

we get into the details. Prior to coming here today, did you meet with Mr. Katzer and discuss your testimony ?

A Yes, I did.

Q All right. And on how many occasions did you do that?

A Two or three times.

Q And can you aggregate the amount of time you spent with him totally?

A Couple of hours maybe.

Q And when you met with him, did you read over your previous testimony that you gave in an evidentiary hearing we had here on December 30, 1981?

A No. We did not read over it.

Q Did you read over your report that you made on this evening?

A I have read it over; not at the time of the meetings, but I have read it over.

Q And in your discussions with Mr. Katzer, did you discuss that report at all?

A We touched on it.

Q O.K. And when you met with Mr. Katzer, did you meet alone or did you meet with anyone else?

A I met alone with Mr. Katzer.

Q Now, when was the last time that you met with Mr. Katzer?

A Just prior to this trial.

Q Does that mean today or yesterday?

A Today.

Q Yesterday?

A Today.

Q Today. Was that in his office?

A In one of the conference rooms.

Q O.K. And I take it at that time he indicated to you what he was going to ask you or the areas?

A The areas.

Q All right. Now, I want to call your attention to the time when the car, the Monarch Mercury was stopped. Do you remember approximately what time that was?

A That was at approximately 7:30.

Q And that was at the time when I think you said Officer DePaulo blocked the car.

A That's correct.

Q So it could not leave the parking lot.

A That's correct.

Q And when Officer DePaulo blocked the car, did he do it by having his car directly up in front, nose to nose or bumper to bumper?

A It was nose to nose but at a slight angle.

Q At a slight angle. And when Officer DePaulo blocked the Monarch, the Mercury from leaving the parking lot, was anybody in Officer DePaulo's car, that you could see?

A Not when I arrived, no.

Q All right. And at that same time I take it that Officer Igoe's car was also in the parking lot?

A Yes. He was next to mine.

Q Now, you indicated, I believe, that after the car was stopped Officer DePaulo exited his vehicle; is that correct?

A That's correct.

Q And went over to the Mercury Monarch.

A Yes.

Q With his gun drawn.

A When I arrived at the scene, his gun was drawn, yes.

Q O.K. And when you arrived at the scene, where was Officer DePaulo standing?

A He was standing towards the front of the Mercury with his weapon aimed toward the windshield.

Q And where was Officer Igoe, if you recall?

A When we both arrived, Officer Igoe was on the driver's side, as I stated before, perpendicular to the driver's door.

Q And where were you?

A I was on the passenger's side somewhat between the rear door and the front door.

Q So would you say that in essence, Officer DePaulo was in front, you were on the passenger's side and Officer Igoe was on the driver's side?

A In essence, yes.

Q And all three had guns drawn?

A Yes.

Q Now, I think you indicated that when you got up to that position on the driver's side, you were on the driver's side.

A Passenger's side.

Q You were on the passenger's side; that you saw that Mr. Spearman, his left hand was on the steering wheel; is that correct?

A I could just barely see it. It appeared to be on

the steering wheel.

Q All right. And that the right hand couldn't be seen by you; is that correct?

A I could not see his right hand on the steering wheel. I could see his right shoulder. I could not see his right hand.

Q And I think at that time, I think you indicated something about his right shoulder dipping two times.

A That is affirmative.

Q Is that your testimony?

A Yes.

Q All right. And when you saw that, you were on the passenger's side; is that correct?

A That's correct.

Q And there was nobody sitting on the passenger's side in the vehicle.

A No, there wasn't.

Q And I take it you looked in the vehicle when you saw this right shoulder dip; is that correct?

A Yes, I did. I was looking in the vehicle at all times.

Q O.K. And when you saw his right shoulder dip, did

you see his right hand?

A No, I could not.

Q O.K. Now then, you indicated that both DePaulo and Igoe asked Mr. Spearman to leave the vehicle.

A Yes.

Q And how many times did you hear them say that?

A I can't be certain; two or three times.

Q Did each man say it two or three times?

A I know Officer Igoe said it at least twice and Officer DePaulo, by the time we arrived, had said it already once when we arrived.

Q I take it your testimony then is that Mr. Spearman did not respond to that, to those orders to leave the vehicle.

A That is correct.

Q Did there come a time when he left the vehicle?

A I do not recall whether he voluntarily left the vehicle on his own or whether he was removed.

Q Now, you indicated, I believe, that you saw his right shoulder dip; is that correct?

A That's correct.

Q Now, you filled out a report of this whole incident, did you not?

