216 Va. 174
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
APR 2 1975
RICHMOND, VIRGINIA

VIRGINIA; IN THE SUPREME COURT OF VIRGINIA, AT RICHMOND:

WALTER FORD KEESEE, JR.

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

RECORD NO. 740999

APPENDIX

Submitted by:
Joseph R. Johnson, Jr., Esquire
Attorney at Law
607 First & Merchants Bank Bldg.
Lynchburg, Virginia 24504

Attorney for Walter Ford Keesee, Jr.
Appellant

VIRGINIA; IN THE SUPREME COURT OF VIRGINIA, AT RICHMOND:

WALTER FORD KEESEE, JR.

Appellant

v.

COMMONWEALTH OF VIRGINIA

Appellee

RECORD NO. 740999

APPENDIX

Submitted by:
Joseph R. Johnson, Jr., Esquire
Attorney at Law
607 First & Merchants Bank Bldg.
Lynchburg, Virginia 24504

Attorney for Walter Ford Keesee, Jr.
Appellant

A P P E N D I X

TABLE OF CONTENTS

		Page No.
(1)	Warrant	1
(2)	Judgment of Lynchburg Juvenile & Domestic Relations Court	2
(3)	Judgment of Lynchburg Juvenile & Domestic Relations Court	3
(4)	Commonwealth's Exhibit Number 1	4
(5)	Defendant's Exhibit Number 1	5
(6)	Order of Conviction and Judgment Appealed From	6-8
(7)	Order of Conviction and Judgment Appealed From	9-11
(8)	Notice of Appeal and Assignments of Error	12-14
(9)	Transcript of Evidence and Incidents of Trial	15-149
(10)	Stipulation Included With and as Part of Transcript of Evidence	150-151

A DISTRICT COURT
EFFECTIVE JULY 1, 1973

VIRGINIA—CITY OF LYNCHBURG, TO-WIT:

To all or any of the Police of said City:

Whereas Sgt. W. R. Tweedy, Jr.

of said city has, this day made complaint, on oath, before me, ~~Earl W. Wingo~~ J. T. Bellen ex-Magistrate, Judge of Juvenile and Domestic Relations Court, of said city,

that Walter Ford Keesee, Jr. on the 12 th day of April, 19 74,

did in said city unlawfully cause or encourage Jeanette Keesee, ~~14~~ 12 years of age, and Darlene Keesee, ~~12~~ 10 years of age, daughters of the accused, to commit misdemeanors, in violation of Section 18.1-14 of the Virginia Code.

On the basis of the sworn statement(s)

of Sgt. W. R. Tweedy, Jr.

the undersigned has found probable cause to

believe the accused has committed the offense.

These are Therefore to Command You, in the name of the Commonwealth, forthwith to apprehend the said Walter Ford Keesee, Jr. and bring him before me, or some Justice of said city, to answer the said complaint, and to be further dealt with according to law.

Given under my hand this 12 th day of April, 19 74.

J. T. Bellen Jr. Judge

WARRANT
FILED APRIL 12, 1974; RECORD, PAGE 1.

-1-

JUDGMENT OF LYNCHBURG JUVENILE & DOMESTIC RELATIONS COURT
FILED MAY 15, 1974; RECORD, PAGE 1.

VIRGINIA:—City of Lynchburg, to-wit:

Be it remembered, that on the 15th day of May, 19 74, Walter Ford Keesee, Jr. brought before me, Judge of Juvenile and Domestic Relations Court, for the City of Lynchburg, charged with a misdemeanor—~~felony~~ in this that he did in said city unlawfully cause or encourage Darlene Keesee, 10 years of age, daughter of the accused, to commit misdemeanors, in violation of Section 18.1-14 of the Virginia Code as charged in within warrant, was by me, upon the evidence, on oath of Sgt. W. R. Tweedy, Jr., et al, duly heard, found guilty of said offense, wherefore I adjudge that he pay a fine of $250.00 and $10.25 costs and that he be confined in Jail of the City of Lynchburg for a period of six (6) months ~~days~~ (confinement to run concurrently with sentence on charge of causing Jeanette Keesee to commit misdemeanors,) and said fine suspended on condition he be of good behavior in all respects. Earle W. Wingo Judge.

Commonwealth of Virginia
vs. } WARRANT
Walter Ford Keesee, Jr.
2513 Old Forest Rd.

Witnesses:
Gary Patterman
c/o Hill's
Jeanette Keesee
&
Darlene Keesee
2513 Old Forest Rd.
Sgt. Tweedy
c/o Lyn. P. D.

But the said Walter Ford Keesee, Jr. having prayed an appeal from my said judgment, an appeal is hereby granted to the next term of the Corporation Court of Lynchburg, and the said judgment and conviction, as well as the said appeal is hereby certified to said Court.

Given under my hand and seal this 15th day of May, 19 74.

Earle W. Wingo Judge.

JUDGMENT OF LYNCHBURG JUVENILE & DOMESTIC RELATIONS COURT
FILED MAY 15, 1974; RECORD, PAGE 2.

VIRGINIA:—City of Lynchburg, to-wit:

Be it remembered, that on the 15th day of May, 19 74, Walter Ford Keesee, Jr. brought before me, Judge of Juvenile and Domestic Relations Court, for the City of Lynchburg, charged with a misdemeanor ~~xxxxx~~ in this that he did in said city unlawfully cause or encourage Jeanette Keesee, 12 years of age, daughter of the accused, to commit misdemeanors, in violation of Section 18.1-14 of the Virginia Code as charged in within warrant, was by me, upon the evidence, on oath of Sgt. W. R. Tweedy, et al, duly heard, found guilty of said offense, wherefore I adjudge that he pay a fine of $ 250.00 and $10.25 costs, and that he be confined in Jail of the City of Lynchburg for a period of six (6) months ~~days~~

Earlew Wingo Judge.

Commonwealth of Virginia

vs } WARRANT

Walter Ford Keesee, Jr.

But the said Walter Ford Keesee, Jr. having prayed an appeal from my said judgment, an appeal is hereby granted to the next term of the Corporation Court of Lynchburg, and the said judgment and conviction, as well as the said appeal is hereby certified to said Court.

Given under my hand and seal this 15th day of May, 19 74

Earlew Wingo Judge.

COMMONWEALTH'S EXHIBIT NUMBER 1
FILED JUNE 14, 1974; RECORD, PAGE 8.

ITEMS IN CAR

MODEL NO.	VENDOR	ITEM	SKU	COST	RETAIL
5231	Toast Master	Broiler	0620201	$14.70	$18.97
79-3	Waring	Blender	1031201	$14.52	$18.38
V935/V936	G. E.	Phonograph	3720201	$35.97	$44.97
7451	Broil Master	Broiler	0610201	$21.63	$24.97
7455-10	Udico	Broiler	0612602	$20.92	$26.87
C4315B	G. E.	FM-AM Digital Clock	4030201	$21.66	$29.97
HD-4	Gillette	Max Hair Dryer	271220	$ 8.40	$12.78
701004	Eskimo	Fan	1730201	$7 .55	$ 9.84
HD-7	Gillette	Super Max Hair Dryer	2724201	$14,13	$17.68
CM10	Presto	Coffee Maker	0233201	$17.38	$19.97
081004	Eskimo	8" double fan	1733201	$10.45	$13.68
081004	Eskimo	8" double fan	1733201	$10.45	$13.68
T2330	G. E.	AM-FM Radio	3922201	$19.97	$26.97
T2330	G. E.	AM-FM Radio	3922201	$19.97	$26.97

ITEMS IN SHOPPING CART

1601A	Proctor Silex	Iron	0111201	$ 9.65	$10.78
F63	G. E.	Iron	0100201	$ 7.57	$ 8.97
94-3	Waring	Blender	1033201	$21.63	$24.78
CM10	Presto	Coffee Maker	0233201	$15.29	$19.97

	Cost	Retail
TOTAL IN CAR:	$237.70	$295.70
TOTAL IN CART:	54.14	64.50
GRAND TOTAL	$291.84	$360.20

DEF. EX. #1

HILLS DEPT STORES

1	76		42
1	45	1070201	171
1	45	1012201	320
1	23		123
1	50		47
			221A
			0205T

07 0915 250 032

THANK YOU

DEFENDANT'S EXHIBIT NUMBER 1
FILED JUNE 14, 1974; RECORD, PAGE 9.

ORDER OF CONVICTION AND JUDGMENT APPEALED FROM, ENTERED JUNE 14, 1974, RECORD, PAGE 12 AND 13.

Virginia: At Lynchburg Circuit Court, June 14, 1974.

Commonwealth

vs. Misdemeanor. Cause or encourage juvenile to commit Misdemeanors - Count #1.

Walter Ford Keesee, Jr., Accused.

This day came the Commonwealth's attorney, and the accused in person, according to the condition of his recognizance, and came also Joseph R. Johnson, Jr., his attorney previously employed.

Thereupon the accused in his own proper person pleaded not guilty to the charge, and thereupon came a jury, to-wit: Mrs. Ardell Armistead, Mrs. Frances S. Richardson, James E. Rice, Lawrence M. Brown and Fred C. Johnson, who were duly summoned, selected, tried and sworn according to law, to well and truly try the issues joined.

Whereupon the Commonwealth's evidence was heard, and thereupon the accused by counsel moved the court to strike the Commonwealth's evidence, on the ground that said evidence is insufficient to support a conviction of the accused, which motion the court doth overrule, and the accused by his attorney objected and excepted.

Whereupon the defendant's evidence was heard, and thereupon the defendant by counsel renewed his motion to strike the Commonwealth's evidence, on the grounds previously stated, and on the additional grounds that the Commonwealth failed to prove venue in this case; and that the Commonwealth failed to prove, as required by statute, that the defendant was at the time of the offense, over the age of 18 years, and said motion being argued, the court doth overrule the same, and the accused by his attorney objected and excepted.

Thereupon the jury aforesaid having heard all of the evidence and argument of counsel, and having received the instructions from the court, were sent to their room to consult and consider of their verdict. They subsequently returned their verdict in open court, reading: "Upon a charge of unlawfully causing or encouraging Darlene Keesee to commit misdemeanors, we the jury find the accused Guilty and fix punishment at 3 months in jail and $500.00 fine. Fred C. Johnson 6/14/74, Foreman."

Thereupon the accused by his attorney moved the court to set aside the jury's verdict, and dismiss this case, or, in the alternative, to set aside the jury's verdict, and grant him a new trial, on the grounds contained in the record, which motion the court doth overrule, and the accused by counsel objected and excepted.

It is therefore considered by the court that the accused, Walter Ford Keesee, Jr., forfeit and pay to the Commonwealth $500.00, the amount of the fine aforesaid, and that he be and he is hereby committed to jail for the aforesaid term of three months, according to the verdict of the jury, and that he pay the costs of this prosecution.

At the instance of the accused, who, by his attorney, intimated his intention to apply for a writ of error and supersedeas to the foregoing judgment, the court doth order that execution of the aforesaid judgment be suspended for a period of sixty days, to allow the accused time to perfect an appeal.

On motion of the accused, he is allowed bail. Thereupon the said Walter Ford Keesee, Jr., together with Walter Ford Keesee, Sr., and Virginia F. Keesee, his surities, who justified as to their sufficiency, were duly recognized in the sum of $2,000.00 upon condition that if the said Walter Ford Keesee, Jr. shall make his personal appearance

before this court on the 13th day of August, 1974, to answer for said offense, and shall make his personal appearance at any time or times to which this case may be continued or further heard before any court, judge or justice having or holding any proceeding in connection therewith, and shall not depart thence without leave of court, judge or justice, then said recognizance to be void, otherwise to remain in full force and effect.

A Copy, Teste:

_____, Clerk.

Cr. O. B. 1, page 512

Costs $159.00

13

ORDER OF CONVICTION AND JUDGMENT APPEALED FROM,
ENTERED JUNE 14, 1974, RECORD, PAGE 14 AND 15.

Virginia: At Lynchburg Circuit Court, June 14, 1974.

Commonwealth

vs. Misdemeanor. Cause or encourage juvenile to commit Misdemeanors - Count #2.

Walter Ford Keesee, Jr., Accused.

This day came the Commonwealth's attorney, and the accused in person, according to the condition of his recognizance, and came also Joseph R. Johnson, Jr., his attorney previously employed.

Thereupon the accused in his own proper person pleaded not guilty to the charge, and thereupon came a jury, to-wit: Mrs. Ardell Armistead, Mrs. Frances S. Richardson, James E. Rice, Lawrence M. Brown and Fred C. Johnson, who were duly summoned, selected, tried and sworn according to law, to well and truly try the issues joined.

Whereupon the Commonwealth's evidence was heard, and thereupon the accused by counsel moved the court to strike the Commonwealth's evidence, on the ground that said evidence is insufficient to support a conviction of the accused, which motion the court doth overrule, and the accused by his attorney objected and excepted.

Whereupon the defendant's evidence was heard, and thereupon the defendant by counsel renewed his motion to strike the Commonwealth's evidence, on the grounds previously stated, and on the additional grounds that the Commonwealth failed to prove venue in this case; and that the Commonwealth failed to prove, as required by statute, that the defendant was at the time of the offense, over the age of 18 years, and said motion being argued, the court doth overrule the same, and the accused by his attorney objected and excepted.

Thereupon the jury aforesaid having heard all of the evidence and argument of counsel, and having received the instructions from the court, were sent to their room to consult and consider of their verdict. They subsequently returned their verdict in open court, reading: "Upon a charge of unlawfully causing or encouraging Jeanette Keesee to commit misdemeanors, we the jury find the accused Guilty and fix punishment at 3 months in jail and $500.00 fine. Fred C. Johnson 6/14/74, Foreman."

Thereupon the accused by his attorney moved the court to set aside the jury's verdict, and dismiss this case, or, in the alternative, to set aside the jury's verdict, and grant him a new trial, on the grounds contained in the record, which motion the court doth overrule, and the accused by counsel objected and excepted.

It is therefore considered by the court that the accused, Walter Ford Keesee, Jr., forfeit and pay to the Commonwealth $500.00, the amount of the fine aforesaid, and that he be and he is hereby committed to jail for the aforesaid term of three months, according to the verdict of the jury, and that he pay the costs of this prosecution.

At the instance of the accused, who, by his attorney, intimated his intention to apply for a writ of error and supersedeas to the foregoing judgment, the court doth order that execution of the aforesaid judgment be suspended for a period of sixty days, to allow the accused time to perfect an appeal.

On motion of the accused, he is allowed bail. Thereupon the said Walter Ford Keesee, Jr., together with Walter Ford Keesee, Sr., and Virginia F. Keesee, his surities, who justified as to their sufficiency,

were duly recognized in the sum of $2,000.00 upon condition that if the said Walter Ford Keesee, Jr. shall make his personal appearance before this court on the 13th day of August, 1974, to answer for said offense, and shall make his personal appearance at any time or times to which this case may be continued or further heard before any court, judge or justice having or holding any proceeding in connection therewith, and shall not depart thence without leave of court, judge or justice, then said recognizance to be void, otherwise to remain in full force and effect.

