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RECORD NO. 8160

IN THE

SUPREME COURT OF VIRGINIA

WILFORD HARLEY NEIGHBORS

v.

COMMONWEALTH OF VIRGINIA

From The Hustings Court of The City of Roanoke

APPENDIX

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IN THE SURREME COURT OF VIRGINIA

WILFORD HARLEY NEIGHBORS, Appellant	:	
V.	:	RECORD NO. 8160
COMMONWEALTH OF VIRGINIA, Appellee	:	

A P P E N D I X

(1) ORDER GRANTING WRIT OF ERROR AND SUPERSEDEAS - JANUARY 16, 1973

Upon the petition of Wilford Harley Neighbors a writ of error and supersedeas is awarded him to a judgment rendered by the Hustings Court of the City of Roanoke on the 12th day of May, 1972, in a prosecution by the Commonwealth against the said petitioner for a felony; but said supersedeas, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

(2) INDICTMENT, MARCH TERM 1972, RECORD PAGE 1, FILED MARCH 6, 1972

The Grand Jury charges that:

On or about January 3, 1972, in the City of Roanoke, Virginia, WILFORD HARLEY NEIGHBORS did distribute a quantity of the controlled drug Morphine Sulphate.

Virginia Code Section 54-524.101.

(3) JUDGMENT OF CONVICTION, MAY 12, 1972, RECORD PAGE 16 ET SEQ.

This day came the Attorney for the Commonwealth and Wilford Harley Neighbors, born March 7, 1937, who stands convicted of a felony, to-wit: distribution of controlled drug, appeared in Court according to the condition of his recognizance, and came also John H. Kennett, Jr., attorney for the defendant.

Whereupon the defendant was arraigned and after private consultation with his attorney, pleaded not guilty to the indictment, which plea was tendered by the defendant in person.

Whereupon came twenty (20) persons, citizens of the City of Roanoke, Virginia, summoned by the Sergeant of the City of Roanoke, Virginia, pursuant to writs of venire facias issued as the law directs, and the Court having examined said persons and finding them free from all legal exceptions and qualified to serve as jurors according to law, the Attorney for the Commonwealth and the Attorney for the defendant having each alternately, beginning with the Attorney for the Commonwealth, stricken from the panel the names of four of the veniremen, the remaining twelve, to-wit: Rolfe E. Petterson, Melville James Hartley, J. W. Kirk, Jr., John Charles Brown, George W. Coleman, Jr., John M. Aldrich, Jr., George E. Parker, Ellsworth L. Clarke, Frank E. Boynton, Jr., Clarence Brownwell Brown, Robert E. Francis and Ronald L. Jewell constituted the jury for the trial of the defendant, and were sworn the truth of and upon the premises to speak and having heard the Commonwealth's evidence the defendant, by counsel, moved the Court to strike said evidence on grounds set forth in the record, which motion the Court overruled. Having heard the defendant's evidence the defendant, by counsel, renewed the motion above on grounds of insufficient evidence, which motion

the court overruled. Having fully heard the evidence, the instructions of Court and argument of counsel, the jury were sent to their room to consult upon their verdict and after some time returned into court and presented their verdict in the following words, to-wit:

> "We, the jury, find the defendant, Wilford Harley Neighbors, guilty of distribution of a quantity of the controlled drug Morphine Sulphate, as charged in the indictment, and fix his punishment at 20 years in the penitentiary
>
> Frank E. Boynton, Jr., Foreman"

and the jury was discharged.

Counsel for the defendant moved the Court to set aside the verdict for reasons that it is contrary to the law and evidence, which motion the Court overruled.

It being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that Wilford Harley Neighbors be, and he is hereby, sentenced to confinement in the penitentiary of this Commonwealth for the term of twenty (20) years, the period ascertained as aforesaid and that the Commonwealth of Virginia recover against the defendant its costs by it about its prosecution in this behalf expended.

It is further ordered that as soon as possible after the entry of this order the prisoner be removed and safely conveyed according to law from the jail of this Court to the penitentiary therein to be kept, confined and treated in the manner provided by law.

The Court orders that the defendant be allowed twenty three days credit for the time spent in jail awaiting trial.

Thereupon the defendant, by counsel, signifying his intention to appeal to the Supreme Court of Virginia for a writ of error, execution on the above judgment is suspended for a period of sixty days, upon the defendant executing a suspending bond, with approved surety, conditioned as the law directs.

The court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise present and capably represented the defendant.

And the defendant is remanded to jail to await transfer to the penitentiary.

(4) NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR, RECORD PAGE 27 ET SEQ. -JUNE 6, 1972

TO THE HONORABLE WALKER R. CARTER, JR., CLERK:

PLEASE TAKE NOTICE that the undersigned appeals this criminal action at law in which final judgment was entered on May 12, 1972 and intends to apply to the Supreme Court of Virginia for a writ of error and supersedeas in regard to the aforesaid judgment; and for that purpose, the undersigned assigns the following as error, referring to the plaintiff as "Commonwealth" and the undersigned defendant as "Neighbors" and the Court as the "trial court":

1. The failure of the trial court to strike the evidence of the Commonwealth and enter summary judgment of acquittal pursuant to the motion made by Neighbors after the Commonwealth rested her case.

2. The failure of the trial court to strike the evidence of the Commonwealth and enter summary judgment of acquittal pursuant to the motion made by Neighbors at the conclusion of all the evidence.

3. The granting by the trial court of Instruction No. 2 submitted on

behalf of the Commonwealth when Neighbors excepted because it did not negate the defense of entrapment.

4. The refusal of the trial court to grant Instruction No. B offered on behalf of Neighbors.

5. The refusal of the trial court to grant Instruction No. C offered on behalf of Neighbors.

6. The refusal of the trial court to grant any instruction pertaining to entrapment as a defense as requested by Neighbors.

7. The failure of the trial court to set aside the verdict of the jury as contrary to the law and evidence pursuant to the motion made by Neighbors after the verdict but before the sentence.

8. * * *

9. * * *

(5) INSTRUCTION NO. 2, GRANTED, RECORD PAGE 21. - FILED MAY 12, 1972

THE COURT INSTRUCTS THE JURY THAT: If you believe beyond a reasonable doubt that the Defendant, Wilford Harley Neighbors, did unlawfully and feloniously distribute a controlled drug, then you shall fix his punishment at confinement in the penitentiary for not less than one (1) nor more than forty (40) years or a fine of not more than $25,000.00 or both.

(6) INSTRUCTION NO. B, REFUSED, RECORD PAGE 25. - FILED MAY 12, 1972

The Court instructs the jury that entrapment is the conception and planning of an offense by an officer of the law and his procurement of its

commission by one who would not have perpetrated it except for trickery, persuasion or fraud of the officer; and if upon the whole evidence of the case there is a reasonable hypothesis consistent with entrapment, you must find the Defendant not guilty.

The Court further instructs the jury that even if you do believe from the evidence beyond a reasonable doubt that the Defendant, Wilford Harley Neighbors, did distribute a quantity of a controlled drug, morphine sulphate, to William M. Patterson on January 3, 1972 in the City of Roanoke, Virginia, if you nevertheless have a reasonable doubt arising from the evidence as to whether or not the Defendant was induced into the commission of the crime, at a time when he had no intentions of committing it, by the action of William M. Patterson acting in concert with police officers in order that he might be prosecuted therefore, then, even though you may believe the Defendant readily consented to the act, you must find him not guilty.

(7) INSTRUCTION NO. C, REFUSED, RECORD PAGE 26 -FILED MAY 12, 1972

The Court instructs the jury that entrapment is the conception and planning of an offense by an officer of the law and his procurement of its commission by one who would not have perpetrated it except for trickery, persuasion or fraud of the officer; and if upon the whole evidence of the case there is a reasonable hypothesis consistent with entrapment, you must find the D fendant not guilty. Entrapment is not a legal defense when the procurement is by a private citizen acting for his own private reasons unless he acts in concert with a police officer and informs the police officer of the intended crime before the criminal act is committed.

The Court further instructs the jury that even if you do believe from the evidence beyond a reasonable doubt that the Defendant, Wilford Harley Neighbors, did distribute a quantity of a controlled drug, morphine sulphate, to William M. Patterson on January 3, 1972 in the City of Roanoke, Virginia, if you nevertheless have a reasonable doubt arising from the evidence as to whether or not the Defendant was induced into the commission of the crime, at a time when he had no intentions of committing it, by the action of William M. Patterson acting in concert with police officers in order that he might be prosecuted therefore and Patterson informed the police officers with whom he was acting in concert of the intended distribution of drugs to him by the Defendant before the Defendant actually distributed the drugs to him, then, even though you may believe the Defendant readily consented to the act, you must find the Defendant not guilty.

(8) NARRATIVE - FILED JULY 10, 1972, APPROVED JULY , 1972

Date: May 12, 1972 at approximately 12:00 o'clock noon after completion of the evidence but before oral argument.

Present: The Honorable Jack M. Matthews, Judge designate of the Hustings Court of the City of Roanoke; Robert C. McLaughlin, Assistant Commonwealth's Attorney; and John H. Kennett, Jr., counsel for the Defendant, Wilford Harley Neighbors.

***

KENNETT: Your Honor, I object to the granting of Instruction No. 2 because it permits the jury to find Mr. Neighbors guilty if they believe beyond a reasonable doubt that he did possess and distribute the drug, which he has admitted, without requiring they additionally find he was not entrapped into the criminal act.

COURT: Even if you believe everything Mr. Neighbors said, he is guilty.

KENNETT: You mean, he is not entitled to an instruction on entrapment?

COURT: That's exactly what I mean.

KENNETT: I except to the granting of Instruction No. 2

* * *

KENNETT: I except the refusal of the Court to grant Instruction No. B but offer in its place Instruction No. C in case I am right about entrapment being a defense but wrong about the particular wording of Instruction No. B.

COURT: (Marks Instruction No. C refused without comment.)

KENNETT: I except to the refusal to grant Instruction No. C and ask the Court to grant some type of instruction on entrapment. If the Court will give me time, I will write still another instruction.

COURT: (Does not grant an instruction on entrapment.)

KENNETT: May I state in the record that I asked the Court to grant some type of instruction on entrapment?

COURT: (No recording ever permitted.)

(9) TRANSCRIPT - FILED JULY 10, 1972

(All portions of transcript included in the Appendix occurred during trial on May 12, 1972 and the transcript page numbers appear in the top right hand corner.)

WILLIAM MATTHEW PATTERSON

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

DIRECT EXAMINATION

BY MR. MCLAUGHLIN:

Q. State your name to the jury please.

A. William Matthew Patterson.

Q. Mr. Patterson, where are you employed?

A. Baush and Lomb Optical Company.

Q. How long have you worked there?

A. I've worked up there about seven months.

Q. And what is your duty up there?

A. I'm an optician; I grind prescription lenses.

Q. And how old are you, Matt?

A. Twenty-three.

Q. Now, are you acquainted with the defendant, Wilford Neighbors?

A. Yes sir, I am.

Q. How long have you known him?

A. Approximately two years.

Q. How did you come in contact with Mr. Neighbors?

A. Well, with my mix up with drugs.

Q. Would you tell us about your mix up with drugs, please?

A. Well, it started about four years ago. And I just---it was more like a peer pressure group type thing at first.

Q. You mean you wanted to do it because everybody else was doing it?

A. Yeah, everybody else was doing it; so, I started out, and the next thing I knew I was in, you know, I was hooked. I, you know, never intended of course to get---for it to get that way, get out of hand; but it did.

Q. Did you become an addict?

A. Yes sir, I did.

Q. And what were you addicted to?

A. Heroin, morphine, opium.

Q. Have you ever been arrested in relation to a drug related offense?

A. Yes sir, I have.

Q. What were you arrested in regards to?

A. What or---

Q. What. What for?

A. Illegal possession of heroin.

Q. Have you been tried on this case?

A. Yes sir, I have.

Q. Have you been convicted of it?

A. Yes.

Q. Have you been sentenced yet?

A. No sir.

Q. When will you be sentenced?

A. Next week, I believe.

Q. You stated you ran---you were acquainted with Mr. Neighbors through your drug problems and what not.

A. Yes sir, that's right.

Q. In what capacity?

A. Well, several times I'd---previously I'd bought drugs from him.

Q. You bought drugs from him?

A. Yeah.

Q. What type drugs did you buy from him?

A. Morphine sulphate mostly.

Q. Is this what you were using?

A. It wasn't my preference, but I did; I used it. Mostly I tried to get heroin, but when I couldn't, I'd use sulphate.

Q. Used morphine as a substitute for heroin?

A. Yes. It's not quite as good; you didn't get off as good on sulphates, but you got off.

Q. Is morphine sulphate a depressant type drug or stimulant?

A. It's depressive; it's a narcotic.

Q. How is it used or taken?

A. It's injected intravenously.

Q. I see. When were you arrested, Matt?

A. December the 4th, I believe it was.

Q. 71?

A. 71.

Q. Did you at that time make any arrangements with the Police Department?

A. Concerning what?

Q. Concerning cooperation or assistance?

A. Yes. I agreed to cooperate with the Police Department.

Q. Tell the jury why you decided to do this.

A. Well, I---I had just gotten to the end of my rope. I'd---I'd gone as far---I'd gotten as low as I could and there wasn't any other way. And I was just tired of it; I wanted out.

