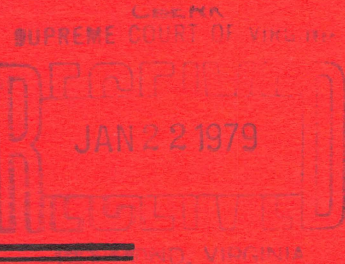


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IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 781136

WILLIAM FRANKLIN WOMACK, JR.,

.....Appellant

v.

COMMONWEALTH OF VIRGINIA,

.....Appellee

APPENDIX

Allen C. Tanner, Jr.
693 J. Clyde Morris Blvd.
Newport News, Virginia 23601

Counsel for Appellant

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INDICTMENT NO 3738-78

VIRGINIA:

In the Circuit Court for the City of Newport News at its
criminal term commencing February 13, 1978

The Grand Jury charges that:

On or about the 28th day of September, 1977, in the City
of Newport News, WILLIAM FRANKLIN WOMACK, JR. feloniously did possess
a controlled drug or substance, to-wit: Preludin, *100 mg tablets, 100 tablets*
in a white plastic bag

Virginia Code: 18.2-250 (Drug Control Act of Virginia)

A true bill

~~Not a true bill~~

FEB 13 1978

Eugene H. Hogg
Foreman

Witnesses:

Sgt. P.D. Bowling ✓

1 statement with regard to the evidence, I
2 don't know that that is necessarily accurate,
3 but I don't really think that's why we're
4 here on that, anyway.
5

6 THE COURT: Do you have any
7 additional evidence today?

8 MR. SHORT: No, sir. I do not.

9 THE COURT: All right. Mr. Astor?

10
11 (Arguments were made by Mr.
12 Astor in behalf of the Commonwealth, and
13 Mr. Short in behalf of the defendant.)
14

15 THE COURT: All right. First, I
16 want to comment about two things. Number
17 one, I did tell defense counsel after I had
18 found him guilty that I would review the
19 cases that he had cited on possession, and
20 the Court has reviewed all of those cases.
21 Of course, the language in those cases, in
22 each of them, is relatively clear in that
23 the Commonwealth has the burden of proving
24 that Womack was aware of the presence and
25 character of the drugs. Well, there is

1 absolutely no question in the Court's
2 mind that Mr. Womack was aware of the
3 presence and character of the drugs. All
4 anybody has got to do is look at those
5 pictures and see the drugs and syringes and
6 there were scales and the glacene packages
7 and everything else all over the place
8 to come to that conclusion. And, of course,
9 the Commonwealth also has the burden of
10 showing that the defendant was intentionally
11 and consciously in physical or constructive
12 possession of it. Now, the evidence is that
13 this was not Womack's residence. The
14 evidence is that he did not burglarize the
15 two drug stores where the narcotics came
16 from. He was not in physical possession
17 of any of the drugs for which he was
18 charged in the indictment. However, he
19 was in possession of two capsules of a
20 narcotic for which he was not charged, but
21 for which the Court allowed the evidence
22 to come in. Also, the evidence is that
23 there were 77 other like capsules in
24 the room.
25

1 Now, it's not necessary under the
2 law, according to the cases, to show
3 exclusive possession, and constructive
4 possession can be shown if the evidence
5 shows that the defendant had some dominion
6 and control over it. I think that the
7 Court can conclude from the facts of this
8 case that Mr. Womack did evidence some
9 dominion and control over the narcotics
10 because he had two of them in his own
11 possession and I think that if he can walk
12 around and pick up two out of 77 other like
13 capsules, he could walk around and pick up
14 anything else. Everybody in there to some
15 degree was high. It's perfectly obvious
16 from the testimony that they were all
17 shooting up. So I feel that the evidence
18 is very strong to convict him of this
19 charge. Most of the cases where they
20 have been found not guilty have been cases
21 in which the defendant had absolutely
22 nothing on him and, also, that the narcotics
23 were located in such a place that the Court
24 could not conclude that he had any dominion
25

1 and control over them. The case cited
2 about the syringe, the boy who had the
3 syringe was not the defendant in that case.
4 He was sitting on the bed. The other
5 fellow had the syringe and there was only a
6 packet found at the bottom of or by the bed
7 and some under a dresser and the Court
8 concluded they could not say that this
9 individual, who, by the way, also
10 testified that he had just come into the
11 room, they held in that case that he did not
12 have dominion and control. I feel that
13 all of the cases cited in which they have
14 held that are certainly distinguishable
15 from the facts in this case. The Ritter
16 case, of course, did hold possession, and
17 I believe that narcotics were found in his
18 mail box. So I feel that the evidence is
19 sufficient to convict him.

20 Now, the second thing I want to
21 mention is, of course, that counsel has
22 pointed out the fact of the sentencing of
23 the co-defendants in these cases. Of
24 course, this is always a problem, that
25

1 defendants don't understand or at least
2 they don't want to understand and a lot of
3 lay people don't understand how somebody
4 in the same boat can get various sentences.
5 Well, if you look at it, it's not
6 really that hard to understand. Mr.
7 Spilde, of course, had a rather lengthy
8 record to go along with these charges.
9 I'm about to sentence James Wright, who, I
10 assure you, is going to go to the
11 penitentiary. Cheryl Lynn Davis is the
12 only other one that I tried and I do not
13 remember precisely, but that was a young
14 lady who has now moved out of the state,
15 had no other record. It was obvious that
16 narcotics had been her problem all along.
17 The Court is not taking into consideration
18 what is pending against Mr. Womack.
19 I think that that would be improper for me
20 to even give any consideration whatsoever
21 to that in passing sentence on him. But
22 I feel that under the circumstances of the
23 probation report, as pointed out by Mr.
24 Astor, I think that this young man has got
25

1 to be taken off the street. He's addicted
2 to drugs. There is no place around here
3 that I can safely put him that would, in
4 the Court's mind, do any good and the
5 only alternative I have is to take him
6 off the street for a period of time.

7 All right, Mr. Womack, I'll
8 ask you to stand, please. The Court has
9 found you guilty of possession of a
10 controlled drug. Do you know of any
11 reason why I should not pass sentence on
12 you at this time?

13 THE DEFENDANT: No.

14 THE COURT: I'm going to sentence
15 you to four years in the state penitentiary.
16 I'm going to suspend two of those four years
17 on condition of good behavior for a period
18 of two years and probation to the probation
19 department for a period of two years after
20 you are released. You will be taken
21 from here to the city jail and from there
22 to the state penitentiary, where you will
23 remain a period of two years unless
24 you are otherwise released according to
25

1 law. You, of course, have a right to
2 appeal this decision to the Supreme Court
3 of Virginia if you so desire. If you do,
4 you should notify your attorney as he has
5 to do certain things within thirty days of
6 today. All right, sir.

7 MR. SHORT: Of course, if Your
8 Honor please, we would take exception to
9 the ruling of the Court based on the law
10 and the exceptions heretofore taken.
11

12 * * *
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VIRGINIA: In the Circuit Court for the City of Newport News,
Tuesday, the 7th day of March, 1978.

PRESENT: The Honorable Douglas M. Smith, Judge.

Indictment #3738-78

COMMONWEALTH

: Indictment for Virginia Code
18.2-250 (Drug Control Act)

Vs.

: A Felony

WILLIAM FRANKLIN WOMACK, JR.

: A true bill. Everett H. Hogge,
Foreman February 13, 1978

This day came the attorney prosecuting for the Commonwealth and the defendant William Franklin Womack, Jr., (who was represented by David L. Short and Paul B. Kerr, III, attorneys of his own choosing) appeared in Court on condition of his recognizance, and Linda Dean, Court appointed Court Reporter, was sworn to faithfully and accurately take down and transcribe the proceedings herein, and after being arraigned and upon advice of counsel, the defendant pleaded not guilty to said indictment, and after being advised by the Court of his right to trial by jury, the Court having made inquiry and being of the opinion that the defendant fully understood his plea, his waiver of trial by jury, and the penalties that may be imposed upon conviction, the defendant knowingly and voluntarily waived trial by jury, and with the concurrence of the attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine this case without the intervention of a jury.

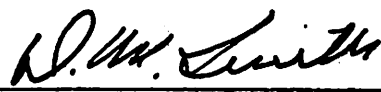
And the evidence of the Commonwealth being heard, the defendant, by counsel, moved the Court to strike the evidence of the Commonwealth on the grounds that the evidence of the Commonwealth did not substantiate a prima facie case against

the defendant, which motion to strike the Court doth overrule, and to which action of the Court in overruling the said motion, the defendant, by counsel, excepted. And the defendant offering no evidence herein, the defendant, by counsel, renewed his aforesaid motion to strike, which motion to strike the Court doth again overrule, and to which action of the Court in overruling the said motion, the defendant, by counsel, excepted. And all argument of counsel being heard, the Court doth find the said William Franklin Womack, Jr., guilty as charged in said amended indictment, to-wit: Violation of the Drug Control Act of Virginia.

Thereupon, the Court on motion of the defendant by counsel, doth refer this case to the Parole and Probation Officer of this Court and doth direct said Officer to thoroughly investigate and report upon the history of the defendant and any and all other relevant facts herein, and this case is continued for further hearing and sentencing until April 14, 1978, at 9:00 A.M.

And the record made by the Court Reporter herein of the said proceeding is filed as part of the record in this case. The Court certifies that at all times during the trial of this case the defendant was personally present and his attorneys were likewise personally present and capably represented the defendant.

And the said William Franklin Womack, Jr., is allowed to remain free on his original bail bond.


JUDGE

VIRGINIA: In the Circuit Court for the City of Newport News,
Friday, the 14th day of April, 1978.

PRESENT: The Honorable Douglas M. Smith, Judge.

Indictment #3738-78
COMMONWEALTH

: Indictment for Virginia Code
18.2-250 (Drug Control Act)

Vs.

: A Felony

WILLIAM FRANKLIN WOMACK, JR.
(D.O.B. 2-26-57)

: A true bill. Everett H. Hogge,
Foreman February 13, 1978

This day came again the attorney prosecuting
for the Commonwealth and the defendant William Franklin Womack, Jr.,
(who was represented by David L. Short, attorney of his own
choosing) appeared in Court on condition of his recognizance, and
Linda Dean, Court appointed Court Reporter, was sworn to faithfully
and accurately take down and transcribe the proceedings herein.

