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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 76-1065

BONNIE WEST SHIRLEY,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

JOINT APPENDIX

Raymond H. Strople, Esquire
Dennis F. McMurran, Esquire
Moody, McMurran and Miller, Ltd.
P.O. Box 1138
Portsmouth, Virginia 23705
Counsel for Appellant

A. R. Woodroof
Assistant Attorney General
Supreme Court Building
Richmond, Virginia 23219
Counsel for Appellee

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INDICTMENT

FIRST COUNT: The Grand Jury charges that: on or about August 8, 1975 in the City of Portsmouth, Bonnie West Shirley did steal one 1968 Chevrolet automobile valued at $100.00 or more, having a value of approximately $900.00 belonging to Willie Clark, against the peace and dignity of the Commonwealth of Virginia.

SECOND COUNT: The Grand Jury charges that: on or about August 8, 1975 in the City of Portsmouth, Bonnie West Shirley did buy, receive, conceal and aid in concealing one 1968 Chevrolet automobile belonging to Willie Clark and valued at $900.00, knowing the same to have been stolen, against the peace and dignity of the Commonwealth of Virginia.

THIRD COUNT: The Grand Jury charges that: on or about August 8, 1975, in the City of Portsmouth, Bonnie West Shirley did steal one 1972 Ford truck valued at $100.00 or more, having a value of approximately $1,700.00, belonging to Robert Waff, against the peace and dignity of the Commonwealth of Virginia.

FOURTH COUNT: The Grand Jury charges that: on or about August 8, 1975, in the City of Portsmouth, Bonnie West Shirley, did buy, receive, conceal and aid in concealing one 1972 Ford truck belonging to Robert Waff and valued at $1,700.00, knowing the same to have been stolen, against the peace and dignity of the Commonwealth of Virginia.

FIFTH COUNT: The Grand Jury charges that: on or about August 8, 1975, in the City of Portsmouth, Bonnie West Shirley did steal one 1968 Plymouth automobile valued at $100.00 or more, having a value of approximately $600.00 belonging to Jimmy Bond, against the peace and dignity of the Commonwealth of Virginia.

SIXTH COUNT: The Grand Jury charges that: on or about August 8, 1975, in the City of Portsmouth Bonnie West Shirley did buy, receive, conceal and aid in concealing one 1968 Plymouth automobile belonging to Jimmy Bond and valued at $600.00, knowing the same to have been stolen, against the peace and dignity of the Commonwealth of Virginia.

SEVENTH COUNT: The Grand Jury charges that: on or about August 8, 1975, in the City of Portsmouth Bonnie West Shirley did steal one 1963 Chevrolet Corvette automobile valued at $100.00 or more, having a value of approximately $1,700.00, belonging to Donald Rood, against the peace and dignity of the Commonwealth

of Virginia.

EIGHTH COUNT: The Grand Jury charges that: on or about August 8, 1975, in the City of Portsmouth Bonnie West Shirley did buy, receive, conceal and aid in concealing one 1963 Chevrolet Corvette automobile belonging to Donald Rood and valued at $1,700.00, knowing the same to have been stolen against the peace and dignity of the Commonwealth of Virginia.

JURY VERDICT

CLERK EDMONDS: Commonwealth of Virginia vs. Bonnie West Shirley. Ladies and gentlemen of the jury, have you reached a verdict?

A. Yes, we have.

CLERK EDMONDS: "Verdict: We the jury find the defendant guilty of grand larceny and fix her punishment at five years." Signed, Paul E. Heath, Jr.

Ladies and gentlemen of the jury, this is your verdict, so say you all?

A. Right.

JUDGMENT OF COURT

Bonnie West Shirley, born on March 23, 1945, who stands convicted of grand larceny on March 3, 1976, being called, appeared in Court in answer to her recognizance, and came also Dennis F. McMurran, attorney for the said Bonnie West Shirley, said attorney being of the defendant's own choosing, and came as well the Attorney for the Commonwealth and the Probation Officer of this Court, who

filed in open Court in the presence of the defendant, who was advised of its contents, his report as prescribed by Section 19.2-299 of the Code of Virginia, which said report is ordered filed as a part of the record in this case; and thereupon, the defendant, by counsel, moved the Court to continue the pre-sentence report hearing until such time as more counts of the indictment are heard, which motion being fully heard, is overruled; and thereupon, the defendant, by counsel, advised the Court that she did wish to cross-examine the said Probation Officer as to matters contained therein; and did wish to present additional facts bearing upon the matter; and did wish to present additional argument; and thereupon, the witnesses were sworn, called singularly, and testified; whereupon, the Court having fully heard the testimony, having considered all of the evidence in the case, the report of the Probation Officer, and such additional facts as were presented, doth deny probation; and thereupon, it being demanded of the said Bonnie West Shirley, if anything for herself, she had or knew to say, why the Court here should not now proceed to pronounce judgment against her according to law, and nothing further being offered or alleged in delay of judgment, it is ordered that the said Bonnie West Shirley be confined in the State Penitentiary for the term of five (5) years, the period by the jury in its verdict rendered; and thereupon, the Court advised the said Bonnie West

Shirley that she has a right to apply for an appeal from this conviction to the Supreme Court of Virginia and was also advised that counsel would be appointed for that purpose if requested; whereupon, the said Bonnie West Shirley noted an appeal; and it appearing that the said Bonnie West Shirley has been held in the jail of this city 5 days, awaiting the trial of this case, it is ordered that she be credited with the time spent by her upon her sentence aforesaid. And the Clerk of this Court is directed to forthwith transmit a copy of this order to the Superintendent of the State Penitentiary in Richmond, Virginia.

And the said Bonnie West Shirley, being under a continuing bond to appear at any and all proceedings that may be had relative to said charge, she is hereby directed to make her appearance before this Court as may be directed, and at any time or times to which these proceedings may be continued or further heard and before any Court having cognizance of such proceedings.

And the defendant, Bonnie West Shirley, is released from custody until that time.

