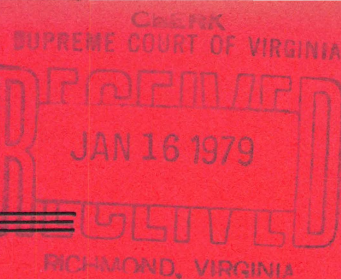


220 VA 26



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 781161

KENNETH W. WILSON

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

JOINT APPENDIX
VOLUME II

Burton L. Albert
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Of Counsel for the Appellant

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TRANSCRIPT OF TRIAL

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

COMMONWEALTH OF VIRGINIA

vs.

KENNETH W. WILSON

TRANSCRIPT of proceedings had and evidence introduced
before the Honorable F. L. Hoback, Judge of the Circuit
Court for the County of Roanoke, Virginia, on the 15th day of
May, 1978, at the trial of said case.

PRESENT: John N. Lampros, Attorney for the
Commonwealth

L. Richard Padgett, Jr., Attorney
for the Defendant

Kenneth W. Wilson, the Defendant in
Person

I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Re-redirect</u>
<u>WITNESSES CALLED ON BEHALF OF COMMONWEALTH:</u>					
Donald H. Boyd	9	20	25	26	
Charles M. Davis, Jr.	28	35	39	40	
Edward C. Manuel	43	58			
Leonard J. Wade	70	73	77	78	79
J. A. Camden	81	85			
Charles B. Asey	91	97	105		
<u>WITNESSES CALLED ON BEHALF OF DEFENDANT:</u>					
Winford W. Wilson	111	117	125		
Lois Wilson	126	133			
Rufus Kyle Cox, Jr.	148				
Hazel G. Talley	152	153			
Ina Newman	156	158			
<u>Arraignment:</u> Page 3					
<u>Voir Dire:</u> Page 3					
<u>Motions:</u> 41, 106					
<u>Instructions:</u> 161					
<u>Exceptions:</u> 159					
<u>Verdict:</u> 164					
<u>Sentencing:</u> 165					

BY THE COURT: Commonwealth of Virginia against Kenneth W.

Wilson. Is the Commonwealth ready to proceed?

BY MR. LAMPROS: Yes, Your Honor.

BY THE COURT: Is the Defendant ready?

BY MR. PADGETT: The Defendant is ready, Your Honor.

BY THE COURT: Arraign the Defendant on the indictment,
please.

THE DEFENDANT IS DULY ARRAIGNED ON THE INDICTMENT

BY THE CLERK

BY THE CLERK: What do you say, guilty or not guilty?

BY THE DEFENDANT: Not guilty.

BY THE COURT: Call the Jury, please.

PANEL OF TWENTY JURORS DULY CALLED BY THE CLERK

PANEL OF JURORS DULY SWORN BY THE CLERK

BY THE COURT: Members of the Jury, this is a felony case brought by the Commonwealth of Virginia against Kenneth W. Wilson, the gentleman seated at the far side of the table on this side of the Courtroom. The Commonwealth is represented by the Commonwealth's Attorney, Mr. John Lampros. The Defendant is represented by Mr. Richard Padgett. The indictment charges the Defendant on January 29, 1978, stealing property of a value of \$100 or more belonging to Litton Office Produce--Products Centers, Division of Litton Business Equipment Group, Division of Litton Industries. Please give me your attention,

these questions go to your qualifications as jurors. Each of you are eighteen years of age and have resided in the Commonwealth of Virginia at least one year and in the County of Roanoke for at least six months just prior to your call to jury service? Everybody is qualified?

JURORS INDICATE: Yes.

BY THE COURT: Is there any matter in which any of you are personally interested in to be tried at this term of Court by a jury?

JURORS INDICATE: No.

BY THE COURT: Any of you have any pending cases?

JURORS INDICATE: No.

BY THE COURT: Have you served as a juror within the past jury year other than at the present term of Court?

JURORS INDICATE: No.

BY THE COURT: Are you related by blood or marriage to the accused, Kenneth W. Wilson, or connected with him in any business way?

JURORS INDICATE: No.

BY THE COURT: Are any of you employees of or stock-holders in or have any business connection with Litton Office Products Centers, Division of Litton Business Equipment Group, Division of Litton Industries?

JURORS INDICATE: No.

BY ONE JUROR: I purchased some lighting from them, you mean that type of relationship?

BY THE COURT: No, sir. Just if you have any ownership interest in it. You have dealt with the company, is that right?

BY ONE JUROR: That's right.

BY THE COURT: And what is your name?

BY JUROR HANCOCK: Hancock.

BY THE COURT: Hancock. Are any of you interested in the outcome of this case?

JURORS INDICATE: No.

BY THE COURT: Have you formed or expressed an opinion in regard to the case?

JURORS INDICATE: No.

BY THE COURT: Have you heard the case discussed to the extent that you have formed an opinion in regard to it or will be influenced by the discussion you have heard?

JURORS INDICATE: No.

BY THE COURT: Are you sensible of any bias or prejudice towards the accused, Kenneth W. Wilson?

JURORS INDICATE: No.

BY THE COURT: Is there any reason known to any of you why you cannot listen carefully to the evidence, follow the instructions of the Court and render a fair and impartial verdict in this case, having in mind at all times that the Defendant is presumed to be innocent of the offense with which he is charged until his guilt is proven by the Commonwealth

beyond a reasonable doubt?

JURORS INDICATE: No.

BY ONE JUROR: Your Honor, I know Mr. Wilson from going to high school with him, if that matters.

BY THE COURT: Well, would that in any wise affect your fair and unbiased judgment and opinion.

BY ONE JUROR: Uh--I hope not.

BY THE COURT: Well, we don't go on hopes. What's that?

BY ONE JUROR: Well, I don't know him that well or anything, I have just known him before.

BY THE COURT: Well--

BY ONE JUROR: I don't know if that matters or not, I just wanted to bring it--

BY THE COURT: Well, unless you think that would have some bearing on your decision, it would not matter. Do you think so?

BY ONE JUROR: Probably not.

BY THE COURT: And what is your name?

BY JUROR KENNEDY: Kennedy.

BY THE COURT: Kennedy. Alright. Yes, sir?

BY ONE JUROR: I am acquainted with the Litton manager and the gentleman sitting next to him.

BY THE COURT: Well, would that affect your--

BY ONE JURORS: No, sir.

BY THE COURT: --judgment or opinion and your name is what?

BY JUROR: Larry Scott.

BY THE COURT: Larry Scott. Any questions, Mr. Lampros?

BY MR. LAMPROS: The panel is satisfactory to the Commonwealth,
Your Honor.

BY THE COURT: Mr. Padgett?

BY MR. PADGETT: We have no questions, Your Honor.

BY THE COURT: Now, I'd like to explain to all of you that
in a felony case, we have to put twenty of you in
the panel, that explains maybe to some of you why
we have to keep calling extra jurors when the
panel gets below that number. Under the law we
put twenty in the panel and under the law each
side has to mark four off each to leave a jury of
twelve to try this case. If you are one of the
eight marked off, it is a legal requirement,
nothing against any of you personally. Proceed
with the strikes. You gentleman and ladies, have
a seat.

THE JURY TO TRY THE CASE IS DULY SELECTED FROM THE
PANEL

THE JURY TO TRY THE CASE IS DULY SWORN BY THE
CLERK

ALL WITNESSES ARE DULY SWORN BY THE CLERK

ALL JURORS NOT SERVING ON THIS JURY ARE EXCUSED

BY THE COURT: Now members of the Jury, the procedure that
we will follow in this case. You will first hear
the opening statements of the attorneys--the
opening statements are simply to tell you what
type of case you are trying and what each side

plans to prove. The statements of the attorneys are not evidence and you will decide this case from the evidence of witnesses you hear from the witness stand. After the opening statements, the Commonwealth will then put on the evidence in support of the indictment, cross examination by the attorney for the Defendant. After which the Defendant will put on his evidence, cross examination by the Commonwealth. And after all of the evidence is in, the Court will give you written instructions about the law that is involved in this case to aid you in your decision. After that you will hear the closing statements of the attorneys and then go to the Jury Room and agree on your verdict keeping in mind at all times in a criminal case, the Defendant is presumed to be innocent at every stage of the trial until his guilt is proved by the Commonwealth beyond a reasonable doubt. The Jury is now ready for opening statements.

BY MR. PADGETT: Your Honor, may I interrupt just a second?

BY THE COURT: Yes.

BY MR. PADGETT: I'd like to make a motion to have the witnesses separated at the proper time.

BY THE COURT: All witnesses will have to leave the Courtroom and be placed in the witness room and we will call you to testify as rapidly as we can.

ALL WITNESSES LEAVE COURTROOM WITH BALLIFF

BY MR. LAMPROS: Opening statement.

BY MR. PADGETT: Opening statement.

BY MR. LAMPROS: Mr. Boyd. Have a seat in the witness chair, please.

DONALD H. BOYD, A WITNESS OF LAWFUL AGE, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION
BY MR. LAMPROS:

Q. If you'll look towards the Court and speak loudly, state your full name.

A. My name is Donald H. Boyd.

Q. Mr. Boyd, what position do you hold with the Evertt Waddey--the Litton Company in Roanoke Valley?

A. I'm the plants manager and locale manager for Litton Office Products centered and located in Roanoke, Virginia.

Q. Alright, is the correct name of that-- technically correct name of your company--Litton Office Products Centers, Division of Business Equipment Group, Division of Litton Industries?

A. Yes, and we some times trade as Everett Waddey, it's in the process of being phased out.

Q. Where is the physical location of your operation and do you have more than one physical location?

A. I have more than one physical location, the main location being 3215 Brandon Avenue, southwest; the warehouses are located at 2203 Patterson Avenue and 2203A

Patterson Avenue.

Q. And that--well, both of the physical locations are within the City of Roanoke, is that right?

A. That's correct.

Q. Are you all a dealer for Steelcase products?

A. Yes, we are, we are the exclusive dealer, have the exclusive dealership in Roanoke, Virginia.

Q. I'm going to direct your attention to January 29, 1978, I believe it was Sunday, is that right?

A. Yes, that's correct.

Q. Did you have occasion to talk with Detective Manuel and, I believe, a Mr. Davis at your home about Six, Six Thirty, that evening?

A. Yes, sir, they came to my house about Six or Six Thirty.

Q. Were you having dinner?

A. Yes.

Q. And after they came to you house, did you have occasion to go to another location on Brambleton Avenue in Roanoke County?

A. Yes, sir.

Q. I believe the Bramble Inn and the basement in particular of that inn?

A. Yes, sir.

Q. When you arrived at that location, did you find any items of a Steelcase nature?

A. We found two cartons there that had markings that

indicated that they belonged to us--

Q. By "us" you mean Everett Waddey?

A. Not Everett Waddey Company, Litton Office Products. In that they had markings that we had applied to the cartons to denote what was in the merchandise carton because some of the labels do sometimes get torn off and so we pre-mark everything that comes in to the warehouse with handwritten numbers and so forth. And they were there in that basement.

Q. I want to show you certain photographs and ask if these photographs accurately show what you observed in that basement on the 29th of January at about 6:30 p.m.?

MR. LAMPROS SHOWS PHOTOGRAPHS TO MR. PADGETT

Q. (Mr. Lampros continuing) I'll ask that you look at these five photographs and I'm going to ask that the Court at a later time to appropriately mark them. I want to show you five of the six at this time and ask first off do these photographs contain boxes therein?

A. Excuse me, I didn't under--

Q. Well, do they accurately show what you observed that day?

A. Yes, yes they do.

Q. What do they show?

A. They tell me by looking at the cartons and I see them every day that this carton is manufactured by Steelcase which is the largest manufacturer of office furniture in the world and which we represent. Also it shows me that,

for instance, in this picture here, number one, they have some markings that were applied by my warehouse people that tells me exactly the model and I can describe the model or what type of desk it is, the color and the woodgrain finish on the top it, and it is a chrome-legged desk.

Q. You can tell that from these numbers just on the carton?

A. Yes, this carton says 330600B0 which says it's a 3300 line Steelcase desk, it's 60 by 30 and has a B pedestal on the lefthand side, it has no pedestal on the righthand side, has a black finish and has a 2762 gunstock walnut top. That's what those numbers mean and I can do that all day long, every day, that's my living. BY MR. LAMPROS. Alright. If Your Honor please, we would submit this photograph as Commonwealth's exhibit one.

BY THE COURT: Number one.

Q. (Mr. Lampros continuing) You say one side, you said one pedestal?

A. Yes.

Q. What do you mean by that?

A. That desk there is made to use in two parts. That's only a half of a desk as we normally would recognize it. It is a desk that has a secretarial return, it's for typing much like any of the office secretaries have a desk and it has a wing. This case it would come off the righthand side and that attachment is not with that desk.

Q. Just half a desk?

A. Well, it's half a desk in the way that is was originally intended to be used. It could be used but as a top surface with a pedestal but it was not intended for that purpose, it is intended to be a secretarial desk.

Q. Did you look in this carton?

A. Did I look in--I looked in one of those cartons, I'm not sure exactly which one of those cartons I looked in.

Q. What was the retail value of this desk?

A. At that time the retail value, I think, was approximately \$360 by itself, that piece and the--

Q. What was the wholesale--

A. --wholesale value less 50 percent which was \$180.

BY MR. LAMPROS: We submit this as Commonwealth's exhibit one, Your Honor.

BY THE COURT: Number one.

Q. Now the photograph which is next in sequence, what does that show?

A. The same thing. All of them show basically the same thing, with the pictures--I was there when they took the pictures that evening--show what they were trying--he was just establishing the fact that they were Steelcase cartons and these labels, one of them had been tried to be mutilated.

Q. You're pointing to this photograph right here which I'm going to submit as Commonwealth's exhibit two?

A. Yes.

Q. You say the photograph--the label has been mutilated?

A. Right there, yes, sir. That is a label and you can still make out the 2203 and a P on it--uh--I think is correct, I don't remember exactly, but you could make it out and we looked at it real closely. On one of them, the other one had been completely removed.

BY MR. LAMPROS: If Your Honor please, we would submit this photograph as Commonwealth's exhibit two.

BY THE COURT: Number two.

Q. (Mr. Lampros continuing) What was the wholesale value of the second desk and what type of desk was that?

A. The second desk, this picture doesn't show the model numbers on it but it has a marking on the carton identical to this except it says 330600AB which means it's a double ped desk with an A pedestal on the righthand side and a B pedestal on the lefthand side which says that it has three box drawers on one side and a boxing file on the other side. It was a 4030 color which says it is putty colored or off-white and it had 2633 which says it's teak. And these numbers are strange but we do--at least, this is how we order the stuff so this is why I'm familiar with it.

Q. What was the value of that desk?

A. I think at that time it was approximately \$225 to \$250 retail, I think it had a wholesale value of approximately \$212, \$215, I don't recall exactly.

Q. Wholesale \$212 or \$215, what would be the retail?

A. Twice that figure.

Q. You mean four and a quarter, you said--

A. Excuse me, four and a quarter, I'm sorry, excuse me.

Q. I'm going to show you another photograph which is a close-up, obviously, of a carton, is this the area that you said is a _____?

A. Yes, that's correct and we distinguish when we push these little pieces of paper up, you could see a 2 2 and then this little thing, you can see a E R was there and S O N Avenue. And as you can see, there is part of an O 3 right there, so it says--now this is by deduction only--2203 Patterson Avenue. And it has Roanoke, Virginia, and there's Steelcase and that being my warehouse.

Q. Does this accurately show what you personally observed that day?

A. Yes. Those desks are still in my possession at my warehouse in my showroom.

Q. Right next to your front door, is that right?

A. Right next to the front door where my customers--

BY MR. LAMPROS: If Your Honor please, we would submit this photograph as Commonwealth's exhibit three.

BY THE COURT: Number three.

Q. (Mr. Lampros continuing) As best you can recall, Mr. Boyd, were the desks in the position as shown on

these three photographs?

A. Yes, well, yes and no. When we got there that night, the two desks were actually pushed square and to get around to get to the labels to take a picture, we slid'em just, they were perpendicular to each other. Yes, they were.

BY MR. LAMPROS: If Your Honor please, we would submit the other three photographs as four, five and six.

Q. (Mr. Lampros continuing) I want to show you another photograph now, which looks like a little tag, could you tell me something about that photograph, can you give us anymore?

A. I've never seen the photograph before but that tag--because I know what the tag is--it's a Steelcase tag, it was taken in the middle of a desk--uh--there is scheduling procedure that a manu--a major manufacturer or this particular manufacturer does in relationship to an invoice. They put inside of the desk, not a serial number but a number like a batch or a group of desks that come off at a certain particular time and a schedule it as a manufacturer batch. That's what that label tells me.

Q. And you receive a "batch" number with your desks, is that correct?

A. Each desk has this label attached somewhere on it. And on our invoices there is a batch number.

Q. In checking back, did you determine that you had invoices with the batch number on the desks that were

found on Brambleton Avenue?

A. That is correct. Now again, I cannot tell you that exact desk--because it is not serialized--was from that particular invoice but I can tell you it was from that batch because there is--it could be manufactured a hundred of those desks out of that batch, I really don't know. But they're generally shipped to various locations.

Q. Desks do not bear serial numbers?

A. No, they do not.

Q. Can you explain to the Jury and the Court your procedure in selling a desk; for example, in selling these two desks?

A. If you come in to my place of business, our normal procedure would be for you to purchase the furniture and then we order the furniture. At that point in time it is then delivered, set up, cleaned up, installed, any repairs--there are damages, we do have damages and they have to be repaired or replaced, and that is a normal procedure. These particular desks with these markings on'em tell me that that is a stock piece of merchandise that I am going to resell that does not belong to anyone at that point in time. For instance, if you are a customer and I order a particular piece of furniture for you--

Q. It belongs to you though.

A. It belongs to me until I deliver it and sell it but I order it for the customer--

Q. Then I'm talking about stock items.

A. Yeah, the stock items belong to me, yes.

Q. Everett Waddey?

A. It is marked for resale out of our stock like a grocery store would buy oranges for stock and resell'em and we keep a few pieces of this around but a majority of our business is pre-sold. When the merchandise comes in-- may I look at this?

Q. Here.

A. When it comes in--this is not one of them-- but anyway when it comes in, we receive it in and if someone here were to buy a desk and Mr. XYZ when it comes in to the warehouse, you can go there and you look and you'll see Mr. XYZ on it. And it'll be marked for him so that will be delivered to him. Anything that is for stock merchandise we put the number, the color and the top which is the classic line that wood grain finishes on the outside so if a salesman takes a customer there he can see exactly what we have in stock that the customer may purchase at that time. We don't keep a (sic) accurate record for inventory purposes because I have five salesman and they sometimes do things for a customer in the evenings, nights, we have returns and it does not justify the ends to keep a running inventory record. So this is why this could possibly happen.

Q. Did you authorize anyone to remove these desks from your warehouse?

A. No, I did not.

Q. Did you--when I say "you" I'm talking about your

company--receive payment for these desks?

A. Not that I can relate to. We have researched our records as such as best we can and we can find no payment for receipt of these desks.

Q. Alright, and your custom and procedure is to deliver desks, strip them from their boxes, and deliver them in a usable condition at that time, is that right?

A. That's correct. The boxes will come in, they will have--they will be in there that the drawers will be tied down, there's a board across the bottom that has to be removed to keep them from, hopefully, from getting damaged very badly in shipping or making them warp and that board has to be removed; has to be untied--the drawers do and then they usually have some labels on top that we peel off and then clean them for the customer so that it'll be ready for his use. There are very, very, very few instances that we ever deliver a desk not boxed and set up; we do leave them occasionally if we don't finish a job that day and go back the next morning and then finish the job.

Q. And you are the lone agent for Steelcase manufacturing in this area?

A. Yes, we are.

Q. You have no record of the sale of these desks to any individual?

A. No, I do not.

Q. And their value does exceed \$100?

A. Yes, they do.

Q. Answer any questions counsel may have.

CROSS EXAMINATION
BY MR. PADGETT:

Q. Mr. Boyd, were these desks ever reported stolen?

A. No, they were not.

Q. When did you first learn that they possibly might be stolen?

A. When the detectives came to my house and told me they had received some information, they had two desks and they would like for me look at them, could I possibly identify the pieces of furniture; and at that time I did that.

