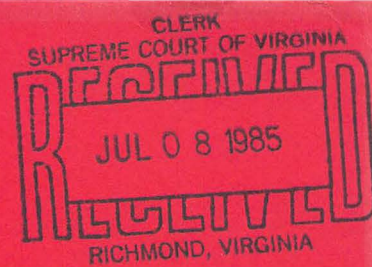


230 VA 405



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 841111

LUIS MANUAL VEREZ,

APR 8 1986

v.

Appellant,

COMMONWEALTH OF VIRGINIA,

Appellee.

RECORD NO. 841114

MILTON VIDAL,

v.

Appellant,

COMMONWEALTH OF VIRGINIA,

Appellee.

JOINT APPENDIX

Ivy P. Blue
Robert S. Ganey
Attorneys at Law
Post Office Box 174
Hanover, Virginia 23609

M. Katharine Spong
Assistant Attorney General
101 North Eighth Street
Richmond, Virginia 23219

Counsel for Appellants

Counsel for Appellee

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VIRGINIA

County of Hanover To-Wit:

In the Circuit Court of the County of HANOVER:

The GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of HANOVER duly summoned to and now attending said Court, on their oaths present, that

LUIS MANUEL VEREZ

on the 3rd day of October in the year one thousand nine hundred and eighty-three in the said County, and within the Jurisdiction of the said Circuit Court of the County of Hanover unlawfully and feloniously possess with the intent to give, sell or distribute concaine, a Schedule II controlled substance.

18.2-248 (5 to 40 and \$25,000.00) *[Signature]*
 against the peace and dignity of the Commonwealth of Virginia

*227 JV
121*

Upon the evidence of:

S. C. Gray VSP

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

*220 JV
762*

MOTION TO SUPPRESS EVIDENCE

Comes now the defendant, Luis Verez, by counsel, pursuant to Rule 3A:28, and he moves the Court to suppress all evidence obtained by law enforcement agencies on October 2, and 3, 1983, as a result of their search and seizure of evidence from Room 205, Kings Motor Inn, Rt. 54, Ashland, Virginia, for the following reasons:

1. Such search and seizure was illegal and violates the constitutional rights of the accused under the Virginia and United States constitutions.

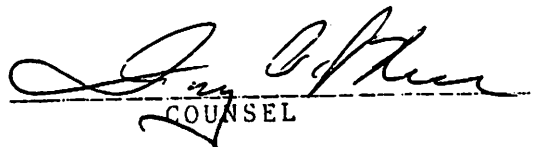
2. The Commonwealth deliberately conspired to conduct an illegal search without permission and without a search warrant.

3. The Commonwealth illegally seized on the occasion various articles of personal property of the accused and now attempts to use such evidence seized as evidence against the accused.

4. The Commonwealth violated all statutory provisions and Rules of Court pertaining to obtaining and searching with a search warrant.

LUIS VEREZ

BY


COUNSEL

IVY P. BLUE
ATTORNEY AT LAW
HANOVER LAW BUILDING
P.O. BOX 174
HANOVER, VIRGINIA 23069

Certificate

I hereby certify that a true copy of the foregoing Motion to Suppress Evidence was hand-delivered this 20th day of December, 1983, to Eddie R. Vaughn, Commonwealth's Attorney, Hanover County, Hanover, Virginia, 23069.

Virginia:

In the Circuit Court for the County of Hanover

January 10, 1984

Case No. 217-83

Commonwealth of Virginia

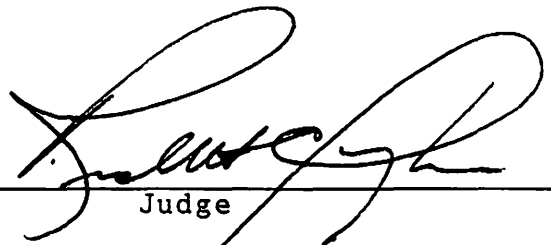
Vs. Upon an Indictment, to-wit: Possess Cocaine to Distribute
Luis Verez

O R D E R

This day came the Attorney for the Commonwealth and, Luis Verez, date of birth 2-2-51, who stands Indicted for a felony, to-wit: Possess Cocaine to Distribute, Virginia Code §18.2-248, date of offense 10-3-83, as charged in the Indictment, was led to the bar in the custody of the Sheriff of this County, and came also Ivy P. Blue, his attorney.

Whereupon, the Court having heard evidence on a Motion to Suppress Evidence, doth overrule said motion, all as stated to the record.

And the defendant was remanded to jail.


Judge

IVY P. BLUE, ESQ.
COUNSELLOR AND ATTORNEY
AT LAW
P. O. BOX 174, HANOVER, VIRGINIA 23069

LAW OFFICES OF:
IVY P. BLUE
ROBERT S. GANEY
BRUCE P. GANEY

January 18, 1984

TELEPHONES: A.C. 804
798-6912
798-6105
537-5389

Honorable Richard H. C. Taylor, Judge
Hanover Circuit Court
Hanover, Virginia 23069

Re: Commonwealth
vs.
Milton Vidal
and
Luis Verez

Dear Judge Taylor:

I am enclosing herewith new motions for suppression and notices sent to the Commonwealth's Attorney. I feel that these motions must be heard to complete the record on behalf of the two accused since the Commonwealth argued, and you apparently sustained their view, that there was no search. I, of course, disagree and believe the law overwhelmingly preponderates in favor of the accused.

At the same time on January 30, 1984, I shall renew the motions for suppression on the ground of illegal search and seizure.

I selected January 30, 1984, because I know that this is a criminal date and these cases are set in early February, and the record must be complete prior to the trial of these cases.

When the law is so clear, I do not feel it is justice to keep these defendants incarcerated and force them to appeal any decision in their cases. As you know, appellate procedures are very expensive and these two parties do not have the funds to finance an appeal.

The action of the police officers in these cases under the law clearly violated the rights of these accused.

By a copy of this letter, I am informing Mr. Vaughn that I am willing to stipulate the evidence heard by the Court on January 10, 1984, and I will only submit evidence of the reliability of the informants to add to that particular evidence on January 10, 1984.

Honorable Richard H. C. Taylor, Judge
January 18, 1984
Page Two

By a copy of this letter, I am asking Mr. Vaughn to advise me if he will agree to the stipulation of the January 10, 1984, evidence, and agree to have the DEA agents in Court on January 30, 1984, to testify to the reliability of the informants.

Please advise if the date of January 30, 1984, is not an appropriate date.

Your cooperation is appreciated.

Yours very truly,



Ivy P. Blue

IPB/cos
Enclosures

CC: Eddie R. Vaughn

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER

COMMONWEALTH OF VIRGINIA

VS.

LUIS VEREZ

MOTION TO SUPPRESS EVIDENCE

Comes now the defendant, Luis Verez, by counsel, pursuant to Rule 3A:28, and he moves the Court to suppress all evidence obtained by law enforcement agencies on or about October 2nd or 3rd, 1983, as a result of their illegal and warrantless entry into the defendant's motel room and his ultimate warrantless arrest; no exigent circumstances existed to justify the law enforcement officers' forceful and warrantless entry into said motel room at Room 205, Kings Motor Inn, Rt. 54, Ashland, Virginia, Hanover County, and for other reasons stated below:

1. For conspiring to conduct an illegal search and seizure in violation of the Virginia and United States constitutions.
2. For forcefully entering the motel room menacing firearms and discharging same.
3. For arresting the defendant without a warrant although they had ample knowledge and ample time existed for them to obtain the necessary warrant.

WHEREFORE, the defendant moves the Court to suppress all evidence and to dismiss the case against him.

LUIS VEREZ

BY



COUNSEL

IVY P. BLUE
ATTORNEY AT LAW
HANOVER LAW BUILDING
P.O. BOX 174
HANOVER, VIRGINIA 23069

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion to Suppress Evidence was hand delivered this 19th day of January, 1984, to Eddie R. Vaughn, Commonwealth's Attorney, Hanover Courthouse, Hanover, Virginia, 23069.



IVY P. BLUE

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER
COMMONWEALTH OF VIRGINIA

vs.

LUIS VEREZ;

and

COMMONWEALTH OF VIRGINIA

vs.

MILTON VIDAL

ANSWER TO MOTIONS TO SUPPRESS EVIDENCE

Now comes the Commonwealth of Virginia, by her attorney, and makes the following answer to the defendant's Motions to Suppress Evidence, filed in this Court on the 19th day of January 1984:

1. Insofar as the foresaid Motions are based upon an allegedly illegal search of the defendants' motel room and seizure of contraband discovered therein, the motions should be denied in as much as the defendants raised that issue in a hearing on Motions to Suppress in this Court on the 10th day of January, 1984 and in which the Commonwealth prevailed and the defendants are therefore estopped from relitigating this issue. Clodfelter v. Commonwealth, 218 Va. 98 (1977); and

2. Insofar as the aforesaid motions are based upon allegations that the reliability or credibility of the informants has not been proven, the motions should be denied in as much as the reliability or credibility of the informants was an issue on the previous Motions to Suppress Evidence based upon an allegation of an illegal search, Wright v. Commonwealth, 222 Va. 188 (1981), Illinois v. Gates, _____ US. _____, 103 S. Ct. 2317 (1983),

and the defendants were given ample opportunity to present evidence and are therefore estopped from relitigating this issue. Clodfelter, supra; and

3. Based upon the evidence heard by this Court in the hearing on the previous motions, as the defendants, by counsel, have offered to stipulate (letter from Ivy P. Blue, Esquire, Attorney for the Defendant, January 18, 1984), Agents of the Virginia State Police and the Hanover Sheriff's Department had sufficient evidence, based upon the totality of the circumstances then known to them, to establish probable cause to believe the defendants were engaged in felonious activity and were therefore authorized, pursuant to Virginia Code § 19.2-81, to effect a warrantless arrest of the defendants. Washington v. Commonwealth, 219 Va 857 (1978). In light of the fact that the evidence which the defendants seek to have suppressed was in plain view for the law enforcement officials and properly seized, the motions, insofar as it alleges an illegal warrantless arrest, should be denied.

WHEREUPON, the Commonwealth of Virginia, by her attorney, respectfully requests this Court to enter Order denying the defendant's Motions to Suppress Evidence.

COMMONWEALTH OF VIRGINIA

By Eddie R. Vaughn Jr.
Eddie R. Vaughn, Jr.
Commonwealth's Attorney
County of Hanover

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer was mailed to Ivy P. Blue, Esquire, Post Office Box 174, Hanover, Virginia 23067, Attorney for the Defendants this 24th day of January, 1984.

Eddie R. Vaughn, Jr.
Eddie R. Vaughn, Jr.

Virginia:

In the Circuit Court for the County of Hanover

January 30, 1984

Case No. 217-83

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Distribute Cocaine

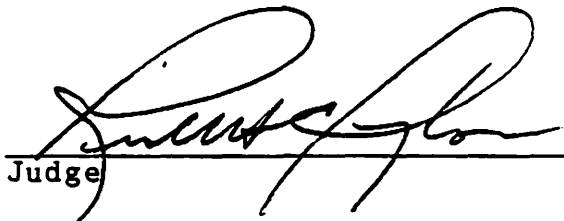
Luis Manuel Verez

O R D E R

This day came the Attorney for the Commonwealth and, Luis Manuel Verez, date of birth 2-2-51, who stands indicted for a felony, to-wit: Distribution of Cocaine, Virginia Code §18.2-248, date of offense 10-3-83, as charged in the Indictment, was led to the bar in the custody of the Sheriff of this County, and came also Ivy P. Blue, his attorney.

Whereupon, the Court having heard evidence on motions previously filed in this case, doth overrule said motions, all as stated to the record.

The Court doth further overrule a Motion for a continuance of the trial date, as stated to the record.


Judge

Virginia:

In the Circuit Court for the County of Hanover

April 30, 1984

Case No. 217-83 & 41-84

Commonwealth of Virginia

Vs. Upon Indictments, to-wit: Dist. Cocaine & Abduction

Luis Manuel Verez

O R D E R

This day came the Attorney for the Commonwealth, and Luis Manuel Verez, date of birth ⁽²⁻²⁻⁵¹⁾~~2-2-51~~, who stands convicted of felonies, to-wit: Distribute Cocaine, Virginia Code §18.2-248, offense date October 3, 1983, as charged in Indictment No. 217-83; and Abduction, Virginia Code §18.2-47, offense date December 11, 1983, as charged in Indictment No. 41-84, was led to the bar in the custody of the Sheriff of this County, and came also Ivy P. Blue, his attorney.

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 he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for the accused.

Thereupon, the defendant and 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.

April 30, 1984

Case No. 217-83 & 41-84, Cont.

Page 2.

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 was known to be said why judgment should not be pronounced according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the Penitentiary of the Commonwealth of Virginia for the term of forty (40) years and fine the sum of \$25,000.00, on the conviction of Distribution of Cocaine, Virginia Code §18.2-248, as charged in Indictment No. 217-83; and one (1) years on the conviction of Abduction, Virginia Code §18.2-47, as charged in Indictment No. 41-48, said one-year sentence to run consecutively, and that the Commonwealth recover against the defendant its costs by it about its prosecution in this behalf expended.

Whereupon, the defendant having noted his intention to perfect an appeal, the Court Reporter is directed to prepare the transcript to be made a part of the record when filed in the Clerk's office.

The defendant by counsel having moved the Court to set bond, the Court doth overrule said motion, and the defendant is remanded to jail.

And it is further ordered that as soon as possible after

April 30, 1984

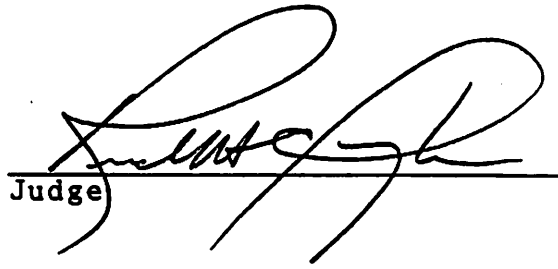
Case No. 217-83 & 41-84, Cont.

Page 3.

the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary therein to be kept, confined and treated in the manner provided by law.

The Court certifies that at all times during the trial of this case the defendant was personally present and the attorney was likewise personally present and capably represented the defendant.

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


Judge

A COPY TESTE

Richard L. Clifton, Clerk

By E. J. Clifton
CLERK

Luis Manuel Verez
against
Commonwealth of Virginia

Record No. 841111

ASSIGNMENT NO. 6

The Court erred by not suppressing the evidence in this case on the grounds that all evidence against the defendant was obtained by virtue of his illegal arrest and the resulting search and seizure, in violation of the Appellant's Constitutional Rights under the United States and Virginia Constitutions.

VIRGINIA

County of Hanover To-Wit:

In the Circuit Court of the County of HANOVER:

The GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of HANOVER duly summoned to and now attending said Court, on their oaths present, that

Milton (NMN) Vidal

on the 3rd day of October in the year one thousand nine hundred and eighty-three in the said County, and within the Jurisdiction of the said Circuit Court of the County of Hanover unlawfully and feloniously possess with the intent to give, sell or distribute Cocaine, a Schedule II controlled substance.

18.2-248

against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of: S. C. Gray VSP

MOTION TO SUPPRESS EVIDENCE

Comes now the defendant, Milton Vidal, by counsel, pursuant to Rule 3A:28, and he moves the Court to suppress all evidence obtained by law enforcement agencies on October 2, and 3, 1983, as a result of their search and seizure of evidence from Room 205, Kings Motor Inn, Rt. 54, Ashland, Virginia, for the following reasons:

1. Such search and seizure was illegal and violates the constitutional rights of the accused under the Virginia and United States constitutions.

2. The Commonwealth deliberately conspired to conduct an illegal search without permission and without a search warrant.

3. The Commonwealth illegally seized on the occasion various articles of personal property of the accused and now attempts to use such evidence seized as evidence against the accused.

4. The Commonwealth violated all statutory provisions and Rules of Court pertaining to obtaining and searching with a search warrant.

IVY P. BLUE
ATTORNEY AT LAW
HANOVER LAW BUILDING
P.O. BOX 174
HANOVER, VIRGINIA 23069

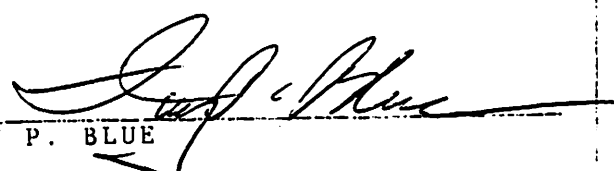
MILTON VIDAL

BY


COUNSEL

Certificate

I hereby certify that a true copy of the foregoing Motion to Suppress Evidence was hand-delivered this 10th day of December, 1983, to Eddie R. Vaughn, Commonwealth's Attorney, Hanover County, Hanover, Virginia, 23069.


IVY P. BLUE

Virginia:

In the Circuit Court for the County of Hanover

January 10, 1984

Case No. 218-83

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Possess Cocaine to Distribute
Milton Vidal

O R D E R

This day came the Attorney for the Commonwealth and, Milton Vidal, date of birth 4-1-33, who stands indicted for a felony, to-wit: Possess Cocaine to Distribute, Virginia Code §18.2-248, date of offense 10-3-83, as charged in the Indictment, was led to the bar in the custody of the Sheriff of this County, and came also Ivy P. Blue, his attorney.

Whereupon, the Court having heard evidence on a Motion to Suppress Evidence, doth overrule said motion, all as stated to the record.

And the defendant was remanded to jail.


Judge

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER

COMMONWEALTH OF VIRGINIA

VS.

MILTON VIDAL

MOTION TO SUPPRESS EVIDENCE

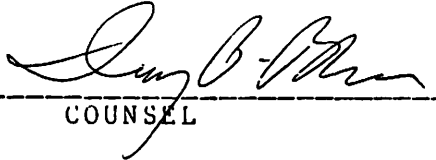
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1. For conspiring to conduct an illegal search and seizure in violation of the Virginia and United States constitutions.
2. For forcefully entering the motel room menacing firearms and discharging same.
3. For arresting the defendant without a warrant although they had ample knowledge and ample time existed for them to obtain the necessary warrant.

WHEREFORE, the defendant moves the Court to suppress all evidence and to dismiss the case against him.

MILTON VIDAL

BY


COUNSEL

IVY P. BLUE
ATTORNEY AT LAW
HANOVER LAW BUILDING
P.O. BOX 174
HANOVER, VIRGINIA 23069

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion to Suppress Evidence was hand delivered this 19th day of January, 1984, to Eddie R. Vaughn, Commonwealth's Attorney, Hanover Courthouse, Hanover, Virginia, 23069.


IVY P. BLUE

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER

COMMONWEALTH OF VIRGINIA

VS.

LUIS VEREZ
AND
MILTON VIDAL

M E M O R A N D U M

THIS memorandum of law is submitted to support the motion to suppress filed on behalf of the defendants, and it is submitted that the evidence in this case should be suppressed and charges dismissed for the following reasons:

STATEMENT OF FACTS

RE: COMMONWEALTH OF VIRGINIA
VS.
LUIS VEREZ
AND
MILTON VIDAL

On October 2, 1983, Mr. Verez arranged with Mr. Vidal to drive him to the Northern Virginia area from the Miami, Florida area. Mr. Verez was to pay all expenses, and in addition, to give to Mr. Vidal a sum of money for his efforts.

Mr. Vidal and Mr. Verez were not acquaintances prior to October 2, 1983.

Mr. Verez had apparently dealt with drugs on previous occasions by selling them to a Mr. Chase and a Mr. Cunningham, who live in the Northern Virginia area or the Washington, D.C. area. There had been telephone communication between Verez, Chase and Cunningham prior to Verez meeting with Mr. Vidal and commencing their journey from Miami to Virginia.

Mr. Chase and Mr. Cunningham were under investigation and possible charges for drug violations on or before October 2, 1983, and were under surveillance by police. This surveillance included telephone interceptions, and through these telephone interceptions the police were alerted and knew Verez was enroute to bring drugs to Chase and Cunningham in Northern Virginia. Neither the police, Chase nor Cunningham knew Vidal.

Mr. Chase and Mr. Cunningham were acting as informers for the police and they may have alerted the police as to the fact that Verez was enroute with about one (1) Kilo of Cocaine.

As Verez and Vidal travelled North through Virginia, Mr. Vidal's vehicle experienced some type of motor trouble and Verez and Vidal were more or less forced to register in the Kings Motor Inn, Room 205, in Ashland, Virginia. The room was registered to Milton Vidal. Verez was paying the bill for the room.

When the parties experienced car trouble and after they had decided to stay at the Kings Motor Inn, Verez telephoned Mr. Chase and Mr. Cunningham to tell them of his difficulties and to inform them that he would be later than he thought. In fact, he would be there the following day.

This call was made between 8:30 and 9:30 p.m. on October 2, 1983. Mr. Chase and Mr. Cunningham informed Verez (Vidal did not talk to them) that they would come to Ashland to the Kings Motor Inn rather than wait for Verez to get to Northern Virginia. Verez Agreed.

Verez was drinking and was somewhat intoxicated and Vidal and he went to the room where Vidal took a shower and went to sleep. It was unknown what Verez did during this period of time, however, the police, in the company of Mr. Chase and Mr. Cunningham acting as informers, journeyed from Northern Virginia to Ashland, Virginia. Before doing so, they telephoned the Commonwealth's Attorney in Hanover County and alerted him of the possible arrest. The Commonwealth's Attorney, as well as the police, were on notice of what was to take place in Room 205 of Kings Motor Inn in Ashland, Virginia, at least three to four hours before the events actually took place concerning the search which was conducted on the early morning of October 3, 1983.

At approximately 11:30 p.m. on October 2, 1983, the police, accompanied by the Commonwealth's Attorney for Hanover County, arrived at the Kings Motor Inn, at which time they sent Mr. Chase and Mr. Cunningham into Room 205 to verify that the drugs and Verez were in that room. Vidal was unknown at this time during the transaction. Mr. Chase and Mr. Cunningham did in fact go to Room 205, talked to Verez and Vidal, and then Chase left the room to go to his vehicle. This was a pre-arranged signal for the police to enter the room, and when Chase returned to the room and the door was opened by Mr. Vidal, a number of police, five to ten, entered the room and a shot was fired into the ceiling of the room. Verez and Vidal were forced to lie on their stomachs, were handcuffed, and taken into custody.

In the room, about one (1) Kilo of Cocaine was found on the bed furthest from the door lying between Verez and Mr. Cunningham, who were sitting on the bed. Mr. Vidal was pinned behind the door when the officers invaded the room with their guns drawn. As a result of the above facts, both Verez and Vidal were charged with the possession of Cocaine with the intent to distribute. No other violations of the law were charged at that time, nor have any violations been charged concerning the events of October 2, 1983, since the arrests.

Chase and Cunningham were taken into custody and taken to the Hanover County jail along with Verez and Vidal, however, Chase and Cunningham were released and no charges were made against them, although they had conspired to violate the law along with Mr. Verez.

The law enforcement agencies and the Commonwealth's Attorney did not apply for and did not have a search warrant to search Room 205, at the Kings Motor Inn in Ashland, Virginia, on the night of October 2, 1983, nor did they have consent of either Vidal or Verez to conduct the search.

QUESTION:

Did the actions of the police and law enforcement agencies violate the constitutional rights of Verez and Vidal against illegal search and seizure?

QUESTION PRESENTED

Did the warrantless entry into the defendants' motel room constitute a violation of their fourth amendment rights?

DISCUSSION OF AUTHORITY

It is axiomatic that the warrantless search of a residence is per se unreasonable, subject only to a few narrow, well-defined exceptions. Keeter v. Commonwealth, 222 Va. 134, 278 S.E.2d, 841, 845 (1981), cert. denied, 454 U.S. 1053 (1982); Abell v. Commonwealth, 221 Va. 607, 272 S.E.2d 204 (1980). The United States Supreme Court recently held that the fourth amendment applies equally to entry for purposes of arrest and entry to effect a search. Payton v. New York, 445 U.S. 573,

585-88 (1980). Absent exigent circumstances, police officers may not enter a private residence without a warrant either to make an arrest or to search for weapons or contraband. Id. The Court reaffirmed these principles in Steagald v. United States, 451 U.S. 204 (1981), observing that the short time required to obtain a warrant will seldomly hinder police efforts to apprehend a felon. Id. at 222.

It is equally clear that the occupant of a hotel or motel room has the same expectation of privacy as the occupant of a private residence and is, therefore, equally protected by the fourth amendment. Stoner v. California, 376 U.S. 483 (1964). While Stoner has yet to be applied by the Virginia Supreme Court the federal courts, including the Fourth Circuit, have consistently applied the fourth amendment's warrant requirement to entries into hotel and motel rooms. United States v. Lyons, 706 F.2d 321, 326 (D.C. Cir. 1983) (dictum); United States v. Bulman, 667 F.2d 1374, 1384 (11th Cir.); rehearing denied, 673 F.2d 1342 (11th Cir. 1982), cert. denied, 456 U.S. 1010 (1982); United States v. Killebrew, 560 F.2d 729, 733 (6th Cir. 1977) ("beyond

dispute" that fourth amendment warrant requirement applies to searches of motel rooms); Hall v. Warden, Maryland Penitentiary, 313 F.2d 483, 493 (4th Cir. 1963), cert. denied sub nom. Pepersack v. Hall, 374 U.S. 809 (1963). Thus, it is safe to conclude that cases concerning searches or arrests in private residences apply equally to hotels or motels.

