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SUPREME COURT OF  
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RICHMOND, VIRGINIA

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

RECORD NO. 810586

WILLIAM EUGENE MOEHRING,

Appellant

v.

COMMONWEALTH OF VIRGINIA,

Appellee

APPENDIX

Carl E. Eason, Jr.  
PRETLOW, PRETLOW & MOORE, P.C.  
104 Western Avenue  
Suffolk, Virginia 23434

Counsel for Appellant



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COMMONWEALTH OF VIRGINIA,

No. \_\_\_\_\_

COUNTY [CITY] OF

Isle of Wight

To Wit:

ARREST WARRANT  
(Rule 3A:4)

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

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

William Eugene Moehring

(Name of accused, or a description by which the accused can be identified)

and to bring him (her) before the

General District Court

(Designation of Court)

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

Isle of Wight

on or about

March 23, 1980

namely (give a brief description of the offense)

did unlawfully and feloniously  
did steal property, namely a 1978 Chevrolet Big 10  
Truck, having a value of more than \$100.00  
belonging to James Keeling;(Grand Larceny - Va Code Sect 18.2-95)On the basis of the sworn statement(s) of Dep. Sheriff Donald Curtis,  
the undersigned has found probable cause to believe the accused has committed the offense.

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

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

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

Given under my hand and seal, this 23rd day of March, 1980.Wilton J. Bell

(SEAL)

(Signature of Issuing Officer)

Magistrate

(Title of Issuing Officer)

COMMONWEALTH OF VIRGINIA,  
COUNTY [CITY] OF \_\_\_\_\_

(Name of accused)

(surety)

each (if more than one) acknowledges himself indebted to the Commonwealth of Virginia in the sum of (\$ \_\_\_\_\_) and waives all benefit under the homestead exemption laws of the State of Virginia as to this obligation.

The condition of this obligation is that if \_\_\_\_\_

(Accused)

on the \_\_\_\_\_

day of \_\_\_\_\_

19 \_\_\_\_\_

at \_\_\_\_\_ m.,

(Designation of court)

and at any time or times to which the proceedings may be continued in that court or heard on appeal, to answer for the offense with which he is charged, and shall not depart without leave of the court and shall keep the peace and be of good behavior, then this obligation shall be void when final disposition of the charge is made; otherwise, this obligation shall remain in full force and effect until declared void and released by order of a competent court. Non-appearance before any court referred to herein shall be deemed to constitute a waiver of trial by jury.

Whenever the context so requires, the masculine shall be deemed to refer to the feminine or neuter and the singular to the plural.

Given under out hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

(SEAL)

(Name of corporate surety)

(Accused)

(SEAL)

by \_\_\_\_\_ Attorney-in-fact (or title of signing officer)

(Individual Surety)

Acknowledged before me in my County (City) on the date last above written.

(Signature of acknowledging official)

(Address of surety)

(Title of acknowledging official)

Fine \_\_\_\_\_ \$ \_\_\_\_\_  
Costs \_\_\_\_\_  
Total \_\_\_\_\_ \$ \_\_\_\_\_

DOCKET NO. 80-182  
WARRANT OF ARREST

COMMONWEALTH vs. \_\_\_\_\_

*William Eugene Mocking*  
*2827 Steady Lane, Portsmouth, Va.*

Executed this, the 23 day of March, 19 80

*D.E. Corder*

Serving Officer

DISPOSITION OF CHARGE:

*C. A. Atty. Fee \$ 75.00*

I hereby certify that I have this day conducted a preliminary hearing of the within felony in accordance with the provisions of Chapter 12 of Title 19.2 of Code of Virginia, and probable and sufficient cause having been found, it is

ORDERED that this case be certified to the Clerk of the Circuit Court of Isle of Wight County, Virginia for presentation to the grand jury.

I further certify that the defendant was effectively represented at the said preliminary hearing by

*Carl E. Eason, Jr.* Esq.

Counsel appointed by the Court

~~Counsel of his own choosing~~

Date 5/6/80

Judge, Isle of Wight County General District Court

JUDGE

The following witnesses were recognized

to appear before the \_\_\_\_\_ Court of

\_\_\_\_\_ County (City).

Virginia, at \_\_\_\_\_

Virginia, at \_\_\_\_\_ M., on the \_\_\_\_\_

day of \_\_\_\_\_, 19 \_\_\_\_\_

under penalty of \$ \_\_\_\_\_

Fine \_\_\_\_\_ \$ \_\_\_\_\_

Liquidated Damages \_\_\_\_\_ \$ \_\_\_\_\_

COSTS

Warrant \_\_\_\_\_ \$ \_\_\_\_\_

Trial \_\_\_\_\_

Bail \_\_\_\_\_

Arrest \_\_\_\_\_

Clerk of Court \_\_\_\_\_

Committal (Date \_\_\_\_\_)

Witnesses \_\_\_\_\_

Sheriff/Sergeant: \_\_\_\_\_

Fees \_\_\_\_\_

Mileage \_\_\_\_\_

Commonwealth Attorney \_\_\_\_\_

Weighing Fee \_\_\_\_\_

Reportable Violation D.M.V. (\$5.00) \_\_\_\_\_

D.M.V. Abstract Fee (50¢) \_\_\_\_\_

Blood (Sample \$ \_\_\_\_\_ Analysis \$ \_\_\_\_\_)

Court Appointed Attorney \_\_\_\_\_

Total Costs \_\_\_\_\_ \$ \_\_\_\_\_

Virginia:

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

July 7, 1980

(Date)

The grand jury charges that:

On or about March 23,, 19 80 in the County of Isle of Wight William Eugene Moehring did unlawfully and feloniously steal property, namely a 1978 Chevrolet Big Ten Pick-up truck, having a value of more than \$100.00 belonging to James Keeling.

Va. Code 18.2-95

Witnesses:

James Keeling  
Patrolman D. C. Relles  
Deputy Sheriff Donald Curtis

A True Bill

B. C. Carr Jr.  
Foreman

Virginia:

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

---

Commonwealth of Virginia

vs. No. \_\_\_\_\_

William Eugene Moehring

---

Indictment for

Grand Larceny

---

\_\_\_\_\_ A True Bill

  
Foreman

Date: July 7 1980

---

Witnesses sworn in open Court and sent to  
the grand jury to give evidence:

Teste

  
Clerk

---

Commonwealth

vs

William Eugene Moehring

ORDER - FELONY NO. 5948

This day came again the Attorney for the Commonwealth and William Eugene Moehring, who stands indicted for a felony, to-wit: On or about March 23, 1980, in the County of Isle of Wight William Eugene Moehring did unlawfully and feloniously steal property, namely a 1978 Chevrolet Big Ten Pick-up truck, having a value of more than \$100.00 belonging to James Keeling, appeared according to the condition of his recognizance, and came also Carl E. Eason, Jr., his attorney, heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury and with the concurrence of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law, and having heard the evidence and argument of counsel finds the accused guilty of grand larceny (Virginia Code Section 18.2-95), as charged in the indictment.

The Court, on motion of the defendant by counsel, before fixing punishment or imposing sentence, directs the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law.

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 the defendant is allowed to depart, his bond being continued.

10-22-80

ORDER - FELONY NO. 5948

This day came again the Attorney for the Commonwealth, and William Eugene Moehring, who stands convicted of a felony, to-wit: grand larceny (Virginia Code Section 18.2-95), as charged in the indictment, appeared according to the condition of his recognizance, and came also Carl E. Eason, Jr., his attorney, heretofore appointed.

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

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

Whereupon the Court taking into consideration all of the evidence in the case and the report of the Probation Officer, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of the Commonwealth of Virginia for the term of two (2) years of which term the Court doth suspend the execution of all except 30 days to be served in jail upon the conditions that he keep the peace and be of good behavior for four (4) years from this date, and that the Commonwealth of Virginia recover against the said defendant its costs by it about its prosecution in this behalf expended in the amount of \$377.59. It is the further condition of the suspension of the execution of this sentence that the defendant pay all costs within four months.



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

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

And the defendant is remanded to jail.

