

SUPPLEMENTAL APPENDIX

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1 not our secretary's fault. It was there.
2 And whatever arrangement, what time you
3 were coming or not coming to get it, was
4 entirely up to you. And it was sent over,
5 not only to the Clerk's Office but also the
6 Commonwealth's Attorney's Office when you
7 came down, there it would be. And I find
8 no basis whatsoever for the position you're
9 taking. Of course, pursuant to the
10 Rule 3A:20, Subsection A, after Subsection 7,
11 the Court may examine on oath any perspective
12 juror or counsel, with permission of the
13 Court, may examine under oath any perspective
14 juror or may ask any question relevant to
15 his qualifications as an impartial juror.
16 Now. Are you asking to put this man on the
17 stand and take up some more time for which
18 you didn't ask for any preliminary time, and
19 we've set this case for two days and now
20 we're going, holding the jury up, they've
21 been sitting out there since 10:00 o'clock and
22 you never asked me at the preliminary hearing,
23 do you want to put this witness on the stand?
24 MR. LOWE: Judge, until this morning, or until yesterday,
25 actually, I did not know that we had this

1 evidence with Ms. Greene, which is on
2 Exhibit 2, which the Dep. Clerk has, those
3 7 of the 31 would not be called at this time
4 unless needed, and would be kept in the jury
5 waiting room, and the same thing applies to
6 Joseph Board and Richard Burgess. Those
7 two will be left in the jury waiting room
8 and not be called unless it's necessary.

9 However, I still want it understood that the
10 Court feels that it has complied in every
11 way with the statute and has done what was
12 necessary in 801-353, and even more so than
13 required, and what it amounts to is the
14 General Assembly of Virginia and all its
15 wisdom and the Supreme Court of Virginia and
16 all its wisdom has made its case to prove
17 the combines methods under 801-353 and also
18 the Rule 3A-20A after sub. And basically,
19 stated that the rule resolved any ambiguity
20 and Section 801-358, I think they mean 353,
21 clearly makes counsel participation voir dire
22 contingent upon the Court's approval by
23 resolved any ambiguity that may be in
24 801-358.

25 MR. REID: Judge, I have one, a couple of issues to

1 THE CLERK:

2 James A. Goins, Sr., Hilda S. Goodstein,
3 Clarence G. Jones, Merritt E. Keppel, Seward
4 H. Armstrong, James E. Garrett, III, Robert
5 S. Melvin, Jr., Thomas B. Nuckols, Carol
6 J. Huckstep, Raymond O. Miller, Mary Jane
7 B. McAfee, Charles F. Kaufelt, Jr.,
8 Joseph W. Moorefield, Jr., Barbara W.
9 General, John C. Harmon, William M. Battle,
10 John C. Isbell, Jr., Neta C. Hastings,
11 Duncan M. Bevan, Frances H. Glasco.

12 THE COURT:

13 Members of the jury, at this time would
14 you kindly face the Clerk, Deputy Clerk,
15 Miss Janice. Raise your right hand.

16 (The Dep. Clerk administered the
17 oath, with each juror answering in
18 the affirmative individually.)

19 Now, members of the jury, let me have your
20 attention, please. This is the stage of
21 the case in which the Court explains to you
22 why you're brought here today, what the case
23 is to try, and the number and style of the
24 case, following which I'll ask you certain
25 questions. So we'll start off, please,
Madam Clerk, this is going to be called a
green file, a felony case, 82F335, the 335th

1 case to reach the docket of this Court in
2 1982. Now, the style of the case is the
3 People of the Commonwealth against William
4 Henry Hewitt. H-e-w-i-t-t. You heard the
5 clerk read the charge. Basically, you
6 heard him plead not guilty. The clerk
7 read the charge that on or about Jan. 17,
8 1982 in the County of Henrico that William
9 Henry Hewitt, that's your defendant,
10 unlawfully and knowingly or intentionally
11 possess more than five pounds of marijuana
12 with the intent to distribute, against the
13 peace and dignity of the Commonwealth. You
14 heard him plead not guilty to that charge
15 and ask for trial by jury. Now, ladies and
16 gentlemen, it's my function at this time to
17 ask you all certain basic questions. If
18 any of you have an affirmative answer speak
19 up. Say yes. Hold up your hand. We may
20 want to get your name likewise. So, you
21 start off then with the first question. By
22 any chance are any of you all related by
23 blood or marriage to the accused, William
24 Henry Hewitt? No affirmative answer. If
25 you have any affirmative answer say yes,

1 or hold up your hand. Otherwise, shake your
2 head negatively and remain quiet. All
3 right, next question. By any chance have
4 any of you all ever worked for, or by any
5 chance been agents for lawyers or anything
6 of the defendant, William Henry Hewitt?
7 You didn't know him, I assume, but I have
8 to ask that question anyway. All right,
9 next question, ladies and gentlemen. Do
10 any of you have any interest in this trial
11 or the outcome of this trial other than as
12 impartial objective citizens who are going
13 to listen attentively to the evidence and
14 the law of the case as I'll give it to you
15 in the instructions later. In other words,
16 there are not any of you that have any
17 interest in this case or this trial other
18 than as impartial citizens? Going to be
19 objective citizens, jurors to listen to the
20 evidence and instructions the Court will
21 give you. All right, no affirmative
22 answer. You heard me relate the charges
23 of Jan. 17, 1982, against the defendant,
24 Hewitt. By any chance, have any of you
25 acquired any information about the case

1 from any source whatsoever? Anyone ever
2 talk to you about it? By any chance did you
3 see anything in the newspaper about it?

4 I don't know whether it was there or not.

5 Any knowledge at all, anyway, or any
6 information at all about the case? All
7 right, no affirmative answers. This may
8 sound like a funny question, but I'll ask
9 you this. Even though that you know nothing
10 about it and have heard nothing about the
11 case, have any of you expressed or formed
12 any opinion as to the guilt or innocence of
13 the accused, by any chance, just by reading
14 the charge? All right, all negative. Now,

15 the next question, ladies and gentlemen of
16 the jury, are you sensible of any bias or
17 prejudice, either against the people of the
18 Commonwealth in the proceeding of a case
19 like this, or against the accused, by
20 virtue of the charge? No affirmative
21 answer. And this question, and think about
22 it, do you know of any reason whatsoever
23 why each of you cannot give a fair and
24 impartial trial, or to the people of the
25 Commonwealth, and to the accused, based

1 solely on the evidence you hear and solely
2 on the law, as the instructions that I'll
3 give you what the law principles are,
4 applicable to the evidence you hear? In
5 other words, do you know of any reason why
6 you can't given a fair and impartial trial
7 to both sides? No affirmative answer.
8 Two more questions. Here again, if you have
9 an affirmative answer say so, otherwise it
10 will be understood that your answers are
11 no. If you have an affirmative answer say
12 yes or hold up your hand. If you have
13 by any chance served on a prior jury and
14 did anything happen in any trial of any
15 criminal case that would prevent you from
16 serving as a fair and impartial jury at
17 this time? All right. Have any of you or
18 any close relative been a victim of crime?
19 Next question, ladies and gentlemen of the
20 jury, have any one of you or any member of
21 your family, a close member of your family,
22 been an employee of any law enforcement
23 agency?

24 JUROR: Well, Your Honor, my brother's an attorney.

25 THE COURT: Well, what I'm asking is not whether he's

1 an attorney, I'm asking whether or not any
2 of you or a member of your family have
3 worked for a law enforcement agency, like
4 a police department or a sheriff's office
5 or anything of that sort. All right.
6 By any chance do any of you all know
7 personally or ever had any business or
8 social dealings either with the Commonwealth
9 Attorney, Mr. Parcell on the right or
10 Mr. Duncan Reid on the left, or with
11 Mr. John Lowe from Charlottesville, who is
12 in the middle of these three gentlemen, or
13 Mr. John Drescher, of Virginia Beach, the
14 one on the left of those three gentlemen?
15 Have you had any contacts, social or
16 otherwise, with any of them? All right,
17 at this time, sheriff, I'm going to ask you
18 to bring in those witnesses that the
19 Commonwealth has summonsed. I want counsel
20 to supervise this to the extent that it's
21 necessary. I want you to bring in first
22 any witnesses for the Commonwealth that
23 have been here, and ask them to come in.

24 (Witnesses were brought in,
25 for the Commonwealth)

1 MR. PARCELL: Judge, there are maybe two or three
2 additional witnesses. We might use them,
3 depending on how the trial goes. These are
4 only 12 witnesses that have been officially
5 summonsed by the Commonwealth.

6 THE COURT: All right. Members of the jury, I ask you
7 at this time under No. 14 question, do
8 any of you all happen to know personally any
9 of these witnesses assembled here before us?

10 JUROR: Your Honor, I possibly might know the fourth
11 gentleman, I'd like to ask him if he worked
12 at DEA.

13 WITNESS: No.

14 JUROR: I don't know him. He looks like someone I
15 knew.

16 THE COURT: The juror said he might know the fourth man
17 from the left and did he work for so and
18 so, who was that?

19 JUROR: DEA. (Mr. Lowe asked him to repeat it)

20 THE COURT: And the witness said no, he did not work
21 for that firm, and he said well, he didn't
22 know him then.

23 MR. LOWE: Your Honor, with the accoustics in here,
24 was it DEA? Is that what he said?

25 JUROR: Yes.

1 MR. LOWE: What does that abbreviation stand for?
2 JUROR: (unintelligible) (Sounds like Drug
3 Enforcement Administration)
4 MR. LOWE: All right, can we have the name of the
5 witness, Your Honor, on the record?
6 THE COURT: Your name, please?
7 WITNESS: K. H. Hudson.
8 THE COURT: K. H. Hudson? All right. No other witness,
9 or no witness knows any of these witnesses,
10 consequently, they may now leave and
11 wait outside. While you're here I will
12 say this. Once you get a jury selected in
13 this case they will be wearing jury buttons.
14 We haven't got to that stage yet, but I do
15 not want anyone talking to any of these
16 jurors at anytime except if and when you're
17 called to the witness stand. All right,
18 would you all kindly leave and wait outside
19 to where you were waiting before you were
20 brought in here?
21 (Witness for the Commonwealth were
22 taken out and witnesses for the
23 Defendant were brought in)
24 MR. LOWE: May counsel approach the bench for a moment?
25 THE COURT: No, sir. I've never allowed anybody to

1 approach the bench. Everything is going to
2 be done fully on the record and with all
3 attorneys present, and where everybody can
4 hear, and it's fully recorded. If you
5 want this jury excluded at this stage I'll
6 send them out, but I'm not going to allow
7 anybody to come up here and whisper to me.
8 No, siree Bob.

9 MR. LOWE: I certainly wanted it on the record. You
10 have a microphone near you, Your Honor,
11 that's why I suggested that all counsel
12 approach you. I have a question that has
13 to, it's important and I think that the
14 jury is not, would not be appropriate to
15 hear it, perhaps we should ask them to step
16 out then, I thought it would be easier just
17 to approach you.

18 THE COURT: Write it on a yellow pad, pass it to the
19 Commonwealth Attorney to give to me.

20 MR. LOWE: Thank you, Judge. That's probably a good
21 solution, Judge.

22 THE COURT: The only solution. All right, members of
23 the jury, at this time, as to when we
24 called in the witnesses for the people of
25 the Commonwealth, we couldn't call in all

1 the people of the Commonwealth so at this
2 time we'll ask that the defendant bring in
3 whatever witnesses the defendant's lawyer
4 may call, but of course the defendant
5 doesn't have to be in that group. All
6 right, call them all in, whoever they are.

7 MR. LOWE:

Your Honor, just as stated by the Common-
8 wealth, the only one that we have present
9 here that we definitely will put on is
10 Mrs. Hewitt, the wife of the defendant.
11 There may be others that may be called by
12 witnesses, or the evidence as it transpires,
13 just as the Commonwealth had two or three
14 like that, this is the only one that we for
15 sure will put on.

16 THE COURT:

All right, I want to know how many more
17 there are out there that -

18 MR. LOWE:

There are no more out there at all, Judge,
19 these are people we would summon if the
20 occasion arose.

21 (Defense witnesses in)

22 THE COURT:

Members of the jury, do you by any chance
23 know this person here?

24 MR. LOWE:

This is Mrs. Ruth Hewitt, Your Honor.

25 THE COURT:

There are no affirmative answers. Then she

1 can be excused, step outside again.

2 MR. LOWE: Thank you very much, Judge.

3 THE COURT: Now, members of the jury, moving along a
4 little bit, please, 15 and 16, is there
5 anything about the nature of the charge in
6 this indictment, distributing marijuana,
7 that would prevent any of you from consider-
8 ing the case fairly and impartially?

9 Both from the standpoint of the people of
10 the Commonwealth and from the standpoint of
11 the defendant? All right, next question.

12 There's no affirmative answer. Has any of
13 you by any chance, or any close member of
14 your family been involved in the use of

15 marijuana? All right, no affirmative
16 answer. 19, 20, 21, and 22. Members of
17 the jury, you'll be given more instructions
18 on this later, but the Court must inform
19 you that any person charged with a crime
20 is presumed innocent and likewise that the
21 defendant doesn't have to prove his
22 innocence and likewise that the burden is
23 on the Commonwealth to - the people of the
24 Commonwealth - to prove a person guilty
25 beyond a reasonable doubt. You're in

1 accord with - do you have any objection to
2 these particular basic rules of law? If
3 you do, please speak up. All right, 25.
4 It may be repetitious, but I want to make
5 sure you understand it. You understand
6 that in a case of this kind, that the
7 defendant doesn't have to testify and
8 you can't draw any emphasis one way or the
9 other from his not testifying. Understand
10 that, and anybody have any disagreement with
11 that basic legal principle?

12 JUROR: Your Honor, would you repeat that?

13 THE COURT: Basic legal principle in any criminal case
14 is that the defendant does not have to
15 testify in the case at all. And consequent-
16 ly, the jury cannot draw any emphasis at
17 all from his not testifying. You can't use
18 that in making a decision. You all under-
19 stand that that is a principle law in all
20 cases in Virginia. Do you have any
21 disagreement? All right, no affirmative
22 answer. Another basic premise in all
23 criminal cases, you understand in a
24 criminal case the defendant cannot be
25 convicted unless the jury votes unanimously

1 that he's guilty beyond a reasonable doubt.
2 That's a basic principle and any of you
3 disagree with it or can't try a case on that
4 particular basis of the law? That everyone
5 is presumed innocent and can't be convicted
6 unless it's a unanimous jury verdict.
7 All right, no affirmative answer.
8 Next one, 53, members of the jury. The
9 next one I just told you, in order that
10 you have to have a unanimous verdict, do
11 you also understand that the jury, if it
12 determines guilt arrives at an appropriate
13 sentence, if the sentence in the event of
14 conviction can't be the average of what the
15 12 jurors say, that there must be a
16 sentence in which all of you agree on the
17 sentence. All right, does anybody have
18 any disagreement on that principle of the
19 law? All right. No affirmative answer.
20 All right, there'll be no affirmative
21 answer to any of the questions that the
22 Court has propounded, and the Court having
23 finished - (unintel.) Now, Madam Clerk,
24 you may hand your list of the 20 jurors to
25 the sheriff. Dep. Sheriff Tom Moon will

1 take it first to the Ass't. Comm. Attorneys
2 and then to the Defense Counsel.

3 MR. LOWE: Your Honor, may we have permission to step
4 outside the courtroom just one moment with
5 the defendant so that he can advise us and
6 Mr. Frederick and Mr. Drescher and I can
7 advise him about what strikes to make, a
8 matter of two minutes probably. Otherwise,
9 he doesn't have any opportunity for input
10 to this decision and it is, after all, his
11 choice.

12 THE COURT: Okay, you can step outside if you want to.

13 (Brief suspension)

14 All right, are we ready to proceed with
15 the peremptory strikes, now that the defense
16 counsel and defendant are back in the
17 courtroom? Commonwealth Attorney and the
18 jury having remained therein. You ready,
19 counsel?

20 MR. LOWE: Yes, sir.

21 THE COURT: All right, sheriff. I want counsel to be
22 admonished here not to obliterate the name
23 when you strike it out, I want one line
24 through it only, because on your right to
25 strike for any cause, alternatively, first

1 said for cases where the problem can be
2 cured by giving you a three hour recess, as
3 apparently the Court felt in that case, we
4 cannot investigate in Chesapeake, if Your
5 Honor gives us three hours today. We could
6 not investigate in Chesapeake if you gave
7 us a continuance until Monday, because by
8 the time we could get to Chesapeake it would
9 be just about the end of the business day
10 on a Friday, and nothing but the weekend in
11 between.

