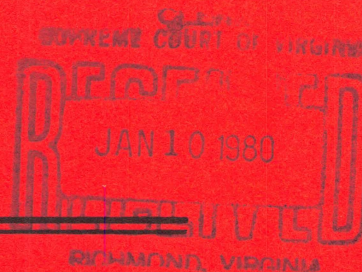


220VA1007



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 790625

THEODORE G. FORE,

.....Appellant

v.

COMMONWEALTH OF VIRGINIA,

.....Appellee

JOINT APPENDIX

Steven M. Garver
11484 Washington Plaza, West
Post Office Box 2243
Reston, Virginia 22090

Counsel for Appellant

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V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

January 17, 1978

COMMONWEALTH OF VIRGINIA)	
)	INDICTMENT FOR
vs.)	
)	BURGLARY
THEODORE G. FORE)	

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its January Term, 1978 charges that: On or about the 11th day of November, 1977 in the County of Fairfax, Theodore G. Fore, while armed with a deadly weapon, did break and enter in the nighttime the dwelling house of James Kasik, 6916 Andover Drive, Alexandria, Virginia, with the intent to commit larceny.

Va. Code §18.2-89

A True Bill ✓

No True Bill

2. 7. 11. 1978
F O R E M A N

Witnesses subpoenaed, sworn and available to testify before the Grand Jury:

Inv. J. Stone, Fairfax County Police Dept.

A COPE COPY
JAMES L. GONNALL, CLERK
By: James L. Gonnall
Deputy Clerk 26152

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs.

THEODORE G. FORE,

Defendant

CRIMINAL NO. 2512 L E O

OCT 12 1978

JAMES L. HOOFNAGLE
Clerk of the Circuit Court
of Fairfax County, Va.

NOTICE

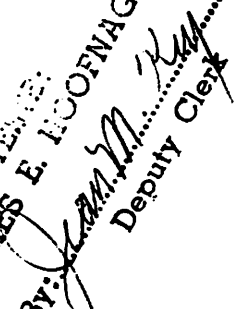
TO: JOHN P. GRAHAM, Esquire
Assistant Commonwealth Attorney
Fairfax County Courthouse
4000 Chain Bridge Road
Fairfax, Virginia 22030

PLEASE TAKE NOTICE that on Tuesday, October 17, 1978 at
10:00 a.m. or as soon thereafter as Counsel may be heard, Counsel for the
Defendant will present the attached Motion To Suppress for a hearing.

THEODORE G. FORE
By Counsel

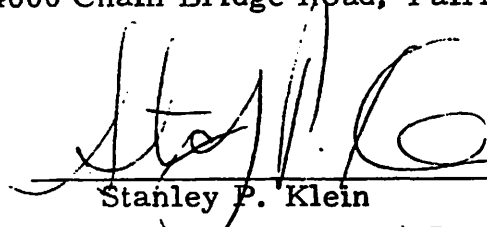


STANLEY P. KLEIN
Counsel for Defendant
3251 Old Lee Highway, Suite 400
Fairfax, Virginia 22030

A COPY TYPED
JAMES E. HOOFNAGLE, CLERK
BY:  Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice and
attached Motion To Suppress were hand-delivered this 12th day of October,
1978, to JOHN P. GRAHAM, Assistant Commonwealth Attorney for Fairfax
County, Fairfax County Courthouse, 4000 Chain Bridge Road, Fairfax, Virginia
22030.


Stanley P. Klein

OCT 12 1976

JAMES E. [unclear]
Clerk of the Circuit Court
of Prince George County, Va.


MOTION TO SUPPRESS

COMES NOW the Defendant, THEODORE G. FORE, by and through Counsel and moves this Honorable Court to suppress any and all items recovered by the Prince Georges County Police from an automobile left for service repairs by the Defendant at Sheehy Ford in Prince Georges County, Maryland in November or December and in support thereof states as follows:

- 1.) That the seizure of the automobile and the contents therein was effected without a warrant;
- 2.) That there was no probable cause to believe that the automobile contained contraband;
- 3.) That there were no exigent circumstances present which would have obviated the necessity of the police having obtained a warrant prior to the seizure of the automobile and its contents;
- 4.) That all searches and seizures conducted without a warrant are per se unreasonable under the Fourth and Fourteenth Amendments;
- 5.) That any items recovered from the automobile would have been obtained as a result of an illegal search and seizure.

WHEREFORE, the premises considered the Defendant respectfully requests that this Court suppress any and all items seized by the Prince Georges County Police from the aforesaid automobile.

THEODORE G. FORE
By Counsel


STANLEY P. KLEIN
Counsel for Defendant
3251 Old Lee Highway, Suite 400
Fairfax, Virginia 22030

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA) Indictment - Burglary

vs.)

THEODORE G. FORE) #26152

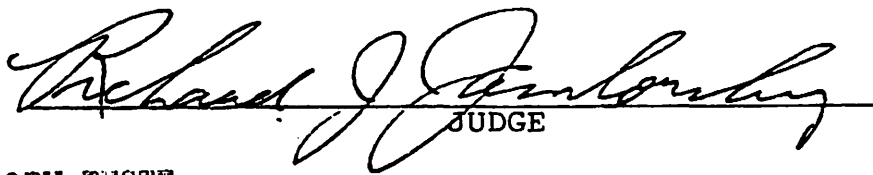
This 17th day of October, 1978, came the Commonwealth, by her Attorney, and the Defendant, THEODORE G. FORE, who stands indicted for a felony, to-wit: burglary, being confined in jail, was brought into Court and put to the bar of the Court, in the custody of a Deputy Sheriff, also appeared J. Randolph Parks and Stanley P. Klein, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

This case came on to be heard this day on the Defendant's motion to suppress evidence, which motion the Court, upon hearing evidence on behalf of the Defendant and on behalf of the Commonwealth, and argument of Counsel, thereon denied.

Whereupon, the Attorney for the Defendant made a motion for an out-of-state subpoena, which motion the Court, upon hearing argument thereon, granted on the condition that this case is not continued from Thursday, October 19, 1978, if the witnesses are unable to appear.

The Defendant is hereby remanded to jail.


JUDGE

A COPY TESTE:
JAMES E. HOOFNAGLE, CLERK

By: 
Deputy Clerk

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA) Indictment - Burglary
)
 vs.)
THEODORE G. FORE) #26152

This 19th day of October, 1978, came the Commonwealth, by her Attorney, and the Defendant, THEODORE G. FORE, who stands indicted for a felony, to-wit: burglary, being confined in jail, was brought into Court and put to the bar of the Court, in the custody of a Deputy Sheriff, also appeared J. Randolph Parks and Stanley P. Klein, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

Whereupon, the Attorney for the Defendant moved the Court to have this case continued, which motion the Court denied.

Whereupon, the Defendant was arraigned upon the indictment returned herein, to which indictment the Defendant entered a plea of not guilty. Thereupon, came a jury of twenty veniremen, who were sworn and examined on their voir dire and found to be competent and qualified jurors, and the Attorney for the Commonwealth and the Attorney for the Defendant having each alternately, beginning with the Attorney for the Commonwealth, stricken from the said panel the names of four of the said veniremen, the remaining twelve, to-wit: Stephen Niezgoda, Roger Brooks, Judy Martieowsky, Bernadette Garcia, Rosemary Fish, Clyde Roush, Betty Roberts, Lillian Powell, Gordon Randall, Andrew Ditoma, Pascal Tashjin, and Claudia Norwood, constituted the jury for the trial of the Defendant

and were sworn the truth of and upon the premises to speak. The jury then proceeded to hear the opening statement of the Attorney for the Commonwealth. Whereupon, Counsel for the Defendant, out of the presence of the jury, but in the presence of the Defendant, made a motion for a mistrial, which motion the Court, upon hearing argument thereon, denied.

Thereupon, the jury was recalled and proceeded to hear the opening statement of the Attorney for the Defendant. The jury then began hearing evidence on behalf of the Commonwealth.

Whereupon, the Defendant, out of the presence of the jury, made a motion to proceed with this case pro se, which motion the Court denied.

Whereupon, the Defendant made a motion for a mistrial, which motion the Court denied.


Whereupon, the Defendant made a motion to suppress identification, which motion the Court, upon hearing evidence on behalf of the Defendant, denied.

Whereupon, the Defendant made a motion for a mistrial, which motion the Court denied.

Thereupon, the jury was recalled and continued to hear evidence on behalf of the Commonwealth.

Whereupon, the Court being of the opinion that this case could not be completed at a reasonable hour admonished the jurors as to their behavior during recess and continued this case to Monday, October 23, 1978, at 10:00 o'clock A.M.

The Defendant is hereby remanded to jail.


JUDGE 6

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA) Indictment - Burglary
)
)
)
)
THEODORE G. FORE) #26152

This 23rd day of October, 1978, came the Commonwealth, by her Attorney, and the Defendant, THEODORE G. FORE, who stands indicted for a felony, to-wit: burglary, being confined in jail, was brought into Court and put to the bar of the Court, in the custody of a Deputy Sheriff, also appeared J. Randolph Parks and Stanley P. Klein, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

Thereupon, the roll was called and the following jurors took their seats in the jury box, to-wit: Stephen Niezgođa, Roger Brooks, Judy Martieowsky, Bernadette Garcia, Rosemary Fish, Clyde Roush, Betty Roberts, Lillian Powell, Gordon Randall, Andrew Ditoma, Pascal Tashjin, and Claudia Norwood.

Whereupon, the Attorney for the Defendant, out of the presence of the jury, moved the Court to have the prosecution's chief witness, Ann Zerega, examined by a physician, which motion the Court denied.

Whereupon, the Attorney for the Defendant made a motion for a mistrial, which motion the Court denied.

Whereupon, the jury was recalled and continued to hear the remainder of the evidence on behalf of the Commonwealth.

Whereupon, the Attorney for the Defendant made a motion for a mistrial, which motion the Court denied.

Upon conclusion of all the evidence presented on behalf

of the Commonwealth, Counsel for the Defendant, out of the presence of the jury, but in the presence of the Defendant, moved the Court to strike the evidence, which motion the Court, upon hearing argument thereon, denied.

Whereupon, the jury was recalled and heard all the evidence presented on behalf of the Defendant.

The jury then received instructions of the Court, heard argument of Counsel and rebuttal argument on behalf of the Commonwealth and were sent to their room to consult upon their verdict and after some time returned into Court and rendered the following verdict, to-wit:

"We, the Jury, on the issue joined in the case of Commonwealth of Virginia vs. Theodore G. Fore, Defendant, find the Defendant guilty of common law burglary, a lesser included offense, as charged in the indictment returned herein, and fix his punishment at 7 years.

/s/ Roger Brooks
Foreperson"

Thereupon, the jury was discharged.

Then Counsel for the Defendant made a motion that this case be referred to the District Probation Officer for his investigation and report before sentencing, which motion the Court granted, and this case is hereby continued to the 22nd day of November, 1978, for said report and sentencing.

The Defendant is hereby remanded to jail.


JUDGE

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

E I C E D

NOV 16 1978

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

THEODORE G. FORE,

Defendant.

JAMES E. HOOFNAGLE
Clerk of the Circuit Court
of Fairfax County, Va.

CRIMINAL NO. 22152

MOTION TO SET ASIDE JURY VERDICT

COMES NOW the Defendant, THEODORE G. FORE, by and through counsel, and pursuant to Rule 3A:22 of the Rules of the Supreme Court of Virginia, moves this Honorable Court for the following relief:

A. To set aside the jury verdict of guilty and enter a judgment of acquittal because the evidence is insufficient as a matter of law to sustain a conviction; or

B. To set aside the jury verdict and grant the Defendant a new trial because he was denied due process for the following reasons:

1. The Defendant was improperly denied a continuance to enable him to subpoena out-of-state witnesses to testify on his behalf, to-wit: the parents of the prosecution's chief witness, Ann Zerega, who, the Defendant alleges, would have contradicted Ms. Zerega's testimony;

2. The Court failed to properly cure the prejudice resulting to the Defendant from certain members of the jury having seen the Defendant in handcuffs and being led to and from the courtroom by the bailiff. The Defendant feels that proper procedure should have been to sequester the jury and

question the appropriate jurors individually in private;

3. The Court improperly denied the Defendant's request that he be permitted to represent himself, pro se, at the trial of this cause;

4. The Court failed to bring the jury back prior to the dinner break to admonish them not to discuss the case during said break; and, further, when it was learned that the jury, without the Court's knowledge or permission, left the jury room during the course of its deliberations and wandered through the courthouse, the Court failed to take appropriate steps to cure any prejudice which might have arisen from such improper action on the jury's part;

5. The Court improperly admitted into evidence certain evidentiary items, to-wit: Exhibits 1, 2 and 3, because the Commonwealth failed to establish a causal nexus between the items allegedly taken from the Kasik residence and those allegedly found by Investigator Creveling at Sheehy Ford;

6. The Defendant has advised counsel that he (the Defendant) has recently learned that the information given to counsel for the defense by the Commonwealth, pursuant to the discovery Order of August 28, 1978, was incorrect in that it did not indicate that the prosecution's chief witness, Ann Serega, has been convicted of the felonies of burglary and forgery in the State of Maryland, rather than solely of misdemeanors as alleged by the Commonwealth;


7. In the light of the Court's ruling at trial that neither the Defendant nor his wife, Christine, would have made any incriminating statements to Investigator Bradley

of the Washington, D. C., Metropolitan police other than pursuant to a plea agreement, the Court should reconsider its denial of Defendant's Motion to Suppress the evidentiary items which subsequently were introduced as Commonwealth's Exhibits 1, 2, and 3. It is submitted that the sole probable cause for entry by Investigator Creveling into the Defendant's automobile at Sheehy Ford and the discovery of the aforesaid evidentiary items was a telephone call for Investigator Bradley relaying information concerning the goods which he (Bradley) had allegedly received from Christine Fore.

WHEREFORE, the Defendant, by counsel, moves this Court to set aside the jury verdict and award Defendant a new trial.

Respectfully submitted,

J. RANDOLPH PARKS
Counsel for Theodore G. Fore



J. RANDOLPH PARKS, Esquire
Suite 316, The Mosby
10560 Main Street
Fairfax, Virginia 22030
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 1978, a true copy of the foregoing Motion to Set Aside Jury Verdict was hand delivered to John Graham, Esquire, Assistant Commonwealth's Attorney, Courthouse, Fairfax, Virginia.



J. RANDOLPH PARKS, Esquire

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA) Indictment - Common law burglary
vs.)
THEODORE G. FORE •) #26152

This 22nd day of November, 1978, came the Commonwealth, by her Attorney, and the Defendant, THEODORE G. FORE, who stands convicted of a felony, to-wit: common law burglary, being confined in jail, was brought into Court and put to the bar of the Court, in the custody of a Deputy Sheriff, also appeared J. Randolph Parks and Stanley P. Klein, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

This case came on to be heard this day on the Defendant's motion to set aside the jury verdict rendered on the 23rd day of October, 1978, and award the Defendant a new trial, which motion the Court, upon hearing argument thereon, denied.

Whereupon, the Defendant moved the Court to remove Court appointed Counsel in this case, which motion the Court denied.

The Defendant is hereby remanded to jail.

Richard J. Jambor
JUDGE

A COPY OF THE
 JAMES
 By *Robert B. Johnston*
 Deputy Clerk

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA) Indictment - Common law burglary
)
 vs.)
)
THEODORE G. FORE) #26152

This 22nd day of December, 1978, came the Commonwealth, by her Attorney, and the Defendant, THEODORE G. FORE, who stands convicted of a felony, to-wit: common law burglary, being confined in jail, was brought into Court and put to the bar of the Court, in the custody of a Deputy Sheriff, also appeared Stanley P. Klein, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

Whereupon, the Probation Officer of this Court, to whom this case had been previously referred for investigation, appeared in open Court with a written report, copies of which had previously been furnished to Counsel for the Defendant, Attorney for the Commonwealth, and the Court. Counsel for the Defendant then advised the Court that he had discussed the report with the Defendant and the Defendant was fully advised of the contents thereof.

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

Thereupon, it was demanded of him, THEODORE G. FORE, if

anything he knew or had to say why the Court should not proceed to pass sentence and judgment upon him, and nothing being offered or alleged in delay of judgment, it is ADJUDGED and ORDERED the Defendant serve seven (7) years in the Penitentiary House of this Commonwealth, at hard labor. The said sentence is to run concurrently with any other sentence the Defendant is presently serving.

The Court proceeded to advise the Defendant of his right to appeal from the sentence heretofore imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with an appeal paid for him in the event he is financially unable to pay the same.

The Court certifies that the Defendant was present at all stages of this trial.

The fee of the Court Reporter who recorded the evidence and incidents of trial in this case is hereby assessed as costs in this case as provided by Sec. 19.2-165 of the 1950 Code of Virginia, as amended.

J. Randolph Parks, Attorney, who was heretofore appointed to represent the Defendant in this case, is hereby allowed a fee of \$ 200⁰⁰.

Stanley P. Klein, Attorney, who was heretofore appointed to represent the Defendant in this case, is hereby allowed a fee of \$ 200⁰⁰.

The Defendant is hereby remanded to jail.


JUDGE

In The Circuit Court of Fairfax County

Commonwealth of Virginia

Theodore ^{VS} Fore

Motion For New Trial

Comes now the defendant, Theodore S. Fore pro-se, and moves this Court to grant him a new trial and States as his grounds;

1) Trial Court erred by not granting mistrial after several members of the jury saw the defendant being led through out the Court house under armed guard and with defendants hands handcuffed behind his back

2) Trial Court erred by letting the Commonwealth Attorney make highly prejud-

ice statements to the jury in opening statements and through out the trial as to defendants alleged drug use.

3) Trial Court erred when making objections on behalf of the Commonwealth attorney and sustaining its own objections.

4) Trial Court erred when placing restrictions on defense counsel's attempt to cross examine Commonwealth's witness.

5) Trial Court erred when denying defendants request for a continuence to obtain out of state witnesses that were crucial to the defense. especially in light of the trial judge delaying the trial after only half a day of the States case being presented to the jury, at that time the trial judge continued the case on the Courts motion to merely

facilitate the Commonwealth
Attorney's Office

6) Trial Court erred by allowing evidence of other crimes defendant could have been charged with, evidence of other burglaries the Commonwealth's witness stated the defendant had committed burglaries the Commonwealth attorney stated defendant had committed

7) Trial Court erred by letting illegally seized evidence before the jury, evidence obtained by Prince George's County, Maryland Police without benefit of Probable Cause to search the car without a search warrant.

8) Trial Court erred by letting illegally seized evidence before the jury without requiring the Commonwealth to show a complete chain of police custody.

9) Trial Court erred by

denying defendant the right to undertake his own defense in light of Court appointed counsel's failure to make timely objections to protect defendant's rights.

10) Trial Court erred when not declaring a Mistrial on the Court's own motion when Investigator Stone stated before the jury "Taddy Fore kept delaying trial and that's why I dropped the Charges against the Commonwealth's star witness."

11) Trial Court erred by not keeping the jury panel sequestered during deliberation. The jury panel should not have been allowed to roam around after they left their deliberations without first being returned to the Courtroom and instructed not to discuss, during dinner

break, the evidence before them, not to discuss the case with each other outside the jury room and not to discuss the case with anyone.

12) Trial Court erred when allowing evidence before the jury that had been obtained pursuant to a plea agreement with both the D.C. Police and Assistant U.S. Attorney Brewer, Washington D.C.

13) Trial Court erred when not allowing the defense counsel to bring out the Commonwealth's Star witnesses complete deals with Prince George's County, Maryland, Arlington County and Fairfax Virginia.

14) Trial Court erred when not enforcing Discovery Order against the Commonwealth that Judge Plumber had signed. Commonwealth attorney concealed felony convictions on the Commonwealth's

Star witnesses' arrest record

15) Trial Court erred when not declaring a mistrial when the Court room guard snatched a writing pen from the defendant's hand in front of the jury

16) Trial Court erred when not granting defendant's motion to have Commonwealth Star Witness undergo a blood test to determine if the "star witness" was on narcotics, in light of witnesses own admission that she was a drug addict

17) Trial Court erred in giving instruction to the jury, in light of the fact that the Commonwealth Attorney chose to indict the defendant on a one count indictment for Armed Burglary In The Night Time

Wherefore, your defendant
moves this Honorable Court to set
aside the prior verdicts and grant
him a New Trial on all issues
before the Court.

