Return to
FILE COPY
Clerk, Supreme Court of Appeals

211 VA 815

Record No. 7369

In the
Supreme Court of Appeals of Virginia
at Richmond

JAMES HAROLD JOHNSON, JR.

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF PRINCE GEORGE COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7369

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 3rd day of December, 1969.

JAMES HAROLD JOHNSON, JR., Plaintiff in error.

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Prince George County
Ligon L. Jones, Judge

Upon the petition of James Harold Johnson, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of Prince George County on the 20th day of May, 1969, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

* * * * *

JUDGE'S CERTIFICATE

I certify that I have investigated and found that James Harold Johnson, Jr., an infant, is unable to pay or secure to be paid the costs of printing the record in this case pursuant to §19.1-289, Code of Virginia, 1950.

Dated: 1/12/70
Ligon L. Jones, Judge
Circuit Court of Prince George County

Recd
1/16/70
HGT

* * * * *

AFFIDAVIT OF POVERTY

Commonwealth of Virginia
City of Petersburg To-wit:

This day James Harold Johnson, Jr., an infant, and his parents Mr. and Mrs. James Harold Johnson, personally appeared before me, Myra P. Houchens, a Notary Public in and for the City and Commonwealth aforesaid, and made oath that they are unable to pay or secure to be paid the cost of printing the record in this case.

James Harold Johnson, Jr.

James Harold Johnson

Mrs. James Harold Johnson

Subscribed and sworn to before me, the aforesaid Notary Public in and for the City and Commonwealth aforesaid, by the above signed parties this 5 day of January, 1970.
My commission expires 5/29/72

Myra P. Houchins
Notary Public

Filed 1/12/70 LLJ

Recd
1/16/70
HGT

* * * * *

RECORD

* * * * *

page 17 }

* * * * *

This day came again the Attorney for the Commonwealth and James Harold Johnson, Jr. who stands convicted of a felony, to-wit: possession of illegally acquired narcotic drugs, known as cannabis, in a quantity greater than twenty-five grains, was again led to the bar in the custody of the Sheriff of this County and came also Sidney Barney, attorney for the accused heretofore appointed.

And the Probation Officer of this Court to whom this case has been previously referred for investigation appeared in open court with a written report which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for accused.

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

The defendant by counsel moved the Court to set aside the verdict of the Court finding the defendant, James Harold Johnson, Jr. guilty of possession of illegally acquired narcotic drugs, known as cannabis, in a quantity greater than twenty-five grains, which motion the Court overruled to which action of the Court the defendant by counsel excepted.

Counsel for the accused moved the Court to
page 18 } suspend the imposition of sentence and to place the defendant on probation which motion was overruled, to which ruling the defendant by counsel excepted.

Whereupon the Court taking into consideration all of the evidence in the case, the report of the Probation Officer, the matters brought out on cross examination of the Probation

Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant be, and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of twenty (20) years, of which term the Court doth suspend the execution of ten (10) years upon the conditions that he keep the peace and be of good behavior for twenty (20) years, and a fine of Five Hundred Dollars ($500.00) and that the Commonwealth of Virginia do recover against the defendant 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 defendant be removed and safely conveyed according to law from the jail of this Court to the State Penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed 188 days credit for the time spent in jail awaiting trial.

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

page 19 } It is further ordered that the dictabelts upon which the evidence and incidents of trial in this case were recorded verbatim be, and they are hereby made a part of the record in this case.

The defendant by counsel indicated to the Court his intention to note an appeal in this case, and the Court inquired of defense counsel if he was in a position to assist said defendant in the perfection of his appeal. The defense counsel informed the Court that he desired some time within which to consider this matter.

The defendant by counsel moved the Court to fix an appeal bond in this matter and the Court, after conferring with the Attorney for the Commonwealth, doth fix the said suspending bond at Ten Thousand Dollars ($10,000.00), and thereupon continued the matter of appointing counsel to assist the defendant in perfecting his appeal until the 19th day of June, 1969 at 10:00 o'clock A. M.

And the defendant is remanded to jail.

Enter This: May 20, 1969

Ligon Jones
Judge

* * * * *

page 21 }

* * * * *

ASSIGNMENT OF ERROR

To: The Clerk of the Circuit Court of the County of Prince George

The Attorney for James Harold Johnson, Jr., the defendant in the above styled case in the Circuit Court of the County of Prince George, hereby sets forth the following assignments of error:

1. That the Court erred in refusing to strike the evidence on the grounds that the defendant was entrapped into obtaining and selling the marijuana.
2. That the Court erred in refusing to strike the Commonwealth's evidence on the grounds that there was insufficient proof adduced from the chemist that the material found on the defendant was marijuana.
3. That the Court erred in refusing to set aside the verdict of guilty and grant a new trial on the grounds that the verdict was contrary to the law and evidence.
4. The defendant deserves the right to add additional grounds of defense which may be found after the transcript has been printed.

Sidney Barney
Attorney for James Harold Johnson, Jr.

Filed in the Clerk's Office the 27 day of May, 1969

Teste:
Kenneth L. Figg, Jr., Clerk
by Frances U. Schera D. C.

* * * * *

page 22 }

* * * * *

NOTICE OF APPEAL

Take Notice, that James Harold Johnson, Jr., heretofore the defendant in the above styled case, does hereby appeal from the judgment of this Court in the premises to the Supreme Court of Appeals of Virginia.

Whereas, the appellant, because of his indigency cannot pay the fee of Counsel to prosecute his appeal, he further moves that the Court will appoint Counsel in his behalf to prosecute an appeal from the judgment of this Court, entered on the 20th day of May, 1969, in the premises to the Supreme Court of Appeals of Virginia.

Whereas, the appellant is a poor person and cannot pay the costs in prosecuting his appeal, he hereby moves the Court for leave to proceed in *forma pauperis.*

And, the appellant further moves this Court to order the Court Reporter to transcribe the proceedings at the expense of the Commonwealth and to furnish the said petitioner required copies of the entire record, and, that the fee for his services be paid for in the manner provided for by law.

James Harold Johnson, Jr.
Petersburg City Jail
Petersburg, Virginia

Filed in the Clerk's Office the 29th day of May, 1969

Teste:
Kenneth L. Figg, Jr., Clerk

* * * * *

page 23 } AFFIDAVIT OF POVERTY AND REQUEST FOR COUNSEL

This is to certify that James Harold Johnson, Jr., the undersigned party, personally appeared before me, a Notary Public in and for the State and City aforesaid, and being duly sworn according to law, deposes and says that, to-wit:

He is indigent and without funds because of his present incarceration; and that because of his poverty he is unable to procure the necessary funds to defray the expense of Court costs, attorney fees, *etc.*, in his proposed appeal. Therefore, he prays that this Court will rule in accordance with the Statute of this Commonwealth governing same and allow him to herewith proceed in *forma pauperis.*

He further prays that, according to the pertinent statute, that an attorney at law be appointed by this Court to perfect his proposed appeal as required by law.

On this 28 day of May, 1969, the said James Harold Johnson, Jr., has the sum of $2.32 on his spending account.

Respectfully submitted,
Affiant James Harold Johnson, Jr.

Subscribed and sworn to before me, a Notary Public in and for the City and State aforesaid, and given under my hand and seal this 28 day of May, 1969.

My commission expires: September 29, 1972.

B Harold Hicks
Notary Public

Seal

Filed in the Clerk's Office the 29th day of May, 1969.

Teste:
Kenneth L. Figg, Jr., Clerk

* * * * *

page 27 }

* * * * *

This day came Sidney Barney, counsel of record for the defendant and asks leave of Court to withdraw as counsel of record for the defendant in this case and to enter the appearance of Arnold & Porter, by Andrew S. Krulwich and Reid P. Chambers, and Hunton, Williams, Gay, Powell & Gibson by Joseph M. Spivey, III, and Thomas G. Slater, Jr., as counsel of record for the defendant. The Court being of the opinion that such leave should be granted, the Court doth

Adjudge, Order and Decree that Sidney Barney be, and he hereby is, granted leave to withdraw from this case as counsel of record for the defendant and that Arnold & Porter, by Andrew S. Krulwich and Reid P. Chambers, and Hunton, Williams, Gay, Powell & Gibson, by Joseph M. Spivey, III, and Thomas G. Slater, Jr., are noted as counsel of record for the defendant.

Dated: 7/7/69

Enter this:

Ligon Jones
Judge

* * * * *

Transcript of the testimony and incidents of trial of the above when heard on March 14, 1969, and March 18, 1969, and the pre-sentence hearing held on May 20, 1969, before the Honorable Ligon L. Jones, Judge.

APPEARANCES:

Mr. F. L. Wyche, Attorney for the Commonwealth
Mr. Sidney Barney, Attorney for the defendant

* * * * *

page 8 }

* * * * *

THOMAS JAMES LAUTER, a witness, deposes and says:

DIRECT EXAMINATION

By Mr. Wyche:

* * * * *

page 13 }

* * * * *

The Court: Mr. Lauter, where is your mother?
A. She's at home.
The Court: Well, I reckon that would be the best way to—
Mr. Wyche: Sheriff, will you have a summons issued for Mr. Lauter's mother and produce her in court, please.
Sheriff: Yes, sir.
Mr. Barney: Judge, I would have to say right now that I would object to her testimony, too.
The Court: To her testifying?
Mr. Barney: That's no evidence, Judge. I understand the birth certificate—
The Court: I think hers is the best evidence. I don't think a piece of paper means near as much as the testimony of a mother.

Mr. Wyche: Are you known as Thomas Lauter or James Lauter or—?
page 14 } A. Thomas.
Q. Thomas Lauter.
A. Yes, sir.
Q. And you say you are a student at Prince George High School?

Thomas James Lauter

A. That's correct.
Q. And you are in your senior year?
A. That's correct.
Q. And you have attended no other high school other than Prince George High School?
A. No other high school, no, sir.
Q. Do you know the accused, James Harold Johnson?
A. Yes, sir.
Q. When did you become acquainted with him and where?
A. In high school during about the tenth grade.
Q. And you have known him how long?
A. About two, three years.

page 15 } Q. Is he—was he a student in Prince George High School?
A. Yes, sir, he was.

Q. Now, Thomas, you have been summoned and have been sworn as a witness in this matter that is being heard by the Court today, an indictment charging James Harold Johnson with the sale of narcotic drugs, commonly known as marijuana, possession of narcotic drugs.
How did you become involved in this matter?
A. Well, I've been knowing Mike, Deputy Sheriff Mike Vrable and he told me that—

Mr. Barney: Objection, Judge.
Mr. Wyche: Don't say what he told you.

A. Well, there had been rumors and the fact that marijuana has been going around in the high school at Prince George and I offered to help out for the school and for the Police Department in order to find out who has been selling the marijuana.
Q. So that is how you became involved in the matter?
A. Yes, sir.

page 16 } Q. A voluntary—was it a voluntary offer to assist the school authorities and the Police Department of Prince George County to determine who was selling marijuana to the school children?
A. That is correct. Yes, sir.
Q. Now as a result of this offer to assist in this matter as you have described, what did you do with reference to this accused, James Harold Johnson?
A. I talked with James Harold Johnson in school to find out if he could get some marijuana or some type of drug and if I could make a buy through him. And I finally was able to make the buys from James Harold Johnson.

Thomas James Lauter

Q. Now, he is charged in the two indictments with a sale of a narcotic drug or marijuana to you on November 14, 1968. Will you tell the Court just what your participation in that alleged sale was, how it occurred and all the facts involved in this alleged purchase by you?

A. You want the first buy, correct?

page 17 } Q. No. November 14th, buy.

A. Oh, yes, sir.

Q. As alleged in the indictment.

A. On November 14th, it was a Thursday, I met—first James Harold Johnson called my house and asked if I could bring the two hundred dollars, which I had already arranged to make a purchase. I told him I had two hundred dollars and see if he could make a purchase with this two hundred dollars. And that Thursday night

Q. Where did you get the two hundred dollars?

A. From Deputy Sheriff Havens and Mike Vrable over at David Lyon's Office. I met them about a quarter after six and

Q. On November the 14th?

A. On November 14th.

Q. Did they give you two hundred dollars?

A. We checked it over and wrote down the marked money and I checked it with them, the numbers of the marked money, and Mike Vrable handed me the two hundred dol-

page 18 } lars in marked money.

Q. What did you do with the two hundred dollars when it was handed to you?

A. I put it in my pocket and held on to it until it was time to pick up James Harold Johnson.

Q. All right, from that time forward tell the Court now what happened.

A. We left—I left in my automobile. David Lyons and Deputy Sheriff Havens and a detective from Hopewell followed my car down 301 and I turned off a side road to pick up Jimmy Johnson. I approached his house and stopped, and he came out and got into the car. I handed him the two hundred dollars in marked money, which his house is in Prince George County. He then proceeded back—

Q. That's the same two hundred dollars that was given you by the officers?

A. That's the same two hundred dollars, yes, sir. It was marked money.

Q. And you gave that to him at his house in

page 19 } Prince George County?

