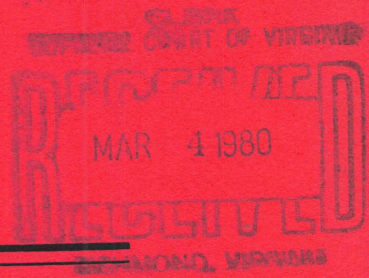


221VA258



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 791369

ROBERT CLYDE CRAFT

Appellant

V.

COMMONWEALTH OF VIRGINIA

Appellee

JOINT APPENDIX

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Chatham, Virginia 24531

Counsel for Appellant

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Commonwealth of Virginia

IN THE CIRCUIT COURT OF THE COUNTY OF PITTSYLVANIA

April 17, 1979

(Date)

The Grand Jury Charges That: ROBERT CLYDE CRAFT

On or about January 9 *Tues*, 19 79, in the County of Pittsylvania, Virginia, DID ATTEMPT TO ROB ONE C. L. JOHNSON OF HIS CASH BOX WHICH CONTAINED APPROXIMATELY \$500.00, IN UNITED STATES COINS AND CURRENCY.

Virginia Code § 18.2-58

✓ A True Bill.

Clyde L. Banks
Foreman
Grand Jury

This Indictment is found on the evidence of Lt. H. L. Gatewood,
witnesses sworn in Court and sent to the Grand Jury.

MOTION

Robert Clyde Craft hereby moves the Court to direct that certain property of which he is the owner, a schedule of which is annexed hereto, and which was unlawfully seized by Lieutenant H. L. Gatewood and Deputy T. T. White, or other officers of the Pittsylvania County Sheriff's Department, or others unknown acting at the direction of officers of the said Sheriff's Department on or about January 9th and January 10th, 1979, from his person or from the premises known as Memorial Hospital, 142 South Main Street in the City of Danville be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

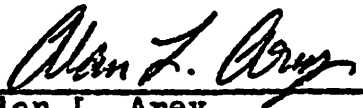
The movant states that the property was unlawfully seized because the search was without a warrant in violation of Section 19.2 - 59 of the Code of Virginia, 1950, as amended.

The movant further states that the search and seizure was unreasonable because it was made without a warrant issued on probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the things to be seized in violation of Amendment IV of the Constitution of the United States.

Filed in the Clerk's Office of the Circuit
Court of Pittsylvania County the 22nd
day of April 1979

S. W. SANCHEZ, Clerk


Deputy Clerk


Alan L. Arey
Counsel for petitioner

003

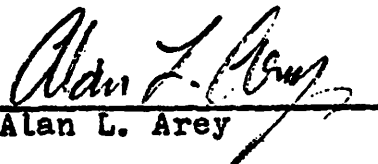
SCHEDULE OF PROPERTY SEIZED FROM ROBERT CLYDE CRAFT

- 1) One (1) leather jacket.
- 2) One (1) shirt.
- 3) Other items number and kind unknown.*
- 4) One (1) bullet.

*The petitioner is unable to identify the items in number three above because no inventory of the property seized has been made or filed in violation of Section 19.2 - 57 of the Code of Virginia, 1950, as amended.

CERTIFICATE

This is to certify that a true and correct copy of the foregoing Motion was delivered to George A. Jones, Jr., Attorney for the Commonwealth at his office in the Pittsylvania County Courthouse, Chatham, Virginia 24531, on this the 26th day of April, 1979.


Alan L. Arey

VIRGINIA: In the Circuit Court of the County of Pittsylvania - June 14, 1979

Commonwealth of Virginia

Plaintiff

vs. Indicted for Attempted Robbery

Robert Clyde Craft (DOB: 1/15/56)

Defendant

This day came again the Attorney for the Commonwealth, and the defendant, in person, who was found guilty of Attempted Robbery by jury verdict rendered May 8, 1979, and also came Alan L. Arey, 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, a copy of said report having been previously delivered to counsel for accused.

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

Whereupon, the Court, taking into consideration all of the evidence in the case, the report of the Probation Officer, and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, the Court finds the defendant guilty of attempted robbery as charged in the indictment, and hereby sentences the defendant to confinement in the penitentiary of this Commonwealth for a term of ten (10) years, the punishment the jurors in their verdict ascertained, and it is ordered that the defendant pay the costs of the Commonwealth in this behalf expended.

After pronouncing sentence, the Court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia and his right to proceed in forma pauperis and to have the assistance of court-appointed counsel.

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 penitentiary, therein to be kept, confined and treated in the manner provided by law.

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

The defendant is due credit from April 9, 1979.

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

A Copy, Testes

S. W. SWANSON, CLERK,


Deputy Clerk

Assignment of Errors

- I. The Court erred in denying the motion to suppress the clothing as evidence first at the suppression hearing, again at the close of the evidence for the Commonwealth, and, finally, at the close of all the evidence.**
- II. The Court erred in denying the motion to strike the evidence of the Commonwealth insofar as the clothing was concerned both at the close of evidence for the Commonwealth and again at the close of all the evidence.**
- III. The Court erred in denying the motion to suppress the bullet, first at the suppression hearing, again at the close of the Commonwealth's evidence, and, finally, at the close of all the evidence.**

LT. H. L. GATEWOOD, Deputy Sheriff, after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. AREY:

Q. Would you please tell the Court your name?

A. H. L. Gatewood, Pittsylvania County Sheriff's Department.

Q. Did you have an occasion in January of this year to seize certain property belonging to Robert Craft?

A. Yes, I did.

Q. Where was this?

A. In the emergency room of Danville Memorial Hospital.

Q. And what time was this?

A. It was approximately in the neighborhood of 3:30 P. M. on January 9, 1979.

THE COURT: January 9th?

A. Yes, sir, your Honor.

Q. And what did you seize?

A. I received all the personal clothing of Robert Craft.

Q. Everything?

A. Yes, I think so.

THE COURT: Well, wat was it---I mean was it a shoe, or hat, or---

A. I recovered a jacket, a shirt----

THE COURT: A waist jacket?

A. Yes, sir. A flowered silk sport shirt; a pair of trousers; and a pair of shoes and socks.

THE COURT: How did you get access to this?

A. From Dr. Stoneburner.

THE COURT: Who is he?

A. He was the physician that was attending on Mr. Craft when I was in the emergency room at the hospital.

THE COURT: Well, did he give it to you---did you ask for it or what?

A. Dr. Stoneburner asked me did I want the clothing from the victim and I told him I did. He handed it to me in a paper bag. A brown paper bag.

THE COURT: Where was the victim?

A. Lying on a stretcher there in one of those little cubicles in the emergency room being prepared to go to x-ray and surgery.

THE COURT: Did you talk to him?

A. Yes, sir, I did.

THE COURT: Did you ask him about these articles?

A. No, sir, I did not.

THE COURT: Did he hear Dr. Stoneburner tell you that?

A. Yes, sir, I imagine he did. He was laying right there between--he was laying between Dr. Stoneburner and a nurse.

THE COURT: All right, Mr. Arey.

Q. So, when you got the clothing Mr. Craft was present?

A. Yes, sir.

Q. And did you ask him if you could take his clothing?

A. No, sir.

Q. Did you ask anybody if you could take the clothing?

A. Dr. Stoneburner asked me did I wish to take the clothing. I told him I did. At that time he handed them to me in a brown grocery shopping bag.

Q. And how soon was this after you found out about the circumstances that took you to the hospital?

A. How soon was this after I found out about the circumstances being in the hospital?

Q. Well, all right. You went down to the hospital in response to a call?

A. That's correct.

Q. How soon was this after you got to the hospital?

A. I would say fifteen or twenty minutes.

THE COURT: What kind of call did you get?

A. I was investigating an incident that happened up here in west of Chatham. I received a call from the Sheriff's Office that a subject had arrived at the hospital that had been shot. From the description that I got from the dispatcher that he received from Memorial Hospital the description fitted the subject we were looking for.

THE COURT: All right.

Q. So, you did not have the warrant---did you have the warrant when you got to the hospital to seize anything?

A. No, sir.

Q. Did you ask the hospital for any assistance in terms of getting together the things belonging to Mr. Craft?

A. No, sir.

Q. Was there any reason it would have been impractical for you to get a warrant?

A. Beg your pardon?

Q. Would there be any reason why it would have been impractical for you to get a warrant to seize these things?

A. None that I know of. No, sir.

THE COURT: You understand what he is saying now----
why didn't you get one?

A. Why didn't I get one?

THE COURT: Yeah.

A. I didn't think I needed a warrant. They asked me did I want the clothing and I told them I did so I got the clothing.

THE COURT: So, they initiated the discussion you didn't?

