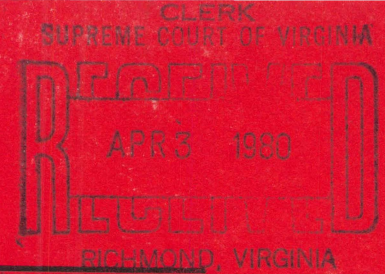
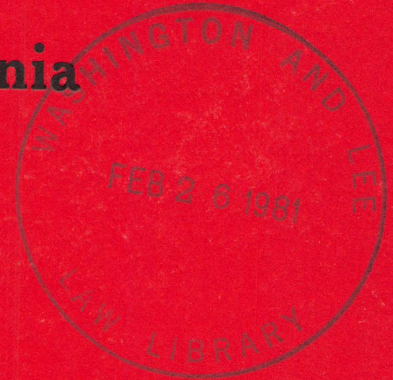


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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND



RECORD NO. 791234

ROBERT MONTGOMERY, III  
Appellant

v.

COMMONWEALTH OF VIRGINIA  
Appellee

JOINT APPENDIX

E. L. STEPHENSON, ESQ.  
Attorney at Law  
P. O. Box 1003  
Newport News, Virginia 23601

Counsel for Appellant

HON. ROBERT H. ANDERSON, III  
Assistant Attorney General  
830 East Main Street  
Richmond, Virginia 23219

Counsel for Appellee

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APPENDIX

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Virginia:

In the Circuit Court of the County of Isle of Wight.

January 2, 1979

(Date)

The grand jury charges that:

On or about September 12, 19 78 in the County of Isle of Wight ROBERT  
McRAE MONTGOMERY, III did feloniously steal certain personal  
property belonging to VIRGINIA LITTLE FEDONCHUK having a value of  
one hundred dollars or more.

Va. Code Section 18.2-95

Witnesses:

Deputy Sheriff Donald E. Curtis  
Virginia Little Fedonchuk

A True Bill

Foreman

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Commonwealth

vs .

Robert Montgomery, III

ORDER - FELONY NO. 5529

This day came again the Attorney for the Commonwealth, and Robert Montgomery, III, who stands convicted of a felony, to-wit: grand larceny (Virginia Code Section 18.2-95), as charged in the indictment, appeared according to the condition of his recognizance, and came also Elmo L. Stephenson, his attorney.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for the accused.

Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case.

Whereupon the Court taking into consideration all of the evidence in the case and the report of the Probation Officer, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the jail of this Court for a period of 12 months, of which term the Court doth suspend the execution of 12 months upon the conditions that he keep the peace and be of good behavior for 12 months, and that the Commonwealth of Virginia recover against the said defendant its costs by it about its prosecution in this behalf expended in the amount of \$110.83.

After pronouncing sentence, the Court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia and his right to proceed in forma pauperis and to have the assistance of court appointed counsel.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise perso-

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nally present and capably represented the defendant.

And the defendant is allowed to depart.

5-23-79

//

A COPY.

TESTE: W. E. Laine, Jr., Clerk

By: Stanton N. Jones, D. C.

1 MR. CROOK: Your Honor. we have one  
2 witness who had been summonsed previously,  
3 Melvin Epstein, from Newport News, and the last  
4 time he was here Mr. Stephenson noted to the  
5 Court, and to me, and I believe it was in the  
6 record, that he would stipulate as to the  
7 testimony of Mr. Melvin Epstein and it would  
8 not be necessary to have a subpoena issued for  
9 him to return.

10 MR. STEPHENSON: If Your Honor please,  
11 after the last appearance in court I wrote Mr.  
12 Crook a letter, and in that letter if Your  
13 Honor please, I set forth certain things, and  
14 I would like to read the letter to The Court  
15 for the record.

16 "Dear Mr. Crook, I have your letter of  
17 February sixteen in which you confirmed this  
18 matter is set for April four, 1979 at 10:00 a.m.  
19 As I mentioned in court and have so advised  
20 Mr. Epstein, I am willing to stipulate that  
21 Robert Montgomery brought the items in question  
22 to Mr. Epstein's shop on Warwick Boulevard in  
23 Newport News and received \$40 for the chair  
24 and horse statue, and I understand from Mr.  
25 Epstein that Mr. Montgomery gave his correct  
26 name, address, telephone number, social security  
27 number, and I assume you are willing to stipu-  
28 late this also and if you would like to discuss

1 this in more detail please call".

2 This was the stipulation that I sent to  
3 the Commonwealth's attorney.

4 THE COURT: That was the agreement?

5 MR. CROOK: It was stated that it would  
6 not be necessary for Mr. Epstein to return and  
7 that the defendant would stipulate his testimony  
8 and this letter is something Mr. Stephenson  
9 wrote later on to me, and basically, that is  
10 the testimony of Mr. Epstein.

11 I was ready to have him come back, but  
12 Mr. Stephenson was a little more concerned about  
13 Mr. Epstein than I was. I don't want to have  
14 any problems about Mr. Epstein's testimony, and  
15 I will bring him back here and that is the  
16 thing I want clear to The Court and Mr. Stephen-  
17 son, and I don't want Mr. Stephenson objecting  
18 to something he would testify to if he were  
19 here.

20 MR. STEPHENSON: I do not object, and  
21 it is stipulated that Mr. Epstein would testify  
22 that this defendant, on the twelveth day of  
23 September, I believe, brought into his shop  
24 these items that are the issue in this trial.

25 There is no question about that, and if  
26 there is something else that Mr. Crook has I  
27 know nothing about that.

28 THE COURT: Do you gentlemen want to

1 MR. CROOK: I am not going to put the  
2 witnessesthat we have here today to the unneces-  
3 sary delay of having to come back again as a  
4 result of what has taken place, and so the  
5 Commonwealth will proceed at this time.

6 THE COURT: Mr. Crook, can you and Mr.  
7 Stephenson talk a few minutes and see if you  
8 can agree on this and it seems to me in the  
9 interest of time and everything else that it  
10 would probably be worth an effort.

11 MR. STEPHENSON: I don't want to  
12 inconvenience The Court and I don't want to  
13 inconvenience Mr. Crook and I have witnesses  
14 here myself.

15 MR. CROOK: I am ready to proceed,  
16 Your Honor.

17 MR. STEPHENSON: I want to reiterate for  
18 the record that I am willing to sit down with  
19 Mr. Crook and attempt to solicit from him  
20 what it is he needs in the stipulation.

21  
22 VIRGINIA LITTLE FEDONCHUK, being first  
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. CROOK:

26 Q State your name, please.

27 A Virginia Little Fedonchuk.

28 Q And your address?



1 A Benn's Church, Route 1, Smithfield,  
2 Virginia.

3 Q Mrs. Fedonchuk, do you know the defendant,  
4 Robert Macray Montgomery, III?

5 A I only had the privilege of meeting  
6 him once.

7 Q What was the relationship between you  
8 and he?

9 A None whatsoever. He was visiting, or  
10 he was a guest of Gary Williams, who was renting a cottage  
11 from us.

12 Q When was it that you met the defendant?

13 A Oh, it was probably two months before  
14 I saw this merchandize in the window in Mr. Epstein's Pawn  
15 Shop.

16 Q What merchandize was that that you  
17 observed there?

18 A A rocking chair, a bendwood rocking  
19 chair.

20 Q Rocking chair and what else?

21 A That's all I saw in the window.

22 Q And where is Epstein's Pawn Shop?

23 A It is in Hilton on Warwick Boulevard  
24 on the lefthand side almost before you reach Hilton.

25 Q Tell us what you observed about the  
26 rocking chair and what you did at that time?

27 A It was strictly by accident that I  
28 passed the shop that day, and I had to go to an auction

1 there, and he was to have an auction Saturday, and I passed  
2 the window and saw this bentwood rocking chair, which I  
3 knew how old it was and how long it had been in my family  
4 and I couldn't believe anywhere else in Virginia would  
5 have one like it, so I went in to see Mr. Epstein and I  
6 know him and his wife personally and he knows me because  
7 I have attended several of his auctions and, matter of  
8 fact, I have been a frequent customer with antiques with  
9 him through dealers.

10 I approached him and asked him where he got this  
11 rocking chair, and he said, "I purchased it, Mrs. Fedonchuk,  
12 from a young man." I said, "Well, this is very odd, because  
13 I have the mate to that if it isn't mine, I have the mate  
14 to it.

15 He said, "Well, do you recall other things that  
16 would be along with this? Do you recall having some  
17 horses from England?"

18 I said, "Yes, I have a pair of white ones, twenty  
19 inches tall, with flags."

20 He said, "Well, I have those, too. I purchased  
21 those from the same two men." It was actually not one man,  
22 it was two men involved in it.