Q. But in actuality there's no way to determine whether these desks had been stolen or sold, is that correct?

A. Uh--in actuality?

Q. Yes, sir.

A. I have no record and we normally have records because of price increases and price--if you buy a desk from me and it's shipped direct to you where you do all the work that I have set down, then I would know that and--uh--we have ways of telling whether you bought it and you're going to set it up completely yourself because there is a price break when you buy direct shipped merchandise.

Q. But the questions was, the desks could've been sold?

A. Apparently they were by someone, you know, not

across and through my books as I can relate.

Q. The desks have no serial numbers, is that correct?

A. No serial numbers, sir, they have--

Q. Just a production number?

A. --batch production number.

Q. Right.

A. A lot number, that says on schedule 13 that they were--this particular desk was manufactured in May of 1976, I believe is correct.

Q. Alright. What were talking about then is that there could be a number of similar desks--

A. Yes, sir.

Q. Of this same kind that--

A. Yes, sir.

Q. --you testified to that these cartons contained, is that correct?

A. That is correct. I stated that, there could be possibly as many as, well, we never get a hundred at one time that's cartonized, so there could be as many as say fifteen or twenty when I stock merchandise at one time.

Q. How many times does Everett Waddey take inventory a year?

A. Once a year.

Q. Once a year?

A. Once a year as a formal inventory entity. We take inventory on a non-standard basis, which means my

warehouse supervisor goes over and he counts stock desks about every four to five weeks and tells the salesmen and we make a cardboard sheet and list of what you have to sell out of inventory or if a customer wants a black desk or a white desk that we normally stock. And we stock the matching file cabinets that go along with those desks and tables and chairs to do a quick office.

Q. When you take this inventory, this is not a physical inventory as such, is it?

A. Yes, it is.

Q. Alright, so you're telling me that when you take this inventory you can identify as to which desks are missing then?

A. No, I can not.

Q. You can not.

A. I can count because if I had 25 of these desks in stock, I could not tell you that one of those desks were missing.

Q. Right. So what you're saying is you can only acco--you can only say that there's been a shortage, let's say, of money?

A. That's correct.

Q. That's correct. So that actually that money could've possibly been embezzled, is that possible?

A. That's true. I would say so, I'm not an accountant, I can't tell you but, you know, the shortage would come up in a monetary manner.

Q. I think you said, you testified that the normal procedure was to--uh-what did you say the normal procedure was to--

A. A normal procedure--

Q. --for delivering these desks?

A. If your firm called me and said Mr. Boyd I'd like to buy a desk, we would then call the warehouse and say--our warehouse man happens to be Tony--and say Tony do we have a putty antique top desk, and he'll go back and look at this carton, it says--these numbers right up in here. He'll call me back and say yes I do and I'll say well get it ready, we're going to deliver it to XYZ's office. They will then put it on the truck, they'll take it to the job site, they'll take the cartons, take it out of the carton, take it in the locale, take it--untie the drawers, take the wood blocks off the bottom and make sure that the drawers work. Most of the time clean it up, now these are delivery people, you know, _____ along those areas, but that's what our general procedures are.

Q. But there are times that the desks are delivered in cartons, isn't that correct?

A. They are delivered all the--most of the time in cartons but they are always uncartered. Now again--

Q. Once they reach their destination, is that what you're saying?

A. That's correct. There again, if we have a large job like--and I'll give you a for instance, we do an

awful lot of work for GE and Salem High School. When we did that there were 50 or 60 desks, and we can't complete it in one day; then we will leave'em until the next day and then go back and do this. But your customers pay for this service and that's what our service is.

Q. Let me ask you this, Mr. Boyd, are these desks sold or distributed by any other companies?

A. No, sir.

Q. Okay, so in other words, you will not sell these desks to another, let's say, distributor and they would then in turn sell them to someone else?

A. I have on occasion sold to Harris Office Supply because in the past years he has been a source but I have no recollection of selling Harris Office Supply a line of this desks; and I can tell you that very shortly by making a phone call and to check my records of this particular desk. Mr. Harris, who incidentally no longer owns that business, his predecessor (sic) no longer sells that type of desk. This is a rectilinear, contemporary type of desk and the desk that they normally buy for their past customers--when years ago they in fact were a Steelcase representative--were of the conventional nature which has the rounded corner, rounded edges and no chrome. And they still do on occasion buy a file cabinet and that type of piece of merchandise which is in the 20 to 30 year old look category. And our convenience and business courtesy, we do do this.

Q. I have no further questions.

REDIRECT EXAMINATION
BY MR. LAMPROS:

Q. But you didn't sell to Harris this particular type of desk?

A. No, sir. I can verify that, I have no recollection of selling Mr. Harris any desks of that nature.

MR. LAMPROS AND MR. PADGETT HAVE WHISPERED CONFERENCE
CONCERNING PHOTOGRAPH

Q. I'm going to show you a photograph which I will not show the Jury at this time, I only ask that you look at it particularly because you've never been in this place?

A. No, I have not.

Q. What is this box that you see on the right side of that photograph?

A. That box is a Steelcase box and the chair is a Steelcase chair. I've never seen this picture before but that's a 43311 Steelcase chair that only has been produced in the last eighteen months and it's a new model chair and there's only two places in Roanoke that use them basically in this point of time when this happened, that's General Electric--or three places--First National and N&W.

Q. Is that a Steelcase desk box?

A. Yes, it is and it is a Steelcase chair.

BY MR. LAMPROS: Now if Your Honor please, we will submit this at a later time.

BY THE COURT: Alright.

BY MR. LAMPROS: Thank you, sir.

RECROSS EXAMINATION

BY MR. PADGETT:

Q. Mr. Boyd, are there any identifying marks on that carton?

A. Yes.

Q. What are they.

A. Steelcase, the word S and the first letter.

Q. But there are no model numbers or anything like that?

A. No, no. I can't see from this photograph.

Q. No numbers whatsoever, is that correct?

A. That's correct.

Q. That's just a carton?

A. That's correct.

Q. With an Everett Waddey symbol?

A. It's not been opened.

Q. How can you tell that's a steel desk?

A. Steelcase only makes steel furniture.

Q. Excuse me?

A. Steelcase is a steel manufacturer. I can tell it's steel because of the name implies Steelcase, the name is there; the banding labels that hold the desk in the carton are still on--

Q. That could be an empty box, couldn't it?

A. No, sir.

Q. Why couldn't it?

A. 'Cause it's never been opened.

Q. How do you know it hasn't been opened?

A. Because the bands are still there.

Q. Can the top be removed?

A. If it did, you would tear the box all to pieces.

Q. Can't you remove that top without--

A. No, sir.

Q. --without disturbing that band?

A. No, sir. That band is pressed in--uh--with a ratchet type thing and--

Q. But--

A. --it travels approximately seven, eight hundred miles to get here.

Q. But it depends upon how tight that band would be wrapped around it whether or not you could remove that top, is that correct?

A. Yes, well I can tell you from this picture right here and if you look at this picture you can see that the band is squeezed so tight that the level of the box where the bands are, it is popped out because it's pushed in, it's drawn in so tight--you can look at that there. If you're familiar with manufacturing procedures that's pretty normal in any industry that does banding in cartons; that's the only means of support for that top and bottom, there are no staples or whatever.

Q. That's all.

BY MR. LAMPROS: This witness, I'm sure, would like to be excused, Your Honor, because he has a business to operate but if the Court does excuse him I would inquire as to his availability later in the day.
Mr. Boyd, will you be at your office?

BY THE WITNESS: I will be at the Court's disposable (sic) at any time.

BY THE COURT: If everybody's finished with Mr. Boyd and then if you would be available, we will notify you if we need for you to return.

BY THE WITNESS: Yes, sir, I'll be at my office, I'll wait for your word.

BY THE COURT: Alright, sir.

BY MR. LAMPROS: If you wish, you can stay in another witness room.

BY THE WITNESS: Well, which ever you'd like.

BY MR. LAMPROS: Why don't you do that for the time being.

WITNESS STANDS ASIDE

BY MR. LAMPROS: Mr. Charles M. Davis, Jr. Please have a seat in the witness chair, Mr. Davis.

CHARLES MILTON DAVIS, JR., A WITNESS OF LAWFUL AGE, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION
BY MR. LAMPROS:

- Q. State your full name.
- A. Charles Milton Davis, Jr.
- Q. Do you know the defendant seated to your right,

Kenneth W. Wilson?

A. Yes, sir.

Q. How long have you known him?

A. Approximately five years.

Q. Would you say that he is a friend of yours?

A. Yes, sir.

Q. Do you all have any business relationship at all?

A. No, sir, not really.

Q. I want to direct your attention to the date of--on or about January 29, 1978, and ask if you had occasion to be in the presence of Mr. Boyd, the gentleman who just left the Courtroom that you may not have observed?

A. Yes, sir.

Q. And Detective Manuel?

A. Yes, sir.

Q. Did you have occasion to see Detective Manuel on that Sunday on approximately two occasions?

A. Yes, sir, I had.

Q. I believe the first time you saw him in the presence of Mr. Charles Asey?

A. Yes, sir, I did.

Q. And where were you physically located when you first observed Detective Manuel and Mr. Asey?

A. I was at my home on Cave Spring Road.

Q. Did you thereafter have occasion to contact Detective Manuel after Mr. Asey had left?

A. Yes, sir, I did.

Q. And Detective Manuel left?

A. Yes, sir.

Q. Did you call him?

A. I called him. I wanted to talk to him about the conversation that Chuck and Gus and I had.

Q. By "Gus" you're talking about Detective Manuel?

A. Yes, sir.

Q. And "Chuck" would be Mr. Charles Asey?

A. Yes, sir.

Q. Did you all arrange again to meet later that day?

A. Yes, sir.

Q. By "you all" I mean yourself and Detective Manuel?

A. Yes, sir.

Q. Alright, where did you arrange to meet with Detective Manuel?

A. I told him I'd meet him down at the Bramble Inn.

Q. At the Bramble Inn, is that located on Brambleton Avenue within Roanoke County?

A. Yes, sir.

Q. And at that time did you lease a portion of that building known as the basement of the Bramble Inn?

A. I still lease the downstairs.

Q. And you lease it for storage?

A. Yes, sir.

Q. I believe you are a contractor?

A. Yes, sir.

Q. And you store some of your material there?

A. Yes, sir.

Q. Alright, did you in fact meet Detective
Manuel there?

A. Yes, sir, he met me at 6:30 that night.

Q. And thereafter where did you and Detective
Manuel go, if any place?

A. He immediately asked me, he said let's go for
a ride. We started up 419 and went to Mr. Boyd's house.

Q. To his house?

A. Yes, sir.

Q. Did he return back to the basement of Bramble
Inn with you all?

A. Yes, sir.

Q. And did you at that time open the storage
area?

A. I opened the door so they could get in.

Q. What kind of door is it?

A. It's just a regular door with, you know,
windows in it, has a deadbolt lock.

Q. And when they went in--I want to show you
some photographs which have been submitted as Commonwealth's
exhibits one, two, four, five and six, if you'll take a look

at those. Each of these photographs show a carton and in some two. Those photographs taken in that area that you rent?

A. Yes, sir, that's me standing in the picture there.

Q. Now you're standing in photograph number, Commonwealth's exhibit two, is that right?

A. Yes, sir.

Q. Well, the next question is how'd those boxes get in your basement?

A. I'd loaned Kenneth Wilson the key and--uh--

Q. The defendant to your right?

A. Yes, sir.

Q. About how long before the Twenty-ninth?

A. Approximately three or four weeks, something like that.

Q. And he wanted to store some stuff in your basement?

A. He was going to sell his house and clean out his garage.

BY THE COURT: Can't hear you.

Q. Speak up so the Judge can hear you, please.

A. He was going to sell his house and wanted to clean his garage and some other stuff out.

Q. He wanted to clean his garage out?

A. Yes, sir.

Q. He wanted to store some of the material in your storage area?

A. Yes, sir.

Q. And you loaned him the keys?

A. Yes, sir, I did.

Q. A couple of days later did you find these boxes in your basement?

A. It was maybe within a week I went back down there and they were there.

Q. Did he give you the keys back?

A. I got the key back either the day after or within two days.

Q. After those items were placed in your basement?

A. Yes, sir.

Q. You did not physically see Mr. Wilson place those boxes in your basement, did you?

A. No, sir.

Q. And you are the ones--you are the individual that contacted the police for reasons which--well, you contacted the police after you saw these boxes?

A. I contacted the police after, you know, Chuck Asey and Gus Manuel were over at my house.

Q. Inquiring about these boxes?

A. Well, at that time they weren't inquiring about those boxes, it was on another matter.

Q. And were these boxes taken out of your storage area with your permission?

A. Well, not with my permission, I went on back upstairs and Mr. Boyd identified them as his and they picked

them up that night.

Q. Everett Wadley picked them up in their own truck?

A. Yeah.

Q. Did you try to lift any of those boxes?

A. I moved them--uh--

Q. Have anything in them?

A. Well, it took two people to lift them. I had to move them when I--I was painting a car down there at the time.

Q. Have you ever been to Mr. Wilson's home?

A. Yes, sir.

Q. Where was that located?

A. It's on Falcon Ridge Road.

Q. In Hunting Hills in Roanoke County, is that right?

A. Yes, sir.

Q. Have you ever been in his garage?

A. Yes, sir.

Q. Do you know what it looks like?

A. Yes, sir.

Q. I want to show you a photograph.

A. Yes, sir.

Q. Yes, sir, what?

A. That looks like his garage.

Q. The inside of it?

A. Yes, sir.

Q. Alright.

BY MR. LAMPROS: If Your Honor please, we would submit the photograph as identified by Mr. Davis which is the same photograph identified earlier, not identified but described earlier by Mr. Boyd. We would now submit this as Commonwealth's exhibit seven. We would also recommend that if the Court does receive it as an exhibit it might be wise to obliterate-- if the Court has it available--a portion of the wording on the back.

BY THE COURT: With that suggestion, do you have any objections?

BY MR. PADGETT: Yes, I object because I still don't think a proper foundation has been made, the time, place the photograph was made--

BY MR. LAMPROS: Well, we'll do it with the officer then.

BY MR. PADGETT: --and identify what's in the picture at the time it was made.

BY THE COURT: Alright.

Q. (Mr. Lampros continuing) You're not very enthused about being here today, are you?

A. No, sir, I'm not.

Q. Answer any questions counsel may have.

CROSS EXAMINATION
BY MR. PADGETT:

Q. Mr. Davis, how many keys were available to that Bramble Inn?

A. There was--I had one permanent and there was one

hanging upstairs.

Q. Alright, sir. You had one key and there was another one hanging upstairs, where was it hanging at?

A. Right beside the cash register upstairs.

Q. Beside the cash register, where is that located--behind the bar?

A. Behind the bar.

Q. Alright. If I were to go in the Brambleton (sic) Inn and ask for the key, could I get it?

BY MR. LAMPROS: If Your Honor please, now we're getting in to speculation and we would object to that.

BY THE COURT: Now that's speculative.

Q. (Mr. Padgett continuing) Was that key easily accessible to anyone coming in the Bramble Inn?

A. If they said they wanted to get something out of the basement, they usually got the key.

Q. Would you ask any questions as to what that key, who it was, who was going to put what down in the basement?

BY MR. LAMPROS: If Your Honor please, I don't know what Mr. Padgett means when he says "they"--

Q. (Mr. Padgett continuing) If anyone would come in asking for the key, would that key be given to them without having asked them any questions?

BY MR. LAMPROS: Again, Your Honor, I have to object because "if anyone" and this witness is, it's still very general, I mean if--

BY MR. PADGETT: Your Honor, I'm testifying that if anyone were to go in that Inn and ask for the key would it be made available to'em, that's a simple question.

BY THE COURT: I think he can ask that, go ahead.

A. (Witness continuing) It would have but not now.

Q. Not now?

A. Not now.

Q. At that time it would be--

A. At that time it would have.

Q. When was the last time you had gone down in to the basement before you said you gave the key to Kenny? How long, how long a period of time?

A. I would say at least a month.

Q. At least a month?

A. Yeah, because I don't frequent down there unless, you know, I need, when I build a house. At that particular time I wasn't.

Q. So those cartons could have been down there before you gave the key to Kenny, is that correct?

A. Yes.

Q. How long after you gave the key to Kenny did you go down to the basement?

A. It was within two weeks, something like that.

Q. So those desks could have been put down any time after Kenneth Wilson asked for the key, is that correct?

A. That's correct.

Q. Has Kenny ever asked for the key before?

A. No.

Q. Never has?

A. Hmmm.

Q. What's usually stored down in the basement, Mr. Davis?

A. Well, just scrap lumber material, generator, mixer, transit, hand tools, stuff like that, that you don't use every day.

Q. As a matter of fact there's a desk in your basement--in that basement right now, that you can't account for, isn't that correct?

A. Yes, sir, there is a desk down there, I found out whose it was though.

Q. But you didn't know whose it was until you had to find out, is that right?

A. That's right.

Q. Do you know when it went down there?

A. Sir?

Q. Do you know when it was placed down there?

A. No, I don't, I just went down there last week to take some old carpet and it was in there.

Q. I think you've already testified, in fact, that you've never seen Kenneth Wilson move anything down in that basement, isn't that correct?

A. That's correct. He helped me at one time when I was finishing a house up move some, just scrap lumber down there, about three truck loads of it; of course, that

was six or eight months ago.

Q. Alright, that's all I have.

REDIRECT EXAMINATION
BY MR. LAMPROS:

Q. Mr. Davis, in response to the cross examination, how long prior to these desks being placed in there, did you have this basement cleaned out?

A. Well, I cleaned it out when I started the house that I'm on now because I had some place to move the scrap to, so--I cleaned it out either the first week of Septem--uh--December or the second week, somewhere around there. It was--

Q. Of 1977?

A. In '77, yes.

Q. And at that time you say that the desks were not there?

A. No, sir, when I cleaned it out there was very little left in it.

Q. And how long after that did you say Mr. Wilson borrowed your key?

A. Three to four weeks, somewhere around there.

Q. So he borrowed your key some time in January?

A. Either the end of December or the first of January, somewhere around there.

Q. Well, the end of December might be just a couple of weeks or a week off, is that right?

A. It could have been, I'm not, you know, I can't

remember that well.

Q. You didn't know how serious your memory had to be at that time?

A. No, sir.

Q. You were just trying to accomodate a friend?

A. Yes, sir.

Q. Thank you.

RECROSS EXAMINATION
BY MR. PADGETT:

Q. Mr. Davis, when--what were the circumstances under which Kenny borrowed the key, did he come to you and ask you for the key or did he borrow the key hanging up behind the bar?

A. He borrowed my key.

Q. He borrowed your key?

A. Yeah, that I keep in my truck.

Q. In your truck?

A. Yes, sir.

Q. That's all I have.

BY MR. LAMPROS: May this witness also be placed in the same room with Mr. Boyd?

BY THE COURT: Alright, sir.

WITNESS STANDS ASIDE

BY THE COURT: Let's let the Jury have a recess at this point.

THE JURY RETIRES TO THE JURY ROOM

THE FOLLOWING TOOK PLACE IN THE COURTROOM BUT OUT OF THE PRESENCE OF THE JURY

BY THE COURT: The following occurred out of the presence of the Jury but in the presence of the Defendant in Court, the Commonwealth Attorney and the attorney for the accused being present.

Alright, Mr. Padgett, you have an objection you wish to note out of the presence of the Jury?

BY MR. PADGETT: Yes, I just want to renew my motion to suppress certain statements made by the Defendant or allegedly made by the defendant Kenneth W. Wilson. I think the first one being on the evening of January 31st at his home and then on the following day February the First in Mr. Claude Carter's office. And this motion is--uh--being taken because we're saying that Mr. Wilson's Miranda Warnings were not properly given to him; therefore, the statements would have been given involuntarily if they were in fact given.

