Howard, 210 Pa. Super. 284, 232 A.2d 207 (1967). The *Gault* case dealt with constitutional rights which are applicable to juvenile proceedings and is limited so as not to apply to the pre-judicial stages of juvenile proceedings — the area which is the focus of this case. Since the question of limitation of actions is within the prerogative of the legislature, their silence on the matter must be interpreted as an indication that it was inapplicable in juvenile proceedings. Had the legislature desired to extend the statute of limitations to such action it would have been a simple matter to have so indicated its intent. Therefore, the court is reluctant to write into the Act a provision dealing with legislative grace when the legislature has failed to do so itself.

On the basis of the nature of the juvenile proceedings and the absence of any language in the Juvenile Act incorporating the statute of limitations, the court must deny the motion for dismissal premised on its applicability to the present case.

The court, however, is not unsympathetic with the plight of the juvenile having to defend himself after a period of greater than two and one-half years from the date of the alleged conduct to the filing of the petition. It has been previously noted that the *Gault* decision was not directly concerned with the procedure or constitutional rights applicable to the pre-judicial stages of the juvenile process. However, the *Johnson* court held that the *Gault* case recognized that juvenile courts must act within the constitutional guarantees of due process. 211 Pa. Super. at 78. This court sitting in the criminal Division has recently stated that the statute of limitations is not the sole standard by which delay between the offense and petition is to be measured. We held, in *Commonwealth v. Mathis*, (No. 522 of 1975), that pre-accusatorial delay which resulted in substantial prejudice to the defendant's case constituted a denial of due process. It was pointed out that *Ross v. United States*, 349 F.2d 210 (D.C. 1965), and subsequent cases "show that in order for such prejudice to exist the court must find (1) that under the circumstances the delay was unreasonable, and (2) that because of such delay the defendant's case was prejudiced." We further stated,

> "(i)t is axiomatic that lapse of time standing alone, is not an unreasonable delay justifying dismissal of the prosecution. However, delay, coupled with a showing that it was resorted to as an improper prosecutorial tactic or that it prejudiced the defendant in the preparation of his case may create a situation calling for the entry of a decree of dismissal. *Commonwealth ex. rel. DeMoss v. Cavell*, 423 Pa. 597, 225 A.2d 673 (1967).

In the present case, the juvenile has merely argued that an excess of two and one-half years has passed from the time of offense to filing of petition. Though we have found that the statute of limitation in criminal proceedings does not apply to juvenile proceedings per se, the time period afforded by the legislature is relevant in determining what is undue delay.

Assuming for argument that the lapse of time was unreasonable, it is still incumbent upon the defendant to show the delay was prejudicial. The Pennsylvania Supreme Court in *Commonwealth v. Williams*, 457 Pa. 502, 327 A.2d 15 (1974), states that the indications of prejudice are: (i) to prevent oppressive pre-trial incarcerations, (ii) to minimize anxiety and concern of the accused, and (iii) to limit the possibility that the defense will be impaired. The juvenile has presented no evidence that the delay has prejudiced his case.

Although we deny the motion for dismissal in its present form, this dismissal should not be interpreted to prejudice a second motion for dismissal containing supplementation with respect to the effect of the delay in causing prejudice to juvenile's ability to meet the allegations of the petition.

ORDER OF COURT

NOW, July 30, 1976, the motion to dismiss the proceedings on the ground that the statute of limitations for larceny had elapsed prior to the filing of the juvenile petition is denied without prejudice to the right of the juvenile to file a supplemental petition with respect to the effect of the delay in causing prejudice to the juvenile's ability to meet the allegations of the petition.

COMMONWEALTH v. ELIFF, ET AL., C.P. Cr.D. Franklin County Branch, No. 465 of 1977

Criminal Procedure - Arrest Warrant - Pa. R. Crim. P. 101(3) - Search Warrant - Sufficiency of Affidavit - Arraignment

1. Entry of a private dwelling to effect a felony arrest without a warrant is constitutionally valid under "exigent circumstances".

2. The execution of an arrest warrant does not follow the same procedures as those required for execution of a search warrant.

3. Volunteered, spontaneous, unsolicited statements made by a person after being given their Miranda warnings are admissible.

BOOK REVIEW

In **Giles v. Maryland** 388 U.S. 66 (1967), the Supreme Court held that the Maryland Court of Appeals denial of post-conviction relief to the convicted rapists whose counsel had been denied access to police reports containing statements inconsistent with testimony of the prosecutrix and to the prosecution's information about her subsequent assertion and withdrawal of rape charges against others was in violation of the Sixth Amendment made applicable to the states by the Fourteenth Amendment's due process clause. Taking the unique action of remanding to the Maryland Court without directions, Mr. Justice William Brennan noted that the Supreme Court had read police reports not in the record that indicated serious inconsistencies between the prosecutrix's earlier statements to the police and her testimony at trial. Not following the traditional liberal-conservative lines of the Warren Court, the justices divided four different ways, failing to establish a clear precedent on discovery and disclosure.