23 *P* He said, "Well, Mrs. Fedonchuk, I would suggest this.  
24 I would suggest you go over to your home at Benn's Church  
25 and check your buildings because this was a covered van-  
26 like truck and it was filled and I have an idea your  
27 building may be empty."

28 MR. STEPHENSON: I have allowed some

1                    hearsay, but I think that is irrelevant to  
2                    the issue and thos horses and the chair is  
3                    the issue, and that is the part I stipulated  
4                    to.

5                    THE COURT: I think we could limit it  
6                    to that.

7                    MR. CROOK CONTINUING:

8                    Q            Did you see the horses as well?

9                    A            No, Mr. Epstein had carried the horses  
10                   home. He was keeping those and said his wife liked them  
11                   and the chair was to be sold through the auction.

12                   Q            Did you check your home in Isle of Wight  
13                   County?

14                   A            I did.

15                   Q            Did you determine the situation?

16                   A            I couldn't wait to get across the  
17                   bridge and go there, and when I did go there Dad was in  
18                   the house and I went straight to the storage house and  
19                   it has a wood door and it has a skeleton key lock which  
20                   was broken and I had to take my foot to push it open since  
21                   it had been stuck and when I went in it was completely  
22                   empty with the exception of some shutters that my husband  
23                   had taken over there before this happened to put on one  
24                   of the tenant's houses and those were the only things left  
25                   in there except two coffee tables and a table that was one  
26                   of my tennants which they use it to put things in if they  
27                   move in the house, and it isn't big enough, and we do allow  
28                   them to put some of their things in this room for storage.

1 Q You said that the lock was broken?

2 A That is correct, and it still is.

3 Q Did you know when it was broken?

4 A No, I do not.

5 Q Was it broken the last time you saw  
6 the lock before that day?

7 A No.

8 Q Do you recall what day it was that  
9 you observed the rocker in the pawn shop?

10 A I think it must have been approximately  
11 four days after he purchased it, because I asked Mr. Epstein  
12 when I came back, I said, "Mr. Epstein, this is my chair,"  
13 and he says, "Well, I have his name and adress and phone  
14 number and everything. I said, "Did you purchase this?",  
15 and he said, "Yes, I did, but I have to as a pawn broker,  
16 get their names and I have it here".

17 Q What was the name that he gave you?

18 A The exact name of this young man.

19 Q Robert MaCray Montgomery?

20 A Correct.

21 Q Did he tell you how much he paid for  
22 it?

23 A I think he said \$40, or \$45, I don't  
24 know which, but on the box he showed me the items which  
25 he had bought from him.

26 Q Did he show you the horses then?

27 A No, he didn't show me the horses then,  
28 and it was not until Deputy Sheriff Curtis came over, the



1 day of the sale, and stopped him from selling the chair  
2 which was to go through the auction, but Sheriff Curtis  
3 came down and tagged the chair and took it away, and the  
4 auction was going on then, and Mr. Epstein still had not  
5 brought the horses back to the business but Mr. Curtis  
6 told him to bring them back and so he finally returned them  
7 and Mr. Curtis tagged them and returned them to me.

8 I do have the two horses, and I do have the chair  
9 returned.

10 Q All right, you mentioned a rocking  
11 chair. What kind of rocking chair was it?

12 A A bentwood rocker, over one hundred  
13 years old, and the value of it is far more than any \$40.

14 Q What is the value of it?

15 A Well, Mr. Epstein said --

16 MR. STEPHENSON: I object, if Your Honor  
17 please.

18 A Well, he deals in antiques and he holds  
19 auctions and he appraises antiques and he is an appraiser.

20 THE COURT: I sustain the objection  
21 on that.

22 MR. CROOK CONTINUING:

23 Q Do you know the value of it?

24 A I know that I would not sell the chair  
25 for less then \$100 to anybody myself.

26 Q Is it worth \$100?

27 A Yes, it is.

28 Q How about the two horses. How would

1 you describe them?

2 A They should be worth \$150. They're  
3 actually antiques from England, my husband and I brought  
4 them back thirty-five years ago almost.

5 Q Were they in good condition?

6 A No, it was twenty-eight years we had them.  
7 and they are painted enameled because they are metal and  
8 they are very very scarce now. They are hard to find.

9 Q What do you say they are worth?

10 A Well, I have had dealers in my house to  
11 appraise things but if I can't say what the dealers have  
12 told me, but they are worth \$125 easy.

13 Q For the two of them?

14 A Yes.

15 Q What is the size of the horses?

16 A They are tall ones. I have pictures  
17 of them. You showed me pictures that you had and they  
18 are used to put on mantles and also you can use them as  
19 doorstops. They are large and they are knights of armor.

20 He knew the value and that is the reason he purchased  
21 them.

22 MR. STEPHENSON: I object, if Your Honor  
23 please.

24 MR. CROOK CONTINUING:

25 Q You received from Deputy Sheriff Curtis  
26 the two horses as well as the rocker you have described?

27 A Yes, I have those items back.

28 Q They are all yours?

1 A Yes.

2 Q They are the ones that were taken from  
3 you?

4 A Yes.

5 Q Did you ever discuss the matter with  
6 the defendant?

7 A No, because his attorney has never  
8 bothered to come to us.

9 Q Just answer yes or no.

10 A I did not. My husband did. He came in  
11 the office of my husband's real estate office.

12 MR. STEPHENSON: Objection.

13 MR. CROOK CONTINUING:

14 Q You weren't there?

15 A No, I wasn't.

16 THE COURT: I sustain the objection.

17 MR. CROOK CONTINUING:

18 Q Are the items in as good a condition now  
19 when you received them back as they were when you last saw  
20 them?

21 A Yes.

22 MR. CROOK: Answer Mr. Stephenson.

23

24 CROSS EXAMINATION

25 BY MR. STEPHENSON:

26 Q Mrs. Fedonchuk, would it be fair to  
27 say it was the latter part of September when you observed the  
28 things in Mr. Epstein's window, the chair?

1           A    No, he purchased them on the 12th, Mr. Epstein  
2    did, I don't know whether it was later than four or five  
3    days, but it was very recent and I wouldn't give you the exact  
4    date because I don't know the exact date.

5           Q           You think it was within a matter of five  
6    days or so after?

7           A           It could be.

8           Q           Do you remember when it was that you  
9    actually regained possession of the chair?

10          A           I gained possession of the chair when  
11    Deputy Sheriff Curtis came over.

12          Q           Was that the first part of October?

13          A           I don't know. I guess it was a month  
14    before Deputy Sheriff returned the chair to my home in  
15    Benn's Church.

16          Q           When was the last time you had seen that  
17    chair before that day, Mrs. Fedonchuk?

18          A           What do you mean the last time I saw  
19    it?

20          Q           You saw it in Mr. Epstein's window  
21    sometime in the middle of September?

22          A           Right.

23          Q           Do you recall the last time prior to  
24    that?

25          A           I did not see the chair any more.

26          Q           Not after, but before, Ma'am, before  
27    September 15th, or 18th.

28          A           Before it was taken or before it was at



1 Mr. Epstein's?

2 Q Before you saw it in Mr. Epstein's on or  
3 about the 18th of September, when was the time before that  
4 you had last see it?

5 A The chair was on my front porch at Benn's  
6 Church, and it was used by my father, and people who visited  
7 there used it and it was a chair that we kept and stored after  
8 the bad weather and my dad took it and put it in the same  
9 storage room, and I don't know what date it was that I saw  
10 it last. I could not tell you.

11 Q That is all I was asking. Do you recall  
12 what date you last saw the horses?

13 A I saw the horses prior to that when my  
14 husband and I went in there to check the new shutters in  
15 the storage room and I would say it was probably a month  
16 before that I saw the horses in there.

17 Q Would that be sometime around the  
18 first part of August perhaps?

19 A No, it was before they were taken.

20 Q I understand that.

21 A They were taken and sold in September  
22 so I'd say maybe it was the end of July.

23 Q So the end of July was the last time  
24 that you had seen the horses?

25 A Yes, but it wasn't the last time I  
26 had gone in the building. I was always carrying things in  
27 there.

28 Q When you went back after you observed

1 the chair in Mr. Epstein's window you went to your property?

