Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

IN THE

SUPREME COURT OF APPEALS OF VIRGINIA

AT RICHMOND

Record No. 8262

GREGORY BLANTON LUGAR,

Appellant

v.

COMMONWEALTH OF VIRGINIA, Appellee

JOINT APPENDIX

ANDREW P. MILLER,
Attorney General
of Virginia

JAMES E. KULP,
Assistant Attorney
General

MICHAEL MORCHOWER,
Attorney for Appellant
113 North Foushee Street
Richmond, Virginia 23220

TABLE OF CONTENTS

1. Judgment appealed from.

2. Assignment of Error.

3. Motion to Suppress.

4. Indictments.

5. Hearing on Motion to Suppress:

   John W. Combs, III -------- p. 6 - 42
   William G. Keenan, Jr. ----- p. 43 - 65
   David C. Hill ---------- p. 69 - 80
   C. W. Bennett ---------- p. 85 - 117
   Robert W. Justice ---------- p. 118 - 148
   C. W. Bennett (recalled)---- p. 149 - 150

6. Trial on Merits:

   Willis H. Cavedo ---------- p. 173 - 190
   Cecelia Barber ---------- p. 191 - 219
   John W. Combs ---------- p. 220 - 242
   C. W. Bennett ---------- p. 243 - 262

7. Opinion of Judge ---------- p. 284 - 290

VIRGINIA:

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

And at another Hustings Court held for the City of Richmond, at the Courthouse, on the 4th day of October, 1972, the following order was entered:

Commonwealth Judge Lumpkin
VS Indictment for Statutory Burglary No. 1 (F-748)
Gregory Blanton Lugar alias Gray Woodson, Dft.
Commonwealth
vs Indictment for Statutory Burglary No. 2 (F-749)
Gregory Blanton Lugar alias Gray Woodson, Dft.

The said defendant was this day led to the bar in the custody of the Sergeant of this City and was represented by Attorney Michael Morchower, the Commonwealth was represented by Robert Duling and the Probation Officer was also present. And the defendant having been on May 24, 1972, found guilty of Statutory Burglary as charged in each of the said indictments and these cases found guilty of Statutory Burglary as charged in each of the said indictments and these cases referred to the Probation Department for a pre-sentence investigation and report and on Juve 28, 1972, the Court having ordered that the defendant be examined as to his mental condition in accordance with Section 19.1-234, and on July 17, 1972, the mental report having been filed with the Court and the said pre-sentence report having this day been filed in open Court and the defendant advised as to the contents thereof and given the privilege of cross-examining the reporting officer thereon, and evicence and arguments of counsel heard, the Court doth now ascertain his term of confinement in the Penitentiary at eight years in the case of Indictment No. 1 and on his motion the imposition of sentence in the case of Indictment No. 2 is suspended during his good behavior.

The said defendant then by counsel moved the Court to set aside its judgment in the case of Indictment No. 1 as being contrary to the law and evidence and grant him a new trial, which motion the Court denied and to which action of the Court in denying his said motion, the defendant noted an exception and time is allowed him not to exceed sixty days in which to file his bills of exception.

Whereupon it being demanded of the said defendant if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment atainst him according to law., and nothing being offered or alleged in delay thereof, it is the judgment of this Court that the said Gregory Blanton Lugar alias Gray Woodson be confined in the State Penitentiary for a term of eight years, this being the period by the Court ascertained in the case of Indictment No. 1. And the said defendant by counsel moved the Court to reduce the said sentence, which motion the Court denied. And the Court recommends that the defendant serve the said sentence in an institution with facilities to offer psychiatric help and drug rehabilitation. And it is ordered that the Sergeant of this City do, when required so

to do, deliver the said defendant from the jail of this City to the Superintendent of the Penitentiary, in said Penitentiary to be confined and treated in the manner prescribed by law; said term to be credited by the time spent in jail awaiting trial.

And the defendant having noted an appeal from the judgment of the Court, the Court doth appoint Michael Morchower to assist the defendant in perfecting same.

And thereupon the said defendant is remanded to jail.

Age - 20

A TRUE COPY, TESTE: R. Schumann

DEPUTY CLERK

V I R G I N I A:

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, Plaintiff

v.

GREGORY BLANTON LUGAR, Defendant

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To: Jose' R. Davila, Jr., Esquire, Attorney for the Commonwealth, Richmond, Virginia

The defendant, Gregory Blanton Lugar, gives Notice of Appeal from the judgment of the Court rendered on October 4, 1972, and hereby assigns the following error as required by Rule of Court 5:1, Section 4:

1. The search of 1102 Floyd Avenue, Apt. 3, Richmond, Virginia and the seizure of evidence violated the Fourth Amendment to the United States Constitution.

2. The evidence was insufficient to support the convictions.

GIVEN under my hand this 23rd day of October 1972.

GREGORY BLANTON LUGAR,

BY Michael Morchower
Of Counsel

Michael Morchower
113 North Foushee Street
Richmond, Virginia 23220

CERTIFICATE

I hereby certify that a copy of the foregoing Notice of Appeal and Assignment of Error was mailed to Jose' R. Davila, Jr., Esquire, Old City Hall, Richmond, Virginia on this 23rd day of October 1972.

Michael Morchower

Michael Morchower

V I R G I N I A:

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, Plaintiff

v.

GREGORY BLANTON LUGAR, Defendant

MOTION TO SUPPRESS EVIDENCE

Comes now Gregory Blanton Lugar, by counsel, and hereby moves the Court for an order to suppress for use in evidence the contraband and other evidence upon which charges against him have been predicated.

The motion before the Court at this time is based upon the following allegation:

That the arrest of the defendant and search of 1102 Floyd Avenue, was illegal and in violation of the Fourth Amendment to the Constitution of the United States.

GREGORY BLANTON LUGAR

BY Michael Morchower
Of counsel

Michael Morchower, Esq.
113 North Foushee Street
Richmond, Virginia 23220

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion to Suppress has been delivered to Jose' Davila, Esquire, City Hall, Richmond, Virginia on this 12th day of May, 1972.

Michael Morchower
Michael Morchower

VIRGINIA:

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND.

City of Richmond, to-wit:

The GRAND JURORS of the Commonwealth, for the body of the City of Richmond, on their oaths present that on or about March 13, 1972, in the said City, and within the jurisdiction of the Hustings Court of the City of Richmond

Gregory Blanton Lugar unlawfully and feloniously did break and enter in the nighttime the storehouse of Willis H. Cavedo, trading as Cavedo's Drug Store, there situate at number 2528 Floyd Avenue, with intent to commit larceny, and merchandise having a value of about $530.00, did unlawfully and feloniously commit larceny thereof,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.1-89

C. W. Bennett (PC)	•	✓	✓		
J. W. Combs (PC)	✓	✓	✓		
Cpt. Justice (PC) Norfolk	•	✓	✓		
Willis H. Cavedo	•	✓	✓		
D. O. Spears (PC)	•	✓	✓		
Cecilia Barber	•	✓	✓		

MAY 1 1972

Witnesses sworn and sent by the Court to the Grand Jury to give evidence.

William K. Slate II

Clerk

5

VIRGINIA:

IN THE HUSTINGS COURT OF THE CITY OF RICHMOND.

City of Richmond, to-wit:

The GRAND JURORS of the Commonwealth, for the body of the City of Richmond, on their oaths present that ~~on or about~~ within three months prior to the finding of this indictment, in the said City, and within the jurisdiction of the Hustings Court of the City of Richmond

Gregory Blanton Lugar unlawfully and feloniously did break and enter in the nighttime the storehouse of L. D. Jones, trading as Sunset Hills Pharmacy, there situate at number 7007 Three Chopt Road, with intent to commit larceny,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code §18.1-89

D. O. Spears		✓	✓		
C. W. Bennett		✓	✓		
J. W. Combs		✓	✓		
Sgt. Justice		✓	✓		
Cecilia Barber		✓	✓		
Willis H. Cavedo		✓	✓		

MAY 1 197[illegible]

Witnesses sworn and sent by the Court to the Grand Jury to give evidence.

William K. Slate II

Clerk

Pd in F 748

4

1

2

3 JOHN W. COMBS, III, on

4 motion to suppress, being first duly sworn, testified as

5 follows:

6

7 DIRECT EXAMINATION

8 BY MR. MORCHOWER:

9 Q Officer, would you state your full

10 name for the record, please?

11 A John W. Combs, III.

12 Q What's your occupation?

13 A I'm a hit-and-run investigator for

14 the Richmond Police.

15 Q And how long have you been working

16 for the Richmond Police Department?

17 A Since September 16th, 1963.

18 Q Directing your attention to the

19 evening of March 13th and the early morning of March 14th,

20 1972, were you on duty for the Richmond Police Department?

21 A Yes, I was working from ten to six.

22 Q And that's 10:00 p.m., to six a.m.,

23 is that correct?

24 A Ten p.m., on the 13th to six a.m.,

1 on the 14th.

2 Q And who was working with you --

3 Q I was working alone.

4 Q You were working alone?

5 A Yes.

6 Q And you were -- were you in a marked

7 vehicle --

8 A No, assigned an unmarked car.

9 Q Assigned an unmarked car? All right,

10 you were in uniform, is that correct?

11 A Yes, sir.

12 Q And did you have occasion to arrive

13 at 1102 Floyd Avenue,

14 A Yes, I did.

15 Q in Richmond?

16 A Yes, sir.

17 Q What time did you originially arrive

18 at 110 -- 1102 Floyd Avenue?

19 A I actually went inside the address

20 approximately 3:00 o'clock, it was in that area, I don't know

21 the exact time.

22 Q And had you been to that apartment

23 prior to three a.m., --

24 A I had been to the rear of 1104 prior

1 to my going in the apartment.

2 Q And what time were you in the rear

3 of 1104 Floyd Avenue --

4 MR. SIMMONS: Judge, I don't see the

5 relevancy of this, we're here on a motion to

6 strike because of illegal search and seizure

7 apparently, it happened at 1102 Floyd Avenue, I

8 don't see what difference it makes if he was at

9 1104 earlier that day.

10 THE COURT: At this point, I don't

11 see any relevancy, Mr. Morchower.

12 MR. MORCHOWER: I think it will be

13 tied in, Judge.

14 THE COURT: All right, subject to

15 tying it in, it will be allowed.

16 Q What time were you at 1104 Floyd

17 Avenue?

18 A About an hour earlier,

19 Q All right?

20 A within the hour.

21 Q And when you were at 1104, did you

22 have occasion to have a car towed, is that correct?

23 A Yes, sir.

24 Q And what -- what kind of car was that?

1 A It was a sports car, it was a purple
2 sports car, I believe it was an MG.
3 Q All right, and what was the reason
4 for it being towed, do you recall?
5 A It was blocking a driveway, also
6 there were drugs found in the car.
7 Q All right, do you know who owned this
8 car?
9 A It was registered to a Michael Carter.
10 Q When you arrived at 1104, who was
11 with you -- 1102 Floyd Avenue, at 3:00 a.m., who was with you?
12 A Riding in my car with Sergeant Jus-
13 tice, of the Henrico County Police.
14 Q All right, and who was -- did you
15 approach Apartment Three at 1102 Floyd Avenue, did you go up
16 to the apartment --
17 A Well, when -- well, let me back up
18 Q All right?
19 A in answer to you first question:
20 When I first arrived at two o'clock, Sergeant Justice was
21 with me, the second time he was not with me when I went,
22 Q All right?
23 A I met him there.
24 Q All right, that clears it up. And

1 who else -- was anyone else with -- you know, anyone else
2 there from the City or County Police Department?
3 A Yes, there were several County
4 Officers there.
5 Q And no other City Officers
6 A No, sir,
7 Q at that time, is that correct?
8 A that's correct.
9 Q And these are the County police
10 officers who are here in Court today, is that correct?
11 A I believe so.
12 Q All right, and did you go up to
13 Apartment Three at 1102 Floyd Avenue, is that correct?
14 A Yes, sir, that's right.
15 Q All right, and who knocked on the
16 door?
17 A I did.
18 Q All right, and who answered the door?
19 A Michael Carter.
20 Q And did you go into the apartment?
21 A We were invited in, yes.
22 Q By whom?
23 A Michael Carter.
24 Q And who else -- who else was in the

1 apartment beside Michael Carter?
2 A A Greek, approximately nineteen years
3 old named Zacharias, I believe,
4 Q All right?
5 A and there was a party named Newcomb
6 in the apartment, along with Michael Carter, three people.
7 Q And for what purpose were you at the
8 apartment?
9 A Looking for a party named Hod --
10 Hodges that, information supplied Henrico County, was wanted
11 on a fugitive warrant --
12 Q From Roanoke?
13 A I believe so, yes, Sergeant Justice
14 had -- had seen a teletype and had this information which he
15 gave to me.
16 Q All right, did you -- tell us what
17 you did on -- on -- after knocking on the door?
18 MR. SIMMONS: Judge, this is more
19 of a discovery proceeding, it looks to me like,
20 rather than a motion to suppress because of
21 illegal search and seizure.
22 MOR MORCHOWER: Well, we're getting
23 into it, Judge, I'm going to lay the foundation,
24 I'm asking him what he did now, as soon as he --

1 after knocking on the door,I assume, he went
2 into the apartment, that's when --
3 MR. SIMMONS: Well, Lugar wasn't
4 even in the apartment, Judge. Judge, I don't
5 see what makes -- makes any difference that the
6 man was arrested outside of the apartment, what
7 happened inside the apartment.
8 THE COURT: Was the search warrant
9 at this address?
10 MR. SIMMONS: It was not a search
11 warrant.
12 THE COURT: There was no search
13 warrant?
14 MR. SIMMONS: There was no search
15 warrant.
16 MR. MORCHOWER: But there was a
17 search of the apartment, Judge, in question,
18 which is the basis for these charges, so I think
19 it would be relevant for us to go into.
20 MR. SIMMONS: And I think it would
21 be relevant if you establish that there was a
22 search,
23 MR. MORCHOWER: well --
24 MR. SIMMONS: I don't think the

1 evidence is going to show that there was a search,
2 that which is an open view is not a search.
3 MR. MORCHOWER: Well, we're getting
4 into it, Judge, and --
5 MR. SIMMONS: . . . . . .discovery
6 is what he's doing, Judge --
7 MR. MORCHOWER: Judge, it's up to
8 the Court to decide whether there was a search
9 or an open view observation --
10 THE COURT: All right, well, I'll
11 expect you to get to the point and this is not,
12 as you know, to be a discovery proceeding.
13 MR. MORCHOWER: Well, I disagree
14 with the Commonwealth, it's not for that purpose,
15 Your Honor.
16 THE COURT: All right, go ahead.
17 Q Tell us what you did upon knocking --
18 after knocking on the door?
19 A I asked the man who opened the door,
20 who turned out to be Michael Carter, his identity, who he was,
21 for none of us there knew what the party, Hodges, looked like.
22 Q All right, go ahead and tell us in
23 narrative form what you want to say?
24 A He then gave me his registration card

1 for the car, I explained to him that his car was blocking the
2 driveway in the back, and asked him if we could come in; he
3 stated come in. When he stated this, two Henrico Officers
4 proceeded by me and the Carter subject walked down a hallway
5 approximately twelve feet into a kitchen area. Carter and I
6 walked together beind the other two Henrico Officers, followed
7 by Sergeant Justice and Sergeant Davis -- five police officers
8 including myself, and Michael Carter. While standing in this
9 area, I noticed on the floor beside a door in a trash container,
10 a milk colored container, and also a -- a round top that fit
11 on top of the container, the round top had Lilly written on
12 it. There were two red capsules beside the container and
13 written on the milk container was Seconal and this container
14 was not the type that is dispensed in drug stores, it's the
15 type that wholesalers sell to drug stores, it's not the type
16 that are --
17 Q Well, (not audible)
18 MR. SIMMONS: Now, he's arguing with
19 this officer --
20 A Yes, it is.
21 MR. SIMMONS: with this witness,
22 Judge, he's already stated that he recognized
23 THE COURT: I --
24 MR. SIMMONS: the item not dispensed --

1 THE COURT: All right, Mr.
2 MR. MORCHOWER: I'm not arguing with
3 him, Judge.
4 THE COURT: Morchower, don't argue
5 with him.
6 MR. MORCHOWER: Judge, I'm not
7 arguing with the witness, I can interrupt the
8 witness if he's answering improperly --
9 MR. SIMMONS: Well, if that's im-
10 proper, that's his conclusion, not what his
11 witness has testified to --
12 MR. MORCHOWER: That was his con-
13 clusion, Judge, I can interrupt the witness when
14 I feel --
15 MR. SIMMONS: It's his witness, though,
16 he vouches his credibility which he puts him on.
17 MR. MORCHOWER: I don't vouch every-
18 thing the witness says, Judge --
19 THE COURT: All right, he has testi-
20 fied that the container had the name Lilly on
21 it,
22 A Yes.
23 THE COURT: and had Seconal written
24 on it --

1 A Had Seconal on it, yes.
2 THE COURT: And was not a normal
3 type Seconal container, now, go ahead.
4 Q What is a normal type of Seconal
5 container, Officer Combs?
6 A Well, I don't believe I've stated
7 actually it was not a normal type of Seconal container, this
8 is -- my wife is a nurse and she deals with some drugs, now,
9 I have seen the type of containers that hospitals had --
10 Q What color -- would you describe
11 this for us?
12 A Well,it's the type that are in
13 hospitals and in drug stores, it's by wholesalers, are in
14 milk containers, milk colored containers and have the pre-
15 scription or the identification marking on them, Seconal,
16 and also written on the side of these containers are the
17 Federal law prohibiting the possession of these drugs without
18 a prescription.
19 Q All right, then, you saw a container?
20 A Yes, sir.
21 Q And you saw two pills,
22 A Yes,
23 Q is that correct?
24 A that's correct.

1 Q And what color -- color were these
2 pills?
3 A They were red.
4 Q Have you ever seen vitamin pills,
5 sir?
6 A Yes, sir.
7 Q What color are vitamin pills normally,
8 have you ever seen red -- red vitamin pills?
9 A Not like those.
10 Q Have you ever seen cold tablets,
11 red cold tablets?
12 A Yes, sir.
13 Q Is Seconal a prescription or non-
14 prescription drug?
15 A It would be a controlled drug, yes.
16 Q What schedule, do you know?
17 A I'm not really associated with the
18 field.
19 Q Do you know whether it's a prescrip-
20 tion or non-prescription drug?
21 A It's a prescription drug.
22 Q And you were walking with Carter
23 and Justice was behind you, is that correct?
24 A Yes, that's correct, he entered the

1 apartment -- well, yes, he entered directly behind me, was
2 behind me.
3 Q And you never told Carter the purpose
4 for which you were in the apartment, did you?
5 MR. SIMMONS: I object, that's
6 leading, that is a suggestive answer.
7 THE COURT: Sustained.
8 MR. MORCHOWER: I can qualify him
9 as a hostile witness, Judge, he works for the
10 Commonwealth --
11 MR. SIMMONS: There's no such thing
12 as a hostile witness in criminal law unless you
13 show he's got an interest --
14 THE COURT: You can try to qualify
15 him as a hostile witness, Mr. Morchower.
16 MR. MORCHOWER: All right.
17 Q Did you ever tell Carter the purpose
18 for which you were in the apartment for?
19 A I didn't no, it was done in my
20 presence, I don't mean to answer your question unnecessarily.
21 Q When was it done in your presence?
22 A Actually after they were placed under
23 arrest for possession of the controlled drug.
24 Q All right, and did you place him

1 under arrest for -- Carter for possessing controlled drug?
2 A Yes.
3 Q Was that after you saw the controlled
4 drugs?
5 A Well, they were under arrest immed-
6 iately, I didn't actually tell them they were under arrest,
7 but when I saw the drugs standing there, the --
8 Q The two Seconal pills you're talking
9 about?
10 A Well, I saw Seconal written on the
11 front of them
12 Q Well --
13 A I confirmed my thought that it was
14 Seconal tablet.
15 Q And at that moment they were under
16 arrest, is that correct?
17 A In my mind they were under arrest.
18 Q But you never advised him that he
19 was under arrest, did you
20 A Well, it took about --
21 Q at the time -- at that time?
22 A It took about fifteen minutes, yes,
23 there were several other activities that had to be immediately
24 controlled.

1 THE COURT: I didn't understand --
2 A There were several things that took
3 place, Your Honor, that had to be taken into account just
4 for our own safety.
5 Q All right, where was -- where was
6 Carp -- how do you pronounce that name, Carrias?
7 A Zacharias.
8 Q Zacharias, where was and where was
9 Newcomb at that point when you saw the container with -- with
10 Seconal written on it?
11 A At that precise moment, I don't
12 know, they were in the front of the apartment, and they were --
13 Q What rooms are you talking about?
14 A Well, there are two rooms divided
15 by a open hallway, now, when I first saw the Greek, Zacharias,
16 he walked into the room where we were standing, the main room,
17 Q Did --
18 A the bedroom-kitchen combination,
19 this is when I first saw him, he came from the direction of
20 the front bedroom.
21 Q How many bedrooms are in the apart-
22 ment?
23 A Just two, two rooms, that's all.
24 Q Two rooms,

1 A Yes.
2 Q the kitchen, bedroom complex and a
3 bedroom, is that correct?
4 A Yes.
5 Q And where was -- where was Newcomb
6 at this time, do -- do you know?
7 A Yes, he was laying in a bed in the
8 front bedroom.
9 Q All right, did you execute any search
10 warrant for this particular -- particular apartment?
11 A No, sir.
12 Q Do you know if any search warrants
13 were executed?
14 A Not of my own personal knowledge,
15 I heard that they were.
16 Q The next day, is that correct?
17 A No, the 14th, were executed the 14th.
18 Q Do you know who executed that search
19 warrant?
20 A No, I don't know.
21 Q Did you ever ask anyone for per-
22 mission to search this apartment?
23 A Yes, as a matter of fact, I did.
24 Q And were you asked by any of the

1 occupants whether you had a search warrant?

2 A Yes, I was.

3 Q And who asked you whether you had a

4 search warrant?

5 A Newcomb.

6 Q Was that after you asked him for

7 permission to search the apartment?

8 A That's correct.

9 Q You never did receive permission

10 from anyone to search the apartment, did you?

11 A No.

12 Q How long were you in the apartment

13 in question, sir?

14 A About two and a half hours, I left

15 about quarter to six, I believe, or five-thirty or quarter

16 to six. I got off at six o'clock so I'm pretty sure of that

17 time.

18 Q Did your -- I'll withdraw that

19 question -- did you ever conduct any testing of these pills

20 which were visible to you in order to determine what type of

21 pills they were?

22 A There were tests conducted, I

23 believe, I don't know.

24 Q At the scene?

1 A No, not at the scene.

2 Q You know of no testing -- there was

3 no testing at the scene, is that correct?

4 A No, sir.

5 Q And these pills were red in color,

6 is that correct?

7 A Yes.

8 Q Did you also place the other occu-

9 pants under arrest?

10 A Yes, sir.

11 Q For this same offense, is that

12 correct?

13 A Yes, sir.

14 Q You mean --

15 A The other occupatns, I -- I don't

16 understand --

17 Q . . . . . and Newcomb?

18 A Yes, they were right there together.

19 Q What else did you see besides these

20 -- these two pills in the apartment?

21 A After looking in more detail and

22 there were drugs found all over the apartment.

23 Q There was --

24 A drugs everywhere.

1 Q Weren't there drugs found in a waste
2 paper basket?
3 A Yes, there was a large amount of
4 drugs found in a waste paper basket.
5 Q And where was the waste paper basket
6 located?
7 A Right beside the empty Seconal
8 tablet, empty Seconal container and two tablets and the top
9 that I described earlier beside the doors as we walked in.
10 Q And who actually went into that
11 waste paper basket, you?
12 A No, one -- one of the Henrico officers
13 actually opened the basket.
14 Q How about an oven, was there an
15 oven in that apartment which was searched also?
16 A Yes.
17 Q And who went into the oven?
18 A One of the Henrico officers.
19 Q Do you know what was found in the
20 oven?
21 A A stamp machine, I believe.
22 Q Anything else connected to these
23 two drugstores in question?
24 A I don't know.

1 Q Could you draw us a diagram of this
2 apartment real quick like, --
3 A Yes -- I think it can be drawn very
4 simply.
5 (pause and rattling of paper)
6 Q Would you look at this for identifi-
7 cation purposes?
8 A Yes, sir.
9 Q Does that appear to be the layout of
10 the apartment, the diagram of the apartment?
11 A A very rough sketch of it, yes.
12 Q Would you point out to the Judge
13 where you saw these two Seconal pills?
14 A Yes, I would have to get up to do
15 that: This is the door that Carter opened, this is the hall-
16 way I referred to as walking into, this is another doorway
17 which stays open apparently permanently. The tablets were
18 found at the edge of this doorway between the trash container
19 and the edge of the doorway, and there's an oven right here
20 which Mr. Morchower brought out. The two tablets were found
21 in front or between a round Lilly container and the milk
22 container, milk colored capsule . . . . . or capsule
23 container right in that area right there.
24 Q All right, would you also show where

1 the other subjects were in relationship to the Seconal pills?
2 A Carter, of course, answered the door,
3 the other party was in this bed right here, and the Zacharias
4 man, when I first observed him, he walked in from this apart-
5 ment here.
6 Q All right, would you show us where
7 this trash can was located?
8 A I don't know if it was a trash can,
9 it was a paper bag that the Henrico man opened right beside
10 this door, this -- the edge of this doorway right here where
11 the capsule -- where the milk container was found.
12 Q Do you know what was in this trash --
13 trash basket?
14 A Yes.
15 Q Could you tell us specifically what
16 -- what items were in that trash can?
17 A No, not specifically, there was a
18 large group of stolen drugs.
19 Q What appeared to be stolen drugs?
20 A Yes.
21 Q What is this area designated as with
22 this arrow?
23 A I just don't know, I believe it was
24 a sink over there, if I remember correctly.

