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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 810861

KATHY MARIE LANE,

Appellant

v.

COMMONWEALTH OF VIRGINIA,

Appellee

APPENDIX

Randolph D. Eley, Jr.
Gary C. Hancock
GILMER, SADLER, INGRAM,
SUTHERLAND & HUTTON
P. O. Box 878
Pulaski, Virginia 24301

Counsel for Appellant

Thomas Bagwell
Assistant Attorney General
101 North 8th Street
Sixth Floor
Richmond, Virginia 23219

Counsel for Appellant

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COMMONWEALTH OF VIRGINIA

COUNTY [CITY] OF PULASKI

To Wit:

No. _____

ARREST WARRANT
(Rule 3A:4)

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

You are hereby commanded in the name of the Commonwealth forthwith to arrest

KATHY MARIE LANE 607 Pulaski St. Pulaski, Va.

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

and to bring him (her) before the GENERAL DISTRICT COURT

(Designation of Court)

to answer a charge that he (she) committed an offense in the County (City) of PULASKI

on or about November 10, 1979,

namely (give a brief description of the offense) did unlawfully and feloniously have in her possession with the intent to distribute the controlled substance Qualude, a Schedule II controlled substance in violation of Section 18.2-248 of the Code of Virginia.

On the basis of the sworn statement(s) of Tpr. J. E. Asbury, the undersigned has found probable cause to believe the accused has committed the offense.

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

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

Name _____ Address _____ ☐

Name _____ Address _____ ☐

Name _____ Address _____ ☐

Name _____ Address _____ ☐

Given under my hand and seal, this 10th day of November, 19 79.

BK Farmer (SEAL)

(Signature of Issuing Officer)

MAGISTRATE

(Title of Issuing Officer)

DIST. DRUGS CD 12/17/79

1:00 PM

C-2-4-80 Preliminary 3-13-80

DOCKET NO. 79 2278

WARRANT OF ARREST

COMMONWEALTH vs. KATHY MARIE LANE

607 Pulaski St.

Pulaski, Va.

Executed this, the 10th day of Nov., 19 79.

Tp. J. E. Cosby

Serving Officer

DISPOSITION OF CHARGE:

(NOT) GUILTY OF THE WITHIN CHARGE AND

FIX THE PENALTY AT _____ FINE AND

Preliminary Hearing Waived

Grand Jury

AND PAYMENT OF COSTS, THIS THE 17 DAY

OF March, 19 80.

G. B. Cox

JUDGE

Fine _____ $ _____

Costs _____ 20.00

Total _____ $ _____

Cont'd

JUDGE

The following witnesses were recognized

to appear before the _____ Court of

_____ County (City),

Virginia, at _____,

Virginia, at _____ M., on the _____

day of _____, 19____,

under penalty of $ _____

Received and filed, this the 24

day of March, 1980

Harry Hutcheson Clerk

Fine _____ $ _____

Liquidated Damages _____ $ _____

COSTS

Warrant _____ $ _____

Trial _____ 10.00

Bail _____ 3.00

Arrest _____

Clerk of Court _____ 2.00

Commital (Date _____) _____

Witnesses _____ _____

Sheriff/Sergeant:

Fees _____ _____

Mileage _____ _____

Commonwealth Attorney _____ 5.00

Weighing Fee _____ _____

Reportable Violation D.M.V. ($5.00) _____ _____

D.M.V. Abstract Fee (50¢) _____ _____

Blood (Sample $ _____ Analysis $ _____) _____

Court Appointed Attorney _____ _____

_____ _____

Total Costs _____ $ _____

(Name of accused) _____ (surety)

with (if more than one) acknowledged himself indebted to the Commonwealth of Virginia in the sum of _____ 2

($ _____) and waives all benefit under the homestead exemption laws of the State of Virginia as to this obligation.

The condition of this obligation is that if _____ (Accused) shall appear personally before the

(Designation of court) on the _____ day of _____, 19____, at ____ m.,

and at any time or times to which the proceedings may be continued in that court or heard on appeal, to answer for the offense with which he is charged, and shall not depart without leave of the court and shall keep the peace and be of good behavior, then this obligation shall be void when final disposition of the charge is made; otherwise, this obligation shall remain in full force and effect until declared void and released by order of a competent court. Non-appearance before any court referred to herein shall be deemed to constitute a waiver of trial by jury.

Whenever the context so requires, the masculine shall be deemed to refer to the feminine or neuter and the singular to the plural.

Given under out hands and seals this _____ day of _____, 19____.

(SEAL) (Accused)

(SEAL) (Individual Surety)

by _____ (Name of corporate surety)

Attorney-in-fact (or title of signing officer)

Acknowledged before me in my County (City) on the date last above written.

(Signature of acknowledging official)

(Title of acknowledging official)

(Address of surety)

IN THE CIRCUIT COURT OF PULASKI COUNTY, VIRGINIA:

COMMONWEALTH OF VIRGINIA:

COUNTY OF PULASKI, to-wit:

The GRAND JURORS of the COMMONWEALTH of VIRGINIA, in and for the body of the COUNTY of PULASKI, and now attending its Circuit Court at the MAY TERM, 1980, upon their oaths, do present that

KATHY MARIE LANE

on/or about the 10th day of November, 1979, in the said County of Pulaski,

did unlawfully, feloniously and knowingly possess, with the intent to distribute, Methaqualone, a Schedule II controlled substance, in violation of Section 18.2-248 of the 1950 Code of Virginia, as amended, against the peace and dignity of the Commonwealth.

Upon the evidence of Trooper J. E. Asbury, a witness duly sworn.

5

FILE NO. 79-2278 80.135

COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

Indictment
for a
Felony
POSSESSION WITH
(INTENT TO)
DISTRIBUTE

KATHY MARIE LANE
Defendent(s)

MAY TERM, 1980,

May 19, 1980.

A true bill:

William L. Tate
Foreman

EVERETT P. SHOCKLEY
Attorney for the Commonwealth
Pulaski County, Virginia

VIRGINIA: IN THE CIRCUIT COURT OF PULASKI COUNTY

COMMONWEALTH OF VIRGINIA

vs. Felony 80.135

KATHY MARIE LANE

O R D E R

This day came again the Attorney for the Commonwealth and Kathy Marie Lane, whose date of birth is November 28, 1957, who stands convicted of a felony, to-wit: possession with intent to distribute, a controlled substance, Methaqualone, as charged in the indictment, appeared according to the condition of her recognizance, and came also J. L. Dillow and R. DAvid Warburton, her attorneys.

It is ORDERED that all of the evidence and incidents of trial be recorded verbatim on electronic equipment operated by Beverly A. Terry, Court Reporter, who was sworn so to do.

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

Thereupon, the defendant and her counsel were given the right to cross-examine the probation officer as to any matter contained in said report and to present any additional facts

bearing on the matter as they desired to present. The report of the probation officer is hereby filed as a part of the record in this case.

Whereupon, the Court, taking into consideration all of the evidence in the case, the report of the probation officer, the matters brought out on cross-examination of the probation officer and such additional facts as were presented by the defendant. And it being demanded of the defendant if anything for herself she had or knew to say why judgment should not be pronounced against her according to law, and nothing being offered or alleged in delay of judgment, it is, accordingly, the judgment of this Court, and in conformity with the verdict of the jury, the defendant is hereby sentenced to confinement in the penitentiary of the Commonwealth of Virginia for a term of twenty years and to pay a fine of $10,000.00, and that the Commonwealth of Virginia do recover against the said defendant its costs by it about its prosecution in this behalf expended.

And it is further ORDERED that as soon as possible after the entry of this Order, the defendant be removed and safely conveyed, according to law, from the jail of this Court to the said penitentiary therein to be kept, confined and treated in the manner provided by law.

Whereupon, the attorneys for the defendant expressed in open Court, the desire of the defendant to seek an appeal from the judgment of this Court to the Supreme Court of Virginia, and moved the Court that the defendant be continued on bond pending disposition by the Supreme Court of such notice of appeal. And it appearing proper so to do, it is, accordingly, the judgment of this Court that the defendant be continued on bond in the

amount of $25,000, with surety to be approved by the Clerk of this Court pending disposition by the Supreme Court of Virginia.

The Court ORDERS that the prisoner be allowed -0- days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case, the defendant was personally present and her attorneys were likewise personally present and capably represented her. Thereupon, the defendant was allowed to depart.

Enter this Order this 2nd day
of February, 1981.

Jack M. Mathews
Judge

ASSIGNMENTS OF ERROR

Petitioner respectfully submits the following as her Assignments of Error:

1. The Trial Court erred in denying defendant's motion and admitting into evidence as expert opinion the testimony of Terry Wayne Lee concerning the alleged drug source and origin of the controlled substance methaqualone, as it was wholly irrelevant and without probative value yet was highly prejudicial to the defendant's case.

2. The Trial Court erred in denying defendant's motion and admitting into evidence as expert opinion the testimony of Richard James McGarry regarding the threat posed by the drug, methaqualone; its effects upon the body; the procedure by which it was classified as a controlled substance; and its relationship to more notoriously abused compounds such as heroin and LSD, as this evidence was wholly irrelevant and without probative value yet was highly prejudicial to the defendant's case.

3. The Trial Court erred in denying defendant's motion and admitting into evidence the testimony of Trooper D. F. Dean concerning certain pocket knives and T-shirts found at 607 Pulaski Street during the course of the officer's search, as this evidence was irrelevant and prejudicial to the defendant's case.

4. The Trial Court erred in finding the evidence of the Commonwealth sufficient as a matter of law and fact to establish that the defendant was in constructive posses-

sion of the controlled substance seized, or that she was aware of the presence and character of the methaqualone seized or that she intentionally and consciously exercised dominion and control over the drugs seized.

5. The Trial Court erred in overruling the objection of the defendant to the introduction into evidence of the affidavit for the search warrant since defense counsel did not have access to the affidavit prior to trial, and erred in permitting the affidavit to be considered as substantive evidence.

6. The Trial Court erred in denying the defendant's motion to suspend or reduce the sentence of the jury by relying on the ground that the defendant has failed to admit guilt or knowledge of the drugs to the Court.

PRINTERS NOTE:

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VIRGINIA: IN THE CIRCUIT COURT OF PULASKI COUNTY

COMMONWEALTH OF VIRGINIA

v.

KATHY MARIE LANE,
Defendant

Stenographic report of all the testimony, together with the motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto, and other incidents of the trial of the case of Commonwealth of Virginia v. Kathy Marie Lane, Defendant, tried at Pulaski, Virginia, on January 8, 1981, and a sentencing hearing heard in this case in Pulaski, Virginia, on February 2, 1981; both the trial and sentencing hearing were heard before the Honorable Jack M. Matthews, heard in the Circuit Court of Pulaski County, Virginia.

APPEARANCES:

Francis C. Terwilliger, Esq.,
Assistant Commonwealth Attorney

R. David Warburton, Esq.,
Attorney for the Defendant

J. L. Dillow, Esq.,
Attorney for the Defendant

Kathy Marie Lane, in person
and by her attorneys

Everett P. Shockley, Esq.,
Commonwealth Attorney (appeared on 2/2/81 on behalf of Francis C. Terwilliger who did not appear on 2/2/81)

REPORTED BY:
Mrs. Beverly Terry
Court Reporter
P. O. Box 1172
Dublin, Virginia 24084

(Trial: 1/8/81)

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1 January 8, 1981

2 (Reporter sworn.)

3

4 THE COURT: Is the Commonwealth ready in the case of

5 Commonwealth against Kathy Marie Lane?

6 MR. TERWILLIGER: Commonwealth's ready, Your Honor.

7 THE COURT: Are you ready, the defense?

8 MR. WARBURTON: Yes, sir, the defense is ready.

9 (Brief silence.)

10 THE COURT: Would you stand up, Ms. Lane, please?

11 (The Defendant stand up at seat next to her attorneys.)

12 THE COURT: The record in this case shows your name to be

13 Kathy Marie Lane, is that your true and correct name?

14 MS. LANE: Yes, sir.

15 THE COURT: How old are you?

16 MS. LANE: 23.

17 THE COURT: When were you born?

18 MS. LANE: November 20, 1957.

19 THE COURT: Do you have your social security number or do

20 you remember it?

21 MS. LANE: Yes, sir.

22 THE COURT: Would you give the Clerk that please?

23 MS. LANE: 224-86-4633.

24 THE COURT: Ms. Lane, the Grand Jury in and for the body

25 of the County of Pulaski attending its Court at its May term has

26 found the following indictment against you which indictment reads

1 thus: "Commonwealth of Virginia, County of Pulaski, to-wit:
2 The Grand Jurors of the Commonwealth of Virginia in and for the
3 body of the County of Pulaski and now attending its Circuit Court
4 at the May term, 1980, upon their oaths do present that on or
5 about the 10th day of November, 1979, Kathy Marie Lane in the
6 said County of Pulaski did unlawfully, feloniously and knowingly
7 possess with the intent to distribute Methaqualone, a Schedule II
8 controlled substance, in violation of Section 18.2-248 of the
9 Code of Virginia, as amended, against the peace and dignity of
10 the Commonwealth of Virginia. Upon the evidence of Trooper J. E.
11 Asbury, a witness duly sworn and sent to the Grand Jury to give
12 evidence." What say you to this charge, guilty or not guilty?
13 MS. LANE: Not guilty.
14 THE COURT: Be seated please.
15 (The Defendant takes her seat next to her attorneys.)
16 THE COURT: Mr. Clerk, will you swear the jury to answer
17 the questions please?
18 (Thereupon the jury panel was duly sworn on voir dire.)
19 (Thereupon a jury of twelve was duly impaneled and sworn
20 to try the case.)
21 THE COURT: You may proceed with your opening statement,
22 Mr. Commonwealth.
23 MR. TERWILLIGER: Thank you, Your Honor.
24 (Thereupon Mr. Terwilliger made his opening statement to
25 the jury.)
26

(Thereupon Mr. Warburton made his opening statement to the jury.)

THE COURT: Go ahead and call your witness please.

MR. WARBURTON: Your Honor, at this time we would move to exclude all witnesses.

THE COURT: All right, all witnesses who expect to testify in this case will be asked to go outside, come back in here and there's a room back in here please and remain there 'til you're called.

MR. TERWILLIGER: Your Honor, I would object to the motion at this time on the grounds that it is untimely; it should have been made prior to opening statements.

THE COURT: Well, it's all right.

(All witnesses leave the courtroom.)

J. E. ASBURY,

a witness called on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TERWILLIGER:

Q. State your name for the Court please.

A. J. E. Asbury.

Q. And how are you employed, Mr. Asbury?

A. Trooper with the Virginia State Police.

Q. How long have you been so employed?

A. Approximately 11 years, sir.

Q. On November 10, 1979, were you a uniformed officer?

1 A. No, sir, I was assigned to Narcotics Investigation at
2 that time.
3 Q. And for what period of time have you undertaken
4 narcotics work?
5 A. I've been in narcotics for approximately 5 years, sir.
6 Q. Are you still in the narcotics branch?
7 A. Yes, sir.
8 Q. Now, on November 10, 1979, did you have an occasion to
9 secure a search warrant for the premises located in the Town of
10 Pulaski, Pulaski County?
11 A. Yes, sir.
12 Q. What premises were those, sir?
13 A. It was for the premises which is located at 607 Pulaski
14 Street here in the City of Pulaski which is a white frame
15 structure, one level with a basement.
16 Q. And at this time did you ascertain who was living in
17 that structure?
18 A. Yes, sir, it was brought to our attention that. . .
19 MR. WARBURTON: I'll object, Your Honor, sounds like
20 hearsay to me.
21 THE COURT: I don't know whether he knows or not.
22 MR. TERWILLIGER: I'll connect it up at a later time.
23 THE COURT: All right, go ahead and ask him if you'll
24 connect it up.
25 A. Yes, sir, we were aware that a Ronald Barry Boardwine
26 and a Kathy Marie Lane were occupants of the residence.

Q. And do you know in whose name the residence was owned?

A. No, sir, not at that time.

Q. Now, did you obtain a search warrant for this property?

A. Yes, sir, we did.

Q. From whom did you obtain it?

A. Are you referring to the magistrate?

Q. Yes, sir, was it a magistrate that you obtained it from?

A. Yes, sir.

Q. _____(inaudible) obtaining the warrant, did you file an affidavit for a search warrant?

A. Yes, sir, I did.

Q. With that magistrate?

A. Yes, sir.

Q. And I ask you to look at this document?

A. Yes, sir, this is the affidavit for the search warrant which I filed with D. K. Farmer, I believe the magistrate's name is.

Q. And when you obtained this affidavit for the search warrant, what did you do with it, you gave it to him?

A. Yes, sir.

Q. Did he issue you a search warrant or a copy thereof?

A. Yes, sir, he did.

Q. I ask you to look at this item which the defense counsel has already seen.

A. Yes, sir, this is the search warrant which was executed

1 at the residence in question.

2 Q. And the wording at the bottom of the warrant where it

3 says "executed and seized on this date, November 10, 1979, the

4 attached list of items; the time executed 1:40 p.m.; search

5 ended 3:15 p.m. on November 10, 1979". . .

6 A. Yes, sir.

7 Q. . . .signed J. E. Asbury?

8 A. That's my handwriting, that's right.

9 Q. It has your signature on it?

10 A. Yes, sir, that's correct.

11 Q. It refers to a list of items seized; I ask you at

12 this time to look at this list of property seized _____

13 (inaudible).

14 A. Yes, sir, this is the list of property which was

15 seized by me at the time of the search.

16 Q. Upon seizing property and executing the search

17 warrant, what did you do with reference to the warrant or copy

18 of the warrant that you had with you at the time?

19 A. The warrant was later filed, the search warrant was

20 later filed with the Circuit Court on the 13th of November which

21 would have been approximately 3 days after execution.

22 Q. And this was in the courthouse here downstairs?

23 A. Yes, sir, that's correct.

24 Q. Okay, and at that time your responsibility for the

25 search warrant _____(inaudible) ceased, is that correct?

26 A. That's correct.

1 MR. TERWILLIGER: Your Honor, at this time I would like
2 to introduce into evidence the affidavit for the search warrant
3 as Commonwealth's Exhibit No. 1, the search warrant itself as
4 Commonwealth's Exhibit No. 2, and I will hold the list of
5 property seized at this time.
6 THE COURT: All right, any objections?
7 MR. WARBURTON: Yes, sir, as I informed the Court
8 earlier, the defense counsels did not have access to that
9 because the Clerk's Office could not present it to us in its
10 normal filed place in the last 3 months.
11 THE COURT: I overrule your motion. All right, let them
12 be introduced and so marked.
13 Q. After obtaining your search warrant, did you go to
14 307 Pulaski Street in the Town of Pulaski?
15 A. 607.
16 Q. I'm sorry, 607?
17 A. Yes, sir, I did.
18 Q. All right, what time of day or night was it that you
19 arrived at the scene?
20 A. We arrived there at approximately 1:40 at the time
21 the search warrant was executed; this was approximately 1:40 p.m.
22 in the afternoon of November 10th.
23 Q. P.M?
24 A. Yes, sir.
25 Q. And were you alone at the time?
26 A. No, sir, I was accompanied by several officers, fellow

1 troopers in addition to Town police officers.
2 Q. And are any of those officers here with you today?
3 A. Yes, sir.
4 Q. Which officers are with you?
5 A. Trooper David Dean and one of the Town officers.
6 Q. At the time that you entered the premises, were you
7 the first one to enter?
8 A. I was actually the second individual officer to enter
9 the premises; of course, it was more or less a joint entry; the
10 first officer would've been Special Agent Al Crane who's a
11 member of the Department of State Police.
12 Q. Who read the warrant at that time?
13 A. I had possession of the warrant and executed the
14 warrant.
15 Q. Who was present in the house when you came in?
16 A. The Defendant, Kathy Lane, Mr. Ronald Boardwine, a
17 small child and a younger female were present.
18 Q. When you say a small child, can you give us the
19 approximate age please?
20 A. I, I don't recall, I would say age 4 to 5 years old
21 I suppose.
22 Q. And the younger female that was mentioned, the
23 approximate age please?
24 A. At that time I felt that she was a juvenile approximately
25 17 or so.
26 Q. And where were these individuals located in the house?