Most of the events of this case transpired within one hundred miles of Chambersburg and are adeptly documented in **An American Rape** by A. Robert Smith and James V. Giles (Washington: New Republic Books, 1975). At times, it is easy to feel that you are reading about a racial problem in the deep South in the early years of this century, but this case occurred last decade in Montgomery County, Maryland, a suburb of Washington, D.C., and at the time, the fastest growing and most affluent county in the nation. The dual efforts of a respected political writer and one of the black defendants mesh well. Instead of homogenizing their words, the authors combine them with the defendant's commentary in italics.

The facts are hardly unique. Three blacks are accused of raping a white girl. Despite highly contradictory testimony and obvious questions about the prosecutrix's actions, an all-white jury delivers a guilty verdict followed by the death sentence. While justice finally prevailed, as recovery of the secret grand jury testimony and police files that proved the defendants' innocence led to the Supreme Court decision on suppression of evidence, the **Giles** case illustrates with powerful clarity the inherent inequities of the American judicial system.

An American Rape is not another **Gideon's Trumpet.** Anthony Lewis' case study of **Gideon v. Wainwright** 372 U.S. 335 (1963) not only is a classic in the annals of jurisprudence, but also received two hours of prime time "advertisement" when NBC presented an outstanding feature on the life of Clarence Gideon. However, unlike **Gideon's Trumpet, An American Rape** provides a clear picture of the state's judicial system at both the original and appellate levels. This moving account of one of the signal cases of courtroom injustice in contemporary legal history should be read as it received very little notice outside the Washington metropolitan area. While relaxing reading, this book can also provide thought-provoking insights for the legal mind.

HUGH E. JONES

4. The six hour arraingment rule enunciated in *Commonwealth v. Davenport*, 471 Pa. 278 (1977) begins at the time a person is formally arrested.

5. Where there is cause to reasonably assume that a farmhouse is being used as a single dwelling place a search warrant describing the farmhouse generally is sufficient to permit the search of all the rooms in the house.

William C. Cramer Esq. and John F. Nelson, Esq., Assistant District Attorneys, Counsel for the Commonwealth

Blake E. Martin, Esq., Kenneth E. Hankins, Jr., Esq., and Edwin D. Strite, Jr., Esq., Counsel for the Defendants

OPINION AND ORDER

Keller, J., September 6, 1978:

Daniel J. Eliff, Bruce W. Bechtold and Richard A. Hogle were charged with the crimes of conspiracy and possession of a controlled substance with intent to deliver on October 28, 1977. The defendants were arraigned on January 18, 1978, and entered pleas of not guilty. On January 30, 1978, an Omnibus Pre-Trial Motion in the nature of an Application to Suppress Evidence was filed on behalf of defendant Bechtold, and similar motions were filed on behalf of defendants Eliff and Hogle on February 8, 1978. A hearing on the pre-trial motion was held on March 6, 1978, and on March 13, 1978, an Order denying the application to suppress was entered. On the same date the three defendants filed written waivers of jury trial and asked that the matter be tried before the Court sitting without a jury. On March 14, 1978 the Court entered a supplemental order again refusing to suppress the evidence.

The case was tried without jury on March 16, 1978, and verdicts of guilty were rendered as to all defendants on all charges. Defense counsel orally moved in arrest of judgment and for a new trial and on March 23, 1978 written motions to the same effect were filed. An order was entered directing the transcription of the pre-trial suppression hearing and the trial. By agreement of counsel and with the approval of Court the post trial motions were submitted on briefs only.

Preliminarily, we note that a number of the issues raised in the defense motions for a new trial and arrest of judgment were not briefed, and will consequently be treated as abandoned by the defendants.

We have attempted to review and discuss each of the issues raised and briefed by separate category as hereinafter set forth.

I

The defendants' first contention is that District Magistrate Gotwals had no legal authority to issue a warrant to search a premise outside his magisterial district and, therefore, the search was illegal and all evidence seized should be suppressed. This very question of whether a magistrate can issue a warrant to search premises located within his county but outside of his magisterial district was recently answered by the Superior Court in the case of *Commonwealth v. Patrick James Ryan, a/k/a William Goldie* and *Commonwealth v. Marianne Lucy Casano, a/k/a Maureen Goldie*, Superior Court, No. 1807, October Term, 1977. In that case, a magistrate issued a warrant for premises located within Monroe County but outside his magisterial district. Justice Hoffman held that magisterial jurisdiction is county-wide and that the magistrate properly issued the search warrant.

