CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
MAR 10 1982
RICHMOND, VIRGINIA

3

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 811158

LACY HAROLD SMITH

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

JOINT APPENDIX

Dorothy P. Dillon
Attorney at Law
105 South Main Street
Suite 204
Rocky Mount, Virginia 24151

Counsel for Appellant

Robert E. Bradenham, II
Assistant Attorney General
101 North 8th Street
6th Floor
Richmond, Virginia 23219

Counsel for Appellee

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

TABLE OF CONTENTS

	Appendix Page
Indictment - LSD charge - filed 1-27-81	1
Indictment - Marijuana charge - filed 1-27-81	2
Judgment Order entered 4-17-81	3
Judgment Order entered 4-17-81	5
Notice of Appeal filed 5-15-81	7
Assignments of Error	8
Excerpts of Transcript of Testimony Heard 4-17-81	
Testimony of Danilo Myer	9
Testimony of Deborah Kirkland	21
Testimony of Judy Shively	26

Commonwealth of Virginia:

COUNTY OF FRANKLIN, To-wit:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY:

The grand jurors of the Commonwealth of Virginia, in and for the body of the said County of Franklin and now attending the said Court at its February Term, 19 81 upon their oaths do present that on or about the ~~24~~ 25th day of April, 1980 in the County of Franklin Lacy Harold Smith did unlawfully and feloniously sell Lysergic Acid Diethylamide (LSD) a Schedule I Controlled Substance.

Va. Code. § 18.2-248

4-17-81
Indictment Amended on
To date without objection
BAB

upon the evidence of Lt. G. T. Angle

witnesses who were first sworn [redacted] to give evidence before the Grand Jury.

Commonwealth of Virginia:

COUNTY OF FRANKLIN, To-wit:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY:

The grand jurors of the Commonwealth of Virginia, in and for the body of the said County of Franklin and now attending the said Court at its February Term, 19 81

upon their oaths do present that on or about the ~~24th~~ 25TH day of April, 1980 in the County of Franklin Lacy Harold Smith did unlawfully and feloniously sell marijuana in a quanity exceeding one-half ounce but not exceeding 5 pounds

4-17-81
Indictment amended as to date without objection
BATB

Va. Code § 18.2-248.1

upon the evidence of Lt. G. T. Angle

witnesses who were first sworn [redacted] to give evidence before the Grand Jury.

VIRGINIA:

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY

COMMONWEALTH

VS: F81-394

LACY HAROLD SMITH, DOB Oct. 6, 1949

This day came the Attorney for the Commonwealth, and Lacy Harold Smith, who stands indicted for a felony, to-wit: did unlawfully and feloniously sell marijuana in a quanity exceeding one-half ounce but not exceeding 5 pounds, appeared according to the condition of his recognizance; and came also John Lee Hopkins and Colby Brown, his attorneys heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said attorneys, plead not guilty to the indictment, which plea was tendered by the accused in person.

The Court then impanelled twenty qualified jurors, free from exception for the trial of the defendant, in the manner provided by law. Whereupon the attorney for the Commonwealth and the Attorney for the defendant exercised their rights to strike names from the panel, as provided by law, and the remaining twelve jurors, to-wit: Brenda L. Adkins, James O. Bowling, George R. Bowles, James H. Hodges, Richard A. Hunley, Rebecca B. Moran, Angie C. Pagans, Jeanette R. Shelhorse, William B. Thurman, Catherine N. Wood, Ray T. Turner and Nellie K. Childress, constituting the jury for the trial of the defendant, were duly sworn.

After opening statements, the Court and jury heard the evidence presented by the Commonwealth and the defendant. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the Court to strike the Commonwealth's evidence, which motion was overruled and exception was noted; at the conclusion of all the evidence, the attorney for the defendant renewed his motion to strike the Commonwealth's evidence, which motion was overruled and exception was noted.

57
281

After hearing the evidence, the instructions of the court and argument of counsel, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, reading:

We, the jury, on the issue joined, find the defendant, Lacy Harold Smith, guilty of unlawfully and feloniously selling marijuana, as charged in the indictment, ans fix his punishment at 5 years.

Jeanette Shelhorse
Foreman

The attorneys for the defendant then moved the Court to set aside the verdict, which motion was overruled and exception was noted.

