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CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VA.

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 75-0100

DONNA J. HENSLEY, BARBARA MCCLURE
AND ERNEST L. COLE,

Plaintiffs in error,

v.

CITY OF NORFOLK,

Defendant in error.

JOINT APPENDIX

Anthony L. Montagna, Jr.
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Board of Trade Building
304 East Plume Street
Norfolk, Virginia 23510
Counsel for Plaintiffs in error

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City Attorney
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Norfolk, Virginia 23510
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ARREST WARRANT FOR VIOLATION OF CITY ORDINANCE
(Rule 3A:4)

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

To any of the Police Officers of the City of Norfolk or any other authorized officer:
You are hereby commanded in the name of the Commonwealth forthwith to arrest

Donna Hensley

(Name of accused, or a description by which the accused can be identified)

Norfolk General District Court, Criminal Division

to answer a charge that he (she) committed an offense in the City of Norfolk on or about Jun. 26, 19 74,

namely Vio-Sec. 31-55, of the City Code, to-wit: Frequenting a house of ill fame.

Place: 3335 N. Military Hwy. Time: Approx. 9:00 PM (1)

On the basis of the sworn statement(s) of Cpl. W. E. Nebrotskie, (On-Information).

the undersigned has found probable cause to Address NPD

believe the accused has committed the offense. (2) Dated: June 30, 19 74.

Charles J. Wilson
(Magistrate)

The complaint has been attached to the original of this warrant. (3)

(1) Give a brief descriptoni of the offense, e.g., the murder of John Doe.

(2) If the warrant issues because the accused failed to appear in response to a summons, this paragraph should read substantially as follows: The accused failed to appear before the _____ on _____, 19 ____ in response to a summons issued _____, 19 ____.

(3) If a written complaint has been made, it should be stapled or otherwise attached to the original of the warrant. If no written complaint has been made, the reference thereto should be lined out.

THE WITHIN NAMED defendant on this _____ day of _____, 19 ____ forfeited (nolo contendere) (guilty) collateral in the amount of $ _____; was brought before me and pleaded (not guilty); upon hearing (guilty) was found by me (not guilty); and I adjudge a fine of $ _____ and costs of $ _____, and _____ days in jail suspended on condition _____

City Attorney Present _____ Trial in Absence _____

Attorney for Defendant Present _____ License Suspended _____ days/months

On motion of said defendant an appeal is granted to the next term of the General Circuit Court of the City of Norfolk, Part _____ to-wit, the first Monday in _____, 19 ____; and the witnesses above named were severally duly recognized each in the sum of One Hundred ($100.00) Dollars, payable to the Commonwealth of Virginia, for their appearance before said Court to give evidence on said charge, and to depart hence without leave of said court.

Given under my hand this _____ day of _____, 19 ____.

_____
Judge

ARREST WARRANT FOR VIOLATION OF CITY ORDINANCE
(Rule 3A:4)

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

To any of the Police Officers of the City of Norfolk or any other authorized officer:
You are hereby commanded in the name of the Commonwealth forthwith to arrest

Donna Hensley
(Name of accused, or a description by which the accused can be identified)

Norfolk General District Court, Criminal Division
to answer a charge that he (she) committed an offense in the City of Norfolk on or about June 26, 19 74,
namely Violation Section 31-56 Code of Norfolk to-wit: Soliciting
Place: 3335 N. Military Highway Time approx. 9:00 p.m.

(1)

On the basis of the sworn statement(s) of Cpl. W. E. Nebrotskie, on information
the undersigned has found probable cause to Address
believe the accused has committed the offense. (2) Dated: June 29, 19 74.

Frank W Merritt, Jr.
(Magistrate)

The complaint has been attached to the original of this warrant. (3)

(1) Give a brief descriptoni of the offense, e.g., the murder of John Doe.

(2) If the warrant issues because the accused failed to appear in response to a summons, this paragraph should read substantially as follows: The accused failed to appear before the _____ on _____, 19 ____ in response to a summons issued _____, 19 ____.

(3) If a written complaint has been made, it should be stapled or otherwise attached to the original of the warrant. If no written complaint has been made, the reference thereto should be lined out.

THE WITHIN NAMED defendant on this _____ day of _____, 19 ____ forfeited (nolo contendere) (guilty) collateral in the amount of $ _____; was brought before me and pleaded (not guilty); upon hearing (guilty) was found by me (not guilty); and I adjudge a fine of $ _____ and costs of $ _____, and _____ days in jail suspended on condition _____

City Attorney Present _____ Trial in Absence _____

Attorney for Defendant Present _____ License Suspended _____ days/months

On motion of said defendant an appeal is granted to the next term of the General Circuit Court of the City of Norfolk, Part _____ to-wit, the first Monday in _____, 19 ____; and the witnesses above named were severally duly recognized each in the sum of One Hundred ($100.00) Dollars, payable to the Commonwealth of Virginia, for their appearance before said Court to give evidence on said charge, and to depart hence without leave of said court.

Given under my hand this _____ day of _____, 19 ____.

_____
Judge

002

ARREST WARRANT FOR VIOLATION OF CITY ORDINANCE
(Rule 3A:4)

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

To any of the Police Officers of the City of Norfolk or any other authorized officer:
You are hereby commanded in the name of the Commonwealth forthwith to arrest

DONNA J. HESSLER , W / F IN CUSTODY

(Name of accused, or a description by which the accused can be identified)

Norfolk General District Court, CRIMINAL Division

to answer a charge that he (she) committed an offense in the City of Norfolk on or about JUNE 28th, 19 74,

namely VIO. SEC. 31 - 55 CITY CODE TO WIT: INDECENT CONDUCT .

PLACE OF OCC: 3335 N. MILITARY HIGHWAY TIME: 11:15 P.M. JUNE 28th 74 (1)

On the basis of the sworn statement(s) of SGT. C. J. MORGANTE , ON INFORMATION

the undersigned has found probable cause to Address NORFOLK POLICE DEPT

believe the accused has committed the offense. (2) Dated: JUNE 29th, 19 74.

J. Hamilton S
(Magistrate)

The complaint has been attached to the original of this warrant. (3)

(1) Give a brief descriptoni of the offense, e.g., the murder of John Doe.

(2) If the warrant issues because the accused failed to appear in response to a summons, this paragraph should read substantially as follows: The accused failed to appear before the _____ on _____, 19 ____ in response to a summons issued _____, 19 ____.

(3) If a written complaint has been made, it should be stapled or otherwise attached to the original of the warrant. If no written complaint has been made, the reference thereto should be lined out.

THE WITHIN NAMED defendant on this _____ day of _____, 19 ____ forfeited (nolo contendere) (guilty) collateral in the amount of $ _____; was brought before me and pleaded (not guilty); upon hearing (guilty) was found by me (not guilty); and I adjudge a fine of $ _____ and costs of $ _____, and _____ days in jail suspended on condition _____

City Attorney Present _____ Trial in Absence _____

Attorney for Defendant Present _____ License Suspended _____ days/months

On motion of said defendant an appeal is granted to the next term of the General Circuit Court of the City of Norfolk, Part _____ to-wit, the first Monday in _____, 19 ____; and the witnesses above named were severally duly recognized each in the sum of One Hundred ($100.00) Dollars, payable to the Commonwealth of Virginia, for their appearance before said Court to give evidence on said charge, and to depart hence without leave of said court.

Given under my hand this _____ day of _____, 19 ____.

_____
Judge

ARREST WARRANT FOR VIOLATION OF CITY ORDINANCE
(Rule 3A:4)

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

To any of the Police Officers of the City of Norfolk or any other authorized officer:
You are hereby commanded in the name of the Commonwealth forthwith to arrest

Jane Doe AKA Donna Hendley

(Name of accused, or a description by which the accused can be identified)

Norfolk General District Court, Criminal Division
to answer a charge that he (she) committed an offense in the City of Norfolk on or about 28 June, 19 74,
namely Vio. Sec. 31-56 CC to wit: Soliciting for immoral purposes

occ: 3335 North Military Highway aprox: 11:15 PM this date (1)

On the basis of the sworn statement(s) of Det. J. L. Banks (on information)
the undersigned has found probable cause to Address Norfolk Police Department
believe the accused has committed the offense. (2) Dated: 28 June, 19 74.

O. J. Hamilton
(Magistrate)

The complaint has been attached to the original of this warrant. (3)

(1) Give a brief descriptoni of the offense, e.g., the murder of John Doe.

(2) If the warrant issues because the accused failed to appear in response to a summons, this paragraph should read substantially as follows: The accused failed to appear before the _____ on _____, 19 ____ in response to a summons issued _____, 19 ____.

(3) If a written complaint has been made, it should be stapled or otherwise attached to the original of the warrant. If no written complaint has been made, the reference thereto should be lined out.

THE WITHIN NAMED defendant on this 31st day of July, 19 74 ~~forfeited~~ (nolo contendere) (guilty) collateral ~~in the amount of~~ $ _____; was brought ~~before me and pleaded~~ (not guilty); upon hearing (guilty) was found by me (~~not guilty~~); and I adjudge a fine of $ 150.00 and costs of $ 6.25, and 30 days in jail ~~suspended on condition~~ _____

City Attorney Present No Trial in Absence No
Attorney for Defendant Present Anthony T. Montague, Jr. ~~License Suspended~~ _____ days/months

On motion of said defendant an appeal is granted to the next term of the General Circuit Court of the City of Norfolk, ~~Part~~ _____ to-wit, the first Monday in August, 19 74; and the witnesses above named were severally duly recognized each in the sum of One Hundred ($100.00) Dollars, payable to the Commonwealth of Virginia, for their appearance before said Court to give evidence on said charge, and to depart hence without leave of said court.

Given under my hand this 31st day of July, 19 74.

Priscilla S. Richardson
Judge

004

ARREST WARRANT FOR VIOLATION OF CITY ORDINANCE
(Rule 3A:4)

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

To any of the Police Officers of the City of Norfolk or any other authorized officer:
You are hereby commanded in the name of the Commonwealth forthwith to arrest

BARBARA McCLURE W / F
(Name of accused, or a description by which the accused can be identified)

Norfolk General District Court, CRIMINAL Division
to answer a charge that he (she) committed an offense in the City of Norfolk on or about JUNE 28th 19 74,
namely VIO. SEC. 31 - 18.2 CITY CODE TO WIT: FREQUENTING A DISORDERLY HOUSE

PLACE OF OCC: 3335 N. MILITARY HIGHWAY TIME: 11:15 P M JUNE 28th 74 (1)

On the basis of the sworn statement(s) of SGT. C. J. MORGANTE, ON INFORMATION
the undersigned has found probable cause to Address NORFOLK POLICEDEPT.
believe the accused has committed the offense. (2) Dated: JUNE 29th, 19 74.

(Magistrate)

The complaint has been attached to the original of this warrant. (3)

(1) Give a brief descriptoni of the offense, e.g., the murder of John Doe.

(2) If the warrant issues because the accused failed to appear in response to a summons, this paragraph should read substantially as follows: The accused failed to appear before the _____ on _____, 19 ____ in response to a summons issued _____, 19 ____.

(3) If a written complaint has been made, it should be stapled or otherwise attached to the original of the warrant. If no written complaint has been made, the reference thereto should be lined out.

THE WITHIN NAMED defendant on this _____ day of _____, 19 _____ forfeited (nolo contendere) (guilty) collateral in the amount of $ _____; was brought before me and pleaded (not guilty); upon hearing (guilty) was found by me (not guilty); and I adjudge a fine of $ _____ and costs of $ _____, and _____ days in jail suspended on condition _____

City Attorney Present _____ Trial in Absence _____

Attorney for Defendant Present _____ License Suspended _____ days/months

On motion of said defendant an appeal is granted to the next term of the General Circuit Court of the City of Norfolk, Part _____ to-wit, the first Monday in _____, 19 ____; and the witnesses above named were severally duly recognized each in the sum of One Hundred ($100.00) Dollars, payable to the Commonwealth of Virginia, for their appearance before said Court to give evidence on said charge, and to depart hence without leave of said court.

Given under my hand this _____ day of _____, 19 ____.

Judge

ARREST WARRANT FOR VIOLATION OF CITY ORDINANCE
(Rule 3A:4)

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

To any of the Police Officers of the City of Norfolk or any other authorized officer:
You are hereby commanded in the name of the Commonwealth forthwith to arrest

ERNEST COLE , W / M IN CUSTODY
(Name of accused, or a description by which the accused can be identified)

Norfolk General District Court, CRIMINAL Division
to answer a charge that he (she) committed an offense in the City of Norfolk on or about JUNE 28th 19 74,
namely VIO. SEC. 31 - 18.1 CITY CODE TO WIT: KEEPING AND MAINTAINING A DISORDERLY HOUSE .

PLACE OF OCC: 3335 N. MILITARY HIGHWAY TIME: 11:15 P M JUNE 28th 74 (1)

On the basis of the sworn statement(s) of SGT. C. J. MORGANTE , ON INFORMATION
the undersigned has found probable cause to Address NORFOLK POLICE DEPT.
believe the accused has committed the offense. (2) Dated: JUNE 29th 19 74 .

(Magistrate)

The complaint has been attached to the original of this warrant. (3)

(1) Give a brief descriptoni of the offense, e.g., the murder of John Doe.

(2) If the warrant issues because the accused failed to appear in response to a summons, this paragraph should read substantially as follows: The accused failed to appear before the _____ on _____, 19 ____ in response to a summons issued _____, 19 ____.

(3) If a written complaint has been made, it should be stapled or otherwise attached to the original of the warrant. If no written complaint has been made, the reference thereto should be lined out.

THE WITHIN NAMED defendant on this _____ day of _____, 19 ____ forfeited (nolo contendere) (guilty) collateral in the amount of $ _____; was brought before me and pleaded (not guilty); upon hearing (guilty) was found by me (not guilty); and I adjudge a fine of $ _____ and costs of $ _____, and _____ days in jail suspended on condition _____

City Attorney Present _____ Trial in Absence _____

Attorney for Defendant Present _____ License Suspended _____ days/months

On motion of said defendant an appeal is granted to the next term of the General Circuit Court of the City of Norfolk, Part _____ to-wit, the first Monday in _____, 19 ____; and the witnesses above named were severally duly recognized each in the sum of One Hundred ($100.00) Dollars, payable to the Commonwealth of Virginia, for their appearance before said Court to give evidence on said charge, and to depart hence without leave of said court.

Given under my hand this _____ day of _____, 19 ____.

Judge

ARREST WARRANT FOR VIOLATION OF CITY ORDINANCE
(Rule 3A:4)

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

To any of the Police Officers of the City of Norfolk or any other authorized officer:
You are hereby commanded in the name of the Commonwealth forthwith to arrest

Donna Hensley

(Name of accused, or a description by which the accused can be identified)

Norfolk General District Court, Criminal Division
to answer a charge that he (she) committed an offense in the City of Norfolk on or about Jun. 26, 19 74,
namely Vio-Sec. 31-35, of the City Code, to-wit: Lewdness and lascivious conduct.

Place: 3335 N. Military Hwy. Time: Approx. 9:00 PM (1)

On the basis of the sworn statement(s) of Cpl. W. E. Nebrotskie, (On-Information).
the undersigned has found probable cause to Address NPD
believe the accused has committed the offense. (2) Dated: June 30, 19 74.

Charles J. Wilson
(Magistrate)

The complaint has been attached to the original of this warrant. (3)

(1) Give a brief descriptoni of the offense, e.g., the murder of John Doe.

(2) If the warrant issues because the accused failed to appear in response to a summons, this paragraph should read substantially as follows: The accused failed to appear before the _____ on _____, 19 ____ in response to a summons issued _____, 19 ____.

(3) If a written complaint has been made, it should be stapled or otherwise attached to the original of the warrant. If no written complaint has been made, the reference thereto should be lined out.

THE WITHIN NAMED defendant on this _____ day of _____, 19 ____ forfeited (nolo contendere) (guilty) collateral in the amount of $ _____; was brought before me and pleaded (guilty) (not guilty); upon hearing was found by me (not guilty); and I adjudge a fine of $ _____ and costs of $ _____, and _____ days in jail suspended on condition _____

City Attorney Present _____ Trial in Absence _____

Attorney for Defendant Present _____ License Suspended _____ days/months

On motion of said defendant an appeal is granted to the next term of the General Circuit Court of the City of Norfolk, Part _____ to-wit, the first Monday in _____, 19 ____; and the witnesses above named were severally duly recognized each in the sum of One Hundred ($100.00) Dollars, payable to the Commonwealth of Virginia, for their appearance before said Court to give evidence on said charge, and to depart hence without leave of said court.

Given under my hand this _____ day of _____, 19 ____.

_____
Judge

1
2 DIRECT EXAMINATION

3 BY MR. FREDRICKS:

4 Q Sergeant Morgante, where are you employed?

5 A The City of Norfolk, Norfolk Police Department.

6 Q And in what division or branch of the Police

7 Department?

8 A Assigned to the Intelligence Tactical and

9 Narcotics Division.

10 Q And what is your position in that division?

11 A I am Sergeant.

12 Q In charge of any one of the three?

13 A All three encompass my duties.

14 Q And in the matters before us today, Barbara

15 McClure, Ernest Cole, and Donna J. Hensley, were you the

16 supervising officer in charge of those investigations?

17 A Yes, sir.

18 MR. FREDRICKS: I have no further questions of

19 the witness.

20

21 CROSS-EXAMINATION

22 BY MR. MONTAGNA:

23 Q Sergeant Morgante, in relation to the charges

24 lodged against the three Defendants here this morning, what

25 functions, if any, did you perform other than taking out

1 warrants on information?

2 A I don't believe I took out the warrants. On

3 some of them, Mr. Montagna, I probably did.