12 THE COURT: I thought you'd already made a statement
13 that you'd already checked all the records
14 down there.

15 MR. LOWE: Yes, sir. and couldn't find any records,
16 but now he tells us that the Commonwealth
17 Attorney's Office is somehow involved and
18 has eliminated, whatever that meant, or
19 can't tell us anything because of some
20 mysterious thing. We can't contact the
21 federal authorities to find out from them
22 what compensation or consideration they
23 have offered him. Have they given him
24 immunity from a lot of federal drug charges,
25 conspiracy charges, tax evading charges?

1 We don't know and Mr. Talley wouldn't tell
2 us, and the Commonwealth hasn't disclosed
3 it. Indeed, you know, we just don't know
4 that.

5 THE COURT: Well, when was it you say that you looked
6 into this situation in Chesapeake?

7 MR. LOWE: Mr. Drescher actually did the groundwork
8 on that, Your Honor. Would you like for
9 him to respond? He can tell you the
10 specifics.

11 THE COURT: I just want to know the approximate date
12 of it.

13 MR. LOWE: We have done some investigation a number of
14 months ago and as recently as this week, I
15 believe, or the last week we checked the
16 file again to find out what the disposition
17 order was and no disposition order could be
18 found, Mr. Drescher advises me, and we have
19 certified copies of the other orders.
20 But we had no time to check with the federal
21 authorities to see what they've given him,
22 that might be very important.

23 THE COURT: You say you've covered everything in
24 Chesapeake. You've gotten all the orders
25 and looked at the file. And presumably

1 looked at the order book.

2 MR. LOWE:

And there was no order on sentencing. And

3 Mr. Talley and the Commonwealth have not

4 disclosed, and Mr. Talley has refused to

5 tell us exactly what compensation he's

6 been given, what consideration he's being

7 given on that Chesapeake charge, which is

8 still hanging over his head. There's no

9 order of revocation, Judge. There was a

10 five year suspended sentence and they had

11 a show-cause or something equivalent of a

12 show-cause, based on some criminal activities

13 that took place I believe in 1979 or '80,

14 I've got the list of those.

15 THE COURT: Well, how in the world could Talley control

16 that. In other words, it's up to the

17 Commonwealth Attorney and the Judge, someone,

18 you say you've checked the records, you

19 found all the records in Chesapeake

20 relating to a conviction and a suspended

21 sentence and apparently there might be or

22 has been something in connection with a

23 show-cause possibility, but that it never

24 has been set and never has been decided and

25 there's nothing relating to the revocation.

1 I mean, how can Talley be responsible for
2 that, for goodness sake? That's the duty
3 of the Commonwealth Attorney and the
4 Court system.

5 MR. LOWE:

6 Judge, the initial court date on revocation
7 hearing for that five year sentence to be
8 revoked for criminal misconduct that
9 followed it, was originally set according
10 to the records for May 4, 1981. The
11 records don't disclose exactly what took
12 place to get it continued, but Mr. Talley
13 indicated that, yesterday, that that
14 revocation hearing had been rescheduled
15 sometime in early 1982, perhaps around
16 February. We asked had it been continued,
17 what's the status of it now? He refused to
18 say. So that there is a pending revocation
19 hearing, or at least there was at one time,
20 maybe it's been dismissed now, we don't
21 know, we can't find an order regarding it,
22 Mr. Talley won't tell us, the Commonwealth
23 has not told us. That's very important.
24 If this man has been told, "If you do a
25 good job on Billy Hewitt we'll forget that
five years," that's very important for this

1 jury to know, in terms of his credibility.
2 And that's what we've been trying to find
3 out and we have not been able to find out.
4 THE COURT: I understood you to represent to the Court
5 a few minutes ago that for a number of
6 months that you all have checked the
7 Chesapeake records on Talley and that in
8 the last few days they've also been checked.
9 You still find no hearing on the show-
10 cause order, is that correct or not?
11 MR. LOWE: No disposition on the revocation, whether
12 they revoked it or whether they just
13 refuse to revoke it and remanded him to
14 his probation, or just what they did, there
15 is no order that we could find, that's
16 correct.
17 THE COURT: No indication of any hearing.
18 MR. LOWE: Yes, sir, the records that we have indicate
19 that there was originally a hearing on
20 May 4, 1981. Mr. Talley said it was
21 continued to early 1982. That it was
22 continued generally at that point. What the
23 status of it from then he refused to talk
24 about.
25 THE COURT: Well, it's a matter of record, and that was

1 what we depend upon and I wouldn't require
2 Talley to respond to that at all. Period.
3 In other words, that's a matter of public
4 record, you all have looked at it and it's
5 been continued and there's been no order in
6 connection with it, there's been no situation,
7 it's entirely up to defense counsel. I
8 don't see how any defendant could control -
9 not defense counsel - it's entirely up to
10 the Commonwealth Attorney and the Court, I
11 don't see how any defense counsel can
12 control that. In other words, I'm not
13 going to consider anything in relation to
14 the fact that Talley hasn't responded to
15 some sort of proceeding in Chesapeake, which
16 you all have all checked the records and
17 found out there's been no disposition made.
18 I think it's immaterial. Next?

19 MR. LOWE:

20 Your Honor, I mentioned that I don't think
21 you've addressed the question that we had
22 not been told and Talley refused to tell us
23 whether he's been paid as an informant,
24 whether they were paying living expenses,
25 whether they were giving a salary, anything
of that line. Are you saying that we're

1 serving ever terminated, or cut short, or curtailed in
2 any way?

3 A No, sir.

4 Q Did you pull all your time on those charges?

5 A Spent every day, yes sir.

6 Q Now, what jail possibility was it you were hoping to
7 prevent by contacting Mr. Zeigler?

8 A I still was facing a show-cause revocation for probation,
9 which was a five-year sentence. I did not want to spend
10 anymore time.

11 Q Now, the jury doesn't know what a show-cause revocation
12 for probation is. Tell them what the original charge
13 was?

14 A The original charge was that grand larceny, which was
15 sales of one ounce of pot in 1975 I was convicted, ~~was~~
16 March 19, 1975. Given a five year suspended sentence and
17 put on supervised probation for a period of five years.
18 When I was arrested and convicted of misdemeanors that I
19 was in jail for in 1981, that gave the Chesapeake
20 authorities a right to have a show-cause for revocation
21 and send me, could bring me back to court and revoke my
22 probation.

23 Q In other words, just give you the time that was suspended
24 over your head?

25 A Yes, sir.

1 Q And that was how much time?

2 A Five years, sir.

3 Q All right. Now when did you originally learn that the
4 show-cause order ~~that~~ had been served on you? When did
5 you learn the authorities were taking action against you?
6 to bring you back before the Judge and give you five
7 years? Do you recall, approximately?

8 A Approximately, I believe it was in December of 1980, or
9 the first part of January of 1981, it was in that first
10 period of time that I was incarcerated.

11 Q So you knew that in July, when you contacted Zeigler?

12 A Yes, sir.

13 Q Did Mr. Zeigler or any - did Mr. Zeigler approach you
14 first, or did you request to talk to him?

15 A I requested that Mr. Zeigler to come talk to me, sir.

16 Q When he contacted you in July, what conversation
17 generally did you have?

18 A He came to Virginia Beach Correctional Center. I'd
19 understood through another inmate that again he was
20 interested in -

21 MR. LOWE: Your Honor, this is all hearsay, it's not
22 admissible. I think he can say that based
23 on conversations certain things took place,
24 but he cannot tell you what other people
25 told him, out of the presence of an attorney.

1 A I had told Mr. Zeigler that I felt like I could - I had
2 90 names of connections I had with drug dealers, gamblers,
3 all aspects of criminal elements. I gave him 3 that I
4 thought I could do, and what I mean do is to have an
5 arrest against them.

6 Q And what are the three names you gave him that you could
7 do?

8 A Billy Hewitt, Terry Williams, and Chip Simpson.

9 MR. LOWE: Could not hear that, Your Honor.

10 MR. REID: Chip Simpson.

11 Q Now, Billy Hewitt, who is that person?

12 A That gentleman that's here right today.

13 Q Would you point to and identify that man?

14 A Right there.

15 Q The man seated to my immediate right?

16 A Yes, sir.

17 MR. REID: The Court please, let the record reflect
18 the witness has identified the accused.

19 THE COURT: So indicated.

20 Q How did you - do you know this man? William Hewitt?
21 The man on trial today?

22 A Yes, sir, I do.

23 Q Tell the jury when you first made his acquaintance?

24 A I've known him over the years, I'd say 10, 12 years.

25 I knew him through drinking, bar to bar type relationship.

1 A Yes, sir, I know beyond a doubt what it goes for.

2 Q Okay, tell the jury what range of price we're talking
3 about.

4 A Hashish, depending on quantity, if you buy a single
5 pound, normally can go from anywhere between 14 and
6 \$2,000.

7 THE COURT: From what to what?

8 A \$1,400 to \$2,000. Again, depending on quality, depending
9 on your connections. Again, depending on quantity.
10 If you get a larger quantity you can get it for a
11 cheaper price. \$1,000. Sometimes \$900.

12 Q Now, your discussion with him on the 17th, you say he
13 was going to go to Richmond and get the 40 lb. And
14 this is at the Sundowner?

15 A Yes, sir.

16 Q Who left the Sundowner first, you or he?

17 A Mr. Hewitt left and said he had to meet his wife. She
18 had been at church somewhere in Great Bridge, had to
19 meet his wife and have lunch and he would meet me at
20 2:00 o'clock at his house in Moyock, N. C. You want me
21 to continue, sir?

22 Q Yes, sir, did you have occasion to meet Mr. Turman that
23 day?

24 A I called Gary Turman up and told him the arrangements
25 were made, to come pick me up.

1 Q Approximately what time?

2 A I would say around 1:00 o'clock or 1:30, time? I didn't
3 look at my watch. It was close to that.

4 Q What did y'all do when he got with you at the Sundowner?

5 A Left there, went to Moyock, went to Billy Hewitt's
6 house, Billy was not there yet. We left there and went
7 down to a restaurant and had two cups of hot chocolate,
8 sat around and talked for a few minutes, left there again
9 and went back to Mr. Hewitt's house. Mr. Hewitt was
10 there at the time. He was warming up the '77 White
11 Plymouth with a blue top, that was to be used and was
12 used to go to Richmond to make the connections. I would
13 use that car to go to Mechanicsburg, Pa., to drop off
14 40 lb. of hashish, collect the money and bring it back.

15 Q Now, who told you you were to use that car?

16 A Mr. Hewitt.

17 Q Was there anything particular about that vehicle?

18 A Was there anything particular about it?

19 Q Did he say anything in particular about that vehicle?

20 A It had been used as a haul car before.

21 Q To haul what before?

22 A As a haul car. A haul car is something you use, it's a
23 description for using a car for hauling back marijuana
24 from out of state or in-state.

25 Q Now, who was down there when you pulled out, you and

1 Mr. Turman and Mr. Hewitt, there were just the three of
2 you there?

3 A No, there was some children around and one lady. They
4 didn't get into any of the conversations, they were just
5 by-passing. We'd talk outside for a few minutes, we'd
6 go inside, in fact we did go inside and go to - he had
7 an office built back in the back of the house. Sir,
8 I don't know what I'm suppose to say.

9 Q Well, what did he have occasion to give you, if anything,
10 when you got back in the back office?

11 MR. LOWE: Objection, Your Honor, may I - this is
12 another matter, I see it's about noon, I
13 don't know if you break for lunch at noon
14 or some other time, but I think there's
15 something we'd better get into.

16 MR. REID: Judge, this is a matter that -

17 THE COURT: Just one minute. I'll ask the jury to step
18 out and I decide, because I'm in charge,
19 of when we go to lunch. It's usually at
20 a time I feel opportune and not at any set
21 hour of the day. Members of the jury, we'll
22 take that up in a few minutes.

23 (Jury out)

24 All right, the jury is now out.

25 MR. LOWE: Your Honor, last night Mr. Talley informed

1 circumstances, part of the discussions they
2 had, part of the plan, part of what they
3 were going to do, how they were going to
4 handle it, who was going to need protection,
5 who was going to help furnish it. There's
6 no question about. In other words, all of
7 the relevant things that take place when
8 they set up this deal are coming in.
9 Objection overruled, no foundation.
10 Anything else in the way of objections
11 before we get started?

12 (Jury in)

13 All right, members of the jury, we're ready
14 to proceed now. All right, continue with
15 the examination. Talking about going to
16 Pa. the last thing I heard.

17 Q Yes, sir. I believe we talked about, before Mr. Lowe
18 objected and asked for the jury to be let out, you
19 testified you were in the office, in the rear of
20 Mr. Hewitt's home, and something occurred there?

21 A Yes, sir, we went back to his office, Gary Turman,
22 Billy Hewitt and myself, to finalize everything. I asked
23 him if he had a gun. I thought I'd need a gun for
24 security. Again, I'm creating this, you have to realize
25 that. He said he did have a gun. He went and got a

1 .25 automatic, came back with it, with a clip with five
2 bullets in it, handed it to me, I stuck it in my back
3 pocket, then we left.

4 Q Okay, did you tell him that you needed a gun for
5 security?

6 A Yes, I did, sir.

7 Q What reaction did he have at that point? Verbally?

8 A He said, "Okay." He went and got a gun.

9 Q Then you all leave the house in Moyock?

10 A Yes, we left the house. He told Gary to park his car
11 around the other side of the house. Gary drove with
12 him. I drove the '77 Plymouth.

13 Q Give the jury an idea, they may not be acquainted with
14 geography, approximately how far is Moyock, No. Carolina,
15 where the defendant's home is, from the North Carolina-
16 Virginia State Line?

17 A From his house to the North Carolina-Virginia State line?

18 Q Yeah, how many miles would you say that is?

19 A I would say four miles.

20 Q Okay, and how far is it from the State line to the
21 Sundowner, approximately?

22 A I'd say 8 miles, 9 miles.

23 Q Now, who was driving what vehicles as you left the
24 defendant's home in Moyock?

25 A I was driving the '77 Plymouth, white Plymouth with blue

1 top. Mr. Hewitt was driving a black pickup, I don't know
2 the date of the truck, the make of the truck. I believe
3 it was a Ford. Black. He was in front and I was behind.

4 Q Where was Mr. Turman? Gary Turman?

5 A Gary Turman was on the passenger's side.

6 Q In what vehicle?

7 A In the truck, sir.

8 Q And where did y'all go?

9 A We went into Great Bridge and stopped at the Amoco on
10 the corner of Battlefield Blvd. and Cedar Road, to
11 fill up the tanks. I got out, we talked a few minutes,
12 you know, just conversation, nothing about -

13 Q Any discussion at that point about who was riding which
14 vehicles?

15 A It was already stipulated that Gary would ride with him,
16 because he rode from the house to Great Bridge.

17 Q Who made that decision?

18 A Billy did.

19 Q After you gassed up, what did you do at that point?

20 A We left and made our way to Richmond.

21 Q Okay, did you get on Rt. 64?

22 A Yes, sir.

23 Q Did you have any car trouble coming down the road?

24 A I had trouble with every ten miles. The car kept on
25 cutting off. It would get to a certain speed, between

1 45 and 50 miles an hour it would cut off on me and go
2 down to like 25 miles an hour. It took a few minutes
3 for it again to regain speed. Several times, I don't
4 know how many times, but several times we had to stop
5 the car, it would just completely konk, cut off. We
6 stopped. He said he would drive the Plymouth, that he
7 was use to it. I said, "No, forget it, we'll make our
8 way there," so he again got in the black pickup truck
9 and we proceeded to Richmond. He said, "We're going to
10 Howard Johnson's," he'd been there before.

11 Q Who was leading the way up there, sir?

12 A Billy was leading the way.

13 Q Who paid for the gas down at the Amoco Station in Great
14 Bridge?

15 A Billy paid for the gas.

16 Q All right. Howard Johnson's you're talking about, is
17 that the one located down on the Blvd?

18 A Sir, I'm not real familiar with Richmond. I know there
19 was a Howard Johnson's. I'm not familiar with Richmond.

20 Q And when you got to the Howard Johnson's where did
21 y'all leave your vehicles, the truck and the Plymouth,
22 where were they put?