And investigation having been made by the
Parole and Probation Officer of this Court, this case came on
again to be heard in the presence of the defendant and his attorney
and the defendant having been advised of the contents of said report
and having been given the right to cross examine the said Parole
and Probation Officer and present any additional information he
desired, and said report of said Parole and Probation Officer
having been filed as part of the record in this case, the Court
after hearing the Parole and Probation Officer and all other
testimony herein, and the Court having on March 7, 1978, found
the said William Franklin Womack, Jr., guilty as charged in said
indictment, to-wit: Violation of the Drug Control Act of Virginia.

Thereupon, it being demanded of the defendant
if anything he had or knew to say why this Court should not now

proceed to pronounce judgment against him, according to law, and nothing being offered or alleged in delay thereof, the Court doth fix and ascertain the punishment of the said William Franklin Womack, Jr., to be imprisonment in the State Penitentiary for the term of four (4) years, the term of his imprisonment therein by the Court herein fixed and ascertained there to be kept imprisoned and treated in the manner directed by law for the term aforesaid, or until he be otherwise discharged by due course of law, and that the Commonwealth recover against the said William Franklin Womack, Jr., the cost of this prosecution. It is further ordered that two (2) years of the aforesaid four (4) year sentence be suspended conditioned upon his being of good behavior for a period of two (2) years and that he be paroled to the Parole and Probation Officer of this Court for a period of two (2) years and that he be required to abide by the conditions of probation as required by said Probation Officer.

The Court advised the defendant that he had a right to appeal to the Supreme Court of Virginia if he so desired. And the record made by the Court Reporter herein of the said proceedings is filed as part of the record in this case. The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

And it is ordered that a credit of twelve (12) days be allowed the said William Franklin Womack, Jr., for the time spent by him in jail awaiting trial on this indictment.

And the said William Franklin Womack, Jr., is committed to custody to await transfer to the Penitentiary.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

COMMONWEALTH OF VIRGINIA,)

Plaintiff)

vs.)

WILLIAM F. WOMACK, JR.,)

Defendant)

AFFIDAVIT

STATE OF VIRGINIA

City of Newport News, to-wit:

THIS DAY comes your Defendant, WILLIAM F. WOMACK, JR.,
and makes oath that he is indigent and without funds with
which to perfect an appeal in this cause.

DATED this 9 day of May, 1978.

William F. Womack Jr
WILLIAM F. WOMACK, JR.

SUBSCRIBED AND SWORN TO before me this 9 day of
May, 1978.

[Signature]
Notary Public

My Commission expires: 19 December 1981

ASSIGNMENT OF ERROR

The Appellant makes the following assignment of error to the final judgement of the Circuit Court for the City of Newport News, entered on April 14, 1978.

That the trial court erred in not granting the Appellant's motion to dismiss the Commonwealth's evidence since there was insufficient evidence to establish the guilt of William Franklin Womack, Jr. for the crime charged beyond a reasonable doubt.

VIRGINIA:

In the Circuit Court for the City
of Newport News at its criminal term
commencing February 13, 1978

The Grand Jury charges that:

On or about the 28th day of
September, 1977, in the City of Newport
News, WILLIAM FRANKLIN WOMACK, JR.
feloniously did possess controlled drugs
or substances, to-wit: Preludin (Phenmetra-
zine), Methaqualone, Oxycodone, Secobarbital,
Amphetamine, in violation of Virginia
Code Section 18.2-250, against the peace
and dignity of the Commonwealth of Virginia.
How do you plead, guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: All right, Mr. Womack,
you have pled not guilty to this charge,
which carries a penalty from jail time up
to ten years in the penitentiary. Do you
understand the charge that was read to you
and the possible punishment involved?

THE DEFENDANT: Yes, sir.

THE COURT: By pleading not guilty,

EVIDENCE ADDUCED IN BEHALF OF COMMONWEALTH

OFFICER W. C. JORDAN, Newport News
Police Department, after being first duly sworn,
testified in behalf of the Commonwealth, as follows:

DIRECT EXAMINATION

BY MR. ASTOR:

Q Would you please state your name
and your occupation for the Court?

A W. C. Jordan, police officer, Newport
News.

Q All right, sir. I would like to
call your attention to September 28 of last year,
1977. Were you a police officer on that date; if so,
what was your assignment?

A Yes, sir. I was assigned to the
Vice-Narcotics Division, Investigation Branch,
Police Department.

Q And did you have occasion to
participate in the search of 13304 Preakness Drive,
Apartment C, City of Newport News?

A Yes, sir. I did.

Q All right, sir. Tell us what
happened at that location, sir, will you, please?

1 A The alleged offense occurred on
2 September 28, 1977. Myself along with other Vice
3 Squad officers and Burglary Squad officers went to
4 13304 Preakness Drive, Apartment C, Newport News,
5 Virginia, at approximately 1:30 p.m. This was in
6 reference to a search warrant that was obtained by
7 Detective Hogan. Upon arriving, Sergeant Bowling,
8 Detective Hogan and myself, Detective Spitzer
9 went to the front door. We had a pass key from the
10 manager for the apartment. We knocked on the door the
11 first time, could hear some rustling the first time,
12 some movement. We knocked again, identified ourselves
13 as police officers, asked them to open the door up.
14 Someone came to the door, would not open it up. We
15 used the key. As soon as we turned the lock on it,
16 pushed the door forward, it would open several
17 inches. A subject we later found to be Richard
18 Spilde was pressing up against the door, trying to
19 hold us out. We forced our way in the door,
20 immediately entered the residence and there were four
21 people in the front living room quarters as we
22 entered. I tussled with one subject. To my left
23 was the dining room area, where the defendant, Mr.
24 William F. Womack, Jr., was coming from. Himself and
25

Printers Note:

The court reporter has errored in numbering the transcript pages. There is no page 13.

1 Garry Allen Cook were running from the dining room
2 and toward the living room and toward the hall. We
3 advised everyone to freeze where they were. We had
4 badges on display and advised we were police officers.

5 There was a very large quantity
6 of narcotics, capsules, pills, what-have-you, needles
7 and syringes everywhere, on the floors, on the coffee
8 table, on the dining room table. It was very obvious
9 there was a large amount. So at this time, we
10 advised everyone they were under arrest for violation
11 of the Drug Control Act of Virginia. We gave them
12 their rights. Everyone did understand they had
13 their rights. I was their, at the time, the evidence
14 man for the Vice-Narcotics Squad, with the only keys
15 to lockers, so I began to take hold of evidence,
16 first with the people. As I came to William Womack,
17 I frisked the subject. There was two capsules in
18 his shirt pocket. He had a pull-over shirt at the
19 time, small pocket, and it was two pills in it.

20 Q Can you describe those for us,
21 please?

22 A Yes, sir. I can. It was two
23 yellow capsules. They were labeled with the letters
24 "CH."
25

1 Q This fellow you're referring to,
2 could you be a little more specific as to who he is?
3 Is he here today?

4 A Yes, sir. William Franklin Womack,
5 Jr., in the dark blue suit, with the glasses, next
6 to the two attorneys.

7
8 MR. ASTOR: The record should
9 reflect, Your Honor, he's referring to
10 the defendant in this matter.

11 THE COURT: Yes, sir.

12
13 BY MR. ASTOR:

14 Q Go ahead, please.

15 A After searching everyone and
16 everyone did understand their rights or stated they
17 did, began to search the room and I, myself,
18 collected all the drugs involved. Among them, in
19 the dining room area, which Mr. Womack and Mr. Cook
20 came from, Item F on the analysis sheet 77T-1282,
21 one small plastic vial containing five white tablets.
22 The tablets, Item F, were found to contain
23 methamphetamine, a Schedule II controlled substance.

24 Q Would you describe to the Court
25

1 what portion, if any, of those tablets were visible?

2 Were these in plain view?

3 A Yes, sir. They were laying right
4 on the dining room table, which was loaded with
5 spoons of fixes of narcotics in the needles and
6 syringes. Needles, syringes contained narcotics,
7 liquid, blood, all of it in plain view.

8 On analysis 77T-1281, on A-1 and
9 A-2, this contained fourteen pink tablets labeled
10 "B1 62" and A-2 was four square white tablets
11 labeled "B1 42." The tablets from A-1 and A-2 were
12 found to contain phenmetrazine, generic name for
13 Preludin, a Schedule II controlled substance.

14 Q Where were these found?

15 A These were also, I believe, found
16 on the table. This was from the coffee table in
17 the front room.

18 Q Go ahead, please.

19 A There was also one hundred twenty-two
20 pink tablets labeled "Endo 123." This is on the
21 same analysis sheet, 77T-1281, Item B. The tablets
22 from B were found to contain oxycodone, a Schedule II
23 controlled substance.

24 Item C contained one hundred thirty
25

1 white tablets labeled "Lilly." The tablets from
2 Item C were found to contain codeine, a Schedule II
3 controlled substance.

4 On D-1, D-2, E-1 and E-2, D-1 was
5 sixty white tablets labeled "RORER 712."

6
7 MR. SHORT: If Your Honor please,
8 seems to me we're getting a little far
9 afield. The evidence that the officer is
10 bringing forth at this time is not
11 included in the indictment and it would
12 appear to me that his direct evidence
13 should be --

14 THE COURT: No, sir. I think it
15 goes to the idea of what was in there and
16 whether he knew what it was and all that
17 sort of thing, even though it's not on the
18 indictment.

19 MR. SHORT: Except.

20
21 A (Continuing) On D-1, sixty
22 white tablets labeled "RORER 712"; on D-2, six white
23 tablets labeled "RORER 714"; E-1 and E-2, seventy-four
24 yellow tablets labeled "AS" and three orange tablets
25

1 labeled "AS"; tablets from D-1, D-2, E-1 and E-2
2 were found to contain methaqualone, a Schedule II
3 controlled substance.