A. That's correct.

THE COURT: Well, now did you know whose clothing it was?

A. Yes, sir.

THE COURT: Did you have a warrant for the man?

A. No, sir.

THE COURT: Did you place him under arrest there in the emergency room?

A. No, sir.

Q. Did you ever seize anything of Mr. Craft's, or associated with Mr. Craft, later?

A. Did I receive anything later?

Q. Yes.

A. No, sir.

Q. Okay. With respect to this you did not get a warrant to take an inventory of the things you seized?

A. No, sir. I didn't take any inventory.

Q. So, since you didn't take one you couldn't file one?

A. No, sir.

Q. Is there any reason why you couldn't have just left these things at the hospital in safe keeping and gone to get a warrant?

A. I guess no. It's never been done. We've always in the past---held clothing and things in the past and we would pick them up another day if we are not there at that time.

Q. I think that's all. Answer any questions Mr. Jones may have.

CROSS EXAMINATION

PY MR. JONES:

Q. You say you talked to Robert Craft, didn't you?

A. Yes, sir.

Q. And what did he tell you---why was he in the hospital?

A. He told me that he had been shot. I asked him where he was shot. He said he was shot in Danville. He didn't know what street it was. I asked him who brought him to the hospital, and he said he walked to the hospital, no one brought him to the hospital.

Q. So, he told you he was a victim of a gunshot wound. Is that correct?

A. That's correct.

Q. Was any Danville Police Officer about?

A. Yes, sir. One of the Danville Sergeants was there. He answered the call the first time it was sent.

Q. Any other deputies?

A. Deputy White was with me.

Q. I believe other than this list of clothing a bullet was also seized some later date. Is that correct?

A. The next day. Yes, sir.

Q. Deputy White got that?

A. That's correct.

Q. The way it went is that you went over to the emergency

room and Dr. Stoneburner gave you a brown paper bag containing these various clothes. Is that correct?

A. That's correct.

Q. And you were in the presence of the defendant, Robert Craft?

A. That's correct.

Q. Did he make any objection to anything that was going on?

A. No, sir, he did not.

Q. And he was lucid and able to understand what was going on?

A. Yes, sir. He talked to me, answered two questions.

Q. It was your understanding that he voluntarily admitted himself in the hospital?

A. That's correct.

Q. And put himself under the car of whatever doctor would see him?

A. That's correct. Yes, sir.

Q. And in this case Dr. Stoneburner?

A. Yes, sir.

THE COURT: I assume he went in the emergency room?

A. Yes, sir. That's correct.

THE COURT: Do you know what time he was admitted?

A. No, sir, I don't, your Honor.

Q. This transaction between you and Dr. Stoneburner took place in the emergency room also?

A. Yes, sir.

Q. Nobody chased you out and said you shouldn't be there did they?

A. No, sir.

Q. No further questions.

THE COURT: When was this defendant formally arrested?

A. On January 16, 1979, at 9:00 A. M.

THE COURT: That was a week later?

A. Yes, sir.

THE COURT: Now, when you went to the hospital was Robert Craft a suspect before you got there?

A. Yes, sir.

THE COURT: Why---I mean what did you match together--
the call and the---

A. The call and the description I received from the---at the scene of the crime.

THE COURT: I assume you went from here or---

A. No, sir. I went from Chatham.

THE COURT: To the scene?

A. To the scene.

THE COURT: He wasn't there?

A. No, sir.

THE COURT: The victim of the crime, was he there?

A. Yes, sir, he was there. I talked to him.

~~Q. You went straight to Danville?~~

~~A. Yes, sir.~~

Q. There's a magistrate available in Danville?

A. Yes, sir.

Q. All right. Thank you, that's all.

THE COURT: You didn't actually search this man
did you?

A. No, sir. I never touched the man.

THE COURT: All right.

WITNESS STANDS ASIDE

THE COURT: All right, Mr. Arey.

MR. AREY: I would like to call Deputy Tom White.

TOM T. WHITE, Deputy Sheriff, after having been
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. AREY:

Q. Deputy White, would you please, for the record, give
us your name and where you work?

A. Tom T. White. I work for Pittsylvania County Sheriff's
Department.

Q. Mr. White, on the 9th of January were you with Lt.

Gatewood when he was investigating a particular case in Danville?

A. Yes, sir.

Q. And at that time did you and he seize any property belonging to Robert Craft?

A. Yes, sir.

Q. About what time was that?

A. I don't know the exact time----between probably 7:30 and 8:00.

Q. Okay. Was Mr. Craft under arrest at the time?

A. No, sir.

Q. Was he arrested later?

A. Yes, sir.

Q. When?

A. About a week later----

THE COURT: Excuse me Mr. Giles, you are in this case, aren't you. I'm sorry I overlooked it on this hearing. We would have waited for you.

MR. GILES: I would have been here at 1:00 but I tell you they had a wreck over here and I didn't get out.

THE COURT: I'm sorry.

MR. GILES: That's all right.

THE COURT: Go ahead.

A. ---ah, he was arrested on January 16, 1979.

- Q. All right. Now you were there when a package described as a paper bag containing some clothing was seized. Is that correct?
- A. That's correct.
- Q. Was there any particular reason that made it essential to take that package right then?
- A. Well, we was just there, you know, and we was there and the doctor had it packed up so we just took it right on at that time.
- Q. Did you have a warrant?
- A. No, sir.
- Q. Was there any reason you couldn't have left it there in safe keeping and gone to get a warrant?
- A. We could have got a warrant if we thought one was necessary. Yes, sir.
- Q. Did you ask anybody at the hospital to get these things together for you?
- A. No, sir.
- Q. They just brought them, period?
- A. He asked us did we want those items and we told him we did. So he bagged them up.
- Q. All right. Was Mr. Craft there?
- A. Yes, sir, he was.
- Q. Did you ask Mr. Craft if you could take his clothing?

A. I didn't, no, sir.

Q. Do you know if anybody did?

A. I don't recall.

Q. You say Mr. Craft was there. What was his condition?

A. Well, he had been shot.

Q. Was he conscious?

A. He was conscious---he seemed to be in----

THE COURT: Did he know you, Mr. White?

A. Yes, sir.

THE COURT: How long have you been knowing him?

A. Fifteen---maybe fifteen years or more---ten or fifteen.

THE COURT: What did he say to you?

A. I don't think he said anything to me. Lt. was talking and I was standing at where the curtains closes at, you know, right next to him.

THE COURT: But he was talking?

A. Yes, sir.

THE COURT: All right.

Q. Mr. White---or Deputy White, did you after you got the clothing did you go back to Chatham?

A. Yes, sir.

Q. All right. Now, did you seize anything else connected with this case after tonight?

A. Yes, sir.

Q. Did you---when was that seized?

A. This was seized on January 10, '79 about 10:00 A. M.

Q. And what was it?

A. This was a bullet.

Q. Okay. Were you in Chatham before you went down to seize the bullet?

A. Yes, sir.

Q. Did you have a warrant to seize the bullet?

A. No, sir.

Q. Was the magistrate's office open?

A. Yes, sir.

Q. Was there any reason that it was impractical to get a warrant?

A. Well, I didn't think we needed a warrant.

Q. Are you aware of the provisions of---are you familiar with the provisions of the Code of Virginia §19.2-50?

MR. JONES: We object to that. Obviously there are plenty of exceptions to obtaining search warrants. That's what we are here for.

THE COURT: I think he's answered your question, Mr. Arey. He said he didn't think that under the circumstances he needed one. That's all you wanted to know, isn't it?

MR. AREY: All right, your Honor.

THE COURT: Tell me about the bullet---who had it?

A. The bullet first was----

THE COURT: I'm just talking about what you know now.

Not what somebody told you. Where did you get it?

A. I got the bullet from the laboratory where the bullet was kept from the time it came from the defendant.

THE COURT: Well---

A. Anyway that's where I picked it up at.

THE COURT: What laboratory?

A. In Memorial Hospital.

THE COURT: Who gave it to you?

A. Dr. Joe M. Estevez.

THE COURT: How did you know it was there?

A. Well, when we was in there in the emergency room, Dr. Stoneburner, Dr. John Stoneburner, asked us did we want to save the bullet for us, and we said "yes". And he said it would probably be tomorrow or the next day or so before we could come get the bullet.

THE COURT: It had not been extracted at that time?

A. No, sir, it hadn't.

THE COURT: All right.

Q. You say you got the bullet ---is that from a Dr. Estevez?

A. Yes, sir.

Q. And you don't know how he got the bullet except what other people have told you?

A. Right, sir.

Q. Okay. Did you know---did you ever ask Mr. Craft if you could have the bullet?

A. No, sir.

Q. Do you know if anybody ever asked Mr. Craft if the police could get the bullet?

A. Not to my knowledge. No, sir.

Q. Okay. When you were going ---going back to the evening before when you first talked to Dr. Stoneburner the bullet was not, had not been removed then?

