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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 730899

CONRAD PLUMMER and
GERTRUDE PLUMMER,
Plaintiffs in error

V.

COMMONWEALTH OF VIRGINIA,
Defendant in error

APPENDIX

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STATE OF VIRGINIA, CITY OF HAMPTON, TO-WIT:

IN THE CIRCUIT COURT OF THE SAID CITY:

The grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Hampton and now attending the said Court, at its June term, nine hundred and seventy-three, upon their oaths do present; That Conrad Plummer on the 11th day of January, in the year one thousand nine hundred and seventy-three, and on divers other days, in the said City, unlawfully and feloniously did set up, promote, operate or conduct a lottery, commonly known as the numbers game or numbers racket, in violation of Section 18.1-340 of the Code of Virginia of 1950, as amended, against the peace and dignity of the Commonwealth of Virginia. Upon the testimony of, Sgt. F. C. Godsey sworn in Court, and sent to the Grand Jury to give evidence.

STATE OF VIRGINIA, CITY OF HAMPTON, TO-WIT:

IN THE CIRCUIT COURT OF THE SAID CITY:

The grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Hampton and now attending the said Court, at its June term, nineteen hundred and seventy-three, upon their oaths do present; That Gertrude Plummer on the 11th day of January, in the year one thousand nine hundred and seventy-three, and on divers other days, in the said City, unlawfully and feloniously did set up, promote, operate or conduct a lottery, commonly known as the numbers game or numbers racket, in violation of Section 18.1-340 of the Code of Virginia of 1950, as amended, against the peace and dignity of the Commonwealth of Virginia. Upon the testimony of Sgt. F. C. Godsey sworn in Court, and sent to the Grand Jury to give evidence.

VIRGINIA

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

COMMONWEALTH OF VIRGINIA

v.

GERTRUDE PLUMMER

and

CONRAD PLUMMER

MOTION TO SUPPRESS AND FOR RETURN OF IMPROPERLY SEIZED ITEMS

TO THE HONORABLE JUDGE OF SAID COURT:

Now come the Defendants, Gertrude Plummer and Conrad Plummer, and represent unto the Court as follows:

1. On or about January 11, 1973 police officers for the City of Hampton obtained a search warrant and conducted a search of the home of the Defendants at 643 Hemlock Street in the City of Hampton.

2. Numerous items were seized at the time of said search, including the contents of a safe located in Defendants home.

3. The search warrant was obtained in order to search for number slips and any other lottery paraphernalia.

4. The search warrant was obtained pursuant to an affidavit which failed to set forth probable cause for the issuance of the search warrant.

5. Numerous personal items including $19,841.56 in cash were located in a safe far from any evidence of a lottery operation, and can in no way be tied to a lottery operation.

Wherefore, Defendants move that the search warrant be declared null and void in that it was issued without probable cause, and further that evidence pursuant to said void search warrant be suppressed. Further, Defendants move that items seized in the safe, far from any evidence of a lottery operation and bearing no relation to any evidence of lottery operation be returned.

GERTRUDE PLUMMER
and
CONRAD PLUMMER

By Counsel

/s/ Charles H. Gordon
Charles H. Gordon

1 this, which gave rise to the issuance
2 of the warrant in question, is
3 sufficient, and the motion to
4 suppress is denied. I presume you
5 wish an exception for both Defendants
6 to be noted.
7 MR. F. GORDON: Yes.
8 COURT: And it's done.
9 The other matter in the motion,
10 having to do with return of the
11 property, specifically, the funds
12 involved, I don't think it's possible
13 to rule on that at this time. We'll
14 have to wait until the evidence has
15 been adduced. I'll defer ruling on
16 that until a later time.
17 MR. F. GORDON: Judge, we
18 would ask, at this time, that we be
19 permitted to put that evidence on
20 in support of that -- in support of
21 that motion.
22 COURT: No sir, I will
23 defer that until the evidence in
24 case in chief is presented. If
25 you wish to present any after that,

1 I'm willing to hear it.
2 MR. F. GORDON: All right.
3 COURT: I think we'll --
4 I think we'll unnecessarily pre-
5 judice the presentation of the case
6 by the Defendants to -- to come in
7 here, at this time, even though I
8 understand the reason for it, so
9 we'll defer it.
10 MR. F. GORDON: Yes sir.
11 COURT: All right, gentle-
12 men, if you wish to present anything
13 by way of opening statement.
14 MR. ROBINS: No, your
15 Honor.
16 COURT: All right. I'll
17 ask you to call your first witness.
18 MR. ROBINS: Call Officer
19 Haynes.
20
21 - - -
22
23 SERGEANT E. D. HAYNES, called as a
24 witness by the Commonwealth, being duly sworn, testified
25 as follows:

1 and search warrant, at this time.
2 COURT: Any objection
3 to this, gentlemen, other than
4 the objections, of course, that
5 you raised in your motion to
6 suppress? I don't ask you to
7 abandon those.
8 MR. C. GORDON: No, I
9 don't want to take the Court's
10 time, at this time.
11 COURT: All right,
12 Commonwealth's Exhibit One ad-
13 mitted in evidence, subject to
14 those exceptions.
15 (At this time,
16 the affidavit and
17 search warrant were
18 received and marked
19 Commonwealth's Exhibit
20 Number One.)
21 BY MR. ROBINS:
22 Q What did you do after you observed the
23 search warrant?
24 A The search warrant was obtained
25 approximately 9:45, January 11, 1973. For fear of being

1 recognized, myself, I asked Officer Morgan and Officer
2 Bergstrom to approach the door with the search warrant, and
3 try to gain entrance.
4 Shortly after observing them enter
5 the house, I, myself, back in a car, along with Sergeant
6 Godsey, and along with ABC Investigator Boyd. I proceeded
7 to the house, I went in. As I got in the house, Mr. Plummer
8 was seated, holding a copy of the search warrant, his copy.
9 I identified myself, and I proceeded to the back of the
10 house, where I immediately saw Mrs. Plummer in the back bed-
11 room, between the bed and the wall.
12 Q The Mr. Plummer you referred to, is
13 he here this morning?
14 A Yes, the gentleman sitting behind
15 the attorney with the glasses on, with suspenders.
16 COURT: The witness
17 pointed to the Defendant, Conrad
18 Plummer.
19 BY MR. ROBINS:
20 Q Mrs. Plummer, is she here this
21 morning?
22 A Yes, the lady sitting at the end of
23 the table.
24 COURT: The witness
25 also pointed to Mrs. Plummer,

1 the Defendant.

2 A I went to the bedroom, and I observed

3 Mrs. Plummer between the bed and the wall. I identified

4 myself, and asked her to come to the living room. I told

5 her we had a search warrant for the house, for a lottery,

6 and I went back to the bedroom, to begin a search.

7 The first area I searched was on top

8 of the dresser in the same bedroom that I originally found

9 Mrs. Plummer. On the dresser, I found this slip of paper

10 that had been marked up, but -- you could read it. I

11 labeled it, and placed the card here, in here, with the time

12 I found it, the date, the address and where I found it.

13 This is the paper I'm referring to, here (indicating).

14 This, to me, is a lottery slip, a bet

15 placed by some unknown person, to me, identified on this

16 slip as X-B one. There are several bets on here, there's a

17 bet for 609 for sixteen cents. 609 being a whole number

18 bet for sixteen cents, and -- just to the right of it, 609

19 again, for thirty-three cents, and there's no date on here,

20 but several other numbers in here, but these are the two

21 readily ones I can read at the top of the page, 609 for

22 sixteen cents, and 609 for thirty-three cents.

23 BY MR. ROBINS:

24 Q What, in your opinion, is this?

25 A That is a number bet. That is a bet.

1 MR. ROBINS: Judge, I
2 move admission of this item at
3 this time.
4 COURT: Counsel seen
5 this?
6 MR. C. GORDON: Yes sir,
7 we have seen it.
8 MR. ROBINS: They have
9 examined it.
10 COURT: Any objection?
11 MR. C. GORDON: No.
12 COURT: All right, Common-
13 wealth's Exhibit Number Two, ad-
14 mitted in evidence.
15 (At this time,
16 the slip of paper was
17 received and marked
18 Commonwealth's Exhibit
19 Number Two.)
20 A I then began a search of the area
21 between the bed and wall, where I found Mrs. Plummer, and
22 immediately under the bed, the same side of the bed, I found
23 this all purpose salesbook. The all purpose salesbook
24 contains several numbers written by some person, and at the
25 top of each page, there is a code, identifying the person