The Court certifies that the defendant and her counsel were present in person at every stage of the proceedings.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The defendant, Bonnie West Shirley, hereby gives notice of appeal from the judgment of the Circuit Court of the City of

Portsmouth, Virginia, rendered herein on the 16th day of April, 1976, and assigns the following errors as required by the Rules of the Supreme Court of Appeals of Virginia 5:6; and further, the defendant states that a transcript of the facts, testimony and other incidences of the trial will be filed hereinafter within the appropriate time allowed.

1. The Court erred in allowing any evidence pertaining to the automobile in question obtained by the police officers in this matter to be introduced in the trial which was obtained by the use of Virginia Code Section 46.1-9, which violated the defendant's constitutional rights pertaining to illegal search and seizure.

2. The Court erred in denying the defendant's motion for a change of venue in this matter due to the unusual amount of publicity in the newspapers, radio, etc., pertaining to this case.

3. The Court erred when it did not grant the defendant a mistrial when the Commonwealth's Attorney made reference to other crimes which the defendant is accused of, although she was on trial for just this one charge.

4. The Court erred in refusing certain instructions offered by the defendant.

5. Since this was a three day trial and the jury went out and deliberated on the verdict for a total of approximately twenty minutes, this alone showed that the jury was biased and prejudiced in this matter and could not render a fair verdict in this matter.

6. The Court erred in failing to grant the defendant's motion to strike the Commonwealth's evidence in this case.

7. The Court erred in failing to rule as a matter of law that a reasonable doubt had been created since the expert testimony for the defense was that the writing in question was signed by the complaining witness.

8. The Court erred in failing to set aside the jury verdict as contrary to the law and the evidence in this case.

9. The defendant will rely on all errors cited and all objections made in the transcript, which has not been received as of the filing of this Notice of Appeal and Assignments of Error, which the defendant cannot particularize due to the inability to recollect the objections, motions, etc. at this time without the transcript.

SECTIONS OF CODE OF VIRGINIA

§46.1-9 RIGHT TO INSPECT VEHICLES IN GARAGES, ETC.

Any peace officer or Division officer or employee who shall be in uniform or shall exhibit a badge or other sign of authority shall have the right to inspect any motor vehicle, trailer or semi-trailer in any public garage or repair shop, for the purpose of locating stolen motor vehicles, trailers and semitrailers and for investigating the title and registration of motor vehicles, trailers, and semitrailers. For such purpose the owner of any such garage

or repair shop shall permit any such peace officer or Division officer or employee without let or hindrance to make investigation as herein authorized. (Code 1950, §46-17; 1958, c. 541.)

§46.1-16. PENALTIES FOR MISDEMEANORS.

(a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of chapters 1 through 4 (§§ 46.1-1 through 46.1-347) of this title, unless such violation is by any of such provisions declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of such chapters for which no other penalty is provided shall for a first conviction thereof, be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in jail for not less than one nor more than ten days, or by both such fine and imprisonment; for a conviction for a second such violation within one year such person shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment in jail for not less than one nor more than twenty days or by both such fine and imprisonment; for a conviction of a third or subsequent violation within one year such person shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in jail for not less than ten days nor more than six months, or by both such fine and imprisonment. (Code 1950, §46-18; 1958, c. 541; 1962, c. 302.)

(Roll call of jury panel).

SHERIFF FUTRELL: Full panel, Your Honor, with one to spare.

THE COURT: Fine. Thank you, Sheriff. Commonwealth vs. Bonnie West Shirley. Commonwealth ready to proceed?

MR. AXELSON: Yes we are, Your Honor.

THE COURT: Defense ready to proceed?

MR. MCMURRAN: Defense is ready, Your Honor.

(Transcript, Page 3) * * * * * * * *

STIPULATION, MOTION TO SUPPRESS, ARGUMENT, AND RULING OF COURT IN CONFERENCE ROOM

PRESENT: The Court, Messrs. Axelson and McMurran, Clerk Gartman, Sheriff Dobrosky, the defendant and the court reporter

* * * * * * * *

THE COURT: Swear the court reporter, please.

(Court reporter sworn).

All right.

MR. MCMURRAN: Your Honor, Mr. Axelson and I went upstairs after we met with you at the end of January and discussed which cases arose out of the search warrant, I mean out of the search pertaining to Code Section 46.1-9 and 46.1-16 of the Code of Virginia of 1950 as

amended, on August 8, 1975. The case which comes on for trial this morning involves Counts 7 and 8 which at the time were excluded in the sense of they were not agreed that the search came out of these code sections.

However, it's been brought to my attention that the car that was seized on August 8 - I don't believe there is any contradiction of this; if there is, I want Mr. Axelson to stop me - the car that was seized on Miss West on this particular one was seized August 8, 1975, at the place of business and was seized from the place of business, so I think that the same rule would apply, I mean the same argument would apply in this case as it does in these other cases, although I think they're going to try to say it was found on the street but I think that actually on further examination when found it was on the premises, the business establishment. If there is any disagreement with that statement before we start -

MR. AXELSON: Judge, it was my understanding from the police officers that the three automobiles

I discussed with Mr. McMurran before were found inside a locked or lockable enclosure yard area at the back of the store. The particular automobile that's involved in this case it was my understanding from talking to the police officers was outside of that enclosure and in fact was in front of the business premises themselves in an area accessible and open to the public; in other words, an area where there would be no expectation of privacy such as a Fourth Amendment search would be forbidden there and that's our position.

MR. MCMURRAN: Well, but it was, you do acknowledge it was on the private premises where the car was located?

MR. AXELSON: It was on the business premises.

MR. MCMURRAN: So it was not parked on the street?

MR. AXELSON: No.

MR. MCMURRAN: Well, of course then the question may not be quite as strong in this case as it would be of course in Counts 1 through 6 which we both agree would involve totally the use of 46.1-9. However, I do state it's important in this case in the ruling, Number 1,

we don't abandon the fact when you go on private premises you don't have to have a search warrant in order to seize property.

The second point is, though, since the Commonwealth chose to indict Bonnie West Shirley by indictment that involves all of these various counts, if the search was invalid or part of the counts are thrown out because of that, then the whole search warrant would be invalid, so it's important as to the ruling -

MR. AXELSON: Excuse me; what search warrant?

MR. MCMURRAN: I mean the whole indictment would be invalid; if they had illegally obtained evidence on part the whole matter would be, you know, invalid, so we get to the point of whether or not the constitutionality of 46.1-9.