1-14-81

ASSIGNMENT OF ERROR

Petitioner assigns the following error:

(1) The verdict of the trial court was contrary to the law and evidence, in that the testimony did not show that the Defendant participated in any way in the offense of Grand Larceny, nor that the Defendant aided or abetted the actual perpetration of the offense committed, hence the evidence did not convict the Petitioner beyond reasonable doubt.

1 MR. DELK: Your Honor, I have no objection.

2 THE COURT: All right. I don't feel -- I believe  
3 the Statute requires me to disqualify myself in certain cases  
4 involving members of my family, but Mr. Keeling and I are so  
5 far distant kin, although I assume we do recognize that we are  
6 kin in some respects, if there is any objection, I would  
7 certainly disqualify myself. I didn't realize Mr. Keeling was  
8 the alleged victim in the case.

9 Is there any objection, Mr. Eason?

10 MR. EASON: We have no objection, Your Honor.

11 THE COURT: All right, then I will proceed to  
12 hear it. Go ahead, sir.

13 JAMES KEELING, called as a witness by and on  
14 behalf of the Commonwealth, having been previously duly sworn,  
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17  
18 BY MR. JONES:

19 Q You are James Keeling?

20 A Yes, sir.

21 Q And the spelling of your last name is K-e-e-l-i-n-g?

22 A Yes, sir.

23 Q Where do you reside?

24 A In Suffolk.

25 Q And how old are you?

1 A Twenty-seven.

2 Q And are you employed?

3 A Yes, sir.

4 Q And what is your employment?

5 A I am self-employed. I am a commercial fisherman.

6 Q Did you happen to be in Isle of Wight County on  
7 March 23rd of this year?

8 A Yes, sir.

9 Q Would you tell the Court when and where you were  
10 at that time and what happened to you with reference to the  
11 alleged offenses?

12 A Yes, sir. I was at Bailey's Service Station, a  
13 little grocery store.

14 Q At what time of the day?

15 A Early, around six, quarter after six.

16 Q Where had you come from and where were you going  
17 at that time?

18 A I had come from Eclipse, which is right there in  
19 Suffolk, on the Chuckatuck Creek. And I was running a little  
20 late Sunday morning. I was going to get some gas, so I could  
21 start to go fish my nets.

22 Q You say it was Sunday morning?

23 A If I could -- it's been so long ago. Yeah,  
24 Sunday morning.

25 Q What did you do, how did you happen to get to the

1 store and what transpired after you were there?

2 A I drove by the store first and I was looking for  
3 a station open, and I knew her and I saw a light in the back,  
4 so I pulled in and I knocked on the door. And she came to the  
5 door and saw who it was and I told her I needed some gas and  
6 she said all right. So she cut the pumps on and I got six  
7 gallons in a tank in back of the truck. And I went in the  
8 store to pay her.

9 Q What was the condition of your automobile as you  
10 went into the store?

11 A What is the condition?

12 Q How did you leave your vehicle when you went into  
13 the store?

14 A Well, I was in a rush. I shut the doors when I  
15 got out, but I left the keys and stuff in the truck.

16 Q Was the ignition on or off?

17 A It was off, but the keys were, you know, it  
18 wasn't running. It was cut off. Key hadn't started. Anyway,  
19 when I pulled into the station, both of these fellows were  
20 thumbing. They were across the street at the time.

21 Q Now do you recognize or can you describe the two  
22 people that were thumbing?

23 A Yes, sir, that's them; no problem.

24 Q No question in your mind that these two people  
25 were thumbing?



1 A No question.

2 Q And where were they in relation to the store where  
3 you had parked your vehicle?

4 A They were across this four-lane highway, 17.  
5 They were across the road. Not directly across, a little bit  
6 toward the stop light, which is as you turn to go to Benns  
7 Church. They were approximately 50, 60 yards, I would say.

8 Q All right.

9 A And I went in to pay the lady for the gas,  
10 because I was in a rush and it all took place, it was so fast.  
11 And I remember handing her a \$10 bill and I had gotten six  
12 or seven dollars worth of gas, and she was getting the change,  
13 and I heard something but I didn't know if another car was  
14 out there or what. But I just happened to look through the  
15 window and Faison was in the seat and was getting ready to  
16 pull out and I ran out the door, you know, trying to stop him,  
17 and he pulled on off and went down toward the stop light and I  
18 watched as it went that far. And Mrs. Bailey in the store, I  
19 told her that somebody just stole the truck, call the police.

20 So I watched until he got to the stop light. Now  
21 all this time, Mr. Faison got in the truck, Mr. Moehring, he  
22 was still across the road, thumbing or whatever, walking in  
23 the road. They went to the stop light, took a left, like you  
24 are going to Benns Church. So I went back in the store and  
25 she had -- I was standing outside this time. She called the

1 police, got the police on the phone. And when I went back  
2 in the store to talk to them, tell them what had happened, the  
3 phone is right inside, but there is a window, you know, right  
4 here. The truck came back by. I was looking. And I dropped  
5 the phone and went back out the door and he stopped and by  
6 this time, they -- Mr. Moehring was down the road a hundred  
7 yards, let's say, because I had yelled at him after the man  
8 had stole my truck, you know, wanting to know who it was.

9 Q You yelled at him. What did you say to Mr.  
10 Moehring when you yelled at him?

11 A I wanted to know who it was, and he said he did  
12 not know the guy's name, but they were, you know, together  
13 thumbing. Now I can't say if they knew each other, but they  
14 were together thumbing.

15 Q You observed them together thumbing prior to the  
16 truck being taken?

17 A Right.

18 Q How close were they together?

19 A Side by side, they were, you know, walking along  
20 talking, thumbing.

21 Q All right. When you yelled at Mr. Moehring,  
22 inquiring of the name of the person in the vehicle, tell the  
23 Court what he said to you as best you recollect.

24 A Best I recollect, he didn't know him.

25 Q Do you recall the words or similar to the words?

1           A       No, I said I don't know. "I don't know his name,"  
2 or whatever.

3           Q       Okay.

4           A       So I went --- he came back down -- now this was  
5 before he came back. All right, I had dropped the phone,  
6 went back outside and he had -- the truck had come back by  
7 and picked Mr. Moehring up, stopped and he got in the truck,  
8 and they went on down the road.

9           Q       Describe to the Court how the truck stopped.

10          A       Abrupt halt. He didn't -- I don't remember  
11 really slamming on brakes, but he was, you know, he stopped  
12 right fast. I mean he was going right fast and he stopped and  
13 he got in the truck and they proceeded back toward Chuckatuck  
14 Creek Bridge, back towards Suffolk.

15          Q       Where did the defendant, Mr. Moehring, get into  
16 the vehicle?

17          A       On the passenger side.

18          Q       In the cab of the truck?

19          A       The cab of the truck, which is, you know --

20          Q       What happened thereafter?

21          A       That's it. I went back and told the police that  
22 they was on 17 going south.

23          Q       Did you see the vehicle again that day?

24          A       Yes. I got -- within twenty minutes, they had  
25 got him and he was right there at Bennett's Creek at -- where

1 you turn right there at George's Steakhouse. They had turned  
2 right there and gone -- what is that road called? Shoulders  
3 Hill Road.

4 Q Had you seen either one of these two defendants  
5 before?

6 A No, sir.

7 Q Never seen them before that day?

8 A Never seen them before.

9 Q Did you authorize either one of them to take  
10 your vehicle?

11 A No, sir.

12 Q Describe the vehicle for the Court, the year  
13 and model.

14 A It is a '78 green -- dark green Big Ten pickup  
15 truck.

16 Q How long have you had it?

17 A I had gotten it new. It was a '78 and I had  
18 gotten it in '78.

19 Q You bought it new?

20 A Yes.

21 Q Do you recall the approximate purchase price?

22 A It lists for right around five and I traded and  
23 I got it for around forty-one, forty-two hundred dollars.

24 Q On the day of the alleged offense, what would  
25 you value -- what value would you place on the truck?

1 A I --

2 MR. EASON: I object.

3 THE WITNESS: I can't say.

4 THE COURT: I will allow him to answer.

5 MR. EASON: I objected.

6 THE COURT: He can place a value on it.

7 THE WITNESS: I can't say. It would be hard to  
8 place a value. Say three --

9 BY MR. JONES:

10 Q More than a hundred dollars?

11 A Yes, I would hope so.

12 Q More than two hundred dollars?

13 MR. DELK: I object to him leading the question,  
14 or rather, leading the witness.

15 THE COURT: Don't lead the witness. He said  
16 it was worth about three. Is that three hundred or three  
17 thousand?