4 On F-1 and F-2, F-1 was one hundred
5 twelve green tablets labeled "SKF D93" and F-2 was
6 twenty-one clear and green capsules labeled "SKF D91."
7 F-1 tablets and the capsules from F-2 were found
8 to contain amphetamine and amobarbital, a Schedule II
9 controlled substance.

10 BY THE COURT:

11 Q How about secobarbital?

12 A Same analysis sheet, K-1 and K-2,
13 on K-1, fifty-nine red capsules labeled "Lilly F40";
14 K-2, twenty-three red capsules labeled "Lilly F42"; the
15 capsules from K-1 and K-2 were found to contain
16 secobarbital, a Schedule II controlled substance.

17 On the same analysis, Item M,
18 forty-two clear and white capsules labeled "SKF J66,"
19 the capsules from M were found to contain amphetamine
20 and prochlorperazine, a Schedule II controlled
21 substance.

22 N-1, 2 and 3, number 1 was sixty-six
23 orange tablets labeled "SKF E19"; number 2, forty-three
24 clear and brown capsules labeled "SKF E13"; and six
25

1 clear and brown capsules labeled "SKF E14"; the tablets
2 from N-1 and capsules from N-2 and 3 were found to
3 contain amphetamine, a Schedule II controlled
4 substance.

5 On analysis sheet 77T-1276, Item A
6 was one syringe with needle containing sixteen
7 white tablets. The white tablets from A were found
8 to contain methamphetamine, a Schedule II controlled
9 substance.

10 Item C was one syringe with needle
11 containing an orange liquid; and Item D was one
12 syringe with needle containing an orange liquid. The
13 liquids from C and D were found to contain
14 amphetamine, a Schedule II controlled substance.

15 BY THE COURT:

16 Q I don't think we need to put them
17 all in. Now go to the paraphernalia.

18 A In the kitchen area, mostly in the
19 living room area, there was some needles, syringes,
20 few on the table and some were on the floor area
21 in the dining room area. There was over three
22 hundred needles and syringes in a trash can that
23 had been dumped over. Some of them were damaged,
24 some of them were not. There's a photograph of them
25

1 that the Commonwealth has. On one table, as you
2 enter the kitchen from the dining room, there was
3 narcotics on the table along with other needles,
4 syringes in a plastic glass. On the dining room
5 table itself, which is a wood dining room table,
6 there were spoons with powdery substance and liquid
7 substance, had been heated down from powder, which
8 were narcotics, and needles and syringes there,
9 some containing pills inside the syringe portion,
10 some containing liquid and some containing blood
11 substance.

12
13 MR. ASTOR: All right, sir. Your
14 Honor, I believe the Court has some pictures.

15 THE COURT: You can get them. Mr.
16 Tench, give him the pictures.

17
18 BY MR. ASTOR:

19 Q Now, Officer Jordan, I have here
20 several photographs. I'd ask you to look at them
21 and identify the scene that is depicted in these
22 pictures, please.

23 A This picture shown here is the
24 dining room table.
25

1 BY THE COURT:

2 Q Hold it up, please.

3 A This is the wooden table. This
4 here is a vial and a marijuana roach inside a wooden
5 box. This is a powdery liquid has also been worked
6 up. Here's a spoon containing powdery substance and
7 liquid inside. There are various needles everywhere,
8 various spoons filled with narcotics. Some have
9 been heated up. This here is a very elite type needle
10 and syringe and cooking set. Everything is stainless
11 steel and chrome.

12 BY MR. ASTOR:

13 Q All right. This photo, please?

14 A This photograph here is as you
15 leave the dining room area, into the kitchen area.
16 This contains bottles, vials that contain liquids
17 and powdery substance. The needle and syringe here
18 is the needle and syringe which contained sixteen
19 white tablets and liquid inside. This is a complicated
20 liquid scale.

21 BY THE COURT:

22 Q That's in the kitchen?

23 A Yes, sir. Here's the plastic cup
24 which contained needles, syringes. All these were
25

1 clean. This scale sits in front of a pitcher.

2 BY MR. ASTOR:

3 Q First picture was of the dinette
4 area?

5 A Yes, sir.

6 Q How about this picture?

7 A This is a coffee table in the
8 living room area. This contains various pills,
9 leather pouches containing pills, marijuana roaches.
10 Also, on the floor area, there's also pills in
11 there.

12
13 MR. ASTOR: I'd offer these photos
14 into evidence.

15 MR. SHORT: If Your Honor please,
16 I have the same objection. I'm not sure
17 how those relate to this defendant. For
18 that reason, I object, for the record.

19 THE COURT: All right. Overrule
20 your objection. Mark them Commonwealth's
21 Exhibits 1, 2 and 3, dining room, kitchen,
22 and coffee table, please, in that order.

23
24
25 (The three photographs were received

1 in evidence as Commonwealth's Exhibits Nos.
2 1, 2 and 3.)
3

4 BY MR. ASTOR:

5 Q All right, sir. I have another
6 item. Can you identify this?
7

8 A Yes, sir. This is a diagram
9 drawn by myself of the apartment floor area.

10 Q Is Mr. Womack's position
11 located on that diagram?

12 A Yes, sir. Mr. Womack, on this
13 diagram drawn by myself, is stated as number "5."
14 Number 5 shows him just entering the hallway area
15 from the dining area.

16 Q At what point were these positions
17 designated?

18 A When I first entered the room and
19 saw them running, he was in a running position at
20 that point.

21 Q Okay. All the drugs that you have
22 located, would you take this pen, mark an "X" wherever
23 you found them?

24 A Yes, sir. (Diagram marked by
25 witness)

1 MR. SHORT: What was the question?

2 MR. ASTOR: I asked him to mark
3 an "X" for the areas he found the drugs
4 we've been referring to, on the diagram.

5 MR. SHORT: Is he identifying the
6 particular drug he found at that particular
7 place or just in general?

8 MR. ASTOR: Drugs in general.

9 (The diagram was received in
10 evidence as Commonwealth's Exhibit No. 4.)
11

12 BY MR. ASTOR:

13 Q Now, Officer Jordan, would you
14 please tell us what you did with these drugs?

15 A Yes, sir. I kept all drugs in my
16 possession until such time as I arrived at the
17 police station, at which time I sealed them there,
18 sealed these drugs on September 28, 1977 in the Vice
19 Squad office. I sealed them all myself in drug
20 envelopes, marked the drug envelopes and I made
21 all the laboratory requests myself, placed them
22 in my locker, to which I had the only key. On
23 October 5, 1977, I removed them from my locker. I
24 was in the Vice Squad office by myself during daytime
25

1 hours at 12:00 o'clock p.m. noontime.

2 Q What was that, sir?

3 A At 12:00 p.m. noon, October 5,
4 1977, I entered the Vice Squad office by myself
5 during the noonhour. The rest of the Vice Squad
6 works nights. On this day, I took the drugs over --
7 I removed them from my locker, to which I have
8 the only key, assigned each drug envelope a Vice
9 Squad number and placed them all in a box. I took
10 this box, left the police station here at Newport
11 News on the same day, walked down to the Vice
12 Squad car and, by myself, I put these drugs in
13 the car with myself in the front seat, at which time
14 I carried them over to 401-A Colley Avenue, which
15 is the Division of Consolidated Laboratories, Bureau
16 of Forensic Science, Commonwealth of Virginia.
17 At this time, I turned them over to the chemist,
18 Harry M. Finley.

19 Q All right, sir. Would you tell
20 the Court who, if anyone, had access to these drugs
21 from the time you recovered them at the scene during
22 the course of the search to the time you took them
23 over to Mr. Finley, the chemist at the Forensic
24 Laboratory?
25

1 A No one but myself. It was a large
2 amount of drugs. The sergeant understands chain of
3 evidence. I have to keep them in my possession, in
4 a box, and do all the narcotics and no one but
5 myself has keys to the locker and I'm the only one
6 that goes on narcotics runs that takes control of
7 the narcotics.

8 Q When you placed these items in
9 your locker, were they all in a sealed condition
10 at that time?

11 A All in sealed condition at the
12 time I placed them in the locker.

13 Q What about the item that
14 you recovered from the defendant, off of his person?
15 What was done with that?

16 A Personally from the defendant?

17 Q Yes, sir.

18 A This was marked 1443 on my drug
19 envelopes and my request form. This was sealed
20 separately from the rest and also taken over by myself,
21 placed in the locker, what-have-you.

22 Q What names were placed on that
23 particular --

24 A This, only one name, William F.
25

1 Womack, Jr., and it contained one sealed envelope
2 containing one yellow envelope containing two
3 yellow capsules.

4 Q And the other envelopes, what names
5 did they contain?

6 A On the drugs that were taken from --

7
8 THE COURT: All right, gentlemen,
9 I'm going to have to interrupt you now.
10 I don't want to hold up Judge Stephens,
11 who is handling a case in my behalf, so
12 I'm going to adjourn. I'm going to ask you
13 all be back at 2:30.
14

15 (Whereupon, court was adjourned
16 at 12:30 o'clock p.m., to be reconvened
17 at 2:30 o'clock p.m.)
18

19
20 * * *
21
22
23
24
25

AFTERNOON SESSION

March 7, 1978

* * *

(Court was reconvened at 2:30
o'clock p.m., March 7, 1978, pursuant
to adjournment for luncheon recess.)

Appearances: As hereinbefore noted.

* * *

OFFICER W. C. JORDAN, previously
sworn, testified further, in behalf of the
Commonwealth, as follows:

DIRECT EXAMINATION (Continued)

BY MR. ASTOR:

Q Officer Jordan, in reference to the
narcotics found on the person of the defendant, did
you receive an analysis back on that?

A Yes.

Q Do you have it with you?

A Yes.

Q May I have it, please?

1 THE COURT: Did we ever get what
2 it was that he had? What drug was it
3 that he had?

4 MR. ASTOR: Well, that's in the
5 analysis. I was going to go over it,
6 bearing his name.

7 THE COURT: I would like for him
8 to tell me what it is.

9
10 BY MR. ASTOR:

11 Q If you will look at this, I ask you
12 if you recognize it? What's the number on it?

13 A 77T-1272 and also my number, 1443.

14 Q Was this the analysis returned in
15 reference to the material found on the defendant?

16 A Yes.

17 Q What was that material?

18 A Pentobarbital, a Schedule II
19 substance, yellow capsules.

20 Q Pentobarbital?

21 A Right.

22
23 MR. ASTOR: All right, sir. Subject
24 to cross examination, at this time, I would
25

1 introduce into evidence the analysis
2 returned back to Detective Jordan with
3 reference to his investigation in this case.