The Virginia Supreme Court has yet to discuss the exigent circumstances exception in any great detail. The court has indicated, however, that exigent circumstances are those requiring action "now or never" in order to avert loss of evidence or danger to law enforcement officers. Wright v. Commonwealth, 222 Va. 188, 278 S.E.2d 849, 852 (1981); Keeter v. Commonwealth, supra, 278 S.E.2d at 845. In addition, the Fourth Circuit has suggested several tactics which should be considered in evaluating a claim of exigent circumstances.

In Wallace v. King, 626 F.2d 1157, 1161 (4th Cir.) cert. denied, 451 U.S. 969 (1980), the court indicated that exigent circumstances may include hot pursuit of a suspect or a justifiable fear of injury to persons or property if an arrest is delayed. The court also pointed out that whether exigent circumstances exist depends upon whether a magistrate was available and whether one officer could have watched the premise while others secured a warrant.' Id. In United States v. Turner, 650 F.2d 526, 528 (4th Cir. 1981), the Fourth Circuit

cited the following factors to be considered: 1) the degree of urgency and time required to obtain a warrant; 2) the reasonableness of the officers' belief that contraband would be removed or destroyed; 3) the extent of any danger to police officers at the site; 4) any evidence that the suspects are aware of the presence of the police; and 5) the ease with which the contraband could be destroyed.

Another laundry list of factors to be weighed in such cases was provided by the court in Vance v. State of North Carolina, 432 F.2d 984 (4th Cir. 1970). The factors cited there were the following:

- (1) whether a serious offense, particularly a crime of violence, is involved;
- (2) whether the suspect is reasonably believed to be armed;
- (3) whether there is a clear showing of probable cause;
- (4) whether strong reason exists to believe the suspect is in the premises being entered;
- (5) whether there is a likelihood that the suspect will escape if not swiftly apprehended;
- (6) whether the entry is forcible or peaceful; and
- (7) whether the entry is at night.

Id. at 990.

Other federal decisions addressing this issue make it clear that exigent circumstances excusing lack of a warrant exist only if the situation presents a real danger to the police or public or a real danger that a suspect will flee or evidence

will be destroyed. See, e.g., United States v. Bulman, supra, 667 F.2d at 1384; United States v. Velasquez, 626 F.2d 314, 317 (3d Cir. 1980). United States v. Velasquez, supra, is particularly instructive in light of its factual similarity to this case.

Velasquez involved a "buy-bust" set up by DEA agents. A DEA agent arranged to purchase drugs from the defendant while other agents surrounded the defendant's house awaiting a signal to enter and make the arrest. The agents did not attempt to obtain either an arrest warrant or a search warrant. The agent making the purchase entered the house, came out, and went back in because the defendant had not yet displayed the drugs. The other agents subsequently entered the house prior to the pre-arranged signal, conducted a search, and found the drugs.

The Third Circuit held that no exigent circumstances existed. 626 F.2d at 317. The court noted that the defendant did not suspect that the buyer was a DEA agent, the defendant was not armed, and there was no evidence the agent was in any danger. Id. at 316-18. The court further pointed to the lack of any evidence the drugs were about to be destroyed or that the defendant was about to escape. Id. The court concluded that the action of the agents was merely a warrantless "buy-bust" and a clear violation of the defendant's fourth amendment rights. Id. at 318.

The facts at issue are strikingly similar. The whole operation was planned ahead of time, leaving ample opportunity to serve a warrant prior to arresting Verez and Vidal. There is no indication that Verez or Vidal suspected that they were dealing with police informants prior to entry of the police into the motel room. Escape or destruction of evidence was never a real threat. Vidal and Verez clearly intended to remain in the room until Chase and Cunningham arrived and obviously would not destroy the drugs prior to the sale. Neither defendant was armed and nothing in the conversations overheard by the police outside the room indicated that Chase or Cunningham was in any danger. Despite more than adequate grounds to obtain an arrest or search warrant, the police made no effort to do so. The facts suggest no justification for their actions.

The state's claim in this case that the informant would have been endangered had he gone back into the motel room without money to complete the transaction is insufficient to excuse the failure to obtain a warrant. First, there was no objective evidence that any such danger existed. Neither Vidal nor Verez had said or done anything threatening or exhibited any weapons. More importantly, the police could have avoided this alleged problem by first obtaining a warrant. Where there is no "grave emergency" existing at the time the police obtain information

sufficient to obtain a warrant, the police cannot create such an emergency to avoid the inconvenience of obtaining a warrant. McDonald v. United States, 335 U.S. 451, 455 (1948); Niro v. United States, 388 F.2d 535, 539-40 (1st Cir. 1968). Circumstances brought about by the conduct of the police never excuse the lack of a warrant.

Those cases in which the courts have upheld warrantless searches based on exigent circumstances are distinguishable on their facts. In United States v. Turner, supra, the court pointed out that circumstances beyond the control of the police had forced a warrantless entry. Id. at 528. The court noted that it was reasonable to believe that one defendant inside his apartment had seen the police arrest a co-defendant in the parking lot and might be destroying the contraband inside. Id. Similarly, in United States v. McGuire, 608 F.2d 1028 (5th Cir.), cert. denied, 444 U.S. 1092 (1979), the police found out about a drug deal while it was in progress at a hotel and had insufficient time prior to completion of the deal to obtain a warrant. In United States v. McKinney, 477 F.2d 1184, 1186 (D.C. Cir. 1973), the crime involved possession of a dangerous weapon, entry was made peacefully during the daytime, and the police had no way of knowing how soon the defendant might leave the transient hotel where he was staying. Also similar is

Kirkpatrick v. Cox, 321 F. Supp. 284, 286 (W.D. Va. 1971), where the police were searching for suspects known to be armed and likely to be about to flee.

In contrast to these cases, the police in the situation at issue were in complete control. Had they needed more time to obtain a warrant all they needed to do was to delay the arrival of Chase and Cunningham. They could have simultaneously set up surveillance of the motel room and arrested Vidal and Verez in the parking lot when they attempted to leave. See United States v. Watson, 423 U.S. 411 (1976) (no warrant needed to arrest suspected felon in public place if probable cause exists). Because they failed to obtain a warrant, any evidence seized in the motel room is subject to exclusion at trial.

Probable cause for issuance of a warrant exists when the facts and circumstances within the knowledge of the police officers involved would lead a man of reasonable caution to believe that a crime is being or is about to be committed or that seizable property is located at the premises in question. United States v. Sweeney, 688, F. 2d 1131, 1137 (7th Cir. 1982). Probable cause requires only a fair probability, not a prima facie showing of criminal activity. Illinois v. Gates, ____ U. S. ____, 103 S. Ct. 2317, 2332 (1983); United States v. Hodges, 705 F. 2d 106, 108 (4th Cir. 1983) to obtain a warrant the police need only to provide the magistrate with sufficiently reliable and detailed information

from which he can reasonably conclude that criminal activity is being committed or the items sought to be seized are located where specified by the police. United States v. Kolodzieg, 706 F. 2d 590, 598 (5th Cir.) rehearing denied, 712 F. 2d 975 (1983); United States v. Welebir, 498 F. 2d 346, 349 (4th Cir. 1974).

Probable cause can be based upon the personal knowledge of those seeking the warrant or upon information supplied by an informant who can authenticate his source. United States v. Rogers, 388 F. Supp. 298, 303 (E. D. Va. 1975). A magistrate is entitled to credit information provided by an informant based upon first hand observation and his own personal participation in the illegal activities at issue. Mantey v. Commonwealth, 211 Va. 146, 176 S. E. 2d 309, 313, cert. denied, 403 U. S. 936 (1970). A warrant may also be obtained on the basis of information provided by a fellow police officer. United States v. Welebir, *supra*, 498, F. 2d at 349 n. 2.

Under the circumstances at issue here the police certainly had sufficient information to obtain a warrant. They knew about the drug deal by means of telephonic surveillance. They later obtained additional details as to the whereabouts of Verez and Vidal from Chase and Cunningham. This information was consistent with what the police already knew and was based upon telephone conversations involving Verez, Chase and Cunningham. Based upon their own knowledge and that of their informants the police had

very specific information as to where Verez and Vidal were and what they were carrying with them. This information would have solidly established a reasonable probability of criminal activity sufficient to support a warrant.


This conclusion is further supported by the Supreme Court's recent decision in Illinois v. Gates, supra. In Gates the Court indicated that the existence of probable cause for issuance of a warrant must be determined not by reference to "hypertechnical" rules and analysis but rather by an evaluation of the "totality of the circumstances" presented to the magistrate issuing the warrant. 103 S. Ct. at 2331-32. The Court noted that the magistrate's determination will be accorded great weight by the reviewing court in an effort to encourage police to obtain warrants more often. Id. It appears that any warrant obtained in this case would have passed muster under the guidelines suggested by Gates.

CONCLUSION

Any warrantless entry into a private residence, whether for purposes of an arrest or a search, is presumptively violative of the fourth amendment. It has been repeatedly held that the same principles apply to entry of a hotel or motel room. The only exception to the warrant requirement potentially applicable here is the so-called "exigent circumstances" exception. In this case, however, there was ample time to obtain a warrant and no indication that the defendants would flee, destroy the contraband,

or endanger either a police officer or the public . Under the circumstances there was no exigency that would excuse the failure to obtain a warrant.

RESPECTFULLY SUBMITTED:
ON BEHALF OF LUIS VEREZ
AND MILTON VIDAL


BY COUNSEL

STATEMENT TO ASSIST COURT:

All authorities cited in this Memorandum of Law have been shepardized and the law is as stated as of December 30, 1983.

LAW OFFICES
IVY P. BLUE, JR.
ATTORNEY AT LAW
P.O.BOX 174
HANOVER, VIRGINIA, 23069

Virginia:

In the Circuit Court for the County of Hanover

January 30, 1984

Case No. 218-83

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Distribute Cocaine
Milton Vidal

O R D E R

This day came the Attorney for the Commonwealth and, Milton Vidal, date of birth 4-1-33, who stands indicted for a felony, to-wit: Distribution of Cocaine, Virginia Code §18.2-248, date of offense 10-3-83, as charged in the Indictment, was led to the bar in the custody of the Sheriff of this County, and came also Ivy Blue, his attorney.

Whereupon, the Court having heard evidence on motions previously filed in this case, doth overrule said motions, all as stated to the record.

The Court doth further overrule a Motion for a continuance of the trial date, as stated to the record.

And the defendant was remanded to jail.



Judge

Virginia:

In the Circuit Court for the County of Hanover

June 11, 1984

Case No. 218-83

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Distribute Cocaine

Milton Vidal

O R D E R

This day came the Attorney for the Commonwealth, and Milton Vidal, date of birth 4-1-33, who stands convicted of a felony, to-wit: Distribution of Cocaine, Virginia Code §18.2-248, offense date October 3, 1983, was led to the bar in the custody of the Sheriff of this County, and came also Ivy Blue, his attorney.

Whereupon, the Court having heard evidence on a Motion for Mistrial and/or New Trial, doth overrule said Motion, all as stated to the record.

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 he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for the accused.

Thereupon, the defendant and 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.

June 11, 1984

Case No. 218-83, Cont.

Page 2.

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 was known to be said why judgment should not be pronounced according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to Forty (40) years in the penitentiary of the Commonwealth of Virginia, of which term the Court suspends the execution of fifteen (15) years, and he is fined the sum of \$25,000.00, of which sum the Court suspends the execution of \$20,000.00 of the fine. Said sentences are to run consecutive to any other sentences, and the suspended sentences are suspended for twenty years.

The defendant is placed under the supervision of the Probation Officer of this Court.

Upon motion of the defendant by counsel, the Court doth suspend the execution of sentence to allow the defendant to perfect an appeal to the Supreme Court of Virginia, for sixty days, to be on the docket on September 18, 1984, at 9:00 A.M.

Whereupon, having heard evidence on a Motion for Bond, the said Motion is overruled, all as stated to the record.

A Motion declaring the defendant indigent is continued to July 2, 1984, at 10:00 A.M.

June 11, 1984

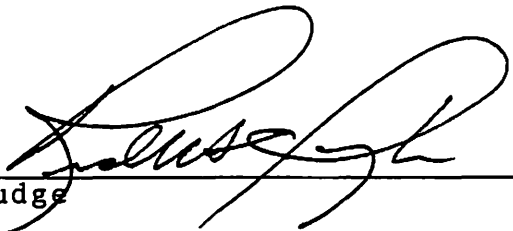
Case No. 218-83, Cont.

Page 3.

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

The Court certifies that at all times during the trial of this case the defendant was personally present and the attorney was likewise personally present and capably represented the defendant.

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


Judge

A COPY TESTE

Richard L. Shelton, Clerk

By E. D. Shelton
DEPUTY CLERK

Milton Vidal
against
Commonwealth of Virginia

Record No. 841114

ASSIGNMENT NO. 1

The Court erred by not suppressing the evidence in this case on the grounds that all evidence against the defendant was obtained by virtue of his illegal arrest and the resulting illegal search and seizure, in violation of the Appellant's Constitutional Rights under the United States and Commonwealth of Virginia constitutions.

EXCERPTS OF TRANSCRIPT OF TESTIMONY AND RULINGS ON MOTIONS
TO SUPPRESS - JANUARY 10, 1984

1
2
3
4
5 MILTON VIDAL, a defendant herein,
6 called as a witness by counsel for the defendants, first
7 being duly sworn, testified as follows:
8

9 DIRECT EXAMINATION

10 BY MR. BLUE:

11 Q Mr. Vidal, look at the Judge. State
12 your name and your address wherever your address is at this
13 time.

14 A Milton Vidal, 790 -- 781 Northwest,
15 Miami, Florida.

16 Q Now, Mr. Vidal, on October 2nd
17 and 3rd of 1983, did you travel from Miami to Ashland,
18 Virginia, here in Hanover County?

19 A Yes, sir.

20 Q And how did you travel, sir?

21 A In my automobile.

22 Q Now when you arrived in the Ashland
23 area, did you -- was your car functioning correctly, sir?

24 A No, sir, it wasn't. It was giving
25 me some trouble.

Vidal - Direct

5.

1 Q As a result of the trouble you
2 had with your car, Mr. Vidal --

3 MR. VAUGHN: Objection, Your
4 Honor. This is Mr. Blue's witness. He can
5 ask the witness what happened, but he cannot
6 lead the witness: As a result of what
7 happened to your car what did you then do.
8 Ask him what happened. Mr. Blue is leading.

9 THE COURT: Yes, you are leading,
10 Mr. Blue. I appreciate you trying to help
11 speed the matter along, but go ahead, Mr.
12 Blue.

13
14
15 BY MR. BLUE: (Continuing)

16 Q When your car broke down, Mr.
17 Vidal, did you have to spend the night or make arrange-
18 ments --

19 MR. VAUGHN: Same objection,
20 Your Honor. Mr. Blue can ask the witness --

21 A (Continuing) -- to spend the
22 night?

23 MR. VAUGHN: -- what he did when
24 the car broke down, period.

25 MR. BLUE: I'm asking him: Did you

Vidal - Direct

6.

1 rent a room to spend the night in Ashland?

2 MR. VAUGHN: Objection. Mr. Blue
3 is leading the witness.

4 MR. BLUE: I'll let you rule on
5 it, Judge, if that's an improper question.

6 THE COURT: I'm going to let the
7 question in, Mr. Vaughn. We're bogging down.
8 Go ahead, Mr. Blue.

9 MR. BLUE: Yes, sir.

10 THE COURT: All right.

11
12
13 BY MR. BLUE: (Continuing)

14 Q Where did you rent the room, sir?

15 A King -- Kings Inn -- Kings -- the
16 name of that place is Kings Hotel, Motel, or whatever it
17 is.

18 Q And in what name did you register
19 the room in?

20 A In my name, Vidal.

21 Q And was anyone with you when you
22 registered in this room?

23 A Yes, Luis was with me.

24 Q And was it a room that accommodated
25 both of you? Did both of you stay there?

PATRICIA S. WRIGHT
COURT-APPOINTED REPORTER
ROUTE 1, BOX 3-H
HANOVER, VIRGINIA 23059
(804) 537-5808

Vidal - Direct

7.

1 A Yes, sir.

2 Q Approximately what time did you
3 get to Ashland?

4 A I would say around between 8:30
5 and 9:00, somewhere around there; around 8:30 or 9:00.

6 Q After you got to Kings Motor Inn
7 in Ashland, did you make any telephone calls whatsoever,
8 Mr. Vidal?

9 A No, sir, no, sir.

10 Q To your knowledge, did you see
11 Mr. Verez make any phone calls?

12 A Yes, sir, I did.

13 Q Approximately what time of day
14 or night was it that he made phone calls that you know of,
15 sir?

16 A Well, I think it was around
17 9:00 -- 9:00, 9:30, somewhere around there.

18 Q Now after you registered in your
19 room, would you tell the Judge what you did personally, sir?

20 A Well, I went to my car and picked
21 up my luggage and came back with -- with the key and Luis
22 went to get something to eat. I went -- I continued on up
23 to the room by myself and soon as I got in, I hung up the
24 bags and went into the shower, took myself a shower.

25 At that time Luis came back and I

Vidal - Direct

8.

1 told him I was going right to sleep.

2 Q Did you, in fact, go to sleep
3 after that?

4 A Yes, sir.

5 Q When were you awakened after you
6 went to sleep, sir?

7 A There was a phone call into the
8 room and when the phone call came, it woken me up. Luis
9 was on the phone and he was talking to somebody and he told
10 me to wake up, you know, to get up because a guy was here,
11 some guy. That's all.

12 Q Now did you get up at that time?

13 A Well not right away. You know,
14 I was just barely getting up out of the bed.

15 Q Did anyone come to your room?

16 A Yes, sir.

17 Q Do you know who they were?

18 A All I know there was two guys.

19 Q Were you introduced to them after
20 they got in the room?

21 A Soon as they came into the room,
22 one was hugging Luis, you know, hugging him and saying, you
23 know, where you been, what took you so long, and that was
24 it, you know.

25 Q All right. Now I want you to

Vidal - Direct

9.

1 describe that scene again. You say when they came in the
2 room, there was hugging of Luis?

3 A Yeah, like they were happy to see
4 each other.

5 Q And what did you do after they
6 came in the room?

7 A Well, I went in towards the
8 bathroom to put on some clothing, you know. I put on my
9 shorts and went back and I was introduced to them after that,
10 right after that.

11 Q Do you remember the names of the
12 people you were introduced to?

13 A Tell you the truth, no, I don't.

14 Q Now, Mr. Vidal, after you got
15 dressed and you were introduced to these individuals, did
16 either -- anybody leave the room?

17 A Yes, some guy with a beard, a
18 little short guy with a beard.

19 Q Was it one of the two that came
20 to the room?

21 A Yes, sir.

22 Q And what did you -- what happened
23 when he left the room? Did you go with him or did you stay
24 there?

25 A No, I stood in the room and Luis

Vidal - Direct

10.

1 turned and told the guy to go get him a soda or something.

2 Q Now were you in the room when
3 this particular -- well, let me ask you this. Did this
4 particular party ever return to the room?

5 A Yes, sir, he did.

6 Q Were you in the room at the time
7 he returned?

8 A Yes, sir.

9 Q Describe to the Court exactly what
10 happened when this man returned --

11 A Well, I was --

12 Q -- into the room?

13 A -- I was standing by the doorway
14 and was look -- I happened to be looking out of the curtain.
15 As I did, I noticed a fellow get him the soda. Then he came
16 back and he was coming up the stairs and I opened the door.
17 And when I opened the door, he came right in, plus some
18 other policemen or something, whatever.

19 Q Well, describe what happened when
20 the policemen came in. How did they come in?

21 A Well, when they -- when I opened
22 the door, they pushed this one guy down, you know, from the
23 back of the neck they pushed him down and about four or five
24 of them, I was behind the door, and four or five of them
25 just threw themselves on the floor with shotguns and one

Vidal - Direct

11.

1 shot up in the air. I don't know who shot, but one of them
2 shot a gun in the air. I was behind the door and I happened
3 to look over towards my left side. As I did, I thought they
4 shot Verez and that's when I turned my face again over to-
5 wards my right.

6 Q Now, Mr. Vidal --

7 A Yes.

8 Q -- when you opened the door for
9 the man that you thought was returning with the sodas, did
10 you expect anyone else then?

11 A No, sir.

12 Q Did you know anyone else was out
13 there?

14 A I haven't seen anybody, no.

15 Q Did anyone -- when they -- anybody,
16 either the man returning with the sodas or the man -- the
17 men that came in, did anyone hand you a search warrant or
18 say we've got a search warrant?

19 A No. They just threw the man
20 towards the floor and just ran right into the room, threw
21 themselves on the floor and everything.

22 Q Before these people entered the
23 room, did anybody ask your permission to come in?

24 A No, sir.

25 Q How long had you known Luis Verez

Vidal - Direct

12.

1 on that -- that -- before this -- these people came in your
2 room? How --

3 A I met him --

4 Q -- long had you known him?

5 A -- I met him that first night. I
6 met him the first night.

7 Q That would have been the day before
8 this happened?

9 A Yes, sir.

10 Q Now did you have any weapon with
11 you whatsoever?

12 A No, sir, none.

13 Q Had you seen any weapon that Luis
14 Verez had whatsoever?

15 A No, sir, none.

16 Q In your presence were any weapons
17 found in the room when these police officers entered?

18 A Well, when the policeman grabbed
19 me behind from the door, they dragged me up towards the
20 bathroom and they put a shotgun behind my neck and another
21 gun and told me not to turn my face. They told me not to
22 turn my face. That's all, but there was no other weapons.
23 There was no weapons at all.

24 Q Before the man that went out to
25 get the sodas or whatever he went for -- this is the guy

Vidal - Direct

13.

1 with the beard. You don't know his name?

2 A No, I don't remember.

3 Q Did you have any argument with any
4 of these two men before that?

5 A No, that's the first time I ever
6 met them; first time in my life I ever seen them.

7 Q Did you hear any argument that
8 Luis Verez had with either of them before the man went out
9 to get the sodas and the police officers came in?

10 A No, sir.

11 Q Did you or Luis Verez in any way
12 threaten these two individuals that you don't know the names
13 of?

14 A No, sir.

15 MR. BLUE: Answer Mr. Vaughn's
16 questions.

17 THE COURT: Mr. Vaughn.

18

19

20 CROSS-EXAMINATION

21 BY MR. VAUGHN:

22 Q Mr. Vidal, you ever been convicted
23 of a felony, sir?

24 A Yes, sir.

25 Q What felony have you been convicted

Vidal - Cross

14.

1 of?

2 A Well --

3 MR. BLUE: If Your Honor please,
4 I submit that that's an improper question.
5 He has a right to ask him if he's ever been
6 convicted. He's answered, and he doesn't
7 have to explain what he's been convicted of.

8 MR. VAUGHN: Your Honor, Mr. Blue
9 has put Mr. Vidal on and gone to extensive
10 questioning whether he had a weapon or not
11 and, in fact, one of Mr. Vidal's previous
12 convictions is for the use of a weapon. I
13 think that's very germane to this procedure.

14 THE COURT: We're in a hearing on
15 a motion, Mr. Blue, and not in the trial.
16 I think he has the right to ask the question
17 at this point with the questions that you've
18 asked.

19 MR. BLUE: Note my exception.

20

21

22 BY MR. VAUGHN: (Continuing)

23 Q What have you been convicted of,
24 Mr. Vidal?

25 A Well, I been convicted for having

Vidal - Cross

15.

1 a weapon.

2 Q What kind of weapon?

3 A A .38.

4 Q .38?

5 A Yes, sir.

6 Q You didn't have one on the night
7 in question though, right?

8 A No, sir.

9 Q And you said you'd just met Mr.
10 Vidal before ya'll made this trip --

11 A I'm Mr. --

12 Q -- Mr. Verez?

13 A -- Vidal. I'm --

14 Q You'd just met Mr. Verez before
15 this trip?

16 A Yes, sir.

17 Q And this all occurred in the early
18 morning hours of the 3rd. When did ya'll leave Florida?

19 A Left on a -- on a --

20 Q Sir?

21 A -- on a Saturday, on a Saturday.

22 Q On the 2nd?

23 A On a Saturday.

24 Q On Saturday, and who drove on the
25 way up from Florida?

Vidal - Cross

16.

1 A I did, sir.

2 Q And what did ya'll leave Florida

3 for; for what purpose?

4 A Well, I was on my way to New York.

5 Q And for what purpose did Mr. Verez

6 have?

7 A He was supposed to meet somebody,

8 to stop and see somebody.

9 Q And what was he supposed to stop

10 and see them for?

11 A At that time I did not know.

12 Q You didn't know?

13 A No, sir.

14 Q And how much did you get paid for

15 driving?

16 A I didn't get paid nothing at all.

17 Q Mr. Verez didn't agree to pay you

18 a thousand dollars for driving him up here?