A Yes, I did.

MR. KUNSTLER: And may I have this marked for identification, please?

(A report was marked Defendant Spearman's Exhibit A for identification.)

BY MR. KUNSTLER:

Q All right. And I am going to show you Defendant's A and I realize it's a photostatic copy, and ask you if that is the report that you filled out?

A Yes, it is.

Q And how long after the incident did you fill out that report?

A From the beginning of the incident or from after?

Q Well, from the time the vehicle was stopped.

A I can't say for certain; possibly an hour.

Q And did you do that in your own handwriting?

A Yes, I did.

Q And it's signed by you, isn't it?

A Yes, it is.

Q And Officer Lascoe, didn't you tell your superiors you saw Mr. Spearman put his hand under the front seat or under the seat of the vehicle?

MR. KATZER: Objection to the form.

THE COURT: No. Overruled.

THE WITNESS: Excuse me. If you give me a moment to find that section of the report --

BY MR. KUNSTLER:

Q Yes. It's on page 3.

A Page 3.

Q Toward the top.

A Page 3?

MR. KATZER: Judge, if he wants to introduce it, that's the proper form.

MR. KUNSTLER: Judge, that is an improper, unethical statement to make.

THE COURT: Gentlemen, please.

MR. KUNSTLER: It's a self-serving statement and he knows that.

THE COURT: Well, don't compound it by making some more.

MR. KUNSTLER: All right.

THE WITNESS: O.K. What I stated was not that I observed it underneath the seat or that it was observed, it come out from underneath the seat, but that it had been removed from underneath the seat. But this was based on not my personal

observation but on the statements of other people.

MR. KUNSTLER: Can you answer my question? May I have that stricken, Judge?

THE COURT: Yes.

BY MR. KUNSTLER:

Q Did you not report to your superiors an hour later that the subject began to reach under the front seat?

A I reported that he appeared to reach under the front seat. I was in no position to see whether -- from my position on the passenger's side I was in no position to see whether he was reaching under the front seat.

Q Officer Lascoe, you didn't say, "appeared to reach under the front seat," did you?

MR. KATZER: That is my objection. The report -- the proper form for this type of impeachment is the report.

THE COURT: Overruled. Cross-examination.

THE WITNESS: The only thing is that in the report, all right, Kosakowski assisted in the search of the vehicle and found a Smith and Wesson

.38 caliber, a five-shot handgun --

THE COURT: No, no. Please. Please.

Please confine yourself to the --

BY MR. KUNSTLER:

Q Yes. Did you not tell your superiors in words or substance that the subject Mr. Spearman reached, began to reach under the front seat? Did you say that or didn't you?

A I don't recall saying that to the -- to my superiors. It is in the report.

Q Did you put it in the report?

A It is in the report. Subject began to reach under the front seat.

Q O.K. That's an answer. Now, you didn't see him reach under any front seat, did you?

A No.

Q O.K. Now, in your report you did not indicate as you've testified here that there were several commands given to Mr. Spearman to leave the vehicle which he disobeyed or ignored, did you?

A No. I did not include that in the report.

Q O.K. In fact, didn't you say in your report that he was warned not to move?

A Initially he was warned not to move, yes.

Q O.K. And then didn't you report to your superiors in your report that he was then removed by officers from the vehicle, Albany Police Department officers?

A Yes. He was removed from the vehicle, yes.

Q First he was warned not to move and then they removed him, the Albany Police Department Officers Igoe and DePaulo. Isn't that what you reported an hour later?

A I reported that he was warned not to move and then he was later removed from the vehicle.

Q O.K. Now, before testifying here did you read your report over?

A No, I did not.

Q Were you relying on your memory?

A I have read it over in the past. I did not read it directly prior to the trial, no.

Q When is the last time before coming in here that you read your report?

A Could have been a week, two weeks ago. I'm not certain.

Q All right. Now, when he was removed from the vehicle, as I recall your testimony, he was then

placed in Officer Igoe's car; is that correct?

A No, in Officer DePaulo's car.

Q Officer DePaulo's car; that's a marked Albany Police Department vehicle.

A Yes, unit 15.

Q And was he handcuffed?

A Yes, he was.

Q And who handcuffed him?

A I believe it was --

Q If you remember.

A I believe it was Officer DePaulo who handcuffed him.

Q And were the handcuffs behind his back or in front?

A I believe they were behind his back.

Q And was he placed in the rear seat of the Albany Police Department vehicle?