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The

defendant having declined, the Court finds the defendant guilty of unlawfully and feloniously selling marijuana, as charged in the indictment and sentences the defendant in accordance with the jury verdict to confinement in the penitentiary of this Commonwealth for the term of five years.

After pronouncing sentence, the Court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia and of his right to proceed in forma pauperis and to have the assistance of court-appointed counsel. A transcript of this trial shall be made a part of the record if a petition for an appeal to the Supreme Court of Virginia is filed.

At all times during the trial of this case the defendant and his counsel were present.

The Court Orders that the defendant be allowed credit for the time spent in jail awaiting trial on this charge.

It is adjudged that the Commonwealth recover from the defendant the sum of $ 370.50 , the costs assessed in this proceedings.

John Lee Hopkins, Esq. is allowed $ 150.00 for his services as court-appointed counsel for the defendant in this Court and Colby Brown, Esq. is allowed $ 150.00 for his services as court-appointed counsel for the defendant in this Court.

The defendant is remanded to jail to await transfer to the Department of Corrections.

ENTER: April 17, 1981

B. A. Davis

B. A. DAVIS, III, JUDGE

VIRGINIA;

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY

COMMONWEALTH

VS: F 81-395

LACY HAROLD SMITH, DOB Oct. 6, 1949

This day came the Attorney for the Commonwealth, and Lacy Harold Smith, who stands indicted for a felony, to-wit: unlawfully and feloniously did sell Lysergic Acid Diethylamide (LSD) a Schedule I Controlled substance, appeared according to the condition of his recognizance and came also John Lee Hopkins and Colby Brown, his attorneys heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said attorneys, plead not guilty to the indictment, which plea was tendered by the accused in person.

The Court then impanelled twenty qualified jurors, free from exception for the trial of the defendant, in the manner provided by law. Whereupon the attorney for the Commonwealth and the Attorney for the defendant exercised their rights to strike names from the panel, as provided by law, and the remaining twelve jurors, to-wit: Brenda L. Adkins, James O. Bowling, George R. Bowles, James H. Hodges, Richard A. Hunley, Rebecca B. Moran, Angie C. Pagans, Jeanette R. Shelhorse, William B. Thurman, Catherine N. Wood, Ray T. Turner and Nellie K. Childress, constituting the jury for the trial of the defendant, were duly sworn.

After opening statements, the Court and jury heard the evidence presented by the Commonwealth and the defendant. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the Court to strike the Commonwealth's evidence, which motion was overruled and exception was noted; at the conclusion of all the evidence, the attorney for the defendant renewed his motion to strike the Commonwealth's evidence, which motion was overruled and exception was noted.

After hearing the evidence, the instructions of the Court and argument of counsel, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open Court, reading:

We, the jury, on the issue joined, find the defendant, Lacy Harold Smith, guilty of unlawfully and feloniously selling Lysergic Acid Diethylamide (LSD), as charged in the indictment, and fix his punishment at 25 years, $5,000.00 fine.

Jeanette Shelhorse
Foreman

The attorneys for the defendant then moved the Court to set aside the verdict, which motion was overruled and exception was noted.

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The defendant having declined, the Court finds the defendant guilty of unlawfully and feloniously selling Lysergic Acid Diethylamide (LSD), as charged in the indictment and sentences the defendant in accordance with the jury verdict to confinement in the penitentiary of this Commonwealth for the term of 25 years., AND FINE OF $5,000.00

After pronouncing sentence, the Court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia and of his right to proceed in forma pauperis and to have the assistance of court-appointed counsel.

A transcript of this trial shall be made a part of the record if a petition for an appeal to the Supreme Court of Virginia is filed.

At all times during the trial of this case the defendant and his counsel were present.

The Court Orders that the defendant be allowed credit for the time spent in jail awaiting trial on this charge.

It is adjudged that the Commonwealth recover from the defendant the sum of $ 887.70 costs assessed in this proceedings and a $5,000.00 fine.

John Lee Hopkins, Esq. is allowed $ 150.00 for his services as court-appointed counsel for the defendant in this Court and Colby Brown Esq. is allowed $ 150.00 for his services as court-appointed counsel for the defendant in this Court.

The defendant is remanded to jail to await transfer to the Department of Corrections.