A Copy, Teste:

L. C. Lydson, Clerk.

Cr. O. B. 1, page 514

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
FILED JULY 10, 1974, RECORD, PAGE 16 AND 17.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

	*	
COMMONWEALTH OF VIRGINIA	*	
Plaintiff	*	
v.	*	NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
	*	
WALTER F. KEESEE, JR.	*	
Defendant	*	

Notice is hereby given, pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, that Walter F. Keesee, Jr., the Defendant above mentioned, hereby appeals to the Supreme Court of Virginia from the final judgement entered in this proceeding on June 14, 1974.

The Transcript of the evidence and other incidents of the case, will be filed in the office of the Clerk within the time prescribed by Rule 5:9 of the Rules of the Supreme Court of Virginia.

Pursuant to the aforesaid Rules, the Defendant makes this his assignments of error and alleges that the Court erred:

(1) In refusing to strike the evidence and dismiss the proceedings on the grounds that there was insufficient evidence to sustain a conviction; and

(2) In refusing to strike the evidence and dismiss the proceedings on the grounds that a conviction would be contrary to the law and the evidence; and

LAW OFFICES
TH R. JOHNSON, JR.
ST & MERCHANTS
AW BUILDING

(3) In refusing to strike the evidence and dismiss the proceedings on the grounds that the Commonwealth had failed to prove venue and jurisdiction of the Court since the Commonwealth did not prove the offense occurred within the City of Lynchburg, Virginia; and

(4) In refusing to strike the evidence and dismiss the proceedings on the grounds that the Commonwealth failed to prove the Defendant was over the age of eighteen (18) years as required by the statute under which he was being prosecuted; and

(5) In its ruling that, should the Defendant testify in his own behalf, the Commonwealth's Attorney would be permitted to ask the Defendant how many times he had been convicted of a felony or a crime involving moral turpitude and be permitted to show the nature of the prior convictions; and

(6) In allowing a witness to testify, over the objection of the Defendant, as to the operations of a computer when such witness was not shown to be an expert in the operation of a computer; and

(7) In refusing to strike the evidence and dismiss the proceedings on the grounds that there were no proof that the children involved herein were delinquent or that they had been convicted of any offense.

Joseph R. Johnson, Jr.
Attorney for the Defendant
Walter F. Keesee, Jr.

Joseph R. Johnson, Jr., p.d.
Attorney at Law
607 First & Merchants Bank Building
Lynchburg, Virginia 24504

Certificate

I, Joseph R. Johnson, Jr., certify that on this 10th day of July, 1974, I personally delivered a true copy of the foregoing pleading to Royston Jester, III, Commonwealth Attorney for the City of Lynchburg, Fidelity National Bank Building, Lynchburg, Virginia, 24504, counsel of record for the Plaintiff.

Joseph R. Johnson, Jr.

LAW OFFICES
H R. JOHNSON, JR.
T & MERCHANTS
ANK BUILDING
HBURG, VIRGINIA

FILED
JUL 10 1974
L.C. Sydnor Clerk

TRANSCRIPT OF EVIDENCE AND INCIDENTS OF TRIAL,
FILED JULY 19, 1974, TRANSCRIPT, PAGE 5, THROUGH PAGE 139,
BOTH INCLUSIVE

(NOTE: FOR CONVENIENCE THE PAGE NUMBERS IN THE ORIGINAL TRANSCRIPT HAVE BEEN INCLUDED IN THE UPPER RIGHT-HAND CORNER OF EACH PAGE)

DIRECT EXAMINATION

BY MR. JESTER:

Q. Please state your full name.

A. Gary K. Patzman.

Q. By whom are you employed?

A. Hill's Department Store.

Q. In what capacity?

A. Assistant Manager

Q. Were you so employed in April, 1974?

A. Yes, I was.

Q. Mr. Patzman, do you recognize this defendant seated here at the counsel table?

A. Yes, I do.

Q. Do you recall a transaction involving him on April 12, 1974?

A. Yes sir.

Q. Did you see him in your store?

A. Yes sir.

Q. Would you please relate to the jury just what the circumstances were which attracted your attentionm to him?

A. Well, we were real busy that day, and I was at the service desk. I happened to see Mr. Keesee and his two daughters in the store. The daughters were pushing the shopping cart down through the appliances.

Q. Now just a minute, Mr. Patzman.

A. Yes sir.

Q. I am going to ask you if you will to speak out a wee bit louder. A little slower so that the jury can grasp that which you are saying. You know this so well, but they don't and they are the ones who have got to digest it, so speak just a little bit slower if you will please.

A. And I observed them going through the appliances department with a shopping cart full of boxes. I figured we were going to have a good sale that night in the appliance department. When I got called to the front registers to okay a check. I was gone approximately five to ten minutes. When I got back, Mr. Keesee's two daughters were pushing an empty shopping cart.

MR. JOHNSON: Can you speak a little louder, I can't hear you.

A. When I got back to the service desk - -

Q. Just a minute. That microphone does not amplify your voice. It merely records it into that machine. You are going to have to pitch your voice to me. Just don't talk to that thing, pitch your voice to me.

A. Okay.

Q. Did I understand you to say that when you first saw the cart being pushed by the girls there was something in it.

A. Right, there were approximately maybe six or eight boxes in the shopping cart at that time. I went to the front registers and when I got back to the service desk, they were pushing an empty shopping cart.

Q. Now, were there two carts involved,. or only one?

A. There was two carts involved.

Q. Each child was pushing a cart?

A. No. The first time I seen them they were pushing a shopping cart with six or eight boxes in it. The next time I seen them they were pushing an empty shopping cart.

Q. Now where was the cart with the six or eight boxes in it?

A. I could never find it.

Q. Alright. Now, go ahead and tell us what you saw when you saw the empty cart, and what you did after you saw the empty cart.

A. I went over to the service desk, and I was just watching people come into the store, and I noticed that he had, that they had four more items in the empty shopping cart. The empty shopping cart now had four items into it. And I got called to the front registers again. While I was at the front registers, the girl at the service desk called me, and I turned around in time to see Mr. Keesee's daughters leaving the store with the shopping cart. I went outside. I stopped them and I asked them for a sales receipt. They said- they didn't answer me. Mr. Keesee was walking from five to ten yards in front of them at the time, and when I stopped them, they called him, and he came back. I asked him for a sales receipt and he said it's paid for but he couldn't prove it by a sales receipt. I took Mr. Keesee and his two daughters back to the manager's office, and called the police department.

Q. Alright, now what were the items that were in the cart when you stopped the girls?

A. There were four boxes, a blender, an iron —

Q. Well do those boxes happen to be down here?

A Yes sir, these are the boxes.

Q. Alright. Do I understand from you now that these four boxes which were in the car?

A. Yes sir.

Q. Would you please bring the two Keesee children in here please sir? I am going to ask you two girls to come right over here, if you will, please. Look toward this gentleman right here, and stand right there. Do you recognize these two young ladies?

A. Yes sir, I do.

Q. Are these the two children that you have reference to that you saw pushing the cart with those four items in it?

A. Yes sir.

Q. Were they both pushing together, or one pushing?

A. No sir, the older one was pushing it, and the smaller one was walking beside.

Q. Now you can go back outside where you came from. Now, the four boxes that you have there before you, would you please tell us what is in those boxes?

A. A blender, coffee pot, and two irons.

Q. Now is there any distinguishing characteristics on those boxes that enable you to determine that they came from Hill's store?

A. Yes sir. The yellow sticker right here.

Q. Now you have pointed to a yellow sticker in the corner of this box. What is it on that sticker that makes you to say that that box came from your store?

A. It has Hill's on it.

Q. It has Hill's on it?

A. Yes sir.

Q. Does it have anything else on it?

A. Yes sir, it has our coding system on it.

Q. What is your coding system?

A. Appliance department, we have a seven digit code for all items that come into the store, and only likable items have the same code, and I brought my code book with me to show that this is our item.

Q. Alright sir, now you are telling us then that this number 0100201 is your code number, to show that this is your electic iron from Hill's store?

A. Yes sir.

Q. Who put that code number on there?

A. A ticket went on in the backroom.

Q. In the store?

A. Yes sir.

Q. I pass this to the jury so they can see it. Now there is another electic iron here before you. Now I ask you whether or not you can identify that as coming from your store?

A. Yes sir.

Q. How can you determine that?

A. It has the yellow sticker on it, with our seven digit code in it. It has Hill's name on it, the top part of the ticket.

Q. Now is that the same code number that is on the other package? The one that the jury is now examining?

A. I don't believe so.

Q. Alright sir. Now the coffee maker that you have here, how can you determine that that came from your store?

A. You have the yellow sticker also with the Hill's name at the top and the seven digit code.

Q. Is that code number different from the other code number?

A. Yes sir.

Q. Alright sir. Now the Waring blender, is there anything on it that enables you to identify it as coming from your store?

A. This also has the yellow sticker with the seven digit code, and the name Hill's on it.

Q. That package happens to be open. Do you know the circumstances under which it was opened?

A. We keep the boxes on the salesfloor. It could have been opened by a customer to look inside.

Q. Well now was the box in this condition when you found it inside the cart?

A. Yes sir.

Q. And does it have the seven digit code on it also?

A. Yes sir.

Q. How do I understand from your testimony that these four boxes with the four code - seven digit code, were in this cart being pushed by these two little girls outside of the store?

A. Yes sir.

Q. How far outside of the store was this cart when you stopped these two little girls?

A. Approximately twenty yards, I'd say.

Q. And I understand you to say the father was walking some five to seven yards in front of them?

A. Yes sir.

Q. Now when you saw the two little girls in the store, where was the father?

A. He was walking with them through the appliance department.

Q. When you say walking with them, how close a proximity was he to the children?

A. He was about three to five yards away from them.

Q. Was this in the appliance department?

A. Yes sir.

Q. Now how can you tell this jury that those four boxes, two containing electric irons, one a coffee maker, and the other a Waring Blender, that they were not paid for?

A. I have two ways of telling that. One way is with the red sticker. A big box leaving the store, big boxes like that one, could not go into a bag, and have the red sticker on it.

Q. Now, this was on April 12, where is the red sticker on that?

A. There is no red sticker.

Q. There is not a red sticker?

A. No sir.

Q. Alright sir, now what would be the red sticker look like if a red sticker was on it?

A. It would be approximately five inches long, 3/4 of an inch wide, and it would be a gum type that could be stuck on to the box and it can not be removed. It will always leave something on there. You can't remove it without defacing it, the box.

Q. Have you examined all these boxes to determine whether or not they have a red sticker on them?

A. Yes sir.

Q. Do any of them have a red sticker?

A. They don't have the red Hill's sticker, no sir.

Q. Alright sir, now you say that's one way you can determine. Is there any other way you can determine that those four boxes and their contents were not paid for?

A. Yes sir, we have a computerized system at the cash registers, and any appliance that is sold —

MR. JOHNSON: Your Honor, please, we would have to object to this gentleman's testifying about the workings of the computer. I am sure he is not an expert, in so far as the computer is concerned.

MR. JESTER: Well he can tell what they do.

MR. JOHNSON: He can tell what they do but not what the computer does, is our point, Your Honor, please.

THE COURT: He can tell what the cash, if he knows what they do, and then I'll pass on the other question when we get to it. I'm going to overrule your motion at this time.

BY MR. JESTER:

A. Everything below the red line on this yellow sticker - -

Q. I expect you had better come down here so the jury can see.

A. Everything below the red line on this yellow sticker we've entered into the register. We first ring the department 45 in, we ring the SKU number in,

which is the seven digit code, and then we ring in the price. This is a detailed tape from one of our registers. Gives you department 45 and the seven digit code.

THE COURT: You mean the unit that you use records the number on this tape?

WITNESS: Yes sir.

MR. JESTER: Judge, I think what he is saying is that first you ring the department number, which in this instance is #45.

THE COURT: But is it recorded on the tape?

MR. JESTER: On a tape, yes sir.

BY MR. JESTER:

Q. Now what other information is recorded on this tape besides the department number?

A. The price.

Q. And what about the serial number?

A. This is just our receiving code up here at the top. This number here you are referring to?

Q. I am talking about the seven digit number?

A. The seven digit number, that's the one right after the department.

Q. Does that go on this tape also?

A. Yes sir.

Q. Alright you may take your seat back up on the witness stand. Now do I understand you to mean that if I as a purchaser go there, through your store and pick up this box and go to the cash register, that the clerk at the cash register, on the cash register machine types up the — hits the button to show dept. #45, then the serial number and then the price?

A. Yes sir.

Q. And is this recorded on every item that is sold there in the store?

A. We do have some items that don't have the seven digit code.

Q. Now are any appliances that are sold in your store without the seven digit code?

A. No sir.

Q. Now are - have you examined the tapes from the several adding machines in the store to determine whether or not there is any entry on these tapes to reflect the sale of these four items represented in the boxes before you?

A. Yes sir.

Q. Was there any evidence of these four items being recorded on any of these adding machine tapes - cash register tapes?

A. No sir.

Q. Alright sir, now, after you found this cart outside the store, what else did you find?

A. I didn't find it, but we learned later that he had - -

THE COURT: Now wait a minute, if you didn't find it. You can't testify to what somebody told you.

BY MR. JESTER:

Q. Did you see a car outside?

A. Yes sir, later on that night I did.

Q. What kind of a car was it?

A. I don't know the make or model, it was a white car.

Q. Alright sir now, what was found in that vehicle?

A. I believe it was sixteen boxes

MR. JOHNSON: If you will, please, Your Honor, we object unless this man says that he checked it and examined it and so forth and found these items.

WITNESS: I didn't touch the car until it was brought down to the police station, and the police opened it and then I examined the boxes.

THE COURT: Then you did personally examine it after it got to the police station?

WITNESS: Yes sir.

THE COURT: Well you can testify what your examination disclosed.

BY MR. JESTER:

Q. Alright sir, did you make an itemization of the items that were found in this vehicle?

A. Yes sir I did.

Q. Did you reduce this to the form of a written list?

A. Yes sir I did.

Q. I'm going to give you a copy. At the proper time, Your Honor, please, I will get this marked as an exhibit. I will ask you to examine that list and state whether or not that list fairly represents the items that were found inside the white dodge, which was moved by the police from your parking lot to the police station?

A. Yes sir, these are the items right here.

Q. Now would you please read out to us what is on that list?

A. There is a broiler, a blender, phonograph, two more broilers, a digital clock, a maxey hair dryer, a fan, a super maxey hair dryer, a coffee maker, two 8 inch double fans, two am-fm radios.

Q. Alright sir, now, does this list which I now give you fairly show the items that you found in the cart as well as those that were found in the vehicle?

A. Yes sir.

Q. I would like to introduce this, Your Honor, please, as Commonwealth's exhibit No. 1, which has been written on the back, and if I may I will pass a duplicate copy to each member of the jury.

THE COURT: Mr. Johnson, have you seen a copy of this?

MR. JOHNSON: Yes sir, we have no objection.

THE COURT: Alright sir.

MR. JESTER: May I give each member of the jury a copy?

THE COURT: Yes sir.

BY MR. JESTER:

Q. Now if you will sir, I don't know if you have the same list that I do or not.

A. Yes sir.

Q. I don't know if it is in the same order or not. You are now referring to a list which has been introduced as Commonwealth's exhibit No. 1. On the first item, model number, you have the number there 5231 toastmaster, does that mean the make of it?