Now, I have cited these cases in here. I'm not going to take Your Honor's time - It's a question of whether or not, first of all, I don't think the Commonwealth can argue it was a voluntary search because it was pursuant to a code section that also had a penalty to it; there's no question about

because, right or wrong, I didn't get it until this morning and I have looked it over and read it and his main case - Again I would reserve any right to argue any further on that if Your Honor desires, but he seems to rely on this Biswell case as much as any and I have this particular case. This is the one that allows, involves the Gun Control Act and they allowed premises of a pawnbroker to be searched pursuant to 18 USC Section 921, etc., dealing with the Federal Gun Control Act which allowed a federal treasury agent to inspect the premises pursuant to this code section, and of course the man was fined because he hadn't paid certain revenue stamps pertaining to certain guns which he found in a locker room.

I would state this case is distinguishable from what we have as far as this code section is concerned. 46.1-9 of the Virginia Code says, "Any peace officer or division officer or employee who shall be in uniform or shall exhibit a badge or other sign of authority shall have the right to inspect any motor vehicle, trailer or semitrailer in

1 any public garage or repair shop for the
2 purpose of locating stolen motor vehicles,
3 trailers and semitrailers and for investigating
4 the title and registration of motor vehicles,
5 trailers and semitrailers. For such purpose
6 the owner of any such garage or repair shop
7 shall permit any such peace officer or division
8 officer or employee without let or hindrance
9 to make investigation as herein authorized."
10 So that points out it couldn't be voluntary
11 because this code section makes it mandatory
12 the garage owner or repair shop personnel
13 allow the officers to come in, and of course
14 the penalty we've talked about, it's a
15 misdemeanor if you don't allow this.
16 It's not a voluntary search. They
17 didn't use any probable cause because they
18 used this particular code section.
19 It wasn't for the purpose of whether
20 or not a person had paid their taxes or
21 anything of this nature which would deal
22 with the Federal Gun Control as far as
23 pawnbrokers is concerned.
24 Virginia passed a statute prior to
25 Mapp vs. Ohio which gives a person - What

you've done is expanded the right to search for stolen vehicles and use the evidence against them without having probable cause or any of the requirements set out in these various cases I have cited in my memorandum here, particularly U. S. vs. Fay which deals with the fact that there must be probable cause, "Even though the particular code section allows a police officer to inspect any motor vehicles, etc., for the purpose of locating stolen motor vehicles, etc., this state statute authorizes the police officers to obtain evidence against defendants without having probable cause and therefore would violate one of the chief requirements necessary in order to have a valid search," and of course in Harmon vs. Commonwealth, 209 VA, Virginia put down the various tests in that particular Harmon case that are necessary in order for officers to go on the premises.

Now, what we have here is the officers go on the premises, use this code section, they make a search and then they came back from what I understand and found a car parked on the business premises and included that in

it. I don't believe they went out in this particular case and seized this car first and went out to the other; they went in and searched and found these other cars, so that's why I'm saying it involves this particular case itself, and then came back and looked for everything else they could find and found this car sitting on the premises out in front of the business and brought this car in also which was on August 8.

I'm not arguing some of these cases that didn't arise on August 8 would come under this; I am arguing the ones on August 8, 1975, all come under the use of this 46.1-9 and 46.1-16, and the only way I can distinguish the Biswell case, in that particular case it was used not to obtain evidence - The particular statute says, "The premises -" this is the code section used in the Biswell case - "The premises including places of storage of any firearms or ammunition dealer for the purpose of inspecting or examining any records or documents required to be kept and any firearms or ammunition kept or stored by such dealer at such premises," and all the treasury agent did,

he went in, said, "I have this code section," the pawnbroker looked at it, said, "If that's the law it's lawful," and he allowed him to inspect and he found these two guns he hadn't paid certain taxes on and he was fined and he raised the question the fine wasn't proper because he didn't have a search warrant, but that's an entirely different point from a felony. This is where the regulations to collect fines or taxes that the United States Government has placed, but in this case we are dealing with a felony that is obtaining evidence to be used then to charge these people without having a valid search warrant, so I say the Biswell case on that basis is distinguishable from these others.

THE COURT: Let me get my Virginia Reports here.

(The Court leaves conference room, then returns).

Okay, David, what have you got to say?

MR. AXELSON: Judge, it's our position first of all in order to strike the evidence in this case you would have to conclude that that section 46.1-9 was unconstitutional.

I would submit that the acts of the legislature as I stated in my brief are presumed

1 to be constitutional and, there being no
2 reason to challenge the constitutionality
3 of that particular statute or no particular
4 reason that's been suggested why it's
5 unconstitutional, it remains presumed to
6 be constitutional.
7 Secondly, the issue of the
8 constitutionality of the use of evidence
9 seized as a result of a statute allowing
10 administrative search has been addressed by
11 the Supreme Court in the Biswell case and
12 with all due respect I see the Biswell case
13 as absolutely controlling on this point.
14 It's the identical argument that
15 Mr. McMurran has raised here, the constitu-
16 tionality of the use of evidence seized as a
17 result of administrative search, and the
18 Supreme Court said when the individual
19 involved consents in response to the
20 assertion of lawful authority then evidence
21 seized thereafter is admissible. That is
22 exactly the way they came down in that case.
23 That would, by the way, go also to
24 the issue of the constitutionality of the
25 statute itself since they affirmed the

conviction in that particular case.

Of course, it's further our position the car being out on the street or being on the property adjacent to the street but in a public area was examined by police officers not as a result of any unlawful search at all and they can request - They could have walked up to the car and seen the license plate number and the lack of vehicle identification number which is what led them to raise the questions in the first place.

We're not intruding in any area the defendant might have expected to remain private.

The only time this issue comes in, the whole issue that Mr. McMurran has raised comes into this particular case is if you rule first of all that the car was seized as a result of that particular search and, secondly, that the entire indictment has to fall if one portion of it falls which I don't think is supported by Virginia case law.

I think, for example, a judge daily will strike a portion of an indictment or

single count of an indictment and it's not required by law to strike the whole indictment. I think as a practical matter that is the way it's done every day; the entire indictment does not fall.