A. That's correct. We then headed back to 301

Thomas James Lauter

where Deputy Sheriff Havens and the detective picked us up again by following us and we proceeded to Route 36 over to the Hopewell Tasty-Freeze.

Q. Now whose automobile were you driving?

A. I was driving my parent's automobile. It was a red, white top, Plymouth station wagon.

Q. You were operating that automobile?

A. That's correct.

Q. Where was James Harold Johnson?

A. He was on the passenger side of the front seat.

Q. So you proceeded from his house back to 301 and then from there to Hopewell, Virginia, is that correct?

A. That's correct. Route 36 leads into Hopewell, Virginia.

Q. Where did you go in Hopewell?

page 20 } A. We drove into the parking lot of the Hopewell Tasty-Freeze, which is in Hopewell, Virginia, and we parked and waited for Stephen Jessup. He was supposed to be driving a blue Volkswagon. He then approached the parking lot driving a blue Volkswagon and pulled up on the passenger side of the car.

Q. Of what car?

A. Of my car. Jessup got out of his automobile carrying a large brown paper bag and then got into the passenger side of my automobile, which Jimmy Johnson, slipped over beside me and Jessup was in the front seat beside Jimmy Johnson.

Q. So you were all three in the front seat?

page 21 } A. That's correct. Jessup opened this brown paper bag and took out twenty small brown envelopes and handed them to James Harold Johnson. In return James Harold Johnson handed Stephen Jessup the two hundred dollars of marked money. Then James Harold Johnson took out his own brown paper bag and put the twenty small brown envelopes into that paper bag. And then they sat and talked awhile and Stephen Jessup handed Johnson, Jimmy Johnson, a small brown envelope and asked him if he would like to try it. It was just a bonus and he didn't have to pay for it. Jimmy Johnson accepted it and he put it in his coat—his left shirt pocket, then sat there and talked awhile. Jimmy Johnson took the small envelope, folded it and put it into the small paper bag with the twenty small brown envelopes. He sat there for a few minutes more and Stephen Jessup took out a small container and it had some kind of little pill or something inside it and asked if we would like to buy it for twenty dollars, and we did not have any more money, which we couldn't make another buy so he put that back away. We then—Stephen Jessup got out of the car and

re-entered his own Volkswagon and Jimmy Johnson and I then proceeded out of the Hopewell Tasty-Freeze.

Q. Where was the paper bag you referred to then? When you left the Tasty-Freeze?

A. Jimmy Johnson was holding it in his lap between his legs. We then headed down to Route 156 where I was supposed to turn into the Lakewood Supper Club, as

page 22 } I did. As I approached the Lakewood Supper Club I asked Jimmy Johnson to hand me the small brown envelopes that he was supposed to give me. We entered the Hopewell Tasty—I mean the Lakewood Supper Club, he handed me five small

Q. What do you mean, entered the Lakewood Supper Club?

A. It's right out—you have to turn off of Route 156 into the parking lot of the Lakewood Supper Club.

Q. Now you are referring to the parking lot when you say you entered the Lakewood Supper Club—

A. Yes, sir.

Q. or to the building itself?

A. No, sir.

Q. The parking lot?

A. The parking lot.

Q. All right, what did you do when you got there?

A. As we entered the parking lot of the Lakewood Supper Club he handed me five small brown envelopes which I then put into my right coat pocket. I pulled into the—

page 23 } turned around in the Lakewood Supper Club parking lot and stopped the car and waited—cut off the lights and waited, and I knew that Deputy Sheriff Vrable was supposed to come up to the car. He then came up to the car and opened the door. I got out of my side of the car and walked around to the front of the car.

Q. Now you are speaking of Deputy Sheriff Vrable?

A. Vrable, yes, sir.

Q. He came up to your side of the car?

A. No, sir, he came up to the passenger side of the car where James Harold Johnson was sitting. He opened the door and asked me if he could have my permission to search my car, which I then gave my permission to search my car. He then told James Harold Johnson—warned him of his rights and told him that he was under arrest for possession of *mariujana.*

Q. Well now where was the—you say when you stopped in the parking lot James Harold Johnson gave you five of the packages—

Thomas James Lauter

page 24 } A. Small brown envelopes, yes, sir.

Q. That you had in your pocket?

A. Yes, sir.

Q. Where was the remainder, the balance of these packets at that time?

A. He had one inside of his shirt pocket and he had fifteen still inside of the brown paper bag.

Q. And where was the brown paper bag at that time?

A. He was still holding it between his legs in his lap.

Q. And where was it when Officer Vrable opened the door?

A. When he opened the door, he took the brown paper bag and stuffed it down between his legs on the floor and—but he was still holding it at all times when Officer Vrable came up to the car.

Q. Well, now what became of that brown paper bag that he was holding or had between his legs?

A. Johnson was then arrested and Mike—

page 25 } Deputy Sheriff Vrable then took the brown paper bag out of his possession.

Q. Now what happened after that?

A. After that they searched him for—they frisked him down and found a knife in his back pocket which I warned Deputy Sheriff Vrable he had, because I knew he had it. He told me he had it.

Q. Was an attempt made to use that knife or anything?

A. When I picked him up that night he had said that he would use it if he had to.

Q. Was any attempt made to use it at any time?

A. No, sir, I just warned Mike Vrable that the knife was back there and Deputy Sheriff Vrable took the knife out of his back pocket.

Q. Now what became of the five brown packets that you put in your pocket?

A. I took them out and handed them to Sheriff Atwood and he held on to them since—from then on.

Q. So Sheriff Atwood was present also?

page 26 } A. Yes, sir, he was following me. He followed me from the Hopewell Tasty-Freeze to the Lakewood Supper Club parking lot.

Q. And was Deputy Sheriff Vrable present when you handed these five packets to Sheriff Atwood?

A. Yes, sir, he was.

Q. Does that cover in substance this transaction that took place between you and James Harold Johnson?

Q. Nothing else you have to add to it?

A. For that night, yes, sir.

Thomas James Lauter

A. No, sir.
Q. The Lakewood Supper Club, is that in Prince George County?
A. That is in Prince George County.
Q. On what highway?
A. On Route 156. It is now called Winter Gardens. Its been changed.
Q. All right, answer Mr. Barney's questions.

CROSS-EXAMINATION

By Mr. Barney:

page 27 } Mr. Barney: Judge, before I cross-examine him, I would like to make a motion to (unintelligible)
The Court: On what ground?
Mr. Barney: On the—he has not proved first, that Johnson had exclusive possession or was in possession. Second, that Vrable, as I understand Johnson—I mean Lauter's testimony, that Vrable came up, opened the door and pulled this —not pulled this man out, but asked this man to get out, and asked, as I understood his testimony, reached in his pocket before he ever arrested him which would be an illegal search.
The Court: The objection—the motion is overruled.
Mr. Barney: I except for the defendant.
The Court: Proceed.

Mr. Barney: Now, Thomas, you work for Mr. Spain, don't you?
A. That's correct.
Q. And he runs an Esso station on 301?
A. Yes, sir, he runs two of them on 301.
page 28 } Q. Which one do you work at?
A. I work at the No. 2. It is located on 301 and 95.
Q. Is that—?
A. Right by the Stephen Kent Motel.
Q. Stephen Kent Motel?
A. Yes, sir.
Q. You are a very popular boy at school, aren't you?
A. Yes, sir.
Q. A lot of kids hang around there?
A. At that station?
Q. Yes.
A. No, sir. He doesn't permit it.
Q. Does Mr. Vrable and—does Mr. Vrable and Mr. Havens come down there often?

A. No, sir.

Q. How do you happen to know—how do you happen to be so friendly with Mr. Vrable?

page 29 } A. I have known him for a year or so and he is just a real good friend of mine. I enjoy being with him.

Q. Have you known him professionally?

A. What do you mean, professionally?

Q. Have you ever had any cause for Mr. Vrable to talk to you about violating any laws?

A. No, sir.

Q. How about Mr. Havens?

A. Mr. Havens, I met him when I was working down at Beck's Garage, was the first time I met him. He used to come in there quite often and that was quite a few years ago. When I was about nine years old I was working down there.

Q. Did Mr. Havens or Mr. Vrable ever question you about a breaking and entering in Prince George County?

A. No, sir, not me.

Q. Now, James, you say that you met Johnson here at school?

A. Yes, sir, I know him. I met him about—

page 30 } Q. Were you a close personal friend of his?

A. Not real close. I talked with him and seen him in school and I'd speak to him and all.

Q. Well, you talked to him before you talked to Mr. Vrable. What kind of conversation did you have with him?

A. Do you mean dealing with—

Q. I mean did you have any conversations before you talked with Mr. Vrable? Did you ever talk to him about buying marijuana, getting marijuana?

A. No, sir.

Q. You did not. Now before Mr. Vrable did Johnson ever in any way indicate to you that he would get you marijuana or he would buy some for you?

A. No, sir, because the people that want it have to ask for it.

Q. So he never indicated any way that he was a buyer or supplier or a user of marijuana?

A. No, sir.

Q. Mr. Vrable talked to you and I expect Mr. Havens did also?

page 31 } A. Yes, sir.

Q. Well, tell me what they said when they first approached you about becoming a buyer?

A. Well, at first Deputy Sheriff Vrable asked—

Thomas James Lauter

Q. Excuse me, let me ask you how long ago this was?

A. About a—I'd say almost a year, at least.

Q. All right, now what did Deputy Sheriff Vrable tell you?

A. He asked me if I could find out of anyone dealing or selling with the marijuana in the high school, and I checked around and talked to a lot of people in school about it and talked to James Harold Johnson and found out he was the only one that I could actually make the buy with.

Q. Now, you went to James Harold Johnson and asked him to buy you some marijuana?

A. I asked him if he could get some, and, in order to make a buy, that I would like to try it out.

page 32 } Q. Well, what I want the Court to thoroughly understand was that up until this time that Mr. Vrable talked to you, you had no idea that James Johnson could get you some marijuana?

A. I had an idea but I never asked him—never had no use until then to ask them for marijuana.

Q. And you went up and asked him to make a buy?

A. Well, I didn't go up and ask him to make the buy, I asked him if he could get a buy. It took a little time but I finally did.

Q. Well, how many times did you have to ask him?

A. It was quite a few unsuccessful attempts actually. I talked with him about four or five times until he actually said he would make a buy for me.

Q. Now, so you talked to him four or five times before he said he would make a buy?

A. Yes, sir.

Q. In other words, you kept nagging him to

page 33 } make a buy, is that correct?

A. No, sir, I never nagged him.

Q. But you kept pressuring him to make a buy, may I use that word?

A. No, sir.

Q. But you kept insisting that he make a buy?

A. He was on his own, actually. I just asked him if he could make a buy, I didn't tell him that I wanted to make a buy, I just asked him if he could get me some marijuana.

Q. Get it for you?

A. Yes, sir.

Q. You wanted him to be an agent for you to get some for you?

A. An agent? No, sir. Just like another buyer.

Thomas James Lauter

Q. Now, James, let me—you asked him to get some mari—could he make a buy for you, is that right?

A. That's correct.

page 34 } *A*. A buy for you not a sell for you?

A. Well, to buy, to get—

Q. To get—?

A. Marijuana, yes, sir.

Q. That is exactly right. You gave him money to get marijuana to give to you, is that correct?

A. That's correct.

Q. Now, this two hundred dollars that he had, that you gave him. How much money—how much of that two hundred dollars went to James Johnson?

A. How much money? I gave him to whole two hundred dollars.

Q. That is correct, and of that two hundred dollars how much went to Jessup?

A. The two hundred dollars.

Q. The two hundred dollars?

A. That's correct.

Q. And he got—he didn't get anything.

A. He got his marijuana.

Q. He got the twenty bags of marijuana?

page 35 } A. That's correct.

Q. Which is the amount that you contracted for, right?

A. I didn't know how much he could get for two hundred dollars.

Q. But he got two hundred dollars worth of marijuana?

A. That's correct.

Q. Now the part that belonged to him was the extra package that Jessup gave him?

A. No, sir. He kept fifteen bags in agreement. He would sell and I would hold on to the other five bags until he sold all his.

Q. You gave him the fifteen bags, is that right?

A. I never gave him fifteen. He had possession of his fifteen the whole time.

Q. Now, James, let's get back here. You gave him two hundred dollars?

A. That's correct.

page 36 } Q. And for this two hundred dollars he was going to give you some marijuana?

A. That's correct.

Q. And out of whatever he got, you were going to give him something. is that right? What was the agreement?

Thomas James Lauter

A. The agreement was that I had the money, I told him I had the money because he didn't in order to make the buy, and I would expect my two hundred dollars back after he had sold his amount, his fifteen bags that I would receive my two hundred dollars worth back.

Q. Now, James, you made a statement here that I have seen, do you recall making a statement on November the 14th?

A. November—the first buy or not?

Q. Second.

A. The second buy, November the 14th. Yes, sir, that was a Thursday night.

Q. Now, in this statement—I'll show it to the Court.

page 37 } The Court: Show it to Mr. Wyche.

Mr. Barney: Now, in this statement, are you familiar with it?