Q. Tell the jury what, if any, special promises were made for your cooperation.

A. I never got any special promises from anybody as such.

Q. Were you told that the Court at the time of your sentencing would be made aware of your cooperation?

A. Yes, I was told that the Judge would be informed of my cooperation, but I was made no promises.

Q. Did you see Mr. Neighbors on January 3rd, 1972?

A. Yes, I did.

Q. Tell the jury please the circumstances of when you first came in contact with Mr. Neighbors that day.

A. Well, I was at work. I believe it was in the

early afternoon. And Mr. Neighbors came up to my office and---

Q. Now, where is your office located?

A. In the Medical Arts Building.

Q. Is that here in the City of Roanoke?

A. Yeah, here in the City, yes sir. And asked me if I wanted to buy some morphine sulphate. And I told him that I would meet him later on that day, because, you know, I was at work at the time, and that I'd meet him after work; I think we set the time at quarter to 6 over on Third Street, a parking lot on Third Street and Highland Avenue.

Q. Did you call Mr. Neighbors to your office that day?

A. No sir, I hadn't.

Q. Did you summons him to your office any time that week?

A. No sir, not that I recall.

Q. All right. Tell the jury what you did after you had this conversation with Mr. Neighbors.

A. Well, after I talked to Mr. Neighbors, I got in contact with Officer Sutherland of the Vice Squad. And they arranged---we made an arrangement to meet him down here later that afternoon.

Q. What preparations did the Police do to you, Matt?

A. Well, they searched, prior to my meeting Mr. Neighbors, they searched my car and my person, and they gave me some money that had been---they recorded the serial numbers and had dusted it with some powder.

Q. OK. Did you subsequently meet Mr. Neighbors?

A. Yes sir. I met him at Third Street about---around 6 o'clock that afternoon.

Q. On January the 3rd, were you still using drugs?

A. No sir, I wasn't.

Q. When did you stop using them?

A. Well, at the time of my arrest, I had---I didn't have a habit at the time. I was still---it was still a mental thing with me, struggling to get that part of it together. But after, say the first of the year, I---I've been clean since the first of the year.

Q. Is this all drugs or just morphine sulphate?

A. This is all drugs.

Q. Do you recall what time you first met Mr. Neighbors that afternoon and after you talked to him?

A. Pardon?

Q. Do you recall at what time you met Mr. Neighbors after work?

A. It was around 6 o'clock.

Q. Do you know where you met him?

A. It was Third---it was a parking lot on Third Street, corner of Third Street and Highland Avenue.

Q. Did you purchase drugs from him there?

A. No, I didn't. He didn't---it was too open and so he didn't like the set up there. And so, he told me to meet him down---it was about a block and a half down the street, on the Corner of Walnut and Third.

Q. When you went to Third and Highland, did you see Police Officers anywhere?

A. Yes sir. Well, I---I didn't see them at the time. I knew they were over behind a building though.

Q. Detective Sutherland and Detective Barrett?

A. Detective---yes sir.

Q. They were in plain clothes and an unmarked car?

A. That's right.

Q. You went from Third and Highland to where?

A. Third and Walnut.

Q. Tell the jury what happened at Third and Walnut.

A. Well, Mr. Neighbors pulled his car around the corner in front of the Walnut and I pulled in right behind him. And he got out of the car and came back immediately and gave me two tablets and I gave him $10.00.

Q. Ten dollars?

A. Ten dollars.

Q. $5.00 a tablet, is that correct?

A. That is correct. And about the same time, almost the exact same instant, Officer Sutherland and Barrett were right there, right---right---they pulled right around the corner, and drove on past right when Mr. Neighbors was handing me the pills.

Q. He drove right by you when---

A. Right.

Q. ---you were making the spot?

A. That's right.

Q. All right, would you tell the jury what happened after you purchased the drugs from him?

A. I---I had set up previously with Officer Sutherland to meet him up at a funeral home on Franklin Road; it's Lotz, I believe it is; and meet him at the parking lot after I made a purchase. And so I met him there about, oh, three or four minutes after I---

Q. Did they follow you down to Lotz?

A. No, they---they'd gone ahead on up to Lotz after they passed me, and I met them up there.

Q. What happened there at the parking lot at Lotz?

A. I gave them the two tablets that I'd bought from Mr. Neighbors.

Q. And what did you proceed to do?

A. I went on home and then I came back down to the Police Station a little later that evening.

MR. MCLAUGHLIN: Answer any of Mr. Kennett's questions.

CROSS EXAMINATION

BY MR. KENNETT:

Q. Mr. Patterson, you testified at the preliminary hearing. Is that correct?

A. That's correct.

Q. At that time you said that the place where you

made the contact with Mr. Neighbors was Elm Avenue? I understand that's incorrect, but that's what you testified to?

A. Yes sir, I don't recall, I might; yes sir, I guess I did if you say---

Q. And so you've obviously had some conferring with the Commonwealth Attorney to get the streets and all straight this time, I mean, get your testimony down real pat.

A. Well, no, at the time, I just---I've always had a mix up about that section about Elm and Walnut---

Q. Well, I understand---

A. ---the two streets.

Q. ---I understand that you testified at that time that the---that the buy occurred at a different place where it did not occur; so, it's probably a mistake on your part, not given intentional. But now you seem to have it down correct. What I'm trying to say is how did you find out where the---what the correct names of the streets and all were? Did you have some conference with the Commonwealth Attorney to get your testimony down real pat?

A. I just---I just figured it out for myself. I---

Q. How did you figure it out?

A. Well, I drove by the streets and found out. I wanted to get it straight before I came to Court, because I knew---

Q. You mean you didn't want to get it straight before you went to Court the last time, but you did this time?

A. Yeah, I---I guess that's right. I just wanted to get it straight before I went to Court.

Q. And you got it straight simply because they came and told you all the mistakes that you made in your previous testimony---

A. No, that's not true.

Q. ---and you've gotten it all straightened out?

A. No, that's not right.

Q. But you didn't even have the---the place that you made the purchase at---at---you had it on the corner of---of Elm Avenue and First Street, and now it's---but it's true that it was on the corner of Third Avenue and Walnut?

A. Yeah, that's right.

Q. But you got it right this time; don't you?

A. Yes.

Q. And you were arrested on December the 4th, is that correct, sir?

A. Uh-huh, that's correct.

Q. And you---of---of possessing heroin.

A. That's right.

Q. And then you were held in jail on a rather high bail bond; is that correct?

A. That's correct, yes sir.

Q. And then you say that you decided that you wanted to reform and no longer be an addict and when you made that decision you were suddenly released on a lower bail. Is that correct?

A. The bail was lowered, yes sir.

Q. Well, the bail got lowered after you talked to the Police; is that right?

A. Well, it was lowered before I talked to them once.

Q. But it didn't get lowered enough for you to get released from---from jail until you gave them this spiel about wanting to rehabilitate yourself---

A. The bail would have been made anyway.

Q. Well, it didn't get---you didn't get released until that; yes or no?

A. Would you say it again; I didn't get released until when?

Q. Until you had a talk, I believe it was probably Detective Viar, but at any rate, until you---

A. I didn't get---well, I didn't get released until after I had talked with him. That's right.

Q. And then the substance, regardless of your motives, whether they were to rehabilitate you or just for you to get some leniency with the Court, but at any rate, the substance of the deal was that you were going to help catch all the drug pushers in town, or some of them.

A. I---there was no deal.

Q. Well, the substance of the---of the understanding with you then.

A. I wasn't going---No, I wasn't---I didn't make

any deal or any plan or anything to go out and catch everybody in the City, no; all the drug pushers.

Q. Well, what---well, what---what were you doing then? Didn't you---didn't you tell Mr. McLaughlin just a few minutes ago that, you know, that you'd had enough of drugs and so that you were going to go out---

A. _____

Q. ---well, what---what were you going to do then? What was your understanding?

A. I couldn't---I couldn't get everybody in town.

Q. Well, you were going to get some then.

A. Yeah.

Q. So, at anyhow, so the substance of your understanding when you were let out of the jail was that you were to do what you could to apprehend people who sold drugs, some of them at least.

A. That's correct.

Q. And you've been tried and conviction---tried and convicted on your drug charge, but you haven't yet been sentenced; is that right?

A. That's right.

Q. And your sentencing was scheduled before right now and then it was suddenly continued until next week until after you testified in this case; is that right?

A. I---I don't know if that was---I don't know when I was---the only thing that I heard that I was supposed to

appear next week for my sentencing.

Q. All right. This was originally scheduled before. You were tried before---you were tried before now; weren't you? I mean, you've already been tried and convicted.

A. That's correct; yeah, that's right.

Q. But the Judge hasn't sentenced---given you sentence to the penitentiary or to suspend it or anything yet?

A. No, not yet, no.

Q. And so, as you sit here on this stand testifying right here to this jury, you're in the position of having---the Judge has got to hand you some kind of sentence whether it's suspended or not as to---concerning this admitted conviction.

A. That's correct, yeah.

Q. And you don't know that the sentencing wasn't originally scheduled before right now, but then later moved off until next week until after you testify. You don't know whether---

A. Would you---would you repeat that again please?

Q. Do you know whether your sentencing was scheduled sometime prior to right now and then delayed until next week?

A. No, only thing I heard was that it was next week, at the first of next week.

Q. And you didn't hear anything about it being scheduled earlier?

A. No.

Q. When were you actually tried?

A. I---let's see. April---April the 4th, I believe it was. It was the first of April. I'm not sure of the correct date.

Q. Back in April.

A. Yeah.

Q. And you were apprehended back on December the 4th.

A. That's correct.

Q. Which of course was prior to January the 3rd when you had your dealings with Mr. Neighbors.

A. That's right.

Q. And your conviction was prior to the day---obviously prior to the day.

A. That's right.

Q. Are you familar with the methadone clinic?

A. The methadone---a methadone---

Q. A methadone clinic.

A. Yes.

Q. There's one over at Community Hospital?

A. There's one over there, yeah.

Q. Are you familar with that one?

A. Yes sir.

Q. Do you know whether Mr. Neighbors goes over there?

A. Yes sir, I think he does.

Q. Do you know what---what the purpose of methadone is?

A. Yes sir.

Q. What is it?

A. It's supposed to help relieve withdrawal symptoms and they have a maintenance program that---that suspends the craving for heroin, for addicts.

Q. Do you know what kind of screening process they have to make sure that the people in the methadone clinic are---are not now taking drugs?

A. Do I know what methods they use?

Q. Screening methods. If you don't, just say you don't.

A. No, I don't.

Q. You yourself though weren't attending the methadone clinic to kick your habit, were you? You yourself, you---you---Mr. Patterson?

A. Right. Was I what? Was I ever on the methadone clinic here in Roanoke?

Q. At---on December the 4th, 1971 when you were arrested, were you on---were you---were you going to the methadone clinic?

A. No.

Q. So, in other words, your decision to kick the habit didn't occur until you got arrested.

A. No sir, that's not correct.

Q. Well, when did it occur? You---you---you had the heroin on you when you were arrested. Right?

A. Right.

Q. In other words, you mean had it for sale and not for use?

A. No, that's not right.

Q. Well, then if you had it for use, you must have had the habit then or at least been a user.

A. That's right. I was using it at the time.

Q. You---you---you---well, I see. You don't call yourself an addict then; you were a user then.

A. At the time, yes.

Q. And you had made no effort to kick the---your use of it then we'll---I'll call it rather than habit, until after you were arrested.

A. No, I'd made---I'd tried before. I was at the time.

Q. Well, you weren't seeking medical assistance then or anything like that, going to doctors, clinics, anything like that. You just---

A. I had---I had been on methadone clinic in Richmond, yeah.

Q. How many years before?

A. Pardon?

Q. How many years ago?

A. It was in October.

Q. But at this particular time you were in Roanoke and you weren't assisting any medical assistance when you had all this heroin on you.

A. No sir.

Q. I see. Then after you were arrested you decided you needed to kick the habit and talked to the Police, and then you were released from jail.

A. That's correct.

Q. And there's no question that Mr. Neighbors is an addict or a former addict and you know he's on the methadone clinic.

A. Yes sir.

Q. So, you went to Mr. Neighbors and asked him for a fix; didn't you, asked him to sell you some drugs?

A. No sir.

Q. Well, he went to you then according to you and asked to sell you some drugs.

A. That's right. He came to me.

Q. I see. Now, how many times did you talk to him about this intended sale before you set up an appointment over on Third Street?

