CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

RECORD NUMBER 761248

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

PAUL C. THIMS,

Appellant

Versus

COMMONWEALTH OF VIRGINIA,

Appellee

APPENDIX TO THE BRIEF

Kesten & DeBoe
Joel A. DeBoe
Counsel for the Appellant
1400 N. Uhle Street
Arlington, Virginia 22201

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V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

December 15, 1975

The Grand Jury charges that:

On or about the 6th day of October, 1975, in the County of Arlington, PAUL C. THIMS did break and enter in the daytime the dwelling house of Phyllis Lee Dorsey with intent to commit larceny therein.

Section 18.2-91, Code of Virginia, 1950, as amended.

SECOND COUNT

The Grand Jury further charges that:

On or about the 6th day of October, 1975, in the County of Arlington, PAUL C. THIMS did steal property, to-wit: One (1) Sony AM/FM stereo receiver, Serial Number 801621, having a value of $100.00 or more, belonging to Phyllis Lee Dorsey.

Section 18.2-95, Code of Virginia, 1950, as amended.

Witnesses sworn and sent to the Grand Jury by the Court to give evidence:

Detective E. A. Faulconer, Arlington County Police Dept.

TESTE: _____
Clerk

COMMONWEALTH OF VIRGINIA

VS.

PAUL C. THIMS

PORTIONS NOT RELEVANT TO ASSIGNMENTS OF ERROR OMITTED

WHEREUPON the jury returned to the Courtroom.

The Clerk: Mr. Foreman, has the jury reached a verdict?

The Foreman: We have.

The Clerk: This is C-10821. "We, the jury, find the defendant guilty of grand larceny as charged in the indictment, and fix his punishment at nine months in jail.

/s/ Howard Oiseth
Foreman

And, we, the jury, find the defendant guilty of statutory burglary as charged in the indictment and fix his punishment at nine months in jail.

/s/ Howard Oiseth
Foreman

"We, the jury, recommend that the two sentences run concurrently."

March 25, 1976
Date

COMMONWEALTH OF VIRGINIA

VS. C-10,821

PAUL C. THIMS

THE 20th day of May, 1976 came the Commonwealth of Virginia, by its Attorney, The Defendant in custody of the Sheriff and his Court Appointed Attorney, Joel A. DeBoe.

PORTIONS NOT RELEVANT TO ASSIGNMENTS OF ERROR OMITTED

IT IS ACCORDINGLY THE JUDGMENT of this Court that the said Paul C. Thims be, and he hereby is, sentenced to confinement in the Arlington County Jail for a term of nine (9) months pursuant to Count #1 of the indictment herein, and nine (9) months pursuant to Count #2 of the indictment herein, the period by the Court ascertained as aforesaid, and that the Commonwealth of Virginia, do recover against the said Paul C. Thims its costs by it about its prosecution on this behalf expended; the aforesaid sentence of nine (9) months imposed pursuant to Count #2 of the indictment herein to run concurrently with the sentence of nine (9) months herein imposed pursuant to Count #1 of the indictment in the Circuit Court of Arlington County on May 20th, 1976 in this case styled the Commonwealth of Virginia vs. Paul C. Thims C-10,821.

AND the Defendant is hereby remanded to jail.

ENTERED this 26th day of May, 1976.

William L. Winston
JUDGE

A COPY,

TESTE: JOSEPH C. GWALTNEY, Clerk

By Elizabeth J. Perry
Deputy Clerk

CIRCUIT COURT OF ARLINGTON COUNTY

VIRGINIA

January 30, 1976

William A. Nunn, III, Esquire
Assistant Commonwealth's Attorney
County of Arlington
Arlington, Virginia

Joel A. DeBoe, Esquire
1400 N. Uhle Street
Arlington, Virginia 22201

Re: Commonwealth v. Thims, C-10821

Gentlemen:

The Court finds that the search of the vehicle in Arlington County, following the defendant's arrest in Falls Church is not an unreasonable search. If a warrantless search of a motor vehicle is made upon probable cause, or on the officer's belief reasonably arising out of the circumstances known to him that the vehicle contains contraband or the fruits of the crime, the search is valid. United States v. Haith, 297 F. 2d 65 (4th Cir., 1961); Cooper v. California, 87 S. Ct. 788 (1967).