Respectfully Submitted,
Frederic S. Lane

Sworn to and before me this 20
day of March 1978

Notary Public *Will J. [Signature]*
My Comm. Exp. 10-30-79

A COURT REPORTER

JAMES E. [Signature] CLERK

By: *Debra B. [Signature]*
Deputy Clerk

RJJ/kss

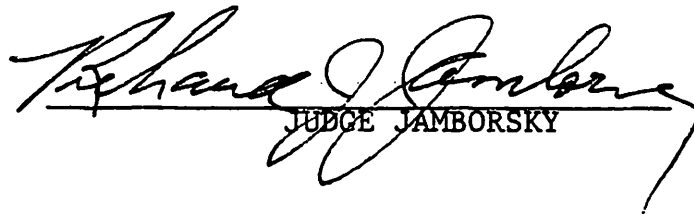
VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA)	Indictment - Burglary
VS.)	
THEODORE GARDNER FORE)	Cr. #26152

And it appearing to the Court that the Defendant is without Counsel and the Court, having determined that the Defendant is indigent, as contemplated by law, hereby ORDERS that Steven Garver, an able and experienced Attorney at Law practicing before this Court be appointed to represent the Defendant for the purpose of perfecting an appeal.

Entered: February 16th 1979


JUDGE JAMBORSKY

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA) Indictment - Common law burglary
vs.)
THEODORE GARDNER FORE) #26152

This 26th day of March, 1979, came the Commonwealth, by her Attorney, and the Defendant, THEODORE GARDNER FORE, who stands convicted of a felony, to-wit: common law burglary, being confined in jail, was brought into Court and put to the bar of the Court, in the custody of a Deputy Sheriff, also appeared Steven Garver, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

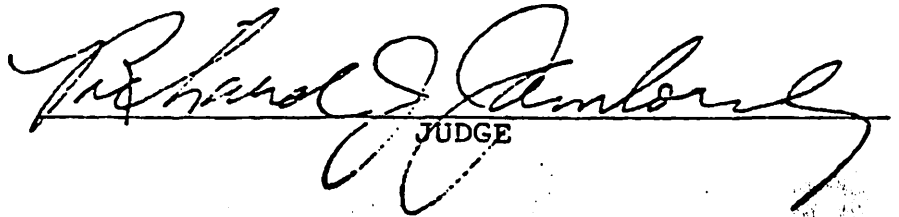
Whereupon, the Court heard the Defendant's motion to reconsider to have his sentence run concurrently with the sentence imposed in Arlington County, which motion the Court took under advisement.

The Court heard a further motion to reconsider to suspend the balance of the Defendant's sentence conditioned upon the Defendant's admittance to the Second Genesis Program, which motion the Court denied.

The Court heard a further motion to allow the Defendant funds to obtain a transcript of the D. C. proceedings, which motion the Court took under advisement.

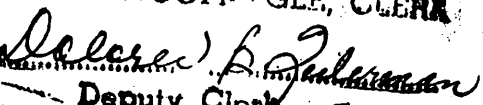
In consideration whereof, the Court on March 28, 1979, granted the motion to run the Defendant's sentence concurrently with the Arlington County sentence as heretofore ordered on December 22, 1979. The Court denied the motion to suspend the

balance of the Defendant's sentence and placement in Second Genesis, and the Court denied the motion for funds to obtain a transcript of the proceedings in the District of Columbia.


JUDGE

A COPY TESTE:

JAMES L. HOOVER, CLERK

By 
Deputy Clerk

P R O C E E D I N G S

(The court reporter was sworn.)

MR. GRAHAM: Good afternoon, Your Honor.

THE COURT: Are you going to make an opening statement to tell me what this motion is about?

MR. KLEIN: Very briefly, Your Honor, but prior to the time I do that, I would request a rule on the witnesses. I would also, if the Court please, request a rule on any witnesses who may be testifying at the time of the trial on Thursday, not only the witnesses who are going to be testifying on behalf of the Commonwealth today, but any witnesses who they may intend to introduce on Thursday at the trial of this matter.

THE COURT: All right.

MR. GRAHAM: Your Honor, I would object to the rule extending to any witnesses that may be called to a trial some time in the future. I don't that the rule extends that far, nor the purpose of the rule extends that far.

THE COURT: I overrule your objection.

If you are a witness today, would you please wait outside, or if you are going to be a witness at the trial on the merits, wait outside.

1 (The witnesses were excluded from the courtroom.)

2 MR. KLEIN: Your Honor, very briefly -- and, I
3 apologize for not supplying the Court with a few more
4 facts at the time that I drafted the motion. At that
5 time, the facts -- most of the facts were unbeknownst to
6 me.

7 What we are talking about here is an automobile
8 -- well, first let me state this for the purposes of the
9 record.

10 THE COURT: Which criminal case is this?

11 MR. KLEIN: Your Honor, this is 26152, the
12 Commonwealth versus Theodore G. Fore.

13 I would state for the record first that the
14 defendant will be testifying at this particular hearing,
15 but pursuant to Simmons versus the United States, he will
16 be testifying with the expectation that no statements
17 that he makes during the course of this hearing can be
18 used against him in the trial of this matter.

19 He is not, by any means, waiving his Fifth
20 Amendment privilege at this time by testifying at this
21 hearing.

22 Your Honor, Mr. Fore brought an automobile
23 into Sheehy Ford in Prince Georges County some time --

1 and to this date, I still do not know the exact date --
2 in November of 1977 for repairs.

3 Mr. Fore was arrested a few days -- well, I
4 think it was a few weeks later, Your Honor, and he was
5 informed by Investigator Stone of the Fairfax County
6 Police Department that the automobile which he had brought
7 into Sheehy Ford had been seized by the Prince Georges
8 County Police, specifically Investigator Al Creveling
9 of ~~the Prince Georges County~~ Police Department, based
10 on what he believed to have been probable cause and exi-
11 gent ~~circumstances~~.

12 No warrant was ever served on Mr. Fore, and
13 it will be very much our position today that in light
14 of the many Supreme Court of the United States and
15 Supreme Court of Virginia cases that say that any search
16 and seizure that was conducted without prior judicial
17 approval is, per se, unreasonable, under the Fourth
18 and Fourteenth Amendments, unless the Commonwealth

19 in this particular case can show that it fits
20 squarely within one of the narrowly-drawn exceptions,
21 should cause this Court to suppress any and all evidence
22 which was found in that automobile.

23 THE COURT: That's what the case is about --

1 MR. KLEIN: Yes, sir.

2 THE COURT: -- today, suppression of evidence
3 in an automobile?

4 MR. KLEIN: Yes, Your Honor.

5 THE COURT: Did you want to make an opening
6 statement, Mr. Graham?

7 MR. GRAHAM: No, Your Honor, only to say that
8 I feel, once the Commonwealth is through -- once the
9 Court hears the evidence, they will find that such exigent
10 circumstances existed to enter the car without a search
11 warrant, based on probable cause.

12 MR. KLEIN: Your Honor, I call Theodore G. Fore.

13
14 Whereupon

15 THEODORE G. FORE

16 the defendant, was called for examination by counsel on
17 his own behalf, and, after having been duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. KLEIN:

21 Q Could you please state your name for the record?

22 A Theodore G. Fore.

23 Q And you are the same Theodore G. Fore who is

1 the defendant in Criminal Number 26152 in the Circuit
2 Court of Fairfax County, Virginia?

3 A Yes, I am.

4 Q Mr. Fore, directing your attention back to
5 November of -- the middle of November, 1977, did there
6 come a time that you brought an automobile into Sheehy
7 Ford in Prince Georges County, Maryland?

8 A Yes, sir.

9 Q Could you please explain to the Court the cir-
10 cumstances, as they existed at that time, which caused
11 you to do so?

12 A The brakes on the car were going bad, and I
13 called up and made an appointment to take the car out
14 and have the brakes repaired.

15 Q Did you, specifically, yourself, take the car
16 in, or was the car taken in by someone else?

17 A I took the car in.

18 Q Was anyone else with you at the time you brought
19 the car in?

20 A Yes; my wife.

21 Q Now, Mr. Fore, did there come a time that that
22 car was returned to you by the people at Sheehy Ford?

23 A Not as of this date, no.

1 Q Did there come a time that any law enforcement
2 official may have explained to you why that car was not
3 returned to you?

4 A Investigator Stone of the Fairfax County Police
5 Department told me, right after my arrest, that the car
6 had been seized and searched, and that the P.G. County
7 Police had it.

8 Q Mr. Fore, have you, at any time, been presented
9 with a warrant for either the seizure or the search of
10 that particular automobile?

11 A No, I have not.

12 Q To the best of your knowledge, has anyone else
13 received the warrant for the search and seizure of that
14 particular automobile?

15 A No, they have not.

16 Q Do you know who purchased that particular auto-
17 mobile, Mr. Fore?

18 A I did.

19 Q And, at the time that it was seized by the
20 Prince Georges County Police, whose name was the car
21 titled in?

22 A My wife's.

23 Q How often did you use that particular automobile?

1 A It was my vehicle.

2 MR. KLEIN: That's all I have, Your Honor.

3 CROSS EXAMINATION

4 BY MR. GRAHAM:

5 Q Mr. Fore, you said the car was your wife's.

6 Whose name was the car listed in?

7 A Virginia Rosanna Donnelly.

8 Q Was your wife married to you at the time you
9 took the car in?

10 A Yes, she was.

11 Q Was your wife's name changed at the time you
12 married her? Did your wife's name change to that of your
13 last name at the time you were married?

14 A Yes, it did.

15 Q Can you explain to the Court why the car was
16 registered in the name of Virginia Donnelly?

17 A Because I'd had previous trouble getting tags
18 and registration for a previous vehicle, and therefore,
19 I had the car titled in that name.

20 Q Now, was your name, at the time you took the
21 car into Sheehy Ford, Theodore Fore?

22 A Yes, it was.

23 Q And what name did you sign for authorization of

1 repairs at Sheehy Ford?

2 A I don't recall. It may have been Bobby Wheeler.

3 Q What name did you give as that of your own at
4 the time you took the car in for repairs?

5 A I'm not certain, but I think it was Bobby
6 Wheeler.

7 Q And, what address did you give for Bobby Wheeler?

8 A It was a Maryland address.

9 Q How did that address compare with where you were
10 living at the time you took the car in?

11 A In the same area.

12 Q In the same area, but not the same address?

13 A Yes, as I recall, it was the same address.

14 Q So, it's your testimony that the address reflected
15 on the repair order form was the same address that you
16 were living at at the time you took the car in?

17 A I couldn't be certain of that. I don't recall
18 the exact address.

19 Q How about the telephone numbers you gave on
20 how to get in touch with you, that you gave on the repair
21 order?

22 MR. KLEIN: Your Honor, I think we are going
23 beyond the point of relevance in regard to this

1 particular hearing. In regard to the address and in re-
2 gard to the name, I think there might be relevance, if
3 Mr. Graham is going to state that Mr. Fore was not the
4 one who brought the car in, but when we start going into
5 telephone numbers, Your Honor, I think we are going
6 beyond the stage of where it has relevance in regard
7 to this particular hearing.

8 THE COURT: I will overrule the objection.

9 Go ahead.

10 MR. GRAHAM: Thank you, sir.

11 BY MR. GRAHAM:

12 Q The telephone number you gave as that of your
13 own, sir, was that, in fact, the telephone number where
14 you were residing at the time you took the car in?

15 A I don't recall if I gave a telephone number.
16 If I did, I gave my mother-in-law's phone number.

17 Q If you did, you gave your mother-in-law's?
18 Has your mother-in-law ever heard you go by
19 the name of Bobby Jack Wheeler?

20 A No.

21 Q So, if someone were to call up your mother-in-
22 law, based on the information contained in the authoriza-
23 tion for work asking for Bobby Jack Wheeler, then your

1 mother-in-law would not know what they were talking about;
2 is that correct?

3 MR. KLEIN: Your Honor, the same objection.

4 THE COURT: Overruled.

5 BY MR. GRAHAM:

6 Q Would you like me to repeat the question?

7 A Yes, please.

8 Q I'm saying, if someone from Sheehy Ford were to
9 call the number you listed on the repair authorization in
10 order to get additional information from you, and asked
11 for Bobby Jack Wheeler at your mother-in-law's address,
12 then she would not know what they were talking about,
13 would she?

14 A Well, more than likely I would answer the phone,
15 or my wife would.

16 Q I see.

17 You stated, I believe, that you were living at
18 an address in Maryland?

19 A Yes.

20 Q Is that not the same address where your mother-
21 in-law lives?

22 A No. My mother-in-law lives in the District of
23 Columbia, but, as a rule, my wife is there every day.

1 Q Well, you just got finished saying that you would
2 most likely answer the phone.

3 A Myself or her, one. I would be there or she
4 would be there.

5 Q Well, which was your predominant address? The
6 one in the District of Columbia where your grandmother
7 resided, or the one in Maryland that you stated you were
8 living at?

9 MR. KLEIN: Your Honor, same objection.

10 THE COURT: I think you misspoke with respect
11 to one of the people involved.

12 Would you repeat your question?

13 So far as your objection is concerned, for the
14 same reasons, I overrule your objection.

15 But, I believe your question is confusing to
16 the witness, because I think you referred to 'grandmother',
17 when you mean --

18 MR. GRAHAM: I'm sorry, Your Honor. I meant
19 mother-in-law.

20 BY MR. GRAHAM:

21 Q Mr. Fore, I believe your previous testimony was,
22 at the time you took the car in to Sheehy Ford, you were
23 living at an address in Maryland; is that correct?

1 A Yes.

2 Q And your later testimony indicated that if some-
3 one were to call your mother-in-law's telephone number,
4 the phone number you listed on the authorization for
5 repairs, that they would most likely get you, and then
6 later you added, or your wife; is that correct?

7 MR. KLEIN: Your Honor, I don't think that is
8 correct. I think what he stated was, "me or my wife".

9 MR. GRAHAM: I think the Court's recollection --

10 THE COURT: I think on cross examination he may
11 ask that question and the witness can answer it if he can,
12 and correct it if he thinks it's wrong.

13 You may answer, Mr. Fore.

14 THE WITNESS: Could you repeat the question?

15 BY MR. GRAHAM:

16 Q My question, Mr. Fore, was if someone were to
17 -- I believe I asked you earlier that if someone were to
18 call the number you listed, that is, the number of your
19 mother-in-law, that either you or your wife would answer
20 the telephone -- is that correct? -- most likely?

21 Is that what you answered?

22 A I couldn't really -- if my mother-in-law -- if
23 she was there, she may answer the phone. If I was there,

1 I might answer it, or my wife, my father-in-law.

2 Q Mr. Fore, I am asking you what your answer to
3 my previous question was, not what, in fact, could have
4 happened.

5 Did not you say that if someone called that
6 number, mostly likely either your wife or you would answer
7 the telephone?

8 A Yes.

9 Q Now, which location were you spending more time
10 at; your mother-in-law's in D.C. or the place that you
11 claimed as your residency in Maryland?

12 MR. KLEIN: Same objection.

13 THE WITNESS: I was spending the majority of the
14 time at my mother-in-law's.

15 BY MR. GRAHAM:

16 Q Now, when did you take the car in for repairs
17 at Sheehy?

18 A It was early in November.

19 Q Did you rent a car at Sheehy at the time you
20 took the other car in for repairs?

21 A After I put the car in for repairs, yes.

22 Q Did you use the alias of Bobby Jack Wheeler
23 at the time you rented the car?

1 A Yes.

2 Q Now, what were the conditions under which you
3 rented the car?

4 MR. KLEIN: Objection; beyond the scope.

5 MR. GRAHAM: Well, Your Honor, if I may respond
6 at this point, I could perhaps give the Court some guidance
7 as to where I'm going.

8 One of the foundations for the search of the
9 vehicle may turn out to be, as the evidence unfolds, that
10 of abandoned property, and my questions are directed both
11 to the issue of what the circumstances were under which
12 the car was left there, as a foundation for exigent cir-
13 cumstances, as well as a possible foundation for the fact
14 that the car was abandoned.

15 And that's the reason why I am perhaps going a
16 bit outside the scope of my original questions, but that,
17 I submit, is the relevancy.

18 MR. KLEIN: I think it is beyond the scope of
19 my direct examination, though, Your Honor.

20 THE COURT: I overrule the objection.

21 You may go ahead.

22 MR. GRAHAM: Thank you, sir.

23

1 BY MR. GRAHAM:

2 Q Now, you said you took the car in for repairs
3 and leased another car from Sheehy Ford in -- early
4 November, did you say?

5 A Early, or the middle part of November.

6 Q Do you recall what repairs you had authorized
7 to the car?

8 A I authorized that they check the brakes out
9 and give me an estimate, a cost estimate.

10 Q And the work was not to be done until the esti-
11 mate was communicated to you?

12 A Well, that was their agreement, that they would
13 contact me.

14 Q Did you say as far as you were concerned, the
15 car could go ahead and be repaired, or what?

16 A No. I told them upon them calling me and con-
17 tacting me that I would tell them whether or not to go
18 ahead.

19 Q Now, do you recall the conditions under which
20 you leased the car from Sheehy Ford?

21 A It's been some time.

22 Q Do the best you can, if you would, please.

23 A I merely rented the car.

1 Q For a specific period of time?

2 A For a couple of weeks.

3 Q Is it fair to say, did there come a time in
4 D.C. when you were arrested while driving the car that
5 you had rented from Sheehy Ford?

6 A Yes.

7 Q And that was some time in the middle of December,
8 was it not?

9 A No, it was not.

10 Q It wasn't around the area of 9 through 12
11 December that you were arrested in D.C. while driving that
12 vehicle?

13 A No, it was not.

14 Q When was it?

15 A December 6th, I think.

16 Q So, if you rented the car in early November
17 with the understanding that you would keep it for a
18 couple of weeks, then you were far in excess of the
19 time you were authorized to use that vehicle when you
20 were arrested in D.C.; isn't that a fact?

21 A No, I was not.

22 Q Under what conditions or what arrangements were
23 you allowed to use the car in excess of the two weeks you

1 originally testified to?

2 A I had subsequently called Sheehy Ford, the
3 rental agent, and talked with her and got an extension
4 on the lease. I had subsequently called the Repair De-
5 partment and got the cost estimate on the automobile,
6 discussed getting the car fixed with them.

7 Q I see.

8 And had you authorized them to finish the repair
9 work on the car you had brought in at that time?

10 A Not at that point.

11 Q Did you ever do that?

12 A No, I didn't. I was arrested.

13 Q Do you recall whom you talked with at Sheehy
14 Ford in reference to extending the time for leasing the
15 vehicle?

16 A A female.

17 Q Do you recall who you spoke with in reference
18 to inquiring about the repairs to your vehicle?

19 A It was a gentleman in the Service Department.

20 Q Did Sheehy Ford ever contact you at the number
21 that you stated?

22 A Yes, they called.

23 Q At your grandmother's?

1 A They called several times.

2 Q And did they ever speak with you at that number?

3 A Not that I recall.

4 Q You got the information from your grandmother?

5 A Mother-in-law.

6 Q Mother-in-law; excuse me. Mother-in-law.

7 So, apparently, each of those times that they
8 called, and there were several, according to your testi-
9 mony, you were not there at any one of those times?

10 A Not that I recall. I may have been, but I don't
11 recall.

12 Q And your grandmother, not knowing who Bobby Jack
13 Wheeler was, probably could not help them out; is that a
14 fair statement?

15 MR. KLEIN: Objection. He's asking for a con-
16 clusion on the part of the witness.

17 THE COURT: I sustain the objection.

18 BY MR. GRAHAM:

19 Q During the period that these calls were received
20 at your mother-in-law's house from Sheehy Ford, you had
21 not made your mother-in-law aware that your alias was
22 Bobby Jack Wheeler?

23 A I had made her aware that I was using the first

1 name Bobby behind the undercover work that I was doing
2 for the Montgomery County Police.

3 Q But you never made her aware that Jack Wheeler
4 was the middle and last name of the alias you were using?

5 A No, I didn't give her the last name. I told
6 her the first name, and that if any messages or phone
7 calls came in there, to take the message.

8 MR. GRAHAM: The Court's indulgence, just for
9 a moment?

10 (Pause.)

11 BY MR. GRAHAM:

12 Q Now, the condition of the -- what type of car
13 was it, sir?

14 A '70 Buick.

15 Q What color was it?

16 A Maroon.

17 Q What license tags did you have, if you recall?

18 A Virginia, at the time.

19 Q Do you recall the condition of the lock on the
20 trunk at the time the car was brought in by you?

21 A Yes, I do.

22 Q What was the condition?

23 A The condition of the lock, it had been punched

1 out. You had to open the truck by way of a screwdriver.

2 Q In other words, there was a hole in the trunk
3 in the location where the lock used to be?

4 A Yes, just a little round --

5 Q What was the condition of the car at the time
6 you took it into Sheehy Ford, generally, including body
7 and accessories?

8 A The car was in fairly good condition. I had just
9 spend several hundred dollars on it -- the Montgomery
10 County Police Department had -- putting a new starter
11 on it, new battery. The only thing that was wrong with
12 the car at that time were the front disc brakes on it,
13 and there was a little dent in either the -- I think in
14 the left front, there was a small dent in the hood.