A. As we entered the house; of course, we entered through the livingroom area; there was a chair situated to the right which Mr. Boardwine was seated in; there was a chair across the livingroom which the Defendant, Ms. Lane, was seated in; and the best of my recollection, the juvenile or the young lady and the child were in the vicinity of the couch which was directly across from the door which we entered.

Q. How many rooms does this building have?

A. The best that I can recall would be 4, 4 rooms upstairs, a bath facility and then 2 rooms I believe downstairs in the basement area.

Q. And how long did the search take?

A. The search, well, was initiated at the time of execution of the search warrant at approximately 1:40 p.m. and was secured at approximately 3:15 p.m.

Q. And at any point during that search were any items of interest uncovered?

A. Yes, sir, there was.

Q. Did you see these items?

A. Yes, sir, I did.

Q. At what point did you see them ?

A. After a period of time, I was involved in searching other rooms of the house, my attention was directed at the items which I have with me here today by Trooper Dave Dean, he directed my attention to a chair which Ms. Lane was seated in, upon observing what was behind the chair which was a white plastic bag

1 which contained a blue plastic bag contained 9 clear ziplock type
2 plastic bags which contained approximately what appeared at that
3 time to be a thousand units per bag of _____(inaudible) 714
4 which is considered to be Methaqualone or Qualude, a Schedule II
5 controlled substance.
6 Q. All right, at this time was Trooper Dean the first,
7 did Trooper Dean actually have this bag in his possession when he
8 brought your attention to it?
9 A. No, sir, he, the bag remained in the position that it
10 was found; of course, he left it in that position for my
11 observation; he did not physically take possession of it; it was
12 at the location that it was discovered.
13 Q. Is there any reason or police procedure of why he
14 did not just pick up the bag and hand it to you?
15 A. Yes, sir, well, it was my investigation and this is
16 the policy that we follow; it was my case, therefore, I was
17 responsible for evidence which would have been seized if any in
18 that residence.
19 Q. At this time is the plastic bag _____
20 (inaudible)?
21 A. This is the plastic bag which I had placed the evidence
22 in for submission to the laboratory in Roanoke.
23 Q. All right, now, prior to the time that you submitted
24 it to the laboratory, did you have the list of the substances
25 seized in your control and possession?
26 A. Yes, sir, I did.

Q. And to whom did you give it at the laboratory?

A. I turned it over to the chemist, Terry Lee, I believe the chemist's name is.

Q. This was for analysis to find out what the substance was?

A. Yes, sir, its examiner was Terry W. Lee, it was the chemist at the Division of Consolidated Laboratory Services in Roanoke, Virginia.

Q. Were you notified as to what the results of that examination were?

A. Yes, sir, I was.

Q. And how were you notified?

A. I was initially contacted by telephone that the lab analysis had been conducted and the results had been finalized and had been requested to come to the lab and pick up the evidence and the laboratory analysis.

Q. And did you receive a laboratory analysis at that time?

A. Yes, sir, I did.

Q. And have you filed that analysis with this Court?

A. Yes, sir, I did.

Q. You filed it in both the related case against the co-defendant and against Ms. Lane?

A. Yes, sir.

Q. Your Honor, I believe at this time the laboratory analysis is in the Court file and I would like to have it marked

1 as an exhibit, Commonwealth's Exhibit No. 3.
2 THE COURT: Any objections?
3 MR. WARBURTON: No, sir.
4 THE COURT: Let it be so introduced and marked Commonwealth's
5 Exhibit No. 3.
6 Q. Now, will you examine these items please? Is this
7 outer plastic bag, is this your plastic bag?
8 A. Yes, sir, that's correct.
9 (Brief silence.)
10 A. Both bags, the trash bags were. . .
11 Q. This trash bag is also your plastic trash bag?
12 A. Yes.
13 (Brief silence.)
14 Q. All right, this plastic bag, is this yours?
15 A. Yes, sir.
16 Q. _____(inaudible) third plastic bag?
17 A. Yes, sir.
18 Q. This plastic bag, is this also yours?
19 A. No, sir, this was the bag which the Methaqualones were
20 discovered in which contained the blue bag also containing the
21 Methaqualones.
22 Q. Now, was this bag in the same condition, all of this
23 black all over it?
24 A. No, sir, it was contaminated apparently by the lab
25 technician in an effort to dust for fingerprints.
26 Q. Okay, and from the analysis have you learned whether

or not fingerprints were in fact found?

A. No, sir, there was not any discernible latent fingerprints removed from the bag.

Q. Okay, was this blue plastic bag also present at the time?

A. Yes, sir, that's correct.

Q. All right, inside this blue plastic bag are large numbers of smaller bags which are marked with certain numbers; were these numbers on them when you found them?

A. No, sir, they were not.

Q. All right, were they on them when you turned them over to the lab?

A. No, sir.

Q. Are they the same or similar bags you gave them?

A. That's correct.

Q. All right, there are 9 big bags?

A. Yes, sir.

Q. Did you ever count how many pills were in each of these?

A. No, sir, I did not, at that time I estimated each bag contained roughly 1,000 units.

Q. Were they tied in a knot like this or were they . . .

A. Yes, sir.

Q. And these pills are Methaqualones?

MR. WARBURTON: Your Honor, I don't believe this witness is qualified to testify to that.

Q. All right, these are the same or similar pills to

1 which you sent to the laboratory?

2 A. Yes, sir.

3 Q. These are the same pills?

4 A. Yes, sir.

5 Q. Now, have you ever in your experience as an undercover

6 officer purchased pills?

7 A. Yes, sir.

8 Q. Have you ever purchased Methaqualone?

9 A. Yes, sir, I have.

10 Q. Approximately how many occasions? (Brief pause.)

11 And over what time period?

12 A. Well, I've made _____(inaudible) seizures of

13 Methaqualone tablets and purchased tablets off of individuals in

14 small numbers some several times; the exact number over a five

15 year period I cannot give you today.

16 Q. Are you aware of what the street value of these tablets

17 would have been in November, November of 1979, or the value

18 today?

19 A. Yes, sir, at that time we computed, by formula computed

20 the street value, approximately $8.00 per unit which would give

21 the street value of approximately $72,000.

22 Q. So we have sitting on that table $72,000 worth of

23 Methaqualone?

24 A. Yes, sir, that's correct.

25 Q. Now, when these items were found, were all the same

26 four individuals, non-police individuals still present in the

room when they were found?

A. Yes, sir, they were.

Q. When your attention was called to the bag, where was Kathy Lane?

A. I don't recall if she was still seated in the chair at the time or not; she was seated prior to and at the time the pills were discovered; she may . . .

Q. Did you speak to her after these pills were found? Prior to answering that question, let me ask you if at any time prior to the finding of these pills did you advise Ms. Lane of her constitutional rights commonly called the Miranda rights?

A. After the tablets had been discovered, the Miranda warning was advised to Ms. Lane and to Mr. Boardwine.

Q. Did she state whether or not she understood these rights?

A. Yes, sir.

Q. And did you then speak to her at all about these tablets?

A. There was a voluntary remark that she had rented the premises or another couple had apparently been residing at the residence, she had not been there for approximately 2 weeks, a 2 week period of time and of course was unaware that the tablets were there.

Q. Did she state whether or not she had been back on the premises for any length of time?

A. I do not recall her making any such statement.

1 Q. Did she tell you where you could locate this mysterious
2 couple who had rented the premises?
3 A. At that time she said that they had apparently moved
4 to Florida or had gone to Florida.
5 Q. Had you had this house under observation at all
6 prior to making or entering the premises?
7 A. Yes, sir, it had been under surveillance for a period
8 of time.
9 Q. And had you observed Kathy Lane enter those premises
10 at any time just preceding the execution of the warrant?
11 A. No, sir, I, myself, did not actually observe Ms. Lane
12 leaving or entering at any certain time.
13 Q. Now, did she make any other statements about these
14 pills?
15 A. No, sir, none that I can recall.
16 Q. All right, did she ever disclaim ownership at all?
17 A. Well, in her remark, her earlier remark itself would
18 have been sufficient I suppose to say that she was disclaiming
19 ownership of the substance.
20 Q. Just that someone else had been on the premises?
21 A. Yes, sir.
22 Q. Now, when you got these, sent these pills to the
23 laboratory, did you yourself go to pick them up?
24 A. Yes, sir, I did.
25 Q. And did you receive them from the Consolidated
26 Laboratories?

A. Yes, sir, I did.

Q. And what did you do with them after you received them?

A. At that time they were, of course, remained preserved as evidence in the trunk of my vehicle which I have access to and I am the only person having access to by way of key until they were presented in evidence against the co-defendant.

Q. And at this time from whom did you receive them this morning?

A. The Sheriff, Mr. Conner, had produced them.

Q. At the related hearing on this case, were these taken into evidence at the end of the trial?

A. Yes, sir, that's correct.

Q. Were you present at the time when any order was entered by the judge?

A. Yes, sir.

Q. Is this the young lady you've been calling Kathy Lane?

A. Yes, sir, it is.

MR. TERWILLIGER: Your Honor, I would like the record to show that he has indicated the Defendant.

Q. Were any other drugs of any type found in the search?

A. There were a couple of bottles of caffeine discovered which is, of course, a non-controlled substance.

Q. Where were these discovered?

A. They were discovered behind a couch which is located in what I consider to be a walkway between the bathroom and the bedroom.

1 Q. And was anything found on either of the individuals
2 present?
3 A. No, sir.
4 Q. Were they individually, Ms. Lane and her other friends
5 searched at that time?
6 A. They were, yes, sir.
7 Q. All right, thank you; answer any questions that the
8 defense counsel might have.
9 CROSS EXAMINATION
10 BY MR. WARBURTON:
11 Q. Trooper, how long had you had this house under
12 surveillance?
13 A. Well, actually it was a joint effort by other members
14 of our department; I may have ventured into conducting the
15 surveillance 2 or 3 times.
16 Q. On November 10, 1979, how long had you been watching
17 this house that is before you went to the front door?
18 A. It had been under surveillance for approximately, in
19 the a.m. of that morning for maybe 2 or 3 hours I suppose.
20 Q. Okay, and I assume that you recall today what you
21 told at the preliminary hearing of another matter heard on
22 March 17, 1980, you called it a loose surveillance?
23 A. Yes, sir, that's correct.
24 Q. Can you define loose surveillance for myself and members
25 of the jury please?
26 A. Yes, sir, this is a surveillance which is not a 24 hour

1 surveillance; it is a surveillance which is at random, may be for
2 a period of several hours and then the surveillance is stopped at
3 that point, it may occur 2 or 3 times a week over a several
4 month period of time.
5 Q. Would it be safe to say that loose surveillance is an
6 effort to maximize your efforts as a trooper in allowing you to
7 do your other duties and that the actual surveillance is meant to
8 see if you could happen upon something?
9 A. No, sir, not necessarily; the loose surveillance
10 purpose is more designed toward the fact of not becoming recognized
11 by individuals we have under surveillance or people that may be
12 associated with those individuals that we have under surveillance
13 to hamper our investigation of those individuals.
14 Q. But it is obvious, is it not Trooper Asbury, that a
15 whole lot of things could or could not go on at that particular
16 residence when you're not watching it?
17 A. Yes, sir, that's correct.
18 Q. And you in fact in the course of this investigation
19 made no attempt to ascertain everything that went on in that home?
20 A. No, sir, that's correct.
21 Q. The day in question on the 10th of November, 1979, you
22 were still under a loose surveillance code, am I correct?
23 A. Yes, sir, that's correct.
24 Q. At the time the search warrant was procured you as the
25 chief officer in this investigation then went I assume to this
26 home on Pulaski Street?

1 A. Yes, sir.

2 Q. In the company of who, sir? (Pause.) You mentioned

3 Mr. Crane, I believe?

4 A. Yes, sir.

5 Q. Ralph Crane?

6 A. Al Crane.

7 Q. Al Crane, pardon me; he's a Virginia State Trooper?

8 A. Yes, sir, special agent.

9 Q. Okay, and who else was there with you, sir?

10 A. There was Trooper Dave Dean, Trooper L. L. Lilly,

11 Trooper Mike Farmer who is a uniformed trooper, and 1 or 2 of the

12 town police officers whose names I do not recall.

13 Q. Were they in uniform or not in uniform?

14 A. They were in uniform.

15 Q. And I assume that you used unmarked vehicles?

16 A. Most of the vehicles were unmarked; however, there

17 were a couple of vehicles that were marked.

18 Q. The two uniformed town officers, did they arrive in a

19 marked car?

20 A. I do not recall.

21 Q. Mr. Crane was the first one through the door; who all

22 went in in a bunch?

23 A. It would've been Special Agent Al Crane followed by

24 me, closely followed by Trooper Dave Dean and Trooper L. L. Lilly.

25 Q. Would this be the familiar knock, no knock, as you

26 knock and enter at the same time, is that correct?

A. Yes, sir.

Q. And the absence of the uniform was taken up by the fact that you announced immediately that you were Virginia State Troopers, am I correct?

A. That's correct.

Q. I assume that there were no weapons displayed or were there?

A. There were no handguns displayed; there was rifles, of course, in a cabinet.

Q. I'm talking about yourselves?

A. Oh, you mean as far as us?

Q. Yes, sir, as you went in did you hold out your shield as you walked in. . .

A. Yes, sir.

Q. . . .and say we're Virginia State Troopers?

A. Yes, sir.

Q. Were there any firearms displayed?

A. I don't recall; I don't think I had my weapon out at the time.

Q. But the other individuals under your control, sir, did they have weapons out?

A. Well, the other individuals were not under my control; I don't recall whether they had, had the weapons out, they may have.

Q. If we could, basically re-create that, you announced that you were State Troopers; I assume you also announced that you

1 had a search warrant and I am sure that you announced that
2 everyone was to stay exactly where they were?
3 A. Yes, sir, that's correct.
4 Q. Can you give the members of the jury the benefit of
5 what exactly you said about staying put to the best of your
6 recollection?
7 A. I _____(inaudible) asked all of the individuals
8 to remain seated and advised that I had a search warrant for the
9 premises that I would have to execute at that point; I read the
10 search warrant and executed the search warrant and explained that
11 the premises would be searched for illegal narcotics.
12 Q. And you found 4 persons in the livingroom, is that
13 correct?
14 A. Yes, sir.
15 Q. Before executing the search warrant, did you search
16 the rest of the house for other individuals or did you just
17 assume that everyone that was there was in that room?
18 A. Well, upon entry I had come face to face with
19 Mr. Boardwine while other officers went throughout the house to
20 make sure that there were not other individuals which is normal
21 procedure, it's a safety factor, to determine if there was anyone
22 else in the house.
23 Q. And you were left alone there in the livingroom with
24 the 4 occupants of the house?
25 A. Well, I wasn't necessarily left alone, I think maybe
26 1 officer remained with me at the time while 1 or 2 officers went

1 throughout the house to determine if there were other individuals
2 in the house.
3 Q. You went through the livingroom door, is that correct?
4 A. Yes, sir.
5 Q. The front door of the home; in your loose surveillance
6 before you arrived had you yourself seen anyone enter or leave
7 the premises?
8 A. Yes, sir, we, or other individuals had observed
9 Mr. Boardwine . . .
10 Q. Well, I'm asking you, sir, if you observed anyone
11 enter or leave the home before you, the same day or immediately
12 preceding the execution of the search warrant?
13 A. Yes, sir, the juvenile left, or what at that time I
14 thought to be the female juvenile left the premises for a short
15 period of time and I observed Mr. Boardwine enter the premises
16 shortly before the search warrant was executed at the premises.
17 Q. You were waiting for him, weren't you?
18 A. Yes, sir.
19 (Brief Silence.)
20 Q. You and your fellow officers burst through the door
21 and asked everyone to remain where they were, I assume that they
22 did so?
23 A. Yes, sir, they did.
24 Q. They were not in any way interfering with your search?
25 A. No, sir.
26 Q. Throughout the long period of time that you were there?

1 A. No, sir.
2 Q. They didn't give you any trouble, call you any names?
3 A. No, sir.
4 Q. Tell you to get out?
5 A. No, sir.
6 Q. You mistakingly thought I was asking you if the
7 occupants of the house displayed any firearms so I want you to
8 tell the jury that they didn't?
9 A. No, sir, they did not.
10 Q. There was no attempt on anyone's part to remove
11 themselves from any room in the house, to leave?
12 A. No, sir.
13 Q. Would it be safe to say that basically there was no
14 reaction other than what you would consider to be normal
15 reaction when uninvited persons come into your house?
16 A. That's correct, real blase type of appearance.
17 (Brief silence.)
18 Q. Could you detail for the members of the jury; you
19 suggested there were 4 rooms upstairs with a bath and 2 rooms
20 downstairs; the search went from 1:40 until 3:15 which is quite
21 a period of time; did the search; did you all fan out and each
22 take a room or were you all doing one room at a time or what?
23 A. Well, the search was initiated in the bedroom area.
24 Q. Upstairs?
25 A. Yes, sir.
26 Q. Quite a distance from the livingroom, is that correct?

A. No, it adjoins the livingroom area.

Q. Okay, go ahead.

A. And I do not recall who participated other than myself, who participated in the search of the bedroom area and then it shifted to the hallway area where the couch and I think some other furniture items were located, into the bathroom area, the kitchen area, downstairs area, and the livingroom area was the last room which the search was conducted on.

Q. You were, you called it your investigation?

A. Yes, sir.

Q. And a little while ago you suggested to me that these people were not under your control; you were the chief officer there, you were directing, am I correct, this investigation?

A. Yes, sir, that's correct.

Q. Was it your choice then, sir, to have all of the rooms searched in the order in which they were searched?

A. I don't recall if I directed any individuals to search any particular rooms at that time or not; I take it upon myself to initiate the search in the bedroom area.

Q. I assume in your search you opened dresser drawers, closets, looked in boxes?

A. Yes, sir, that's correct.

Q. Went through just about everything that you could in that bedroom?

A. Yes, sir, that's correct.

Q. And found absolutely nothing, am I correct?

1 A. That's correct, yes, sir.

2 Q. And you moved to the hallway and you searched every

3 possible _____(inaudible) in the hallway?

4 A. Yes, sir.

5 Q. And found absolutely nothing?

6 A. Caffeine, 2 bottles of caffeine.

7 Q. Caffeine is a perfectly legal drug which any member

8 or citizen can buy. . .

9 A. Yes, sir.

10 Q. . . .everybody in this room can buy caffeine, as much

11 as you want?

12 A. That's correct.

13 Q. When I ask these series of questions, Trooper Asbury,

14 I'm asking if you found any contraband or any items which would infer

15 or suggest drug use. When you searched the basement area, is

16 that correct?

17 A. Yes, sir.

18 Q. And in that basement area I assume that you looked in

19 every drawer and closet and box. . .

20 A. Yes, sir.

21 Q. . . .under seat cushions, etc., etc.,?

22 A. Yes.

23 Q. And I assume that you found nothing?

24 A. That's correct.

25 Q. And the kitchen which I am sure took a considerable

26 amount of time; kitchen cabinets. . .

A. Yes, sir.

Q. Refrigerator?

A. Yes, sir.

Q. Stove and under the sink?

A. Yes, sir.

Q. Every where you looked did you find anything?

A. No, sir.

Q. The livingroom; you made an extensive search of the livingroom; had you searched just about every where in the livingroom?

A. I do not recall; I don't think that at that point I was searching the livingroom area; I was documenting the caffeine which I had discovered behind the couch and my attention was directed to the items that are before you today behind the chair. . .

Q. Why the big interest in this caffeine; you just testified that it's a perfectly legal drug; if you had 100,000 caffeine tablets it's certainly not illegal and I'm just curious as to why the great interest in this caffeine?

A. Well, it's been practice through my experience that caffeine could be erroneously marked and contain a controlled substance; in other words, you were going by physical observation whereas we routinely submit caffeine to determine if it is a controlled substance.

Q. So you found something you felt that _____(inaudible)?

A. Not necessarily, it's routine procedure that it

could be contraband.

Q. You don't even have that with you here, do you?

A. No, sir.

Q. Trooper Dean apparently directed your attention to this white bag here which was behind the chair, is that correct?

A. Yes, sir.

Q. You entered through the livingroom, I assume _____ (inaudible) initial view of the situation to make sure you yourself were safe you looked around the livingroom at least quickly upon your entry, am I correct?