1 Q Did the -- did the subjects who were
2 placed under arrest, did they remain in the apartment until
3 you left?
4 A No, they were taken out of the apart-
5 ment.
6 Q Do you know what time they were
7 taken out of the apartment?
8 A I think specifically about twenty
9 minutes before --
10 Q So the -- the two tablets are the
11 only pills that you specifically can account for, is that
12 correct, as -- as far as you recovering?
13 A Well, I saw other capsules in there,
14 but I didn't see any identifying markings on them like I did
15 on these two beside the trash can.
16 Q Do you know what Seconal is used
17 for, what type of medication?
18 A Not the remotest idea.
19 Q You never did find this person,
20 Hodges, in the apartment, did you?
21 A No, sir.
22 Q Nor did you ever see Gregory Lugar
23 in this apartment, did you?
24 A No, sir, I did not.

1 Q Rather than go in -- go into what
2 other officers did, I think we can get that through the other
3 police officers what they did, is there anything else you did
4 specifically?
5 A Several things I did specifically,
6 but I -- I don't know what you want me to answer,
7 Q Well, did you --
8 A things what were done.
9 Q did you actually find any -- any
10 drugs in the apartment other than these two items was
11 my question?
12 A Well, it was different things found,
13 it was like an Easter egg hunt, everything was all over the
14 place, in open view, and then we'd look a little further and
15 find something else, just everywhere you looked there was
16 pills and capsules.
17 Q But these capsules and pills were
18 also in some bags, weren't they?
19 A Yes, that's true, some were.
20 Q But you don't -- and you couldn't
21 say which specifically were in bags and which were not, could
22 you?
23 A That's right.
24 Q And things were also found in this

1 oven, is that correct, sir?

2 A Yes, sir, that's correct.

3 Q So it would be a fair statement to

4 say that the entire apartment was searched?

5 MR. SIMMONS: I object to that.

6 Q What -- did you go into any dresser

7 drawers in this apartment?

8 A Not --

9 MR. SIMMONS: At what time, I mean

10 there's been testimony that there was a search

11 warrant.

12 Q Well, while you were there up until

13 five-thirty, quarter to six, did you see any search warrant?

14 A No, sir.

15 Q And as far as you know, there were

16 no search -- there was no search warrant at that time, is

17 that correct, up until that time?

18 A That's correct.

19 Q And I assume there was some furniture

20 in this apartment, is that correct?

21 A Yes, sir.

22 Q Did anyone go into any drawers?

23 A Not in my -- no, no, I don't --

24 Q Nothing was opened in the apartment,

1 is that what you're telling the Court?
2 A No, I'm not saying that nobody went
3 into any drawers, I didn't see any drawers in the apartment --
4 Q Well, was anything open, what items
5 -- would you describe what was in the apartment?
6 A There was a heap of trash in it,
7 when you first opened the door, at the -- by the stove, there
8 was just a big pile of trash and --
9 Q And someone went through that trash,
10 is that correct?
11 A Yes, they did.
12 Q Could you describe the length -- the
13 length of this apartment and the size of the rooms, approxi-
14 mately?
15 A Approximately twelve by twelve, each
16 room, I guess, roughly.
17 Q And there's also another apartment
18 up there on that second floor?
19 A I believe it is, yes.
20 Q In the front apartment and back
21 apartment, is that correct?
22 A I -- I don't really know, I'm
23 associated with this particular apartment, I'm familiar with
24 that one, because I was inside of it, I don't know about the

1 others.

2 Q Well, did you have to go up to some

3 steps to get to this apartment?

4 A Yes.

5 Q And these steps were in the rear of

6 this building, is that correct?

7 A That's correct --

8 Q There's also a rear -- a rear door

9 at the bottom of the steps, is that correct?

10 A I -- it could be, I don't remember

11 seeing any, it was pretty dark, I couldn't see any doorways.

12 Q And as far as looking for Hodges,

13 you never received any specific information about Hodges, is

14 that correct, you, yourself?

15 A I received it from Sergeant Justice,

16 he --

17 Q Right, so he's the man who actually

18 received it from -- from this third party, is that correct?

19 A That's correct.

20 Q No further questions.

21

22 CROSS EXAMINATION

23 BY MR. SIMMONS:

24 Q What -- what information did you

1 receive from Sergeant Justice?

2 A There was a fugitive warrant out

3 for this party, Hodges, who had ran from a Henrico policeman --

4 Q Who had what?

5 A Who had ran from a Henrico Policeman

6 in the County.

7 Q Do you know what the circumstances

8 was under which he ran?

9 A Yes.

10 MR. MORCHOWER: The officers are

11 here, Judge, I intend to call --

12 MR. SIMMONS: I -- this is probable

13 cause for arrest, it can be based on hearsay,

14 this officer was operating in the City of Rich-

15 mond, and I want to know what this officer saw.

16 THE COURT: Objection overruled,

17 exception noted.

18 A Information was that the Hodges

19 subject had been a passenger in a car which was towed from

20 the rear of 1104 Floyd Avenue, he had run from this automobile

21 when a wanted check was made in his presence and the check

22 came back that the party was wanted, he jumped from the car

23 and ran. As the police officer chased the party, the car

24 also drove also and the police officer was there with nothing.

1 Q Do you know -- was it related to you
2 what other parties were in the car at the time it was -- that
3 left the scene in Henrico?
4 A No.
5 Q Well, where was Mr. Lugar -- Lugar
6 the first time you saw him?
7 A The first time I saw him he was
8 coming out of the paddy wagon and jumped on top of me and
9 another officer.
10 Q What?
11 MR. MORCHOWER: Judge, I think --
12 A This is the first time I saw him,
13 he was inside the paddy wagon and was trying to get -- escape
14 and get out.
15 Q When was this?
16 A This was after he'd been arrested.
17 Q What was the condition of the parties
18 that were in the apartment?
19 A Newcomb appeared to be under the
20 influence of something, some narcotic drug, he --
21 Q Why do you say that?
22 A He was walking kind of irregular,
23 unsteady, he would whine when he talked, and couldn't talk
24 without slurring his speech, there was no smell of alcohol or

1 any other thing on his breath, and he would become violent
2 for no apparent reason.
3 Q Now, were you present when Officer
4 Bennett was questioning Mr. Lugar?
5 MR. MORCHOWER: Judge, he's going
6 beyond the scope of my direct examination and
7 that has no relevancy as far as what has been
8 brought out up to this time.
9 THE COURT: Mor Morchower, you had
10 a very wide scope on direct, I'm going to allow
11 it exception noted.
12 MR. MORCHOWER: Exception noted.
13 Q Were you present when Detective
14 Bennett was talking with the man who is today identified as
15 Mr. Lugar?
16 A During some of the conversation I
17 was, but all of this conversation was total obscenity from
18 the defendant.
19 Q What do you mean?
20 MR. MORCHOWER: Judge, it has no
21 relevancy to whether these people were lawfully
22 in the apartment or whether the search was
23 proper.
24 MR. SIMMONS: Well, I'm trying to

1 find out --

2 MR. MORCHOWER: Well --

3 MR. SIMMONS: He doesn't tell -- he

4 doesn't say a thing in the world in the motion

5 to suppress on what -- arrested for what.

6 Q Now, what was he arrested for,

7 Officer Combs, do you know?

8 A He was arrested for being disorderly,

9 sir.

10 Q All right, he was arrested for being

11 disorderly, what did you notice about him being disorderly,

12 if anything.

13 A He was cursing, screaming, yelling,

14 well, then, when --

15 MR. MORCHOWER: I assume this was all

16 done prior to the arrest being made, because if

17 he's going into whether this arrest was lawful

18 or not, he has to go into the facts before the

19 arrest was made.

20 MR. SIMMONS: I don't have to go

21 into anything, this is his motion to suppress

22 the evidence because of illegal arrest, if I'd

23 asked Officer Combs why he was arrested because

24 of disorderly and give us information to justify

1 the arrest, Mr. Morchower has missed the boat
2 insofar as him not going on direct examination.
3 MR. MORCHOWER: Maybe I have another
4 witness in mind --
5 MR. SIMMONS: Well, maybe you do,
6 but I got this witness now on cross.
7 THE COURT: Objection's overruled
8 and
9 MR. MORCHOWER: Exception noted.
10 THE COURT: exception noted.
11 MR. MORCHOWER: Judge, I think I
12 can ascertain whether he's answering a question
13 on -- on facts leading up to the arrest or not,
14 can't I, because it's all irrelevant what
15 happened after the arrest.
16
17 BY THE COURT:
18 Q Were you officer?
19 MR. SIMMONS: I don't --
20 Q Your testimony is based on something
21 leading up to the arrest?
22 A No, sir, actually he was inside the
23 paddy wagon when I first saw him.
24 THE COURT: What -- is this relevant

1 insofar as your motion is concerned, Mr. Simmons?
2 MR. SIMMONS: Well, it would appear
3 to be because it says that the arrest of the
4 defendant is one thing and search of 1102 Floyd
5 Avenue is another thing, now, I'm going into
6 why he was arrested.
7 MR. MORCHOWER: He's going into
8 subsequent facts, Judge, that's my point.
9 THE COURT: Well, I acknowledge
10 MR. SIMMONS: He --
11 THE COURT: that, but it is -- there
12 is nothing before the Court to show whether
13 there was -- apparently there was more than one
14 search, and I don't know whether this relates
15 to a subsequent search which is the subject of
16 your motion or not.
17 MR. MORCHOWER: Well, my search --
18 on my motion, Judge, is the search of the apart-
19 ment and arrest of the -- I'm satisfied that Mr.
20 Combs was not present when my client was arrested
21 by Mr. Bennett, which is the reason why I haven't
22 gone into any of these circumstances, I think
23 he answered the question, when he saw Mr. Lugar,
24 he was in the paddy wagon already under arrest,

1 so what transpired after the arrest, I think is
2 immaterial to my motion.
3 THE COURT: Well, your motion says
4 arrest and then search and I can only assume
5 that you're talking about an arrest first and
6 then a search until it's otherwise shown.
7 MR. MORCHOWER: Well, he didn't
8 search -- I'm satisfied that --
9 MR. SIMMONS: They had to search
10 and then arrest.
11 THE COURT: Well, the motion says
12 arrest and search and it doesn't say the chrono-
13 logical order and I don't think what's been
14 presented thus far would -- would show whether
15 the motion is based upon a search made subsequent
16 to or prior to the arrest.
17 MR. MORCHOWER: Well, if my record --
18 if I show the arrest is improper, Judge, it
19 immediately follows that the search was improper,
20 so there's no need to go into the -- any probable
21 cause as to the search, we're concerned about
22 the arrest of Lugar, which Mr. Combs did not
23 take part in and he was not present when the
24 arrest was made.

1 MR. SIMMONS: That's not necessarily
2 true, Judge, the officers were at a certain place
3 looking for Hodges and saw these drugs. I think
4 the evidence will show at the time the car was
5 stopped in Henrico County, the defendant and
6 another party were in that automobile.
7 MR. MORCHOWER: I'll stipulate that,
8 Judge, there's no question about that.
9 MR. SIMMONS: And while the --
10 Officer Combs was up there, the defendant came
11 to that apartment, and he subsequently gave a
12 fictitious name and later gave his address 1102
13 Floyd Avenue.
14 MR. MORCHOWER: But Combs doesn't
15 know anything about this, Judge, this is all we
16 can ask him.
17 MR. SIMMONS: He can -- he can
18 testify on hearsay information on the probable
19 cause to arrest.
20 THE COURT: Gentlemen, I am looking
21 anxiously for a tying in of a lot of what has
22 been brought out this far and subject to being
23 tied in, I'll allow it as I did with the defense.
24 MR. SIMMONS: All right.

1 BY MR. SIMMONS:

2 Q Officer Combs, did it come to --

3 MR. MORCHOWER: Exception noted.

4 Q Did it come to your attention at

5 any time that the defendant, Lugar, had been a passenger in

6 that vehicle when it stopped in Henrico County?

7 A Yes, it did.

8 Q But you didn't know his name at that

9 time, is that correct?

10 A That's correct.

11 Q And at some three or four, five

12 o'clock in the morning that you were up there looking for

13 Hodges on the fugitive warrant, the defendant came to that

14 area, is that correct?

15 A Yes.

16 Q And he was arrested for being dis-

17 orderly?

18 A That's correct.

19 Q And did he not, to you knowledge,

20 give his address as 1102 Floyd Avenue, Richmond, Virginia?

21 MR. MORCHOWER: Judge, again I

22 object for the simple reason what he was told

23 after he arrested in the apartment, all of this

24 he discovered after the apartment was early --

1 they were already in the apartment for a number of -- an hour
2 or so before Detective Bennett arrived and arrested Lugar,
3 so this is --
4 THE COURT: Mr. Morchower, now,
5 you're testifying.
6 MR. MORCHOWER: Well, Mr. Simmons,
7 when he objects testifies too, Judge, so I
8 thought I would testify to something --
9 THE COURT: Well, we're going to
10 stop it right now.
11 MR. SIMMONS: All right, that's all.
12
13 REDIRECT EXAMINATION
14 BY MR. MORCHOWER:
15 Q Officer Combs, is that correct,
16 when you were -- originally approached this apartment, you
17 didn't know anything about Lugar, did you?
18 A No, sir, I didn't.
19 Q And you were not present when Lugar
20 was arrested by Bennett, were you?
21 A No, I was not.
22 Q You only saw him after he was being
23 placed in the paddy wagon after the arrest occurred, is that
24 correct?

1 A No, I saw him when he was trying to
2 escape from the paddy wagon --
3 Q Well, this is after the arrest, is
4 that correct?
5 A Yes.
6 Q Were the other subjects in the apart-
7 ment also seemingly under the influence of some drug?
8 A No, only Newcomb.
9 Q I have no further questions.
10
11 RECROSS EXAMINATION
12 BY MR. SIMMONS:
13 Q 1102 Floyd Avenue, is that located
14 in the City of Richmond?
15 A Yes, it is.
16 Q All right.
17 THE COURT: All right, Mr. Combs,
18 when you're outside, don't discuss your testimony
19 or allow anyone to discuss it with you.
20
21
22
23 WITNESS STOOD ASIDE.
24

1
2
3 WILLIAM G. KEENAN, JR., on
4 motion to suppress, being first duly sworn, testified as
5 follows:
6
7 DIRECT EXAMINATION
8 BY MR. MORCHOWER:
9 Q Would you state your full name for
10 the record, sir?
11 A William G. Keenan, Jr.
12 Q All right, and what's your occupation,
13 sir?
14 A Patrolman, Henrico County Police
15 Department.
16 Q And how long have you been a patrol-
17 man for Henrico Police Department?
18 A It would be two years the end of
19 June.
20 Q Two years in June, and directing
21 your attention to the evening of March 13th, 1972, did you have
22 occasion to stop a certain vehicle in Henrico County?
23 A It was actually on the 14th when I
24 stopped the vehicle.

1 Q Was it the early morning of the 14th?
2 A Yes, sir,
3 Q All right?
4 A after twelve.
5 Q And what kind of car did you stop
6 and who was in the car?
7 A It was a '66 Austin Healy, and three
8 subjects in the vehicle, the names they gave me at that time
9 was Greg B. Lugar, Matthew Wayne Baughan and Ernest Frederick
10 Hodges.
11 Q All right, now, if I may summarize
12 to save time, it is a fair statement to say you stopped this
13 car which was being driven by Hodges?
14 A Yes, sir.
15 Q For a traffic offense, is that
16 correct?
17 A Yes, sir.
18 Q And you were also running a check on
19 Hodges, through the NCIC, is that correct?
20 A I ran a check on all three of the
21 subjects.
22 Q All right, and you received informa-
23 tion that Hodges was wanted in Roanoke, is that correct?
24 A Wanted in Salem, Virginia.

1 Q Salem, Virginia, all right, and did
2 he escape from you or did he run from you
3 A Yes, sir,
4 Q or something?
5 A he did.
6 Q Who was with him when he ran?
7 A He was by himself when he ran.
8 Q Did he drive off or did he run off
9 on foot --
10 A Yes, he ran off on foot.
11 Q All right, and did Lugar leave with
12 your permission
13 A Yes, sir,
14 Q in your presence?
15 A I had nothing to hold him on, he
16 asked if he could leave, and I said he could, but he would
17 have to walk.
18 Q As far as you know he walked,
19 A Yes, sir.
20 Q is that correct? And what about
21 Newcomb?
22 A Newcomb was sitting in the vehicle
23 that I stopped after Mr. Hodges escaped. When I came back to
24 the vehicle David was gone and Mr. Newcomb was gone.

1 Q All right, and you had nothing to
2 hold Newcomb on either, did you?
3 A Not at that time, no.
4 Q All right, what time was this
5 approximately, Officer, do you know?
6 A I'm not certain, it was after twelve,
7 shortly after I left Headquarters,
8 Q All right?
9 A I was headed towards the West End.
10 Q All right, did you also have occasion
11 to go to 1102 Floyd Avenue in the City of Richmond?
12 A Yes, sir.
13 Q And who was there with you?
14 A Well, there were several people
15 there, Sergeant Schesventer, Sergeant Justice, Officer Taylor,
16 Officer Hill was there one time, and I believe Sergeant Davis
17 was there, the City Police Officers responded -- and I believe
18 that's --
19 Q So it was about eight or ten police
20 officers?
21 A Yes, sir.
22 Q Mostly from the County?
23 A Most from the County at first.
24 Q At first? And do you know the

1 purpose for which -- for which you were at 1102 Floyd Avenue?
2 A The vehicle that I had stopped was
3 found in the alleyway beind this address.
4 Q Well, do you know specifically where
5 that vehicle was found?
6 A It was directly behind the apartment --
7 Q 1102 or 1104?
8 A Well, it was in the alleyway there,
9 I'm not certain, it was quite dark in there, but it was behind
10 the apartments that we went into.
11 Q All right, and did you have occasion
12 to go to any particular apartment in 1102 Floyd Avenue?
13 A Yes, sir, we went to Apartment Three.
14 Q All right, and at that time, was the
15 vehicle, the Austin, the '66 Austin Healy behind -- parked
16 behind the apartment?
17 A No, when we went in the apartment,
18 the City had already towed the vehicle away.
19 Q All right, what time was this when
20 you first arrived at the apartment, do you recall?
21 A I couldn't say for sure.
22 Q Well, was it --
23 A It was several hours after I origi-
24 nally stopped the vehicle.

1 Q And did you go into the particular
2 apartment?
3 A Yes, sir, I did.
4 Q Would you describe how you got into
5 the apartment and what you did and what was done in your
6 presence upon entering this particular apartment?
7 A Well, when we arrived at the apart-
8 ment, City Police Officer knocked on the door and -- several
9 times -- there was a little bit of a scuffle inside and
10 finally the door was opened and two subjects were standing
11 at the door.
12 Q Two subjects?
13 A Yes.
14 Q Who were they, do you recall them
15 by name?
16 A I believe one was Mr. Carter, the
17 owner of the vehicle, and a Greek boy, only name I heard was
18 Nick.
19 Q Is it . . . . . something
20 like --
21 A I don't know, I never heard his last
22 name.
23 Q All right, what happened, what --
24 immediately --

1 A We asked if Mr. Hodges was there and
2 they stated he was not there at that time, we asked if they
3 mind if we came in and looked for him and they stated they
4 did not and allowed us to come in. We went inside and Mr.
5 Baughan that had been in the vehicle I originally stopped
6 was in bed, laying in bed.
7 Q Could you show us on that diagram
8 where he was? (pause) Assume this diagram represents the
9 apartment, this is the front door right here?
10 A He would be laying up in this bed
11 up in the corner.
12
13 BY THE COURT:
14 Q Who is this?
15 A Mr. Baughan, I found out later his
16 name was Newcomb.
17
18 BY MR. MORCHOWER:
19 Q All right, what did you see?
20 A Well, when I came in, I went into
21 this room and was talking to Mr. Baughan, asked him what his
22 name was and he told me his name was Dennis Newcomb, and I
23 asked him for identification, and I recognized him as Mr.
24 Baughan, the one I originally stopped; he got up, couldn't

1 find any identification whatsoever to show me. It was shortly
2 after this that the City Police Officer came in and advised
3 everyone they were under arrest and advised them of their
4 rights.
5 Q Did they --
6 A While I was talking to Mr. Baughan
7 some drugs had been found in the kitchen.
8 Q But you didn't find any yourself?
9 A No, I didn't find any myself.
10 Q Did you see any drugs yourself?
11 A Yes, sir, after they'd been found,
12 I -- most of them were laid on the bed in the --
13 Q No, I mean coming -- on coming into
14 the apartment --
15 A No, sir, I didn't see anything.
16 Q Then you came through that hallway
17 and went to the back bedroom, is that correct?
18 A Yes, sir.
19 Q Do you know where the Greek fellow,
20 Nick, was located?
21 A He came to the door when we first
22 went in.
23 Q Who did -- who actually conversed
24 with these boys after the door was answered?

1 A I believe City Police Officer and
2 one of my Sergeants, I don't know which one was doing -- was
3 talking to them.
4 Q And you had no search warrant, is
5 that correct?
6 A No, sir, we did not.
7 Q And did you ever -- how long were you
8 in the apartment, you, yourself?
9 A Off and on I would say about an hour,
10 an hour and a half.
11 Q And did you ever see a search warrant
12 executed during this time?
13 A No, sir, I did not.
14 Q And what were you doing for this
15 hour or hour and a half?
16 A Most of the time I was standing in
17 the bedroom with the subjects after they'd been placed under
18 arrest, I was standing in there with them.
19 Q Did you see what the other officers
20 were doing?
21 A They were searching the apartment.
22 Q And where were the subjects being
23 detained, in the kitchen area?
24 A Well, they --

1 MR. SIMMONS: He's leading, Judge,
2 and
3 MR. MORCHOWER: Well, show us --
4 MR. SIMMONS: he hasn't said they'd
5 been detained yet,
6 MR. MORCHOWER: Well, show us --
7 MR. SIMMONS: in the kitchen area.
8 THE COURT: He is leading.
9 MR. MORCHOWER: I apologize, Judge,
10 for leading the witness.
11 Q Show us on the diagram where the
12 subjects were being detained by you?
13 MR. SIMMONS: Well, he's never said
14 they'd been detained by him.
15 MR. MORCHOWER: Well, he said --
16 A I was standing in the bedroom with
17 them, I wasn't --
18 Q Well, were they under arrest at this
19 time?
20 A Yes, sir.
21 Q So you would not have allowed them
22 to leave, would you?
23 A No, sir.
24 Q Would you show us where --

1 A Be in the bedroom --

2 Q Could you mark that, please?

3 A What do you want, just initials on

4 these?

5 Q Mark -- mark the area where you were

6 standing with the three subjects who were arrested?

7 A Well, they were all -- all round in

8 the room, I mean I just stood there blocking the doorway to

9 keep them from leaving the room.

10 Q All right, this is the back bedroom,

11 is that correct?

12 A Yes, sir.

13 Q All right, would you mark that back

14 -- back --

15 A Actually, this is the front of the

16 building.

17 Q Right, all right, I understand.

18 MR. MORCHOWER: Judge, I think it

19 would be proper to introduce this for identifica-

20 tion purposes anyway --

21 THE COURT: All right.

22 MR. MORCHOWER: I would ask that it

23 be marked.

24 Q Did you actually find anything

1 youself, sir?

2 A No, I did not.

3 Q Did you actually see where these

4 drugs were -- were found?

5 A No, I did not.

6 Q Who actually -- and you never saw

7 any drugs when you went to the rear of the apartment, is

8 that correct?

9 A No, sir, I did not see them until

10 after they were found.

11 Q Did you ever see Greg Lugar in that

12 particular apartment?

13 A No, sir, I did not.

14 Q And who actually -- I mean you esti-

15 mated the search remained in the apartment for an hour, an

16 hour and a half, is that correct?

17 MR. SIMMONS: He didn't say that,

18 he said he stayed there that long.

19 Q Well, were the subjects with you

20 during this time?

21 A Yes, sir, they were.

22 Q All right, you had no information

23 that Hodges was actually in the apartment at this time, did

24 you?

1 A The only information I had was
2 information Mr. Hodges had given me that the owner of the
3 car was up in this area, and that he had loaned him the car,
4 and this is how I gave the information to the City to look
5 up, he said somewhere up on Grove Avenue, and I gave this
6 information to my Dispatcher and they radioed it to
7 Q City?
8 A the City and the City shortly after
9 that located the vehicle.
10 Q Well, can you tell us why you went
11 to this particular apartment?
12 A Well, they called me up originally
13 to identify the vehicle.
14 Q All right, then you went there and
15 you went into the apartment, do you know why you went to the
16 apartment?
17 A It had been -- this was supposed to
18 be the apartment it was told me that he was in,
19 Q Oh?
20 A Mr. Hodges had been staying in.
21 Q Had been staying in, but you had no
22 -- you were not told that he was actually in the apartment
23 or --
24 A No, sir, I was not.

1 Q Did you have any information that
2 Lugar, Greg Lugar, was seen in the rear of 1102 when you were
3 searching the apartment?
4 A The only information I know is when
5 he was stopped in front of the apartment, how he got to the
6 apartment, I have no idea.
7 Q You weren't present when he was
8 arrested, were you?
9 A Well, I went downstairs when the
10 scuffle started out in front of the building, and at this
11 time a City Detective had put him in custody.
12 Q So you actually saw the -- the
13 circumstances?
14 A Yes, sir -- well, they were still
15 scuffling when I got down there and --
16 Q You don't --
17 A and I saw him restraining the
18 subject.
19 Q Well, yet, you weren't present when
20 the scuffling began, were you?
21 A No, sir, I was not.
22 Q All right, and he was placed under
23 arrest for what purpose, do you know, what reason --
24 A No, sir, I do not know.

