IN THE

Supreme Court of Virginia

AT RICHMOND

CLERK
SUPREME COURT OF VIRGINIA
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MAR 17 1978
RICHMOND, VIRGINIA

JERRY DEAN STILLWELL, Appellant v. COMMONWEALTH OF VIRGINIA, Appellee	Record No. 771528
JERRY DEAN LOWERY, Appellant v. COMMONWEALTH OF VIRGINIA, Appellee	Record No. 771527
JACKIE WADE PHILLIPS, Appellant v. COMMONWEALTH OF VIRGINIA, Appellee	Record No. 771526

APPENDIX

Emmitt F. Yeary
Mary Lynn Tate
YEARY, LOHMAN & TATE, P.C.
161 East Main Street
Abingdon, Virginia 24210

Counsel for Appellants

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Abingdon, Virginia 24210

Counsel for Appellants

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The Jurors of the Regular Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on ~~Monday~~ Tuesday the 11th day of January in the year of Christ 1977, upon their oaths present that Jerry Dean Stillwell

on the 26th day of January in the year of Christ 1976, in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4 of the Code of Virginia, 1950, as amended, as a Schedule I Controlled Substance,

against the peace and dignity of the Commonwealth of Virginia.

Third Count — And the Jurors aforesaid, upon their oaths said, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Presented upon the information of the following witnesses, sworn in Court, and sent by it to the Grand Jury.

Trp. L. E. Lambert, VSP

sent that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

1-77-29

The Commonwealth

VS.

Jerry Dean Stillwell

INDICTMENT FOR

Distribute Controlled Substance

A TRUE BILL

Foreman.

January 31, 1977

The Jurors of the Regular Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on ~~Monday~~ Tuesday the 11th day of January in the year of Christ 19 77, upon their oaths present that Jerry Dean Stillwell

on the 9th day of January in the year of Christ 19 76, in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4 of the Code of Virginia, 1950, as amended, as a Schedule I Controlled Substance,

against the peace and dignity of the Commonwealth of Virginia.

Second Count — A(Grand Jurors aforesaid, upon thei aforesaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Third Count — And [illegible]nd Jurors aforesaid, upon their o[illegible] [illegible]oresaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Presented upon the information of the following witnesses, sworn in Court, and sent by it to the Grand Jury.

Trp. D. H. Smith, VSP ✓ .....

.....

.....

1-77-30

The Commonwealth

VS.

Jerry Dean Stillwell

INDICTMENT FOR

Distribute Controlled Substance

A TRUE BILL

Foreman.

January 31, 1977

8

19

The Jurors of the.....Regular.....Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on ~~Monday~~ Tuesday the..11th...day of.....January..... in the year of Christ 19..77., upon their oaths present that...Jerry Dean Stillwell.....

.....

on the...9th..... day of.....January..... in the year of Christ 19..76..., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaidin...violation...of. Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4 of the Code of Virginia, 1950, as amended, as a Schedule I Controlled Substance,

against the peace and dignity of the Commonwealth of Virginia.

Second Count — And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Third Count — And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Presented upon the information of the following witnesses, sworn in Court, and sent by it to the Grand Jury.

Trp. D. H. Smith, VSP ✓

1-77-31

The Commonwealth

VS.

Jerry Dean Stillwell

INDICTMENT FOR

Distribute Controlled Substance

A TRUE BILL

Foreman.

January 31, 1977

22 12

IN THE CIRCUIT COURT OF WASHINGTON COUNTY

COMMONWEALTH OF VIRGINIA

vs. CASE NOS. 1-77-29 thru 1-77-31
DISTRIBUTE CONTROLLED SUBSTANCE

JERRY DEAN STILLWELL

This day came David D. Brown, Esquire, Attorney for the Commonwealth, Emmitt F. Yeary, Esquire, counsel for the defendant, Jo Crewey, Court Reporter, who was duly sworn in the manner prescribed by law; came also the defendant in obedience to his recognizance.

It appearing to the Court that the defendant was tried in this Court on May 17, 1977, at which time he entered a plea of not guilty to each of the charges contained in the indictments herein.

The defendant was found guilty as charged in each of the respective indictments and sentenced to a term of (5) years in the penitentiary and a fine of $250.00 on each of the three indictments. Upon motion of the defendant, by counsel, a probation report was ordered prepared on the defendant. The said report was filed on June 10, 1977 and a copy was furnished to counsel for the defendant. It appearing to the Court that O. W. Beckner, Probation Officer of this Court, prepared the report, but for good cause shown he was not present on this date. The Attorney for the Commonwealth and the attorney for the defendant stated to the Court that there was no controversy as to the contents of the report and no objections to the absence of the Probation Officer.

The Court heard statements by the Attorney for the Commonwealth and the attorney for the defendant, after mature consideration the Court is of the opinion to and doth deny the motion for probation and doth order that the defendant serve five (5) years in the penitentiary on the charge contained in indictment 1-77-29 and at the completion thereof doth suspend execution of each of the two (5) years penitentiary sentences imposed in indictments 1-77-30 and 1-77-31 and doth place the defendant on probation for a period of (10)

years upon the following terms and conditions:

1. That the defendant abide by the terms of probation as recorded in Law Order Book Y, page 175.

2. That he pay the fines and costs of these prosecutions.

The defendant is remanded to jail to await transfer to the appropriate penal institution of this Commonwealth.

The Court certifies that the defendant was present and his attorney was present during all stages of this proceeding.

During the course of this proceeding certain motions were made and objections interposed which will appear fully in the stenographic record herein.

ENTER: June 16, 1977

Lindsay Matthews
JUDGE

ASSIGNMENTS OF ERROR

1. The Court erred in not dismissing the indictments since the statute under which the defendant was charged placed the burden of proof on the defendant to prove the lesser offense of accommodation and failed to state any standard of proof in this regard.

2. The Court erred in failing to grant the defendant's motion to strike the evidence of the Commonwealth, made after the Commonwealth rested and after all the evidence, as to the felony charges and thereby reducing the charges to the misdemeanor charge of accommodation.

3. The Court erred in denying the defendant's motion to dismiss the indictments since the statute under which the defendant was charged would subject him to cruel and unusual punishment.

4. The Court erred in denying the defendant's motion to strike the evidence of the Commonwealth which motion was made both before and after the Commonwealth rested and after all the evidence, based upon the entrapment by the police officers.

5. The Court erred in denying defendant's motion to strike the evidence and dismiss Indictments Nos. 2 and 3 because they were multiplicious.

6. The Court erred in denying the defendant probation under Indictment No. 1 because the defendant had exercised his basic right to plead not guilty.

7. The Court erred in revoking probation on Indictments 2 and 3 and refusing bond because the defendant wished to exercise his right to appeal to the Supreme Court of Virginia.

VIRGINIA: IN THE CIRCUIT COURT OF WASHINGTON COUNTY

COMMONWEALTH v. JERRY DEAN STILLWELL	)	A FELONY: DISTRIBUTION OF A CONTROLLED SUBSTANCE

TRANSCRIPT OF TRIAL

AND

PROBATION HEARING

JO CREWEY
COURT REPORTER
RT. 2, BOX 262
MARION, VIRGINIA 24354

VIRGINIA: IN THE CIRCUIT COURT OF WASHINGTON COUNTY

COMMONWEALTH

v.

JERRY DEAN STILLWELL

APPEARANCES: David D. Brown, Attorney for the Commonwealth

Emmitt F. Yeary, Counsel for Defendant

Jerry Dean Stillwell, in person and by his counsel

L. E. Lambert
D. H. Smith
Kenny Forrester
David Michael Weaver
Larry Link
Arthur L. Goff, Jr.
Daniel H. Eddy
James L. Goins
Patricia Kay Stillwell

I N D E X

	Dr.	Cr.	Redr.
L. E. Lambert	10	15	
D. H. Smith	26	33	
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Kenny Forrester	58	62	63
David Michael Weaver	64	69	
Larry Link	70	72	
Arthur L. Goff, Jr.	73	75	
L. E. Lambert, Adverse	75		
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Daniel H. Eddy	81		
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Case #1-77-29

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Commonwealth Exhibit #2, Acknowledgement Receipt.....P 13
Commonwealth Exhibit #3, Brown Envelope.....P 14
Commonwealth Exhibit #4, White Envelope with contents.P 14
Commonwealth Exhibit #5, Certificate of Analysis.....P 15

Case #1-77-30

Commonwealth Exhibit #1, Certified Mail Receipt.....P 30
Commonwealth Exhibit #2, Acknowledgement Receipt.....P 30
Commonwealth Exhibit #3, Manila envelope.....P 31
Commonwealth Exhibit #4, White envelope with contents.P 32
Commonwealth Exhibit #5, Certificate of Analysis.....P 32

Case #1-77-31

Commonwealth Exhibit #1, Certified Mail R ceipt.....P 46
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Commonwealth Exhibit #3, Manila Envelope.....P 47
Commonwealth Exhibit #4, White envelope with contents.P 48
Commonwealth Exhibit #5, Certificate of Analysis.....P 48

This matter came on to be heard on Tuesday, May 17th, 1977, before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia.

Mrs. Jo Crewey, Court Reporter, was duly sworn in the manner prescribed by law.

COURT: In the cases of Commonwealth v. Jerry Dean Stillwell, are you ready in those, Mr. Brown?

D. BROWN: Yes sir, Your Honor.

THE COURT: Mr. Yeary?

E. YEARY: Your Honor, we do have one witness who is not here yet, but I understand he will be here by the time we will need him.

THE COURT: Then you are ready?

E. YEARY: Yes sir.

THE COURT: Mr. Yeary, there are three indictments. Any objection to the Court hearing them together?

E. YEARY: No objection to hearing them together, Your Honor, however, we do have a motion to dismiss the indictments because we believe they are multiplicious in nature. Subject to that objection, we would like to present evidence on the motion. We would have no objection to hearing them together.

THE COURT: Alright.

E. YEARY: Probably, if the Court will sustain our motion, we would not have that problem, Your Honor.

THE COURT: Alright. Mr. Stillwell, if you will stand up and give attention to the Court, please. Indictment number 1-77-29: (Reading) "Virginia-Washington

1 County, To-wit: The Jurors of the Regular Grand
2 Jury, empanelled and sworn in and for the body of
3 Washington County, in the State of Virginia, at
4 the term of the Circuit Court, held in and for
5 said county, commencing on Tuesday, the 11th day
6 of January, in the year of Christ 1977, upon their
7 oaths present that Jerry Dean Stillwell on the
8 9th day of January in the year of Christ 1976,
9 in the County of Washington aforesaid, and within
10 the jurisdiction of the Court aforesaid, in
11 violation of Section 18.2-248 of the Code of
12 Virginia, 1950, as amended, feloniously and unlaw-
13 fully did sell, give or distribute Marijuana,
14 listed and included in Section 54-524.84:4 of the
15 Code of Virginia, 1950, as amended, as a Schedule
16 I Controlled Substance, against the peace and
17 dignity of the Commonwealth of Virginia. Presented
18 upon the information of the following witness
19 sworn in Court and sent by it to the Grand Jury:
20 Trooper L. E. Lambert". Indictment number
21 1-77-30: "Virginia-Washington County, To-wit:
22 The Jurors of the Regular Grand Jury, empanelled
23 and sworn in and for the body of Washington County,
24 in the State of Virginia, at the term of the
25 Circuit Court, held in and for said county,
commencing on Tuesday, the 11th day of January,
in the year of Christ 1977, upon their oaths
present that Jerry Dean Stillwell, on the 9th day

JO CREWEY
COURT REPORTER
RT. 2, BOX 262
MARION, VIRGINIA 24354

of January, in the year of Christ 1976, in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid, in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4 of the Code of Virginia, 1950, as amended, as a Schedule I Controlled Substance, against the peace and dignity of the Commonwealth of Virginia. Presented upon the information of the following witness sworn in Court and sent by it to the Grand Jury. D. H. Smith". Indictment number 1-77-31: "Virginia-Washington County, To-wit: The Jurors of the Regular Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on Tuesday, the 11th day of January, in the year of Christ 1977, upon their oaths present that Jerry Dean Stillwell on the 26th day of January, in the year of Christ, 1976, in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid, in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4, of the Code of Virginia, 1950, as amended, as

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1 a Schedule I. Controlled Substance, against the
2 peace and dignity of the Commonwealth of Virginia.
3 Presented upon the information of the following
4 witness sworn in Court and sent by it to the
5 Grand Jury: D. H. Smith". Now, Mr. Stillwell,
6 your name is Jerry Dean Stillwell?
A. Yes sir.
7 Q. And what is your age?
8 A. 24.
9 Q. And where do you reside?
10 A. Glade Spring.
11 Q. And you are presently at large under bond?
12 A. Yes sir.
Q. ..and you have employed Mr. Yeary to represent you
13 in each of these cases?
14 A. Yes sir.
15 Q. He has consulted with you in connection with each
16 case and has explained to you the seriousness of
17 each case?
18 A. Yes sir.
19 Q. He has explained to you the punishment you may
20 receive if found guilty - the minimum punishment
and the maximum punishment?
21 A. Yes sir.
22 Q. He has explained to you and you, yourself, under-
23 stand you have a right to enter a plea of not
24 guilty; to have a jury hear the evidence; the jury
25 will determine your guilt or innocence and the

1 jury fix your punishment?
2 A. Yes sir.
3 Q. He has explained to you and you understand that you
4 have a right to enter a plea of not guilty, and if
5 the Court and the Attorney for the Commonwealth
6 consent, the Court will hear the evidence; determine
7 your guilt or innocence and fix your punishment?
8 A. Yes sir.
9 Q. Do you also understand that you have a right to
10 enter a plea of guilty?
11 A. Yes sir.
12 Q. Alright, in the event that you enter a plea of
13 guilty, do you understand that the only appeal that
14 you will have from this Court is on the jurisdictional
15 grounds of the Court and by that, I mean, that the
16 Court makes a mistake as to the law as it applies
17 to your case?
18 A. Yes sir.
19 Q. Do you have any complaints against Mr. Yeary, and
20 his representation of you?
21 A. No sir.
22 Q. Any complaints against the Sheriff's Department of
23 Washington County, the State Police or any other
24 law enforcement agency of the Commonwealth?
25 A. No sir.

JO CREWEY
COURT REPORTER
RT. 2, BOX 262
MARION, VIRGINIA 24354

1 Q. Are you ready for trial at this time?
2 A. Yes sir.
3 Q. Alright, on Indictment number 1-77-29, the first
4 Indictment which the Court read, what is your
5 plea?
6 A. Not guilty.
7 Q. Indictment number 1-77-30, the second Indictment
8 that the Court read to you, what is your plea?
9 A. Not guilty.
10 Q. On Indictment number 1-77-31, the third and last
11 Indictment that the Court read to you, what is your
12 plea?
13 A. Not guilty.
14 Q. Alright, sir, do you desire a jury trial?
15 A. No sir.
16 Q. You waive the jury?
17 A. Yes sir.
18 Q. Mr. Brown, do you consent for the Judge to hear
19 these without a jury?
20 D. BROWN: Yes sir, in each case, Your Honor.
21 THE COURT: And for the record, the Court hereby consents to
22 hear these without the intervention of a jury. Do
23 you have any objection to the evidence being
24 presented on all three cases together? Subject to
25 the objection of your attorney?
A. No sir.
THE COURT: Alright, and on your motion on the multiplicity,
the Court will hear you and rule on that motion,

1 E. YEARY: Your Honor, we would ask for the rule.

2 THE COURT: Alright, all persons here expecting to testify,
3 follow the Sheriff. That includes all witnesses
for the defendant, too.
4 (Thereupon, all witnesses were excluded from the
5 courtroom).

6 THE COURT: You may proceed, Mr. Brown.

7 D. BROWN: Trooper Lambert.

8 E. YEARY: Your Honor, is this on my motion?

9 THE COURT: On the evidence in the case, Mr. Yeary.

10 E. YEARY: Oh, I had some other motions to make prior to
this. I didn't realize the Court was going to
11 hear all the evidence.

12 THE COURT: Didn't the Court indicate that it was going to hear
13 the evidence and take your motion under advisement
14 and would pass on it when the evidence was heard?

15 E. YEARY: I didn't understand that to be the case, Your Honor.

16 THE COURT: Alright, that is the case, Mr. Yeary.

17 E. YEARY: Your Honor, we would also have additional motions
18 if we could make them at this time.

19 THE COURT: Proceed.

20 E. YEARY: Your Honor, first of all, we would move to dismiss
all three indictments on the basis, first, that
21 all three Indictments are void for vagueness.
22 They fail to inform the defendant of what he is
23 accused, that is, they do not name the person to
24 whom the alleged Controlled Substances were given,
sold, or distributed and, thereby, allows the
25

1 Commonwealth to potentially reduce his rights to
2 not be placed twice in jeopardy. It would be in
3 violation of the due process clause of the 14th
4 Ammendment of the United States Constitution and
5 would subject him to double jeopardy, also in
6 violation of the 5th Ammendment of the United
7 States Constitution, and Article I, Section 8, of
8 the Virginia Constitution. Also, they fail to
9 inform him of the nature and cause of the accusation
10 in violation of the 6th Ammendment of the United
11 States Constitution and due process clause of the
12 15th Ammendment of the United States Constitution;
13 also, Article I, Section 8 of the Virginia Con-
14 stitution. We would ask that all three Indictments
15 be dismissed for that reason.
16 THE COURT: The Court read the Indictments, Mr. Yeary, and as
17 I recall they were returned by the Grand Jury that
18 convened on the 11th day of January, and the In-
19 dictments themselves were returned the month of
20 January, and the Court doesn't recall the dates on
21 them. You have a very adequate remedy on that if
22 there is additional information required, by filing
23 a Bill of Particulars if you desire that, so your
24 motion is denied.
25 E. YEARY: Your Honor, our second motion would be that we move
to dismiss the indictments relating to the date of
January 9th, 1976. We have two indictments on that
which are identical and we submit that that would

be placing him in double jeopardy. That would also....

THE COURT: ...that is the same as the motion that you heretofore made that the Court took under advisement, isn't it, Mr. Yeary?

E. YEARY: Alright, sir. Your Honor, I would also submit that the Code Section under which we are now proceeding is unconstitutional in that for the Controlled Substance of Marijuana that would amount to....the potential punishment under this Statute amounts to cruel and undue punishment and we would ask that the indictments be dismissed for those reasons.

THE COURT: That motion is denied.

E. YEARY: We would also submit that Section 18.2-248 of the Virginia Code, under which we are now proceeding, is unconstitutional on its face which places the burden of proof on the defendant for what should be a lesser included offense of accomodation, and it is also void for vagueness in that it has no standard of proof as to the defendant's burden as given by this Code Section.

THE COURT: That motion is denied.

E. YEARY: Thats all we have at this time, Your Honor.

THE COURT: Call your first witness, Mr. Brown.

L. E. LAMBERT,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

be placing him in double jeopardy. That would also....

THE COURT: ...that is the same as the motion that you heretofore made that the Court took under advisement, isn't it, Mr. Yeary?

E. YEARY: Alright, sir. Your Honor, I would also submit that the Code Section under which we are now proceeding is unconstitutional in that for the Controlled Substance of Marijuana that would amount to....the potential punishment under this Statute amounts to cruel and undue punishment and we would ask that the indictments be dismissed for those reasons.

THE COURT: That motion is denied.

E. YEARY: We would also submit that Section 18.2-248 of the Virginia Code, under which we are now proceeding, is unconstitutional on its face which places the burden of proof on the defendant for what should be a lesser included offense of accomodation, and it is also void for vagueness in that it has no standard of proof as to the defendant's burden as given by this Code Section.

THE COURT: That motion is denied.

E. YEARY: Thats all we have at this time, Your Honor.

THE COURT: Call your first witness, Mr. Brown.

L. E. LAMBERT,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

1 BY: DAVID D. BROWN:

2 Q. Please state your name to the Court.

3 A. I'm Trooper L. E. Lambert. I'm a Virginia State
4 Trooper.

5 Q. In January of 1976, did you have any particular
6 assignment with the Virginia State Police?

7 A. I was participating in a narcotics program with
8 the Virginia State Police.

9 Q. Did you have occasion during the month of January,
10 1976, to be in Washington County, Virginia?

11 A. Yes, I did.

12 Q. I will ask you if you, in January of 1976, became
13 acquainted with the defendant, Jerry Dean Stillwell?

14 A. Yes sir.

15 Q. And on the 9th of January, 1976, did you have any
16 transactions or dealings with the defendant, Jerry
17 Dean Stillwell?

18 A. Yes sir.

19 Q. And where did this take place; any transactions or
20 dealings you had with Jerry Dean Stillwell?

21 A. It took place in Glade Spring, in Washington County.

22 Q. Specifically, the location, please? Do you recall?

23 A. This took place partly at his residence, which is
24 on the East side of Glade Spring, and also con-
25 cluded at the skating rink inside the Town there.

Q. Both of those were in Washington County, Virginia?

A. Yes sir.

Q. And just what took place or what transaction was

there between you and Mr. Stillwell on January 9th, 1976, in Washington County, Virginia?

A. I had occasion at approximately 6:20 P.M., in that neighborhood, to receive two bags of brownish-green plant-like material from him at his residence and upon his request, I gave him a ride into Town to the skating rink. When we reached the skating rink, at that time I paid him $30.00 for these two bags of material.

Q. How did you happen to receive it? How did you get the material from him? What occurred prior to that time that caused you to have it delivered to you?

A. He was approached...he was walking near his home and a subject in the vehicle with me, Tommy Porter, knew him and made the introduction with him for the purpose of buying alleged Marijuana from him.

Q. And what was it...what are the specifics of the transaction? What did you say to him and what did he say to you, and what did he do and what did you do?

A. Well, as I say, Tommy Porter introduced me to the gentleman. I don't remember the exact words that transpired. I requested to buy some of this alleged Marijuana from him. He quoted a price of $15.00 per bag and I agreed to buy two at that time.

Q. From the time that you had this conversation, how long was it until you had it delivered to you?

1 A. He went into the house...or we went into the house
2 with him and I secured it inside the residence
3 there. We left there and he was going back down
4 into Town and he asked me for a ride into Town.
5 We immediately received the stuff...well, shortly
6 after we arrived there and spoke a few moments,
7 we received it and we immediately left and went to
8 the skating rink where we let him out and then
9 I paid the money to him.
10 Q. And you paid his price for it?
11 A. Yes sir, I paid him $30.00 for it.
12 Q. Now, the two bags of brown plant material...what
13 did you do with those bags that you received from
14 Mr. Stillwell on January 9th, 1976?
15 A. I carried them on my person until I reached my
16 residence where I placed them in a locked steel
17 box that I have in my residence for temporary
18 custody of these materials. On January 12th,
19 1976, I mailed this material to the Division of
20 Consolidated Laboratory Services, in Richmond,
21 Virginia, by Certified Mail. On January 14th,
22 1976, I received a Certified Mail receipt, stating
23 they had received parcel number 391122 at that
24 location, which is the Certified Mail number that
25 this parcel was sent by.
Q. The material that you sent...how did you send it;
what type envelope did you send it in?
A. I sent this material, first, in a white envelope

which had an evidence stamp on the outside, which was filled out. This was placed inside a yellow envelope which was addressed to the Division of Consolidated Laboratory Services. On the outside of this was attached the Certified Mail receipt at the Post Office.

Q. Who placed the material in the white envelope?

A. I did.

Q. What material did you place in it?

A. I placed two plastic bags, each containing brownish-green plant material.

Q. From whom did you receive it?

A. Mr. Stillwell, seated over here.

Q. This is the receipt for Certified Mail and also the acknowledgment of the receipt?

A. Yes sir.

Q. I would like to introduce the receipt for Certified Mail as Commonwealth's Exhibit one, and the acknowledgment as Commonwealth's Exhibit two.

THE COURT: They will be so marked.

(Thereupon, Commonwealth's Exhibits one and two were marked for identification and filed).

D. BROWN:

Q. I'll ask you if this brown envelope, if you addressed it and if you were the person who placed the Certified Mail number on it?

A. Yes sir.

Q. And what is the number on that brown envelope?

A. 391122.

Q. Alright, I would like to introduce this envelope as Commonwealth's Exhibit three. I'll ask you if this is the white envelope that you placed in the brown envelope about which you have already testified that you put two plastic bags in that you acquired from Jerry Stillwell?

A. Yes sir, this is the envelope.

Q. Alright, and is this your writing on the outside of it?

A. Yes sir.

Q. I'd like to introduce this bag as Commonwealth's Exhibit four - this envelope.

THE COURT: With the contents?

D. BROWN: Yes, with the contents.

E. YEARY: Your Honor, I object to that. I don't think the relevancy of any of these documents have been shown at this point.

THE COURT: They will be so marked and introduced into evidence.

(Thereupon, Commonwealth's Exhibits three and four were marked for identification and filed).

D. BROWN:

Q. You personally sent the envelopes containing the material that you wanted analyzed?

A. I sent them to the Division of Consolidated Laboratory Services at Richmond, Virginia.

Q. And did you receive a certificate from them of

analysis?

A. Yes sir.

Q. And I'll ask you if you have it with you?

A. Yes, I do.

Q. And is this the original of that certificate?

A. Yes sir.

Q. And what certified mail number does it have on it?

A. 391122.

Q. Alright. I would like to introduce this certificate and the copy has heretofore been introduced in the District Court and the Circuit Court of Washington County, as Commonwealth's Exhibit #5.

THE COURT: It will be so marked.

(Thereupon, Commonwealth's Exhibit #5 was marked for identification and filed).

E. YEARY: Your Honor, we object to that as being hearsay.

THE COURT: Overruled, Mr. Yeary.

D. BROWN: I believe that's all.

THE COURT: You may examine, Mr. Yeary.

CROSS EXAMINATION:

BY: E. F. YEARY:

Q. Trooper Lambert, I believe that you have been testifying about the events that occurred on January 9th, 1976, is that correct?

A. Yes sir.

Q. And when did you first see Mr. Stillwell that day?

A. That was the first time I had seen him that day.

Q. Where did you first see him?

A. He was walking near his home.

Q. He was walking in the road?

A. I believe he was walking toward his house.

Q. And you all picked him up?

A. I believe he walked on and we followed him back to his house. He was very close to his house.

Q. And were you going there for the express purpose of attempting to purchase anything or obtaining anything from Mr. Stillwell?

A. Yes sir.

Q. And would you have stopped there on that particular occasion, or did the fact that you just happened to see him on the road, make you stop there at this time?

A. No, that is where we were going - to his residence.

Q. Did you have any idea whether or not he would be at home?

A. No.

Q. That was just by chance that you happened to catch him?

A. Yes.

Q. Had you been to his home on other occasions?

A. On one occasion I was there, but I didn't go inside.

Q. And did anyone go inside?

A. Yes sir.

Q. Who was this?

A. Tommy Porter.

Q. And he was with you?

1 A. Yes sir.
2 Q. And when was this in relation to January 9th?
3 A. If I can recall correctly, I'd say within two
4 weeks...probably a week.
5 Q. Was Mr. Stillwell at home on that occasion?
6 A. Yes sir.
7 Q. Was there any reason why you didn't go inside
that time?
8 A. We were taken there by Tommy Porter and he didn't
9 want us to go in with him.
10 Q. Tommy Porter was a good friend of Mr. Stillwell's
11 is that correct?
12 A. Well, it seemed like they were - I don't know.
13 Q. How old was Tommy Porter at the time?
14 A. I believe he was ...he was a juvenile...I believe
he was 17.
15 Q. And how long had you been running around with
16 Tommy Porter?
17 A. Two or three months I would guess.
18 Q. He had been in your car on several other occasions?
19 A. Yes sir.
20 Q. And you all smoked Marijuana together before?
21 A. Yes sir.
Q. And you had supplied it on occasion?
22 A. No sir.
23 Q. Have you ever supplied any beer or wine or anything
24 of that nature to Tommy Porter?
25 A. Yes sir, it was available.

1 Q. You say it was available. Does that mean you
2 supplied it or just what do you mean?
3 A. It was in the vehicle and had he wanted it, he
4 could have had it.
5 Q. Well, you gave it to him, didn't you, isn't that
6 correct?
7 A. If he drank any in the vehicle, that's true. I
8 don't recall right off hand him drinking any -
9 maybe on one occasion he did drink - other than
10 that, it was there in the car for that purpose.
11 Q. And did you think to inquire how old Mr. Porter
12 was?
13 A. No sir.
14 Q. And how long had you been working under cover in
15 the Glade Spring area prior to January 9th, 1976?
16 A. I believe it was about August - somewhere in that
17 area.
18 Q. And would it be safe to say that, in general, you
19 were ingratiating yourself and trying to make
20 friends with the young people in this community?
21 A. Yes sir.
22 Q. Tommy Porter was one of them?
23 A. Yes sir.
24 Q. Was the common gathering place at the time, or during
25 this period of time, the Town Square, where young
26 people would normally hang out?
27 A. Yes sir.
28 Q. I take it that you would probably kind of hang out

1 there yourself?

2 A. Yes sir.

3 Q. When you went to Mr. Stillwell's house on January 9th, did anyone else acocompany you?

4 A. David Weaver was there. Of course, Trooper Smith

5 was there. Tommy Porter and another black subject,

6 I only knew as "Bo"

7 Q. David Weaver was there. Did you...did he come with

8 you?

9 A. Yes sir.

10 Q. And Tommy Porter came with you also?

11 A. Yes sir.

12 Q. And who else?

13 A. Trooper Smith. This subject named "Bo".

14 Q. Was this person charged....this "Bo"...was he

15 ever charged...is that a person who had ever been charged?

16 A. No sir.

17 Q. He was just present?

18 A. He was just along.

19 Q. How old is "Bo"?

20 A. I would guess him to be approximately 30.

21 Q. So five of you were there...did all five of you go in?

22 A. No sir.

23 Q. How many of you went inside?

24 A. Trooper Smith and myself and Tommy Porter, I know

25 for a fact.

22

1 Q. Was David Weaver inside?

2 A. I don't believe he went in on that occasion. He could have, but I don't recall him being inside.

3 Q. Do you know whether he was drunk at that time?

4 A. He may have been.

5 Q. You have been drunk with him before?

6 A. No, I've never seen him drunk.

7 Q. When you went there on January 9th, you and Trooper

8 Smith, you all had planned to go there for some

9 time then? When did you originate your plan on January 9th to go to Mr. Stillwell's?

10 A. We talked Tommy Porter into taking us over there.

11 Q. When was that?

12 A. 6:20 approximately.

13 Q. When did you arrange for Tommy Porter to take you

14 over there?

15 A. When?

16 Q. Yes.

17 A. Just shortly before.

18 Q. Had you and Trooper Smith talked about it prior to this time in words to the effect that "let's

19 tonight or this afternoon check out Stillwell"?

20 A. Well, yes sir, we talked about trying to get Tommy

21 to take us over and introduce us.

22 Q. When did you originate the plan to go to Stillwell's

23 house, you and Trooper Smith?

24 A. Probably that day. We talked about getting Tommy

25 to take us over there.

1 Q. And you asked Tommy to take you over there and
2 help you get some Marijuana?
3 A. About him taking us over there for that purpose,
4 yes.
5 Q. And do you recall who was standing in the room
6 when you arrived at the Stillwell house?
7 A. His wife was there and child.
8 Q. Did you all sit down?
9 A. I didn't. I don't know if any of the rest of them
10 did or not.
11 Q. How long did you stay there?
12 A. Just a few minutes. Just a very short time.
13 Q. How old was the child that was there in the house?
14 A. He was very small - maybe a month or two - pretty
15 small.
16 Q. Who originated the conversation on that occasion
17 about purchasing Marijuana?
18 A. I don't recall exactly - probably Tommy Porter.
19 Q. And that would have been pursuant to your request
20 and your instructions?
21 A. No, Tommy, You know, wasn't working with me or
22 anything. We just talked him into taking us over
23 there. I don't recall who initiated the con-
24 versation.
25 Q. Could it have been yourself or Trooper Smith?
A. It could have.
Q. And if Tommy Porter had done it, it would have been
because you all had asked him to do so?