A. Yes, sir.

Q. Okay, and apparently there hadn't been a real detailed search of that livingroom until an hour and a half after you arrived; do I take it from what you are saying is that even on no more than a casual observation you would not come across this bag?

A. No, sir.

Q. Was it hidden?

A. Yes, sir, I think that that would be a good description.

Q. And if I were to go in there that day or any other day or any other regular person I would not have seen it?

A. That's correct.

Q. Safe to say that it takes a search by 4 members of our State Police to uncover something like this?

A. Well, any individual could discover them I'm sure if

1 they were looking for it.
2 Q. But you I'm sure would characterize your search as
3 intense?
4 A. Yes, sir.
5 Q. When you testified on direct examination, Mr.
6 Terwilliger asked you where Kathy Lane was at the time Dave Dean
7 directed your attention to this bag and I believe you testified
8 that you can't recall if she was sitting in the chair?
9 A. Well, there again my attention was directed at
10 documenting the caffeine and then Trooper Dean suggested that I
11 come into the livingroom and observe what he had discovered
12 being the items displayed and I don't recall if she was still in
13 the seat or if she had been instructed to move elsewhere.
14 Q. Well now your attention was directed at an item
15 which is extensively behind the chair and has not been moved,
16 you walked towards that item which is behind this chair, it hasn't
17 been moved, and you can't tell me whether you saw a person
18 sitting in that chair or not sitting in that chair?
19 A. Not at that time, no, sir; there again I do not
20 recall whether she was seated at the time; I know that she was
21 seated whenever we entered the room.
22 Q. That was an hour and a half earlier?
23 A. Right, and during the period of time while the search
24 was being conducted; whether she was in the chair at the time the
25 items were discovered I do not know, I don't recall if she was
26 in the chair whenever I went to observe the items or not.

1 Q. Not to _____(inaudible), let's assume that
2 this is the chair and the drugs I assume are back here, is this
3 correct?
4 A. That's correct.
5 Q. And you're in this area and Dave Dean says come look
6 what I've found?
7 A. Yes, sir.
8 Q. And you walked towards this, he's not moved it according
9 to your testimony. . .
10 A. That's correct.
11 Q. . . .and you walked towards this to look behind the
12 chair and you can't tell me if someone was sitting there?
13 A. I don't recall if she was still seated or not.
14 Q. Was she in the room?
15 A. Yes, sir.
16 Q. Okay, how do you know that; where was she in the room?
17 A. I believe she was seated on the couch at that time;
18 I know she was seated on the couch after I had removed the items
19 to determine what the substance was and at that point whenever she
20 made the remark about the couple from Florida or a couple that had
21 been in the house and since moved or gone to Florida.
22 Q. The items that are now on this table in front of you
23 that's what you found except for the blackening on them; the 2
24 garbage bags that are over there on the Commonwealth Attorney's
25 table that you put the drugs into to transport to the lab, where
26 did you get those 2 bags?

A. The 2 bags, the trash bags?

Q. Um huh (positive).

A. They are bags which I had with me at the time.

Q. Ms. Lane didn't give them to you?

A. She could have.

Q. In fact you asked her if she had a garbage bag and she gave you 1 or 2 or how many is there, is that correct?

A. She may have; I don't recall; routinely I'll say that I carry trash bags, maybe at that time I didn't have any available.

Q. And it is safe to say, is it not Trooper, that you found what we have in front of us here _____(inaudible)?

A. Yes, sir.

Q. You did not find any powder of any kind?

A. No, sir.

Q. Did you find any marijuana, sir?

A. No, sir.

Q. Did you find any drug paraphernalia such as scales, heroine spoons, roch clips, cigarette rolling papers, any of that kind of thing?

A. No, sir.

Q. Did you see an ashtray in the house, a cigarette ashtray so much as that?

A. No, not that I recall.

Q. And you went there to find, if I'm correct and I'll put this in front of you, pills, capsules, powders and marijuana?

A. Correct.

Q. And you found no capsules and no powders and you found no marijuana. Did you find any large amounts of cash on anyone in the home?

A. No, sir, I don't think that there was any large amounts of cash.

Q. Did _____(inaudible) at all that you found on anyone in the home?

A. I don't recall; no, sir.

Q. You indicated to the Commonwealth Attorney that you arrested these persons; I assume that you did a pat down search either when you entered the premises or upon leaving with them in your custody, is that correct?

A. Yes, sir.

Q. Did you find any weapons of any type on anyone?

A. No, sir.

Q. Did you find any money at that time on anyone?

A. No, sir.

Q. That's all.

RE-DIRECT EXAMINATION

BY MR. TERWILLIGER:

Q. Trooper Asbury, let's just go back to a few things here. Now, this drug _____(inaudible) concept that we seem to run across; do you commonly run into places where there are not paraphernalia and not paraphernalia visible when you seize drugs?

A. Yes, sir, it's quite common.

1 Q. And in this particular case were you particularly
2 looking for paraphernalia as opposed to a controlled substance
3 itself?
4 A. No, sir, not necessarily; we were looking for
5 controlled substances namely in the form of Methaqualone tablets.
6 Q. And at this time did you ask Kathy Lane whether or
7 not she lived on those premises?
8 A. We were going under the assumption that she was but,
9 of course, her remark that the other couple had been residing there
10 for a couple of weeks period of time lead me to believe that she
11 apparently was residing at the residence.
12 Q. All right, at this time did she indicate the names
13 and addresses of that other couple?
14 A. No, sir.
15 Q. Did she ever give you the names and addresses of that
16 other couple?
17 A. No, sir.
18 Q. Now, this caffeine tablets that you found, how were
19 they contained?
20 A. How were they contained?
21 Q. Yes, sir.
22 A. They were contained in what we refer to as medicine
23 viles.
24 Q. Were these medicine viles marked or unmarked?
25 A. I believe 3 of them were unmarked and 1 was marked.
26 Q. And in what way was it marked, do you know?

1 A. I believe it may have had a label stating that the
2 substance was caffeine.
3 Q. And the other 3 did not?
4 A. Yes, sir, to the best of my recollection.
5 Q. Have you ever purchased caffeine yourself in a
6 store or seen it on display?
7 A. No, sir, I've purchased it off of individuals.
8 Q. You purchased it as caffeine or as a controlled
9 substance?
10 A. No, it was represented as amphetamine.
11 Q. And does it in appearance seem similar to the
12 amphetamines?
13 A. Yes, sir, it does.
14 Q. And is this, from your knowledge; from your knowledge
15 is this a common practice to sell caffeine as amphetamines?
16 A. Yes, sir, it is.
17 Q. Now, _____(inaudible) we really went into detail
18 about this chair that she was sitting in, is this a chair like
19 yours so if you sat up we could see right through it or was it
20 a solid chair?
21 A. No, sir, it was a solid typical livingroom chair, the
22 best that I can recall cloth with insulated type comfortable
23 easy chair.
24 Q. And can you give us an approximate distance from any
25 wall that it was placed?
26 A. It would have been no more I would say than a foot from
the wall.

Q. And this bag was placed behind the chair, between it and the wall?

A. Yes, sir, that is correct.

Q. Now, you stated that you did not see it when you walked into the room; when you approached the chair after talking to Trooper Dean, could you at any time see it prior to moving the chair?

A. Well, you could bend over the chair or look around the chair and observe the bag that the substance was contained in.

Q. And at this time was there any other furniture blocking the view at any, uh, in any way?

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

Q. What was the general condition of the premises as far as neatness and cleanliness as opposed to disorderly premises?

A. It was, in my own opinion, it was not a well maintained residence; it was not clean, it was somewhat disarrayed.

Q. And can you recall her exact words as to the people who went to Florida?

A. No, sir, I cannot recall the exact words that; it was paraphased that another couple had been residing for approximately the past 2 weeks in the residence and had since gone to Florida.

Q. And this house, I again ask for the record, is in Pulaski County, the Town of Pulaski?

A. Yes, sir, that's correct.

Q. All right, thank you.

(The witness stands aside and leaves the courtroom.)

1 THE COURT: We'll recess for 5 minutes; you ladies and
2 gentlemen of the jury go back in that room if you would please.
3 (Thereupon the jury retires to their room.)
4 (Thereupon the Court takes a recess and there was a brief
5 discussion between the attorneys which was not recorded.)
6 (Thereupon after a short time all interested parties
7 returned into the courtroom, including the Court, jury, defendant
8 and her attorneys, and the Assistant Commonwealth Attorney.)
9 THE COURT: Call you next witness, Mr. Commonwealth
10 Attorney.
11 D. F. DEAN,
12 a witness called on behalf of the Commonwealth, after being first
13 duly sworn, testified as follows:
14 DIRECT EXAMINATION
15 BY MR. TERWILLIGER:
16 Q. State your full name and position for the record
17 please.
18 A. D. F. Dean, trooper, Virginia State Police.
19 Q. And what are the nature of your duties with the
20 Virginia State Police?
21 A. I work narcotics out of the narcotics division.
22 Q. And on November 10, 1979, were you in the company of
23 Trooper J. E. Asbury when he executed a search warrant on the
24 premises of 607 Pulaski Street, Pulaski, Virginia?
25 A. Yes, sir.
26 Q. And at what point did you enter the premises; were you

alone or with someone when you entered the premises, let's put it that way?

A. I entered the front door at the time Trooper Asbury entered also.

Q. And when you entered the front door, what room of the house did you enter?

A. The livingroom.

Q. Who was present in the livingroom at that time?

A. Mr. Ronald Boardwine, the defendant, and another lady.

Q. When you say the defendant, you're speaking of Ms. Kathy Lane who is seated between her counsel at that table?

A. Yes, I am.

Q. And this other lady, how old was she?

A. She appeared to be a juvenile.

Q. Anyone else present at the time?

A. I believe there was a little baby, I'm not for sure, but I think there was, I can't be, I can't recall that, it seems like there was a baby but I'm not for sure.

Q. Were you present when the search warrant was executed?

A. Yes, I was.

Q. And by whom was it executed?

A. Well, I was present, as far as to whom Trooper Asbury executed it on I don't know.

Q. All right.

A. When I entered, I went into the room and went directly into a part of the house to begin the search; Trooper Asbury. . .

1 Q. Which part of the house did you begin to search?
2 A. I went through the livingroom, went to the right,
3 and went into a bedroom, the first bedroom to my right after I
4 left the livingroom, it was facing the front of the house.
5 Q. And did you find anything in that bedroom?
6 A. No, sir, we did not.
7 Q. Did you personally find anything in the course of your
8 entire search?
9 A. Yes, I did.
10 Q. Where did you find these objects and what were they?
11 A. The search took me from the bedroom to the dining
12 room to the basement and then back to the livingroom, the
13 livingroom was the last room searched. The search started in a
14 clockwise or a counter clockwise motion beginning with the sofa
15 going to a gun cabinet and then proceeding to a chair that Ms.
16 Lane was sitting in; I approached the chair which was located;
17 there was a window directly behind this chair with long drapes and
18 in this chair Ms. Lane was sitting. To her right was a
19 television set, to her left was the gun cabinet. I approached the
20 chair from Ms. Lane's right; there was a bookcase sitting beside
21 of her chair; this was a livingroom chair; upon beginning my
22 search I removed the bookcase and as I did the statement; I then
23 observed Ms. Lane become fidgetive to me; she made the statement
24 that there was nothing behind the chair and at the same time I
25 observed her look directly across from her at Mr. Ronald
26 Boardwine; he was sitting in another chair directly across from

her; looking from the top of the chair behind where she sat I could not see anything due to the fact that the drapes were hanging there and I just could not see so I proceeded; I bent down, looked around behind the chair, and when I did I observed this bag there behind the chair lying on the floor directly behind it; you had to get down to look to see it.

Q. All right now, you said that she stated to you that there was nothing behind the chair, is that correct?

A. Yes.

Q. Now had you moved other furniture prior to this time like the couch?

A. Yes.

Q. Had she said anything to you about the couch, that there was nothing behind the couch?

A. No, sir.

Q. Did you move anything else besides the couch?

A. We removed guns in the gun cabinet, on top of the gun cabinet; as far as other pieces of furniture prior to this chair we had not in this room.

Q. When you were looking in the gun cabinet, did she say to you anything along the line that there's nothing in the gun cabinet?

A. She did not state anything; Mr. Boardwine stated some things when we was looking at the guns.

Q. All right, but Ms. Lane seated here said nothing?

A. That's correct.

1 Q. And her first comments came when you went to look
2 behind the chair?
3 A. That's correct.
4 Q. Was she seated in this chair when you first entered?
5 A. When I first entered the livingroom?
6 Q. First entered the premises?
7 A. I can't recall that; I do recall that when I entered
8 the livingroom on the initial search of the livingroom she was in
9 this chair.
10 Q. All right, was she alone in the chair?
11 A. Yes, sir.
12 Q. After you found these drugs, did you move them in any
13 way?
14 A. I opened the bag and, of course, there was a white
15 bag, a large white bag and then upon opening it I observed the
16 blue bag and then, of course, it was still behind the chair; I
17 did not open it; and when I opened it, I observed the smaller bags
18 containing the white tablets in them; at this time I summoned
19 Trooper Asbury who was handling the evidence to where I saw it and
20 he came and took possession of it.
21 Q. Did you leave them in the general location behind that
22 chair at that time?
23 A. Yes, sir, I did.
24 Q. I would like to show you this exhibit which shows a
25 cloth upholstered chair, a bag, a similar bag to the one before us
26 here, is this indeed the same bag that you saw?

A. It appears to be, yes, sir.

Q. Is that the same chair that you saw that night?

A. Yes, sir.

Q. And is that an accurate picture showing the relationship of where the bag was as far as where the chair was?

A. No, sir.

Q. All right, in what way is it different?

A. The bag has been pulled out from behind the chair for the photograph; it was more directly behind the chair.

Q. All right, has the chair itself been moved?

A. It appears that it has to a degree, yes, sir.

Q. Okay, how far was it moved?

A. Uh, it appears that this corner should have been back more against the draperies.

Q. This is a photograph taken at the time of these bags?

A. That is correct.

Q. Were you present when these photographs were taken?

A. Yes, I was.

Q. And are they accurate as far as what they represent?

A. That is correct.

Q. These were inside the blue, the white bag in the blue bag, is that correct?

A. Correct.

Q. And I notice they seem very white at this time, they do not have the black powder on them?

A. That's right, they were very clean.

1 MR. TERWILLIGER: Your Honor, I would move to introduce
2 these into evidence as Commonwealth's Exhibits, I believe it's
3 4 and 5.
4 THE COURT: Let them be so introduced and marked.
5 MR. TERWILLIGER: Your Honor, I would move the first
6 photograph showing the chair _____(inaudible) be 4.
7 THE COURT: All right.
8 Q. Now, after you found these drugs, did you talk to the
9 defendant, Ms. Lane, at any time?
10 A. No, sir.
11 Q. All right, were you present when anyone else talked
12 to her?
13 A. No, sir.
14 Q. Were you present when she was advised of any rights
15 that she might have?
16 A. Not that I can recall; my duties upon finding this
17 was automatically turned over to Trooper Asbury who was handling
18 the case; I believe I went back through the house again to search
19 in other rooms upon finding this or as I recall I proceeded on to
20 the television set to complete my search of the livingroom; I had
21 not completed it upon finding this so I had the T.V. to go, behind
22 it and things of that nature after this.
23 Q. Now, at any time did you search the person of either
24 the defendant or anyone else?
25 A. No, sir.
26 Q. Did you yourself find any other items which at the time

1 you may or may not have realized was contraband, any suspicious
2 items?
3 A. I found in the dining room, if I can recall, a bottle
4 containing some pills; this was alerted to Trooper Asbury and,
5 of course, he took it into possession; down in behind a sofa like
6 there was a large amount of different clothing, there was; I don't
7 think any, it was any controlled substance.
8 Q. Did you ever at any time hear any statements made by
9 Ms. Lane other than the ones that you've already told us about?
10 A. That is all of the statements that I heard.
11 Q. And are these the items which you saw behind that
12 chair she was seated in?
13 A. They appear to be the same, yes, sir.
14 Q. Had you participated in the surveillance of the house
15 that was searched?
16 A. Yes, I did.
17 Q. Over what time period did you participate?
18 A. The time period prior to the search warrant execution
19 10 days prior, 10 days up to the present time of the search
20 warrant.
21 Q. And during that time had you seen Ms. Kathy Lane around
22 those premises?
23 A. No, sir, I did not.
24 Q. Had you been there constantly during that 10 day period?
25 A. No, sir, it was a loose surveillance; a different
26 method of doing surveillance; it would consist from driving by the

1 residence once or driving by it two or three different times or
2 sitting and observing the residence for any where from a half hour
3 to an hour and a half, things of that nature, during the day,
4 evening and darkness, over this period of 10 days.
5 Q. All right, thank you; answer any questions that the
6 defense counsel may have.
7 CROSS EXAMINATION
8 BY MR. WARBURTON:
9 Q. Trooper, in 10 days of surveillance at all the times
10 that you were there and with all intensity you did not ever see
11 the defendant enter or leave the house, is that correct?
12 A. That is correct.
13 Q. You would certainly expect the owner/of the house to
14 have appeared one time at least during that 10 day period, am I
15 correct? _____(inaudible) under surveillance unless you
16 see the residents coming or going?
17 A. Well, my, the surveillance which I conducted was not
18 for the purpose of seeing someone enter or leave the residence;
19 the purpose was just to observe if someone was there, the vehicles
20 that were parked there, obtain the license numbers if I could,
21 things of that nature, just whatever came up whenever I did
22 observe it and I cannot state that I observed her leave or enter.
23 Q. Okay, so the 10 days of surveillance you still were
24 unable to connect Kathy Lane with this house and the first time
25 you saw her then would have been when you and Trooper Asbury
26 executed the search warrant, is that correct?

A. That is correct.

Q. Okay, now, Trooper Asbury was in charge, am I correct?

A. That is correct.

Q. He was the chief officer on this particular investigation and search and seizure, am I correct?

A. Yes, sir.

Q. Did he have the search warrant?

A. Yes, sir, I believe he did.

Q. And was he the first one through the door?

A. I'm sure he was by having the search warrant.

Q. Okay, and you were the second one through the door?

A. If I recall correctly, there was 3 of us that went through the front door.

Q. Who were those 3 people please?

A. It was Trooper Asbury, myself, and Special Agent Al Crane.

Q. And the best of your recollection is that Trooper Asbury was the first one through the door and you're certain of that because he had the search warrant, is that correct?

A. I'm not certain of it, although the whole emphasis of my duties were to enter the premises and begin to search; as far as taking care, the procedure on executing the search warrant was not my responsibility.

Q. _____(inaudible) testimony here is based on your recollection and I want to ascertain that your recollection is correct; your observations have been important to each member

of the jury and I want to know what it is that you recollect about the execution of the search warrant, sir; if you could, give me your best recollection of what order you went through the door, who all was there, I would appreciate it?

A. My best recollection is that the door was closed upon going upon the porch, a knock was made.

Q. By whom, sir?

A. I do not know, not by me.

Q. Okay.

A. I entered the premises and went directly, upon the door opening I went directly to the front bedroom of the residence.

Q. You were not in uniform, I assume?

A. No, sir, but my badge was, and identification was in my lapel with the badge out showing that I was a police officer.

Q. What is your recollection of the other officers, were they in uniform?

A. None of the State officers were; there were Town police officers in uniform.

Q. How many Town police officers?

A. There were 2 Town police officers and Detective Dobbins, who was not in uniform.

Q. Trooper Asbury and Trooper Crane also have identification on them?

A. Yes, sir, they did.

Q. Did you ever hear anyone announce that this was a

State Police search?

A. Yes, sir.

Q. Who announced that?

A. I do not know.

Q. It was not you?

A. It was not me.

Q. There were only 2 other State Troopers there?

A. At the front door, yes, sir.

Q. It would've been one of those 2 people, right, but you can't tell which one of the 2 announced who was there?

A. No, sir, not from November, 1979, to now, I cannot recall who did that, no, sir.

Q. It has been a while. Can you tell us whether or not any of the law enforcement officers had weapons present, visible?

A. Other than the officers in uniform, I do know that the other ones in, not in uniform had weapons although as far as them being drawn. . .

