215 Va. 260
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
APR 29 1974
RICHMOND, VIRGINIA

3

IN THE SUPREME COURT OF VIRGINIA AT RICHMOND

ROBERT BRUCE CRAIG
APPELLANT

v. RECORD NO. 740042

COMMONWEALTH OF VIRGINIA
APPELLEE

APPELLANT'S APPENDIX TO BRIEF

COUNSEL FOR THE APPELLANT

John N. McCune
7 South Street
Front Royal, Virginia

IN THE SUPREME COURT OF VIRGINIA AT RICHMOND

ROBERT BRUCE CRAIG

APPELLANT

v. RECORD NO. 740042

COMMONWEALTH OF VIRGINIA

APPELLEE

APPENDIX TO BRIEF

TABLE OF CONTENTS

	Page
Arrest Warrant	1
Statement of Facts (Stipulated)	2
Judgment Appealed From	5
Assignment of Errors	8
Certification	9

ARREST WARRANT

Date filed: June 7, 1973

COMMONWEALTH OF VIRGINIA

To Wit:

COUNTY (CITY) OF WARREN

ARREST WARRANT
(Rule 3A:4)

TO ANY SHERIFF, POLICE OFFICER, OR OTHER AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth forthwith to arrest Robert Bruce Craig and to bring him before the Warren County Court to answer a charge that he committed an offense in the County of Warren on or about June 7, 1973, namely, did unlawfully and knowingly have in his possession a quantity of a controlled drug, marijuana, against the peace and dignity of the Commonwealth. 54-524.101.

On the basis of the sworn statement of Trooper W.J. Whitehurst the undersigned has found probable cause to believe the accused has committed the offense.

If a written complaint has been made, it is attached to the original of this warrant.

You are also commanded, in the name of the Commonwealth, to summon the following as witnesses:

Name_____ Address_____

Name_____ Address_____

Given under my hand and seal, this 7th day of June, 1973.

Alfred M. Figgins (SEAL)
Signature of Issuing Officer

Justice of the Peace
Title of Issuing Officer

STATEMENT OF FACTS

Date filed: Nov. 9, 1973

On June 7, 1973, at 8:30 P.M., State Trooper W. J. Whitehurst, accompanied by Ronald Cromer, a jailer for the Warren County Jail, set up a traffic check on State Route 604 at its intersection with State Route 671. At that time, the natural lighting conditions were good, and headlights were not required for vehicular travel. It became dark enough for headlights at approximately 9:00 P.M.. At approximately 9:15 P.M., the defendant's truck was observed traveling on Route 604 towards the check point, proceeding in the same direction as that traveled by the officers in proceeding to the checkpoint initially. The defendant's vehicle was first seen by the officers as it rounded a right turn approximately 300 feet from the check point. The vehicle slowed, pulled to the left side of the road, and came nearly to a complete stop, then accelerated, pulled back to the right side of the road and proceeded to the check point. Trooper Whitehurst testified as the truck came nearly to a stop, on the left side of the road, he heard a sound like something sliding along the pavement. Ronald Cromer also testified that he heard a sound at this time. After the truck stopped at the check point, Cromer, at the request of Whitehurst, walked back down the road approximately 100 feet and found, sitting upright on the dirt shoulder just off of the paved surface of the road, a

paper bag approximately 8 inches wide, 5¼ inches deep, and 10½ inches high. This was taken to Whitehurst, who upon investigation found that the paper bag contained seventeen (17) plastic bags of marijuana, each containing approximately the same amount, with a total weight of 419.4 grams. The brown paper bag was introduced into evidence and showed no scrapes or marks. At the time the defendant was stopped, the road was unlighted and the Officers were using flashlights to stop vehicles on the road.

Cromer testified that en route to the check point he was on the passenger's side of the police vehicle and saw something red along the left side of the road, at approximately the same location where he later found the brown paper bag, he observed approximately one foot from it, a red paper Schlitz Beer six pack container. Trooper Whitehurst did not remember seeing anything along the road as he proceeded to the checkpoint. Both Cromer and Whitehurst testified that they did not observe the brown paper bag while it was still light, although they looked in that direction on a number of occasions while conducting the checking detail, nor did either hear any sounds of a similar nature to that heard as described above.

The defendant testified that it was dark and as he rounded the curve he saw flashlights ahead of him, he stepped on the brakes which pulled him to the left, and that he slowed down while trying to get the truck into second gear. He denied having the bag or throwing the bag out.