A. That's the vender, that's who makes it, and that's his model no.

Q. Then the next item on there shows broiler, that's what the specific item was?

A. Yes sir.

Q. And then the next one has SKU, what is that?

A. That's the stock keeping unit.

Q. Is that what that seven digit number is?

A. Yes sir.

Q. Alright. and then you have the cost item on there and then the retail value?

A. Yes sir.

Q. Is that correct?

A. Yes sir.

Q. Now does that list which you have there, were they in boxes as originally appeared in your store?

A. Yes sir.

Q. Did they have any characteristics on those boxes to indicate to you that they were items that came from your store?

A. Yes sir. They have the yellow Hill's label on them.

Q. Is that the same type of label that appears on these four boxes which you have previously identified for the benefit of the jury?

A. Yes sir.

Q. Now do they all have a seven digit No. on them?

A. Yes sir.

Q. Did you ascertain by examining your adding machine tapes as to whether or not any of these items which were found in that vehicle had been paid for at the Hill's store?

MR. JOHNSON: If your Honor please. We would like to note our objection to this on the ground that this gentleman did not handle the cash registers, he did not make those entrys admittedly, he is not an expert in so far as computers are concerned. He has no basis upon which to testify as to whether or not these came through the adding machine. We object.

THE COURT: The only thing he can testify to is that he took these numbers and compared them with the tape and they weren't on the tapes. If he did that, you don't have to be a computer expert to do that.

MR. JOHNSON: But if Your Honor please, Mr. Jester asked him did he determine from the examination whether or not these went through the register.

THE COURT: Well, I'll let him testify to whether he examined the tapes or not, and whether or not they appeared on the tapes.

MR. JOHNSON: We respectively note an exception.

THE COURT: I'm going to let him testify, so go ahead.

BY MR. JESTER:

A. Yes sir, I didn't examine the tapes right away because they would not answer my question as to when they bought the merchandise that was in their car. I later- -

THE COURT: What do you mean, they would not answer?

WITNESS: I asked for a sales receipt for the merchandise in the car. Mrs. Keesee came along and said - -

THE COURT: Now you can't tell what Mrs. Keesee said, but what Mr. Keesee said, you can tell.

WITNESS: Well, I had no further conversation with Mr. Keesee.

THE COURT: Alright go ahead sir.

BY MR. JESTER:

Q. When did you examine these tapes?

A. As soon as I got them at juvenile court. That was - I examined the tapes on the 15th of April.

Q. The 15th of April? Now I believe the original trial on this was a date prior to the 15th of April.

A. May 15th.

Q. May 15. You examined them on May 15?

A. Yes sir,

Q. And that was after you returned from the original trial in this matter?

A. Right.

Q. Alright sir, did you examine all of the tapes for the dates of April the 11 and April 12, 1974?

A. I examined all the tapes for April 12, and I did not examine the tapes for April 11.

Q. Alright sir, now did the tapes for April 12 reflect the sale of any of this merchandise having been rung up on the cash register?

A. No sir they didn't. These are the sales that were rung up that day in the department 45.

Q. You show us now a copy of what appears to be a shoe box and you have written therein the names of certain items in code numbers and you tell us that these were the only items that - - appliances that were rung up on April 12?

A. Right. And the way that I can do that is because we did a department readout at the end of the day and department 45 for April 12, the total business was $166.35.

MR. JOHNSON: We object Your Honor.

THE COURT: I sustain your objection, you can tell what you did, and what -

MR. JESTER: Your Honor please, he is telling the jury what the tapes reflect.

THE COURT: But the tapes you examined, you are talking about a readout- did you -

MR. JESTER: Well that is the terminology for the examination of the tapes.

THE COURT: You ladies and gentlemen just retire to the jury room.

(Whereupon the jury was retired to the jury room.)

THE COURT: Now tell what you did, and go ahead and testify.

BY THE COURT:

A. Well, I left the juvenile court on May 15. Mr. Keesee told Judge Wingo that he bought the merchandise on the 11th day - 12th of April, that was in his car. The reason it was still in his car was because he bought it on a Thursday and Friday. I went back to the store, examined the tapes through the 12th. These items here totaling $166.35.

Q. Did you examine all the tapes on the machines that day?

A. Yes sir. Tapes for the 12th.

Q. Alright you can testify to that. Now what were you testifing to about something else?

MR. JESTER: He is showing the total number of appliance sales for that day.

A. This is the total amount of business done in Department 45 for the day, Your Honor. This is the total amount that was done on the 11th. The total amount of business for the 11th and 12th is $221.74. The total amount in Mr. Keesee's car was $295.70.

Q. Well show me how you arrived at that.

A. This is department 45.

Q. That is 45 6.

A. The 6 is that means the department No. The Z over here means it is a Z reading for the day.

Q. What does the Z reading mean?

A. It means it is the last reading for the day. That is the end.

Q. Yes sir.

A. And that comes to $166.35.

Q. In other words it was $166.35 business done in Department 45 on this day?

A. Yes sir.

Q. Now what about on the 11th?

A. On the 11th, there was $55.39 sir.

Q. On the 11th? And did you examine all the tapes on these days?

A. To tell the truth, Your Honor, I didn't because there was only $55.00 worth, and I proved that with -

Q. Well are there any other tapes that could have had any items from department 45 on them?

A. Yes sir, could have been some on the 11th.

Q. Well why didn't you examine all of them?

A. I couldn't find the other tapes, they were sent to our home office.

Q. Well what are these if this is not the 11th?

A. This is what we sent. We keep this in our store.

Q. Now $55.39, what is that?

A. That is how much money was done on the 11th.

Q. In department 45?

A. Yes sir.

Q. But you said, I thought, a moment ago there could have been some more that you didn't examine?

A. No sir, I thought you were talking - -

Q. But did you examine all the tapes on the 11th to determine what was the amount of business done in dept. 45

A. Did I do -

Q. Like that?

A. I couldn't Your Honor, they were in the homeoffice in Boston.

Q. Well what do these tapes reflect?

A. This is how we do our report. We keep these in the store.

Q. This reflects the total of what was in the tapes?

A. Right.

Q. And this amount here reflects what was in the tapes on another day?

A. Right, sir.

Q. And when they examine the tapes, you just show what was the amount of business done that day from the - of this cash register rather than from an examination of the tapes?

A. Well, I could not examine the tapes for that day, but the total of those two was 94.

THE COURT: Alright, I am going to let that in.

MR. JOHNSON: Your Honor, may I examine him?

THE COURT: Yes sir.

BY MR.JOHNSON:

Q. Mr. Patzman, you told his Honor that there could be tapes and in fact are tapes for the 11th that you did not examine?

A. I could not examine them, right.

Q. Now the figures here on the documents on the Judge's desk, they were actually compiled by somebody else were they not and then sent in as a part of their summary?

A. I don't understand the question.

Q. You said this was a summary sheet sent in by the department head, or something to that affect?

A. I might not understand what you mean, but I think I can answer it. You refer to this?

Q. Yes?

A. This is _____ for the day, we take- -

Q. By whom?

A. By a member of management

Q. Not yourself?

A. No sir. I could have put —

THE COURT: These are the _____ made in the course of business out there?

A. Right.

Q. You can not say who made them, is that right?

A. I couldn't say who pushed the button to get the readout, no sir.

Q. You can not say of your own knowledge that they are correct? Without your checking the actual cash register tape, can you?

A. I can say they are correct because they balanced.

Q. What do you mean they balanced? They could show something else, how can you say they balance?

THE COURT: He misunderstood you because he said that he did not examine the tapes. He meant he examined the summary of what the tapes were.

MR. JOHNSON: But this isn't the summary here. He did not examine the registers though, Your Honor,

and didn't examine the tapes.

BY MR. JOHNSON:

Q. You examined this summary prepared by somebody else, did you not?

A. You refer to this?

Q. Right, but you didn't prepare it, did you?

A. Nobody prepares it, it just comes out of the machine.

Q. And you did not push the button to get it out of the machine, or you don't know who did, or anything like that?

A. Right.

Q. Well the information in the machine,is that from the tapes themselves?

A. Right, the information right here comes from these tapes.

Q. Let me ask you this, you don't know from this statement whether a particular item were sold on the 11th, do you?

A. I don't know what particular items were sold, no.

Q. You would have to look at the tapes some of which are missing to know that?

A. Right.

THE COURT: All he can testify to is the total amount.

MR. JOHNSON: I understand.

THE COURT: So I am going to allow him to testify on the basis that the statements were made in the course of business, which I think is acceptable. He also made examination of the totals on those dates.

MR. JOHNSON: We respectively note an exception, Your Honor.

THE COURT: Alright, call the jury back.

MR. JESTER: Wait a minute now. Where were we before the jury went out?

THE COURT: He was going to give the total of the sales that was made in department 45 on the 11th.

MR. JESTER: Alright, sir.

THE COURT: Go ahead, bring the jury back. Now you can proceed.

(WHEREUPON, the jury returned into the Courtroom.)

BY MR. JESTER:

Q. Mr. Patzman, you have before you there two separate computations, I believe, which reflect the day's business for April 11 and April 12, 1974?

A. Yes sir I do.

Q. Were these prepared in the usual course of a business events of the day?

A. Yes sir.

Q. Alright sir, now do you have a means of determining what the total sales were? From department 45, which I believe, you have indicated was the appliance department for April 11?

A. Yes sir I do.

Q. And what was the total sales for that day?

A. For that day it was $55.39.

Q. Do you have a computation to reflect what the total sales were for April 12, 1974, in department 45.

A. Yes sir, I do $166.35.

Q. Adding those two figures together, would they equal the total value of the merchandise found in the vehicle said to belong to Mr. Keesee?

A. No sir, they wouldn't.

Q. What was the total value of the merchandise found in the Keesee vehicle?

A. $295.70. The total amount from the two days was $221.74.

Q. Did Mr. Keesee give you any explanation as to why he could not furnish you with any indication as to how he had paid for this merchandise on the evening that you stopped him?

A. He said he thought it was paid for. That's all he said.

Q. Did you see him with anyone other than the two children in the store?

A. No sir, I didn't.

Q. Witness with you. Just one question. You have indicated that you used some kind of a red sticker to place on packages that were too large to be put in a bag?

A. Yes sir.

Q. Do you happen to have one of those stickers with you?

A. No sir, I don't.

Q. Indicate with your hands if you will, approximately the size of that sticker.

A. Approximately that long.

Q. Now would you say about four or five inches long?

A. Four or five inches long, maybe anywhere from 3/4 to an inch wide.

Q. And what was written on the red sticker?

A. Just Hill's.

Q. Hill's?

A. Yes sir.

Q. Now do you always use that as a means of marking packages that come through the front of the store?

A. We did up until June 1.

Q. Why did you discontinue on June 1?

A. We received a policy procedure letter from the home office, stating that the security seals would be used only at the primer registers, and the primer registers are appliances, hardware, jewelry and lay-a-ways. We don't use them at the front registers anymore.

Q. So you have discontinued that practice?

A. Yes sir.

Q. Alright witness with you.

CROSS EXAMINATION

BY MR. JOHNSON:

Q. Mr. Patzman, you did not bring -

JUROR: May I approach the bench?

THE COURT: Yes sir.

JUROR: As I understand it -

THE COURT: He is going to answer the question, let him see.

JUROR: This seven digit number, is that a unique number for each like item or is it a unique number for each item? In other words you got two. This is a duplicate that appears, now is this two separate things or is this-

WITNESS: Right, they are the same item. If you give me the book down there I can show you.

THE COURT: Now there are two irons, two radios. They have the same number?

WITNESS: They are the same items.

THE COURT: Same item, but each individual radio does not have a separate number?

WITNESS: They have a separate digital number. This number right here T2333GE will have that number on it.

THE COURT: And all that model from GE will have that same number?

WITNESS: yes sir.

JUROR: So that's two?

WITNESS: Right.

THE COURT: These two have the same number?

WITNESS: Right.

THE COURT: Mr. Jester may have misled him.

MR. JESTER: I think so, in my opening statements. Each one -

THE COURT: Alright go ahead now, Mr. Johnson.

BY MR. JOHNSON:

Q. Mr. Patzman, you did not bring one of these red stickers with you today?

A. No sir, I did not.

Q. You recall testifing in the lower court on May 15, do you not?

A. Yes I do.

Q. You had the red stickers with you then, did you not?

A. I had one, yes sir.

Q. And you demonstrated that to the Judge in the lower court as to how that is supposed to be fixed on the box and all, did you not?

A. Yes sir, I did.

Q. And you stated at that time that nothing was supposed to be sold out of the appliance line without the red sticker on it when it had to go out in boxes like this, is that right?

A. I stated that it is supposed to have a red sticker on it when it leaves the store if it isn't in a box, yes sir.

Q. And you stated that maybe one might have gotten out, but certainly not more than that? Without the red sticker?

A. I think my statement was that maybe a couple could get out without the red sticker.

Q. Okay. Now, you heard in that trial a number of witnesses testify that they had purchased items out at Hill's, and one lady had them there with her, showing no red sticker, did you not?

A. I heard one lady state that she bought one thing out there, I didn't hear many people stating that.

Q. Did she have the items with her?

A. She did.

Q. Now then at the hearing, that's when you went back to check the computer and so forth, is that right?

A. It was not after that court, it was in juvenile court.

Q. But they were on the same day, was it not?

A. I believe so.

Q. One at nine o'clock and another at ten?

A. It was put back to a later date, I believe, not the same day.

Q. Wasn't one held at nine or eight-thirty, and one at ten, same date?

A. Yes.

Q. Alright, now, when you went back to check, what you testify to the jury that you checked with the tapes, that you checked yourself, were the tapes on the cash register?

A. Right.

Q. And this computer readout, but you stated that you heard in that court that these items in the car were supposed to have been bought on Thursday and on Friday.

A. Yes sir.

Q. Is that correct? Alright now, you checked on Friday on the tapes, right? April 12, you checked the tapes?

A. No I did not. I had no way of knowing when Mr. Keesee bought the merchandise until May 15.

THE COURT: He's talking about after that when you went back and checked.

Q. I am talking about after J & D Court when you went back to check. Did you not check the tapes from the 12th?

A. Right.

Q. But although you had heard that these were purchased on the 11th, or part of it, you didn't check the tapes for the 11th, did you.

A. I couldn't check them, no.

Q. You didn't check them?

A. No, I didn't.

Q. Alright. So right now you can not tell us what those tapes, all the tapes on the 11th show, can you?

A. No I can't, just total money.

Q. Now, what you have testified to about those yellow slips are not what you checked yourself, but the information turned in by the department heads, is that right?

A. No, information turned in by the computer.

Q. By the computer? And whoever pushed the button for the computer or got that? That is a summary, right? So you didn't check this card yourself, you didn't check the computer to get that information? That was gotten by somebody else?

A. Yes sir.

Q. Now you said the red seals were discontinued on June 1?

A. Yes.

Q. Now, that was after the other court hearing, in this matter, wasn't it?

A. Yes sir.

Q. Do you happen to know whether or not they were discontinued because it developed as a result of that hearing that they weren't being put on anyhow?

A. No. This came down from home office in Kenton, Massachusetts.

Q. But you don't know why. You don't know what that reason was?

A. No, I don't.

Q. So up until June 1, it is your testimony as I understand it, that maybe two items might have gotten through out there, over this period, without a red sticker, but no more than that?