Q. Yes, sir.

A. . . .I do not know.

Q. Did you draw your firearm? Had it ready?

A. I assume that I did because I usually do.

Q. So going back to November, 1979, you believe that as you entered you had your weapon visible, is that correct?

A. I possibly had it in my hand, yes, sir.

Q. Why?

A. Routinely on the search warrant I always do, yes, sir.

1 Q. If we could re-create, briefly, this is a knock and
2 enter, you don't knock and wait for someone to come to the door,
3 is this correct?
4 A. We do it different ways, it depends upon the
5 circumstances.
6 Q. How about this one?
7 A. There was no forcible entry, no, sir; there was a
8 knock and we entered; I can't recall whether Mr. Boardwine or
9 Ms. Lane came to the door.
10 Q. Oh, someone came to the door?
11 A. I do not know, I do know that we did not forcibly
12 enter the residence.
13 Q. But you can't state whether Trooper Asbury, who was the
14 first one through the door, opened the door or whether someone came
15 to the door _____(inaudible)?
16 A. No, sir, I can't.
17 Q. Can you remember the layout of the house?
18 A. Yes, I can.
19 Q. You went apparently through the livingroom, according
20 to your testimony, to the bedroom area first; you began your
21 search for contraband, is that correct?
22 A. Yes, sir.
23 Q. Okay, the persons in the room, you testified that there
24 were at least 3 and you're not sure if there was a baby there or
25 not, they were all in the livingroom?
26 A. That's correct.

Q. Did you make an effort to secure the rest of the premises to see if there was anyone else there?

A. Yes, sir.

Q. Did you find anybody else?

A. No, sir.

Q. When you used the word baby, are we talking about an infant or are we talking about a toddler, you know; 2 years old, 5 years old, 8 years old, 6 months old.

A. For some reason I think that there was a baby there; there was no reason for me to recall other than just a glance to determine that; I don't recall.

Q. I'm curious about when you say baby; are you talking about an infant?

A. Yes, I'm talking about a small baby, yes, sir.

Q. 6 month old for example?

A. Not walking.

Q. Not walking; and where was this baby, you are indeed _____(inaudible) about that?

A. On the sofa I believe.

Q. Was this next to _____(inaudible) or next to this other unidentified female who might have been a juvenile?

A. There was a juvenile also on the sofa I can recall; Mr. Warburton, that's all I can recall about it.

Q. Okay, well, let's move on to your search, see what you recall about that. You went to the bedroom, I assume that you searched under the bed, in pillow cases, in the closets, in the

1 dresser drawers, and, am I right?
2 A. You're correct.
3 Q. Left no stone unturned, correct?
4 A. I try not to.
5 Q. All right, did you find anything?
6 A. I found a lot of things but no contraband.
7 Q. Not anything suspicious?
8 A. No contraband.
9 Q. All right, you moved next to what, sir?
10 A. The dining room.
11 Q. In the dining room you again searched every place that
12 your experience teaches you to search, am I right?
13 A. Yes, sir.
14 Q. And you found no contraband?
15 A. No, sir.
16 Q. And your search next went, took you to where?
17 A. The basement.
18 Q. In the basement, sir, I assume, like everybody, there's
19 a lot of things in a basement, there's a lot of crates and a lot
20 of things to open and close and whatever, am I right?
21 A. Yes, sir.
22 Q. And you just, you did that?
23 A. Yes, sir.
24 Q. And when you left the basement you felt secure in your
25 knowledge that there was no contraband there, am I correct?
26 A. Yes, sir.

Q. I mean you weren't doing just enough to satisfy you saying well I don't think there's any but you left there knowing that there was no contraband?

A. That's correct.

Q. Your search was very _____(inaudible)?

A. That's correct.

Q. And from the basement area you went where, sir?

A. To the livingroom.

Q. And the livingroom you searched, you mentioned in a counter clockwise manner, and you were three-quarters of the way through with your search of the livingroom?

A. Yes, sir.

Q. When you stumbled upon this?

A. Yes, sir.

Q. Up until this point had you found anything whatsoever?

A. In contraband?

Q. Yes.

A. No, sir.

Q. Did you find any powder?

A. No, sir.

Q. Any marijuana?

A. No, sir.

Q. Any capsules?

A. Capsules were found.

Q. Known to be caffeine, am I correct?

A. I'm sure since there is no charge, I'm sure.

1 Q. You were aware of the search warrant before you went
2 in, had you read it yourself, sir?
3 A. No, sir.
4 Q. You did not know what you were looking for?
5 A. Yes, sir.
6 Q. What was it that you were looking for when you went
7 into the premises, were you not looking for pills, powders,
8 capsules and marijuana?
9 A. I was looking specifically for controlled drugs,
10 mainly Methaqualone.
11 Q. Were you aware that the search warrant had quite
12 of _____(inaudible)?
13 A. No, I am not aware of the other 4 items.
14 Q. Did you find any drug paraphernalia?
15 A. I did not.
16 Q. And you're familiar with that?
17 A. Yes, sir.
18 Q. A whole of, a whole _____(inaudible) of things
19 that you have found I'm sure in your prior experience, you didn't
20 find any item whatsoever that you would clasify as an expert as
21 being drug paraphernalia?
22 A. I did not, no, sir.
23 Q. Is there, was there a large amount of cash?
24 A. I did not see a large amount of cash.
25 Q. See any cash?
26 A. No, sir.

Q. When you moved the bookcase and searched behind this chair, was Ms. Lane in the chair or not in the chair?

A. She was in the chair.

Q. When you entered the room from the basement area, according to your testimony you finished your basement area search and then you moved to the livingroom, was Ms. Lane in the chair or not in the chair?

A. She was in the chair.

Q. She was in it?

A. She was in the chair when I came up from the basement.

Q. Mr. Terwilliger asked you and I was confused myself, at one point you said you couldn't tell if she was in the chair or not, was that when you first entered the home, when you first entered the livingroom again or when you searched behind the chair?

A. I stated that I did not know when I entered where she was at, when I came up from the basement she was in the chair.

Q. When you were in the presence of those 4 persons in the house, did anybody give you any trouble whatsoever?

A. No, sir.

Q. Did they ask you what the heck are you doing there, why don't you leave. . .

A. No, sir.

Q. . . .anything like that?

A. No, sir.

Q. At the time you removed the bookcase Ms. Lane was sitting in the chair, is that correct?

1 A. That is correct.
2 Q. And Mr. Boardwine was where, sir?
3 A. Directly across from her approximately 10 feet in
4 another chair facing her.
5 Q. And this juvenile?
6 A. Was on the sofa.
7 Q. With the baby, maybe?
8 A. I don't recall.
9 Q. Okay, you reached down and apparently you had to look
10 very carefully upon finding anything behind that chair, is that
11 right?
12 A. It was well concealed from just casual observation;
13 I had to get down and look; you could not see it unless you did
14 that.
15 Q. Safe to say that it takes a State Trooper or someone
16 skilled in searching, not normally looking, to have found that,
17 sir?
18 A. Anyone that looked behind the chair could have seen it.
19 Q. But no one's attention would have been directed behind
20 the chair, nothing was sticking out of the side of it?
21 A. That's correct.
22 Q. Did you find any personal belongings in or around that
23 bag?
24 A. No, I did not.
25 Q. You apparently saw it, what was your, what _____
26 (inaudible) when you saw this white bag, sir?

A. What was in it.

Q. You looked inside and found the blue bag and looked inside and found these other items, what did you do just then, sir?

A. Upon seeing what was in the blue bag?

Q. Well, as soon as you got to the bottom of the bag _____(inaudible)?

A. I observed, I knew exactly what it appeared to me to be and at that time I called Trooper Asbury.

Q. And he was in some other place in the house I believe?

A. He was not there with me.

Q. Okay, and he came in?

A. Yes, sir.

Q. When he entered the room, you said look or something to that effect?

A. Come take a look at these, Jim; something like that.

Q. Okay, and he came over to the chair?

A. Yes, sir.

Q. Where was Ms. Lane then?

A. Still in the chair.

Q. You're sure of that?

A. Yes, sir.

Q. When Trooper Asbury approached the chair, did he then pull out this whole parcel?

A. Yes, he pulled it to where he could get to it and then the photograph was taken.

Q. And Ms. Lane was still in the chair when he pulled the

1 bag out from behind the chair?

2 A. I recall seeing him take the photographs; he then took

3 charge of the scene; I did not interfere with that from that

4 point on.

5 Q. Again, my question is very important here and I want

6 to know whether you can testify here from your own knowledge, if

7 you can't just say that you don't know, whether Kathy Marie Lane

8 was in that chair when Trooper Asbury pulled this bag out from

9 behind it?

10 A. I do not know.

11 Q. Do you recall asking her to get up, get out of the

12 chair?

13 A. I did not ask her that, no, sir.

14 Q. Do you recall Trooper Asbury or anyone else doing it?

15 A. No, sir, I do not recall one way or the other.

16 Q. After Trooper Asbury had the same reaction as you've

17 testified to that perhaps he had seized a controlled substance,

18 what was the next action that was taken?

19 A. By whom?

20 Q. Anyone, other troopers specifically? Were people put

21 under arrest at that time?

22 A. I do not know.

23 Q. Well, where were you?

24 A. Like I stated I was, I proceeded on with what I had to

25 do; it was not my concern anymore after upon finding the evidence;

26 Trooper Asbury then proceeded; if the rights were going to be

given or what he was going to do, he initiated it; it was his case.

Q. Trooper, I understand that; after you turned this bag over to Trooper Asbury and he pulled it out and took the photographs, you were still in the livingroom continuing your search that you testified included looking at the television set, am I right?

A. That's correct.

Q. You were in the livingroom then?

A. That's correct.

Q. Trooper Asbury was there, in the livingroom?

A. I'd say he was.

Q. Kathy Lane was in the livingroom?

A. I'm sure that they did not leave the livingroom; I'm sure they were.

Q. Your search continued but I'm certain that you were aware of what was going on in the livingroom around you at that time, am I right?

A. No, my search, what I was doing was what I was aware of; I. . .

Q. So if anybody would have been put under arrest at that time you were unaware of it?

A. As far as listening to Trooper Asbury saying you're under arrest and things of that nature, yes, sir, that's what I mean.

Q. Did you leave with Trooper Asbury?

A. All of the officers left at the same time; as far as

1 me leaving in the same vehicle as him, I don't. . .
2 Q. _____(inaudible) I'm asking, you all went out
3 the front door sometime and I'm just curious if you left in the
4 company of Trooper Asbury?
5 A. All officers left at the same time when the search was
6 complete.
7 Q. There were persons in custody at that time and
8 _____(inaudible), am I correct?
9 A. I believe that's so, yes, sir.
10 Q. And two people were arrested, am I correct?
11 A. I do not know. Mr. Warburton, since I've been on this
12 case, I've been on several searches since then and as far as, I can
13 only state my actions and what I did and what I observed, I cannot
14 state for anyone else.
15 Q. Right, and again, Trooper Dean, it's very important
16 that we get the best recollection we can have and I just want to
17 know if you recollect anyone being arrested; you did not
18 participate in any arrest, am I correct?
19 A. I did not.
20 Q. Is it normal police procedure to announce an arrest
21 and perform a body search prior to placing handcuffs on a prisoner?
22 A. The arresting officer must advise the arrestee, yes,
23 sir, and make the proper search.
24 Q. Is there, almost, you know, a 100 percent of the time
25 there would be a search of the persons being arrested, am I correct,
26 a patdown at least?

A. Yes, in males but in females sometimes it would consist of taking the purse and looking through it and waiting for a matron to handle it from there.

Q. Can you tell us whether you observed these persons or person being escorted from the house and in handcuffs or not in handcuffs?

A. I cannot state.

Q. You really don't have any idea?

A. No, sir.

Q. Thank you.

RE-DIRECT EXAMINATION

BY MR. TERWILLIGER:

Q. All right, Trooper Dean, you mentioned in response to a defense question there when they asked if you found anything suspicious, you replied you found no contraband; did you find anything else suspicious in the house?

A. To me it appeared to be suspicious, yes, sir.

Q. All right, and what were these items?

A. I found a large quantity of pocketknives, hundreds of T-shirts still in their container, things of that nature, large quantities of different items, saleable items that does not usually appear in a residence or a home.

Q. You say hundreds of T-shirts still in their packages?

A. That's correct.

Q. And in shipping cartons as well?

A. They were in the basement and they were loosely

1 scattered throughout in a big pile.

2 MR. WARBURTON: Your Honor, this is _____(inaudible)

3 irrelevant. . .

4 MR. TERWILLIGER: Your Honor, the defense opened the door

5 on this line of questioning by. . .

6 THE COURT: I overrule your objection.

7 Q. And at this time the pocketknives that you mentioned,

8 approximately how many of those were there?

9 A. Well, I can recall in the bedroom upstairs, several

10 drawers that I opened contained several of these items, there was

11 pocketknives still contained in the containers and things of this

12 nature, small saleable items that you see _____(inaudible) in

13 stores for sale.

14 Q. And at this time did you seize any of these items into

15 evidence?

16 A. No, sir.

17 Q. You mentioned also that no force was used going through

18 the door, is that correct?

19 A. That's correct.

20 Q. The door was not burst opened in any way?

21 A. That is correct.

22 Q. It was opened in a normal way whether it was by State

23 Police or by someone inside?

24 A. Yes, sir.

25 Q. All right, and as far as the defendant's activities

26 when you approached that chair to look behind it, you mentioned the

word, the, fidgetive?

A. Yes, sir.

Q. Can you just go into a little detail on what that means?

MR. WARBURTON: Your Honor, that has been gone into on direct. . .

THE COURT: Yes, it has.

Q. All right.

MR. TERWILLIGER: Your Honor, I have no further questions of this witness.

THE COURT: All right, come down.

(The witness stands aside and leaves the courtroom.)

TERRY WAYNE LEE,

a witness called on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TERWILLIGER:

Q. State your name for the Court, please.

A. My name is Terry Wayne Lee.

Q. And how are you employed, Mr. Lee?

A. I'm a Forensic Drug Chemist.

Q. And where are you employed?

A. I'm employed by the Commonwealth of Virginia, Bureau of Forensic Science, Roanoke, Virginia.

Q. And have you been educated or trained for this position in any way?

1 A. Yes, sir; I have a degree in General Science concentrating
2 in chemistry from Virginia Tech; and I've taken training in drug
3 analyses in Richmond at the Central Laboratory; I've taken
4 additional courses in chemistry at Virginia Commonwealth University
5 and I've taken training in drug analyses from the Drug Enforcement
6 Administration.
7 Q. And how long have you been employed by the, as a
8 Forensic Chemist?
9 A. Approximately 3 years this March.
10 Q. Do you belong to any professional organizations of
11 any type?
12 A. I'm a member of the American Chemical Society and the
13 Mid-Atlantic Association of Forensic Scientists.
14 Q. Have you ever analyzed in the past any drug samples
15 which are submitted to you for analyses from various sources?
16 A. Pardon?
17 Q. Have you in the past prior to today and through your
18 career analyzed unknown substances which have been submitted to
19 you?
20 A. Many, many times.
21 Q. Can you give us an approximate number?
22 A. I would think that I've done maybe 1200 or 1400 drug
23 cases in this time.
24 Q. Have you ever in your work come across Methaqualone, is
25 that the proper pronunciation?
26 A. Methaqualone.

Q. Methaqualone, all right, have you ever encountered that in your work?

A. In approximately 150 cases.

Q. And have you given reports on any of the examinations of either Methaqualone or other drugs _____(inaudible) which are admissible into Court evidence?

A. Yes, sir.

Q. And have you yourself ever testified other than today in various cases?

A. Yes, sir.

Q. Approximately how many times have you testified in Court?

A. 10 perhaps.

Q. Have you done so as an expert witness?

A. Yes, every time.

MR. TERWILLIGER: Your Honor, at this time I would request that this witness be recognized by this Court as an expert witness.

THE COURT: Yes, sir, go ahead.

Q. In the course of your duties did you receive from Trooper J. E. Asbury a sample of drugs to be analyzed in November of 1979?

A. I received a case from Trooper Asbury on November 13, 1979.

Q. All right, what did it contain?

A. Case right here, this large trash bag which had a white

1 plastic bag, this one right here, which contained 9 sealed
2 plastic bags, I have in my notes that they were knotted, and each
3 one contained white tablets, and in addition the bag contained a
4 brown plastic bottle with black capsules and 3 white plastic
5 bottles with black capsules, I don't see those. . .
6 Q. All right, now, did you analyze these substances with
7 your laboratory?
8 A. Yes, I did.
9 Q. And you yourself conducted the analyses, is that
10 correct?
11 A. I did.
12 Q. What were the results of your examination?
13 A. The 9 plastic bags here contain approximately 1,000 tablets
14 each; the tablets are marked Ror 714 and these tablets contain
15 the drugs Dithahydramine and Methaqualone.
16 Q. And approximately how many of these tablets were
17 there?
18 A. I did not count each one of the tablets, instead I
19 weighed approximately, I weighed 200 tablets, got an exact
20 weight to 4 places and then weighed the tablets in each bag and
21 approximately 9,300 tablets total.
22 Q. Now, you mentioned that they not only contained
23 Methaqualone but also another substance?
24 A. Dithahydramine.
25 Q. Now, is this common to find 2 substances in one tablet?
26 A. Many drug tablets and capsules are mixtures but these

tablets are marked Ror 714 and Ror 714 is the marking on a drug called Qualude, that's the brand name of it, and Qualude contains only Methaqualone and these tablets containing Dithahydramine and Methaqualone are clandestinely made.

Q. When you say clandestinely, what are the common sources of such tablets?

MR. WARBURTON: Your Honor, I'm going to object, this witness has been qualified as an expert in determining what a substance is in a chemical analysis, I don't believe he's been qualified as an expert in drug origin and things of that nature.

THE COURT: I overrule your motion; he's qualified.

Q. Can you describe for us please what you mean by clandestine?

A. Clandestine means that it did not come from a legitimate pharmaceutical manufacturer.

Q. And you're saying then that the Ror company, that is a drug company. . .

A. Yes.

Q. . . .did not make these tablets according to your analyses?

A. No, the tablets not only have this additional drug which was not put in by the Ror company but the inscription, the 4, is normally open on a legitimate product and if you examine these you'll find that the 4 is closed; it did come from a clandestine origin.

Q. All right, and what are some common sources of clandestine pills?

1 A. They're made clandestinely in the United States; in
2 the Carribean; Columbia, South America; many different places.
3 Q. And what did you do with the pills after you examined
4 them?
5 A. After I examined them, I sealed them back up and put
6 them in my locked vault and waited for Trooper Asbury to return.
7 Q. And did you in fact return them to him?
8 A. I returned them to him on the 10th of March of this
9 year, I'm sorry, of 1980.
10 (Brief silence.)
11 Q. I would ask you to examine Commonwealth's Exhibit No. 3,
12 the Certificate of Analysis, is this your signature on it?
13 A. That's my signature and I signed this report.
14 Q. All right, and it basically summarizes what you told us
15 about the analyses, is that correct?
16 A. With the exception of the plastic bottles.
17 Q. And what did you analyze to be in those plastic bottles?
18 A. The plastic bottles contained a look-a-like preparation
19 of basically caffeine and _____(inaudible) and just plain
20 emphadrine which are non-controlled substances.
21 Q. And what did you mean by the term look-a-like?
22 A. The capsules had numbers on them like one of them had
23 the number, a number of them had the number 335 and the other ones
24 had the number 17-865 and by look-a-like preparation what I mean is
25 that the capsules are very similar in appearance to legitimate
26 pharmaceutical preparations; I don't know right off hand what the

number 17-865 and 335 are close to but they look like a drug known as biphetamine which contains other drugs.

Q. All right, thank you; answer any questions that the defense counsel may have.

CROSS EXAMINATION

BY MR. WAREURTON:

Q. Now, these pills that you say are look-a-like to legitimate pharmaceutical preparations, I take it that your analyses revealed that this caffeine and emphadrine was a legitimate pharmaceutical preparation, am I correct?

A. It's my understanding that this is kind of . . .

Q. I want to know what you know, sir, not what you heard from someone else.

A. I've seen these capsules from many different sources labeled in the bottles.

Q. The subject that you examined pursuant to Trooper Asbury's request turned out to be, to the best of your knowledge, a legitimate pharmaceutical preparation, am I correct, caffeine and emphadrine?

A. It's a legitimate preparation; it's made by a legitimate _____(inaudible); it's not in reference work such as the Physician's Desk Reference.