23 A Behind the restaurant is basically where we parked. He
24 parked on the left side, I parked on the right side.
25 That will give you an idea where we parked. We got out

1 of the trucks, went right into the restaurant. We all
2 sat down and had dinner. Billy was on one side, Gary
3 was on the inside, and I was on the opposite side. Would
4 you like me to proceed?

5 Q Okay, what happened at dinnertime?

6 A We discussed - he had mentioned that one of us could go
7 with him. I quickly said, "Take Gary with you. I'll
8 stay."

9 Q Go with him where?

10 A Go to pick up the hashish. I don't know the guy's house,
11 I don't know the guy. So, I knew he was going to pick
12 up the hashish because he said he was going to pick up
13 the hash, and we were going up there for that purpose.
14 I quickly said, "Take Gary with you," and then I said
15 that, "I will stay here, and again make the arrangements
16 and make sure everything is okay in Mechanicsburg,"
17 because that was the place that I was suppose to go up
18 there and sell the stuff.

19 Q Is there such a place as Mechanicsburg, Pa.?

20 A Oh, yes sir.

21 Q Do you in fact have contacts with people up there in the
22 drug culture?

23 A Yes, sir.

24 Q Could you in fact sell drugs up there if you wished to?

25 A Yes, sir.

1 Q Did you in fact have any intention of doing so?

2 A No, sir.

3 Q And after you all ate dinner, what did you do then?

4 A We had dinner. I paid for the dinner, out of some
5 expense money that Billy had given me previous to that
6 time.

7 Q What money are you discussing now?

8 A I received a total of \$300 on three different occasions.
9 \$100 bills for expenses. Again, I'm suppose to be broke,
10 which I was broke anyhow, but I received the money from
11 him, but I paid for the dinner. He got up. Billy
12 Hewitt got up. Gary got up and they moved the vehicles
13 from where we parked, moved them around to the motel
14 room. He made arrangements at the desk to rent the
15 rooms, by the way. So he went around to the motel room
16 and told me what room it was. I forget the room. After
17 I paid for the dinner I went up there. They got ready
18 to go and he said he'd be back between 45 minutes and
19 1 hour. They left. I called Chesapeake Police -

20 THE COURT: They being - make it clear for the record.

21 A Sir?

22 Q Who left the restaurant?

23 A Gary Turman and Billy Hewitt left.

24 Q What vehicle did they leave in?

25 A They left in the black pickup truck.

1 Q Leaving the Plymouth outside your motel room?

2 A Yes, sir.

3 Q All right. Who was driving the truck when they left?

4 A I didn't see, sir.

5 Q Okay. Now. Who moved the trucks from where you had
6 them parked in front of the restaurant, to in front of
7 your motel room?

8 A I don't know who moved what, but Gary and Billy moved
9 the vehicles.

10 Q And after they left and told you the information that you
11 said that they told you, what did you do?

12 A I called the Chesapeake Police. There was an investiga-
13 tion, not involving this particular one, but other
14 information I'd given them of the situation I'd helped
15 them with. They were taking those people under arrest
16 down in Chesapeake, and -

17 THE COURT: We're just interested in what -

18 Q Just tell us what you told me about this case.

19 A I called Chesapeake Police. I called Lt. Floyd and I
20 called Sgt. Cherry on different occasions to see what
21 was going on.

22 Q Did you have occasion to give them certain information?

23 A Yes. State Trooper Hollowell, I was in the lounge.
24 I was having a drink, came into the lounge, I got up
25 and walked into the bathroom with him. And told him they

1 were on their way. And he contacted whoever else was
2 in the investigation that, and then he said they were on
3 their way.

4 Q Who is Wayne Hollowell? What's his occupation?

5 A He belongs to the - he works for the State Narcotics
6 Division.

7 Q State Police?

8 A Yes, sir.

9 Q All right, now, exactly what information did you give
10 him?

11 A I just told him that they were on their way and he said
12 it would take between 45 minutes and an hour.

13 Q Do you recall if there were any head apparel on Turman
14 and Hewitt when they left to pick up the marijuana?

15 A Would you repeat that, sir?

16 Q Were they wearing any hats or head apparel when they
17 left to pick up this suspected Hash, do you recall?

18 A Yes, if I remember correctly they both had ball caps on.

19 Q After you gave the information to Hollowell, Trooper
20 Hollowell, he left your presence?

21 A Yes, sir, he did.

22 Q Then you went back to the room?

23 A Yes, sir, I did.

24 Q And approximately when was it after that that you were
25 contacted by the next contact by the troopers?

1 A Around 2:00 o'clock in the morning State Trooper
2 Hollowell again showed up at the room.

3 Q You learned that something had occurred and based on
4 that what did you do?

5 A I left there. Again, now I was still in the possession
6 of the .25 automatic. I asked Mr. Hollowell, "What
7 do you want me to do with this?"

8 Q And he told you something, based on what he told you
9 what did you do?

10 A He told me to head back towards Chesapeake, which I
11 was suppose to meet up with Lt. Zeigler at the
12 headquarters, Chesapeake headquarters.

13 Q Did you do so?

14 A Yes, sir, I did.

15 Q Did you give him anything?

16 A I gave him the .25 automatic that I had.

17 MR. REID: Sheriff, would you be kind enough to hand
18 these items to the witness?

19 Q You've been handed what purports to be a weapon by the
20 sheriff. Can you identify it, Mr. Talley?

21 A This is the .25 automatic that Mr. Hewitt gave me.

22 Q Okay. Sheriff, would you hand him this clip and
23 purported rounds of ammunition? Can you identify
24 those items, sir?

25 A Yes, sir.

1 Q What are they?

2 A You have five .25 caliber bullets in a clip.

3 MR. REID: Judge, the Court please, I'd move the
4 Court to accept these as Comm. Exh. 1,
5 in the matter.

6 THE COURT: Put them inside of an envelope, please,
7 Madam Clerk. Comm. Exh. 1.

8 MR. LOWE: We would have a continuing objection on
9 that, Your Honor.

10 THE COURT: Same ruling. Overruled.

11 MR. LOWE: Your Honor, I believe you already have
12 a Comm. Exh. No. 1.

13 THE COURT: Well, I have exhibits in connection with
14 this. Suppose we just start with these
15 and make them A, B, C, D, which is contrary
16 to usual practice, not to confuse them with
17 other exhibits the Court had earlier today
18 and the jury hasn't seen and won't see.
19 All right, next?

20 Q Mr. Talley?

21 A Yes, sir.

22 Q What arrangements did you make with Mr. Hewitt when you
23 got to Richmond, about how you were to sell the drug,
24 with whom, and how you would get to wherever it was you
25 would sell the drug?

1 A The agreement was that I would take the 40 lb. of hashish
2 from Ho-Jo's - Howard Johnson's, to Mechanicsburg, Pa.
3 I would sell it, take it back, turn the money over to
4 him and split the profit. He - since I was having car
5 trouble with the '77 Plymouth, he suggested I take the
6 black pickup truck. He said he would stay there for
7 one day. If I couldn't get back, then he would leave
8 and we'd make arrangements to meet later on.

9 Q Who was suppose to go up with you?

10 A Gary was suppose to go up to Mechanicsburg, Pa. with me.

11 Q What amount of money, if any, was he suppose to get out
12 of it?

13 A Percentage, depending on what I wanted to give him. We
14 never solified anything.

15 Q A percentage of your half?

16 A Yes, sir.

17 Q Were you ever in the pickup truck?

18 A No, sir.

19 Q Prior to that day.

20 A That day?

21 Q That day were you ever in the pickup truck?

22 A No.

23 Q Did you ever know where the marijuam or hashish was?

24 A I knew nothing of the connection or where he was picking
25 up, no sir.

1 A Mr..Hewitt's writing.

2 Q Okay, is that the defendant here today?

3 A Yes.

4 Q Mr. William Hewitt?

5 A Yes, I stipulate it.

6 Q You know Mr. Hewitt, do you not?

7 A Yes, I do.

8 Q Okay, when was that gun purchased?

9 A August 22, 1980.

10 MR. REID: Judge, if the Court please, I'd move the
11 Court to introduce this as I think it's,
12 the Court is using letters for the
13 Commonwealth?

14 THE COURT: This may be "B".

15 MR. REID: Yes, sir. I have a copy, a Xerox copy that
16 I made that I would ask the Court to accept
17 in lieu of the original.

18 MR. LOWE: No objection.

19 MR. REID: Thank you, Judge.

20 THE COURT: All right.

21 MR. REID: I'd ask that the original be returned to me.
22 I'd appreciate it.

23 THE COURT: All right, sir, return the original document
24 to the Comm. Attorney, please. Anything
25 else of this witness?

1 MR. REID: No, sir.

2 MR. LOWE: Be excused as far as we're concerned, Judge.

3 MR. REID: Thank you, Judge.

4 THE COURT: All right, thank you very kindly. You're
5 free to leave. Don't discuss the case on
6 the way out to any other witness. Next
7 witness?

8 MR. REID: Donna Drew, if the Court please.

9 THE COURT: You were sworn yesterday, were you not?

10 WITNESS: Yes, sir.

11 THE COURT: Face your chair towards the jury and talk
12 to the one farthest away and loud enough
13 so we can all hear you. Identify the
14 witness.

15 DIRECT EXAMINATION: Donna Drew by Mr. Reid

16 Q State your name, please ma'am.

17 A Donna Drew.

18 Q And by whom are you employed, Miss Drew?

19 A United Intermountain Telephone Company.

20 Q And where do you live and work?

21 A I live and work in Chesapeake, Virginia.

22 Q The United Intermountain Telephone Company is new to us
23 in this part of Virginia, what area do you all service?

24 A A portion of Chesapeake and Virginia Beach.

25 Q Now, ma'am, are you familiar - what job do you have down

1 there, Miss Drew?

2 A Service representative.

3 Q In that regard, ma'am, do you have occasion to have

4 examined the records of telephone calls made from

5 area code 804-482-9811?

6 A Yes, sir.

7 Q Okay, and where is that telephone located, ma'am?

8 A Wilson Shopping Center at the corner of the shopping
9 center outside Mr. Jim's, just down from the Sundowner
10 Restaurant.

11 Q That's located in Chesapeake, is that correct?

12 A Yes, sir.

13 Q The Sundowner is the Sundowner Lounge?

14 A Correct.

15 Q Ma'am, I hand you now a document and ask if you can
16 identify this. What is that document, ma'am?

17 A It's a statement of the toll calls made from 482-9811,
18 the coin station.

19 Q Now, ma'am, at the bottom of that page is there one that
20 seems to be underlined in pencil?

21 A Yes, sir.

22 Q Okay. And there's apparently two pencil marks down there.
23 I'm referring to one call that was purportedly made at
24 1242 and 24 seconds on the 17th of January. Can you see
25 that there?

1 A There's one at 1241.

2 Q 1241, excuse me. Now, according to that record, ma'am,
3 where was the phone call made from?

4 A 804-482-9811.

5 Q That's the number you talked about at Wilson's Village
6 Shopping Center?

7 A That's correct.

8 Q Okay, and to what number was the phone made?

9 A 804-749-4045.

10 Q And what area is that in? Do you know?

11 A Rockville, Virginia.

12 THE COURT: Where?

13 A Rockville, Va.

14 Q And what time was that call made, ma'am?

15 A 1241 and 24 seconds.

16 Q Is that a.m. or p.m.?

17 A That's military time.

18 Q Okay, so that would be between 12:00 and 1:00 o'clock in
19 the afternoon?

20 A That's correct.

21 Q And what day are we talking about that this was made?

22 A January 17, 1982.

23 THE COURT: Are both of those times you gave, the
24 first time 1249, is that daylight, afternoon,
25 after 12:00 o'clock noon, or are they in

1 the nighttime, I just don't know.
2 WITNESS: 1241, it's noon. Afternoon.
3 THE COURT: Daylight.
4 WITNESS: Yes, sir.
5 Q How many times did you read into the record, ma'am, was
6 it just one time or two times that you mentioned?
7 A Just one time.
8 Q Okay.
9 A 1241 and 24 seconds.
10 Q Does your record reflect how long that phone call was
11 made? Or just that in fact it was made?
12 A Just the connect time as far as I can tell.
13 Q Judge, if the Court please, Comm. Exh. C at this point.
14 THE COURT: Commonwealth's Exhibit No. C. All right.
15 Q Ma'am, that number 482- 9811, that is in your United
16 Intermountain area, is that correct?
17 A That's correct.
18 Q Cross?
19 MR. LOWE: No.
20 THE COURT: May the witness be excused?
21 MR. REID: She may, Judge.
22 THE COURT: All right, thank you, lady, you're excused
23 and you're free to leave.
24 MR. REID: If the Court please, Mr. Tommy Harris.
25 MR. LOWE: Your Honor, may we have a copy of that

1 exhibit from the clerk at some point,
2 perhaps Monday, there's no rush on it?

3 THE COURT: Sheriff? We'll get a photocopy made of it
4 now.

5 DIRECT EXAMINATION: Thomas E. Harris by Mr. Reid

6 Q State your name, please.

7 A Thomas E. Harris.

8 Q Mr. Harris, by whom are you employed?

9 A C. & P. Telephone Company of Virginia.

10 Q And what is your title, sir?

11 A Security manager.

12 Q As such, do you have access to control over the records
13 of the telephone company?

14 A Yes, I do.

15 Q Where are these records kept?

16 A Kept in the controls department.

17 Q Is that located close by here?

18 A Yes, sir, it's over on Hungary Springs Road.

19 Q Now, sir, do you have the records with you of a phone
20 number registered in the name of Gerald C. Hester?

21 A Yes, I do.

22 Q Okay, and what is that phone number, sir?

23 A 749-4045, area code 804.

24 Q And where is that number, where does it ring?

25 A It rings at - I'll give you the mailing address.

1 Route 1, Box 264-I, Manakin, Va.

2 Q What county is that in, do you know?

3 A Goochland County, I believe.

4 Q Is that the only phone number you have listed for the
5 Gerald C. Hester, is that correct?

6 A Yes, sir, to my knowledge that's the only one.

7 Q The Chesapeake area and the Richmond or Goochland area,
8 what area code are they both listed in?

9 A 804.

10 Q And they're just one number, one 7-digit number per area
11 code?

12 A That's correct.

13 Q So, 749-4045 listed to Mr. Gerald C. Hester, that number
14 in Manakin is the only number in the 804 dialing area,
15 is that correct?

16 A That's correct.

17 Q Do you have a document in front of you, sir, that you
18 are examining?

19 A Yes, sir.

20 Q May I examine that, sir? Sheriff? What is that document,
21 Mr. Harris?

22 A This is a document of the line card information. This
23 tells us where the telephone is actually located and the
24 name and address of the customer.

25 Q Does the name Gerald Hester and the phone number 749-4045

1 on there?

2 A Yes, it is.

3 Q Judge, if the Court please, I'd like to move that as
4 entered as Exh. D, if the Court please. There's not a
5 lot of information on there, that perhaps it's decipheral
6 only to Mr. Harris, if he could indicate the name and
7 number of, perhaps underline with a pencil for the
8 convenience of the jury, I'd appreciate it.

9 MR. LOWE: Your Honor, he just states that there's no
10 contest over this.

11 THE COURT: Anything else from this witness?

12 MR. REID: No, sir, Judge.

13 THE COURT: All right, cross examination?

14 MR. LOWE: Just briefly.

15 CROSS EXAMINATION: Thomas Harris by Mr. Lowe

16 Q Mr. Harris, I gather this is a print-out.

17 A Yes, sir.

18 Q We pretty much live by computers nowadays and I gather
19 that that's not information that you would have in your
20 own head, first of all.

21 A No, sir.

22 Q And you wouldn't have it in any ledger books or things
23 like that?

24 A No, sir, it's all on computer.

25 Q It's all on computer. So, you're trusting in the fact

1 THE COURT: Thank you, sir, all right. Continue to
2 face the jury and talk to them. Identify
3 the witness.

4 DIRECT EXAMINATION: Glen L. McDonald by Mr. Reid

5 Q Would you please state your full name for the jury, please
6 sir?

7 A I'm Glen L. McDonald.

8 Q Mr. McDonald, how are you employed?

9 A I'm a detective, assigned to the special investigation
10 of the Bureau of the Chesapeake Police Department.

11 Q What does the Special Investigation Bureau mean, sir?

12 A We work vice, narcotics, and at the chief's pleasure.

13 Q Sir, do you have occasion to know a person by the name of
14 Robert Francis Talley?

15 A Yes, sir.

16 Q Is he the witness who has testified here today?

17 A Yes, sir.

18 Q Do you have occasion to know a person by the name of
19 William Hewitt?

20 A Yes, sir.

21 Q Is he present in court today?

22 A Yes, sir.

23 Q Will you point to him and identify him?

24 A Yes, sir.

25 Q The defendant seated to my right?

1 A Yes, sir.

2 Q Do you have occasion, sir, to know a person by the name
3 of Gary Turman?

4 A Yes, sir.

5 Q Okay. Sir, directing your attention to January 17, the
6 early afternoon hours of January 17, 1982, did you have
7 a particular assignment for that time, sir?

