215 Va. 298

CLERK
SUPREME COURT OF VIRGINIA
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JUL 3 1974
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 740165

JAMES RUSSELL GILLIS,

Appellant

V.

COMMONWEALTH OF VIRGINIA

Appellee

APPENDIX

Barry W. Norwood, Esquire
NORWOOD AND NORWOOD, ATTYS.
304 West Broad Street
Richmond, Virginia 23220
Counsel for Plaintiff in error

Andrew P. Miller, Attorney General of Virginia
Supreme Court Building,
Richmond, Virginia 23219
Counsel for Defendant in error

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COMMONWEALTH OF VIRGINIA
City of Richmond { To-Wit:

№ 7126

TO ANY POLICE OFFICER:

WHEREAS, G.C.Robinson PC has this day made complaint and information on oath, before me, the undersigned, a Justice of the Peace of said city, that James Russell Gillis did on the 20 day of June, 19 73:
Unlawfully

did have in his possesion or under his control marijuana.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Police Court of the City of Richmond, the body of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon

G.C.Robinson - J.J.Cox PCS Address
Address
Address
Address
Address
as witnesses.

Given under my hand and seal, this 21 day of June, 19 73.

Justice of the Peace (SEAL)

10060

MOTION

The defendant, James Russell Gillis, does hereby move this honorable Court to set aside the verdict of the Court rendered in this matter on September 14, 1973, on the ground that the verdict of the Court was contrary to the law and to the evidence and without evidence to support it and to acquit the defendant of the charge or to grant the defendant a new trial and based on the additional grounds set forth below:

1. The Court erred in overruling the defendant's motion to strike the Commonwealth's evidence on the ground that the Commonwealth had failed to prove beyond a reasonable doubt that the defendant was in possession of marijuana on June 20, 1973.

2. The Court erred in not allowing the witness for the defendant to testify that the roommate and codefendant stated that the defendant hardly ever stayed at the apartment since this was an exception to the hearsay rule as an admission against interest.

3. The Court erred in failing to sustain the defendant's motion to strike the Commonwealth's evidence after all the evidence was in since there was no evidence that the defendant was aware of the presence and character of the marijuana and was intentionally and consciously in possession of it.

4. The Court erred in failing to render a verdict of not guilty of the charge of possession of marijuana since any conclusion that the defendant possessed marijuana was based on speculation rather than proof and was not based on evidence beyond a reasonable doubt. There was no evidence of possession of marijuana other than that traces of marijuana were found in the common area of an apartment jointly occupied by the codefendants.

For all of the reasons set forth above the defendant, by counsel, respectfully moves the Court to set aside its judgement and to either acquit the defendant or grant the defendant a new trial.

Respectfully submitted.

JAMES RUSSELL GILLIS

By: /S/ Barry W. Norwood
Counsel

CS139051

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 5th DAY OF October 19 73

Commonwealth
vs Appeal (M-1569)
James R. Gillis, Dft.

The said defendant this day appeared and was set to the bar in the custody of the Sergeant of this City and was represented by Attorney Barry W. Norwood, court appointed counsel, and the Commonwealth was represented by J. Thomas McGrath. And the Court having heard arguments of counsel on defendant's motion previously filed with the Court to set aside its finding of guilty entered herein on September 14, 1973, doth deny said motion. And this case is continued to October 23, 1973, at 9:00 a.m. and the defendant is released on continuing bail.

OCT 5 1973

Enter: James M. Lumpkin
James M. Lumpkin

SENTENCING ORDER

The said defendant this day again appeared and was set to the bar in the custody of the Sergeant of this City and was represented by Attorney Barry W. Norwood, court appointed counsel, and the Commonwealth was represented by J. Thomas McGrath. And the defendant having been on September 14,1973, found guilty of having in his possession or under his control marijuana, as charged, and this case continued and the Court having this day heard additional evidence and arguments of counsel doth now assess his fine at two hundred and fifty dollars and ascertains his term of confinement in the City Jail at twelve months.

Whereupon it is considered by the Court that the said James R. Gillis pay and satisfy a fine of two hundred fifty dollars and costs and be confined in the City Jail for a term of Twelve months. And on his motion the execution of the said jail sentence is suspended during his good behavior and he is to pay his fine and costs of court at the discretion of his probation officer.

And the Court designated counsel for the defendant to advise him of his appellate rights and an appeal having been noted, Barry W. Norwood is appointed to assist the defendant in perfecting same. And thereupon the said defendant is released.