4 Can you check that?

5 Q You took out one on Donna J. Hensley for --

6 let's see. You took out one for 31-55 on June 28, on

7 information?

8 A Yes, sir.

9 Q You took out one on Barbara McClure on

10 information, 31-18.2?

11 A Yes, sir.

12 Q You took out one on information on Mr. Cole

13 for 31-18.1?

14 A Yes.

15 Q Is that your entire basis of your function in

16 the matter?

17 A The question is what was my function? Information

18 I received --

19 Q Just a second. We are not at that point right

20 now. Did you serve any other function other than taking out

21 warrants and information?

22 A I was there on June 29, 1974, at approximately

23 12:15.

24 Q On Saturday?

25 A When the arrest took place with Miss Hensley.

1 Q That's your only function?

2 A That's when I was there. I went there with the

3 rest of the men.

4 Q You were not the investigating officer; were

5 you?

6 A I was, and so was Corporal Nebrotskie when

7 the undercover --

8 THE COURT: Just a minute. Either the question

9 can be responded to with a yes or a no, and if there

10 is further interrogation that we have, we can get that;

11 but can you answer the question in a yes or no fashion?

12 Were you the investigating officer in any of these

13 cases, or all of these cases?

14 THE WITNESS: Yes, sir. But, Your Honor, I

15 have to give two answers.

16 THE COURT: All right. In which cases would you

17 say you were the investigating officer?

18 THE WITNESS: Both of them. I am the one who

19 initiated the investigation.

20 THE COURT: The three Defendants in both cases?

21 THE WITNESS: Yes. There were two separate

22 dates with two different undercover agents.

23 THE COURT: All right, sir. You may explain

24 them.

25

1 BY MR. MONTAGNA:

2 Q As an investigating officer, what function did
3 you perform?

4 A I instructed the agents who were going in there.
5 I also told them a name to use to give to Tasha or Miss Donna
6 Hensley. I also advised this Corporal Nebrotskie and told
7 him what to expect, what this woman would do.

8 Q Did you do anything other than just correlate
9 the activities of the other police officers?

10 THE COURT: Well, he has just advised you what
11 he did. In fact, you are putting words in his mouth
12 when you say, "did you do anything other than correlate."
13 I think that the Court will have to conclude exactly
14 what he did do, whether you are asking him whether he
15 did anything other than correlate. I don't think
16 the question is fair. It's a leading question, and
17 asks for a conclusion.

18 BY MR. MONTAGNA:

19 Q Now, have you prepared or assisted the City
20 Attorney in the preparation of this case?

21 A I just turned in a case report on the appeal.

22 Q Based on what other officers told you?

23 A I believe a case report was turned in by
24 Corporal Nebrotskie.

25 Q So you did not even prepare the case report?

1 A No, sir.

2 MR. MONTAGNA: He is not the investigating
3 officer in this matter. I realize he has had some
4 part in it, but he has not been the investigator from
5 the City Attorney's office in setting everything up,
6 preparing case reports, and what-not.

7 We would say that under the Virginia Supreme
8 Court decision allowing chief investigators to stay
9 in the courtroom, upon the separation of witnesses,
10 that he doesn't qualify, and ask that he be excluded
11 like all other ordinary witnesses.

12 MR. FREDRICKS: Well, I think Sergeant Morgante
13 was very candid with the Court. He is the supervisory
14 officer. There is no doubt about that he is the
15 sergeant. He was in on the investigation. By virtue
16 of his rank, he conducted the investigation, if
17 nothing else. He instructed the various people what
18 to do when they went in. He instructed them on what
19 to expect. He took out the warrants, or at least he
20 took out the warrants against Barbara McClure, Donna
21 Hensley, and one warrant against Ernest Cole.

22 I think that that, in itself, speaks for
23 Sergeant Morgante's role. Under the decision which
24 allows the chief investigating officer, and I emphasize
25 the chief investigating officer, to sit with the

1 prosecution during the trial of the case, I think
2 Sergeant Morgante has more than qualified under that
3 test.
4 THE COURT: I think he has, Mr. Montagna.
5 MR. MONTAGNA: Please note our objection.
6 THE COURT: Note objection for Defendants,
7 and exceptions to the Court's ruling permitting him
8 to remain in the courtroom.
9 All right. You may come down.
10 THE CLERK: Any opening statements?
11
12 (Whereupon, opening statements were made by
13 both counsel for the City and counsel for the
14 Defendants.)
15 THE CLERK: Mr. City Attorney, call your first
16 witness.
17 MR. FREDRICKS: Your Honor, the City calls
18 Mr. Tom Swah.
19
20 TOM SWAH, called as a witness by and on behalf
21 of the City, having been first duly sworn, was examined and
22 testified as follows:
23
24
25

1
2 DIRECT EXAMINATION

3 BY MR. FREDRICKS:

4 Q Will you please state your name?

5 A Thomas Swah.

6 THE COURT: How do you spell that name, please?

7 Your last name?

8 THE WITNESS: S-w-a-h.

9 BY MR. FREDRICKS:

10 Q Mr. Swah, do you remember the night of June 26

11 of this year?

12 A Yes, sir.

13 Q On that date, did you have occasion to enter

14 a massage parlor at 3335 North Military Highway, known as

15 the Venus I Massage Parlor, I believe?

16 A Yes, I did.

17 Q Could you please relate to the Court in your

18 own words what occurred from when you entered the massage

19 parlor until you left the massage parlor.

20 A Well, I entered the massage parlor approximately

21 8:50.

22 THE COURT: Suppose you speak up, sir.

23 A (Continuing.) I entered the massage parlor

24 about 8:50 on June the 26th, 1974, I seen the Defendant

25 there, Mr. Cole, behind -- to the left of the door as you

1 approach inside the door, and he asked me --

2 MR. MONTAGNA: Your Honor, I would object to

3 any testimony relating to Mr. Cole on June 26th, 1974.

4 He is not charged with any offense of maintaining or

5 frequenting a disorderly house on June 26th.

6 MR. FREDRICKS: Your Honor, if I might,

7 Mr. Montagna is well aware that the offense of keeping

8 and maintaining a disorderly house has been held in

9 Virginia on a number of occasions to be a continuing

10 offense; that it is not only a continuing offense,

11 but the prosecution not only may, but must bring in

12 evidence to show the continuing nature of the offense.

13 Therefore, I believe it is perfectly proper

14 for the witness to discuss what happened with Mr. Cole

15 on June 26th.

16 THE COURT: Insofar as what Mr. Swah is now

17 relating, your objection is overruled. Note your

18 exception for the Defendant Cole.

19 MR. FREDRICKS: Thank you, Your Honor.

20 A (Continuing.) I came into the door. As I

21 said, Mr. Cole was sitting to the left of the door in a

22 cage-like room enclosed in whatever you have, and he said

23 hello to me, and I said hello to him. I said, "I know you

24 know me."

25 He said, "Yes, I do." He said, "You are here

1 for a massage?"

2 And I said, "Yes."

3 He said, "That would be $20."

4 I gave him a $20 bill. I went into the room --

5 into the back, the very back to the right-hand side of the

6 building, and the girl known as -- she has a nickname of

7 Tasha.

8 Q Is she in the courtroom today?

9 A Yes, she is.

10 Q Would you please point her out?

11 A The young lady sitting behind there.

12 Q Let the record show that that was Donna Hensley.

13 MR. MONTAGNA: Just a second. There has been

14 no -- we object to the record showing that that's

15 Donna Hensley, based on what Mr. Fredricks said.

16 THE COURT: Except she has been arrested as

17 Donna Hensley, and isn't she now? She stood when there

18 was an arraignment by the Clerk of this Court, when the

19 charges were stated and inquiries were made of her

20 if she wanted a trial by a Court or a Jury. She

21 responded. Now, is she or isn't she Donna Hensley?

22 The Court assumes she is.

23 MR. MONTAGNA: She is.

24 THE COURT: All right, sir. Your objection is

25 overruled. Go ahead, sir.

1 A (Continuing.) She came into the room and asked
2 me if I would take off my clothes. I said okay. She left
3 the room approximately a minute, two minutes. She came back
4 and I was laying on my stomach at the time, and she massaged
5 my back. She asked me to turn over so she could massage my
6 chest and the rest of my body.
7 We were talking, and she asked me if I was in
8 for a regular. I said yes. She then massaged the lower part
9 of my body, my legs at that time.
10 She asked me if I was interested in anything
11 else, and I asked her what did she have in mind at the time,
12 and she so stated more or less -- basically, I would say
13 a proposition. She asked if I would like to have a
14 woman.
15 MR. MONTAGNA: Excuse me. I didn't hear that.
16 THE WITNESS: Would I like to have a woman.
17 BY MR. FREDRICKS:
18 Q Excuse me, Mr. Swah. I understand the possible
19 embarrassing nature of your testimony, but would you please be
20 more specific as to what Miss Hensley asked you and did?
21 A At the time she asked me about the proposition --
22 $50 for a woman for a relationship. I said, at that time,
23 that I don't think I would be interested.
24 Q Mr. Swah, you say for a relationship. Would
25 you be more specific?

1 A Intercourse with her. I said, at the time,
2 that I didn't have the amount of money. She said, "Would you
3 be interested in something else?"
4 I said, "What else?"
5 I guess the word or term that is used is sodomy.
6 MR. MONTAGNA: What did you say?
7 THE WITNESS: Sodomy. For $25. I said, "I
8 don't have that much money."
9 So she said, "You just want the regular?"
10 And I said, "Yes."
11 This was -- she massaged my genitals with body
12 lotion.
13 BY MR. FREDRICKS:
14 Q Would you tell us what happened then?
15 A She masturbated me, I believe is the word.
16 Q During this time, how was Miss Hensley dressed?
17 A I would say it looked to me like an oversized
18 T-shirt. It hung below, and she had something basically like
19 shorts on.
20 Q Now, after she completed masturbating you, would
21 you please tell the Court what you then did?
22 A She then told me that I could get dressed.
23 THE COURT: I did not hear the testimony that
24 she completed anything. He said she then masturbated
25 him. In fairness to the Defendants, let's keep the

1 testimony going along as to the time --

2 MR. FREDRICKS: I apologize to the Court.

3 BY MR. FREDRICKS:

4 Q You say she was masturbating you.

5 A After I finished, she wiped me with a towel.

6 At that time, before she started, she put it around my privates.

7 She wiped me, and I got up and she asked if I would like to

8 come back on a Friday around 10:00 when it is not so busy.

9 I said, "I will keep it in mind."

10 She said, "Okay. Thank you."

11 Q I assume she completed the act of masturbation?

12 MR. MONTAGNA: Your Honor, I object to

13 Mr. Fredricks assuming anything.

14 A I so stated that she did, and then wiped me

15 afterwards. Yes.

16 MR. FREDRICKS: I withdraw the question.

17 MR. MONTAGNA: I assume his answer is withdrawn,

18 too, Your Honor. If there is no question, there is no

19 answer to it.

20 THE COURT: Sustained.

21 BY MR. FREDRICKS:

22 Q You mentioned the fact that she wiped you.

23 Would you please go on from there.

24 THE COURT: Let's get down to language now that

25 everybody can understand. I am not going to be

1 embarrassed by this, and I don't think you should be,
2 and I don't think counsel should be, and certainly
3 these Defendants who are faced with these charges, and
4 if the witness is embarrassed, it's a little late for
5 him to be embarrassed. I want to get it right out
6 from his mouth exactly what took place. Let's not
7 dance around the subject.
8 A I could still be using the word masturbating.
9 She gave me a hand-job. I finished.
10 THE COURT: When you say you finished, what
11 took place?
12 THE WITNESS: I discharged.
13 THE COURT: All right. You had a seminal
14 discharge?
15 THE WITNESS: Yes, sir.
16 THE COURT: All right. Let's get down there
17 and talk about what supposedly took place. I am not
18 going to speculate, and I don't expect another soul
19 to speculate on this. These are charges, and they
20 will be proven to the satisfaction of the Court, or
21 out they go.
22 MR. FREDRICKS: I understand, Your Honor.
23 THE COURT: All right, sir. Let's move along.
24 BY MR. FREDRICKS:
25 Q After this was completed, what you just described,

1 what you refer to as a hand-job, will you please tell the
2 Court what happened at that point?
3 A At that point, after she finished, after she
4 finished with the hand-job, she wiped me, and told me to get
5 dressed. She asked me if I would like to come back on a later
6 date, like on a Friday. There is less business there, and we
7 could continue if I had any other intentions. That's the end
8 of it. I dressed, and left from there approximately an hour
9 and 15 minutes later; somewheres along in that time.
10 MR. FREDRICKS: I have no further questions of
11 this witness, Your Honor.
12 THE COURT: All right. Mr. Montagna.
13
14 CROSS-EXAMINATION
15 BY MR. MONTAGNA:
16 Q What is your address, Mr. Swah?
17 A In Norfolk on Tidewater Drive.
18 Q What is your address on Tidewater Drive?
19 MR. FREDRICKS: Excuse me, Your Honor. I would
20 object to that question. There is no doubt that the
21 Defendant lives in Norfolk. He lives on Tidewater
22 Drive. I can't see, in light of the nature of the
23 charges, and any possible thoughts which might -- and
24 I am not accusing anybody of anything -- enter into
25 the Defendants' mind to have his specific address.

1 THE COURT: Any reason to keep it a secret?
2 Any reason to keep it a secret? He has surfaced now.
3 He is a witness in Court.
4 MR. FREDRICKS: No, Your Honor. I withdraw the
5 objection.
6 BY MR. MONTAGNA:
7 Q What is your address?
8 A 9007 Tidewater Drive in the City of Norfolk.
9 Q 9007?
10 A Uh-huh.
11 Q Are you married?
12 A Yes, I am.
13 Q Do you live with your wife?
14 A Yes, I do.
15 Q How long have you been married?
16 A Roughly about eleven years.
17 Q Does your wife know you go to massage parlors?
18 A Yes.
19 MR. FREDRICKS: Your Honor, I don't see the
20 relevancy of that question.
21 MR. MONTAGNA: Your Honor, I think we are
22 entitled to broad leeway in cross-examination,
23 especially when his credibility is so important to
24 this case.
25 THE COURT: All right. I will allow it. Go ahead

1 massage parlor? ***

2 MR. FREDRICKS: Your Honor, again, his wife's
3 credibility is not in issue. His wife is not a witness
4 here. I can't see the need to pursue it.
5 THE COURT: I'm going to let him ask the
6 question and get it out of his system.
7 A I told her the basic purpose of going to a
8 massage parlor.
9 BY MR. MONTAGNA:
10 Q What is the basic purpose of going to a massage
11 parlor?
12 A It depends on what part of sex you are seeking
13 at the time you go.
14 Q Say that again?
15 A It depends upon what part of sex you may be
16 seeking or persons involved may be seeking.
17 Q Like what? What were you seeking on June 26th,
18 1974?
19 A Nothing at that time.
20 Q You were seeking nothing?
21 A No, sir.
22 Q Then why were you there?
23 A I was sent there by Sergeant Morgante.
24 Q And why did Sergeant Morgante pick you out? Are
25 you a member of the Norfolk Police Department?

1 A No, I am not.

2 Q Why would Sergeant Morgante ask you to go there?

3 MR. FREDRICKS: Your Honor, I would object on

4 the grounds that this witness cannot possibly delve

5 into the convolutions of Sergeant Morgante's brain and

6 come up with the rationale that Sergeant Morgante

7 used. I don't know. Should it be that he got it from

8 Sergeant Morgante's mouth, it would be strictly

9 hearsay and inadmissible on that foundation.

10 MR. MONTAGNA: Presumably he knows that.

11 Sergeant Morgante asked him to go to the massage

12 parlor.

13 THE COURT: If he knows, it would be on the

14 basis of what was told to him by Sergeant Morgante.

15 BY MR. MONTAGNA:

16 Q Why did you go there?

17 MR. FREDRICKS: I object. He already answered

18 that question, Your Honor.

19 THE COURT: How about it, Mr. Montagna. He

20 only knew that somebody put him there.

21 BY MR. MONTAGNA:

22 Q Have you ever been to a massage parlor before?

23 A No, sir.

24 Q You have never been to a massage parlor before?

25 A No.

1 time, I was approached. I assumed that most of them work
2 that way.
3 Q You would assume that most of them work that
4 way?
5 A It seems as the Venus I --
6 Q Haven't you been to Venus I before?
7 A Never.
8 Q I intend to contradict you on that point,
9 Mr. Swah. Do you persist in your testimony?
10 A Yes, I do.
11 Q Why would you volunteer as a married man to
12 assist Sergeant Morgante for whatever purposes you went?
13 A Sergeant Morgante asked me at the time if I
14 would help him, and I said yes. He said he understood it
15 was --
16 MR. FREDRICKS: Your Honor, I would object to
17 this answer. It's strictly hearsay.
18 THE COURT: It's not responsive, either.
19 The question put to you is: Why would you
20 assist the Sergeant?
21 THE WITNESS: Because he requested my services.
22 BY MR. MONTAGNA:
23 Q Has he ever requested your services before on
24 any matter?
25 A Yes.

1 Q Did you get a massage?

2 A Yes, I did.

3 Q Why did you testify just a moment ago that you

4 never had been into a massage parlor?

5 A I said into Venus I. You asked if I had been

6 in there before; Mr. Cole's establishment. I said no. That

7 was the first time.

8 Q Have you ever been to any other massage parlors?

9 A Yes, I have.

10 Q How many massage parlors have you been in?

11 A Two.

12 Q In your whole life?

13 A Yes.

14 Q Two other than the Venus I?

15 A One other than the Venus I.

16 Q And that's what?

17 A That was up there by NOB, the main gate there

18 around the corner, off of Hampton Boulevard, I guess.