1 placing the bet, or the writer for this particular number.
2 And along with it, I found a speedwriter's, stenographer's
3 notebook. Upon examining the notebook, it was open to this
4 page here (indicating). I marked it, the book open to this
5 page, and in checking this book, I went back and checked
6 this book, and there is a page folded in here, the
7 abbreviation for the day and month, Thursday, in here.
8 Upon checking the figures on here,
9 for Thursday, the same figures are recorded in the book.
10 And at the top of the book, the same figures appear. Of
11 course, in the book, you have a code. LX five, what it
12 looks like to me. And it has the place, bets placed here,
13 for total of twenty dollars, sixty-six cents.
14 Now, in checking this with the book,
15 we have the same figure here, twenty dollars, sixty-six
16 cents. And then, in the next column, we have fifteen dollars,
17 fifty cents.
18 In the operation of a lottery, it is
19 common for the writer to get one-fourth of what he takes for
20 the day. One-fourth from the top, meaning the total figure.
21 This shows the difference, the one-fourth, all the way along,
22 shows the minus the one-fourth, shows the figure after the
23 one-fourth is taken off the top. What I am saying, this is
24 what this particular person gets for turning this number
25 bet in for twenty dollars, sixty-six cents. He gets one-

1 fourth of it, which means he owes her or him, or whatever,
2 fifteen dollars, fifty cents. Minus the one-fourth.
3 This went on back, and I further
4 searched in the closet, I found a coat hanging, with four
5 of these books, and it just went on back for a period of
6 sixteen days in the same thing, goes on for a period of
7 sixteen days. There's no date indication, as to calendar
8 date, on the books, anywhere. Except for the month -- the
9 day at the top of the page, of each page.
10 The date we went to the house was on
11 a Thursday, the book, at the time we entered the house, was
12 open to Thursday. This book also is opened to Thursday,
13 along with this pen and scratch pad, and these were found in
14 the bedroom, where I originally found Mrs. Plummer, under the
15 bed, just under the edge of the bed.
16 I might also, at the same time, when
17 I got into the bedroom, the telephone receiver was laying on
18 the bed. I checked it. Nobody was on it. So I hung it up.
19 MR. C. GORDON: No
20 objection.
21 MR. ROBINS: I offer
22 these into evidence at this
23 time, your Honor.
24 COURT: All right,
25 gentlemen, any objection to

these items?

MR. F. GORDON: No sir.

COURT: All right.

MR. C. GORDON: No sir.

COURT: All right, the receipt book, marked Wednesday, Thursday, I'll mark Commonwealth's Exhibit Number Three.

The stenographic notebook, marked as to what page was open, under Mr. Haynes's testimony, Commonwealth's Exhibit Number Four, and the four receipt books held together with a rubber band, he said he found in a closet --

A No sir, in the coat pocket, hanging in the hallway.

COURT: Coat pocket, all right. Commonwealth's Exhibit Five.

(At this time, the receipt book marked Thursday was received and marked Commonwealth's Exhibit Number Three.)

(The stenographic notebook was received and marked Commonwealth's Exhibit Number Four.)

(The four receipt books were received and marked Commonwealth's Exhibit Number Five.)

COURT: Where did you say you found these?

A In the coat pocket, the coat was hanging in the hall.

COURT: Not in the closet. In the hall.

A No, just in the hall. There's a coat rack in the hall.

COURT: All right, there being no objection, these items are admitted in evidence.

A Upon finding these items, I went back to the living room, read Mr. and Mrs. Plummer their rights. Mrs. Plummer stated she understood.

BY MR. ROBINS:

Q In what manner did you advise them of their rights?

A I read them from the card we carry. It states, "It is my duty to inform you, before being questioned, that you have the right to remain silent and not say anything, unless you choose to do so. That anything you do say may be used against you in a court of law, and that you have the right to talk with a lawyer, before you say anything, and that he can be present during any questioning. And further, if you cannot afford a lawyer, a court will appoint one for you, to talk with you before, and be present during any questioning. If you understand all of these rights, but still wish to, and hereby agree to give and do give any statements, they will be of your own free will, without having been promised any benefits, rewards, immunity for making the following statements."

I asked if they understood; Mrs. Plummer stated she did, and Mr. Plummer indicated he -- he couldn't hear me. So I read it again to him, in a louder tone, and then I gave him the card, himself, to read, and he later -- stated that he understood.

I then asked who the coat belonged to. Mrs. Plummer stated it was her coat.

Q What coat was that?

A This is the coat I'm speaking of, the one that had the -- the sales tickets in it.

Q Where was this coat found?

A Hanging in the hallway. Hallway leading from the dining room into the bedrooms, the bathroom.

Q When you examined the coat, what did you find?

A The four salesbooks were just stuck down in the pocket (indicating).

Q Mrs. Plummer identified this as being her coat?

A Yes, she did.

Q What did you do after talking to Mr. and Mrs. Plummer, Sergeant?

A After she identified it as being her coat, I -- I went back to continue the search. I started, this time, in the dining room, and down there on the dining room table, was a woman's purse, and inside the purse, there was another purse, woman's purse, I guess you call it. In searching this purse, I found this one piece of paper. It had the code that appears in those books, LXD, sixty dollars, and right under it, it's got nine eighty-four and -- I seized this also.

Q Where was that found?

A This was found in the purse. Excuse me. The reason I took that, I can't make anything out of the figures, but the fact that the code that I seen on other pieces of paper appeared on this slip also.

1 MR. C. GORDON: No
2 objection.
3 A Inside the other purse I spoke of as
4 being into this purse, I found two hundred sixty-three dollars,
5 sixty-six cents. I then asked Mrs. Plummer who the purse
6 belonged to, she stated she was keeping it for a friend. I
7 asked her the name of the friend, and I don't recall what
8 she said to me, but I did not get the name of the friend.
9 Upon searching the purse further, I
10 found the lady's wallet. They contained Mrs. Plummer's
11 social security card and -- that was about all I found in
12 the purse. Some change that we later seized, along with the
13 two hundred sixty-three dollars, sixty-six cents.
14 BY MR. ROBINS:
15 Q What did you do with the money you
16 found in the purse?
17 A I seized that money, along with the
18 other property I found in the house. I counted it, and I
19 believe Mrs. Plummer was given a receipt for the two hundred
20 sixty-three dollars, sixty-six cents. And I began to search
21 some more.
22 I went back to the bedroom, where I
23 originally found Mrs. Plummer, and there, in the closet,
24 there was a safe, approximately three feet high. I asked
25 Mr. Plummer if he would open the safe for us. He informed

1 me he had not been in the safe in some twelve years. But he
2 would try. Immediately, he got down on the floor next to the
3 safe, apparently, he tried, and he began to have some medical
4 problem, and I asked him if he wanted us to call an ambulance
5 for him, or if we could do something. And he stated he would
6 be all right. He just wanted to lay down for a few minutes,
7 so I helped him take his pants off, and he climbed into bed,
8 and I asked Mrs. Plummer if she knew the combination, if she
9 would open the safe. She stated she did not know, but if she
10 would know, she would open it. The safe hadn't been opened
11 in some years.
12 After about an hour trying to get
13 somebody to open the safe, I informed Mr. Plummer and Mrs.
14 Plummer that I was going to load the safe up and take it to
15 police headquarters. We loaded the safe into the paddy
16 wagon and brought it to police headquarters.
17 When I got it to the police station,
18 this is the -- the way the safe looked (indicating). I then
19 got a -- a drill, forced it open, and this is what it looked
20 after I drilled the holes in it (indicating). Immediately
21 upon opening the safe, this is the first picture you see
22 (indicating). This portion here, which contains personal
23 papers, title to a '69 Cadillac, property deeds, tax receipts,
24 and so forth. And this is what's here, once you open the
25 safe (indicating). After removing the notebook, or the

1 papers, this is the first thing you see (indicating), after
2 you remove the notebook.
3 COURT: What is being
4 conducted, I don't see how any-
5 body reading this record will be
6 able to tell what you're talking
7 about. Nothing has been marked
8 for identification.
9 MR. ROBINS: I intend to
10 introduce the photographs at one
11 time.
12 COURT: You'll have to go
13 through it and have him identify
14 it all again, aren't you?
15 MR. ROBINS: Yes, your
16 Honor.
17 COURT: Why don't we do it
18 one time instead of twice.
19 MR. ROBINS: All right,
20 sir.
21 COURT: Perhaps you can
22 arrange them in order from the
23 way he's testifying, and keep them
24 that way, and then we'll know what
25 they are.