The search is not rendered unreasonable because of the passage of several hours time from the arrest to the search. There appears to be a tendency in the cases to minimize the effect of the passage of time following the defendant's arrest before the search, so long as neither the search nor the delay may be said to be unreasonable. Cady v. Dombrowski, 93 S. Ct. 2523 (1973); United States v. Edwards, 94 S. Ct. 1234, (1974).

The Clerk will prepare the order overruling the Motion to suppress evidence heard on January 20, 1976.

Very truly yours,

William L. Winston
Judge

WLW:kw

ASSIGNMENTS OF ERROR

1. The Trial Court erred in overruling the defendant's Motion to Suppress certain evidence introduced by the Commonwealth obtained by police authorities pursuant to an illegal warrantless search and seizure of a 1962 Ford Thunderbird automobile and contents thereof which automobile was parked in the driveway of the defendant's residence at the time the acts of said police authorities were accomplished.

2. The Trial Court erred in admitting over defendant's objection certain evidence which it permitted the Commonwealth to introduce at trial, concerning other crimes alleged to have been committed by the defendant, which crimes had not been charged for the purpose of prejudicing the jurors against the defendant, thereby erroneously and prejudicially introducing into the Commonwealth's case, in chief, the bad character of the defendant.

3. The Trial Court erred in allowing the Commonwealth to introduce, over defendant's objection, certain evidence adduce testimony of certain witnesses regarding crimes committed by persons other than the Defendant not directly related to the offenses charged, to prove its case in chief, thereby erroneously and prejudicially allowing the jury to infer that the

Defendant participated in and/or had knowledge of said crimes and infer from that the commission of the offenses charged, i.e., the Court permitted the jury to speculate and pyramid inferences.

4. The Trial Court erred in admitting, over Defendant's objection, certain evidence which it permitted the Commonwealth to introduce as part of its case in chief, statements allegedly made by the Defendant concerning his intention to "plead guilty" at a time when he was charged only with several misdemeanors which had occurred in Falls Church, Virginia, and while in the custody of the Falls Church Police Department; said statements all being made prior to the time he was charged with the instant offenses, thereby inviting the jury to infer that he intended to acknowledge guilt as to the offenses - for which he was tried in Arlington County, Virginia.

5. The Trial Court erred in refusing to grant the Defendant's motion for mistrial made with regard to the erroneous and prejudicial admission of certain evidence referred to in Assignment of Error number 4 and number 6; and, the Defendant was by virtue of the Trial Court's erroneous and prejudicial rulings as signed hereinabove, the Defendant was compelled to testify in an attempt to rebut the erroneously admitted evidence.

6. Withdrawn.*

7. That the Trial Court erroneously and prejudicially limited the latitude of the Defendant's cross-examination of certain Commonwealth witnesses to such an extent as to deprive the Defendant of his right to confront his accusers or adduce evidence to show bias prejudice on the part of or otherwise impeach said witnesses, all to his detriment and prejudice.

8. Withdrawn.*

9. The Trial Court erred in refusing to grant the Defendant's motion to strike the evidence as to both counts of the indictment because said evidence was not sufficient as a matter of law to sustain a conviction in that the evidence failed to show:

(a) That Phyllis Dorsey owned the dwelling house located at 2713 North Florida Street, Arlington County, Virginia, as charged in the indictment, or had any such proprietary interest therein as would allow her, alone, to grant or deny permission to enter said dwelling, and by the admission of record that the subject dwelling house was owned by her father and mother; which also resulted in a fatal variance between the allegations of this indictment and the proof adduced at trial.

(b) The evidence failed to show that if the defendant entered the premises at all, it was trespassary in nature, i.e., without permission of one

of the several individuals who resided therein, other than Phyllis Dorsey, or that entry was gained by breaking. It being admitted of record that several persons were or had been lawfully present in the dwelling when she arrived the evening of October 6, 1975.