Cromer took the defendant's truck to the police station and testified that the brakes did not pull, but he had some trouble shifting gears.

Both officers testified that from 8:30 to 9:15, as many as ten (10) cars were checked, and at one time, there may have been as many as three vehicles stopped at the check point at the same time.

Neither officer testified that he saw the bag thrown from the defendant's truck and there were no fingerprints taken from plastic bags within the paper bag.

JUDGMENT APPEALED FROM

Date filed: Sept. 15, 1973

On the 15th day of September, 1973, came the accused in the custody of the Sheriff, also came the retained attorney for the accused, John N. McCune, Esquire, also came the Commonwealth by her attorney. Also came a venire of eleven (11) who, having been duly sworn by the Clerk to well and truly answer such questions as might be propounded to them by the Court, touching their qualifications as jurors in this case, were found free of all legal objections and exceptions.

The attorneys for the Commonwealth and the accused each struck from the said panel three alternately, the remaining five constituting a jury for the trial of the accused, namely: John F. Dofflemyer, John Dangerfield, Beverly H. Cameron, Andrew J. Wiatrowski and Charlotte Murphy, who were sworn to well and truly try and true deliverance make between the Commonwealth and the accused, and a true verdict render according to the law and the evidence in the case.

After the opening statements of the Commonwealth and the accused, the Commonwealth proceeded to present evidence on behalf of the charge made in the warrant until she had rested her case.

Counsel for the accused then moved to strike the evidence of the Commonwealth, which motion was denied, to

which ruling counsel for the accused objected and excepted.

The accused thereupon introduced evidence on his own behalf until he had rested his case. Counsel for the accused then renewed his motion to strike, which motion was again denied, to which ruling counsel for the accused objected and excepted.

After the Court had given the jury its oral instructions governing the law, to which there was no exception taken, and the attorney for the Commonwealth and the accused, had concluded their closing arguments, the jury retired to its room to consider its verdict.

After some time the jury returned into open Court and announced that it had agreed upon a verdict as follows: "We the jury find the Defendant Guilty as charged, one (1) year in Jail, $500.00 fine", (signed) Foreman of Jury, Andrew J. Wiatrowski, which verdict is ordered recorded and the jury discharged.

The Court then demanded of the accused if anything for himself he had or knew to way why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, in accordance with the verdict of the jury and evidence heard in open Court it is the judgment of this Court that the accused is guilty of unlawfully and knowingly possessing a qualtity of marijuana, a Schedule I controlled drug, as charged in the warrant, and the Court doth sentence him to twelve (12) months in jail, and doth impose upon him

a fine of $500.00, and he shall pay the costs of this prosecution.

The accused is remanded to the custody of the Sheriff.

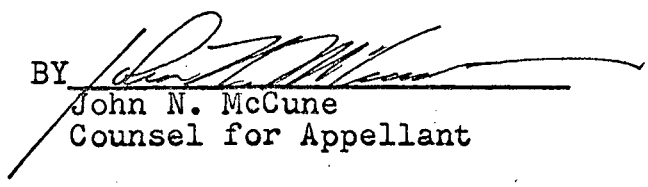
ASSIGNMENT OF ERRORS

Date filed: Oct. 12, 1973

1. That the Court erred by denying the defendant's motion to strike the Commonwealth's evidence on the grounds that she failed to prove that the defendant had possession of the marijuana.

2. That after completion of all the evidence, the Court erred by denying the defendant's motion to strike the Commonwealth's evidence on the grounds that she failed to prove that the defendant had possession of the marijuana.

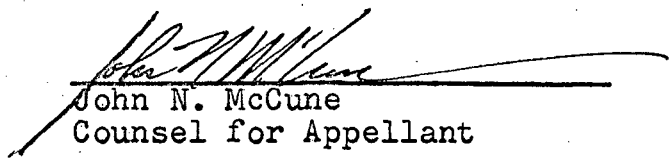
ROBERT BRUCE CRAIG

BY 
John N. McCune
Counsel for Appellant

John N. McCune
7 South Street
Front Royal, Va. 22630

C E R T I F I C A T I O N

I certify that on the 29th day of April, 1974, 3 true copies of the foregoing appendix were delivered to Andrew P. Miller, Esq., Attorney General of Virginia, Supreme Court Building, Richmond, Virginia 23219.



John N. McCune
Counsel for Appellant