1 MR. C. GORDON: We have
2 no objection. As long as you're
3 satisfied, we're satisfied.
4 COURT: The Sergeant
5 started off with a picture of
6 the way the safe looked when he
7 got there, and a picture of the
8 way the safe looked when he
9 opened it.
10 A That's the first picture, the safe in
11 its original form.
12 COURT: Where is the
13 one -- just stand there for a
14 minute, if you will.
15 A This is a picture after the safe has
16 been forced open.
17 COURT: Did you put that
18 under the first one, or on top of
19 it? Put it under it. The first
20 one is on top, and the second one
21 is under it.
22 A Three drill holes here (indicating).
23 MR. ROBINS: All right,
24 sir.
25 COURT: What's the next

1 picture?
2 A The next one shows the safe, the in-
3 side of the safe, after first opening the door, the way it
4 appears.
5 COURT: That would
6 be the third photograph.
7 A Then, I removed the notebook, just
8 at the bottom of the picture, after the safe was open, here,
9 and this is what you see (indicating).
10 COURT: All right,
11 that's the fourth one.
12 A This is just a repeat of one of the
13 others. I think that's the sequence there.
14 COURT: Let me have
15 those, Mr. Robins.
16 MR. C. GORDON: No
17 objection.
18 MR. ROBINS: I offer
19 these into evidence at this
20 time.
21 COURT: There being
22 no objection, I mark these
23 Number Seven, and I'll staple
24 them together in the order in
25 which they were described by the

1 Sergeant.
2 MR. ROBINS: Judge, I
3 would also like to offer, at
4 this time, the slip that Sergeant
5 Haynes testified he found in the
6 purse.
7 COURT: Any objection
8 to this, gentlemen?
9 MR. C. GORDON: No
10 objection.
11 COURT: Commonwealth's
12 Exhibit Number Six, admitted in
13 evidence.
14 (At this time,
15 the slip of paper was
16 received and marked
17 Commonwealth's Exhibit
18 Number Six.)
19 (The photographs
20 were received and marked
21 Commonwealth's Exhibit
22 Number Seven.)
23 BY MR. ROBINS:
24 Q All right, Sergeant, after you tried
25 to get the two Defendants to open the safe, what did you do

1 then?

2 A I informed them I was going to bring

3 it to police headquarters, and I would have to force it

4 open, and that's what I did.

5 Q Did you immediately do that?

6 A We brought it to police headquarters

7 and forced it open. The pictures were taken by Officer

8 Guillotte, under my direction, and after counting the contents

9 in the safe, the safe contained nineteen thousand, eight

10 hundred forty-one dollars, sixty-six cents.

11 Q Of what denominations were those?

12 A Ones, fives, twenties.

13 Q Do you have those --

14 A Pardon?

15 Q Do you have that this morning?

16 A Yes sir, here's the money (indicating),

17 and the purse that was inside here, with its two hundred

18 sixty-three dollars, sixty-six cents. This is the money

19 (indicating).

20 Q All right, I show you this, and ask

21 you to identify that.

22 A Yes, that's the purse that was inside

23 here (indicating), and it contains two hundred sixty-three

24 dollars, sixty-six cents. And two bags.

25 MR. ROBINS: I'd offer,

at this time, this purse and the contents therein.

COURT: Now, is this purse the one that had the two hundred sixty-three dollars, sixty-six cents?

A Yes sir.

COURT: Counsel want me to count this?

MR. C. GORDON: No sir.

COURT: All right. Exhibit Number Eight, being purse, reddish or some maroon leather purse, containing two hundred sixty-three dollars, sixty-six cents, according to the Officer. The Court is not going to count it.

(At this time, the purse was received and marked Commonwealth's Exhibit Number Eight.)

A The money was binded up like it is now. The only difference is, if you'll notice on the band around the money, there will be some initials and maybe the amount marked on there, because some of the bands did not

1 correspond with the amount of money in them, and the initials
2 will either be Mrs. Landrum or Mrs. Nicholson, the two clerks
3 in the police department that helped me in the count.
4 BY MR. ROBINS:
5 Q Are these the —
6 A That's Ann Landrum (indicating).
7 Q How much money did you say this was?
8 A In the safe was nineteen thousand,
9 eight hundred forty-one dollars, sixty-six cents, and the
10 purse was two hundred sixty-three dollars, sixty-six cents,
11 a total of nineteen thousand, five hundred seventy-eight
12 dollars, rough total.
13 COURT: Say that again.
14 How much was in the safe?
15 A The safe contained nineteen thousand,
16 eight hundred forty-one dollars, sixty-six cents. And the
17 purse contained two hundred sixty-three dollars, sixty-six
18 cents.
19 COURT: Now, the total.
20 A That was in my head. Apparently, I
21 wasn't too good.
22 MR. ROBINS: Judge, I
23 offer — these two bags in evidence
24 at this time. Anticipating an
25 objection of Counsel to that.

1 COURT: I understand
2 that these two bags, then, accord-
3 ing to your testimony, Sergeant,
4 contained nineteen thousand, eight
5 hundred forty-one dollars, sixty-
6 six cents.
7 A That's correct.
8 COURT: And again, gentlemen,
9 did you want the Court to count this?
10 MR. C. GORDON: No sir.
11 COURT: All right, is
12 there objection -- I'm going to
13 mark these two bags. I don't
14 know -- has got what in it. I'm
15 going to mark these two bags as
16 Commonwealth's Exhibits Nine and
17 Ten.
18 MR. F. GORDON: Judge,
19 those bags are, in particular,
20 are the subjects of our pre-trial
21 motion, so subject to those
22 objections.
23 COURT: Yes sir. I don't
24 expect you to abandon the grounds
25 of the motion to suppress, but --

other than that, is there any objection?

MR. F. GORDON: No sir.

COURT: All right, Commonwealth's Exhibits Number Nine and Ten are admitted in evidence.

(At this time, the bags containing money were received and marked Commonwealth's Exhibit Numbers Nine and Ten.)

BY MR. ROBINS:

Q Sergeant, what else did you find in the safe?

A There was a metal box in the safe, that contained some old silver, silver dollars, and one paper fifty dollar bill, oversized bill. I seized that along with it. This was in the safe along with that amount. If I am not mistaken, the picture shows this can sitting in the safe, in the upper left.

(At this time, the metal box was exhibited to Mr.

Charles Gordon.)

MR. C. GORDON: No objection.

MR. ROBINS: I offer this in evidence at this time, your Honor.

COURT: I think he said no objection, Mr. Gordon?

MR. C. GORDON: Right.

COURT: All right, we'll mark this metal box --

MR. ROBINS: All right, Sergeant.

COURT: As Commonwealth's Exhibit Eleven.

A I placed those envelopes in there, your Honor, labels.

COURT: All right, sir, as noted in the envelope, the box is a tin box,contains eight silver dollars, one ten dollar gold piece, and one old style fifty dollar Federal Reserve note.

All right, sir. This will be Commonwealth's Exhibit

1 Number Eleven. I understand
2 there's no objection to this.
3 MR. C. GORDON: No
4 objection.
5 COURT: All right.
6 (At this time,
7 the metal box and its
8 contents were received
9 and marked Commonwealth's
10 Exhibit Number Eleven.)
11 BY MR. ROBINS:
12 Q Officer, I show you these —
13 MR. C. GORDON: What
14 date is that fifty dollar bill,
15 Judge?
16 MR. ROBINS: If you can
17 identify that.
18 COURT: 1914.
19 MR. C. GORDON: Thank
20 you. And the ten dollar gold
21 piece?
22 COURT: 1881.
23 MR. C. GORDON: Eighteen
24 what?
25 COURT: 1881.

1 MR. C. GORDON: Thank
2 you, sir.
3 A I found these papers --
4 COURT: That was being
5 in this particular lottery, if
6 indeed, it was a lottery, must go
7 back some time.
8 MR. C. GORDON: I don't
9 believe they had lotteries then.
10 BY MR. ROBINS:
11 Q What are those papers?
12 A This is a title here, to a Cadillac
13 coupe, 1969. I believe it is stamped October 3rd, 1968.
14 I found this interesting, in the fact nobody had been in the
15 safe for twelve years. There are some other deeds and papers
16 and property (indicating), insurance policies and so forth.
17 MR. C. GORDON: No
18 objection.
19 MR. ROBINS: I offer
20 these into evidence at this time.
21 COURT: You said no
22 objection, Mr. Gordon?
23 MR. C. GORDON: No
24 objection.
25 COURT: All right, then

1 this -- the notebook or file, I'll
2 mark Commonwealth's Exhibit Number
3 Twelve, and so admit it in evidence.
4 (At this time,
5 the file was received
6 and marked Commonwealth's
7 Exhibit Number Twelve.)
8 BY MR. ROBINS:
9 Q All right, Sergeant, what, if anything,
10 else did you find?
11 A The back bedroom, while waiting on the
12 wagon to pick up the safe, I found this in the chest of
13 drawers. It's two dream books, and they're basically
14 apparatus or paraphernalia for lottery, and basically what
15 you do, if you have a dream, you supposedly look it up in
16 this book, and it gives you some hint as to what number would
17 be a lucky number for that particular day. I seized them
18 along with the telephone directory and the ledger, ledger
19 book.
20 MR. C. GORDON: No
21 objection.
22 MR. ROBINS: I move
23 to admit these items into evi-
24 dence at this time, your Honor.
25 COURT: All right.