In the *Ryan and Casano* cases the police officers tried three times without success to contact the proper magistrate. In the case at bar, Agent Bilansky testified that upon leaving the farmhouse at approximately 8:00 P.M. he tried to contact the proper magistrate but was informed that the magistrate would not be available for at least one hour and a half. Due to the large quantity of drugs suspected to be on the premises, the number of people being detained, and the hour of the evening, we are not persuaded that the officers acted unreasonably or in bad faith in seeking another then available magistrate whose office was only a few miles from the premises to be searched.

As a result of the Superior Court's recent decision that magisterial jurisdiction is county-wide, and having found no improper motive on the part of the officers, we dismiss the defendants' contention.

II

The defendants' contention is that the application for the search warrant for the farmhouse does not, on its face, demonstrate probable cause for the issuance of the warrant. The affidavit stated, in pertinent part:

> "Upon gaining entrance to the premises this Affiant detected a strong odor of what appeared to be burning Marihuana. This Affiant has personally smelled burning Marihuana during the course of my investigations well over one hundred times. Additionally, upon immediately entering the livingroom by the side door this Affiant personally observed on a stand next to a stuffed chair a tray containing two rolled up suspected

> Marihuana cigarettes, approximately 10 grams of a greenish vegetable matter suspected to be Marihuana and an open pill bottle on its side with chunks of a brown compressed matter near the opening which I suspected to be Hashish."

From these facts the magistrate was satisfied that there was sufficient probable cause to issue the search warrant for the farmhouse. We agree with the magistrate's conclusion and feel that the affidavit alleges sufficient grounds to lead a reasonable person to believe that the search of the farmhouse was warranted. The affiant personally observed, in plain view, several apparent controlled substances plus there was the addition of the odor of marihuana.

In *Commonwealth v. DeSantis*, 213 Pa. Super. 724, 244 A. 2d 799 (1972), the Superior Court held that probable cause was established for the search of the premises where a narcotic agent stated in the affidavit that he saw an individual smoking a marihuana cigarette on the premises and three days later observed on the premises a jar with suspected marihuana in it. In *Commonwealth v. Chilengarean*, 215 Pa. Super. 112, 257 A. 2d 279 (1969), a housekeeper found ashes in an ashtray in a motel room registered to the defendant and because of the unusual smell of the ashes, they were tested and found to be marihuana. This was held to constitute sufficient probable cause to search the defendant's room and car for additional narcotics.

The Superior Court in *Commonwealth v. Cosley*, 234 Pa. Super. 1, 335 A. 2d 531 (1975), held that a warrant to search an apartment for additional controlled substances was justified where an informant observed a small packet containing white powder and a small residue of white powder on an album cover in the defendant's apartment. In *Commonwealth v. Frye*, 242 Pa. Super. 144, 363 A. 2d 1201 (1976), a reliable informant had observed defendant selling marihuana from his car and then overheard defendant telling buyer that if he wished to make further purchases, he could contact defendant at his home. This was held sufficient to allow a search warrant of defendant's car and his house.

In the case at bar, there are more facts alleged leading to probable cause than in the cases just cited. We have the personal observation in the farmhouse itself, plus the odor. The defendants' contention of lack of probable cause for the issuance of the search warrant is dismissed.

The defendants contend in the alternative that if probable cause existed for the warrant, the warrant is still defective because it was overly broad in describing the items to be seized.

The affidavit for the warrant requests search and seizure of "Controlled substances to wit: Marihuana & Hashish; any other controlled substances as defined in Act 64; Documents and/or paper work relating to trafficking in same; Documents showing ownership or control of premises."

The Fourth Amendment requires that the search warrant must, with particularity, describe the things to be seized and thus general exploratory searches are forbidden. *U.S. v. Lester*, 21 FRD 376, 282 F. 2d 750 (W.D. Pa. 1957). The request made in the warrant in this case is not so overly broad as to be classified as a general search. It specifically stated that the search was to be for illegal controlled substances, plus documents and papers relating to trafficking in these drugs and any papers showing ownership of the farmhouse. This is far from being so general as to permit the search and seizure of anything and everything in the hope of finding incriminating evidence. The contention is dismissed.

III - IV

The next argument by the defendants concerns the entry of the police officers pursuant to their arrest of defendant Hogle. Counsel for the defendants and for the Commonwealth have stipulated; (1) the two felony arrest warrants were invalid in that they did not, on their face, establish probable cause, and (2) the officers who arrested Hogle at the farmhouse had probable cause to arrest him on the aforesaid felony charges based upon facts not set forth in the warrant. Thus, we are faced with the following issue: Where the arresting officer entered the farmhouse with an invalid arrest warrant, but with probable cause to arrrest for a felony, was the arrest and/or entry into the farmhouse illegal?