1 Q Are you aware of any search warrant
2 being executed at -- at 1102 Floyd Avenue, Apartment Three?
3 A No, sir, I never saw one executed.
4 Q In your presence, did anyone advise
5 these three or two subjects who answered the door that --
6 that they had a right to refuse you permission to search --
7 to come into the apartment?
8 MR. SIMMONS: I don't think that
9 makes any difference, the testimony was that
10 this officer was invited in.
11 MR. MORCHOWER: Well, I think the --
12 THE COURT: The testimony is of this
13 officer, Mr. Morchower.
14 MR. MORCHOWER: I thought he said it
15 was the testimony either by Combs or this officer
16 that they asked --
17 MR. SIMMONS: It was by Combs, this
18 officer is not responsible for the knowledge of
19 Combs.
20 MR. MORCHOWER: Well, this was done
21 -- this was done in the presence, Judge, I'm
22 asking him what was stated in his presence and --
23 THE COURT: He's already said that
24 they asked if Hodges were there and were told no,

1 and asked if it were all right to search for him
2 and they were told yes.
3 Q All right, did you also -- in your
4 presence was it stated that they didn't have to give you
5 permission to search the apartment, did you go into any of
6 those --
7 A I don't recall anyone saying this.
8 Q All right, you never saw this --
9 any teletype did you, yourself, sir?
10 A What, on Mr. Hodges?
11 Q Uh huh?
12 A No, sir, I did not see a teletype.
13 Q Would you tell us who actually was --
14 beside Combs and Justice -- who else was in the apartment
15 searching when you were with the three subjects in the back
16 room?
17 A I believe Sergeant Davis, Sergeant
18 Schesventer, I'm not sure about whether Sergeant Scheventer
19 was there, he was in the apartment one time or another, and
20 Officer Taylor.
21 MR. MORCHOWER: Excuse me, Judge.
22 (pause and rattling of paper)
23 Q How about Officer -- Officer Hill,
24 was he present at the scene?

1 A He was present at the scene, I
2 believe he was at the rear of the building.
3 Q I have no further questions.
4
5 CROSS EXAMINATION
6 BY MR. SIMMONS:
7 Q Let's see now, who was it that ran
8 from you initially?
9 A Mr. Hodges.
10 Q Hodges? And the defendant stayed
11 in the car?
12 A Right -- well, he was -- he was
13 already gone when Mr. Hodges ran from me, he'd asked me
14 prior to that could he leave and I had nothing to hold him
15 on at that time and I told him he could leave, if he wanted
16 to, but he would have to leave on foot because Mr. Hodges had --
17 Q And Mr. Baughan?
18 A He was in the vehicle when Mr.
19 Hodges ran.
20 Q And how did the vehicle leave, do you
21 know?
22 A I didn't see the vehicle leave, when
23 I returned back to the police car after losing Mr. Hodges,
24 the vehicle was gone.

1 Q As was Mr. Lugar
2 A Yes --
3 Q and Mr. Baughan?
4 A Right.
5 Q Do you know how either one of them
6 left?
7 A Mr. Lugar walked off, the last time
8 I seen him he was walking away from the vehicle, prior to
9 Mr. Hodges escaping.
10 Q Now, did you -- did somebody tell
11 you what the fugitive warrant was for?
12 A As they were telling me on the radio
13 that he was wanted for statutory burglary that's when he ran.
14 Q Statutory burglary?
15 A Yes, sir.
16 Q Of what?
17 A That's all they gave me, they said
18 he was wanted in Salem, Virginia, and they began to say
19 statutory burglary and when they got burglary out, he went
20 out the back door.
21 Q Now, you say the officers were search-
22 ing, do you know if they were searching or were looking?
23 MR. MORCHOWER: I think he's
24 answered the question, Judge --

1 MR. SIMMONS: Well, I'll --

2 MR. MORCHOWER: I think he knows the

3 difference between looking and searching --

4 MR. SIMMONS: Let's see if he does.

5 THE COURT: He can explain what he

6 does --

7 A ~~Well, they were searching in my~~

8 opinion.

9 Q What was he -- when you went in the

10 door, did you see any trash or anything on the floor?

11 A There was a large amount of trash

12 in the kitchen.

13 Q Now, do you know what that trash

14 consisted of?

15 A No, sir, I did not look at it, I

16 didn't pay any close attention to it.

17 Q Well, anyhow, you weren't the one

18 that was finding things

19 A No, sir.

20 Q in the kitchen?

21 A No, sir.

22 Q You were more interested in what was

23 going on in the bedroom?

24 A Yes, sir.

1 Q And looking at other people in the
2 bedroom?
3 A Yes, sir.
4 Q And you saw items after they were
5 found?
6 A Yes, sir.
7 Q Did you see the seven thousand
8 tablets or approximately a whole bunch of drugs --
9 A Well, there was -- there was a large
10 amount drugs laid on the bed, which had been found in the
11 room and one wrist watch had been found, and several other
12 articles and a stamp machine found in the stove.
13 Q After Mr. Lugar left the scene,
14 what was he doing the first time you saw him after that?
15 A After leaving the scene where I
16 originally stopped him?
17 Q Yea, at 1102 what was he doing?
18 A He was fighting with the detective
19 in front of the building --
20 MR. MORCHOWER: Well, I would want
21 to know if this was before the arrest or after
22 the arrest, if it was after the arrest, it's
23 immaterial.
24 THE COURT: Does he know?

1 BY THE COURT:

2 Q Do you know?

3 A No, sir, I do not know

4 Q All right.

5 Q whether he was placed under arrest,

6 at the time I got out, he was just fighting --

7

8 BY MR. SIMMONS:

9 Q Do you know whether or not he'd been

10 in the paddy wagon?

11 A He was put in the paddy wagon after

12 that, and he again got away.

13 Q Do you -- to your knowledge, was any

14 drugs found in that '66 Austin Healy when it was towed?

15 A (No audible response is heard)

16 Q Have you ever heard that there was?

17 A One capsule was --

18 MR. MORCHOWER: Judge, I would also

19 object, the Austin Healy has no connection with

20 the apartment in question or the arrest of the

21 subject --

22 MR. SIMMONS: I don't see how you

23 can say that, Judge,

24 THE COURT: Well --

1 MR. SIMMONS: you got people in the
2 automobile earlier that day on Dumbarton Road
3 who was later arrested for drugs, and if there
4 was drugs in the automobile at the time it was
5 towed away, I think that is a circumstance to
6 be considered.
7 MR. MORCHOWER: I think it's --
8 THE COURT: I don't think it's yet
9 presented as to the details and nature of the
10 arrest of the defendant, I'll allow it subject
11 to being connected up.
12 MR. MORCHOWER: I think Mr. Simmons
13 is trying to connect it up by virtue of the
14 fact that he was in the automobile --
15 MR. SIMMONS: I'm not trying to
16 connect up anything, Judge, this is his motion
17 to suppress.
18 THE COURT: I understand that, but
19 it's your evidence now.
20 MR. SIMMONS: Yes, sir.
21 THE COURT: Is that it?
22 MR. SIMMONS: Yes, sir.
23 MR. MORCHOWER: I have no redirect --
24 THE COURT: Officer Keenan, when

1 you're outside, don't discuss your testimony or
2 allow anyone to discuss it with you.
3 A Yes, sir.
4
5
6
7 WITNESS STOOD ASIDE.
8
9
10
11
12
13
14 MICHAEL A. BATTEN, on
15 motion to suppress, being first duly sworn, testified as
16 follows:
17
18 DIRECT EXAMINATION
19 BY MR. MORCHOWER:
20 Q Sir, would you state your full name
21 for the record?
22 A Michael Andrew Batten.
23 Q Mr. Batten, how long have you been
24 employed by the Henrico Police Department?

1
2
3 DAVID C. HILL, on motion to
4 suppress, being first duly sworn, testified as follows:
5
6 DIRECT EXAMINATION
7 BY MR. MORCHOWER:
8 Q Mr. Hill, would you state your full
9 name and your occupation, please?
10 A David Charles Hill, Henrico police-
11 man.
12 Q And how long have you been employed
13 in this capacity?
14 A Approximately fifteen, sixteen
15 months.
16 Q All right, directing your attention
17 to March 14th, specifically, 1102 Floyd Avenue, were you
18 present at that particular house?
19 A Yes, I was.
20 Q All right, were you with Combs and
21 Keenan and Justice when they arrived at the particular apart-
22 ment in question?
23 A I met them at the apartment.
24 Q All right, and who was with you, were

1 you by yourself?

2 A Sergeant Davis and Sergeant Sches-

3 venter were with me.

4 Q All right, and do you recall what

5 time this -- this occurred?

6 A Approximately three p.m., somewhere

7 around in there.

8 Q And would you tell the Court where

9 Apartment Three is located in this particular dwelling house?

10 A It would be upstairs, you go up the

11 stairs and to your right.

12 Q All right, the stairs are in the

13 rear of the building, is that correct?

14 A Yea, you walk in the hall and go

15 down towards the rear of the building and then back up the

16 stairs.

17 Q Which leads you to Apartment Three,

18 A Yes,

19 Q is that correct?

20 A which the door opens toward the

21 front of the building,

22 Q All right?

23 A you go back in a U-turn more or less.

24 Q So the rear apartment -- the rear

1 bedroom would actually be the front of the building, is that
2 correct?
3 A I'm not sure, no, sir, I don't
4 recall.
5 Q All right, is there another apartment
6 up there, Apartment Four, also?
7 A There may be, I don't -- don't
8 recall.
9 Q All right, did you ever see Greg
10 Lugar at this particu -- in this particular apartment?
11 A No, I did not.
12 Q And would -- who actually knocked
13 on the door to gain entry --
14 A I don't know, now, I was behind the
15 building, I was watching the back of the building at the time,
16 Q All right?
17 A Sergeant Davis and myself.
18 Q All right, how long were you -- did
19 you stay behind the building?
20 A Approximately twenty minutes, I
21 imagine.
22 Q Did you ever see anyone running
23 down an alley
24 A Ah --

1 Q to the rear of the building?
2 A At that time, no.
3 Q How about later?
4 A Later I did.
5 Q All right, who were you with when
6 you saw someone running down the alley?
7 A Sergeant Schesventer, and he wasn't
8 running down the alley, he was --
9 Q All right, tell us what you saw?
10 A Sergeant Schesventer and I had gone
11 to our car, were getting ready to leave, we'd forgotten some-
12 thing, so we got back out of the car and started walking
13 across the street, Harrison Street --
14 MR. SIMMONS: Can you identify this
15 as somebody that got --
16 MR. MORCHOWER: I think it's Lugar --
17 A Yes, it's Mr. Lugar.
18 MR. MORCHOWER: I think it's Lugar.
19 MR. SIMMONS: Well, I didn't know --
20 MR. MORCHOWER: I don't want to lead
21 the witness.
22 A At this time we began to cross the
23 street, we saw a subject walking up, Mr. Lugar was one of them
24 that we hadn't found at the time, I believe he was dressed in

1 a brown coat and we were looking for a brown coat as well as
2 I can recall.
3 At this time Sergeant Schesventer
4 motioned for me to go to the right and he went to the left.
5 As we split and started to walk towards the subject, he broke
6 and ran through a little passageway at the rear of the
7 building. I went around to the rear of the building, Sergeant
8 Schesventer followed directly behind him. At this time I
9 yelled for him to halt, he turned and ran into the back door
10 of -- of the building there on Harrison Street,
11 Q Of the --
12 A of the apartment -- the particular
13 apartment house in question. I entered the door, it was dark,
14 I wasn't familiar with it, I turned on my light and I saw him
15 waiting, when I hit him with the light, he turned and ran
16 again. We went through, like I say, the hallway zigzags
17 through --
18 Q He ran out the front door?
19 A We scuffled a little in the hallway,
20 he broke again, ran out the front door and ran into one of
21 the City detectives.
22 Q He ran into actually, Bennett, didn't
23 he?
24 A I believe it was Mr. Bennett, yes.

1 Q And were you present when -- did
2 Bennett place him under arrest?
3 A Yes, he did.
4 Q For what charge?
5 A I don't know, I went back to pick
6 up the stuff that I dropped in the hallway.
7 Q Did -- did Bennett draw his weapon,
8 could you see that?
9 A I don't remember, I wasn't -- I
10 didn't stay that long.
11 Q Was Bennett --
12 A As soon as -- as soon as he ran into
13 Bennett and I believe another officer, they had him under
14 control or what appeared to be to me under control, I couldn't
15 see, there was too many people in anyway, it wasn't no use
16 in me offering assistance, so I just went back there and got
17 my hat.
18 Q Okay, so the essence of your testi-
19 mony is you chased Lugar through the --
20 A Through the hallway, that is the
21 extent of my seeing him that night.
22 Q And this is the hallway on the first
23 floor whereas the apartment in question is on the second
24 floor,

1 A Yes, it is.

2 Q is that correct? And you had no

3 warrant for Lugar at this time, did you?

4 A No, I did not, I just went on the

5 premise that he ran when we approached him --

6 Q So you followed him --

7 A Therefore, I followed him.

8 Q So you left Bennett and this other

9 officer since you felt the situation was under control?

10 A Yes, I did.

11 Q What did you do after you left, you

12 went to your car or --

13 A I came back out, they were putting

14 Mr. Lugar in the paddy wagon at that time --

15 Q Come back out from where?

16 A From in the building, see, I dropped

17 my hat, my watch, and several things inside the building.

18 Q Did you ever -- were you ever in this

19 particular apartment house or apartment?

20 A I was in the apartment before that

21 time, yes.

22 Q How long were you in the apartment

23 before this time?

24 A Approximately five to ten minutes,

1 something like that,

2 Q Could you tell us what was --

3 A it may have been longer.

4 Q what was being done in the apartment?

5 A They were just more or less holding

6 the subjects, I wasn't really paying any attention to what

7 they were doing, they had found several things and were

8 discussing --

9 Q Where were the subjects in the

10 apartment?

11 A In the front room of the apartment,

12 one of the City Officers had them in custody at that time,

13 I believe.

14 Q Do you know who -- who that City

15 Officer was?

16 A No, I don't, I'm not familiar with

17 them.

18 Q Did you actually see the subjects in

19 question leave the apartment under cus -- in custody?

20 A That was after I'd left.

21 Q And how many officers were in the

22 apartment when you were there?

23 A I'm not sure, possibly six.

24 Q Did you see any search warrant at

1 that time?

2 A No, I did not.

3 Q And Schesventer -- Schesventer was

4 also in the apartment, is that correct?

5 A He was when I came in, yes, I

6 believe, I'm not real sure on that.

7 Q What did you do -- you were present

8 when the -- when the officers went into the apartment origi-

9 nally, is that correct?

10 A Yes, I was out back standing in the

11 alley watching the back door.

12 Q So you never actually went into the

13 apartment

14 A No, I

15 Q really, did you?

16 A don't know what went on when they

17 first went in.

18 Q Do you know the purpose for which

19 you were at this particular apartment in question?

20 A I knew we had a -- a teletype on one

21 of the subjects that they had reason to believe he was in

22 this apartment.

23 Q But did you -- who told you this?

24 A I had heard it from conversation on

1 my radio, I was working in the other end of town, our radios
2 aren't that strong, I wasn't real sure on all of the circum-
3 stances, I couldn't hear them all.
4 Q So you're not sure if the -- if the
5 information -- the information could have been that he -- he
6 had stayed in this apartment rather than being in the apartment,
7 is that correct?
8 A I don't know, I was told to watch
9 the back door.
10 Q That's all --
11 A That's all I was told.
12 Q And you -- you never actually saw
13 this teletype in question, did you?
14 A No, I did not, that would have been
15 in the radio room, I had no reason to go down there.
16 Q Can you give us when you left this
17 apartment the last time?
18 A It may have been about four or so,
19 I'm not real sure, I'd lost my watch and --
20 Q But officers were still in the apart-
21 ment when you left, is that correct?
22 A Yes, they were, there wasn't any
23 use in me staying, they had the situation under control, so
24 I went back to my area.

1 Q All right.

2 MR. MORCHOWER: I have no further

3 questions, Judge.

4

5 CROSS EXAMINATION

6 BY MR. SIMMONS:

7 Q Do you know where Sunset Hill Phar-

8 macy is?

9 A I'm not real sure.

10 Q Let me ask you two questions. Do

11 you -- do you know anything as to why Mr. Lugar was arrested,

12 were you there at the time, do you know anything exactly why?

13 A Not exactly why, no.

14 Q All right, do you know anything

15 about the search of that apartment, specifically, as to why

16 they were there?

17 A No, I don't.

18 Q So you know nothing about the arrest

19 nor nothing about the search?

20 A No, no, sir.

21 Q That's all.

22 THE COURT: All right, Officer Hill,

23 when you're outside don't discuss your --

24 MR. MORCHOWER: I have one question,

1 excuse me, Judge.

2 THE COURT: All right.

3

4 REDIRECT EXAMINATION

5 BY MR. MORCHOWER:

6 Q You said you do not know exactly

7 why Lugar was arrested?

8 A No, I don't.

9 Q Well, what would you have done if

10 you --

11 MR. SIMMONS: That doesn't make any

12 difference what he would have done.

13 MR. MORCHOWER: But he --

14 THE COURT: No, sir, Mr. Morchower,

15 I don't think that's the type of testimony we

16 want to hear.

17 Q Well, do you know why you were

18 chasing him?

19 A Because he ran from me, I had sus-

20 picion to believe -- to believe that he had committed a crime.

21 Q What -- what suspicion did you have,

22 what reasonable suspicion did you have?

23 A The fact that he turned and ran

24 when I approached him.

1
2
3 C. W. BENNETT, on motion to
4 suppress, being first duly sworn, testified as follows:
5
6 DIRECT EXAMINATION
7 BY MR. MORCHOWER:
8 Q State your full name and occupation?
9 A Detective C. W. Bennett, Richmond,
10 Virginia, Bureau of Police, assigned to the Detective Division.
11 Q And you've been in that capacity for
12 how long, Officer?
13 A Two years.
14 Q And directing your attention to
15 March 14th, 1972, did you have occasion to be at 1102 Floyd
16 Avenue?
17 A Yes, sir, I did.
18 Q Did you have occasion to get a search
19 warrant for this location?
20 A Yes, sir, I did.
21 Q And what time did you get the search
22 warrant?
23 A The best I can recall it was about
24 two o'clock p.m., on the 14th.

1 Q On the 14th, the afternoon?
2 A Yes, sir.
3 Q And did you have occasion to be in
4 the apartment at some earlier
5 A Yes, sir.
6 Q time? What --
7 A Approx -- approximately four a.m.,
8 on -- is best I can recall on the 14th.
9 Q And Officer -- there were officers
10 in the apartment to your knowledge, is that correct?
11 A Yes, sir, I was summonsed there by
12 Officer Combs.
13 Q Can you tell us what you found on
14 the 14th as a result of the search warrant?
15 A We found -- as best I can recall,
16 we found two bottles of prescription drugs and --
17 Q And that's it?
18 A Yes, sir.
19 Q Are you aware of what was found
20 prior to that time?
21 A I certainly am.
22 Q What was it, about seven thousand
23 A Yes, sir.
24 Q pills?

1 BY THE COURT:

2 Q Seven thousand what?

3 MR. MORCHOWER: Pills or something --

4 A Pills -- capsules and tablets in --

5 loose and in bottles and cartons.

6

7 BY MR. MORCHOWER:

8 Q Also wrist watches, is that correct?

9 A One wrist watch, I believe, a stamp,

10 postage machine, labels from the Sunset Pharmacy, empty watch

11 boxes, Bank of Virginia money bags, coins, several other

12 items.

13 Q Now, when you returned, you found

14 two bottles of prescription pills, is that correct?

15 A Yes, sir.

16 Q Were these gentlemen charged with

17 that -- with that particular possession of that contraband?

18 A I'm not sure, I don't -- I don't

19 understand.

20 Q When you are saying prescription,

21 they were lawful -- they were in lawful possession of these

22 new pills as far as you're concerned?

23 MR. SIMMONS: The best way to find

24 that out is to find out if they had a prescription.

1 Q Did they --

2 A Are you asking me, in other words,

3 if -- if the tablets and pills that we found as a result of

4 the search warrant executed at two p.m., were in lawful

5 possession

6 Q Right?

7 A of the defendant? No, they were not

8 in lawful possession of the defendant.

9 Q Now, how many pills are we talking

10 about?

11 A I would imagine fifteen perhaps.

12 Q Fifteen pills? And you did not get

13 a search warrant prior to that time, is that correct?

14 A No, sir.

15 Q Do you know how long Combs and Jus-

16 tice and the rest of them were in the apartment prior to you

17 arriving?

18 A The best I could determine it was

19 half an hour to forty-five minutes before I arrived.

20 Q Did you actually, yourself, locate

21 any of the contraband in question that -- that morning?

22 A Many of the items that I recovered

23 were in their original position --

24 Q How do you know that, Officer, were

1 you there when the officers went in originally?
2 A If you would let me finish I would
3 explain that to you.
4 Q All right?
5 A They were in the original position
6 as related to me by the officers and were pointed out to me.
7 Q So you had no first-hand knowledge
8 of the original position?
9 A None other than what was related to
10 me.
11 Q Now, what time was this, was it
12 related to you?
13 A When I arrived at approximately
14 four a.m.
15 Q And you went up to the apartment in
16 question?
17 A Yes, sir.
18 Q And how long were you up there?
19 A I was up there approximately, I was
20 in and out during a two-hour period, I would imagine, two
21 hours.
22 Q Do you know -- did you have occasion
23 to -- to see Greg Lugar?
24 A Yes, sir.

1 Q And what time did you see Greg
2 Lugar, do you know?
3 A Approximately four-thirty a.m.
4 Q Now, who was standing with you when
5 you -- when you saw Lugar for the first time?
6 A Nobody.
7 Q Well, you heard the testimony from
8 Hill, didn't you --
9 MR. SIMMONS: That doesn't make any
10 difference what he heard from Hill --
11 MR. MORCHOWER: All right.
12 Q So you were by yourself?
13 THE COURT: That's correct.
14 Q All right, and you placed him under
15 arrest, is that correct?
16 A Yes, sir.
17 Q What charge?
18 A Being disorderly.
19 Q Did you take any warrants out for
20 him?
21 A No, sir.
22 Q You did not?
23 A No, sir.
24 Q So you arrested him for disorderly,

1 what you mean by it is the breach-of-peace statute, I assume,
2 is that correct?
3 A Yes, sir.
4 Q And no charges were ever pressed?
5 A I did not obtain a warrant.
6 Q Did -- when you saw Lugar, was he
7 being followed by two or one Henrico Police Officer?
8 A The best way I can answer that
9 question is to describe to you what happened, I -- I really
10 can't state whether or not he was being followed by anybody.
11 Q Did you see him come out of the
12 front door
13 A Yes, sir.
14 Q of this dwelling?
15 A 1102 --
16 Q On Floyd?
17 A 1102 Floyd Avenue, he came out the
18 front door.
19 Q All right, and Apartment Four is --
20 is upstairs, is that correct?
21 A I don't know where Apartment Four is.
22 Q Apartment Three upstairs?
23 A Yes, sir.
24 Q How many apartments are upstairs,

1 one or two?

2 A I believe there's two, I'm not sure.

3 Q All right, did you ever see Lugar

4 in the particular apartment in question here?

5 A No, sir.

6 Q All right, tell us what you did,

7 tell us what you saw when you -- leading to the arrest of

8 Lugar?

9 A I had left 1102 Floyd Avenue, Apart-

10 ment Three, and had returned to my automobile which is parked

11 directly in front of the apartment to get my evidence kit to

12 begin recovering property that was found in the apartment, and

13 as I was walking back towards the front door, I was standing

14 on, just off the sidewalk onto the front walk, I heard what

15 sounded to me like someone running down the stairs very loudly,

16 the banging of footsteps, and I continued to -- I took several

17 steps forward and I had not gotten up onto the landing in

18 front of the front door yet, when Mr. Lugar burst out the

19 front door and ran into me and knocked me down and fell on

20 top of me, and I didn't see anyone pursuing him at that time

21 because I was in the process of falling down. He kicked me

22 in the leg and I rolled over on top of him and managed to get

23 the handcuffs on him, and placed him under arrest.

24 Q You were in civilian clothes, weren't

1 you, sir?

2 A Yes, sir.

3 Q And as a result of this arrest, you

4 had occasion to -- to speak with the -- with the subject?

5 A Yes, sir.

6 Q And you also had occasion to confis-

7 cate -- did you have occasion to confiscate any property

8 from him?

9 A Yea, I took a watch --

10 Q Which will be --

11 A I took a watch off of his wrist.

12 Q Which will be -- which will be used

13 in evidence?

14 A I don't know.

15 Q All right, is that watch here?

16 A I don't know.

17 Q What did you do with the watch,

18 Officer?

19 A I turned it in as evidence.

20 Q To whom?

21 A To the -- through the normal police

22 channels, I turned it into the Property Section.

23 Q Is that what you did with the rest

24 of the evidence too?

1 A No, a number of the drugs, in fact,
2 all of the drugs, themselves, were turned into the State
3 Board of Pharmacy, the empty cartons and bottle were held as
4 evidence, the watch boxes and the other property seized was
5 held as evidence, the postage machine was turned over to
6 Detective Garner of the Henrico Police, and I, in my own --
7 rather than turning them into the Property Section, I main-
8 tained in a locked box in my office.
9 Q What -- what was that?
10 A Some four bottles of pills.
11 Q What did the -- were these drugs
12 tested by anyone, do you know?
13 A Yes, sir.
14 Q Who?
15 A Faye Taylor and Paul Strother.
16 Q All right --
17 THE COURT: Mr. Morchower, what
18 does that question have to do with --
19 MR. MORCHOWER: Not much, I apologize.
20 Q And this watch which you recovered
21 from the accused, he was wearing it, is that correct?
22 A Yes, sir.
23 Q All right, and the accused, did he
24 make any statement to you after he was placed under arrest?

1 A He made numerous statements to me,
2 none of them of any -- of any -- that were logical or sensible.
3 Q So, in other words, you're telling
4 the Court he was in --
5 MR. SIMMONS: That's not what he's
6 saying, he just told you --
7 Q Well, did he appear to be under the
8 influence of anything?
9 A Of something, yes, sir.
10 Q In other words, was he coherent or
11 incoherent?
12 A He was incoherent and violent at
13 times, other times he was docile.
14 Q Well, did he make any statement
15 which -- relative to these -- this particular offense?
16 A I advised him in the -- at 8:00 a.m.,
17 in the Detention Section of certain Constitutional rights
18 from the card provided us by the Commonwealth Attorney's
19 Office, and he was so violent at that time that it was im-
20 possible for me to question him other than to get the basic
21 information that I needed to fill out certain of the booking
22 procedures.
23 Q Now, who was present with you when
24 you interviewed the subject at this time leading to this

1 basic information?

2 A Detective M. D. Scott.

3 Q Did you execute any waivers as to

4 his Constitutional rights?

5 A No, sir, in other words, are you

6 asking me did he sign any forms, no, sir.