(c) That the evidence failed to show that the Sony AM/FM Stereo Receiver or other evidence admitted was the property of Phyllis Dorsey, or identical with the property alleged to have been stolen, or that Defendant was at any time in the sole or exclusive possession of said property, or that possession was not lawfully transferred to the Defendant or others by an occupant of the house who had apparent authority to do so, or show the same had a value of One Hundred Dollars ($100.00) or more on or about October 6, 1975.

10. Withdrawn.*

11. The Trial Court erred in granting Instruction Number 7 and Number 8 and refusing to instruct the jury that if they found the Defendant guilty of receiving stolen property then he must be acquitted of breaking and entering as alleged, thereby permitting inconsistent verdicts.

12. Withdrawn.*

13. The Trial Court erred in allowing the prosecuting attorney to comment on matters not in evidence, which comments were improper and prejudicial,

thereby inviting the jury to base its verdict on speculation and conjecture.

14. Withdrawn.*

15. The Trial Court erred in overruling Defendant's Motion the conclusion of the proceedings to set an appeal bond hearing, said refusal effectively denying to the Defendant to appellate review contrary to the law of Virginia. The time required to perfect an appeal in the Commonwealth of Virginia is such that if the Defendant is to remain in custody during pendency of his appeal, with credit for good time served on his misdemeanor penalties, he would have served the sentence of the jury in full, thereby rendering moot his questions to be raised on appeal. The Trial Court's action in denying bond therefore was arbitrary, unreasonable, punitive, and oppressive and an abuse of discretion.

[Transcript: January 20, 1976
P. 17, Line 6 to P. 26, Line 23
Joseph Edmund Sheaffer, Police Officer,
City of Falls Church]

[Transcript: January 20, 1976
P. 30, Line 11 to P. 31, Line 23
Timothy M. Toreau, Police Officer,
City of Falls Church]

[Transcript: January 20, 1976
P. 33, Line 12 to P. 52, Line 5]

[Transcript: January 20, 1976
P. 52, Line 11 to P. 53, Line 23
Phyllis Dorsey]

[Transcript: January 20, 1976
P. 58, Line 14 to P. 62, Line 16]

[Transcript: January 20, 1976
P. 65, Line 11 to P. 66, Line 23;
P. 71, Line 8 to P. 77, Line 21
William L. Nunn]

[Transcript: January 20, 1976
P. 77, Line 22
P. 79, Line 4
Honorable William L Winston]

[Transcript: March 3, 1976
P. 15, Line 2 to P. 24, Line 3
Susan Graham]

[Transcript: March 3, 1976
P. 24, Line 11 to P. 30, Line 23
Susan Carol Dorsey]

[Transcript: March 3, 1976
P. 34, Line 4 to P. 34, Line 23
Susan Carol Dorsey]

[Transcript: March 3, 1976
P. 47, Line 17 to P. 82, Line 7
Officer Dwyer]

[Transcript: March 3, 1976
P. 85, Line 8 to P. 88, Line 11
Paul C. Thims]

[Transcript: March 3, 1976
P. 122, Line 5 to P. 125, Line 14
Honorable William R. Winston

[Transcript: January 20, 1976
P. 17, Line 6 to P. 26, Line 23
Joesph Edmund Sheaffer, Police Officer,
City of Falls Church]

1 Whereupon,

2 JOSEPH EDMUND SHEAFFER,

3 was called as a witness by and on behalf of the Commonwealth

4 of Virginia, and, having been previously duly sworn, was

5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. NUNN:

8 Q Would you state your name?

9 A Joseph Edmund Sheaffer.

10 Q And your occupation?

11 A Police officer, City of Falls Church.

12 Q How do you spell your last name?

13 A S-h-e-a-f-f-e-r.

14 Q Thank you, sir.

15 How long have you been employed with the Falls

16 Church Police Department?

17 A I am completing my 16th year.

18 Q Officer, were you on duty on the nights of the

19 6th and 7th of October, 1975?

