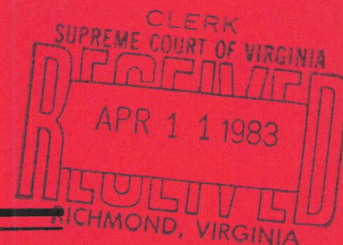


226 Va 96



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 821549

MICHAEL EDWARD FULCHER

Appellant,

v.

COMMONWEALTH OF VIRGINIA

Appellee.

JOINT APPENDIX

Jonathan M. Rogers
Strickland & Rogers
131 Kirk Avenue West
P. O. Box 2886
Roanoke, Virginia 24001

Counsel for Appellant

Robert B. Condon
Assistant Attorney General
Office of the Attorney General
Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

Counsel for Appellee

TABLE OF CONTENTS

	<u>Appendix Page</u>
Indictment filed 10-5-81	1
Order of Circuit Court of Botetourt County filed 6-7-82	2
Juvenile Petitions of the Juvenile and Domestic Relations Court - James E. Mannetta	5
Order entered 11-12-81 of the Juvenile and Domestic Relations District Court	13
Orders filed 6-15-82 in the Circuit Court of the Botetourt County	15
Assignment of Error	23
<u>Transcript of Proceedings Heard 4-6-82</u>	
Preliminary Conference between Court and Counsel	25
Testimony of Iva Scaggs	30
Testimony of Rudolph J. Scaggs, Sr.	39
Testimony of Rudolph J. Scaggs, Jr.	44
Testimony of James Edward Manetta	49
Testimony of Deputy B. R. Kelly	79
Testimony of Arthur Wilson Almond	85
Testimony of Deputy Albert H. Johnson	93
Testimony of David Bowers	100
Testimony of Richard Schutts	125
Testimony of Michael Fulcher	137
<u>Transcript of Proceedings on 6-7-82</u>	
Sentencing of Court	180
<u>Transcript of Proceedings on 6-24-82</u>	
Discussion of Court and Counsel	187

INDICTMENT NO. 4471-F

VIRGINIA:

IN THE CIRCUIT COURT OF BOTETOURT COUNTY

October 5, 1981

The grand jury charges that:

On or about the 9th day of June, 1981 in the County of Botetourt, Virginia, Mike Fulcher did commit larceny in that he did feloniously and intentionally steal, take and carry away a quantity of goods and property owned by Rudy Scaggs and having a value of more than TWO HUNDRED DOLLARS (\$200.00).

Virginia Code Section 18.2-95

A True Bill.

Foreman

Jean L. Branscom

Witness: Albert L. Johnson, Deputy Sheriff

Virginia: In the Circuit Court of Botetourt County June 7, 1982
Commonwealth of Virginia

vs.

Felony No. 4471

June 7, 1982

File No. 4575

Michael Edward Fulcher
dob: 6-17-58

This day came again the Attorney for the Commonwealth and Michael Edward Fulcher, who stands convicted of a felony to-wit: receiving stolen goods, a lesser and included offense in the indictment, was led to the bar in the custody of the jailer of this Court and came also A. B. Crush, III and Jonathan M. Rogers, his attorneys.

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 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, the report of the Probation Officer, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, 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 be and he is hereby sentenced to confinement in the jail of this Court for the term of 12 months, and that the Commonwealth of Virginia do recover against the defendant a fine of \$1,000.00 and costs in the amount of \$450.20 by it about its prosecution in this behalf expended.

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

This sentence is not to run concurrently with any sentence of this Court or any other Court.

The Court orders that the prisoner be allowed credit for time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant, and George E. Holt, Jr., Court Reporter, recorded the evidence and incidents of trial verbatim and for his services is allowed a fee of \$30.00.

Counsel for the defendant advised the Court the defendant desired to appeal the judgment rendered, and accordingly the Court suspended execution of the sentence and judgment for a period of 60 days and such additional time as may be necessary until the said appeal is acted upon.

On motion of the defendant, he is released from custody upon executing a bond in the penalty of \$30,000.00 with the defendant, pending the perfection of the appeal.

Upon the completion of the transcript, if any, it is ordered to be made part of the record of this case.

2 COPY TESTED

George E. Hall Jr. CLERK
WOTETOWN COUNTY CIRCUIT COURT

PETITION

CODE ANN. §§ 16.1-262.3

Court File No. 5-1873-4

COMMONWEALTH OF VIRGINIA

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY/COUNTY OF

BOTETOURT

In re a Child under eighteen years of age

<input checked="" type="checkbox"/>	CHILD'S NAME:	1. JAMES EDWARD MANNETTA	DATE OF BIRTH:	2. 9/5/62	AGE:	3. 19
	CHILD'S ADDRESS:	4. 211 Orlando Ave., Roanoke, Va.	Telephone No.	366-3749		
<input checked="" type="checkbox"/>	FATHER'S NAME AND ADDRESS:	5. Charles E. Mannetta, same address	Telephone No.			
<input checked="" type="checkbox"/>	MOTHER'S NAME AND ADDRESS:	6. Mrs. Charles Mannetta, same address	Telephone No.			
<input type="checkbox"/>	GUARDIAN / LEGAL CUSTODIAN OR PERSON IN LOCO PARENTIS AND ADDRESS:	7.	Telephone No.			
<input type="checkbox"/>	OTHER(S) AND ADDRESS(ES):	8.	Telephone No.			
<input type="checkbox"/>	OTHER(S) AND ADDRESS(ES):	9.	Telephone No.			
<input type="checkbox"/>	10. Child held in CUSTODY	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
PERSON TO BE SUMMONED	11. Place of Detention or Shelter Care					
	12. Date and Time Taken into Custody	13. Date and Time Placed in Detention or Shelter Care				
	/ / : m. / / : m.					
<input type="checkbox"/>	14. The above information is not known to the petitioner: No(s).					

I, the undersigned petitioner, state under oath to the best of my knowledge, that the above-named child is within the purview of the Juvenile and Domestic Relations District Court Law in that, within this city/county, the child:

JAMES E. MANNETTA did unlawfully on or about July 8, 1979 take, steal and carry away property belonging to Roanoke County (Carvins Cove snack bar), valued at less than \$100.00, with the intent to permanently deprive the owner of the use thereof, in violation of Section 18.2-96 of the Code of Virginia as amended.

If you request a court appointed attorney
YOU MUST APPEAR before this court
10-13-81 at 9:00

WHEREFORE, the Petitioner requests that the child and the persons having his or her custody and control be summoned to appear before this Court, and that this Court enter such orders and judgment as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

October 5, 1981

DATE

B. Reed Kelly

PETITIONER'S NAME (PRINT OR TYPE)

Botetourt County Sheriff's Dept., Fincastle, Va.

PETITIONER'S ADDRESS AND TELEPHONE NO. (COURT COPY ONLY)

Sworn/affirmed and signed before me on October 5, 1981

Intake Officer

TITLE

B. Reed Kelly
PETITIONER'S SIGNATURE

DATE
Signature
SIGNATURE

SUMMONS

TIME OF APPEARANCE MONTH	October	DAY	15	YEAR	1981	TIME:	9:00	A. M.
COURT'S STREET ADDRESS AND TELEPHONE								
Main St. Fincastle, Va. 473-8244								

TO ANY SHERIFF OR POLICE OFFICER OR

I COMMAND YOU to summon the parties as designated in the above petition.

TO THE PERSON SUMMONED: I COMMAND YOU to appear in person before this Court at the date, place and time specified in this Summons to respond to the allegations in the petition in accordance with the provisions of the Juvenile and Domestic Relations District Court Law. Failure to appear at Court may subject you to contempt of court proceedings.

10-6-81

& COPY TEST

DATE

CLERK

☐ CLERK

JUDGE

Dep.

FORM DC-511 4/80

NOTE: READ THE NOTICE ABOUT RIGHT TO REPRESENTATION BY A LAWYER ON THE BACK OF THIS SUMMONS.

PETITION

CODE ANN. §§ 16.1-262-3

Court File No.

-1873-3

COMMONWEALTH OF VIRGINIA

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY/COUNTY OF

BOTETOURT

In re a Child under eighteen years of age

<input checked="" type="checkbox"/>	1. CHILD'S NAME: JAMES EDWARD MANNETTA	DATE OF BIRTH: 2. 9/5/62	AGE: 3. 19	SEX: (M)
	CHILD'S ADDRESS: 4. 211 Orlando Ave., Roanoke, Va.	Telephone No. 366-3769		
<input checked="" type="checkbox"/>	FATHER'S NAME AND ADDRESS: 5. Charles E. Mannelta, same address	Telephone No.		
<input checked="" type="checkbox"/>	MOTHER'S NAME AND ADDRESS: 6. Mrs. Charles Mannelta, same address	Telephone No.		
<input type="checkbox"/>	GUARDIAN / LEGAL CUSTODIAN OR PERSON IN LOCO PARENTIS AND ADDRESS: 7.	Telephone No.		
<input type="checkbox"/>	OTHER(S) AND ADDRESS(ES): 8.	Telephone No.		
<input type="checkbox"/>	OTHER(S) AND ADDRESS(ES): 9.	Telephone No.		
<input type="checkbox"/>	10. Child held in CUSTODY <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
PERSON TO BE SUMMONED	11. Place of Detention or Shelter Care			
	12. Date and Time Taken into Custody		13. Date and Time Placed in Detention or Shelter Care	
	/ / : m. / / : m.			
	14. The above information is not known to the petitioner: No(s).			

I, the undersigned petitioner, state under oath to the best of my knowledge, that the above-named child is within the purview of the Juvenile and Domestic Relations District Court Law in that, within this city/county, the child:

JAMES E. MANNETTA did unlawfully on or about July 8, 1979 take, steal and carry away property belonging to Roanoke ^{CITY} County (Carvins Cove boat house), valued at less than \$100.00, with the intent to permanently deprive the owner of the use thereof, in violation of Section 18.2-96 of the Code of Virginia as amended. *Admitted - Found guilty 12/12/81*

If you request a court appointed attorney, YOU MUST APPEAR before this court on 10-13-81 at 9:00 A.M.

WHEREFORE, the Petitioner requests that the child and the persons having his or her custody and control be summoned to appear before this Court, and that this Court enter such orders and judgments as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

October 5, 1981

DATE

B. Reed Kelly

PETITIONER'S NAME (PRINT OR TYPE)

Botetourt County Sheriff's Dept., Fincastle, Va.

PETITIONER'S ADDRESS AND TELEPHONE NO. (COURT COPY ONLY)

Sworn/affirmed and signed before me on

October 5, 1981

Intake Officer

TITLE

B. Reed Kelly
PETITIONER'S SIGNATURE

Patricia Kay Carson
SIGNATURE

SUMMONS

TIME OF APPEARANCE MONTH	October	DAY	15	YEAR	1981	TIME	9:00	A.M.
COURT'S STREET ADDRESS AND TELEPHONE								
Main St. Fincastle, Va. 473-8244								

TO ANY SHERIFF OR POLICE OFFICER OR

I COMMAND YOU to summon the parties as designated in the above petition.

TO THE PERSON SUMMONED: I COMMAND YOU to appear in person before this Court at the date, place and time specified in this Summons to respond to the allegations in the petition in accordance with the provisions of the Juvenile and Domestic Relations District Court Law. Failure to appear at Court may subject you to contempt of court proceedings.

(114-9-704 7/80)

10-6-81
DATE

8 COPY TESTED

George E. Hall
CLERK

Dep.

CLERK

JUDGE

FORM DC-511 4/80

NOTE: BEAT THE SERVICE OF PROCESS & CIRCUIT CO.

PETITION

CODE ANN. § 16.1-262.3

Court File No. 18732

COMMONWEALTH OF VIRGINIA

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY COUNTY OF

BOTETOURT

In re a Child under eighteen years of age

<input checked="" type="checkbox"/>	CHILD'S NAME:	1. JAMES EDWARD MANNETTA	DATE OF BIRTH	2. 9/5/62	AGE	3. 19	SEX	4. M
	CHILD'S ADDRESS:	4. 211 Orlando Ave., Roanoke, VA	Telephone No.	366-3769				
<input checked="" type="checkbox"/>	FATHER'S NAME AND ADDRESS:	5. Charles E. Mannetta, same address	Telephone No.					
<input checked="" type="checkbox"/>	MOTHER'S NAME AND ADDRESS:	6. Mrs. Charles Mannetta, same address	Telephone No.					
<input type="checkbox"/>	GUARDIAN / LEGAL CUSTODIAN OR PERSON IN LOCO PARENTIS AND ADDRESS:	7.	Telephone No.					
<input type="checkbox"/>	OTHER(S) AND ADDRESS(ES):	8.	Telephone No.					
<input type="checkbox"/>	OTHER(S) AND ADDRESS(ES):	9.	Telephone No.					
<input checked="" type="checkbox"/>	10. Child held in CUSTODY	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
PERSON TO BE SUMMONED	11. Place of Detention or Shelter Care							
	12. Date and Time Taken into Custody	13. Date and Time Placed in Detention or Shelter Care						
	/ / : m. / / : m.							
	14. The above information is not known to the petitioner: No(s).							

I, the undersigned petitioner, state under oath to the best of my knowledge, that the above-named child is within the purview of the Juvenile and Domestic Relations District Court Law in that, within this city/county, the child:

JAMES E. MANNETTA did unlawfully and feloniously on or about July 8, ~~1981~~ 1979 break and enter the property of Roanoke County (Carvins Cove boat house), with the intent to commit larceny therein, in violation of Section 18.2-91 of the Code of Virginia as amended.

If you request a court-appointed attorney, YOU MUST APPEAR before this court on

10-13-81 at 9:00 A

WHEREFORE, the Petitioner requests that the child and the persons having his or her custody and control be summoned to appear before this Court, and that this Court enter such orders and judgments as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

October 5, 1981

DATE

B. Reed Kelly

PETITIONER'S NAME (PRINT OR TYPE)

Botetourt County Sheriff's Dept., Fincastle, Va.

PETITIONER'S ADDRESS AND TELEPHONE NO. (COURT COPY ONLY)

Sworn/affirmed and signed before me on October 5, 1981

Intake Officer

TITLE

B. Reed Kelly
PETITIONER'S SIGNATURE

Pamela Kay Cassin
DATE
SIGNATURE

SUMMONS

TIME OF APPEARANCE MONTH	October	DAY	15	YEAR	1981	TIME	9:00	A. M.
COURT'S STREET ADDRESS AND TELEPHONE								
Main St Fincastle, Va. 473-8244								

TO ANY SHERIFF OR POLICE OFFICER OR

I COMMAND YOU to summon the parties as designated in the above petition.

TO THE PERSON SUMMONED: I COMMAND YOU to appear in person before this Court at the date, place and time specified in this Summons to respond to the allegations in the petition in accordance with the provisions of the Juvenile and Domestic Relations District Court Law. Failure to appear at Court may subject you to contempt of court proceedings.

10-6-81

DATE

COPIES TESTED

George E. Hall
CLERK
Dep. CLERK
JUDGE

Mary J. Lee
JUDGE

STATE COURT COUNTY CIRCUIT COURT

PETITION

CODE ANN. §§ 16.1-262.3

Court File No. 3 1873-1

COMMONWEALTH OF VIRGINIA

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY/COUNTY OF

BOTETOURT

In re a Child under eighteen years of age

<input checked="" type="checkbox"/>	1. CHILD'S NAME: JAMES EDWARD MANNETTA	DATE OF BIRTH: 2. 9-5-62	AGE: 3. 19	SEX: (M)
	CHILD'S ADDRESS: 4. 211 Orlando Ave., Roanoke, Va.	Telephone No. 366-3769		
<input checked="" type="checkbox"/>	FATHER'S NAME AND ADDRESS: 5. Charles E. Mannetta, same address	Telephone No.		
<input checked="" type="checkbox"/>	MOTHER'S NAME AND ADDRESS: 6. Mrs. Charles Mannetta, same address	Telephone No.		
<input type="checkbox"/>	GUARDIAN / LEGAL CUSTODIAN OR PERSON IN LOCO PARENTIS AND ADDRESS: 7.	Telephone No.		
<input type="checkbox"/>	OTHER(S) AND ADDRESS(ES): 8.	Telephone No.		
<input type="checkbox"/>	OTHER(S) AND ADDRESS(ES): 9.	Telephone No.		
<input type="checkbox"/>	10. Child held in CUSTODY <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
PERSON TO BE SUMMONED	11. Place of Detention or Shelter Care			
	12. Date and Time Taken into Custody		13. Date and Time Placed in Detention or Shelter Care	
	/ / : m. / / : m.			
	14. The above information is not known to the petitioner: No(s).			

I, the undersigned petitioner, state under oath to the best of my knowledge, that the above-named child is within the purview of the Juvenile and Domestic Relations District Court Law in that, within this city/county, the child:

JAMES E. MANNETTA did unlawfully and feloniously on or about July 8, 1979 break and enter the property of Roanoke County (Carvins Cove snack bar), with the intent to commit larceny therein, in violation of Section 18.2-91 of the Code of Virginia as amended.

If you are not a duly appointed attorney, YOU MUST APPEAR before this court on 10-13-81 at 9:00 AM.

WHEREFORE, the Petitioner requests that the child and the persons having his or her custody and control be summoned to appear before this Court, and that this Court enter such orders and judgments as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

October 5, 1981

DATE

B. Reed Kelly

PETITIONER'S NAME (PRINT OR TYPE)

Botetourt County Sheriff's Dept., Fincastle, Va.

PETITIONER'S ADDRESS AND TELEPHONE NO. (COURT COPY ONLY)

Sworn/affirmed and signed before me on October 5, 1981

DATE

Intake Officer

TITLE

B. Reed Kelly
PETITIONER'S SIGNATURE

Paula Jay Carson
SIGNATURE

SUMMONS

TIME OF APPEARANCE MONTH	October	DAY	15	YEAR	1981	TIME:	9:00	A. M.
COURT'S STREET ADDRESS AND TELEPHONE		Main St. Fincastle, Va. 4738244						

TO ANY SHERIFF OR POLICE OFFICER OR
I COMMAND YOU to summon the parties as designated in the above petition.

TO THE PERSON SUMMONED: I COMMAND YOU to appear in person before this Court at the date, place and time specified in this Summons to respond to the allegations in the petition in accordance with the provisions of the Juvenile and Domestic Relations District Court Law. Failure to appear at Court may subject you to contempt of court proceedings.

(114-9704 7/80)

10-6-81	DATE	<i>James E. Harte</i>	CLERK	<i>Monry J. Reed</i>	JUDGE
		NOTETOURT COUNTY, CIRCUIT COURT		65	

FORM DC-511 4/80 NOTE: READ THE NOTICE ABOUT RIGHT TO REPRESENTATION BY A LAWYER ON THE BACK OF THIS SUMMONS

COMMONWEALTH OF VIRGINIA:

IN AND FOR THE BOTETOURT COUNTY JUVENILE AND
DOMESTIC RELATIONS DISTRICT COURT

COMMONWEALTH OF VIRGINIA
COUNTY OF BOTETOURT

v.

James E. Mannette, ~~Infant~~) age 19

The above named ~~Infant Child~~, with his parent, _____
_____ and his attorney Harold E. Ely appeared
in this Court this date charged on a duly verified petition filed in
this Court by B. Paul Kelly on 12th day of Nov
1981, alleging that the said child comes within the purview of the
Juvenile and Domestic Relations Court Law, as amended _____

4 Petitions - see file

It is ADJUDGED that the above mentioned child (does) (~~does not~~)
come within the purview of the aforementioned law and it is further
ADJUDGED that the said child be cases are taken under
advisement with disposition to be deferred
until reset by Term. atty and defense
counsel (for Disposition)

Entered this 12 day of November, 1981.

[Signature], Judge
Juvenile and Domestic Relations
District Court

5/20/82 - Def. appeared w/ atty Eads. Case continued
and reset for disposition on June 10,
1982. (Investigation & report to be completed by then)
[Signature]

A COPY TESTED

George E. Shet Jr. CLERK
FOURTH COUNTY CIRCUIT COURT

64

In the Circuit Court for the County of Botetourt, on Tuesday the 15th day of June, in the year Nineteen Hundred and Eighty-two.

PRESENT: The Honorable Duncan M. Byrd, Jr., Judge of said Court.

Commonwealth of Virginia

vs.

Felony No. 51

June 15, 1982
File No. 48

James Edward Manetta
dob: 9-5-62

This day came again the Attorney for the Commonwealth and James Edward Manetta, who stands indicted of a felony to-wit: unlawfully and feloniously break and enter the property of Roanoke City (Carvins Cove Boathouse) with intent to commit larceny therein, in violation of Virginia Code Section 18.2-91, appeared according to the condition of his recognizance, and came also J. Harold Eads, his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said counsel, pleaded GUILTY to the petition, which plea was tendered by the accused in person, and the Court having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea and of the penalties that may be imposed upon his conviction, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel, doth find the accused GUILTY of breaking and entering property of Roanoke City, to-wit: Carvins Cove Boathouse with intent to commit larceny as charged in the petition.

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 be and he is hereby sentenced to confinement in the jail of this Court for the term of 12 months, the execution of said sentence is hereby suspended and the defendant placed on probation under the supervision of the Probation Officer of this Court for a period of 2 years during his good behavior on condition that he not violate any laws of the Commonwealth, fully cooperate with the Probation Officer and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$167.50 by it about its prosecution in this behalf expended.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant, for which service he is allowed a fee of \$100.00 and George E. Holt, Jr., Court Reporter, recorded the evidence and incidents of trial verbatim for which services he is allowed a fee of \$10.00.

Commonwealth of Virginia

vs.

Case No. 52

June 15, 1982
File No. 49

James Edward Manetta
dob: 9-5-62

This day came again the Attorney for the Commonwealth and James Edward Manetta, who stands charged with a misdemeanor, to-wit: unlawfully taking, stealing and carrying away property of Roanoke City (Carvin's Cove Boathouse) value at less than \$100.00, in violation of Virginia Code Section 18.2-96, appeared according to the condition of his recognizance, and came also J. Harold Eads, his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said counsel, pleaded GUILTY to the petition, which plea was tendered by the accused in person, and the Court having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea and of the penalties that may be imposed upon his conviction, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel, doth find the accused GUILTY of petit larceny as charged in the petition.

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 be and he is hereby sentenced to confinement in the jail of this Court for ther term of 30 days, and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$81.00 by it about its prosecution in this behalf expended.

The Court orders that the prisoner be allowed credit for time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant, for which service he is allowed an attorney s fee of \$50.00.

The defendant is allowed to report to the Roanoke County jail on June 16, 1982.

Commonwealth of Virginia

vs.

Case No. 53

June 15, 1982
File No. 50

James Edward Manetta
dob: 9-5-62

This day came again the Attorney for the Commonwealth and James Edward Manetta, who stands charged with a misdemeanor to-wit: unlawfully taking, stealing and carrying away property of Roanoke City (Carvin's Cove Snack Bar) valued at less than \$100.00, in violation of Virginia Code Section 18.2-96, appeared according to the condition of his recognizance, and came also J. Harold Eads, his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said counsel, pleaded GUILTY to the petition, which plea was tendered by the accused in person, and the Court having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea and of the penalties that may be imposed upon his conviction, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel, doth find the accused GUILTY of petit larceny as charged in the petition.

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 be and he is hereby sentenced to confinement in the jail of this Court for the term of 30 days, and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$81.00 by it about its prosecution in this behalf expended.

This sentence shall run concurrent with the sentence of this Court adjudged against him under case number 52.

The Court orders that the prisoner be allowed credit for time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant, for which service he is allowed an attorney's fee of \$50.00.

Commonwealth of Virginia

vs.

Felony No. 54

June 15, 1982
File No. 51

James Edward Manetta
dob: 9-5-62

This day came again the Attorney for the Commonwealth and James Edward Manetta, who stands indicted of a felony to-wit: unlawfully and feloniously breaking and entering the property of Roanoke City (Carvin's Cove Snack Bar) with intent to commit larceny therein, in violation of Virginia Code Section 18.2-91, appeared according to the condition of his recognizance, and came also J. Harold Eads, his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said counsel, pleaded GUILTY to the petition, which plea was tendered by the accused in person, and the Court having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea and of the penalties that may be imposed upon his conviction, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel, doth find the accused GUILTY of breaking and entering the property of Roanoke City (Carvin's Cove Snack Bar) as charged in the petition.

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 be and he is hereby sentenced to confinement in the jail of this Court for the term of 12 months, the execution of which sentence is hereby suspended and the defendant placed on probation under

the supervision of the Probation Officer of this Court for a period of 2 years during his good behavior on condition that he not violate any laws of the Commonwealth, fully cooperate with the Probation Officer and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$167.50 by it about its prosecution in this behalf expended.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant, for which service he is allowed a fee of \$100.00 and George E. Holt, Jr., Court Reporter, recorded the evidence and incidents of trial verbatim for which services he is allowed a fee of \$10.00.

I Copy Teste
George E. Holt Jr. Clerk

ASSIGNMENT OF ERROR

(1) The trial court erred by not allowing the defendant to cross-examine and impeach the key prosecution witness concerning possible bias deriving from witness' pending juvenile charges notwithstanding that such impeachment would conflict with the Commonwealth's asserted interest in preserving the confidentiality of juvenile adjudications.

1. VIRGINIA:
2. IN THE CIRCUIT COURT FOR THE COUNTY OF BOTETOURT
3.
4. COMMONWEALTH OF VIRGINIA
5. VS
6. MICHAEL EDWARD FULCHER
7.
8. TRANSCRIPT OF PROCEEDINGS had and evidence
9. introduced before the Honorable Duncan M. Byrd, Jr., Judge
10. of the Circuit Court of Botetourt County, held in Fincastle,
11. Virginia, on the sixth day of April, 1982, in the above-
12. captioned matter.
13. APPEARANCES: William L. Heartwell, III
14. Attorney for the Commonwealth
Fincastle, Virginia
15. Arthur B. Crush, III
16. Crush, Moran & Ward
410 Elm Avenue, S.W.
17. Roanoke, Virginia 24016
Attorney for Defense
18.
19. REPORTED BY:
20. George E. Holt, Jr.
21. Fincastle, Virginia
22.
23.
24.
25.
26.

1. convicted of the one that we're present for today. And I
2. would ask you, some of you have been to jury trial, and
3. understand, some may not have, but if you don't understand,
4. in a jury trial the Commonwealth goes first, followed by the
5. defense or the defendant, before we put on our evidence some
6. two or three hours from now really. I would ask you to keep
7. clear and open mind until you have heard all the evidence
8. and then at the point in time when the Court asks you to
9. make your decision then review all the evidence and then
10. decide. Thank you.