8 A Yes, sir.

9 Q And tell the jury what that was?

10 A I was to set a surveillance on the Sundowner Restaurant
11 located in Wilson Village Shopping Center, City of
12 Chesapeake, located at the corner of Johnstown and
13 Battlefield Blvd.

14 Q And what time did you begin your surveillance, approximately?

15 A Approximately noon.

16 Q And what time did you make your first observation of any
17 of the three individuals? Mr. Talley, Mr. Turman, or the
18 defendant, Mr. Hewitt?

19 A Approximately 12:25.

20 Q Okay, and tell the jury what you saw at 12:25.

21 A I observed Mr. Robert Talley arrive at the Sundowner
22 Restaurant in a primer gray Grand Prix Pontiac.

23 Q Was he alone or with someone?

24 A He was alone.

25 Q And what did Mr. Talley do when he arrived at the

1 Sundowner?

2 A Went inside.

3 Q Did you have occasion to observe any of the other persons
4 arrive thereafter?

5 A Yes, sir, I did.

6 Q Tell the jury who that was and when it was.

7 A Approximately five minutes later at 12:30 I observed a
8 black Ford Pickup Truck with the defendant inside.

9 He also went inside the Sundowner Restaurant.

10 Q Was he also alone?

11 A Yes, sir, he was.

12 Q Did you ever go into the Sundowner while those two
13 gentlemen were in it at that time?

14 A NO, sir, I didn't.

15 Q And when next did you observe either Mr. Talley or
16 Mr. Hewitt?

17 A Approximately 12:50. I observed Mr. Hewitt come outside
18 the Sundowner Restaurant, go to a telephone, a pay tele-
19 phone that was outside Mr. Jim's Subs. It would be the
20 next business to the Sundowner Restaurant. Outside will
21 be a pay telephone. Mr. Hewitt went to that telephone.

22 Q What did you observe Mr. Hewitt do at the telephone?

23 A Make a phone call.

24 Q About how long was he making that telephone call?

25 A For a minute or so.

1 Q Did you have occasion, sir, to subsequently go back and
2 learn the telephone number that's there?

3 A Yes, I did.

4 Q What number was that?

5 A 482-9811.

6 Q Area code is what?

7 A 804.

8 Q After he made the phone call where did Mr. Hewitt go?

9 A He got back, went back into the Sundowner Restaurant.

10 At approximately 1:15 Mr. Hewitt got back into his pickup
11 truck and left the restaurant. During that time traffic
12 and I lost sight of his vehicle, I didn't see where he
13 went. I'd lost sight of the vehicle.

14 Q You say didn't see where he went. Do you know if he went,
15 Battlefield Blvd. runs north and south, doesn't it?

16 A Yes, sir.

17 Q Did he go north or south on it?

18 A Went south.

19 Q Okay. That's all you can say?

20 A Yes, sir.

21 Q And when Mr. Hewitt left, did he leave alone or with
22 someone else?

23 A He left alone.

24 Q And was Mr. Talley's vehicle still there in the parking
25 lot?

1 A Yes, sir, it was.

2 Q And when did you make your next observation of any of
3 these people?

4 A I proceeded - I assumed Mr. Hewitt was going home, so I
5 proceeded to Moyock, N. C., and rode by Mr. Hewitt's
6 residence. I did see his truck there at the time. So
7 I left and went to the 7-Eleven Store parking lot at the
8 corner of Rt. 168, that will be Battlefield Blvd. and
9 Ballehack Road, in the City of Chesapeake. At that time
10 I just, I sat there and waited to see if any of the
11 vehicles that I was familiar with were coming back down
12 Rt. 168, going north.

13 Q From North Carolina into Virginia?

14 A Yes, sir.

15 Q Did you ever return into the Sundowner Lounge and go by
16 the area into the Sundowner that day?

17 A Yes, sir.

18 Q Okay, and tell the jury when that was.

19 A That was about 2:05.

20 Q Okay.

21 A I went to the Sundowner Restaurant to see if anyone was
22 still there. I went inside and no one was there, except
23 for the employees.

24 Q Okay. By no one, you're talking about none of the three
25 names I've mentioned; Turman, Hewitt, or Talley?

1 A Yes, sir. None of them were there.

2 Q When none of those people were there at 2:05, where did
3 you go at that point?

4 A At that point I went back to the 7-Eleven Store, where
5 I'd been once before to make any observations I could
6 from any vehicles coming from North Carolina that I was
7 familiar with.

8 Q And did you have occasion to see such any vehicles?

9 A Yes, I did.

10 Q Tell the jury what time it was and what you saw.

11 A At approximately 3:00 o'clock I observed a black Ford
12 Pickup Truck, driven by the defendant, and at that time
13 another white male whom I could not identify. Coming by
14 immediately behind them was a blue over white Plymouth
15 with Robert Talley driving it. We - I followed the
16 vehicles to Great Bridge and observed the vehicles pull
17 over to an Amoco Station at the corner of Battlefield
18 Blvd. and Cedar Road, where both vehicles received gasoline.

19 Q At that point, sir, were you able to observe who got out
20 of each of the vehicles, who got out of the truck?

21 A Yes, sir. Mr. Hewitt got out of the truck. I was parked
22 across the street. At that point I could identify the
23 passenger in Mr. Hewitt's truck.

24 Q Who was that?

25 A Gary Turman.

1 Q And could you identify the passenger of the person who
2 was in the Plymouth at that point, sir?

3 A That was Robert Talley.

4 Q What did those three people do at the gas station?

5 A I recall everybody getting gas. Mr. Hewitt was out of
6 his truck. I don't recall/anyone else got out of their
7 vehicles. Robert Talley did get out of his vehicle. I
8 don't recall/Mr. Turman got out or not.

9 Q And how long were they actually there getting the gas?

10 A Just a couple of minutes, not very long at all.

11 Q And they left?

12 A Yes, sir.

13 Q Where did they go? What direction did they travel when
14 they left?

15 A They traveled northbound, or Route 168, and took the
16 exit to I-64 going towards/Richmond-Virginia Beach area.

17 Q How far did you continue your surveillance behind these
18 people?

19 A I stopped there.

20 Q Why did you stop there?

21 A I received word that another police unit would be picking
22 up the surveillance at that point.

23 Q Did you have occasion to see any of those three people
24 anymore on the 17th, sir?

25 A No, sir, I didn't.

1 Q When the truck left the Amoco Station who was driving?

2 A Mr. Hewitt.

3 Q Who was in the truck with him, if anyone?

4 A Mr. Turman.

5 Q And the Plymouth was driven by -

6 A It was driven by Talley. Robert Talley.

7 Q All right. And which vehicle was first, the truck or
8 the Plymouth?

9 A The truck.

10 Q Do you know if Mr. Hewitt and Mr. Turman had any headwear
11 or hats on their head at that time, sir?

12 A Both of them had baseball hats.

13 Q Did Talley, to your recollection?

14 A No, sir, as far as I can remember he didn't have a hat on.

15 Q Cross examine.

16 THE COURT: All right, Mr. Lowe.

17 CROSS EXAMINATION: Det. McDonald by Mr. Lowe

18 Q Det. McDonald, let me ask you a couple of questions very
19 briefly. When was the first time that you saw Gary
20 Turman on January 17th?

21 A The first time that I actually identified Mr. Turman was
22 when he was at the Amoco Station.

23 Q Now you say the first time you could identify him, did
24 you see a person with Mr. Talley and Mr. Hewitt at any
25 earlier time that you now, reconstructing it, believe was

1 Q Sir, did there come a point in time when you had a
2 specific assignment on Jan. 17, 1982?

3 A Yes, sir.

4 Q Can you tell what that assignment was?

5 A Yes, sir. I came to Richmond and stopped at the scales
6 on I-64, called the Sandston scales, where I met with
7 several members of the First Division Narcotics Squad,
8 and advised them that Mr. Hewitt, Robert Talley, and
9 Gary Turman were enroute to the Richmond area to pick up
10 40 lb. of hashish.

11 Q And what, if anything, did you do when you left the
12 Sandston scales?

13 A Two vehicles that we were looking for passed the Sandston
14 scales and as soon as they went by I got out on 64 and
15 followed them westbound to the Howard Johnson's Hotel.

16 Q Do you recall which exit they took?

17 A I think it's 14 or 14A.

18 Q That's the Howard Johnson's on the Boulevard.

19 A Yes, sir, it is.

20 Q And did there come a point in time when you moved your
21 car up to a specific location?

22 A Yes, sir, I positioned my vehicle at the toll plaza, which
23 is directly across the street from the Howard Johnson's
24 Hotel.

25 Q Did there come a point in time when you saw the vehicle

1 pass you?

2 A Yes, sir.

3 Q What kind of vehicle was it?

4 A It was a black Ford Pickup Truck.

5 Q And was it occupied by persons?

6 A Yes, sir, it was.

7 Q How many?

8 A Two.

9 Q Were they male or female?

10 A Male.

11 Q Were they black or white?

12 A White.

13 Q And did you notice anything else unique about their
14 physical appearance; for example, their dress?

15 A Both of them were wearing caps.

16 Q And can you tell us who these persons were?

17 A I couldn't - it was dark at this time and I couldn't
18 recognize who was driving the vehicle or who the passenger
19 was at that time.

20 Q And they were heading where?

21 A They got onto 95 northbound.

22 Q And can you tell us about what time this was? If you recall?

23 A 6:20.

24 Q P.m. or a.m.?

25 A P.m.

1 Q Yes, sir, and after you observed this vehicle going where
2 it went, what if anything did you do next?

3 A Approximately 6:35 p.m. I went to the Howard Johnson's
4 Lounge and had a conversation with Robert Talley.

5 Q And as a result of that conversation, what if anything did
6 you do next?

7 A I went out to my vehicle and got on the radio and made
8 contact with Special Agent Foster and told him that
9 Mr. Turman and Mr. Hewitt had left to go pick up the
10 hash and would be back in approximately one hour.

11 Q And what did you do for the next hour?

12 A I got on 95 and went west on 64, and by the time that I
13 got on the highway they had gotten out of my radio range.
14 And I wasn't real sure about where they were going, so I
15 proceeded on down 64 and I finally got up close enough to
16 them. They gave me directions on how to get to where they
17 were at, which was in the Manakin-Sabot area.

18 Q And you in fact took the Manakin-Sabot exit, is that
19 correct?

20 A Yes, sir, I did.

21 Q And you took a left on Rt. 621?

22 A Yes, sir.

23 Q Took a right on 250?

24 A Yes, sir.

25 Q And then did there come a point in time when you stopped

1 your vehicle again?

2 A Yes, sir, I did. I set up a surveillance at the intersec-
3 tion of Rt. 621 and Rt. 650 - excuse me, no, it's not 621,
4 it was Rt. 250 and the Manakin-Sabot Road. Behind a gas
5 station.

6 Q And did there come a point in time when you saw a familiar
7 vehicle come down the 621 road?

8 A Yes, sir, I observed the same black pickup truck, North
9 Carolina tags on it, stop at that intersection of 250
10 and whatever the Manakin-Sabot Road is, and make a left-
11 hand turn and head back towards Interstate 64.

12 Q Was that the same truck that you'd observed earlier in the
13 day?

14 A Yes, sir.

15 Q And whose truck was that?

16 A Mr. Hewitt's.

17 Q Do you see him in the courtroom today?

18 A Yes, sir, I do.

19 Q Would you point him out to the ladies and gentlemen of
20 the jury?

21 A It's Mr. Hewitt, right there.

22 Q The gentleman to Mr. Reid's right?

23 A Yes, sir.

24 Q Do you recall what time you got to the Howard Johnson's
25 on the Blvd?

1 A 5:25.

2 Q A.m. or p.m.?

3 A P.m.

4 Q Judge, I have no further questions.

5 THE COURT: Cross examination?

6 CROSS EXAMINATION: Trooper Hollowell by Mr. Lowe

7 Q Trooper Hollowell, how much experience have you had with
8 these body transmitters in the past?

9 A Some, not a whole lot.

10 Q Can you tell the jury what the effect of a body transmitter
11 is, if there are extra layers of clothing, such as jackets
12 and shirts and so forth on top of them, in terms of your
13 ability to receive transmissions.

14 A Well, depending on what the material is made out of, you
15 will get some scratchy sounding from the clothing itself
16 rubbing up against the mic.

17 Q Now, I guess we'll all seen television shows or movies
18 where a body transmitter is involved some way with all
19 the police programs they have nowadays. Would it be -
20 would I be correct in assuming that this is somehow
21 taped or strapped onto his body underneath his shirt?

22 A Yes, it's put into a harness.

23 Q And that's against his bare skin and then other shirts and
24 things are put on top of it?

25 A Well, generally you try to put it over the, a T-shirt.

1 MR. LOWE: I just thought it might help the court
2 reporter if he spelled Mr. Castelow's name.
3 THE COURT: I was getting ready to ask him, too.
4 A I'm not sure I know how to spell it.
5 MR. PARCELL: Judge, it's spelled C-a-s-t-e-l-l-o-w.
6 MR. LOWE: Thank you. That's all I have, Judge.
7 THE COURT: May this witness be excused?
8 MR. PARCELL: Yes, sir, Judge.
9 THE COURT: Permanently?
10 MR. PARCELL: Yes, sir.
11 THE COURT: All right, sir, you are excused. You are
12 free to leave. You're not to discuss the
13 case on the way out with any other witness,
14 please. And, next witness?
15 MR. PARCELL: Trooper B. W. Powers. P-o-w-e-r-s.
16 DIRECT EXAMINATION: Trooper Powers by Mr. Parcell
17 Q Sir, would you state your full name?
18 A B. W. Powers.
19 Q And how are you employed?
20 A I'm with Virginia State Police, as a trooper.
21 Q How long have you been so employed with Va. State Police?
22 A Nine years.
23 Q Sir, what is your specific assignment?
24 A I'm assigned to Narcotics.
25 Q How long have you been assigned to Narcotics?

1 A A little over four years.

2 Q Now, what is your specific area assignment?

3 A I 'm assigned to fifth division, mainly around the
4 Tidewater area, Virginia Beach, Norfolk, Chesapeake, and
5 Portsmouth area.

6 Q And sir, were you so employed in that position with
7 Va. State Police on January 17, 1982?

8 A Yes, sir, I was.

9 Q And did you have a specific assignment on that particular
10 date?

11 A Yes, sir, I did.

12 Q And what was that assignment?

13 A I was contacted at 12:30 p.m. on that day to go to
14 Lt. Zeigler's, Chesapeake Police Department's Office,
15 I went there and they advised that there'd be two subjects:
16 a William Hewitt, Gary Turman, who were going to the
17 Richmond area to pick up approximately 40 lb. of hashish.

18 Q What, if anything, did you do next?

19 A I got the description of them, the tags of the vehicle,
20 and I went and sat on the intersection of Rt. 168 and
21 Johnstown Road, in the City of Chesapeake.

22 Q Did you know either one of these two persons, Mr. Hewitt
23 or Mr. Turman?

24 A Not at the time, no sir.

25 Q And did there come a point and time in the afternoon hours

1 on January 17 that you had occasion to see the persons
2 that had been described to you earlier?

3 A Yes, sir, I did.

4 Q And what time was that?

5 A Approximately 3:08 p.m. they passed by my location.

6 Q And did you have occasion to follow those gentlemen?

7 A Yes, sir, I did.

8 Q And what vehicles were they positioned in?

9 A They were operating a black Ford Pickup Truck with
10 North Carolina license plates and a blue and white
11 Plymouth.

