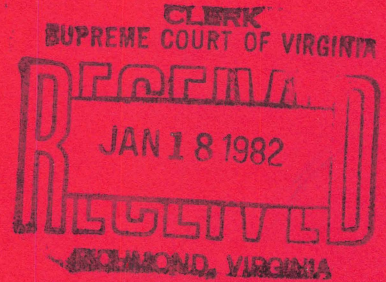


823 Va 695

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NOS. 810348 and 810409



THOMAS FRANKLIN DRUMHELLER,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee

APPENDIX

William B. Allen, III
126 West Court Street
Woodstock, Virginia 22664

J. Daniel Pond, II
Post Office Box 546
Front Royal, Virginia 22630

Counsel for Appellant

Elizabeth Gay
Assistant Attorney General
101 N. Eighth Street
6th Floor
Supreme Court of Virginia Bldg.
Richmond, Virginia 23219

Counsel for Appellee

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COMMONWEALTH OF VIRGINIA,

COUNTY [CITY] OF Warren

To Wit:

No. _____

ARREST WARRANT
(Rule 3A:4)

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

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

Thomas F. Drumheller
(Name of accused, or a description by which the accused can be identified)

and to bring him (her) before the

Gen Dist Court
(Designation of Court)

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

Warren

on or about

December 7, 1979

namely (give a brief description of the offense)

Feloniously did abduct

Hope Rogers Atkins Va Code 18.2-47

Unlawfully and feloniously by force, intimidation or
deception and without legal justification or excuse, seize,
take, transport detain or secrete Hope Rogers Atkins
with intent to deprive her of her liberty.
Arrested on motion of Commonwealth.

On the basis of the sworn statement(s) of Roger W. Foy
the undersigned has found probable cause to believe the accused has committed the offense.

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

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

Name _____	Address _____	<input type="checkbox"/>
Name _____	Address _____	<input type="checkbox"/>
Name _____	Address _____	<input type="checkbox"/>
Name _____	Address _____	<input type="checkbox"/>

Given under my hand and seal, this 8 day of December, 19 79

W. Edlowell (SEAL)
(Signature of Issuing Officer)

magistrate
(Title of Issuing Officer)

90 Bond 12-11-79
10 AM

DOCKET NO. 79-1076

WARRANT OF ARREST

COMMONWEALTH vs. Thomas F. Drumheller

Executed this, the 8 day of Dec., 19 79

R. W. Lee

Serving Officer

F.R.P.D.

DISPOSITION OF CHARGE:

Cont 12-18-79

Prelim 1-15-80 2 PM

Held separately until we can settle a hearing date.

Prelim hearing 2-12-80 2 PM

entitled to the grand jury meeting on 3-13-80 at 9:30 AM.

Defendant is remanded to the custody of the Sheriff.

Mr. Paul & Myself P.D.

Noted

Fine \$

Costs

Robert E. Wayne 1-12-80

JUDGE

(Name of accused) _____ and _____
each (if more than one) acknowledges himself indebted to the Commonwealth of Virginia in the sum of _____
(Amount) and waives all benefits under the homestead exemption laws of the State of Virginia as to this obligation.
The condition of this obligation is that if _____ shall appear personally before the _____ on the _____ day of _____, 19 _____, at _____ m., and at any time or times to which the proceedings may be continued in that court or heard on appeal, to answer for the offense with which he is charged, and shall not depart without leave of the court and shall keep the peace and be of good behavior, then this obligation shall be void when final disposition of the charge is made; otherwise, this obligation shall remain in full force and effect until declared void and released by order of a competent court. Non-appearance before any court referred to herein shall be deemed to constitute a waiver of trial by jury.
Whenever the context so requires, the masculine shall be deemed to refer to the feminine or neuter and the singular to the plural.
Given under our hands and seals this _____ day of _____, 19 _____.

RES. & FILED

2/15/80
EDWARD M. MATTHEWS, CLERK
WARREN CO. CIRCUIT COURT

(Name of corporate surety) _____
(Address of surety) _____
Attorney-in-fact (or title of signing officer) _____
(Signature of acknowledging official) _____
(Title of acknowledging official) _____

(Individual Surety) _____
(Accused) _____
(Seal) _____
(Seal) _____

The following witnesses were recognized to appear before the _____ Court of _____ County (City), Virginia, at _____ M., on the _____ day of _____, 19 _____, under penalty of \$ _____
Fine \$ _____
Liquidated Damages \$ _____
Warrant \$ _____
Trial \$ _____
Bail \$ _____
Arrest \$ _____
Clerk of Court \$ _____
Committal (Date) _____
Witnesses _____
Sheriff/Sergeant: _____
Fees _____
Mileage _____
Commonwealth Attorney _____
Weighing Fee _____
Reportable Violation D.M.V. (\$5.00) _____
D.M.V. Abstract Fee (\$0.40) _____
Blood (Sample \$ _____ Analysis \$ _____)
Court Appointed Attorney _____
Total Costs \$ _____

COMMONWEALTH OF VIRGINIA
REQUEST FOR COURT APPOINTED COUNSEL

Virginia:

In the Warren County General District Court

COMMONWEALTH OF VIRGINIA

v. Thomas H. Drumheller

I, THOMAS H. DRUMHELLER, have
been advised by Robert B. Hayes, Judge
of the Warren General District Court for the
County/City of Warren, of my rights to
representation by counsel in the trial of the charge pending against me in said Court;
I certify that I am without means to employ counsel of my own choosing and I hereby request
this Court to appoint counsel for me.

Given under my hand this 18 day of December, 1979

Thomas H. Drumheller

Subscribed and sworn to before me in open Court in the County/City of Warren
this 18 day of December, 1979.

Judge of the

Robert B. Hayes
Warren County

General District Court

Thomas D. Lopez
Court Appointed Counsel

Virginia:

In the _____ General District Court

_____, 19____

COMMONWEALTH OF VIRGINIA

V.

ORDER FOR APPOINTMENT OF ATTORNEY
(Pursuant to Virginia Code 14.1-184.1)

This day came the Attorney for the Commonwealth, and _____,
(misdemeanor)
who stands charged with the commission of a felony, to-wit: _____,
as charged in the warrant, was led to the bar in the custody of the jailer (appeared in Court according
to the condition of his bond).

And the Court, before commencing the proceedings and having heretofore on the _____ day of
_____, 19____, informed the accused of his rights and having allowed the accused a reasonable
opportunity to employ counsel of his own choice, doth ascertain that the accused is not represented by counsel.

And having ascertained by oral examination of the accused and other competent evidence that the
accused is indigent and having provided the accused with and received from him (her) the statement under
oath required by law, which executed statement is now filed with the warrant, the Court before proceeding
with the preliminary hearing now appoints _____, an able, discreet and
competent attorney at law, to defend the said accused.

Whereupon, on motion of the attorney for the Commonwealth, with the consent and approval of the
accused after private consultation with his counsel, this case is set for preliminary hearing on _____
_____, 19____, at _____ o'clock _____ M. and the accused is remanded to jail (and the
bond of the accused together with the surety thereon continued until the further Order of the Court),

Enter: 12/18/1979

Judge of _____ General District Court

() Indicate optional provision
dependent upon facts of case

THE HON: JUDGE ROBERT HAYES.

YOUR HONOR: I HAVE a hearing problem
THIS WAS POINTED OUT TO YOU BY LAWYER
POND. HE UNDERSTANDS THIS, BUT SOME OF
THE OTHERS DOES NOT SEEM TOO UNDERSTAND
THIS MATTER.

I TOLD YOU I HAD A LAWYER
UNDER CONSIDERATION, I DID NOT FULLY
UNDERSTAND THE MATTER IN REGARD TO
AN ATTORNEY, I AM WILLING TO ACCEPT ANY
LAWYER EXCEPT MR. THOMAS LODIE,
ESPECIALLY ONE WHO CAN TALK LOUDER AND
PLAINER THAN MR. LODIE.

I WOULD APPRECIATE YOUR
UNDERSTANDING IN THIS REGARD,

SO PLEASE CONSIDER THIS.
I NEED A LAWYER WHO I
CAN FULLY HEAR AND UNDERSTAND, MR. LODIE
IS NOT THIS PERSON.

AS STATED ABOVE I AM WILLING
TO ACCEPT ANY LAWYER BUT HIM.
ESPECIALLY ONE WHO I CAN
FULLY UNDERSTAND, NOT ONE WHICH I
CANNOT.

SO PLEASE RECONSIDER IN
REGARD TO AN ATTORNEY.

RIGHT NOW I AM HERE IN
JAIL NOT FEELING VERY WELL.

PERHAPS I NEED A DOCTOR
WOULD APPRECIATE YOUR ARRANGING ONE

PLEASE GIVE THIS MATTER YOUR
CONSIDERATIONS.

Sincerely,

THOS DRUMHELLER
5

Told Jim. Ponds
who delivered letter
to inform def. that
court would not change
the letter for the reasons
given by the def. R.E.H

The Commonwealth of Virginia,

To the Sheriff or any Police Officer of Warren :

WE COMMAND YOU, That you summon ^{RWB} Ronnie Dodson, c/o Warren County Jail, DEC Roger W.

Fox, c/o Front Royal Police Department, Eddie Fox, Route 522 South, Front Royal, Virginia

to appear before the 26th General District Court
of Warren County at Front Royal

on the 15th day of January, 19 80 at 2:00 o'clock P M, to testify and

the truth to say in behalf of Commonwealth of Virginia

in a certain matter of controversy, in our said Court depending and undetermined, between

Commonwealth of Virginia, Plaintiff,

and Thomas Drumheller, Defendant,

who stands charged with abduction

And have then there this writ.

WITNESS, Mildred Ryman, Clerk
of our said Court, this 9th day of
January, 19 80.

Mildred A. Ryman, Judge/Clerk

The Commonwealth of Virginia,

To the Sheriff or any Police Officer of Warren County :

WE COMMAND YOU, That you summon Andy Rodeffer, Riverton, Virginia

to appear before the 26th General District Court

of Warren County at Front Royal

on the 15th day of January, 19 80 at 2:00 o'clock P. M. to testify and

the truth to say in behalf of Commonwealth of Virginia

In a certain matter of controversy, in our said Court depending and undetermined, between

Commonwealth of Virginia Plaintiff,

and Thomas Drumheller Defendant,

who stands charged with Abduction

And have then there this writ.

WITNESS, Mildred Ryman Clerk, ~~XXXXXX~~ of our said Court, this 8th day of

January, 19 80.

Mildred A. Ryman

~~XXXXXX~~ Clerk

3 The Commonwealth of Virginia,

To the Sheriff or any Police Officer of Warren

WE COMMAND YOU, That you summon Robert Atkins, 204 Virginia Avenue, Front Royal,
Virginia, Sheriff Lynn C. Armentrout, c/o Warren County Sheriff's Department, Charles L.
Sturdivant, c/o Front Royal Police Department, Paul J. Krieger, c/o Front Royal Police
Department, James E. Roop, c/o Warren County Sheriff's Department, Howard Byon, c/o FRPD

to appear before the 26th General District Court
of Warren County at Front Royal, Virginia

on the 15th day of January, 19 80 at 2:00 o'clock P. M. to testify and
the truth to say in behalf of Commonwealth of Virginia

in a certain matter of controversy, in our said Court depending and undetermined, between
Commonwealth of Virginia, Plaintiff,

and Thomas Drumheller, Defendant,

who stands charged with Abduction

And have then there this writ.

WITNESS, Mildred A. Ryman, Clerk
of our said Court, this 9th day of
January, 19 80.

Mildred A. Ryman, Clerk

188 Commonwealth of Virginia,

To the Sheriff or any Police Officer of Warren County :

WE COMMAND YOU, That you summon ^{see} Roger W. Fox, c/o FRPD, ¹⁷Eddie Fox, Route 522 South,
Front Royal, ⁴⁸Robert Atkins, 204 Virginia Avenue, Front Royal, VA, ⁵⁰⁵Sheriff Lynn C.

Armentrout, c/o Sheriff's Department, ¹⁷Charles L. Sturdivant, c/o FRPD, ¹⁷P. J. Krieger,

c/o FRPD, ⁵⁰⁵James E. Roop, c/o Warren Cty. Sheriff's Dept. Howard Ryon, c/o FRPD

to appear before the 26th General District Court

of Warren County at Front Royal

on the 12th day of February, 19 80 at 2:00 o'clock P. M. to testify and

the truth to say in behalf of Commonwealth of Virginia

in a certain matter of controversy, in our said Court depending and undetermined, between

Commonwealth of Virginia, Plaintiff,

and Thomas F. Drumheller, Defendant,

who stands charged with abduction

And have then there this writ.

WITNESS, Mildred A. Ryman Clerk
Judge of our said Court, this 31st day of

January, 19 80.

Mildred A. Ryman

Judge/Clerk

Docket No.

vs. { SUBPOENA
FOR
WITNESS

..... Court

the..... day of

19.....

Subpoenaed on the 11 of February 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Eddie Fox
in person.

L.C. Armentrout
Sheriff, County of Warren, Va.

Kent P. Smith
By Deputy Sheriff

Executed on the 9th of Jan 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Roger W. Fox
in person.

Lynn C. Armentrout
Sheriff, County of Warren, Va.

Desina Cromer
By Deputy Sheriff

Subpoenaed on the 9 of JAN 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Ronnie Dodson
in person.

L.C. Armentrout
Sheriff, County of Warren, Va.

By Deputy Sheriff Robert J. Smith, Jr.

Docket No. _____

vs

{ SUBPOENA
FOR
WITNESS
{

_____ Court

the _____ day of _____,

19____.

Executed on the 11 of Jan. 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Andy Radeffer
in person.

L.C. Armentrout
Sheriff, County of Warren, Va.

By Deputy Sheriff

Sgt. Hal J. Morditz

Executed on the 9th of Jan 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Sheriff Lynn C. Armentrout
in person.

Lynn C. Armentrout
Sheriff, County of Warren, Va.

Debra Cromer
By Deputy Sheriff

Executed on the 9 of January 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Tamara C. Roop
in person.

R.C. Nimitz
Sheriff, County of Warren, Va.

Kent P. D.
By Deputy Sheriff

Executed on the 10 of Jan 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Robert Atkins
in person.

R.C. Armentrout
Sheriff, County of Warren, Va.

Executed on the 9 of Jan 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Charles L. Sturdivant
in person.

L.C. Armentrout
Sheriff, County of Warren, Va.

Alfred M. Fejins
By Deputy Sheriff

Executed on the 10 of January 1980
within the County of Warren, Va., by delivering

true copy of the within Summons

in writing to Paul T. Krueger
in person.

R.C. Armentrout
Sheriff, County of Warren, Va.

Kent P. D.
By Deputy Sheriff

Executed on the 11 of Jan 1980
within the County of Warren, Va., by delivering

true copy of the within Summons

in writing to Harold Ray
in person.

L.C. Armentrout
Sheriff, County of Warren, Va.

Deputy No.

WITNESS
FOR
SUBPOENA

Executed on the 5 of February 1984
within the County of Warren, Va., by delivering a
true copy of the within Summons
in writing to Edwin Fox
in person.

R. C. Armentrout
Sheriff, County of Warren, Va.

Carl Pugh
By Deputy Sheriff

Executed on the 1st of Feb. 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to James E. Roop
in person.

Lynn C. Armentrout
Sheriff, County of Warren, Va.

Deana Cromer Count
By Deputy Sheriff

Executed on the 1 of Feb. 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons
LYNN C. Armentrout WITNESS
FOR

in writing to Roger Fox SUBPOENA
in person.

L. E. Armentrout
Sheriff, County of Warren, Va.

Deana Cromer
By Deputy Sheriff

Executed on the 7 of February 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Robert Atkins
in person.

J. C. Armentrout
Sheriff, County of Warren, Va.

Eusberg
By Deputy Sheriff

Executed on the 7 of Feb 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Howard Ryan
in person.

L. V. Armentrout
Sheriff, County of Warren, Va.

H. Newman
By Deputy Sheriff

Executed on the 1 of Feb. 1980
within the County of Warren, Va., by delivering a

true copy of the within Summons

in writing to Charles L. Starnes
in person.

L. C. Armentrout
Sheriff, County of Warren, Va.

IN THE CIRCUIT COURT OF WARREN COUNTY
COMMONWEALTH OF VIRGINIA

V. FELONY

AT LAW NO. 5480

THOMAS FRANKLIN DRUMHELLER

Defendant

MOTION TO SUPPRESS

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW Your Defendant, Thomas Franklin Drumheller, by Counsel, and moves to quash the search warrants attached hereto and to suppress as evidence the articles taken by means of such search and seizure and any evidence gained by means of such search.

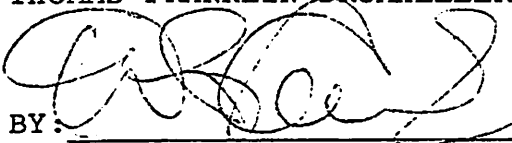
The grounds for this motion are:

1. The warrant was illegally executed.
2. The warrant was insufficient on its face.
3. The property seized was not sufficiently described by the warrant.
4. There was no probable cause for believing the existence of the grounds on which the warrant was issued.
5. By reason of the foregoing, said search and seizure was unreasonable in violation of the Fourth Amendment to the United States Constitution and Defendant was compelled to give evidence against himself in violation of the self-incrimination clause of the Fifth Amendment.

DATED: 15 May 1980

Respectfully submitted,

THOMAS FRANKLIN DRUMHELLER

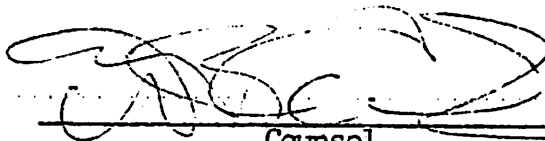
BY: 
Counsel

J. Daniel Pond, II, Esquire
Court House Square
Front Royal, Virginia 22630

William B. Allen, III, Esquire
Allen & Allen
Attorneys at Law
126 West Court Street
Woodstock, Virginia
Counsel for Defendant

CERTIFICATE

I hereby certify that I delivered a true copy of the foregoing Motion to Suppress to David C. Crump, Jr., Commonwealth's Attorney, at his office address being Court House Square, Front Royal, Virginia, this 15th day of May, 1980.



Counsel

*Rec'd, filed 5/15/80
James H. Brown Dep.*

VIRGINIA: IN THE CIRCUIT COURT OF WARREN COUNTY

✓ COMMONWEALTH OF VIRGINIA

V. Felony

AT LAW NOS. 5430, 5437, 5438, 5480

✓ THOMAS FRANKLIN DRUMHELLER

Defendant

O R D E R

THIS 18th day of June, 1980, came the Commonwealth, by her attorney, and also came the Defendant, Thomas Franklin Drumheller, in person and by his court-appointed counsel, J. Daniel Pond, II, Esq. and William B. Allen, III, Esq.. Also came Linda G. Logan, Court Reporter, who was previously duly sworn well and truly to record the felony proceedings before this Court on this date, for a hearing on the defendant's motion to suppress evidence seized pursuant to certain search warrants.

In consideration of the evidence presented to the Court and the arguments of counsel, it is the opinion of this Court that said motion be denied for the reasons as stated in the record.

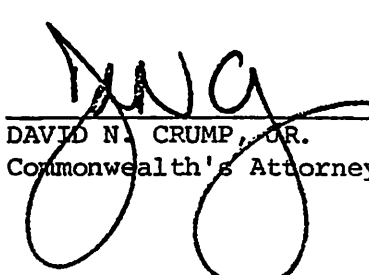
WHEREUPON, the Defendant moved that hearings on defendant's motion to quash the arrest warrant, and for a change in venue be continued until July 17, 1980, at 9:30 a.m. There being no objection by the Commonwealth, said motion is granted.

The accused is remanded to the custody of the Sheriff. ✓

ENTER: 6/25/80


ELLIOTT MARSHALL, Judge

SEEN:


DAVID N. CRUMP, JR.
Commonwealth's Attorney

COMMONWEALTH OF VIRGINIA

County of Warren, to-wit:

IN THE CIRCUIT COURT OF WARREN COUNTY

JANUARY TERM, 1980

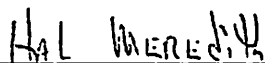
THE GRAND JURY CHARGES THAT:

On or about December 7, 1979, in the County of Warren, Thomas Franklin Drumheller, did unlawfully and feloniously kill and murder one Hope Rogers Atkins against the peace and dignity of the Commonwealth, in violation of Section 18.2-32 of the Code of Virginia, 1950, as amended.

A True Bill:


FOREMAN

WITNESSES:



COMMONWEALTH OF VIRGINIA

County of Warren, to-wit:

IN THE CIRCUIT COURT OF WARREN COUNTY

JANUARY TERM, 1980

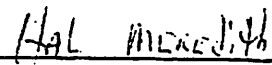
THE GRAND JURY CHARGES THAT:

On or about December 7, 1979, in the County of Warren, Thomas Franklin Drumheller, did unlawfully and feloniously use and display a firearm while committing murder, in violation of Section 18.2-53.1 of the Code of Virginia, 1950, as amended.

A True Bill:


FOREMAN

WITNESSES:



COMMONWEALTH OF VIRGINIA

County of Warren, to-wit:

MARCH TERM, 1980

IN THE CIRCUIT COURT OF WARREN COUNTY

THE GRAND JURY CHARGES THAT:

On or about December 7, 1979, in the County of Warren, THOMAS F. DRUMHELLER, did unlawfully and feloniously, by force, intimidation and without legal justification or excuse, seize, take, transport, detain and secrete the person of one Hope Rogers Atkins, with the intent to defile said Hope Rogers Atkins, in violation of Section 18.2-48 of the Code of Virginia, 1950, as amended.

A True Bill:

W. Kirk Stratton
FOREMAN

WITNESSES:

MR ROGER FOX
INVESTIGATOR FOR
TOWN OF FRONT ROYAL, VA

O R D E R

THIS 27th, 28th and 29th days of August, 1980, came the Commonwealth, by her attorney and also came the Defendant, in person and by his court-appointed counsel, J. Daniel Pond, II, Esq. and William B. Allen, III, Esq. Also came Linda G. Logan, Court Reporter, who was previously duly sworn well and truly to record the felony proceedings before this Court on this date.

WHEREUPON, the Defendant moved to sever the charge contained in case #5437 and to continue this case for trial at a later date, said motion being objected to by the Commonwealth. In consideration of the arguments of counsel, the motion is hereby granted and case #5437 charging a violation of Virginia Code Section 18.2-308.2 is hereby continued until September 11, 1980, at 9:30 a.m. for the purpose of setting a trial date.

WHEREUPON, the Defendant moved to waive trial by jury in cases #5430, #5438 and #5480, said motion being objected to by the Commonwealth. The Commonwealth having refused to agree to a waiver of trial by jury, the Defendant's motion is hereby denied.

WHEREUPON, a felony venire of 20 heretofore summonsed was examined by the Court and counsel. In the course of the voir dire, the defendant moved for a mistrial, said motion being denied for the reasons stated in the record. After examination, the panel having being found to be without objection, counsel for the Commonwealth and the Defendant alternately struck the names of four (4) jurors each, until there remained a panel of twelve (12) who were thereupon duly sworn.

WHEREUPON, counsel for the Commonwealth and the Defendant presented their opening arguments, and the Commonwealth presented her evidence and then rested her case. The Defendant thereupon moved to strike the Commonwealth's evidence, said motion being denied for the reasons as stated in the record.

WHEREUPON, the Defendant presented his evidence, and then rested his case. The Commonwealth then presented evidence in rebuttal and then rested her case. The Commonwealth and the Defendant having rested their respective cases, the defendant renewed his motion to strike the Commonwealth's evidence, said motion being denied for the reasons as stated in the record.

The Court having instructed the jury as to the law of the case, counsel presented their closing arguments and the jury retired to consider the verdict. After due deliberation, the jury returned and announced its verdict as follows:

Book 2
Page 113

In case #5430, "We, the jury, find the defendant guilty of first degree murder and fix his sentence at life in prison. Signed, Russell F. Wilson, Foreman."

In case #5480, "We, the jury, find the defendant guilty of abduction with the intent to defile and fix his punishment at life in prison. Signed, Russell F. Wilson, Foreman."

In case #5438, "We, the jury, find the defendant guilty of using a firearm in the commission of a felony and fix his punishment at one (1) year in the State Penitentiary. Signed, Russell F. Wilson, Foreman."

WHEREUPON, counsel for the Defendant moved to set aside the verdict as contrary to the law and the evidence of the case, and requested time to prepare argument. And there being no objection the part of the Commonwealth, the Defendant's motion for a continuance is granted, and case #5430, #5438 and #5480 are hereby continued until October 2, 1980, at 1 o'clock p.m. for a hearing on defendant's motion to set aside the verdict.

WHEREUPON, the Defendant moved for a presentence investigation and report and there being no objection on the part of the Commonwealth, the motion is granted, and the State Probation and Parole Officer is hereby directed to submit his report by October 2, 1980, at 1 o'clock p.m.

The Court certifies that at all times during the trial a public address system was furnished and functioning with loudspeakers at the Defendant's table, and with microphones at the judge's bench, the witness stand, the prosecutor's table and counsel for the Defendant's table.

And the Defendant is remanded to the custody of the Sheriff.

ENTER:

9/18/80

Henry H. Whiting

HENRY H. WHITING, Judge

SEEN:

[Signature]
DAVID N. CRUMP, JR.
Commonwealth's Attorney

*(subject to
signature of
both defense
counsel)*

*Seen & objected to be entered in
the record.*

[Signature]
J. Earl Pugh II

VIRGINIA: IN THE CIRCUIT COURT OF WARREN COUNTY

✓ COMMONWEALTH OF VIRGINIA

V.

Felony

AT LAW NO. 5430, 5438,
and 5480

✓ THOMAS FRANKLIN DRUMHELLER

Defendant

O R D E R

THIS 25th day of October, 1980, came the Commonwealth by her attorney and also came the Defendant, Thomas Franklin Drumheller in person and by his court appointed counsel, J. Daniel Pond, II, Esq. and William B. Allan, III, Esq. Also came Linda G. Logan, Court Reporter, who was previously and duly sworn well and truly to record the felony proceedings before this Court on this date. Also came Melvin C. Medved, State Probation and Parole Officer.

WHEREUPON, a hearing was held on Defendant's motion to set aside the jury verdict, and in consideration of the arguments of counsel the motion is denied for the reasons as stated in the record.

WHEREUPON, the State Probation and Parole Officer submitted his presentence report as previously directed by the Court, and he was examined on said report.

The Court then demanded of the Defendant if there be any reason why judgment should not be pronounced against him according to the law, and the Defendant thereupon made a lengthy statement to the Court, however, nothing being offered in delay of judgment, in accordance with the jury verdict, the evidence heard in open court, and the report of the State Probation and Parole Officer,

Book 2
Page 241
22

it is the judgment of this Court that case no. 5430, the Defendant is guilty of first degree murder as charged in the indictment, and he is sentenced to serve life in the State Penitentiary and to pay the costs of the prosecution; in case no. 5480, it is the judgment of this Court that the Defendant is guilty of abduction with the intent to defile, as charged in the indictment, and is sentenced to serve life in the State Penitentiary and to pay the cost of this prosecution; and, in case no. 5438, it is the judgment of this Court that the Defendant is guilty of using a firearm in the commission of a felony, and he is sentenced to serve one (1) year in the State Penitentiary and to pay the costs of this prosecution. The sentences hereby imposed in each of the above-stated cases shall be served consecutively to, and not concurrently with, each other.

Upon motion of the Defendant, without objection by the Commonwealth, the transcript of the above-styled trial, and all preliminary matters leading to trial, is hereby made a part of the record.

AND the Defendant is remanded to the custody of the Sheriff.

ENTER:

10/31/80

Henry H. Whiting

HENRY H. WHITING, Judge

SEEN:

DAVID N. CRUMP, JR.
DAVID N. CRUMP, JR., ESQ.
Commonwealth's Attorney

The Defendant is entitled to 314 days credit for time spent in jail awaiting trial as of October 25, 1980.

ASSIGNMENTS OF ERROR

1. The Court erred in denying the Defendant's Motion to suppress the evidence that was obtained pursuant to the search warrant.
2. The Court erred in failing to quash the arrest warrant.
3. The Court erred in denying the Defendant's Motion for a change of venue.
4. The Court erred in refusing to dismiss the charges against the Defendant on the grounds of misconduct by agents Commonwealth denying effective assistance of counsel to the Defendant.
5. The Court erred in admitting the testimony of Dr. William F. Enos as evidence of intent "to defile".
6. The Court erred in denying the Defendant's Motion for a mistrial after the testimony of Commonwealth witnesses Russell Jenkins and Billy Chapman.
7. The Court erred in overruling the Defendant's Motion to set aside the verdict of the jury.

VIRGINIA: IN THE CIRCUIT COURT OF WARREN COUNTY

COMMONWEALTH OF VIRGINIA

V. Felony

AT LAW NOS. 5430, 5437, 5438, 5480

THOMAS FRANKLIN DRUMHELLER

Defendant

O R D E R

THIS 18th day of June, 1980, came the Commonwealth, by her attorney and also came the Defendant, Thomas Franklin Drumheller, in person and by his court-appointed counsel, J. Daniel Pond, II, Esq. and William B. Allen, III, Esq. Also came Linda G. Logan, Court Reporter, who was previously duly sworn well and truly to record the felony proceedings before this Court on this date for a hearing on the defendant's motion to suppress evidence seized pursuant to certain search warrants.

In consideration of the evidence presented to the Court and the arguments of counsel, it is the opinion of this Court that said motion be denied for the reasons as stated in the record.

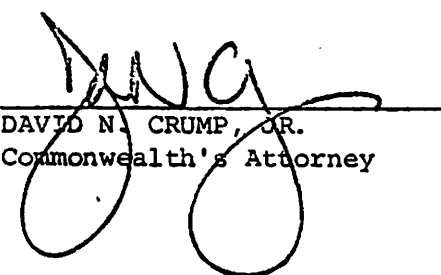
WHEREUPON, the Defendant moved that hearings on defendant's motion to quash the arrest warrant, and for a change in venue be continued until July 17, 1980, at 9:30 a.m. There being no objection by the Commonwealth, said motion is granted.