11. JUDGE: Alright. Ladies and gentlemen, at this
12. point, before we begin to hear the evidence, I'm going to
13. let you take about a ten-minute recess and you can go into
14. the jury room, get a drink of water, use the restroom, if
15. you like, and then we will come back and begin to hear the
16. testimony of the case. Alright, Mr. Crush, would you gene-
17. rally state for the record the, the testimony which you intend
18. to offer so that we can

19. MR. CRUSH: Your Honor, what we think, Mr.
20. Manetta, would have been the equivalent charge in J & D
21. Court as we understand it, several offenses that would be
22. considered felonies, several offenses that would be on the
23. same lines as burglaries, grand larceny. We would put on
24. that if he had this thing hangin over his head the same point
25. in time as these other charges develop, we were goin to show
26. the reason we want to introduce that evidence is to show

1. possible bias, prejudice on the part of Mr. Manetta. That's
2. that's my

3. JUDGE: Aright. Now those charges that you've
4. alleged, are those charges related in any way, with the
5. exception of the time, they're not related to these offenses
6. except that you're saying

7. MR. CRUSH: The offenses occurred at separate
8. time, your Honor. The only reason we would introduce it is
9. to show that Manetta's tryin' every possible consider-
10. another reason for him to get up on the stand and say what
11. he would say.

12. JUDGE: And is it my understanding that those'
13. matters are at end as far as disposition and adjudication

14. MR. CRUSH: That was my understanding from
15. the Commonwealth Attorney. We will stipulate all that,
16. when we put Manetta on.

17. JUDGE: Alright. Mr. Heartwell.

18. MR. HEARTWELL: Well your Honor. I have diffi-
19. culty responding to the argument because basically I just
20. don't understand what's being suggested. My understanding
21. of the law is that, a juvenile's record is protected, that
22. it can't be delved into, exposed or illustrated for any pur-
23. pose, and, even conceivably or assuming, I should say, that
24. the evidence he wishes to offer meets the other tests for
25. acceptable evidence such as relevance, and uh,

26. JUDGE: His purpose is to show bias on the part

1. of this witness to influence his testimony, a possible bias
2. to influence his testimony here today.

3. MR. HEARTWELL: Well, I just don't see, I guess,
4. how he can show that, but - - - conditions and my own
5. limitations I just don't think it's acceptable evidence, and
6. I would object to its entrance.

7. JUDGE: Alright.

8. MR. CRUSH: Briefly, just briefly respond to
9. that. We're saying that something that we feel the courts
10. have ruled, a witness, not a defendant, takes the stand, and
11. that the defendant, through his attorney or himself, is
12. empowered to show anything or everything that may be biased,
13. may be biased or prejudicial, for the jury to decide actually
14. whether it is or it isn't. The business about the juv- the
15. juvenile record is not a crime. I understand that, we're
16. not questioning that. We think that the jury should be
17. entitled to be aware he had other reasons to give his
18. testimony.

19. JUDGE: Alright. As in so many matters as to
20. introduction of evidence, these are matters within the sole
21. discretion of the court, and not to confuse the rule, of the
22. use of prior felony convictions and their nature is in and
23. of itself a means of showing an impeachment of credibility.
24. As I understand, Mr. Crush, you're saying that in this case
25. you wish to show possible bias which would influence Mr.
26. Manetta's testimony here today. And so what the court is

1. doing is laying that clear rule to allow the defendant to do
2. that against the likewise clear rule that the person's juve-
3. nile record may not be divulged, and with that in mind it
4. would be the court's opinion that weighing these balances
5. that you may not make a reference to any juvenile charges or
6. any juvenile convictions, and I use that term rather loosely
7. since there is some question about what you call it. I think
8. it is relevant that the defendant, I think you may ask him
9. whether or not he is currently on probation, without making
10. reference to what Court. I think you make reference to the
11. fact whether or not he has currently a suspended jail sen-
12. tence, and I think that you may make reference that you may
13. ask him the question if, that he, if he has received any
14. offers of leniency or received any offers of leniency or if
15. he has received any consideration from the Commonwealth for
16. his testimony here today, without referring specifically to
17. any juvenile charges. Do you understand what I'm saying?

18. MR. CRUSH: Yes sir, and I think I take,
19. perhaps, little bit, maybe I misunderstand. I think this is
20. going to the juvenile record. We will cross that bridge
21. in court.

22. JUDGE: Specifically about that, about the
23. juvenile.

24. MR. CRUSH: The juvenile record we can not
25. say anything about. I understand.

26. JUDGE: Right.

1. MR. CRUSH: The felony record will of course
2. take care of the court. Of course I want to protect my
3. record, Judge, the stipulation that he had this charge in
4. J & D Court 'n all will bring him in
5. JUDGE: Well I
6. MR. CRUSH: I say. I want the stipulation
7. from the Commonwealth attorney that he was in fact charged
8. about the same time in J & D Court for bringing Manetta in
9. here now
10. JUDGE: Just to vouch the record
11. MR. CRUSH: To protect the record, the
12. tape record.
13. JUDGE: Alright. He wants you to vouch the
14. record that he did have charges pending in Juvenile Court
15. while these charges were pending, and that those charges
16. have been
17. MR. HEARTWELL: Your Honor, all I can say is
18. that he had charges as a juvenile that occurred years before
19. the charges we're trying here today, but he did have charges
20. as a juvenile and that as far as I
21. JUDGE: Well, OK, but generally the charges
22. were pending at about the same time. You indicated that in
23. your opening.
24. MR. HEARTWELL: Yes.
25. JUDGE: Is that sufficient voucher for
26. the record?

1. MR. CRUSH: It appears as I understand it.
 2. He had charges pending at the same time these charges, those
 3. charges been disposed since these charges occurred. Is that
 4. correct?

5. JUDGE: That's correct.

6. MR. CRUSH: That's correct. OK. \

7. JUDGE: Let the record show that the
 8. defendant and counsel are present and that all members of
 9. the jury are present. You may have a seat right here, Mrs.
 10. Scaggs.

11. MRS. IVA SCAGGS, a witness called on behalf of the
 12. Commonwealth, having previously been sworn, testified as
 13. follows:

14. D I R E C T E X A M I N A T I O N

15. BY MR. HEARTWELL:

16. Q.: State your name, please.

17. A.: Iva Scaggs.

18. Q.: Mrs. Scaggs, where do you live?

19. A.: I live in Woodbridge, Virginia.

20. Q.: But I believe that, until just recently, you'
 21. lived here in Botetourt County?

22. A.: Yes. I did.

23. Q.: Where was your home located in Botetourt
 24. County?

25. A.: Between Cloverdale and Bonsack on State Route
 26. six fifty-four. Our mailing address was Route eleven, Roanoke.

1. Q.: Between Cloverdale and Bonsack, is that what
2. you -
3. A.: Yes.
4. Q.: Now, tell the jury just briefly, just give
5. the jury a brief description of what your house looked like.
6. A.: It's a long brick ranch that sets up on a
7. hill.
8. Q.: Long brick ranch set up on a hill. OK. Now,
9. Mrs. Scaggs, I want to direct your attention to June twenty-
10. ninth of nineteen eighty-one. Do you remember the events
11. of that day?
12. A.: June the ninth.
13. Q.: June the ninth. I'm sorry. I said twenty-
14. ninth. June the ninth.
15. A.: Yes. You want me just to
16. Q.: You remember the day?
17. A.: Yes.
18. Q.: Were you at home that day?
19. A.: No. I was there part of the day. I was
20. working part of the day.
21. Q.: What times were you at home?
22. A.: I came for lunch about twelve o'clock, and
23. left about one o'clock to go back to work. Came home again
24. about three.
25. Q.: Alright. Now when you were there from twelve
26. to one, did everything seem to be in order?

1. A.: Yes. Everything was fine.

2. Q.: When you came back at three did you notice
3. anything unusual?

4. A.: Yes, I did. When I, when I pulled in the, in
5. the driveway, our driveway we have a driveway that comes up
6. to the back of the house. When I came up to the driveway I
7. noticed that a door that goes into our den that we seldom
8. use was standing open and I had a strange feeling about it
9. and I wondered how it was opened. The wind had been blowing
10. pretty hard, and I thought, well, how could wind have blown
11. that door open, because I recall, when I passed that doorway
12. on my way through the den at lunch time getting to back to
13. work, I had a habit of checking the doors to be sure they
14. were locked, and the door was locked. We used, a door that
15. went out into the garage, through the kitchen because we came
16. - - all the time. So I got out of the car and into the
17. house through that door and noticed a light was shining in
18. the hallway I immediately walked over to the hallway and
19. looked down the hall. The light was shining from the bath-
20. room and from, at the other end of that hallway there was my
21. son's bedroom and when I raised my eyes and looked in to the
22. bedroom the first thing I noticed was that his stereo equipment
23. was gone, that he had just put back into the house that day,
24. because he had just returned home from college and was moving
25. his things back into the house. Then I sort of panicked.
26. You know, it just dawned on me someone had been in the house

1. and I became very upset. I looked through the house just a
2. little but, I ran to the telephone and called my husband who
3. worked not far away and told him I thought someone had broken
4. into the house, and he asked me to call the police and said
5. that he would come right home.

6. Q.: Alright. Now, Mrs. Scaggs, this door that was
7. you found open when you came back, was it normally locked or
8. unlocked or what?

9. A.: It was always locked.

10. Q.: And did you have occasion to check that door
11. sometime after you discovered it being open, to see if -

12. A.: I checked when, when the police came, or my
13. husband came, I don't know, I was very upset. The door was
14. still locked.

15. Q.: It was still locked.

16. A.: It was still locked. You still couldn't turn
17. the knob. It was still locked.

18. Q.: Now, did you and your husband, your son
19. attempt to inspect your home and determine what was missing?

20. A.: Yes, we did.

21. Q.: Did you prepare a list of items you found to
22. to be missing?

23. A.: Yes.

24. Q.: Presented to Sheriff's department

25. A.: Yes, we did.

26. Q.: Is this a copy of that list?

1. A.: Yes.

2. Q.: Alright. Now, would you tell the jury exactly
3. what was taken from your home that day, and what you estima-
4. ted its value as -

5. A.: Each item?

6. Q.: Yes.

7. A.: My most treasured piece of jewelry, a cameo
8. necklace which my husband had gotten overseas. We don't
9. know the value of that. We estimate that perhaps it might
10. be worth a hundred dollars on the market, but it's worth much
11. more to me. A, um, a half-carat diamond ring, my ring that
12. I had, we'd just gotten new diamonds for our wedding anni-
13. versary. Also a white gold wedding band that was with that.
14. The diamond we estimated value at a thousand dollars. An
15. opal necklace, twenty-five dollars. Masonic, my husband's
16. masonic gold ring, fifty dollars. His old high school ring,
17. with a ruby set, a hundred and fifty dollars. My son's
18. stereo equipment, about a thousand dollars, for all four
19. pieces, that was two speakers, a receiver and a turn-table.
20. My son's Washington and Lee College class ring, eighty
21. dollars. A sterling silver man's necklace, it was my husband's
22. necklace, twenty-five dollars. A gold chain, man's costume
23. jewelry, eighteen dollars, and some sterling silver flatware.
24. It has on here about twenty-five dollars, but that is not
25. correct. We checked with a jeweler afterwards and, and it
26. was worth seven hundred dollars.

1. Q.: Sterling.
2. A.: Sterling flatware was stolen.
3. Q.: OK. Now, Mrs. Scaggs, I want to show you a
4. serving spoon I have here. Do you recognize this spoon?
5. A.: Yes. It's mine.
6. Q.: This is one that was taken from your house.
7. A.: Yes sir.
8. MR. HEARTWELL: Your Honor, we ask that this be
9. numbered for identification as Commonwealth's Exhibit number
10. one.
11. JUDGE: Alright. It is so ordered.
12. Q.: Mrs. Scaggs, I want to show you what's left
13. of a Troutville High School ring. Do you recognize that?
14. A.: Yes. That's, that must be what remains of my
15. husband's high school ring. - -
16. MR. CRUSH: Your Honor, could she speak up a
17. little. I'm having some difficulty hearing.
18. A.: Yes. That's my, what remains of my husband's
19. high school ring. It has the Troutville high school Indian
20. warrior on the side.
21. JUDGE: Mrs. Scaggs, I realize that the
22. natural tendency in what we do here is not - The natural
23. tendency is when Mr. Heartwell is asking you questions is to
24. turn to him. It's important that you address your answers,
25. if you'll just address them to me, I think everybody will be
26. able to hear just like you're talking to me. For identifica-

1. tion this is Commonwealth two.

2. Q.: Do you know the defendant, Mr. Fulcher?

3. A.: No.

4. Q.: To your knowledge has he ever been given per-
5. mission to come into your home?

6. A.: No.

7. MR. HEARTWELL: Answer this gentleman's questions.

8. C R O S S E X A M I N A T I O N

9. BY MR. CRUSH:

10. Q.: Do you know a James Edward Manetta?

11. A.: No.

12. Q.: Aright. If you, when you described your
13. house, Mrs. Scaggs, I believe it's a house that sits on a
14. hill, a ranch, but, if you would, from this back door, do
15. you have to go up any steps to get in that back door?

16. A.: There's a stoop there, one step.'

17. Q.: One step? And do you also have a storm door
18. there?

19. A.: A s- yes.

20. Q.: And you enter into the house.

21. A; Yes.

22. Q.: Approximately what distance would your son's
23. bedroom be from, that back door? I know that's hard. Do
24. you have to go through a hallway to get to it?

25. A.: Yes. You go, you enter into a den, a small,'
26. you enter into a small room, and several other rooms open off

1. that room. You have to go into a hallway to the right, you
2. go to the right and then down the hallway - to get to the
3. bedroom.

4. Q.: Are there any inside doors in this hallway?

5. A.: Are there other inside doors? Yes all the
6. bedrooms open

7. Q.: No. Through the hallway. There wouldn't be,
8. or would, Are there any inside doors? Where you have to
9. open from the time you have to open to the time you get to
10. your son's bedroom, are there any doors you would have to
11. open?

12. A.: There would be a door going into the hallway
13. and there would be a door into his bedroom.

14. Q.: OK

15. A.: There would, they were usually kept open.

16. Q.: Approximately what distance would that be?

17. Can you use this room for to help you? Would it be the
18. length of this room from the back door to your son's bedroom?
19. Approximately?

20. A.: No. It wouldn't be the length of this room.

21. Q.: Pardon me?

22. A.: No. It wouldn't be that far.

23. Q.: A, can you do it in feet, thirty, forty feet,
24. or can you figure it roughly -

25. A.: No. See, since we aren't living here now, it's
26. a little hard for me to remember - Maybe, maybe twenty

1. feet or twenty-five feet.

2. Q.: OK. Is that walking feet or feet, twelve
3. inches?

4. A.: No. It's walking. It's walking feet.

5. Q.: OK. When you, as I understand it now, you
6. left at about one o'clock and returned at about three on
7. June, June the ninth. Were there any other cars that would
8. be at your house at this time?

9. A.: During, in the afternoon -

10. Q.: Any other vehicles that you-all had.

11. A.: No. No other cars, would be there during that
12. time.

13. Q.: Just for my curiosity, how did you identify'
14. this ring?

15. A.E How did I identify the ring?

16. Q.: Yes, ma'am.

17. A.: It has a warrior on the side which was the
18. Troutville, the old Troutville High School.

19. Q.: So you identified it by being Troutville.

20. A.: It's, yes, and also, there is also, it would
21. have my husband's initials inside, if they were not smashed
22. out.

23. Q.: But you didn't see them.

24. A.: No. I haven't looked closely inside.

25. Q.: Now the items that you mentioned, were they
26. in one room or several rooms?

1. A.: Several rooms.

2. Q.: OK. Were th, aright. I presume you have, for
3. instance, color TV, other jewelry, silver lying around?

4. A.: There was other silver ware in the silver
5. chest that was not taken. Yes.

6. Q.: And color TV? and other stereo -

7. A.:, There was a color TV in the den. No other
8. stereo.

9. Q.: No other stereo. Your Honor, we have no
10. further questions.

11. JUDGE: ANY re-direct?

12. MR. HEARTWELL: No, your Honor.

13. JUDGE: Thank you, Mrs. Scaggs. You may
14. stand down.

15. MR. HEARTWELL: We call Mr. Rhudy Scaggs, Senior.

16. RHUDY SCAGGS, a witness called on behalf of the
17. Commonwealth, having been previously sworn, testified as
18. follows:

19. D I R E C T E X A M I N A T I O N

20. BY MR. HEARTWELL:

21. Q.: State your name please, sir.

22. A.: Rudolph J. Scaggs, Senior.

23. Q.: And, what is your business, Mr. Scaggs?

24. A.: I work for Civil Service. I'm stationed at,
25. Night Vision Optics Lab at Fort Belvoir, Virginia.

26. Q.: Now, Mr. Scaggs, was this your wife that just

1. testified before you?

2. A.: Yes sir.

3. Q.: And, she testified that you-all previously'
4. lived in Botetourt County.

5. A.: Yes sir.

6. Q.: And at that time you lived in the Cloverdale
7. area.

8. A.: Yes sir.

9. Q.: Alright. You are, of course, familiar with
10. the offense that occurred on June the ninth in nineteen
11. eighty-one?

12. A.: Yes sir.

13. Q.: And, your wife testified that your home was
14. broken into on that date.

15. A.: That's correct.

16. Q.: Now, Mr. Scaggs, let me ask you, - Your
17. Honor, I'm referring to Commonwealth's Exhibit number two -
18. to look at this item and ask you whether you can, you recog--
19. nize it or can identify it.

20. A.: Yes, I can. It's a Troutville High School
21. ring in the year of 1947. And that's the year I graduated
22. from Troutville High School, and it had my initials in it,
23. RJS, and I can make those out. Looked like they tried to
24. scratch 'em out.

25. Q.: Alright, sir. You're satisfied that this is
26. your ring?

1. A.: Yes sir.

2. Q.: And you missed it on that day?

3. A.: Yes sir. I missed it from my jewelry box.

4. Q.: Aright. Now. Mr. Scaggs, let me show you
5. this list here that was given by, given the Sheriff's depart-
6. ment, is that an accurate list of the items that were taken
7. from your house on that day?

8. A.: Should I read these aloud?

9. Q.: No sir. Just - Answer his questions.

10. JUDGE: Mr. Heartwell, I, so we can
11. protect the record, I think we missed a, one question, just
12. his last answer. Would you ask the last question over,
13. please?

14. Q.: The last question - I previously asked him,
15. your Honor, to read the list of items that his wife has
16. testified on, asked him was that an accurate, list of the
17. items that were stolen from his house on June ninth.

18. A.: And my answer was, yes sir.

19. JUDGE: Thank you. Your witness now,
20. Mr. Crush.

21. C R O S S E X A M I N A T I O N

22. BY MR. CRUSH:

23. Q.: Mr. Scaggs, your wife also testified, described
24. the house you'all lived in at this point in time. If you
25. would, how far from the back door, you have driveway back
26. there beside the back door?

1. A.: Yes sir.
2. Q.: About how far from where the driveway is
3. would it be to the door, back door, approximately?
4. A.: Approximately, - - - a long day.
5. JUDGE: Wait just a second. Why don't
6. we just put this, the next time it happens, we stop and
7. plug in. Every time we get the, the portable thing going. -
8. - back on. We're alright now, but I want to go ahead and put
9. this there, put right down in front, and I think it will be
10. all right, won't it?
11. MR. CRUSH: I'll back up just a little bit,
12. too, now. Alright. From your driveway to the back door,
13. about how many feet would that be?
14. A.: My answer was twenty to twenty-five feet.
15. Q.: And you had to step up a step?
16. A.: You have two steps.
17. Q.: Two steps?
18. A.: Step up on a stoop, and then into the door.
19. Q.: Alright. - - - From there, how far would it
20. be to your son's bedroom, approximately?
21. A.: Approximately forty feet.
22. Q.: About forty feet. You - - from a small
23. den into a hallway and then to the bedroom.
24. A.: That's true.
25. Q.: These items, were there other items there not
26. taken, silver and gold, color TV perhaps?

1. A.: Yes, there was a color TV in the room, in the
2. family room.
3. Q.: In the family room.
4. A.: Yes, or den.
5. Q.: Use this list again to refresh your memory. -
6. - What would be the total value of your loss?
7. A.: Roughly thirty-six hundred dollars.
8. Q.: Thirty-six hundred counting the stereo also.
9. A.: Yes.
10. Q.: Do you know James Edward Manetta?
11. A.: Do I know him?
12. Q.: Have you ever met him before?
13. A.: Before this?
14. Q.: U-huh.
15. A.: No sir. Let me qualify this last issue.
16. This - - - was worth thirty-six hundred dollars. There's
17. no way to put a value on some items, like the cameo.
18. Q.: I understand your point.
19. A.: Certain, like that
20. Q.: Your wife
21. A.: sentimental value
22. Q.: Do you know James Edward Manetta?
23. A.: No sir.
24. Q.: You don't know this boy either.
25. A.: No sir.
26. MR. CRUSH: OK. No further questions, your

1. Honor.

2. JUDGE: Thank you. You may stand aside
3. now, Mr. Scaggs.

4. MR. HEARTWELL: We call Lieutenant Scaggs, your
5. Honor.

6. LIEUTENANT SCAGGS, a witness called on behalf of
7. the Commonwealth, having been previously sworn, testified as
8. follows:

9. D I R E C T E X A M I N A T I O N

10. BY MR. HEARTWELL:

11. Q.: State your name, please,

12. A.: Rudolph J. Scaggs, Jr.

13. Q.: And, Lieutenant Scaggs, you're apparently in
14. the Marine Corps now?

15. A.: A, yes, I am.

16. Q.: Where are you stationed now?

17. A.: Quantico, Virginia.

18. Q.: And, these, your parents that preceded you in
19. the witness stand?

20. A.: Uh, yes sir. They are.

21. Q.: Do you, a, were you living with your parents
22. when they resided here in Botetourt County?

23. A.: Uh, yes, I did.

24. Q.: Now, are you familiar with the event that
25. took place on June the ninth in nineteen eighty-one?

26. A.: Uh, yes, yes, I am.

1. Q.: Aright. Did you own a stereo set at that time
2. A.: Yes, I did.
3. Q.: Now, Lieutenant Scaggs, let me ask you if you
4. would, to step down and examine these two speakers and
5. receiver and turn-table. Do you recognize these?
6. A.: Yes. I do.
7. Q.: And, are they, are they yours?
8. A.: Yes, they are.
9. Q.: Are these the ones you had in your house?
10. A.: Yes.
11. Q.: Are you certain about that?
12. A.: Yes, I am.
13. MR. HEARTWELL: Now, your Honor, I would ask that
14. these items be numbered for identification purposes. We
15. would ask the speakers be numbered as number three and the
16. receiver and turn-table be numbered four. Was this the only
17. item stolen in the break-in that belongs to you personally?
18. A.: Uh, there was a, another item. It's not been
19. recovered.
20. Q.: It's not been recovered. Do you know the
21. defendant, Mr. Fulcher?
22. A.: No.
23. Q.: Do you know James Manetta?
24. A.: No. I don't know him. I have met him,
25. before the events that night, but I wouldn't call him my
26. friend. I had met him.

1. Q.: Did you ever give Mr. Manetta an invitation
2. to come into your home or - No question about
3. that - Answer Mr. Crush questions.

4. C R O S S E X A M I N A T I O N

5. BY MR. CRUSH:

6. Q.: This college ring - that you haven't
7. recovered yet, which college would that be?

8. A.: Washington and Lee University.

9. Q.: Aright. And, did you have some kind of
10. initials or anything like inside the college ring, when you
11. got it?

12. A.: Yes. I believe I did. It had RJS on the
13. inside.

14. Q.: RJS on the inside. Aright. You made reference
15. to, I'm not saying that Mr. Manetta's your friend, but you
16. knew him.

17. A.: I knew who he was. I, I didn't know anything
18. about him. I knew his face.

19. Q.: You talked to him several times before at
20. the filling station I believe.

21. A.: Yeh, a couple times, I suppose.

22. Q.: Where would that filling station be?

23. A.: That was an Amoco station in, in Daleville,
24. Virginia, right next to the Interstate.

25. Q.: And, you remember approximately how long
26. prior to this break-in you talked to him, or seen him?

1. A.: You mean how, how long from the first time I
2. had met him until the break-in occurred?

3. Q.: Basically, yes.

4. A.: I, I wouldn't have any idea, I'd say maybe,
5. maybe a matter of a small number of months.

6. Q.: OK. OK. And where did you get this stereo
7. system?

8. A.: Each piece?

9. Q.: Bought 'em separately?

10. A.: Yes. The speakers were bought from a friend
11. of mine at school in Lexington, Virginia, and the receiver
12. and turn-table, the receiver came from Best Products and the
13. turn-table came from Harvey-s Warehouse.

14. Q.: Aright. I presume you looked at 'em. Excuse
15. me. I presume you've looked at 'em before the Court, before

16. A.: Uh, yes. Yes.

17. Q.: And on the turn-table there's a model number.
18. I believe. On the back of it.

19. A.: I suppose there is.

20. Q.: OK. I presume then, on the receiver, too,
21. there would be a model number there, too.

22. A.: Yes sir. There is.

23. Q.: And the speakers, you identified them, I
24. think you said they're the same type, I understand. There's
25. a pre-inspection sticker on the back of 'em.

26. A.: Yeh, on the back of one of them, there is.

1. There is also, well, the -

2. Q.: Did they look the same prior to when they-
3. were stolen?

4. A.: There is one difference.

5. Q.: What is that?

6. A.: Um, there was, the model number on the front,
7. it said HPM six zero and those - - like they've been
8. taken off.

9. Q.: OK. But other than that, it's the same
10. condition.

11. A.: Yes. There's one of the hook-ups in the back
12. of one of 'em has fallen off. Of course, that was loose
13. before it was taken -

14. Q.: Loose connection?

15. A.: Yes.

16. Q.: Let me ask you. When you go to move these
17. things, how do you - - just lift 'em up and carry 'em all
18. or do you take 'em one at a time?

19. A.: No sir. I usually take 'em one at a time.

20. MR. CRUSH: I have no further questions,
21. your Honor.

22. JUDGE: Any re-direct?

23. MR. HEARTWELL: No, your Honor.

24. JUDGE: You may stand down. Thank you.

25. JAMES MANETTA, a witness called on behalf of the
26. Commonwealth, having been previously sworn, testified as

1. follows:
2. D I R E C T E X A M I N A T I O N
3. BY MR. HEARTWELL:
4. Q.: State your name, please.
5. A.: James Edward Manetta.
6. Q.: Where do you live, Mr. Manetta?
7. A.: Two eleven Orlando Avenue, Roanoke.
8. Q.: Now, Mr. Manetta, I believe you have already
9. been convicted of this same offense we're trying the defend-
10. ant on today. Is that correct?
11. A.: Yes sir.
12. Q.: Have you been sentenced yet?
13. A.: No sir.
14. Q.: Aright. Have you ever been convicted of any
15. other felonies?
16. A.: Yes sir. ,
17. Q.: What? Tell the jury what other felonies you've
18. been convicted of.
19. A.: Breaking and entering.
20. Q.: And, where was that?
21. A.: Roanoke County.
22. Q.: Anything else?
23. A.: I believe that's all.
24. Q.: Alright. Now, in connection with your testi-
25. mony here today, have you been promised any favors or any
26. other consideration by either the Sheriff's Department or

1. my office?
2. A.: No sir.
3. Q.: Do you think that if by testifying you're
4. going to make anything easier for yourself?
5. A.: No sir.
6. Q.: Why are you testifying?
7. A.: Just to get the truth out.
8. Q.: Aright. Let me direct your attention then
9. to, June the ninth, of nineteen eighty-one. Do you remember
10. the events that took place on that day?
11. A.: Yes sir.
12. Q.: And who were you with?
13. A.: Mr. Fulcher.
14. Q.: You have indicated the defendant?
15. A.: Yes sir.
16. Q.: And, just tell the jury what happened on that
17. day as it relates to the Scaggs residence.
18. A.: Well, we ended up at the Scaggs house. A,
19. when we were there, Mike jimmied the door to get in.
20. Q.: What did you go there for?
21. A.: To break in the house.
22. Q.: Whose idea was it?
23. A.: Both of ours.
24. Q.: Why did you do it?'
25. A.: Well, I owed him some money for some -
26. stuff.