The officers entered the farmhouse with no legally effective arrest warrants[1] and no search warrant. Agent Bilansky displayed his identification to defendant Eliff, advised him that he had an arrest warrant for Hogle, and then proceeded to enter the house. In *Commonwealth v. Shaw*, 476 Pa. 543, 383 A. 2d 496 (1978), the police, without a search warrant or an arrest warrant, entered the appellant's family home with permission from the appellant's sister and then ran to the second floor and initiated a search for persons who may have been involved in a shooting and robbery. They did not

1. We will be treating the entrance with invalid arrest warrants as though the officers were making a warrantless arrest. *Vance v. North Carolina*, 432 F. 2d 984 (4th Cir. 1970); *People v. Moreno*, 176 Colo. 448, 491 P. 2d 575 (1975).

have permission to go to the second floor of the house and upon finding the appellant upstairs, they searched him and subsequently arrested him. The Supreme Court of Pennsylvania held that the search of the second floor of the house was an invasion of the appellant's legitimate expectation of privacy and stated:

> "Such an intrusion must, at a minimum, be based upon a showing that the officers had probable cause to believe that persons sought were on the premises and that those persons committed the crime being investigated." *Supra* p. 500

Thus the Supreme Court has laid down two criteria that must be met when entering a private dwelling without a search warrant to search for a criminal suspect: (1) probable cause that the suspect is on the premise, and (2) probable cause that the subject committed the crime being investigated. In the case at bar, one of the police officers observed Hogle inside the farmhouse approximately ten minutes before they entered, and so there was sufficient probable cause that the defendant was on the premises. By virtue of the stipulation there was probable cause to arrest Hogle for the two felonies, beyond doubt there was probable cause to believe that he committed the crimes for which he was to be arrested.

Although the entry in the case at bar satisfies the two requirements in *Shaw*, supra, we are not totally satisfied that the issue raised in this case has been fully answered. *Shaw* deals with police investigating a crime. This case does not involve investigation. Here the police officers entered the farmhouse for the express purpose of arresting their suspect.

It appears that the Pennsylvania Courts have never directly answered the question of whether a person may be arrested in a private place without warrant.

> "Indeed, the issue of whether a judicial determination of probable cause to believe a suspect is present, i.e., a warrant, is required to justify entry of a residence for the purpose of arresting a suspect is a significant and open question." (citations ommitted). *Commonwealth v. Hilliard*, 471 Pa. 318, 330, A. 2d (1971) (FT) NT 4 Eagen, Dissenting.

The Supreme Court of the United States has also not directly addressed itself to this question; however in *Warden v. Hayden*, 387 U.S. 294 (1967), that court held that there need not be a warrant where there is "hot pursuit." Relying on the rationale of *Warden v. Hayden* a majority of Federal and State Courts which have considered the question have taken the position that an arrest of a person in a private place is a search for Fourth

Amendment purposes and an arrest warrant is needed unless there is a showing of "exigent circumstances." *Dorman v. U.S.*, 140 U.S. App. D.C. 313, 435 F. 2d 385 (D.C. Cir. 1970); *Morrison v. U.S.*, 262 F. 2d 449 (D.C. Cir. 1958); *U.S. v. Shye*, 492 F. 2d 886 (6th Cir. 1974); *Vance v. North Carolina*, 432 F. 2d 984 (4th Cir. 1970); *People v. Ramsey*, 127 Cal. Rptr. 629, 545 P. 2d 1333 (1976), *Commonwealth v. Forde*, 329 N.E. 2d 717 (Mass. 1975).

On the subject of warrantless arrests in a private place, the most frequently cited case relied on by the courts is *Dorman v. U.S.*, 435 F. 2d 385 (D.C. Cir. 1970). In *Dorman*, the court held that in order to enter a home to execute an arrest, a warrant is always required, except for the exception of "exigent circumstances". The court then enumerated seven considerations[2] to be examined to determine whether exigent circumstances are present in order to justify a warrantless arrest. These factors are: (1) the gravity of the offense, particularly where violence is connected; (2) whether the suspect is reasonably believed to be armed; (3) that there exists not merely minimum probable cause that is necessary for a warrant, but beyond that a clear showing of probable cause including reasonable trustworthy information to believe that the suspect committed the crime involved; (4) strong reasons to believe that the person is on the premises, (5) the likelihood that the suspect will escape if not swiftly apprehended; (6) that the entry is peaceful, although forceable entry can be justified in certain circumstances, and (7) the time of entry, i.e., night or day.

Applying these seven factors to the case before us we find:

1. The crime for which defendant Hogle was sought is not a violent crime, however, we must note the gravity of the crime. Hogle was wanted for two felonies, unlawful delivery of a controlled substance and conspiracy for which Hogle could receive up to ten (10) years imprisonment and/or $30,000.00 fine.