18 THE WITNESS: Three thousand dollars.

19 THE COURT: All right.

20 BY MR. JONES:

21 Q Where the car was parked before it was taken  
22 was in Isle of Wight County, is that correct?

23 A Right, right.

24 MR. JONES: Answer defense counsel, please.

25 THE WITNESS: All right.



## CROSS EXAMINATION

BY MR. EASON:

Q Mr. Keeling, you said that you were late for work that morning. Was it still dark?

A No.

Q It was light?

A It was daybreak.

Q Daybreak? ARound six a.m.?

A Uh huh, a little after six.

Q And that you were going towards Newport News, I take it, on Route 17?

A Right. But I had gone through the stop light and turned around because --

Q The Texaco Station is on the Suffolk side of that stop light, is that correct?

A On the Suffolk side, right.

Q And you had gone past Bailey's, then up to the stop light?

A At first, see, I was looking for a station open, and I had gone by and when I went by, I saw a light on in the back. But I went on up to the light because I thought maybe the self service was open. So I turned around and come back by. And that is when I really -- I rode right by them. They were on that side of the road coming south.

1 Q So you went by Bailey's a second time and had to  
2 turn around?

3 A No, I turned there. There is a little road.

4 Q Cross-over there?

5 A Yes, cross-over right there and I went in Bailey's  
6 and stopped.

7 Q And you say you went right by both of these  
8 gentlemen sitting here with us today?

9 A Right.

10 Q And how close were they?

11 A Close as you would pass in a car. They were  
12 right beside the road, you know, from here to those seats  
13 there.

14 Q You distinctly remember them?

15 A Yes, sir.

16 Q And it is your opinion they were walking together  
17 or were they standing still?

18 A They were thumbing together, yeah. They had  
19 their thumbs out when I went by, but I was in a rush.

20 Q You stopped at the store and you started pumping  
21 gas. Where were they when you started pumping the gas?

22 A Like I said, across the four-lane highway.

23 Q Were they standing still at this point?

24 A I didn't really look over there. I wasn't, you  
25 know, paying any attention to them.

1 Q The highway is divided there, right?

2 A That's right. So whatever the distance is across  
3 those two highways on the other side.

4 Q When did you first notice Mr. Faison starting  
5 to drive your pickup away? Where were you standing?

6 A I was standing at the counter paying the lady,  
7 Mrs. Bailey.

8 Q And could you see Mr. Moehring at that point?

9 A No, sir.

10 Q When did you see Mr. Moehring, after the truck  
11 was taken?

12 A The truck pulled out and I ran out the door and  
13 he was -- he, you know, had taken off fast as he could. Can't  
14 go but so fast, and going up towards the stop light --

15 Q What was Mr. Moehring doing?

16 A He was still across the road.

17 Q Walking towards Portsmouth?

18 A Walking towards Suffolk, still on that side of  
19 the highway, you know, thumbing or whatever. But he was still  
20 going that way.

21 Q With the pickup truck going in the opposite  
22 direction?

23 A Right.

24 Q And a cross-over right in front of Bailey's  
25 store?

1           A       He was in --

2           Q       The cross-over on the median of Route 17 is  
3 right in front of Bailey's Store, is that correct?

4           A       It is a little bit above it, a little bit towards  
5 the stop light.

6           Q       Then Mr. Faison took your pickup and made a left  
7 at that light to go towards Benns Church?

8           A       Yes, and went on the highway going towards  
9 Benns Church. He didn't make a U-turn.

10          Q       And went out of sight?

11          A       Yes, and when he got on that road going towards  
12 Benns Church is when I turned around to yell at him and find  
13 out who it was. And he didn't know. And I went back in the  
14 store.

15          Q       Did Mr. Moehring keep on walking after he said  
16 he didn't know who it was?

17          A       Yes, he was walking at the time I yelled at him.  
18 He stopped and said he didn't know --

19          Q       How much longer was it before the pickup then  
20 came back?

21          A       Oh, three minutes, four minutes. Not long at  
22 all.

23          Q       When the pickup stopped, what did Mr. Moehring  
24 do? Do you distinctly remember? You testified earlier that  
25 he got into the cab.

1           A       He got in the truck.

2           Q       In the cab of the truck?

3           A       The cab of the truck.

4           Q       Are you positive of that?

5           A       I am positive, because I went back outside,

6 wasn't 80, 90 yards from it.

7           Q       Could you still recognize him at that point?

8           A       Yes, sir.

9           MR. EASON: I have no other questions.

10          THE COURT: Mr. Delk?

11

12                   CROSS EXAMINATION

13

14          BY MR. DELK:

15           Q       How long was your truck out of your possession?

16 You received a call about twenty minutes after the truck was

17 stolen?

18           A       That's about right. I called --

19           Q       And you got it back shortly afterwards?

20           A       Yeah. I got it back -- they let me drive it home.

21           Q       Was it brought back to you or were you taken --

22           A       I was taken to it.

23           Q       So where was that?

24           A       On Shoulders Hill Road, about a mile from

25 George and Steve's Steakhouse there.

          Q       Were there any damages to the truck or anything



1 of that sort?

2 A None I -- no.

3 Q Far as you could tell, the truck was there the  
4 same as --

5 A I am still driving it. I haven't done anything  
6 to it.

7 MR. DELK: Okay. No further questions.

8 THE COURT: Anything further?

9 MR. JONES: No, Your Honor, and I would ask that  
10 this gentleman be permitted to leave, if there is no objection.

11 THE COURT: Is that agreeable, gentlemen?

12 MR. DELK: Yes.

13 MR. EASON: Yes.

14 THE COURT: You are free to go.

15 MR. JONES: I call Patrolman Relles.

16  
17 D. C. RELLES, called as a witness by and on  
18 behalf of the Commonwealth, having been previously duly sworn,  
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21  
22 BY MR. JONES:

23 Q State your full name.

24 A D. C. Relles, R-e-l-l-e-s.

25 Q You are employed by the City of Suffolk Police

1 Department?

2 A Yes, sir.

3 Q And were you on or about the 23rd day of March,  
4 1980, employed in the same capacity?

5 A Yes, sir.

6 Q On the morning of the 23rd, were you on patrol?

7 A Yes, sir, I was.

8 Q Did you have occasion to investigate an alleged  
9 grand larceny of an automobile?

10 A Yes, sir, I was given a message by the dispatcher  
11 on that effect.

12 Q And after receiving a message, what did you do?

13 A Well sir, at approximately 6:11 that morning, I  
14 was dispatched by the dispatcher to be on the lookout for a  
15 possible stolen vehicle that was just taken in Isle of Wight,  
16 and was reported to be headed south on Route 17. Description  
17 of the vehicle and the license number was given to me. I was  
18 on Route 17. I started heading northbound toward the Isle of  
19 Wight line. Just in the area of Benn Pasture Road and Route  
20 17, which is the City of Suffolk. The vehicle passed me south-  
21 bound. I turned around and pursued it.

22 Q What was the description of the vehicle that you  
23 began to pursue?

24 A Given to me as 1978 Chevy pickup truck, green in  
25 color, and had a Virginia license KKK-879.

1 Q What happened thereafter?

2 A I turned around and pursued the vehicle with  
3 lights and siren. The vehicle in the beginning made no  
4 intention at all of stopping, continued on, went approximately  
5 a mile and a half down Route 17, made a hard right turn onto  
6 Route 626, or Shoulders Hill Road, again kept going.

7 Every now and then I'd notice the driver would  
8 be looking back at me in his rear view mirror, but he made no  
9 attempt to stop, and I was motioning to pull over. Went  
10 through several of the S-turns that we have on Shoulders Hill  
11 Road, almost wrecked the vehicle, continued about half a mile  
12 further, and finally did stop. I advised the dispatcher that  
13 I finally had the vehicle stopped and my location.

14 As I was exiting my vehicle, the driver, who  
15 was in the pickup truck, got out of his vehicle. At such time  
16 I ordered him face down onto the ground. And he kind of looked  
17 at me somewhat confused, like he didn't understand what I was  
18 saying. I had to repeat myself several times further, and he  
19 eventually did.