19 A No, he told me that he would give

20 me some money, you know.

21 Q Did you know you were transporting

22 cocaine, sir?

23 A No, sir, I did not know.

24 Q Didn't know that?

25 A No, sir.

Vidal - Cross

17.

1 Q You ever use cocaine with Mr. Verez
2 on the way up here?

3 A I took a blow, if that's what you
4 mean.

5 Q Sir?

6 A I -- I've taken a -- I've taken
7 a blow, yeah.

8 Q Did you take it out of those two
9 bags that they found in the hotel room?

10 A No, sir.

11 Q Where did the cocaine come from --
12 come from that ya'll were using for your personal use?
13 Where'd that coke come from?

14 A It came from Mr. Verez.

15 Q Did you ever see those two bags
16 prior to the time the two men came into your room?

17 A No, sir.

18 Q Never saw them?

19 A No, sir.

20 Q So your testimony under oath this
21 morning is that you didn't know that Verez was transporting
22 cocaine?

23 A I did not know that he was trans-
24 porting cocaine.

25 Q That's what you're testifying to

Vidal - Cross

18.

1 under oath?

2 A (No answer).

3 Q Who paid the expenses on the way
4 up?

5 A Mr. Verez.

6 Q Do you remember talking to Special
7 Agent Brown after you were arrested?

8 A As far -- I was speaking to some-
9 body, yeah.

10 Q Do you remember talking to a gentle-
11 man there at the scene after you were arrested?

12 A After when they brought us down
13 here.

14 Q Do you remember right after -- do
15 you remember a man reading you rights and telling you
16 honesty was the best policy?

17 A They read us -- they read us the
18 rights at the motel.

19 Q Do you remember talking to somebody
20 after that?

21 A Yeah, I spoke to you.

22 Q Do you remember talking to one of
23 the special agents after that?

24 A Yeah.

25 Q Do you remember stating to him

Vidal - Cross

19.

1 that you knew you were transporting cocaine on behalf of
2 Verez but did not involve yourself in the actual distribu-
3 tion itself? Do you remember telling that to the state
4 trooper?

5 A No, I don't remember.

6 Q Are you denying the fact that you
7 told it to the state trooper, that you knew you were trans-
8 porting cocaine?

9 A No, I just can't remember what --
10 what -- I don't understand the question.

11 Q Did you or did you not tell a
12 state trooper the night you were arrested that you were
13 transporting cocaine with Mr. Verez --

14 MR. BLUE: Judge --

15 Q (Continuing) -- that you knew
16 you were transporting cocaine?

17 MR. BLUE: -- Judge, I -- I submit
18 that this is entirely irrelevant to the issue
19 at hand this morning, and I don't think whether
20 he was or was not transporting cocaine is even
21 important whatsoever, sir.

22 MR. VAUGHN: Your Honor, Mr. Blue
23 puts a witness on --

24 MR. BLUE: This is a matter of --

25 MR. VAUGHN: -- the stand and his

1 credibility --

2 MR. BLUE: -- suppression of the
3 evidence whether the -- entering that room
4 and the search they made, whether or not it
5 was illegal, sir. That's all it is.

6 MR. VAUGHN: Mr. Blue puts a
7 witness on the stand and wants to vouch for
8 his credibility and the man has said two
9 inconsistent things that the Commonwealth can
10 establish. I think we're entitled to pursue
11 that.

12 THE COURT: I think he is, Mr. Blue.
13 It's not for -- not for whether or not it goes
14 to guilt or innocence. It's whether or not
15 he tells the same story every time he testi-
16 fies. He has a right to do that.

17 MR. BLUE: All right. I note my
18 exception, if Your Honor please.

19

20

21 BY MR. VAUGHN: (Continuing)

22 Q Do you remember talking -- do you
23 remember talking to the state trooper after your arrest?

24 A Yes, sir.

25 Q Do you remember telling him that

Vidal - Cross

21.

1 you knew that you were transporting cocaine on behalf of
2 Verez but you didn't want to involve yourself in the actual
3 distribution of the cocaine?

4 A Yes, sir.

5 Q So you admitted you knew you were
6 carrying cocaine, is that correct?

7 A Yes, sir.

8 Q Well now, you've just told the
9 Court that you didn't know about it. Which way was it?

10 A I did not know that he was carrying
11 that amount. Let's put it that way.

12 Q But you knew he was carrying cocaine
13 to sell?

14 A Yes, sir.

15 Q When the two informants came to
16 the room, who, in fact, was it, sir, that went to the closet
17 and got the cocaine out of the closet and put it on the bed?
18 Wasn't that you?

19 A No, sir.

20 Q You didn't do that?

21 A No.

22 Q You never handled the cocaine at
23 all?

24 A No.

25 Q Did you know that selling cocaine

Vidal - Cross

22.

1 was against the law, sir?

2 A Yes, sir.

3 MR. VAUGHN: That's all the
4 questions.

5 THE COURT: Mr. Blue.

6 MR. BLUE: I have no further
7 questions, Judge.

8 THE COURT: All right. Thank you,
9 Mr. Vidal. Have your seat.

10

11 * * * * *

12 WITNESS STOOD ASIDE

13

14

15 THE COURT: Next witness.

16 MR. BLUE: Judge, I'm going to
17 call Gary Messler.

18 THE COURT: Gary Messler.

19 THE CLERK: Raise your right hand.

20 Do you solemnly swear the evidence
21 you give in this hearing will be the truth,
22 the whole truth, and nothing but the truth,
23 so help you God?

24 MR. MESSLER: Yes, sir.

25 THE CLERK: Have a seat, sir.

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GARY MESSLER, called as a witness

by counsel for the defendants, first being duly sworn,
testified as follows.

DIRECT EXAMINATION

BY MR. BLUE:

Q Sir, would you state your name
and your address, please.

A My name is Gary Messler. I live
at Kings Motor Inn in Ashland.

Q Are you in any way associated
with Kings Motor Inn in Ashland, Virginia, and, if so, what
is your association with them?

A I'm the general manager.

Q I ask you to direct your attention
to the night of October 2nd, October 3rd. Were you on
duty that particular night, sir?

A I live at the motel, so I'm on
duty all the time.

Q Well, were you on duty at the desk

Messler - Direct

24.

1 where people register, sir?

2 A No, I was not.

3 Q Now after that particular date,
4 did you have cause to investigate room 205 at the motel
5 and if you did, did you find any damage and, if so, would
6 you describe what damage you found in the motel, sir --

7 MR. VAUGHN: Objection.

8 Q (Continuing) -- room, sir?

9 MR. VAUGHN: Objection. Could I
10 hear the relevance of this? The Commonwealth
11 is going to object that there is no relevance.

12 THE COURT: What is the relevance,
13 Mr. Blue?

14 MR. VAUGHN: Mr. Blue is --

15 MR. BLUE: To show that there was
16 forceful entry, if Your Honor please.

17 MR. VAUGHN: Excuse me. Mr. Blue
18 is alleging an unlawful search. At what
19 point is the damage, sir? What is the possible
20 relevance? Mr. --

21 MR. BLUE: I just stated what it
22 was, to show that there was a forceful entry,
23 if Your Honor please, and I think that it's
24 relevant to this particular --

25 THE COURT: Well, if the search

Messler - Direct

25.

1 was --

2 MR. BLUE: -- case.

3 MR. VAUGHN: Well, Your Honor, he
4 can't testify. He was not there. Unless
5 he can testify he was there when entry was
6 gained, he can't testify to when the damage
7 occurred if there -- conceding there was
8 damage, he can't testify when it occurred or
9 how it occurred.

10 MR. BLUE: I think he can describe
11 the damage, and if I can connect it up, Judge,
12 then I can connect it up, and I represent
13 to the Court that I intend to do that if I can.

14 THE COURT: Well, you have a right
15 to vouch the record anyway, Mr. Blue, so let's
16 hear what he's going to say and I'll determine
17 whether it's admissible.

18 Go ahead.

19 MR. BLUE: All right.

20 THE WITNESS: Would you repeat the
21 question, please?

22
23
24 BY MR. BLUE: (Continuing)

25 Q

I said after October -- the night

Messler - Direct

26.

1 of October 2nd, morning of October 3rd, did you have reason
2 to investigate room 205 for damage, sir?

3 A Yes, I did.

4 Q Did you find any damage?

5 A Yes.

6 Q Would you describe to the Court
7 what that damage is, sir?

8 A There was a hole in the carpet.

9 Q What kind of hole or do you know?

10 MR. VAUGHN: Your Honor, at this
11 point I object because this does not go to
12 forced entry. The Commonwealth will stipulate
13 that there was an accidental discharge by a
14 shotgun in the floor, but that does not go to
15 forced entry. If Mr. Blue had reviewed the
16 facts at all, he would know that that occurred
17 after entry was gained. That is not the type
18 of damage to indicate forced entry, such as
19 damage to a door, a door sill, or broken glass,
20 or something of that nature.

21 THE COURT: Well, even if it was
22 forced entry, if the search is proper, you
23 can --

24 MR. VAUGHN: If the arrest was
25 lawful, you can force an entry, which, again,

Messler - Direct

27.

1 the Commonwealth objects. There is no rele-
2 vance.

3 MR. BLUE: Well, I submit that
4 there is relevance because I take an entirely
5 different view from Mr. Vaughn, --

6 MR. VAUGHN: We just pulled Mr.
7 Messler down here for nothing.

8 MR. BLUE: -- Judge, and that's
9 why I'm putting it in.

10 THE COURT: But Mr. Vaughn has
11 stipulated that there was a hole in the rug
12 and it was caused by a blast from a shotgun.

13
14
15 BY MR. BLUE: (Continuing)

16 Q Was there any other damage, sir?

17 A No.

18 MR. BLUE: I have no further
19 questions, Judge.

20 THE COURT: All right. Any ques-
21 tions of Mr. Messler?

Messler - Cross

28.

CROSS-EXAMINATION

BY MR. VAUGHN:

Q Sir, you weren't present when any of this happened, were you?

A I was in my apartment.

Q I mean, but you weren't actually in room 205 when any of this happened?

A I wasn't in room 205, no, sir.

Q When the room was rented, you didn't know that it was going to be used for any unlawful purpose, did you, sir?

A No, sir.

Q And you cooperated fully with the authorities, did you not?

A Yes, sir, I gave the Chief my passkey.

MR. VAUGHN: That's all the questions and I'd ask Mr. Messler -- I did not bring him here, but I ask that Mr. Blue excuse him unless he needs him for something else.

THE COURT: May he be excused, Mr. Blue?

MR. BLUE: Why, sure, Judge.

THE COURT: All right, Mr. Messler.

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5 RAYMOND CUNNINGHAM, called as a
6 witness by counsel for the defendants, first being duly
7 sworn, testified as follows:
8

9 DIRECT EXAMINATION

10 BY MR. BLUE:

11 Q State your name, sir, and where
12 you live, please.

13 A Raymond Cunningham. What do you
14 want, an address or --

15 Q Yes, sir, I want to know where
16 you live. That's not just an address.

17 A Okay, 7434 Sportsman Drive in Falls
18 Church, Virginia.

19 Q Do you know a man by the name of
20 Russ Chase?

21 A Yes, I do.

22 Q How long have you known Mr. Chase?

23 A Since approximately 1972.

24 Q Do you know a man by the name of
25 Milton Vidal?

Cunningham - Direct

33.

- 1 A The name is familiar but I can't
2 quite place it.
- 3 Q Do you know a man by the name of
4 Luis Verez?
- 5 A Yes, I do.
- 6 Q How long have you known Mr. Verez?
- 7 A Since 1977.
- 8 Q On -- I want you to direct your
9 attention to October 2nd -- 1st or 2nd of 1983. Did you
10 have occasions to call Mr. Verez, say, within two weeks
11 before October 1st and 2nd of 1983, sir?
- 12 A Yes, I did.
- 13 Q For what purpose did you call Mr.
14 Verez prior to October 1st and October 2nd of '83, sir?
- 15 A Well, there were calls back and
16 forth between us.
- 17 Q Well, who initiated the calls?
18 You, Mr. Chase, or Mr. Verez?
- 19 A Originally Mr. Verez.
- 20 Q And how long before October 1st or
21 2nd was it that Mr. Verez initiated the call?
- 22 A Over a period of months.
- 23 Q When you say months, give us a
24 figure. One, two, three months?
- 25 A At least a couple of months before

Cunningham - Direct

34.

1 that.

2 Q A couple of months. At that time,
3 sir, were you under any charges for anything by the Virginia
4 State Police or the Drug Enforcement Agency of the federal
5 government?

6 MR. VAUGHN: Objection at this
7 point, Your Honor. The man's a witness. He
8 can ask what he's been convicted of but that's
9 all.

10 THE COURT: Well, the man's charact-
11 er has not been put in issue at this point.
12
13

14 BY MR. BLUE: (Continuing)

15 Q Well let me ask you. Were you
16 working for the Virginia State Police or the Drug Enforcement
17 Agency at this time, sir, in any capacity?

18 A Yes, I was.

19 Q Did you tell Mr. Verez you were
20 working for the Virginia State Police -- well, let me ask
21 you. Which one were you working for, the Virginia State
22 Police or the Drug Enforcement Agency?

23 A Drug Enforcement Agency.

24 Q Did you tell Mr. Verez that you
25 were working for the Drug Enforcement Agency when these

Cunningham - Direct

35.

1 calls were initiated?

2 A No, I did not.

3 Q As you got closer to October 1st
4 and 2nd of 1983, tell the Court did you make any arrange-
5 ments with Mr. Verez for any purpose and, if so, what
6 purpose did you make arrangements with Mr. Verez?

7 A After Mr. Verez's original calls
8 to me, I more or less dissuaded him for calling for a while
9 but then at a -- at a particular point when he called, I
10 was directed to go and have -- and have him come on up.

11 Q You mean -- you said you were
12 directed. Who directed you?

13 A Agent Brown, DEA.

14 Q And as a result of those directions,
15 what did you do, sir, to get Mr. Verez to come up?

16 A Well, Mr. Verez was actually
17 calling me before that with the -- looking for the opportu-
18 nity to come up. When I -- when I eventually heard that,
19 you know, they wanted to proceed on this --

20 Q Who wanted to proceed on this?

21 A The DEA.

22 Q All right, go ahead.

23 A -- I was directed to tell him
24 to go ahead and -- come ahead and see me.

25 Q All right, so did you call Verez

Cunningham - Direct

36.

1 then?

2 A Yes, I did.

3 Q To your knowledge, do you know
4 whether or not your drug -- your telephone lines were
5 tapped in any way?

6 MR. VAUGHN: Your Honor, at this
7 point I object. We're going -- we're on a
8 motion to suppress. I think -- I'm only
9 trying to guess from what Mr. Blue's asking,
10 he's now trying to go back to an affirmative
11 defense which is not the purpose of this
12 hearing. We're only concerned with what took
13 place at the hotel room on the day in question.

14 THE COURT: Mr. Blue, why is it
15 relevant whether the lines were tapped or not?

16 MR. BLUE: If Your Honor please,
17 if I understand the law, I have to show on a
18 motion to suppress, number one, that if I
19 feel that they needed a warrant, I've got to
20 show that they had plenty of time, knew what
21 was going on, the totality of the situation,
22 I think, is the term that the Court uses, and
23 I have to show that to show that this search
24 was illegal, sir, and that's why I'm asking
25 the question.

Cunningham - Direct

37.

1 MR. VAUGHN: Your Honor, if it
2 please the Court, we're talking about some-
3 thing that happened months before the date
4 in question or a week before the date in
5 question. The question is what did we know
6 on the day in question, not the -- the witness
7 has testified that he's known the man since
8 1977, but that doesn't have anything to do
9 with the facts in place.

10 MR. BLUE: I think I've put it
11 up to October 1st and 2nd is what I've done,
12 Judge.

13 MR. VAUGHN: Your Honor, I would --
14 if we could -- we're here on a motion to
15 suppress. I think we've got to narrow our-
16 selves. Mr. Blue has said the search was
17 unlawful. We have to narrow ourselves to that
18 issue, and I think that for that reason, these
19 questions are improper.

20 MR. BLUE: Judge --

21 THE COURT: Mr. Blue, aren't we
22 interested in the telephone conversations of
23 the 1st and 2nd?

24 MR. BLUE: Yes, sir, Judge, but the
25 law --

Cunningham - Direct

38.

1 THE COURT: He's testified that
2 the --

3 MR. BLUE: -- requires me to show
4 that they had plenty of time to get their
5 ducks in a row and that's what I'm trying to
6 do, Judge, and that's why I have to ask these
7 questions.

8 THE COURT: Well, I don't know
9 what he's going to say about the conversation.

10 MR. BLUE: I don't -- I'm not
11 believing what Mr. Vaughn tells you. I know
12 maybe you're being persuaded at this point,
13 but the evidence is going to show opposite
14 what he says, sir.

15 THE COURT: Well, don't argue your
16 case here, Mr. Blue.

17 MR. VAUGHN: Well then, Your Honor,
18 let Mr. Blue put the evidence on.

19 THE COURT: Gentlemen, gentlemen,
20 gentlemen.

21 All right, Mr. Blue, we're talking
22 about just prior to the search, so go ahead.
23
24
25

Cunningham - Direct

39.

1 BY MR. BLUE: (Continuing)

2 Q My question was when you called
3 Mr. Verez after you'd been directed to do so, sir, did you
4 know that your telephone lines were tapped?

5 A At the time, I don't know whether
6 the telephone lines were tapped or not. At the time that
7 I made the -- made the calls, we taped the calls.

8 Q Who taped them?

9 A I did.

10 Q And how did you tape them, sir?

11 MR. VAUGHN: Objection. Same
12 objection, Your Honor.

13 THE COURT: What difference does
14 it make --

15 MR. VAUGHN: What possible rele-
16 vance does it make --

17 THE COURT: -- how he taped them,
18 Mr. Blue?

19 MR. BLUE: Well, I want to know
20 if he could give them to somebody so they
21 could read -- hear them, Judge.

22 THE COURT: Ask him. Ask who had
23 access to the taped calls, Mr. Blue. Whether
24 he taped them on a -- one thing or another
25 doesn't make any difference.

Cunningham - Direct

40.

1 BY MR. BLUE: (Continuing)

2 Q You heard the Judge's question.
3 Did anyone else have access to the taped calls, Mr. Cunning-
4 ham --

5 A Well I --

6 Q -- and, if so, who had access?

7 A -- I'm not -- I'm not sure that
8 I understand the question.

9 Q Did you let anyone else other
10 than you and Mr. Chase listen to those taped calls and, if
11 so, who was it?

12 A No. As soon as the -- as soon as
13 the calls were taped, they were turned over to Agent Brown.

14 Q Turned over to Agent Brown?

15 A Uh huh.

16 Q Now it becomes important on what
17 you -- did he have a way he could listen to it when you
18 turned them over to him?

19 MR. VAUGHN: Objection. Objection.

20 MR. BLUE: Well, that's why I was
21 trying to do it in the first place, Judge.

22 MR. VAUGHN: Your Honor --

23 THE COURT: Well, what difference
24 does it make whether Agent Brown listened to
25 them or not. He had the right to listen to

Cunningham - Direct

41.

1 them. I assume if he -- apparently it's
2 standard procedure what Mr. Cunningham is
3 doing.

4
5
6 BY MR. BLUE: (Continuing)

7 Q Do you know whether or not Agent
8 Brown listened to what was on those tapes, sir, and, if so,
9 how do you know?

10 MR. VAUGHN: Objection. Your
11 Honor --

12 MR. BLUE: What is the objection,
13 sir? State the objection.

14 MR. VAUGHN: Because there is no
15 relevance as to what was on the tapes. The
16 man has admitted he talked to Mr. Verez and
17 what time and what date. That's all that's
18 relevant. We keep going off on little tan-
19 gents. We're not here on the proverbial
20 fishing expedition for Mr. Blue. Mr. Blue
21 has filed a motion that the search was unlaw-
22 ful.

23 MR. BLUE: I think he stated his
24 reason for the objection, Judge. Now I would
25 like to answer that.

Cunningham - Direct

42.

1 It is up to me to show that the
2 police had knowledge prior to their actual
3 search. That is what I'm getting at, Judge,
4 and I have got to put it in the evidence and
5 you've got to hear it in order to make a
6 decision.

7 THE COURT: Well, he said he turned
8 the tapes over to Agent Brown. What Agent
9 Brown did with them, I don't see how he can
10 testify about it, Mr. Blue.

11 MR. BLUE: I just asked him whether
12 he had any knowledge if he listened to what
13 was on the tape, sir. If he doesn't have any
14 knowledge, all he's got to do is say no, I
15 don't know.

16 MR. VAUGHN: Well, he can't testify
17 to that anyway and I object to it.

18 THE COURT: I'm going to sustain
19 the objection, Mr. Blue. Go --

20 MR. BLUE: I note -- I note my
21 exception, if Your Honor please.

22 THE COURT: Yes, sir.

23
24 BY MR. BLUE: (Continuing)

25 Q I ask you to direct your attention

Cunningham - Direct

43.

1 to October 2nd, 1983, sir. Did you receive any calls from
2 anyone, either Milton Vidal or Luis Verez, on that particular
3 day, sir?

4 A Yes, I did.

5 Q At what time of day on October 2nd
6 did you receive a call and from whom did you receive it?

7 A There were -- there were actually
8 a couple of calls.

9 Q Well, what time of day was the
10 call made that you're talking about, sir? That's what I'm
11 interested in.

12 A Actually in the -- towards evening.

13 Q What do you mean by towards evening,
14 sir?

15 A Well, one of them was approximately
16 around seven o'clock. There was another one about nine
17 something.

18 Q I'd like for you --

19 A There were -- there were various
20 other calls.

21 Q Well, I'd like for you to tell
22 us first about who called on -- at 7:00 on October 2nd
23 or about 7:00, sir?

24 MR. VAUGHN: Your Honor, I object
25 at this point. If Mr. Blue will just ask

Cunningham - Direct

44.

1 the witness if prior to going to the room
2 did you know whether the narcotics were
3 there, we can get over what happened on
4 October 2nd at 7:00 on the telephone. That's
5 the only issue, what they knew before they
6 went to the room.

7 THE COURT: Well, I may agree
8 with you, Mr. Vaughn, but Mr. Blue has the
9 right to put his case on in the manner in
10 which he wants to, so long as he complies
11 with the rules and --

12 MR. VAUGHN: Yes, sir.

13 THE COURT: But you are dragging
14 it out, Mr. Blue. Go ahead and ask him what
15 you want him to answer. Who made the call
16 at 7:00 and what he said?

17 MR. BLUE: I've asked him that,
18 Judge --

19 THE COURT: All right.

20 MR. BLUE: -- and I'd like for him
21 to answer it.

22 A Mr. -- Mr. Verez.
23
24
25

Cunningham - Direct

45.

1 BY MR. BLUE: (Continuing)

2 Q And did you talk to him personally,
3 sir?

4 A Yes, I did.

5 Q Tell us the substance of the
6 conversation between you and Mr. Verez at 7:00, sir.

7 A Well, the nature -- the nature of
8 the call concerned the fact that he was still delayed from
9 his original intended arrival, that he was in Virginia,
10 that basically he was expecting to see me within a -- within
11 a few hours, that he was going to call back, and -- and then
12 later on there was another --

13 Q All right, now wait just a minute,
14 sir. As a result of that call, did you contact anyone
15 with the DEA or the Virginia State Police, sir?

16 A They were with me at the time.

17 Q They were with you at the time.
18 Had you yourself called Mr. Verez's home in Florida on that
19 particular day or on October 1st, the day before that?

20 A Yes, I had.

21 Q And what had -- what was your call
22 to Mr. Verez's home about?

23 A Because when --

24 MR. VAUGHN: Object, objection.

25 Same objection, Your Honor. Now we're going

Cunningham - Direct

46.

1 back to something -- the search takes place
2 on October 3rd. Now we're going back to
3 something on October 1st, which I think is
4 too far in time and distance to have any
5 relevance.

6 THE COURT: Mr. Blue asked him
7 first or second. Well let's stay with the
8 second, Mr. Blue. I assume you -- you want --
9 you're trying to find out --

10 MR. BLUE: Judge, I'm getting now --
11 if you'll allow me, sir, I'm getting now that
12 the reason he wanted -- he called and the
13 reason he wanted Mr. Verez to meet him, he knew
14 that they -- he was bringing some cocaine up
15 here and I've got to prove that he had know-
16 ledge of it, sir.

17 THE COURT: Well the question is,
18 if you want to ask him, had he called Mr.
19 Verez's home on October the 2nd. I assume
20 that's what you want to ask him.

21 MR. BLUE: I asked him about the
22 1st first.

23
24 BY MR. BLUE: (Continuing)

25 Q Do you know what day you called

Cunningham - Direct

47.