1 D. BROWN: I object to that. He has already answered that.
2 THE COURT: Mr. Yeary, let's don't repeat, please.
3 E. YEARY:
4 Q. When did you ask him - or whoever asked him - to
5 purchase the Marijuana - do you remember what was
6 said?
7 A. Not word-for-word. I asked him, you know....we
8 talked about the price at one point and it was
9 $15.00 for a bag. It was a little cheaper than what
10 we had been buying, so I remember saying something
11 about "well, that's a lot more reasonable than the
12 usual", so I went ahead and told him that I would
13 take two bags.
14 Q. There wasn't any quibbling or anything - haggling
15 over the price or anything like that?
16 A. No sir.
17 Q. And would you describe the scene there at the time
18 as maybe one of a friendly nature; one between
19 friends?
20 A. Well, there were no arguments or anything like
21 that. I didn't know the people - that was the
22 first time I had met them and as far as I know
23 Trooper Smith had never been there before. Tommy
24 Porter, obviously, knew them and they knew him.
25 Q. Did you all smoke any together there at the time?
A. I don't recall smoking any of that. We were there
only a short time and he asked to go back downtown.
Q. And when you and Trooper Smith went there, I take

1 it Trooper Smith will probably testify that he
2 got something himself on that same occasion, is
3 that correct?
4 A. I expect that he probably will.
5 Q. And that was at the same time; part of the same
6 transaction?
7 A. Well, Trooper Smith carried his own deals out...
8 I didn't have anything to do with that. I never
9 asked him to sell Trooper Smith any. I asked for
10 myself and Trooper Smith asked for himself.
11 Q. I mean, you and Trooper Smith planned...you were
12 working as a team?
13 A. Yes sir, we worked as a team.
14 Q. You had planned, I take it, that if you did obtain
15 any substance from Mr. Stillwell, that you all each
16 would get some?
17 A. Well, I can't hardly say that. We both went there
18 for the purpose of buying it if it was available,
19 and if he could set up a deal, he bought it, and
20 if I could set up a deal, then I bought it. If
21 both of us set up a deal on the same occasion,
22 then we both bought it and he was selling to two
23 different people and...
24 Q. Well, I'm just asking what your plans were...
25 D. BROWN: ...you did ask him that.
LAMBERT: That is how we set things up. That was our plan
for operating on most all occasions we had.
E. YEAR: So, each of you would obtain the material...that

1 was your plan for obtaining the material, is that
2 correct?
3 A. Well, not on each occasion.
4 Q. What occasions could you single out where you did
5 not do that?
6 A. Well, if...well, for instance, if I had a purchase
7 on a subject and Trooper Smith, if he didn't, then
8 he would try to buy some, you know, it's no point
9 in me just going ahead and keeping on buying
10 drugs from the same person.
11 Q. Do you recall who actually took the money?
12 A. It was handed directly to Mr. Stillwell.
13 Q. If I told you that Tommy Porter actually took your
14 money and then gave it to Mr. Stillwell, would you
15 deny that?
16 A. Yes sir. I handed my money to Mr. Stillwell.
17 Yes sir, Mr. Stillwell. He was in the front seat
18 with me.
19 Q. Do you know who took Officer Smith's money?
20 A. No sir, I don't recall. I know that Trooper Smith
21 got into the right rear behind Mr. Stillwell when
22 we drove back to the roller rink.
23 Q. At the time Tommy Porter was asking for you, I take
24 it....or whoever asked him...you say you can't
25 recall...he would also have been doing the same
for Trooper Smith, is that correct? If Tommy
Porter had been the one to ask Mr. Stillwell?
A. I can't testify to that. I don't have any notes

of what Trooper Smith said to him. I know that we went there for that purpose; that I got the stuff and I know we talked about the price.

Q. I thought you said before that you didn't know if Tommy Porter did it or not?

A. I don't recall whether he did or not. I remember talking to him about the price and that was the first $15.00 bag of this material that I had bought and I remember saying that it was cheaper than what I was used to.

Q. At the same time you got your's then, Trooper Smith got his?

D. BROWN: If Your Honor please, that's repetitious.

THE COURT: Mr. Yeary, please let's not repeat in different words. He has testified to that.

E. YEARY:

Q. And did you and Trooper Smith stay in the house together all during this time on January 9th?

A. Yes sir.

Q. Always within five or six feet of each other?

A. Yes sir.

Q. Now, at that any time...I take it that at no time did anyone initiate any conversation regarding any Marijuana or anyting of that nature, other than either you, Officer Smith, or Tommy Porter?

A. I believe that's correct, yes.

Q. Do you recall any words of introduction from Tommy Porter, or how did he go about introducing

you to Mr. Stillwell?

A. I don't believe he ever introduced us really. He might have said that I was Les and this is Doug. I don't recall him ever mentioning our names, really, other than that. That is usually enough to someone that is known in the same circle. It is not a usual thing for you to ask their name or for them to ask you your's.

Q. So, if you are among friends, people take you as a friend also?

A. If there is somebody to vouch for you and take you in.

Q. I believe that's all at this time.

D. BROWN: Mr. Smith.

THE COURT: Now, Mr. Brown, for the record, are you going to introduce any additional evidence for the Commonwealth on 1-77-29?

D. BROWN: No sir, Your Honor.

THE COURT: Alright, so this is the evidence in 1-77-30 for the Commonwealth?

D. BROWN: Yes sir.

D. H. SMITH,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: DAVID D. BROWN:

Q. State your name to the Court, please.

A. Douglas H. Smith.

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1 Q. Where do you live, Mr. Smith?
2 A. Sir?
3 Q. Where do you live?
4 A. I would rather not say.
5 Q. Alright. How old are you?
6 A. I'm 25.
7 Q. And in January of 1976, were you employed by the Virginia State Police?
8 A. Yes sir, I was.
9 Q. And in what capacity?
10 A. I was working narcotics as an undercover Trooper.
11 Q. And is that the reason you don't care to give your address?
12 A. Yes sir.
13 Q. Now, in January of 1976, were you assigned as part
14 of your area, Washington County, Virginia?
15 A. Yes sir.
16 Q. And I'll ask you if you were in Washington County
17 on January 9th, 1976?
18 A. Yes sir, I was.
19 Q. And on that date, did you become acquainted with the defendant, Jerry Dean Stillwell?
20 A. Yes sir.
21 Q. And I'll ask you where you were and where you be-
22 came acquainted with him; what location in
23 Washington County?
24 A. It was at Mr. Stillwell's residence.
25 Q. How did you go to the residence; what means of

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1 transportation did you use?
2 A. We were in a State car - owned by the State, and
3 let's see, there was myself, Trooper Lambert, let's
4 see, Mr. Weaver, and Tommy Porter.
5 Q. When you got to Stillwell's house, approximately
6 what time was it?
7 A. I would imagine it was probably between 6:00
8 and 6:15 P.M.
9 Q. Alright, and after you got there, did you have
10 any dealing or transaction with Jerry Dean Stillwell?
11 A. Yes sir, I did.
12 Q. And what was the nature of the dealing or trans-
13 action that you had with Jerry Dean Stillwell?
14 A. Well, it was approximately 6:10 P.M., that I made
15 a deal with Mr. Stillwell to buy two bags of
16 supposed Marijuana, and...
17 Q. ...you said you made a deal with him. What were
18 you going to give him for the two bags?
19 A. Well, he quoted a price of $15.00 a bag.
20 Q. And did you get the ...what was alleged to be
21 Marijuana?
22 A. Yes sir, I obtained two bags.
23 Q. How soon after you struck the deal with him did you
24 get the two bags of the brown plant material?
25 A. Well, it was just within a coupld of minutes.
Q. Did you see where he got it?
A. No sir.
Q. Did he go out of the room?

A. I believe that he went out of the room, but I couldn't see where he went...I don't know where he got it..I couldn't see him.

Q. Alright. Now, when did you pay him for it?

A. He ....I didn't give him any money. We offered to give him a ride down to Glade...he was going back down into Town. We gave him a ride back down to the skating rink.

Q. When you got into the car you were riding, who was driving the car?

A. I don't remember whether I was driving or Trooper Lambert.

Q. You don't remember where Mr. Stillwell was in the car?

A. No sir, I sure don't.

Q. How did you happen to....what were the circumstances where the money was transferred to him...tell us about that ...how you gave him the money?

A. Well, I just took the money out of my pocket and handed it to him.

Q. You gave it directly to Mr. Stillwell?

A. Yes sir.

Q. Alright, now what did you do with the brown plant material which you received from Mr. Stillwell?

A. The material was kept on my person until I got back to my residence and at my residence I have a box which I can lock- it was a cabinet which only I had the key to, and it was for temporary

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storage of evidence, and the material was stored in this until it was mailed to the Division of Consolidated Labs in Richmond.

Q. Did you mail the material that you got from Mr. Stillwell to the Laboratory for analysis?

A. Yes sir, I did.

Q. How did you mail it...by what means of the mail did you mail it?

A. It was mailed by Certified Mail, Certified Mail number 384520, and the material was mailed on January 12th, and then on January 14th, I received a receipt back from the Lab stating that they had received it.

Q. And I'll ask you if that is the receipt for Certified Mail and also the acknowledgment of the receipt of the Certified Mail?

A. Yes sir, it is.

Q. I would like to introduce the receipt for Certified Mail, 384520, as Commonwealth Exhibit one in the Indictment 1-77-30, and also the acknowledgment of that mailing as Commonwealth Exhibit two in Case number 1-77-30.

THE COURT: They will be so marked and introduced.

(Thereupon Commonwealth Exhibits number one and two were marked for identification and filed).

D. BROWN:

Q. What type package or envelope did you mail this material in?

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1 A. Each individual plastic bag was put into a small
2 white envelope and then it was placed in this
3 large manila envelope.
4 Q. Is this the large, or outer, envelope that you
5 mailed the material in?
6 A. Yes, it is.
7 Q. Does it have on it what Certified Mail number?
8 A. 384520.
9 Q. Did you address that?
10 A. Yes sir, I did.
11 Q. To whom did you send it?
12 A. The Division of Consolidated Lab Services, Bureau
13 of Forensic Science, P. O. Box 999, Richmond,
14 Virginia.
15 Q. Alright, and did you place the Certified Mail
16 number on it?
17 A. Yes sir, I did.
18 Q. Alright, I would like to introduce this envelope.
19 THE COURT: Commonwealth Exhibit number three.
20 D. BROWN: Commonwealth Exhibit number three in Case number
21 1-77-30.
22 (Thereupon, Commonwealth Exhibit number three was
23 marked for identification and filed).
24 D. BROWN:
25 Q. What did you put into the envelope in addition to...
the yellow envelope...what did you put in the
yellow envelope?
A. The small white evidence envelopes were placed in

1 the larger envelope.

2 Q. Who prepared the writing on the envelopes that you

3 placed...the white envelopes....that you placed

4 in the manila envelope?

5 A. It was placed on there by me.

6 Q. Alright, and what did you put in those envelopes?

7 A. Each individual plastic bag of supposed Marijuana

8 was placed in each envelope.

9 Q. And it was the material you had received from what

10 person?

11 A. The defendant, Mr. Stillwell.

12 Q. Alright, and these are the two bags that you

13 placed in the envelope?

14 A. Yes sir, they are.

15 Q. I would like to introduce these two as Commonwealth

16 Exhibits four and five which were in that envelope,

17 Commonwealth Exhibit three.

18 THE COURT: They will be so marked and introduced.

19 (Thereupon Commonwealth Exhibits four and five

20 were marked for identification and filed).

21 E. YEARY: Your Honor, we do have an objection. If the

22 Commonwealth would let me see these items before

23 they are introduced, it would be appreciated.

24 THE COURT: Alright.

25 D. BROWN:

Q. Mr. Smith, did you receive from the Consolidated Laboratories a Certification of Analysis? That is with regard to the materials that you submitted

1 by Certified Mail number 384520?

2 A. Yes sir, I did.

3 Q. And I'll ask you if you have the original of that certificate?

4 A. Yes sir, I do.

5 Q. Alright, is that the original and does it bear on it the evidence submitted by envelope bearing Certified Mail number 384520?

6

7

8 A. Yes sir, it does.

9 Q. I'd like to introduce this...

10 THE COURT: ....let Mr. Yeary see it.

11 D. BROWN: In Case number 1-77-30, as Commonwealth Exhibit six.

12

13 E. YEARY: We object to that as being hearsay.

14 THE COURT: It follows the Statute on it, Mr. Yeary. Overruled.

15 (Thereupon, Commonwealth Exhibit number six was

16 marked for identification and filed).

17 D. BROWN: In the case of 1-77-30, that's all we have.

18 CROSS EXAMINATION:

19 BY: MARY TATE:

20 Q. Trooper Smith, when did you first see Mr. Stillwell on January 9th?

21 A. It was at his residence. As best I can remember,

22 it was at his residence.

23 Q. Was it inside the house?

24 A. I believe we first saw Mr. Stillwell, it might be

25 that he was coming home.

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1 Q. But you say you saw him inside the house?
2 A. I believe so.
3 Q. How did you get the impression that he had just
4 gotten home, Trooper Smith?
5 A. Well, we had been there prior to that and there
6 wasn't anybody at home...or he wasn't at home.
7 Q. Had you been there for the purpose of making a
8 buy?
9 A. Yes.
10 Q. And how long before that had you been there?
11 A. It had been within a half hour I would suppose.
12 Q. Were the same people with you on that occasion?
13 A. Yes, I believe we picked Mr. Porter up. He was at
14 his residence and we picked him up and he rode up
15 there with us.
16 Q. I'm asking you if the same people were with you
17 when you actually made the buy as when you went
18 there the first time?
19 A. Do you mean when there wasn't anybody at home?
20 Q. Yes sir.
21 A. I don't recall. I can't say that everybody was.
22 Q. Had you met Mr. Stillwell before?
23 A. I don't believe I had met Mr. Stillwell before. I
24 had possibly seen him downtown a couple of times,
25 but I personally had never been introduced to him.
Q. For what purpose did you pick up Tommy Porter?
A. He had previously been at Mr. Stillwell's for ...
Mr. Porter had obtained some where we had made a

1 case on Mr. Porter, but at this time I didn't meet
2 Mr. Stillwell, and I really don't know what took
3 place on that occasion.
4 Q. What I'm asking is, for what purpose did you get
5 Mr. Porter? To introduce you to Mr. Stillwell?
6 A. Well, yes, Mr. Porter knew Mr. Stillwell.
7 Q. So, you took him for that purpose?
8 A. Yes.
9 Q. I take it that you and Trooper Lambert were work-
10 ing as a team, is that correct?
11 A. Yes.
12 Q. And both of you had determined that you were going
13 to Stillwell's residence that evening to make a
14 buy, is that correct? You discussed it?
15 A. I don't know what you mean by discussed.
16 Q. Well, did you decide to go there before driving
17 over there?
18 A. Yes M'am, or we wouldn't have know'd where we was
19 going.
20 Q. Okay, and how soon did you pick up Tommy Porter?
21 A. I don't know exactly how long it was prior to that,
22 but we picked Mr. Porter up at his residence, which
23 isn't too far away from the Stillwell house.
24 Q. And when did you decide to do that?
25 A. Well, we usually, you know, have people that we
would stop and talk to, so we stopped and asked
Mr. Porter if he knew, you know, where anything
could be obtained at - any kind of drugs.

1 Q. Did you feel it was necessary to take Mr. Porter?
2 A. I don't know whether it would have been necessary
3 or not, but..like I said...he had been up there
4 prior to this and whether we could have done it
5 on our own, I couldn't say.
6 Q. Then you took Mr. Porter for the purpose of
7 obtaining it just in case you couldn't do it on
8 your own, is that correct?
9 A. Yes M'am.
10 Q. How long were you in Mr. Stillwell's residence if
11 you recall?
12 A. Nothing but just a few minutes. It wasn't too
13 long.
14 Q. Did you smoke with him on that occasion?
15 A. I believe we did.
16 Q. Was everyone there smoking, including Trooper
17 Smith?
18 THE COURT: This is Trooper Smith, young lady.
19 M. TATE: I'm sorry, I mean Trooper Lambert.
20 SMITH: I believe he did too, yes M'am.
21 Q. When did you ask Mr. Stillwell for Marijuana?
22 I guess maybe Trooper Lambert asked for both of
23 you, is that correct?
24 A. I think Trooper Lambert made his buy prior to this.
25 He had dumped it out in the floor - what he had -
and we picked from what he had. It was laying in
the floor.
Q. Okay, and you were handed something at that point,

JO CREWEY
COURT REPORTER
RT. 2, BOX 262
MARION, VIRGINIA 24354

1 or did he...

2 A. ...well, it was all laying in the floor and he

3 said "Just pick which ones you want".

4 Q. And I take it Trooper Lambert picked up three

5 bags for both of you?

6 A. No, I picked up my two bags.

7 Q. And when did you hand over the money, or did you

8 hand over money then and there?

9 A. No, it was a few minutes later at the skating

10 rink. We gave Mr. Stillwell a ride down to the

11 skating rink and it was at this time that he was

12 paid money.

13 Q. And why did you not pay him on the spot?

14 A. We asked him and he said it was not necessary. He

15 said we could just pay him when we got downtown.

16 Q. Trooper Smith, if I told you that the evidence

17 was that Tommy Porter had taken the money for both

18 of you, would you deny that?

19 D. BROWN: I'm going to object to that being the evidence.

20 That is not the evidence.

21 M. TATE: I said "if"...I did not say that was the evidence.

22 THE COURT: Objection sustained. Proceed.

23 D. BROWN: That is the inference and that is not the case.

24 M. TATE: Your Honor, I object to the Commonwealth's Attorney

25 testifying. Trooper Smith, how was the money

26 handed over?

27 A. Well, it was just handed from me to him as best

28 I can remember. I do not have my original notes.

1 Q. So, it is possible that you could have given the
2 money to Tommy Porter and he could have handed
3 it over?
4 A. There is a possibility. I couldn't state for
5 sure without my original notes. It has been so
6 long, I can't remember.
7 Q. Okay. Now, I take it, since you drove Mr.....
8 A. .....If I may put it this way. The money never
9 left my sight. In other words, I know that Mr.
10 Stillwell got the money.
11 Q. But you still don't remember who turned it over?
12 A. No M'am.
13 Q. And I take it since you offerred Mr. Porter a
14 ride down to the skating rink that he did not seem
15 to be in any hurry for his money, is that correct?
16 A. That's correct.
17 Q. If I recall correctly, the amount you paid was
18 $15.00 a bag, is that right?
19 A. Yes M'am.
20 Q. Is that a good price?
21 A. It's real good.
22 Q. Is that the price you would pay a friend for
23 something he had bought for $25.00?
24 A. Normally, most other places that I had dealings
25 with, the same amount of bag or somewhat the same
amount of a bag would sell for $20.00. There were
several people around Glade that you could get it
from for $15.00.

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1 Q. Do you recall any words of introduction from
2 Mr. Porter?
3 A. I believe I was introduced as Trooper Lambert's
4 brother.
5 Q. Did Mr. Porter...or do you recall who supplied the
6 Marijuana that was sold on that occasion?
7 A. Well, it was some that was there. I mean....
8 Q. ...I mean, you stated that Marijuana was smoked
9 there at the Stillwell residence, who supplied the
10 Marijuana that was smoked on that occasion, do you
11 recall?
12 A. As I say, it was some that was there. It was not
13 any that I had bought.
14 Q. Was it some that Trooper Lambert had bought?
15 A. No M'am. Once evidence gets in our hands, we
16 can't let any of it go.
17 Q. So, Mr. Stillwell gave you some, is that correct?
18 A. I...
19 Q. ...to smoke on that occasion?
20 A. Well, it was handed to us, yes M'am.
21 Q. By whom was it handed to you?
22 A. I don't remember which one of them handed it to
23 me. Somebody that was there in the room. It was
24 being passed around.
25 Q. Was it any that Mr. Stillwell owned, or was it
some that someone else brought?
A. Nobody else had any with them as far as I know.
Q. So, it came from Mr. Stillwell?

1 A. As best I know, yes M'am.

2 Q. Did it not indicate to you that Mr. Stillwell....

3 D. BROWN: ....Objection. That's a conclusion asking for any indication - that's a conclusion.

4 THE COURT: He may state what transpired.

5 M. TATE:

6 Q. Trooper, I take it that everyone there was sharing

7 in Mr. Stillwell's Marijuana, is that not true?

8 A. Yes M'am.

9 Q. At no charge, except for...

10 A. ...not for what we smoked, no M'am.

11 Q. I believe that's all on this particular charge,

12 Trooper Smith. One other thing, Trooper Smith,

13 had you seen Mr. Stillwell in the area of Glade

14 Spring prior to this visit in his residence?

15 A. As I stated awhile ago, we did probably see him

16 around Town.

17 Q. Was it part of your plan and your job, so to

18 speak, with Trooper Lambert, to seek out people

19 like Mr. Stillwell who might have something?

20 A. Any time we received the slightest bit of infor-

21 mation from anyone saying we might possibly obtain

22 something from somebody, we always tried to make

23 a buy.

24 Q. And would you do that even though you didn't have

25 any indication that you might get nothing?

A. I don't understand.

Q. Would you just ask anybody you could find?

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1 A. Well, you just didn't go up to somebody and ask
2 them.
3 Q. Was it your plan to use people like Mr. Porter for
4 this purpose, or was it your purpose to hang out
5 on the Square and get these kind of connections?
6 A. Yes M'am.
7 Q. Trooper Smith, do you recall in the testimony of
8 ...during the preliminary hearing...to the effect
9 that you or Trooper Lambert would just walk up to
10 anybody and ask them, especially anybody you saw
11 around the Town Square in Glade?
12 A. I don't recall stating that.
13 Q. Do you recall that being stated by Trooper Lambert?
14 D. BROWN: Objection. If they want to know what Trooper
15 Lambert said up there, the person to ask would be
16 Trooper Lambert.
17 M. TATE: Well, based on what we have just discussed,
18 Trooper Smith, part of your plan was to hang out
19 down there and make connections, is that correct?
20 A. Yes M'am.
21 Q. Trooper Smith, on January 9th, was it a purpose
22 that you and Trooper Lambert had together or a
23 plan to go to Mr. Stillwell's or a plan to make
24 purchases?
25 A. As I said, we rode together and we worked together
but we always tried to make our deal on our own.
Q. It was your plan to go there and make purchases.
That is a very simple question.

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A. Yes M'am.

Q. Trooper Smith, I don't believe you have covered this and I'm sure the Court will correct me if I'm wrong, but who initiated the conversation about Marijuana, was it you; was it Trooper Lambert; was it Tommy Porter; just who was it?

A. At Mr. Stillwell's residence?

Q. At his residence, on January 9th?

A. I don't recall who initially spoke up first.

Q. Would it have been you or Trooper Lambert?

THE COURT: Young Lady, he has already said he doesn't know.

M. TATE: Do you know that it was definitely Mr. Stillwell, or that it was not Mr. Stillwell?

A. I told you I don't know.

Q. That's all of Trooper Smith, Your Honor.

THE COURT: Alright. Any additional evidence from the Commonwealth on 1-77-30, Mr. Brown?

D. BROWN: No sir, Your Honor. We are ready to proceed with Case number 1-77-31, having to do with the sale on January 26th, 1976.

E. YEARY: Your Honor, is the Commonwealth going to rest at the end of all three cases or what?

THE COURT: We're going to hear all the Commonwealth's evidence on each case and then all of your evidence.

E. YEARY: Then I can proceed on my motions at the end of all of their evidence?

THE COURT: Yes.

DIRECT EXAMINATION:

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BY: DAVID D. BROWN:

Q. In Case number 1-77-31, Commonwealth v. Jerry Dean Stillwell, state your name to the Court, please.

A. Douglas H. Smith.

Q. How old are you?

A. 25.

Q. And I'll ask you if, in January of 1976, you were employed by the Virginia State Police?

A. Yes sir, I was.

Q. In what capacity, sir?

A. As an undercover Trooper in narcotics.

Q. In addition to being a regular Trooper, you had that special assignment?

A. Yes sir.

Q. Alright, and in the area of your assignment, was Washington County, Virginia, included in it?

A. Yes sir, it was.

Q. Did you become acquainted with Jerry Dean Stillwell in January of 1976?

A. Yes sir, I did.

Q. And on January 26th, 1976, did you see and have any dealings or transactions with the defendant, Jerry Dean Stillwell?

A. Yes sir, I did.

Q. And I'll ask you where and what were the circumstances and just what the transaction was?

A. On January 26th, 1976, I contacted Mr. Stillwell

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1 at his residence.

2 Q. And where is his residence located?

3 A. I would say East or Northeast of Glade Spring.

4 Q. Is that in Washington County, Virginia?

5 A. Yes sir, it is.

6 Q. Alright, and you contacted him at his residence?

7 A. Yes sir.

8 Q. Do you know what time it was?

9 A. It would have been somewhere between 7:05 and 7:15.

10 Q. Is that in the afternoon or evening?

11 A. Yes sir.

12 Q. Alright, and just tell us what transpired.

13 A. Okay, at this time I asked Mr. Stillwell if he had any Marijuana for sale and he stated that he did,

14 and I purchased one bag of supposed Marijuana from

15 Mr. Stillwell and paid him $15.00.

16 Q. How long from the time that you asked him if he

17 had any Marijuana and he said he did was it until

18 you were delivered the Marijuana, or supposed

19 Marijuana?

20 A. Just a couple of minutes.

21 Q. Did you see where he got it?

22 A. No sir, I did not.

23 Q. And you said you gave him $15.00 for it?

24 A. Yes sir, I paid Mr. Stillwell.

25 Q. What did you do with the brown plant material which you acquired from Mr. Stillwell?

1 A. The material was placed on my person and it was
2 kept on my person in my ...well, it was kept on
3 my person until I arrived home. At home I have a
4 locked box which I use to keep evidence in. It
5 was kept there until it was mailed by Certified
6 Mail to the Division of Consolidated Lab Services
in Richmond.
7 Q. Did you mail the brown plant material that you
8 received from Jerry Dean Stillwell on January
9 26th, 1976, to the Consolidated Laboratories?
10 A. Yes sir, I did. It was mailed by Certified Mail
11 on January 27th, and I received a receipt back
12 on January 28th from the Lab stating that they had
received it.
13 Q. What was your Certified Mail receipt number?
14 E. YEARY: I object and ask that the Court strike from the
15 evidence anything that he said the Consolidated
16 Lab said.
17 THE COURT: Overruled, Mr. Yeary.
18 D. BROWN:
19 Q. What was your Certified Mail receipt number, showing
that you had in fact mailed it?
20 A. My Certified number was 384528.
21 Q. Alright, and then did you receive through the
22 mail an acknowledgment that that package bearing
23 that number, 384528, had been received by the
24 Consolidated Laboratories?
25 A. Yes sir, I did.

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1 Q. I would like to introduce the receipt for
2 Certified Mail as Commonwealth Exhibit one, and
3 the acknowledgment that it had been delivered as
4 Commonwealth Exhibit number two in Case number
5 1-77-31.
THE COURT: Let Mr. Yeary examine them. They will be so marked.
6 (Thereupon, Commonwealth Exhibits number one and
7 two were marked for identification and filed).
8 D. BROWN:
9 Q. Mr. Smith, in what type of package did you mail
10 the material that you received from Jerry Dean
11 Stillwell to the Division of Consolidated Lab-
12 oratories?
A. The plastic bag which contained the material was
13 placed in a small white envelope, which was
14 stamped up for evidence by me and, of course, the
15 envelope was filled out by me, and it was placed
16 in a larger envelope.
17 Q. Is this the larger envelope?
18 A. Yes sir, it is.
19 Q. And what is the color of that?
A. It's a manila envelope.
20 Q. Alright, and who placed the writing on the
21 envelope and directing it to where?
22 A. I placed the writing on there, directing it to
23 the Division of Consolidated Laboratory Services,
24 Bureau of Forensic Science, P. O. Box 999, Richmond,
25 Virginia.

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Q. And what about the Certified Mail....who placed that number on there?

A. It was placed on there by me.

Q. And what is the Certified Mail number on the manila envelope?

A. The Certified number is 384528.

Q. And this is what you mailed the material in you got from Mr. Stillwell to Richmond?

A. Yes sir, it is.

Q. I would like to introduce this as Commonwealth Exhibit three.

THE COURT: Alright, it will be so marked.

(Thereupon, Commonwealth Exhibit three was marked for identification and filed).

E. YEARY: There appears some writing on there that was placed on there by persons other than Mr. Smith, and we would object to that as being hearsay.

THE COURT: Commonwealth Exhibit number three.

D. BROWN:

Q. Mr. Smith, the white envelope that you referred to, do you have that envelope there that you placed the material that you received from Mr. Stillwell that you sent to the Laboratory - do you have that envelope?

A. Yes sir, I do.

Q. And you indicated that...who placed the writing on that envelope?

A. I did.

1 Q. Now, you didn't place the numbers on it, did you?
2 A. No, I did not.
3 Q. I would like to introduce this white envelope as
4 Commonwealth's Exhibit four in Case number 1-77-
5 31.
THE COURT: Alright, it will be so marked.
6 (Thereupon, Commonwealth Exhibit four was marked
7 for identification and filed).
8 D. BROWN: Along with its contents.
9 E. YEARY: Your Honor, we object to the contents. We don't
10 think the relevancy of the contents has been
11 shown.
THE COURT: It will be introduced as Commonwealth Exhibit
12 number four.
13 D. BROWN:
14 Q. Mr. Smith, did you receive a certificate of
15 analysis from the Consolidated Laboratories with
16 regard to the evidence submitted by the envelope
17 bearing Certified Mail number 384528?
18 A. Yes sir, I did.
19 Q. Do you have the original of that certificate?
A. Yes sir, I do.
20 Q. I would like to introduce this as Commonwealth
21 Exhibit number five.
22 E. YEARY: We object to that as being hearsay, Your Honor.
23 THE COURT: Is it in accordance with the Statute, Mr. Yeary?
24 E. YEARY: Yes sir, but we feel...
25 THE COURT: ....overruled....

1 E. YEARY: ...its still hearsay, Your Honor.

2 (Thereupon, Commonwealth Exhibit number five was

3 marked for identification and filed).

4 D. BROWN: That's all for the Commonwealth in Case Number 1-77-31.

5 CROSS EXAMINATION:

6 BY: E. F. YEARY:

7 Q. Mr. Smith, going back to the events that you

8 stated took place on January 12th....

9 A. ...26th.

10 Q. 26th. What time of day were you at the Stillwell

11 residence?

12 A. It was in the afternoon. I made the buy at approximately 7:15 P.M.

13 Q. Do you recall the exact words that you used with

14 Mr. Stillwell at the time you all discussed your

15 getting anything from him?

16 A. No sir, I cannot state my exact words - not under

17 oath, no sir.

18 Q. So, it would not be correct when you said you asked

19 him did he have any Marijuana. Those were not the exact....

20 A. ...that was not the exact words, but it was put

21 to him in that way.

22 Q. You didn't use the word "sell", did you, or did

23 you just ask him if he had any Marijuana there?

24 A. Normally, I'd ask if they did have any and if they

25 did, then I'd ask them.

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1 A. If they would sell some, right.

2 Q. Did you use the word "sell", or would they let you have some, or do you know?

3 A. Most of the time I would ask if they had some for

4 sale if they did have some, or if they would let

5 me have it for sale, you know.

6 Q. Well, did you always use the word "sell"?

7 A. Not always, no.

8 Q. You don't know whether you used it in this case or

9 not?

10 A. No sir.

Q. Who was with you inside the house at this time?

11 A. On this occasion, myself, Trooper Lambert and Mr.

12 Weaver.

13 Q. Mr. who?

14 A. Weaver.

15 Q. David Weaver?

16 A. Yes sir.

17 Q. And he is one of the local boys there around

18 Glade Spring, or...

A. ...that area, yes sir.

19 Q. And how long had you all been running around, so

20 to speak, with David Weaver - you and Trooper

21 Lambert?

22 A. I don't recall the time, it had been a pretty good

23 while though.

24 Q. A pretty good while...maybe three, four five

25

1 months?

2 A. Well, I hadn't known him for that long. Maybe

3 Trooper Lambert did...I can't say, for a fact;

4 I don't know for sure how long he did know him.

5 Q. Did he go in the house with you?

6 A. Yes sir, we all three did.

7 Q. What was the purpose of all three going in, do you

8 know?

