

223 Va. 368

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 810230

PAUL A. CARTWRIGHT

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

JOINT APPENDIX

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(1)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Commonwealth of Virginia)

vs.)

Indictment for CONSPIRACY TO COMMIT

PAUL ANDREW CARTWRIGHT
aka ROBERT NOEL GRIFFIN

CAPITAL MURDER

September 3, 1980

DATE

The Grand Jury charges that: On or about July 14, 1980, in the City of Norfolk, PAUL ANDREW CARTWRIGHT alias ROBERT NOEL GRIFFIN, did conspire, confederate or combine with Barry Lynn Cartwright to commit a felony, to-wit: capital murder, specifically the willful, deliberate and premediated killing of an employee of Tidewater Macke Company in the commission of robbery while armed with a deadly weapon.

Va. Code Section 18.2-22; 18.3-31; 18.2-10

Witness:

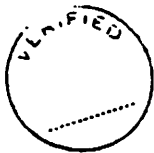
Inv. L. W. Hemenway - Robbery Squad

(X) A True Bill

() Not A True Bill


(Foreman of Grand Jury)

MED



(2)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Commonwealth of Virginia)

vs.)

Indictment for CONSPIRACY TO COMMIT

PAUL ANDREW CARTWRIGHT
aka ROBERT NOEL GRIFFIN

ROBBERY

September 3, 1980

DATE

The Grand Jury charges that: On or about July 14, 1980, in the City of Norfolk, PAUL ANDREW CARTWRIGHT alias ROBERT NOEL GRIFFIN, did conspire, confederate or combine with Barry Lynn Cartwright to commit a felony, to-wit: robbery of an employee of Tidewater Macke Company.

Va. Code Section 18.2-22; 18.2-58; 18.2-10

Witness:

Inv. L. W. Hemenway - Robbery Squad

(☒) A True Bill

(☐) Not A True Bill

(Foreman of Grand Jury)

FILED



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IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

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Va. Code Section 18.2-22; 18.2-31; 18.2-10

SECOND COUNT: On or about July 14, 1980, in the City of Norfolk, PAUL ANDREW CARTWRIGHT alias ROBERT NOEL GRIFFIN, did conspire, confederate or combine with Barry Lynn Cartwright to commit a felony, to-wit: feloniously kill and murder an employee of Wackenhut Security.

Va. Code Section 18.2-22; 18.2-32; 18.2-10

Witness:

Inv. L. W. Hemenway - Robbery Squad

(X) A True Bill

() Not A True Bill

[Signature]
(Foreman of Grand Jury)

VERIFIED
FILMED

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IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

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Va. Code Section 18.2-22; 18.2-58; 18.2-10

Witness:

Inv. L. W. Hemenway - Robbery Squad

(X) A True Bill

() Not A True Bill

James M. Hemenway
(Foreman of Grand Jury)

Virginia:

In the Circuit Court of the City of Norfolk, on the 7th day
of October, in the year 19 80.

COMMONWEALTH vs Paul Andrew Cartwright (AKA: Robert Noel Griffin)

Attorney for the Commonwealth: Robert J. Seidel, Jr.

Attorney for the accused: William P. Robinson, Jr.
(X) Heretofore appointed by the Court

FELONY TRIAL ORDER - NOT GUILTY PLEA

This day came the Attorney for the Commonwealth and the attorney for the accused, as aforesaid, and the accused, who stands indicted for Conspiracy to commit capital murder on Indictment #1; for Conspiracy to commit robbery on Indictment #2; for Attempt robbery on Indictment #3; for Use of a weapon in commission of a felony, robbery on Indictment #4; for Conspiracy to commit capital murder and for Conspiracy to commit murder on Indictment #5; for Conspiracy to commit robbery on Indictment #6; and for Attempt robbery on Indictment #7, was led to the bar in custody of the Sheriff of this Court.

Whereupon counsel for the accused moved the Court to certain of dismiss/the aforesaid Indictments based on grounds stated to the record, which motion the Court delayed ruling thereon pending hearing of evidence during the trial of this case.

Thereupon the accused was arraigned and after private consultation with and being advised by his counsel, tendered in person his plea of Not Guilty to each Indictment, as aforesaid. And thereupon, after having been first advised of his rights by the Court, and specifically of his right to trial by jury, and

having stated to the Court that he was satisfied with his counsel, the accused knowingly and voluntarily waived trial by jury and with the concurrence of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law. Whereupon the Attorney for the Commonwealth commenced to present its evidence. And having heard the evidence in part, the accused, by counsel, moved the Court to suppress certain evidence, and C-18, namely Exhibit C-10, C-11, C-12, C-16, C-17, based on grounds stated to the record, which motion, having been fully heard and determined by the Court, was overruled and exception noted. Whereupon the Attorney for the Commonwealth continued to present its evidence, and at its conclusion, the accused presented no evidence on his own behalf. And having heard all the evidence, the accused, by counsel, moved the Court to strike the Commonwealth's evidence, as to two Attempt robbery indictments; as to Conspiracy to commit capital murder and Conspiracy to commit robbery indictments; renewed his previous motion to dismiss; and finally moved the Court to strike the Commonwealth's evidence as to all indictments, based on grounds stated to the record, and requested the Court to consider his argument as to the motions to be his closing argument.

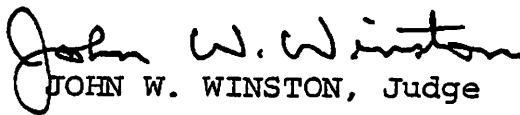
Whereupon the Court, having heard all of the evidence and argument of counsel, advised the accused and counsel present that its ruling as to finding of guilt or innocence will preclude any further ruling as to motions heard. Whereupon the Court,

stating its judgment as to each offense, does find the accused Guilty of Conspiracy to commit capital murder as charged in Indictment #1; Guilty of Conspiracy to commit robbery as charged in Indictment #2; Guilty of Attempt robbery as charged in Indictment #3; Guilty of Use of a weapon in commission of a felony, robbery as charged in Indictment #4; Acquitted as to Conspiracy to commit capital murder as charged in the 1st count of Indictment #5 and is discharged thereon; Guilty as to Conspiracy to commit Murder as charged in the 2nd count of Indictment #5; Acquitted as to Conspiracy to commit robbery as charged in Indictment #6 and is (Case of Paul Andrew Cartwright) 26- 2 -

discharged thereon; and is Acquitted as to Attempt robbery as charged in Indictment #7 and is discharged thereon. Exception of the defendant, by counsel, to the judgment of the Court, is noted.

Whereupon on motion of the defendant by counsel, the whole matter is referred to a Probation Officer of this Court for a Pre-Sentence Report, the hearing on which will be held on the 18th day of November, 1980, at 9:00 A.M., to which time this case is continued.

And the defendant was remanded to jail.


JOHN W. WINSTON, Judge

(Court reporter - Cathy Ames)

(Case of Paul Andrew Cartwright)

ASSIGNMENTS OF ERROR

- I. ~~THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THE
EXISTENCE OF A CONSPIRACY OF ANY DESCRIPTION.~~
- II. THE TRIAL COURT ERRED IN OVERRULING THE DEFENSE
MOTION TO MERGE ALL CONSPIRACY INDICTMENTS INTO
ONE CONSPIRACY CHARGE.
- III. ~~THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW
UPON WHICH TO SUSTAIN A CONVICTION FOR ATTEMPT
ROBBERY.~~
- IV. ~~THE TRIAL COURT ERRED IN ADMITTING DEFENDANT'S
EXTRAJUDICIAL STATEMENT INTO EVIDENCE BECAUSE SAME
WAS PROCURED PURSUANT TO AN ILLEGAL ARREST.~~

1 with it once the evidence has been presented.

2 MR. ROBINSON: Yes, sir.

3 THE CLERK: If you will stand.

4 Paul Andrew Cartwright, also known as Robert Noel
5 Griffin, you stand indicted for conspiracy to commit capital
6 murder on Indictment Number One as follows:

7 Virginia, in the Circuit Court of the City of
8 Norfolk, September 3, 1980, the Grand Jury charges that, on or
9 about July 14, 1980 in the City of Norfolk, Paul Andrew
10 Cartwright, alias Robert Noel Griffin, did conspire,
11 confederate or combine with Barry Lynn Cartwright to commit a
12 felony, to-wit: capital murder, specifically, the lawful,
13 deliberate and premeditated killing of an employee of
14 Tidewater Macke Company in the commission of robbery while
15 armed with a deadly weapon, in violation of Virginia Code
16 Section 18.2-22 and 18.2-31.

17 What say you, guilty or not guilty?

18 THE DEFENDANT: Not guilty.

19 THE CLERK: And on Indictment Number Two for
20 conspiracy to commit robbery as follows:

21 Virginia, in the Circuit Court of the City of
22 Norfolk, September 3, 1980, the Grand Jury charges that, on or
23 about July 14, 1980 in the City of Norfolk, Paul Andrew
24 Cartwright, alias Robert Noel Griffin, did conspire,
25 confederate or combine with Barry Lynn Cartwright to commit a

1 felony, to-wit: robbery of an employee of Tidewater Macke
2 Company, in violation of Virginia Code Section 18.2-22 and
3 18.2-58.