12 Q And who was in what vehicles?

13 A Mr. Hewitt and Gary Turman was in the black pickup truck,
14 N. C. license plate.

15 Q Who was in the other car?

16 A Robert Talley.

17 Q Did you know Mr. Talley prior to January 17th?

18 A Yes, sir, I did.

19 Q And did you observe these people go somewhere?

20 A Yes, sir, they pulled off into Ray's Amoco, that's the
21 service station located in Great Bridge.

22 Q And did you notice anything unusual about the dress
23 appearance of Mr. Talley and Mr. Hewitt or Mr. Turman?

24 A Mr. Turman and Mr. Hewitt were wearing baseball caps.

25 Q And what was Mr. Talley wearing?

1 A He did not have a baseball hat on, he had sunglasses on.

2 Q And can you tell the ladies and gentlemen of the jury

3 approximately what time those two vehicles left Ray's

4 Amoco?

5 A Approximately 3:18 p.m.

6 Q And where did they go?

7 A They went northbound on Rt. 168. When they got on

8 I-64 headed westbound.

9 Q And where were you at this time?

10 A I was following behind them.

11 Q And were there any other police units following besides
12 yourself?

13 A Yes, sir, we had a State Police airplane that was in the
14 air that was following us.

15 Q And you followed them to what area?

16 A I followed them to the Richmond area.

17 Q And during the course of you following them from Great
18 Bridge area to the Richmond area, did there come a point
19 in time when you had to stop?

20 A Yes, sir, they were having difficulties with the Plymouth
21 and they were pulled off the side of the road and I was
22 pulling off behind them to keep from coming up on them.

23 Q Did there come a point in time when you had to pass those
24 two vehicles?

25 A No, sir.

1 Q You stayed with - behind them the entire time, is that
2 correct?

3 A Yes, sir.

4 Q Did there come a point in time when you saw them leave
5 or get off I-64?

6 A Yes, sir, there did.

7 Q And where did they go?

8 A Exit 14, went into the Howard Johnson's parking lot.

9 Q Sir, with the use of this photograph and this pen, I'd
10 like for you to mark on that particular photograph with
11 that pen, where you saw them exit and where they went.
12 If you would, just draw a line down where the road, if
13 any, you saw them take, and go towards where?

14 THE COURT: All right.

15 MR. PARCELL: Judge, with the Court's permission, may he get
16 in front of the jury to explain to them what
17 that's about?

18 THE COURT: You may come around in this case.

19 (Witness moves in front of jury)

20 A All right, this is going to be I-95. This
21 is going to be exit 14 as you come off. And this is
22 going to be the route that they took, right here. This
23 is the Howard Johnson's. They came off here (unintel.)

24 Q This road up here is going to be the interstate. This is
25 the exit 14 that they came off on. This is the road they

1 took right here, they went to the right. This is the
2 Howard Johnson's parking lot.

3 MR. PARCELL: Judge, I would ask that that be Commonwealth's
4 Exhibit E.

5 THE COURT: All right, Comm. Exh. E.

6 (Witness moves back to witness stand)

7 Q Trooper Hollowell, did you stay behind that vehicle when
8 the vehicle went to Howard Johnson's?

9 A No, sir, I did not.

10 MR. LOWE: It's Trooper Powers.

11 Q I'm sorry, Trooper Powers. Thank you, Mr. Lowe. Trooper
12 Powers, what did you do after the vehicle took Exit 14?

13 A When they came off the ramp I made a lefthand turn and
14 went over by Bill's Barbecue parking lot.

15 Q And did you see anything from there?

16 A No, sir, I did not.

17 Q What, if anything, did you do next?

18 A At approximately 6:20 p.m. the black truck with two
19 subjects in it left the Howard Johnson's parking lot.

20 I got on the interstate and I took I-64 westbound.

21 Q Who was in that vehicle?

22 A The - Mr. Hewitt and Mr. Turman.

23 Q Who was driving?

24 A Mr. Hewitt was driving.

25 Q And where did that vehicle go?

1 A The vehicle went 64 westbound and got off at the Rockville
2 Manakin exit, took a left and went up to Rt. 250, took a
3 right, I went down to the Manakin Road exit - road, I
4 took another right. And I went down to Rt. FO-93 and took
5 a left.

6 Q And how long did that-- did that particular vehicle stop
7 somewhere on FO-93?

8 A Yes, sir, the vehicle pulled into a private residence at
9 FO-93.

10 Q And who resided at that residence?

11 A Hester. A Mr. Hester.

12 Q And how long was that vehicle at that Hester residence?

13 A Approximately 20 minutes.

14 Q And did you see that - did there come a point in time that
15 vehicle left?

16 A I observed the vehicle when it got back on the Manakin
17 Road.

18 Q Then, what, if anything, did you observe about the vehicle
19 next?

20 A The vehicle went straight back out Manakin Road to the
21 left on 250, went back and got on the I-64 and headed
22 eastbound.

23 Q Did there come a point in time that vehicle stopped by
24 the Va. State Police?

25 A Yes, there was.

1 Q And who was operating the vehicle?

2 A Mr. Hewitt.

3 Q And who was the passenger?

4 A Mr. Turman.

5 Q Later on that evening did you have occasion to execute
6 a search warrant on that particular vehicle?

7 A Yes, sir, I did.

8 Q I'd like to show you this item and tell the ladies and
9 gentlemen of the jury whether or not that means anything
10 to you.

11 MR. LOWE: Your Honor, the Court has already made
12 certain rulings regarding the search, I don't
13 believe it's appropriate for the jury to be
14 shown the search warrant. They don't need to
15 do it, there's no dispute in this hearing
16 that they had a search warrant and made a
17 search, and I think if the witness merely
18 states, that's all that's necessary in this
19 for the jury to hear.

20 THE COURT: That's correct. I don't think the jury does,
21 there were preliminaries on all that.

22 Q I'd like to show you these two photographs, sir, and tell
23 the ladies and gentlemen of the jury whether these two
24 photographs mean anything to you.

25 THE COURT: All right, let's say you can identify them
and then we'll mark them. And thereafter

1 A To Trooper Hudson.

2 Q On that date?

3 A Yes, sir.

4 Q Trooper Powers, can you tell us whether or not you ever
5 saw that suitcase prior to the execution of the search
6 warrant that you personally executed on the early morning
7 hours of January 18, 1982?

8 A Prior to the search warrant I never saw it.

9 Q And sir, did you testify that you kept the Hewitt and
10 the Talley vehicles in your observation from the time
11 they first came to the Great Bridge area, is that
12 correct?

13 A Yes, sir. Excuse me. It was a constant surveillance,
14 but I didn't have them in my eye contact all the time,
15 no sir.

16 Q Did there come a point in time anytime through your
17 surveillance or observation that you ever saw Robert
18 Francis Talley operating the black pickup truck
19 unbeknownst to Hewitt?

20 A No, sir, I did not.

21 Q Did you ever see him within that vehicle?

22 A No, sir, I did not.

23 Q No further questions, Judge.

24 THE COURT: All right, cross examination.

25 CROSS EXAMINATION: Trooper Powers by Mr. Lowe

1 Q I have no further questions of this witness, Judge.

2 MR. LOWE: No questions. Can be excused as far as I'm
3 concerned, Judge.

4 THE COURT: All right, I understood the Commonwealth
5 Attorney still wanted you to be, to wait
6 outside and I've already given you instructions
7 about not talking to anyone. Okay, sheriff,
8 the suitcase on the floor. Take these exhibits,
9 put the clerk's desk. All right, members of
10 the jury, at this time we'll take our morning
11 break, a recess of about eight minutes or so.

12 (Court Recess)

13 All right, who'll be the next witness?

14 MR. PARCELL: Trooper R. G. Kemmler, K-e-m-m-l-e-r.

15 THE COURT: You were sworn on Thursday Morning, were you?

16 WITNESS: Yes, sir.

17 DIRECT EXAMINATION: Trooper Kemmler by Mr. Parcell

18 Q Sir, would you please state your name?

19 A R. G. Kemmler.

20 Q Occupation?

21 A Trooper.

22 Q Where?

23 A Virginia State Police, First Division.

24 Q What area does that encompass?

25 A Counties of Henrico, Goochland, the whole way south to

1 Petersburg.

2 A How long have you been so employed?

3 A Three years.

4 Q And what is your specific assignment this year?

5 A I'm assigned to special investigations, narcotics.

6 Q And how long have you been on that particular assignment?

7 A Approximately 15 months.

8 Q And sir, were you so employed with the Virginia State
9 Police on the 17th day of January, 1982?

10 A Yes, I was.

11 Q And what was your specific assignment on that particular
12 day?

13 A I was called up by Special Agent Foster to assist in a
14 surveillance. I was called at my residence. He told me
15 to meet him at the Sandston scales at approximately
16 3:00 p.m.

17 Q And did you in fact do that?

18 A Yes, I did.

19 Q Did there come a point in time when you had occasion to
20 go out I-64 west in Goochland County?

21 A Yes, I did.

22 Q For what reason?

23 A Well, we started - I was - surveillance started at the
24 Sandston scales, I was briefed there, and the target was
25 followed to Howard Johnson's. And then from Howard

1 Johnson's we got back into surveillance, I was the last
2 car on the surveillance out towards Goochland, from the
3 Howard Johnson's.

4 Q And how did you get to Goochland County?

5 A Via 64. Went out 64, I got off at Rockville-Manakin exit,
6 made a left, went down to 250, made a right, went up 250
7 to I believe 621. Followed 621 up to FO-93.

8 Q What, if anything, did you do at FO-93?

9 A Well, FO-93, when I was following the car up 621 it
10 appeared to have missed a turn because he backed up on
11 621 and made a left and went down FO-93 and turned in the
12 second driveway on the left.

13 Q And whose residence was that?

14 A Hester.

15 Q How do you know that?

16 A That's -- there was a search warrant executed on that
17 residence later on that evening.

18 Q Were you there when that was done?

19 A Yes, I was.

20 Q Do you know the address of Mr. Hester?

21 A No, I don't.

22 Q And what, if any observations did you make once you
23 followed that particular vehicle to that residence?

24 A Well I observed the vehicle pull into the second driveway
25 on the left. I proceeded on 621 and parked in the church

1 lot and was met there by Trooper Hudson. We were picked
2 up by Special Agent Foster and transported back to 621
3 and dropped off at the edge of FO-93, because FO-93 was
4 frozen over with a sheet of ice. We walked down FO-93 to
5 the driveway, walked up in the driveway approximately
6 20, 25 feet, and I observed the black pickup truck in the
7 driveway.

8 Q I'd like to show you this diagram. With the use of this
9 diagram would you please go to the front of the ladies
10 and gentlemen of the jury and explain to them what that
11 is and what that means to you?

12 (Witness goes before the jury)

13 This is Rt. 621 here. This is FO-93, it's an access road
14 that goes off here. I-64 runs somewhere along here and
15 on the other side of I-64 is the church that I parked in.
16 Myself and Trooper Hudson was down here, walked down here,
17 there's another driveway that goes up somewhere, approxi-
18 mately up in here to the house on the corner. The corner
19 house on here. Went down and walked like I said, 20 to
20 25 feet up in the driveway and observed the truck, then
21 went back down and walked back up here. And this is a
22 guardrail all the way along here, and we went down over
23 the bank behind the guardrail.

24 Q Who did?

25 A Myself and Trooper Hudson.

1 Q Can you tell us what the weather conditions were that
2 night?

3 A Extremely cold and there was snow on the ground.

4 THE COURT: Excuse me, I want the witness to come give the
5 same explanation to the jury here, none of
6 us can see. Hold it up a little higher, and
7 move your hand higher with your lefthand, and
8 then - All right.

9 A This is Rt. 621. This is the one that comes off of -

10 THE COURT: Can you in the middle see this all right?

11 A And this is FO-93. This is where I observed the vehicle
12 go down and turn up the second driveway. There is another
13 driveway that goes up here to the corner house, that faces
14 off here, but the driveway goes up off FO-93. Further
15 down here, this is I-64, right along in here, and the
16 church is over here. Myself and Trooper Hudson come up
17 and walked down FO-93, up the driveway, 20 to 25 feet,
18 and observed a black pickup back down the driveway, back
19 out of FO-93 and went over the guardrail, right along
20 here it's all guardrails. Were over the guardrail laying
21 in the snowbank on the other side of the guardrail.

22 MR. PARCELL: Judge, that will be Comm. Exh. No. K. I'm
23 sorry, J.

24 Q Trooper, can you tell us why you and Trooper Hudson did
25 not go further down the driveway of the Hester residence?

1 A Well, as we started to walk up there, we were standing
2 there approximately one to two minutes and numerous dogs
3 started barking around the area, we weren't sure if it
4 was from that house or from the adjacent house. We wanted
5 to get out of there before we got detected.

6 Q And were you able to determine or see whether or not there
7 was anyone in the vehicle as you saw it parked in front of
8 the Hester residence?

9 A I couldn't determine whether there was or wasn't.

10 Q Can you tell us -

11 A You could see into the glass, but, you know, the way the
12 vehicle, you couldn't tell whether there was anyone in it.
13 Now, the front of the house was lit up and everything.
14 But you still couldn't tell if there was anyone in the
15 vehicle.

16 Q And you had occasion to respond, after you left the house
17 you were down, and Trooper Hudson was along with you,
18 the guardrail, is that correct, and laid in the snow?

19 A Yes.

20 Q And what, if anything, did you do next?

21 A Well, after we went over the guardrail we, I think it was
22 Special Agent Foster, we had a radio with us and we
23 relayed to him that you know, the vehicle was down there.
24 Then approximately, I think it was approximately 7:10 or
25 so the vehicle backed out of the driveway and got stuck

1 backing out of the driveway. And then it started up the
2 road and when it got to the edge of O-93 it made a right
3 and when, it exited the same way it entered.

4 Q And, describe this truck to us, was it an old truck, or -

5 A It was a new type Ford pickup.

6 Q Did it have any -

7 A It had a short - I think it was a short bed.

8 Q Do you recall whether or not it was four-drive vehicle?

9 A I don't recall.

10 Q And then, what if anything, did you do next?

11 A We, myself and Trooper Hudson ran back to our vehicles
12 and proceeded to catch up with the rest of the surveillance
13 units. We called ahead and told them that the truck was
14 coming, and then after the truck was far enough out of
15 sight that it couldn't detect us we ran back to our
16 vehicles to catch up with the rest of the surveillance.

17 Q And did there come a point in time when you returned
18 to the Hester residence later that night or early the
19 next morning?

20 A After the vehicle had been stopped along the interstate,
21 myself and Trooper Hold went back out and I showed
22 Trooper Holt the residence where the truck had been.

23 Q And did you see the vehicle leave the Hester residence?

24 A I saw it back out of the driveway?

25 Q And how many persons were in that vehicle?

1 A It appeared to be two when it come out to the edge of
2 0-93.

3 Q Could you identify either one of the persons within that
4 truck?

5 A No, I couldn't.

6 Q Had you ever heard of or seen the defendant William
7 Hewitt or a Gary Turman before?

8 A No, I didn't.

9 Q Your witness.

10 MR. LOWE: Excuse me a moment.

11 CROSS EXAMINATION: Trooper Kemmler by Mr. Lowe

12 Q Trooper Kemmler, I gather that you cannot testify that
13 at anytime you saw this suitcase placed into the pickup
14 truck, nor can you say who placed it in there, or when it
15 was placed in, is that correct?

16 A That's true.

17 Q That's all.

18 THE COURT: Any redirect?

19 MR. PARCELL: No, sir. Your Honor.

20 THE COURT: What is the pleasure of counsel with regard
21 to this particular witness?

22 MR. LOWE: Can be excused as far as I'm concerned, Judge.

23 MR. PARCELL: No, sir, Judge. I would not like him to be
24 excused.

25 THE COURT: All right, at this time, then Mr. Kemmler, you

1 may step out of the witness chair and go
2 outside. Do not discuss with any other
3 witness any questions you were asked or any
4 answers you gave. And I don't want anyone
5 in the courtroom to communicate any such
6 information to you.

7 MR. PARCELL: Special Agent L. C. Foster. F-o-s-t-e-r.

8 THE COURT: All right, face the jury, please. Talk to
9 the farthest one away and loud enough so we
10 can all hear. You were sworn Thursday morning,
11 were you?

