanor on the hit and run the trial Court, District

20 Court, found the Defendant not guilty by reason of the

21 fact he did not think it was sufficient proof to show

22 the Defendant was driving. Then the Commonwealth came

23 back and tried him on the manslaughter and the same issue

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1 arose. And Lee raised the question of collateral
2 estoppel. The Supreme Court said the Doctrine of
3 Collateral Estoppel doesn't readily apply to every case
4 but it did in the case of Lee because one of the main
5 facts in issue was whether or not Lee was driving the
6 car at either time, hit and run misdemeanor or manslaughter.
7 Your Honor, in our case it is not really
8 a full collateral estoppel argument because I say the
9 Commonwealth could have proven their case or whether they
10 have obtained a conviction I don't know but I say they
11 could have presented a case in the manufacturing charge
12 without any evidence of the items that were found in the
13 car down the road.
14 So, at first blush you'd say collateral
15 estoppel doesn't apply; however, the Commonwealth did
16 elect to introduce that evidence of the cigarettes that
17 were found in the car down the road and did introduce --
18 they moved to introduced it. You allowed it, Your Honor.
19 Once it came in I think it's, for lack of better
20 phraseology, a partial collateral estoppel because, in
21 fact, we know -- and I do want to make this part of the
22 record -- that he was acquitted. You were the presiding
23 Judge in the acquittal trial for the possession. You

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1 knew it. The reason I am saying this is because of the
2 case I want to cite to you in just a minute. You knew
3 it. Mr. Ebert knew it. We all knew it.
4 What I sought to elicit from Trooper Dyer,
5 what happened in that case, that he, in fact, was
6 acquitted of the possession charge, you would not allow
7 me to go into that. Your Honor, I said it then and I'm
8 saying it now, that first of all I respectfully say to
9 the Court it was error to allow the testimony to come
10 in at all but it was compounded, Your Honor, and again
11 I say this respectfully, it was compounded when you would
12 not permit me to get into the fact he was acquitted,
13 because the Jury was left with the impression or could
14 have been left with the impression, well, if he possessed
15 it down the road that must have been the white object
16 he took out of the car.
17 Mr. Ebert had the best of everything that
18 particular day. He put the evidence in. He didn't show
19 what happened to it. And I wasn't allowed to show an
20 acquittal.
21 Your Honor, I say as far as those facts are
22 concerned, the Commonwealth re-litigated in the
23 manufacturing case, re-litigated the possession down the

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1 road even though he had been acquitted of it.

2 Your Honor, there is a case of Smith versus

3 the United States -- the United States versus Smith,

4 reported at 446 Fed.2nd at page 200. This was a case

5 decided by the Fourth Circuit in 1971. Smith was

6 charged in the State Court in Virginia with uttering

7 some forged bank notes. He was acquitted in that case

8 because of the fact the bank teller couldn't identify

9 Smith as the one who actually uttered. So, therefore

10 he was acquitted on that ground. Subsequently the

11 Federal Government indicted him for some Federal Statute

12 involving negotiable instruments or bank notes and at the

13 trial Judge Hoffman was the trial Judge presiding. The

14 defense attorney sought to introduce the evidence -- Well,

15 excuse me. Let me back up. The Government sought to

16 bring in evidence of, I believe, of what took place at

17 the bank, the uttering of the notes. Defense attorney

18 sought to show that it, in fact, there was an acquittal

19 of that charge. The Fourth Circuit affirmed the case.

20 But I think the language which they used

21 is indicative or infers it would be proper in certain

22 circumstances. So, with that as a factual background

23 I would like to read what the Fourth Circuit said. First

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1 of all, the Court says, page 202, the Doctrine of
2 Collateral Estoppel is indeed applicable in criminal
3 cases, citing Ash versus Swinson and other cases, but is
4 fundamental that the party is stopped from re-litigating
5 issues must have been a party to the initial litigation.
6 They argued here, the United States Government and the
7 Commonwealth of Virginia aren't the same party.
8 In our case it is the same party, the
9 Commonwealth versus Rhodes and Commonwealth versus
10 Rhodes.
11 They go on to say, We have here two
12 sovereignties deriving power from different sources to
13 show the fact the parties were not the same.
14 At page 203, Your Honor, it says, Further,
15 in sustaining a conviction, it says, Nor has the appellant
16 informed either the trial Judge or this Court as to
17 the issue determined in a prior trial, ascerting boldly
18 that any evidence regarding the offense involved in the
19 State trial was inadmissible.
20 Then at page 204 it says, The fact of an
21 acquittal, the Court said, The fact of an acquittal, even
22 though in another sovereign jurisdiction is a relevant
23 factor to be considered by the trial Judge in ruling on