2. There was no evidence justifying any suspicion that Hogle was armed.

3. The factor of probable cause that subject committed the crime is present in the case. The parties agree that there was

2. See dissent in *Commonwealth v. Hilliard*, 471 Pa. 318 (1977) p. 330 FT/NT 4 where Chief Justice Eagen uses, as his justification for a warrantless entrance that isn't in hot pursuit, the *Dorman* criteria for exigent circumstances.

probable cause to arrest Hogle on the felony charges, and either Agent Bilansky or Agent Hicks had personally received delivery of the controlled substance from Hogle. (Bilansky and Hicks both participated in the entry of the farmhouse.)

4. Factor four is present because one of the officers stated that he saw a number of people in the farmhouse and identified one as Hogle. The police officers knew Hogle was present inside the house and their entrance was to apprehend him, not to conduct a search for him.

5. The defendants contend that there was no likelihood of escape because it was several months since Hogle committed the crime for which he was being arrested. The evidence shows that when Officer Thomas and Agent Bilansky arrived at the farmhouse they felt additional manpower was required, and so additional men were summoned. Some of them were assigned to stations around the farmhouse to prevent escape. There was good reason for this concern. The officers suspected that there was drug dealing occurring at the farmhouse and they believed that there were large quantities of drugs at the house. Thus it was likely that when Hogle learned that the police were there to arrest him that he would try to escape just so he could not be connected with any drugs which might be found. Also, as stated in the Commonwealth's brief, there were a number of arrest warrants issued at the time as a result of an ongoing undercover investigation, and by delaying the arrest, Hogle could possibly find that he was a target of the investigation and would possibly try to escape.

Even though Hogle was not a fugitive, in that he didn't know he sold to an undercover agent, there was a likelihood that he would try to escape if not apprehended swiftly. The inherent mobility of a suspect could suggest a likelihood of escape. *U.S. v. McKinney*, 379 F. 2d 259 (6th Cir. 1967).

6. The entry, as we found the facts, was peaceful. Agent Bilansky was wearing a badge, showed his I.D. to Eliff, and advised him that he had an arrest warrant for Hogle. The officers entered expeditiously, but under the circumstances, in a reasonable, non-hostile manner.

7. Finally, the arrest was in the evening and not at night. The evening entry increases the likelihood that Hogle could escape, and also strengthens the probablility that Hogle was present. As stated in *Dorman* the fact that an entry is at night raises particular concern over its reasonableness, and may elevate the degree of probable cause required.

TO: MEMO

ALL MEMBERS AND FRIENDS OF
THE FRANKLIN COUNTY BAR ASSOCIATION

FROM:
CONTINUING LEGAL EDUCATION COMMITTEE

The survey of Recent Developments in Pennsylvania Law Institute for Chambersburg, as you know, will be held on December 19, 1978. Contrary to previous information given to me, the Institute will begin promptly at 1:00 o'clock in the afternoon and end at 5:00 o'clock in the afternoon. It will take place at the Holiday Inn and you have the choice of registering with me as an agent with the Pennsylvania Bar Institute or directly with the Institute. However, in any event, I would like to be notified for sure whether or not you intend to be there. The latest information I have available to me is that the Survey of Real Estate will be covered by Mr. William F. Hoffmeyer, Esq., of York, Pennsylvania; Civil Procedure will be covered by Mr. John J. Walsh, Jr., Esq., of Philadelphia, Pennsylvania; Family Law by Mr. Norman Perlberger, Esq., Philadelphia, Pennsylvania; and Decedents Estates by Mr. Paul E. Clouser, Esq., of Harrisburg, Pennsylvania. As a matter of information, the Holiday Inn will be serving, as usual, a buffet style lunch if you desire to purchase and eat your lunch at the Holiday Inn prior to the beginning of the seminar.

The enrollment fee is $35.00 unless you have been admitted to practice after January 1, 1974, for which the enrollment fee is $28.00.

RICHARD K. HOSKINSON, *Chairman*
CLE Committee

READERS, PLEASE NOTE . . .

We have been informed that the first bound volume of the Journal will be ready for shipment and delivery within the next couple of weeks. Please keep your eyes open for notice of the exact date. We would like to make delivery of as many of these bound volumes as possible without having to incur mailing expenses. Anyone **within** Franklin County who was a subscriber to our advance sheets during the publication of Volume 1 of the advance sheets is entitled to receive a copy of the bound volume, as is anyone **within** Franklin County who placed an order for a copy of such bound volume back when we made a request for such orders. It will be very helpful to us for as many of those persons as possible to appear at such distribution point as we shall notify you of, probably in the next issue of the advance sheets, to pick up their copies of the bound volume. Persons **outside** Franklin County, Pennsylvania, who wish to purchase a bound volume should place an order therefor with Geo. T. Bisel Company, 710 S. Washington Square, Philadelphia, Pennsylvania 19106 (Telephone: 215-WA2-5760). They will make delivery to such purchasers. We shall also have a few extra copies available for sale to persons **within** Franklin County, Pennsylvania, who have not yet placed an order with the managing editor but may wish to do so. That supply, however, is very limited.