2 A That's correct.

3 Q And this is some sort of storage shed,  
4 is it not?

5 A I would say it's a twelve by twenty  
6 building.

7 Q Is it a separate building standing by  
8 itself?

9 A Absolutely.

10 Q And it is not within a barn or anything  
11 of that nature?

12 A No.

13 Q And there was a lock on the outside;  
14 is that correct?

15 A That's right.

16 Q And you noticed at that time when you  
17 went there that the lock was broken?

18 A When I went to find out if my chair was  
19 there that was when I found the door broken.

20 Q And can you tell me when it was, the last  
21 time that you went in there, in that shed, prior to that?

22 A I'd say probably three weeks before that.

23 Q So it had been three weeks at least before  
24 that you were last there?

25 A Yes, and the things were not out of it.

26 Q Did you make a list of those items that  
27 were missing at that time?

28 A After I noticed the chair gone I just made

1 one trip back to Mr. Epstein's hoping that he would have  
2 bought more of the merchandize, but he said he didn't buy  
3 because the other things on the truck he didn't like.

4 Q Well, I object to that, but what I am  
5 trying to ask you, did you come back to the shed and make  
6 a list of those items that were missing?

7 A Not then, no.

8 Q Did you ever do that?

9 A I did for insurance purposes.

10 Q When was that, ma'am?

11 A Long before they were taken.

12 Q Mrs. Fedonchuk, maybe I am not making  
13 myself clear. After you observed the chair in Mr. Epstein's  
14 window, when was it that you came back to your storage shed  
15 and found the lock broken, and I assume you made a list of  
16 what items were missing?

17 A I didn't make a list that day. I am  
18 trying to tell you that I have a list that we carry insurance  
19 on the merchandize, and we had a list, and when I came back  
20 I rechecked everything and we are still missing things.

21 Q Is it fair to say, Mrs. Fedonchuk,  
22 after you came back and looked in your shed there were  
23 things missing other than this chair and those two horses?

24 A Entirely.

25 Q Do you recall what you paid for the  
26 chair when you bought it?

27 A I did not buy it. It was handed down  
28 in the family.

1 Q Did you buy the horses, ma'am?

2 A Yes.

3 Q Do you recall what you paid for those?

4 A Yes, I paid twenty pounds for them.

5 Sixty dollars in England, something like twenty-eight years  
6 ago.

7 ~~MR. STEPHENSON: All right. I have no~~  
8 ~~further questions.~~

9  
10 D. E. CURTIS, being first duly sworn,  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CROOK:

14 Q State your name, please.

15 A Deputy Sheriff D. E. Curtis.

16 Q And you are a Deputy Sheriff of Isle  
17 of Wight County?

18 A Yes, sir.

19 Q Were you a Deputy Sheriff of Isle of  
20 Wight County in September 1978?

21 A Yes, sir, I was.

22 Q Did you, in that capacity, investigate  
23 an alleged statutory burglary and larceny of certain property  
24 of Mrs. Virginia Fedonchuk in Isle of Wight County?

25 A Yes, sir, I did.

26 Q Tell The Court of your investigation,  
27 please.

28 A On September 29 of 1978 I obtained from



1 the magistrate a warrant sworn out by Mrs. Virginia Fedonchuk  
2 for grand larceny for certain antique items, a chair and two  
3 iron horses.

4 The warrant was for Robert Montgomery, III. On Saturday  
5 morning, September 30, I went to Melvin Epstein's Pawn Shop  
6 on Warwick Boulevard in Newport News in the company of a  
7 Newport News police officer; and there I saw three items, a  
8 wooden chair and two metal horses and upon checking with the  
9 pawn shop book as the law requires, I observed there an entry  
10 made on September 12, '78 at 2:15 p.m. on page 28, pawn  
11 ticket number 2147, and this entry was made to Robert Mont-  
12 gomery, III, 512 Latham Drive, for an old white rocker and  
13 a pair of metal horses.

14 This is the pawn ticket, or a copy of it.

15 Q Is this a copy of the pawn ticket  
16 that Mr. Epstein had?

17 A Yes.

18 Q You made a copy of it?

19 A Yes, sir.

20 Q You don't have the original?

21 A No, sir. That was retained at the  
22 store.

23 Q Does this reflect the condition of the  
24 ticket as you viewed it on that day?

25 MR. STEPHENSON: I am not going to  
26 object to the ticket, even though it is a copy.

27 MR. CROOK: We offer the pawn shop ticket  
28 as Commonwealth's exhibit number "1".

1 MR. CROOK CONTINUING:

2 Q Go ahead.

3 A At this time I brought the white rocking  
4 chair and two metal horses back to the Sheriff's office at  
5 which time I photographed them and returned them to Mrs.  
6 Fedonchuk.

7 Q Are these photographs of the one rocker  
8 and the two horses?

9 A Yes, sir.

10 MR. CROOK: We would offer the photographs  
11 of the rocker and horses as Commonwealth's exhibit  
12 number "2".  
13

14 MR. CROOK CONTINUING:

15 Q After you got the photographs of the items  
16 what did you do with them?

17 A I returned them to Mrs. Fedonchuk.

18 Q All right, go ahead.

19 A I left word in a couple of places for  
20 Mr. Montgomery to contact me if possible on Sunday morning.  
21 On Sunday morning, October 1, 1978 Mr. Montgomery did arrive  
22 at the Sheriff's office and a copy of the warrant was given  
23 to him at which time he was warned of his legal rights.

24 ~~Q Do you have a waiver form?~~

25 ~~A Yes, sir.~~

26 MR. STEPHENSON: I will stipulate he was  
27 properly advised of his constitutional rights.

28 MR. CROOK: We would offer the waiver

executed by the defendant, Your Honor.

MR. CROOK CONTINUING:

Q Did you obtain a statement from the defendant?

A Yes, sir, after he was warned of his legal rights he did make a statement.

Q Did he write it or did you write it?

A No, sir, I wrote it.

Q Would you read the statement to us, please?

A " I believe it was on Saturday, September 9, 1978, I was at Gary William's house at Benn's Church. Gary had some trash that he was going to take to the dumpster on Route 10 in the direction of Suffolk. This dumpster was about three quarters of a mile from where Gary lives.

When we arrived there I noticed two chairs and one was a brown rocking chair and one was a white rocking chair, and both chairs were made of wood. Also, two small iron horses.

I felt that I might be able to fix the brown rocking chair as it was broken and I took the items back to Gary's house and dropped them off at my car. When I left Gary's house I took them with me and I tried to fix the brown rocking chair, but could not. I did take the white rocking chair and the two horses to Epstein's Pawn Shop and he gave me \$40 for the three items.

I had been to other places but all they would give me was \$8 or \$10. I threw the brown rocking chair in a dumpster in Newport news. "

Q Did he sign that in your presence?

A Yes, sir, he did.

Q Did he read it, or did you read it to him?

1 A He read it.

2 MR. CROOK: Your Honor, we would offer  
3 the statement of the defendant into evidence.

4  
5 MR. CROOK CONTINUING:

6 Q Do you have anything else, Mr. Curtis?

7 A No, sir.

8 MR. CROOK: That's all.  
9

10 CROSS EXAMINATION

11 BY MR. STEPHENSON:

12 Q Sheriff Curtis, when you testified you  
13 secured the indictments, you indicated this offense occurred  
14 on September 12, 1978, this alleged burglary?

15 MR. CROOK: I don't understand what  
16 Mr. Stephenson is referring to.

17 MR. STEPHENSON: I was referring to  
18 what I can see, the date of the warrant and so  
19 forth indicates that this breaking and entering  
20 occurred on September 12.

21 MR. CROOK: I think the warrants read  
22 on or about as do the indictments, Your Honor.  
23

24 MR. STEPHENSON CONTINUING:

25 Q Anyhow, as a result of your getting Mr.  
26 Montgomery's name, Mrs. Fedonchuk secured some warrants for  
27 his arrest; is that true?

28 A Yes, sir.

1 Q And those warrants were issued either on  
2 the 28th or 29th of September you indicate?

3 A Yes, sir, the 29th.

4 Q And you asked someone if they would  
5 get word to Robert Montgomery to meet you on the first of  
6 October or to contact your office?

7 A Yes, sir. After leaving Mr. Epstein's  
8 Pawn Shop there on Saturday morning, September 30th.

9 Q All right, as a result of that these  
10 warrants were secured for Robert Montgomery?

11 A Yes, sir. They were secured on September  
12 29th.

13 Q And then thereafter, then a day or two,  
14 I believe, on October 21st, you indicated Robert Montgomery  
15 voluntarily came to your office, did he not?

16 A Yes, sir. That was on Sunday morning,  
17 October first.

18 Q And you advised him that you had these  
19 warrants for his arrest?

20 A Right.

21 Q And after having served the warrant on  
22 him he voluntarily gave you this statement, did he not?

23 A That's correct, sir.

24 Q And he indicated to you in his statement  
25 that on the 9th of September that these items were found in  
26 a Dempsty Dumpster in Isle of Wight?