15 Q So, it's your testimony that other than the
16 deficiencies you've just stated, the car was in good con-
17 dition, or would you say it was in fair condition, or
18 would you say it was in poor condition?

19 A I would say it was in fair condition, excluding
20 the brakes.

21 Q Now, when you called Sheehy Ford, some time
22 after you had taken your car in for repairs, what was
23 the estimate that they gave you?

1 A Well, as I recall, Sheehy Ford called my
2 mother-in-law, and I subsequently called them back, and
3 they told me that it needed brakes all the way around,
4 and in their estimate it would possibly run around \$350
5 or \$400.

6 Q What did you tell them at that time?

7 A I told them at that particular time that I did
8 not have that kind of money, that I would call them back
9 in three or four days, or either I would bring the money
10 out.

11 Q So, if someone from Sheehy Ford were to testify
12 that the repair work requested had, in fact, been done on
13 that car, your position would be that you did not authorize
14 it?

15 A No, not that I recall. I never told anyone to
16 do the work. As a matter of fact, they told me that I
17 would have to bring a deposit out in order for them to
18 start the work.

19 Q So, at the time of December 12th, which you can
20 assume to be the date on which the car was entered, the
21 car had been at Sheehy Ford approximately five to six
22 weeks?

23 A It had been there, as I recall, from around the

1 20th or 21st of November until December 6th, I think it
2 was.

3 Q Your earlier testimony indicated that you took
4 the car in in early November.

5 Would you call the 20th of November --

6 A Early November, or the middle, as I recall.

7 MR. GRAHAM: I have no further questions.

8 THE COURT: Mr. Klein, is there any redirect?

9 MR. KLEIN: Not at this time, Your Honor.

10 THE COURT: Thank you, Mr. Fore. Watch your
11 step when you step down.

(
12 (Mr. Klein and the defendant conferred, off the
13 record.)

14 MR. KLEIN: Your Honor, may I recall Mr. Fore
15 for one quick question?

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MR. KLEIN:

19 Q Mr. Fore, to the best of your knowledge, how
20 many pairs of keys were there to that particular automobile?

21 A One set.

22 Q And who had possession of them?

23 A I did, until I presented the Service Manager with

1 a key.

2 MR. KLEIN: That's all I have.

3 THE COURT: Is there anything else?

4 MR. GRAHAM: No, Your Honor.

5 THE COURT: Thank you.

6 (Witness excused.)

7 MR. KLEIN: If the Court would indulge me for
8 one moment, please -- ?

9 (Mr. Klein and the defendant conferred, off the
10 record.)

11 MR. KLEIN: Your Honor, I'd call Detective
12 Creveling, please.

13
14 Whereupon

15 ALAN L. CREVELING

16 a witness, was called for examination by counsel on behalf
17 of the defendant, and, after having been duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. KLEIN:

21 Q Would you please state your name for the record?

22 A Detective Alan L. Creveling, Prince Georges
23 County Police Department, Prince Georges County, Maryland.

1 Q Detective Creveling, directing your attention
2 to December of 1977, did there come a time when you re-
3 ceived a phone call from an individual who requested
4 information concerning an automobile which had been left
5 at Sheehy Ford in Prince Georges County, Maryland?

6 A Not exactly in those terms. It was more that
7 he was giving me information concerning an automobile
8 that had been left at Sheehy Ford in Prince Georges County,
9 Maryland.

10 Q Did that person inquire as to the present
11 whereabouts of that particular automobile?

12 A I don't exactly understand the question.

13 Would you repeat that?

14 Q When the person, the individual, who called you
15 concerning that particular automobile -- did that particu-
16 lar person ask you where the present whereabouts was?

17 Well, let me -- I think I'm confusing you.

18 Subsequent to December 12th, 1977, did an
19 individual call you inquiring about the whereabouts of
20 an automobile which had been left at Sheehy Ford, Prince
21 Georges County, Maryland?

22 MR. GRAHAM: Your Honor, I am going to object
23 to the relevancy of that question, in that the alleged

1 unlawful search and seizure of the vehicle took place on
2 the 12th of December, 1977.

3 Now, if counsel can tie up the relevancy --
4 if that took place on or before December 12th, 1977,
5 then I will withdraw my objection.

6 THE COURT: I overrule the objection.
7 Go ahead.

8 MR. KLEIN: Well, Your Honor --

9 THE COURT: I've overruled the objection.

10 MR. KLEIN: Thank you.

11 THE WITNESS: I was informed of the whereabouts
12 of a particular motor vehicle on December the 12th, 1977,
13 by a particular individual.

14 BY MR. KLEIN:

15 Q Okay.

16 Subsequent to that time, did there come a time
17 that another individual contacted you in reference to that
18 particular automobile?

19 A You're talking about before that time?

20 Q After that time.

21 A After that time? No, sir, not that I can recall.

22 Q Did you ever speak to a Christine Fore concern-
23 ing that car?

1 A I spoke to a person who identified herself as
2 Virginia Ann Donnelly in reference to that car, yes.

3 Q When did she contact you?

4 A I'll have to retract my previous statement
5 and say yes, she did, after December the 12th, contact
6 me in reference to that motor vehicle. Yes.

7 Q What, if anything, did she request of you in
8 regard to that particular automobile?

9 A She asked me why I'd impounded the motor vehicle,
10 and would I release that motor vehicle to her.

11 MR. KLEIN: That's all I have.

12 THE COURT: Do you have any questions?

13 MR. GRAHAM: Not on cross, Your Honor. I intend
14 to call Mr. Creveling as my witness.

15 THE COURT: Thank you. You may step down.

16 (Witness excused.)

17 MR. KLEIN: Your Honor, that's all that we'll
18 have, pretty much, for the purposes of this motion and
19 our case in chief.

20 I think the law is clear and the evidence is
21 uncontradicted that there was a warrantless -- that there
22 was a seizure of this particular automobile, and that
23 the seizure was accompanied without a warrant.

1 I think the defendant, by the fact that he was
2 the one, from his own testimony, who brought the automo-
3 bile in -- that his testimony is that he was the one who
4 purchased the automobile -- would have standing to raise
5 the Fourth Amendment question, even if the car happened,
6 at that particular time, to be titled in his own name.

7 I would cite to the Court's attention Cady
8 versus Dombrowski, if Your Honor has any doubts in regard
9 to that.

10 For Mr. Graham's argument, which I would anti-
11 cipate, that the car had been abandoned, I think you have
12 the testimony of Detective Creveling to the fact that
13 there was a request for that car to be returned, and I
14 don't think that the evidence would support any conten-
15 tion by the Commonwealth that that particular automobile
16 had been abandoned.

17 Mr. Fore's testimony was that he had been con-
18 tacted on a number of different occasions from people at
19 Sheehy about it, that he had been arrested and was in
20 custody, and I think, then, we're to the point where
21 there is a warrantless search and seizure, Your Honor,
22 and if there is a warrantless search and seizure, the
23 Fourth and Fourteenth Amendments say that it is, per se,

1 unreasonable, unless the Commonwealth can show that the
2 warrantless search and seizure fits within one of the
3 narrowly-drawn exceptions to the warrant requirement
4 rule, and I think the Commonwealth -- the burden at
5 this particular time shifts over to the Commonwealth
6 to produce evidence to convince the Court that it does
7 fit into one of those exceptions.

8 THE COURT: Mr. Graham?

9 MR. GRAHAM: Your Honor, we'll acknowledge the
10 burden. We'll also stipulate that Mr. Fore, based on
11 his testimony, as well as other evidence, has standing
12 to raise the issue, the Fourth Amendment issue.

13 I think evidence has yet to be adduced in order
14 for the Court to make the determination as to whether or
15 not, in Officer Creveling's view at the time he entered
16 the vehicle, the vehicle was abandoned, based on the
17 information he had, and his knowledge, and whether or not
18 there were exigent circumstances, notwithstanding the
19 abandoned vehicle justification.

20 THE COURT: All right.

21 MR. GRAHAM: I would call Investigator Creveling.
22
23

1 Whereupon

2 ALAN L. CREVELING

3 a witness, was called for examination by counsel on behalf
4 of the Commonwealth, and, after having been previously duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q Investigator Creveling, you have already been
9 sworn and have already identified yourself.

10 A (Nodding head.)

11 Q Now, I direct your attention to the period prior
12 to December 12th of 1977, and ask you whether or not,
13 prior to that date, you had any knowledge of Mr. Theodore
14 Fore, alias Bobby Jack Wheeler, or Mrs. Christine Fore,
15 alias Virginia Donnelly?

16 A Yes, I did, sir.

17 Q All right, sir, and give the Court, please, the
18 extent of your information regarding those people and
19 their aliases.

20 A Briefly, the first time that I ever came in con-
21 tact with Theodore Fore was on October the 23rd, 1977 at
22 the 9:30 hour in the evening, approximately. At that time,
23 he was introduced to me by Detective Nowland of the

1 Montgomery County Police Department at the Oxon Hill
2 Police Station, 7500 Livingston Road.

3 He was introduced to me and freely admitted
4 to me that he was a burglar who had been involved in the --

5 MR. KLEIN: Your Honor, I think I'm going to
6 have to object at this point. If Mr. Graham wants to
7 try and tie in the name Theodore Fore to Bobby Jack
8 Wheeler, I think there's some relevance in regard to
9 that, but for the detective to go into his total know-
10 ledge about Theodore Fore, I don't think it would be
11 relevant to this particular hearing.

12 MR. GRAHAM: Well, Your Honor, I believe one
13 of the issues that has to be decided is whether or not,
14 number one, there was probable cause to enter the vehi-
15 cle, and in making that determination, I believe that
16 the information imparted to Investigator Creveling prior
17 to and on the 12th of December must be corroborated in
18 Investigator Creveling's mind as to its legitimacy in
19 order the support the probable cause that I intend to
20 argue to the Court.

21 I think the background information insofar as
22 Mr. Fore is concerned, and as far as Chris Fore is con-
23 cerned, his wife, adds to that probable cause, and that

1 was what was in Investigator Creveling's knowledge at
2 the time he entered the vehicle.

3 THE COURT: Do you want to respond, Mr. Klein?

4 MR. KLEIN: No, Your Honor. I would simply
5 state the same. If he wants to briefly state that he
6 met him on a number of occasions or knew of him, I think
7 that would suffice, but to go through the entirety of his
8 knowledge of Mr. Fore and/or Mrs. Fore, I think would be
9 wasting this Court's time, because I don't think it's
10 relevant to this particular hearing.

11 THE COURT: I overrule your objection.

12 Go ahead.

13 MR. GRAHAM: Thank you, sir.

14 I might just add, Your Honor, I certainly don't
15 intend that this would influence the Court's opinion
16 about the case, and we're not trying the case here. I'm
17 just attempting to set a state of mind.

18 BY MR. GRAHAM:

19 Q Please continue, Investigator Creveling.

20 A At that time, I was introduced to Mr. Theodore
21 Fore, who is this person sitting here to my left, and was
22 given a background on his past history by Detective Nowland.

23 Subsequent to that meeting, I was in contact

1 with other law enforcement jurisdictions, including the
2 Fairfax County Police Department, the Washington, D.C.
3 Police Department, the Montgomery County Police Depart-
4 ment, and our own records of the Prince Georges County
5 Police Department, which indicated that Theodore Garner
6 Fore was married to Christine Fore.

7 Their arrest records and different aliases are
8 on file at the Oxon Hill Police Station, which I did re-
9 view after December the 12th, 1977, on various occasions.

10 Q What, if any, information did you have concern-
11 ing what, if any, alias Mr. Teddy Fore was using currently,
12 at that time?

13 A I had been told that he had been using the
14 alias of --

15 MR. KLEIN: Well, Your Honor, if I may, I think
16 the testimony of Detective Creveling was just that he had
17 checked the information about the aliases after December
18 the 12th, which was the date that the automobile was
19 seized.

20 Now, I'd like Mr. Graham, if he's going to ask
21 that particular question, to lay the foundation that
22 anything he knew about the aliases was prior to the time
23 of the seizure of the automobile.

1 MR. GRAHAM: Okay. My question was not
2 specific enough.

3 BY MR. GRAHAM:

4 Q I meant to say, what, if any, information did
5 you have concerning the aliases, if any, that Teddy Fore
6 had been using on the morning of December 12th, 1977,
7 prior to the time you entered the trunk of the vehicle
8 at Sheehy Ford, or on days before that time?

9 A I knew that one of Teddy Fore's aliases, on
10 December the 12th, 1977 -- at that time, I knew that
11 one of his aliases was Bobby Wheeler, Bobby Jack Wheeler,
12 due to the follow-up investigation and reviewing of
13 his history that I had done since I had met him on
14 October the 23rd, 1977.

15 Q I'll ask you the same question, with regard
16 to the same time frame, with reference to Mrs. Christine
17 Fore, insofar as aliases are concerned.

18 A Okay. I knew one of her aliases to be Virginia
19 Donnelly, Virginia Ann Donnelly, due to the fact that
20 after October the 23rd, 1977, when I first came in con-
21 tact with Mr. Fore, I had done reviewing of his records
22 and his wife's records, Christine Fore, up until Decem-
23 ber the 12th, 1977.

1 Q Now, on the morning of December the 12th,
2 prior to the time you entered the vehicle, or periods
3 before that time, what, if any, investigations were you
4 involved in in P.G. County, wherein you suspected involve-
5 ment by either Mr. Teddy Fore and by Mrs. Christine Fore?

6 MR. KLEIN: Same objection, Your Honor, as I
7 previously made. I feel that that is irrelevant to this
8 particular hearing.

9 THE COURT: I overrule the objection.

10 THE WITNESS: I had been involved in several
11 breaking and enterings and burglaries within Prince
12 Georges County, which are felonies, in the Tanttallon
13 area of Prince Georges County. I was actively assigned
14 to investigate these burglaries.

15 During the month of December, prior to Decem-
16 ber the 12th, 1977, I had been informed that Mr. Fore
17 plus another person who I do not know named Ann Zerrega
18 had been involved with Christine Fore in doing burglaries
19 of which I was presently investigating.

20 This information came from law enforcement
21 agencies, specifically, Detective Mullins of the Fairfax
22 County Police Department.

23

1 BY MR. GRAHAM:

2 Q What, if any, inventories, if you will, of
3 missing property involved in these burglaries which
4 your suspicion led to Mr. Fore did you have on the
5 morning of December 12th, 1977?

6 A I had reports, official Prince Georges County
7 police reports, made by various victims listing quanti-
8 ties of property, and these cases, these breaking and
9 enterings of which this property had been stolen, was
10 assigned to me to investigate.

11 Q What, if any, relationship was there between
12 the cases in which you had lists for those properties and
13 Mr. Teddy Fore or Mrs. Christine Fore?

14 A Specific houses had been pointed out to me
15 through information that I'd received that Mr. Fore had
16 participated in these breakings and enterings and had
17 stolen that particular property.

18 Q This was prior to the 12th of December?

19 A Prior to. Prior to December the 12th.

20 Q Now, directing your attention --

21 MR. KLEIN: For the record, the same continuing
22 objection, please.

23 THE COURT: Okay. And your objection is based

1 on relevancy?

2 MR. KLEIN: (Nodding head.)

3 THE COURT: I overrule the objection.

4 Go ahead.

5 BY MR. GRAHAM:

6 Q Now, sir, directing your attention to the
7 morning of December 12th, 1977, did you have an occasion
8 to be contacted by a police officer of Washington, D.C.?

9 A Yes. At 8:00 o'clock in the morning on Decem-
10 ber the 12th, 1977, I was contacted by telephone by
11 Detective Jimmy Bradley of the Metropolitan Police De-
12 partment.

13 Q At the time you were contacted by Investi-
14 gator Bradley, did you, at that time, have any knowledge
15 whatsoever of any car taken into Sheehy Ford in Prince
16 Georges County by Mr. Theodore Fore or by Mr. Bobby Jack
17 Wheeler, or by any other name?

18 A Not at that time.

19 Q Go ahead.

20 Did there come a time when you had a conversa-
21 tion with Investigator Bradley on the telephone?

22 A Detective Bradley informed me --

23 MR. KLEIN: Hearsay, Your Honor. I'm going to

1 object.

2 THE COURT: Mr. Graham, what is the exception,
3 if any?

4 MR. GRAHAM: Your Honor, I believe -- well, I
5 am eliciting this testimony not for the truth of the
6 testimony, but merely what Investigator Creveling ulti-
7 mately relied on, in part, as justification for entering
8 the vehicle at Sheehy Ford.

9 I am not advancing it for the truth of what
10 is contained therein. I am merely trying to identify
11 the source of the information, presumably as being a
12 reliable source, and to define for the Court what infor-
13 mation the detective had at the time he entered the car.

14 THE COURT: Do you want to respond to that?

15 MR. KLEIN: No, Your Honor.

16 THE COURT: I overrule the objection.

17 Go ahead.

18 MR. GRAHAM: Thank you.

19 THE COURT: You may answer.

20 THE WITNESS: At that time, Detective Bradley
21 informed me that he had been recovering what he believed
22 to be stolen property at various District of Columbia
23 pawn shops, which he believed to have been stolen in

1 Prince Georges County.

2 BY MR. GRAHAM:

3 Q Did he identify with whose help these recoveries
4 were being made?

5 A He informed me that he had been talking to
6 Christine Fore, who was the wife of Teddy Fore, and that
7 she had been assisting him in recovering this stolen
8 property.

9 Q Now, had Investigator Bradley indicated that
10 any of the property that had been recovered by him or
11 that had been identified by him was suspected of being
12 taken from burglaries in Prince Georges County?

13 A Christine -- the information that he told me
14 was that Christine Fore had told him that it was stolen
15 from Prince Georges County in the area in which I was
16 assigned to investigate burglaries and break-ins.

17 Q At that time, did you get a specific descrip-
18 tion of any of the property so alleged?

19 A Yes, sir, I did. Specifically a ring set, a
20 man and woman's ring set, and women's clothes.

21 Q Now, were you given any information by Detective
22 Bradley as to whether or not some of the property taken
23 in P. G. County burglaries was, or may have been, located --

1 MR. KLEIN: Your Honor, I think we're starting
2 to lead the witness in an area --

3 THE COURT: I sustain the objection.

4 MR. GRAHAM: Very well.

5 BY MR. GRAHAM:

6 Q All right, sir, what, if any, additional infor-
7 mation was given to you by Detective Bradley at that time?

8 A At that time, Detective Bradley also informed
9 me that Christine Fore and Teddy Fore had left a 1970
10 Buick at Sheehy Ford, which is located on Route 5 in
11 Prince Georges County, Maryland.

12 Detective Bradley informed me that Christine
13 Fore had told him that there was stolen property in that
14 car, including women's clothes that had been stolen from
15 Prince Georges County.

16 Q What, if any, information did you receive at
17 that time regarding the status of Christine Fore?

18 A I was under the impression that she was not
19 under arrest at that time by Detective Bradley, and that
20 she was free to go and come as she pleased, and she had
21 merely been assisting him, however not herself admitting
22 to participating in the break-ins.

23 Q How specific a description of the automobile

1 at Sheehy Ford did you obtain at that time?

2 A At that time, it was only a 1970 Buick, listed
3 in the name of Virginia Rosanne Donnelly.

4 Q What, if any, action did you take as a result
5 of that? Approximately what time did you get off the
6 phone with him, or how long did the conversation take,
7 or --

8 A I talked to him at 8:00 o'clock in the morning.
9 I'd say the conversation -- a matter of minutes.

10 Q What, if any, action did you take as a result
11 of that conversation, sir?

12 A I immediately looked in my folder of the cases
13 that I was assigned and the property that he had described
14 to me that he had recovered was very similar to the
15 property that I had listed in front of me as being stolen
16 from the burglaries that I was actively investigating in
17 Prince Georges County, Maryland.

18 Q Did you do anything to confirm that information at that time?

19 A Yes, I did. I called up one of my victims and
20 described the property that Detective Bradley had described
21 to me, and he says, "Well, that sounds like mine."

22 Q How long after you had gotten off the phone with
23 Detective Bradley did you call the property owner, if you

1 can give just a general time?

2 A Immediately.

3 Q What, if anything, did you do after you talked
4 to the property owner?

5 A I then called back Detective Bradley, who had
6 left his name and number with me, and told him the gist
7 of my conversation with the property owner.

8 Q What did you do thereafter?

9 A By 9:30 in the morning, I had traveled out to
10 Sheehy Ford on Route 5 in Prince Georges County, Maryland,
11 to see if I could locate that 1970 Buick which was there
12 under the pretense of repair, getting repaired.

13 Q Do you have an estimate as to your travel time
14 from your office where the phone calls were made to
15 Sheehy Ford?

16 A I would say no more than half a hour. Probably
17 more like 20 minutes.

18 Q Do you recall approximately what time you
19 arrived at Sheehy Ford?

20 A Just prior to 9:30 in the morning. I remember
21 that I impounded the car at 9:30 in the morning, so I
22 would say that I'd arrived just prior to 9:30 in the
23 morning.