4 What say you, guilty or not guilty?

5 THE DEFENDANT: Not guilty.

6 THE CLERK: And on Indictment Number Three for
7 attempt robbery as follows:

8 Virginia, in the Circuit Court of the City of
9 Norfolk, September 3, 1980, the Grand Jury charges that, on or
10 about July 14, 1980 in the City of Norfolk, Paul Andrew
11 Cartwright, alias Robert Noel Griffin, did attempt to rob one
12 employee of Tidewater Macke Company, in violation of Virginia
13 Code Section 18.2-58 and 18.2-26.

14 What say you, guilty or not guilty?

15 THE DEFENDANT: Not guilty.

16 THE CLERK: And on Indictment Number Four for use
17 of a weapon in the commission of a felony as follows:

18 Virginia, in the Circuit Court of the City of
19 Norfolk, September 3, 1980, the Grand Jury charges that, on or
20 about July 14, 1980 in the City of Norfolk, Paul Andrew
21 Cartwright, alias Robert Noel Griffin, did use, attempt to use,
22 or display a pistol while committing a felony, to-wit:
23 attempt robbery, in violation of Virginia Code Section
24 18.2-33.1.

25 What say you, guilty or not guilty?

1 THE DEFENDANT: Not guilty.

2 THE CLERK: And on Indictment Number Five for
3 conspiracy to commit capital murder as follows:

4 Virginia, in the Circuit Court of the City of
5 Norfolk, September 3, 1980, on the first count, the Grand Jury
6 charges that, on or about July 14, 1980 in the City of Norfolk,
7 Paul Andrew Cartwright, alias Robert Noel Griffin, did
8 conspire, confederate or combine with Barry Lynn Cartwright to
9 commit a felony, to-wit: capital murder, specifically, the
10 lawful, deliberate and premeditated killing of an employee of
11 Wackenhut Security in the commission of robbery while armed
12 with a deadly weapon, in violation of Virginia Code Section
13 18.2-22 and 18.3-31, and on the second count, the Grand Jury
14 charges that, on or about July 14, 1980 in the City of Norfolk,
15 Paul Andrew Cartwright, alias Robert Noel Griffin, did
16 conspire, confederate or combine with Barry Lynn Cartwright to
17 commit a felony, to-wit: feloniously kill and murder an
18 employee of Wackenhut Security, in violation of Virginia Code
19 Section 18.2-22 and 18.2-32.

20 What say you, guilty or not guilty?

21 THE DEFENDANT: Not guilty.

22 THE CLERK: And on Indictment Number Six for
23 conspiracy to commit robbery as follows:

24 Virginia, in the Circuit Court of the City of
25 Norfolk, September 3, 1980, the Grand Jury charges that, on or

1 about July 14, 1980 in the City of Norfolk, Paul Andrew
2 Cartwright, alias Robert Noel Griffin, did conspire,
3 confederate or combine with Barry Lynn Cartwright to commit a
4 felony, to-wit: robbery of an employee of Wackenhut Security,
5 in violation of Virginia Code Section 18.2-22 and 18.2-58.

6 What say you, guilty or not guilty?

7 THE DEFENDANT: Not guilty.

8 THE CLERK: And on Indictment Number Seven for
9 attempt robbery as follows:

10 Virginia, in the Circuit Court of the City of
11 Norfolk, September 3, 1980, the Grand Jury charges that, on or
12 about July 14, 1980 in the City of Norfolk, Paul Andrew
13 Cartwright, alias Robert Noel Griffin, did attempt to rob one
14 employee of Wackenhut Security, in violation of Virginia Code
15 Section 18.2-58 and 18.2-26.

16 What say you, guilty or not guilty?

17 THE DEFENDANT: Not guilty.

18 THE CLERK: Do you wish to be tried by a judge or
19 by a jury?

20 THE DEFENDANT: By a judge.

21 THE CLERK: Does the Commonwealth concur in
22 waiving trial by jury?

23 MR. SEIDEL: Yes, it does.

24 THE CLERK: Does the Court?

25 THE COURT: The Court does concur.

1 Q. And what does that mean to you?

2 A. I pick up stock, food and so forth and deliver it
3 to different locations.

4 Q. All right. Directing your attention to early
5 Monday morning, June 30th of this year, 1980, you were with
6 Tidewater Macke then?

7 A. That's correct.

8 Q. And what were your duties on that date?

9 A. I was filling in for Kevin Dickerson. He was the
10 warehouse deliveryman at the time, and I was filling in for
11 him. He had hurt his knee and I was running his route.

12 Q. Now, as a warehouse deliveryman, besides
13 delivering food, you also have a responsibility to do what
14 with the vending machines?

15 A. I just bring in the food and the money and the
16 hostess fills them.

17 Q. And you take the money from the vending machines?

18 A. Correct.

19 Q. Now, on that date, did you have occasion to go to
20 3321 East Princess Anne Road where the General Foam and
21 Plastic Plant is located?

22 A. Yes, I did.

23 Q. Why did you go there?

24 A. That is just a normal stop for me, everyday stop.

25 Q. You had to service the vending machines there?

1 A. I pick up the -- I drop off and I pick up money
2 in a stockroom.

3 Q. And you, on that particular date, did you have
4 occasion to see the defendant, Paul Cartwright?

5 A. Yes, I did.

6 Q. Would you point him out, please?

7 A. (The witness pointed to the defendant.)

8 Q. Let the record reflect he has identified the
9 defendant, Paul Andrew Cartwright.

10 Had you seen him there before June 30th?

11 A. Yes, I did.

12 Q. And in what capacity?

13 A. He was a security guard there.

14 Q. And when he was a security guard, did he wear a
15 uniform?

16 A. Yes, he did.

17 Q. On this date, June 30th, was he wearing a uniform?

18 A. No, he wasn't.

19 Q. Do you recall what he was dressed in?

20 A. To be truthful --

21 Q. In civilian clothes?

22 A. Yes.

23 Q. Would you tell the Court what happened when you
24 saw him that day.

25 A. I pulled up right beside General Foam at

1 approximately 4:15.

2 Q. Now, this is a.m.?

3 A. Yes, it is.

4 Q. And is that the normal time you make your stop at
5 General Foam and Plastic?

6 A. That's correct.

7 Q. Okay.

8 A. Okay. Cartwright and a black security guard were
9 standing out at the gate where they normally meet me. I got
10 out of the truck. I said, "How are you doing," so forth.
11 Cartwright had a handgun strapped to his side. He was in
12 plain clothes. I had seen him a few times before, so I didn't
13 really think anything was strange, so I went ahead and I
14 unloaded the truck. I went ahead and went on into the plant,
15 made the drop off, picked up the money and so forth, again
16 starting to come out when I met Cartwright halfway in the
17 plant.

18 Q. You were still inside the plant when you met him?

19 A. Yes, I was.

20 Q. What happened?

21 A. Cartwright had asked me about Kevin Dickerson,
22 had wanted to know approximately when he was coming back, so
23 forth. I told him it would be probably about a week or ten
24 days at that time, from what I knew, and he wanted to know if
25 he could get his phone number and so forth, and I said, "Well,

1 I will try to get it for you." He said he had a conversation
2 he wanted to finish with him.

3 I began to walk away from him through the plant
4 then. I got approximately 50 feet from him. At that time, I
5 guess it was dark in the plant, I heard a banging, it was
6 gunshot. I turned around, Cartwright had his gun drawn and
7 pointing at me.

8 I stood there for about ten seconds, it shocked
9 me. I was really stunned at what he had done, you know. I
10 stood there for about 10 or 15 seconds just facing him and he
11 just held the gun on me at that time.

12 So he just stood there, so I turned around and I
13 started to walk on out again. I thought he was, I didn't know,
14 I thought he was goofing around. I thought he did it to scare
15 me, to make me run. I didn't know what he was doing.

16 Q. Did you have anything in your hands at that time?

17 A. I was pushing a stock cart with money in it, and
18 so as I began, I guess it was another probably 20 feet or so,
19 to walk on, my back was to him, he fired another shot, and so
20 I didn't really stay, I just kept on walking towards the door.

21 Before I got to the back door, he met me, he had
22 run up, I suppose, and he said, "I hope I didn't scare you,"
23 and I can't remember what my exact words were at the time, but
24 I was somewhat shaken and I didn't know exactly what to say,
25 so I went ahead, I loaded my truck, put the hand cart in the

1 ~~and dangerous situations.~~

2 Q. Now, in reference to the weekend of July 12th and
3 14th, 1980, did you have occasion to perform duties with the
4 Emergency Response Team on those dates?

5 A. Yes, sir, we did. We arrested the robber
6 questioned by the Detective Division in a stakeout of the
7 General Foam and Plastic in Central Park.

8 Q. This is 3321 East Princess Anne Road?

9 A. Yes, sir.

10 Q. How many officers did you have from your team?

11 A. Counting myself, there was seven.

12 Q. And at what time did you have occasion to arrive
13 at the scene at that location?

14 A. Yes, sir.

15 Q. About what time was that?

16 A. Re July 14, 1980 at approximately 9:05 p.m.

17 Q. And did you give directions to members of the
18 team?

19 A. Yes, sir. The team was deployed in a perimeter
20 around which would be the east side of General Foam and
21 Plastics on Production Road.