1 Mr. Verez's home, sir?

2 A There were several calls.

3 Q Did you call him on October 1st
4 and 2nd or did you call on the 2nd, sir?

5 A Originally called on a -- on the
6 Thursday there, whatever date that was. It was on a
7 Thursday just about noon.

8 Q And did you call anytime after that,
9 sir?

10 A Yes, I did.

11 Q What day was that?

12 A I called again on Friday and Satur-
13 day and on Sunday.

14 Q For what purpose did you call to
15 Mr. Verez's home in Miami, sir?

16 A Because -- because Mr. Verez had
17 said that he was coming up on that previous Thursday and
18 Mr. Verez did not show up nor call and so we placed a call
19 to find out if he'd been on the way or whether something
20 had happened or what have you because he had me basically
21 waiting in an office waiting for -- waiting for his call
22 and I didn't want to miss it.

23 Q When you say we placed the call,
24 sir, who is we?

25 A Russ Chase was with me.

Cunningham - Direct

48.

1 Q Anybody else?

2 A On the original -- original call,
3 there was myself, Russ Chase, Agent Brown was there, and
4 also a representative of the Virginia State Police.

5 Q Mr. Cunningham, on October 2nd
6 when you called, was there any discussion about what Mr.
7 Verez was supposed to be bringing with him?

8 A Well, this had -- he indicated
9 that he was coming to talk about cocaine.

10 Q Did he -- did he use the word
11 cocaine or did he --

12 A No, he did not.

13 Q -- use a code word?

14 A He used a code word.

15 Q What was the code word?

16 A Lady.

17 Q Did you know by the use of that
18 code word that he was talking about cocaine?

19 A Yes, I did.

20 Q Did you tell Mr. -- Agent Brown
21 that he was talking about cocaine?

22 A Yes, I did.

23 Q And on what day was this, sir?

24 A This was on that very first day
25 and previous conversations before that.

Cunningham - Direct

49.

1 Q When we say the very first day,
2 that would have been before October 1st or 2nd, sir?

3 A Yes.

4 Q And on October 1st and 2nd also?

5 A Yes.

6 Q Now, Mr. Cunningham, you got a
7 call you said at nine o'clock on October 2nd, around nine
8 o'clock. Who called who at nine o'clock, sir?

9 A It was Mr. Verez calling me.

10 Q And what was the substance of that
11 conversation at nine o'clock, sir?

12 A That his car had broken down in
13 this vicinity, that they were no longer able to go on, that
14 it was going to be necessary for me to come down with Mr.
15 Chase to meet him down here.

16 Q Did he give you a location to meet
17 him, sir?

18 A Yes, he did.

19 Q What location did he give you?

20 A It was the -- at the hotel where
21 they were staying at.

22 Q Kings Motor Inn in Ashland, sir?

23 A Correct.

24 MR. VAUGHN: Objection to Mr. Blue
25 leading his witness.

Cunningham - Direct

50.

1 BY MR. BLUE: (Continuing)

2 Q Did he -- did he give you a room
3 number?

4 A No.

5 Q Did he tell you how you -- how he --
6 did he describe the car he was traveling in, sir?

7 A Yes, he did.

8 Q Tell us what information he gave
9 you about the car he was traveling in, sir.

10 A He gave me the year and model.

11 Q What was the year and model?
12 What were the year and model?

13 A I -- to tell you the truth, I don't
14 remember. I just wrote it down at the time.

15 Q You wrote it down, sir?

16 A Uh huh.

17 Q What did you do with what you
18 wrote down, sir?

19 A I gave it to the agents as they came
20 into our office.

21 Q What agents, sir?

22 A To Agent Brown and Degravio and
23 various Virginia State people.

24 Q Did he give you the license number
25 of the vehicle he was driving?

Cunningham - Direct

51.

1 A No, he didn't.

2 Q Did you ask for it?

3 A No.

4 Q Now did you receive any other calls
5 or did you make any calls to Mr. Verez after nine o'clock
6 on that night, sir?

7 A After coming down here and going
8 to the hotel, called from the lobby up to Mr. Verez.

9 Q How about before you came down
10 here?

11 A No.

12 Q Now where did you receive these
13 calls that you told us about, the one at seven and nine p.m.
14 on the night in question, sir? Where did you receive them?

15 A At our office at McLean Typographics.

16 Q Would you repeat that, sir? I
17 didn't understand.

18 A It was at the office I work at
19 at McLean Typographics in McLean, Virginia.

20 Q Now did you, after you received this
21 call around nine o'clock, what did you do, sir, and if so,
22 tell us how you did it and when you -- if you came to Ashland
23 tell us when you arrived here.

24 A Well, actually the police were in
25 the office at the time of the second call and they proceeded

Cunningham - Direct

52.

1 with us down to the Ashland area. They had -- where they
2 had ascertained that Mr. Verez was and then Mr. Chase and I
3 proceeded to Room --

4 Q Well let me ask you a question.
5 On either of these calls, the seven o'clock or nine o'clock
6 call, did Mr. Verez indicate to you whether he had the lady
7 with him?

8 A He indicated that he had it around
9 him somewhere, I mean in his immediate vicinity.

10 Q Well tell us what words he used.
11 What did he say, sir?

12 A He indicated that he had it in hand.

13 Q In where?

14 A In hand.

15 Q In hand. All right, Mr. Cunningham,
16 you and Mr. Chase came down. How did you get down here? Tell
17 me about that.

18 A We came down in Mr. Chase's car.

19 Q Was anybody in the car with you?

20 A No.

21 Q Just you and Mr. Chase?

22 A Yes.

23 Q Were you following or being followed
24 by any car?

25 A We were following.

Cunningham - Direct

53.

1 Q Who were you following?

2 A Various elements of the Virginia
3 State Police as well as -- as well as Agent Brown and the
4 federal.

5 Q When you arrived in the Ashland
6 area, or this area, whatever you call it -- term it, sir,
7 did you meet with other law enforcement agencies?

8 A Yes, we did.

9 Q Where did you meet?

10 A In basically an area behind a
11 shopping center.

12 Q Were you instructed to go to the
13 room of Milton Vidal --

14 MR. VAUGHN: Objection to Mr.
15 Blue's leading.

16 MR. BLUE: I don't think that's
17 leading, if Your Honor please.

18 MR. VAUGHN: Were you instructed
19 to go to the room? You can ask him what he
20 did. When Mr. Blue says did you do something
21 that calls for a yes or no answer, it certainly
22 is leading.

23 THE COURT: I think it's leading,
24 Mr. Blue, but I realize you're trying to help
25 me, Mr. Blue, but go ahead and ask the question

Cunningham - Direct

54.

1 properly. What did he do then?

2
3
4 BY MR. BLUE: (Continuing)

5 Q After you had your meeting behind
6 the shopping center, what did you personally do, Mr. Cunning-
7 ham, and I want to know each step you made? What did you
8 do from the time you left that shopping center until you
9 went to the room?

10 A Until I went to the room?

11 Q Yes, sir.

12 A You mean up -- you're not talking
13 about the room. We were actually talking about from the
14 time we left the shopping center?

15 Q From the time you left the shopping
16 center.

17 A We drove directly to the hotel.

18 Q All right. What did you do when
19 you got to the motel?

20 A I went to the lobby, asked for
21 the room number for, what is it? I'm not sure of his name
22 again, Mr. Vidal, and then -- and then once got -- I got the
23 room number, we called there to find out if -- if Mr. Verez
24 was in the room.

25 Q Well, let me ask you this, sir. Do

Cunningham - Direct

55.

1 you know approximately what time that was done?

2 A Approaching one in the morning,
3 somewhere around in there.

4 Q Now who was with you when you got
5 the information about where the room was and --

6 A I was by myself. Mr. Chase was
7 in the car outside.

8 Q Any of the agents with you?

9 A No.

10 Q Did you look for -- did you or
11 anyone that you know of look for the car that had been
12 described to you?

13 A I --

14 MR. VAUGHN: Objection, Your Honor.
15 He can testify to what he did. He can't
16 testify to what somebody else did. Mr. Blue's
17 question, did you or somebody else look for
18 the car, that's -- obviously there's a large
19 number of people involved.

20

21

22 BY MR. BLUE: (Continuing)

23 Q Well did you look for the car, sir?

24 A No, not particularly.

25 Q Did you get the room number when

Cunningham - Direct

56.

1 you made inquiry at the desk?

2 A Yes, I did.

3 Q What room number was it, sir?

4 A I really don't remember offhand.

5 Q Did you and Mr. Chase go to that
6 room?

7 A Well, we drove around the back
8 of the, or the area that the room was indicated to be in
9 and we actually sort of missed the room first and drove
10 back to the area when Mr. Verez came out of the room and
11 down to meet us.

12 Q All right, now Mr. Verez then came
13 out of the room on the first occasion and came down to meet
14 you and Mr. Chase, is that right?

15 A Correct.

16 Q Were you all alone?

17 A Was who alone?

18 Q You and Mr. Chase.

19 A Me and Mr. Chase were alone at
20 that point.

21 Q All right, what did you do when
22 Mr. Verez came down to meet you, sir?

23 A We greeted him and he was looking
24 about --

25 Q Describe the greeting, if you will,

Cunningham - Direct

57.

1 sir. You know, tell us what kind of greeting was it?

2 A It was like hello, Lou, and how
3 you doing and, you know, just a general long-time, no-see
4 type of greeting.

5 Q All right, sir, and what did you
6 all do after greeting each other?

7 A Mr. Verez went and got a soda from
8 a soda machine and was, obviously, looking all about to
9 see whether or not we'd been followed or observed. Then
10 we -- we all proceeded, at his request, back up to his room.

11 Q All right, what happened when you
12 got to the room, sir?

13 A Well, we went into the room. The
14 other gentleman over there was in the first bed in the room
15 and Mr. Verez was in the second bed furthest back. He
16 went in ahead of us and sat down in the chair at the desk
17 and we talked for a few minutes briefly, just basically
18 exchanging pleasantries and just background chit-chat and
19 at which point, you know, he -- the other gentleman started
20 to wake up and was talking about how tired he was from all
21 the driving on the trip and the breaking down of the car and
22 how unreliable it had proved and -- and actually was com-
23 plaining about the fact that he'd had to do all the driving.
24 At that point the -- it was established that we were there
25 and he'd more or less established that there wasn't anybody

Cunningham - Direct

58.

1 following us and proceeded to produce out a plastic bag
2 with cocaine in it.

3 Q Who pro -- who proceeded to produce
4 plastic bags?

5 A Mr. Verez asked the other gentleman
6 to go get the thing from where he'd put it.

7 Q Did they -- did he, in fact,
8 produce plastic bags at that time?

9 A Yes, he did.

10 Q Were the bags open?

11 A No.

12 Q Did you see inside the bags?

13 A Yes, I did. It was --

14 Q Did you, after the bags were
15 produced, did you leave the room?

16 A No.

17 Q Who left the room?

18 A Mr. Chase.

19 Q Why did he leave the room or do
20 you know?

21 A He left the room to go downstairs
22 to obtain some -- a bottle of clorox for testing.

23 Q Who told him to do that, sir?

24 A That was by my request that he went
25 downstairs to do that.

Cunningham - Direct

59.

1 Q To get a bottle of clorox, is that
2 right, sir?

3 A Uh huh.

4 Q And what --

5 A And it was also to indicate that --
6 that we'd actually seen goods.

7 Q Now at that point, sir, did he
8 come back -- did Mr. Chase come back to the room?

9 A Yes, he did.

10 Q What went on between you and Mr.
11 Verez while Mr. Chase was gone from the room, sir? Did
12 ya'll talk?

13 A We were talking just precursorially
14 but he was sitting on the bed and he was taking some of the
15 substance out of the bag and putting it out and he was sort
16 of fiddling around with one of the -- the rocks that was in
17 it, and he -- he --

18 Q Well then one of the bags was open
19 then, wasn't it, Mr. Cunningham?

20 A By this time, yes.

21 Q All right. Now what -- what --
22 anything else go on between you and Mr. Verez while Mr.
23 Chase was gone?

24 A Well the only thing was that he
25 was sort of in a playful mood and he jumped up on the chair

Cunningham - Direct

60.

1 next to the doorway to jump down on Mr. Chase as he came in
2 with the -- with a big rock in his hand, and I was appre-
3 hensive of the fact that he was going to be shot if he
4 stayed there or jumped down suddenly as he came in and I
5 tried to get him back to the -- back to the bed and away
6 from the --

7 Q You were apprehensive that who
8 was going to be shot?

9 A Mr. Verez.

10 Q This was before Mr. Chase came back?

11 A Before -- while Mr. Chase was out
12 getting the --

13 Q Did you tell Mr. Verez you were
14 apprehensive about him getting shot, sir?

15 A No. I just saw that he was going
16 to jump down on Mr. Chase as he came in and I mean he meant
17 it in joke and jest but the sudden movement I was afraid of.
18 So I tried to get him to come back to the bed.

19 Q So what did he do?

20 A He came back to the bed.

21 Q Now, Mr. Cunningham, did Mr. Chase
22 return?

23 A Yes, he did.

24 Q Who opened the door when Mr. Chase
25 returned?

Cunningham - Direct

61.

1 A Mr. Chase opened the door.

2 Q Mr. Chase opened the door.

3 A He knocked and -- and I'm -- I
4 think it was the other gentleman that opened the door or
5 I'm not absolutely sure. I can't really say that. I know
6 I was sitting on the bed with Mr. Verez at the time. I'm
7 not sure whether Russ just opened the door when he came back
8 to it. I'm sure that the door was locked and I don't know
9 if it was Luis that got up to open it or whether it was the
10 other gentleman who went to open it.

11 Q Let's go back over that, sir. You
12 were sitting on a bed with Mr. Verez, you say, when Mr. --

13 A Yes.

14 Q Huh?

15 A Yes.

16 Q And what -- did this room have --
17 was it a large room with two beds in it?

18 A Yes.

19 Q Were you sitting on the bed closest
20 to the door or --

21 A Furthest away.

22 Q Beg your pardon?

23 A Furthest away from the door.

24 Q Furthest away. And you know you
25 were sitting there on the bed with Mr. Verez, is that right?

Cunningham - Direct

62.

1 A Correct.

2 Q And you know the door was locked --

3 MR. VAUGHN: Objection, Your Honor.

4 This is Mr. Blue's witness and --

5 MR. BLUE: Well, I'm asking him --

6 MR. VAUGHN: -- Mr. Blue can ask
7 questions. He cannot cross-examine and he
8 cannot antagonize a witness or go back and
9 cross-examine on direct. Mr. Blue is, in
10 fact, testifying at this point.

11 THE COURT: Mr. Cunningham testi-
12 fied that he doesn't know whether the door was
13 locked or not but he assumes it was locked and
14 he doesn't know who opened it but he thinks
15 Mr. Vidal opened it.

16 MR. BLUE: You got that message,
17 Judge?

18 THE COURT: Yes, sir.

19 MR. BLUE: That's all I want to
20 get over. That's all right, Judge. Thank you.

21 THE COURT: That's the way I heard
22 it.

23
24 BY MR. BLUE: (Continuing)

25 Q Now when Mr. Chase came back into

Cunningham - Direct

63.

1 the room after going to get the clorox for you, sir, tell
2 the Judge exactly what you saw happen when he came in the
3 door, sir.

4 A Well the moment that Mr. Chase
5 came in the door, right behind him, in rushed the police
6 representatives.

7 Q All right, go ahead.

8 A And basically came in and saw the --
9 the cocaine on the --

10 Q No, I don't want you to tell what
11 they saw --

12 MR. VAUGHN: Objection.

13 Q (Continuing) -- but tell what you
14 saw.

15 MR. VAUGHN: Objection.

16 Q (Continuing) -- That's all I
17 want you to say.

18 MR. VAUGHN: Objection, Your Honor.

19 Mr. Blue asked him --

20 A I saw them -- I saw them come in
21 and see exactly what was there. I mean me and Mr. Verez
22 were right there at the bed and that there was a bag between
23 us and that he had --
24
25

Cunningham - Direct

64.

1 BY MR. BLUE: (Continuing)

2 Q What else did you see, sir, if
3 anything?

4 A (No answer).

5 Q How did they come in? Describe
6 their entry, sir.

7 A They rushed it.

8 Q And what did they do when they got
9 in there?

10 A They immediately came over and
11 saw what the substance was. They -- they proceeded to read
12 the rights to everyone there and write up -- write everybody
13 up.

14 Q Did you ever hear the word search
15 warrant mentioned when Mr. Chase came back, sir?

16 A When Mr. Chase came back into the
17 room?

18 Q Yes, sir.

19 A I heard them ask Mr. Verez if there
20 was a -- if he would give them permission to go through the
21 rest of the room.

22 Q You heard them ask that, sir?

23 A The police.

24 Q Do you know which police?

25 A No, I did not, because my head was

Cunningham - Direct

65.

1 turned away from them at that time.

2 Q But you did hear them ask if they
3 could go through the rest of the room, is that what you're
4 saying?

5 A Yes.

6 Q At that time had they found the
7 cocaine?

8 A Yes.

9 MR. VAUGHN: Objection, Your Honor.
10 He's asking him to testify to what somebody
11 else has done.

12 THE COURT: Yes, sir. Go ahead,
13 Mr. Blue.

14
15
16 BY MR. BLUE: (Continuing)

17 Q On October 2nd, 1983, Mr. Cunning-
18 ham, what time of day or night did you notify the police
19 that Mr. Verez was coming?

20 A Actually I notified them several
21 times that he was coming because he had changed the time so
22 many times. He was actually originally coming on Friday
23 and then that Friday became Saturday and Saturday became
24 Sunday and there was a series of phone calls indicating
25 delays all along the way.

Cunningham - Direct

66.

1 Q Would you tell us what you told
2 the police he was coming for?

3 MR. VAUGHN: Objection.

4 THE COURT: Why is that material,
5 Mr. Blue? He's already said that there's --
6 he and Mr. Verez had had conversations on
7 Thursday, Friday, Saturday and Sunday, and
8 then we got down to the two on Sunday; at
9 seven o'clock he'd be delayed and nine o'clock
10 he was there.

11
12
13 BY MR. BLUE: (Continuing)

14 Q Mr. Cunningham, talking about
15 Milton Vidal, when did you first hear the name of Milton
16 Vidal, sir?

17 A When Mr. Verez told me that the
18 room would be in his name.

19 Q And that would be on October 2nd
20 sometime between seven and nine?

21 A That would be the -- the second
22 phone call.

23 Q At nine o'clock?

24 A Yes.

25 MR. BLUE: All right, sir. I have

Cunningham - Cross

67.

1 no further questions of this witness at this
2 time, if Your Honor please.

3 THE COURT: Mr. Vaughn.

4
5
6 CROSS-EXAMINATION

7 BY MR. VAUGHN:

8 Q Mr. Cunningham, you've known the
9 defendant since 1977?

10 A Yes, I have.

11 Q And during the time from 1977 to
12 1988 -- 1977, excuse me, to 1980, were you all involved in
13 drug transactions together?

14 A Yes, we were.

15 Q Buying and selling cocaine?

16 A Yes.

17 Q He would supply you with cocaine?

18 A Yes.

19 Q Ya'll did this on numerous
20 occasions during that time period, is that correct?

21 A Yes, we did.

22 Q In 1980 you all ceased your
23 business relationship in reference to narcotics?

24 A Yes, we did.

25 Q And subsequent to the time of 1980

Cunningham - Cross

68.

1 and back during -- on up to the time in 1983, from time
2 to time would Mr. Verez call and ask if you were still
3 interested in selling cocaine?

4 A Yes, he would.

5 Q So ya'll kind of had kind of an
6 informal relationship during that interim period?

7 A Yes, we did.

8 Q And he would call on a regular
9 basis, would he not, to see if you were still interested in
10 purchasing cocaine?

11 A I might not hear from him for
12 months and then all of a sudden I'd get two or three calls.

13 MR. BLUE: Now, Judge, I'm really
14 not objecting, but this is what you said I
15 couldn't do and the Commonwealth is doing it.
16 What -- what relevance does that have? I'd
17 like for him to get to October 2nd or 3rd,
18 Judge.

19
20
21 BY MR. VAUGHN: (Continuing)

22 Q Mr. Verez, during the transaction --

23 MR. BLUE: That's Mr. Cunningham.

24 Q (Continuing) -- Cunningham, during
25 the transactions that you've had with Mr. Verez, did you ever

Cunningham - Cross

69.

1 know him to be armed?

2 A Yes, I have.

3 Q Have you ever seen him be armed
4 and violent?

5 A Yes.

6 Q And during the transactions that
7 you all had, during the course of these drug transactions,
8 did you ever, during the course of the transaction, know
9 him to be armed at the time of the delivery?

10 MR. BLUE: Now, Judge, I'm going
11 to object to that again. That has --

12 MR. VAUGHN: Your Honor, Mr. Blue --

13 MR. BLUE: -- nothing to do with
14 it and I -- I -- I am saying that I'm object-
15 ing on the grounds that it has no relevancy
16 to this hearing, Judge, and you would not let
17 me go back in the past time, but the Common-
18 wealth is getting a privilege that I didn't
19 have.

20 THE COURT: Yeah, but, Mr. Blue,
21 you raised the question of the way they went
22 into the room and Mr. Vaughn has a right on
23 cross-examination of Mr. Cunningham to find
24 out what Mr. Cunningham knew about the past
25 performance of Mr. Verez.

Cunningham - Cross

70.

1 Go ahead, Mr. Vaughn.

2 MR. BLUE: I note my exception,
3 if Your Honor please.

4 MR. VAUGHN: Your Honor, Mr. Blue
5 raised the issue of force and I think that's --

6 THE COURT: Let's go ahead.
7
8

9 BY MR. VAUGHN: (Continuing)

10 Q On other occasions when you've
11 been with Mr. Verez during drug transactions, have there
12 been other people that were armed and present?

13 A On a couple of occasions.

14 Q On other occasions that you've done
15 drug transactions with Mr. Verez, has he met you at one
16 location and then taken you to another location where the
17 drugs were?

18 A He's done it innumerable ways.
19 That's one of the ways of doing it.

20 Q And other times when you've met
21 Mr. Verez for a drug transaction, have there been other
22 people at another location watching your transaction?

23 MR. BLUE: Well now, I don't think
24 he can tell what other people were doing,
25 Judge.

Cunningham - Cross

71.

1 MR. VAUGHN: He can tell if he
2 knows or not.

3 MR. BLUE: I would object to that
4 question. No, I said that too, but you said
5 that was wrong. So I object to his doing that,
6 Judge.

7 THE COURT: Well, ya'll stop talking
8 to each other and let's get the evidence before
9 the Court. I'll disregard anything --

10 MR. VAUGHN: Your Honor, the Common-
11 wealth is trying rather desperately and it's
12 difficult with Mr. Blue. The issues here are
13 very simple. Mr. Blue --

14 THE COURT: Yes, sir. You can argue
15 later, Mr. Vaughn. Just ask him the question.
16 I'm going to let you ask him.

17
18
19 BY MR. VAUGHN: (Continuing)

20 Q You have seen Mr. Verez armed?

21 A Yes.

22 Q And you have set up transactions
23 where you went to other locations? You would meet him and
24 then go to a different location?

25 A Yes.

Cunningham - Cross

72.

1 Q And the transaction that went down
2 on the early morning hours of October 3rd, that was original-
3 ly set for three days earlier to go down in Alexandria, I
4 believe?

5 A (No answer).

6 Q Or Northern Virginia somewhere?

7 A In Northern Virginia.

8 Q Three days prior to the time it
9 actually went down?

10 A Yes.

11 Q Now Mr. Blue asked you the question
12 when Mr. Verez called he had to say -- when he said he had
13 the drugs at hand. Did you know where the drugs were?

14 A No, I did not.

15 Q When you came to Ashland?

16 A No.

17 Q Did you know, for instance, whether
18 the drugs were in the room or in the car?

19 A No, I did not.

20 Q Did you know whether the drugs were
21 in the room or in a separate room or at an entirely different
22 location?

23 A No, I did not.

24 Q Would there have been anything
25 unusual in prior procedures that you'd had with Mr. Verez

Cunningham - Cross

73.

1 for you to meet him at that room and then go to another
2 location for the actual delivery of the drugs?

3 A That could easily have happened.

4 Q Now you've indicated when Mr. Blue
5 asked the question whether you knew Mr. Vidal, the other
6 gentleman seated here on Mr. Blue's left is the other gentle-
7 man that was in the motel room on the day in question, is
8 that correct?

9 A Yes, he is.

10 MR. VAUGHN: That's all the
11 questions of this witness.

12 THE COURT: Mr. Blue.

13 MR. BLUE: I have one or two
14 questions.

15 THE COURT: Yes, sir. Ask the
16 questions.

17
18
19 REDIRECT EXAMINATION

20 BY MR. BLUE:

21 Q Where did these occasions take
22 place that you saw men with arms?

23 MR. VAUGHN: Objection, Your Honor.
24 That goes beyond the scope of the question.
25 The only purpose for the question is to show

Cunningham - Redirect

74.

1 that there could be some apprehension for
2 arms. The details of those have no -- is not
3 germane and is not relevant.

4 MR. BLUE: Well, I think that I have
5 to see if he's -- I can test his word, Judge.
6 I want to know where it happened.

7 MR. VAUGHN: How can Mr. Blue test
8 his word, and there's no relevance beyond what
9 he's already testified to.

10 THE COURT: Yes, well if somebody
11 takes the stand and says that he never had seen
12 Mr. Verez with arms, I think Mr. Blue has the
13 right to do that. So I think he has a right
14 to ask this question.