1. Q.: What did you owe him money for?
2. A.: Coke.
3. Q.: For coke?
4. A.: Yes sir.
5. Q.: Is that cocaine?
6. A.: Yes sir.
7. Q.: Aright. How was the Scaggs house chosen?
8. A.: It looked like it was unoccupied at the time.
9. Q.: Chosen at random?
10. A.: Yes.
11. Q.: Did you know who lived there?
12. A.: No sir.
13. Q.: Aright. How did, was entry gained into the
14. house?
15. A.: He used a credit card to slip the back door
16. lock.
17. Q.: Aright. What did you do then?
18. A.: Went into the house.
19. Q.: Both of you?
20. A.: Yes.
21. Q.: What did you do?
22. A.: Uh, I carried the stereo equipment outside.
23. Q.: Is this the stereo equipment that you carried
24. outside?
25. A.: Uh, yes sir.
26. Q.: How did you carry it?

1. A.: Put it in my arms and carried it outside.
2. Q.: All at once?
3. A.: Yes sir.
4. Q.: What you do with it when you got it outside?
5. A.: Loaded it in the trunk, trunk of his Datsun.
6. Q.: Aright. And this was, Mr. Fulcher's car?
7. A.: Yes sir.
8. Q/: What did Mr. Fulcher - inside the house?
9. A.: He went in some of the other rooms and
10. carried out stuff.
11. Q.: What type of stuff did he carry out?
12. A.: Some jewelry and a few other odds and ends.
13. Q.: Aright. Now, Mr. Fulcher, you said you
14. carried out, stereo
15. MR. CRUSH: Judge, I believe it's Mr. Manetta.
16. MR. HEARTWELL: I'm sorry. Mr. Manetta. - You
17. said you carried out this stereo equipment. I would refer
18. you to this equipment sitting here in front of you, - and
19. your Honor, I'm indicating Commonwealth's Exhibits three and
20. four. Is this the equipment that you carried out on that
21. day?
22. A.: Yessir.
23. Q.: Aright. And then, did you put it in Mr.
24. Fulcher's car?
25. A.: Yes sir.
26. Q.: Now, what type of house was this that you-all

1. went into. Can you just -
2. A.: It was just a one-story brick ranch.
3. Q.: Aright. Where did you go? After you loaded
4. this equipment in Mr. Fulcher's car, did you go back into
5. the house or did, what happened then?
6. A.: Uh, yeh, I walked back into the house and
7. asked Mike if he's ready to go and he said "yes" and we went
8. outside and got in the car and left.
9. Q.: Aright. Did he bring any items out himself?
10. A.: Some jewelry, 'n' stuff he had in his hands.
11. Q.: And, where did you all go once you left the,
12. Scaggs residence?
13. A.: To his house in the city.
14. Q.: And where was that located?
15. A.: Over next to Salem Furniture.
16. Q.: Do you know the name of the street?
17. A.: Mississippi.
18. Q.: Mississippi?
19. A.: Yes sir.
20. Q.: And what was done with the stereo equipment?
21. A.: It was taken out of the car and put inside
22. the house.
23. Q.: What was done then?
24. A.: Uhh
25. Q.: Did y'all go anywhere else?
26. A.: Yeh, we left from his house and went to

1. Roanoke Coin Exchange.
2. Q.: For what purpose?
3. A.: To pawn the jewelry, the gold and stuff.
4. Q.: Now, let me ask you, Mr. Fulcher, if you
5. recognize this piece I have, this Commonwealth one and two?
6. A.: Yes sir.
7. Q.: Aright. And were these part of the items
8. that you took?
9. A.: Yes.
10. MR. HEARTWELL: Your Honor, I would ask that
11. these be entered as evidence at this point.
12. JUDGE: Aright. Do you have any
13. objection at this point, Mr. Crush?
14. MR. CRUSH: No, your Honor.
15. JUDGE: Alright. They will be intro-
16. duced as Commonwealth's Exhibit One and Two.
17. MR. HEARTWELL: Your Honor, I would also ask
18. that the stereo equipment be entered as evidence at this
19. time.
20. JUDGE: Alright. Now introduced as
21. Commonwealth's three and four.
22. MR. HEARTWELL: Mr. Manetta, do you recognize
23. this item?
24. A.: Yes sir. I do.
25. Q.: What is that?
26. A.: Receipt.

1. Q.: From the Roanoke Coin Exchange?
2. A.: Yes sir.
3. Q.: And, how much money did you receive for the
4. items you took there?
5. A.: About, fifty dollars, something like that.
6. Q.: Did you, read the figure on there?
7. A.: It's a hundred and twelve ninety.
8. Q.: Is that what you got?
9. A.: Yes sir. That's what he got.
10. MR. HEARTWELL: Your Honor, we ask that this,
11. receipt be, entered as the Commonwealth's next exhibit.
12. JUDGE: Alright. Do you have any
13. objection, Mr. Crush?
14. MR. CRUSH: No, your Honor.
15. JUDGE: Commonwealth's five is the
16. receipt.
17. MR. HEARTWELL: Now, Mr. Manetta, who went into
18. Roanoke Coin Exchange?
19. A.: I did.
20. Q.: And where was Mr. Fulcher at this time?
21. A.: Outside in his car.
22. Q.: And what was done with the money you received
23. from the, shop there?
24. A.: I gave it to Mike.
25. Q.: All of it?
26. A.: Yes sir.

1. Q.: What did you get out of this?
2. A.: Nothin'.
3. Q.: What, you mentioned a debt that you had owed
4. him.
5. A.: Yes sir.
6. Q.: What about that?
7. A.: Well, the debt was taken care of.
8. Q.: The debt was considered cancelled?
9. A.: Yes sir.
10. Q.: The stereo equipment or any of the other items
11. that were not taken to the Coin Exchange, did you ever get
12. back?
13. A.: No sir.
14. Q.: That's all the questions I have, your Honor.
15. C R O S S E X A M I N A T I O N
16. BY MR. CRUSH:
17. Q.: Uh, how old are you, James?
18. A.: Nineteen.
19. Q.: Nineteen years old? And you say you were
20. convicted, what, how long ago were you convicted in Roanoke
21. County?
22. A.: Close to two years.
23. Q.: Close to a year ago. Are you now on probation?
24. A.: Yes sir.
25. Q.: How much probation?
26. A.: Uhh, I guess it's indefinite.

1. Q.: Pardon?
2. A.: I think it's indefinite.
3. Q.: Indefinite probation.
4. A.: Right.
5. Q.: You could be on it for life for all you know.
6. A.: Well, I, until they decide to release me from
7. probation.
8. Q.: Aright. And this happened in June nineteen
9. eighty-one.
10. A.: Right.
11. Q.: - about six, seven, how long would that be
12. after you went on probation -
13. A.: About a year.
14. Q.: About a year?
15. A.: Yeh, I'd say.
16. Q.: So it's about a year ago you were convicted
17. in Roancke County?
18. A.: You're right. It's been about six months.
19. Q.: OK. So it was six or seven months, this
20. happens again. Now you say you owed, the reason that you
21. went with Michael, you say, is because you owed him some
22. money.
23. A.: That's right.
24. Q.: How much did you owe him?
25. A.: Approximately about two hundred dollars.
26. Q.: Approximately about two hundred dollars. And

1. do you have any idea how much is the value of the stuff, is
2. that was taken?
3. A.: No, not right off hand.
4. Q.: But you said, well, we just, call it even.
5. A.: Right.
6. Q.: That's the reason you broke into the house.
7. No other reason.
8. A.: No.
9. Q.: Didn't want to yourself?
10. A.: Not particularly.
11. Q.: Aright. Now about this time did you have a
12. Comet automobile?
13. A.: Yes I did.
14. Q.: And where did you get this car?
15. A.: I bought it.
16. Q.: Where did you get it from?
17. A.: Mr. Fulcher.
18. Q.: . What year Comet was it?
19. A.: I believe it was '73.
20. Q.: Seventy-three?
21. A.: I believe.
22. Q.: Aright. And, how much did you, how much was
23. the car worth, how much did you pay for it?
24. A.: A hundred dollars.
25. Q.: Hundred dollars.
26. A.: Yes sir.

1. Q.: And you remember about when you purchased
2. this car?
3. A.: Not right off hand.
4. Q.: Now, did you go to the police and turn your-
5. self in after this?
6. A.: No sir.
7. Q.: They came to you. And you immediately told
8. them about this.
9. A.: Yes.
10. Q.: Immediately.
11. A.: Yeah, pretty much immediately, yes. About
12. five or ten minutes after they confined me.
13. Q.: Alright. Now, how'd you carry that stereo
14. out? How far d'you have to carry it out of the house, James?
15. A.: About twenty feet.
16. Q.: About twenty feet in all. How many times
17. did it take you to carry it?
18. A.: Once.
19. Q.: Turn around and lift up and show the jury how
20. you did it.
21. A.: I did it the last time.
22. Q.: Well, come around and do it now. - - - -
23. Was the trunk open when you carried it?
24. A.: Yes. The hatchback was. - - -
25. Q.: You carried that for about twenty feet like
26. this and set it down in the back of the car.

1. A.: Yes sir.
2. Q.: Aright. Set it back down. Step, d'y'have any
3. steps, were there any steps when you did that, James?
4. A.: No sir.
5. Q.: No steps.
6. A.: Well, a step right off from the house about,
7. that high.
8. Q.: Set it back down on the floor, James. You've
9. known, you knew Mike for some time, didn't you?
10. A.: Yes sir.
11. Q.: You grew up, I think, in the same neighborhood.
12. A.: M-hm.
13. Q.: Had you been to Mike's house before?
14. A.: Yes sir.
15. Q.: Had you ever sold him a Pioneer amplifier?
16. A.: Yes.
17. Q.: Do you remember how long ago you did that?
18. A.: Not off hand.
19. Q.: Could it have been a year, six months, twelve
20. months?
21. A.: About a year.
22. Q.: About a year. How much d'you get for that?
23. A.: About Thirty dollars.
24. Q.: About thirty dollars. And you did this to
25. satisfy a two hundred dollar debt.
26. A.: Do what?

1. Q.: You did all this to satisfy a two hundred
2. dollar debt.
3. A.: Yes.
4. Q.: Aright. You remember, you were here previously
5. A.: M-hm.
6. Q.: You remember someone asked you a question,
7. "What did you do with the, with the hundred and ten dollars"
8. A.: Not right off hand.
9. Q.: Do you remember your answer?
10. A.: No.
11. Q.: I'm sorry, you didn't hear the question, I'm
12. sorry. Did you ever say "I gave him about sixty percent of
13. the money, and I kept forty percent" ?
14. A.: Right.
15. Q.: You did say that.
16. A.: Yes, I did.
17. Q.: You were referring to Michael then, weren't
18. you?
19. A.: Right.
20. Q.: When did you say that?
21. A.: When we were here before, last time.
22. Q.: Is that any different than what you just said?
23. A.: No.
24. Q.: You didn't just testify that you received
25. nothing for this?
26. A.: I received it, but then I turned around and

1. handed it right to him.
2. Q.: Handed what right to him?
3. A.: The money to it.
4. Q.: All hundred and ten or twelve dollars?
5. A.: Yes.
6. Q.: Why, you just said, last time, that you split
7. sixty-forty, didn't you?
8. A.: Right, and I just turned around and handed it
9. right back to him.
10. Q.: Aright. As I understand you're on indefinite
11. probation, this happens, you tell the, you have any idea,
12. d'you still have these speakers, James?
13. A.: No sir.
14. Q.: Did you sell 'em?
15. A.: Yes sir.
16. Q.: How much did you sell 'em for?
17. A.: Thirty-five dollars.
18. Q.: Thirty-five dollars. At the time you bought
19. them did you have any idea just how much they were worth?
20. A.: Fifty dollars.
21. Q.: Fifty dollars. OK. When did you get these
22. speakers from, Michael?
23. A.: It's been about a year or so ago, I -
24. Q.: About a year since you got 'em? - - Last,
25. here, in January, you were asked this question, "Just assum-
26. ing he made reference to giving you two large speakers in

1. exchange for something, would you have any idea what he was
2. referring to?" You replied, "Yes, the - " You replied, "Yes
3. sir, I would" and the question was "What? Do you remember
4. at all?" You stated "Two stereo speakers which were - - -
5. to me for a car transaction." I presume you got a Comet and
6. the two speakers for a hundred and twenty-five dollars.
7. Aright. You were also asked at that time, "And he gave
8. those to you." Do you know what you replied?
9. A.: No.
10. Q.: You replied, "Yes sir." Was this along about
11. the same time? Do you remember what you replied to that?
12. A.: I'm not sure I understand.
13. Q.: "Yes sir. It was." And, when you said about
14. the same time, wasn't that about the same time as this
15. break-in?
16. A.: No. It wasn't.
17. Q.: When did you register title to that car at
18. DMV? or did you, James?
19. A.: 'S registered.
20. Q.: When?
21. A.: Probably that same day.
22. Q.: I'm not asking the exact date, approximately
23. when?
24. A.: I don't even know that.
25. Q.: Do you still have the car?
26. A.: No. It's been sold.

1. Q.: How long ago did you get rid of it?
2. A.: Mmm - January, February, June -
3. Q.: January, February, June? or along through
4. there? June would be about the same time as this break-in,
5. wouldn't it, James?
6. A.: Yes.
7. Q.: Let me ask you this, James. Why didn't you
8. just give Michael this nineteen seventy-what - Comet,
9. nineteen seventy-two -
10. A.: Three
11. Q.: Seventy-three Comet to pay this debt instead
12. going around burglarizing someone's house?
13. A.: H- The car wasn't worth it to 'im 'cause I
14. already been - - with it.
15. Q.: The car wasn't worth it?
16. A.: Right.
17. Q.: Well, how much you sell it for?
18. A.: Fifty dollars.
19. Q.: Fifty dollars?
20. A.: Yes.
21. Q.: Where were you working during all this, James?
22. A.: I was unemployed at the time.
23. Q.: You were unemployed at the time. From the
24. whole, I guess, January on till recently?
25. A.: Yes.
26. Q.: When you came out of this house, you stated

1. that Michael carried the jewelry, you carried the stereo,
2. where, how, do you know how Michael carried it out?
3. A.: I believe it was stuffed in his pockets.
4. Q.: He stuck it in his pockets.
5. A.: Right.
6. Q.: May I ask you, would it have been simpler for
7. both of y'all to carry that out, instead of you carrying it?
8. A.: I guess.
9. Q.: You didn't ask Michael to help carry it out.
10. A.: No.
11. Q.: Do you know Mr. Scaggs, the young boy that's
12. here?
13. A.: Yes, I do.
14. Q.: How do you know him?
15. A.: Through acquaintance of a person that I used
16. to work with.
17. Q.: And, how, when was about the last time you saw
18. him, prior to this break-in?
19. A.: Could have been eight months prior, ten months.
20. Q.: Do you know David Bowers, lives in the same
21. neighborhood also?
22. A.: Yes, used to.
23. Q.: Used to. Have you seen him recently?
24. A.: No.
25. Q.: Before this happened you had seen him, hadn't
26. you?

1. A.: Yes.
2. JUDGE: Mr. Manetta, will you speak up,
3. please. We've got this other recorder on.
4. Q.: Did you get anything, did you get anything
5. else when you paid for this Comet to Mr. Fulcher, Michael?
6. A.: Yes.
7. Q.: What?
8. A.: Set of speakers.
9. Q.: What type speakers?
10. A.: Uh- off brand.
11. Q.: Off brand. The last time you were here, do
12. you remember saying they were home made?
13. A.: Right.
14. Q.: Well, were they manufactured or were they
15. home-made?
16. A.: The cabinets were home-made. The speakers
17. were manufactured.
18. Q.: Aright. That's OK. You got that the same
19. time you got this Comet.
20. A.: Right.
21. Q.: You have any idea - Do you still have these
22. speakers, James?
23. A.: No.
24. Q.: Did you sell 'em?
25. A.: Yes.
26. Q.: How much did you sell 'em for?

1. A.: Thirty-five dollars.
2. Q.: Thirty-five dollars. At the time bought 'em
3. d'you have any idea how much they were worth?
4. A.: Fifty dollars.
5. Q.: Fifty dollars. OK. When did you get these
6. speakers from, Michael?
7. A.:
8. Q.: OK. You don't remember for sure?
9. A.: No, not exactly.
10. Q.: Did you have any idea of what the value of all
11. this stuff was, Jamie?
12. A.:
13. Q.: Let me ask you this. You, as I understand it,
14. you are on probation for one offense in January and caught
15. again, if you broke in by yourself, Jamie would you have
16. talked to the police officers about it?
17. A.: Yes.
18. Q.: You would?
19. A.: I guess so.
20. Q.: Would you have anything for better considera-
21. tion
22. A.: I don't know.
23. Q.: You don't know.
24. A.: No.
25. Q.: You think you would, though, if you had -
26. A.: Possibly

1. Q.: Possibly so?
2. A.: Possibly.
3. Q.: Have you been sentenced yet, Jamie?
4. A.: No.
5. Q.: How long ago were you convicted, of the
6. offense here in Botetourt?
7. A.: I don't know. You'd have to ask my wife.
8. Q.: You don't remember that?
9. A.: I don't.
10. Q.: Were you in court?
11. A.: Yes.
12. Q.: You had to come here. Where do you live?
13. A.: Roanoke County.
14. Q.: You had to come down here from Roanoke County
15. for a day of sentencing.
16. A.: Right.
17. Q.: You don't remember how long it's been?
18. A.: I've been down here about ten or fifteen times.
19. Q.: You don't remember standin' up sayin' "Guilty"
20. A.: Yes.
21. Q.: And you still, you can't remember.
22. MR. HEARTWELL: Your Honor, I'm gonna object to
23. this. The witness has testified that he remembers being
24. convicted but he doesn't remember when. Now that's his
25. answer.
26. JUDGE: I think it's proper examination

1. at this point. Your objection is overruled.

2. Q.: Well, let me ask you this, then. You can
3. remember everything about June the ninth, nineteen eighty-one.
4. You can't remember being convicted of a felony, or can you?
5. You have to ask your lawyer what you said. How is it you
6. can have such a crystal clear memory one day and you can't
7. recall something else?

8. A.: I don't see where it was important for me to
9. remember the exact date that I was tried on.

10. Q.: Do you think it was important to remember the
11. date you were convicted of a felony?

12. A.: No.

13. Q.: Wouldn't stick in your mind? Where'd you and
14. Michael leave from the day you say you and he broke in this
15. house?

16. A.: Where did we leave from?

17. Q.: M-hm.

18. A.: Before we went there? His parents' house.

19. Q.: His parents' house. Where is that located?

20. A.: Uh, about five or six blocks from my house.

21. Q.: Five or six blocks from your house. Where,
22. what county, James?

23. A.: Roanoke County.

24. Q.: Roanoke County. Would that be near Roanoke
25. City?

26. A.: Yes.

1. Q.: Aright. And, you're saying that you'all rode
2. around for several hours trying to pick a house at random to
3. break in?

4. A.: Right.

5. Q.: Why didn't you just ride around the Roanoke
6. area instead of down in Botetourt?

7. A.: I don't know. I suppose to

8. Q.: Did you know the Scaggs house was broken into
9. and you were one of 'em?

10. A.: No.

11. Q.: You surely had other ways to obtain that two
12. hundred dollars, didn't you James?

13. A.: No.

14. Q.: You didn't?

15. A.: No.

16. Q.: Didn't bother your conscience one bit to break
17. into a house?

18. A.: Yeh, it bothered my conscience.

19. Q.: You did it.

20. A.: Yeh.

21. Q.: You did it. Didn't bother too much, did it,
22. James?

23. A.: What factor does my conscience have to do
24. with this?

25. Q.: Well, I ask you if it did. Didn't bother it
26. too much, did it?

1. A.: Yeh. It bothered me.
2. Q.: Oh, it did. OK. - You remember January you
3. said you split the money sixty-forty, but today you said you
4. got nothing for all this.
5. A.: We split it sixty-forty and then I gave him
6. the forty.
7. Q.: In a s-, in a car, after coming out of the
8. Coin Exchange, is that where?
9. A.: Right.
10. Q.: Did you set there and you divided a hundred
11. and ten or a hundred and twelve dollars, sixty-some dollars
12. and forty-some dollars, set it down on the console, and said
13. well, good, it's all yours?
14. A.: Right.
15. Q.: Why didn't you steal all the money?
16. A.: I don't know.
17. Q.: Why didn't you use your car, James, for this
18. break-in?
19. A.: Why didn't I use it?
20. Q.: Yeh.
21. A.: It was broke down I believe at the time.
22. Q.: Broke down. You said you used Michael's little
23. what type car is it?
24. A.: Datsun.
25. Q.: What type Datsun?
26. A.: Two forty.

1. Q.: How many c-, how many seats does that car have?
2. A.: Two seats.
3. Q.: And does it have any trunk in it?
4. A.: It's got a hatchback that opens.
5. Q.: It has a hatchback. Would it be a - how big
6. is it? How big is it, James?
7. A.: Oh, about three foot wide, and three
8. Q.: Three by three. Three feet by three feet, a
9. square yard is what you're saying?
10. A.: Right.
11. Q.: Does that hatchback come down close to the
12. seat?
13. A.: M- yes.
14. Q.: "S very little clearance back there, is it?
15. A.: Right, But the hatchback wasn't shut. It
16. was left open.
17. Q.: Was left open?
18. A.: Right.
19. Q.: Y'all stuck all this into a hatchback.
20. A.: Right.
21. Q.: Oh, you did.
22. A.: Right.
23. Q.: You carried it out by yourself, you set it,
24. what'd you do, set it all in the hatchback, James?
25. A.: Yes.
26. Q.: You set any of it on the ground?

1. A.: I don't remember the exact way I placed it in
2. the car, but I put all of it in there.
3. Q.: Well did you set it on the ground and then
4. place it in?
5. A.: Set in the car.
6. Q.: All at one time.
7. A.: Right.
8. Q.: Stacked up.
9. A.: Right.
10. Q.: Hatchback didn't get in the way?
11. A.: It got in the way a little bit.
12. Q.: Little bit. Did you look through this house
13. also for items, Jamie?
14. A.: Yes.
15. Q.: What items did you look for?
16. A.: Stereo, what I looked for.
17. Q.: You found that, didn't you?
18. A.: Yeh.
19. Q.: Look for anything else, Jamie?
20. A.: No.
21. Q.: How long were you in this house, do you think,
22. do you remember?
23. A.: Five minutes.
24. Q.: Five minutes? Didn't go in any other rooms?
25. A.: No. Well, I walked through the kitchen,
26. through the living room.

1. Q.: Through the kitchen and the living room?
2. A.: Right.
3. Q.: And then what?
4. A.: Into the bedroom where I found the stereo.
5. Q.: So you just immediately went straight to the
6. bedroom where the stereo was at?
7. A.: No.
8. Q.: Well what did you do?
9. A.: I went through the kitchen, into the living
10. room, and then out of the living room and into the bedroom.
11. Q.: To the bedroom where this was located.
12. A.: Right.
13. Q.: Were there any rooms in between?
14. A.: No.
15. Q.: Did you look anywhere else, other than this
16. one room?
17. A.: No.
18. Q.: Do you know how many bedrooms they had in
19. that house, Jamie?
20. A.: I think it's two bedrooms.
21. Q.: Two bedrooms? You looked at nothing else in
22. that house?
23. A.: Just the living room, that's all.
24. Q.: How many, you just, if I understand, in five
25. minutes you basically went in the house and put everything
26. in and away you went, quick as you could.

1. A.: Yes.
2. Q.: Did you go back, you went back into the house,
3. the second time, didn't you?
4. A.: Right.
5. Q.: What you do that for?
6. A.: To see if he was ready to go.
7. Q.: To see if he was ready to go? Didn't look
8. around no more?
9. A.: No.
10. Q.: Who do you live with Jamie?
11. A.: My parents.
12. Q.: Who did you live with when this happened in
13. June?
14. A.: My parents.
15. Q.: Who did you live with in January, 1981?
16. A.: My parents.
17. Q.: You've lived with your parents all along, the
18. same town and the same neighborhood. Well, did your parents
19. broadcast about your being in all this trouble?
20. A.: No.
21. Q.: They had to keep quiet I would think.
22. A.: Yeh. Why -
23. Q.: Even the period of time about your probation
24. has been kept quiet hasn't it? Nobody else's business.
25. MR. HEARTWELL: Judge, I -
26. MR. CRUSH: I have a reason for it, Judge.