27 A That's correct, sir.

28 Q And not only that, but he gave you the

1 name of the person who was with him at the time they were  
2 found?

3 A Yes, sir, Gary Williams.

4 Q And did your investigation lead you to  
5 Gary Williams?

6 A Yes, sir.

7 Q Did you secure a statement from Gary  
8 Williams?

9 A Yes, sir. I did.

10 Q All right, Robery Montgomery denied to  
11 you, did he not, that he had broken into any place or stolen  
12 any items at all?

13 A Yes, sir.

14 MR. STEPHENSON: All right, thank you, sir.

15  
16 JOHN FEDONCHUK, being first duly sworn,  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CROOK:

20 Q State your name, please.

21 A John Fedonchuk.

22 Q Are you the husband of Virginia Fedonchuk?

23 A Yes, I am.

24 Q Mr. Fedonchuk, would you describe for us  
25 generally the property of Mrs. Fedonchuk in Isle of Wight  
26 County where the personal property items were removed allegedly.

27 A In a storage house, and it is behind a  
28 two-story house, and it was locked, and there is a couple of

1 other items that were missing from the farm that we submitted  
2 to the insurance company.

3 Q When did you discover that the items had  
4 been removed?

5 A They were discovered when my wife went  
6 down to Mr. Epstein's auction house.

7 Q Were you there at the time?

8 A No, I was not there.

9 Q Did you go to the storage house on  
10 your property in Isle of Wight County?

11 A At what time?

12 Q After learning of this?

13 A Yes, with my wife.

14 Q And what did you observe when you viewed  
15 your property in Isle of Wight?

16 A Well, everything that appeared to be of  
17 any value was missing. There were some broken bookshelves and  
18 shutters which we had placed in there sometime in the early  
19 part of September or late August, and I am not sure.

20 Q Did you know the defendant, Robert  
21 Montgomery?

22 A Yes, sir. He was one of our tenants.

23 Q Robert MaCray Montgomery, III was one  
24 of your tenants?

25 A No, I am sorry. I thought you meant  
26 Gary Williams.

27 Q Did you know the defendant, Robert  
28 MaCray Montgomery, III?

1 A I didn't know him personally, no.

2 Q Had you met him?

3 + A Yes, he came over to me after I had  
4 issued a warrant on September the 29th, he came to me several  
5 days later stating to me that he had found those items that  
6 were discovered at Epstein's auction house.

7 Q Had you met him prior to that?

8 A No, I hadn't.

9 Q When were the rockers and horses put  
10 in the storage shed?

11 A I couldn't answer that.

12 Q You don't know how long they were in  
13 there?

14 A I couldn't answer that, no.

15 Q After the rocker was found at Epstein's  
16 you then checked the storage shed?

17 A Yes, with my wife.

18 Q What was the condition of the shed,  
19 particularly the door?

20 A Well, the door was hard to open.

21 Q Did it have a lock on it?

22 A I think it was more or less difficult  
23 to open and close.

24 Q Did it have a lock on it of any type?

25 A Yes, it had a skeleton key lock.

26 Q Was that in good condition, or did you  
27 notice anything about it?

28 A Well, it was operable.



1 Q When had you observed the door and lock  
2 prior to that? How long prior to that time?

3 A Actually if anybody wanted to enter that  
4 particular storage shed all he would need would be a skeleton  
5 key to gain entrance to it.

6 Q You didn't have a skeleton key there in  
7 the door?

8 A No, I did not.

9 Q Was it locked?

10 A Yes, we always kept it locked.

11 Q Was it locked when you went to it and  
12 looked at it after the items were missing?

13 A Frankly I don't recall.

14 Q Are you familiar with the items that  
15 were taken?

16 A Yes, my wife described the items and,  
17 of course, she is more familiar with the items and the items  
18 belonged to her, and she had bought the items and she stored  
19 them.

20 Q Were you familiar with them, too?

21 A Well, I am familiar with some of the  
22 items, and as a matter of fact, I have a list of the items  
23 with me that we discovered were missing plus I know of two  
24 very definite items that were located in a barn, and they  
25 were house jacks, and they were very old and we didn't know  
26 exactly what the value of it was, but I found out later that  
27 they were worth at least \$200 apiece --

28 MR. STEPHENSON: We are primarily talking

1                   about the rocking chair and two horses, Your  
2                   Honor, and what other items he is speaking of as  
3                   to value I would object to that.

4                   THE COURT: I sustain the objection.

5  
6 MR. CROOK CONTINUING:

7                   Q       Do you have any other information concer-  
8                   ning this matter, Mr. Fedonchuk?

9                   A       You mean that was in the storage room?

10                  Q       I mean the rocker and the two horses  
11                  that were taken from the storage room.

12                  A       The only thing I know about it is that  
13                  my wife discovered them at the auction house.

14                  Q       Do you know the value of those items?

15                  A       I am not an expert in that field, but.  
16                  I do know that the knights on the horses were purchased in  
17                  England and I would have no idea what they would be worth.  
18                  My wife is the expert in that category.

19                  MR. CROOK: Answer Mr. Stephenson.

20

21 CROSS EXAMINATION

22 BY MR. STEPHENSON:

23                  Q       Mr. Fedonchuk, after you were advised  
24                  about the chair being in there you came over with your wife  
25                  to check the storage shed?

26                  A       Yes.

27                  Q       There was nothing unusual that you could  
28                  notice at first as to the storage shed, was it, as you

1 approached it?

2 A What do you mean?

3 Q Was anything there that caught your  
4 attention as you first approached the storage shed?

5 A Inside or outside?

6 Q Outside?

7 A No.

8 Q The lock was on?

9 A Yes.

10 Q The lock was operable and it was  
11 working?

12 A Yes.

13 Q There was no evidence that anyone had  
14 broken down a door or anything of that nature was there?

15 A No, there wasn't.

16 Q Now would it be fair to say that this  
17 was the latter part of September that you went over there  
18 with your wife?

19 A Well, she noticed the items I think, on  
20 or about September 12th, she located the items at the auction  
21 house in Newport News.

22 Q She didn't locate them on that date, but  
23 you don't know the date that you came over?

24 A Over where?

25 Q Over here with your wife?

26 A I am over there every single day.

27 Q To check the shed out?

28 A It was after that date, because it was

1 between September 12 and September 29 because on the 29th is  
2 the time or the date that I issued the warrant.

3 Q When you came over at that time you  
4 indicated that there was nothing unusual that you could  
5 notice about the shed from the outside?

6 A That's correct.

7 Q The lock was on and the lock was operable  
8 but once you went inside you noticed there was some items  
9 missing?

10 A A lot of items.

11 Q Do you recall the last time you saw that  
12 chair where it was?

13 A I could not be specific about that.

14 Q And do you recall the last time you  
15 saw those horses, where they were?

16 A Yes, definitely in the storage house.

17 Q I believe you indicated the last time  
18 you were in the shed was sometime about a month, at least,  
19 prior to that around the first of August or thereabouts.

20 A Three or four weeks to the 12th I would  
21 say.

22 Q Within the first week or ten days of  
23 August then, would that be fair?

24 A Well, I wouldn't say that far back. I  
25 would say later than that because I had occasion to check to  
26 see how things are around the farm.

27 Q But you mentioned four weeks.

28 A Three or four weeks.

1 Q Four weeks from September 12 would be  
2 sometime around August 12th, 13th, or 14th?

3 A Yes.

4 Q And when you speak about Mr. Montgomery  
5 talking to you, Mr. Montgomery came to you after he was  
6 arrested?

7 A After he was issued a warrant; that is  
8 correct.

9 Q And explained to you exactly how he  
10 came into possession of those items?

11 A Not exactly. He told me precisely that  
12 he found them, and of course, I kind of chuckled over that.

13 Q You may have well have chuckled, but he  
14 came to you and told you that; did he not?

15 A Yes, he did.

16 MR. STEPHENSON: I have nothing further.

17 MR. CROOK: The Commonwealth rests,  
18 Your Honor.

19 MR. STEPHENSON: If Your Honor please,  
20 on behalf of the defendant, I would move to strike  
21 the Commonwealth's evidence as to the charge of  
22 breaking and entering or burglary and if Your  
23 Honor please; there is absolutely no evidence  
24 that this defendant broke or entered into any  
25 property belonging to the Fedonchuks and if we  
26 take Mrs. Fedonchuk's testimony, she indicated  
27 the lock was broken and if we take Mr. Fedonchuk's  
28 testimony, he indicated it was nothing unusual

1 about the lock, and it was operable and intact  
2 and was on and locked.