ENTER: April 17, 1981

B. A. Davis

B. A. DAVIS, III, JUDGE

NOTICE OF APPEAL

TO: WILLIAM J. WALKER, JR., CLERK OF THE CIRCUIT COURT OF FRANKLIN COUNTY, VIRGINIA:

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the undersigned defendant, Lacy Harold Smith, by counsel, files this as his Notice of Appeal to the Supreme Court of Virginia, the appeal being from a jury verdict of the Circuit Court of Franklin County, Virginia, of April 17, 1981.

This is to further give notice that the transcript of the trial is to be hereafter filed.

Respectfully submitted this the 15th day of May, 1981.

LACY HAROLD SMITH

BY: Dorothy P. Dillon
Counsel

Dorothy P. Dillon, p.d.
Commonwealth Bldg., Suite 204
105 South Main Street
Rocky Mount, Va. 24151

This is to certify that I have this the 15th day of May, 1981, mailed a true copy of this Notice of Appeal to William N. Alexander, II, Commonwealth Attorney, Court House, Rocky Mount, Virginia.

Dorothy P. Dillon
Counsel

ERRORS ASSIGNED AND QUESTIONS PRESENTED

1. Whether the chemist, qualified as an expert witness in chemistry and not as a medical expert, nor as an expert in human behavior, prejudiced the defendant's right to a fair trial when he made the inflammatory statements about bizarre behavior which he alleged to result from the use of LSD.

2. Whether the defendant's right to a fair trial

were given to Mrs. Kirkland?

A. No sir.

Q. From your knowledge?

A. No sir, I wasn't...wasn't there.

Q. Or what happened after they left your hands?

A. No sir.

Q. That's all.

WITNESS STEPS ASIDE.

DANILO MYER
After having first been duly sworn,
testified as follows:

DIRECT EXAMINATION: BY: MR. ALEXANDER

Q. Sir, would you state your name for the ladies and gentlemen of the jury, please.

A. My name is Danilo Myer.

Q. And I believe you go by Dan Myer, is that right?

A. Yes sir.

Q. Dan, are you employed at the present time?

A. Yes sir.

Q. By whom are you employed?

A. I'm employed by the Commonwealth of Virginia.

Q. And in what capacity...or what do you do for the Commonwealth of Virginia?

A. I'm an Analytical Chemista for the Commonwealth of Virginia specializing in drugs.

Q. How long have you been with the Commonwealth of Virginia?

A. I've been with the State for approximately three years.

Q. How long have you been an Analytical Chemist with the State of Virginia?

A. For approximately three years.

Q. What did you do prior to coming with the State?

A. I've been a chemist at several industrial chemical companies and completed my education.

Q. All right. And what education do you have?

A. Qualifications I possess; I received a Bachelor of Science degree from Virginia Commonwealth University in 1976, which is an accredited institution with the Southern...Southern Association of Colleges and Universities. The program I completed was American Chemical Society Program. I also have completed further training with the Bureau of Forensic Sciences under the State of Virginia for approximately a year. In addition to that, I also attended the National Drug Enforcement Agency's Forensic Chemist Seminar at the special...at the special research and testing laboratory in Washington, DC. I am, in addition to that, the primary operator or the (one word) for an instrument that we call the (gas.....not clear.....), which is the highest state of the art instrument in chemistry and probably in the world, and...

Q. Now, let me ask you about that, I'm not going to try to say what you said, type of machine. What does that machine do?

A. Our machine within from start to finish, if we depend

upon a sample can complete an analysis within approximately two to three minutes, and we can call the drug or the chemical compound by name and finish an analysis in that amount of time and say definitively within a... an approximate 90 to 95% assurance that it is that compound and it has a sensitivity limit of approximately one billionth to one trillionth of an ounce on an average.

Q. All right. Now does it take special training to operate that instrument?

A. Yes sir.

Q. And did you have special training in that?

A. Yes sir.

Q. Where did you take that training?

A. The training I received in that, in that particular discipline is...has been done in Richmond and miscellaneous other areas included in my education. Part of that includes the interpretation of (mas...not clear...) which is what this instrument puts out, and the operation of theoretics of.....(not clear)....

Q. Okay. Now you were, I think you were telling about the education that you received, did you have any other special courses or any other special education to prepare you for your job in chemistry that you're doing now?

A. I have received several miscellaneous courses not particularly related to chemistry.

Q. All right. Have you received any honors in chemistry?

A. I...

Q. Okay.

A. I received my Collegiate Professional Certificate and I am also trained and qualified to teach chemistry, general science, and mathematics.