A. Just that one time he came up to the office that afternoon.

Q. Just that one time?

A. That's right.

Q. And then after the deal was set up---since you didn't know the street; you thought it was Elm Avenue and Third Street instead of Third Street and Highland or between Third Street---between Highland and Albemarle on Third

Street; how did you describe the lot? I mean, how did you know where to go?

A. I was---I knew where the parking lot he was talking about was because---

Q. You just didn't know the names of the streets.

A. That's right.

Q. When he said the parking lot behind the Lutheran Church, you---that---you knew where that was.

A. Yeah.

Q. That was a sufficient description for you then.

A. That's right.

Q. You didn't refer to it by street numbers then.

A. No sir.

Q. You referred to it by Lutheran parking lot.

A. That's right.

Q. So the jury may know where we're talking about then, this is the Lutheran Church that's down on Franklin. Do you know where Franklin Road is?

A. Yes sir.

Q. I take it you're pretty familar with the streets now if you weren't then. Are you from Roanoke, Mr. Patterson?

A. That's correct.

Q. So, in other words, actually you have a general idea of this. I guess you just didn't live in the south west section, but you know the streets generally.

A. Yeah, I just didn't know that section over there too good.

Q. I see. You know where Franklin Road is. That's the main drag through there.

A. That's right.

Q. And there's a Lutheran Church, sits on the corner of Highland Avenue and Franklin Road.

A. Yes sir.

Q. And then over on the other side I believe is the--- the Beth Israel Synagogue and the funeral home and the National Business College's dormitory on the other corner.

A. Right.

Q. And then you go on back up the hill, going eastward on up Highland Avenue and there's a house on the corner right there, corner of Highland Avenue and Third Street.

A. Yes it is.

Q. And then the parking lot behind the church is the next---next---

A. That's right.

Q. In other words, the church doesn't come all the way through the block. There's a house there that just comes through the block; there's one---one house torn down.

A. Yeah. Yeah.

Q. Where this parking lot is. And then so when you made this appointment with Mr. Neighbors, then you went over to Highland Park. Is that right?

A. That's correct.

Q. Did you know the name of that park at the time?

A. Yeah, I knew the name of the park. Yes sir.

Q. And you went over to Highland Park. Did you have anybody with you when you went to Highland Park?

A. No sir.

Q. And you met some Police Officers.

A. That's right.

Q. And of course the Police Officers knew what you were going to do.

A. That's right.

Q. So you all, whether it was right or wrong, I mean, you all were all in it together. I mean, in other words, you were collaborating with the thing.

A. I was, you know, I was cooperating with the Police.

Q. Well, you were doing more than cooperating. I mean, you all were in it together. You were both designing the effort to apprehend the villain of this. And you all were planning it, I mean, how you were going to catch this fellow.

A. Yes sir.

Q. And so what you did---they searched you; right?

A. That's right.

Q. Found out you didn't have any morphine sulphate on you or any other kind of drug.

A. That's correct.

Q. And searched your car.

A. That's right.

Q. And then all of you all went over to this parking lot.

A. That's right.

Q. And the Police, he kind of got under cover behind a garage or something or the house next door here.

A. Yeah.

Q. And you were out in the parking---just out in the open lot with your car.

A. That's right.

Q. And this was about what; 7:30?

A. No, this was about 5:30, quarter to 6.

Q. 5:30, quarter to 6, on January the 3rd.

A. That's right.

Q. Then Mr. Neighbors comes driving up.

A. That's right.

Q. Was he alone or did he have anybody with him in the car?

A. He had another fellow with him.

Q. Mr. Ratcliffe?

A. I believe that's his name.

Q. And then you and---then Mr. Neighbors looks around and says, according to you, said, "Let's go on down the street then. I don't like it here," or something.

A. That's right.

Q. So you drive on down Third Street going south.

A. That's right.

Q. And you got down to---you cross on past Albemarle and got down to Walnut Avenue.

A. That's correct.

Q. The street that runs from old Jefferson Hospital down to what they call Five Corners.

A. Yeah, that's right.

Q. And you made a right turn.

A. Right.

Q. There's a great big brick house on that corner there. That's either the northeast---the west corner.

A. Yeah.

Q. Then you made the right turn and a great big brick house there.

A. Right.

Q. And a great big brick wall.

A. I don't recall the wall there.

Q. It sort of obscures the vision. I mean, you can't see around the corner because of that wall.

A. I don't recall the wall, but I guess if you say there's one there, there must be.

Q. All right. At any rate then, Mr. Neighbors was the first car and you were the second car.

A. That's correct.

Q. Following each other down the street and you made this turn.

A. Right.

Q. Mr. Neighbors parked and you parked behind him.

A. Right.

Q. Then he got out and eventually came on over and was talking to you.

A. That's right.

Q. And while he was sitting there, I guess he was standing on the driver's side in the street talking to you.

A. That's right.

Q. And your window was rolled down.

A. That's right.

Q. Or partially rolled down.

A. It was rolled down.

Q. Rolled down all the way.

A. Yeah.

Q. And then while you all were sitting there talking, the Police they came over in their car and went on around.

A. That's right.

Q. And so they saw you all sitting there talking, Neighbors and you talking.

A. That's right.

Q. And then they went on down to Franklin Road and made a right and went on back to the---well, they went out of sight at this point.

A. The Police did.

Q. Yeah, well, that's what I'm talking about, the

Police. They came on---while you were talking there, they came on around the wall and came on around---down Franklin Road where Jefferson Surgical Clinic is there, and made that right turn and went on out of sight.

A. That's right.

Q. Now, then when they---you found them, they were parked up there at this---where Lotz Funeral Home is.

A. That's correct.

Q. Some, about three or four blocks away.

A. Uh-huh.

Q. Then that's when you went to them and handed them the---the---the two capsules of the morphine sulphate.

A. That's correct.

Q. Now, you---you gave Mr. Neighbors, you said $10.00?

A. That's right.

Q. Were there two---was there one $10.00 bill or two $5.00 bills or what?

A. Five and five ones.

Q. Give him a $5.00 bill and five ones. And this all six of these pieces of paper had been marked with some kind of spray.

A. That's right.

Q. Or do you know that? Did you see it or they just told you that?

A. They just told me that.

Q. You don't---then so all you know is you had six

pieces of paper.

A. Yeah.

Q. And they---they---you don't know whether it was marked or not; they just told you it was.

A. Yeah.

Q. And there was one $5.00 bill and five $1.00 bills, making six pieces of paper.

A. That's correct.

Q. You gave him the six pieces of paper, United States Currency, and he gave you the two pills.

A. That's right.

Q. Standing on the street.

A. Right.

Q. He wasn't in his car at the time.

A. No.

Q. And then you went on to the Police Department---not to the Police Department but to the Lotz Funeral parking lot.

A. That's right.

Q. Now, I take it you didn't see any more about---about it. You went somewhere else.

A. I went home and had supper, and then I came back down to the Police Station around 7 o'clock that evening.

Q. And what did you do then?

A. Nothing. I just came down and talked to---to Mr. Sutherland for a few minutes.

Q. This fellow over here.

A. Yeah.

Q. You didn't---you didn't see Mr. Neighbors then.

A. No, I didn't see him.

Q. What did you do; go ask Mr. Sutherland---Sutherland---Sutherland if this would be enough to get you a suspended sentence?

A. No, huh-uh. I went down there to talk to him on some---some business, and I never did get in touch with him.

Q. Oh, I see.

A. I went down---I went---

Q. You went down---you had---you had some business with the Detective Department though later after you'd---already caught Mr. Neighbors you still had some business with the Detective Department that night.

A. Yes, I had something I wanted to talk to them about. That's right.

Q. Now, you said in your particular case you weren't given any promises as such.

A. No sir.

Q. But you---what do you mean by the word "as such," the qualification, "as such?"

A. I was---I wasn't promised anything, but I felt that it would be in my better interest for me to cooperate. I just did nothing---to lose nothing and gain. That's the only thing that I could do was gain.

Q. In other words, they told you they'd make the Judge aware though of the---of your cooperation in apprehending the villain and so forth.

A. That's correct.

Q. So, at least there was that much of a promise.

A. That's right.

Q. In other words, there wasn't any direct promise as such that you would be not sentenced to the penitentiary, or rather to serve. But there was a promise---no direct promise as such, but a promise that if you would help them catch people who peddled drugs then they'd tell the Judge all about, and that might go easy on you, sort of thing, indirect understanding.

A. That's right.

Q. But still, I mean, that message came across to you loud and clear that---that---that the Judge would have a propensity to be lenient with you if you helped catch a couple of villains.

A. Well, I don't know whether he'll be lenient or not---

Q. I understand that. But you thought he would sort of have a propensity, I'll call it, to be lenient.

A. That's right.

MR. KENNETT: All right. Thank you.

REDIRECT EXAMINATION

BY MR. MCLAUGHLIN:

Q. Mr. Patterson, I believe you stated in response

to one of Mr. Kennett's questions that your bail was lowered prior to your talking with the Police Department.

MR. KENNETT: Wait a minute. Wait a minute. I didn't hear what the question was.

Q. The question was, I believe in response to one of your questions concerning his bail that it was lowered prior to the time that he ever talked to the Police Department. Is that correct?

A. I believe it was. I, you know, I was upstairs and so I wanted to work. See, my family was handling, you know, the procedures to get me out on bond. And so---

Q. Did you have a lawyer working for you?

A. Yes, I did.

Q. Matt, when did the Police drive by at the time you were talking to Mr. Neighbors? Was it before or after the sale?

A. It was right at the time he was handing me the pills, right---they pulled right up, right when he was handing me the pills through the window.

Q. At any time that morning or that afternoon when the purchase was made did Mr. Neighbors express any reluctance to you to do this?

A. No, other than the fact that he didn't like the place that we were first, you know, the parking lot. That was the only time that he thought, you know, he had any doubt, expressed any doubts at all.

MR. MCLAUGHLIN: I have no further questions.

THE COURT: All right. Come down please. Call your next witness.

(The Witness Stands Aside)

G. W. SUTHERLAND

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

DIRECT EXAMINATION

BY MR. MCLAUGHLIN:

Q. State your name and occupation to the jury, please.

A. G. W. Sutherland, I'm a Detective for the Roanoke City Police Department.

Q. Detective Sutherland, what are your present duties and what were your duties on January the 3rd in the Police Department?

A. Assigned with the Vice Division.

Q. In that capacity did you come in contact with Matt Patterson?

A. Yes, I did.

Q. Would you tell the jury the circumstances surrounding January 3rd and your contact with Matt Patterson?

A. Well, Mr. Patterson called the office and informed us that he'd been contacted by the defendant in reference to

a narcotic sale. We informed Mr. Patterson that we would meet him in Highland Park at 5:30 that evening.

Q. Did you meet him there?

A. Yes, we did. Detective Barrett and I met the informant, Mr. Patterson, in the Park on top of the hill.

Q. What time did he call your office?

A. It was around 3 o'clock in the afternoon.

Q. Well, what transpired in Highland Park?

A. Prior to going to Highland---excuse me---prior to going to Highland Park, Detective Barrett and I recorded the serial numbers on one $5.00 bill and five $1.00 bills. Detective Barrett dusted the money with ultraviolet powder, placed it in an envelope. Then we went to Highland Park and met Mr. Patterson. I searched Mr. Patterson and his automobile thoroughly; found no drugs whatsoever. At this point, Detective Barrett handed Mr. Patterson five one---five $1.00 bills and one $5.00 bill. We then left Highland Park. We followed Mr. Patterson to the church, to the parking lot at the rear of St. Mark's Lutheran Church.

Q. Where is this located?

A. Third Street and Highland Avenue, S. W.

Q. Is that in the City of Roanoke?

A. Yes, it is.

Q. All right. What transpired there?

A. We parked my automobile behind a building. Mr. Patterson parked at the---in the lot next to the street.

We got out of my automobile and watched Mr. Patterson. This was about 5:45 p.m. About 6 p.m. Mr. Neighbors drove up into the lot, got out of his automobile, and walked up to Mr. Patterson. They had a short conversation, which I was unable to overhear. Then Mr. Neighbors got back in his automobile and they both left traveling south on Highland Avenue--- on Third Street towards Walnut Avenue.

Q. Where did they go from there?

A. They went to Third Street and Walnut Avenue and turned the corner.

Q. Is this location also in the City of Roanoke?

A. Yes, it is.

Q. What transpired there?

A. I observed them turn the corner. Just as we went around the corner, Mr. Neighbors was standing at Mr. Patterson's automobile. Just as I turned the corner, he had his hand inside the car window. I drove on past where they were parked and turned the corner on Franklin Road.

Q. Was Mr. Patterson sitting in his car at the time?

A. Yes, he was.

Q. Could you tell whether Mr. Neighbors was alone at the time?

A. I don't know if he was or not; I couldn't say.

Q. Did you continue to observe the parties after

you passed them?