A That's correct, rear seat, passenger's side.

Q All right. Now, you then indicated, as I recall, that there was approximately five minutes of elapsed time from that moment until a lieutenant arrived; is that correct?

A It was within five minutes that the lieutenant arrived.

Q All right. And there was no search of Mr. Spearman's vehicle, was there, during that five-minute period?

A No, not until the lieutenant arrived, no.

Q Are you sure that was five minutes?

A It was within five minutes.

Q And do you remember testifying in this very courtroom a month and a half ago?

A Yes, I do.

Q Do you remember being asked the question, and on page 25 of the testimony, Mr. Katzer,

"Q And after that, did you see any of the police officers searching the vehicle?

A A bit afterwards, yes.

Q How long after?

A One of the lieutenants showed up on the scene; oh, anywhere from ten or five to ten, fifteen minutes. I really couldn't say.

Q It could be anywhere from five to fifteen minutes.

A That's correct."

Do you remember giving those answers under oath in this very courtroom?

A Yes, I do.

Q And when you made those answers, were they correct?

A I was stating that I was not --

Q Were they correct?

MR. KATZER: Objection. He is answering the question.

THE COURT: Sustained.

THE WITNESS: I was explaining that --

THE COURT: Sustained. Please.

BY MR. KUNSTLER:

Q Were those answers correct?

MR. KATZER: Objection.

THE COURT: Sustained.

BY MR. KUNSTLER:

Q When you gave them? All right. Those answers that you just gave were under oath, weren't they?

A Yes, they were.

MR. KATZER: Objection.

THE COURT: Sustained.

BY MR. KUNSTLER:

Q Now, today you said it was no more than five minutes.

Is that your testimony?

A It was within five minutes that the lieutenant arrived.

Q And with reference to the lieutenant arriving, do you know what lieutenant that was?

A Lieutenant Kosakowski.

Q And when did the search of the vehicle begin with reference to the Lieutenant arriving?

A Within a few minutes possibly after he arrived. I really don't recall exactly when it began.

Q Do you know how many minutes after he arrived?

A No, I do not.

Q Now, up to that time that the Lieutenant arrived, had you seen any of the other officers, Officer Igoe, Officer DePaulo, search the vehicle?

A No, they did not.

Q Or enter the vehicle in any way?

A No.

Q So I take it the vehicle was not disturbed.

A No, it was not.

Q From the time you saw Mr. Spearman removed from it to the time that the Lieutenant arrived.

A That's correct.

Q Now, after the Lieutenant arrived, can you estimate how many minutes elapsed before the search began?

A As I stated just prior, within a couple minutes. I can't say for certain how long.

Q Well, when you say a couple of minutes, what do you mean by that?

A Anywhere from the time he arrived to maybe five minutes later.

Q And prior to the searching of the vehicle or the time it started, was there any conversation between Officer Igoe and DePaulo and the Lieutenant?

A And the Lieutenant?

Q Yes. Did they talk?

A I really don't recall. I wasn't in their company, the direct company of them at the time.

Q Where were you when the Lieutenant arrived?

A When the Lieutenant arrived, I was at the rear of the Mercury and I was conversing with some of my fellow officers.

Q With whom?

A With some of my fellow officers from my department.

Q All right. And so when the Lieutenant arrived, did he -- withdrawn. Did you see the Lieutenant arrive?

A I don't recall whether I saw him arrive. I know I saw him there.

Q All right. Well, there came a time that you saw the Lieutenant for the first time.

A That's correct.

Q Do you know the Lieutenant?

A I didn't know him until that point, no.

Q O.K. And when you first saw the Lieutenant that evening, was he in the company of Officers Igoe and DePaulo?

A When I saw him at that scene?

Q Yes.

A After he was called, I believe he was.

Q All right. And did you see their lips moving or anything that would indicate conversation was taking place?

A I really didn't notice.

Q They could have been talking or they could not have been as far as you were concerned.

A Yeah.

Q Now, then, you saw the Lieutenant search the car, didn't you?

A No. I did not see him search the car.

Q Didn't you see him search the car?

A No.

Q You didn't see the Lieutenant find a gun.

A No. I did not see him find it.

Q Did you put in your report that you saw the
Lieutenant --

MR. KATZER: Objection. Can we get
the report at least marked so we know what purpose
it is being used for?

MR. KUNSTLER: Judge, it is marked.

MR. KATZER: Is it being used to
refresh his recollection or to impeach?

MR. KUNSTLER: It is being used to
impeach, Judge.