15 MR. BLUE: Thank you, sir.

16 A I had seen the -- I had seen Luis
17 armed at his house. I had seen him at a point where he took
18 over my house when he was armed.

19
20
21 BY MR. BLUE: (Continuing)

22 Q When was this, sir? How -- what
23 year?

24 A In 1980.

25 Q And when was it at his house?

1 A Back in 1978 or so right around
2 that area, right -- there were several times when I was
3 exposed to his having been armed at his house and other
4 times that I had seen him with a pistol and --

5 Q Why were you -- why --

6 A -- had talked to him about it.

7 Q -- would you be at his house, Mr.
8 Cunningham?

9 MR. VAUGHN: Objection.

10 THE COURT: You've gone into some-
11 thing else now, Mr. Blue.

12
13
14 BY MR. BLUE: (Continuing)

15 Q As far as this particular incident
16 was concerned, you were told to come to Room 205, or Milton
17 Vidal's room, at Kings Motor Inn, were you not, Mr. Cunning-
18 ham?

19 A I was told to come down here and
20 find out the room number at the -- at the desk.

21 Q And you'd been given a description
22 of the car and you were able --

23 MR. VAUGHN: Your Honor, I --

24 Q -- to find the room that you were
25 told --

Cunningham - Redirect

76.

1 MR. VAUGHN: Object at this time.
2 Q -- to ask for, is that right, sir?
3 MR. VAUGHN: Mr. Blue -- not only
4 is Mr. Blue testifying, he's being repetitive.
5 THE COURT: You're going over the
6 same thing again, Mr. Blue, and Mr. Vaughn --
7 MR. BLUE: All right, sir.
8 THE COURT: -- didn't ask anything
9 about that.
10 MR. BLUE: All right, I have no
11 further questions, Judge.
12 THE COURT: All right. May Mr.
13 Cunningham be excused?
14 MR. BLUE: No, sir.
15 MR. VAUGHN: Well --
16 THE COURT: All right. Go back
17 to the witness room, Mr. Cunningham. Do not
18 discuss what's gone on in the Courtroom.
19
20 * * * * *
21 WITNESS STOOD ASIDE
22
23
24 MR. VAUGHN: Your Honor, if it
25 please the Court, it's one o'clock and I don't

1
2
3
4
5 LAWRENCE RUSSELL CHASE, called as
6 a witness by counsel for the defendants, first being duly
7 sworn, testified as follows:

8
9 DIRECT EXAMINATION

10 BY MR. BLUE:

11 Q Would you state your name, sir,
12 and where you live?

13 A Lawrence --

14 MR. VAUGHN: Your Honor, I -- at
15 this point I don't have any objection to his
16 name and his business address, which Mr. Blue
17 has, but the witness has asked that he not have
18 to use his home address and we have a business
19 address for his own privacy and security
20 reasons. I don't have -- I think that's a very
21 worthwhile request. It would serve no rele-
22 vance. Mr. Blue got service on him at his
23 business address. He's available there. His
24 home address he would like not to be a matter
25 of record and I can appreciate that concern.

1 MR. BLUE: He's a witness in a
2 case, Judge, and I think it's necessary to
3 know his address if I want him again.

4 THE COURT: No, I don't know
5 whether it's relevant or not as to this
6 hearing, Mr. Blue.

7 MR. VAUGHN: You've got --

8 MR. BLUE: All right.

9 MR. VAUGHN: He has the business
10 address that he got service on, which is the
11 only purpose for having an address.

12 THE COURT: I'll overrule your
13 objection, Mr. Blue, and let him testify as
14 to --

15 MR. BLUE: I didn't make the
16 objection. He made it, Judge.

17 THE COURT: Well, I'll sustain his
18 objection on behalf of Mr. Chase and let him
19 state his business address.

20 MR. BLUE: We note our exception,
21 if Your Honor please.

22 THE COURT: Yes, sir.

23 BY MR. BLUE: (Continuing)

24 Q Mr. Chase, would you kindly state

1 your name again and state your business address?

2 A Lawrence Russell Chase; the address
3 is 6835 Tennyson Drive in McLean.

4 Q And how old a man are you, sir?

5 A I'm thirty-eight.

6 Q Now, Mr. Chase, do you know Milton
7 Vidal?

8 A No. I've met him once.

9 Q When did you meet him?

10 A The night in question at the --

11 Q That would be either October 2nd
12 or 3rd, right?

13 A Yes, sir.

14 Q Do you know Luis Verez?

15 A Yes, sir, I do.

16 Q How long have you known him, sir?

17 A Approximately four or five years.

18 Q Now, are you associated in business
19 with Mr. Cunningham, sir?

20 A Yes.

21 Q I ask you to direct your attention
22 to October 2nd of 1983 and the hours following whatever
23 my question relates to. Did you at any time on October 2nd
24 talk to Milton Vidal by telephone, sir?

25 A No.

1 Q Did you at any time talk to Luis
2 Verez by telephone?

3 A Yes.

4 Q Where were you at the time you
5 talked to him and who initiated the call? I mean by that,
6 did you call him or did he call you?

7 A I was at the typographics business.

8 Q That's the one you just gave the
9 address of?

10 A Yes.

11 Q All right. Who initiated the call,
12 you or Mr. Verez?

13 A He had just called and told us
14 to meet him at a rest area and then he called back and I
15 received his call to the typographics department telling us
16 that he was not going to be at the rest area.

17 Q Did he give you a reason for not
18 being at the rest area?

19 A His car had broken down.

20 Q Who -- in whose company were you
21 when you received that call, sir?

22 A My partner, Ray, Bill Brown --

23 Q Who is Bill Brown?

24 A From DEA.

25 Q What's DEA?

Chase - Direct

83.

- 1 A Drug Enforcement Agency.
- 2 Q In other words, he was a federal
- 3 officer?
- 4 A Yes.
- 5 Q Who else was there, sir?
- 6 A Sam Gray was there.
- 7 Q Who's he with?
- 8 A The State Police.
- 9 Q Virginia State Police?
- 10 A Yes.
- 11 Q Anybody else?
- 12 A There were a bunch of other police-
- 13 men, none of which I could tell you their names.
- 14 Q Were they federal policemen or
- 15 Virginia State Police, sir?
- 16 A Probably both. I --
- 17 Q All right, sir. Now when you
- 18 received that call, did Luis Verez tell you where he was
- 19 and did you make any arrangements with him concerning the
- 20 rest of the time after that call?
- 21 MR. VAUGHN: Objection to Mr.
- 22 Blue's leading. He can ask if he received
- 23 the call and what took place.
- 24 THE COURT: Just ask him what the
- 25 conversation was, Mr. Blue.

Chase - Direct

84.

1 BY MR. BLUE: (Continuing)

2 Q State the nature of your conversa-
3 tion with Mr. Verez, Mr. Chase, please.

4 A Well, there weren't -- really
5 wasn't much conversation between him and I. As soon as
6 he --

7 Q Tell us what was between you and he.

8 A He related that he was not going
9 to be where he had initially said and said -- asked me
10 whether Ray was still there, at which time I put Ray on the
11 phone with him.

12 Q All right, sir. After that conver-
13 sation -- well, do you know what time that conversation took
14 place, Mr. Chase? What time of day or night did it take
15 place, sir?

16 A About nine or ten o'clock p.m.

17 Q Do you know what day? Would that
18 be October 2nd, sir?

19 A Yes.

20 Q Now after that telephone call,
21 did you come to Hanover County?

22 A Yes.

23 Q How did you get here, sir?

24 A I traveled in my own vehicle
25 following other vehicles down here.

Chase - Direct

85.

1 Q Who were in the other vehicles,
2 if you know?

3 A Bill Brown, Sam Gray and various
4 other policemen.

5 Q Now when you first arrived at
6 Ashland or Hanover County, where did you go, sir?

7 A There is a shopping center and we
8 met behind the shopping center, the shopping mall close by
9 the Kings Court Inn.

10 Q How were you dressed on that
11 occasion, Mr. Chase?

12 A Blue jeans, long-sleeved casual
13 shirt and a blue jacket and a hat, a ball cap.

14 Q After you met or when you met
15 behind the shopping center, was there anything done to your
16 person by the police?

17 A I was patted down.

18 Q Anything else, sir?

19 A Not that I can recall, no, sir.

20 Q Were you equipped with any equip-
21 ment, sir?

22 A Yes, sir.

23 Q What were you equipped with?

24 A A hidden microphone.

25 Q A hidden microphone?

Chase - Direct

86.

1 A Yeah.

2 Q Is that -- and who put this micro-
3 phone on you and what was the reason for it, sir, or do
4 you know?

5 MR. VAUGHN: Your Honor, at this
6 point the Commonwealth objects. We're going,
7 again, afield of Mr. Blue's motion. If he
8 gave permission -- there's no search question
9 if he gave them permission to wire him. It's
10 not the purpose for Mr. Blue's motion and who
11 put him on it or whatever else happened is
12 not an issue and it's not appropriate at this
13 time. There's no relevance to Mr. Blue's
14 motion whether he was. He's testified he was
15 wired. If Mr. Blue asks him, he'll say he gave
16 permission, so there's no search issue there.

17 MR. BLUE: If Your Honor please, I
18 think I know what I'm doing and I'll -- even
19 if you're going to sustain his objection, I
20 want to vouch the record. I think that it is
21 necessary and relevant to this hearing to
22 have this evidence in.

23 THE COURT: Okay, well I'll let him
24 answer who put it on there and when it was put
25 on there and if he knows the reason why. Go

Chase - Direct

87.

1 ahead.

2 MR. BLUE: All right, sir.

3

4

5 BY MR. BLUE: (Continuing)

6 Q Tell us the reason why. You've
7 told us it was put on. Do you remember who put it on?

8 A Yes.

9 Q Who put it on?

10 A Sam Gray and Bill Brown.

11 Q And what was the reason for putting
12 it on you, sir?

13 A (No answer).

14 MR. VAUGHN: Your Honor, he can
15 testify to the reason if he knows. If he did
16 it at their direction, then I don't think he
17 can answer.

18

19

20 BY MR. BLUE: (Continuing)

21 Q Well if you know tell us what the
22 reason was -- if you don't know the reason, I agree. You
23 don't have to make up one, but you -- if you do know it, I
24 want you to tell the Judge what reason was it for putting
25 that equipment on you.

Chase - Direct

88.

1 A They asked me to put it on and I
2 did not object to it, so I really don't know their reason
3 for it.

4 Q You don't know the reason?

5 A I was never point-blank told this
6 is why we're doing this.

7 Q All right, sir. Do you know
8 whether or not somebody on the other end of that mike could
9 hear what was being said when you talked?

10 MR. VAUGHN: Objection unless he
11 can testify to that from his own experience.

12 MR. BLUE: Well I said do you know
13 whether or not. That's a fair question, Judge.
14 It's not leading.

15 THE COURT: Yes, he can answer it
16 if he has personal knowledge of it.

17 MR. BLUE: I want him to answer it.
18 That's all.

19 A There were tests made and there was
20 somebody at the other end saying yes, we hear you.

21
22
23 BY MR. BLUE: (Continuing)

24 Q Thank you, sir. Now after this
25 equipment was installed on you, where was it installed on

Chase - Direct

89.

1 you? I mean what location were you at when it was put on
2 you?

3 A I was at --

4 MR. VAUGHN: Objection. Again, as
5 a matter of relevance, what difference does
6 it make where he was. If Mr. Blue could
7 maintain or try to maintain some relevance,
8 what difference does it make where the wire
9 was put on him.

10 THE COURT: What difference does
11 it make, Mr. Blue, whether it was put on in
12 Northern Virginia, McLean, or in Ashland at
13 the shopping center, or before he went in the
14 room?

15 MR. BLUE: Judge, I think it only
16 makes a difference when you get ready to decide
17 this case so that Mr. Vaughn can't say well,
18 you didn't prove where it was put on. You
19 don't -- we don't even know if it was working
20 or anything like that. That's why I want it
21 in the record, Judge.

22 THE COURT: All right. Go ahead
23 and ask the question.

24 MR. VAUGHN: If Mr. Blue would like
25 to proffer for the Court what possible

Chase - Direct

90.

1 relevance it has, then I'll withdraw the
2 objection. But it doesn't have any.

3 MR. BLUE: It does have some rele-
4 vance to show that there was no reason for
5 you to suspect danger in the room.

6
7
8 BY MR. BLUE: (Continuing)

9 Q Now would you answer my question,
10 please?

11 MR. VAUGHN: Objection.

12 THE COURT: I overrule your object-
13 ion, Mr. Vaughn. Let him put it in the record.

14 Go ahead, Mr. Blue.

15 A Could you ask the question again,
16 please?

17 MR. BLUE: Can you read it back?
18 I've forgotten what the question was.

19 THE COURT: Where was it put on,
20 Mr. Chase?

21
22
23 BY MR. BLUE: (Continuing)

24 Q Where were you when it was put on?
25 That's what I asked you. Were you at the shopping center,

Chase - Direct

91.

1 Northern Virginia, or where?

2 A I was in McLean Typographics.

3 Q Now when you got through at whatever
4 you were doing at the shopping center, where did you go, sir?

5 A From the shopping center?

6 Q Yes, sir.

7 A From the shopping center, we went
8 to the Kings Court Motor Inn.

9 Q And tell us what you did, every
10 step you made, when you got to Kings Court Motor Inn, sir.

11 MR. VAUGHN: Objection. Mr. Blue
12 can ask a question.

13 MR. BLUE: I'm asking him.

14

15

16 BY MR. BLUE: (Continuing)

17 Q Each step you made when you got
18 to the Kings Motor Court Inn, what did you do personally,
19 sir?

20 A I drove the car to the front of the
21 motel, waited for Mr. Cunningham to ring the room. Mr.
22 Cunningham came back to the car. We drove around to where
23 the room was, met Mr. Verez coming out of the room. Mr.
24 Verez got a soda and walked -- we went back into the room.

25 Q All right, you went back to the

Chase - Direct

92.

1 room. What room did you go to?
2 A To his motel room.
3 Q To Mr. Verez's motel room?
4 A Yes.
5 Q Who was in that room when you went
6 in?
7 A Himself and Mr. Vidal.
8 Q After you got in the room -- this
9 is the first time you went in, sir -- tell us what went on.
10 A Well we had a bunch of small talk
11 and --
12 Q Tell us what you mean by small talk.
13 What -- what --
14 A Well, we haven't seen him in a
15 while, hello, how are you; just --
16 Q Go ahead.
17 A Just small talk.
18 Q All right, what else happened after
19 just small talk?
20 A He had Mr. Vidal go to, I believe,
21 it was in the closet and brought out the contraband.
22 Q The what?
23 A The -- the drugs.
24 Q All right, tell us what happened
25 after they were brought out. Go ahead, sir.

Chase - Direct

93.

1 A At the time they were brought out,
2 we needed to test it. I had left some test equipment in
3 the car and went out to the car, brought it back in and
4 was followed in by the state police.

5 Q All right. Now in other words,
6 you left the room?

7 A Yes.

8 Q Right? You went to your car?

9 A Yes.

10 Q Is that right?

11 A Yes.

12 Q Did you know what kind of car Mr.
13 Verez was traveling in before you went into the room on the
14 first occasion, sir?

15 A Yes.

16 Q Did you have a license number?

17 A I believe we did.

18 Q Did you see his car, or the car
19 he was traveling in, before you went into the room, sir?

20 A Yes.

21 Q And how did you identify it, that
22 it was the car when you first saw it? How did you identify
23 that this was the car Mr. Verez was driving?

24 A He pointed it out to us.

25 Q Mr. Verez did, is that right?

Chase - Direct

94.

1 A (Nodding head yes).

2 Q Now you went to your car to get
3 some test equipment and then you came back to go to the room,
4 is that right?

5 A Yes.

6 Q Who opened the door for you when
7 you went back to the room on the second occasion, sir?

8 MR. VAUGHN: Objection, Your Honor,
9 if he can testify. If he's on the outside of
10 a closed door --

11 THE COURT: Yes, sir, if he knows.

12 MR. BLUE: Well, I guess if it was
13 opened, he'd know who opened it, Judge.

14 THE COURT: Yes, sir. Ask him if
15 he knows who opened it and who opened it.

16

17

18 BY MR. BLUE: (Continuing)

19 Q Do you know who opened the door
20 when you went back on the second occasion, sir?

21 A No.

22 Q Was it opened for you or --

23 A Yes.

24 Q -- did you open it, sir?

25 A No. I knocked and it was opened for

Chase - Direct

95.

1 me.

2 Q All right. Tell us exactly what
3 happened to you now when you started in the door.

4 A I took one or two steps into the
5 room and was pushed to the right. I fell down.

6 Q And go ahead. Describe what
7 happened immediately following that, sir.

8 A One of the policemen that was in
9 the doorway was pushed down pretty close to on top of me
10 and a shotgun went off.

11 Q Go ahead. What else happened? Go
12 ahead and tell us what happened after that.

13 A I laid still, was handcuffed, read
14 my rights and was taken out the door.

15 Q Did you observe anything that was
16 going on around you before you were led out the door, sir?

17 A I observed other people getting
18 handcuffed and read their rights.

19 Q Anything else, sir?

20 A No, sir.

21 Q When you went down to your car for
22 the test equipment, where was the contraband, the drugs?

23 A In the hotel room.

24 Q Where in the hotel room?

25 A Sitting on the dresser table, the

Chase - Direct

96.

1 dresser drawer, on top of the dresser drawer.

2 Q And where were Mr. Cunningham and
3 Mr. Verez when you entered the room? Do you know, sir?

4 A The second --

5 Q The second time.

6 A They were back around by the second
7 bed. There's a bed right by the door and then a second bed.
8 They were by the second bed or sitting on the bed.

9 Q Did you ever tell Sam Gray, Agent
10 Brown, or any of the other police why Luis Verez was coming
11 up to see you all on this occasion, sir?

12 A (Pausing). Yes.

13 Q In relation to October 2nd -- that's
14 the night you came down here -- when did you tell them the
15 reason for Luis Verez coming up here, sir?

16 A (Pausing). Mr. Brown and Mr. Gray
17 were informed the Thursday before.

18 Q The Thursday before October 2nd?

19 A Right, would be January 29th; I
20 believe that's the date.

21 Q Did you personally -- did you tell
22 them the reason for having to come to Hanover, the agents?
23 Did you tell them when you received that telephone call,
24 did you tell the agents the reason that you would have to
25 come to Hanover?

Chase - Direct

97.

1 A They were aware -- they were aware
2 of it starting Thursday.

3 Q All right, well what -- what
4 was the reason that you had to come to Hanover? If they
5 were aware of it, what were they aware of?

6 MR. VAUGHN: Objection, Your Honor.

7 Q (Continuing) What was the reason
8 they were aware of?

9 MR. VAUGHN: He's going beyond the
10 scope of this witness, whether it's something
11 Mr. Cunningham said or something they heard
12 on the telephone.

13 THE COURT: Yes, you phrased the
14 question --

15 MR. VAUGHN: He can only -- this
16 witness can testify to what he did.

17 MR. BLUE: Judge, I have couched
18 my question, you personally. That's all I
19 have asked him. I haven't asked him a thing
20 about Cunningham or anybody else. I asked
21 him you personally and I think that's a proper
22 question, Judge.

23 MR. VAUGHN: Well, Mr. Blue asked
24 what were they aware of.

25 MR. BLUE: Well, he said they were

Chase - Direct

98.

1 aware. He must know.

2 MR. VAUGHN: Your Honor, he can
3 know, but unless it's something he said, it's
4 not proper to ask this witness, as Mr. Blue
5 knows.

6 THE COURT: Well, Mr. Blue is
7 phrasing it as to what this witness said to
8 the officers and he can testify to that.

9
10
11 BY MR. BLUE: (Continuing)

12 Q Now go ahead. Just tell us what
13 you told the officers about why you had to come to Hanover,
14 Mr. Chase.

15 A Excuse me. To pick up the drugs.

16 Q And you told them that when you
17 were in Vienna, right?

18 THE COURT: I think he said McLean,
19 Mr. Blue.

20
21
22 BY MR. BLUE: (Continuing)

23 Q Or McLean.

24 A McLean.

25 Q Is that right? You told --

Chase - Direct

99.

1 A Right, on the 29th.
2 Q -- them that when you were in McLean
3 is that right?
4 A On the 29th.
5 Q All right, sir.
6 MR. BLUE: I have no further
7 questions of this witness, Judge.
8 THE COURT: All right. Mr. Vaughn.

CROSS-EXAMINATION

BY MR. VAUGHN:

10 Q Mr. Chase, when ya'll came down
11 to the Kings Quarters, did ya'll ascertain at that time
12 where Mr. Vidal and Verez were?
13 MR. BLUE: Just a minute, Judge.
14 Now I'm going to object to his question.
15 Ya'll is not him, and I insist that the Court
16 keep him to the same track that I'm on.
17 THE COURT: Yes, Mr. Blue.
18 MR. BLUE: Thank you, sir.
19 MR. VAUGHN: For the record --
20 THE COURT: You can testify as to
21 what you said, Mr. Chase, or what you observed
22 from your personal knowledge.

1 BY MR. VAUGHN: (Continuing)

2 Q When ya'll came to Kings Quarters,
3 did there come an occasion when ya'll went to, I believe,
4 Room 205?

5 A Yes.

6 Q Prior to that time, did you see
7 in that room Mr. Verez and Mr. Vidal?

8 A Prior to the time --

9 Q When you went to the room --

10 A -- prior to the time I went into
11 the room?

12 Q No, sir, prior -- you went to the
13 room, is that correct?

14 A Yes.

15 Q Were Mr. Verez and Mr. Vidal in
16 that room?

17 A Mr. Verez was out on the upstairs
18 balcony coming down to get a soda.

19 Q Okay, but prior to arriving --

20 A And had been made aware that we
21 were there by our phone call from the lobby.

22 Q Prior to arriving at that location
23 at the Kings Quarters Motel, did you know for a fact that
24 Mr. Verez and Vidal would, in fact, be there?

25 A Yes.

Chase - Cross

101.

1 Q Had you seen them there prior to
2 that time?

3 A No. This was by a phone call made
4 to us in McLean.

5 Q But prior to the time you got there
6 you didn't know whether they were there or not, did you?

7 MR. BLUE: Now, Judge, I'm going to
8 object. He's asked a question; he's got an
9 answer. Now he's trying to impeach his own
10 answer.

11 MR. VAUGHN: I'm not trying to
12 impeach my witness. This witness is on cross-
13 examination, if it please the Court.

14 THE COURT: I think the question's
15 proper, Mr. Blue.

16

17

18 BY MR. VAUGHN: (Continuing)

19 Q Was that the first time ya'll saw
20 them? When Mr. Verez comes out of the room, ya'll walk up
21 and see Mr. Vidal?

22 A Yes, sir.

23 Q And ya'll hadn't seen them earlier
24 that night?

25 A No, sir.

Chase - Cross

102.

1 Q And when Mr. Vidal at Mr. Verez's
2 direction goes and gets the narcotics out of the closet, I
3 believe you testified, was that the first time you'd seen
4 those?

5 A Yes.

6 Q Prior to that time, did you know,
7 in fact, whether or not the narcotics were in the room or
8 at some other location?

9 A I had no idea at all.

10 Q Did you know whether they could or
11 could not have been in the car, for instance?

12 A They could have been there. They
13 could have been anywhere.

14 Q Did you know whether or not they
15 were, perhaps, in a different room?

16 A They could have been in another
17 room.

18 Q Did you know whether --

19 MR. BLUE: Judge, this is all
20 speculation. I -- I think he can answer ques-
21 tions, but it could have been and what have
22 you, that's speculation. I think that he --

23 THE COURT: He said he didn't know
24 where the drugs were until he saw them removed
25 from the closet.

Chase - Cross

103.

1 MR. BLUE: Thank you, sir.

2 MR. VAUGHN: Your Honor, that's
3 the whole point. It goes to the thrust of
4 the Commonwealth's position. Mr. Blue has
5 said you can get a search warrant, but the
6 issue is you can't get a search warrant and
7 know where you're looking for.

8 THE COURT: You've made your point,
9 Mr. Vaughn. Go on.
10

11
12 BY MR. VAUGHN: (Continuing)

13 Q Did you know, sir, prior to the
14 arrest of Mr. Verez and Vidal, whether they'd come -- did
15 you know whether they were accompanied by anyone else in a
16 second vehicle?

17 A No, I did not.

18 Q Did you know whether or not there
19 were other parties that could have been in another room
20 with Mr. Verez and Mr. Vidal?

21 A No, I didn't -- didn't know whether
22 there were or weren't.

23 Q When you went to the room, sir,
24 did you know whether Mr. Verez or Mr. Vidal, either one,
25 would be armed?

Chase - Cross

104.

1 A No, I had no idea whether they were
2 or not.

3 Q When you went to the room, sir, did
4 you know whether or not the narcotics were in the room or
5 not prior to the time they came out of the closet?

6 A No, I didn't.

7 Q And at that time, was there a
8 prearranged signal between you and the state police to
9 indicate whether the narcotics were there?