9 A. Well, normally, I didn't like to go in a place by

10 myself in case any trouble started or anything,

11 I'd always have somebody to back me up.

12 Q. But you had no reason to believe that any trouble

13 would start on that occasion. The last time you

14 were there - a few days earlier - you all set

15 around and smoked a little bit while you there,

16 even after he agreed that he would let you have

17 some, is that correct?

18 A. Yes sir.

19 Q. No trouble at all.

20 A. No what?

21 Q. I said after he agreed on the other occasion, you

22 all smoked some there - on the other occasion -

23 without any trouble at all.

24 A. Yes sir.

25 Q. So, you had no reason to believe you were going

to expect any trouble on this occasion at the

Stillwell residence?

A. Well, I never had any occasion to think so, but

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I had been confronted with this before and I wasn't figuring on letting it happen again.

Q. Alright, what about Mr. Weaver? Did he go along as one of your back-ups?

A. He just went in with us.

Q. Because he's one of the local boys or what was the purpose in taking him?

A. Well, he was just with us, so he went in with us.

Q. And why was he with you on this occasion?

A. Well, normally, if we saw somebody that we knew, we'd just pick them up.

Q. And did you all smoke pot or Marijuana...when I say "pot", I mean Marijuana, did you all smoke pot with Mr. Weaver on occasion?

A. I don't recall Mr. Weaver ever having any on his person to smoke. I mean that he just brought out where there was just the three of us.

Q. Did you all let him have some?

A. No sir.

Q. What did you let him have...wine or beer?

A. Yes, there was usually wine or beer available in the car.

Q. Both you and Trooper Lambert use the term "Available". What....

A. Well, if we had anything to drink we always, you know, would keep it up front with us and if we had anything, you know, for somebody else to drink, like somebody else was in the car talking to us, we

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1 just left it laying either in the floorboard or in
2 the back seat and usually when they'd see it, they'd
3 ask if they could have a drink.
4 Q. Okay.
5 A. ..or they'd pick it up and drink it anyway.
6 Q. Would it be safe to say during this time period
7 that you and Trooper Lambert were known in the
8 community as one of the boys, so to speak?
9 A. Well, they knew we weren't from around there
10 and didn't even think we was.
11 Q. Well, I mean, you all had been working and building
12 up this image for some months?
13 A. Yes sir.
14 Q. And by building up this image, you all had gone
15 around with young people from time to time and
16 smoked with them, drunk with them, given them
17 wine and beer and all this?
18 A. Yes.
19 Q. Including people who were under the age of 18?
20 A. We never personally gave anything to anybody...or
21 intentionally gave anything to anbody that we
22 thought was...
23 Q. ...well, I'm not asking what you did intentionally,
24 but I'm saying that you did this?
25 A. Yes sir.
Q. And did you ever intentionally make any inquiries
as to the age of these young people that you were
buying beer and wine for and giving it to?

A. Well, if you had asked them, they probably would tell you, but you couldn't do that or it would blow your cover.

Q. Well, did you make any concerted effort of any kind to find out what their age might be?

A. We were told when we were put on the program by the....

Q. ....Mr. Smith, what I'm asking is: Did you make any effort to find out any of these young people that you were giving this beer and wine to....

A. ...only after they were arrested.

Q. But not before?

A. No sir.

Q. During this time, you all would be going around doing this for weeks with these young people in the Glade Spring area?

A. We didn't normally drink, no sir. Most of the time we'd be out on the parking lot with them, just talking.

Q. ...sometimes drinking?

A. Yes sir.

Q. Smoking pot?

D. BROWN: We object...that's repetitious.

THE COURT: Mr. Yeary, let's not keep repeating, please.

E. YEARY:

Q. Do you recall on January 26th when you went into Mr. Stillwell's home, who started the conversation?

A. I did.

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1 Q. And you asked him if he had any Marijuana could he
2 let you have it?
A. I asked him.
3 Q. So, the idea then to go there initiated by you?
4 A. We had discussed prior to going up there...we
5 discussed it that I would make the case because...
6 Q. ...you and Trooper Lambert?
7 A. Right.
8 Q. You all had planned this for sometime?
9 A. Just that night.
10 Q. Why didn't Smith make a case on this occasion like
you did...excuse me, Lambert...like you did on
11 the other occasion? What was the reason you all
12 didn't do that?
13 A. We didn't feel it was necessary.
14 Q. Why did you feel this one was necessary?
15 A. Well, we just wanted to show when we got to court
16 that..that we had bought on several occasions and
that the subject did have it.
17 Q. Well, you didn't do that on the other people?
18 A. A lot of times, you couldn't, because they'd get
19 suspicious of you or maybe not have it the next
20 time.
21 Q. Okay. So, this whole transaction then was con-
22 ceived and planned by you and Trooper Lambert?
23 A. Yes sir.
24 Q. In all respects, isn't that correct?
25 A. Yes sir, I would say so.

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1 Q. That's all.

2 REDIRECT EXAMINATION:

3 BY: D. BROWN:

4 Q. Trooper Smith, on January 26th, 1976, you paid Jerry Dean Stillwell for the Marijuana, didn't you?

5 A. Yes sir, I did.

6 THE COURT: Mr. Brown, you covered that.

7 D. BROWN: Alright.

8 E. YEARY: One other question: You all smoked some on this

9 occasion, too?

10 A. Yes sir, while we were standing there, Mr. Stillwell

11 told his wife to go back to the bedroom to get some

12 of his stuff...he stated it like that.

13 Q. This was after the transaction...

14 A. ...it was...

15 Q. ...I mean, you had made the case at that point, in your words?

16 A. Yes sir.

17 Q. So, here again he just voluntarily offerred you

18 some of his as a friend and you all smoked some?

19 A. Yes sir.

20 Q. There in his home?

21 A. Yes sir.

22 Q. I believe that's all.

23 THE COURT: Anything else for the Commonwealth in this Indictment, Mr. Brown?

24 D. BROWN: No sir, nothing in the case 1-77-31.

25 THE COURT: Alright, the Commonwealth has rested in all three

1 cases against Mr. Stillwell?

2 D. BROWN: Yes sir.

3 E. YEARY: We have several motions we would like to make at this time if it please the Court.

4 THE COURT: Alright.

5 E. YEARY: I would like to move to strike the evidence of

6 the Commonwealth on all three counts. We submit

7 that from the evidence of the Commonwealth's

8 witnesses that in each case the Marijuana, if it

9 was Marijuana, was conceived...the idea to receive

10 it...was conceived and planned by the officers.

11 No mention has been made from anyone that he would have done it otherwise and we would submit that

12 for that reason, the charges should be dismissed.

13 THE COURT: That motion is denied.

14 E. YEARY: The second motion or the second reason we would

15 ask the Court to strike the evidence of the Common-

16 wealth, at least as to the .....

17 THE COURT: ...on your motion on multiplicity, the Court took

18 that under advisement. I guess you want to renew that motion?

19 E. YEARY: Yes, I do.

20 THE COURT: That motion is denied.

21 E. YEARY: Your Honor, we would also ask the Court at this

22 time to strike the evidence as to the felony

23 charges and to reduce it to accomodation.

24 THE COURT: Overruled. That motion is denied.

25 E. YEARY: We call Kenny Forrester.

1 DIRECT EXAMINATION:

2 KENNY FORRESTER,

3 having been duly sworn, testified as follows:

4 BY: E. F. YEARY:

5 Q. Would you state your name, please?

6 A. Kenneth Ray Forrester.

7 Q. And, Mr. Forrester, how old are you?

8 A. 18.

9 Q. And how long have you been 18?

10 A. Since March 9th.

11 Q. And prior to today, have you had occasion to know Mr. Smith, who has testified in this case today, and State Trooper Lambert?

12 A. Yes sir.

13 Q. And how long have you known those two gentlemen?

14 A. Since when?

15 Q. About how long ago did you first meet them?

16 A. I don't remember.

17 Q. Well, going back to January of 1976, about a year and a half ago, more or less, did you know them at that time?

18

19 A. A year and a half?

20 Q. Yes.

21 A. I'd guess.

22 Q. Did you, or do you remember about the first time that you made their acquaintance?

23

24 A. Yes.

25 Q. Can you tell the Court how this came about - what

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1 dealings, if any, you had with them after that?
2 A. Well, I was coming down off of the Texaco hill...
3 Q. ...that's in Glade Spring?
4 A. Um-hum, and I was coming down under the under-pass
5 and they was setting over at Tommy Porter's house
6 and I was walking by and Tommy was there and he
7 said "You want to go get some beer", and I said
8 "Yeah", so I got in and we got some beer and some
9 pot.
10 Q. Who bought the beer?
11 A. Tommy had the money and he give it to one of them
12 and I can't remember which one of them went in...
13 which one went in and got the beer.
14 Q. And did anyone inquire as to how old you were at
15 the time?
16 A. No sir.
17 Q. And...
18 A. ...not 'til we got there.
19 Q. And when you got there, what was said about your
20 age?
21 A. They give me the money...Tommy handed the money
22 across the seat and we told them that we wasn't
23 old enough to get it and so they went in and got
24 it...one of them went in and got it. I don't
25 remember which one of them went and got it.
Q. You say they went in...where was this you went to?
A. Chilhowie.
Q. What about the pot? Where did that come from that

1 you smoked on that occasion?
2 A. I think I had some and Porter had some too.
3 Q. You had some on you then?
4 A. Yeah.
5 Q. Did you ever smoke any with them after that?
6 A. Yes sir.
7 Q. Where did it come from on the other occasions?
8 A. Well, they had some and then they asked me where they could get some more at because they was about
9 out.
10 Q. How long did your relationship along this line, that is, you all would drink beer together and
11 smoke pot together..how long did that last?
12 A. I'd say about three months.
13 Q. Did the officers ever sell any pot to you?
14 A. Yes sir.
15 Q. And when was this?
16 A. I don't remember when it was but he said....
17 Q. ...which one was it, Trooper Lambert or Mr. Smith?
18 A. I think it was Trooper Lambert because he said, asked to sell me five dollars worth and I told
19 him I didn't have the money and he said I could pay him later, but I never did see him no more
20 until they come and picked us all up.
21 Q. How would you describe the relationship that you and Mr. Porter had with Officers Smith and Lambert?
22 A. Well, we thought they had just started smoking pot and they wanted to know everybody, you know,
23
24
25

1 and just have a good time.
2 Q. Did you later let them have some pot yourself?
3 A. Yes sir.
4 Q. And did you do that for any profit or anything of that nature?
5 A. No. I was just doing them a favor because they'd
6 done me one, riding me around and giving me beer
7 and wine and stuff.
8 Q. How were you travelling about Glade Spring during
9 this time...what was your mode of transportation?
10 A. With them?
11 Q. No, did you have any kind of vehicle..bicycle?
12 A. Had a bicycle.
13 Q. Did they ever get you off your bicycle and take you along with them?
14 A. Yes sir.
15 Q. Did they ever ask you to find any Marijuana for
16 them?
17 A. Yes sir.
18 Q. And what would they tell you?
19 A. Most of the time they'd always be looking for
20 pounds and then I'd tell them I couldn't get no
21 pounds and that I would be able to get them a bag.
22 They'd wait somewhere and I'd go get it and then
23 come back. They'd let me out and I'd tell them
24 to go on down the road and I'd go get it and then they'd come back.
25 Q. You are acquainted with Mr. Stillwell?

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1 A. Yes.
2 Q. How long have you known him?
3 A. About four years, I'd say.
4 Q. And do you all live in the same community there in Glade Spring?
5 A. Yeah.
6 Q. And does Jerry Stillwell have the reputation of being a pusher or anything of that nature?
7 A. No sir.
8 Q. Do you think if he had been you would have known about it?
9 A. Yes sir.
10 Q. And you were smoking Marijuana during this period in January of 1976 yourself?
11 A. Yes sir.
12 Q. I believe that's all.
13 CROSS EXAMINATION:
14 BY: DAVID D. BROWN:
15 Q. You say your name is Kenny Forrester?
16 A. Yes sir.
17 Q. And born March 9th, 1959?
18 A. Yes sir.
19 Q. Where do you live now?
20 A. Glade Spring.
21 Q. Are you in school?
22 A. No sir, I'm employed.
23 Q. In January of 1976, were you in school?
24 A. No sir.
25

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1 Q. What were you doing in January of 1976?

2 A. Yes sir, I was still in school. in January, because I didn't quit 'til March.

3 Q. Alright, and you indicated that Tommy was the one

4 that asked you if you wanted some beer?

5 A. Yeah, he had one can of Black Label was all he had.

6 Q. And Tommy had the money to buy the beer?

7 A. Yeah, he asked me did I want to go.

8 Q. Tommy asked you to go?

9 A. Yeah, but I asked him if they'd care and he said

10 no, they didn't care.

11 Q. Tommy was the one who invited you, right?

12 A. Yeah.

13 Q. And you said you were arrested. Were you arrested on drug charges?

14 A. Yes sir.

15 Q. These same people - Lambert and Smith - did they

16 bring charges against you?

17 A. Yes sir.

18 Q. Were those charges disposed of as a juvenile matter?

19 A. Yeah.

20 REDIRECT EXAMINATION:

21 BY: E. F. YEARY:

22 Q. How old was Tommy Porter at the time?

23 A. I think he was 17 too.

24 Q. Whose vehicle did you all...

25 THE COURT: Now, Mr. Yeary, you've gone through that once.

1 E. F. YEARY:

2 Q. Well, the occasions - other occasions you were out
3 with them, by whose invitation was it that you
4 happened to go along with them when you smoked
5 pot with them and they bought beer?

6 A. Their's.

7 Q. Always by their invitation?

8 A. Yes sir, just that one time that it was Tommy's,
it was always their's.

9 Q. And how many times after that firstoccasion
10 would you say you went around smoking with them,
11 drinking with them, this sort of thing?

12 A. Three or four times.

13 Q. I believe that's all.

DAVID MICHAEL WEAVER,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINTION:

16 BY: E. F. YEARY:

17 Q. Would you state your name, please?

18 A. David Michael Weaver.

19 Q. And, Mr. Weaver, how old are you?

20 A. 22.

Q. And where do you reside at the present time?

21 A. In Saltville.

22 Q. That's Saltville, Virginia?

23 A. Yes sir.

24 Q. Are you acquainted with Mr. Smith, formerly with
25 the Virginia State Police, and Trooper Lambert,

1 presently a Trooper with the Virginia Department of
2 State Police?
3 A. Yes sir.
4 Q. How long have you known them?
5 A. Around two years.
6 Q. And how did you make their acquaintance?
7 A. Well, I don't know really...they just seemed like, you know, pretty nice guys.
8 Q. Where did you first meet them?
9 A. Up around Marion.
10 Q. And after that, did you all start running around together?
11 A. Yes sir.
12 Q. And let's go back to January - let's say a period
13 from October of 1975, to March or April of 1976,
14 during that period of time, did you have a chance
15 to be running around with them in the Glade Spring
16 and Saltville area?
17 A. Yes sir.
18 Q. And how often would you say you were running around with them?
19 A. It would be two, three, four times a week, I'd
20 say.
21 Q. And what would you all do when you would get out
22 together?
23 A. Do a little bit of drinking along with the drugs.
24 Q. With the drugs?
25 A. Right.

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1 Q. Would you be helping them look for drugs?
2 A. Yes sir.
3 Q. Tell me how you would go about this.
4 A. Well, they didn't know anybody around.
5 Q. Well, would you just normally start asking anybody...
6 A. ...anybody I knew, your know, asking about it.
7 Q. And each time you asked, would this always be at
8 their request?
9 A. Yes.
10 Q. And each time you asked, would you initiate the
11 conversation in order to purchase the drugs?
12 D. BROWN: I'm going to object to this. His whole line of
13 questions are leading.
14 THE COURT: Mr. Yeary, let's get down to the issue before the
Court, would you, please sir?
15 E. YEARY: Your Honor, we submit...
16 THE COURT: ...objection sustained. You may note your except-
17 ion and proceed.
18 E. YEARY: Well, the exception would be on the basis that
19 we offer this witness for two issues now before
20 the Court, Your Honor. One would be on the issue
of entrapment; the second would be on the issue of
21 accomodation, and since this man now has testified
22 that he .....
23 THE COURT: .....proceed with your questioning, Mr. Yeary.
24 E. F. YEARY:
25 Q. Would you describe how you would go about contacting

the people and what would be your role in assisting these officers?

A. Well, we'd drive around and if I saw somebody I knew, I'd just ask them if they knew where there was any pot, Marijuana.

Q. And on any of these occasions would you remind the persons of any favors you had done them and so forth?

A. Huh-uh.

Q. I beg your pardon?

A. I don't believe so.

Q. Well, in the case of Mr. Surber about a week ago, I believe you testified to that, didn't you?

A. Mr. Surber....maybe. I ain't sure though.

Q. Did you ever have occasion to go to Mr. Stillwell's house, the defendant in this case?

A. I've only been there once or twice.

Q. Was this with either Trooper Smith or Lambert?

A. Yes sir.

Q. Did you go inside the house on either occasion?

A. I time I know of...I'm not sure about the other.

Q. And the occasion that you know of, would you describe the scene on that occasion as being a friendly one between friends?

A. Yes.

Q. What happened?

A. Well, we went in and they already knew Mr. Stillwell and we went in and set down and the Officer

there asked him if he had any drugs...he said could he buy any drugs.

Q. Did they initiate the conversation regarding any drugs?

A. Yes.

Q. I don't believe they used the term "sell", did they...didn't they say did he know of any pot they could get or something along that line?

A. Yeah.

Q. Was there any pot being smoked between Stillwell and the Officers at that time?

A. Yes sir.

Q. How would you describe the scene there...was it a business-type transaction or just transactions between friends?

A. Just a friendly transaction.

Q. On that occasion, did Mr. Stillwell let either Officer have anything?

A. I can't remember to be sure about that. I was sort of drunk and I can't remember.

Q. You were drunk?

A. Yes sir.

Q. When did you get drunk?

A. Well, the Officers they, whenever I'd go with them, they'd have some beer or some wine or something like that. I'd sort of get drunk.

Q. They didn't object to that I don't imagine?

A. No sir.

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1 Q. How long did they feed you this beer and wine?
2 How long did this last?
3 A. Several Times. I don't know the exact number..
4 just a few times.
5 Q. I believe that's all.
6 CROSS EXAMINATION:
BY: DAVID D. BROWN:
7 Q. David, during the time you were with the Officers,
8 what did you drink?
9 A. Wine, beer....
10 Q. ...was it available there and you just drank it?
11 A. Yes sir.
12 Q. And were you on drugs at that time?
13 A. Yes sir.
14 Q. And have you had any treatment for drugs, being
on drugs; being addicted to drugs?
15 A. Yes sir, going to a Psychiatrist.
16 Q. You've been confined to a mental institution too,
17 haven't you?
18 A. Yes sir.
19 Q. How many times?
20 A. Several times...I don't remember the exact number.
21 Q. And has that been since January of '76, that
you've been confined in a mental institution?
22 A. Let's see....I believe so.
23 Q. And you said in answer to Mr. Yeary's question,
24 that you didn't really know how you made Lambert's
25 and Smith's acquaintances, didn't you?

1 A. Yes sir.

2 Q. You described this scene at the Stillwell home that

3 you observed as being friendly, but the Officers

4 paid for what they got, didn't they?

5 A. I couldn't tell you because I don't really remember.

6 It has been a long time.

7 Q. You didn't see the money exchange hands?

8 A. I don't remember...I don't think so.

9 Q. You indicated that you asked these people if they

10 had anything to give or sell or whatever. Why

11 did you do that?

12 A. Well, they asked me to, so I did it.

13 Q. Would you do that for anybody that asked you?

14 A. No sir. They seemed friendly and I thought they

15 were pretty nice people.

16 Q. I believe that's all.

17 LARRY LINK,

18 having first been duly sworn, testified as follows:

19 DIRECT EXAMINATION:

20 BY: E. F. YEARY:

21 Q. State your name and your age, please.

22 A. Larry Link. I'm 20.

23 Q. Mr. Link, where do you reside?

24 A. In Glade Spring.

25 Q. You are acquainted with Trooper L. E. Lambert, and

former State Trooper, D. H. Smith? I believe they

are back in the witness room at the present time.

A. I know them whenever I see them. I'm not really,

1 what you call acquainted with them.

2 Q. How long have you lived around the Glade Spring area?

3 A. About ten years, I guess.

4 Q. Had you had any previous experience with these two Officers, Mr. Lambert or Mr. Smith?

5 A. Yeah, I had one encounter with them.

6 Q. Tell the Court what that was.

7 A. They'd been around Glade, and they come up to me and asked me, you know, where they could find any Marijuana or anything and I give them a joint or something and anyway they had a warrant out for me and I went through the courts and everything and I ended up with a fine and a year, suspended.

8

9

10

11

12

13 Q. Have you ever had any occasion for them to give you any?

14

15 A. No. They never did give me any. They was all the time looking for some.

16

17 Q. On this occasion that you let them have a, you say a joint?

18 A. Yeah.

19 Q. How did you finally let them have some? Is that your policy or something of that nature?

20

21 A. No, they kept on coming around and they'd asked me about it three or four times on different occasions. They'd drive up next to the car and ask me where they could find some. I had a little bit on me one time and I give them a joint and sent them on their

22

23

24

25

way. I didn't have anything to do with them.

Q. Now, you are familiar with people in Glade Spring?

A. Um-hum.

Q. Was Jerry Stillwell ever known to be a pusher or have that reputation?

A. No, nope.

Q. If he had, would you have known about it...that he was pushing drugs?

A. Yes, as small as Glade is, I probably would have known about it.

Q. I believe that's all.

CROSS EXAMINATION:

BY: DAVID D. BROWN:

Q. You have indicated, Mr. Link, that Trooper Lambert and Smith came up to you and indicated to you ....asked you if you knew where they could get any drugs?

A. Yes sir.

Q. They asked you, didn't they?

A. Yes, um-hum.

Q. One or the other, or both of them?

A. Lambert did.

Q. Lambert asked you?

A. Yeah.

Q. Smith was present?

A. Yeah, he was in the car with Lambert.

Q. Was anybody else with them?

A. Not that I know of.

1 Q. So they were going around asking where to find
2 drugs?
3 A. Um-hum.
4 Q. Do you know David Weaver - Michael Weaver?
5 A. David, yeah.
6 Q. He wasn't with them on the occasion you were talk-
7 ing about, was he?
8 A. No, not on that occasion.
9 Q. Tommy Porter wasn't with them either, was he?
10 A. No sir.
11 Q. Are you in the Air Force, or have you been dis-
12 charged, or what is your status?
13 A. I'm going into the Air Force this Fall.
14 Q. I believe that's all.
15 ARTHUR L. GOFF, JR.,
16 having first been duly sworn, testified as follows:
17 DIRECT EXAMINATION:
18 BY: E. F. YEARY:
19 Q. Would you state your name to the Court, please?
20 A. A. L. Goff, Jr.,....Arthur L. Goff.
21 Q. And, Mr. Goff, what is your age and where do you
22 live?
23 A. 53 years old. I live in Glade Spring.
24 Q. And how long have you lived in Glade Spring,
25 Virginia?
A. I think it was '36, something like that.
Q. So, it would be safe to say you have lived there
practically all your life?

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1 A. Yes sir.

2 Q. Are you acquainted with Jerry Stillwell, the

3 defendant in this case?

4 A. Yes, I am.

5 Q. How long have you known him?

6 A. About three years.

7 Q. Do you know when he ....well, what is your

8 occupation?

9 A. I'm a brick layer by trade and I build houses,

10 small houses, now. I'm a brick layer by trade.

11 Q. Are you acquainted with the reputation of Mr.

12 Stillwell for truth and veracity in Glade Spring?

13 A. Yes, I am.

14 Q. And tell the Court what you know about his

15 reputation - what it is?

16 A. It is very good. Most of what I know about him is

17 his workmanship and it is in that route that I

18 became acquainted with him. He is a very con-

19 scientious young man; a very good worker; a very

20 good brick layer.

21 Q. If he had a bad reputation, I take it you would

22 probably know about it in Glade Spring?

23 A. I imagine so...it is a small community. I never

24 heard of anything. This was news to me when I

25 heard of this.

Q. Would you describe him as an asset to the

community?

A. Yes sir.

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THE COURT: Is this a character witness, Mr. Yeary?

E. F. YEARY: Yes sir.

THE COURT: Well, now look, you know the rules of presenting evidence of this nature, so let's stick to them.

E. F. YEARY: I believe that's all.

CROSS EXAMINATION:

BY: DAVID D. BROWN:

Q. Mr. Goff, how long have you known Mr. Stillwell?

A. About three years.

Q. And your connection has been that he works for you?

A. Yes sir, he has.

Q. For that long?

A. No sir, he hasn't worked for me that long. It's through a mutual understanding in the trade.

Q. How long has he worked for you?

A. He worked for me on and off for about a year.

Q. That's in the past year?

A. Yes sir.

Q. Alright, I believe that's all.

THE COURT: Next witness.

E. YEARY: I call Trooper Lambert as an adverse and hostile witness.

L. E. LAMBERT,

having heretofore been sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. I believe you are the same Trooper Lambert that testified here previously in this case, is that

1 correct?

2 A. Yes sir.

3 Q. Trooper Lambert, are acquainted with a person by the name of Norman Richards?

4 A. No, I don't think so.

5 Q. Do you know whether you or your partner had any cases involving him?

6

7 A. No sir, I don't recall any.

8 Q. I believe that's all.

9 D. BROWN: No questions.

10 E. YEARY: I call Mr. Smith as an adverse and hostile witness.

11

12 D. H. SMITH,

13 having heretofore been sworn, testified as follows:

DIRECT EXAMINATION:

14 BY: E. F. YEARY:

15 Q. Would you state your name, please?

16 A. Douglas H. Smith.

17 Q. And you are the same Mr. Smith that testified here earlier today in this case?

18

19 A. Yes sir.

20 Q. Mr. Smith, are you acquainted with a person known as Norman Richards?

21 A. No sir, the names' not familiar.

22 Q. Do you recall bringing charges against anybody who happens to be back in the witness room right now?

23

24

25 A. Do I remember bringing charges against him?

Q. Yes.

A. Just Mr. Forrester.

Q. Anyone besides him?

A. I don't believe so.

Q. I belive that's all.

CROSS EXAMINATION:

BY: DAVID D. BROWN:

Q. Mr. Smith, have you seen everybody that's back in the back room?

A. No sir, I didn't get a good look at everybody.

Q. You have been standing outside the door here just as you go down the steps, haven't you?

A. Yes sir.

Q. You haven't been back in the witness room?

A. No sir.

E. YEARY: Your Honor, for the purpose of identification, and so he'll know the person we're talking about, we ask that Mr. Richards be....

THE COURT: ...what is the basis of this, Mr. Yeary...I don't follow you.

E. YEARY: Your Honor, we would submit to the Court that Smith or Lambert and perhaps both, filed charges of a similiar nature against Mr. Norman Richards, who is also a young man that they procured and connived this offense against him, and this man has an I.Q. of about 65...and at the time he had an I.Q. of 65 and had been under psychiatric care since he was in grade school. That would be

the purpose in calling him.

THE COURT: Now, what is your request, Mr. Yeary?

E. YEARY: That Mr. Richards be called and identified.

THE COURT: Any objection, Mr. Brown?

D. BROWN: No sir.

(Thereupon, Norman Richards was brought into the courtroom for identification).

E. YEARY:

Q. Mr. Smith, Mr. Richards has just been brought into the courtroom. He came in with Captain McCall. Do you recognize him?

A. No sir.

Q. You have never seen him before?

A. I have never talked with a Norman Richards, no sir, or charged a Norman Richards.

Q. Have you charged that young man before?

A. He doesn't look familiar to me.

Q. He can be taken out now. On the second occasion, Mr. Smith, that you were in the Stillwell home on January 26th, did you not take a pipe in with you at that time?

A. I had a pipe on my person, yes sir.

Q. A Marijuana pipe?

A. It was a pipe. It's not specifically called a Marijuana pipe.

Q. What did it look like? Is it the type you would normally smoke tobacco in or does it have....

A. ...it was more or less...it was a metal pipe.

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1 Q. Well, that's the kind of pipe Marijuana is usually
2 used in?
3 A. Yes sir.
4 Q. Marijuana?
5 A. That and hash both.
6 Q. And did you use that pipe to smoke your Marijuana
on that particular occasion?
7 A. I believe I did, yes sir.
8 Q. What about on the previous occasion?
9 A. I think just the one time is all I had it with me.
10 Q. So, when you took the pipe in there you expected
to use it?
11 A. I always carried it....if they'd see that pipe, a
12 lot of times they'd know you used it.
13 Q. But you didn't have to use it, though?
14 A. Well, like I said, we used it that one time, yes.
15 Like I say, I never had anything to smoke in it
16 myself.
17 Q. Well, you had something to smoke in it on that
18 occasion?
19 A. Yes, but it was what we got there.
20 Q. That they gave you?
21 A. Yes.
Q. That's all.
22 CROSS EXAMINATION:
23 BY: DAVID D. BROWN:
24 Q. Mr. Smith, did you and Trooper Lambert plan the
25 entire....

1 M. TATE: ....Objection, Your Honor, that was not a subject
2 on direct examination.
3 THE COURT: He has been recalled and he may go into it.
4 D. BROWN:
5 Q. In all respects, did you all plan the entire
6 transaction?
7 E. YEARY: Objection. He's trying to impeach his own
8 witness, Your Honor.
9 D. BROWN: I just asked him a question.
10 THE COURT: Overruled, Mr. Yeary.
11 D. BROWN:
12 Q. What did you understand the meaning of.....
13 A. I understood awhile ago, the way he said, "Did
14 we discuss going there", naturally, we said, you
15 know, "Let's go to Stillwell's", but we didn't
16 plan everything out in detail.
17 Q. Was there any plan who would buy on either occasion?
18 A. No, we were both trying to buy.
19 Q. On the first occasion on January 6th, 1976, was
20 there any plan as to who was going to buy?
21 A. We were, you know, like I say, we both tried to
22 buy whenever we could. There was no step-by-step
23 plan ever laid out.
24 Q. But you did discuss going there?
25 A. Oh, yes sir.
Q. Alright, that's all.
E. YEARY: Well, you discussed what you normally did. I'm
not saying you had a one through ten procedure,

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step-by-step, but you generally had the idea.

A. I would say, you know, "Let's go up to Stillwell's and see if we can make a buy", or something like that. We never discussed you know, I'll say this and you say that, or anything like that.

Q. But the idea to go up there was discussed and planned by you?

A. Well, we'd have to talk it over between us or we wouldn't know where we was going.

Q. That's right. Thank you.

THE COURT: Next witness, Mr. Yeary.

DANIEL H. EDDY,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

E. F. YEARY:

Q. Would you state your name, please?

A. Daniel H. Eddy.

Q. And, Mr. Eddy, what is your age and where do you live, sir?

A. I'm 55 years old and I live at Glade Spring.

Q. How long have you lived in the Glade Spring, Virginia, Washington County area?

A. 50 years.

Q. And where did you live prior to that?

A. Roanoke, Virginia.

Q. In Roanoke?

A. Yes sir.

Q. Did you ever have occasion to be out of the Country

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1 or anything of this nature?

2 A. Yes sir, World War II.

3 Q. And how long were you in Service during World War II?

4 A. Three years eight months.

5 Q. Have you had occasion...well, let me ask you one

6 other question: When were you in Roanoke,

7 Virginia?

8 A. I was born there....the first five years of my

9 life.

10 Q. And then World War II, with that exception, all the rest you have lived in Washington County?

11 A. Except periodical times when I have been out of

12 town to work and return.

13 Q. How long have you now lived in the Glade Spring

14 community?

15 A. Sixteen years.

16 Q. How long have you been acquainted with Jerry

17 Stillwell?

18 A. Since he was born.

19 Q. Are you acquainted with his reputation in the Glade Spring, Washington County community for

20 truth and honesty?

21 A. Yes sir.

22 Q. And how do you know this reputation?

23 A. I find him to be honest and sincere in all deal-

24 ings at any time.