7 Q Well, let's get to the basic inform-

8 ation, he -- did he give you any particular address?

9 A 1102 Floyd Avenue, Apartment Three.

10 Q Do you have that written down?

11 A Yes, sir.

12 Q May I see what the content of the

13 question -- well, what --

14 A That doesn't show the content of

15 the question.

16 Q Read what you have on that form

17 there relative to this address in question?

18 A I have 1102 Floyd Avenue.

19 Q Well, what's the -- the caption?

20 A In other words, to you want me to

21 read this whole form --

22 Q No, let me see it, I think we can

23 save some time.

24 MR. SIMMONS: I still don't see where

1 this goes to the arrest or to the search.

2 MR. MORCHOWER: Well, Judge, if this

3 goes to the arrest, if the -- the arrest is --

4 if the Court rules that the arrest is improper

5 anything flowing from that improper arrest would

6 also be fruit of the poisonous tree and I anti-

7 cipate Mr. Bennett introducing it on -- in the

8 merits of the case that Greg Lugar gave this

9 address as his address and that would be the

10 fruit of a poisonous tree, if the arrest is in

11 fact illegal, but it does have some -- some

12 validity to go into this.

13 THE COURT: All right, go ahead.

14 Q Would you read item -- read item 19

15 on that -- the form print and also the written-in print?

16 A Item 19, the printed information is

17 home address, street, city, town and county, and it's written

18 here 1102 Floyd Avenue.

19 Q Is there a form filled out by the

20 man who fingerprints these subjects?

21 A No.

22 Q So he actually -- that's the inform-

23 ation that you took down from the accused, right?

24 A That's correct.

1 Q All right, no further questions.

2

3 CROSS EXAMINATION

4 BY MR. SIMMONS:

5 Q What name did the defendant first

6 give you?

7 A I believe he gave us the name of

8 Gregory Woodson.

9 Q Gregory Woodson?

10 A Yes, sir.

11 Q Did you find -- looking at the dia-

12 gram that the defendant has introduced is there a mantle in

13 that room, if there is, would you point it out?

14 MR. MORCHOWER: Judge, I assume to

15 go into this, the arrest is the main reason for

16 questioning Bennett.

17 A And this is the kitchen-bedroom area,

18 this is the door where the officers entered, this area here is

19 a mantle.

20 Q Did you find this on the mantle?

21 A Yes, sir, along with other envelopes

22 addressed to Gregory -- Gregory Lugar.

23 Q What is that you found on the mantle?

24 MR. MORCHOWER: Well, Judge,

1 A The condition of this --
2 MR. MORCHOWER: I would object --
3 MR. SIMMONS: Assuming that the
4 identity of the person who knocked him down
5 running out of the apartment.
6 MR. MORCHOWER: Well, he -- I'm
7 assuming --
8 THE COURT: Mr. Morchower, what
9 you're saying can't be recorded.
10 MR. MORCHOWER: Excuse me, Judge.
11 THE COURT: What's your objection?
12 MR. MORCHOWER: My objection is that
13 I don't think Mr. Simmons is going to tie this
14 in with the arrest and --
15 MR. SIMMONS: . . . . . .tie it in
16 as to corroborating the defendant's statement
17 that he lived at 1102 Floyd Avenue, Apartment
18 No. 3.
19 MR. MORCHOWER: That that occurred
20 at eight a.m., I'm talking about an arrest which
21 occurred around 4:30 a.m., Judge.
22 MR. SIMMONS: I'm talking about an
23 arrest which occurred the first time, was he
24 legitimately under arrest for disorderly conduct.

1 THE COURT: All right, objection's
2 overruled, exception noted.
3 MR. MORCHOWER: Exception noted for
4 the reasons stated.
5 Q Can you identify that which was just
6 handed to you?
7 A Yes, sir.
8 Q What does it say?
9 A It says order of release and con-
10 ditions of parole to Gregory Blanton Lugar.
11 MR. MORCHOWER: I would object, he
12 doesn't know -- this evidence has no cogency,
13 Judge.
14 MR. SIMMONS: It has for two reasons,
15 two or three, one to identify the person who was
16 out there that knocked Bennett down and this is
17 found in the apartment prior to the officer
18 obtaining the search warrant and, two, it does
19 corroborate the fact that the defendant does
20 live at 1102 Floyd Avenue, Apartment No. 3, as
21 he indicated to the Officer.
22 THE COURT: It's allowed.
23 MR. MORCHOWER: Objection for those
24 reasons already stated, or exception --

1 Q You say the defendant ran over you
2 and kicked you?
3 A Ran into me and knocked me down and
4 fell on top of me and kicked me,yes, sir.
5 Q Did he kick as he was -- when did
6 the kicking take place?
7 A I really couldn't tell you, I don't
8 know, it all happened so -- so rapidly that I don't know
9 exactly when that occurred.
10 Q You say an officer related to you
11 the original position of the pills or some of them?
12 A Yes, sir.
13 Q Was this in open view or --
14 MR. MORCHOWER: Judge, it has no
15 relevancy to the purpose for calling this
16 defendant, this defendant made the arrest of
17 Lugar,if the arrest is good, everything there-
18 after including the statement as to his address
19 would be admissible. As far as what Bennett
20 was told in the apartment, I don't think has
21 any materiality.
22 THE COURT: Mr. Morchower, I think
23 you are trying to isolate the one part of the
24 testimony that's being brought today and I don't

1 think it can be done.

2 MR. MORCHOWER: I think it can,

3 Judge, I think in a search of the apartment

4 and the arrest of the subject outside of the

5 apartment are two separate and distinct incidents

6 and Mr. Bennett is testifying as to the arrest

7 aspect of it, he did not participate directly

8 in the search of the apartment and I did not

9 call him for that purpose --

10 THE COURT: Well, he said he found

11 this on the mantlepiece.

12 MR. MORCHOWER: What purpose I

13 contest that the -- that paper has no relevancy

14 to the arrest.

15 THE COURT: Well, I take it the --

16 there are more witnesses to be heard and I expect

17 that I'll have to rule on that at the time the

18 witnesses have been heard, your objection is

19 overruled, the exception noted.

20 MR. MORCHOWER: Exception noted.

21 MR. SIMMONS: We do concede or you

22 concede you didn't see Lugar in the apartment?

23 A No, sir.

24 Q You saw him coming out of the

1 apartment building in which 1102, Apartment No. 3 is located?
2 A Yes, sir.
3 Q At some -- what time in the morning?
4 A About 4:30.
5 Q You say he was under the influence
6 of something, did you detect any odor of alcohol about him?
7 A No, sir.
8 Q All right, were you aware of a
9 breaking and entering of Cavedo's Drug Store on March 13 and
10 14, 1972, at 2528 Floyd Avenue in the City of Richmond?
11 A At what time?
12 Q At -- when was the defendant arrested
13 on these charges?
14 A He was arrested on those charges
15 approximately -- he was arrested for the Sunset Hills
16 Pharmacy,
17 Q Okay?
18 A at about six o'clock, six a.m.
19 Q On what day?
20 A On the 14th.
21 Q And what does -- was that for
22 breaking and entering?
23 A Yes, sir.
24 Q Sunset Hills Pharmacy at 7007 Three

1 Chopt Road,

2 A Yes --

3 Q City of Richmond?

4 A Yes, sir.

5 Q In front of that dwelling in the

6 City of Richmond?

7 A The front's in the City, the back's

8 in Henrico County.

9 Q All right, at the time of the pro-

10 bable cause for arrest, did you have knowledge that there

11 were certain drugs and items that had been taken out of

12 Sunset Hills Pharmacy on this particular occasion?

13 A Yes, sir.

14 Q All right, and subsequent to that

15 did you learn of a breaking and entering at Cavedo's Drug

16 Store, 2528 Floyd Avenue, in the City of Richmond?

17 A Yes, sir, I did.

18 Q On the night of March 13 and early

19 morning of 14, 1972?

20 A Yes, sir.

21 Q Were you aware that growing out of

22 that breaking and entering that certain drugs and certain

23 items were taken out of the apartment

24 A After --

1 Q or the --

2 A after the report was made -- this

3 warrant was not executed until some days afterwards and at

4 which time I had allowed Dr. Cavedo to identify certain drugs

5 that had been taken from the apartment.

6 Q You say you were in uniform -- well,

7 that -- I mean you were not in uniform, that's -- all right,

8 you say the first time you saw Mr. Lugar he was coming out of

9 1102 Floyd?

10 A Yes, sir.

11 Q All right, came out and knocked you

12 down?

13 A Yes, sir.

14 Q What happened after that?

15 MR. MORCHOWER: Judge, we've been

16 over this and over this, I think he's --

17 MR. SIMMONS: No, we haven't, I've

18 been over the fact he was put in the paddy wagon,

19 he came to the back --

20

21 BY THE COURT:

22 Q You arrested him at that time for

23 disorderly conduct?

24 A Yes, sir.

1 Q All right, what --
2 MR. MORCHOWER: I think this -- I
3 think anything flowing thereafter is immaterial
4 as to the arrest, Judge, I think it doesn't go
5 to my motion to -- that the arrest is illegal.
6 THE COURT: Mr. Morchower, your
7 motion refers to an arrest, there was testimony
8 he was arrested at 4:30 a.m., disorderly conduct,
9 6:00 a.m., breaking and entering. There's
10 nothing to indicate which arrest
11 MR. MORCHOWER: Well, I think, Judge,
12 THE COURT: your motion
13 MR. MORCHOWER: we're concerned
14 about --
15 THE COURT: pertains to.
16 MR. MORCHOWER: we're concerned --
17 excuse me, we're concerned about the first arrest
18 and my motion goes to the first arrest, not to
19 the second arrest.
20 THE COURT: Well, this is the first
21 in almost two hours that there's been any indi-
22 cation that I know of.
23 MR. MORCHOWER: Well, this is the
24 first witness that I had to -- which touched on

1 the arrest and I did not bring out anything
2 relative to the second arrest, I'm concerned
3 about the first arrest and I apologize for not
4 making that clear to the Court, I think the first
5 arrest is the important arrest, if that's good,
6 I think anything thereafter would be obviously
7 a proper and legal arrest, I am concerned about
8 the first arrest at 4:35, Mr. Bennett, and my
9 motion goes to that arrest, Your Honor.
10 THE COURT: All right, Mr. Simmons?
11 MR. SIMMONS: Well, we've heard
12 several witnesses ain't testified to a bit in
13 the world except this officer, now, he's trying
14 to cut me off, why he was arrested on disorderly.
15 MR. MORCHOWER: Well, he's the only
16 officer relative to that arrest, Judge, the
17 other officer relative to the search of the
18 apartment.
19 MR. SIMMONS: Well, I disagree with
20 that, some of them didn't even know that there
21 had been a search or anything found up there
22 at the apartment.
23 THE COURT: Yes, sir, that's true.
24 MR. MORCHOWER: Plus there had been

1 a --

2 THE COURT: Just a minute --

3

4 BY MR. SIMMONS:

5 Q I want to know after he ran over

6 you, what happened?

7 A We were down on the ground and I was

8 struggling -- he was on top of me and I grabbed ahold of him

9 and by that time a Henrico officer had come up and we were

10 able to get him up against the car and handcuff him, we first

11 placed him in my automobile and shortly thereafter a patrol

12 wagon arrived on the scene and we placed him in the patrol

13 wagon.

14 Q Then what happened, anything?

15 A Well, we were --

16 MR. MORCHOWER: My objection would

17 be continuous, Your Honor.

18 THE COURT: Well, Mr. Simmons, why --

19 why should we go in at this time to what

20 happened --

21 MR. SIMMONS: To show the man's

22 mental state as he was at a place that contains

23 over seven thousand pills that were taken out

24 of the breaking and entering, when this officer

first saw him, his mental state as to what he tried to do when the officer arrested him, plus the fact that he had been stopped earlier in an automobile with one, Hodges, who was a fugitive warrant out for and he had -- this defendant lived at this address which Mr. Hodges had given and he was seen in the automobile earlier that same morning this guy, Hodges, for whom a fugitive warrant had been issued, as was Newcomb, a man who give a fictitious name earlier that morning, and Newcomb was found at the time, his name was Baughan, but Baughan was originally stopped in Henrico County, was found in bed in that apartment on that particular morning, then you have the defendant running out of that apartment at about the same time that Newcomb is found in the apartment.

BY THE COURT:

Q Let me ask you, Mr. Bennett, did you have knowledge of the fugitive status of Hodges at 4:30 a.m.?

A Yes, sir, I did.

Q And had you already found the paper

1 which had been introduced?

2 A I cannot testify as to whether I had

3 found that paper, I had seen articles in there with Mr. Lugar's

4 name on them when I had first gone into the apartment.

5 THE COURT: All right, your objection

6 is overruled, Mr. Morchower, exception noted,

7 go ahead.

8

9 BY MR. SIMMONS:

10 Q Where did you -- you say you found

11 them, did you search for them?

12 A No, sir, they were sitting on top

13 of the mantle in a shoe box.

14 Q All right, that's all.

15

16 REDIRECT EXAMINATION

17 BY MR. MORCHOWER:

18 Q I have a few questions: What kind

19 of papers were found in the shoe box, Officer?

20 A Letters primarily addressed to him.

21 Q Well, was everything exposed or was

22 there something on top of the rest of the papers in the shoe

23 box

24 A Ah --

1 Q or are you telling the Court that
2 everything was exposed in this --
3 A No, everything wasn't exposed, they
4 were -- they were in the shoe box and -- laying in the shoe
5 box, so some of them would have been covered up.
6 Q Well, all of them except the top
7 few, is that correct?
8 A I -- yes, I would --
9 Q So something -- everything wasn't
10 visible in the shoe box, is that correct?
11 A Yes, that's --
12 Q Someone went into the shoe box and
13 removed the papers, the bottom papers, is that correct?
14 A Yea.
15 Q Who did that?
16 A I did that.
17 Q Did you have a search warrant at
18 this time?
19 A No.
20 Q And where were the -- where was the
21 -- where was Lugar at this time?
22 A In the -- in -- at that particular
23 time that I went into the shoe box, he was on his way to
24 Headquarters in the patrol wagon.

1 Q How about the other three subjects?
2 A They were in the -- on the same
3 patrol wagon on their way to Headquarters.
4 Q You are telling the Court that no
5 defendants were in the apartment when you were doing this
6 searching or looking, is that correct?
7 A At that time, no, sir.
8 Q What else did you find at that time?
9 MR. SIMMONS: At what time?
10 Q When you were looking -- around the
11 time you were looking in the shoe box?
12 A What I did, I collected the evidence
13 that had -- or the material that had been found before my
14 arrival, I looked at the -- at a number of other things in
15 the apartment. This was the only -- these -- was a name that
16 I wasn't familiar with at the time and I saw that one particu-
17 lar notice that has been introduced and I took that, that's
18 all I did other than gathering up the evidence.
19 Q So basically --
20 A . . . . . pictures.
21 Q basically you are telling the Court
22 you didn't know anything about Lugar, when he came out of the
23 front door, did you?
24 A I didn't know who Lugar was, no, sir.

1 he told me he was Greg Woodson to start with.
2 Q Well, we understand that.
3 MR. MORCHOWER: May I see that
4 document that was introduced?
5 Q Did you also have occasion to look
6 into some trash baskets or bags?
7 A I didn't look into the trash that
8 was on the floor, no, sir, not at this time.
9 Q Who collected everything in the
10 apartment, do you know?
11 A I picked up the articles that were
12 shown to me in the apartment and preserved them.
13 Q Which I assume is everything except
14 these two little prescription things you located the next
15 day, is that correct?
16 A That's correct.
17 Q Did you look into this oven that was
18 in the apartment?
19 A When I got there the oven was open
20 so I did look in it.
21 Q When we speak of trash what are we
22 talking about, we've heard that today mentioned a few times?
23 A On -- in the kitchen floor there was
24 piles of grocery bags filled with trash, empty cans, balled

1 up paper, chicken bones and that sort of material and there
2 was some loose that was just laying on the floor.
3 Q Did you actually go into any trash
4 bag, you, yourself?
5 A No, sir, I didn't go into any trash
6 bag.
7 Q Did anyone go into any trash bags
8 in your presence?
9 A Yes, sir.
10 Q And to your knowledge some of the
11 evidence was found in these trash bags, is that correct?
12 A Yes, sir, what that consisted of
13 doing is moving the trash out of the way and then I was -- an
14 article was pointed out to me.
15 Q What about the trash in the bag,
16 how would you move trash?
17 A I don't think anything was found in
18 the bags themselves, the trash bags themselves.
19 Q You're not sure --
20 A No, sir, to the best of my knowledge
21 nothing was found in the trash bags themselves.
22 Q But some of the contraband was
23 covered by trash which had to be moved in order to see the
24 contraband, is that correct?

1 A I don't know.
2 Q Well, I thought you just told that
3 to the Judge, didn't you just say that --
4 A You say in the bag --
5 Q No, prior to that time did you say
6 some of the trash had to be moved in order to see the evidence?
7 A And I --
8 MR. SIMMONS: I'll stipulate that,
9 Judge.
10 A I misunderstood your question,
11 MR. SIMMONS: . . . . before some
12 items could be seen.
13 THE COURT: All right --
14 A Mr. Morchower.
15 Q Well, what items are these, so we
16 can identify them?
17 A The only item that I know that was
18 found in the pile of trash was a watch, a wrist watch.
19 Q Well, is that going to be used in
20 evidence today?
21 A I don't know.
22 Q Is it here?
23 A I don't know.
24 MR. MORCHOWER: Well, Judge, my

1 motion's subject to whether some of this evi-
2 dence is going to be introduced into evidence,
3 if the officer doesn't know where it is, I
4 certainly don't know where it is, we're talking
5 about a wrist watch in question, we're talking
6 about a watch which was found in the apartment,
7 a watch which was found on the subject confis-
8 cated by Officer Bennett, he doesn't know where
9 it is, I don't know where it is, and if it's
10 going to be used in evidence, my motion, I think,
11 is relative to any searching of this apartment,
12 I think there's been evidence that there was
13 some searching, now what evidence was actually
14 found in the garbage or in the trash, the
15 officers -- this officer was not present when
16 the apartment was originally entered, he's not
17 really in a position -- he did some searching
18 as to some material, one of which was introduced
19 into evidence which was in a shoe box, obviously,
20 there was some searching of this apartment, and
21 I think we can -- and I've tried to bring out
22 as much as I could from reluctant witnesses.
23 THE COURT: Where do you stand now
24 insofar as the witnesses are concerned?

1 MR. MORCHOWER: I have one final
2 witness, Justice.
3 THE COURT: Do you have anything
4 more of Mr. Bennett?
5 MR. MORCHOWER: No, I don't think
6 so, Judge.
7 THE COURT: All right.
8 MR. SIMMONS: Just one question.
9
10 RECROSS EXAMINATION
11 BY MR. SIMMONS:
12 Q Were you aware of what the fugitive
13 warrant for Hodges was for?
14 A After I arrived at the apartment,
15 I was informed what it was for, it was for burglary of a drug
16 store in Salem, Virginia.
17 Q That's all.
18 THE COURT: All right, take your
19 seat.
20
21
22
23 WITNESS STOOD ASIDE.
24

1

2

3 ROBERT W. JUSTICE, on

4 motion to suppress, being first duly sworn, testified as

5 follows:

6

7 DIRECT EXAMINATION

8 BY MR. MORCHOWER:

9 Q State your full name, sir?

10 A Robert W. Justice.

11 Q And you're with the Henrico Police

12 Department, is that correct?

13 A Yes, sir.

14 Q How long have you been with the

15 Henrico Police Department?

16 A Seven years.

17 Q And you arrived at 1102 Floyd on

18 March 14th, is that correct, 1972?

19 A Yes, sir.

20 Q And you were one of the officers

21 which -- or who immediately entered the apartment,

22 A Yes, sir.

23 Q is that -- in question, is that

24 correct?

1 A Yes, sir.

2 Q And there were a number of police

3 officers with you, is that correct?

4 A There were several, yes, sir.

5 Q Pardon me?

6 A Yes, sir.

7 Q And you had to -- who actually did

8 the knocking on the door, you or Combs?

9 A Officer Combs of Richmond Police

10 Department.

11 Q And is it also true -- I'll lead a

12 little bit as far as innocent things, you all had --

13 MR. SIMMONS: Well, I don't know

14 whether they're innocent or not --

15 Q Well, did you all have to wait an

16 extra fifteen minutes outside the door before Carter allowed

17 you to come in?

18 A We had to wait for sometime, yes,

19 sir.

20 Q Is fifteen minutes a fair estimate,

21 I heard --

22 A That would be fair, yes, sir.

23 Q Now, during this time, you heard

24 some shuffling, is that correct, sir?

1 A Yes, sir, we did.
2 Q You heard some bags being crumbled,
3 is that correct?
4 A We heard paper.
5 Q Well, haven't you identified that
6 sound as paper bags?
7 A No, sir, we heard paper, I don't know
8 exactly what was crumpled --
9 Q They were --
10 A there was crumpled up newspaper on
11 the floor of the room, yes, sir.
12 Q Pardon me?
13 A I say there was crumpled up newspaper
14 on the floor
15 Q There were bags in the room, weren't
16 there, sir?
17 A in the kitchen -- several, yes, sir,
18 garbage bags.
19 Q All right, there was some trash in
20 those garbage bags, wasn't it, sir?
21 A A number of them, yes, sir.
22 Q Did you actually go to this apartment
23 in order to arrest or look for one, Ernest Hodges, is that
24 correct?

1 A Yes, sir, it is correct.
2 Q And there was a teletype in the --
3 within the breast of the Henrico Police Department as to this
4 warrant outstanding in Salem, Virginia, is that correct?
5 A Yes, sir.
6 Q What information was specified on
7 this -- did you actually look at this teletype?
8 A I didn't read it word for word, no,
9 sir.
10 Q It was read to you, is that correct?
11 A It was read, yes, sir.
12 Q You never saw this teletype?
13 A I have seen it, yes, sir,
14 Q Since --
15 A in fact, there were two, yes, sir.
16 Q Since the arrests were -- were made
17 at the apartment --
18 A Prior to -- prior to the arrest also.
19 Q All right, what did this teletype
20 say as to the subject, Hodges?
21 A The teletype, one of them came --
22 went from our Department to the Roanoke Police Department,
23 Q Well --
24 A or just a general warrant through

1 NCIC, this came back that there was a warrant on Ernest
2 Hodges in Salem or Roanoke for breaking and entering.
3 Q And the teletype gave the name of
4 the subject and the charge, is that correct?
5 A Yes, sir.
6 Q Was anything else -- did the tele-
7 type give you any other information?
8 A I don't recall whether than his name,
9 no, sir.
10 Q As far as you're concerned, it
11 didn't, is that correct?
12 A Right, yes, sir.
13 Q Did -- do you know why these three
14 subjects in the apartment were arrested originally?
15 A For possession of the prescription
16 drugs, I assume.
17 Q But you don't know that the --
18 A I didn't -- I haven't seen any
19 warrants charging them with that, no, sir.
20 Q Well, were they formally arrested
21 and charged in your presence?
22 A No, sir.
23 Q But they were in custody?
24 A Yes, sir.

1 Q What time did you arrive at this
2 apartment, do you recall?
3 A Actually going to the apartment
4 door, I would say it was approximately three a.m.
5 Q Now, what time did you leave the
6 apartment?
7 A I have no idea.
8 Q Well, was it ten minutes or four
9 hours?
10 A It wasn't ten minutes, but I wouldn't
11 say it was four hours either, it was, I would say, over an
12 hour at least.
13 Q Closer to two hours --
14 A Possibly.
15 Q Do you know where the subjects were
16 located upon entering the apartment?
17 A Basically, yes, sir.
18 Q All right, could you tell us where?
19 A Yes, sir, Mr. Carter answered the
20 door and allowed us entry into the apartment, he walked back
21 into the living room -- or correction, the bedroom-kitchen
22 combination, there was a room directly to the left, Mr.
23 Newcomb and a Greek were back there, I don't recall his name,
24 he has quite an odd name.

1 Q And where were they, standing?
2 A At the time I saw them, yes, sir.
3 Q And you were the second one in the
4 apartment, weren't you?
5 A Yes, sir, I was.
6 Q Was anyone in bed at all?
7 A I didn't see anyone in the bed.
8 Q And you are telling the Court that
9 Carter allowed you to come in the apartment?
10 A Yes, I am.
11 Q Is it also true that no one stated
12 the purpose of coming to the apartment to Carter?
13 A No, sir, that's not true.
14 Q Who -- who actually told Carter the
15 purpose --
16 A We told Carter --
17 Q Who's we?
18 A Officer Combs,
19 Q Who did the talking?
20 A and myself -- Officer Combs did.
21 When we first went to the apartment and knocked on the door,
22 we inquired as to Hodges being there, and he told us we could
23 come in.
24 Q Is that the extent of the conversation

1 which allowed you to come into the apartment?
2 A Basically.
3 Q Carter told you Hodges was not there,
4 is that correct?
5 A He said he was not there, but we
6 could come in and look if we desired, and we did.
7 Q And where did you go upon entering
8 the apartment?
9 A As we entered the apartment, I
10 walked down the small hallway that entered into the apartment
11 to the right, to the bedroom-living room combination -- or
12 bedroom-kitchen combination.
13 Q And what did you do?
14 A I went inside and stood with Combs.
15 Q Did you see him look down at the two
16 Seconal pills?
17 A There were some Seconals on the
18 floor --
19 Q Did you actually see them, or did he
20 see them?
21 A We both saw them, he called my
22 attention to them.
23 Q How did you know they were Seconal?
24 A Well, that's what they appeared to

1 be, they were distributed by Lilly, they were small red
2 capsules which looked like Sodium Seconal.
3 Q They were small red capsules?
4 A Yes, sir.
5 Q Distributed by Lilly?
6 A Yes, sir.
7 Q Who's Lilly?
8 A It's a drug manufacturer.
9 Q Well, they're prescription drugs,
10 aren't they?
11 A Yes, sir.
12 Q And that's the only -- anything
13 else which indicated to you they were Seconal pills?
14 A No, sir, none other than I've seen
15 him -- I've seen Seconal before and this is what they appeared
16 to be, I don't know what -- the jacket appeared to be Seconal,
17 now, what was in the -- what type of substance was in them, I
18 don't know, but they appeared to be --
19 Q Well, cold tablets appear to be red
20 in color too, don't they?
21 A I've never seen any cold tablets
22 look like Sodium Seconal, no, sir.
23 Q How about vitamin pills?
24 A No, sir.