4 (The laboratory analysis sheet
5 No. 77T-1272 was received in evidence as
6 Commonwealth's Exhibit No. 5.)
7

8 THE COURT: You may cross examine.

9 MR. SHORT: If Your Honor please,
10 just as a point I would like to preserve,
11 it was my understanding at the outset of
12 the trial that the Court ruled you would
13 exclude all evidence as it pertained to the
14 pentobarbital, which were the two pills
15 found on the defendant. I would object to
16 the admissibility of that report at this
17 time. The other five reports --

18 THE COURT: No, sir. I am
19 excluding it from the standpoint that he's
20 not charged with it and I will not look
21 upon it as a charge, but I feel that all
22 of it goes together to show whether he
23 feloniously did possess other drugs that
24 were in the area.

25 MR. SHORT: Well, then, we would --

1 THE COURT: I mean, in other words,
2 your defense could be he didn't know
3 anything about drugs or anything at
4 all and I think it would be improper for
5 me to exclude the fact that he had these
6 on him, even though I realize, and I have
7 so starred on my notes, that's not in
8 the indictment, is it?

9 MR. SHORT: No, sir.

10 THE COURT: Okay.

11
12 CROSS EXAMINATION

13 BY MR. SHORT:

14 Q Officer Jordan, did you, in your
15 investigation, ascertain the ownership of the
16 apartment at 13304, Apartment C, Preakness Drive?

17 A Yes, sir. It was co-owned, so to
18 speak, two brothers, Chuck and Bryan Stay, and also
19 Pat Stepp.

20 Q So there were three parties involved?

21 A Right.

22 Q Were all three of those parties
23 charged with possession?

24 A No, sir. Neither of these subjects
25

1 were in the house at the time. They were charged
2 with burglary later on other evidence. After
3 talking to the Commonwealth, we could not charge
4 them.

5 BY THE COURT:

6 Q What was the last name, Chuck and
7 Bryan what?

8 A Stay, S-t-a-y.

9 BY MR. SHORT:

10 Q And none of the three were in the
11 apartment at the time you raided the apartment?

12 A No.

13 Q Now, you have submitted into
14 evidence a diagram of the layout of the apartment?

15 A Yes, sir.

16 Q At the time you entered the
17 apartment, it's my understanding that you were met
18 first with some resistance from inside the apartment,
19 but you managed to push the door open?

20 A Right.

21 Q Now, at the time you entered,
22 isn't it correct that there were numerous persons
23 sitting around the coffee table?

24 A Yes, sir. There were.
25

1 Q As a matter of fact, there was
2 a poker game in progress; is that right?

3 A Not to my knowledge, there wasn't.

4 Q As a matter of fact, didn't you
5 find cards and money on top of the coffee table
6 in question?

7 A I think there may have been. I
8 can't testify unless I saw the picture again of that
9 table. To my knowledge, as far as cards are
10 concerned, may have been.

11
12 THE COURT: Would you like to show
13 him this one?

14
15 BY MR. SHORT:

16 Q Well, this is a picture that
17 depicts the coffee table in question?

18 A Right.

19 Q This picture, to me, depicts the
20 contents of pocketbooks, doesn't it?

21 A Right. This is the pocketbook. --

22 Q As a matter of fact, the pocketbooks
23 were emptied onto the table at the time this picture
24 was taken?
25

1 A Right.

2 Q So you're not suggesting to the
3 Court this was the way you found the coffee table
4 when you entered the apartment?

5 A No, sir. A lot of the drugs in
6 that picture had been taken away myself.

7 Q That's right. Also, the pocketbooks
8 had been emptied onto the table after you arrived
9 on the scene?

10 A Right.

11 Q And you don't have any recollection
12 one way or the other whether or not there were any
13 cards and money on the table?

14 A No, sir. I couldn't say for sure.

15 Q Okay. Now, as you entered the
16 apartment, is't my understanding that you
17 first observed a Mr. Wright?

18 A Right.

19 Q And was Mr. Wright seated on the
20 sofa on the opposite side of the coffee table from
21 you?

22 A Yes, sir. He's showed there as
23 number 1.

24 Q Now, that's as you first entered
25

1 the apartment?

2 A Right.

3 Q You did not see Mr. Womack as you
4 entered the apartment?

5 A No, sir.

6 Q As a matter of fact, you had to
7 come around the corner, I guess would be the
8 bedroom corner, before you could actually see into
9 the kitchen and dining room area?

10 A Right.

11 Q And at the time you rounded that
12 corner, that's where you positioned Mr. Womack?

13 A Right as I came into view where I
14 could see Mr. Womack, I saw him and another subject
15 coming from the kitchen area at a fast pace.

16 Q And at the same time, you were
17 observing Mr. Wright drop some drugs from his belt or
18 attempting --

19 A Attempting to, yes, sir.

20 Q And did you later or subsequently
21 have a photograph taken of the parties in approxi-
22 mately the same position you found them to be as
23 you first observed them as you rounded this corner?

24 A Yes, sir.

25

1 Q Now, you have identified Mr.
2 Womack as being number 5?

3 A Yes, sir.

4 Q And who would be number 6?

5 A Garry Allen Cook.

6 Q Is it possible that you could
7 have the numbers of Mr. Cook and Mr. Womack in
8 reverse order?

9 A I don't think so.

10 Q Okay. Now, there's a wall here; is
11 that correct?

12 A Right.

13 Q Which would be the bathroom and
14 bedroom wall?

15 A Yes, sir.

16 Q And this diagram reflects both
17 Womack and the other gentleman were clearly
18 inside the dining room area; is that right?

19 A Right. At that time.

20 Q Well, we're talking about now, to
21 be specific, the time that you first observed them.

22 A Right. When I first observed
23 them, they were coming from the dining room area.

24 Q And you did have a photograph made
25

1 after you apparently had placed all the suspects
2 under arrest, which would reasonably be the relative
3 positions of the parties as you first saw them?

4 A Right.

5 Q And would this be the photograph
6 I have made reference to?

7 A Yes, sir.

8 Q And this, of course, does reflect
9 Mr. Womack to be right at the corner, almost at the
10 corner of the bathroom, bedroom and the dining area?

11 A Right. He had come from the dining
12 room area.

13 Q And it does reflect this other
14 gentleman to be inside of the living room, so to
15 speak, or at least up against this wall?

16 A Right.

17 Q So this photograph would differ,
18 to some degree, compared to the diagram you have
19 submitted here today?

20 A Right.

21
22 MR. SHORT: Would the Court like
23 to see the photograph?

24 THE COURT: Yes.
25

1 BY MR. SHORT:

2 Q Now, Officer Jordan, you were
3 assisted in this arrest by at least three other
4 detectives?

5 A Yes, sir. As a matter of fact,
6 there were six there or more.

7 Q Officer Bowling was one of those,
8 was a member of the arresting party?

9 A Yes, sir, Sergeant Bowling.

10 Q And is it possible Sergeant
11 Bowling went over and arrested Mr. Womack before
12 you had the occasion to get to Mr. Womack?

13 A No, sir. Each detective grabbed
14 somebody so they would not leave or throw anything,
15 so they could observe them, and during that time,
16 I collected my evidence.

17 Q Well, is it possible that
18 Sergeant Bowling frisked Mr. Womack before you had
19 the occasion to get to him?

20 A Yes, I'm sure he would have
21 frisked him for weapons or anything.

22 Q Is it possible Sergeant Bowling
23 might have removed articles from Mr. Womack's
24 pockets prior to your getting to it?
25

1 A I imagine it would be possible,
2 but he would have told me, because I get my own
3 evidence.

4 Q Well, there were some five
5 thousand pills involved?

6 A Right.

7 Q In this arrest. You're not telling
8 the Court that you picked up each and every one of
9 those pills, are you?

10 A Yes, sir. Every pill that's been
11 confiscated, I did.

12 Q You picked it up physically
13 yourself?

14 A Yes, sir.

15 Q None of the other members of the
16 arresting party touched any piece of evidence
17 insofar as the pills are concerned?

18 A Not the pills. Only myself.

19 Q To your knowledge?

20 A If any other pills were picked
21 up, they were not handed to me.

22 Q Did you read the rights to Mr.
23 Womack?

24 A Yes.
25

1 MR. ASTOR: Objection. It's
2 irrelevant. No questions were asked of
3 Mr. Womack.

4 THE COURT: It's all right. I'll
5 let him answer it.

6
7 A Yes.

8 BY MR. SHORT:

9 Q You did?

10 A Yes.

11 Q As you first observed Mr. Womack,
12 he was running and it appeared to you that he was
13 running from the kitchen or the dining room area?

14 A Right.

15 Q You don't have any way of
16 knowing which room he was in, do you?

17 A No, sir.

18 Q How many people were arrested as
19 a result of this raid?

20 A Six.

21 Q Of the six that were arrested,
22 isn't it a fact two of them have given confessions
23 that they --

24 MR. ASTOR: I object to that. I'm
25

1 only trying one man here today. I don't
2 think it's proper to bring in statements of
3 other defendants.

4 MR. SHORT: What I'm trying to
5 show, if Your Honor please, the derivation
6 of these pills. I think it's of paramount
7 importance if we've got two of the six
8 arrested who have confessed to stealing the
9 pills from a local pharmacy.

10 MR. ASTOR: As the Court is well
11 aware, the approach the Commonwealth is
12 taking is joint dominion and control.

13 THE COURT: All right. I think he
14 can answer that.

15
16 BY MR. SHORT:

17 Q You did obtain confessions
18 from at least two of those arrested that they, in
19 fact, stole these pills from a local pharmacy?

20 A Yes, sir. I didn't get the
21 statements, but, yes, two people gave statements
22 at least.

23 Q And the breaking and enterings or
24 the burglaries were made on at least two separate
25

1 occasions?