Q. And caffeine and emphadrine and caffeine and emphadrine together are perfectly legal, am I correct?

A. Yes, sir.

Q. That's all the questions I have.

1 THE COURT: All right, come down.

2 (The witness stands aside and

3 leaves the courtroom.)

4 MR. TERWILLIGER: Your Honor, at this time I would move to

5 introduce into evidence the State Police Department's list of

6 property seized _____(inaudible - mumbling) and also the

7 drugs themselves are here before us; I believe the foundation has

8 been laid and the chain of evidence has been established, Your

9 Honor.

10 THE COURT: Any objections?

11 MR. WARBURTON: No, sir.

12 THE COURT: Let them be introduced and so marked.

13 RICHARD JAMES McGARRY,

14 a witness called on behalf of the Commonwealth, after being first

15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. TERWILLIGER:

18 Q. Would you state your name for the Court please?

19 A. My name is Richard James McGarry.

20 Q. And how are you employed?

21 A. I'm employed by the State of Virginia at the Bureau of

22 Forensic Science as a toxicologist.

23 Q. And is toxicology your only occupation?

24 A. No, prior to my going into the field of toxicology I

25 have a pharmacy degree and I've maintained my degree in pharmacy

26 and worked in Roanoke as a pharmacist part-time now.

Q. Could you describe for us some of your educational background, your training, and your past experiences as a toxicologi perhaps just tell us what a toxicologist is?

A. Sure. I've got a Bachelor of Science Degree in pharmacy from Saint John's University in New York and got that in 1960; in 1963 I went to the Graduate School in Richmond at MCV and got a Master of Science Degree in toxicology; finished up in 1966; 1967 until the present time I've been the head of the toxicology section in Roanoke at the Bureau of Forensic Science; the field of toxicology that I'm involved in is forensic toxicology or analytical toxicology and it's my job to find poisons including alcohol and drugs in biological material primarily from medical examiners cases, after having found these substances in blood or tissue then I identify what I have found, determine the concentration that I have found in the tissue, and inform the medical examiners whether that is a sufficient concentration of the poison to have caused the death; it's an application of chemistry and drug action or poison action so to speak.

Q. And in the past have you, you do analyses from biological specimens, is that correct?

A. That's correct.

Q. And have you encountered the drug Methaqualone or are you familiar with it?

A. Yes, both as a toxicologist and as a pharmacist, I've had experience with Methaqualone.

Q. All right.

MR. TERWILLIGER: Your Honor, I would ask at this time that this gentleman be recognized as an expert witness.

THE COURT: Yes, he's qualified; go ahead.

MR. TERWILLIGER: Your Honor, have you accepted him at this time?

THE COURT: Sir?

MR. TERWILLIGER: Have you accepted him as an expert witness?

THE COURT: Yes, sir.

MR. TERWILLIGER: Thank you, sir.

Q. Are you aware of what type of schedules are set up concerning controlled substances in the State of Virginia?

A. Yes, sir, I am.

Q. And can you give us some indication, how many there are, how many classes, and how are they grouped?

A. Right. Drugs are classified in 6 different schedules; Schedule VI being those drugs which require a prescription for possession similar to an antibotic like penicillen for example; Schedules I through V are those drugs which have a potential for abuse are placed into these 5 categories; Schedule V is the least abusable type drug, it would be a drug which would require you to sign like if you wanted to get a bottle of codine contained in cough medicine for an example, that would be a Schedule V; the other extreme of Schedule I are those drugs with, or which have a high potential for abuse and don't have a

1 recognized medical use right now, heroine is a prime example of
2 Schedule I, LSD is another example of Schedule I drug; the
3 Schedule II drugs are those drugs which have a high potential for
4 abuse but do have a legitimate medical need, the narcotics like
5 morphine for example are classified as Schedule II, Methaqualone
6 is considered a Schedule II drug also; Schedule III would be those
7 drugs which have less of a potential for abuse, some of the other
8 sedatives, phenobarbitol and drugs like that are Schedule III;
9 Schedule IV are even less potential for abuse and some of the
10 other sedatives like plasadile or something like that might be
11 considered a Schedule IV.
12 Q. Mr. McGarry, you mentioned that Methaqualone is a
13 Schedule II drug?
14 A. Yes, sir.
15 Q. Can it be dangerous to the human body?
16 MR. WARBURTON: Your Honor, I'll object at this time; the
17 indictment reads or warrant reads that this young lady is
18 charged with possession of a Schedule II drug _____
19 (inaudible) a Schedule II and what effect and toxicology has
20 nothing to do with this case; the charge is possession.
21 MR. TERWILLIGER: Your Honor, . . .
22 THE COURT: I overrule your objection; go ahead.
23 MR. TERWILLIGER: Thank you, Your Honor.
24 A. Methaqualone was placed in the Schedule II category
25 because it can be a dangerous drug when taken in overdose amounts;
26 in toxicology throughout the country quite a number of deaths from

1 Methaqualone have occurred from the drug.
2 Q. And what is the normal effect of Methaqualone?
3 A. The normal effect is as a sedative; it was originally
4 introduced as a sleeping pill and it is, although it has the same
5 effect as the older ones which were the barbitraites or like
6 nemutol or seginol, it chemically is not in that category, it
7 does have the same effect in that the onset of action is quick,
8 a person will go to sleep relatively quickly after taking it
9 within 30 minutes to an hour and its effect will last for about
10 6 to 8 hours.
11 Q. And are there any other names by which Methaqualone
12 is used or known?
13 A. Yes, because the generic name of the drug is
14 Methaqualone, it's called Quales, I'm not familiar with any others,
15 I'm sure there are other street names for the drug.
16 Q. All right, thank you, sir; answer any questions that
17 the defense counsel may have.
18 MR. WARBURTON: We have no questions, Your Honor.
19 THE COURT: All right, thank you.
20 MR. McGARRY: May I be excused?
21 MR. TERWILLIGER: I don't foresee any need for you to stay.
22 THE COURT: Can this gentleman be excused?
23 MR. WARBURTON: Yes, sir.
24 THE COURT: Thank you, sir, and you're excused.
25 (The witness stands aside, is excused,
26 and leaves the courtroom.)

1 THE COURT: We'll recess until 1:00.

2 (The Court instructs the jury not to discuss the case

3 during the lunch hour.)

4 (Thereupon the Court was recessed for lunch.)

5 (Thereupon after a short time all interested parties

6 returned into the courtroom, including the Court, jury, defendant

7 and her attorneys, and the Assistant Commonwealth Attorney.)

8 MR. TERWILLIGER: Your Honor, at this time we're going to

9 be calling the witness that was to be called, I went over and

10 notified her in person, she said she would be here at 1:00, it's

11 still lacking several minutes to 1:00.

12 (Brief silence.)

13 RACHEL ANDERSON,

14 a witness called on behalf of the Commonwealth, after being first

15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. TERWILLIGER:

18 Q. Could you state your full name for the record please?

19 A. Rachel Anderson.

20 Q. And where do you work, Ms. Anderson?

21 A. Elks Club.

22 Q. And do you have any connection with property at 607

23 Pulaski Street in the Town of Pulaski?

24 A. No, not now.

25 Q. Not at this time?

26 A. No.

1 Q. Have you ever had any connection with that property?
2 A. I used to own it.
3 Q. And when did you cease owning that property?
4 A. It was either in April or May of 1979, I'd be afraid to
5 say which.
6 Q. All right, how did you dispose of it?
7 A. I sold it and still left it in my name and they made
8 payments in my name, she did...
9 Q. All right, now, who is she; who did you sell it to?
10 A. Kathy Lane.
11 Q. And is this the same young lady who is sitting there
12 at that table?
13 A. Yes.
14 Q. How much did she initially pay you for the downpayment
15 on the property?
16 MR. WARBURTON: Objection, Your Honor. . .
17 THE COURT: I don't think . . .
18 Q. And. . .
19 THE COURT: What you pay for the property is not material.
20 A. How much did I pay for the property?
21 Q. No, never mind, Ms. Anderson. Tell me, you said that
22 she made payments on the property?
23 A. And she paid me a downpayment.
24 Q. All right, now, without going into the size of the
25 payments or anything like that, did she continue to make payments
26 on a monthly basis?

A. Yes, to the bank.

Q. To the bank, directly to the bank?

A. Virginia National Bank.

Q. The account was still in your name?

A. Right.

Q. And did she continue making payments for the rest of 1979?

A. And part of 1980.

Q. All right, did she ever miss a payment?

A. Never; if she had of, it automatically went back to me.

Q. So all the way from May or whenever it was, May of '79, early '79 through early 1980 then she was making monthly payments on this property?

A. Through most of 1980.

Q. Was it in anyone else's name; did you sell it to anyone else besides Ms. Lane?

A. No.

Q. Just to her?

(Witness shakes her head in the affirmative.)

Q. When you sold the premises to her was there any furniture in the premises?

A. No, my mother-in-law lived there and she sold all of her furniture.

Q. All right, and it was cleared out when you sold it to Ms. Lane?

A. Yes, now who my mother-in-law sold her furniture to,

1 I don't know.
2 Q. All right, do you know of your own knowledge that there
3 was no furniture there?
4 A. It was none of mine.
5 Q. All right, thank you, Maam; if you would just answer
6 any questions these gentlemen may have.
7 CROSS EXAMINATION
8 BY MR. WARBURTON:
9 Q. Did you have a written contract?
10 A. No.
11 Q. It was all verbal?
12 A. Yes.
13 Q. So the property records would reflect that you own
14 the property, is that correct?
15 A. That's right.
16 Q. But as far as the business deal that you made with
17 Ms. Lane, there was no problem with it through all of 1979?
18 A. No.
19 Q. And she just made regular payments on your behalf to
20 the bank?
21 A. That's right.
22 Q. And . . .
23 A. And she paid the taxes.
24 Q. And made a downpayment to you?
25 A. That's right.
26 Q. All right.

1 THE COURT: Is that all?

2 MR. WARBURTON: Yes, sir.

3 THE COURT: Thank you.

4 (The witness stands aside and

5 leaves the courtroom and is excused.)

6 J. E. ASBURY,

7 a witness recalled on behalf of the Commonwealth, after

8 previously being sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. TERWILLIGER:

11 Q. Trooper Asbury, you're still under oath at this time.

12 A. Yes, sir.

13 Q. Could you, directing your attention back to the

14 search warrant that was introduced into evidence, you had a

15 notation on that warrant that it was executed on November 10th,

16 I believe?

17 A. Yes, sir, that's correct.

18 Q. Upon whom did you execute that warrant?

19 A. It was, well, I directed my speech to Mr. Boardwine

20 at the time it was executed, of course, for the premises and a

21 copy was presented to Mr. Boardwine.

22 Q. All right, was Ms. Lane present at that time?

23 A. Yes, sir, she was.

24 Q. And did she make any comments at that time?

25 A. No, sir, I do not recall any comments.

26 Q. Did you ever give her a copy of it?

1 A. No, sir.
2 Q. All right.
3 A. I only had 2 copies; of course, I had to file one in the,
4 and the other copy was presented to whom I assumed to be the
5 head of the family.
6 Q. All right, thank you very much; answer any defense
7 questions.
8 CROSS EXAMINATION
9 BY MR. WARBURTON:
10 Q. Did the search warrant have any people's names on it,
11 on there besides yourself and Mr. Farmer?
12 (Brief silence.)
13 A. Yes, sir, it had Mr. Boardwine, Ronald Barry Boardwine,
14 premises' name is Ronald Barry Boardwine.
15 Q. Okay, the search warrant has Trooper J. E. Asbury's
16 name on it twice, three times, B.K. Farmer, am I correct?
17 A. Yes, sir.
18 Q. And Ronald Barry Boardwine; it doesn't mention Kathy
19 Marie Lane in any respect, does it?
20 A. No, sir, it does not.
21 Q. And your investigation was about Ronald Barry
22 Boardwine, am I correct?
23 A. Sir?
24 Q. Your investigation, you waited for Mr. Boardwine to
25 enter the premises, you were looking for Ronald Barry Boardwine,
26 were you not?

A. Yes, sir, _____(inaudible) activities at the residence as well as Mr. Boardwine.

Q. And you didn't direct your announcement of the search or reading of the search warrant or a copy to Ms. Lane, am I correct?

A. Well, it was not directed directly at her; of course, she was present.

Q. She was there?

A. Yes.

Q. I believe you testified yourself. . .

A. Yes, sir, that's correct.

Q. . . .that you read it to Ronald Boardwine?

A. That's correct.

Q. That's all.

THE COURT: All right, come down.

(The witness stands aside and leaves the courtroom.)

MR. TERWILLIGER: Your Honor, I'd like a few moments to review my notes.

THE COURT: Sure.

(Brief silence.)

MR. TERWILLIGER: Your Honor, at this time the Commonwealth rests.

THE COURT: All right.

MR. DILLOW: Your Honor, counsel for the defendant respectfully requests an _____(inaudible) with the Court in chambers.

1 THE COURT: All right.

2 (Thereupon the jury retires to their room.)

3 (Thereupon all remaining parties go to chambers and the
4 following motion was heard in chambers.)

5 MR. DILLOW: May it please, Your Honor, counsel for the
6 defendant respectfully moves the Court to strike the Commonwealth's
7 evidence in this case; I'm not going to _____(inaudible) this
8 matter; I'm not going to take the time to go into great detail
9 except to just say generally that the Court has heard what has
10 been introduced to you; the only evidence in the case that seeks
11 to connect the defendant in any way with this matter is exactly
12 what the legislature of Virginia says you can't do; that her
13 ownership or occupancy of the premises upon which the alleged
14 drugs were found shall not raise even a prima facie presumption,
15 creates no presumption whatsoever; there's nothing else in this
16 case and I could talk from now to Labor Day and it wouldn't
17 enlarge it a bit in the world nor would it take from it; the
18 evidence simply is not here; Ms. Lane was present; you've heard
19 what the officers have said and it just does not in our opinion
20 make a case and to say that it does make a case is to read out of
21 the statute what the legislature has written into it; that's the
22 motion and that's the reason for it.

23 MR. TERWILLIGER: Your Honor, in response I'd just say that
24 the statute to which the counsel is referring is one that says
25 that there is no presumption raised; the cases are quite clear
26 that it's evidence just to be considered by a jury just as any

other evidence would be considered by them and in this case we not only have the evidence found on the premises; we find that it was in very close proximity to her herself; she's seated in the chair behind which it is found; she made no denial at the time which ordinarily would be expected of someone; she in fact very suspiciously made the comment as the trooper was looking behind the chair she made the statement that there's nothing behind that chair or words to that effect and it was the only time that she made any such statement while he was searching the rest of the room; and I think the circumstances here and the size of the bag involved which would indicate that they should have had knowledge of it definitely is evidence that should go to a jury and looked upon in the light most favorable to the Commonwealth; definitely should go to a jury.

THE COURT: I think that it is a jury question and I overrule your motion.

MR. DILLOW: May we have a couple of minutes?

THE COURT: Yes, sir.

(Thereupon the Court takes a brief recess)

(Thereupon after a short while, in open court, all interested parties return into the courtroom, including the Court, jury, defendant and her attorneys, and the Assistant Commonwealth Attorney.)

1 KATHY MARIE LANE,
2 a witness called on behalf of the defendant, after being first
3 duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. DILLOW:
6 Q. If you would kindly look up in the direction of
7 Judge Matthews and that would also be in the direction of the
8 jury, talk out distinctly, look at them please when you're
9 testifying and not over this way or that way so we can all hear
10 you.
11 A. Okay.
12 Q. Your name?
13 A. Kathy Marie Lane.
14 Q. And Kathy, is it all right for me to call you Kathy?
15 A. Yes, sir.
16 Q. Kathy, how old are you?
17 A. 23.
18 Q. Where do you live?
19 A. Route 3, Brookmont Road, Pulaski.
20 Q. In Pulaski?
21 A. Yes, sir.
22 Q. Are you a native of Pulaski?
23 A. Yes, sir.
24 Q. Born and raised here?
25 A. Yes, sir.
26 Q. Did you go to school here?

A. Yes, sir.

Q. Where did you go to school?

A. Pulaski County High School.

Q. Did you graduate from that high school?

A. Yes, sir.

Q. When?

A. '77.

Q. Beg your pardon?

A. '77.

Q. 1977, you're a graduate of Pulaski County High School?

A. Yes, sir.

Q. It was in Pulaski at that time, right, or was it down at the Dublin school?

A. The Dublin school.

Q. The Pulaski County High School down on the highway between here and Dublin?

A. Yes, sir.

Q. I believe that high school took over all of the students that had previously been in the old school out here. . .

MR. TERWILLIGER: Your Honor, I'll object to this line of questioning as irrelevant.

MR. DILLOW: Well, it may be; just withdraw it.

THE COURT: It's all right, go ahead, there's nothing. . .

Q. Kathy, are you married?

A. No, sir.

Q. You divorced?

1 A. Yes, sir.
2 Q. Do you have a child?
3 A. Yes, sir.
4 Q. How old was that child on the day that this house down
5 here in question was searched?
6 A. 19 months.
7 Q. Is that your child?
8 A. Yes, sir.
9 Q. The name of that child?
10 A. Crystal Gail Boardwine.
11 Q. Kathy, you've heard the testimony of Ms. Anderson who
12 says that you had contracted to purchase this house, I assume
13 that's true?
14 A. Yes, sir.
15 Q. You had taken possession of the premises?
16 A. Yes, sir.
17 Q. And you were living there when this search was made,
18 is that right?
19 A. Yes, sir.
20 Q. You remember the officers being there, you've heard
21 what their testimony was?
22 A. Yes, sir.
23 Q. Their testimony is to the effect that they found this
24 bag of so called drugs there in the house and they did find the
25 bag there, right?
26 A. Yes, sir.

Q. Now, you've heard their description of where they found it and what they found and what generally occurred there, you were there at the time they arrived?

A. Yes, sir.

Q. Did you answer the door or did somebody answer the door when the knock came?

A. I went to answer the door but they took and opened the screen door, the door wasn't shut, it was just a screen door, and I went to open it and they just said sit back down and told me who they were.

Q. Okay, then entrance to the house was made just like an ordinary entrance would be made, somebody knocks, party opens the door and they walk in?

A. Yes, sir.

Q. You sat down in the chair?

A. Yes, sir.

Q. Did exactly what you were told to do?

A. Yes, sir.

Q. Now, did you have any ownership in or control over or any knowledge of the contents of that bag that's been introduced into evidence here?

A. No, sir.

Q. Did you know anything about it being there?

A. No, sir.

Q. Did you have anything to do with it?

A. No, sir.

1 Q. Now, Kathy, just before this search was made, when the
2 officers came there to make the search, had you been away from
3 home?
4 A. Yes, sir.
5 Q. Where had you been?
6 A. I'd been at my mother's.
7 Q. And where does your mother live?
8 A. On Peppers Ferry Road here in Pulaski.
9 Q. How far would your mother's home have been from this
10 home on Pulaski Street?
11 A. Uh, I guess about 3 miles.
12 Q. And how, you had been at your mother's home?
13 A. Yes, sir.
14 Q. And how long had you, would say that you had been
15 there?
16 A. I guess I had been over there for about 2 weeks.
17 Q. Why were you over there for 2 weeks?
18 A. Because Randy and Tina Anderson came up, they were
19 from Florida, and they wanted, and I wanted to spend a week down
20 there and they were going to spend a week up here, so I just
21 decided to let them stay at my place and they said that when I
22 came down that I could stay at their place for a week.
23 Q. And that explains why you were not at home?
24 A. Yes, sir.
25 Q. And that had been for 2 weeks?
26 A. Yes, sir.

Q. Approximately?

A. Yes, sir.

Q. And what were the names of those 2 people?

A. Tina and Randy Anderson.

Q. And where did they live?

A. Florida.

Q. Exactly where in Florida, what was the address, the town or the city?

A. I don't know.

Q. What kind of house is this down there on Pulaski Street; how many rooms in that house?

A. It has 4 rooms and a bath upstairs and it has 2 rooms downstairs plus the furnace room and a dairy room.

Q. And you were the housekeeper?

A. Yes, sir.

Q. And how long had you lived there at the time this search took place?

A. About 6 months.

Q. About 6 months; you knew nothing about these drugs being there?

A. No, sir.

Q. The officers who have already testified that upon a thorough and complete minute detailed search of the premises they found absolutely nothing there, is that correct?