20 A Yes, I was.

21 Q On that date did you have occasion to assist in an

22 arrest?

23 A Yes, sir, I did.

Q Who did you arrest if you recall?

A Arrested Mr. Thims.

Q Is that the defendant in this case?

A Yes, sir, the defendant and a party by the name of Graham.

Q Could you state some of the circumstances of that arrest?

A Yes, sir. On this particular day in question we were -- I am assigned to the Tactical Squad, City of Falls Church. Officer Conway and myself are partners. We were on stake out at the Grand Union or West Broad Street, 300 block. I observed a car that was given to us by Sgt. Toureau on information he received from Arlington County.

Q Who is Sgt. Toureau?

A Sgt. Toureau?

Q Yes, who is he?

A My sergeant, and he give it to us at roll call.

Officer Conway got out of the vehicle which we were operating that day, and he got the tag number of the vehicle. We called it in and it came back listed to Mr. Thims. At that time we advised Sgt. Toureau and Mr. Thims was leaving the lot. He pulled on to West Broad Street, made a left turn heading east. Sgt. Toureau is over at the

intersection of Broad and Maple Streets at which time he proceeded to ask for identification and the pertinent information.

Q What was the purpose of the arrest at that time?

A The purpose of the arrest was Mr. Thims was operating a vehicle to the best of my knowledge on a revoked permit and information received from Arlington County.

THE COURT: Was it on a revoked permit to drive?

THE WITNESS: Yes, sir, I believe that's what it was. Sgt. Toureau could clarify that.

BY MR. NUNN:

Q Now, subsequent to that arrest did you have occasion to seize any items from the defendant?

A Yes, taken from Miss Susan Graham's purse were three items.

MR. DeBOE: Your Honor, those were not taken from Mr. Thims.

MR. NUNN: I think the officer did not understand my question, Your Honor.

BY MR. NUNN:

Q Officer, did you have occasion to take any items from Mr. Thims?

A His person, no, sir.

Q Did you observe any items taken from Mr. Thims during the search?

A No, sir.

Q Officer, could you state where these items were found?

A These items were taken from Susan Graham's purse.

Q I see.

MR. DeBOE: Your Honor, I haven't seen what we're talking about here.

MR. NUNN: Your Honor, may I ask the Court to recognize this has come on for the purpose of this hearing?

THE COURT: All right.

MR. DeBOE: Your Honor, I don't think a proper foundation has been laid for the admission.

MR. NUNN: It will be made.

THE COURT: All right, I will mark it for identification as Commonwealth's No. 1.

(The document previously referred to was marked Commonwealth's Exhibit No. 1 for identification.)

BY MR. NUNN:

Q All right, Officer, I show you Commonwealth's No. 1

for identification. Can you identify that, sir?

1 A Yes, I can.

2 Q How?

3 A By my initials on the back with the initials of

4 Officer Conway. Also, on the date this was taken we wrote

5 on the back where it was taken from.

6 Q Where again did you say it was taken from?

7 A From Susan Graham's purse.

8 MR. DeBOE: Your Honor, there's been no evidence

9 as to who took that alleged receipt from her purse. He

10 testified he took nothing from Mr. Thims, and he testified

11 this came from Miss Graham's purse. There is no evidence

12 as to who took it.

13 THE COURT: Who took it from the purse?

14 THE WITNESS: Officer Conway and myself working as

15 partners. He is the one that took it from the purse.

16 BY MR. NUNN:

17 Q Did you personally observe him taking it from her

18 purse?

19 A I did.

20 THE COURT: Was she placed under arrest?

21 THE WITNESS: Yes, sir.

22 THE COURT: And was this defendant placed under

23

arrest?

THE WITNESS: Yes, sir.

THE COURT: And they were both there together?

THE WITNESS: I don't recall. They was at the station at the same time, but I don't know if they were there at the time this was taken from her purse.

BY MR. NUNN:

Q Now, upon seizing this instrument did you have occasion to notice what Officer Conway did with it?

A He labeled it, and we put it in our property room where all evidence, property is taken.