1 No objection to this, gentlemen?
2 MR. C. GORDON: No sir,
3 no objection.
4 COURT: I'll put the
5 books in the glassine envelope
6 and mark the whole thing Common-
7 wealth's Exhibit Number Thirteen.
8 (At this time,
9 the glassine envelope
10 and contents were
11 received and marked
12 Commonwealth's Exhibit
13 Number Thirteen.)
14 MR. ROBINS: Also, at this
15 time, your Honor, I move the ad-
16 mission of this purse and the
17 enclosed wallet, and I believe,
18 also, it contains a roll of five
19 dollars worth of dimes.
20 MR. C. GORDON: No
21 objection.
22 COURT: This purse, then,
23 there being no objection, will be
24 Commonwealth's Exhibit Number
25 Fourteen. This larger brown purse

1 containing, as indicated by the
2 Commonwealth's Attorney, what
3 appears to be a five dollar roll
4 of dimes. I'll not open that.
5 And a plastic billfold containing
6 a social security account card,
7 231-286-172, under the name of
8 Gertrude Plummer, business card
9 of George F. Dodson, D-O-D-S-O-N,
10 Special Representative for
11 Tidewater Automobile Association,
12 Automotive Association. That
13 seems to be all that's in it.
14 All right, the Commonwealth
15 Exhibit Fourteen.
16 (At this time,
17 the purse and contents
18 were received and marked
19 Commonwealth's Exhibit
20 Number Fourteen.)
21 MR. C. GORDON: Can we see
22 the purse? We'll give it right back.
23 We won't hold the Court up.
24 BY MR. ROBINS:
25 Q Sergeant Haynes, where was the safe

located?

A In the back bedroom, in the closet, up under a scarf. It had a cover over the top of it.

Q Which closet was this, sir?

A It's in the back bedroom. The same room I found Mrs. Plummer in, when I originally went in the house, the bedroom.

Q Is this the same closet that the -- I withdraw the question. What, if anything, else did you find in that closet?

A That was all I seized in the closet. There was clothing. I didn't seize any clothing or anything.

Q And other than identifying the coat and the purse, did either Mrs. Plummer or Mr. Plummer make any other statement to you?

A No, no.

MR. ROBINS: Answer Mr. Gordon's questions, please.

MR. F. GORDON: Judge, I might note there are some items in that purse that has been introduced into evidence, that I think perhaps the Officer did not see. There's some credit cards down in the bottom, and perhaps, with the

notations I don't think I'm going to read. All right.

MR. F. GORDON: Judge, at the proper time, perhaps, with the Commonwealth's indulgence, we might be able to receive those.

COURT: I assume there's no objection, we can take it up when we get to it. That's one reason I read those numbers in the record. I didn't see any particular reason to keep them.

MR. F. GORDON: All right.

CROSS EXAMINATION

BY MR. F. GORDON:

Q Sergeant Haynes, with respect to the safe you described, when you opened it, did those pictures reflect the order it was in when you opened the safe?

A Yes.

Q There were no extraneous papers or other matters that were lying around, littering the safe?

A No, it was not.

Q The money was in bundles --

1 A Yes.
2 Q You described. Did the bands that
3 are on the money in the sacks, today, were they around the
4 money at the time you got it?
5 A Yes.
6 Q And was the -- what we call, "little
7 notebook" --
8 A With the papers in it.
9 Q With the papers in it.
10 A Yes.
11 Q And that was lying neatly in front of
12 the money?
13 A Yes.
14 Q And there were no slips, with any such
15 as you described as being related to the numbers or the
16 lottery that you described earlier, in that safe, any of
17 these little extraneous pieces of paper lying around?
18 A Not in the safe, no.
19 Q There were -- there was nothing else
20 that you found in the safe, besides what you have introduced
21 here and described to the Court?
22 A That's correct.
23 Q Introduced into evidence. In going
24 over the items that you found in the house, with respect to
25 items that you described as Thursday slips, and that kind of

1 thing, they all appeared to be in the same handwriting,
2 didn't they?
3 A They did.
4 Q And there were no other statements
5 made by Mr. and Mrs. Plummer, besides the one that you have
6 described today?
7 A Just the ones that I related today.
8 MR. F. GORDON: I have
9 no other questions of this witness.
10 COURT: Mr. Robins?
11 MR. ROBINS: I have no
12 further questions of this witness,
13 Judge.
14 COURT: May Sergeant Haynes
15 be excused, or do you want him to
16 return to the witness room?
17 MR. F. GORDON: We have
18 no objection -- he can --
19 MR. C. GORDON: He can
20 go about his duty.
21 MR. ROBINS: I have no
22 objection to his being excused,
23 sir.
24 COURT: All right.
25 MR. ROBINS: Call Officer

1 to say in response to that. I
2 feel our motion is well taken.
3 COURT: You attempt to
4 put Mr. Plummer sort of in the
5 position of Mr. Charles Dickens
6 and Mr. Bumple. The law,
7 supposing the wife operates at the
8 instruction of the husband. I
9 guess we don't use that rule any-
10 more.
11 No, gentlemen, I think
12 there's sufficient evidence here,
13 at this point, I'll have to deny
14 your motion and note your exception
15 on behalf of Mr. Plummer.
16 All right, the Commonwealth
17 has rested.
18 MR. F. GORDON: Judge, in
19 addition to the motion with respect
20 to Mr. Plummer, we would, at this
21 point, renew, and on the basis of
22 the evidence before the Court, ask
23 that the Court find there is now
24 sufficient evidence to ground our
25 motion with respect to all the

1 items in the safe. I think it's
2 plain that, from all the evidence,
3 that there would be nothing to tie
4 any of that in with any lottery
5 operation.
6 If the Court could, were
7 to be inclined to find that the
8 fact there was a great deal of money
9 present, would in some way tie it
10 in, I think the condition of it,
11 the fact it was neatly bundled as
12 opposed to being thrown in, as to
13 be readily available for distribution,
14 would negate any inference that
15 could be -- could be given the fact
16 that this might be tied in, in any
17 way. I think all the evidence
18 pointed to the fact that this was
19 personal money, in no way related
20 to any operation that may have been
21 present.
22 And, I think, at this point,
23 that our motion should be considered
24 and should be granted at this time.
25 With respect to that as well.

1 Incidentally, I would throw in at
2 this point, that the money found
3 in the purse be returned as im-
4 properly seized, on the basis of
5 the Quidley case, at 59 South-
6 east 2nd, 52, where there, too,
7 someone was involved in an operation,
8 was apprehended, and there was no
9 evidence as to the nature of the
10 money, so the Court could find there
11 was some way to tie it into the
12 operation. The Court found there
13 wasn't sufficient evidence to allow
14 the money to be seized. The Court
15 of Appeals granted the motion that
16 money found in the -- found on a
17 person, be struck in that case.
18 And, on that basis, we
19 would also ask that the money in
20 the purse be returned.
21 COURT: Well, now, let me
22 ask you, Mr. Gordon, was the -- the
23 purse in which the two hundred sixty-
24 three dollars, sixty-six cents was,
25 what you're talking about?

1 MR. F. GORDON: Yes
2 sir.
3 COURT: Was that purse
4 not the one in which this slip
5 marked Commonwealth's Exhibit
6 Number Six was found?
7 MR. F. GORDON: I don't
8 recall precisely where -- I think
9 the money was in a smaller coin
10 purse, within a larger purse.
11 COURT: Yes.
12 MR. F. GORDON: I don't
13 recall the precise logistics of
14 the discovery of that particular
15 tape.
16 COURT: All right, sir.
17 Mr. Robins?
18 MR. ROBINS: If the Court
19 please, on the motion, the Common-
20 wealth would contend, of course,
21 subject to the finding the Defendants
22 guilty, to move the money be for-
23 feited.
24 COURT: We don't get to
25 that for quite sometime.

1 MR. ROBINS: I realize
2 that, your Honor. It's the
3 Commonwealth's position as to
4 the money that was found in the
5 purse, if I am not mistaken, the
6 Quidley case is the matter where
7 the Court talked more about the
8 players of numbers, as opposed to
9 the operators of lottery. I can't
10 remember the exact citation of the
11 Riggin case, but I believe that
12 is the case where the amount of
13 money was found in a paper bag, with
14 a number of number slips, and the
15 Court found, in that case, there
16 was sufficient evidence to confiscate
17 the money that was found in the bag
18 with the slips.
19 As to the money in the
20 safe, the Commonwealth -- the
21 Commonwealth's evidence is that
22 Mrs. Gertrude Plummer and Mr. Conrad
23 Plummer were operating a lottery
24 out at their residence, or where
25 they were located at the time of

1 the raid. That no evidence of any
2 other money was found, other than
3 in the purse and the safe. In the
4 operation of the lottery requires
5 money be held on hand to pay off
6 both the high-ups in the lottery
7 operation, and to pay off the winners
8 among the players.
9 Further, the statements of
10 Mr. Plummer and Mrs. Plummer are
11 that the safe hadn't been opened in
12 twelve years.
13 COURT: Well, I think Mr.
14 Plummer is quoted having said twelve
15 years, and Mrs. Plummer as having
16 said a number of years.
17 MR. ROBINS: Yes sir,
18 I believe that's correct. In either
19 event, upon opening the safe, which
20 the Defendants were unable to do,
21 according to their statements, we
22 find a number of papers which the
23 Commonwealth introduced into evidence.
24 COURT: That's Commonwealth
25 Exhibit Number Twelve.