BY THE COURT: Now, I assume, Mr. Lampros, that you intend to present evidence as to these statements given, warnings--

BY MR. LAMPROS: Yes, Your Honor, I certainly do.

BY THE COURT: And the statements by the accused?

BY MR. LAMPROS: I certainly do, Your Honor.

BY THE COURT: The Court on May 1, 1978, had a Suppression Hearing on this particular motion and having heard

the evidence at that time ruled that the motion should not be sustained and the Court adheres to that ruling and recites for the record here that the evidence of the officers will be presented. There is nothing to suppress as the accused has denied ever making the statement which will then be a matter submitted to the Jury as to whether or not the statements were made by the Defendant and if so the effect that it might have on the case against him. And the Defendant by counsel excepts to the ruling of the Court.

BY MR. PADGETT: Yes, sir, we note exception.

BY THE COURT: Alright, sir. And that exception will go to all of the witnesses presented by the Commonwealth as to any alleged statements made by the accused.

BY MR. PADGETT: Yes, sir.

BY THE COURT: Alright.

THE JURY RETURNS TO THE COURTROOM

BY THE BAILIFF: The Jury is seated, Your Honor.

BY THE COURT: The Jury is ready and if I keep you all too long without having a recess and forget it, just turn around and wave at me, we'll have it any time. Alright, the Jury's ready, call your next witness.

BY MR. LAMPROS: Detective Manuel. Have a seat in the witness chair, please.

EDWARD C. MANUEL, A WITNESS OF LAWFUL AGE, HAVING
BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION
BY MR. LAMPROS:

Q. Please state your full name and position.

A. Detective Edward C. Manuel, Roanoke County.

Q. Detective Manuel, I believe you were assigned
the investigation of this particular offense the defendant
is being charged and tried on today, is that correct?

A. Yes, sir.

Q. In the course of your investigation did you
have occasion to go to the residence of the defendant?

A. Yes, sir, I did.

Q. Now prior to this particular offense, did you
have occasion to be at the defendant's home some couple of
months before hand?

A. Yes, sir, I did, the original offense was on
the 5th of December, 1977.

Q. It has nothing to do with this case, it's
another matter. The reason I ask of you that question was
to ask if you have ever seen this photograph?

A. Yes, sir, our evidence technician took that
on the night of the 5th of December.

BY THE COURT: Can't hear you.

BY MR. LAMPROS: Speak up.

BY THE WITNESS: Little bit--throat.

BY MR. LAMPROS: Do you want some water?

BY THE WITNESS: No, it's just--I got a sore throat.

A. (Witness continuing) The evidence technician took the photographs of the crime scene on the original offense that has nothing to do with this case the night of the 5th of December.

Q. Alright--

A. And this just happened to be in the photographs.

Q. Alright, were you present at that time?

A. Yes, sir, I was.

Q. Now I'll ask does this photograph that I'm showing you accurately depict and show what you personally saw through your own eyes on that particular day?

A. Yes, sir, it does.

BY MR. LAMPROS: If Your Honor please, the photograph that the Commonwealth is referring to at this time is the photograph exhibited earlier to Mr. Davis and to Mr. Boyd. And we at this time would submit it and would allege that we have certainly produced a foundation necessary for submitting this as Commonwealth's exhibit seven.

BY THE COURT: Number Seven.

Q. (Mr. Lampros continuing) In conducting your investigation of this allegation--the allegation of receiving stolen goods--against this defendant Mr. Wilson, did you have occasion to go to his home on January 31, 1978?

A. Yes, sir, I did.

Q. Just describe to the Court and the Jury the circumstances surrounding your arrival at his home, who was with you if anyone?

A. In the--uh--previous part of the investigation I had information that there was--

Q. You cannot repeat information, just go ahead.

A. I went to the Wilson home on the 31st of January.

Q. What time?

A. Approximately Seven, Seven Thirty.

Q. P.m.?

A. P.m., yes, sir.

Q. Did you go alone or with others?

A. No, sir, there were three of us that went to the Wilson residence, Lieutenant Wade, Detective Camden and myself.

Q. Did you ride with anyone else?

A. No, sir, I drove my car together with Detective Camden, we followed each other over.

Q. You and Detective Camden followed each other?

A. Right, we were together more or less.

Q. And Wade came over after?

A. A few minutes later.

Q. Just go ahead and describe to the Jury and to the Court what occurred upon your arrival.

A. Well, we arrived at the Wilson residence, we got out of our cars.

Q. Where'd you park your cars in relation to the Wilson residence?

A. In the garage driveway.

Q. And did Mr. Wilson at that time reside at 5241 Falcon Ridge Road?

A. Yes, sir, he did.

Q. That's in Hunting Hills in Roanoke County, is that right?

A. It is.

Q. And what physical distance--feet, yards or any measurements you'd like to use--would your cars have been from the garage?

A. There was a lot of ice on the ground that night, we parked down toward the bottom end of the driveway but we were fairly close to the garage. I guess twenty-five feet. I couldn't be positive.

Q. Alright, go ahead.

A. We got out of our cars, walked up toward the garage, we were kind of just taking it easy waiting for the Lieutenant to show up. Mr. Wilson was there and his folks were there by the time we all went in, we went in last as far as I can remember. And we exchanged formalities.

Q. Introductions?

A. Right, more or less. They never met the Lieutenant and--uh--Mr. and Mrs. Wilson I don't think were too familiar--

Q. Speak up a little bit louder.

A. Right. Mr. and Mrs. Wilson weren't too familiar with Detective Camden, we introduced each other. Just small talk.

Q. What happened thereafter?

A. We were in the garage by this time, we had gone in to the garage. About five or ten minutes later I advised Mr. Wilson of his rights.

Q. Did you tell him why you were there?

A. Pardon?

Q. Did you tell him why you were there?

A. Oh, yes, sir, I explained--

Q. What did you tell him?

A. My primary purpose in going there was to search some belongings that belonged to a Charles Asey who used to live with Mr. Wilson. And that was the primary purpose of our visit.

Q. And thereafter in the course of your visit you found the need to advise Mr. Wilson of his Constitutional Rights?

A. Yes, sir, before I got in to any questioning.

Q. And what area of questioning were you going to go in to?

A. I was going to go in to the questioning of the desks and other stolen property that I had had information about.

Q. At that time before going in to the question of the desks, did you advise the defendant seated to your

right, Kenneth W. Wilson--

A. Yes, sir.

Q. --of his Constitutional Rights as provided by the Miranda decisions of the United States Supreme Court?

A. Yes, sir. I advised him of the Miranda Warning before questioning him on official business.

BY MR. LAMPROS: Your Honor, the Court has previously made a statement, is it--

Q. (Mr. Lampros continuing) Alright, what did you advise him? What did you advise him?

A. I told him he had the right to remain silent, if he waived this right anything he said can and will be used against him in the Court. I told him he had the right to an attorney, to have the attorney present with him during any questioning. If he couldn't afford an attorney, one would be provided by the Courts; and I also advised him if he wished to cease his questioning any time he had the right to do so.

Q. Now I'm showing you here a card which you can't read from that distance you are from me. Do you carry a card similar to this?

A. Yes, sir, I carry one. I keep it in the car over the door.

Q. Alright, now, one side says Implied Consent Law when you pick up somebody for driving under the influence, right?

A. Right.

Q. The other side is entitled Miranda Warnings, is that right?

A. Right.

Q. Miranda Warnings one through four?

A. Yes, sir.

Q. And at this time do you recall whether you used the card or not?

A. I don't recall. I generally recite it, sometimes I will pull out the card but normally I recite it because I add a fifth one on there which I was taught in school to do.

Q. You add the fifth one that he can stop at any time he wants?

A. Yes, sir, I do.

Q. After--where were you physically at the time you advised this defendant of his Miranda Warnings?

A. The defendant was sitting on the couch on the left of the garage, I was standing almost directly in front of him as close as I could get and I was kind of--

Q. Alright, now use that photograph, Commonwealth's exhibit seven. Just pick it up, sit down. Flip it around so the Jury might be able to see a little bit. Here hold it in your hand, kind of show the Jury where you were.

A. Alright. Mr. Wilson was sitting on the left of the couch as I'm facing him, my left. I was standing directly in front of the couch on the floor.

Q. And where were the other people in your party and--

A. More or less behind me, my men. A little probably inboard, they were to my rear actually. When I was talking to Mr. Wilson, I didn't have them in my view as far as I could see unless I, you know, moved my head around. And the parents were at the other end of the couch in that area up there.

Q. Alright. Just go ahead and tell the Court what happened after that.

A. Well, I asked Mr. Wilson about the desks, that--uh--by now I had the photograph that showed the desk in the garage.

Q. Was that desk there when you went back?

A. No, sir, no.

Q. It wasn't there on January 31?

A. No. It was moved. So I got to talking about it to Kenny and I went in to why don't you admit the desk was in the garage. He said it wasn't in the garage. I said well I know it was in the garage, I have a picture of it in the garage and I kept on saying why don't you admit it was in there. He said alright I admit it was in there. And I said why don't you admit that you knew they were stolen and he says yeah alright they were stolen. In those words more or less, I can't remember exactly but that was the context of his statement, that they were stolen, that he knew they were stolen and that was after I told him I had a picture of it.

Q. You in fact did have a photograph?

A. Yes, sir, I did.

Q. Did you describe to him or when you were talking with him, the type of desks that you were referring to?

A. Yes, sir, I did.

Q. And what did you tell him?

A. I told him they were office desks from Everett Waddey.

Q. And what did he say?

A. He didn't say they were office desks from Everett Waddey, he said yeah I know they were stolen.

Q. And that was after you had told him they were office desks from Everett Waddey? Is that correct?

BY MR. PADGETT: I object to leading questions.

Q. (Mr. Lampros continuing) Alright. When was that?

A. During my interview that I had told him about the desks, that I knew they were from Everett Waddey and they were office furniture. I couldn't say exactly when.

Q. How long did you all actually stay at the residence of Mr. Wilson that evening?

A. I'd say until close to midnight.

Q. Now how long had you been there when the defendant made this statement to you? As best you can recall.

A. Probably twenty minutes. It was early in the--

Q. And after you had that conversation with him about these desks, you proceeded with some other investigatory work, is that correct?

A. Right. The--alright the time frame on the--uh--I'm not counting the preliminaries now--we talked five, ten minutes, I don't know, generally before we got in to the business. And then we talked for quite a while, I'd say twenty minutes or more after that. At the same time we were going in to search the belongings of the other man, I had word that a t.v. set was stolen. We removed the back from a t.v. set trying to identify it. We got a serial number--uh-we found out it wasn't reported stolen and Lieutenant and Camd--we were all more or less working together on this.

Q. Well, you went for another purpose, is that correct?

A. You mean besides the search for the drugs and the money?

Q. Well, this Mr. Asey's situation?

A. Yeah, right.

Q. And you were seeking to search the house, is that correct?

A. That was in back of my mind, yes, sir.

Q. So without getting in to the other area--I don't wish to get in to that area at this time--you had terminated your conversations about desks?

A. Right--

BY MR. PADGETT: Your Honor, counsel's leading the witness

and I've put up with it this far and I ask the Court just to instruct counsel not to lead the witness any more.

BY MR. LAMPROS: I'm just trying to cut him off, Judge, that's all.

BY THE COURT: That is leading, alright go ahead.

Q. (Mr. Lampros continuing) Did you at a later time have occasion to talk with the defendant? Later date?

A. The next day.

Q. Describe to the Jury and the Court the circumstances surrounding any such conversation.

A. We had an appointment to meet in Mr. Claude Carter's office.

Q. Who is Mr. Claude Carter?

A. At the time he was Mr. Wilson's attorney.

Q. And where is his office?

A. In the Boxley Building downtown.

Q. Downtown?

A. Roanoke.

Q. City?

A. City, yes, sir.

Q. How was the meeting arranged?

A. The meeting was arranged through Mr. Carter and Mr. Wilson. And it was set up for about One O'clock in the afternoon. I was down there a few minutes early and Mr. Wilson, I don't believe, had showed up yet. Mr. Carter and I talked a little bit and we went in to his office and

talked by ourselves--uh--fairly long, I'd say twenty minutes and I went over the whole case with him--what I had, what I was looking for and what Mr. Wilson had previously stated to me. And then he called Mr. Wilson in and we stayed there about an hour and a half, two hours, it was close to Three O'clock when we left.

Q. Speak up because I know you're speaking to me but--how long were you there?

A. Close to--uh--we left about Three O'clock, I'd say. From One to Three was the time I was there.

Q. When Mr. Wilson was--was in the office, was Mr. Carter present?

A. Yes, sir. It was Mr. Carter, Mr. Wilson and myself. And I went in to my questioning--

Q. How long did Mr. Carter stay there?

A. Throughout the conversation.

Q. What distance was he from you?

A. We were all sitting around his desk, about four feet.

Q. Just go ahead and tell the Jury what happened.

A. Well, when I first when in, we exchanged, again, just general talk. Then--uh--I started--uh--went in my official questioning there. I hesitated and looked at Mr. Carter and--

BY MR. PADGETT: Objection, Your Honor, I think it's leading to something with Mr. Carter, either said or something that he mot--did through some kind of

motion of his or acquiescence or something like this and I object to that. Anything that Mr. Carter said or any motions that Mr. Carter said (sic).

BY THE COURT: Whatever he said was in the presence of the defendant, isn't that correct? That's what I'm talking about, if so, your objection's overruled. Go ahead.

A. (Witness continuing) I looked at Mr. Carter and--uh--I didn't know what to do really. I said I've got to advise him, don't I or, you know, I wanted to advise him of his rights, I didn't know whether it was necessary to do this in the presence of his attorney. So I looked at Mr. Carter--

Q. For the record, you did not advise him of his rights?

A. No, sir, I didn't.

Q. Okay. Thereafter, did you question this defendant concerning this offense?

A. Yes, sir, I did.

Q. Just go ahead and tell them what you heard and what you said and what he said.

A. I said Kenny, I said you already told me you knew the things were stolen and he says yeah and I turned to his lawyer and I said see he admits it right here in front of you. And then I looked at him again, I says--uh--where do we go from here and Mr. Carter replied--

Q. You cannot repeat what Mr. Carter said.

Answer any questions counsel may have. Oh, one--one--excuse me, I'm sorry. Did you have occasion on January 29, to be in the presence of Mr. Boyd and Mr. Davis?

A. Yes, sir, I did.

Q. Just go ahead and tell the Jury and the Court what occurred.

A. I had seen Mr. Davis earlier that day and when I got back to the office as I approached the control room the phone was ringing for me. Mr. Davis asked me if I could meet him today, it was very urgent and--uh--I said sure. I asked him what about and he said--

Q. Well, he's already testified about it. After you had your conversation with him, where did you go?

A. I met him at the Bramble Inn on Brambleton Avenue out front in the parking lot and I believe it was about Six, Six Thirty, somewhere around there.

Q. What'd you do from there?

A. As soon as Mr. Davis got in the car, I pulled out and drove up to Mr. Boyd's house.

Q. Pick up Mr. Boyd?

A. Right.

Q. Where'd you go from there?

A. To Bramble Inn in the rear.

Q. What happened?

A. Now Mr. Davis said--uh--

BY MR. PADGETT: Objection, Your Honor.

BY THE COURT: Sustained.

A. (Witness continuing) Alright. We were--we entered the garage in the basement of the Bramble Inn and were shown some cardboard cartons that were in the garage.

Q. I'm going to show you Commonwealth's exhibits one, two, four, five and six. And ask if you've ever seen these photographs before?

A. Right, I took these photographs myself.

Q. And what were they of and where did you take them?

A. I took'em in the basement garage of Bramble Inn and this is Mr. Boyd and Mr. Davis in this picture here.

Q. Those photographs accurately depict and show what you observed on the 29th day of January?

A. Yes, sir, they do.

Q. What happened to the two cartons that are shown in those photographs?

A. They were tagged as evidence and turned over to Mr. Boyd.

Q. How were they tagged and what identifying marks, if any, were placed thereon?

A. Detective Camden, who (sic) I called out there to join us, we both signed the desks, made marks in any movable piece of cardboard that could come off the desks, and put an evidence tag that we use to mark evidence on each desk.

Q. When you signed it, what do you mean signed?

A. Well, I signed my name on the cardboard itself, so we could identify the same cartons at a later date.

Q. Have you since seen those cartons?

A. Yes, sir.

Q. Where are they located as best you know?

A. They're in Everett Waddey's showroom on Lee Highway in Roanoke City.

Q. Answer any questions counsel may have.

CROSS EXAMINATION
BY MR. PADGETT:

Q. Detective Manuel, have you ever seen any of the two desks allegedly stolen in Kenneth Wilson's house?

A. I saw the cartons.

Q. You only saw two boxes, right?

A. In Kenneth Wilson's house.

Q. You never saw any desks, is that right?

A. I never saw inside the cartons, no, sir.

Q. How many cartons did you see?

A. To the best of my knowledge, I saw one.

Q. Saw one?

A. Yeah.

Q. And you don't know what was in that box, do you? Other than the fact that you saw a carton.

A. At the time I saw the carton, I didn't know what was in the box. I had a good idea though.

Q. And this was an investigation of another matter,

right? On a separate occasion?

A. Yes, sir.

Q. So in other words, you were not there to investigate the charge of the possession of stolen goods against Mr. Wilson but it was an investigation of another matter? Isn't that correct?

A. No, I wouldn't say that, I was there to investigate the desks, I knew the desks had been there.

Q. But you just happened to see the boxes, right?

A. Well, by the time I investigated the desks-- are you talking about the 31st or when?

Q. I'm talking about the 5th of December when the picture was taken.

A. The 5th of December, no, I was investigating something else.

Q. Something else entirely?

A. Yes, sir.

Q. As a matter of fact, there were a lot of boxes in Mr. Wilson's garage, isn't that correct?

A. Not that large, no, sir.

Q. But it was being--uh--couldn't you tell it was being used for a storage area because of the number of boxes in it?

A. I'd guess you'd say it's normal for a garage to have those kind of things in it if you're not putting cars in it.

Q. Can you recall seeing a serial number or a production number or any kind of number on this carton that you saw on the 5th of December?

A. Not off hand, I can't, no.

Q. So in other words, that picture which you say depicts the box as you saw it on the 5th of December--you can't really say that that's the same box that you saw at the Bramble Inn, can you?

A. I doubt if I could, no.

Q. But you're just assuming that it was, isn't that correct?

A. Well, from what I--my investigation revealed, I was pretty certain it was.

Q. Did you ever seen Mr. Wilson move any desks in or out of his house?

A. No, sir.

Q. On any occasion?

A. No.

Q. Did you ever seen Mr. Wilson move anything or any desks in or out of the Bramble Inn on any occasion?

A. No, no.

Q. Mr. Manuel, isn't it a fact that Mr. Asey that you referred to actually lived with Mr. Wilson for some time and that you knew this?

A. Yes, sir, he lived there until he was shot.

Q. And that--uh--Mr. Asey--uh--had many of his items stored in boxes in the garage, is that correct?

A. He left--uh--all his belongings at Mr. Wilson's house when he departed.

Q. So that Mr. Asey actually has as much access to that garage as Mr. Wilson himself, isn't that right?

A. No, sir, he didn't. He turned in the garage opener to Mr. Wilson when he moved.

Q. But you went there that night, I'm talking about January 31st now, to investigate a stolen t.v.--

A. Right.

Q. --that was in the possession of Mr. Asey?

A. Well, it wasn't a stolen t.v., though, we found out.

Q. But you went there for that purpose?

A. I went there because I had information that the t.v. was stolen.

Q. And that it belonged to Mr. Asey? Is that correct?

A. It was in his possession although--

Q. So in other words, he did have articles in the garage?

A. Oh, he had articles in the garage, yes, sir.

Q. Isn't it a fact that you told Mr. Wilson and his parents the t.v.--I'm talking about the night of the 31st again--isn't it a fact you told Mr. Wilson and his parents that that t.v. was in fact stolen and that you were coming back the following day to retrieve that t.v.?