Q Was it continually in either your possession or in your observation from the time it was taken to the time it was turned into the Falls Church Police Department property room?

A Everything has to be turned in and logged.

Q Did there come a time when at my request you secured this exhibit from the Falls Church Police Department property room and brought it to this courtroom?

A Yes, sir.

Q And has it been continually in your possession from that time?

A Yes, sir.

1 Q Now, is this exhibit now in the same condition it
2 was when you first seized it?
3 A Yes, sir.
4 Q Or assisted Officer Conway?
5 A Yes, sir.
6 Q Would you describe the contents of that exhibit,
7 please, sir?
8 A This piece of paper appears to be a receipt for a
9 vehicle which was a 1962 T-Bird.
10 Q You are reading from the --
11 A (Interposing) Yes, sir, I am reading what is
12 written on the piece of paper.
13 MR. DeBOE: I think the best evidence would be to
14 admit --
15 THE COURT: (Interposing) Do you have any objec-
16 tion?
17 MR. DeBOE: I have no objection to it's --
18 THE COURT: (Interposing) For purposes of this
19 hearing?
20 MR. DeBOE: Yes, sir.
21 THE COURT: All right.
22 All right, Commonwealth's Exhibit No. 1 is received
23 in evidence for the purpose of this hearing.

(The document previously marked for identification as Commonwealth's Exhibit No. 1 was received in evidence.)

BY MR. NUNN:

Q Now, at the time that you and Officer Conway seized this exhibit did you have occasion to show it to anybody?

A Officer Conway may have, I personally didn't.

Q Did you see it shown to anybody?

A Yes, he showed.

Q Well, was it somebody that was there in the police station?

A Yes.

MR. NUNN: All right, I have no further questions.

THE COURT: Mr. DeBoe?

CROSS EXAMINATION

BY MR. DeBOE:

Q Was Susan Graham arrested?

A Yes, sir.

Q Why?

A She gave us false identification. We talked to her and ascertained her real name and she was arrested at that

time.

Q What name did she give you?

A I don't recall.

Q Were you there when she gave the false name?

A Yes, sir.

Q How do you know it was a false name?

A Officer Conway questioned her.

Q You were present during the questioning, is that it?

A Yes, sir.

Q But you don't know what false name she gave?

A No, I don't recall.

Q When was she arrested?

A She had been talking to Mr. Thims in the car. Officer Conway and Sgt. Toureau stopped Mr. Thims, and Officer Conway got the defendant and I went with Sgt. Toureau when he stopped Mr. Thims.

Q Wait a minute, you were on a stake out?

A That's right, sir.

Q What time of day was it now?

A Well, it was approximately 7:45 to 8:00.

Q And you observed an automobile bearing the license number that you had been told to be on the look out for?

A That's right.

Q What kind was it?

A A Ford stationwagon, white in color.

Q A Ford stationwagon?

A White in color.

Q Did you have a license number?

A I don't remember.

Q You don't remember?

A No, sir.

Q So, you had a call to be on the lookout for a white Ford stationwagon?

A Yes, sir.

THE COURT: Did you have the license number then, didn't you?

THE WITNESS: Oh, yes.

THE COURT: Did the license number correspond with the one given to you by your sergeant at the roll car?

THE WITNESS: To the best of my knowledge we ran a tag check on it and it came back

BY MR. DeBOE:

Q And you say that the automobile belonged to Mr. Thims?

A I recall the last name was Thims.

[Transcript: January 20, 1976
P. 30, Line 11 to P. 31, Line 23
Timothy M. Toreau, Police Officer,
City of Falls Church]

1 MR. DeBOE: Thank you.

2 THE COURT: You may return to the witness room.

3 Who is your next witness?

4 MR. NUNN: Sgt. Toureau.

5 THE COURT: Would you send that witness in please?

6 Whereupon,

7 TIMOTHY M. TOUREAU,

8 was called as a witness by and on behalf of the Commonwealth

9 of Virginia, and having been previously duly sworn was

10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. NUNN:

13 Q Sgt. Toureau, would you state your full name, sir?

14 A Timothy M. Toureau.

15 Q How do you spell your last name?

16 A T-o-u-r-e-a-u.

17 Q What is your occupation?

18 A I am police officer with the City of Falls Church.

19 Q In what position are you sir?

20 A I am a police sergeant.

21 Q How long have you been so employed?

22 A Five years.

23 Q As a sergeant or --

A (Interposing) Five years of employment.