A. Yes.

Q. At the time you were arrested there that day, after they

1 made this search. . .

2 A. Yes, sir.

3 Q. When you were arrested, were you patted down or searched

4 or anything of this nature?

5 A. Well, they didn't pat me down or anything; they just

6 looked through my pocketbook.

7 Q. Was the juvenile arrested?

8 A. No, sir, she wasn't a juvenile.

9 Q. Who was that?

10 A. It was Charlotte Powers.

11 Q. Did you have any, did they examine your pocketbook?

12 A. Yes, sir.

13 Q. Did they remove anything from your pocketbook?

14 A. No, sir.

15 Q. Did you have any sum of money in your pocketbook?

16 A. No, sir.

17 Q. Any at all, a dollar, 2, 3, 4?

18 A. I might have had maybe $30.

19 Q. Maybe $30?

20 A. Um huh (positive), I might not have had that much.

21 Q. You had no sum of money in the house?

22 A. No, sir.

23 Q. Do you or Ronnie Boardwine either smoke or indulge in

24 the use of cigarettes?

25 A. No, sir.

26 Q. You do not?

A. No, sir.

Q. And I believe I asked you if you've lived in Pulaski County all of your life?

A. Yes, sir.

Q. Now answer any questions which may be asked you by Mr. Terwilliger, the Assistant Commonwealth Attorney.

CROSS EXAMINATION

BY MR. TERWILLIGER:

Q. Ms. Lane, you stated here that you're divorced and you have a child that's 19 months old. . .

A. She's. . .

Q. . . .or was 19 at the time?

A. Yes.

Q. All right, who's the father of that child?

A. Ronnie Boardwine.

Q. And Ronald Boardwine is not your husband, is that correct?

A. No, sir, he's not.

Q. Now, at this time you told us that you were in the house on November 10th, were you seated in that chair when the police came in?

A. Yes, sir.

Q. When they first knocked?

A. Yes, sir.

Q. When they told you to sit down, you were just resuming your seat then to where you'd been?

1 A. Yes, sir.
2 Q. And this is the chair behind which the drugs were
3 found?
4 A. Yes, sir.
5 Q. Now, when is it that you met Randy and Tina Anderson?
6 A. I guess, I guess about a month before then, about a
7 month before November.
8 Q. And you had talked to them about going down to their
9 house in Florida and they were going to take your house here in
10 Pulaski?
11 A. Yes, sir.
12 Q. And yet at the same time you tell us that you don't
13 know where they live in Florida, is that correct?
14 A. Yes, sir, I don't.
15 Q. How long did they stay at your house?
16 A. Before this happened?
17 Q. How long did the Andersons stay at your house?
18 A. I guess, it had been almost 2 weeks.
19 Q. And someone, was there any particular reason that they
20 left or was 2 weeks the agreed upon time?
21 A. No, they left because Ronnie ran them off.
22 Q. Is there any particular reason that you know of?
23 A. They were having loud music and everything and drinking.
24 Q. Um huh, now, they had stayed almost 2 weeks prior to
25 that time?
26 A. Yes, sir, I think so.

1 Q. And you were staying at your mother's for 2 weeks, you
2 say?
3 A. Yes, sir.
4 Q. And you're sure of the names Ronnie, I mean Randy and
5 Tina Anderson?
6 A. Yes, sir, that's what they told me.
7 Q. Did you ever have any narcotics on your premises before
8 this time?
9 A. No, sir.
10 Q. None at all?
11 A. Not as I know of.
12 Q. When did you come back to your premises prior to
13 November 10th?
14 A. That night, well it was late that night, the 9th, I
15 guess it was the 9th, up in the, it was late.
16 Q. Did you come back the night before or late on the 9th?
17 A. They had already left when I come back.
18 Q. All right, you're talking about the evening before, is
19 that correct?
20 A. Yes, sir.
21 Q. So it would be the 9th of November?
22 A. Yes, sir.
23 Q. And you were there all day long, is that correct?
24 A. No, sir, the 10th I was there until the law came but I
25 hadn't been in the house for long until they knocked, but they were
26 already gone.

1 Q. Okay, how long had it been since you'd been in that
2 house?
3 A. I guess it had been 3 or 4 days because I went over and
4 got me some clothes.
5 Q. When you came home on the 9th, did you have any
6 luggage with you?
7 A. No, sir, I didn't.
8 Q. You just moved back in; put your things away on the
9 night of the 9th; and you were there throughout the morning of
10 the 10th until the police came in about 1:45 in the afternoon?
11 A. I didn't, I didn't move out, I just took a few things,
12 you know, that I would need.
13 Q. Okay.
14 A. I had clothes at the house.
15 Q. Did you leave the house at all on the morning of the
16 10th?
17 A. No, sir.
18 Q. What time did Ronald Boardwine come to the premises?
19 A. Let's see, he came in, I guess he was there a few
20 minutes just before the law came.
21 Q. And what about this Charlotte Powers?
22 A. She'd been there, I reckon, she came about, about 45
23 minutes before then and we were talking and so we wanted a
24 hamburger and she left and went and got a hamburger and when she
25 came back, I guess she was there about 15 minutes, we were eating
26 and then the law came and knocked on the door.

Q. All right, you've heard the officers' testimony; they didn't burst into the room or anything like that. . .

A. No, sir.

Q. . . .they opened the door prior to you opening it?

A. No, I didn't get to it.

Q. Right. . .

A. They opened it.

Q. . . .but they didn't on the other hand break it in. . .

A. No, sir.

Q. . . .or anything like that?

A. No, sir, they didn't.

Q. And they were all wearing badges?

A. Yes, sir, I didn't pay that much attention.

Q. All right, you knew that they had a search warrant at that time?

A. Yes, sir, they said they did.

Q. And you heard them reading the warrant, they weren't sure which of you owned the house, is that correct?

A. They read it to Mr. Boardwine.

Q. Right, and you were standing right there when it was read, you never made any objections of any type?

A. I was sitting in the chair _____(inaudible).

Q. Okay, now when they began their search, you stayed in the chair the entire time they were searching, is that correct?

A. Yes, sir, they told me to stay seated.

Q. All right, and did you talk to anybody while you were

1 sitting there?
2 A. No, sir, just that they asked me _____(inaudible).
3 Q. When Trooper Dean approached your chair, do recall
4 telling him that there was nothing behind the chair?
5 A. No, sir, I don't recall that.
6 Q. Is it possible that you did make that statement but
7 you're simply not recalling it or are you saying that you didn't
8 make the statement at all?
9 A. It is possible that I said it but I don't remember if
10 I did say it.
11 Q. All right, and you never said any statements of that
12 same type to him when he was going about any other furniture in
13 the room, is that correct?
14 A. No, sir, I didn't.
15 Q. What is your mother's full name?
16 A. Stella Duncan Lane.
17 Q. And have you, did you sleep at your mother's house for
18 that entire 2 week period?
19 A. Yes, sir.
20 Q. Where did you get the knives and T-shirts that were
21 found on the premises?
22 A. I had bought the T-shirts off of a company in
23 Hunington, West Virginia, and I don't remember any knives.
24 Q. You don't remember any knives being there?
25 A. No, sir, I don't.
26 Q. How much did you pay for these?

A. The T-shirts?

Q. The T-shirts.

MR. WARBURTON: Your Honor, I'll object; that is certainly immaterial.

MR. TERWILLIGER: Your Honor, I think the source of the funds might be very material.

THE COURT: Go ahead; I overrule your motion.

A. They were $1.25 a piece.

Q. A, (pause), $1.25 a piece?

A. Yes, sir.

Q. And there were approximately how many?

A. I don't know really.

Q. Would the figure 4500 be pretty close?

A. No, sir, that would be awfully high.

Q. 4000?

A. No, sir, I don't think there was that many of them; there was a whole lot of them; there were in boxes but there wasn't a whole lot of T-shirts.

Q. And do you recall the purchase price of this in its entirety then?

A. No, sir, I had bought them a while before then but I can't remember.

Q. Was it more than $1000?

A. It may have been, I don't know.

Q. Was it more than $2000?

A. No, sir, I doubt it because I didn't have a lot of money.

1 Q. Where did you get the money to pay for these?
2 A. At the store.
3 Q. And where did you get the money for the house itself?
4 A. I had saved it; I didn't pay that much down.
5 Q. You're denying then that at any time your home was
6 used for the distribution of narcotics?
7 A. Yes, sir.
8 Q. And that includes distribution by someone else while
9 you were there and not just distribution by yourself?
10 A. Could you repeat that again?
11 Q. Are you denying then that the home itself was used
12 not just you not distributing any but no one else distributed it
13 to your knowledge out of that home?
14 A. Yes, sir, to the best of my knowledge.
15 Q. Thank you; that's all the questions that I have.
16 RE-DIRECT EXAMINATION
17 BY MR. DILLOW:
18 Q. Kathy, were you at that time employed?
19 A. Yes, sir.
20 Q. By who?
21 A. By the U.S. Government.
22 Q. United States Government?
23 A. Um huh (positive.)
24 Q. In what capacity?
25 A. I drove a U.S. mail truck.
26 Q. Operating a U.S. mail truck?

A. Yes, sir.

Q. For the United States Post Office Department, right?

A. Yes, sir.

MR. TERWILLIGER: Your Honor, I'll object to any continuance of this line of questioning at this time; it's irrelevant and outside the scope.

THE COURT: Go ahead.

MR. WARBURTON: _____(inaudible) get at her salary that's what you just went into . . .

THE COURT: Go ahead and ask her, Mr. Dillow.

Q. Approximately what did that job or contract pay you?

A. Approximately $200 a week.

Q. About $200 a week. That's all.

THE COURT: All right, come down.

(The witness stands aside, remains in the courtroom, and takes her seat next to her attorneys.)

MR. TERWILLIGER: Your Honor, I would like to have a moment to confer with defense counsel.

THE COURT: Just wait and let's see where. . .

MR. TERWILLIGER: I believe, it affects prior discussions that we had; it may affect whatever decisions they have at this time, Your Honor.

(Thereupon all the attorneys involved leave the courtroom for a short while for a discussion which was not electronically recorded.)

(Thereupon after a short while all interested parties

1 return into the courtroom, meaning the attorneys involved.)

2 RONALD BOARDWINE,

3 a witness called on behalf of the defendant, after being first

4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WARBURTON:

7 Q. State your name please.

8 A. It's Ronald Boardwine.

9 Q. Ronald Barry Boardwine, is that correct?

10 A. Yes.

11 Q. Mr. Boardwine, how old are you, sir?

12 A. 32.

13 Q. Okay. In November of 1979, did you reside at 607

14 Pulaski Street here in the town?

15 A. No, sir, I was in and out of there a lot.

16 Q. Okay, you were a frequent visitor there?

17 (No answer recorded on the record.)

18 Q. And you know the defendant in this case, Kathy Marie

19 Lane, am I correct?

20 A. Yes.

21 Q. And you and she have a child, is that correct,

22 Crystal?

23 A. Yes.

24 Q. Who at that time was about 19 months old?

25 A. Yeah, I'd say close to there.

26 Q. In November, 1979, sir, how were you employed?

A. Contract mail carrier; I had 3 trucks that ran Pulaski, Galax, and Dunsboro and Willis, over in that area.

Q. Okay, and as one, Kathy was one of your employees, is that fair?

A. Yes.

Q. Okay, and her income, sir, I guess you were the boss, what was her income at the time approximately; can you recall?

A. I'd say, total income or just take home?

Q. The take home per week if you can estimate it, sir?

A. Probably $230 to $250 or something like that.

Q. And did you contribute to household expenses at that time?

A. Well, a little bit, yes, sir.

Q. Can you estimate how much you provided in income to Ms. Lane for running that house?

A. I wouldn't say, just enough to help out with the baby, not a whole lot.

Q. $20 a week, $50 a week?

A. Something like that, maybe.

Q. Now, how long had Kathy been living in that house before November, 1979?

A. I would say maybe 8 months or so.

Q. And the baby lived there also?

A. Um huh (affirmative).

Q. I take it that Charlotte Powers did not live there?

A. No, no, sir.

1 (Brief silence.)

2 A. I would keep the baby a whole lot on the weekends.

3 Q. Going back a few weeks before November 10, 1979, were
4 you aware of who was occupying that house?

5 A. Well, yeah, it was partly my fault; see what happened
6 was I met these two people, well there was actually three of them,
7 two of them I talked to, and they said they were from Miami,
8 Florida; one of them said she worked at Denny's, Denny's
9 Restaurant in Miami, Florida; and we made a deal with them if they
10 would let us use their house for 2 weeks then we could use, they
11 could use ours for 2 weeks; but the way it was I was tied up with
12 a federal contract and I couldn't get away but they still, they
13 still come on up; so she went to stay with her Mom and . . .

14 Q. Is that on Peppers Ferry Road here in town?

15 A. Yes, sir, Charlie Lane. And, well, the way it worked
16 out we didn't get to go down but they, they in turn come on up
17 and my brother went over there and he, well, he went to her house
18 looking for her and he couldn't find her so in a little while I
19 went up there and they was, they was pretty disorderly, you know,
20 and using a lot of foul language.

21 Q. Who are these 2 people, do you remember their names?

22 A. It was Tina Anderson and Randy Anderson, the other
23 one was Robert Wright but I didn't get to talk to him much, he
24 lived in South Carolina. (Brief Silence.) Well, I come up there
25 and they was all disorientated and stuff like that and I just told
26 them, you know, that she couldn't stand stuff like that, you know,

and couldn't put up with stuff like that so I just told them all to leave.

Q. That would've been the 2 people, Tina and Randy?

A. Um huh.

Q. You asked them basically to get out of the house?

A. Yeah, I just told them that they was going to have to leave.

Q. All right, and your objection was what?

A. On account of they was all disorderly and they were just _____(inaudible). . .

Q. Partying?

A. Well, I guess you could call it partying; they kept on trying to come back in the house and I told them that I had called the Town Police and they would be up shortly and if they didn't leave there was going to be a whole lot of trouble, you know, on their part if they just didn't go ahead and leave and the one of them, he kept on trying to come back in the house and after I told him that he went ahead and left; they drove by, you know, every little bit and then they didn't come back no more.

Q. And if you recall the 10th of November is the day that the State Police surprised you there, when was this that you kicked them out?

A. Well, this was, _____(inaudible) was the night before this, a little, I expect it was a little bit before, it might of been right around midnight.

Q. Okay, that would've been; if it was prior to midnight,

that would've been on the night of November 9th then?

A. I. . .

Q. And about 12 hours later then the police arrived, is that correct?

A. Yeah, yeah, I'd say.

Q. After you ran them off, where did you go; did you stay there at that house?

A. I stayed there for a little while and then I went on after she come home.

Q. Kathy was not there when you ran them off then?

A. No, no, she wasn't; I think she had gone shopping or something or somewhere, her and Ms. Gravely had gone shopping in Roanoke, I think; she was gone somewhere.

Q. Okay, then after Kathy came back to her house, you left?

A. Um huh (affirmative).

Q. And I assume, sir, that you were there when the police came the next day?

A. Yeah, yeah, I come in that morning; it was early in the morning, I don't know what time it was but it was real early and I come in and I left and went and got a motorcycle and brought it back and I unloaded the motorcycle and my brother was with me, he helped me unload it, and we went in the house and drunk a cup of coffee and he left, and then just a few minutes the officers came in.

Q. You were in the house then 10 or 15 minutes before the

1 officers showed up?

2 A. Something, something like that I'd say, yeah.

3 Q. We've had several different people talk about how the

4 officers gained entrance, can you recount that for us, was there

5 a knock?

6 A. I was sitting in a chair right beside the door and the

7 best I remember they just reached and got the door and pulled it

8 open and one of them had his hand, he just had his gun stuck under

9 his belt and he laid his hand on his gun and had his badge out

10 like this and said I'm officer so and so and uncover State Police

11 and we've got a search warrant to search these premises and then

12 they just come in.

13 Q. Did he ask you if you were Ronald Barry Boardwine?

14 A. Yes, he did, and he. . .

15 Q. Did he read that search warrant to you?

16 A. He read me a search warrant and he read me my rights

17 and they went to searching all through the house and. . .

18 Q. Did they care whether you stood up and moved around or

19 did they ask you to stay seated or what?

20 A. I believe he asked me to stay seated.

21 Q. Was that directed at everyone there?

22 A. Um huh (affirmative), yeah, I think he asked everybody

23 just to, yeah, I'm pretty sure he did; when he held his badge up,

24 he said everybody be seated.

25 Q. Charlotte Powers was there?

26 A. Yeah, yes, sir.

1 Q. And your baby was there?
2 A. Um huh (affirmative.)
3 Q. And the four of you were the only people in the house
4 until the State Police showed up. . .
5 A. Yeah.
6 Q. . . .and then there was 3 or 4 or 5 of them, is that
7 correct?
8 A. Yeah, um huh (affirmative), at that time.
9 Q. Now, while the search was going on, you just stayed in
10 the livingroom, is that correct?
11 A. Yeah, we, we just stayed right where we was at, yeah.
12 Q. And the troopers testified that it took them about
13 an hour and a half to go through the house?
14 A. Well. . .
15 Q. Did anybody accompany them to any other room while
16 they were searching?
17 A. Oh, no, no, he told us just to be seated and we was
18 completely surprised, we just sat right there, we really, we
19 didn't know what was happening until it was all really 'til, 'til,
20 'til they found what they was looking for.
21 Q. At the time then who was it that found this bag behind
22 the chair, do you remember?
23 A. I think it was the tall, slim boy, I don't know him by
24 name.
25 Q. Okay, anyway at one point or another someone pulled a
26 bag out from behind the chair, is that right?

A. Yeah, it was directly behind the chair just, like I'm sitting here and there was a chair straight across from me over there, it was right in behind the chair, right in behind it.

Q. You didn't see it before it was pulled out?

A. No, there was a window there and then there's curtains behind the window and the bag was just stuck back behind the curtains and then the chair was pulled right up against it.

Q. Was Kathy in the chair when they pulled that out from behind the chair?

A. I believe. . .

Q. Or did they ask her to stand up?

A. I won't say for sure, she might've been sitting in the chair, you know, in that chair; I think she might've been changing the baby or something when they come in; we was getting ready to eat when they come in.

Q. You know Kathy Lane very well?

A. Um huh (affirmative).

Q. Did you ever tell her that there were drugs in the house; was she aware, to the best of your knowledge, that there was anything in the house that was illegal to possess?

A. No, she would've never fooled with anything like that anyway; I mean she's just not the kind of person that would go along and fool with anything like that.

Q. To the best of your knowledge, did she ever speak to you about illegal drugs?

A. No, as a matter of fact she's way down on stuff like

1 that, you know, she, you know, and drinking, drinking or any kind
2 of, any kind of thing like that, she's down on anything like that.
3 Q. Do you or Kathy smoke cigarettes?
4 A. No, sir.
5 Q. There are photographs in evidence, Mr. Boardwine, that
6 show where the bag was found; I'm referring to Commonwealth's
7 Exhibit No. 5; this picture shows a portrait of the chair, this is
8 what baby toys down here on the floor, down in the lower righthand
9 corner?
10 A. Yes, that's what it looks like. (pause) Yeah, that's
11 her little tricycle sitting there. . .
12 Q. Uh huh.
13 A. . . .see the handle bars.
14 Q. Right. Now, this other picture which is Commonwealth's
15 Exhibit No. 4 shows the chair again, about the same area and the
16 television, there is an ashtray there on an ash stand, I guess
17 there's an ashtray in the house, who are you aware that smokes
18 that had been in that house?
19 A. Well, I don't know of anybody unless it was the other
20 people that had been there the night before.
21 Q. Randy and Tina Anderson; did you ever see them smoke
22 cigarettes, I'm just curious?
23 A. I don't remember.
24 Q. _____(inaudible) testified that the house was left
25 in pretty much of a disarray by the Andersons which was one of the
26 reasons that you asked them to leave, had you participated in or

encouraged Kathy to clean up the house that _____(inaudible) or just take it easy or . . .

A. I believe she straightened up a little bit, some of the back bedrooms or something.

Q. To the best of your knowledge, was Kathy Lane surprised when they found this bag behind the chair?

A. Yes, she was totally surprised.

Q. Were you looking at her at the time? (pause) Do you remember; if you weren't, that's fine; I'm just wondering if you were looking at her?