25 Q. Is this his reputation in the community also?

55

A. Yes sir.

Q. And if it were otherwise, would you know about it?

A. I'm reasonably sure I would.

Q. Why do you say that?

A. Well, I've worked with him now for ..since last Summer. I've planted gardens with him and, as I say, I've saw him almost every day right on up through his childhood and I've had personal dealings with him since he came to work with us.

Q. I believe that's all.

D. BROWN: No questions.

JAMES L. GOINS,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Would you state your name, please?

A. James L. Goins.

Q. Mr. Goins, what is your age and where do you reside?

A. I'm over 21 and I live out here on the lake.

Q. Well, for the record, would you tell us how much over 21 you are?

A. Is that required and necessary?

Q. Well, would it be safe to say you are at least 25 years over the age of 21?

A. It would be safe to say past 50.

Q. Alright. Now, Mr. Goins, are you acquainted with Jerry Stillwell?

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A. Yes.

Q. And how long have you known him?

A. Around four years.

Q. You have lived in the Washington County community for how long?

A. 23 years.

Q. Are you acquainted with Mr. Stillwell's reputation in the Washington County community?

A. Yes.

Q. For truth and honesty?

A. Yes.

Q. And would you tell the Court what you know that reputation to be?

A. Well, it's very good. He worked for me for a year - oh, about a year or two out there. He's a good worker and an honest boy. In fact, he kept his own payroll and the other boys' payroll. He checked out very good and he was a very good worker.

Q. Did he have occasion to be working for you in January of 1976?

A. No, he was working for a friend of mine up there, lay-ing brick up there on a house.

Q. "Up there"...where would this be?

A. Right above me just a little ways. I was up there every day or two and saw him. It was just a friend of mine; I sold him the lot; and he was helping build a house on it.

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Q. And you have a place, when you say "there", you are talking about the South Holston Lake area?

A. Yes. That's what I spoke of.

Q. I believe that's all.

D. BROWN: No questions.

PATRICIA KAY STILLWELL,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Would you state your name, please?

A. Patricia Kay Stillwell.

Q. And, Mrs. Stillwell, how old are you?

A. 20.

Q. And you are the wife, I believe, of Jerry Stillwell, the defendant?

A. Yes sir.

Q. And were you all married to each other during the period of January, 1976?

A. Yes sir.

Q. And living in Glade Spring, Virginia, I believe?

A. Yes.

Q. Now, are you acquainted with persons known as Officers Lambert and Smith, who previously testified in this case?

A. Yes.

Q. How long have you known them prior to today?

A. Prior to today?

Q. Yes?

1 A. About a year and a half.

2 Q. And going back to January of 1976, had you known
3 them prior to that time; had occasion to see them
4 in and around Glade?

5 A. I had seen them before then and Jerry Know'd them,
6 but I never met them except that night...January
7 9th.

8 Q. And would you describe the scene at the house;
9 what took place then, and how it came about..all
10 this on January 9th?

11 A. Well, I had just come home from the hospital and
12 they come up to the house with some friends,
13 wanting to buy some pot. They just come up with
14 some people that we know'd and come on in the
15 house and set down.

16 Q. Was there any discussion leading up to ....

17 A. ...well, they just asked Jerry if he had anything.

18 Q. How would you describe any transaction that took
19 place...was it a friendly one or....

20 A. ...well, I thought they was friends. I didn't
21 really know them or know nothing about them except
22 that night. Jerry said he met them out in town
23 before then.

24 Q. And did they come with friends of Jerry's?

25 A. Yeah...well, they come with people that I know'd.
Friends of mine too.

Q. And at the time, was your husband dealing in any
drugs or drug trafficing?

1 A. No, he wasn't out pushing nothing down on the
2 streets or nothing like that. We had pot in our
3 house.
4 Q. You had pot in your house?
5 A. Yeah.
6 Q. And would it be at that time, common for friends
7 to exhange pot just for what they had in it?
8 A. Yes.
9 Q. Have you all ever gotten it from other persons....
10 A. ...yeah...
11 Q. ...by the same method?
12 A. Yeah, um-hum.
13 Q. And the pot that you let the Troopers have on
14 that occasion....on this occasion, did Jerry offer
15 to sell, or did they initiate the conversation, or
16 did they try to get some from him, or just how
17 did this come about?
18 A. It was their idea. They come to the house. That's
19 what they come for to see if Jerry had any that
20 he'd let them have.
21 Q. Was there any profit made or anything by Jerry on
22 that occasion?
23 A. No. He just let them have it for what he had in
24 it.
25 Q. Why would he do this?
A. Because they were friends of our's. Jerry had met
them out and they had been around town for some
time; said they were from Saltville. I'm not from

1 around here originally. I don't know...when they
2 said they were from Saltville, I don't know that
3 many people other than in Glade.
4 Q. Where are you from?
5 A. Wisconsin originally.
6 Q. At the time, were you employed?
7 A. Well, I worked until the day before Christmas and
8 my baby was born on the 6th of January. I worked
9 until Christmas.
10 Q. Was Jerry working at this time?
11 A. Yeah.
12 Q. Buying furniture?
13 A. Yeah.
14 Q. Bills being kept up?
15 A. Yes.
16 Q. Living high on the hog so to speak, or anything
17 like that?
18 A. No.
19 Q. Making your payments?
20 A. Yes.
21 Q. Paying for your car, right?
22 A. That's right.
23 Q. I believe that's all.
24 CROSS EXAMINATION:
25 BY: DAVID D. BROWN:
Q. Mrs. Stillwell, you indicated that Jerry wasn't
pushing it on the street. He was pushing it there
at the house, wasn't he?

1 A. No. It was there, if it was somebody he know'd
2 and was friendly with him.
3 Q. Well, he sold it, didn't he?
4 A. Well, he sold it for what he had in it.
5 Q. How do you know what he had in it?
6 A. Because I'd been with him to get it.
7 Q. Well, you knew...
8 A. ...I know what was in it, yeah.
9 Q. Well, Jerry wasn't just the one to have it then.
10 You were involved in it too?
11 A. If you want to put it that way.
12 Q. And you said they just asked Jerry if he had some?
13 A. That's right.
14 Q. What did Jerry say in reply?
15 A I imagine he told them he did have some and he
16 told them he'd let them have it.
17 Q. They just said "You got anything?" He said, "Yeah,
18 I got some Marijuana and I'll sell it to you for
19 what I got it for - 15 dollars".
20 A. No, that's not how he said it.
21 Q. How did he say it?
22 A. Sir, that's been quite sometime ago and I don't
23 believe I can remember exactly the words that he
24 said.
25 Q. That's true with the rest of your testimony as
well. You couldn't remember exactly how it
happened?
A. I can remember the day they came to our house

1 looking for it, if that's what you mean.

2 Q. Alright. And they found it?

3 A. Well, it was there, I guess.

4 Q. Alright, that's all.

5 REDIRECT EXAMINATION:

6 BY: E. F. YEARY:

7 Q. Mrs. Stillwell, how would you describe the scene with them? Was it one like where you go to the grocery store and...

9 THE COURT: ....NOW, Mr. Yeary, you've been into that once and you're not going into it again.

10 E. F. YEARY:

11 Q. Was there any pot smoked with the Troopers...

12 A. ...yes...

13 Q. ..on that occasion?

14 A. Yes sir.

15 Q. How did that come about?

16 A. They wanted to try it out.

17 Q. Was any smoked afterwards - of Jerry's own stuff?

18 A. Yes, it was his. He just smoked some of his own stuff.

19 Q. Anything paid for that?

20 A. Pardon?

21 Q. Anything paid for that by them?

22 A. No, not for what they smoked.

23 Q. Did you all just stand around then and smoked and had a good time for a few minutes?

24 A. Um-hum.

25

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Q. Smoking pot?

A. Yeah, um-hum.

Q. I believe that's all.

JERRY DEAN STILLWELL

HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Would you state your name please?

A. Jerry Dean Stillwell.

Q. Mr. Stillwell, you are the defendant in this case, I believe?

A. Yes sir.

Q. How old are you, Jerry?

A. 24.

Q. 24 years old?

A. Yes sir.

Q. At the present time, I believe you are married and have - what? One child?

A. Yes sir. We have a girl 16 months old.

Q. Are you employed at the present time?

A. Yes sir, I work at Goff Construction Company in Glade Spring at the present time as a brick layer.

Q. On January...during the month of January, 1976, were you employed at that and if so, by whom?

A. Yes sir. Well, I was sort of self-employed. I was working for a man out on South Holston Lake. Mr. Fields. He was originally from Grundy and he was building a home out there. R. H. Ford, Jr., and

1 I was working, building this home for him.

2 Q. Now, shortly before that, was your wife employed?

3 A. Yes sir, she worked in a restaurant here in Abingdon.

4 Q. How long had you been working out at the lake and

5 how long have you been employed, say immediately

6 preceding January of '76?

7 A. Well, for different people...I just work by the

8 hour for different people I'd say for two or

9 three years.

10 Q. So, you are employed on a regular basis then?

11 A. Well, we'd finish one job and people would like our work and we'd go from job-to-job...finish

12 one job and go right to another.

13 Q. So, you were not having any financial difficulties

14 or anything of this nature in January of 1976?

15 A. No sir.

16 Q. And were you getting any source of income other

17 than your job you had, brick laying?

18 A. Just what my wife was making.

19 Q. Are you Union certified?

20 A. Yes sir, Local 14 out of Bristol, Journeyman Brick Layer.

21 Q. What are the wages of a....

22 A. ...$7.80 an hour as of January 1st.

23 Q. What were you making in January of '76?

24 A. Well, it may have been $7.80 then. I joined the Union in January...I was in the process of around

25

1 the first of the year, in January of '77...yeah,
2 '77. I just worked by the hour for these people
3 out on the lake. I was making $4.50 an hour.
4 Q. Did you have any bills...I mean, were you making
5 any payments or anything like that?
6 A. Yes sir, I bought a jeep...I bought a new jeep and
7 I was paying for it.
8 Q. One payment?
9 A. One payment, yes sir...$107.00 per month.
10 Q. If you had been selling drugs at that time, do you
11 think you would have been able to pay for your
12 jeep earlier?
13 A. I don't really know...I had some pot. I just smoke
14 it myself - my friends smoked it. I just had it
15 there, really, I sold just for what I give for it.
16 I don't know what I would have made...I never did
17 make no profit on it...I couldn't exactly say
18 whether I could have paid for it or not.
19 Q. Let's go back to the first occasion which has been
20 described by the Troopers that happened on January
21 9th, 1976...the first occasion they testified
22 about...
23 A. ...yes sir.
24 Q. Could you tell us what, if anything, you recall
25 about that situation?
A. Well, it had been about two weeks...or roughly
sometimes...three or four months and, you know,
they greeted me and I greeted them and they came

1 to my house one other time before and we'd talked.
2 They come back again and asked me if I had any
3 Marijuana I'd let them have, so I said yes, that
4 I had some I'd let them have...I didn't really
5 want to...I just had some for myself, but I could
6 get some more, so I let them have it. They said
7 they couldn't get any anywhere, so I let them have
8 what I had.
Q. Were they with any people...friends of your's?
9 A. Yes sir, Tommy Porter, which I've known, well,
10 Tommy's my next door neighbor so to speak...he
11 lives within 200 feet of my own home and David,
12 which I've known...well, I've know'd David about
13 all his life just around Glade there....and a guy
14 named "Bo", which I knew him for sometime. We
15 went to school together. He was my age. I think
16 Kenny Forrester was with them one time and that's
17 all there was that came up to my house.
Q. The first time they came around that you said they
18 were at your house, what kind of conversation did
19 you all have the first time?
A. They just asked me how I was doing ...you know,
20 kind of how people talk to each other. We were
21 just, you know, carrying on a conversation between
22 friends. you know, more or less, just carrying on
23 a conversation between friends. The other guys
24 I knew well and they had lived there all their
25 lives. We were just friends and I'd seen them

1 around there and they'd wave at me and I'd wave
2 at them.
3 Q. At any time, either on January 9th or January
4 26th, the two occasions the Officers testified
5 about, did you initiate any conversation that you
6 would sell them this stuff, or who initiated the
7 conversation?
8 A. No sir, I ain't never...I do a lot of fishing and
9 hunting and I had the stuff there; I smoked it
10 myself and I had some for my friends; I smoke it
11 myself and my wife smokes it..we just had it there
12 and they come along wanting it as friends and I
13 just let them have it...for exactly what I paid
14 for it.
15 Q. Did you make any profit whatsoever?
16 A. I really didn't plan to make no profit on the
17 stuff. I just sold it to them and I just let them
18 have it...I mean, it was mine..I smoked it myself
19 and they said they couldn't find any anywhere else
20 and I just let them have it through friendship.
21 Q. Was it your understanding that they already smoked
22 Marijuana?
23 A. Sure, they were smoking it then. They smoked it
24 before. They were smoking it the time before they
25 were at my house...with Tommy Porter and a guy
named "Bo", James Wright is his real name, and
David Weaver.
Q. Did you let them have it with any intent to induce

1 either of the Officers or anybody there, I assume,
2 to induce them ....
3 A. ...no sir...
4 Q. ...to either become addicted to or dependant upon
Marijuana...
5 A. ...no sir. I knew that Tommy Porter and "Bo" and
6 David Weaver had been using it...they already
7 smoked pot. I could smell it in the car and so
8 I just figured these guys were smoking it too.
9 They were all together when there was smoke in the
10 car....
11 Q. ...you weren't trying to get anybody hooked on it
or anything?
12 A. No sir. No, they came to me. They came to my
13 house wanting it. They already smoked it.
14 Q. The first time they came on January 9th, how did
15 the conversation start, if you remember?
16 A. Like I said, they just came in and asked me if I
17 had any Marijuana, and I said yeah, that I had some;
I said "I really don't want to let you have it",
18 but "I'll let you have for what I got in it". I
19 had, I think, four bags at the time. They said"Well,
20 we'll take all four bags". I could get some more,
21 so I just let them have it. They came to me wanting
22 it and they come with friends, and they became
23 friends around with everyone. I just let them have
24 it.
25 Q. The second occasion: How did that come about if

you remember?

A. Well, just like before. They'd been around all this time smoking Marijuana and drinking. I had bought some more...like I said, I could get it and could get it any time, just most anytime I wanted it, which I usually kept a pound around home. I just let them have it again. I mean, they was friends with everyone around there and they was friends with me and they come and Trooper Smith asked me again, so I let him have it. They came in and I gave it to him, and he gave me the money and we set down and he brought his pipe out and started smoking. They wanted me ...we got to talking there, and he wanted me to give him a pound. They said that they'd got some from somewhere that wasn't no good and they wanted to sell me part of it and me sell them part of what I had and mix it together. I told them that I couldn't do that. I told them that mine was better than their's and we smoked some of their's and we smoked some of mine. So, I just let Trooper Smith have one more bag of it. They left and the next thing I know'd, I was....from August 24th, I didn't see them no more. Theyjust left town.

Q. Have you ever sold any drugs or made any profit from them or anything of that nature?

A. No sir. Like I say, I smoke it myself. I did before. I don't no more...I've learned my lesson;

I quit fooling with it--period. I've never dealt none. I could buy it; I've smoked it; I bought it and I have it around my home.

Q. And you were paying $15.00?

A. Yes sir.

Q. How big a bag?

A. I'd buy 16 bags most of the time or 8 bags, or just what ever I could get and I'd give $15.00 a bag for it. If I'd buy 16 bags, I'd give $240.00 for it. Most of the time, maybe a couple of us would go in together or something. Friends around Glade would go in together and get it.

Q. I believe that's all.

CROSS EXAMINATION:

BY: DAVID D. BROWN:

Q. Jerry, how much Marijuana did you have on January 9th, 1976?

A. As best I can recall, I had four bags...or maybe five. Maybe I kept one for myself.

Q. You just had one more than what you sold?

A. One more than what I let them have, yes sir.

Q. How long did one bag take care of your needs there at the house and those friends that came in and wanted to smoke it?

A. Well, it would just all depend ...sometimes you would have more friends that would come than others. It took like anywhere from a week to two weeks - one bag.

1 Q. One bag would last from one to two weeks?
2 A. It depended on how many people come in. It could
3 be used up in two nights.
4 Q. You say...
5 A. ...I mean, it depended on how many people came
6 into my home.
7 Q. You indicated your source of supply was readily
8 accessible, wasn't it?
9 A. I could get it, yes sir.
10 Q. Yet, you'd buy 16 bags at a time and one bag would
11 do you two weeks?
12 A. Two weeks, maybe, yes sir.
13 Q. 16 bags for 32 weeks?
14 A. Sometimes we would have a big party, maybe 15, 20,
15 25 people would pull up. I would supply it. A lot
16 of friends would get together and they'd supply the
17 beer...get a keg of beer...go out on the river
18 bank fishing, and just have a party...that's the
19 purpose of me having so much, really.
20 Q. You usually kept a pound around the home?
21 A. Yes sir, at times I did...usually, at times, I
22 did have as much as a pound.
23 Q. How much Marijuana did you have on January 26th?
24 A. Well, I can't exactly recall. I could have had as
25 much as...like you say, I could have had as much
as a pound.
Q. How far did you have to go to get your supply..
how long would it take you to go to his house to

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1 got your supply?

2 A. Usually, my supplier would come to me.

3 Q. That was on call wasn't it?

4 A. Well, not necessarily on call...I mean, he'd come to me and ask me if I needed anything and if I did, I'd tell him and sometimes, if I needed it, I could go and look him up and say, go into Glade...I could go into Glade.

8 Q. You said "They asked me if I had anything"...

9 A. ....yes sir...

10 Q. ...Who is "they"?

11 A. Trooper Lambert and Trooper Smith - one of those - one of the Troopers.

13 Q. They are the ones who said to you, "Do you have anything?"

14 A. Yes sir. "Do you have any Marijuana"?

15 Q. Alright, and you said in reply, you said "I really don't want to let you have it"?

17 A. No, we talked around and....

18 Q. ...now, that's what you said, isn't it?

19 A. Yes sir, I told them that this....

20 Q. ...So, you were....

21 E. YEARY: Let him answer the question.

22 D. BROWN: He did answer it. Is that all?

23 J. STILLWELL: Yes sir, I did have it, yes sir.

24 D. BROWN:

25 Q. Did you tell them you did have it?

A. Yes sir. I told them, I think at the time I had

1 five bags...four or five, and I told them I'd
2 let them have it. I could get it..so, I let them
3 have it...four bags, I think.
4 Q. And the second time, did Trooper Smith say that
5 he couldn't find any somewhere else?
6 A. Yes sir.
7 Q. He said that the second time?
8 A. Yes sir.
9 Q. Both times they came to you and they couldn't find
10 any anywhere else?
11 A. Yes sir. They said it seemed to be dry around.
12 Q. Well it wasn't dry where you were concerned, was it?
13 A. I had some myself for my own personal.
14 Q. From the time that they arrived at your house, that
15 is, Trooper Lambert and Mr. Smith, and the question
16 was asked, "Have you got any Marijuana?" ...how
17 long was it that it took you to get the Marijuana
18 and turn it over to them?
19 A. As I say, it was in my home....
20 Q. ...how long did it take?
21 A. ...it could have been a minute or two or three
22 minutes. It could have been 5 to 10 or even 20
23 minutes. I don't remember.
24 Q. I'm asking you on this particular occasion, on
25 January 6th, 1976, when both Officers came there
and you told them you had five bags and you let
them have four of them, how long it took you to
give it to them?

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A. That time, I don't remember the time. I didn't keep no notes on it. I'd say about five minutes. They stayed and we smoked some.

Q. Alright, that was after you got it and put it in the floor wasn't it?

A. Yes sir.

Q. So, that didn't have anything to do with the time that it took you to deliver it to them - the time you were asked about?

A. They were at my house for about - during the month of January - for about twenty minutes.

Q. The second time, how long did it take?

A. I'd say fifteen or twenty minutes. Each time... we smoked each time.

Q. I believe that's all.

REDIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Mr. Stillwell, when you smoked, you say they smoked, did you join in with them?

A. Yes sir.

Q. Kind of like friends when you'd drink a beer with them?

A. Yes sir, I'd drank some with them...I drank with them the time they took me to the skating rink. We had some beer and some wine both. I drank with them then.

Q. That's all.

THE COURT: Next witness.

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1 E. YEARY: That's all we have, Your Honor.

2 THE COURT: The defendant has announced through. Anything further for the Commonwealth?

3 D. BROWN: No sir, Your Honor.

4 THE COURT: I'll hear any statement you gentlemen care to make.

5 D. BROWN: I don't care to make a statement, Your Honor.

6 THE COURT: Mr. Yeary.

7 E. YEARY: Your Honor, we would, first of all, renew the

8 motion as to multiplicity of the indictments, but

9 most of all, we would move the Court to strike the

10 evidence on the felony charge on distribution with

11 the intent to profit and ask that the Court reduce

12 it to accomodation. We would submit again that

13 it is entrapment, but assuming the Court won't

14 sustain that objection, we would submit that the

15 evidence at this point and there has been nothing

16 in rebuttal, that, in fact, this was an accomodation.

17 It was a transaction between friends; a transaction

18 between men ingratiating themselves with all the

19 young people of that community and it was an act

20 which would certainly lead Mr. Stillwell to believe

21 he was dealing with friends and was letting them

22 have this material and he could reasonably expect

23 to get some from them. There has been nothing

24 said whatsoever about profit and nothing has been

25 said that he did anything to cause these men or

anyone else to become addicted to it. At the time,

Mr. Stillwell had no motive at all to make a

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profit. We would submit that he would have been living in a much higher style had he been pushing drugs. He was employed, making a good income; his wife was employed and we submit, again, there was no motive for him to be going out of his way to make a profit. In fact, the Officers themselves testified that $15.00 was a little cheaper than what was the normal going rate on it. They had gotten it from other people at that price in Glade Spring, but certainly, the going rate at that time was $20.00, for that inself would be evidence that there was no profit made by Mr. Stillwell. People in the community have come here and testified that he does not have a reputation, or did not have a reputation at that time of being a drug pusher, and I submit if anybody would know, these other men would. I think it comes to the question, in this case, of credibility of the witnesses. Mr. Stillwell testified and it was supported again by the evidence, that he had no intent whatsoever to profit from either of these transactions. His credibility is certainly supported by the witnesses who have come in and testified that they have known him all his life and all of these witnesses have testified he has a very good reputation in the community for truth and honesty. We would ask the Court to reduce the charge to accomodation.

D. BROWN: Your Honor please, with regard to the defendant's

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1 argument concerning the facts. I don't need to
2 point to Mr. Stillwell's own testimony which
3 would negate any entrapment, saying that he had
4 done this before and there certainly wasn't any
5 procuring or encourgement for Stillwell to sell
6 to them. He had taken care of his friends before
7 and he done these things, so there is certainly
8 no entrapment. In regard to the accomodation, I
9 submit to the Court that if one bag will do you
10 two weeks, 16 bags for the purpose of having
11 friends there is absolutely incredible and it was
12 the admission of the witness alone on the witness
13 stand that he had a pound around his house at a
14 time for the purpose of friends, negates any
15 question of accomodation.
16 THE COURT: Alright, gentlemen, I find him guilty as charged
17 in each indictment and you all are familiar with
18 the Statute. I don't intend to stack it up on
19 Mr. Stillwell, but the minimum is, in the Court's
20 opinion, sufficient. I don't intend to fix his
21 punishment at anything more than the minimum and
22 that is five years in the penitentiary. I don't
23 intend to stack the fines, but I have to fine him.
24 As I understand the Statute, the maximum fine is
25 what? $40,000 or $25,000?
D. BROWN: $25,000.
THE COURT: So, I don't see why not to knock off two zeros,
Mr. Yeary, and fix the fine at $250.00 instead of

any exorbitant fine, so that will be the opinion of the Court and the verdict - find him guilty and fix his punishment at five years in the penitentiary on each indictment and a fine of $250.00.

E. YEARY: Your Honor, we would ask the Court to run the sentences concurrently and before the Court passes on that motion, we would also ask the Court for a probation report before the Court passes on that motion.

THE COURT: Alright, I have no objection to taking your motions under advisement, but I'm going to sentence him, so there will be no question as to whether or not he has been sentenced, so Mr. Stillwell, if you will stand up, please. Do you have anything to say or offer as to why the Court should not sentence you at this time?

STILLWELL: No sir.

THE COURT: Alright, on Indictment #1-77-29, I hereby sentence you to five years in the penitentiary and a fine of $250.00. On Indictment #1-77-30, I hereby sentence you to five years in the penitentiary and a fine of $250.00. On Indictment #1-77-31, I hereby sentence you to five years in the penitentiary and a fine of $250.00. Alright, you may be seated. Now, on your motion for probation, Mr. Yeary, and your motion for the sentences to run concurrently, I'll take those motions under advisement at this

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stage until I receive a report and, Mr. Osborne, you've got right many you are working on..if you'll let me know when you have this one, then I'll fix a date for a hearing as quickly thereafter as the Court can hear it. Now, what bond...you have the papers there, Mr. Brown, check his bond.

E. YEARY: He's on a $30,000 bond.

THE COURT: Whose on his bond?

STILLWELL: My mother, Paul Ellison and Mr. Gilbert.

THE COURT: You heard that, Mr. Brown, you know the people better than I do.

D. BROWN: I don't have any objection.

THE COURT: Alright, the bond is sufficient. He may remain at large until the Court fixes a date. Make yourselves convenient to the Court, Mr. Yeary, as soon as the report is filed for the proper length of time...

E. YEARY: ...YES SIR.

THE COURT: He may remain at large under his present bond.

THESE WERE ALL THE PROCEEDINGS HAD IN THIS MATTER ON THIS DATE.

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This matter came on again to be heard on Thursday, June 16th, 1977, before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia.

THE COURT: In the case of Commonwealth v. Jerry Dean Stillwell, the record will show that Mr. Stillwell was tried in this Court on May 17th, 1977, at which time he entered pleas of not guilty to each of the three indictments. The Court heard the evidence; argument of counsel, and at the conclusion thereof, found him guilty on each charge and fixed his punishment at five years in the penitentiary and a fine of $250.00 on each of the three charges. At the conclusion of the trial, motion for probation was made; the matter referred to the Probation Officer of this Court for a report. At that time, no date was scheduled on the hearing for probation. The record will show that Mr. Beckner, Probation Officer of this Court, filed his report, in writing, in the Clerk's Office on June 10th, and made a copy available to Mr. Yeary and the defendant, Mr. Stillwell. The record will show that Mr. Stillwell, his attorney, Mr. Yeary, the Attorney for the Commonwealth, Mr. Brown, are present. The Court had not, prior to this date, fixed a date to be heard and at this time, Mr. Brown, do you desire to question Mr. Beckner on his report?

DAVID D. BROWN: No questions by the Commonwealth.

THE COURT: Mr. Yeary, do you desire to question Mr. Beckner on his report?

E. F. YEARY: We do not.

THE COURT: You do not. Alright, then if there are no questions in connection with the report, the Court will hear this matter today on your motion, if that is agreeable with you?

E. F. YEARY: Yes, that is agreeable.

THE COURT: Alright. Do you have any additional evidence on your motion for probation other than that contained in the report?

E. F. YEARY: We would ask Mr. Stillwell to take the stand.

JERRY DEAN STILLWELL,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. State your name, please.

A. Jerry Dean Stillwell.

Q. And Mr. Stillwell, I believe you are the defendant in this case, is that correct?

A. Yes sir.

Q. And you have had an opportunity to examine this report and the recommendation of Mr. Beckner, is that correct?

A. Yes sir.

Q. Since he has made his report, has your status

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remained the same?

A. Yes sir.

Q. Are you still employed?

A. Yes sir.

Q. Same...

A. ...same company.

Q. Mr. Stillwell, you understand that ...what you have been convicted of and what you did was wrong?

A. Yes sir.

Q. Would you tell the Court your attitude in this regard?

A. I know it was wrong. I'm just through with it... that's the end of it, I mean, I haven't fooled with it any since I've been caught. I'm not going to. It has cost me too much; cost too much for my family and I just can't do it no more.

Q. If the Court should deem it appropriate to place you on probation, is there any difficulty in your mind that you will not be able to follow any and all terms placed upon you by the Probation Officers?

A. No sir.

Q. It would be your plan then, I take it, to remain in Glade Spring and support your family?

A. Yes sir. I work in Norton, Virginia. I would be going back and forth to work.

Q. I believe that's all.

DAVID BROWN: No questions.

THE COURT: Alright, Mr. Yeary, anything you have to

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say on your motion, the Court will hear you.

E. F. YEARY: Your Honor, I believe it is well pointed out by Mr. Beckner in his final recommendation, in which he says: "The findings of this investigation were favorable and in taking into account the usual considerations...no prior record, good husband and father, and good employment record...the defendant appears to be a suitable candidate for probation should the Court see fit to suspend all or part of the three 5-year sentences previously imposed. I believe that two of these transactions did grow out of the same transaction although there were two different people involved. Mr. Stillwell has a good record with the exception of these two offenses, and we would ask the Court to follow the recommendation of the Probation Officer and place him on probation.

THE COURT: Mr. Brown?

DAVID D. BROWN: I have no recommendation, Your Honor.

THE COURT: Your motion for probation on Indictment 1-77-29 is denied. He has heretofore been sentenced, so he will serve that. Your motion for probation on Indictment #1-77-30, #1-77-31, will be granted upon the usual terms and conditions when released from serving his sentence on Indictment #29 and on the further condition that he pay all fines and costs in each of the

three cases, and his term of probation will be for a period of ten years. So, that will be the ruling.

E. F. YEARY: Your Honor, we move the Court ...or we would also renew our motion to run the sentences concurrently.

THE COURT: That motion is denied.

E. F. YEARY: Would the Court consider suspending a portion of the sentence imposed?

THE COURT: That motion is denied. I have ruled on that, Mr. Yeary. For the benefit of the defendant, frankly, I seriously doubt the propriety of suspending any of it because he maintains that he is not guilty. In the Court's opinion, before they are suitable candidates for probation, they should acknowledge their guilt and say they are sorry and want to do better.

STILLWELL: Yes sir, I'm guilty of accomodation, but not selling, that's my opinion.

THE COURT: You may take charge of him, Mr. Sheriff.

E. F. YEARY: Your Honor, at this point, we would move the Court to stay execution of the sentence, pending an appeal for Mr. Stillwell to the Supreme Court.

THE COURT: You may...you may, but in that event the motion for probation on all cases is denied at this stage. He cannot be on probation and on an appeal status at the same time. So, Mr.

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1 Sheriff, that will be granted, but take charge of
2 him and he will not be permitted at large on bond.
3 E. F. YEARY: Your Honor, it is my understanding then
4 that he will not get probation on the other two
5 charges?
6 THE COURT: If you're appealing...asking for a
7 writ, it certainly is not appropriate that he be
8 on probation at this time on his sentence, Mr.
9 Yeary. If he says the sentence is wrong - it's
10 wrong, so he can't be on probation with an appeal.
11 E. F. YEARY: Your Honor, he would not be on probation...
12 he would not be at large, but he would...
13 THE COURT: ...No, you can't be on probation,
14 convicted and sentenced - suspended, and appealed
15 at the same time. You may take charge of him,
16 Mr. Sheriff.
17 (Thereupon, Mr. Stillwell was remanded to jail,
18 and a short time thereafter, returned to open court).
19 E. F. YEARY: Your Honor, after conferring with Mr.
20 Stillwell, we would ask the Court's leave to
21 withdraw our motion to stay the execution of the
22 sentence in order to allow Mr. Stillwell to be
23 placed on probation as the Court originally in-
24 dicated.
25 THE COURT: Any objection to that, Mr. Brown?
DAVID D. BROWN: No sir, Your Honor.
THE COURT: Alright, the ruling heretofore announced
by the Court is reinstated under the same terms

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and conditions.

E. F. YEARY: Thank you, Your Honor.

END OF PROCEEDINGS

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2 REPORTER'S CERTIFICATION

3 STATE OF VIRGINIA, AT LARGE:

4 I, Jo Crewey, Court Reporter and Notary Public in and for the State of Virginia, at large, do hereby certify
5 that the foregoing is a true transcript of the trial and probation hearing in the matter of Commonwealth v. Jerry Dean
6 Stillwell, all of said proceedings having been heard before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia, at Abingdon, Virginia, on
7 the 16th day of June, 1977, and on the 17th day of May, 1977; that all of said proceedings were recorded electronically and
8 have been reduced to writing by me on such electronic recordings.