12 MR. FOSTER: Yes, sir.

13 THE COURT: All right, talk to the jury entirely.

14 DIRECT EXAMINATION: Special Agent Foster by Mr. Parcell

15 Q Sir, would you please state your name?

16 A L. C. Foster, Jr.

17 Q Sir, what is your occupation?

18 A I'm a special agent with the Department of State Police.

19 Q Sir, how long have you been so employed?

20 A Fifteen years.

21 Q And what is the location of your employment?

22 A Richmond.

23 Q And what area are you responsible for?

24 A Nineteen counties surrounding the City of Richmond and
25 three cities.

1 Q And were you so employed on the 17th of January 1982?

2 A Yes, I was.

3 Q And what was your specific assignment on that particular
4 date?

5 A I'm the coordinator for the narcotics agents here in the
6 City of Richmond, or the State Police in the Richmond
7 area.

8 Q How long have you been in that position?

9 A In Richmond I've been since '76.

10 Q Sir, can you explain the difference between a regular
11 state trooper and a special agent such as yourself?

12 A Well, the troopers are selected from the field for their
13 ability to work drug investigations. It's a voluntary
14 basis. The coordinator is usually a special agent, a
15 person who has been promoted from trooper to special agent
16 and he is in charge of the troopers. He attempts to
17 direct them in the right places and to hopefully conduct
18 an investigation properly.

19 Q And that's why you're now special agents compared to a
20 state trooper.

21 A Yes, sir.

22 Q But you are still in fact a state trooper?

23 A Yes, sir.

24 Q Sir, did you do anything unusual on the 17th day of
25 January 1982?

1 A We conducted a surveillance and ended up searching an
2 automobile and making two arrests, or three arrests,
3 total that night.

4 Q Did you search an automobile or a truck?

5 A A pickup truck.

6 Q What was unique about this pickup truck, if anything?

7 A It was carrying a large quantity of marijuana or hashish.

8 MR LOWE: Your Honor, may I raise an issue just because
9 some of these jurors may not have sat on
10 criminal cases before, but I assume the fact
11 that there are references to marijuana or
12 hashish are taken not as proof that that's
13 what the substance is, but merely as statements
14 that are in the course of describing what they
15 believe and that the Commonwealth has a
16 chemist who will come on to give the appro-
17 priate proof as to what the substance is, is
18 that correct, Mr. Parcell?

19 MR. PARCELL: Yes, sir.

20 MR. LOWE: Thank you.

21 THE COURT: All right, thank you.

22 Q This pickup truck was a four-drive vehicle or a regular
23 vehicle.

24 A It was a four-wheel drive vehicle.

25 Q Now, did there come a point in time when you in fact

1 saw that particular vehicle?

2 A Yes, sir, I did.

3 Q Where and at what time?

4 A The first place I observed the vehicle was on Jan. 17th
5 at the scales on Interstate 64, in Henrico County.

6 Q And do you recall about what time?

7 A It was approximately 5:00 o'clock. Couple of minutes
8 after 5:00.

9 Q And what did you do, if anything, after you saw that
10 particular vehicle?

11 A We took part in the surveillance. The surveillance led
12 us to the Howard Johnson's on the Boulevard in the City
13 of Richmond.

14 Q And did there come a point in time when you saw that
15 particular truck leave Howard Johnson's?

16 A Yes, sir, I did.

17 Q And do you know who was inside that truck?

18 A Not at that time I did not know who was exactly inside,
19 it was getting dark and it was almost impossible to tell
20 who was in there.

21 Q And what, if anything, did you do once that vehicle left
22 the Howard Johnson's?

23 A We maintained surveillance on the vehicle until it arrived
24 at a location in Goochland County.

25 Q And did there come a point in time that vehicle left

1 Goochland County?

2 A Yes, sir, it did.

3 Q And what if anything did you do?

4 A We followed the vehicle again until the, until we got a
5 uniform trooper, which had red lights and sirens and was
6 capable of stopping the vehicle. And we also waited
7 until Trooper Hudson arrived back to the point that we
8 were at, because he was assigned to be the case agent in
9 this investigation.

10 Q Did there come a point in time when that black pickup
11 truck was in fact stopped?

12 A Yes, sir, it was.

13 Q And who was operating that vehicle?

14 A Mr. Hewitt.

15 Q Who is Mr. Hewitt?

16 A Mr. William Hewitt. He is sitting to Mr. Lowe's left.

17 Q And who approached that vehicle?

18 A I approached the vehicle. Trooper Cline approached the
19 vehicle. And several of the other troopers.

20 Q And which side did you approach?

21 A I approached the driver's side of the automobile.

22 Q And who was driving?

23 A Mr. Hewitt was driving.

24 Q The defendant?

25 A Yes, sir.

1 Q And what if anything, did you observe about Mr. Hewitt's
2 physical presence when you approached him?

3 A I informed him that we had reason to believe there was
4 narcotics in the automobile. I asked him to get out of
5 the vehicle. At that time he was wearing a flannel type
6 shirt with the sleeves rolled up. He did not have any
7 jacket whatsoever. He was later brought back to the
8 rear of the pickup truck where he was advised of his
9 rights and I informed him at that time that a narcotic
10 canine was enroute to check his vehicle, and if it
11 alerted on the vehicle we were going to obtain a search
12 warrant for his vehicle.

13 Q And did he make any statements to you?

14 A The only statement at that time I recall he made was when
15 I asked him if he wanted to have a seat in my car, because
16 it was so cold that night. He told me that I should let
17 the other man go, that he had nothing to do with it.
18 And I asked him what he was referring to and he stated
19 that he'd rather not say.

20 Q And where did you place the defendant at that time?

21 A In the right front seat of my assigned vehicle.

22 Q And did you inquire as to whether or not the defendant
23 possessed or owned a coat?

24 A Yes, sir, I did.

25 Q And what was the response?

1 A He said he had one behind the seat but he'd rather for
2 me not to get it for him.

3 Q So at that time you placed him where?

4 A In the right front seat of my automobile?

5 Q Did there come a point in time when you found something
6 unfamiliar or unusual in your automobile?

7 A Shortly thereafter I found a piece of legal paper, yellow
8 legal pad paper, which was rolled up and placed beside
9 the seat, between the seat and the door on the little
10 carpeted area, on the passenger's side of the automobile.

11 Q Is that where Mr. Hewitt was sitting?

12 A Yes, sir.

13 Q And within that piece of paper was anything else there?

14 A Yes, sir, there was numbers on the page, which indicated
15 grams and pounds.

16 MR. PARCELL: Judge, with the Court's permission, those
17 particular items are already with the clerk.

18 At this time I'd like to have those
19 introduced. They haven't been formally
20 introduced as an exhibit.

21 THE COURT: Let's make certain counsel knows what we're
22 talking about now.

23 Q Can you identify that particular item first?

24 A Yes, sir, the yellow piece of legal paper is what I found
25 folded up on the carpeted area between the seat and the

1 door on the righthand side of my automobile.

2 Q And who was sitting in that seat?

3 A Mr. Hewitt. The business card was on the inside of this
4 piece of paper. It has the name of Gerald Hester on it.
5 It's a realtor's card.

6 Q Sitting in the chair, Special Agent Foster, act like
7 you're Mr. Hewitt. Would you show the ladies and gentlemen
8 of the jury exactly where you found those particular items.

9 A This was the seat and this was the door. It was setting
10 in between the seat and door.

11 Q Judge, I'd like that piece of legal paper as Commonwealth's
12 Exhibit No. K, and the business card with the name of
13 Gerald Hester as Comm. Exh. No. L.

14 THE COURT: All right, sheriff. Do you want this to go
15 back to the witness or not?

16 MR. PARCELL: No, sir.

17 THE COURT: Okay. sheriff. (unintel.) Next question?

18 Q Sir, did the defendant Mr. Hewitt ever make any statements
19 about any hitch-hiker?

20 A Yes, sir, he did.

21 Q What was that statement?

22 A I beleive it was when we were back in the back of the
23 truck when he said that he had picked the man up for
24 hitch-hiking and that he didn't know anything about this.
25 Once he got into the automobile I asked him what the guy's

1 name was and he said the only thing he knew it was Gary.

2 Q What man are we talking about?

3 A This was the other defendant in this case that was
4 arrested that night.

5 Q What man are we talking about?

6 A This was the other defendant in this case who was
7 arrested that night. Gary Turman.

8 Q Did there come a point in time when you determined the
9 age of Mr. Hewitt, the defendant?

10 A Yes, sir, I did, but I'm not sure what it was.

11 Q Going back to the two items that have been introduced as
12 Commonwealth's Exh. No. K and L, why were you on that
13 particular side of the vehicle?

14 A I went to call the Ass't. Comm. Attorney, to advise him
15 of what had transpired there that night. And I leaned
16 down to reach in to pick up the radio for my vehicle and
17 I observed it at that time.

18 Q And had you been in the area, your particular car,
19 earlier that day that you found these two items?

20 A Yes, sir.

21 Q And were they there?

22 A No, sir.

23 Q Who else drives your car, other than yourself.

24 A I'm assigned the vehicle, I can't remember for sometime
25 who's driven it besides myself.

1 Q Can you describe for us what the weather conditions were
2 when you all made the stop of Mr. Hewitt's truck in
3 Henrico County?

4 A At that time I'd say that it was at least close to a foot
5 of snow on the ground and it was probably from zero to
6 ten degrees in temperature.

7 Q And did you give those particular two items, Comm. Exhibit
8 Nos. K and L, the legal pad paper and the business card,
9 to someone else?

10 A Yes, I gave it to Trooper Hudson, who was case agent.

11 Q Prior to the stop on Jan. 17, had you ever met a Robert
12 Francis Talley?

13 A No, sir.

14 Q Had he ever been in your vehicle?

15 A No, sir.

16 Q During the course of your investigation and/or surveillance,
17 did you ever see Mr. Talley in the truck operated by the
18 defendant?

19 A No, sir.

20 Q After the arrest of the defendant what if anything was
21 done with the pickup truck which y'all had stopped?

22 A It was taken to our main headquarters on Rt. 1, Division
23 Headquarters, at the corner of Connecticut and Rt. 1,
24 Henrico County.

25 Q Who took it there?

1 A I did.

2 Q Who drove it?

3 A I did.

4 Q Who was with you?

5 A No one.

6 Q Did you - you took the vehicle to the First Division
7 Headquarters, is that correct?

8 A Yes, sir.

9 Q And what, if anything, did you do when you got out of the
10 vehicle?

11 A I locked all the doors on it and turned the keys over to
12 Trooper Hudson.

13 Q And to your knowledge, is that the only set of keys?

14 A To my knowledge, that night, yes sir.

15 Q Can you tell us why there was a delay from the time you
16 first stopped the vehicle to the time the defendant was
17 arrested?

18 THE COURT: Why do we need to get into this, please?

19 I just - I don't think it's pertinent.

20 MR. PARCELL: Judge, I'll withdraw the question.

21 Q Did there ever come a point in time since this arrest
22 that you had had occasion to go to the Howard Johnson's
23 on the Boulevard and drive to the arrest of Gerald Hester?

24 A Yes, sir.

25 Q And was this done approximately the same time this offense

1 occurred back in January?

2 A Yes, sir.

3 Q And how long did it take you to go from Howard Johnson's
4 to Mr. Hester's house?

5 MR. LOWE: Ojbection, Your Honor, it's not proper
6 foundation, it's not relevant, we don't know
7 whether he's going the same speed, the road
8 conditions different, I don't know what it
9 has to do with this case in any event. The
10 testimony is that they followed them all the
11 way down there.

12 THE COURT: Well, I don't know what information he may
13 or may not have about the speed going there
14 or what speeds he may have had coming back,
15 so you'll have to lay further foundation.

16 Q Special Agent Foster, you made the trip just last week,
17 is that correct?

18 A Yes, sir, I did.

19 Q And were the weather conditions different?

20 A Yes, sir, it was snow on the ground in January when we
21 went out there.

22 Q What were the conditions last week?

23 A The roads were clear.

24 Q And about the traffic on those two different dates?

25 MR. LOWE: Your Honor, I fail to see the relevance of

1 what happened last week. We had direct
2 testimony about how long it took to drive and
3 what was going on. I don't understand what
4 we're getting into here. It may not be very
5 harmful, but I don't know where he's going.
6 And it might very well be prejudicial in some
7 way.

8 THE COURT: Well, I'll overrule objection. It's subject
9 to cross examination. It's admissible as to
10 driving distance between two places, it's a
11 question of subject cross examination as to
12 what the conditions were or weren't. But it's
13 a probative value and it's entirely up to the
14 jury.

15 Q What were the traffic conditions in regards to the flow
16 of traffic ^{to} compared / the last week and Jan. 17, 1982?

17 A The flow of traffic was similar. About the same.

18 Q How about the speed you went over there the 17th and the
19 speed you went over there last week?

20 A I drove about the same speed as we drove that same day.

21 Q Did you follow the same route that you took on Jan. 17th?

22 A Yes, sir, I did.

23 Q Identical route?

24 A Yes, sir.

25 Q How long did it take you?

1 A Approximately 22 minutes to drive.

2 Q No further questions.

3 THE COURT: Cross examination?

4 CROSS EXAMINATION: Special Agent Foster by Mr. Lowe

5 Q Sp. Agent Foster, I'm not entirely clear. When you
6 started out on this particular day in this surveillance,
7 where did you begin and with whom were you, if anyone
8 was in your car with you?

9 A I was informed what was taking place at the scales on
10 Interstate 64 by Trooper Hollowell.

11 Q Did you have your vehicle with you?

12 A Yes, sir, I did.

13 Q Were you driving alone in your vehicle?

14 A Yes, sir.

15 Q I assume it's an unmarked State Police cruiser.

16 A Yes, sir.

17 Q And from that point forward did you involve yourself in
18 the surveillance up to the Howard Johnson's?

19 A Yes, sir, I did.

20 Q Now, where were you after the vehicles, the pickup truck
21 and the Plymouth parked at the Howard Johnson's, where
22 did you go?

23 A I was parked across the street at the U-tot-em Store.

24 Q And did you leave your vehicle at that point or did you
25 stay in your vehicle? What did you do?

1 WITNESS: Yes, sir, I was.

2 THE COURT: All right, and you will remain seated as you
3 are, facing the jury. Talk to the one
4 furthestest away, loud enough so everybody can
5 hear you.

6 DIRECT EXAMINATION: Trooper Hudson by Mr. Parcell

7 Q Sir, would you please state your name?

8 A K. H. Hudson.

9 Q Occupation?

10 A Va. State Trooper.

11 Q How long have you been so employed?

12 A Approximately four years.

13 Q What is your specific assignment today?

14 A The Narcotics Division.

15 Q And how long have you been in that department?

16 A Two years.

17 Q And sir, were you so employed in that capacity the 17th
18 day of January 1982?

19 A YES, sir, I was.

20 Q And did you have a specific assignment on that particular
21 day?

22 A Yes, sir, I did.

23 Q Will you tell the ladies and gentlemen of the jury what
24 that was?

25 A Between 2:00 o'clock and 2:30 p.m. on the 17th, Special

1 Agent Foster called my residence requiring me to meet him
2 at the Sandston scales on I-64.

3 Q And did you do that?

4 A Yes, sir, I did.

5 Q Did you make any observations at that time?

6 A Could you repeat the questions, sir?

7 Q Did you make any personal observations of a target at
8 that time?

9 A No, sir, I didn't.

10 Q What, if anything, did you do next, after you met Special
11 Agt. Foster at Sandston scales?

12 A Trooper Hollowell advised us of the situation that was
13 becoming that day. At approximately 4:30 to 5:00 o'clock
14 I went to the Bottoms Bridge exit on the exit ramp west-
15 bound.

16 Q Did you make any observations at that time?

17 A No, sir.

18 Q What, if anything, did you do next?

19 A Approximately 5:00 o'clock Trooper Powers notified me over
20 the radio that the target vehicles were proceeding west-
21 bound by the Bottoms Bridge exit.

22 Q What, if anything, did you do and observe?

23 A At that time I pulled onto the Interstate where we were
24 going up the hill by the Sandston scales, I noticed the
25 vehicle in question, where I followed the vehicle to where

1 it got off the Exit 14, Boulevard Exit.

2 Q Did you see who was operating the black pickup truck?

3 A No, sir, I didn't.

4 Q Did you see how they were dressed?

5 A All I could see, I noticed they had on baseball caps of
6 some sort.

7 Q Both persons that were in the truck?

8 A Yes, sir.

9 Q Then, when you saw them take Exit 14, what if anything
10 did you do next?

11 A At that time I exited Exit 14 also and parked in the
12 doctor's parking lot to the southside of the building.

13 Q Did you see that truck again?

14 A Yes, sir.

15 Q And it was where?

16 A It was parked on the northside of - northeast side of
17 the parking lot of Howard Johnson's.

18 Q With the use of Comm. Exh. No. E, show to the ladies and
19 gentlemen of the jury exactly where you saw the vehicles.