ENTER: JAMES M. LUMPKIN
Judge

NOTICE OF APPEAL
AND
ASSIGNMENTS OF ERROR

TO THE HONORABLE RICHARD TURNER, CLERK OF THE CIRCUIT COURT OF THE CITY OF RICHMOND, VIRGINIA, DIVISION I:

James Russell Gillis, the defendant in the above styled case in the Circuit Court for the City of Richmond, Division I, Virginia, hereby gives Notice of Appeal and Assignments of Error from the judgment entered in this matter on October 23, 1973, and states that he will apply to the Supreme Court of Appeals of Virginia for a writ of error and supersedeas, and he sets forth the following assignments of error:

1. The Trial Court erred in overruling the defendant's motion to strike the Commonwealth's evidence on the ground that the Commonwealth had failed to prove beyond a reasonable doubt that the defendant was in possession of marijuana on June 20, 1973.

2. The Trial Court erred in not allowing the witness for the defendant to testify that the roommate and codefendant stated that the defendant hardly ever stayed at the apartment since this was an exception to the hearsay rule as an admission against interest.

3. The Trial Court erred in failing to sustain the defendant's motion to strike the Commonwealth's evidence after all the evidence was in since there was no evidence that the defendant was aware of the presence and character of the marijuana and was intentionally and consciously in possession of it.

4. The Trial Court erred in failing to render a verdict of not guilty of the charge of possession of marijuana since any conclusion that the defendant possessed marijuana was based on speculation rather than proof, and was not based on evidence beyond a reasonable doubt. There was no evidence of possession of marijuana other than that traces of

marijuana were found in the common area of an apartment jointly occupied by the codefendant.

5. The Trial Court erred in not granting the defendant's motion to set aside the verdict of the Court as being contrary to the law and to the evidence and without evidence to support it based on grounds set forth in said written Motion heretofore filed in this matter.

That a transcript of the record will be filed with the Court.

JAMES RUSSELL GILLIS

By: /S/ Barry W. Norwood
Counsel

1
2
3 J. J. COX, introduced on
4 behalf of the Commonwealth, being first duly sworn, testified
5 as follows:
6
7 DIRECT EXAMINATION
8 BY MR. McGRATH:
9 Q State your name for the record,
10 please?
11 A Detective John J. Cox, Richmond
12 Bureau of Police, assigned to the Division of Narcotics.
13 Q Detective, Cox, on the 20th day of
14 June, 1973, did you have occasion to enter an address known
15 as 2100 Grove Avenue, in the City of Richmond?
16 A Yes, sir.
17 Q All right, sir, was this pursuant
18 to a search warrant?
19 A Yes, sir, I went to this address,
20 2100 Grove Avenue, Apartment Number 3, City of Richmond, on a
21 search warrant which was seen by Detective Robinson. This was
22 approximately 10:50 when we went in. The -- when I knocked
23 on the door, a male by the name of Gary Cook opened the door.
24 I advised him I had a search warrant for the apartment. I went

in, at which time the defendant, Gillis, was coming from the kitchen. We went into the living room, and as I went into the living room, I looked into an ash tray beside of the chair in the living room, and I found some plant material, at which time, I advised Detective Robinson to advise them of their rights. He advised them of their Constitutional rights, both of them at the same time in my presence, in the room, we continued to search the room. On the table in the -- well, there was a living room-dining room combination, it was a table, it was a large glass pipe with two wooden bowls which contained burnt material, two metal containers on the side of this pipe that was found.

* * *

TR 10

DIRECT EXAMINATION MR. McGRATH

Q. There are two small manila envelopes, and they both bear your initials, is that correct?

A. Yes, sir.

Q. And the larger one bears my initials and also Detective Robinson's, all right, now, the larger one that you referred to, for the record again was a large, what appears to be a brown paper bag?

A. Paper bag.

Q. All right, sir, now, would you tell us the contents of -- of these?

A. The small one, which we have numbered -- -- labeled as Number One for the records, it's the burnt material, this is Detective Robinson's writing on the front

1 Q All right, sir?
2 A of this one.
3 Q The second one is the tin foil,
4 which I found in the freezer, with the -- and it's also --
5 it's Detective Robinson's writing, my initials on the back.
6 The hash pipe that --
7 MR. NORWOOD: I object.
8 THE COURT: Object to what?
9 MR. NORWOOD: To hash pipe.
10 THE COURT: On what grounds?
11 MR. NORWOOD: Well, there's been no
12 showing yet that there was any material in the
13 pipe.
14 MR. McGRATH: Your Honor, I believe
15 he stated that there was material in the pipe,
16 and I think I can -- if Counsel objects to the
17 use of the term hash pipe, I can qualify the
18 Vice Detective as possibly an expert.
19 THE COURT: All right, he says
20 there's burnt material, I have it in my notes,
21 objection's overruled, exception noted.
22
23
24 Transcriber's Notes: Micro-