The accused is remanded to the custody of the Sheriff.

ENTER: 6/25/80


ELLIOTT MARSHALL, Judge

SEEN:


DAVID N. CRUMP, JR.
Commonwealth's Attorney

COMMONWEALTH OF VIRGINIA

County of Warren, to-wit:

IN THE CIRCUIT COURT OF WARREN COUNTY

JANUARY TERM, 1980

THE GRAND JURY CHARGES THAT:

~~NOVEMBER AND DECEMBER~~

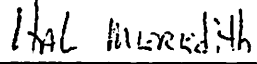
On or about ~~December 7~~, 1979, in the County of Warren, Thomas

Franklin Drumheller, did unlawfully and feloniously, knowingly and intentionally possess a handgun after having been convicted of a felony involving the use of a firearm, in violation of Section 18.2-308.2 of the Code of Virginia, 1950, as amended.

A True Bill:


FOREMAN

WITNESSES:



VIRGINIA: IN THE CIRCUIT COURT OF WARREN COUNTY

✓ COMMONWEALTH OF VIRGINIA

V. Felony

AT LAW NO. 5437

✓ THOMAS FRANKLIN DRUMHELLER

Defendant

O R D E R

THIS 25th day of October, 1980, came the Commonwealth, by her attorney and also came the Defendant, Thomas Franklin Drumheller, in person and by his court-appointed counsel, J. Daniel Pond, II, Esq., and William B. Allen, III, Esq. Also came Sandy Moser, Court Reporter, who was previously duly sworn well and truly to record the felony proceedings before this Court on this date. Also came Linda G. Logan, Court Reporter, who was previously duly sworn well and truly to record the felony proceedings before this Court on this date.

WHEREUPON, a hearing was held on the Commonwealth's motion to amend the indictment in the above-styled case, said motion being objected to by the Defendant. In consideration of the arguments of counsel, the Court hereby grants the motion, and the indictment was amended to read as follows:

"The Grand Jury charges that on or about November and December, 1979, in the County of Warren, Thomas Franklin Drumheller, did unlawfully and feloniously, knowingly and intentionally, possess a handgun after having been convicted of a felony involving the use of a firearm, in violation of Section 18.2-308.2 of the Code of Virginia, 1950, as amended."

WHEREUPON, the accused was rearraigned, and upon being rearraigned on the amended indictment charging him with a violation of Virginia Code Section 18.2-308.2, and being asked how he did plead thereto, the accused did

answer and say that he was not guilty of the charge therein made against him.

WHEREUPON, a felony venire of twenty (20) heretofore summonsed was examined by the Court, and by the Commonwealth, and by counsel for the Defendant. Five (5) members of the venire were excused for cause, and replaced by five (5) alternates heretofore summonsed who were likewise examined by the Court, by the Commonwealth, and by counsel for the Defendant. The panel being found to be without objection, counsel for the Commonwealth and the Defendant then alternately struck the names of four (4) jurors each, until there remained a panel of twelve (12), who were thereupon duly sworn.

WHEREUPON, counsel for the Commonwealth and the Defendant presented their opening arguments, and the Commonwealth presented her evidence. During the course of the Commonwealth's evidence, the Defendant, Thomas Franklin Drumheller, became disruptive, consistently ignored the directions of the Court and made repeated outbursts. It appearing that the Defendant was uncontrollable and completely unresponsive to the Court and his counsel, the Court then directed the Sheriff to remove the Defendant from the courtroom, and the trial proceeded in the Defendant's absence. The Court on several occasions during the recesses and out of the presence of the jury offered the defendant the opportunity to return to the courtroom upon his promise that he would address his objections to his counsel and would not otherwise disrupt the proceedings. On each occasion the defendant refused to so promise, remained disruptive, and was ordered removed from the courtroom. The Commonwealth then completed the presentation of her evidence and then rested her case. Counsel for the Defendant thereupon moved to strike the Commonwealth's evidence, said motion being denied for the reasons as stated in the record.

WHEREUPON, the Defendant was returned to the courtroom and out of the presence of the jury was advised by the Court and his counsel of his right, but not his obligation, to testify, the fact that no comment could be made of his failure to testify if he did not choose to do so, and the fact that if he

did choose to testify he would be subject to cross-examination. Having been so advised the defendant elected not to testify in his own behalf, but still refused to promise the Court that he would not be disruptive, and was thereby again removed from the courtroom. When the jury was recalled, the Defendant rested his case and presented no evidence on his own behalf.

The Defendant then renewed his motion to strike the Commonwealth's evidence, said motion being denied for the reasons as stated in the record.

The Court having instructed the jury as to the law of the case, counsel presented their closing arguments and the jury retired to consider their verdict. After due deliberation, the jury returned and announced their verdict as follows:

"We, the jury, find the Defendant guilty of knowingly and intentionally possessing a handgun after having previously been convicted of a felony involving the use of a firearm, and fix his punishment at five (5) years in the State Penitentiary. Signed, Arthur Oswood Smoot, Jr., Foreman."

WHEREUPON, counsel for the Defendant moved to set aside the verdict as contrary to the law and the evidence of the case, and presented argument in furtherance of their motion. In consideration of the arguments of the Defendant and the Commonwealth, the Court is of the opinion that the motion should be denied for the reasons as stated in the record.

WHEREUPON, on the Commonwealth's motion, without objection by the Defendant, the above-styled case #5437 was thereupon combined with case #5430, #5438 and #5480 for the purpose of sentencing, and thereupon, Linda G. Logan assumed the duties of Court Reporter.

The Defendant having been returned to the courtroom, the Court then demanded of the Defendant if there be any reason why judgment should not be pronounced against him according to law, and the Defendant having made a lengthy statement, but there being nothing offered in delay of judgment, in accordance with the verdict of the jury, the evidence heard in open Court, and

the report of the State Probation and Parole Officer previously ordered in case #5430, #5438 and #5480, it is the judgment of this Court that in case #5437 the Defendant is guilty of knowingly and intentionally possessing a handgun after having previously been convicted of a felony involving the use of a firearm, as charged in the amended indictment, and the Court does sentence the Defendant to five (5) years in the State Penitentiary, and he shall pay the costs of this prosecution.

The Court certifies that at all times during the trial while the Defendant was present, a public address system was furnished and functioning with loudspeakers at the Defendant's table, and with microphones at the Judge's bench, the witness stand, the prosecutor's table, and counsel for the Defendant's table. The Court further certifies that loudspeakers were furnished adjacent to the courtroom where the Defendant was initially placed after being removed from the courtroom. However, when the Defendant's disruptions in this adjacent room became so loud as to be plainly audible in the courtroom, the Court ordered the Defendant returned to his jail cell to prevent further disruptions potentially prejudicial to the Defendant, and no loudspeakers were available in the jail cell. The Court further certifies that the Defendant was afforded ample and repeated opportunities to recant his disruptive ways, but the Defendant repeatedly refused to respond to the directives of the Court and his appointed counsel.

Upon motion of the Defendant, without objection by the Commonwealth, the transcript of the above-styled trial and of all preliminary matters leading to trial, is hereby made a part of the record.

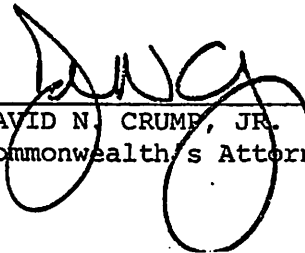
The Defendant is entitled to 314 days credit for time spent in jail awaiting trial as of October 25, 1980.

And the Defendant is remanded to the custody of the Sheriff. ✓

ENTER: 11/6/80


HENRY H. WHITING, Judge

SEEN:


DAVID N. CRUMP, JR.
Commonwealth's Attorney

ASSIGNMENTS OF ERROR

1. The Court erred in denying the Defendant's Motion to Suppress the evidence that was obtained pursuant to the search warrant.
2. The Court erred in failing to quash the arrest warrant.
3. The Court erred in refusing to dismiss the charges against the Defendant on the grounds of misconduct by agents Commonwealth denying effective assistance of counsel to the Defendant.

Search Warrant

(Rule 3A:27)

To Roger W. Fox (1) or
any other Authorized Officer:

You are hereby commanded in the name of the Commonwealth forthwith to search
Apartment #10 Riverside Motor Court, State Rt. 340 S.
(Place to be searched)

for certain concealed property, namely Hope Rogers Atkins, and/ or personal effects of Hope
(Describe property)

Rogers Atkins.

and to produce the property, if it be found, before the

General District Court

(Designation of Court)

On the basis of the sworn statement(s) of Roger W. Fox
the undersigned has found probable cause to believe the search should be made in relation to the
offense (s) of Abduction (2)

Issued at 4:00 p. m., December 8, 19 79.

W. E. Dowell

(Signature of Issuing Officer)

W. E. Dowell

Magistrate

(Title of Issuing Officer)

- (1) Insert designation of officer, e.g., the Sheriff of Accomack County, or any Policeman of Alexandria City.
- (2) Give a brief description of the offense in relation to which the search is to be made, e.g., the murder of John Doe; possession of narcotics.

signed 6:50 PM

12-8-79

Affidavit for Search Warrant

(Rule 3A:27)

State of Virginia
County (City) of Warren

Before me, the undersigned, this day came Roger W. Fox
(Name of affiant)

who, after being duly sworn, made oath that:

(1) He has reason to believe that on the premises known as Riverside Motor Court, Rt. 340S., Apt. #10
1967 Ply. FFE-497 in the county (city) of Warren

there is now being concealed certain property, namely 1- Hope Rogers Atkins, 2- Personal effects of
Hope Atkins.

(2) He bases his belief that such property can be found on those premises on the following facts:

On the morning of the abduction a car fitting Drumheller's car was seen leaving the area of
the crime of Abduction that occurred at Eddie's Laundromat on 12-07-79 and that on Tuesday
12-04-79 he shook a dildo at two women on Rt. 522, also that the information he has is that
Drumheller is known for unjust sexual acts.

* (3) (a) He has personal knowledge of the facts set forth in paragraph (2).

or

* (3) (b) He was advised of the facts set forth in paragraph (2) by an informer. This informer's credibility
or the reliability of the information may be adjudged by the following facts: Eyewitnesses and personal
observation of past acts seen by 2 other witnesses.

(4) (a) The offense in relation to which the search is to be made is: Abduction.

(4) (b) The grounds for search and seizure are established by the following facts:**

1) Suspects vehicle was seen leaving area of crime 12-07-79.

2) Suspect shook a dildo at two other women 12-04-79.

3) Suspect is known for certain unjust sexual acts.

* (5) (a) He has personal knowledge of the facts set forth in paragraph (4).

or

* (5) (b) He was advised of the facts set forth in paragraph (4) by an informer. This informer's credibility
or the reliability may be adjudged by the following facts: Eye witness that says the car that left the
scene is the same type and make that the suspect owns. Also it is the same color.

Subscribed and sworn to before me on

Roger W. Fox
(Signature of Affiant)
Roger W. Fox
Investigator
(Official Title, if any)

December 8, 1979
W.E. Dowell magistrate
(Signature and Title)

*If subparagraph (a) is applicable, strike out subparagraph (b). If subparagraph (b) is applicable, strike out subparagraph (a) and set forth the relevant facts in the space provided in subparagraph (b). The informer need not be identified.

**Give reasons why the property should be searched for and seized. If the property to be searched for is contraband, a description of the property will suffice. If the property to be searched for was an instrumentality of a crime or was stolen or embezzled, set forth facts showing probable cause to believe that the property was an instrumentality of a crime or was stolen or embezzled. If the property to be searched for is property that was used or is being used in committing a crime, set forth facts showing probable cause to believe the property was used or is being used to commit a crime. If the property to be searched for is property constituting evidence of a crime or evidence, that a particular person committed a crime set forth facts showing probable cause to believe that seizure of the property will aid in a particular apprehension or conviction.

LIST OF PROPERTY SEIZED

(§ 19.-87, Code of Virginia, as Amended)

ITEM #

DESCRIPTION OF PROPERTY

1.	Remington Shotgun ,Automatic, Serial 0414581
2.	Winchester Model 94 30-30, Serial 02398015
3.	Model 939-22 Revolver
4.	One green blanket
5.	One small white blanket
6.	One green and white stripe bed sheet
7.	One tan and brown bed sheet
8.	One green and white pillow case
	Note** 1967 Plymouth 4 door hardtop was seized in order to process
	vehicle...

(Use other side for additional listing)

I, Roger W. Fox, certify that the above property
 was seized after execution of a search warrant at Apartment 10, Riverside Motor Court
 (Location) Route 1
December 8, 1979 Front Royal, Virginia
 (date) 22630

Investigator Roger W. Fox

(Title)

Subscribed and sworn before me, Debra L. Boger, a
 Notary Public in and for the (County) (City) of Warren
 this 10th day of December, 1979.

(NOTARY PUBLIC)

My commission expires August 10, 1982

LIST OF PROPERTY SEIZED

(§ 19.-87, Code of Virginia, as Amended)

ITEM #

DESCRIPTION OF PROPERTY

1.	Tissue Paper
2.	Floor Mats
3.	Brown Bag containing prophylactics (Rubbers)
4.	Box of 32 bullets
5.	12 Gauge Shotgun ammunition
6.	Assorted nickels, pennies and dimes
7.	Envelope containing pictures of nude women
8.	Gloves
9.	Assorted rolls of pennies
10.	Two Machetti knives
11.	Shovel

(Use other side for additional listing)

I, Roger W. Fox, certify that the above property
 was seized after execution of a search warrant at Apt. 10, Riverside Motor Court
 (Location) Route 1
 Front Royal, Virginia
 on December 8, 1979
 (date) 22630

Investigator
 (Title)

Roger W. Fox

Subscribed and sworn before me, Debra L. Boger, a
 Notary Public in and for the (County) (~~CITY~~) of Warren
 this 10th day of December, 1979.

(NOTARY PUBLIC)

36 My commission expires August 10, 1982

Affidavit for Search Warrant

(Rule 3A:27)

State of Virginia
County ~~(City)~~ of Warren

Before me, the undersigned, this day came Roger W. Fox

(Name of affiant)

who, after being duly sworn, made oath that:

(1) He has reason to believe that on the premises known as 1967 Plymouth 4 dr HT.

Va. Lic/ FPE-497 in the county ~~(City)~~ of Warren

there is now being concealed certain property, namely 1- Hope Rogers Atkins and personal effects of Hope Rogers Atkins.

(2) He bases his belief that such property can be found on those premises on the following facts:
On the morning of the abduction a car fitting Drumhellers car was seen leaving the area of the crime of Abduction that occurred at Eddie's Laundromat on 12-07-79 and that on Tuesday 12-04-79 he shook a dildo at 2 women on Rt. 522. Also that Drumheller is known for unjust sexual acts.

* (3) (a) He has personal knowledge of the facts set forth in paragraph (2).

or

* (3) (b) He was advised of the facts set forth in paragraph (2) by an informer. This informer's credibility or the reliability of the information may be adjudged by the following facts: Eyewitness, and personal observation of past acts seen by 2 other witnesses.

(4) (a) The offense in relation to which the search is to be made is: Abduction.

(4) (b) The grounds for search and seizure are established by the following facts:**

1) Suspects vehicle was seen leaving the area of crime 12-07-79.

2) Suspect shook a dildo at 2 other women 12-04-79.

3) Suspect is known for certain unjust sexual acts.

* (5) (a) He has personal knowledge of the facts set forth in paragraph (4).

or

* (5) (b) He was advised of the facts set forth in paragraph (4) by an informer. This informer's credibility or the reliability may be adjudged by the following facts: Eyewitnesses that say the car that left the scene is the same type and make, also the same color as the suspects vehicle.

Roger W. Fox

(Signature of Affiant)

Roger W. Fox

Investigator

(Official Title, if any)

Subscribed and sworn to before me on

December 8, 1979

W.E. Dowell magistrate

(Signature and Title)

*If subparagraph (a) is applicable, strike out subparagraph (b). If subparagraph (b) is applicable, strike out subparagraph (a) and set forth the relevant facts in the space provided in subparagraph (b). The informer need not be identified.

**Give reasons why the property should be searched for and seized. If the property to be searched for is contraband, a description of the property will suffice. If the property to be searched for was an instrumentality of a crime or was stolen or embezzled, set forth facts showing probable cause to believe that the property was an instrumentality of a crime or was stolen or embezzled. If the property to be searched for is property that was used or is being used in committing a crime, set forth facts showing probable cause to believe the property was used or is being used to commit a crime. If the property to be searched for is property constituting evidence of a crime or evidence, that a particular person committed a crime set forth facts showing probable cause

Affidavit for Search Warrant

(Rule 3A:27)

State of Virginia
County (City) of Warren

Before me, the undersigned, this day came Investigator Roger W. Fox
(Name of affiant)

who, after being duly sworn, made oath that:

(1) He has reason to believe that on the premises known as 1967 Plymouth 4dr Ht. Black Top,
Green Bottom in the county (city) of Warren

there is now being concealed certain property, namely small caliber ammunition, chamais with unknown
stains, 1 box of band-aids with blood stains, anything that would contain evidence of the crime

(2) He bases his belief that such property can be found on those premises on the following facts: of abduction
and murder.

1. Suspect has told 4 inmates that he abducted Hope Atkins
2. Suspect was arrested on December 08, 1979 on a Warrent charging Abduction.
3. Suspect told Officer Krieger that he was at the place of the crime at the and at the
time of the crime. (4) Victim was killed by a small caliber weapon.

*(3) (a) He has personal knowledge of the facts set forth in paragraph (2).

or

*(3) (b) He was advised of the facts set forth in paragraph (2) by an informer. This informer's credibility
or the reliability of the information may be adjudged by the following facts: The 4 inmates all had
access to the suspect at different times and all people relayed information are
willing to testify in court.

(4) (a) The offense in relation to which the search is to be made is:

(4) (b) The grounds for search and seizure are established by the following facts: ** 1. Weapon has not
been found.

2. While searching for a weapon in the vehicle a Chamois was found that had stains
that look like sperm stains, also a band-aids box with blood was found on it.

*(5) (a) He has personal knowledge of the facts set forth in paragraph (4).

or

*(5) (b) He was advised of the facts set forth in paragraph (4) by an informer. This informer's credibility
or the reliability may be adjudged by the following facts: all of the above are willing to testify in
court.

R. W. Fox

(Signature of Affiant) Roger W. Fox
Investigator

(Official Title, if any)

Subscribed and sworn to before me on

December 17, 1979
W. E. Dowell, magistrate
(Signature and Title)

*If subparagraph (a) is applicable, strike out subparagraph (b). If subparagraph (b) is applicable, strike out subparagraph (a)
and set forth the relevant facts in the space provided in subparagraph (b). The informer need not be identified.

**Give reasons why the property should be searched for and seized. If the property to be searched for is contraband, a description of the property will suffice. If the property to be searched for was an instrumentality of a crime or was stolen or embezzled, set forth facts showing probable cause to believe that the property was an instrumentality of a crime or was stolen or embezzled. If the property to be searched for is property that was used or is being used in committing a crime, set forth facts showing probable cause to believe the property was used or is being used to commit a crime. If the property to be searched for is property constituting evidence of a crime or evidence, that a particular person committed a crime set forth facts showing probable cause to believe that seizure of the property will aid in a particular apprehension or conviction.

Search Warrant

(Rule 3A.27)

To Roger W. Fox, Investigator (1) or
any other Authorized Officer:

You are hereby commanded in the name of the Commonwealth forthwith to search
1967 Plymouth 4-door hardtop, green in color with black top.VA.License FPE-497
(Place to be searched)

for certain concealed property, namely Small caliber handgun
(Describe property)

and to produce the property, if it be found, before the
General District Court
(Designation of Court)

On the basis of the sworn statement(s) of Roger W. Fox, Investigator
the undersigned has found probable cause to believe the search should be made in relation to the
offense (s) of Murder, Abduction, Possession of Firearm by a felon, and use of firearm (2)
in the commission of a felony.
Issued at 5:00 P.M. m., December 17, 1979.

W. E. Dowell
W. E. Dowell (Signature of Issuing Officer)

Magistrate
(Title of Issuing Officer)

- (1) Insert designation of officer, e.g., the Sheriff of Accomack County, or any Policeman of Alexandria City.
(2) Give a brief description of the offense in relation to which the search is to be made, e.g., the murder of John Doe; possession of narcotics.

*Warrant Executed on December 17, 1979 AT 1730 hrs by
LT. Farrell & P.J. Krieger*

P.J. Krieger

AFFADAVIT FOR SEARCH WARRANT
QUESTION No. 2.

same time of the crime.

- (3) Victim was killed by a small caliber weapon.
- (4) Suspect's wife says suspect has another hand gun which has not been found yet.

*Ru for
Inu*

Search Warrant

(Rule 3A:27)

To Investigator Roger W. Fox (1) or
any other Authorized Officer:

You are hereby commanded in the name of the Commonwealth forthwith to search
1967 Plymouth 4dr Ht. with black Top and Green Bottom
(Place to be searched)

for certain concealed property, namely Small caliber ammunition, chamois cloth, box of
(Describe property)
bandaides, and other items of evidence of the crime of abduction and murder.
and to produce the property, if it be found, before the

General District Court

(Designation of Court)

On the basis of the sworn statement(s) of Investigator Roger W. Fox
the undersigned has found probable cause to believe the search should be made in relation to the
offense (s) of Abduction and murder (2)

Issued at 7:00 p.m., December 17, 19 79.

W.E. Dowell
W.E. Dowell

(Signature of Issuing Officer)

Magistrate

(Title of Issuing Officer)

- (1) Insert designation of officer, e.g., the Sheriff of Accomack County, or any Policeman of Alexandria City.
- (2) Give a brief description of the offense in relation to which the search is to be made, e.g., the murder of John Doe; possession of narcotics.

served 12-17-79 7:20 PM

RW Fox

Affidavit for Search Warrant

(Rule 3A:27)

State of Virginia
County (City) of Warren

Before me, the undersigned, this day came Roger W. Fox

(Name of affiant)

who, after being duly sworn, made oath that:

(1) He has reason to believe that on the premises known as 1967 Plymouth 4 door hardtop, green
with black top, License FPE-497 in the county (city) of Warren
there is now being concealed certain property, namely A small caliber hand gun

(2) He bases his belief that such property can be found on those premises on the following facts:

(1) Suspect has admitted to the abduction of Hope Atkins to four (4) inmates.

(2) Suspect was arrested on December 8, 1979 on a warrant charging abduction on December 7, 1979.

(3) Suspect admitted to Officer Krieger that he was at the place of the crime at about the

* (3) (a) He has personal knowledge of the facts set forth in paragraph (2). SEE PLAIN SHEET ATTACHED.

or

* (3) (b) He was advised of the facts set forth in paragraph (2) by an informer. This informer's credibility or the reliability of the information may be adjudged by the following facts: The four (4) inmates all had access to suspect at different times and all people who relayed information are willing to testify in court.

(4) (a) The offense in relation to which the search is to be made is: Murder, Abduction, possession of firearm by convicted felon and use of firearm in the commission of a felony.

(4) (b) The grounds for search and seizure are established by the following facts:**

(1) Weapon has not been found.

(2) Place to be searched is 1967 Plymouth 4 door hardtop, License Number FPE-497.

* (5) (a) He has personal knowledge of the facts set forth in paragraph (4).

or

* (5) (b) He was advised of the facts set forth in paragraph (4) by an informer. This informer's credibility or the reliability may be adjudged by the following facts:

All of the above are willing to testify in court.

R.W. Fox
(Signature of Affiant)

IMV
(Official Title, if any)

Subscribed and sworn to before me on

December 17, 1979
W.E. Dowell magistrate
(Signature and Title)

*If subparagraph (a) is applicable, strike out subparagraph (b). If subparagraph (b) is applicable, strike out subparagraph (a) and set forth the relevant facts in the space provided in subparagraph (b). The informer need not be identified.

**Give reasons why the property should be searched for and seized. If the property to be searched for is contraband, a description of the property will suffice. If the property to be searched for was an instrumentality of a crime or was stolen or embezzled, set forth facts showing probable cause to believe that the property was an instrumentality of a crime or was stolen or embezzled. If the property to be searched for is property that was used or is being used in committing a crime, set forth facts showing probable cause to believe the property was used or is being used to commit a crime. If the property to be searched for is property constituting evidence of a crime or evidence, that a particular person committed a crime set forth facts showing probable cause to believe that seizure of the property will aid in a particular apprehension or conviction

LIST OF PROPERTY SEIZED

(19.I-87-I, Code of Virginia, as amended)

DESCRIPTION OF PROPERTY

ITEM #

ONE	(1) ERMA-WERKE Mod. KGP-68A blue steel kal. 7.65/.32 Serial # 109279 made IN Germany Automatic.
TWO	(1) BIK leather holster # 44746
THREE	(1) SPARE MAGAZINE for automatic pistol
FOUR	(22) .32 cal. cartridges inside cardboard box
FIVE	(1) BLE SHAVING CASE
SIX	(1) Plastic bag for Derby SANITORIZED shorts
SEVEN	(7) boxes of .22 cal long rifle hollowpoint Federal Hi-Power Ammunition
EIGHT	(1) JOHNSON-JOHNSON Bandaid box with blood ON the box.
NINE	(1) TAN Chamois with UNKNOWN type STAINS
TEN	(1) .22 cal. Short BLANK cartridges inside box
ELEVEN	(1) Thelson Starter Pistol
TWELVE	(1) Thelson Alarm pistol box
THIRTEEN	(1) Wht men's T-Shirt found inside fishing tackle box IN TRUNK of car

(Use other side for additional listing)

I, Paul J. Krieger, certify that the above
property was seized after execution of a search warrant at FRONT ROYAL
FIRE STATION
ON COMMERCE AVE on DECEMBER 17, 1979.
(Date) (Location)

Patrolman P. J. Krieger
(Title)

Subscribed and sworn before me Edward B. McPherson
a Notary Public in and for the (County) (City) of Warren
this 18th day of December, 1979.

Edward B. McPherson
NOTARY PUBLIC

My Commission expires July 5, 1983

Affidavit for Search Warrant

(Rule 3A:27)

State of Virginia
County ~~(City)~~ of Warren

Before me, the undersigned, this day came Roger W. Fox

(Name of affiant)

who, after being duly sworn, made oath that:

(1) He has reason to believe that on the premises known as 1967 Plymouth 4 dr HT.
Va. Lic/ FPE-497 in the county ~~(city)~~ of Warren
there is now being concealed certain property, namely 1- Hope Rogers Atkins and personal effects of
Hope Rogers Atkins.

(2) He bases his belief that such property can be found on those premises on the following facts:
On the morning of the abduction a car fitting Drumhellers car was seen leaving the area of
the crime of Abduction that occurred at Eddie's Laundromat on 12-07-79 and that on Tuesday
12-04-79 he shook a dildo at 2 women on Rt. 522. Also that Drumheller is known for unjust
sexual acts.

•(3) (a) He has personal knowledge of the facts set forth in paragraph (2).

or

•(3) (b) He was advised of the facts set forth in paragraph (2) by an informer. This informer's credibility
or the reliability of the information may be adjudged by the following facts: Eyewitness, and personal
observation of past acts seen by 2 other witnesses.

(4) (a) The offense in relation to which the search is to be made is: Abduction.

(4) (b) The grounds for search and seizure are established by the following facts:**

1) Suspects vehicle was seen leaving the area of crime 12-07-79.

2) Suspect shook a dildo at 2 other women 12-04-79.

3) Suspect is known for certain unjust sexual acts.

•(5) (a) He has personal knowledge of the facts set forth in paragraph (4).

or

•(5) (b) He was advised of the facts set forth in paragraph (4) by an informer. This informer's credibility
or the reliability may be adjudged by the following facts: Eyewitnesses that say the car that left the
scene is the same type and make, also the same color as the suspects vehicle.

Roger W. Fox

(Signature of Affiant)

Roger W. Fox
Investigator

(Official Title, if any)

Subscribed and sworn to before me on

December 8, 1979

W.E. Dowell magistrate
(Signature and Title)

*If subparagraph (a) is applicable, strike out subparagraph (b). If subparagraph (b) is applicable, strike out subparagraph (a) and set forth the relevant facts in the space provided in subparagraph (b). The informer need not be identified.

**Give reasons why the property should be searched for and seized. If the property to be searched for is contraband, a description of the property will suffice. If the property to be searched for was an instrumentality of a crime or was stolen or embezzled, set forth facts showing probable cause to believe that the property was an instrumentality of a crime or was stolen or embezzled. If the property to be searched for is property that was used or is being used in committing a crime, set forth facts showing probable cause to believe the property was used or is being used to commit a crime. If the property to be searched for is property constituting evidence of a crime or evidence, that a particular person committed a crime set forth facts showing probable cause

Affidavit for Search Warrant

(Rule 3A:27)

State of Virginia
County (City) of Warren

Before me, the undersigned, this day came Roger W. Fox

(Name of affiant)

who, after being duly sworn, made oath that:

(1) He has reason to believe that on the premises known as 1967 Plymouth 4 door hardtop, green with black top, License FPE-497 in the county (city) of Warren there is now being concealed certain property, namely A small caliber hand gun

(2) He bases his belief that such property can be found on those premises on the following facts:
(1) Suspect has admitted to the abduction of Hope Atkins to four (4) inmates.

(2) Suspect was arrested on December 8, 1979 on a warrant charging abduction on December 7, 1979.

(3) Suspect admitted to Officer Krieger that he was at the place of the crime at about the

* (3) (a) He has personal knowledge of the facts set forth in paragraph (2). SEE PLAIN SHEET ATTACHED.

or

* (3) (b) He was advised of the facts set forth in paragraph (2) by an informer. This informer's credibility or the reliability of the information may be adjudged by the following facts: The four (4) inmates all had access to suspect at different times and all people who relayed information are willing to testify in court.

(4) (a) The offense in relation to which the search is to be made is: Murder, Abduction, possession of firearm by convicted felon and use of firearm in the commission of a felony.

(4) (b) The grounds for search and seizure are established by the following facts:**

(1) Weapon has not been found.

(2) Place to be searched is 1967 Plymouth 4 door hardtop, License Number FPE-497.