1. MR. HEARTWELL: Let me make my objection, please.
2. MR. CRUSH: I'm sorry, terribly sorry.
3. JUDGE: Aright.
4. MR. HEARTWELL: Truthfully, I don't see the
5. relevance, what his parents keep quiet, has that got to do
6. with anything that we're here trying to do.
7. JUDGE: Well, in the abstract, I'm sure
8. it won't, assuming you can show it relevant by linking with
9. his other testimony.
10. MR. CRUSH: I believe so. He's already
11. answered. His parents kept it quiet. And you kept it quiet
12. in the neighborhood, didn't you, Jamie?
13. A.: Yes.
14. MR. CRUSH: Aright.
15. MR. HEARTWELL: Now what's the connection?
16. MR. CRUSH: I'm just goin' about the, his,
17. his sentence. I'm not going to ask any more-
18. MR. HEARTWELL: Alright. The objection then.
19. JUDGE: Aright. The objection is over-
20. Ruled at this point, and if it fails to prove relevant with
21. other testimony then I'll instruct the jury to disregard it.
22. MR. HEARTWELL: He said he was finished.
23. JUDGE: Well I know, that's what I'm
24. saying. He's gonna link it up with other testimony.
25. MR. CRUSH: Let me ask you this, Jamie. You
26. testified you took this stuff over to Coin Exchange in Roanoke

1. City. How many trips in and out did you make with that stuff?
2. You're sure it's just one like you said here before?
3. A.: No.
4. Q.: What did you do?
5. A.: Carried it in - - about two trips.
6. Q.: About two trips?
7. A.: Yes.
8. Q.: This amplifier, this Pioneer amplifier you
9. made reference to earlier, where had you gotten that?
10. A.: Best Products.
11. Q.: Best Products?
12. A.: M-hm.
13. Q.: And, you sold it to Michael, to Michael you
14. say for how much?
15. A.: Thirty-five dollars.
16. Q.: Thirty-five dollars? Had you even taken out
17. of the box when you sold it to him?
18. A.: Yes.
19. Q.: It wasn't in the box when you sold it to him?
20. You said "yes". I presume you said the same thing.
21. A.: No. It was in the box when I sold it to him.
22. Q.: Oh, it was, in the box when you sold it to
23. him.
24. A.: I thought you meant if I had it out prior to
25. selling it.
26. Q.: Aright. So you had had it out of the box

1. prior to selling it to Michael.
2. A.: Right.
3. Q.: So, what did you do, you just buy it at Best's
4. and then store it at your house and then sell it to him?
5. A.: No. I had had it out prior to selling it to
6. him.
7. Q.: You worked for Michael before hadn't you,
8. James?
9. A.: Yes.
10. Q.: Has he always paid you when you worked for
11. him?
12. A.: Most of the time.
13. Q.: Most of the time?
14. A.: M-hm.
15. Q.: In fact, you probably worked for him some
16. time prior to this, hadn't you?
17. A.: Right.
18. Q.: You'd seen him socially before this, just
19. around this time, too,
20. A.: Yes.
21. Q.: You couldn't work your debt off?
22. A.: No.
23. MR. CRUSH: No further questions, your Honor.
24. JUDGE: Any re-direct?
25. MR. HEARTWELL: James, do you have any trouble
26. remembering the court hearing?

1. A.: Some, yes.
2. Q.: Do you know what happened when you were here
3. before?
4. A.: Right. Yes. I know what happened.
5. Q.: Just the dates you can't remember.
6. A.: Right.
7. Q.: Do you know you've been convicted of this
8. offense?
9. A.: That's right.
10. MR. HEARTWELL: That's all the questions.
11. JUDGE: Alright. You may stand down,
12. Mr. Manetta.
13. MR. HEARTWELL: We call Deputy Kelly.
14. DEPUTY KELLY, a witness called on behalf of the
15. Commonwealth, having been previously sworn, testified as
16. follows:
17. D I R E C T E X A M I N A T I O N
18. BY MR. HEARTWELL:
19. Q.: State your name, please.
20. A.: B. R. Kelly. I'm a deputy sheriff of Bote-
21. tourt County.
22. Q.: Deputy Kelly, did you participate in investi-
23. gation of this break-in and larceny of the home of the Scaggs
24. in Botetourt County?
25. A.: Yes sir. I did.
26. Q.: And, did your investigation focus on any

1. particular suspects?
2. A.: Yes sir. On James Manetta and Michael Fulcher.
3. Q.: Now, a, with reference to facts that you,
4. came to your attention during your investigation, did you
5. have occasion to search Mr. Fulcher's home?
6. A.: Yes. We did.
7. Q.: And, did you obtain a warrant before you
8. searched his home?
9. A.: Yes sir. Deputy Johnson secured a search
10. warrant, Roanoke City.
11. Q.: And what date was this search on?
12. A.: The nineteenth of June, eighty-one.
13. Q.: And where was the Fulcher house located?
14. A.: Located at eight sixteen Mississippi Avenue,
15. Northeast, Roanoke City.
16. Q.: Did you find, or did you seize any items then
17. searched?
18. A.: Yes, we did.
19. Q.: What were they?
20. A.: Two Pioneer speakers, model HPM sixty.
21. Q.: Aright. Are these the speakers that you
22. seized on the premises - -
23. A.: Yes, they are.
24. Q.: And, why were these speakers seized?
25. A.: They were seized because an informer had
26. indicated these were speakers stolen, during the, from the

1. Scaggs residence, and because they matched, the type stolen
2. reported by Mr. Scaggs as being stolen.

3. Q.: And were they subsequently identified by the
4. Scaggs' as being theirs?

5. A.: Yes sir.

6. Q.: Was Mr. Fulcher at home when you searched his
7. residence?

8. A.: I'm not certain. I believe he may have come
9. over there. He wasn't there initially, no.

10. Q.: Alright. Do you know of your own knowledge
11. if anyone else was living in the residence?

12. A.: Not that I know of, no, sir.

13. Q.: Did you notice another stereo equipment in
14. the, in the Fulcher residence?

15. A.: Yes, I did.

16. Q.: Would you briefly describe what else you saw
17. there?

18. A.: If I remember correctly there were at least
19. two more speakers and I believe there were other receiver
20. or amplifier or somethin that was still in a box. There
21. was also a turn-table there.

22. Q.: Aright. Was all of this equipment hooked up?

23. A.: The speakers were hooked up. Obviously the
24. component in the box was not. I, I'm not at all sure
25. whether the turn-table was hooked up or not.

26. Q.: Aright. Answer Mr. Crush's questions.

1. A.: Yes sir.

2. C R O S S E X A M I N A T I O N

3. BY MR. CRUSH:

4. Q.: You say you observed, I guess, I, I had
5. trouble, I'm not too, I don't know, I'm not, I don't know
6. enough about stereos but anyway you say that you saw other
7. equipment other than these two speakers here.

8. A.: Yes sir.

9. Q.: And, I'm still, a, what you see, two other
10. stereo systems?

11. A.: There were two other speakers, that I remember.
12. There was also another turn-table, which I distinctly remem-
13. ber, and if I'm not mistaken there was another component,
14. whether it was an amplifier or receiver or whatever, in a
15. box, I believe, yes sir.

16. Q.: Do you remember where it was setting at all?

17. A.: It, it would've had to been in the, as you go
18. in the front door, I believe there's a bar, there, and this,
19. this component in a box, I believe it was either on the bar
20. or behind the bar or at least in that same area.

21. Q.: That same area?

22. A.: Yes sir. If I remember correctly. It's been
23. a long time.

24. Q.: Do you have stereo equipment? Have a stereo
25. at home?

26. A.: I've got one that I purchased about, about

1. nine years ago.

2. Q.: Aright. Do you understand what component
3. systems are as opposed to just one box, so to speak?

4. A.: I would think component system would mean
5. different parts that would work together, yes sir.

6. Q.: It would be not unusual to have four speakers,
7. the four speakers, hooked up to one system.

8. A.: Wouldn't be at all unusual, that's right.

9. Q.: There's nothing really unusual about the ,
10. house was there?

11. A.: No sir.

12. Q.: Your informer, that was James Manetta, wasn't
13. it? James Edward Manetta.

14. A.: Yes sir.

15. Q.: That's your sole informant.

16. A.: Yes sir.

17. Q.: Were all these items in plain view in this
18. bar?

19. A.: Well, you had to step behind the bar, I
20. think, to look at the, turn-table, but other than that, yes
21. sir.

22. Q.: Nothin unusual. They were all sitting in one
23. room, the den, I guess, and it has a bar.

24. A.: Well, as you go in, if I remember right, as
25. you go in, there's a, I guess, a, a, an entry foyer or what-
26. ever you call it. There's a bar to the left as you go into a

1. what I guess would be called a den, or sitting room. The
2. speakers were there next to the door, but I believe they
3. were actually in the den.

4. Q.: How long have you known Mr. James Manetta,
5. before you, before he told you about all this?

6. A.: How long had I known him?

7. Q.: For how long, he's been down here at the
8. jail? I presume he -

9. A.: He was arrested the day before that. No sir.
10. I don't know that he was in jail. He may have posted bond,
11. I don't know.

12. Q.: Where did you talk to him? Did he come to
13. your office?

14. A.: I talked to him on the way to the Sheriff's
15. office, and at the Sheriff's office.

16. MR. CRUSH: We have no further questions.

17. JUDGE: Re-direct? Thank you.

18. MR. HEARTWELL: I'm sorry, Judge. We do have
19. one question, if I may.

20. JUDGE: Aright.

21. MR. HEARTWELL: Deputy Kelly, I take it, well,
22. I don't know whether I ought to take it. Were these the
23. only items that were seized or were other items seized?
24. These two speakers.

25. A.: There were other items seized but not pertain-
26. ing to this particular case.

1. Q.: But these were obtained during the Scaggs
2. break-in.

3. A.: Yes sir. These speakers.

4. MR. CRUSH: Now wait a minute. Did you take
5. those items out of Michael's house or

6. A.: Sir?

7. MR. CRUSH: Did you take other items out of
8. his house other than these two speakers?

9. A.: I didn't, no sir. Detective Smith did.

10. MR. CRUSH: I have no further questions.

11. JUDGE: You may stand down.

12. MR. HEARTWELL: We call Arthur Almond.

13. ARTHUR ALMOND, a witness called on behalf of the
14. Commonwealth, having been previously sworn, testified as
15. follows:

16. D I R E C T E X A M I N A T I O N

17. BY MR. HEARTWELL:

18. Q.: State your name, please, sir.

19. A.: Arthur Wilson Almond, the second.

20. Q.: And Mr. Almond, where are you employed?

21. A.: Piedmont Airlines.

22. Q.: What's your job?

23. A.: I am flight services agent.

24. Q.: Do you know the defendant here, Michael
25. Fulcher?

26. A.: Yes, I do.

1. Q.: How long would you say you've known him?
2. A.: About ten years.
3. Q.: Have you known him on a social basis?
4. A.: Yes. Yes sir.
5. Q.: He was, or is a friend of yours?
6. A.: Yes sir.
7. Q.: Aright. Now, did you have occasion to be at
8. Mr. Fulcher's home on Mississippi Avenue around the thirteenth
9. or fourteenth of June nineteen eighty-one?
10. A.: Yes sir.
11. Q.: And what, how did you happen to be there?
12. A.: I went, a, I started out, and went to the
13. lake and I came back and I was invited over to his home, and
14. we stopped by there/
15. Q.: Alright. Now, Mr. Almond, let me ask you to
16. speak up so the , everybody can hear you. I'll just talk at
17. your side here. Now, about, time, of day was it that you'all
18. got to the residence on Mississippi Avenue?
19. A.: It was later in the evening. I don't remember
20. theprecise time.
21. Q.: Aright. And, just tell us briefly what took
22. place once you got there.
23. A.: Uh, I was, propositioned with a sale of a
24. stereo and a
25. Q.: By whom?
26. A.: Uh, the defendant.

1. A.: Uh, the defendant.
2. Q.: Aright.
3. A.: Uh, I decided to buy it, which was on the
4. fifteenth, two days later when I bought it.
5. Q.: Aright. Now, what, did you buy a complete
6. stereo system, did you buy certain components, what exactly
7. did you buy?
8. A.: I bought the complete system.
9. Q.: and, consisting of
10. A.: A, tuner, turn-table, two speakers.
11. Q.: A turn-table, two speakers-
12. A.: And a tuner, yes sir.
13. Q.: A tuner, receiver, is that the
14. A.: I guess.
15. Q.: OK. Now, Mr. Almond, let me ask you to step
16. outside the witness stand, and look at this, receiver and
17. turn-table, that are, have been labeled Commonwealth's Exhi-
18. bit Four. Are they familiar to you?
19. A.: Yes sir. That's the tuner and turn-table that
20. I purchased, the speakers.
21. Q.: Aright. So, what you're saying, you bought
22. this turn-table and receiver -
23. A.: Yes sir, and two speakers.
24. Q.: And some other set of speakers.
25. A.: Yes sir. Those aren't the ones I bought.
26. Q.: Aright. A, how much did you pay Mr. Fulcher

1. for these items?
2. A.: Three hundred and fifty dollars.
3. Q.: And, was anyone else present at his home at
4. the time?
5. A.: Yes sir. Mr. Bowers.
6. Q.: Mr. Bowers?
7. A.: M-hm.
8. Q.: Anybody else?
9. A.: No sir.
10. Q.: Did Mr. Fulcher make any statement to you
11. about what, where he obtained these items?
12. A.: Uh, he said that, a, the system had come from
13. Ohio, some college town or something, I really don't know.
14. Q.: What was his connection with Ohio?
15. A.: Uh, I assumed he went to college up there.
16. He went up a couple of years and that was my understanding,
17. that
18. Q.: Alright. Was he speaking of the whole system
19. or some part thereof or what?
20. A.: Uh, I think he was speaking mostly of the
21. whole system.
22. Q.: Did he make any mention to you on this
23. occasion of Mr. Manetta?
24. A.: No.
25. Q.: Do you know Mr. Manetta?
26. A.: Uh, he grew up in the same neighborhood that

1. I did. We're all from the same area.
2. Q.: Fulcher said nothing about Manetta at this
3. time.
4. A.: No sir.
5. Q.: Where are the speakers that came along with
6. A.: I've still got 'em.
7. MR. HEARTWELL: Answer Mr. Crush's questions.
8. C R O S S E X A M I N A T I O N
9. BY MR. CRUSH:
10. Q.: Arthur, I guess you - - How long have
11. you known Michael? For ten years?
12. A.: Yes sir, ten years.
13. Q.: Pretty good friend?
14. A.: Fairly good, yes sir.
15. Q.: Alright. And you went over and, you'd been
16. in Michael's house before, hadn't you?
17. A.: Yes sir.
18. Q.: And you're aware that he had one, you'd call,
19. I guess, new system, stereo system, and one stereo that his
20. parents gave him.
21. A.: Mhm. You talkin' about the old stereo?
22. Q.: The old stereo, yes. So, when you walked in
23. this time, there was a different system sitting there also.
24. A.: Correct.
25. Q.: Y'all had been to the lake, hadn't you?
26. A.: Yes sir.

1. Q.: Smith Mountain?
2. A.: Uh, yes sir.
3. Q.: At whose insistence? Had Mike called you, you
4. called him -
5. A.: I don't remember, who called.
6. Q.: Y'all just got together and went. And, was
7. there any mention of stereo before you got back to Mike's
8. house?
9. A.: No sir .
10. Q.: Y'all just goofin' off with Mr. Bowers?
11. A.: Excuse me?
12. Q.: Were you and David Bowers and Mike
13. A.: I think we stopped by and picked him up,
14. brought him over, he was gonna go to work the next day or so.
15. I think he worked for Mr. Fulcher.
16. Q.: Aright. Have you, you and Michael, what type
17. of speakers do you still have at home?
18. A.: Uh, they're Realistic speakers. I don't know
19. exactly.
20. Q.: Could be Radio Shack possibly?
21. A.: Yes. Probably so. It's Realistic.
22. Q.: Were y'all drinkin' some?
23. A.: Uh, yeh, we probably drank a few beers.
24. Q.: Probably drank a few beers. And this was at
25. night, I think. That night when you got back.
26. A.: Correct.

1. Q.: When you bought this from Michael, did you
2. ask for a receipt?
3. A.: No sir. I didn't.
4. Q.: Why not?
5. A.: I just didn't think it'd be necessary.
6. Q.: Grew up in the same neighborhood. Knew him
7. a long time, huh? Is that the reason?
8. A.: Excuse me? Oh. Yeh. I trusted him, yeh.
9. Q.: And Mr. Manetta's been over at Michael's house
10. before, hadn't he? You're aware of that?
11. A.: Yes sir.
12. Q.: D'y'all look at this system quite a bit?
13. A.: Uh, yes, we did, and there was a, couple
14. other components there, - we fooled around with an equalizer.
15. Q.: Were y'all sittin' there and sayin' somethin'
16. like, Michael, say, David, well my stereo's better 'n yours,
17. or this is better than that one there.
18. A.: I think that the defendant, and Mr. Bowers got
19. into a discussion of that nature. I didn't participate in
20. any of it.
21. Q.: But you were there when the comparison
22. A.: Yes.'
23. Q.: And there was a whole lot goin' on then,
24. wasn't there?
25. A.: Mm, not a whole lot -
26. Q.: Well, I mean, talk about systems and every-

1. thing else. A lot about that stereo system.
2. A.: There's a lot of technical problems. The
3. defendant and Mr. Bowers. Yes sir.
4. Q.: Do you remember Michael saying that these
5. speakers are mine? I got 'em in Ohio. Remember that?
6. A.: Pointing to these speakers in front of you?
7. Q.: No, he said something, something about them
8. coming from Ohio, didn't he?
9. A.: Yes sir.
10. Q.: Mike could, Mike could have been referring to
11. just the speakers came from Ohio, couldn't he?
12. A.: There's a possibility of that.
13. Q.: There's a lot - When did you pay Mike?
14. A.: I paid him on Monday and I think it was the
15. fifteenth of June.
16. Q.: Pay him by check?
17. A.: No. I paid him cash.
18. Q.: Paid him cash? - Where's Michael's stereo
19. system in the house? Which one does he use? Where, in his
20. house, which system's Michael's? Which one 'd he use? The
21. old, his parents gave him, or the new one?
22. A.: You're referring to Mississippi. I'm not
23. really sure which one he actually uses. There's two or
24. three there so -
25. MR. CRUSH: OK. I have no further questions.
26. JUDGE: Any re-direct? Thank you. You

1. may stand down.

2. MR. HEARTWELL: Call Deputy Johnson.

3. DEPUTY JOHNSON, a witness called on behalf of the
4. Commonwealth, having been previously sworn, testified as
5. follows:

6. D I R E C T E X A M I N A T I O N

7. BY MR. HEARTWELL:

8. Q.: State your name and position, please.

9. A.: Albert Hill Johnson, Deputy Sheriff of
10. Botetourt County.

11. Q.: And, Deputy Johnson, I believe that you parti-
12. cipated in the investigation of this, break-in and larceny
13. to the Scaggs residence?

14. A.: Yes sir.

15. Q.: And did you also participate in the search
16. of the, Fulcher residence?

17. A.: Yes sir. I did.

18. Q.: And do you recall what day that was?

19. A.: It was on, June the nineteenth.

20. Q.: June the nineteenth?

21. A.: Yes sir.

22. Q.: And the, offense occurred on what day?

23. A.: On June the, ninth.

24. Q.: June the ninth?

25. A.: Yes sir.

26. Q.: Now, Deputy Kelly has testified that these

1. two speakers were among the items seized at the Fulcher
2. residence.

3. A.: Yes sir.

4. Q.: Aright. When you were there, did you notice
5. any other stereo equipment in the residence?

6. A.: Yes. There was another stereo and a turn-
7. table and two more speakers that I can recall -

8. Q.: Aright.

9. A.: - and a, an amplifier of some sort in a card-
10. board box that was still in a carton sitting on the bar stool

11. Q.: Aright. Now, the next day, were you on duty
12. here in the Sheriff's department?

13. A.: Yes sir. On June twentieth.

14. Q.: Do you recall what day of the week that would
15. have been?

16. A.: It was on Saturday.

17. Q.: And, did you have any contact with Mr. Fulcher
18. on that day?

19. A.: Yes sir.

20. Q.: How did that come about?

21. A.: He came in to the Sheriff's office, after he
22. had learned that we had warrants on file for his arrest, he
23. came in to be processed and to arrange for bond.

24. Q.: And, these warrants had to do with these
25. Scaggs offenses?

26. A.: Yes sir.

1. Q.: Alright. Now when Mr. Fulcher came in then
2. did you question him about these offenses?

3. A.: Uh, yes sir. I asked him about the speakers.

4. Q.: Well, prior to that did you advise him of his
5. constitutional rights?

6. A.: Right. Yes sir.

7. Q.: Would you repeat what you advised him?

8. A.: I read him the Miranda warning from this little
9. card that I carry in my wallet which says, "You have the
10. right to remain silent. Anything you say can and will be
11. used against you in a Court of law. You have the right to
12. talk to a lawyer and have him present with you while you are
13. being questioned. If you can not afford to hire a lawyer
14. one will be appointed to represent you before any questioning
15. if you wish one."

16. Q.: Did he appear to understand his rights?

17. A.: Yes sir.

18. Q.: Alright. What did you ask him at that point?

19. A.: I started off, I told him that the two speak-
20. ers that we had seized at this residence had been identified
21. as the property from, about the --

22. Q.: Right.

23. A.: - and, he told me that he had traded James
24. Manetta two large speakers for the two smaller ones, the two
25. Pioneers, and an amplifier.

26. Q.: Alright. He had traded two large speakers for

1. these two speakers?

2. A.: Yes sir.

3. Q.: Aright. Did he make, a, do you know what
4. amplifier he was referring to?

5. A.: He, told me that there was one that was in a
6. box, cardboard box, settin on a bar stool and he asked me if
7. I saw it.

8. Q.: Did he indicate to you that he had, sold part
9. of the equipment to Almond at that point?

10. A.: No sir.

11. Q.: Did he make any mention to you about having
12. been to Bristol on that day?

13. A.: No sir.

14. Q.: Did he say anything to you at all about Ohio?

15. A.: Not that I recall, no.

16. MR. HEARTWELL: Answer Mr. Crush's questions.

17. C R O S S E X A M I N A T I O N

18. BY MR. CRUSH:

19. Q.: Michael is charged with an offense and he
20. comes down to see you and you read him the Miranda rights,
21. saying he doesn't have to say a thing.

22. A.: Yes sir.

23. Q.: You tell him that these speakers were stolen.

24. A.: Yes sir.

25. Q.: And you, and he immediately said "I traded
26. with James Manetta".

1. A.: Yes sir.

2. Q.: And since you said, you said you also searched
3. the residence he made reference to an amplifier that was
4. sittin' where when you searched that house?

5. A.: It was on the bar stool in the house, fairly
6. close to these speakers.

7. Q.: In a cardboard box?

8. A.: In a cardboard box, and Fulcher asked me if I
9. saw it, on the bar stool/

10. Q.: Did he also ask you to go over to James
11. Manetta's house? His speakers were over there.

12. A.: He, I don't remember the exact words, but he
13. said that, asked me if we could get his speakers back or if
14. we would get his speakers back. I don't recall his exact
15. words.

16. Q.: Where did he ask you to go get them back?

17. A.: At Manetta's.

18. Q.: At Manetta's?

19. A.: Yes sir.

20. Q.: Did he describe those speakers to you at all?
21. at that time? Ones he said were large speakers?

22. A.: Well, we were sitting in the Sheriff's office
23. and he looked at the door, like this. He said, "They were
24. great big. They're as big as that door right there."

25. Q.: Well, from what you tell me, he seems that he
26. was a cooperative fellow. wasn't he?

1. A.: Yes sir.
2. Q.: He came in and the minute he was asked and he
3. said Manetta, that was where he got them. He might have
4. said quite a few other things I expect. Alright. I have no
5. further questions for him.
6. JUDGE: Any re-direct?
7. MR. HEARTWELL: Just briefly, your Honor.
8. Q.: Deputy Johnson, did the defendant make any
9. characterization of Mr. Manetta?
10. A.: He specifically told me that Manetta was a
11. thief.
12. MR. HEARTWELL: Alright. That's all the
13. questions I have.
14. JUDGE: Anything further?
15. MR. CRUSH: That was of course after he'd
16. been charged with this and you -
17. A.: That was after.
18. Q.: - you read the Miranda warning, didn't you?
19. A.: Yes sir.
20. Q.: He told you Manetta's a thief.
21. A.: This was after he told me that he made the
22. trade.
23. Q.: And after he, you said they were stolen he
24. said "Manetta's a thief".
25. A.: Yes.
26. MR. CRUSH: No further questions.

1. JUDGE: Alright. You may stand down.
2. MR. HEARTWELL: Commonwealth rests, your Honor.
3. JUDGE: Alright. Ladies and gentlemen,
4. I think this would be an appropriate time to take a lunch
5. recess. We're going to stand in recess until one P.M. and
6. then I would ask you on your return to the courtroom to not
7. to stay in the courtroom but report back to the jury room,
8. and I will remind you of my previous instruction and admonish-
9. ment to you that while you're in recess do not discuss this
10. matter with anyone. Do not even make a casual greeting to
11. anyone you think may be connected with this case, lest it
12. be, taken as some feeling of bias one way or the other. If
13. anyone tries to talk to you about this matter do not allow
14. it. I realize there's this tendency to want to talk about
15. it, maybe with your spouse during lunch or whatever. You can
16. have plenty of time to do that and I would ask you not to do
17. it. You may be excused until one P. M. and I would remind
18. you the, I don't know what the situation is with the roof
19. but just look up, when you go out, OK? Any motions, Mr.
20. Crush?
21. MR. CRUSH: Judge, for the record, I make a
22. motion to strike. I make it on the basis at this point in
23. time the Commonwealth has failed to at least prove a prima
24. facie case. At this point in time he hasn't done it.
25. JUDGE: Alright. Mr. Heartwell.
26. MR. HEARTWELL: I d-

1. JUDGE: Alright. At this point, the
2. evidence we have, the evidence of a co-participant, allegedly
3. at this point, and that evidence is taken as true certainly
4. that makes out a prima facie case, and the motion to strike
5. is overruled, and I note your exception for the record.
6. Declare a recess now, until,
7. MR. HEARTWELL: Your Honor, before we do -
8. JUDGE: I'm sorry.
9. MR. HEARTWELL: That's all right. Might I ask
10. that the defendant be reminded that he's not to speak to his
11. witnesses concerning what has taken place in the courtroom
12. this morning?
13. JUDGE: I would just remind, let Mr.
14. Crush remind him of, of the rule of exclusion and what it
15. means so that we don't -
16. MR. CRUSH: I - - put it this way. He
17. should not be near 'm, period. I'd just not speak to 'm
18. about the case.
19. - - - - -
20. JUDGE: All members of the jury are
21. present. You may call your next witness.
22. MR. CRUSH: David Bowers.
23. D I R E C T E X A M I N A T I O N
24. DAVID BOWERS, a witness called on behalf of the
25. defendant, having been previously sworn, testified as follows
26. BY MR. CRUSH:

1. Q.: Have you been sworn, David?
2. A.: Yes.
3. Q.: You have. Aright. For the record, taped
4. record, state your name.
5. A.: David Bowers.
6. Q.: Where do you live at, David?
7. A.: I live at fifteen Spruce Circle, in Blue
8. Ridge.
9. Q.: Aright. And how old are you, David?
10. A.: I'm nineteen.
11. Q.: Nineteen? Aright. Do you know Michael Fulcher?
12. A.: Yes sir.
13. Q.: Aright. Now, I want to call your attention
14. to, going back to June, were you present when Jimmy Manetta
15. came over?
16. A.: Uh, yes I was.
17. Q.: I want you to tell what if anything happened?
18. A.: OK. That was on June the eleventh. That was
19. a Thursday, and Michael and myself were employed at his
20. father's place of business at the time, and we came home.
21. Q.: His father's place of business, what would be
22. the name of that?
23. A.: That's Old Dominion Auto Parts.
24. Q.: All right. OK. Go on.
25. A.: And we came home to Michael's house, six to
26. six-thirty, and, when we got there, Mr. Manetta was seated

1. on the back porch. There's a few little chairs, things like
 2. that, on the back porch; and he was seated there, with some
 3. stereo equipment setting around his feet, beside him and
 4. so forth, and, when we got out there Michael unlocked the
 5. door so we could go in.