A. My statement was two a day.

Q. Maybe two a day?

A. Maybe two a day, maybe three a day.

Q. In other words, you really don't know how many items red stickers were put on, and how many were not, do you?

A. No sir, not at the front register.

Q. And really in a way, stickers don't mean anything in so far as establishing anything, do they? You don't know whether they are put on or not, or how many are put on, or how many aren't?

A. I can't answer that because I don't know what they put on and what they don't. I am not up there.

Q. Alright now, as far as what you saw, what time was it that this occurred? What time was it you say you first saw the Keesee children?

A. Nine o'clock.

Q. What?

A. Around nine o'clock that night.

Q. Around nine o'clock. Is that when you first saw the Keesee children in the appliance department, about nine o'clock?

A. That is correct.

Q. What time did the later part happen about you actually observing the children following Mr. Keesee some five or ten yards behind him out of the store?

A. Approximately nine-thirty.

Q. Nine-thirty? Now, the cart that we are talking about, because it is pretty easy to misunderstand the cart and car. So I want to be sure that you understand. These four items were found in the cart. C A R T. Shopping cart, right. The other items that you referred to were found in an automobile?

A. Right.

Q. Now as far as the first time you saw the cart, shopping cart, who had it, and how did they have it? In the appliance department?

A. The oldest Keesee girl was pushing it, and the younger was by her, and Mr. Keesee was also there.

Q. Was he right there with them, or some distance away?

A. He wasn't real close to them, no.

Q. How far away was he from them?

A. Three, five yards I guess.

Q. Were the - strike that. Is it the practice of Hill's to keep merchandise displayed sometimes in these shopping carts?

A. No sir.

Q. Is it the practice to restock the shelves by using a shopping cart to, you know, to bring the merchandise up, a number of items, and then take them from the cart, and put them on the shelf?

A. Yes.

Q. That is done? Is it quite ordinary that people will see shopping carts setting either between the aisles or at the end of the aisle with something like that, with items in it, because they are being restocked constantly?

A. We don't restock at night.

Q. You do not restock at night?

A. No sir,. we -

Q. Would you - now differently to the red tag now, are you saying that you never restock at night?

A. We don't make departmental moves. That you are talking about at night. We don't have enough personel. If somebody wants it, we go back and get it. If we have it in the back room.

Q. Well if you brought it out, you would bring - Can you say that if you ran out of the particular item, that the department head wouldn't sent somebody back to get a number of them in the shopping cart and bring them back, if this was the way of transporting?

A. Depending on the merchandise, we might.

Q. Alright, now then what you saw, you don't know how far she pushed it?

A. No I don't.

Q. All you know you saw the girl push a shopping cart?

A. Right.

Q. Now you say you came back there later and the cart was empty?

A. They were pushing empty shopping carts at the time, yes sir.

Q. Later on? You don't know whether it was the same cart or not, do you?

A. No I don't.

Q. You went up to - when you saw the cart being pushed first, at least her hold of it, and knew the defendant, you went up to the front door - to the checkout thing at the front door?

A. I was up front, and I was called to the other side.

Q. You did not see that full cart come on through there did you?

A. No I didn't.

Q. It had to go through those doors to get out of the store?

A. Yes it would have.

Q. And you didn't see it go through?

A. No sir. I didn't.

Q. And you said, I believe, that you thought it was a good sale and did you not look to see if that came on through?

A. I was not at the front register all night, and I can't answer that.

Q. You were until you walked back there to check it?

A. I was back and forth between service desk and the front register.

Q. Well did you not check and watch particularly about this shopping cart that you had seen, to see if it came through?

A. Well when I went back and there was an empty shopping cart, I looked around and I couldn't see the one that was full, and I was called back to the front registers again, next thing the girl at the service desk called me and I saw them leave.

Q. When you saw them leaving, the four items that were in there, you had seen them with the empty cart before those- they laid the things in there, right?

A. Right.

Q. Well let me ask you, did you not testify previously that you knew this ~~was~~ going to be a pretty good sales so I went to the register, but the shopping cart with the appliances never came through, and I was called back to the front registers again. But you didn't go anywhere except the front register and the appliance department, right?

A. Right, I stayed up -

Q. Your previous testimony, and this full cart that you first saw, I believe you said, seven or eight packages in it, could not have gone out those front doors without you seeing it, could it?

A. It could have. I was okaying a check, and to okay a check you have to turn your back when you go in to okay them.

Q. Did you look to see if it went through? Haven't you stated that "I looked for the shopping cart, I didn't see it. I wasn't especially looking out for it, I looked to see where it was"? Didn't you testify previously you were looking for it because you knew it was a good sale and you watched for it and it never came through?

A. I said I saw it and it was going to be a pretty good sale. When I looked around I didn't see it, but I saw the empty shopping cart, but I didn't think anymore about it.

Q. Then do you deny that you testified in lower court what I just read from the transcript here that I have, "but the shopping cart with the appliances never came through"?

THE COURT: Mr. Johnson, wait a minute. You can't read from your transcript. You are going to have some witness here to contradict him.

MR. JOHNSON: Your Honor, I am asking him whether he did, of course, these are not transcripts, that's true.

THE COURT: I know it, that's what you can't do here. If you've got a witness that can testify to that's what he testified to, he can testify.

MR. JOHNSON: Your Honor, this was done with a tape, and the secretary that did it is no longer with us.

THE COURT: You can't do it.

MR. JOHNSON: Alright.

BY MR. JOHNSON:

Q. In any event, you were interested in whether this cart came through, you didn't see it come through?

A. No.

Q. And you were there at the front door, which is the only way it could have gotten out of the store, if it went out of the store, right?

A. I was up at the front of the store. I didn't stay right at the front door, no.

Q. Well, you were either there or in your appliance department, where it would have been coming from?

A. The front of our store is maybe fifty to seventy-five yards long, I was in that seventy-five yard area.

Q. Okay. Now, when the cart with the four items in it went out of the store, was the taller or the shorter of the two girls pushing it?

A. The taller was pushing, the shorter was walking along side her.

Q. Was walking with her?

A. Yes sir.

Q. Alright now, where was Mr. Keesee then?

A. I would say between five to ten yards ahead of them.

Q. Five or ten yards ahead of them? Now, he did not have anything in his hand, did he?

A. No sir, he didn't.

Q. Then you stopped the girl, did you not?

A. Yes I did.

Q. Did you talk to Mr. Keesee then at that time?

A. His oldest girl called him back and I, at that time asked him, for a sales receipt for the merchandise, and he looked at the girls, and said it was paid for, and they couldn't produce a sales receipt. I brought three of them back to the manager's office.

Q. Did he tell you then and there that he thought his wife had paid for it? And didn't he ask you to be allowed to call her over there to see if she had?

A. He brought his wife back to the manager's office, yes sir.

Q. He told you that he thought she had paid for it, that's what he told you, did he not?

A. He said that he thought it was paid for. He didn't say who paid for it.

Q. Well, the reason for calling her back to the manager's office was because he told you he thought she had paid for it, was it not?

A. I believe that's why we called her back there, yes sir.

Q. Alright sir, that's all.

RE-DIRECT EXAMINATION

BY MR. JESTER:

Q. Mr. Patzman, you said this defendant's wife was called back into the same room where he was?

A. Yes sir. The store manager, Mr._____, went out of the store and brought her back.

Q. Right, how large is that room?

A. Eight by Eight.

Q. Mr. Keesee and his wife both were in the same room at the same time?

A. Yes they were.

Q. Did she make any statement concerning the merchandise having been paid for?

A. No she didn't.

Q. Did she claim that she had paid for it?

A. No she didn't.

Q. Alright sir.

THE COURT: Alright, you may stand aside.

AND THE WITNESS STANDS ASIDE.

SCOTT BELCHER, the witness, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. JESTER:

Q. Your name is Scott Belcher?

A. Yes sir.

Q. I am going to ask you to look towards me and speak loud enough so that I will know that the members of the jury on the back row are hearing your answers. On April 12, 1974, were you an employee of Hill's store?

A. Yes sir.

Q. Were you working that night?

A. Yes sir.

Q. Do you recognize this defendant here?

A. Yes.

Q. Now speak up, don't be afraid to talk out. Were you present in the lower court when there was a previous trial concerning this matter?

A. No sir.

Q. You were not over there?

THE COURT: You are not speaking loud enough, they can't hear you. Speak out.

Q. Well have you seen this defendant since he was in the lower court?

A. One time.

Q. Where was that?

A. In Kroger's parking lot.

Q. Now where were you at the time that you saw him?

A. I was getting in my car.

Q. And did you have any conversation with him?

MR. JOHNSON: Your Honor, please, we have a matter at this time.

THE COURT: Alright sir. Members of the jury, just retire to your jury room.

(WHEREUPON, the jury retired to the jury room.)

THE COURT: Alright sir, go ahead out of the presence of the jury.

BY MR. JESTER:

Q. Did you have any conversation with him at Kroger's parking lot?

A. He - I was getting ready to pull out and he come around in to the window where I was and he told me - I didn't say anything to him and he said something about I was lying and I would pay for it dearly.

Q. That you would pay for it dearly?

A. Yes.

Q. Alright after he communicated that to you, what did you do?

A. I didn't do anything.

Q. Yes you did. Did you call me on the telephone about it?

A. I called you, but not the same day.

Q. Alright, you mean you did nothing as far as he was concerned. You didn't say anything back to him. Did he refer to the other trial in this conversation ?

A. (inaudible)

Q. Did you testify over before Judge Wingo in this matter?

A. I thought you meant in the Juvenile Court.

MR. JOHNSON: That's what he is talking about. You didn't testify in juvenile court.

Q. Were you over there in Juvenile Court?

A. No sir.

BY THE COURT:

Q. Well did you testify at all before today?

A. One time. It was for Mr. Keesee.

Q. Was that over in Judge Glass' Court?

A. Yes sir.

Q. On other charges pertaining to this?

A. Yes it's the same case, same charge.

MR. JESTER: Alright sir. I think he is charged with larceny of the merchandise, Your Honor, and he testified under those circumstances. I just want to show the attempt to intimidate the witness, Your Honor, please.

THE COURT: Well he said he didn't testify in the case.

MR. JESTER: Well he testified in another case though.

THE COURT: I think you are getting into showing the charge against him and testifying in another case, you are -

MR. JESTER: Well, I wasn't going to - I was just trying to avoid mentioning another charge... Just asked him if he testified before.

BY THE COURT:

Q. What did you testify? Did you testify for him or against him, or were you called - what did you testify to?

A. I testified against him in the trial of Mr. Keesee.

Q. Brought out of the same case. What did you testify to, that is what I want to know? What did you say?

A. When they went to the men's department, he told his wife to hurry up and get out. That's all I knew in the matter, that's all.

Q. Well did you hear him tell his wife to hurry up and get out this night that the thing happened?

A. (inaudible)

THE COURT: I think that's admissable.

MR. JOHNSON: Your Honor, let me question him on it, if I may, because I don't think the Court has the full - -

BY MR. JOHNSON:

Q. When was this that you heard him tell her to leave?

A. It was after they had been back at the office.

Q. It was after they had been to the office, and the whole thing had been discussed back there and Mrs. Kessee had been called back to the office and they had all talked back there, then they came out, I believe your testimony was, and he handed her the key and said "come on let's leave", or something like that?

THE COURT: I thought maybe that at the time of the arrest - -

MR. JESTER: Judge, wait a minute. I think maybe Mr. Johnson is misleading you and the witness. Let me try to clarify it.

BY MR. JESTER:

Q. Mr. Belcher, with reference to the conversation which you are trying to relate to the court, were you there in the Hill's store on the night when this man was stopped with his two daughters out side of the store?

A. (inaudible)

Q. Now -

THE COURT: Wait. Speak up, I can't hear you.

Q. Nobody is going to hurt you, son, speak up so we can hear you. Were you there in the store that night?

A. Yes sir.

Q. Did you see the defendant and his two daughters go back to the manager's office?

A. No not when they went back there.

Q. Did you see them come out of the manager's office?

A. No sir.

Q. Well did you see them out in the store?

A. Yes sir.

Q. Alright. Did this - - who was present at that time?

A. When I saw them?

Q. That's right.

A. It was him and his wife and two daughters.

Q. Alright now. What conversation took place between him and his wife in your presence at that time?

A. Well, I went up to the men's department -

Q. I am not asking you what you did. I asked you to just tell us what you heard, that's all.

A. He just told his wife to hurry up and get out.

Q. Well did he say anything to her about moving the automobile?

A. No he just said hurry up and leave.

THE COURT: Now this is after he had been back in the manager's office?

MR. JOHNSON: Right. Now I fail to see how I misled the court, but anyhow, that's -

MR. JESTER: It isn't what he told the police officer, what I've got in my report.

THE COURT: Well I am going to sustain the objection. I think to allow what he said in another case is getting into another case. I think it will be prejudicial.

MR. JESTER: Judge, this isn't what was said in the other case, this -

THE COURT: What he testified to in another case against this man, that has nothing to do with this case, it was a charge, I don't even know what happened to the charge over there; but it was a charge of larceny against this man

MR. JESTER: That's what I understand.

THE COURT: And he testified in that case that he threatened, or if he did intimidate him, was in that case, is that case appealed up here too?

MR. JOHNSON: It has been certified.

THE COURT: It has been certified?

MR. JOHNSON: Yes sir.

THE COURT: Well of course that may be evidence in that case, but not in this case.

MR. JESTER: Alright, let me ask you this.

BY MR. JESTER:

Q. Did you see the Keesee automobile out in the parking lot?

A. Yes sir.

Q. Where were you at that time?

A. When I saw it?

Q. Yes sir.

A. I was outside. I went out with the manager outside.

Q. Alright now, was Keesee outside at that time?

A. Yes sir.

Q. Was his wife outside at that time?

A. Yes sir.

Q. Alright, I want to develop a little bit of that later.

THE COURT: Alright, go ahead and develop it now.

Q. Alright sir, where was this car parked with reference to the front door of the Hill's store?

A. It was over to the, like you was at Hill's it was over on the right.

Q. Would it be fifty feet or a hundred feet away?

A. Just about a hundred or more.

Q. What did you see in the automobile?

A. Back seat was full. Had all these appliances -

Q. Back seat was full of packages? Could you tell if the packages came from the Hill's store?

A. They had Hill's stickers on them.

Q. Alright, That's all I want to develop.

THE COURT: I think that is admissible.

MR. JESTER: Now Your Honor please, it was after that that he testified and this intimidation resulted.

THE COURT: I will allow that in the other case, but I think the intimidation was, will not be a witness in this particular case, but another case, so I am going to sustain the objection. Now I will let him testify to what he saw in the car out there, but

MR. JOHNSON: What's in the car?

THE COURT: Yes sir.

MR. JOHNSON: Would the Court make it plain to Belcher that he is not to mention the later conversation or the being in the other court or anything of that sort?

MR. JESTER: I am not going to ask him that.

THE COURT: He is not going to ask him,all he is going to do is ask him is what he saw in the parking lot.

MR. JOHNSON : Alright.

THE COURT: Let's take a few minutes recess before we proceed.

(Whereupon, a recess was had, after which the Jury returned into the Courtroom.)