A. I said as far as I know it was stolen because we

didn't have the serial number and after we got the serial number, which was, you know, during our visit, we did run it through NCIC which is our computerized system--anything stolen is reported in and anything recovered you can run in to the machine and it'll tell you where it was stolen and when it was reported stolen. This did not come back stolen.

Q. But you thought it was at that time?

A. Oh, yes, sir.

Q. How many times had you been in Mr. Wilson's house?

A. Three, four times.

Q. Three or four times?

A. Um-hmm.

Q. On any occasion did Mr. Wilson ever try to conceal or hide anything from you when you went--when you came there?

A. I can't say whether he did or not.

Q. But he hasn't?

A. I can't say whether he has or not, Mr. Padgett.

Q. I'm talking about when he was in your presence, has he tried to conceal or hide anything while he was in your presence while you were there--

A. No, he didn't--I never saw him take anything and hide it from me, no.

Q. Did he ever refuse you from going in to his garage area on any occasion?

A. No, we had no reason to really ask him to go in the

garage, we--

Q. In the investigation of this other matter that's been brought up, did he ever refuse you from going in to his garage?

A. No.

Q. Okay. Now on the 31st of January you said you went over to Mr. Wilson's house--uh--aproximately what, Six Thirty, Seven O'clock?

A. More like Seven Thirty, Seven.

Q. I think you said Detective Camden and--uh--Officer Wade was (sic) there with you or met you there, is that correct?

A. Right.

Q. Now you said you advised Mr. Wilson of his Miranda Rights. How long after you arrived, did you advised Mr. Wilson of his Miranda Rights--his Miranda Warnings?

A. Five or ten minutes.

Q. Five or ten minutes, are you sure of that?

A. As sure as I can be, yes, sir.

Q. Did you all have--didn't you say you all had exchanged small talk--

A. Right.

Q. --and you all spent some time--uh--trying to get the back of the t.v. off and things of this nature?

A. Right, we were discussing why we were coming, leading in to something else, but we discussed why we were coming. We wanted to look at Asey's gear and--uh--that's

about more or less general how it was.

Q. Was Mr. Wilson already there?

A. Yeah, he was there.

Q. He was already there?

A. Well, as far as I know when we got up, he was the first one in the garage, he was at the garage.

Q. In other words he was there when you arrived?

A. As far as I know, yeah.

Q. And you say he was at the garage?

A. I would--I would imagine he was--we were waiting for Lieutenant Wade, I wasn't paying much attention. We weren't going in until we were all three there, you know, and when Lieutenant Wade come (sic) up, motioned him up--

Q. I thought you said he was sitting on the couch when you arrived.

A. No, I didn't say he was sitting on the couch.

Q. You never said he was sitting--

A. Not when I arrived, no. We were speaking after we were settled in to the garage more or less, Mr. Wilson sat on the couch.

Q. He sat on the couch?

A. Right.

Q. At that time you said you read him his rights to him, is that right?

A. No, it was five or ten minutes.

Q. Isn't what you read to him actually a form that you get someone to sign to allow police officers to

search--

A. No, that was later.

Q. --his home?

A. Hm--mmm. I read that to him later.

Q. You read that to him later?

A. Yeah.

Q. And you're not getting that confused with the Miranda Rights?

A. No.

Q. You sure?

A. I'm sure.

Q. Was Mr. Wilson upset?

A. Not at first he wasn't, no.

Q. Not at first? When did he become upset then?

A. Later on in the evening he got a little emotional.

Q. Is this before you read his rights to him or after or when?

A. No, this was after I read his Miranda Warning and before he signed the consent form.

Q. Uh-huh. So in other words, after you read--uh--his Miranda Warnings to him, he seemed to be visibly upset, is that correct?

A. After I read his rights to him?

Q. Yes, sir.

A. Not more than--uh--I wouldn't say he was upset that much, no. Now later on in the evening is what I

call upset.

Q. Alright, I think you said that--when did you say he said it again in reference to the---

A. To the desks?

Q. To the desks, yes, sir.

A. He said something like yeah, yeah I knew they were stolen. That's as close as I can come to it.

Q. And that's just about it right there, is that--is that right on that particular occasion?

A. On that particular occasion, yeah.

Q. Detective Manuel, when you arrested Kenneth Wilson you advised what he had been arrested for, did you not?

A. Um-hmm.

Q. You advised him of what the articles were and so forth, isn't that correct?

A. I believe I read the warrant to him, I don't remember what exactly was on the warrant. But he knew why I was arresting him.

Q. Well, that's, of course, your opinion but of course naturally he would know after you told him. Do you recall what you said at the preliminary hearing on this matter?

A. Not any more than I'm saying now that I know of.

Q. Uh-huh. Didn't he say something to the effect that--uh--he knew they were stolen but only after

you'd told him that they were stolen, that is, after his arrest?

A. No, not at--not at the house, no.

Q. You sure?

A. I'm sure.

Q. Okay.

A. Because I wanted to get it out of him that he knew that they were stolen.

Q. Detective Manuel, this is a copy of the transcript taken at the preliminary, would you read right here--it says question now what did he tell you when you told him that--read your answer please.

BY MR. LAMPROS: What date was that?

A. (Witness continuing) He said alright--

BY MR. PADGETT: Wait a second.

A. (Witness continuing) And he was upset by then, he said alright I admit--

BY MR. PADGETT: Excuse me, the date on this is March 29th, 1978, at 11:00 O'clock a.m. taken before Eula M. Bott.

Q. (Mr. Padgett continuing) Read your answer, please.

A. He said alright, he said, he was upset by then, he said alright I admit it, they are stolen, they are stolen, about like that.

Q. Alright, he said they are stolen, they are stolen, right?

A. About like that.

Q. And the desks weren't even in his garage at that time, right?

A. What?

Q. The desks were not in the garage at that time--

A. At the time of the preliminary hearing?

Q. Or the cartons or whatever you're saying was there, I'm talking about the cartons on the 31st?

BY MR. LAMPROS: I'm sorry, Your Honor, even I don't understand it now.

Q. (Mr. Padgett continuing) Okay. I'm referring back to the 31st of January when you were in the garage.

A. No, the cartons weren't there when we went in to the house.

Q. Alright.

A. Camden, Lieutenant Wade and myself.

Q. Alright. Now, when you went the following day on the First of February, when you met with Kenny and Mr. Claude Carter at Mr. Carter's office, you said you did not read his rights to him at that time, is that correct?

A. No, sir, I attempted to or started to but I didn't.

Q. Okay, and this is, again, after he was arrested for the offense possession of stolen goods, isn't that correct?

A. Right.

Q. Alright. Now, and what did you say Mr. Wilson said at that time?

A. Well, I was--I was talking to Mr. Carter ahead of time, right. And I told Mr. Carter what went on, what I knew, what Mr. Wilson admitted to me and Kenny and I got in to the desk bit. I says Kenny, I says, you already admitted that you knew the desks were stolen and right away he said yeah, yeah I knew it, I knew they were stolen. And I immediately turned to Mr. Carter and said see he even admits it here.

Q. Well, didn't he say those desks were stolen but only after you told him those desks were stolen? Or the desks--

A. No, when I--

Q. --that you all allege were stolen?

A. --when I spoke to Mr. Wilson on any time about the desks, I'm speaking to him that--uh--he should know they were stolen, that's how I'm speaking to him. I'm saying Kenny why don't you tell me that you knew the desks were stolen.

Q. Didn't he tell you that he knew the desks were stolen after--only after you told him they were stolen, is what I'm asking you, Mr. Manuel?

A. That's when he admitted it, after they were already stolen, I mean--uh--what do you--I don't understand.

Q. What I'm asking is: he only knew those desks were stolen only after you told him, right?

A. I can't believe that, no.

Q. That's all I'm asking.

BY THE COURT: Any other questions?

BY MR. PADGETT: Just a second. That's all I have, Your Honor.

BY MR. LAMPROS: Stand aside, please.

WITNESS STANDS ASIDE

BY MR. LAMPROS: May I have Lieutenant L. J. Wade. Please be seated in the witness chair. You've been sworn, is that correct?

BY THE WITNESS: Yes, sir.

LEONARD J. WADE, A WITNESS OF LAWFUL AGE, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LAMPROS:

Q. State your full name and position.

A. Leonard J. Wade, Lieutenant, Roanoke County Sheriff's Department.

Q. Were you so employed on or about January 31, 1978?

A. Yes, sir, I was.

Q. Did you at approximately 7:30 p.m. of that day have occasion to be in the presence of the defendant Kenneth Wilson?

A. Yes, sir, I did.

Q. Just go ahead and tell this Jury and the Court how you got there, who was there, and what happened

upon your arrival?

A. Earlier that afternoon Detective Manuel asked me if I'd be available to go with he (sic) and Detective Camden that night at approximately 7:30 to help them search a house.

Q. Why'd they want you to go, because of the uniform?

A. That was the impression I got, that they wanted an officer with them in uniform because both of them would be in civilian clothes.

Q. You don't know anything about this case, you weren't assigned to it or anything, is that right?

A. That's correct.

Q. You just happened to be asked to go?

A. Just to go with them to search the house.

Q. Go ahead and tell the Jury and the Court what happened upon your arrival.

A. When I arrived--uh--Detective Camden and Manuel were going up the driveway. There's a double car garage connected to the house, the double car garage door was open, there was lights on in the garage, there was some people in the garage. So I parked my car and got out and went up the driveway. Upon entering the garage there was Kenneth Wilson, his mother and father, Detectives Camden and Manuel. At that point Detective Manuel introduced me to Mr. Wilson and his parents. There was a lot of small talk, there was some problem with Mr. Wilson and Detective Manuel

over signing a consent search form. I understood that he had said that he was going to sign it, then when we arrived there he had some reservations about signing this consent search form. At that point I guess it was that Mr. Wilson became very upset, screaming, hollering, beating on the wall there with his fist. And at that point I asked--uh--Detectives (sic) Manuel that probably the best thing for us to do would be to leave because I didn't think that the man was going to sign the warrant, he was quite upset.

Q. Did you all in fact leave?

A. We did leave. As I was getting in my car, Detective Manuel called me back and said Mr. Wilson had consented to sign the search form. And at that point I searched the property that was in the garage and in the attic.

Q. Lieutenant Wade, how far away from Detective Manuel and the defendant were you when they were talking concerning whatever they were talking about?

A. Some six to eight foot.

Q. Were you talking with other people at the time?

A. Yes, I was.

Q. Where was the defendant at this time?

A. Most of this time--there was a couch there in the garage--uh--Mr. Wilson was seated on the couch most of the time.

Q. And where was Detective Manuel?

A. In front of him, some three, possibly four foot from him.

Q. Could you describe whether he was upright, squatted, or what?

A. Detective Manuel was standing up.

Q. Was he talking with the defendant?

A. Yes, sir.

Q. Do you recall whether he was advised of his rights?

A. I heard Detective Manuel advise Mr. Wilson of his rights, part of them. I heard him advise him that he had a right to an attorney--uh--I heard him advise him that any time during the questioning if he wanted to stop he was free to do so.

Q. You were not listening?

A. No, sir.

Q. Do you know what the defendant's response was, if any, at that time?

A. More arguing, I guess, than anything. He did say something about wanting to make a phone call and sometime during this he got up and left the garage, the rest of us stayed in the garage and he went in to the house. He was gone probably eight, ten minutes.

Q. Answer any questions counsel may have.

CROSS EXAMINATION
BY MR. PADGETT:

Q. Officer Wade, when--you said that his Miranda

Warnings were given to him, is that correct?

A. What I stated that I heard.

Q. When was that done? Before or after the consent form was signed?

A. That was before.

Q. Before. How long after the consent form was signed--uh--were the Miranda Warnings given, would you say?

A. What was your question?

Q. How long after the consent form was signed--well, you said the Miranda Warnings were given first, right?

A. Yes.

Q. How long after that was the consent form signed? I'm sorry, I phrased the question wrong.

A. Probably several minutes because--uh--his warning was given to him before I left the garage, before he became upset and--uh--

Q. This was done all in a span of---

A. Shortly after we arrived.

Q. A short span of time, is that right?

A. Yes, sir.

Q. I'm talking about the Miranda Warnings and the consent form was all done in a short span of time?

A. How much time elapsed in between I really couldn't say.

Q. Okay.

A. Because he did get upset and that's when I asked Detective Manuel--

Q. Are you sure that what was read to him was not--uh--the consent form allowing the police officers to search the house?

A. No, sir.

Q. You're not sure?

A. Oh, I'm sure, I'm sure that his warning was given to him. Then it was later that he signed--uh--after I left the house and come back that he signed the form for the consent search.

Q. Where'd you say you were standing when these warnings were given?

A. Where was I standing?

Q. Yes, sir.

A. Probably six to eight foot on the other side of the garage.

Q. On the other side of the garage?

A. From Mr. Wilson.

Q. Where was Detective Manuel standing?

A. Between myself and Mr. Wilson, he was probably three foot from him.

Q. He had his back to you?

A. Yes, sir.

Q. Alright, and you say they were carrying on some general conversation and some arguing going back and forth and so forth, is that right?

A. That's correct. Mr. and Mrs. Wilson both was (sic) trying to talk to Kenneth and tell him to go ahead and

let us do what we wanted to do. There was just a lot of conversation coming from everybody.

Q. How much of the Miranda Warnings did you hear, did you hear the full Miranda Warning being given?

A. No, sir, I didn't hear all of it.

Q. You just heard part of it, is that right?

A. That's correct.

Q. And you're sure it was the Miranda Warning being given?

A. Yes, sir.

Q. It was not part of a consent form, the language on a consent form?

A. The consent form came later.

Q. But you don't know how much later, do you?

A. Several minutes.

Q. Several minutes.

A. Like I said there was a lot of confusion.

Q. Okay. Didn't Kenny Wilson, when you all first came to the garage, say that he did not want to talk with you any further and that he wanted to talk to his attorney?

A. That's when he became very upset, raising his voice, hitting on the wall and that's the time that I asked Detective Manuel the best thing for us to do would be leave.

Q. Right. So he was upset, emotional?

A. Yes, sir.

Q. At this time. Did you know for what purpose

you were there that night?

A. Yes, sir.

Q. What purpose was that?

A. I was to be looking for some type of narcotics or a large sum of money.

Q. Which would be planted in Mr. Wilson's home?

A. That's what I was told, yes, sir.

Q. Were you up--were you there also investigating a t.v. set possibly being stolen?

A. I didn't know anything about a t.v. there was some discussion over a t.v. that was in the garage but I had no prior knowledge of that.

Q. Do you know who the t.v. belonged to?

A. No, sir.

Q. No further questions.

REDIRECT EXAMINATION
BY MR. LAMPROS:

Q. Lieutenant Wade, so when--uh--after the Miranda Warnings had been given--well, let me ask it this way. Who recommended that you all leave when Mr. Wilson became upset?

A. I did.

Q. Did you all in fact leave?

A. Yes, sir.

Q. By "you all" I mean Detective Manuel and Detective Camden insofar as you know.

A. Yes, sir. We were out going down the driveway--

their car was pulled up in the driveway and mine was out on the street. And I was opening my car door to get in when Detective Manuel called me and said come on back Mr. Wilson says he'll sign the consent form.

Q. This was after the Miranda Warnings?

A. Yes, sir.

Q. Did--uh--had Mr. Wilson at that time had the opportunity to make a phone call you say?

A. Yes, sir, he went in the house.

Q. He wasn't under arrest or anything, was he?

A. No, sir.

Q. You all didn't carry him out with you, did you?

A. No, sir.

Q. Anybody threaten him?

A. No, sir.

Q. Anybody pull a gun?

A. No, sir.

Q. Alright, no further questions.

RE CROSS EXAMINATION
BY MR. PADGETT:

Q. Officer Wade, how long after you all arrived were the Miranda Warnings given to Mr. Wilson?

A. I'd say within the first ten minutes.

Q. First ten minutes.

A. After the introductions.

Q. Okay, when they were given you said that--uh--

Detective Camden, I mean, Detective Manuel was between you and Kenneth Wilson, is that correct?

A. Yes, sir.

Q. Alright, now where was Kenneth Wilson?

A. Seated on the couch.

Q. Seated on the couch?

A. Um-hmm.

Q. Where was Detective Manuel?

A. Approximately three foot in front of him.

Q. Facing him?

A. Facing him.

Q. And Kenneth Wilson had been placed under arrest previously for this offense, isn't that correct?

A. I don't know about that.

Q. No further questions.

RE-REDIRECT EXAMINATION
BY MR. LAMPROS:

Q. When you all left, who left that evening?

A. Everybody left at the same time.

Q. Who's everybody?

A. Detective Manuel and Camden, myself, Mr.

Wilson and his parents all went out to get in the cars, they had their cars.

Q. Mr. Wilson didn't get in your car, did he?

A. No, sir.

Q. Did he go his own merry way?

A. Yes, sir. I believe it was a Pacer that he

was

was driving.

Q. Okay. Thank you. No further questions.

BY MR. PADGETT: No further questions.

BY MR. LAMPROS: Detective Camden.

BY LIEUTENANT WADE: May I be excused now?

BY MR. LAMPROS: Yes, unless the Court has some objection.

You'll be available in your office?

BY LIEUTENANT WADE: In the office.

BY THE COURT: Just so you're available in the event we do
have to recall you.

BY LIEUTENANT WADE: Yes, sir.

WITNESS IS EXCUSED

BY MR. LAMPROS: Please have a seat in the witness chair.

J. A. CAMDEN, A WITNESS OF LAWFUL AGE, HAVING BEEN
FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION
BY MR. LAMPROS:

Q. State your full name and position.

A. Detective J. A. Camden with the Roanoke
County Sheriff's Department.

Q. I direct your attention to on or about January
31, 1978, of this year. Did you have occasion to be in the
presence of Detective Manuel and Lieutenant Wade of the
Roanoke County Sheriff's Department?

A. Yes, I did.

Q. Approximately what time of that day?

A. Approximately 7:30 in the evening.

Q. Just go ahead and describe to the Jury and the Court what occurred insofar as you know involving this particular offense.

A. At approximately 7:30, Detectives (sic) Manuel and myself went to the residence of the defendant--

Q. Is he in the Courtroom?

A. Yes, he is.

Q. Whose residence?

A. Mr. Kenneth Wilson's residence.

Q. Is he here?

A. Yes, he is seated immediately to my right.

Q. Alright.

A. We went there to search the possessions of Mr. Wilson's former roommate with permission from the former roommate. In order to get in to the garage portion of the house where the property was located, we asked Mr. Wilson to sign the consent form to allow us to get in to his residence.

Q. Alright, when you first arrived, who was present?

A. When we first arrived, Detective Manuel and myself, the defendant and both the defendant's mother and father were there, we were all in the garage section of the house which was attached to it.

Q. Lieutenant Wade show up shortly after that?

A. Yes, he did.

Q. Did you all introduce each other around?

A. Yes, we did. We exchanged small talk for

several minutes making introductions back and forth and answering preliminary questions that were asked of us by both Mr. and Mrs. Wilson and by the defendant as to what we were looking for, why we were there, what happened next, standard procedure, etc., etc.

Q. Did Detective Manuel have occasion to talk with Mr. Wilson in your presence?

A. Yes, he did.

Q. Where was Mr. Wilson at that time, by "Mr. Wilson" now I'm referring to the defendant Kenneth W. Wilson?

A. The defendant was seated on a couch directly inside the garage door on the lefthand side, Detective Manuel was standing directly in front of him four to five feet away.

Q. Where were you at this time?

A. I was standing almost directly behind Detective Manuel approximately six feet away.

Q. Was there a conversation going on between the two, by the two I'm talking about Detective Manuel and this defendant?

A. Yes, there was. Detective Manuel showed him the consent search form, explained to him--by him I mean the defendant--what was contained on it and what was meant by the form. Detective Manuel also advised the defendant of certain Constitutional Rights.