2 A Right. My understanding is
3 that's right.

4 Q Now, you have also indicated on
5 the diagram, you have made X's on this diagram
6 indicating the areas that you found either drugs or
7 paraphernalia?

8 A Yes, sir.

9 Q Are these items that you have
10 forwarded to the state laboratory; is that right?

11 A Right.

12 Q You're not attempting in any
13 way to tell the Court what items, what pills were
14 found in the areas X'd?

15 A No. I'm just showing the areas
16 I found pills or evidence.

17 Q And you forwarded all of the
18 pills you found over to the state laboratory for
19 analysis?

20 A Yes, sir.

21 Q And some of the results came back
22 negative; is that right?

23 A Yes. Some did.

24 Q So are you in a position to say
25

1 which drugs were returned positive or were a positive
2 Schedule II finding at the areas you have marked "X"?

3 A I can on the majority basis,
4 such as the orange -- all the vials, all the spoons
5 and the needles and syringes with any substance I
6 sent to the lab came from that dining room table.

7 Q Came from the dining room table?

8 A Right.

9 Q The orange pills? I was under the
10 impression, Officer Jordan, the only pills you
11 could positively identify as being on the table.--

12 A These weren't pills. These were
13 vials.

14 Q Okay. Did you find any of the
15 pills on the table?

16 A Yes, sir, in a needle and syringe.

17 Q In a needle and syringe?

18 A Right.

19 Q Had the contents of the pills
20 been emptied? Is that what you're suggesting?

21 A Well, that's the first time I'd
22 ever seen anything like it. The syringe had
23 about sixteen pills stuffed inside of it and it
24 was pulled back again.
25

1 Q And the pills were in the syringe
2 and these items were located on the table?

3 A Right.

4 Q What color were these items?

5 A Pills were white.

6 Q It's my understanding the only
7 pills you identified on the table were pink pills?

8 A No, sir.

9
10 THE COURT: No. White. Dining
11 room table, white.

12
13 BY MR. SHORT:

14 Q Were there any other pills on the
15 dining room table?

16 A Mostly on the table were the white
17 pills, needle and syringe, and there was liquid and
18 orange powdery substance. They were on spoons.
19 Mostly what you had on the table were powdered, heated
20 substances inside of a regular eating spoon, teaspoon.

21 Q And that basically was what you
22 found on the dining room table?

23 A Yes, sir.

24 Q The other pills and narcotic
25

1 Schedule II drugs in question were found in other
2 areas of the home, in the living room, by the coffee
3 table and other areas?

4 A Right.

5 Q The only thing you found in the
6 kitchen, which I believe to be separated from the
7 dining room -- is that correct?

8 A Right.

9 Q Was the syringes, needles and
10 syringes?

11 A Yes, sir, basically.

12 Q You did not find any pills per se
13 in the kitchen?

14 A Not in the kitchen area, no,
15 sir.

16 BY THE COURT:

17 Q Didn't you also find a bucket
18 of syringes in the dining room?

19 A Yes, sir. Not a bucket. There
20 was a trash, garbage can that was filled up with
21 them that had been dumped over and there was a
22 plastic glass like your beer type that was filled
23 with --

24 Q That was in the dining room?
25

1 A Right. Well, the plastic glass
2 was sitting on the bar which separates the dining
3 room from the kitchen.

4 BY MR. SHORT:

5 Q I believe some of the vials you
6 testified were broken and some of them were good?

7 A Right.

8
9 MR. SHORT: I don't believe I have
10 any further questions.

11 THE COURT: All right.

12
13 REDIRECT EXAMINATION

14 BY MR. ASTOR:

15 Q Let me see. With reference to
16 the photographs referred to by defense counsel, did
17 you take those pictures?

18 A No, sir. Sergeant Clay Hester,
19 Identification Division, he took them.

20 Q Did you position the people
21 there?

22 A Yes, sir.

23 Q Okay. These, as defense counsel
24 said, are reasonable positions. Do you claim they're
25

1 exact?

2 A No, sir. Reasonable.

3 Q When you said that he was
4 running from the dining room area or moving at a
5 very quick pace from the dining area, defense counsel
6 asked you whether or not you were sure which room.
7 You said, "No." What rooms are back there that
8 he had his back to?

9 A The dining room and kitchen.
10 I couldn't tell you which room he was in.

11 Q In both of those areas, you
12 found drugs and paraphernalia of some sort?

13 A Yes, sir.

14
15 MR. SHORT: I don't believe
16 that's the evidence.

17 THE COURT: Didn't find any
18 drugs in the kitchen.

19 MR. ASTOR: I'm sorry.

20
21 BY THE COURT:

22 Q You mentioned a bar. Is that a
23 wide open area just separated by, the kitchen and
24 dining room, by a bar?
25

1 A Yes, sir. Kitchen is a very,
2 very small kitchen.

3 Q But it's open? You can see
4 from the dining room into the kitchen, over a counter
5 bar?

6 A Right.

7 BY MR. ASTOR:

8 Q Does this accurately reflect it?

9 A Right. And this is the bar.

10
11 MR. ASTOR: Your Honor, this is
12 the counter.

13
14 BY THE COURT:

15 Q Right. That's the counter top
16 between the two?

17 A Yes, sir.

18
19 MR. ASTOR: Thank you very much.

20
21 RE CROSS EXAMINATION

22 BY MR. SHORT:

23 Q Officer Jordan, approximately
24 how far was Mr. Womack from the dining room table
25

1 at the time you first saw him?

2 A I couldn't say, because that
3 would be behind him. He was entering the living
4 room portion, in other words, from the --

5 Q You have a photograph which you've
6 taken. Are you in a position to estimate approxi-
7 mately how far the table was behind him?

8 A General guess, eight to ten
9 feet.

10
11 MR. SHORT: I have no further
12 questions.

13 THE COURT: All right, sir.
14 Thank you very much.

15
16 (Witness stood aside)

17
18 THE COURT: Next witness, Mr.
19 Astor?

20 MR. ASTOR: With the offering of
21 the analysis and acceptance of the analysis,
22 the Commonwealth would rest.

23 THE COURT: Commonwealth rests.

24 MR. SHORT: If Your Honor please,
25

1 I would move to dismiss the charges against
2 Mr. Womack. I think we're in a little bit
3 of an unusual situation here because of the
4 two pills found on Mr. Womack. They may
5 lend themselves to his consciousness as
6 far as the other pills that were in the
7 apartment, but I would suggest to the Court
8 that the law involved here is that mere
9 proximity to these drugs is not exercising
10 the dominion and control over these drugs
11 that is required in order to convict this
12 defendant of the charges pending against him.

13 As authority, I would suggest to
14 the Court the case of Huvar v. Commonwealth,
15 212 Va. 667, and I would just read, if I
16 could, from the decision of the Court.
17 The Court there said -- the police found
18 a large quantity of tablets, capsules and
19 substances in various places throughout
20 a three bedroom apartment. Most of these
21 items were apparently in plain view, just
22 as we have here. The Court ruled, ". . . mere
23 presence of the defendant at the party is
24 not sufficient to convict him of actual or
25

1 constructive possession of the drugs that
2 were found there. It was not his apartment,"
3 as we have. "Those present were not shown
4 to have been his guests or there at his
5 invitation," and that is our situation.
6 "None of the prescription containers in
7 which some of the drugs were found bore his
8 name on their labels." We don't have
9 that situation here. "He made no statement,
10 committed no act and indulged in no conduct
11 from which the inference could be fairly
12 drawn that he possessed or controlled the
13 drugs which the police found."

14 Now, forgetting the two pills
15 which were found in his possession -- I
16 think that's a separate and distinct case
17 as the Court indicated this morning. The
18 Commonwealth could conceivably come back,
19 indict him for that crime. But foregoing
20 that for the moment, because I don't think
21 that that -- that only lends itself to his
22 knowledge as to the other pills in the apart-
23 ment but does not give him constructive
24 possession of the other pills in the
25

1 apartment. This Huvar case was followed
2 in Fogg v. Commonwealth, 216 Va. 394,
3 where the Court said, ". . . mere proximity
4 to a controlled drug is insufficient to
5 establish possession." In that case, the
6 drugs in question were lying five feet
7 from the defendant. This case was also
8 followed in the decision handed down last
9 year, Wright v. Commonwealth, 232 SE2d 733.
10 In that case, the police knocked on the
11 door, the defendant was lying in bed with
12 a needle in his hand and a packet of
13 heroin was found three feet from the
14 defendant's feet, and the Court there,
15 again, ruled mere proximity to the controlled
16 drugs was not constructive possession as
17 required by the law.

18 We have here a defendant that's
19 not a registered owner of the apartment,
20 no statement given by him. Yes, it's true
21 the place was just absolutely loaded with
22 controlled Schedule II drugs, but there's no
23 reason, no inference this defendant here
24 exercised dominion and control over any of
25

1 these drugs. The testimony from the officer
2 is the defendant was either coming from the
3 kitchen or dining room. That seemed to vary
4 a little bit, but he was at least eight feet
5 from the dining room table or approximately,
6 by the police officer's own estimate.
7 There is nothing to link the defendant
8 with these drugs other than his close
9 proximity to the drugs in question. I
10 would suggest to the Court that of itself
11 is not sufficient to support a conviction.