A. That's correct.

Q. And it was after you told the doctor to keep the bullet for you-----

A. Right.

Q.---that you then came back and got it?

A. At a later date. Yes, sir.

THE COURT: I thought you said the doctor asked you if you wanted it?

A. Right, he did.

Q. But you told him you wanted the bullet?

A. After he asked us we said we wanted him---right, we said we wanted the bullet.

Q. That's all.

NO QUESTIONS BY MR. JONES:

THE WITNESS STANDS ASIDE

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THE COURT: All right, Mr. Arey. Now, Mr. Arey, you can put the defendant on the stand if you want to without waiving his right on the guilt or innocent issue. On this phase of the case only. If he does, of course, he is subject to cross examination like any other witness on this phase of the case.

MR. AREY: Right. One thing other---Mr. Giles do you have anything you want to ask Lt. Gatewood?

MR. GILES: No, sir.

MR. AREY: Okay. I'll put Robert Clyde Craft on the stand.

THE COURT: All right.

ROBERT CLYDE CRAFT, the defendant, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. AREY:

Q. Mr. Craft, would you state your name and address for the Court?

A. Robert Clyde Craft, P. O. Box 932, Chatham, Virginia.

Q. All right. And on January 9th of this year did you have occasion to be in the Danville Memorial Hospital?

A. Yes, sir, I think so.

Q. And while you were there did you see any police officers, or anybody?

A. Not that I remember.

Q. Well, what were the circumstances that took you to the hospital?

A. I was shot.

Q. And you went to the hospital for that?

A. Yes.

Q. While you were there did anybody ask you if they could take your clothing, or the bullet if it was extracted from you?

A. No.

Q. Did you sign any papers saying they could do so?

A. No.

Q. Do you remember anybody talking to you about this?

A. No.

Q. Do you remember seeing Lt. Gatewood----do you remember seeing Tom White there?

A. No.

Q. Did you---I may be repeating myself---did you give anybody at the hospital---did you tell anybody at the hospital to take your clothing and give it to the police or give it to someone else?

A. No.

THE COURT: How was it gotten off of you----who took it off?

A. I don't know.

THE COURT: Well, you went there for treatment
I assume---how did you get to the hospital?

A. I don't know that either.

THE COURT: You don't know how you got there?

A. No.

THE COURT: What clothes did you last have on?

A. I remember having on a brown jacket, shirt, sweater over
top of the shirt, and a pair of jeans, socks, a pair of
tennie shoes---

THE COURT: Sir, I didn't understand the last thing
you said?

A. A pair of jeans, socks, a pair of tennie shoes and
underwear.

Q. All right, that's all. Answer any questions Mr. Jones
wishes to ask you.

CROSS EXAMINATION

BY MR. JONES:

Q. What time did you arrive at the hospital?

A. I don't know.

Q. What time were you shot?

A. I don't know that either.

Q. What's the last thing you know?

A. I remember being in the pool hall that evening.

Q. What pool hall?

Q. And you went ahead and took it?

A. Yes.

Q. Not knowing what you were taking?

A. Correct.

Q. Huh?

A. Correct.

Q. When did you take these pills before or after leaving the pool hall?

A. Before I left the pool hall.

Q. You remember leaving the pool hall?

A. No.

Q. Do you know what type of wound you had in your chest?

A. Gunshot.

Q. What type of gun?

A. I don't know.

THE COURT: Did you consent to the operation?

A. Not as I know of.

Q. Well, do you realize that you entered the hospital?

A. I realized the next day that I was in the hospital.

Q. And you realized that you were wounded?

A. Yes.

Q. And if you didn't say anything----you were operated on. Is that correct?

A. Yes.

- Q. And they did take the bullet out of you?
- A. Yes.
- Q. Who was your doctor?
- A. Stoneburner.
- Q. You had no objections for Dr. Stoneburner to take the bullet out of you did you?
- A. I don't know what----I was suppose to sign a paper.
- Q. Do you object to it right now?
- A. Do I object to it?
- Q. Yeah.
- A. I guess they done took the bullet out.
- Q. Did you want him to take it out or not---did you care?
- A. It didn't matter---I didn't know.
- Q. Huh?
- A. I didn't know. The next day I woke up----
- Q. Right now--what do you say right now---are you glad he took it out?
- A. Well, the bullet couldn't have done me no harm. I don't see no need in them having to operate.
- Q. So, are you planning to sue Dr. Stoneburner for malpractice for operating on you?
- A. I don't know. I'll have to check into that.
- Q. Let me show you some clothes here and see if any of them are yours or not. Do they look like your pants?

A. Yes.

Q. Yes?

A. Yes.

Q. Are they the same ones you had on when you were shot?

A. I think so.

Q. Now about this---what's this thing?

A. I don't know what it is.

THE COURT: That wasn't part of his.

MR. GATEWOOD: No, sir.

Q. Are these your shoes?

A. Yes.

Q. Your underwear?

A. Yes.

Q. Those your socks?

A. Yes.

Q. Is this your sweater you are talking about?

A. Yes, that's the sweater.

Q. How about the shirt?

A. I'm suppose to have a jacket and a shirt.

Q. Is this your silk flowered shirt?

A. Yes.

Q. That you were wearing?

A. That's my shirt.

Q. Is this your jacket?

A. That's my jacket.

- Q. So, all these clothes on the table that I just showed you are yours?
- A. Those is mine.
- Q. I believe that's all.

RE-DIRECT EXAMINATION

BY MR. AREY:

- Q. Mr. Craft, you say you haven't remembered anything about--- you remember very little about that night?
- A. Right.
- Q. Do you know why this was?
- A. No, I don't.
- Q. You had been shot?
- A. Yes.
- Q. Were you operated on that night?
- A. I guess so, sometime that night.
- Q. Do you know if it was with general anesthesia---they put you to sleep?
- A. I guess.
- Q. Were you given any medication afterwards?
- A. They were giving me pain pills later on.
- Q. Did they give you anything to make you sleep?
- A. That's what they were giving me the pain pills for so I could sleep.
- Q. I think that's all.

MR. JONES: No further questions.

~~MR. AREY: That's all the witnesses as far as
the gunshot wound.~~

~~THE COURT: All right.~~

~~MR. JONES: No witnesses for the Commonwealth.~~

THE COURT: All right. Do you gentlemen wish to
argue the matter?

MR. AREY: If you please.

THE COURT: All right.

MR. AREY: Your Honor, the evidence introduced here
shows that there wasn't any warrants for the taking
and seizure of either the clothing or the bullet.

THE COURT: What standing have you got for requesting
the bullet ---now it wasn't your bullet was it?

MR. AREY: He don't know. It was removed from him.

I think he has an interest in it somewhat. That
certain veterans of the county may carry pieces of
hardware that were introduced along with the Empire
of Japan or the Sherman Right. It doesn't seem to
be anybody elses property. He was the last one to
happen to have an injury in connection with it.

THE COURT: You don't claim it was his do you---he
said it wasn't self inflicted.

MR. AREY: It wasn't self inflicted but I would suggest
it is his by right of capture. You don't know wo
elses it might have been. And I would suggest that

his connection with the bullet _____

THE COURT: Of course, it hasn't been proven that it was taken from him.

MR. AREY: In which case the only more reason to suppress it. It doesn't belong in the case at all.

THE COURT: Well, you've got to prove that it was his.

MR. AREY: Your Honor, the terrible problem we don't know. But we do know that it was seized in connection with this case----

THE COURT: And it was gotten in the process with his apparent consent----an effort to save his life, wasn't it? He went to the hospital.

MR. AREY: Your Honor, when a person goes to the hospital they do not automatically consent for their property to be seized, taken and extracted from their body and then passed out to the world of law. Even if an officer of the law has a right to request these things. But there's a proper procedure primarily on questioning of reason the procedure is getting a warrant, going before a neutral magistrate to decide whether there is a reasonable request. The officers didn't go before the magistrate. They testified that there was no---that it wouldn't took any inconvenience for them to go. Particularly with the respect

to the law Tom White, the deputy, was right here in Chatham and the Sheriff's Office next to the Magistrate's Office it wouldn't have taken but a minute for him to walk across get a neutral magistrates view on whether or not this was a reasonable seizure and come down with a warrant. But he completely ignored doing this. Now he is trying to justify as far as the court/^{goes} on the basis that the seizure was consented to. Well, his testimony is that, you know, to the extent that there was a direct consent it was from Dr. Stoneburner. Now perhaps you can _____ the consent from Mr. Estevez, Dr. Estevez because he handed it over when asked by a uniformed officer.