Q. You mean the Miranda Warnings?

A. Yes, sir.

Q. What did he advise him as best you can recall?

A. He advised him that he had the right to remain silent; that anything he said could and would be used against him in a Court of law; he had the right to consent--consult with an attorney and to have the attorney present with him during any and all questioning; if he could not afford an attorney one would be appointed for him by the Court prior to any questioning; and if he decided to waive his right to an attorney, that he could stop the questioning at any time he so desired. He asked Mr. Wilson, the defendant, if he understood his rights and the defendant acknowledged he did by nodding his head.

Q. Thereafter were any questions asked of this defendant?

A. Yes, there were.

Q. About what and what were his responses?

A. Detective Manuel asked him about certain items contained in the garage initially--uh--to-wit: two large cardboard boxes. Mr.--the defendant first denied any knowledge of it and then when Detective Manuel pointed out the fact that we had pictures showing the existence of those desks at some short time earlier, and that we knew they had been moved, the defendant Mr. Wilson said yeah alright they were here.

Q. Was there any other question concerning those boxes as best you can recall?

A. Detective Manuel, I believe, asked him where they

came fr--if he knew they were stolen and the defendant did answer yes that he did know.

Q. You were not involved in this investigation, is that correct?

A. That is correct.

Q. Why were you there this evening?

A. I was simply there to accompany Detective Manuel on the--in the search for--in Mr. Asey's belongings.

Q. And how long thereafter did the defendant ask you all to leave? Or how long thereafter did you all leave?

A. For the final time?

Q. No, the first time.

A. Approximately an hour to an hour and a half after we arrived.

Q. And this was after the defendant--well, what caused this?

A. Well, after we--after Detective Manuel first asked the defendant to give us permission to search, the defendant refused. He said we could search the whole damn house but he wasn't going to sign anything. The defendant then left our presence under the pretenses of calling his attorney, he did go inside and stay a very few minutes and came back out. And when Detective Manuel asked him to sign a consent form that was the only way we could get in to the garage, the defendant became very upset and started crying and banging his fist against the garage wall. At that time Lieutenant Wade suggested it might be best if we leave and

come back at a later time. The three of u--well, I left, left the garage, got in my car and started it. Lieutenant Wade left the house, walked back down the driveway to his car which was some twenty-five or thirty feet from mine. And very shortly thereafter Detective Manuel motioned for us to come back into the garage portion of the house.

Q. And where was Detective Manuel at the time he motioned to you?

A. He was still in the garage talking with the defendant and the defendant's mother and father who were in the process of trying to get him to calm down a little bit.

Q. How long was this after you heard the Miranda Warnings given to the defendant?

A. This was--this was a good while after--uh--forty-five minutes perhaps.

Q. What was the defendant's condition at the time the Miranda Warnings were given to him and the time he responded to Detective Manuel's questions?

A. He was def--appeared to be defensive, wanted to be precise in everything he was saying, thought about his answers before that he answered any of the questions.

Q. Answer any questions counsel may have.

CROSS EXAMINATION
BY MR. PADGETT:

Q. Detective Camden, I think you testified that when you all first arrived, Kenneth Wilson's Miranda Rights and also the consent form were read about the same time? Is

that what you said?

A. Yes, sir.

Q. Alright. I'm--I'm--what span of time would be between the rights were read to him and the consent form was read to him?

A. It was almost simultaneously.

Q. Almost simultaneously.

A. Yes, sir.

Q. What would you say if I told you the two officers before you testified it was--there was at least two or three minutes or as much as four or five minutes before this was done?

A. To the best of my recollection, it would still've been simultaneously.

Q. Simultaneously. Where were you standing when the Miranda Warnings were given?

A. Almost directly behind Detective Manuel, five or six feet.

Q. Five or six feet?

A. Yes, sir.

Q. And you could hear everything that was being said?

A. Yes, sir, they were the only two--Detective Manuel was the only one talking.

Q. And you heard the full Miranda Warnings being given Mr. Wilson?

A. I heard parts of all or different warnings.

Q. Parts of all different warnings?

A. Yes, sir.

Q. But you can't testify that the full warning was given Mr. Wilson, can you?

A. No, sir.

Q. Well, you just did, just a minute ago, you just recited it to the Jury.

A. Yes, sir.

Q. What did you say Mr. Wilson said now? After the warnings were given?

A. He said nothing, he simply acknowledged the understanding by nodding his head.

Q. Alright, what statement did he give? What was the substance of the statement that he gave?

A. Concerning what?

Q. Concerning the desks.

A. Alright, they were here and then he made the comment that he did know they were stolen.

Q. What else?

A. And that they had been moved.

Q. Alright, what else?

A. To the best of my knowledge that was it.

Q. Alright, what would you say if I told you that Detective Manuel just testified a few minutes ago that the only thing Mr. Wilson said was that they had been stolen, that they were stolen? Are you telling the Jury that you could--that you could testify as to what Mr. Wilson said

better than Detective Manuel when Mr. Wilson was--

BY MR. LAMPROS: Your Honor please, that's not the--

Q. (Mr. Padgett continuing) --talking to Detective Manuel not you?

BY MR. LAMPROS: --area in question here, he has a transcript in front of him.

BY THE COURT: That's not a--you can cross examine him but that isn't proper, Mr. Padgett. That's argumentative.

Q. (Mr. Padgett continuing) Now how long after Miranda Warnings were given was the consent form actually signed, Detective Camden?

A. Approximately an hour, hour and a half. It was after we had left the building the first time and then had immediately turned around and gone back.

Q. Um-hmm. I think before you said it was forty-five minutes, didn't you?

A. I believe I did.

Q. Are you positive that the Miranda Warnings were given to Kenneth Wilson and that was not a consent form being read to him?

A. Yes, sir, I am.

Q. And you're positive full warnings were given to Mr. Wilson? The full Miranda Warnings?

A. I heard parts of all of the Miranda Warnings being either recited or read to the defendant.

Q. Mr. Wilson upset? Emotional, after the warnings

were given to him? Or before?

A. He was upset before, that's why his parents tried to calm him down. No. I beg your pardon, he was not upset at all when the rights were read to him or recited to him. He didn't become upset until sometime afterwards.

Q. That's all I have.

BY MR. LAMPROS: Stand aside.

WITNESS STANDS ASIDE

BY MR. LAMPROS: Judge, I'm going to require about a five minute recess to determine whether I'm going to call any additional witnesses. This might be an appropriate time to break for lunch if the Court wishes.

BY THE COURT: Alright, sir. Members of the Jury, we'll adjourn at this point so that you may go to lunch; and while you're gone and until your return, do not discuss this case with anyone or permit anyone to discuss it with you or come in contact with any type of news media or communication that would in any wise affect your fair and unbiased judgment and opinion in this case. When you return please report to the Jury Room and if you can, return please at quarter to Two.

THE JURY IS EXCUSED FOR LUNCH

COURT RECESSES FOR LUNCH

COURT RECONVENES AFTER LUNCH

BY THE BAILIFF: The Jury is seated, Your Honor.

BY THE COURT: The Jury's ready.

BY MR. LAMPROS: Mr. Asey, please. Mr. Charles Asey. Have
a seat in the witness chair, please.

CHARLES B. ASEY, A WITNESS OF LAWFUL AGE, HAVING
BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION
BY MR. LAMPROS:

Q. State your full name.

A. Charles B. Asey.

Q. Do you know the defendant Mr. Wilson seated
to your right?

A. Yes, I do.

Q. How long have you known him?

A. Since about 1971.

Q. Do you consider that you're a friend of his?

A. Yes, sir.

Q. Do you know the charge that is now being
tried against him this date?

A. Yes.

Q. Direct your attention to on or about the
Twentieth day of September, 1977. Did you have occasion to
be in the defendant's presence on that day?

A. Yes, sir.

Q. Describe to the Jury and the Court where you
all were and under what circumstances.

A. We--uh--were supposed to meet a boy that day
about One O'clock at Kenny's house.

Q. One O'clock in the evening?

A. P.m., right.

Q. P.m.?

A. Right. And--uh--

Q. And where was Mr.--when you say "Kenny" are you referring to the defendant Mr. Wilson?

A. Right.

Q. And at that time where did he live?

A. 5241 Falcon Ridge Road, Hunting Hills.

Q. Is that in Roanoke County?

A. Yes, sir.

Q. Proceed.

A. We were supposed to meet a boy at One p.m. that afternoon--uh--at Kenny's house.

Q. Did Mr. Wilson tell you for what purpose?

A. Uh--no.

Q. Go ahead.

A. So--uh--we pulled up in Kenny's driveway and --uh--

Q. Who is "we" now?

A. Me and Kenny Wilson.

Q. Um-hmm.

A. In his driveway and he's got an electric garage door opener and--uh--he pushed the button and goes inside and I'm still sitting in the car.

Q. When you say "he"?

A. Kenny Wilson, he went in to his house, in his

garage looking around, I don't know what he was looking for, I was still in the car. Jamie Phillips pulls up in an Everett Waddey van beside of us and Kenny's standing in the garage. And Jamie didn't get out of the truck, the van. And--uh--they exchanged words, I was just sitting in the car.

Q. By "they"?

A. Kenny and Jamie Phillips exchanged words and then--

Q. Did you hear the conversation?

A. No, sir.

Q. Did you hear any portion of it?

A. After Kenny opened his door, yeah, I did hear some of it then.

Q. And what did you hear?

A. I heard--uh--Kenny asked Jamie if he wanted to go to the Parkway Restaurant and get a glass of tea.

Q. What happened thereafter?

A. So Kenny got in the car and we proceeded down to the Parkway Restaurant.

Q. Alright, now who was in your car?

A. Me and Kenny Wilson.

Q. Who was driving that vehicle?

A. Kenny.

Q. He owned that particular car?

A. Yes, sir.

Q. Alright. What was Mr. Phillips in at that time?

A. A van.

Q. Did he follow you all down?

A. Yes, sir.

Q. What happened upon your arrival at the Parkway Restaurant?

A. Well, we proceeded to go inside and sit down and we all ordered tea. And Kenny and Jamie Phillips proceeded to talk about--uh--this exchange--a desk that Kenny was going to buy from Jamie Phillips and--uh--they were dickering over a price. Kenny--in the conversation I heard that Kenny had been buying them before for Seventy Dollars and that--uh--he had another table--

Q. What did you say--he'd been buying four for Seventy Dollars or before?

A. Before for Seventy Dollars.

Q. Alright.

A. And Jamie had another table in the deal that him (sic) and Kenny was talking about and he wanted Ten Dollars extra for this table. And Kenny didn't argue with him, he went on and wrote the check for Eighty Dollars. And the money--the check exchanged hands.

Q. Did you see who is was written to?

A. The check?

Q. Yes, sir.

A. Uh--they didn't know whether they wanted to

make it out to Jamie Phillips or cash and I don't know how they made the check out.

Q. Alright.

A. So then we paid for our tea and we left. And Kenny told Jamie that he would meet him back up to the house, so we proceeded to go back up to the house. And--uh--we pulled up to the driveway and Jamie pulled up to the side of the garage and he got out of the van and went back to the back of the van and opened the doors and Kenny went back there and didn't see that there was any box or any desk in the van. He asked Jamie about the box and Jamie said well I've already delivered the desk. And the desk was--he told--Jamie told Kenny that the desk--

BY MR. PADGETT: Objection, Your Honor, to hearsay.

BY THE COURT: Was that in the presence of the accused?

BY MR. LAMPROS: Was that--did you hear the Court, was that in the presence of the accused?

BY THE COURT: Was Kenny Wilson present when this statement was made?

BY THE WITNESS: About the desks being already delivered?

BY THE COURT: Yes.

BY THE WITNESS: Yes, sir.

BY THE COURT: Overruled.

A. (Witness continuing) So-uh--Jamie told Kenny that he'd already delivered the desks before we got there. We were supposed to meet him at One O'clock and we were late, we was (sic) ten minutes late. So--uh--Jameie gets

the two-wheeler out of the back of the van; goes back around behind the garage where he had set it there and picks it up on the two-wheeler; rolls it around the side of the garage by the van, inside; Kenny opened the garage and Jamie rolls the desk inside and we load it--there's another desk already sitting inside the garage and he loads it on top of the other desk. And then Jamie got--uh--the table was already in the van and it took two of us to unload the table out of the van in to Kenny's garage. We--me--I don't know who is was that moved the desk--uh--we just, you know, the desk was just moved inside from out of the van in to the garage.

Q. How long did Mr. Phillips stay there?

A. Not very long, he had a delivery to make, he had to go back to the warehouse and pick up some stuff and then make a delivery.

Q. He--uh--was an employee of Litton Industries, is that--Everett Waddey, is that correct?

A. Yes, sir.

Q. How was the desk packaged?

A. In a cardboard box.

Q. Approximately what size?

A. Three by six foot.

Q. How high was it?

A. Probably stood about three foot high.

Q. You remember any of the--if anything was imprinted on the side of the desk?

A. Just a lot of numbers.

Q. Do you recall any color on the side of the desk? Of the case, if any?

A. The numbers?

Q. No. Well, the color, any color at all.

A. Just it was a cardboard box, you know, just cardboard color.

Q. And where was that desk placed?

A. That desk was placed on top of the other desk that was sitting in the middle of the garage.

Q. What was the container of the other desk like?

A. It was identical to the one that we--well, to the one that was delivered previously.

Q. I want to show you Commonwealth's exhibit five and ask if you'll please take a look at that.

A. Yes, sir.

Q. "Yes, sir" what?

A. That's the desk, that's the box and everything.

Q. Answer any questions counsel may have.

CROSS EXAMINATION
BY MR. PADGETT:

Q. Mr. Asey, you lived with Kenneth Wilson for some time, did you not?

A. I had just moved in with him.

Q. How long had you lived with Kenny?

A. Ten days.

Q. How long did you live with him in total amount of

time I'm talking about--over how many months? Can you recall?

A. I just moved in September the Tenth.

Q. When did you move out, what date did you move out?

A. The day I left, the last time I've ever been at Kenny Wilson's house is the night I got shot.

Q. Okay. What day was that, I'm asking you what day? In December?

A. December the Fifth.

Q. Okay, that's all I asked you. Alright, Mr. Asey when you moved in, did you not move in a lot of personal possessions of your own stored in boxes?

A. Yes, sir.

Q. Did you not store some of these things in the garage area?

A. Yes, sir.

Q. And they were stored up in boxes, is that not correct?

A. Yes, they was (sic).

Q. Did you not have a t.v. down there and such articles as that?

A. Yes, sir.

Q. Located in the garage?

A. They weren't in the garage, they was (sic) in the bedroom.

Q. Okay, but they were later on stored in the garage,

is that not correct?

A. The boxes was, my t.v. wasn't, no.

Q. Now, you said that you met with Kenny and Janey--Jamie Phillips, what day was that again, please?

A. I met--uh--we met on a Monday morning.

Q. A Monday morning?

A. Um-hmm.

Q. You don't know the date?

A. September the 19th, 1977.

Q. Okay. Then you said you and Kenny went to his house and then proceeded to the Parkway Restaurant where you met Jamie Phillips, is that correct?

A. We'd already--Jamie was already--when we pulled up to the driveway, Jamie pulled up beside of us about ten minutes after One.

Q. Um-hmm. Then you all went to the Parkway Restaurant?

A. Right.

Q. And then after money was exchanged, went back to the house, right? And you said you saw how many cardboard boxes removed from the van?

A. One.

Q. One?

A. It was not removed, I didn't see it removed, no, sir.

Q. You did not see a cardboard box removed from the van?

A. No, sir.

Q. What did you see removed from the van?

A. A desk, a table with four legs on it.

Q. A desk?

A. It was a table with four legs on it.

Q. It was not boxed up?

A. No, sir.

Q. Can you describe that desk?

A. It was just a long, flat table with four legs
on it.

Q. Just a plain table?

A. That's right.

Q. No desks removed?

A. No, sir.

Q. That's the only thing you ever saw removed
from that van?

A. That's right.

Q. I thought you just testified that a desk was
removed from that van.

A. I did not testify that a desk was removed.

Q. Are these the boxes that counsel for the
Commonwealth showed you?

A. WITNESS INDICATES YES

Q. Where have you seen these boxes before?

A. Kenny's house.

Q. At Kenny's house?

A. In the garage.

Q. When did you see these boxes there?

A. That day, September the 20th.

Q. Were they piled up like this?

A. Yes.

Q. Is that the way they looked?

A. Not exactly, no.

Q. But they were stacked one on top of the other?

A. That's right.

Q. Does this look like Kenny's garage?

A. No.

Q. And what about these numbers along the side here, can you remember what the numbers were on the boxes you said you saw in Kenny's garage?

A. WITNESS INDICATES NO

Q. How can you be so sure that these are the same boxes then?

A. 'Cause--

Q. You can't be sure, can you, Mr. Asey?

A. Yeah, I can be sure.

Q. How can you be sure that these are the same boxes you saw in Mr. Wilson's garage, how can you be so sure? You cannot recognize the markings on the boxes. All you saw was two boxes.

BY MR. LAMPROS: Your Honor please, he's not allowing him to answer the question.

BY THE COURT: Let him answer the question.

A. (Witness continuing) I can tell by the band on the boxes--

Q. By the band on the boxes. Is that the only way you can tell, Mr. Asey?

A. Yes, sir.

Q. So on the basis of that, you're positive these are the same boxes you saw in Mr. Wilson's garage, right?

A. That's right.

Q. Have you ever seen Mr. Wilson move any boxes in his garage like that?

A. Yeah, we moved them around to clean out his garage.

Q. I'm asking you have you ever seen him move'em in to his garage?

A. I seen (sic) Jamie Phillips move it from around the back of the house in to the garage, yes, sir, I did.

Q. You saw him move a box, a carton?

A. With a desk in it.

Q. How'd you know there was a desk in it, did you open it?

A. I could hear it rattle.

Q. You could hear it rattle?

A. That's right.

Q. So you're assuming a desk was in it?

A. Yes, sir.

Q. You say you saw him move one, right?

A. Yes, sir.

Q. Just one?

A. That's right.

Q. And yet you're testifying you say you saw two in Mr. Wilson's garage?

A. There was (sic) two, there was one there before Jamie moved it.

Q. How did that get there?

A. I moved in Kenny Wilson's house September the 10th. The following Friday on September the 16th, me and my girlfriend left Kenny Wilson's house to go to the store. I was gone approximately thirty minutes, when I got back there was a desk setting (sic) in the garage. And--one of them (sic) desks on the bottom--I don't know which one it is--one of them was there.

Q. It was a box, you don't know if there was a desk in it or not, do you?

A. No, I asked Kenny what was in it and he said there was a desk in it.

Q. When did you ask that, Mr. Asey?

A. When? Approximately--

Q. You're on the stand, Mr. Asey, you're under oath--

BY MR. LAMPROS: Your Honor please, he's trying to answer the question.

BY THE COURT: Let him answer, Mr. Padgett. Alright, now repeat

the question and give him time to answer the question.

Q. When did he tell you there was a desk in the box, Mr. Asey?

A. That Satur--that following Saturday.

Q. What day was that, do you know?

A. That was a Saturday, September the 17th.

Q. You just assume there were desks in those boxes though, right?

A. I heard the desks in the boxes when he moved them.

Q. You heard the desks in the boxes.

A. And he wouldn't be pulling them around the back with a two-wheeler--

Q. I'll ask the question, Mr. Asey, please. Mr. Asey, do you have a grudge against Mr. Wilson?

A. No, sir.

Q. As a matter of fact, you do, don't you?

A. No, sir.

Q. Don't you think that Mr. Wilson shot you on one occasion?

A. Yes, sir, I sure do.

Q. You'd have a grudge against him then, wouldn't you?

A. No, sir.

Q. No grudges at all?

A. I haven't spoke (sic) to Kenny Wilson since that

night.

Q. I have no further questions.

REDIRECT EXAMINATION
BY MR. LAMPROS:

Q. And that's the subject of another proceeding,
is that right?

A. Sir?

Q. The fact that you were shot is the subject of
another proceeding, is that right?

A. Yes, sir.

Q. Not before the Court today as far as your
advised, is that right?

A. Yes, sir.

Q. Mr. Wilson tell you what he was going to do
with those desks?

A. He was going to--he asked me to try to find a
place to sell them. Or try to sell them for him.

Q. Did he tell you for how much?

A. Three Hundred Dollars. He said he would take
less, Two Hundred Fifty.

Q. Alright, sir. Stand aside.

WITNESS STANDS ASIDE

BY MR. LAMPROS: That's all we have at this time, Your
Honor.