* (5) (a) He has personal knowledge of the facts set forth in paragraph (4).

or

* (5) (b) He was advised of the facts set forth in paragraph (4) by an informer. This informer's credibility or the reliability may be adjudged by the following facts:

All of the above are willing to testify in court.

R. W. Fox

(Signature of Affiant)

I. W. J.

(Official Title, if any)

Subscribed and sworn to before me on

December 17, 1979

W. E. Powell, magistrate

(Signature and Title)

* If subparagraph (a) is applicable, strike out subparagraph (b). If subparagraph (b) is applicable, strike out subparagraph (a) and set forth the relevant facts in the space provided in subparagraph (b). The informer need not be identified.

** Give reasons why the property should be searched for and seized. If the property to be searched for is contraband, a description of the property will suffice. If the property to be searched for was an instrumentality of a crime or was stolen or embezzled, set forth facts showing probable cause to believe that the property was an instrumentality of a crime or was stolen or embezzled. If the property to be searched for is property that was used or is being used in committing a crime, set forth facts showing probable cause to believe the property was used or is being used to commit a crime. If the property to be searched for is property constituting evidence of a crime or evidence, that a particular person committed a crime set forth facts showing probable cause to believe that seizure of the property will aid in a particular apprehension or conviction.

Search Warrant

(Rule 3A.27)

To Roger W. Fox, Investigator (1) or
any other Authorized Officer:

You are hereby commanded in the name of the Commonwealth forthwith to search
1967 Plymouth 4-door hardtop, green in color with black top. VA. License FPE-497
(Place to be searched)

for certain concealed property, namely Small caliber handgun
(Describe property)

and to produce the property, if it be found, before the

General District Court

(Designation of Court)

On the basis of the sworn statement(s) of Roger W. Fox, Investigator

the undersigned has found probable cause to believe the search should be made in relation to the
offense (s) of Murder, Abduction, Possession of Firearm by a felon, and use of firearm (2)
in the commission of a felony.

Issued at 5:00 P.M. m., December 17, 1979.

W. E. Dowell
W. E. Dowell (Signature of Issuing Officer)

Magistrate
(Title of Issuing Officer)

- (1) Insert designation of officer, e.g., the Sheriff of Accomack County, or any Policeman of Alexandria City.
(2) Give a brief description of the offense in relation to which the search is to be made, e.g., the murder of John Doe; possession of narcotics.

Warrant Executed on December 17, 1979 AT 1730 hrs by
LT. Farrell & P.J. Krieger

P.J. Krieger

AFFADAVIT FOR SEARCH WARRANT
QUESTION No. 2.

same time of the crime.

(3) Victim was killed by a small caliber weapon.

(4) Suspect's wife says suspect has another hand gun which has not been found yet.

Search Warrant

(Rule 3A:27)

To Roger W.Fox, Investigator (1) or
any other Authorized Officer:

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

Apartment 10, Riverside Motor Court

(Place to be searched)

for certain concealed property, namely Blood stained clothing, pornography, phallus, symbols,

(Describe property)

small caliber weapon and ammunition

and to produce the property, if it be found, before the

General District Court

(Designation of Court)

On the basis of the sworn statement(s) of Roger W.Fox

the undersigned has found probable cause to believe the search should be made in relation to the

offense (s) of Murder and Abduction

(2)

Issued at 4:25 P.M. m., December 17, 19 79.

W.E. Dowell
W.E. Dowell (Signature of Issuing Officer)

magistrate
Magistrate (Title of Issuing Officer)

- (1) Insert designation of officer, e.g., the Sheriff of Accomack County, or any Policeman of Alexandria City.
- (2) Give a brief description of the offense in relation to which the search is to be made, e.g., the murder of John Doe; possession of narcotics.

Roger W. Fox

(Name of affiant)

who, after being duly sworn, made oath that:

(1) He has reason to believe that on the premises known as

Warren

clothing containing blood stains, pornography,

there is now being concealed certain property, namely

(12) He bases his belief that such property can be found on those premises on the following facts:

(2) Suspect was arrested on December 8, 1979 on warrant charging abduction on December 7, 1979.

(3) Suspect admitted to Mr. Kraiger that he was at place of abduction at about the time of the abduction. SEE PLAIN PAPER ATTACHED....

(3) (a) He has personal knowledge of the facts set forth in paragraph (2).

or

(3) (b) He was advised of the facts set forth in paragraph (2) by an informer. This informer's credibility or the reliability of the information may be adjudged by the following facts: The four (4) inmates all had

access to suspect at different times and all people who relayed information are willing to testify in court.

(4) (a) The offense in relation to which the search is to be made is: Murder, Abduction, Possession of

firearm by convicted felon and use of firearm in commission of murder and abduction.

(4) (b) The grounds for search and seizure are established by the following facts: (1) Weapon has not

been found. (2) Place to be searched is the home of the suspect where he resided on December 7, 1979 and had the opportunity to return and was there on December 8, 1979 at the time of his

arrest. The bullets have been found, and the gun is needed to determine if it was fired, and will help in the conviction of the suspect.

(5) (a) He has personal knowledge of the facts set forth in paragraph (4).

or

(5) (b) He was advised of the facts set forth in paragraph (4) by an informer. This informer's credibility or the reliability may be adjudged by the following facts: All of the above are willing to testify in court.

(Signature of Affiant)

(Official Title, if any)

Subscribed and sworn to before me on

19

(Signature and Title)

"If subparagraph (a) is applicable, strike out subparagraph (b). If subparagraph (b) is applicable, strike out subparagraph (a) and set forth the relevant facts in the space provided in subparagraph (b). The informer need not be identified. *Give reasons why the property should be searched for and seized. If the property to be searched for is contraband, a description of the property will suffice. If the property to be searched for was an instrumentality of a crime or was stolen or embezzled, set forth facts showing probable cause to believe that the property was an instrumentality of a crime or was stolen or embezzled. If the property to be searched for is property that was used or is being used in committing a crime, set forth facts showing probable cause to believe the property was used or is being used to commit a crime. If the property to be searched for is property constituting evidence of a crime or evidence, that a particular person committed a crime set forth facts showing probable cause to believe that seizure of the property will aid in a particular apprehension or conviction.

My commission expires

(NOTARY PUBLIC)

5/18/83

AFFADAVIT FOR SEARCH WARRANT.

Page # 2

QUESTION No. 2.

- (4) Prior to arrest, suspect said, "I will tell you what you want to know if you let me talk to my uncle," after being asked by police officers where the victim of the abduction was.
- (5) Body of Hope Atkins (Victim) was found December 14, 1979 at about 10:35 A.M. in Warren County.
- (6) Hope Atkins sustained small caliber gunshot wounds which was cause of death.
- (7) Other firearms were found in suspect's home.
- (8) Suspect has admitted he has more pornography material.
- (9) Suspect has previously been convicted of a felony.
- (10) Suspect was seen flashing a phallus symbol on December 4, 1979.
- (11) Police have recovered much pornography material from another location that was stored by suspect.
- (12) Suspect's wife told police officers that suspect has another handgun which has not been recovered.

Search Warrant

(Rule 3A.27)

To Sgt. Insy. Hal. Meredith III (1) or
any other Authorized Officer:

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

House - 8 miles from 522 N to drive way a two story
stone house with curtilage (Place to be searched)

for certain concealed property, namely Hand gun - rifle
(Describe property)

and to produce the property, if it be found, before the

26 General District Court
(Designation of Court)

On the basis of the sworn statement(s) of Sgt. Insy. Hal. Meredith III

the undersigned has found probable cause to believe the search should be made in relation to the
offense (s) of Abduction and murder (2)

Issued at 5:40 P.m. Dec 28 1979

Robert L. Trust
(Signature of Issuing Officer)

Magistrate
(Title of Issuing Officer)

- (1) Insert designation of officer, e.g., the Sheriff of Accomack County, or any Policeman of Alexandria City.
- (2) Give a brief description of the offense in relation to which the search is to be made, e.g., the murder of John Doe; possession of narcotics.

(19.1-87-1, Code of Virginia, as amended)

ITEM

[illegible]

I, Det. Anr. W. L. Meredith III, certify that the above

Andrew Jackson Rodeffer on 12-28-79 6:07PM.
(Date)

Deputy Sheriff, Warren Co. Sheriff's Dept
(Title)

Subscribed and sworn before me, Elise L. Hest.

a Notary Public in and for the (County) (City) of Warren.

this 28 day of Dec, 19 79.

John L. Hart Magistrate
NOTARY PUBLIC

My Commission expires Dec 31, 1979

* * *

1 MR. POND: May we call Deputy Fox first.

2 MR. CRUMP: He is an investigator.

3 MR. POND: Investigator.

4 WHEREUPON

5 INV. ROGER FOX

6 was called as a witness, and having been previously sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINTION

9 BY MR. POND:

10 Q. State your name, please.

11 A. Roger W. Fox.

12 Q. And what is your occupation, Mr. Fox?

13 A. Investigator for the Town of Front Royal Police
14 Department.

15 Q. How long have you been employed by the Police
16 Department, sir?

17 A. Now, it has been two years and approximately
18 two months.

19 Q. How long have you been an Investigator?

20 A. Since November of '79.

21 Q. In December of 1979, were you asked to investigate
22 the disappearance of a lady named Hope Rogers Atkins?

23 A. I was a part of the investigation. Yes, sir.

24 Q. What day did that occur?

1 A. December the 7th, 1979.

2 Q. Pursuant to your investigation, did you have an
3 occasion to swear out an affidavit for a search warrant on the
4 8th of December?

5 A. Yes, sir.

6 Q. And do you have a copy of it?

7 A. Yes. I do.

8 Q. Specifically, Investigator Fox, an affidavit, which
9 I am going to ask to be marked as Defendant's Exhibit I...

10 MR. POND: Your Honor, may I remove these from
11 the file?

12 THE COURT: (Nodding consent).

13 BY MR. POND:

14 Q. One search warrant for Riverside Motor Court,
15 Apartment 10: did you sign that affidavit?

16 A. Yes, sir. I did.

17 Q. And one search warrant dated December the 8th, for
18 a 1972 Plymouth.

19 A. 1967...

20 Q. 1967 Plymouth. Excuse me.

21 A. Yes, sir.

22 MR. POND: Your Honor, I move that these be entered
23 as Defendant's Exhibit 1...

24 THE COURT: Without objection, so admitted.

1 MR. POND: ...I and 2.

2 (WHEREUPON, affidavit and search warrant for Riverside Motor
3 Court, Apartment 10, and affidavit and search warrant for
4 1967 Plymouth are received and admitted into evidence as
5 Defendant's Exhibit #1 and #2, respectively).

6 BY MR. POND:

7 Q. Mr. Fox, what led you to believe that there may be
8 personal effects of Mrs. Atkins at Riverside Motor Court?

9 A. On the morning of the abduction...alleged abduction,
10 December the 7th, a Richard Andrews, who lives at 131 Hillidge
11 Street, which is right beside the laundromat, said he was
12 coming out to work and he heard what sounded like two muffled
13 screams coming from the direction of the laundromat. He
14 looked toward the laundromat and saw a vehicle, green in
15 color, with a dark top, possibly a '67 or a '69 Chrysler
16 product, leaving the parking lot of the laundromat.

17 It turned south on Commerce Avenue and proceeded
18 south on Commerce Avenue. And then, I received information
19 from an unknown...

20 Q. Excuse me one second. Is it a fact that some
21 articles belonging to Mrs. Atkins were found in the laundromat
22 later that day?

23 A. There were articles of clothing that she was doing
24 her laundry and still in the wash tubs at the laundromat.

1 And her purse and her vehicle.

2 Q. Okay. And, then you started to say something
3 else about an unknown source?

4 A. There was...I received a call on December the...
5 I am sorry. Received a call from an unknown female on
6 December the 4th...

7 Q. You took that phone call yourself?

8 A. Yes, sir.

9 Q. All right, sir.

10 A. That on December the 4th, a subject drove by
11 them on Route 522, near the Clarke County-Warren County
12 line and shook a dildo out the window at them.

13 Q. Now, by "dildo", you mean a phallic symbol of
14 some sort?

15 A. Yes.

16 Q. She said a subject went by?

17 A. Yes. She gave us the license number and
18 description of the car and so forth.

19 Q. What was the description of the car?

20 A. It was a green Plymouth with a dark top, and gave
21 us the license number.

22 Q. What was the license number?

23 A. I have to look. FPE 497.

24 Q. Would you repeat it?

- 1 A. FPE 497.
- 2 Q. And I assume you traced that number?
- 3 A. Yes.
- 4 Q. Who was that car titled to?
- 5 A. Thomas F. Drumheller.
- 6 Q. Did the unknown lady give you a description of the
- 7 person who was in the car?
- 8 A. No, sir. They said that somebody went by in a
- 9 green and black car and shook a phallic symbol at them.
- 10 Q. Said it was a man?
- 11 A. Yes, sir.
- 12 Q. And had no description...
- 13 A. No, sir.
- 14 Q. ...of the man who did it?
- 15 A. No, sir.
- 16 Q. Now, who were these witnesses that told you about
- 17 this?
- 18 A. The lady?
- 19 Q. Yes. On the 4th.
- 20 A. They refused to give their names. Just the
- 21 information.
- 22 Q. You do not know that witness' name?
- 23 A. No, sir. I do not.
- 24 Q. Has this lady ever given you any information

1 regarding any criminal cases in the past?

2 A. No, sir. I don't even know her.

3 Q. You do not know her?

4 A. No. She would not give me her name.

5 Q. On your affidavit for the search warrant, Number
6 Three...do you have that in front of you?

7 A. Yes. I do..

8 Q. You testified under oath that you were advised
9 of the facts set forth in Paragraph Two by an informer. The
10 informer's credibility or the reliability of the information
11 may be adjudged by the following facts: Eyewitness from
12 personal observation of past acts seen by two of the witnesses.
13 All right, sir, now who were these two witnesses?

14 A. Richard Andrews would be one. And the other, I
15 don't know their name.

16 Q. You are...and you do not know their reliability or
17 their credibility: is that correct?

18 A. No. I don't know their name.

19 Q. In Paragraph Four, Section B, you stated under
20 oath that the suspect was known for certain unjust sexual
21 acts. Now, is this something to your own personal knowledge,
22 that you knew of Mr. Drumheller?

23 A. This is information I gathered from Sergeant
24 Tennett from the Sheriff's Department.

1 Q. From Sergeant Tennett?

2 A. Yes.

3 Q. What were the unjust sex acts that were...

4 A. According to Sergeant Tennett...beg your pardon?

5 Q. What were they?

6 A. According to Sergeant Tennett, he was known for
7 fondling young girls.

8 Q. To your knowledge, has he ever been arrested for
9 that?

10 A. Not to my knowledge. No.

11 Q. To your knowledge, was he arrested for shaking a
12 phallic symbol at the ladies on the 4th of December?

13 A. No.

14 Q. Was that pursued at all on the 4th?

15 A. No.

16 Q. To your knowledge, has he ever been convicted of
17 any kind of a sexual act or illegal sexual act, to your
18 knowledge?

19 A. Not to my knowledge. No.

20 Q. Mr. Fox, did you later, on the night of December
21 the 8th, have an occasion to sign an affidavit to...for a
22 second warrant for Andy Rodefer's house at Riverton?

23 A. Yes.

24 ~~MR. CRUMP: Objection, Your Honor. That is not an~~

* * *

1 A. He was in the vehicle outside.

2 Q. He was in custody at that time?

3 A. Yes. He was.

4 Q. Do you have in your records what time you served
5 the first search warrant we are talking about: Exhibit 1?

6 A. Yes. This search warrant was served by myself
7 on December the 8th, 1979, at 6:50 p.m.

8 MR. POND: That is all, Your Honor.

9 CROSS EXAMINATION

10 BY MR. CRUMP:

11 Q. Mr. Fox, do you have the inventory you filed pursuant
12 to those two warrants?

13 A. This is the vehicle. Nothing was seized at the
14 Roderfer house.

15 Q. Not concerned with that.

16 MR. CRUMP: I would like to have a minute, please,
17 Your Honor.

18

19

20 BY MR. CRUMP:

21 Q. Now, which of these is the vehicle and which is
22 the residence?

23 A. This is the residence. This is the vehicle.

24 Q. This is the vehicle?

1 MR. CRUMP: Please the Court. To narrow the issue
2 here, there is no evidence that was seized from the vehicle
3 by this search warrant.

4 MR. ALLEN: Are you saying that that search warrant
5 is invalid?

6 THE COURT: Are you saying there is nothing to
7 suppress?

8 MR. CRUMP: I am saying as far as the search of
9 the vehicle, there is nothing to suppress. We haven't found
10 any evidence. As far as the...

11 THE COURT: That satisfy you, Mr. Pond?

12 MR. ALLEN: No, sir.

13 MR. CRUMP: As far as the premises...

14 MR. ALLEN: Unless he is conceding that the search
15 warrant is invalid. If he is willing to concede that point,
16 that will satisfy us.

17 MR. CRUMP: No, sir. I won't concede that. I am
18 saying it is moot.

19 THE COURT: What difference does it make if it is
20 invalid if there is nothing to be introduced into evidence?

21 MR. ALLEN: Well, at this particular point, the
22 way the evidence stands now, it doesn't make any difference.
23 But with the other evidence we plan to introduce today, we
24 will show that as a result of the search warrant, the

1 defendant was arrested on statements made as a result of
2 the execution of an invalid statement...search warrant. And
3 if those statements...

4 THE COURT: He was not under arrest prior to this
5 time?

6 MR. ALLEN: No, sir. We will let the evidence
7 develop itself, Judge, and I think it will become more clear.

8 MR. CRUMP: Please the Court. As I said, there is
9 no evidence that we are going to present under the search
10 of the automobile. There is one item of evidence we will
11 present, the search of the premises, and that is item number
12 three, a Model 939 .22 revolver. None of the items, like
13 I said, have evidentiary value.

14 BY MR. CRUMP:

15 Q. Officer Fox, this report you received from an
16 unknown woman, you said that was December 4th that you
17 received this report?

18 A. No, sir. That was the date of the incident. I
19 received it on December the 8th.

20 Q. December the 8th. This was after the abduction?

21 A. Yes.

22 Q. The abduction took place on December...

23 A. December the 7th.

24 Q. December 7th.

1 MR. CRUMP: No further questions.

2 MR. ALLEN: That is all we have of this witness,
3 Your Honor, at the present time.

4 THE COURT: You want to excuse the witness?

5 MR. POND: No, sir. We will ask that he remain
6 outside.

7 THE COURT: We will ask you to remain outside,
8 please.

9 This Court will now recess for about five minutes.

10 (RECESS)

11 MR. ALLEN: Call Investigator Sturdivant.

12 WHEREUPON

13 INV. CHARLES L. STURDIVANT

14 was called as a witness, and having been previously sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ALLEN:

18 Q. State your name, sir.

19 A. Charles L. Sturdivant.

20 Q. And where are you employed?

21 A. I am a Sergeant for the Police Department, Town of
22 Front Royal.

23 Q. Were you so employed on the evening of December
24 the 8th, 1979?

1 A. Yes, sir. I was.

2 Q. Directing your attention to the evening of December
3 the 8th, 1979, did you accompany Officer Fox to Cabin 10 in
4 Riverside?

5 A. Yes, sir. I did.

6 Q. Was anybody else with you?

7 A. Sheriff Armentrout. I believe Bo Meredith, Mike
8 Tennett of the Sheriff's Department.

9 Q. And what was the purpose of your visit there?

10 A. To serve a search warrant on Thomas Drumheller's
11 apartment.

12 Q. Did you see the search warrant?

13 A. I don't recall if I seen it.

14 Q. So, you were there to aid in the search: is that
15 correct?

16 A. Yes, sir.

17 Q. While you were, did you serve the search warrant?

18 A. Investigator Fox did.

19 Q. All right. And what did you do pursuant to that?

20 A. I was there...Tommy Drumheller was seated inside
21 the house. His wife invited us in. Sheriff Armentrout
22 advised Mr. Drumheller of his...

23 Q. Just a minute, Officer. You said you were invited
24 in or that you were there to execute a search warrant?

1 A. We were there to execute a search warrant.

2 Q. Did you execute the search warrant prior to the
3 time you were being invited in?

4 A. Investigator Fox served the search warrant after
5 we were invited in. He served it on Mr. Drumheller.

6 Q. Okay. So you were there under the search warrant: is
7 that correct?

8 A. Yes, sir.

9 Q. Did you...what, if anything, did you observe while
10 you were there?

11 A. Mr. and Mrs. Drumheller and their child.

12 Q. Did you overhear any conversations?

13 A. Yes, sir.

14 Q. Did you overhear any conversations with Mr.
15 Drumheller?

16 A. Yes, sir.

17 Q. Officer, isn't it a fact that you are the one who
18 placed Mr. Drumheller under arrest?

19 A. Yes, sir.

20 Q. And what facts led you to place him under arrest?

21 A. The facts that were on the search warrant, plus
22 the statements that Mr. Drumheller made.

23 Q. What statements were those?

24 A. While Mr. Drumheller was in a room talking to his

1 uncle, Sheriff Armentrout and myself were in the kitchen,
2 which is right off the room that Mr. Drumheller was in. Mr.
3 Drumheller's uncle asked Tommy where the girl was at. Tommy
4 told her...told the uncle that he was afraid she was dead.
5 Then Tommy asked the uncle: "What will they do to me if she
6 is dead?" The uncle said: "They will probably electrocute
7 your ass." Statements to that effect.

8 When I came back out and asked Tommy: "For God's
9 sake tell us where the girl is at." Tommy...

10 THE COURT: Excuse me. When you say "Tommy", whom
11 do you mean?

12 THE WITNESS: Thomas Drumheller.

13 MR. ALLEN: The defendant. On a first name basis
14 with the Officer.

15 BY MR. ALLEN:

16 Q. Go ahead.

17 A. Okay. When I came back out and asked Mr.
18 Drumheller: "For God's sake, tell us where the girl is at",
19 at this time, I was trying to explain to him that she could
20 still be alive. Tommy said: "If I tell you what I done to
21 her, you will probably place me under arrest."

22 And also the fact that before the uncle was sent
23 after, Tommy made the statement that if you will send out
24 to Riverside and get my uncle, we will...or I will tell you

1 what you want to know.

2 Q. After these statements were made, what did you do?

3 A. After Mr. Drumheller stated that: "If I tell you,
4 you will be mad at me and place me under arrest.", I said,
5 "Tommy, I am telling you that you are under arrest for the
6 abduction of Hope Atkins."

7 Q. Did you place him under arrest at that time?

8 A. Yes, sir.

9 Q. And what did you...after...when did you obtain an
10 arrest warrant?

11 A. The warrant was obtained probably an hour or so
12 later by Investigator Fox.

13 Q. And when was the arrest warrant served on the
14 defendant?

15 A. I believe the arrest warrant was served when Mr.
16 Drumheller was taken to the station.

17 Q. How long after this...how long after the initial
18 search was that?

19 A. This would have probably been the search...let's
20 see, it would have probably been somewhere in the neighborhood
21 of four hours.

22 Q. It is a fact that you took Mr. Drumheller for a
23 ride after you placed him under arrest: is that correct?

24 A. Mr. Drumheller was taken...yes, sir. He went with

* * *

1 A. Yes, sir.

2 Q. So, it took you a half an hour to search Rodefer's
3 residence and another fifteen minutes to get there. So, we
4 are talking about forty-five minutes to an hour after the
5 Rodefer warrant was executed: is that correct?

6 A. Could be. Yes, sir.

7 Q. That would be around twelve midnight?

8 A. Somewhere in the neighborhood. I don't recall
9 the exact time.

10 MR. ALLEN: That is all.

11 CROSS EXAMINATION

12 BY MR. CRUMP:

13 Q. Sergeant Sturdivant, you said the door at the
14 Drumheller residence was opened by Mrs. Drumheller: is that
15 correct?

16 A. Yes, sir. She invited us in.

17 Q. Did you demand entrance?

18 A. No, sir. We were there, you know, to search. I
19 believe a couple of us went up and knocked on the door and...

20 Q. Did you tell her: "We are here with a search
21 warrant"?

22 A. I don't recall that.

23 Q. But you were, at that point, admitted. And, you
24 did execute the search warrant: is that correct?

1 A. Yes, sir. Investigator Fox did.

2 Q. Nothing, in the course of that search, was found
3 directly related to Hope Atkins: is that correct?

4 A. No, sir. Not to my knowledge.

5 Q. Now, at what point did Mr. Rodefer...Mr. Drumheller
6 say to get me my uncle and I will tell you what you want to know.

7 A. This would have been after the search warrant, I
8 guess, had been served on him.

9 Q. Before the search began, after or when?

10 A. I believe it was before the search began.

11 Q. Was Mr. Drumheller under arrest at that point?

12 A. No, sir.

13 Q. Now, did somebody go get the uncle?

14 A. Yes, sir. There was a deputy sent after the uncle.

15 Q. Was there any questioning conducted of the
16 defendant while you were waiting for the uncle?

17 A. He was asked questions, yes, sir, about...

18 Q. Did he say anything?

19 A. He stated that he would take us and show us what
20 we wanted as soon as the uncle got there.

21 Q. All right. The uncle came?

22 A. Yes, sir. The uncle did come.

23 Q. All right. And they went to another room?

24 A. Yes, sir. Tommy wanted to talk to the uncle by

1 hisself. Sheriff Armentrout and I went into the kitchen,
2 which is approximately six feet from where they were sitting.
3 There is an open door way there with no door on it.

4 Q. You weren't in that room?

5 A. No, sir. Not in the same room.

6 Q. He wasn't under arrest at that point?

7 A. No, sir.

8 Q. All right. And you overheard what?

9 A. The uncle said...kept saying: "Tommy, for God's
10 sake, tell them where the girl is at." Tommy kept saying:
11 "I am afraid she is dead." And the uncle...or Tommy says:
12 "Well, what will they do to me if she is dead?" And he
13 said: "They will probably exectrocute your ass but don't
14 worry about yourself. Worry about the girl."

15 Q. All right. And then, what happened after that?

16 A. Then, Tommy was, of course, placed under arrest
17 after I spoke to him and he said: "You will arrest me if I
18 tell you what I done." We were under the assumption that
19 Tommy would, like he said, lead us to the girl if we went
20 and got the uncle...

21 Q. He was placed under arrest based on the statements
22 which were overheard in the other room: is that correct?

23 A. Yes, sir. The statements that we overheard.

24 Q. Was he read his Miranda rights at that point?

1 A. Sheriff Armentrout had advised him of his Miranda
2 rights.

3 Q. At what point?

4 A. This was somewhere after we had first entered the
5 room. Later, he was taken to the car where Captain Cullers
6 did advise him of his Miranda warnings again.

7 Q. Are you saying that the Sheriff advised him of
8 his Miranda rights on your first entering with a search
9 warrant: is that correct?

10 A. This would have been right after the search
11 warrant was served and Tommy was, you know, saying...he
12 wanted to know what was going on. And, of course, he was
13 advised...

14 Q. Had he said anything up to that point?

15 A. Not that I recall. No, sir.

16 Q. Had he said: "Get my uncle and I'll show you
17 what you want" at that point?

18 A. I think that was after he was advised of his
19 rights.

20 Q. He said that after he was advised?

21 A. Yes, sir.

22 MR. CRUMP: No further questions.
23
24

1 THE COURT: When you went to the Riverside Motor
2 Court, is that where Mr. Drumheller lived?

3 THE WITNESS: Yes, sir. It was room, or Apartment
4 10.

5 THE COURT: He had an apartment in the motor court?

6 THE WITNESS: Yes, sir.

7 THE COURT: And his wife lived there?

8 THE WITNESS: Yes, sir. These are small buildings.
9 They are separated.

10 THE COURT: Now, where was he when you entered?

11 THE WITNESS: He was on the couch in the front room.

12 THE COURT: He was in the house?

13 THE WITNESS: Yes, sir.

14 THE COURT: Well, the wife came to the door?

15 THE WITNESS: Yes, sir.

16 THE COURT: And you didn't...upon your entry, then,
17 you saw him?

18 THE WITNESS: Yes, sir.

19 THE COURT: That is all.

20 MR. ALLEN: That is all the evidence we wish to
21 present, Your Honor, at this time.

22 THE COURT: May we excuse this witness?

23 MR. CRUMP: Yes, Your Honor.

24 MR. ALLEN: We don't have any questions, Your Honor.

1 THE COURT: The witness is excused from further
2 attendance upon the Court.

3 MR. CRUMP: Commonwealth has no evidence, Your
4 Honor.

5 MR. ALLEN: Your Honor, if I may address the Court to
6 ...one issue at a time, the first issue being the validity
7 of the search based on the affidavit of search warrants we
8 have introduced as Exhibit 1. I would point out to the
9 Court that the search warrant...or the affidavit for search
10 warrant in no way comes close, or even approaches the
11 standards set up in Aguilliar versus Texas or in Spinnelle
12 versus United States.

13 What is the basis for the probable cause? Who is
14 the...we have an unknown informant, apparently, in this
15 matter. Unidentified informant. Do we have any affirmative
16 allegations that the the informant spoke with any personal
17 knowledge or do we have anything to back the credibility of
18 the informant? We have nothing on this search warrant that
19 would say that the informant was credible. The Officer
20 testified on direct examination that he didn't know who she
21 was. I am talking about the informant about the...on Number
22 Two, under the credibility section, the fact that eye witnesses
23 and personal observance of past acts of the defendant, + Now
24 those...that was the statement given by the Officer to

1 establish the credibility and reliability of the informant.
2 And we know that mere conclusions are not sufficient with
3 which to base these type of affidavits. They must set forth
4 facts and there are no facts set forth there. None at all.
5 Eye witnesses and personal observations. What personal
6 observations? That is what should have been stated in there
7 and that is what the magistrate had to base his opinion on
8 and once we get to that point, how do we know that the
9 informant was telling the truth, or do we have anything in
10 here to show that the informant was telling the truth. What
11 is the veracity of the informant?

12 I would suggest that there is none. There is
13 nothing on this affidavit to show the veracity of the
14 informant. If the affidavit fails to meet the test of
15 Aguilliar and Spinnelle, and its kindred decisions, then
16 the search warrant must also fail. And if the Court reaches
17 the conclusion that the affidavit is as defective as the
18 defense contends, what then flows from that is that the
19 defendant, this defendant, was arrested on information
20 received during the execution of an invalid search warrant,
21 which we would say, at that point, would make the arrest
22 invalid.