THE COURT: But he initiated the discussion.

MR. AREY: Estevez?

THE COURT: Dr. Stoneburner did. He said, "do you want these things."

MR. AREY: At a time when he didn't have it. And Tom White and whoever the officer was that was there said, "yes, we want it." Whereupon Dr. Stoneburner knowing that the police wanted the bullet went and searched for it in the body of the defendant.

THE COURT: Just because the Sheriff asked him to?

MR. AREY: We don't know. The only evidence presented

as far as his consent is apparently is because the Sheriff asked for it.

THE COURT: Dr. Stoneburner is your agent you know. You hired him to doctor on this man.

MR. AREY: There are perhaps an answer to that. But I think that under the circumstances where a bullet the police request that Dr. Stoneburner would do as much as he could for the police in this as he was agent for the defendant.

THE COURT: What was he doing for the police.

MR. AREY: He was searching for the bullet that they had asked him for.

THE COURT: He wasn't doing that---the police didn't pay the bill did they?

MR. AREY: I have no idea whether the bill has even been paid. But in any case---

THE COURT: We are getting two things confused. We getting the bullet and the clothes.

MR. AREY: Yes--no there were two separate things. I thought about it in responding questions back and forth. But as far as the bullet goes in any case an agent doesn't have, you know, a person can be an agent of the police in a search and seizure even if

if he is not paid, provided that he's doing whatever request in their behalf. But to separate the two-- we have two problems here----one is the bullet, one is the clothes. I would suggest that under the circumstances that it simply has not been shown that there existed those kind of exceptional circumstances that justify these search without a warrant.

Particularly with respect to the bullet for the officer to recover it would have been no way and means to get. And none of the dangers that normally associated with the situation where a warrant was _____ or existed. The terms, if there was a consent, even if it was with a consent from Dr. Stoneburner, or whether the consent was from Dr. Estevez, there wasn't one from the defendant to hand him the bullet. And I think you do have the real question here with respect to the bullet as to whether or not the personnel of the hospital were acting under the direction of the police with respect to the bullet. The other problem as far as clothing goes is again none of the _____. There were no exceptional circumstances according to the testimony of both Lt. Gatewood and Deputy White. There's no reason why they couldn't have left the clothing there and gone to get a warrant. There is a magistrate

in Danville. There appears it would have been minor inconvenience to get the warrant. They relied on consent. But they both testified they didn't ask the defendant for his consent even though he was right there. Even though according to Deputy White he was able to talk--knew what was going on. Instead there was a third person who was just standing around holding the clothes--holding the bag. Now-----

THE COURT: Standing around?

MR. AREY: Well, not exactly--

THE COURT: You don't think the doctor was just standing around hold the clothes?

MR. AREY: Well, that's what the testimony seems to---

THE COURT: surely he had more to do that night than that.

MR. AREY: Well, yes, but according to Lt. Gatewood-- it was testimony Dr. Stoneburner came forth with his clothes in a bag. And I think we have a real question here. Admittedly a person can waive their rights with respect to search and seizure and things like that. But can a third person, in this case Dr. Stoneburner, waive the rights of the defendant. We would suggest that we are treading on very dangerous grounds if we start to say that people---that one

person can waive somebody else's rights. Especially as far as being crucial. The crucial rights of having to do with judicial process. I would say that under the facts and particularly since the defendant was there and could have been asked, the failure took items at his consent since he was personally available, or to go get a warrant and go before a neutral magistrate is favorable as far as the clothes goes.

THE COURT: Do you have any authority for your position?

MR. AREY: Which one?

THE COURT: Either or both.

MR. AREY: As far as an authority for going without the warrant, the authority---

THE COURT: I don't mean general authority now.

Admittedly there was no warrant. It seems to me there was a case recently, not recently, but within the past ten years since all this commotion started about clothing.

MR. AREY: Yes, your Honor, there is. This case is Morris v. Commonwealth.

MR. JONES: I believe that case is a little different from what we've got here.

THE COURT: Tell me a little bit more about it. I don't know what it is.

MR. JONES: I believe the way I understand it Morris was admitted to the hospital and they actually put him in a room. And the police came several days thereafter looking for evidence and his clothes were in the hospital room where he was residing. And the police came to the nurse and asked her about it, whether or not she would give them the clothes and she agreed to. And, of course, the Supreme Court of Virginia said that was not correct procedure and suppressed the evidence. This obviously is not the case. This was Morris v. Commonwealth police officers are instigating making the nurse just a tool of their search and their seizure. Here one, we submit that the case will end itself entirely when we start realizing that this is not a search and seizure case. It's no search involved. The police officers went to the emergency room when they had a right to be to investigate a shooting, a robbery and shooting that took place in Pittsylvania County. They came to the emergency room where they had a right to be to investigate and when they got there the search, if you want to call it, had already happened as far as the clothes were concerned. Dr. Stoneburner had already gathered up the clothes and put them in a bag

susceptible to distruction and being lost. Therefore, the seizure as far as the bullet was concerned still came from a third part, Dr. Estevez, or whatever his name is, came from probably Dr. Stoneburner to Estevez and then to Deputy White. They were just recipients of searches and seizures of other independent citizens. Therefore, we are not really talking about the Fourth Amendment Constitutional Rights as far as the defendants concerned be, I beleive, the police officers and their actions. They were actually receiving things that were being offered to them. That's why we submit the motion is not well made because it's not a Fourth Amerdment attack on any thing. It's not a search and it's not a seizure.

THE COURT: All right. Mr. Arey do you want to reply to that---wait a minute---Mr. Giles, do you want to---

MR. GILES: No, sir.

MR. AREY: Your Honor----

THE COURT: What's the citation on the Morris case?

MR. AREY: It's 208 Va., 331, 126 S.E.2d----

THE COURT: That's all right, I don't want that. I've got the 209.

MR. AREY: Your Honor, the holdings in Morris is as follows: "We think the assignment is well taken

and that the admission of the clothes in evidence was error. Admittedly, no search warrant had been procured for the officer's search of the defendant's room and the taking of his personal effects. Only where incident to a valid arrest or in exceptional circumstances may a lawful search and seizure of personal effects be made without a search warrant and the burden is on the prosecution to show a justification for such seizure." And it cites United States v. Jeffers. Your Honor, the Commonwealth _____ that from the evidence presented that there is no consent from the defendant even though there was an opportunity to get and only some small inconvenience to do so. The exceptional circumstances that are presented are to justify the search and seizure on both of them, or consent from third parties who may or may not have been agents of the police. Under the circumstances I think that the fact that with Morris should be controlling here. The fact that the sewing was in the patient's room rather than--or the emergency room whether it was shortly after the patient was admitted or after he had been there a couple of days these are really _____ to the simple fact that there was no real necessity

to search then. The evidence wasn't in danger of being destroyed. Certainly not from the testimony. The officers themselves cannot think of anything exceptional that would indicate why they shouldn't have gotten the warrant. Under the circumstances then I would say that on Morris the seizure of the clothes under the circumstances is illegal. Although there is no direct holding on the fact that the officers could afford to wait some twelve hours between the time they found out where the evidence was and then time they actually went and got it. Indicating they had plenty of time and convenience to get a warrant rather than going ahead without a warrant is uncalled for. Specifically under the explicit instruction of the Code of Virginia §19.2-59 which indicates that any search and seizure by anybody, officers or a third person, without the authority of a warrant is---well it use to be criminal. The General Assembly in its wisdom has changed it. It's no longer a misdemeanor but as far as officers go we would say it's malfeasance in office. A person can be sued because of it. There are no exceptions recognized in this statute. The only exception that was ever recognized was that a search incident and _____. So just in closing I would say that both of the seizures are illegal because there was no warrant.

THE COURT: All right. Gentlemen, anything further.

MR. JONES: Not for the Commonwealth.

THE COURT: I'm gonna overrule the motion as to the bullet. I want to study the matter further as to the clothes. I'll rule on that tomorrow when we get into the case. I do not think it's Fourth Amendment violation to take the bullet. Anything further?

MR. AREY: Yes, your Honor, we would like to note an exception on that as far as the bullet goes.

THE COURT: Yes, sir.

IN OPEN COURT

Upon the opening of court on the morning of May 8, 1979, the case of Commonwealth of Virginia v. Robert Clyde Craft was called and the recorder was sworn. Both the Commonwealth and the defendant announced themselves as ready.

THE COURT: Gentlemen, the Court is of the opinion that the evidence introduced--that the motion to suppress should be denied in toto. I had previously indicated that I didn't think the bullet should be suppressed and I have reached the same conclusion with reference to the other articles and I will so rule. You may make your objection and exception. Now do we have any other matters in connection with this Craft matter?