A. We then turned the corner and stopped. In just a relatively few seconds, I'd say thirty seconds at the most, Mr. Neighbors came around the corner and Mr. Patterson met us at the parking lot of Lotz Funeral Home at Franklin and Highland. He got out of the car, handed me two, small, white tablets, which I placed inside of a piece of cellophane in my pocket.

Q. All right. Did he then inform you from where he'd obtained these tablets?

A. He stated that he had bought them from Wilford Neighbors.

Q. Would you tell us what you then did with those tablets?

A. The---well, I placed them in my pocket until Mr. Neighbors was arrested.

Q. What time did you arrest Mr. Neighbors?

A. This was about, I would say thirty minutes after we met Mr. Patterson back at the parking lot.

Q. Where did you arrest him?

A. At the parking lot at the rear of the church.

Q. Did you search the person at that time?

A. Yes, we did.

Q. Did you recover some of the marked money?

A. Yes, we did.

Q. Detective Sutherland, I'm going to hand you

five $1.00 bills and a piece of paper and ask if you can explain to the jury please what these are?

A. All right. This slip of paper, on this slip of paper are written six serial numbers; it was dated January the 3rd at 5:15 p.m. I read these serial numbers off to Detective Barrett and he wrote them down on a piece--- on this slip of paper.

MR. KENNETT: I don't guess I'll object, but you have to have both of them here to show that he wrote down what was called to him before you can authenticate it. I'll waive the objection.

THE COURT: All right.

Q. (Mr. McLaughlin Continues) All right. Would you tell the jury where you recovered this amount of money?

A. Four of the $1.00 bills were recovered from Mr. Neighbors. One was taken from the pants' pocket of Mr. Ratcliffe, who was in the car with Mr. Neighbors at the time that he was arrested.

Q. Was anything else done to this money?

A. Yes, it was dusted with ultraviolet powder.

Q. What is ultraviolet powder and what are its purposes?

A. It's a powder that will not reflect unless it is produced under an ultraviolet light or black light.

Q. Does this ever come off the money?

A. It---it comes off on anything that touches the money.

Q. Would it come off on skin if the---

A. Yes, it does.

Q. ---fingers came in contact with the money?

A. Yes, it does.

Q. And could you tell us what happens---is there some way of detecting whether it's on your skin or not?

A. You have to put it under an ultraviolet light.

Q. And what happens?

MR. KENNETT: Excuse me. Mr. McLaughlin, are you going to use Mr. Viar as a witness? He just came in---

MR. MCLAUGHLIN: No.

MR. KENNETT: ---he's not separated.

MR. MCLAUGHLIN: No.

MR. KENNETT: All right.

Q. (Mr. McLaughlin Continues) Could you tell the jury please, if I were to come in contact with some money that had been treated with ultraviolet powder and my hands were put under an ultraviolet light, what would happen?

A. If the room is completely dark, if you put your hand under the blue light, the ultraviolet powder will shine like a---it will be small particles all over your hands.

Q. Does the Vice Squad have one of these black lights?

A. Yes, we do.

Q. Did you check Mr. Neighbors' hands out the afternoon of June---January 3rd, 1972?

A. Yes, we did.

Q. Tell the jury what you observed please.

A. He had ultraviolet powder on both of his hands.

MR. MCLAUGHLIN: Judge, we'd like to offer in evidence the money at this time.

THE COURT: Yes sir. Let it be introduced and marked Commonwealth's Exhibit. All of them can be put in one.

MR. MCLAUGHLIN: I believe it's already _____.

THE COURT: All right.

(Marked money received, marked, and filed as Commonwealth's Exhibit #1.)

Q. (Mr. McLaughlin Continues) Did Mr. Neighbors make any statement to you at that time?

A. No, he did not.

Q. All right. Detective Sutherland, what did you then do with the two pills that were in your shirt pocket?

A. Took the pills out, locked them in our safe in our office. The following day, I packaged these two pills in a box, mailed them to the drug laboratory in Richmond by registered mail.

Q. Did you receive a registered mail certificate at the Post Office?

A. Yes, I did.

Q. Is this the certificate which you received at that time?

A. Yes, it is.

MR. KENNETT: I'll stipulate he sent the thing to Richmond.

MR. MCLAUGHLIN: Your Honor, we'd also like to make this part of the record.

THE COURT: All right, sir. That will be marked Commonwealth's Exhibit #2 without objection.

(Certificate received, marked, and filed as Commonwealth's Exhibit #2.)

Q. (Mr. McLaughlin Continues) Detective Sutherland, did you yourself make any deals with Matt Patterson, make him any promises?

A. No, I did not. I had very little conversation with Mr. Patterson except prior to this incident. I did not arrest him on the previous occasion.

MR. MCLAUGHLIN: Answer any of Mr. Kennett's questions.

CROSS EXAMINATION

BY MR. KENNETT:

Q. Now, let's see. Mr. Sutherland, you had six pieces of United States Currency that were---that you called the serial number off to Officer Barrett.

A. That's correct.

Q. And supposedly, although he's not here, he correctly transcribed those six numbers on that piece of paper.

A. That's correct.

Q. One was a $5.00 bill and the other five were to a $1.00 bill.

MOTION TO STRIKE

MR. KENNETT: All right. If it please the Court, the defendant, at the conclusion of all the testimony of the Commonwealth in the -- in open court with the defendant present and making this motion by counsel, moves the Court to strike the evidence of the Commonwealth and enter a summary judgment of acquittal on the grounds that the evidence if insufficient to support a conviction beyond a reasonable doubt; even though there's been clear testimony that Mr. Neighbors did distribute two capsules of morphine sulphate, a controlled drug, even though small in -- even though it was a small amount of -- of drugs involved , even if he did distribute to Mr. Patterson. However, Mr. Patterson's own testimony is such * that it would [page 108] seem to be without even presenting the defense of entrapment, there's an entrapment as a matter of law. He's almost confessed to it.

THE COURT: I overrule your motion.

MR. KENNETT: All right. And the defendant excepts.

MARY ELLEN NEIGHBORS [page 108]

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

DIRECT EXAMINATION

BY MR. KENNETT:

Q. Please state your name.

A. Mary Ellen Neighbors.

Q. Do you know the defendant, Wilford Harley Neighbors?

A. He's my husband.

Q. And how long have you been married to him?

A. Five years in August.

Q. Pardon?

A. It will be five years in August.

Q. Now, I want to direct your attention to January the 3rd, 1972, the day that he was arrested around about 6 o'clock or so in the afternoon. During that day, like early that day or in the morning, did you see William M. Patterson?

A. Yes, I did.

Q. What---where did you see him and when did you see him?

A. He came into our trailer. He came out to our trailer at---

Q. Well, let me ask you this. Do you live in a trailer?

A. We used to.

Q. At this---on January the 3rd, 1972---

A. Yes, uh-huh.

Q. ---you lived in a trailer?

A. Yes.

Q. And where---where is the trailer you lived in, I mean, what section of town; I don't guess it's particular---

A. It's route 6, Roanoke County.

Q. Roanoke County. All right. And go ahead. Now, what time of day did Mr. Patterson come by?

A. It was about 7 or 7:30, in between there.

Q. In the morning?

A. In the morning.

Q. All right. Now, what did he---what---what, if anything, did you see him do or---or did you just no more than see him just come?

A. Well, he came to the door and he asked for my husband and he wanted to know if he had any drugs; that's what he asked my husband. And my husband told him, no, he didn't have any, that he didn't take nothing but that methadone out there at the Clinic and he didn't mess with nothing like that.

Q. Pardon?

A. He didn't mess with anything like that, that's what my husband told him.

Q. And then what happened?

A. And he kept asking him and asking him, you know, bugging him, keep asking, you know. And I told him, I said, "It would be better if he just left and not come out there no more," because I have a little daughter that's three years old and I don't want that around her.

Q. Then did Mr. Patterson leave?

A. Yes, he did.

Q. And I take it the next time you saw your husband

he was arrested.

A. Yes.

Q. So, you don't know what transpired the rest of the day.

A. No, that's right.

MR. KENNETT: All right. Answer any questions Mr. McLaughlin has.

CROSS EXAMINATION

BY MR. MCLAUGHLIN:

Q. Mrs. Neighbors, have you seen Mr. Patterson in the company of your husband prior to January 3rd?

A. No, I haven't.

Q. Never have seen him around your husband before?

A. No.

Q. Did you know Mr. Patterson prior to this?

A. No, I never knowed him; I just seen him.

Q. When had you seen him?

A. Out at the trailer that day.

Q. That day?

A. Just that day.

Q. Well, when did you report to the Police that a strange man was attempting to purchase drugs from your husband?

A. I didn't.

Q. You didn't report this to the Police?

A. No.

Q. I see. And I believe you stated you have a three year old child.

A. Yes.

Q. What time did Mr. Patterson leave?

A. As soon as he got there just about. He didn't stay over five minutes.

Q. Did he introduce himself?

A. My husband told me who he was. I knowed him by seeing him.

Q. You know---knew him to see him?

A. No, he told me who he was.

Q. Oh, your husband told you who he was.

A. Yes.

Q. So you don't really know who it was that came out there.

A. Yeah, I know who it was, because I seen him before after that.

Q. After that?

A. Yes.

Q. Do you know whether your husband has ever sold drugs to him or not?

A. No, I don't know nothing about that.

Q. Your husband doesn't mess around with drugs.

A. Not around me he don't---

Q. Well, not around you he doesn't---

A. ---as far as I know.

Q. I see.

A. As far as I know he don't.

Q. He doesn't?

A. As far as I know.

Q. Do you know your husband is on the methadone clinic?

A. Yes, I know that.

Q. So he was addicted at one time.

A. Yes, but I never knowed he take any drugs like that except what doctors give him---

Q. Well, he never---

A. ---prescribed him.

Q. He never took anything but what doctors gave him.

A. That's right. Doctor Cruser in Salem---

Q. I see.

A. ---wrote prescriptions for him.

Q. And is your husband your sole support, ma'am?

A. Yes.

Q. So if he were to be convicted it would be an extreme hardship on you?

A. That's right.

MR. MCLAUGHLIN: OK. I have no further questions.

MR. KENNETT: Thank you.

(The Witness Stands Aside.)

WILFORD HARLEY NEIGHBORS

the defendant, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENNETT:

Q. Please state your name.

A. Wilford Harley Neighbors.

Q. Mr. Neighbors, well, first, have you ever been convicted of a felony?

A. Yes, I have.

Q. Are you a drug addict or were a drug addict?

A. I was a drug addict. I have a methadone habit now.

Q. Methadone habit now?

A. Yes sir.

Q. What is the methadone---

A. Methadone is a servant to get you clean from heroin or all hard drugs. And once you are---you take the methadone, you can't take---you don't have a crave or anything for any other drug. And if---if you use the drug, any other drug even if it's a barbitual, it shows in your urine. And they take a urine specimen every night at the methadone clinic. And if you have---if you have come with a dirty urine, then you're automatically discharged from the clinic.

Q. Where is the clinic that you're talking about?

A. At the Roanoke Memorial Rehab on Jefferson Street

and McClanahan Street.

Q. And prior to January---prior to the time you were arrested on January the 3rd, 1972 in this matter, were you attending the methadone clinic, this clinic?

A. Yes, I was. I had been---

Q. How long had you been attending the methadone clinic?

A. Approximately eighteen months.

Q. Eighteeen months. Now, what was your purpose now of getting treatment at the methadone clinic?

A. To---to get away from the hard drugs, and to clean out from the---from the hard drugs.

Q. And you're saying after eighteen months, you'd gotten off drug addiction but gotten into a methadone habit.

A. To a methadone habit, yes sir.

Q. Now, what would be the next step? Then they would withdraw you slowly from the methadone?

A. That's what they're doing now. The methadone, I think I was started from 160 milligrams and now I'm taking approximately 15 milligrams.

Q. You're saying that since you've been out---since the arrest, I mean, you've been out on bail and you're still taking the treatments?

A. Yes sir.

Q. And you're---you're down now to a lesser methadone habit.

A. Oh, yes sir, a lot lesser.

Q. So, now that eighteen months that you say you've been getting this withdrawal treatment, has it been eighteen months, you mean, from today, or is that before you got arrested and you've been on it another six months?