1 MR. McGRATH: I have no other
2 questions of Detective Cox.
3 THE COURT: All right.
4
5 CROSS EXAMINATION
6 BY MR. NORWOOD:
7 Q Detective Cox, you say that one Gary
8 Cook was in the apartment when you arrived?
9 A Yes, sir.
10 Q Was Cook also charged?
11 A Yes, sir.
12 Q Where is Cook right now?
13 A Cook's on the run.
14 Q Was he -- was there an investigation
15 subsequent to this one for other alleged activities of Gary
16 Cook?
17 A What do you mean?
18 MR. McGRATH: I object, Your Honor,
19 I don't see what investigations of Cook has --
20 subsequent investigations of Mr. Cook have any --
21 any bearing on this case.
22 THE COURT: What would it have to
23 do with it, Mr. Norwood?
24 MR. NORWOOD: Your Honor, I think

1 that we can show that Mr. -- Mr. Cook was a known
2 dealer in drugs and this was -- and that all
3 these -- these drugs and marijuana found in the
4 apartment were his, and in no way belonged to
5 the defendant, and I think that any subsequent
6 investigations concerning dealings prior --
7 after this arrest would lend credibility to the
8 fact that the -- these were his.
9 THE COURT: Objection sustained.
10 Q Do you know Mr. Barry Sheeran?
11 A Yes, I do.
12 Q Was he with you that night?
13 A Yes, he was.
14 Q And who -- who is he?
15 A He is a State Probation Officer.
16 Q Was he called in there for any
17 specific reason?
18 A He was called in there because Gary
19 Cook is one of his probationists.
20 Q And you suspected that Gary Cook was,
21 in fact, there in the apartment?
22 A Yes, I did.
23 Q I hand you a copy of the affidavit
24 for a search warrant, is that a copy of the search warrant

1 that you executed on the night of June 20th?

2 A This is a copy of the affidavit,

3 Mr. Norwood, which I did not make, Detective Robinson can

4 answer this, I did not obtain this search warrant.

5

6

7 Transcriber's Note: The

8 operator of the recording device has not yet

9 made any adjustment in microphones and the

10 witness is not heard completely. The transcriber

11 cannot guarantee every word.

12

13

14 Q All right, well, I'll call on

15 Detective Robinson.

16 THE COURT: All right, any other

17 questions of Mr. Cox?

18 MR. NORWOOD: Well, one other

19 question, do you think --

20 THE COURT: Pardon me, I'm sorry.

21 Q This other material that you found

22 was in the common area of the apartment?

23 A Yes, the -- in fact, all the items

24 that were found within the common area of the house, neither --

1 neither of the items was found in Mr. Gillis' room, which we
2 have letters that was addressed to him in his room, or in
3 Cook's, all items was found in the common area of the house.
4 Q How -- how long had this apartment
5 been under surveillance?
6 A This apartment had been under sur-
7 veillance off and on for probably about -- I guess, at least
8 two weeks.
9 Q Two weeks, I see, no further
10 questions.
11
12 REDIRECT EXAMINATION
13 BY MR. McGRATH:
14 Q Detective, who occupied -- were you
15 able to determine who were the occupants of the apartment?
16 A Yes, the defendant, Mr. Gillis, and
17 Gary Cook.
18 Q All right, sir, did you find any of
19 Mr. Gillis' belongings in the apartment, or his . . . . . .
20
21
22 Transcriber's Note: The
23 microphones have yet to be adjusted and every
24 word is not possible.

1 A Yes, we -- we received a piece of
2 his mail which was found in his room, with the name of James
3 R. Gills -- Gillis, 2100 Grove, Apartment Number 3.
4 Q What's the postmark on that?
5 A June the 4th, at one a.m.
6 Q All right, sir, and what -- did you
7 question Gillis at any time about the apartment, or his
8 residence in the apartment?
9 Q Detective Robinson questioned him
10 about it at the -- at our office in my presence, he can testify
11 to the -- to the --
12 Q All right, sir, I have no --
13 A Also -- I also questioned him about
14 it at our office, he was again advised of his Constitutional
15 rights by me at 12:50 a.m., in the morning.
16 Q Was that from the BP-119?
17 A This was from the -- the BP-119 is
18 what Detective Robinson advised him at his office, but this is
19 the BP-116, which is furnished us by our office.
20 Q All right, this is a typed form?
21 A Typed form, and also on the form
22 where we ask the questions and when I filled out this form on
23 Mr. Gillis, I asked him some questions, and the --
24 Are the drugs and narcotics yours?