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1 admissibility. An acquittal may introduce an element of
2 uncertainty as to the Defendant's culpability and may
3 diminish the convincingness of the evidence that another
4 crime was committed. The trial Judge, however, is not
5 bound to accept a judgement of acquittal in the Courts
6 of another sovereignty as conclusive, especially where
7 in this case, the Defendant's failure to introduce the
8 transcript of the former trial rendered it impossible to
9 learn the actual basis that underlay the verdict. We find
10 no error in the Court's ruling.
11 I am saying, Your Honor, I think the meat
12 as set out on page 204 is in Mr. Rhodes' favor, and I
13 repeat, The fact of an acquittal, even though in
14 another foreign jurisdiction is a relevant factor to be
15 considered by the trial Judge in ruling on admissibility.
16 An acquittal may introduce an element of uncertainty as to
17 the Defendant's culpability and may diminish the
18 convincingness of the evidence that another crime was
19 committed.
20 Your Honor, I think with that language there
21 is inferential language here, inferential authority by the
22 Fourth Circuit that should sustain Mr. Rhodes' motion for
23 a new trial, in that he should have been allowed to show

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1 that there was an acquittal of the possession of those
2 PCP dipped cigarettes.
3 Next, Your Honor --
4 THE COURT: As I recall there wasn't any
5 question the evidence wasn't presented he was possessing
6 them. They were simply in the car, at this manufacturing
7 trial.
8 MR. LYNCH: Your Honor, that was the same
9 evidence presented -- that is the only evidence that came
10 out at the possession trial too.
11 THE COURT: I understand.
12 MR. LYNCH: Why would the Commonwealth even
13 introduce that then if it weren't to go forward to show
14 he was indirectly possessing.
15 THE COURT: It is one thing to be charged
16 with manufacturing and something else to be charged with
17 possession.
18 MR. LYNCH: I absolutely agree, Your Honor.
19 That is why I say it was not relevant to show it was in
20 the car down the road. It has nothing to do with the
21 manufacturing.
22 THE COURT: I have to agree with you. On
23 the trial of the possession the question of manufacturing

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1 didn't get to the picture and I think that was proper.
2 But I don't think you can exclude that when it comes to
3 the manufacturing. In view of the totality of
4 circumstances involved that within a relatively short
5 period of time after these observations were made in
6 regards to the manufacturing that he was in a car in
7 which there was PCP dipped cigarettes.
8 MR. LYNCH: That is my point.
9 THE COURT: I understand your point. I
10 understand your point. I'm not so sure it's so well
11 taken.
12 MR. LYNCH: It was allowed into evidence.
13 Why was it allowed in? Why did Mr. Ebert seek to
14 introduce it? To draw certain inferences to those twelve
15 people sitting in that Jury Box. And you as the trial
16 Court let him do it.
17 THE COURT: That is right.
18 MR. LYNCH: Then, as I said, to compound it,
19 you then -- this is what I'm talking about as far as the
20 last case I cited -- you did not permit me to show the
21 fact of an acquittal of the possession of the PCP.
22 THE COURT: You are using terms that I don't
23 think the question of possession ever came out. I don't

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1 believe the transcript will ever bear that out. It was
2 shown these were in an automobile in which he was
3 occupied.
4 MR. LYNCH: Yes, sir.
5 THE COURT: I don't think it said he was
6 actually in possession thereof.
7 MR. LYNCH: What was the relevancy of it?
8 THE COURT: The relevancy was they had seen
9 all of this activity out at the farm and a short period
10 of time thereafter they found the PCP dipped cigarettes
11 in an automobile. That doesn't mean he was in possession.
12 MR. LYNCH: Then where is the causal
13 connection? Why do they introduce it if it's to show
14 facts --
15 THE COURT: It's another circumstance.
16 MR. LYNCH: Yes, sir.
17 THE COURT: The manufacturing.
18 MR. LYNCH: You're saying a circumstance.
19 But what kind of a circumstance? Where is the causal
20 connection between the fact the PCP dipped cigarettes
21 were in the back of a car that wasn't even his in the
22 manufacturing? My first point, we are missing the
23 causal connection. That was my first argument. We

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1 don't even have to get to collateral estoppel.