The list of factors in *Dorman* is not considered to include every factor in determining exigent circumstances. We find that 6 of the 7 requirements laid down in *Dorman* have been satisfied in the case at bar. In addition, one factor which was not present in *Dorman* which we feel warrants consideration is the fact that the arresting officers felt that they were armed with valid arrest warrants, and at all times felt that they were abiding by the constitutional requirements. In *Vance v. State of North Carolina*, 432 F. 2d 984 (4th Circ. 1970), the court took into consideration the fact that police had arrest warrants when they entered, but these were later found to be invalid. The court there stated that part of the concern of the Fourth Amendment is the lawless behavior of the police and the fact that the police thought they were acting lawfully and in obedience to the Constitution could be used to mitigate the failure to have an arrest warrant.

In conclusion, the Commonwealth has proven that there was compliance with the two criteria enunciated in *Shaw*, and the exigent circumstances consideration listed in *Dorman*. We find the law of Pennsylvania to be that a police officer is authorized to make an arrest without a warrant where he has probable cause to believe that a felony has been committed, and that the person to be arrested is the felon. Pa. R. Crim. P. 101(3) provides, "Criminal proceedings in court cases shall be constituted by: (3) an arrest without a warrant upon probable cause when the offense is a felony." *Commonwealth v. Bosurgi*, 411 Pa. 56, 190 A. 2d 304 (1963); *Commonwealth v. Jackson*, 450 Pa. 113, 299 A. 2d 213 (1933). We find that the arresting officers had sufficient probable cause to believe that Hogle was in the farmhouse and there was sufficient exigent circumstances. We, therefore, dismiss this contention of the defendants and hold that the arrest and entry were constitutionally valid.

We note a discussion of this issue appearing in the August 16, 1978 edition of the Criminal Law Reporter Vol. 23, No. 19, Page 1973, 1074, which refers to the unpublished discussion of the New York Court of Appeals in *People v. Payton*, decided July 11, 1978. The majority of the New York Court apparently concluded entry of a private dwelling to effect a felony arrest without warrant does not require exigent circumstances.

V

The defendants contend that the initial entry was invalid because they did not knock and announce their purpose and wait a reasonable time to be left in voluntarily. The defendants seek to draw an analogy between requirements when executing

a search warrant and the execution of arrest warrants. The defendants have cited no authority in support of their position that the execution of an arrest warrant must follow the same procedures as that required for execution of a search warrant, and we believe there is no such authority. To require a law enforcement officer to announce his intention to arrest a person already charged with a serious crime would be an open invitation to an attempted escape or a violent and dangerous response.

The manner in which the law enforcement officials entered the farmhouse in the case at bar was neither unlawful nor unreasonable under the circumstances. Agent Bilansky was wearing his badge and displayed his identification card to defendant Eliff, and advised him that he had an arrest warrant for Hogle. Due to the number of people that were in the house and the possibility of escape or violent response, the officers entered expeditiously and we find nothing improper or unlawful. This contention by the defendants is dismissed.

VI

The defendants argue that the trial judge should have disqualified himself because he sat at the suppression hearing. A judge who sits in a suppression hearing should not preside in a trial without a jury where any evidence of guilt has been suppressed. *Commonwealth v. Corbin*, 447 Pa. 469 (1972), *Commonwealth v. Poquette*, 451 Pa. 250 (1975). In this case, no evidence was suppressed and the same evidence heard at the suppression hearing was heard at the trial.

As we noted on the record (N.T. 4), due to the complexities of the issues and the great amount of time spent by this judge in considering the issues for suppression, to involve both judges of this Judicial District in handling a matter where no evidence was suppressed would be an uneconomical use of judicial time. We, therefore, declined to disqualify ourself and we can find no prejudice to the defendants because of it.

Parenthetically, we note that as a result of our familiarity with the underlying facts of the case, and the multitude of exhibits resulting from our exposure to them at the suppression hearing, the time for trial of the entire case was substantially reduced without prejudice to either side.

VII

The defendants claim that defendants Bechtold and Eliff have standing to attack the validity of the arrest of Hogle. The

parties have already stipulated that the arrest warrants were invalid but that there was probable cause to arrest Hogle on a felony. Thus, any issue as to the validity of the arrest warrants or the probable cause needed for a warrantless felony arrest is now moot.