A. That was before I got arrested that I was on the clinic. I was on the clinic---

Q. Well, I meant the eighteen months that you said.

A. Well, I said approximately eighteen months before I got arrested.

Q. And then you've been on it, still on it from---

A. Yes sir.

Q. ---January til May.

A. Yes sir.

Q. And you're now down to a lesser methadone habit.

A. Approximately 15 milligrams, which I started on approximately 160 milligrams.

Q. But you were---no question about being dyed in the wool, hardened addict before you started taking the treatment.

A. No sir. I was a hardened addict. I was in hospitals for withdrawal. They couldn't draw---withdraw me; I would go into comas, convulsions. And they didn't---they would try the drug that I was using to withdraw me, which was neumorphan and I couldn't withdraw from it. And at the time that I was in the hospital, St. Elizabeth's in Washington,

they didn't have this methadone. They didn't know what it was. And they have recently come out with it and they have a program here in Roanoke and it's run by the Food and Drug Administration, which they have several doctors over top of it. And the doctors meet at the clinic every night along with the patients. And the urine specimen is took every night.

Q. And you go every night?

A. Every night, yes sir.

Q. Never miss a night?

A. No sir.

Q. Even the week or so that you were in jail, did you go from the jail over there every night?

A. Yes sir. Judge Ballou had the Sheriff give me transportation to the hospital and back, which was a---which they couldn't take you out of the jail at night, but they took us to the emergency room at Roanoke Memorial---Roanoke Memorial Hospital where they had the place set up there that I could get it there and brought from the hospital back to the jail.

Q. All right. Now, let's go into the question of January the 3rd. When---when on that day did you---this was the day that you were arrested, in case you don't know what the date January the 3rd is, what day on that day---what time on that day did you first see Mr. Patterson?

A. Mr. Patterson came to my house, well, my trailer,

well, it wasn't mine; I was renting it and---

Q. Came to where you lived then.

A. Yes sir.

Q. Where is---where is the trailer?

A. It's route 6, Roanoke County.

Q. All right. Take---take your hands away from your finger; I don't mean to give you a hard time, but the jury might hear you better if you just talk---You say it's right in the Mount Pleasant area of Roanoke County?

A. Yeah.

Q. That's in the east, sort of the east way of the City.

A. Yes sir.

Q. Southeast.

A. Yeah.

Q. All right. And who lives in the trailer?

A. Me, my wife, and we have one daughter.

Q. All right. And what time did Mr. Patterson show up?

A. I guess, took it to be around 7, or 7:30, we hadn't---it was between 7 and 7:30; we hadn't got out of the bed yet, well, I hadn't got out. The baby was out of the bed and was playing and I was awake.

Q. All right. And just tell us what happened.

A. Well Mr. Patterson came up and knocked on the door. And my wife went to the door. And he asked if I was there and she told him yeah, to come on in. So, he came on

in the living room and I got out of bed and slipped my trousers on and came into the living room where he was at. He asked me, he says, "Do you have any drugs?" I said, "Naw," I said, "I don't man," I said, "I been on the methadone program out there for quite awhile." I said, "I don't have any urge for them." I said, "I'm trying to get away from them." And he said, "Well, do you know anybody that I might be able to get any from?" I said, "Naw," I said, "I've lost all contacts from all the pushers and all the users other than what's on the clinic," because we had been threatened about hanging with the---the users. So, anyway, he explained to me that he was out of jail on bond and everybody was afraid of him and wouldn't sell him anything and he was trying to---to quit but he still had a habit and he was awful sick and he was on his way to work and he didn't think he could make the day through. So, I told him that I didn't have anything, that I wasn't using anything, and he just kept---just practically begging---begging for it. So, my wife told him---

Q. Have you been in the position---have you been in that same position yourself---

A. Oh, yes I have; several times, a lot of times I have.

Q. ---of needing a fix and have to beg for it?

A. Yes sir, I have.

Q. Describe that---describe that feeling.

A. Well, it's just a---it's just a feeling that you

have to have it or you're---you're going crazy. You just---I don't know; it's just a feeling you can't describe when you're sick, I mean, every nerve and muscle in your body just wrenches I mean, you just---I don't know how to explain it; just a--- I've never had a feeling like it.

Q. But anyhow he---he was telling you he had that kind of a feeling---

A. Yes sir.

Q. ---that you yourself have witnessed.

A. Well, he didn't tell me in those words, you know, but I---I knew by the condition that I have been in that that's what he was in when he was in withdrawal.

Q. All right. Now, as a result of him begging you and you telling him you didn't know anything---didn't have any-supply, what---what---how did the conversation end?

A. My wife just told him that he would have to leave. Says, "I have a daughter here at the house." Says, "I don't want her to have anything at all to do with any drugs and know anything about any drugs." And said, "I would appreciate it very much if"---in fact, I had to shove him out the door and shut the door on him. So, I guess about 9 o'clock I got away from the house and came to the pool room down on Jefferson Street. Well---

Q. What day of the week was this?

A. This was on Monday morning.

Q. All right.

A. So, I was in the pool room, sitting down there, was talking to Mr. Richard Ratcliffe, which is a very good friend of mine; he's on the clinic. And at the time I was transporting him backwards and forth to the clinic; he's 74 years old and he don't have any means of transportation back and forwards to the clinic.

Q. He's on the clinic too, you mean, both of you on the clinic?

A. Yes sir.

Q. I take it that the people---these drug users or former drug users, you sorta know each other, I mean---

A. Yes sir. We have a---

Q. ---you have a common problem.

A. ---we have a therapy meeting on Mondays and Thursdays and the group meets, then---then we have a therapist for whatever to---

Q. Now, how did you know Mr. Patterson? Has he ever joined your therapy or anything like that?

A. No, he hasn't.

Q. But you knew him just because he was a user?

A. Yes sir. I knew mostly---when I was using drugs, I knew most of the users and most of the pushers.

Q. I think Mr. Patterson---Patterson testified back there years ago you had even sold him some. Do you recollect it?

A. Yes, I think at one occasion I did sell him---well,

it wasn't morphine at the time; it was neumorphan. Well, I didn't sell it to him; I gave it to him. And---

Q. That was years ago?

A. Yes sir. And I had a legal prescription from Doctor Fred Cruser, which was running a program in Salem at the time. And I had a legal prescription from him. He supplied me---

THE COURT: I think we're going into too much detail---

MR. KENNETT: All right.

THE COURT: ---on this. Let's get down to the---

MR. KENNETT: All right. Let's get down---let's get on down to the thing about now you're down at the pool room. Let's go into that.

A. Well, I was in the pool room. I got to the pool room about---between 10 and 10:30. So, along about lunch time, Mr. Patterson came in the pool room. He looked all around; he seen me, and he walked over, said, "Have you found out anything?" I said, "About what?" He said, "About anybody that has any drugs." I said, "No, I haven't." I said, "I'm not looking for any." So, he just done everything. He said, "I'll get right down on---on---on the floor or on my knees and kiss your bare behind if you'll do something for me." He said, "Man," he said, "I'm about to die." Says, "You know how I feel." He said, "I've got to give my job up." So, then I told him, I said, I said, "Well, I don't have anything, Patterson." I said, "I'll see if I can get you

anything." So, I went and talked to this fellow that I knew. He was known as a Kingpin of the drug store break ins in Roanoke and which I think he's in custody now.

Q. What's his name?

A. Dennis Newcomb, Dennis Warren Newcomb.

Q. All right. And then what happened?

A. So, Dennis let me have two morphine sulphate tablets. And he---he told me, he said, "I'm not going to charge you regular price for them." He said, "Because I know you're not go use them yourself." So, he charged me $5.00 for the two. And a quarter grain of sulphate usually sells for---for $7.00 each. So, he let me have the two for $5.00. So, I took them over on Highland Avenue. Well, I went over on Walnut Avenue and Third Street. They was in a little glass vial, and I planted them beside a telephone pole in the grass over there. So, I went down to the place he works and I told him to meet me on the Third Street parking lot. And he said, "What time?" I said, "Well," I said, "I'll be going to the clinic approximate---between 6, 6:30, around there somewhere." He says, "All right." He says, "Be sure and be there." I said, "I'll be there." So, I pulled up in the parking lot---

Q. Now this---you mean the parking lot behind St. Mark's Lutheran Church?

A. Yes sir.

Q. All right. Go ahead.

A. I pulled up in the parking lot. He was already

sitting there. So, he got out of the car---

Q. Did you have anybody with you when you pulled up in the parking lot?

A. Yeah, Mr. Ratcliffe was with me.

Q. All right.

A. So---

Q. Were you taking him to the clinic?

A. Yes sir.

Q. All right. Go ahead.

A. So, we stopped in the parking lot and Mr. Patterson's car was there. So, he got out of his car and walked around to my car. And he said, "Have you got them; have you got them?" I said, "I got them down the road." I said, "Just follow me down the street." He says, "All right." So, he got in his car and I got in my car and pulled out, and he hesitated like his car wouldn't start or something. So, I went on down to Third Street and turned in on Walnut Avenue. Well, a couple of minutes later he pulled in behind me. So, I walked back to his car. He says, he says, "How much are you go charge me for them?" I said, "The man let me have two of them for $5.00." So, he give me five $1.00 bills and stuck a $5.00 bill back in his shirt pocket.

Q. Now this is when you were standing at the window of his car?

A. Yes sir.

Q. All right. Then what?

A. Then I went---

Q. Did you---did you see the Police go by at that time or---

A. I seen a---it was several automobiles by; I didn't know any of them was Police officers. There wasn't any Police vehicle went by.

Q. All right.

A. So, I got in my car, and I circled around two blocks---

Q. Well, how did you give him the morphine sulphate? I mean, you said you went and he gave you $5.00 and put---

A. I told him where it was at; that it was beside a telephone pole.

Q. Was the telephone pole right where you were---

A. Right beside his automobile.

Q. Did he get out and get them?

A. All he had---he wouldn't have had to got out, just slide out over on his other side and open the door and get out.

Q. Well, did you see him do it?

A. Yes sir. So, I drove off and went out to Franklin Road and went south on Franklin Road two blocks and came back to Third Street and back to Third Street parking lot. So, when I pulled in Third Street parking lot, I sat there a few minutes. Then I got out of the car and started across the street. And when I did, Mr. Sutherland, the

detective, hollered, "Halt." Said, "You're under arrest." Said, "Stop right where you're at." So, I stopped. And he said, "Put your hands on top of your head." So, I put my hands up on top of my head. He patted me down.

Q. Well, let me just ask you a question. The five $1.00 bills; did you have all five of them on you?

A. Yes sir. No sir, I didn't. I'd gave Mr. Ratcliffe one that I had---that I had got up in the pool room, because only---I think the smallest thing I had was a $5.00 bill. And I got a dollar from him to get a Coca-Cola and a pack of nabs or something with up in the pool room. And so---

Q. So you gave him a dollar back?

A. I gave the dollar back to him. And I had four $1.00 bills that was---turned out to be the Vice Squad's money.

Q. Did you have any other money on you besides that four?

A. Yes sir, I did. I had a---well, I think I had about nineteen, eighteen, nineteen, twenty dollars left that---

Q. So the way Mr. Ratcliffe got the dollar bill was that you paid him back a dollar that you owed him.

A. Yes sir. He gave me $5.00---five $1.00 bills.

Q. By "he" you mean Mr---

A. Mr. Patterson.

Q. ---Patterson.

A. Gave me five $1.00 bills and he had another $5.00 bill in with the roll and he just pulled it out and

put it in his shirt pocket and gave---He said, "Now, count that and see if it ain't right." So, I---and I said, "Yes." So, then I went south on Franklin Road two or three blocks; I don't know exactly which. And I came back to Third Street, back to the parking lot.

Q. And that's when you were arrested.

A. Yes. I was patted down on me; I wasn't, say, really searched. I was just patted down to see if I was---had a weapon or something. And I was handcuffed with my hands behind me and brought to the Vice Squad room where I was stripped from head to bottom.

Q. I take it they didn't find any other drugs or anything on you.

A. No sir. And before---before all this ever happened, every---every time that I was ever---I was working with Adams Construction Company---

Q. Naw, naw. I don't think---you can't---you can't don't go into that. All right. Answer any questions they have.

CROSS EXAMINATION

BY MR. MCLAUGHLIN:

Q. OK. Mr. Neighbors, you are a convicted felon; is that correct?

A. Yes sir.

Q. OK. You say Mr. Patterson came out to your

trailer about 7:30 in the morning?

A. Between 7 and 7:30.

Q. Well, how long prior to January 3rd had it been since you'd sold him drugs?

A. I guess two years.

Q. So you---

A. Or maybe---maybe longer. And I didn't---I didn't sell them to him, you know; I just gave them to him. He was in a drug store one morning.

Q. You distributed drugs to him at least once that you can remember, possibly other times.

A. Once anyway.

Q. Possibly others?

A. No, I don't---

Q. You can remember everybody that you've given drugs to for two or three---

A. Yes, I can.

Q. You can.

A. Yes sir.

Q. And you've been on methadone for eighteen months and lost all your contacts; is that right?

A. Yes sir.

Q. Now, when he came to the pool hall, what time was it?

A. It was---I'd say five minutes after 12, along that area.

Q. I thought it was 9 o'clock in the morning.

A. That's when I got to the pool room.

Q. Oh, when you got to the pool room. What---

A He came in around lunch time, or something. Told me he was on his dinner hour and he had to get back and---

Q. Was he in pretty bad shape then?

A. He acted pretty bad; yes, he did.

Q. Now, what's your occupation?

A. Now or then?

Q. Then.

A. I was a truck driver for Adams Construction Company.

Q. Were you not working that Monday?

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

Q. And what time did you meet Mr. Newcomb, the person you allegedly got the drugs from?

A. About 2 o'clock.

Q. So, you really hadn't quite lost all your contacts. It took you a little less than two hours to come up with some morphine even after you'd been out of it for eighteen months.