Q Sgt. Toureau, were you on the duty on the night of the 6th and 7th of October, 1975?

A Yes, I was.

Q Do you recall whether or not an arrest was made?

A Yes, there was.

Q Do you recall, sir, who was arrested?

A There were Mr. Thims and three juveniles.

Q Sgt. Toureau, I show you Commonwealth's Exhibit No. 1, can you identify that, sir?

A Yes, I can.

Q How do you identify it?

A It was taken off one of the juveniles, I believe. It was one of the juveniles that was in the purse.

Q Now, a more general question. Do you recall who was with you in the police station at the time besides the defendant and the juveniles? Was there anybody else?

A Right there was Officer Sheaffer, another Officer Conway, and two Arlington County policemen.

Q Do you remember who the Arlington County police officers were?

A No, I can't remember their names.

Q Do you recall whether thiswas shown to anybody else

[Transcript: January 20, 1976
P. 33, Line 12 to P. 52, Line 5]

1 guns for the trial. --

2 THE COURT: (Interposing) Anything else?

3 MR. DeBOE: No, Your Honor.

4 THE COURT: Next witness.

5 MR. NUNN: Officer Dwyer.

6 I believe the officer will have to be sworn.

7 THE COURT: You were not sworn?

8 THE WITNESS: No, sir, I was not.

9 THE COURT: Raise your right hand and face the

10 Clerk please.

11 Whereupon,

12 MICHAEL JOSEPH DWYER,

13 was called as a witness by and on behalf of the Commonwealth

14 of Virginia, and having been previously duly sworn, was

15 examined and testified as follows:

16 DIRECT EXAMIANTION

17 BY MR. NUNN:

18 Q Officer Dwyer, would you state your full name?

19 A Michael Joseph Dwyer.

20 Q And how do you spell your last name?

21 A D-w-y-e-r.

22 Q What is your occupation?

23 A I'm a police officer, Arlington County, Virginia.

1 Q How long have you been so employed?

2 A One year, three months.

3 Q Officer Dwyer, were you on duty the night of the

4 6th and 7th of October, 1975? Were you on duty on the 6th

5 of October, 1975?

6 A Yes, sir, I was.

7 Q Drawing your attention to approximately 1830 hours,

8 approximately 6:30 in the evening that day, did you have

9 occasion to respond to a citizen's complaint?

10 A Yes, sir, I did.

11 Q What if anything did you do in response to that

12 complaint?

13 A I responded to the address.

14 Q Do you recall where that was?

15 A Yes, sir, I believe it was 2713 N. Florida Street,

16 Arlington, Virginia.

17 Q And what if anything did you do when you arrived

18 at that address?

19 A I met the complainant at the front door, Phyllis

20 Dorsey.

21 Q What if anything did you do?

22 A Upon arriving Miss Dorsey led me through the

23 house to examine the crime scene.

Q Did she tell you what the complaint was?

A Yes, sir.

Q What was the complaint?

A She said persons had come into the house and stolen some of the property in that house.

Q Did she -- well --

THE COURT: (Interposing) You may just point to it unless he needs to refer to numbers on it.

MR. NUNN: This will be No. 2 for purposes of this hearing, Your Honor.

THE COURT: All right, that is marked for identification as Commonwealth's Exhibit No. 2 for this hearing.

(The item previously referred to was marked as Commonwealth's Exhibit No. 2 for identification.)

BY MR. NUNN:

Q Officer, No. 2 for purposes of this hearing, can you identify that exhibit?

A Yes, sir, I can.

MR. DeBOE: Your Honor, there's been no proper foundation.

THE COURT: You need not bother marking it at this time.

BY MR. NUNN:

Q How can you identify it?