20 A Where I saw the vehicles?

21 Q Yes, sir. Would you mark it, then come over in front of
22 the ladies and gentlemen of the jury.

23 THE COURT: Step down, please, and do this in front of the
24 jury.

25 MR. PARCELL: Mr. Lowe?

(Witness steps in front of jury)

1 THE COURT: That half of the jury, and then turn around
2 and do it from this half of the jury.

3 A The vehicle was in this vicinity right here.

4 Q That being which vehicle?

5 A The - both vehicles.

6 THE COURT: Excuse me one minute. Is that showing on the
7 exhibit, you've got some sort of white
8 pencil, have you got anything else?

9 MR. PARCELL: Judge, I've got a red and a black. I'm not
10 using the red since I've been using it before,
11 but we can use the black one for it to show
12 better.

13 THE COURT: Do it over again with the black pencil so we
14 can see what you're talking about.

15 Q Did there come a point in time when that particular - or
16 those particular vehicles moved in your presence?

17 A Yes, sir, they did.

18 Q And will you show us where you watched them go?

19 A They backed out and went up and moved around. After they
20 got back by the corner of the building was the last time
21 I saw them, they were going up that way.

22 Q Do you know who was operating those two vehicles?

23 A No, sir, I don't.

24 Q That's all the questions in regard to the photograph.

25 (Witness resumes seat in witness chair)

1 Q Did there come a point in time when you got into your
2 vehicle and responded somewhere else?

3 A Yes, sir, I did.

4 Q Where did you go?

5 A I went to a residence in Goochland County.

6 Q How did you get there?

7 A I-95 northbound to I-64 westbound. Exited off the
8 Rockville-Manakin exit, went to Rt. 250, went west on
9 250 to Rt. 621, made a right turn on 621 and went down to
10 Rt. FO-93.

11 Q And what, if anything, did you do there?

12 A At that time I parked my vehicle at a church parking lot.
13 Special Agt. Foster picked myself up and Trooper Kemmler,
14 and let us off at FO-93, where Trooper Kemmler and myself
15 went down to the residence where the truck was parked at.

16 Q Then what did you do? What if anything did you observe?

17 A We observed a black Ford Pickup Truck setting in the yard.
18 The dogs of the neighbor started barking, so we walked
19 away and went back to the intersection of FO-93 and 621,
20 where we stayed until the vehicle left.

21 Q And was that the same truck you observed at the Howard
22 Johnson's?

23 A Yes, sir.

24 Q Did there come a point in time you saw the truck leave?

25 A Yes, sir.

1 Q Did you see anyone within that truck?

2 A Yes, sir, I saw two persons in the truck.

3 Q Were you able at that time to recognize either one of the
4 persons?

5 A No, sir, I wasn't.

6 Q And then, after the truck passed you what, if anything,
7 did you do next?

8 A At that time we went back to our vehicles and proceeded
9 to try and to catch up with the vehicles.

10 Q And did there come a point in time when that black Ford
11 Pickup Truck was stopped by a uniformed Va. State Trooper?

12 A Yes, sir, it was.

13 Q And whom did you observe to be the driver of that vehicle?

14 A Mr. William Hewitt.

15 Q Who is the -?

16 A The defendant.

17 Q Would you point him out if you see him in the courtroom?

18 A Sitting right there in the black suit.

19 Q To Mr. Ried's right?

20 A Yes, sir.

21 Q Who else was in that vehicle?

22 A Mr. Gary Turman.

23 Q During the course of your contact with the defendant did
24 you have occasion to determine his age?

25 A Yes, sir.

1 for identification.

2 THE COURT: That isn't the stipulation he's made.

3 MR. PARCELL: Oh, I'm sorry.

4 THE COURT: The stipulation is he's not making any contest
5 over chain of evidence, that is, did they
6 lose it somewhere, did somebody else get hold
7 of it and not give it back to him?

8 MR. PARCELL: Yes, sir.

9 THE COURT: The Court always appreciates that kind of
10 stipulation. It indicates thorough knowledge
11 of counsel, as well as moves it along.

12 Q Trooper Hudson, did there come a point in time when you
13 took that piece of paper that's been identified as
14 Comm. Exh. K and with that piece of paper look at these
15 18 pieces of evidence on this bench in front of you?

16 A Yes, sir.

17 Q Would you explain the use of those pieces of whatever they
18 are, and that piece of paper, what if any correlation or
19 similarity do they have?

20 A Compared to numbers on the sheet of paper to the soles,

21 THE COURT: Indicate to the record what you're talking
22 about. What's your exhibit, please?

23 A Exhibit K of the numerals on the paper were compared with
24 the numerals on Exhibit H, they were matched identically
25 to the ones on Exh. H.

1 Q Would you physically take those 18 pieces of, 18 items
2 and that piece of paper and explain to the ladies and
3 gentlemen of the jury what you're talking about numbers
4 corresponding?

5 MR. LOWE: Your Honor, we can save a lot of time here.
6 There is no contest whatsoever that these
7 items came out of a suitcase that was in the
8 pickup truck, that they're listed on that
9 piece of paper, that they were taken to the
10 chemist. This is a whole lot of wasted time
11 we don't need. I'm going to stipulate to
12 that. There's no contest about that whatsoever.
13 Save a lot of time.

14 THE COURT: You have the right to put the evidence on
15 without the stipulation, or read a stipulation.
16 But -

17 MR. PARCELL: I prefer that he show the ladies and gentlemen
18 of the jury what he's talking about the
19 numbers corresponding.

20 THE COURT: All right, you may do that. Now, one other
21 thing I'd like to get straight, counsel. I
22 think the idea was that once he finished
23 this particular - it was represented to me
24 during recess - that once you get through that
25 we'd put the particular soles, 18 of them,

1 back in the suitcase.

2 MR. PARCELL: Yes, sir, that is correct, Judge.

3 THE COURT: Okay, but once he gets through with the
4 explanation, each one, Sheriff, just slip it
5 back in the suitcase.

6 Q All right, No. 3 on the sheet of paper, also listed as
7 No. 3 -

8 THE COURT: Here again, you're going to have to show not
9 just that end, but rotate that exhibit, each
10 of them, so that the jury can understand what
11 you're talking about.

12 A All right, this is No. 3, that's marked on the sole.
13 To the right of it is 980.5. On the sheet of paper,
14 Item No. 3 would be ^{Weight} 9805, which was the same as on this
15 one.

16 Q When you say "weight" what are you talking about?

17 A Weight in grams.

18 Q To avoid repetitions, Judge, did you find each other of
19 those remaining 17 were also listed by number?

20 A Yes, sir, I did.

21 MR. LOWE: We'll stipulate to that.

22 Q And a gram number to correspond to each one of the soles.

23 A Yes, sir.

24 Q Judge, I don't need each one of them to identify this.
25 I want to show this as an example.

1 Next witness?
2 MR. PARCELL: Trooper J. R. Holt. H-o-l-t.
3 THE COURT: Face the jury and talk to them entirely.
4 Talk to the one farthest away, so we can
5 all hear you. You were sworn, were you not?
6 WITNESS: Yes, I was.
7 THE COURT: Last Thursday?
8 WITNESS: Yes, sir.
9 THE COURT: All right, identify and examine the witness.
10 DIRECT EXAMINATION: Trooper Holt by Mr. Parcell
11 Q Sir, would you please state your name?
12 A J. R. Holt.
13 Q Occupation?
14 A Virginia State Police Trooper.
15 Q How long have you been so employed?
16 A Since October 16, 1975.
17 Q Sir, did you have any specific assignment today?
18 A I'm currently assigned to the narcotics section of the
19 Bureau of Co-investigation.
20 Q Sir, how long have you been in that particular assignment
21 area?
22 A Since July 1, 1980.
23 Q What is your job detail?
24 A We're investigating primarily narcotics, illegal
25 narcotics traffic in the Richmond and surrounding

1 counties.

2 Q Sir, you work at the First Division with Special Agent
3 Foster, Hudson, and Kemmler, is that correct?

4 A That's correct.

5 Q And were you still employed the 17th day of January
6 1982?

7 A Yes, sir, I was.

8 Q And did you have occasion to be involved in a particular
9 surveillance target that day?

10 A Yes, sir.

11 Q Who was the target?

12 A Targets were William Henry Hewitt and Gary Turman.

13 Q Do you see one of those persons in the courtroom today?

14 A Yes, sir, I do.

15 Q Which one? Point him out?

16 A Mr. William Henry Hewitt.

17 Q At Mr. Reid's right?

18 A Correct.

19 Q During the course of your investigation did there come
20 a point in time that you responded to a address in
21 Goochland County?

22 A Yes, sir, I did.

23 Q Do you recall -

24 THE COURT: You're dropping your voice.

25 Q I'm sorry, Judge. What address in Goochland did you

1 respond to?

2 A It was a house off of Rt. FO-93, which runs off of
3 Rt. 621 in Goochland County.

4 Q Do you recall a mailing address?

5 A I believe it was Rt. 3, Manakin-Sabot, Va. I don't
6 recall the box number.

7 Q I'll show you this piece of paper and tell us whether or
8 not this means anything to you.

9 THE COURT: I think we're a little premature. Did he
10 ever see anybody after he went to the
11 address? I think that normally would
12 follow. Something in relation to the time
13 factor, other than just Jan. 17.

14 Q Yes, sir. Whose handwriting is on the face of that
15 piece of paper?

16 A Mine.

17 Q And what address is it for Gerald Hester on that piece
18 of paper?

19 A Rt. 1, Box 264-I, Manakin-Sabot, Virginia.

20 Q Going back to where you were earlier, Trooper Holt, what
21 were your activities that day leading up to going to
22 Goochland County? Where did you go first that day?

23 A I had been called at my residence to meet Special Agent
24 Foster at the Sandston Scales in Henrico County.

25 Q About what time did you meet Special Agent Foster?

1 A I think it was approximately 3:45 p.m.

2 Q And what if anything did you do there?

3 A I took over a surveillance standpoint at Bottoms Bridge
4 exit, westbound on I-64.

5 Q Did you see anything there?

6 A Yes, sir, I did.

7 Q What, if anything, did you see?

8 A Saw a black Ford Pickup Truck and a white Plymouth,
9 westbound I-64.

10 Q And what, if anything, did you do after you saw those
11 particular vehicles go by you?

12 A I took up a position behind the other surveillance units
13 and proceeded towards Richmond on I-64, assisting in the
14 surveillance.

15 Q And did there come a point in time when you got off of
16 I-64?

17 A Yes, sir, I did.

18 Q Where?

19 A Exit 14, which is the Boulevard Exit, off of I-95.

20 Q Did you have occasion to see that black pickup truck
21 again?

22 A Yes, sir, I did.

23 Q Where was it?

24 A Next time I saw it it was parked in front of the Howard
25 Johnson's.

1 Q Did you have occasion to see that particular truck move?

2 A Yes, sir, I did at approximately 6:15 p.m. I was
3 travelling up the ramp to the upper deck parking lot and
4 met the black pickup truck headed down the ramp.

5 Q And do you know who was driving that truck?

6 A I didn't know. It fit the description of the, the
7 description I'd been given earlier that day.

8 Q Of who?

9 A Mr. Hewitt.

10 Q And did you see how either one - how many person were in
11 that truck?

12 A There two persons.

13 Q How were they dressed?

14 A All I could tell, both of them had hats on. Baseball
15 type hats on.

16 Q Then after you saw these two persons in a black pickup
17 truck, what if anything did you do next?

18 A I immediately contacted other surveillance units by radio
19 and told them they were leaving the Howard Johnson's.
20 And I took a position at the Howard Johnson's in case the
21 surveillance team lost contact, so that when they
22 returned to the Howard Johnson's I would be able to assist
23 them.

24 Q And did there come a point in time when you did in fact
25 respond to Goochland County?

1 A Yes, sir.

2 Q And can you tell us what time or what date that was?

3 A The first time I went to Goochland was after the subject
4 had been stopped in Henrico County, near Parham Road.

5 I met them out there, found out where he had went.

6 Trooper Kemmler and I proceeded out to Goochland County
7 to ascertain the description of that residence.

8 Q For what purpose?

9 A To get a search warrant in Goochland County to search
10 the premises where we believe Mr. Hewitt went.

11 Q And Trooper Kemmler took you to what address again?

12 A Rt. 1, Box 264 Manakin-Sabot. I didn't know the address
13 at the time. It was - he showed me the address and what
14 the route number was also.

15 Q And then you went to where and did what?

16 A I went to Goochland County Courthouse, obtained a search
17 warrant, based on the information we had previously, and
18 subsequently executed that search warrant in Goochland
19 County on the 18th of January, approximately 2:30 a.m.

20 Q And who was with you when you did that search warrant?

21 A Trooper Kemmler was with me. Lt. Leslie Parrish and
22 Fred Donald of the Goochland Sheriff's Department. It
23 was another deputy, I don't recall his name, who was
24 with me. And subsequently, other units of the surveillance
25 team arrived, after we were inside.

1 Q And who was within that residence?

2 MR. LOWE: Objection, Your Honor, until the proper
3 foundation is laid I would object to that.

4 THE COURT: All right, proceed to ask him who - the
5 number of people and what have you.

6 Q How many persons and whom were they within that residence?

7 A There were two people in the residence.

8 Q And who were they?

9 MR. LOWE: Ojbection. Same objection. Until he lays
10 a foundation as how he knew and whether
11 they were identified in some way that would
12 not be hearsay, Your Honor.

13 THE COURT: Let's find out whether they were male or
14 female and go through it step by step, since
15 an objection was made.

16 Q What were the age of the persons there?

17 A One was approximately 30 years old, one approximately
18 3 or 4 years old.

19 Q Are these males or females?

20 A They were both white males.

21 Q And how did you ascertain who these people were?

22 A The old, 30 year old identified himself -

23 MR. LOWE: Objection to - the question was only how did
24 he identify him, without getting into the
25 identity.

1 THE COURT: Overruled.

2 A The subject identified himself to me with his Virginia
3 Driver's license as Gerald Courtney Hester. And he told
4 me the other young boy was his son.

5 Q And did you look at his photograph on the operator's
6 license?

7 A Yes, sir, I did.

8 Q That corresponded to the person in front of you?

9 A Yes, sir, it did.

10 Q And during the course of that search warrant -- I'd like
11 to show you these two documents and tell the Court
12 whether or not these documents mean anything to you?

13 THE COURT: I don't think we're interested in what it
14 means to him. I think we're interested in
15 what documents he found.

16 Q Where did you find those two items?

17 A These two documents were on a desk in Mr. Hester's
18 bedroom, upstairs in the house.

19 MR. PARCELL: Judge, I'd like the white piece of paper
20 to be introduced as Comm. Exh. M.

21 MR. LOWE: I think this is going to be N. A lab
22 report was identified as M.

23 THE COURT: Okay, let's get them both identified. What
24 are we on, M?

25 MR. PARCELL: Yes, sir.

1 THE COURT: And N.
2 MR PARCELL: The yellow legal pad will be N, please.
3 MR. LOWE: Judge, so I can keep my notes straight, was
4 the chemistry report that we referred to
5 earlier not identified by any number yet?
6 I thought that was given M. That's why I
7 ask.
8 THE COURT: No, we never gave it a final number. That
9 was not ready to come in with the exact
10 witness who normally produces it. So we
11 are dealing now, and that other one will
12 become entirely something else when it comes
13 in. I don't believe in tentative identifi-
14 cation on the things, anyway. All right,
15 the white letter says the receipt is Comm.
16 Exh. M. The yellow sheet is Comm. Exh. N.
17 Now. Do you want these handed back to the
18 witness?
19 MR. PARCELL: Yes, sir.
20 Q Trooper Hold, who took those items out of the Hester
21 residence?
22 A I seized these out of there. These items.
23 Q Did they stay in your possession until you took them to
24 the state lab?
25 A Yes, sir, they did.

1 Q And at that time you turned them over to whom?

2 A Turned them over to Gordon Stanghor, a chemist at the lab.

3 Q And what day did you turn them over to him?

4 A I have those dates right here. February 22, 1982.

5 Q Did there come a point in time when you had occasion to
6 be in the company of Mr. Hester again and obtain some
7 other items from him?