22 Q. And would you tell us, please, what unusual
23 activity you observed that night in reference to this stakeout?

24 A. Yes, sir. At approximately 3:05 a.m. I observed
25 a Buick, it was a maroon bottom with a white top, URS-841. It

1 came down Village Avenue, made a right-hand turn, which would
2 be in a northerly direction to go down Production Road. It
3 was going at a very slow rate of speed. All of the windows
4 were down on this particular vehicle, and there was a white
5 male subject with long hair driving the vehicle.

6 MR. SEIDEL: Let me interrupt you there,
7 Lieutenant Cameron. At this time, I would ask this be marked
8 for identification, Commonwealth's Exhibit C-9.

9 THE COURT: All right. The photograph will be
10 marked C-9 for identification.

11
12 (Whereupon, the Photograph was marked as
13 Commonwealth's Exhibit No. C-9 for identification.)
14

15 BY MR. SEIDEL:

16 Q. Lieutenant, I show you what has been marked for
17 identification as C-9 and ask if you can identify that
18 individual in the photograph?

19 A. Yes, sir. The individual that is in the
20 Photograph marked C-9 is Barry Cartwright.

21 Q. Okay. He was the driver?

22 A. Yes, sir.

23 Q. Please go ahead with what you were testifying to.

24 A. The vehicle in which I have already testified was
25 going northbound on Production Road. As it got to the main

1 entry gate of the General Foam and Plastics Corporation, the
2 vehicle slowed down and came almost to a complete stop. This
3 was when I was able to look through a night viewing device
4 that I had and observe the subject, Barry Cartwright,
5 operating the vehicle.

6 The vehicle remained at a very slow rate of speed,
7 proceeded north on Production Road and made a right-hand turn
8 on Enterprise to go eastbound and disappeared from my sight.

9 At approximately 3:30 a.m. the same vehicle
10 returned to the immediate area, came down Village Avenue, made
11 a right-hand turn to go north on Production Road again. This
12 time there were two subjects in the vehicle. Barry Cartwright
13 was operating the vehicle and the defendant, Paul Cartwright,
14 was sitting on the passenger side of the vehicle.

15 Q. For the record, do you see him in court here?

16 A. Yes. He is the subject who is seated to
17 Mr. Robinson's right, directly between Mr. Bryant and
18 Mr. Robinson.

19 Q. You have identified the defendant, Paul Andrew
20 Cartwright, for the record.

21 A. Yes. He is Paul Andrew Cartwright.

22 Q. Go ahead, Lieutenant Cameron.

23 A. The vehicle again came in a very slow direction,
24 stopped almost in front of -- came to almost a complete stop
25 in front of the main gate and then proceeded northbound on

1 Production Road and then made a right-hand turn on Enterprise
2 and disappeared from my view..

3 At approximately 3:40 a.m. I instructed
4 Investigator F. F. Smith, who was operating a Tidewater Macke
5 vehicle, who was in radio communication with myself and other
6 members of the stakeout team, that he was to drive the Macke
7 vehicle into the immediate vicinity, he was to come down
8 Enterprise Road, make a left-hand turn, to come south on
9 Production and when he approached the main gate of General
10 Foam and Plastic, he was to drive so close to the fence that
11 no one would be able to come up on the passenger side of the
12 vehicle. He was then instructed by me that he would go to the
13 floorboard, sound a horn twice and remain in the vehicle,
14 which was to be locked, until he received further instructions
15 from myself.

16 At approximately 3:45 a.m. I heard Officer
17 McGuire. He did not discern the words. I looked to that
18 position, which would be to my right, which would be in a
19 northerly direction, I saw him standing with two shotguns
20 elevated at the defendant.

21 At that time myself and Officer Batten, who was
22 my partner on the stakeout team, we left our position of cover
23 and ran northbound on Production Road to the vicinity of where
24 the defendant, Mr. Cartwright, was laying face down in the
25 street being covered by Officers McGuire and Sergeant Scott of

1 the stakeout team.

2 Q. Okay. Now, you had Officer F. F. Smith drive the
3 Macke vending truck and not the regular scheduled driver?

4 A. That is correct.

5 Q. Why was that?

6 A. The reason for this is that we had reason to
7 believe and had been furnished information that there was
8 going to be a robbery which was going to endanger the life of
9 the Macke driver, and he was placed in that vehicle to
10 minimize any risk of any citizens, especially the Macke
11 Company employee.

12 Q. And you were in radio contact with the other
13 officers on this stakeout during the entire stakeout?

14 A. That is correct. I was the stakeout commander
15 during the entire operation.

16 Q. Let me show you what has been marked for
17 identification as Exhibit C-1, and if you could initial where
18 you were and put an initial where you were during the stakeout.

19 A. Okay. This would be -- If you will look across
20 here, this is Caligari Company, which would be to the east of
21 the General Foam and Plastics Corporation. There had been a
22 fire at the warehouse, which was much publicized, and the
23 building, what had been completely destroyed in the rear, they
24 had taken a bulldozer and piled up about 30 feet high of
25 twisted steel, and myself and Officer D. S. Batten, who is

1 marksman for the Emergency Response Team, positioned inside
2 the steel work here.

3 The other members of the team which would have
4 been, for the record, for the court reporter, be marked number
5 four on this exhibit. The rest of the members of the stakeout
6 team would be Sergeant Leonard. There was a truck which was
7 about approximately 45 to 50 feet to the south of where
8 Officer Batten and myself were. He was in an old blue
9 Chevrolet van-type truck that had been reched and he was in
10 the back of that vehicle there.

11 The other members of the stakeout team, Sergeant
12 J. N. Scott and Officer J. H. McGuire, were at the
13 intersection, close to the intersection, of Enterprise and
14 Production and in a stand of weeds which is situated near that
15 intersection. They were concealed in that area.

16 The other two members of the stakeout team which
17 would be Sergeant Hernholm and Officer R. L. Whealton, were
18 inside of General Foam and Plastic. They had been placed in
19 there shortly after midnight when the change of relief between
20 the Wackenhut guards had taken place and Officer Whealton was
21 dressed as a Wackenhut security guard. For the same purposes,
22 we had placed him in that type of disguise or uniform to
23 minimize any danger to the Wackenhut security guard.

24 Q. Now, would you put your initials there?

25 A. Put an "X" where I would be and the initial "C"

1 which is just directly in front of number four on this exhibit.

2 MR. SEIDEL: Okay. Would you answer any questions
3 Mr. Robinson has.

4
5 CROSS-EXAMINATION

6 BY MR. ROBINSON:

7 Q. The first time, as I understand it, that you
8 observed the defendant outside the car, the Buick, was when he
9 was actually on the ground face down with a shotgun drawn on
10 him; is that correct?

11 A. That first time? That is when I observed the
12 defendant other than when he pulled up to the front of General
13 Foam and Plastics.

14 Q. Can you put the defendant's initials on the
15 diagram as to where you found him or where he was when he was
16 placed on the ground with the guns on him,
17 P. C., Paul Cartwright?

18 A. All right. To the best of my recollection, after
19 I heard the shouting and saw the two officers emerging from
20 the weeds, I had been advised earlier the position of where
21 the vehicle had stopped, I ran from this location out around
22 the front of the business, and as I came around this front
23 area here, the defendant would be in an area, I would guess to
24 the best of my recollection, directly in front of the weeds.
25 He would be in the middle of the street closer to the --

1 Q. Put a circle around it so we can distinguish it
2 from the name of the street, Enterprise.

3 A. He was on Enterprise, laying on Enterprise.

4 Q. He was on Enterprise. That's a public street,
5 isn't it?

6 A. That is correct.

7 Q. And it's not private property?

8 A. No, sir, it's not private property. It's a
9 regular city street in the Central Park complex in the City of
10 Norfolk.

11 Q. All right. And were you shown or was a weapon
12 exhibited to you of any kind that was taken from the defendant?

13 A. There was a weapon that was removed from him that
14 I observed, I would say, four or five minutes later after I
15 had originally seen the defendant laying face down in the
16 street.

17 Q. Where was the weapon and what kind was it?

18 A. The weapon? It was a revolver. It was in
19 Officer McGuire's possession. I had been advised by Officer
20 McGuire he had removed the weapon from the holster the
21 defendant was wearing.

22 Q. Where was the holster on the belt?

23 A. On the right-hand side, sir.

24 Q. On the right-hand side. Had you given
25 instructions to the other officers as to what they should do

1 in the way of effecting an arrest of the defendant or any
2 other person and under what circumstances?

3 A. Counsel, repeat the question.

4 Q. Let me put it this way. What directions, if any,
5 did you give to the members of the surveillance team for them
6 to take action to place the defendant or any other person
7 under arrest?

8 A. These members that were -- To answer your
9 question, Mr. Robinson, these members that were placed there
10 are highly trained and advised members in that position. The
11 main member of the team with the most responsibility would
12 have been Sergeant D. S. Eatten, which is the marksman. His
13 instructions were when there come a point when either police
14 officers or citizens' lives become in immediate danger, his
15 instructions were to shoot Mr. Paul Cartwright on this
16 particular occasion.