19 Q What was the name of that one?

20 A I can't recall. I think it was -- I would be

21 afraid to say, because I don't remember the name. The girl

22 that massaged me was Joan Carr. I believe that's what the

23 first name was.

24 Q And when did this occur? When did your other

25 visit occur? Before or after the Venus I visit?

1 Q Did you talk to your wife about it?
2 A Yes, I did.
3 Q And she was perfectly willing for you to go to
4 massage parlors?
5 MR. FREDRICKS: Your Honor, I object. This is
6 the third time we are getting into whether his wife
7 approves or disapproves whether he goes to massage
8 parlors. The Defendant has answered that question.
9 THE COURT: He responded to that, Mr. Montagna.
10 You don't have to answer it.
11 BY MR. MONTAGNA:
12 Q Why did you want to help Sergeant Morgante?
13 A Because I was asked to do so, sir.
14 Q Do you automatically respond favorably to
15 every request made to you by every citizen?
16 A No, I don't.
17 Q Well, why is it that you responded so favorably
18 to the request of Sergeant Morgante or his associate?
19 A It wasn't so much to Sergeant Morgante that I
20 responded. It was to the other officer.
21 Q Who was the other officer?
22 Don't look at him. Answer the question.
23 A I was debating whether I should mention the
24 officer's name, seeing that it was not brought into Court
25 before.

1 THE COURT: Speaking of when?

2 BY MR. MONTAGNA:

3 Q -- as a result of your activities?

4 A June 26th?

5 Q June 26th.

6 A Yes, I did.

7 Q And you kept that statement?

8 A No. It was kept in the Intelligence Squad down

9 in the Police Department.

10 Q Have you had a chance to review it?

11 A Once.

12 Q When did you review your statement?

13 A This morning, about a quarter to 9:00.

14 Q Have you been paid by Sergeant Morgante as an

15 informer or undercover agent?

16 A No, I haven't.

17 Q Have you continued to work as an undercover

18 agent?

19 A Not as of approximately two months ago; I would

20 say roughly around -- since the last time I went to the

21 massage parlor. No.

22 Q What massage parlor was that?

23 A The one on Hampton Boulevard.

24 Q Now, you pronounce your name Swah?

25 A Yes. Swah.

1 been denied, and that's the way it stands, period, at
2 this point. Go ahead, Mr. Montagna.
3 MR. MONTAGNA: Excuse me one moment, Your Honor.
4 BY MR. MONTAGNA:
5 Q Did you not mention Mr. Cole by name? Didn't
6 you call him by his name when you came in?
7 A When I was asked about the person that received
8 me at the time I went into Venus I, I stated Mr. Cole.
9 Q What did you call him?
10 A I called him Mr. Cole.
11 Q You didn't call him Ernie?
12 A I didn't know his name was Ernie.
13 Q You didn't know his name was Ernie?
14 A No, I did not.
15 Q And you have never been in there before?
16 A No, I have not.
17 Q Now, is it not true, Mr. Swah, that you asked
18 Donna Hensley whether you could get anything starting with
19 masturbation and going on up?
20 A No, sir. It's not.
21 Q Is it not true that she never masturbated you?
22 A No, it is not. She did so; masturbated or
23 hand-job, as the Judge says. Same thing.
24 Q You are familiar with hand-job?
25 A Oh, yes. Most of us are.

1 Q How many different places have you had hand-jobs?
2 A At the Venus I.
3 Q Is that the only place?
4 MR. FREDRICKS: Your Honor, if defense counsel
5 is inquiring as to the witness' private married life,
6 I don't see where that is proper or relevant in this
7 case.
8 MR. MONTAGNA: Your Honor, I think that we are
9 entitled to cross-examine this man. He has made some
10 incredible statements already. I think the Court is
11 the judge of the testimony, and knows as well as we
12 do that he has been inconsistent the whole time he has
13 been sitting here.
14 THE COURT: All right, sir. Now, that you are
15 through arguing about what he has said or hasn't said,
16 go ahead with your questioning, Mr. Montagna.
17 BY MR. MONTAGNA:
18 Q Is that the only place?
19 A Yes, in Venus I. Not in my lifetime, but in
20 the Venus I at this time that we are discussing.
21 Q And you said you had not been drinking, and you
22 did not try to fondle Donna Hensley at all?
23 A No.
24 Q I intend to contradict you on that point, and I
25 ask you if you wish to reconsider?

1 A No.

2 Q Did not Donna Hensley tell you to get dressed

3 and leave?

4 A No, she did not.

5 Q Now, you spent, by your own testimony, an hour

6 and a half?

7 A I said approximately an hour and 15 minutes.

8 Q And it took you an hour and 15 minutes -- you

9 went immediately into a massage room; did you not?

10 A When I gave Mr. Cole $20, I went into the room

11 and then the girl I know only as Tasha came in there and

12 asked me to take off my clothes. I did. She massaged my back,

13 which took a little bit of time, quite a bit of time, because

14 we were talking.

15 Q What were you talking about?

16 A Just everything in general. Nothing specific

17 at that time, until I turned on my back.

18 Q And you didn't ask her whether you could get

19 something?

20 A No.

21 Q This was all out of the mouth of that young lady?

22 A Yes, it was.

23 Q And this took an hour and a half for you to get

24 a massage?

25 A I said approximately an hour and 15 minutes. It's

1 call for a legal conclusion on the part of the witness.
2 THE COURT: Sustained.
3 BY MR. MONTAGNA:
4 Q According to your testimony, you were
5 masturbated in the Venus I massage parlor?
6 A Yes.
7 Q Now, that was part of your massage, according
8 to you; is that true?
9 A That was part of the massage of what they call
10 a regular. Yes.
11 Q And you went back and told Sergeant Morgante
12 this?
13 A Well, Sergeant Morgante was waiting for me.
14 Yes, he was.
15 Q Was he waiting for you right outside?
16 A No, sir.
17 Q Where was he waiting for you?
18 A Down the street.
19 Q Do you have any aversion to being masturbated?
20 THE COURT: I don't know if he knows what the
21 word aversion means.
22 BY MR. MONTAGNA:
23 Q Are you reticent or reluctant to be masturbated
24 by some other girl? Do you have feelings of distaste?
25 MR. FREDRICKS: Your Honor, I don't see the

1 relevancy of whether he has distaste about the matter
2 or not.
3 THE COURT: I will permit it. Answer the
4 question.
5 A Do you mean if I like it or not?
6 BY MR. MONTAGNA:
7 Q That's right. You are not turned off by it?
8 A I am not exactly turned on by it. No.
9 Q You are not turned on by it?
10 A Not exactly.
11 Q You were just being a public-spirited citizen?
12 A If you think -- if you say so, sure.
13 Q Well, you are as guilty as she is; aren't you?
14 MR. FREDRICKS: Your Honor, again, I object.
15 THE COURT: Sustained.
16 MR. MONTAGNA: Excuse me one moment, Your Honor.
17 BY MR. MONTAGNA:
18 Q Who provided you with the money to go into this
19 massage parlor?
20 A At the time I went into the massage parlor?
21 Q That's right.
22 A The Intelligence Squad.
23 Q They gave you the money to go in?
24 A Yes, sir.
25 Q Do you know when Sergeant Morgante took out the

1
2 DIRECT EXAMINATION

3 BY MR. FREDRICKS:

4 Q Would you please state your full name?

5 A John Kipper.

6 THE COURT: Speak up.

7 Mr. Jolley, would you fix that microphone

8 so we can get some action out of it, please, sir.

9 BY MR. FREDRICKS:

10 Q Would you please state your full name?

11 A John Kipper.

12 Q Would you come a little closer to the

13 microphone so that we can all hear, please. And would you

14 please tell us where you live?

15 A 5251 Revre Drive.

16 Q Is that in the City of Norfolk?

17 A Yes, sir.

18 MR. MONTAGNA: Revre Drive?

19 THE WITNESS: Yes, sir.

20 MR. MONTAGNA: How do you spell that?

21 THE WITNESS: R-e-v-r-e.

22 BY MR. FREDRICKS:

23 Q On June the 28th of this year, did you have

24 occasion to enter the Venus I massage parlor located at

25 3335 North Military Highway?

1 A Yes, sir.

2 Q Is that within the City of Norfolk?

3 A Yes, sir.

4 Q Would you please relate to the Court in detail

5 from when you began -- excuse me -- from when you entered

6 until when you left exactly what transpired.

7 A It was approximately 11:15. I entered the

8 massage parlor and looked at the price board --

9 Q A.M. or p.m.?

10 A P.M.

11 I looked at the price board that they had on the

12 wall for prices of massages. I selected the one for $20, and

13 I handed the money to Mr. Ernest Cole.

14 At that time, I was led through another door

15 into another waiting room, and I sat down and watched TV.

16 They had a TV program going for approximately 40 minutes.

17 At that time, I asked this girl was there a

18 girl named Tasha working, that's Miss Hensley, and she

19 related she was working. Then she asked me where I knew

20 Tasha from. She asked if I had ever been in there before,

21 and I said,"no, ma'am, I have not." So then approximately

22 15 minutes later this girl Tasha came into the room and

23 led me back to a cubicle room in the back of the building.

24 She said, "Take your clothes off, and I will be back in

25 about 15 minutes."

1 So again, she came back in the room. She
2 started massaging me, and I asked her if she knew of a
3 person by the name of Tom Swah. I said that he sent me
4 there, and told me to come by and see her. She thought for
5 a second, and she realized that she did know the person,
6 and she said, "Yes, I know him."
7 I told her that he said there might be
8 something happening in here.
9 She said, "I will put it to you just like it
10 is; $50 for a piece of ass and $25 for a blow job." I told
11 her I didn't have the money at this time, and she said that
12 I could come back.
13 So she massaged the back part of me, and I
14 rolled over on the front, and she massaged me.
15 Q During the massage of the front, would you be
16 more specific as to what happened, and let's not be
17 embarrassed.
18 A She masturbated me at the last part of the
19 massage.
20 Q Could you give us more details, please.
21 A She was massaging me from my shoulders to my
22 waist, and from my feet to my waist, and then it was
23 masturbation.
24 Q Could you please tell us what the masturbation
25 entailed?

1 A Just a hand-job.

2 THE COURT: Hand-job where?

3 THE WITNESS: On the penis.

4 BY MR. FREDRICKS:

5 Q All right. Would you tell us what happened at

6 that point after?

7 A At that point, I asked her would she be there,

8 and she said yes, to come back with the money. So at this

9 time, I got up and left and went back to talk to Sergeant

10 Morgante.

11 Q Now, where was Sergeant Morgante at this point?

12 A He was outside, about a block away.

13 Q All right. Go on.

14 A At this time, we went about two blocks down the

15 street, and a transmitter was put on me.

16 MR. MONTAGNA: Say that again.

17 THE WITNESS: A transmitter was placed on me.

18 It was in working order.

19 MR. MONTAGNA: Transmitter was placed on you?

20 MR. FREDRICKS: Your Honor, I don't see --

21 THE COURT: Did you hear what he stated?

22 MR. MONTAGNA: Transmitter, he said.

23 THE COURT: All right. Let's move along.

24 A (Continuing.) At this time, I came back to the

25 massage parlor. At this time, this girl Tasha was leaving.

1 I walked up to her and asked her where she was
2 going. She said she had some business to take care of, and
3 to come back tomorrow and the price would still be the same;
4 $50 for a piece of ass and $25 for a blow job.
5 At this time, Sergeant Morgante came around the
6 building, and an arrest was made.
7 MR. FREDRICKS: I have no further questions.
8 MR. MONTAGNA: Can I see the warrants?
9
10 CROSS-EXAMINATION
11 BY MR. MONTAGNA:
12 Q Mr. Kipper, how is it that you happened to
13 volunteer your services on June 28, 1974?
14 A I have been working for Sergeant Morgante for
15 about two years.
16 Q Where are you employed?
17 A At Mama Kayer's Bakery.
18 Q What do you do there?
19 A Route salesman.
20 Q How old are you?
21 A 20.
22 Q What kind of work do you do for Sergeant
23 Morgante?
24 A Just about a little bit of everything.
25 Q What do you mean a little bit of everything?

1 A As far as drugs and vice are concerned.
2 Q Now, did Morgante tell you to mention the name
3 of Tom Swah?
4 A Yes, sir.
5 Q You did not give your name as John Kipper; did
6 you?
7 A Yes, I did. I said my name is John. That's all
8 I gave. All I gave was John.
9 Q Are you sure you didn't call yourself Paul?
10 A No, sir.
11 Q Really?
12 A Really.
13 Q You say you did say that you were referred by
14 Tom Swah?
15 A Yes, sir.
16 Q And who told you to say this?
17 A Sergeant Morgante.
18 Q What were your instructions?
19 A To go into the massage parlor and talk to this
20 person named Tasha, and instruct her -- tell her that I was
21 sent there by Tom Swah.
22 Q How long did your massage take?
23 A Approximately 15, 20 minutes.
24 Q 15 or 20 minutes. Is that including your
25 waiting time?

1 A No, sir.

2 Q So you were in the massage parlor about 35

3 minutes altogether?

4 A No, sir. I was in there approximately an hour.

5 Q How do you figure that?

6 A Because it was 11:15 when I went in, and it was

7 ten minutes after 12:00 when I left.

8 Q Did you make a record of that?

9 A Well, I just remembered what time it was.

10 Q Did you come in here this morning with a slip

11 of paper?

12 A Yes, sir.

13 Q Have you been testifying from that?

14 A No. It's some notes that I am referring to.

15 Q When was that made?

16 A Just this morning.

17 Q Just this morning?

18 A Yes. I referred to times. I had notations.

19 Q How is that you have to write down these things

20 if you just made it this morning?

21 A That's what it is. I just made it this

22 morning.

23 Q Where did you get that paper from?

24 A It's just a piece of paper.

25 Q It says City of Norfolk.

1 A It was in the City Intelligence Office. It's
2 the first piece of paper that I got to write it down on.
3 Q And you wrote these notes down?
4 A Yes, sir.
5 Q From memory?
6 A Yes, sir.
7 Q Why did you have to write them down if you
8 already knew them?
9 A I just wanted to make sure. I just wrote it
10 down from memory.
11 Q You wrote it down from memory?
12 A I wanted to be exact, in other words.
13 Q Did you check this with anything else that you
14 ever prepared?
15 A Yes, sir. I checked that against the arrest.
16 It was checked against the arrest sheet. I wrote it down
17 from notations.
18 Q You took this from an arrest sheet? Sergeant
19 Morgante gave you this?
20 A Yes.
21 Q Now, he pays you as an informer; doesn't he?
22 A Yes, sir.
23 Q Excuse me?
24 A Yes, sir.
25 Q How much did you get to go in the Venus I

1 massage parlor?

2 A Nothing.

3 Q Well, how much did he customarily pay?

4 A No certain amount.

5 Q No certain amount?

6 A Yes, sir.

7 Q How often does he give you money?

8 A Once every couple of months. Three months.

9 Q And how much did he give you?

10 A $60, $70.

11 Q And this has been going on for two years?

12 A Yes, sir. Well, I worked off and on for two

13 years; not all straight time.

14 Q Excuse me?

15 A I do not work full-time. It's whenever he

16 needs me.

17 Q Whenever he needs you. And he needed you for

18 the massage parlor?

19 A Yes, sir.

20 Q This was part of your pay,to go in for a

21 massage? This is what you did for your money, go in and

22 testify as to what went on?

23 A I didn't get no money for going into the

24 massage parlor.

25 Q You got your regular monthly or periodic payment;

1 didn't you?

2 A No, sir.

3 Q When was the last time he paid you?

4 A About four months, five months ago.

5 Q When is he going to pay you again?

6 A I don't know.

7 MR. FREDRICKS: Your Honor, I don't see how

8 he can tell when he is going to be paid again.

9 THE COURT: Sustained.

10 BY MR. MONTAGNA:

11 Q And your testimony this morning is that you

12 went to the tactical office. Was Mr. Swah there, too?

13 A Not when I first got there he wasn't.

14 Q What time did you get there?

15 A Approximately 9:00.

16 Q About 9:00. And Sergeant Morgante was there?

17 THE COURT: Mr. Montagna, the Court has been

18 very lenient, but the Court does not feel that your

19 demeanor at the moment as counsel is a courteous one.

20 You should address the witness, face the witness, and

21 I think you would be a lot better if you just

22 remained stationary in one place or the other, rather

23 than parading back and forth. Certainly the witness

24 is entitled to have you face him when you ask him a

25 question. All right. Go ahead.

1 BY MR. MONTAGNA:

2 Q When did you get there, and who was there when
3 you arrived?

4 A Sergeant Morgante was there.

5 Q And what did Sergeant Morgante tell you this
6 morning?

7 A He didn't tell me nothing.

8 Q How did you get to see the file?

9 A When the sheet was taken out, it was on the
10 desk. I wrote down the time.

11 Q The sheet was taken out by whom?

12 A Sergeant Morgante.

13 Q He just ripped out a piece of paper and said
14 "here"?

15 A No, sir. It's an arrest folder.

16 Q And you looked through the arrest folder?

17 A No, I didn't look through the arrest folder.

18 Q What did you look through?

19 A The date and the time and what he wrote down
20 on the piece of paper.

21 Q In other words, you didn't remember it until
22 you had Sergeant Morgante refresh your recollection? Is that
23 your testimony?

24 A I remembered it, but I wanted to make sure what
25 the times and the dates were, because it was two separate

1 occasions, and I wrote down the right date.

2 Q You wrote down June 29, 1974?

3 A Yes, sir. The 28th was when I went in there,

4 and when it turned 12:00, it turned to the 29th. That's when

5 the arrest was made, on the 29th.