20 Q Is that person in the courtroom today?

21 A Yes, sir, he is.

22 Q Will you point him out to the Court?

23 A Yes, sir, be Mr. Faison.

24 Q Seated all the way to the end of the counsel  
25 table?

1 A Yes, sir.

2 Q What happened thereafter?

3 A At this time, I was attempting initially to secure  
4 the driver, who was the primary person I wanted. I patted him  
5 down, put a set of handcuffs on him, put him in the back of  
6 my police car, and was attempting to gain control of the two  
7 other occupants of the pickup truck when my back-up arrived,  
8 and they assisted me in cuffing and segregating both of the  
9 other occupants of the vehicle. All three of them were put  
10 into several separate vehicles.

11 Q Are any other persons in the courtroom that were  
12 in the vehicle?

13 A No, sir. There was one other person in the rear  
14 bed of the pickup, but he has since been acquitted.

15 Q All right. But is another person -- is the person  
16 who was in the cab of the vehicle here today?

17 A Yes, sir, the occupant in the front right of the  
18 cab, Mr. Moehring, the defendant.

19 Q Did you take any statements from either  
20 defendant?

21 A Just initially at the scene. I questioned Mr.  
22 Faison as to how he got in the vehicle.

23 MR. EASON: Your Honor, I object to anything  
24 Mr. Faison may have said in regard to my client until Mr.  
25 Faison may take the stand and I have an opportunity to cross

1 examine him on it.

2 THE COURT: Yes, sir. Mr. Delk, you have any  
3 objection to Mr. Faison's statement?

4 MR. DELK: No, sir.

5 THE COURT: You do not?

6 MR. DELK: No, sir.

7 THE COURT: All right, sir. Overruled.

8 BY MR. JONES:

9 Q What was said by Mr. Faison?

10 A Said he was tired of walking, saw the truck,  
11 and took it to get back to Portsmouth. Said he was walking  
12 back from a party with Mr. Moehring.

13 Q Did you take a statement from Mr. Moehring?

14 A In questioning Mr. Moehring, all that was stated  
15 was that he was walking back from a party with Mr. Faison.  
16 Nothing else further was said.

17 MR. JONES: Answer defense counsel, if you will  
18 please.

19 THE WITNESS: Yes, sir.

20 CROSS EXAMINATION

21  
22 BY MR. EASON:

23 Q Patrolman Relles, did you place them under  
24 arrest as soon as they stopped?

25 A First person I placed under arrest was Mr.



1 Faison. I wanted to get control of him, since he was the driver  
2 of the vehicle. After I had secured him and placed him in the  
3 back of my police car, I did go up and make the arrest of  
4 the other two occupants.

5 Q Did you personally place them under arrest,  
6 or did one of your back-up assistants place them under arrest?

7 A To actually say that I put the cuffs on them,  
8 no, because I didn't have another set of cuffs to begin with.  
9 But I was maintaining control on them where they were, because  
10 I knew my assistance was about a mile away.

11 Q So they were under arrest?

12 A I advised them that they were.

13 Q Did you advise them of their rights?

14 A Not at that time. We were out in the road and  
15 there were no statements made.

16 Q But you asked Mr. Moehring a question after you  
17 placed them under arrest?

18 A Yes, sir, after they had been placed in the  
19 vehicle and the Miranda rights were read to them. After that,  
20 I did talk to them. Other than that, I was out in the roadway  
21 telling them to leave their hands where I could see them and  
22 it was just to maintain control of the situation.

23 Q Mr. Moehring did not speak to you concerning  
24 what was going on that night till you placed him in your  
25 patrol car. Is that the way you understand it?

1 A Well, he was placed in another officer's  
2 patrol car, but that is when the conversation took place.

3 Q He told you at that time he was walking back  
4 from a party?

5 A Yes, sir.

6 Q You are positive he told you he was walking  
7 with Mr. Faison?

8 A That's what I wrote down the morning of the  
9 offense.

10 Q Could you have made a mistake?

11 A No, sir, I don't believe so.

12 MR. EASON: I have no other questions.

13 THE COURT: Any questions, Mr. Delk?

14 MR. DELK: Yes, sir.

15

CROSS EXAMINATION

16

17 BY MR. DELK:

18 Q Officer Relles, you stated that Mr. Faison had  
19 a confused look on his face when you apprehended him.

20 A Uh huh.

21 Q As you began to handcuff him. What do you mean  
22 by that?

23 A Well sir, when he came out of the vehicle, there  
24 was one hand in back of him. The next thing he saw looking at  
25 him was a 38, and apparently this kind of boggled him a little

1 bit. And apparently the only thing he was focusing on was  
2 the 38, and not what I was saying.

3 Q You said you had no problem with him after the  
4 truck was stopped, did you?

5 A Other than his unwillingness to do what I was  
6 telling him to do, no.

7 Q Is that why you drew the 38?

8 A Well, when he came out of the pickup truck, he  
9 had one hand behind his back, and I could not see what was in  
10 it. That and coupled with the fact that he was trying as best  
11 he could in that pickup truck to make an attempt at flight and  
12 not stop, I was not going to take any chances till I could  
13 see what was in his hand, which turned out to be nothing.

14 Q But other than that, you had no problem with  
15 him?

16 A No, sir.

17 Q What was his physical condition at the time?

18 A Somewhat disheveled, looked like he had been in  
19 the same clothes for, you know, a day or so, not particularly  
20 neat.

21 Q Was any evidence of drinking?

22 A Not that I could discern.

23 Q Did you -- the notes you took of Mr. Faison's  
24 statement, are they verbatim notes or just your summary?

25 A Well sir, these were written at the time when I

1 got to headquarters, filling out the arrest sheet.

2 Q So it is a summary of what you recall he said to  
3 you?

4 A Yes, sir.

5 Q And he stated that he just wanted to get back to  
6 his home in Portsmouth?

7 A Yes, sir, said he had been walking back from a  
8 party and said he was tired of walking, saw the truck, took it  
9 to get back to Portsmouth.

10 Q Was there any explanation about the third person  
11 in the truck?

12 A Yes, sir, there was. The person was alleged to  
13 have been picked up on the Isle of Wight side of the Chuckatuck  
14 Bridge, supposed to be hitchhiking.

15 Q Another hitchhiker?

16 A Yes, sir.

17 MR. DELK: All right, that's all I have.

18 MR. JONES: I have no further questions.

19 THE COURT: Was that third fellow in the back  
20 of the truck while you were going down --

21 THE WITNESS: Yes, sir.

22 MR. EASON: Your Honor, I have another question.

23 THE COURT: Go ahead.

24 BY MR. EASON:

25 Q Mr. Relles, when you were pursuing the pickup

1 truck, could you give us the location of the three individuals  
2 that were in it?

3 A Yes, sir. Mr. Faison was the operator. He was  
4 seated behind the steering wheel. Mr. Moehring was sitting  
5 in the right front seat of the pickup truck. And Mr. Este was  
6 in the back, the bed area of the pickup truck.

7 Q Did you notice anything going on within the bed  
8 or the cab of the truck as you were pursuing them?

9 A The first thing that caught my eye was Mr. Este,  
10 and when I started -- after I saw no heed being given to the  
11 sirens and red lights, Mr. Este in response to my pointing  
12 over, just kind of gave me a look and started shaking his  
13 head and holding his hands up in apparent confusion. He  
14 didn't know what was going on. I could catch eye contact in  
15 the mirror with Mr. Faison. He kept looking back to see, you  
16 know, if he was possibly losing me. He kept looking into the  
17 mirror.

18 Mr. Moehring, on several occasions, looked back  
19 at my vehicle and I could see conversation going on between  
20 the two. I couldn't tell what was being said.