1 The answer was no.
2 If so, where did they come from?
3 He said, I don't have any idea.
4 I went further and asked him the
5 question, how long have you been living at this address?
6 The answer was, the end of April.
7 Question: Does anyone have a key
8 to the apartment other than Mr. Cook.
9 The answer was no, no one else.
10 Have you had a visitor tonight?
11 The answer was no.
12 Do you have knowledge of the mari-
13 juana in the ash tray?
14 The answer was no.
15 Did you know the tablets were in the
16 freezer?
17 The answer was, of course, no.
18 Q I see, did he execute that form, is
19 that a form that he would execute?
20 A No, this is a form which -- I asked
21 these particular questions, he did not sign anything.
22 Q I understand. Did he sign the
23 rights form?
24 A Yes, he did.

1
2
3 GEORGE C. ROBINSON, JR.,
4 introduced on behalf of the Commonwealth, being first duly
5 sworn, testified as follows:
6
7 DIRECT EXAMINATION
8 BY MR. McGRATH:
9 Q State your name for the record?
10 A Detective George C. Robinson, Jr.
11 Q Detective Robinson, were you so
12 employed on the 20th day of June, 1973?
13 A Yes, sir, I was.
14 Q On that date, did you visit an
15 address known as 2100 Grove Avenue, in the City of Richmond?
16 A Yes, sir, Apartment Number 3.
17 Q Is that address north of the James
18 River in the City?
19 A Yes, sir, it is.
20 Q All right, sir, could you tell us
21 what took place when you arrived at the scene?
22 A A search warrant was obtained by
23 myself, it was given to Detective Cox by myself, I went to the
24 rear of the apartment, which is double glass doors. I could

observe into the apartment from the outside. Mr. Cook was sitting on the sofa, Mr. Gillis was in the kitchen fixing what appeared to be a drink.

* * *

TR 22

CROSS EXAMINATION BY MR. NORWOOD

Q. All right, I'm going to show you a copy of an affidavit for a search warrant, would this be the affidavit -- a copy of the affidavit that was executed on the night of June the 20th?

A. Yes, sir, it is.

Q. Would you read to his Honor the third paragraph, designated the third paragraph on there, please, in the typed portion?

A. The address listed above,

1 Q Right,
2 A is that what you want?
3 Q that's correct?
4 A The address listed above has been
5 under investigation and observation by the Vice Division and
6 several hippie type individuals have been seen entering and
7 leaving this apartment in the past forty-eight hours.
8 Q Several -- it says several have been
9 seen entering and leaving the apartment?
10 A Yes, sir.
11 Q All right.
12 MR. NORWOOD: I would like to offer
13 that as the defendant's Exhibit 1, Your Honor.
14 THE COURT: No objection?
15 MR. McGRATH: No, sir, there's no
16 objection to the -- I would ask that the entire
17 affidavit come in . . . . . .
18 THE COURT: Yes, sir.
19 MR. NORWOOD: Right Your Honor, I
20 didn't mean to infer that it wouldn't.
21 Q And again, all the material was
22 found in the common area of the apartment?
23 A Yes, sir, it was.
24 Q No other questions.

1
2
3 JAMES EDWARD BROWN, intro-
4 duced on behalf of the defendant, being first duly sworn, testi-
5 fied as follows:
6
7 DIRECT EXAMINATION
8 BY MR. NORWOOD:
9 Q State your name, please?
10 A James Edward Brown, Senior.
11 Q And your occupation?
12 A I'm a medical technician, St. Mary's
13 Hospital, Emergency Room. (mumbling and distant from micro-
14 phone)
15 MR. McGRATH: Your Honor, I can't
16 hear.
17 THE COURT: Speak up.
18 A I'm a medical technician at St.
19 Mary's Hospital Emergency Room.
20 Q And what is your address?
21 A My address is 413 Westover Hills
22 Boulevard.
23 Q How long have you known Mr. Gillis?
24 A I've known Mr. Gillis about twelve

1 years.

2 MR. NORWOOD: May I have -- may I

3 have the pipe, Your Honor.

4 Q I show you this pipe and ask you if

5 you can identify this pipe, have you ever seen that pipe

6 before?

7 A Yes, sir, I have.

8 Q And where did you see it before?

9 A It was in Mr. Cook's possession.

10 Q Did you see him purchase it?

11 A Yes, sir.

12 Q Would you tell the Court the circum-

13 stances?