THE COURT: Call the witness.

MR. JESTER: Where is the witness?

THE COURT: Alright, Mr. Jester, you may proceed.

BY MR. JESTER:

Q. Mr. Belcher, were you there in the store on the night of April 12, 1974, the night this defendant was stopped outside the store?

A. Yes sir.

Q. Did you see his automobile on the parking lot?

A. Yes sir.

Q. Did you go up to the automobile?

A. Yes sir.

Q. What did you see inside the car?

A. There was a lot of boxes or packages in the back that I could see.

Q. Could you determine where those boxes or packages came from?

A. It had our Hill's tickets on them. Yellow stickers.

Q. The yellow stickers? How much stuff was in the back of that car?

A. (inaudible)

Q. Was it filled up or just two or three?

A. Yes sir, it was filled up with several packages.

Q. Was this on the back seat or on the front?

A. Just on the back.

Q. Back seat. Alright no further questions. Witness with you.

CROSS EXAMINATION

BY MR. JOHNSON:

Q. You saw the car in the parking lot, is that right, Mr. Belcher?

A. (inaudible)

Q. How far was it from the front door of Hill's?

A. It was about a hundred feet or a little bit more.

Q. About a hundred feet?

A. Yes sir.

Q. Now is that parking lot lit?

A. Lit? It's got lights out there.

Q. It has flood lights, does it not?

A. Yes sir.

Q. Is it well lit?

A. It is pretty well lit.

Q. Alright, now the boxes then were visible in the back seat of the car?

A. Not from a distance.

Q. No, no, but if you had been near the car, could you not see the boxes?

A. You could see them.

Q. You said that the boxes were some of them setting above the lower edge of the windows?

A. A couple of them.

Q. So at least these two would have been visible to anybody there within a hundred feet of the front door of Hill's?

A. (inaudible)

Q. Is that right?

A. That's right.

Q. Did you at any time later have an occasion to look in the trunk?

A. No sir.

Q. Did this particular automobile appear to have a trunk on it?

A. Yes sir.

Q. Was the trunk lid up or down?

A. Down.

Q. And what you saw then was all in the back seat of the car, and there is no reason why anybody couldn't see it from the outside?

A. That's right.

Q. Alright sir, thank you. Stand aside.

(Whereupon, the witness stands aside.)

JEANETTE KEESEE, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR.JESTER:

Q. Please state your full name.

A. Jeanette Denise Keesee.

Q. And is this your father seated here?

A. Yes sir.

Q. How old are you?

A.4 Thirteen.

Q. Were you there at Hill's Department store the night of April 12 with him?

A. Yes sir.

Q. Alright. witness with you.

CROSS EXAMINATION

BY MR. JOHNSON:

Q. Who else was with you?

A. My mother and my three sisters.

Q. Your mother and your three sisters?

A. Yes sir.

Q. So there were four of you girls, rather than just two? I mean two more in addition to the two that are here today?

A. Yes sir.

Q. How old are they?

A. Fourteen, ten, eleven.

Q. Alright, and you say you were there with your father, your mother and of course, Darlene was with you, and then the other two sisters, is that right?

A. (inaudible)

Q. Did you push a cart out of the store?

A. No sir.

Q. Did you push a cart to the front door at any time?

A. Yes sir.

Q. Alright tell us about that.

A. Darlene pushed me the basket, and then she just took and walked on off. I don't know where she went to.

Q. Where had the two of you been?

A. Which two, me and -

Q. When she gave you the basket or the cart?

A. Near the cash register.

Q. You mean, do I understand you that Darlene had the cart?

A. Yes sir.

Q. And she turned it over to you, is that what you are saying?

A. (inaudible)

Q. Now what happened after that?

A. She pushed, she gave me the basket, and my father, he come back from the restroom, and asked me had the stuff been paid for, and I said, "Yes, I think so because mother was at the end of the cash register".

Q. Had your mother and Darlene been together before Darlene gave you the cart?

A. Yes sir.

Q. And your father came from the restroom, you say?

A. Yes sir.

Q. Do you know about how long he had been in the restroom?

A. No sir.

Q. Alright. He came out of the restroom and he asked you if the things had been paid for?

A. Yes sir.

Q. Now tell the jury please, Jeanette, as close as you can what you told him when he asked you that?

A. I told him that I think the stuff had been paid for I am not for sure. He told me to push it on to the car.

Q. Told you what?

A. Told me whether the stuff had been paid for or not, and I said "Yes I think so".

Q. Said "Yes I think so". Did you say anything about who you thought had paid for it or was that mentioned?

A. No sir.

Q. Well let me ask you this then, Jeanette, if Mr. Jester has no objection. Who did you think had paid for it?

MR. JESTER: Your Honor, please.

MR. JOHNSON: Alright, I withdraw it.

BY MR. JOHNSON:

Q. Was anything else said, I mean, is that what the whole thing was?

A. No sir.

Q. It is not the whole thing?

A. What I just told you.

Q. Is that all that was said?

A. Yes sir.

Q. So then what did you do?

A. I started pushing it on out the store.

Q. Alright, then what happened?

A. Then the manager stopped me, and told me to come on back to his office.

Q. Then there were some things out in the car, were they not?

A. Yes sir.

Q. Some other boxes. Now do you know whether or not or to your knowledge had any of those been purchased or taken out of the store that night, the things that were out there in the car?

A. No sir. They were from Thursday and Friday morning, Friday night when we went out there.

Q. What is that? I can't hear you, speak up. They were in there Thursday, you say?

A. Yes sir. And Friday morning and Friday night we went out there.

Q. Alright now, they were in there Thursday, the things in the car. They they were in there when you drove back to the place on Friday?

A. Yes sir.

Q. Those things were already in there, is that right?

A. Yes sir.

Q. Was there anything at all in the trunk of the car in the way of any boxes?

A. No sir.

Q. The things were in the back seat area of the car, is that right?

A. Yes sir.

Q. Alright answer Mr. Jester's questions?

RE-DIRECT EXAMINATION

BY MR. JESTER:

Q. How old is your litte sister, Darlene?

A. Ten.

Q. Ten. And both of you were together in the store that night?

A. Yes sir.

Q. That's all. You may stand aside.

(Whereupon, the witness stands aside.)

OFFICER W. R. TWEEDY, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. JESTER:

Q. You are W. R. Tweedy, a police officer for the City of Lynchburg with the rank of Sergeant assigned to the Youth Bureau?

A. Yes sir I am,

Q. I believe you were assigned with one of the officers to investigate this case involving this defendant out at Hill's store?

A. Yes sir.

Q. What did your investigation consist of, Mr. Tweedy?

A. Well on the night Mr. Keesee was arrested, which was April 12, I talked with his daughters, Darlene and Jeanette, and also his wife. I did not talk with him.

Q. Did you see the automobile?

A. Yes sir I did.

Q. Where was the car when you first saw it?

A. The car was in the police lot.

Q. Alright sir. At that time had anything been removed from the car?

A. Yes sir.

Q. What had - Were you present when the items were removed from the vehicle?

A. No sir.

Q. Alright sir. Now did you later on have a conversation with this defendant?

A. Yes sir, I did.

Q. Where did that conversation take place?

A. Took place at his home on Old Forest Road.

Q. Under what circumstances did you happen to be at this home on Old Forest Road?

A. Mrs. Keesee called me at the police station and said that she wanted to talk to me.

Q. Did you go to the house?

A. I went to the home.

Q. Who was present?

A. Mr. and Mrs. Keesee.

Q. Did Mr. Keesee make a statement to you at that time?

A. He did say that the whole thing was a misunderstanding, and he had not done anything wrong, that everything that was in his car had been bought Thursday or early Friday. He said that the shopping cart that Jeanette pushed out of the store contained some items that he thought that his wife had paid for.

Q. Did his wife make any statement in his presence?

A. No sir.

Q. Alright sir. Witness with you?

CROSS EXAMINATION

BY MR. JOHNSON:

Q. He told you that those things had been bought on Thursday, which would have been the 11th?

A. Yes sir.

Q. Or early Friday morning, is that right?

A. Yes sir.

Q. You didn't ask him particularly which things were bought on Thursday and on Friday and so forth, did you?

A. I just did not ask him anything, Mr. Johnson. I told Mr. Keesee, he made several statements to me and I told him this was not for the court, I did not ask him questions.

Q. Yes but he told you that as far as the things in the shopping cart, that there was a misunderstanding that he thought his wife had paid for them?

A. Yes sir.

Q. Alright sir. That's all. Thank you.

MR. JESTER: Commonwealth rests, Your Honor. You may come down.

(Whereupon the witness stands aside.)

MR. JOHNSON: We have a motion to make, Your Honor.

THE COURT: Alright. Ladies and Gentlemen, just retire to your jury room.

(Whereupon, the jury retired to the jury room.)

MR. JOHNSON: Now, Your Honor. We would move the Court at this time that the evidence against Mr. Keesee be stricken on the grounds that the Commonwealth has not carried the burden of proof required at this time. There is no establishment of a prime facie case that this man has caused his daughters to steal these items. First of all, the evidence shows that these items, of course, were taken out, and we admit that for the purpose of this motion, and will admit it all through the

trial. They were taken out, but one of the Commonwealth's witnesses has testified, Jeanette Keesee, that her sister gave this to her. That through all of this that the father had anything to do with the items other than he asked Jeanette if it had been paid for when he came out of the restroom. She said, "Yeah, I think so". Now that Your Honor, is the evidence for the Commonwealth at this point. It is true that it has been established that there were items out there in the car, which sitting in full view in front of the place, but it has not been established that they were taken on that day or the day before, except for Mr. Keesee's statement that he purchased them previously, or that some one did. There is nothing, Your Honor, to tie this man in with these four items that the Commonwealth has shown came out of the store, and we admit this, at the hands of this - -

THE COURT: Well, Mr. Johnson, the circumstances show that the evidence of the manager is that none of the items in the car were paid for at all on Thursday or Friday. They were in his car. The manager testified he saw Mr. Keesee

with the two daughters with the cart about six or eight items in it. He next saw the cart and it was empty, then he saw the cart again and it had four items in it, and he and his daughters were leaving the store, and he was slightly ahead of them. So I think there are facts which the jury may conclude that he was there and encouraged his daughters to commit a misdemeanor, So I think - -

MR. JOHNSON: May I mention one thing, Your Honor? That you haven't referred to. I don't want to prolong this, but I do want to get this in the record, because it is most important. Our point is that there is nothing in the way of evidence to establish as to these four items that Mr. Keesee caused his girls to steal these items. Now he is charged with both girls, that he caused them both to do it. The Commonwealth's evidence does not show that Darlene did one thing in this world at this point. She didn't have these. She didn't take them out of the store. She gave the cart to her sister, and her sister then proceeded to take it out of the store after the conversation with the father. Now surely there is nothing there upon which the case as to Darlene - -

THE COURT: Jeanette testified that Darlene pushed them and gave it to her.

MR. JOHNSON: Yes sir right, but there is nothing to show that Mr. Keesee was even out there.

THE COURT: Well he did nothing with the manager. I am going to overrule the motion, Mr. Johnson.

MR. JOHNSON: We respectively object, Your Honor please, and except.

THE COURT: Call the jury back.

MR. JOHNSON: Your Honor, I need to take up one thing -

THE COURT: Alright sir.

MR. JOHNSON: Your Honor, if Mr. Keesee, if it is so that Mr. Keesee takes the stand in this case, I assume that Mr. Jester would attempt to show a record on the part of Mr. Keesee. We have Your Honor, it was submitted with the case of Farmer vs. Commonwealth.

THE COURT: I realize that.

MR. JOHNSON: It is our contention and this is what we want to get straightened out. Mr. Jester can ask Mr. Keesee "Have you been convicted of a felony". If Mr. Keesee answers "yes" then that closes that inquiry in that.

THE COURT: Well if he has been convicted of more than one felony, he can ask him about the felony on such and such a date, and such and such a date.

MR. JOHNSON: Your Honor, this is contrary to the Commonwealth's armored rule _____

THE COURT: There was only one felony involved in that case.

MR. JOHNSON: Well Your Honor, the dates _____ circumstances on each felony can be shown.

THE COURT: Maybe not at the time you can show different felony convictions, but how many felonies have you been convicted of? I don't know how many he has been convicted of. May be more than one. May be a mute question. What is it, Mr. Jester, what's the record?

MR. JESTER: Your Honor, frankly I can only show one felony conviction, however, he has been involved in other crimes involving moral turpitude.

THE COURT: Well I think you can ask him "have you been convicted of a felony", and then you can ask "have you been convicted of any crimes involving moral turpitude", and you can ask him that question.

MR. JOHNSON: Well if Your Honor please, if he ask this question, it is our contention that if he asks "have you been convicted of a felony or a crime involving moral turpitude"

THE COURT: No. Suppose he said "yes". What would the jury right consider?

MR. JOHNSON: Well that's all, that they have a right -

THE COURT: Well which was he convicted of? If he said "yes". Suppose he said "have you been convicted of a felony or a crime involving moral turpitude", and he said "yes". What did the jury think he had been convicted of, a felony or a crime involving moral turpitude?

MR. JOHNSON: Your Honor, the law wants the two together. The question is his creditability is being impeached.

THE COURT: No I am going to let him ask whether he has been convicted of a felony, or whether he had been convicted of a crime or crimes involving moral turpitude?

MR. JESTER: I stand corrected, Your Honor, please. There are two felonies.

THE COURT: Well I will let you ask whether he has been convicted of two felonies. I will let you ask that question.

MR. JOHNSON: Mr. Jester, are you speaking of the larceny in 1974- 1964 shown on there as grand larceny?

MR. JESTER: I am speaking of the one he was convicted of here on the 6th day of May, 1957, and had three years in the pen, suspended, and I speak of the one on the 15th of June, 1964, when he was convicted of grand larceny and fined.

MR. JOHNSON: Now if Your Honor, please, I would like the Court to check this. I have checked the police record and -

THE COURT: Was it in this court?

MR. JOHNSON: No sir. I have checked the record and the original record in the police court, now the Municipal court, shows not grand larceny but shows larceny, $51.25 fine.

MR. JESTER: Well that is moral turpitude.

MR. JOHNSON: But it is not a felony.

MR. JESTER: It shows on here grand larceny. If it was disposed of in that court, obviously it is treated as petit larceny.

THE COURT: That is a misdemeanor. Well you can ask about the felony and about the crimes involving moral turpitude.

MR. JESTER: What about the unauthorized use of the tractor in Amherst County?

MR. JOHNSON: No conviction as far as I know in that. It was dismissed. Now what else do you intend to show?

MR. JESTER: Anything that I can.

MR. JOHNSON: Well I gather that, but I want to find out what you are going to try to show?

MR. JESTER: Looks like to me you are going on a fishing expedition. You better put him on the witness stand and let's go from there.

MR. JOHNSON: Your Honor, I think I have a right to have it clarified before.

THE COURT: Well, I told him what he could do.

MR. JOHNSON: Do I understand correctly. You are going to let him ask two questions. Has he been convicted of a felony?

THE COURT: Right.

MR. JOHNSON: And if he answers "yes" that is closed?

THE COURT: Right.

MR. JOHNSON: Then you are going to allow him to ask him "have you been twice convicted of crimes involving moral turpitude"?