1 MR. ROBINS: Among the
2 paper is a car title for a
3 Cadillac, stamped by the Division
4 of Motor Vehicles, in 1968. There
5 are --
6 COURT: Real estate tax
7 receipts from 1970.
8 MR. ROBINS: A number of
9 other papers that would indicate
10 the safe -- contrary to the state-
11 ment of the Defendants, had been
12 opened recently, and in the opinion
13 of the Commonwealth, was continually
14 being opened to extract sums of
15 money, for payment in the operation
16 of this lottery.
17 It's the Commonwealth's
18 position that the circumstances
19 surrounding this raid, and the
20 circumstances of the evidence found
21 and seized, is sufficient to establish
22 this money is connected to the
23 lottery operation, and for that
24 reason, we ask the Court to deny the
25 Defense's motion to return the

1 evidence.
2 COURT: All right,
3 sir, anything further?
4 MR. C. GORDON: Nothing
5 further.
6 COURT: The Court is
7 not sure, at this point, whether
8 the Defendants are laying joint
9 claim to the funds in the safe,
10 or whether one or the other of
11 them is claiming it. I suppose
12 it would be improper, at this
13 point, to inquire, so I won't.
14 I think the motion that
15 the various items -- the motion
16 that these funds be returned must
17 be denied, and with the exception,
18 as far as money we're talking about
19 now, with the exception of the
20 items in the small tin box. I --
21 I am not convinced that ten dollar
22 gold piece and that gold certificate
23 and those silver dollars have been
24 shown to have any connection with
25 what's been going on. At the proper

time, they may be withdrawn.

As to the other items, I think I must deny your motion, and note your exception.

MR. C. GORDON: Call Mr. Johnson.

- - -

ARTHUR JOHNSON, called as a witness by the Defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. C. GORDON:

Q State to his Honor, your name, please.

A Arthur Johnson.

Q What relation are you to the two Defendants here today?

A His wife is my sister. He's my brother-in-law.

Q I see. Now, is there a close relationship between you all, are you friendly and see each other often?

A Oh, we see each other often, yes sir.

1 Q Now, prior to retirement from the
2 Shipyard and all, what business did your sister and your
3 brother-in-law operate?
4 A They were in the -- cafeteria and
5 store business.
6 Q I see. Had you visited the store
7 often?
8 A Yes sir, I sure did.
9 Q All right, sir. Now, do you know
10 about what year they closed the store?
11 A Now --
12 Q Went out of business.
13 A I say it was about nineteen hundred
14 sixty-three, something like that.
15 Q Did you have anything to do, at that
16 time, with the closing of the store or -- the disposing of
17 the property that -- at the conclusion of their business?
18 A No, I didn't have anything to do
19 with that.
20 Q Do you know anything about the amount
21 they received from the sale of it?
22 A I don't -- know the amount -- of
23 their receipts of the sale.
24 Q Do you know of any property they've
25 owned in the last ten or fifteen years?

A Well, in the last ten --

Q Property.

A My brother and her brothers and sisters, own property in North Carolina.

Q Did you handle the sale of it, or the distribution of the proceeds from the sale?

A Well, I handled the -- the distribution, proceeds from the sale.

Q Do you know about what time --

MR. ROBINS: I object to this line of questioning. It's getting to be a little bit leading, when the witness responds to Mr. Gordon's question exactly the same words Mr. Gordon uses.

COURT: He can just as easily said yes. I think it's a leading question, leading line of questioning, Mr. Gordon. Maybe you can do it some other way.

BY MR. C. GORDON:

Q Was there property in which was owned jointly among you, distributed among the heirs?

A Yes sir.

1 Q Do you know how much your sister
2 received?
3 A My sister received five thousand
4 dollars.
5 Q And about when was that?
6 A That was about 1960 something.
7 Q Yes. When the property was --
8 COURT: What year
9 did he say?
10 MR. C. GORDON: 1960
11 what?
12 A 1960.
13 COURT: 1960?
14 MR. C. GORDON: Yes.
15 BY MR. C. GORDON:
16 Q Do you know what happened to the
17 proceeds of the sale?
18 A The proceeds were divided.
19 Q I see. And you visited in the store
20 or in the house recently?
21 A Yes.
22 Q Did you notice in the house, what
23 was in there, in the way of how the house was maintained
24 and -- and do you know anything about what -- they did with
25 the money that they received?

A Well --

MR. ROBINS: Judge, I'm going to object to that question, unless Mr. Gordon can establish that anything Mr. Johnson can testify to is not hearsay.

MR. C. GORDON: He said he was his brother and sister.

COURT: He said he observed the thing. I think it's a pretty broad question, but -- I'll leave that to Mr. Gordon.

BY MR. C. GORDON:

Q In 1960, the estate was divided up, right?

A Yes.

Q How much did your sister get, if you know?

A I know she got five thousand dollars.

Q All right, do you know what she did with the money?

A What she did with it?

Q Yes.

A Well, she had the thing cashed and carried the money home.

Q All right. Have you visited in the home?

A Yes, I visited in the home.

Q What furniture, or what did you see in the home?

A Oh, I saw just about everything they got.

Q Did you see any furniture or anything from the store that was brought into the home?

MR. ROBINS: I object to that, your Honor, as leading, again.

COURT: I think all the questions have been leading, but --

BY MR. C. GORDON:

Q All right. Now, do you know of any other money that she received in the last ten or twelve years?

A Well --

Q Any property she's owned?

A Well, after the sale of property, my father left her money, cash.

Q How much was that?

1 A That was in the amount of about three --
2 about four thousand dollars.
3 Q I see. Do you know what she did with
4 that money?
5 A She carried it home.
6 Q When they ran the store, did you
7 notice in what condition or what manner they carried on
8 their business?
9 A Well, they carried on -- yes.
10 Q What manner did they carry on the
11 business?
12 A They carried on the manner -- the
13 business in decent fashion. They didn't have --
14 Q What sized store was it?
15 A Oh, the store, something about --
16 I'd say approximately fifty or sixty feet long, and about --
17 about thirty feet wide, I imagine, yes.
18 Q I see, and did they run and operate
19 the business themselves?
20 A They did.
21 Q And then, you know of, approximately
22 in 1960, of nine or ten thousand dollars --
23 A Oh, yes.
24 Q That she received?
25 A Yes.

1 MR. C. GORDON: You
2 may inquire.
3
4 CROSS EXAMINATION
5
6 BY MR. ROBINS:
7 Q What kind of store did your sister
8 run, Mr. Johnson?
9 A She operated a grocery store and
10 cafeteria, combined.
11 Q Do you know how much business she
12 did?
13 A Oh, well, I'd say she did -- I don't
14 know exact figure, how much business she did. It's kind of
15 hard for me to calculate that.
16 Q You say she received an inheritance
17 of five thousand dollars, in 1960?
18 A Yes.
19 Q How was this paid, if you know?
20 A It was paid in a lump sum.
21 Q Was it paid by check?
22 A Check.
23 Q And what did she do with the check?
24 A She had to get the check cashed at
25 People Trust Company, at Rocky Mount, North Carolina, and

1 brought the check to have it cashed.
2 Q When she cashed the check, what kind
3 of money did she get from it?
4 A What kind of money?
5 Q Did she take it home in one dollar
6 bills, five dollar bills, ten dollar bills?
7 A The dimension was high and they had
8 small dimensions. So far as -- getting -- a good amount for
9 the property, they wouldn't pay particularly small money.
10 It was mixed.
11 Q Were there any hundred dollar bills?
12 A Now, I -- I don't know -- probably
13 had hundred dollar bills too, yes.
14 COURT: Now, Mr. Johnson,
15 let me say, you are in a rather
16 uncomfortable position. If you
17 don't know, don't guess. If you
18 know what the denominations are,
19 all right. If you don't know,
20 tell him you don't know.
21 Do you know what the
22 denominations she had the money
23 in?
24 A I don't know the exact, what
25 denominations she got the money in.

BY MR. ROBINS:

Q Mr. Johnson, how long has your sister lived on Hemlock Street?

A My sister lived on Hemlock Street about -- oh, I'd say about thirty years. Maybe a little more. I don't know about that. It has been a long time.

Q Did she live there when she was operating this business?

A Yes.

Q She has continued to live there since then?

A Yes.

Q Do you know how old your sister is?

A Yes.

Q Do you know what her major source of income is now?

A Well, now, I don't -- know what her income is.

Q Do you know if she's working now?

A No.

Q You don't know, or is she working?

A Is she working?

Q Yes sir.