23 Now, Your Honor, the first thing we have to do is
24 reach the validity of the search warrant and the affidavit

1 as it now stands. I cannot find the requirements necessary
2 to uphold this affidavit under the Constitution of the
3 United States, Fourth Amendment and Fifth Amendment privileges,
4 that are granted for, through the Fourteenth Amendment, for
5 that matter. And I would suggest that the Court must rule
6 that this affidavit is not a valid affidavit to be able to
7 sustain a search warrant.

8 MR. CRUMP: May it please the Court. First of all,
9 the standard here is to determine whether or not there is
10 sufficient probable cause in the affidavit for a neutral and
11 detached magistrate to find that, well, the cause exists
12 for the issuance of a search warrant.

13 Now, first of all, we have the fact that a young
14 woman was abducted from a laundromat. We have an eye
15 witness, Richard Andrews, who saw a vehicle matching the
16 description of Mr. Drumheller's automobile leaving the
17 scene of the laundromat at about the time the abduction
18 occurred, heard muffled screams coming from the vehicle.

19 Now, Mr. Andrews is an ordinary citizen. He is
20 not part of what is commonly referred to as the criminal
21 milieu. those people who have...

22 THE COURT: I am sorry. Did the affidavit say
23 that someone heard screams?

24 MR. CRUMP: That was the testimony of the Officer,

1 Your Honor.

2 THE COURT: Well, but did the affidavit say that?
3 It did not.

4 MR. CRUMP: The affidavit said that an eye witness
5 saw the vehicle leaving the scene.

6 THE COURT: But it didn't say...the affidavit
7 didn't say that anyone heard screams.

8 MR. CRUMP: Apparently they didn't put that on the
9 affidavit.

10 Next, we have other corroborating, independent
11 evidence. Going back to the reliability of Mr. Andrews, as
12 I was saying, he is not part of the criminal element of this
13 community. He is an ordinary, reliable citizen, who happened
14 to witness certain events, and as such, the cases are clear
15 that he is not put to the same standards to show how many...
16 how much of his information is the result of any convictions
17 to the Police in the past. The eye witness reports of
18 objective observers are given the essence of reliability by
19 the nature of their objectivity and their neutrality.

20 Now, we also have the corroborating evidence to
21 the effect that a report was received independent of Mr.
22 Andrews' information that a vehicle again matching the
23 description of Mr. Drumheller's car was seen just a few
24 days earlier to this and that the occupant of that vehicle

1 was engaged in some perverse activity, waving a dildo, a
2 sexual devise, at female passerbys.

3 Now, in addition, this informant supplied a license
4 number to the vehicle which turned out to be the vehicle of
5 Thomas Drumheller. Now finally, we have the...

6 THE COURT: Excuse me. That is not in the...I don't
7 have that in the affidavit, that they gave a license number.
8 Is it in the affidavit?

9 MR. CRUMP: The affidavit speaks for itself. I am
10 telling the Court what the Officer's testimony...

11 THE COURT: No. But the attack is upon the
12 affidavit given the...given before the magistrate.

13 MR. CRUMP: Yes.

14 THE COURT: And the question is whether the
15 magistrate could issue on this information...

16 MR. CRUMP: Yes, sir.

17 THE COURT: ...this information under oath could
18 issue a search warrant.

19 MR. CRUMP: All right. If I could proceed.

20 THE COURT: We can't go beyond the search warrant
21 in order to determine that...the affidavit in order to determine
22 that, can we?

23 MR. CRUMP: Well, the affidavit speaks for itself.
24 I am just reciting what the Officer testified to.

1 THE COURT: Well, that would be irrelevant. The
2 affidavit itself is what must rest of itself. In order to
3 determine whether or not the magistrate was authorized to
4 issue the search warrant. He might have told the magistrate
5 something else...

6 MR. CRUMP: That is true.

7 THE COURT: ...but, and it might have been under
8 oath.

9 MR. CRUMP: Yes, sir.

10 THE COURT: But, the facts must be set forth in
11 the affidavit.

12 MR. CRUMP: Yes, sir.

13 THE COURT: So, I think we ought to direct our
14 attention to that.

15 MR. CRUMP: All right, Your Honor.

16 The final item of the affidavit was the police had
17 information in their files to the effect that Mr. Drumheller
18 had been involved in certain, I think the word is unjust
19 sexual practices. Now, you put all these together, Your
20 Honor, and we would submit that there is sufficient probable
21 cause on the face of the affidavit when we are dealing with a
22 situation where there is a missing woman, a woman abducted
23 from an establishment and they are trying to find this person,
24 there is sufficient information based on that to suspect that

1 this vehicle may have been involved in some way with this
2 woman, and there...based on the exigent circumstances, it
3 was sufficient evidence for a magistrate to find probable
4 cause to issue the warrant.

5 Now, again, it is probable cause, Your Honor. We
6 are talking about proof beyond a reasonable doubt or anything.
7 We are conducting a desperate search for a missing woman
8 whose life is in grave danger, and there are...is available
9 what evidence there is. We have reports of a certain vehicle
10 being in the area. Police know where such a vehicle is.
11 They want to look for the woman, and that is exactly what
12 they are doing. And they executed the warrant.

13 Now, next of all, the defendant is alleging that
14 the statements made, if the Court would say...decide that
15 the search warrant is invalid, they are saying that the
16 statements made by the defendant at the motor lodge, whatever
17 it was, apartment, were fruit of the poisonous tree and
18 therefore inadmissible. We would submit, Your Honor, that
19 this is not a fruit of the poisonous tree situation. That,
20 as the officers testified, they were invited in, they executed
21 the search warrant. Nothing was found pursuant to that
22 warrant, in anyway involved with the abduction, murder, of
23 sodomization of Hope Atkins. Nothing at all was found.
24 There was nothing on the basis of that search warrant...there

1 is one item there that pertains to a seperate offense,
2 possession of hand gun by someone who has been convicted of
3 a felony involving a firearm. But that has nothing at all
4 to do with the Hope Atkins case. And, in fact, the hand gun
5 found there was not the murder weapon. It was just another
6 weapon.

7 Now, Mr. Drumheller went...

8 THE COURT: None of the articles found would be
9 admissible in this case?

10 MR. CRUMP: They would be admissible in the case
11 involving the charge, possession of a hand gun by a person
12 who has been previously convicted of a felony involving a
13 firearm. That is one of the cases...counts joined for trial.
14 But it has nothing to do with the murder. Has nothing to
15 do with the abduction. Has nothing do to with the sodomy.

16 THE COURT: And that article was found at the home?

17 MR. CRUMP: That article was found at the home.

18 Yes, sir.

19 Now, finally, we have Mr. Drumheller, not under
20 arrest, going into a seperate room to talk with his uncle,
21 and makes incriminating statements that are overheard by the
22 officers. This is completely independent of the search
23 warrant. Completely independent of anything, and as such,
24 is not fruit of the poisonous tree. It is new evidence

1 volunteered by the defendant. In fact, he went into the
2 other room in an attempt, I suppose, to keep the officers
3 from overhearing, but the officers could hear him. And, as
4 such, it has nothing to do with the search warrant, has nothing
5 to do with any issue of whether or not the search/^{warrant} is valid
6 or invalid. It is independent and it is admissible.

7 So, we would ask, first, that the Court uphold the
8 search warrant, and regardless of what it does with the
9 search warrant, hold that the statements are admissible
10 because they are not subject to the fruit of the poisonous
11 tree doctrine under these special circumstances.

12 THE COURT: Well, what do you say to the contention
13 that the search warrants were invalid? Then the officers
14 were trespassers, had no right to be there, had no right to
15 hear what they heard.

16 MR. CRUMP: Well, Your Honor, first of all, he
17 went into another room. They had been invited in. The
18 defendant went to another room entirely to keep them, I
19 suppose, from hearing, but they could overhear them. They
20 weren't trespassers because whether or not the search
21 warrant was valid or invalid, they had a document that was
22 prima facie valid on its face. So, they had a right to be
23 there. The Court may later decide that the search warrant
24 was valid or invalid. They had right to be there because

1 the document said they could be there. And they had the
2 right to be there to investigate this offense, for an
3 abduction, and they had been invited in. And he went into
4 another room, didn't make the statement as a result of their
5 questioning of him, of their browbeating of him, or them
6 placing him under arrest, a custodial type of interrogation.
7 It was overheard, innocently overheard, by the officers.
8 And they should not be expected to turn deaf ears under such
9 a circumstance, Your Honor. They had a perfect right to hear this
10 information, because the defendant volunteered it. Because
11 he made them aware of it through his own actions. Not
12 through any actions of what...on the part of the police.
13 And, as such, it is perfectly admissible.

14 MR. ALLEN: May it please the Court. Briefly in
15 rebuttal. As to the affidavit and search warrant, we have
16 no facts. All we have are conclusions, Your Honor. No facts.
17 And that is what must be presented to the magistrate. Facts,
18 not conclusions.

19 I would point out to the Court that the information
20 received by the unnamed, unknown people who called the Police
21 Department and talked to Officer Fox related information that
22 was to have occurred on the 4th of December, which was four
23 days prior to the alleged abduction, or to the abduction.

24 Now, does that give probable cause for a search

* * *

1 statements made by the accused. They involved property that
2 was seized.

3 MR. ALLEN: Your Honor, we...I am sure in that
4 particular case of Aguilliar...I think it was some narcotic
5 drugs that was involved, and Spinelli...I have it...I am
6 taking the position at this point, I am willing to submit
7 to the Court memorandum of authority on the question of
8 whether or not the statements are also suppressible, too.

9 THE COURT: Well, I thought you had moved to
10 suppress the statements.

11 MR. ALLEN: Well, we...

12 THE COURT: The only thing you move to suppress
13 now is the revolver, the pistol?

14 MR. ALLEN: We move to suppress the search warrant
15 and the evidence that was received as a result of it.

16 THE COURT: Well, the only evidence that...is the
17 pistol.

18 MR. ALLEN: Well, the statements are also.

19 THE COURT: Well, I didn't know that you...I thought
20 you said didn't move to suppress the statements.

21 MR. ALLEN: We are asking that would...would be
22 evidence, Judge. We would ask that that was evidence that
23 was received as a result of the search.

24 THE COURT: That is the...

1 MR. ALLEN: The statements.

2 THE COURT: ...the prejudicial statement of the
3 accused?

4 MR. ALLEN: Yes, sir.

5 THE COURT: Well, here the search was for the
6 person of Hope Rogers Atkins and her personal effects. Now,
7 this lady that disappeared and the affidavit shows that...
8 I didn't mean to keep you standing...this affidavit shows
9 that a car resembling the car of Mr. Drumheller was seen to
10 leave the vicinity. Although I don't see it in the affidavit,
11 wasn't it early in the morning and nobody around?

12 MR. CRUMP: Yes, sir. That is correct. About six,
13 six-thirty.

14 THE COURT: That doesn't appear in the affidavit.

15 MR. CRUMP: No, sir.

16 THE COURT: Those are facts which would appear
17 from the affidavit, that this lady has disappeared, although
18 they don't say that.

19 MR. CRUMP: Well, they are saying by asking for
20 the body, Your Honor.

21 THE COURT: Oh, yes. On the morning of the
22 abduction, that is the abduction of Hope Rogers Atkins, a
23 car fitting Drumheller's car...I mean the description of
24 Drumheller's car was seen leaving the area of the crime of

1 abduction which occurred at Eddie's Laundromat, and that on
2 Tuesday, he shook a dildo at two women.

3 I think the important part of the affidavit is
4 that a car fitting the description of Drumheller's car was
5 seen leaving the area of the crime of abduction. It leaves
6 much to be desired, this affidavit does leave much to be
7 desired, gentlemen. It should be more specific. There isn't
8 any question of that. But, I think that the magistrate would
9 have the authority to issue the warrant upon the showing in
10 the affidavit that a car fitting the description of
11 Drumheller's car...somebody said something about the license
12 number. That doesn't appear in the affidavit.

13 MR. CRUMP: No, sir. The licence number was
14 supplied by the women who reported the other thing.

15 THE COURT: We haven't any right to consider that.
16 That should be in the affidavit.

17 I think that the magistrate would have the right
18 to issue...would have the duty to issue a search warrant upon
19 showing that an affidavit which showed that Hope Rogers
20 Atkins had disappeared under suspicious circumstances and
21 that she...that a car fitting Drumheller's...the description
22 of Drumheller's car was seen leaving the area of the...where
23 she was last seen. I think that that would give him the
24 right to issue a search warrant to search the automobile for

1 her and her...or her personal effects. And also, the home
2 of the subject.

3 I therefore deny the motion.

4 MR. ALLEN: Note our exception, Your Honor.

5 THE COURT: Exception is noted.

6 Anything further?

7 MR. POND: Your Honor, we also have a motion for
8 a change of venue, but we move that be heard at some later
9 time. We are not prepared to submit affidavits on that
10 motion at this time.

11 MR. CRUMP: No objection.

12 THE COURT: When is the case set for trial?

13 MR. CRUMP: August...

14 MR. ALLEN: End of August, Your Honor, I believe.

15 THE COURT: If there is to be a change of venue,
16 gentlemen, it would take some time to...it should be heard
17 as soon as possible. It would take time to make arrangements.

18 MR. CRUMP: August 27th, 28th, and 29th, Your
19 Honor.

20 THE COURT: Well, that is far enough in advance.
21 When will you be ready?

22 MR. POND: July 17th.

23 MR. CRUMP: No objection.

24 THE COURT: July 17th?

* * *

* * *

1 Q. Could you speak into the microphone, please?

2 A. Edward Fox. I operate a laundromat.

3 Q. All right. Mr. Fox, where is this laundromat
4 located?

5 A. On Second and Hillidge Streets.

6 Q. Second and Hillidge Streets? Would you describe
7 this laundromat, please? What is the building like?

8 A. How was that?

9 Q. Describe the laundromat. What is the building
10 like?

11 A. Well, it is brick.

12 Q. It is a brick building?

13 A. Yes. And it faces towards Second Street.

14 Q. Faces towards Second Street. Is there a parking
15 lot?

16 A. Yes.

17 Q. Where is that?

18 A. In front, running out to Second Street.

19 Q. Okay. Black-topped parking lot?

20 A. Yes. It is.

21 Q. Okay. And what kind of...does it have windows?

22 A. Yes. Four windows.

23 Q. Four windows?

24 A. Yes. Five by five.

1 Q. Five by five plated glass?

2 A. Yes.

3 Q. And do these face out in the parking lot?

4 A. Yes.

5 Q. Okay. What do you have inside: how many washers
6 and dryers?

7 A. Inside, how many?

8 Q. Yes.

9 A. Twenty-three.

10 Q. Twenty-three washers and dryers inside?

11 A. Twenty-three washers and twelve dryers.

12 Q. All right. What are your hours of operation?

13 A. We are open twenty-four hours.

14 Q. Twenty-fours a day. You were open twenty-four
15 hours last December '79?

16 A. Yes. I was.

17 Q. All right. Now, did you have an occasion to go
18 to your laundromat on the 7th of December, 1979?

19 A. Yes.

20 Q. About what time did you go?

21 A. About 6:45.

22 Q. About 6:45. Is that in the morning?

23 A. Yes. In the morning.

24 Q. Was it light at that time?

1 A. No. It was still dark.

2 Q. Still dark. All right. Was anyone in the laundromat?

3 A. No.

4 Q. Were the lights on in the laundromat?

5 A. Yes.

6 Q. Did you notice any property in the laundromat?

7 A. Yes.

8 Q. What did you notice?

9 A. Well, the first thing was the pocketbook.

10 Q. Pocketbook? Just a second. I show you this

11 pocketbook and ask if you can identify it?

12 A. That looks like the pocketbook that was sitting

13 on the floor.

14 Q. All right, sir.

15 MR. CRUMP: Your Honor, at this time, the

16 Commonwealth would move to introduce the pocketbook as

17 Commonwealth's Exhibit 1.

18 MR. ALLEN: Is that for identification only?

19 MR. CRUMP: No. To admit it.

20 MR. ALLEN: I have no objection to it being

21 admitted for identification at this time. As to relevancy,

22 I don't know what it is.

23 THE COURT: I think you will have to tie it in by

24 some other witness. I will admit it for identification.

1 MR. CRUMP: All right, sir.

2 (WHEREUPON, pocketbook is received and marked as Commonwealth's
3 Exhibit #1 for identification).

4 BY MR. CRUMP:

5 Q. Where did you find that pocketbook?

6 A. Where did I find it?

7 Q. Yes.

8 A. It was sitting in the floor near the Hillidge
9 Street side of the laundromat. On the front. In the aisle.

10 Q. Did you found anything else?

11 A. Yes. I found a coat.

12 Q. A coat. All right. I show you this coat and ask
13 if you can identify it.

14 A. Yes. That looks like the coat.

15 MR. CRUMP: Your Honor, I move that this be
16 admitted for identification purposes as Commonwealth's
17 Exhibit 2.

18 THE COURT: Any objection?

19 MR. ALLEN: No.

20 THE COURT: Admitted for identification, Exhibit 2.
21 (WHEREUPON, coat is received and marked as Commonwealth's
22 Exhibit #2 for identification).

23 BY MR. CRUMP:

24 Q. Did you find anything else in the laundromat?

1 A. Well, there was three loads of clothes that had
2 finished washing in the first three washers as you come in
3 the door.

4 Q. Anything else?

5 A. Well, there was a car sitting on the parking lot.

6 Q. In the parking lot?

7 A. Yes.

8 Q. Can you describe this car?

9 A. It was a small orange car. I can't give it a name.
10 It was orange, bright orange.

11 Q. What did you do?

12 A. Well, I looked around everywhere I could think. I
13 knew something was wrong or something had happened.

14 Q. Why?

15 MR. ALLEN: Your Honor, I object to that response.
16 It is a conclusion that is not found in the evidence. It is
17 just irrelevant.

18 THE COURT: I think the jury should disregard what
19 he thought. Disregard the last remark.

20 BY MR. CRUMP:

21 Q. Did you find anybody?

22 A. Did I find what?

23 Q. Did you find anybody around?

24 A. Oh, no.

1 Q. What did you do then?

2 A. I looked around the laundromat, even went behind
3 the laundromat and everywhere I could think. Then I called
4 the police.

5 Q. About what time did you call the police?

6 A. I would say probably five minutes to seven,
7 something like that.

8 Q. And did the police arrive?

9 A. Yes.

10 Q. You remember which policeman it was?

11 A. Ryon, I believe was the officer.

12 Q. Officer Ryon?

13 A. Uh, huh.

14 Q. Do you know about what time he got there?

15 A. I believe it was right at seven. In just a few
16 minutes.

17 Q. Did you show him this pocketbook and coat?

18 A. Yes. I showed it to him.

19 MR. CRUMP: Your witness.

20 CROSS EXAMINATION

21 BY MR. POND:

22 Q. Mr. Fox, when you entered the laundromat, from
23 which door did you enter?

24 A. From the Hillidge Street side. The small door.

* * *

1 was called as a witness on behalf of the Commonwealth, and
2 having been previously sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. CRUMP:

6 Q. Would you state your name, please?

7 A. Robert Atkins.

8 Q. Mr. Atkins, would you try to speak into the
9 microphone as much as possible. If it is not the right
10 height, you can adjust it.

11 Mr. Atkins, you were the husband of Hope Rogers
12 Atkins: is that correct?

13 A. Yes, sir.

14 Q. When were you and your wife married?

15 A. October the 7th, 1979.

16 Q. What was your wife's name then?

17 A. Hope.

18 Q. That is her first name. What was her maiden name?

19 A. Maiden name? Hardin.

20 Q. Hardin. Mr. Atkins, on December 7th, 1979, what
21 did you do that day?

22 A. Sir?

23 Q. What did you do that day?

24 A. Got up at five o'clock and got dressed to go

1 hunting. I left at about twenty minutes of six.

2 Q. About twenty minutes of six? Who did you go
3 hunting with?

4 A. Doug Lineweaver.

5 Q. Doug Lineweaver?

6 A. Yes, sir.

7 Q. Could you speak up a little bit and make sure you
8 are talking into the microphone?

9 Where was your wife when you left to go hunting at
10 twenty of six?

11 A. In bed.

12 Q. Now, do you own a washer and dryer?

13 A. No, sir.

14 Q. How did your wife do the laundry when she did do
15 the laundry?

16 A. Laundromat.

17 Q. The laundromat? Which laundromat did she use?

18 A. Eddie's Laundromat.

19 Q. After you left the house to go hunting at twenty
20 to six, did you see your wife again thereafter?

21 A. No, sir.

22 Q. Did you have an occasion to go to the laundromat
23 later on on the 7th?

24 A. Yes, sir.

* * *

1 Lineweaver and ask that he be excused, Your Honor.

2 THE COURT: Any objection?

3 MR. POND: No objection.

4 THE COURT: No objection. You are excused.

5 MR. CRUMP: Commonwealth calls Ricky Andrews.

6 WHEREUPON

7 RICHARD ANDREWS

8 was called as a witness on behalf of the Commonwealth and
9 having been previously sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. CRUMP:

13 Q. State your name, please.

14 A. Richard Andrews.

15 Q. Mr. Andrews, on December the 7th, 1979, where were you
16 living, sir?

17 A. 131 Hillidge Street.

18 Q. Please speak directly into that microphone.

19 A. 131 Hillidge Street.

20 Q. All right. Is that anywhere near Eddie's Coin
21 Laundromat?

22 A. Yes, sir.

23 Q. Can you see Eddie's Coin Laundromat from your house
24 or apartment?

1 A. You couldn't right then because it was just
2 breaking, you know, it wasn't quite daylight.

3 Q. It was dark out?

4 A. Yes, sir.

5 Q. All right. What time did you get up that morning?

6 A. At ten minutes after six.

7 Q. All right. After you had gotten up, did anything
8 over in the direction of the laundromat attract your attention?

9 MR. ALLEN: Objection. Leading question.

10 MR. CRUMP: I don't believe that is leading.

11 MR. ALLEN: It calls for a negative or affirmative
12 reply. He can testify to the facts, but Mr. Crump is leading
13 him, I would have to say.

14 THE COURT: Would you restate the question?

15 MR. CRUMP: The question is: did anything attract
16 his attention in the direction of the laundromat after he
17 had gotten up. I don't see how that is leading.

18 THE COURT: No. I . . .

19 MR. ALLEN: What, if anything, the form of the
20 question.

21 THE COURT: The phrase is: What, if anything?

22 BY MR. CRUMP:

23 Q. What, if anything, attracted your attention in the
24 direction of Eddie's Laundromat?

1 A. Well, I thought I heard a...sounded like a scream.
2 Somebody had their hand over somebody's mouth or something
3 like that.

4 Q. Would you speak up? I am not sure if everybody
5 heard that.

6 A. I kind of thought I heard a scream, like, you know,
7 there had been somebody holding a hand over somebody else's
8 mouth.

9 Q. A muffled scream?

10 A. That's right.

11 Q. Could you tell if it was a man or woman screaming?

12 A. No.

13 Q. All right. Did you do anything then?

14 A. Yeah. I stood on the back porch for a couple of
15 minutes and I looked over that way and I saw a car's head-
16 lights go.

17 Q. And then what happened?

18 A. About a half a minute later, he took off and went
19 up the bypass, on 522.

20 Q. This car went to the bypass on 522. Which way did
21 he go from the bypass?

22 A. South.

23 Q. Went south?

24 A. Uh, huh.

1 Q. Can you describe that car?

2 A. To me, it looked like it was green with a black
3 top, but I couldn't be certain.

4 Q. Green with a black top: is that what you are saying?

5 A. Yes.

6 Q. Big car or little car?

7 A. Big car.

8 Q. Big car?

9 A. Uh, huh.

10 Q. Could you see who was in it?

11 A. No, sir.

12 Q. Could you see if anyone was driving it?

13 A. No. I couldn't see.

14 Q. Could you see if there were any passengers?

15 A. Sir?

16 Q. Could you see if there was anybody in the front
17 seat?

18 A. To me, it looked like it could have been a baby
19 in the front seat, but I ain't for sure.

20 Q. Baby?

21 A. Yes, sir.

22 Q. All right. Now, please do not show these to the jury.

23 I would like you to take a look at these photographs of
24 an automobile and ask you if that is the car you saw.

1 A. It is similar, but I can't say for sure.

2 Q. It is similar?

3 A. Yes, sir.

4 Q. Take a look at all those photographs. Don't show
5 them to the jury.

6 Now, is that still your testimony that the car you
7 saw on the 7th of December is similar to this?

8 A. Yes, sir.

9 MR. CRUMP: Your Honor, at this time, we would like
10 to move that these photographs be admitted for the purposes
11 of identification as Commonwealth's Exhibit 4, and make it a
12 block exhibit and we can number, or letter them, a, b, c, d,
13 e and f.

14 THE COURT: How many photographs are there?

15 MR. CRUMP: Six.

16 THE COURT: Six.

17 MR. ALLEN: I have objections to them. May I
18 approach the bench, Judge?

19 (AT THE BENCH with the Court, Counsel, defendant and Court
20 Reporter).

21 MR. ALLEN: I object to the introduction of these
22 photographs. We asked for a Bill of Particulars and asked
23 for all photographs that the Commonwealth intended to
24 introduce into evidence. These were not some of the ones

* * *

1 Q. Did you stoke the stove when you got up that
2 morning?

3 A. I waited a few minutes before I went outside and
4 got some wood for it.

5 Q. Is there a street light in front of your house?

6 A. I think there is.

7 Q. You think so?

8 A. Yes.

9 Q. Is there or isn't there?

10 A. I have no idea.

11 Q. You don't know. All right. Your back yard borders
12 on Commerce Avenue: is that correct?

13 A. Yes, sir.

14 Q. Is there a street light in front of Eddie's
15 Laundromat?

16 A. Where I saw the car's lights come on, there wasn't
17 none then but they have put one up since.

18 Q. Okay. There was not one at that time: is that
19 correct?

20 A. Yes.

21 Q. What time did you hear the, as Mr. Crump character-
22 ized it, muffled scream?

23 A. Between 6:20 and 6:35.

24 Q. Okay. Where do you work?

1 A. Down in Front Royal.

2 Q. What time do you have to go to work?

3 A. I usually leave around 6:30; sometimes a little
4 later.

5 Q. You hadn't left then, obviously?

6 A. I hadn't yet.

7 Q. How do you get to work?

8 A. Drive a vehicle.

9 Q. You drive your own vehicle?

10 A. Yes, sir.

11 Q. Where were you when you first heard this noise,
12 this scream that drew your attention?

13 A. On the back porch getting some wood for the stove.

14 Q. That is when you were out there on the back porch
15 getting wood?

16 A. Yes.

17 Q. Is your house directly in the back of your house,
18 or it on the side? Strike that. Is your porch directly
19 behind your house or is it on the side?

20 A. It is on the side of the house.

21 Q. As you face your house from Hillidge Street, on
22 which side is it?

23 A. The right side.

24 Q. As you are facing your house from Hillidge Street,

1 it is on the right side?

2 A. Yes.

3 Q. All right. So, you were not able to see Eddie's
4 Laundromat from your porch: is that correct?

5 A. Yes. I could see it.

6 Q. All right. Maybe we are mistaken. As you face...

7 THE COURT: Why doesn't somebody do a sketch? I'm
8 terribly...maybe if I knew where it is. Do you think...
9 do you have any sketches?

10 MR. CRUMP: Of the laundromat?

11 THE COURT: And how his house sits in relation
12 to the laundromat. If you don't...

13 MR. CRUMP: I believe one of the officers may
14 have prepared it, Your Honor. I will have to find out which
15 one has it.

16 THE COURT: It would have been helpful to have
17 something like that.

18 BY MR. POND:

19 Q. All right. Mr. Andrews, I may have confused you
20 and if I did, I apologize. So, I am going to rephrase my
21 question to make sure that we got things straight.

22 If you are on Hillidge Street, standing in the
23 middle of Hillidge Street, and looking at your house...all
24 right...on which side of your house would the porch be on:

* * *

1 (OPEN COURT)

2 THE COURT: Call the jury.

3 Now, gentlemen, just before we recessed, Mr.
4 Andrews was on the stand. Do I understand now that his
5 examination, cross examination is completed?

6 MR. ALLEN: Yes, sir.

7 THE COURT: Mr. Andrews', then, his examination
8 is finished. Can the witness be excused?

9 MR. CRUMP: Yes, sir.

10 THE COURT: Without objection, the witness can be
11is excused from further attendance upon the Court.

12 Call your next witness.

13 MR. CRUMP: Commonwealth calls Wayne Miller.

14 WHEREUPON

15 WAYNE MILLER

16 was called as a witness on behalf of the Commonwealth, and
17 after having been duly sworn, was examined and testified as
18 follows.

19 DIRECT EXAMINATION

20 BY MR. CRUMP:

21 Q. State your name, please.

22 A. Wayne L. Miller.

23 Q. Mr. Miller, directing your attention to the 14th
24 day of December, 1979, were you in the Harmony Hollow area of

1 Warren County, Virginia?

2 A. Yes, sir.

3 Q. And why were you there on that day?

4 A. I work for Perry Engineering. We were up there
5 cutting a right of way that day for our water and sewer line.

6 Q. All right. Did you come across anything that day?

7 A. Pardon?

8 Q. Did you find anything that day?

9 A. Yeah. We found the body of a girl.

10 Q. About what time was this?

11 A. I don't know right off.

12 Q. Was it daylight?

13 A. Yes, sir.

14 Q. Morning or afternoon?

15 A. Morning.

16 Q. Who all was with you?

17 A. There was about five of altogether. But only three
18 of us went where the body was laying. Two of us.

19 Q. Who saw this body with you?

20 A. Pardon?

21 Q. Who saw this body in the ditch?

22 A. A guy by the name of Gordon and myself.

23 Q. Is that Douglas Gordon?

24 A. Yes, sir.

* * *

1 DR. WILLIAM F. ENOS

2 was called as a witness on behalf of the Commonwealth, and
3 after having been first duly sworn was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. CRUMP:

7 Q. Would you state your name and occupation, please.

8 A. Dr. William F. Enos.

9 Q. Dr. Enos, are you trained in Forensic Science?

10 A. Yes. I am. I am certified in anatomic, clinical
11 and forensic pathology.

12 Q. And how long have you been

13 MR. ALLEN: Your Honor, we will stipulate his
14 qualifications.

15 BY MR. CRUMP:

16 Q. Dr. Enos, on the 15th day of December, 1979, did
17 you have occasion to perform an autopsy on a body?

18 A. Yes. I autopsied a Hope Rogers Atkins.

19 Q. All right. Doctor, we are not giving it a name
20 at this point.

21 A. All right.

22 THE COURT: The jury will disregard that.

23 THE WITNESS: All right. Yes. I did. On 12-15-79,
24 at 10:00 a.m. at the morgue at Fairfax Hospital.

* * *

1 Q. All right, Doctor, were you able to determine the
2 cause of death?

3 A. Yes. Cause of death was because of the multiple
4 penetrating gunshot wounds of the head.

5 Q. How many gunshot wounds?

6 A. There were five.

7 Q. And were any one or more of these a fatal wound?

8 A. Yes. Number 4, for example, was a missile..no.
9 Number 3, lacerated the brain stem, that is the back of the
10 brain, which is a very crucial area of the functioning of
11 the human body. Obviously, that was a fatal wound.