10 A Yes.

11 Q What were you to do if the narcotics
12 were in the room?

13 A When I went out, I was to take my
14 hat off.

15 Q And did you do that?

16 A Yes.

17 Q I believe you testified -- there
18 is testimony you went out to get bleach. What is the purpose
19 for that?

20 A A form of testing the cocaine.

21 Q On cocaine?

22 A Uh huh.

23 ~~MR. VAUGHN: That's all the~~
24 ~~questions.~~

25 ~~THE COURT: Mr. Blue.~~

1
2
3
4
5 SAM GRAY, called as a witness by
6 counsel for the defendants, first being duly sworn, testified
7 as follows:

8
9 DIRECT EXAMINATION

10 BY MR. BLUE:

11 Q Would you state your name, sir,
12 and where you're employed, please?

13 A Sam Gray, Special Agent, Virginia
14 State Police.

15 Q Mr. Gray, I ask you to direct your
16 attention to October 2nd, 1983. Did you on that date parti-
17 cipate in a raid on Room 205 in the Kings Motor Inn in
18 Ashland, Virginia, sir?

19 MR. VAUGHN: Objection to the
20 word raid. He can ask if he participated in
21 an arrest at that time, for the record.

22 THE COURT: Yes, Mr. Blue. You're
23 putting words in his mouth. You can ask him
24 what he did on that day.
25

Gray - Direct

107.

1 BY MR. BLUE: (Continuing)

2 Q Did you go to Room 205 in Kings
3 Motor Inn in Ashland, Virginia, on October 2nd, 1983, sir,
4 or immediately after midnight on the morning of October 3rd,
5 1983, sir?

6 A I did, on October the 3rd, yes, sir.

7 Q Now prior to your going to that
8 room, Mr. Gray, had you been investigating Luis Verez?

9 A Yes, sir.

10 Q Had you been investigating Milton
11 Vidal?

12 A No, sir, I didn't know anything
13 about Mr. Vidal.

14 Q Briefly describe the nature of your
15 investigation of Mr. Verez prior to going to his room on
16 October 3rd, 1983, sir.

17 MR. VAUGHN: Object to that, Your
18 Honor, unless we put this in some sort of time-
19 frame. There's already been testimony that
20 the association of the parties went back a
21 number of years.

22
23
24 BY MR. BLUE: (Continuing)

25 Q Well, let's say within the month

Gray - Direct

108.

1 prior to -- the month --

2 MR. VAUGHN: Objection.

3
4
5 BY MR. BLUE: (Continuing)

6 Q -- of September, 1983. What --

7 MR. VAUGHN: Objection.

8
9
10 BY MR. BLUE: (Continuing)

11 Q -- did you do in the way of investi-
12 gating Mr. Verez, sir?

13 MR. VAUGHN: Objection. The Common-
14 wealth would ask that we confine ourselves to
15 October 2nd and 3rd. If we go back to
16 September, we're getting once again --

17 THE COURT: Yes, certainly beginn-
18 ing, Mr. Blue, at the Thursday before where
19 we seem to start -- start this proceeding.

20 MR. BLUE: I beg your pardon?

21 THE COURT: The Thursday before
22 is a good time.

23 MR. BLUE: The Thursday before,
24 all right, sir.
25

Gray - Direct

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1 BY MR. BLUE: (Continuing)

2 Q The Thursday before October 2nd,
3 and I understand October 2nd was on a Sunday and Monday
4 morning was October 3rd, is that correct, sir?

5 A Best I recollect, yes, sir.

6 Q So direct your attention to Thurs-
7 day before that, sir, and what was the nature of your
8 investigation of Luis Verez from Thursday until you went
9 into that room?

10 A Waiting for Mr. Verez to arrive
11 and make contact with Mr. Cunningham or Mr. Chase.

12 Q Why were you waiting for Mr. Verez
13 to make contact with Mr. Cunningham or Mr. Chase, sir? .

14 A I had information that possibly
15 Mr. Verez may be bringing up a quantity of cocaine.

16 Q And where did you get that informa-
17 tion from?

18 A I originally got it from Special
19 Agent Bill Brown and also --

20 MR. VAUGHN: Your Honor, I object
21 at this point. We're once again going afield.
22 He's now asking where he got information from
23 other people which clearly calls for hearsay.

24 THE COURT: Yes, sir. Mr. Blue,
25 he testified as of --

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1 MR. VAUGHN: He can ask this witness
2 what he did.

3 THE COURT: -- Thursday he under-
4 stood he was coming up with cocaine.

5
6
7 BY MR. BLUE: (Continuing)

8 Q Now I direct your attention to the
9 day, October 2nd, 1983, Mr. Gray. Were you in the company
10 of Mr. Chase and Mr. Cunningham on October 2nd, 1983, sir?

11 A Yes, sir.

12 Q Would you tell us approximately what
13 time you got with them on that particular day, sir?

14 A The very first time I got with them?

15 Q Yes.

16 A I don't recall the exact time I
17 got with them.

18 Q Approximately.

19 A Sometime in the afternoon.

20 Q Afternoon. Would it be fair to
21 say between one and three, two and four, or what?

22 MR. VAUGHN: Objection. Objection
23 to Mr. Blue, would it be fair to say. Mr.
24 Blue's trying to make a record and Mr. Gray's
25 answered the question and he has to go from

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111.

1 there. Mr. Blue cannot testify.

2 THE COURT: Yes, sir. Sometime
3 in the afternoon is sufficient, Mr. Blue.

4
5
6 BY MR. BLUE: (Continuing)

7 Q Where were you when you met up with
8 them the first time?

9 A I was in McLean, Virginia.

10 Q Did you -- after you met up with
11 them, sir, in McLean, Virginia, did there come a time that
12 you decided to come to Hanover County, sir?

13 A Yes, sir.

14 Q You personally were coming to
15 Hanover County, is that right?

16 A That's correct.

17 Q What was your reason for coming to
18 Hanover County, sir?

19 A Mr. Verez had made a phone call to
20 Mr. Cunningham and that was my reason. As a result of that
21 phone call was the reason I went to Hanover County, Virginia.

22 Q Did you, Mr. Gray, or did anyone
23 in your presence put any electronic equipment on Mr. Chase
24 or Mr. Cunningham before you left McLean, Virginia?

25 A Yes, sir, I did put a body mike on

Gray - Direct

112.

1 Mr. Chase.

2 Q Why did you put a body mike on
3 Mr. Chase, sir?

4 A So I could monitor any conversation
5 if the case arose where Mr. Chase may be involved with any
6 negotiations with Mr. Verez.

7 Q Was there a receiving set for the
8 body mike and, if so, who had that receiving set, sir?

9 A Yes, there was a receiving set
10 and Special Agent R. L. Miller was monitoring that receiving
11 set.

12 Q Before you came to Hanover County,
13 Mr. Gray, did you know the type of vehicle that Mr. Verez
14 was traveling in?

15 A I had information. I didn't know
16 for sure what he was traveling in.

17 Q What information did you have, sir?
18 MR. VAUGHN: Objection, Your Honor.
19 Once again, it calls for hearsay. If he
20 didn't receive it, he had to receive it from
21 someone else.

22 MR. BLUE: Well, I don't know, if
23 it's his information and he's acting on --

24 MR. VAUGHN: Your Honor, it's not
25 his information. We've already had a witness

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1 on the stand who said they talked to Mr. Verez
2 and got the information. It's obvious any-
3 thing he's got had to come from them. It's
4 hearsay as to this witness and we've been
5 through it before.

6 THE COURT: I think it's repeti-
7 tious, Mr. Blue. If -- everybody had all the
8 information that everybody had, I assume.
9

10
11 BY MR. BLUE: (Continuing)

12 Q When you came to Hanover County,
13 what is the first location you went to, Mr. Gray?

14 A I went to a shopping center behind
15 the Ukrops Store.

16 Q After you went there, and I assume
17 you met some people at that location, is that right, sir?

18 A That's correct.

19 Q Where did you go from there?

20 A My exact spot?

21 Q Well, I -- just trace your activi-
22 ties, sir.

23 A I waited in the parking lot right
24 across the street from the motel in which Mr. Verez was
25 staying.

Gray - Direct

114.

1 Q Did you ever go into the motel --
2 A Yes, sir, I did.
3 Q -- office, sir?
4 A Sir?
5 Q Did you ever go into the motel
6 office, sir?
7 A The office where the registration
8 is?
9 Q Yes, sir.
10 A No, sir.
11 Q Did you ever look for the automobile
12 that Mr. Verez was allegedly traveling in, sir?
13 A No, sir.
14 Q You did not, sir?
15 A No, sir.
16 Q I'm going to read to you from a
17 transcript, Mr. Gray --
18 MR. VAUGHN: Objection, Your Honor,
19 he --
20 Q (Continuing) -- and I'm going --
21 MR. VAUGHN: -- cannot impeach his
22 own witness. Mr. Blue put this witness on the
23 stand. He cannot impeach his own witness. It's
24 a rule of evidence that's probably just as
25 preliminary as they come.

Gray - Direct

115.

1 MR. BLUE: At this time, Judge, I
2 consider this witness hostile and I ask that
3 I interrogate him as a hostile witness.

4 MR. VAUGHN: There's been no show-
5 ing of hostility. He's asked him a question.

6 THE COURT: Well, he's answered
7 every question you've asked him, Mr. Blue, to
8 the best of his recollection.

9 MR. VAUGHN: Your Honor, if it
10 please the Court, Mr. Blue asked him if he went
11 to look for the car. I think if Mr. Blue asked
12 him did anybody go to ascertain the identity
13 of the car he can get the answer. This officer
14 did not do it himself. Mr. Blue is trying to
15 take something out of context from an earlier
16 hearing. He cannot do it.

17 THE COURT: I'm going to sustain
18 Mr. Vaughn's objection, Mr. Blue. If you want
19 to ask him the same --

20 MR. BLUE: Judge, I would like to
21 be heard because it is important to --

22 THE COURT: Ask him the same
23 question that was asked earlier and then ask
24 him if he was asked earlier that question.
25

1 BY MR. BLUE: (Continuing)

2 Q When you got to Kings Motor Inn,
3 did you verify that the car being described by the inform-
4 ants was, in fact, at Kings Motor Hotel, sir?

5 MR. VAUGHN: Objection, Your Honor.
6 That's the whole point of the Commonwealth's
7 question. That's not the same question Mr.
8 Blue asked. He asked did you go and look for
9 the car. On this proceeding they asked did
10 they verify it was there, which indicates any-
11 body could have done it.

12 MR. BLUE: I'm asking him.

13 THE COURT: Right, well let -- let
14 him answer whether or not he could verify the
15 car was there. That's what you want him to
16 answer.

17 A I did not personally see the car
18 myself. I received information that it was there.

19 THE COURT: He said he received --

20 MR. BLUE: Judge, I still say that
21 I have to examine him as a hostile witness.

22 THE COURT: Yes, sir. Well, he
23 said he received information the car was there.

24 MR. BLUE: But he didn't testify
25 that way in the lower court.

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1 MR. VAUGHN: Objection to Mr. Blue
2 testifying.

3 THE COURT: Mr. Blue, I sustain
4 Mr. Vaughn's objection.

5 MR. BLUE: I note my exception,
6 if Your Honor please, and --

7 THE COURT: All right, sir. If
8 you want to --

9 MR. BLUE: -- represent to the
10 Court that his testimony was different in the
11 lower court, sir.

12 THE COURT: All right, sir.

13 MR. VAUGHN: Your Honor, I'll be
14 most happy to introduce the transcript that
15 Mr. Blue has from the lower court and make it
16 a part of the record.

17 THE COURT: All right, sir.

18 MR. BLUE: I'll be glad to do that,
19 if you'd like to do that, Judge, fine.

20 THE COURT: Now ask another ques-
21 tion.

22 MR. BLUE: All right, sir. Let's
23 first get this into evidence, Judge.

24 THE COURT: Yes, sir.

25 MR. BLUE: It's Exhibit Number 1 on

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118.

1 behalf of Vidal.

2 THE COURT: All right, sir.

3 MR. BLUE: And I -- I'd like for
4 you to read Page --

5 MR. VAUGHN: Your Honor, I --

6 MR. BLUE: -- 4, Line 25 to 3 --

7 MR. VAUGHN: Your Honor, I object
8 to that. Mr. Blue cannot impeach his own
9 witness. The Court has so ruled.

10 THE COURT: I have ruled, Mr. Blue.

11 MR. BLUE: I know, but you allowed
12 me to introduce the transcript and I'm asking
13 you to take judicial notice of the transcript
14 now, Judge. I'm not trying to impeach the
15 witness.

16 MR. VAUGHN: The Judge can read the
17 transcript, but you cannot use the transcript
18 to impeach your own witness.

19 MR. BLUE: I'm not trying to impeach
20 him. I'm trying --

21 MR. VAUGHN: Then why are you asking
22 the Court to take notice of line whatever?

23 MR. BLUE: Because I want the
24 evidence to be in, like I said.

25 MR. VAUGHN: Objection.

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1 MR. BLUE: Then I want to vouch
2 the record, if Your Honor please.

3 MR. VAUGHN: Objection.

4 THE COURT: The whole transcript
5 is in --

6 MR. BLUE: I want you to read
7 only --

8 THE COURT: -- and a part of the
9 record, Mr. Blue.

10 MR. BLUE: -- Page 4, Line 25 to
11 Line 3 on Page 5. That's all I want you to
12 read, Judge.

13 THE COURT: Well, it's in evidence,
14 Mr. Blue.

15
16
17 NOTE: The above-referred-to
18 transcript of lower court proceeding was
19 marked: Defense Exhibit Number 1.

20
21
22 BY MR. BLUE: (Continuing)

23 Q Were you in charge of a delegation
24 of Virginia State Police that came to Hanover County on this
25 occasion, Mr. Gray?

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1 A I was the case agent, yes, sir.

2 Q That's not my question, sir.

3 Were --

4 MR. VAUGHN: Objection.

5 Q (Continuing) -- you in charge of
6 the Virginia --

7 MR. VAUGHN: Objection.

8 Q (Continuing) -- State Police --

9 MR. VAUGHN: He's answered the
10 question.

11 THE COURT: Mr. Blue, you can ask
12 him what it means to be case agent.

13

14

15 BY MR. BLUE: (Continuing)

16 Q What does it mean to be case agent?

17 A That means if whenever decisions
18 are made as far as any arrests, seizures, I take care of
19 any arrests or seizures involved in the case.

20 THE COURT: All right. Now he's
21 answered your question, Mr. Blue.

22 MR. BLUE: Thank you, sir.

23

24 BY MR. BLUE: (Continuing)

25 Q Did you, from your vantage point at

Gray - Direct

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1 the parking -- parking lot across from the motor inn, did
2 you ultimately leave that spot and go to Room 205 in Kings
3 Motor Inn, sir?

4 A Yes, sir.

5 Q Before doing that, sir, did you
6 call a magistrate or did you get a search warrant of any kind,
7 sir?

8 A No, sir, I did not.

9 Q Did you apply for one?

10 A No, sir, I did not.

11 Q Describe what you did when entry
12 was made into the room, sir.

13 A I checked to make sure that the
14 room was fully secured. Then I took charge of any evidence
15 that was laying in train -- plain view. Then Mr. Verez and
16 Mr. Vidal were placed under arrest for appropriate charges
17 by me and they were advised of their rights by Special Agent
18 Straka.

19 Q Can you name some individuals that
20 were there when you saw that the room was secured, sir,
21 other than Mr. Verez, Mr. Vidal, Mr. Chase and Mr. Cunning-
22 ham? Who else was there, sir?

23 MR. VAUGHN: Your Honor, for the
24 record, is this at the time of the arrest or
25 after the room was secured?

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1 MR. BLUE: When he entered the
2 room is the question.

3 THE COURT: Answer who it was when
4 you entered the room and who came during the
5 process of arresting and things of that nature,
6 Mr. Gray.

7 A Trooper Morris, Trooper Frady,
8 Special Agent Marara from DEA, Special Agent Bill Brown,
9 DEA, Trooper Roy Shaw from Virginia State Police. I think
10 Special Agent Straka. I can't recall who else. There
11 were several.

12
13
14 BY MR. BLUE: (Continuing)

15 Q But you know that all of them were
16 in the room? Did you go in with the first group that went
17 in, sir?

18 A No, sir. I went in immediately
19 after.

20 Q How many, or do you know how many
21 went in on the first group that went in the room?

22 A It would be five subjects.

23 Q Five people?

24 A Five.

25 Q Were they armed, sir?

Gray - Direct

123.

1 A The police officers?
2 Q Yes, sir.
3 A Yes, sir.
4 Q What were they armed with?
5 MR. VAUGHN: Objection. Is there
6 going to be some relevance as to what they
7 were armed with?
8 THE COURT: Well, he -- he --
9 MR. VAUGHN: Mr. Blue has contested
10 the search, not the arrest.
11 THE COURT: I'm going to let him
12 put it in the evidence. He has the right to
13 vouch the record anyway, Mr. Vaughn.
14 MR. VAUGHN: Yes, sir.
15 THE COURT: Go ahead, Mr. Blue.
16 A I believe there were some shotguns
17 and handguns.
18
19
20 BY MR. BLUE: (Continuing)
21 Q Prior to your entry into the room,
22 had you had any conversation personally with Luis Verez?
23 A Prior to me entering?
24 Q Yes, sir.
25 A No, sir.

Gray - Direct

124.

1 Q How about with Mr. Milton Vidal?

2 A No, sir.

3 Q Had you been a party to any messages
4 or conversations intercepted over the mike that was on Mr.
5 Chase prior to entering the room, sir?

6 A Can you -- I don't understand your
7 question.

8 Q Had you heard any receptions over
9 that mike before --

10 A Of any conversations between Mr.
11 Vidal and Mr. Verez?

12 Q Chase and Cunningham, any of the
13 four.

14 A No, I never heard any of the
15 conversations, no, sir.

16 Q That's all I ask, sir. As the
17 officer in charge of making decisions and things of that
18 nature, Mr. Gray, what did you anticipate finding when you
19 went into this room?

20 MR. VAUGHN: Objection, Your Honor.
21 It calls for speculation. He can ask him why
22 he went into the room.

23 THE COURT: How can he possibly
24 answer that question, Mr. Blue?

25 MR. BLUE: I think he can tell you

Gray - Direct

125.

1 what he expected to find. He knew what he
2 expected to find.

3 MR. VAUGHN: Your Honor, if he
4 asked him --

5 MR. BLUE: It's not speculation.

6 MR. VAUGHN: If he asked what
7 did the informant -- what was the informant
8 supposed to indicate and what did he indicate,
9 based on that why did he enter the room, I
10 don't have any problem with that. It's pure
11 speculation --
12
13

14 BY MR. BLUE: (Continuing)

15 Q All right, answer that. What did
16 you -- what did the informants inform you was going to be in
17 the room, sir?

18 A Through the signals that were
19 received from the informant, I expected to find cocaine.

20 MR. BLUE: I have no further
21 questions of this witness, if Your Honor please.

22 THE COURT: All right, Mr. Vaughn.
23 Any questions of Mr. Gray?

24 MR. VAUGHN: Just briefly, Your
25 Honor.

Gray - Cross

126.

1 CROSS-EXAMINATION

2 BY MR. VAUGHN:

3 Q Mr. Gray, is one of the reasons
4 for the informant being wired for his own protection?

5 A Yes, sir.

6 Q And Mr. Blue has asked the question
7 about the state police being armed when they entered the
8 room. Was that also for their protection?

9 A Yes, sir.

10 Q Information -- had there been
11 information received to indicate that Mr. Verez had been
12 armed in the past?

13 A Yes, sir.

14 MR. BLUE: That would be hearsay,
15 if Your Honor please. I'll object to it.

16 MR. VAUGHN: Mr. Blue raised the
17 issue. He's the one who asked why --

18 MR. BLUE: I don't care if I did.
19 You still can't put any hearsay evidence in.
20 That's what you've ruled all along, so I object
21 to it on the grounds of hearsay, sir.

22 MR. VAUGHN: Your Honor, hearsay
23 is only applicable if it goes to the truth of
24 the matter. In this case it only goes to the
25 issue -- the issue is not whether he was armed

Gray - Cross

127.

1 or not and that's not the issue before the
2 Court. The issue at this point is why they
3 did what they did, purely predicated on Mr.
4 Blue's question.

5 THE COURT: Yes, well, Mr. Gray
6 has answered it anyway and we're going into
7 a room and you were armed. He said that.

8
9
10 BY MR. VAUGHN: (Continuing)

11 Q Mr. Gray, when you went into the
12 room -- when ya'll left the parking lot to go into the room,
13 did you go into the room to search the room or to effect the
14 arrest of Mr. Verez and Mr. Vidal?

15 A I went in to effect the arrest.

16 Q And at that time was the plan to
17 arrest them and then obtain a search warrant?

18 A Yes, sir, it was.

19 Q And did you, in fact, obtain a
20 search warrant?

21 A No, I did not.

22 Q Why was it not necessary or why
23 did you not obtain a search warrant at that time?

24 A In the first place, I found evidence
25 in plain view. In the second place, I had a consent form

Gray - Cross

128.

1 signed by both Mr. Vidal and Mr. Verez to search both the
2 car and the room, on their consent.

3 Q At the time that entry was made
4 into the motel room, was the purpose of that entry to arrest
5 these two defendants on what you believed to be valid prob-
6 able cause?

7 A Yes, sir.

8 Q Entry was not made to effect a
9 search?

10 A No entry was made to effect a search.

11 Q In your opinion was any search
12 ever made?

13 A No, sir.

14 Q At the time that Mr. Chase and Mr.
15 Cunningham went into the room, did you know where the drugs
16 were?

17 A Could you rephrase it? I --

18 Q At the time Mr. Chase and Mr.
19 Cunningham first went in the drugs -- in the room to have
20 contact with Mr. Verez and Mr. Vidal, did you know for a
21 fact that drugs were in there?

22 A Not when they first went in there,
23 no, sir.

24 Q Did you know for a fact whether
25 they were in the car?

1 A No, sir.

2 Q How long have you been in narcotics
3 investigations?

4 A Eight years.

5 Q Is it unusual, Mr. Gray, in your
6 experience to have an original contact at one location and
7 then go to another location for the actual delivery of the
8 drugs?

9 MR. BLUE: I object to that, Judge.
10 I don't see what the relevancy is. That's not
11 in this case.

12 MR. VAUGHN: Your Honor, predicated
13 on Mr. --

14 THE COURT: We have a --

15 MR. VAUGHN: -- Blue's motion, it's
16 extremely relevant.

17 MR. BLUE: Everything predicated
18 on my motion gives him a right to do anything,
19 but I can't put anything in beyond my motion.

20 THE COURT: Now, Mr. Blue, I've
21 been very lenient to both of you and I've let
22 a lot of stuff in that ought not to be in and
23 I've kept some out, probably, that ought to
24 be in. But I think the question's proper. He
25 can -- he can ask about the normal way of

1 handling this type of investigation.
2
3

4 BY MR. VAUGHN: (Continuing)

5 Q Would it be unusual, Mr. Gray, to
6 go to one location and make -- verify the parties and the
7 fact they're not followed and then go to another location
8 to deliver the drugs?

9 A No, that's not unusual at all.

10 Q Did you have any way of knowing
11 whether or not that was going to be done at this --

12 A I had no way of knowing.

13 Q -- occasion?

14 A No, sir, I had no way of knowing.

15 Q Did you have any information or
16 any way of knowing whether or not anybody else had accompan-
17 ied Mr. Verez and Mr. Vidal?

18 A No, sir, I did not.

19 MR. VAUGHN: That's all the
20 questions of this witness.

21 THE COURT: Mr. Blue.

22 MR. BLUE: I have a few questions,
23 Your Honor.
24
25

REDIRECT EXAMINATION

BY MR. BLUE:

Q Mr. Gray, you said you had probable cause to go in and make the arrest?

A Sir?

Q Did you say that you had probable cause to go in and make an arrest on these two?

A Yes, sir, I felt I did.

Q You felt you did. Did you have probable cause to get a warrant to arrest them, sir?

A Sir?

MR. VAUGHN: Your Honor, I object to that. Again we're going --

MR. BLUE: I can't help if they -- Judge, every time I ask him a question he's going to object. I want to know. He opened this up; I didn't.

MR. VAUGHN: Objection, Your Honor. It goes beyond the scope of Mr. Blue's motion. The issue is not whether they could have gotten a warrant. The only issue would rather be whether they had probable cause to arrest. Mr. Blue is here saying that they had an illegal search and that's the only issue that's before the Court.

1 THE COURT: Mr. Blue, Mr. Gray has
2 told you everything he knows and everything
3 he did. I don't understand what -- what the
4 problem is we're trying to get now.

5 MR. BLUE: Judge, he -- he testi-
6 fied. I didn't open this up. He testified
7 that he felt that he had probable cause to
8 arrest Vidal and Verez. Still he's testified
9 that he didn't know where any drugs were. I
10 want to know what his probable cause was for
11 the arrest of Vidal and Verez if he didn't
12 know anything about the drugs.