A. I hadn't used any for eighteen months, naw. But I had seen Mr. Newcomb quite often.

Q. You didn't think he'd---that Patterson could get through the day, that he was really sick, and he made all these statements to you about what he would do for drugs.

A. Yes sir.

Q. Who all was around when he did all of this?

A. Well, Mr. Ratcliffe was around.

Q. Was Newcomb there?

A. Naw, Newcomb wasn't there. I had to go to Newcomb's home.

Q. So you pretty well kept up your contacts. Mr. Ratcliffe is on the methadone program; so, he was an addict and you were an addict and Newcomb---

A. Well, he's---

Q. ---is Kingpin of the drug sales, in your term. So you pretty well kept up---

A. Naw---

Q. ---your contacts.

A. Naw, I didn't keep up with any---any contacts other than the people that was on the methadone clinic. And if you attend the therapy group with people twice a week, you're naturally going to know them; I mean, from inside, outside.

Q. And you told him that you'd meet him at 6.

A. Between 6 and 6:30.

Q. Even though he was in such a bad shape as you described to this jury, you decided to let him suffer for six more hours.

A. Well, he couldn't---said he couldn't get away from his place up there. And I told him I wouldn't bring them up there if I could get them.

Q. You didn't go up that place at all?

A. I went up there and told him to meet me at 6---between 6 and 6:30, that I had got them for him.

Q. Well, what---

A. And then he wanted me to bring them up there. And I told him, "Naw," that I wouldn't---that I wouldn't bring them up there.

Q. You paid how much for these two morphine sulphate tablets?

A. I got both of them for $5.00.

Q. $2.50 a piece. Approximately how much time elapsed between the time that you sold them to Mr. Patterson and the time you were arrested?

A. I'd say no more than fifteen minutes, if that much.

Q. Weren't the Police officers on the parking lot when you arrived there and jumped you as you got out of your car?

A. Yes sir, they was.

Q. So, you didn't actually sit in your car for awhile before the Police arrived.

A. I sat in my car awhile when I went back to the parking lot, but the Police officers was already there in a private car. I believe it was a white and black automobile with a black top on it. And the car was there, but they never---they never arrested me until I got out of the car.

And when I got out of the car, then they arrested me.

Q. The two year period since it's been since you allegedly sold drugs to Mr. Patterson, what has been your contact with him since then?

A. I've seen him. I haven't had any contacts with him.

Q. He didn't go to the methadone clinic, does he?

A. He's not on the program, naw. But he has went to the methadone clinic, and bought drugs from dealers that came out there.

Q. Out there?

A. Yes.

Q. So a lot of dealers come out to the clinic?

A. Yes, a lot of dealers---they don't come in the clinic; they're not allowed in the clinic.

Q. But you know them to be dealers?

A. Oh yeah.

Q. So, you haven't lost all your contact.

A. I didn't have any dealings with them.

Q. Oh, you didn't---

A. I just knew they were dealers---

Q. ---have contact with them?

A. ---and I knew if I were to---and I knew if I did deal with them or I came with a dirty urine, then I would be discharged from the methadone clinic. And there's been several discharged from the methadone clinic because of dirty urines.

And there's no way around a dirty urine showing up if you use drugs.

Q. You're sure there's no way around it?

A. There's no way around it, because the doctor watches you when you---when you give your urine, he watches you. He makes sure you don't have it in any bottle or belong to anybody else. He makes sure it's yours.

Q. What type of drugs were you selling when you were selling drugs?

A. I never sold any drugs.

Q. Well, when you gave drugs away.

A. Neumorphan.

Q. Neumorphan?

A. Yes sir.

Q. Is that a morphine derivative?

A. It's based on morphine, yes.

Q. What did Mr. Patterson allege that he wanted when he came out to see you?

A. This---when he came out to me at the trailer, he wanted anything he could get.

Q. Do you recall what he was wearing?

A. He didn't care what it was.

Q. Do you recall how he was dressed?

A. No, I don't. I think he had on a pair of---pair of boots and a pair of---

Q. Do you recall what color pants he had on?

A. No, I don't.

Q. What kind of shirt he had on?

A. I think he had a long sleeved shirt on with some kind of collar---

Q. Light color, dark color?

A. I don't---don't remember.

Q. You don't recall?

A. No sir.

Q. The first time you had distributed drugs in how long? You've been arrested for it and you don't recall.

A. No sir. I didn't pay any attention to his clothes he had on.

MR. MCLAUGHLIN: I have no further questions.

MR. KENNETT: All right. Come on back.

(The Witness Stands Aside.)

MR. KENNETT: We rest, Your Honor.

THE COURT: Any rebuttal?

MR. MCLAUGHLIN: Yes sir. Call---recall Mr. Matt Patterson.

DIRECT REBUTTAL EXAMINATION

BY MR. MCLAUGHLIN:

Q. Matt, I'll remind you that you're still under oath from your previous testimony. On January 3rd, 1972 did you go to Mr. Neighbors' trailer that morning at 7:30?

A. I---I don't know where Mr. Neighbors lives; I

don't know. No, I've never been to his house or have no idea where it is or trailer or house or what.

Q. Did you see him later that day in a pool hall?

A. No sir.

Q. Did you ever tell him or attempt to simulate withdrawal symptoms from narcotics on January 3rd, 1972?

A. No sir. I wasn't on narcotics.

MR. MCLAUGHLIN: I have no further questions.

MR. KENNETT: No questions.

MR. MCLAUGHLIN: Thank you, Mr. Patterson.

(The Witness Stands Aside.)

MR. MCLAUGHLIN: We rest.

THE COURT: Members of the jury, go back in the room and remain there until you're called.

(Out of the Presence of the jury)

THE COURT: All right, Mr. Kennett.

MR. KENNETT: If it please the Court, the defendant, Wilford Harley Neighbors, by counsel, at the conclusion of all the evidence in the case by both the Commonwealth and the defendant, in the open Courtroom, with the Commonwealth Attorney present, and the jury not present, moves the Court to strike the evidence on the grounds that it is insufficient and enter a summary judgment of acquittal. The reason for the motion is that there's been no issue of fact for the jury to decide

concerning the question of entrapment, which the Court should find is a matter law.

THE COURT; I overrule your motion.

MR. KENNETT: And the defendant excepts.

OBJECTION TO INSTRUCTIONS [Page 137]

MR. KENNETT: - - - the defendant further requests the *Court to [* Page 138] grant some instruction on entrapment in some manner, shape, or form, if not in the language of the two offered instructions, in some other language. It's my understanding that the Court is ruling that I'm not entitled to any type of instruction on entrapment as a matter of law.

[Page 140]

EXCEPTION TO FAILURE TO GRANT MOTION TO SET ASIDE VERDICT AS BEING CONTRARY TO THE LAW AND EVIDENCE

MR. KENNETT: All right. If it please the Court, the defendant excepts to the ruling of the Court. And I take it that you're denying the motion to set aside the verdict as contrary to law and evidence even though - - -

THE COURT: Yes sir, I sure do.

MR. KENNETT: - - - It wasn't specific ruling on that point.

THE COURT: Well, I have done so twice and I'll do so again and I overrule it, sir.

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IN THE

SUPREME COURT OF VIRGINIA

At Richmond

Record No. 8165

JOHN C. ECCLES

Appellant,

v.

COMMONWEALTH OF VIRGINIA.

Appellee,

Record

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COMMONWEALTH OF VIRGINIA

v.

JOHN C. ECCLES

INDICTMENT

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Charlottesville now attending Corporation Court upon their oath present that John Eccles on or about March 22, 1970, in the City of Charlottesville did feloniously sell marijuana to Carl Deavers against the peace and dignity of the Commonwealth. The indictment found on the evidence of Carl Deavers.

COMMONWEALTH OF VIRGINIA Plaintiff

v. Indictment No. 2 - Feloniously sell Marijuana

JOHN C. ECCLES Defendant
Date of Birth: 2/20/47

On this the 28th day of April, 1972, came the Commonwealth of Virginia, by her Attorney, and the defendant, John C. Eccles, appeared in court in obedience to his recognizance; likewise appeared John Lowe, attorney for said defendant.

Thereupon the Court ordered that the evidence and incidents of trial of this case be recorded verbatim by

a Court Reporter, and thereupon Mrs. Elaine Helvin, a competent court reporter, was duly sworn according to law.

The defendant having previously been arraigned upon the indictment herein pending against him had personally entered his plea of not guilty to the charge of feloniously selling Marijuana therein contained.

An the Sheriff of this City having made return of the venire facias issued for the trial of felony cases during the current term, together with a list of the veniremen summoned by him in obedience thereto, upon examination of those so summoned twenty duly qualified jurors free from all just cause of exception were found by the Court to be in attendance.

And the Attorney for the Commonwealth and counsel for the defendant having each aternately striken from said panel of the case at bar, namely: Thomas M. Boyd, Jr., Moses J. Knight, Mrs. Lutie W. Lucas, F. Page Nelson, James G. Morrison, Mrs. Hazel Antrobus, Annie C. Currier, Mrs. Lily B. Jones, Hugh H. Lucas, William K. King, Sue H. Eikner, and Harry N. Lewis, who were thereupon duly sworn and received their charge according to law.

At the conclusion of the evidence on behalf of the defendant, counsel for the defendant renewed his motion to the court to strike the Commonwealth's evidence on same grounds, which motion the Court overruled, and to which

action and ruling of the court the defendant, by counsel, duly excepted.

Thereupon the jurors, aforesaid, having fully heard the evidence, having received the instructions of the court and having fully heard the arguments of counsel, retired to their room to consider of their verdict and, after some time, returned into court with the following verdict, to-wit:

> "WE THE JURY FIND THE DEFENDANT GUILTY AND FIX HIS PUNISHMENT AT FIVE HUNDRED DOLLARS ($500.00) FINE AND THREE (3) YEARS CONFINEMENT IN THE PENITENTIARY. HARRY N. LEWIS, FOREMAN."

And the jury was discharged.

Thereupon counsel for the defendant moved Court to set aside the verdict of the jury as being contrary to the law and evidence, which motion the Court overruled, and to which action and ruling of the Court the defendant, by counsel duly excepted.

An it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, the Court finds the defendant guilty of feloniously selling Marijuana as charged in the indictment and, it is, therefore Adjudged

and Ordered that the defendant be confined in the penitentiary of this Commenwealth for a term of three (3) years and pay a fine of $500.00, and the defendant was advised by the Court of his right of appeal.

Thereupon counsel for the defendant moved the Court to suspend execution of the said sentence, which motion the Court overruled, and to which action and ruling of the Court the defendant, by counsel, duly excepted.

Thereupon counsel for the defendant moved the Court to continue bond pending appeal, which motion, upon due consideration by the court, was granted.

Thereupon counsel for the defendant moved the Court to declare the said defendant a pauper for purpose of obtaining a transcript of record, which motion the court took under advisement and ordered this case continued until further order.

And the defendant was permitted to depart under his recognizance.

George M. Coles, Judge

COMMONWEALTH OF VIRGINIA

v.

AMENDED NOTICE OF APPEAL
AND ASSIGNMENT OF ERROR

JOHN C. ECCLES

TO: Mr. Carl Hennrich, Clerk
Corporation Court of the City
of Charlottesville
East High Street
Charlottesville, Virginia

Kindly take notice that John C. Eccles, Defendant as styled above, notes his appeal from his conviction on April 28, 1972 in the above Court on a charge of sale of marijuana for which he was sentenced to $500.00 fine and three years confinement in the penitentiary. The final judgment order of conviction was entered in this Court on June 8, 1972. A transcript of trial proceedings has already been prepared and filed with the court along with the other incidents of trial.

ASSIGNMENT OF ERROR

For his Assignment of Error, the Defendant notes the following:

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2. It was error for the Court to admit evidence of prior criminal acts, including the possession of a quantity of marijuana allegedly obtained from Boston, Massachusetts, since these prior criminal acts bore no

relevance to the charge for which the Defendant was being tried, and tended only to inflame and prejudice the jury. Particularly is this true where the Defendant offered to stipulate that he had knowledge about the marijuana in general.