3 We have, if Your Honor please, a young man  
4 who had possession of three items on the 12th  
5 day of September who sells these items, giving  
6 the right name, address ect., and thereafter  
7 voluntarily comes in response to the police and  
8 gives a statement.

9 We don't have here, if Your Honor please,  
10 recent exclusive possession of recently stolen  
11 goods because we cannot ascertain as to when  
12 these goods were in fact stolen from that shed,  
13 and Mr. Fedonchuk indicates, if Your Honor please,  
14 it was at least three to four weeks prior to  
15 that; and Mrs. Fedonchuk, if I recall correctly,  
16 indicated probably the latter part of July, but  
17 I submit, if Your Honor please, there is abso-  
18 lutely no evidence that this young man is guilty  
19 of any breaking and entering, and as to the  
20 larceny, if Your Honor please, he has come  
21 foreward voluntarily making an explanation to  
22 the police as to how he came into possession  
23 of these items and when he came into possession  
24 of those items, and what he did with them, and  
25 then on top of that, if Your Honor please, he  
26 gives a correct name, address and phone number  
27 to the pawn shop operator and thereafter in  
28 response to information that the police wanted

1 to talk to him he voluntarily comes over, if  
2 Your Honor please and makes this statement.

3 I submit to His Honor there is certainly  
4 no evidence to link this man to any burglary  
5 and we don't even know when it occurred if it  
6 did occur, and as to possession of any stolen  
7 goods we would have to assume they were taken  
8 without the Fedonchuk's permission, but this  
9 young man has made an explanation as to how he  
10 came into possession of them, and we can't even  
11 say, based on the evidence that it was recent  
12 possession, and we don't know when the alleged  
13 break-in occurred, and I don't think the Common-  
14 wealth nor The Court, nor I can assume as to  
15 when it happened and I would submit to His  
16 Honor that this case should be struck at this  
17 time.

18  
19 MR. CROOK: Your Honor, the break-in of  
20 the storage shed or building was determined as  
21 a result of seeing the rocker in the pawn shop  
22 sometime after September 12th.

23 September 12th is the day the defendant sold  
24 the item to Melvin Epstein at the pawn shop, and  
25 Mrs. Fedonchuk and Mr. Fedonchuk both state it  
26 was several weeks, I believe, she said, three  
27 weeks prior to that that she had been in the  
28 storage building and Mr. Fedonchuk is not quite

1 as specific, but he says several weeks before  
2 that that he had been into the storage building.

3 She testified, or at least it is her  
4 understanding, that the lock was broken on the  
5 door.

6 Mr. Fedonchuk says it was not broken,  
7 but it was always difficult to open, but it  
8 was operable, and they left the door locked and  
9 it was still locked when they went in and  
10 discovered these items were missing, so who-  
11 ever entered the building entered with the  
12 skeleton key or by some other means.

13 We do have an entry to the storage building  
14 and items taken out and the items were taken  
15 through a locked door by whatever means it  
16 was opened, and we have a breaking and entering  
17 and we have the larceny of the goods from the  
18 storage building.

19 The defendant is in exclusive possession of  
20 those goods on September 12th at the time he  
21 sells them to Mr. Epstein, and based on the  
22 presumption of the possession of the goods,  
23 drawing the inference that he was the thief  
24 of the goods and all inferences at this point  
25 should be drawn in favor of the Commonwealth  
26 on the motion to strike, and I ask The Court  
27 to overrule the motion to strike.  
28



-55-

MR. STEPHENSON: If I might just reply,  
the inference has never been as to a burglary  
charge even assuming the recent possession of  
stolen goods.

That only goes to the goods themselves,  
Your Honor.

THE COURT: I am going to sustain the  
motion as to the breaking and entering, but I  
am going to overrule the motion as to the larceny.

GARY WILLIAMS, being first duly sworn,  
testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Would you state your name, please?

A Gary Williams.

Q Where do you now reside?

A Newport News, 5918 Wickham Avenue.

Q How old are you?

A Twenty-four.

Q I want to call your attention to August  
and September, or thereabouts, of 1978, and ask where you  
were residing at that time?

A August of '78, I believe I was at Benn's  
Church in Smithfield, Virginia.

Q And were you leasing property there?

A Right, renting.

1 Q Is there an address other than Benn's  
2 Church?

3 A I think it was rural route 1, Box 157A,  
4 Benn's Church, Smithfield, Virginia.

5 Q How long had you been leasing that  
6 property?

7 A About four months as I recollect.

8 Q Did you know the defendant, Robert  
9 Montgomery?

10 A Yes, I went to school with him.

11 Q How long have you known Robert?

12 A Several years.

13 Q Did Robert have an occasion to visit  
14 with you on or about September 8 or 9 of 1978?

15 A Yes, sir, dove season was coming in about  
16 the second week in September and I do believe we were going  
17 to get together and do some dove hunting.

18 Q Had he visited you at that location  
19 prior to that date?

20 A No, sir, not that I know of.

21 Q To your knowledge, that was the first  
22 time he visited with you at that home?

23 A Right.

24 Q On that date, September 9, what if any-  
25 thing occurred between you and Robert?

26 A When he came over I told him where I  
27 lived at and when I went to Newport News I called him prior  
28 to that and he came over and I went and emptied the trash.

1 Q What time of day or night was it that  
2 you went to empty the trash?

3 A Five or Six o'clock in the evening.

4 Q Where was it that you went to empty  
5 the trash?

6 A On Route 10, the dumpster is about three  
7 quarters of a mile down the street going towards Suffolk on  
8 the right.

9 Q About three quarters of a mile from where  
10 your residence was?

11 A Yes, sir.

12 Q Who was with you at that time?

13 A Robert Montgomery.

14 Q How did you get there?

15 A I had a '72 Opel G. T. at the time.

16 Q What, if anything occurred when you got  
17 to the dumpster?

18 A When we arrived there, it was a bunch  
19 of junk laying around, an old broken-down chair, and we  
20 decided to take them back to my house and he took them back  
21 to Newport News to his house.

22 Q What do you remember seeing at the  
23 dumpster?

24 A Two iron horses, a broken-up old chair,  
25 and a white rocker.

26 Q Two chairs and the two horses?

27 A Right.

28 Q Where were they, if you can recall,

1 in relationship to the dumpster itself?

2 A Well, I believe one of them was sitting  
3 out on the ground and one of them was up in the dumpster.

4 Q When you speak of one of them, one of what?

5 A The chairs.

6 Q Do you recall where the horses were?

7 A I believe they were in the dumpster, too.

8 Q Did you take possession of those items  
9 at that time?

10 A Right.

11 Q And what, if anything, did you do with  
12 them?

13 A We put the chairs on top of my car and  
14 put the horses inside and took them back to my house at  
15 Benn's Church and put them on his car.

16 Q Why did you take them out of the  
17 dumpster?

18 A We was going to try to take them and  
19 fix them up and make some money.

20 Q Did you have any idea how they got there?

21 A I just figured somebody threw them away.  
22 They were all beat up and didn't look like they were much good,  
23 and we figured we could buy wood and fix it up.

24 Q Who took the chairs from your house  
25 and the horses?

26 A Robert.

27 Q Do you have any knowledge of where  
28 Robert took them?

1 A Newport News. He lives in an apartment  
2 up on 17, and I believe that is where he took them.

3 Q Do you know why he took them at that  
4 time?

5 A He took them to fix them up or try to  
6 anyway.

7 Q Did you see Robert on the 12th of  
8 September?

9 A Yes, sir. I went over to Newport News  
10 to his house and he had fixed up the white chair a little  
11 bit and the iron horses and he went around trying to sell  
12 them, and we went to Epstein's and he gave him \$40 for it.

13 Q How did you go to Epstein's?

14 A In Robert's car.

15 Q What kind of car does Robert have?

16 A '73 brown Camaro.

17 Q He doesn't have a van?

18 A No.

19 Q These items were sold to Mr. Epstein  
20 were they not?

21 A Right.

22 Q To your knowledge, were you listening or  
23 present when the transaction was going on?

24 A Yes, sir.

25 Q Did Mr. Montgomery, to your knowledge,  
26 give his right name and adress, ect.?

27 A Yes, sir, he gave him his driver's  
28 license.

1 Q Thereafter, did it come a time that the  
2 police contacted you in this matter?

3 A Yes, sir. I guess it was a couple of  
4 days later or something later the Sheriff from over here  
5 came to my house at Benn's Church and I gave him a statement.