12 Number 4 wound came to rest in the brain substance
13 on the left side. There is a probability that life could
14 have sustained for a while, but that also could cause a
15 fatal wound, but the one that lacerated the spinal cord was
16 obviously the most serious.

17 Q. Were you able to determine points of entry for
18 these various bullets?

19 A. Yes. I can recite the exact...

20 Q. All right.

21 A. Wound 1 was on the left side approximately here.
22 It entered two and a half inches from the top of the head
23 and three inches left of the midline. There was no stippling
24 because of the hair. Stippling is unburned powder particles

1 which are driven into the skin in a shot at close range. .
2 It measured .23 inches in diameter. Some tissue and hair
3 about the wound entrance was due to what we call "splash-
4 back phenomenon". In other words, when a missile hits, tissue
5 splashes back. And the missile goes to the right of the brain
6 substance coming to rest in the right para nasal sinus cavity.
7 In other words, from here to approximately here.

8 Wound Number 2 was here and entered 2 1/4 inches
9 from the top of the head and 1 3/4 inches left of the midline.
10 It measured 1 by 0.3 cm., metallic fragment in the debris,
11 does not enter the skull. A fragment was recovered at that
12 point.

13 Wound Number 3, which is right here, entered 3 1/2
14 inches from the top of the head and two inches left of the
15 midline, measured .23 inches in diameter, stippling formed
16 in area 1 1/2 inches in circumference. In other words, about
17 the wound entrance there was stippling, unburned powder
18 particles indicating the gun was held relatively close to
19 the head when it was discharged. Goes through the bone
20 base. Number three, that is correct. It measured one...
21 well, that stippling measured 1 1/4 inches in circumference.
22 The missile goes to the right, through the bone base of the
23 skull, lacerating the brain stem. Metallic fragments, are
24 recovered from the middle and posterior fossa.

1 Wound 4, entrance midline, 1 1/2 inches by 1 1/4
2 inches. Stippling formed in area in two inches in diameter
3 and is located 8 3/8 inches from the top of the head below
4 the chin. Right here. The missile projects upward and to the
5 left coming to rest in the left parietal lobe, that is a lobe
6 of the brain located approximately in here.

7 And, finally, wound 5, which was right here,
8 entrance wound 7 5/8 inches from the top of the head, 1 3/4
9 inches right to the midline, stippling again, 1 1/2 inches
10 overlapping stippling of Wound 4. Entrance base of the skull,
11 coming to rest in left occipital lobe, which is the back of
12 the head here. Fragment recovered.

13 Q. All right, sir. Were you able to determine or
14 estimate the date and time of death?

15 A. I cannot estimate the time of death or the date,
16 except...without the history which I obtained from the...from
17 Dr. Eastham and the investigators. But the findings were
18 consistent to that of six or seven days.

19 Q. Consistent with someone being dead for six or seven
20 days?

21 A. That is because of the environment the body was in.
22 It was cold and in fairly good condition. There was some
23 tissue missing from the nose and face which was caused by
24 animals feeding on the...

1 MR. ALLEN: Your Honor, I am going to object to
2 that question. I believe that would be a conclusion. We
3 object to it on the basis that it is a conclusion and move
4 to strike it.

5 MR. CRUMP: Your Honor, he is an expert witness.

6 THE COURT: Well, I think he would have to lay a
7 background to get the opinion.

8 MR. CRUMP: Your Honor, I didn't seek that
9 response. The doctor was testifying as to the condition of
10 the body and his opinion.

11 MR. ALLEN: Move to strike the answer.

12 THE COURT: Objection sustained. The jury will
13 disregard it.

14 BY MR. CRUMP:

15 Q. All right.

16 A. You want me to also go into other reasons I think
17 that it was six or seven days?

18 Q. Yes, sir.

19 A. The stomach was empty as was the signoid colon,
20 meaning that she hadn't eaten. And the bladder was also
21 empty. Rigor mortis had obviously completely disappeared.
22 The body was extremely cold and with that temperature the
23 appearance of the body would remain...or the condition of
24 the body in which I saw it could easily be maintained for

1 seven days.

2 Q. All right, doctor. Did you recover any bullets or
3 bullet fragments from the body?

4 A. Yes. As I recited the entrance wounds, I told...
5 I mentioned bullet fragments removed from various parts of
6 the brain.

7 Q. And how many fragments and/or bullets did you
8 remove?

9 A. Five.

10 Q. And what did you do with these fragments and
11 bullets?

12 A. These fragments were placed in appropriate
13 containers, labeled as to the name of the deceased, dated,
14 and my name, and then were given to Sergeant Meredith.

15 Q. On what date were they given to Sergeant Meredith?

16 A. The same day that the autopsy was done.

17 Q. Doctor, did you examine the mouth and the throat
18 of this body?

19 A. Yes. We smeared the mouth and throat of the
20 deceased.

21 MR. ALLEN: Your Honor, may we approach the bench?
22 (AT THE BENCH with the Court, counsel, defendant and the
23 Court Reporter).

24 MR. ALLEN: Mr. Crump is about ready to get into

* * *

1 MR. CRUMP: Refers to the
2 THE COURT: Motion overruled.
3 MR. ALLEN: Exception to the Court's ruling.
4 THE COURT: Exception noted.
5 (OPEN COURT)
6 BY MR. CRUMP:

7 Q. All right, sir. I asked you if you examined the
8 mouth and the throat of this body and if you found anything
9 there?

10 A. We smeared the mouth and the throat in this case
11 and this material was placed on slides, dried and stained.
12 They were examined under the microscope and sperm was found.

13 Q. Now, were you able to type this sperm?

14 A. No. You cannot type sperm from the oral cavity,
15 and that time factor also would

16 Q. Now, Doctor, I am going to ask you a medical
17 question. If a living person had sperm in their mouth or
18 throat, how long would that living person take to eliminate
19 all traces of it, either just spitting or salavory
20 digestion or swallowing?

21 A. I base this opinion on examining many living rape
22 cases. I have been able to recover sperm from the oral
23 cavity up to six hours after the event. I will qualify that
24 by saying that there are obviously very few sperm and they

1 are very difficult to find. Takes a lot of perservance to
2 keep going over all these slides. However, in this case,
3 there was no absolutely no problem in identifying sperm
4 because of the heavy concentration in the oral cavity and
5 thorax.

6 Q. Are you saying that there was a great amount of
7 sperm in the oral cavity?

8 A. That is correct. There was no problem finding it.

9 Q. In your opinion as an expert, how close to the
10 point of death would you say that that sperm was placed in
11 the oral cavity of the body?

12 A. I think she died...it would be my professional
13 opinion that she died immediately after the oral intercourse.

14 MR. CRUMP: Your witness.

15 CROSS EXAMINATION

16 BY MR. ALLEN:

17 Q. What was the date that you performed your autopsy,
18 Doctor?

19 A. 12-15-79.

20 Q. And you stated that the cause of death and the
21 time of death was six to seven days?

22 A. As I mentioned, I based that on the history given
23 to me by the investigators and Dr. Eastham. The condition
24 of the body was consistent with that statement of seven days,

* * *

1 BY MR. CRUMP:

2 Q. Would you state your name, please?

3 A. Donald Joseph Colamorino.

4 Q. Mr. Colamorino, on the 17th day of January, 1980,
5 were you an inmate in the Shenandoah County Jail?

6 A. Yes, sir. I was.

7 Q. And, do you know the defendant, Thomas Franklin
8 Drumheller?

9 A. Yes, sir. I do.

10 Q. Did you see him on the 17th day of January, 1980?

11 A. Yes, sir. I spoke with him.

12 Q. Where did you see him?

13 A. In the cell block.

14 Q. He was with you in the same cell block?

15 A. Yes, sir.

16 Q. And you spoke with him?

17 A. Yes. I did.

18 Q. What did you talk about?

19 A. Talked about the article in the newspaper. It was
20 about him. He picked it up and read it and he was sort of
21 proud of it. And I...you know, he asked me what I thought
22 about it. There was another man with us. I told him, I
23 said: "I thought they ought to give him life imprisonment,
24 and whenever he died, feed him through the bolonga slicer."

1 Q. What did Mr. Drumheller tell you about this
2 incident, if anything?

3 MR. POND: May it please the Court. I wonder if
4 Mr. Colamorino would move the microphone towards him so we
5 could hear a little better?

6 THE WITNESS: Pardon me?

7 BY MR. CRUMP:

8 Q. What did he tell you about this?

9 A. He admitted that he pulled the trigger and he did
10 kill the girl. That he had abducted her from the laundromat
11 and that he did kill her.

12 Q. He told you that?

13 A. Yes. He did.

14 Q. And this is Hope Rogers Atkins?

15 A. Yes, sir.

16 Q. And he told you that on the 17th day of January,
17 1980?

18 A. Yes, sir. The reason he was wanting to know...he
19 said that his wife was involved, and he wanted to know that
20 if...if he should put the blame off on her or if he should
21 even mention that she was involved. That is what he was
22 asking me and another inmate.

23 THE DEFENDANT: I object.

24 THE WITNESS: So, we asked him...you know, we asked

1 Drumheller, you know, "Who pulled the trigger?" And he said
2 that he pulled the trigger. And I told him, I said: "Well,
3 why should you get someone else in trouble for what you did?"
4 And that was it.

5 MR. CRUMP: Your witness.

6 CROSS EXAMINATION

7 BY MR. ALLEN:

8 Q. Mr. Colamorino, how long were you in Shenandoah
9 County Jail?

10 A. I was in there approximately five and a half months.

11 Q. And...

12 A. I had only been there for about fifteen days
13 whenever he came in.

14 Q. How long after...when did you report this statement?

15 A. I talked to the Sheriff down there about it about
16 three days after I spoke with Mr. Drumheller.

17 Q. Which Sheriff?

18 A. Sheriff Marshall Robinson.

19 Q. How much time did you receive for your sentence?

20 A. A total of seven months.

21 Q. And were you released early?

22 A. No. I pulled out the whole stretch.

23 Q. Anyone promise you any leniency should you testify
24 today?

* * *

1 WHEREUPON

2 ROBERT ATKINS

3 was recalled as a witness and having been previously sworn,
4 was examined and testified as follows:

5 FURTHER DIRECT EXAMINATION

6 BY MR. CRUMP:

7 Q. Mr. Atkins, you are still under oath. Mr. Atkins,
8 on December 14th, 1979, were you summonsed to the Warren
9 County Memorial Hospital to identify a body?

10 A. Yes, sir.

11 Q. And did someone from the Sheriff's Department show
12 you the body?

13 A. Yes, sir.

14 Q. And whose body was it?

15 A. Hope's

16 Q. Your wife, Hope's, Hope Rogers Atkins?

17 A. Yes, sir.

18 Q. I show you these exhibits, these particular ones
19 which are Commonwealth's exhibits marked for identification,
20 6-F, 6-E, 6-B and 6-J, and ask if you can identify the person
21 in that picture?

22 A. My wife.

23 Q. That is Hope?

24 A. (Nodding affirmatively).

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1 Q. I show you one more picture, it is a picture of a
2 shoe, marked for identification as Commonwealth's Exhibit
3 6-H, and ask you if you recognize that shoe?

4 A. Yes, sir.

5 Q. Whose shoe is that?

6 A. My wife's.

7 Q. Hope's.

8 A. (Nodding affirmatively).

9 MR. CRUMP: At this time, Your Honor, Commonwealth
10 would move to admit to Commonwealth's Exhibits 5, 6, 8 and
11 9, which previously had been marked for identification.

12 MR. ALLEN: I have objections.

13 THE COURT: All right. Let's go to the sidebar.

14 (AT THE SIDEBAR with the Court, Commonwealth's Attorney,
15 Counsel, defendant and Court Reporter).

16 MR. ALLEN: My objection lies in what I previously
17 stated as prejudicial and inflammatory. Further, there is no
18 evidence adduced from the officer that took the picture that
19 the picture accurately and truly depicted the scene as
20 they discovered them on that date. I think he has got to tie
21 it in and he has got to say that.

22 THE COURT: Now, represents the scene as he took
23 the picture?

24 MR. ALLEN: That is right. That it presents that

* * *

1 MR. ALLEN: I didn't quite hear you, Judge.

2 THE COURT: I say: I feel that if we put in just
3 a little bit of overtime here today and start a little
4 earlier tomorrow, we may avoid another day of trial.

5 MR. ALLEN: You are talking about staying tonight
6 until five-thirty?

7 THE COURT: Five-thirty or quarter to six.

8 MR. ALLEN: That is fine.

9 THE COURT: I am not going to do what they used to
10 when I was a young lawyer and Judge Marshall was the Judge.
11 He would keep you here until ten or eleven and make you finish.

12 WHEREUPON

13 SERGEANT HAL J. MEREDITH
14 was recalled as a witness on behalf of the Commonwealth, and
15 having been previously sworn, was examined and testified as
16 follows:

17 FURTHER DIRECT EXAMINATION

18 BY MR. CRUMP:

19 Q. All right, Sergeant Meredith, you are still under
20 oath.

21 Directing your attention to the 28th of December,
22 1979, did you have an occasion to go to the home of one
23 Andrew Roderfer?
24

1 A. Yes, sir. I did.

2 Q. Of your own personal knowledge, is Mr. Roderfer
3 related to Mr. Drumheller?

4 A. Yes, sir. He is his uncle.

5 Q. Now, where is Mr. Roderfer's home?

6 A. It is in the boundaries of Riverton Corporation,
7 at Riverton, and it is big stone house up on the hill on
8 the right.

9 Q. Did Mr. Roderfer admit you into this house?

10 A. Yes, sir. He did.

11 Q. And did he give you anything?

12 A. Yes, sir. He did.

13 Q. Did you observe him obtain whatever he gave you?

14 A. Yes, sir. He turned over to me RG revolver. It
15 was wrapped in a plastic bags in the stove, in his kitchen.

16 Q. In his kitchen? Did you see Mr. Roderfer retrieve
17 this gun?

18 A. Yes, sir. We...Mr. Roderfer told...

19 MR. POND: Your Honor, I will object to what he
20 told him.

21 MR. CRUMP: Just tell us what...

22 MR. POND: It is hearsay.

23 MR. CRUMP: Just tell us what Mr. Roderfer did.

24 THE WITNESS: Mr. Roderfer reached down in the

1 stove in the kitchen, under some ashes, pulled out a plastic
2 bag containing a revolver.

3 BY MR. CRUMP:

4 Q. All right. Would you go over there and pick it
5 up, please?

6 Would you open the bag, please?

7 Is that the revolver you obtained from Mr.
8 Roderfer?

9 A. Yes, sir. It is.

10 Q. All right.

11 MR. CRUMP: At this time, Your Honor, Commonwealth
12 would move that this revolver be admitted as Commonwealth's
13 Exhibit 10 for the purposes of identification.

14 THE COURT: Without objection, for identification,
15 so admitted.

16 MR. ALLEN: For identification. No objection for
17 identification.

18 THE COURT: Correct.

19 (WHEREUPON, 22 caliber pistol and holster is admitted into
20 evidence as Commonwealth's Exhibit #10 for identification).

21 BY MR. CRUMP:

22 Q. Now, having had this gun turned over to you by
23 Mr. Roderfer, what did you do with it?

24 A. I took it in my possession. I noted the date, the

1 time, the make, the model of the gun, the serial number,
2 placed it in this paper bag, locked it up in my personal
3 evidence locker. And on the 2nd day of January, I arrived
4 at the lab in Richmond with it and turned the revolver over
5 to Mary Jane Burton.

6 Q. Now, you say you sealed it in the bag?

7 A. Yes, sir.

8 Q. Was it sealed when you took it to Richmond?

9 A. To the lab?

10 Q. Richmond.

11 A. No, sir.

12 Q. Now, what date did you turn it over to Mary Jane
13 Burton?

14 A. Turned it over to Mary Jane Burton on the 2nd of
15 January, 1980.

16 Q. And who is Mary Jane Burton?

17 A. She is the serology examiner at the Richmond
18 laboratory.

19 Q. All right. And did you subsequently receive this
20 gun back from the laboratory?

21 A. Yes, sir. I did.

22 Q. All right. How did it come back into your
23 possession?

24 A. Lieutenant Farrell from the Police Department picked

* * *

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1 Q. Now, did you mark down the serial number of the
2 gun when you picked it up from Mr. Roderfer?

3 A. Yes, sir. I wrote it down here on the bag. Serial
4 Number is 465472. It is an RG Model 23 blue finish revolver.

5 Q. All right. Would you read the serial number from
6 the gun?

7 A. Yes, sir. It is 46472. It has got a T...

8 THE DEFENDANT: I object.

9 THE WITNESS: It has got a letter "T" in front of
10 it. The numbers are 465...465472.

11 MR. CRUMP: Read the whole thing.

12 THE WITNESS: 4...it has got a "T" in front of it,
13 a letter, and then...

14 BY MR. CRUMP:

15 Q. "T"?

16 A. Yeah. And then it has got 465472.

17 Q. Is that the same serial number you recorded as
18 taking from Mr. Roderfer?

19 A. Yes, sir.

20 MR. CRUMP: Again, I am going to reserve the right
21 to recall Sergeant Meredith. I have no further questions
22 at this time.

23 CROSS EXAMINATION

24 BY MR. POND:

* * *

1 (RECESS)

2 (OPEN COURT - reconvened at 5:17).

3 WHEREUPON,

4 CLEON C. MAWYER

5 was called as a witness on behalf of the Commonwealth, and
6 after having been first duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CRUMP:

10 Q. Would you state your name and occupation, please?

11 A. Cleon C. Mawyer. I am employed with the Bureau
12 of Forensic Science in Richmond, Virginia. I am employed
13 as a forensic scientist in the field of firearms
14 identification.

15 MR. POND: Mr. Crump, would you ask him...Mr.
16 Mawyer, would you mind turning the microphone towards your
17 mouth, please.

18 BY MR. CRUMP:

19 Q. Would you repeat that answer, please?

20 A. My name is Cleon C. Mawyer. I am employed with the
21 Bureau of Forensic Science in Richmond, Virginia. I am
22 employed as forensic scientist in the field of firearms
23 identification.

24 Q. All right. Mr. Mawyer, how long have you been

* * *

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1 is what happens when the projectile reaches the target or
2 whatever it is aimed at. Completely different field.

3 BY MR. CRUMP:

4 Q. Mr. Mawyer, in December...January of 1980, you
5 were working in this field in Richmond?

6 A. I was.

7 Q. And did you have an occasion to examine this gun,
8 which has been marked for identification as Commonwealth's
9 Exhibit 10?

10 A. I did.

11 Q. And, who did you receive that gun from and on
12 what date, sir?

13 A. I received Exhibit 10 from Mary Jane Burton on
14 the 3rd of January, 1980.

15 Q. All right. And, when did you relinquish that gun
16 and who did you give it to?

17 A. I returned Exhibit 10 back to Mary Jane Burton on
18 the 15th of January of 1980.

19 Q. And how did you keep this gun secured while it was
20 in your possession?

21 A. The complete laboratory is in a secured area. There
22 is a guard at the gate...or at the door, rather. And the
23 individual laboratory itself, in the firearms section itself,
24 is a locked enclosure when no one is present. After one is

* * *

1 Mrs. Burton on January 3rd.

2 Q. I ask you to look at this statement and try to
3 explain to me, if you would, please, sir, what date received
4 is typed on there?

5 A. Yes, sir. The report, which bears my signature
6 and dated 17th of January, says: "Date received as 2 January
7 1980". The firearm was received at the laboratory on 2
8 January 1980. However, I did not receive it until the 3rd
9 of January of 1980.

10 MR. ALLEN: That you. Just a minute.

11 (DISCUSSION between defendant and Counsel).

12 MR. ALLEN: That is all.

13 MR. CRUMP: Again, Your Honor, I move that this
14 be admitted as Commonwealth's Exhibit 11.

15 MR. ALLEN: I do not have any objection.

16 THE COURT: All right. It is admitted without
17 objection as Commonwealth's Exhibit #11.

18 (WHEREUPON, Certificate of Analysis dated January 17, 1980,
19 is received into evidence as Commonwealth's Exhibit #11).

20 FURTHER DIRECT EXAMINATION

21 BY MR. CRUMP:

22 Q. Now, Mr. Mawyer, did you also receive some bullets,
23 or bullet fragments, which you compared with that gun?

24 A. I did.

* * *

1 being tied in later.

2 MR. ALLEN: Okay. It has been properly filed.

3 THE COURT: All right.

4 MR. CRUMP: I am sorry. Twelve.

5 (WHEREUPON, Certificate of Analysis dated January 15, 1980,
6 is received into evidence as Commonwealth's Exhibit #12).

7 BY MR. CRUMP:

8 Q. Now, did you also receive three misfired cartridges
9 for comparison with the gun which you refer to as Item 92,
10 which is Commonwealth's Exhibit 10?

11 A. I did.

12 Q. All right. And which of these reports shows those
13 three misfired cartridges?

14 A. Again, the report concerning the fired...unfired
15 cartridges cases with firepin impressions on them is contained
16 in this report dated on the 17th of January. However, they
17 are listed on the previous report of 15th of January.

18 Q. What is the item number?

19 A. Item number would be 82.

20 Q. So, bullet fragments are Item 73. The Commonwealth's
21 Exhibit 10, marked for identification as Commonwealth's
22 Exhibit 10, is Item Number 2, and the three misfired
23 cartridges are Item 82: is that correct?

24 A. That is correct.

1 Q. All right, sir.. Now, did you do a comparison of
2 the bullet fragments with the gun?

3 A. I did.

4 Q. And what is the result of your analysis?

5 A. Based upon the examination which I conducted, it
6 is my opinion that one of the bullets which I had received
7 was fired from the Exhibit 10 revolver.

8 Another of the bullets had rifling impressions
9 like those made by this revolver, but I could not identify
10 it specifically as having been fired from this revolver
11 to the exclusion of some other revolver similar to it.

12 The other three fragments were not suitable for
13 identification purposes. I could not identify them...anything
14 at all.

15 Q. All right. Why were they not suitable?

16 A. Because they were fragmented and did not have
17 sufficient individual microscopic markings necessary to
18 conduct an examination identification.

19 Q. And there were five bullet fragments?

20 A. There were five plastic bags, each containing a
21 bullet or a fragment or portions of a bullet.

22 Q. And when we refer to bullet fragments, we are
23 referring to spent bullets, bullets that have been fired:
24 is that correct?

* * *

1 a specific index of its own? Such as A, B, C, for instance?

2 A. The bullet which I identified, I have given a
3 designation of 73-B.

4 Q. 73-B?

5 A. B. A, B. B. The other bullet, which has rifling
6 impressions similar to or consistent with the Exhibit 10,
7 was designated 73-E.

8 Q. Now, Item 82, the three misfired cartridges, did
9 you compare them with that gun, which is your Item 92,
10 Commonwealth's Exhibit 10 for identification?

11 A. I did.

12 Q. All right. And what were the results of your
13 analysis?

14 A. These three cartridges which I received are 22
15 caliber Federal Long Rifle cartridges. And they contain
16 more than one firing pin impressions. In my opinion, at
17 least two of those firing pin impressions were made by the
18 firing pin of the Exhibit 10 revolver.

19 Q. All right. Two of the cartridges, misfired
20 cartridges, had firing pin impressions from that revolver?

21 A. Two of the firing pin impressions.

22 Q. All right. Can you give us your designation of
23 which two cartridges those are?

24 A. No, sir. I didn't make an identification on that.

1 Q. Now, you say that is a .22 caliber gun: is that
2 correct?

3 A. It is.

4 Q. Would you tell us what kind of ammunition it uses?

5 A. Exhibit 10 is designed to fire .22 long rifle
6 cartridges. However, it will also chamber and fire the
7 .22 long, which is another designation of a .22 cartridge, and
8 it will also chamber and fire a .22 short cartridge.

9 Q. Now, going to the bullet fragments, Item 73,
10 who did you receive those from initially and on what date?

11 A. I received the bullet and bullet fragments from
12 Mary Jane Burton on the 19th of December, 1979.

13 Q. All right. And how long were they in your custody?

14 A. They were in my custody and control until the 15th
15 of January of 1980, at which time, I returned them to Mary
16 Jane Burton.

17 Q. And how did you secure these bullet fragments?

18 A. In a like manner as the firearm.

19 Q. Now, the three misfired cartridges, Item 82, on
20 what date did you receive those and who did you receive them
21 from?

22 A. Again, from Mary Jane Burton, on the 19th of
23 December.

24 Q. Is that 1979?

* * *

1 WHEREUPON

2 PAUL ETTLE

3 was called as a witness on behalf of the Commonwealth and
4 having been previously sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. CRUMP:

8 Q. Would you speak into the microphone and state
9 your name and occupation?

10 A. My name is Paul R. Ettle. Manager of Paul's
11 Trading Post in Harrisonburg.

12 Q. All right. Mr. Ettle, do you deal in firearms?

13 A. That is correct.

14 Q. Are you a Federally-licensed firearm dealer?

15 A. Yes, sir.

16 Q. How long have you been a Federally-licensed
17 firearm dealer?

18 A. Ever since I been in business. Thirty-seven years.

19 Q. Thirty-seven years. So you were trading in firearms
20 in 1974: is that correct, sir?

21 A. That is true.

22 Q. All right, sir. Now, I am going to show you this
23 gun, which is marked Commonwealth's Exhibit #10 for
24 identification and I want you to take a look at the serial

1 number and tell the Judge whether you ever sold that gun.

2 A. I am not getting enough light on that. Can hardly
3 see the serial number.

4 THE COURT: Get where you can see.

5 THE WITNESS: Yes, sir. I sold this gun.

6 BY MR. CRUMP:

7 Q. All right, sir. Now, as a Federally-licensed
8 firearm dealer, you are required to keep a record of your
9 sales, your transactions?

10 A. Yes, sir.

11 Q. All right. You said you sold that gun. Is that
12 a record of the transaction?

13 A. This is a record of the transaction. Yes, sir.

14 Q. All right, sir. And how is that record maintained
15 by you?

16 A. I put it on my files and if a murder case or
17 something comes up, it is available to the local authorities.

18 Q. All right. And that has been in your personal
19 possession, your files, since 1977: is that correct?

20 A. That is correct.

21 Q. All right, sir.

22 MR. CRUMP: At this time, I would move that this
23 transaction record be admitted for the purpose of
24 identification, Commonwealth's Exhibit 13.

1 MR. ALLEN: Identification purposes? All right.

2 THE COURT: So admitted. For that purpose only.

3 (WHEREUPON, fire arms transaction record, #245, dated October
4 11, 1974, is received and marked as Commonwealth's Exhibit
5 #13 for identification).

6 BY MR. CRUMP:

7 Q. All right. Mr. Ettler, when was this gun, which has
8 been identified as Commonwealth's Exhibit 10, sold?

9 A. On the tenth month, the 11th day of '74.

10 Q. All right, sir. Who did you sell it to?

11 A. T. F. Drumheller.

12 Q. Does that record show his height?

13 A. Five feet, seven, the record states.

14 Q. Does it show his weight?

15 A. 150 pounds.

16 Q. Show his race?

17 A. Born December the 16th, 1930.

18 Q. All right. Does it show his race as well as date
19 of birth?

20 A. No, sir.

21 Q. Is there a...

22 A. White race. Yes, sir.

23 Q. White race?

24 A. Uh, huh.

1 Q. Does it show place of birth?

2 A. December the 16th, 1930.

3 Q. Place of birth?

4 A. What did you say?

5 Q. Block 7. Place of birth.

6 THE COURT: Where he was born.

7 THE WITNESS: - Oh. Augusta County.

8 BY MR. CRUMP:

9 Q. Does it show his present address, at least in
10 October of '74?

11 A. Riverton, Virginia.

12 Q. Does it have his signature on it?

13 A. Yes, sir.

14 Q. Does it have his social security number on it?

15 A. Yes, sir.

16 Q. Would you read the social security number for the
17 record, please?

18 A. 231 dash 38 dash 6992.

19 Q. All right. Does it contain the type of pistol?

20 A. Revolver RG 23 model .22 caliber.

21 Q. The serial number?

22 A. T465472.

23 Q. That is the same serial number as is on Exhibit

24 10?

1 A. Yes.

2 Q. All right. Mr. Ettler, I know it has been six years,
3 and you must conduct a number of transactions of this sort,
4 but I would ask the Court to direct the defendant to stand
5 up at this time.

6
7 MR. ALLEN: I think you can ask him if the
8 defendant...if he recognizes anybody in the Courtroom.

9 THE COURT: I think so. Yes.

10 BY MR. CRUMP:

11 Q. Do you recognize anyone in the Courtroom?

12 A. Yes, sir. But...

13 Q. Who do you recognize?

14 A. This man here on the right. But, I wouldn't have
15 recognized him not knowing that he...I could tell by your
16 procedure here this morning that he was the man. I didn't
17 recognize him when he walked in here.