12 MR. ASTOR: Mr. Short and I agree
13 to some extent. We agreed on facts. We
14 pretty well agree on the law. But I would
15 submit to the Court the facts which have
16 been presented to the Court by virtue of
17 the testimony of the officer in charge of
18 this case certainly are grounds for arriving
19 at a conclusion of guilt beyond a reasonable
20 doubt; that he was in dominion and control
21 and had dominion and control over these
22 Schedule II drugs. Mr. Short asked the
23 Court to consider the trees and miss the
24 forests. I don't think the Court can do that.
25

1 The burden on the Commonwealth is proof
2 beyond a reasonable doubt. This man was
3 found in the apartment where five thousand
4 pills were found. We have him leaving
5 very abruptly, after the police had forced
6 entry into the premises, an area where
7 syringes were found and two of the Schedule
8 II drugs with which he's charged were also
9 found, phenmetrazine and secobarbital.
10 These were found in spoons on the dining
11 room table, that were in plain view.
12 Additional drugs were found on the coffee table,
13 phenmetrazine, Oxycodone. I'm not sure what
14 that is, but it's also a Schedule II drug.
15 I think the primary point, of course, is
16 the fact that drugs were found on the
17 defendant which are also Schedule II
18 drugs, paradoxically. I think the Court
19 should consider this as evidence of his
20 familiarity with the drugs and his participa-
21 tion in the obvious party going on at that
22 time and his use of drugs in the area
23 where he was leaving, the kitchen area and
24 dining room area. The law to the effect a
25

1 person cannot be convicted because of
2 mere proximity is designed to protect the
3 innocent person that wanders into someone
4 else's den of iniquity. But we have a man
5 who had controlled Schedule II drugs on
6 him. Schedule II drugs were found all over
7 the apartment. I think it's ludicrous
8 for this Court to find this man is not
9 responsible for these drugs in light of
10 the clear evidence. All of them were
11 present, all were visible and he had some
12 on him, himself.

13 THE COURT: All right, sir. I'm
14 going to overrule your motion.

15 MR. SHORT: Would you give us
16 just a moment?

17 THE COURT: Surely.

18 MR. SHORT: We have no evidence.
19 We would renew our motion to dismiss at the
20 conclusion of all the evidence.

21 THE COURT: Overruled.

22 MR. SHORT: Note our exception.

23 THE COURT: I'm going to find
24 him guilty and I am going to get a probation
25



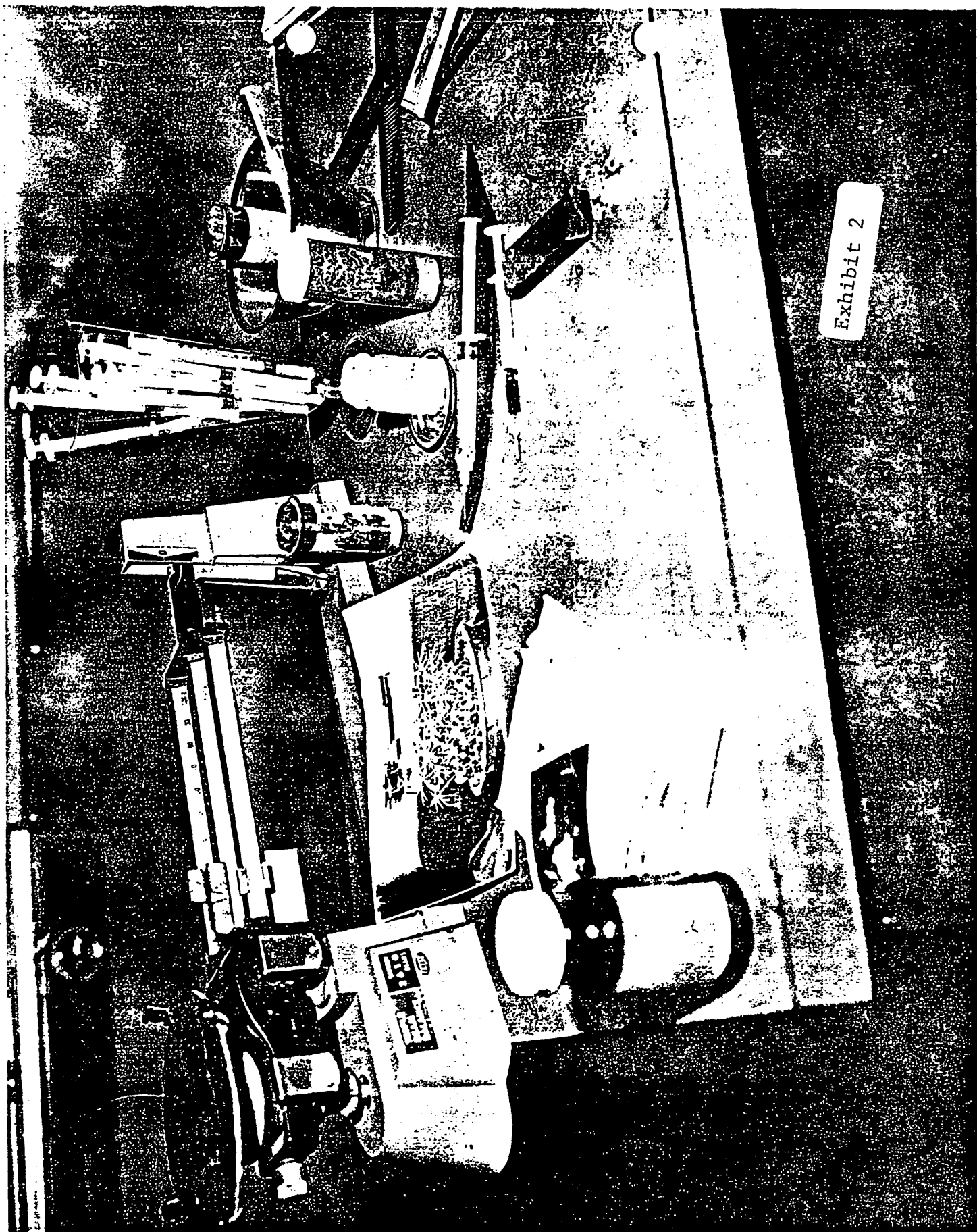
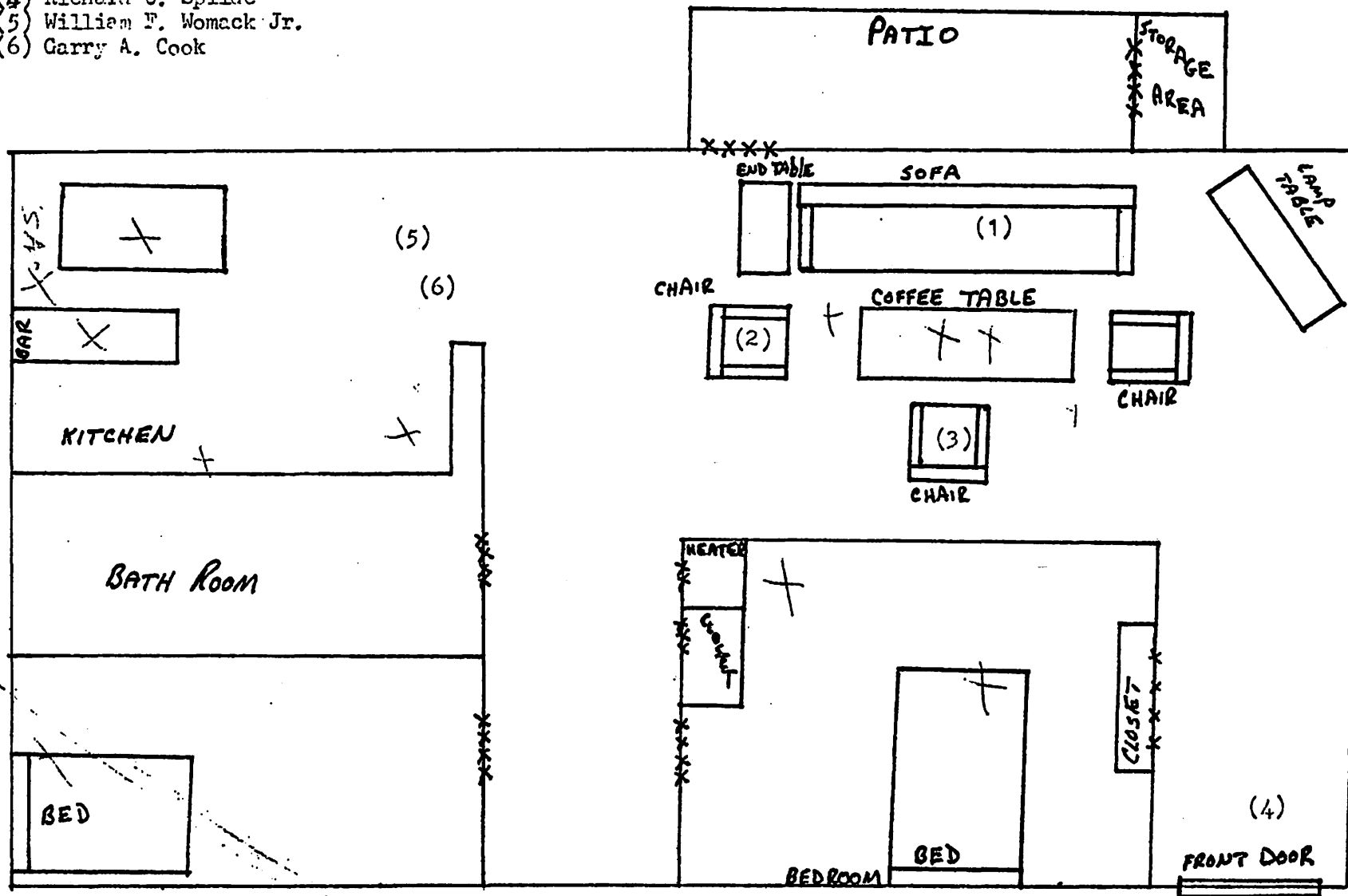


Exhibit 2



- (1) James W. Wright
- (2) Cheryl L. Davis
- (3) Kristy A. Morris
- (4) Richard C. Spilde
- (5) William F. Womack Jr.
- (6) Garry A. Cook

64



Detective W.C. Jordan-306
 9/28/77 13304 #C PREAKNESS DR.
 NEWPORT NEWS, VIRGINIA.

Exhibit 4

Exhibit 5

DRUG ANALYSIS
FOR
GENERAL DISTRICT COURT

DATE: 11-17-77

DEFENDANT: William F. Womack

Drug Analysis # 77T-1272 was filed in General District Court
on this date.