13 MR. VAUGHN: Your Honor, he's
14 taking that entirely out of context.

15 THE COURT: Mr. Blue, you've got
16 to look at the testimony. He just testified
17 that he knew where the drugs were when Mr.
18 Chase came out and took his hat off. You're
19 trying to put something in his mouth that --
20 you're going over the same stuff you went over
21 before.

22
23
24 BY MR. BLUE: (Continuing)

25 Q But you had been formed -- informed

Gray - Redirect

133.

1 since Thursday before that Mr. Verez was bringing up some
2 cocaine, is that right, sir?

3 A I had been informed that he possibly
4 was bringing up cocaine, yes, sir. I didn't know for sure.

5 Q And that's what you had probable
6 cause to arrest him for, isn't it?

7 MR. VAUGHN: Objection. It calls
8 for a conclusion on the part of the witness.

9 THE COURT: You're putting words
10 in his mouth, Mr. Blue.

11 MR. BLUE: I'm asking him to answer
12 a question. That's all I'm asking.

13 MR. VAUGHN: Objection.

14 THE COURT: He's answered the --
15 you've asked the question and he's answered.

16 MR. BLUE: Just one minute, sir.
17 Let me look at my notes.
18
19

20 BY MR. BLUE: (Continuing)

21 Q Now you have stated that you went
22 into the room and in plain view was some drugs, right?

23 MR. VAUGHN: Your Honor, at this
24 point, we're now going back -- there's no
25 question about that on cross-examination. Mr.

Gray - Redirect

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1 Blue's going back to things he did on direct
2 and it is improper for redirect. He is limited
3 to what the Commonwealth brought up on cross-
4 examination and I object.

5 MR. BLUE: That's what I'm going
6 into, what the Commonwealth brought up.

7 MR. VAUGHN: No, sir, this is --

8 THE COURT: Well, he didn't ask --

9 MR. VAUGHN: -- testimony from
10 direct examination.

11 THE COURT: He --

12 MR. BLUE: They brought up the fact
13 that he got something to search and I want to
14 go into that, Judge. Got permission, I think
15 he said, to search something, the car and
16 something else.

17 THE COURT: He said that they
18 signed a consent for him to search the room
19 and the car.

20 MR. BLUE: All right, sir.

21
22
23 BY MR. BLUE: (Continuing)

24 Q Did you find anything, or did you
25 search after you got the permission to search, sir?

Gray - Redirect

135.

1 A Yes, the vehicle.

2 Q Did you find anything in the way
3 of contraband, drugs?

4 A No, sir.

5 Q Did you find any weapons?

6 A No, sir.

7 MR. BLUE: I have no further
8 questions.

9 THE COURT: All right. Now, Mr.
10 Gray, you go back to the witness lounge and
11 do not discuss what's gone on in the Courtroom.

12 THE WITNESS: Yes, sir.

13

14 * * * * *

15 WITNESS STOOD ASIDE

16

17

18 THE COURT: Next witness.

19 MR. BLUE: Special Agent Robert
20 Miller, I think his name is, Judge.

21 THE COURT: All right, Mr. Miller.

22 THE CLERK: Do you solemnly swear
23 the evidence you give in this hearing will be
24 the truth, the whole truth, and nothing but
25 the truth, so help you God?

1 MR. MILLER: I do.

2 THE CLERK: Have a seat.

3
4
5
6
7 ROBERT L. MILLER, called as a
8 witness by counsel for the defendants, first being duly
9 sworn, testified as follows:

10
11 DIRECT EXAMINATION

12 BY MR. BLUE:

13 Q Would you state your name, sir,
14 and your occupation?

15 A My name is Robert L. Miller. I'm
16 a special agent employed by the Virginia State Police.

17 Q In that capacity, Mr. Miller, do
18 you -- had you -- do you know Luis Verez?

19 A I've seen Mr. Verez, yes.

20 Q Then you don't know him, you've
21 just seen him?

22 A No, I do not. I've just seen him.

23 Q When is the first time you saw
24 him, sir?

25 A I believe it was October 3rd, 1983.

Miller - Direct

137.

1 Q Where were you when you saw him
2 and where was he?

3 A He was in a hotel room here in
4 Hanover County. I don't remember what the room is or the
5 name of the hotel is at this point.

6 Q And would you explain to the Court
7 your actions in going to that room and how you happened to
8 see Mr. Verez, under what circumstances you saw him, sir?

9 A My actions were to assist in the
10 arrest, which I among others, and I just remember them being
11 in the room.

12 Q Were you in charge of any police
13 officers on that occasion, sir?

14 A No, sir.

15 Q Who was in charge?

16 A The case agent was Special Agent
17 Gray.

18 Q Now would you describe to the Court
19 exactly what you personally did when you went into the room
20 that you say you went in that you found Mr. Verez? What
21 did you do, sir? How did you get in and what did you do
22 as you went in?

23 A I didn't do anything in the room.
24 All I did was looked in. In fact, I didn't go over two foot
25 in the door and I went right back out.

Miller - Direct

138.

1 Q Do you know who did go in?

2 A My recollection is that Special
3 Agent Gray was in the room. I believe DEA Agent Bill Brown
4 was in the room. Special Agent Steven Straka was in the
5 room.

6 Q Were you -- did you go in the room
7 when Russ Chase went back for the second time, sir?

8 A I was on the tail end of that.

9 Q Well, what did you see happen in
10 front of you if you --

11 A Nothing. I saw nothing, sir. By
12 the time I got to the room, everything was secured and I
13 believe the people were already being read their rights.

14 Q And Mr. Gray is mistaken when he
15 says you went in first, sir?

16 MR. VAUGHN: Objection, objection.

17 A Into the --

18 THE COURT: He never said that,
19 Mr. Blue.

20 MR. BLUE: What did -- who did he
21 say? I thought he said Miller.

22 MR. VAUGHN: Your Honor, I object.
23 Mr. Blue cannot testify on the record. It is
24 improper.

25 MR. BLUE: I'd like for you to read

Miller - Direct

139.

1 the record back from Mr. Gray, if you will,
2 please.

3 MR. VAUGHN: Well, Your Honor, I
4 object. He cannot ask this question about
5 any other -- anybody else's testimony. He
6 can ask a question, but he can't ask this
7 question to categorize any other witness'
8 testimony.

9 THE COURT: Mr. Blue, the Court
10 recalls the evidence. The question is not
11 proper under these circumstances. Now you
12 can ask Mr. Miller what other -- other things
13 he participated in during the October the
14 2nd and 3rd and you might get the answer and
15 recall then what Mr. Gray said Mr. Miller was
16 doing.

17
18
19 BY MR. BLUE: (Continuing)

20 Q Mr. Miller, you -- where were you
21 when you first got involved with the transaction that
22 ultimately ended up in Hanover on October 2nd and 3rd, sir?

23 A I originally came into this investi-
24 gation in Fairfax County to assist Special Agent Gray with
25 surveillance.

Miller - Direct

140.

1 Q And as a result of that, you
2 traveled to Hanover County on or about October 2nd, early
3 morning, October 3rd, is that right, sir?

4 A That's correct.

5 Q When you got to Kings Motor Inn,
6 sir, would you describe your moves from the time you got
7 there until you went to Room 205, sir? What did you do?

8 A I was in a van listening to a
9 transmitter until the arrest took place.

10 Q What -- when you say listening to
11 a transmitter, what, if anything, were you receiving over
12 the transmitter, sir?

13 A We were receiving voices from that
14 hotel room.

15 Q Could you tell us what you heard
16 from those voices, sir?

17 A The transmitter wasn't working that
18 well. It was a lot of static, but when I did hear some
19 names mentioned, which I don't recall. There were some
20 greetings of how you been, whatever. The transmitter kept
21 coming in and out as it was sending the signal for some
22 reason. The other thing I recall being -- I heard was a
23 voice saying that this stuff is so good that you won't even
24 sneeze.

25 Q You heard all of that while you were

Miller - Direct

141.

1 in the van listening to the transmitter, is that right, sir?

2 A Yes.

3 Q Did you, sir, at any time apply
4 for a search warrant?

5 A No, sir, I did not.

6 Q When you entered the room, did you
7 have any permission of anyone or did you have a search
8 warrant with you?

9 A I had no search warrant and I had
10 no permission.

11 MR. BLUE: I have no further
12 questions.

13 THE COURT: Mr. Vaughn, any ques-
14 tions of Mr. Miller?

15 MR. VAUGHN: No, sir.

16 THE COURT: Do you want to keep
17 Mr. Miller in the back room, too, Mr. Blue?

18 MR. BLUE: I don't -- I don't
19 know what Mr. Vaughn wants to do, Judge. I'm
20 going to rest my case now.

21 THE COURT: Do you want Mr. Miller
22 to stay or may he go?

23 MR. VAUGHN: I'd like him to stay,
24 Your Honor.

25 THE COURT: All right. Go back to

Miller - Direct

142.

1 the witness lounge.

2 MR. VAUGHN: I'd like to just talk
3 with the witnesses briefly before they leave.

4 THE COURT: Go back to the witness
5 lounge. Do not discuss what's gone on in the
6 Courtroom.

7
8 * * * * *

9 WITNESS STOOD ASIDE

10
11
12 THE COURT: All right. Any other
13 witnesses?

14 MR. BLUE: That's my case, Judge.

15 THE COURT: All right. Your
16 evidence, Mr. Vaughn?

17 MR. VAUGHN: Your Honor, the
18 Commonwealth would submit it on Mr. Blue's
19 evidence. I think he's put on our evidence
20 for us.

21 THE COURT: All right.

22
23
24 NOTE: At this time the closing
25 arguments of counsel are had, and the hearing

continues as follows:

THE COURT: Well, Mr. Blue, your argument is good, and the Gates' case is particularly good if, instead of sending Cunningham and Chase in the police had kicked in the door and gone into the closet and opened it up, I think you'd have had a perfect answer there and found the stuff in the closet. But we don't get to the search question because when they went in, they went in to arrest.

MR. BLUE: Judge, it's synonomous.

MR. VAUGHN: Objection.

THE COURT: Yes, well, I'm just telling you what my views are, Mr. Blue, and if I followed your line of thought, you never would be able to break up a floating crap game because somebody's got to come out and tip his hat to know that the game is going on so you can go in and arrest.

MR. BLUE: That's not what they say, Judge.

MR. VAUGHN: Objection.

1 THE COURT: I think it is what
2 they say, Mr. Blue, and I overrule both
3 motions.

4 MR. BLUE: I note my exception for
5 the reasons stated and ask you to make the
6 argument -- written argument a part of the
7 record, if Your Honor please.

8 THE COURT: Yes, sir, the written
9 argument will be filed in the record.

10
11
12 HEARING CONCLUDED
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EXCERPTS OF FEBRUARY 6, 1984

1 JURY OUT

2
3 grounds of illegal search and seizure, ille-
4 gal arrest without a warrant, and illegal
5 entry into a room, and conspiracy to, I
6 guess you'd say, obtain evidence illegally.

7 THE COURT: Yes, sir.

8 MR. BLUE: I -- at this time,
9 if Your Honor please, I want to renew those
10 motions on the record and urge you again to
11 suppress the evidence in this particular
12 case and for the reasons that I've previously
13 stated to you and also I've submitted a memo-
14 randum on that law, and that is my motion
15 at this time, sir, to renew.

16 THE COURT: All right, sir. Well,
17 we've had two hearings on those motions, Mr.
18 Blue, and the Court did independent research
19 and heard the arguments of both and your
20 motions are denied again.

21 MR. BLUE: All right, and let
22 the record show that I except to your ruling.

23 THE COURT: Yes, sir.

24 MR. BLUE: Now, if Your Honor
25 please, previously also I asked you to stay

Gray - Direct

317.

1 not leading unless the question suggests
2 an answer.

3 MR. BLUE: When he got to Kings
4 Motor Inn. I think it does suggest an
5 answer. That's why you're asking it and
6 that's why I'm objecting to it.

7 THE COURT: Gentlemen, let's
8 go ahead and proceed. I see nothing im-
9 proper with that question.

10 MR. VAUGHN: Thank you.

11
12
13 BY MR. VAUGHN: (Continuing)

14 Q Prior to that time, how did
15 you --

16 MR. BLUE: Exception.

17
18
19 BY MR. VAUGHN: (Continuing)

20 Q -- know that there were
21 narcotics in the room, sir?

22 A I did not know until I sent
23 a confidential informant into the room. I did not know prior
24 to their entry that there was drugs.

25 Q And there was a sig -- was there

Gray - Direct

318.

1 a signal or any method by which he was going to let you know
2 if he saw --

3 A Yes, I had given him --

4 Q -- which he believed to be
5 narcotics in the room?

6 A Yes, I had given instructions
7 to the informant.

8 MR. BLUE: Object to any
9 instructions he gave the informant.

10 MR. VAUGHN: I'd like to hear
11 the basis --

12 MR. BLUE: It has nothing to
13 do with the charge.

14 MR. VAUGHN: -- the basis of
15 the objection.

16 THE COURT: I think the ques-
17 tion is proper and I think the statement is
18 proper, Mr. Blue.

19 Go ahead.

20 MR. BLUE: Judge, what he told
21 his informant has nothing to do with what
22 this man did. This case is about Milton
23 Vidal. What did he do with Milton Vidal,
24 period?

25 THE COURT: The question is

Gray - Direct

319.

1 asked was there a signal and he's telling
2 you how the signal worked.
3
4

5 BY MR. VAUGHN: (Continuing)

6 Q What was the signal, trooper?

7 A The signal was if the informant
8 had observed narcotics in the room that when he left the room
9 to go get the chemical test to test the drugs that he would
10 remove his hat after leaving the motel room.

11 Q Did he make such a signal?

12 A Yes, he did.

13 Q Subsequent to that, did you go
14 back into the room behind him?

15 A Yes, sir, we did.

16 Q And describe, if you would,
17 to -- well, one question before that. Was this individual
18 searched prior to the time he went into the room?

19 A Yes, he was.

20 Q Did he have any narcotics on
21 him?

22 A No, sir, he did not.

23 Q And describe, if you would,
24 when you entered the room at 1:15 a.m. -- 1:15 a.m. what
25 you observed.

Gray - Direct

320.

1 A I observed four subjects inside
2 the room. On the far bed away from the entry of the room was
3 two bags of white powdered substance which I observed, which
4 I felt was cocaine, laying in the open plain view of my
5 sight.

6 Q Were the lights on in the
7 room?

8 A Yes, they was.

9 Q And describe, if you would,
10 the interior of the room for the ladies and gentlemen of the
11 jury, what the -- Room 205 at Kings Motor Inn looked like.

12 A As you enter the -- enter the
13 room, you have a -- two beds, one -- they're immediately to
14 the right; you have one bed closest to the door and then you
15 have a little break in between that bed and the second bed,
16 which is against the wall. On the other side of that wall
17 is the bathroom and on the left hand side is, I believe, a
18 desk and a lamp and the wall preceding the other room.

19 Q Were the lights on in the room?

20 A Yes, they were.

21 Q Describe the lighting. Is it
22 comparable to what is in the Courtroom or darker or lighter?

23 A No, it was well lit.

24 Q And when you first entered the
25 room, you said there were four subjects in the room. Where

Gray - Direct

321.

1 were they; who were they and where were they?

2 A Two of the subjects, Ray
3 Cunningham and Russell Chase, both of which were informants,
4 they were sitting -- one of them sitting on each bed. Mr.
5 Vidal was behind the door as we entered -- entered the room.
6 Mr. Verez -- Luis Verez was sitting on the bed with the
7 narcotics, sitting over in the far corner.

8 Q Now describe -- you've said
9 that one of the informants was searched prior to the time.
10 Were both informants searched?

11 A Yes, they was.

12 Q Either one of them have any
13 narcotics on them?

14 A Neither one of them had any
15 narcotics.

16 Q Now you've said that the
17 narcotics was on the bed. Describe it on the bed. Describe
18 what it looked like to the ladies and gentlemen of the jury.

19 A One -- one package of cocaine
20 was in a large clear plastic bag and you could see the white
21 powdered material plainly within -- contained inside that
22 plastic bag. The other bag was a -- resulted to be in the
23 same clear plastic bag except -- with the exception it was
24 wrapped in gray duct tape and you could not really actually
25 see the narcotics itself inside the bag, but it was also

laying on the bed.

Q But as to the first package just standing there you could make those observations as to the white powder?

A Yes, sir.

Q And was there anything covering that bag?

A No, sir.

Q Just sitting there in the middle of the bed?

A Just laying there on the bed, yes, sir.

Q What did you do at that time, sir?

A I took possession of all the evidence and got it under my control and then Mr. Vidal and Mr. Verez was placed under arrest for possession of cocaine with intent to distribute.

Q Did you keep the cocaine under your control until it was delivered to the lab?

A Yes. It stayed within my presence until I handcarried it to the drug lab in Merrifield, Virginia, that next morning.

Q And do you have those narcotics with you this morning?

sir?

A Yes.

Q And when you say you -- yes, give us a brief description what you had been doing prior to October 2nd that related to what you did on October 2nd, sir.

MR. VAUGHN: Objection, Your Honor. It goes beyond the field of direct examination and has no relevance.

MR. BLUE: I believe --

MR. VAUGHN: Mr. Blue can ask a specific question but he's asking open-ended questions with no timeframe whatsoever, what did you do before October 2nd.

THE COURT: I think if you put it in a timeframe it's proper, Mr. Blue.

BY MR. BLUE: (Continuing)

Q Okay, well, take -- say a month before October 2nd and tell us what you did that related to what happened on October 2nd and made you come to Hanover, sir.

A Well, as you say, it was a case that I had been working on and it specifically related to Luis Verez. According to my information, Luis Verez was a

large-scale cocaine trafficker, had trafficked in cocaine for some time, that he provided quantities to the Northern Virginia area and I'm talking about kilogram quantities of cocaine. So I did direct -- I did make -- well, I did direct people to make contact with Luis Verez and arrange for me a delivery of cocaine.

Q You did direct that, right, and --

A Yes.

Q -- when you said people, could or do you have any names of people that you directed to do that, sir?

A Ray Cunningham and Lawrence Russell Chase.

Q And did they come with you on October 2nd when you came to Hanover, sir?

A They did.

Q All right, sir. Now as a result of that work that you did, you said it was centered on Luis Verez, is that right?

A That's correct.

Q Did you, prior to October 2nd, ever hear the name of Milton Vidal?

A No, sir.

Q Mr. Brown, now you came down

Q And what was the purpose for that?

A Safety and they were also handcuffed.

Q Now where were the narcotics when you gained entry to the room seconds after --

A They were laying on the bed.

Q -- this thing started?

A In the room.

Q And Mr. Blue has asked a question about a shot going off. How did that occur?

A When they went to gain entry, someone pushed the back of the police officer and the shot went off.

Q The first officer in line had a shotgun?

A Yes, sir.

Q And that was discharged into the floor?

A It sure was, yes, sir.

Q And what was the purpose for having that gentleman there?

A We had received information that these people were carrying guns.

Q Is that unusual with narcotics?

A No, sir.

Q But there were, in fact, no guns, is that correct?

A No, sir, we did not find any. We found a holster and some bullets in the car, but we never found a weapon.

MR. VAUGHN: That's all the questions of this witness.

THE COURT: Bring up anything new, Mr. Blue?

RECROSS-EXAMINATION

BY MR. BLUE:

Q Did you search the car?

A I assisted in searching the automobile.

Q And you found what?

A We found a holster in the car.

Q Whereabouts in the car?

A I really don't recall. I think it was in the front area in the passenger compartment.

Q Passenger compartment area?

A Yes, sir.

Q And did you search the room?

J. A. FRADY, called as a wit-

ness by counsel for the defendant, first being duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BLUE:

Q Trooper, will you state your
name, sir, and where you're employed?

A Trooper J. A. Frady, stationed
out of Fairfax, Northern Virginia.

Q And how long have you been a
trooper for the Virginia State Police, sir?

A Approximately five years.

Q In the performance of your
duties, Trooper Frady, were you a part of a team that came
to Hanover County on October 2nd and 3rd and made a raid on
a room 205 at Kings Motor Inn, sir?

A Yes, I was.

Q Did you actually enter that
room and, if so, could you tell us what your number was? Were
you first, second, third or fourth?

1 A I would have been the first
2 person through the door.

3 Q And I believe you were carrying
4 a shotgun and it was accidentally discharged, is that
5 correct, sir?

6 A As the team entered the room,
7 it was discharged, yes.

8 Q When you entered the room,
9 would you describe what happened to the man that opened the
10 door, sir? What happened to him?

11 A The person that we followed
12 into the room entered through the door. When we came in
13 there was a subject trapped between the door and the wall.
14 I'm not sure who opened the door. I just know that we met
15 resistance coming through the door.

16 Q And there was a subject
17 trapped between the door and the wall, is that right, sir?

18 A Yes, sir.

19 Q Can you look at this gentleman
20 today and tell us was it this man, Milton Vidal, that was
21 trapped between the door and the wall? Do you know, sir,
22 by looking at him?

23 A As I entered the room, I
24 didn't see Mr. Vidal.

25 Q Did you see the two informants

that were working with the police when you entered the room?

A Yes, sir, I did.

Q It was -- was it either of them that was trapped behind the door, sir?

A No, sir.

Q Do you know Luis Verez?

A When we went into the room, we had a description and a name of Louie and from elimination, I take it that the other gentleman on the bed was Luis.

Q And you don't know who was behind the door between -- pinned between the wall and the door?

A No, sir. I didn't see the subject behind the door.

Q Before you entered that room, sir, and went in, had you heard the name of Milton Vidal at any time?

A No, sir.

MR. BLUE: I have no further questions.

THE COURT: Mr. Vaughn.

CROSS-EXAMINATION

BY MR. VAUGHN:

Q Mr. Frady, what was your

capacity or what was your role in this activity?

A I was a member of the two-man tactical assault team. Our main objective was to make initial entry, secure the room.

Q To secure the room?

A Secure the room.

Q And that's why you were armed in case of fire --

A Yes, sir, it was.

Q -- power being directed at you? And you say you followed one of the informants. Would that be Mr. Chase? Have you seen the man this morning?

A I've seen the man this morning, yes.

Q Back into the room?

A Yes.

Q Somebody inside the room opened the door, is that correct?

A To the best of my -- my knowledge it did. As soon as the informant approached the door, it was opened.

Q Okay, and do you know whether Mr. Vidal was behind the door or not?

A I can't say for sure who was behind the door.

Q Did ya'll come into the room
in a hurry?

A Yes, we did.

Q If Mr. -- I assume the door
swings open, does it not?

A Yes, it does.

Q If Mr. Vidal had been at the
door, would the force of your entry have moved him?

A It would have trapped him
between the door and the wall.

Q Same place Mr. Blue is trying
to say he was?

A Yes.

Q So if he was standing to open
the door and then when ya'll came in and rushed the door
would have just taken him right back around?

A Yes.

MR. VAUGHN: That's all the
questions.

THE COURT: Mr. Blue.

MR. BLUE: I have no further
questions, Judge.

THE COURT: All right. Now,
may Trooper Frady be excused?

MR. VAUGHN: Yes, sir, but I'd

EXCERPTS OF TRANSCRIPT OF PRETRIAL MOTION AND EVIDENCE -
FEBRUARY 13, 1984

fair and impartial trial in accordance with the law and the evidence presented to the Court on the day of the trial itself. The Court has examined that in this particular situation and believes that it can give a fair and impartial trial to Mr. Verez. Your motion is denied.

MR. BLUE: We respectfully note our exception for reasons stated, if Your Honor please.

THE COURT: Yes, sir.

MR. BLUE: Judge, at this time I also would like to renew the motions to suppress heard on January 10th and January 30th of 1984, for reasons stated during those proceedings, and I ask this Court again to suppress the evidence in accordance with those motions and on the evidence heard by the Court at that time, and at this time I would ask you to reconsider those motions and reverse the previous decision in this case, sir.

THE COURT: Well, the Court felt at the time it heard the motions that it ruled properly and even though it's

1 good to keep them on the record, Mr. Blue,
2 for the record, I overrule those motions,
3 as I did, for the reasons I stated in the
4 record at that time.

5 What other motions do we have
6 this morning?

7 MR. BLUE: Well, if Your Honor
8 please, I respectfully note my exception
9 to your ruling in that particular situation
10 also, sir, for reasons stated.

11 In view of that, Judge, if the
12 Court will not disqualify itself, we'll
13 not reconsider the motions. We'll have
14 to represent to the Court that we are here
15 to be tried.

16 THE COURT: All right. Any
17 motions from the Commonwealth's side?

18 MR. VAUGHN: Just, Your Honor,
19 only for the record that the motions that
20 Mr. Blue earlier filed with the Common-
21 wealth, as we did in the Vidal case as to
22 3A:14, were complied with and the Common-
23 wealth has given -- I don't know --
24 anticipate all the witnesses, but the
25 records of the witnesses that have records

Gray - Direct

338.

BY MR. VAUGHN: (Continuing)

Q What room did you go into, Mr. Gray?

A It was 205. My correction.

MR. BLUE: I object to the Commonwealth helping his witness, if Your Honor please.

MR. VAUGHN: Your Honor, I object to Mr. Blue if that's if -- if you want to --

THE COURT: All right, gentlemen, let's go ahead. Your objection is overruled.