9 Given under my hand on this the 9th day of August, 1977.

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11 Notary Public

12 (My commission expires 9-3-77).

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The Jurors of the Regular Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on ~~Monday~~ Tuesday the 11th day of January in the year of Christ 1977, upon their oaths present that Jerry Dean Lowery

on the 13th day of March in the year of Christ 1976, in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4 of the Code of Virginia, 1950, as amended, as a Schedule I Controlled Substance,

against the peace and dignity of the Commonwealth of Virginia.

Second Count — And the [illegible]d Jurors aforesaid, upon their oath [illegible]resaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

.....

.....

Third Count — And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Presented upon the information of the following witnesses, sworn in Court, and sent by it to the Grand Jury.

Trp. L. E. Lambert, VSP ....

....

....

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1-77-40

The Commonwealth

VS.

Jerry Dean Lowery

INDICTMENT FOR

Distribute Controlled Substance

A TRUE BILL

Curtis Fischer

Foreman.

January 31, 1977

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he Jurors of the....Regular.....Grand Jury, empanelled and sworn in and for the
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19..77.., upon their oaths present that.....Jerry...Dean..Lowery.....

.....

..13th.. day of.....March..... in the year of Christ 19..76..., in the County of
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Presented upon the information of the following witnesses, sworn in Court, and sent by it to the Grand Jury.

Trp. D. H. Smith, VSP ✓ .....

.....

.....

1-77-41

The Commonwealth

VS.

Jerry Dean Lowery

INDICTMENT FOR

Distribute Controlled Substance

A TRUE BILL

Foreman.

January 31, 1977

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IN THE CIRCUIT COURT OF WASHINGTON COUNTY

COMMONWEALTH OF VIRGINIA

vs. CASE NOS. 1-77-40 and 1-77-41
DISTRIBUTE CONTROLLED SUBSTANCE

JERRY DEAN LOWERY

This day came David D. Brown, Esquire, Attorney for the Commonwealth, Emmitt F. Yeary, Esquire, counsel for the defendant, Jo Crewey, Court Reporter, who was duly sworn in the manner prescribed by law; came also the defendant in obedience to his recognizance.

It appearing to the Court that the defendant was tried in this Court on May 17, 1977, at which time he entered a plea of not guilty to each of the charges contained in the two indictments herein.

The defendant was found guilty as charged in each of the respective indictments and sentenced to a term of (5) years in the penitentiary and a fine of $250.00 on each of the indictments. Upon motion of the defendant, by counsel, a probation report was ordered prepared on the defendant. The report was filed on June 10, 1977, and a copy was furnished to counsel for the defendant. It appearing to the Court that O. W. Beckner, Probation Officer of this Court, prepared the report, but for good cause shown he was not present on this date. The Attorney for the Commonwealth and the attorney for the defendant stated to the Court that there was no controvery as to the contents of the report and no objections to the absence of the Probation Officer.

The Court heard statements by the Attorney for the Commonwealth, attorney for the defendant, and testimony on behalf of the defendant. After mature consideration the Court is of the opinion to and doth deny the motion for probation and doth order that the defendant serve (3) years of the (5) year penitentiary sentence heretofore imposed in indictment 1-77-40 and at the completion thereof doth suspend the balance of (2) years in indictment 1-77-40 and the (5) year penitentiary sentence imposed in indictment 1-77-41 and doth place the

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defendant on probation for a period of (5) years upon the following conditions:

1. That the defendant abide by the terms of probation as recorded in Law Order Book Y, page 175.

2. That he pay the fines and costs of these prosecutions.

The defendant is remanded to jail to await transfer to the appropriate penal institution of this Commonwealth.

The Court certifies that the defendant was present and his attorney was likewise present during all stages of this proceeding.

During the course of this proceeding certain motions were made and objections interposed which will appear fully in the stenographic record herein.

It is ordered that Jo Crewey, Court Reporter, be allowed $15.00 for her services herein.

ENTER: June 16, 1977

Newton Matthews

ASSIGNMENTS OF ERROR

1. The Court erred in not dismissing the indictments since the statute under which the defendant was charged placed the burden of proof on the defendant to prove the lesser offense of accommondation and failed to state any standard of proof in this regard.

2. The Court erred in failing to grant the defendant's motion to strike the evidence of the Commonwealth, made after the Commonwealth rested and after all the evidence, as to the felony charges and thereby reducing the charges to the misdemeanor charge of accommodation.

3. The Court erred in denying the defendant's motion to dismiss the indictments since the statute under which the defendant was charged would subject him to cruel and unusual punishment.

4. The Court erred in denying the defendant's motion to strike the evidence of the Commonwealth which motion was made both before and after the Commonwealth rested and after all the evidence, based upon the entrapment by the police officers.

5. The Court erred in denying defendant's motion to strike the evidence and dismiss the Indictments because they were multiplicious.

U.T. Geary

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2 VIRGINIA: IN THE CIRCUIT COURT OF WASHINGTON COUNTY

3)
COMMONWEALTH)
4)
v.) A FELONY: DISTRIBUTION OF A
5) CONTROLLED SUBSTANCE
JERRY DEAN LOWERY)
6)
)
7)

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11 TRANSCRIPT OF TRIAL

12 AND

13 PROBATION HEARING

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APPEARANCES: David D. Brown, Attorney for the Commonwealth

Emmitt F. Yeary, Counsel for Defendant

Jerry Dean Lowery, in person and by his Counsel

L. E. Lambert
D. H. Smith
Larry Thomas
Jake Stillwell
Juanita Hamilton
Perkins Stuart

I N D E X

	Dr.	Cr.	Redr.	Recr.
L. E. Lambert	7	13		
D. H. Smith	20	27		
Larry Thomas	28	32	36	
Jake Stillwell	37	43		
D. H. Smith, recalled	44			
Juanita Hamilton	47			
Perkins Stuart	48			
Jerry Dean Lowery	49	53		
Probation Hearing	59 thru 62			

e x h i b i t s

Case Number 1-77-40

Commonwealth Exhibit #1, Certified Mail Receipt.....P 10
Commonwealth Exhibit #2, Acknowledgement Receipt.....P 10
Commonwealth Exhibit #3, Manila envelope.....P 11
Commonwealth Exhibit #4, White envelope with contents..P 12
Commonwealth Exhibit #5, Certificate of Analysis.....P 13

Case Number 1-77-41

Commonwealth Exhibit #1, Certified Mail Receipt.....P 24
Commonwealth Exhibit #2, Acknowledgement Receipt.....P 24
Commonwealth Exhibit #3, Manila Envelope.....P 25
Commonwealth Exhibit #4, White envelope with contents..P 26
Commonwealth Exhibit #5, Certificate of Analysis.....P 26

This matter came on to be heard on Tuesday, May 17th, 1976, before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia.

Mrs. Jo Crewey, Court Reporter, was duly sworn in the manner prescribed by law.

THE COURT: In the case of Commonwealth v. Jerry Dean Lowery, are you ready, Mr. Brown?

D. BROWN: Yes sir.

THE COURT: Are you ready in that, Mr. Yeary?

E. YEARY: Yes, Your Honor.

THE COURT: Alright, there are two indictments against Mr. Lowery, may they be heard together?

E. YEARY: Yes sir, they can.

THE COURT: Mr. Lowery, if you would stand up, please, and give attention to the Court. (Reading) "Virginia-Washington County, to-wit: The Jurors of the Regular Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on Tuesday, the 11th day of January, in the year of Christ, 1977, upon their oaths present that Jerry Dean Lowery on the 13th day of March, in the year of Christ, 1976, in the county of Washington aforesaid, and within the jurisdiction of the Court aforesaid, in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute

1 Marijuana, listed and included in Section
2 54-524.84:4 of the Code of Virginia, 1950, as
3 amended, as a Schedule I Controlled Substance,
4 against the peace and dignity of the Commonwealth
5 of Virginia. Presented upon the information of
6 the following witness sworn in court and sent by
7 it to the Grand Jury: Trooper L. E. Lambert".
8 Indictment #1-77-41: "Virginia-Washington County-
9 to-wit: The Jurors of the Regular Grand Jury,
10 empanelled and sworn in and for the body of
11 Washington County, in the State of Virginia, at
12 the term of the Circuit Court, held in and for
13 said county, commencing on Tuesday, the 11th day
14 of January, in the year of Christ, 1977, upon
15 their oaths present that Jerry Dean Lowery on
16 the 13th day of March, in the year of Christ,
17 1976, in the County of Washington aforesaid, and
18 within the jurisdiction of the Court aforesaid,
19 in violation of Section 18.2-248 of the Code of
20 Virginia, 1950, as amended, feloniously and un-
21 lawfully did sell, give or distribute Marijuana,
22 listed and included in Section 54-524.84:4 of
23 the Code of Virginia, 1950, as amended, as a
24 Schedule I Controlled Substance, against the peace
25 and dignity of the Commonwealth of Virginia.
Presented upon the information of the Following
Witness, sworn in court and sent by it to the Grand
Jury: D. H. Smith". Mr. Lowery, your name is

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1 Jerry Dean Lowery?

2 A. Yes sir.

3 Q. And what is your age?

4 A. 25.

5 Q. And where do you live?

6 A. Glade Spring.

7 Q. Here in Washington County?

8 A. Yes sir.

9 Q. And you are presently at large under bond on the charges which the Court read to you?

10 A. Yes sir.

11 Q. You have employed Mr. Yeary to represent you?

12 A. Yes sir.

13 Q. Has he consulted with you in connection with the charges which the Court read to you?

14 A. Yes sir.

15 Q. He has explained to you the seriousness of the charges?

16 A. Yes sir.

17 Q. He has explained to you, and you, yourself, understand the possible punishment you could receive on each charge - the maximum and the minimum?

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21 A. Yes.

22 Q. Alright, sir, has he explained to you and do you yourself understand you have a right to enter a plea of not guilty; the jury will hear the evidence; the jury will determine your guilt or

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1 innocence, and the jury fix your punishment?
2 A. Yes sir.
3 Q. You also understand you have a right to enter a
4 plea of not guilty and providing the Attorney for
5 the Commonwealth and the Court both agree, the
6 Court will hear the evidence; determine your
7 guilt or innocence, and fix your punishment?
8 A. Yes sir.
9 Q. You also understand you have a right to enter a
10 plea of guilty?
11 A. Yes sir.
12 Q. Alright, sir, do you understand that in event you
13 enter a plea of guilty, the only appeal you will
14 have from this Court is on the jurisdictional
15 grounds and by that I mean the Court makes a
16 mistake as to the law as it applies to your case?
17 A. Yes sir.
18 Q. Do you have any complaints against Mr. Yeary and
19 his representation of you?
20 A. No sir.
21 Q. Any complaints against the Sheriff's Department
22 of Washington County; the State Police, or any
23 other law enforcement agency of the Commonwealth?
24 A. No sir.
25 Q. Are you ready for trial at this time?

A. Yes sir.

Q. And what is your plea to the first indictment which the Court read to you, 1-77-40?

A. Not guilty.

Q. And on the second one, indictment number 1-77-41?

A. Not guilty.

Q. Not guilty. Alright, you desire a jury trial?

A. No sir.

Q. Alright, Mr. Brown, do you consent for the Court to hear these without a jury?

D. BROWN: Yes sir, in both cases, Your Honor.

THE COURT: Alright, and for the record, the Court consents to hear these matters without the intervention of a jury. You may proceed, gentlemen.

MARY TATE: Your Honor, at this time we would ask for the rule.

(Thereupon, all witnesses in this matter were excused from the courtroom).

MARY TATE: Prior to the Commonwealth putting on any evidence, we have certain motions that we would like to make.

THE COURT: You may proceed.

MARY TATE: We would move this Court to dismiss the indictments for several reasons: The first one being vagueness. We would submit to the Court that both indictments are identical in nature; identical in each word with the exception of the indictment number and for that reason we submit that they fail to inform

1 the defendant of the true nature and cause of the
2 accusations against him in violation of the Sixth
3 Ammendment of the United States Constitution; also
4 in violation of due process and may subject him
5 to double jeopardy in violation of the Fifth
6 Ammendment. Secondly, we would move to dismiss
7 the indictments based on multiplicity in that we
8 have one transaction. The Trooper will bear this
9 out; we would ask to present evidence on this
10 motion and for that reason, at least one of the
11 indictments should be dismissed. We would submit
12 to this Court that the Statute under which we are
13 proceeding, Section 18.2-248 of the Virginia Code
14 is unconstitutional on its face. That Code
15 Section provides that persons must prove, in fact,
16 that there was an accomodation in order to get a
17 reduction of the penalty. It is our position that
18 that is, in fact, the lesser included offense and
19 should have been set out in the Code as such. As
20 it is presently set out, it places the burden of
21 proof upon the defendant without, one, stating
22 what standard of proof is required to sustain that
23 burden, and two, without showing any indication or
24 definition of accomodation itself. For that
25 reason, we submit that that Statute is uncon-
stitutional on its face. Next, we would submit
that that same Statute constitutes cruel and
unusual punishment insofar as it concerns the

1 controlled substance of Marijuana. We submit that
2 the felony outlined in that Statute and the
3 penalty of five to forty years is cruel and un-
4 usual punishment for the distribution, gift, or
5 sale of the substance, Marijuana. Finally, we
6 would move this Court to dismiss the indictments
7 and enter a judgment of acquittal against the
8 defendant, based on the defense of entrapment.
9 We submit that the testimony will show, and the
10 pattern of these.....
THE COURT: ....that's no grounds to quash the indictment, is
11 it, young lady?
12 MARY TATE: I beg your pardon, Your Honor is correct. I will
13 reserve that argument for later. So, at this
14 time, we have those four arguments in support of
15 our motion to dismiss the indictments.
THE COURT: As to your respective points of view, first, you
16 have an ample remedy to ...by asking for a Bill
17 of Particulars to clear up anything in the indict-
18 ments - the face of the indictments are perfectly
19 correct. That motion is denied. On your multi-
20 plicity, the Court will take that motion under
21 advisement and consider it upon the presentation
22 of the...all the evidence in the case. All other
23 motions are denied. Mr. Brown, you may proceed.
L. E. LAMBERT,
24 having first been duly sworn, testified as follows:
25 DIRECT EXAMINATION:

BY: DAVID D. BROWN:

Q. State your name to the Court, please.

A. Trooper L. E. Lambert. I am a Virginia State Trooper.

Q. Trooper Lambert, during the month of March, 1976, did you have any special assignment with the Virginia State Police?

A. Yes sir, at that time I was engaged in Narcotics work in Washington County.

Q. On the 13th of March, 1976, did you have any dealing or transaction with Jerry Dean Lowery?

A. Yes sir, I did.

Q. Did you know Jerry Dean Lowery at that time, or prior to that time?

A. No sir.

Q. And it was at that time, or later, that you learned his identity?

A. Yes sir.

Q. And is the defendant, Jerry Dean Lowery, the person you had a dealing and transaction with on March 13th, 1976?

A. Yes sir.

Q. Where did this take place?

A. It took place in the Town of Glade Spring, Washington County.

Q. And I'll ask you what the circumstances were and what transpired between you and Jerry Dean Lowery?

A. This occurred approximately 7:00 o'clock, P.M., on

the 13th of March, 1976. That evening I talked to a subject I knew as "Thomas". He gave his full name as Larry Thomas. I had approached him on the subject of where I could find some drugs and ....in and around Town there. He wanted...

Q. ...don't say what he told you. Based on your conversation, did you have occasion to see and talk with and have any transaction with Jerry Dean Lowery?

A. Yes sir.

Q. And who was with you at the time?

A. Trooper D. H. Smith.

Q. Anyone else with you?

A. No sir.

Q. Alright, and where did you find and locate Jerry Dean Lowery?

A. The first time I saw him he was in a vehicle with Larry Thomas.

Q. Alright, and what took place after you saw him, what transpired between you?

A. He was brought to the location I was at by this Mr. Thomas. He got out of the Thomas vehicle and got into the rear of my vehicle and at that time he stated that he did have some alleged Marijuana, which I paid him $15.00 for a bag of it then.

Q. Alright, you say upon getting into the vehicle, he told you that he had Marijuana?

A. Yes sir, Mr. Thomas....

Q. ....anyway Mr. Thomas brought him back and upon getting in the vehicle, he told you he had Marijuana?

A. Yes. We spoke there just a little bit, but anyhow...I don't know how to say it...but that's the reason he came back. He wasn't with Mr. Thomas...

E. YEARY: ...I think that's a conclusion as to why he came back.

DAVID BROWN:

Q. Did you talk to Mr. Thomas about Marijuana?

A. Yes sir.

Q. Alright, and he came back with Mr. Thomas?

A. He came back in the same vehicle with Mr. Thomas.

Q. Alright, you say he got in the vehicle. Just tell what he said as best you recall.

A. I don't remember the exact words, but anyhow, he got into the vehicle and produced some of this material. He was in the back seat at the time. Trooper Smith and I were in the front seat. Very little conversation, really, transpired there. We just asked the price and he said "$15.00", and I paid him the $15.00 for mine and received ....

Q. What did he give you in return for the $15.00?

A. He gave me a plastic bag full of brownish-green plant-like material that he alleged was Marijuana.

Q. Alright, and what did you do with the brown plant material that Mr. Lowery gave you there in the Town of Glade Spring on this date for $15.00 ?

1 A. I kept it on my person until I reached my residence
2 where I placed it in a steel box that I have I
3 use for the temporary custody of these materials.
4 On March 19th, 1976, I sent this by Certified
5 Mail #841707, to the Division of Consolidated
6 Laboratory Services in Richmond, Virginia.
7 Q. You said, Trooper Lambert, that you sent "this".
8 What did you send?
9 A. This material that I was just speaking of that
10 I received from Jerry Lowery.
11 Q. And you sent it by Certified Mail, and you gave
12 the number?
13 A. Yes sir.
14 Q. Do you have a receipt for that Certified Mail
15 number?
16 A. Yes, I do.
17 Q. Did you also receive another document in regard
18 to that, acknowledging receipt of that envelope?
19 A. Yes, sir, on March 22nd, I received a return mail
20 receipt for the Certified Mail package.
21 Q. And the Certified package, what was the number?
22 A. 841707.
23 Q. Alright, I would like to introduce the receipt
24 for Certified Mail as Commonwealth Exhibit #1 in
25 case 1-77-40 and the acknowledgement as Common-
wealth Exhibit #2 in case 1-77-40.
THE COURT: They will be so marked.
(Thereupon Commonwealth Exhibits #1 and #2 were

marked for identification and filed).

DAVID D. BROWN:

Q. Trooper Lambert, what was the outer envelope that you sent the material in and address to the Consolidated Laboratories...what type envelope was that?

A. It was a yellow envelope...this is the envelope that I sent bearing Certified Mail #841707.

Q. Alright, and who wrote the information on there ...the directions to what place?

A. I wrote the address of the Laboratory and also the return address for my box at State Police Headquarters.

Q. Did you also place the Certified Mail sticker on the envelope?

A. Yes sir, I did.

Q. And that number is 841707?

A. Yes sir.

Q. I would like to introduce this Manila envelope as Commonwealth Exhibit #3 in case 1-77-40.

E. YEARY: Your Honor, we object to all writings on this except that which has been placed there by Mr. Lambert.

THE COURT: It will be introduced as Commonwealth Exhibit number three.

(Thereupon, Commonwealth Exhibit #3 was marked for identification and filed).

D. BROWN:

Q. The envelope containing the material for analysis,

1 do you have that available?

2 A. Yes sir.

3 Q. Did you place the material that you got from

4 Mr. Lowery in that envelope?

5 A. Yes, I did.

6 Q. I'll ask you to describe the envelope.

7 A. It is a white envelope that has a rubber stamp

8 on the outside which indicates "Evidence -

9 Virginia State Police".

10 Q. I'll ask you, the printed part - the part that

11 is in ink and written, who wrote that on there?

12 A. I wrote that.

13 Q. And that is the envelope in which you sent the

14 material inside the other envelope to the

15 Laboratory for analysis?

16 A. Yes sir.

17 Q. I would like to introduce this as Commonwealth

18 Exhibit #4 in the case of 1-77-40.

19 E. YEARY: We object to that. It appears that that envelope

20 contains some material. We don't know what

21 might be inside it, and how the material would

22 relate to the defendant and the chain of custody

23 has not been established.

24 THE COURT: It will be so marked and received into evidence.

25 (Thereupon Commonwealth Exhibit #4 was marked for

identification and filed).

D. BROWN:

Q. Trooper Lambert, did you receive from the

1 Consolidated Laboratory a certificate of analysis
2 concerning the evidence submitted by envelope
3 bearing Certified Mail #841707?
4 A. Yes, I did.
5 Q Do you have that certificate?
6 A. Yes, I do.
7 Q. Is this the certificate?
8 A. Yes, it is.
9 Q. I would like to intorucce this, by this witness,
as Commonwealth Exhibit #5 in case 1-77-40.
10 E. YEARY: We object to it as being hearsay, Your Honor.
11 THE COURT: It will be so marked and received.
12 (Thereupon, Commonwealth Exhibit #5 was marked for
identification and filed).
13 D. BROWN: That's all at this time from this witness, Your
14 Honor.
15 CROSS EXAMINATION:
16 BY: E. F. YEARY:
17 Q. Trooper Lambert, on March 13th, I believe you
18 testified that you were in....in 1976...you were
19 in the Town Square there at Glade?
20 A. No sir.
21 Q. Where were you...I'm sorry.
22 A. Right across the street next to a garage there.
23 I don't know what the name of the garage was.
24 Q. Was that where you first saw Mr. Stillwell...or
who did you see? You said you saw Mr. Thomas....
25 A. ...Thomas. I think there was a Stillwell boy

1 with him.

2 Q. And who was driving the automobile - the Thomas vehicle?

3 A. Mr. Thomas was driving it.

4 Q. And Mr. Stillwell was a passenger?

5 A. Yes sir.

6 Q. And after your conversation, Mr. Thomas left... did Mr. Stillwell go with him?

7

8 A. Yes sir.

9 Q. Now, at any time, did either Mr. Stillwell or Mr. Thomas mention Lowery's name?

10

11 A. No sir.

12 Q. And you approached Mr. Stillwell and Thomas and asked if they had any Marijuana?

13 A. Yes sir.

14 Q. How did this come about?

15 A Well, they were just faces I knew around Town there and I just asked them...

16

17 Q. ...Thomas?

18 A Thomas.

19 Q. How long had you known him?

20 A. I'd say a month or two.

21 Q. Had you talked to him on other occasions?

22 A. Yes sir.

23 Q. And had you had occasion to socialize with them and maybe have a beer or smoke a little pot or anything of that nature?

24

25 A No sir.

18

1 Q. What was the extent of your relation with him?
2 A. Well, he was just one that hung around the parking
3 lot up there and we got to know him that way.
4 Q. What about Mr. Stillwell?
5 A. I knew him very little. I had, maybe, spoken to
6 him on a couple of occasions. He was usually with
7 Mr. Thomas.
8 Q. Is this Jack Stillwell you are speaking of?
9 A. I'm not sure. I think he is Jerry's brother.
10 Q. You don't know what his first name is?
11 A. No.
12 Q. Would you know him if you saw him again?
13 A. Yes sir.
14 Q. You and Mr. Smith were together on this occasion?
15 A. Yes sir.
16 Q. Had you made any prior arrangements with either
17 Mr. Stillwell or Mr. Thomas to be there on this
18 occasion to make arrangements about drugs?
19 A. No sir.
20 Q. So, it was just a chance then that you happened
21 to see them on this occasion?
22 A. Yes sir.
23 Q. You say you were some distance from the Town
24 Square...how did the conversation get started?
25 A. Well, as usual, that was what we talked about when
we went out. I talked to Mr. Thomas. That's
usually the reason I talked to him. I knew he
knew these people and we started asking him about

it.

Q. You asked him what?

A. Asked him if he knew of anything around.

Q. If he could get you some?

A. No, I asked him if he knew if there was anything around, which can mean several different things.. according to how you want to take it.

Q. So, you initiated the conversation?

A. Yes sir.

Q. And why...what did Mr. Smith say, if anything, along that line...did he join in your request?

A. I don't recall what Mr. Smith might have said to Mr. Thomas at that time, if anything.

Q. At that time, were you all operating in your normal procedure...that is, to join in any transaction that you could?

A. Not in the same transaction. If he wanted to buy, he made his own deal. I didn't make a deal for him as a pair.

Q. But you all were working as a team?

A. Yes sir.

Q. As in all these cases you have testified about?

A. Yes sir.

Q. It was a team effort on this occasion?

A. I don't know about that...what you are referring to as a team effort.

Q. Well, did you both buy by accident or...

A. ...no, we worked with each other.

1 Q. Did you work with each other as a team on that
2 occasion?
3 A. Yes sir.
4 Q. Do you remember what, if anything, Mr. Smith said
5 in regard to any purchase at that time, if any-
6 thing?
7 D. BROWN: He's already asked him that once and he said he
8 didn't know. That's repetitious.
9 THE COURT: You've asked that question once, Mr. Yeary, and
10 he said he didn't know.
11 E. YEARY:
12 Q. How long did Mr. Thomas leave before he returned?
13 A. Sir?
14 Q. How long did he stay gone?
15 A. I don't recall exactly how long he was gone. I
16 didn't make a note of it at the time. I could
17 just make a guess as close as I could come...I
18 didn't make any notes.
19 Q. Did Mr. Stillwell return with him also?
20 A. Yes sir.
21 Q. The same seating arrangement they had there
22 before?
23 A. Yes sir, Mr. Lowery was in the rear seat when they
24 returned.
25 Q. And you all were seated in the front seat of
your automobile?
A. Yes sir.
Q. Were you on the driver's side?

1 A. Yes sir.

2 Q. And you say Mr. Lowery got out..or you all got out?

3 A. No, he got out.

4 Q. Did he actually get in your car?

5 A. Yes sir.

6 Q. And I take it you got a buy and Mr. Smith got a

7 buy?

8 A. Yes sir.

9 Q. Did you all just lay that money down there to-

gether or how was it?

10 A. No, I paid him for mine and he accepted mine

11 directly. I'm not sure what happened with

12 Trooper Smith. I don't pay a lot of attention,

13 you know, to his cases and I try to keep my facts

14 together and he keeps his together.

15 Q. Well, you all were in the same car and you knew

16 you would be coming to court to testify and here

17 you didn't pay any attention to what transpired

in relation to the other party?

18 A. That's right.

19 Q. Have you ever been called to court on cases before

20 you started your undercover work?

21 A. Yes sir.

22 Q. Was that a team effort?

23 A. No sir.

24 Q. This is the first team effort you have ever been

involved in?

25

1 A. We are not usually working in two's.

2 Q. Do you know if Mr. Smith laid his on the back

3 seat...his money on the back seat?

4 A. No sir, I don't recall what Trooper Smith did

5 with his.

6 Q. Do you know if he had any money?

7 A. No, I don't recall what he did.

8 Q. I believe that's all. No, one other question.

9 How long had you been operating in this area prior

10 to this---the Glade Spring area?

11 A. Since August of the last year.

12 Q. And I believe you previously testified in one of

13 the other cases that one of your methods of

14 operation was to ingratiate yourself with the

15 local young people and try to become one of the

16 boys, so to apeak?

17 A. Yes sir.

18 Q. And you had been at it pretty well up to this

19 point in March of 1976?

20 A. Yes sir.

21 Q. In Glade Spring?

22 A. Yes sir.

23 Q. And the same is true with Mr. Smith, your partner?

24 A. Yes sir.

25 Q. Thank you.

DOUGLAS H. SMITH,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

23

BY: DAVID D. BROWN:

Q. State your name to the Court, please.

A. Douglas H. Smith.

Q. Mr. Smith, were you employed by the Virginia State Police during the month of March, 1976.

A. Yes sir, I was.

Q. In addition to being a State Trooper with the Virginia State Police, did you have any other assignment - special assignment during March of 1976?

A. Yes sir, I did.

Q. And what was that?

A. I was working as an undercover Trooper in Narcotics.

Q. I'll ask you if during the month of March, specifically on the 13th of March, 1976, if you were working in Washington County, Virginia?

A. Yes, I was.

Q. Did you know at that time...prior to that time... Jerry Dean Lowery?

A. No...prior to this date?

Q. Yes.

A. No sir.

Q. Had you seen him before?

A. No sir.

Q And where did you see him on March 13th, 1976?

A. It was in Glade Spring.

Q. Where in Glade Spring?

1 A. Well, let's see. I don't know exactly how to
2 describe it. It would be just this side of the
skating rink beside a service station.
3 Q. Alright, and that was in the Town of Glade Spring,
4 Washington County, Virginia?
5 A. Yes sir.
6 Q. And when you first saw him, was he with someone
7 or how did he happen to be there?
8 A. Well, prior to meeting him, we talked to two
9 subjects on the parking lot. A subject called by
10 the name of Jake and another by the name of
Thomas.
11 Q. Did you have a conversation with either of them
12 about obtaining drugs?
13 A. Yes sir, we did.
14 Q. Alright, did they leave you after you had that
15 conversation?
16 A. They said they thought they might know somebody
that would have something.
17 Q. Alright, and when you were at this location, who
18 came there to the location?
19 A. Well, a vehicle pulled in and a subject got out
20 and came up to the car and got in the back seat.
21 Q. And who was the subject who came up to the car?
22 A. Mr. Lowery.
23 Q. Is that the defendant here?
A. Yes sir.
24 Q. Alright, and who was in the vehicle which he got
25

1 out of and came to your car?
2 A. Sir?
3 Q. Who were the people in that car?
4 A. Thomas and Jake.
5 Q. And Jake?
6 A. Yes.
7 Q. Do you know what Jake's last name was?
8 A. I believe it is Stillwell.
9 Q. Alright, and he got in the car. Just tell us what transpired between you and Mr. Lowery, if anything.
10 A. Well, he got in the back seat as I indicated and
11 he took out what he had and it was two bags of
12 supposed Marijuana and he stated how much he wanted per bag.
13 Q. How much was that?
14 A. It was $15.00 a bag.
15 Q. Alright, and did you buy a bag?
16 A. Yes sir, I did.
17 Q. Alright, and what did you do with the money that
18 you were...who got that money that you were going to pay for the Marijuana?
19 A. I gave it to Mr. Lowery.
20 Q. What did he give to you for the money?
21 A. He give me a bag of greenish-brown plant-like
22 material.
23 Q. What did you do with this greenish-brown plant
24 material that you got from Mr. Lowery?
25 A. Well, the material was kept on my person until I

1 got home and at home I have a locked box in which
2 I keep...or used to keep evidence on a temporary
3 basis and the material was kept in there until it
4 was mailed by Certified Mail to the Division of
5 Consolidated Labs in Richmond.
Q. Did you mail the material which you acquired from
6 Jerry Lowery and kept on your person and then in
7 a locked box?
8 A. Yes sir, I did.
9 Q. ...to the Consolidated Laboratory?
10 A. Yes sir.
Q. And how did you send it?
11 A. I..
12 Q. ...by what type mail?
13 A. It was sent by Certified Mail, certified number
14 799818.
15 Q. Alright, now did you..do you have a receipt for
16 that mailing - Certified Mail?
17 A. Yes sir, I do.
18 Q. I'll ask you to show the receipt. And you also
19 have a receipt, acknowledging the delivery of that
20 particular mail by the Consolidated Laboratory?
A. Yes sir.
21 Q. I'll ask you to look at the receipt for Certified
22 Mail and tell me the number on it?
23 A. 799818.
24 Q. And the acknowledgment that the addressee received
25 it, what number does it have on it?

1 A. 78...799818.

2 Q. I would like to introduce the receipt, 799818, as
3 Commonwealth Exhibit #1 in case of Commonwealth
4 v. Lowery, #1-77-41, and also the acknowledgment
5 of the receipt as Exhibit #2 in the case of
Commonwealth v. Jerry Lowery, case #1-77-41.