17 Q. Detective Eatten was directed to shoot, but my
18 question relates to whether you gave anyone any instructions
19 as to when, if, at all, the defendant or anyone, any person,
20 should be taken into custody to be placed under arrest?

21 A. Yes, sir. After the vehicle entered the area the
22 second time and I was advised over the radio by Sergeant Scott
23 that the defendant, Paul Cartwright, had exited the vehicle
24 and had drawn his weapon and disappeared from his sight, my
25 instructions to McGuire and Scott were to make an arrest and

1 not allow him to go back to his vehicle. This was the second
2 time that the vehicle had come into the area.

3 Q. All right. And it did not matter to you what the
4 defendant was doing at the time he was arrested? Once he got
5 out of the car, he was to be arrested?

6 A. No, sir, not once he got out of the car.

7 Q. Once he got out of the car and drew his weapon
8 and you got that information, from that point on, the first
9 opportunity, he was to either be arrested or if he placed
10 someone's life in danger, he was to be shot?

11 A. Yes, sir, that is correct.

12 Q. It did not matter to you where he was physically
13 on the streets, the public streets, Enterprise or Production
14 Road, he was to be arrested; is that correct?

15 A. My instructions to Sergeant Scott, he was to take
16 whatever necessary action was needed to take the subject, Paul
17 Cartwright, in custody and not allow him to return to his
18 vehicle.

19 Q. Now, from your vantage point, you personally did
20 not observe any conduct on the part of the defendant,
21 Cartwright, that constituted a violation of the law?

22 A. No, sir, none whatsoever.

23 Q. The vehicle in question, when it traveled the
24 route of Enterprise and Production Road, Village, Production
25 Road and Enterprise, at all times was on public streets; is

1 that correct?

2 A. That is correct, in the time it was in my vision.

3 Q. I'm only talking about what you could see.

4 A. Yes, sir, up to the point after Mr. Cartwright
5 had been arrested. When I got to where his location was, I
6 ran past that when I saw he was being controlled by the
7 officers on the stakeout team. I then went on -- I was on
8 Enterprise Road. The Buick, I observed again, at that time,
9 was parked in the Sears parking lot facing in an easterly
10 direction. I ran past where Mr. Cartwright was, ran onto the
11 parking lot with two other officers.

12 At that particular time, Investigator Walker and
13 Sergeant Berna were approaching a police car. I ran up to the
14 driver's side of the vehicle, the engine was running. I
15 advised Mr. Barry Cartwright that he was under arrest and to
16 place his hands on the steering wheel where I could see them
17 and not to move.

18 Q. What had Mr. Barry Cartwright done at that point
19 to your observation that constituted a violation of the law?

20 A. That constituted a violation of the law?

21 Q. Yes.

22 A. Well, in making that determination, of course, I
23 have already stated that I did not observe any of the actions
24 of the defendant, Paul Cartwright.

25 Q. Right.

1 A. After seeing Mr. Barry Cartwright operate the
2 vehicle on both of the occasions and being advised by Sergeant
3 Scott over the police radio and a surveillance channel that
4 the defendant had walked past his location and in walking and
5 jogging past his location he had drawn a weapon.

6 From the information we had received earlier in
7 the day and a couple days previously, it was no doubt in my
8 mind that the brother of the defendant, Barry, was involved in
9 a crime.

10 Q. Well, what I'm asking you, sir, is: What did you
11 see Barry Cartwright do, if anything, that constituted a
12 violation of the law? That is all I asked you.

13 A. What did I see him do?

14 Q. Either you saw him do anything or you didn't see
15 him do anything.

16 A. Yes, sir. I saw him drive a 1981 maroon Buick,
17 license number URS-841, who I believed at that time was an
18 accomplice to a felony that was about to be committed.

19 Q. A felony about to be committed?

20 A. Yes, sir.

21 Q. That is your suspicion, based on what you had
22 heard earlier that was the reason you went up to the car when
23 it was parked in Sears and arrested him?

24 A. It was suspicion based on my experience and the
25 police department. It was my probable cause for making the

1 General Foam and Plastics is located?

2 A. Yes, sir.

3 Q. Would you relate to us, please, what information
4 you had received and what action you took as a result of that
5 information?

6 A. We were briefed by Detective Walker and a couple
7 of other detectives of a possible robbery and shooting at
8 General Foam and Plastics. Myself along with other members of
9 the Emergency Response Team went to the location, looked it
10 over and stationed ourselves in strategic points.

11 Myself and Officer McGuire were stationed on the
12 northeast corner of Enterprise and Production corner. This is
13 the bushes approximately five feet from the edge of the road.

14 We had got there around nine o'clock and
15 concealed ourselves. Approximately at 3:05 we observed a
16 vehicle pass by that fit the description and license number of
17 the suspect car.

18 Q. Would you describe that vehicle.

19 A. Buick with a maroon bottom and light color top.
20 It was a subject driving with shoulder length hair described
21 to us as being Barry Cartwright. He went down the road in
22 front of General Foam and Plastics, turned and went back and
23 went and parked in the Sears parking lot at the edge of
24 Ingleside Road.

25 The subject dismounted the vehicle and came by

1 and passed our location.

2 Q. You are indicating the defendant, Paul Andrew
3 Cartwright, walked past you?

4 A. Past us and past the northend of the building and
5 disappeared on the opposite end. We watched until he passed
6 us, our sight. He was gone approximately five minutes, came
7 back by and went back to the vehicle and got in the vehicle
8 and left.

9 Approximately 3:40 the car returned again,
10 cruised down past the building, went back and parked in the
11 same location on the Sears parking lot. This time when Paul
12 came by us, he was half walking and half running.

13 As he approached our position, he drew a pistol,
14 a revolver, from his right side, held it in his right hand.
15 He ran past the position. He went to the northend and
16 traveled about ten feet and stopped and turned in towards the
17 shrubbery and disappeared. He was in this position for
18 approximately five to ten minutes.

19 We notified Lieutenant Cameron who was in charge
20 of the squad. He was positioned down in front of the building
21 of what we had seen and what position he had taken.

22 In a short period, the Tidewater Macke truck
23 arrived and pulled up to the fence as instructed by Lieutenant
24 Cameron and blew his horn. In a period of three to five
25 minutes, Paul came out from his place of concealment on the

1 northend of the building.

2 Q. After the truck --

3 A. After the truck had blown his horn and stopped,
4 he turned and walked south alongside the building
5 approximately 60 to 75 five feet.

6 Q. Toward or away from the truck?

7 A. Toward the truck, hesitated for a moment and
8 turned back to our position and started back toward the car.
9 We had discussed it with Lieutenant Cameron after his first
10 visit there, and he was not to leave the property if he came
11 back. So as he approached his position, we stood up, called
12 to him, identified ourselves as police officers and placed him
13 under arrest. Put him face down on the ground and while
14 McGuire searched him, I advised him of his rights.

15 As I advised him of his rights, he said he did
16 understand his rights.

17 Q. Let me show you what has been marked for
18 identification as Exhibits C-2, C-3, 4 and 5. Look at those
19 and I ask if you can identify them?

20 A. Yes, I can.

21 Q. Starting with C-2, will you tell us what each
22 photograph is?

23 A. This is a photograph of the east side of General
24 Foam and Plastic looking from the north down to the south.

25 Q. And is that the side where the truck was?

1 out.

2 Q. Was he searched?

3 A. Yes, sir. He was searched by Officer McGuire and
4 a weapon was recovered and three ounces of MC was recovered
5 from his right front pocket.

6 Q. Did you advise him of his rights at the scene?

7 A. I did.

8 Q. Did he have any response to that?

9 A. I asked if he understood his rights and he said
10 yes, sir.

11 MR. SEIDEL: Answer any questions Mr. Robinson may
12 have.

13
14 CROSS-EXAMINATION

15 BY MR. ROBINSON:

16 Q. I take it that the car that passed in front of
17 you on these two occasions, it was just within a few feet?

18 A. Yes, sir.

19 Q. You had a clear line of sight?

20 A. Yes, sir.

21 Q. Sufficient lighting to determine whether there
22 were occupants in the car?

23 A. Yes, sir.

24 Q. And on both occasions the vehicle was occupied by
25 two men?

1 A. The first time it went by Paul was not visible to
2 us.

3 Q. He wasn't visible?

4 A. When he went down, when the car went down, he was
5 not in it. When it came back he was. When he first came by
6 we thought he had dismounted.

7 Q. But he was in the car apparently at all times
8 until he got out in your line of sight to walk up Enterprise?

9 A. Yes, sir. We thought he had dismounted the car,
10 but we found out later he was in there.

11 Q. Would you say that the distance between the point
12 at which the truck had stopped after blowing its horn and
13 where the defendant walked from his position of concealment
14 from behind the shrubs on the end of the building, would you
15 say that distance is about 70 yards, 75 yards?