BY THE COURT: Commonwealth rests. Are you ready to proceed
or do you wish a recess?

BY MR. PADGETT: I'm going to make a motion, Your Honor--

BY THE COURT: Well, I asked you if you wanted to proceed or have a recess, which is it?

BY MR. PADGETT: Yes, sir, I'd like to have a recess, Your Honor.

BY THE COURT: Let the Jury go to their room.

THE JURY RETIRES TO THE JURY ROOM

THE FOLLOWING TOOK PLACE IN THE COURTROOM BUT OUT OF THE PRESENCE OF THE JURY

BY THE COURT: The following took place out of the presence of the Jury in the presence of the accused, attorney for the Commonwealth and the attorney for the defendant. Alright, Mr. Padgett.

BY MR. PADGETT: If it please the Court, I'd like to make a motion to strike the statements made today in that the corpus delecti of the crime has not been established--

BY THE COURT: I can't hear you now.

BY MR. PADGETT: I'm making the motion, Your Honor, to strike the statements made or allegedly made by Mr. Kenneth Wilson and the basis for that is that I'm saying the corpus delecti of the crime has not been shown beyond a reasonable doubt. And that would include the four elements of the crime of possession of stolen goods. And, of course, one is I don't think the Commonwealth has shown beyond a reasonable doubt that the goods were ever in the possession or actual possession or constructive

possession of Mr. Wilson. All that they have shown is that there were possibly two boxes or a box in his garage at one time but they have never in any way made any connection between those boxes and the boxes found at the Bramble Inn. There's been no convincing evidence, furthermore, as to whether or not the desks found at the Brambleton (sic) Inn were ever stolen. Mr. Boyd, himself, could not testify that those desks were stolen, he said they could have been sold. And that's a part of the crime in itself, right there. Those two elements plus the fact that I think the Commonwealth has--neither have they shown that Mr. Wilson has had knowledge or any intent other than through the statement that he made. And I move to have those statements stricken and I also would like to make a motion to strike the evidence on the grounds that the evidence so far presented has been insufficient as a matter of law to sustain a conviction.

BY MR. LAMPROS: May it please Your Honor, counsel has recited and well the four elements of the offense, the first one being that the items must be stolen and, in this particular case, have a value exceeding One Hundred Dollars. I think it's uncontested that the goods that were seized on January 29th have a value exceeding One Hundred Dollars. Insofar as the goods being stolen, Mr. Boyd has

testified that the goods were not sold by his firm; no one had permission to sell the goods; that the goods when they are sold by his firm are handled in a specific and particular manner. He further stated that he had checked all of his invoices and that goods of this nature had not been sold to Mr. Wilson or to anyone, if I recall correctly, on his behalf. It is true, and I'm the first to admit, that I would have preferred--and I'm certain Mr. Boyd would have preferred--that they had kept better inventory control but they do not. And the only way that the Commonwealth has in achieving compliance with number one is through Mr. Boyd's testimony. We feel at this point in time in the case, that it is sufficient to overcome the motion to strike as to issue one. That the defendant aided in concealing them, I think, is a situation where the Court can--and as a Jury would have to--look at all the circumstances. Certainly, that you couple this number two, that at the time he so aided in concealing them he knew they had been stolen. Well, certainly, in listening to the testimony of the last witness, Mr. Asey, the one desk was recovered from behind the garage, moved in to the garage floor itself, and placed on another like desk in a like carton, that he was offered money to go out and sell these desks right

after they were purchased or acquired--I should not say purchased, purchased true for Seventy Dollars each. The defendant on two separate occasions, one in the presence of Detective Manuel and two other officers, admitted that he knew the desks were stolen and he received them; and two in the presence of his attorney Mr. Carter, his attorney at that time, he knew that they were stolen when he received them. And number four that he so aided in concealing them with a dishonest intent. Certainly the facts, the movement of the desks from location to location indicate and certainly infer a lot of compliance with these four requirements must be obtained by the Court or the Jury through circumstantial evidence. The circumstances, what do they mean to an average, reasonable person? And we would submit in this particular case with these particular circumstances at this point in time in this trial, that they mean that this defendant was receiving stolen goods.

BY THE COURT: Anything further?

BY MR. PADGETT: Your Honor, I still don't think Mr. Lampros spoke to my first motion. I still don't believe there's been enough corroborating evidence to sustain the corpus delicti without his own statements. I really believe that there is some question first

of all as to whether or not those desks were ever stolen. And as far as Mr. Asey's testimony goes, the money was exchanged so we don't know whether the desks were stolen or being sold from Everett Wadley. There's just been no connection established between the cartons or the desks, if we assume they were desks, in Mr. Wilson's garage and the cartons recovered at the Bramble Inn. There's been no connection whatsoever.

BY THE COURT: Three separate police officers stated that when the defendant was confronted with information concerning the desks, he stated to them he knew they were stolen, he knew they were moved. That coupled up with the evidence of the other witnesses, particularly Asey, who stated that the defendant asked him to see if he couldn't get a purchaser for the desks, that he saw the witness--not the witness--the individual named Phillips move one desk in the garage and put it on top of another, that coupled up with the statements of the officers that the defendant said he knew the desks were stolen and had been moved in the opinion of the Court is sufficient to go to the Jury. So your motion's overruled and you except to the ruling of the Court.

BY MR. PADGETT: Yes.

BY THE COURT: Now, do you want to stand on your motion or do you

have any evidence?

BY MR. PADGETT: We have some evidence, Your Honor.

BY THE COURT: Alright. Are you ready to proceed?

BY MR. PADGETT: Yes, sir.

BY THE COURT: Call the Jury.

THE JURY RETURNS TO THE COURTROOM

BY THE BAILIFF: The Jury is seated, Your Honor.

BY THE COURT: Jury's ready.

BY MR. PADGETT: Your Honor, I'd like to call Mr. Winford
Wilson to the stand, please.

WINFORD WILLIAM WILSON, A WITNESS OF LAWFUL AGE,
HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. PADGETT:

Q. Okay, would you state your name for the
Court, please.

A. Winford William Wilson.

Q. Alright. Where are you employed, Mr. Wilson?

A. I run Wilson's Restaurant up above Dixie
Caverns.

Q. Are you any relation to the defendant here
today Mr. Kenneth Wilson?

A. My son.

Q. He's your son. Okay, I'd like to take you
back to the evening of January 31st, 1978. Can you recall
that day as to what happened that evening?

A. Yes, sir.

Q. Can you relate to the Court and to the Jury as to what happened that evening in the company of Mr. Wilson your son.

A. Well, my son called me and wanted me to go with him over to his house that night. They--uh--

Q. What time was this, Mr. Wilson?

A. Oh, it was somewhere around Eight--

Q. Eight O'clock?

A. --maybe a little later.

BY MR. LAMPROS: What time?

A. (Witness continuing) Around Eight or something like that.

Q. Okay, and what did you all do?

A. He called me and told me that he wanted me to go over to his house with him, supposed to meet a detective over there.

Q. Detective who?

A. Gus Manuel, he wanted to look at Charles Asey's stuff in there and said he had a stolen t.v. in there.

Q. Alright. Did you all proceed to the house then?

A. Yes, sir, we went over to the house.

Q. And is this where Kenny lives?

A. Yes, in Hunting Hills there in the County.

Q. When you all arrived, what did you find?

A. Well, when we got there--uh--Gus Manuel and--uh--Jack, another detective, two detectives there when we drove up to the house.

Q. Then what did you do?

A. Well, we went in the garage and--uh--they wanted to look at Chuck Asey's t.v., look at his stuff. And Gus Manuel said he knew it was stolen because Asey'd done told him it was stolen.

Q. Okay, so the t.v. was looked at?

A. Yeah. We had to find some tools and I helped them get the back off of it so they could get a serial number or something off of it.

Q. Alright, what was said during this time by Kenny?

A. Well, Kenny just stood there, wasn't much said, I mean, we was just talking about different things, you know, trying to find tools and get the back of the t.v. so they could get a serial number and name off it or something.

Q. So you all took the back of the t.v. off?

A. Yeah, we finally got some tools and got the back of it off.

Q. Uh-huh and what happened after that, Mr. Wilson?

A. Well, it seems the wanted to--they wanted to search Kenny's house and--uh--Kenny told them he didn't want them to search it until he talked to his lawyer. And--uh--

Q. Okay. What did--did Kenny go back to call his

lawyer at any point?

A. Yes, Kenny went in and used the phone and called his lawyer and come back out and he told them he didn't want them to search and me and his mother told him--well, Gus said he'd go get a warrant and search anyway. And I said--well, Kenny's mother talked to him and told him well he didn't have nothing to hide let 'em go on and search, let'em look around.

Q. Okay. What happened after that?

A. Well, Gus read this paper to him, you know, where he wanted him to sign so he could search?

Q. Do you know what that paper was?

A. It was just--uh--wanted to search and look in his house to see if he could find anything planted in there, somebody was supposed to've planted something in there.

Q. Okay. Could you hear what Detective Manuel was reading?

A. Yes, I heard him read the--uh--paper there where he had--uh--search the house.

Q. Okay. Was there anything else read to Kenneth Wilson that night at all?

A. Not anything else read but that paper to search the house was all was read that night.

Q. Alright. Were you with Detective Manuel that night?

A. I was with him all the time.

Q. All the time?

A. Yeah.

Q. Were you with Detective Manuel when he actually searched the house?

A. Yes, me and the wife was with him.

Q. Were you with him at all times?

A. At all times, sure was.

Q. Did you at any time hear Detective Manuel advise Kenny of anything else other than what he read from the consent form to search the home?

A. That's all that was read, the paper to search the house, there was nothing else read.

Q. Did you at any time during this whole evening hear Kenneth Wilson give any statement or make any admissions to Detective Manuel?

A. No. I didn't hear him make any statements.

Q. Did you hear any discussions concerning the charge or the possession of stolen goods at any time?

A. Well, Gus said something about--asked me did I see any boxes the night of the shooting in there, I told him I wasn't looking for no boxes, I didn't see boxes, boxes all over the house anyway where we'd move our stuff in there. We was (sic) remodeling our house and we had moved everything out of our house over to Kenny's house.

Q. Did you hear Detective Manuel confront Mr. Wilson about the boxes or the desks which were allegedly stolen?

A. There was something said about the boxes but--

he asked Kenny did he know they was stolen, Kenny told him he didn't know they was (sic) stolen until he told him they were.

Q. Mr. Wilson, you said there were other boxes in Kenny's garage, is that correct?

A. There was boxes, a lot of boxes.

Q. Did you have things stored in there too?

A. Yes, sir, we had furniture and all kin--we had clothes and everything packed in boxes where we'd moved out of our house over there to remodel our house.

Q. Okay. So you were in the process of remodeling, is that right?

A. Yes, sir.

Q. And you're absolutely certain that at no time Kenneth said anything other than he knew the items were stolen but only after Detective Manuel had told him?

A. Only after he told them they were.

Q. And you're sure that's the only thing Kenneth--

A. That's the only thing was said, yes, sir.

Q. And you were with Detective Manuel the entire night?

A. Yes, I was. After Kenny finally decided to sign the papers and let'em search.

Q. Did you know whether or not Kenneth had a roommate or somebody living with him in the house?

A. Chuck Asey'd been staying with him.

Q. Did you know whether or not Mr. Asey had any items

stored in the garage, stored in boxes?

A. Well, he had boxes, bed, t.v., a lot of stuff in there.

Q. That's all I have, answer any questions Mr. Lampros might have.

CROSS EXAMINATION
BY MR. LAMPROS:

Q. Mr. Wilson, how many children do you have?

A. I have three. Two boys and one girl.

Q. The night in question, you say you arrived sometime after Eight O'clock?

A. It was around Eight O'clock, I reckon, it might have been a little bit after, a little before, I don't remember the time exactly.

Q. Did you drive over?

A. Yes, we drove over together--

Q. When you say "we"--

A. --Kenny, me and my wife.

Q. --you mean you and your wife?

A. Me and my wife and Kenny, yes.

Q. You all drove in the same car?

A. Yes.

Q. At that time did you go in to the garage?

A. Yes, sir, we went in the garage.

Q. Was there a couch in that garage at that time?

A. Yes, it was a couch in that garage.

Q. And at that time was there Detective Camden, Manuel and Lieutenant Wade, were they also present during most of this time?

A. Yes, Wade wasn't there when--uh--I mean--uh--not Wade but the uniformed police, the two detectives were there when we drove up but the other one came up--the uniformed police came up later.

Q. Now you're saying that they talked, they and Detective Manuel talked with your son at length?

A. Well, we was all talking.

Q. At the same time?

A. Well, different ones talking different times.

Q. A lot of talking going on there, is that not correct?

A. Well, a lot of things said, I guess, yeah.

Q. Because I assumed that you all talked from the time the officers arrived which you say was about Eight O'clock and what time did they leave?

A. I don't know, they was there probably a (sic) hour and a half, two hours, I don't know exactly how long, I know it was cold.

Q. Cold?

A. It was cold, we was (sic) standing out in the garage, it was cold.

Q. At that time you know that your son had been charged with receiving stolen goods, did you not?

A. Yes, I was on the bond.

Q. And at that time you say--well, who approached your son about searching the house and reading statements to him concerning the search of your house or his house?

A. Well, Gus Manuel had a--said he had a paper, he read it to Kenny and that he wanted to search his house.

Q. And he told him, you said, that unless your son Mr. Wilson signed the paper he couldn't proceed with searching the house, is that right?

A. He said he couldn't search until Kenny signed it.

Q. And as a matter of fact, he didn't even attempt to search until Kenny signed it, isn't that correct?

A. No, they didn't attempt to search.

Q. As a matter of fact, when your son got upset--kind of beat his fists up against the wall--the officers left, is that right?

A. They started to leave. My wife and I talked to Kenny and told him go on and let'em search, they'd go get a warrant and come back and search and cause us to loose more time and told him he didn't have anything to hide, to let'em search.

Q. So the officers did not--they weren't abusive, were they?

A. No.

Q. And you were trying to listen to everything that went on in your son's behalf, I assume, is that right?

A. I was, I heard what was said, yes.

Q. And you said only one item was read off a sheet of paper to your son, is that correct?

A. That was the only thing was read, only thing that was said--

Q. And the only person that read this--not this--that read the consent to search form was Detective Manuel, is that right?

A. He read that paper to search, yeah.

Q. And he read it vocally, orally, he read it to your son, is that correct?

A. Yes.

Q. And did your son likewise take the paper and read it himself?

A. He couldn't see it, he was---

Q. Crying?

A. Crying, tears in his eyes and--

Q. He was crying at that time?

A. --he was upset.

Q. Now how much time had gone by when your son started crying?

A. I don't know, it was a while there, I don't know exactly.

Q. Would an hour be a fair amount of time? Forty-five minutes?

A. I'd say a half an hour, forty-five minutes, something like that.

Q. And during that period of time other conversation

had been occurring, is that correct?

A. Well, it was just talking, yeah.

Q. I assume that you weren't there--and I don't mean this to be flippant--but you and the officers weren't there to talk about the weather, is that correct?

A. No, we wasn't there--

Q. I mean you were talking business, they were talking business and you were there to see what the business was?

A. Right.

Q. So during that period of time before the consent to search was offered to your son, they were talking business with you a good deal of that time, is that right, and with your son?

A. I guess you might say so.

Q. And were they talking about offenses and things of that nature?

A. NO ANSWER

Q. Offenses, you know, crimes? Is that what they were talking about?

A. Well, I don't really know.

Q. You don't recall?

A. No.

Q. And when you went to your son's home, did you go to your son's home the evening of what has been referred to as the shooting? Did you go there that evening or the next day?

A. I was with him that evening, yes.

Q. What time did you arrive?

A. I don't know what time it was now. Somewhere around after Seven, I guess it was.

Q. And did you live at that home at that time, sir?

A. Did I do what?

Q. Did you live at your son's home at that time?

A. Did I live there at that time?

Q. Yes.

A. No, I did not, I lived on Cave Spring Lane.

Q. This is the photograph--is this the photograph of the interior of his garage, I'm just referring to Commonwealth's exhibit seven?

A. Yeah, I guess so, uh-huh.

Q. You're not sure?

A. Yes, that's it, yeah.

Q. You are sure that that's it?

A. Yeah, there's the couch, yeah, I recognize it, the furniture.

Q. Do you recognize anything else?

A. I recognize the chair and the cabinet and the couch.

Q. But you don't recognize anything else, how about the boxes and the other chair?

A. I don't recognize the box.

Q. You've never seen that box before, you're sure?

A. Not that I know of, I don't know whether I seen (sic) it or not, I might've seen it that night, I don't know. I wasn't looking for boxes that night.

Q. Have you ever seen a box like that in your son's home?

A. Not as I know of, that's the only time I've seen it, I've seen boxes.

Q. That's a pretty good size box, you have to admit, now isn't it?

A. Well, I seen boxes in there but I didn't pay no attention to no boxes, I wasn't looking for a box.

Q. Do you see a lot of boxes of this type in your son's home?

A. Well, we had our clothing, part of furniture and everything, little things, all in boxes, they were all over the house.

Q. Did you have it in boxes, did you actually have your furniture in boxes like this with steel bands around them and straps around them?

A. I don't know what they had around them.

Q. Well, you packed it, didn't you?

A. No, I didn't.

Q. Who packed it for you?

A. My son, different ones.

Q. Well, the night or the evening of the 31st, when the officers came by, you don't recall all the conversation, is that correct?

A. Well, I know we was talking, I don't remember everything was said.

Q. And you remembered someone saying something about desks, is that correct?

A. NO ANSWER

Q. Is that correct, sir?

A. I remember Gus asking Kenny about some desks and Kenny told him that he didn't know they were stolen.

Q. Was that before your son started beating the wall and started crying or was that afterwards?

A. That was before.

Q. How often did you frequent your son's home?

A. I go over right often.

Q. How often might that be, sir, once a week, twice a week?

A. Once, twice, sometimes three or four times.

Q. Do you normally enter through the garage of your son's home?

A. Yes, I do.

Q. And you've been frequenting your home--your son's home this often over a period of six or eight months?

A. Well, ever since he's lived there.

Q. How long has he lived there?

A. Well, he's lived there for a year or two.

Q. And you've never noticed any boxes in his garage, any specific boxes?

A. Well, I notice boxes and we had boxes all over the

place.

Q. How about in his basement?

A. Had boxes all over the basement.

Q. Very good, thank you, sir.

REDIRECT EXAMINATION
BY MR. PADGETT:

Q. Mr. Wilson, you said Kenny was upset and crying, why was he upset and crying?

A. Well, they'd been on him about things, you know, and first one thing and another and bunch of lies told on him and all that stuff.

Q. How many times had the officers been out to his house? Do you know? Before that particular occasion, the 31st of January?

A. Well, the night of the shooting and they was (sic) back the next day and the next day and--

Q. They'd been there several times I take it?

A. Yes.

Q. Had they wanted to search the home before?

A. No, they'd been all over the house.

Q. They'd already been all over the house before?

A. Yes.

Q. And they were there to search that night as well, is that correct?

A. Yes.

Q. Okay. No further questions. Stand aside, Mr.

Wilson.

WITNESS STANDS ASIDE

BY MR. PADGETT: Mrs. Lois Wilson. Mrs. Lois Wilson, please.

LOIS WILSON, A WITNESS OF LAWFUL AGE, HAVING BEEN
FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. PADGETT:

Q. Okay. State your name for the Court, please.

A. Lois Wilson.

Q. Are you employed, Mrs. Wilson?

A. No.

Q. Are you any relation to Mr. Kenneth Wilson
seated here at the table?

A. He's my son.

Q. Would you mind speaking up, please.

BY THE COURT: You'll have to speak louder, we're recording
this, so if you'll talk to me I think we'll get
along fine.

BY MR. PADGETT: Speak up to the Judge and I think the
microphone will pick you up.