2 Your Honor, the basic rule in criminal law

3 is you can't introduce evidence of other crimes in the

4 trial of an issue. That is the general rule, except to

5 show, as I said, continuity, a plan or scheme.

6 The Commonwealth introduced the evidence

7 of the PCP being in the back seat of that car but never

8 did connect it up and until they did so the evidence

9 should not have been admissible.

10 THE COURT: The question of it, we had one

11 police officer out at the farm who had seen the

12 Defendant leave and seen him take something; he couldn't

13 say what it was.

14 MR. LYNCH: A white object.

15 THE COURT: A white object. And he says,

16 He has left. And when they get down to Orndoff's, as I

17 recall the evidence and I haven't reviewed all of it,

18 they stopped him and they found the PCP cigarettes in

19 the automobile.

20 MR. LYNCH: That is true.

21 THE COURT: I don't remember how many

22 people. It seems to me there were two or three people

23 in the automobile.

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1 MR. LYNCH: There were four people in the
2 automobile.
3 THE COURT: Four people in the automobile.
4 Well, I think that makes sense to me as to
5 who was the possessor of it. It wasn't even his
6 automobile.
7 MR. LYNCH: True.
8 What I am saying is why was it relevant at
9 the manufacturing trial?
10 THE COURT: I let it into evidence, Mr.
11 Lynch, and it will stay in there. The record will speak
12 for itself.
13 MR. LYNCH: I'm not finished yet.
14 THE COURT: Go ahead.
15 MR. LYNCH: Of course, there were some pre-
16 trial motions filed sometime ago, that were argued before
17 Judge Sinclair. All I want to do -- I'm not going to
18 rehash them except I want to preserve them for the record.
19 The question of the illegal search and seizure
20 at the farm, at Mrs. Rhodes' property. Judge Sinclair
21 ruled against me. I just want to preserve the record for
22 appeal.
23 THE COURT: All right, sir.

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

CERTIFICATE OF ANALYSIS

December 5, 1978

Northern Laboratory
2714 Dorr Avenue
P. O. Box 486
Merrifield, Virginia 22116

Tel. No. (703) 573-8636

TO: Trooper S. C. Gray
Virginia State Police
P. O. Box 232
Culpeper, Virginia 22701

Re: Drugs

Your Case # - - -

FS Lab # 78-N-2096

Victim(s): - - -

Examiner: K.E. Hepner, Jr., Ph.D.

Suspect(s): RHODES, John

Date Received 9-16-78

Evidence Submitted By: Trooper Gray

Item 1. One brown bucket containing white crystals.
Item 2. One plastic bag containing white crystals.
Item 3. One plastic bag containing white crystals.
Item 4. One plastic bag containing white crystals.
Item 5. Four plastic buckets, one (5A) containing white residue.
Item 6. One bottle marked "Piperidine" (factory seal intact).
Item 7. Two bottles marked "cyclohexanone" (factory seal intact on 7A)
Item 8. One measuring cup containing white crystals.
Item 9. One fiber container marked "Magnesium Metal Turnings".
Item 10. Omit
Item 11. One wooden spoon containing residue.
Item 12. One plastic jug containing liquid.
Item 13. One plastic dish containing residue.
Item 14. Omit
Item 15. Omit
Item 16. One brown paper bag containing three jars marked "LYE".
Item 17. One brown paper bag containing a bottle marked "Piperidine" (factory seal intact
Item 18. One plastic bag containing plant material.
Item 19. One large glass jar containing liquid and white solid.
Item 20. One glass jar containing white powder.
Item 21. Omit
Item 22. Three metal cans marked "Coleman Fuel".
Item 23. One jar containing residue.
Item 24. Omit
Item 25. One metal can marked "Ether, Absolute".

Chrysler (Plus Item #51)

Dodge Van (Plus Item #52)

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

EXH. 10

One plastic bag containing two buckets (26A and B), one empty "Coleman Fuel" can (26C), two plastic bags containing solid material (26D1 and D2), and miscellaneous trash.