A. Yes, sir, I have a copy.

Q. There is nothing in this statement about a sale, you getting your two hundred dollars back and about Johnson having to sell this marijuana. The statement is signed as a complete statement. When did this—when did it strike you to remember about Johnson supposing to sell?

A. This statement is only supposed to be what happened that night. That's all the Sheriff asked me. To give him the statement of what happened that Thursday night. That's what this statement is.

Q. Well, when you took this, supposedly to sell this marijuana, when did you tell the Sheriff about that? When did you tell the Sheriff or have you told the Sheriff about that, that Johnson was supposed to sell this marijuana?

page 38 } A. I did tell the Sheriff.

Q. Which Sheriff did you tell?

A. Sheriff Atwood.

Q. And when did you tell him?

A. I'm not sure of the date but he did know that we were supposed to make this buy and I would get—supposedly get the two hundred dollars back after Johnson had sold his share.

Q. Did you ever tell Mr. Vrable or Mr. Havens?

A. I'm not sure. I can't remember whether I did or not?

Q. You've got this story down pretty pat. Have you memorized your story?

A. I used to memorize what happened every night that I was supposed to make—to buy with James Harold Johnson.

Thomas James Lauter

Q. Now, on this particular night that you got the two hundred dollars from Mr. Vrable. Who was present?

A. At David Lyons' office? There was Deputy Sheriff Vrable, Havens, Clark, a detective from Hopewell,
page 39 } Lt. English and I believe another man from Hopewell, a Marshall.

Q. A Marshall from Hopewell. You don't have a list of the serial numbers, do you?

A. No, sir, I did have a list. I checked them. They handed me a list which I checked them that night, but I handed it back to Mike Vrable because they didn't want any kind of list on me.

Q. Did they search your car before you left?

A. No, sir.

Q. Did they search you before you left?

A. No, sir.

Q. Did you ever get out of the sight of any of the police officers?

A. Only to go when I turned down from Route 301 to Jimmy Johnson's house.

Q. And you were out of sight of the police?

A. Yes, sir, I was.

Q. How long were you out of their sight?

A. I'd say approximately four minutes.

page 40 } Q. Any other houses from the time you got out of sight until you got to Jimmy Johnson's?

A. There are other houses, yes, sir.

Q. Do you know any people that live there?

A. No, sir.

Q. You didn't stop at any of them by any chance, did you?

A. No, sir.

Q. Now, when you came into—you picked up Johnson, of course.

A. Yes, sir.

Q. And you went into Hopewell?

A. That's correct.

Q. When Jessup came to the car, did you talk to Jessup?

A. No, sir. Jimmy Johnson did all the talking. I just sat there and watched.

Q. Do you know Jessup?

A. No, sir.

Q. Now, what did Johnson tell Jessup when he
page 41 } came there?

A. They had made arrangements over the phone. I don't know—

Q. I'm talking about in the car.

Thomas James Lauter

A. Just talked about what—if he had the stuff and all.

Q. Well, no, no, tell me exactly what happened.

A. Well, I told you what happened, but I can't say exactly what he said.

Q. Well tell me what you remember. Who—tell me how the money passed hands.

A. The money?

Q. Yes.

A. Jessup entered the car holding that brown paper bag. Jimmy Johnson had the two hundred dollars of marked money in his pocket. He, after Jessup handed Johnson twenty brown envelopes, small brown envelopes, Jimmy Johnson in return handed Jessup the two hundred dollars in marked money.

page 42 } Q. Now did Jessup count the money?

A. Yes, sir, he counted it.

Q. How was it? What kind of denominations was it?

A. It was twenties, tens and fives.

Q. Did—in passing over this money, did Johnson ever say who he was getting the marijuana or the brown packages for?

A. No, sir, it was believed—

Q. I don't want—

A. It was believed for Johnson.

Q. I beg your pardon?

A. It was believed by Jessup that he was getting it for Johnson and me.

Q. That he was getting it for you?

A. Well, he was making the buy. I had the money. Jessup knew I had the money.

Q. Now, that's exactly what I'm getting at. Johnson was making a buy for you, is that correct?

A. Johnson was making the buy. I

page 43 } Q. For you?

A. All right. I guess so, if you say so.

Q. I don't want a guess, I want an answer, yes or no. Was he making a buy for you?

A. Yes, sir.

Q. He was not selling it to you, is that correct?

A. Well—

Q. Yes or no, he was not—

Mr. Wyche: Let him answer the question. Don't put words in his mouth, let him answer the question. He was answering your question, now let him answer.

A. All right, he was supposed to give me my money back, so he would be making the profit on the rest of the marijuana, and I would have my money back.

The Court: I have heard all of this before about two or three times, Mr. Barney.

Mr. Barney: All right, sir. I don't have any further questions right now, Judge.

RE-DIRECT EXAMINATION

By Mr. Wyche:

page 44 } Q. Thomas?

A. Sir?

Q. What did you receive from Harold Johnson, if anything, for the two hundred dollars you gave him?

A. Five brown—five small brown envelopes, containing the marijuana.

Q. What did he retain?

A. Fifteen small brown envelope and an extra brown envelope which did not cost anything. That was a bonus.

Q. Who did those fifteen brown envelopes and the extra one belong to?

A. James Harold Johnson.

Q. Did you have any control over that?

A. No, sir.

Q. That's all you received for your two hundred dollars?

A. That's correct.

Q. Now you say you had an agreement with Johnson that he was to sell—

page 45 } A. The marijuana—

Q. The ones that he retained?

A. Yes, sir. I was to hold on to mine. I would give him my five bags after he had sold his fifteen in order to get the two hundred dollars back.

Q. But that's all that you received from him for the two hundred dollars that you gave him?

A. That's correct.

Q. All right.

RE-CROSS EXAMINATION

By Mr. Barney:

Q. Let me ask you this. You say that after he gave you your two hundred dollars back you're going to give him the five bags?

A. No, sir. I was going to give him the five bags if he needed more to get my two hundred dollars back, but I was going to give him the five bags. To sell.

Q. Well, I don't quite understand it. If he needed three more bags to get two hundred dollars, you would give him three bags and you would only have two left, is that correct?

page 46 } A. That would be correct. If he needed it.

Mr. Wyche: Was any valuation placed on each of these packets?

A. The only thing that I knew of that he could sell—roll this marijuana up in a cigarette and sell the cigarettes for one dollar apiece, and that was what he was going to do.

Q. Did he tell you that?

A. Yes, sir.

Q. That's all.

The Court: Mrs. Lauter is here, Mr. *Myche.*

Mr. Wyche: Mrs. Lauter.

* * * * *

page 47 }

* * * * *

M. J. VRABLE, a witness, deposes and says:

DIRECT EXAMINATION

By Mr. Wyche:

Q. Will you state your name and occupation, page 48 } please?

A. Michael James Vrable, Jr., Deputy Sheriff, Prince George Sheriff's Office.

Q. Mr. Vrable, how long have you been a Deputy Sheriff of Prince George County?

A. I've been with the Police Department and Sheriff's Department for four years, sir. Three and a half years.

Q. Do you know Thomas James Lauter?

A. Yes, sir, I do.

Q. Do you know James Harold Johnson?

A. Yes, sir, I do.

Q. Will you state to the Court what occurred on November 14th, 1968 with reference to the delivery of money to Thomas James Lauter—

A. Yes, sir, I will.

Q. If you know anything about that?

A. Yes, sir. Thomas James Lauter gave me a call at home and advised me—

Q. Now don't say what he advised you but just
page 49 } tell us about this money that you are talking
about.

A. Thomas James Lauter and Deputy Sheriff Havens and myself and Detective Marshall from Hopewell met at Mr. Lyons' Office with two hundred dollars in marked bills.

Q. And what did you do with the two hundred dollars?

A. We wrote the serial numbers down in Thomas James Lauter's presence and Mr. Havens turned the money over to Thomas James Lauter in my presence, and Mr. Lauter checked the serial numbers on the piece of paper we had. That's all there was.

Q. Who has the serial numbers of the money that was delivered to Lauter?

A. Chief Deputy Havens has all the copies and the money.

Q. Now subsequent to that do you know where Thomas James Lauter went?

A. Yes, sir, I do.

He left David Lyons' Office approximately ten
page 50 } after seven, proceeded toward James Harold
Johnson's residence to pick him up, from there they went to Tasty-Freeze in Hopewell

Q. Did you follow him?

A. No, sir, I did not. I had radio contact with Claiborne Havens who did follow him. I was at the Winter Gardens Restaurant on 460, I mean, 156. It was Lakewood Supper Club before they changed the name.

Q. So you went to Lakewood Supper Club and waited, is that what you are saying?

A. Yes, sir, we had a stake-out there waiting for the vehicle to come back there by previous agreement.

Q. Now, what occurred as you waited at Lakewood Supper Club?

A. The buy was made at Tasty-Freeze. Sheriff Claiborne Havens called us on the radio and told us that they were headed towards Lakewood Supper Club with the bag believed to be marijuana, contain the marijuana.

Q. Well, what did you do?

A. Thomas James Lauter pulled into the park-
page 51 } ing lot. I observed them. When he turned around
James Johnson handed him—at that time I did not know how many packages—it was later to be five packages.

M. J. Vrable, Jr.

Q. Where were you?

A. Within twenty feet of the car behind a gas cylinder, natural gas cylinder.

Q. And you observed what?

A. Thomas James Lauter receiving five bags, brown manila envelopes from James Harold Johnson.

Q. Could you actually see that?

A. Yes, sir, they handed it to him before they turned around and then when they turned around, we walked over to the car. I went to the passenger side, opened the door, told James Johnson that—asked him out the car, that we were placing him under arrest on suspicion of having narcotics in his possession at which time I warned him of his rights. Mr. Lauter came around out of the driver's side around to the passenger side of the car where I was, stated that Mr. James Johnson had a knife in his back

page 52 } pocket at which time I frisked him and pulled the knife out of his pocket. I also found one manila envelope in his top shirt pocket and between his legs in this particular bag here was fifteen bags containing marijuana. Separate manila envelopes.

Q. Sixteen packets of some kind in there, is that correct?

A. There was fifteen in here, sir, and one in his shirt pocket.

Q. One in his shirt pocket?

A. Yes, sir.

And Thomas James Lauter had—

Q. And where was that when you first observed it?

A. Between his legs, sir, which he was sitting in the passenger side of the car in the front seat. Like this. Had it between his legs.

Q. Was he holding it in his hand like you are holding it?

A. When I opened the door he removed his hand, started to drop and it fell right between his legs a little

page 53 } further at which time I reached down and pulled the bag out.

Q. So you reached in the car and pulled it out?

A. Yes, sir.

Q. Now, what did you do with the bag that you took from Johnson?

A. I held on to it beside the fender. At that time Sheriff Atwood drove up and Thomas Lauter turned over the five packages that he had to Sheriff Atwood.

Q. And what did he do with them?

A. Sheriff Atwood turned around and proceeded to hand

them to me, which I held them in my possession until the following morning when they were taken to the Medical College.

Q. Now what was in this brown bag you described?

A. Fifteen manila envelopes, small packages, of marijuana.

Q. Well you don't know what was in it, do you?

page 54 } A. No, at the time I didn't know what was in it.

Q. But there were fifteen small packets in there?

A. Yes, sir.

Q. And you say you took one packet from the shirt pocket—

A. That's correct.

Q. of Mr. Johnson, is that correct?

A. That's correct, sir.

Q. You had then prior to that time placed him under arrest?

A. That is correct, sir, at which time he was warned of his rights.

Q. And subsequent to that Sheriff Atwood handed to you an additional five packets?

A. That's correct, yes, sir.

Q. And you say they were taken from the other boy?

A. James Lauter turned them over to the Sher-

page 55 } iff, yes, sir.

Q. And he in turn handed them to you?

A. That's correct, sir. Right there in the parking lot.

* * * * *

page 61 }

* * * * *

CROSS-EXAMINATION

By Mr. Barney:

* * * * *

page 62 }

* * * * *

Q. When did you first talk to Lauter?

A. In the school year of 67-68. I can't—it was right before Christmas in the school year of '67. We had received numer-

ous complaints from the parents that narcotics were being used in Prince George High School.

Q. And this was in 1967?

A. '67-'68, yes, sir.

Q. Well, when you say '67-68—

A. Right. It was '67 when we started getting complaints about it.

Q. And when did you first talk to Lauter about trying to help you? Approximately.

A. During the summer of '68.

page 63 } Q. During the summer?

A. Yes, sir.

Q. And what was he supposed to do?

A. He was supposed to try and find out who was bringing it into the school and see just about where it was coming from.

Q. Now, you didn't know who was bringing it in, I assume?

A. No, sir, we did not.

Q. Did you know anything before Lauter told you?

A. We had heard rumors, sir. Other than that we didn't know, no, sir.

Q. Now, when Lauter came up to you, when did he first mention Johnson?

A. Back in October, sir, of '68.

Q. Back in October. And what did he tell you? What was the first thing he told you about Johnson?

A. That the word was that Jimmy Johnson was supplying the students that were using this material in the

page 64 } high school.