1 Q So you're saying that Seconal pills --
2 MR. SIMMONS: He's arguing and he's
3 leading his own witness, Judge, and I object.
4 MR. MORCHOWER: Excuse me -- excuse
5 me --
6 THE COURT: All right,
7 MR. MORCHOWER: I'll withdraw the --
8 THE COURT: sustained.
9 MR. MORCHOWER: the question.
10 Q Well, tell me -- tell the Court
11 what's so unique about Seconal pills which are red in color,
12 which distinguish them from any other red tablet?
13 A Well, other than what I just told
14 you, I don't know how I could unless you had some I could
15 tell you, I could identify them.
16 Q So as far as any unique characteris-
17 tics, you don't know of any, do you?
18 A No, sir, I don't know the exact
19 dimensions on it, but looking at the tablet, this is what it
20 appeared to me as a capsule.
21 Q Did Combs immediately place the
22 subjects under arrest for possessing these?
23 A At the time I don't recall hearing
24 him say they were under arrest, no, sir.

1 Q Did you hear him at any time place
2 the subjects under arrest?
3 A No, sir.
4 Q Were the subjects taken -- taken to
5 one particular room?
6 A They were taken into the other room
7 which I assume was a bedroom,
8 Q And who took --
9 A it had a sofa or bed --
10 Q All right, is that the bedroom, the
11 rear bedroom as you go into the apartment, can you show us
12 on the diagram?
13 A I don't know what you would call the
14 rear bedroom, it was on the front of the building.
15 Q Right as you go into the apartment
16 it would be the far bedroom, would that be a fair statement?
17 A From the entrance to the apartment,
18 yes, sir.
19 Q And who was in there with them
20 besides the three subjects?
21 A You mean with Officer Combs?
22 Q No, I'm talking about the three
23 subjects in the -- in the front or rear bedroom, however,
24 you want to call it?

1 A Well, there were the only -- only
2 the three in there.
3 Q Was any police officer in there with
4 them?
5 A Combs was, yes, sir.
6 Q And when were they taken into this
7 bedroom, immediately upon seeing the Sec -- Seconal pills?
8 A No, sir, it wasn't immediately, it
9 was maybe a couple of minutes elapsed, I don't recall exactly
10 how long it was.
11 Q And do you know how long they were
12 kept in this particular bedroom?
13 A For the majority of the time we
14 were there, however long that was.
15 Q And you're saying it could have been
16 one to two hours?
17 A Possibly.
18 Q Did you see any search warrant that
19 -- that morning?
20 A No, sir, I didn't.
21 Q Did you subsequently see any search
22 warrant?
23 A I -- I didn't, no, sir.
24 Q Did any police officer go through

1 this trash and trash bags?
2 A At a later time, yes, sir.
3 Q And who -- what officer went through
4 the trash --
5 A It was a while later, I don't recall,
6 there were several officers there on the scene.
7 Q And that was sometime after the
8 subjects were taken away from the -- taken out of the apart-
9 ment in question?
10 A No, sir, it was not --
11 Q Would it be --
12 A It was while they were in the apart-
13 ment at this time.
14 Q Well, who actually went through the
15 trash, you don't remember?
16 A I don't recall who went through all
17 of the trash, no, sir.
18 Q You weren't present when the trash
19 was being examined, were you?
20 A I saw the trash being emptied on
21 the floor on newspapers while I was there, yes, sir.
22 Q Now, we're talking about three or
23 four trash bags, is that correct?
24 A There were a number, they may have

1 been more than that, it was quite a large amount of trash.
2 Q Now, what -- in what room was all
3 this trash laid out?
4 A In the kitchen.
5 Q And you don't know who laid it out
6 or who went through the trash, do you?
7 A No, sir, I do not.
8 Q And how -- the point of time is very
9 important, I don't want to belabor the point, when was this
10 trash laid -- spread out in the point of time in relationship
11 to your entry into the apartment?
12 A It would be hard -- hard to -- for
13 me to even estimate, I have no idea.
14 Q And you never. . . . . in the
15 apartment in question, did you, sir?
16 A No, sir.
17 Q What type of furniture was -- was
18 in this apartment in question, do you know?
19 A I don't understand the question.
20 Q Well, was there a bed?
21 A You mean French provincial --
22 Q Was there a bed, was there an ice
23 box?
24 A Yes, sir, in the kitchen there was,

1 there was a stove, a refrigerator, a metal cabinet, just a
2 utility cabinet I would assume, kitchen table and a bed in
3 the kitchen itself.
4 Q Well, were there some ordinary
5 pantries in the -- some type of pantry or storage area in
6 the kitchen?
7 A The only one I recall was a metal
8 cabinet.
9 Q What about in the bedroom, were
10 there any closets in the bedroom?
11 A I recall one.
12 Q Now, how many bedroom are in the
13 apartment, one or two?
14 A I know there were two, there may
15 have been three, but I recall two beds in there, one under
16 the window as you walk into the front bedroom to the left
17 and one in the kitchen, there may have been possibly one on
18 the right-hand side of the room, but I don't recall.
19 Q Would you tell the Court what you
20 did in this one to two hour period when you were in the
21 apartment?
22 A Well, sir, from the time I walked in,
23 I, more or less, assisted the City, I stayed there while the
24 other City officers responded to the scene, I did not inter-

1 view any of the subjects in the apartment, but I was merely
2 present.
3 Q And at some point in time you did
4 see a number of drugs, is that correct?
5 A Yes, sir, quite a number of drugs.
6 Q But exactly where they were found
7 and who found each item, you're not in a position to say
8 here, are you?
9 A I know where several items were
10 found, yes, sir.
11 Q Well, we're talking -- we're talking
12 about -- well, what items did you have in mind?
13 A All right, sir, when we went into
14 the kitchen and we were in there with Carter, I was looking
15 around in the kitchen --
16 Q What were you looking for?
17 A I was looking for Hodges.
18 Q And where were you looking for Hodges?
19 A Just around in the room.
20 Q In the kitchen?
21 A Yes, sir.
22 Q Where could he have been in the
23 kitchen?
24 A Well, he could have been behind the

1 metal cabinet.

2 Q Did you look behind the metal cabinet?

3 A Yes, sir, I did.

4 Q Was he there?

5 A No, sir.

6 Q All right?

7 A And while I was looking for Hodges

8 in the kitchen, there were several trash bags in the kitchen,

9 in one of these trash bags laying in the top of the bag was

10 a gray zipper type bank bag, like you would make a deposit

11 in the bank, which was unzipped and it had numerous prescrip-

12 tion items in this bag.

13 Q Well, someone went into this bag,

14 is that a fair statement to say, Sergeant Justice?

15 MR. SIMMONS: Let's let him answer --

16 he's already asked what he did, now, he wants

17 to argue with him every time he says something.

18 Q Did you pick up the zipper bag?

19 THE COURT: Let him answer the

20 question.

21 A Yes, I did, I picked the zipper bag

22 up out of the trash bag.

23 Q Did you go into the zipper bag?

24 A It was open.

1 Q I understand that, --
2 A I didn't take any --
3 Q Did you unzip --
4 A I didn't take anything out of it,
5 no, sir.
6 Q Did you go in and see what was in
7 this zipper bag which was unzipped?
8 A I looked in it, I could see in it
9 standing looking in the bag.
10 Q This was after you picked it up?
11 A No, sir, this was before.
12 Q Did you ever stick your hand into
13 the zipper bag?
14 A I don't recall if I stuck my hand in
15 it, I didn't take anything out of it at this time, no, sir.
16 Q Well, what else -- what other items,
17 do you know what pills -- particular pills we're talking about
18 now so we can identify them here in Court?
19 A I know by sight two or three of them
20 that I saw in the apartment, yes, sir.
21 MR. MORCHOWER: Could we have him
22 look at these to see what we're talking about,
23 I don't know where the contraband is?
24

1 BY THE COURT:

2 Q Can you describe what you saw and

3 where you saw it, Sergeant?

4 A Your Honor, throughout the apartment

5 on the floor there were self prescription type drugs laying

6 scattered on the floor, we -- in bottles and out of bottles

7 both.

8 Q Pills in -- in bottles and out of

9 bottles?

10 A And out of bottles.

11 MR. MORCHOWER: Your Honor --

12 Q Laying on the floor in plain view?

13 A Yes, sir, they were.

14 MR. MORCHOWER: Judge, I apologize,

15 but I don't think he was responsive to your

16 question and I think I have -- I should be given

17 the opportunity to explore this witness in my

18 own fashion.

19 THE COURT: You can, he can also

20 answer your question.

21 MR. SIMMONS: Without being inter-

22 rupted and without being lead, well, the Court

23 has suggested to him also.

24 MR. MORCHOWER: The Court asked him

1 to describe the pills which were found in the
2 zipper bag and he went into other pills which
3 were found in the apartment.
4 THE COURT: Then he described other
5 pills and I asked him about those, Mr. Morchower.
6 MR. MORCHOWER: Well --
7 THE COURT: Go ahead with the zippered
8 bag.
9
10 BY MR. MORCHOWER:
11 Q What particular -- would you describe
12 the pills found in the zipper bag?
13 A Well, there were numerous types,
14 just the ones that I would be familiar with on sight, it
15 would be Nembutal produced by Abbott, in small yellow capsules.
16 Q Was that in a container of some sort?
17 A All the ones that I observed in the
18 bag, I believe, were in containers.
19 Q What kind of container are we talking
20 about, sir, can you describe the container?
21 A It was just bottles with a screw-on
22 type caps and --
23 Q Anything written on the bottles?
24 A Some of them had, yes, sir, brand

1 names on the bottles.
2 Q All right --
3 A I think one was Amytal, Tuinal,
4 Nembutal, Seconal and --
5 Q And this was found in the zipper
6 bag which was laying in the trash, is that correct?
7 A Yes, sir.
8 Q Well, you had no idea of finding
9 Hodges in this trash bag, did you, Sergeant?
10 A No, sir, I was just looking around
11 through the apartment, I glanced and saw a bank bag laying
12 in there, it looked pretty unusual.
13 Q So you reproached the bank bag, is
14 that correct?
15 A No, sir, I was looking down at it at
16 the time.
17 Q And you're telling the Court that
18 this zipper bag, which is about this long and this narrow --
19 MR. SIMMONS: I think the Court can
20 draw its own conclusion, without Mr. Morchower
21 interpreting --
22 THE COURT: Go ahead, what is the
23 question, Mr. Morchower?
24 MR. MORCHOWER: Well, I was in the

1 process of phrasing it, Your Honor, I took a
2 little long --
3 Q The question is you're telling
4 the Court that you went into the kitchen you saw this zipper
5 bag as you were looking for Hodges, is that correct?
6 A Yes, sir.
7 Q And the zipper bag was laying in the
8 trash?
9 A Yes, sir.
10 Q Would you tell us exactly on the --
11 on the diagram, would you specify where the -- this trash was
12 located in relationship to where you were located?
13 MR. SIMMONS: He's asking about the
14 trash --
15 A Here's the stove, I don't recall
16 what this was, a table, but there was a cabinet also, the
17 trash was lying from the stove all the way to the cabinet,
18 several garbage bags, I say it may have been five, maybe a
19 couple more, but there was quite a large amount of garbage.
20 Q And where did you look for Hodges,
21 when you said you looked behind something to see if Hodges
22 was there?
23 A All right, sir, there was a cabinet,
24 if I recall, in this area here, and I was in this particular

1 area right here and the garbage bags were there.
2 Q And you looked down at the garbage
3 bags?
4 A Yes, sir, there was trash all over
5 the floor.
6 Q And there was also trash in a number
7 of bags?
8 A Yes, sir.
9 Q Now, ... (mumbles) items are
10 we talking about, now, that you actually recall specifically?
11 A Would you repeat the question,
12 please?
13 Q Would you relate the other specific
14 items that you found, you found a zippered bag with -- with --
15 which contained some contraband?
16 A Yes, sir.
17 Q What else did you actually recover?
18 A I found the front off of a stamp
19 machine.
20 Q Well, is that relative to this --
21 these two offenses?
22 A No, sir --
23 Q All right --
24 A but you asked me what I found.

1 Q All right, I'm sorry, relating to
2 what -- to these two items in question?
3 A The only other items I saw, I didn't
4 recover them, but I saw throughout the apartment, these other
5 pills on the floor.
6 Q And do you remember when, in point
7 of time, you saw all of these pills scattered around?
8 A Throughout the time I was there any
9 -- just about anywhere you would look on the floor, there
10 were pills laying around, I would say within five or six
11 feet of each other.
12 Q And you also -- someone also emptied
13 a lot of trash in the apartment, is that correct?
14 A This was later, yes, sir. I don't
15 recall seeing any pills that came out of the trash when the
16 trash was emptied.
17 Q So you're telling the Court that
18 all of these pills were -- were laying around the apartment,
19 is that what you're telling the Court?
20 A Yes, sir, in fact, there were more
21 prescription items than I've ever seen out of a drug store.
22 Q Well, why did Officer Keenan fail
23 to see anything when he came into the apartment?
24 MR. SIMMONS: Object, this is his

1 witness. Judge, I think it's been enough evidence
2 before the Court to make a determination as to
3 whether or not this there was a legal search up
4 there.
5 THE COURT: Mr. Morchower, your
6 question as to what Sergeant Keenan saw -- I mean
7 saw or didn't see is not proper.
8 Q You're telling -- you also indicated
9 that you don't know who turned the trash over or who examined
10 the trash, is that correct?
11 A I don't recall who dumped the trash
12 out, no, sir.
13 Q And you don't recall who went through
14 the trash, do you?
15 A Not right off, no, sir, I don't.
16 Q Do you recall who went to the
17 refrigerator later?
18 A No, sir, I don't, I don't recall the
19 refrigerator being open, but it's possible it was.
20 Q I have no further questions.
21
22 CROSS EXAMINATION
23 BY MR. SIMMONS:
24 Q Are you telling -- I think that when

1 you went in, there was drugs all over the floor, is that
2 right, in containers?
3 A In containers and out of containers,
4 yes, sir.
5 Q Well, did -- were there numerous
6 containers or boxes -- boxes had --
7 A Yes, sir, there were drugs all over
8 the apartment --
9 Q Well, did you have to search for
10 them or could you just
11 A No, sir,
12 Q look and see?
13 A you could look and see.
14 Q And you were invited into the
15 apartment?
16 A Yes, sir, we were.
17 Q Now, when you went to 1102 Floyd
18 Avenue, looking for that MG, didn't you talk to somebody that
19 directed you to Apartment Number Three as the people that had
20 driven that car and gone up to Apartment Number Three?
21 A Yes, sir, we did.
22 Q And that's the reason you went to
23 Apartment Number Three because you had information that
24 people in that MG had gone up to Apartment Number Three?

1 A That's correct.
2 Q Where was Mr. Lugar the first time
3 you saw him?
4 A Laying on the sidewalk in front of
5 the apartment.
6 Q And the items that you found, didn't
7 you point those out to Detective Bennett who was recording
8 that information?
9 A Yes, sir, I did.
10 Q What?
11 A Yes, sir.
12 Q And did -- in your presence, did
13 other officers point out to Detective Bennett where they
14 found certain items?
15 A Yes, sir, they did.
16 Q All of this happen in the City of
17 Richmond?
18 A Yes, sir.
19 Q Thank you.
20
21 REDIRECT EXAMINATION
22 BY MR. MORCHOWER:
23 Q Officer, I have a couple of questions
24 in response to Mr. Simmons: You were -- were directed to this

1 particular apartment, is that correct?
2 A Yes, sir.
3 Q And did you actually receive the
4 information yourself?
5 A Sergeant Schesventer did.
6 Q And you don't know what was told
7 Sergeant Schesventer, do you?
8 A Well, I was out front when this
9 gentleman pointed to the apartment,
10 Q Well, did you --
11 A but he was with Sergeant Schesventer.
12 Q But did you hear any conversation
13 in particular, sir?
14 A No, sir.
15 Q Between Schesventer and -- so you
16 don't know if he pointed out to that apartment as the apart-
17 ment that Hodges lived in or, for that matter, or anyone else,
18 do you?
19 A He didn't point to it as the apart-
20 ment Hodges lived in, but the one that his stepson frequented
21 and lived, I believe he lived in there, he was supposed to --
22 Q Well, I thought you were looking for
23 Hodges?
24 A We were, but his son was with Hodges.

1 Q So you went up there -- you went up
2 there under the assumption that since Hodges lived with Lugar
3 and you knew where Lugar's apartment, that Hodges would be in
4 Lugar's apartment?
5 A Possibly, yes, sir.
6 Q And, in fact, the car was found
7 behind 1104 Floyd Avenue, wasn't it, sir, the '66 Austin
8 Healy?
9 A It was off of Harrison Street, right
10 in back -- in back of the apartment project, you could --
11 you could see the building from where the car was, I don't
12 recall exactly what address it was in back of, it was within
13 either that house or next door.
14 Q No further questions.
15
16 BY THE COURT:
17 Q Sergeant, you testified at one point
18 that pills were laying on the floor in containers and not in
19 containers?
20 A Yes, that's correct.
21 Q Is this when you first went in the
22 apartment?
23 A Yes, sir.
24 Q What room was this in?

1 A This was in the kitchen and the
2 other room.
3 Q Were there a total of two rooms in
4 the apartment or --
5 A Two livable rooms I would say, sir,
6 yes, sir, it was a bathroom and a closet, and a small hallway.
7 Q And were the -- what kind of con-
8 tainers were they in?
9 A The ones that I saw were in bottles
10 with white labels on them, screw-on type caps, these weren't
11 the type bottle that I would -- that I have gotten prescrip-
12 tion drugs from the drug store.
13 Q All right, sir.
14 MR. MORCHOWER: I have a few questions.
15
16 BY MR. MORCHOWER:
17 Q Did you have information about --
18 about the break-in at Cavedo's at this time?
19 A No, sir.
20 Q How about Sunset Hills?
21 A I had knowledge of it, but this was
22 sometime prior to this -- the time that we were there.
23 Q And you don't know what kind of pills
24 you saw which were in these bottles -- in the bottle and

1 lying open?

2 A Well, some of them, like I say, I

3 could identify them by sight and the others were in bottles,

4 yes, sir.

5

6 RECROSS EXAMINATION

7 BY MR. SIMMONS:

8 Q As a matter of fact, some of the

9 things you saw had Sunset Hills Pharmacy on them, didn't they?

10 A Yes, sir.

11 Q Labels?

12 A Yes, sir.

13 Q That's all.

14 THE COURT: All right, sir, Sergeant,

15 when you're outside, don't discuss your testimony

16 nor allow anyone to discuss it with you.

17

18

19

20 WITNESS STOOD ASIDE.

21

22

23

24

1 THE COURT: Is that it on your
2 motion, Mr. Morchower?
3 MR. MORCHOWER: That's it, Judge,
4 I would like to make a little statement.
5 THE COURT: Well, before all of the
6 witnesses are heard on the motion?
7 MR. MORCHOWER: Unless Mr. Simmons
8 has some evidence, I don't have any more --
9 THE COURT: I don't know whether he
10 has --
11 MR. MORCHOWER: I don't have any
12 more witnesses.
13
14
15
16
17
18 C. W. BENNETT, being
19 recalled, having been duly sworn, testified as follows:
20
21 RECROSS EXAMINATION
22 BY MR. SIMMONS:
23 Q Detective Bennett, you're still under
24 oath, when you went up there on this particular morning, 1102,

1 Apartment Number Three, were certain items pointed out to you
2 as to where they had been located?
3 A Yes, sir.
4 Q And did you make notation of where
5 you found the items?
6 A On a list that I prepared, yes, sir.
7 Q You do have that list?
8 A Yes, sir.
9 Q And those things that you have on
10 the list, have they -- were they introduced in Court in a
11 previous trial?
12 A Some of them were, yes, sir.
13 Q And --
14 MR. SIMMONS: Do you want to see --
15 MR. MORCHOWER: Now -- maybe not
16 now, but --
17 MR. SIMMONS: All right.
18 Q That's all.
19 THE COURT: Is that it?
20 MR. SIMMONS: Yes, sir.
21 THE COURT: All right.
22
23
24 WITNESS STOOD ASIDE.

1

2

3 WILLIS H. CAVEDO, introduced

4 on behalf of the Commonwealth, being first duly sworn, testi-

5 fied as follows:

6

7 DIRECT EXAMINATION

8 BY MR. SIMMONS:

9 Q Would you state your name, please?

10 A Willis H. Cavedo.

11 Q And Mr. Cavedo, do you operate a

12 drug store?

13 A I do, sir.

14 Q What's the name of it?

15 A Cavedo's Drug Store at 2528 Floyd

16 Avenue.

17 Q Is that in the City of Richmond?

18 A Yes.

19 THE COURT: Sergeant, was it on a

20 minute ago?

21 THE SERGEANT: (reply unintelligible)

22 THE COURT: All right, excuse me,

23 go ahead.

24 Q Willis H. Cavedo operates Cavedo's

1 Drug Store at 2528 -- 2528 Floyd Avenue in the City of Richmond?
2 A That's correct, sir.
3 Q Did anything unusual happen at your
4 drug store on the night of March 13th, or early morning of
5 March 14th, 1972?
6 A Yes, sir, my drug store was broken
7 into, and a good deal of merchandise in the form of classified
8 drugs was stolen.
9 Q Do you know how entry -- you say
10 was broken into, do you know how entry was gained?
11 A Through the rear of the drug store,
12 the rear door was torn down.
13 Q When did you return to the drug store
14 and find this?
15 A I closed the drug store the preceding
16 evening at 6:30 and I opened up on the morning of -- Tuesday
17 morning at nine, and when I went into the store, as I turned
18 behind the counter, I saw the back door had been torn down
19 and was lying on the floor, then as I went to the back of
20 the prescription department, I immediately noticed the section
21 I kept all of the classified drugs in was practically stripped,
22 one or two bottles were remaining.
23 Q What's a classified drug?
24 A These are drugs that are classified

1 by the Federal Government as to their effects as hypnotics,
2 sedatives, amphetamines, and narcotics in general.
3 Q What kind of containers are they in?
4 A They are in the containers that are
5 put out by the manufacturer.
6 Q What are some of the manufacturers?
7 A Lilly, Parke-Davis, Strossberg,
8 Abbott, and quite a few others.
9 Q Do the containers -- are they paste-
10 board, or what are they?
11 MR. MORCHOWER: Slightly leading,
12 Judge, I think he can describe the container
13 without Mr. Simmons leading him.
14 THE COURT: Yes, sir, you are leading.
15 A The containers are in glass bottles,
16 labeled by the pharmaceutical manufacturers.
17 Q And how do you get the glass bottles?
18 A I receive them from the manufacturer,
19 through the wholesale distributors, and then I -- when I
20 dispense them, I dispense them in prescription containers.
21 Q And what does a prescription contain-
22 er look like?
23 A That's a container with our label
24 on it, bearing the doctor's name, the patient's name, and

1 directions.

2 Q Now, the classified drugs, do you

3 put anything on the bottles?

4 A Not on the bottles themselves until

5 they are sold, we -- the only thing we do with our drugs,

6 and all drugs in the store, is marked as they come in with

7 our code mark.

8 Q Give me an example of a code mark?

9 A Our code mark is Rock Island and,

10 for instance, a drug that cost three dollars and forty cents

11 would be CK D, and we mark those in a large marking pencil.

12 Q Doctor, I hand you four containers

13 and ask you whether or not you're able to identify those?

14 A Yes, this is Benzedrine, five milli-

15 gram, the code mark is OOS, it costs two dollars and twenty-

16 six cents.

17 Q I hand you one of these to describe?

18 A VOICE: Can we mark each one

19 separately, Your Honor? Or how do you want to

20 mark them?

21 THE COURT: Are these offered for --

22 being offered, or simply for identification now?

23 MR. SIMMONS: They will be offered

24 as exhibits.

1 THE COURT: All right, how about
2 marking them for identification?
3 MR. SIMMONS: I -- can I put a red
4 "one" on there? Let the record show that we're
5 putting a red "one" on the Benzedrine that the
6 doctor's just identified.
7 A This bottle is labeled Amytal Sodium,
8 two hundred milligrams, or three grains, made by Lilly, it's
9 CAC, which is code mark for three dollars and eighty-three
10 cents.
11 MR. SIMMONS: Red "two" on the top
12 of that one the doctor's just described.
13 A This bottle is by Lilly, it's labeled
14 Tuinal, two hundred milligram, three grains, and it's CKI,
15 which is our code for three forty-five.
16 MR. SIMMONS: Mark on the side of
17 this one, number three.
18 A This bottle I have in my hand is
19 labeled Amytal, one half a grain, also by Lilly. This has
20 been handled in -- in and out Courts so many times now that
21 the mark is beginning to wear off of it, but it appears to be
22 RAC.
23 MR. SIMMONS: Four on this one.
24 Q Doctor, do you -- are these that

1 have been marked 1, 2, 3 and 4, you have just described,
2 this particular code, to your knowledge, is this the only
3 one is being used, is this your code?
4 A These -- this is my code, it's not
5 -- possibility that same -- someone else could use the same
6 code, however, the markings on there are distinctive and they
7 are my markings.
8 Q Your markings?
9 A My markings, yes, sir.
10 Q Is that the way you recognize them?
11 A Yes, sir.
12 MR. SIMMONS: The Commonwealth would
13 offer these, 1, 2, 3, 4, as Commonwealth's
14 Exhibit Number 1, I mean for identification
15 purposes, Identification Number 1.
16 THE COURT: Yes.
17 Q When you left your store on the
18 night of March 13, 1972, were the classified drugs in there,
19 the ones that you have described as being able to identify
20 by your markings?
21 A Yes, sir.
22 Q Sir?
23 A Yes, sir, they were.
24 Q Were they in there when you returned

1 on the morning of March 14th at nine o'clock?
2 A No, sir, they were not.
3 Q Where were they the next time you
4 saw them?
5 A The next time I saw them, I saw them
6 over in, I think it was, the Police Court building, when I
7 was called down to identify my drugs.
8 Q Can you identify that which is just
9 being handed to you?
10 A Some of the marks, as I said before,
11 are now being worn out by being handled, but this one, CSK,
12 Carbrital, Parke Davis', it's evident, it's mine, this --
13 Q Would you pull that one out. You
14 identify -- how do you identify that?
15 A By the code mark, it's CSK, and this
16 scratching on the front indicates that I had opened that
17 bottle and taken medicine out of it, so I knew that it
18 wouldn't be a full bottle on the shelf when I went back to
19 get more out of it.
20 Q Is that the way you identify it, by
21 your markings?
22 A By my markings up here, CSK, yes,
23 sir, that's my code, Rock Island, it's -- that means -- CSK,
24 is three dollars and sixty-four cents, that's the cost of

1 that bottle.