6 THE COURT: They will be so marked and received.

7 (Thereupon Commonwealth Exhibits #1 and #2 were
8 marked for identification and filed).

9 D. BROWN:

10 Q. The envelope that you sent this in was addressed
11 to the Consolidated Laboratory...do you have
that envelope, Mr. Smith?

12 A. Yes, I do.

13 Q. I'll ask you to describe the envelope - the type
14 envelope it is.

15 A. Well, it is a Manila envelope.

16 Q. Alright, the writing in the return address and the
17 address to whom it was to be delivered...who put
that on the envelope?

18 A I did.

19 Q And I'll ask you if you put the Certified Mail
20 sticker on it also?

21 A. Yes sir.

22 Q. And what Certified Mail sticker is on that Manila
23 envelope?

24 A. It is 799818.

25 Q. Alright. I would like to introduce this Manila

28

envelope, by this witness, as Commonwealth Exhibit 3 in the case of Commonwealth v. Jerry Lowery, 1-77-41.

E. YEARY: Your Honor, we object to the envelope. It contains portions of material other than what he testified he placed on there and that would be hearsay.

THE COURT: It will be so marked.

(Thereupon, Commonwealth Exhibit #3 was marked for identification and filed).

D. BROWN:

Q. Mr. Smith, the brown plant material that you got from Jerry Lowery and kept on your person and in a locked box, you put in an envelope. Do you have the envelope with you that you placed that material in?

A. Yes sir.

Q. What type envelope is it?

A. It is a white envelope with an evidence information stamp on it.

Q. Now, except for the printed material, who put the information on the white envelope?

A. I did.

Q. And it is information concerning the defendant and so forth?

A. Yes sir.

Q. Alright, and that is the envelope that you placed in the Manila envelope and mailed to the Consolidated

Laboratory, is that correct?

A. Yes sir, it is.

Q. I would like to introduce this white envelope as Commonwealth Exhibit #4 and by this witness, in the case Commonwealth v. Jerry Lowery, case #1-77-41.

THE COURT: It will be so marked and received.

(Thereupon, Commonwealth Exhibit #4 was marked for identification and filed).

D. BROWN:

Q. Mr. Smith, did you receive a certificate of analysis from the Consolidated Laboratories concerning the evidence submitted by you in Certified Mail #799818?

A. Yes sir, I did.

Q. Do you have that certificate?

A. Yes sir.

Q. That is the original?

A. Yes, it is.

Q. Alright, I would like to introduce this certificate of analysis bearing evidence...bearing evidence submitted by envelope bearing Certified Mail #799818, as Commonwealth Exhibit #5, in Commonwealth v. Jerry Lowery, case #1-77-41.

MARY TATE: We would note our objection to the introduction of the certificate as being hearsay.

THE COURT: It will be so marked and received.

(Thereupon, Commonwealth Exhibit #5 was marked for identification and filed).

30

1 D. BROWN: That's all I have from this witness at this
2 time.
3 CROSS EXAMINATION:
4 BY: MARY TATE:
5 Q. Officer Smith, I believe you testified on March
6 13th that the two men in the car that left and
7 brought Mr. Lowery back...is that correct?
8 A. Yes M'am.
9 Q. And I believe you also testified that you knew
10 both of those gentlemen prior to that time?
11 A. Right...both of those people.
12 Q. And had you partied with them...share in beer and
13 pot and that sort of thing?
14 A. I believe we had drank with them before.
15 Q. Did you have occasion to see Mr. Lowery after this
16 date?
17 A. Yes M'am, we saw him around town.
18 Q. And how did you find out what his name was if you
19 never knew him before?
20 A. I believe later on, Mr. Weaver told us he thought
21 his name was Merrill. That's all we knew him by
22 at that time.
23 Q. Would you describe for the court the kind of
24 car seat that was in your car - the front seat -
25 were they bucket seats or straight across?
A. Straight across.
Q. That means there is a surface on top of the seat
where items could have been laid?

1 A. I suppose you could.

2 Q. Alright, isn't it a fact that both you and Trooper Lambert laid a certain amount of money on the seat and that Mr. Lowery then, supposedly, laid bags of alleged Marijuana on the seat and that nothing was ever passed directly to him or from him?

6 A. I don't recall it going down that way, no M'am.

7 Q. Okay, could you deny that that was the way it happened?

9 A. Not without my original notes, no M'am.

10 Q. So, you don't know whether it was laid on the seat or whether it was passed directly isn't that right?

12 A. That's right.

13 Q. Alright, thank you, Mr. Smith. That's all.

14 THE COURT: Does the Commonwealth rest?

15 D. BROWN: Yes sir.

16 THE COURT: Alright, you all may proceed.

17 MARY TATE: Your Honor, would the Court, before hearing all the evidence prior to our argument on multiplicity charges...

19 THE COURT: I don't care for any additional argument. That motion is denied.

21 LARRY THOMAS,

22 having first been duly sworn, testified as follows:

23 DIRECT EXAMINATION:

24 BY: MARY TATE:

25 Q. State your name, please.

32

1 A. Larry Wayne Thomas.

2 Q. Larry, are you acquainted with the two gentlemen
3 who are the Investigating Officers in this case,
4 Trooper Lambert and Mr. Smith?

A. Yes M'am.

5 Q. And are you also acquainted with the defendant,
6 Jerry Lowery?

7 A. Yes M'am.

8 Q. And did you have occasion to see the two Officers
9 on March 13th, and if so, would you relate to the
10 Courtwhat happened?

11 A. Me and my friend was setting in Town and they come
12 up to us and we was setting there talking and he
13 asked us if we know'd where any pot was at and we
told them we didn't know for sure, but we'd see.

14 Q. Who initiated that conversation?

15 A. I can't really remember which one.

16 Q. But it was one of the Officers?

17 A. Yes M'am.

18 Q. Okay, Mr. Thomas, what did you do at that time?

19 A. Well, me and my friend...well, I'd heard there was
some in Saltville...some was there, you know, so
20 we went out Glade and down to the underpass and we
21 seen Jerry coming down the road, see.

22 Q. You saw Mr. Lowery walking down the road?

23 A. Yes M'am, and we just made a circle and come back
24 and asked him if he know'd where there was any
25 and he said he knew where there was some at and he

thought he knew where the boy was so we picked him up at the restaurant and the boy was there and he went in and a few minutes later he come back, you know, and the boy handed him the pot and he said, Jerry said, we would bring his money back in just a minute. So, we left from there and went down to the B.P. Station and Jerry got in the car and gave them the pot and then when he got out he got back in our car and went to the Oh Boy Restaurant and he went back in there and he give the boy his money and he come back out and we left.

Q. Your first contact, after talking with the Officers, with Mr. Lowery was picking him up on the road?

A. Yes M'am.

Q. And did you and Mr. Stillwell then make the same request of him that the Officers had made of you?

A. yes M'am.

Q. And where did you go to get it?

A. At the Oh Boy Restaurant.

Q. And did you see Mr. Lowery get it?

A. Yes M'am.

Q. And from whom did he get it?

A. Lonnie Coe.

Q. And did....

THE COURT: Wait a minute...wait a minute...speak up, young man.

A. Lonnie Coe.

THE COURT: Who?

1 A. Lonnie Coe.

2 THE COURT: Lonnie Coe? C-O-E?

3 A. I don't know how you spell it.

4 MARY TATE:

5 Q. Mr. Thomas, at that point, did you all transport Mr. Lowery back to the station?

6 A. Yes M'am.

7 Q. And did Mr. Lowery, when you picked him up, make any offer to sell you anything?

8

9 A. What did you say?

10 Q. Did Jerry Lowery offer to sell anything or not?

11 A. Sell to me?

12 Q. Or to anybody?

13 A. No, he just said he know'd where he could get some.

14 Q. After you all had asked him about it?

15 A. Yes M'am.

16 Q. What kind of relationship did you and Mr. Lowery have?

17 A. We was real good friends.

18 Q. Did you run around together?

19 A. Yes M'am.

20 Q. How long have you known him?

21 A. About four to five years - along there.

22 Q. What about Trooper Lambert and Mr. Smith, had you known them for awhile?

23 A. I'd seen them around town and had talked to them.

24 Q. And had you partied with them before?

25 A. Yes M'am.

1 Q. And what sort of party did you all go to?

2 A. We went out riding...well, there is just this one

3 time is the only time I can remember...we went out

4 riding and they was one of them in front that

5 throwed a joint back at me and I lit it up and

6 smoked it and talked a few minutes and then I went

on back to town.

7 Q. And so they had given you pot on this occasion?

8 A. Yes M'am.

9 Q. That's all right now.

10 CROSS EXAMINATION:

BY: DAVID D. BROWN:

11 Q. Mr. Thomas, on this occasion you saw persons you

12 later learned were Trooper Lambert and Officer

13 Smith, you didn't have any Marijuana or any drugs

14 in your possession at that time?

15 A. No sir.

16 Q. Did you have any anywhere?

17 A. No sir.

18 Q. Are you telling the Court that you were ready to

go to Saltville to hunt these people some

19 Marijuana?

20 A. Yes sir.

21 Q. Drive to Saltville?

22 A. Yes sir.

23 Q Did you have any money with which to purchase it?

24 A. No sir, I was just going to ask if there was any

25 over there.

36

1 Q. Well, how would you get it?

2 A. Well, I know a few people over there and I would just tell them I'd bring the money back to them.

3

4 Q. Alright, and then you saw Jerry Lowery, is that correct?

5

6 A. Yeah.

7 Q. Why did you approach Jerry Lowery about getting Lambert and Smith something to smoke?

8 A. I thought he might know someone closer, you know.

9 People around town or something.

10 Q. Why would you think that?

11 A. Well, I just thought so.

12 Q. Been involved in it before and you knew that he had gotten drugs...a supply...is that the reason?

13 E. YEARY: We object...that's not the testimony.

14 THE COURT: That's the question and your objection is over-

15 ruled.

16 DAVID D. BROWN:

17 Q. Is that the reason...you knew he had a source of supply?

18

19 A. No sir, I just thought he might know of somebody.

20 Q. Well, you just didn't stop anybody? You didn't stop Keith Edminston up there or any of the

21 Officers and ask them if they knew where a source

22 of supply was, did you?

23 A. No.

24 Q. Why did you pick on Jerry Lowery?

25 A. Because I'd known him a long time and thought he

1 might know.

2 Q. And Jerry Lowery, then, went to Lonnie Coe and

3 got some Marijuana, didn't he?

4 A. Yes sir.

5 Q. Do you know how much he got?

6 A. Well, the Officers said only a couple of bags

7 was all.

8 Q. Alright, and Lonnie Coe gave it to him on credit?

9 A. Yeah, Jerry said he'd bring the money right back.

10 Q. And so Jerry knew where he was going...he was

11 going down to the Officers?

12 A. Yes sir.

13 Q. You had told him...you were the intermediary for

14 the Officers then, weren't you? You...he wasn't

15 going to buy it for you?

16 A. No sir.

17 Q. He was buying it for the Officers?

18 A. The reason..it was for me, more or less.

19 Q. But it wasn't to go to you?

20 A. No sir.

21 Q. As far as you know, Jerry hadn't had any dealings

22 with the Officers, had he?

23 A. No sir, not that I know of.

24 Q. How were you able to persuade him to do this?

25 A. Like I said, we was good friends and everything.

I said if he knew where there was any at, it would

save me a trip all the way to Saltville, and I

just thought I'd ask him.

38

1 Q. How much time was there from the time you asked
2 him if he knew where there was some until he
3 took you to the source of supply?
4 A. Well, he said he might know where he'd be, so
5 about five minutes.
6 Q. Well, he did know. He took you right to him in
7 five minutes?
8 A. Well, he said he didn't really know, that he might
9 be up there.
10 Q. How long was it from the time you left the
11 Officers until you came back with the Marijuana?
12 A. About 15 to 20 minutes - somewhere along there.
13 Q. Were you in the car where the transaction took
14 place or were you still in your car?
15 A. I was in my car.
16 Q. And Jerry didn't have you go over and verify who
17 these people were or anything did he?
18 A. No sir.
19 Q. Did you point out who they were and say "these
20 are the boys who want it", or anything of that
21 nature?
22 A. Jerry was my friend and I thought they were mine
23 too, you know. We just trusted them.
24 Q. What restaurant was it that you say this took
25 place?
A. The Oh Boy.
Q. Where is that located?
A. It's on 91.

Q. At the by-pass?

A. Yes sir.

Q. Just across the railroad - overhead - and it is on the left?

A. Yes sir.

Q. Who runs the Oh Boy, do you know?

A. I don't know his name.

Q. Do you know of any particular reason that Lonnie Coe was at this particular location?

A. I guess to get him something to eat...I don't know...I mean I didn't even ask.

Q. Alright, that's all.

MARY TATE:

Q. One more question. Mr. Thomas, when you came back to the scene where the Officers were parked, was any indication given by you - - I assume that there must have been some indication given by somebody - saying "There they are"?

A. Yeah.

Q. And prior to the time that he handed over the material, did not you and Mr. Stillwell indicate or tell Mr. Lowery that they were friends of your's.

A. Yes, I thought they was friends...I told him they was.

Q. Okay, that's what you told Mr. Lowery?

A. Yes M'am.

Q. Thank you.

JAKE STILLWELL,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Would you state your name, please?

A. Jake Stillwell.

Q. Mr. Stillwell, how old are you?

A. 22.

Q. And I believe you are a brother to Mr. Jerry Stillwell?

A. Yeah. Yes.

Q. And you are acquainted, I believe, with people who have testified here earlier known as Trooper D. H. Smith and Trooper L. E. Lambert?

A. Yes.

Q. How long have you known those gentlemen prior to March 13th, 1976, if at all.

A. About three or four months.

Q. How did you make their acquaintance and what did you know about them at that time?

A. Well, I had just talked to them. They'd pull up in town, you know, and I'd just talk to them and they'd come up and ask if I know'd where they could get any Marijuana.

Q. Were they sort of one of the boys there?

A. I thought they was friends.

Q. And had you ever had any occasion to do any socializing with them or beer drinking or smoking

1 pot or anything like that?
2 A. No sir.
3 Q. Going to the incident, do you know whether Mr.
4 Thomas ever had any occasion to think.....
5 A. ...I think he had. He said he had. He said
6 that he thought that he...
7 D. BROWN: I'm going to object to that.
8 THE COURT: Just what you've seen yourself, young man.
9 A. No, I haven't.
10 E. YEARY:
11 Q. Going to the occasion on March 13th, 1976, assum-
12 ing that date is the date these two Police
13 Officers that I have previously named spoke to
14 you and Mr. Thomas there in Glade Spring. What
15 do you remember about that particular occasion?
16 A. Well, Larry and I was setting there talking and
17 they pulled up beside us. I don't remember which
18 one asked if, you know, but they asked if we knew
19 where they could find any pot and we told them that
20 we thought we might be able to; that we didn't
21 know and we told them we'd go and see and we left..
22 well, we told them to meet us at the B.P. Service
23 Station behind the skating rink and we left and
24 as we was going under the under-pass in Glade...
25 the little road going toward Saltville....well,
we was going to Saltville because Larry had heard
there was some over there and we seen Jerry
walking down the road from home, so we went up to

1 the church and turned around and came back and
2 asked him if he knew where there was any pot at
3 and he said he knew a guy that might have some.
4 He said he thought he knew where he was at and he
5 asked us to run him up to the restaurant - the
6 Oh Boy...and we ran him up there and he went
7 inside and that guy was there and they stayed a
8 few minutes and came back out to the car and I
9 heard Jerry tell him that he would bring his money
10 back to him.
11 Q. So, you left there?
12 A. We left there and went back to the filing station
13 and Jerry got out of the car and got in their's,
14 and then he got back in our car and we went back
15 and took the guy his money, and Jerry got out and
16 took the guy his money in and we left.
17 Q. Did Jerry go with you?
18 A. When...yeah....
19 Q. Did he stay or come back out?
20 A. He went in and give him his money and come back
21 out and we left.
22 Q. So, he got back in the car with you all?
23 A. Yeah.
24 Q. What did you all do then?
25 A. We just drove around.
Q. You say you all were headed to Saltville?
A. Yeah.
Q. Did you all have any plans to see Jerry Lowery?

1 A. No, we just happened to see him walking down the
2 road.
3 Q. Why would you stop and turn around and pick him
out and say "Hey, there's a guy..."
4 A. ..we thought he might know somebody that had
5 some.
6 Q. He smoked pot and I guess you knew that?
7 A. Yes.
8 Q. And you smoke pot?
9 A. Yes.
10 Q. What would be the percentage of young people about
your age group in Glade Spring that...
11 D. BROWN: ....Object to that.
12 THE COURT: Objection sustained.
13 D. BROWN: He's not qualified to answer that.
14 THE COURT: Objection is sustained. Proceed.
15 E. YEARY:
16 Q. How long have you known Jerry Lowery?
17 A. About ten years.
18 Q. Are you employed at the present time?
19 A. Yes.
Q. Where?
20 A. American Furniture in Chilhowie, Virginia.
21 Q. How long have you been working up there?
22 A. This makes my seventh or eighth month.
23 Q. Now, during this period of time, or any time,
24 have you ever known Jerry Lowery to have a
reputation for selling drugs or anything of that
25

1 nature?

2 A. No.

3 Q. It was not for that reason that you stopped him?

4 A. No sir. He is just a friend and we thought he might know.

5 Q. If it had been anybody that you knew smoked pot, would you have stopped and asked them the same question?

8 A. Yes sir.

9 Q. Let's go back to the original conversation with the Officers, do you know which one initiated the conversation or did they make separate conversations or was it just in one transaction?

12 A. It was one of them...I forget which one it was.

13 Q. Did they say, "You get a bag for us"...one of them, and then to get another bag for the other one of them or what was said along that line?

16 D. BROWN: Object to that. That's leading and suggestive and everything else.

18 THE COURT: Mr. Yeary, you keep going back over the same thing. Now, I have requested you not to keep repeating, but apparently it makes no difference to you.

20 E. YEARY: I was not aware that was a repetitious question. If it was, I apologize to the Court.

22 E. YEARY:

23 Q. Once you got back to the car with Mr. Lowery... back to where the Police were, do you know why he got out of the car as opposed to you all?

45

1 A. Well, he was the one that had it on him.

2 Q. This was easier then than handing it to you all?

3 A. Yes.

4 Q. Did either one of you, that is you or Mr. Thomas, tell him who these fellows were and what relation, if any, they had with you all, or anything like that?

5

6

7 A. No, I didn't know their names then. I just thought they was friends, you know.

8

9 Q. Mr. Thomas, I think, had been out with them?

10 A. Yes sir, I think so.

11 Q. Did he tell Mr. Lowery they were friends?

12 A. I don't recall.

13 Q. Do you recall how much was involved in the transaction...how much money?

14 A. I think it was $30.00...$15.00 a bag.

15 Q. $15.00 a bag?

16 A. Yes sir.

17 Q. Was that the going rate at the time or cheaper than the going rate?

18 A. That was the going rate.

19 Q. At any time did you see any profit or anything like that being made by Mr. Lowery?

20

21 A. No sir.

22 Q. Did he make any profit at all..do you know?

23 A. No.

24 Q. So, he just did you all a favor, is that correct?

25 A. Yes sir.

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Q. I believe that's all.

CROSS EXAMINATION:

BY: DAVID D. BROWN:

Q. Mr. Stillwell, you were not socializing and beer drinking with Lambert and Smith were you?

A. No sir, I had never.

Q. Alright, and if they were friends at all, they were friends of Larry Thomas?

A. Yes sir, I guess.

Q. Well, why did you involve yourself in it then to be the conduit for putting all these drugs into circulation if you didn't even know these people except that Larry knew them?

A. Well, I'd talked to them when they came to town.

Q. Well, is that enough for you to engage in some illegal act?

A. Well, they were friends...I thought they were friends. I wanted to help them out.

Q. You wanted to be considered part of the "With it" gang or the "cool" gang or something by being able to furnish Marijuana to them?

A. Well, they was just friends.

Q. Well, was that part of it...that you wanted to be part of the group?

A. Yeah, I guess.

Q. You said they made a switch. You didn't participate in it, you said, but you knew it and you knew what price they paid for it, didn't you?

A. Well, that's what it was going for.

Q. And that was the going rate. You said that too?

A. Yeah.

Q. $15.00. Why would you go to Saltville for somebody that you didn't even know anything about to purchase any drugs for?

A. Well, I just...like I said...I thought they was friends and I just wanted to help them out.

Q You didn't think they were your friends did you, Jake?

A. Yes.

Q. That these people that you didn't even know were your friends?

A. Well, I'd talked to them four or five times, you know, just talked to them, and every time I'd talk to them they'd ask me about Marijuana.

Q. Well, you knew that this was illegal, didn't you?

A. Yes.

Q. I believe that's all.

D. H. SMITH,

having heretofore been sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Mr. Smith, I believe you have testified earlier that you all knew Mr. Thomas and had been out before together?

A. I believe he had been in the car. As best I can remember, I think he had been with us before.

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1 Q. And you all smoked together...smoked pot to-
2 gether?
3 A. Well, I think we drank together. I can't
4 remember if we smoked any or not.
5 Q. If I showed you a transcript of your testimony
6 that you gave on November 5th, 1976, page 32, of
7 the preliminary hearing in this courthouse, up-
8 stairs, in which you said....
9 THE COURT: ....read the question and the answer, Mr. Yeary.
10 E. YEARY: "Have you ever been drinking or smoking pot with
11 these two gentlemen before?" Answer: "Let's
12 see. I drank with them before and then they were
13 in the vehicle once before when there was some
14 pot smoked". Is that a correct statement of what
15 you said?
16 A. It's possible.
17 Q. Well, you didn't say it was possible here...
18 A. Yes sir, Mr. Yeary, but I don't have my original
19 notes here and that has been a long time ago.
20 Q. Alright, if you said this on November 5th, 1976,
21 that would have been a true recollection of the
22 facts?
23 A. As best I can remember, yes sir.
24 Q. Well, you wouldn't have testified falsely on
25 November 5th?
A. No sir, I said as best I can remember.
Q. Well, that wasn't what you said on November 5th...
was there something else you said on that date

that is not reflected in this transcript?

A. I don't know. I'm just tell-ing you as best I can remember, Mr. Yeary, right now.

Q. My question is: You testified on November 5th that you had been in a car with Thomas and Still-well smoking pot and that would be a correct statement. You were not falsely testifying on November 5th, were you?

A. No sir. No sir.

Q. I believe that's all.

D. BROWN: No questions.

THE COURT: Next witness, Mr. Yeary.

E. YEARY: Your Honor, I believe Mr. Brown had a stipulation with regard to the next witness.

D. BROWN: Which witness is this?

E. YEARY: Forrester.

D. BROWN: If Your Honor please, in regard to the testimony of Kenny Forrester, if he is called as a witness, The Commonwealth is prepared to stipulate that if he is asked the same questions in this case as he was in the Stillwell case, that his answers would be the same and that the transcript of that case would be incorporated in the transcript of this case and will be utilized as testimony in this case.

THE COURT: Alright.

D. BROWN: Larry Link is the same, Your Honor, and also Weaver...I believe it is David Weaver. Those

1 three.

2 THE COURT: The Court will consider that testimony in this case and it will be made a part of the record in

3 this case.

4 JUANITA HAMILTON,

5 having first been duly sworn, testified as follows:

6 DIRECT EXAMINATION:

7 BY: MARY TATE:

8 Q. Would you state your name, please?

9 A. Juanita Hamilton.

10 Q. Mrs. Hamilton, what is your residence presently?

A. Glade Spring, Virginia.

11 Q. And how long have you been living in Glade Spring?

12 A. About 11 years.

13 Q. And is that in Washington County, Virginia?

14 A. Yes.

15 Q. Mrs. Hamilton, do you know the defendant, Jerry

16 Lowery?

17 A. I sure do.

18 Q. How long have you known him?

19 A. About six years.

20 Q. And having known him for six years, do you know his reputation in the community for truth and

21 honesty?

22 A. Yes, I do.

23 Q. Would you tell the Court what that is?

24 A. Well, what time I've know'd Jerry, he has been honest and truthful.

25

THE COURT: Is his reputation for truth and honesty good or bad?

A. Yes, it's good.

THE COURT: Okay.

MARY TATE: I believe that's all.

D. BROWN: No questions.

PERKINS STUART,

having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: MARY TATE:

Q. What is your name, please?

A. Perkins Stuart.

Q. Mr. Stuart, what is your residence?

A. Glade Spring, Virginia.

Q. And is that in Washington County?

A. Yes, it is.

Q. How long have you lived in Glade Spring?

A. Approximately all my life except for a time I was in Military Service.

Q. Mr. Stuart, do you know the defendant, Jerry Lowery?

A. Yes, I do.

Q. And how long have you known Mr. Lowery?

A. I've known Mr. Lowery approximately eight or ten years.

Q. Alright, Mr. Stuart, do you know Mr. Lowery's reputation in the community for truth and honesty?

A. Yes, I do.

Q. And what is that, please?

A. Mr. Lowery is an outstanding young man in the community. The way I got acquainted with him was...

THE COURT: ....Just a minute. Do you know his reputation; is it good or bad?

A. It's good, sir.

THE COURT: Alright.

MARY TATE: That's all.

STUART: As I was about to state...

THE COURT: ....That's all you can state. If you will phrase your questions correctly, we'll get along a whole lot better.

MARY TATE: I thought I did ask what his reputation was.

THE COURT: You did, but you asked how did he know it and the question is: What is it?

MARY TATE: That's all.

JERRY DEAN LOWERY,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Would you state your name, please?

A. Jerry Dean Lowery.

Q. And, Jerry, how old are you?

A. 25.

Q. Jerry, going back to the day of March 13th, 1976, the time you met Jake Stillwell and Larry Thomas, would you tell the Court what happened on that

1 occasion?

2 A. Well, I was coming home from eating supper...I mean
3 I was coming from home after eating supper and I
4 was walking towards town and I saw Larry go by
5 and me and him run around a lot together and they
6 circled around and come back by and picked me up
7 and he asked me if I know'd where I could get any
8 pot and I told them I knew this guy that had some
9 and he told me he was going to eat hisself, you
10 know, and he told me he'd be up at this restaurant
11 and so, I just thought I'd try and so I went up
12 there and he was up there and so, of course, I
13 couldn't get it from him inside and we went out
14 to the car and he gave me two bags and I told him
15 I didn't have the money and he said "Okay", and
16 I said "Well, can I bring you the money back",
17 you know, "As soon as I can", and he said, "Well",
18 he said he'd stay up there a little while and
19 so I got it from him and went down there to the
20 B.P. Station where the car was parked and I got
21 in it and I thought I was just making one sale
22 and, you know, I just had the pot in my back
23 pocket in bags and I just reached out and got
24 them and laid them upon the car seat and I don't
25 remember Mr. Smith giving me any money. It seems
to me like only one of them give me any money,
as far as I can recollect and that was the driver.
I didn't know them apart, you know, they were just

1 some people. They looked familiar to me.

2 Q. But as far as you knew at that point there was just one transaction?

3 A. Yeah, the guy wanted two bags, you know and I just laid it upon the car seat.

4 Q. Who was the person who told you he was going to get something to eat?

5 A. Mr. Coe.

6 Q. What is his first name?

7 A. Lonnie.

8 Q. Now, what did Mr. Coe tell you he charged for this?

9 D. BROWN: Well, now I think that's hearsay...

10 E. YEARY: ...not to the issue of whether or not he said it. I think we have to have this to establish whether or not there was a profit made.

11 THE COURT: Yes, Mr. Yeary, but you have to go about it the right way. Objection sustained.

12 E. YEARY:

13 Q. What would you have to pay Mr. Coe for what you obtained?

14 A. $30.00.

15 Q. That was for both bags?

16 A. Yes sir.

17 Q. And what did you receive for them?

18 A. $30.00 from them.

19 Q. And did you take that same $30.00 you got off the Officers...did you change it in any way - the

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1 denominations or anything.....

2 A. ...I probably just had a dollar myself, so I

3 couldn't switch bills or anything.

4 Q. So you gave Mr. Coe the same money you received

5 from the Police Officers?

6 A. Yes, the exact same.

7 Q. The exact same bills?

8 A. Yes sir.

9 Q. This left you with the same one dollar bill you

10 had to start with?

11 A. Yes and some change.

12 Q. Did you receive any profit of any kind whatsoever

13 in any of this transaction?

14 A. No sir.

15 Q. Did you do it with any intent to make a profit?

16 A. No.

17 Q. Or any expectation that in the future there would

18 be a profit?

19 A. No.

20 Q. No gain whatsoever?

21 A. No.

22 Q. Did you do it with any intent to induce the

23 Police Officers or your buddies, that is Mr.

24 Thomas and Stillwell...to induce them to use or

25 become addicted to the pot or Marijuana or what-

ever you want to call it?

A. No sir.

Q. In other words, it was your understanding that

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these were people who already smoked pot?

A. Yes sir. Larry had told me he'd smoked pot with them....and several other poeple told me they were "cool" , so to say...that's just a word saying they were friends.

THE COURT: Speak up, young man.

A. They used the word "cool". They said they were "cool" people. That's just meaning friends and nice people...it's just lingo.

E. YEARY: I believe that's all.

CROSS EXAMINATION:

BY: DAVID D. BROWN:

Q. Mr. Lowery, "cool" is a person who is addicted to the use of Marijuana, isn't it?

A. No sir.

Q. "Cool"...

A. ...addicted to Marijuana?

Q. Yes.

A. I don't know anyone addicted to Marijuana. I don't know that you can become addicted to Marijuana.

Q. Using it then...people who use it ..Marijuana?

A. Well, I know a lot of people I call "Cool" don't even drink or anything.

Q. They're mighty friendly people?

A. Yes sir.

Q. Mighty friendly people...you call them "Cool"?

A. Yes sir.

1 Q. The going rate for a bag of Marijuana at this
2 time was how much?
3 A. $15.00 from that certain person.
4 Q. Now, you said in answer to Mr. Yeary's question
5 that when you go into the car you thought you
6 were going to make one sale?
7 A. Yes sir.
8 Q. One sale?
9 A. Yes sir.
10 Q. What sale? What does sale mean to you?
11 A. I was just going to lay it there and they bought
12 it all at once...just one time.
13 Q. Why did you become involved in this knowing that
14 it was illegal, Mr. Lowery? You knew it was
15 illegal, buying and selling Marijuana?
16 A. That's about the only time I ever did it in my
17 life. I know it is illegal.
18 Q. Why would you become involved in it on the say-so
19 of Larry Thomas and Jake Stillwell?
20 A. Just because they was such good friends.
21 Q. You weren't even going to do it for them. They
22 were going to give it to somebody else.
23 A. They said it was their friends and I'd saw a car
24 like that before in Saltville and I thought it was
25 somebody that was friends.
Q. They were their friends and right on and right on...
A. ..it was dark and I couldn't tell them from any-
body else.

1 Q. I believe that's all.

2 THE COURT: Next witness, Mr. Yeary.

3 E. YEARY: That's all we have, Your Honor.

4 THE COURT: Alright, you gentlemen may make any statements you care to.

5 D. BROWN: I don't care to make any statement, Your Honor.

6 E. YEARY: Your Honor, we would renew our motion as to the

7 multiplicity and the multiplicious nature of the

8 charges and would submit to the court in support

9 of this that this was one transaction and did not

10 make any separate deals or anything of this nature.