Q. And what did you tell him?

A. Mr. Lauter?

Q. Uh huh.

A. I asked him if he could try and see if we couldn't make a buy, a small purchase.

Q. And how many times, to your knowledge, did Lauter try to make a buy?

A. We have several—

The Court: Of your own knowledge. Not what Lauter told you.

Mr. Barney: I say, of your own knowledge.

A. Right. I know of several attempts. Three times that I know of personally, sir.

Q. You know of at least three times?

A. Yes, sir.

M. J. Vrable, Jr.

Q. Now, in talking to Lauter when the first attempt failed, what did you tell Lauter to do?

A. This is going back to the first package?

Q. No, this is the first—

page 65 } A. On the big package?

Q. No, this is—you say you know at least three times that Lauter made an attempt and nothing took place, no buy was made.

A. I told him to try again.

Q. Now, on the first attempt, what did Lauter tell you? Why the buy couldn't be made?

A. Because the boy in Hopewell had not received his supply and could not supply Jimmy Johnson until he got his supply.

Q. And then there were two other—you told him to try again?

A. That's correct, sir.

Q. And at the end of the second time you told him to try again, is that right?

A. Second time, yes, sir.

Q. And on that third time, did you tell him to try again?

A. The third time, sir, is the time that we (unintelligible).

Q. Now, I understand that Lauter made all the

page 66 } advances to Johnson. Is that correct?

A. As far as I—

The Court: Do you know of your own knowledge what transpired between these two?

A. Not between James Johnson and James Lauter, no, sir.

The Court: All right. You're on the realm of hearsay, Mr. Barney.

Mr. Barney: Well, I wanted to just ask him—What I'm trying to show, Judge, what I'm trying to show is that they were trying to set this man up.

The Court: I am well aware of what you are trying to do.

Mr. Barney: I am certain that you are *familar* with the defense. I think the record has got to show it, though.

Now, on the 14th of November, your testimony has been that you gave two hundred dollars to Lauter and that he went to Hopewell and came back. Now when he

page 67 } came back to Prince George, as I understand your testimony, you saw Johnson hand Lauter something.

A. Right, which I took to be five packages.

M. J. Vrable, Jr.

Q. Well, how did you count the number?

A. Well, I didn't know the number, sir, not until after they were handed to me.

Q. Now, all—you were how far from the car? Approximately?

A. Twenty feet.

Q. Twenty feet and how was the light situation out there?

A. There is one night light that comes on automatically and goes off at day-break and comes on at dark. I was to the right of that and the car was well lighted.

Q. Well, give me an idea of how far the light was from the car.

A. Approximately twenty-five feet. The pole.

Q. The pole?

A. Yes, sir, the light itself is on top the pole, I couldn't say—

page 68 } Q. I understand that. Now was this in back of the lot or in front of the lot?

A. Right in front of the restaurant, sir.

Q. Right in front. How far from the front door, approximately?

A. Well, the parking lot is seventy-five to ninety feet from the door, or more.

Q. And who was present besides you?

A. Deputy Sheriff Mitchell.

Q. And how about Sheriff Atwood?

A. He followed the car into the County. He wasn't present at the time when the car first pulled in, sir.

Q. And this is very important. You say that you saw Johnson give something to Lauter?

A. Yes, sir, he made the motions and handed him something. What it was, I do not know. As far as I could determine—I couldn't see actually what was in his hand.

Q. So you don't know whether he gave him

page 69 } those five packages or not?

A. No, sir, not just what I was told, no, sir. I couldn't say.

Q. Now, did you ever see the big bag before you opened the car door? This bag that you took off the floor?

A. Yes, sir, the bag won't on the floor when I saw it.

Q. Well, did you see it before you opened the car door?

A. Yes, sir.

Q. Where did you happen to see it?

A. Right between his legs, sir. He had it in his hands

sitting on top of his legs and when he—and when I opened the door he opened his legs and it slid down to the floor.

Q. But coming towards the car and passing the—whatever was passed—did you see this big bag?

A. Not until I got right up to the door looking in, sir.

Q. Now, when you came up to the car I understand to say to Johnson, "You're under arrest for suspicion of marijuana", is that correct?

page 70

A. He was asked to get out of the car and he was being placed under arrest for possession of narcotics.

Q. I understand—

A. for possession of narcotics.

Q. Now did you say 'suspicion of narcotics'?

A. I don't know whether I used the word suspicion at that time or not, sir. I did tell him—I asked him out the car, that I was placing him under arrest—

Q. I think Mr. Wyche—

A. for possession of narcotics,—

Q. Now you testified—

A. because we had been radioed that they had received the package.

Q. I understand that, that's hearsay, but I want to know definitely, and you testified when Mr. Wyche asked you, you said that I placed him under arrest for suspicion of possession of narcotics. Is that correct?

page 71

A. Yes, sir.

Q. You used the word 'suspicion'.

Well, just a couple of more questions. After Lauter got the two hundred dollars, did you search his car to see if there were any narcotics in it?

A. In James Harold—

Q. After you gave him the two hundred dollars.

A. At Mr. Lyons' Office?

Q. Right.

A. No, sir, I did not.

Q. Did you ever search him to see if he had any narcotics on him?

A. No, sir, I did not.

Q. I don't have any further questions.

Mr. Wyche: That's all, Mr. Vrable.

The Court: Your next witness.

Mr. Barney: If the Court pleases, now I am going to move to strike Mr. Vrable's testimony which would include the finding of the marijuana.

page 72

The Court: On what grounds?

Claiborne A. Havens

Mr. Barney: The grounds, Judge, is that he says he arrested the man on suspicion of possession. The case in Virginia holds there is no such charge as suspicion. The Supreme Court has held that, unfortunately I do not have the citations with me, but I have used it quite a few times—

The Court: The objection is overruled.

Mr. Barney: I note an exception.

Mr. Wyche: Sheriff Atwood.

The Court: The Sheriff hasn't come back yet.

Mr. Wyche: Deputy Sheriff Havens.

CLAIBORNE A. HAVENS, a witness, deposes and says:

DIRECT EXAMINATION

By Mr. Wyche:

Q. Will you state your name and occupation?

A. Deputy Sheriff Havens, Prince George County.

Q. Mr. Havens, how long have you been connected with the Sheriff's Office or Police Department?

page 73 } A. Five years.

Q. Do you know Thomas James Lauter?

A. Yes, sir.

Q. Do you know James Harold Johnson?

A. Yes, sir.

Q. On November 14, 1968, did you deliver any money to Thomas James Lauter?

A. Yes, sir. We met at David Lyons' Office on the 14th about six thirty at night and I gave him two hundred dollars in twenties, tens and fives.

Q. Did you take down the serial numbers of those bills?

A. Yes, sir.

Q. Do you have the original paper?

A. Yes, sir.

Q. How many bills did you give him?

A. Nine twenty dollar bills, one ten and two fives.

Q. Is that the paper that you used that night to record the serial numbers?

page 74 } A. Yes, sir.

Q. Will you show it to Mr. Barney?

That's all right, obviously he doesn't want to see it.

Mr. Barney: I've seen it.

Mr. Wyche: I ask that this paper be filed in evidence as Commonwealth's Exhibit No. 1.

Claiborne A. Havens

The Court: It will be so received.

Mr. Wyche: Subsequent to your delivery of this money to Thomas James Lauter, what did you do? Where did you go after that?

A. After that Lauter got into his station wagon and went to pick up Johnson. Myself and Detective Marshall from Hopewell got in my car and we went above 632 in Prince George and waited for Johnson and Lauter to pass. As they did we pulled in behind them and followed them to the Tasty-Freeze in Hopewell.

Q. What did they do when they got there?

A. They parked on the side of the lot. Lauter was driving. Mr. Johnson was sitting in the front seat beside

page 75 } him.

Q. Where did you park?

A. I parked across the street which is about twice the length of this Courtroom from them.

Q. What did you observe from that point with reference to Johnson and Lauter?

A. They were there a short time when a blue Volkswagon pulled in beside them. The gentleman got out of the Volkswagon, who later was found to be Jessup, Daniel Stephen Jessup from Hopewell. He got in the front seat of their car. They talked for awhile. When they left, a pre-arranged signal had been made, Lauter was to pull out of the drive-way with his lights off. As he entered the street he was to cut his lights on, which he did, but—

Q. He left?

A. Yes, sir.

Q. What became of Jessup?

A. Jessup was arrested then.

Q. Well, did he leave with them or did he stay

page 76 } there?

A. No, he stayed there.

Q. And where did he go?

A. He stayed at his vehicle. As they left we crossed the street and he was arrested at that time.

Q. Did you recover any money from him?

A. Yes, sir, I recovered the same marked bills that we had recorded serial numbers on in Prince George.

Q. Were they taken from his person?

A. Yes, sir. He was arrested down there and they were taken from him.

Q. Did you check the serial numbers at that time?

John F. Atwood

A. I checked the serial numbers and they were the same as the ones I had recorded earlier, that I had given to Mr. Lauter.

Q. The same numbers shown on Commonwealth's Exhibit One?

A. Yes, sir.

page 77 } Q. Now what did you do after that?

A. Jessup was taken down to Hopewell Police Department and I later came to Headquarters where he was. I saw Johnson. He had been arrested. We had a radio signal from Prince George that they had arrested Johnson and had recovered marijuana. That's when Jessup was arrested.

Q. Then did you come to Prince George Police Headquarters then?

A. Yes, sir.

Q. Was Johnson here—

A. Yes, sir.

Q. at that time?

You did not go to Lakewood Supper Club that night?

A. No, sir.

Q. That's all, Mr. Havens.

CROSS-EXAMINATION

By Mr. Barney:

Q. Mr. Havens, do you have the two hundred dollars?

A. Yes, sir.

page 78 } Q. Mr. Havens, who paid the money over to Jessup?

A. That I couldn't tell. I was it was done inside of the automobile and I couldn't see them from the inside.

Q. So far as you know Lauter had the money when he left Prince George, of course?

A. Yes, sir.

Q. You never saw him give it to Johnson?

A. No, sir, they were in front of me in the automobile, but I couldn't tell what was transpiring.

Q. Is it possible Lauter paid Johnson—paid Jessup?

A. I don't know that.

Q. All right, that's all.

Mr. Wyche: Sheriff Atwood.

JOHN F. ATWOOD, a witness, being first duly sworn, deposes and says:

John F. Atwood

DIRECT EXAMINATION

By Mr. Wyche:

Q. You are John F. Atwood, Sheriff of Prince
page 79 } George County?

A. Yes, sir.

Q. Mr. Atwood, were you at Lakewood Supper Club on the night of November 14th when Lauter and Johnson were apprehended there? Johnson was apprehended at that place.

A. No, sir, Mr. Wyche, I arrived at Lakewood Supper Club, but under the pre-arranged plan I was in my personal car and had the Lauter vehicle and Mr. Johnson under observation at the Dairy Freeze in Hopewell. It was—

Q. You did go to Lakewood Supper Club?

A. From there. When the car left, the Lauter car left the Dairy Freeze then I followed it and stayed in constant vision and contact with this automobile from the time it left the Dairy Freeze until it pulled into the Lakewood Supper Club lot. At that point Officer Vrable was at this destination. I circled around and then came back into the parking lot and when Mr.—Deputy Sheriff Vrable had approached
page 80 } the vehicle and Mr. Johnson and Mr. Lauter *where* out of the car. At this point when I arrived Thomas Lauter handed me five packs of marijuana that he had in his possession at that time.

Q. What did you do with it?

A. They, in turn, were given to Officer Vrable.

Q. That's all.

The Court: Cross examine.

CROSS-EXAMINATION

By Mr. Barney:

Q. Sheriff, you didn't see any transactions at all?

A. Mr. Barney, the only transaction that I saw was the contact between Mr. Jessup, Mr. Johnson and Mr. Lauter at the Dairy Freeze. Not enough to see any physical transaction of any evidence and I saw no evidence at the Lakewood Supper Club because of the fact that I arrived after this had occurred.

* * * * *

Robert G. Blanke

page 82 }

* * * * *

ROBERT G. BLANKE, M. D., a witness, deposes and says.

DIRECT EXAMINATION

By Mr. Wyche:

* * * * *

page 86 }

* * * * *

Mr. Wyche: All right, would you proceed, please? Tell us what you did after receiving those substances?

A. This material was examined, first visually and it appeared to be cannabis sativa. All of the contents of the envelopes were emptied and weighed to determine the total weight of the material, and a portion of each sample was examined microscopically to identify the morphology of the material, and the microscopic examination showed that this was cannabis sativa. A portion of each sample was then extracted and chemical tests were run which confirmed the original microscopic examination that this material was cannabis sativa. My report, therefore, was that the dried plant material in all twenty-one envelopes was identified as cannabis and the weight of envelope "A" was seventy-three grains, envelope.

page 87 } Q. Did you designate envelope "A"? Did you mark envelope "A"?