2 Q This particular box -- the one here,

3 how many capsules would that -- was in this?

4 A Originally it was a hundred.

5 Q Okay, now what comes inside this

6 box?

7 A It's a glass bottle in there that

8 contains the medication, and that is marked similar to the

9 carton on the outside.

10 Q All right, when this was -- was this

11 in your store when you left on the

12 A It was.

13 Q night of March 13th?

14 A It was, sir.

15 Q Did it have any pills in it?

16 A Oh, yes.

17 Q All right.

18 MR. SIMMONS: The Commonwealth would

19 mark this as B-1.

20 Q All right, do you have any others

21 there you can identify?

22 A Yes, this made by Strasburg, this --

23 of course, the medication in here is -- is not here, the

24 carton is, with my markings of -- my code on it, ALD, which

1 means eight dollars and seventy cents.

2 Q You identify these as having your

3 markings on them?

4 A They are my markings on them, that

5 is correct, sir.

6 Q And were these in your store when

7 you left?

8 A That's correct, sir.

9 Q Were they there when you came back?

10 A No, sir.

11 Q And how many capsules or tablets are

12 in these?

13 A In those bottles, one of them you

14 notice is x'd, this had had some removed from it, that was a

15 full bottle, it had not been x'd.

16 Q So, this -- how many come in the

17 bottle?

18 A It was a full bottle, I -- I believe

19 they come fifty to a bottle in that particular brand.

20 MR. SIMMONS: All right, the one

21 with the X, we'll mark it as

22 A It had been opened.

23 MR. SIMMONS: B-2, and the one that

24 had not been opened is B-3.

1 A That's correct, this bottle --
2 carton says Biphetamine, twelve and a half grains, that has
3 ARA on it, mean -- code meaning eight dollars and eleven
4 cents, this also had been opened and some of the tablets had
5 been used on prescriptions, and the -- that's why it was
6 marked with the X, indicating it -- some had been taken out
7 of it.
8 THE COURT: Mr. Simmons, for the
9 sake of the Clerk's Office, why are you not
10 numbering them in numerical sequence?
11 MR. SIMMONS: I guess it could have
12 been done, I just numbered these 1, 2, 3, 4,
13 these packages, I've offered the first four
14 identification Exhibit Number 1,
15 THE COURT: Right.
16 MR. SIMMONS: I intend to offer
17 this package as Identification Exhibit Number 2.
18 THE COURT: All right.
19 MR. SIMMONS: The fact I put a B in
20 it --
21 THE COURT: That's all right, no
22 problem with your --
23 Q Can you identify that?
24 A Yes, that's ARX -- when we use the

1 word X, that's a repeat of the preceding letter, and sometimes
2 I'll use an X in place of the preceding letter, so instead
3 of being ARR on this package, ARX, which would be ARR.
4 Q Read that?
5 A This is Preludin, twenty-five
6 milligrams, this is marked KID, this bottle had not been
7 opened because it had not been x'd, and this bottle contained
8 a hundred tablets, twenty-five milligrams.
9 MR. SIMMONS: B-6.
10 A This one again is becoming a little
11 blurry, but it appears to be again AAD, and this was one --
12 one of the amphetamines by Strasburg, it doesn't tell you on
13 the outside of the carton but was inside.
14 MR. SIMMONS: B-7.
15 A These are a group of empty cartons
16 that are the type that's used by Abbott to put their glass
17 bottle in, that has the directions on the bottle, on the
18 label, it shows through this, and it's just their form of
19 packaging, these are empty boxes, this is marked S -- LSO,
20 which is seven dollars and sixty-two cents, this one RND, a
21 dollar ninety, this was RND. Now, I have no way of knowing
22 how many were in those because when we X it, we X it on the
23 container, not on the box of this type. This is Nembutal,
24 this bottle, fifty milligram, three-quarter grain,

1 MR. SIMMONS: B-8.

2 A which is marked RAD, a dollar eighty

3 cents.

4 MR. SIMMONS: Mark this as B-9.

5 Q And was B-8, B-9, I believe that the

6 B-9 is from Abbott?

7 A This is also from Abbott, but this --

8 the glass vials come in those containers, and the plastic

9 come without the container. (pause) This is a preparation

10 known as Bamadex, it's made by Lederle, this is dextro-

11 amphetamine type drug, and this was a sequel form, which is

12 a repeat -- a longer lasting type, this had been x'd and some

13 merchandise had been removed, this was CIN, which was three

14 dollars and fifty-nine cents.

15 MR. SIMMONS: B-10.

16 A Now, this is the type of glass

17 container that comes in those type of packages.

18 Q You're talking about this B-8?

19 A Yes, that's right, see, it comes in

20 those type of things, and it fits in in this manner -- oh,

21 here's one that's large enough to hold, that one, now, you

22 see, this is a very unwieldy type of thing, but -- no, this

23 one isn't large enough to hold that one either, but it came

24 in a container of this nature.

1 MR. SIMMONS: B-11.

2 Q Well, do you -- is this marking on

3 the front of that --

4 A That's our markings, yes. This again

5 is ours, this is OIA, two, fifty-eight.

6 MR. SIMMONS: B-12.

7 A This again is ours, OIA, two fifty-

8 eight, ...

9 MR. SIMMONS: B-13.

10 Q Have I shown you anything that did

11 not have your markings on it?

12 A No, sir, you have not.

13 Q Do you know Mr. Lugar, the defendant?

14 A No, sir, except having seen him in

15 Court preceding this trial.

16 Q Did you ever give him permission to

17 go in your drug store, take any items out?

18 A No, sir.

19 Q Have any of the items that I have

20 showed you here, are they dispensed in these type containers?

21 A No, sir, they are dispensed in

22 prescription containers bearing the doctor's name, the

23 patient's name, and the date, and the directions.

24 Q All right, and is 2528 Floyd Avenue,

1 is that located in the City of Richmond?

2 A Yes, sir, it is.

3 MR. SIMMONS: The Commonwealth would

4 offer the second batch with the number -- letter

5 B and the numbers following as Identification

6 Exhibit Number 2.

7 THE COURT: Yes, sir.

8 Q Answer Mr. Morchower, please.

9

10 CROSS EXAMINATION

11 BY MR. MORCHOWER:

12 Q Doctor Cavedo, how many other employ-

13 ees do you have working for your -- for your drug store?

14 A I have one other registered pharma-

15 cist, Mr. Lecky.

16 Q Is he here to testify . . . . . .

17 (Counsel quite distant from microphone)

18 A No, sir, he's not here because Mr.

19 Lecky is apparently -- is presently not working regularly

20 for me due to the fact he went on social security and he can

21 only work approximately once a week, and he hadn't been in

22 the store prior to this night of the robbery, and he hadn't

23 been in there the -- wasn't in the next morning either.

24 Q I see, this code, are you saying

1 that -- this code, you don't know if any other drug store in
2 the City of Richmond is using this code, do you, to your
3 personal knowledge?
4 A No, not to my personal knowledge.
5 Q These markings on the packages you
6 have identified, are they your markings, or your drug store's
7 markings?
8 A They are the markings that the drug
9 store uses, and I normally check in all classified drugs,
10 my pharmacist sometimes checks in some, too, and some -- when
11 he checks them, he -- he has made his mark on some of them.
12 Q So when you said you got -- when you
13 testified in response to a few questions by Mr. Simmons that
14 these markings are your markings, do you mean your drug store
15 markings or your personal markings?
16 A Some of them are my personal markings
17 on -- I used the drug store code.
18 Q Which might have been placed on the
19 bottle by another --
20 A By the other pharmacist, yes, but a
21 good number of them are my personal markings.
22 Q Did you personally take inventory
23 when you left there -- closed the shop on the -- on the 13th?
24 (Counsel remains quite distant from microphone)

1 A No, that's an impossible proposition
2 to take an inventory every night at close of business,
3 Q When were --
4 A but the shelves were full that night,
5 because I personally wiped off two sections of that to --
6 and normally when we're not busy in the evening before closing
7 time, we'll wipe off sections,
8 Q And you were --
9 A and this is all in one section
10 altogether.
11 Q You were working that evening?
12 A I worked the preceding evening,
13 that's correct.
14 Q And you dusted -- you say you dusted
15 this
16 A Some --
17 Q material?
18 A Not all of them, but we covered a
19 couple of shelves.
20 Q And you -- you couldn't say whether
21 these were there -- positively there at that time?
22 A Those were there at that time, yes,
23 sir, because --
24 Q Are you positive they were there?

1 A Because the shelves were empty the
2 next morning and they were full the preceding evening.
3 Q Well, how many drugs did you have on
4 your shelves?
5 A We put them in alphabetical order
6 and the -- and we keep them right straight down, they are --
7 they are right exactly next to each other, because we have to
8 do that to get all these classified drugs together, we're
9 quite crowded and we put them behind each other.
10 Q Are these -- these brands, are they
11 also dispensed by other drug stores in the City of Richmond?
12 A Oh, yes.
13 Q I noticed you said some of the
14 bottles were -- were not filled when you -- previously because
15 of some X's and
16 A Yes, sir,
17 Q some scribbling,
18 A uh, huh.
19 Q well, what kind of markings did you
20 indicate?
21 A Well, when we open a bottle in the
22 store and take medicine out of it, we X it, normally, or
23 sometimes I'll just take a pen and scratch across it to
24 indicate that it has been opened, is not a full bottle.

1 Q No further questions.
2 A Thank you.
3 MR. SIMMONS: Thank you, sir.
4 MR. MORCHOWER: He may be excused,
5 Judge, I'm sorry.
6 THE COURT: Any objection, Mr.
7 Simmons?
8 MR. SIMMONS: No, sir, I don't
9 think so.
10 THE COURT: All right, thank you,
11 you're excused, Mr. Cavedo.
12
13
14
15 WITNESS STOOD ASIDE.
16
17
18
19
20
21
22
23
24

1
2
3 CECELIA BARBER, introduced
4 on behalf of the Commonwealth, being first duly sworn, testi-
5 fied as follows:
6
7 DIRECT EXAMINATION
8 BY MR. SIMMONS:
9 Q Would you state your name, please?
10 A Cecelia Barber.
11 Q What's your occupation?
12 A Pharmacist.
13 Q And on March 10 or 11, somewhere
14 around there, where did you work?
15 A Sunset Hills Pharmacy.
16 Q And where is that located?
17 A 7007 Three Chopt Road.
18 Q Is the entrance to that pharmacy
19 located in the City of Richmond?
20 A Yes, it is.
21 Q I believe the back of the pharmacy
22 is in Henrico County?
23 A Yes.
24 Q Did anything unusual happen there on

1 the evening of March 10, or early morning of March 11?
2 A Yes, there was a break-in, and we
3 had drugs, money and merchandise missing.
4 Q Merchandise, any watches?
5 A Yes.
6 MR. MORCHOWER: Judge, he's leading
7 the witness.
8 MR. SIMMONS: I'm not leading, I'm
9 suggesting, I -- either -- either it is or it
10 isn't.
11 THE COURT: I think it is technically
12 leading, Mr. Simmons.
13 Q All right, what kind of merchandise
14 was missing?
15 A Mostly watches.
16 Q What kind of watches?
17 A Mostly Timex, there was one Mickey
18 Mouse electric watch.
19 Q Mickey Mouse electric?
20 A I don't know who makes those, but
21 the -- and we have Timex.
22 Q Had you -- had you worked the
23 previous evening?
24 A Yes, I had closed the store at nine

1 p.m., on March the 10th, and opened it the following morning,
2 March the 11th, at 8:15.
3 Q And at 8:15, what did you notice, if
4 anything?
5 A There had been a break-in, I didn't
6 realize it from unlocking the doors, I didn't realize it
7 until I got back into the pharmacy department, because the --
8 they had -- whoever entered the store had entered it from
9 the front door and had jimmied the lock, and this was dis-
10 covered after I realized there was a break-in, the pharmacy
11 department and the office, which is adjacent to the pharmacy
12 department, was quite a mess, there were many drugs missing,
13 amphetamines, barbituates, C and S stimulants, and some
14 narcotics, cocaine --
15
16 Transcriber's Note: A constant
17 rattling of paper and noise is taking place
18 throughout this testimony.
19
20 BY THE COURT:
21 Q What's the name of the shopping
22 center?
23 A The Village Shopping Center, Three
24 Chopt and Patterson.

1 BY MR. SIMMONS:

2 Q Can you identify that _____

3 which I'm handing you?

4 A Yes, I gave this -- it's a list of

5 the drugs that we found that were missing.

6 Q That -- that a complete list?

7 A Yes.

8 MR. MORCHOWER: Judge, I would object

9 unless she personally made up that list and --

10 A I did help make up the list, and

11 this was --

12 MR. SIMMONS: The Commonwealth would

13 offer that as Commonwealth's Exhibit Number 1,

14 with reference to Sunset Hills Pharmacy case.

15 THE COURT: All right, --

16 MR. MORCHOWER: That's subject to

17 my cross examination.

18 THE COURT: Just a minute.

19

20 BY THE COURT:

21 Q Did you participate in the prepara-

22 tion of this list?

23 A Yes.

24 Q All right.

1 THE COURT: Do you wish to cross
2 examine her about this list, Mr. Morchower?
3 MR. MORCHOWER: I whink we -- I can
4 do it on the cross examination, Judge.
5 THE COURT: All right, go ahead.
6
7 BY MR. SIMMONS:
8 Q Can you identify that?
9 A Yes, this has our label with the
10 name of the store on the label, it's a pressure label, and
11 it has our code,
12 Q What's the --
13 A the pricing code.
14 Q Our label, what label's on there?
15 A Sunset Hills Pharmacy, and this is
16 -- this is one of the items that is listed on the list that
17 you have.
18 Q And what do you mean by our code?
19 A Well, every store has their own code
20 for pricing merchandise, and if you want me to give --
21 Q Do you know what a Rock Island code
22 is?
23 A That's a code that was used by -- by
24 another store, that's not ours.

1 Q A what?

2 A That's a code used by another store,

3 that's not our code.

4 Q What kind of code do you all use?

5 A Come and buy.

6 Q Can you identify this which I've

7 handed you?

8 A Yes, this is also a container that

9 held a bottle of Biphetamine, and it has our Sunset Hills

10 Pharmacy on the pressure label, with our code.

11 Q And what is that which I have just

12 handed to you?

13 A Well, it contains many of our labels

14 -- pressure labels for pricing.

15 Q (Unintelligible)

16

17 Transcriber's Note: Microphone

18 very distant from Counsel and his voice is

19 unintelligible.

20

21 A Thirteen of them -- yes, Sunset Hills

22 Pharmacy.

23 Q (Unintelligible)'

24 A This middle label here is ours,

1 having our name, Sunset Hills Pharmacy on the label, with
2 two cost code lines.
3 Q What is this?
4 A A container that held a Mickey Mouse
5 electric watch.
6 Q On the evening of March 10, 1972,
7 when you left the store, was there a Mickey Mouse electric
8 watch in the store?
9 A Yes, there was.
10 Q What was it in.
11 A It was in a display case, a watch
12 display case, we had two of them.
13 Q The watch itself was in a what?
14 A It was in this box, and it was in
15 the display case -- they are displayed in their box.
16 Q When you returned on the morning of
17 March 11, was the Mickey Mouse electric in there?
18 A No, it wasn't.
19 MR. SIMMONS: The Commonwealth would
20 offer these as Commonwealth's Exhibit Number 2,
21 with reference to this indictment.
22 MR. MORCHOWER: Is this subject to
23 my cross examination, Mr. Simmons?
24 MR. SIMMONS: Yes.

1 THE COURT: All right, it will be
2 received subject to cross examination, I trust
3 the Clerk is with the Commonwealth on numbering.
4 (There is mumbling by someone)
5 MR. SIMMONS: I guess we'd better --
6 we might number these indictments, we'll call
7 Cavedo's, Indictment Number 1?
8 THE COURT: Yes.
9 MR. SIMMONS: We've got identifica-
10 tion exhibits in there.
11 THE COURT: All right.
12 MR. SIMMONS: And Number 2, the
13 Sunset Hills Pharmacy.
14 THE COURT: Have you got that? (The
15 Court's voice is barely audible) . . . . . .
16 with Cavedo will be shown as Indictment Number 1,
17 and Sunset Hills, Indictment Number 2.
18 Q Seen anything like that before?
19 A Yes, this is the base of a watch
20 case, that held a watch at one time, and has our store label
21 on it.
22 MR. SIMMONS: Can you make that a
23 part of Exhibit Number 2?
24 Q Have you ever seen anything similar

1 to that before?

2 A Yes, we have a employee in our store

3 by the name of Ralph, and this is his petty cash bag.

4 Q Is that a Bank of Virginia bag --

5 A Yes, uh huh, we bank at the Bank of

6 Virginia.

7 Q Was that in the store, to your know-

8 ledge,

9 A Yes,

10 Q on the evening

11 A it was.

12 Q of the 10th and was not there on

13 the 11th?

14 THE COURT: Is any marking on this

15 bag?

16 A It has his name on it.

17 MR. MORCHOWER: Judge, I think, with

18 all due respect, this is -- this young lady is

19 not the prpper party to identify that bag.

20 MR. SIMMONS: Well, let's ask her

21 this.

22 THE COURT: She -- she has identified

23 it, she has said that it is the petty couch --

24 petty cash bag --

1 A Well, I handle their bags, the
2 member -- the clerk's bags when I do a daily report on --
3 in the evening, so I am familiar with their petty cash bag.
4 Q Is that bag that you have just looked
5 at, does it have a name on it?
6 A Yes, Ralph.
7 Q Do you all have an employee at
8 Sunset Hills Pharmacy that's -- by the name of Ralph?
9 A Yes, we do, there -- uh huh, Ralph.
10 MR. MORCHOWER: I think I can develop
11 any point I want to bring out in cross, Judge.
12 Q I show you another bag?
13 A Also, we -- this is familiar, Mrs.
14 Naomi Bryant, this is her bag, and she has drawer E, and E
15 on there, so --
16 Q She also works for Sunset Hills
17 Pharmacy?
18 A Yes.
19 MR. SIMMONS: I think all of that
20 part of it will go as Number 2. (rattling of
21 paper and some mumbling)
22 A VOICE: These are Number 2?
23 Exhibit Number 2, Mr. Simmons?
24 MR. SIMMONS: Yes, make all of it

1 part of Exhibit Number 2. (continued rattling
2 of paper)
3 Q Would you pick those up one at a
4 time and hand me the ones that you can identify?
5 A (rattling of paper obliterates) . . .
6 . . . . . and this one . . . . . .
7 Q . . . . . invoice, can you
8 identify it?
9 A Yes, this one has our store label
10 on it, Sunset Hills Pharmacy, and has our code, and this also
11 has our label and the code, and this is also ours.
12 (very loud rattling of paper)
13 Q All of these with the code?
14 A Yes, uh huh, and this has our Sunset
15 Hills Pharmacy label with the code. Also this one, with our
16 label and the code, and also this one, with our label and the
17 code, Biphetamine box, and Preludin, has our label and the
18 code, which is a C and S stimulant, and this has our label
19 and code, and this one has our label and code, this one also
20 has our label and code.
21 Q When you came in on the morning of
22 March 11th, did you find these drugs missing?
23 A Yes, I did.
24 Q Of what nature were the drugs?

1 A Well, most of them were amphetamines,
2 and some, not amphetamines, but C and S stimulants, and
3 barbiturates, and a few narcotics like cocaine powder.
4 Q Now, the last series of boxes and
5 bottles that we went through, that you identified, which
6 we'll call Commonwealth's Identification Exhibit Number 3,
7 what type drugs are they?
8 A Most -- those are barbiturates and
9 C and S stimulants,
10 Q And,
11 A amphetamines and not amphetamines.
12 Q does your drug store dispense drugs --
13 A No, we do not dispense them without
14 a proper -- proper labeling, and they are transferred to a
15 prescription bottle.
16 MR. SIMMONS: Identification Exhibit
17 Number 3.
18 Q Do you know Mr. Gregory Lugar, the
19 defendant?
20 A No, I do not. (noise and loud
21 rattling of paper into microphones_
22 Q Do you know how many Mickey Mouse
23 watches you had when you left on the night of the 10th?
24 A We only had one. (very loud rattling

1 of paper)

2 Q What's that which has just been

3 handed to you?

4 A A Mickey Mouse electric watch.

5 Q Have you ever seen a watch like that

6 A Yes,

7 Q before?

8 A and this is the type that we carry.

9 Q In what kind of box?

10 A In a Timex Mickey Mouse watch --

11 watch box.

12 Q Like the one that you've seen here --

13 A Yes, uh huh, it was in the same type

14 of box.

15 Q Was one of those watches in the store

16 when you left on March 10th?

17 A Yes, there -- there was one.

18 Q Was it gone on March the 11th when

19 you returned?

20 A Yes, it was gone.

21 Q The Commonwealth would offer that

22 as Commonwealth's Exhibit Number 4.

23 MR. MORCHOWER: Judge, I -- that's

24 subject to cross examination as to the watch.

1 THE COURT: Yes, as I understand as
2 to the watch, she has simply identified this as
3 a Mickey Mouse electric watch by reading from
4 the watch, and no other identification of this
5 watch has been --
6 A No, there was no label on the box.
7 THE COURT: All right.
8 MR. MORCHOWER: Judge, I think,
9 without having -- cross examining this young
10 lady as to the watch, I think it would be
11 appropriate to object to the admissibility at
12 this stage in view of the fact that she identi-
13 fied it as a type of watch, obviously this is
14 a type of watch which is carried by other drug
15 stores and other stores in the City of Richmond,
16 and she cannot identify this as positively the
17 watch which was taken.
18 THE COURT: Well, I agree with you
19 it has not been sufficiently identified as yet.
20 MR. SIMMONS: Mark that as Identifi-
21 cation Exhibit 4, I believe.
22 THE COURT: All right, sir.
23 Q And did you detect some -- or did
24 you detect any damage to the entrance to the store or anything,

1 or how entry was gained?

2 A Yes, there were large --

3 MR. MORCHOWER: Judge, I would object

4 unless she was present when entry was made.

5 MR. SIMMONS: Well, now --

6 THE COURT: She said she opened the

7 door.

8 A I was there -- I opened the door

9 that morning.

10 Q All right?

11 A The locks -- there are two locks on

12 the doors, at the base of the door that lock into the framing

13 at the base, and there were large scrapes, like -- like a --

14 about that wide, an inch or inch and a half wide, and it --

15 they had just jimmied the locks, but the locks were intact

16 when I opened the store, that's -- that's why I was surprised

17 when I got back to the pharmacy department to see that we had

18 been --

19 Q Who locked --

20 A there had been a break-in.

21 Q who locked the store on the evening

22 of the 10th?

23 A I did, and I had -- the gentleman

24 that closes the store with me, we double check it, so it was

1 locked.

2 MR. MORCHOWER: I would object to

3 that, Judge, I mean that's a voluntary type of

4 response on her part.

5 THE COURT: Well, she --

6 MR. SIMMONS: What's wrong with her

7 testifying to what she saw the other gentleman

8 do?

9 THE COURT: It's all right if she

10 saw it.

11 Q Did you see it?

12 A See what now?

13 Q See him double check to see if the

14 door --

15 A Yes, uh huh.

16 Q Answer Mr. Morchower.

17

18 CROSS EXAMINATION

19 BY MR. MORCHOWER:

20 Q Who was present -- who -- who was

21 the gentleman who was present when you locked up the previous

22 evening, Miss Barber?

23 A Mr. Underwood.

24 Q Mr. Underwood. What -- what is his

1 position at the drug store?
2 A He is the drug clerk.
3 Q And how many other employees doyou
4 have at Sunset Hills Pharmacy?
5 A Not on the -- total employees, not
6 on the same shift, or there at one time, is this --
7 Q Total employees,
8 A Okay.
9 Q approximately, I'm not going to ask
10 you --
11 A Three, five, seven, eight -- about --
12 approximately eight employees.
13 Q And who else has keys to the drug
14 store besides yourself?
15 A The owner of the store, Mr. L. D.
16 Jones, and we occasionally have a relief pharmacist fill in
17 for us, and there are two that help us that also have keys
18 to the store.
19 Q And when you locked or closed the
20 drug store that evening, were you -- were you the only
21 druggist on duty?
22 A Yes.
23 Q Did you take any inventory as to
24 whether these items specifically were there when you closed

1 up that evening?

2 A No, we don't take a daily inventory.

3 Q When was the last inventory taken --

4 taken at the drug store?

5 MR. SIMMONS: Well, I don't know,

6 you mean before or after, she testified . . . .

7 after.

8 MR. MORCHOWER: Obviously before,

9 I'm talking about the last one before the break-

10 in.

11 THE COURT: Prior to March 10th?

12 MR. MORCHOWER: Yes, sir.

13 A The new ruling on narcotics and

14 dangerous drugs, for --

15 Q Is the ruling since the break-in or

16 before the break-in?