Q. Have you taught any courses in chemistry?

A. Yes, I have.

Q. Where have you taught chemistry courses?

A. I have taught chemistry at several high schools, at private institutions. I have also given lectures and seminars in chemistry and drugs to...at the Virginia Academy of Forensic Sciences for our law enforcement agencies.

Q. Have you testified as an expert witness in Court cases before?

A. Yes sir, on numerous occasions.

MR. ALEXANDER: Now, Your Honor, I would move to have Mr. Myer qualified as an expert witness to testify as to the drugs.

JUDGE DAVIS: Mr. Hopkins and Mr. Brown, you gentlemen have any questions about this gentleman's qualifications to testify as an expert?

MR. BROWN: No sir.

JUDGE DAVIS: All right. Mr. Myer may testify as an expert.

(Direct Continued):

Q. Mr. Myer, I hand you Commonwealth's exhibit number one, would you examine that and tell the ladies and gentlemen of the jury whether or not you have seen that before.

A. (Pause...) Yes sir, this...this piece of evidence bears the analysis number of the evidence when it came into my, our laboratory, the date that I sealed the evidence.

Q. All right. Point that out, will you?

A. My analysis number on what we call the evidence tape, the date which I sealed the evidence upon completion of the analysis, and it also bears my initials on this tape. In addition to that, it also bears once again the analysis number on the evidence itself that was given to it by the laboratory and my initials on the back side.

Q. And was, was this handed to you in this state with the exception of the tape that has been put on there?

A. Yes sir. I received this evidence in sealed condition.

Q. Okay. Who did you receive that from?

A. I received this, may I refer to my notes, sir?

Q. Sure.

A. Thank you. (Pause...) I received this particular piece of evidence from Lt. G. T. Angle, sir.

Q. When did you receive it?

A. I received it on the first of April, sir.

Q. First of what?

A. Five-one, nineteen eighty.

Q. Oh, I thought you said the first of April. Received it on the first of May.

A. Yes, five-one.

Q. Okay. And where did you receive this?

A. I received this in the laboratory which is a high security

area, sir.

Q. All right. Where is this located?

A. Our laboratory is located in Roanoke.

Q. All right. When you received it, did you examine the contents of that package? Did you just look at it?

A. Not immediately that day, I didn't.

Q. All right. Did you later perform an analysis on what the package contained?

A. Yes sir, I did.

Q. What did the package contain?

A. This package contained lysergic acid diethylamide, LSD.

Q. All right. And what type of test did you perform on the contents of that package to determine that it was LSD?

A. The material that is contained in here, I performed a process, for my conclusion, I ran color test, specifically ...(not clear)..., color test...(not clear)...of which I did three systems. I did...(not clear)...and admission wave lengths of ...(not clear)...on a particular color.

Q. All right. Now what did you, what...what type of material did you perform the test on it, was it, what did you find inside the package is what I'm asking?

A. Okay. When I opened the package I encountered a paper towel, which contained these blue tablets in here, twenty blue tablets, I tested twenty...I tested the blue tablets.

Q. All right. Now, I show you Commonwealth's exhibit number two, which is a paper bag containing a plastic bag or

baggie, would you examine these items and tell the ladies and gentlemen of the jury if you've seen these before?

A. (Pause...) I received this package, also, from Lt. G. T. Angle at the Bureau of Forensic Science located in Roanoke. Upon receiving it it was in a sealed condition, and it also bears again the evidence tape which bears the analysis number given to it by the laboratory, the date that I completed the analysis, my initials on the tape, on the evidence itself it also bears the analysis number and my initials.

Q. All right. Did you receive exhibit number two at the same time that you received exhibit number one?

A. I received that...this at one, five-one, which is the same day.

Q. Okay. Now after you received exhibit number two, what did you do with it?

A. I put both pieces of evidence in my work area, which is sealed and high security area...

Q. All right...excuse me, go ahead.

A. Okay, my working area is a locked area of which only I have a key and our bureau director has a key in the event that I should, you know, be, be killed.

Q. Okay. Now, after placing it in your high security area under lock and key, did you later perform a drug analysis on the contents of exhibit number two?