6. Q.: Were you staying at Michael's at that time?

7. A.: Yes. I was living with Mike at that time.

8. Q.: Right. It was his house. Where was that
 9. house located, do you know?

10. A.: It's eight sixteen, I believe, Mississippi
 11. Avenue.

12. Q.: Aright. Go on.

13. A.: OK. And, so, as we got there and we go into
 14. the house, we said "hello" to James and everything, and, we
 15. proceeded on into the house and he followed us in. He was
 16. carryin' some of this stereo equipment with him and so he
 17. came in and took it through the house, set it down somewhere,
 18. like on a table or somethin', and Mike told him to clear it
 19. out from in there and take it into the front room where he
 20. had bar and place it on top of the bar. So he started
 21. carrying all this stuff in. He made two, three trips, I
 22. guess, and he took it all in and set it there and he come
 23. back into the kitchen where we were at washing our hands and
 24. stuff, as we got home from work, and he asked us if we wanted
 25. to buy it. And so we told him "no", we don't have any use
 26. for it. We both own stereos, and didn't see any reason to

1. need it.

2. Q.: Alright. Now, if you would, David, I want you
3. to come around and look at this stereo equipment here and see
4. if it appears to be about the same type equipment as James
5. had.

6. A.: OK. - - - - Yeh. This appears to be it, but
7. there's a piece missing from what all he had.

8. Q.: What, what else did he have?

9. A.: He had, he had, a, amplifier, stereo amplifier,
10. and it was in this packing crate, shipping crate, whatever
11. you want to

12. Q.: You remember at all what, did you look at the
13. amplifier, see what type it was?

14. A.: Uh, yes sir. I looked at it. Was a Pioneer
15. amplifier, I'd seen before that time.

16. Q.: And did he say how much he wanted for all
17. this?

18. A.: For all that? Not at first. He was, I guess
19. he kinda wanted us to probably make him an offer first and
20. see if he could get more money than he really wanted, to
21. start with.

22. Q.: OK.

23. A.: And, he said, he'd like to sell it, or maybe
24. trade it for a car or somethin'. He didn't really care, he
25. just wanted somethin' valued for it.

26. Q.: Alright.

1. A.: So, told him we really had no use for it.
 2. He said, "Well, maybe could you sell it for me?" and we
 3. said, "Well, we got a lot of friends. Maybe somebody might
 4. want it."

5. Q.: What did, did, during the course of the con-
 6. versation, did Mike, and Manetta swap anything?

7. A/: Well, that came later on. They talked about
 8. stereo equipment, things like that a little bit. Then
 9. Manetta brought, I think it was Manetta brought the subject
 10. up, I'm pretty sure he did, about sellin' custom-made speakers
 11. Mike had. He had 'em for, I don't know how long he had 'em,
 12. a long time. They were at his mother's house, and, he asked
 13. him if he'd swap his speakers for I guess this set of speakers.
 14. And, Mike said, "Well, no, I don't think I want to do that."
 15. And so they went over it a little more and a little more and
 16. Manetta finally decided to throw in the amplifier that was
 17. in that box in the trade, and so Mike figured, "Well, a set
 18. of speakers and an amplifier and a set of speakers, a pretty
 19. fair swap." He was comin' out a little ahead -

20. Q.: If he- someone else

21. A.: That's what I say. That's what I would think
 22. in that position. I'd be coming out a little ahead.

23. Q.: Alright. So what happened then?

24. A.: Well, I guess a couple days later they made a
 25. swap. They, at that time they decided they were goin' to
 26. make a swap and I came to find out later they did.

1. Q.: Well, did Michael swap any other speakers
2. also?

3. A.: ANY other speakers?

4. Q.: Yeh. You're saying some speakers over his
5. mother's house, for these two speakers here.

6. A.: Yes sir. And the amplifier.

7. Q.: And the amplifier. But did he, swap any other
8. speakers for it?

9. A.: Not that I know of.

10. Q.: He's sittin' there without any speakers to
11. this system.

12. A.: Yeh. Well, no, I guess he might must have
13. swapped some other speakers.

14. Q.: Aright. You don't know.

15. A.: I don't really know.

16. Q.: What, if anything else happened?

17. A.: Well. It was a day or maybe two later, Arthur
18. Almond came over to Mike's house.

19. Q.: D'you know Arthur prior to this?

20. A.: Yeh, I've known Arthur for a long time.

21. Q.: Aright. Now, what happened?

22. A.: And, he came over and looked at the stereo
23. equipment. Well, he actually didn't come over to look at it.
24. He came over just to sit around and shoot the breeze with us
25. drink a few beers like he usually does. So in the course of
26. the evening we decided there was nothing good on TV and

1. decided to play some music and so I went ahead and turned on
2. the stereo sitting around in the living room there, around
3. where the bar was at, where the stereo stuff was, and, he
4. noticed all this other stereo equipment that hadn't been
5. there before, so he asked about it and, Mike said, um, it was
6. for sale. If he hadn't said it I would have.

7. Q.: Well, how did Arthur hear it then played?

8. A.: It was already hooked up, I believe. I'm not
9. sure, just turned it on and Mike had a set of speakers there
10. in the house, another set, and, he had hooked those up to it
11. or maybe they were already hooked up to it, I don't really
12. know, but there was those speakers of his. He had bought
13. them when he lived in Ohio, when he was goin' to school.

14. Q.: Aright. How long a period of time was Arthur
15. there? Any idea?

16. A.: A few hours.

17. Q.: Where had y'all been? to the lake or anywhere?

18. A.: Uh, I hadn't been to the lake. They, they
19. had been to the lake, Mike and Arthur had.

20. Q.: What if anything else did you see, or hear?
21. What if anything else?

22. A.: Oh, we started discussing a, stereos in
23. general, to start with, we all did, and, we discussed how
24. this stereo has more good points or bad points than this one
25. and how this one played louder than that one and just general
26. talk about 'em, and then after a while Arthur said, well,

1. he'd kinda like to buy that one.

2. Q.: Aright. So

3. A.: So we started discussing prices.

4. Q.: Do you remember how much, if anything, Arthur

5. paid for it?

6. A.: Uh, they decided on three hundred and fifty

7. dollars.

8. Q.: Aright. Did Arthur pay him then?

9. A.: No. He said it'd be Monday before he'd get

10. the money from the Credit Union.

11. Q.: Aright. Did you, talk to James Manetta about

12. this?

13. A.: You mean about sellin' the stereo?

14. Q.: Or whether or not he had received the three

15. hundred and fifty dollars?

16. A.: Uh, well, the Monday following this, I ran into

17. Mike - - - and he gave me ten dollars and I said, "Well,

18. what's ten dollars for?" "That's ten dollars Manetta owes

19. you." - - We'd made a car, or football game or baseball

20. game or somethin', kind of a bet, or maybe I loaned him ten

21. dollars, I don't even remember now, but I do remember getting

22. that ten dollars. So he gave me that and said "I got the

23. twenty out of him that he owed me, too". He said "Arthur

24. paid me for the stereo and I was gonna take the money that

25. Manetta owed me but I took Arthur - - - first. Later

26. that evening, Manetta called me. He called and asked if I'd

1. come up and get him and take him to the store to buy a couple
 2. cases of beer. When he was over talkin' or tryin' to get us
 3. to sell the stereo for him he said "I'll buy you a couple
 4. cases of beer if you sell it." So I went and picked him up,
 5. and I think he put some gas in my car, and we went to the
 6. store and got a couple cases of J. R.'s beer. I'll never
 7. forget that because it was just out for a little while and
 8. they had it on TV -

9. Q.: Did you and James, or James Manetta and Michael
 10. and Almond had grown up together?

11. A.: We were all in the same neighborhood.

12. Q.: Would you say it was unusual for James to
 13. appear on Mike's porch with this speak-, with this stuff?

14. A.: Well, it was kind of strange, but I didn't
 15. think it was that strange. He's kinda little I guess you'd
 16. say eccentric, like weird, about his ways.

17. Q.: Do you know how he got there?

18. A.: I don't have any idea. He didn't have a car.

19. Q.: D'you know how he left?

20. A.: Uh, I don't know. He walked away from the
 21. house.

22. Q.: OK. From Michael's house is there a store
 23. where there's a public phone?

24. A.: Yes.

25. Q.: OK.

26. A.: About a half of block away from the house.

1. Q.: Well, you're saying that Manetta left the
2. stereo at Michael's house?
3. A.: Yes. It was at the house.
4. Q.: And he said to Michael, you know, if you
5. A.: Well, he directed it at both of us. He
6. directed the statement to both of us, that either one of us
7. could sell the stereo equipment.
8. Q.: Did you try and sell it?
9. A.: Did I try and sell it? No, because nobody I
10. knew came by in the time period that would want anything.
11. Q.: You think Jamie's coming back to get it?
12. A.: Do I think he was ever coming back to get the
13. stereo?
14. Q.: Well, he left it there. Do you think, did he
15. say he'd come back to pick the stereo up?
16. A.: It was just more or less assumed if nobody
17. bought it from him -
18. Q.: Did Jamie come and go often at Michael's?
19. A.: He came over fairly often.
20. Q.: Well, out of this you gained what, ten dollars
21. some beer,
22. A.: I didn't really gain ten dollars. It was
23. already owed to me.
24. Q.: Oh. OK.
25. A.: I got ten dollars that was owed to me. And I
26. gained a few beers..

1. Q.: Well, Arthur Almond came by quite a bit too?
2. Arthur would come by quite a bit too. How are you able to
3. tell if these are sim-, look like James brought over?
4. A.: You can tell - when you hear 'em.
5. Q.: Well, you said, it looked like what James
6. brought over. I'm asking -
7. A.: It looks like the same stuff.
8. Q.: Do you, what, do you remember what type turn-
9. table or anything like that?
10. A.: I think it's a Sony, or something like that.
11. Q.: The speakers?
12. A.: I think they're Pioneer, I'm not sure. I
13. think the receiver was a Morantz.
14. Q.: Well, did this strike you as suspicious at
15. all that Jamie came up there like that?
16. A.: What, he came to the house?
17. Q.: Yes.
18. A.: He's been over to the house quite a few times.
19. Q.: Draggin' in a stereo?
20. A.: M, no, not draggin' in a stereo.
21. Q.: W, he had it with him, didn't he?
22. A.: W, that one time he did. But not every time
23. he came he didn't bring a stereo.
24. Q.: As far as you know, did Manetta owe Michael
25. any money at that time?
26. A.: He owed him twenty dollars, like I said before.

1. He said he'd gotten all the money.

2. Q.: OK. That's all the questions we have, Judge.

3. JUDGE: Your witness, Mr. Heartwell.

4. C R O S S E X A M I N A T I O N

5. BY MR. HEARTWELL:

6. Q.: Mr. Bowers, you were recently convicted of

7. possession of cocaine?

8. A.: Yes sir.

9. MR. CRUSH: Well, Judge, I object to that.

10. JUDGE: On what basis?

11. MR. CRUSH: I think that the, Commonwealth

12. can ask whether he's been convicted of a felony or not, but

13. I make a motion to

14. MR. HEARTWELL: I withdraw the question.

15. MR. CRUSH: Well, I don't think you can with-

16. draw it like that, Judge.

17. JUDGE: Well, I think, he, I would

18. admonish the jury to disregard the question and answer as it

19. was asked. You may rephrase your question, Mr. Heartwell.

20. MR. HEARTWELL:

21. MR. CRUSH: - - make a motion at this time.

22. JUDGE: Go ahead and make it.

23. MR. CRUSH: I'm gonna move for a mistrial.

24. JUDGE: Alright. And I'll overrule

25. your motion.

26. MR. CRUSH: OK. OK.

1. Q.: Have you ever been convicted of a felony?
2. A.: Yes sir.
3. Q.: What?
4. A.: Possession of cocaine.
5. Q.: And, what sentence did you receive?
6. MR. CRUSH: Judge, I thought
7. JUDGE: Objection sustained.
8. Q.: Have you ever been convicted of any other
9. offenses?
10. A.: No sir.
11. Q.: Now, Mr., Bowers, where did the three hundred
12. and fifty dollars figure come from?
13. A.: It came from Mr. Manetta.
14. Q.: In other words, this three hundred and fifty
15. dollar figure that it was sold for was not a figure that was
16. drug out of the air. This was what Manetta said he wanted
17. for it.
18. A.: Yes.
19. Q.: So that was the basis of Almond and Fulcher
20. made an agreement on the three hundred and fifty dollar
21. figure.
22. A.: Yes sir.
23. Q.: Manetta said he wanted it.
24. A.: Yes..
25. Q.: For what?
26. A.: For what? the stereo.

1. Q.: Which parts?
2. A.: The parts that Mr. Almond got, not the set of
3. speakers - the amplifier in the box -
4. Q.: OK. So, in other words, what Mr. Manetta
5. wanted was three hundred and fifty dollars simply for the
6. receiver and the turn-table.
7. A.: I guess so. Yes. You have to ask him.
8. Q.: Well, this is what you testified to.
9. A.: I'm testifyin' to what I know about. I'm
10. assuming that's what he wanted it for because the speakers
11. and the amplifier in the box weren't even there.
12. Q.: In any event, three hundred and fifty is what
13. Manetta said.
14. A.: Yes.
15. Q.: You're sure about that.
16. A.: Yes.
17. Q.: And three hundred and fifty was the deal they
18. struck, Fulcher and Almond.
19. A.: Yes. As far as I know.
20. Q.: But what Fulcher sold to Almond was more than
21. just this speaker, more than just this receiver and this
22. turn-table, wasn't it?
23. A.: Yeh, I guess it was. He also had the speakers.
24. Q.: He also included a set of speakers in there
25. with it.
26. A.: Yes.

1. Q.: So what you're sayin' is Fulcher got nothin'
2. for the speakers.

3. A.: Well, he got this set of speakers and that
4. amplifier.

5. Q.: Well, what I'm sayin' is, he had this set of
6. speakers, got that on a swap, right?

7. A.: I assumed he did.

8. Q.: And then he went ahead and sold this turn-
9. table and this receiver and another set of speakers to Almond.

10. A.: Yes.

11. Q.: Right?

12. A.: Yes, as far as I can tell.

13. Q.: And then he got three hundred and fifty dollars
14. is all the money he got.

15. A.: As far as I know it was.

16. Q.: And all that he turned over to, to Manetta.

17. A.: I assumed so.

18. Q.: So he gave him the speakers for free, didn't
19. he?

20. A.: You have to ask him. I don't know.

21. Q.: Well, the three hundred and fifty dollars, he
22. got was just what, just what Manetta had asked for, just for
23. the turn-table and for the receiver. Right?

24. A.: I guess so. You're, you're tellin' me. Go
25. ahead and call Manetta.

26. Q.: Well, you tell me. What did Manetta want?

1. A.: He wanted three hundred and fifty dollars.
2. Q.: And that's what he got.
3. A.: I assume so. You'd have to ask Manetta.
4. Q.: Oh, you don't know that he got three hundred
5. and fifty dollars.
6. A.: I know that he got money. I don't know how
7. much. I didn't count it. So I have no idea.
8. Q.: Well, how much do you think he got?
9. A.: A large sum. He had a large amount of money
10. when I saw him -
11. Q.: You testified that three hundred and fifty
12. dollars was the deal they had struck.
13. A.: Yes. That's what I heard them talkin' of,
14. was three hundred and fifty dollars. I never saw the money
15. change hands.
16. Q.: So when Almond paid him what they talked about
17. he would have paid him three hundred and fifty dollars.
18. A.: Yes, that's my assumption.
19. Q.: Which is what Manetta wanted for just these
20. two pieces.
21. A.: I suppose so.
22. Q.: So Fulcher gave him two free speakers is what
23. you're testifyin' to.
24. A.: That's the way it appears.
25. Q.: Aright. Now. You stated that you had known
26. Mr. Manetta for some period of time.

1. A.: Yes.
2. Q.: How long?
3. A.: About all my life.
4. Q.: All your life, and y'all were raised in the
5. same neighborhood?
6. A.: Yes.
7. Q.: Your mothers were friends or related?
8. A.: They were friends. They grew up together.
9. Q.: And you know, of course, that Mr. Manetta has
10. had some scrape with the law?
11. A.: I know he had a lot of traffic tickets.
12. Q.: Now, you know more than that, don't you?
13. A.: Now I do, yes.
14. Q.: And you knew it at that time?
15. A.: No. I did not.
16. Q.: You remember being asked that in the last, in
17. the last trial? Said you knew he'd been convicted of break-
18. ing and entering?
19. A.: I didn't know that. I knew that during the
20. last trial.
21. Q.: Did y-, but you're saying that you didn't
22. know that at the time this occurred?
23. A.: No.
24. Q.: But you knew he'd been in trouble.
25. A.: I knew he had traffic tickets.
26. Q.: Did you know he was on probation?

1. A.: No.

2. Q.: You had no knowledge of that. But here comes
3. Mr. Manetta, up on this day and sets all this up on the porch,
4. nobody else around, no car, no friend, nobody claims to own
5. it, brings it in and you don't think that's in the least'
6. suspicious.

7. A.: I never said no one claimed to own it. He
8. brought it so he owned it.

9. Q.: Well, you didn't think that was in the least
10. suspicious.

11. A.: It was a little strange, but not anything was
12. suspicious.

13. Q.: Did you ask him where he got it?

14. A.: No. I saw a piece and I recognized it. So I
15. assumed it all come from his house.

16. Q.: Where was Manetta working at that time?

17. A.: He wasn't working.

18. Q.: He wasn't working?

19. A.: Not that I know of.

20. Q.: Would you disagree that this is a fairly nice
21. collection of stereo components?

22. A.: Looks like some nice stereo components.

23. Q.: Probably worth a thousand dollars or more
24. when new.

25. A.: I don't know. It could be.

26. Q.: Well, here's a man's not working, got no job,

1. been in trouble, shows up on the porch with a thousand dollars
 2. worth of new stereo equipment and you don't think anything
 3. is strange.
 4. MR. CRUSH: He's answered that question,
 5. Judge. Maybe he worded it differently.
 6. JUDGE: Do you object to the question?
 7. MR. CRUSH: Yes. I object to the question.
 8. JUDGE: Overruled.
 9. Q.: You didn't think it was strange.
 10. A.: No. I didn't think it was strange.
 11. Q.: Just another day in your life.
 12. A.: Yeh. Just another day in my life.
 13. Q.: Now, you also stated, Mr. Bowers, that this
 14. occurred, actually the attorney didn't ask you this, you
 15. just stated, that this occurred on June the eleventh, which
 16. was a Thursday.
 17. A.: Yes.
 18. Q.: That's what your statement was. Is that
 19. correct?
 20. A.: Yes sir. It is.
 21. Q.: That's when you remember it happened?
 22. A.: Yes.
 23. Q.: How do you happen to remember that day so
 24. well?
 25. A.: How I remember?
 26. Q.: Yes sir.

1. A.: Well, it's not every day someone's sittin' on
2. the back porch with stereo equipment.

3. Q.: Well, I agree with you on that, but my ques-
4. tion is how did you remember this being June the eleventh,
5. being a Thursday?

6. A.: Well, when I was asked to testify in this trial
7. I went over these things with Mr. Crush and relied on records
8. from the junk yard where we were workin' at that time and I
9. pieced it all together, - - having things to trigger my
10. memory.

11. Q.: What were some of these things?

12. A.: Sellin' receipts from that week, prior week.

13. Q.: Do you remember any of these other events
14. that helped you place this day as Jan-, as June the eleventh
15. Thursday?

16. AA: I remember quite a few things. Which would
17. you like to know about?

18. Q.: Well, let me just ask you this. Can you
19. remember anything else that happened that week?

20. A.: Um, let's see. We pulled quite a few cars
21. down the junk yard.

22. Q.: Do you remember something about every week
23. that took place in the summer of eighty-one?

24. A.: No. Not every week. I don't think about
25. every week of the summer of eighty-one.

26. Q.: Well, isn't it true, though, that when this

1. happened you didn't go and mark the calendar, or anything of
2. that nature?

3. A.: No. I didn't mark my calendar.

4. Q.: And it was only later when Mr., after he was '
5. charged, and this matter came to trial, that you got together
6. with Mr. Crush to talk about it.

7. A.: Yes.

8. Q.: Is that correct?

9. A.: Yes.

10. Q.: And that's when you went back and tried to
11. figure out what day this was?

12. A.: Yes sir.

13. Q.: Now, Manetta had asked, I take it from what
14. you said, you and Mr. Fulcher to sell this equipment for him.
15. Is that correct?

16. A.: Yes. If we could.

17. Q.: And he made this offer to you both or to Mr.
18. Fulcher or to you or

19. A.: To both.

20. Q.: And the three hundred and fifty dollar figure
21. was that negotiated with both of you or just with Mr. Fulcher?

22. A.: Manetta expressed that figure?

23. Q.: To both of you?

24. A.: Yes.

25. Q.: When you were there?

26. A.: Yes. I was there.

1. Q.: Let me ask you again then, what did he intend
2. to sell for three hundred and fifty dollars?
3. A.: The stereo equipment.
4. Q.: What part of it?
5. A.: Turn-table, receiver, and I guess a set of
6. speakers.
7. Q.: This set of speakers?
8. A.: I don't know.
9. Q.: Well, now, I want, Mr. Bowers, either he made
10. a deal with you or he didn't.
11. A.: He didn't make a deal with me.
12. Q.: Alright. So you were not involved, then.
13. A.: No. I was there. I saw what was goin' on.
14. I wasn't payin' real close attention to it. Wasn't really
15. that interested.
16. Q.: My question was, did he try to make this
17. offer to you alone, or Mr. Fulcher alone, or to both of you?
18. A.: Huh, it was a statement to both of us. It
19. was there in the kitchen, gettin' cleaned up, we were
20. covered with grease, washin' some grease off our hands.
21. Q.: So you were involved, in, in the discussion.
22. A.: I was just acknowledg - - - -
23. Q.: Well, what did you understand about the deal?
24. What was being sold? Let's get back to that.
25. A.: Hm. 'All the stereo equipment. This thing
26. right here, is what I understood as being sold - -

1. Q.: For three hundred and fifty dollars.
2. A.: Yes.
3. Q.: Including the speakers.
4. A.: At that time, yes. Then, later on, Mr. Manetta
5. and Mr. Fulcher worked out some kind of a deal over the
6. speakers for the swap with another set of speakers and Mr.
7. Manetta's amplifier and his set of speakers. I mean, I don't
8. know what he's sellin' for what, 'cause I wasn't involved
9. that closely with that. They did that a couple days later
10. when I wasn't around.
11. Q.: So what you're saying, though, is that though
12. you were involved in it in the beginning, that as events
13. evolved, it sort of got away from being between you and
14. Manetta and got between Fulcher and Manetta. Is that what
15. you're saying?
16. A.: In a way.
17. MR. HEARTWELL: That's all the questions I have.
18. JUDGE: Any re-direct, Mr. Crush?
19. MR CRUSH: Aright. Some of this equipment,
20. now, you remember, in the cardboard box, an amplifier, did
21. Mr. Almond buy that too?
22. A.: N-no.
23. Q.: Do you have any idea what happened to it?
24. A.: I assume Mike got it. I really don't know.
25. Q.: Have you ever seen that before? - seen it
26. before?

1. A.: Yeh, I'd seen it before. I saw it I guess
2. about a year and a half prior to this took place. I saw it
3. at Mr. Manetta's house. It was at Christmas time and I went
4. by his house and, seen what he got for Christmas.

5. Q.: And, as I understant it, you, you didn't
6. purchase anything from Jamie, or, or Manetta?

7. A.: No.

8. MR. CRUSH: All right. That's all the
9. questions.

10. MR. HEARTWELL: Your Honor, I have just a couple
11. more questions, if I may.

12. Q.: Uh, Mr. Bowers, were you present, I believe
13. you did state you were present when Mr. Almond was over that
14. night and negotiated about this.

15. A.: Yeh. I was there when he was negotiating
16. about the, stereo.

17. Q.: Did you, or in your hearing, Did Mr. Fulcher,
18. either one, advise Mr. Almond that you were selling this
19. equipment on behalf of Mr. Manetta?

20. A.: I didn't myself. I can't say for Mr. Fulcher.
21. I wasn't sitting there right with them the whole time that
22. they were discussing all this, but I was off in other parts
23. of the house. It's very possible he could have.

24. Q.: But given the parts you yeard, he didn't.

25. A.: I didn't hear it.

26. Q.: And you didn't, you didn't tell him you were

1. selling it for Manetta.
2. A.: I wasn't selling it.
3. Q.: OK. But my question is you didn't tell him
4. it was being sold for Manetta?
5. A.: No. He just asked me what I thought of the
6. stuff.
7. Q.: Did you tell him?
8. A.: Did I tell him what?
9. Q.: That it was being sold for Mr. Manetta.
10. A.: No. I didn't tell him that.
11. Q.: Mr., alright. Let me, let me ask this. How
12. long was Arthur there, total time. I think I ask this -
13. all night?
14. A.: Three or four hours.
15. Q.: Three or four hours? And, y'all -huh?
16. A.: Mike and Almond were just sittin' around
17. drinkin' a few beers and listening to music -
18. Q.: Which stereo were you listening to?
19. A.: Uh, I think we listened to 'em both.
20. Q.: W, both, what do you mean both?
21. A.: Well, Mike's stereo system is, he had at the
22. house and this stereo equipment here, too.
23. Q.: Alright. And I presume someone's gonna buy
24. something then they listen to it.
25. A.: I would.
26. Q.: Well, so Mr. Almond did.

1. A.: Yeh. Mr. Almond did listen to it.
 2. Q.: Do you remember when, did he take it that
 3. night?
 4. A.: Yeh, I think, yeh, he did take it that night.
 5. 's loaded up in his car.
 6. Q.: W, did he pay, do you know whether he paid
 7. him that night?
 8. A.: No. He said it'd be Monday before he could
 9. get the money.
 10. MR. CRUSH: OK. No further questions,
 11. your Honor.
 12. JUDGE: Alright. You may stand down.
 13. MR. CRUSH: Oh, bring in, Richard Shults,
 14. Schutts. Schutts. Richard Schutts.
 15. JUDGE: Y^Ou may be seated. You were
 16. sworn earlier, were you not?
 17. MR. SCHUTTS: Yes, I was.
 18. JUDGE: Be seated.
 19. RICHARD SCHUTTS, a witness called on behalf of the
 20. defendant, having been first previously sworn, testified as
 21. follows:
 22. D I R E C T E X A M I N A T I O N
 23. BY MR. CRUSH:
 24. Q.: Aright, sir. If you would, for the record,
 25. I want you to state your name.
 26. A.: My name is Richard Schutts.