THE COURT: Right.

MR. JOHNSON: If Your Honor please. We respectively object and except to the Court's ruling. Now I also state for the record that purely because of the ruling of the Court as to what would be allowed, we are not going to put this man on the stand, for that one reason. He is not going to testify in his own behalf because the Court has stated that if he does this, the questions will be allowed in this fashion, and for this reason we object on the grounds that he has been in effect deprived of his right to give testimony in his own behalf.

THE COURT: You can put him on now.

MR. JOHNSON: I know Your Honor, but I am trying to make the record if Your Honor please. We are not going to put him on, knowing what the ruling of the Court would be. It is our contention that this is in effect denies him the right to testify in his own behalf, and we object and except, Your Honor.

THE COURT: Alright sir, call the jury back.

(Whereupon, the Jury returned to the Courtroom.)

JOHNNIE SHEPHERD, Being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Please state your name and where you live?

A. My name is Johnnie Shepherd. I live at 2511 Old Forest Road, Apartment #8.

Q. Mr. Shepherd, are you related by either blood or marriage to Mr. Keesee?

A. No sir.

Q. Where do you live with regard to where he lives?

A. I live at the house right next to his house.

Q. Well he is your next door neighbor?

A. Yes sir.

Q. Were you familiar with or did you know about this matter when it occurred? Or when he was arrested and so forth? Did you know about that?

A. No sir. The first time I heard about it was the Saturday following.

Q. The Saturday after the Friday?

A. Yes sir.

Q. That it occurred?

A. Yes sir.

Q. Now let me call your attention back to the Thursday night prior to that Friday. In other words, I believe if we may stipulate that Friday was the 12th, Thursday was the 11th, the Saturday you heard about it was the 13th. Now on the Thursday night before this occurred on the 11th, did you see his automobile in the neighborhoold of his home?

A. Yes sir it was parked right next to his back door.

Q. Did you notice anything particular about that automobile?

A. Yes sir. Like in that first hearing I was testifying at -

Q. Sir?

A. Is this the same information like I was testifying -

Q. Yes sir.

A. It had a lot of packages in it.

Q. A lot of packages. What did you notice about these packages? First of all, do you have any idea what you mean about a lot?

A. I would say eight or nine packages. Two or three big packages and the rest were smaller packages in the back seat of his car.

Q. Was the - were all the packages in the back seat? There were none in the front?

A. I didn't see any in the front.

Q. Did you notice anything particular about the packages?

A. no answer

Q. Did you notice what any of them said on them? Or any tags on them or anything like that?

A. The two biggest ones that I saw in particular, had pictures of fans on them. And a little yellow sticker on the front of the package.

Q. A little what?

A. A little yellow sticker on the front of the package.

Q. A little yellow sticker on the packages. Let me ask you whether or not this sticker appears to be the type sticker you saw or something else?

A. It appears to be that kind of sticker. Yellow like that.

Q. And do you know how many of those packages that you saw that yellow sticker on?

A. Well I didn't look at his car a real long time. I just sort of looked at it maybe a few seconds. Maybe a couple of boxes I noticed in fact did have yellow stickers on them. I remember that.I couldn't say all of them had yellow stickers on them.

Q. Did you see any red tags on anything? Large red stickers?

A. No sir.

Q. Can you tell what time this was on the night of the 11th?

A. I had classes at Community College at 7:00 o'clock, and it was right before, pretty close before I went to classes, probably between six and quarter after six, something like that.

Q. Between six and quarter after, on the night of the 11th?

A. Yes sir.

Q. You are a student at Community College?

A. Yes sir.

Q. What are you studying?

A. Business math. I just graduated down there last Saturday.

Q. Do you work?

A. Yes I do.

Q. Excuse me one minute, Judge. Answer Mr. Jester's questions.

CROSS EXAMINATION

BY MR. JESTER:

Q. How close did you say you live to the defendant?

A. He lives at 2513 and I live at 2511 so just a very short distance. We are right beside each other.

Q. Not in the same building, but a yard between you?

A. Yes sir.

Q. And this vehicle was in his yard?

A. Yes sir.

Q. Behind his house?

A. Yes sir.

Q. And this was at eleven o'clock at night when you saw it?

A. No sir, it was about six or quarter after six.

Q. Six or quarter after six?

A. Yes sir.

Q. At that time of the year, would it have been dark or approximately dark? At quarter after six?

A. No sir it wouldn't. It wasn't dark when I walked over to his house.

Q. What was the occasion for going over to his house?

A. I just walked over to talk to him.

Q. I take it you are quite friendly with him.

A. I have been living there about ten months I guess, and I wouldn't say we are the greatest friends, but we get along alright.

Q. You have been living there about what?

A. Ten months.

Q. Ten months?

A. Where I live at now.

Q. You mentioned you saw some yellow stickers on these packages. Was this the only store in town that has these yellow stickers to put on packages?

A. I don't know about that.

Q. Do you know that K-Mart has the same color stickers on its packages?

A. I wouldn't know.

Q. That's all. No further questions.

THE COURT: Any further questions?

MR. JOHNSON: No sir Your Honor.

THE COURT: You may be excused. Call your next witness.

MRS. WALTER KEESEE, SR., being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Please state your name and where you live?

A. Virginia F. Keesee. 519 Thomas Road, Lynchburg.

Q. Are you married?

A. Am I married?

Q. Yes.

A. Yes sir, Mrs.

Q. Do you live with your husband?

A. I do.

Q. Alright. Are you any relation to the man here on my left?

A. Yes I am. I am his mother.

Q. Alright now. Mrs. Keesee, the record shows that there were two sessions of a hearing in Judge Glass' Court on May 15 and May 20, 1974, between these two court dates did you or did you not have any transactions with Hill's?

A. I don't quite understand the question.

Q. Mrs. Keesee, did you anytime in the month of May, did you purchase any item out at Hill's?

A. Yes sir.

Q. What did you purchase?

A. I purchased a percolater, a coffee maker, I believe it was, and a filter. I bought some toilet tissue. I bought some chocolate milk for the grandchildren and I bought some bubble bath that you clean the bathroom with.

Q. Now are these items here in the courtroom this morning, any of them?

A. Yes.

Q. The items here?

A. They are: The coffee maker and the filter.

Q. The coffeemaker and the filter?

A. Filter.

Q. Now would you -

MR. JESTER: Is that f i l t e r?

Q. Are you saying filter f i l t e r?

A. Filter.

Put in the percolater and put your coffee in. In other words it keeps the drugs out of your coffee.

Q. Just lay that over there.

A. This is the filter?

Q. Now were these- let me ask you a question. When was it that you bought these?

A. The ticket is in there, Mr. Johnson. I don't remember the date and it was on a Saturday.

Q. What I want to know Mrs. Keesee was, do you have the ticket there, I want to know the date with reference to the date of the hearing in Judge Glass' Court.

A. You are asking the date that I bought the stuff?

THE COURT: Yes that is what he is asking.

A. Well I say the ticket was there I believe. I just don't remember the date, Mr. Johnson.

Q. Well Mrs. Keesee, was it before or was it after your son's hearing in the municipal court, district court was held?

A. Yes.

Q. Was it before or after?

A. It was after.

Q. It was after?

A. Un huh.

Q. How long after?

A. Oh, I went out there on the weekend, on Saturday after the hearing.

A. Did you after these were purchased, did you or did you not later testify in Judge Glass' Court about these?

A. I did.

Q. So was it - was your purchase made between the first hearing in his court and the second?

MR. JESTER: I don't know whether these questions can be considered leading or not.

MR. JOHNSON: Well she said she testified at the second hearing. Maybe I am not making it clear but -

A. See, I didn't go to the first hearing. I cared for the children see.

Q. Alright.

A. But I bought it after then.

Q. Did you go to the second?

A. I did, I did.

Q. Did you testify about your purchase of these items at the hearing that you went to?

A. Yes sir I did.

Q. Was that the hearing held on May 20?

A. Yes sir.

Q. Now I ask you then, when you purchased these items, were they or were they not placed in a bag?

A. No sir. They couldn't get them in a bag along with the four rolls of toilet tissue and the glass jar of the chocolate milk that I got for, and the bubble bath - not bubble bath- little plastic things the children play in the tub with.

Q. Alright was there at any time -

A. The box was cutting the bag, you see it wouldn't fit down in, the cashier told me it would be alright if I took it out in my hand.

Q. Alright. Did she or anyone else put a large red sticker on it?

A. No sir.

Q. Are these exactly the way that you purchased them?

A. That's right.

Q. Your Honor, I would like to show these to the jury, if I may.

THE COURT: Is that a coffee pot or just an accessory to a coffee pot? What is that?

WITNESS: It is a coffee -

MR. JOHNSON: Coffee plastic decanter.

THE COURT: It is a decanter?

WITNESS: You put those -

BY MR. JOHNSON:

Q. But you say the cashier was not able to put these in a bag?

A. No sir because the corner cut the bag and I asked her if it would be alright if I took the two boxes out in my hand. She said fine.

Q. Now, I believe you said you did get a receipt and it is supposed to be with these items?

A. Yes sir.

Q. But you do not have it?

A. I dropped it over in the bag when I came in the courtroom. I don't know what become of it, Mr. Johnson.

Q. Your Honor, may we ask the Sergeant to check with Mrs. Linda Keesee to see if she has this receipt that we are interested in? She is a witness that has been separated so I don't want to speak to her.

THE COURT: It is alright. Go ahead and check.

Q. While we are getting that, Mrs. Keesee, have you purchased any appliances of any kind of large item in boxes out there on any other occasion?

A. Yes. April of 1973 I bought a chaise lounge.

MR. JESTER: Your Honor, please, I object to what she did in April, 1973. It has absolutely nothing to do with what happened in April, 1974.

MR. JOHNSON: Your Honor, please, the security officer said that it had been their policy not to allow -

MR. JESTER: Just a minute, now, don't you'll talk in front of the jury.

THE COURT: Well I am going to overrule the objection because he testified up until June 1st 1974 they did it.

BY MR. JOHNSON:

Q. Mrs. Keesee, when you bought that, what did you buy?

A. Two chaise lounges and the covers for the chaise lounge.

Q. Two chaise lounges and what?

A. Covers that goes over them.

Q. Cloth covers that goes over them?

A. Yes sir.

Q. Now did anyone up there place a large red tag on these?

A. No I carried one and my husband carried the other one to the car.

Q. Did you carry them thru the checkout counter?

A. Yes.

Q. Did anybody try to put any stickers on them?

A. No.

Q. I show you this - I show you what appears to be a receipt after Mr. Jester looks at it.

MR. JOHNSON: Your Honor, what will our exhibit number be?

THE COURT: Have you introduced one before?

MR. JOHNSON: No sir.

THE COURT: It will be No. 1.

MR. JOHNSON: You are going to show it as defendant exhibit?

THE COURT: Yes sir.

BY MR. JOHNSON:

Q. Mrs. Keesee, I show you this and ask you is this the receipt that you received from Hill's?

A. Yes sir.

THE COURT: Does it show the date?

MR. JOHNSON: Yes sir. Let me ask Mr. Jester. Mr. Jester, can we stipulate that's 5-18?

THE COURT: That is what it appears to me.

MR. JOHNSON: That shows the date of May 18.

THE COURT: Yes sir, I see that.

MR. JOHNSON: It is that second number there.

THE COURT: Alright sir.

MR. JOHNSON: May I show this to the jury?

THE COURT: Any other question?

MR. JOHNSON: Just one other, Your Honor.

BY MR. JOHNSON:

Q. Mrs. Keesee, you mentioned the two chaise lounges that you purchased in 73. Now are they the appliance purchases that you made at any time?

A. Yes sir.

Q. Alright do I understand then that none of them- your appliance purchases at any time had a red tag on them?

A. Yes sir. No sir never.

Q. Alright answer Mr. Jester's questions.

CROSS EXAMINATION

BY MR. JESTER:

Q. But the two chaise lounges were quite large, weren't they?

A. Yes sir.

Q. And you paid for them when you went through the cashier?

A. Yes sir.

Q. And then this was a daytime transaction, I take it?

A. Yes sir.

Q. Took them out to the car and took them away?

A. Yes sir.

Q. Now with reference to the most recent purchase of these two items, coffee glass decanter and the filter. You went there specifically for the purpose of purchasing those so you could come here and testify in this case, did you not?

A. No sir, I did not.

Q. Why haven't you opened that Mr. Coffee Glass decanter and used it?

A. I got them to give as a gift.

Q. And you brought them to give away almost a month a go and haven't given them to anybody yet?

A. No I was going to give them away this Saturday night.

Q. Alright no further questions.

RE-DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Mrs. Keesee, after you testified in the lower court, did I tell you to keep them just like they were and not to let anything happen to them?

A. Yes sir.

Q. Alright.

THE COURT: Alright just have a seat out there.

MR. JOHNSON: May she stay in the courtroom Your Honor?

THE COURT: You are not going to use her?

MR. JOHNSON: Not going to use her any more.

THE COURT: Alright you may remain in the courtroom. Call the next witness.

MR. JOHNSON: Yes sir.

REVEREND EARL OWNBY, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Please state your name sir?

A. I am Earl Ownby.

Q. What is your occupation?

A. Pastor of Yellow Branch Baptist Church, Rustburg, Va.

Q. That is in Campbell County, Rustburg?

A. Yes sir.

Q. Is that right?

A. Yes sir.

Q. Alright sir. How long have you been pastor of that church?

A. Ten months.

Q. Now, Reverend Ownby, are you related in any way to Mr. Keesee?

A. No sir.

Q. No kin to him?

A. No sir.

Q. I want to ask you sir, if anytime in the month of May, you had occasion to make any purchase at Hill's Department Store?

A. On or about the 9th or 10th of May, I bought a sunbeam hand mixer from Hill's Department store, for a Mother's Day present.

Q. For a Mother's Day present?

A. Right.

Q. Is that right?

A. Right sir.

Q. Excuse me. Describe this to the jury, Reverend Ownby.

A. Hand Mixer. It's a sunbeam avodado color hand job with two beaters on it.

Q. Show us with your hand if you will about how large the machine itself is?

A. Oh about so big.

Q. Alright, what if anything was it in when you bought it?

A. It was in a box sealed, stapled box.

Q. Would it have been about the size- in regard to the size - would it have been similar to these type boxes you see in front of you, that sort of thing?

A. About like that orange box.

Q. The orange box. You are talking about the orange and tan one on top there. About like that, now, when you came through did you go through the checkout line when you purchased that out at Hill's?

A. Yes.

Q. When you purchased this was it placed in a bag, or did you take it on out outside of a bag?

A. It was placed in a bag.

Q. It was placed in a bag?

A. Yes sir.

Q. Was at any time a red marker placed on it, red tag?

A. Not to my knowledge, no sir.

Q. Well, I am talking about a red marker that has been described as about this long and that wide. Was anything like that placed on it at all at any time?