BY: Cathy Brown



COMMONWEALTH OF VIRGINIA
DIVISION OF CONSOLIDATED LABORATORY SERVICES
Bureau of Forensic Science

A. W. TIEDEMANN, PH. D.
DIRECTOR

CERTIFICATE OF ANALYSIS

CHARLES E. O'BRIEN, PH. D.
DEPUTY DIRECTOR
TEL. NO. (804) 786-2281

November 10, 1977

TO: Chief G. C. Austin
Newport News Police Department
229 25th Street
Newport News, Virginia 23607

Attention: Det. W. C. Jordan

RE: Drugs

Your Case # 1443

FS Lab # 77T-1272

Victim(s):

Examiner: Harry M. Finley

Suspect(s): WOMACK, WILLIAM F. JR. 12-13 C.

Laboratory: Tidewater
401-A Colley Avenue
Norfolk, Virginia 23507

Evidence Submitted By: Det. W. C. Jordan

Date Received: 10/5/77

One (1) sealed brown envelope containing one (1) small yellow envelope containing two (2) yellow capsules labeled "CH".

RESULTS OF EXAMINATION:

The yellow capsules were found to contain Pentobarbital, a Schedule II controlled substance.

Evidence retained for personal pickup.

HMF/ep

STATE OF VIRGINIA
CITY/COUNTY OF Norfolk, to-wit:

Harry M. Finley
Chemist

THIS day personally appeared before me, Lisbeth P. Magrath, a notary public, in and for said city/county in the Commonwealth of Virginia, Harry M. Finley, who signed the foregoing Certificate of Analysis, before me, and after being duly sworn, made oath (1) that he is a chemist and performed the analysis the results of which are herein contained, (2) that said analysis was performed in a chemical laboratory operated by the Division of Consolidated Laboratory Services of the Commonwealth or authorized by such Division to conduct such analysis and (3) that this Certificate of Analysis is true and correct.

Given under my hand this 10th day of November, 19 77

My commission expires April 17, 19 81

Lisbeth P. Magrath
Notary Public

DRUG ANALYSIS
FOR
GENERAL DISTRICT COURT

DATE: 12-6-77

DEFENDANT: William F. Womack

Drug Analysis # 77T-1275 was filed in General District Court
on this date.

BY: Cathy Brown



**COMMONWEALTH OF VIRGINIA
DIVISION OF CONSOLIDATED LABORATORY SERVICES
Bureau of Forensic Science**

A. W. TIEDEMANN, PH.D.
DIRECTOR

CERTIFICATE OF ANALYSIS

CHARLES E. O'NEAR, PH.D.
DEPUTY DIRECTOR
TEL NO. (804) 786-2781

November 16, 1977

TO: Chief G. C. Austin
Newport News Police Department
229 25th Street
Newport News, Virginia 23607

Attention: Det. W. C. Jordan

RE: Drugs

Your Case #: 1446

Lab # 77T-12/5

Victim(s):

Owner: Harry M. Finley

Suspect(s): SPILDE, RICHARD C. G. J. WRIGHT, JAMES W. 12-13 C.
COOK, GARRY A. 12-13 C. MORRIS, KRISTY A. 12-15 J.
✓ WOMACK, WILLIAM F. JR. DAVIS, CHERYL L. G. J. 12-13 C.

Laboratory: Tidewater
401-A Colley Avenue
Norfolk, Virginia 23507

Evidence Submitted By: Det. W. C. Jordan

Date Received: 10/5/77

One (1) sealed brown envelope containing:

- + A. One (1) small yellow envelope containing seventy (70) white tablets labeled "Rorer 714".
- + B. One (1) small yellow envelope containing thirteen (13) white tablets labeled "Rorer 714".
- + C. One (1) small yellow envelope containing thirty-five (35) orange tablets labeled "AS".

RESULTS OF EXAMINATION:

The tablets from A, B, and C were found to contain Methaqualone, a Schedule II controlled substance.

Evidence retained for personal pickup.

HMF/ep

Millie Schitt

STATE OF VIRGINIA Norfolk to-wit.

Harry M. Finley

This day personally appeared before me, Lisbeth P. Magrath, a Notary Public in and for the City and County of Norfolk, Virginia, Harry M. Finley, who signed the foregoing Certificate of Analysis, before me, and after being duly sworn, depose and say that he is a named and performed the analysis the results of which are being certified. I, the Notary Public, do hereby certify that the analysis was performed by a duly qualified and authorized person of the Division of Consolidated Laboratory Services of the Commonwealth or authorized by such Division to conduct such analysis and that the Certificate of Analysis is a true and correct copy of the original.

Gave under my hand this 16th day of November, 19 77

My commission expires April 17, 19 81

Lisbeth P. Magrath Notary Public

DRUG ANALYSIS
FOR
GENERAL DISTRICT COURT

DATE: 12-6-77

DEFENDANT: William F. Womack

Drug Analysis # 77T-1276 was filed in General District Court
on this date.

BY: Cathy Brown



COMMONWEALTH OF VIRGINIA
DIVISION OF CONSOLIDATED LABORATORY SERVICES
Bureau of Forensic Science

CHARLES E. O'BRIEN, Ph. D.
DEPUTY DIRECTOR
TEL. NO. 804 / 775-1211

A. W. T. O'BRIEN, Ph. D.
DIRECTOR

CERTIFICATE OF ANALYSIS
LABORATORY REPORT

November 22, 1977

TO: Chief G. C. Austin
Newport News Police Department
229 25th Street
Newport News, Virginia 23607

Attention: Det. W. C. Jordan

RE: Drugs

Your Case # 1447

FS Lab # 77T-1276

Victim(s):

Examiner: Harry M. Finley

Laboratory: Tidewater
401-A Colley Avenue
Norfolk, Virginia 23507

Suspect(s): COOK, GARRY A.
DAVIS, CHERYL L.
MORRIS, KRISTY A.

WRIGHT, JAMES W.
SPILDE, RICHARD C.
WOMACK, WILLIAM F.

Date Received: 10/5/77

Evidence Submitted By: Det. W. C. Jordan

One (1) sealed brown envelope containing:

- + A. One (1) syringe with needle containing sixteen (16) white tablets, *methamphetamine sch II*
- ⊖ B. One (1) syringe with needle containing a dark red liquid.
- + C. One (1) syringe with needle containing an orange liquid.
- + D. One (1) syringe with needle containing an orange liquid. *amphetamine sch II*
- ⊖ E. One (1) syringe with needle containing a clear liquid.

all drugs sch II

77T-1276

RESULTS OF EXAMINATION:

The white tablets from A were found to contain Metamphetamine, a Schedule II controlled substance.

The liquids from C and D were found to contain Amphetamine, a Schedule II controlled substance.

The liquids from B and E were negative for controlled substances.

Evidence retained for personal pickup.

HMF/ep

STATE OF VIRGINIA
CITY/COUNTY OF Norfolk to-wit:

Harry M. Finley

THIS day personally appeared before me, Lisbeth P. Magrath, a notary public, and for and by reason, in the Commonwealth of Virginia, Harry M. Finley, who signed the foregoing Certificate of Analysis, before me, and after being duly sworn, made oath

1. that he is a chemist and performed the analysis the results of which are herein contained; 2. that said analysis was performed in a chemical laboratory, subject of the Division of Consolidated Laboratory Services, of the Commonwealth or authorized by such Division to conduct such analysis and 3. that this Certificate of Analysis is true and correct.

Given under my hand this 22nd day of November, 19 77

My commission expires April 17, 19 81

Lisbeth P. Magrath Notary Public

DRUG ANALYSIS
FOR
GENERAL DISTRICT COURT

DATE: 12-6-77

DEFENDANT: William F. Womack

Drug Analysis # 77T-1279 was filed in General District Court
on this date.

BY: Cathy Brown



COMMONWEALTH OF VIRGINIA
DIVISION OF CONSOLIDATED LABORATORY SERVICES
Bureau of Forensic Science

A. W. TIEDEMANN, PH. D.
DIRECTOR

CERTIFICATE OF ANALYSIS

CHARLES E. O'NEAR, PH. D.
DEPUTY DIRECTOR
TEL. NO. (804) 786-2281

November 30, 1977

TO: Chief G. C. Austin
Newport News Police Department
229 25th Street
Newport News, Virginia 23607

Attention: Det. W. C. Jordan

RE: Drugs

Four Case # 1451

Case # 77T-1279

Victim(s):

Examiner: Harry M. Finley

* Suspect(s): ~~WOMACK, WILLIAM F.~~
~~COOK, GARRY A.~~
SPILDE, RICHARD C.

~~WRIGHT, JAMES W.~~
~~MORRIS, KRISTY A.~~
DAVIS, CHERYL L.

Lab. Address: Tidewater
401-A Colley Avenue
Norfolk, Virginia 23507

Evidence Submitted By: Det. W. C. Jordan

Date Received: 10/5/77

One (1) sealed brown envelope containing six (6) metal spoons each containing a white powdery substance.

RESULTS OF EXAMINATION:

The residues from three (3) of the metal spoons were found to contain Phenmetrazine, a Schedule II controlled substance. *sch II*

The residues from three (3) of the metal spoons were found to contain Secobarbital, a Schedule II controlled substance. *sch II*

Evidence retained for personal pickup.

HMF/ep

STATE OF VIRGINIA
COUNTY OF Norfolk to wit:

Lisbeth P. Magrath

Harry M. Finley

This day personally appeared me, Lisbeth P. Magrath, a notary public in and for the State of Virginia, who signed the foregoing Certificate of Analysis before me, and after being duly sworn, testified that he is a chemist and performed the tests the results of which are herein contained. I, Lisbeth P. Magrath, am authorized by the Division of Consolidated Laboratory Services of the Commonwealth of Virginia to conduct such analyses and to sign the Certificate of Analysis in the foregoing form.

Witness my hand this 30th day of November, 1977

My commission expires April 17, 1981

Lisbeth P. Magrath
Notary Public

DRUG ANALYSIS
FOR
GENERAL DISTRICT COURT

DATE: 12-22-77

DEFENDANT: William F. Womack

Drug Analysis # 27T-1280 was filed in General District Court
on this date.