17 A Before the break-in.

18 Q All right?

19 A About a year ago, we require that

20 Schedule 2 drugs, which the -- these amphetamine drugs, and

21 C and S stimulants fall into, and narcotics, the narcotic

22 and dangerous drugs, we had to keep a -- it's more or less

23 a type of perpetual inventory, you put down your initial,

24 what you have at the beginning, the initial inventory, and

1 it can be checked because these prescriptions that are filled
2 for these drugs are filed separately and they can be checked
3 against the special narcotic forms that you use to order these
4 drugs from the wholesalers, so you do not have to keep, say,
5 a monthly inventory of these drugs.
6 Q Well --
7 A You can go by your orders and your
8 prescriptions filled, going through the files and check what
9 you have --
10 Q Well, you have no personal knowledge
11 of --
12 A Pardon?
13 Q You have no personal knowledge of
14 each perpetual type of inventory when they're taking it at
15 the drug store, do you?
16 A I usually help with the inventory.
17 Q Usually help with the inventory?
18 A Yes, sir.
19 Q Well, can you positively say that --
20 that those drugs which have been introduced here under Common-
21 wealth's Exhibit 2 and -- and 3, were positively in the drug
22 store when you closed on the 10th of March, 1972?
23 A Well, we dispensed from those bottles,
24 and I can say most of them, I couldn't swear that every one

1 of them that -- I would say that most of those containers
2 were there, yes.
3 Q You could say that?
4 A Yes.
5 Q That's because you dispense the drugs
6 from those containers into prescription bottles, when
7 A Yes.
8 Q . . . . . And you're
9 also telling the Court that these containers are not dispensed
10 to customers at the drug store, is that correct?
11 A No, they are not.
12 Q And you have no personal knowledge
13 as to whether anyone with a key went into the drug store,
14 like any of the two relief druggists or the owner went into
15 the drug store after you closed on March 10th, you were not
16 present to observe anyone, were you?
17 A No, not from nine until 8:15
18 Q The next morning?
19 A the following morning, uh huh.
20 (rattling of paper)
21 Q And you say you participated in the
22 -- in the inventory, did you type this up, this sheet?
23 A Mr. Jones, the owner, that signed
24 the form, that's an insurance form, that's what we just used,

1 because it was an insurance form, and for the narcotic --
2 or -- you know, BNDD Bureau, they have to have a report of it.
3 Q So you did not type it up, and --
4 A I -- I -- I helped make the list
5 that he typed that from.
6 Q Whether he typed it accurately or
7 not, you're not in a position to say, are you?
8 A I would think so.
9 Q Well, did you check this with your
10 list after it was typed?
11 A Yes, it was -- we -- I had the
12 original list with me at the last trial, on Thursday, and
13 it was the same.
14 Q The original list which Mr. Jones
15 typed from?
16 A Yes, it was -- I had it with me the
17 other day.
18 Q And you nodded your head when I made
19 a statement to the Court, when I objected to that Mickey
20 Mouse watch, you are aware of the fact that this type of
21 watch is commonly sold in other drug stores, in other
22 facilities in the City of Richmond, is that correct?
23 A Yes, it is.
24 Q And when Mr. Simmons asked you whether

1 it was there on the evening of the 10th when you locked up,
2 did you recall looking at it and seeing that watch before you
3 left?
4 A I know it was there. (the witness
5 is laughing)
6 A VOICE: What's the answer, please?
7 Q Well, how did you know, I mean, . .
8 . . . . . actually see it, or --
9 A Yes, it was there.
10 Q All right, where are these drugs
11 kept at the -- in the pharmacy, in what part of the -- in
12 what part of the drug store?
13 A In the pharmacy department.
14 Q Which is located in what section of
15 the --
16 A In the -- in the back of the store.
17 Q Which would be part of Henrico
18 County, is that correct?
19 A Yes.
20 Q And you -- is there a rear door to
21 the pharmacy?
22 A Yes, there is a back door -- not
23 from the storeroom, there is a space in between the pharmacy
24 and the very back of the store, and that's the storeroom area.

1 Q So someone could gain entry through
2 the back or the front of the store, is that correct?
3 A Ah --
4 Q In order to get into the pharmacy?
5 A There have been several attempts to
6 get through the back and they've never made it because there's
7 a steel bar up.
8 Q But there is a -- my question is,
9 a person could gain entry through the front or the rear of
10 the particular drug store, is that correct?
11 A Yes.
12 Q Any windows in the rear of the drug
13 store?
14 A No.
15 Q Is that the only door which is
16 located in Henrico County, in the rear?
17 A Yes.
18 Q And is the front door located in the
19 City of Richmond, is that correct?
20 A Yes.
21 Q And you -- since you were not present
22 when the alleged break-in occurred, you're not sure how --
23 you could not positively say how the subject got into the
24 drug store, could you, first-hand knowledge -- do you have

1 first-hand knowledge as to how --

2 A No, I wasn't there.

3 Q When did you see these exhibits the

4 next time, after the closing on March the 10th?

5 A Gee, let's see, the -- I think the

6 first time was last Thursday morning, unless I heard them at

7 the preliminary hearing, and I don't recall seeing them then.

8 Q Do you know --

9 A The first time was Thursday -- last

10 Thursday morning.

11 Q When you identified them in -- in

12 Newcomb's trial?

13 A Yes.

14 Q And you never identified them at any

15 prior time, is that correct?

16 A Yes, that's correct.

17 Q All right, these Exhibits 2 and 3,

18 you are identifying them by the -- by these Sunset Hills price

19 sticker on the containers, is that correct?

20 A It has our name and our code that we

21 use, and the handwriting is familiar, because the code, the

22 price code is written in -- by hand.

23 Q I have no -- oh, I have a few further

24 questions, about these money bags, other than the fact of the

1 name Ralph and the other woman's name on -- on the money bag,
2 you -- you could not positively identify -- identify that
3 as coming from Sunset Hills, can you?
4 A They have other distinctive marks,
5 like tape that had been on them before, that is off, and
6 other distinguishing marks.
7 Q No further questions.
8
9 REDIRECT EXAMINATION
10 BY MR. SIMMONS:
11 Q When you returned to the drug store
12 on the morning of the 11th, did you see any damage to the
13 rear door?
14 MR. MORCHOWER: Judge, I think --
15 MR. SIMMONS: He's the one asked
16 about that --
17 THE COURT: You opened it up, Mr.
18 Morchower.
19 MR. MORCHOWER: Oh, I -- no question
20 about that, Judge, I don't think this girl --
21 I don't think that answer would have any material
22 credence to the case.
23 THE COURT: Well, the question is
24 a proper question and I'll allow it.

1 MR. MORCHOWER: Unless she can say
2 that that -- unless she can say the damage was
3 put on there at that particular time.
4 THE COURT: The objection is over-
5 ruled, exception noted.
6 Q Did you see any damage to the rear
7 door?
8 A No, I didn't.
9 Q That's all.
10
11 RECROSS EXAMINATION
12 BY MR. MORCHOWER:
13 Q And the only damage you saw to the
14 front door was -- was what?
15 A A large scraping marks across the
16 metal, steel frame
17 Q Other than that,
18 A of the door,
19 Q there was no other damage, is that
20 correct?
21 A at the base of the door. As far as
22 breaking in no, that's all that I observed --
23 Q No further questions.
24 A Oh, no, there was -- I beg your

1 pardon, after further examination, one of the doors was --
2 they are glass doors -- was off track some, in some way, and
3 it was not like that the day -- the evening before.
4 THE COURT: Front door?
5 A Yes, sir.
6 Q Well, when was that discovered?
7 A That -- that morning, and it had --
8 and it was not like this the previous evening because when
9 the door was opened from an incoming customer, it would --
10 it scraped the floor, it -- it could not open completely,
11 swing open.
12 Q Was this discovered after the police
13 arrived?
14 A Yes.
15 Q Well,
16 A Okay.
17 Q you did not stand at the door from
18 the time you got there until the time the police came, did you?
19 A No.
20 Q No further questions.
21
22 RE-REDIRECT EXAMINATION
23 BY MR. SIMMONS:
24 Q Did anybody hit that door with a

1 hammer before the police got there, before you got there?
2 MR. MORCHOWER: Well --
3 A Not that I'm aware of.
4 MR. MORCHOWER: She wasn't --
5 Q Was this a metal door?
6 A No, these are glass doors.
7 Q Glass all over, or does it --
8 A They have a metal trim at the bottom
9 and at the top, and they have a glass -- cylindrical glass
10 handles.
11 Q That's all.
12 MR. MORCHOWER: No further questions.
13
14 BY THE COURT:
15 Q What does this retail for now?
16 A Approximately twenty-five dollars.
17 Q And was this -- that's all right.
18 MR. SIMMONS: Thank you.
19 MR. MORCHOWER: Thank you, m'am.
20 THE COURT: Can she be excused?
21 MR. MORCHOWER: Yes, certainly.
22 MR. SIMMONS: As far as I'm concerned.
23 THE COURT: All right, thank you,
24

1 Mrs. Barber, you're excused.
2
3
4
5 WITNESS STOOD ASIDE.
6
7
8
9
10
11 MR. MORCHOWER: Judge, may I approach
12 the bench with Mr. Simmons?
13
14
15
16 NOTE: There is an off-
17 record discussion. The recording
18 device is stopped. The log accompanying the
19 recorded belt has the following
20 language thereon:
21 "Officer Keenan called. (Clerk's
22 switch not on)- Keenan testified
23 Lugar was in vehicle with Hodges
24 when he stopped it. H. P. Wright,

1 Recorder"

2

3

4

5

6

7

8 JOHN W. COMBS, introduced

9 on behalf of the Commonwealth, being first duly sworn, testi-

10 fied as follows:

11

12 DIRECT EXAMINATION

13 BY MR. SIMMONS:

14 Q Would you state your name and occu-

15 pation, please?

16 A My name is John W. Combs, I'm a

17 police officer.

18 Q Officer Combs, on the morning of

19 March 14th, 1972, did you have occasion to go to 1102 Floyd

20 Avenue in the City of Richmond?

21 A Yes, I did.

22 Q And why did you go there?

23 A Had information that a party named --

24 MR. MORCHOWER: I would object,

1 that's hearsay, Judge.

2 MR. SIMMONS: That's an exception

3 to the hearsay rule under the recent case, Judge,

4 THE COURT: Well,

5 MR. SIMMONS: as to why the officer

6 went there.

7 THE COURT: just a -- just a minute,

8 what about the stipulation you made at the outset

9 of the first trial?

10 MR. MORCHOWER: Sure, well, we

11 stipulated everything but hearsay, Judge.

12 THE COURT: I understand that, but

13 MR. MORCHOWER: I will withdraw the

14 objection.

15 THE COURT: what was the purpose of

16 the stipulation?

17 MR. MORCHOWER: What was the purpose?

18 THE COURT: That's right.

19 MR. MORCHOWER: To sort of streamline

20 the case. I'll withdraw the objection.

21 THE COURT: That's just -- all right,

22 I'll trust you'll both bear the stipulation in

23 mind.

24 Q Why did you go to 1102, or why were

1 you going into that area?

2 A Attempting to locate parties wanted

3 on a felony.

4 Q Where did you get that information?

5 A Information was supplied to me from

6 a Sergeant in Henrico County Police Department, Sergeant

7 Justice.

8 Q And what were you looking for?

9 A Looking for the party named Hodges.

10 Q What -- how was the -- were you

11 looking for a vehicle?

12 A Yes, we were also looking for a

13 motor vehicle.

14 Q What kind?

15 A It was a MG, I had the license

16 number, I haven't got the license number with me now.

17 Q And did you -- in what area were you

18 looking for it -- what area did you go?

19 A We went to the Fan District, the car

20 was located, I responded to the rear of 1104 Floyd Avenue, and

21 I found the car parked right beside a No Parking sign, block-

22 ing a garage entrance.

23 Q Did you see anything in the auto-

24 mobile?

1 A Yes, I did.
2 Q What?
3 A I saw a --
4 MR. MORCHOWER: Judge, I object --
5 THE COURT: What's your objection?
6 MR. MORCHOWER: Well, my objection --
7 I can't anticipate his answer, but I assume the
8 Court will allow me to object, at the appropriate
9 time, I'm not too sure what he's getting at here,
10 I'm not too sure if it's relevant or material,
11 so I want to alert the Court that I may be
12 objecting and I hope I don't object too late.
13 THE COURT: All right, sir.
14 MR. MORCHOWER: I don't want to wait --
15 THE COURT: I trust if it's something
16 in plain view, you won't -- probably will not
17 object?
18 MR. MORCHOWER: That's correct.
19 THE COURT: All right, sir.
20 MR. MORCHOWER: I also -- it must be
21 relevant to the case, Judge.
22 THE COURT: Yes, sir.
23 Q All right, you went up there and you
24 found a car parked beside a No Parking sign, what did you do?

1 A Looked inside the car.
2 Q Why?
3 A I looked inside and we saw a red
4 capsule inside the car.
5 Q Where was it?
6 A It was sitting right on the seat.
7 Q And what did you have done with that
8 vehicle?
9 A Had the car towed.
10 Q And was anyone in the vehicle at the
11 time?
12 A No.
13 Q Who was with you at this time?
14 A Sergeant Justice, let's see, Sergeant
15 Davis, and there was at this particular time one other Henrico
16 police officer, I believe it's -- I don't know his name.
17 Q All right, after the vehicle was
18 towed, did you go back to that area --
19 A Yes, I was called back.
20 Q When?
21 A About -- about a half hour later I
22 was called back by the radio, I responded back to the address,
23 where I met Sergeant Justice again, in front of 1102 Floyd
24 Avenue.

1 Q Did you see any citizen out there?
2 A Yes, I did.
3 Q Did you talk to the citizen?
4 A I didn't directly talk to him, but
5 the gentleman gave information.
6 Q As a result of information given,
7 where did you go?
8 A Went to the second floor apartment,
9 it was Apartment 3 at 1102 Floyd Avenue.
10 Q What did you do when you got to the
11 door?
12 A I knocked on the door, and it was
13 a -- about eight to fifteen minute wait, knocked on the door
14 very loudly, I could hear inside the apartment, I could hear
15 the sound of paper rubbing together, could hear footsteps
16 going across the floor inside of the apartment.
17 Q Was the door finally opened?
18 A Yes, the door was opened.
19 Q By whom, do you know by whom?
20 A By a Michael Carter.
21 Q What did you say?
22 A I asked Mr. Carter for his identifi-
23 cation, and he went through his wallet and gave me a registra-
24 tion card to the automobile, which was parked out in the back.

1 I advised him at this time, I asked him if he knew the car
2 was out back, and I asked him who had been driving it, and --
3 Q Wait a minute now, you're going to
4 get into some hearsay, we don't want to get into that. Did
5 you tell him any other purpose for which you were there?
6 A Later I did, yes.
7 Q What did you tell him?
8 A Well, no -- excuse me, I didn't tell
9 him, I was present when a Henrico officer told him.
10 Q Told him what?
11 A Told him that they were looking for --
12 MR. MORCHOWER: I would object to --
13 unless my client was there, and -- I think it's
14 hearsay.
15 MR. SIMMONS: As to what this --
16 MR. MORCHOWER: Well, if he's going
17 to quote a Henrico police officer, I think that's
18 hearsay, isn't it, I would object for that
19 reason.
20 Q Okay, did the Henrico officer have
21 conversation with Carter?
22 A Yes, sir.
23 Q As a result of that conversation,
24 what did Carter consent for you all to do?

1 MR. MORCHOWER: Leading question,
2 Judge, I would object.
3 MR. SIMMONS: I'm not asking --
4 THE COURT: Sustained, you can ask
5 him what he did.
6 Q What did you do?
7 A I, myself, asked Michael Carter if
8 we could come in.
9 Q You asked Carter that yourself?
10 A Yes, I asked Carter if we could come
11 in.
12 Q What did he say?
13 A He said, come in.
14 Q Did you go in?
15 A Yes, we did.
16 Q Did you keep your eyes open when
17 you were going in?
18 A Yes.
19 Q What did you see?
20 A We walked down a hallway to the open
21 part of the apartment, the -- there was a door that was already
22 open into the kitchen area. Right beside the floor, or right
23 beside a trash container, and between the trash container and
24 the end of this open door were two capsules, red capsules,

1 the same type that were seen in the car, also a empty con-
2 tainer, milk-white container, with Seconal written on the top
3 of it, also the top to this same container, with Lilly written
4 on the top of that.
5 Q Did you see any other things in the
6 apartment,
7 A Yes.
8 Q observe, without touching anything, did
9 you see anything?
10 A Yes.
11 Q What did you see?
12 A Well, you -- the light was turned on,
13 the light was off, the light was turned on, and other things
14 became visible, these different capsules that were laying in
15 different areas of the apartment.
16 Q Anything other than capsules them-
17 selves?
18 A Well, I saw a top to a stamp machine,
19 which was on the floor in the apartment, I didn't know it
20 was at this time, but it looked like it was from some type
21 of machine.
22 Q Anything else you saw?
23 A Well, the Henrico man opened a -- a
24 bag after we saw the Seconal written on this milk container,

1 and the two capsules were reasonably belived to be Seconal by
2 Sergeant Justice and myself, we went into this bag and we
3 found a large quantity of containers of the type that are not
4 dispensed, or not sold to the public but are dispensed and
5 held at drug stores and sold by the wholesalers to the drug
6 stores.
7 Q Was your -- was your curiosity aroused
8 when you saw this container having the label Lilly on it
9 A Yes.
10 Q in the apartment?
11 A Yes.
12 Q What?
13 A Yes.
14 Q Why?
15 A Well, it -- I could look down and
16 see that it was Seconal written right on the container, and
17 seeing two pills that appeared to be the same type and
18 description that I have as Seconal, of my own knowledge.
19 Q What?
20 A Of my own knowledge, the sametype
21 pill that appeared -- that is identified as Seconal, was
22 right beside the Seconal container.
23 Q All right, did you later that same
24 morning have occasion to see Detective Bennett up there?

1 A Yes, I did.
2 Q And was anything pointed out to
3 Detective Bennett?
4 A Yes.
5 Q Did he write down and recover the
6 items that were pointed out to him?
7 A Yes, he did.
8 MR. SIMMONS: The Identification
9 Exhibit in the motion to suppress there.
10 Q Have you ever seen that before?
11 A I can't identify this as coming
12 from the apartment, no, I can't.
13 Q Okay, 1102 Floyd Avenue, is that
14 located in the City of Richmond?
15 A Yes, it is.
16 Q Did you ever -- ever on that day see
17 Mr. Lugar, the defendant,
18 A Yes.
19 Q in the area of 1102?
20 A Yes, I did.
21 Q Under what -- what -- what occasion
22 was it you saw him?
23 A We were putting a prisoner in a
24 paddy wagon, and as we did, Mr. Lugar kicked the paddy wagon

1 door, and it flew open and pushed me over to the end of the --
2 into the arms of the prisoner we were putting into the wagon,
3 and Mr. Lugar jumped out of the wagon and started -- made a
4 left turn and started running south in an attempt to escape,
5 he was immediately apprehended.
6 Q Do you know, was he under arrest
7 when you first saw him?
8 A Yes.
9 Q In the wagon?
10 A Yes, when I first saw him.
11 Q What did you observe about Mr.
12 Lugar's condition?
13 A He was belligerent, very belligerent,
14 used very obscene language.
15 Q Such as?
16 MR. MORCHOWER: Judge, I'm not too
17 sure this would have any purpose other than an
18 inflamatory effect, I know the Court can -- can
19 wade through it, but I don't think it has any
20 probative value concerned with -- with whether
21 he broke and entered these two particular drug
22 stores, not whether he uttered any conversation
23 with courtesy or whether -- whether he was
24 obscene, I don't think it has any relevance to

1 the --

2 THE COURT: What is the purpose?

3 MR. SIMMONS: I'll withdraw it.

4 THE COURT: All right.

5 Q Did you see Detective Bennett in

6 1102 Floyd Avenue,

7 A Yes, I did.

8 Q Apartment number 3?

9 A Yes, sir.

10 Q That same morning?

11 A Yes.

12 Q Answer Mr. Morchower.

13

14 CROSS EXAMINATION

15 BY MR. MORCHOWER:

16 Q Officer, I think I asked you on the

17 motion to suppress, do you recall what time you arrived at

18 this apartment the second time?

19 A Approximately three o'clock.

20 Q Do you -- and you said -- you indi-

21 cated earlier that you stayed there during most of the time

22 until you got off at six in the morning, is that correct?

23 A Yes, I did.

24 Q So you were approximately two and a

1 half hours in the apartment, more or less?
2 A That's correct.
3 Q And there were three subjects in the
4 apartment, is that correct?
5 A Yes.
6 Q Carter, Newcomb, and this Greek boy?
7 A That's correct.
8 Q You can pronounce his name, what is
9 his name for the record?
10 A I believe it's Zacharias,
11 Q Yes, Zacharias.
12 A I'm not sure.
13 Q What was done with the -- with this
14 bag which was opened by the Henrico policemen, in which large
15 quantities of drugs were -- were seen, what was done with
16 that bag after it was opened?
17 A It was -- well, I didn't bother it
18 any further actually than to see -- see it, I held it there
19 until Detective Bennett arrived and he took possession of it.
20 Q So nothing was emptied, none -- none
21 of these -- that trash -- that trash bag was not emptied in
22 your presence?
23 A I don't recall, it wasn't actually
24 emptied in my presence, I didn't see anybody turn it upside

1 down, it may have been, but I didn't see it done.

2 Q And what specifically did you recover

3 besides those two Seconal pills?

4 A Nothing specifically.

5 Q Nothing specifically?

6 A Oh, I'll have to expand that to the

7 milk container and also the Lilly (unintelligible)

8 THE COURT: Also the what?

9 A The Lilly (unintelligible) beside

10 the milk container.

11 Q The Lilly what?

12 A Top. (word not entirely clear to

13 the transcriber)

14 Q Top? Well, would you look at this --

15 these exhibits and tell us where certain items were -- were

16 in the apartment?

17 MR. MORCHOWER: Would you hand him

18 the exhibits, please?

19 MR. SIMMONS: Judge, I would further

20 stipulate Officer Combs will not be able to look

21 at these specifically and identify where they

22 came from, have to come from Detective Bennett,

23 THE COURT: All right.

24 MR. SIMMONS: I believe, where

1 Detective Bennett -- was indicated by Officer
2 Combs to Bennett where they was, and I think it
3 was Bennett who made the notes.
4 THE COURT: Any problem with that
5 stipulation, Mr. Morchower?
6 MR. MORCHOWER: Stipulations always
7 frighten me a little bit, Judge, he's going to
8 stipulate that this gentleman, Mr. Combs, cannot
9 identify where any of these drugs came from?
10 MR. SIMMONS: That is correct, he
11 will not be able to look at any drug and say,
12 this drug came from here.
13 MR. MORCHOWER: Well --
14 MR. SIMMONS: Combs won't be able to
15 say anything other than he indicated to Detective
16 Bennett where the drugs were found. Now, what
17 drug was found there, he's not going to be able
18 to say, because he didn't make notes of it.
19 Q Did you actually indicate to --
20 yourself to Detective Bennett where drugs were found in the
21 apartment, I mean --
22 A I pointed to what we found when he
23 arrived, and he made a full -- more thorough investigation
24 of it.

1 BY THE COURT:

2 Q Did you make any notes that evening

3 of where the drugs -- any drugs were found?

4 A No, sir, I left that completely to

5 Detective Bennett.

6 Q All right.

7

8 BY MR. MORCHOWER:

9 Q Well, how long were you in the apart-

10 ment before Detective Bennett arrived?

11 A Well, let's see, I believe he --

12 perhaps an hour before he arrived, I'm not sure.

13 Q And you testified that the only

14 thing you saw in the apartment that you can testify to right

15 now is the -- is the two Seconal tablets and the Lilly con-

16 tainer and the top, is that correct?

17 A I saw various other capsules all

18 around the apartment.

19 Q At what point in time?

20 A Well, actually immediately after

21 the -- Mr. Carter, I believe it was, turned on a light in --

22 inside the apartment. Visible on the floor were capsules,

23 but, of course, I didn't know what these capsules were.

24 Q Well, do you know -- do you know

1 whether or not Carter lived in this particular apartment
2 house?
3 A No, I don't.
4 Q And you did indicate earlier that
5 you asked him if you could search for Keenan -- for Hodges,
6 and he asked you if you had a search warrant, is that correct?
7 A No, I did not.
8 Q No one's ever asked you for a search
9 warrant in that particular apartment?
10 A Yes, they have.
11 Q Who did?
12 A Newcomb, and he didn't phrase it
13 that way, I asked him if we could search, he stated, do you
14 have a search warrant.
15 Q And what did you say?
16 A I told him we didn't need one, is
17 what I replied to him.
18 THE COURT: I didn't hear your answer?
19 A I told him we didn't need one, he
20 was -- had previously -- he had been placed under arrest
21 previous to this.
22 Q For possession of these two Seconal
23 -- Seconal pills?
24 A That's right.

1 Q Was this before or after the light
2 was turned on?
3 A This was -- everyone in the house --
4 apartment, in my mind, was under arrest when I saw those
5 tablets laying on the floor.
6 Q Well, the question was, did you have
7 this conversation with him when the light was on or the light
8 was off?
9 A On.
10 Q And you couldn't look at any of
11 those drugs -- exhibits, and tell the Court where they were
12 located?
13 A Those containers look so much alike,
14 it's no way in the world I could tell where they were in the
15 apartment, no.
16 Q Were any pictures taken of the apart-
17 ment?
18 A Some were, yes.
19 Q By whom?
20 A It was an accident man, I don't know
21 who the -- who the man was.
22 Q When you were there?
23 A Yes.
24 Q Who has them now, Officer Bennett?

1 A I believe I saw . . . . . have
2 them, yes. (The witness continuously mumbles)
3 Q And Officer Keenan was with you at
4 this time, wasn't he, when you entered --
5 A At that particular time all those
6 Henrico officers looked the same, I don't know if he was with
7 me or not, he may have been outside.
8 Q And you don't know where -- you've
9 never seen that exhibit that Mr. Simmons showed you, you've
10 never seen that before, have you?
11 A Yes, I have.
12 Q Well, you've never seen it in the
13 apartment, did you?
14 A That's correct.
15 Q Do you recall seeing a shoe box in
16 this particular apartment?
17 A No, I don't.
18 Q How many trash -- you indicated that
19 some of these drugs were found in a trash bag, what you mean
20 is a brown paper bag, is that correct?
21 A Yes.
22 Q All right, and there are numberous
23 brown paper bags containing trash, et cetera, is that correct?
24 A Yes.