A. Yes, I did.

Q. Well, now this twenty-one packets, were they all together or were they separated in any way?

A. There were three groups of packets.

Q. In what groups were they?

A. Envelope "A" was separate, envelopes "B" through "F" were separate and envelopes "G" through "U" were separate.

Q. In other words there was one envelope separate and then there was a group of five and then a group of fifteen, is that correct?

A. That is correct, yes, sir.

Q. Well, now what designations did you put on the group of five packets?

A. The group of five packets were those that were marked as having come from the pocket of T. J. Lauter.

Q. All right. Now, what was the total weight

page 88 } of those five packets?

A. The total weight was forty-one and a half grams or six hundred and forty-one grains.

The Court: How many grams?

A. Forty-one and a half grams.

The Court: Forty-one and a half.

Mr. Wyche: Now on the fifteen packets, how were they marked?

A. These, according to my notes, were just marked as being in a paper bag. I don't have any indication in my notes as to the source of that paper bag.

Q. And what was the weight?

A. The weight—

Q. Of those fifteen packets.

A. of those fifteen packets was 107.3 grams of 1660 grains. These are the weights that were of the material before the analysis was conducted.

Q. Now in making an analysis, is a portion of the material used up?

A. Yes, it is.

page 89 } Q. After you made your analysis what did you do with these materials?

A. The materials were returned to the same envelopes that they had been in originally and were sealed and marked by me.

Q. Who were they delivered to from your office?

A. They were then returned to, they were picked up by Deputy Sheriff Vrable again on November 26th.

Q. All right, sir, that's all I have to ask you.

The Court: Cross examine.

CROSS-EXAMINATION

By Mr. Barney:

Q. Doctor, what was your specialty in college? I mean, I know you are a chemist but you specialize mostly in marijuana field?

Robert G. Blanke

A. My specialty is in toxicology and pharmacology which is, in the broad sense is drugs primarily.

Q. Doctor, what biology or what botany did you
page 90 } have?

A. I had a college course in botany.

Q. Then you don't consider yourself an expert in botany?

A. I do not consider my self a botanist, no, sir.

Q. Doctor, are you familar with the number of and types of marijuana?

A. I don't quite understand what—

Q. Are you familar with the type of plants, how many types of marijuana there are?

A. There is one genus marijuana, cannabis sativa.

Q. Have you ever heard, Doctor, of a plant called cannabis indigo?

A. I have heard that term, yes, sir.

Q. Have you ever heard of cannabis moraceae m-o-r-a-c-e-a-e?

A. Yes, I have heard of that term.

Q. Now, doctor, explain to the Court how you can tell before you make the chemical test, how you can
page 91 } microscopically tell the difference between cannabis L, cannabis indigo and cannabis moraceae?

A. There is no difference between those three types of plants.

Q. There is no difference? Doctor, chemically, how can you tell whether the plant you are testing is cannabis L, cannabis indigo and cannabis moraceae?

A. There is no difference because they are all the same.

Q. Now when you say they are all the same, Doctor, you mean one plant is known by three names or there are three different plants?

A. There is one plant that is known by three names. There is one genus, cannabis sativa, and this genus has escaped to other parts of the world and has been given other names depending on the location where it is found.

Q. Well, what you are saying, Doctor, as I understand it, that a cannabis indigo and a cannabis moraceae is the same as the cannabis L?

page 92 } A. As cannabis sativa L?

Q. That's what you are saying?

A. Yes, that's correct.

Q. Now, Doctor, you have just testified that you are not an expert in botany.

A. Yes, sir.

Q. Therefore, this is not—this is only a guess that you are saying, am I correct?

A. Well, sir, it is not a guess. This is common knowledge that is available in any botanical testbook.

Q. But, as an expert, you cannot, under oath, say they are three *diferent* plants, is that correct?

A. I don't know to what extent the Court will permit me to testify in this regard, but as an expert in science, in a branch of science, I am able to read material in other branches of science and make interpretations. My opinion is that there is one plant which has several different names.

Q. Now, Doctor, what type of test did you make page 93 } on this—this chemical?

A. The material was examined microscopically—

Q. I mean, what was the name of the test?

A. The chemical test?

Q. The Duconoid—

A. The chemical test?

Q. Yes, sir.

A. We ran the Duconoid Test and the Bouquet Test.

Q. Which one?

A. Bouquet?

Q. Bouquet. Now, Doctor, did you run a spectrographic test?

A. No, sir, I did not.

Q. And, may I ask, why not?

A. A spectrographic analysis involves combustion of the sample and measuring the light which is emitted by that combusted sample. This is an analysis which is reserved for detecting metals of various types. We are not page 94 } particularly interested in determining metallic content of the sample submitted.

Q. Well, isn't it a chemical axiom that in order to be positive of a substance, the chemist must run three tests? Isn't that an axiom of analytical chemistry?

A. I would not call it an axiom. It depends on the specificity of the tests being run. If one can run a test which is highly specific, only one test need be run, however, we, for these types of analyses, run two chemical tests and one microscopic examination.

Q. Now, Doctor, this test on the—the chemical test, boils down to a color test, is that right?

A. That is correct.

Q. Tell the Court how you determine whether or not it is marijuana by the amount of color or what—how do you base your findings as to the color scheme?

Robert G. Blanke

Q. Our findings as to whether the material is marijuana is based on the results of all three tests which we
page 95 } run. Not on one chemical test, however, the Duconoid Test, for example, is carried out by extracting a portion of the sample with trillium ether, evaporating that extract to dryness which leaves a residue containing the active ingredient in the plant material. This residue is then dissolved in the Duconoid reagent which contain vanillin dissolved in alcohol and acetaldehyde and after this reagent is added it is acidified with hydrochloric acid and a typical color results in the presence of certain types of substances. The color changes somewhat. It begins as a green and goes into a violet and blue color. This is then extracted with a solvent called chloroform and the color, if it has been produced by one of the active ingredients in cannabis sativa is soluble in the chloroform.

Q. Now, Doctor, isn't it true that on your chemical test, isn't it true that there are at least thirty or forty substances that will give the same chemical reaction?

A. I can not say exactly how many substances
page 96 } will give the reaction but a number of phenolic substances will.

Q. And how do you differentiate between those and this marijuana?

A. As I said before, we did not use the one test as a criterion. All three tests must be positive before we designate the material as being cannabis sativa.

Q. Doctor, would you say there is a specific test for marijuana?

A. I think that the most specific examination that could be done of dried plant material is the morphology of the plant, microscopic identification of the plant. The active ingredients can be extracted and identified by physical means but this is a very lengthy and laborious procedure.

Q. Doctor, are you familar with the Bureau of Customs Laboratory in Baltimore?

A. Yes, I am.

page 97 } Q. Are you familar with a man named, Lerner, up there who is the Chief Chemist?

A. I do not know him personally but I have read his work, yes.

Q. Are you familar with any work by him which states that he will refuse to prosecute if all he gets is a Duconoid identification?

A. Yes, and I would agree with that.

Robert G. Blanke

Q. Are you familar with him—his work when he says that unless he has enough of the substance to run a spectrophotometro analysis he won't recommend prosecution?

A. I would not agree with that statement, no.

Q. Then why wouldn't you agree with him?

A. Because in my opinion the material can be identified by other means beside spectrophotometric analysis.

Q. Now you say, Doctor, that usually in—usually in analysis it takes three, you would say at least two, sometimes three tests, and you made a microscopic test and

page 98 } two chemical tests. Yet, since you don't agree with the Duconoid identification alone, what is purpose of making the Duconoid?

A. First of all, I did not say that three tests were necessary to make a specific analysis. It depends on the specificity of the test. It is common practice in chemical analyses in identifying unknown substances by colormetric tests to confirm a test if more than one substance will give such a test. Now, with the Duconoid test a number of phenolic substances will give positive results. If the material does not contain the active ingredients of cannabis sativa, the Duconoid test would be negative. This would be a very useful bit of information if the test were negative, however, if the test is positive, the results must be confirmed by other tests.

Q. Now, Doctor, the color tests depend, of course, on the—whether or not the chemist making the test is color blind.

A. Yes, this would be true.

page 99 } Q. Have you had your eyes checked for color blindness lately?

A. About five years ago was the last time I—color—my eyes were checked for color discrimination.

Q. I see.

Thank you, Doctor.

Mr. Wyche: That's all.

The Court: Doctor, let me ask you one question. Is there any question in your mind that all twenty-one packets of Commonwealth's Exhibit 2 contain marijuana?

A. There is no doubt in my mind at all that it is marijuana.

* * * * *

page 102 }

* * * * *

Mr. Wyche: Mr. D. T. Agee.

Mr. Barney: Judge, before you call him I would like to make a motion.

The Court: Proceed.

Mr. Barney: That Dr. Blanke's evidence be stricken as the test he made microscopically is not pertinent since he has said he is not an expert.

The Court: The motion is overruled.

Mr. Barney: I note an exception to it.

DELBERT T. AGEE, a witness, deposes and says:

DIRECT EXAMINATION

By Mr. Wyche:

Q. Will you state your name, please?

A. My name is Delbert T. Agee.

Q. And your occupation?

A. I am drug chemist for the State Board of Pharmacy but employed within the structure of the laboratories of the Virginia Department of Agriculture.

Q. What educational background do you have,
page 103 } Mr. Agee?

A. I graduated from Randolph-Macon College with a degree in chemistry. I undertook graduate studies at the University of South Carolina for two and a half years. Instructed in Chemistry at Georgia Institute of Technology in Atlanta for a year, have been engaged in the analysis of drugs for quality control and for purposes of testifying for five years, have been engaged in drug work for about six years.

Q. And you are with the Department of Agriculture?

A. This is correct.

Q. And your specialty is analysis of drugs?

A. This is correct. Drugs of all types—narcotic and all.

* * * * *

page 105 }

* * * * *

Mr. Wyche: Mr. Agee, did you proceed to make a chemical analysis of the materials in these envelopes?

A. Yes, sir, I did. The results of my analysis from each—the material from each envelope, including "A", each of the twenty-one envelopes, "A" through "V" with the envelope that would be marked "J" omitted, responded positively to the quality of tests for cannabis or marijuana as it is commonly called. The total weight of cannabis in the envelope designated "A" was 3.7 grains or 56.9—grams

page 106 } rather, 3.7 grams—

Q. Now, is that the single envelope?

A. The single envelope.

Q. And the weight was what?

A. 3.7 grams—

Q. Grains?

A. Or 56.9 grains.

Q. All right, sir. Now, the next group.

A. The group of five envelopes, the substance contained in those, these are envelopes "B" through "F", the total weight of cannabis from the five envelopes was 38.06 grams and 585.5 grains, the weight in grams was put upon each envelope, separately marked on each envelope. The weight of cannabis in the fifteen envelopes "G" through "V" with "J" omitted, total weight of cannabis 99.196 grams or 1,526 grains.

Q. Do I understand you to have stated to the Court that the chemical analysis of the five packets of one group and the fifteen packets of another group disclosed that the contents were cannabis?

page 107 } A. This is correct.

Q. Now, what is cannabis sativa L?

A. Cannabis sativa L is the Latin designation for a, or biological designation for a plant of the hemp family, and it is a growing plant.

Q. Was this material cannabis sativa L?

A. That is right. Cannabis sativa L is the sole species of this plant although there are several varieties of this species.

Q. That's all I have to ask you.

The Court: Cross-examine.

Delbert T. Agee

CROSS—EXAMINATION

By Mr. Barney:

Q. Mr. Agee, explain your—explain your statement "Cannabis L is a species but there are certain varieties". What—what do you mean by that?

A. Well, if I may draw a particular analogy, just like a tomato plant would be a species of plant, various varieties of tomato, such as Big Boy or Marglob, would be varieties of the tomato family.

Q. Would a—would a variety be cannabis in-
page 108 } digo?

A. Cannabis indigo is a variety of cannabis sativa L.

Q. And how about cannabis moraceae?

A. Well, cannabis moraceae is usually referred to as the pistolate portion of the female plant.

Q. Now, cannabis L is a narcotic, is that right?

A. Cannabis sativa L as designated under the State Code falls as a narcotic drug under the Uniform Narcotic Act. As a chemical it is considered in the calss of hallucigans, in other words, what I'm saying is, it is psychologically—a psychologically dependant drug but not physically addicting, or physically dependant.

Q. What is cannabis indigo classified as?

A. Cannabis indigo as a variety of cannabis sativa L falls under the same classification.

Q. It falls under the same classification as a narcotic?

A. This is correct.

Q. Does the Code—are you familar with the
page 109 } Narcotic Drug Act?

A. Yes, sir, I am.

Q. Does the Narcotic Drug Act list cannabis indigo as a narcotic?

A. The Narcotic Drug Act lists cannabis sativa L under the definition of cannabis. It does not mention the word sativa—indigo rather.

Q. Does it list moraceae?

A. Under the Drug Act it does not list moraceae.

Q. And you're saying it is a narcotic, yet it is not listed.

A. I didn't say that. I said that these were varieties of a plant that is listed.

Q. Now, let me ask you this, in making a chemical test of cannabis sativa L, and by the way, what does the L stand for?

A. Linne—L-i-n-n-e, it's the name of the man who catalogued the plant.

Q. It wouldn't be Lavaus would it, L-a-v-a-u-s? Have you ever heard that?

page 110 } A. I've heard that designation but, no, this is L-i-n-n-e.