***

JOHN C. ECCLES

By Counsel

John C. Lowe,
Counsel for John C. Eccles
1111 West Main Street
Charlottesville, Virginia

1 THE COURT: You think he just asked for four bags
2 without knowing what was in them?
3 MR. LOWE: I think there is reasonable doubt --in
4 any event as a matter of law...
5 THE COURT: I am not ruling on the case. I am just
6 ruling on what goes to the jury and I think very
7 definitely this is a fact or circumstance to be
8 considered by the jury. I will overrule your
9 objection.
10 MR. LOWE: We except, Your Honor.
11 THE COURT: All right.
12 RECESS
13 JURY OUT
14 MR. CAMBLOS: May it please the Court: I do intend
15 to go into the question with this witness as to
16 the defendant's knowledgability concerning the
17 marijuana.
18 THE COURT: Why don't we get Mr. Deavers back on
19 the stand and ask him the question you propose
20 and let Mr. Lowe have a chance to object to it
21 out of the presence of the jury?
22 MR. CAMBLOS: It would not come at precisely at
23 this point in direct-examination but I can still
24 do it, Your Honor.
25 THE COURT: All right.

1 BY MR. CAMBLOS:

2 Q Mr. Deavers, do you have any knowledge as to
3 whether the defendant was knowledgeable concerning
4 marijuana at this time?

5 A Yes, sir.

6 Q What knowledge do you have concerning his knowledg-
7 ability about marijuana?

8 A Conversations in his presence relative to marijuana
9 different grades, different types of marijuana
10 that were in the area that I was purchasing and
11 also at different times seeing him smoke to be
12 what was alleged to be marijuana.

13 Q Had you ever been in his presence where he could
14 see it, packages alleged to contain marijuana?

15 A We were both in one room where packages were broke
16 out and marijuana was being smoked but I couldn't
17 say that I saw him look at the package when I did.

18 Q You saw the packages in his presence?

19 A Yes, sir.

20 Q And marijuana was smoked from these packages?

21 A Yes, sir.

22 Q Were those packages similar to the packages in
23 this case?

24 A Yes, sir, they were.

25 Q Were the packages in this case in the usual form

in which marijuana was bought and sold in this area at that time?

A Yes, sir.

Q Do you know on how many occasions you had seen marijuana being used in the presence of the defendant, or could you give us an estimate?

A Well, there were several occasions. Some of them occurred after this date but there were several occasions.

Q Which of them occurred before this date, one or more?

A The one time that I can recollect.

Q On how many occasions have you heard marijuana discussed in the presence of this defendant prior to this date?

A Several times.

Q Had this defendant joined in those conversations?

A I don't recall if he did or not.

Q Had Bruce Minton or William Matheny been present on any of these occasions?

A Yes, sir.

Q Had they been present on all of them or most of them or just one of them?

A I can just say some. I don't recall how many.

MR. CAMBLOS: That is the evidence I will offer.

1 THE COURT: Do you have any questions before you
2 make your point, Mr. Lowe?
3 MR. LOWE: I don't think so except to clarify what
4 I said before.
5 At no time did you actually discuss with Mr. Eccles
6 looking at a bag of marijuana and say, "This is
7 marijuana"? Anything of that nature? Your re-
8 collection is merely that he was present at some
9 of the occasions when you were present and when
10 there was marijuana in use?
11 MR. DEAVERS: That is correct.
12 MR. LOWE: I have no other questions, Your Honor.
13 THE COURT: Did I understand you to say that he
14 also had discussed the types of marijuana in your
15 presence?
16 MR. DEAVERS: No, sir, I said that it had been
17 discussed.
18 THE COURT: But not necessarily...
19 MR. DEAVERS: I don't recall statements the defend-
20 ant made himself.
21 THE COURT: Will you state your objection, Mr.
22 Lowe?
23 MR. LOWE: Yes, sir. I think first of all it is
24 attempting to use a prior criminal act by the
25 defendant to show criminal culpability in this

1 instance which is not permitted.

2 Number two, I don't think that it is relevant at

3 this point. First of all, we have not produced

4 any evidence to the effect that Mr. Eccles does

5 not know what marijuana is or didn't know what

6 it was or could not identify it. I think this

7 might be proper rebuttal testimony depending on

8 what the defense testimony was but would not be

9 the case in chief.

10 I think, number three, it does not relate to

11 this particular offense as to whether on other

12 occasions there was marijuana present or whether

13 people talked about it in the presence of Mr.

14 Eccles.

15 That does not show whether Mr. Eccles knew whether

16 it was marijuana or not or knew these ...

17 particularly the issue here is whether he knew

18 these bags were on Mr. Matheny regardless of what

19 they contained and could not relate to that.

20 Now, I remind the Court that the last time that

21 we tried this matter there was a charge of sale

22 and a charge of possession and it may be that the

23 requirement of law, that the knowing, intentional

24 possesion that the Court at that time felt this

25 evidence would be cognizable.

1 Of course, the Supreme Court of Appeals in
2 Virginia granted a writ on this issue - that
3 doesn't decide it in any way but obviously there
4 was some question in their mind and they wanted
5 to hear more argument on it.
6 But in this case we have no possession charge
7 only sale. Now, I think it would not be relevant.
8 I think it would be highly prejudicial and would
9 be inflammatory and could not bear on what the
10 truth of the matter is and for that reason we
11 feel it should not be admitted.
12 MR. CAMBLOS: May it please the Court: Counsel
13 has made an opening statement, I think that the
14 Commonwealth is perfectly entitled to base its
15 own case in part at least on that opening state-
16 ment and prove the case or disprove what the
17 defense counsel has claimed he is going to prove
18 in his opening statement.
19 He says that this would be proper rebuttal. I
20 don't know that coun-el intends to put on any
21 evidence. Counsel might very well rest at the
22 end of the Commonwealth's case and then argue
23 to the jury that I haven't proved that Mr. Eccles
24 knew this to be marijuana. I think this perfectly
25 proper a part of the Commonwealth's case in chief.

1 THE COURT: Anything more?

2 MR. LOWE: The only thing that I would say, Your

3 Honor, my opening statement stands for itself

4 and that was I stated that the Commonwealth would

5 have to prove that element of knowledge and we

6 believe that the evidence would not contain any

7 proof of knowledge.

8 That is different from saying that we would put

9 on affirmative evidence that he did not know.

10 And I think that in this particular case until

11 we put on such evidence then it would be improper.

12 THE COURT: The Court will overrule the objection.

13 The use of marijuana or whiskey or anything, I

14 think implies a certain knowledge of the substance

15 the way it is packaged, the way it is marketed

16 and so forth, and I think that the previous

17 evidence which the Court has admitted to the

18 effect that he said, "Give me four of those bags."

19 referring to the plastic bags according to the

20 evidence before any statement had been made as

21 to what it was would indicate that if he had

22 knwoledge of the contents - would certainly

23 indicate something that the jury could rely upon

24 as to his knowledge. I think it is material

25 for the case which is before them now.

1 I may have said it before but a user of whiskey
2 knows it doesn't come in plastic bags or at least
3 he would ... certainly be surprising if it did
4 but a user of marijuana would know that it did
5 come in plastic bags and I think that the fact that
6 he asked for four of these bags coupled with his
7 actions in going along on the motorcycle trip and
8 so on is a part of the case and is a circumstance
9 for the jury to consider.
10 MR. LOWE: We except to the ruling of the Court.
11 I would ask the Court then to treat this matter
12 the same way as we did in the first trial and that
13 is to allow us to enter a stipulation over our
14 objection on this point.
15 That is to save time and also possible information
16 on it. The stipulation at that time reading from
17 the record:Mr. Camblos said that the stipulation
18 was that Mr. Eccles knew what was in these bags
19 when placed on the blanket and I clarified that
20 once he saw the bags on the blanket that he knew
21 what was in them and he recognized them - recognized
22 what was in them. I would offer -- to make that
23 stipulation under objection again in order to
24 clarify this in the same way as we did before.
25 THE COURT: The Commonwealth doesn't have to go along-

1 MR. CAMBLOS: The Commonwealth doesn't want to
2 stipulate, Your Honor.
3 MR. LOWE: All right, we note an exception to the
4 Court's ruling.
5 THE COURT: All right, ask the jury to return, please
6 JURY IN
7 REPORTER'S NOTE: Examination of Mr. Deavers
8 continues as follows:
9 BY MR. CAMBLOS:
10 Q Mr. Deavers, we had gotten to the point where 11
11 of these bags had been given to you and I had
12 asked you what had happened to the other 4 bags
13 and I believe that had testified to a statement
14 to a request made by the defendant, would you
15 pick up at that point and restate what the defend-
16 ant requested?
17 A Yes, sir. There were 4 bags left - remaining on
18 the blanket and the defendant told Mr. Matheny
19 to give him the other 4 bags and Mr. Matheny
20 handed the other 4 bags to the defendant.
21 Q Did you notice what the defendant did with them?
22 A No, sir. I knew that he received them in his hands
23 but after that I am not certain.
24 Q Now let me go back just a bit, when the 11 bags
25 I believe that you said that Mr. Matheny handed

1 them to Minton and Minton handed them to you?
2 A That is correct.
3 Q Insofar as you could observe was there any parti-
4 cular selection of the 11 bags or was it just a
5 random selection?
6 A It was a random selection.
7 Q I show you ... Your Honor, I have here three plastic
8 bags, and two of them I can't get out of these
9 bottles..
10 MR. LOWE: We will stipulate they will be the
11 same as the first.
12 BY MR. CAMBLOS:
13 Q I show you one of the bags that has been identified
14 as one of the bags that you received on that
15 occasion and I ask you what you did with that
16 bag as well as these two that I can't get out
17 of these bottles?
18 A I kept those three bags in my exlcusive control
19 until I delivered them to the State Drug Lab in
20 Richmond, Virginia to Mr. Delbert T. Agee, Drug
21 Chemist.
22 Q Now these three bags, did you particularly select
23 these three bags from the 11 or again was this
24 a random selection?
25 A This was a random selection.

1 Q Now, Mr. Deavers, was there any observable
2 difference - material difference between these
3 three bags and the other eight?
4 A No, sir, there was not.
5 Q Was there any observable difference between the
6 eleven bags that you got and the four bags that
7 Mr. Eccles got?
8 A No, sir.
9 MR. CAMBLOS: Your Honor, I offer these three
10 bags in evidence as the Commonwealth's Exhibit
11 Number 1.
12 THE COURT: All right.
13 REPORTER'S NOTE: Whereupon, said three bags
14 received in evidence and marked, filed as
15 the Commonwealth's Exhibit Number 1.
16 BY MR. CAMBLOS:
17 Q Now, Mr. Deavers, I believe that you said that
18 you had met the defendant, Bruce Minton and
19 Matheny on about the middle of February?
20 A Yes, sir, it was towards the end of February or
21 the first part of March, I don't recall the
22 exact date.
23 Q Now had you met other persons who were also in
24 so far as you could observe involved in drugs?
25 A Yes, sir, I had.

1 Q Had you seen the defendant in the presence of Mr.
2 Minton and Mr. Matheny and such other persons on
3 occasion?
4 A Yes, sir, I had.
5 Q Do you have any knowledge as to the defendant's
6 knowledgability concerning marijuana?
7 A Yes, sir, I do.
8 Q And what knowledge do you have along those lines
9 from your observation, things that you have seen
10 or heard prior to March 22, 1970?
11 MR. LOWE: I would object, Your Honor, this is not
12 relevant. It is based on guilt by association
13 and it is based on hearsay. It is based on things
14 that don't relate to the offense charged here and
15 I think it is improper evidence.
16 MR. CAMBLOS: May it please the Court: Defense
17 counsel has stated in an opening statement that
18 the defense here is that the defendant did not
19 know what was going on.
20 I think the evidence as to his knowledgability
21 concerning marijuana is a circumstance that the
22 jury should be allowed to consider.
23 THE COURT: The Court will overrule the objection.
24 MR. LOWE: We except, Your Honor.
25 THE COURT: All right.

1 BY MR. CAMBLOS:

2 Q What have you seen and heard which tend to indicate
3 the defendant's knowledgability concerning mari-
4 juana?

5 A He was present when there were conversations with
6 reference to drugs, marijuana and other drugs,
7 the different grades of drugs in the Charlottes-
8 ville area and also I observed him participate in
9 smoking alleged marijuana on different occasions.

10 THE COURT: Let me interrupt at this point to
11 caution the jury.

12 Members of the Jury, the defendant is being tried
13 today only on the charge of selling marijuana to
14 Carl Deavers on or about March 22nd. Any evidence
15 which relate to any offense of smoking marijuana
16 which of course would be a separate offense is
17 to be considered by you only insofar as it may
18 be evidence showing knowledge of this particular
19 transaction or what the contents of these bags
20 might be or what the expedition was about.