BY THE COURT: Alright.

Q. (Mr. Padgett continuing) Mrs. Wilson, I'd
like to take you back to the 31st of January on that evening,
1978. Can you recall the events that occurred on that
evening?

A. NO ANSWER

Q. Can you recall what happened that evening, just

answer yes or no.

A. Yes.

Q. Alright. Were you with your son that evening?

A. Yes.

Q. Okay. Just go ahead and relate to the Court and to the Jury when you met with your son that evening and what happened after you met with him.

A. Well, earlier in the afternoon we had met and gone down to the lawyer's office--

Q. Well, I'm trying to direct your attention to that evening now, okay?

A. At the garage?

Q. Right. Yes, ma'm.

A. Well, we went over to the garage that evening and--uh--when we got there Mr.--Gus Manuel and--uh--the other detective--uh--Jack Cam--

Q. Mr. Camden?

A. --and a Mr. Wade, well Mr. Wade wasn't there right then. The two detectives were there when we drove up.

Q. Alright, what time was this?

A. It was--uh--close to Nine O'clock.

Q. Okay. Alright, and who was with you now besides your son?

A. My husband.

Q. Alright, and you all arrived at approximately Nine O'clock?

A. Yes.

Q. And you say the detectives were already there, is that right?

A. The two detectives were.

Q. The two detectives. Okay, now what happened after you all arrived?

A. Well, after we arrived we went in the garage and--uh--Mr.--the two detectives--uh--wanted to look at some belongings of Chuck Asey, he had lived with Kenny and his belongings were still there. And--uh--they said that they thought that the t.v. might be stolen. And they looked through all his belongings and they took the back, you know the whole case off the t.v. Took'em a while to do that and they had to get some tools to do it with.

Q. Okay. How much time had expired now?

A. It took'em about--you mean?

Q. From the time you all first met and the time the back of the t.v. was taken off? Can you recall?

A. It was between twenty and thirty minutes.

Q. Okay. Alright, proceed, go ahead and tell us what happened.

A. Well, after they took that off, they said it was stolen. And I asked'em, I said are you sure it's stolen and they said yes that they could tell by the number that was inside of the t.v. that it was stolen. And--uh--Kenny said Gus, well I guess you're going to charge me with that too and they said no, said--uh--that Chuck Asey had admitted that the t.v. belonged to him and that it was stolen.

Q. Alright. Now, did Detective Manuel read anything to Kenny during that evening?

A. Later on.

Q. Alright.

A. He--uh--he had--

Q. What was that?

A. It was--uh--I believe they call it a consent paper, anyway it was to--uh--they wanted to--uh-search the other part of Kenny's house and Kenny didn't want'em to search it because he told them they had been and over there so many times and--well, practically harrassed him, you know, just on his back all the time. And he said he didn't mind'em investigating him but he didn't like the statements they were making to people when they were investigating. And he was really upset about all of it. And he said if they had any charges to make to go ahead and make'em and so finally we talked Kenny in to letting'em go ahead and search. Because--uh--Mr. Manuel said he was going back and get a warrant, you know, search warrant and all of that anyway. And we told Kenny he didn't have anything to hide so, you know, go on and let'em search. And besides if they went to get a search warrant they might say that he had something in there and had moved it while they were gone.

Q. Alright now. So Detective Manuel did, in fact, read a consent form allowing the police officers to search the home, is that correct?

A. He read a consent form.

Q. Alright. How much time had expired between the time they first arrived and when this was done, can you recall? Give some kind of estimate.

A. I'd say about an hour all together from the time they arrived, you know, searching Chuck's things and then that too.

Q. Alright. Now in between this period of time did you hear Detective Manuel at any time read any other statements to Kenneth Wilson?

A. No, he did not.

Q. Were you with Detective Manuel--uh--that evening?

A. Yes, I--me and my husband stayed with him the whole time.

Q. You stayed with him the whole time?

A. Yes. We made it a point to stay with him.

Q. Alright, and you're saying to the Jury here that he--that the only thing you heard Detective Manuel read was the consent form to allo--

A. Yes.

Q. --allow them to search the house, is that right?

A. Consent form was the only thing that he read.

Q. Alright. Now when did Kenneth become upset or emotional?

A. When they asked to look in his--the other part of his house.

Q. The other part of his house, and that's when he started banging on the walls and so forth, is that correct?

A. Yes.

Q. Alright and then--

A. He became very upset and he was crying. In fact, he tried to read the consent paper hisself (sic) and he couldn't even read it because his eyes, you know, was red from crying. He just put it down, he said well I can't read it anyway. And I asked Detective Manuel, I said, we're trying to get him to let you all search the house and I said we want to be sure that we're not doing something wrong. I said is that all that that says, it's just consent for you all to search the house and that's when Detective Manuel read it. Read the consent form.

Q. Alright. Did you hear Kenneth make any statements that entire night concerning the charge of possession of stolen goods?

A. The only statement that he made was right before they left. Gus asked him--uh--he asked him if he knew if the--of any desks being stolen or knew anything about the desks. And Kenny told him, said the only thing that I know is what you told me when you arrested me, said you told me when you arrested me that some desks were stolen. He says if I'd believe what you say, I guess they are.

Q. Now are you positive that's the only thing Kenneth said?

A. I'm certain.

Q. As far as the charge of possession of stolen goods goes?

A. Yes.

Q. And you were with Detective Manuel that entire night, is that correct?

A. Yes. We were in the basement with him for quite a while, my husband and him and myself.

Q. Were there boxes in the garage at that time on that evening?

A. Yes, there were some boxes out there.

Q. Had there been boxes down there previously?

A. Oh, there's lot of boxes there. We had eight rooms of furniture, some things out of the basement, we moved everything out of our closets, out of our drawers, you know, and packed them in boxes except for maybe, you know, about a couple of changes of clothing. We were, you know, remodeling our house and we moved all of this over to his house while we were remodeling and--uh--well, there was a lot of boxes but we have, you know a pretty large home and I'm not one to throw things away too much. And well, Chuck Asey had some things over there too.

Q. Alright. Who's Chuck Asey?

A. He is--uh--the guy that they wanted to come and look at his belongings that had lived with Kenny, stayed with Kenny some.

Q. Chuck had some things over there, too?

A. Yes, he had some over there.

Q. Were they boxed up?

A. He had some furniture and some boxes.

Q. Okay, answer any questions Mr. Lampros might have.

CROSS EXAMINATION
BY MR. LAMPROS:

Q. Mrs. Wilson, now how did you arrive at your son's home on the 31st?

A. You mean transportation?

Q. Yes, ma'am.

A. We three went in the car and when we got there Mr. Manuel and--well, their car was parked up in the driveway and we had to park across the street and we walked on up to the house.

Q. You say you think you arrived about Nine p.m.?

A. Yes.

Q. And how long was it before the officers finally finished their work and left permanently?

A. I would say it was Eleven or a few minutes after.

Q. At this time on this particular date, you didn't--did you live at the home full time?

A. Which home?

Q. At your son's home in Hunting Hills, did you all live there at that--

A. Oh, no. We've never lived in his home.

Q. You've never lived in his home?

A. No.

Q. Just use his home to store certain items?

A. We were remodeling the furniture, I mean, the house and we moved all of our furniture out and all of our clothing except just a few changes, put everything over there so we wouldn't have to be moving it back and forth 'cause we was remodeling the whole thing.

Q. Did you move everything in to the basement or the garage?

A. You mean at his home?

Q. Yes, ma'm.

A. Some things were in the garage and some things were in the basement. In fact--

Q. When were they moved over there?

A. --I still got some in there, over there like that.

Q. When were they moved, when was your furniture moved there?

A. We started remodeling in--uh--November--some part of November.

Q. So nothing had been moved there in September, is that correct?

A. You mean from our house?

Q. Yes, ma'm.

A. I believe they moved it all about the same time.

Q. In November, is that correct?

A. Yes, I think so.

Q. So none of your items were over there in September, right?

A. None of'em over there in September?

Q. Yes, ma'm, do you have any trouble understanding my question? Your personal items?

A. You mean--oh, I see, you mean ahead of time.

Q. Yes.

A. No, not that I know of, no.

Q. So you remember what has been referred to as the shooting incident at your son's house, is that correct?

A. Yes.

Q. None of your items were there at that time, is that right?

A. No, huh-uh.

Q. Did you frequent and visit your home or your son's home on a regular routine occasions?

A. No, not regular or routine.

Q. How often would you go to your son's home?

A. Very seldom. He always--on his way home, he passes our home and, of course, he come over for dinner and all. I didn't go over there very often.

Q. Where is your home now?

A. He's not home very often.

Q. Where is your home?

A. Cave Spring Lane.

Q. So rather than you all visiting him, he would come to you and your husband's home, is that correct?

A. Right.

Q. How often would he visit within your home?

A. Well, pretty often.

Q. Would it be fair to say that you and your husband may have visited within his home, maybe once a month at the most?

A. Probably.

Q. So you would not have any knowledge as to what items were stored within your husband--within your son's home? Is that correct?

A. NO ANSWER

Q. You wouldn't have any personal knowledge of what items were stored, boxes were stored in your son's home, would you? Or do you, do you know what items he would have stored in his home?

A. I know what I saw there when I went there, is that what you mean?

Q. Yes, ma'm.

A. It wasn't often but I do know what, you know, whatever all was there when I went there.

Q. Okay. Let me show you Commonwealth's exhibit seven and ask if you can identify, if this is within your son's residence and what portion of the residence.

A. That looks like it would be the garage to me.

Q. But you say it in such a fashion that you appear

to be unsure.

A. No. Let me see, there's my couch and my couch, one of my couches, that was in the garage. And--uh-- I'd say it's--

Q. How about--

A. --the garage, yeah, because this goes in to the kitchen.

Q. How about this box?

A. Well, I don't know what that is.

Q. What about this chair?

A. That belongs to my sister-in-law.

Q. Not the one--the one that's covered with cellophane or something of that nature, have you ever seen those before?

A. No.

Q. Never have?

A. No.

Q. Ever seen any box that looks like that before? This is kind of a close-up shot, that may help you a little bit. Ever seen any box that looks like that before?

A. No, not really.

Q. Thank you, ma'm. Now, when you arrived, there was some momentary chitchat, I assume, when the officers and you all kind of met. You had not met all of them and some of the officers had not met you and your husband, is that correct?

A. We had met all except Mr. Wade.

Q. And I assume he was introduced to you and your husband and to your son, is that right?

A. Um-hmm.

Q. Now, you at that time, I assume, knew that your son had been charged with receiving stolen goods, a felony, is that right? You and your husband, I assume, put up bond for him?

A. Yes.

Q. The officers, Detective Manuel inquired of your son as to--well, he talked with your son at length, is that right?

A. When he first came in?

Q. Um-hmm. Did he talk with your son?

A. Yeah, they discussed, they were talking about the belongings of Mr. Asey, Chuck Asey, and they were trying to get the top off the--the outer part of the t.v. off, that type thing.

Q. Did he ask--you said at some point in time, he asked your son if your son would sign a consent search warrant--

A. Um-hmm.

Q. --or a consent search?

A. That's right.

Q. And were the officers boisterous, belligerent, nasty or anything of this nature?

A. NO ANSWER

Q. Tell it like it is.

A. No, not, I don't think so, not that I know, not at that time but Mr. Manuel has been, plenty of times.

Q. But at that time, let's talk about this day. Alright and when your son asked him to leave, they left, right?

A. NO ANSWER

Q. You say they didn't leave?

A. They started to leave one time.

Q. Um-hmm. Was that because--for what reason?

A. Because he was upset.

Q. He was crying, is that right? Beating his hands against the wall?

A. He had told them then that he wasn't going to let'em search.

Q. Were you present when your son went in to make a phone call to his lawyer?

A. Yes.

Q. And so the officers left, I believe Lieutenant Wade suggested that they leave at that time because your son was upset, is that right?

A. Yes, but they didn't leave, not completely.

Q. Didn't some of them go out to their cars?

A. Mr. Wade had gotten about out to his car but the other two hadn't.

Q. So you're saying the other two were still inside the garage at that time?

A. Not right inside, right outside the door.

Q. And then your son, you say, changed his mind?

A. Yes, he was real upset. He said oh go ahead and search and get it over with and just go on and leave me alone.

Q. But the officers, the officers were going to leave because he did not give his consent, is that correct?

A. Yes, that's right.

Q. Now the officers were there for over two hours in your estimate, is that correct?

A. About two hours.

Q. And during a period of that time, you say you and your husband at various times were with Detective Manuel?

A. We were with him all the time? Because he had made--

Q. You were with him all the time, is that correct?

A. Yes, we were with him all the time because he had said that he was going to burn Kenny and he was going to get him one way or the other. And we wanted to be sure what he was doing.

Q. Do you feel better that you got that out?

A. Pardon? I beg your pardon?

Q. Nothing, ma'm. Let me ask you a couple of more questions. You say that Detective Manuel has an ax to grind against your son, is that correct?

A. He said so hisself (sic).

Q. You're saying that now--

A. Yes.

Q. --is that correct?

A. Yes, he said so hisself (sic), that's what he said.

Q. And where was this when it occurred?

A. When Mr. Manuel said it?

Q. Um-hmm, yes, ma'm, I want to know.

A. It was over at the Courthouse after they had arrested Kenny that evening.

Q. You were present?

A. I certainly was. In fact we called Kenny and told Kenny that Mr. Manuel was at our house with a warrant for him and Kenny told'm that he would meet him at the Courthouse.

Q. Okay.

A. And we went with Mr. Manuel to the Courthouse.

Q. And you were present also when your son went to his lawyer's office, is that correct?

A. Yes, I was.

Q. And why did they go to your son's lawyer's office?

A. We went to get a lawyer--

Q. No, I'm talking about when you all went to Mr. Carter's office.

A. That's what we went for.

Q. Did you--

A. Are you talking about the day that Gus called Kenny?

Q. I'm talking about the time that you and your husband and the defendant Mr. Wilson went to Mr. Carter's office to talk in the afternoon about Two p.m. of the same day.

A. Oh, that was another day.

Q. Alright. Do you recall going to that office?

A. Yes, I recall going to it.

Q. Do you recall your son going with you?

A. Yes.

Q. Do you recall why you went to that office?

A. Yes.

Q. It was to discuss this particular offense, wasn't it?

A. No, it was not.

Q. It was not?

A. It was certainly was not.

Q. Did you recall--

A. Mr. Manuel said he wanted some--

Q. Do you recall--

A. --names.

Q. Do you recall going to that office with your son?

A. Yes.

Q. Do you recall your son going in to the office with Detective Manuel and Mr. Carter?

A. He didn't go in with Detective Manuel because Detective Manuel was already in there. And he went in later.

Q. Alright, do you recall your son going in?

A. Yes.

Q. How long was your son in that office?

A. Well, he was in there longer than Detective Manuel, and I would say Mr. Manuel was in there about thirty, forty-five minutes. I'm not sure exactly what--

Q. And you have no idea what--

A. --time he was in there--

Q. --the conversation was about because you were not present, is that correct?

A. No, we weren't in there. But Gus had asked us to come--said we could go down, said that he wasn't trying to do anything to Kenny or get anything out of him that he would care about and said that wanted us to come down there and be present. But then when we got down there, he didn't allow us to be present.

Q. And this was in your son's lawyer's office? Is that correct?

A. That's right.

Q. And did Mr. Manuel--uh--ask that you not go within that office?

A. He didn't--uh--he was already back there.

Q. So you're saying that Detective Manuel prevented you and your husband from your being present when your son

was talking to his lawyer, is that correct?

A. Yes.

Q. In his lawyer's own office. Was Detective-- do you know how this came up, ma'am?

A. He didn't take us in with him.

Q. Alright, but you say Detective Manuel prevented it, is that right?

A. Yes, because he already assured us, he said that if Kenny would come down and talk to'em, that we could be present when he talked to him.

Q. Did you talk to Mr. Carter, your son's lawyer?

A. No, not that day.

Q. Alright, so you didn't--

A. Oh--uh--when Kenny came out, just, you know, good-bye, that type thing, we didn't discuss anything, you know.

Q. Was it not the purpose of your son's attendance at that meeting to discuss the charge of receiving stolen goods?

A. No, it wasn't. Not from what he told us over at the garage that night. He even told Kenny--he asked Kenny to make a list of names of--uh-Chuck Asey's friends that night so that he could give'em to him the next day. He was talking about the shooting, he said he was more concerned with the shooting than anything because he was afraid somebody else was going to be shot and might get killed. 'Cause Kenny's house wasn't the only one that had been broken in.

Q. Were you present when the meeting was arranged between your son and Mr. Carter and Detective Manuel?

A. Yes.

Q. Did you know that Mr. Carter had arranged that meeting?

A. NO ANSWER.

Q. Excuse me?

A. We went by, we were supposed to've met at Manuel's office after--uh--what do you call it--preliminary hearing?

Q. Could you answer my question, yes or no?

A. Yes, I was--uh--

Q. Did you know that Mr. Carter had arranged the meeting?

A. Sure.

Q. Alright. And you did not inquire as to why the meeting had been arranged? Is that correct?

A. I didn't need to because Mr. Manuel had told us the evening before why we were going to meet.

Q. Did you inquire of Mr. Carter as to why the meeting had been arranged?

A. No, because we had already discussed that the evening before.

Q. But this is a meeting that Mr. Carter had arranged?

A. We told Mr. Carter--uh--what Mr. Manuel had said the evening before, that he would like to talk to him

and we could be there. And that's when--what the meeting was arranged for and about. We didn't need to ask anymore, we knew what it was about. At least that's what he told us.

Q. Excuse me one moment. Now did you read the consent to search statement to your son?

A. No, I didn't read it to him, I read it myself, tried to.

Q. And did you-- A. Mr. Manuel read it.

Q. You heard that read to him?

A. Mr. Manuel read it out loud.

Q. There's no question about in your mind?

A. He read it out loud when I had told him I wanted to be sure of what was in it. I wanted to be sure I understood it.

Q. No question in your mind that it was read to your son, right?

A. The consent form was.

Q. What does it have in it?

A. It was just to give permission for them to go in the house and search in the house on that day.

Q. Does it refer to anything else?

A. Oh, I don't know.

Q. What items are being searched for?

A. I don't remember whether it said any particular items or not but Mr. Manuel said that--uh--

Q. I'm asking you what you read, do you recall whether the consent that your read provides for the searching

of any particular items?

A. Well, I don't know whether it had in there about the money or not that he was supposed to be looking for, I don't remember. He said it to me but I don't remember whether it was in that form or not.

Q. Alright. Thank you.

BY MR. PADGETT: I have no further questions. Stand aside.

WITNESS STANDS ASIDE

BY MR. PADGETT: Mr. Rudy Cox, please.

BY THE COURT: Stand, please, and be sworn. Now this gentleman was in the Courtroom, you moved that all the witnesses be excluded, does the Commonwealth raise any issue about it?

BY MR. LAMPROS: I have no idea what this gentleman is going to be testifying about, Your Honor, until I--

BY THE COURT: I don't either but if he was to be a witness he should not have been in the Courtroom.

BY MR. PADGETT: Yes, I didn't realize that--he must have came (sic) later because I didn't realize until later on, when I saw him I did tell him to go out. So I didn't realize it at that time.

BY THE COURT: You made the motion is the reason I call attention to it.

BY MR. PADGETT: Yes, sir. I apologize for that but I did not know it.

WITNESS DULY SWORN BY THE CLERK

RUFUS KYLE COX, JR., A WITNESS OF LAWFUL AGE,
HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION
BY MR. PADGETT:

Q. What is your name, please, for the Court?

A. Rufus Kyle Cox, Jr.

Q. Alright. And what do you do, Mr. Cox?

A. I'm a real estate broker.

Q. Alright. Do you know Mr. Wilson here, Mr.

Kenneth Wilson?

A. Yes, I do.

Q. How long have you known him?

A. I've known him for around five years.

Q. Where do you live, Mr. Cox?

A. I live at Nottingham Hills, 5374 Luwana.

Q. How long have you lived there?

A. I've lived there for approximately a year.

Q. Where did you live before that?

A. I lived in Hunting Hills on Falcon Ridge

Drive.