THE COURT: Well, after reviewing your respective memorandums and the case law on the subject involved as well as the statutes involved, I'm going to overrule the motion to suppress.

It's my view that these, the statutes involved in this case are not unconstitutional and I do think it is a proper control -

MR. MCMURRAN: Your Honor -

THE COURT: As set forth by the legislature of the traffic in stolen automobiles.

MR. MCMURRAN: The only thing I request - and I understand that is the ruling at this point and I would certainly respectfully note an exception - is that since I did receive the brief this morning - And I'm not being critical here; I'm only asking that if I could find any subsequent law that could persuade Your Honor I would like the opportunity to at least look into it a little further. I haven't spent but an hour

or maybe a little less in going into the cases cited by Mr. Axelson, and if I could find any I think could be persuasive, I'd like the opportunity to present that. Any point in a ruling Your Honor could consider at a later time, so if I could be permitted to respond if I find anything that might be helpful.

I understand the ruling now. I am just asking the opportunity to do that.

THE COURT: Well, I will certainly grant you that opportunity to request it at a later date.

* * *

MR. AXELSON: Your Honor, I have one additional motion to make at this time. It's my understanding the defendant now goes by the name of Bonnie Renn West. I would move to amend the indictment to reflect that fact, that this name - In other words, the indictment should read - I believe it reads 'Bonnie Renn West Shirley' - include the phrase 'also known as Bonnie Renn West'.

THE COURT: The indictment here says 'Bonnie West Shirley'. There is no 'Renn' in it.

MR. AXELSON: Yes, sir, Judge. I would move -

(Transcript, Page 85) * * * * * * * *

TESTIMONY OF R. D. SCHUDER

DIRECT EXAMINATION

EXAMINED BY MR. AXELSON:

Q Would you state your full name, please.

A R. D. Schuder, Sr., Special Agent, National Automobile Theft Bureau.

Q What do you do for the Automobile Theft Bureau?

A Assist federal, state and local law enforcement officers in examining and identifying automobiles, trucks and so forth.

Q How are these vehicles identified?

A Either through the public serial number or through confidential serial numbers.

Q What is a confidential serial number?

A A confidential number is a number stamped by the manufacturer which is not supposed to be known by the public.

Q As opposed to a public serial number, what is that?

A As an example, a public serial number would be the serial number on the dashboard of your 1968 through the present date car.

Q What training have you had for your position?

A I had on-the-job training when I came with the Bureau; I was a trooper for almost twelve years.

Q With what organization?

A With the Virginia State Police. I have attended numerous training seminars plus I have instructed in the majority of the police academies in the State of Virginia and other states.

Q Were you assisting the Portsmouth Police Department on August 8 of 1975?

A Yes, sir, I was.

Q What were you doing for them on that date?

A I was examining vehicles at Glenn's Wrecker Service on Deep Creek Boulevard. I was looking at the vehicles where the public serial numbers were missing.

* * *

MR. MCMURRAN: Your Honor, I'm going to object to this.

MR. AXELSON: I beg your pardon?

MR. MCMURRAN: I'm going to object to it.

MR. AXELSON: Your Honor, Mr. McMurran has raised an objection.

THE COURT: I think we'd better take this up in the conference room.

* * * * * * * *

of these cars was all of a piece.

THE COURT: I don't agree with you. Each barrel has got to stand on its own bottom. This man is going to have to stick to this particular car we are concerned with in this particular trial.

MR. AXELSON: Yes, sir, Your Honor.

* * * * * * * *

IN COURTROOM

* * * * * * * *

(Transcript, Page 90)

MR. AXELSON:

Q Did you examine, Mr. Schuder, a 1963 Corvette on the 8th of August of 1975?

A I did.

Q Would you tell the Court what occurred during the course of your examination, please.

A I was leaning up against a 1963 Chevrolet Corvette, white bottom, black top, convertible. The defendant was in my presence at the time. I asked her whose car it was and she said it was hers and I asked her had it been examined and she said she didn't think so and she asked me if I wanted to see the title for it.

Q What occurred then?

A She went to the glove box and came back

with a document from Division of Motor Vehicles.

Q In what state?

A Virginia.

Q Did it bear a vehicle identification number?

A It did.

Q Did you record that vehicle identification number?

A Yes, sir.

Q What was that vehicle identification number?

A 21867B - like in Boy - 192880.

Q Did you make a recording at that time of that number?

A No, I didn't.

Q Does that number correspond to a Corvette?

A No, sir, it doesn't.

Q How do you know that?

A On the Corvette - If I could just spend one minute and give you a little information on the serial number, General Motors has a particular unique sequence for or format for each year. The serial number 21867B192880, the 2 indicates that it's a 1962 year automobile; the 1867 indicates the body

(Transcript, Page 92)

style. In this particular instance it would be an Impala convertible, two-door. The B would be the assembly plant, Baltimore, and the 179 - I'm sorry - the 192880 would be the sequential production number, so this vehicle was the 92,880th vehicle assembled in Baltimore.

Q Where are Corvettes manufactured?

A St. Louis.

Q Are any manufactured in Baltimore?

A No, sir. Had it been a Corvette the assembly plant designator would have been an 'S', like in Sam.

Q Did you record the license number?

A I did.

Q Of the car. What was the license on the Corvette at that time?

A It was F as in Frank, W as in William, G as in George, 409. That was a Virginia license.

Q Were you able to determine the vehicle identification number for the Corvette?

A Yes, sir, I was.

Q What did you have to do in order to determine this?

A First of all I checked the engine in the vehicle and came up with a derivative of the serial

number. I came up with engine number 3119094. Then I checked the confidential number which was the same number, 3119094. The public vehicle identification number which is placed under the glove box in this particular instance was missing from the vehicle. The public number was missing at this particular time.

Q Did you make any record of the vehicle identification number at that time?

A Yes, sir, I did.

Q How did you do that?

A I made a tape lift.

Q What is that?

A I used fingerprint ink, spread it over the number and with a piece of scotch tape lifted the number and placed it on a three by five card which I have in my possession here.

MR. AXELSON: Your Honor, we would move to introduce this into evidence.

THE COURT: Where was the public number that you spoke of?