1. Q.: And, where do you live?
2. A.: A, Roanoke.
3. Q.: What is your address in Roanoke?
4. A.: Oh. Thirty-eight nineteen Growing Hill Avenue.
5. Q.: Q.: Aright, sir. How old are you?
6. A.: Sixty-two.
7. Q.: Aright. I want to call your attention to
8. June the ninth. Do you remember anything that happened on
9. that day?
10. A.: Yes. Michael Fulcher and I went to Bristol,
11. Virginia, to pick up my car,
12. Q.: Aright, sir. In your own words, I want you
13. to tell these people everything about that: where you had
14. been, why your car was in Bristol, and everything.
15. A.: Aright. I have a daughter who lives in
16. Nashville, Tennessee, and I went down there on the sixth,
17. which was a Saturday, to visit my daughter, and on Sunday,
18. the seventh, I was on my way back home and I developed car
19. trouble, just a, well, it would be in Bristol, about a
20. quarter of a mile -
21. Q.: What type car do you have?
22. A.: Oh, I have a seventy Cadillac. It's an old
23. one.
24. Q.: Is that the one you had trouble with?
25. A.: Yes.
26. Q.: Alright. Go on ahead.

1. A.: Thank you. And, a, so I pulled off to the
2. side of the road and got out, and then I got my suitcase and
3. was standing on the side of the road, and, this elderly
4. gentleman stopped and I told him my troubles and, he lived
5. in salem. So he brought me into Roanoke.

6. Q.: And what did you do then?

7. A.: Well, now this was on Sunday evening, and on
8. Monday morning, a, I called Mr. Fulcher. I knew he had a
9. towing service.

10. Q.: Now, by Mr. Fulcher, who are you referring to?

11. A.: Oh, I'm talking to Michael's father.

12. Q.: Aright. So you called him.

13. A.: I knew he had a towing service but I didn't
14. know whether he wanted to go that far down to pick my car so
15. I called Mike's father, and I asked him also if he did go
16. down that day and he said he couldn't but he would go down
17. the following day, which was on Tuesday, so I went over there
18. Tuesday morning and we, Michael and I, we left the lot,
19. around ten-thirty, quarter to eleven in the morning, and we
20. drove to Bristol and got my car.

21. Q.: Aright. Had you in the past done business
22. with Mr. Fulcher?

23. A.: Yes. I had, I had bought cars from Mr. Ful-
24. cher previously, bought parts for my cars and things like
25. this. This is how I got to know, knew Mr. Fulcher.

26. Q.: Aright, sir. And what time did you leave to

1. go to Bristol?

2. A.: Uh, it was between, eleven, or I mean, ten-
3. thirty and quarter to eleven.

4. Q.: Do you have any idea what time you got back?

5. A.: We got back about quarter to six that evening.

6. Q.: Did you stop anywhere on the way down?

7. A.: Yes. We stopped off at the, a, Howard John-
8. son's Restaurant in Bristol, where we had lunch.

9. Q.: Aright. Let me ask you, where did you leave
10. your car now in Bristol?

11. A.: My car was parked on Eighty-one, just about,
12. I thought it was a quarter of a mile, before you get to
13. Route Eleven.

14. Q.: Why didn't you just have your car fixed in
15. Bristol?

16. A.: Well, first of all, it was Sunday afternoon,
17. and, a, from past experience, a, I had the opportunity of
18. having this situation, and it cost me three times as much to
19. have my car fixed at that, than if I had taken it back to
20. my garage.

21. Q.: Alright. Now, did Mr. Fulcher fix your car?

22. A.: Yes. Mr. Fulchers did.

23. Q.: Did you receive these receipts?

24. A.: Yes, I did, sir.

25. Q.: Aright, so, and what did they do to your car?

26. A.: Uh, they fixed my transmission, put a trans-

1. mission in.

2. Q.: Aright. And you paid how much to have the
3. car towed back?

4. A.: Alright. I have one receipt here which was
5. for the ninth. It was on Tuesday, for my towing charge. He
6. charged me sixty-five dollars, for having my car towed back.
7. And I went over on the eleventh and I paid two hundred and
8. eighty-three dollars for that and these are the receipts that
9. Mr. Fulcher gave me at that time, so

10. Q.: What did they, did you have any idea what was
11. wrong with your car? What did you pay for having it fixed?

12. A.: Two hundred and eighty-three dollars.

13. Q.: I, I know. What, what did they fix on your
14. car?

15. A.: It was the transmission.

16. Q.: The transmission.

17. A.: Yes.

18. MR. CRUSH: Judge, we at this time, would
19. introduce this receipt, as our exhibit.

20. JUDGE: Mr. Heartwell, have you seen
21. them? That's aright. I will label them later. The copy of
22. the tow bill will be defendant's one and the receipt for the
23. repair will be Defendant's Two.

24. Q.: What do you do for a living now?

25. A.: Beg your pardon?

26. Q.: What do you do for a living?

1. A.: Oh, I'm retired.
2. Q.: What did you do when you worked?
3. A.: Oh, I worked for Pitney-Bowes.
4. Q.: And, what type work did you do for them?
5. A.: I was in the selling business.
6. Q.: In the selling business. You're travelling?
7. A.: Yes. Yes.
8. Q.: Aright. Do you remember anything you and
9. Michael talked about on the way down? Anything?
10. A.: Well, kinda reminiscing a little bit about
11. volunteering in the service.
12. Q.: How, how is it that you rode down on Monday?
13. Wouldn't it have been easier just to send him down?
14. A.: Well, I wanted my car, and I wanted to make
15. sure that nothing was taken from my car and Michael was
16. going by himself, and probably would need some help. So, I
17. had nothing pending so I went down with him.
18. Q.: And came back.
19. A.: Yes, and came back with him.
20. MR. CRUSH: We have no further questions,
21. your Honor.
22. JUDGE: Your witness, Mr. Heartwell.
23. C R O S S E X A M I N A T I O N
24. BY MR. HEARTWELL:
25. Q.: How long have you been retired?
26. A.: I retired last year.

1. Q.: You've been retired for a year.
2. A.: Beg pardon?
3. Q.: I said you've been retired for a period of
4. about a year.
5. A.: It was a little less than a year, yes.
6. Q.: Little less than a year. And now you're
7. living in the Roanoke area?
8. A.: Yes sir.
9. Q.: Is that correct?
10. A.: Yes.
11. Q.: And, your, testimony is that you'd been down
12. to see your daughter.
13. A.: Yes.
14. Q.: And, were you working at this time, or were
15. you retired at this time?
16. A.: No. I was working at this period. I was still
17. working for Pitney-Bowes.
18. Q.: OK, but you didn't have to work that next week.
19. A.: Beg pardon?
20. Q.: You didn't have to work that next week.
21. A.: What? I'm not following you, sir.
22. Q.: The week following the Sunday that your car
23. broke down.
24. A.: Oh, yes, but the business I was in, was like
25. operating my own business. I had my own contracted territory
26. and -

1. Q.: What you're saying then, is, you took a day
2. off on Tuesday. You took the day off and went down with the
3. wrecker man to bring your car back.
4. A.: Oh, yes.
5. Q.: And is this something you did on, type of
6. thing you did on a frequent basis?
7. A.: It never happened to me before.
8. Q.: No. What I mean, to take the day off from
9. work, for something like this. Is this something that
10. Pitney-Bowes was aware of?
11. A.:
12. Q.: And, you're stating that, when your car broke
13. down, was it near Bristol?
14. A.: Yes, m-hm.
15. Q.: Were you in Virginia or Tennessee?
16. A.: Home in Virginia on Eighty-one.
17. Q.: On Eighty-one.
18. A.: Yes.
19. Q.: Now, you testified previously you were on
20. Eleven, didn't you?
21. A.: No.
22. Q.: Well, let me ask you Mr. Schutts, do you
23. remember your, attorney, Mr. Crush, asking that, to back up
24. a little and explain where you were goin' and where you were
25. going from there. Read your answer here. "I was comin'
26. back. I got as far as Bristol. I was still on Eighty-one,

1. just before, I reached Route Eleven". Is that enough?

2. Well, were you on Route Eleven or Eighty-one?

3. A.: I was on Eighty-one. Just before I got on
4. Route Eleven, I pulled on over Eighty-one.

5. Q.: You were on Eighty-one just before you got to
6. Route Eleven.

7. A.: Those were my words.

8. Q.: You don't take Eighty-one all the way from
9. Bristol?

10. A.: Yes.

11. Q.: You intended to stay on Eighty-one all the way
12. is that what you're saying?

13. A.: Well, I was on Eighty-one there, yes.

14. Q.: My question is, was it your intention to stay
15. on Eighty-one all the way to Roanoke?

16. A.: Oh, yes.

17. Q.: Aright. And so, your car broke down just
18. before you got to Route Eleven, and at that point, you didn't
19. know what was wrong with it.

20. A.: No. I really didn't, to be honest with you.

21. Q.: Do you know anything about cars?

22. A.: Not that much. I knew at one time, but,

23. Q.: Do you have the ability to make repairs your-
24. self?

25. A.: Oh, puttin' in spark plugs, and things, change
26. the oil.

1. Q.: Nothing out of the ordinary.

2. A.: No.

3. Q.: So, really, you couldn't have provided very
4. much help to Mr. Fulcher on the next Tuesday, could you?

5. A.: Oh, as far as - - -

6. Q.: Did it ever occur to you that it might be a
7. good idea to call a service station, see if something could
8. be done about your car, before coming all the way back to
9. Roanoke, hiring somebody from Roanoke to drive back, finding
10. someone to bring it back to Roanoke to have it repaired.
11. Isn't that a cumbersome way to go about this?

12. A.: No. No. Well - - - Again I say, I can
13. remember years ago when I had a similar experience it cost me
14. three times as much to have the car fixed so -

15. Q.: Well, I mean, at that point, you didn't know
16. what was wrong, with your car, did you?

17. A.: All I knew, it just wouldn't run.

18. Q.: It could have been a spark plug wire. It
19. could have been anything, couldn't it?

20. A.: Probably could.

21. Q.: And you could have had somebody come out there
22. and located it and it wouldn't have cost you twenty dollars
23. if it had been something minor.

24. A.: Well, you know, as they say, I wasn't think-
25. ing that way either, being a Sunday afternoon.

26. Q.: What I'm, what I'm trying to get at, is why

1. you weren't thinking that way. Why is it that you would
2. rather go and spend a sure hundreds of dollars, hundreds of
3. dollars to tow your car all that way back up to Roanoke and
4. have it repaired, when it very easily could have been some-
5. thing that you could have gotten done for next to nothing.
6. A.: Well, as it turned out, it was transmission
7. trouble, and it did cost me considerable.
8. Q.: As it turned out you were right, but at that
9. time you didn't know that, did you?
10. A.: No.
11. Q.: You just figured you'd rather go ahead and
12. spend the money than fool with it down there.
13. A.: Oh, yes, very much -
14. Q.: So you left your car parked there on the
15. shoulder of the road, the Interstate
16. A.: On Eighty-one, yes.
17. Q.: And it was still there when you got there
18. Tuesday.
19. A.: Oh yes.
20. Q.: Hadn't been moved or altered in any way
21. A.: No.
22. Q.: And, you remember this date because of the
23. receipts you had.
24. A.: I remember the date and the time that I had
25. the trouble, yes.
26. MR. HEARTWELL: That's all the questions I have.

1. RE - DIRECT EXAMINATION

2. BY MR. CRUSH:

3. Q.: Let me ask you this. You say a gentleman
4. picked you up. Where did he take you?

5. A.: I, this elderly gentleman picked me up, and
6. again, he lived in Salem, and I told him where I lived at and
7. he was a very gracious man. He took me home, because it was
8. gettin' late in the evening.

9. Q.: So, you, and your car, did it, would it start
10. at all? Would your car start at all?

11. A.: As far as starting, yes.

12. Q.: But it wouldn't move.

13. A.: It wouldn't move.

14. Q.: Aright. And, what time of evening would this
15. be, approximately?

16. A.: Uh, this was probably around four-thirty in
17. the evening.

18. Q.: Aright. And so when he came, and he's from
19. Salem, do you live in Salem?

20. A.: No. I live in Roanoke.

21. Q.: In Roanoke City?

22. A.: Yes.

23. Q.: Aright, sir. And he gave you a ride on home.

24. A.: Yes. He was very gracious, I appreciated it.

25. Q.: Right. Right. And, as I understand it, you
26. work as a salesman, you can take, I guess you can take off

MICHAEL FULCHER-D

RICHARD SCHUTTS-RD

1. and come and go as you darn well please.

2. A.: Well, as they say, uh, having a contracted
3. territory was like having my own business.

4. Q.: Aright.

5. A.: And we all went that way, yes.

6. MR. CRUSH: and, OK. I have no further
7. questions, your Honor.

8. JUDGE: You may stand down.

9. MR. SCHUTTS: Thank you, sir.

10. MICHAEL FULCHER, the defendant, a witness called
11. in his own behalf, have been duly sworn by the Clerk,
12. testified as follows:

13. D I R E C T E X A M I N A T I O N

14. BY MR. CRUSH:

15. Q.: If you would, for the record, state your name.

16. A.: Michael Fulcher.

17. Q.: Aright. Where do you reside at, Michael?

18. A.: Uh, currently I'm staying with my parents in
19. Roanoke County.

20. A.: What would be that address?

21. Q.: Fifty-four fifteen, Plantation Road.

22. A.: Aright. Now, where were you staying in June
23. nineteen eighty-one?

24. A.: On eight-sixteen Mississippi Avenue in
25. Roanoke City.

26. Q.: Aright. Was that your house?

1. A.: Yes sir.
2. Q.: How old are you Michael?
3. A.: Twenty-three.
4. Q.: Where did you go to s-, are you from Roanoke?
5. A.: Yes sir.
6. Q.: Where did you go to school at?
7. A.: Uh, I went to high school at William Byrd and
8. currently, except for these charges, I attend Ohio Institute
9. of Technology.
10. Q.: Where is that at?
11. A.: Columbus, Ohio.
12. Q.: Aright. Now, if you would, I want you in your
13. own words now, Michael, you've heard all this evidence, I
14. want you to explain in your own words what happened?
15. A.: As far as, as the whole thing with this
16. stereo, with this Jamie Manetta, well, on a, as Mr. Bowers
17. said, on Thursday evening, Mr. Bowers worked for me, we came
18. out to my house on Mississippi Avenue and Mr. Manetta, which
19. visited my house frequently, was there.
20. Q.: How did you come to know this James Manetta?
21. A.: We all grew up in the same neighborhood.
22. Q.: For what period of time, did you grow up
23. together?
24. A.: Yes sir. Ten years.
25. Q.: Ten years. Alright. OK. Now proceed.
26. A.: Uh, we came home and Mr. Manetta was on the

1. back of my porch. I've got a porch that's enclosed, with
2. some chairs, and Mr. Manetta had some stereo equipment,
3. which Mr. Bowers knew right away, that one piece of it, this
4. amplifier, which I have still, as, as being Mr. Manetta's
5. that he had got for Christmas. So, Mr. Manetta went inside
6. the house, and we were cleaning up and Mr. Manetta offered
7. to sell us the stereo. He offered David and me both, he said
8. he felt that the stereo was worth five hundred dollars and
9. that he would take three hundred and fifty dollars for it
10. and anything we made above that figure we could have.

11. Q.: OK. What happened?

12. A.: That was the first night. Um, later that
13. evening, Mr. Manetta offered to trade me these speakers here
14. for a set of speakers that I have and I really was interested
15. but he kept on and we negotiated till finally I made a trade
16. with Mr. Manetta for these speakers, for another set of
17. speakers and an amplifier.

18. Q.: Where was this other set of speakers at you're
19. referring to?

20. A.: The speakers that Mr. Manetta received were
21. at my parents' house on Plantation road.

22. Q.: Alright. OK.

23. A.: This system here is what Manetta, Mr. Manetta
24. originally brought to my house, except for one amplifier
25. which is missing, and, and what what we did was, he just took
26. the stereo in and he set it up in my house, y'know, 's sayin'

1. well, he wanted to sell it or trade it or, he needed the
2. money real bad. That's what he wanted us, wanted to do. So,
3. y'know, I wasn't interested in buyin' the stereo and Mr.
4. Bowers wasn't interested, but I did trade him speakers for
5. speakers and an amplifier.

6. Q.: Aright. Now what all did you trade him for?

7. A.: What did I trade him?

8. Q.: Uh-huh.

9. A.: Speakers for speakers.

10. Q.: OK. So what happened then?

11. A.: Well, uh, he stayed there for, I'm not sure,
12. about an hour or two and he left. When he left he said,
13. like, he, he said, well, y'know, if anybody comes by and is
14. interested in the stereo, and, y'know, anything you get
15. above three fifty, you can have. And Mr. Manetta had no car
16. when he got home and he had no car when he left/ He just
17. walked.

18. Q.: Alright. Well, what happened then?

19. A.: Well, the next day me and Mr. Almond had
20. already decided that we were going to the lake. I don't
21. remember who brought it up or how.

22. Q.: Well, how long have you known Mr. Almond?

23. A.: All my life, since we were kids, grade school.

24. Q.: Is he a friend of yours?

25. A.: Yes sir.

26. Q.: Aright. So, you're all going to go to the

1. lake. OK. What happened?
2. A.: And, well, we went to the lake all day and we
3. stayed till some time that evening and when we came back from
4. the lake we went by Mr. Bowers's house, his parents' house,
5. and picked Mr. Bowers up and Mr. Bowers, myself and Mr. Almond
6. went back to the house on Mississippi Avenue. We sat around
7. and watched TV for a while and, I think we got bored with
8. that and we started battin' the breeze and talkin' back and
9. forth and we went into where my stereo is located which is
10. like a bar similar to this, but my stereo sits underneath
11. the bar, whereas this stereo is setting on top of the bar and
12. it stuck out, y'know, as soon as you walked into the room,
13. it didn't go, it didn't fit in with the room. Well, Mr.
14. Almond asked me, or either I brought it up one, that, y'know,
15. the stereo was for sale. He looked at it and he liked it
16. and he said he would buy it. He took it, a little later on,
17. he loaded it in his car and took it with him, and, he said
18. that he couldn't pay for it until that Monday, something
19. about the Credit Union, you know. This was Friday night and
20. he couldn't get the money until Monday. Mr. Almond did come
21. over, I remember, 'cause he has to work at two o'clock,
22. Monday, that's what time he had to be there, and, he paid
23. me his three hundred and fifty dollars for the stereo.
24. Q.: OK.
25. A.: After he paid me for the stereo I called Mr.
26. Manetta's house and told Mr. Manetta that I had sold the

1. stereo and I was comin' over to pay him. When I went over
2. to pay Mr. Manetta he had owed me twenty dollars. He had
3. owed Mr. Bowers ten dollars and so I took the money that he
4. owed us out before I paid Mr. Manetta. And I gave Mr.
5. Manetta the remaining amount of money.

6. Q.: Aright. Now how about these speakers he
7. traded that they were at your mother's house. When, when
8. did James pick them up, or Mr. Manetta pick them up.

9. A.: The speakers? That was Sunday, the same
10. week-end.

11. Q.: He picked them up.

12. A.: Yes sir. I wonder if I could have a drink of
13. water. Makes me nervous.

14. - - - -

15. Q.: So on Monday you saw your friend Mr. Manetta,
16. Jamie,

17. A.: Yes sir.

18. Q.: Aright.

19. A.: I went by Mr. Manetta's house, I called him
20. first, and he was there so, shortly after two o'clock, Mr.
21. Almond works for Piedmont Airlines, he's worked for Piedmont
22. for three or four years now, and I was familiar with the
23. schedule. I know he had to be there at two o'clock. That's
24. why I can remember the time.

25. Q.: How did you figure the three hundred and fifty
26. dollars?

1. A.: That's the price that Mr. Manetta said he
2. would take, that was the bottom figure.

3. Q.: Aright. And, did, on this, did Mr. Almond
4. buy another set of speakers?

5. A.: Mr. Almond purchased the amplifier, and the
6. re, the receiver rather, and the turn-table and when I
7. bought these speakers here I traded for these speakers. My
8. stereo already had a set of speakers there. Now, these
9. speakers that I had at my house were speakers which I had
10. bought in Ohio when I was attending college and Mr. Almond
11. got the speakers. He got the complete system. He had the
12. speakers I had from Ohio and I'm sure that I emphasized that
13. these speakers came from Ohio.

14. Q.: Aright. Did you tell, your friend Mr. Almond
15. this thing came from, from Manetta?

16. ; A.: Uhm, I, sure, I, thought that I had mentioned
17. it. Probably I assume, since it was sitting on the bar, it
18. was obvious that it wasn't mine. I had the same stereo
19. that I ever had, for a good many years -

20. Q.: Aright. Well, did you, take this gentleman,
21. that just spoke, to a, Bristol?

22. A.: Yes sir.

23. Q.: Tell us about that.

24. A.: Well, in the summer when I'm home from college
25. I work for my Dad. He runs a junk yard and we have a wreck-
26. er, and we put motors in cars and transmissions, and Mr.

1. Schutts is a, a, I guess a client, or however you might call
2. it, of my father's, and Mr. Schutts, I guess, I don't know,
3. to be truth-, he had visited his sister in Nashville, or
4. some place in Tennessee and my only involvement was that I
5. worked with my Dad and I do drive the wrecker and most of the
6. time my wrecker service is over from local, like from here up
7. the street five miles just to pick a car up real close. Any
8. time I make a trip from here to Bristol it takes all day I
9. remember, because I'm always sure to kill most of the day and
10. not get back before six, and I distinctly remember that Mr.
11. Schutts had a blue Cadillac. I believe it was a seventy
12. Cadillac, and he takes real good care of cars, is why I
13. remember so much about it. However, the fact that we did go
14. to Bristol and towed this car back to Roanoke -

15. Q.: That was on June the ninth, nineteen eighty-one

16. A.: Yes sir.

17. Q.: Aright. When -

18. A.: - I was at work on June the ninth from eight
19. oclock in the morning until we got back that evening which
20. was probably around six o'clock.

21. Q.: Aright. I want you to tell me what if any
22. conversation you had with Officer Johnson.

23. A.: Yes sir. On the, thirteenth, I believe would
24. be, Friday, they came to my house and

25. Q.: I believe he said the nineteenth,

26. A.: Nineteenth, he came to my house on Mississippi

1. MR. HEARTWELL: Your Honor, who's testifying
2. here?
3. JUDGE: Don't lead your witness.
4. MR. CRUSH: Yes, your Honor.
5. A.: On the nineteenth, they came to my house. I
6. wasn't present, I was, I'm not for sure, working, some place,
7. I deliver parts, I pick up cars. I could've been anywhere,
8. a bunch of places, but my, the police officers were to my
9. house and had a search warrant. I wasn't present and they
10. y'know, nobody was there to let 'em in so Officer, I don't
11. know which officers called but they, one of them, did call
12. my parents. My parents have a, an extra key to my house.
13. My parents went over to my house on Mississippi and unlocked
14. it and let them search the house/. When the police officers
15. searched my house they found these two speakers here, which
16. were stolen, or said to be stolen, when, this was on a Friday
17. Friday evening some time, and they told my parents, one of
18. the officers told my parents that they had the warrants for
19. my arrest and that, y'know, to tell me when they seen me.
20. On Saturday morning, I don't remember the time, I called
21. down to Botetourt Sheriff's Department down here and I told
22. them who I was and that I understood that they had a warrant
23. for me, and the magistrate, I believe, 's who I spoke to,
24. he said, yes, he did, we and for me to come down and turn
25. myself in. I told my parents that I was going to come down
26. and turn myself in. I came down here, and, y'know, they did

1. the, the, I guess what you call the routine processing, and,
2. at which time my parents arrived somewhat shortly later,
3. later, and of course arranging a bond, and when Officer
4. Johnson asked me if he could talk to me, I went upstairs to
5. the Sheriff's office, and next door in this other building
6. and Officer Johnson asked me if I knew, what I knew about
7. these speakers, did I know that they were stolen. He ex-
8. plained to me that the speakers were stolen, they were in-
9. volved in a crime, somebody'd had taken in a burglary and
10. he read me my rights and told me I was being charged also
11. with this. I think he had already told me as soon as I got
12. to the Sheriff's department. I explained to him, to Officer
13. Johnson that these speakers I had obtained from Mr. Manetta,
14. that I had made a trade of speakers for speakers and ampli-
15. fier and that, y'know, I know Mr. Manetta, and y'know, I
16. knew if there would be any problem with them I could, y'know,
17. I could go back to Mr. Manetta.

18. Q.: Well, did you, call Mr. Manetta a liar, a
19. thief?

20. A.: Uh, when, me and, myself and Officer Johnson
21. were in the Sheriff's office, after I had already been
22. charged, and, um, I called Manetta a thief and a liar, a
23. cheat, I told Officer Johnson that, I had lost a set of
24. speakers. I had been hood-winked, or whatever you want to
25. call it -

26. Q.: Did you ask him, did you ask him to go over

1. to Manetta's house and get your speakers back?

2. A.: I told him that if he didn't believe my story
3. he should go to Mr. Manetta's house and Manetta did have my
4. speakers there, that I had traded him the speakers for the
5. speakers and that, y'know, I would like to get my speakers
6. back. I, 'y'know, now I lost a set of speakers, y'know.

7. Q.: Aright. You ever been convicted of a felony
8. before, Michael?

9. A.: No sir.

10. Q.: Misdemeanor involving moral terpitude?

11. A.: No sir.

12. Q.: How do you know what moral terpitude is?

13. A.: Uh, I was talking to a lawyer and he explained
14. to me that it involves lying, cheating, stealing,

15. Q.: OK.

16. A.: - writing bad checks -

17. Q.: OK. You understand the terminology. Well,
18. is this the usual way you do business?

19. A.: Uh

20. Q.: Is the usual way things happen?

21. A.: Far as me selling the stereo? Yes sir. At
22. the time I seen no problems with it whatsoever. Mr. Bowers
23. recognized part of the stereo as being Manetta's that he got
24. for Christmas. I never second-guessed who bought 'em. To
25. me, nothin' looks suspicious about the stuff.

26. Q.: How long have you known James Manetta?

1. A.: Five or ten years. He lives in the same
2. neighborhood that I grew up in.

3. Q.: Is it anything unusual when he appears on
4. your porch with this?

5. A.: No sir. Mr. Manetta came over to my house
6. quite frequently. I've done business with Mr. Manetta before.
7. I've bought other things from him, that I never had no
8. problems with.

9. Q.: What, if any, profit did you make out of this?

10. A.: Well, when Mr. Almond came by and paid me on
11. Monday, I went by and paid Mr. Manetta, and Mr. Manetta came
12. out to the car. He, 'y'know, went outside and I handed him
13. the three hundred fifty dollars. I STARTED TO HAND HIM the
14. three hundred fifty dollars and as I did, I said, "Well,
15. Jamie", I said, "Remember the twenty dollars you owe me?"
16. and I said, "Ten dollars for David". So that was thirty
17. dollars I took from the three hundred fifty dollars, which
18. left Mr. Manetta with three hundred and twenty dollars. He
19. said he really appreciated it. I told him, that, y'know,
20. that Mr. Almond had bought the stereo. He said - -

21. Q.: Do you think it was suspicious the way this
22. happened?

23. A.: No sir.

24. Q.: You don't?

25. A.: No sir.

26. Q.: Do you think it was suspicious the way you

1. sold it?