18 Q. You recognize him now as the same man you sold the
19 gun to?

20 A. I couldn't say truthfully. No, sir.

21 Q. You can't recall the person you sold the gun to.
22 You just recognize him in general: is that correct?

23 A. That is correct.

24 Q. All right.

* * *

1 follows:

2 DIRECT EXAMINATION

3 THE DEFENDANT: I object to this over here. Over
4 there is the only place I will be able to hear from. This
5 won't do any good.

6 THE COURT: Mr. Drumheller, if your Counsel decides
7 that you are not hearing, if it isn't coming in too clear,
8 they will notify me. You sit down there, please.

9 THE DEFENDANT: Over there is where I want.

10 MR. CRUMP: Would be careful...

11 THE COURT: He has been sworn?

12 MR. CRUMP: Yes, sir.

13 BY MR. CRUMP:

14 Q. Would you be careful to speak into the microphone,
15 and state your name and occupation?

16 A. Charles Sturdivant. Front Royal Police Department.

17 Q. Were you so employed in December of 1979?

18 A. Yes, sir. I was.

19 Q. On December 8, 1979, did you have occasion to go
20 to the home of the defendant, Thomas Drumheller?

21 A. Yes, sir. I did.

22 Q. Where is his home?

23 A. It would be Cabin 10 at the Riverside Motel on
24 340 South.

* * *

1 Q. Sergeant Sturdivant, as I recall, when we recessed
2 you testified that you went out to Cabin 10 at the Riverside
3 Motel, which was Mr. Drumheller's residence on the 8th of
4 December, 1979, and you went out with certain law enforcement
5 personnel: is that correct?

6 A. Yes, sir.

7 Q. All right. About what time was it?

8 A. This would have been approximately 6:45 p.m.

9 Q. All right. For what purpose did you go out there?

10 A. To serve a search warrant.

11 Q. And what were you looking for?

12 A. We were looking for the body of Hope Atkins.

13 Q. Now, this warrant was served?

14 A. Yes, sir. It was.

15 Q. Who served it?

16 A. Roger Fox.

17 Q. And was Mr. Drumheller advised of his Miranda
18 rights at that point?

19 A. Yes, sir. Sheriff Armentrout advised Mr. Drumheller
20 of his Miranda warnings.

21 Q. Did Mr. Drumheller indicate that he understood
22 his rights?

23 A. Yes, sir.

24 Q. All right. Please tell the jury what happened at

1 that point.

2 A. As soon as Mr. Drumheller was advised of his rights,
3 the search warrant had already been read to him, we began to
4 talk to Mr. Drumheller in reference to the Hope Atkins
5 abduction. At one point, Mr. Drumheller advised us if we would
6 go to Riverton or send somebody to Riverton to get his uncle,
7 he would tell us what we wanted to know.

8 Q. All right. His uncle is who?

9 A. Andy Roderfer.

10 Q. All right. And then?

11 A. We had a deputy sent out to pick the uncle up. And
12 while he was gone, we continued to talk to Mr. Drumheller.
13 As soon as the uncle got back with the deputy, he came in,
14 Mr. Drumheller asked us if he could talk to his uncle alone.
15 We stated: Yes, we would give him time to talk to his uncle
16 alone. He told us to go in...he pointed towards the kitchen.
17 We walked in through the kitchen, which is an open room off
18 to the left, and there is no door on it. It is approximately
19 six feet from where they were seated.

20 Sheriff Armentrout and I stayed in the kitchen.
21 The uncle and Mr. Drumheller were talking. The uncle kept
22 asking Mr. Drumheller: "Where is the girl at?"

23 MR. ALLEN: Objection. I object at this point,
24 Your Honor, to any statements that have been made by Mr.

1 Roderfer, who is the uncle, or Mr. Drumheller, and I think
2 we had better go out of the hearing of the jury.

3 (AT THE SIDEBAR with the Court, Commonwealth's Attorney,
4 Counsel, the defendant and the Court Reporter).

5 MR. ALLEN: Your Honor, the evidence already
6 elicited showed that the defendant was making a statement to
7 him with a reasonable expectation that he was going to have
8 a private conversation. And what occurred would have been
9 a violation of his rights of privacy, and a violation of
10 his Constitutional rights, and I would object to the
11 statements being introduced into evidence.

12 MR. CRUMP: I can lay a foundation to show that
13 they were not eavesdropping. That Mr. Drumheller was
14 speaking in an extremely loud voice and could be heard all
15 over the house and the officers were where they had been
16 directed to go by Mr. Drumheller himself.

17 THE COURT: It was in his house?

18 MR. CRUMP: Yes, sir.

19 THE COURT: I suggest you do that. If you continue
20 to object after that, I will overrule your objection and
21 note your exception..

22 MR. ALLEN: Okay. At this point...

23 THE COURT: I suggest you make the objection at the
24 time he lays the foundation. And I will overrule you now.

1 MR. ALLEN: Okay.

2 THE COURT: All right.

3 (OPEN COURT)

4 BY MR. CRUMP:

5 Q. All right, Sergeant Sturdivant, in what room were
6 you and Sheriff Armentrout when you heard these voices?

7 A. We were in the kitchen.

8 Q. And why did you go in the kitchen?

9 A. Mr. Drumheller requested to be with his uncle, to
10 speak to him alone and we went off into the kitchen which is
11 approximately, I would say, about six feet from where they
12 were seated.

13 Q. Is that where you were told to go by Mr. Drumheller?

14 A. Yes, sir. He more or less pointed to the kitchen.

15 Q. Now, Mr. Drumheller and his uncle were aware of
16 this?

17 A. They were seated on the couch which is in the
18 front room of the Cabin 10.

19 Q. And you clearly heard the voices of Mr. Drumheller
20 and the uncle?

21 A. Yes, sir. In speaking to Mr. Drumheller, you have
22 to speak in a loud voice.

23 Q. All right. And how about Mr. Drumheller: was he
24 speaking in a loud voice as well?

1 A. Yes, sir. Mr. Drumheller speaks...I mean, you know,
2 he talks rather loud.

3 Q. Now, could these voices be heard freely all over
4 the house?

5 A. Yes, sir.

6 Q. All right. Where in the kitchen were you, exactly?

7 A. As you go through the door, the stove is to the
8 left hand side. We were standing right by the stove. It is
9 approximately two feet inside the kitchen, I would say.

10 Q. Were you making any effort whatsoever to increase
11 your ability to hear what was going on in that next room?

12 MR. ALLEN: Your Honor, I am going to object to
13 that question. That calls for a conclusion from the witness
14 and I don't believe that it is a proper question. I think
15 he can ask him a different way.

16 BY MR. CRUMP:

17 Q. Did you have your ear pressed to the wall?

18 A. No, sir.

19 Q. Did you sneak around the doorway, cock your head
20 to hear better?

21 A. No, sir.

22 Q. Did you do anything at all to enable you to hear
23 what was going on any better than you would have otherwise?

24 A. No, sir. I believe you could have heard the voices

1 outside the house if you had been out there.

2 MR. ALLEN: Strike that question. I believe it is
3 not...we move to strike that...I move to strike that answer.
4 It is not responsive to the question. What he believes is
5 not facts, and I object to it.

6 THE COURT: Motion is sustained. The jury will
7 disregard the last answer.

8 BY MR. CRUMP:

9 Q. Please tell the jury what was said.

10 MR. ALLEN: Objection again, Your Honor, on the
11 grounds that I previously stated.

12 THE COURT: The objection is overruled.

13 MR. ALLEN: Note our exception, please.

14 THE WITNESS: As I was standing in the kitchen with
15 Sheriff Armentrout, Mr. Roderfer kept telling Tommy to tell
16 us where the girl was at. You know, tell him or us where the
17 girl was at. Tommy made the statement: "I am afraid she is
18 dead." This went on and on, over and over. At one point,
19 Tommy asked his uncle, he said: "Well, what will they do to me
20 if she is dead?" And the uncle said: "They will probably..."

21 MR. ALLEN: Object to what the uncle said. It is
22 hearsay.

23 MR. CRUMP: All right.

24 BY MR. CRUMP:

1 Q. Go ahead.

2 A. The uncle said: "They will probably electrocute
3 your ass, but don't worry about yourself. Tell them where
4 the girl is at." So, this continued. There was another
5 statement made, Tommy kept trying to get his uncle to round
6 up his guns. He said: "Get my guns." And this went on for
7 a while, finally, we came back into the room, Tommy said he
8 would tell us or show us...go with us and show us what we
9 wanted, if the uncle would go with him.

10 We started to go out the door, the uncle said:
11 "Hell, no. I am too sick. I am not going." So, at this
12 time, Tommy was taken on out to the car where he was placed
13 under arrest.

14 Q. What was he under arrest for at that point?

15 A. Abduction.

16 Q. All right. And was he subsequently taken to the
17 Warren County Jail?

18 A. Yes, sir. Later on that night.

19 Q. And, was anything seized at his house that night?

20 A. Not that I know of. No, sir. Not that I remember.
21 The search warrant...another party done the searching. I
22 had no part in the search.

23 Q. Was there any automobile at his house that night?

24 A. Yes, sir. I believe there was.

1 Q. Was that impounded?

2 A. Yes, sir.

3 Q. I show you these photographs that have been marked
4 for identification as Commonwealth's Exhibit 4, and ask if
5 you can recognize the automobile in those photographs?

6 A. Yes, sir. This is Mr. Drumheller's automobile.

7 MR. ALLEN: Your Honor, I am going to object to
8 that and move to strike that answer. He cannot state, unless
9 they can prove that it is his automobile. He can state that
10 that was an automobile picked up someplace, but not...

11 THE COURT: I think you would have to tie it up,
12 Mr. Crump.

13 MR. CRUMP: All right.

14 BY MR. CRUMP:

15 Q. Is that the automobile that was at Mr. Drumheller's
16 house?

17 A. Yes. It is.

18 Q. And, do you know who that automobile is registered
19 to?

20 A. I would say it is registered to...

21 Q. You don't know for sure?

22 A. No, sir. I couldn't...

23 Q. Is that the automobile that was impounded that
24 night?

1 A. Yes, sir. This is the automobile that was impounded.

2 THE COURT: The jury will disregard any attempts
3 tying the automobile to Mr. Drumheller at this particular
4 point.

5 MR. CRUMP: Your witness.

6 CROSS EXAMINATION

7 BY MR. POND:

8 Q. Mr. Sturdivant, who else was with you the night
9 that you went to Cabin 10?

10 A. There was Sheriff Armentrout, Roger Fox, I believe
11 Bo Meredith, I believe Mike Tennant was also there. That is
12 as far as I can remember.

13 Q. Was Captain Cullers there?

14 A. I don't believe he was inside the cabin. No, sir.
15 He came up later, I think, after we got out there.

16 Q. Cabin 10: where? Where is Cabin...

17 A. Cabin 10, Riverside Motel. It is 340 South,
18 approximately nine-tenths of a mile out of town.

19 Q. Over near the Skyline Caverns: is that correct?

20 A. Yes, sir.

21 Q. Mr. Drumheller lived in that cabin with whom?

22 A. His wife and I believe he has a daughter.

23 Q. At that time, he had a daughter. Now, he has a
24 daughter and a son: is that correct?

1 A. I don't know, sir.

2 Q. Was she pregnant at that time, when you were out
3 there?

4 A. Yes, sir.

5 Q. You entered the cabin, among other people: is that
6 correct?

7 A. Yes, sir.

8 Q. Who else went in to execute the search warrant?

9 A. Who done the actual searching?

10 Q. Uh, huh.

11 A. Would be Investigator Fox, and I believe there was
12 ...That is all I know that really done the searching. As
13 far as I know that is all the people that I knew went in. I
14 couldn't say if there was anyone else in there with him.

15 Q. Would you describe the cabin's layout, please?

16 A. Yes, sir. As you approach the cabin, you go down
17 a slight grade. You go around to the back of the cabin
18 which faces Shenandoah River. There is a screened-in porch...

19 Q. That is the only entrance to the place?

20 A. Well, you go through the screened-in porch and then
21 there is an entry way into the front room.

22 Q. That is the only door into the cabin: is that
23 correct?

24 A. As far as I know. Yes, sir.

1 Q. All right. Where is that door in the house, where
2 does it lead to?

3 A. The door inside the screened-in porch enters the
4 front room of the house.

5 Q. That is where the couch is located?

6 A. Yes, sir.

7 Q. All right. That is the main room of the cabin?

8 A. Yes, sir. That would be the main room.

9 Q. Would you consider it a living room?

10 A. Yes, sir.

11 Q. All right. To your left would be what?

12 A. Would be the kitchen.

13 Q. All right. Then you go through the room and the
14 doorway to the kitchen is to the left?

15 A. Yes, sir.

16 Q. And then into the room from the right is what?

17 A. There is another doorway that goes into a bathroom.

18 Q. Then to what?

19 A. Then there is another doorway off the bathroom
20 that goes into a bedroom.

21 Q. So, this is a fairly modest type place where he is
22 living: is that correct?

23 A. Yes, sir. Small place.

24 Q. The bathroom consisted of a commode, a shower stall?

1 A. Yes, sir.

2 Q. When you were talking to...you said you and Sheriff
3 Armentrout were talking to Mr. Drumheller?

4 A. Yes, sir.

5 Q. I see. This is when you first came into the cabin,
6 while you were searching the cabin under the search warrant?

7 A. No, sir. As we entered the cabin, the search
8 warrant was read to Mr. Drumheller by Investigator Fox.
9 Sheriff Armentrout and I did talk to him at that point.

10 Q. But you and Sheriff Armentrout weren't doing any
11 searching?

12 A. No, sir. We didn't go into the searching...

13 Q. You went there for the specific purpose of talking
14 with Mr. Drumheller? Isn't that true?

15 A. I talked to Mr. Drumheller.

16 Q. That is why you went there. You didn't...

17 A. Well, I was in charge...I was Sergeant in charge
18 of investigations at the time. My officers call me at
19 home when they are going to serve a search warrant and I
20 go along with them.

21 Q. Well, why did you go?

22 A. Well, we did have a search warrant, and yes sir,
23 I did want to speak to Mr. Drumheller if he would talk to me.

24 Q. Your contention was this was within the Town limits,

1 or the limits provided by statute for you to execute a search
2 warrant

3 A. Well, we had the Sheriff with us to assist us.

4 Q. Why did you have him with you?

5 A. Well, it is a County form.

6 Q. Was there some question as to whether or not you
7 were within the Town jurisdiction at that time?

8 A. If we was to serve a search warrant if it was
9 five feet out of the Town of Front Royal, I would advise the
10 Sheriff and if he wanted to go along, he would go.

11 Q. Covering all your bases, make sure...

12 A. Yes, sir.

13 Q. When you first started...when you and Sheriff
14 Armentrout first started talking to Mr. Drumheller, where
15 was Mrs. Drumheller?

16 A. She was in the same room with us.

17 Q. She was in the living room?

18 A. Yes, sir.

19 Q. All right. When you were talking...when he was
20 talking to the uncle, after the uncle had come do you know
21 where Mrs. Drumheller was at that time?

22 A. No, sir. I don't recall.

23 Q. Do you know if she was still there?

24 A. Yes, sir. She was still somewhere in the house.

1 Q. Was she still there when you arrested Mr. Drumheller
2 some time later?

3 A. Yes, sir. She was present then.

4 Q. Do you recall what time it was that you placed
5 Mr. Drumheller under arrest?

6 A. Probably somewhere within an hour, an hour and a
7 half, after we were at the place.

8 Q. And your testimony is that Mr. Roderfer was still
9 there at that time?

10 A. Yes, sir. Mr. Roderfer was still there.

11 Q. When you placed Mr. Drumheller under arrest, was
12 Mr. Roderfer in the same room with you?

13 A. Yes. Mr. Roderfer was there.

14 Q. you recall what time Mr. Roderfer arrived at
15 Mr. Drumheller's place, Mr. Sturdivant?

16 A. I would say this was approximately somewhere
17 between a half an hour, forty-five minutes, after we arrived
18 at the cabin.

19 Q. How was he brought to the cabin?

20 A. I believe Sergeant Tennant of the Sheriff's
21 Department went out to get him.

22 Q. And, then he and Mr. Drumheller stayed on the
23 couch in the living room...

24 A. Yes, sir.

1 Q. ...talking.

2 A. Yes, sir.

3 Q. And you and Sheriff Armentrout went into the
4 living room...into the kitchen away from...

5 A. Into the kitchen.

6 Q. ...where they were.

7 A. Yes, sir.

8 Q. Where was Officer Fox at this time?

9 A. I believe he was out on the front porch, outside
10 somewhere. I am not sure.

11 Q. He had finished searching?

12 A. Again, I don't know. I am not sure whether, you
13 know, whether he had finished searching or...

14 Q. Did he come back in and search anymore after you
15 finished talking?

16 A. I don't know, sir. After I placed Mr. Drumheller
17 under arrest, Sheriff Armentrout, Captain Cullers, who was
18 outside in the car, and myself left.

19 Q. Did Mr. Drumheller go with you?

20 A. Yes, sir. He did.

21 Q. You mentioned that Mr. Drumheller has a hard time
22 hearing, I think.

23 A. Yes, sir.

24 Q. And, consequently, a person has to speak a little

1 louder than normal to talk to him. He talks the same way.

2 A. Yes, sir.

3 Q. Would you say Mr. Drumheller speaks clearly?

4 A. No, sir.

5 Q. Some people have a hard time understanding what he
6 is trying to say?

7 A. You can understand him. He doesn't speak well but you
8 can understand what he is saying.

9 Q. Are there times when you have spoken to him that
10 he has had to repeat himself?

11 A. Yes, sir. There have been times.

12 Q. Then you would agree that he is hard to understand
13 at times?

14 A. Yes, sir.

15 Q. You mentioned that you, Captain Culleers, Sheriff
16 Armentrout and Mr. Drumheller left Cabin 10 sometime maybe
17 an hour and a half after you first arrived: is that correct?

18 A. Yes, sir.

19 Q. I assume from there you went directly to the police
20 department?

21 A. No, sir.

22 Q. You didn't?

23 A. No, sir.

24 Q. Where did you go?

* * *

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D22
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Reporter

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1 any of this procedure? That was fine with him, to travel like
2 this with you three police officers without an attorney
3 present?

4 A. No, sir. He never made any objections. As a
5 matter of fact, he was the first one to agree to go along
6 with us, he would show us what we wanted if his uncle would
7 go, and his uncle became sick and said: "Hell, no." He was
8 too sick, he wasn't going.

9 Q. His uncle didn't go with you, then?

10 A. No, sir.

11 Q. You mentioned from the depot that you went to his
12 uncle's house.

13 A. Yes, sir.

14 Q. Tommy was with you...Mr. Drumheller was with you?

15 A. Yes, sir.

16 Q. How long were you there?

17 A. We were there until sometime, I would say, maybe
18 around eleven o'clock, a little bit after eleven.

19 Q. Actually, it was after midnight, wasn't it?

20 A. No, sir. I think it was before midnight.

21 Q. Now, while you were there at Mr. Roderfer's house,
22 was not another search warrant issued to search Mr. Roderfer's
23 house?

24 A. Yes, sir. Another search warrant was issued.

1 Q. And, Roger Fox issued...I mean, had the search
2 warrant brought out? To search Mr. Roderfer's house?

3 A. Yes, sir.

4 Q. And, I am assuming that you all stayed there until
5 after Mr. Fox came and served the search warrant and finished
6 the search: is that correct?

7 A. Yes, sir.

8 Q. How long did he search the building?

9 A. He searched, I would say, approximately five to
10 ten minutes.

11 Q. All right. And you agree, then, that...all right,
12 after he finished the search, how long did you stay?

13 A. I believe we left after the search.

14 Q. So you would agree that whatever time that Roger
15 finished...Mr. Fox finished, it took you, what: ten minutes
16 to get back to the jail?

17 A. Yes, sir. Somewhere in the neighborhood.

18 Q. All right. If I told you that the search warrant
19 was served at 11:05...

20 A. Yes, sir.

21 Q. ...p.m. All right. And you said that it was about
22 fifteen minutes that he took to search the house?

23 A. I would say somewhere...ten or fifteen. No more.

24 Q. Well, let's just say fifteen to make it even. 11:20.

1 Would you say that it takes about ten more minutes to get
2 back in town: is that right?

3 A. Yes, sir.

4 Q. So, then, it was probably close to 11:30 when you
5 got him back into the jail?

6 A. 11:30, 11:45, somewhere in that neighborhood.

7 Q. At that time was he taken before the magistrate?

8 A. Yes, sir. I believe a warrant was served on...a
9 warrant was served on him. Yes, sir. I believe so.

10 Q. The whole time that you had Mr. Drumheller out,
11 from approximately eight o'clock until twelve o'clock, your
12 contention was that he never once asked to be taken somewhere
13 to talk to a lawyer: is that correct?

14 A. No, sir. Not that I recall.

15 Q. Mr. Sturdivant, on your trip from Riverside to
16 Eddie's Laundromat, I assume that conversation took place
17 among the three of you and Mr. Drumheller: is that correct?

18 A. Yes, sir.

19 Q. What was that conversation?

20 A. Captain Cullers advised Mr. Drumheller of his
21 rights again when we took him to the car. Captain Cullers
22 was trying to find out where the girl was at. He also asked
23 Tommy if she was dead. I think Tommy...well, I won't go
24 into that because I don't know for sure. But, Captain Cullers

1 said: "You threw her in the river, didn't you, Tommy?" He

2 said: "No." Just general...

3 Q. Now, he said: "No." You don't know whether he said
4 that no, he didn't throw her in the river, or no, he didn't do
5 it?

6 A. No, sir. All I know is he said: "No".

7 Q. Was Investigator Criegee with you when you went
8 out to Number Ten at Riverside that night?

9 A. He could have been, sir. I don't recall.

10 Q. You don't know whether he was or not?

11 A. If he did, he stayed outside. He didn't enter
12 the cabin with me.

13 MR. POND: No further questions.

14 REDIRECT EXAMINATION

15 BY MR. CRUMP:

16 Q. Sergeant Sturdivant, at the time that Mr.
17 Drumheller was placed under arrest, you didn't know
18 the fate of Hope Atkins: did you?

19 A. No, sir. I did not.

20 Q. You didn't know whether she was dead or alive?

21 A. No, sir.

22 Q. What was the weather like on December 8th?

23 A. It was cold.

24 Q. Below freezing?

1 A. I don't believe it was below freezing. No, sir.
2 It wasn't so cold that, you know, that you would freeze to
3 death outside.

4 Q. But it was cold?

5 A. Yes, sir.

6 MR. POND: Your Honor, I object. I don't believe
7 this is proper redirect.

8 THE COURT: I think it exceeds. Did you forget
9 that on...

10 MR. CRUMP: Beg your pardon?

11 THE COURT: Did you forget to ask that...

12 MR. CRUMP: This isn't direct. This is rebuttal,
13 Your Honor.

14 THE COURT: Well, I know. But I think you are
15 going beyond the scope of his cross examination.

16 MR. CRUMP: No, sir. I disagree with that.

17 THE COURT: How is that responsive to cross
18 examination?

19 MR. CRUMP: If I could approach the bench for a
20 conference.

21 (AT THE SIDEBAR with the Court, Commonwealth's Attorney,
22 defense counsel, the defendant, and the Court Reporter).

23 THE COURT: Now, what difference does the weather
24 make?

* * *

1 THE COURT: Mr. Crump, I will permit you to go
2 ahead. I am convinced that it is responsive.

3 (OPEN COURT)

4 BY MR. CRUMP:

5 Q. It was cold. And you didn't know whether the girl
6 was dead or alive?

7 A. No, sir. I did not. We were hoping to find the
8 girl alive.

9 Q. For all you knew, she could have been lying injured
10 out in the cold somewhere?

11 A. Yes, sir.

12 Q. And, in fact, the fate of the girl, Hope Atkins,
13 was not known until December 14th when the body was found?

14 A. That is correct, sir.

15 MR. CRUMP: That is all.

16 MR. POND: No further questions.

17 THE COURT: You want the witness excused?

18 MR. CRUMP: Yes. Ask that this witness be excused,
19 Your Honor.

20 (WHEREUPON, the witness was excused from further attendance
21 upon the Court without objection).

22 MR. CRUMP: Call Lynn Armentrout.

23 WHEREUPON

24 SHERIFF LYNN ARMENTROUT

* * *

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CROSS EXAMINATION

BY MR. POND:

Q. Mr. Armentrout, where is Cabin 10, Riverside, located?

A. Would be on the south side of the

Q. Approximately how far out of town?

A. Approximately nine-tenths of a mile

Q. South of Front Royal, near the Skyline Caverns: is that correct?

A. This is true.

Q. I believe you testified that you went into the cabin?

A. Yes, sir.

Q. Would you describe the layout of the cabin and how you get into it, please?

A. Okay. The...we went into the front porch area which is facing towards the river. Went in and knocked on the door, Mrs. Drumheller answered the door and we seen Tommy. He was sitting in a couch in the living room area, right inside the door. So, then, she invited us in.

Q. I assume you told her: "We have a search warrant for your house."?

A. Yes, sir.

Q. All right. As you...will you describe for the jury,

1 Q. Were you sitting on the couch or was Mr.
2 Drumheller?

3 A. Mr. Drumheller was sitting on the couch when I
4 arrived. I do know that Sergeant Sturdivant sat in a chair
5 immediately across from him. I am not sure whether I sat
6 down at any time or not.

7 Q. How long did you talk to him before he asked that
8 his uncle be brought out?

9 A. As near as I can recall, about ten or fifteen
10 minutes.

11 Q. While you were waiting for the uncle to be brought
12 out, did you still carry on a conversation with him?

13 A. I feel certain we did, but I don't recall exactly
14 what was said.

15 Q. When Mr. Roderfer arrived, how was it determined
16 that you all were going to go into the kitchen while he
17 talked to him?

18 A. I believe Mr. Drumheller asked to talk to Mr.
19 Roderfer alone and asked us to go into the kitchen.

20 Q. Is there a door on the kitchen?

21 A. No, sir.

22 Q. Where in the kitchen did you and Mr. Sturdivant go?

23 A. Just inside the door. Very small kitchen.

24 Q. But it does go back...the kitchen actually is the

1 same length of the living room: is it not? Isn't the
2 refrigerator back in, on the back wall? It was on the same
3 wall the door entered through?

4 A. I remember it as a small room, Mr. Pond, but I
5 don't...couldn't give you the dimensions.

6 Q. So you and Mr. Sturdivant stood by the door?

7 A. Yes, sir. We were inside the door. Out of sight
8 but not out of sound.

9 Q. Did you try to get out of sound?

10 A. I don't believe you could have got of sound. It
11 was a real small room.

12 Q. Plus Mr. Drumheller is kind of hard of hearing:
13 isn't he?

14 A. Yes, sir.

15 Q. And a person talking to him has to speak fairly
16 loud?

17 A. They were both speaking fairly loud.

18 Q. Does Mr. Drumheller speak loud, too, most of the
19 time? In your experience with him.

20 A. Quite often.

21 Q. Does he speak well?

22 A. Not real plain. No, sir.

23 Q. There have been times when you have had to ask him
24 to repeat what he said to you, I assume, I am sure?

1 A. Yes, sir.

2 Q. How long did he and Mr. Roderfer speak with each
3 other?

4 A. I wouldn't think it would be over five minutes.

5 Q. What prompted you to come back into the room and
6 decide to end the conversation?

7 A. Sergeant Sturdivant went in first and I just went
8 along with him.

9 Q. He had enough, was ready to put him

10 A. Yes, sir.

11 Q. From what you heard from in the kitchen.

12 A. I assume that he felt...He come in shortly there-
13 after and placed him under arrest.

14 Q. He actually did the arresting? You did not do it?

15 A. Yes, sir.

16 Q. Where was Mrs. Drumheller at this time?

17 A. She was either in that room or a room to the right,
18 which I believe must have been the bedroom.

19 Q. Do you remember for sure?

20 A. I know she had been there at sometime.

21 Q. All right. When you were speaking to Mr.
22 Drumheller before his uncle arrived, was she in the room at
23 that time?

24 A. I believe she was in and out because there was a

1 child there.

2 Q. What time do you think it was, the time you placed
3 Mr. Drumheller under arrest that night?

4 A. I would say it would be nearing eight o'clock. I
5 am not sure. Believe it was 7:30, nearer to eight.

6 Q. When you placed Mr. Drumheller under arrest, had
7 Investigator Fox completed his search?

8 A. No, sir. The search was done after he was placed
9 under arrest. It wasn't done while I was there.

10 Q. So, he hadn't even done any searching at all when
11 you were talking to Mr. Drumheller?

12 A. Not to my knowledge. I don't recall any searching.

13 Q. All right. Sheriff Armentrout, at about eight...
14 you said between seven-thirty and eight, you took him out of
15 the house under arrest. You said that you and Sheriff...
16 you and Captain Cullers and Sergeant Sturdivant took him,
17 sometime later, took him to the jail: is that correct?

18 A. Yes, sir.

19 Q. All right. From his house, where did you go?

20 A. We went to Second Street, near the laundromat.

21 Q. All right. Did you go to the laundromat?

22 A. Inside?

23 Q. Yes.

24 A. No, sir.

* * *

1 FURTHER DIRECT EXAMINATION

2 BY MR. CRUMP:

3 Q. You are still under oath. State your name and
4 occupation.5 A. Roger W. Fox. Investigator, Front Royal Police
6 Department.

7 Q. And you were so employed in December of 1979?

8 A. Yes.

9 Q. Were you at Cabin 10 at Riverside Motel on December
10 8th...

11 A. Yes.

12 Q. ...1979?

13 A. Correct.

14 Q. Speak directly into the microphone, please.

15 Why were you out at that cabin?

16 A. I had received information from a witness that
17 lives at 131 Hillidge Street that a car...

18 MR. POND: Objection, Your Honor.

19 BY MR. CRUMP:

20 Q. Just tell us why you were at the cabin.

21 A. I served...

22 THE COURT: The jury will ignore the previous statement.

23 THE WITNESS: To serve a search warrant.

24 BY MR. CRUMP:

1 Q. All right. A search warrant on whom?

2 A. Thomas Drumheller's residence and his vehicle.

3 Q. Who was with you?

4 A. Sheriff Armentrout, Sergeant Sturdivant, Bo
5 Meredith, Mike Tennett, Officer Honse, H-o-u-n-s-e. H-o-n-s-e.
6 That is all I can remember right now.