16 A. I would put it somewhere around between 100 and
17 125 yards.

18 Q. A hundred to one hundred and twenty-five yards?

19 A. That is from the point of concealment down to the
20 actual gate where the truck was parked.

21 Q. Right. And how close would you say he got to the
22 truck?

23 A. He went around the corner of the building and
24 traveled approximately 70, 75 yards. He got just to the overhang
25 of the building before he --

1 Q. How long with the Robbery Squad?

2 A. Five years.

3 Q. Were you so employed on July 14, 1960?

4 A. Yes, sir, I was.

5 Q. And directing your attention to that date, did
6 you have occasion to assist the Emergency Response Team in
7 reference to a stakeout of 3321 East Princess Anne Road at
8 General Foam and Plastic in the City of Norfolk?

9 A. Yes, sir, I did.

10 Q. And for what purpose was that?

11 A. A conspiracy to commit murder and robbery.

12 Q. And in reference to that, were you there at the
13 scene?

14 A. Yes, sir, I was.

15 Q. What time did you arrive?

16 A. I made one of the arrest at 3:40 a.m. on the
17 morning of the 14th.

18 Q. What time did you get to the scene of General
19 Foam and Plastic?

20 A. We had been on roving patrol, so we arrived
21 shortly right before that time.

22 Q. Ten minutes before or half hour?

23 A. I would say about five minutes before.

24 Q. You arrived there at approximately 3:45?

25 A. Yes, sir.

1 Q. And did you have occasion to make an arrest in
2 this case?

3 A. Yes, sir, I did.

4 Q. And who was that?

5 A. That was Barry Lynn Cartwright.

6 Q. Commonwealth's Exhibit C-9?

7 A. Yes, sir. That's the brother of the defendant.
8 That was a picture that was taken that morning.

9 Q. And where was the defendant when you arrested him,
10 Barry Lynn Cartwright?

11 A. Barry Lynn Cartwright was sitting in the car that
12 was in the parking lot next to, I think it's, Enterprise and
13 Production Road.

14 Q. Would you describe that vehicle, please.

15 A. Yes, sir. That was a -- Let me see. I think it
16 was about a '70 Buick.

17 Q. Let me show you Commonwealth's Exhibit 5. Is
18 that a photograph of the vehicle?

19 A. Yes, sir, it is. That was taken at the scene
20 where the arrest was made.

21 Q. Now, during the offense of this night, were you
22 in radio contact with Lieutenant Cameron and the Emergency
23 Response Team?

24 A. Yes, sir.

25 Q. Had you been advised of what observations they

1 had seen?

2 A. Yes, sir.

3 Q. And did you receive information that they had
4 observed Paul Cartwright with a weapon and had apprehended him?

5 A. Yes, sir.

6 Q. And based on that, is that when you went to the
7 vehicle to arrest him?

8 A. That is when we moved in and made the arrest of
9 the brother.

10 Q. And earlier you had received information in
11 reference to a potential robbery and murder that was going to
12 occur here?

13 A. That's correct.

14 Q. And it was you who advised the E.R.T. Squad?

15 A. That's correct.

16 Q. Now, would you tell us what you observed upon
17 your arrival at the vehicle where Barry Cartwright was? Where
18 was he and was he running or not running?

19 A. He was in the car, sitting behind the driver's or
20 in the driver's seat, the engine was running. We approached
21 the car from the front and the back, demanded for him to put
22 his hands on the wheel, and then after we had gotten out of
23 the car and the other people from the back had gotten
24 stationed, we told him to slowly get out of the car.

25 He got out of the car, laid down on the pavement

1 and we searched him, and then we handcuffed him and placed him
2 in the back of our police car.

3 Q. Okay. Did you observe anything inside the
4 vehicle in plain view?

5 A. Yes, sir. On the front seat was a thermos jug;
6 also a knife, a buck knife; gloves, surgical gloves; and a
7 white towel.

8 Q. All right. Let me show you what has been marked
9 for identification, photographs C-6, 7 and 8, and ask if you
10 would look at each of those at this time?

11 A. Yes, sir. This is the knife holder and the
12 surgical gloves and the towel and thermos jug that were in the
13 front seat of the car. That's on C-6.

14 C-7 is also the same thing from a different
15 angle, and C-8 is the items taken from the car and placed in
16 front of the car, the gloves, the knife and the towel and
17 leather pouch.

18 Q. What was in that?

19 A. I'm not sure. I think it was for identification.
20 I'm not sure.

21 MR. SEIDEL: Your Honor, I move to introduce C-6,
22 7 and 8 at this time.

23 MR. ROBINSON: No objection to the photographs.

24 THE COURT: C-6, 7 and 8 will be admitted without
25 objection.

1 (Whereupon, the Photographs were marked and
2 received in evidence as Commonwealth's Exhibit Nos. C-6, C-7
3 and C-8.)

4
5 BY MR. SEIDEL:

6 Q. And in voucher number 13301, did you put certain
7 property you recovered from that vehicle?

8 A. Yes, sir, I did.

9 Q. What was that?

10 A. I put both of them on the one voucher, I'm sorry,
11 on the two vouchers. That was voucher number, 13301.

12 A. Okay. That was a bowie knife, pair of surgical
13 gloves and a white towel.

14 Q. Would you remove them from the bag?

15 A. Yes, sir. It's a pair of surgical gloves.

16 MR. SEIDEL: Your Honor, I would ask that the
17 knife and surgical gloves be marked for identification at this
18 time.

19 THE COURT: The knife in the holster marked as
20 one exhibit?

21 MR. SEIDEL: Yes, sir.

22 THE COURT: Knife and the holster is marked C-13,
23 and the envelope marked Perry surgical gloves will be C-14.

24 Envelope appears to contain some articles.
25

1 (Whereupon, the Knife and Holster was marked as
2 Commonwealth's Exhibit No. C-13; and the Surgical Gloves was
3 marked as Commonwealth's Exhibit No. C-14 for identification.)
4

5 BY MR. SEIDEL:

6 Q. Investigator Walker, let me show you what has
7 been marked for Exhibit 13 and 14 and ask if you can identify
8 both of those?

9 A. Yes, sir. Thirteen is the original Bowie knife
10 which was taken from the front seat of the car.

11 Q. And C-14?

12 A. C-14 is the gloves that were sitting or laying
13 next to the knife on the front seat of the car.

14 MR. SEIDEL: Your Honor, I move to introduce C-13
15 and C-14 into evidence.

16 MR. ROBINSON: Subject to cross. I may have
17 questions about identification.

18 THE COURT: All right.
19

20 BY MR. SEIDEL:

21 Q. And after the defendants were arrested, what was
22 done with them?

23 A. They were taken to the Detective Bureau. A short
24 time later, they were questioned individually, and after
25 giving them their rights on N.P.D. Form M-361, they gave a

1 statement.-

2 Q. Do you have that form with you?

3 A. M.P.D. Form M-381, yes, sir.

4 Q. For Paul Cartwright?

5 A. Yes, sir, I do.

6 MR. SEIDEL: Your Honor, I would ask that the
7 rights form be marked Commonwealth's Exhibit C-15.

8 THE COURT: Legal rights advice form dated July
9 14, 1980 with the signature of Paul A. Cartwright is marked
10 C-15.

11
12 (Whereupon, the Rights Form was marked as
13 Commonwealth's Exhibit No. C-15 for identification.)

14
15 BY MR. SEIDEL:

16 Q. Investigator Walker, I asked you this. I don't
17 know if you answered this. Was the vehicle's motor running
18 when you arrested Barry Cartwright?

19 A. Yes, it was.

20 Q. Let me show you what has been marked for
21 identification as C-15 and ask if you can identify that,
22 please?

23 A. Yes, sir. This is the rights form that was
24 filled out by Paul Cartwright. He was advised by myself and
25 Detective Showalter of the Detective Bureau at 7:50 a.m. on

1 7/14/80.

2 Q. And did you read each of the six questions to him
3 on the form?

4 A. Yes, sir, I did.

5 Q. And did he answer yes to each of the six
6 questions?

7 A. Yes.

8 Q. And who answered each of the questions, the yes?

9 A. Paul.

10 Q. And did he sign the rights form?

11 A. Yes, sir, he did.

12 Q. Dated 7/14/80 at 7:40 in the detective room?

13 A. Yes, sir.

14 Q. And was it witnessed by yourself?

15 A. Yes, sir.

16 Q. And anyone else?

17 A. Showalter.

18 Q. That was in the presence of the Defendant, Paul
19 Cartwright?

20 A. That's correct.

21 MR. SEIDEL: Your Honor, I move to introduce C-15
22 in evidence.

23 MR. ROBINSON: No objection, Your Honor.

24 THE COURT: Let me mark it, please.

25 THE COURT: C-15 is admitted without objection.

1 (Whereupon, the Rights Form was marked and
2 received in evidence as Commonwealth's Exhibit No. C-15.)
3

4 MR. SEIDEL: Your Honor, I would ask that this
5 eight-page written statement be marked for identification as
6 C-16.

7 THE COURT: The statement of Paul Andrew
8 Cartwright is marked C-16 for identification.
9

10 (Whereupon, the Statement was marked as
11 Commonwealth's Exhibit No. C-16 for identification.)
12

13 MR. SEIDEL: Mr. Robinson, there will be a
14 constitutional objection to the introduction of the statement;
15 is that correct?