8 A Yes, sir, I did.

9 THE COURT: Excuse me one minute. My standard procedure
10 is when you put an exhibit in, once it's
11 identified I want the jury to see it. There
12 isn't any use in throwing it in the waste
13 basket.

14 MR. PARCELL: Yes, sir.

15 THE COURT: Sheriff, hand - do you have anything else
16 you wish to ask about him?

17 MR. PARCELL: Not of those two pieces of paper, Judge.

18 THE COURT: Pass them down the line, sheriff. M & N?

19 MR. PARCELL: Yes, sir, both of them.

20 THE COURT: Pass it down, sheriff. All right, continue
21 with the questioning. The last I heard was
22 something about sometime later he was,
23 whether he did or did not see Hester, as to
24 the dates and whatever else.

25 Q I'd like to show you these items and tell the ladies and

1 gentlemen of the jury whether or not they in fact mean
2 anything to you.

3 A Yes, sir, they do.

4 Q What are those two pieces of yellow paper?

5 A These were pieces of paper I obtained from Gerald
6 Courtney Hester on Feb. 18, 1982, at Goochland Courthouse.
7 He conceded to give me a sample of his handwriting, to
8 be compared against the pieces of paper that was seized
9 from his residence on the 18th of January.

10 Q And how about the three pieces of white paper in front of
11 you, too?

12 A These were forms which aided the chemist to determine,
13 to compare the handwriting that was submitted. They
14 were just three sample forms I got him to fill out.

15 MR. PARCELL: Judge, I'd ask at this time that the two
16 yellow pieces of paper be Comm. Exh. No. O,
17 and the three pieces of white paper be P.

18 Q Trooper Hold, Comm. Exh. O and P, the two yellow pieces
19 of paper and the three white pieces of paper, once again
20 they were obtained from whom?

21 A Gerald Courtney Hester.

22 Q Is that the same person you executed a search warrant on
23 in Goochland County on Jan. 18, 1982?

24 A Yes, sir, it was.

25 Q And looking at Comm. Exh. No. K and L, have you ever seen

1 those two items before?

2 A Yes, sir, I have.

3 Q Who gave them to you?

4 A I saw them on the 17th of January on 64. Special Agent
5 Foster discovered these in a vehicle, I believe.

6 Q He gave these to Trooper Hudson, is that correct?

7 A I think so.

8 Q Trooper Hudson gave them to you?

9 A Yes, sir.

10 Q And you took them to the State Lab for testing?

11 A Yes, sir.

12 Q No further questions.

13 THE COURT: All right, cross examination?

14 MR. LOWE: Yes, sir.

15 CROSS EXAMINATION: Trooper Holt by Mr. Lowe

16 Q Trooper Holt, during this entire day, up until the time
17 that the vehicle was searched at First Division Head-
18 quarters, I gather that you at no time saw the suitcase
19 placed into the pickup truck or saw anybody carrying it
20 or putting it in the pickup truck, is that correct?

21 A That's correct.

22 Q I gather there were periods of time when you did not have
23 the pickup truck or the Pontiac within your sight. I
24 think you mentioned the Howard Johnson's as being one
25 place. Is that correct?

1 save a lot of time and I'm perfectly willing
2 to have him do it.

3 THE COURT:

4 What it amounts to, members of the jury,
5 is that when someone offers someone, an
6 expert here, you normally go through all the
7 qualifications to show the background first
8 and then the other side can stipulate it.
9 At the same time the person offering the
10 witness can have every right to show his
11 full qualifications if he wants to. So it's
12 optional with the attorney. Come forward,
13 please sir, I don't believe you were sworn,
14 have you?

15 (The witness was duly sworn)

16 Will you have a seat in that chair and watch
17 your step as you turn? Now, having been
18 seated you're not to talk with the lawyers
19 or me. You talk entirely to the jury. Face
20 them. Talk to the ladies and gentlemen
21 farthest away from you and talk loud enough,
22 please, so all of us can hear you.

23 DIRECT EXAMINATION: Gordon R. Stanghor by Mr. Reid

24 Q State your name, please.

25 A My name is Gordon R. Stanghor.

Q Where do you work, sir?

1 A I'm employed as an examiner of questioned documents at
2 the Bureau of Forensics Science, Division of Consolidated
3 Laboratory Services here in Richmond.

4 Q Is this the same place the last witness works?

5 A That is correct.

6 Q Now, your job is to examine documents and tell something
7 about the handwriting, among other things, is that
8 correct?

9 A To determine identify or non-identity of questioned and
10 specimen writings.

11 Q And how many years of experience have you had in this
12 regard, Mr. Stanghor?

13 A Approximately 36 years.

14 Q And in that time approximately how many separate examin-
15 ations have you made of questioned documents?

16 A It would be any number in the thousands.

17 Q And you've spent all of your working time nowadays
18 devoted to this examination, is that correct?

19 A This is my fulltime pursuit.

20 Q And you previously qualified as an expert in the
21 Commonwealth of Virginia in the Circuit Courts testifying
22 in this area?

23 A I have.

24 Q Okay. You've been doing that for approximately how many
25 years, sir?

1 A For five years with the Div. of Consolidated Laboratories.

2 Q Prior to that you qualified practically for the last 34
3 years as an expert, is that correct?

4 A Yes, sir, and I testified in Federal, State, and Military
5 Courts, involving questioned documents.

6 Q In this regard, Mr. Stanghor, did you have occasion to
7 receive, in this case sir, documents and items of
8 exhibits?

9 A I did.

10 Q Sheriff, if you'd be kind enough to hand the witness I
11 think it's M, as in mother, N, as in never, and K. Those
12 three, if you would, please. Mr. Stanghor, you have
13 M, N, and K in front of you, Exhibits M, N. and K. Can
14 you identify those?

15 A Yes, I can. These are exhibits which were brought to me
16 at the laboratory by Trooper Holt, with the Virginia
17 State Police.

18 Q Did he also provide you with samples of a known handwrit-
19 ing of a person called Gerald C. Hester?

20 A He did.

21 Q Okay, and sheriff, would you please hand those to the
22 witness? O and P are the two. Mr. Stanghor, those
23 documents, O and P, those are the handwritings of
24 Mr. Hester that you had occasion to examine?

25 A Yes, they are.

1 Q Okay. Now, Mr. Stanghor, the conclusion you came to is
2 that some of the writings on the questioned documents
3 were the writings of Mr. Hester, is that correct?

4 A That is correct.

5 MR. REID: May I approach the witness for a brief
6 second, Your Honor, and examine those
7 documents?

8 THE COURT: The Court doesn't normally. Hand them back
9 to the prosecutor, the Commonwealth's
10 Attorney.

11 Q Now, the top document, what letter does that have on it,
12 sir?

13 THE COURT: The exhibit number?

14 MR. REID: Exhibit number, yes sir.

15 A That is Comm. Exh. No. M.

16 Q And are parts of that in Gerald Hester's handwriting?

17 A Yes, it is, I determine that to be.

18 Q Now, Mr. Stanghor, would you be kind enough to circle
19 those parts of those writings that are in Mr. Hester's
20 handwriting?

21 Q I've got a red pen here, Mr. Stanghor, if you want this.

22 A I have a red pen. I am to mark directly on this exhibit?

23 Q Yes, if you would, please.

24 THE COURT: Did you ask him to circle or what do you
25 ask him to do with it?

1 Q Circle everything that's in Mr. Hester's handwriting,
2 please.

3 MR. REID: Judge, if the Court please, I'll display

4 this to the jury after he gets through

5 marking all three exhibits. In

6 THE COURT: Better start now and move it on down.

7 Members of the jury, you will get to see all

8 these in the jury room. Look over each

9 other's shoulders. Move along.

10 Q In terms of M, which I think you have in front of you

11 now, would you please do the same thing and circle

12 everything that's in Mr. Hester's handwriting.

13 THE COURT: Witness, are you again doing this with a red

14 pen?

15 A Yes, I am, Your Honor.

16 THE COURT: Thank you. You are now marking on

17 exhibit what?

18 A Exhibit No. N.

19 Q Exhibit K, which is in front of you, is all of that in

20 Mr. Hester's handwriting?

21 A Yes, it is, except for the No. 4 in the very upper right

22 corner, and some initials.

23 Q JRH, is that correct?

24 A Right.

25 Q Is it Mr., or Trooper J. R. Holt's initials?

1 A I believe they are, sir.

2 Q Would you write on that document the word "all", signi-
3 fying everything is, except for what you delineated for
4 us? Sheriff, would you be kind enough to hand that

5 exhibit to the jury? Can you identify this document,
6 Mr. Stanghor, sir?

7 MR. LOWE: No objection, Your Honor.

8 Q What is that exhibit?

9 A This is a copy of the report which I rendered, based
10 upon my examination of the exhibit which I have just
11 been shown.

12 Q And the conclusion of the report was what?

13 A The conclusion that I reached is that the writing which
14 I have circled in red on Exhibit M,N,K, is in the same
15 handwriting as that furnished to be as being the
16 specimens of Gerald Hester.

17 MR. REID: Judge, if the Court please, I think that's
18 Exhibit R.

19 MR. LOWE: No objection, Your Honor.

20 MR. REID: Sheriff, I don't have any further need for
21 Mr. Stanghor to see the two other exhibits
22 which I thought I would.

23 A This report describes several exhibits which I have
24 identified as Items 1A, 1B, and 1C. 1A is a white
25 envelope with a note beginning, "I have another."

1 The Exhibit 1B is described as a yellow ruled sheet with
2 figures. 1C is a white sheet containing figures.
3 Item 2 is a ruled yellow sheet containing figures.
4 Item 3 consists of two yellow ruled sheets and three
5 pages from a handwriting sample forms booklet containing
6 specimen writing of G. C. Hester. The results of my
7 examination read thus: "It was concluded from compari-
8 sons of the submitted writings of G. C. Hester. Writer
9 of the Item 3 specimens wrote the question writing on
10 Item 1A, the black figure writing to the right of both
11 columns of blue ink figures and also at the bottom of
12 Item 1B the black figure writing down the center of
13 Item 1C, and the writing on Item 2 excluding the number
14 4 and the initials in the upper right corner." The
15 evidence items were returned, and the question and
16 specimen writings were photographed.

17 Q You've marked in red those items you've described in
18 that report, is that correct? The items that are marked
19 in red that you've done today are the same items that are
20 described in terms of black and blue ink, things of that
21 nature.

22 A That's correct.

23 Q That's all I have, Your Honor.

24 MR. LOWE: May I just have one moment, Your Honor.

25 THE COURT: Thank you, sir. Cross examination?

1 a recess at this time.

2 (Court Recess)

3 All right, we've returned to the courtroom
4 from the (intel.) recess, and the Court
5 notes the presence of the Ass't. Comm.
6 Attorney, the defense attorney, and the
7 defendant. All right, gentlemen.

8 MR. LOWE:

9 Your Honor, we have one matter that we'd
10 asked about earlier and Your Honor
11 deferred a ruling, so we came to that
12 point in trial. I think we're at that
13 point now, and that was Mr. Reid had
14 objected to my putting on evidence that,
15 the number of years that Mr. Hewitt was
16 married and the number of children he had,
17 and so forth, and you said that you would
18 defer that until we got to that point.
19 We're at that point now, but I need to have
20 a ruling in order to put on that evidence
21 if I'm permitted to. Mr. Reid has advised
22 me that he continues to object, so I guess
23 I'll have to have him make his objection
24 to see if Your Honor will make a ruling
25 at this time so I'll know whether to put
it on or not.

1 MR. REID: Judge, I object. There's some law in Virginia
2 that indicates character is admissible on
3 behalf of the defendant, good or bad charac-
4 ter, but there's no law that I know of that
5 talks about marital status, family situations
6 being admissible. In addition, I've never
7 seen it done and there's no law that I can
8 think of that would allow it to be done.
9 Basically what you're doing is you're putting
10 that evidence in without the stigma they
11 may attach where Mr. Hewitt himself would take
12 the stand. We had taken the stand of course
13 that it would be admissible to place him
14 within the parameters of his family to
15 evaluate his testimony, see what kind of man
16 he is, whater the family situation tells you
17 about that, to evaluate his credibility as a
18 witness, but since he's not on the witness
19 stand, whether he's got one child or five,
20 been married once, or happily for ever and
21 ever, or has had a checkered marital history,
22 is of little particular significance. It's
23 not admissible.

24 MR. LOWE: It's relevant for two issues. Number one,
25 I think that the jury may weigh that in

1 deciding whether they would believe that
2 Mr. Hewitt would undertake something like this
3 or not, risk his family's welfare and so
4 forth, but secondly, if they convict him it
5 certainly is a relevant factor for them to
6 know about, that he's not just some drifter
7 that has no family, no ties, nothing like
8 that, to know that he's married and has five
9 children. That's not putting his character
10 in evidence. And I think I should be
11 permitted to put that evidence on, but I -
12 Your Honor will have to rule on it and -
13 THE COURT: Anything else, Mr. Reid?
14 MR. REID: No, sir, Judge, I just don't think it's
15 character, and Mr. Lowe seems to concede
16 that in his arguments.

16 THE COURT: What's that?
17 MR. REID: Mr. Lowe seems, I think I heard him say it's
18 not character, and I think that's the thrust
19 of my argument. I think he's limited to
20 the evidence of character and that's the law
21 (unintel.) as I understand it.

22 THE COURT: Well, I seem to recall an earlier argument or
23 statement made by Mr. Lowe to the effect that
24 a bifurcated trial was the only way to do
25 things and that would be the basis on which

1 you could put in nice things about a defendant
2 but you can't do now, and therefore you could
3 put in things about how many kids or grand-
4 children he had, and that sort of thing,
5 he's a great guy. And so I think the position
6 he's now taken is inconsistent with the prior
7 statement he made in connection with the
8 reason that he would favor a bifurcated trial,
9 so they could have both good and bad and that
10 the person's family and so forth could come
11 in. Now, the other thing is that - are
12 y'all listening?

13 MR. REID: Yes, sir, Judge.

14 MR. PARCELL: Yes, sir, Judge.

15 MR. REID: Didn't mean any disrespect.

16 THE COURT: You know I don't permit talking between the
17 attorneys without addressing them.

18 MR. REID: I'm sorry, Your Honor.

19 THE COURT: Now. The other thing is if you're getting it
20 in close enough to be character, something
21 can always come out in the process that will
22 be character, and of course you're going to
23 be able to put in his record, which we always
24 know about that the virtue of the examination
25 may during the course of the Motion to

1 Suppress where he took the stand and through
2 credibility he got in something about his
3 record. I forget what the details were, but
4 I'm not interested in that at this time.

5 Additionally, I've known lawyers in this area
6 to offer this at this time, I don't think it's
7 appropriate, I think it might come out on
8 presentence report if the jury finds a
9 conviction or something of that sort, and
10 then they want a presentence report, get into
11 the background of that, I think that's the
12 only time it could come in, so I'm not
13 allowing any evidence so far, purely on the
14 basis that "I've got a wife and kids."

15 MR. LOWE: I would except to your ruling, Your Honor,
16 we have no evidence to offer then. I would
17 make a motion to strike the Commonwealth's
18 evidence on the grounds that it has not
19 proven possession of marijuana with intent to
20 distribute the same. I would incorporate all
21 my previous arguments rather than reciting
22 them again here. I think Your Honor knows
23 what my arguments have been and I would
24 incorporate them. If you want me to restate
25 them I will, but I would just simply say for

1 all the reasons previously stated, particularly
2 on the identification of marijuana, I don't
3 believe that the Commonwealth has placed its
4 case in a position where it can sustain a
5 conviction.

6 THE COURT: Well, I find no basis at all for this motion,
7 nor the prior ones being referred to, and
8 therefore it's definitely overruled, in case
9 the case will go to the jury.

10 MR. LOWE: All right, sir. We rest our case without
11 presenting any evidence. I would renew the
12 motion and I presume you'd make the same
13 ruling and in light of that that's where I
14 guess we stand.

15 THE COURT: Have you all submitted all the instructions
16 you intend to?

17 MR. LOWE: Judge, I may have one or two more. If you
18 want I can pull them out at this point and go
19 through them, I think I may have one or two
20 that are variations because of the status of
21 the evidence at this point.

22 THE COURT: I simply want to know whether there will be
23 anymore or not.

24 MR. LOWE: But there are only one or two, Judge, and I
25 can pull them out right now. I didn't think