6 MR. MONTAGNA: Your Honor, I would like to

7 introduce this into evidence as Defendant's Exhibit

8 No. 1.

9 THE COURT: Any objection?

10 MR. FREDRICKS: No objection, Your Honor.

11 THE COURT: All right.

12

13 (A handwritten paper with the letterhead

14 City of Norfolk on it was marked Defendant's

15 Exhibit No. 1 and received in evidence.)

16 BY MR. MONTAGNA:

17 Q Now, that shows 11:15, June 29, 28. Sir, would

18 you like to look at it again?

19 Did you write this?

20 A Yes. 11:28 is the time I went in there.

21 Q Well, what is the June 29?

22 A June 29 is when the arrest was made.

23 Q Why did you write the date of the arrest

24 rather than the date when it occurred?

25 A I knew when it occurred. I wanted to make sure

1 when the arrest was made.

2 Q Now, isn't it a fact that you asked Donna

3 Hensley whether you could get something else, and she said no?

4 A No, sir.

5 Q It's not?

6 A It's not.

7 Q Did you put your arms on her leg?

8 MR. FREDRICKS: Your Honor, I want to draw

9 Mr. Montagna's attention to this point. He did not

10 face the witness for the last three or four questions,

11 and he is still parading back and forth.

12 THE COURT: Maybe it's a habit of yours that's

13 hard to break, but I would ask you now, sir, to

14 please concentrate on that. Otherwise, if you would

15 be more comfortable asking the questions sitting --

16 MR. MONTAGNA: No, Your Honor.

17 BY MR. MONTAGNA:

18 Q Did you put your arm on her leg?

19 A No, sir.

20 Q You didn't?

21 A No, sir.

22 Q Now, your testimony is that she told you that

23 you could get certain sexual acts. You didn't ask for anything?

24 A No, sir.

25 Q Did you know what to expect?

1 A Yes, sir. I did.

2 Q Now, you immediately went out and you were

3 going to be wired for sound. Is that what Sergeant Morgante

4 was going to do?

5 A Yes, sir.

6 Q What was the purpose of the transmitter? What

7 was that going to be?

8 A I don't really know, myself.

9 Q What were your instructions after you were

10 wired?

11 A Just act like I normally do. Just walk in

12 there like I didn't have it on.

13 Q You were going to go back and take advantage

14 of these services that had been offered to you?

15 A Yes, sir.

16 Q So what were you driving? Were you driving a

17 truck?

18 A Yes, sir.

19 Q What kind of truck?

20 A A blue '73 Ford, I believe.

21 Q And what happened when you went back?

22 A I went back and she was getting -- Tasha was

23 getting ready to leave.

24 Q Where was she?

25 A Outside in the parking lot.

1 Q Why would she be leaving? You told her you
2 were coming right back with the money; didn't you?
3 A Yes, sir.
4 Q Well, why would she be leaving if she had
5 already made a date with you for sexual activity?
6 THE COURT: He wouldn't know that except for
7 what she might tell him.
8 BY MR. MONTAGNA:
9 Q What did she tell you?
10 A She said she had business to take care of, and
11 to come back tomorrow.
12 Q Come back tomorrow is what she said?
13 A Yes, sir.
14 Q Isn't it a fact, Mr. Kipper, that you were
15 never masturbated?
16 A No, sir. It was a fact that I was.
17 Q Now, when you were in your truck, what did you
18 do when Donna Hensley left? You saw her in the parking lot?
19 A Sergeant Morgante came around from the front
20 of the parking lot, and as she was leaving, he blocked her
21 way so she couldn't leave. I pulled up behind her.
22 Q You pulled up behind her?
23 A Yes, sir.
24 Q Sergeant Morgante had a warrant for this?
25 A Yes, sir.

1 Q Was it a Jane Doe warrant?

2 A I couldn't tell you.

3 Q First, when you got to the massage parlor, it

4 was 11:15?

5 A Yes, sir.

6 Q And you say you were there about an hour?

7 A Yes, sir.

8 Q And then you say that you went out and met

9 Sergeant Morgante a block down the street?

10 A Yes, sir.

11 Q And then you say you went back?

12 A Yes, sir.

13 Q And you got back about 12:15?

14 A Yes, sir.

15 Q And Sergeant Morgante had the warrant?

16 A Yes, sir.

17 Q Was Sergeant Morgante ever out of your presence?

18 A Not out of my sight. He wasn't.

19 Next door is an Econo-Travel motel, and he was

20 sitting right next door in the parking lot.

21 Q Was Detective G. L. Banks there? The question

22 was: Was Detective G. L. Banks there?

23 A Yes.

24 Q Was he with you?

25 A No. He was with Sergeant Morgante.

1 Q When you came back out of the massage parlor?
2 A Yes, sir.
3 Q And both of you then went back? Did both you
4 and Officer Banks go back, too?
5 A Not with me. No, sir.
6 Q Did Sergeant Morgante have the Jane Doe warrant
7 at this point?
8 A Yes, sir. He had it with him.
9 Q He had it before you even talked to him?
10 A Would you repeat the question?
11 Q Did he have the warrant even before you talked
12 to him? Did he have it in his hand when you went back?
13 A Went back to where?
14 Q To talk to him after leaving the massage parlor.
15 A I am not sure whether he had it then or not.
16 Q Well, you immediately went back; did you not?
17 A Yes, sir.
18 Q And he followed you. How far behind you was
19 Sergeant Morgante?
20 A Five feet.
21 Q Five feet in the car right behind you?
22 A Yes, sir.
23 Q Okay. You went back to the massage parlor, and
24 you identified this young lady right here?
25 A Yes, sir.

1 Q And Sergeant Morgante jumped out of the --
2 MR. FREDRICKS: Excuse me. At this time, I
3 would like Mr. Montagna to specify which young lady
4 when he said this young lady right here.
5 MR. MONTAGNA: Donna Hensley. That's the
6 Jane Doe warrant; right?
7 THE WITNESS: Right.
8 BY MR. MONTAGNA:
9 Q And Officer Banks had been with Sergeant Morgante
10 when you got there?
11 A What do you mean when I got there?
12 Q When you got out of the massage parlor, and
13 went down the block, Banks was there?
14 A Yes, sir. As far as I know, he was.
15 Q And Banks followed you back?
16 A No, sir. Nobody followed me back.
17 Q The warrant was there?
18 A Yes, sir.
19 Q In other words, the warrant was there at the
20 time that you were telling Morgante what happened?
21 A I couldn't tell you if the warrant was there
22 or not. I didn't know his business.
23 Q But he didn't know anything of what transpired
24 until you got there?
25 A Yes, sir.

1 Q He wasn't there; was he?

2 A The warrant was there; I imagine it was there.

3 THE COURT: Well, let's not imagine. You

4 either know it was there or don't know it was there.

5 Let's not speculate.

6 THE WITNESS: All right. I don't know it

7 was there.

8 BY MR. MONTAGNA:

9 Q But you do know that as soon as you got back,

10 and he was five feet behind you, that he jumped out of his

11 car and handed a warrant to Donna Hensley; the Jane Doe

12 warrant, known to you as Tasha?

13 A When I said he was five feet behind me, it was

14 when he was going to put the transmitter on myself. He was

15 sitting in the parking lot, and at that time he heard a

16 conversation on the transmitter, and he started pulling around

17 just as she was leaving.

18 Q But you are saying that -- how long were you

19 with Sergeant Morgante?

20 A At which time?

21 Q When you came back out of the massage parlor

22 and told him what happened?

23 A Five, ten minutes.

24 Q And he followed you? He was right behind you?

25 A Yes, sir.

1 Q And then you pulled --

2 A I pulled in the massage parlor. He pulled into

3 the motel beside the massage parlor.

4 Q And you pointed out Tasha, or Donna Hensley?

5 A No, I didn't point out nobody.

6 Q How did they come to arrest her?

7 A Because it was recorded on the transmitter.

8 It was going through.

9 Q What happened then when Sergeant Morgante got

10 on the scene?

11 A At the time when she was getting ready to

12 leave, I just talked on the microphone. I said she was

13 leaving now.

14 Q And that's when he pulled up?

15 A Yes, sir.

16 Q And he had a warrant in his hand?

17 A Yes, sir.

18 Q This is about ten, fifteen minutes?

19 A Yes, sir. Approximately.

20 Q Did you ever see a man by the name of Hamilton

21 any place?

22 A Who?

23 Q A man by the name of Hamilton?

24 A No, sir.

25 Q You never saw anybody?

1 A No, sir.

2 Q The only people you saw were Banks and Morgante?

3 A Yes, and Nebrotskie.

4 Q Is Officer Banks here today?

5 A Yes, sir.

6 MR. MONTAGNA: That's all I have.

7 THE COURT: All right. Anything else on

8 redirect of this witness?

9 MR. FREDRICKS: Yes. I have one question,

10 Your Honor.

11

12 REDIRECT EXAMINATION

13 BY MR. FREDRICKS:

14 Q The warrant that was served by Sergeant Morgante

15 that we have been making a big to-do about, did you ever, on

16 that date and at that time, look at the contents of that

17 warrant?

18 A No, sir.

19 Q So you couldn't tell what that warrant read?

20 A No, sir.

21 MR. FREDRICKS: I have no further questions.

22 THE COURT: All right. We are finished with

23 this witness. Can he stand excused, or do you want

24 to retain him?

25 MR. MONTAGNA: I would like to retain him.

1 A Employed by the City of Norfolk, Norfolk
2 Police Department, assigned to -- Sergeant in the Intelligence
3 Tactical Narcotics Division.
4 Q Sergeant, have you had occasion to conduct an
5 investigation in reference to the Venus I massage parlor?
6 A Yes, I have.
7 Q As a result of that investigation, do you know
8 the general reputation in the community of Venus I massage
9 parlor, located at 3335 North Military Highway?
10 MR. MONTAGNA: Your Honor, I would ask before
11 Sergeant Morgante started his rating on the
12 reputation, that Mr. Fredricks establish how this
13 investigation was done, and how he came to this
14 reputation that he is getting ready to elaborate on.
15 MR. FREDRICKS: Your Honor, I believe that's
16 the scope of the cross-examination.
17 THE COURT: Go ahead, Mr. Fredricks.
18 BY MR. FREDRICKS:
19 Q Sergeant, are you familiar with the general
20 reputation of the Venus I massage parlor, located at 3335
21 North Military Highway in the City of Norfolk?
22 MR. MONTAGNA: Excuse me, Your Honor. If the
23 Court is not going to allow or require Sergeant
24 Morgante to establish how he came by this information,
25 and how his investigation was conducted, we would like

1 to note an objection.

2 THE COURT: I am permitting him to respond to

3 this particular question at this time, and the answer

4 that he would have at this time is either yes or no.

5 Then we will take it from there.

6 MR. MONTAGNA: Yes, sir.

7 THE COURT: All right.

8 BY MR. FREDRICKS:

9 Q Sergeant Morgante, how did you come about this

10 general reputation?

11 A Just on a regular patrol in that district. I

12 would stop and just talk to people and check taverns in that

13 area, too.

14 Q Could you please tell the Court what the

15 general reputation of the Venus I massage parlor at the

16 location we are describing is?

17 A Most people I talked to -- I would say seven

18 out of ten would say it was just a house of prostitution.

19 A whorehouse. The other three per cent would say that it's

20 the City's fault that they are operating, and they should make

21 them illegal. It just goes in that category.

22 Q Officer, do you remember the night of June 28,

23 19 -- I am referring to the night that immediately falls

24 between the 28th and 29th?

25 A Yes, sir.

1 BY MR. FREDRICKS:

2 Q Do you recognize that warrant, Sergeant?

3 A Yes, sir.

4 Q Could you tell us if, in fact, that's the

5 warrant that you had on the night of June 28th, 29?

6 A Yes, sir. I executed this warrant on Miss

7 Hensley right in the parking lot.

8 MR. FREDRICKS: Your Honor, does the Court

9 want the warrants back?

10 THE COURT: Please, when you are finished

11 with them. All right.

12 BY MR. FREDRICKS:

13 Q Sergeant Morgante, after you executed the

14 warrant on Miss Hensley, did you have occasion to enter

15 the Venus I massage parlor in question?

16 A Yes, I entered it a few minutes later after

17 Corporal Nebrotskie entered.

18 Q While you were inside the massage parlor,

19 would you tell us who you saw present?

20 A (No response.)

21 Q If you remember.

22 A I talked to Mr. Cole. He was very upset, and

23 he was using some profanity.

24 MR. MONTAGNA: I object. That's a conclusion.

25 THE COURT: Well, he can define or describe

1 exactly what he saw, but I think counsel's point is
2 well taken when he says he was upset. I think counsel
3 is entitled for his clients to know exactly what the
4 course of conduct -- the actions were of the Defendant.
5 Strike the word "upset" unless you want more definition.
6 MR. FREDRICKS: No, Your Honor. That won't
7 be necessary.
8 BY MR. FREDRICKS:
9 Q Did you see anybody else in the massage parlor
10 besides Mr. Cole?
11 A Not at that time. I was talking to Mr. Cole
12 at that time, because I knew him. I informed him why we were
13 there, and that he was under arrest for operating a massage
14 parlor without a permit, and also for keeping and maintaining.
15 Statements he made at the time of the arrest
16 were: He was not going anywhere with me. I had no right to
17 do this. His lawyer told him I could not do this. He stated
18 he was going to get warrants for us. He said we needed a
19 warrant to arrest him.
20 I asked him why he didn't show his health permit,
21 and he said he did not have one.
22 MR. MONTAGNA: Your Honor, I object to this
23 line. There is no charge of a health permit here.
24 That is an offense that Mr. Cole is not forced to face
25 here this morning. There is no charge of a health

1 code violation.

2 THE COURT: Sustained.

3 A (Continuing.) When I was talking to him, I
4 asked him about the money that our agent had. We were in the
5 back office, I believe, and he took the money out of his
6 pocket by himself, and he said, "here." He asked me if we had
7 serial numbers of them, and I said yes, we did. I think
8 Corporal Nebrotskie had the list of serial numbers, and we
9 showed him the serial numbers on the bills and verified them,
10 and we took our money back. That's it.

11 MR. FREDRICKS: I have no further questions of
12 this witness at this time, Your Honor.

13 THE COURT: All right.

14

15 CROSS-EXAMINATION

16 BY MR. MONTAGNA:

17 Q Sergeant Morgante, isn't it a fact that Donna
18 Hensley was arrested on a Jane Doe warrant?

19 A Yes, it was a Jane Doe warrant. The procedure
20 there was that Tom Swah was sitting there by me with -- I gave
21 him a man's name as a reference to use, and told him to ask
22 for Tasha.

23 When he came back out, I showed him a picture
24 of Donna Hensley at the office, and he identified Donna Hensley
25 as Tasha. The warrants were then taken out, I believe, for

1 Jane Doe, alias Tasha, and that's when I sent the other
2 undercover agent in.
3 Q There was one initial Jane Doe warrant; is that
4 true?
5 A Yes, sir. I believe so.
6 Q Just one?
7 A One or two. I am not sure.
8 Q You don't remember?
9 A There should have been one.
10 Q If Kipper says there was only one --
11 A No. I had warrants in my hand, Mr. Montagna.
12 I don't remember exactly how many I had. I believe there
13 should have been two. One for 31-56 and one for 31-55. One
14 for soliciting and immoral conduct.
15 Q And that was on June 26th?
16 A I believe that's when Tom Swah went in there.
17 Q Let me show you this warrant, Sergeant Morgante,
18 and tell me what the date is on it?
19 A It's the 28th of June.
20 Q And what does it say? Who is it out for?
21 A Jane Doe.
22 Q Is this the warrant?
23 A Yeah. In other words, when you work a case like
24 that --
25 Q You take the warrant out ahead of time?

1 A You can do it two ways, Mr. Montagna. If this
2 case is going to continue, maybe I want to put five more
3 undercover agents in. I would get the warrants when one
4 undercover agent would make the violation, and hold them.
5 So I don't believe I got those warrants the same day that
6 Tom Swah went in there, because I knew that I was going to
7 send another undercover agent in there.
8 Q Sergeant Morgante, this warrant says Jane Doe,
9 also known as Donna Hensley, to answer a charge that he or
10 she committed an offense in the City of Norfolk on or about
11 the 28th of June, 1974, in violation of 31-56 CC to wit:
12 Soliciting for immoral purposes on information of G. L. Banks.
13 A Can I see that, please?
14 Q You already identified it as being the warrant.
15 A I looked at a piece of paper like you did.
16 These are the warrants I had.
17 Q These are the warrants?
18 MR. FREDRICKS: Excuse me, Your Honor. I
19 suggest to the Court that we all check which ones
20 when he says, "These are the warrants."
21 A (Continuing.) It's on the 26th. You showed me
22 the 28th, Mr. Montagna. The warrant on the 28th wouldn't
23 have been gotten out --
24 MR. FREDRICKS: Excuse me. Before we continue
25 any testimony, Sergeant Morgante, just point out the

1 warrant.

2 Mr. Montagna just flipped the warrant. I would

3 ask that Sergeant Morgante point out the warrant that

4 he was talking about.

5 THE COURT: Hand him the warrant.

6 BY MR. MONTAGNA:

7 Q Put an X on it, Sergeant. Is that the warrant?

8 A Yeah. It's impossible for me to have the

9 warrant for the 28th.

10 MR. FREDRICKS: Excuse me, Your Honor. Before

11 we do anything further --

12 THE COURT: Just a minute. Just a minute.

13 MR. MONTAGNA: Let me establish --

14 THE COURT: Just a minute. One at a time.

15 MR. FREDRICKS: Your Honor, Mr. Montagna and I

16 were standing there. He had a set of four warrants.