MR. JONES: I believe Mr. Giles has-----

MR. GILES: (Not audible)

THE COURT: Has Mr. Arey seen it?

MR. GILES: I don't believe he has.

THE COURT: Do you want to look at it before I do?

MR. AREY: Go ahead.

THE COURT: All right. Now here is the procedure, Mr. Arey. I will interrogate all twenty-five of them on all of these questions. If any are disqualified they will stand aside. If you still

THE COURT: How much did you have in it?

A. About---approximately \$500.00.

THE COURT: Had you counted it?

A. Well, it was close to it. It was right at it, yes, sir. And I went on pass the gas tanks----I've got a big light out in front and when I past the gas tanks I made about five or six steps to the main highway and I heard a little fuss behind me. I started to turn---started to glance over my shoulder---it sounded like somebody tipping. And when I did I seen this sheet coming down over my head. And I was sideways, turned sideways because I had heard of that case down the road a little further and I knew what was happening right then. So he just come right down on top of me and I fell sideways and his knees come right down into my groin and stomach.

THE COURT: Had you gotten to the road?

A. No, sir. I was about I would say four or five steps from the road back on the hardsurface---because it's hardsurfaced all around the station. And when he came down on me like that he was grabbing for my money box. Just grabbing like that and that sheet and I just fell sideways and he come right down on top of me. And when I throwed up this left arm like this and had my gun and I could see an old flowered shirt. His stomach--he didn't have on no coat--his stomach was open. He had on a flowered shirt on and I just took

my gun and stuck it right in his stomach and pulled the trigger. Moved over an inch or two and pulled it again. He was trying to get up all that time I was trying to shoot him. And I snapped on it twice more and the bullets just weren't any good. He got up and had his old sheet---he just left that laying right beside of me and he just ran right around the corner.

THE COURT: Of the building?

A. No, he went down the road. There's an old dirt road coming around Mr. Shelton's place. He run around that dirt road.

Q. Mr. Johnson, I show you this---

A. That's it, that's it.

Q. Any doubt about it?

A. No, sir.

Q. That's what you found at the scene?

A. That's right. He left it laying right beside of me. He blacked my eye; he broke my glasses all to pieces and I had a black eye for about two weeks.

Q. I repeat was this a bedspread or a sheet?

A. I don't know. It's an old bedspread I would say. I really don't have any idea.

MR. GILES: Your Honor, we would like to offer this in evidence as Commonwealth's Exhibit #1.

THE COURT: Any objections.

- A. It was just a matter of minutes---just a matter of just maybe five minutes that it happened. Cause just as soon as I shot he was trying to get up---scrambling, running. And it was just a matter of maybe I would say five minutes from the time that he ran with that sheet to put it over my head that it all happened.
- Q. Were you able to tell anything about whether----what his color was, light brown, white or what?
- A. You couldn't tell anything about his color because between the sheet and myself I couldn't tell a whole lot of what was going on. I just saw his stomach and that flowered shirt. He had on an old flowered shirt. And that's when I shot him. I was just trying to get him off of me. I couldn't tell---I didn't see his face---I couldn't tell what it was.
- Q. That's all. Your witness Mr. Arey.

CROSS EXAMINATION

BY MR. AREY:

- Q. Mr. Johnson, you say you did not recognize who your assailant was?
- A. Right.
- Q. But you do know at least by sight Robert Craft?
- A. Oh, yes. I've seen him. Yes.
- Q. Now, the circumstances---this was after dark?
- A. It was.

- Q. At there was a light there?
- A. Yes, sir.
- Q. Was it a bright light?
- A. It's just one of those lights on a pole like the people from the electric people put up. About half way between the house and the store so it would show me going to the house.
- Q. You said that your assailant was wearing a flowered shirt?
- A. Right.
- Q. What color was it?
- A. I don't know what color just an old flowered looking shirt---just kinda an old grey looking flowered shirt. I could see that very plain.
- Q. Could you see anything else he was wearing?
- A. No, no, sir.
- Q. Was he wearing anything on his upper body other than the shirt?
- A. No, I didn't see anything but just the shirt.
- Q. All right. You said you pushed the gun into his stomach and shot?
- A. Right.
- Q. Could you indicate approximately---
- A. I just put the gun right into his stomach right against the shirt and pulled the trigger and then I moved it over a little further and pulled it again.

- Q. This would be at the belt line?
- A. It was somewhere along about the belt line-- above it there somewhere.
- Q. Was anything taken from you?
- A. No, sir. He was just grabbing for the box all the time. And, of course, I was trying to keep him from getting it and that was it.
- Q. Did your assailant say anything to you?
- A. No, sir, not a word.
- Q. You said you were carrying a gun. Where were you carrying it?
- A. In my belt. Stuck in my belt right there.
- Q. Were you wearing a coat?
- A. Yes, sir. I had a coat on.
- Q. Would your gun have been in plain view?
- A. Yes, oh, yes, it was in plain view. I keep it stuck right there and my coat back so I could keep my hands on it.
- Q. All right. Did you get a good look at your assailant as he was running away?
- A. Nothing but his back. I could just see him running from the back.
- Q. Could you tell if he was wearing---what he was wearing when you saw him from the back?

Q. Did you receive any weapons from Mr. Johnson?

A. Yes, sir. I received a 32 caliber revolver from Mr. Johnson.

Q. That's Commonwealth's Exhibit #2. Do you recognize that weapon and the bullets?

A. Yes, sir. This is the revolver I received from Mr. Johnson on the night of January 9th.

Q. Did you check to see if it was loaded or unloaded or fired shells or not?

A. It had four unspent shells and two spent shells in it and I removed them from the revolver after he gave it to me.

Q. What did you do with that weapon and the bullets?

A. I kept the bullets and the weapon in my possession until the next morning the 10th. On that date I packed it and it was forwarded to the Forensic Science Lab in Roanoke for examination.

Q. Did you take it or somebody else?

A. No, sir. Deputy Sheriff Tom White taken it to Roanoke.

Q. What was the purpose of taking this weapon and the bullets to Roanoke?

A. We had a bullet we received from the hospital and we taken the bullet that was received from the hospital along with the weapon to see if the bullet received from the hospital was fired from this gun.

Q. Did you ever go to Memorial Hospital on the 9th of January?

A. Yes, sir. On January 9th, Deputy Sheriff Tom White and I went to Memorial Hospital Emergency Room at approximately 8:15.

Q. For what reason did you go to Memorial Hospital?

A. We received a call from the dispatcher and I learned that a subject had entered the emergency room that had been shot--a gunshot wound.

Q. Once you arrived at the emergency room did you determine who this gunshot victim was?

A. Yes, sir. I determined it was Robert Clyde Craft, Route 4, Chatham.

Q. That's the defendant sitting over here in the red shirt and the blue breeches?

A. Yes, sir.

Q. Did you talk to him in the emergency room?

A. Yes, sir. I asked him a couple of questions.

Q. Were you able to understand him?

A. Yes, sir.

Q. And what did he tell you that happened to him?

A. I asked Robert who brought him to Danville; who brought him on the car. And he told me no car brought him to the hospital he walked. I asked him how he received the gunshot wound. He said he was shot in Danville but he

didn't know by whom.

Q. While you were at the emergency room did you receive any clothes from anybody?

A. Yes, sir, I did. I received the clothing that Mr. Craft was wearing from Dr. Stoneburner.

Q. Are these the shoes that you received from Dr. Stoneburner?

A. Yes, sir.

Q. How did you receive all these items?

A. When I arrived at the emergency room Mr. Craft was lying on a stretcher and Dr. Stoneburner and the nurse were administering first aid to Mr. Craft. When I first observed him he was undressed from the waist up and they were working on his wounds. And after they prepared him to take him to x-ray and to surgery they handed me that paper bag right there and Dr. Stoneburner asked us did we wish the clothing and I advised him that we did. So he gave us---

- THE COURT: Same bag?

A. Same bag, yes, sir.

Q. All these clothes belong to Robert Craft. Is that Correct?

A. Yes, sir, that's correct.

Q. Is there anything unusual about this shirt here?

A. Yes, sir. It has a----

MR. AREY: Objection. I would like to look at it.

THE COURT: All right, let Mr. Arey see it.

Alright proceed.

Q. I was noticing---afterwards you found something about this shirt----anything about it significant?

A. Yes, sir. It has two---couple bullet holes in it. One right on the left side and it's one right in the seam.

Q. They are very small holes aren't they?

A. Yes, sir. They are very small holes.

Q. What about this jacket here, anything about this---did it have any holes in it?

A. Yes, sir. One right there.

Q. Show it to the jury.

THE COURT: Why don't you stand over here Mr. Gatewood in front of the jury.