A The public number was missing, sir.

THE COURT: All right. What do you have there?

MR. AXELSON: Your Honor, this is the

lift made by Mr. Schuder of the vehicle identification number. The Commonwealth would move to introduce it into evidence at this time.

THE COURT: Very well. The lift made by the witness is received and admitted into evidence and identified as Commonwealth's Exhibit Number 4.

MR. AXELSON:

Q Mr. Schuder, I show you Commonwealth's Exhibit Number 1 and Commonwealth's Exhibit Number 4. Commonwealth's Exhibit Number 1 is a motor vehicle title. Can you determine whether or not that motor vehicle title applies to the vehicle from which you obtained that lift?

A Yes, sir. On the Exhibit Number 1 the motor vehicle title lists Serial Number 30867S119094. Breaking that number down, the 3 indicates it's a '63 model car, the 0867 is a symbol for a Chevrolet Corvette convertible, the S is the designator for the St. Louis assembly plant and 119094 is the sequential number which means that is the 19,094th vehicle assembled in St. Louis in 1963.

The lift I made, 3119094, indicates that is the 19,094th vehicle assembled in St. Louis in

1963.

Q Do these apply to the same car?

A They do, identical, yes.

Q Mr. Schuder, would you repeat that title number you were given by the defendant, please.

A I did not record the title number and I'm not certain whether it was a title or a Virginia registration card. It was a DMV document.

Q What was the number that you did obtain?

A From the document?

Q Yes.

A 21867B192880.

Q Would you repeat that again, please.

A 21867B - Boy - 192880.

MR. AXELSON: Mr. McMurran?

CROSS EXAMINATION

EXAMINED BY MR. MCMURRAN:

Q Mr. Schuder, this is a rather important question here. The Virginia document that was shown to you, you can't say whether it was a title or registration card?

A I don't recall, no, sir. I didn't make a note of it.

Q So you're not saying it was a title?

A No, sir.

Q And you're not saying it was a registration card; you know it was one or the other?

A It was one or the other.

Q But this number you just read off to Mr. Axelson a second ago, this number that came off the title or the registration card, one or the other, you got off that document shown to you?

A I didn't take it from the document myself. I obtained this number, 21867B192880 by running a check on the Virginia license number and it come back. I had the license number recorded.

Q So in other words, then, the tags that were on this 1963 Chevrolet Corvette corresponded with this registration card or title, whichever, that Miss West showed you?

A That's right.

Q All right. So what you're saying in effect is that she had up there a 1963 Chevrolet Corvette as shown on this title introduced in Commonwealth's Exhibit 1? In other words, you're saying then that Bonnie Shirley, Bonnie West Shirley had this car as shown by this title number, is that correct, this Corvette?

A That's correct, sir.

Q And she had on that car, though, a license number, a Virginia license - What was that license number?

A FWG-409.

Q FWG-409. The license number on that corresponded with the instrument or the document that she showed you?

A Right.

Q Whether it was a title or a registration card?

A Right.

Q So in other words she had the wrong tags on this '63 Chevrolet Corvette?

A Right. The tags on the vehicle was assigned to a '62 Chevrolet Impala convertible.

Q I understand. So she had the wrong tags, but that's all you know about it, she showed you a document that related to the tags but it didn't relate to the car it was on?

A That plus the fact she said it was her car.

Q That's another good point -

* * *

MR. AXELSON: Your Honor, I object to that.

MR. MCMURRAN: I'm asking a question.

* * * * * * * *

WILLIAM T. DORSON, Witness called by the Commonwealth, having been first duly sworn, was examined and testified as follows:

(Transcript, Page 108) * * * * * * * *

TESTIMONY OF W. T. DORSON

DIRECT EXAMINATION

EXAMINED BY MR. AXELSON:

Q Would you state your full name, please.

A William Thomas Dorson.

Q And your occupation?

A Detective, Portsmouth Police Department.

Q How were you assigned in August of 1975?

A I was in charge of the Auto Theft Squad.

Q Do you have here with you a record of an automobile theft relating to a 1963 Corvette?

A Yes, sir, I do.

Q Is this the theft report that was filed with your office?

A Yes, sir, it is.

(Mr. Axelson shows card to Mr. McMurran).

MR. AXELSON: Your Honor, the Commonwealth would move to introduce the auto theft report into evidence at this time.

1 THE COURT: Very well. The automobile
2 theft report is received and admitted into
3 evidence and identified as Commonwealth's
4 Exhibit Number 5.
5 (Mr. Axelson shows papers to Mr. McMurran).
6 MR. AXELSON:
7 Q Detective Dorson, did you make inquiry
8 of the Division of Motor Vehicles concerning License
9 Number FWG-409?
10 A Yes, sir, I did.
11 Q Did they send you a certified report
12 on this?
13 A Yes, sir.
14 Q Do you have a copy of that with you?
15 A Yes, sir, I do.
16 (Mr. Axelson shows papers to Mr. McMurran).
17 MR. AXELSON: Your Honor, the Common-
18 wealth would move to introduce the
19 records of the Division of Motor Vehicles
20 relating to this automobile.
21 THE COURT: This is the record of
22 disposition of the '62 -
23 MR. AXELSON: Yes, sir, Your Honor.
24 THE COURT: Car that was bought at
25 auction. Very well. Records of the

Division of Motor Vehicles are received and admitted into evidence and identified as Commonwealth's Exhibit Number 6.

MR. AXELSON:

Q Detective Dorson, when did you learn that the Chevrolet Corvette had been reported stolen?

A We took the theft report from the subject - The date I don't have. I've got a copy here.

Q Would it appear on the theft report itself?

A Yes, I have a copy of it.

Q When did you become aware this car was in the possession of the defendant?

A I became aware the vehicle was in the possession of the defendant when I received a phone call -

MR. MCMURRAN: I would object to any hearsay.

THE COURT: Sustain the objection.

MR. AXELSON:

Q Did you inspect this vehicle?

A Yes.

Q When was this?

A It was inspected on the day that we

went to Bonnie and Glenn's Wrecker Service on Deep Creek Boulevard.

Q What was recovered from the vehicle? Was anything recovered from the vehicle?

THE COURT: Can't you give me some idea of when you went there?