21 Q Did you notice anything Mr. Moehring was doing  
22 in the cab?

23 A Other than he reached over once and grabbed him  
24 or poked him or something to that effect, and --

25 Q Poked the driver, Mr. Faison, a couple of times?

1           A       Yes, sir. But in some words -- I could see some  
2 words were going back and forth.

3           Q       Did it look like Mr. Moehring was trying to get  
4 Mr. Faison to pull over?

5           A       I couldn't say one way or the other.

6           Q       But that was a possibility, from his actions?

7           A       There was a communications going on between the  
8 two. As to what it was, I don't know.

9           Q       And some physical movement?

10          A       Yes, sir.

11          THE COURT: Is that it, gentlemen?

12          MR. EASON: That's it.

13          THE COURT: Can he be excused?

14          MR. JONES: Yes, sir.

15          MR. DELK: May I ask one other question?

16          THE COURT: Yes, you may.

17 BY MR. DELK:

18          Q       Do you know the owner of the truck, Mr. Keeling?

19          A       Yes, sir.

20          Q       Personally?

21          A       As a result of the numerous times we have had  
22 to come up here. Until then I had never met the man. Only  
23 because of this, as a result of this is the only way I have  
24 gotten to know him.

25          MR. DELK: That's all. Thank you.

1 THE COURT: May he be excused?

2 MR. DELK: Yes, sir.

3 MR. JONES: Yes, Your Honor.

4 MR. EASON: Yes, sir.

5 THE COURT: Thank you, Officer. You are free to  
6 to.

7 MR. JONES: I call Officer Curtis.

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

12 DIRECT EXAMINATION

13 BY MR. JONES:

14 Q You are Deputy Sheriff Donald Curtis?

15 A Yes, sir.

16 Q And in your capacity as Deputy Sheriff, did  
17 you have occasion to investigate an alleged grand larceny of  
18 a vehicle that occurred in Isle of Wight County on the 23rd  
19 of March of this year?

20 A Yes, sir, I did.

21 Q As a part of that investigation, did you take  
22 statements from the two defendants here today?

23 A Yes, sir, I did.

24 Q And were those statements given after you had  
25 advised them of their Constitutional rights under Miranda?

1           A       That's correct, sir.

2           Q       Where were the statements given?

3           A       I obtained these statements at the Sheriff's  
4 Office here in Isle of Wight County.

5           Q       Were you speaking with the two defendants  
6 together or separately?

7           A       Separately.

8           Q       Do your records reflect the time of day and on  
9 what day you took the statements?

10          A       Yes, sir, was on the 23rd of March, 11:45 a.m.

11          Q       Would you tell the Court what those statements  
12 were?

13          A       Here is the warning from Samuel Faison.

14          Q       All right, we'll just put these aside. At this  
15 point, all I am interested in are the statements of Mr.  
16 Faison first, if you will, and Mr. Moehring secondly.

17          A       All right. "On Sunday, March 23rd, I left  
18 Smithfield walking and trying to catch a ride home. I had  
19 been walking for about two hours when I saw a truck parked  
20 at the Texaco Station on Route 17 in Carrolton. I walked  
21 over to the truck and saw that the keys were in the switch.  
22 I got in and drove east on Route 17. Just a short distance  
23 away, I picked up this dude that was trying to catch a ride  
24 in my direction. All I wanted was a ride to Tower Mall,  
25 because I was tired of walking. At Nansemond River Bridge, I



1 stopped and picked up another dude in the area of Bennett's  
2 Creek on Route 17. The police came up and the dude in the  
3 front kept telling me to stop. I don't know what happened. I  
4 was just scared and kept going. I made a right turn onto  
5 Shoulder Hills Road and stopped for the police.

6 The other two with me did not have anything to  
7 do with stealing the truck."

8 Signed Samuel Faison.

9 Q Deputy Sheriff Curtis, did you ask Mr. Faison  
10 if he knew Mr. Moehring?

11 A Yes, sir.

12 Q And what did he tell you?

13 A He said he didn't know him.

14 MR. JONES: I would ask that this be intro-  
15 duced as Commonwealth Exhibit No. 1 in the Faison trial.

16 THE COURT: No objection?

17 MR. DELK: No, sir.

18 THE COURT: All right. The statement of Mr.  
19 Faison will be accepted as Commonwealth Exhibit No. 1.

20 (The statement of Mr. Faison was marked and  
21 received in evidence as Commonwealth Exhibit No. 1.)

22 BY MR. JONES:

23 Q Did Mr. Moehring give you a statement at  
24 approximately the same time on the same day?

25 A Yes, sir, after being warned of his rights.

1 Q Would you tell the Court what he said at that  
2 time?

3 A "On Sunday, March 23rd, around 6:30 a.m., I was  
4 trying to catch a ride on Route 17. About 2/10 of a mile east  
5 of Bailey's Texaco Station, this 1978 Chevrolet truck came by  
6 with one person in it. The truck was traveling at a high rate  
7 of speed, because the driver locked the brakes when he stopped  
8 to pick me up. I jumped in the bed and the driver took off,  
9 headed in the direction of Portsmouth.

10 "A little way down the road, the driver stopped  
11 the truck and I got out of the bed into the cab with him. He  
12 took off again, and a short distance down the road, we stopped  
13 to pick up this other guy. He got in the bed.

14 "In the Bennett's Creek area, I saw this police  
15 car was behind me, and tried talking to the dude driving to  
16 get him to stop. After a while, he did stop for the police.  
17 I did not know either of the other two people in the truck."

18 Signed William Moehring.

19 MR. JONES: I would ask that this be introduced  
20 as a Commonwealth Exhibit.

21 MR. EASON: No objection, Your Honor.

22 THE COURT: This will be Commonwealth Exhibit  
23 No. 1 in the Moehring case.

24 (The statement of Mr. Moehring was marked and  
25 received in evidence as Commonwealth Exhibit No. 1 (Moehring.)

1 BY MR. JONES:

2 Q Were you present when Mr. Keeling recovered his  
3 vehicle?

4 A No, sir.

5 Q You were not?

6 A No, sir.

7 MR. JONES: Okay. Answer defense counsel, if  
8 you would.

9 MR. EASON: No questions.

10 MR. DELK: No questions.

11 THE COURT: All right, step down, sir.

12 MR. JONES: That is the Commonwealth's evidence,  
13 Your Honor.

14 THE COURT: All right, sir.

15 MR. DELK: Your Honor, I have a motion. As I  
16 have pointed out to the Court earlier when Mr. Faison was  
17 arraigned, he would offer a plea of guilty to unauthorized  
18 use of a motor vehicle. The evidence in this case is clear  
19 that the vehicle was taken --

20 THE COURT: Excuse me, Mr. Delk. Mr. Curtis,  
21 you will have to step back out, sir.

22 MR. DELK: And was taken by Mr. Faison. However,  
23 if you look at all of the evidence in this case, the statements  
24 are inconsistent in one respect, but are consistent in the  
25 other. And that is the statements made to Officer Relles and

1 Deputy Sheriff Curtis that Mr. Faison -- the reason expressed  
2 to them that the vehicle was taken was that he simply wanted  
3 to get back to Portsmouth, get back to his home. There is  
4 nothing contrary to that in the case.

5 The vehicle was taken. I think the circumstances  
6 are this: Mr. Keeling testified he saw the Defendant Faison  
7 hitchhiking on the road in the vicinity of the road before the  
8 vehicle was taken. That is simply not consistent with the  
9 instance where someone would steal Mr. Keeling's truck with  
10 the intent to permanently deprive him of the ownership of the  
11 truck. And that is to either sell it to someone else or to  
12 take it away and keep it or hide it or something of that sort.

13 I would ask the Court to strike the evidence  
14 as to the charge of larceny and reduce it at this time to what  
15 I believe is the proper charge of unauthorized use of a motor  
16 vehicle.

17 THE COURT: All right, sir, I overrule the motion  
18 to strike Commonwealth's evidence. The Commonwealth has  
19 presented a prima facie case with reference to that charge.

20 MR. EASON: Your Honor, I'd like to make a  
21 motion also, a motion to strike the evidence as to Defendant  
22 Moehring. The evidence has come out that they were obviously  
23 somewhere in the vicinity of each other on Route 17. Whether  
24 they were walking together or not, Mr. Keeling says they were.  
25 Statements given by both defendants imply, if they don't

1 directly say, that they were not together, and that they did  
2 not know each other.

3 Mr. Moehring, by Mr. Keeling's own testimony,  
4 continued walking down the highway after the truck was stolen.  
5 Additionally, the truck completely went out of sight with Mr.  
6 Moehring still walking towards Portsmouth and the truck comes  
7 back three, four minutes later, and at that point he gets in  
8 the truck and takes off.