1 Q And these were examined in your
2 presence, or while you were in the apartment, is that correct?
3 A Yes.
4 Q Are you in a position to say what
5 particular drugs came from what particular trash bag?
6 A No, I'm not.
7 Q Did you have any conversation about
8 getting a search warrant when Officer Bennett arrived?
9 A No.
10 Q Was the bureau dresser drawers
11 turned upside down?
12 A I don't recall seeing a bureau in
13 the place, to be honest with you, I don't know, it's new to
14 me, I've never seen it.
15 Q I have no further questions at this
16 time.
17 MR. SIMMONS: Detective Bennett.
18
19 BY THE COURT:
20 Q Just a minute. Officer Combs, you
21 made a statement twice that you also saw capsules laying in
22 different areas on the floor,
23 A Yes, sir.
24 Q was this -- were they scattered about

1 floors, were they in containers?

2 A They were -- appeared as if someone

3 had thrown the capsules across the floor, is the way it

4 appeared to me, it was just capsules by themselves -- now,

5 they weren't the same type, they weren't Seconal.

6 Q What floor?

7 A They were on the floor, in common

8 view, in the -- just as you first walk in the apartment,

9 right in the --

10 Q What room was this?

11 A This was in the kitchen --bedroom

12 combination -- it wasn't a great many tablets, it was about,

13 I'd say, from five to seven, five to ten possibly.

14 MR. MORCHOWER: Are you saying now,

15 excuse me, Judge.

16 THE COURT: Go ahead.

17

18 BY MR. MORCHOWER:

19 Q Are you talking about five to seven

20 capsules, is that what you are telling the Judge you saw in

21 addition to the two Seconal pills?

22 A Yes, these were the type that were

23 on the floor -- the ones that were on the floor.

24 Q And you had no information as to

1 what those pills were?

2 A No.

3 Q But you did identify the Seconal?

4 A Yes.

5 Q By its color?

6 A Yes.

7 Q And the markings on the --

8 A Yes.

9 THE COURT: All right, when you're

10 outside, don't discuss your testimony or allow

11 anyone to discuss it with you.

12 A Yes, sir.

13

14

15

16 WITNESS STOOD ASIDE.

17

18

19

20

21

22

23

24

1
2
3 C. W. BENNETT, introduced
4 on behalf of the Commonwealth, being first duly sworn, testi-
5 fied as follows:
6
7 DIRECT EXAMINATION
8 BY MR. SIMMONS:
9 Q Would you state your name and occu-
10 pation, please?
11 A Detective C. W. Bennett, of the
12 Richmond, Virginia, Bureau of Police, assigned to the
13 Detective Division.
14 Q Detective Bennett, on March 14th,
15 1972, did you have occasion to go to 1102 Floyd Avenue,
16 Apartment number 3?
17 A Yes, sir, I did.
18 Q You say you're in the Detective
19 Division?
20 A Yes, sir.
21 Q Can you identify Commonwealth's
22 Identification Exhibits Number 1 and Number 2,
23 A Yes, sir, I --
24 Q in reference to Indictment 1, which

1 has been identified by Doctor Cavedo?

2 A Yes, sir, I can.

3 Q Have you seen all these items before?

4 A Yes, sir, I have. Most of these

5 items bear an evidence label with my initials on it, which I

6 placed on these items as I removed them from the various

7 containers that they were in. I tried to gather up most of

8 the evidence in the original container that it was in in the

9 apartment, for example, a good deal of this material was in

10 a brown paper grocery bag. I simply picked up the brown

11 paper bag and took it to Headquarters, at which time I

12 inventoried, recorded and labeled them.

13 Q And those items that are in that bag,

14 all of those items in that bag, where were they the first

15 time you saw them?

16 A Well, these items were in various

17 places in the kitchen area when I initially saw them, some

18 were in a brown paper bag by the stove, and the -- as you go

19 in the door from the hall; some of them were in a disposable

20 diaper box that was sitting up on the stove in the kitchen

21 area, some of them were in a green, Bank of Virginia, zipper

22 deposit bag that was laying on the bed, and some others were

23 in a white Bank of Virginia drawstring bag that was also

24 laying on the bed.

1 MR. MORCHOWER: Judge, I'm willing
2 to stipulate these items were -- were found by
3 Officer Bennett in the apartment, if it saves
4 the Court some time.
5 MR. SIMMONS: As pointed out during
6 my conversation yesterday, Judge.
7 MR. MORCHOWER: Yea, but I -- I may
8 -- I may be interested in going to the locations
9 and so forth, but I'll stick to that agreement
10 rather than have him go through each container
11 and state to the Court that he located and
12 recovered each particular container in the
13 apartment, I'm satisfied that those exhibits
14 were recovered by Officer Bennett in the -- in
15 the apartment.
16 THE COURT: All right.
17 Q Now, I specifically want you to look
18 at a Mickey Mouse electric box, (rattling of paper) have you
19 ever seen that box before?
20 A Yes, sir.
21 Q Where did you see it?
22 A That was found in the disposable
23 diaper box on the counter in the kitchen area, in 1102 Floyd
24 Avenue.

1 Q Apartment number?
2 A Three.
3 Q And I want you to look at the Mickey
4 Mouse watch, (rattling of paper) what do you have in your
5 hand?
6 A It's a Mickey Mouse electric watch.
7 Q Where was that watch the first time
8 you saw it?
9 A It was on the wrist of the defendant.
10 Q Where was the defendant?
11 A In the detention section of the
12 Richmond Police Headquarters.
13 Q Where was the defendant the first
14 time you saw him?
15 A The first time I saw him he was
16 running out the door of 1102 Floyd Avenue, out of the front
17 door.
18 Q How close did he get to you?
19 A He got right on top of me.
20 Q And after he got on top of you, what
21 did you do?
22 A After we once gained control, I set
23 him in my -- the back seat of my unit, and immediately
24 thereafter a patrol wagon arrived on the scene and I placed

1 him in the patrol wagon, he was handcuffed during this time.
2 Q He was handcuffed?
3 A After I -- as soon as I got control,
4 I handcuffed him and placed him in my automobile, then placed
5 him in a patrol wagon, and I didn't see him again until I
6 saw him in the Detention Section.
7 Q You took that Mickey Mouse watch
8 off his arm?
9 A In the Detention Section, yes, sir.
10 Q All right, before -- before they
11 ever saw the defendant, did you go up -- go up to apartment
12 number 3?
13 A Yes, sir.
14 Q Can you identify that which was just
15 handed to you?
16 A Yes, sir.
17 Q Does it have a name on it?
18 A The name of Gregory --
19 MR. MORCHOWER: Judge, I would
20 object to -- to Mr. Bennett reading or intro-
21 ducing any portion of that statement, as first
22 of all, hearsay, what that -- what that paper
23 contains is hearsay, number one; number two --
24 that's the -- the crux of my objection, the fact

1 that this statement is hearsay, and --

2 THE COURT: What, the statements in

3 the paper?

4 MR. MORCHOWER: Yes, sir.

5 THE COURT: But he can read the

6 label, no objection to his reading the label on

7 the paper, is there?

8 MR. MORCHOWER: Well, what -- what

9 do you mean by label, Judge?

10 THE COURT: Whatever heading the

11 paper may have, as -- for identification purpose,

12 the Commonwealth has offered it, I believe, as

13 evidence?

14 MR. SIMMONS: Yes, sir.

15 THE COURT: Now, what -- it's a

16 piece of white paper with print and -- and there's

17 some

18 MR. SIMMONS: Handwriting.

19 THE COURT: handwriting on it, and

20 I want it identified.

21 MR. SIMMONS: The purpose for which

22 the Commonwealth is offering this is to show the

23 defendant's name on it and it was in 1102,

24 apartment number 3, Floyd Avenue.

1 THE COURT: All right, now --
2 MR. SIMMONS: I mean, we've got
3 nobody that's seen the defendant in that apart-
4 ment, but his belongings, some with his name on
5 it, is up there, that's the purpose --
6 THE COURT: All right, but I don't
7 want Mr. Bennett to read the whole thing, what's
8 your objection to his reading whatever the label
9 is?
10 MR. MORCHOWER: Well, I think you
11 have to hook it in with the -- with my client,
12 Judge, the mere fact that a piece of paper, a
13 form piece of paper is found in the particular
14 apartment with a particular name on it doesn't
15 necessarily have any relevancy or any probative
16 value in a -- in this particular case, and Mr. --
17 obviously this is a very critical piece of
18 evidence in view of the fact that my client was
19 not in the apartment, Mr. Simmons wants -- is
20 attempting to show through this piece of paper
21 that my client had been in the apartment, and
22 I don't think it could be offered without pre-
23 judice.
24 THE COURT: You're indicating that

1 the paper has your client's name -- the defen-
2 dant's name on it?
3 MR. MORCHOWER: I think it does --
4 may I see that?
5 (There is off-record colloquy between
6 Counsel)
7 MR. MORCHOWER: I would object,
8 Judge, my client's name is typed in on that
9 sheet, and there is a signature on the bottom
10 which Mr. Simmons indicated to me in his opinion
11 is the signature of -- of Gregory Lugar, and I
12 would -- I would dispute that interpretation and
13 I would object on the grounds that it has no
14 probative value, should not be given any weight,
15 or because of the fact it's not relevant to the
16 offense, and because of the fact that the state-
17 ment does contain hearsay.
18 THE COURT: All right, Mr. Simmons,
19 what's your response?
20 MR. SIMMONS: Judge, we've got --
21 found in the apartment a Mickey Mouse automatic
22 watch, it's been identified -- Miss Barber stated
23 that --
24 THE COURT: The box?

1 MR. SIMMONS: The box, got the box
2 in the apartment, and got the wrist watch on his
3 arm, and he -- at this point, Detective Bennett
4 is up there, making the investigation, and he --
5 not only have you got the box in the apartment,
6 got the wrist watch on his arm, you've got other,
7 an important document here, and the Court can
8 take notice if it ever gets a chance to look at
9 it, but this is an important document, that it
10 has the defendant's name typed on it, and it has
11 the defendant's name signed on it, and that was
12 found in the apartment in the same place where
13 the Mickey Mouse automatic watch box was found.
14 THE COURT: All right, it'll be
15 received, but there's no proof that the writing
16 on it of the defendant's name is his signature.
17 MR. SIMMONS: Judge, this -- okay.
18 MR. MORCHOWER: Subject to cross
19 examination, Judge?
20 THE COURT: All right.
21 MR. SIMMONS: Judge, I'd like to say
22 one thing, I didn't know that this was coming
23 up, Mr. Barry Shearin is in the Courtroom right
24 here, and I'd like to call him at a later time

1 to identify this -- well, I realize witnesses
2 were excluded, and I think it is a matter in the
3 sound discretion of the Court, I didn't know that
4 this was coming up, I'd ask that Mr. Shearin be --
5 THE COURT: All right, Mr. Shearin,
6 would you step outside, if there should later
7 be an objection to his testifying, we'll consider
8 it later.
9 Q Mr. Bennett, where was that paper
10 the first time you saw it?
11 A It was on the mantle in the kitchen,
12 across from the stove, I saw it when I first -- on my first
13 trip into the apartment, I was being shown the location of
14 these various articles which I recovered, and I happened
15 to notice this and the writing on it called my attention to
16 it so that I took notice, I did not recover it immediately,
17 but set it aside, moved it slightly to the end of the mantle-
18 piece, I also noticed some -- a shoe box with mail in it,
19 the mail was laying in such a fashion you could -- that you
20 could read the name on the first letter, at that time that's
21 all I did.
22 Q What was the name that you read on
23 the letter?
24 A The only name --

1 MR. MORCHOWER: I would object, it's
2 hearsay, it has no --
3 MR. SIMMONS: It is not hearsay,
4 what this officer saw.
5 THE COURT: No, it's what he saw,
6 Mr. Morchower.
7 MR. MORCHOWER: Well, he can't start
8 introducing writings which were found in the
9 particular apartment and start quoting what he
10 saw.
11 THE COURT: He can read what -- he
12 can testify as to what he saw just as if it were
13 an individual.
14 MR. MORCHOWER: Speaking -- I would
15 object, Judge, I think -- I think it's hearsay,
16 if this officer is allowed to testify as to
17 what he read in the particular apartment.
18 THE COURT: He -- he has testified
19 that he saw what purported to be a letter with
20 a name on it, he can testify as to what name
21 was on the letter.
22 MR. MORCHOWER: I would except to
23 the Court's ruling, Your Honor.
24 THE COURT: All right.

1 Q Do you remember what name was on it?
2 A The only name that I remember was
3 Lugar.
4 Q Was this before or after -- seeing
5 that paper in front of you, and seeing the letter, was it
6 before or after you saw the man with the Mickey Mouse wrist
7 watch on?
8 A That was before I had ever seen him,
9 that was before I had gone back to my automobile to get my
10 evidence kit, that was on my first trip to the apartment.
11 Q Would you look at the defendant,
12 Gregory Blanton Lugar, when's the first time you ever saw
13 him?
14 A When he -- when he came running out
15 of the front of 1102 Floyd Avenue.
16 Q What -- what day was that?
17 A That was on March 14th, 1972.
18 Q Did you place him under arrest that
19 day?
20 A Yes, sir.
21 Q What name did he give you?
22 A Well, the first name he gave me was
23 Greg Woodson.
24 Q What happened to all the pills that

1 were found up there?

2 A Well, it was --

3 MR. MORCHOWER: He's leading his

4 witness, and I would object. I think Mr. Bennett

5 can testify as to what he has done --

6 MR. SIMMONS: Judge, that is not a

7 leading question, it may -- that's not leading

8 the witness.

9 THE COURT: Go ahead, and the

10 objection is overruled and exception noted.

11 A All of the -- or the majority of

12 these actual drugs was -- I turned them over to Detective M.

13 D. Scott, and he and I together prepared analysis sheets and

14 went -- took them to the State Board of Pharmacy.

15 Q Why?

16 A Well, we -- they were charged on

17 misdemeanor drug offenses.

18 Q Do they still have them?

19 A To the best of my knowledge they --

20 they do still have them.

21 MR. SIMMONS: Well, in view of the

22 stipulation Mr. Morchower made a while ago to

23 certain of these items, the Commonwealth would

24 move to introduce these as exhibits rather than

1 identification exhibits.

2 MR. MORCHOWER: Which -- what are

3 we talking about?

4 MR. SIMMONS: All of this paraphernalia

5 that was up there

6 MR. MORCHOWER: Everything is in

7 there I thought, already.

8 MR. SIMMONS: as exhibits.

9 THE COURT: They were offered for

10 identification only before, they are now being

11 offered as exhibits.

12 MR. MORCHOWER: Judge, I have a few

13 questions I want to clear up in my mind on cross

14 and I think I'd be willing to go into these, you

15 know, I don't think there's any question about

16 the stipulation, I'd like to go into a few

17 matters.

18 MR. SIMMONS: I don't have any

19 objection to that if we got these in as exhibits.

20 Are they -- is everything in now, do you stipu-

21 late as exhibits?

22 MR. MORCHOWER: As exhibits.

23 MR. SIMMONS: All right.

24 THE COURT: All right, mark them as

1 exhibits, and scratch the word, identification.

2

3 CROSS EXAMINATION

4 BY MR. MORCHOWER:

5 Q Officer, where is this letter that

6 you casually saw in the apartment, do you have it here with

7 you?

8 A No, sir, I didn't recover that.

9 Q You didn't recover that?

10 A No, sir.

11 Q What happened to all the material

12 in the shoe box that you found?

13 A I left -- I left it in the apartment.

14 Q Why did you leave it in the apartment,

15 isn't it considered evidence, everything --

16 A I suppose if I had taken everything

17 with his name on it, I'd have had a bushel basket full of

18 material, I didn't -- I just didn't recover them as evidence,

19 I simply didn't realize, or I didn't feel that they would be

20 nevessary at that time.

21 Q But you did see fit to take his

22 probation exhibit, didn't you?

23 A Yes, sir.

24 Q Didn't you testify in an earlier

1 hearing that this probation and parole exhibit was in a shoe
2 box?
3 A No, sir.
4 Q Would you tell the Court that --
5 why you got a search warrant the next day and did not get
6 a search warrant that morning?
7 A The reason that we got the search
8 warrant -- it was not the next day, it was actually the same
9 day, later in the day -- was the fact that I was in my head-
10 quarters talking with Detective Garner and Officer Taylor
11 concerning this case, Officer Taylor related that he had --
12 Q Well, I don't want to hear anything--
13 A All right --
14 Q even though my question calls for
15 hearsay, I can object, Judge, and -- can you answer that
16 question without relating that
17 A No, sir.
18 Q conversation -- all right, I'll
19 withdraw the question. Did you take any photographs of this
20 apartment?
21 A I did not personally take any.
22 Q You have some photographs in your
23 files --
24 A Yes, sir.

1 Q May I see them?
2 A This one is simply a copy --
3 Q All right, when were these photo-
4 graphs taken, sir, and who took them?
5 A They were taken by an accident
6 investigator, I do not know which one, they were taken some-
7 time after our entry into the apartment, my collection
8 operation had already begun before those pictures were taken.
9 Q Begun, but did your collection
10 operation terminate?
11 A Yes, sir, it terminated, when I left
12 the apartment, after
13 Q No --
14 A I had finished collecting, I gathered
15 my evidence and left the apartment.
16 Q Would you describe to the Court what
17 this photograph -- two photographs show?
18 THE COURT: Are you offering them?
19 MR. MORCHOWER: I may, Judge, yes,
20 sir.
21 A This is a picture of the stove, it's
22 taken in a easterly direction, and it shows inside the oven
23 part of the stove, there's --
24 Q Well, establishing is not relevant to

1 this case, how about the -- the other items in the picture?
2 A They are bags of trash, a table,
3 frying pan on top of the stove.
4 MR. MORCHOWER: Judge, I would offer
5 these into evidence as the Defendant's Exhibits.
6 THE COURT: All right.
7 Q And you indicated earlier that you
8 did not place any formal charges against the accused for the
9 arrest you made of him when he ran out of the apartment in
10 question, did you?
11 A No, sir.
12 Q And were the three subjects still
13 in the apartment when you began your collection operation?
14 A Yes, they were.
15 Q And you were there for two or three
16 hours, weren't you, sir?
17 A Two hours approximately.
18 Q May I see that sheet you've been
19 testifying to on direct examination
20 MR. SIMMONS: Have you been testifying
21 to it?
22 MR. MORCHOWER: Yes.
23 MR. SIMMONS: Well, I didn't ask you --
24 A Yes, I've been refreshing my memory

1 from that sheet.

2

3 BY THE COURT:

4 Q Mr. Bennett, while he's looking at

5 that, these photographs which have been offered, when you

6 first saw these items, were they in substantially the same

7 condition as reflected by these photographs?

8 A The items that are now shown in the

9 picture?

10 Q In the picture?

11 A Yes, sir, they were -- there were

12 some items that, when I first arrived, were there that are

13 not there now.

14 Q All right, sir.

15 (pause)

16 MR. MORCHOWER: Excuse me, Judge,

17 this is six pages.

18 MR. SIMMONS: . . . . . apartment

19 number, 1102 Floyd Avenue, which was the same

20 address as he gave him, that being 1102 Floyd

21 Avenue, when he was arrested. Mickey Mouse

22 watch is Mickey Mouse watch box, is crucial in

23 the Sunset Hills Pharmacy breaking and entering,

24 it happened only two days before, the defendant

1 out at three o'clock in the morning, is running
2 from the police officer.
3 THE COURT: Rebut?
4 MR. MORCHOWER: Judge, I'm -- no,
5 I don't have anything more to add other than the
6 fact that Miss Barber identified the -- the box
7 as the type coming from her store, and the
8 watch was the type coming from her store, and
9 he's -- my client had a Mickey Mouse watch on
10 his wrist sometime after he was taken from the
11 1102 Floyd Avenue, there's no evidence that he had
12 the Mickey Mouse watch on at that time, there's
13 no evidence that -- that no one else had a
14 Mickey Mouse watch on, there were three other
15 subjects in the apartment, this Greek fellow
16 with -- with a name starting with a "K", Carter,
17 and Newcomb, no evidence that they did not have
18 a Mickey Mouse watch on, this is a Mickey Mouse
19 watch which could easily be purchased at any
20 other drug store or any other outlet at any other
21 time, and the mere fact that he happens to have
22 a Mickey Mouse watch on him should not have any
23 probative value and should not be introduced --
24 allowed into evidence in the case.

1
2
3 Hearing on May 24, 1972,
4 before the Honorable James M.
5 Lumpkin, Judge.
6 PRESENT: Reid A. Simmons, Esq.
Attorney for the Common-
7 wealth
8 Michael Morchower, Esq.
Attorney for the defendant
9
Gregory Blanton Lugar, the
10 defendant, in person and
by counsel
11
12
13
14
15
16
17 THE COURT: This is the case of
18 Gregory Blanton Lugar, this 24th day of May,
19 1972. The defendant is present and his attorney,
20 Mr. Morchower, is present, and Mr. Simmons is
21 present representing the Commonwealth, this matter
22 having been taken under advisement after all the
23 evidence and argument were in.
24 All right, Gentlemen, what I'm going

1 to say is, not to be taken as anything more than
2 some notes of my own after reviewing the notes
3 and because I think they may be entitled to a
4 nickel's worth.
5 The things that connect this defen-
6 dant with the apartment in question and with the
7 offenses in question I have listed in this way:
8 Number one, he was in a car which
9 was stopped for a traffic offense in Henrico,
10 he was freed, but it is noted that another
11 occupant in the car, upon advice that he was
12 wanted in connection with a breaking and enter-
13 ing of a Salem drug store, ran and was pursued
14 by the officer and escaped the officer at this
15 time. The third occupant of the car was -- he
16 gave a false name -- was later found in the apart-
17 ment in question in bed. The car was later
18 found near the apartment in question, and the
19 officers were directed to that particular apart-
20 ment. At the time the defendant was not there,
21 but, but as I said, an occupant of the vehicle
22 the defendant was in was in bed.
23 The officers were looking, or at
24 least one officer testified he was looking for

1 a man in a brown coat. The defendant was seen
2 in the immediate vicinity in a brown coat, and
3 upon being approached by the officer, ran. There
4 was a chase, he -- there was a momentary appre-
5 hension, he was chased outside of the building
6 into the -- into Detective Bennett, and he
7 knocked Detective Bennett down, and kicked at
8 him, and Detective Bennett subdued him, placed
9 him under arrest, and the defendant gave a false
10 name, it -- the Court takes into account a cir-
11 cumstance, being the hour of four a.m.
12 Found -- meanwhile, the search was
13 going on in the apartment, the officers having
14 initially been there lawfully and with consent
15 to search for the individual who was driving the
16 vehicle stopped in Henrico County, and while
17 looking for him they saw pills on -- scattered
18 on the floor, known and reasonably believed by
19 one of the officers to be a controlled drug, and
20 in plain view, and also in plain view certain
21 other evidentiary items and the letter was found
22 in the same apartment with the defendant's name
23 on it; likewise, a Parole Board form document
24 with instructions to a parolee, and with the

1 defendant's name on the document, and what pur-
2 ported to be the signature of Gregory Blanton
3 Lugar, although no evidence was introduced as
4 to -- beyond that to prove signature. At the
5 time of -- or shortly after arrest, the defendant
6 was noted to be wearing a Mickey Mouse electric
7 wrist watch, and there was evidence from Sunset
8 Hills Pharmacy that a -- an electric Mickey
9 Mouse wrist watch was stolen approximately three
10 nights earlier during the course of a breaking
11 and entering, and it was further established
12 that a Mickey Mouse electric watch case was
13 found empty in apartment 3, in the same apartment,
14 along with numerous items removed from Sunset
15 Hills Pharmacy as well as Cavedo's Drug Store.
16 The defendant gave police the address
17 of 1102 Floyd Avenue.
18 There was evidence that defendant
19 was under the influence of, quote, something,
20 not alcoholic beverages. His conduct was des-
21 cribed as violent one moment and docile at a --
22 at a later time, and he, during the course of
23 the morning, attempted to run from law enforce-
24 ment officers on at least three occasions.

1 The Court considers it passing
2 strange that a nineteen-year-old white male
3 defendant is wearing a Mickey Mouse electric
4 wrist watch, and upon study of the wrist watch,
5 it is noted that the appearance of the watch is
6 significant, that there is an absence of nicks
7 or scratches, and no indicia of age of the watch.
8 As a circumstance in this case, the
9 Court takes into account also that the defendant
10 was seen in very close proximity to the apart-
11 ment in question, he -- there was flight on the
12 part of the defendant not once but twice, before
13 he was arrested. The Court considers the action
14 of Detective Bennett in initially arresting
15 him for disorderly conduct to be thoroughly
16 reasonable, and as to the search, the officers
17 had a lawful right to be in the apartment, and
18 considering the items in plain view, the other
19 matters brought to their attention, and taking
20 into account the Wharton case, the Court feels
21 that the search was reasonable under all the
22 circumstances.
23 Stand up, Mr. Lugar:
24 On your plea of not guilty on

1 Indictment Number 1, the Court finds you guilty
2 as charged.
3 And on your plea of not guilty in
4 Indictment Number 2, the Court finds you guilty
5 as charged.
6 Is there a motion?
7 MR. MORCHOWER: Yes, sir, I think it
8 would be appropriate for a pre-sentence report,
9 Judge.
10 THE COURT: All right, on motion of
11 your attorney, a pre-sentence report is ordered
12 from the Probation Department, returnable to
13 this Court on
14 A VOICE: June 28th?
15 THE COURT: June 28th, Mr. Morchower?
16 Returnable to this Court on June 28th, at nine
17 a.m.
18 MR. LUGAR, the -- one of the -- the
19 Probation Officer will make a thorough --
20 thorough review of your background, and one of
21 the last things he'll do before reporting to the
22 Court will be to ascertain what your conduct
23 has been at the City Jail. This, along with all
24 the other circumstances, will be taken into

account at the time of sentencing. Mr. Morchower is directed to advise you as to details of my instruction about your conduct at the City Jail.

Mr. Lugar, you're remanded to the custody of the City Sergeant.

HEARING CONCLUDED.

Hearing on June 28, 1972, before the Honorable James M. Lumpkin, Judge.

PRESENT: Reid A. Simmons, Esq.
Attorney for the Commonwealth

Michael Morchower, Esq.
Attorney for the defendant

Gregory Blanton Lugar, the defendant, in person and by counsel

THE CLERK: In the Hustings Court on

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUL 23 1973
RICHMOND, VIRGINIA