6 Q Did you give him a statement about how  
7 you and Robert came into possession of the items?

8 A Yes, sir.

9 Q Was your statement identical or similar  
10 to what you have just testified here to?

11 A Yes, sir.

12 MR. STEPHENSON: Answer Mr. Crook.

13 CROSS EXAMINATION

14 BY MR. CROOK:

15 Q How long did you live there?

16 A About four months, I believe. I don't  
17 know exactly.

18 Q What were the months?

19 A I think it was June, July, and August.

20 Q And September?

21 A And September, right.

22 Q Were you working over here at that  
23 time?

24 A No, I was working in Newport News,  
25 downtown Newport News. I was working at Hutchens Chevrolet.

26 Q You didn't work at Smithfield Motors?

27 A No, sir, but I put an application in  
28 there.

1 Q Do you know where the storage building  
2 was located relative to the house you were living in?

3 A Directly across the field, right beside  
4 my house.

5 Q How far from your house?

6 A About a hundred and fifty yards or  
7 two hundred yards.

8 Q Had you been in that storage shed  
9 while you were living there?

10 A Yes, sir. Mr. and Mrs. Fedonchuk had  
11 taken me over there prior to when I moved in and said I  
12 could use some lumber to fix a storage shed behind my house  
13 and tools.

14 Q Did you have a key?

15 A No, the key was at the door. It stayed  
16 at the barn all the time on the right.

17 Q The same building or a different building?

18 A The same building.

19 Q What did you observe in there?

20 A Well, they probably got two or three  
21 dozen chairs and all kinds of antiques and stuff when I  
22 first moved in, and they showed me around their house and  
23 their antiques and all of that.

24 Q Did you see the white bentwood rocker  
25 in there?

26 A No, sir. I don't recollect.

27 Q And the iron horses?

28 A No, sir.

1 Q Did you go in there while you were  
2 living there?

3 A Yes, sir.

4 Q What did you go in there for?

5 A To get tools and I worked on Mr. Little's  
6 lawnmower for him quite a bit.

7 Q That is the father of Mrs. Fedonchuk?

8 A Right.

9 Q How big a storage building is it?

10 A It is a barn.

11 Q One floor or two?

12 A Two floors. The lumber is on the second  
13 floor.

14 Q But you have to go through the first  
15 floor?

16 A No, you don't have to go through the  
17 first floor to get to the second floor.

18 Q Where were the antiques?

19 A That was on the first floor, and the  
20 tools were on the first floor, and the lumber was on the  
21 second.

22 Q Did you ever talk to Mrs. Fedonchuk  
23 about buying a rocker from her?

24 A No, sir, but a friend of mine did.

25 Q Who?

26 A Frank Childress. He stayed with me  
27 about a month.

28 Q He talked with her about buying a



1 rocker?

2 A Right.

3 Q Which one?

4 A It won't no particular one. I believe  
5 he asked her if she had some rockers she wanted to sell that  
6 he wanted to buy a rocker.

7 Q He saw the rockers in the barn?

8 A They had a bunch of them on the front  
9 porch, too. at that time.

10 Q But he didn't specify any particular  
11 one?

12 A Right.

13 Q You didn't know which one he was  
14 talking about?

15 A No, sir.

16 Q Did Gary Williams stay with you at all  
17 while you were living there?

18 A That's me.

19 Q I don't mean Gary Williams, I mean  
20 the defendant, Montgomery?

21 A No, sir.

22 Q But he was there with you the day you  
23 discovered these items?

24 A Right.

25 Q Had you moved out at that time?

26 A No, sir.

27 Q Were you still living there?

28 A Yes, I was still living there at

1 the time.

2 Q What day was that, what was the date?

3 A I believe it was September 9th, I  
4 think.

5 Q When did you move out?

6 A I don't really remember what day it  
7 was, but it was right at the first of the month.

8 Q Of October?

9 A October, yes.

10 Q You were still living there on September  
11 29th?

12 A I believe so. I don't really recollect  
13 the date.

14 Q You say that you all went to the dumpster  
15 to get rid of some trash and that was when you found these  
16 items?

17 A Uh-huh.

18 Q You didn't recognize these items as  
19 items in the barn of Mrs. Fedonchuk?

20 A No, I just recognized them as junk.  
21 When you go to the trash dump you see all kinds of items  
22 just lying around and like I drive a dump truck and I see  
23 all kinds of garbage in the dump every day, and I could  
24 pick it up but I'm almost scared to.

25 MR. CROOK: All right, that's all.

26 MR. STEPHENSON: Does The Court have  
27 any questions?

28 THE COURT: No, sir.

-10-  
ROBERT MACRAY MONTGOMERY, III, THE

DEFENDANT, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENSON:

Q Are you Robert Montgomery?

A Yes, sir.

Q How old are you, Robert?

A Twenty-four.

Q Where do you live?

A Newport News, Virginia.

Q What is your address there?

A 512 Latham Drive.

Q How long have you lived in the Newport  
News area?

A I just recently moved back home,  
I'd say a year.

Q Does your family live there?

A Yes, sir.

Q Are you employed, Robert?

A Yes, sir, I work for Norfolk and  
Western Railroad.

Q How long, approximately, have you been  
employed with Norfolk and Western?

A Going on seven years.

Q You sought employment there when you  
were seventeen or eighteen years old?

A Nineteen, I think.

Q Robert have you ever been convicted of

1 a felony?

2 A No, sir.

3 Q Have you ever been convicted of a crime  
4 involving moral turpitude such as lying, stealing, or  
5 cheating?

6 A No, sir.

7 Q Where were you living on or about the  
8 8th and 9th of September?

9 A I was living on Marcus Drive off of  
10 17, and Oyster Point Road at the apartments at Clover Leaf  
11 Point.

12 Q Do you know Gary Williams?

13 A Yes, sir.

14 Q How long had you know Gary williams  
15 at that time?

16 A I had been to school with Gary and I  
17 had known him for a few years.

18 Q Did you have occasion to visit with him  
19 in Isle of Wight?

20 A Yes, sir, I came to see him one day  
21 and we were making plans and I talked to him at the super-  
22 market at Newport News, and we were making plans to go  
23 dove hunting.

24 Q Do you recall what date that was?

25 A That I was talking to him in Newport  
26 News?

27 Q No, the time you visited here in Isle of  
28 Wight.

1 A The 9th, and it was on a Saturday.

2 Q The 9th of September?

3 A Yes, sir.

4 Q Was that the first time you had ever  
5 visited with Mr. Gary Williams here in Isle of Wight?

6 A Yes, sir.

7 Q What was your purpose of coming over  
8 on that day?

9 A We had planned to do some dove hunting  
10 in the afternoon.

11 Q What did you and Gary Williams do that  
12 afternoon?

13 A Well, as soon as I got over there Gary  
14 had trash in his car and he said he was going to take it to  
15 the dump and I said I didn't know the people had to drive so  
16 far to the dump.

17 Q Did you have any idea where trash was  
18 dumped in the county?

19 A I thought maybe up on the road or some-  
20 thing and a truck would come by and pick it up.

21 Q Where did you go, if you can recall?

22 A When we left the house out of the  
23 road that Gary Williams lives on you turn right and go south  
24 on towards Suffolk, and I'd say it's about a half a mile or  
25 so after we left the driveway to Gary's house.

26 Q Did you dump the trash?

27 A Yes, sir.

28 Q What facility did you use to dump the

1 trash? What was it?

2 A It was just a couple of these green  
3 Dempsty Dumpsters, two of them there.

4 Q At that time, what, if anything, did  
5 you observe there?

6 A I walked up to the trash and lifted the  
7 lid and I found one white rocking chair all complete  
8 and whole, but the paint was chipped off of it and it was  
9 all together but it still didn't look like it was worth  
10 50 or 60 cents and there were bits and pieces of another  
11 chair found in this section here and the back of a brown  
12 rocking chair laying up against the dumpster, so I picked  
13 the white one up and in the back of the dumpster I saw two  
14 statues and there was a couple of other pieces of the brown  
15 rocking chair inside of the dumpster and the only thing I  
16 didn't find to the brown rocker was this one leg here, and  
17 I found two pieces that were broke.

18 Q What, if anything, did you do with  
19 those items that you found there?

20 A Well, I looked at the brown rocker  
21 and the white one looked like all you could do was sand it  
22 and maybe paint it and it would be something to keep on the  
23 back porch or something to sit it, and the brown one I  
24 thought maybe I could put it back together with a few pieces  
25 of wood and it didn't look like no hard problem.

26 Q Did you take the horses?

27 A Yes, sir, I picked those up and threw  
28 them in the trunk.

1 Q Where did you take them?

2 A Back to my car at Gary's house, and  
3 took them off of Gary's car and laid them aside and when  
4 I left I put them in my car.