MR. KATZER: Then the report speaks
for itself, Judge.

MR. KUNSTLER: Judge --

THE COURT: Continue. Stop it.

MR. KUNSTLER: All right.

Q Officer, when you filled out your report, isn't it
a fact that you stated that the Lieutenant assisted
in the search and found a weapon? Isn't that what
you said?

A This was my understanding.

Q This was your understanding. You were right there, weren't you?

A I was there but I was not observing the search.

Q You weren't observing the search.

A No, I was not.

Q So you told your superior that you saw something you didn't see. Is that what you are telling us?

MR. KATZER: Objection.

THE COURT: Yes. Sustained.

BY MR. KUNSTLER:

Q All right. Didn't you tell your superiors in your report that you saw the Lieutenant find a gun under the front seat?

A I would really have to review the report. I don't recall.

Q Read the report.

A Yes. I state that Lieutenant found it, found the weapon.

Q Where?

A Under the seat.

Q Under the front seat; isn't that correct?

A That's correct.

Q All right. Are you telling us now you didn't see that?

A No. I did not see it. It was not personal observation.

Q Not personal observation. If it wasn't personal observation, where did you get the information from?

A When the Lieutenant was searching the vehicle, when he came out of the vehicle, I was facing the opposite direction. He said look and I turned as he said that and he had a weapon in his hand and he stated, "Look what -- look what we found," or something to that extent.

Q Did he say anything about the front seat?

A No, but he had -- he was near the front door of the vehicle, coming out of the front door of the vehicle.

Q And did you then make an assumption in your report that it was found under the front seat?

A Based on what I asked some other officers, yes.

Q Other officers told you it was found under the front seat?

A They assumed that it was found under the front seat.

Q They assumed. Did they say to you we assume it was found under the front seat?

MR. KATZER: Objection.

THE COURT: Sustained.

BY MR. KUNSTLER:

Q All right. Now, you filled out these reports many times in the past, haven't you?

A Yes.

Q And how many times would you say prior to September 21, Nineteen Hundred and Eighty-one?

A I really couldn't put a number on them.

Q Hundreds?

A Maybe a hundred, may hundreds. I have no idea.

Q And you try to be accurate in these reports, do you not?

A Try to be, yes.

Q They are supposed to be a recordation of things you observe and see and do while you are police officers; isn't that correct?

A Yes.

Q And how many years were you a Campus police officer prior?

A Excuse me?

Q How many years were you a Campus police officer prior to September 21, Nineteen Hundred and Eighty-one?

A Approximately nine years.

Q And did you work? You had other police experience before that, didn't you?

A No, I did not.

Q O.K. So during that period of time, you understand the purpose of a report like this is to record accurately your activities.

A To the best of my recollection, yes.

Q To the best of your recollection. Now, when you first saw the weapon, it was in the Lieutenant's hand, was it not?

A That's correct.

Q O.K. And when you first saw the weapon, where was the Lieutenant with reference to the car? I'm talking about the Monarch now.

A He was standing outside the vehicle perpendicular, approximately perpendicular to the driver's door.

Q And he had the gun in his hand and he said something; is that correct?

A That's correct.

Q Do you recall the exact words?

A Not the exact words, no.

Q Well, can you recall what you recall it sounding like to you?

A Something to the effect of look what we found.

Q Look what we found.

A Something to that effect.

Q All right. Now, did you touch the gun itself?

A No, I did not.

Q Did you check whether it had bullets or not?

A No. No, I did not.

Q Now, in your report you referred to bullets, caliber, do you not?

A Yes, I do.

Q I take it that you received information from somebody that it was a .38 caliber five-shot handgun; is that correct?

MR. KATZER: Objection.

THE COURT: Overruled.

THE WITNESS: That is correct.

BY MR. KUNSTLER:

Q And who told you that?

A I believe it was either Officer Igoe or Officer

DePaulo who emptied the weapon.

Q When did they tell you that? How long after the Lieutenant had found the gun?

A In five minutes, maybe. I'm really not sure.

Q And did they also tell you anything about the type of bullets they were?

A Yes, they did.

Q What did they tell you?

A I stated in the report that they were hundred fifty-eight grain hollow-point.

Q And you didn't inspect the gun, the bullets or the gun yourself.

A No, I didn't.

Q You took their word for it.

A Yes, I did.

Q Now, when the Lieutenant had the gun in hand, did you see where Officer DePaulo was at that time, if you recall?