Q. Did you do anything with these clothes?

A. Yes, sir. The jacket and the shirt were packed up and sent to the laboratory in Roanoke along with the pistol and the bullets.

Q. That's all the questions I have.

CROSS EXAMINATION

BY MR. AREY:

Q. Lt. Gatewood, just to make certain of this, the gun involved in this case is the one you got from Mr. Johnson?

A. That's correct.

- Q. And it was his gun as far as you know?
- A. Yes, sir.
- Q. And the clothing, the shirt and jacket, are the ones that were given to you at the hospital?
- A. That's correct.
- Q. You never saw them on Mr. Craft?
- A. Not the jacket.
- Q. The jacket and shirt?
- A. Right. I didn't see them on Mr. Craft.
- Q. That's all.

WITNESS STANDS ASIDE

DR. JOHN STONEBURNER, next witness called on behalf of the Commonwealth, after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

- Q. What I want you to do is talk to the Judge and the jury, okay. Don't talk to me. Tell them your name?
- A. John Stoneburner.
- Q. What's your occupation?
- A. Surgeon.
- Q. Did you have an occasion to see a patient by the name of

Robert Clyde Craft on the night of January 9, 1979?

A. Yes, I did.

Q. Do you recognize Mr. Craft here today?

A. Yes, sir.

Q. The man setting in the red shirt and the blue pants. Is that correct?

A. That's correct.

Q. For what reason did you have to see him on that night?

A. He entered the emergency room complaining of a gunshot wound to his left chest.

Q. About where was his wound---if you can show the jury?

A. It was just above and lateral to his nipple.

Q. When you came in did you observe whether or not he had any clothes on---what type of clothes he had?

A. I do not recall his clothes, sir.

Q. Did you give any clothes to Lt. Gatewood, or Deputy Sheriff White?

A. I did not.

Q. You didn't?

A. Not to my recollection.

Q. What did you do as far as Robert Craft was concerned?

A. I examined Mr. Craft and x-rays were taken as well as laboratory work. And appropriate surgical therapy was carried out.

Q. In other words, you operated on him, correct?

A. Correct.

Q. Did you remove anything from his body?

A. Yes, I removed a bullet from his chest cavity.

Q. When was the operation---when did it take place, that night?

A. That night shortly after admission. I would estimate within an hour and a half.

MR. JONES: We want to mark this. See what the number is.

Q. I show you Commonwealth's Exhibit #5. Do you recognize this at all?

A. Yes, sir. It looks like a bullet.

Q. Have you ever seen it before, or one similar to it?

A. Yes.

Q. Where did it come from?

A. Well, the one I removed from Mr. Craft looked similar to it as well as I can remember.

Q. Of course, you didn't put any special marks on the bullet yourself?

A. No, I did not, sir.

Q. What did you do with this bullet you got out of the body of Robert Craft?

A. I handed the bullet to the circulating nurse in the operating room.

Q. Is that Mrs. Betty Burnett?

A. Yes, it is.

Q. Answer Mr. Arey's questions.

CROSS EXAMINATION

~~BY MR. AREY:~~

~~Q. Dr. Stoneburner, were you in charge of the emergency room at Danville Memorial Hospital that night?~~

~~A. I was on call for my associate and myself. We engage in practice of thoracic surgery, and was called to see this patient. I simple do not recall whether I was on call for the entire emergency room for all surgical patients or not.~~

Q. You indicated that---when you first saw the patient what was his condition as far as the way he was dressed?

A. I do not recall.

Q. Do you remember whether he had any clothing at all or whether he had been undressed to the waist to say?

A. Sorry, I---he was as I recall on the examining table in the emergency room and I really don't recall. My vague impression would be that he had on pants and no shirt. I really am quite vague on that.

Q. So you can't tell us what Robert Craft was wearing that night?

A. No, I cannot.

Q. And you say you did not give Robert Craft's clothing to Lt. Gatewood?

A. To the best of my knowledge, no.

Q. Did Lt. Gatewood, or any other police officer, talk to you about the case?

A. They did, yes.

Q. Did they ask you anything particular about it?

A. They, I believe, had one question and one request.

Q. Could you te-l us what that question was?

~~MR. JONES: We object to hearsay.~~

~~THE COURT: What was the question---what was your question, Mr. Arey?~~

~~MR. AREY: My question was if you could---if the doctor could tell us what the question the police officer asked him. I think this goes to the state of the mind of the witness.~~

~~THE COURT: I think it's in some degree connected with what the Commonwealth witness said. Proceed.~~

Q. Can you tell us what the question was that the police officers asked you?

A. Was the patient going to have surgery?

Q. And what was their request?

A. If a bullet was removed would it---could it be turned over to them. They wanted to have it.

Q. So, you took special steps to preserve the bullet at the request of the police?

A. No.

Q. You would have preserved it normally?

A. Yes.

Q. Is this a standard procedure in gunshot cases?

A. Yes.

Q. Is it required by law?

A. I do not know.

Q. Is it your impression that the hospital could get into any trouble if you didn't?

A. MR. JONES: That's irrelevant with the hospital.

THE COURT: I don't think that makes any difference here, Mr. Arey. It's just a routine transaction as far as you are concerned, isn't it doctor?

A. Yes, sir.

THE COURT: And you do it probably fifty times a year, don't you?

A. No, sir. Maybe two or three.

THE COURT: All right.

Q. You treated Robert Craft afterwards. What was the nature of his treatment?

A. The patient presented with a gunshot wound to the left chest and an active bleeding wound. Under that wound of entry the x-ray revealed evidence of blood in the left thoracic cavity. The bullet was quite low in relation to the diaphragm. And the patient had tenderness in the

did not require any exploration of the chest cavity. The wound in the chest had bleed thoroughly actively and I believe the wound of entrance was debrided.

Q. Was what---excuse me?

THE COURT: Debrided

A. Debrided

Q. Am I understanding correctly that when you say the bullet entered the upper chest, stayed in the chest area where the lungs are the entire time and there were no wounds in the abdomen down around the stomach?

A. That is correct.

Q. This surgery that you conducted is this under a general anesthesia?

A. Yes, sir.

Q. Afterwards were there any sedatives prescribed for proper care?

A. Yes. He had considerable discomfort---postoperative, but none out of the ordinary. And he was given demoral for pain and it made a _____ recovery as I recall it.

Q. When you saw Mr. Craft the first time was he showing signs of shock?

A. He---let me see---somewhat sweaty, but his blood pressure was not down. And no, as I recall---let me get the emergency room sheet---he was not in shock, no. I have two blood pressures recorded on the emergency room sheet.

- Q. Did you prepare the room for the defendant Robert Clyde Craft?
- A. Yes, I did.
- Q. And who was the doctor----who was the surgeon in other words?
- A. Dr. Stoneburner
- Q. And did Dr. Stoneburner operate on Mr. Craft?
- A. Yes, he did.
- Q. For what purpose?
- A. He had a gunshot wound.
- Q. In the process of the operation was a bullet removed from Mr. Craft?
- A. Yes.
- Q. Dr. Stoneburner removed it. Is that right?
- A. Right.
- Q. Did you receive anything from Dr. Stoneburner?
- A. I received a bullet from Dr. Stoneburner.
- Q. I want to show you this object here which is marked Commonwealth's Exhibit #5. Do you see this?
- A. Uh-huh.
- Q. Do you recognize it---do you know what it is?
- A. Yeah.
- Q. What is it?
- A. It's a bullet.
- Q. Do you know whether or not it's the bullet that Dr. Stoneburner gave you?

- A. It looks like the one.
- Q. Do you know anything about bullets?
- A. Not a whole lot.
- Q. Was anything significant about this bullet when you got it from Dr. Stoneburner?
- A. Well, I just noticed it was larger than a 22.
- Q. After you got the bullet from Dr. Stoneburner what did you do with it?
- A. I give it to Dr. Estevez.
- Q. Right then or---
- A. No, the next morning.
- Q. Okay. What did you do with the bullet before the next morning?
- A. I locked it in the narcotic box.
- Q. The narcotic box is located where?
- A. At the nurses' station in the operating room.
- Q. You locked it up?
- A. Right.
- Q. And the next morning, which would be the 10th of January, you unlocked the narcotic box and took the bullet?
- A. Yes.
- Q. Did you put the bullet in a bag or box or jar or what?
- A. No, I had it in a jar.
- Q. And you removed that bullet from the jar and then did what with it?