21 You are not to try him at this time for any other
22 charge whether or not you think he participated
23 in such a thing. The evidence is only admissible
24 for the purpose of showing his knowledge. We are
25 trying him today on the charge of selling

1 marijuana as charged in the indictment. All right
2 Mr. Camblos.
3 BY MR. CAMBLOS:
4 Q Had on any of these prior occasions when marijuana
5 had been smoked and when it had been discussed in
6 the defendant's presence had Bruce Minton or
7 William Matheny also been present?
8 A Yes, sir, they had.
9 Q On one or more of these prior occasions?
10 A There was more than one. I don't recall the exact
11 number of times. This group would be together
12 and the subject of drugs was always talked about.
13 Q Now from your observation and the period of time
14 that this occurred, March of 1970, had you seen
15 marijuana in packages on prior occasions in this
16 area?
17 A Yes, sir, I had.
18 Q What kind of packages was marijuana in usually,
19 or more than usually, or if always, if that is a
20 correct statement? What kind of packages was it
21 contained in when it was bought and sold?
22 A When it was bought and sold in ounces or what
23 they refer to as "dime" bags, $10.00 worth, I
24 can only recall one time that I had seen it in
25 any other container besides clear cellophane bags.

1 Q Do you recall other occasions when you had seen
2 it?
3 A Yes, sir, many times.
4 Q In what kind of packages?
5 A Always in clear cellophane bags with one exception.
6 Q Now had you seen such bags as these at any time
7 when ... previous to March 22, 1970, when the
8 defendant had been present?
9 A Yes, sir, I had.
10 Q Had you seen the contents of those bags on previous
11 occasions?
12 A Yes, sir.
13 Q When the defendant was present?
14 A Yes, sir.
15 Q Do you know whether...
16 MR. LOWE: Your Honor, I would like for you to
17 understand that this is a continuing objection.
18 I may have stated it before.
19 THE COURT: Yes, sir.
20 BY MR. CAMBLOS:
21 Q Had the defendant to your specific knowledge on
22 prior occasions used the contents of similar bags?
23 A Yes, sir.
24 Q What did the bags on these previous occasions
25 purport to contain?

1 A Marijuana.

2 Q How long did you stay in the apartment after these

3 11 bags were delivered to you?

4 A I left within 5 minutes.

5 MR. CAMBLOS: Witness with you.

6 CROSS EXAMINATION

7 BY MR. LOWE:

8 Q Let me go back to one of your most recent state-

9 ments. I must have missed it. Did you state when

10 it was that you observed Mr. Eccles smoking, was

11 it after or before this occasion?

12 A The most recent occasion...

13 Q No, I mean ... I am speaking -- were there any

14 occasions before?

15 A Yes, sir, that same morning, in the wee hours of

16 the morning.

17 Q But you also testified as to afterwards, too?

18 That you saw him smoking?

19 A Yes, sir.

20 MR. LOWE: Your Honor, I would like to ask that

21 be stricken in any event.

22 MR. CAMBLOS: I don't believe he so testified,

23 Your Honor, until counsel asked him just now.

24 THE COURT: I don't recall him testifying to any-

25 thing afterwards but I will strike it and ask

1 the jury to disregard any such evidence just as
2 if it had not been testified to.
3 MR. CAMBLOS: Your Honor, I will agree that any
4 such evidence brought out except by Mr. Lowe just
5 now should be stricken but I don't believe any
6 evidence that Mr. Lowe has just now brought out
7 should be stricken.
8 THE COURT: No, I am going to strike it all because
9 I don't think there has been any previous evidence.
10 MR. CAMBLOS: I don't think so either, Your Honor.
11 BY MR. LOWE:
12 Q Now at no time prior to Mr. Matheny coming back
13 putting his bags down on the blanket, did Mr. Eccles
14 or anyone in his presence make any statement about
15 buying marijuana to your knowledge, isn't that
16 correct?
17 A You are talking about this particular charge?
18 Q This particular case we are talking about today.
19 A On that evening, I don't recall him making any
20 statements prior to the bags being produced.
21 Q Now in his opening statement Mr. Camblos said
22 that he wasn't sure who it was who put the bags
23 down. There is no question in your mind who put
24 the bags down and who took them out of his jacket,
25 is there?

1 BY MR. CAMBLOS:

2 Q You claim that on occasion you can remember every-
3 thing that was said?

4 A I can't remember every single word but I can
5 remember what happened.

6 Q What?

7 A I pretty well remember what happened and some
8 of the things that were said.

9 Q Now you and Bruce Minton and John Eccles were
10 very close, were you not?

11 A Yes.

12 Q You lived with John Eccles for a period of time
13 did you not?

14 A Yes.

15 Q Did you have any reason to keep secrets from him?

16 A Well, I guess some, I would, yes.

17 Q Isn't it a fact that the marijuana that you got
18 on this night and subsequently sold to Carl
19 Deavers, wasn't that part of a supply of mari-
20 juana that Bruce Minton had gotten from Boston?

21 A Yes, it was.

22 Q Wasn't it a fact that you, Bruce Minton and John
23 Eccles and others in your close group had been
24 using that marijuana as community property for
25 some time before the sale?

1 MR. LOWE: I object, Your Honor, for all of the
2 reasons that I have stated before. Again, it is
3 not relevant here. I think that Virginia law has
4 well established that prior offenses or actions
5 which may have been cognizable at law are not
6 relevant.
7 I think that this is being done for obvious pur-
8 poses and has no relevancy to the proof of this
9 claim.
10 THE COURT: Members of the jury, will you retire
11 to your room, please?
12 JURY OUT
13 THE COURT: What are you trying to get at?
14 MR. CAMBLOS: I am trying to get at the fact, Your
15 Honor, that this witness as well as the defendant
16 Bruce Minton and others had been using this
17 particular supply of marijuana for some time and
18 that they knew all about it.
19 They knew where it was kept. They knew where it
20 had come from. They knew how it had been obtained.
21 They knew all about it. That is the question that
22 I put to the witness.
23 THE COURT: Let's see out of the presence of the
24 jury what his answers are.
25 BY MR. CAMBLOS:

1 Q Isn't it a fact that this is a part of the supply
2 of marijuana that Bruce Minton had gotten in
3 Boston and that you, Bruce Minton and John Eccles
4 and your other marijuana smoking friends had been
5 using this supply for some time?
6 A Yes.
7 Q THE COURT: Did John Eccles know where it was
8 located?
9 THE WITNESS: Where it was located?
10 THE COURT: Where it was kept?
11 THE WITNESS: I can't say. I have got an opinion
12 on it but I couldn't say for sure.
13 THE COURT: Did he go over there?
14 THE WITNESS: Did he go to the place? Let's see,
15 I don't remember if we used his car, he didn't
16 drive me. It was Bruce and I who took it there
17 that night, the first time, you know, when we
18 got the quantity and we took it to this certain
19 place.
20 BY MR. CAMBLOS:
21 Q Isn't it true that you and Bruce Minton didn't
22 have any transportation of your own at the time?
23 A Yes, I said that Bruce drove the car that John
24 had.
25 Q John Eccles was the only one of the three of you

1 who had any transportation, wasn't he?
2 A Yes.
3 Q And this place was some distance from where John
4 Eccles and you were living and where Bruce Minton
5 lived?
6 A Well, it was within walking distance, yes.
7 Q But you didn't walk to it? You went there in John
8 Eccles's car and on his motorcycle most of the
9 time, didn't you?
10 A Yes.
11 MR. CAMBLOS: I think this is relevant, Your Honor.
12 MR. LOWE: Well, Your Honor, this is like proving
13 somebody has a violent disposition and then saying
14 that proves he murdered somebody when there is no
15 connection to it.
16 I think there has to be some showing that connects
17 it up to begin with -- with this transaction. It
18 may well be that John Eccles knew that there was
19 a stash somewhere. He may have even smoked a lot
20 of it but that doesn't prove anything relating
21 to this offense.
22 The testimony is that he did not know anything
23 about the transaction going on at that time and
24 that is what is relevant here.
25 MR. CAMBLOS: That is not the testimony, Your Honor,

1 the testimony is that this witness has stated
2 that nothing was said about this transaction.
3 I think that the fact that these people knew all
4 about each other's drug business is relevant.
5 THE COURT: Had Mr. Eccles taken you... well, he
6 had taken you , where this marijuana was kept on
7 previous occasions on his motorcycle?
8 THE WITNESS: I don't believe so. I don't think so.
9 No, I don't think he did. This was the first time
10 he took me over because it was.. I think it was
11 within about a week or so, I remember Bruce got
12 it, he brought it from Boston and then the next
13 day, him and I wrapped it up and then that night
14 Bruce and I took it over there and stashed it.
15 Then I guess it was in the same period of a week
16 or two.
17 MR. LOWE: Unless it can be shown that John Eccles
18 knew where it was, Your Honor, it would not be
19 relevant.
20 Now if he made three prior trips and each time
21 he came back with little baggies, I think that
22 there may be something for the jury to grab on
23 but not in this instance when there is no scintilla
24 of evidence that John Eccles knew what was there.
25

1 THE COURT: Well, I think that anything that would
2 show his knowledge that it was there or where it
3 was kept or anything of that sort is admissible.
4 MR. LOWE: But there is no knowledge showing that
5 that is exactly my point, Your Honor. The witness
6 says that he has no knowledge of anything that
7 would connect John Eccles to that location.
8 The fact that Jon Eccles knew that there was some
9 marijuana somewhere that was being smoked does
10 not show that John Eccles -- doesn't even lead
11 a reasonable person to conclude that John Eccles
12 knew where he was going that night.
13 MR. CAMBLOS: Your Honor, I think the fact that
14 this is a close knit group using the same supply
15 and that it was an identifiable supply and that
16 marijuana was community property all of which
17 this witness has already answered yes to... is
18 relevant.
19 THE COURT: I am going to allow that to come in.
20 I will caution them again if you wish, Mr. Lowe,
21 that he is not being tried on any other...
22 MR. LOWE: We obect to the admissibility of that
23 evidence completely, Your Honor, as being completely
24 irrelevant in this case.
25

1 THE COURT: The only questinn now is whether you
2 want me to caution them again that we are only
3 trying one case and that they are not to ... the
4 only purpose of bringing in this other evidence
5 is knowledge.
6 MR. LOWE: I am at a loss to say what to have the
7 Court instruct. I can see ... there is absolutely
8 no relevancy at all . I am not even sure what the
9 jury would conclude from it.
10 I think that the Court ought to instruct them
11 again, I guess, or whatever the Court thinks is
12 proper. I don't see how they could use just
13 general knowledge ... even if we had stipulated
14 that John Eccles knew that somewhere there was
15 some marijuana and that unless the evidence is
16 that he knew what they were going there for, I
17 don't think...
18 THE COURT: I am inclined to agree with Mr. Lowe
19 unless there is something to show that he knew
20 how that trip could tie in.. to his knowledge,
21 I don't think it would make any difference.
22 MR. CAMBLOS: I think the most important part of
23 the testimony that this witness has just given
24 Your Honor, is the fact that they were using this
25 marijuana as community property.

1 THE COURT: I think that is admissible but I think
2 that the part, the primary thing is whether or not
3 he knew what this trip was about.
4 MR. CAMBLOS: I think that, too, Your Honor, I
5 think all of the circumstances of their closeness
6 and their using this tend to give the jury the
7 circumstances upon they can judge that question.
8 THE COURT: I will let that in. I am going to
9 caution them again though this is knowledge not
10 another offense. Ask the jury to return, please.
11 JURY IN
12 BY MR. CAMBLOS:
13 Q Mr. Matheny, I will again ask you...
14 THE COURT: Let me interrupt at this point. Members
15 of the jury, the Court will allow in certain
16 evidence but again I caution you that the defendant
17 is being charged with the sale of ... a specific
18 offense here and any evidence which might show
19 any previous offense is not to be considered by
20 you except insofar as this evidence might or
21 might not show any knowledge of what this trip
22 was about or about the substance which is in
23 issue here. All right, Mr. Camblos.
24 BY MR. CAMBLOS:
25 Q I will again ask you, Mr. Matheny, if this

1 marijuana in the 11 bags which were sold to Mr.
2 Deavers that night was not part of a supply of
3 marijuana which Bruce Minton had obtained in
4 Boston and that you, Bruce Minton and John Eccles
5 and others of your marijuana smoking friends had
6 been using for some time as community property
7 supply of marijuana from which you had been smoking
8 your marijuana?
9 A Yes.
10 Q Now on this occasion you claimed to know precisely
11 what was said and what was not said, now, how
12 do you happen to remember whether or not John
13 Eccles was in the room when you were talking to
14 Bruce Minton about going after this marijuana?
15 A Well, I remember seeing Bruce there and I do
16 remember talking to him in the kitchen part.
17 Q How do you remember that John Eccles was not
18 there? What was significant about the occasion
19 to make you remember something that otherwise
20 would be completely insignificant?
21 A I guess just because he wasn't there.. he wasn't..
22 Q Where was he?
23 A I guess he was in the back room. You see, there
24 is two rooms back there.
25 Q Was the door open or closed between them?