Q. Now in making chemical analysis of cannabis L and cannabis indigo and cannabis moraceae, can you tell the difference chemically.

A. No, because the test is for cannabis sativa L and everything that is under this species containing the drug tetrahydracannabanol will give the test.

Q. Now, how can you testify that this is cannabis L, a narcotic?

A. Well—

Q. How can you testify that it is not cannabis indigo or cannabis moraceae which is not a narcotic?

A. I have never said that cannabis—you are asking me to define these two items as not being cannabis sativa L. They are cannabis sativa L. It's a further designation of them as a variety of cannabis sativa L. In other words, cannabis sativa indigo and cannabis moracea are both cannabis sativa L.

Q. Well, since they are a variety, they have

page 111 } different characteristics, is that right?

A. Characteristics that would differentiate the varieties physically from being varieties of this species, cannabis sativa L.

Q. Now, in your testifying before the Courts and in your making these analyses, have you ever run across cannabis indigo?

A. As a particular plant?

Q. Yes.

A. Well, my break down to the plant to that extent does not go down to variety of level. I can identify any variety of the plant as cannabis sativa L to break it down to which variety of this plant, no, this I can not do.

The Court: Let me ask this question, is there any difference in the chemical structure of cannabis sativa L and cannabis indigo?

A. No, sir, they—the difference is in the physical structure of the plant and its very—

The Court: What do you mean? In the leaf

page 112 } structure or what are you referring to—

Delbert T. Agee

A. Well, again I would draw an analogy, the differences occurring would be if you see a tomato plant as a species, you can recognize a tomato plant. You may not necessarily be able to recognize that plant as an individual variety until you see the fruit of the plant. It may be a large tomato such as a Big Boy or a Oxheart Tomato or any of this type. Both, or all are tomatoes, but they are varieties of this species.

The Court: And you say cannabis sativa L is the—

A. Single species, the only species.

Mr. Barney: Do you, of your own knowledge, know that cannabis indigo or cannabis moraceae is a hallucigenic—

A. Well, they are plants of the variety cannabis sativa. The drugs that they contain by this chemical test, tetrahydracannabanol, is the hallucinagetic agent.

Q. That is cannabis sativa L. I'm asking you page 116 } on these other two.

A. All—the species cannabis sativa L contains tetrahydracannabanol. That's any variety of it.

Q. Now, in running this test. You only ran to see it—you only ran the test to see if it was cannabis L?

A. Well, the tests that are run which—these tests are from the Bureau of Narcotics, are run to determine cannabis sativa L because to determine it for this purpose nobody breaks it down into the variety of this particular species.

Q. Now, you say nobody breaks it down.

A. What I'm saying, for purposes of this type of testimony, now for purposes of a biologist whose classifying plants as to plant type, yes, its been broken down.

Q. And it has been found evidently, but these two varieties are not narcotic.

A. No, sir.

page 117 } Q. Well, I can't argue the law with you, I'm not going to do that. Tell me something, how many—how many organic factions are in—how many organic factions compose cannabis sativa L?

A. The complete break down—

Q. Just the number.

A. Well, even that is not easily done because it depends on where the plant is grown. Cannabis sativa L which can be grown as far north as Wisconsin but which occurs as a native plant in the tropics, the organic make-up of the plant is determined by where the plant is grown, however, all of the plants do contain tetrahydracannabanol in approximately

three isomers of tetrahydracannabanol and the plants from the tropics contain a larger amount of this drug than do the plants grown in the more northern climes.

Q. Now have you ever tested a plant from a norther clime?

A. Yes, I have.

Q. And have you ever tested plants from the
page 118 } tropics?

A. Yes, I have.

Q. In testing these plants by looking—by running a test, can you tell which plant is from where?

A. I can—you can't distinguish other than the fact of the intensity of the color in one of the tests that you receive and having tested cannabis from Viet Nam, Puerto Rico and Mexico and Morocco, as well as some of the South American countries, I can't distinguish from the tests which one of those countries it came from, but I certainly can distinguish from the plants say that came from Wisconsin by the amount of drug or intensity of the color.

Q. Well, which—which one of the factions that are in marijuana causes color?

A. Tetrahydracannabanol.

Q. Now, are you positive of it?

A. This is correct.

Q. Are you familar with the work of—are you familar with the Bureau of Customs Laboratory in *in*
page 119 } Baltimore?

A. Yes, sir, in fact I've done some work for them.

Q. Do you know a man named Lerner up there?

A. No, I don't.

Q. You're not familar with his work?

A. (no audible reply)

Q. Did you ever run a spectrophotometric analysis on marijuana?

A. Which type of spectrophotometric analysis are you talking about, infra-red, U. V. or are you talking about the Rammon spectrum?

Q. The infra-red.

A. I have done some infra-red work with marijuana.

Q. Did you run it on this test?

A. No, I did not.

Q. May I ask why not?

A. Because the test has not been proven in Court as of present to be absolutely valid. Because there is
page 120 } no—Well, let me put it this way, the work is still in the research stage.

Delbert T. Agee

Q. How many tests did you run?

A. I used what is standardly used in cases of this instance, of course. Physical examination which is microscopic, the Duconoid Divine Test which is a colorimetric test and in some instances I used what is known as the Beam Test which, although no item which is not marijuana will give this test. Not all marijuana will produce positive results with this test. Its a variable test. But the two that are used specifically are the microscopic examination and your Duconoid Divine Test.

* * * * *

page 129 }

* * * * *

Mr. Wyche: That's the Commonwealth's case, if it please the Court.

The Court: All right, sir.

Mr. Barney: Judge, I make a motion to strike the Commonwealth's evidence in proving that the defendant was entrapped into making this purchase.

The Court: The motion is overruled at this time. I will give you a chance later on to argue it but at this time

* * * * *

page 154 }

* * * * *

Again, so far as the Court is able to determine, it finds beyond a reasonalbe doubt that entrapment did not exist in any of these matters.

The Court is most concerned in this matter and I state that from the Bench about the degree of punish-
page 155 } ment in all of these cases. Now as a consequence at this time, I am only going to pass sentence on one of the indictments. The reason being, and I don't mind stating in open Court, because the Court has nothing to hide in this case, the minimum sentence for the sale of narcotics to a minor is ten years in the penitentiary, and the Court does not have the power to suspend the execution or the imposition of that sentence. Now I don't know whether the

family of this young man realize that. I don't know whether this young man realizes it, but the Court has been very concerned over this matter. Here is a young man eighteen years of age that has become involved in the sale of narcotic drugs and I only wish that his family as well as he realized the seriousness of this type of an offense. I have seen unconcerned people in this Courtroom, members of his own family, and that has given me most concern because this type of an offense, if his family had had any suspicion or had attempted in any manner to prevent this sort of thing happening, just as this young boy, Lauter, recognized his duty to
page 156 } prevent this sort of thing from happening in this community. I don't think I'd be confronted here today with my dilemma, so as a consequence I am going to withhold my decision on the two sales in this case. That doesn't mean that I haven't got a feeling with regard to the two sales. I am going to find the defendant guilty of possession of narcotic drugs in excess of twenty-five grains and I don't know whether his family is aware of the punishment there. It carries a minimum punishment of twenty years in the penitentiary. I hope that you have become aware of the great difficulty that this young man has become embroiled in the law.

Let me have the indictment on possession.

James Harold Johnson, stand up.

Upon your plea of not guilty to the indictment charging that on the 14th day of November, 1968, you unlawfully and feloniously had in possession narcotic drugs, the Court finds you guilty and finds that it was in excess of twenty-five grains.

* * * * *

page 158 }

PRE—SENTENCE HEARING

May 20, 1969

* * * * *

DANIEL BOWERS, Probation Officer, being duly sworn, deposes and says:

Daniel Bowers

DIRECT EXAMINATION

By Mr. Barney:

Q. Will you, please, state your name for the record?

page 159 } A. Daniel A. Bowers, State Probation and Parole Officer.

Q. Mr. Bowers, you made this report on James Harold Johnson, that you have here?

A. Yes, I did.

Q. Do you have any further evidence, such as letters, that were not included in this report?

A. Yes, I have a letter here from the defendant dated May 18th in which he states that he hopes that he is going to be dealt with leniently. I feel it is a very good letter. I have another letter here from—

Q. Would you mind reading that letter on—

A. Well, all right. It says, "I am sorry I haven't written sooner. I wanted to express my gratitude toward you for talking with me. It isn't often I can sit down and really talk to a person, man to man. I have many things to be thankful for. My parents have given me hope through this terrible wait. My preacher has give me faith in God and the jailer here has given me respect for the law. I have been a trustee

page 160 } here for the last month and a half. My uncle has a job waiting for me when I get out. My preacher wants me to make *speaches* to young people on the dangers of drugs. I, indeed, have a lot to look forward to. If there is anything you need to know or anything you want me to do, just let me know. I have hopes of finishing my high school education in September. I have been in here more than six months. I can indeed say I have learned my lesson, I just want to live a simple life. I value my freedom very much. Hope that some of the things I have told you can be of some value to you. Sincerely yours, James H. Johnson, Jr."

Q. Who else do you have letters from?

A. I have a letter here from a Mrs. Bob Kennedy, Mrs. Vera L. Kennedy of three—

Q. Mr. Bowers, before you start reading, does this letter speak well of the reputation of James Johnson?

A. Yes, I think we could say this for all the letters I have.

page 161 } Q. Now, Mr. Bowers, have you spoken to various people in the general area that have—that know James Johnson?

A. I have had some telephone calls and three or four per-

sonal calls from, I guess about five personal calls from people in the general area there. Mr. Frank Irvine, his uncle, has called me and Mr. Claude Newsome has called me. His teacher at Gibbons and I talked with a number of other people.

Q. Did they give him—did they give Johnson a very good reputation?

A. Well, yes, so far as they knew about him.

I have another letter here, Mr. Barney, from a Mrs. Paul P. Bulware of 308 Claremont Street and I have another one here from Miss Margaret Hood of the St. Mark's Methodist Church and I think that is all.

Q. I don't have any further—well, let me ask you this, if this man is put on probation, then the Petersburg Probation Officers will take care of him?

A. Yes.

page 162 } Q. I don't have any further questions.

CROSS—EXAMINATION

By Mr. Wyche:

Q. Now, Mr. Bowers, I assume that the people who have talked to you and written to you have written and talked to you in behalf of this young man with a sympathetic attitude toward him and with a desire to lay before you facts upon which you might make a recommendation to the Court and on which the Court might act on the question of probation, is that correct?

A. I assume that is what they had in mind. There haven't been too many facts laid before me.

Q. Have any of these people who have talked to you or written to you expressed any concern about what might happen to other people in similar instances?

A. I believe that the teacher from Gibbons School did last night. He had a very deep concern I think for this, Mr. Newcome or Newsome, I think he had a very deep concern about the whole problem. I think he showed some insight into it.

Q. And was he the only one that expressed

page 163 } any opinion or insight into the effect of the use of drugs in the public school systems or what it does to children, to their families and to their future and things of that kind? Did any of these people discuss that side of the problem with you or were they simply saying to you that this is a fine young man and he should be placed on parole?

A. Well, generally the latter part of your statement would fit the facts. I would say that the defendant's mother has talked to me quite a bit about drug addiction and she has tried to get some group started to study the problem and I believe that the Rev. Mr. Long did express some concern about the drug traffic but by and large I think they were interested in this boy as an individual. I think that would be the gist of their conversations.

Q. That's all.

RE-DIRECT EXAMINATION

By Mr. Barney:

Q. Let me just ask one question. Your report shows that this boy did not get, as I read it, along with his
page 164 } family, is that correct?

A. Yes, sir.

Q. It shows his mother did not love him or take care of him.

A. Well, no, I don't think it showed that they didn't love him and take care of him. I think it showed a conflict there, Mr. Barney.

Q. Will you tell us what conflict does it show?

A. Well, I'd say, it shows the boy is in rebellion against his parents in a right early age.

Q. But there was some family disagreement?

A. Yes, sir.

Q. All right, I don't have any further questions.

Thank you, Mr. Bowers.

* * * * *

FRANK IRVINE, a witness, being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Barney:

* * * * *

page 166 }

* * * * *

Rev. J. G. Long

CROSS—EXAMINATION

By Mr. Wyche:

* * * * *

page 167 } A. Frank Irvine.
Q. Irvine.
A. I run Tri-City Plumbing and Heating.
Q. Mr. Irvine, do you have any opinions about the use of narcotics among young people in Colonial Heights for example? You live in Colonial Heights.
A. Yes, sir, and I don't—
Q. Have you done any reading on this question?
A. I haven't done a whole lot. Since this has come up I've heard a lot about it and I don't condone it. I have two sons and I wouldn't want anything like this to happen to them.
Q. That's all.