11 The Police Officers were acting as a team as they

12 had been doing in the past on other occasions and

13 especially in this Lowery case, it was all con-

14 templated as one transaction. His friends came

15 up to him to ask if he knew where he could get

16 some; again they did that as one transaction in

17 its entirety. We would submit that this is a

18 multiplication of charges. In addition, we would

19 submit that clearly this is a case where the

20 defendant has proven that this was for accomodation;

21 that he has come in to testify just how this

22 transaction took place. He met these boys and they

23 explained to him that they had some friends who

24 wanted to buy and he, in turn, asked...or, in turn,

25 asked the third person. Mr. Coe is the one, I

submit, who made the profit if there was a profit

made in the transaction. Certainly, there is no

1 evidence to show that Mr. Lowery made any profit
2 whatsoever. His testimony is completely consistent
3 with what the Troopers said in terms of how the
4 whole transaction arose. These young men placed
5 themselves in jeopardy by coming here to testify
6 and I think that fact, in itself, lends to the
7 credibility of what they say. There has been no
8 evidence to contradict Mr. Lowery to the effect
9 that this was merely an accomodation and that he
10 made any profit whatsoever in the sale of the
11 substance involved. For those reasons we would
12 ask the Court to strike the evidence, at least,
13 as to the felony portion and to consolidate the
14 charges into one.
15 D. BROWN: If Your Honor please, in regard to the accomodation
16 argument of the defendant, if I recall the
17 testimony correctly and I believe I do, Mr. Lowery
18 testified that prior to the time he met Mr. Thomas
19 and Mr. Stillwell, he had already made contact
20 with Mr. Coe and that he knew Mr. Coe had this
21 Marijuana - this material - and I submit to you
22 that the evidence clearly indicates....
23 E. YEARY: I don't recall that he said Mr. Coe had it.
24 D. BROWN: ...AND IT CLEARLY INDICATES that Mr. Lowery here
25 was Mr. Coe's agent and principal in dealing with
this and he was the one that was carrying it out,
aiding and abetting in the commission of this
offense, and I can't for the life of me see that

there was any accomodation. He was part and parcel of the bringing of it from one person to another and he was the second party involved in this accomodation...it wasn't Larry Thomas involved in the accomodation or Jake Stillwell. It was a friend of a friend of a friend involved in it. It seems to me like that he, at best, Larry Thomas is, of course, involved in it as much as he is, but Mr. Lowery is charged here, and he is aiding it and an agent of Mr. Coe, aiding and abetting in the distribution of Marijuana, and there were two separate transactions.

THE COURT: Alright, based on the evidence, the Court finds him guilty of each indictment, and I am of the opinion to fix his punishment at the minimum of five years under the statute and a fine of $250.00 on each case. So, Mr. Lowery, do you have anything to say or offer as to why the Court shouldn't sentence you at this time?

LOWERY: No sir.

THE COURT: Alright, if you will stand up, please. I hereby sentence you to five years in the penitentiary on indictment #1-77-40, and a fine of $250.00, and hereby sentence you to five years in the penitentiary on indictment #1-77-41, and a fine of $250.00. You may be seated.

E. YEARY: Your Honor, at this time we would ask the Court to run the sentences concurrently and for a

1 probation report.

2 THE COURT: Alright, Mr. Yeary, I'll take those motions under
3 advisement and refer it to the Probation Officer,
4 and really, I'm inclined at this stage - I'm not
5 ruling on it but I'm not so sure if the report
6 is fairly good, that I won't grant this motion.
7 I can see this is the only time that this young
8 fellow sold to the Officers; he was brought there
9 and this is getting pretty close. Technically,
10 he's guilty under the Statute, but based on the
11 evidence, I think maybe your motion may be good,
12 but I'll take it under advisement and rule on it
13 at a later date.

14 D. BROWN: I just wanted to make one statement to clarify the
15 record in the Jerry Dean Stillwell case. It has
16 already been adjudicated but I still feel like
17 I should tell the Court, there was a matter raised
18 in it concerning one Norman Richards and Trooper
19 Lambert or Trooper Smith did not arrest Norman
20 Richards. I have the warrant here. The person
21 who got the warrant was an undercover agent named
22 Trooper B. K. Lawson and also the Investigation
23 Officer, Wyatt, and I want to make it clear to the
24 Court that inference or otherwise it was not either
25 one of these two people who testified.

THESE WERE ALL THE PROCEEDINGS HAD IN THIS MATTER ON THIS DATE

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This matter came on again to be heard on the 16th day of June, 1977, before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia.

THE COURT: In the case of Commonwealth v. Jerry Dean Lowery, the record will show that Mr. Lowery was tried in this Court on May 17th, 1977, at which time he entered pleas of not guilty to the two indictments, charging distribution of a schedule I controlled substance. The Court heard the evidence; the argument of counsel, and at the conclusion thereof, found him guilty of each charge and fixed his punishment at 5 years in the penitentiary and a fine of $250.00 on each indictment. Thereafter, motion for probation was made and the matter referred to the Probation Office of this Court for a report. No date was fixed for the hearing on the motion for probation. The record will show that the probation report has heretofore been filed on June 10th, by Mr. Beckner. The report will be made a part of the record. Mr. Beckner is not present in that the date had not been scheduled for a hearing. The record will show that Mr. Brown is present; Mr. Lowery is present with his attorney, Mr. Yeary, and at this time, Mr. Brown, do you care to question Mr. Beckner on his report?

DAVID BROWN: No questions by the Commonwealth.

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THE COURT: Mr. Yeary, do you care to question Mr. Beckner on this report?

E. F. YEARY: No sir.

THE COURT: If there are questions, I'll continue it if you desire a continuance. The report is accurate...I don't know that it is necessary. Do you have any objection if the Court considers it at this time?

E. F. YEARY: We have no objections.

THE COURT: Alright, do you have any evidence on your motion, Mr. Yeary?

E. F. YEARY: We would ask Mr. Lowery to take the stand.

JERRY DEAN LOWERY,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Would you state your name, please?

A. Jerry Dean Lowery.

Q. Jerry, since this report has been filed, have you found employment?

A. Well, I was supposed to start to work today.

Q. Where was this?

A. Norton, cleaning brick.

Q. For whom?

A. David McNeil, Contractor.

Q. Do you understand that what you did was wrong in these cases?

A. Yes sir.

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Q. Would you tell the Court your feelings about this?

A. Well, I'm sorry I did it. I know I won't do it any more. I'd rather just start going back to church like I was.

Q. I believe that's all.

DAVID BROWN: No questions.

THE COURT: Alright.

E. F. YEARY: That's all we have, Your Honor.

THE COURT: Any statement you care to make will be entertained at this time, Mr. Yeary.

E. F. YEARY: Your Honor, I believe Mr. Beckner has likewise summed this case up pretty well. He states that he would be a fit and proper person for probation, and we would ask the Court to grant our motion. I might point out, Your Honor, these two charges did grow out of the same transaction. I might also point out that there is a real question as to whether this is not accomodation. Mr. Lowery does also, I would point out, help take care of his parents.

THE COURT: Mr. Brown?

DAVID BROWN: No recommendation.

THE COURT: As to indictment #1-77-40, your motion will be granted in part and denied in part, Mr. Yeary. After serving three years, the balance of the term will be suspended, and he be placed on probation under the usual terms and conditions upon release after serving the three years. He is

1 ordered to pay the fine and costs, and his term
2 of probation shall be for a term of five years.
3 DAVID BROWN: There were two indictments against
4 Mr. Lowery, Your Honor. Are you suspending the
5 second one?
6 THE COURT: The second one is suspended, yes, upon
7 serving of the three years. Mr. Sheriff, you
8 may take charge of him.
9 END OF PROCEEDINGS.
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REPORTER'S CERTIFICATION

STATE OF VIRGINIA, AT LARGE:

I, Jo Crewey, Court Reporter and Notary Public in and for the State of Virginia, at large, do hereby certify that the foregoing is a true transcript of the trial and probation hearing in the matter of Commonwealth v. Jerry Dean Lowery, held on May 17th, 1977, and June 16th, 1977, before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia; that all of said proceedings were recorded electronically and have been reduced to writing by me on such electronic recordings.

Given under my hand this 9th day of August, 1977.

Jo Crewey
Notary Public

(My commission expires 9-3-77).

The Jurors of the Regular Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on ~~Monday~~ Tuesday the 11th day of January in the year of Christ 1977, upon their oaths present that Jackie Wade Phillips

on the 20th day of March in the year of Christ 1976, in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4 of the Code of Virginia, 1950, as amended, as a Schedule I Controlled Substance,

against the peace and dignity of the Commonwealth of Virginia.

Second Count — And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Third Count — And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Presented upon the information of the following witnesses, sworn in Court, and sent by it to the Grand Jury.

Trp. L. E. Lambert, VSP ✓ .....

.....

.....

1-77-42

The Commonwealth

VS.

Jackie Wade Phillips

INDICTMENT FOR

Distribute Controlled Substance

A TRUE BILL

Foreman.

January 31, 1977

The Jurors of the.....Regular.....Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on ~~Monday~~ Tuesday the 11th....day of.....January..... in the year of Christ 1977..., upon their oaths present that.....Jackie Wade Phillips.....

.....

on the....20th. day of.....March..... in the year of Christ 19...76.., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid in violation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4 of the Code of Virginia, 1950, as amended, as a Schedule I Controlled Substance,

against the peace and dignity of the Commonwealth of Virginia.

Second Count — And the said Jurors aforesaid, upon their oath aforesaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Third Count — And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that .....

.....

on the.....day of.....in the year of Christ 19....., in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid.....

against the peace and dignity of the Commonwealth of Virginia.

Presented upon the information of the following witnesses, sworn in Court, and sent by it to the Grand Jury.

Trp. D. H. Smith, VSP ✓ .....

.....

.....

1-77-43

The Commonwealth

VS.

Jackie Wade Phillips

INDICTMENT FOR

Distribute Controlled Substance

A TRUE BILL

Foreman.

January 31, 1977

220

43

V I R G I N I A:

IN THE CIRCUIT COURT OF WASHINGTON COUNTY

COMMONWEALTH OF VIRGINIA

vs. CASE NOS. 1-77-42 and 1-77-43
DISTRIBUTE CONTROLLED SUBSTANCE

JACKIE WADE PHILLIPS

This day came David D. Brown, Esquire, Attorney for the Commonwealth, Emmitt F. Yeary, Esquire, counsel for the defendant, Jo Crewey, Court Reporter, who was duly sworn in the manner prescribed by law; came also the defendant in obedience to his recognizance.

It appearing to the Court that the defendant was tried in this Court on May 17, 1977, at which time he entered a plea of not guilty to each of the charges contained in the two indictments herein.

The defendant was found guilty as charged in each of the respective indictments and sentenced to a term of (5) years in the penitentiary and a fine of $500.00 on each of the indictments. Upon motion of the defendant, by counsel, a probation report was ordered prepared on the defendant. The report was filed on June 10, 1977, and a copy was furnished to counsel for the defendant. It appearing to the Court that O. W. Beckner, Probation Officer of this Court, prepared the report, but for good cause shown he was not present on this date. The Attorney for the Commonwealth and the attorney for the defendant stated to the Court that there was no controversy as to the contents of the report and no objections to the absence of the Probation Officer.

The Court heard statements by the Attorney for the Commonwealth, attorney for the defendant, and testimony on behalf of the defenda .t. After mature consideration the Court is of the opinion to and doth deny the motion for probation and doth order that the defendant serve five (5) years in the penitentiary on the charge contained in indictment 1-77-42 and at the completion thereof doth suspend execution of the (5) year penitentiary sentence imposed in indictment 1-77-43 and

BOOK 449 PAGE 0350

doth place the defendant on probation for a period of (5) years upon the following conditions:

1. That the defendant abide by the terms of probation as recorded in Law Order Book Y, page 175.

2. That he pay the fines and costs of these prosecutions.

The defendant is remanded to jail to await transfer to the appropriate penal institution of this Commonwealth.

The Court certifies that the defendant was present and his attorney was present during all stages of this proceeding.

During the course of this proceeding certain motions were made and objections interposed which will appear fully in the stenographic record herein.

ENTER: June 16, 1977

Lindsay D. Matthews
JUDGE

ASSIGNMENTS OF ERROR

1. The trial court erred in admitting Commonwealth's Exhibits 1, 2, 4 and 5 and in refusing to strike the evidence as to indictment No. 1-77-42 when the Commonwealth's evidence failed to establish any link or relevancy between the defendant and Commonwealth's exhibit no. 5, the certificate of analysis showing positive test for marijuana.

2. The Court erred in not dismissing the indictments since the statute under which the defendant was charged placed the burden of proof on the defendant to prove the lesser offense of accommodation and failed to state any standard of proof in this regard.

3. The Court erred in failing to grant the defendant's motion to strike the evidence of the Commonwealth, made after the Commonwealth rested and after all the evidence, as to the felony charges and thereby reducing the charges to the misdemeanor charge of accommodation.

4. The Court erred in denying the defendant's motion to dismiss the indictments since the statute under which the defendant was charged would subject him to cruel and unusual punishment.

5. The Court erred in denying defendant's motion to strike the evidence and dismiss the indictments because they were multiplicious.

VIRGINIA: IN THE CIRCUIT COURT OF WASHINGTON COUNTY

COMMONWEALTH V. JACKIE WADE PHILLIPS	)	A FELONY: DISTRIBUTION OF A CONTROLLED SUBSTANCE

TRANSCRIPT OF TRIAL

AND

PROBATION HEARING

APPEARANCES: David D. Brown, Attorney for the Commonwealth
Emmitt F. Yeary, Counsel for Defendant
Jackie Wade Phillips, in person and by his Counsel
L. E. Lambert
D. H. Smith
Nannie Bruce Atkins
Sally Sapp
Marcus Spitzer
Shelbert Phillips

I N D E X

	Dr.	Cr.	Redr.	Recr.
L. E. Lambert	8	15		
D. H. Smith	20	26		
Nannie Bruce Atkins	28.			
Sally Sapp	29			
Jackie Wade Phillips	31	34		
Probation Hearing	41 thru 48			

E X H I B I T S

Case #1-77-42

Commonwealth Exhibit #1, Certified Mail Receipt.....P 11
Commonwealth Exhibit #2, Acknowledgement Receipt.....P 11
Commonwealth Exhibit #3, Manila envelope.....P 12
Commonwealth Exhibit #4, White envelope with contents..P 13
Commonwealth Exhibit #5, Certificate of analysis.....P 14

Case #1-77-43

Commonwealth Exhibit #1, Certified Mail Receipt.....P 23
Commonwealth Exhibit #2, Acknowledgement Receipt.....P 23
Commonwealth Exhibit #3, Manila envelope.....P 24
Commonwealth Exhibit #4, White envelope and contents...P 25
Commonwealth Exhibit #5, Certificate of analysis.....P 26

This matter came on to be heard on Tuesday, May 17th, 1977, before The Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia.

Mrs. Jo Crewey, Court Reporter, was duly sworn in the manner prescribed by law.

THE COURT: Are you ready in the case of Commonwealth v. Jackie Wade Phillips?

D. BROWN: Yes sir.

THE COURT: Mr. Yeary, are you ready?

E. F. YEARY: Yes, Your Honor.

THE COURT: Alright, Mr. Phillips, if you will stand up and give attention to the Court, please. (Reading) "Virginia-Washington County, to-wit: The Jurors of the Regular Grand Jury, empanelled and sworn in and for the body of Washington County, in the State of Virginia, at the term of the Circuit Court, held in and for said county, commencing on Tuesday, the 11th day of January, in the year of Christ, 1977, upon their oaths present that Jackie Wade Phillips on the 20th day of March, in the year of Christ, 1976, in the County of Washington aforesaid, and within the jurisdiction of the Court aforesaid in villation of Section 18.2-248 of the Code of Virginia, 1950, as amended, feloniously and unlawfully did sell, give or distribute Marijuana, listed and included in Section 54-524.84:4 of the Code of Virginia, 1950, as amended, as a Schedule I Controlled Substance, against the peace

1 and dignity of the Commonwealth of Virginia.
2 Presented upon the information of the following
3 witness, sworn in Court and sent by it to the Grand
4 Jury: Trooper L. E. Lambert". The next Indict-
5 ment, 1-77-43, and the Court read 1-77-42.
6 "Virginia-Washington County, to-wit: The Jurors
7 of the Regular Grand Jury, empanelled and sworn
8 in and for the body of Washington County, in the
9 State of Virginia, at the term of the Circuit Court
10 held in and for said county, commencing on
11 Tuesday, the 11th day of January, in the year of
12 Christ, 1977, upon their oaths present that Jackie
13 Wade Phillips on the 20th day of March, in the
14 year of Christ, 1976, in the County of Washington
15 aforesaid, and within the jurisdiction of the
16 Court aforesaid in violation of Section 18.2-248
17 of the Code of Virginia, 1950, as amended, felon-
18 iously and unlawfully did sell, give or distribute
19 Marijuana, listed and included in Section
20 54-524.84:4 of the Code of Virginia, 1950, as
21 amended, as a Schedule I Controlled Substance,
22 against the peace and dignity of the Commonwealth
23 of Virginia. Presented upon the information of
24 the following witness, sworn in court and sent by
25 it to the Grand Jury: Trooper D. H. Smith".
Mr. Phillips, your name is Jackie Wade Phillips?
A. Yes sir, that's right.
Q. What is your age?

A. 23.

Q. Where do you live?

A. In Abingdon.

Q. You live in Abingdon?

A. Um-hum.

Q. You are presently free on bond in connection with the charges which the Court read to you?

A. Yes.

Q. You have employed Mr. Yeary to represent you?

A. Yes sir.

Q. And has he consulted with you in connection with the charges which the Court read to you?

A. Yes sir.

Q. He has explained to you the seriousness of the charges?

A. Yes sir.

Q. Has he explained to you and do you know the minimum - the least punishment you can receive on these charges - and the most punishment you can receive, if convicted?

A. Yes sir.

Q. Now, has Mr. Yeary explained to you and do you, yourself, understand that you have a right to enter a plea of not guilty; to have a jury hear the evidence; the jury will determine your guilt or innocence, and the jury fix your punishment?

A. Yes sir.

Q. Alright, sir, has he explained to you and do you

1 understand you also may enter a plea of not guilty
2 and providing the Court and the Attorney for the
3 Commonwealth consent, the Judge will hear the
4 evidence; determine your guilt or innocence and
5 fix your punishment?
6 A. Yes sir.
7 Q. Do you also understand you have a right to enter
a plea of guilty?
8 A. Yes sir.
9 Q. Alright, sir, do you understand that in event you
10 enter a plea of guilty, the only appeal you will
11 have from this court is on the jurisdictional
12 grounds of the court and by that I mean that the
13 Court makes a mistake as to the law as it applies
to your case?
14 A. Yes sir.
15 Q. Do you have any complaints against Mr. Yeary and
16 his representation of you?
17 A. No sir.
18 Q. Any complaints against the Sheriff's Department
19 of Washington County, the State Police, or any
other law enforcement agency of the Commonwealth?
20 A. No sir.
21 Q. Are there any witnesses you desire present today
22 who are not present?
23 A. No sir.
24 Q. Are you ready for trial at this time?
25 A. Yes sir.

1 Q. Alright, and what is your plea to the first
2 indictment which the Court read to you?
3 A. Not guilty.
4 Q. And your plea to the second indictment which the
Court read to you?
5 A. Not guilty.
6 Q. Alright, sir, do you desire a trial by jury?
7 A. No sir.
8 Q. Alright, let the record show that Mr. Phillips
9 waived trial by jury. Now, Mr. Brown, do you
10 consent that the Court hear this matter without
a jury?
11 D. BROWN: Yes sir, in each case.
12 THE COURT: Alright, for the record, the Court hereby consents
13 to hear it without a jury. You may be seated.
14 You may proceed, Mr. Brown.
15 E. YEARY: We desire the rule, Your Honor, and we also have
16 some motions as well.
17 (Thereupon, all witnesses in the matter were
excluded from the courtroom).
18 E. YEARY: Your Honor, the first motion we would make, we
19 would move to dismiss the indictments on the
20 basis that they are vague and they, thereby, would
21 possibly subject Mr. Phillips to double jeopardy.
22 In addition, they fail to state the nature of the
23 accusation against him in that they fail to state
24 the name of the person or persons who he allegedly
distributed or sold the drugs in question to.
25

1 THE COURT: On that issue, Mr. Yeary, you are familiar with
2 the rules on criminal procedure and that you may
3 file a motion for a Bill of Particulars, I'm
4 sure.
5 E. YEARY: Yes sir, I am, but...
6 THE COURT: ...I see no such motion filed in this case.
7 E. YEARY: No sir, we have not, but I submit, however, that
8 the defendant is entitled to have this information
9 without having to file a motion for a Bill of
10 Particulars.
11 THE COURT: That motion is denied.
12 E. YEARY: We...
13 THE COURT: ...The indictments are perfectly clear on their
14 face.
15 E. YEARY: Your Honor, we would also move the Court to
16 consolidate or to dismiss at least one of the
17 indictments on the basis that even on the face,
18 with the exception of the indictment numbers,
19 that they are identical charges....
20 THE COURT: ...I understand that and that may or may not be
21 a good motion and the Court will take it under
22 advisement until such time as the Court hears the
23 evidence.
24 E. YEARY: Your Honor, we would also ask the Court to dismiss
25 the charges on the basis that the Statute under
which we are proceeding is unconstitutional since
it subjects the defendant to cruel and unusual
punishment for the offense of Marijuana under the

present state of affairs as compared to other states and how they treat that offense.

THE COURT: I don't know how other states treat that offense, Mr. Yeary. I have enough trouble keeping up with the law of the Commonwealth, but the Commonwealth has seen fit to fix this punishment and I know of no restriction on the Legislature of the Commonwealth in fixing punishment. So, that motion is denied.

E. YEARY: We would also ask the Court to dismiss the charge on the basis that it is unconstitutional..the Statute under which we are proceeding is unconstitutional in that it places the burden of proof on the defendant in that the Statute of Accomodation as outlined there, it is difficult to say whether it is a lesser included offense and, therefore, the Statute is void for vagueness and also, it has no standard of proof as to the defendant's burden, assuming that the Commonwealth can constitutionally place the burden upon him, which we submit that is unconstitutional, but even if it is, it does not tell us to what degree we have to prove the defense of accomodation.

THE COURT: And that motion is denied.

E. YEARY: I believe that's all I have.

L E. LAMBERT,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

1 BY: DAVID D. BROWN:

2 Q. State your name to the Court, please.

3 A. I'm Trooper L. E. Lambert. I'm a Virginia State Trooper.

4 Q. During March of 1976, did you have any special assignment with the Virginia State Police?

5 A. Yes sir, I was participating in a Narcotics program of the Virginia State Police.

6 Q. During the month of March, and specifically on March 20th, 1976, did you have occasion to be acting in your capacity as an undercover agent with the Virginia State Police in Washington County, Virginia?

7 A. Yes sir.

8 Q. Prior to that time, had you made an acquaintance with the defendant, Jackie Wade Phillips?

9 A. On an occasion or so I had been in his company and we never spoke or anything. You know, I knew him by sight; I did not know his name.

10 Q. Prior to that time, you did not know his name?

11 A. No, I did not.

12 Q. Alright, on March 20th, 1976, did you have occasion to have a transaction with Jackie Wade Phillips?

13 A. Yes sir, I did.

14 Q. Where did this transaction take place?

15 A. I met Mr. Phillips inside the pool room in Slagle's Restaurant in Damascus.

16 Q. Is that in Washington County, Virginia?

A. Yes sir.

Q. How did the meeting take place, Trooper Lambert; who made the first approach and just what took place?

A. Trooper Smith and I were shooting pool at one of the tables in there when Mr. Phillips came in. He came over to us and asked if we were interested in buying some pot. He quoted a price of $20.00 per bag at that time, and Trooper Smith and myself finished shooting the game of pool and went outside with him. Out there, we entered, I believe it was a 1970 model Mercury; got into the rear seat of it and inside the car was another young lady and Mr. Phillips took his position as driver of the car. We went up into town; he handed a bag of this material across the seat to me; I examined it and as we were coming back, I paid him with a $20.00 bill. He let us out at Slagle's Restaurant on the return trip.

Q. The approach and initiation of the conversation was by Mr. Phillips?

A. Yes sir.

Q. And you paid him the $20.00 for the..what he represented to you to be what substance?

A. He alleged it was pot. I understood, in my opinion, he was referring to Marijuana.

E. YEARY: I object to what his opinion was.

D. BROWN:

1 Q. He said he was selling pot?

2 A. Yes sir.

3 Q. What did you do with the brown plant material that Mr. Phillips gave to you in exchange for the

4 $20.00?

5 A. I carried it on my person until later that evening,

6 when I locked it in a steel box that I have in

7 my residence, which I use to temporarily store

8 these materials until they are mailed to the

9 laboratory. On March 26th I mailed this material to the Division of Consolidated Laboratory Ser-

10 vices in Richmond, Virginia.

11 Q. Is that the material that you had purchased from

12 Mr. Phillips?

13 A. Yes sir, it was.

14 Q. What was the Certified Mail Receipt number?

15 A. The Certified Mail Receipt number is 841706.

16 E. YEARY: Excuse me, what did you say it was?

17 A. 8-4-1-7-0-6.

18 D. BROWN:

19 Q. Did you receive back through the mail that that package you had mailed was, in fact, received?

20 A. Yes sir, on March 30th, I received a return

21 Receipt.

22 Q. What number is on that return receipt?

23 A. 841706.

24 Q. I would like to introduce the receipt and the acknowledgement by this witness as Commonwealth

25

1 Exhibits one and two in the case of Commonwealth
2 v. Jackie Wade Phillips, case #1-77-42.
3 E. YEARY: Your Honor, we object to the relevancy of that
4 and we submit that he has not tied that in with
5 anything sent by Certified Mail.
6 THE COURT: They will be introduced and received into evidence.
7 (thereupon, Commonwealth Exhibits #1 and #2 were
marked for identification and filed).
8 D. BROWN:
9 Q. I'll ask you what type envelope that you forwarded
10 this to Consolidated Laboratories in?
11 A. This is a yellow envelope that I ...it is the
12 outside wrapper of this package.
13 Q. And what type of envelope did you have on the
14 inside?
15 A. A white envelope with an evidence stamp on it which
16 I filled out.
17 Q. I'll ask you, in regard to the Manila envelope,
18 if you addressed the envelope?
19 A. Yes sir, I did.
20 Q. I'll ask you if you put a return address on it?
21 A. I did.
22 Q. I'll ask you about the Certified Mail number.
23 A. I placed that number on there.
24 Q. And what is that number?
25 A. 841706.
Q. I'll ask you if there is a number on the envelope
that you didn't put on there...I'm just asking

14

1 if the number is on the envelope?
2 A. Yes sir, there is a number.
3 Q. And what is the number on the envelope having to do with the stamp of the chemist?
4 A. 75W2590.
5 Q. I would like to introduce this Manila envelope
6 as Commonwealth Exhibit #3, in the case of
7 Commonwealth v. Jackie Wade Phillips, 1-77-42.
8 E. YEARY: Your Honor, we object to the admission of this
9 envelope at this time. First of all, it contains
10 a number of items which the Trooper does not have
11 any personal knowledge of and it is hearsay and
12 the relevancy has not been shown at this point.
THE COURT: It will be marked.
13 (Thereupon, Commonwealth Exhibit #3 was marked
14 for identification an d filed).
15 D. BROWN:
16 Q. The envelope that you have heretofore testified
17 to that you put the material in that you received
18 from Mr. Phillips, do you have that envelope?
19 A. Yes sir, I do.
20 Q. And you also said that you prepared an information
21 for the front where the evidence stamp was on it,
22 is that correct?
23 A. Yes sir.
24 Q. And that is in the center of the envelope?
25 A. Yes sir.
Q. I'll ask you, although you didn't put any numbers

on it, if there is another number on the envelope?

A. Yes sir, there is.

Q. What is that number?

E. YEARY: Objection, unless he knows, and I believe he's previously stated he doesn't know.

D. BROWN: I never asked him if he knows...

THE COURT: ....He ought to know what the number is. He can see it, Mr. Yeary.

LAMBERT: The number on the envelope is 75W2590.

D. BROWN: By this witness, I'd like to introduce this white envelope as Commonwealth Exhibit #4, in the case of Commonwealth v. Jackie Wade Phillips, case #1-77-42.

E. YEARY: Your Honor, we would object to the admissibility of that. I think there are a number of items that this witness has no knowledge of and it would be hearsay, in addition to the relevancy of that envelope has not been shown at this time. In addition, the envelope contains some items...I don't know what it is. Certainly, there is no relevancy as to the contents...that is the relevancy of the contents has not been shown.

THE COURT: It will be marked and received into evidence.

(Thereupon, Commonwealth Exhibit #4 was marked for identification and filed).

D. BROWN:

Q. Trooper Lambert, did you receive from the

1 Consolidated Laboratory a Certificate of Analysis
2 in regard to evidence submitted by you in this
3 case?
4 A. Yes sir, I did.
5 Q. I'll ask you to look at that....
6 E. YEARY: ....Your Honor, I object to that. It has not
7 been shown that it was in regard to evidence
8 submitted in this case...we submit that the
9 document itself is not proof of that...of which
10 he would have any personal knowledge.
11 D. BROWN: Is this document in regard to a drug analysis,
12 Trooper Lambert?
13 E. YEARY: The document will speak for itself, Your Honor.
14 THE COURT: Has this document been properly filed with the
15 Clerk?
16 LAMBERT: Yes sir.
17 THE COURT: Alright, then it will be admitted into evidence,
18 marked Exhibit #5, as the Statute permits. You
19 may note your exception.
20 (Thereupon, Commonwealth Exhibit #5 was marked for
21 identification and filed).
22 D. BROWN: Your Honor please, there is one thing about it.
23 I have been asking him about the numbers on
24 them and this has a number on it other than the
25 Certified Mail number...it has the Certified Mail
number on it.
THE COURT: Alright.

1 D. BROWN:

2 Q. I'll ask you if it has a Lab number and what that
3 Lab number is?

4 A. The number is 75W2590.

5 Q. Alright. I would like to introduce this...I
6 believe the Court has already done that, as
7 Commonwealth Exhibit #5 in the case of Commonwealth
v. Jackie Wade Phillips, case #1-77-42.

8 E. YEARY: Your Honor, we object to this. I believe the
9 defendant has already testified in a previous
10 case and will ask for the right to cross examine
him at this point....

11 D. BROWN: .....the defendant?

12 E. YEARY: Excuse me, the witness. I believe he will state,
13 as he has in the other case, that he has no
14 personal knowledge of what....

15 THE COURT: ....I understand...

16 D. BROWN: ....I just asked him to read it. That's all I
17 asked him. Right?

18 E. YEARY: We object to this whole document as being hearsay
19 and the relevancy has not been shown at this
point.

20 THE COURT: Commonwealth Exhibit #5 - received.

21 D. BROWN: That's all from this witness at this time, Your
22 Honor.

23 CROSS EXAMINATION:

24 BY: E. F. YEARY:

25 Q. Trooper Lambert, I first show you Commonwealth

1 Exhibit #4, and I'll ask you to circle and place
2 your initials above all items on the envelope
3 which you have not personally placed thereon.
4 In the first circle, beside your initial, put
5 number one....and so on...in consecutive numbers.
6 Mr. Smith, I believe you have circled six different
7 items, is that correct?
A. Lambert.
8 Q. Excuse me, Lambert. Item number four contains
9 the numbers which you previously read to the
10 Court, 75W2590?
11 A. Yes sir.
12 Q. And do you have any personal knowledge of what
13 those numbers refer to?
A. No sir.
14 Q. And who put them on there....you have no personal
15 knowledge of that?
16 A No sir.
17 Q. And the same with the numbers of the items you
18 have circled and put your initial beside the
19 circle..number one...also containing the same
20 numbers. You have no personal knowledge of the
21 items contained in that?
A. No sir.
22 Q. Or the meaning or significance of them?
23 A. No sir.
24 Q. Now, I'll show you Commonwealth Exhibit #3, which
25 you testified about and if you would, please, I'll

ask you to do the same things in terms of the circling, numbering and initialling....the items you have no personal knowledge of. I believe on Exhibit #3, you have now encircled six items, is that correct, Mr. Lambert?

A. I believe so.

Q. What about the item right there?

A. I placed that on there.

Q. Now, of all the items...those six items that you just circled, you have no idea of the significance, or in any way know how they relate to Mr. Phillips...you have no personal knowledge in any way of these items?

A. No sir, I don't.

Q. And the same would be true of all these items that you encircled...

D. BROWN: You've already asked him that.

E. YEARY: Item four.

D. BROWN: I believe you asked him.

E. YEARY: I've only asked about items one and four...that would be true as to all the items encircled...

THE COURT: ...You've asked him once and now you're just repeating the second time, Mr. Yeary.

E. YEARY: Your Honor, I was interrupted by Mr. Brown. I wanted to make sure the witness understood. You understand the question?