A I believe he was -- I don't know if he was still in the vehicle or not. I think he was on the passenger's side either inside or outside of the vehicle.

Q All right. And where was Officer Igoe?

A I don't recall.

Q Now, is it not a fact that you told your superiors in your report that the gun had been found under the front seat within reach of the subject, subject meaning Mr. Spearman; is that correct?

A I don't believe I said within reach but that he began to, subject began to reach.

Q Well, didn't you look in the middle of page 3? To refresh your recollection, as to what you --

A O.K. O.K. Yes.

Q Do you see that? Isn't it a fact that you told your superiors that the gun had been found under the front seat within reach of the subject?

A Yes. I did state that in the report.

Q Now, I take it you didn't see that.

A No, I did not.

Q So you got that from the Lieutenant perhaps.

A No. I got that from some of my fellow officers who had -- I don't know where they received the information from. They stated that it was found -- they believed it to have been found underneath the front seat.

Q And were those fellow officers present at the scene?

A They were present at the scene but not involved in the search.

Q Not involved in the search but in the vicinity of the search.

A In the vicinity.

Q And do you know where they were?

A They were with me at the rear of the vehicle.

Q And do you know what are the names of those officers?

A I really don't recall which officers it was. There was, I believe, only one that told me and I don't recall which one it was.

Q Well, do you recall their names at all?

A Well, there was Officer Kearn that was on duty, Officer Lasard was on duty and Lieutenant Polli was on duty. There may have been a few other officers there. I don't believe that there were. I think that was the extent of it.

Q All right. Then I take it your testimony is there were two or three or maybe more Campus police officers there in the vicinity of the vehicle while it was being searched.

A Yes.

Q It was from them you got the information that the gun had been found under the front seat.

A That's correct.

Q Of the vehicle. Now, did Mr. Spearman identify himself?

A No, he did not.

Q All right. And who told you that his name was John Spearman?

A It was after the fact, after the scene was cleared; to complete my report we contacted Albany Police Department to see if they had determined who the gentleman was.

Q Then you learned it was John Spearman.

A That is correct.

Q And how long after the incident did you discover his name was John Spearman?

A I really can't recall how long afterward.

Q Well, can you estimate?

A I believe we contacted the Albany Police Department at least twice. The first time they didn't have a name for us and second time they did; I believe maybe within an hour, two hours.

Q Give us a time period. Did you get the name after

you had completed your report?

A I believe it was towards the end of completing my report or maybe after. I'm not exactly sure.

Q You can take a look at your report.

A O.K. According to my report, he did have a canvas license on him, the name John Spearman. He did not identify himself verbally. I did get the name at the scene. I do recall now.

Q You got the name at the scene.

A Off the license but not from verbal from Mr. Spearman.

Q And isn't it a fact you got that name before the Lieutenant arrived?

A That I really don't recall.

Q Could have been, couldn't it?

A Could have been. I don't recall.

Q Now, did you yourself do any searching of the vehicle?

A No, I did not.

Q And did you see anything in the vehicle other than what you've described so far?

A I believe there was a, possibly a leather portfolio and a manila portfolio on one of the seats.

Q Did you look in that portfolio?

A Did I look in that portfolio?

Q Yes.

A No, I did not.

Q And did anyone look in the portfolio, to your knowledge?

A To my knowledge, yes.

Q Who did that?

A I really don't recall who it was that looked into it.

Q And you didn't learn at that time that there were papers in the portfolio relating to the rugby match?

A Yes, I did.

Q Now, at that time the rugby team, if you know, was staying at the Hyatt Thruway Motel; isn't that correct?

A That is correct.

Q And you knew that, didn't you?

A Yes, I did.

Q Did you know then when the rugby game was scheduled to be played?

A Yes, I believe it was the next day. I'm not sure

but I did know when it was scheduled to be played, yes.

Q Now, just a word or two more and I think I'm done. After the arrest of John Spearman and between then and now, have you had any discussions at all about this case with either Officers Igoe or DePaulo?

A Have we had discussions about it?

Q Yes.

A We have met. We haven't had any group discussion or organized discussions on it, no.

Q Well, I'm not talking about organized discussions. Did you discuss the case with them in some way after the incident?

A Briefly.

Q And how long after the incident?

A I really don't recall how long after. It wasn't immediately. I don't see Officers Igoe or DePaulo on a regular basis.

Q Estimate. I realize we are talking about four or five months back. Can you estimate how long afterwards?

A Couple months, maybe a month.

Q And at that time I take it you had a brief discussion