2. A.: No sir. I think now, at the time I wished I
3. would have asked for a receipt from Mr. Manetta. I had
4. bought other things from Mr. Manetta and never obtained a
5. receipt, and had no reasons to do otherwise. Mr. Manetta
6. said he really appreciated me selling the stereo. Uh, y'know
7. he had hooked up his speakers that he had got from me the day
8. before on Sunday, that we had negotiated a trade for, that
9. was his end of the bargain. I had his speakers. I had
10. borrowed my parents's truck. These speakers that I have that
11. Officer Johnson said are big as a door, they're extremely
12. large. It takes two people to carry 'em and y'have to have
13. a truck to move 'em and he had received his end of the bar-
14. gain the day before. That day when I paid Mr. Manetta he
15. said he really appreciated it and he would buy us some beer
16. and get us drunk and all that, and I give him all the money
17. except for what he owed me and Mr. Bowers, which was thirty
18. dollars.

19. Q.: Why didn't you get a receipt, or offer one
20. to Arthur?

21. A.: I trusted, I trusted Mr. Manetta and I had no
22. reason not to.

23. Q.: Did Arthur get one from you?

24. A.: No sir. As he said earlier, I would assume
25. that he trusted me also.

26. Q.: Mr. Almond did?

1. A.: Yes sir. I went to college, I majored in
2. engineering. I've seen lots of stereos. As they've stated
3. I have two or three stereos I work on. My parents had given
4. me one stereo, they probably had for twenty or thirty years
5. old.

6. Q.: What did Jamie owe you twenty dollars for?

7. A.: I'm like Mr. Bowers. I don't remember to tell
8. you the truth. I think I might have lent him five dollars
9. here or five dollars there and I think we bet ten dollars on
10. a race if I'm not mistaken.

11. Q.: Aright.

12. A.: - between Darrel Lawford and Richard Petty,
13. one week-end.

14. Q.: Aright. Did you sell Mr. Almond, or uh, Mr.
15. Manetta a Comet?

16. A.: Yes sir.

17. Q.: How long ago was that?

18. A.: Uh, about the same time period. I'd sold
19. Mr. Manetta two cars, in fact I sold Mr. Manetta three cars..
20. I sold Mr. Manetta a Cutlass Supreme, he paid fourteen hundred
21. dollars for, in 'see, that would be nineteen eighty-, nine-
22. teen eighty. I sold Mr. Manetta a seventy-two Comet, not a
23. seventy-three Comet, and which he paid me a hundred dollars
24. for. We did not include these speakers that he says he
25. obtained from me on that Sunday in that weekend, and this
26. car trade. He had the car probably a month or two prior to

1. this incident.
2. Q.: What type of business is your daddy in?
3. A.: We are in the car
4. Q.: Y'all sell cars?
5. A.: Yes sir. We don't have a used car lot, but
6. every now and then, we get a wrecked car that is repairable
7. and, y'know, usually it's not that great of a car and we
8. usually let 'em go for very cheap. I sold Mr. Manetta this
9. Comet for I believe a hundred dollars. If Mr. Manetta would
10. have owed me some money he would have give me the car. He
11. had the money to buy the car so I don't see where he says that
12. he owed me money for any cocaine or anything else.
13. Q.: Alright.
14. A.: Other than the twenty dollars, the thirty
15. dollars he owed me and David.
16. Q.: Aright. Well, I'm still, why did you, you
17. didn't really make anything on your twenty dollars, all clear
18. A.: No, no sir. I did make some. I did trade.
19. I got these speakers and I made a receiver too.
20. Q.: Well, did you solicit people to buy these
21. things?
22. A.: No sir. As Mr. Almond said, we are long-time
23. or life-time friends. He went to the lake and, y'know, it
24. wasn't my stereo. I didn't care if it was sold or not,
25. really, and Mr. Almond came back and he seen it setting up
26. just as this microphone sets here. It sticks out. And we

1. started talkin' about it. I think he asked me whose stereo
2. and I told, said "Well, y'know, it's for sale if you want to
3. buy it." And he said, "Well how much? What's wrong with it?
4. Does it play?" Yknow, just the usual conversation.

5. MR. CRUSH: Aright. Answer any questions
6. the Commonwealth Attorney has.

7. C R O S S E X A M I N A T I O N

8. BY MR. HEARTWELL:

9. Q.: Mr. Fulcher, during this period in June of
10. eighty-one you've, I believe you stated you were working for
11. your father. Is that correct?

12. A.: Yes sir. It is.

13. Q.: This was a summer job?

14. A.: Yes sir. I'd come in from college. When I'm
15. in Columbus I work for United Parcel Service.

16. Q.: But this was not a, you're not working every
17. day?

18. A.: Yes sir.

19. Q.: You were working every day.

20. A.: Uhm, yes sir.

21. Q.: You're workin', pullin' a regular eight-hour
22. day, forty-hour week.

23. A.: Yes sir.

24. Q.: And, is this pretty much without exception
25. during the summer?

26. A.: Pardon me?

1. Q.: Was this pretty much without exception during
2. the summer?

3. A.: Uh, yes sir. During the summer I'm home from
4. college. Y'know, I don't overly exert myself, just havin'
5. a good time. We get away and try to relax before I go
6. back every year.

7. Q.: But you were working.

8. A.: For my dad, yes sir.

9. Q.: Steady is what I'm getting at.

10. A.: Yes sir.

11. Q.: Aright. Now on this day, June the ninth, you
12. contend your job took you to Bristol.

13. A.: Yes sir.

14. Q.: Is that right?

15. A.: Yes sir. I distinctly remember the day. I,
16. y'know, dates sometimes are, like y'say, you try to remember
17. a whole week of one summer and so many things like the stereo
18. in one week-end happens, probably ten million other things
19. happen, other than that, but I do remember going to Bristol
20. with Mr. Schutts, and y'know, he's a distinctive person, and
21. he told me a bunch of war stories and I just remember very
22. distinctively

23. Q.: Aright. And what day was it after that that
24. Mr. Manetta came over to your house with the stereo equipment?

A.: ---25. That would be June the ninth that Mr. Manetta alleges that
26. I helped him break into this place, the Scaggs's

1. Q.: Now, Mr. Fulcher, we're going to get along
2. a lot better if you answer the question I ask you.. Now the
3. question I asked you was "What day after that was the day that
4. Mr. Manetta came over to your house with the stereo equip-
5. ment?"

6. A.: Well, I'm trying to think. June the ninth
7. was just one date in my mind. Mr. Manetta came over I
8. believe the twelfth, thirteenth, it's a Thursday night. I
9. remember it was a Thursday.

10. Q.: It was the following Thursday.

11. A.: Um, I'm not sure that it follows that week.
12. I think it might have been that same week for all I know.

13. Q.: Well, in other words, ninth.

14. A.: It would be the twelfth.

15. Q.: Aright. So, the ninth was a Tuesday, the
16. twelfth would have been a Thursday.

17. A.: Yes sir.

18. Q.: The next Thursday after you went to Bristol.

19. A.: No sir. It would be the same week, ninth,
20. tenth, eleventh, twelfth. That would be the same week.

21. Q.: The same week, that's what I'm saying.

22. A.: Yes sir.

23. Q.: OK. So, on that day, that was the day that,
24. this deal was made in terms of you selling the stereo for
25. Mr. Manetta.

26. A.: We made no deal.

1. Q.: Well, I thought you testified to something
2. about three hundred fifty dollars and swapping stereos and
3. so forth.

4. A.: Yes sir. I did. Manetta propositioned Mr.
5. Bowers and myself and said if we would like to buy it, this
6. is what he wanted.

7. Q.: Well, is the word "deal" -

8. A/: If anybody wanted to buy it

9. Q.: Is the word "deal" what you object to?

10. A.: Um, we never had no

11. Q.: Would it be better if I said "arrangement" or
12. "agreement"? Would you have less trouble with that?

13. A.: That's what he said he wanted if somebody
14. came over that he wanted for the stereo.

15. Q.: OK. So, on this day, on this day, Mr. Manetta
16. comes over to the house and you come home from work and
17. there he is on the porch with the stereo equipment spread
18. all around. Is that the way it happened?

19. A.: Yes sir.

20. Q.: And there was no car, no truck, nothing, no
21. indication of how he got there.

22. A.: No sir.

23. Q.: And you didn't ask how he got there.

24. A.: N-no sir.

25. Q.: And you've known Mr. Manetta for ten years.

26. A.: Uh, five to ten years, yes sir.

1. Q.: And you've known he'd been in a lot of
2. trouble.
3. A.: No sir.
4. Q.: And he was over at your house on a frequent
5. basis.
6. A.: Yes sir.
7. Q.: But you never knew he'd been in any trouble.
8. A.: Not to my knowledge.
9. Q.: Any unexplained absences when he might have
10. been in jail and you just didn't know about that?
11. A.: Jamie's the kind of person that just comes
12. and goes at random. He's
13. Q.: Sort of keeps to himself.
14. A.: Just on his way. Yes sir.
15. Q.: So you didn't know he'd been in any trouble.
16. A.: No sir.
17. Q.: But you did see him there sittin' on your
18. porch with all this new stereo equipment and you didn't
19. bother to ask him how he got there or where the equipment
20. came from or anything of that nature.
21. A.: Uh, no sir. When we walked in there was a
22. reference made. Mr. Bowers did, as to, one piece of stereo
23. that isn't here, an amplifier. It was brand new. It's in
24. a box. It had receipts, warranty and all that. Mr. Bowers
25. made a reference to, like, "Jamie, what are you doin' with
26. this?" James said, "Well, the money. I need to sell my

1. stereo. I need some money real bad."

2. Q.: My question was, "Did you ask him how he got
3. there, or where the stereo equipment came from".

4. A.: Uh, no sir. He stated that it was his
5. equipment.

6. Q.: And, you never thought there was anything in'
7. the least suspicious that he should appear on your porch
8. with all this stereo equipment like this.

9. A.: No, sir.

10. Q.: That just struck you as something that was
11. perfectly ordinary.

12. A.: Yes sir.

13. Q.: Aright. So, at that point, you and Mr. Manetta
14. and Mr. Bowers, perhaps, not really important, but at some
15. point this discussion ensued about you selling the system
16. for him.

17. A.: Yes sir.

18. Q.: And what was the price that was agreed on?

19. A.: Three Hundred and Fifty Dollars.

20. Q.: What did that include?

21. A.: Mr. Manetta said that he wanted three hundred
22. and fifty, that's what he had to have out of this system,
23. and that anything me or Mr. Bowers got over that it was ours.

24. Q.: But did it include the two speakers?

25. A.: It included the two pieces you see down here,
26. which, y'know, you saw earlier in the morning, - power equip-

1. ment - They-re not in a box, and he had these two speakers
2. and uh, for three hundred fifty dollars, we had negotiated
3. the deal as I said before Mr. Manetta left that night. I
4. traded him these two speakers which I hooked up
5. Q.: Now wait a minute. You're getting away from
6. what I asked. What was the original three hundred and fifty
7. dollar selling price to include?
8. A.: Originally it was to include this stuff.
9. Q.: All of this.
10. A.: Yes sir.
11. Q.: And the amplifier?
12. A.: Um, no sir.
13. Q.: Well, what about the amplifier? Did he just
14. give that to you?
15. A.: Um, no. He -
16. Q.: What was said about the amplifier?
17. A.: He used the amplifier to ante up the deal to
18. give me a trade, trade these speakers he had.
19. Q.: What are you talking about, "ante up the deal"
20. A.: He first, y'know, like I said, he came in and
21. asked us if we want to buy it and we said no. He came, he
22. sat around for awhile then he said, "Well, look, Mike, I
23. know the speakers you got at your Mom's. Y'know, I'd like
24. to have them." They're really too big for my house. They
25. weren't at my house, because of their size. He offered to
26. trade me these two speakers for those two speakers and I

1. Q.: You're getting away from what I'm asking you.
2. What I'm asking you about is the three hundred and fifty
3. dollars and you said originally three hundred and fifty
4. dollars was to cover these four pieces.

5. A.: Yes sir.

6. Q.: Then my question was to the amplifier. What
7. was the original understanding about the amplifier? What
8. was that supposed to be done? What was supposed to be done
9. with that?

10. A.: He never put a price on it.

11. Q.: So that, that was just sort of left there and
12. nothing said about it, at that point.

13. A.: No sir. He harped on the deal. I, I think
14. somethin' Mr. Bowers said, somethin' about "Well, what are
15. your parents goin' to say, sellin' this stuff?" He said it
16. was his. He could do what he wanted with it.

17. Q.: But my question goes to the amplifier. What
18. was said about the amplifier initially? Nothing?

19. A.: That his parents had given it to him for
20. Christmas. It was brand new. Here's receipts to it.

21. Q.: Did he want you to sell that?

22. A.: Um, yes sir. He indicated so.

23. Q.: So that was included in the three hundred
24. fifty dollar deal.

25. A.: No. He never stipulated whether it was a
26. separate price or whether he - He talked. We listened, He

1. said at one time he wanted three fifty for this. He said
2. if we had three fifty cash and if we were interested he'd
3. throw in an amplifier. Then he later indicated that, if,
4. y'know, somebody wanted to buy the amplifier separate or
5. just the speaker or somethin' he, y'know, he would negotiate
6. that way.

7. Well, again, the three hundred and fifty dollar
8. deal was originally proposed, the amplifier was not included.
9. It was just these four pieces. That's what you just said.

10. A.: Uh, I was assuming. I really don't know.

11. Q.: You don't know.

12. A.: No. It was my -

13. Q.: OK. Alright. So then, the evening went on,
14. I take. The deal changed a little bit and y'all started
15. talkin' swap.

16. A.: Uh, yes sir. He did.

17. Q.: Aright. And after that had been talked about
18. at some point a swap was arranged.

19. A.: Yes sir.

20. Q.: And the deal was that you were to get these
21. two speakers and he was to get, and the amplifier, and he
22. was to get those two speakers that are the size of a door.
23. Is that right?

24. A.: Uh, partially.

25. Q.: Well, what was the rest of it?

26. A.: Well, he negotiated for an hour, and this

1. system, without the speakers won't play, and, as I said,
2. the rest of it is that I had these speakers

3. Q.: Trade, trade, trade

4. A.: He traded speakers for speakers.

5. Q.: What did you get?

6. A.: I received an amplifier and these two speakers.

7. In return Mr. Manetta received for his personal home, these
8. speakers the size of a door at my parents's house.

9. Q.: Well, isn't that what I just said?

10. A.: But you said is there anything else and what
11. I'm tryin'to get at is that I had a set of speakers at my
12. house also.

13. Q.: Uhuh.

14. A.: A set of Tower speakers I bought at Radio
15. Shack from Ohio, and Manetta, there buyin' these speakers
16. in the trade, he had no ways to prove that stereo worked,
17. so Mr. Manetta also gained a gift in a sense, my having
18. these two old speakers, items that were discontinued, to
19. pick for this, to demonstrate that it would play.

20. Q.: But those two speakers weren't part of the
21. deal.

22. A.: Um, well, when Mr. Almond bought the stereo
23. he got those speakers in

24. Q.: Listen, I'm not asking you a tough question.
25. I'm just asking you were those two speakers part of the
26. deal, yes or no?

1. A.: Which two speakers, we're talking about six
2. pair of speakers.
3. Q.: Ohio speakers.
4. A.: Yes sir.
5. Q.: Aright. So you swapped, you didn't swap him
6. two speakers, you swapped him four speakers.
7. A.: Uh
8. Q.: Is that what you're saying?
9. A.: No. He swapped these, me, I guess for four
10. speakers.
11. Q.: You already owned the Ohio speakers, didn't
12. you?
13. A.: Yes sir.
14. Q.: So there's no way you could swap them, 'cause
15. you already owned, they were yours.
16. A.: Yes sir.
17. Q.: Aright. You traded him these two speakers.
18. He traded you these speakers, the amplifier and the two big
19. speakers, and did you, are you saying that you threw in the
20. two Ohio speakers also?
21. A.: No sir. The deal, Mr. Manetta received four
22. speakers. He only kept two speakers, which he picked up on
23. Sunday. The other two speakers which he had already receiv=
24. ed, he hooked up to this two components here and Mr. Almond
25. took those speakers with him when he bought the system.
26. Q.: And whose were they?

1. A.: The speakers that went with the system?
2. Q.: Yes.
3. A.: They were originally mine. I bought them in
4. Ohio, but they were Manetta's, I guess, because of what we
5. negotiated.
6. Q.: So you did trade him the four speakers. You
7. did give him four speakers.
8. A.: Yes sir.
9. Q.: Well, it took us a long time to get it down,
10. didn't it? Now, is that what you're saying? Is that what
11. you're going to stick to?
12. A.: Yes sir. Mr. Manetta got four speakers but
13. he only kept two speakers.
14. Q.: Well, he got four speakers, but, he, in other
15. words, he got the value of the other two as well.
16. A.: I, auh, yes sir.
17. Q.: So, when you testified all during the other
18. trial, and all today, up to this very minute, that you
19. traded for two big speakers for these two speakers and the
20. amplifier, that's not exactly accurate.
21. A.: Um, as best I can see.
22. Q.: Well, really, you traded four speakers, that's
23. what you're saying now, isn't it?
24. A.: Um, well, Mr. Manetta only got two speakers.
25. Is that what you wanted to know?
26. Q.: Aright. OK. Let's just leave it at that.

1. So, as the deal was over, you gave Mr. Manetta two big
2. speakers. You allowed him to sell two of your speakers.
3. A.: He didn't sell it. I sold it.
4. Q.: Aright. You allowed him to get paid for two
5. of your speakers.
6. A.: Yes sir.
7. Q.: And then, you kept these speakers and the
8. amplifier.
9. A.: Yes sir.
10. Q.: Is that what you're saying?
11. A.: Yes sir.
12. Q.: And what was the deal at that time about the
13. money?
14. A.: He said if I could make over three hundred
15. and fifty dollars that I could have
16. Q.: Still three hundred and fifty dollars.
17. A.: Yes sir.
18. Q.: Even though part of the equipment had been
19. swapped?
20. A.: Yes sir.
21. Q.: There's no change in the price.
22. A.: He, he tried to change it, the price, and
23. y'know, he finally, when he left he said, the lowest that I
24. will take, the minimum, is three hundred and fifty dollars.
25. Q.: Alright. So you traded Mr. Manetta four
26. speakers.

1. speakers.
2. A.: Yes.
3. Q.: For these two speakers and the amplifier.
4. A.: Yes.
5. Q.: But, up to this time you just testified you
6. traded him for two speakers, is that correct?
7. A.: No. He traded me these two speakers.
8. Q.: And then Mr. Almond came around the next day,
9. is that right?
10. A.: Uh, yes sir. I'm not for sure when we met.
11. I don't recall. I remember goin' to the lake, Smith Mountain
12. Lake, where my sister has a place there.
13. Q.: Well, my question is, "He came the next day".
14. A.: Yes sir.
15. Q.: Aright. And that would have been Friday.
16. A.: Uh, yes sir.
17. Q.: So, you weren't working on that Friday.
18. A.: No sir.
19. Q.: So, when you tell me you worked full time,
20. you weren't workin' that full time.
21. A.: Uh, I had that Friday off.
22. Q.: Had that Friday off. I see, so that Friday
23. you went to the lake?
24. A.: Uh, yes sir.
25. Q.: And went to the lake with Mr. Almond?
26. A.: That was a special Friday, 's why I know.

1. Q.: So you went to the lake with Mr. Almond.
2. A.: Yes sir.
3. Q.: And then you and Mr. Almond came back to your
4. house.
5. A.: No sir.
6. Q.: Went and got Mr. Bowers and then came back to
7. your house.
8. A.: Yes sir.
9. Q.: Aright. And then at that point, you and Mr.
10. Almond start to talking about this deal.
11. A.: Uh, yes sir.
12. Q.: And that's when, you agreed to sell him the
13. two speakers from Ohio plus the Scaggs receiver and turn-
14. table.
15. A.: Yes sir.
16. Q.: Aright. And you took three hundred and fifty
17. dollars for that.
18. A.: Yes sir.
19. Q.: And you told him this was the stuff
20. A.: He said he'd pay me on Monday of that week.
21. Q.: And you told him this was the stuff you got
22. from Ohio.
23. A.: Um, I told him that the speakers which he
24. received with that, those two pieces, that I had bought
25. brand new in Ohio, yes sir.
26. Q.: Then, at that point you didn't mention any-

1. thing on any point during that night. You didn't mention
2. anything about selling the stuff for Manetta.
3. A.: I sure thought I did. Well,
4. Q.: You didn't think you did in the last hearing,
5. did you?
6. A.: If I - - - - I would have surely
7. mentioned it. I would've never had it in my house.
8. Q.: I didn't ask you, did you know it was stolen.
9. I asked you, did you tell him you were selling it for Manetta.
10. A.: I thought I had mentioned it.
11. Q.: Do you recall me asking you that question at
12. some length at the previous trial?
13. A.: I recall a question of similarity, yes.
14. Q.: And do you recall denying or admitting that
15. you never said anything about Manetta the whole evening?
16. A.: Uh, um, uh, I can't recall.
17. Q.: Do you want me to show it to you?
18. A: Yes sir. I probably could understand it better
19. if I could see it.
20. Q.: "Question, Well, you didn't feel any compul-
21. sion, I take it, to explain to Almond that this was not your
22. equipment, not your equipment. Answer: He never really
23. asked. It seemed, he assumed, I mean, I do not know. You
24. assume, Question: You assumed he assumed what? Answer:
25. That it was my equipment." Do you remember testifying to
26. that?

1. A.: Yes sir.

2. Q.: So, at a previous trial you said you didn't
3. tell him and that he assumed it was your equipment.

4. A.: Uh, yes sir.

5. Q.: Well, then, don't give us this business about,
6. you don't know, you think you might have told him it was
7. Manetta's equipment.

8. A.: I, - you asked me, this time, I'm trying to
9. remember, as best that I can, to my memory

10. Q.: Has ~~your~~ memory been refreshed now?

11. A.: Uh, yes sir.

12. Q.: And what is the

13. A.: You didn't ask me the exact same question.

14. Q.: Well, let me ask you the same question. Did
15. you feel any compulsion, I take it, to explain to Almond
16. that this was not your equipment?

17. A.: I don't remember my exact reply. I'm human,
18. and I make errors.

19. Q.: Well, what is your reply today?

20. A.: That I thought I mentioned it to him. It,
21. it stuck out. It was obvious.

22. Q.: OK. You're saying now you thought you said
23. something to him about it being Manetta's equipment.

24. A.: Yes sir.

25. Q.: But you concede at the last hearing that you
26. admitted that you knew you didn't tell him it was Manetta's

1. equipment.
2. A.: Uh, yes sir, if that's what the transcript
3. says.
4. Q.: Aright. So, the deal with Almond was comp-
5. leted. He got the equipment.
6. A.: Yes sir.
7. Q.: And that would have been on a, the twelfth?
8. A.: Uh, that would have been the thirteenth.
9. Q.: The thirteenth? OK. Then on the seventeenth
10. your house was searched.
11. A.: Nineteenth.
12. Q.: Nineteenth your house was searched.
13. A.: Yes sir.
14. Q.: Is that what you're saying? And that's when
15. these two speakers were found in your house?
16. A.: Yes sir.
17. Q.: And of course at that point the rest of the
18. equipment was already at Almond's house?
19. A.: Uh, yes sir.
20. Q.: Aright. And then, on the twentieth, that was
21. the day the day you came down to the Botetourt County Sheriff's
22. department? Is that right?
23. A.: Yes sir.
24. Q.: And you told Deputy Johnson that you got the
25. stuff from Manetta.
26. A.: Uh, yes sir.

1. Q.: But you didn't explain to Deputy Johnson what
2. had happened to the turn-table and the receiver, did you?

3. A.: He never asked.

4. Q.: Well, my question is, you explained about the
5. speakers but you didn't explain about the rest of it, did
6. you?

7. A.: I, uh, explained, y'know, everything that he
8. questioned me about.

9. Q.: Did you explain to Deputy Johnson what hap-
10. pened to the receiver and what had happened to the turn-
11. table? understand

12. A.: Yes sir. I understand. No sir. I didn't
13. tell 'im where these two pieces -

14. Q.: You didn't mention

15. A.: - Mr. Almond had bought 'em at the time I
16. volunteered to trade Manetta the speakers, I see no reason
17. to volunteer anything about someone else other than myself,
18. after knowing Mr. Almond for y'know,

19. Q.: At that point you knew that the speakers were
20. stolen, right?

21. A.: No. At that time, I, thought it was a big
22. mistake.

23. Q.: And you knew that this stuff came along with
24. 'em, didn't you?

25. A.: Uh, yes sir, after they had given me the
26. papers, that was on the warrants.

1. Q.: But knowin' that and knowin' that this was
2. what Deputy Johnson wanted to know about, I mean, you were
3. innocent, weren't you?

4. A.: Yes sir.

5. Q.: Isn't that what you're claiming?

6. A.: Yes sir.

7. Q.: So, you could have helped him a lot if you had
8. explained about what happened to that, couldn't you?

9. A.: Uh, yes sir.

10. Q.: But you didn't.

11. A.: No.

12. Q.: Didn't say a word about Ohio. Didn't say a
13. word about Almond.

14. A.: Uh, um. What d'you mean about Ohio?

15. Q.: About getting equipment in Ohio and selling
16. it to Almond.

17. A.: Um, no sir.

18. Q.: And didn't say a word about Bristol?

19. A.: Uh, that was the first day that, yknow, he
20. said, the first time I knew these people Scaggs had been
21. broke into would have been when I turned myself in. He told
22. me this crime was committed on the ninth. I had no idea
23. where I had been on the ninth right at the spur of the
24. moment, no sir.

25. Q.: But my question is, you didn't say anything
26. about Bristol.

1. A.: I didn't, even remember where I was at on the
2. ninth at that time.

3. MR. HEARTWELL: Alright. That's all the
4. questions I have, your Honor.

5. JUDGE: Re-direct?

6. R E - D I R E C T E X A M I N A T I O N

7. BY MR. CRUSH:

8. Q.: Where is this amplifier, this trade around,
9. where is this amplifier?

10. A.: Um, where was what now?

11. Q.: The amplifier, that Jamie traded

12. A.: The amplifier that Manetta

13. Q.: Where is it at now?

14. A.: I have it.

15. Q.: Where was it at, did you tell Officer Johnson
16. anything about it when he came down?

17. A.: Uh, yes sir.

18. Q.: What?

19. A.: That I received it, in trade.

20. Q.: Did you, you made mention of it in his house.
21. You asked him if he checked it to see if it was stolen?

22. A.: Yes sir. I made a mention to Officer Johnson
23. the-, y'know, that my speakers were at Manetta's and, y'know
24. I was out of some speakers and can he go get my speakers,
25. and that they searched Mr. Manetta's house.