16 MR. ROBINSON: Yes, sir.
17

18 BY MR. SEIDEL:

19 Q. Investigator Walker, let me show you what has
20 been marked for identification as Commonwealth's Exhibit C-16
21 and ask if you can identify that, please?

22 A. Yes, sir. This is a statement that was given by
23 Paul Andrew Cartwright to myself and Investigator Showalter in
24 the Detective Bureau.

25 Q. And is that Paul Andrew Cartwright who gave you

1 the statement in court today?

2 A. Yes, sir.

3 Q. Point him out.

4 A. Defendant sitting at the defense table.

5 Q. Let the record reflect you identified the
6 defendant.

7 A. Yes, sir.

8 Q. Is that the original statement?

9 A. Yes, that's the original statement.

10 Q. Would you go ahead and read us the written
11 statement, please?

12 MR. ROBINSON: Don't do that. I have an
13 objection.

14 THE COURT: I have reserved the possible
15 introduction of three exhibits based on a constitutional
16 objection and indicated I would like to take it up at the time
17 everything is offered.

18 Now, if I let you read it, what's the point of
19 him making the objection? If you are ready to offer it
20 through Mr. Walker, I think we have to take up his objection
21 at this time.

22 MR. SEIDEL: Okay. I have no further questions.

23 MR. ROBINSON: You want to have Mr. Walker depart
24 while we make argument?

25 THE COURT: Excuse me?

1 probable cause to arrest Paul Andrew Cartwright and that any
2 fruits of that arrest which arose therefrom, including the
3 exhibits mentioned, the physical exhibits and the statements
4 are constitutionally admissible in evidence, and the Court
5 will therefore admit them over objection of the defendant at
6 this time.

7 MR. ROBINSON: Why don't we just let the Court
8 read the statement faster than Walker trying to read it to him?

9 MR. SEIDEL: I call Investigator Walker.

10

11

12

13

14

15

16

17

18

INVESTIGATOR MARSHALL T. WALKER, JR., recalled as
a witness on behalf of the Commonwealth, having been
previously duly sworn, was re-examined and re-testified as
follows:

DIRECT EXAMINATION

BY MR. SEIDEL:

19

Q. State your name for the record, please.

20

A. Marshall Thomas Walker, Jr.

21

22

Q. And you're the same Marshall Walker who testified
earlier in this case?

23

A. Yes, sir, I am.

24

25

Q. All right. And did you have occasion to talk to
Paul Andrew Cartwright, the defendant, in the Detective Bureau?

1 A. Yes, sir, I did.

2 Q. And did you have occasion to take a statement
3 from him in reference to the offenses that were to occur and
4 did occur at 3321 East Princess Anne Road in the City of
5 Norfolk?

6 A. Yes, sir, I did.

7 Q. Would you read that statement in the record,
8 please?

9 A. Yes, sir. "This is a statement of Paul Andrew
10 Cartwright, white male, 24, in reference to the attempt
11 robbery to the Macke truck driver and to the Wackenhut
12 security guard at General Foam and Plastics at 3321 East
13 Princess Anne Road in the City of Norfolk on July 14, 1960,
14 at approximately 3:40 a.m. Statement given to Investigator
15 H. M. Showalter and M. T. Walker on July 14th at 8:38 a.m.

16 Q. What is your full name?

17 A. Paul Andrew Cartwright.

18 Q. How old are you?

19 A. Twenty-four.

20 Q. How far did you go in school?

21 A. Thirteen years.

22 Q. What is your home address?

23 A. 6121 Saunders Drive, Virginia Beach.

24 Q. Are you presently under the influence of
25 alcohol or drugs?

1 A. No.

2 Q. I show you Norfolk Police Department Legal
3 Rights Advice Form M-381, and ask if you read this
4 form and if you understand your rights?

5 A. Yes.

6 Q. Did you, in fact, sign yes to the six
7 questions on this form?

8 A. Yes, I did.

9 Q. Is this your signature in the lower right-
10 corner of this form?

11 A. Yes, that is my signature.

12 Q. Understanding your legal rights, do you
13 desire to make a statement in reference to the above
14 mentioned offenses?

15 A. Yes.

16 Q. Tell me basically what you planned to do.

17 A. I guess approximately five weeks ago at
18 that time I mentioned it to no one. I played it around
19 in my mind. I blocked it out several times over doing
20 it myself, the robbery. I finally realized that due to
21 the time factor I would need at least one more person to
22 help shuffle the vehicles around. At that time I
23 mentioned it to my younger brother, Barry Lynn
24 Cartwright.

25 Then that particular Sunday morning, two weeks

1 ago, I went to General Foam and Plastics in street
2 clothes, the same clothes I was wearing tonight, and
3 basically I had a dress rehearsal, if you will, of
4 what I intended to do. I don't remember
5 the security guard's name, black, approximately 5'9",
6 I'd say, about 150-160 pounds, mid twenties, was the
7 security guard. We worked together before, so I stopped
8 him and chatted a little bit. We were standing outside,
9 the Macke man drove up. I was chatting with the guard,
10 the guard allowed him entrance, lets him into the
11 building. I chatted with the guard for another 30
12 seconds, excused myself, went into the building, talk to
13 the Macke man, as he came around the isle pulled my
14 revolver, fired twice with blanks at the Macke man.

15 He made a comment about the Wackenhut
16 Security Company giving us blanks to use. I made a joke
17 about how safe it was. He goes out, I go out. He gets
18 in his truck and drives away and I get in my car and
19 drive away.

20 Approximately ten days ago at my house, my
21 brother and I were discussing the robbery and a friend
22 of mine, Jerry Breen, overhears it, and so he gets drawn
23 into the conversation. He was there when we were
24 talking about it. He was not at any time part of the
25 robbery.

1 Saturday, the 12th, in Great Bridge I
2 purchased at a hardware store, I purchased the rounds
3 for the pistol. I got a whole box of shells.

4 Last night we discussed it. It was
5 decided to go ahead with it.

6 At three o'clock a.m. I left my house.
7 About a quarter 'til three, I drove the Buick Lesabre,
8 '61 Virginia license URS-841, missing a headlight on
9 the left side.

10 My original intention was that I was going
11 to call my younger brother when I was ready for him and
12 his driving services.

13 Upon arrival at the scene, I felt
14 uneasy because I noticed the guard's car was missing and
15 I just generally felt ill at ease. I returned to my
16 house, picked up my younger brother, returned to the
17 scene. At that time we decided to go ahead with it.

18 I parked in the Sears parking lot, walked
19 out of the car down Enterprise Road, went around the
20 north end of General Foam and Plastic, waited by the
21 door for I don't know what length of time, no more than
22 ten minutes at the maximum. I drew my weapon on the
23 northeast corner of the building.

24 Upon getting to the northwest corner of
25 the building by the office doors I didn't see the guard.

1 so I holstered my weapon. After waiting five or ten
2 minutes, I decided to abandon the project, returned
3 around the building to the northeast corner and was
4 coming down Enterprise when the police officers in the
5 weeds told me to stop.

6 At that point I was arrested.

7 Q. During the planning of this robbery, what
8 did you plan to do first to the security guard and then
9 to the Macke truck driver?

10 A. If possible, my intention was to knock the
11 guard unconscious without being seen; if not possible, I
12 was going to shoot him in the chest and lower abdomen.

13 The Macke man I intended to just take him
14 around, play the part of a security guard, and when he
15 got to the cafeteria area and opened the door where he
16 drops off the supplies, I was going to knock him
17 unconscious and then kill him, and then I was going to
18 remove the bullets from the body. I was going to carve
19 them out with a knife that I brought with me for that
20 purpose, and then I was going to load them in the
21 vehicle, either the van or my car, and drive them out
22 to the Knotts Island area and dispose of the bodies in
23 the marsh.

24 Q. What were you going to do with the vehicle
25 that was used to transport the bodies?

1 A. Depending on whether it was the car or the
2 van. I was going to abandon the van, probably in the
3 Willoughby area, that was unsettled. The purpose was to
4 mislead the authorities.

5 Q. What was the purpose of the white or clear
6 plastic gloves found in the car?

7 A. I was going to leave no trace in the fact
8 as to who or why or how.

9 Q. Where did the Bowie knife that was found
10 in the front seat of the car come from?

11 A. I got it from my younger brother. Where
12 he got it from, I don't know.

13 Q. Is that what you intended to remove the
14 bullets from the body with?

15 A. Yes.

16 Q. How much money did you intend to receive
17 from this robbery/murder?

18 A. I was anticipating \$3,000.00. I have no
19 idea how much money the Macke man picked up.

20 Q. How much money did you intend to give your
21 brother?

22 A. Either ten percent or anything over
23 \$3,000.00.

24 Q. What you are telling us is you just wanted
25 \$3,000.00 for yourself?

1 A. Yes, that's all I needed.

2 Q. Can you explain why you needed the
3 \$3,000.00?

4 A. Basically for college in Switzerland,
5 \$666.00 for a one-way ticket, would have approximately
6 \$2,000.00 for living expenses once I got there for an
7 apartment, et cetera. There also was approximately
8 \$350.00 I owed to the Cavalier Sportswear that I was
9 going to pay off before I left. The college tuition is
10 \$161.00 a semester, this is the Swiss Federal Institute
11 of Technology. I checked that out with the Minister of
12 Education at the Swiss Embassy in Washington D. C.