The defendants state in their brief that what they are really attacking is not the arrest itself but the search of the farmhouse because if it wasn't for the arrest there would have been no search. We agree that the defendants have standing to attack the validity of the search of the farmhouse. The police officers must have been in a legal position when they made their observations. In other words, when the police officers observed the facts that were presented to the magistrate in the affidavit for the search warrant, the officers must have had a right to be in that position to make those observations. *Commonwealth v. Cooper*, 240 Pa. Super. 477, 362 A. 2d 1041 (1976). As previously discussed in Section III of this Opinion, the legally warrantless entry and arrest of Hogle was lawful and, therefore, the police officers had a right to be where they were in the farmhouse to observe the contraband which in turn led to the search warrant.

VIII

Defendant Eliff in his supplemental brief on his behalf raises two contentions. They pertain to the two statements which he made and subsequently contended should be suppressed. At approximately 11:00 P.M. on October 27, 1977, Agent Bilansky was in the process of searching the farmhouse and found, in the bedroom that belonged to Eliff, a bag containing suspected marihuana. He stated to a fellow officer that it looked like "Columbian". Defendant Eliff voluntarily stated that it was not Columbian but was "Acapulco Gold." Agent Bilansky immediately reminded Eliff of his right to remain silent and that anything he said would be used against him. Later, at approximately 2:30 A.M., the officers were deciding where to search next when Eliff voluntarily and without any interrogation stated that they had gotten it all, there was nothing else to find.

The defendant claims that, first, the statement should not be admissible because it was obtained in violation of his constitutional right to remain silent. Eliff had been given his Miranda warnings and was even reminded of them after the first statement. Miranda offers no protection for volunteered, spontaneous, unsolicited statements made by a person in custody. There was no interrogation of Eliff; he voluntarily made the statements and thus cannot claim any violation of his constitutional rights.

The second claim by defendant Eliff is that the statements should be suppressed because he was not arraigned within six hours of his arrest, and any statement made between the time of his arrest and his arraignment is inadmissible under the rule of *Commonwealth v. Davenport*, 471 Pa. 278, 378 A. 2d 301 (1977). The testimony shows that Eliff was arraigned at 6:00 A.M. and was formally arrested at 12:25 A.M. Therefore, the arraignment was within the six hours. The defense argues that the arrest actually took place at 7:40 P.M. when the police entered the farmhouse and detained the defendant and so arraignment came after six hours.

Preliminarily, it is our opinion that it is not necessary to answer the question of when the arrest took place for purposes of *Davenport*, supra, because Eliff volunteered the statements he now claims should be suppressed. The six hour Rule of *Davenport* was enunciated to prevent unreasonable pre-arraignment delay before a defendant is informed of his rights by a neutral magistrate. Here, there was no interrogation by the police at all. Eliff, knowing his rights, gave the statement of his own volition.

With regard to the time of his arrest for *Davenport* purposes, we conclude that even though Eliff was not free to leave the premises after the officers entered at 7:40 P.M., he was not under arrest until his actual arrest at 12:20 A.M. The officers left to get a search warrant and did not start to search until 9:56 P.M. At some unknown time during the search the officers became satisfied that the two females were only visitors and they were no longer detained. We are unwilling to expand the operative effect of *Davenport* to the time Eliff was initially detained. The six hour limit begins at the time defendant was formally arrested. We conclude that the statements should not be suppressed.

IX

Defendant Bechtold in his supplemental brief on his behalf raises certain contentions. The first event complained of occurred when Agent Bilansky was searching the bedrooms. During the search, Agent Bilansky found, in one of the rooms, mailing items addressed to Bechtold with his address crossed off and the farmhouse address inserted. The agent felt that the bedroom was occupied by Bechtold and caused Bechtold to be brought to the bedroom to observe the search. Agent Bilansky saw a locked padlock lying on the floor near the wall of the bedroom and asked Bechtold if he had a key. Bechtold produced a key which fit the lock. The lock was seized and it was used as evidence that the bedroom belonged to Bechtold.

The defendant claims that the evidence must be suppressed because this was an unlawful interrogation and an unlawful search and seizure.

As to the unlawful interrogation, the record shows that Bechtold was given his Miranda warnings. He was asked if he had a key and voluntarily handed it over. In our judgment this constituted a voluntary waiver of his right to remain silent after due warning.

As to the search and seizure aspect of the contention, the Commonwealth concludes that there was no search warrant but that the search was incident to the arrest. The Commonwealth claims that it had probable cause to arrest Bechtold and the search was incident to the arrest even if the arrest came a few minutes after the search. (The arrest occured between three and eighteen minutes after the key was obtained.)

When the formal arrest is not made until after the search, the search will be upheld so long as there is probable cause for arrest before the search began and the search and arrest are nearly contemporaneous in time. *Commonwealth v. Friel*, 211 Pa. Super. 11, 234 A. 2d 22 (1967); *Commonwealth v. Wheeler*, 20 Ches. Co. Rep. 225 (1972), 389 F. 2d 305 (D.C. Cir. 1967). Since contraband already had been found in the house, together with mail addressed to Bechtold at the farmhouse which linked him to the farmhouse and the particular room, we conclude that probable cause for arrest was established and the search was contemporaneous to the arrest.