A August 8.

THE COURT: What year?

A 1975, sir. At that time we recovered some serial numbers and based on the license plate number that was on the automobile we inquired at DMV as to what vehicle was registered under that number and based on the information we received from the Division of Motor Vehicles we went to the vehicle and made a search of the inside.

MR. AXELSON:

Q What did you find inside the vehicle?

A We found inspection sticker receipts dated January 28, 1975, and July 18, 1975, to a Chevrolet Corvette bearing FWG-409.

Q Are these the articles that you recovered from the vehicle?

A Yes, sir.

Q From the Chevrolet Corvette?

A Yes, sir, and that receipt from King Dodge for the bill of $3.00 for the inspection.

(Mr. Axelson shows papers to Mr. McMurran).

MR. AXELSON: Your Honor, the Commonwealth would move to introduce these papers recovered from the Chevrolet Corvette in evidence at this time.

THE COURT: All right. I'm going to staple them all together and make them one exhibit.

All right. The papers recovered from the Chevrolet Corvette are received and admitted into evidence and identified as Commonwealth's Exhibit Number 7.

* * *

MR. AXELSON:

Q Detective Dorson, I show you document labeled Defendant's Exhibit Number 11, what purports to be a sales agreement. Have you seen this before today?

A Yes, sir. I saw this sales agreement yesterday when -

Q When was the first time you saw this sales agreement?

A I saw that sales agreement yesterday

sales agreement, stipulated to the man the agreement that we had made and I still had not heard from the boy and could he tell me if he had been transferred or whatever.

Q Have you been able to find that copy?

A No, sir, I have not.

Q But you did mail it, is that right?

A Yes, sir, I did.

(Transcript, Page 293)

TESTIMONY OF BONNIE WEST SHIRLEY

Q ~~Now, Bonnie, on August 8, 1975~~, when the police came to your place of business where was this 1963 Chevrolet Corvette parked?

A It was parked out in front of my building.

Q And what type of lot is that, in front of your building?

A It's just a graveled-off area where the customers would pull up to park.

Q In reference to this 1963 Chevrolet Corvette, did you have anything on it that was improper?

A Yes, sir, I did. I had a set of plates on it that came off my other car.

Q All right. Is that the car that's been mentioned by Detective Grant in I believe it's Commonwealth's Exhibit Number 6?

A Yes, sir.

Q What type of car was that?

A It was a 1962 Chevrolet Impala convertible, black in color.

Q All right. And you bought - How did you buy that car, the '62?

A I bought it at public auction from the city back in June of 1974.

Q Now, Bonnie, tell the jury why you put, what happened to that 1962 car and why did you put these tags on this 1963 Chevrolet Corvette.

A I didn't start driving this 1962 Chevrolet until sometime around the middle of January. I drove it for approximately a month or month and a half. I had bought it for $15.00. We had done a little bit of work to it, was going to fix it up and sell it and so I'd been driving it.

I was out on the road in it one day and the motor blew up in it. We towed it back to the shop. At this particular time I didn't have anything else to drive. I had already expected the title from Rood, so I illegally put the plates off of this car on the 1963 Corvette.

Q All right. That's the car you're charged with stealing, is that correct?

A Yes, sir.

* * *

Q You will notice what appears right here; would you read that to the jury?

A "Make or trade name."

Q Now, is there anything filled in there?

A No, sir, it is not.

Q You left that blank. Do you have any explanation for that?

A No, sir, I don't. For the same reasons I left the shipping weight blank and numerous other lines blank.

(Transcript, Page 306) * * *

Q What was the document that you showed to Mr. Schuder of the National Automobile Theft Bureau on the 8th of August of 1975?

A It was a registration card for the plates that were on the vehicle.

Q Did he ask to see the registration card for the vehicle?

A Yes, sir, he did.

Q For the Chevrolet Corvette?

A Yes, sir.

Q And you showed him -

A The registration for the plates that I had on the car.

Q Being careful to draw the distinction that these were for the plates and not for the car?

A He asked me did I have a registration card for the plates that were on the vehicle.

Q For the plates?

A Yes, he did.

Q And you showed him the -

A The registration card.

Q Now, it's your testimony today that you only began driving the Corvette in I believe you said February?

A The latter part of February or the first of March.

Q What did you shift over from your Chevrolet Impala to the Corvette?

A Personal things or - I don't understand what you're talking about.

Q Anything?

A I would have taken everything that was in the other car at one time or another and put it in the car that I was driving.

Q You would have moved everything over?

A Ten to one, yes, sir.

Q That would of course have included the inspection sticker?

A Yes, sir.

Q I show you Commonwealth's Exhibit

Number 7 which bears a date of 1-28-75, License Number FWG-409.

A Yes, sir.

Q Is that something that you moved over?

A If it was in the glove box, yes, sir, I would have, but you also see that it does not say 'Corvette'. It says 'Two-door car'.

Q And it also bears the identification number that we find on this application, does it not?

A Yes, sir, it does.

Q And it's your testimony you moved this over from the -

A If it had been in the glove box, yes, sir, I would have moved it.

* * *

Q You're testifying here today that you had that $15.00 1962 Chevrolet Impala convertible in running order?

A It was in running order when we picked it up from the pound.

Q Why did you wait from June of 1974 to January of 1975 to title that Chevrolet Impala?

A Because I would have had no reason to have titled it; I wouldn't have been driving it.

Q Where has this sales agreement been since August of 1974? I'm referring to Defense Exhibit

COMMONWEALTH'S EXHIBIT NO. 4

CVIN 3 / 19094

1963 Corvette Conv.
Blk top / white Bottom

FVIN - MISSING

1975 VA inc
#FNG-409
MAR 4 1976

KAB
8-8-75

Commonwealth's Exhibit # 4

19

COMMONWEALTH'S EXHIBIT NO. 6

VIRGINIA, IN THE OFFICE OF THE DIVISION OF MOTOR VEHICLES AT RICHMOND

I, the undersigned, pursuant to the provisions of Section 46.1-34.1 of the Code of Virginia, as amended, (Chapter 196, Acts of Assembly, 1966), and being duly designated by the Commissoner of the Division of Motor Vehicles, Commonwealth of Virginia, for the purpose of attesting and certifying as provided in said section, do hereby certify that the attached writing consisting of four (4) page (s), is a true and exact transcript of the records of this Division.