A The serial number inlaid on the back of the panel.

Q Do you recall the serial number?

A 801621.

Q Whatis that object?

MR. DeBOE: Your Honor, there's been no foundation laid. What is the object? You can see it's a piece of electrical equipment. It looks like a Sony.

THE COURT: Are you going to develop through Officer Dwyer it's coming into his possession?

MR. NUNN: Yes, sir.

THE COURT: All right, do that.

BY MR. NUNN:

Q As a result of your investigation -- I may have asked you this before, but if I did forgive me. Did you determine whether anything was missing?

A Yes, sir, I did.

Q Do you recall what the items were?

A Yes sir, it included several items, one of which was a Sony AM and FM radio.

Q As a result of your investigation were you able to determine the existence of any suspects?

MR. DeBOE: Your Honor, I think that calls for a conclusion. There has been no proper foundation. As a result of this investigation, that's a vague term, Your Honor.

THE COURT: All right. Objection sustained.

BY MR. NUNN:

Q Officer, when you spoke to Miss Dorsey upon entering the house did she say anything to you as to who might have taken this item?

A Yes, sir, she did.

Q What if anything did she say?

A She believed that Paul and Rhonda Thims took the item, broke in the house and took the items.

Q Now, directing your attention to the early morning hours of the night of the 6th and 7th, the early morning hours of the 7th, do you recall where you were?

A Yes, sir, I do.

Q All right, sir, where were you?

A I was in Falls Church at the police department.

Q At the police department? Do you recall who was there?

A Yes, sir, I do.

Q Who if anyone was there?

A Sgt. Timothy Toureau, Susan Graham, Susan Dorsey, Paul Thims and Rhonda Thims along with Officer Sheaffer of the Falls Church Police Department.

Q Now, Officer, I show you Commonwealth Exhibit 1. Can you identify that, sir? Have you ever seen that before?

A Yes, sir, I have.

Q When and where?

A I saw that in the early morning hours of October 7 at the Falls Church Police Department.

Q Now, Officer Dwyer, do you recall having a conversation with Miss Graham, Susan Graham?

A Yes, sir, I did.

Q What if anything do you recall the substance of the conversation?

A It consisted of information regarding a burglary and a larceny which transpired in Arlington County on October 6.

Q All right, sir, did she -- that was very general. Did she say anything more?

MR. DeBOE: Your Honor, he's leading. I believe he is leading the witness rather substantially here.

THE COURT: You asked first what the substance of it was, and it was answered. Now, if you wish to ask for it

in any more detail, you may.

BY MR. NUNN:

Q Thank you, Your Honor.

Would you go into some detail, Officer, regarding the conversation with Miss Graham?

A Yes, sir, Miss Graham indicated that Paul Thims and Rhonda Thims were both involved in a burglary in Arlington County the day previous, and that the items taken in that burglary were to be found in such and such a location.

Q Where was that location?

A It was 1962 Ford T-Bird that was parked in the Thims' driveway.

Q What if anything did you do in response to that information?

A In response to the information given me I responded to the Thims' residence.

Q And what if anything did you do when you were there?

A Upon arrival I tried to ascertain the legal ownership of the vehicle by checking the vehicle identification number.

Q That's the VIN number?

A Yes, sir.

Q Were you able to determine the ownership of that

vehicle?

A No, sir, we were not able to determine the ownership.

Q Were license plates on the vehicle?

A No, sir, there were not.

Q Continue.

A Upon arriving and running the number through the computers and not receiving any legal ownership, and with proper precaution knowing the car contained stolen merchandise and the car was purchased with proceeds taken from the burglary --

MR. DeBOE: (Interposing) Your Honor, that is a conclusion. I would like to know what information he had to say it was purchased with proceeds of a burglary.

THE COURT: All right, sir.

BY MR. NUNN:

Q Officer, what information did you have?

A The information I received during the investigation from Susan Graham was that she had witnessed a check being passed from Paul Thims to a Mr. David Woolhyde in return for the vehicle.

Q Do you know who David Woolhyde was?

A No, sir, I don't.