17 Sergeant Morgante identified the top two as the two

18 he had.

19 THE COURT: We are going to let him identify

20 it now. We are going to let him identify the warrants

21 that Mr. Montagna wants him to identify, and that's

22 going to end it.

23 Now, what is that you want him to identify,

24 Mr. Montagna?

25 MR. MONTAGNA: Your Honor, there has been

1 the violations on June 26th.

2 Now, Agent Kipper went in. There were no

3 warrants involving him yet, because the violations hadn't

4 occurred. So when Kipper went in there and came out and

5 related what occurred in there, well, we made the arrest on

6 the prior violation with the other agent.

7 So, now, the procedure is when we take them

8 down to the precinct, warrants are again secured for the

9 violations that happened at the time of the arrest.

10 I hope I made that clear.

11 BY MR. MONTAGNA:

12 Q No, you didn't. I want to ask you a couple of

13 questions about it. You had a Jane Doe warrant?

14 A It had Donna Hensley on it.

15 Q Do you see a Jane Doe warrant at all?

16 A Yes, sir. I will explain that to you now.

17 Q Please do.

18 A Now, John Kipper, the second agent to go in

19 there -- he goes in there with the instructions to ask for

20 Tasha. He comes out and relates to us that money was stated.

21 If he comes back, he would have intercourse for a certain X

22 amount of money. Then we went back and arrested her, because

23 she was walking out the door.

24 Now, these warrants on the 28th were gotten out

25 by Detective G. L. Banks.

1 Q Her arrest was made with a Jane Doe warrant;
2 was it not, Sergeant Morgante?
3 A No. When she was arrested, I had warrants with
4 her name on it. It says right here Donna Hensley.
5 Q Sergeant, when were those warrants taken out?
6 A Probably a day after or two days after.
7 Q When was the Jane Doe warrant taken out?
8 A Probably that night. Detective Banks is the
9 one who got the warrant out.
10 Q That's what she was arrested on?
11 A It shows she was arrested at the precinct.
12 Q On a Jane Doe warrant?
13 A She was arrested in the parking lot behind the
14 massage parlor with two warrants of arrest with her name on
15 it. I arrested her, and I showed her the warrants, and
16 executed the copies. She was later taken downtown and
17 warrants again were taken out on her. Now, why that Jane Doe
18 warrant is on there like that --
19 Q Did you sit in here and listen to Swah testify
20 that he didn't know her name? Now, how can you have gotten
21 that Donna Hensley warrant from June 26th if you didn't know
22 her name at that point?
23 A I knew who Tasha was. I have a picture of her.
24 Q My initial question was: Was she arrested on a
25 Jane Doe warrant?

1 A When I arrested her?
2 Q That's right.
3 A In the parking lot?
4 Q That's right.
5 A No.
6 Q No?
7 A It says right here Donna Hensley. It doesn't
8 say Jane Doe.
9 Q Look at those two warrants that you say occurred
10 on June 26th, and tell me what date is on them?
11 A It says that on June 26th, 1974, violation
12 31-55 of the City Code, time approximately 9:00 p.m., by
13 Corporal Nebrotskie.
14 Q What's the date on it? When was it taken out?
15 A June 30th. The Magistrate put that down.
16 Q Are you suggesting the Magistrate would put
17 the wrong date down? Isn't it true you served her with those
18 warrants after Court on Monday when the cases were continued
19 in Police Court, Sergeant? Do you remember that?
20 A You are right, Mr. Montagna. Now, I am getting
21 to it. You are right. There were warrants executed outside
22 of Police Court, but I did have a warrant in my hand when I
23 arrested her.
24 Q You had the Jane Doe warrant; didn't you?
25 THE WITNESS: I'm sorry, Judge.

1 THE COURT: Well, the Court told you before to
2 relax and take your time and examine those documents
3 thoroughly. Next time, listen and you won't get yourself
4 all confused and embarrassed.
5 We are only trying to get at the truth. Nobody
6 wants anything else but the truth; and least of all,
7 nobody is trying to get you all balled up. We want
8 to get to the truth of the matter.
9 A You are right. Warrants were executed on
10 Miss Hensley and Mr. Cole at Police Court after Court. I
11 believe you are absolutely correct when it was the warrant
12 on Tom Swah.
13 Now, the warrant I had to arrest her when I
14 went behind the massage parlor, was probably gotten out that
15 night by Mr. Nebrotskie.
16 BY MR. MONTAGNA:
17 Q How about Banks?
18 A Yes. But I did have a warrant, Mr. Montagna,
19 before I went there.
20 Q Now, are you saying you had one warrant or two
21 warrants?
22 A It was one or two. I don't know.
23 Q What you had is a Jane Doe warrant. There was
24 one Jane Doe warrant.
25 A Yes. It could have been one or two. I am not

1 sure.

2 Q But you need two Jane Doe warrants?

3 A No, just one. I did execute a warrant.

4 Q Would you please put your name on the warrant

5 that you had in your hand when you arrested that lady.

6 A You are speaking about on the parking lot?

7 Q Yes, sir, on the parking lot.

8 THE COURT: Of the massage parlor early in the

9 morning on the 29th?

10 MR. MONTAGNA: Yes, sir. 12:15, according to

11 Mr. Kipper.

12 MR. FREDRICKS: Your Honor, if I might, before

13 Sergeant Morgante marks the warrant -- if Sergeant

14 Morgante can point to the one and let the Court mark

15 it officially, so there could not be any question at

16 any point. I am not sure of the technicalities

17 involved on writing on warrants afterwards, but if the

18 Court would simply make a notation after Sergeant

19 Morgante shows which warrant it is, I would appreciate

20 it.

21 THE COURT: All right.

22 MR. MONTAGNA: I believe it is the Jane Doe.

23 Okay. Mr. Fredricks, would you like to accompany me

24 over to the bench?

25 MR. FREDRICKS: There is only one Jane Doe

1 warrant.

2 Sergeant Morgante, don't write on the warrant.

3 MR. MONTAGNA: Would you put an X on it.

4 THE WITNESS: I think that's the one.

5 MR. MONTAGNA: Your Honor, would you mark this,

6 please.

7 THE COURT: All right.

8 BY MR. MONTAGNA:

9 Q Now, Sergeant Morgante, you already testified

10 that the 31-55 charge growing out of June 26th, and the

11 31-56 charge growing out of June 26th, you served on this

12 lady on Monday morning; is that not true?

13 A That's right, because I double-checked it.

14 Tom Swah came to Court and pointed her out in the courtroom.

15 Q Well, did you not tell me you already knew who

16 Tasha was?

17 A He picked her out on a picture.

18 Q He did?

19 A Yes.

20 Q So you already knew?

21 A I took him to Court. He came to Court Monday

22 morning to double-check.

23 Q Sergeant, why would you wait?

24 A You mean wait for the arrest?

25 Q That's right.

1 A Just like any other investigation. If you buy
2 a buy of narcotics from a dealer, you don't arrest him then.
3 Q Well, do you have to make two buys before you
4 arrest him?
5 A No. You just keep on your investigation.
6 Q You weren't satisfied that Tom Swah was telling
7 the truth?
8 A I did it for one reason, Mr. Montagna. I sent
9 Tom Swah in there because I knew he didn't know John Kipper?
10 and once he came out and told me what happened, I still had
11 to satisfy my mind. Like you say, I want the truth. So I
12 sent another agent in there, and I was going to see for
13 myself if this is really going on.
14 Another agent goes in there, and he comes out
15 with the same story. These two never met before, so now I
16 am satisfied.
17 Q But why do you have one warrant? Couldn't you
18 take out the warrants and not serve them based on information
19 of what Swah tells you? You waited until the following
20 Monday; didn't you? I mean, you took one out on Sunday,
21 June 29th, and the other one on Monday, June 30th?
22 THE COURT: Are we talking of 1974?
23 MR. MONTAGNA: Yes, sir.
24 THE COURT: It so happened that 1974, June 30th,
25 was on a Sunday.

1 suggest that the proper procedure would have been to
2 take them out on the 26th.
3 THE COURT: That's a matter of argument. Let's
4 move along, Mr. Montagna.
5 BY MR. MONTAGNA:
6 Q Now, Sergeant Morgante, as to June 28th when the
7 alleged immoral conduct -- you took out a warrant on the 29th;
8 did you not, on information?
9 A Right.
10 Q 31-55?
11 A When they were arrested on Mr. Kipper's
12 information, they were brought down to the precinct. Now,
13 the warrants we had.
14 Q You had it already on a 31-56 soliciting warrant;
15 is that it?
16 A Right.
17 Q That's the one you marked as the warrant being
18 in your hand when you made the arrest; is that true?
19 A Right.
20 Q Well, my question to you, Officer, is: When
21 was this June 28th warrant, Jane Doe warrant, taken out?
22 What time?
23 A I believe Mr. Kipper called down, and if the
24 warrant was gotten by Officer Banks on information received,
25 he probably got the Jane Doe warrant and then went immediately

1 up there by Azalea Drive-In Theatre, and met Mr. Kipper.
2 Q You already had the warrant?
3 A Well, he has to call in now.
4 Q When did he call in?
5 A I have to ask him.
6 Q Well, you sat there, Sergeant Morgante. Did
7 you hear him testify that he called him? What he said on
8 the witness stand -- didn't he say he met you immediately
9 afterwards, and then you put a transmitter on him, and you
10 followed him back to the massage parlor?
11 A Somebody could have gone down and got the
12 warrant.
13 Q Who?
14 A Ask Mr. Banks.
15 Q Sergeant, isn't it true you had this warrant
16 before?
17 A Mr. Montagna --
18 Q You talked to that man Kipper.
19 A Mr. Montagna, if that is so, I would be violating
20 a very serious --
21 THE COURT: The answer is either yes or no, sir.
22 THE WITNESS: No, sir.
23 THE COURT: We don't need any speeches.
24 BY MR. MONTAGNA:
25 Q Now, Sergeant, you are alluding to the oath that

1 MR. MONTAGNA: Please note my objection,
2 Your Honor.
3 THE COURT: All right.
4 BY MR. MONTAGNA:
5 Q When did you get this warrant, this Jane Doe
6 warrant?
7 A That night. I didn't get it.
8 Q Who handed it to you?
9 A I believe either Corporal Nebrotskie or
10 Detective Banks.
11 Q Did you have it when Kipper came up to you?
12 A When we met, Kipper went behind the Azalea
13 Drive-In. Now, somebody might have gone down and got the
14 warrant, because I had a transmitter, and it took some doing
15 to tape it on him. We stood behind the Azalea Drive-In and
16 tested the transmitter out, but the warrant I had. Somebody
17 gave me the warrant.
18 Now, the warrant I had, and I executed the
19 warrant on Miss Hensley in the parking lot.
20 Q Did you not follow Kipper back to the massage
21 parlor?
22 A Kipper got in his truck.
23 Q And you got in your car?
24 A When we were behind this Azalea Drive-In, we
25 stood there maybe 15, 25 minutes, and Kipper got in his truck

1 and went behind the Azalea Drive-In.

2 Q You said 20, 25 minutes?

3 A We were behind there for awhile. I heard the

4 testimony, Mr. Montagna. Kipper drove around, and went into

5 the back lot. There is an Econo Motor Travel Lodge right

6 next to the Venus massage parlor on Military Highway. We

7 went in there, and as I was coming around to the back part so

8 I could see the back door of the Venus, the transmitter was

9 working. The only thing I heard was something like where are

10 you going -- $50. At that time, John Kipper said something.

11 She was leaving, so we took the radio car and Corporal

12 Nebrotskie and Banks swung around the massage parlor and

13 went through the rear. I met Miss Hensley on the parking

14 lot, and executed the warrant.

15 Q When did you get the warrant physically in

16 your hand?

17 A I had it there in the car.

18 Q And this arrest was made at 12:15; was it not?

19 A Yes, sir.

20 Q But Kipper says --

21 A Between 12:15 or a little after.

22 Q How much after?

23 A I don't know.

24 Q Do you have any notes that you have been

25 testifying from today?

1 A Yes.

2 Q You didn't follow your notes too closely; did

3 you, Sergeant?

4 A You are referring to what, Mr. Montagna?

5 Q Your notes say a lawyer sent him a letter, a

6 lawyer, and it was all taken care of about a health permit.

7 MR. FREDRICKS: Your Honor, I would object to

8 any comments about that. Mr. Montagna had any

9 references struck on direct, and it is impossible on

10 cross-examination.

11 THE COURT: Sustained.

12 BY MR. MONTAGNA:

13 Q Now, you say in your note that this occurred

14 at 12:15?

15 A Yes, approximately 12:15.

16 Q When did you prepare this?

17 A It could be either a few days after --

18 Q A few days afterwards?

19 A -- or that night. You see, the undercover

20 agents have to write up their notes if the investigation keeps

21 going. They have to write it out on yellow legal pads right

22 after they finish their investigation.

23 Q And you wrote in your notes that it was 12:15

24 you arrested her?

25 A Yes.

1 A Yes, sir.

2 Q On that night, did you have occasion to enter

3 the Venus I massage parlor located at 3335 North Military

4 Highway?

5 A Yes, sir.

6 Q After entering the massage parlor, would you

7 please tell the Court who, if anyone, you saw inside the

8 massage parlor?

9 A Yes, sir. I saw a Mr. Cole and Barbara McClure.

10 Q Would you please point her out?

11 A Yes, sir. It's the lady in the blue coat and

12 blonde hair.

13 Q Let the record show that the witness identified

14 the Defendant Barbara McClure.

15 Did you have occasion to talk to Miss McClure

16 on that night?

17 A Yes, sir.

18 Q Would you please relate to the Court what, if

19 anything, she stated to you?

20 A I don't recall her exact words at the time I

21 saw her.

22 MR. MONTAGNA: Your Honor, if he doesn't recall

23 her exact words, we will object to him guessing as to

24 what was said.

25 THE COURT: What he is saying is going to be a guess.

1 Let's see how he is going to phrase it.
2 Go ahead, sir.
3 A (Continuing.) At the time I met Miss McClure,
4 I was going into one of the back stalls in the Venus I massage
5 parlor. Miss McClure was coming out of one of the stalls.
6 She was putting some garments on at the time.
7 I said, "Wait a minute." And she stated something
8 like I'd better leave her alone if I knew what was good for
9 me, and she went to another room and put the rest of her
10 clothes on.
11 Q Officer, you stated that she was in the process
12 of putting several garments on. Would you state specifically
13 what her state of dress or undress was when she first left
14 the cubicle?
15 A She was putting an outer garment on. I couldn't
16 see exactly what she had underneath.
17 Q Could you describe the outer garment; a dress,
18 a skirt?
19 MR. MONTAGNA: Your Honor, he already said that
20 he couldn't.
21 THE COURT: Well, if he can, he can, and if he
22 can't, he can't.
23 Can you answer the question?
24 THE WITNESS: No, sir. I don't know.
25 MR. FREDRICKS: I have no further questions of

1 this witness at this time.

2 THE COURT: All right, sir.

3

4 CROSS-EXAMINATION

5 BY MR. MONTAGNA:

6 Q Officer Nebrotskie, what time did you arrive

7 at the massage parlor?

8 A I arrived -- you mean when I took the police

9 agent inside the massage parlor, or the time we made the

10 arrest?

11 Q What time did you arrive for the arrest?

12 A We arrived at approximately 12:15 p.m. on the

13 29th.

14 Q Have you been testifying this morning from

15 notes?

16 A Yes, sir.

17 Q Who else was there besides you and Sergeant

18 Morgante?

19 A At the time of the arrest?

20 Q Yes.

21 A Officer Banks.

22 Q He was there also?

23 A Yes, sir.

24 Q Who had the warrant?

25 A The warrant for --

1 for the Court which one of those warrants it was that you had.
2 A When Donna Hensley was arrested?
3 Q Look at them carefully, now. Take your time
4 so you are certain.
5 A I believe it was this one here, 31-56.
6 Q This one?
7 A Yes, sir.
8 Q You are pointing to this one here; is that
9 true?
10 A (Witness nodded head affirmatively.)
11 Q Let the record show that Corporal Nebrotskie is
12 pointing to the same warrant as identified by Sergeant
13 Morgante. Look at it carefully now, Corporal. What is the
14 date on it?
15 A June 28th.
16 Q And what is the date of the alleged offense?
17 A I thought it was June 26th.
18 Q What does it say?
19 A It says June 28th.
20 Q That's the warrant you had, though?
21 A Yes, sir.
22 Q When did you take that warrant out?
23 A I took it out on the 28th.
24 Q When?
25 A What time?

1 MR. FREDRICKS: Excuse me, Your Honor. I
2 would object to that. That warrant states on it that
3 it was taken out by Detective G. L. Banks, not by
4 Officer Nebrotskie. So how could he know what time
5 it was taken out? It calls for speculation on the
6 part of the witness, unless he was present.
7 MR. MONTAGNA: He knows an awful lot about it,
8 Judge.
9 THE COURT: I don't know if he knows or doesn't
10 know. Frankly, I am not going to comment at this time.
11 Do you know? Were you there? Did you take
12 out the warrant?
13 THE WITNESS: No, sir.
14 THE COURT: Do you know who did take out the
15 warrant? Were you with that person?
16 THE WITNESS: No, sir.
17 THE COURT: So stop guessing.
18 BY MR. MONTAGNA:
19 Q That was taken out by Officer Banks?
20 A Yes, sir.
21 THE COURT: Just testify to what you know, sir,
22 and I think you will make a better witness.
23 BY MR. MONTAGNA:
24 Q Now, were you present with Sergeant Morgante,
25 and was Officer Banks present when John Kipper came out of

1 the massage parlor?