1 Q Did you have an occasion to speak to anyone
2 at Sheehy Ford when you arrived there?

3 A I talked to the Service Manager, or a car
4 rental agent, who had already been notified by the
5 District of Columbia about the facts concerning the car
6 which was impounded by the District of Columbia that Teddy
7 Fore had been driving.

8 Q Were you aware at the time that you spoke with
9 the gentleman from Sheehy Ford about the fact that the
10 car Teddy Fore had been driving was impounded in D.C.?

11 A Yes. He told me. He told me at that time,
12 and Detective Bradley had told me.

13 Q He had told you earlier?

14 A Yes.

15 Q Were you aware at that time of the circumstances
16 under which the car had been impounded in D.C.?

17 A Yes, that Teddy Fore had been arrested in the
18 District of Columbia and was presently incarcerated in
19 the District of Columbia.

20 Q Were you aware at that time of the nature of
21 the charge under which he was arrested?

22 A I can't remember what the nature of the charge
23 was, sir.

1 MR. GRAHAM: Your Honor, my next question will
2 be to elicit what, if anything, was told to Investigator
3 Creveling by the gentleman at Sheehy Ford, for the same
4 purposes as I stated in my previous elicitation.

5 THE COURT: I'll note Mr. Klein's objection and
6 overrule the objection.

7 You may answer. Go ahead, sir.

8 MR. GRAHAM: Thank you, sir.

9 BY MR. GRAHAM:

10 Q All right, sir, can you relate to the Court
11 what information, if any, was imparted to you by the man
12 at Sheehy Ford, at that time, or what your questions were
13 to him, or what, if anything, he answered?

14 A I asked him if he was familiar with a 1970
15 Buick that had been left there by a registered owner
16 named Virginia Donnelly. He stated yes, that a person
17 identifying himself as Bobby Wheeler had come in, left
18 that 1970 Buick at Sheehy Ford for a brake job and had
19 asked to rent a late model Ford to use while the 1970
20 Buick was being repaired.

21 Q Did he relate to you how long the car had been
22 there?

23 A I can't remember at the time. He related to

1 me the fact that he was disturbed because the person
2 that had brought the '70 Buick in to be repaired hadn't
3 come and picked it up, plus he was disturbed that that
4 same person was now presently under arrest, and that his
5 rental car was impounded in the District of Columbia.

6 Q Were you aware at that time, or did you have
7 an understanding, as to who owned the rental car that
8 was impounded in D.C. at that time?

9 A The person who had rented it was Bobby Wheeler.

10 Q Did you know who rented the car to Bobby
11 Wheeler?

12 A At the time, I can't remember his name.

13 Q Was it a Sheehy Ford --

14 A Yes, it was a Sheehy Ford representative.

15 Q Did you know at that time how long the car
16 that had been taken in for repairs had been there without
17 being --

18 A He had told me that the car was ready to go,
19 that the 1970 Buick had had its work completed and was
20 ready to go, so he was disturbed because it had been,
21 you know, an ample amount of time for the person to come
22 and regain the custody of the 1970 Buick.

23 As far as how many days, I can't tell you.

1 Q Subsequently, did you have an occasion to look
2 at the car yourself?

3 A I did look at the car, and I looked at the
4 repair order.

5 Q And where did you find the car, sir?

6 A The car was located in the parking lot of
7 Sheehy Ford, in the first row, approximately 30 feet
8 from the bay doors where they do the service work.

9 Q Did you know from your conversation with the
10 gentleman at Sheehy Ford, or your observation of the car
11 or any of its contents, whether or not the car appeared
12 to be ready to be taken out of custody?

13 A I saw the repair order. He told me it was
14 ready to go.

15 Q Can you describe for the Court as specifically
16 as your recollection will allow you, the condition --

17 MR. KLEIN: Your Honor, if I may, for the
18 purposes of the record if nothing else, I'm going to
19 move to strike that. I think if the Commonwealth is
20 going to seek to introduce that later or argue later
21 on that the car was ready to go, I think that is hearsay
22 and I would move to strike it.

23 I don't think, then, we're talking about what

1 probable cause this particular officer might have had
2 to seize the automobile. I think we are talking about
3 a later argument by the Commonwealth that the car was
4 ready to go and would have had the movability that might
5 fall within the automobile exception.

6 THE COURT: If that comes up, then you be sure
7 and renew your objection.

8 Go ahead.

9 BY MR. GRAHAM:

10 Q Investigator Creveling, could you, as specifi-
11 cally as your recollection will allow you, describe the
12 condition of the car; that is, the body condition and
13 so forth as you observed it on that day?

14 A (No response.)

15 Q Let me ask you this.

16 If I suggest the categories good, fair, poor
17 condition, in which category would you place the car as
18 you observed it on that date?

19 A In good condition. It didn't look like a new
20 car. Specifically, the doors were unlocked and the trunk
21 lock had been popped and was not in the car at the time.

22 Q After you observed the car, what, if any,
23 action did you take?

1 A I opened up the trunk.

2 Q What was the condition of the trunk and its
3 lock at the time?

4 A The trunk lock was popped so you did not need
5 a key. I merely took a screwdriver and stuck the screw-
6 driver in and opened up the trunk.

7 Q Why did you open up the trunk?

8 A I had been told by Detective Bradley that there
9 was stolen goods in the car. Detective Bradley had told
10 me that he'd been working with Christine Fore in recover-
11 ing stolen property. This was verified through the
12 property owner.

13 I then went to Sheehy Ford to see if I could
14 locate this car, to see if there was more stolen property
15 in the car. I wanted to get the stolen property out of
16 the car, and I wanted to do it as quickly as possible.

17 Since I had been told the car was ready to go,
18 I wanted to make sure the car and the stolen property
19 didn't leave the premises before I'd had a chance to get
20 the stolen property.

21 Q Why didn't you get a search warrant before
22 you went into the trunk of the car?

23 A I didn't have enough time.

1 MR. KLEIN: Objection to the conclusion, Your
2 Honor.

3 THE COURT: I don't receive it as a conclusion.
4 Go ahead.

5 BY MR. GRAHAM:

6 Q Now, sir, how much time elapsed between the time
7 you first picked up the phone in response to a call from
8 Investigator Bradley on the morning of the 12th of Decem-
9 ber, 1977, and the time you ultimately entered the trunk
10 of the car?

11 A From 0800 hours on December the 12th to 0930
12 hours on December the 12th.

13 Q Now, in your opinion, did you have probable
14 cause at the time you left your station to go to Sheehy
15 Ford --

16 MR. KLEIN: Objection, Your Honor. That is a
17 conclusion for this Court to make, not for this witness
18 to make.

19 MR. GRAHAM: Well, Your Honor, obviously I am
20 not asking the Court to base its conclusion on the opinion
21 of the officer, but I think the opinion of the officer,
22 namely, the state of the mind of the officer, is very
23 important in determining what information the officer had

1 available to him at that time, and what he felt justified
2 in doing based on that information, and that's my only
3 purpose in asking.

4 THE COURT: Well, he certainly may say what
5 he felt justified in doing, but with respect to whether
6 he believed he had probable cause, I sustain the objec-
7 tion.

8 MR. GRAHAM: Very well.

9 BY MR. GRAHAM:

10 Q Officer, do you believe you had enough infor-
11 mation at the time you left your police station to go
12 to Sheehy Ford to look for the vehicle to obtain a
13 search warrant?

14 MR. KLEIN: Same objection, Your Honor.

15 THE COURT: I overrule the objection.

16 Go ahead.

17 BY MR. GRAHAM:

18 Q Would you like me to repeat the question?

19 A Yes, would you, please?

20 Q All right.

21 At the time you left your police station to go
22 to Sheehy Ford on the morning of the 12th of December to
23 investigate the car, and based on the information that you

1 had available to you at that time, did you feel you could
2 have obtained a search warrant?

3 A No, I don't.

4 Q Now, after you finished talking with the gen-
5 tleman at Sheehy Ford, and after you'd examined the
6 vehicle, which was your purpose in arriving there, did
7 you feel you had enough information to obtain a search
8 warrant at that point?

9 A I don't feel that I had enough time to obtain
10 a search warrant.

11 Q No, sir, that was not my question.

12 My question was, do you feel you had enough
13 information, factual information, to obtain a search
14 warrant at the time you entered the vehicle?

15 A Yes, I do, by that time.

16 Q Now, you spoke earlier in your testimony of
17 a person whom you said you did not know by the name of
18 Ann Zerega.

19 Now, what was your understanding at the time
20 you entered the trunk of the car as to Ann Zerega's
21 involvement, if any, in the recovery of the stolen
22 property or the contents of the trunk?

23 MR. KLEIN: Your Honor, I would object to that,

1 also. I cannot under Ann Zerega's relevance to this
2 particular hearing.

3 THE COURT: I don't know, but the case is
4 somewhat similar to one that Judge Winston decided and
5 went up to the Virginia Supreme Court of Appeals within
6 the last six months, where a car was parked in the
7 driveway, and the Supreme Court went on and said that
8 if there are persons who are still running loose, they
9 may go and drive the car away.

10 So, maybe Ann Zerega is one of the people who
11 might do that, so I overrule the objection.

12 Go ahead.

13 MR. GRAHAM: Thank you, sir.

14 BY MR. GRAHAM:

15 Q What was your knowledge, if any, if this mys-
16 terious Ann Zerega that you had heard about prior to
17 entering the trunk?

18 A To the best of my knowledge, Ann Zerega had
19 been a compatriot of Theodore Fore and Christine Fore
20 and had participated in break-ins in Prince Georges
21 County with Teddy Fore.

22 MR. KLEIN: Your Honor, if I may, for purposes
23 of the record, if Your Honor doesn't agree with me, I'll

1 object to this also as hearsay. I don't know what we're
2 going into with regard to the probable cause this parti-
3 cular witness may have had, or things that were in his
4 mind to have made the seizure at that point.

5 If it's just --

6 THE COURT: I sustain --

7 MR. KLEIN: What I am saying, Your Honor, if
8 it's going just again -- if Mr. Graham is only trying to
9 use this for probable cause purposes, then I can't see
10 why he would be asking that particular question, but I
11 don't want the Commonwealth turning around later and
12 testifying about where Ann -- or, arguing where --
13 Ann Zerega's whereabouts or what her involvement was
14 in this particular crime, based upon what this officer
15 heard through hearsay.

16 MR. GRAHAM: My sole purpose in eliciting that
17 testimony was what the Court zeroed in on, namely, to
18 identify other individuals who may have had access to
19 the car and who may have had knowledge of what was in
20 the car.

21 MR. KLEIN: I believe that is hearsay, Your
22 Honor.

23 MR. GRAHAM: And that is for exigent circumstances

1 which justified the seizure, and I submit it's admissible
2 on the same basis as the other hearsay was admissible,
3 going to the officer's state of mind and his assessment
4 as to whether or not there were exigent circumstances.

5 THE COURT: Well, I think what's bothering me
6 is his statement that he had reason to believe; it's not
7 sufficient. I am concerned about his belief, but why
8 did he believe? What did he base his belief on?

9 MR. GRAHAM: I intend to go into that.

10 THE COURT: Okay.

11 BY MR. GRAHAM:

12 Q Could you answer the Court's question, Detective
13 Creveling, about what, if any, source was there to the
14 information you had concerning Ann Zerega?

15 You testified earlier about Ann Zerega, and you
16 had some knowledge about her being involved in the Teddy
17 Fore/Christine Fore alleged burglary ring.

18 Can you identify for the Court the source of
19 that information?

20 A The source of that information was the Fairfax
21 County Police Department, Detective Mullins, specifically.

22 Q Could you identify the circumstances surrounding
23 your receipt of that information, as best you can recall?

1 A Detective Mullins had informed me that Ann
2 Zerega had informed him that she had participated in
3 break-ins with Teddy Fore in Prince Georges County.
4 There came a point in time when Ann Zerega pointed out
5 the homes which she had broken into in Prince Georges
6 County with Teddy Fore.

7 Soon after that point in time, Detective Mullins
8 pointed out those homes to me that Ann Zerega had pointed
9 out to him. Among them were homes which I was presently
10 investigating the burglaries of.

11 Q Thank you, sir.

12 MR. KLEIN: Your Honor, if I just may, for
13 the record -- I assume that you have overruled my objec-
14 tion. If you have not, then I would move to strike that
15 testimony for the same reasons I've previously stated to
16 the Court.

17 THE COURT: I overrule the objection.

18 Go ahead.

19 MR. GRAHAM: Thank you, sir.

20 One further question along that line, Your Honor.

21 BY MR. GRAHAM:

22 Q Investigator, what is your understanding of the
23 capacity of Ann Zerega, if any, in the upcoming trial

1 involving the Kasik burglary?

2 A My understanding is that she hasn't -- she
3 wasn't charged with the burglary. Other than that,
4 I've never seen Ann Zerega, never talked to her.

5 Q Do you know what, if any, input she will have
6 at the upcoming trial?

7 A I have been told --

8 MR. KLEIN: Same objection, Your Honor.

9 THE COURT: What is the basis of that question?

10 MR. GRAHAM: Well, Your Honor, I was merely
11 trying, in retrospect, to show what, in fact, Investi-
12 gator Mullins told Investigator Creveling will take place,
13 and just for purposes of confirming the legitimacy of the
14 source, not that that was in Investigator Creveling's mind
15 at the time, but just to show that it was not total hearsay,
16 off-the-wall hearsay.

17 THE COURT: I sustain the objection.

18 MR. GRAHAM: Very well.

19 BY MR. GRAHAM:

20 Q At the time you went into the trunk,
21 Investigator Creveling, what was your understanding of the
22 status of Theodore Fore, the gentleman before you in the
23 court today?

1 A That he was under arrest in the District of
2 Columbia.

3 Q And, again, what was your understanding of the
4 status of Mrs. Christine Fore at the time you entered
5 the trunk?

6 A That she was not under arrest.

7 Q Did you have any idea how many keys there were
8 to the car that you ultimately entered the trunk of at
9 the time you did so?

10 A I had no idea. You didn't need a key to enter
11 the trunk.

12 Q Were you aware to whom the car that you looked
13 in the trunk of was registered, ownership-wise, at the
14 time you entered it?

15 A I was aware that it was registered to a person
16 -- the registered owner was Virginia Roseanne Donnelly,
17 which is a known alias of Christine Fore.

18 MR. GRAHAM: May I have the Court's indulgence
19 for just one moment?

20 (Pause.)

21 BY MR. GRAHAM:

22 Q Sir, did any other officers accompany you from
23 the police station to Sheehy Ford at the time you responded?

1 A No, sir.

2 Q What did you do with the car after you opened
3 the trunk?

4 A When I opened the trunk, there was --

5 Q Without testifying as to what was in the trunk,
6 what did you do with the car?

7 A The car was finally impounded by Prince Georges
8 Towing, which is an impounding concern in Prince Georges
9 County.

10 Q Thank you, sir.

11 MR. GRAHAM: I have no further questions.

12 MR. KLEIN: Would the Court indulge me for one
13 moment, please?

14 (Mr. Klein conferred with the defendant, off
15 the record.)

16 MR. KLEIN: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. KLEIN:

19 Q Investigator Creveling, you've testified that
20 you had had contact with Theodore Fore in October of
21 1977.

22 A Yes.

23 Q Was that in regard to the Lorenzo case, sir?

1 A The Laurelio case.

2 Q The Laurelio case? And, in fact, Mr. Fore had
3 cooperated with the Montgomery County police and you with
4 regard to obtaining a search warrant for Mr. Laurelio's
5 Mr. Laurelio's home, back in October of 1977, had he not?

6 A Yes, sir.

7 Q You've testified that the information that was
8 supplied to you by Detective Bradley of the Metropolitan
9 Police Department was relayed on from Christine Fore --
10 relayed on to him from Christine Fore?

11 A Yes, sir.

12 Q And he informed you that Christine Fore, at
13 that point, was in the process of cooperating with the
14 Metropolitan Police Department, did he not?

15 A Christine Fore was assisting him in recovering
16 stolen property. What cooperation, I don't know.

17 Q Well, Christine Fore had given him the infor-
18 mation and had been the one who recovered those particular
19 items from the P.G. County burglaries, was she not?

20 A Correct.

21 Q And you knew that?

22 A Yes, on December the 12th.

23 Q Right.

1 Now, you've also testified that you knew that
2 there supposedly was a link between Ann Zerega and Theo-
3 dore Fore and Christine Fore arising out of Fairfax
4 County and out of Prince Georges County burglaries?

5 A Yes; I received that information from Fairfax
6 County.

7 Q And it was Detective/Investigator Mullins who
8 relayed that information on to you?

9 A Yes.

10 Q And Investigator Mullins also told you that
11 Ann Zerega was in the process of cooperating with
12 Fairfax County, did he not?

13 A I don't know what the status of Ann Zerega was,
14 but she was the one that had pointed out the homes to
15 Mullins, which Mullins then pointed out to me.

16 Q And she had told Mullins that she and Theodore
17 Fore -- strike that, please.

18 She had told Investigator Mullins that she,
19 herself, had been involved in the breaking and entering
20 of those Prince Georges County homes?

21 A That's correct.

22 Q And you also had information that she had told
23 Investigator Mullins that she and Theodore Fore were

1 involved in situations involving crimes in Fairfax County,
2 also?

3 A I don't know whether she told him that. All I
4 know is that she told him things in reference to the
5 crimes in Prince Georges County. What she told him about
6 crimes in Fairfax County, I do not know.

7 Q Prior to December 12th, had you ever, for any
8 reason, spoken to Detective Bradley before?

9 A Not that I can remember, sir.

10 Q When he called, how did he identify himself?

11 A As Detective Bradley from the Metropolitan
12 Police Department. I think he said he worked for Major
13 Vice Squad.

14 Q What else did he tell you specifically, if you
15 remember?

16 A He told me that Christine Fore had assisted
17 him in recovering some property which he felt was stolen
18 from Prince Georges County due to the fact that she told
19 him that it was stolen from Prince Georges County, and
20 he asked for my assistance in tracking down this parti-
21 cular property.

22 Q Did he request that you make the phone call that
23 you made to the owner of the property?

1 A I don't think he had to request it. That would
2 be a matter of investigation, that, you know, I would
3 freely do it. You don't have to request it.

4 Q How long was your initial conversation with
5 him at that time?

6 A I would guess -- he called right at 8:00 o'clock
7 in the morning, and I would guess that it was no more than
8 a few or several minutes long.

9 Q And you immediately then called the owner whose
10 property seemed to match the property described to you by
11 Detective Bradley?

12 A Right. I had a list of the property that had
13 been stolen in a particular break-in in a particular area,
14 where Teddy Fore had supposed to have been doing break-ins,
15 and I matched up the property as best I could with my re-
16 port. Then I called the owner and talked to him.

17 Q When you got off the phone with the owner, you
18 immediately called back Detective Bradley?

19 A Yes, soon after I talked to the owner, I called
20 Detective Bradley back.

21 Q What, if anything, did he say to you at that
22 point?

23 A He then told me about the 1970 Buick that was

1 at Sheehy Ford, that was Christine Fore's car. It was in
2 there for a brake job.

3 Q Did he tell you what, if anything, supposedly
4 was in that car?

5 A He told me that there was supposed to be stolen
6 property in that car, including women's clothes.

7 Q Did he say where the stolen property supposedly
8 was from?

9 A He was under the impression it was from Prince
10 Georges County.

11 Q He specifically stated that to you?

12 A Yes.

13 Q Did he mention anything about Fairfax County to
14 you at that time?

15 A Not that I can recall.

16 Q So, the only thing he mentioned to you was that
17 there were women's clothes in there?

18 A No; he said there was stolen property, including
19 women's clothes.

20 Q What time was it -- well, approximately what
21 time was it when you got off the phone with Detective
22 Bradley the second time?

23 A I would say that --

1 Q You are talking about before 8:30 in the morning,
2 within a half an hour of the time of the initial call?

3 A I would say -- since it takes about 20 minutes
4 to get to Sheehy Ford, and I was to Sheehy Ford by 9:30
5 in the morning -- no later than 9:00 o'clock.

6 Q How many other police officers work in that
7 particular station where you were on that morning?

8 A I don't know. I can't give you an estimate.

9 Q Well, did you have access to other police
10 officers that morning to go along with you to Sheehy Ford?

11 A Had I requested them, I'm sure I could have got-
12 ten another police officer to go with me.

13 Q Had you ever obtained previously a search war-
14 rant in Prince Georges County?

15 A Yes.

16 Q Are there magistrates on duty at 8:30 or 9:00
17 o'clock in the morning in Prince Georges County for this
18 purpose?