9 As the Court knows, mere presence does not  
10 constitute one to be a principal in a felony or larceny  
11 matter of this sort, and flight from the scene itself does  
12 not create any presumption of intent on the person's part  
13 to participate in the matter. And I would say under the  
14 evidence that they have presented so far, regarding the  
15 statements given by both Mr. Faison and Mr. Moehring, that  
16 it has been shown that he had nothing to do whatsoever with  
17 this crime. He was picked up as a hitchhiker, similar to the  
18 third person who was also picked up as a hitchhiker. And none  
19 of the three knew any of the others.

20 And when the police finally did try to stop them,  
21 there is evidence that Mr. Moehring actually talked Mr.  
22 Faison into finally pulling the truck over to the side. For  
23 that reason, I would ask the Court to strike.

24 THE COURT: Mr. Jones?

25 MR. JONES: Your Honor, I think there are two

1 theories the Commonwealth can proceed under in this case. One  
2 is, I think there is circumstantial evidence that the two  
3 defendants were there together, planned the larceny, and then  
4 it was effected in accordance with their plan. That evidence  
5 being that they were together hitchhiking, were in conversation  
6 with one another prior to it occurrring. One of them takes  
7 the vehicle, and then rendezvous at a point. I think there  
8 is circumstantial evidence of that fact.

9 There is certainly -- certainly Defendant  
10 Moehring was in possession of the truck when he got into the  
11 truck, knowing that it had been stolen, and proceeded down  
12 the road with him. It was in joint possession with the  
13 Defendant Faison, under a second theory.

14 If he had not participated in it at the outset,  
15 I think the Commonwealth's evidence has clearly shown under  
16 either theory that he is in violation of Section 18.2-95,  
17 either the principal in the second degree to the larceny  
18 itself, or within joint possession of the vehicle with Faison  
19 when he got into the vehicle after the larceny, knowing that  
20 the car had obviously been stolen only moments before, and  
21 was in the process of using the vehicle, making an escape from  
22 the larceny.

23 Under either theory I think there is ample  
24 evidence to have a prima facie case developed at this point.

25 THE COURT: Yes, I will overrule your motion to

1 strike and note your exceptions for the record also.

2 All right, you want to call any witnesses?

3 Mr. Delk?

4 MR. DELK: Yes, sir, I will call Mr. Faison.

5 THE COURT: Mr. Faison, take the stand, please.

6 I don't think he has been sworn.

7 (Witness sworn at this time)

8  
9 SAMUEL A. FAISON, called as a witness by and on  
10 his own behalf, having been first duly sworn, was examined and  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DELK:

14 Q State your name, please.

15 A Samuel Allen Faison.

16 Q You have already given your address. What  
17 is your current address?

18 A 5115 Jefferson Avenue, Newport News, Virginia.

19 Q How old are you?

20 A Twenty-three.

21 Q Where are you employed, Mr. Faison?

22 A Newport News Shipbuilding.

23 Q And what is the nature of your job there?

24 A Airconditioning/ refrigeration.

25 Q Would you explain to the Court what occurred on

1 the morning of March 23, 1980?

2 A Yes, sir. I was at a party with Mr. Kenny  
3 Hayden on the other side of Smithfield.

4 Q Where, do you recall exactly?

5 A I'm not sure. He invited me to the party, and  
6 I didn't know where it was.

7 Q Who is Kenny Hayden?

8 A Neighbor lives nearby.

9 Q Where?

10 A In Portsmouth.

11 Q Was he anywhere present at the time the vehicle  
12 was taken?

13 A No, sir, he left me at the party.

14 Q How did you get to the party?

15 A With Mr. Hayden.

16 Q And after you got to the party, what happened?

17 A Well, we were drinking heavily that night is  
18 what it was, and in the course of the events, I had fell  
19 asleep or passed out. And the people there woke me up and  
20 told me that Mr. Hayden left.

21 Q Do you recall what time that was?

22 A It was about three, three thirty, four o'clock  
23 in the morning.

24 Q All right, sir.

25 A So I woke up and was starting to go home. I



1 started walking, hitchhiking, trying to get back to Ports-  
2 mouth. That's all I wanted to do was get home.

3 Q What is your marital status at this time?

4 A Separated.

5 Q At the time of the offense, what was your status?

6 A Separated.

7 Q Did you have custody of your child?

8 A Yes.

9 Q Who had custody of the child?

10 A I did.

11 Q You had legal custody?

12 A Yes.

13 Q Where was the child at that time?

14 A Grandparents' house.

15 Q Your parents or your wife's parents?

16 A My wife's parents.

17 Q Did they know you were out that evening or were  
18 they babysitting or what was the situation?

19 A They had the child there, but they didn't know  
20 I was going over to this party. I told them I had just gone  
21 out with one of my friends, so they figured I would be back  
22 sometime that night.

23 Q What occurred when you started hitchhiking?

24 A I got weary of hitchhiking, not catching a ride.  
25 I seen this truck on 17 there at the gas station. I got in

1 to it, I started back towards Newport News and made a left at  
2 the stop light, and I realized I was going the wrong way, so  
3 I turned around in the gas station and come back to the stop  
4 light and made a right. As I got past the place I had taken  
5 the truck, I noticed Mr. Moehring standing out there  
6 hitchhiking.

7 Q Did you know Moehring?

8 A No, sir.

9 Q Had you ever seen him before?

10 A No, sir.

11 Q Have you ever seen him since the offense other  
12 than in court?

13 A Only in court.

14 Q Now do you know where he lives?

15 A No, sir, other than I -- well, while we were in  
16 jail he told me that he lived there in Portsmouth.

17 Q Do you know what kind of a service station you  
18 turned around at when you found you were going the wrong way?

19 A I know it is on the road towards Smithfield,  
20 righthand side. I don't know the name of it.

21 Q All right. You came back and you found Mr.  
22 Moehring on the side of the road hitchhiking.

23 A Yes, sir.

24 Q Had you seen him prior to the time you took the  
25 truck?

1           A       No, sir. I hadn't noticed anyone out there.

2           Q       All right. What did you do after you picked  
3 him up?

4           A       I put on the brakes and stopped rather suddenly.  
5 I realized that he had been hitchhiking and so had I and I knew  
6 what was going on.

7           Q       What do you mean?

8           A       I knew what it was like to be out there that  
9 early in the morning trying to catch a ride and couldn't, so  
10 I stopped and Mr. Moehring jumped in the back. On further  
11 down the road I slowed down, stopped, let him -- wanted him to  
12 get up front. So he got up front and we continued on down  
13 the road and seen another person hitchhiking, so I stopped for  
14 him also.

15                   So we were going on and a police car turned  
16 around and started pursuing me. Mr. Moehring was telling me,  
17 you know, to go ahead and pull over. I kept going. I just  
18 didn't -- I was in a daze as it was.

19           Q       Why were you in a daze?

20           A       Sir?

21           Q       Why were you in a daze?

22           A       From the alcohol, from the drinking. I wasn't  
23 sure -- I'm sure -- I wasn't in my proper mind. I didn't  
24 realize what I had been doing, and all I had in my mind was  
25 the intent of getting home. And I was desperate to get home

1 to my daughter.

2 The policeman -- Mr. Moehring finally convinced  
3 me to pull over, which I did. I got out of the truck. I  
4 kneeled down on one knee and put both my hands up in the air  
5 and then the policeman told me to lay down, put my face on the  
6 pavement, which I hesitated in doing. He told me several times  
7 to do it. I put my face on the pavement. He handcuffed me,  
8 put me in the car, read me my rights, said, "I advise you,  
9 Mr. Faison, to sit there and keep your mouth shut," which I  
10 did. I didn't say anything to him. I talked to the Sheriff  
11 here in Isle of Wight County.

12 Q You did not make a statement to Officer Relles?

13 A No, sir, I did not say anything to the police  
14 officer.

15 Q Now you heard the statement read, and you saw  
16 a copy of the statement that you gave Deputy Curtis?

17 A Yes, sir.

18 Q Is that a correct statement?

19 A Yes, sir, it is.

20 Q And you stand by what you stated to him?

21 A Yes, sir.

22 Q What did you intend to do with this truck after  
23 you got to Portsmouth?

24 A Well, I just wanted to get home. I knew that --  
25 a place such as Tower Mall, it would be easily found there, and

1 it was about a mile from where I lived. I was planning on  
2 leaving it out there out in the parking lot there. I was sure  
3 it would have been found.