A Nope.

Q Mr. Plummer working?

1 A No. Now, Mr. Plummer -- now, I know
2 he sells eggs about, and things like that. Just a little
3 minor something.
4 Q What does your sister live on then?
5 A What she lives on?
6 Q Yes sir.
7 A By the time we get through issuing
8 the family gives -- appropriates something for her and --
9 and maybe, that's all I know.
10 Q What family is this?
11 A What did you say?
12 Q Which family?
13 A Her family. Me and my -- and my --
14 aunts and things.
15 Q Is there anything like ten thousand
16 dollars in the last ten years?
17 A What?
18 Q Have you given her anything like ten
19 thousand dollars in the last ten years, all together?
20 A No, I don't think I give her --
21 given her -- anything like that. And so far, I didn't --
22 being my sister, I didn't try to -- to keep the figure, keep
23 the figure about what I give her. I just gave her money.
24 Q Did you give it to her on a regular
25 basis, or just occasionally?

1 A No, not a regular basis. Occasionally.
2 Q In what amount of money, usually, was
3 it that you gave her?
4 A Well, I would give her anywhere from
5 five to ten, fifteen dollars, things like that.
6 Q You testified quite a bit about your
7 sister's financial affairs. Did you ever see your sister
8 open that safe?
9 A Occasionally, I saw my sister open
10 the safe, yes.
11 Q And when was the last time you saw
12 her open the safe?
13 A The last time I saw her open the
14 safe, was, I think it was 19 -- I mean 1962, in September,
15 I think.
16 Q 1962?
17 A '72.
18 Q '72?
19 A '72, pardon me.
20 Q When she opened the safe, did you see
21 in it?
22 A Oh, I could see in it.
23 Q What did you see in it?
24 A Well, she had money in there.
25 Q How much money, could you tell, a lot

of money or a little money?

A Well, it was -- well, it was a lot of money. A lot of money.

Q Since that time, have you continued to give her money?

A Well, since that time, I've contributed some, yes.

Q Why?

A Well, it's my sister, it was occasionally to give her some money.

Q If you're supporting her, and she had all the money in the safe, what did you need to give her money for?

A Well, she didn't have the money all the time when they took the safe out.

Q While you were there at the Plummers' house, these many visits you made, did you ever see your sister or her husband writing any numbers?

A No, I haven't seen that. That I haven't seen.

MR. ROBINS: I don't have any further questions, Judge.

MR. C. GORDON: No questions.

1 COURT: Just a minute.
2 You said your sister and her
3 husband closed their business,
4 what, in -- 1960 --
5 A I don't know when, exactly. It was
6 until the sixties.
7 COURT: When was it?
8 A I was thinking in 1963.
9 COURT: And she got
10 the estate from 1960?
11 A She got some in the estate in 1960,
12 yes. My father died in '59. They had a year extension for
13 "probase", and then after that,it was -- division.
14 COURT: And what other
15 funds has your sister gotten then?
16 A Well, my father gave her some real
17 estate, and she sold that, and he gave her some money --
18 put it in the bank, and she drew it out and cashed the check.
19 COURT: Your father died
20 when?
21 A 1959.
22 COURT: So he was dead
23 before 1960?
24 A Yes, but you see,after the will was
25 probated, we just couldn't get the money in 1959. He died --

June 21, 1959.

COURT: If the large amount of money was in the safe, was a series of 1969, it would be hard to say that money came from there.

A 1959?

COURT: '69.

A '69.

COURT: '69. The bills I have in my hand were printed in 1969. Would you say that came from the sale of the restaurant?

A Well, I don't know, now --

COURT: All right. That's all I have.

MR. C. GORDON: No further questions.

- - -

GERTRUDE PLUMMER, called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. C. GORDON:

Q State to the Court your name, please.

A Gertrude Plummer.

Q And, Gertrude, how old are you?

A I'm sixty-five.

Q Now, will you tell the Court here, were you formerly in business, prior to the time when you were arrested? Were you formerly in business?

A In business? What do you mean?

Q Did you ever operate a business; there has been testimony --

A Yes, yes.

Q Where did you have your store?

A Next to me.

Q Right near where you live?

A Yes.

Q And how many years did you operate the store?

A From '45 until '60.

Q '45 to '60. And what type of business did you have there, grocery business?

A Grocery business, and we sold beer, part of the time.

Q And -- how did you carry on your business? Was it cash business?

A Oh, yes.

Q I see. And when delivery is made, how did you pay for them?

A Cash.

Q I see. Now, there has been evidence here that there was a safe in your home.

A Yes.

Q How long had you had that safe?

A Ever since '45.

Q I see. Was that safe formerly used in your store?

A Yes.

Q Did you have it moved to this house when you moved over there?

A Yes, indeed.

Q All right. Can you tell the Court, what did the nineteen thousand dollars that they found there, represent, as far as your estate is concerned?

A Well, part of that money, I babysat, and I do day work, when I can get it.

Q There has been testimony here, about an estate, money that you inherited. Will you tell the Court --

A Oh, from my father?

Q Yes.

1 A Yes.
2 Q How much did you get?
3 A Oh, five thousand, and then -- he left
4 me some money in the bank.
5 Q All right, what did you do with that
6 money, when you got it?
7 A I put it in my safe.
8 Q And is that where you kept all the
9 money you had in this world?
10 A Yes.
11 Q All right. Now, will you tell us,
12 further, about any other money that you might have inherited
13 or came into your hands?
14 A Well, I sold my property.
15 Q Where the store was located, did you
16 sell that property?
17 A Yes, I sold the -- you know -- the
18 operation.
19 Q Will you tell the, tell the Court
20 what you got for the sale of the property, when you sold it?
21 A All together, just about five
22 thousand.
23 Q I see. Now, will you tell the Court,
24 where is your income derived from today, you and your husband?
25 Is he -- retired from social security?

A Yes, yes.

Q Does he draw social security?

A Yes.

Q Do you draw social security?

A Yes.

Q I see. That's the way you maintain yourself, you and your husband?

A Sure, only what my brother gives me sometimes.

Q You tell the Court that was your life's saving in that safe?

A All I got.

Q Where did the fifty dollar bill come from?

A It came from my father. He gave that to me a week before he died.

Q And where did the ten dollar gold piece come from?

A It came from him.

Q I see.

A He gave me both of them.

Q That was the life savings of you and your husband?

A Yes.

Q That's the same safe you had across

1 the street?

2 A Yes, yes.

3 MR. C. GORDON: You may

4 inquire, Mr. Commonwealth Attorney.

5

6 CROSS EXAMINATION

7

8 BY MR. ROBINS:

9 Q Mrs. Plummer, you and your brother

10 have testified you got five thousand dollars in 1960, from

11 the sale of some property you inherited from your father,

12 is that correct?

13 A Yes.

14 Q Then, you got three or four thousand

15 dollars that he left you in the will, is that right?

16 A Yes, four thousand dollars.

17 Q And then, you sold the store, you got

18 another five thousand dollars?

19 A Yes.

20 Q What year did you sell the store?

21 A Sell what?

22 Q What year did you sell the store?

23 A '60.

24 Q So, in 1960 —

25 A 1960.

1 Q 1960 or thereabouts, you had fourteen
2 thousand dollars?
3 A Yes.
4 Q And the rest of this money, you say
5 the remaining five thousand dollars came from your brother
6 and from babysitting?
7 A Just babysitting, just any kind of
8 extra work that I could get.
9 Q What have you been living on, Mrs.
10 Plummer? How have you been living? Who pays for your food
11 and your clothing?
12 A Well, my brother -- helps me, and then,
13 the extra money that I get babysitting, ironing.
14 Q How much money would you say you made
15 in the last ten years?
16 A I don't know exactly.
17 Q Have you filed an income tax return?
18 A No, because I over age, and I don't
19 have to file it.
20 Q When was the last time you filed a
21 tax return?
22 A Well, we filed, sometime me and my
23 husband filed together, when he filed.
24 Q All these number slips, dream books,
25 and this other stuff that -- Sergeant Haynes brought into

1 Court this morning, where did they come from?
2 A He got them from my house.
3 Q How did they get into your house?
4 A Somebody left them there, I guess.
5 Q You don't know how they got there?
6 A I say someone left them.
7 Q Do you know who that somebody was?
8 A When I see the person, I just know
9 the person. I don't know their name.
10 Q You don't know his name?
11 A No.
12 Q Did he leave them there accidentally,
13 or did he leave them there on purpose?
14 A I couldn't tell you that.
15 Q What did he leave them there for?
16 A Just because he had them and left
17 them there, I guess. I don't know.
18 Q Do you know what they are?
19 A Sure, they're number books. Dream
20 books.
21 Q But you didn't participate in any
22 of them?
23 A I looked through them sometimes.
24 Q You didn't participate in the
25 operation, is that right, is that what you're telling the

1 Court?

2 A I didn't say that.

3 Q Do you participate in the operation

4 of the lottery?