19 A There is always a stand-by judge. Generally,
20 there's -- the process is, if you need a search warrant
21 signed, the District Court or Circuit Court makes avail-
22 able a judge, and you have to go to get it signed.

23 Q And you didn't avail yourself of that possibility.

1 at that time?

2 A No. I didn't think that I had enough reason
3 to get a search warrant at the station.

4 THE COURT: You didn't think you had enough
5 reason to get a search warrant?

6 THE WITNESS: Right, when I was still at the
7 station.

8 THE COURT: When did you decide that you did
9 have enough reason?

10 THE WITNESS: Once I had gone to the Sheehy
11 Ford and determined that there was a car in fact there,
12 that it was registered in the name of Virginia Ann Donnelly,
13 which is a known alias of Christine Fore, and that it had
14 been put there by Bobby Wheeler, which is a known alias
15 of Theodore Fore.

16 THE COURT: Once you knew that Theodore Fore,
17 alias Bobby Wheeler, was in custody, and that Christine
18 Fore, alias Virginia Donnelly, was cooperating with the
19 police in recovering the stolen property, and that Ann
20 Zerega had cooperated with the Fairfax County Police in
21 recovering the property, why couldn't you get the search
22 warrant, thinking that the car would remain right where
23 it was?

1 THE WITNESS: Like I said before, Your Honor,
2 Ann Zerega's status I wasn't fully aware of. Christine
3 Fore's status was that she was not under arrest. I
4 can't remember whether, on December 12th, 1977 at 8:00
5 o'clock in the morning, whether she was with Detective
6 Bradley or not. I don't know that.

7 THE COURT: Go ahead, Mr. Klein.

8 MR. KLEIN: Thank you, Your Honor.

9 BY MR. KLEIN:

10 Q Did the people -- when you arrived at Sheehy
11 Ford, who was the first person you spoke to? Was it the
12 Service Manager?

13 A I can't tell you whether it was a -- whether
14 it was the Service Manager. It was a representative of
15 Sheehy Ford.

16 Q In the Service Department area?

17 A Yeah; there's a Service Department area, which
18 I went to. I didn't go to the new car showroom, if that's
19 what you mean.

20 Q Now, when you received the information from
21 Detective Bradley after the second phone call that there
22 might be an automobile with stolen property at Sheehy
23 Ford, while you were still at your office you didn't call

1 Sheehy Ford and confirm that, did you?

2 A No, sir, I didn't.

3 Q Now, when you spoke to the person at Sheehy
4 Ford and he explained to you that there was, in fact,
5 a 1970 automobile matching the description there, did
6 you call up or attempt at any time, at that point, to
7 obtain a search warrant?

8 A No.

9 Q Did he also -- did the person at Sheehy also
10 tell you at that point that the bill remained unpaid,
11 not only for the service on the 1970 automobile, but
12 also for the rent-a-car?

13 A I know that the bill was unpaid on the -- for
14 the service. As far as the rent-a-car, I don't really
15 know what the status of the rent-a-car was and their
16 agreement as far as -- I know that the manager was dis-
17 turbed about the situation with the rent-a-car.

18 Q Did you know that under Maryland law, that
19 Sheehy Ford at that point, if the bill remained unpaid,
20 had a valid existing lien on that particular automobile?

21 A I'm not familiar with, you know, lien laws in
22 Maryland.

23 Q Now, you've testified that you felt that the

1 situation required some immediate action at the time
2 that you opened the automobile, because of the confirma-
3 tion --

4 A (Nodding head.)

5 Q Were any of the Sheehy people with you at the
6 time that you put the screwdriver in and opened the trunk
7 of the automobile?

8 A I think the Service Manager was, the person
9 that I had originally, you know, gone to talk to, but --

10 Q Didn't it occur to you that you might ask him
11 to hold onto the car and go get yourself a warrant, now
12 that you had this information confirmed?

13 A At the time, no, not particularly; it didn't
14 occur to me.

15 Q Do you know where the keys to the automobile
16 were?

17 A No, I don't. I don't -- I know that I didn't
18 use a key to get in the car.

19 Q So, you had no reason to believe that the keys
20 to the automobile were inside the automobile, did you?

21 A The car was unlocked. I don't think the keys
22 were in it. You know, I don't remember.

23 Q How far away would the magistrate in Prince

1 Georges County be, or a judge from a Circuit or District
2 Court in Maryland? How far away, travel time, were they
3 from Sheehy Ford at the time that you realized -- you'd
4 received the confirmation of the information that Detec-
5 tive Bradley had given you?

6 A I can't answer that, sir.

7 Q Is it a half an hour's driving time; 15 or 20
8 minutes? How far away is the nearest available magistrate?

9 A I can't answer that, since I would have to -- a
10 search warrant has to be signed by a District Court judge
11 or a Circuit Court judge, and it depends on their avail-
12 ability. If they're in Hyattsville, then it's an hour's
13 driving time. If they're in Oxon Hill, then you're
14 talking about a half an hour's driving time, but, you
15 know, it would depend on whether, you know, the judge was
16 available.

17 Q How far away is Sheehy Ford from Upper Marlboro?

18 A By miles?

19 Q By driving time.

20 A I would say probably 30 minutes.

21 Q And that is where the Circuit Court of Prince
22 Georges County sits, is it not?

23 A Yes.

1 Q And that is also one of the areas where the
2 District Court of Maryland for Prince Georges County sits?

3 A There is a District Court and a Circuit Court
4 there, also. That doesn't guarantee there would be a
5 judge there.

6 Q How far away from Sheehy Ford is Oxon Hill,
7 Maryland, the courthouse in Oxon Hill, Maryland?

8 A Twenty minutes to no more than thirty minutes
9 driving time.

10 Q And that is also a place where judges for
11 the District Court of Maryland or Prince Georges County
12 sit?

13 A When they're assigned to sit there, that's
14 where -- they also sit there.

15 Q Did you at any time make any phone calls from
16 Sheehy Ford attempting to ascertain whether, and if so,
17 where, any of the judges would be available for the
18 issuance of a search warrant?

19 A No, sir.

20 MR. KLEIN: If the Court would indulge me for
21 one minute -- ?

22 (Mr. Klein conferred with the defendant, off
23 the record.)

1 MR. KLEIN: Your Honor, if I may, two more
2 brief questions.

3 BY MR. KLEIN:

4 Q Did you have any reason to believe that there
5 were any weapons in the automobile?

6 A No, sir.

7 Q And when you went into the trunk of the auto-
8 mobile, you were going in there for the express purpose
9 of trying -- of attempting to find contraband, rather
10 than for taking any type of inventory search?

11 A Because I had received information that there
12 was stolen property.

13 MR. KLEIN: Your Honor, that's all I have of
14 the witness. Thank you.

15 MR. GRAHAM: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q Detective Creveling, other than the information
19 imparted to you by Detective Bradley on the morning of the
20 12th of December, did you have any independent information
21 concerning the existence or whereabouts of the automobile
22 referred to in the conversation with Bradley?

23 A No, sir, I'd never heard of the car before.

1 Q Excuse me?

2 A I'd never heard of the car before.

3 Q Did you know at the time you received the phone
4 call from Detective Bradley or at the time you entered the
5 trunk at Sheehy Ford, the whereabouts of Ann Zerega, the
6 wife of the defendant?

7 THE COURT: I think you misspoke.

8 MR. KLEIN: I'm sorry, Your Honor --

9 MR. GRAHAM: I'm sorry.

10 MR. KLEIN: -- I think Mr. Graham may be con-
11 fusing the situation. I think he stated "Ann Zerega,
12 the wife -- "

13 MR. GRAHAM: Excuse me; I apologize. Thank you.

14 BY MR. GRAHAM:

15 Q At the time you received the phone call from
16 Detective Bradley from D.C. up until the time you went
17 into the trunk of the car at Sheehy Ford, were you aware
18 of the whereabouts of Christine Fore, the wife of the
19 defendant?

20 A No, sir, I was not.

21 Q Did you know her whereabouts at the time you
22 received the phone call from Detective Bradley?

23 A No, sir.

1 Q Were you aware of whether or not Christine Fore
2 was cooperating with the D. C. Police in return for
3 immunity from prosecution?

4 A No, sir.

5 Q Did you have any information to indicate that?

6 A No, sir.

7 Q Were you aware as to whether or not Christine
8 Fore was cooperating with the D. C. Police in return for
9 immunity for her husband, Teddy Fore?

10 A I think that that's probably -- I think that
11 she was assisting -- the impression that I got from
12 Bradley, that she was assisting the District of Columbia
13 Police in hopes that they would assist her husband.

14 Q Did you know whether or not it was in hopes
15 and in anticipation of, or whether there had been a firm
16 agreement reached?

17 A No, sir. No, I don't know that there had been
18 a firm agreement reached.

19 MR. GRAHAM: I have no further questions.

20 MR. KLEIN: Your Honor, I have nothing on
21 recross of this witness.

22 THE COURT: Thank you very much. Watch your
23 step as you step down.

1 (Witness excused.)

2 MR. GRAHAM: May I setp out in the hallway and
3 see if any other witnesses have arrived?

4 THE COURT: We'll take a ten-minute break.

5 (Brief recess.)

6 MR. GRAHAM: Your Honor, my information that I
7 conclude based on the lack of any other information is that
8 the other witness has not shown up, so that is the evidence
9 I intend to elicit.

10 MR. KLEIN: Your Honor, I have one piece of
11 evidence in rebuttal, and Mr. Graham is reviewing it right
12 now, and I would ask the Court to take judicial notice of
13 the laws of the State of Maryland.

14 I have a copy of Maryland Code, the Commercial
15 Law Section, Section 16-202 and Section 16-203, in regard
16 to the rights of a mechanic in regard to a possessory lien
17 when a bill remains unpaid for automobile services, and I
18 would ask that the Court take judicial notice of it.

19 THE COURT: I'll receive it as Defense Exhibit No. 1.

20 (The document referred to above
21 was marked Defendant's Exhibit
22 No. 1, for identification, and
23 received in evidence.)

MR. KLEIN: Your Honor, that's all the evidence

1 we would have.

2 THE COURT: Go ahead with your argument.

3 MR. KLEIN: Thank you, Your Honor.

4 I'll not waste the Court's time with the basics.

5 We're talking about a warrantless search and seizure.

6 We're narrowing ourselves down specifically to the
7 automobile exception.

8 I think that the answer by Detective Creveling
9 in regard to whether or not he was inventorying the car
10 takes out any possible inventory exception in regard to
11 the particular case.

12 I think that the automobile exception as far
13 back as Carroll and then Coolidge and Chambers
14 versus Maroney has set out that there are two elements
15 for an automobile exception, the first being that the
16 officer had probable cause.

17 I don't think that I can realistically argue
18 to the Court based upon the evidence that Officer
19 Creveling at the time that he did conduct the search
20 did not have probable cause. I think the evidence should
21 and would convince the Court that, in fact, he did have
22 probable cause at that point to believe that there was,
23 in fact, contraband inside the vehicle.

1 The other issue and really the issue that
2 Your Honor centered on in the few questions that you
3 asked, the heart of the matter is whether or not there
4 was sufficient exigent circumstances existing at the
5 time of the search to afford him the luxury of not ob-
6 taining a warrant.

7 Your Honor, it seems that Coolidge has come
8 under attack in a number of different ways. I'm sure
9 Your Honor is familiar with it, but one of the things
10 from Coolidge which still has stood up is the fact that
11 this exigency is necessary.

12 Cooper versus the United States and any number
13 of other cases have said that whether or not there is
14 exigency, whether or not there is probable cause, must
15 be determined on a case-by-case basis, and the Court is
16 going to have to look into whether or not the facts of
17 this case have convinced Your Honor by a preponderance of
18 the evidence that there was, in fact, sufficient exigency
19 available here.

20 I would cite very quickly to Your Honor, if
21 Your Honor does not feel that there is still an exigency
22 requirement -- Your Honor did mention Judge Winston's
23 case, which is Thims versus the Commonwealth at 218, which

1 I will be arguing about and I know Mr. Graham is going
2 to be arguing concerning, also.

3 Coolidge itself specifically stated that, at
4 461, the word 'automobile' is not a talisman in whose
5 presence the Fourth Amendment fades away and disappears.
6 As to whether or not the exigency part of Coolidge still
7 remains, there have been a number of cases which have
8 come down that I would cite to the Court's attention,
9 most of them being in United States Circuit Courts.

10 I would cite to Your Honor the United States
11 versus Kelly, at 547 Fed 2d 82, where the Court in that
12 case -- and I don't think it's necessary for me to really
13 go into the facts of these cases unless Your Honor feels
14 there is reason to, because I don't think the facts are
15 apposite to our situation; just the fact that the Court
16 in that particular case did go on to express the fact
17 that exigency is still required.

18 I would cite also to the Court's attention,
19 out of the Sixth Circuit, United States versus Chuke.
20 554 Fed 2d 260, a 1977 case.

21 Out of the First Circuit, I would cite to the
22 Court United States versus Farnkoff, 535 Fed 2d 661.

23 Now, Your Honor, the Supreme Court of Virginia

1 has addressed itself to the issue, and Your Honor really
2 centered upon the main case, which I am sure Mr. Graham
3 is going to argue is apposite to our particular situation.
4 That's Judge Winston's case in Thims versus the Common-
5 wealth, and I think at this point, it is time for me to
6 start centering on the facts which were involved in this --

7 THE COURT: Okay. Before you do, let me read
8 it over, okay?

9 MR. KLEIN: Thims?

10 THE COURT: Yes.

11 MR. KLEIN: You might also want to read Patty
12 versus the Commonwealth which is also -- it is in that
13 same --

14 MR. GRAHAM: It is the case before the case
15 you are reading, Your Honor.

16 THE COURT: All right.

17 MR. KLEIN: May I continue?

18 THE COURT: Yes.

19 MR. KLEIN: Your Honor, looking at the factual
20 situation in regard to this particular case, first off,
21 the officer receives information from a police officer
22 in the District of Columbia who he has never spoken to
23 before, from his own testimony.

1 That officer had supposedly received information
2 from another police officer. He does not believe, based
3 upon the information that he has received, that he has
4 sufficient probable cause to go obtain a warrant, even
5 after the corroboration, when he contacted the alleged
6 victim in Prince Georges County; that he did not, at that
7 point, have sufficient corroboration to obtain a search
8 warrant.

9 I think -- and, Your Honor, I think that he
10 did have sufficient corroboration at that point to obtain
11 a search warrant, and if he wanted to obtain further
12 corroboration very quickly, what he could have done,
13 and actually should have done -- he could have called
14 Sheehy Ford instead of wasting 20, 25, 30 minutes in
15 driving over there.

16 He could have called up, identified himself
17 as a detective from the Prince Georges County Police
18 Department and asked them if, in fact, they had a 1970
19 automobile which matched the description which had been
20 given to him by Detective Bradley.

21 But, he did not. He did not elect to take
22 that course, either, Your Honor.

23 Your Honor would remember from his testimony

1 that there were other police officers that were available
2 to him, but he did not elect to take police officers down
3 to Sheehy Ford with him again, thereby further enhancing
4 the possibility of creating an exigent circumstance by
5 going down there alone.

6 So, he went down to Sheehy Ford alone, he re-
7 ceived his corroboration. Now, did he attempt to obtain
8 a search warrant at that point? No, again, he did not.
9 He didn't even take the step of trying to find out exactly
10 where he could find a judge from the Circuit Court, and
11 from his own testimony, Upper Marlboro is approximately
12 a half hour ride from there. Oxon Hill, where the District
13 Court also sits, is 20 minutes away.

14 His testimony, I believe, on -- it might have
15 been early in my cross examination or on direct examina-
16 tion, was that they always seemed to make a judge of the
17 District Court or the Circuit Court available for purposes
18 of obtaining a search warrant.

19 But, he didn't elect to take either of those
20 courses.

21 Now, as far as the lack of exigency goes, Your
22 Honor, it goes even further. The car at that point was
23 in the possession and custody of Sheehy Ford. When he

1 conducted the search, he testified that the people at
2 Sheehy Ford already knew that the automobile which had
3 been rented had been impounded in the District of Columbia.

4 Now, if they know that, he could just as
5 easily have left with them the information not to release
6 this car under any circumstances. They've got a valid
7 existing lien on the automobile. The fact that the car
8 had been impounded in the District of Columbia can lead
9 this Court to only one inference, that the rent-a-car
10 fees had, in addition, not been paid.

11 That, again, Your Honor, is further showing
12 that there was no need for a search right at that moment.

13 Now, if we're going to start addressing our-
14 selves to Thims, in Thims the Court seemed to be very
15 much concerned about the fact that there were other
16 people who possibly could have come over to take the car.
17 Your Honor centered upon it in your questioning.

18 The only people that we knew about -- or,
19 excuse me -- that Detective Creveling knew about at
20 that point were Theodore Fore, incarcerated in the
21 District of Columbia. Detective Creveling knew that.

22 Christine Fore? Christine Fore, he knew, had
23 been cooperating with the Metropolitan Police Department.

1 As a matter of fact, his probable cause had been supplied
2 by Christine Fore. Now, for the Commonwealth to turn it
3 around and say, "Well, we've got the probable cause from
4 Christine Fore supplying the information, and she's doing
5 it in order to help get her husband out of jail", which
6 she obviously felt at that time was the thing to be doing,
7 in order to help her husband -- for her, then, to turn
8 around and come out and be the one who takes the car away,
9 thereby insuring that her husband will not get out, I
10 think goes beyond credibility, Your Honor.

11 I think it would be incredulous for the Common-
12 wealth to attempt to argue that, that she is the exigent
13 circumstances cause, while she was the one who gave the
14 Commonwealth the probable cause.

15 Ann Zerega? If Your Honor feels that what Officer
16 Creveling knew at that point -- what he knew about Ann Zerega
17 was that Ann Zerega had been cooperating for a period of
18 time with the Fairfax County Police Department in regard
19 to investigations concerning Theodore Fore.

20 Now, to expect her, then, to come over -- now,
21 he had no knowledge that Ann Zerega was involved -- had
22 any involvement -- well, I'll take that back.

23 Ann Zerega had been cooperating with the

1 Metropolitan -- excuse me; Fairfax County -- pointing
2 out burglaries that she was involved in. She had al-
3 ready obviously incriminated herself. There was no
4 reasonable expectation that Ann Zerega would come by
5 in order to attempt to take the automobile away, and we
6 have no reason to believe that anyone else was involved.

7 Your Honor, in terms --

8 THE COURT: Well, if the Supreme Court were
9 deciding this case like Thims, they would say, "Well,
10 what about the mother-in-law?" She may get the money,
11 come over with the money, pay off the lien on the car
12 and drive it away.

13 MR. KLEIN: What reason do we have to believe
14 that the mother-in-law is going to be involved in it,
15 Your Honor?

16 THE COURT: About the same reason that they
17 had in Thims, to believe that some unknown person was
18 going to come over and take that car out of the driveway.

19 MR. KLEIN: Well, Your Honor, I don't think
20 the record in Thims is going to reflect the amount of
21 time that's involved and how easily it could have been
22 done, to have obtained the warrant. I also think that,
23 in fairness, Officer Dwyer did not have the opportunity

1 that Detective Creveling had in this particular case.

2 I think the Court stated, and had reason to
3 believe, that the probable cause which existed for Officer
4 Dwyer to conduct the warrantless search at the time that
5 he did so was based upon the fact that he had to observe
6 the automobile himself. He could not call into Sheehy
7 Ford in order to be able to do it, and the automobile in
8 that particular case, if he leaves, if Officer Dwyer
9 leaves, is left completely out in the open, with no one
10 watching it, if he attempts to go get a warrant.

11 And I don't think that is the situation in our
12 particular case.

13 THE COURT: That puts you back in the Patty
14 case, then.

15 MR. KLEIN: Well, Your Honor, I think the Court
16 took pains in Patty to go to two things. The Court, first
17 of all, acknowledged in Patty that the wiser course would
18 have been for the officer to have obtained the warrant,
19 and the Court also, Your Honor, at Page 157, noted that
20 another part of the exigency in this particular case --
21 that one of the group in custody may have had a key to
22 the trunk affording ready access to the weapons.

23 If you remember, I asked Detective Creveling, on

1 cross examination, whether or not he had any reason to
2 believe that there were weapons involved, and the reason
3 I specifically asked that was because of Patty, and we
4 don't have that situation involved in Patty -- that was
5 involved in Patty.

6 That is one of the things which the courts
7 oftentimes take into consideration in regard to exigency,
8 is whether or not there was any reason to believe that there
9 may be weapons or any threat to a police officer or an-
10 other member of the community involved.

11 Your Honor, if I may direct your attention back
12 to Coolidge, and some of the things which were brought out
13 in Coolidge, which I would submit to the Court are not
14 present in our particular case -- I would submit I have
15 already argued to Your Honor that there was no conceivable
16 reason that Theodore Fore or anyone else directly involved
17 would have had access to the automobile.