A. Yes, I analyzed the material on five-nineteen.

Q. And what did you determine exhibit number two to be?

A. The material contained within the plastic bag contains marijuana.

Q. What type of test did you run on the marijuana to determine if it was in fact marijuana?

A. First I determined the amount, the weight of the materials inside the plastic bag. I did microscopic examinations to determine physical characteristics, ran... (not clear)...on it and ran a color test, which is called the...(not clear)...test.

Q. And what did you determine exhibit number two to be?

A. Upon doing all my analysis, I concluded the material that was in the plastic bag to be marijuana, sir.

Q. All right. Now, after placing this in your security area and after doing the laboratory analysis on both exhibit number one and exhibit number two, after you completed your analysis, what did you do with these two items?

A. In each case I sealed up each piece of evidence, put my initials, the analysis number and put them in their respective containers and sealed them with my analysis number and my initials and I put it back into my security area till Lt. Angle returned to pick up the evidence.

Q. And did you deliver it to Lt. Angle?

A. Yes sir, I handed it to him.

Q. And when did you deliver it to Lt. Angle?

A. I returned the material to...(tape did not pick up response...)

Q. Answer Mr. Brown's and Mr. Hopkins' questions if you would.

CROSS EXAMINATION: BY: MR. BROWN

Q. On the LSD, how big a sample did you run your test on?

A. I did...I did, let me see...I ran four tablets.

Q. Four different tablets?

A. Yes sir.

Q. Okay. Did you use the whole tablet or...?

A. No sir. I never use the complete material. I always leave some.

Q. How much of the tablet did you leave..or run it on, how large of a sample?

A. Only, I use only as much as I need to use, and I always leave enough to redo the analysis...analysis if necessary.

Q. Okay. Did you run these samples either the tablet or the marijuana against the known?

A. Of course, sir.

Q. Okay. Where did you get your...have your known from?

A. Okay. The known sample of marijuana I received from USPC, United States Pharmaceutical Corporation. The LSD is a (one word) source, which I concluded to be a LSD against known reference...(not clear)...

Q. Okay. And you ran the known first on the GC...(not clear) and compared them with your...(not clear)..graph...and they were both the same?

A. I did not perform the GC...(not clear)...on either...on either piece of evidence, it was not necessary.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 147

Q. What, what test did you use?

A. Like I said, on this particular piece of evidence I ran color test. I ran...(not clear)... I ran...(not clear).. I ran...(not clear)..., sir. On this test, I did a wave analysis, microscopic examination...(not clear)...and color test.

Q. Okay. And on your GC spectrum did you have a spectrum for that for both the known and the unknown LSD?

A. Yes sir, I always run...

Q. And they were both the same?

A. Yes sir, identical.

Q. I don't have any other questions.

JUDGE DAVIS: Further questions of Mr. Myer?

REDIRECT EXAMINATION: BY: MR. ALEXANDER

Q. Dan, I show you a copy of a Certificate of Analysis dated May 19th, 1980, would you identify that, please.

A. Yes sir. This Certificate of Analysis bears my signature.

Q. All right. I show you, also, a Certificate of Analysis dated May 20th, 1980, is that your certificate, is that your analysis?

A. Yes sir. This also bears my signature.

Q. All right. The certificate of May 19th is a Certificate of Analysis of the LSD, is that correct?

A. Yes sir.

Q. And the certificate of May 29th, is the Certificate of Analysis of marijuana, is that correct?

A. Yes sir.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2051

MR. ALEXANDER: Your Honor, I would ask that...

JUDGE DAVIS: Objections, Mr. Hopkins or Mr. Brown?

MR. BROWN: None, sir.

JUDGE DAVIS: All right.

MR. ALEXANDER: Certificate of Analysis of May 19th be Commonwealth's exhibit number three and May 20th be number four.

JUDGE DAVIS: Further questions of Mr. Myer, Mr. Alexander?

MR. ALEXANDER: No sir.

JUDGE DAVIS: Mr. Myer, let me ask you a question. People assume that the jury and I know a whole lot of things that we don't know. Tell us what the effect of acid is, of LSD is. I don't have anv idea of what it is. These people would like to know. What effect does it have on the human body?

MR. MYER: Okay, sir. I can tell you what I have researched and learned. I have not taken it personally.

JUDGE DAVIS: That's what I want to know.

MR. MYER: I am not a (one word), so...

JUDGE DAVIS: Your opinion as an expert, tell us what effect it has on the human body.