7 Q. All right. Who actually executed the search warrant?

8 A. I did.

9 Q. Who did you serve it on?

10 A. Mr. Drumheller.

11 Q. Now, where were Sergeant Meredith...I am sorry.

12 Sergeant Sturdivant and the Sheriff, Sheriff Armentrout after
13 the search warrant was executed?

14 A. They were in the same room with myself and Mr.
15 Drumheller. In the living room.

16 Q. Did you remain in the house?

17 A. After I served the search warrant, they began
18 talking to Mr. Drumheller. I left the room, went out on
19 the porch.

20 Q. What exactly were you looking for at that time?

21 A. The body of Hope Atkins and her personal effects.

22 Q. Now, did you see Mr. Drumheller later on that
23 evening at the Warren County Jail?

24 A. Yes.

1 Q. And was he being processed in?

2 A. Yes. He was.

3 Q. Did you take any articles that had been processed
4 from Mr. Drumheller?

5 A. Yes. I did.

6 Q. What did you take?

7 A. His clothing, his shoes, his watch.

8 Q. All right. Would you get the shoes, please.

9 (WHEREUPON, witness retrieves the shoes).

10 BY MR. CRUMP:

11 Q. Was Mr. Drumheller wearing those shoes?

12 A. Yes, sir. He was.

13 Q. When he was taken in?

14 A. Yes.

15 Q. What did you do with the shoes after you took them
16 from the jailer on December the 8th?

17 A. I took them to the Police Department and sealed
18 them in a paper bag, placed them in the evidence locker.

19 Q. And what did you with them thereafter?

20 A. I transported them to Merrifield Lab for analysis.

21 Q. All right. And what day did you transport them to
22 the lab and who did you turn them over to?

23 A. I will have to refer to the report.

24 I transported the shoes and clothing to the

* * *



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1 MR. CRUMP: Call Andrew Roderfer.

2 WHEREUPON

3 ANDREW RODERFER

4 was called as a witness on behalf of the Commonwealth, and
5 having been previously sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. CRUMP:

9 Q. Would you try to speak as directly into the
10 microphone as possible.

11 Would you state your name, please?

12 A. Andrew J. Roderfer.

13 Q. Do you know the defendant, Thomas Drumheller?

14 A. How is that?

15 Q. Do you know Thomas Drumheller?

16 A. Absolutely.

17 Q. Are you related to him?

18 A. He is my nephew.

19 Q. You are his uncle?

20 A. Sir?

21 Q. You are his uncle? You are Tommy Drumheller's
22 uncle?

23 A. No. He used to stay with us.

24 Q. He is your nephew?

* * *

1 A. Have what?

2 Q. Do you have a house out there?

3 A. Yes, sir.

4 Q. On December 28th, 1979, last December, did
5 Sergeant Meredith and some other people from the Sheriff's
6 Department come out to your house?

7 A. Yes, sir.

8 Q. And did you turn something over to them at that
9 time?

10 A. Absolutely. Absolutely.

11 Q. I show you this gun which has been marked for
12 identification as Commonwealth's Exhibit 10. Is this what
13 you gave Sergeant Meredith?

14 A. That is what it is. I don't want to put my hands
15 on it.

16 Q. Where did you get the gun?

17 A. His wife gave it to me. Told me keep it.

18 Q. Tommy's wife gave it to you?

19 A. That is right. Exactly.

20 Q. Told you to keep it? When was this: do you
21 remember?

22 A. I don't remember.

23 Q. Was it after the girl had been abducted?

24 A. Well, sir, I will tell you exactly how it happened.

1 His wife, when they arrested him, put him away, his wife
2 asked me...I went out there to the cabin where they lived,
3 and she asked me, says I will stay there...

4 MR. POND: Your Honor, object to his testimony as
5 to what the wife told him.

6 THE COURT: Unless it is in the presence of the
7 defendant, it is inadmissible.

8 MR. CRUMP: I have no idea what he is going to say,
9 Your Honor.

10 THE COURT: Oh. All right.

11 THE WITNESS: I want to tell you how I got messed
12 up in it. When I went out there, and the minister come
13 down there, the preacher, me and him was talking to her.

14 MR. ALLEN: Your Honor.

15 THE COURT: Now wait a minute.. Was Mr. Drumheller
16 ...Mr. Drumheller wasn't there; was he?

17 THE WITNESS: No.

18 THE COURT: He was in jail?

19 THE WITNESS: He was in jail. Right.

20 THE COURT: So, you can't say anything that was
21 said to you by Mrs. Drumheller or by the preacher since
22 Tommy wasn't there.

23 BY MR. CRUMP:

24 Q All right. Mr. Drumheller had already been

1 arrested: is that right?

2 A. Sure.

3 Q. And you went out to his cabin at the Riverside
4 Motel?

5 A. Took her from her work home.

6 Q. Okay. And she gave you that gun at the cabin?

7 A. She went in the bedroom and said: "Look, laying
8 here." And I walked in...

9 THE COURT: The jury will disregard that.

10 MR. CRUMP: Fine.

11 THE COURT: What she said. Just tell us what she
12 did.

13 BY MR. CRUMP:

14 Q. She went into the bedroom?

15 A. That is right.

16 Q. And did she get the gun in the bedroom?

17 A. She told me to come in and in there she handed it
18 to me and says: "Keep this." And went out in the other room
19 and picked up an old rifle. And I took it out to the house.

20 Q. Okay. And you took that gun out to your house?

21 A. Yes, sir.

22 Q. And you kept it there until Sergeant Meredith came
23 and got it from you?

24 A. How is that?

1 Q. You kept it at your house until Sergeant Meredith
2 came and got it?

3 A. Absolutely. They came out there. Hook Cullers
4 is the man I gave the gun to.

5 MR. CRUMP: No further questions.

6 MR. POND: Your Honor, may I ask Mr. Drumheller...
7 (Conference between counsel and defendant).

8 CROSS EXAMINATION

9 BY MR. POND:

10 Q. Mr. Roderfer, how long had you had that gun before
11 you turned it over to the police?

12 A. I don't know exactly. Maybe a day or two. I put
13 it in a plastic bag. There was old heater there because if
14 something happened to my oil heater or something, I would
15 turn it on, see. I just laid it down in there.
16 Didn't even put my hands on the gun. Put it in a plastic
17 bag.

18 Q. You mentioned that you were there with the preacher:
19 is that right? At her house?

20 A. I went out to her house. Took her home from work.
21 He was locked up. She couldn't get home. I took her out
22 there and she...

23 Q. Well, I don't know what she said. But, did you
24 mention that there was a preacher there? I thought you said

* * *

1 BY MR. CRUMP:

2 Q. Sergeant Meredith, on the 17th day of December,
3 1979, did you have an occasion to go to Cabin 10 at the
4 Riverside Motel, the residence of Thomas Drumheller?

5 A. Yes, sir. I did.

6 Q. Why were you there?

7 A. I went with Investigator Chapman and Investigator
8 Sturdivant to serve a search warrant.

9 Q. And, were any objects turned over to you?

10 A. Yes, sir. There were.

11 Q. What objects were turned over to you?

12 A. I got three .22 caliber cartridges and I got a
13 rubber penis and some movies and some clothes.

14 Q. All right. Would you get the .22 caliber cartridges?
15 Would you open the bag and put the cartridges here?

16 A. Now, both of these bags are cartridges. These
17 were found by the nightstand. These were found in the door
18 as you come in the apartment.

19 Q. Is there one bag with three misfired cartridges?

20 A. Yes, sir. It is this one.

21 MR. CRUMP: At this time, I would move that these
22 three misfired cartridges be admitted as Commonwealth's
23 Exhibit 17 for purposes of identification.

24 MR. ALLEN: No objection for purposes of

* * *

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1 A. Put them in my personal evidence locker with the
2 rest of the items.

3 Q. Have they been sealed in your locker since that
4 time?

5 A. Yes, sir.

6 Q. And you just opened the seal here in the Courtroom
7 today?

8 A. Yes, sir.

9 Q. Taking a look at the laboratory analysis, which
10 has been marked for identification as Commonwealth's
11 Exhibit #12, are those three misfired cartridges listed on
12 that analysis? Is there an Item 82 on there?

13 A. Yes, sir. Here they are. Yes, sir.

14 Q. Those are the three cartridges?

15 A. Yes, sir.

16 Q. And what is the Item number?

17 A. 82.

18 Q. Now, you say Investigator Chapman also turned over
19 to you a rubber penis?

20 A. Yes, sir.

21 Q. That was in the Drumheller house?

22 A. Yes, sir.

23 Q. All right. Where has that object been since that
24 time?

* * *

- 1 Q. What did you do with them?
- 2 A. Turned them over to Sergeant Meredith.
- 3 Q. When did you turn them over to him?
- 4 A. That same evening.
- 5 Q. Where?
- 6 A. At the Sheriff's Department.
- 7 Q. All right. Did you recover anything else?
- 8 A. Recovered a rubber item, approximately ten inches
- 9 long.
- 10 Q. Sorry. Rubber what?
- 11 A. Penis. It was a...
- 12 Q. How long?
- 13 A. Approximately ten inches long.
- 14 Q. What color?
- 15 A. Orange.
- 16 Q. And where did you find that?
- 17 A. In the kitchen.
- 18 Q. Where in the kitchen?
- 19 A. It was in a cabinet.
- 20 Q. Was this a hollow object or solid object?
- 21 A. It was made out of solid rubber, flexible. Very
- 22 flexible. About two inches in diameter. About ten inches
- 23 long.
- 24 Q. I am sorry. I didn't quite hear where you found it

* * *

1 Q. Would you state your name and occupation, please?

2 A. Deputy Ken Printz. Warren County Sheriff's

3 Department.

4 Q. Deputy Printz, you have a motor vehicle registration
5 card there?

6 A. Yes, sir. I do.

7 Q. In whose name is that card?

8 A. Thomas F. Drumheller.

9 Q. And what is the registration number and the
10 license number of the vehicle in question?

11 A. License number: FPE 497.

12 Q. I show you these photographs which have been marked
13 for identification as Commonwealth's Exhibit 4: is that the
14 same vehicle?

15 A. Yes, sir.

16 MR. CRUMP: At this time, Your Honor, I would move
17 that this registration be admitted as Commonwealth's Exhibit
18 18.

19 THE COURT: Without objection, so admitted.
20 (WHEREUPON, registration card for Plymouth 4-door hardtop
21 registered to Thomas F. Drumheller is received and admitted
22 into evidence as Commonwealth's Exhibit #18).

23 MR. CRUMP: Your witness.

24 MR. ALLEN: No questions.

* * *

1 18th, and I sent them back to him on the 25th of January.

2 Q. Now, would you repeat that once more?

3 A. Okay. I originally sent them to him on the 21st of
4 December, and then I received them back from him in the locked
5 box on the 18th of January, and I returned them to him on the
6 25th of January.

7 Q. And you did not receive them from Mr. Miller?

8 A. Not that second time. No.

9 Q. Now, I show you this bag and shoes which have been
10 marked for identification as Commonwealth's Exhibit 15, and
11 ask if you can identify that?

12 A. Yes, sir. It has my case number, item number and
13 initials on it.

14 Q. All right. That is a portion of Item 30?

15 A. That is right.

16 Q. Were you able to detect any substance on the shoes?

17 A. Yes, sir. I was able to identify blood on the
18 sides on the soles of both shoes. But the amount of blood
19 was not sufficient that I could type it or even determine if
20 it was human.

21 MR. CRUMP: Your witness.

22 MR. ALLEN: May I have a minute, please, Judge?

23 MR. CRUMP: Your Honor, I am going to request that
24 the witness be recalled for further direct at another time.

* * *

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FURTHER DIRECT EXAMINATION

BY MR. CRUMP:

Q. Investigator Fox, you are still under oath.

Going back to the 9th of December, 1979, did you have an occasion to search the vehicle which is shown in Commonwealth's Exhibit 4?

A. I did.

Q. All right. Where was this vehicle searched?

A. At the Front Royal Volunteer Fire Department in Front Royal.

Q. Did you have a search warrant?

A. Yes, sir. We did.

Q. Did you find anything in the vehicle?

A. Yes, sir.

Q. What did you find?

A. Found the picture...pornographic material. You want everything I found?

Q. Yes. This picture you described as pornographic material, would you be more specific, please?

A. It was pictures of things...books that you could order of men and women committing sodomy on each other.

Q. Any other sexual acts?

A. There was also pictures of men with their penis in women's vagina and rectum. Also, there was an advertisement

1 where you could order dildos. Pictures of the dildos you could
2 order. All this was in an envelope with Mr. Drumheller's
3 name on it.

4 Q. The pictures you described as showing sodomy,
5 would you be explicit in explaining that or what act was
6 shown?

7 A. It showed the male's penis in the woman's mouth.

8 Q. More than one of these pictures?

9 A. More than one.

10 Q. In color or black and white?

11 A. Beg your pardon?

12 Q. Color or black and white pictures?

13 A. They were colored.

14 Q. Now, were these pictures contained in an envelope?

15 A. Yes, sir.

16 Q. Who was this envelope addressed to?

17 A. T. Drumheller.

18 Q. Would you speak into the microphone?

19 A. T. Drumheller.

20 Q. All right. Did you find anything else?

21 A. Yes, sir. I have three pages...

22 Q. Before you go into that, where did you find the
23 pictures and envelope?

24 A. They were under the driver's seat of Mr. Drumheller's

1 car.

2 Q. Now, what else did you find in the vehicle?

3 A. Found .22 bullets under the front seat of the
4 vehicle.

5 Q. On the driver's side or passenger side?

6 A. One box was under the driver's side and one box
7 was under the passenger's side.

8 Q. Do you have this ammunition?

9 A. Yes, sir.

10 Q. Would you get it, please?

11 Now, this first bag here, would you describe the
12 ammunition, please?

13 A. It is .22 caliber hollow point ammunition.

14 Q. What does it say on the side?

15 A. .22 long rifle hollow point high power.

16 Q. And this was found where?

17 A. That was on the right side of the front seat. I
18 am sorry. The left side. The driver's side.

19 Q. Driver's side under the front seat?

20 A. Yes, sir.

21 Q. And what did you do with it after you took it from
22 the vehicle?

23 A. It was placed in the evidence bag and placed in
24 the evidence locker at the police department.

1 Q. And has it been in that locker until today?

2 A. Yes.

3 Q. You brought it to Court?

4 A. Correct.

5 Q. Has it been tampered with in any way?

6 A. It has not been opened. No, sir.

7 MR. CRUMP: At this time, Your Honor, the
8 Commonwealth would move that the box of ammunition, .22 long
9 rifle hollow point high power cartridges be admitted as
10 Commonwealth's Exhibit 20.

11 THE COURT: Any objection?

12 MR. ALLEN: Yes, sir.

13 (AT THE SIDEBAR with the Court, Commonwealth's Attorney,
14 defense counsel, the defendant and the Court Reporter).

15 MR. ALLEN: Your Honor, I object on the grounds of
16 irrelevancy. No relevancy as to a box of bullets found in
17 the car.

18 THE COURT: Objection is overruled.

19 MR. ALLEN: Okay. Exception.

20 THE COURT: Exception noted.

21 (OPEN COURT)

22

23

24



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1 THE COURT: Commonwealth's Exhibit #20, just
2 described by the witness will be introduced over the
3 objection and exception of the defendant on the ground
4 of relevancy.

5 (WHEREUPON, box of .22 long rifle hollow point high power
6 cartrdiges are received and admitted into evidence as
7 Commonwealth's Exhibit #20).

8 BY MR. CRUMP:

9 Q. Now, you say you found another box of bullets?

10 A. Yes, sir.

11 Q. Where was this found?

12 A. Under the driver's seat.

13 Q. They were both under the driver's seat?

14 A. I am sorry. I have got them turned around. That
15 one was under the driver's seat and the other one was under
16 the passenger's seat.

17 Q. All right. Commonwealth's Exhibit 20 was under
18 the passenger's seat?

19 A. Correct. That box right there.

20 Q. And this was the under the...

21 A. The driver's seat.

22 Q. All right. And what are these bullets?

23 A. They are .22 long rifle hollow bullets. High
24 powered.

1 MR. CRUMP: At this time, Your Honor, we would
2 move that these .22 long rifle hollow point cartridges be
3 admitted into evidence as Commonwealth's Exhibit 21.

4 MR. ALLEN: Same objection.

5 THE COURT: Mr. Crump, I will ask you...I don't
6 remember. Does the record show that...where did he say these
7 were contained in?

8 MR. CRUMP: Those were found...that one particular,
9 Exhibit 21, was found under the driver's. Exhibit 20 was
10 under the passenger's.

11 THE COURT: Has he identified the car?

12 MR. CRUMP: Yes, sir. He identified this car as
13 the car he searched. On the 9th of December.

14 THE COURT: All right. The objection is overruled.

15 MR. ALLEN: Note our exception.

16 THE COURT: The exception is noted and the exhibit
17 is introduced as Commonwealth's Exhibit 21.

18 (WHEREUPON, box of .22 long rifle hollow point high power
19 cartridges are received and admitted into evidence as
20 Commonwealth's Exhibit #21).

21 BY MR. CRUMP:

22 Q. Now, I see you have a single bullet there?

23 A. Yes.

24 Q. Where was that found?

1 A. It was found under the right front seat.

2 Q. Is that the driver or passenger side?

3 A. It was the passenger side.

4 Q. Is this the same type of bullet contained in those
5 other boxes?

6 A. Yes, sir. .22...

7 MR. ALLEN: I object to that. I don't know whether
8 he can draw that conclusion or not. The jury can draw that
inference.

9 THE COURT: I think that is correct.

10 MR. CRUMP: All right. Fine.

11 BY MR. CRUMP:

12 Q. This was under the passenger's seat?

13 A. Yes, sir.

14 Q. It was not in any box or anything?

15 A. Just a single bullet.

16 MR. CRUMP: Move that this single bullet be
17 admitted into evidence as Commonwealth's Exhibit 22.

18 MR. ALLEN: Same objection.

19 THE COURT: Same ruling.

20 (WHEREUPON, single .22 bullet is received and admitted into
21 evidence as Commonwealth's Exhibit #22).

22 THE COURT: The single bullet described by the
23 witness is now introduced as Commonwealth's 22 over the
24 objection and exception of the defendant on the grounds of

* * *

1 Q. I show you Defendant's Exhibit A, and ask if you
2 are the same R. W. Fox that presented those items listed 1....
3 I mean, 3, 8, 9, 11, 16, 23, 24 and 30, and Items 46, 47, 48
4 and 49?

5 A. Yes. I am.

6 Q. And where were those items taken from? Excuse me,
7 you might want this. Can you give me a general layout?
8 You don't have to go through each one, Officer Fox.

9 A. They were taken from the vehicle.

10 Q. All right. Taken from the vehicle?

11 A. Correct.

12 Q. Except for the clothing: Item 30?

13 A. That is right.

14 Q. Now, did you assist in the search of the defendant's
15 cabin or house?

16 A. Yes. I did.

17 Q. Did you conduct it?

18 A. It was three of us.

19 Q. Did you search it thoroughly when you searched. I
20 am talking about the 8th of December.

21 A. Right. We, at this time we were looking for a body and
22 personal effects of the victim. We didn't go into real small
23 areas.

24 Q. Did you return to the defendant's house with another
search warrant?

1 A. I did.

2 Q. Do you recall the dates of those search warrants?

3 A. I can look.

4 Q. Go ahead.

5 A. On December 17th, we obtained another search
6 warrant for the house.

7 Q. You didn't have one in between? Or did you assist
8 in a search between the 8th and the 17th?

9 A. None that I recollect.

10 Q. Just a moment, please, sir.

11 MR. ALLEN: I have no further questions.

12 MR. CRUMP: I have no questions and ask that this
13 witness be excused.

14 THE COURT: Any objection?

15 MR. ALLEN: Your Honor, I would like to reserve
16 the right to recall him.

17 THE COURT: All right. You will step down and be
18 available for recall. Next witness.

19 MR. CRUMP: Call Russell Jenkins.

20 WHEREUPON

21 RUSSELL JENKINS

22 was called as a witness on behalf of the Commonwealth and
23 having been previously sworn, was examined and testified as
24 follows:

* * *

1 Q. Chief Robertson, have you ever spoken to the
2 defendant, Thomas Drumheller?

3 A. Yes. I have.

4 Q. Did you speak with him on December the 11th, 1979?

5 A. Yes, sir. I did.

6 Q. All right. Before you spoke to him, was he advised
7 of his Miranda rights?

8 A. He was.

9 Q. And did he indicate that he understood his rights?

10 A. Yes, sir.

11 Q. What did he tell you?

12 A. I advised his rights to him one at a time, and after
13 advising him of his rights, I asked him if he understood
14 it? He said yes, he did.

15 Q. All right. But what he did tell you?

16 A. I...in my conversation to him was asking him to be
17 cooperative with the police officers and advise them of what
18 crime he had committed, the abduction, at that particular
19 time.

20 Q. Did he tell you anything about it, the abduction?

21 A. Yes. He did.

22 Q. What did he say?

23 A. He stated that he had taken the girl. But that he
24 had not killed her.

* * *

1 was called as a witness on behalf the Commonwealth, and
2 after having been first duly sworn, was examined and testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. CRUMP:

6 Q. Would you state your name, please?

7 A. Junius Mundine.

8 Q. Mr. Mundine, would you speak into the microphone
9 please, so that everybody can hear you? Repeat your name..

10 A. Junius Mundine.

11 Q. And Mr. Mundine, are you presently a trustee at
12 the Warren County Jail?

13 A. That is right.

14 Q. All right, sir. Were you incarcerated in the
15 Warren County Jail on the 10th of December, 1979?

16 A. Yes, sir.

17 Q. And did you see the defendant, Thomas Drumheller,
18 on that date?

19 A. Yes, sir.

20 Q. Were you in the same cell block with Mr. Drumheller?

21 A. I was in the same cell block as he was, but I was
22 a trustee out in the hall.

23 Q. All right. Did you have any conversation with
24 Mr. Drumheller?

1 A. Yes. I did.

2 Q. What did you talk about?

3 A. We talked about this girl, Hopkins.

4 Q. Hope Atkins?

5 A. Yes, sir.

6 Q. All right. What was said?

7 A. We was...I was asking him did he kill the girl, and
8 he said he took the girl and he killed her. And he wanted to
9 know whether she was alright. And he was afraid to say
10 anything else. At that time, his lawyer walked in, Danny
11 Pond.

12 Q. All right, sir.

13 MR. CRUMP: Your witness.

14 CROSS EXAMINATION

15 BY MR. ALLEN:

16 Q. How long have you been a resident of the Warren
17 County Jail?

18 A. Sixteen months.

19 Q. Are you still a resident of the Warren County Jail?

20 A. Yes. I am.

21 Q. What are you staying in the Warren County Jail for?

22 A. Trustee..

23 Q. You work there?

24 A. That is right. A trustee.

* * *

1 Counsel will compare if someone else has another card.
2 This man has a certificate on it and he doesn't want to lose
3 it.

4 MR. ALLEN: I have no objection to a copy being
5 made of it and being substituted for the record.

6 THE COURT: All right. We will, then, permit
7 the witness to read this and we will make an exact copy to
8 be taken to the jury room.

9 (OPEN COURT)

10 (WHEREUPON, xerox copy of Miranda Rights card belonging to
11 Paul J. Criegee is received and admitted into evidence as
12 Commonwealth's Exhibit #23).

13 FURTHER DIRECT EXAMINATION

14 BY MR. CRUMP:

15 Q. Would you state your name and occupation, please?

16 A. Paul J. Criegee. Investigator with the Front
17 Royal Police Department.

18 Q. And you were...

19 MR. ALLEN: Excuse me, Judge. I hate to interrupt.
20 Would you move that microphone so we can hear.

21 THE COURT: Yes.

22 BY MR. CRUMP:

23 Q. Speak right into the microphone. Were you so
24 employed on the 12th of December, 1979?

1 A. Yes, sir.

2 Q. Did you have an occasion to talk to the defendant,
3 Thomas Drumheller, on the 12th of December, 1979?

4 A. Yes, sir.

5 Q. Now, before you talked to him, did you read him
6 his Miranda rights?

7 A. Yes, sir. I did.

8 Q. And how did you read him his rights?

9 A. From a standard issue Miranda card.

10 Q. I show you Commonwealth's Exhibit 23 and ask you
11 if that is the card?

12 A. Yes, sir. It is.

13 Q. All right. Would you please read from the card
14 as you read to Mr. Drumheller?

15 A. I stated: "You have the right to remain. Anything
16 you say can and will be against you in a Court of Law. You
17 have the right to talk to a lawyer and have him present with
18 you while you are being questioned. If you cannot afford
19 to hire a lawyer, one will be appointed to represent you
20 before any questioning, if you wish. You can decide at any
21 time to exercise these rights and not answer any questions
22 or make any statements."

23 Then I said: "Do you understand each of these
24 rights I have explained to you?" Having these rights in mind,

1 do you wish to talk to us now?"

2 Q. All right. Did Mr. Drumheller indicate whether or
3 not he understood those rights?

4 A. He indicated he understood them.

5 Q. Did he indicate whether or not he wanted to speak
6 with you?

7 A. Yes, sir. He stated he would speak with us.

8 Q. All right. What did you talk about?

9 A. First five or ten minutes, I just introduced myself
10 as an investigator, talked to him. Then I asked him about
11 the abduction. I asked Mr. Drumheller if he was at Eddie's
12 Laundromat on December the 7th between six and 6:30 a.m.

13 Q. What did he say?

14 A. He stated yes, he was, and that he had seen a dark
15 haired girl there.

16 Q. Did he say anything else?

17 A. No, sir. At that point, he decided he didn't want
18 to say anything else.

19 MR. CRUMP: Your witness.

20 CROSS EXAMINATION

21 BY MR. ALLEN:

22 Q. Who else was present during this interview?

23 A. Investigator Jim Roup, a Deputy Sheriff with the
24 Warren County Sheriff's Department.

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1 MR. POND: That is number one. Secondly, Your
2 Honor, Mr. Drumheller had asked that several witnesses be
3 subpoenaed, which Mr. Allen and I did. We have...well,
4 fortunately or unfortunately, this request was made to us,
5 I believe, on Monday. And because of the short nature of
6 time before trial, we went ahead and subpoenaed these
7 people, after much conversation with him, and to try to get
8 them here if possible.

9 I talked to a good many of them, and we feel that
10 they have absolutely no probative value in this matter. We
11 are afraid of a couple of them, if we put them on the stand
12 and ask the questions that Mr. Drumheller wants, they could
13 be considered character witnesses, which would invite
14 evidence from the Commonwealth as to this man's character,
15 and we do not want to put these people on.

16 THE COURT: All right.

17 MR. POND: Specifically, Bill Coffman and Robert
18 Williams. Mr. Drumheller indicated to us...Now, tell me
19 if I am wrong, Tom. Can you hear me okay? Bill Coffman,
20 you indicated that you wanted him to come testify that the
21 police have been picking on you for years: is that right?
22 That is the only thing you wanted him for? Bill Coffman.

23 THE DEFENDANT: I want him to testify how well he
24 knows me and all that.

* * *

1 THE DEFENDANT: Yeah.

2 THE COURT: I don't think that would be admissible,
3 Mr. Drumheller. In other words, you can't have evidence
4 that...you can't introduce evidence of that character before
5 the jury. It has got to have more bearing on the particular
6 charges. And the only evidence you can introduce about that
7 is evidence from witnesses that you have a good character;
8 that you are peaceful, and you are a law abiding citizen.
9 Can you offer...

10 THE DEFENDANT: You see....

11 THE COURT: Wait a minute, Mr. Drumheller...any
12 other reputation evidence that is admissible? I think you
13 would have a right to introduce evidence that you have a
14 good reputation for truth and veracity, if you testify.

15 MR. POND: Right.

16 THE COURT: All right.

17 THE DEFENDANT: Well, now, you are talking about
18 somebody that knows you. You just now mentioned somebody
19 that knows me in the last four or five years: right?

20 THE COURT: Yes, sir.

21 THE DEFENDANT: All right. Then, I have to get
22 somebody here that does know me in the last four or five
23 years.

24 THE COURT: Well, who? Have you got anybody?

1 THE DEFENDANT: Well, I got people over in
2 Winchester, I work there. I worked there for thirteen
3 years. They give me good references.

4 THE COURT: Well, but you have not got them here
5 now, today: have you?

6 THE DEFENDANT: Well, now, there are two of them
7 that haven't got here. That is Mr..his name is Preston
8 Clark, and the other one is Charles Funk.

9 THE COURT: Are they here today, gentleman?

10 MR. POND: No, sir. This is the first we have
11 heard of these people.

12 THE COURT: Well, Mr. Drumheller, they are not
13 here today. They are not available, so we can't consider
14 what they might say. Have you talked to them lately?

15 THE DEFENDANT: Well, if I need somebody like
16 you say, somebody that knows me in the last four or five
17 years...

18 THE COURT: Yes. Have you talked to them lately?

19 THE DEFENDANT: Well, I talked to them not very
20 long ago. Just a while back.

21 THE COURT: How far back?

22 THE DEFENDANT: Oh, back in January.

23 THE COURT: Before you were arrested?

24 THE DEFENDANT: January.

* * *

1 is the last one to see her alive.

2 THE COURT: That man will testify. Anybody else?

3 MR. ALLEN: I think that is it as far as the
4 character witnesses are concerned. I don't think he really
5 understands the gravamen of that situation. And I would
6 expect that if character witnesses are put on the stand
7 that the Commonwealth will introduce certain evidence that
8 they got when they seized, when they did some searching.
9 They found some films that would just really let him have
10 it. I don't know how much more explicit...