4 Q You didn't have any intent to keep the vehicle?

5 A No, sir.

6 MR. DELK: Answer Mr. Jones.

7 CROSS EXAMINATION

8  
9 BY MR. JONES:

10 Q Have you ever been convicted of a felony?

11 A No, sir.

12 Q Previously? How about a misdemeanor involving  
13 moral turpitude?

14 A I don't understand moral turpitude.

15 Q A misdemeanor involving lying, cheating or  
16 stealing.

17 A No, sir.

18 Q Now you say you were drinking heavily that day?

19 A That night, yes, sir.

20 Q When had you stopped drinking?

21 A I stopped when I passed out.

22 Q What time of evening was that?

23 A It was early in the morning between two and  
24 three.

25 Q And the officer testified that you did not appear

1 to be intoxicated with alcohol, did not have the odor of  
2 alcohol about your person?

3 A Well, I don't know whether he could sense whether  
4 I had been drinking or not, but I know that I had.

5 Q You had been drinking heavily the night before?

6 A Yes.

7 Q When had you started drinking the night previously,  
8 about what time?

9 A About ten.

10 Q From ten to two you drank heavily, passed out,  
11 and when did you awaken?

12 A When the people there at the place woke me up,  
13 around four I guess.

14 Q Now you said you were hitchhiking, but you did not  
15 realize that Mr. Moehring was hitchhiking nearby you, is that  
16 correct?

17 A Yes, sir. Well, he must have been up on the road  
18 above me somewhere. I did not see him.

19 Q You did not see him?

20 A No, sir.

21 Q And Mr. Keeling testified that y'all were  
22 close together, close enough to touch one another.

23 A Well, I had been -- I had been in -- I have been  
24 in a store and strangers come up and call me by people's name  
25 that I don't even know. I have been mistaken for other people

1 many times.

2 Q But you are saying that you were not there close  
3 enough to touch Mr. Moehring across the street from that place  
4 of business?

5 A No, sir, I am saying that.

6 Q Where were you when you saw the vehicle drive  
7 up to the store?

8 A I was towards the Newport News side, back from  
9 it. I seen it up ahead, up from me, off to the left.

10 Q About how far up towards Newport News from the  
11 store building?

12 A Can't judge the distance. It's --

13 Q About sixty yards? --

14 A Maybe so.

15 Q Exactly where Mr. Keeling says you were, is that  
16 correct?

17 A That is where I seen the truck.

18 Q And you walked from there to the truck?

19 A Yes, sir.

20 Q And you are saying you did not see Mr. Moehring  
21 nearby you at that point?

22 A No, sir, I didn't see anybody else out there.  
23 I got in the truck, I went back towards Newport News, made a  
24 left, went out of sight, turned around at the gas station. I  
25 realized once I started back towards Smithfield I was headed in

1 the wrong direction, so I turned around and come back. I went  
2 past the store and I seen Mr. Moehring standing out there  
3 hitchhiking.

4 Q So you slammed on brakes and stopped?

5 A Yes, sir.

6 Q And he jumped in the rear of the truck, the bed  
7 of the truck?

8 A Yes, sir.

9 Q And you sped off?

10 A Well, I took off.

11 Q And it is your testimony that he got in the bed  
12 of the truck?

13 A That's right.

14 Q He didn't get in the cab of the truck?

15 A No, sir, he did not.

16 Q How far were you from the store when you stopped  
17 to pick up Mr. Moehring?

18 A Between 80 and 100 yards.

19 Q Right in front of the store, weren't you, on the  
20 other side of the road?

21 A On the other side of the road further up,  
22 between there and I think it is a kennel place.

23 Q But you were almost in front of the store,  
24 weren't you?

25 A Almost in front, just past.



1 MR. JONES: That's all, Your Honor.

2 REDIRECT EXAMINATION

3  
4 BY MR. DELK:

5 Q Mr. Faison, why were you so desperate to get  
6 back home?

7 A My child was at her grandparents' and they  
8 didn't know where I was. And I just wanted to get back to my  
9 daughter to see that she was okay. I knew that if I wasn't  
10 there when they got up in the morning, that they would be  
11 holding that against me.

12 Q And how would they be holding that against you?

13 A Well, they like for her to visit with them.  
14 They don't necessarily care that much about me, and anything  
15 they can use against me to help them to -- with my wife to  
16 take the child from me, they would.

17 Q You thought that there might be some consequence  
18 in a custody situation with your daughter?

19 A Yes, sir.

20 MR. DELK: That's all.

21 RECROSS EXAMINATION

22  
23 BY MR. JONES:

24 Q What were they going to say about you going  
25 there in a drunken state?

1           A           In a drunken state, I would have still been  
2 there.

3           MR. JONES: That's all, Your Honor.

4           THE COURT: All right.

5           MR. EASON: I would like to call him as a witness,  
6 unless you want me to examine him at this time.

7           THE COURT: Go ahead.

8           MR. JONES: Suits me fine.

9           MR. EASON: All right.

10          THE COURT: Go ahead.

11  
12          SAMUEL FAISON, recalled as a witness by and on  
13 behalf of Defendant Moehring, having been previously duly  
14 sworn, was examined and testified as follows:

15                   DIRECT EXAMINATION (Rec.)

16 BY MR. EASON:

17          Q           Mr. Faison, where were you walking from? Where  
18 was the party at, in the town of Smithfield?

19          A           It was out in the country, outside of Smithfield.

20          Q           Were you coming from Benns Church?

21          A           I am not very familiar with the area, but it  
22 was -- we went through a couple of stop lights.

23          Q           Are you aware where the stop light is on Route  
24 17 close to the store where you took the truck?

25          A           Right from as you go town, toward Newport News,

1 yes, sir.

2 Q Were you walking down side roads, or were you  
3 coming the whole way down 17 from Newport News?

4 A I was coming from the road from Smithfield.

5 Q And therefore you made a left turn when you were  
6 walking on Route 17, is that correct?

7 A It was a righthand turn.

8 Q Excuse me, a righthand turn. Did you see  
9 anyone on the Route 17 thumbing in front of you?

10 A No, sir.

11 Q When did you first notice the pickup?

12 A After I got nearer to the store.

13 Q When did you pick up Mr. Moehring? Was it in  
14 front of Bailey's Store or farther on the Portsmouth side?

15 A Further.

16 Q How far down?

17 A Sixty to a hundred yards.

18 Q And you never discussed with Mr. Moehring steal-  
19 ing the truck, any of those things?

20 A No, sir, had no conversation. I didn't even  
21 know the man.

22 Q Did you ever tell Mr. Moehring you took the  
23 truck?

24 A I told him after we seen the police car after  
25 me. I told him I had taken the truck. He then told me best

1 thing for me to do was pull over.

2 MR. EASON: I have no other questions.

3 MR. JONES: No other questions.

4 THE COURT: Step down, sir.

5 Is that your case, Mr. Delk?

6 MR. DELK: Yes, sir.

7 THE COURT: You want to call any witnesses, Mr.  
8 Eason?

9 MR. EASON: No, sir.

10 THE COURT: You don't desire to call the defend-  
11 ant?

12 MR. EASON: No, sir.

13 THE COURT: Gentlemen, you want to argue? Do  
14 you want to call rebuttal witnesses?

15 MR. JONES: I have no rebuttal witness. Submit  
16 the case, the evidence, reserve the right to rebut the  
17 argument, Your Honor.

18 THE COURT: Mr. Delk?

19 MR. DELK: Your Honor, I think the case is clear  
20 as to the taking of the vehicle, and our defense is the same  
21 as I have already made clear to the Court. Mr. Faison has  
22 taken the stand and he's been very forthright in his  
23 testimony. It is consistent with the statement he gave  
24 Deputy Curtis. He denies that he made a statement to  
25 Officer Relles, although taking that as a denial, Officer Relles

1 didn't -- whatever he did, he wrote it down after he got back  
2 to the station, and he has no written record of it other than  
3 his own notes.