Item 27. One large glass bottle containing metal turnings and residue.
Item 28. One cooler containing rags, metal turnings, a strainer, two jars marked "LYE", a red bowl, box of plastic bags, and miscellaneous debris.
Item 29. One cooler containing eight plastic bags containing solid material.
Item 30. One cooler containing two bottles marked "Cyclohexanone" (30B, factory seal intact) and one plastic jar containing white powder.
Item 31. One cooler containing two plastic bags containing white powder.
Item 32. Three large metal cans (empty) marked "Ethyl Ether".
Item 33. One metal strainer containing residue.
Item 34. One paper sleeve containing one percolator.
Item 35. One cardboard box containing a beaker and two funnels.
Item 36. One plastic bag containing two plastic jugs marked "Muriatic Acid".
Item 37. One plastic jar marked "LYE".
Item 38. One brown paper bag containing a glass jar, a plastic cup, two green plastic lids, two jar lids, and a metal cup containing residue.
Item 39. One brown paper bag containing a bottle marked "Bromobenzene".
Item 40. One brown paper bag containing a jar and two metal lids.
Item 41. Omit
Item 42. One brown paper bag containing a glass bowl containing residue.
Item 43. One brown bucket containing residue.
Item 44. One brown bucket containing residue.
Item 45. One yellow bucket containing residue.
Item 46. One orange bucket containing residue.
Item 47. One plastic bag containing a brown bottle containing metal turnings.
Item 48. One green plastic bag containing two plastic bags containing white crystals.
Item 49. One empty bottle marked "Bromobenzene".
Item 50. One bottle marked "Bromobenzene", containing traces of liquid.
Item 51. One plastic bag containing two plastic bags containing residue.
Item 52. One jar containing traces of yellow liquid.
Item 53. One large pail containing three bottles marked "Cyclohexanone" (factory seals intact).

#53 also found in white Pontiac

Woods left of van

RESULTS OF EXAMINATION

The specimens in items 1, 26D1, 26D2, 38, and 46 were found to contain 1-piperidinocyclohexanecarbonitrile (PCC). Received 241.5 grams (item 1).

The specimens in items 2, 4, 29D, 29E, 29F, and 31 were found to contain sodium cyanide. Received 40.3 pounds (18.3 kilograms).

The specimens in items 3, 29A, 29B, 29C, 29F, 29G, 30C, and 48 were found to contain sodium metabisulfite. Received 22.2 pounds (10.1 kilograms).

The specimens in items 6 and 17 were found to contain piperidine. Received 1.7 kilograms.

The specimens in items 7, 30A, 30B, and 53 were found to contain cyclohexanone. Received 6.3 kilograms.

The specimens in items 9, 27, 28, 29H, and 47 were found to contain magnesium metal. Received 1.4 kilograms.

The specimen in item 12 was found to contain water.

The specimens in items 13, 19, 23, 26A, 26B, 26D1, 42, 43, 44, and 52 were found to contain phencyclidine (PCP), a Schedule II substance. Received 30 grams (Item 19).

The specimens in items 16, 29, and 37 were found to contain sodium hydroxide (Lye). Received 4.9 pounds (2.21 kilograms).

The specimens in item 22 were found to contain petroleum distillate (Coleman Fuel). Received 3 gallons.

The specimen in item 25 was found to contain ethyl ether.

The specimens in item 36 were found to contain hydrochloric acid (Muriatic Acid). Received 2 gallons.

The specimens in items 39 and 50 were found to contain bromobenzene. Received 0.74 kilograms.

The specimens in items 5, 8, 11, 20, 45, and 51 tested negatively for controlled substances and substances used in the manufacture of phencyclidine.

The specimen in item 33 tested negatively for controlled substances.

The specimens in items 18, and 34 contained insufficient material for complete chemical analysis.

The specimens in items 26C, 32, 35, 40 and 49 contained no residue for analysis.

The specimens in items 10, 14, 15, 21, 24, and 41 were not analyzed.

STATE OF VIRGINIA
CITY/COUNTY OF Fairfax to-wit:

THIS day personally appeared before me, Geraldine L. Krabbiel
of Virginia, K.F. Hepner, Jr., Ph. D.
that he performed the analysis and/or examination the results of which are
by the Division of Consolidated Laboratory Services of the Commonwealth
Analysis is true and correct

Given under my hand this 11th day of December, 18

My commission expires March 2, 1982

glk

DCLS ES 0072A (REV. 7/73)