MR. MYER: In my opinion the lysergic acid diethylamide, LSD, is a very potent drug. Most drugs are given in milligram amounts. Okay. Most drugs like valium, aspirin are given in milligrams. LS...which is about a billionth of an ounce. In LSD the concentration that you need to take is

PENGAD CO., BAYONNE, N.J. 07002 · FORM 2017

one, is micrograms, that's one trillionth of an ounce. That is one hundred times more potent than most of your drugs right off the bat. The effect that it actually does, it is called a hallucinogenic and it causes your senses to become very distorted. It can make you do some very erratic things, and it's quite unpredictable in its effects. You may do some very bizarre things. The effects of LSD has been reported to cause a person from, or hallucinogenics in general, I should say, have been, have made people go as far as to tear their eyes right out of their sockets, chew off an arm, jump out of windows, do some really...

MR. HOPKINS: Your Honor, I object to this.

MR. MYER: Bizarre things.

JUDGE DAVIS: Objection overruled, Mr. Hopkins. I think the jury ought to know exactly what the effect these drugs may have on any individual who may take 'em. Objection overruled and exception noted, Mr. Hopkins.

MR. MYER: These are the general...these are the general effects of hallucinogenics and LSD is among the most potent of hallucinogenics available.

JUDGE DAVIS: How about marijuana, Mr. Myer?

MR. MYER: Marijuana, from what I understand is, causes (one word), does not cause hallucinations. It has...it has a similar effect to alcohol with...with let's say the advantage, if there is to be an advantage, that it doesn't give you a hangover and your senses are not considerably effected by it. You can preceive relatively accurately things

around you without any distortion or any major distortions.

JUDGE DAVIS: Thank you, Mr. Myer. Any further questions, Mr. Alexander, Mr. Brown, or Mr. Hopkins?

MR. ALEXANDER: No sir.

WITNESS STEPS ASIDE AND EXCUSED.

DEBORAH KIRKLAND
(Already Been Sworn)

REDIRECT EXAMINATION: BY: MR. ALEXANDER

Q. All right, you are Deborah Kirkland, is that correct?

A. Yes sir.

Q. And you have testified before today, Deborah. Deborah, I...I neglected to ask you a question. I show you Commonwealth's exhibit number one and Commonwealth's exhibit number two.

A. Yes sir.

Q. You previously testified that you purchased these items on April 25th from the defendant, Harold Lacy Smith.

A. Yes sir.

Q. All right. After you purchased these items what did you do with 'em?

A. I turned them over to Lt. Angle. I kept them in my possession.

Q. When did...when did you turn them over to Lt. Angle?

A. Same day.

Q. All right. And where, between the time you purchased the LSD and the marijuana, where did you keep 'em until you turned them over to Lt. Angle?

A. With me in my car.

Q. All right. And approximately how long was it from the time of purchase until time you...

A. Well, from time of purchase, complete purchase as soon as I left the defendant I took it straight and notified Lt. Angle that I needed to turn the stuff over to him.

Q. All right.

A. So I would say within a half an hour from the time I left there and made the phone call to Lt. Angle.

Q. What time did you purchase the marijuana?

A. It was in the afternoon, I'd say between, around three-thirty, somewhere like that.

Q. What time did you purchase the LSD?

A. I guess it was around lunch time, little after, maybe.

Q. All right. Where did you turn these items over to Lt. Angle?

A. It was right off of 122 as you're going out of Rocky Mount. I met him on a dirt road.

Q. All right. Thank you, ma'am. Answer...

JUDGE DAVIS: You gentlemen have any further questions of this lady?

RECROSS EXAMINATION: BY: MR. HOPKINS

Q. I believe you previously stated that you had gotten the LSD in the morning?

A. I'm not sure. I usually get to Rocky Mount between ten and eleven every day.

Q. Testifying whether you say you got that in the morning or

early in the afternoon?

A. It may have been in the morning, late morning, around lunch time.

Q. You turned both of 'em over, the marijuana and the LSD, over to Lt. Angle at the same time?

A. Yes, I did.

Q. And that was what time?

A. It was in the late afternoon.

Q. So you did turn it over within a half hour after you got 'em then, didn't you?

A. After I made the complete, both buys.

Q. Well, after you got the last one, you did?

A. Yes sir.

Q. Half hour after that, but not the first one.

A. Yes sir.

Q. That's all.

WITNESS STEPS ASIDE.