Given under my hand and under the Seal of the Division of Motor Vehicles this sixteenth day of September 19 75 .

C. H. Beachery

DIVISION OF MOTOR VEHICLES OF
THE COMMONWEALTH OF VIRGINIA

Case No. 27313

Commonwealth's Exhibit # 6

Date 2/27/76

Judge

35

MAR 4 1976

FOR DMV USE ONLY

SALE OR USE TAX
Sale $ 50.00
No trade-in allowance
Tax $ 1.00
Title Fee $ 7.00 35.00
Total Amt. $

COMMONWEALTH'S EXHIBIT NO. 6

COMMONWEALTH OF VIRGINIA

DIVISION OF MOTOR VEHICLES

TITLE DEPARTMENT
RICHMOND

DO NOT SEND CURRENCY

READ BOTH SIDES CAREFULLY

APPLICATION FOR A CERTIFICATE OF TITLE FOR A MOTOR VEHICLE, TRACTOR OR TRAILER

I/We The undersigned owner/owners of the following described motor vehicle, tractor or trailer, hereby make application for a certificate of title of ownership for said vehicle and for that purpose state the following facts:

Purchaser Social Security No. or Employers Identification No. 226 54 3080 Odometer Reading at Time of Transfer 63510

NAME BONNIE R WEST
Name in which certificate is to be issued. Print full name

HOME ADDRESS P O BOX 6524 PORTS VA 23703
Number St. or R.F.D. No. City or Town County State Zip Code

Business Address 2410 Deep Creek Blvd PORTS VA 23704
Number St. or R.F.D. No. City or Town County State Zip Code

Owner's occupation or business Body Shop
Must be given

DESCRIPTION OF MOTOR VEHICLE

APPROVED

Sale price $ 5000 (No Trade-in Allowance) 2% tax $ 1.00 Make or trade name

Body Style: ☐ 2 DR SDN ☐ 2 DR HT ☐ 2 DR SW ☐ 4 DR SDN ☐ 4 DR HT ☐ 4 DR SW ☒ CONV ☐ TRUCK ☐ TRACTOR ☐ TRAILER ____ OTHER (SPECIFY)

Identification No. 21867B192280 Model year 1962

Shipping weight 3140 lbs. Empty weight/Gross weight ____/____ lbs. (TRUCKS, TRACTORS, TRAILERS ONLY)

No. of axles 2 Fuel used for motive power ☒ GASOLINE ☐ DIESEL ☐ PROPANE ____ OTHER (SPECIFY) Seating capacity 2

LIEN INFORMATION. Vehicle is now subject to the following lien(s) and no other: (Not Lien Veh. Repossessed Under)

Lien. Original Amount $ N/A Lien Kind ____ (See List of Liens) Date

Name of Lienor Street Address

City Town of Lienor State Zip Code

S/A - Security Agreement S/C - Conditional Sales	C/M - Chattel Mortgage D/T - Deed of Trust	R/T - Reserve Title L/A - Lease Agreement	Tax Lien E/T - Equipment Trust

SOURCE OF OWNERSHIP

Date Repossessed / Replevied / Seized ____ (Day Month Year) From

Address ____ (Number Street City State Zip Code)

Why was this vehicle seized? bought at public auction
Give short history setting forth terms of contract and how these terms were violated.

Repossessed title is not in order unless the applicant has possession of the motor vehicle. Do you have possession of this machine? Answer yes or no

X YES

Title No. 20582271

To be assigned by Commissioner Division of Motor Vehicles.

1976 MAR 4

E. 36

COMMONWEALTH'S EXHIBIT NO. 6

If sold at public auction or by Sheriff or Constable by a writ of *fieri facias*, give short history of case and certified copy of order of court _____

Has engine number ever been altered, removed or obliterated? _____

Has this car ever been titled before in Virginia? YES
Give Number

Has formal demand been made upon former owner for delivery of title certificate? _____
Yes or No

What was his reply? _____

The above-described vehicle complies with the requirements of the Motor Vehicle Code of Virginia as to headlights, safety glass in windshield and windows, brakes, axles, tires, wheels and other safety devices.

NON-RESIDENTS POWER OF ATTORNEY ONLY APPLYING TO NON-RESIDENTS AND CORPORATIONS NOT DOMESTICATED IN VIRGINIA

That I/We acting under and pursuant to the provisions of Chapter 342 of the Acts of 1932, General Assembly of Virginia, as now or hereafter amended, have made, constituted and appointed and under these presents do make, constitute and appoint the Commissioner of the Division of Motor Vehicles of the Commonwealth of Virginia, and his successor or successors in office, to be my/our true and lawful agent and attorney-in-fact upon whom all legal processes against and notices to me/us may be served in any action or legal proceedings brought as the result of the operation and/or use of all motor vehicles titled or licensed in my/our name in the State of Virginia, and he is hereby authorized to enter an appearance in my/our behalf in any case or proceedings; and I/we hereby stipulate and agree that any lawful process against or notice to me/us which is duly served on said agent and attorney-in-fact shall be of the same legal force and validity as if served on me/us.

Given under my(our) hand(s) this _____ day of _____ 19 ____

Signature of purchaser(s) Bonnie R West

Report of investigating officer _____

Signature of Officer _____

INSTRUCTIONS

If seizure by Writ of *Fi Fa*, Writ of *Replevin*, or by order of Court, attach a copy of order of court. If vehicle was seized under mechanics lien, itemized bill must accompany application. The lienholder must furnish a notorized affidavit confirming compliance of Section 43-34. The person conducting the sale must furnish the purchaser a bill of sale, describing the motor vehicle sold, and sale price.