A. I left it in the jar.

Q. Picked the jar up with the bullet in it and you did what with it then?

A. I took it and gave it to Dr. Estevez.

Q. Now Estevez, Dr. Estevez, who is he?

A. He's the pathologist there at the hospital.

THE COURT: How do you spell that name--"S T E V I S"?

A. No, "E S T E V E Z".

THE COURT: "E S T E V E Z". And pronounced?

A. Estevez. I don't know if that's right, but that's the way I pronounce it.

THE COURT: That's close enough.

Q. And now answer Mr. Arey's questions, okay.

CROSS EXAMINATION

BY MR. AREY:

Q. Mrs. Burnett, you indicated that you got a bullet from Dr. Stoneburner?

A. Yes.

Q. But you can't tell for certain that this is the bullet?

A. No, sir. It looks like the one that I got.

Q. And you then put it in the narcotic box overnight?

A. Yes.

Q. And then the next morning did Dr. Estevez ask you to get this bullet or----

- Q. Now, I believe on the 10th day of January, 1979, you received an object from nurse Betty Burnett. Is that correct?
- A. That's correct.
- Q. And what was this object?
- A. This object was a bullet.
- Q. I show you an item marked Commonwealth's Exhibit #5. Do you know what that is in that little bag there?
- A. That's a bullet.
- Q. Does it look anything like the bullet that you got from Betty Burnett?
- A. It looks like that one, yes.
- Q. Of course, you didn't put any marks or anything like that on it?
- A. No, I didn't. I didn't examine it myself.
- Q. Why would she give you a bullet?
- A. Well the pathologist usually takes custody of all of the tissues or objects removed from every patient that enters Memorial Hospital. We get anything that is removed in the emergency room or in the operating room is brought to pathology. Some of it, of course, is brought for examination and most of it is brought for examination but this bullets are brought only for custody. And we only take the bullet--take custody of the bullet, put it in a closet and whenever the police comes for it we will give it

back to the police.

Q. Now, what did you do with this bullet then?

A. I placed it in the usual closet.

Q. Did you put it in a box or a jar or----how did you keep it?

A. No, it wasn't in a---in a plastic tube.

Q. Did you keep it in a plastic tube?

A. Yes, it was in plastic tube wrapped in _____ identified with the patients name.

THE COURT: Identifiable by the patient's name?

A. With the patient's name. Yes, sir.

THE COURT: Did you write the patient's name on there yourself?

A. I did not. It was identified whoever brought it---Mrs. Burnett, or somebody else. I really don't know.

Q. Did you give this bullet to anybody?

A. Yes, later on that morning I gave it to Mr. White.

Q. That was Deputy White?

A. Deputy White.

Q. Is it the same bullet in that plastic tube?

A. Exactly the same place it was with the patient's name wrapped around to identify it.

Q. The patient's name was Robert Craft?

A. Robert Craft.

Q. Answer Mr. Arey's questions.

CROSS EXAMINATION

BY MR. AREY:

Q. Dr. Estevez, the first you saw this bullet was when Mrs. Burnett brought it to you. Is that correct?

A. Yes.

Q. And that is on the morning of the 10th?

A. Yes.

Q. And you don't know what happened to the bullet before that?

A. No.

Q. And you put it in a cabinet in the Pathology Lab?

A. Yes.

Q. Is that cabinet locked?

A. No.

Q. So, somebody in the Pathology Lab could go in there?

A. Yes.

Q. Did he ask you for this bullet?

A. Yes.

Q. So, you went back to the cabinet and got it out and gave it to Deputy White?

A. Yes.

Q. Did you do it for any reason other than Deputy White asked you to?

A. No. I did it because he asked me. And my secretary wasn't available at the time so I got up and got it myself and give it to him.

- Q. Is it standard procedure to turn over sample of things in the Pathology Lab at the request of the police?
- A. Whenever they want it they get it. Yes.
- Q. Did Deputy White show you any special authority to get this, like a warrant?
- A. I don't recall.
- Q. Thank you, that's all.

WITNESS STANDS ASIDE

TOM T. WHITE, Deputy Sheriff, next witness called on behalf of the Commonwealth, after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

- Q. State your name to the Court and jury?
- A. Tom T. White, Deputy Sheriff of Pittsylvania County.
- Q. Did you have an occasion to go to Memorial Hospital the 10th of January, 1979?
- A. I did.
- Q. I believe you went to see Dr. Estevez?
- A. I did.
- Q. For what purpose?
- A. Pick up a bullet which was taken from the defense's body.

MR. AREY: Objection---that's a conclusion.

THE COURT: It's not said for the purpose of establishing the truth of it. It's just to show what he did.

Q. I want to show you this item Marked Commonwealth's Exhibit #5. Do you recognize this object---do you know what it is?

A. I do.

Q. What is it?

A. 32 caliber slugs.

Q. Had you ever seen them before?

A. Yes, sir.

Q. Where?

A. It's the same one I picked up over at the hospital and took it to the lab,

Q. Who did you pick it up from?

A. Dr. Estevez.

Q. Estevez?

A. Estevez.

Q. When did you take this bullet to the labor atory?

A. I took it on the 10th of January.

Q. Along with this bullet did you take anything else?

A. I did.

Q. What?

A. I took the jacket, shirt, the 22 caliber pistol and also the cartridge which were in the chamber at the time of the firing.

to

- Q. Now, I show you this package here marked Commonwealth's Exhibit #2. Do you know what these objects are?
- A. I do.
- Q. What are they?
- A. 22 caliber pistol.
- Q. What else is in there?
- A. And also 22 caliber slugs.
- Q. Did you take these objects to Roanoke with you along with Commonwealth's Exhibit #5?
- A. I did.
- Q. These objects are Commonwealth's Exhibits #3 and #4. Do you recognize these?
- A. Yes, sir.
- Q. Did you take these two objects along with the gun and the bullets?
- A. I did.
- Q. Who did you give these objects to?
- A. They was given to Mr. James Hamby---"H A M B Y:.
- Q. But you took them there to get them analyzed?
- A. Analyzed
- Q. Did you stay there the whole time?
- A. I did.
- Q. After they made the test on these objects did you get all these items back?
- A. I did.

Q. And what did you do with them from the time you got them?

A. I brought them back to the Sheriff's Office and turned them over to the Lt. Gatewood.

Q. Do you know what he did with them?

A. Yes, sir.

Q. What?

A. He locked them immediately in my presence locked them in his locker.

Q. Answer Mr. Arey's questions.

CROSS EXAMINATION

BY MR. AREY:

Q. Deputy White, you identified this bullet, the one in the package there, as the one you got from Dr. Estevez. Is that correct?

A. Yes, sir.

Q. Are there any distinguishing marks on it to distinguish it from any other bullets so you could tell that from a different bullet of the same caliber?

A. No, sir.

Q. Then how can you be certain that that's the bullet you got from Dr. Estevez?

A. Under my investigation that part revealed that it came from the subject.

Q. You can say positively that that bullet came from Robert

Craft---did you ever see it in Robert Craft?

A. No, I can't say that because I won't there when he took it out.

~~Q. Can you positively say that that's the bullet you got from Dr. Estevez?~~

~~A. Yes, sir.~~

~~Q. Can you show us any identifying marks that distinguish it from a different bullet of the same caliber?~~

~~A. No, sir.~~

~~Q. Now, you said you got this bullet from Dr. Estevez. Is that correct?~~

~~A. Yes, sir.~~

~~Q. Do you remember the preliminary hearing in this case?~~

~~A. Are you asking me a question?~~

~~Q. I'm asking you.~~

~~A. Yes, sir.~~

~~Q. Did you testify in that hearing?~~

~~A. Yes, sir.~~

~~Q. At that hearing did you testify that you got the bullet from Mrs. Burnett?~~

~~A. No, sir.~~

~~Q. Did you testify that you didn't know her name but you got it from the woman who had testified ahead of you at the preliminary hearing?~~

~~A. I don't recall that. No, sir.~~

Q. When you went to the hospital to get this bullet who did you ask for it?

A. Well, I first went to the waiting room there. I asked the lady there and she told me where to go---where it would be--where to go to pick the bullet up at.

Q. And so you went--where did you go?

A. I went down to the laboratory.

Q. And did you ask for the bullet there?

A. I told him I came to pick up the bullet that they had there for the Sheriff's Department.

Q. And they turned a bullet over to you?

A. The bullet---I would say the bullet that came out of Mr. Clyde Craft and they turned that bullet over to me.

Q. Was it a bullet in a container marked with Robert Craft's name?

A. With his name, yes, sir.

Q. Thank you, that's all.

WITNESS STANDS ASIDE

JAMES EDWARD HAMBY, next witness called on behalf of the Commonwealth, after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q. Talk to the Judge and the jury, okay?