Mr. Alexander indicates he would like to recall Lt. Gene Angle.

JUDGE DAVIS: Mr. Hopkins and Mr. Brown, I'm assuming that Mr. Brown is gonna call Lt. Angle to say that Mr. Myer turned the...

MR. ALEXANDER: Yes sir.

JUDGE DAVIS: Exhibits back over to him. Do you have any, is there any question about this?

MR. BROWN: No sir.

MR. ALEXANDER: Your Honor,...

JUDGE DAVIS: Mr. Hopkins...Mr. Alexander, they will admit, or stipulate that after Mr. Myer completed his examination he turned it back to Lt. Angle.

MR. ALEXANDER: All right, sir. Could I have one minute, Judge, I may rest.

COURT RECESSED.

FOLLOWING TOOK PLACE IN CHAMBERS:

JUDGE DAVIS: Mr. Hopkins and Mr. Brown, Mr. Alexander advised the Court that that concluded his evidence, and the Commonwealth rests. Do you gentlemen have any motions prior to proceeding with the defense?

MR. HOPKINS: Your Honor, I would like to make a motion for a mistrial on the grounds; one, when Mrs. Kirkland testified, and she got this out before we could make any objection, she said she had been told that Harold Smith sold drugs, which was improper, and hearsay, very improper and prejudicial. And, also, the testimony of the doctor, or the lab expert, Mr. Myer, who testified in detail about the effects of LSD, about gouging people's eyes out. We consider that highly prejudicial to apply because those are really exceptions and not the general effect of the drug. For those reasons...

JUDGE DAVIS: Mr. Hopkins, excuse me...start in reverse order, Mr. Myer stated the effects of LSD to me, as a result of a question that I proposed to him, not on behalf of the Commonwealth. I don't blame you for objecting, but Mr. Myer was subject to cross examination, Mr. Hopkins, as to the effects and which he was not asked anything further other than

what he testified to, and I asked him what the effect was. I think the jury is entitled to know exactly what they're trying whether it be aspirin, or sugar, or salt, or whatever. I think they ought to know what effect it has on the human system, that reason the maximum punishment could be imposed is forty years in the penitentiary. And I'll overrule your objection and note your exception, Mr. Hopkins, to that. In so far as Mrs. Kirkland said she had been told, of course, as you say was answered...the question was asked and answered, not a whole lot you could do about it. But it was testified as to what she was told, not for the truth of it, but the reason that she was there. And I will so instruct the jury if you want me to. Her testimony was solely...was asked and answered solely for the purpose of her presence in Franklin County and on the occasion at the Doe Run section of the County at the time of the alleged offenses. Certainly Mr. Smith can not be convicted on what she may have been told, and it was done solely for the purpose of giving her a reason for being where she was, and not for the truth of the matter. So, if you and Mr. Brown request I'll so instruct the jury, but otherwise I'll overrule your motion.

MR. HOPKINS: I except the Court's ruling, but, Your Honor, at this point I don't think we would like to mention if further to the jury because I think it might magnify the problem rather than help it.

JUDGE DAVIS: All right, sir.

MR. ALEXANDER: Judge,...

JUDGE DAVIS: Sir.

MR. ALEXANDER: I don't have anything.

JUDGE DAVIS: All right. Bring the jury back.

OPEN COURT RESUMED.

JUDGE DAVIS: All right. Mr. Hopkins and Mr. Brown, the Commonwealth has rested. That concludes all the Commonwealth's evidence. You may proceed.

JUDY SHIVELY
After having first been duly sworn,
testified as follows:

DIRECT EXAMINATION: BY: MR. HOPKINS

Q. Would you state your name, please.

A. Judy Shively.

Q. Now, Mrs. Shively, were you assisting Mrs. Kirkland, State undercover agent, on April 25th, 1980?

A. Yes sir.

Q. When you contacted Mr. Harold Smith?

A. Yes sir.

Q. And I believe you pointed Harold Smith out to her?

A. Yes sir.

Q. To your knowledge does Harold Smith sell any drugs?

A. No sir.

Q. And on this date the only thing he was doing was just assisting y'all to find some?

A. Yes sir.

Q. And that's his entire role?

A. Yes sir.

Q. And at the time y'all were investigating many other