The Court: Mr. Irvine, according to the report, Jimmy freely admitted that he has used marijuana and LSD on one occasion. He also states that once you use it you're never the same again. Does that give you any concern?
A. Well, no, I don't believe it does. I believe I know Jim enough to—I've known him long enough I think
page 168 } that—well, I guess last—last summer he had a little problem and he come over to my house and stayed a week and, frankly, if I had known he had this problem, I think I could have straightened him out. He had some deep problems and we talked it over and I think I helped Jim and I feel like I can help him now.
The Court: But you are not at all familiar with the effect of marijuana on those that use it. Or LSD or any of the other hallucinatory or narcotic drugs.
A. Only—I'm only familiar with what I've read.

The Court: Any other questions?
Mr. Barney: No, sir, I don't think so.
Let me have Rev. Long.

REV. J. G. LONG, a witness, being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Barney:
Q. Will you state your name and residence, please?

Rev. J. G. Long

A. J. G. Long, 1654 Avon Lane, Petersburg.
page 169 } Q. And what is your occupation?
A. Minister, Methodist Minister.
Q. And what church?
A. St. Mark's Methodist.
Q. In Petersburg?
A. Yes.
Q. Rev. Long, have you known James Harold Johnson for any length of time?
A. Well, I've known him since I've been here, this is the fourth year.
Q. Fourth year. Is he a member of your Church?
A. Yes.
Q. Does he attend Sunday School and Church.
A. Well, he had not attended very regular in the past. He has participated some, in fact he participated some in a folk choir group last summer. But he has not been a regular attendant.
Q. Have you had occasion to talk to him since
page 170 } he has been in Petersburg jail?
A. I have regularly visited.
Q. And has James made any statement about his views about his feelings in this matter?
A. Yes, he has on, I guess, almost every occasion I've visited with him. I feel that he has really had some real hard thinking about it and is determined to change in his attitude, according to the attitude that he has come to.
Q. Does he give you the impression that he is sorry he did this, or just sorry he is in jail?
A. Well, I feel that he is sorry on both points. I'm sure he is sorry he is in jail but I feel that he is definitely sorry that he has been involved in this and, in fact, he said he would like to have the opportunity of talking with youth groups to help others avoid getting in the same trap that he was caught in.
Q. Have you spoken to him about speaking—
A. Yes, I have.
Q. to the young people of Church?
page 171 } A. Yes, in fact the young people said they would like to have him talk to the group.
Q. I see. Answer Mr. Wyche's questions.

CROSS—EXAMINATION

By Mr. Wyche:
Q. Mr. Long, are you familiar with the fact that this

young man has been before the Juvenile Courts some several times?

A. Yes, sir.

Q. Have you read this report?

A. No, I have not read it.

Q. You spoke of the fact that James Harold Johnson, Jr. had participated in some type of folk music or entertainment in your Church. That happened on one occasion did it not?

A. The—one occasion that he participated in.

Q. He has not been a regular attendant at your Church services nor has he regularly attended Sunday School or youth work or anything of that kind in your Church except on this one occasion when he played?

page 172 } A. He attended more than the one occasion.

Q. Not just regularly.

A. He hasn't attended regularly, no.

Q. All right, sir. In this report psychiatrists and psychologists were consulted in this matter and they state this along with the psychiatric-social worker, they both stated, these two doctors, along with the psychiatric-social worker that James Harold Johnson, Jr. is a socio-pathic personality. Their definition of a socio-pathic personality is one who simply does not learn by his mistakes but is apt to repeat the same mistake again and again. They also described this condition as one who looks down upon people and who feels that he himself is superior, although at the same time, is experiencing a terrible inferior feeling. A socio-pathic personality is also one who tries to manipulate others for his own end. This was pointed out to us in Johnson's record because, time and time again, he promised his parents and courts that he would do better and would change his ways if give a chance; then, when given a chance,

page 173 } simply did not respond.

Now, with that psychiatric description of this young man, do you feel that the Court should show leniency and place this young man on probation and give him the third and the fourth and fifth and sixth chance? You know the Scripture tells you to do that. Is that your thinking in this matter?

A. Well, I do think that people often change. I wouldn't be in the Christian ministery if I didn't. This is basic to my profession that people do change, and over these months that I've visited Jim I definitely feel that he has made a change or else I wouldn't have—

Q. Well, I'm positive that you feel that way about it, but these things have happened before and no change, ap-

parently, has been exhibited because they happen again. Do you have children, Mr. Long?

A. Yes, I do.

Q. How old are they?

A. My boy will be twenty-one in September. A girl eighteen.

page 174 } Q. And you are concerned, of course your children are passed high school age and are not subjected to the traffic in marijuana, LSD and things of that kind.

A. They are subjected—

Q. You fully realize that there is a duty and responsibility upon the Court, the police, the prosecuting attorney, the ministers of the gospel and all good citizens to protect the young people of Petersburg and Prince George and so forth from subjection to this kind of thing. You fully realize that, I'm sure.

A. Oh, yes, I realize and I'm concerned, too. I don't think we could live without the law. I think we have to have law and we have to live within the law and I'm aware that there has to be some justice.

Q. Have you made any study or examination of the reports on the effects of marijuana and LSD and things of this kind?

A. Yes, we have gone into this in our Christian Social Concerns Commission, in fact, we have a man on

page 175 } that commission that has had quite a bit of experience before he came to Petersburg. He headed a commission up in Maryland in which they did go very deeply into this problem which was existing there before it was here, and so we have had concern and discussed it and, in fact, have a group that is trying to do something about it.

Q. Well, the very fact that those things have happened would indicate to you and to me and others that it is a very serious problem among our young people?

A. Right. I wouldn't minimize the problem at all.

Q. I believe that's all.

RE-DIRECT EXAMINATION

By Mr. Barney:

Q. Mr.—Rev. Long, in your ministry in the last four years have you had any trouble with the Church with Johnson bringing marijuana or anything to the young people in the Church?

A. No, not so far as I know. There has been

page 176 } none in the Church.

James Harold Johnson, Jr.

Q. Well, when I say in the Church, I'm talking about the members. I don't know if he'd bring it right to the Church. I'm speaking of the members of the Church.

A. Well, so far as I know he has not given it to any of the members of my Church.

Q. Mr. Wyche has mentioned the Scriptures say forgive and for judge to let him go one, or two or three or four times. Am I correct in assuming that the Scriptures say that you shall forgive until you forgive seventy times seven times and then you shall take other action? Is that correct?

A. That's right.

Mr. Wyche: I don't believe it states you shall take any other action, Mr. Barney, I think it's an illustration of the fact that there should be no limit to forgiveness.

Mr. Barney: Well we won't get into that.

page 177 } Thank you, Rev. Long.

* * * * *

page 182 }

* * * * *

JAMES HAROLD JOHNSON, JR., the defendant, being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Barney:

Q. Speak up so the Judge can hear you. For the record what is your full name?

A. James Harold Johnson, Jr.

Q. And you are eighteen years old?

A. Yes, sir.

Q. James, how long have you been in jail?

A. Almost seven months.

page 183 } Q. Seven months.

A. Yes, sir.

Q. What have you learned since you've been in there?

A. I've learned that there is a lot more things valuable to you than getting high. That reality is always there and you can't escape it and that jail is a harsh place. You learn a lot of things in there.

Q. Can you tell the Court—your record states that you've

taken marijuana and you've taken LSD—can you tell the Court why you started taking it?

A. I was just boyish, it was just a fad about two or three years ago and we went to Richmond and they had these clothes and long hair and all that was the fad, and I met this boy who went to Prince George High School who knew more than I knew about it and he had had first hand information and he got me started on it, on marijuana.

Q. How about this LSD? Did you take that?

page 184 } A. I took it one time. I took it—*its* been nine, ten months ago. Marijuana, in the report, marijuana is not the thing that will make you change but LSD, an habitual LSD user will—his mental capacity will change, his mental out-look on life will change.

Q. Well, how often did you take LSD?

A. One time.

Q. Now, the report says that you have promised your parents time and again that you would do better, but you never did. Can you explain this?

A. I—my parents and I, since I've been a young child, I've tried to get along with them—we both have our conflicts in which I, being young, wanted to go out and have a good time and them, having the experience and wiser, wanted me to stay at home and conform. And I was hard-headed and strong and I thought that going out and having fun was sometimes more importnat than material—than getting your education and things like that. A young child without any sense, that's what I was.

page 185 } Q. Now, can you explain your absences from school?

A. When I first came to Prince George High School I met certain people and they became my companions and they had been doing this and I didn't skip school when I went to Petersburg and when I went to Prince George a lot of people were doing this—when they cut out a couple of days from class. They would go fishing or things like that and it seemed—they introduced me into it and I—and I just went along with them when they skipped and went fishing and things like that which really I didn't think back on my education was more important.

Q. Did these people come to see you since you've been in trouble?

A. No, sir, none of my friends have.

Q. Did you learn anything from that?

A. Yes, sir.

Q. What did you learn?

James Harold Johnson, Jr.

A. Only when you've got something they want,
page 186 } they'll come to you. That when you're in trouble
they are not going to bother to help you.

Q. Now if you should get on probation, you plan to finish school?

A. Yes, sir, I much intent to. I want to.

Q. Do you want to live with your uncle, Frank Irvine?

A. Yes, sir, I'd be glad to do that.

Q. How could the Court be sure that you wouldn't go back to smoking marijuana or dealing in marijuana if you were put on probation? What assurance could you give the Court?

A. I'd work five days a week and I'd go to church every Sunday and I would be home at a regular hour and every time I leave the house I would let Mr. Irvine know exactly where I was.

Q. Answer Mr. Wyche's questions.

A. Yes, sir.

CROSS-EXAMINATION

By Mr. Wyche:

Q. When did you first use marijuana? How
page 187 } old were you?

A. I was sixteen.

Q. Was it given to you or did you buy it?

A. It was given to me.

Q. By an older person?

A. Yes, sir.

Q. Did you consider he was doing you a favor when he gave you this marijuana to smoke?

A. When I first tried marijuana I tried it more or less as an experience. I had heard about it but didn't know. I was curious to find out what it was like.

Q. Do you consider now that he did you a favor by furnishing you with marijuana to smoke?

A. I don't—I don't believe he did. The reason is that a lot of people that take marijuana can sometimes get on to stronger things like heroin and become addicts and this leads to moral and physical degeneration.

Q. Somewhere it is stated in this report some-
page 188 } where that you denied that you were trafficing in
marijuana or selling marijuana. That the only thing you did was to buy some marijuana for this young Lauter boy simply to do him a favor?

A. That is right. I've known Lauter, Thomas Lauter for four years *every* since I've been in Prince George County.

James Harold Johnson, Jr.

Q. Do you consider it a favor to furnish the Lauter boy or anyone else with marijuana?

A. Lauter came to me and he came to me several times before I would do this, and he give me every indication that he had heard about it and that he wanted to try it very much.

Q. But you'd smoked it, you knew what marijuana was?

A. Yes, sir, I had.

Q. You know you knew the effects of marijuana?

A. Yes, sir.

Q. And still you wanted to do him a favor by putting him in the position of becoming an addict of narcotics?

page 189

A. No, sir.

Q. Did you consider you were doing him a favor?

A. He came to me and asked me to get him some, now what he did with it, I don't know what he could do with it, whether he would give it to someone else or what he would do with the marijuana once I got it for him.

Q. Did you attempt to explain to him what marijuana would do for him?

A. He explained to me the effects of it, and which verified what I already knew.

Q. So you—well what do you know about marijuana? Tell us something about it?

A. Marijuana is, if taken intensely can produce hallucinations, it dilates your eyes and slows your reactions.

Q. And it's a narcotic drug? You know that?

A. Cannabis.

page 190

Q. And do you also know that studies of the use of marijuana in groups of people, individuals, also leads to the use of other types of drugs?

A. Yes, sir, that's a fact.

Q. Isn't that a fact from studies and information that's available?

A. A person who uses marijuana intensely can go to high drugs if he doesn't find satisfaction in marijuana.

Q. And you didn't find that out today, you knew that a year ago, didn't you?

A. No, sir, I have not been—I'm not an habitual user and never have been.

Q. I say, you didn't know—the statement you just made, you didn't just become aware of that today, that the use of marijuana may lead to other, use of other types of drugs and so forth?

James Harold Johnson, Jr.

A. I did not know that when I first started.
Q. Well, did you know it last night?
A. Yes, sir.
Q. And still you consider that obtaining mari-
page 191 } juana for the young Lauter boy was doing him a favor?
A. He ask—he—yes, as a friend, consider I went up to him and asked him for a pint of liquor and he got it for me, he'd do it as a favor.
Q. You didn't place any more seriousness or importance—
A. If I had any idea that Lauter—
Q. on the use of marijuana by the young Lauter boy than it was just simply doing him a favor, is that what you're saying?
A. I've known Lauter four years, I've—I've personally knew him and I believed Thomas Lauter had more sense than to experiment with dangerous drugs, which I mean marijuana and LSD.
Q. Well, did you have more sense than to experiment with them?
A. I tried LSD one time.
Q. But you tried marijuana a number of times?
A. I tried it several times.
page 192 } Q. You knew where to go to get the marijuana for him?
A. No, sir, not at the time.
Q. Well, you went to a source that made marijuana available?
A. I called up people and finally found out the person who was doing this through phone calling somebody else. I did not know the Jessup boy personally, who I received the marijuana from.
Q. Well, tell me now, do you think you did the Lauter boy a favor?
A. No, sir, I would not recommend marijuana to anybody.
Q. And when did you come to that conclusion?
A. Well, I've been in jail almost seven months, I've had plenty of time to think about it.
Q. And only since you've been in jail have you come to the conclusion that marijuana is not good, should not be used? Have you come to that conclusion?
A. I have come to that conclusion, yes, sir.
page 193 } Q. I don't believe you stated that to Mr. Bowers, at least he didn't report that in his report.