2 A Yes, sir.

3 Q All three of you?

4 A Yes, sir.

5 Q What happened after Kipper came out of the

6 massage parlor?

7 A You mean when he first came out?

8 Q He came out after getting a massage.

9 A Sergeant Morgante and Banks were not there. I

10 was there by myself.

11 Q Sergeant Morgante was not there?

12 A Not there. No, sir.

13 Q And did you have a conversation with Kipper?

14 A Yes, sir.

15 Q What time was this?

16 A I don't recall exactly.

17 Q Before 12:15?

18 A Yes, sir.

19 Q Five minutes, ten minutes before 12:15?

20 A Before 12:15?

21 Q Yes.

22 A I couldn't tell you.

23 Q When was the warrant secured?

24 MR. FREDRICKS: Your Honor, we have already

25 gone through this.

1 BY MR. MONTAGNA:

2 Q When did you first see the warrant?

3 A When Sergeant Morgante gave it to me.

4 Q He gave it to you to serve, or did Sergeant

5 Morgante serve it?

6 A I believe he had the warrant first, and he gave

7 the warrant to me to serve. He stopped Tasha outside, and

8 I went inside.

9 Q He had the warrant first?

10 A Right.

11 Q And your testimony is that you saw Miss McClure

12 and Mr. Cole in the massage parlor when you got there at

13 12:15?

14 A Yes, sir.

15 Q No one else was there?

16 A Yes, sir. There was someone else there.

17 Q Why wasn't that person arrested?

18 A He was a customer.

19 Q You don't arrest customers?

20 A Not normally. No, sir.

21 Q Do you know his name?

22 A No, sir.

23 MR. MONTAGNA: Excuse me one moment, Your Honor.

24 THE COURT: All right.

25 MR. MONTAGNA: That's all we have, Your Honor.

I anticipate will take less than about two minutes. I have one question of this witness.

THE COURT: All right. Okay.

MR. FREDRICKS: As soon as I find the right one.

G. L. BANKS, called as a witness by and on behalf of the City, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FREDRICKS:

Q State your name and occupation, sir.

A G. L. Banks, Investigator, Narcotics Squad, Norfolk Police.

Q And you work with Sergeant Morgante?

A Yes, sir.

Q Do you remember the night of June 28th, 29th?

A Yes, sir.

Q All right. I show you this warrant here. For the record, this is the one that's been identified.

MR. MONTAGNA: Your Honor, just a second. I object to this procedure.

THE COURT: All right, sir. He hasn't said how or what. He just said it has been identified. Let's not clue him any further.

1 MR.MONTAGNA: Yes, sir.

2 THE COURT: All right.

3 BY MR. FREDRICKS:

4 Q And I ask you if you recognize it?

5 A Yes, sir. I do.

6 Q And do you remember what time of day or night

7 that you took that warrant -- that you secured that warrant?

8 A I can't testify as to the exact time.

9 Q Officer, is your memory totally unclear?

10 MR. MONTAGNA: Your Honor, he has already --

11 A Well, the offense occurred at 11:15 p.m. on the

12 28th, and I took it out on the 29th. It had to be after

13 midnight, but before 4:00 in the morning, because I get off

14 at 4:00.

15 THE COURT: Any objection, Mr. Montagna, for

16 the record?

17 MR. MONTAGNA: Yes, sir.

18 THE COURT: State it for the record.

19 MR. MONTAGNA: Your Honor, we object to this

20 leading of this witness here. I am not sure of his

21 last statement which I would like for the Reporter

22 to read back, if she will.

23 THE COURT: Whose last statement, counsel or

24 witness'?

25 MR. MONTAGNA: Read the last statement of the

1 witness, please. And we object to the question,
2 Your Honor, although we intend to get into it
3 ourselves. Would you read his last statement back,
4 please.
5
6 (Whereupon, the Court Reporter read back the
7 following answer:
8 "A Well, the offense occurred at 11:15 p.m.
9 on the 28th, and I took it out on the 29th. It had
10 to be after midnight, but before 4:00 in the morning,
11 because I get off at 4:00.")
12 THE COURT: All right. Your objection is
13 overruled.
14 MR. MONTAGNA: Yes, Your Honor.
15 Are you finished with him now?
16 MR. FREDRICKS: Yes. I have no further questions.
17 MR. MONTAGNA: What did you do with the warrant?
18 MR. FREDRICKS: I believe the Officer still
19 has the warrant. I'm sorry.
20 Your Honor, here are the sets of warrants back.
21 I apologize to the Court for not returning them.
22
23 CROSS-EXAMINATION
24 BY MR. MONTAGNA:
25 Q Now, Officer Banks, were you present with

1 Sergeant Morgante and Corporal Nebrotskie when this man
2 Kipper came back?
3 MR. FREDRICKS: Your Honor, I would object.
4 THE COURT: Sustained. You are concluding
5 something that hasn't come out on direct examination.
6 You haven't laid a foundation for the question you
7 put to him. There hasn't been one laid on direct
8 examination.
9 MR. MONTAGNA: Your Honor, it's my --
10 THE COURT: Wait a minute. I will send the
11 witness out and we can find out about it.
12 Suppose you step out in the hall.
13 All right, sir.
14 MR. MONTAGNA: Your Honor, Officer Banks has
15 turned out to be, in my opinion, a very critical
16 witness. The City Attorney essentially asked him
17 two questions other than his name and who he worked
18 for. In essence, he asked him did he take out a
19 warrant, and when he took it out.
20 Now, he said he took it out on the 29th. The
21 warrant is dated the 28th and signed by a Magistrate
22 by the name of O. J. Hamilton. There has been
23 testimony that Officer Banks, Morgante, and Nebrotskie
24 were all present when this man Kipper came out. The
25 testimony has been pretty clear that a warrant

1 materialized, and it was there when Kipper was out
2 of the massage parlor.
3 Now, our point is that, and our position is
4 that this warrant was taken out ahead of time, and
5 was already to go when they sent this paid informer,
6 Kipper, in and back out again. I would like to inquire
7 of Officer Banks exactly what he did and where he was.
8 THE COURT: All right, sir. But the thing is
9 that the Court has sustained the objection because,
10 again, the Court does not recall any foundation laid
11 with this particular officer with the name of Kipper,
12 he being there or anything of that nature. Your
13 question assumed certain situations by which there
14 has been no testimony from this officer to that extent.
15 Lay your foundation.
16 MR. MONTAGNA: Yes.
17 THE COURT: This is the point, Mr. Montagna:
18 The Court is not fussing with what you are trying to
19 do, but we have to have the foundation.
20 MR. MONTAGNA: Yes, sir.
21 THE COURT: All right. Bring in the witness.
22 BY MR. MONTAGNA:
23 Q Officer Banks, do you know a man by the name
24 of Kipper, John Kipper?
25 A Yes, I do.

1 MR. FREDRICKS: Your Honor, at this time, I
2 would object on the following grounds: On direct
3 examination, I asked the witness two questions. I
4 asked him did he take a warrant out, and I asked him
5 at what time -- excuse me. I asked him three questions.
6 I asked him if his memory was totally unclear. I
7 believe that was the third question I asked him.
8 I have no objection to Mr. Montagna asking him
9 questions not related to my direct examination at all,
10 which that question just was, if he does it by calling
11 this man, this gentleman, as his own witness; but he
12 has not done so. He chose to pursue it as
13 cross-examination, and the proper scope of cross-
14 examination is simply and solely what has been gone
15 into on direct examination.
16 THE COURT: All right. I will stop it right
17 now. I don't sustain your objection. I overrule your
18 objection. At this point, I will let him continue
19 his cross-examination. If it gets too far afield, it
20 might become another ball game.
21 BY MR. MONTAGNA:
22 Q Do you know a John Kipper?
23 A Yes, sir.
24 Q And where did you first meet John Kipper?
25 A I met him in the Narcotics Office.

1 Q When?

2 A It's been some time ago.

3 Q Did you see John Kipper on the night of

4 June 28, 1974?

5 A Yes, I did.

6 Q Where did you see him?

7 A We met him and Corporal Nebrotskie out near

8 the massage parlor on Military Highway.

9 Q Who else was there?

10 A Myself.

11 Q At that point --

12 THE COURT: Just a moment. Let him finish.

13 You asked him who else was there, and you cut him off.

14 BY MR. MONTAGNA:

15 Q Who was there?

16 A Myself and Corporal Nebrotskie.

17 Q Where was Sergeant Morgante?

18 A I can't recall where Sergeant Morgante was.

19 Q Did you ever see Sergeant Morgante on the night

20 of the 28th or morning of the 29th?

21 A Of course I did.

22 Q When?

23 A Well, we met Kipper -- Sergeant Morgante,

24 Corporal Nebrotskie and myself and Kipper -- we wired Kipper.

25 We put what they call a body transmitter on him. He said that

1 they needed $50 for the girl to solicit him. He said he
2 needed $50.
3 We wired him, and sent him back in there.
4 Q At this point, did you have a warrant?
5 A Sergeant Morgante had a warrant.
6 Q When did he get the warrant?
7 A I have no idea.
8 Q What warrant did he have?
9 A I have no idea. He had a warrant. He told me
10 that he had a warrant.
11 Q Did he have the warrant that you took out? Did
12 he have this warrant? This is the warrant he said he had, the
13 one that's been marked, and Corporal Nebrotskie said this is
14 the warrant he had. Is that the warrant he had?
15 THE COURT: Did you see the warrants?
16 THE WITNESS: No, sir.
17 THE COURT: Then don't ask him if he didn't
18 see it.
19 BY MR. MONTAGNA:
20 Q Did you take out this warrant?
21 A I took out that warrant. Yes, sir.
22 Q When did you take this warrant out?
23 A I told you sometime after midnight and sometime
24 before 4:00 a.m.
25 Q Did you take out this warrant after you talked

1 to Kipper?

2 A I don't remember, Mr. Montagna.

3 Q Did you take it out before you talked to Kipper?

4 A I said I don't remember.

5 Q Is it possible you took it out before you talked

6 to Kipper?

7 A It's possible if I don't recall.

8 Q Is it possible?

9 THE COURT: If he doesn't remember, that's his

10 whole answer. He said he doesn't remember.

11 MR. MONTAGNA: That's all I have of this man.

12 THE COURT: Are you finished with him,

13 Mr. Fredricks?

14 MR. FREDRICKS: I have no further questions.

15 THE COURT: All right. Are we finished with

16 him as a witness altogether? Do you need him?

17 MR. FREDRICKS: Not me.

18 THE COURT: Do you need him, Mr. Montagna?

19 MR. MONTAGNA: No, sir.

20 THE COURT: You stand excused. You may go about

21 your calling, Mr. Banks.

22

23 (Witness excused.)

24 THE COURT: Next witness.

25 MR. FREDRICKS: Your Honor, at this time, the

1 City would introduce into evidence the City Code Section
2 31-18, City Code Section 31-55, and City Code Section 31-56.
3 The City, Your Honor, would rest. I have up
4 in the office certified copies for the record if the Court
5 needs them.
6 THE COURT: The law provides that they must be
7 introduced, Mr. Fredricks. We don't operate upstairs. I
8 don't know how they operate downstairs, but upstairs they
9 operate that you will introduce certified copies of the City
10 Code, so are you resting or aren't you resting?
11 MR. FREDRICKS: If Your Honor will give me a
12 short recess, then.
13 THE COURT: All right. We will recess for lunch.
14 Be back at 2:15.
15 This Court stands at recess until 2:15.
16
17 (Luncheon recess.)
18
19 AFTERNOON SESSION
20
21 THE COURT: All right.
22 MR. FREDRICKS: Your Honor, at this time I have
23 shown them to Mr. Montagna before the Court came back out of
24 recess. At this time, the City would introduce the certified
25 copies of Section 31-18, Section 31-55 and Section 31-56.

1 THE COURT: All right.

2 MR. MONTAGNA: Your Honor, for the record, we
3 would like to make an objection. It was my understanding
4 that the City Attorney had rested prior to lunch today.

5 THE COURT: All right, sir. You can note your
6 objection. The Court, of course, overrules your objection
7 and notes the exception. The Court's understanding was, as
8 counsel put it to the Court, the City rested if the Court was
9 satisfied, et cetera, et cetera. So for the record, I don't
10 blame you.

11 All right, sir.

12 MR. MONTAGNA: Your Honor, we have several
13 motions.

14 THE COURT: All right.

15 I am identifying these ordinances as Exhibits
16 1, 2, 3, and 4. I am identifying these as four exhibits.
17 These three ordinances are four pages.

18 MR. FREDRICKS: Oh, I see. I understand,
19 Your Honor.

20

21 (Four certified copies of three City Ordinances
22 consisting of four pages were marked Plaintiff's
23 Exhibits 1, 2, 3, and 4, and were received in evidence.)

24 MR. MONTAGNA: Your Honor, my first motion is
25 to dismiss charges 31-18 against Miss McClure and Mr. Cole on

1 several reasons.

2 The first reason is that the certification that
3 the Court just received into evidence -- it's my recollection
4 that it's certified as of June 17, 1974, and not as of this
5 date as a certification. There has been no evidence introduced
6 by the City Attorney that this is an accurate City Code
7 provision. There has been no statement by the City Clerk
8 that as of this date, that these are, in fact, in evidence.

9 THE COURT: What we have -- we have 31-54.
10 Of course, we are not concerned with that; but 31-55 of the
11 Code, and 31-56 of the Code, which is Plaintiff's Exhibits
12 1 and 2, are certified as of 9/24/74. Both of those are
13 City Exhibits 1 and 2.

14 Section 31-18, which is the only other section
15 we are concerned with at the moment, is certified too as of
16 June 17, 1974, and that's the one you are addressing yourself
17 to?

18 MR. MONTAGNA: Yes, sir.

19 THE COURT: 31-18 of the City Code?

20 MR. MONTAGNA: Yes, sir.

21 THE COURT: How about it, Mr. Fredricks?

22 MR. FREDRICKS: Well, Your Honor, first I presume
23 that the essence of Mr. Montagna's motion is a motion to strike.

24 MR. MONTAGNA: Yes, sir.

25 THE COURT: As to those parties who would be

9/24/74 - I certify this is a true excerpt from the Code of the City of Norfolk, Virginia, 1958 as amended.
Kathleen M. Bathurst
Kathleen M. Bathurst, Deputy City Clerk

If such profane cursing or swearing be directed towards a school teacher or school administrator while such school teacher or school administrator is performing school related duties, he shall be fined not less than ten dollars nor more than twenty-five dollars.

If any person shall be convicted for being drunk in public three times within one year in this city, upon the third or any subsequent conviction for such offense within the period of one year, such person may be punished by imprisonment in jail for not more than six months or by a fine of not more than fifty dollars or by both such fine and imprisonment. (Code 1950, § 29-48; Ord. 27,135, 10-2-73, § 1.)

Sec. 31-54. Prostitution—Keeping house of ill fame.[3]

It shall be unlawful for any person in the city to keep, maintain, operate or reside in any house of assignation, bawdyhouse, apartment, room or other place which is used or to be used for lewdness, assignation, prostitution or illicit sexual intercourse, and in any prosecution for this offense, the general character and reputation of such place may be proved, and each day's keeping of such place shall constitute a separate offense. Any person convicted thereof shall be fined not less than twenty-five dollars nor more than two hundred and fifty dollars or confined in jail not less than ten days nor more than six months, either or both. (Code 1950, § 29-49.)

Editor's note.—This section was cited in the case of Al Warshaw v. City of Norfolk, 190 Va. 862, 58 S. E. (2d) 884.

Sec. 31-55. Same—Frequenting or residing in house of ill fame, etc.[4]

It shall be unlawful for any person in the city to frequent, reside in or visit for immoral purposes any house of ill fame,

[3] For state law as to keeping house of assignation or bawdyhouse, see Code of 1950, § 18.1-196.

[4] For state law as to residing in or frequenting house of ill fame, see Code of 1950, § 18.1-195.

PLAINTIFF EXHIBIT No. 11
DEFENDANT EXHIBIT No.
CASE: City of Norfolk
INITIALED BY:

094

the Code of the City of Norfolk, Virginia, 1958 as amended.

Kathleen M. Bathurst, Deputy City Clerk

brothel or bawdyhouse, apartment, room or other place, within or without any building or structure, which is used or is to be used for lewdness, assignation, prostitution or illicit sexual intercourse. Any person convicted thereof shall be fined not less than ten dollars nor more than one hundred dollars or confined in jail not exceeding six months, either or both. (Code 1950, § 29-50; Ord. 18,722, 2-5-57, § 1.)

Sec. 31-56. Same—Soliciting.

Any person who shall, within the limits of the city, solicit another, by word, sign or gesture, to commit any act which is lewd, lascivious, indecent or prostitute shall, upon conviction thereof, be fined not less than twenty dollars nor more than two hundred dollars or confined in jail not more than six months, or both. (Code 1950, § 29-51.)

Sec. 31-57. Same—Aiding in commission.[5]

It shall be unlawful for any person within the city, with knowledge of, or good reason to believe, the immoral or illegal purpose of such visit, to direct, or assist in directing, or aid, by telephone or otherwise, or to take or transport or assist in taking or transporting, or offer to take or transport, either on foot or in automobile, or in any other way, to any person, or to any place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation or prostitution, whether such place be within or beyond the boundaries of the city; or to procure, or assist in procuring, or give any information or direction to any person with intent to enable such person to commit an act of prostitution, or for illicit or illegal sexual intercourse.

For the purpose of this section, the words "place", structure" or "building" shall be defined to include streets, alleys,

[5] For similar state law, see Code of 1950, § 18.1-197.

PLAINTIFF EXHIBIT NO. 2

9-24-76

City v Cole Hearing

095

6/17/74 - I certify this is a true excerpt from the Code of the City of Norfolk, Virginia, 1958 as amended.