MAR 4 1976

COMMONWEALTH'S EXHIBIT NO. 6

BILL OF SALE

The Chief of Police of the City of Portsmouth, Virginia, pursuant to section 46.1-3 of the code of Virginia, 1950, as amended, and section 23-239of the code of the City of Portsmouth, Virginia, 1961, as amended, has sold to Bonnie R. West P.O. Box 1259 Portsmouth, VA 23703, the highest bidder, at public auction held in the City of Portsmouth, Virginia on the 18th day of June, 1974 this certain vehicle described as follows:

1. Year: 1962
2. Make: Chevrolet Conv/
3. Motor number and identification number: 21867B192880
4. Color: Black

E. R. Boone
Chief of Police
City of Portsmouth, Virginia

STATE OF VIRGINIA
City of Portsmouth, to-wit:

I, Gary W. Waters, a Notary Public in and for the City of Portsmouth, in the State of Virginia, do certify that E. R. Boone, Chief of Police of the City of Portsmouth, Virginia, whose name is signed to the foregoing instrument bearing date on the 18th day of June, 1974, has acknowledged the same before me in my city aforesaid.

Given under my hand this 18th day of June, 1974

My commission expires January 2, 1977.

Gary W. Waters
Notary Public

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MAR 4 1976

COMMONWEALTH'S EXHIBIT NO. 6

BONNIE R WEST
P O BOX 6584
PORTSMOUTH VA 23703

CHEVROLET CONV 21867B192880

20583474 3140 62 63,570

656
P2 LNO

01/24/75 1.00

4059163

COMMONWEALTH'S EXHIBIT NO. 7

NUMBER	DESCRIPTION	PRICE
PARTS & ACCESSORIES		

CUSTOMER REPAIR ORDER 7419

NAME: Glenn Wheeler
ADDRESS:
CITY:
PHONE: | PHONE WHEN READY YES ☐ NO ☐ | CUST. ORDER NO.
SERIAL NO.: | LICENSE NO.: AW5409
YEAR: 62 | DATE: 7/12/75
MAKE: Ford | REC'D. TIME FROM: 9:00 A.M. P.M.
MODEL: Country Squire | WRITTEN BY: Ron
MILEAGE: 66144 | TERMS: CASH | CHARGE

I hereby authorize the repair work to be done along with the necessary material, and hereby grant you and/or your employees permission to operate the vehicle herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto. Dealer not responsible for unavailability of parts or delays in parts shipments beyond dealer's control.

X

NOT RESPONSIBLE FOR LOSS OR DAMAGE TO VEHICLE OR ARTICLES LEFT IN VEHICLE IN CASE OF FIRE, THEFT OR ANY OTHER CAUSE BEYOND OUR CONTROL.

OPERATION	LABOR
Change Engine Oil ☐	
Replace Oil Filter Cart. ☐	
Lubricate ☐	
Service Air Cleaner ☐	
Safety Inspection ☒	3.00
Tune Motor ☐	
Rotate Tires ☐	
Balance Wheels ☐	
Align Front End ☐	
Repack W. B. Fr. ☐ Rr. ☐	

OPER. NO.	INSTRUCTIONS:

Case No. 27313
Commonwealth's Exhibit # 7
Date 2/27/76
Judge [illegible]
By

P.O. NO.	CUST. NO.	MILEAGE	SERVICE ADVISOR
7419			

TOTAL PARTS & ACCESSORIES

P.O. NO.	SUBLET WORK

TOTAL SUBLET WORK

GAS, OIL & LUBRICANTS
GALS. GAS @
QTS. OIL @
LUBRICANTS @

WE RECOMMEND THE FOLLOWING REPAIRS
1
2
3
4
5
6
7
8

KING DODGE, INCORPORATED
1313 High Street
Telephone 397-3431
PORTSMOUTH, VIRGINIA 23704

Dodge

DESCRIPTION	SALE
LABOR MECH. NON-AUTO	3.00
SUBLET WORK	
GAS, OIL & LUB.	
LABOR - BODY & PAINT	
BODY & PAINT, SUBLET & SHOP MATERIALS	
PARTS & ACCESS. MECH.	
PARTS & ACCESS. BODY & PAINT	
TAX	
CHARGE SALES	
CASH SALES	

MAR 4 1976

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COMMONWEALTH'S EXHIBIT NO. 7

FORM S.P. 131

INSPECTION CERTIFICATE
ISSUED UNDER THE DIRECTION OF
VIRGINIA STATE POLICE E 536188

Equipment Inspected	O. K.	Adjust	Install
BRAKES	✓		
HEADLIGHTS	✓		
OTHER LIGHTS	✓		
SIGNAL LIGHTS	✓		
HORN	✓		
STEERING	✓		
MIRROR	✓		
WINDSHIELD	✓		
OTHER GLASS			
WINDSHIELD WIPER	✓		
TAG MOUNTING	✓		
EXHAUST LINE	✓		
TIRES	✓		
SEAT BELTS	✓		
HOOD LATCH	✓		

JANUARY
Date 1-28-75
Lic. No. FEJ 469
Make Chev
Body Type
Year Built 1962
Speedometer Reading 23810
Charges $ NC

Identification No. 21R0 7B192280
Eqp. Removed None Sta. No. 3327
Station Name Montgomery Hill
INSPECTOR

CARRY THIS RECEIPT WITH YOU AT ALL TIMES WHILE OPERATING THIS VEHICLE (Over)

THIS STICKER EXPIRES JULY 31

FORM S.P. 131

INSPECTION CERTIFICATE
ISSUED UNDER THE DIRECTION OF
VIRGINIA STATE POLICE E 358381

Equipment Inspected	O. K.	Adjust	Install
BRAKES	✓		
HEADLIGHTS	✓		
OTHER LIGHTS	✓		
SIGNAL LIGHTS	✓		
HORN	✓		
STEERING	✓		
MIRROR	✓		
WINDSHIELD	✓		
OTHER GLASS	✓		
WINDSHIELD WIPER	✓		
TAG MOUNTING	✓		
EXHAUST LINE	✓		
TIRES	✓		
SEAT BELTS	✓		
HOOD LATCH	✓		

JULY
Date 7-18-75
Lic. FWG 1197
Make Dodge
Body Type 1-door
Year Built 68
Speedometer Reading 64114
Charges $ 300

Identification No.
Eqp. Removed None Sta. No.
Station Name KING DODGE 003
INSPECTOR

CARRY THIS RECEIPT WITH YOU AT ALL TIMES WHILE OPERATING THIS VEHICLE (Over)

THIS STICKER EXPIRES JANUARY 31