A. No sir.

Q. Was this the only item you bought?

A. Yes sir.

Q. Was that item in the appliance section of the store, do you know?

A. Yes unhuh.

Q. Now is that the only item that you have any recollection of purchasing out there in the way of appliances?

A. Yes sir.

Q. Alright. Just answer Mr. Jester's questions.

CROSS EXAMINATION

BY MR. JESTER:

Q. I take it that when you say the orange box you are speaking of the box here that the steam and dry iron is in?

A. Yes sir.

Q. Did you carry it out just in that form or was it placed in a paper bag?

A. In a bag.

Q. In a bag?

A. Yes sir.

Q. And that was a bag that carried Hill's?

A. Yes sir.

Q. That's all. No further questions.

RE-DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Let me ask you this. Did you place it in the bag or did the cashier, after it was paid for?

A. The cashier placed it in the bag.

Q. Was it sealed, or stapled or anything or just placed in the bag?

A. No staple on it.

Q. Just placed in one of these shopping bag type things?

A. Right sir.

Q. So in any event no red tag was placed on the box. Alright that's all.

MR. JOHNSON: May he be excused, Your Honor.

THE COURT: Yes sir. You may be excused.

LOIS WELLS, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. What is your name please?

A. Lois Wells.

Q. Where do you live?

A. 1207 Ashlawn Drive.

Q. Now do you work?

A. Yes.

Q. Where do you work?

A. Imperial Reading.

Q. Imperial Reading here in Lynchburg?

A. Yes sir.

Q. Well let me ask you Mrs. Wells. Are you related in any way to Mr. Keesee?

A. Yes sir.

Q. In what way?

A. I am his sister.

Q. You are his sister?

A. Yes sir.

Q. Now at any time since the date that we are speaking of here I believe April 12 of this year, have you had occasion to purchase anything from Hill's?

A. Yes I went out last Thursday, the 6th and purchased a chaise and some small items.

Q. What do you mean a chaise?

A. A chaise lounge.

Q. Alright?

A. And I went with my sister in law, his wife, Linda, and she bought a fan and went out first with that and then she came back in and I got the chaise lounge and she bought a ash tray like, I don't know what you call them, they are in a box.

Q. It was in a box.

A. Yes and we went out together with that.

Q. On both occasions that you went out of the place with these were they placed in bags, or did you take them out while still in the box?

A. We carried them out in the box.

Q. In the box. Were there any red tags placed on them?

MR. JESTER: Now Your Honor, please. That's getting right into the _____, the man testified to. Didn't put tags -

THE COURT: The jury can realize they said they discontinued June 1, so they were not doing it.

MR. JESTER: Well, it is immaterial, irrelevant.

WITNESS: Well I went out there at Christmas time -

THE COURT: Just wait a minute. You moving to strike?

MR. JESTER: Yes sir.

THE COURT: I am going to sustain your motion. Anything after June 1 is immaterial.

MR. JOHNSON: Yes sir. I think she said last Thursday and that's after June 1. Alright we will not ask that.

BY MR. JOHNSON:

Q. Now tell us if you will about last Christmas.

A. Well I went out there before Christmas and purchased two items. It was a pivot ppol and one of those inch worms. I bought them for my daughter and son.

Q. What is an inch worm?

A. Inch worm is an item that you have to put together. It comes in a large box, and you ride it.

Q. That is one of these things that children ride on. You set in the middle of it and it bends in the middle. You see them on t.v.?

A. Right.

Q. Alright and what else?

A. A pivot pool that is something like pool, you know, balls and everything. That was in a large box also.

Q. How big is that pivot pool?

A. The pivot pool?

Q. Just show us with your hand.

A. Ok. It is about that wide.

Q. And how long.

A. How Long. I'm sorry. About that long and

about that wide.

Q. Now were these items in boxes?

A. Yes sir.

Q. Were they taken out in those boxes or something else?

A. They were taken out in the boxes.

Q. Were any red tags placed upon them?

A. No sir.

Q. Did anybody try to put any red tags on them?

A. No sir.

Q. Have you made any other purchases out there, appliance type things?

A. No sir.

Q. Incidently were you at his home, that is, your brother's home, the night of the 11th, April the 11th, do you recall?

A. I have been out to his home several times, I don't remember if it was April the 11th or not.

Q. You couldn't say what was in his car or wasn't on April 11 because you don't remember?

A. No sir.

Q. Do you remember - you don't have any recollection of anything specific between that Thursday and Friday. You didn't see his car or anything, you said you didn't?

A. No sir.

Q. Alright. Answer Mr. Jester's questions.

CROSS EXAMINATION

BY MR. JESTER:

Q. You were not there at Hill's on April 12 when he and his two daughters were there?

A. No sir.

Q. That is all, no further questions.

THE COURT: Stand aside, y ou may be excused.... Call your next witness.

MR. JOHNSON: Yes sir. Excuse me, Your Honor, I am trying to cut out a witness here.

RON READ, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. What is your name please?

A. Ron Read.

Q. Where do you live?

A. I live here in Lynchburg.

Q. Are you working, going to school, or what?

A. I am going to school at Lynchburg Baptist College, studying to be a minister.

Q. What year are you in there?

A. I am a senior.

Q. Alright sir. Now, Mr. Read, did you have an occasion to buy an ice cream maker from Hill's?

A. Yes sir.

Q. Alright when was this purchased?

A. Last Tuesday.

Q. Last Tuesday, is that right?

A. Yes.

Q. Alright now, let me ask you whether or not -

MR. JESTER: Just one minute. Your Honor -

MR. JOHNSON: Just a minute, Mr. Jester, let me state my question and then I doubt you will object.

MR. JESTER: Alright.

BY MR. JOHNSON:

Q Whether or not you, did you pay cash, check or what?

A. I used cash.

Q. Did you go through the line and pay for it to the girl there?

A. Yes sir.

Q. Were you given a receipt?

A. Yes sir.

Q. Were you given a receipt to begin with?

A. No not at first I didn't get a receipt, and

Q. Tell us what happened?

A. I bought the ice cream maker, paid cash for it, got my change and went outside and then I realized I didn't have a receipt, so I came back for the receipt and the woman had already thrown it away. So she wrote down her name, the price of the ice cream maker and the fact that it was an ice cream maker and gave me that, and she said that will do, as good as a receipt.

Q. But when you first paid, you were allowed to leave the store without bing offered a receipt or anything, is that right?

A That is correct.

Q. And of course this was since June 1 and no red tag was put on it?

A. No sir.

MR. JESTER: Now Your Honor please.

MR. JOHNSON: I understood we stipulated that.

THE COURT: I will not let in any evidence of any purchase made since June 1.

MR. JOHNSON: Well we introduce this for the other reason, Your Honor.

THE COURT: Yes but you said no red tag was put on it.

MR. JOHNSON: I said it was after June 1, so no red tag was put on it. I thought I was just agreeing with Mr. Jester.

THE COURT: You trying to help him along?

MR. JOHNSON: No sir I was not, just trying to be agreeable. O. K. That is all, answer Mr. Jester's questions.

CROSS EXAMINATION

BY MR. JESTER:

Q. Where did you say you live?

A. I live in Lynchburg.

Q. What?

A. Here in Lynchburg.

Q. Where bouts in Lynchburg?

A. At Westchester Drive.

Q. Where is Westchester Drive?

A. It is right by Thomas Road Baptist Church.

Q. Is that in the same neighborhood in which Mr. Keesee lives?

A. No it isn't.

Q. How did he find out about you making this purchase?

A. His wife was standing at the counter when I made it. She was standing over on the side.

Q. Alright, no further questions.

THE COURT: Alright, you may be excused.

MRS. WALTER KEESEE, JR., who has been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Please state your name and where you live.

A. My name is Mrs. Walter F. Keesee, Jr. and I live at 2513 Old Forest Road.

Q. Do you work, Mrs. Keesee?

A. No sir I don't.

Q. You are a housewife?

A. Yes sir.

Q. How many children do you have?

A. I have four daughters.

Q. How many were with you in Hill's on the night of April 11?

A. All four of my daughters.

Q. Who also was with you?

A. My husband.

Q. Now let me ask you Mrs. Keesee, what- first of all I believe that items were found in the family car later that evening?

A. Yes sir.

Q. What were those items purchased for or why were they in the car?

A. Well, we go out to the Fort Drive-in on- first, they used to have it from one to two Saturdays a month, and then they started having it every Saturday of the month, and that following Saturday the 13th was to be their first Saturday and we bought the items.

Q. What is that they have?

A. A flea market.

Q. That is a - is that a market where anybody can take anything in and sell it?

A. Yes sir.

Q. Alright, what were you going to do with these items, in regard to the flea market?

A. We sell them.

Q. Now had you and your husband, or either of you been doing this for some time? -

A. Yes sir, we used to run The Red Tub, an antigue shop on Ward's Road, and we had new items for sale, we bought and we sold.

Q. Tell us if you will what- I just want what you know of your knowledge now, what you saw or what you heard. Don't tell what anybody told you. What do you know about any transactions between you, your husband and Hill's Department store on Thursday April the 11th?

A. Well the only thing that I know that I was in the checkout line, and I started to the car and some guy come out -

Q. No no, I am talking about on Thursday the 11th?

A. Oh Thursday, excuse me. On Thursday we went out to Hill's and we bought the three fans, a popcorn popper, a deepwell, -

Q. A deepwell, is that a deepfat cooker, that type of thing?

A. Yes sir.

Q. Alright. You remember buying those on Thursday?

A. Yes sir.

Q. Do you remember what other items you bought, or whether you bought any other?

A. Right now that is all I can think of.

Q. That's all you remember? Were they or were they not placed in your car?

A. Yes sir.

Q. What time was that on Thursday?

A. Well, I can't give the exact time. I would say anywhere from eleven o'clock until one. I don't know exactly date - I mean time.

Q. Were either of you back in the store anymore on that Thursday?

A. No on Thursday, no.

Q. Did you go over there on Friday?

A. Yes sir.

Q. What time did you go over there?

A. We went over to Hill's about eleven o'clock Friday morning.

Q. Alright. Do you remember what you purchased then or you don't know?

A. No sir I can't remember right off. I do know one was a blender and one was a radio. I do remember.

Q. But other than that you can't say what you purchased?

A. No sir.

Q. So those items that were in the back of the car on Friday night, as I understand it, you can't say exactly which were Thursday's and which were Friday's?

A. No sir.

Q. Now when you went over there on Friday, just tell us what you did.

A. Well we pulled into the parking lot, and I had these items up in the back seat of the car. The children wanted to go, so we stacked them up into the back seat of the car, they was piled up, and when the children got out, we got out of the car, they kind of slid over, so I just reached into the back and took my hand and pushed them all down. And I locked the door and we went on in Hill's, and my husband was with

us, and he said "Well let's go back to the childrens clothes", and we went back there and then he had to go to the bathroom, and we had talked on the way out there about getting some more merchandise, and -

Q. Alright, did you get anything that night?

A. Well, I had these two pair pants I had got for my youngest daughters, and my husband had gone to the appliance department.

Q. Well what about these four items you see in front of you, what can you tell us about those, now again of your own knowledge?

A. Well they are the items that he got that night for us to take out to the Fort drive-in on Saturday.

Q. Who - were you there, did you see the items go out of the store or not?

A. Well like you say, I can't repeat on hearsay.

Q. No I don't want- I just want to know, did you see the items taken out of the store?

A. No sir.

Q. Alright, you did not pay for them yourself?

A. No sir.

Q. Right. Now before these four items were taken out of the store, do you have any knowledge of your daughters being in the appliance area and there being any cart filled with more packages where they were?

A. No sir.

Q. You don't know about that? Where were you?

A. When?

Q. Well just before these items were taken out? About nine o'clock, where were you?

A. Well I was in checkout line, at nine o'clock. We had just got out of the store at nine o'clock.

Q. I see.

A. About five minutes after nine.

Q. I see. Alright. Well now, did you, you never did see this thing about your daughter being near a full cart?

A. No sir.

Q. Okay. Now you didn't see it taken out of the store?

A. No sir.

Q. Answer Mr. Jester's questions.

CROSS EXAMINATION

BY MR. JESTER:

Q. Mrs. Keesee, as I understand it, you were buying these items to resell?

A. Yes sir.

Q. Hill's is a retail store, is it not?

A. Well I guess, I don't know.

Q. Well that is where the general public goes to buy things to be consumed and used at home?

A. Right.

Q. Now if you are going to resell items such as these isn't it customary to buy them at a wholesale establishment?

A. Well I don't know. This is not the first time we have bought out there and we sold.

Q. What type of business is your husband in?

A. He is in home improvement.

Q. What do you mean by home improvement?

A. Well he does roofing, carpentry, painting, general repairs.

Q. You said something about running an antique shop?

A. I used to run the Red Tub, an antique shop on Ward's Road. Used to be formerly the Old Wagon Wheel.

Q. So as I gather it, you went there around eleven o'clock on Friday morning the 12th day of April, at which time you purchased, according to you among other things, a blender?

A. Un huh.

Q. Now that blender, I believe, is indicated by item No. 2 on the exhibit, Commonwealth's exhibit #1, which shows model No. 79-3 Waring Blender, and then has a number and a price of $14.52 cost, retail $18.38. Is that the blender you are speaking of?

A. I believe so.

Q. As a matter of fact there was only one blender found inside of the automobile, wasn't it?

A. I believe so, I couldn't say.

Q. So that particular item was bought on April 12?

A. Yes sir.

Q. Now what else did you buy on Friday, April 12?

A. Well, like I said I couldn't remember. I do know of a radio.

Q. What kind of a radio?

A. It is a - one with the diget dial.

Q. Now it appears on this list - six items down- model C4315B G E FM-AM digital radio. Is that the radio you are speaking of?

A. I believe so.

Q. Now what else did you buy that morning?

A. Well like I say I couldn't remember.

Q. Well how many different items did you buy?

A. I didn't memorize anything that I bought.

Q. I beg your pardon.

A. I didn't memorize everything that I bought.

Q. Well can't you remember how many different items you bought on that morning?

A. I was - just taking a guess I think it was about four boxes,five boxes, I couldn't say definite.

Q. Well what were some of the other items?

A. I just told you I couldn't remember.

Q. But you do remember specifically the blender and you remember the digital clock?

A. Yes sir.

Q. Are you contending that those items were paid for?

A. Yes sir.

Q. Who paid for them?

A. My husband paid for them and I paid for them.

Q. Well now why did both of you pay for them?

A. Well he bought some items and I bought some items.

Q. Well you went through the cash register and they rang them up on the cash register when you paid for them?

A. Exactly right.

Q. And that would be the item #2 and Item #6.? That is all, no further questions.

THE COURT: You may stand aside. Go back where you were. You are not going to use her anymore, are you Mr. Johnson.

MR. JOHNSON: No sir Your Honor.

THE COURT: Alright.

MR. JOHNSON: Your Honor, that is our evidence. I have about three more witnesses, but under your ruling, it would be cumulative.

THE COURT: Alright, Mr. Jester?

MR. JESTER: Your Honor, I want to recall Mr. Patzman.

G. R. PATZMAN, the witness, being first duly sworn, was re-called and testifies as follows:

DIRECT EXAMINATION

BY MR. JESTER:

Q. You are the same G. K. Patzman who has already testified in this case?

A. I am.

Q. Mr. Patzman, with reference to Commonwealth's exhibit #A. which has been introduced, and the members of the jury have a duplicate copy of it. This 2nd item thereon 79-3 Waring Blender SKU1031201 with the price and so forth, does that number indicate the code number that you referred to on the yellow slip?