26. Q.: Aright.

1. MR. FULCHER: May I have some water? I hate
2. to ask. I've just gotten over a strep throat and I keep,
3. it's hard for me to talk and I feel out of place.
4. (SOUND OF WATER POURING)
5. --
6. --
7. MR. CRUSH: Anything else you want to say?
8. MR. FULCHER: Yes sir. I, I know that, from
9. being here today, and having a previous hearing that they
10. mentioned, pretty well that somebody jot these notes down,
11. because I, y'know, just realized when I got arrested this
12. was a big mistake. It was a mix up. The speakers weren't
13. stolen, that they found at my house. Y'know, see no reason
14. to ever question the stuff from Mr. Manetta. I realize that
15. this is very serious. I missed a semester from school, from
16. college, because I'm in this trouble until this decision is
17. made. I realize from what Mr. Manetta has said, it's very
18. incriminating, and that I know where I was at on the ninth.
19. I will never forget that, y'know, riding up there with Mr.
20. Schutts,
21. MR. CRUSH: Aright.
22. MR. FULCHER: - having those discussions,
23. MR. CRUSH: OK.
24. MR. FULCHER: - and if I had known that this
25. stuff was stolen it would never have been in my house.
26. MR. CRUSH: OK. OK. That's enough. Come

1. around here. We rest at this time.

2. JUDGE: Any further evidence?

3. MR. HEARTWELL: No, your Honor.

4. JUDGE: Thank you. You may stand down.

5. All right. Ladies and gentlemen of the jury, that concludes

6. the evidence in the hearing. As I promised you earlier, at

7. this time you will go into the jury room while we get your

8. instructions ready and hopefully that won't take, hopefully

9. no more than fifteen or twenty minutes, and then we'll come

10. back and at that time I will read the instructions to you,

11. which I indicated belong to this case, and then you will

12. hear the final arguments from the attorneys and the matter

13. will be submitted to you for your deliberation. I will

14. admonish you at this point, though the evidence is over with,

15. do not attempt to begin your deliberations until the matter

16. is finally submitted to you. You may now adjourn to the

17. jury room while we get your instructions ready.

18. MR. CRUSH: After hearing all the evidence,

19. the Commonwealth still has to show a prima facie case and I

20. feel at this point in time they haven't and in more ways

21. than one I think they haven't established the value of the

22. equipment to have grand larceny and receiving stolen goods.

23. JUDGE: Again, hearing the whole evidence

24. in the light most favorable to the Commonwealth as I must on

25. your motion to strike, I will overrule your motion and I will

26. note your exception for the record.

1. MR. CRUSH: And just for the record, your
2. Honor, I leave a motion for mistrial, just for the record.
3. The reason I was doing that is the proper question there
4. would have been "Have you been convicted of any felony" that
5. the question was asked about cocaine. It was obvious to
6. prejudice the jury. That is the reason we ask for mistrial
7. there.

8. JUDGE: Alright. I put your reason for
9. that on the record. The jury is out. I will enter into
10. the record in the presence of the defendant the instructions
11. that have been , not been granted as well as the instruction
12. granted. The defendant has offered instructions A through
13. E, A through E, which have been granted, and Commonwealth is
14. offering One through Five which have been granted. Now,
15. Mr. Heartwell, do you wish to enter any objections into the
16. record insofar as - - instructions

17. MR. HEARTWELL: No, your Honor.

18. JUDGE: Mr. Crush, do you have any
19. objections which you wish to read into the record concerning
20. of Court's granting or refusing of granting instructions?

21. MR. CRUSH: No, your Honor, we don't.

22. JUDGE: Bring in the jury, please. -

23. Ladies and gentlemen, the following instructions which will
24. now be given to you are the law of this case, which are
25. applicable to the evidence which you have heard from the
26. witness stand. These instructions in their entirety consti-

1. JUROR: Your Honor, we're concerned as
2. to what the, fixing punishment, for instance, if we, fix
3. punishment, how much of this time, would he actually serve?
4. JUDGE: Well, my instruction to you on
5. that regard would be that you must fix your punishment,
6. within the limitations that are set in the court's instruc-
7. tions, and, you should not concern yourself with what happens
8. outside of that.
9. JUROR: OK. OK. Thank you.
10. JUDGE: Do you understand? The question
11. has been answered? Alright. You may retire to the jury room
12. to complete your deliberation.
13. - - - - -
14. CLERK: Have you agreed upon a verdict?
15. JURORS: We have.
16. CLERK: We, the jury, find the accused
17. not guilty of breaking and entering as charged in the indict-
18. ment. Paul Crawford, foreman. We, the jury, find the
19. accused not guilty of grand larceny as charged in the
20. indictment. Paul Crawford, foreman. We, the jury, find the
21. accused guilty of receiving stolen property, a lesser and
22. included charge in the indictment of grand larceny, and fix
23. his punishment at confinement in the jail for a period of
24. twelve months and a fine of one thousand dollars. Paul
25. Crawford, foreman. Members of the jury, is this your
26. verdict?

1. JURORS: Yes.

2. JUDGE: Alright. Ladies and gentlemen

3. of the jury, I want to express the court's appreciation for

4. your service in this case. As I explained to you this

5. morning, your service as jurors is one of the foundations

6. of corner-stones of our judicial system and I realize it's

7. been a heavy responsibility placed on your shoulders. However

8. by accepting and fulfilling this responsibility you have

9. performed a vital service for your fellow man and your

10. community. You may be excused at this time.

11. - - - - -

12. JUDGE: Are there any post-trial motions?

13. MR. CRUSH: Yes. First of all, I move to set

14. aside the verdict, because it's contrary to law and the

15. evidence in the case, as far as receiving stolen goods, and

16. if you want I can start setting out what course the defense

17. witness or Mr. Manetta has never once submitted anything

18. about selling this to Mr. Fulcher whatsoever for less than

19. true value or what have you. No mention that he should know

20. that these things had been stolen. That was Commonwealth's

21. evidence on that. The only evidence is to swap value for

22. value between Mr. Fulcher and Mr. Manetta, and that would

23. be in the motion to set aside that, receiving stolen goods.

24. JUDGE: Alright. Mr. Heartwell?

25. MR. HEARTWELL: Your Honor, we feel like, of

26. course, under receiving stolen goods, it's taking control of

1. stolen goods or exercising any control or possession of them,
2. involves that they're stolen and certainly ample evidence to
3. give rise to an inference these were stolen goods. I feel
4. like the jury was well within the evidence on that point,
5. and we ask the court to confirm the jury's verdict.

6. JUDGE: Aright. Anything from the, any
7. other questions?

8. MR. CRUSH: Judge, we would ask for a pre-
9. sentence report before imposing sentence.

10. JUDGE: Are you opposed to sentence or
11. OK

12. MR. CRUSH: Pos-

13. JUDGE: Alright. I think you're
14. entitled to that as a matter of law. Well, at this point
15. the court will, is of the opinion that the verdict is
16. supported by the law and the evidence and the court will
17. render judgment in accordance with the jury's verdict and
18. find Mr. Fulcher guilty of receiving stolen property and,
19. withhold imposition of sentencing directing the probation
20. officer of this court prepare a pre-sentence investigation,
21. and he is remanded to the jail pending that investigation.

22. MR. CRUSH: Judge, we're asking just to stay
23. out

24. JUDGE: Request denied.

25. MR. CRUSH: Well, could he perhaps come down
26. here, say tomorrow afternoon and check in?

1. VIRGINIA:
2. IN THE CIRCUIT COURT FOR THE COUNTY OF BOTETOURT
3.
4. COMMONWEALTH OF VIRGINIA
5. vs
6. MICHAEL EDWARD FULCHER
7.
8. TRANSCRIPT OF PROCEEDINGS had and evidence
9. introduced before the Honorable Duncan M. Byrd, Jr., Judge
10. of the Circuit Court of Botetourt County, held in Fincastle,
11. Virginia, on the seventh day of June, 1982, in the above-
12. captioned matter.
13. APPEARANCES: William L. Heartwell, III
14. Attorney for the Commonwealth
Fincastle, Virginia
15. Arthur B. Crush, III
16. Roanoke, Virginia
17. and
18. Jonathan M. Rogers
Roanoke, Virginia
19. Attorneys for the Defendant.
20.
21.
22. REPORTED BY:
23. George E. Holt, Jr.
24. Fincastle, Virginia
25.
26.

1. consideration of all those factors in the pre-sentence
2. investigation, I am of the opinion that imposition of
3. sentence should not be suspended in this particular case.
4. Would you stand up, Mr. Fulcher? - Do you have
5. anything you wish to say before the Court pronounces judgment
6. in this matter?

7. MR. FULCHER: No sir.

8. JUDGE: In accordance with the jury's
9. verdict and the review of your pre-sentence investigation
10. in this matter, the Court sentences you, in accordance with
11. the jury's verdict, to twelve months in jail and assesses a
12. one-thousand dollar fine. Your motion to suspend the imposi-
13. tion of sentence and implore the Court to place you on
14. probation is denied. Let the record show that you were
15. present and ably represented by counsel at each stage of
16. these proceedings and you are advised of your right of appeal
17. to the Virginia Supreme Court. You may be seated.

18. MR. ROGERS: Judge, if I may at this time, Mr.
19. Fulcher has indicated that he does want to appeal, and that
20. would necessitate a brief hearing, post trial hearing, post
21. trial to make something that has not been made a part of the
22. record a part of the record, which is actually the status of
23. his J & D cases at the time of his trial last

24. JUDGE: Status of whose J & D cases?

25. MR. ROGERS: Mr. Manetta's, I'm sorry. Mr.
26. Manetta's, because the point of appeal will be that those

1. should have been brought out during the trial. And so, we
2. need to make them a part of the record, and I think that
3. would necessitate a brief hearing. We could do it now or at
4. a time that the Commonwealth would agree to and there will
5. also be a need to take up a matter of bail, ,pending appeal.
6. We can do that either now or at a time that the Commonwealth
7. would find more agreeable.

8. JUDGE: Mr. Heartwell?

9. MR. HEARTWELL: Well, let's see, Judge. We can
10. re-open the record for the introduction of further factual
11. items of evidence that, is that what is being pressed here?

12. JUDGE: Aright, I guess that what he's
13. saying is that they wish to vouch the record as to certain
14. things.

15. MR. HEARTWELL: But, I understand that, that,
16. wouldn't that necessitate a Court hearing, additional factual
17. evidence, and that being made a part of the record?

18. JUDGE: Yes.

19. MR. HEARTWELL: OK. I mean, I'm just saying Ok, I
20. understand.

21. JUDGE: OK. Well, I think that the
22. conviction, I think that, today, the conviction does not
23. become final until today. I think as long as we do it, as
24. long as it's done, jurisdictionally I think I have the power
25. within the twenty-one days. Whether or not it's proper will,
26. will determine - you think we should, you're obviously not in

1. a position to argue, you don't want to go into that now? How
2. about the question of bail? Is the question of bail incum-
3. bent on that?

4. MR. HEARTWELL: Well, I guess we could argue that,
5. if that's what you're saying. We could argue that today. I
6. still have the time.

7. JUDGE: Well, do you have a recommendation
8. as to bail for an appeal?

9. MR. HEARTWELL: Yes, I do.

10. JUDGE: Alright. Let's hear what it is.

11. MR. HEARTWELL: I recommend that no bail, that Mr.
12. Fulcher be remanded back to jail to serve his sentence. I
13. think the same factors that were present when the Court
14. denied bail pending sentencing are still present and it seems
15. to me this is a question with justice in terms of the same
16. analysis and I can't, I can't see anything that's changed,
17. from that point to now. In fact the situation, if anything,
18. in terms of his security and his right to appeal has become
19. greater, or less in his favor. Now, he is now formally
20. convicted of this offense and he also is, facing additional
21. felony charges that he was not facing at the time of, the
22. Court's initial decision at the conclusion of the trial. So,
23. I, I think for those reasons, that there should be no change
24. in the Court's previous analysis.

25. MR. ROGERS: Judge, I'd like to respond, too.
26. First of all, it's true, I assume it's going to be true,

1. that he's gonna be faced with additional charges but he's
2. been facing a lot of charges for some time and he's always
3. showed up on time and there's been, the extra charges really
4. kinda diminish in comparison to the pending charges, that
5. he's always reported in on time for both of these jury trials
6. here. If bail is denied, the way the time-table of the
7. Virginia Supreme Court works, well he will probably have
8. served his time by the time they can consider whether or not
9. to grant an appeal, the first stage, does normally take six
10. months. He's already served two, so we're talking about
11. really depriving him of the chance to have an appeal that
12. would affect the sentence, he will have already served his
13. sentence. I don't feel this will be a frivolous appeal. The
14. issue is going to be pure and simple, on whether or not the
15. J & D status of Mr. Manetta, his pending cases should have
16. been something that Mr. Crush, when he attempted to bring it
17. out in pre-trial was denied. That's going to be the issue,
18. but I don't think the frivolous appeal. A lot of appeals
19. are. I know that, but I think this one has a, a very
20. important issue, and what it will create as far as Mr.
21. Fulcher, bail is denied, I don't have any argument that maybe
22. it should be higher than it was before trial, but it will in
23. effect almost take away his right to appeal.

24. JUDGE: What was it before trial, do you
25. recall?

26. MR. ROGERS: I guess, I think it was thirty

1. thousand. That's what Mr. Crush said.

2. MR. CRUSH: As I understand it, your Honor,
3. Mr. Roe was handling that, but originally it was somewhat
4. less than thirty thousand. There was a charge which was
5. dismissed, about shooting an occupied car, and you raised
6. the bail to thirty thousand at that time - (pause)

7. JUDGE: Aright. I think that it's clear
8. that, as Mr. Rogers has pointed out, that while the criteria
9. is certainly changed as you pointed out, also, Mr. Heartwell,
10. while the criteria in a close conviction, post-sentencing
11. situation, the criteria for bail is significantly altered by
12. those facts, I think that the, nonetheless that the, the
13. defendant is entitled to bail. It's just a again the
14. criteria is somewhat changed by those factors, the conviction
15. and sentence. I do agree that the original thirty thousand
16. bond was set. At that time there was both the breaking and
17. entering and larceny charges pending, and the jury's verdict
18. in effect, acquitted him of the breaking and entering charge
19. and found him guilty of the lesser included offense within
20. the grand larceny, and I would feel under the totality of the
21. circumstances that a bond or bail of a, of fifteen thousand
22. cash, or thirty thousand property, pending an appeal, would
23. be appropriate.

24. MR. ROGERS: Thank you, sir.

25. JUDGE: Aright?

26. MR. ROGERS: Judge, did we want to set a post-

1. trial hearing on just the issue which we may be litigating,
2. whether or not there should be a post-trial hearing, I
3. thought a date which could be set now
4. JUDGE: How about the fifteenth?
5. MR. ROGERS: I can't do it on the fifteenth,
6. Judge. I could on the tenth.
7. JUDGE: But I can't.
8. MR. ROGERS: I know.
9. JUDGE: I've got, I think, we've got to do
10. it within twenty-one days.
11. MR. ROGERS: Yes sir. I agree.
12. JUDGE: Twenty-fourth? How's that?
13. MR. ROGERS: I could do it only in the morning
14. on the twenty-fourth. I have an afternoon hearing in
15. Roanoke County.
16. JUDGE: Alright. As I understand, all
17. we're doing is, is, is you wish to, vouch the record, with
18. his juvenile record?
19. MR. ROGERS: Yes sir, the pending case.
20. JUDGE: Alright.
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1. VIRGINIA:
2. IN THE CIRCUIT COURT FOR THE COUNTY OF BOTETOURT
3.
4. COMMONWEALTH OF VIRGINIA
5. vs
6. MICHAEL EDWARD FULCHER
7.
8. TRANSCRIPT of proceedings had and evidence
9. introduced before the Honorable Duncan M. Byrd, Jr., Judge
10. of the Circuit Court of Botetourt County, held in Fincastle,
11. Virginia, on the 24th day of June, 1982, in the above-
12. captioned matter.
13. APPEARANCES: William L. Heartwell, III
14. Attorney for the Commonwealth
Fincastle, Virginia
15. Jonathan M. Rogers
16. Attorney for the Defendant
Roanoke, Virginia
17.
18. Reported by:
19. George E. Holt, Jr.
20. Fincastle, Virginia
21.
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1. who your counsel is and be prepared on the ninth of August
2. to set the matter for trial, not to be heard on that date,
3. but set it on that date, for a future time. Aright. OK.

4. MR. ROGERS: Your Honor, that leaves the
5. original purpose for which this hearing was set, which was
6. concerning the case which Mr. Fulcher was convicted of, and
7. sentenced by this Court, merely to put certain things in the
8. record, the J. & D. records, and there are a few other things
9. that, and I subpoenaed three witnesses for that purpose, very
10. brief questioning, answers, to the point of basically, the
11. status of the charges when Mr. Manetta testified and how
12. they arrived at their status which was, as I understand it,
13. under advisement at that time.

14. THE JUDGE: Aright. I think that, I mean,
15. this is a matter pretty much of public record. Will the
16. Commonwealth stipulate to that fact, to these facts?

17. MR. HEARTWELL: Judge, I take the position, and
18. attempted to research this with some care, that, it appears
19. to me that really what he's trying to do is to come after
20. judgment and insert additional facts into the trial record.
21. Now I can find no vehicle under the law that permits this.
22. Prior to the Court entering its final judgment you can order
23. a new trial, and we could do that I suppose, at that point.
24. I found no case where there's even been a new trial ordered
25. by the trial court judge after final judgment has been
26. entered and I don't believe that would be proper. For that

1. reason my primary position is that that no facts, no facts,
2. can be inserted into the record of the trial after final
3. judgment has been rendered and that if the Court feels facts
4. can be entered at this point, I think that that would be
5. tantamount to ordering a new trial and we would ask that
6. either the jury that heard the first set of facts be impanel-
7. ed to hear these facts or that a new jury be impaneled to
8. hear these facts. The record is now set and I don't believe,
9. under any circumstances that I'm aware of, that additional
10. facts, particularly out of the presence of the jury that
11. heard the case, can now be inserted into the record, and,
12. there are, cases I have found that held that there are such
13. a thing called "bill of review" that can be obtained in
14. equity cases when there's - discovered evidence or something
15. of this nature, but, unless that falls in this category and
16. these equity cases -- criminal law, I don't think this would
17. be appropriate, and for that reason I object.

18. MR. ROGERS: Your Honor, if I may, there
19. have been many, many cases which allow, in fact the Rules
20. allow for after-discovered evidence. What we're gonna put on
21. is after-discovered evidence and it's clear from reading the
22. transcript that this evidence was not within Mr. Crush's
23. knowledge, and in fact he states quite the contrary, that he
24. was under the opposite impression in terms of the status of
25. the J & D cases and how they arrived at that status. In the
26. transcript, and the Court obviously thought the cases had

1. been disposed of, the Carvin's Cove cases, and they were
2. under advisement at the time, and in the transcript of the
3. case, the Court asked Mr. Crush if the cases had been
4. disposed of. Mr. Crush replies "The Commonwealth Attorney
5. has told me that" and no other comments are made by the
6. Commonwealth saying, "well, that's not the case". In parti-
7. cular, under the grounds that we are seeking to appeal this
8. case, it is essential that the status of the Juvenile and
9. Domestic Relations cases, the Carvin's Cove cases pending
10. against Mr. Manetta, be in the record. Otherwise the Supreme
11. Court won't know what was not, what Mr. Crush was not allowed
12. to question. There would be a question mark, and Mr. Crush
13. attempted before the trial to get a court ruling allowing him
14. to question Mr. Manetta concerning the J & D charges. The
15. Commonwealth objected, and the Court sustained that objection
16. as I read the transcript. The Supreme Court, if that was
17. incorrect, the Supreme Court has to know what the effect of
18. sustaining that objection was, what was not allowed to be
19. placed in the record. The profer was incorrect. The profer
20. was basically the cases have been disposed of. It is
21. critical that they had not been disposed of, that they were
22. still pending, that this could have been arguably a motive
23. for Mr. Manetta's testimony, which is the linch-pin of the
24. appeal. There is a vehicle for after-discovered evidence
25. being presented. Perhaps a motion for a new trial is a
26. possibility. We're still within the twenty-one days of the

1. final judgment. I still could file that, but nonetheless,
2. the record must be made complete.

3. THE JUDGE: Aright. Thank you.

4. MR. HEARTWELL: Judge, Mr. -- has a
5. section on after-discovered evidence and cites one Common-
6. wealth case. It's section seven in - - and sets out the
7. factors for after-discovered evidence and I don't believe
8. what he's attempting to do passes muster at that point.

9. THE JUDGE: Well, it seems to me that we're
10. not talking about after-discovered evidence. We're talking
11. about the true state of evidence that was excluded and, if,
12. if we were in the trial of the case, and I had made my ruling
13. at that time, it would be something you did outside the
14. presence of the jury for the purpose of vouching the record.
15. I would concur with Mr. Rogers that there's no way that a
16. court of review can properly, rule on this objection without
17. knowing the true state of affairs. I would overrule your
18. objection. I think it is proper and within the inherent
19. power of the Court to allow the defendant to vouch the record
20. on the point in question.

21. MR. HEARTWELL: Your Honor, isn't there, isn't
22. it incumbent to have some initial showing that Mr. Crush
23. couldn't have discovered these facts without, by exercising
24. some, due diligence on his part, as they are facts?

25. THE JUDGE: I understand that -

26. MR. HEARTWELL: And as facts, would have to come

1. into the record, by virtue of witnesses or by witnesses and,
2. and the question would be what, could they have, he could
3. have done this in the regular trial, what we're doing now.
4. Right?

5. THE JUDGE: That's right.

6. MR. HEARTWELL: But he didn't. He chose not to,
7. and he didn't know, apparently.

8. THE JUDGE: Well, I think those are matters
9. of, again, those are matters that the, I guess, court of
10. review can look at, but I don't know that

11. MR. HEARTWELL: Well, I can't predict

12. THE JUDGE: Well, I don't know that hinges
13. on the admissibility of it. I know that that's the rule in
14. after-discovered evidence. You have to come forward and
15. show that, that, you know, that through due diligence you
16. would have discovered this evidence and that maybe, I just
17. don't see this as that sort of thing. We're not talking about
18. re-opening the trial to put in additional evidence before the
19. jury. We're merely talking about, vouching the record.

20. MR. HEARTWELL: Alright, your Honor.

21. THE JUDGE: To clarify the objection.

22. MR. HEARTWELL: Well, I object.

23. THE JUDGE: I understand that.

24. MR. HEARTWELL: I may very well be wrong.

25. THE JUDGE: May very well be wrong, but with
26. that in mind, I, I think the, the facts that the, as I under-

1. stand you want to put in, are pretty concise and limited. It
2. would be just a question of including in the record and
3. stipulating basically the status of it at that time, would
4. it? You don't have a problem with that -

5. MR HEARTWELL: As far as I can tell, I know
6. I don't have any objection to that, other than the objection
7. I've stated

8. THE JUDGE: I understand that, but given
9. the fact that the Court's overruled that, w-

10. MR. HEARTWELL: I don't think there's any, any
11. controversy over what the record stated.

12. MR. ROGERS: Aright. Then, I, I, There are
13. The Juvenile and Domestic Relations records are here, which
14. would show that all the Carvin's Cove charges, which were
15. two breaking-enterings and two petit larcenies, they were
16. under advisement at the time Mr. Manetta testified.

17. MR. HEARTWELL: But I thought there was no
18. objection, but as he said, there is objection. They were not
19. under advisement. He was here. He had been - -

20. THE JUDGE: He had been adjudicated "not
21. innocent", but had not been sentenced.

22. MR. ROGERS: Well, I, I've looked at the
23. records and they do say under advisement, your Honor.

24. THE JUDGE: Aright. Let's check.

25. MR. ROGERS: But we can just put the records
26. in, but I'm certain they say under advisement.

1. THE JUDGE: I think we're talking semantics
2. at this point. Let's, let's go off the record now and let's
3. see if we can't work out this thing. I think we're talking
4. about something very simple -
5. MR . ROGERS: They're in a sealed envelope,
6. I believe.
7. THE JUDGE: That should be -
8. -
9. THE JUDGE: - in that you should not be
10. allowed to vouch the record to correct the, the Court's
11. disposition of the, finding and sentence of Mr. Manetta on
12. the, as co-defendant, on the charges in question. I feel
13. that while there have been some semantic differences in,
14. well, let me say that while the record does reflect that the
15. Court took both the finding and the sentence under advise-
16. ment, that that was a matter of public record and that, Mr.
17. Crush had access to it, as well as the Commonwealth, but I
18. would not allow you to vouch the record on that point.
19. MR. ROGERS: OK. One final thing and I -
20. THE JUDGE: You take exception to that?
21. MR. ROGERS: Yes sir. Mr. Eads allowed that
22. the reason it was done was to allow Mr. Manetta -
23. MR. HEARTWELL: Objection.
24. MR. ROGERS: Let me say it and then you can
25. object. This is why I subpoenaed Mr. Eads, and I say you
26. can object

1. MR. HEARTWELL: What's the point of excluding
2. it from the record if he's gonna say it right into the
3. record?
4. MR. ROGERS: Well -
5. THE JUDGE: He's, his final argument. If I
6. disallow it, it's not going on the record.
7. MR. ROGERS: What I'm saying is Mr. Eads
8. told me the reason it was done was to allow Mr. Manetta to
9. spend Christmas with his family. He went on that he had not
10. spent Christmas with his family the prior year. To me, this
11. sounds like preferential treatment and a favor, which could
12. not have been within Mr. Crush's knowledge at that time, and
13. that it was not a matter of public record and I subpoenaed
14. Mr. Eads for that purpose, and I'd like to put it on that
15. the reason that this was done, the reason that Mr. Eads and
16. the Commonwealth came back was to allow Mr. Manetta to be
17. home for Christmas. That sounds like a favor to me.
18. THE JUDGE: Aright. And, are you saying
19. that Mr. Crush didn't have the same opportunity to interview
20. Mr. Eads as you did?
21. MR. ROGERS: I do not know that. I, I take
22. it he would be, would have had that opportunity.
23. THE JUDGE: I would think so, and I will
24. disallow you to, I would not allow you to, vouch the record
25. on Mr. Eads' testimony.
26. MR. ROGERS: Aright. Thank you, your Honor.

1. That's all I have.

2. THE JUDGE: Aright. At this time the Court

3. will for the purpose of allowing the defendant to vouch the

4. record, will make a part of the record in this particular

5. case, the petitions, Juvenile Petitions of Mr. James Edward

6. Manetta, File Number 49, Case Number 52-M; and File Number 48

7. Case Number 51; File Number 50, Case Number 53-M; and File

8. Number 51, Case Number 54. The Court will make a part of the

9. record in this/the Juvenile Petitions in each of those

10. respective cases and also the Final Orders of the Juvenile

11. and Domestic Relations Court, dated 12 November 1981 and

12. 10 June 1982, respectively. Aright?

13. MR. ROGERS: Yes sir. That's all I want.

14. Thank you.

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