5 Q What kind of car do you own?

6 A A '73 Camaro.

7 Q Is that a big car or small car?

8 A It's a relatively small car.

9 Q Do you own a van of any description  
10 or did you take those items back to Newport News?

11 A Yes, sir, to my apartment.

12 Q What, if anything, did you do with  
13 them while you had them in the apartment?

14 A I took the white one and sat it in the  
15 downstairs in the livingroom and I tried to put the brown  
16 one together, put glue on it and sanded the end off, and  
17 tried to fit it together and it stayed together for a few  
18 days and the only thing I couldn't fix was the bottom leg  
19 part and it was broke so I took both the chairs and I  
20 never even took the horses out of the trunk of my car because  
21 when I got home it was raining.

22 Q Did you do anything to the white chair  
23 to try to fix it or clean it up?

24 A No, sir, not anything.

25 Q What did you do after that?

26 A I let the leg on the bottom of the chair  
27 set up maybe a day or a day and a half and those two bottom  
28 pieces on it, I had seen these places on Jefferson Avenue

1 and they have these rockers lined up and I thought I could  
2 get a bottom part of a rocker to replace mine, and I took  
3 both chairs to get a good fit and whatnot, and like I say,  
4 I had been to maybe five or six places before I went to  
5 Mr. Epstein's.

6 Q Were you able to fix the brown chair?

7 A No, sir, not at all.

8 Q When you went to Mr. Epstein's what  
9 did you have with you at that time?

10 A I had the white rocker, the brown rocker,  
11 and the two statues.

12 Q And when you went into Mr. Epstein's  
13 did you sell them to him?

14 A Well, not at first. I asked him if he  
15 had any old rockers he was trying to get rid of that I wanted  
16 to fix one, and he asked me said, "I'll be with you in a  
17 minute", and he was taking care of somebody when I came in,  
18 and he came out and looked at the rockers and he said he  
19 didn't have anything that I could buy from him that would  
20 fix them, but he offered me \$40 for my chair and two horses.

21 Q Did you sell them to him?

22 A Yes, when he said \$40 I let him have  
23 them.

24 Q Did you sign that receipt, is that  
25 your signature on that receipt for \$40?

26 A Yes, sir.

27 Q At that time did you give him your right  
28 name and address?



1 A Yes, sir.

2 Q Did you have any reason at that time  
3 to give him any false information or to be dishonest with  
4 him?

5 A No, sir, not at all.

6 Q When was the first time after that  
7 that you had some idea that the Smithfield or the Isle of  
8 Wight Sheriff's Department wanted to talk to you?

9 A I got word when I come home and I  
10 think I worked that day, but I came home and I was left  
11 word to call Isle of Wight Courthouse, and so that was on  
12 a Saturday and I called over there on a Saturday, and talked  
13 to about six different departments and didn't nobody know  
14 what it was about so they told me the best thing to do  
15 and the only person I hadn't talked to was the sheriff,  
16 and that he would want to see me, so I drove over there  
17 Saturday and I didn't ever meet up with the Sheriff and  
18 they said for me to leave a phone number and he would get in  
19 touch with me Sunday, and Sunday morning at 9 o'clock I  
20 called over there and he asked me to come to see him.

21 Q You are telling The Court you came on  
22 Saturday and left your name and phone number with the  
23 Sheriff's Office?

24 A Yes, sir.

25 Q And you came back on Sunday in response  
26 to a call?

27 A Yes, sir.

28 Q And at that time did you give him

1 this statement?

2 A Yes, sir.

3 Q Is that statement true and correct?

4 A Yes, sir.

5 Q Did you, at any time steal or take  
6 anything that you knew or believed or had reason to believe  
7 belonged to Mrs. Fedonchuk?

8 A No, sir. I never met the lady before  
9 in my life.

10 MR. STEPHENSON: That's all.

11

12 CROSS EXAMINATION

13 BY MR. CROOK:

14 Q Did you go into that barn or storage  
15 building that they had?

16 A No, sir. I have been down to it, and  
17 that particular day I was over there Mr. Little, like Gary  
18 said, he was doing some tractor work for him, and I did meet  
19 Mr. Little and all we did was walk down there and we talked  
20 for a few minutes and that was the only reason I knew who  
21 he was.

22 Q And you found these two iron horses and  
23 this white rocker in the dumpster?

24 A Yes, sir.

25 Q And you deny taking them out of the barn?

26 A Yes, sir.

27 MR. CROOK: All right, that's all.

28 THE COURT: All right, I have a couple

of questions.

What time did you get over here that day, to Gary William's house?

DEFENDANT MONTGOMERY: I'd say around 5 o'clock.

THE COURT: And you were going hunting?

DEFENDANT MONTGOMERY: The place we hunt is a big corn field I'd say 35 or 40 acres, and like I said, it was opening day and people were still out there shooting and I figured it would be too late to go.

THE COURT: Do you all go hunting?

DEFENDANT MONTGOMERY: We hunted for about 30 or 45 minutes just standing right there in the backyard.

THE COURT: You said you never did anything to the white chair?

DEFENDANT MONTGOMERY: No, sir.

THE COURT: You never painted it?

DEFENDANT MONTGOMERY: No, sir.

THE COURT: You never fixed it up?

DEFENDANT MONTGOMERY: No, sir.

THE COURT: All right.

MR. STEPHENSON: That's all, and that's the defendant's case, and I would renew my motion once again, if Your Honor please as to this larceny. I think the defendant has now taken the stand and the witnesses have taken

1 the stand and given an explanation as to how  
2 they came into possession of this property.

3 I think it is a reasonable explanation  
4 and I think it is a believable explanation,  
5 coupled with the fact this young man at no  
6 time attempted to give Mr. Epstein any false  
7 information as to his name or address.

8 He voluntarily came over here in response  
9 to the police call, and if Your Honor please,  
10 without the benefit of even talking to counsel  
11 in advance he came voluntarily and gave that  
12 statement, and I think that everything he did,  
13 if Your Honor please, is consistent with his  
14 innocence and we don't even know if Your Honor  
15 please, if we get to the point of recent  
16 exclusive possession; and I doubt if we have  
17 exclusive possession when Mr. Williams indicates  
18 that the two of them found it together, and  
19 I think at this stage we're talking about beyond  
20 a reasonable doubt, and I think some doubt  
21 does exist and this young man with no criminal  
22 record working for the railroad for seven years,  
23 and I realize that people who commit acts of  
24 theft don't have to fall in this particular  
25 category, but certainly if one person need not  
26 do it it's this young man here, and I would  
27 renew my motion at this time and ask His Honor  
28 to dismiss the charge.

1 MR. CROOK: Your Honor, the story of  
2 the defendant, I find to be rather incredible.  
3 We have antiques which are rather valuable  
4 antiques, that are kept in a storage building  
5 behind the house, and to believe the story  
6 of the defendant someone entered the storage  
7 building and stole those antiques and took  
8 them down the road about five miles and placed  
9 them in a dumpster.

10 That is inconceivable and the statement  
11 of the defendant, which is very similar to  
12 the statement that we get frequently that they  
13 found the items or they found the gun or found  
14 something besides the road.

15 As you heard earlier today, something is  
16 always found beside the road. He was visiting  
17 Gary Williams, and Gary Williams was a tenant  
18 there and he was familiar with what was in  
19 that storage building in the back, and the items  
20 were removed from the storage building and  
21 subsequently the defendant sells the items  
22 to a pawn broker in Newport News and fortunately  
23 Mrs. Fedonchuk recognized her rocker at the  
24 pawn shop being familiar with her property as  
25 well as antiques, and as a result of that found  
26 the iron horses and they were traced back to  
27 the defendant as the person who sold them.

28 It is the position of the Commonwealth

1 that we have shown the defendant was in  
2 exclusive possession of the stolen property,  
3 and we ask The Court to find that his story is  
4 not believable in this case, and to find him  
5 guilty of possession of stolen property, deemed  
6 grand larceny.

7 THE COURT: On your plea of not guilty  
8 and on the evidence I find you guilty of grand  
9 larceny as charged in the indictment. Are  
10 there any motions?

11 MR. STEPHENSON: Yes, sir. I would  
12 move for a presentence report.

13 THE COURT: I will order a presentence  
14 report. Is he on bond?

15 MR. CROOK: Yes, sir.

16 THE COURT: I will allow him to remain  
17 on bond.

18 MR. STEPHENSON: I move that The Court  
19 set aside the verdict as being contrary to the  
20 law and evidence in this case.

21 THE COURT: I will overrule that motion.

22 MR. STEPHENSON: Note my exception to  
23 that, and I would move The Court to reduce the  
24 matter down to petty larceny.