18 There is no suggestion in this particular case
19 that the car which was in Sheehy Ford itself was being
20 used for any illegal purpose at that time. I think the
21 testimony was that Mr. Fore had been arrested on December
22 6th. The car had been there until December 12th.

23 Mr. Fore, if, in fact, he was going to attempt

1 to make a phone call to someone else to go get the car
2 out of Sheehy Ford because there was incriminating evi-
3 dence in it, had already had six days to afford himself
4 of that luxury, and I think that is something else which
5 the Court in Coolidge, at 460, specifically, pointed out,
6 that the defendant in that case had already had ample
7 opportunity to destroy any evidence that he felt was
8 incriminating.

9 Your Honor, when you take all of these factors
10 into consideration, there is no testimony -- well, the
11 automobile in Thims, there was obviously evidence pro-
12 duced to the Court that the mother in that particular
13 case was living in that house, and if Officer Dwyer had
14 had to leave and leave the car completely alone, the
15 mother could have been in the house and could have driven
16 away.

17 We don't have any testimony about that. We just
18 know that there's a mother-in-law, whose phone number
19 had been left at Sheehy Ford. We don't know what, if
20 any, extent she had in this, and I don't think there is
21 any reason for the Court or for Detective Creveling, at
22 that point, to have inferred that she might have been in
23 any way involved, and we don't know -- we just know that

1 she's living someplace in the District of Columbia. We
2 don't know how close that would be to Sheehy Ford, which
3 is not the situation in Thims.

4 The only testimony before the Court is that
5 there was one pair of keys to that particular automobile.
6 The testimony of Detective Creveling is that he had no
7 reason to believe that the keys to that automobile were
8 in the automobile.

9 When you add that to the other reasons why
10 the people at Sheehy Ford had a right to be holding onto
11 that automobile -- even if somebody had come, Your Honor,
12 to have paid the bill for the rent-a-car, or even for
13 the brake job and had requested the automobile, in light
14 of the fact that, from the officer's own testimony, he
15 was within either 20, maybe 30 minutes of a judicial
16 officer to attempt to obtain a warrant, and he had
17 sufficient people down there to watch over the car --

18 Somebody could have called up, if, in fact,
19 someone did show up attempting to take out the car,
20 which is what the Supreme Court of Virginia went to in
21 Patty, saying that when those individuals arrived, that's
22 when there was an exigent circumstance. It's when those
23 individuals arrive.

1 If individuals had arrived at Sheehy Ford --
2 Detective Creveling could have stayed there, called over
3 to the police officers at the nearest barracks, "Send
4 somebody over here to watch this car", and if, in fact,
5 somebody showed up to attempt to take that car away, as
6 took place in Patty, then I would not be able to argue
7 to the Court that there weren't exigent circumstances,
8 because at that point, as the point was in Patty, there
9 would have been, but not before.

10 But, Detective Creveling didn't avail himself
11 of that opportunity, either.

12 Your Honor, there may have been a relaxing
13 in regard to automobile searches, of the right to privacy,
14 but as they said in Coolidge, an automobile search is not
15 just a talisman for wiping away the Fourth Amendment, and
16 in a particular situation such as this, I think there is
17 sufficient ways to distinguish this case from both Patty
18 and Thims.

19 If there is ever going to be a case where there
20 is not any exigent circumstance, then this is it. For
21 this Court to rule that this evidence should not be sup-
22 pressed, I think Your Honor is going to have to ignore
23 the mandate of Coolidge versus New Hampshire, because I

1 think under the facts of this particular case, Thims
2 is not going to be apposite, Patty is not going to be
3 apposite, and you are going to pretty much have to say
4 that this Court is going to rule in the face of Coolidge.

5 And, I would submit to the Court that under
6 the factual circumstances in this case, that there was
7 more than sufficient time to have obtained a warrant.
8 If a warrant was not obtained, then it was, per se, un-
9 reasonable unless it fits within one of the exceptions,
10 and I don't think the exigent part of the exception
11 fits in this case, Your Honor, and I will ask the Court
12 to suppress the evidence.

13 THE COURT: All right.

14 Mr. Graham?

15 MR. GRAHAM: Your Honor, my immediate response
16 is, if the Court wants to ignore Coolidge in order to
17 deny the suppression motion in this case, that ignorance
18 pales in light of the ignorance shown by the Supreme
19 Court of Virginia in two recent cases of the Coolidge
20 case in holding as they did.

21 Now, just briefly, the Court has read both
22 cases, and I will just point out generally what I con-
23 sider to be a much more lenient treatment of the definition

1 of exigent circumstances in both Patty as well as the
2 second case, Thims, than in this case.

3 Now, for example, Patty involved the observa-
4 tion of a vehicle, I believe, from approximately 3:00
5 in the afternoon until 8:00 that night. Now, at the
6 time the observation began, the police officers already
7 knew everything about the contents of the trunk that they
8 knew at the time they ultimately seized the trunk and
9 popped the trunk, finding marijuana.

10 The Court, I think, mentioned the fact that
11 the person getting in the car as he did, added to the
12 probable cause, but I think the probable cause existed
13 at that time, and whatever else happened between 3:00
14 and 8:00 certainly diminished what exigent circumstances
15 existed at 3:00, when the police first find out what was
16 in the car.

17 Now, relying on that same point, only jumping
18 to the Thims case, I believe counsel argued that the
19 officer, Dwyer in that case, after he completed his
20 duties, only had a limited amount of time in which to
21 respond to the -- Dwyer's mother's residence and place
22 the car in the driveway under observation.

23 I would point out to the Court this: Dwyer

1 began interviewing witnesses at 12:00 midnight the
2 previous night. He interviewed several witnesses, all
3 of whom added information which I think without
4 equivocation established probable cause to believe
5 that the defendant was the perpetrator of the crime
6 under investigation and that stolen property was in the
7 trunk of the car.

8 Now, from midnight, the officer began inter-
9 viewing witnesses -- At 6:30 a.m., the statements of
10 each of the several young girls that had given state-
11 ments were reduced to writing and transcribed and typed.
12 That means that the officer waited from almost shortly
13 after midnight to 6:30 a.m. until the statements were
14 typed.

15 After the statements were typed, the officer
16 took an additional three hours, knowing all the informa-
17 tion about the whereabouts of the car, its contents, and
18 probabl cause to support a search warrant, if one was
19 available at that time, at 9:00 o'clock the next day,
20 when he went to the car ultimately, as he did shortly
21 after midnight that night, so that was the elapse of
22 approximately nine hours from the time he had enough
23 information to at least place a stake-out on the car

1 until he ultimately did.

2 Now, in that time, he was in the company of
3 at least one other officer, presumably at the station
4 house part of that time, in the presence of many other
5 officers, any one of whom or any number of whom could
6 have been dispatched to the residence to keep an eye
7 on the car.

8 But, no, that was not done, and yet the Supreme
9 Court affirmed the entry of that car without a search
10 warrant on the basis of exigent circumstances.

11 Now, frankly, I would much prefer to be arguing
12 the defendant's position in the Thims case than I would
13 to be arguing that equal position in this case, but I
14 think the Court has to define exigent circumstances, and
15 admittedly, based on the Thims case, they are not exactly
16 what they seem to communicate on the basis of recent
17 Supreme Court precedents.

18 On the basis of both Thims and Patty, 1977
19 cases, June, the Court found on circumstances much
20 less exigent than those presented here, that, in fact,
21 a warrantless search of the vehicle was justified.

22 Now, insofar as Investigator Creveling's state
23 of mind in this matter, to me, Investigator Creveling

1 acted with much more dispatch and much greater cir-
2 cumspect than did either of the officers in the Patty or
3 the Thims case.

4 Within an hour and a half of the time that he
5 had first been made aware that such a vehicle existed
6 and that there may have been stolen property in that
7 vehicle, he was at the vehicle, and he had popped the
8 trunk of it.

9 Now, the Court pointed out one additional
10 person who may have placed that property in jeopardy
11 that I was not going to mention, and that is the mother-
12 in-law, but I think that indicates the scope that the
13 Court goes to in order to determine whether or not such
14 exigent circumstances existed.

15 Now, I think the Supreme Court in the Patty
16 case was, in fact, straining when it said that perhaps
17 another load of individuals, seeing as how there was a
18 great amount of grass or marijuana in the back of this
19 car -- a carload or several carloads of individuals could
20 have come up, could have taken the car, could have driven
21 off.

22 Well, I think that's the height of speculation,
23 but yet the Court gave that consideration, and I certainly

1 think suspecting the mother-in-law of possibly destroying
2 evidence might be less speculative than what was done in
3 the Patty case.

4 Now, secondly, the officer testified on redirect
5 examination that he was not aware of any agreement of
6 immunity protecting either the wife or the husband. There-
7 fore, I am not sure how counsel can argue that it is
8 absurd to think that either Ann Zerega, who was in no
9 way involved in this agreement, to the understanding of
10 Investigator Creveling, or Christine Fore, who was in no
11 way a recipient of this information, which could very
12 easily have been used to prosecute her, could not have
13 gone out and taken the car, removed it, paid the fee for
14 its removal and then, you know, left the scene and destroyed
15 the evidence or hidden it.

16 Furthermore, another interesting point made by
17 counsel, in that it seems from all accounts that Christine
18 Fore had, in fact, volunteered the information about the
19 contents of the car, with the understanding that, in return
20 for her cooperation and in return for allowing the police
21 to go to the car, pop the trunk and get the goods out,
22 that she was expecting leniency on behalf of her husband.

23 That seems to me to come very close to giving

1 consent to the Prince Georges County Police Department,
2 vis a vis Detective Bradley in D.C., to, in fact, go
3 out and look in the trunk, that "This is what I am
4 expecting to do in return for leniency toward my husband",
5 which raises another, and perhaps a third, ground for
6 justifying the search, which I won't argue strenuously.

7 Whether or not there was the possibility of a
8 weapon, well, I think the kind -- the circumstances, the
9 number of burglaries that had been committed, the fact
10 that apparently these people were involved in each and
11 every one of them, does not dispel the notion that there
12 possibly was a weapon.

13 Investigator Creveling didn't know what was
14 in the car. He firmly stated that. He didn't even know
15 the car existed a half an hour or 45 minutes before that
16 time.

17 In total, I think, and I say so respectfully,
18 that in order for the Court to grant the suppression
19 motion in this case, the Court would have to ignore a
20 more lenient standard defining exigent circumstances as
21 was defined in Patty and Thims.

22 I frankly don't see any logical basis upon which
23 this case can be distinguished from Patty and Thims, except

1 to say the exigent circumstances in this case were cer-
2 tainly more exigent than those existing in the other two
3 cases.

4 And, I ask the Court, based on those two cases,
5 current Supreme Court cases decided much after Coolidge
6 and acknowledging the existence of Coolidge, are the law
7 of the jurisdiction, and I ask the Court to deny the motion
8 to suppress.

9 MR. KLEIN: Your Honor, very briefly in rebuttal,
10 I agree that Detective Creveling worked with great dis-
11 patch. The question that the Court has to arrive at is
12 whether or not the fact that he felt it necessary to act
13 with such great dispatch is reason for him to have not
14 gotten a search warrant, and I would submit to the Court
15 that that is, in fact, not the case.

16 Now, in regard to -- if Your Honor is taking
17 into consideration the possibility that Christine's
18 mother would have gone and taken the car out, again, we
19 have to realize that the information supplied to the
20 Metropolitan Police Department was that Christine Fore
21 had stated something, and I don't think -- I think it
22 goes, again, beyond reasonable credibility to believe
23 that Christine would say something, and that her mother

1 would act in direct contravention of it.

2 In regard to Thims, Your Honor, again, the
3 Court did -- Mr. Graham can talk about the time lag
4 involved in that particular case, but the Court, at
5 Page 91, specifically said, "Upon verification -- ",
6 and this is when Officer Dwyer arrived at the scene --
7 "Upon verification of his information, Dwyer had probable
8 cause to believe that the car was the fruit of the crime,
9 that it might be stolen and that it contained stolen
10 property. He then, for the first time, had probable
11 cause to seize."

12 Now, I think the situation, with that car
13 being in a place where the Court acknowledges here,
14 easy accessibility to a number of different people --
15 which is not the situation in our case, Your Honor.
16 I would submit to the Court that it was not easily
17 accessible. It was in the custody of Sheehy Ford,
18 and there are no people which this Court can infer,
19 which the record obviously did supply in Thims, would --
20 might very well want to get the car out of there, be-
21 cause the only three people who Detective Creveling
22 had any inkling about were either cooperating with the
23 police or in custody, and I think that is a sufficient

1 distinguishing of Thims, because the whole rationale,
2 on Page 91, concerns that. It concerns that there might
3 have been other people that they had no reason to know
4 who else had keys -- which may very well be the same
5 situation here, Your Honor, although the only testimony
6 before the Court is that there was only one set -- and
7 that the mother lived in the house itself, that Thims
8 himself might have telephoned to a friend, relative, or
9 confederate to move the car.

10 Well, Theodore Fore's uncontradicted testimony
11 is, he had been incarcerated for six days, and if that
12 was going to be taking place, he had more than sufficient
13 opportunity to do it, and I don't think that Thims is
14 apposite to this particular case, Your Honor, and I
15 think the Court went, in Patty, to pains to point out
16 the fact that they had reason, or there might have been
17 reason, in that case, to believe that a weapon was involved,
18 and from the only evidence that Your Honor has heard,
19 there was no reason to believe that a weapon was involved.

20 There are no confederates; there are no weapons.
21 I think that takes this case away from Patty and Thims
22 and places it back in Coolidge, Your Honor. I don't
23 agree with the decisions of the Supreme Court. I realize

1 that Your Honor is bound by them, but I think if Your
2 Honor can distinguish them factually, then Your Honor
3 must abide by Coolidge and the Supreme Court of the
4 United States, and I would ask Your Honor to do so.

5 I think there is a sufficient factual distinction.

6 MR. GRAHAM: May I ask the witnesses to be
7 allowed in for purposes of the finding of the Court?

8 THE COURT: Uh-huh.

9 When I raised that question as to whether or
10 not the mother-in-law could come over and pay for the car
11 and take it off the lot, the reason I did that was to
12 illustrate what I think the dilemma is in view of Thims
13 and Patty, particularly in view of Thims, in the sense
14 that inferences from the record that the Supreme Court
15 makes are very broad and take into account just about
16 any possibility that a person cares to make.

17 I don't believe that that's a possibility in
18 this case, nor do I make it any finding, but I feel you
19 have a very, very difficult position in view of Thims
20 and Patty, and I don't feel you've made it, and I deny
21 your motion.

22 I think that the issue is, what were the
23 circumstances that the officer saw in view of applying

1 the law of those two cases, when he went over there, and
2 I think that what he did know, really, was that there were
3 two females involved, and that two females had assisted
4 with returning stolen property, but I am not prepared
5 to say that his knowledge of that goes down to exclude
6 those people from being people who could conceivably
7 take the car away or take the property out of the car,
8 in view of the fact that the trunk lock had been popped.

9 I also think that it would be fair for him,
10 in view of the background that he had of both Mr. and
11 Mrs. Fore, to draw the conclusion that simply because Mrs.
12 Fore had cooperated or assisted in some way in the recovery
13 of some of the property would not preclude the attempt to
14 obtain the car.

15 I think that those two cases really do re-define
16 exigent circumstances, and it's not a question of whether
17 I agree with that or disagree with it, but, as you properly
18 pointed out, it is whether or not, given those two
19 cases, the Court can, in this instance, grant your motion,
20 and I don't feel that I can.

21 I also feel that it is a very, very close ques-
22 tion, and while I am sure that defense counsel don't
23 necessarily approve of this, it would seem to me that in

1 a case as close as this on a motion to suppress, given
2 those two cases, that the better step for the Court to
3 take is to deny the motion and let an appellate court
4 review it, than to grant it, and that also has been
5 some influence in my decision today.

6 MR. KLEIN: Your Honor, if I may, there is one
7 other thing that I would point out to the Court.

8 I have discussed this with Mr. Graham, so I
9 am not surprising him.

10 Mr. Fore has requested, and I would state for
11 the purposes of the record, with disagreement of both
12 of his counsel in the case -- has requested that I ask
13 Your Honor to issue an out-of-state subpoena for Mr.
14 and Mrs. Zerega, who can be served -- this is for the
15 purposes of trial, Your Honor -- who can be served at
16 519 Massachusetts Avenue, Northwest.

17 Mr. Fore, from the information which we have
18 gathered through investigation and through discovery --
19 Ann Zerega will be testifying for the Commonwealth
20 Thursday that this crime was committed by she in con-
21 junction with Theodore Fore, and, my understanding is,
22 also in conjunction with Christine Fore, with a certain
23 automobile which belongs to her father.

1 Mr. Fore has information which leads him to
2 believe that that could not be the case, that there is
3 such a difference between Miss Zerega and her parents
4 at the present time, which I have somewhat corroborated
5 during my discussions with Mrs. Zerega, Miss Zerega's
6 mother, that she would not be in a position to be able
7 to borrow her parents' car.

8 Mr. Fore also has information that her father
9 most probably or, in his opinion, definitely, was using
10 the car on that particular day during the time period
11 that this crime may have taken place.

12 He also believes that there may be certain
13 admissible evidence with regard to reputation evidence
14 that Ann Zerega had, or has, in the D. C. community
15 with people that her parents know, and that that reputa-
16 tion evidence would be that she is not a truthful person.
17 That belief is based upon information which has been
18 relayed to Mr. Fore that Mrs. Zerega has been involved
19 in stealing articles from a number of people, including
20 her parents.

21 After discussing this issue with counsel and
22 realizing counsel's feelings concerning it, Mr. Fore
23 still would request the Court to issue an out-of-state

1 subpoena.

2 I would apologize to the Court about the late
3 date for the request. I think a lot of that, in defense
4 of Mr. Fore's position -- a lot of that depends on
5 specific things that you learn through investigation,
6 and at one point in this case, it seemed to Mr. Fore
7 that having the parents here would probably hurt more
8 than help.

9 At this particular point in the case, especially
10 in light of Your Honor's ruling, Mr. Fore is of the
11 opinion that having the parents here is extremely
12 material to his defense, especially if, in fact, they
13 would testify that their daughter had no right to have
14 the automobile, which, according to the information
15 supplied to me by the Commonwealth, was registered in
16 her father's name, and was supposedly the automobile
17 that was used in his particular case.

18 THE COURT: But, are you proffering, or is
19 the attempt to have him testify as to the fact that she
20 wouldn't have had the right to have it, or that she
21 didn't have it because it was in use somewhere else?

22 MR. KLEIN: Well, Your Honor, from the information
23 which Mr. Fore has supplied to me, we would submit to

1 the Court that for either of those reasons, Mr. and
2 Mrs. Zerega may very well be material witnesses for
3 the defense, and in light of the gravity of the charge
4 for which he stands, with the possibility of life
5 imprisonment, he would like to have the opportunity
6 to have those people here.

7 THE COURT: Do you want to be heard?

8 MR. GRAHAM: Your Honor, I am not sure on
9 what basis I would have to object to the order, but I
10 would like it to be known, and I think counsel will
11 corroborate this, the information concerning Ann Zerega's
12 testimony in the upcoming trial, as well as her use of
13 the automobile that was owned by her father, was known
14 to the defense long before today's date.

15 That is an eleventh-hour election, presumably
16 on the part of Mr. Fore, and that if, for any reason,
17 the parents don't or can't respond to the subpoena, I
18 would like it to be outlined in advance that that shall
19 not be a grounds for a continuance of the case.

20 We have a witness that's flying up here from
21 Florida to testify.

22 THE COURT: How many times has this case been
23 continued at the request of the defendant, do you know?

1 MR. GRAHAM: I frankly do not know, Your Honor.

2 MR. KLEIN: Your Honor, I think specifically at
3 the request of the defendant -- I think it is only once.
4 I may be mistaken. There were times that the case was
5 continued because Mr. Fore was, at that point, a fugitive,
6 and then there was the request for a continuance when Mr.
7 Rodway made a motion to withdraw as counsel of record.

8 I requested a continuance I believe at one time,
9 Your Honor, when I was initially appointed to aid Mr.
10 Parks, and that was based upon the fact that I felt I
11 needed sufficient -- I needed more opportunity.

12 The last continuance in this particular matter
13 was at the request of the Commonwealth, although no objec-
14 tion was offered by the defense.

15 THE COURT: Today, I grant your motion for the
16 out-of-state subpoena on the condition that the case is
17 not going to be continued from Thursday, and on the con-
18 dition that I am not ruling on the admissibility of
19 character evidence, nor does this ruling today constitute
20 a ruling on the admissibility of any of the evidence
21 or testimony that might be adduced from the two witnesses
22 sought.