14 A We were at a friend of his apartment,

15 and this man came in and had pipes that he had made himself,

16 and they were for sale, and Mr. Cook purchased that particular

17 pipe. (continuing distant from microphone)

18 Q I now ask you, have you ever heard

19 Mr. Cook make any statement as to --

20 MR. McGRATH: Objection, Your Honor,

21 it calls for hearsay.

22 MR. NORWOOD: Your Honor, I think

23 this is going to be a statement of admission

24 against interest, I'm going to ask him if he

1 heard Mr. Cook make any statement as to Mr.
2 Gillis living there in the apartment, and I
3 think when Your Honor hears the statement --
4 MR. McGRATH: Your Honor, I'm going
5 to object to any question about this defendant
6 as to what someone else said to him when I'm
7 not going to have the chance to cross examine
8 that other party.
9 MR. NORWOOD: Your Honor --
10 MR. McGRATH: He's not here to deny
11 the statement or to admit it, and particularly
12 if it's a statement against Mr. Cook's own
13 interest. The Court can't listen to a statement
14 by another person about what someone said, and
15 then not hear the defendant --
16 MR. NORWOOD: Your Honor, the
17 Commonwealth --
18 THE COURT: The objection is sustained,
19 Mr. Norwood.
20 MR. NORWOOD: Exception to the
21 ruling of the Court, Your Honor.
22 Q Can you -- would you tell the Court,
23 beginning with Monday, June 18th, give us a little rendition
24 of what occurred between you and Mr. Gillis?

1 A I'd have to go back one more week --
2 Q Well, go on back one more week then?
3 A My -- I was not allowed to drive,
4 my license had been suspended.
5 Q Talk to Your Honor, sir?
6 A I'm sorry -- my license had been
7 suspended, and on the Tuesday of the week before, my wife had
8 given birth to a baby boy, and Mr. Gillis was doing most of
9 the driving for me, and he was staying there with me while my
10 wife was in the hospital. He worked about a quarter of a mile
11 away from my apartment, and he'd go to work in the morning,
12 and he'd come home for lunch, and then go back to work and
13 come home again, it was about four o'clock when he got off
14 work, (microphone remains distant) and he would take me to the
15 hospital to see my wife. That Saturday, he brought me to the
16 hospital to pick up my wife, brought us home. Monday, at noon,
17 he came to lunch, came home for lunch. At four o'clock he
18 came home, we went over to his apartment about 4:30 to pick
19 up another set of his work clothes and some regular clothes,
20 and we left there about -- I guess we stayed there about
21 twenty minutes, and he came and he stayed at my apartment on
22 Monday night. Tuesday morning, he went to work, came home
23 for lunch at my apartment, and stayed over that night.
24 Q What time -- would you be specific

1 as to what time he -- he got over there that afternoon, what
2 time he went to work?
3 A Lunch at twelve to twelve-thirty,
4 then he went back to work, he got off at four o'clock, it took
5 him about five minutes to get to my apartment; he stayed there
6 the rest of the evening. Wednesday he went to work in the
7 morning.
8 Q About what time did he go?
9 A I can't really be sure, about seven-
10 thirty, he came home for lunch, at four o'clock -- about five
11 after four he got back, and he stayed Wednesday evening until
12 about seven o'clock that evening, and he went over to another
13 friend's apartment.
14 MR. McGRATH: Your Honor, I have, I
15 think, been more than lenient in the gentleman
16 testifying as to where he went, I think he can
17 testify as to the fact that he was at his place
18 from such and such a time until such and such
19 another time, but unless he went with the
20 defendant, I'm going to have to object to his
21 statement and his prior statements, which I have
22 let into the record because I thought maybe we
23 were getting somewhere, that he went to work,
24 or he went to this person, unless he was with

1 him, he doesn't know.

2 THE COURT: Yes, sir, you have --

3 you are assuming he went to work, he left you,

4 I take it?

5 A I saw him leave, and I saw him come

6 back, I had lunch with him, I saw him when he came home that

7 afternoon. No, I can't say whether he was at work myself, I

8 talked -- Wednesday evening I talked to him on the telephone

9 about nine-thirty, and it was the last time I saw him before

10 -- I had talked with -- I talked to him before he was arrested.

11 Q You say that on Monday he took

12 clothing out of the apartment, so

13 A Yes, sir.

14 Q then he was living with you?

15 A Yes, sir, he was going to stay a

16 couple of nights with his -- with my wife and me and tend to

17 the baby, and prescriptions, and things like that, and I

18 wasn't going to jeopardize my -- my license by driving.