A. I may have glanced at her, I don't know, I don't remember.

Q. Did you hear her say anything to the trooper?

A. If she did, I didn't hear her.

Q. And was she shaking or was she just fine or whatever when they found this bag?

A. Well, I imagine she was pretty shook up, you know, a little more shook up than I was, you know, it was just a total surprise, you know; I imagine she was kind of shaken up a little bit.

Q. Of course, you weren't with the troopers throughout the whole search but, to the best of your knowledge, they didn't find anything except for some pills that turned out to be legal, caffeine, and these items that are somewhere in the courtroom; they didn't find any marijuana?

A. No, no, they wouldn't have found anything like that.

1 Q. Powders, capsules, any of that kind of thing?
2 A. _____(inaudible - mumbling) had in their
3 pocket, I guess.
4 Q. They didn't find any marijuana seeds, scales, coc
5 spoons, baggies?
6 A. No, there wasn't nothing like that.
7 Q. Do you know if they found any large amounts of money?
8 A. I'm pretty sure she didn't have any money; if there was,
9 it wasn't enough to amount to maybe less than $100 I'd say.
10 Q. And you'd been with Kathy on and off of your relation-
11 ship for a long time and she never mentioned, never said anything
12 to you about possessing illegal drugs or possessing anything
13 illegal?
14 A. No, sir, she's completely down on drinking or any kind
15 of drugs or anything of that nature, you know, she just, she just
16 has been raised not to associate with stuff like that.
17 Q. Answer Mr. Terwilliger's questions if you would,
18 Mr. Boardwine.
19 CROSS EXAMINATION
20 BY MR. TERWILLIGER:
21 Q. Now, Mr. Boardwine, am I understanding, you're saying
22 that Mr. Robert Wright and Tina Anderson were the persons who were
23 in the house for several days there?
24 A. Well, I'm not for sure about Robert Wright but Tina
25 Anderson and Randy Anderson was, they was there the night before
26 when I had to ask them to leave.

Q. Okay, if I recall some earlier testimony that you gave, they were there for one night and part of a day, is that correct?

A. Well, I'm not exactly sure how long they was there.

Q. Well, could it have been 2 nights?

A. I would be afraid to say for sure.

Q. Well, was it. . .

A. _____(inaudible) in and out.

Q. Well, now, was. . .

A. I went up there twice and there wasn't nobody there and the next time, one time I went back, well, there was several times and there wasn't nobody there and this time when I went they was there and pretty well messed.

Q. All right, do I understand you to say that Robert Wright lived in South Carolina and. . .

A. I think Hartwell, South Carolina.

Q. Huh?

A. I think Hartwell, South Carolina.

Q. Hartwell, South Carolina?

A. Yeah, I think so, Hartsville or Hartwood.

Q. How long did Kathy go live with her mother?

A. I don't know exactly.

Q. 2 or 3 days?

A. Maybe, I couldn't say for sure how long she was there.

Q. It wasn't any long period of time, a week or anything like that, was it?

1 A. Well, it could've been a week, yeah, or maybe a little
2 longer than a week.
3 Q. Um huh. Now, . . .
4 A. It's been a year, you know, it's been a whole year since
5 that happened.
6 Q. I know but this was a fairly important event in both
7 of your lives, wasn't it?
8 A. Well, the day that the officers come to the house it
9 was but what happened prior to that, you know, just kind of, a
10 little bit vague.
11 Q. All right, let's go a little bit further on things that
12 happened prior to that. Do you recall purchasing some T-shirts
13 with Kathy Lane's money?
14 A. Yeah.
15 Q. Now, it's my understanding that you purchased some
16 4000 to 4500 T-shirts, is that correct?
17 A. Well, it was a large amount, I don't know how many it
18 was.
19 Q. Do you recall testifying to 4000 to 4500 T-shirts?
20 A. I may have done it, something close to that.
21 Q. And do you recall testifying that you paid Kathy Lane's
22 money, you took Kathy Lane's money on her behalf and paid close to
23 $4000 for these T-shirts?
24 A. I don't recall testifying to that but it could very well
25 be.
26 Q. Would you like to listen to your tapes to refresh your

1 memory?

2 A. No, no, it could very well be.

3 Q. Do you ordinarily pay $4000 out in purchases and not

4 remember?

5 A. Not ordinarily but we got it for something, well, at a

6 cheap price, you know.

7 Q. Per shirt?

8 A. Yeah.

9 Q. And there was a large quantity of shirts?

10 A. Yes, yes, there was; as a matter of fact, it put her in

11 a financial bind _____(inaudible).

12 Q. It did put her in a financial bind?

13 A. Um huh (affirmative).

14 Q. One in which she needed some quick money?

15 A. Well, I wouldn't say where she needed quick money or

16 not but it did put her in a financial bind.

17 Q. All right, now, would it be incorrect then if I said

18 that when you were placed under oath the last time and talked

19 about this matter you said that 2 individuals from Florida, who

20 lived in Florida, had a house in Florida, stayed for one night and

21 part of the next day before you kicked them out and you kicked them

22 out because of the party on their first night in there?

23 A. Well, it may, I don't know how long they was there,

24 I could have testified to that, yeah.

25 Q. If you testified to that, would that mean that you were

26 telling the truth at that time and you just can't recall at this

time?

1 A. Well, it would be at that time, would be the best that
2 I can remember then, you know, it would be the best that I can
3 remember now.
4 Q. Well, I'm asking then do you remember now, is that
5 correct? (Pause) Or were you lying then?
6 A. No, I wasn't lying, if, it just, you know, give or take
7 a time, I don't know how long it was.
8 Q. Give or take a time, okay, a day, 2 days?
9 A. I just don't remember.
10 Q. A month, 2 months?
11 MR. WARBURTON: The question has been asked and answered,
12 Your Honor.
13 MR. TERWILLIGER: Your Honor, I would like to try and get
14 him down to a time frame if possible.
15 A. I don't know a time frame; I don't know.
16 Q. Do you recall testifying that the names of those 2
17 individuals, not 3 just 2 individuals, were Robert Wright and
18 Tina Jones and that Robert Wright was from Georgia?
19 A. I don't know, I give the names to the officers when
20 they come.
21 Q. Do you recall testifying under oath in that stand to
22 the fact that the names of the people who rented that apartment
23 who had the house in Florida were named Robert Wright from
24 Georgia and Tina Jones and that you did not know their present
25 whereabouts?
26 A. I don't know, I may have, I don't know; if I did, the

name is wrong; I know that Robert Wright was wrong but I don't it was, it was Tina Anderson instead of Tina Jones.

Q. And you never mentioned any Randy Anderson, did you?

A. Yeah, I give the officers their names.

Q. Did you mention it when you testified in this Court under oath?

A. I guess it was just common knowledge that I give them their names; Asbury was up on the stand, he knowed it.

Q. I have no further questions of this witness.

RE-DIRECT EXAMINATION

BY MR. WARBURTON:

Q. Mr. Boardwine, despite the fact that you don't remember their exact names, was it the truth that 2 people were there that you kicked out for messing up the house and holding wild parties?

A. Yes, sir.

Q. That's why you asked them to leave?

A. Um huh (affirmative).

Q. And they were definitely there?

A. They were definitely there.

Q. Okay, thank you, sir.

THE COURT: All right, call your next witness.

(The witness stands aside and leaves the courtroom.)

1 D. F. DEAN,
2 a witness recalled on behalf of the defendant, after having
3 previously been sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WARBURTON:
6 Q. Trooper Dean, you're still under oath. When you
7 testified this morning, I failed to ask you a few questions. I
8 thought maybe you could clear up some things for us. We were
9 talking, if you'll recall this morning, about the loose
10 surveillance that the State Police had been performing on this
11 particular house in our city here and, although, it was defined
12 as loose surveillance; I believe you went into what; could you
13 just quickly review what loose surveillance is?
14 A. That means that the surveillance is not permanent; it's
15 not set up permanent to where it's continuously over a period of
16 time; it's placed on and off; it's just; during the investigation
17 whenever I had the time and at my convenience.
18 Q. Okay, I believe also this morning you testified that
19 during this loose surveillance of a period of 10 days before the
20 actual search and seizure was made that you did not see Kathy
21 Marie Lane at all; the first time you saw her was when you came
22 through the door, is that correct?
23 A. That's correct.
24 Q. Okay, in that period of loose surveillance, though, did
25 you see a number of people going in and out of the house?
26 A. No, sir.

Q. Did you see anybody going in and out of the house?

A. I did on one occasion.

Q. When was that, sir?

A. That was the day of the execution of the search warrant.

Q. That was the young lady who went out for hamburgers and came back, is that right?

A. I observed a young lady as well as Mr. Boardwine.

Q. Okay, prior to that time, though, _____(inaudible saw anybody going in or out, I believe you told me that you had seen a party going on, is that correct?

A. I observed the lights on in the house and quite a few people inside the house and from what I could observe it appeared to be a party, yes, sir.

Q. Was there noise, music, etc., noticeable from your vantage point; where were you anyway, sir; were you out in the street?

A. Yes, I drove by and then directly above the residence there is another street that takes to the right, you could sit there and observe down to the house.

Q. Okay, from that vantage point, were you able to hear music or noise or whatever, things that are associated with a party?

A. No, sir, I could not.

Q. But what you observed lead you to believe that there was a party going on?

A. It appeared, there was quite a few people inside the house where I could observe through the window, more than on

1 the other occasions.
2 Q. Okay, do you remember the date of that?
3 A. No, sir, I don't, it was within 10 days of the search
4 warrant.
5 Q. You don't know whether it was 10 days prior to the
6 search warrant or the day before, you can't recall it today, is
7 that correct?
8 A. It wasn't the day before and it wasn't the day of the
9 search warrant, it was of the nighttime.
10 Q. Can you estimate the time of day; was it . . .
11 A. Approximately 9 p.m.
12 Q. Answer Mr. Terwilliger's questions.
13 MR. TERWILLIGER: I have no further questions of this
14 witness.
15 THE COURT: All right, come down.
16 (The witness stands aside and
17 leaves the courtroom.)
18 MR. WARBURTON: Your Honor, the defense rests.
19 THE COURT: Any rebuttal?
20 MR. TERWILLIGER: Yes, sir, Your Honor, I would like to
21 discuss it with the Court and counsel, though.
22 THE COURT: All right, you ladies and gentlemen go back in
23 that room please.
24 (Thereupon the jury retires to their room.)
25 MR. TERWILLIGER: Your Honor, for purposes of impeachment
26 of their defense witness, Mr. Boardwine, I would like to play for

the jury the tapes of his testimony and the trial that took place here, his own trial took place here.

THE COURT: No, I overrule you, it isn't proper; I've never heard of it being done; you might impeach him by testimony but he doesn't flat out deny it, he just, as I understood it, he said he might have.

MR. TERWILLIGER: Your Honor, I would like to make it clear for the jury that he did in fact testify to those facts, though.

THE COURT: Sir?

MR. TERWILLIGER: Sir, I would like to make it clear to the jury that he did in fact testify to those facts, the facts that I asked him on my cross examination were in fact taken from his testimony; they at this point don't know whether he testified to those facts or not or they might draw the inference; I feel that the only other way to do so is perhaps to call someone that was in the courtroom.

THE COURT: Well, you can do that?

MR. TERWILLIGER: Well, Your Honor, in that case we would have to continue the case so I could get someone who was in the courtroom.

THE COURT: Some of these officers were here; I'll give you a few minutes to see if any of them remember.

MR. TERWILLIGER: Your Honor, some of the officers would be the bailiff for instance, and the Clerk of Court and the court reporter, would all be persons who could not testify; _____ (inaudible) witnesses.

1 THE COURT: Any. . .
2 MR. TERWILLIGER: The officers who are outside were
3 excluded at that trial as well as this one.
4 THE COURT: Well, you can impeach him if you can by one of
5 those witnesses if you have them here; I'll give you a few
6 minutes to get one that heard this trial and if he can say that
7 he said it but I never, the playing of a tape I've never heard of,
8 it may be proper.
9 MR. TERWILLIGER: Your Honor, they are a record of this
10 Court and I feel that any record of this Court is properly
11 introduced.
12 THE COURT: No, no, I overrule you in that but if you've
13 got someone here that remembers any statement or the names of
14 these witnesses or if he stated that on the trial in this
15 courtroom, I'll let you do it and I'll give you a few minutes to
16 get him and if you can't. . .
17 MR. TERWILLIGER: All right, sir.
18 (Thereupon the Assistant Commonwealth Attorney leaves the
19 courtroom and after a very short time he returns.)
20 MR. TERWILLIGER: Your Honor, at this time the Commonwealth
21 will not present any rebuttal evidence.
22 THE COURT: All right, let's go back and get our
23 instructions.
24 (Thereupon instructions were considered in chambers, which
25 said proceedings were not recorded electronically.)
26

(Thereupon proceedings were resumed in the courtroom with the Court, jury, defendant and her attorneys, and the Assistant Commonwealth Attorney being present.)

(Thereupon all the witnesses in the case were permitted to return into the courtroom.)

THE COURT: Ladies and gentlemen of the jury, this case has now been concluded and after argument of counsel it will become your duty to decide this case.

(Thereupon the Court gave the instructions to the jury.)

THE COURT: Now you may proceed with your argument, Mr. Commonwealth.

MR. TERWILLIGER: Thank you, Your Honor.

(Thereupon Mr. Terwilliger made his opening argument to the jury.)

(Thereupon Mr. Warburton made his closing argument to the jury.)

(Thereupon Mr. Dillow made his closing argument to the jury.)

(Thereupon Mr. Terwilliger made his closing argument to the jury.)

THE COURT: Ladies and gentlemen of the jury, you may retire to your room. Remember the instructions when you retire to your room, remember the first thing that you do is to elect a foreman; when you have reached a verdict the foreman will sign it and knock on the door and the Sheriff will be there to wait on you; you may retire; Sheriff, give them the exhibits and the instructions.

1 (Thereupon the jury retired to their room to consider their
2 verdict.)
3 (Thereupon the following was heard out of the presence of
4 the jury.)
5 MR. DILLOW: If the Court pleases, the counsel for the
6 defendant at the conclusion of the Commonwealth's evidence lodged
7 a motion to strike the evidence and stated on the record our
8 reasons for, our reasons in support of that motion and the Court
9 considered the motion and overruled the motion; now that the
10 entire evidence has been introduced both for the Commonwealth and
11 the defendant, counsel respectfully renews that motion to strike
12 the evidence for the same reasons which were assigned in support
13 of the original motion; thank you, sir.
14 THE COURT: The same ruling as it was in the beginning;
15 I'm consistently wrong or at least I'm consistent.
16 (Thereupon the Court takes a recess while awaiting the
17 verdict of the jury.)
18 (After a short time the jury returned to the courtroom
19 with a question and all other interested parties also returned
20 into the courtroom, including the Court, the defendant and her
21 attorneys, and the Assistant Commonwealth Attorney.)
22 JUROR: The question that we have concerns sentencing and
23 fines. We would like to know, can we ask how if we give a
24 certain sentence how much of that sentence she or _____
25 (inaudible) guilty that she will have to serve?
26 THE COURT: No, maam, you cannot; you give what you think,

if you found a man guilty beyond a reasonable doubt, you give what you consider a just and proper punishment; what takes place thereafter none of us has anything to do with it and you don't even consider it; you just give what you think is a just and proper punishment; any other questions?

JUROR: Wait just a second.

ANOTHER JUROR: If we find her guilty and there's a time period recommended, do we have to also include a fine, that's wwhat we want to know?

THE COURT: No, I don't think you have to.

ANOTHER JUROR: Well, according to this one line, this was oour concern, it says "then you shall find the defendant guilty and fix her punishment at confinement in the penitentiary for a period of not less than five (5) years nor more than forty (40) years and a fine of not more than $25,000; do we have to. . .

THE COURT: You don't have to put a fine on it at all.

SAME JUROR: We don't?

THE COURT: No, maam.

SAME JUROR: But we could put. . .

THE COURT: Is that right, Mr. Dillow?

MR. DILLOW: You stopped; you haven't read all of the instruction, you just read part of it.

THE COURT: Let me see it.

(Brief silence.)

THE COURT: You don't have to fine at all; it says "if you find the defendant guilty, then fix her punishment at confinement

1 in the penitentiary for a period of not less than five (5)
2 years nor more than forty (40) years and a fine of not more than
3 $25,000."
4 MR. DILLOW: What I'm talking about, Your Honor, is there
5 is another instruction in which Your Honor gave on if the jury
6 finds the defendant _____(inaudible), there's another
7 instruction.
8 THE COURT: Oh, yes.
9 MR. DILLOW: That even though . . .
10 THE COURT: That's if. . .
11 MR. DILLOW: _____(inaudible) possession.
12 THE COURT: You don't have to put it.
13 SAME JUROR: But we could find her guilty and give her a
14 fine and a jail sentence; it could be both or it could be one or
15 the other?
16 MR. DILLOW: That's right.
17 THE COURT: No, have to give penitentiary sentence.
18 SAME JUROR: Okay, okay.
19 THE COURT: But you don't have to give a fine but you
20 could give both.
21 (Thereupon the jury again retires to their room.)
22 (At this point there was a discussion between the attorneys
23 and the Court which was partially inaudible.)
24 THE COURT: Get it and we'll see.
25 MR. TERWILLIGER: Yes, sir, it says here "shall upon a
26 conviction be imprisoned for not less than five (5) nor more than

forty (40) years and a fine of not more than $25,000."

THE COURT: Well, they could fine her anything they wanted to, $10 or anything?

MR. TERWILLIGER: Yes, sir.

(At this point the Judge goes to the juryroom door.)

THE COURT: We've read the statute and it says "and a fine"; you have to give a fine, it can be any amount, $1 or whatever, but a fine.

(Thereupon the Court takes a recess while awaiting the verdict of the jury.)

(Thereupon after a short time the jury returned to the courtroom with a verdict and all other interested parties also returned into the courtroom, including the Court, the defendant and her attorneys, and the Assistant Commonwealth Attorney.)

THE COURT: Ladies and gentlemen of the jury, have you reached a verdict?

(No answer recorded on the record.)

THE COURT: Read the verdict, Mr. Clerk.

THE CLERK: "We the jury find the defendant, Kathy Marie Lane, guilty of possessing with the intent to distribute Methaqualone as charged in the indictment and fix her punishment at 20 years and a $10,000 fine. Signed Alma Thompson, Foreman."

THE COURT: Is that your verdict? Who's the foreman?

JUROR: I am.

THE COURT: Is this your verdict?

(Thereupon the jury was polled and was in agreement with the verdict.)

1 THE COURT: So say ye all?
2 (Jury shakes their heads affirmatively.)
3 THE COURT: Thank you all, appreciate your helping us.
4 (Thereupon the jury was discharged.)
5 THE COURT: Ms. Lane, you heard the jury verdict, do you
6 have anything to say before the Court pronounces sentence?
7 MR. WARBURTON: Your Honor, we would like to request a
8 presentence report at this time.
9 THE COURT: Sir?
10 MR. WARBURTON: We would like to request a presentence
11 report at this time, Your Honor.
12 THE COURT: Yes, sir, I'll be glad to grant one.
13 (At this point there was a discussion with the probation
14 officer as to the report.)
15 THE COURT: All right, we'll put it the 2nd day of
16 February, at 9:00, is that all right with you Mr. Dillow?
17 MR. DILLOW: Yes, sir.
18 THE COURT: And you?
19 MR. WARBURTON: Yes, sir.
20 THE COURT: And she's on bond now?
21 MR. DILLOW: Yes, sir.
22 THE COURT: I see no, you have no objections to it, to
23 continuing bond, do you?
24 MR. TERWILLIGER: Your Honor, I would like to inquire as
25 to the amount of the bond at this time.
26 MR. DILLOW: $25,000 property.

MR. TERWILLIGER: I have no objection to that.

THE COURT: Well, she'll be continued on the same bond, Ms. Lane, and you know what time to be back here; of course, you'll be in contact with your attorneys.

(Brief silence.)

THE COURT: And in the meantime if you all want to write up any objections or anything, Mr. Dillow, I say if you want to make some objections you can do it and I'll let it be done as of now, write it up anyway you want to.