5 A No, I don't participate in it, but

6 that's what they got me for.

7 MR. ROBINS: I don't

8 have any other questions, Judge.

9

10 REDIRECT EXAMINATION

11

12 BY MR. C. GORDON:

13 Q You play numbers every day?

14 A What?

15 Q Do you play the numbers yourself?

16 A No.

17 Q All right.

18 A No, indeed.

19 Q How much do you get each month from

20 social security?

21 A I guess around sixty-three dollars.

22 Q How much does your husband get each

23 month from social security?

24 A I don't know exactly how much he gets.

25 Q He does get social security?

A Yes.

Q You and he together, both?

A Yes, yes.

MR. C. GORDON: The Court wish to inquire?

COURT: No, I don't think so.

MR. C. GORDON: Step down. We rest, your Honor.

COURT: All right.

MR. ROBINS: The Commonwealth has nothing in rebuttal, your Honor.

COURT: No rebuttal. No rebuttal. All right, gentlemen, I'm prepared to hear whatever you want to say concerning,about it.

MR. ROBINS: Judge, I reserve my closing remarks in rebuttal.

COURT: All right.

MR. F. GORDON: Judge, we would simply renew, of course, note all objections have been previously made, these are preserved.

1 Abandoned or not.
2 We would specifically
3 renew our motion, at this time,
4 our motion with respect to the
5 return of the nineteen thousand
6 plus dollars in the safe. Again,
7 reiterating, that the Commonwealth
8 has made no connection whatever
9 between this money in the safe,
10 locked away, and any operation.
11 The Commonwealth's only claim with
12 respect to that money, would be
13 that there is a lot of it. But
14 the fact that it was bundled neatly,
15 the fact that it was not connected
16 in any way with any slips or any
17 other part of any operation that
18 they would allege, the fact it was
19 behind these personal papers, piled
20 up very neatly, at the back of the
21 safe, everything about the thing --
22 about the money, circumstantially
23 belies any effort to try to tie it
24 into the operation.
25 There has been testimony

1 from the Defendants, this is the
2 life savings. The money has piled
3 up from several large sources for
4 a while, perhaps piling up slowly
5 very recently. The Commonwealth,
6 by his own cross examination, counted
7 up fourteen thousand in -- in the
8 back, piling up, and that just
9 leaves the -- the last few years to
10 slowly inch the total up.
11 COURT: Under the testimony
12 given by Mrs. Plummer, that fourteen
13 thousand would have all piled up by
14 1961, right?
15 MR. F. GORDON: Yes sir,
16 and by the -- I think the Court
17 could -- determine from the demeanor
18 of the witnesses, and the general
19 nature of the business as described,
20 that this would be the kind of
21 operation or these -- these Defen-
22 dants are the people who would,
23 indeed, keep this money in cash and
24 keep it in a safe. Sensing, not
25 trusting banks, that kind of thing,

1 allowing the money to pile up,
2 perhaps not the wisest course we
3 would have taken to avoid interest,
4 all the benefits of investment,
5 but certainly not incredible, with
6 respect to the background of these
7 witnesses, and it is credible to
8 assume that's what they have done
9 with their life savings, they have
10 allowed it to accumulate in this
11 safe.
12 There's nothing that the
13 Commonwealth has, ties that -- ties
14 that money to any kind of operation,
15 and everything about the physical
16 apparatus belies any connection.
17 Again, present with money
18 that the Court has indicated it will
19 very likely find was not -- could
20 not conceivably have been involved
21 in the operation. There was the box
22 that the Court seems to indicate,
23 feels could not be tied in. There
24 just above the -- the pile of cash
25 we're talking about.

1 That pile, again, stuck
2 behind other items, not -- free
3 and out and available, ready for
4 quick distribution, as the Common-
5 wealth would try to imply.
6 I think all those factors
7 taken into account, the Court must
8 recognize that this is, indeed,
9 exactly as the Defendants have said,
10 this is money that has piled up over
11 the years, this is, indeed, their
12 life savings, not tied to the
13 operation in any way,and for those
14 reasons, we ask that the, particularly
15 that money, be returned and not per-
16 mitted to be forfeited by the State.
17 MR. ROBINS: If the Court
18 please, the Defense would have the
19 Court believe that -- the Defense
20 have been piling this money up little
21 by little, put fourteen thousand
22 dollars in there in 1960, just let
23 it sit. I think the -- the date,
24 the series of the bills would belie
25 that. Accumulate that amount of

1 money and leaving it sit, assuming,
2 of course, they didn't spend any of
3 it, both Defendants are retired, no
4 longer working, and have been so for
5 quite sometime, Mrs. Plummer does
6 babysitting, day work, they live on
7 social security and handout from
8 their brother. The brother has tes-
9 tified he gives them money occasionally,
10 even though he sees the vast amount
11 of money they have in the safe.
12 Now, I would submit to the
13 Court, that that -- to have the Court
14 believe that, would be -- straining
15 the Court's, or straining the
16 credibility of the witnesses.
17 Mrs. Plummer has further
18 testified she's not operating the
19 lottery. She just happened to be
20 there when the man came and left the
21 material, although some of it found
22 its way into her coat, into her back
23 bedroom. The Commonwealth is not
24 familiar where Mrs. Plummer receives
25 visitors, but it doubts very seriously,

1 this unknown party who she can
2 identify only on sight, happened
3 to leave all these items in the
4 back bedroom.
5 The Commonwealth considers
6 that this money was, in fact, the
7 proceeds of the lottery operation,
8 and would, therefore, move that
9 the -- upon a finding of guilty,
10 move that the items be forfeited.
11 MR. F. GORDON: Judge, in
12 response, it's true that the Court
13 did note that some of the bills bear
14 the year, 1969. However, I noted
15 those bills as well. I didn't have
16 time to go through the bag with care,
17 but I notice there was one bundle,
18 near the top, that did have a number
19 of recent bills.
20 COURT: Most of them that
21 I have looked at. Of course, there
22 are all sorts of them, but a large
23 number of them are 1963 or 1969 issue.
24 There are earlier bills in there.
25 MR. F. GORDON: I noticed

1 a substantial number in other
2 piles further down in the bag,
3 that were fifties and other years,
4 so I don't believe that, in it-
5 self, cuts against anything the
6 Defendants have said. We know
7 they have been accumulating, by
8 their testimony, over the years,
9 slowly, since the -- the early
10 sixties, when -- the largest bulk
11 came into their possession, but
12 there's certainly nothing incredible
13 about a few of the bundles of 1969
14 bills, under the testimony.
15 So, I don't think that
16 should be taken largely into account,
17 in determining that this money was
18 not a part of any illegal operation,
19 but rather, as indeed has been, the
20 life savings of the Defendants.
21 COURT: All right, gentle-
22 men, the evidence has been presented
23 concerning these charges. We deal
24 with the -- criminal standard of
25 proof beyond a reasonable doubt.

1 MR. F. GORDON: Perhaps
2 before -- you make a ruling, I
3 should reiterate, on the basis of
4 Mr. Plummer, that once again, now
5 that the -- all the evidence is
6 in, the Court is dealing with the
7 case in equipoise, rather than
8 viewing the case in the light most
9 favorable to the Commonwealth.
10 Perhaps it should review its position
11 with respect to Mr. Plummer. Per-
12 haps at the end of the Commonwealth's
13 case, the Court was reviewing the
14 case most favorable to the Common-
15 wealth, perhaps giving them every
16 possible inference, the Court could
17 have found there was enough to get
18 by with a motion to strike, and at
19 this point, the evidence is in a
20 different posture.
21 I hope the Court would bear
22 our position in mind, with respect
23 to that motion to strike.
24 COURT: Yes, I'm not un-
25 mindful of the position. I think

1 the evidence establishes, beyond a
2 reasonable doubt, that a lottery
3 of the kind commonly called numbers,
4 games, numbers racket, was being
5 conducted on the premises of Mr.
6 and Mrs. Plummer. The evidence is
7 clearer as to Mrs. Plummer, than
8 it is to Mr. Plummer. But in view
9 of the Court, the guilt of both has
10 been established.
11 Mrs. Plummer, if you will
12 stand, please.
13 (The Defendant
14 complied with the
15 request of the Court.)
16 COURT: Gertrude Plummer, the
17 Court has heard the evidence con-
18 cerning the charge against you, and
19 find you guilty of the offense set
20 forth in the indictment.
21 Now, you gentlemen wish
22 this referred to -- to a probation
23 officer, or not? You may have a
24 seat, Mrs. Plummer. We'll defer the
25 question of sentencing for a minute.