13 Q. When did you have the conversation with
14 this man in D.C.?

15 A. Last week. It would have been Tuesday, I
16 believe.

17 Q. Had you applied for your passport?

18 A. No, I was going to New York to buy a
19 ticket and go to the passport office and tell them I
20 have business that calls for me to be in Switzerland and
21 to issue me an emergency passport.

22 Q. Had you taken care of any other papers
23 that were needed to be taken care of?

24 A. Getting an international driver's license
25 about three weeks ago, four weeks ago.

1 Q. At an earlier date, had you talked with
2 another Macke truck driver by the first name of Kevin
3 about his route, the value of the truck and monies
4 picked up by him?

5 A. I talked to a driver. I am not
6 familiar with his first name. Yes, we talked about the
7 value of the truck and the monies received.

8 Q. When did you purchase the gun that was
9 used by you tonight?

10 A. Approximately five weeks ago.

11 Q. Why did you purchase the gun?

12 A. To use it for this robbery.

13 Q. Why did you have three extra bullets in
14 your pocket?

15 A. I have enough gun knowledge that a person
16 just doesn't fall down when you pull the trigger. So
17 the bullets were in case I needed them. I figured it
18 was better to have too many than not enough.

19 Q. Earlier in your statement you mentioned
20 Jerry Breen. Did he have anything to do with the
21 planning of this offense?

22 A. No, he was a sounding board for the whole
23 idea. I already planned the idea. I went through the
24 dress rehearsal and he overheard that one comment.
25 That's how he got dragged into it. I had no intention

1 of using him and did not want him involved.

2 Q. Was he present when you and your brother
3 discussed any parts of this offense?

4 A. Yes.

5 Q. Do you remember when that was?

6 A. Approximately ten days ago.

7 Q. Do you know where he is now?

8 A. Probably at his father's house on Harfield
9 Drive, Crown Point Apartments in Norfolk.

10 Q. Why were you going to remove the bullets
11 from the bodies?

12 A. So that the weapon could not be traced and
13 that if the bodies were found, it would not be known
14 that they were shot, you would just find bodies with
15 holes in them.

16 Q. Did you intend to mutilate the bodies in
17 any way?

18 A. No, just remove the bullets.

19 Q. Have you had any kind of medical training?

20 A. Yes, I've had three months of emergency
21 medical technician. I am an Emergency Medical
22 Technician.

23 Q. Where did you receive your training?

24 A. With the Norfolk Paramedic Rescue Service.

25 Q. Do you remember the dates of the school

1 you attended?

2 A. I just graduated last month, April to June
3 1980.

4 Q. I show you this original Bowie knife with
5 a piece of white tape around the handle which appears to
6 be brown plastic, and ask you is this the knife you took
7 with you during this offense?

8 A. Yes, it is.

9 Q. You brought this knife with you?

10 A. Yes.

11 Q. The wife surgical gloves that were found
12 in the front seat of the car, do they belong to you?

13 A. Yes.

14 Q. You brought them with you?

15 A. Yes.

16 Q. So as to not leave any fingerprints?

17 A. Yes, sir.

18 Q. Is there anything else you would like
19 to add to this statement?

20 A. The fact it is my first offense and just
21 to emphasize that I did decide against it and was
22 heading back to the car.

23 Q. What made you change your mind at the last
24 moment?

25 A. Well, several factors. Again, the

1 uneasiness that I felt just in the whole area. It just
2 felt wrong because I did not see the car of the security
3 guard, I saw no car because I know where they park their
4 cars. As soon as I got out and started walking around I
5 felt the uneasiness, that it wasn't right, a six sense,
6 if you will, that something is wrong here. The more I
7 thought about it while I was by the door I thought
8 about the fact at the most money that the guy would be
9 carrying is \$5,000.00 and say two lives against that. I
10 just decided not to do it, so I was walking back or
11 trotting back.

12 Q. Had your brother or your friend, Jerry
13 Breen, tried to talk you out of doing this?

14 A. Yeah, they basically brought up the
15 argument of the price of a human life, what it is worth.
16 I overrode it with me weighing my college education
17 against it. I was willing to take two lives and leave
18 the country.

19 Q. Was this statement given by you of your
20 own free will without any threats or promises from any
21 member of the Norfolk Police Department?

22 A. Yes.

23 Q. Is this statement true to the best of your
24 knowledge and belief?

25 A. Yes.

1 .Statement ended 9:16 a.m., 7/14/80. Signed by
2 Paul Andrew Cartwright, and witnessed by myself and
3 Investigator Showalter."

4 Q. And did he make the necessary corrections on each
5 page of the statement?

6 A. Yes, sir, he did. There was small corrections
7 made on page two, and he initialed each page, also.

8 Q. He initialed each page where that was done?

9 A. Top and bottom of each page.

10 Q. And Commonwealth's Exhibit C-14 is the knife that
11 he identified for you?

12 A. Yes, sir.

13 Q. I'm sorry, C-13 is the knife?

14 A. The original Bowie knife.

15 Q. That he was going to use to carve the bullets out?

16 A. Yes, sir, that's the knife.

17 Q. And C-14 are the gloves he identified for you
18 that were found in the front seat of the car that he was going
19 to wear?

20 A. Yes, sir.

21 Q. And he identified the weapon?

22 A. The handgun, yes, sir.

23 Q. Commonwealth's Exhibit C-10 is the weapon he was
24 going to use to shoot the guard and the vending truck driver?

25 A. Yes, sir.

1 Q. Now, before you took the written statement, you
2 spoke with him orally?

3 A. Yes, sir, I did.

4 Q. Now, when he says he was going into the statement
5 to play the role of the guard, what did he tell you about that
6 that I didn't see in your written statement? What did he tell
7 you about playing the role of the guard?

8 A. Well, he was dressed with jeans and a shirt on
9 that is very similar to the Wackenhut security uniform, and
10 what he had planned to do, in talking with him, was if he had
11 to kill the Wackenhut man first, then take his whistle and his
12 gun and his badge and put that on his clothes, so when the
13 Macke man came, he could let him in the building and it would
14 look more normal.

15 Q. What is the Wackenhut uniform?

16 A. That's a blue shirt and pants with a blue strip
17 down the side.

18 Q. Contrasting in color?

19 A. Yes, sir, a little bit.

20 Q. Did you recover his clothing?

21 A. Yes, sir.

22 MR. SEIDEL: Your Honor, I ask that the shirt and
23 pants be marked C-17 and 18 for identification.

24 THE COURT: The shirt is marked C-17 and the
25 pants C-18 as soon as I can find a place to put the tag on it.

1 (Whereupon, the Shirt was marked as
2 Commonwealth's Exhibit No. C-17; and the Pants were marked as
3 Commonwealth's Exhibit No. C-18 for identification.)
4

5 BY MR. SEIDEL:

6 Q. Investigator Walker, let me show you what have
7 been marked for identification as C-17 and 18, and ask if you
8 can identify those?

9 A. Those are the clothes the defendant was wearing
10 the date he was arrested, the 14th.

11 MR. SEIDEL: Your Honor, I move to introduce C-17
12 and 18 into evidence at this time.

13 THE COURT: Mr. Robinson, I take it that you
14 object to these as parts of the fruits of the search?

15 MR. ROBINSON: Yes, sir.

16 THE COURT: I will admit them over objection, C-17
17 and 18.

18
19 (Whereupon, the Shirt and Pants were marked and
20 received in evidence as Commonwealth's Exhibit Nos. C-17 and
21 C-18.)
22

23 BY MR. SEIDEL:

24 Q. Investigator Walker, how do they compare with
25 what the Wackenhut security guard would wear?

1 THE COURT: And determine whether there is a
2 lawful basis for the conspiracy indictments and whether the
3 Commonwealth has proven its case beyond a reasonable doubt?

4 MR. ROBINSON: Yes, sir.

5 THE COURT: I think it might be appropriate to
6 deal with your issue concerning the weapon initially since
7 that becomes involved in other charges as we go along.

8 The most recent case from the Supreme Court of
9 Virginia dealing with the subject of what is a firearm under
10 the statutory provision of 18.2-53.1, which was the section
11 making it unlawful for any person to use or attempt to use any
12 pistol, shotgun, rifle or other firearm or displaying such
13 weapon in a threatening manner while committing or attempting
14 to commit murder, rape, burglary, murder or abduction, is
15 H-o-l-l-m-a-n-d versus Commonwealth decided August 28, 1980
16 and found at 221 Virginia Report reprints at page 202. I'm
17 not certain, but I believe those will correspond with the
18 official reports of the Supreme Court when they print them.

19 The opinion of the Court made reference to
20 several cases that have dealt with the question of what is a
21 firearm under that section, and include Cox versus
22 Commonwealth, 218 Va. 689, decided in 1973 in which it was
23 held that a pistol capable of firing by use of gun powder but
24 loaded with wooden bullets was a pistol and a deadly weapon.