23 And, I base this ruling on the fact that the case

1 has been pending for some time, and I accept the unchal-
2 lenged representation that the facts of the case have been
3 known to the defense for some time, and having considered
4 those things, I would grant the motion, with the under-
5 standing the case won't be continued from Thursday if
6 those witnesses are unable to appear.

7 MR. GRAHAM: Your Honor, out of an abundance
8 of caution, I might ask Mr. Klein to correct me. There
9 may have been some matters that came to his attention
10 that he didn't think had been brought to his attention
11 before, and I'd just like to confirm --

12 MR. KLEIN: No, I think that Mr. Graham's
13 representation is a fair one, Your Honor.

14 Your Honor, is there anything I can do to
15 attempt to speed up that process? Should I draft the
16 Order, or will the Court have an Order drafted?

17 THE COURT: Do you know, Mr. Graham, what the
18 procedure is?

19 MR. GRAHAM: There is a statute, Your Honor,
20 and I am unfamiliar with it, I must confess.

21 THE COURT: Well, I suggest that it would
22 probably help for you to do it, Mr. Klein, and I'll sign
23 it first thing in the morning, if it can be hand-delivered

1 to someone, or if you know of any way that it can be done
2 more expeditiously than that, I will be happy to assist
3 you as best I can.

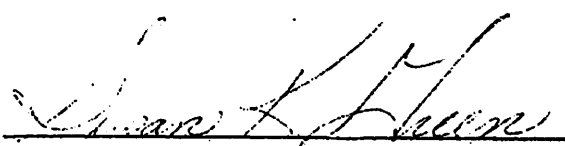
4 MR. KLEIN: Thank you, sir.

5
6 (Whereupon, at approximately 4:20 o'clock p.m.,
7 the hearing in the above matter was concluded.)

8
9 *****

10 CERTIFICATE OF COURT REPORTER

11
12 I, Susan K. Green, do hereby certify that I
13 took the stenographic notes of the foregoing proceeding
14 and reduced the same to typewriting; that the foregoing
15 is a true record of the testimony given by said witnesses;
16 that I am neither related to nor employed by any attorney
17 or counsel employed by the parties thereto, nor financially
18 or otherwise interested in the outcome of the action.

19
20 
21 Court Reporter
22
23

1 they, in fact, recognized him as the defendant. Because he
2 recognizes them, it doesn't necessarily mean that they
3 recognized him, or to the conclusion that this is the
4 defendant. I am not going to further exasperate the
5 situation by calling specific attention to it.

6 I have gone as far as I am going to go with the
7 request of the defendant in finding out whether or not he
8 has been observed under those circumstances.

9 OPEN COURT

10 THE COURT: Who is your next witness?

11 MR. GRAHAM: Detective Krevlin.

12 Whereupon,

13 ALLEN KREVLIN,
14 a witness, called for examination by counsel on behalf
15 of the Commonwealth, and, after having been duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GRAHAM:

19 Q. Would you, please, state your full name and
20 occupation?

21 A. I am Detective Allen Krevlin of the Prince
22 Georges County Police Department, Prince Georges County,
23 Maryland.

1 Q Were you employed in that capacity in
2 December, 1977?

3 A Yes, sir, I was.

4 Q On that date did you have an occasion to go
5 to a location in Prince Georges County, namely Sheehy
6 Ford, for any purpose?

7 A Yes, sir, I did.

8 Q For what purpose did you go there?

9 MR. KLEIN: Your Honor, I think I am going to
10 have to object to that. That's going to be hearsay.

11 THE COURT: I overrule the objection. Answer
12 the question.

13 BY MR. GRAHAM:

14 Q For what purpose did you go there?

15 A I was going there under official capacity to
16 look for a particular car that had been described to me
17 by Detective Bradley of the Metropolitan Police Department.

18 MR. KLEIN: Same objection.

19 THE COURT: Overruled.

20 BY MR. GRAHAM:

21 Q Did there come a time that you found that car
22 that had been described to you?

23 A Yes, sir, at approximately 9:30 on the morning

1 of December 12, 1977 I found a 1970 Buick, which had
2 been described to me by Detective Bradley.

3 Q Sir, could you give the description of that
4 automobile, based on your recollection, on that date?

5 THE COURT: Based on your observation, not
6 what was told to you by somebody else.

7 THE WITNESS: I found a vehicle which appeared
8 to be in operating order, however, it was not operating
9 at the time. It was a maroon color. It was in good condition.
10 It wasn't a shiny vehicle, nor was it in obvious need of
11 outward body repair.

12 I found the vehicle had had a trunk lock
13 which was missing to the rear. This vehicle was in the
14 parking lot in the first row, next to the service bay
15 doors, of the Sheehy Ford Company in Prince Georges County,
16 Maryland.

17 Q Did you have an occasion to speak to anybody
18 at Sheehy Ford when you initially arrived?

19 A Yes, sir, I did. I talked to a service
20 manager, whose name I do not recall.

21 Q After that conversation did you have an occasion
22 to go to the vehicle in question?

23 A Yes, sir, I did. I described the vehicle to him,

1 and he informed me that he was --

2 Q Not what he informed you of, sir.

3 Where did you find the vehicle located?

4 A I found the vehicle located on the first row
5 of cars in the Sheehy Ford parking lot, the first row of
6 cars next to the service department.

7 Q Can you describe the immediate surrounding
8 areas as to security, or lack of it thereof?

9 A The Sheehy parking lot is surrounded completely
10 by a metal fence, I would estimate six feet high. However,
11 during the operating hours the fence has entrances to it
12 where the fence is open so the public can enter during the
13 working hours.

14 Q When is the first time prior to that point
15 when you had information concerning the existence and
16 whereabouts of that automobile?

17 A I had no prior information concerning that
18 particular vehicle prior to 8:00 o'clock in the morning
19 on December 12, 1977.

20 Q What, if any, action did you take once you
21 found the vehicle, sir?

22 A I opened up the trunk.

23 Q How did you do that?

1 A. The trunk lock was removed, so I simply took
2 a screwdriver out of my police car and put it into the
3 locking mechanism and popped the locking mechanism. and
4 then the trunk sprung open.

5 Q. What, if anything, did you find inside of the
6 trunk?

7 A. I found the trunk to be completely loaded with
8 various types of clothing, women's clothes, men's clothes,
9 shoes, ties, etcetera.

10 Q. What, if any, containers were in the trunk,
11 to your knowledge?

12 A. I don't recall any particular containers.
13 The clothes were stacked in stacks, and some were pushed
14 on the sides. Other than that, it was just stacks of
15 clothing.

16 Q. What, if anything, did you do thereafter?

17 A. I impounded the motor vehicle.

18 Q. What, if anything, did you do with the contents
19 of the trunk?

20 A. I immediately took the contents of the trunk,
21 consisting of the clothes, placed them in my police car,
22 and then had the motor vehicle, minus the clothes, impounded
23 at approximately 9:30 on the morning of December 12, 1977.

1 Q What did you do with the clothes after you
2 placed them in your cruiser?

3 A I kept them in my custody. I took them to
4 the Oxon Hill police station, where I placed them in four
5 yellow plastic trash bags, whereupon, then I placed them
6 in a holding cell under lock and key until such time
7 that Mrs. Kasik came and identified some of her clothes
8 with Detective Rickter.

9 MR. KLEIN: Objection. It's a conclusion.

10 THE COURT: I sustain the objection.

11 BY MR. GRAHAM:

12 Q Did you have an occasion between the time you
13 found the clothes in the trunk and the time you secured
14 them in the evidence room in the Oxon Hill station to
15 examine the clothes yourself?

16 A Yes, sir, I did.

17 Q Detective Krevlin, I show you what has been
18 marked as Commonwealth's Exhibits 1 through 3 consecutively
19 for identification, and ask you to examine those, sir.
20 Tell the jury if you have ever seen those items before,
21 and if so, when and where.

22 A I remember seeing this item here (indicating)
23 in particular as being a multi-colored hat at the Oxon Hill

1 police station and in the trunk of the car which I found
2 at Sheehy Ford. The reason I remember it is because of the
3 separate multi-colors. I remember seeing this shirt
4 here (indicating) in the trunk of the car at Sheehy Ford.
5 I remember seeing it at the Oxon Hill police station when
6 Mrs. Kasik identified it because it was also multi-colored.

7 MR. KLEIN: Objection. Your Honor, I move to
8 strike that.

9 THE COURT: With respect to Mrs. Kasik's
10 identification, I strike that part of it, and ask the
11 jury to disregard that part of the testimony.

12 THE WITNESS: I remember seeing this at the
13 Oxon Hill police station. The sweater, I cannot particularly
14 remember seeing, to the best of my recollection.

15 BY MR. GRAHAM:

16 Q At the time that you placed the items that you
17 have before you, in addition to other items you found in
18 the trunk of the car at Sheehy Ford in the evidence room
19 at Oxon Hill police station, was there any period of time
20 when those items, in addition to the others, were outside
21 of your presence or outside of your observation?

22 A No, sir. I made out a property record, pursuant
23 to the general orders of the Prince Georges County Police

1 Department, listing the items I had taken out of the
2 car which I had impounded. I made up property tags on the
3 items and then placed them in the cell. The next time that
4 those items were disturbed was when I went back into
5 the cell and showed them to Detective Rickter and Mrs. Kasik.

6 Q Will you describe to the jury what, if any,
7 security measures there are in the cell that those items
8 were kept?

9 A The cells in Prince Georges County Police
10 Department at Oxon Hill, which is a secure station, is
11 in the basement. It has a metal door, which requires a key,
12 and then it has a cell type door with bars on it. The key
13 is not accessible to everybody.

14 For example, I do not have a key. My
15 Sergeant has a key. He is the property manager from my
16 squad, so he is the one issued the key.

17 Q Can you testify as to whether or not the blue
18 item, which I believe is Commonwealth's Exhibit No. 3,
19 before you was shown to Mrs. Kasik at the time that she
20 came over to PG County?

21 MR. KLEIN: Your Honor, I don't think he can
22 testify to that. He has already testified that he doesn't
23 remember the item. I don't see how he could possibly

1 answer whether or not it was shown to Mrs. Kasik.

2 MR. GRAHAM: I misunderstood his answer. I
3 think it was a little more ambiguous saying he didn't
4 remember the item being in the trunk, but I am not sure
5 that lack of memory extended. I was just asking.

6 THE COURT: I overrule the objection. You
7 may answer the question.

8 THE WITNESS: Can you repeat it, please?

9 BY MR. GRAHAM:

10 Q I am asking you whether or not you recall
11 whether Commonwealth's Exhibit No. 3, the blue sweater,
12 was shown to Mrs. Kasik at the police station at Oxon
13 Hill.

14 A This particular blue sweater, I don't
15 remember its physical appearance.

16 Q What happened to, at least, two of the three
17 items that you do remember, Commonwealth's Exhibits Nos.
18 1 and 2, after they were shown to Mrs. Kasik?

19 A At that time they were released to Mrs. Kasik
20 on a Prince Georges County property record, which she signed
21 for.

22 Q Was Mrs. Kasik in the presence of any other
23 police officers when she was shown these items?

1 A. Yes, sir, she was in the presence of
2 Detective Rickter.

3 Q. Sir, do you recall the color of the car from
4 which those items, or at least two or three of those
5 items, were taken?

6 A. To the best of my recollection, it was maroon.

7 Q. Do you recall whether or not there was
8 one color on the car?

9 A. I don't recall whether there was more than one
10 color on the car.

11 Q. Do you recall what the tag number or state
12 of registration was?

13 A. If I refer to my original notes I could.

14 MR. GRAHAM: Your Honor, I have no further
15 questions at this point.

16 MR. KLEIN: If the court will indulge me
17 for one moment, please.

18 THE COURT: All right.

19 (Brief pause while counsel is conferring
20 with defendant.)

21 CROSS EXAMINATION

22 BY MR. KLEIN:

23 Q. Detective Krevlin, you were able to open the

1 trunk of the car by merely putting a screwdriver into the
2 area where the lock would have been on the trunk?

3 A. I had to look in there and see the mechanism,
4 and turn the mechanism. I don't recall exactly how long or
5 how easy it was to open it.

6 Q Was there anything else, besides clothes,
7 in the trunk of the car?

8 A Are you referring to, like, spare tire -- I
9 don't recall -- shoes were included.

10 Q I believe you testified on direct examination
11 that there was access during the operating hours at
12 Sheehy Ford. Will you, please, describe that a little
13 bit more to the members of the jury.

14 Was the car inside a building at Sheehy
15 Ford, or was it out in an open parking lot?

16 A I have been working the area of Sheehy Ford
17 where this car was for approximately five years as a police
18 officer. I know that the parking lot where they have new
19 cars, and used cars, and cars that are being serviced on,
20 it's a fenced in area.

21 I know that they close those fences and lock
22 them up at night.

23 Q Not to your conclusions and not to your --

1 MR. GRAHAM: I ask that the witness be allowed
2 to finish answering the question. If counsel wants to
3 ask him what basis the witness knows these things, fine.
4 But he is in the process of answering a question.

5 THE COURT: Did you want to respond, Mr. Klein?
6 Repeat your question.

7 MR. KLEIN: I believe I asked him if the car
8 was housed inside a building or if it was kept outside in
9 an opening parking lot. I believe that was the wording I
10 used, Your Honor.

11 MR. GRAHAM: I believe in addition to that he
12 asked the witness to elaborate on what he meant by that.

13 THE COURT: Is it in an opening parking lot?
14 Was the car kept in an open parking lot?

15 THE WITNESS: Under the definition of open
16 parking lot, I would have to say, yes, in a fenced in
17 parking lot.

18 BY MR. KLEIN:

19 Q I believe you stated on direct examination that
20 there was open access during working hours, what did you
21 mean by that, sir?

22 A During the normal time that Sheehy Ford Company
23 would be open, at the times that I have gone there when they

1 were open, the fences to the entrances to the parking lots
2 were open so the public can come in.

3 Q So, any person could have walked off the
4 street and had access to the car during working hours?

5 MR. GRAHAM: Your Honor, I think that's a
6 conclusion that he is asking for on the part of the
7 witness. I think that conclusion is arguable.

8 THE COURT: Well, considering it's cross
9 examination, I will permit the witness to answer.

10 THE WITNESS: Can you repeat that?

11 BY MR. KLEIN:

12 Q What you meant by open access was that a person
13 could have walked off the street and had open access to
14 that automobile during the working hours at Sheehy Ford?

15 A As well as any other automobile on the lot,
16 I suppose.

17 MR. KLEIN: Your Honor, that's all I have of
18 the witness.

19 THE COURT: Do you have any redirect?

20 REDIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q Do you know whether or not a guard is on duty
23 at Sheehy Ford, or guards?

1 A At night, yes, I do know there are guards.

2 Q Are these cars in an area -- describe the
3 area in which these cars, including the car in question,
4 was located in reference to the employees and where they
5 normally go during the day, if you can.

6 A Very generally, the Sheehy Ford Corporation
7 at that point is a new car area, at one end of the building
8 is a drive-up area, in the middle a used car lot, at the
9 other end to the rear of the used car area is a large
10 garage where they do the service work. The cars are spread
11 out, just as in a parking lot of, say, this building, to
12 the exterior of the building, and parked in rows in parking
13 spaces.

14 MR. GRAHAM: No further questions.

15 THE COURT: Is there anything else of this
16 witness?

17 MR. KLEIN: No, Your Honor.

18 MR. GRAHAM: Your Honor, as far as I am concerned
19 he may be excused.

20 THE COURT: You are excused. Thank you for
21 coming.

22 (Witness excused.)

23 THE COURT: Who is your next witness?

1 MR. GRAHAM: Your Honor, in view of the fact
2 that I know that the case will not go on tomorrow, I will
3 have to rearrange in my mind the sequence of witnesses.

4 THE COURT: All right.

5 (Brief pause.)

6 MR. GRAHAM: The Commonwealth calls Mr. Wilson.
7 Whereupon,

8 DAVID WILSON,
9 a witness, called for examination by counsel on behalf
10 of the Commonwealth, and, after having been duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q Would you, please, state your full name
15 for the ladies and gentlemen of the jury?

16 A David Wilson.

17 Q Directing your attention to November, 1977,
18 by whom were you employed at that time?

19 A Sheehy Ford, Marlow Heights.

20 Q Directing your attention specifically to
21 on or about the 21st day of November, 1977, did you have
22 an occasion to come into contact with anyone representing
23 himself to be Bobby Wheeler?

1 Q How did you meet him?

2 A Well, I knew his wife, Christine. I met her
3 in jail.

4 MR. KLEIN: Objection, Your Honor. May
5 counsel, please, approach the bench?

6 THE COURT: No. I sustain the objection. I
7 instruct the jury to disregard the last statement.

8 BY MR. GRAHAM:

9 Q How did you --

10 MR. KLEIN: For purposes of the record, may
11 we, please, approach the bench?

12 THE COURT: All right.

13 (Whereupon, counsel and the defendant approached
14 the bench.)

15 BENCH CONFERENCE

16 MR. KLEIN: Your Honor, I move for a mistrial
17 at this time in light of the statement.

18 THE COURT: Denied. I deny it. It's not
19 necessary to approach the bench for that. At any rate,
20 I deny your motion for a mistrial. The court's ruling
21 stands. The last statement I have instructed the jury to
22 disregard. There is not even any showing that it's harmful
23 or prejudicial. At any rate, I sustain the objection and

1 of any of these convictions?

2 A. Yes, I did. On the second offense it was
3 10 days, and the third offense was -- well, I did
4 approximately 30 days.

5 Q In what jurisdictions?

6 A. In Montgomery County.

7 Q Do you have any other criminal record that you
8 are aware of?

9 A. No.

10 Q Can you explain why you committed these offenses?

11 A. Because I needed --

12 MR. KLEIN: Objection, Your Honor.

13 THE COURT: I sustain the objection. Go ahead.

14 THE WITNESS: Do you want me to answer?

15 THE COURT: No.

16 MR. GRAHAM: No, do not answer.

17 BY MR. GRAHAM:

18 Q How long, prior to the first two weeks in
19 November, 1977, were you using heroin or dilata?

20 A. I was using it quite often.

21 Q Can you ascribe an amount you spent on the
22 average each day for drugs and narcotics?

23 A. I was spending approximately \$60 a day at that

1 A All that I can remember.

2 Q Were the lights on or off in the Kasik house
3 when you were in there?

4 A Off.

5 Q What were you using for light?

6 A He turned on the master bedroom closet light
7 for the bedroom and then you could just like -- you didn't
8 really need light throughout the whole house, you could
9 just see. It was light enough in the house where you
10 could see.

11 Q Ms. Zerega, do you remember the date when the
12 Fairfax County Police Department first came to your house?

13 A Yes, I do. It was the day after Thanksgiving.

14 Q They told you at that time that the license
15 number from your father's car had been obtained from someone
16 who had seen it in the area, isn't that correct?

17 A That and the chain on the back of the car.

18 Q And they also told you that -- Investigator
19 Stone also told you, did he not, that someone had been able
20 to identify you from that area?

21 A I am not sure if he said that or not. I can't
22 remember.

23 Q Why did you go out west after the Fairfax

1 County Police came to see you that day?

2 A. Because I was scared.

3 Q When you were out west and you spoke to your
4 sister, was your sister advising you to come back?

5 A. Yes.

6 Q When you came back did you immediately give
7 a statement to the Fairfax County Police Department?

8 A. The next day.

9 Q But prior to the time that you gave the Fairfax
10 County Police Department a statement didn't you tell
11 them that if you were to give a statement that you wanted
12 to be sure that you were not going to be going to jail?

13 A. Did I tell them that?

14 Q Yes, ma'am.

15 A. No, they told me that.

16 Q You didn't ask them for anything at all in
17 return for your giving the statement?

18 A. No. He was just telling me to have complete
19 confidence in him, and that's exactly what I did.
20 I had never been in big trouble before. You know, I was
21 just relying on him.

22 Q Your testimony is that you were promised
23 nothing at all and made no demands prior to the time that

1 you made the statement?

2 A No. He just told me that they promised me
3 that I wouldn't get any jail time. I was just happy
4 with that.

5 Q When did he tell you that, before or after
6 you made the statement?

7 A I believe it was before.

8 Q And you hadn't asked them for anything like
9 that?

10 A No.

11 Q Was this Investigator Stone?

12 A Yes.

13 Q Why did you go to the Commonwealth Attorney's
14 office?

15 A Because that's where they told me to meet
16 them.

17 Q Did you request to go to the Commonwealth
18 Attorney's office?

19 A No.

20 Q At that time there were four charges of
21 burglaries, or attempted burglaries, against you, were
22 there not?

23 A When I first went into the Commonwealth's

1 office? I don't understand what you are saying.