19 Q Had Mr. Cook been sick, do you know?

20 A Yes, sir, he had been sick. (The

21 microphone remains quite distant from the witness)

22 Q Was he taking any --

23 MR. McGRATH: I object again, Your

24 Honor, unless this gentleman is qualified as a

1 doctor and is treating him, Mr. Cook's not here,
2 and it's gone from completely and nothing but
3 hearsay.
4 THE COURT: That would be true unless
5 it was something obvious that a layperson could
6 testify to, and there's been no such evidence.
7 Q Did he -- did you take Mr. Cook to
8 the hospital because he was complaining of --
9 A Yes, sir, I took his pulse, and --
10 I was a medical corpsman in Vietnam, I have been in that type
11 of field for five years, I'm very competent in doing things
12 like that. He was running a very high fever, over a hundred,
13 he had a very rapid pulse, he -- he was very sick, and I took
14 him to Johnston-Willis, and then Richmond Memorial.
15 Q All right, sir, so we can get it
16 straight with Your Honor, Mr. Gillis was -- was with you from
17 approximately four o'clock on Monday until seven-thirty
18 Tuesday morning?
19 A Yes, sir.
20 Q And when you were at his apartment --
21 did you go into the refrigerator?
22 A Yes, sir, I fixed some tea.
23 Q Did you notice any tablets or any
24 tin foil in the freezer?

1 A No, sir, I just got some ice -- ice
2 and tea. (continuing distant from microphone) The tea was
3 already made and it was in the icebox and had --
4 Q And you got the ice out of the
5 freezer?
6 A It was -- the ice was in a blue
7 bowl in the icebox, I know that, and I just took the ice out
8 and --
9 Q And you didn't notice any -- any
10 orange tablet --
11 A I was -- I was getting the ice, I
12 didn't notice anything, no, sir.
13 Q Okay, Tuesday evening, from four
14 o'clock until seven-thirty Wednesday morning, he was always
15 with you?
16 A Yes, sir.
17 Q And then from Wednesday afternoon
18 from four o'clock until seven o'clock he was with you?
19 THE COURT: Wait a minute, now,
20 what date are you talking about?
21 MR. NORWOOD: We're talking about
22 the 18th, 19th, and 20th.
23 THE COURT: All right.
24 Q He was with you on Wednesday, June

1 20th, from four o'clock until seven -- approximately seven
2 o'clock that evening?
3 A Yes, sir.
4 Q No further questions.
5
6 CROSS EXAMINATION
7 BY MR. McGRATH:
8 Q Now, when you went into the icebox,
9 what day was that, what was the date?
10 A That was Monday afternoon, sir.
11 Q Monday afternoon, of the week of --
12 of the week in which the 20th occurred, is that correct?
13 A Yes, sir, I --
14 Q And at that time, I believe you
15 testified that Mr. Cook was sick and you could tell he was
16 sick, is that right?
17 A No, sir, I don't believe he was sick
18 at that time, I believe he was sick about a week or so before
19 that.
20 Q Oh, about a week or so --
21 A About a week before that, he
22 Q All right, sir --
23 A still had the effects from it.
24 Q And this pipe, was it -- when you

1 went into the apartment that Monday, was it out in the --
2 A I hadn't seen that pipe since that
3 February when he bought it.
4 Q Who did he buy it from?
5 A I don't know the man's name.
6 Q Where did he buy it?
7 A He bought it at my sister's apartment.
8 Q At your sister's apartment?
9 A Yes.
10 Q Where does she live?
11 A She's no longer living in Richmond.
12 Q Where is she living now?
13 A She's living in Waynesboro.
14 Q Waynesboro?
15 A Yes.
16 Q What's the address in Waynesboro?
17 A I don't know, sir, I don't -- I am
18 not in contact with my sister --
19 MR. NORWOOD: What relevancy would
20 it have her -- her address now, Your Honor?
21 THE COURT: Are you objecting for
22 relevancy?
23 MR. NORWOOD: I'm objecting to the --
24 where the Commonwealth's Attorney is going at

1 this point.

2 THE COURT: The objection's over-

3 ruled, exception noted, I think it's obvious

4 that he's going after why a witness is not here.

5 Q Now, when you went into the refrig-

6 erator to get the ice, you didn't notice these pills, did you?

7 A No, sir.

8 Q I have no further questions.

9

10 BY THE COURT:

11 Q When was this pipe purchased that

12 you saw?

13 A To the best of my knowledge, sir,

14 it was about February, January or February.