MR. DILLOW: All right.

(At this point there was a discussion with the Judge and the attorneys which was not audible on the record.)

END OF PROCEEDINGS - January 8, 1981

February 2, 1981

(Reporter sworn.)

THE COURT: Is the Commonwealth ready in this case of Commonwealth against Kathy Marie Lane?

MR. SHOCKLEY: Yes, Your Honor.

THE COURT: Are you ready, Mr. Dillow and Mr. . .

MR. WARBURTON: Yes, we're ready, Your Honor.

THE COURT: You may proceed with your presentence report, gentlemen.

MR. SHOCKLEY: Go ahead, gentlemen, if you'd like; you

1 requested it.

2 JAMES S. THOMPSON,

3 a witness called on behalf of the defendant, after being first

4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WARBURTON:

7 Q. Mr. Thompson, would you identify yourself for the

8 Court, then?

9 A. James S. Thompson, State Probation and Parole Officer,

10 work Pulaski County.

11 Q. And you prepared this report that's in front of the

12 Court dated January 23, 1981?

13 A. Yes, sir, I did.

14 Q. Other than comments that you made about this current

15 offense which the Judge is well acquainted with and the family

16 history, I assume that you found nothing outstanding as far as

17 criminal record _____(inaudible) life style of this young

18 lady, did you?

19 A. No, sir, the only thing that I found in this immediate

20 area was the 3 charges listed; I might note, however, that I

21 did not have time to get my FBI record check with CCRE or DMV

22 back so the record check that I have is just within these local

23 counties.

24 Q. But as far as your report to the Court is concerned you

25 found 3 traffic offenses and no other criminal offenses of any

26 kind, is that correct?

A. That's correct.

Q. You did find that she is regularly employed at this time?

A. She is noted in that, _____(inaudible) first employment with Honest John's Truckstop, noted she, it is operated by Mr. Boardwine, the co-defendant; she advised me that she didn't get any pay for this but that she just sort of helped him run it.

Q. She's operating a business, then?

A. Yes, sir.

Q. And you found that she has a 2 year old daughter, is that correct?

A. That's correct.

Q. For which she provides the support, both emotional and financial, is that correct?

A. That's correct.

Q. And she is basically the sole provider for that child, is that right?

A. I think so, mostly; I think the father helps somewhat, to what extent I do not know for sure.

Q. That's all the questions I have.

CROSS EXAMINATION

BY MR. SHOCKLEY:

Q. Mr. Thompson, did she tell you the same story that she told the Court and the jury at the trial?

A. Yes, sir, she did.

1 Q. As to how somebody from Florida must have left the
2 drugs in the house?
3 A. That's correct.
4 Q. Mr. Thompson, what is the reputation of Honest John's
5 Truckstop?
6 MR. WARBURTON: I'll object, Your Honor.
7 MR. SHOCKLEY: I think it is most material; she has tried
8 to pass off honest and continuous employment as the basis for
9 some request to the Court and I think that the Court ought to be
10 advised as to the reputation of this establishment.
11 THE COURT: I sustain the objection.
12 MR. WARBURTON: Thank you, Your Honor.
13 MR. SHOCKLEY: That's all I have.
14 (The witness stands aside.)
15 MR. WARBURTON: Does the Court have any questions?
16 THE COURT: No, I don't have any questions.
17 MACK WILSON, JR.,
18 a witness called on behalf of the defendant, after being first
19 duly sworn, testified as follows:
20 DIRECT EXAMINATION
21 BY MR. WARBURTON:
22 Q. Tell the Court your name please.
23 A. Mack Wilson, Jr.
24 Q. Mr. Wilson, you're a local businessman, is that right?
25 A. Yes, sir.
26 Q. Are you acquainted with Kathy Marie Lane?

A. Yes, sir, I am.

Q. For what period of time have you been acquainted with her?

A. Approximately 5 years.

Q. In those past 5 years have you gotten to know her personally?

A. Yes, sir.

Q. And have you been in her home during the last 5 years?

A. Yes, sir, I have.

Q. Are you acquainted with her daughter, Crystal?

A. I sure am.

Q. If you would, please state to the Court how, you know, how well you know Ms. Lane and under what circumstances you've seen her, what kind of person she is in general, and what kind of mother she is, and things like that?

A. I've had numerous occasions to visit in her home and I feel that she is a good mother to her child, the home environment is clean and she is protective of the child, she takes care of her family very well, and I have 2 daughters of my own and I would trust either one of them with Kathy, I just feel that she is a good mother all the way around as far as her family and home is concerned.

Q. On your occasions to visit in the home of Ms. Lane or any other occasion have you ever witnessed any drug use?

A. No, sir.

Q. Have you ever heard Kathy Lane express views about drugs

A. No, sir.

Q. Not one way or another?

A. Not one way or the other.

Q. If you would, answer Mr. Shockley's questions if he has any.

CROSS EXAMINATION

BY MR. SHOCKLEY:

Q. You said that you were employed locally or had a small, a local businessman?

A. Yes, sir, I own Wilson's Cleaners.

Q. Wilson's Cleaners?

A. Yes, sir.

Q. Where is that located, sir?

A. On Main Street.

Q. All right, thank you, that's all.

(The witness stands aside.)

MR. WARBURTON: Your Honor, that's all we have to present this morning by way of testimony.

THE COURT: You gentlemen want to argue?

MR. SHOCKLEY: We have nothing to present, Your Honor.

THE COURT: Any argument that you gentlemen want to make?

MR. SHOCKLEY: Yes, sir, Judge. This is a most serious offense; if you recall the evidence, there was, I believe, 9,000 tablets of Methaqualone or Qualudes found, I believe, in 1,000 tablet groupings, I think there was 9,000 or excuse me nine 1,000 bags contained in a larger bag; the evidence was that the bag was

found immediately behind the chair in which this defendant was seated and that upon the narcotics officers investigation when they approached the chair she made some remark like - oh, there's nothing behind the chair - this is a crime which carries a punishment of 5 to 40 years and up to, I believe, a $25,000 fine; the jury had every opportunity to assess a lesser punishment had they felt that was in order; the jury came here, they are the conscience of the community, they heard the evidence and they determined first of all that this young lady was guilty, then they determined the seriousness of it and the very severity of the crime committed and they felt that a 20 year prison sentence was in order and a $10,000 fine; they could've fined her $1, $5, $100 or any amount of money but they saw fit to impose a 20 year prison sentence and a $10,000 fine. I submit to the Court that this young woman was involved with Mr. Boardwine in this trafficing and, I submit to the Court that she is here and she has been convicted and despite family obligations, she took that risk when she got into this business and I submit to the Court that she should be given the sentence of the jury; again they had every opportunity to come forward and to assess a punishment less if they felt that was in order; the jury gave her 20 years; I think the jury was very angered by that; they were here as citizens of the community, parents, grandparents, brothers and sisters, husbands and wives, and they know the very damage that these drugs can do and I think that Mr. Terwilliger that day presented evidence from a pathologist as to the very dangerousness of these particular drugs, a Schedule

1 controlled substance and I just don't see where the defendant
2 having been convicted on such a serious offense and such large
3 quantity, street value of $70,000, how she can come in here and
4 expect the Court to have much leniency.
5 MR. DILLOW: Your Honor, I'll make my statement very
6 brief. I think that maybe I got some information just now that
7 I hadn't previously been able to get to when the Commonwealth's
8 Attorney said that the jury must have been angry. I suppose that
9 there always comes a time, if the Court pleases, when we see some
10 shocks if we stay in this business long enough and what I shall
11 say in regard to this case has no intention whatsoever of
12 _____(inaudible) the province of the jury. In the first place
13 I have no right to do that, it's part of the system. For whatever
14 interest this may have, if any, I take a great deal of pride in
15 having been one of the people who, briefly, insisted that our jury
16 system was the best, we haven't been able to find any substitute
17 for it yet. Juries are not anything but human beings and I
18 suppose that they are entitled to get angry sometimes and no doubt
19 they did in this case, that might be the reason why they imposed
20 the sentence that they did in this case or found in their verdict
21 that the punishment in the case should be 20 years and a $10,000
22 fine. We're talking here ever so often about the sanctitude of
23 the jury verdict; I realize the sanctitude of the jury verdict,
24 nobody has to tell me anything about that, goodness knows that I've
25 dealt with enough of them to have some degree of understanding
26 about it; but when you talk about the sanctitude of the jury verdict

1 and saying that the Court should not do anything about it
2 regardless of what it is, I suppose that if there had been a
3 $40,000 or 40 year imprisonment in this case and a $25,000 fine
4 that we would be saying much the same thing but unreasonable
5 verdicts of juries, unreasonable verdicts can have as much affect
6 as the thing turned around in reverse; we have the right to
7 insist that jury verdicts be upheld and I repeat, I'm not
8 criticizing this jury's verdict, that was their responsibility,
9 but I shall never be able to understand exactly what motivated
10 this jury; Mr. Shockley has helped me some maybe to resolve that
11 by his suggestion that the jury was angered by the situation;
12 this young lady took the witness stand in this case and testified
13 and she subjected herself to cross examination and the jury
14 sought not to believe her and held in their verdict that she was
15 guilty of the offense for which she was indicted but we submit in
16 fairness to the Court in this case that this jury verdict should
17 not be imposed as the sentence from this Court; it's unreasonable,
18 I think it is unjust; there is nothing else that I can say that
19 would help the Court even remotely in this case; you've heard it
20 and know what the facts are; we all had differences of opinion;
21 I think that this jury verdict came as much as a surprise to the
22 Commonwealth as it did perhaps to the accused and her counsel in
23 this case; we _____(inaudible) this matter as, of course,
24 we are compelled to do in the hands of a fair and impartial judge;
25 it is a serious matter and there isn't any question about that
26 but it's extremely serious to this defendant to be faced with

1 a 20 year sentence of imprisonment and a $10,000 fine. I submit
2 that that not be the judgment of the Court on this jury's verdict.
3 MR. SHOCKLEY: Your Honor, if I might have. . .
4 THE COURT: Do you have anything to add to it?
5 MR. WARBURTON: No, sir.
6 MR. SHOCKLEY: In just brief response to Mr. Dillow; first
7 of all he talks about the defendant taking the stand and subjecting
8 herself to cross examination, that's one of the very reasons
9 she was convicted because it was apparent to this jury and I hope
10 apparent to the Court that her version of how those drugs got
11 in her house was nothing but an absolute lie; she lied to the
12 Court and to the jury and she lied to the probation officer and
13 she's still trying to pull the wool over somebody's eyes; this
14 jury; I used the word anger and Mr. Dilbw apparently took
15 exception with that indicating in so many words I feel that a
16 jury is not entitled to get angry; I feel that a jury is entitled
17 to get angry; they are the members of this community; they come
18 in here, they see crimes committed around them and they stand in
19 judgment of those who commit the crimes and they have the
20 absolute right to get angry, to get infuriated, to get upset,
21 with crimes committed in their presence and in their community
22 and when they come in here and they say by golly I live in this
23 community and we don't want dope dealers and big dope dealers
24 we're going to deal with strictly and we're going to give them
25 20 years, that would be a choice of the members of this community
26 and they have announced their choice and I would certainly hope

that the Court would stand behind the community and support them and I would hope that the Court would impose the jury verdict.

THE COURT: Would you stand up, Ms. Lane, please?

(The defendant stands at seat with her attorneys.)

THE COURT: Ms. Lane, you heard the Commonwealth's Attorney, you've heard the probation officer, you've heard Mr. Wilson, and you've heard your very able Mr. Dillow plead for you; do you have anything to say before the Court pronounces sentence?

MS. LANE: No, sir.

THE COURT: Ms. Lane, upon your, upon the sentence of the Court, the judgment of the Court is that and in accordance with the jury's verdict you be found guilty and that you be sentenced to confinement in the state penitentiary of this Commonwealth for a period of 20 years and that you be fined $10,000 cost; I know that may seem a right severe punishment but it has been my experience as a long years as a practicing attorney and as a judge that before a person can be rehabilitated they must admit their crime and they must say that they are sorry for it before they can really and truly become a good citizen of the community; you have continued to say that you weren't guilty and that you didn't know the drugs were in this home which the evidence is that you owned. The disturbing factor in the matter is that your live-in companion, in my opinion, was found not guilty by a jury and what extent you were under his influence I don't know but I cannot believe in my own mind and from this evidence that you didn't know these drugs were in this house; I would've been

1 more inclined if you had admitted it to have taken serious
2 consideration to suspending a portion of this sentence but you were
3 very ably represented by one of the best attorneys and older
4 attorney if I should say and a young attorney as I know of; the
5 evidence was fairly presented and I think the jury was fairly
6 instructed; I know of no error in it; all I can say is that if
7 you go to the penitentiary and you behave yourself you'll be out
8 when you serve 5 years and maybe more if you cooperate, I don't
9 know, I don't have anything to do with that, but that is the
10 judgment of this Court, I just can't see it to interfere with
11 the jury's verdict who heard this case; it is serious this drug
12 business and it's getting more serious every day and I'm beginning
13 to see juries impose a little stiffer punishment; now the purpose
14 of punishment is to punish the defendant so he won't do it again
15 and to detour others from committing the same crime, whether this
16 has the effect or not I don't know, you may take charge of her.
17 MR. WARBURTON: If it pleases the Court, Your Honor, there
18 was no problem after the jury came back with their verdict in
19 continuing the same bond, I assume the Commonwealth's position
20 hasn't changed since that time; may we ask that the bond continue
21 while we consider an appeal, Your Honor.
22 MR. SHOCKLEY: Your Honor, we would have strong objections
23 to that, very strong, because I think that this young woman would
24 be gone in a heartbeat; I must insist that she be placed in
25 jail pending any appeal please.
26 (Brief silence.)

THE COURT: Well, I order her to go to jail now and we'll see about this bond a little later.

(Brief silence.)

THE COURT: If you get a writ, I'll certainly do it.

MR. DILLOW: Would you give us a minute with our client please?

THE COURT: Yes, sir.

MR. DILLOW: What is the bond, Mr. Clerk?

THE CLERK: $25,000 property.

MR. DILLOW: $25,000 . . .

THE COURT: When the bond is; if you get a writ, I'll continue the bond but right now I'm not going to pass on it.

END OF PROCEEDINGS - February 2, 1981

* * *

Affidavit for Search Warrant

(Rule 3A:27)

State of Virginia
County (~~City~~) of Pulaski - Town

Before me, the undersigned, this day came Trooper J. E. Asbury, V.S.P.
(Name of affiant)

who, after being duly sworn, made oath that:

(1) He has reason to believe that on the premises known as Ronald Barry Boardwine - residence 607 Pulaski Street SEE REVERSE in the county (~~city~~) of Pulaski - Town

there is now being concealed certain property, namely illegal or controlled drugs namely pills, capsules, powders and marijuana.

(2) He bases his belief that such property can be found on those premises on the following facts: I have received evidence through a confidential source (informant) who has personal ~~knowledge and has observed illegal narcotics namely amphetamines, quaalude, pills and capsules on the described premises over a several month period.~~

*(3) ~~(a) He has personal knowledge of the facts set forth in paragraph (2).~~

or

*(3) (b) He was advised of the facts set forth in paragraph (2) by an informer. This informer's credibility or the reliability of the information may be adjudged by the following facts: Confidential informer has provided the affiant with information over the past several ~~months which has led~~ to the arrest and conviction of a number of narcotics violators. ~~SEE REVERSE~~

(4) (a) The offense in relation to which the search is to be made is: possession of illegal or controlled drugs.

(4) (b) The grounds for search and seizure are established by the following facts:** I have received information from the confidential informant that ~~he~~ she ~~has observed narcotics in the~~ form of pills, capsules, powders and marijuana on the described premises. Confidential informant observed the aforementioned over a period of several months. Confidential ~~informant has observed, most recently within the past 24 hours~~ pills of various sizes and marijuana.

*(5) ~~(a) He has personal knowledge of the facts set forth in paragraph (4).~~

or

*(5) (b) He was advised of the facts set forth in paragaph (4) by an informer. This informer's credibility or the reliability may be adjudged by the following facts: See Para. (3) (b)

J. E. Asbury
(Signature of Affiant)

Trooper, V.S.P.
(Official Title, if any)

Subscribed and sworn to before me on November 10, 1979

B.K. Farmer Magistrate
(Signature and Title)

*If subparagraph (a) is applicable, strike out subparagraph (b). If subparagraph (b) is applicable, strike out subparagraph (a) and set forth the relevant facts in the space provided in subparagraph (b). The informer need not be identified.

**Give reasons why the property should be searched for and seized. If the property to be searched for is contraband, a description of the property will suffice. If the property to be searched for was an instrumentality of a crime or was stolen or embezzled, set forth facts showing probable cause to believe that the property was an instrumentality of a crime or was stolen or embezzled. If the property to be searched for is property that was used or is being used in committing a crime, set forth facts showing probable cause to believe the property was used or is being used to commit a crime. If the property to be searched for is property constituting evidence of a crime or evidence, that a particular person committed a crime set forth facts showing probable cause to believe that seizure of the property will aid in a particular apprehension or conviction.

Continuation of Para. (3) (b)

All information which I have received from this informant has proven to be extremely accurate and reliable. Each time that I have acted on information from this informant, drugs, which he described have been seized and arrest as well as convictions of those arrested have resulted. I have never received any inaccurate information from this informant which I have acted upon.

Continuation of Para. 1
which is a white frame structure with one level and basement.

I, B. K. Farmer, the undersigned magistrate do hereby certify that the facts contained on this affidavit are those on which probable cause was established for the issuance of a search warrant for the described premises, and further, I certify this to be the original affidavit.

Given under my hand this 10th day of November, 1979

***** B K Farmer
Magistrate

1-8-81
Commonwealth's
Exhibit No.
1

79-9
Ronald Boardum

Received and filed, this the 13
day of Nov., 1979
Gerry J. Atkinson Clerk

Search Warrant

(Rule 3A.27)

To Tpr. J. E. Asbury (1) or
any other Authorized Officer:

You are hereby commanded in the name of the Commonwealth forthwith to search The Residence of Ronald Barry Boardwine, a one-story frame dwelling with basement locaxted at 607 Pulaski Street in the town of Pulaski.
(Place to be searched)

for certain concealed property, namely illegal or controlled drugs namely pills, capsules,
(Describe property)

powders, and marijuana.
and to produce the property, if it be found, before the

PULASKI COUNTY GENERAL DISTRICT COURT
(Designation of Court)

On the basis of the sworn statement(s) of Tpr. J. E. Asbury

the undersigned has found probable cause to believe the search should be made in relation to the offense (s) of Possession of illegal or controlled drugs. (2)

Issued at 12:39 p.m., November 10 19 79.

B K Fanner
(Signature of Issuing Officer)

MAGISTRATE
(Title of Issuing Officer)

(1) Insert designation of officer, *e.g.*, the Sheriff of Accomack County, or any Policeman of Alexandria City.

(2) Give a brief description of the offense in relation to which the search is to be made, *e.g.*, the murder of John Doe; possession of narcotics.

Executed and signed on the date November 10 1979
The attached list of items was seized during the
search ended 3:15 P.M. on November 10 1979

Signed
Tpr. J. E. Asbury, V.S.P.

1-8-81
Commonwealth's
Exhibit No.
2

S.P. 144
Rev. 10-1-75

1-8-81
Commonwealth's Exhibit No.
6 Jim Judge

DEPARTMENT OF STATE POLICE

LIST OF PROPERTY SEIZED

(19.2-57 Code of Virginia, as Amended)

ITEM#	DESCRIPTION OF PROPERTY
1	nine clear plastic bags containing a large quanity of white tablets w/RORER 714 inscribed thereon in a large blue and a large white bag.
2	three white bottles containing black capsules with 17-365 inscribed thereon, one brown bottle with white label black capsules 335.

(Use other side for Additional Listing)

I, J. E. Asbury, certify that the above property was seized after execution of a search warrant at 607 Pulaski St., Pulaski, Virginia (Location)

On November 10, 1979 (date).

J. E. Asbury (Signature)

Trooper, V.S.P. (Rank or Title)

Subscribed and sworn before me, Jane B. Overton

a Notary Public in and for the (County) (~~City~~) of Pulaski

this 13 day of Nov., 1979.

154

Jane B. Overton
NOTARY PUBLIC

My commission expires 3-2-83