BY: Cathy Brown

COMMONWEALTH OF VIRGINIA
DIVISION OF CONSOLIDATED LABORATORY SERVICES
Bureau of Forensic Science

CHARLES E. GIBSON, III, D.
DIRECTOR
TELEPHONE 521-1100

CERTIFICATE OF ANALYSIS
LABORATORY REPORT

December 2, 1977

Chief C. C. Austin
Newport News Police Department
229 25th Street
Newport News, Virginia 23607

Attention: Det. W. C. Jordan

RE: Drugs

Case # 1448

FS Lab # 77T-1280

Antagon(s):

Examiner: Harry M. Finley

Subject(s): COOK, GARRY A.
DAVIS, CHERYL L.
MORRIS, KRISTY A.

WRIGHT, JAMES W.
SPILDE, RICHARD C.
✓ WOMACK, WILLIAM F.

Laboratory: Tidewater
401-A Colley Avenue
Norfolk, Virginia 23507

Date Received: 10/5/77

Evidence Submitted By:

Det. W. C. Jordan

1-24

One (1) sealed brown envelope containing:

- meth-phenidate sch II*
codine sulfate sch II
- A. One (1) small yellow envelope containing two hundred twenty (220) yellow tablets labeled "CIBA".
 - B. One (1) small yellow envelope containing three hundred fifty two (352) light green tablets labeled "CIBA".
 - C. One (1) small yellow envelope containing fifty-five (55) white tablets labeled "Lilly".
 - D. One (1) small yellow envelope containing:
 - + 1. Two (2) white tablets labeled "RORER 714". *> (methaguanone sch II)*
 - + 2. One (1) orange tablet labeled "AS".
 - + 3. Two (2) green tablets labeled "SKF D93". *(Amphetamine + Amobarbital sch II)*
 - + 4. Two (2) white tablets labeled "Roche 44". *Levonphosol sch II*
 - + 5. One (1) white tablet labeled "Lilly". *(codine sulfate sch II)*

all items are sch. II

77T-1280

RESULTS OF EXAMINATION:

The tablets from A and B were found to contain Methylphenidate, a Schedule II controlled substance.

The tablets from C and D-5 were found to contain Codeine sulfate, a Schedule II controlled substance.

The tablets from D1 and D2 were found to contain Methaqualone, a Schedule II controlled substance.

The tablets from D3 were found to contain Amphetamine and Amobarbital, a Schedule II controlled preparation.

The tablets from D4 were found to contain Levorphanol, a Schedule II controlled substance.

Evidence retained for personal pickup.

HMF/ep

Norfolk

Lisbeth P. Magrath

Harry M. Finley

Harry M. Finley

2nd December 77

April 17 1981

Lisbeth P. Magrath Notary Public

DRUG ANALYSIS
FOR
GENERAL DISTRICT COURT

DATE: 12-22-77

DEFENDANT: William F. Womack

Drug Analysis # 77T-1281 was filed in General District Court
on this date.

BY: Cathy Brown

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF LABORATORY AND FORENSIC SERVICES
Bureau of Forensic Science

CERTIFICATE OF ANALYSIS
LABORATORY REPORT

December 13, 1977

TO: Chief G. C. Austin
Newport News Police Department
229 25th Street
Newport News, Virginia 23607

Attention: Det. W. C. Jordan

RE: Drugs

Case # 1452

Lab # 77T-1281

Submitted by:

Analyst: Harry M. Finley

Laboratory: Tidewater
401-A Colley Avenue
Norfolk, Virginia 23507

1-24
Specimen(s): COOK, GARRY A. ✓ WOMACK, WILLIAM F. JR.
MORRIS, KRISTY A. SPILDE, RICHARD C.
DAVIS, CHERYL L. WRIGHT, JAMES W.

Date of receipt: 10/5/77

Submitted by: Det. W. C. Jordan

One (1) sealed brown envelope containing one (1) large plastic bag containing:

+ A. One (1) small yellow envelope containing:

+ 1. Fourteen (14) pink tablets labeled "BI 62".

+ 2. Four (4) square white tablets labeled "BI 42".

Phenmetrazine sch II

+ B. One (1) brown envelope containing one hundred twenty-two (122) pink tablets labeled "Endo 123". (Oxycodone sch II)

+ C. One (1) small yellow envelope containing one hundred thirty (130) white tablets labeled "Lilly". (Codeine sch II)

+ D. One (1) small yellow envelope containing:

+ 1. Sixty (60) white tablets labeled "RORER 712".

+ 2. Six (6) white tablets labeled "RORER 714".

Methazqualone sch II

+ E. One (1) small yellow envelope containing:

+ 1. Seventy-four (74) yellow tablets labeled "AS".

+ 2. Three (3) orange tablets labeled "AS".

Methazqualone sch II

+ F. One (1) small yellow envelope containing:

+ 1. One hundred twelve (112) green tablets labeled "SKF D93".

+ 2. Twenty-one (21) clear and green capsules labeled "SKF D91".

Amphetamine
+
Amobarbital sch II

G. One (1) small yellow envelope containing:

+ 1. Two hundred sixteen (216) light green tablets labeled "CTBA 3".

+ 2. Ninety-seven (97) yellow tablets labeled "CTBA 7".

Methyl-
phenidate
sch II

all dup sch II 77T-1281 3 78

EVIDENCE SUBMITTED: (cont.)

+ H. One (1) small yellow envelope containing thirty (30) yellow capsules labeled "CIBA". *> Methylphenidate Sch II*

+ I. One (1) small yellow envelope containing one hundred nineteen (119) white tablets labeled "Roche 44". *> Levorphanol Sch II*

+ J. One (1) doubled small envelope containing:

- + 1. Sixty-six (66) orange and blue capsules labeled "Lilly F64".
- + 2. Thirty-six (36) orange and blue capsules labeled "Lilly F65".
- + 3. Forty-four (44) orange and blue capsules labeled "Lilly F66".

*Secobarbital
Sch II*

+ K. One (1) small yellow envelope containing:

- + 1. Fifty-nine (59) red capsules labeled "Lilly F40".
- + 2. Twenty-three (23) red capsules labeled "Lilly F42".

*Secobarbital
Sch II*

+ L. One (1) small yellow envelope containing:

- + 1. Twenty-three (23) yellow capsules labeled "CIBA". *> Methylphenidate Sch II*
- + 2. Seventy-seven (77) yellow capsules labeled "CH". *> Pentobarbital Sch II*

+ M. One (1) small yellow envelope containing forty-two (42) clear and white capsules labeled "SKF J66". *> Amphetamine & Prochlorperazine Sch II*

+ N. One (1) small yellow envelope containing:

- + 1. Sixty-six (66) orange tablets labeled "SKF E19".
- + 2. Forty-three (43) clear and brown capsules labeled "SKF E13".
- + 3. Six (6) clear and brown capsules labeled "SKF E14".

*Amphetamine
Sch II*

RESULTS OF EXAMINATION:

- + The tablets from A1, and A2 were found to contain Phenmetrazine, a Schedule II controlled substance.
- + The tablets from B were found to contain Oxycodone, a Schedule II controlled substance.
- + The tablets from C were found to contain Codeine, a Schedule II controlled substance.
- + The tablets from D1, D2, E1, and E2 were found to contain Methaqualone, a Schedule II controlled substance.
- + The tablets from F1 and the capsules from F2 were found to contain Amphetamine and Amobarbital, a Schedule II controlled preparation.
- + The tablets from G1, G2, and the capsules from L1 and H were found to contain Methylphenidate, a Schedule II controlled substance.

RESULTS OF EXAMINATION: (cont.)

The tablets from I were found to contain Levorphanol, a Schedule II controlled substance.

+ The capsules from J1, J2, and J3 were found to contain Amobarbital and Secobarbital, a Schedule II controlled preparation.

+ The capsules from K1, and K2 were found to contain Secobarbital, a Schedule II controlled substance.

+ The capsules from L2 were found to contain Pentobarbital, a Schedule II controlled substance.

+ The capsules from M were found to contain Amphetamine and Prochlorperazine, a Schedule II controlled preparation.

+ The tablets from N1, and the capsules from N2 and N3 were found to contain Amphetamine, a Schedule II controlled substance.

Evidence retained for personal pickup.

IMF/ep

Norfolk

Lisbeth P. Magrath

Harry M. Finley

14th day of December 1977

April 17 1981

DRUG ANALYSIS
FOR
GENERAL DISTRICT COURT

DATE: 12-22-77

DEFENDANT: William F. Womack

Drug Analysis # 77T-1282 was filed in General District Court
on this date.

BY: Cathy Brown

COMMONWEALTH OF VIRGINIA
DIVISION OF CONSOLIDATED LABORATORY SERVICES
Bureau of Forensic Science

CHARLES E. GIBSON, Ph.D.
Deputy Director
Cell No. 104-770071

CERTIFICATE OF ANALYSIS
LABORATORY REPORT

December 13, 1977

Chief G. C. Austin
Newport News Police Department
229 25th Street
Newport News, Virginia 23607

Attention: Det. W. C. Jordan

RE: Drugs

File # 1453

Case # 77T-1282

Examiner: Harry M. Finley

Laboratory: Tidewater
401-A Colley Avenue
Norfolk, Virginia 23507

Date: 10/5/77

1-24
Subject(s): ☒ WOMACK, WILLIAM F. JR. WRIGHT, JAMES W.
COOK, GARRY A. MORRIS, KRISTY A.
SPILDE, RICHARD C. DAVIS, CHERYL L.

Officer Submitted By: Det. W. C. Jordan

One (1) sealed brown envelope containing:

- ① A. One (1) plastic vial containing a yellow powdery substance.
- ② B. One (1) plastic vial containing a white powdery substance.
- ③ C. One (1) plastic vial containing a green powdery substance.
- ④ D. One (1) plastic vial containing an orange powdery substance.
- ⑤ E. One (1) glass vial containing a pink powdery substance.
- F. One (1) small plastic vial containing five (5) white tablets.

*Methamphetamine
sch II*

*all drugs
sch II - 77T 1282*

RESULTS OF EXAMINATION:

The tablets from F were found to contain Methamphetamine, a Schedule II controlled substance.

The substances from A, B, C, D, and E were negative for controlled substances.

Evidence retained for personal pickup.

HMF/ep

Norfolk

Lisbeth P. Magrath

Harry M. Finley

14th day of December 1977

April 17 81