1 the State Penitentiary of this State.
2 The Court suspends execution of that
3 sentence for a period of three years,
4 conditioned upon your good behavior.
5 You may have a seat.
6 Gertrude Plummer, upon your
7 conviction, the Court sentences you
8 to serve a term of two years in the
9 State Penitentiary of this State.
10 And commits you for service of that
11 sentence, to the State Industrial
12 Farm for Women. In your case, also,
13 the Court suspends execution of that
14 sentence for a period of three years,
15 conditioned upon your good behavior.
16 I'm going to ask Counsel to
17 instruct these Defendants as to what
18 good behavior means. Because I don't
19 want any question about it if this
20 ever happens again.
21 Have a seat, Mrs. Plummer.
22 Now, we come to the other
23 matter, gentlemen. About the funds
24 here. The Court has already indicated
25 that the metal box, marked Commonwealth's

1 Exhibit Number Eleven, and its con-
2 tents, fifty dollar gold certificate,
3 eight silver dollars, one ten dollar
4 gold piece, does not appear to this
5 Court, under the evidence, to have
6 been involved in the operation of
7 this lottery, and when that item is
8 no longer needed as part of the
9 record in this case, it may be with-
10 drawn.
11 Certain of the other items
12 submitted in evidence here, there
13 are things like insurance policies,
14 that are still in force, automobile
15 policies, automobile title certifi-
16 cates, when these items are no longer
17 needed as part of the record in this
18 case, they may be withdrawn. If
19 they're needed in the meantime, per-
20 haps Counsel can agree on some sort
21 of substitution and certified copies.
22 The larger funds involved,
23 the nineteen thousand eight hundred
24 forty-one dollars, sixty-six cents,
25 in these two bags here, and the two

1 hundred sixty-three dollars, sixty-
2 six cents, which is in the other
3 purse, under the evidence in this
4 case, have been proven in the
5 operation known as the numbers game
6 or number racket, and are forfeited
7 to the Commonwealth of Virginia.
8 The Clerk is instructed that these
9 funds are to be recounted, at the
10 bank where they are to be kept.
11 They are not to be changed for other
12 bills, but they are to be recounted,
13 and these exact bills and currency
14 are to be kept in a safe deposit box,
15 in the National Bank, until they are
16 no longer needed as part of the record
17 in this case.
18 I will assume, gentlemen,
19 you wish to note some exceptions
20 and maybe some motions. I think this
21 is the proper time to do it.
22 MR. F. GORDON: Judge, we
23 note exception to the Court's ruling.
24 At this point, with respect to all
25 matters, and we would note our appeal.

at this time.

COURT: All right.

MR. F. GORDON: I don't know -- except for -- the matter of the items that we may wish to discuss with the Commonwealth, as far as withdrawal is concerned, I don't know that there are any other motions we would make.

COURT: All right, sir.

(The case was then concluded.)

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Circuit Court of the City of Hampton, Virginia, on Friday, the twenty-second day of June, in the year of our Lord one thousand nine hundred and seventy-three.

********** ********** **********

Commonwealth

vs. Felony- Viol. of Section 18.1-340 (Operating a Lottery)

Conrad Plummer

This day came the Assistant Attorney for the Commonwealth and Conrad Plummer (born May 1, 1894), who stands indicted of a felony, to-wit: violation of Section 18.1-340 (operating a lottery), who appeared in Court according to the condition of his recognizance.

Whereupon the accused was arraigned and after private consultation with Charles H. Gordon, counsel of his own choosing, pled not guilty to the indictment, which plea was tendered by the accused in person, and thereupon the accused after having been first advised by his attorney, waived trial by jury and with the concurrence of the Assistant Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law; thereupon, two written motions having been previously filed, one to suppress the evidence obtained by the search warrant and the other to suppress and return improperly seized items, and the same having been argued by counsel, the Court doth deny the motion as to the search warrant,

to which ruling of the Court the defendant, by counsel, excepted, and doth continue until all the evidence is in the motion to suppress and return improperly seized items; and the Court having heard all the evidence of the Commonwealth, the defendant, by counsel, made a motion to strike the evidence on the grounds orally assigned and made a part of the stenographic record of this case, which motion the Court doth deny and to which ruling of the Court the defendant, by counsel, noted his exception; and thereupon the defendant, by counsel, renewed his motion to suppress and return the improperly seized items, which motion the Court doth grant as to the items in the tin box, consisting of eight (8) silver dollars, one Ten dollars ($10.00) gold piece, and a Fifty dollar ($50.00) gold certificate, and doth deny the motion as to the other items, to which ruling of the Court the defendant, by counsel excepted; and having heard all the evidence the defendant, by counsel renewed his motion to strike the evidence of the Commonwealth and further renewed his motion to return the sums of money and the other items improperly seized, which motion the Court doth deny and notes the defendant's exception to the ruling of the Court.

And the Court having heard arguments of counsel doth find the accused guilty of violation of Section 18.1-340 (operating a lottery) as charged in the indictment, and ascertains his punishment to be two (2) years in the State penitentiary.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the said Conrad Plummer be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of Two (2) years, the period by the Court ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Conrad Plummer its costs by it about its prosecution in this behalf expended.

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

The Court certifies that at all times during the trial of this case the accused was personally present.

This sentence is not to run concurrently with any sentence of this Court or any other Court.

Whereupon the Court doth suspend the foregoing sentence for a period of Three (3) years on the condition that the defendant be of good behavior and not violate any law.

Copy Teste:

/s/G. M. Gibson Clerk

Circuit Court of the City of Hampton, Virginia, on Friday, the twenty-second day of June, in the year of our Lord one thousand nine hundred and seventy-three.

********** ********** **********

Commonwealth

vs. Felony - Violation of Section 18.1-340 (Operating a Lottery)

Gertrude Plummer

This day came the Assistant Attorney for the Commonwealth and Gertrude Plummer (born Apr. 25, 1914), who stands indicted of a felony, to-wit: violation of Sec. 18.1-340 (operating a lottery), who appeared in Court according to the condition of her recognizance.

Whereupon the accused was arraigned and after private consultation with Charles H. Gordon, counsel of her own choosing, pled not guilty to the indictment, which plea was tendered by the accused in person, and thereupon the accused after having been first advised by her attorney, waived trial by jury and with the concurrence of the Assistant Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law; thereupon, two written motions having been previously filed, one to suppress the evidence obtained by the search warrant and the other to suppress and return improperly seized items, and the same having been argued by counsel, the Court doth deny the motion as to the search warrant, to which ruling of the Court the defendant, by counsel excepted, and doth continue until all the evidence is heard the

motion to suppress and return improperly seized items; and the Court having heard the evidence of the Commonwealth, the defendant, by counsel, renewed her motion to suppress and return the improperly seized items, which motion the Court doth grant as to the items in the tin box, consisting of eight (8) silver dollars, one Ten dollars ($10.00) gold piece, and a Fifty dollar ($50.00) gold certificate, and doth deny the motion as to the other items, to which ruling of the Court the defendant, by counsel, excepted; and having heard all the evidence, the defendant, by counsel, renewed her motion to strike the evidence of the Commonwealth and further renewed her motion to return the sums of money and the other items improperly seized, which motion the Court doth deny and notes the defendant's exception to the ruling of the Court.

And the Court having heard arguments of counsel doth find the accused guilty of violation of Section 18.1-340 (operating a lottery) as charged in the indictment, and ascertains her punishment to be Two (2) years in the State penitentiary.

And it being demanded of the accused if anything for herself she had or knew to say why judgment should not be pronounced against her according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the said Gertrude Plummer be and she is hereby sentenced to confinement in the State Industrial Farm for Women for the term of

Two (2) years, the period by the Court ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Gertrude Plummer its costs by it about its prosecution in this behalf expended.

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

The Court certifies that at all times during the trial of this case the accused was personally present.

This sentence is not to run concurrently with any sentence of this Court or any other Court.

Whereupon the Court doth suspend the foregoing sentence for a period of Three (3) years on the condition that the defendant be of good behavior and not violate any law.

Copy Teste:

/s/ G. M. Gibson Clerk.

VIRGINIA

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

COMMONWEALTH OF VIRGINIA

v.

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

CONRAD PLUMMER

and

GERTRUDE PLUMMER

NOTICE OF APPEAL

Kindly take notice that the defendants intend to appeal from a final judgment order of conviction entered in the above cases on June 22, 1973.

ASSIGNMENTS OF ERROR

* * * *

3. It was error for the Court to overrule defendant's Motion to Suppress on the ground that the search warrant issued in the above case was issued improperly in that the affidavit in support of said search warrant failed to set forth probable cause for the issuance of said warrant, in violation of Defendant's rights under the Constitution of Virginia and the Fourth and Fourteenth Amendments to the Constitution of the United States.

* * * *

5. It was error for the Court to refuse to grant Defendant's motion, at the conclusion of all the evidence

to have $19,841.56 in cash returned to Defendants on the ground that no showing had been made that the money was connected in any way with illegal lottery operation.

GERTRUDE PLUMMER

and

CONRAD PLUMMER

By Counsel

/s/ Charles H. Gordon
Charles H. Gordon
107 North King Street
Hampton, Virginia