A. Right.

Q. Alright sir. Now can you take the adding machine tape of that date and determine whether or not there is any indication that that particular item was paid for? That is on April 12. It is in evidence that it was purchased on that date.

A. There is a radio, dryer, iron, toaster, radio, t.v., fry pan, radio, hairdryer, radio.

Q. Are you telling us then that it was not paid for on the 12th?

A. Right.

MR. JOHNSON: Now Your Honor, please, just for the record, we make the same objection we made previously, and respectfully note an exception.

THE COURT: Alright, sir.

BY MR. JESTER:

Q. Now with reference to the 6th item which I have checked there, which is C4315B G E FM-AM digital radio clock with code section, code number 4030201, it is in evidence now that that was purchased on April 12, which would have been Friday morning, can you check your adding machine tapes to determine whether or not that item was paid for?

A. No it was not.

Q. Alright sir, witness with you.

THE COURT: Any questions, Mr. Johnson?

MR. JOHNSON: Just a couple.

CROSS EXAMINATION

BY MR. JOHNSON:

Q. Mr. Patzman, as far as whether or not you can state from your investigation, your reading the

tape, that these two items were purchased on the 11th, you cannot say because you don't have all the tapes?

MR. JESTER: Just one minute Your Honor. The testimony was April 12, and he is asking about April 11 now.

THE COURT: He is talking about the 12th, he didn't -

MR. JOHNSON: I know that. I know but I am -

THE COURT: He didn't go into that on direct. He went into April 12 only.

MR. JOHNSON: Yes but Your Honor, he has brought out that they don't show, these items don't show on there on April, 12.

THE COURT: That's right.

MR. JOHNSON: I am asking whether or not he can say that they were not purchased on the 11th since he doesn't have the tapes.

MR. JESTER: Your Honor please.

MR. JOHNSON: I have got a right to ask him that.

MR. JESTER: I don't think so. Your Honor please. Mrs. Keesee testified point blank that they went there at eleven o'clock on Friday the

12th and that those two items were purchased on that date. Now we will have to confine ourselves to what her testimony was.

MR. JOHNSON: Your Honor, Mrs. Keesee testified that she thought those two were, that she could not possibly say which was purchased on the 12th and which on the 11th. In view of this testimony, I think I have -

THE COURT: Well, I am going to let you ask the question.

MR. JOHNSON: Alright thank you.

BY MR. JOHNSON:

Q. You can not say whether or not they could have been purchased on the 11th canyou?

A. No I can not.

Q. Alright that's all.

MR. JESTER: That is the case for the Commonwealth.

THE COURT: Alright, gentlemen. We will retire to chambers to consider instructions. Ladies and gentlemen of the jury, I am going to recess until two o'clock and let you come

back promptly at two o'clock and do not discuss this case among yourselves and allow anyone to discuss it with you or in your presence. Do not arrive at any conclusions on the evidence you have heard, until you have heard the instructions of court and the argument of counsel. Recess until two o'clock.

(Whereupon, a recess was had, after which the jury returned into Court, and the following proceedings were had.)

THE COURT: Now ladies and gentlemen, the Court is going to instruct you as to the law applicable in this case. This is civil - this is a criminal case. The accused is presumed to be innocent of the charge against him until he is proved guilty beyond a reasonable doubt. This presumption of innocence is not a mere form to be disregarded by you at your pleasure, but constitutes a substantial right

of the accused. It goes with him throughout the entire trial until you have reached your unanimous verdict. And if the case is a doubtful one, it is sufficient to turn the scales in favor of the accused. The burden of proof rests upon the Commonwealth throughout the case and never shifts. To bear this burden the Commonwealth, by competent evidence, must prove the defendant's guilt beyond a reasonable doubt of the crime and every material element thereof as charged.

The defendant does not have to prove his innocence, nor does he have to prove the truth of his defense, or anything, for all that is necessary to entitle him to an acquittal, is from the evidence as a whole or from the lack of evidence there is raised in the mind of the jury a reasonable doubt of his guilt. The proof of the defendant's guilt by a mere preponderance of the evidence or evidence that raises in the mind only suspicion of guilt, however strong or evidence for any proper reason falls short of satisfying the jury of his guilt beyond a reasonable doubt

is insufficient to warrant a conviction. There is however no burden upon the Commonwealth to prove the defendant's guilt, to a mathematical certainty beyond all possibility of mistake, or do more than satisfy the jury from the evidence on the whole of his guilt, beyond a reasonable doubt.
If the preponderance or the weight of the evidence as a whole be so greatly in favor of his guilt as to satisfy the jury beyond a reasonable doubt of the crime and every material element thereof as charged, they should convict him.
If the jury have a reasonable doubt of the defendant's guilt, upon the case as a whole, or any material element thereof, they should give him the benefit thereof, and acquit him.

Now the particular charge here is that statutory charge of encouraging a child under eighteen to commit a misdemeanor. And if you believe from the evidence beyond a reasonable doubt that the defendant, at the time and place that has been testified to here today, did cause any person, if the person eighteen years of age or over cause any person under the

age of eighteen or encourages that child to commit a misdemeanor, then you should find him guilty and fix his punishment by confinement in jail not exceeding twelve months, or a fine not exceeding $1,000.00, or either or both fine and imprisonment.

Are there any other matters you want me to instruct on?

MR. JOHNSON: No sir.

THE COURT: Alright, Mr. Jester, you may proceed.

(Whereupon, closing arguments were had by the Commonwealth and the Defense.)

THE COURT: Now ladies and gentlemen, it is time for you to retire to your jury room to consider your verdict. The first thing you do when you go in the jury room is select one of you as foreman. Your foreman presides over your deliberation, and signs your verdict. However, your foreman has a vote and may participate in discussion, like the rest of you. In order to reach a verdict, it must be a unanimous verdict. All of you must agree that that is your verdict.

You are trying two cases. Now you will have to render a separate verdict on each of the cases. The jury - the clerk has prepared two verdicts, one in each case. One charge is the charge of unlawfully causing or encouraging Jeanette Keesee to commit misdemeanor, we the jury find the accused , if you find him not guilty, you write not guilty, and your foreman signs it. If you find him guilty, then you put guilty as charged, and fix his punishment. Then do the same thing on the other one with reference to Darlene Keesee. You will have with you the exhibits that have been introduced for your inspection. And I will allow you to take these with you also, and Mr. Johnson, do you want those to go also. I will just allow them to be treated as exhibits, but not filed, for inspection.

Now, ladies and gentlemen, after you have reached your unanimous verdict, have your foreman sign it, then sound the buzzer, and we will bring you back in here, to receive your verdict. You may retire to consider your verdict.

(Whereupon the jury retired, and after some time returned into Court.)

CLERK: Members of the jury, have you reached a verdict?

FOREMAN: We have.

CLERK: May I have it please.

(Whereupon the clerk received the verdicts.)

CLERK: Members of the jury, harken to your verdict. "Commonwealth vs. Walter Ford Keesee, Jr.. Upon a charge of unlawfully causing or encouraging Darlene Keesee to commit misdemeanors, we the jury find the accused guilty and fix his punishment at three months in jail and $500.00. Fred C. Johnson, Foreman." 6/14/74" "Commonwealth of Virginia vs. Walter Ford Keesee, Jr. Upon a charge of unlawfully causing or encouraging Jeanette Keesee to commit misdemeanors, we the Jury find the accused guilty and fix punishment at three months in jail and $500.00. Fred C. Johnson. 6/14/74. Foreman." Is that the verdict of each and every one of you?

THE COURT: Let me see those verdicts. That is $500.00, fine, Mr. Sydnor. It is intended to be a fine, but just add the fine, just add $500.00 fine.

CLERK: Alright sir. It is added in each instance, Judge.

THE COURT: Alright read it back to them.

CLERK: Members of the jury harken to your verdicts. "Upon a charge of unlawfully causing or encouraging Darlene Keesee to commit misdemeanors, we the jury find the accused guilty and fix punishment at three months in jail and $500.00 fine. Fred C. Johnson, 6/14/74, Foreman." "Upon a charge of unlawfully causing or encouraging Jeanette Keesee to commit misdemeanors, we the Jury find the accused guilty and fix punishment at three months in jail and $500.00 fine. Fred C. Johnson, Foreman."

THE COURT: You have heard the verdict as amended. We added the word fine to the $500.00. I presume that is what you intended the $500.00 to mean was a fine, was it not?

FOREMAN: Yes sir.

THE COURT: Thank you.

(Whereupon the jury was discharged.)

THE COURT: Alright, Mr. Johnson.

MR. JOHNSON: May it please the Court, we, the defendant, by counsel -

THE COURT: Excuse me just a minute. Wait just a minute, alright.

MR. JOHNSON: May it please the Court, the defendant by counsel moves the Court at this time to set aside the verdict as contrary to the law and the evidence and for other reasons that we will state, or in lieu thereof to - and dismiss the charge - and in lieu thereof to set aside the verdict and grant a new trial, for the following reasons. First of all, we respectively submit it is contrary to the law and the evidence, Secondly we respectively submit that the Court errored in refusing to strike the evidence for the reasons given at that time at the conclusion of the Commonwealth's evidence, and also at the conclusion of all of the evidence. Thirdly, that the Court errored in admitting the testimony of Mr. Patzman in regard to computer entry and so forth, for reasons stated at that time. Fourthly for the failure on the grounds that the Commonwealth

failed to prove venue, in that as to a motion was made previously, it was never proven there is no evidence that Hill's Department store is in the City of Lynchburg. Fifthly, that the Commonwealth failed to prove as required by the statute that the defendant was over the age of eighteen years. We would like to add, Your Honor, to our other observations made when we made this motion previously, that all that has been testified to is that these were his children. There is no evidence that they are his natural children. He could be their step-daddy, they could be children by adoption, or what have you. So the age is not determinative of this alone. The statute requires they are supposed to be over eighteen and there is no evidence of that. Next, we would base this upon the ruling of the Court with regards to such question had he taken the stand, Mr. Jester could ask about his previous conviction of a felony, or other crime involving moral turpitude. We contend that the Court's ruling, with all respect to the Court, we contend that the Court's ruling is a denial of his constitutional rights under the right to a

fair trial, in violation of due process, and also a violation of his right to give evidence against him, I mean in favor of himself, that when the Court indicated it would rule this way, that he was in effect prohibited from taking the stand as a result of this.

THE COURT: He wasn't prohibited, he could have.

MR. JOHNSON: Your Honor, under the ruling of the Court, knowing the rule, I think Your Honor, with a little bit of experience, I had to make a decision that if these questions were going to be asked I couldn't allow him to take the stand under those circumstances. So that is our contention. Now on the further ground, the statute here Your Honor, and this is part of our motion to set aside the verdict, and grant a new trial. The statute here provides that if someone eighteen years of age or older is convicted of encouraging or contributing to the delinquency of the child, there is no evidence here that these two young girls are either delinquent or that they have been convicted of any crime. It is the contention

of the defendant that this defendant can not be convicted of contributing to something that there is no evidence to show it exists, either by delinquency status or by conviction of the girls of the crime. For these reasons, -

THE COURT: It doesn't say they have to convict them. It says to encourage to commit a misdemeanor, and it doesn't say they have to be convicted of the misdemeanor, just encourage them to commit a misdemeanor.

MR. JOHNSON: Well if Your Honor, please, I am simply stating our contention that it is our construction of the statute, respectfully Your Honor, that this is what the legislature had in mind. In any event for these reasons and also for the reasons stated to support our motion to strike both times, we respectfully request the court to set aside the verdict, and dismiss the case, or should the error so require that a new trial be granted.

THE COURT: Well Mr. Johnson, the court is going to overrule the motion. I passed on those at the time, and I am going to overrule the motion and enter up the jury's verdict in both instances.

MR. JOHNSON: We respectively note an exception Your Honor. Now Your Honor, there will be -

THE COURT: Let him stand. I will sentence him first. You have anything to say why the Court should not now pass sentence upon you.

DEFENDANT: No answer.

THE COURT: Now, the jury having found you guilty in both instances, and fixed your punishment at three months in jail and $500.00 fine, the Court enters up the judgment as the court's verdict, and cause you to be confined in the city jail for a term of three months and fined $500.00 in each of the cases, unless sooner discharged according to law. Alright, sir, have a seat.

MR. JOHNSON: Now Your Honor, my client has instructed me that he does wish to appeal the conviction.

THE COURT: Alright sir.

MR. JOHNSON: Now we would like to ask that the execution be -

THE COURT: What kind of bond is he under?

MR. JOHNSON: I think $2,000.00. My client tells me, I haven't checked.

THE COURT: Let me see the papers.

(Whereupon, the bond of the defendant was discussed.)

THE COURT: Take the bond for $2,000.00, and I will suspend execution of sentence for sixty days in order for you to proceed with your appeal, and Mr. Sydnor will take the bond.

(Whereupon, the proceeding was concluded.)

I, Juanita E. Shields, do hereby certify that I have transcribed the evidence to the best of my ability, from an electronic recording prepared by the Clerk's Office of the Circuit Court of Lynchburg, and that the transcript of this case is a true and accurate account of all the evidence taken, motions made, objections and exceptions and other incidents of the trial of Commonwealth vs. Walter Ford Keesee, Jr., tried in the Circuit Court of the City of Lynchburg, on the 14th day of June, 1974.

Juanita E. Shields

STIPULATION INCLUDED WITH AND AS PART OF TRANSCRIPT OF EVIDENCE FILED JULY 19, 1975, INCORPORATED IN TRANSCRIPT

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
AUG 12 1974
RICHMOND, VIRGINIA

VIRGINIA; IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

COMMONWEALTH OF VIRGINIA Plaintiff v. WALTER F. KEESEE, JR. Defendant	STIPULATION TO BE INCLUDED IN TRANSCRIPT OF EVIDENCE

It is hereby stipulated and agreed between the parties to these proceedings that, at the conclusion of all the evidence in the case, and prior to the Court instructing the jury as to the law, the defendant, by counsel, moved the Court that the evidence against the defendant be stricken and these proceedings dismissed upon the following grounds:

(1) For reasons stated by the defendant in support of his motion to strike the evidence at the conclusion of the Commonwealth's evidence; and

(2) On the grounds that the Commonwealth had failed to prove venue and jurisdiction of this Court since the Commonwealth did not offer evidence that the offense occurred within the City of Lynchburg, Virginia; and

(3) On the grounds that the Commonwealth failed to prove that the defendant was over the age of eighteen (18) years as required by the statute under which he was being prosecuted; and

(4) On the grounds that there is insufficient evidence of guilt for the matter to be submitted to the jury.

It is further stipulated that the Court overruled this motion made by the defendant and that the defendant properly noted his exception to the ruling of the Court.

It is lastly stipulated that the above shall be included in, and as part of, the transcript of the evidence in this proceeding.

W OFFICES
R. JOHNSON, JR.
& MERCHANTS
NK BUILDING
BURG, VIRGINIA

Commonwealth Attorney for the
City of Lynchburg, Virginia

Counsel for the Defendant,
Walter F. Keesee, Jr.

I hereby approve the above stipulation and Order that same be included in, and made a part of, the transcript of the evidence in this proceeding.

Enter 7/18/74

Judge

FILED
JUL 19 1974
L.C. Sydnor Clerk