15 Q You'd known this man, Cook,how long?

16 A I guess I've known Mr. Cook about a

17 year -- I haven't -- since he moved into the apartment, I

18 haven't associated with him very much, he was living on the

19 Southside before he moved in the apartment, and did not have

20 any transportation, that's why I saw him more.

21 Q Where did you live June 20th?

22 A Out where I'm living now, sir, I've

23 been living there about eighteen months.

24 Q What's the address?

1 A 413 Westover Hill Boulevard.

2 Q Do you know the address of the

3 defendant at that time?

4 A I think it's twenty-- twenty-one,

5 twenty-three hundred, I know where it is . . . . . .(Mumbling)

6 . . . . . I know the building, I believe

7 it's 2100, ... (microphone very distant)

8 THE COURT: All right,

9 MR. NORWOOD: One more question.

10 THE COURT: any more questions?

11

12 REDIRECT EXAMINATION

13 BY MR. NORWOOD:

14 Q How many nights of the week of the

15 20th, and of the preceding week, did Mr. Gillis stay with you?

16 A Of the preceding -- my wife had the

17 baby on a Tuesday, he stayed Wednesday, Thursday, Friday, he

18 did not stay Saturday, he did not stay Sunday, Monday, Tuesday,

19 and Wednesday evening.

20 MR. NORWOOD: No further questions.

21

22

23

24 WITNESS STOOD ASIDE.

1
2
3 MICHAEL ROSE, introduced
4 on behalf of the defendant, being first duly sworn, testified
5 as follows:
6
7 DIRECT EXAMINATION
8 BY MR. NORWOOD:
9 Q Please state your name?
10 A My name is Michael Rose.
11 Q And your occupation?
12 A I'm a carpenter's helper with Inge
13 Construction Company.
14 Q How long have you known Mr. Gillis?
15 A I've known him about five years.
16 Q Starting Sunday -- start Saturday,
17 June the 16th -- the 15th, rather, could you tell us at what
18 times Mr. Gillis was in your presence?
19 A I believe that on that weekend,
20 Saturday the 15th, we went to the country where we were ori-
21 ginally from, the schools and so forth, and went -- both of
22 us went home, which was down to the country.
23 Q That was in -- where was that, what
24 county?

1 A Lancaster County.

2 Q And what time did you come back

3 Sunday evening?

4 A We came back sometime in the after-

5 noon, it was after three, I believe.

6 Q Monday morning, what time did you go

7 to work?

8 A I went to work at seven-thirty.

9 Q With Mr. Gillis?

10 MR. McGRATH: Your Honor, if I

11 might, maybe save some time, if the -- if the

12 questions are going to be, was Mr. Gillis at

13 work during the week, we would let Counsel ask

14 that one question, did he see him there every

15 day during the week, and did he leave work, and

16 if he says he saw him at work and he did not

17 leave work during the day, we'd be satisfied with

18 the answer.

19 THE COURT: All right.

20 MR. NORWOOD: That's what I was going

21 to get to.

22 THE COURT: All right, ask --

23 Q Monday, Tuesday and Wednesday, was

24 Mr. Gillis at work from seven-thirty until four?

1 A Yes, sir.
2 Q Did he ever leave your presence?
3 A No, very much during those weeks,
4 the time in which Jim's wife was having the baby, we were all
5 very much together, and over on that . . . . . (microphone
6 still distant from witness)
7 Q Okay, Wednesday evening, where were
8 you all Wednesday evening?
9 A We were at a girlfriend's apartment,
10 over on Floyd.
11 Q You and Mr. Gillis?
12 A Right.
13 Q What time did -- did Mr. Gillis get
14 there?
15 A He got there around seven-thirty,
16 we usually watch television on Wednesday nights.
17 Q And what time did he leave there?
18 A He left there before ten.
19 Q Approximately?
20 A Well, ten.
21 Q Ten o'clock? No further questions.
22 CROSS EXAMINATION
23 BY MR. McGRATH:
24 Q Did -- you were with Mr. Gillis, is

1 that correct,

2 A Right.

3 Q when you went to the girl's house?

4 A He came over from Jim's, and we --

5 Q This is your assumption, that he came

6 over from Jim's, isn't it?

7 A Well, the testimony was that he

8 left Jim's at seven o'clock --

9 Q All right, what time did you see him?

10 A I saw him at seven-thirty.

11 Q You saw him at seven-thirty?

12 A Right.

13 Q All right, so your testimony is

14 based on what you heard in the Court, you don't know of your

15 own knowledge what time he left Jim's, do you?