25 I think the question of value is not  
26 established by competent reasonable evidence  
27 that the evidence is, if Your Honor please,  
28 that \$40 was the amount in question and that

1 was paid for the items and Mrs. Fedonchuk believes  
2 they are of greater value, but If Your Honor  
3 please, that is not the proper way to prove  
4 value.

5 THE COURT: Well, she is the owner  
6 of the property and has had some experience  
7 with it, and can give her opinion as to the  
8 value. She gave a value \$125 for the horses  
9 and the chairs she said were worth \$100. I  
10 think it has been proven.

11 MR. STEPHENSON: I assume from Your  
12 Honor's decision that he is in exclusive  
13 recent possession of recently stolen property?

14 THE COURT: Yes, sir.

15 MR. STEPHENSON: Notwithstanding the  
16 fact that we can not determine the date of  
17 the alleged theft of the property?

18 THE COURT: Well, that is my decision.

19 MR. CROOK: It says, 'As charged in the  
20 indictment' and we have him charged with  
21 grand larceny.

22 THE COURT: We will continue him on  
23 bond.

1 disposed of, and we can proceed on the pre-  
2 sentence report. If so, we can take it up now.  
3 If it is going to be a lengthy argument, and  
4 what have you, then perhaps we should wait until  
5 after lunch.

6 THE COURT: Mr. Stephenson indicated it  
7 would be about ten minutes.

8 MR. STEPHENSON: It will not be a lengthy  
9 argument, and I assume the Court will overrule  
10 me again. I don't intend to run Your Honor's  
11 docket in any shape or form.

12 MR. CROOK: Under indictment number 5529  
13 he was convicted of grand larceny and not statu-  
14 tory burglary. The matter is before the Court  
15 on a presentence report and sentencing.

16 THE COURT: Let the record show the  
17 Commonwealth's Attorney is present, the pro-  
18 bation and parole officer is present, the defen-  
19 dant is present, and his attorney, Mr. Stephen-  
20 son is present. Mr. Stephenson, have you had  
21 an opportunity to go over the report with the  
22 defendant?

23 MR. STEPHENSON: Yes, sir, Your Honor,  
24 and before we address that matter, if I might  
25 speak on the motion that I filed, and I filed  
26 a written motion, if Your Honor please, on the  
27 19th day of April indicating on that date that  
28 I would ask the Court to set the matter aside,



1 property, and not actually breaking and entering  
2 into the storage shed, since Your Honor let  
3 that go out on the motion to strike.

4 If Your Honor please, in the Commonwealth  
5 of Virginia a person who is to be found guilty  
6 of recently stolen property, it must be shown,  
7 number one, that possession was recent. There  
8 was no evidence, if Your Honor please, as to  
9 what date the break-in occurred. It was some-  
10 time in the area of 3 to 6 weeks, and it was no  
11 evidence, if Your Honor please, that it was an  
12 exclusive possession, and the testimony was it  
13 was found by two parties, and the evidence fur-  
14 ther, if Your Honor please, showed it was not  
15 unexplained. Mr. Montgomery took the stand and  
16 explained to His Honor where he came into pos-  
17 session of the statues and chairs, and how he  
18 found them, where he found them, and what he did  
19 with them, and if Your Honor please, to convict  
20 this person of a felony charge of grand larceny  
21 based on that evidence is contrary to the law  
22 and the evidence, and I would move Your Honor  
23 to set aside that verdict.

24 THE COURT: I think I stated at that time  
25 that I would review my notes, and I have them  
26 here, but I stated it was sufficient evidence in  
27 my mind for a conviction, and I will overrule  
28 your motion.

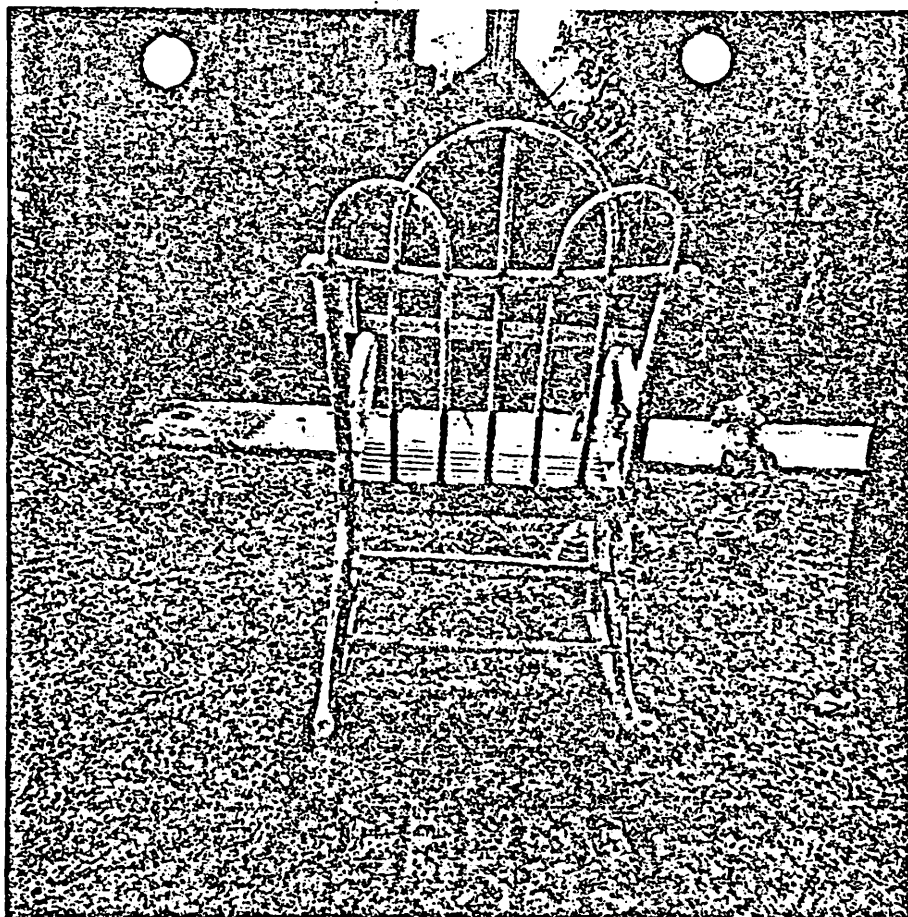


Exhibit No. 2

Comm Ex #1  
4-279  
Mullerberg Barf

LICENSED AND BONDED BROKERS  
**EPSTEIN'S PAWN SHOP**

9905 WARWICK BLVD. (1/2 Mile. from James River Bridge)  
MELVIN EPSTEIN Phone 599-3332 Newport News, Va. 23601

No. 2147

19

Mr.

Article

and authorizes Epstein's Pawn Shop to deliver article to bearer of this ticket upon the payment of

Amount Advanced

Interest per month

Misc. Charges

Total

**INTEREST CAN BE PAID MONTHLY**

Ticket may be renewed upon the payment of interest. In the event of borrower failing to repay or renew loan within 4 MONTHS, Epstein's Pawn Shop will declare the pledge forfeited and put on public sale.

**LIBERAL LOANS MADE ON GOODS OF ALL KINDS**

Watches, Diamonds, Guns, Cameras, Musical Instruments, etc.

NOT RESPONSIBLE FOR THEFT, FIRE, LOSS, OR ACCIDENTAL DAMAGE.  
NO PLEDGES SHOWN UNTIL RECEIVED.  
ALL BUSINESS STRICTLY PRIVATE.  
NO GOODS CHECKED C.O.D.  
\$5.00 UP EXTRA FOR PACKING

Special 22 figure  
at 100000/40

Robert M. Montgomery

argument, denied the motion and found the Appellant guilty of grand larceny. At that time a motion to set aside the verdict as being contrary to the law and the evidence was denied.

Later a written motion to set aside the verdict was filed, and at sentencing on May 23, 1979, this motion was denied and excepted to. The Court sentenced the Appellant to serve twelve (12) months in jail, and then suspended said sentence on condition of good behavior for twelve (12) months.

A notice of appeal was duly filed.

#### ASSIGNMENT OF ERROR

The Court erred in denying the Appellant's motion to strike the evidence as to the grand larceny indictment, and thereafter finding the Appellant guilty of grand larceny since the evidence was not sufficient to establish beyond a reasonable doubt that the Appellant stole the rocking chair and the two metal horses with flags.

#### STATEMENT OF FACTS

The basic facts are not in dispute except for conflicting testimony as to whether there was a breaking and entering of the storehouse where the items in question were stored. Mrs. Fedonchuk testified that she was in Newport News in mid September 1978, and saw a rocking chair at Epstein's Pawn Shop that was identical to a chair she owned. She ascertained that at the time Mr. Epstein purchased the chair he also bought two white metal horses with flags from the same two men about four days ago.