4 Mr. Faison's testimony is that he was -- had been  
5 drinking that night. He was desperate to get home to Ports-  
6 mouth to pick up his daughter. It is a credible explanation  
7 of what he did and why he did it. The only thing that we have  
8 here, Your Honor, that would tend to reduce his credibility,  
9 would be his denial that he made any statement to Officer  
10 Relles, at the point of arrest, but even taking what Officer  
11 Relles said, that in itself is also consistent with Mr.  
12 Faison's statement, because Officer Relles noted that Faison  
13 told him that he simply wanted to get back home to Portsmouth,  
14 to Tower Mall. And that is where Mr. Faison said he intended  
15 to leave the vehicle. He simply wanted to get back: The  
16 reason, to pick up his daughter from his in-laws, who had --  
17 were keeping her that night.

18 I submit, Your Honor, that this is all consistent  
19 with his defense which is that he did not have any intent to  
20 permanently deprive Mr. Keeling of this vehicle. It is also  
21 consistent with the circumstances of it, a hitchhiker walking  
22 down the road is simply -- this is not a case of the  
23 organized car thief or anything of that sort. The hour of  
24 the day, that is not when vehicles are normally stolen, at  
25 six o'clock on Sunday morning within seconds after the owner

1 walks into a store to buy some gas.

2 I think it is clear here, Your Honor, that from  
3 his own testimony that Mr. Faison did not like -- rather, did  
4 not have the requisite intent to permanently deprive Mr.  
5 Keeling of the ownership of the vehicle. That still makes  
6 for the offense of unauthorized use of a motor vehicle, which  
7 is what we would ask the Court to reduce the charge to.

8 THE COURT: Mr. Eason?

9 MR. EASON: Your Honor, first of all, I would  
10 like to renew my motion to strike at this time.

11 THE COURT: Well, you want to argue --

12 MR. EASON: Based on the same arguments, Judge,  
13 solely that Mr. Faison gets on the stand and reiterates what  
14 he gave in his statement, and says that he didn't know Mr.  
15 Moehring; no evidence whatsoever of any concerted effort  
16 on their parts to steal any truck, even taking for granted  
17 that they were somewhere in close proximity of each other.

18 Mr. Moehring continued walking down the street  
19 or the highway, and Mr. Faison leaves, and again case law  
20 simply that they are in the presence does not make one a  
21 principal in the second degree of a larceny. And also that  
22 flight from the scene does not create any assumption of guilt.  
23 There can be plenty of other circumstances that the Court  
24 could consider as being plausible for why Mr. Moehring would  
25 have gotten in the truck when it was going down the highway and

1 that, coupled with the fact that Mr. Faison testifies that he  
2 told Mr. Moehring that it was stolen, and Mr. Moehring asked  
3 him to pull over, clearly he was not aiding or abetting in  
4 any way, but if anything was providing assistance to the  
5 police officers in getting the truck to stop, instead of  
6 providing assistance to Mr. Faison in that matter.

7 THE COURT: All right. Mr. Jones?

8 MR. JONES: Your Honor, it is true that a  
9 co-defendant has gotten on the stand and said that he did it  
10 by himself, but I think it flies in the face of what other  
11 evidence the Commonwealth has presented here today, and I  
12 just think it is a conflict of the evidence. And I think  
13 that the more reliable evidence is that of the Commonwealth,  
14 which has been presented through two other witnesses,  
15 principally one, Mr. Keeling. He saw the two together. He  
16 testified unequivocally that it was these two people.

17 I think the most telling thing is that when Mr.  
18 Faison takes the vehicle, Mr. Keeling goes out to Mr. Moehring  
19 and says, "Who is it?" Obviously Mr. Moehring saw the vehicle  
20 stolen. And when the vehicle comes back to pick him up, he  
21 was a willing participant to get in that vehicle which he had  
22 just moments earlier seen stolen.

23 And also, had been notified by the victim that  
24 it had been stolen, and to come in and say he didn't have any  
25 idea the vehicle was stolen, didn't participate in it in any

1 way just flies in the face of reality. He knew that vehicle  
2 was stolen when he got into it, and he took up the theft at  
3 that point, and attempted to use the vehicle to get himself  
4 away from the place of the larceny, and to carry him further  
5 towards the home in Portsmouth. I think again the Commonwealth's  
6 evidence is clear that he was a participant in this larceny,  
7 Judge.

8 THE COURT: I thought you had your argument..

9 MR. EASON: I thought I had rebuttal.

10 THE COURT: No, Mr. Jones, the Commonwealth has  
11 had the burden of proof and he has the right of rebuttal.

12 Gentlemen, in this case, obviously with  
13 reference to Mr. Faison, he is guilty of grand larceny and I  
14 so find him guilty. The fact that he stated he was going to  
15 abandon the vehicle at Tower Mall makes him clearly guilty of  
16 larceny, grand larceny. He did not say that he ever intended  
17 to bring the vehicle back. And there is a case right on  
18 point to where you abandon the vehicle, shows -- certainly  
19 negates the intent to bring it back, or unauthorized use in  
20 this case. So I find him guilty.

21 In the case of Mr. Moehring, I would agree mere  
22 presence is not enough, and neither is flight from the scene  
23 or leaving the scene, but in this particular instance, Mr.  
24 Moehring -- testimony is, and credible testimony is -- was  
25 present when he saw the vehicle being taken, and he left the



1 scene. And he didn't just leave, but he left in the very  
2 vehicle that was stolen from the scene, that he saw it was  
3 stolen. Only inference, credible, reasonable inference that  
4 the Court can take from that kind of testimony. And based  
5 on that, I am going to find you also guilty of grand larceny,  
6 Mr. Moehring, as charged in the indictment.

7 Any motions prior to Court imposing sentence in  
8 this case?

9 MR. DELK: Yes, sir. I move for pre-sentence  
10 report on Mr. Faison.

11 MR. EASON: I so move for Mr. Moehring.

12 THE COURT: All right, so ordered in each case.  
13 What is the status of these bonds?

14 MR. EASON: Mr. Moehring is out on bond, Your  
15 Honor.

16 THE COURT: Is he working at this time? Mr.  
17 Moehring, are you working?

18 MR. MOEHRING: Yes, sir.

19 MR. DELK: Mr. Faison is on bond and he is main-  
20 taining the job he testified to. I would ask that he be allowed  
21 to remain on bond. He has employed me in this case, Your  
22 Honor and has been totally cooperative with me in every  
23 instance, has not failed to come to my office when I called  
24 him and I don't think he's --

25 THE COURT: How about your situation with reference

1 to Mr. Moehring?

2 MR. EASON: I am a court-appointed counsel. He  
3 is living in Portsmouth at the present time. He is employed.  
4 I have had no problem getting him, getting in touch with him.

5 THE COURT: Where is Mr. Moehring employed?

6 MR. MOEHRING: It is not a company yet. Name  
7 is Ark Diesel, I think it is.

8 THE COURT: Mechanic?

9 MR. MOEHRING: Yes, panel siding.

10 THE COURT: But you are working every day?

11 MR. MOEHRING: Yes, sir.

12 THE COURT: What is your position, Mr. Jones?

13 MR. JONES: Your Honor, I have no objection.  
14 I think that certainly incarceration is going to be necessary,  
15 at least the Commonwealth is going to so move. It may be  
16 wise to start now rather than later, but I have no objection  
17 to them remaining on bond.

18 THE COURT: I will honor the motion to allow them  
19 to remain on bond, pending the pre-sentence report, on three  
20 conditions: Number one, the two defendants will stay in contact  
21 with their attorneys, let them know where they are at all  
22 times. And number two, that you obey the laws of the Common-  
23 wealth of Virginia. Failure to do so will result in your  
24 bond being revoked. Or failure to stay in touch with your  
25 counsel would result in your bond being revoked. Thirdly, I am

1 going to require that both of you cooperate with the probation  
2 parole officer to prepare the report that you requested.  
3 These matters will be continued for final disposition upon  
4 receipt of the pre-sentence reports as requested, the date to  
5 be set by agreement of counsel.

6 MR. DELK: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8  
9 (Whereupon, the proceedings were concluded  
10 at 1:00 p.m.)  
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