MR. BLUE: Note the exception, if Your Honor please.

BY MR. VAUGHN: (Continuing)

Q Did there come an occasion when you entered room 205 of Kings Motor Inn?

A Yes, sir, that's correct.

Q And tell the Court what you precipitated that on. Was there any plan or pattern prior to entering that room?

A Yes, there was.

Q And what was that?

A The plan was after the informants had gone into the perpetrators' room, I would receive a signal. When the --

MR. BLUE: If Your Honor please, I want to know if Mr. Gray concocted this plan, whether he heard somebody else do it, whether this was his plan. I don't think he can repeat what somebody else planned, sir.

MR. VAUGHN: Your Honor, Mr. -- number one, Mr. Gray can because that's not hearsay.

THE COURT: Yes, sir, I understand that.

MR. VAUGHN: Whether there was a play -- a plan or was not a plan does not make it hearsay.

THE COURT: No, sir, I agree with you, but I think that if you'd lay some back -- background as to what Mr. Gray's participation in the group was for the record.

MR. VAUGHN: Yes, sir.

Gray - Direct

340.

BY MR. VAUGHN: (Continuing)

Q Mr. Gray, what was your capacity in reference to this investigation? What was your --

A I was the case agent.

Q So you were the one that was in charge at the scene?

A Yes, sir, that's correct.

Q And who -- who formulated what procedure, what plan was going to be used at the scene?

A I did.

Q And were you part and party of that plan?

A Yes, I was.

Q And what was the plan?

A The plan was, we gave instructions to the informants prior to them entering room 205. We formulated a plan to receive a signal back from the informants after they had observed, or if they had observed, any narcotics in room 205.

Q And which informant was to give you the signal?

A Mr. Russell Chase.

Q And did there come a time when Mr. Russell Chase exited room 205 after they'd entered?

A Yes, sir, there was.

Q And did he give a signal?

A Yes. He gave a signal by taking off his hat which meant that he had observed narcotics in room 205.

MR. BLUE: Objection, if Your Honor please. I think he can give a signal taking off his hat. It doesn't say what he observed.

MR. VAUGHN: Well, what is the basis of Mr. Blue's objection?

MR. BLUE: He --

THE COURT: I don't think he said, Mr. Blue, that he -- he's saying what the signal meant within the boundaries of the plan, --

MR. VAUGHN: He's saying what the signal meant.

THE COURT: -- Mr. Blue.

MR. BLUE: Well --

MR. VAUGHN: He's certainly entitled to say that.

MR. BLUE: -- let him say that, but don't -- he gave a signal pursuant to the plan but he didn't -- he wasn't inside the head of Mr. Chase at the time. He

doesn't know what Mr. Chase was thinking.

BY MR. VAUGHN: (Continuing)

Q Was Mr. Chase to give a signal if he saw narcotics in the room?

A Yes, he was.

Q And what was the signal?

A He was to remove his hat from his head.

Q And did he leave the room and make that signal?

A Yes, he did.

Q And what did you do pursuant to receiving that signal?

A The plan was formulated that Mr. Chase was going to go to his car, pick up a chemical test to test the drugs. When he went back to the room, that was the time that we were going to enter the room 205.

Q And, in fact, is that what you did?

A That's correct.

Q Now did you follow Mr. Chase back up to the room 205?

A I didn't directly myself. It

was five other people that followed him in before I got there.

Q And where was room 205, Kings Motor Inn, sir?

A It was on the second floor of the motel. You had to go up one flight of stairs.

Q And when entry was made, did you enter room 205 with that --

A Yes, sir.

Q And would you describe room 205 for the Court, please.

A As you enter room 205, there will be -- it was a double bedroom. The beds would be on the right-hand side.

Q When you say double bedroom, was it a double bedroom or two beds?

A There was two beds. There was two beds in the room. The first bed would be immediately to the right with a little break between the bed and the window. There is a break between the first bed and the second bed; the second bed being closer to the wall, which on the other side of the wall contains a bathroom part of the room.

Q When you're describing first bed and second bed, would that be the order they come --

A Yes.

Q -- you'd approach them as you

come in the door?

A Yes.

Q And what was the lighting like in that room at that time, sir?

A It was well lit.

Q And did you have occasion to see the defendant, Mr. Verez, when you entered the room?

A Yes, I did.

Q Where was he?

A He was facedown either on the floor or the bed. I don't recall which.

Q Now did you have occasion to see any suspected narcotics at that time?

A Yes, I did.

Q When did you first see it and where was it?

A When I first entered the room, it was laying on the second bed, the bed being closest to the bathroom.

Q And describe what you saw laying on that second bed.

A I saw a plastic bag containing white powdered substance, also one gray duct tape package, a package wrapped in duct tape.

Q And did you take possession of

those items at that time?

A Yes, I did.

Q Now I'd ask you, if you would, sir, if you would look at the items in the custody of the Court and tell the Court whether you can identify those two items and the lab report which is attached to them.

A That's the two items that were taken to the lab that I seized from room 205. The lab report that was attached is the analysis that I received back from the chemist saying -- stating the results of the examination.

Q And what was the purity of the cocaine that was seized at that time?

A Eighty-nine and ninety percent.

Q And, Mr. Gray, what did you do with those -- that package or those two packages from the time you seized them in the early morning hours of October the 3rd until the time that they were received in evidence this morning?

A They were locked up in my briefcase and my briefcase was further locked up in the trunk of my vehicle, which I --

Q Were they put in any kind of container before they were locked up?

A Yes, it was a locked, sealed brown manila envelope.

Brown - Direct

369.

1 THE COURT: Yes, sir.

2
3
4 BY MR. VAUGHN: (Continuing)

5 Q Did you advise Mr. Sam Gray of
6 that fact?

7 A Yes, sir, I did.

8 Q And were you, in fact, part of
9 the group that came to Hanover County on October 2nd, October
10 3rd?

11 A I was.

12 Q And you, of course, know Mr.
13 Cunningham and Mr. Chase?

14 A Yes, sir, I do.

15 Q They're here this morning, is
16 that correct?

17 A Yes, they are.

18 Q Have you ever instructed Mr.
19 Cunningham or Mr. Chase to instigate contacts with any
20 individual?

21 A I did. I instructed Mr.
22 Cunningham during September of '83 to recontact Mr. Verez
23 for the purpose of setting up a cocaine transaction.

24 Q You said recontact?

25 A Yes, I did. It had been my

Brown - Direct

370.

1 understanding that they had had previous cocaine dealings
2 with Mr. Verez.

3 Q And that was not an original
4 contact as to your exposure?

5 MR. BLUE: Judge, here we go
6 again delving into hearsay evidence.

7 MR. VAUGHN: Your Honor, we're
8 not delving into anything. He said re-
9 contact.

10 THE COURT: Yes, but is that
11 really relevant to what we're doing here
12 today, Mr. Vaughn?

13 MR. VAUGHN: No, sir, Your
14 Honor, it's not. I withdraw that question.

15
16
17 BY MR. VAUGHN: (Continuing)

18 Q Have you told Mr. Cunningham
19 or Mr. Chase what to testify this morning?

20 A No, sir.

21 Q Have you made Mr. Cunningham
22 or Mr. Chase any representations of any reward for their
23 cooperation this morning?

24 A I have not.

25 Q And did their activity with you

Patricia S. Wright
11/1/83

Brown - Direct

371.

1 begin with Mr. Verez or was that just a spin-off of another
2 investigation?

3 A It was better characterized as
4 a spin-off. It was related to an ongoing investigation.

5 MR. VAUGHN: That's all the
6 questions of this witness.

7 THE COURT: Mr. Blue.

8
9
10 CROSS-EXAMINATION

11 BY MR. BLUE:

12 Q Mr. Brown, you contacted Mr.
13 Gray and suggested a joint investigation of a concaine
14 arrangement between your informants and Mr. Verez, is that
15 right, sir?

16 A That's correct.

17 Q Do -- do you know or do you
18 have in your mind approximately when you contacted Mr.
19 Gray concerning this joint venture of DEA agents and Virginia
20 State Police, sir?

21 A I believe it was in September.

22 Q Of '83?

23 A I believe so.

24 Q Uh huh, and after you contacted
25 Mr. Gray, then you -- tell us exactly what you told either Mr.

Brown - Cross

372.

1 Cunningham or Mr. Chase to do in regards to Mr. Verez. What
2 did you tell them to do, sir?

3 A I told them to recontact Mr.
4 Verez and arrange for the purchase of, I probably specified,
5 one kilo of cocaine or -- or more.

6 Q Are the -- are they -- do you
7 certify that they were your exact words?

8 A No. I can't tell you that I --
9 I cannot quote myself at this time, but just generally that
10 was the instruction.

11 Q And approximately when did you
12 do that, sir, in relation to when you contacted Mr. Gray?

13 A In relation to my contact with
14 Mr. Gray?

15 Q Yeah, when did you instruct --

16 A You want to know if I instructed
17 them prior to or after?

18 Q Yes, sir.

19 A Prior to.

20 Q Prior to. So that would be
21 sometime in early September or August or what? You said you
22 contacted Mr. Gray in September. I'm wondering -- do you --
23 your information for them to contact Mr. Verez, the inform-
24 ants, was that, would you say, earlier than in September or
25 was it in August or what?

Brown - Cross

373.

1 A Mr. Blue, my recollection is
2 that Mr. Cunningham had had conversations with Mr. Verez,
3 which were directed by me, during early September and I
4 recall reviewing the -- the contents of those conversations
5 with the Virginia State Police probably early part of October,
6 maybe latter September, so that the relationship was that I
7 had initiated this portion of the case with Mr. Verez prior
8 to contacting the Virginia State Police.

9 Q You had initiated the contact
10 with Mr. Verez and -- to arrange for him to bring cocaine up
11 to your informants, is that right?

12 A Yes.

13 MR. BLUE: I have no further
14 questions.

15 THE COURT: Mr. Vaughn.

16
17
18 REDIRECT EXAMINATION

19 BY MR. VAUGHN:

20 Q When Mr. Blue says you had
21 initiated, based on what information did you initiate that?

22 MR. BLUE: I object to that,
23 if Your Honor please.

24 MR. VAUGHN: Your Honor, Mr.
25 Blue is trying to lay a foundation for

Cunningham - Direct

381.

1 how much cocaine?

2 A No, not specifically.

3 Q And was -- did ya'll speak
4 about cocaine specifically or was there a code that ya'll
5 used when you talked about it?

6 A There was a code used.

7 Q And what was the code name?

8 A Lady.

9 Q And where was Mr. Verez at
10 this time?

11 A In Florida.

12 Q Do you know where in Florida?

13 A In Miami.

14 Q And you were in Falls Church?

15 A No, I wasn't at that time.

16 Q Well, where were you in the
17 latter part of October -- September, October?

18 A Well, I was either at the
19 residence in Aldie, Virginia, or else at the office at McLean
20 Typographics in McLean, Virginia.

21 Q McLean. Now based on the phone
22 conversations that you had with Mr. Verez, were arrangements
23 made for him to bring a lady up to meet you?

24 A Yes.

25 Q And when was that supposed to

Cunningham - Direct

382.

1 take place and where?

2 A It was originally supposed to
3 take place on the -- the last Friday in -- in the month.
4 Actually, I had talked to him on the Thursday. He was coming
5 up to be up on Friday, when actually he showed up was Sunday
6 night.

7 Q Now where were you originally
8 supposed to meet him?

9 A Well, originally we talked
10 about a truck stop. We talked about several places to meet
11 him, but it was originally to call us when he reached a
12 certain point at a truck stop along the way to make arrange-
13 ments to get together at our office at McLean Typographics.

14 Q And when did you find out that
15 you were to meet him in Hanover County?

16 A On Sunday.

17 Q And how did you receive that
18 information?

19 A Well there had been various
20 calls to try to find out why he wasn't there. We'd been
21 there for several days in relation to the messages we got
22 as to when he was going to show up and at that Sunday night
23 about seven o'clock, we got a call indicating that they were
24 having some --

25 MR. BLUE: Objection, if Your

Cunningham - Direct

383.

1 Honor please, unless the call was from
2 Mr. Verez.

3
4 BY MR. VAUGHN: (Continuing)

5 Q Did you get a call from Mr.
6 Verez?

7 A Yes.

8 Q Go ahead.

9 A The -- he was having car
10 difficulties.

11 Q Did he tell you where he was
12 at that time?

13 A Well they were trying to take
14 care of the thing and he was going to get back to me on it,
15 but they weren't able to get the car going and I got another
16 call later on from Mr. Verez, again indicating that we should
17 go down there and meet him.

18 Q Did he tell you where he was
19 at that time?

20 A He told us about the hotel that
21 they were going to be at and that I should go down and --
22 and ask for the -- for the hotel room in the name of his
23 traveling companion.

24 Q And pursuant to that, did he
25 tell you what kind of car they were driving?

Cunningham - Direct

384.

1 A On the last phone call before
2 we left, he described the -- the year and model number of the
3 car and I wrote that -- I wrote that down at the time that
4 the call came in, that he -- that he also told me to go to
5 the front desk of the motel and to ask for what it turns out
6 Mr. Vidal's room.

7 Q So he told you the room would
8 be in Vidal's name?

9 A Yes, he did.

10 Q And you were at this time
11 cooperating with the DEA and Virginia State Police, is that
12 correct?

13 MR. BLUE: Objection, if Your
14 Honor please. That's no part in this
15 trial.

16 MR. VAUGHN: That's no what?

17 MR. BLUE: That's not evidence
18 against Mr. --

19 THE COURT: I don't know the
20 purpose --

21 MR. BLUE: -- Verez.

22 THE COURT: I don't know the
23 purpose of the question, Mr. Vaughn. It
24 may be --

25 MR. VAUGHN: Well, I'm going

Cunningham - Direct

385.

1 to ask him what he did then in reference
2 to this. Obviously, he's cooperating
3 with DEA and the state police, they came
4 down here.

5 THE COURT: All right, well
6 you can ask him what he then did.
7
8

9 BY MR. VAUGHN: (Continuing)

10 Q What did you then do, sir,
11 after you received a phone call from Mr. Verez indicating
12 that he was in the motel in Ashland?

13 A Well, at the time of that phone
14 call and the description of a car and all that, the -- the
15 people from the Virginia State Police and DEA were in the
16 office at the time that the phone call came in and so --

17 Q And what did ya'll do after
18 you received the phone call?

19 A I took the phone call. They
20 heard the information that came in and they stayed around for
21 awhile making their contingent plans since he wasn't coming
22 up.

23 Q And subsequent to that, did
24 ya'll respond from Northern Virginia to the Hanover area?

25 A Yes.

Cunningham - Direct

386.

1 Q And did you have occasion to
2 go to the motel that Mr. Vidal had given to you?

3 A Mr. Vidal didn't give me the
4 hotel. Mr. Verez gave me the hotel.

5 Q I'm sorry, that Mr. Verez gave
6 you. Did you have occasion to go to the motel that Mr.
7 Verez gave you, the name of the motel?

8 A Yes.

9 Q Did you go there and check on
10 a room registered in Vidal?

11 A Yes.

12 Q Did you have occasion to go to
13 that room?

14 A Yes.

15 Q Now who went with you when you
16 went to the room when you first got there?

17 A Russ Chase.

18 Q And how is Mr. Chase related
19 to you in the business sense?

20 A He was my business partner in
21 the typographics business, sound studio.

22 Q And did ya'll go to the room
23 there at Kings Motor Inn?

24 A Yes, we did.

25 Q And what -- tell the Court what

Cunningham - Direct

387.

1 took place after you arrived at the room.

2 A Well, when we first pulled into
3 the parking area down below, Mr. Verez, evidently in looking
4 out for us, came down to the parking area. We walked with
5 him over to a soda machine, exchanged greetings and what
6 have you, and he told us to come up to the room. When we got
7 up to the room, we were in the room for a few minutes talking,
8 basically just talking about how long it had been since we'd
9 seen one another, so on and so forth, and got from that point
10 to a point where Mr. Verez asked the other gentleman to get
11 the things out of where he'd put them and --

12 Q Now what other gentleman --
13 who was in the room at this time?

14 A Mr. Vidal.

15 Q And you and Mr. Chase?

16 A And me and Mr. Chase.

17 Q And Mr. Verez told Mr. Vidal
18 to do what?

19 A To go and get the other things
20 from where he'd put them.

21 Q And at that time --

22 A That being -- that being the,
23 you know, substance cocaine.

24 Q At that time did Mr. Vidal go
25 get something?

Cunningham - Direct

388.

- 1 A Yes, he did.
- 2 Q Where was it?
- 3 A Plastic bags that -- to the --
- 4 to the back area of the -- of the room back near the bathroom
- 5 area, closet area.
- 6 Q And what did Mr. Vidal do after
- 7 he brought those packages out at Mr. Verez's request?
- 8 A He brought them out and put
- 9 them on the desk. It was sort of in the middle of the room,
- 10 and Mr. Verez sat down at the desk and opened them up.
- 11 Q Mr. Verez did that?
- 12 A Uh huh.
- 13 Q And where were you when Mr.
- 14 Verez was at the desk opening up the packages?
- 15 A Standing next to him.
- 16 Q Okay, and what happened after
- 17 that?
- 18 A In the process of our talking,
- 19 it was then moved from that point over to the bed and --
- 20 Q Now how many beds were in the
- 21 room?
- 22 A Two.
- 23 Q This would be the bed closest
- 24 to the door or farthest away from the door?
- 25 A Furtherest away.

Cunningham - Direct

389.

1 Q Go ahead.

2 A At which point I asked Mr.

3 Chase to go out and -- and bring in a bottle of clorox and
4 test equipment for us to --

5 Q What was the purpose of that,
6 sir?

7 A Well two purposes; under
8 normal conditions, to test it for what it was, but in this
9 particular situation, to indicate to the other officers that
10 we had actually seen the substance.

11 Q Did Mr. Verez make any state-
12 ment to you in reference to the cocaine at that time while
13 you were in the room?

14 A Oh, various statements about
15 how good it was and how much we were going to like it and so
16 on and so forth.

17 Q And what happened when Mr.
18 Chase returned?

19 A When Mr. Chase returned to the
20 room, he knocked at the door and I didn't actually see the
21 person that actually answered the door but I know it wasn't
22 Luis, so it only leaves the one other person, Mr. Vidal, to
23 have opened it from the lock that was on there.

24 Q Well, where -- where were you
25 and Luis when the knock was on the door?

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Cunningham - Direct

390.

1 A We were sitting on -- on the
2 back bed in the room with the package between us.

3 Q And --

4 A And I was a little bit con-
5 cerned at that point which is why I wasn't -- because of the
6 fact that he had jumped up to the window before that and I --
7 actually I had some concerns since I did know how they were
8 going to come into the room with his safety and I was a little
9 concerned to make sure he wasn't too near the door as I was
10 instructed.

11 Q And there's a knock on the door.
12 You and Mr. Verez were sitting on the bed. What happens
13 next?

14 A As soon as --

15 Q You've got the cocaine between
16 you.

17 A -- the door opened and Mr.
18 Chase came into the room, the police immediately and the
19 officers rushed the door.

20 Q And everyone was seized at that
21 time?

22 A That's correct.

23 Q Now describe the two packages,
24 or describe the quantity of cocaine that was on the bed between
25 you and Mr. Verez.

Cunningham - Direct

391.

1 A Well, I didn't have any actual
2 weight on it, but from all intents and purposes of having seen
3 before, there was probably about a kilogram of cocaine.
4 Q And --
5 A 2.2 pounds.
6 Q -- how was it packaged?
7 A Plastic bags, large white
8 rocks in it as well as powder.
9 Q And the contact in Florida to
10 bring the substance north had been with Mr. Verez?
11 A Yes, it had.
12 Q Had you had any contact with
13 Mr. Vidal at all prior to the --
14 A Never.
15 Q -- time you saw him at the room?
16 A Never.
17 Q Were you present when that sub-
18 stance was seized?
19 A Excuse me?
20 Q Were you present when that sub-
21 stance was taken off of the bed?
22 A Yes.
23 Q And who did that?
24 A The officers.
25 MR. VAUGHN: That's all the

same thing. The Commonwealth's entitled to go back.

THE COURT: Well, I still think it's cumulative, but go ahead.

BY MR. VAUGHN: (Continuing)

Q Did there come an occasion --

MR. BLUE: What was your ruling, if Your Honor please?

THE COURT: Overruled you, Mr. Blue.

MR. BLUE: I note the exception, if Your Honor please.

BY MR. VAGUHN: (Continuing)

Q Going back to the latter part of September after you've had this agreement to come up, what was the day he was supposed to be here?

A Friday.

Q And did he show up on Friday?

A No.

Q And did you have a conversation with him after that day he didn't first show up?

A Well, we didn't have a direct conversation with him. We called his home.

Q And who did you talk to at that time?

A Well, there were a couple of people we talked to through there, someone that I knew which was his wife, to ask her if he was there or if he was coming or what have you, and she said that she hadn't heard from him, that he was on the road and I assumed then it was because he was coming to see me.

Q And when you next talked to Mr. Verez, did you ever indicate that you couldn't wait around for him and that you were going to call the deal off?

A I tried when -- in saying that I can't stay here all weekend and all that type of thing. He insisted that -- that we stay there on the weekend to see him.

Q He insisted that you stay to see him?

MR. BLUE: Well, I object to him repeating the answer in asking the question, if Your Honor please. The evidence comes in when he asks the question, not repeating it and getting it in again, sir.

THE COURT: Yes. You were --

EXCERPTS OF TRANSCRIPT ON RULINGS ON MOTIONS TO SUPPRESS -
January 30, 1984

1 NOTE: At the calling of the
2 case, the Court Reporter being duly sworn,
3 the matters are begun as follows:
4
5

6 THE COURT: All right, let the
7 record show that Mr. Vidal and Mr. Verez are
8 here, and Mr. Blue is here, and the Common-
9 wealth's Attorney is here.

10 Mr. Blue, you have filed additional
11 motions.
12
13

14 NOTE: At this time several defense
15 motions are heard, i.e., motion on reliability
16 of informants and motion that arrest of defend-
17 ants was illegal, as well as the search, and
18 the Court's ruling is as follows:
19
20

21 THE COURT: Yes, sir, I understand
22 that, gentlemen, but the Court orders that
23 the record made on January the 10th is a part
24 of the record today. The Court will order
25 that the informants were reliable. That's

1 all the evidence you want to put on today.
2 I think you have enough evidence of that at
3 the last hearing for the Court to make the
4 ruling, Mr. Blue, and the -- if the present
5 pending motion is different from the one I've
6 already heard, I deny it and each of the
7 three separate listings on the one filed on
8 January 19th. I think I've heard sufficient
9 evidence to do it, Mr. Blue. In fact, I
10 went --

11 MR. BLUE: You will not hear
12 my argument, if Your Honor please?

13 THE COURT: In fact, I went back
14 and read all of the cases that you cited in
15 your Memorandum and I read the cases that Mr.
16 Vaughn called to my attention, and I think
17 we have sufficient evidence before the Court
18 for me to allow me to rule this morning.

19 Now I'll let you argue for the
20 record, but I wanted to put that in the record
21 so that you'll know what you're arguing.

22 MR. VAUGHN: Your Honor, I would
23 suggest that Mr. Blue make a proffer to the
24 Court of what he anticipates putting on this
25 morning that would make any difference and

1 make it a part of the record of what he thinks
2 he's going to say that would make a difference.

3 THE COURT: All right. Well, as
4 I say, if he wants me to rule that the inform-
5 ants were reliable, I'll rule that they were
6 reliable.

7 MR. BLUE: Then I need to offer
8 no evidence --

9 THE COURT: That's right.

10 MR. BLUE: -- if the evidence of
11 the 10th is accepted, if Your Honor please.

12 THE COURT: Yes, sir.

13 NOTE: Defense motion to suppress
14 the evidence is heard at this time, and the
15 Court's ruling is as follows:

16
17
18
19
20 THE COURT: I feel that the evidence
21 is sufficient to deny the motions to suppress,
22 Mr. Blue, and I deny them, each of the three
23 listed today, and your renewal of the ones that
24 we did on January the 10th. They're all
25 denied.

EXCERPT OF TRANSCRIPT OF MOTIONS - JANUARY 30, 1984

1 continue, if Your Honor please, is -- I
2 think it would be well to argue after you
3 decide whether you're going to hear this
4 motion. I have offered to the Commonwealth,
5 if they would allow me to do so, to stipulate
6 the evidence that you heard on January 10th
7 and then I would simply proffer to -- in
8 addition to that evidence if the witnesses
9 are here, I would simply proffer some eviden-
10 ce on the reliability of the two informants
11 that were involved. It would take a matter
12 of, I'd say, a half an hour to decide this,
13 if the Commonwealth will agree to those
14 terms. As of now, they've not agreed. So
15 I have witnesses subpoenaed and I'll put them
16 on if the Court feels that it will hear the
17 motion, sir.

18 THE COURT: Well, didn't you
19 raise the same questions on January 10th
20 and isn't the -- wouldn't the evidence be
21 the same even if I take your theory of the
22 new motions?

23 MR. VAUGHN: Your Honor, may I
24 proffer --

25 MR. BLUE: If Your Honor