Q. Do you belong to any Professional Association?

A. Yes. I'm a member of the Association of Firearms and Tool Mark Examiners; The American Academy of Forensic Science; California Association of Criminals; The National Rifle Association; International Cartridge Collectors Association and several others.

Q. Have you ever received any awards from these organizations?

MR. AREY: Your Honor, the defense will stipulate the witness is qualified.

THE COURT: All right.

Q. I believe in the process of your job you received certain items of evidence that are listed on this table, Commonwealth's Exhibits #5, #2, #3 and #4. Come over here and see if you recognize any of these items?

A. Yes, sir, I do.

Q. When did you receive these items?

A. I received these on the 10th of January from Deputy White of the Pittsylvania County Sheriff's Office.

Q. For what purpose did you receive these items?

A. I was requested to conduct an examination of the weapon, the bullets, the cartridges contained within the weapon and the jacket and the shirt.

Q. Did you conduct any test?

A. Yes, sir, I did.

Q. That gun--what did you determine as far as this 32 caliber gun was concerned?

A. the
That/weapon was operating in a proper manner, or functioning correctly as the factory designed it to do.

Q. Did you make any determination as far as that gun and these bullets that were listed in package Commonwealth's Exhibit #2?

A. Yes, sir. Those cartridges in that package are designed to be fired in that weapon.

Q. What type of weapon is this?

A. This is a Smith & Wesson 32 caliber revolver.

Q. I believe you also received what is marked as Commonwealth's Exhibit # 5. Now what is this?

A. Sir, this is a 32 caliber projector which is capable of being fired out of a weapon of this type.

Q. Did you make any type of test to compare that projector as far as this gun is concerned?

A. Yes, sir, I did.

THE COURT: How do you do that?

A. Sir?

THE COURT: How do you do that?

A. The weapon is test fired, sir, after you have examined to make sure it's in a safe condition. It's test fired into a water tank. The test bullets and cartridge cases are recovered by doing this, which I have in my pocket today. The bullet---I have a comparison microscope, which

is actually two microscopes with an optical bridge that allows you to view through both microscopes at the same time. This is put on one side and the test bullet is put on the other side---

THE COURT: The one that you have fired?

A. Yes, sir. That I personally test fired from the weapon. I then look at both of them and compare the splash and the lines that are running along the surface of the bullet.

Q. So, from these thest that you made what did you determine as far as that bullet and this gun was concerned?

A. That this bullet was fired from this revolver.

THE COURT: You are talking about Exhibit #3 now?

A. This has 5 on it, sir.

Q. You determined that Commonwealth's Exhibit #5 was fired from this weapon which is marked Commonwealth's Exhibit #2. Is that correct?

A. Yes, sir.

Q. As far as the clothes were concerned what did you determine as to Commonwealth's Exhibit #3, the shirt and Commonwealth's Exhibit # 4, which is the leather jacket?

A. The leather jacket, sir, had indications that a weapon had been fired at contact range.

THE COURT: What do you mean by contact range?

A. What this means, sir, is that the revolver, or weapon, that was used was placed directly against the jacket and

then fired. It was within less than one inch.

THE COURT: Less than one inch?

A. Yes, sir.

Q. How do you determine that?

A. By examining the powder pattern residue that is actually on the jacket itself.

Q. So, when a gun is fired gun powder comes out of the barrel. Is that correct?

A. Yes, sir. Not all the gun powder fired, part of it will come out and adheres to the surface of the material that it is shot against. Be it a jacket, shirt, pair of trousers or whatever.

Q. I believe while you made these test Deputy White stayed around waiting for the results. Is that correct?

A. Yes, sir. Deputy White was present.

Q. And when you finished your results what did you do with these objects--these items that are laying on the table--- did you keep them, give them to Deputy White, or what?

A. Yes, sir. All the evidence was returned to Deputy White on the same day/

Q. No further questions.

MR. JONES: We would like to admit---make sure we have already admitted into evidence about his identifying.

with the attorneys, defendant, witnesses or anybody. If anybody attempts to do that, attempts to converse with you about anything, not even the case---I mean the case and anything else, it is your responsibility to report that to me when you return to court. When you return to the courtroom go into the last room on my right and remain there until the Sheriff brings you into the courtroom. You may leave the courtroom now.

JURY RECESSES FOR LUNCH FROM 11:45 to 1:00 P.M.

THE COURT: All right, Mr. Arey, you may proceed.

MR. AREY: Your Honor, I would like to renew the motion to suppress the evidence as far as the bullet and the clothing is concerned. I would also like to renew to strike the evidence of the Commonwealth.

THE COURT: Do you wish to elaborate on the argument?

MR. AREY: Yes, your Honor. The evidence presented here today shows that although Lt. Gatewood testified that he got---witnesses for the Commonwealth has shown again in possession as far as the clothing goes. Dr. Stoneburner who supposedly had it has definitely denied that he ever had the clothing, or gave it to Lt. Gatewood. As far as the bullet goes the evidence shows that Dr. Stoneburner extracted the bullet from Robert Craft after having been

requested to do so by the police. The evidence also shows that Dr. Estevez went back to the cabinet, searched the cabinet to get the bullet to hand over to Tom White. In this case the defense argues that they are acting as agents of the police and their consent to, since this was a warrant or search which was argued yesterday, that this consent of the agent of the police is not a sufficient showing of extraordinary or exception of circumstances to support a warrant with search, a warrant with search and seizure. Continuing from this the clothes in evidence were illegally seized. Of course, that's to the bullet and the clothing. This is strictly a circumstantial case. The only link between Robert Craft and this incident is the bullet and the clothing. The evidence as a matter of law is simply insufficient to convict.

THE COURT: All right. Mr. Jones, or Mr. Giles, or both of you, any response?

MR. JONES: As far as the argument is concerned about the illegal search and seizure I believe we have already argued that case yesterday and it has been disposed of. The Commonwealth again states that this wasn't a search as far as the police are concerned. And that, therefore, whatever objects

received they received these from citizens which the Fourth Amendment does not cover. This isn't a Fourth Amendment case to begin with. So as far as the bullet is concerned we've more or less shown step by step the chain of that bullet from Robert Craft's body through Dr. Stoneburner, through Betty Burnett to Dr. Estevez, Deputy White and Mr. Hamby back to Deputy White and to Lt. Gatewood to right here. This is the first time really that I can see a chain established to that extent and that strong as far as that bullet is concerned. That definitely links Mr. Craft with the intent to robbery. And, therefore, the motion to strike obviously should be denied just on that. The clothes aspects, obviously Dr. Stoneburner is not trained in enforcement of law. He don't remember about the clothes and you really can't expect him much. He don't believe he gave them to Lt. Gatewood. But Lt. Gatewood, who is actually trained in these matters to remember where he received objects, says that Dr. Stoneburner gave him that bag of clothes. So as far as that is concerned it's believed whether these clothes are the ones that came from Dr. Stoneburner which eventually came from Robert Craft. As far as the evidence is concerned we submit the evidence was

property seized by the police officers and as to the motion to strike it should be denied because that bullet being fired by Mr. Johnson during the attempted robbery came from the defendant, Robert Craft.

THE COURT: Mr. Giles.

MR. GILES: If your Honor, please, I would certainly stand pretty much to what Mr. Jones said here because this thing has been put together from the very beginning here. I don't see how you could get it any more unless you had a bodyguard with the police officer which is not necessary. So we say we have traced it from the beginning to the end and we are at this junction now I think the motion should be overruled.

THE COURT: Mr. Arey, any response?

MR. AREY: Your Honor, I would only reiterate the evidence that the Commonwealth shows that the bullet in particular was searched for and recovered at the request of the police. That this constitutes the people who did the searching agents of the police. And as such they are controlled by the same legal requirements that a plain search is controlled by.

THE COURT: The renewed Motion to Suppress is overruled. The Motion to Strike is overruled. You

Q. And he said that the bullet that came out of your body was fired from that gun right there?

A. That's what he said.

Q. And there was an impression on that jacket over there--- it was fired within less than an inch of your body?

A. Yes, I heard that.

Q. And went into the jacket, also went through your t-shirt into your cavity up here in the chest?

A. Yes, sir.

Q. What did you do on the afternoon of January 9th--where were you?

A. In the pool hall.

Q. In the pool hall?

A. Pool Hall.

Q. do you own a car?

A. No.

Q. Who was the person that went with you over there at Mr. Johnson's store?

A. I don't recall going to Mr. Johnson's store.

Q. Do you recall going to the hospital?

A. No, I don't.

Q. Do you know the route?

A. Know what?

Q. Do you know the route---did you go by Jones' Mill over to 41, or did you come back to Chatham and go down 29 to the hospital?