Q. How long did you live there?

A. I lived there approximately four years.

Q. How long have you known Kenny while you lived
at those two addresses?

A. Approximately five years.

Q. Approximately five years. Do you know what
Kenny Wilson's reputation is in the community in which he

lives?

BY MR. LAMPROS: Your Honor, before the question is asked, is this in the business community that he deals with or the community that--

BY THE COURT: I don't know.

BY MR. LAMPROS: I was trying to make this determination because I realize that Mr. Cox is a real estate broker, and I'm talking about business reputation or the communal reputation.

BY MR. PADGETT: I'll establish that then.

Q. (Mr. Padgett continuing) How did you know Mr. Wilson, Mr. Cox? What dealings have you had with Mr. Wilson?

A. Again, are we talking about business or otherwise?

Q. Well, either one. What contacts have you had with Mr. Wilson?

A. Well, Mr. Wilson is approximately the same age as my son and they've been very close friends for five years. Mr. Wilson has been to my home many times for dinner and--uh--he's just been considered a close friend of the family.

Q. Alright.

A. Mr. Wilson also has his real estate license with my firm which is Rudy Cox Realtors. He's had his license with me for approximately one year.

Q. Okay. What's required to have that license issued

to him?

A. Well, persons that are on the application state whether you ever had a police record or not, whether you've ever been in bankruptcy or not; whether there is any--

BY MR. LAMPROS: If Your Honor please, I think we're going out of the scope of the examination of this witness.

I assume the question is--

BY MR. PADGETT: Okay.

BY MR. LAMPROS: --do you know his reputation in the community as a good man.

BY MR. PADGETT: No, sir, the question is do you know what the reputation of Mr. Wilson is in the community.

A. (Witness continuing) Well, I--

Q. Do you know whether he is--

A. Do I--I do not know anything bad about Mr. Wilson nor have I ever heard anything bad about him.

Q. Alright. Can you testify as to what his reputation is in the community?

A. I don't see how I could because I don't know exactly what you're trying to ask me, I don't know of anything bad or good either way. I mean--I mean as far as your reputation being--all I know he has a good reputation.

Q. Let me ask do you know what his reputation is in the community as to the particular trait of honesty?

BY MR. LAMPROS: If Your Honor please--

BY MR. PADGETT: I think--

BY MR. LAMPROS: --that's not my understanding of the question.

BY MR. PADGETT: --it is admissible, Your Honor.

BY THE COURT: You have not asked the question properly, Mr.

Padgett. You haven't laid the foundation for a
character witness and I'll sustain the objection.

Q. (Mr. Padgett continuing) So you're testifying
that you've never heard anything good or bad about Mr.
Wilson, is that correct as to what his reputation is in the
community, is that right?

A. That would be correct.

Q. Alright. No further questions.

BY MR. LAMPROS: No questions.

BY MR. PADGETT: Stand aside.

BY THE COURT: Is everybody finished with this witness.

BY MR. LAMPROS: Yes, sir.

BY THE COURT: You're excused, sir.

WITNESS IS EXCUSED

BY MR. PADGETT: Hazel Talley, please.

BY THE COURT: Right over there, please. Just be sworn by
the Clerk, please. Hold up your right hand.

WITNESS DULY SWORN BY THE CLERK

HAZEL G. TALLEY, A WITNESS OF LAWFUL AGE, HAVING
BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. PADGETT:

Q. What is your name for the Court, please.

A. Hazel G. Talley.

Q. Are you employed, Mrs. Talley?

A. Yes, I am.

Q. Where are you employed?

A. I'm a hairdresser for _____ Hill Beauty
Salon.

Q. Where do you live?

A. 1728 Driftwood Lane, Roanoke, Virginia.

BY MR. LAMPROS: I'm sorry, could you speak up a bit, look
towards the Judge, maybe I can hear a little
better.

A. (Witness continuing) 1728 Driftwood Lane,
southwest, Roanoke, Virginia.

Q. How long have you lived there, Mrs. Talley?

A. Since August of last year.

Q. Do you know the defendant here Mr. Kenneth
Wilson?

A. Yes, I do.

Q. How long have you known him?

A. Approximately eleven years.

Q. How have you known him?

A. I knew him when he started dating my daughter
when she was in high school.

Q. Have you known him otherwise?

A. Through business, I worked for him and his
aunt at the restaurant.

Q. Which restaurant is this?

A. Wilson's.

Q. Wilson's. And you say you've known him how long?

A. Approximately eleven years.

Q. Do you know what Mr. Wilson's reputation is in the community?

A. As far as I know, good.

Q. Okay. And you say you've known him how long again?

A. Approximately eleven years.

Q. Eleven years?

A. Um-hmm.

Q. Okay. No further questions.

CROSS EXAMINATION
BY MR. LAMPROS:

Q. Mrs. Talley, you live at 1728 Driftwood Lane, southwest?

A. That's right.

Q. You've lived there how long?

A. We moved in there August of last year.

Q. Where'd you live prior to that time?

A. Westclub, 200 Eagle Drive in Salem.

Q. Where does Mr. Wilson live? The defendant Mr. Wilson?

A. In Hunting Hills.

Q. About how far is Driftwood Lane, 1728 Driftwood Lane from Hunting Hills?

A. My gosh, I--

Q. From where Mr. Wilson lives? Several miles?

A. Yes.

Q. Five, ten miles?

A. Yes, I would say.

Q. Would it be fair to say that Westwood (sic) Estates is equally five or ten miles from Hunting Hills and where Mr. Wilson lives?

A. Wesclub? In Salem?

Q. Yes. Yes, ma'm.

A. That would be probably further.

Q. Further?

A. Yes.

Q. Do you ever visit within his home?

A. Not since he's moved to Hunting Hills, I haven't.

Q. When's the last time you visited within his home?

A. When he lived in Roanoke County, I believe.

Q. How long was that?

A. Oh--

Q. You do know that Hunting Hills is in Roanoke County, don't you?

A. I'm talking about over towards northwest, out there.

Q. Alright. How long would that be?

A. Probably about five years.

Q. And how long have you been employed by--I

think you said you're employed by him and his aunt?

A. No, I worked for Wilson's Restaurant for approximately a year and that has been a little over two years ago. And then I helped'em some from November through-- I would say up to the 1st of March.

Q. Are you kind of an old family friend and employee?

A. Yes and no.

Q. And you say he dated your daughter--

A. Yes.

Q. Does he still date your daughter?

A. No.

Q. When did they break up?

A. Well, he dated her for about five years--

Q. Long ago?

A. Yeah, when they were in high school.

Q. How often do you have contact with him now?

A. With Mr. Wilson?

Q. Yes, ma'm.

A. I would see him probably every other day when I was at the restaurant--

Q. But that's been some time ago you say?

A. Since this March.

Q. So you saw him then?

A. Yes.

Q. Who wrote your paycheck out for you?

A. Mrs. Newman.

Q. She an employee of that same business?

A. She and Mr. Wilson together own it, I understand.

Q. Okay. Mr. Wilson being this defendant's
father or this defendant?

A. This defendant's father.

Q. Thank you very much.

BY MR. PADGETT: Stand aside.

BY THE COURT: Everybody finished with this witness?

BY MR. PADGETT: Yes, sir.

BY MR. LAMPROS: Yes, sir.

BY THE COURT: Let's let the Jury have a recess.

BY MR. PADGETT: Yes, sir.

THE JURY RETIRES TO THE JURY ROOM

THE JURY RETURNS TO THE COURTROOM

BY THE BAILIFF: The Jury is seated, Your Honor.

BY THE COURT: Call your next witness.

BY MR. PADGETT: Mrs. Ina W. Newman.

BY THE COURT: Just hold up your right hand, please.

WITNESS DULY SWORN BY THE CLERK

INA NEWMAN, A WITNESS OF LAWFUL AGE, HAVING BEEN

FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. PADGETT:

Q. Alright. State your name for the Court,
please.

A. Ina Newman.

Q. Mrs. Newman, where do you live?

A. Elliston.

Q. Where are you employed, Mrs. Newman?

A. Wilson's Restaurant.

Q. Do you know the defendant seated here Mr.
Kenneth Wilson?

A. Yes, I do.

Q. Do you know where he lives?

A. He lives in Hunting Hills.

Q. Do you know the address?

A. Not right off, I can't say that I know or
don't know.

Q. Do you know any of his neighbors around
there?

A. No, I don't know his neighbors.

Q. How long have you known Mr. Wilson?

A. All his life.

Q. How long would that be?

A. How long?

Q. Yes, ma'm.

A. About thirty some years.

Q. Have you known Mr. Wilson since he's been
living where he lives now, presently?

A. Yes, I do.

Q. What kind of dealings have you had with Mr.
Wilson?

A. He works with me in the restaurant.

Q. Okay, so you're--business dealings?

A. Yes.

Q. Okay. Do you know what Mr. Wilson's reputation is in the community in which he lives?

BY MR. LAMPROS: Your Honor please, I'm sure that this witness is going to say he's a very good person but, unfortunately, she's not able to say what his reputation is in the community where he lives.

BY MR. PADGETT: I'm just asking for a yes or no, then we'll lead in to the others.

BY THE COURT: What's that?

BY MR. PADGETT: I'm going to ask for a yes or no answer, then if she says yes I'm going to ask what the reputation is, Your Honor.

BY THE COURT: She said she didn't know anybody in the neighborhood in which he lives--

BY MR. PADGETT: Okay.

BY THE COURT: --and I'll have to sustain the objection.

Q. (Mr. Padgett continuing) You don't know any of the neighbors who live in his community, is that what you're saying?

A. Not in his community, no.

Q. Okay. I have no further questions.

CROSS EXAMINATION

BY MR. LAMPROS:

Q. Mrs. Newman, how long have you been working at Wilson's?

A. Wilson's? Oh, we've been there about thirty-eight,

thirty-seven years.

Q. And you've owned a portion of it since then?

A. Yes, I do. Yes, I do.

Q. What relation are you to the defendant?

A. He's my nephew.

Q. Thank you, ma'm.

BY MR. PADGETT: That's all, you may stand aside.

BY THE COURT: Everyone finished with Mrs. Newman?

BY MR. PADGETT: Yes.

BY MR. LAMPROS: Yes, sir.

BY THE COURT: You're excused.

WITNESS IS EXCUSED

BY MR. PADGETT: The defendant rests, Your Honor.

BY THE COURT: The defendant rests. Any further evidence
for the Commonwealth?

BY MR. LAMPROS: No, Judge. No, sir.

BY THE COURT: Members of the Jury, we will proceed with the
instructions as rapidly as we can to see if we
can't complete this case today. Just let the Jury
go to their room and as soon as we're ready we'll
call you back promptly.

THE JURY RETIRES TO THE JURY ROOM

THE FOLLOWING TOOK PLACE IN THE COURTROOM BUT OUT
OF THE PRESENCE OF THE JURY

BY THE COURT: Instruction A1 is tendered and refused by the
Court on the basis that there is no evidence on
which such an instruction can be based as there is

no evidence in the Court or before the Court that a confession was made by the defendant which was obtained by--his contention--by threats, duress, undue influence, made under the hope or fear held out by an officer or not freely or voluntarily made. The officers state that it was made, the witnesses for the defendant state that it was not and that is a Jury issue on the basis of credibility of witnesses and that will be given but not in a specific instruction like A-1. And the defendant excepts to the refusal.

BY MR. PADGETT: Yes, sir.

BY THE COURT: Alright.

BY THE COURT: Instruction D-1 is refused on the basis that it deals with guilt of the larceny of the property while the particular charge in the case now before the Court is receiving stolen goods, knowing the same to be stolen. And not that the defendant actually committed the larceny of the property. Furthermore, the defendant has not undertaken to account for possession of the goods but it has been denied by his witnesses that he ever had them. And exception noted by the defendant.

BY MR. PADGETT: Right. Yes, sir.

BY THE COURT: F-1 tendered and refused is not in accordance with the intention of the Commonwealth and, furthermore, it is having the Court comment on the evidence

to the Jury which is not proper but is sufficient for the defendant to make a motion to strike the evidence of the Commonwealth which was made and refused by the Court.

BY THE COURT: G-1 tendered and refused on the basis that it is covered by other instructions and also there is no evidence on which to base it. Do you except to that?

BY MR. PADGETT: Yes, sir.

BY THE COURT: Alright.

THE JURY RETURNS TO THE COURTROOM

BY THE BAILIFF: The Jury is seated, Your Honor.

BY THE COURT: Members of the Jury, as the Court has heretofore informed you, at the conclusion of all evidence it is the duty of the Court to give you written instructions governing the law involved in this particular matter now before you. These are in writing and you will take them with you to the Jury Room after you hear the arguments of counsel. But first it is the duty of the Court to read these instructions to you, so give me your attention, please, these are the Court's instructions. You may turn around this way.

INSTRUCTIONS GIVEN: 1, 2, 3, 4, 5, 6. A, B, C, D, E, F.

And X.

INSTRUCTIONS REFUSED: A-1, D-1, F-1 and G-1.

BY THE COURT: We are now ready for the closing arguments of

counsel.

BY MR. LAMPROS: Closing argument.

BY MR. PADGETT: Closing argument.

BY MR. LAMPROS: Closing argument.

BY THE COURT: Members of the Jury, you will now go to the Jury Room and first elect one of your number foreman of the Jury and agree upon your verdict. Should you find from the evidence beyond a reasonable doubt and the instructions of the Court that the defendant is guilty, you return this verdict which reads: We the Jury find the defendant Kenneth W. Wilson guilty of receiving stolen goods as charged in the indictment and fix his punishment at blank-- whatever you think just and proper in accordance with the evidence and the instructions of the Court. On the other hand, should you find from the evidence and the instructions of the Court that the defendant is not guilty, then you return this verdict which reads: We the Jury find the defendant Kenneth W. Wilson not guilty. The foreman of the Jury signs the verdict. Please knock on the door when you're ready to report. Let them go to the Jury Room and take the instructions and if you wish the exhibits you may send for them.

THE JURY RETIRES TO THE JURY ROOM FOR ITS DELIBERATION

THE JURY RETURNS TO THE COURTROOM WITH A QUESTION

BY THE COURT: You have a question?

BY ONE JUROR: Yes, Judge.

BY THE COURT: Alright, sir.

BY ONE JUROR: On the two slips that we received that dealt with the verdict?

BY THE COURT: Yes, sir.

BY ONE JUROR: It indicates here on the one slip that we the Jury find the defendant Kenneth W. Wilson guilty of receiving stolen goods as charged in the indictment. And on instruction three it indicates that--uh--from the evidence beyond a reasonable doubt that two Steelcase office desks were previously stolen. Uh--we want to know what was specified in the indictment, did it specify two Steelcase office desks or did it specify receiving stolen goods? And if that would be relevant in the case?

BY THE COURT: The indictment, of course, was read at the beginning of the case and it charges that on or about January 29, 1978, in the County of Roanoke, Commonwealth of Virginia, Kenneth W. Wilson did steal property, namely, goods and chattels having a value of One Hundred Dollars or more belonging to Litton Office Products Centers. The test is if you believe beyond a reasonable doubt that goods having a value of more than One Hundred Dollars, was the real charge and the two desks were set out

in the instruction as that was the evidence before the Jury on the Commonwealth's side and that is the reason it was put in that way. But the charge in this is receiving stolen goods having a value of more than One Hundred Dollars.

BY ONE JUROR: That answers the question. Thank you.

BY THE COURT: Alright, sir.

THE JURY RETIRES TO JURY ROOM FOR FURTHER DELIBERATION

THE JURY RETURNS TO THE COURTROOM AFTER ITS DELIBERATION

BY THE COURT: Members of the Jury, have you agreed on a verdict?

BY ONE JUROR: Yes, we have.

BY THE COURT: Give it to the Clerk, please.

BY THE CLERK: We the Jury find the defendant, Kenneth W.

Wilson, guilty of receiving stolen goods as charged in the indictment and fix his punishment at confinement in jail for six months. Michael J. Corridon, Foreman. Is this your verdict, so say you all?

JURORS INDICATE: Yes.

THE JURY IS EXCUSED

BY THE COURT: Kenneth W. Wilson, please stand. Is there any reason known to you why you should not now be sentenced in accordance with the Jury verdict?

BY THE DEFENDANT: I don't understand what you mean?

BY THE COURT: Do you know of any reason why the Court should not pronounce sentence upon you in accordance with the verdict of the Jury?

BY THE DEFENDANT: No.

BY THE COURT: Now, you've been represented in this matter by Mr. Padgett, he was employed by you. Do you have any complaints about the way he's handled your case?

BY THE DEFENDANT: No, sir.

BY THE COURT: Has he failed to do anything you thought he should do or you asked him to do in your behalf?

BY THE DEFENDANT: No, sir.

BY THE COURT: According to the Jury verdict and in accordance therewith, you are sentenced to confinement in jail for a period of six months and the costs of these proceedings. Now it is the duty of this Court to advise you that you have a right should you desire to appeal from the verdict of this Jury. You do not have an automatic appeal, you have to apply for one. Your attorney can advise you fully about what you have to do in the event you desire to appeal. If you do not have money to employ an attorney and file an affidavit of poverty should you desire to appeal, then the Court would appoint an attorney to represent you and also would direct that you be furnished a copy of the transcript if you're unable to pay for it. However, this would have to be done and if you desire to appeal, you have to file Assignments of Error within a period of thirty days from this date and

other formalities which, if you desire to appeal, your attorney would advise you of.

So the Court directs that no indication of any appeal being made at this time, that the defendant be remanded to custody and confined in a manner provided by law to serve the sentence imposed by the Jury.

BY MR. PADGETT: Your Honor, we are going to note an appeal but I have not--I don't have the papers or anything to file at this time.

BY THE COURT: Well, what do you mean by papers?

BY MR. PADGETT: Well, I understand, of course, a formal notice has to be filed with the Clerk.

BY THE COURT: That's Assignments of Error, if you wish to advise the Court now--

BY MR. PADGETT: Yes, sir.

BY THE COURT: --that you are going to apply for appeal--

BY MR. PADGETT: I wish to advise the Court of that.

BY THE COURT: Alright, the Court--the Order will indicate that you having indicated on the behalf of the defendant that you intend to apply for an appeal in the decision--in the verdict of the Jury in this case. The verdict of the Jury is suspended accordingly for a period of ninety ninth days and thereafter until the Supreme Court acts on his petition, conditioned upon the defendant or someone for him entering into a bond in the penalty of

Twenty-five Hundred Dollars with good and sufficient surety to be approved by the Clerk within ten days from this date. And pending the giving of the Twenty-five Hundred Dollar bond, the defendant is released upon the bond heretofore entered into for ten days.

BY MR. PADGETT: Thank you.

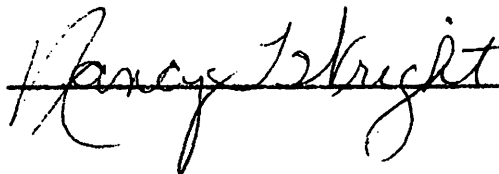
BY THE COURT: Alright, sir.

THE DEFENDANT WAS PRESENT AT ALL STAGES OF THIS TRIAL

C E R T I F I C A T E

I, Nancy T. Wright, Court Reporter, designated and appointed to report and transcribe the case of Commonwealth of Virginia vs. Kenneth W. Wilson do certify that, to the best of my ability, the foregoing is a true and correct transcription of the proceedings had, motions made, and the evidence introduced in said trial of the aforesaid case on the 15th day of May, 1978.

Witness the following signature and seal this the 2nd day of June, 1978.

 (SEAL)

C E R T I F I C A T E

I, Elizabeth W. Stokes, Clerk of the Circuit Court for the County of Roanoke, Virginia, do hereby certify that the foregoing copy or report of the testimony and other incidents of the trial in the case of Commonwealth of Virginia vs. Kenneth W. Wilson was filed with me as Clerk of said Court on the 22 day of June, 1978.

Elizabeth W. Stokes
Clerk of the Circuit Court for the
County of Roanoke