LAMBERT: Yes sir.

E. YEARY:

20

1 Q. And your answer would be that you have no
2 personal knowledge of any of these?
3 A. That's right.
4 Q. Now, I show you Commonwealth Exhibit #5 and ask
5 you if anywhere thereon is contained the name of
6 Mr. Phillips?
7 A. No sir.
8 Q. Or Certified Mail number?
9 A. No sir.
10 Q. Now, the number out from the letters "FS" and
11 "LAB", there is a smybol for a number in the
12 right hand portion of the upper half of that
13 exhibit...75W2590. You have no personal knowledge
14 of what that relates to or the significance of
15 it...
16 D. BROWN: ...I'm going to object to this, for the same
17 reason he did on the drug analysis. It speaks
18 for itself.
19 E. YEARY: I just asked him if he had any personal knowledge
20 of it.
21 D. BROWN: Awhile ago, about the drug analysis, when I asked
22 that question, you objected to and said it speaks
23 for itself. The number is on there. He didn't
24 put any of those numbers on there.
25 THE COURT: Did you put anything on there?
LAMBERT: No sir.
E. YEARY: And you have no personal knowledge of what...
D. BROWN: ...Objection, it speaks for itself and he's

1 already said he didn't put any numbers on it.

2 E. YEARY: I'm asking if he has any personal knowledge about it.

3 THE COURT: The instrument speaks for itself and it has been filed with the Court here as required by Statute, Mr. Yeary, and that's sufficient.

4 E. YEARY: Then, I would be correct in saying, Mr. Lambert, would I not that there is no way you can tie in this drug report to Mr. Phillips - from your personal knowledge?

5 D. BROWN: Objection. That would be a conclusion on his part. It has already been filed in this court.

6 THE COURT: This is for the Court to determine. Objection sustained.

7 E. YEARY:

8 Q. Now, going back to the 20th of March, 1976, when you all were in Damascus, I take it that you and Mr. Smith were working as a team as you had been in other cases that you testified about today?

9 A. Yes sir.

10 Q. In this series of undercover work?

11 A. Yes sir.

12 Q. And you were over there in that capacity on that occasion?

13 A. Yes sir, we were.

14 Q. I believe that's all.

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1 D. H. SMITH,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION:

4 BY: DAVID D. BROWN:

5 Q. Mr. Smith, you are called here as a Commonwealth
6 witness in the case of Commonwealth v. Jackie
7 Wade Phillips, Case #1-77-43. State your name
8 to the Court, please.

A. Douglas H. Smith.

9 Q. I'll ask you if during the month of March, 1976,
10 if you were employed by the Virginia State Police?

11 A. Yes sir, I was.

12 Q. And I'll ask you if during that time you had any
13 special assignment other than that as a Trooper?

A. I was working undercover as a Trooper in Narcotics.

14 Q. I'll ask you if during the month of March, and
15 specifically, March 20th, 1976, if you were working
16 in Washington County, Virginia?

17 A. Yes sir, I was.

18 Q. On March 20th, 1976, did you have occasion to make
19 acquaintance with a person you learned at that
20 time or a later time, was Jackie Wade Phillips?

A. Yes sir, I did.

21 Q. Had you known him prior to that time?

22 A. No sir.

23 Q. Where did you first see him or make his acquaintance?

24 A. Well, it was at a...I don't know what the name of
25 the place is...it is a recreation center in Damascus.

Q. Alright, who was there with you?

A. Trooper Lambert and myself.

Q. What were you doing?

A. We were shooting pool.

Q. And how did you happen to become acquainted with Jackie Wade Phillips?

A. Well, he walked up to the table and I overheard him ask Lambert if he'd be interested in buying some Marijuana. He stated the price and Trooper Lambert started to walk away and he went back to me and said "How about you?"

Q. Who went back to you?

A. Mr. Phillips, and he said "Would you be interested too?"

Q. Alright, and after he went back and asked you that question, what did you do?

A. I followed him.

Q. Then what happened? What did you do?

A. We went out on the parking lot and got in a vehicle with him and which he was accompanied by a girl in the vehicle and Trooper Lambert and myself got in the back seat and he proceeded to drive out of town...or he drove up through town and drove back toward Glade...I mean, he didn't go all that far out of town and then he turned around and started back toward town and he handed the material back to me and I handed him the money.

1 Q. How much did you give him?
2 A. I payed him a twenty dollar bill.
3 Q. This was in accordance with his stated price when
4 you overheard him talking to Trooper Lambert in the
5 recreation center?
6 A. Yes sir.
7 Q. And you gave him the money and what did he give
8 you?
9 A. I gave him the money and he handed me a clear
10 plastic bag with greenish-brown plant-like material
11 in it.
12 Q. What did you do with this greenish-brown plant
13 material that you got from Jackie Wade Phillips?
14 A. Well, it was kept on my person until I arrived
15 at home. At home I have a locked box in which I
16 kept evidence temporarily and, of course, it was
17 taken out of this box and mailed by Certified Mail
18 to the Division of Consolidated Laboratories at
19 Richmond, Virginia.
20 Q. Did you place what you acquired from Jackie Wade
21 Phillips in that box?
22 A. Yes sir, I did.
23 Q. And then when did you take it out?
24 A. I mailed it on March 24th.
25 Q. Alright, you took out the material that you placed
in there, having been acquired from Jackie Wade
Phillips?
A. Yes sir, I did.

Q. Alright, how did you send it to the Laboratory?

A. I mailed it by Certified Mail, Certified Mail number 799819.

Q. Alright, after you mailed it, did you get anything back from the mail in regard to your request for return receipt?

A. Yes sir, I received a return receipt, advising me they had received it on March 25th.

Q. Alright, of...

A. ....1976, yes sir.

Q. What number does that have on it?

A. 799819.

Q. Your Honor please, I'd like to introduce the receipt for Certified Mail, #799819, as Commonwealth Exhibit #1 in this case, and also the return receipt, acknowleding it had been received, #799819, as Commonwealth Exhibit #2 in this case. Case #1-77-43.

THE COURT: They will be so marked and received.

(Thereupon, Commonwealth Exhibits #1 and #2 were marked for identification and filed).

D. BROWN:

Q. What type envelope did you mail the package in, Mr. Smith?

A. It was first placed in a small white envelope, which was labeled, and then I placed it in a Manila envelope, with the certified number on it.

Q. I'll ask you if this is the manila envelope?

1 A. Yes sir, it is.

2 Q. And I'll ask you who prepared the address on it to where it was to be sent?

3 A. I did.

4 Q. And the return address?

5 A. I did.

6 Q. And who placed on it the certified mail number?

7 A. I also did that too.

8 Q. And what is that number?

9 A. 799819.

10 Q. I would like to introduce this as Commonwealth Exhibit #3 in the case of Commonwealth v. Jackie

11 Wade Phillips, case #1-77-43.

12 THE COURT: It will be marked and received.

13 (Thereupon, Commonwealth Exhibit #3 was marked

14 for identification and filed).

15 D. BROWN:

16 Q. The white envelope that you heretofore referred

17 to, Mr. Smith, is that the envelope in which you placed the greenish-brown plant material which

18 you received from Jackie Wade Phillips?

19 A. Yes sir, it is.

20 Q. And that is the envelope in which you mailed the

21 material, inside the other envelope, to the

22 Consolidated Laboratories?

23 A. Yes sir, it is.

24 Q. Who prepared and placed the stamp on it "For Evidence, Virginia State Police"...who put the

25 information on that envelope?

A. I did.

Q. This number that is on the white envelope, Mr. Smith, you didn't place that number on it, did you?

A. No sir, I didn't.

Q. What is that number?

A. 7519089.

Q. Alright, I'd like to introduce this envelope as Commonwealth Exhibit #4 in the case of Commonwealth v. Jackie Wade Phillips, Case #1-77-43.

E. YEARY: Your Honor, we object to that. That envelope appears to contain some contents. The contents has not developed...the contents have not been shown to be relevant and in addition, with reference to the number, the relevancy of that has not been shown.

THE COURT: It will be received and marked Exhibit #4.

(Thereupon, Commonwealth Exhibit #4 was marked for identification and filed).

D. BROWN:

Q. Mr. Smith, did you receive a certificate of analysis from the Consolidated Laboratory in regard to the evidence submitted by you in Certified Mail number 799819?

A. Yes sir, I did.

Q. Do you have that certificate of analysis - the original?

A. Yes sir.

Q. I'd like to introduce this as Commonwealth Exhibit

1 #5 by this witness in the case of Commonwealth
2 v. Jackie Wade Phillips, Case #1-77-43.
3 E. YEARY: Your Honor, we object to that as being hearsay.
4 THE COURT: Overruled, it will be marked Exhibit #5 and received.
5 (Thereupon, Commonwealth Exhibit #5 was marked
6 for identification and filed).
7 D. BROWN: That's all from this witness at this time.
8 CROSS EXAMINATION:
9 E. F. YEARY: We have no questions.
10 D. BROWN: The Commonwealth announces through in both cases.
11 E. F. YEARY: Your Honor, we would renew the motions
12 as to the multiplicity of charges in this case
13 and submit that it was one transaction. These
14 gentlemen were acting as team mates in this case
15 and they testified that...
16 THE COURT: ....I don't care to hear any argument on that,
17 Mr. Yeary. I tell you, the motion is denied,
18 because this is different circumstances than in
19 the other cases you've had, so it is denied.
20 E. F. YEARY: Your Honor, I would move to strike the
21 evidence as to - especially as to the case in-
22 volving Trooper Lambert. The lab report.....
23 THE COURT: ...you've noted your exception to that
24 Mr. Yeary, and I've overruled it. It is in
25 evidence and so far as any motions to strike on
either case, I see no grounds, so your motions
are denied.

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1 E. F. YEARY: We just ask that the evidence ....the
2 Commonwealth's evidence be struck, Your Honor.
3 THE COURT: Denied.
4 D. BROWN: Your Honor, I understand that Dr. Garland Hunter
5 Wolfe was called as a character witness for Mr.
6 Phillips. Dr. Wolfe has spoken with me prior to
7 the date of this trial concerning Mr. Phillips...
8 he has on two or three occasions and he says that
9 he knows Mr. Phillips' father; he knows the boy's
10 character; he knows the boy's reputation in the
11 community for being truthful and honest, and he
12 would say that it was good.
13 THE COURT: I will accept that.
14 D. BROWN: I stipulate that that is what his testimony would
15 be; that is what he told me it would be. He didn't
16 say that he wouldn't be here, but I understand
17 that he is not here. The same with the other
18 witnesses Mr. Yeary has indicated...the character
19 witness that you summonsed that is not here?
20 E. F. YEARY: In fact, I think he will say the same
21 thing....Weaver.
22 D. BROWN: I'm saying the same for him, Your Honor please,
23 in regard to the testimony as to the type operation;
24 what was going on....David Michael Weaver, Larry
25 Link...and who is the other one?
E. F. YEARY: Kenneth Forrester and David Weaver.
D. BROWN: Well, I just named David Weaver, and Kenneth
Forester, if they were called in here to be

witnesses and the same questions were asked as in the Stillwell case were asked in this case, I'm willing to stipulate that their answers would be the same and that the transcript of the Stillwell case will be incorporated in this case as if the evidence were taken here today.

THE COURT: Do they know this defendant though?

D. BROWN: That's what I indicated...just their mode of operation.

THE COURT: Alright, but not as to any personal knowledge of this defendant or his activities?

D. BROWN: That's correct.

THE COURT: Alright. I will accept that.

D. BROWN: You agree to that, don't you, Mr. Yeary...what I said?

E. F. YEARY: Yes sir.

NANNIE BRUCE ATKINS,

having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. You are Mrs. Nancy B. Atkins, is that correct?

A. Nannie Bruce.....

Q. Nannie Bruce? I was about to get it wrong all around, calling you Mrs. Roe, right?

A. Right.

Q. Would you state your age to the Court and where you reside?

A. I live ....I am Nannie Bruce Atkins. I live on

1 White's Mill Road and I am 81 years old.
2 Q. And how long have you lived in the Washington County, Abingdon, Community?
3 A. All my life.
4 Q. And are you acquainted with the defendant, Jackie?
5 A. Yes, I am.
6 Q. How long have you known him?
7 A. Fifteen years.
8 Q. And where is his home in relation to your's?
9 A. Next door neighbor.
10 Q. And are you familiar with Mr. Phillips' reputation in the community for truth and honesty?
11 A. Yes, I am.
12 Q. And what is that reputation?
13 A. Well, he's a good, honest boy. He has never been in any trouble around there that we know anything about. As far as we know, he is a good boy.
14 Q. And that would be his reputation in the community?
15 A. Yes.
16 Q. That's all.
17 CROSS EXAMINATION:
18 BY: DAVID D. BROWN:
19 Q. Mrs. Atkins, I'm not going to ask you any questions, but if I look as well at your age as you do, I'd be proud of it too.
20 A. Thank you, sir.
21 Q. That's all.
22
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25

1 SALLY SAPP,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION:

4 BY: DAVID D. BROWN:

5 Q. Would you state your name, please?

6 A. Sally Sapp.

7 Q. Sally Sapp, and is it Mrs?

8 A. Mrs.

9 Q. And, Mrs. Sapp, what relation, if any, are you to Mrs. Atkins who just testified?

10 A. My sister.

11 Q. And may I ask where you live and what is your age?

12

13 A. My age is 83 and I live out on White's Mill Road.

14 Q. How long have you lived in Washington County and the Abingdon area?

15 A. All my life.

16 Q. Do you know this young man over here to my left, Jackie Phillips?

17

18 A. Yes.

19 Q. How long have you known him?

20 A. Fifteen years.

21 Q. And you all are neighbors, I take it.

22 A. Yes.

23 Q. You live in a house with your sister there?

24 A. Yes.

25 Q. Next to the Phillips' for about fifteen years then, is that right?

33

A. That's right.

Q. Are you acquainted with Jack's reputation in the Washington County, Abingdon, community for truth and honesty?

A. Well, I've know'd him to be a good boy. He has always been nice to us.

Q. A good neighbor, I take it?

A. Good neighbor.

Q. And what is his reputation in the community for truth and honesty?

A. Well, I've never heard nothing against him, his reputation.

Q. Would you think that in fifteen years, if there had been something bad about his reputation you would have heard it?

A. I would think so.

Q. Alright.

D. BROWN: No questions, Mrs. Sapp.

JACKIE WADE PHILLIPS,

having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Would you state your name, please?

A. Jackie Wade Phillips.

Q. And I believe people call you Jack, is that correct?

A. Yes sir.

Q. And, Jack, how old are you?

1 A. 23.
2 Q. Are you employed at the present time?
3 A. Yes sir.
4 Q. And by whom?
5 A. Letcher Motor Repair and Sales in Bristol.
6 Q. What do you do for them?
7 A. I'm an Electro-Mechanic.
8 Q In March of 1976, were you employed at that time?
9 A. Yes sir. I was self-employed then, working in the air conditioning field.
10 Q. Now, you have heard the Officers testify about the
11 incident that took place on March 20th, 1976,
12 would you tell the Court how this situation came about?
13 A. Well, I stopped ...drove in Damascus and stopped
14 by Slagle's Restaurant, or play house, or what
15 you call it, to use the bathroom, and I thought
16 I recognized the two Officers, but I couldn't
17 really place them, so when I come back out, I
18 stopped by and said hello to them and started
19 talking to them for a few minutes and I'd jarred
20 my memory and I remembered where I had seen them
21 first and they asked me if I knew where any pot
22 was; I told them that I didn't, you know, that
23 I had some of my own; that if they wanted to smoke
24 some, we'd go smoke some; so we did, and they,
25 you know, kept asking me if I'd give them any and
I had a couple of bags and, really, I didn't want

to sell because that was all I had, so, you know, they finally persuaded me to let them have it, so I did. We drove through town; smoked another one, and come back and that's really about all that happened.

Q. Now, did you make any profit of any kind on those two bags of Marijuana?

A. No sir.

Q. You let them have it for how much?

A. $20.00 a bag.

Q. And was that the same amount that you paid for it?

A. Yes sir.

Q. Did you let them have it with any intent to make any profit of any kind whatsoever?

A. No.

Q. At that time or any time in the future?

A. No sir.

Q. Did you let them have it with any intent to induce them -- both or either of them - to become addicted or dependant upon pot?

A. No sir, that's not possible.

Q. Pardon?

A. That's impossible for Marijuana - I believe it is. No sir, I had no intention of trying to hook them on Marijuana or making them dependant on it.

Q. Now, have you ever been in the business of selling Marijuana?

36

1 A. No sir.

2 Q. I believe that's all.

3 CROSS EXAMINATION:

4 BY: DAVID D. BROWN:

5 Q. You indicated that after you observed Trooper Lambert and Trooper Smith for awhile, you remembered

6 where you had seen them.

7 A. Yes sir.

8 Q. Where was that?

9 A. I had seen them in the presence of some other

10 people in Glade Spring that I knew.

11 Q. Who was that?

12 A. Mr. Stillwell.

13 Q. Who else?

14 A. Well, that's about all the people over there I know. I don't know any of them very well.

15 Q. Had you seen them smoke pot before?

16 A. Yes...they smoked pot with Mr. Stillwell.

17 Q. Did you smoke with them that time, before?

18 A. No, I'd never smoked any with them before, no.

19 Q. And you say that they were asking you where they could find some?

20 A. Yes sir.

21 Q. Do you have any recollection of offering to sell

22 there, and then turning around and asking one of

23 the Troopers to come on, and saying "Do you want

24 some too?"

25 A. No sir.

1 Q. Are you saying that that didn't happen?
2 A. Yes sir.
3 Q. And you're saying that they came up and approached
4 you about selling them some Marijuana?
5 A. Yes sir, they asked me for Marijuana. I may have
6 come up to them and started talking to them, you
know.
7 THE COURT: Talk up to me. I can't hear you when you're
8 looking at Mr. Brown.
9 A. No, I didn't ask them to buy it. I may have
10 initiated the conversation...just talking to them.
11 I thought I recognized them...recognized them and
12 wanted to talk to them and they kept looking at
13 me like they recognized me and I thought I re-
14 cognized them too, so I just, you know, said
hello and watched them shoot pool and talked to
15 them a few minutes.
16 Q. What did you say to them that made them think that
17 you might have some Marijuana to sell?
18 A. Well, I asked them where I'd seen them before and
19 they said they'd been around Glade Spring a lot
20 and I remembered who they were from that and that
21 I'd seen them and they named people they'd been
with.
22 Q. Was that when you told them that you could take
23 care of them with some Marijuana?
24 A. No sir, I just told them I would smoke a number
25 with them if, you know, they were out.

1 Q. And that's when you all left to go smoke one?
2 A. Yes sir.
3 Q. And, at that time, you had two bags?
4 A. Yes sir.
5 Q. Did you have more than two bags?
6 A. No sir.
7 Q. You sold them two bags, didn't you?
8 A. Yes sir.
9 Q. What did you smoke?
10 A. We smoked a number out of that.
11 Q. Before you sold it to them?
12 A. Well, I hadn't intended on selling them any at the time.
13 Q. And you charged them $20.00 and they gave you $20.00 for it, didn't they?
14 A. Yes sir.
15 Q. I believe that's all.
16 E. F. YEARY: That's all for the defenda nt, Your Honor.
17 THE COURT: Anything further for the Commonwealth?
18 D. BROWN: Nothing further for the Commonwealth.
19 THE COURT: You gentlemen may make any statement
20 you care to make.
21 D. BROWN: I don't care to make any initial
22 statement, Your Honor.
23 E. YEARY: Your Honor, we would submit....first
24 of all we would renew our motion to strike after all the evidence.
25

1 THE COURT: The ruling is the same as it was hereto-
2 fore, Mr. Yeary, denied.
3 E. YEARY: Your Honor, we would submit that,
4 basically, this is a question of credibility of
5 the witnesses...we have on the one hand, Mr.
6 Phillips' credibility that has been attested to
7 by a number of witnesses....Doctor Wolfe, who is
8 a well respected member of the community and has
9 known Mr. Phillips for a number of years...and the
10 two fine ladies who have known Mr. Phillips for
11 fifteen years and live there in the neighborhood
12 with him and know him to be truthful and honest,
13 and Mr. Phillips testifies that at this time the
14 police officers approached him or initiated the
15 conversation regarding the drug and we, we sub-
16 mit, believe that this is entrapment if you
17 believe Mr. Phillips' testimony and from all the
18 evidence, since the burden of proof beyond a
19 reasonable doubt is on the Commonwealth, we would
20 submit that he should be given the benefit of
21 a doubt in that regard. Now, in addition, in the
22 alternative, we would submit to the Court that
23 at the very most, the Commonwealth has only shown
24 that this is a case of accomodation. Again,
25 according to Mr. Phillips, he was just merely
doing these fellows a favor; he had known them
from acquaintances in Glade Spring, Virginia, and
when they asked him if they could buy.....

1 THE COURT: .....I don't believe we heard the same
2 evidence, Mr. Yeary, but proceed.
3 E. F. YEARY: In any event, Your Honor, we would
4 submit that this is a case of accomodation and
5 he should be given the benefit of a doubt on that
6 issue. What he has testified to is in complete
7 accord with their usual pattern, and with what
8 the Commonwealth has testified to as to how
9 these gentlemen would go about initiating the
10 conversations; ingratiating themselves with the
11 young people in the community and that his version
12 of what happened in the pool room on the night in
13 question is consistent with what they had done
14 in the past and we submit that under all the
15 evidence, that he should be given the benefit of
16 a doubt and his version is the one more believable.
17 Based upon that, Your Honor, we would ask the
18 Court to strike the evidence in both charges in
19 addition to the previous reasons stated and that
20 at the very most, to find, if any charge, guilty
21 of the offense of accomodation.
22 D. D. BROWN: If Your Honor please, my view of the
23 evidence is that there is no evidence of entrap-
24 ment. There is no credible evidence of accomodation.
25 The Commonwealth certainly didn't prove accomodation.
I'm saying that there is no credible evidence so
far as the defendant is concerned of any accomodation
and if the evidence of the Commonwealth is to be

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1 believed at all, we didn't show anything having
2 to do with accomodation and Mr. Yeary is completely
3 in error in saying that we proved accomodation.
4 We don't have to prove it and we didn't prove it.
5 The fact of the matter is, we showed completely
6 to the contrary and I am saying to the Court is
7 that there has been no evidence here at all on
8 entrapment and certainly nothing on accomodation.
9 THE COURT: The Court finds that the Commonwealth
10 has carried the burden on each indictment beyond
11 a reasonable doubt and in the Court's opinion, this
12 case is a little worse than the other cas es
13 that the Court has heard today. However, I think
14 the minimum sentence is adequate, but since it is
15 in the Court's opinion from the evidence, a more
16 aggravated case, I am of the opinion to fix his
17 punishment on five years in the penitentiary on
18 each count and a fine of $500.00 on each indict-
19 ment. So, Mr. Phillips, is there anything you care
20 to say or offer as to why the Court should not
21 sentence you at this time?
22 PHILLIPS: No sir.
23 THE COURT: If you will stand up, please. I hereby
24 sentence you to serve a term of five years in the
25 penitentiary on indictment #1-77-42, and a fine
of $500.00. I hereby sentence you to five years
in the penitentiary and a fine of $500.00 on
indictment #1-77-43. You may be seated.

42

E. F. YEARY: Your Honor, we would ask the Court to consolidate these two sentences to one term.

THE COURT: That motion is denied.

E. F. YEARY: We would also ask the Court to suspend the sentences and place Mr. Phillips on probation and we ask for a probation report at this time.

THE COURT: I will take that motion under advisement, Mr. Yeary, and refer it to the Officer for a probation report and, Mr. Osborne, as soon as you have it filed, advise me and we will fix a date thereafter for a hearing on the motion for probation.

THESE WERE ALL THE PROCEEDINGS HAD IN THIS MATTER ON THIS DATE.

This matter came on again to be heard on the 16th day of June, 1977, before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia.

THE COURT: In the case of Commonwealth v. Jackie Wade Phillips, the record will show that Mr. Phillips was tried in this Court on May 17th, 1977, on two charges of selling a schedule I controlled substance. The Court heard the evidence and at the conclusion of the evidence, found him guilty on each charge and fixed his punishment at five years in the penitentiary and a fine of $500.00 on each charge. At the conclusion of the trial, motion for probation was made, which motion was taken under advisement and the matter referred to the Probation Officer of this Court for a report. The record will show that the report was made by Mr. Oliver Beckner and filed in the Clerk's Office of this Court on June 10th, 1977, and a copy made available to Mr. Yeary and his client, the defendant. The record will show that today present is the defendant, Mr. Phillips, his attorney, the Attorney for the Commonwealth, Mr. Brown. This matter has not been fixed for a definite date for hearing and Mr. Beckner is not present. Should either party desire to question Mr. Beckner, the matter will be delayed until such time as they

1 may have the opportunity. Do you have any
2 questions in connection with the report, Mr.
3 Brown, for the Commonwealth?
4 DAVID BROWN: Your Honor please, I have no questions
5 but I would like to point out one thing. On page
6 1, it says "Probation Completed", and that
7 should be misdemeanor convictions according to
8 that...that's the wrong place there. Whoever put
9 that figure there, it should be misdemeanor
10 convictions.
11 THE COURT: I saw that...but I didn't know it should
12 be misdemeanor convictions. Any objections to the
13 report being corrected to that extent?
14 E. F. YEARY: I have no objections, Your Honor.
15 THE COURT: Do you desire to have Mr. Beckner
16 present for questioning, Mr. Yeary?
17 E. F. YEARY: No, Your Honor. There is another mis-
18 take in the list of convictions. Mr. Phillips
19 tells me that he was not convicted of reckless
20 driving on January 12th, 1972.
21 THE COURT: Alright. Do you want the Court to con-
22 sider this ....on your motion for probation...
23 at this time?
24 E. F. YEARY: Yes sir.
25 THE COURT: Do you have any evidence on your motion?
E. F. YEARY: Yes sir.

MARCUS SPITZER,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION: 45

BY: E. F. YEARY:

Q. Would you state your name to the Court, please?

A. Marcus Spitzer.

Q. And, Mr. Spitzer, what is your age and where do you reside?

A. Age 47, and I live in Bristol, Tennessee.

Q. And how long have you lived in the Bristol, Tennessee area?

A. Seven years.

Q. What is your occupation, sir?

A. General Manager of Electric Motor Repair and Sales, in Bristol, Virginia.

Q. How long have you been in that business?

A. About a year and a half.

Q. Have you had the occasion to become acquainted with Jackie Wade Phillips?

A. Yes, Jack is one of our employees.

Q. How long has he been employed with your company?

A. About a year, I believe, I'm not sure exactly.

Q. And would you tell us what type of employee you have found him to be - anything you might know about him that you would like to tell the Court?

A. Jack has an excellent work record and he is currently on a very responsible job with our company.

Q. You are aware of the nature of these offenses?

A. Yes, I am.

Q. And the fact that he has been found guilty of these

1 two charges?
2 A. I am.
3 Q. And if the Court should deem it proper to place
4 him on probation, would your company be willing
5 to continue him in his present employment?
6 A. We would.
7 Q. I believe that's all.
8 DAVID BROWN: No questions.

SHELBERT PHILLIPS,

9 having first been duly sworn, testified as follows:
10 DIRECT EXAMINATION:
11 BY: E. F. YEARY:
12 Q. Would you state your name, please?
13 A. Shelbert Phillips.
14 Q. And, Mr. Phillips, what is your age and what, if
any, relationship are you to Jackie Wade Phillips?
15 A. I am 58 years old and I am his father.
16 Q. And does your son live at home with you now?
17 A. Yes.
18 Q. In the last few months have you seen any, or
19 observed any, change in his attitude?
20 A. No, he's the same. I ain't seen nothing wrong.
21 Q. Would you tell us what type of son he has been?
22 A. He has been good.
23 Q. Has he expressed regret over these happenings?
24 A. How's that now?
25 Q. Has he expressed sorrow to you that these things
happened?

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A. Yeah-yeah.

Q. And regret?

A. Yeah.

Q. Does he appear to be sincere and sorry for what he did?

A. Yeah.

Q. I take it that you and your wife...your wife is living, is that correct?

A. Yes sir.

Q. And would you be able to assist your son and the Probation Officers of this Court...assisting Jack in keeping the terms laid down by his Probation Officer or the Court if probation is granted?

A. I would.

Q. And cooperate with the Court in every matter?

A. Yes sir.

Q. I believe that's all.

DAVID BROWN: No questions.

JACKIE WADE PHILLIPS,

having first been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY: E. F. YEARY:

Q. Would you state your name, please?

A. Jackie Wade Phillips.

Q. Jackie, how old are you?

A. 23.

Q. Could you tell the Court what is your thinking in terms of what you have done?

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A. I know what I did was wrong. I'm really sorry for it. I didn't realize it was going to cost all this trouble and I know it has caused my parents a lot of heartache. It is going to cost them a lot more if I'm not out where I can pay back the loan. If I had a second chance, I'm sure I would do a lot different.

Q. That's all we have, Your Honor.

THE COURT: Alright, I will hear any statement you have to make, Mr. Yeary.

E. F. YEARY: Your Honor, Mr. Phillips is a yong man, just 23 years of age. His record is essentially good with the exception of a few traffic violations classified as misdemeanors. I would point out to the Court that although he does have seven, I believe, previous misdemeanor offenses, they all involved traffic and things of this nature. So, with the exception of those traffic offenses, the young man does have a good record. He is presently employed and at least during the last year, he has been a very responsible employee as testified to by his supervisor. He does have ties with the community and his father, of course, indicated that he would assist Jack in meeting any terms while he is under probation. We submit to the Court that he would be a fit candidate for probation and would ask the Court to grant our motion for probation, and also to at least follow the recommendation of

1 the Probation Officer in respect to running the
2 sentences concurrently.
3 THE COURT: Do you have any statement, Mr. Brown?
4 DAVID BROWN: If Your Honor please, it might appear
5 to be proper to grant it....I really don't feel
6 like the sentences should run concurrently...it
7 might be proper to place him on probation and
8 then suspend the balance. I don't think it would
9 be proper to treat him...
10 THE COURT: ...is this the case that happened in
11 Damascus?
12 DAVID BROWN: Yes sir.
13 THE COURT: I seriously doubt that this....as I
14 recall the facts in this case, this young fellow
15 solicited those two men to purchase from him.
16 They didn't contact him...they were over there
17 playing pool and he came to them wanting to sell,
18 and I take it, the Court made some distinction in
19 punishment because I fixed the fine greater.
20 E. F. YEARY: We would ask the Court to suspend at
21 least part of one of the sentences, Your Honor.
22 THE COURT: Mr. Yeary, his record is alright. His
23 record is such that were it not for the nature of
24 the offense and how it came about, he probably
25 would deserve probation on the record, and I under-
stand that a lot of times, people don't understand
how the Court arrives at decisions, but to me this
is an entirely different situation to some of the

other cases and you were involved in them. This young man solicited, went out and asked these people to buy this....almost peddling, and I don't think he deserves the same treatment as the others, really. On indictment #1-77-42, your motion for probation is denied. On indictment #1-77-43, your motion is granted upon his release from incarceration on serving the first indictment. His term of probation shall be for a term of five years and the further condition of the terms of that suspension is that he pay all fines and costs on both indictments on his release. So, that will be the ruling. Mr. Sheriff, you may take charge of him.

END OF PROCEEDINGS

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2 REPORTER'S CERTIFICATION

3 STATE OF VIRGINIA, AT LARGE:

4 I, Jo Crewey, Court Reporter, and Notary Public in and for the State of Virginia, at large, do hereby certify that the foregoing is a true transcript of the trial and

5 probation hearing in the matter of Commonwealth v. Jackie Wade Phillips, on May 17th, 1977, and June 16th, 1977, and

6 that all of said proceedings were heard before the Honorable J. Aubrey Matthews, Judge of the Circuit Court of Washington County, Virginia, and that all of said proceedings were re-

7 corded electronically and have been reduced to writing by me on such electronic recordings.

8 Given under my hand this 9th day of August, 1977.

9

10 Jo Crewey

Notary Public

11 (My commission expires 9-3-77).

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