25 Johnson versus Commonwealth, 209 Va. 291, decided

1 in 1968 in which the revolver that was used had a blocked
2 barrel and fired only blank cartridges, and it was again held
3 that was a firearm such as was referred to in the statute.

4 And then the Hollmand case dealt with a string
5 operated BB gun. The Court held that was a weapon as defined
6 in the statute.

7 The Court made reference to the fact that the
8 victim did not know what kind of pistol was being used and the
9 Court said "that a sensible victim of a holdup acts on
10 appearance and the victim is not required to know whether the
11 gun pointed at him is loaded or whether it shoots bullets or
12 blanks." That's the quote from the Johnson case proved and
13 recited in Hollmand.

14 The Court noted "that a toy pistol has been held
15 sufficient to sustain the allegation of robbery with a
16 firearm." I don't know the case they are referring to, I
17 didn't have time to look up the Johnson case, but it would be
18 my opinion based on the various rulings of the Supreme Court
19 of Virginia that any weapon that gives the appearance of being
20 capable of causing injury or death to a victim, either it be
21 operable or not, is a firearm, and its use in commission of a
22 robbery or one of the other specified crimes would be a
23 separate felony.

24 Certainly the gun that was introduced into
25 evidence in this case, Commonwealth's Exhibit 10, would still

1 fear anyone who stood and looked at the point of the gun as it
2 was pointed in their direction, his or her direction.

3 Indictment number one charges conspiracy to
4 commit capital murder, charges Paul Andrew Cartwright with
5 conspiring, confederating or combining with Barry Lynn
6 Cartwright to commit a felony: to-wit, capital murder,
7 specifically, the willful and deliberate and premeditated
8 killing of an employee of Tidewater Macke Company in the
9 commission of robbery while armed with a deadly weapon.

10 The Court has already indicated that the weapon
11 in Commonwealth's Exhibit 10 is a deadly weapon. It is clear
12 beyond a reasonable doubt from the evidence in this case that
13 the defendant, Paul Andrew Cartwright, did conspire,
14 confederate or combine with Barry Lynn Cartwright to commit
15 the murder of an employee of Tidewater Macke Company in the
16 commission of a robbery with the deadly weapon that has been
17 referred to. The indictment charges that the felony in
18 question was the willful, deliberate and premeditated killing
19 of such employee and thus constituting capital murder since it
20 was to be accomplished in the commission of the robbery with
21 the weapon.

22 The statement of Mr. Paul Cartwright clearly
23 indicates that the idea of a crime originated with him; that
24 he thereafter mentioned it to his younger brother, Barry Lynn
25 Cartwright; that he thereafter discussed the proposed crime

1 with his brother; that it was their plan that Barry Lynn
2 Cartwright would participate in the crime by driving a car at
3 the behest of his brother; that it was understood between them
4 that the robbery would occur; that two murders would be
5 accomplished; that the bodies would thereafter be disposed of
6 by removing them from the area where the killings were to take
7 place; that bullets were to be removed from the bodies with a
8 knife; that Barry Lynn Cartwright supplied the knife that was
9 to be used for that purpose; that this was a continuing
10 conspiracy leading up to the night of July 13, 1930 and the
11 early morning of July 14, 1930 at which time Mr. Paul Andrew
12 Cartwright, having visited the crime scene, returned home and
13 picked up Barry Cartwright and returned to the scene with him.

14 They decided to proceed with the crimes even
15 though Mr. Paul Cartwright indicated a feeling of concern or
16 ill at ease because of the layout that he observed outside the
17 crime scene. Having driven again by the General Foam and
18 Plastic Building and driven away, they returned and took up a
19 position in a parking lot nearby, whereupon Mr. Paul Andrew
20 Cartwright departed the vehicle, leaving his younger brother
21 in the car which was later observed to be still parked there
22 with his motor running. Paul Cartwright walked down the
23 street with the gun drawn in the direction of the General Foam
24 and Plastic Building, continued to observe the scene around
25 the building itself where the crime was to occur, remained at

1 the scene for a period of minutes, then concluded that the setup
2 was not satisfactory and that he should abandon the endeavor,
3 which he attempted to accomplish by returning in the direction
4 of his automobile, however was then stopped and placed under
5 arrest by the police.

6 It had been Mr. Paul Cartwright's intention to
7 approach the Wackenhut security guard at the General Foam and
8 Plastic plant and to knock him unconscious, if he could, but
9 to shoot him in the chest and lower abdomen using the carried
10 gun for that purpose; that he then intended to proceed on
11 where the Tidewater Macke Company employee was located, knock
12 him unconscious and then kill him, take the money that the
13 Macke employee had with him, which he estimated to be as much
14 as three thousand or more dollars, then remove the bullets
15 from the bodies of the Wackenhut security employee and the
16 Macke employee and dispose of their bodies; that he intended
17 to kill both persons, that is, Mr. Paul Andrew Cartwright
18 intended to kill both persons, as clearly stated by Paul
19 himself when he explained the need for extra bullets by saying
20 "I have enough gun knowledge that a person just doesn't fall
21 down when you pull the trigger, so the bullets were in case I
22 needed them. I figured it was better to have too many than
23 not enough."

24 The Court is of the opinion that three separate
25 crimes were contemplated by Paul Andrew Cartwright and by his

1 brother, Barry Lynn Cartwright, they being the robbery of the
2 employee of the Tidewater Macke Company, using a deadly weapon
3 for that purpose, the willful, deliberate and premeditated
4 killing of the employee of Tidewater Macke Company who was to
5 be robbed, and a conspiracy with Barry Lynn Cartwright to
6 feloniously kill and murder an employee of Wackenhut security.

7 These three separate offenses give rise to three
8 separate conspiracies of which the defendant, Paul Andrew
9 Cartwright, is found guilty, the killing as described of the
10 Tidewater Macke Company employee in the commission of the
11 robbery, the killing of the Wackenhut security employee in the
12 commission of the robbery of that individual, and the robbery
13 of the Tidewater Macke employee who was to be killed in the
14 commission of that offense.

15 So far as the charges of attempt robbery are
16 concerned and use of the weapon in the commission of the
17 attempt robbery, the Court is aware that something more than
18 mere preparation is required in order to constitute an attempt
19 to commit a crime such as robbery. There must be an act which
20 shows a present intention to commit the crime, and it must be
21 more than mere preparation although the last act need not be
22 the last act prior to the actual commission of the crime.

23 Here the intent is completely that a robbery was
24 to be accomplished. Here there was far more than mere
25 preparation to rob, as evidenced by the decision of Paul

1 Cartwright and his brother to go ahead with the crimes, the
2 proceeding to the scene of the crime, the parking of the
3 automobile later found to be running, the drawing of the
4 weapon by Paul Cartwright after he had left his vehicle and
5 proceeded in the direction of the building where the crimes
6 were to be committed, the approach to that building leading
7 him into the bushes close at hand.

8 All of these things indicate more than mere
9 preparation. All of these indicate a crime in progress or
10 crimes in progress, although they never reached the actual
11 consummation, and although there was an abandonment of the
12 project before consummation ever occurred, all of these things
13 convince the Court beyond a reasonable doubt that the
14 defendant, Paul Andrew Cartwright, did conspire, confederate
15 or combine with Barry Lynn Cartwright to commit a felony:
16 to-wit, capital murder, specifically the wilfull and
17 deliberate and premeditated killing of the Tidewater Macke
18 Company employee in the commission of a robbery while armed
19 with a deadly weapon;

20 That Paul Andrew Cartwright did conspire,
21 confederate or combine with Barry Lynn Cartwright to commit a
22 felony: robbery of an employee of Tidewater Macke Company as
23 charged in Indictment Number Two;

24 That Paul Andrew Cartwright did attempt to rob
25 one employee of Tidewater Macke as charged in Indictment

1 Number Three;

2 That Paul Andrew Cartwright did use, attempt to
3 use or display a pistol while committing a felony; to-wit,
4 attempt robbery, and that's attempt robbery of the Macke
5 employee as charged in Indictment Number Four;

6 That Paul Andrew Cartwright did conspire,
7 confederate or combine with Barry Lynn Cartwright to commit a
8 felony: to-wit, feloniously kill and murder an employee of
9 Wackenhut security as charged in the second count of
10 Indictment Number Five.

11 Now, that leaves for disposition the first count
12 of Indictment Number Five which charges Mr. Cartwright with
13 conspiring, confederating or combining with Barry Lynn
14 Cartwright to commit a felony: to-wit, capital murder,
15 specifically, the wilfull, deliberate and premeditated killing
16 of an employee of Wackenhut security in the commission of a
17 crime. The Court will acquit him of that charge.

18 Indictment Number Six, Paul Andrew Cartwright did
19 conspire, confederate and combine with Barry Lynn Cartwright
20 to commit a felony: to-wit, kill an employee of Wackenhut
21 security. The Court will acquit him of that charge.

22 Indictment Number Seven, which is the last
23 indictment, Paul Andrew Cartwright did attempt to rob one
24 employee of Wackenhut security. The Court will acquit him of
25 that charge.