James Harold Johnson, Jr.

A. I stated to Mr. Bowers that—every question that he asked me I answered to the best of my ability.

Q. Do you have any brothers or sisters?

A. Yes, sir, I have one brother and one sister.

Q. How old is your brother?

A. My brother will be sixteen tomorrow and my sister is thirteen.

Q. Do you have any opinions about a person who would furnish marijuana to your brother and sister?

A. Yes, I would have an opinion.

Q. What would that opinion be?

A. It would not be a good opinion. I think a person—a young person like that is not capable of making up his own mind whether he wants to do right or wrong. I think that is just influencing the person. You take a person twenty-five, twenty-one, he's usually old enough and capable enough of making up his own mind what he wants to do.

page 194 } Q. Are you saying to the Court that you were not capable of knowing what you were doing?

A. I'm saying at the time that I began with marijuana, if I had known what I know now, I wouldn't be in the same situation.

The Court: Did you know it was a violation of the law when you first started fooling with it?

A. Yes, sir, but I didn't know how bad or serious it was.

The Court: You didn't know how serious it was?

A. No, sir.

The Court: When did you find out how serious it was?

A. When I got arrested.

The Court: When you got arrested?

A. Yes, sir.

The Court: Do you think it was important to check and find out how serious it was?

A. I never gave it a thought.

page 195 } The Court: How about breaking into another man's house and stealing one hundred and fifty-five dollars, did you know that that was a violation of the law?

A. At that time I was—I had just come back from Military Academy and—and I wasn't very mature, I was more of a juvenile.

The Court: Did you know that it was a violation of the law?

A. I knew what I was doing was wrong.

James Harold Johnson, Jr.

The Court: You knew that it was wrong?
A. Yes, sir.
The Court: And yet you did it?
A. But I don't know why.
The Court: You don't know why?
A. Why I did it, except I wanted some new shoes and that—
The Court: Well, this money wasn't yours. It belonged to someone else. Did you feel that you had a right just to go into another man's house and take what ever he
page 196 } and appropriate it for your own use?
A. I was sorry after I did it and I returned all the money the same day.
The Court: You were also convicted of driving on a revoked license.
A. Yes, sir.
The Court: For which you served some jail time.
A. Yes, sir, twenty-one days.
The Court: Did you know that that was a crime?
A. Yes, sir.
The Court: Did you know how serious it was?
A. No, sir.
The Court: Well, you did know that you didn't have a right to drive an automobile?
A. Yes, sir.
The Court: And yet you drove it?
A. Well, here's the circumstances, the boy came to my house and he drove the car to my girl friend's house
page 197 } and I had a flat tire. He usually drove it all the way to my house, but he said that night he wanted to go home and that he didn't feel like walking the rest of the way. He lived on Crater Road so I drove from his house to my house and I got arrested on the way going to my house. I knew I was doing wrong.
The Court: You mean serving ten days in jail for driving on a revoked license didn't concern you at all when you broke into—broke into the home and stole this one hundred and fifty-five dollars?
A. I did that when I was sixteen, just turned sixteen. I was seventeen when I drove on a revoked license.
The Court: Go ahead, Mr. Wyche.
Mr. Wyche: That's all I have.
The Court: I'd like to ask you one further question. You told Mr. Bowers—you told him that you had taken marijuana and LSD once.
A. Yes, sir.

James Harold Johnson, Jr.

The Court: And you also told him that you are never the same after you have taken it, is that right?

page 198

A. If you become a user of LSD, yes, sir.

The Court: You didn't say that. You just said that you're never the same after you've taken it.

A. When I told him that I was talking about LSD.

The Court: Are you the same after taking it?

A. LSD can affect a person in many ways. It can change your thinking, your ways of thinking. It can affect your brain. It can affect you permanently if taken enough of it.

The Court: I also notice by this report that you have missed many days in school, apparently without any cause. A total of fifty-two days in '67 and '68. Can you give us any reason why you were absent from school during that period of time?

A. I was just in with a crowd of boys and they skipped school so I just did it to go along with them.

page 199

The Court: You don't mean to say this other group skipped school fifty-two days along with you, did they?

A. They—no, not all the time, but that's how I first got started doing it.

The Court: And then during '65 and '66 while in Petersburg High School, English, an F; *Mathametics*, Incomplete; Science, an F;—

A. This report is incorrect.

The Court: Incorrect?

A. Yes, sir.

The Court: World History, F; Typing, F; Band, F, Physical Education, F.

A. They are incorrect.

The Court: All right.

RE-DIRECT EXAMINATION

By Mr. Barney:

Mr. Barney: Well, what grades did you get on them, if you can remember?

A. As far as I know I passed all my subjects but English.

Mr. Barney: This was in Petersburg High School?

page 200

A. Yes, sir.

Q. How about these other grades I showed you for Prince George for '68—'69?

A. They are all true.

James Harold Johnson, Jr.

Q. They're all true.
A. Yes, sir.
Q. Now, in getting that marijuana for Lauter, am I to understand it was only as a favor to him?
A. I had no intention of making any gain out of it.
Q. Well, let me—
A. I mean I wasn't thinking of myself, that's the reason I got it for him.
Q. I don't have any further questions.

The Court: Do you want to call anybody else?
Mr. Wyche: Mr. Bowers.

CROSS-EXAMINATION

By Mr. Wyche:
Q. Mr. Bowers, where did you get your information about the school record of James Harold Johnson, Jr. in the Petersburg High School during the years 1965
page 201 } and '66?
A. From the school office.
Q. Was this information you obtained from his school record?
A. I think it was read to me by the Guidance Counselor there as far as I know. I tell you, Mr. Wyche, I obtained so much information here that I don't remember exactly the incident relating to it but that's the way I usually obtain it.
Q. Are you usually wrong when you obtain information of that kind from the public school officials?
A. Well, I certainly will admit that I am the first one who could make a mistake but I think the record is essentially correct. I may add that this boy did show some improvement in his school work this past year but he has had a—he has had a problem all the way through.
Q. Well, the reason I asked the question is because he denies the accuracy of your report on his Petersburg School record.
page 202 } A. Well so far as I know the report is correct to the best of my ability, sir.
Q. That's all.

RE-DIRECT

By Mr. Barney:
Q. Just to get before the Court, this boy does have an excellent work record, does he not, Mr. Bowers?

A. Yes, he has a very good work record. I didn't find anyone who said anything except something nice about his work.
Q. And he kept busy at various jobs over a period here?
A. Yes, sir.
Q. I don't have any further questions.
That's the case.

* * * * *

page 208 }

* * * * *

The Court: Oh, yes, it does. The Section provides that however, such offense shall consist of sale, barter, selling, exchange, dispensing or supplying marijuana or narcotic drugs to a minor.
Mr. Barney: Yes, sir, Judge, how about the last Section on the twenty-five grains.
The Court: That Section is narcotics.
Mr. Barney: Narcotics, that is—
The Court: My next question—

* * * * *

page 210 }

* * * * *

The Court: Gentlemen, this has been a most distressing case to me and one of the most difficult ones that I have had to preside since I have come to the bench. One that I wish that I didn't have to decide today but that burden is mine and I am going to decide it.
I have read this report through and I might say that it's one of the most comprehensive, complete and illuminating reports that I have received since I have been on the Bench. I noticed from the report at the very beginning, mentioning the criminal record of the defendant, apparently his first encounter with the law was back in 1966 at which time he was convicted of littering the highway. Not a very important offense but it's necessary to keep our highways clean, but then apparently his parents thought that it would be *it* his best interest to turn him over to Hargrave Military Academy.
And I think it would have been to his best in-
page 211 } terest had he remained there, but he wasn't sat-

isfied and he came back. And shortly after that he broke into the home of Eddie Sluka and stole a hundred a fifty-five dollars. Apparently because he was dissatisfied with the fact that his parents made him either quit or avoid a job that he had and was earning some money at Fort Lee. Judge Binford still has that case under advisement now. Then in 1968 he was convicted of careless and reckless driving. On the surface, careless and reckless driving is not a serious offense but his driver's license was suspended for a period of three months, and in defiance of the law he decided to drive that vehicle anyway for which he was apprehended and he was fined a hundred dollars and given ten day jail sentence which is a mandatory jail sentence. Then this offense occurred. In the meantime, I go to his school record. His record at Petersburg High School certainly was not enviable according to the report. I noticed by the report during the term of '68-'69 in Prince George High

page 212 } School he missed a total of fifty-two days which certainly indicates that he was rebelling against authority, or certainly he was not doing that which was for his benefit, attending school and improving his mind. During that period of time his first six-week's grades were very good: Aerospace Education, C; Business Law, B; Physical Education, B; United States History, B; Art, C and English, D. Then the second six-weeks of the second half of that year was incomplete because of, apparently this trouble or for some other reason.

Mr. Barney: If the Court please, I believe the second six-weeks the defendant was in the Petersburg jail.

The Court: Well, that's what I say, I think that's the reason why it was incomplete. But the entire report reveals to me that this defendant has rebelled not only against his parents but against organized authority. Reading the portion under the Clinical Psychologists Mazeri and Morbitzer, they both stated along with the psychiatric

page 213 } social worker that James Harold Johnson, Jr. is a socio-pathic personality. Their definition of a socio-pathic personality is one who simply does not learn by his mistakes but is apt to repeat the same mistake again and again. They also described this condition as one who looks down upon people and who feels that he himself is superior, although at the same time, is experiencing a terrible inferior feeling. A socio-pathic personality is also one who tries to manipulate others for his own ends, and that certainly has been his pattern of behavior over the past couple of years, and they point out that it is certainly revealed in his record.

I also notice from Johnson, which I have pointed out earlier, that he may have taken marijuana for some time and I think while on the stand since he was sixteen. Taken one dose of LSD. Stated that you're never the same once you have taken it. He explains that he meant that once you have become addicted to it.

I hate to see a young man eighteen years of age go to the penitentiary. I'm not unmindful of the three
page 214 } "R's" of criminal punishment as pointed out by Mr. Barney. There is another one, it's not an "R". That punishment is also for the purpose of indicating to society that a certain course of conduct will not be permitted. This Court has never in seven years of its history, or this Judge hasn't, ever punished someone for revenge. Most of the time this Court is interested in the rehabilitation of those that come before it. I think too often today we look too much to the individual and too often we don't look to society as a whole for the evil that we wish to eliminate. In this particular case, I feel that the use of marijuana in high school among our younger children coming up is an evil that has got to be eliminated and I feel that the interest of Jimmy Johnson does not transcend the interests of society and for that reason I'm not going to place him on probation.

Let me have the indictments.

James Johnson, stand up.

page 215 } The Court, having heretofore found you guilty of the possession of narcotic drugs in excess of twenty-five grains, is there anything you wish to say before the Court passes sentence upon you?

James Harold Johnson, Jr.: No, sir.

The Court: Did you say, no, sir?

James Harold Johnson, Jr.: Yes, sir.

The Court: It is the judgment of the Court and the sentence of the Court accordingly that you be confined in the penitentiary for twenty years unless sooner discharged by law and pay a fine of Five Hundred Dollars and the costs of this proceeding. The Court will suspend the execution of ten years of that sentence conditioned upon your keeping the peace, being of good behavior and not violating any of the laws of this Commonwealth upon your release. The Court will dismiss the other two indictments feeling that this punishement is sufficient to cover this particular crime.

Court's adjourned, Gentlemen.

page 216 } Mr. Barney: If the Court pleases, may I now make the motion to set aside the verdict?

The Court: Certainly, and I would like to remind the defendant at this time that he is entitled to appeal the decision of this Court to the Supreme Court of this State.

Mr. Barney: I'll note an exception.

The defendant says that he wishes to note an appeal from the sentence and judgment of the Court in this matter and has asked that the Court set an appeal bond.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas*	1
Judge's Certificate	2
Affidavit of Poverty	2
Record	3
Judgment—May 20, 1969	3
Assignments of Error	5
Notice of Appeal	5
Affidavit of Poverty and Request for Counsel	6
Order—July 7, 1969	7
Witnesses:	
Thomas James Lauter	8
M. J. Vrable, Jr.	22
Claiborne A. Havens	30
John F. Atwood	32
Dr. Robert G. Blanke	34
Delbert T. Agee	40
Daniel Bowers	47
Frank Irvine	50
Rev. J. G. Long	51
James Harold Johnson, Jr.	55
Proceedings	27, 46, 64