Ardith M. Murrill, Deputy City Clerk

Sec. 31-17.1. Same—In public meetings of council or any division, agency or authority thereof; refusal to obey ruling of presiding officer.

It shall be unlawful for any person to behave in a riotous or disorderly manner in any public meeting of the council of the city or any division, agency, or authority thereof, or to cause any unnecessary disturbance therein, by force, shouting or any other action calculated to disrupt such meeting, or to refuse to obey any ruling of the presiding officer of such meeting relative to the orderly process thereof.

Any person violating any of the provisions of this section, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars or imprisonment in jail not exceeding twelve months, either or both. (Ord. 25,597, 7-28-70, § 1.)

Sec. 31-18. Disorderly houses.

It shall be unlawful for any person in the city to keep, maintain or operate, for himself or as an officer of or agent for any corporation, association, club, lodge or other organization, or under the guise of any corporation, association, club, lodge or other organization, any disorderly house or place where disorderly persons meet or may meet for the purpose of illegally dispensing or indulging in intoxicating liquors, gaming or boisterous or other disorderly conduct. Each day's keeping of any such place shall constitute a separate offense, and in any prosecution for this offense, the general reputation of such place may be proved.

It shall be unlawful for any person to frequent, reside in or visit any such place for the purpose of illegally dispensing or indulging in intoxicating liquors, gaming or boisterous or other disorderly conduct.

Any person violating the first paragraph of this section shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars or by confinement in jail

PLAINTIFF EXHIBIT No. 3

DATE 7-24-74

CASE City v Hurley, Cole, McClure

INITIALS MPB

096

not exceeding six months, either or both; and any person violating the second paragraph of this section shall be punished by a fine of not less than five dollars nor more than one hundred dollars. (Code 1950, § 29-13; Ord. 18,721, 2-5-57, § 1.)

Sec. 31-19. Drawbridges [9]—Going on movable span after warning.

It shall be unlawful for any person to go upon, or attempt to go upon, any draw or movable span of any bridge in the city, or to drive or lead, or attempt to drive or lead, any team or vehicle upon said span, while the warning bell on said bridge is being sounded, or while signals are displayed on said bridge or after being notified by signal or direction from the attendant at said bridge, against making any attempt so to do.

Every person convicted of violating any provision of this section shall be fined not exceeding one hundred dollars or confined in the city jail not exceeding six months. (Code 1950, § 29-14.)

[9] As to police powers of city employees designated to operate drawbridges, see § 36-17 of this Code.

9-24-74
City v Henry, Cole, McClung
Wright

097

1 the record, is overruled.

2 If that's all your motions, all your objections

3 are noted for the Defendant as to all motions made by the

4 Defendant in which the Court has overruled the Defendant.

5 MR. MONTAGNA: Thank you.

6 THE COURT: All right. Are you putting anything

7 on the stand?

8 MR. MONTAGNA: Yes, Your Honor. We call

9 Donna Hensley.

10

11 DONNA HENSLEY, a Defendant, called as a witness

12 by and on her own behalf, having been first duly sworn, was

13 examined and testified as follows:

14

15 DIRECT EXAMINATION

16 BY MR. MONTAGNA:

17 Q Please state your full name.

18 A Donna Hensley.

19 Q And where do you reside?

20 A 538 20th Street, Virginia Beach.

21 Q On June 26th and June 28th, 1974, were you

22 working at the Venus I massage parlor?

23 A Yes, sir.

24 Q Now, you are no longer working there; is that

25 true?

1 A Yes, sir.

2 Q And you are planning to go to school?

3 MR. FREDRICKS: Excuse me, Your Honor.

4 A I am no longer working at the Venus I massage

5 parlor.

6 BY MR. MONTAGNA:

7 Q And you are planning to go to school in

8 February?

9 A Yes, I am.

10 Q Now, do you remember a man by the name of

11 Tom Swah? You saw him on the witness stand this morning.

12 A Yes, sir.

13 Q Did you see him on June 26th, 1974?

14 A Yes, sir.

15 Q In what connection did you see him?

16 A He came in as a customer in the Venus I.

17 Q Has he ever been in there before?

18 A Yes, sir.

19 Q You have seen him there?

20 A Yes, sir.

21 Q Now, when he came in, were you the girl that

22 gave him a massage?

23 A Yes, I was.

24 Q Would you describe the massage that you gave to

25 Tom Swah?

1 A It was just like a regular body massage.
2 Q Did you masturbate Mr. Swah?
3 A No, I didn't.
4 Q Did you offer to perform sexual intercourse
5 for $50?
6 A No, sir.
7 Q Did you offer to perform some sort of oral
8 copulation for $25?
9 A No, sir.
10 Q Had Mr. Swah been drinking?
11 A Yes, he had.
12 Q Now, what did Mr. Swah say to you, if anything,
13 while he was in there?
14 A We talked about -- well, whenever I first went
15 in, I said, "Hi. It's been a long time." And he said that
16 he had never been there before. I sat down and started
17 giving him a massage, and he was kind of quiet.
18 He started getting rather obnoxious, and rather
19 grabby.
20 Q What was he doing? Where was he grabbing you?
21 A He was playing with my breasts and genital
22 area.
23 Q Because of what he was doing, did you ever ask
24 him to stop?
25 A Yes, repeatedly.

1 Q And what did you finally tell him to do?
2 A Put his clothes on and leave.
3 Q What were his feelings after that?
4 A He was angry, very angry.
5 Q Did anything else occur in that massage parlor
6 other than what you have described?
7 A No, sir. I tried to pacify him, but he was
8 angry; and whenever he persisted in grabbing me and being
9 obnoxious, I asked him to leave. He did leave.
10 Q You never offered him any sort of sexual
11 conduct at all?
12 A No, sir.
13 Q Okay. Now, as to June 28th, 1974, do you
14 remember seeing somebody this morning who identified himself
15 as John Kipper?
16 A Yes, I saw him.
17 Q What did you know him as? What did he say his
18 name was?
19 A Paul.
20 Q That's the same person that is here?
21 A Same person.
22 Q What did Paul or John Kipper say?
23 A He came in and he requested me. He came in and
24 requested me and had to wait, because I had customers already.
25 I took care of the customers that I had, and I took him back

1 to the room and told him to get undressed. I left the room
2 and then came back. He was lying on his stomach, and I
3 completely massaged his back.
4 I turned him over, and I was massaging the
5 front of him. Whenever I was massaging his back, he told me
6 that he was a friend of Tom Swah, and did I know him. He
7 described him, and told me what kind of work he did and that
8 he was married and several things I already knew about Tom.
9 Q Because you had seen Tom on other occasions?
10 A Yes, sir.
11 MR. FREDRICKS: Your Honor, I object to the
12 leading nature of defense counsel's questions.
13 THE COURT: Sustained.
14 BY MR. MONTAGNA:
15 Q Go ahead.
16 A And he told me that Tom told him that he could
17 get something else there.
18 Q What did you tell him about that?
19 A I said, "That's what Tom said. Go back and
20 talk to him about it."
21 Q Did you ever offer this Kipper any sort of
22 sexual gratification at all?
23 A No, sir.
24 Q You did not. Did you offer to perform any sort
25 of sexual acts?

1 MR. FREDRICKS: Your Honor, I object to the
2 leading nature of the question.
3 A No, I did not.
4 BY MR. MONTAGNA:
5 Q Now, Miss Hensley, had you received a telephone
6 call earlier on June 28th, 1974?
7 A Yes, sir.
8 Q And who was that telephone call from?
9 A It was from my fiancee.
10 Q And were you going to meet him at some later
11 date?
12 A I was going to meet him at 12:30.
13 Q Now, what time did you finish up with the
14 massage of John Kipper?
15 A It was about 12:05, 12:10.
16 Q And what did you do after the massage of Kipper?
17 A I made sure that there wasn't too many people
18 for Miss McClure to take care of, herself, because I didn't
19 want to leave her stranded there. We let Paul out, and I
20 went back and put on my clothes and left.
21 Q That's when you were immediately accosted by
22 Sergeant Morgante?
23 MR. FREDRICKS: I object to the leading
24 questions.
25 THE COURT: Don't lead.

1 BY MR. MONTAGNA:

2 Q What happened when you got outside?

3 A When I got out, there was nobody in the

4 parking lot. I got in my car and I started it, and while

5 I was waiting for it to warm up, Paul came back up and he

6 was in a blue pickup truck, and he came over to the car and

7 asked me where I was going. I told him that I had some

8 family business that I had to attend to, but if he would like

9 to come back -- well, actually, it was that morning I had to

10 come back at 10:00, because I was going to be working days

11 on Saturday, and he said okay.

12 He walked back around and got in his truck,

13 and then we both started pulling out.

14 Sergeant Morgante pulled in front of me.

15 Q Did you ever offer to meet him back at the

16 massage parlor that night?

17 A I wasn't coming back. No.

18 Q Did you ever masturbate John Kipper?

19 A No, I didn't.

20 Q Did you ever offer to provide him sex for money?

21 A No, sir.

22 MR. FREDRICKS: I don't mean to be making a

23 pain of myself, but Mr. Montagna has not asked anything

24 but leading questions.

25 THE COURT: Well, he is putting it to her quickly

1 so we can get over with the accusations that the
2 Defendant had to sit there and listen, direct
3 accusations that were made against her. Technically,
4 he is leading, but I will permit him to go ahead and
5 ask the questions.
6 Go ahead, Mr. Montagna.
7 MR. MONTAGNA: Thank you, Your Honor.
8 BY MR. MONTAGNA:
9 Q Now, what happened to you when Sergeant Morgante
10 pulled up?
11 A Well, I don't know whether the Judge is familiar
12 with the layout of the place or not; but, anyway, there is a
13 circular part in the driveway, and I was pulled about half-way
14 into the circular part, and Sergeant Morgante came around and
15 blocked the front. It's only wide enough for one car. He
16 came around and blocked me from the front, and Paul came up
17 in his pickup and blocked me from behind.
18 Sergeant Morgante got out of the car in front
19 of me, and Paul got out and walked up to my window. He
20 asked Paul if I was the girl. That's exactly how it was
21 worded. He said, "Is this the girl?" And Paul said yes.
22 He asked me what my name was, and I told him
23 I assumed that he was there from work, and I told him that
24 my name was Tasha, and he told me that I was under arrest
25 and to leave my car where it was and get inside his, which I

1 did.

2 Q Did he show you a warrant at that point?

3 A Uh-huh.

4 Q Was that a Jane Doe warrant that he showed you?

5 A Yeah. It was.

6 Q I show you a warrant dated June 28, 1974, in

7 which an X has been made by Sergeant Morgante, and the Court

8 has inscribed a legend in red.

9 Is this the warrant that you received?

10 A Yes, sir; but only—I don't think it had the

11 Donna Hensley on it at the time.

12 Q It didn't have the Donna Hensley. That's the

13 one that he gave you?

14 A Uh-huh.

15 MR. MONTAGNA: Answer any questions the Court

16 and Mr. Fredricks might have.

17 THE WITNESS: Yes, sir.

18

19 CROSS-EXAMINATION

20 BY MR. FREDRICKS:

21 Q You mentioned at one point that you were leaving,

22 and you checked around because you didn't want to leave

23 Miss McClure alone; is that a correct statement?

24 A No, it's not.

25 Q What did you say?

1 A I said that I looked around to make sure that
2 there wasn't more customers than Miss McClure can take care
3 of, because I wasn't going to leave her with a whole room of
4 customers.
5 Q So she was working that night with you?
6 A She was there.
7 Q She wasn't working then?
8 A I don't know whether she was or not. She was
9 there.
10 Q Is she employed there?
11 A To the best of my knowledge, yes.
12 Q You work there all the time. Do you know
13 whether or not she works there or not?
14 A Yes.
15 Q All right. Now that we know you know, does she
16 work there?
17 A Uh-huh. Yes, sir.
18 Q Thank you.
19 You say you were on your way out when Sergeant
20 Morgante came up in front of you?
21 A Uh-huh.
22 Q And John Kipper came up behind you?
23 A Yes.
24 Q And Sergeant Morgante came out, and among other
25 things, showed you a warrant?

1 A I was given my warrant.

2 Q All right. He gave you the warrant?

3 A Yes.

4 Q Approximately what time was that?

5 A I left the place at -- okay. I am allowing

6 myself five minutes to get dressed, and I would say I was

7 out no more than ten minutes at the very most after Paul's

8 massage was over, which would make it about 12:20 or so.

9 Q Now, you heard testimony here this morning

10 from John Kipper and Tom Swah?

11 A Yes, I have.

12 Q You deny everything that both of them have said

13 in reference to allegations that you engaged in sexual --

14 some form of, or one form or another of sexual conduct with them?

15 A That's right.

16 Q And you deny that you solicited either or both

17 of them?

18 A That's also correct.

19 Q How long have you been working at the massage

20 parlor?

21 A Since March of '74.

22 Q During that entire time while you were working

23 there, you were working for Mr. Cole; right?

24 A I was working for the Venus I Corporation.

25 Q Who hired you?

1 A Mr. Cole acted as personnel agent for Venus I.
2 Q That's not the question. I asked you who
3 hired you?
4 A The Venus I Corporation.
5 Q The Corporation walked up to you and said
6 you're hired?
7 A No, sir.
8 Q Well, who hired you?
9 A Who actually told me that I have the job?
10 Q Yes.
11 A Mr. Cole.
12 MR. FREDRICKS: I have no further questions of
13 the witness.
14 THE COURT: All right. Redirect?
15 MR. MONTAGNA: None, Your Honor.
16 THE COURT: All right. You may come down and
17 have a seat.
18
19 (Witness stood aside.)
20 THE COURT: How about it, Mr. Montagna?
21 MR. MONTAGNA: Defense rests, Your Honor.
22 THE COURT: In all cases?
23 MR. MONTAGNA: Yes, Your Honor.
24 THE COURT: All right. Any rebuttal?
25 MR. FREDRICKS: Your Honor, I would just call

Virginia:

In the Circuit Court of the City of Norfolk, on the 24th *day of* September *, in the year 19* 74.

City of Norfolk vs. Ernest Cole

On Warrant appealed from General District Court -
Vio.Sec. 31-18, City Code - Keeping and maintaining a disorderly house

City of Norfolk vs. Donna J. Hensley

On 4 Warrants appealed from General District Court -
#1 - Vio.Sec. 31-55, City Code - Immoral conduct
#2 - Vio.Sec. 31-56, City Code - Soliciting for immoral purpose
#3 - Vio.Sec. 31-56, City Code - Soliciting for immoral purpose
#4 - Vio.Sec. 31-55, City Code - Immoral conduct

City of Norfolk vs. Barbara McClure

On Warrant appealed from General District Court -
Vio.Sec. 31-18, City Code - Frequenting a disorderly house

MISDEMEANOR TRIAL ORDER - NOT GUILTY PLEA

This day came each of the aforesaid defendants in person and by counsel of their own choosing in the person of Anthony L. Montagna, Jr., and came as well the Attorney for the City of Norfolk, in the person of Douglas Fredericks. Whereupon, each aforesaid defendant was arraigned and after private consultation with and being advised by their counsel, each defendant tendered in person a plea of Not Guilty to his/her respective warrant(s), each waived trial by jury, each stated their desire to be tried jointly, and the whole matter of law and fact was heard and determined by the Court without the intervention of a jury. After opening statements, the defendant, by counsel, moved the Court to dismiss the aforesaid charges, which motion having been fully heard and argued by counsel, is overruled, and exception

noted. Thereupon, having heard all the evidence and argument of counsel, the Court doth find the defendant, Ernest Cole, Guilty as charged in his aforesaid warrant and doth adjudge and order that he be confined in the City Jail for the term of Thirty (30) Days, he be fined in the sum of $500.00, and he be required to pay the costs of his prosecution; the Court doth find the defendant, Donna J. Hensley Guilty as charged in each aforesaid Warrant #1, Warrant #2, Warrant #3, and Warrant #4, and doth adjudge and order that she be confined in the City Jail for the term of Thirty (30) Days, she be fined in the sum of $50.00, and she be required to pay the costs of her prosecution on Warrant #1 and Warrant #4, respectively, that she be confined in the City Jail for the term of Thirty (30) Days, she be fined in the sum of $150.00, on each Warrant #2 and Warrant #3, and she be required to pay the costs of her prosecution; and the Court doth find the defendant, Barbara McClure, Guilty as charged in her aforesaid warrant and doth adjudge and order that she be fined in the sum of $20.00, and she be required to pay the costs of her prosecution. Whereupon the court on its own motion ~~of the defendants, Ernest Cole and Donna J. Hensley, by counsel, it is~~ further ordered that the Thirty (30) Day jail sentence imposed on Ernest Cole, and the Thirty (30) Day jail sentences imposed on each Warrant #1, Warrant #2, Warrant #3, and Warrant #4, and the $50.00 fine and costs imposed on Warrant #1 and Warrant #4 in the case of Donna J. Hensley, all be suspended, conditioned upon the good behavior of Ernest Cole and Donna J. Hensley, for the period of Twelve (12) Months, and upon payment of fines and costs. If defendant, Donna J. Hensley, violates the terms of good behavior during the period specified, all jail sentences are to run concur-

rently, but all fines and costs shall each be paid independent of the aforesaid suspension judgment.

Thereupon, each aforesaid defendant, by counsel, moved the Court for time in which to apply for a writ of error to the foregoing judgment, which motion, having been fully heard, is sustained, and the execution of the foregoing sentence is hereby postponed for the period of Thirty (30) Days or until the Supreme Court of Virginia shall deny said writ of error if prior thereto, and bail bond, with sufficient surety, is set in the sum of $750.00 in the case of Ernest Cole; in the sum of $500.00, in the case of Donna J. Hensley; and in the sum of $100.00, in the case of Barbara McClure.