11 THE COURT: Have you explained that to Mr.
12 Drumheller?

13 MR. ALLEN: I have tried to, but he doesn't listen.

14 THE DEFENDANT: This is the description he gave...
15 He gave a discription of what the girl-looked-like...

16 THE COURT: Well, this is the fellow that...

17 THE DEFENDANT: That was given to me by a lawyer.

18 THE COURT: This man will testify. Have you any
19 other witnesses?

20 THE DEFENDANT: Tells on 5:55 a.m...

21 THE COURT: That man is going to testify. He is
22 going to testify.

23 MR. POND: Who is that?

24 MR. ALLEN: Carroll Kenney.

* * *

1 THE DEFENDANT: To testify to the time that I
2 was out there. I want him to testify whether I was out
3 there.

4 MR. POND: Why were you at filling stations?

5 THE DEFENDANT: I went out there to see Mr. Hayes.
6 I went in the restroom out there. They don't have one
7 inside of that one. I went out there and got a copy that
8 morning of the newspaper and played the juke box. I want
9 somebody to account for what I was doing. Everybody I can
10 get to account for everything that I was doing that day.

11 THE COURT: What day is that?

12 MR. POND: The 7th.

13 THE COURT: Do they know that?

14 MR. POND: No, sir. I proffer to the Court that
15 I talked to both of them. Neither one of them, Mr.
16 Fitzgerald, number one, cannot remember Mr. Drumheller. He
17 says that people come in there all the time. He is not even
18 sure who Mr. Drumheller is. He has seen him. He doesn't
19 even recognize him.

20 Mr. Hayes knows him, but he says that he doesn't
21 have any idea whether he was there on the 7th of December
22 or not.

23 THE COURT: Well, neither of those witnesses can
24 be put on and Mr. Drumheller. their testimony probably will

* * *

1 THE DEFENDANT: I talked to her cousin the other
2 day. He said he would bring her.

3 MR. POND: She is in Front Royal, but she would
4 not converse with you. Would not talk with you.

5 THE DEFENDANT: He told me the other day...

6 MR. POND: I am sorry. She told me that. If you
7 have any question about it, I am sure she would tell you the
8 same thing.

9 Mr. Drumheller indicates that he thinks she went
10 to work around six-thirty or 6:45, and she gave the statement
11 to the police that she said she went to work at six o'clock,
12 which would be terrible. Do you understand that: Tom?

13 THE DEFENDANT: Huh?

14 MR. POND: Do you understand what I said?

15 THE DEFENDANT: What? = - - - - -

16 MR. POND: Susella said that she went to work at
17 six o'clock in the morning.

18 THE DEFENDANT: She didn't go to work at that time.
19 She was different that day. She was late that morning.

20 THE COURT: But, Mr. Drumheller, if she said she
21 went to work at six o'clock, there isn't going to be any
22 other...

23 THE DEFENDANT: She ain't for sure what it was.

24 THE COURT: That is enough time on this. Now,

* * *

1 Mrs. Drumheller is going to testify and what...

2 MR. POND: Your Honor, after that conversation
3 with her, I am even more adamant that she not testify.

4 THE COURT: All right.

5 MR. POND: She states that Mr. Drumheller took
6 her to work at approximately 6:05. She thinks she was about
7 five minutes late.

8 THE DEFENDANT: She don't know for sure what time
9 it was. She was late.

10 MR. POND: She was very adamant that it was 6:05.

11 THE COURT: All right.

12 MR. POND: Very definite.

13 THE DEFENDANT: She don't know for sure what time
14 it was.

15 THE COURT: All right.

16 MR. POND: All right. I asked her...

17 THE DEFENDANT: She said she thought it was...

18 THE COURT: Just a minute, Mr. Drumheller.

19 MR. POND: We asked her again about the conference
20 in which she told the police the whereabouts of the gun which
21 turned out to be the RG 22 revolver. She reiterated, once
22 again, that her testimony...I mean, her statement to the
23 police was perfectly voluntarily. They asked her to come and
24 talk, requested her. Didn't order her. She went with them.

1 They asked her if there were any more guns and she told them
2 that she had given one to Mr. Roderfer.

3 All right. She further states that she gave Mr.
4 Roderfer the gun. She found the gun on the 10th of
5 December, which is...that Monday. I think the 10th. I don't
6 have a calendar. I believe that is the date. Yes. On
7 Monday. And she further states that an incident took place
8 on Thursday, in which Mr. Valentine...the following Thursday,
9 would be the 13th...in which Mr. Valentine was present, in
10 which a man was supposedly trying to break into their home.
11 And Mr. Drumheller insists that this was the man who had
12 taken his gun sometime before and was breaking back in to
13 put the gun in the house...

14 THE DEFENDANT: She . . .

15 MR. POND: ...after he had committed the crime.
16 And Mrs. Drumheller states that three days before she had
17 given the gun to Mr. Roderfer.

18 THE DEFENDANT: He is standing out there.

19 MR. POND: No. You can't say anything. The Judge
20 is not going to let her talk about it.

21 THE DEFENDANT: She claims it wasn't at the house...

22 THE COURT: Now, in this statement..

23 THE DEFENDANT: She claims...now, it wasn't in the
24 house that morning. We both know it wasn't in the house that

* * *

1 those exhibits the Commonwealth's Attorney has just described,
2 and the Court notes the proper objection and exception of
3 the defendant.

4 (WHEREUPON, five bullet fragments are admitted into evidence
5 as Commonwealth's Exhibit #16).

6 THE COURT: Now, was there anything else?

7 MR. ALLEN: The testimony.

8 THE COURT: Yes. The Court took under advisement
9 the testimony of the witness, Rutherford...is that correct?

10 MR. POND: Chief Robertson, Your Honor.

11 THE COURT: The testimony of the witness, Chief
12 Robertson, of the Front Royal Police Force. The Court has
13 considered the argument of Counsel, the objection of Counsel
14 to that testimony. The Court reserved the ruling yesterday,
15 but the Court has now ruled that that testimony is
16 admissible and may be considered by the jury and the Court
17 notes the objection and exception of the defendant to the
18 Court's ruling.

19 All right. You may call your first witness.

20 MR. POND: Your Honor, I hate to do this. May we
21 approach the bench, please?

22 (AT THE SIDEBAR with the Court, Commonwealth's Attorney,
23 defense counsel, the defendant and the Court Reporter).

24 MR. POND: Mr. Drumheller has indicated to us now

1 that he does not wish that his wife be called as a witness.

2 I would like for him to state to the Court the same thing.

3 THE DEFENDANT: Only one. I will let him testify
4 but I will not let her testify.

5 THE COURT: You are going to what?

6 THE DEFENDANT: Let her cousin and not her testify.

7 THE COURT: All right.

8 MR. POND: But I want him to understand that I
9 tried...

10 THE DEFENDANT: Have her cousin testify and not her
11 She would be incompetent to testify.

12 MR. POND: The cousin cannot testify about anything
13 except what happened over here in the jail that night. Can't
14 testify to anything that happened out at the cabin because
15 he wasn't there.

16 THE COURT: All right. Do you understand?

17 THE DEFENDANT: He can testify to all of the
18 information that he has.

19 MR. POND: He can't testify as to what she told
20 him. That would be hearsay.

21 THE COURT: Well, we will rule on that when it
22 comes. Is there anything damaging about his testimony?

23 MR. POND: No. I don't mind him testifying.

24 THE COURT: All right. You can call your first

* * *

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1 MR. POND: May it please the Court. Your Honor,
2 we would object to the showing of the film on the grounds
3 that, if it is what we think it is, it is going to be highly
4 inflammatory to the jury. I would prefer, if it is the
5 Court's ruling that the film is admissible, and I believe the
6 Court has ruled that way...

7 THE COURT: Yes.

8 MR. POND: ...I would prefer to attempt to make
9 some kind of stipulation that Mr. Drumheller made a false
10 statement on the stand. That he is, indeed, in this film,
11 and is performing the acts which Mr. Crump has described.

12 MR. CRUMP: Also, there was a statement that he
13 never does that.

14 MR. POND: So...

15 MR. CRUMP: Are you stipulating that he testified
16 falsely?

17 THE COURT: Why wouldn't the stipulation be
18 sufficient that the...that there is a film...

19 MR. POND: That is true.

20 THE COURT: ...that the film does show him engaged
21 in the act of oral sex with a woman?

22 MR. POND: And then the jury can make their own
23 conclusions about it.

24 THE COURT: And can see that he is shown in the

1 film engaged in act of oral sex with a woman as you have
2 described.

3 MR. POND: Yes, sir.

4 THE COURT: Mr. Crump, will that satisfy you?

5 MR. CRUMP: If it satisfies Mr. Drumheller, Your
6 Honor.

7 MR. POND: Mr. Drumheller, Your Honor, I can't get
8 him to understand that the film is going to be shown. He is
9 insisting that it is inadmissible and for me to cut it off.

10 THE COURT: All right.

11 MR. POND: Now...

12 THE COURT: Now, Mr. Drumheller, you have the
13 choice. I am going to permit the film to be shown. Now
14 wait a minute. You have the choice whether or not you want
15 the film shown or not.

16 THE DEFENDANT: I do not want the film shown.

17 THE COURT: What?

18 THE DEFENDANT: He is talking about something
19 incredible. But that is not what I am talking about. What
20 I am talking about is when Mr. Chapman was on the stand, I
21 asked him about something. I told him Crump was asking
22 Chapman the same things. All right. They went back. All
23 right. They went back over it again, about that cigar box.
24 And he asked Mr. Chapman where he found it at, if he had a

the jury isn't sitting here in suspense.

THE COURT: All right, I'll note your exception.

MR. ALLEN: Thank you, Sir.

EXCEPTION NOTED

THE COURT: Go ahead.

A. The paragraph applicable to the sentencing?

Q. Yes.

A. '...Whereupon, after inquiry of the accused if he had anything further to say, and after receiving from the defendant a response to the effect that he pled not guilty to the charge, the Court proceeded to pronounce the sentence in the following words:

'In accordance with the verdict of the jury and the evidence presented in this case it is the judgment of this Court that you are guilty of maliciously shooting at a motor vehicle occupied by one person, William D. Lucas, whereby the life of the said William D. Lucas was put in peril, as charged in count number two of said indictment, and you are now sentenced to confinement in the State Penitentiary of Virginia for a period of five years and that you pay the cost of this prosecution...'

Q. All right, now, what was the date of that proceeding?

A. The 11th day of October, 1960.

Q. And you said you assumed your duties as Clerk in January of 1960, so in fact you were the Clerk at the time that order was entered.

A. Yes, sir.

MR. CRUMP: At this time, Your Honor, I'd move that this certified copy of the order in the case Mr. Ziegler has testified to be admitted as Commonwealth's Exhibit #1.

MR. ALLEN: I have an objection I'd like to make out of the presence of the jury.

THE COURT: Could you do it at the bar of the Court?

MR. ALLEN: Yes, Sir.

BENCH CONFERENCE

MR. ALLEN: For the record, I would object to the introduction of this document on the basis that it's hearsay and that the proper foundation has not been laid by the Commonwealth Attorney necessary to proffer introduction of a document.

THE COURT: Stop right there. What do you think further he should do, Mr. Allen?

MR. ALLEN: He has not shown where it came from yet; just from the Clerk.

Q. What did Mr. Drumheller say in relation to guns?

A. Tommy asked his uncle to gather up all his guns for him.

Q. You say that you and Sheriff Armentrout were there in the other room. Were there any other law enforcement officers on the premises, either inside or outside?

A. Yes, sir, there were other officers.

Q. Who else was there?

A. Roger Fox of the Front Royal Police Department, an investigator for the Front Royal Police Department; there was Bo Meredith, I believe; Mike Tennett; there was a state trooper, but I don't know his name right offhand. I believe he was there. Let's see, Sheriff Armentrout...I couldn't name them all off, but there were other people outside.

Q. Was Mr. Drumheller's automobile outside the residence?

A. Yes, it was.

Q. Was that automobile seized by the police and sheriff's departments?

A. Yes, sir.

Q. Do you know what was done with the motor vehicle?

A. It was towed by Rutherford's and taken to the fire

MR. CRUMP: I have no objection,
Your Honor.

THE COURT: Mr. Allen?

MR. ALLEN: No objection to his
being excused.

THE COURT: All right. You're
excused, Sergeant, thank you.

(WHEREUPON, the witness was excused.)

THE COURT: Call your next wit-
ness.

MR. CRUMP: Roger Fox.

ROGER FOX, having been duly sworn by the Clerk, was exam-
ined and testified as follows:

DIRECT EXAMINATION
BY MR. CRUMP:

Q. State your name and occupation, please.

A. Roger Fox, Investigator for the Town Police of Front
Royal.

Q. Were you so employed on the 8th of December, 1980?

A. Yes, I was.

Q. For that matter, for the whole month of December in
1980?

A. Yes, sir.

Q. Investigator Fox, did you have an occasion to go to

the residence of the defendant, Thomas Drumheller,
on the 8th of December, 1980?

A. Yes, I did.

Q. For what purpose, not the reasons behind it, but for
what purpose did you go out there?

A. To serve and execute a search warrant.

Q. Who obtained that search warrant?

A. I did.

Q. Did you serve it?

A. Yes, I did.

Q. Was the defendant home?

A. Yes, he was.

Q. Where is this home of his?

A. It's located at the Riverside Motor Court on 340
south of Front Royal.

Q. In the course of the search did you find any handguns?

A. Yes, sir, I did.

Q. Where did you find a handgun?

A. In the closet of the bedroom in Mr. Drumheller's
residence.

Q. Do you have that handgun here this morning?

A. I do.

Q. Would you get it, please?

(WHEREUPON, the witness complied with counsel's request.)

Q. And this was found in the bedroom closet? Whereabouts in the bedroom closet, do you recall?

A. No, sir, Sergeant Meredith...I was not directly in line with the closet to see where in the closet it was located. Sergeant Meredith pulled it from the closet and handed it to me.

Q. All right, and it's been in your possession?

A. Yes, sir.

Q. And that is the same weapon that came from the closet?

A. It is.

MR. CRUMP: At this time I'd move that this handgun be admitted as Commonwealth's Exhibit #2.

MR. ALLEN: For identification at this time?

MR. CRUMP: No, for admission.

MR. ALLEN: Subject to my voir dire of the witness for purposes of custody and over my objection as previously stated as to search warrant.

MR. CRUMP: Custody is not necessary in this case. The search warrant is one thing, but there's no chain of custody necessary to

this case. It's not something subject to analysis or capable of a change of appearance.

MR. ALLEN: I certainly have a right to know whether...

MR. CRUMP: You can ask this on cross-examination. It has nothing to do with admissibility.

MR. ALLEN: I think it does.

THE COURT: Well, hasn't he already testified it was the gun, the same gun that he found in the closet?

MR. CRUMP: He sure did.

THE COURT: All right, I'll let you cross-examine him in the regular course of cross-examination.

MR. ALLEN: All right. I'll reserve my objection until that time, Sir. Thank you, Sir.

THE COURT: I will admit the gun at this time as Commonwealth's Exhibit #2.

(WHEREUPON, the item referred to was marked Commonwealth's Exhibit #2 for identification and received in evidence.)

CONTINUATION OF DIRECT
EXAMINATION BY MR. CRUMP:

Q. Investigator Fox, did you subsequently search this automobile?

A. Yes.

Q. On what date was that?

A. December the 9th.

Q. Was the vehicle secured when you began your search?

A. Yes, sir, an officer personally sat with the vehicle all night.

MR. ALLEN: Objection, unless he was with him.

Q. Was the vehicle locked?

A. Yes, sir.

Q. Was the trunk locked?

A. Yes, sir.

Q. Was it inside the Rutherford building?

A. Yes, sir.

Q. Was it under guard?

A. Yes, sir.

Q. You searched what, the interior of the vehicle?

A. The state police crime lab was there. The state police actually did the search. I was behind them

watching them.

Q. How long did it take them to go through the material?

A. Approximately 9 a.m. they started on the vehicle, and it was pretty close to 9 o'clock at night when they finished.

Q. They were very thorough then, right?

A. Yes, sir.

Q. Were they completely finished...

MR. ALLEN: Your Honor, I don't object to Mr. Crump testifying, but I'd like to have him under oath at the time and have the opportunity to cross-examine him.

THE COURT: Yes, sir. Mr. Crump, you are drawing an inference with your question.

MR. CRUMP: I'm not inferring, Your Honor. If he hasn't searched every part of the vehicle, then he's either incomplete or he's complete.

THE COURT: Yes, sir, but you...

Q. Did you go into the trunk?

A. The police officer who actually did the search went through the trunk somewhat. He did miss one particular part of the trunk.

Q. Did he look under the spare tire?

A. No, sir.

Q. Was the vehicle subsequently searched again?

A. Yes, sir, it was.

Q. What did you do with the trunk when you left it?

Did you leave the trunk open?

A. No, it was closed and locked.

Q. You locked it back up? Is that correct?

A. Right.

MR. CRUMP: Your witness.

CROSS-EXAMINATION

BY MR. ALLEN:

Q. When was the vehicle searched again, Officer Fox?

A. On December the 17th.

Q. The revolver that was admitted into evidence earlier, did you say that you took that out of the closet?

A. No, sir.

Q. Who took it out of the closet?

A. Sergeant Meredith of the police department.

Q. Did you see him take it out of the closet?

A. Yes, I did.

Q. And he handed it to you, is that correct?

A. That's correct.

* * *

Go ahead.

Q. Is Mr. Rodefer the uncle of Thomas Drumheller?

A. Yes, sir, that's what they both said.

Q. Was Mr. Rodefer in fact at the Drumheller house on the 8th of December?

A. Yes, sir, he came in. We went and got him and brought him to the Drumheller house that night.

Q. What was the date when you went out to Mr. Rodefer's house?

THE COURT: Mr. Crump, lead him on questions like that, if you please.

MR. CRUMP: I beg your pardon, Sir?

THE COURT: The occasion for going out there, I'd like you to lead him on that so we can focus on it.

Q. What was the date?

A. December the 28th, 1979, at 6:07 p.m.

Q. Did Mr. Rodefer give you anything?

A. Yes, sir, he did.

Q. What did he give you?

A. He gave me an RG .22 caliber revolver, model 23, serial number T-465472.

PAUL J. CREAGER, having been duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION
BY MR. CRUMP:

Q. State your name and occupation, please.

A. My name is Paul Creager. I'm an investigator with the Front Royal Police Department.

Q. Investigator Creager, were you so employed in December of 1979?

A. That's correct.

Q. Did you have occasion in December 1979 to go to Rutherford's Auto Body here in Warren County for the purpose of searching a vehicle?

A. The vehicle was removed from Rutherford's and taken to the Front Royal Fire Department. That's where I made my search.

Q. Were you present when it was removed?

A. Yes, sir.

Q. What was the date it was removed?

A. December 17th, 1979.

Q. I show you this photograph and ask if you can identify it.

A. Yes, sir, this is the vehicle which I searched.

THE COURT: Which exhibit is

that?

MR. CRUMP: Commonwealth's Exhibit #3 in this case, Your Honor.

Q. All right, sir, when you searched the vehicle, did you look in the trunk?

A. Yes, sir, I did.

Q. Was the trunk locked or open?

A. The trunk was locked.

Q. Would you describe where you searched in the trunk?

A. I removed the spare tire from the trunk area of the vehicle.

Q. How was the spare tire positioned in the trunk?

A. It was positioned in the normal manner with the lug screw...

Q. Lying flat in a well or in some other manner?

A. Propped up, you know, in a position...it wasn't lying flat in a regular wheel well. It was one of the older models tilted on an angle with a portion of the stem coming out protruding with the lug nut holding the wheel in place.

Q. Was it screwed down?

A. Yes, sir.

Q. Did you have any difficulty unscrewing it?

A. Yes, sir, I had to use quite a bit of force to remove the lug nut from it.

Q. Why was that?

A. Evidently it hadn't been removed for quite some time. There was a lot of dirt and dust on the back area of the tire.

Q. Now, on removing the spare tire, did you find anything underneath?

A. Yes, sir, I found a shaving bag which contained a .32 caliber blue steel semiautomatic pistol.

Q. Do you have that here today?

A. Investigator Fox had it.

Q. Is that over there on the table? Would you go look? (WHEREUPON, the witness complied with counsel's request.)

Q. All right, do you want to return to the stand?

A. With the gun?

Q. Yes, sir.

(WHEREUPON, the witness returned to the stand.)

Q. Now, I ask you to look at that handgun and I ask you if that is the same gun that you removed from beneath the spare tire in that automobile.

A. Yes, sir, it is.

Q. How can you tell, sir?

A. The serial number on the weapon was inventoried and listed on the property release form, an inventory form of the search warrant.

Q. Do you recognize that as being the same gun as well?

A. Yes, sir, this is the same handgun which I found.

MR. CRUMP: Your Honor, at this time the Commonwealth would move that this handgun be admitted as Exhibit #6.

MR. ALLEN: Same objection, Your Honor.

THE COURT: Objection overruled; exception noted.

EXCEPTION NOTED

(WHEREUPON, the item referred to was marked Commonwealth's Exhibit #6 for identification and received in evidence.)

MR. CRUMP: Your witness.

CROSS-EXAMINATION
BY MR. POND:

Q. Mr. Creager, when you went into the trunk, you testified that evidently the tire had not been removed for some length of time; is that correct?

A. That is correct.

Q. What made you feel that way?

DIRECT EXAMINATION
BY MR. CRUMP:

Q. Would you state your name, please?

A. Paul Etel.

Q. Mr. Etel, what's your occupation?

A. I own and operate Paul's Consignment Center in Harrisonburg.

Q. Are you a licensed firearm dealer?

A. Yes, I am.

Q. How long have you been dealing with firearms?

A. 37 years.

Q. So you were dealing with them in 1974; is that correct?

A. That's correct.

Q. Mr. Etel, I ask you to look at this Federal firearms transaction record and ask if you recognize that.

A. Yes, sir.

Q. That is your record, sir?

A. Yes, sir.

Q. And that's been in your possession since the date of the transaction?

A. That's right.

Q. You're required to keep those records on file; is

that not correct?

A. That's true.

Q. What is that record for, sir?

A. This record is a complete record of whoever purchased a firearm off of me, with the serial number, the social security number, the name and address, the weight, date of birth and place of birth.

Q. What's the name of the individual that purchased the firearm?

A. Thomas F. Drumheller.

Q. Did he give an address?

A. Riverton, Virginia.

Q. What kind of firearm was purchased?

A. A .22 caliber RG-23 model revolver.

Q. Does it have a serial number there?

A. Serial number P-465472.

Q. I show you this handgun that has been marked for identification at this point as Commonwealth's Exhibit #5 and ask if that is the same handgun that was sold by you to Thomas Drumheller.

(WHEREUPON, the witness examined the item referred to.)

A. Yes, it is.

Q. The same serial number?

A. Same serial number.

Q. What was the date of the sale?

A. The 10th month, 11th day of '74.

MR. CRUMP: At this time, I'd move that the Federal firearms transaction record be admitted into evidence as Commonwealth's Exhibit #7.

THE COURT: Any objection, gentlemen?

MR. ALLEN: No objection.

THE COURT: So admitted.

(WHEREUPON, the document referred to was marked Commonwealth's Exhibit #7 for identification and received in evidence.)

MR. CRUMP: Your witness.

MR. ALLEN: Have a nice trip back to Harrisonburg. No questions.

THE COURT: He is excused?

MR. CRUMP: Yes, Sir, he's excused.

(WHEREUPON, the witness was excused.)

MR. ETEL: You want to keep that record, do you?

THE COURT: Yes, sir, we will take good care of it, and we'll see that you get it

ago...'

Q. That's Mr. Drumheller speaking when you refer to the answer, is that correct?

A. Yes, it is.

Q. Referring to page 710 and 711, starting on 710, is there any reference there to a handgun?

A. Yes, there is.

Q. Before we go into that, do you have additional duties as a court reporter besides taking down the testimony, as far as the physical exhibits are concerned?

A. Yes, I do; I label them.

Q. You label them, mark them?

A. Yes, sir.

Q. Now, the gun that's mentioned on page 710 and 711, does this have the exhibit number?

A. Yes, it does.

Q. What exhibit number is that?

A. As I recollect, it would be Exhibit #10.

Q. I show you this handgun, which is currently marked for identification today as Commonwealth's Exhibit #5, and ask if you can identify it.

(WHEREUPON, the witness examined the item referred to.)

A. Yes. That's my label that I put on it that day.

Q. What exhibit is that?

A. #10.

Q. Commonwealth's Exhibit #10?

A. That's right.

Q. At the trial of Mr. Drumheller on the 29th of August, 1980?

A. Right, labeled on the 27th.

Q. Would you please read from 710 and 711 those passages concerning the handgun which we have identified here as then Commonwealth's Exhibit #10 and today marked for identification as Commonwealth's Exhibit #5?

A. Page 710, line 17. '...Question: Now, Mr. Drumheller, you have seen introduced into evidence a gun. Answer: Huh? Question: A gun. You have seen a gun introduced that came from Andy's house, from your Uncle Andy's house. Answer: I understand it did. I am not for sure. I was in jail at the time. Question: Well, that is what the testimony was, okay?'

Page 711, line 1. 'Answer: I was in jail at the time. I don't know how the gun got there. Question: When was the last time you had seen this gun? Answer: It was over a month before the crime took place. I had missed that gun. It was taken sometime.

There was a fellow that claimed to be from Kansas around there, and when I came back from the Safeway I caught him running out of the house. He had been in the house. I could tell. Later on, when I was looking for some of my things, I found out that the gun had been missing, along with a lot of other stuff had been missing. I wasn't for sure that he had taken it, but I suspected he'd taken it. Anyway, while I was in jail something came up. They had an anonymous call, but nobody could identify it...'

MR. CRUMP: Your Honor, at this time I'm going to move that this gun which has been marked for identification as Commonwealth's Exhibit #5 be admitted as Commonwealth's Exhibit #5. I think we've tied it in with both the firearms transaction form and Mr. Drumheller's own admission concerning the gun.

MR. ALLEN: I'm not stalling; I'm just reviewing the evidence in my mind.

THE COURT: That's all right. Take your time.

MR. ALLEN: May we approach the side bar?

at the time, this Exhibit #10 which is now identified as Exhibit #5?

A. No, sir.

MR. CRUMP: Again I would move that the exhibit be admitted as Commonwealth's Exhibit #5.

MR. ALLEN: No objection.

THE COURT: So admitted.

(WHEREUPON, the item marked Commonwealth's Exhibit #5 for identification was received in evidence.)

CONTINUATION OF DIRECT
EXAMINATION BY MR. CRUMP:

Q. Referring to transcript page 713, is there anything there concerning the identification of an automobile?

A. Yes, sir.

Q. Does he in fact identify pictures by exhibit number?

A. Yes, sir.

Q. I'm going to show you these pictures, which have been marked as Commonwealth's Exhibit #3A to #3F, and I ask if you can identify those photographs.

(WHEREUPON, the witness examined Commonwealth's Exhibit #3A to #3F.)

A. Yes, sir, I marked these on the 27th.

Q. As Commonwealth's Exhibits?

A. As Commonwealth's Exhibits #4A-F.

Q. Now, you say you marked them on the 27th. Maybe we should clarify that. Did this trial in August take more than one day?

A. Yes, it took three days.

Q. What were those three days?

A. The 27th, 28th and 29th, I believe.

Q. All right, and these are pictures of an automobile?

A. Yes, they are.

Q. Would you read the passage on page 713 pertaining to this automobile and these pictures please?

A. Line 10. '...Question: Mr. Drumheller, I show you these pictures, Commonwealth's Exhibit #4. Is that your automobile? Answer: I reckon that it is mine. Question: You reckon that is your automobile? Answer: Yeah. Question: Now, your testimony was that you hadn't seen this gun about a month before the abduction...'

Q. All right, what gun are we referring to?

A. Exhibit #10.

Q. Referring to what was then Exhibit #10 and is now Exhibit #5?

A. Yes, sir.

Q. Continue.

A. '...Answer: Right. Question: So it is your gun.

Answer: That is the gun I used to have. Question:

Is this the gun you bought from Paul Etel on October

the 11th, 1974? Is that right? Answer: I got that

in 1974. Question: And that is your signature?

Answer: It is...'

Q. Now, on page 720, do we again have a reference to the automobile as identified in these photographs that were then marked Commonwealth's Exhibit #4 and today are marked Commonwealth's Exhibit #3?

A. Yes, sir.

Q. All right, would you read that passage, please?

A. Line 3. '...Now, Mr. Drumheller, your car... Answer:

Huh? Question: ...which is shown in Exhibit #4, you

had that car on December the 7th? Answer: I did

what? Question: On December the 7th, 1979, you had

that car didn't you? Answer: December the 7th, '79?

Question: Right. Answer: What do you mean, a car

on December the 7th, 1979? Question: Were you in

possession of this car, which you have identified as

your automobile, on December the 7th, 1979? Answer:

I had that car, yeah....'

Q. On page 738 of the transcript and page 739, is there any reference to a conversation he had with his uncle and a description of the guns?

A. Yes, there is.

Q. Would you read that passage, please?

A. Line 10. '...Question: And you and your uncle went into the living room, sat on the couch and talked while Sheriff Armentrout and Investigator Sturdivant went in the kitchen; is that right? Answer: I talked to him. We had a conversation while they was in the kitchen, but I didn't make any mention about the case. All I said was, you'd better look after these guns in here because if they come here, they will take everything out of the house. Question: You did have guns in the house? Answer: I had my hunting guns in there, yeah. Question: What kind of guns did you have in the house? Answer: I had a 12-gauge shotgun, a 30-30 rifle, a 410, a .22 rifle and shotgun together, over and under. That must be the one they got out. Question: Have any pistols?'

Page 739, line 1. 'Answer: Oh, I have one with a long barrel. Question: You have one pistol

with a long barrel? Answer: One with a long barrel.

Question: What caliber was that? Answer: .22.

Question: .22? Answer: Yeah. Question: And this pistol here, you had that at one time, too, didn't you?...

Q. Now, which pistol was that?

A. Referring to today's Exhibit #5, that day's Exhibit #10.

Q. All right, the long barrel .22 is a different gun, and then we changed the reference to this one, which is Commonwealth's #5, is that correct?

A. Yes, sir.

Q. Go ahead.

A. Back to line 8. 'Question: And this pistol here, you had that at one time, too, didn't you? Answer: At one time, but I did not have it at the time. Question: When was the last time you had it? Answer: It was a whole month before they came. That gun had been missing for some time before they even came there. Question: A month? Answer: (Nodding affirmatively.)

Q. That's fine.

MR. CRUMP: Your witness.