Bechtold's second contention is that the search of his room was improper because he was not named in the search warrant, and the room to be searched was not specifically described as his in the warrant. However, defendant Bechtold initially told Agent Bilansky that he did not live at the farmhouse and was only visiting. Thus, he intentionally tried to mislead the officers and he will not now be heard to complain that his name did not appear on the warrant.

Bechtold also argues that there must be probable cause shown in the affidavit for search warrant for each room in the farmhouse because the farmhouse has separate living units similar to an apartment building. The Commonwealth urges that the farmhouse is a single dwelling unit and a general description of the building in the warrant is sufficient for the search of all rooms inside.

In *Commonwealth v. Copertino*, 208 Pa. Super. 63,68 (1966), the court stated:

"Normally, separate living units of a multiple tenant building must be treated as if they were separate dwelling houses and probable cause must be shown to search each one. *U.S. v. Hinton*, 219 F. 2d 324 (7th Cir. 1955); see *Commonwealth v. Smyser*, 205 Pa. Super. Ct. 599, 211 A. 2d 59 (1965). But there are two exceptions to that rule: a warrant directing the search of more than one living unit may be valid if there is cause to believe all are being used for the unlawful purposes involved, or there is cause to believe the premises covered by the warrant are being used as a single unit, *U.S. v. Poppitt*, 227 F. Supp. 73 (D.C. Del. 1964)."

The evidence established that the farmhouse was a single dwelling unit and consequently the warrant describing the farmhouse generally was sufficient to warrant the search of all the rooms in the building. There is only one kitchen, one bath, one livingroom and the only barriers separating the bedrooms were the bedroom doors. The officers could reasonably believe that this was a single dwelling unit and so the warrant describing the premises as a whole was sufficient for the search of individual rooms.

In *Commonwealth v. Davis*, 20 Ches. Co. Rep. 271 (1972), police officers observed marihuana plants growing outside a house and they arrested two individuals who were seen coming out of the house after these individuals admitted that they cared for the plants. These individuals informed the police that the house was rented by another person, but they were vague concerning any other occupants in the house. A search warrant for "a two-story wooden frame house" was issued and during the search, evidence was found in the bedroom belonging to the defendant, the defendant being previously unknown to the police. The defendant rented the room as his living quarters. A motion to suppress the evidence seized in the defendant's room was denied. The court, citing *Copertino*, supra, felt that the police could reasonably assume the house was a single unit and that evidence seized from the defendant, even though he wasn't named in the search warrant, was admissible.

Commonwealth v. Davis is analogous to the case at bar in that we feel the officers could reasonably assume that the house was a single dwelling and it did not matter that defendant Bechtold was not named in the search warrant. The description of the farmhouse as a "Two & one-half brick story farm house with tin roof & having an L-shaped porch, with 2 brick chimneys attached thereto. . ." is sufficient to allow the search of Bechtold's bedroom.

X

The defendants Eliff and Bechtold's final contention is that the evidence was insufficient to connect each of them with the offense charged. As previously noted, the police had ample evidence to link Bechtold to one particular bedroom in the house. A footlocker was seized out of that bedroom and it contained large amounts of controlled substances, including Thai Sticks, marihuana, hashish, cocaine, LSD and other narcotics. In addition, marihuana was found on top of his dresser. The large quantity of contraband found in Bechtold's bedroom, plus the large quantities of contraband found throughout the common living areas of the farmhouse, leads us to conclude that the evidence established beyond a reasonable doubt Bruce W. Bechtold's guilt of the crimes of conspiracy and possession with intent to deliver.

In Eliff's room over 200 grams of marihuana — some of it separately packaged in small plastic bags —, smaller quantities of qualude (methaqualone), peyote buttons (mescaline), cocaine and LSD, kilo sized wrappers containing marihuana residue, $1,300.00 in traveller's checks, $2,800.00 in cash, and an unemployment compensation card issued to him were seized. This quantity and variety of contraband, and the unexplained large sum of cash, coupled with the large quantities of contraband and drug paraphernalia found in the common living areas of the farmhouse originally rented to Eliff, satisfies us that the Commonwealth proved beyond a reasonable doubt Daniel J. Eliff's guilt of the crimes of conspiracy and possession with intent to deliver.

ORDER

NOW, this 6th day of September, 1978, the motions for a new trial and in arrest of judgment on behalf of the defendants, Daniel J. Eliff, Bruce W. Bechtold and Richard A. Hogle, are dismissed.

The defendants shall appear for sentencing on the call of the District Attorney.

Exceptions are granted the defendants.

Editor's Note: This case has been appealed to the Superior Court of Pennsylvania. See Table of Cases Appealed From at end of bound Volume 2 for further information.