And the defendants were permitted to depart pursuant to the terms of their recognizance.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

CITY OF NORFOLK

vs.

DONNA J. HENSLEY,
Defendant

NOTICE OF APPEAL

The defendant in the above styled cause, DONNA J. HENSLEY, is aggrieved by the final order entered in this cause by the Circuit Court of the City of Norfolk, Virginia, on September 24, 1974 wherein she was convicted of two violations of §31-55 of the Norfolk City Code, and two violations of §31-56 of the Norfolk City Code, and hereby files her Notice of Appeal prior to thirty (30) days after the entry of said final order and states that she will apply to the Virginia Supreme Court for a Writ of Error.

ASSIGNMENTS OF ERROR

DONNA J. HENSLEY, the defendant in this case, assigns the following errors:

1. The Court erred in overruling the defendant's preliminary motion to dismiss the charges of violation of §31-55 of the Norfolk City Code on the grounds that it was unconstitutional.

2. The Court erred in overruling the defendant's preliminary motion to dismiss the charges of violation of §31-56 of the Norfolk City Code on the grounds that it was unconstitutional.

3. The Court erred in allowing Sergeant Carmen Morgante to remain in the Courtroom as Chief Investigating Officer after the defendant's motion to exclude all witnesses.

4. The Court erred in allowing the City of Norfolk to reopen its case in chief after resting.

5. The Court erred in refusing to strike the evidence as to the two violations of §31-55 of the Norfolk City Code against the defendant in that there was no evidence placed on the defendant within the ambit of the ordinance.

6. The Court erred in failing to dismiss all charges against the defendant on the grounds that the Jane Doe warrant taken out against the defendant was clearly taken before the police could possibly have had any knowledge of an offense.

7. The Court erred in particuliar in failing to dismiss the charges against the defendant allegedly to have occurred on June 28, 1974 as a result of the improper Jane Doe warrant.

8. The Court erred in overruling all motions renewed by the defendant at the conclusion of the trial.

9. The Court erred in denying the motion of the defendant to dismiss all charges as contrary to law and the evidence.

10. The Court erred in refusing to grant a new trial.

STATEMENTS OF PRECEEDINGS
IN LOWER COURT

The transcript in this cause will hereafter be filed.

DONNA J. HENSLEY

By _____
Of Counsel

Anthony L. Montagna, Jr. p.d.
Suite 211-214 Board of Trade Building
Norfolk, Virginia

I certify that a true copy of the foregoing pleading was mailed to Douglas Fredericks, Esquire, Room 908, City Hall, Norfolk, Virginia, 23501, Assistant City Attorney for the City of Norfolk, on the _____ day of October, 1974.

_____

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

CITY OF NORFOLK

vs.

BARBARA McCLURE,
Defendant

NOTICE OF APPEAL

The defendant in the above styled cause, BARBARA McCLURE, is aggrieved by the final order entered in this cause by the Circuit Court of the City of Norfolk, Virginia, on September 24, 1974 wherein she was found guilty of a violation of §31-18 of the Norfolk City Code, and hereby files her Notice of Appeal prior to thirty (30) days after entry of said final order and states that she will apply to the Virginia Supreme Court for a Writ of Error.

ASSIGNMENTS OF ERROR

BARBARA McCLURE, the defendant in this case, assigns the following errors:

1. The Court erred in overruling the defendant's preliminary motion to dismiss the charge for a violation of §31-18 of the Norfolk City Code on the grounds that it was unconstitutional.

2. The Court erred in allowing Sergeant Carmen Morgante to remain in the Courtroom as Chief Investigating Officer after the defendant's motion to exclude all witnesses.

3. The Court erred in allowing the City of Norfolk to reopen its case in chief after resting.

4. The Court erred in refusing to strike the evidence against the defendant when a certified copy of §31-18 of the Norfolk City Code was used that was dated June 17, 1974.

5. The Court erred in refusing to strike the evidence against the defendant on the grounds that §31-18 of the Norfolk City Code was unconstitutional as applied to the defendant.

6. The Court erred in refusing to strike the evidence against the defendant on the grounds that there was no evidence to indicate that the defendant came under the ambit of §31-18 of the Norfolk City Code.

7. The Court erred in refusing to strike the evidence against the defendant in that there was no evidence presented to indicate that she was ever arrested.

8. The Court erred in failing to strike the evidence against the defendant on the grounds that she was charged with the wrong offense.

9. The Court erred in overruling the defendant's motion to strike on the grounds that there was no evidence presented to indicate that the defendant was present when any alleged criminal conduct occurred.

10. The Court erred in failing to strike the evidence against the defendant on the grounds that the Jane Doe warrant taken out against a co-defendant was clearly taken out before the police could possibly have had any knowledge of an offense.

11. The Court erred on motion to strike for failure of the City to establish a prima facie case.

12. The Court erred in overruling all motions renewed by the defendant at the conclusion of the trial.

13. The Court erred in denying the motion to dismiss the charges against the defendant as contrary to the law and the evidence.

14. The Court erred in refusing to grant a new trial.

STATEMENTS OF PRECEEDINGS
IN LOWER COURT

The transcript in this cause will hereafter be filed.

BARBARA McCLURE

By _____
Of Counsel

Anthony L. Montagna, Jr. p.d.
Suite 211-214 Board of Trade Building
Norfolk, Virginia

I certify that a true copy of the foregoing pleading was mailed to Douglas Fredericks, Esquire, Room 908, City Hall, Norfolk, Virginia, 23501, Assistant City Attorney for the City of Norfolk, on the _____ day of October, 1974.

_____

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

CITY OF NORFOLK

vs.

ERNEST L. COLE,
Defendant

NOTICE OF APPEAL

The defendant in the above styled cause, ERNEST L. COLE, is aggrieved of the final order entered in this case by the Circuit Court of the City of Norfolk, Virginia, on September 24, 1974 in which he was found guilty of a violation of §31-18 of the Norfolk City Code, and hereby files his Notice of Appeal prior to thirty (30) days after entry of said final order and states that he will apply to the Virginia Supreme Court for a Writ of Error.

ASSIGNMENTS OF ERROR

ERNEST L. COLE, the defendant in this case, assigns the following errors:

1. The Court erred in overruling the defendant's preliminary motion to dismiss the charge for a violation of §31-18 of the Norfolk City Code on the grounds that it was unconstitutional.

2. The Court erred in allowing Sergeant Carmen Morgante to remain in the Courtroom as Chief Investigating Officer after the defendant's motion to exclude all witnesses.

3. The Court erred in allowing the witness, Tom Swah, to testify as to activities of the defendant on a day not related to the charge placed against him.

4. The Court erred in allowing the City of Norfolk to reopen its case in chief after resting.

5. The Court erred in refusing to strike the evidence against the defendant when a certified copy of §31-18 of the Norfolk City Code was used that was dated June 17, 1974.

6. The Court erred in refusing to strike the evidence against the defendant on the grounds that §31-18 of the Norfolk City Code was unconstitutional as applied to the defendant.

7. The Court erred in refusing to strike the evidence against the defendant on the grounds that there was no evidence to indicate that the defendant came under the ambit of §31-18 of the Norfolk City Code.

8. The Court erred in refusing to strike the evidence against the defendant on the grounds that the Jane Doe warrant taken out against a co-defendant was clearly taken out before the police could possibly have had any knowledge of an offense.

9. The Court erred in failing to strike the evidence against the defendant on the grounds that he was charged with the wrong offense.

10. The Court erred in failing to strike the evidence against the defendant on the grounds that the City of Norfolk did not establish a prima facie case.

11. The Court erred in overruling all motions renewed by the defendant at the conclusion of the trial.

12. The Court erred in denying the motion to dismiss the charges against the defendant as contrary to the law and the evidence.

13. The Court erred in refusing to grant the defendant a new trial.

STATEMENTS OF PRECEEDINGS
IN LOWER COURT

The transcript in this cause will hereafter be filed.

ERNEST L. COLE

By _____
Of Counsel

Anthony L. Montagna, Jr., p.d.
Suite 211-214 Board of Trade Building
Norfolk, Virginia

I certify that a true copy of the foregoing pleading was mailed to Douglas Fredericks, Esquire, Room 908, City Hall, Norfolk, Virginia, 23501, Assistant City Attorney for the City of Norfolk, on the _____ day of October, 1974.

_____

Adopted 3/12/74
Effective 4/12/74

ORDINANCE NO. 27,352

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF NORFOLK, VIRGINIA, 1958, BY ADDING A NEW CHAPTER THERETO NUMBERED 7.1 WHICH CHAPTER RELATES TO PERMITS TO OPERATE A HEALTH PARLOR, INCLUDING ADMINISTRATION, APPLICATION AND INSPECTION, TERM SUSPENSION AND REVOCATION AND THE CHARGE OF A FEE FOR SAID PERMIT TO OPERATE A HEALTH PARLOR; MINIMUM FACILITIES REQUIRED TO OPERATE A HEALTH PARLOR; SANITATION REQUIREMENTS TO OPERATE A HEALTH PARLOR, INCLUDING PERSONNEL AND HYGIENE REQUIREMENT; PERSONNEL GOOD HEALTH CERTIFICATES FOR MASSEUR OR MASSEUSE; REQUIRED HYGIENE OF PATRONS AND EMPLOYEES; NO UNLAWFUL ACTIVITIES AT HEALTH PARLORS; DEFERRED COMPLIANCE OF CERTAIN CONSTRUCTION REQUIREMENTS; AND PROVIDING PENALTIES FOR THE VIOLATION OF CERTAIN TERMS AND CONDITIONS OF THIS CHAPTER.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That The Code of the City of Norfolk, Virginia, 1958, be and the same hereby is amended by adding a new Chapter thereto numbered and reading as follows:

CHAPTER 7.1.

HEALTH PARLORS.

Article I. In General.

Sec. 7.1-1. Definitions.

The following words and phrases when used in this chapter shall be construed as:

Director. Shall mean the director of public health of the city or his duly authorized agent.

Health parlor. Any place, establishment or institution which is operated for the purpose of providing one or more of the following services at such establishment or on a house call basis: Physical massage of the body of another, steam bath, hot box, electrical, mechanical or chemical magnetic bath and stimulation

exercises. Excluded are the following: Hospitals, nursing homes, medical clinics, offices or quarters of duly licensed physicians, chiropractors, osteopaths or facilities operated by the federal, state or city, or barber shops and beauty parlors.

Health parlor operator. The owner, assignee, agent, contractor, employee, individual, officer of a firm, company, corporation, association, club, institution or any other person or entity operating a health parlor.

Masseur and masseuse. Masseur (male) and masseuse (female) are persons who practice or administer one or more of the acts of body massage, either by hand towel or mechanical apparatus, oil rubs, corrective gymnastics, mechanotherapy, including color therapy, dietetics, hot packs, cabinet, tub, shower, sitz bath, vapor, steam or any other special bath.

Article II. Administration.

Sec. 7.1-2. Permit to operate a health parlor.

It shall be unlawful for any health parlor operator who does not possess a valid health parlor permit to operate a health parlor in the city.

Sec. 7.1-3. Application for health parlor operator's permit.

Application for a health parlor operator's permit shall be made in writing on a form prescribed by the director of public health, wherein the applicant shall agree to conform to the ordinances, rules and regulations governing such places and to permit such examinations and inspections of the facility as may be deemed necessary by the director of public health. The director of public health shall refuse said permit if the conditions do not conform to the requirements of this chapter.

Sec. 7.1-4. Term.

A health parlor operator's permit shall be issued only to an individual and shall be valid until revoked or suspended by the director of public health. Said operator's permit is not transferable to another operator or from one establishment or location to another. Said operator's permit shall be posted in full view of the

public at each health parlor location.

Sec. 7.1-5. Suspension and revocation of health parlor operator's permit.

The health parlor operator's permit may be suspended or revoked for cause by the director of public health.

Sec. 7.1-6. Fee for health parlor operator's permit.

The director of public health is hereby authorized to charge a fee of $25.00 for the issuance of a health parlor operator's permit.

Article III. Minimum Facilities Required.

Sec. 7.1-7. Bathing, dressing and locker facilities.

In every health parlor each patron shall be provided with a separate dressing room, and each dressing room shall contain a tub or a shower and a locker capable of being locked. If male and female patrons are to be served simultaneously, each health parlor shall contain separate massage rooms and separate dressing facilities for male and female patrons.

Sec. 7.1-8. Toilet facilities.

Separate toilet facilities shall be provided each sex and said facilities shall be conveniently located within the health parlor.

Sec. 7.1-9. Ventilation.

Ventilating facilities shall be maintained and operated so as to adequately ventilate each health parlor and keep said facility free from excessive heat, steam, condensation, vapor, smoke or odors.

Sec. 7.1-10. Lights.

A minimum of twenty foot candles of light, including natural and artificial sources, shall be maintained in all rooms including toilet rooms.

Article IV. Sanitation.

Sec. 7.1-11. Sanitation.

All walls, ceilings, floors, pools, showers, bathtubs,

steam rooms, toilet rooms, lavatories, sinks and all other physical facilities for the health parlor shall be in good repair and maintained in a clean condition. Wet and dry steam rooms, steam or vapor rooms shall be thoroughly cleaned each day the business is operated. Bathtubs shall be cleaned and sanitized after each use. Non-disposable equipment shall be cleaned and sanitized after use upon one patron.

Sec. 7.1-12. Towels, linens and tissues.

Linen shall be cleaned and laundered. All towels and tissues and all sheets or other covering shall be used only once for each patron and discarded for laundry or disposal immediately after use. Closed containers shall be required for storage of wet or soiled linens.

Sec. 7.1-13. Brushes, combs, towels and drinking cups.

The common use of brushes, combs, towels and drinking utensils shall be prohibited.

Sec. 7.1-14. Liquid waste.

All liquid waste shall be disposed of in a public sanitary sewage system or by another method approved by the director of public health.

Sec. 7.1-15. Refuse.

All refuse shall be stored in suitable tight containers with lids. Refuse disposal methods shall meet applicable city standards.

Sec. 7.1-16. Condition of premises.

The premises of all health parlors shall be maintained in a clean condition and free of litter, rubbish, refuse or any material which affords development or harborage places for rats, mosquitoes or other vermin.

Sec. 7.1-17. Sleeping quarters.

No room or any part of any room of a health parlor shall be used for, or connected with, any bedroom or sleeping quarters; nor shall any person sleep in such health parlor except it be for limited periods incidental or or directly related to a massage or bath service.

Article V. Personnel and Hygiene.

Sec. 7.1-18. Personnel certificate required.

No person shall practice as a masseur or masseuse at a health parlor without a certificate of good health issued by the director of public health after an examination by a physician licensed to practice in the Commonwealth of Virginia. Certificates issued by the director of public health shall be valid for one year from day issued unless sooner revoked or suspended. No person afflicted with any communicable disease shall work or be employed in any health parlor. The director of public health may require an employee suspected of having any communicable disease to submit himself for examination by a practicing physician or to the director of public health, such examination to be at the expense of the employee. The director of public health may suspend the certificate of any person who is suspected to be suffering from a communicable disease or who refuses a physical examination to determine whether such person is suffering from a communicable disease.

Sec. 7.1-19. Patron service.

No person shall provide any of the services of a health parlor to any patron exhibiting symptoms of being infected with any fungus or other skin infections, nor shall service be performed on any patron exhibiting skin inflammation or eruptions, unless a physician licensed in the Commonwealth of Virginia certifies that the person may be safely served.

Sec. 7.1-20. Report employees.

Whenever an operator or proprietor of a health parlor employs a person to work or provide service in such establishment, such operator or proprietor shall so inform the director of public health and furnish the director of public health with the number of the certificate of good health, name, date of birth, sex and address(es) of the employee.

Sec. 7.1-21. Cleanliness - employees.

All employees shall wear light colored outer garments (covering from the neck to the knees) and maintain a high degree of personal cleanliness while on duty. They shall wash their hands thoroughly in an approved hand

washing facility before starting service to each patron and as often as may be necessary to remove soil and contamination.

Sec. 7.1-22. Unlawful activity prohibited.

No operator of a health parlor shall permit any activity or behavior prohibited by the laws of the city or the Commonwealth of Virginia.

Article VI. Deferred Compliance.

Sec. 7.1-23. Deferred compliance.

The owner or operator of any health parlor operating in the city as of the effective date of this chapter, may, in the discretion of the director of public health, be granted a grace period not to exceed six months in order to comply with the construction requirements of Article III.

Article VII. Violations and Penalties.

Sec. 7.1-24. Violations and penalties.

The person who violates any provisions of this chapter shall be guilty of a misdemeanor and on the conviction thereof, such person shall be fined not less than one hundred dollars nor more than five hundred dollars or sentenced to not more than thirty days in jail or both, and on second and subsequent convictions thereof, such person shall be fined not less than two hundred dollars nor more than one thousand dollars or sentenced to not more than ninety days in jail or both, each day of violation shall constitute a separate offense.

Any employee who shall accept any employment in any health parlor in order to perform the duties of a masseur or masseuse, in violation of this chapter, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed three hundred dollars, or by imprisonment in jail not exceeding thirty days, or by both such fine and imprisonment. Each day of employment shall constitute a separate offense and any touching of another person with the intention of performing the duties of a masseur or masseuse in violation of this chapter shall constitute a separate offense as to each person touched.

Section 2:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

Adopted by the Council March 12, 1974
Effective April 12, 1974

TRUE COPY
TESTE:

LOUIS S. HUDGINS, CITY CLERK

BY: _____
Deputy City Clerk