16 A No, I don't.

17 Q And he left the party around ten?

18 A It wasn't a party, but he was --

19 Q Well, I'm sorry,

20 A Right.

21 Q I didn't mean to characterize it as

22 a party. Who else was there?

23 A Just myself and T. C., ... and

24 the girl who lives in the apartment.

1 Q T. C., who is that?
2 A James Gillis.
3 Q James Gillis, okay, do you know
4 whether or not Mr. Gillis had any drugs on him at the time he
5 left the apartment?
6 A No, sir.
7 Q You don't know one way or the other,
8 whether he did or he didn't, do you?
9 A No, sir.
10 Q I have no further questions.
11
12 BY THE COURT:
13 Q Where did you say you worked?
14 A Inge Construction Company, at --
15 it's over on Roanoke Street, which was a block behind where
16 Mr. Brown lives.
17 Q All right, take your seat.
18
19
20
21 WITNESS STOOD ASIDE.
22
23
24

1 THE COURT: Is that the case?
2 MR. NORWOOD: I'm debating about
3 whether to put my client on, Your Honor, at this
4 point. May I have a couple of minutes --
5 seconds to --
6 THE COURT: Yes, sir, and
7 MR. NORWOOD: it will be very short.
8 THE COURT: in six minutes the Court
9 will recess for lunch until three p.m.
10 MR. NORWOOD: I call Mr. James
11 Gillis, the defendant.
12
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17
18 JAMES RUSSELL GILLIS, the
19 defendant, introduced on his own behalf, being first duly
20 sworn, testified as follows:
21
22 DIRECT EXAMINATION
23 BY MR. NORWOOD:
24 Q State your name?

1 A My name is James Russell Gillis.

2

3

4 Transcriber's Note: The

5 microphone is quite distant from the witness.

6

7

8 Q And where are you now presently

9 living?

10 A Living?

11 Q Right?

12 A 413 Westover Hills Boulevard.

13 Q Mr. Gillis, you've heard the testi-

14 mony of both Mr. Brown and Mr. Rose, would you relate to this

15 Court -- unless the Commonwealth's Attorney would stipulate

16 that he was with those people at those times?

17 MR. McGRATH: Your Honor, I have no

18 argument or no quarrel that he was with those

19 people at the times that they testified.

20 THE COURT: All right, sir.

21 Q Other than the brief time that you

22 were at the apartment at 2100 Grove Avenue, on Monday, June

23 the 18th, were you ever back in that apartment before approx-

24 imately 10:15 on Wednesday, June the 20th?

1 A No, sir, I wasn't.

2 Q Were any of the narcotics and drugs

3 found in that apartment yours?

4 A No, sir.

5 Q Had you ever seen them before?

6 A No, sir, I hadn't.

7 Q When you went in the freezer, did

8 you see that -- did you remember seeing the tin foil and the

9 drugs?

10 A No, I did not. (The witness is so

11 distant from microphone that the answer is barely audible)

12 Q No further questions.

13

14 CROSS EXAMINATION

15 BY MR. McGRATH:

16 Q Where were you from ten p.m., until

17 eleven, the 20th of June?

18 A At home, ...

19 Q What time did you leave this girl's

20 house that you heard testified to?

21 A About ten. (The witness is so far

22 from the microphone that the answer is barely audible)

23 Q How long did it take you to get to

24 your apartment?

1 A I'd say about ten minutes.

2 Q Was anyone else at the apartment

3 with you?

4 A Mr. Cook.

5 Q Mr. Cook.

6 A Yes.

7 Q Did you ever see that pipe before?

8 A Yea, I saw it when he bought it.

9 Q Uh huh, did you see it on the night

10 that they raided the apartment?

11 A Yes, I did . . . .

12 Q Where did they find it?

13 A On the living room table.

14 Q On the living --

15 THE COURT: Speak up.

16 A On the living room table.

17 Q On the living room table, and do you

18 recall going into the refrigerator that night?

19 A Yes.

20 Q Do you recall getting some ice out?

21 A Yes, sir, I do.

22 Q Do you recall seeing a tin foil pack?

23 A No, sir, I don't.

24 Q Do you recall seeing any orange

1 substance which had been partially melted on the ice?

2 A No, sir.

3 Q So then you did not see them, is

4 that correct?

5 A That's correct.

6 Q All right, sir, I have no further

7 questions -- I have one other question: Are you presently on

8 probation?

9 A I am.

10 Q Is that for a drug offense?

11 A Yes.

12 Q What is the offense?

13 A Possession of marijuana.

14 Q I have no further questions.

15 THE COURT: All right, take your

16 seat.

17

18

19

20 WITNESS STOOD ASIDE.

21

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23

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