2 Q You were charged with four different
3 burglaries, or attempted burglaries?

4 A Right. Well, all they knew about was one
5 at the present time.

6 Q But you were charged with four, were you not,
7 Ms. Zerega?

8 A Yes.

9 Q Ms. Zerega, all four of those charges have
10 been dropped since that time, have they not?

11 A Yes, they have.

12 Q Have you ever gone to jail for your involvement
13 in any of those burglaries?

14 A No.

15 Q Did you, in fact, commit all of those
16 burglaries?

17 A Yes, I did.

18 Q Did the Fairfax County Police Department,
19 through Investigator Stone or any other investigator,
20 make any other promises about help that they might be
21 able to give you in return for your so-called cooperation?

22 A No.

23 Q Nothing at all?

1 A Just that I wouldn't get any jail time.
2 That's the only thing they promised me.

3 Q Here in Fairfax County?

4 A Here in Fairfax County.

5 Q Was there any mention of any other jurisdiction?

6 A No.

7 Q Ms. Zerega, at the time that you gave this
8 statement to the Fairfax County Police Department did
9 you know that those four crimes carried about 20 years
10 in prison on each of them?

11 A Yes, I did. I think I did. I knew they
12 carried a lot of time.

13 MR. KLEIN: If the court will indulge me.

14 (Brief pause.)

15 BY MR. KLEIN:

16 Q Ms. Zerega, this crowbar that you described
17 that Mr. Fore had, could you, please, describe the
18 crowbar a little more; how big was it, Ms. Zerega?

19 A About this long (indicating).

20 Q About a foot and a half?

21 A Yes, I guess.

22 Q How about the screwdriver that you said he
23 had?

1 the only other evidence to this.

2 Whereupon,

3 JAMES BRADLEY,

4 a witness, called for examination by counsel on behalf
5 of the Commonwealth, and, after having been duly sworn, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q Sir, you are Detective James Bradley of the
10 District of Columbia Police Department?

11 A That's correct, sir.

12 Q Directing your attention to the period around
13 November or December, 1977, were you so employed at that
14 time?

15 A Yes, sir, I was.

16 Q Did there come a time during that period when
17 you became aware of the existence of one Theodore Fore?

18 A Yes, sir.

19 Q Could you testify as to when you first met
20 face-to-face with Mr. Fore?

21 A December 7, 1977.

22 Q Could you tell the circumstances under which
23 that meeting took place?

1 A The meeting took place at the Third District
2 police headquarters. I was called from home by a uniformed
3 officer.

4 Q Who else was present at the meeting between
5 you and Mr. Fore?

6 A Sergeant Kenneth Brown, Officer Cagney, and
7 Officer Openheim, and Officer Jinks.

8 Q Do you have a recollection of what took place
9 at that meeting?

10 A Yes, sir.

11 Q Would you, please, tell the court about it?

12 A Mr. Fore and his wife were both at the Third
13 District. I was summoned by Officer Jinks because Mr.
14 Fore had told him that he could locate a gentleman who
15 was --

16 MR. KLEIN: Objection, if this is going to be
17 admitted for any truth of this particular hearing. If it's
18 just an explanation of what he later he did, I realize it
19 would be admissible.

20 THE COURT: You may answer.

21 THE WITNESS: Thank you, Your Honor. Mr. Fore
22 had allegedly told Officer Jinks that he could locate a
23 fence for firearms in the District of Columbia. He said

1 he could locate some coins, and some jewelry. But we
2 were concerned about the weapons. I responded from home.
3 I met Mr. Fore. I talked to him and then I talked to my
4 supervisor about working this particular case of locating
5 this fence.

6 He got an approval from the Assistant Chief
7 of Police to put a listening device on me. Mr. Fore and
8 I went to a location in the District to attempt to locate
9 some firearms.

10 Q What, if any, understanding was there between
11 the D. C. Police Department, or the U. S. Attorney's office,
12 and Mr. Fore that was given in return for his cooperating
13 with you in this endeavor?

14 A Officer Jinks had several charges that were
15 going to be placed against Mr. Fore and one of them was
16 receiving stolen property, another one was bringing
17 stolen property into the District, I believe another one
18 was unauthorized use of a motor vehicle.

19 Those charges were not going to be pressed.
20 There was one charge of misrepresentation of a driver's
21 permit. I think that's the only charges I can think of.

22 Q Was there any information expected from Mr.
2 Fore regarding the recovery of stolen property or burglaries

1 at that time?

2 A. At the time, no, sir.

3 Q Was there any other promises for immunity
4 regarding charges other than the ones you have just
5 itemized in return for his cooperation?

6 A. No, sir.

7 Q Did you try to investigate the matter of the
8 stolen guns or stolen coins?

9 A. Yes, sir.

10 Q By use of the listening device?

11 A. Yes, sir.

12 Q Was the eventful?

13 A. No, sir.

14 Q When did that take place?

15 A. In the early morning hours of December 8th or
16 the late hours of December 7th.

17 Q Did you have another meeting with Mr. Fore
18 after your unsuccessful attempts?

19 A. Yes, sir.

20 Q When was that and where?

21 A. The early morning hours of December 8th at my
22 office, 300 Indiana Avenue.

23 Q Do you recall who else was present besides

1 Mr. Fore?

2 A. Christine Fore and members of my office,
3 supervisors.

4 Q. What was the purpose of that meeting?

5 A. It was -- we went back to my office after we
6 were unsuccessful in gaining entrance to the premises to
7 where the guns were allegedly at, or would have allegedly
8 have been. I then secured a search warrant for the
9 premises.

10 Q. Was there any other mention of the agreement
11 that had been reached the previous day at the meeting in
12 your office on the 8th?

13 A. Well, this all transpired the late hours
14 of the 7th or the early morning hours of the 8th. No,
15 nothing else was discussed about that.

16 Q. Was there any additional cooperation expected
17 from either Mr. Fore or Christine, other than what was
18 agreed to on the 7th?

19 A. At that time, no, sir.

20 Q. Was the search warrant obtained and executed?

21 A. Yes, sir.

22 Q. Was Mr. Fore present during the time that
23 search warrant was executed?

1 A. No, sir.

2 Q Had you had any communication with Mrs.
3 Christine Fore independent of your association with Teddy
4 Fore up to that point where the search warrant was
5 executed?

6 A. No, sir.

7 Q After the search warrant was executed when
8 was the next time, if there was one, that you met with
9 Mr. Fore?

10 A I met with Mr. Fore on Friday, I believe it
11 was Friday, December 9, at D. C. Jail.

12 Q Do you recall what time of the day that was?

13 A I believe it was in the afternoon, late
14 afternoon.

15 Q Let me stop you right there. Did there come
16 a time that there was a meeting between U. S. Attorney
17 Brewer, yourself, Mr. Fore, and others?

18 A Yes, sir.

19 Q When did that take place?

20 A Late December, about two weeks after I initially
21 met Mr. Fore.

22 Q Let's go back to your meeting at D. C. Jail on
23 the 9th. What was the purpose of that meeting?

1 A. Christine Fore had called me on several
2 occasions and I had explained to her that since Mr. Fore
3 had given information relative to weapons and we tried to
4 check out the information, we tried to go along with him
5 on the information, and nothing panned out, that more
6 or less I didn't believe that what he was saying was
7 true and factual.

8 She stated that in good faith she could show
9 us how to recover a large quantity of stolen property.

10 Q When did this conversation take place, sir?

11 A. On the 9th.

12 Q On the 9th?

13 A. Yes.

14 Q Before, after, or during your visit to D. C.
15 Jail?

16 A. All three.

17 Q Have you spoken with Mrs. Fore either in person
18 or by telephon prior to the 9th?

19 A. Yes, sir.

20 Q When was the last time prior to the 9th?

21 A. On the 8th and the 9th. She wanted to go to
22 D. C. Jail with us to talk to Teddy, Mr. Fore.

23 Q The background of that conversation between you

1 and Christine -- what happened at the meeting at the jail
2 on the 9th?

3 A. We talked about, or she talked about, recovering
4 the quantity of stolen property. I said, well, if you want
5 to do that -- what you have told us before hasn't panned
6 out. Then there came a time she had a private conversation
7 between Mr. Fore and herself.

8 Q. You were not privileged to that?

9 A. No. They talked on the telephone back and
10 forth. After that meeting Christine said that she would
11 locate a quantity of stolen property for us.

12 Q. Did there come a time when that information
13 was forthcoming from Christine Fore?

14 A. Yes, sir.

15 Q. On what date was that?

16 A. I believe that was the 12th of December.

17 Q. At the time Mrs. Fore gave you that information
18 what, if any, understanding or agreement was there between
19 you, or the U. S. Attorney's office, and Teddy or Christine
20 Fore in reference to immunity from prosecution for whatever
21 crimes these items of property were the fruits of?

22 A. None.

23 Q. Had Mr. Brewer from the U. S. Attorney's office

1 become involved in any capacity as of yet?

2 A. Not with me, Mr. Fore, and Mrs. Fore.

3 Q When was the first time, to your knowledge,
4 that Mr. Brewer became involved in any capacity in the
5 investigation you were conducting involving Mr. and Mrs.
6 Fore?

7 A. That particular investigation he had nothing
8 to do with. It came at a later time when I met with Mr.
9 Brewer concerning Mr. Fore.

10 Q Did there come a time pursuant to that
11 negotiation that Mr. Fore had occasion to be in the U. S.
12 Attorney's office in the presence of Mr. Brewer?

13 A. Yes.

14 Q Was there a time prior to that time, to your
15 knowledge, that you were present with Mr. Brewer and Mr.
16 Fore in the U. S. Attorney's office?

17 A. There was not.

18 Q What's the minimum amount of time that had
19 elapsed from the time you had the meeting in the jail with
20 Mr. Fore on the 9th and the time this meeting had taken
21 place?

22 A. A couple of weeks.

23 MR. GRAHAM: I don't have any other questions.

CROSS EXAMINATION

BY MR. KLEIN:

Q Detective Bradley, when you first discussed this situation with Theodore Fore and Christine Fore you stated that a certain agreement had been reached to the extent the charges were not going to be pressed against them for certain specific crimes that you thought they may have been involved in, who did you speak to who gave you the authority to make that promise to them?

A No one.

Q Do you normally have the authority to do that on your own?

A The charges weren't dropped. There were additional charges that could been placed by Officer Jinks. Officer Jinks agreed not to press those charges, or pursue those charges.

Q Don't you normally have to speak to the U. S. Attorney before you can make an agreement like that with a particular defendant?

A That depends.

Q What type of immunity was discussed with Mr. and Mrs. Fore at that time?

A There was no immunity discussed at all.

1 Q You just said that certain charges were going
2 to be dropped.

3 MR. GRAHAM: At which time, Your Honor.

4 MR. KLEIN: I am talking about the initial
5 time that they got together. I am sorry if that was
6 not clear. The initial time that they got together.

7 THE WITNESS: Right.

8 BY MR. KLEIN:

9 Q That these charges would never be brought
10 against them, was there any other immunity discussed?

11 A There was no immunity discussed at all.

12 Q Had you discussed with Mr. Fore whether or not
13 any statements that he might make during this trip to the
14 house where the guns might be found, or was there any dis-
15 cussion with him whether or not those statements could be
16 used against him?

17 A Other than being advised of his rights.

18 Q It's your testimony that Mr. Fore, without any
19 kind of an immunity agreement, gave you this information
20 after being informed of his rights?

21 A That is correct.

22 Q Now, you seem to be completely sure about this
23 first day that you got together with Mr. Fore. What's that

1 date again?

2 A. December 7th.

3 Q And you are also sure about the date that you
4 got together with Mr. Fore and Christine Fore for the
5 first time, when was that date?

6 A. December 7th.

7 Q When was the second time that you got together
8 with Christine and Theodore Fore?

9 A. This went from the 7th to the early morning
10 hours of the 8th that we were together originally.

11 Q What was the date that you called -- strike
12 that, please.

13 What was the date that Christine gave you the
14 information for the first time, sir?

15 A. Which information?

16 Q I am talking about the information -- when was
17 the first time that Christine gave you any information?

18 A. She talked to be briefly on the 7th and 8th.

19 Q In regard to what, sir?

20 A. In regard to attempting to get Theodore Fore
21 out of jail.

22 Q Was she advised of her rights at that time?

23 A. No, sir.

1 A. What, if anything, did Christine tell you in
2 regard to possibly inculpatory statements concerning either
3 her or her husband at that time?

4 A. Nothing.

5 Q. When was the next time that Christine spoke to
6 you?

7 A. The next day, the 9th.

8 Q. Did she give you any information at that point
9 which may have been inculpatory in regard to either her
10 or her husband?

11 A. She didn't give me any specific information.
12 She told me she was going to locate a quantity of stolen
13 property at particular pawn shops for me.

14 Q. Did she tell you whether or not that was in
15 regard to an investigation going on in the District of
16 Columbia or another jurisdiction?

17 A. No, sir, she did not.

18 Q. Did there come a time that she told you about
19 what jurisdiction those items in the pawn shop were supposed
20 to be recovered for?

21 A. She stated -- in the pawn shop?

22 Q. Yes, sir.

23 A. I don't know what particular jurisdiction she

1 said. She stated they came from other jurisdictions.

2 Q I believe you previously testified that on
3 December 12th you had a conversation with Christine Fore?

4 A That's correct.

5 Q What time on the 12th did you have the con-
6 versation with Christine Fore?

7 A In the morning.

8 Q Do you remember what time in the morning?

9 A She was with me most of the morning and the
10 afternoon.

11 Q 9:00 or 10:00 in the morning, or could it have
12 been earlier?

13 A It was after 8:00 o'clock.

14 Q What, if anything, did you do in response to
15 what Christine Fore told you?

16 A I went with her to several pawn shops.

17 Q Had Christine Fore at that time given you any
18 information as to where these goods allegedly had been
19 stolen from?

20 A She stated they were from burglaries.

21 Q Did she tell you from which jurisdictions?

22 A Maryland and Virginia.

23 Q In regard to the items that were in the pawn

1 shop?

2 A. That's correct.

3 Q When, if ever, did you call Detective Krevlin?

4 A. Monday morning, 8:00 o'clock, December 12th.

5 Q Was this before or after you discussed it with
6 Christine?

7 A. As I said before, I talked to Christine the
8 7th, 8th, and 9th. It was after the conversation I had on
9 the 9th and before the conversation I had on the 12th.

10 Q I thought you testified that Christine didn't
11 give you any possible inculpatory information until the
12 12th?

13 A. You asked me what information concerning
14 burglaries.

15 She said -- the information I passed on to
16 Krevlin, items about her, she stated that the items in the
17 car came from a burglary in Virginia.

18 Q When did she tell you that?

19 A. The 9th, after the trip to D. C. Jail.

20 Q Did she give you any other information on
21 December 9th?

22 A. Just that she was going to locate some
23 television sets for us, and some weapons.

1 Q Why did you wait until the 12th to call
2 Detective Krevlin?

3 A We didn't do anything until the 12th.

4 Q Why, sir?

5 A We didn't have anybody to do it with.

6 Q What changed on the 12th?

7 A It was a Monday morning. I got in touch
8 with Prince Georges County and went to the pawn shops.

9 Q What time did she make the statement to you
10 on December 9th?

11 A Late in the afternoon.

12 Q When was the first time that you had spoken
13 to Mr. Brewer, sir, the United States Attorney?

14 A Concerning this case?

15 Q Yes, sir. Any information concerning Christine
16 or Theodore Fore around that time period.

17 Q A couple of weeks after I first met Theodore
18 Fore.

19 Q You don't remember the exact date of that but
20 you remember the dates that you spoke to Mr. and Mrs.
21 Fore?

22 A Yes, sir. I was summoned to the U. S. Attorney's
23 office to talk to Mr. Fore.

1 Q When was the first time that you spoke to Mr.
2 Fore's lawyer, if ever?

3 A I talked to him several times on the telephone.
4 I never talked to him in person until the trial date in
5 the District.

6 Q When was the first time that you ever spoke
7 to Mr. Drew?

8 A I believe on Monday.

9 Q Which was the --

10 A 12th.

11 Q Did Mr. Drew tell you at that time whether or
12 not he had been in touch with United States Attorney's
13 office yet?

14 A He stated that he had an ongoing negotiation
15 with Mr. Brewer concerning a separate case.

16 Q A separate case?

17 A Yes, sir.

18 Q Did he tell you what case he was referring to?

19 A I know which one now.

20 Q Do you know Detective Boyd of the Prince Georges
21 County Police Department?

22 A Yes, sir.

23 Q Did you at any time see Mr. Fore with him, or

1 while Mr. Fore was in the D. C. Jail?

2 A Yes, sir.

3 Q On what date was that, sir.

4 MR. GRAHAM: Your Honor, I am not sure that this
5 is within the scope or is it relevant to the hearing that
6 is taking place.

7 THE COURT: I overrule the objection. Go ahead.

8 THE WITNESS: I believe it was on the 9th.
9 I am not sure, but I believe it was on the 9th.

10 BY MR. KLEIN:

11 Q Prior to the time the statement was made by
12 Mrs. Fore to you?

13 A It was the same day.

14 Q Was the meeting prior to the time that Mrs.
15 Fore made the statement?

16 A Which meeting?

17 Q Excuse me.

18 A Which meeting?

19 Q The meeting you had with Mr. Fore and Detective
20 Boyd, was that meeting before or after the time that
21 Christine Fore made the statement to you that there was
22 supposedly stolen items in the car at Sheehy Ford?

23 A Prior.

1 Q If Mrs. Fore had not said anything to you,
2 or if Mr. Fore had not said anything to you about Prince
3 Georges County before, what was the Prince Georges County
4 investigator doing there?

5 A He was detailed to our office.

6 Q For what purpose, sir?

7 A Nothing to do with this case.

8 Q Then why was he brought down to the jail to
9 see Mr. Fore?

10 A He asked to talk to Mr. Fore.

11 Q Did he tell you why?

12 A No.

13 Q Weren't you curious about why he was coming?

14 A Well, I assumed why he was coming.

15 Q What was the assumption?

16 A In reference to burglaries in Prince Georges
17 County.

18 Q But you never asked him?

19 A No, sir.

20 Q No promises at all were made to Mr. Fore at
21 that time in regard to him supplying any information
22 regarding Prince Georges County burglaries?

23 A No, sir.

1 Q Christine Fore subsequently on the 9th,
2 with no other promises, just volunteered this information to
3 you?

4 A Yes, sir.

5 Q Detective Bradley, did you ever have a con-
6 versation with Allen Drew whereby you set out the agreement
7 that you had had with Mr. Fore?

8 MR. GRAHAM: Again, Your Honor, the time we
9 are talking about.

10 MR. KLEIN: I am talking about the 8th or
11 9th of December.

12 THE WITNESS: No, sir.

13 MR. KLEIN: That's all the questions I have
14 of this witness.

15 REDIRECT EXAMINATION

16 BY MR. GRAHAM:

17 Q Detective Bradley, at the time you were
18 negotiating with Mr. Fore in reference to certain fencing
19 organizations, pawn shops, and an attorney in Maryland
20 being involved in criminal activity was it ever indicated
21 to you whether or not Mr. Fore was criminally involved in
22 any of these things about which he was to render assistance
23 to your office?

1 A Did I know he was involved?

2 Q Did he ever indicate to you that he himself
3 was criminally involved in any of these alleged criminal
4 activities which he was going to disclose to you the
5 nature of?

6 A Yes, sir.

7 Q Just for the record, could you testify as to
8 what exactly Christine Fore imparted to you in the way of
9 information on the afternoon of the 9th of December?

10 A Yes, sir.

11 Q In so far as the location of the alleged
12 stolen property in PG County.

13 A Yes, sir. She stated that a car -- she referred
14 to her husband as Teddy. Teddy had a car at Sheehy Ford
15 being repaired. The car was in the name of Virginia
16 Donnelly. And there were proceeds of burglaries in
17 Virginia, including clothing and a lot of personal papers,
18 in the vehicle.

19 Q Was the name ever mentioned as an alternative
20 to Theodore Fore in that conversation?

21 A Yes, sir.

22 Q What was that name?

23 A Bobby Jack Wheeler.

1 MR. GRAHAM: No further questions, Your Honor.

2 THE COURT: Is there anything else of this
3 witness?

4 MR. KLEIN: No, sir.

5 THE COURT: Thank you. You may step down.

6 (Witness excused.)

7 MR. KLEIN: Your Honor, I would ask to recall
8 Theodore Fore.

9 THE COURT: All right.
10 Whereupon,

11 THEODORE G. FORE,
12 the defendant, was recalled for further examination by
13 counsel in his own behalf, and, after having been sworn,
14 was examined and testified as follows:

15 FURTHER DIRECT EXAMINATION

16 BY MR. KLEIN:

17 Q Mr. Fore, directing your attention to the 8th
18 day of December, 1977, did you meet Detective Bradley that
19 day?

20 A Yes.

21 Q During the course of the meeting with Detective
22 Bradley do you know if anyone else was contacted?

23 A My attorney.