1 Q Do you know what connection he had with the trans-
2 action?
3 A No, sir, other than that the check was to him.
4 Q But this had a connection with the vehicle?
5 A Yes, sir, it was an exchange for the purchase of
6 the vehicle.
7 Q So, after you failed to determine the identification
8 of the owner, the legal owner of the vehicle, what if anything
9 did you do then?
10 A Well, believing the possibility that the vehicle
11 could possibly be stolen and contained stolen merchandise,
12 and not finding a legal owner, I impounded the vehicle at the
13 scene.
14 Q Did you subsequent thereto have occasion to conduct
15 an inventory search of that vehicle?
16 A Yes, sir, I did.
17 Q Did you seize any evidence as a result of that
18 inventory search?
19 A Yes, sir, I did.
20 Q What did you seize?
21 A The evidence seized was a Sony AM-FM stereo that
22 which is lying on the floor there.
23 Q Let the record indicate the witness referred to

Commonwealth Exhibit No. 2.

Now, where did you find this exhibit, Officer?

A That was in the trunk, right rear corner of the trunk of the 62 T-Bird.

Q Now, prior to your search had you procured a search warrant?

A No, sir.

Q Approximately what time of day or night was this when you seized the vehicle and discovered that exhibit?

A I am not exactly certain. I believe it was approximately 9:45 in the morning onthe 7th.

Q You say prior to your search you had not been able to determine the ownership of the vehicle?

A No, sir.

Q Where was the inventory search conducted?

A It was conducted after having impounded the vehicle at the Thims' house in the driveway.

Q Upon discovery of this exhibit 2, what did you do with it?

A Upon discovering this item here it was taken into custody as evidence.

Q By whom?

A By myself.

1 Q What if anything did you do with it then?

2 A I transported it back to our identification section.

3 THE COURT: Where was it in the vehicle, Mr. Dwyer?

4 THE WITNESS: It was in the right rear corner

5 towards the fender. It was just sitting there.

6 BY MR. NUNN:

7 Q Was it exposed to view or was anything over it?

8 A It was exposed to view.

9 Q Had you been --

10 THE COURT: (Interposing) And at that point you

11 had been told of the existence of the Sony equipment, is that

12 correct?

13 THE WITNESS: Yes, sir, I was.

14 THE COURT: And its probable presence in the

15 vehicle?

16 THE WITNESS: Yes, sir, I was.

17 MR. DeBOE: Where did he say he saw that?

18 THE COURT: On the right rear deck by the rear

19 wheel.

20 THE WITNESS: It was on the right rear corner of

21 the trunk.

22 THE COURT: Well, we'll have to proceed here, Mr.

23 DeBoe.

MR. DeBOE: I understand that it was not in the trunk?

THE WITNESS: Yes, sir, it was.

THE COURT: It was in the trunk.

MR. DeBOE: All right, sir.

THE COURT: Was this a stationwagon?

THE WITNESS: No, sir, it was a sedan.

THE COURT: It was not a stationwagon?

THE WITNESS: No, sir.

THE COURT: So, it was necessary to open the trunk in order to see it?

THE WITNESS: Yes, sir, it was.

BY MR. NUNN:

Q What kind of car was this, Officer?

A A 1962 Ford T-Bird.

Q But you did have to open the trunk in order to see this exhibit, is that correct?

A Yes, sir, I did.

Q Now, did there come a time when at my request you secured this exhibit from the property section here at Arlington County Police Department and brought it to this courtroom?

MR. DeBOE: Your Honor, I will stipulate to chain

1 of custody for purposes of the motion.

2 THE COURT: For purposes of the motion? Then the

3 chain of custody is stipulated.

4 MR. NUNN: No further questions.

5 CROSS EXAMINATION

6 BY MR. DeBOE:

7 Q Did you have the keys to that 1962 Thunderbird?

8 A Yes, sir.

9 Q Where did you get them?

10 A I obtained them from Officer Toureau, Sgt. Toureau

11 from Falls Church Police Department.

12 Q They were taken from Mr. Thims, were they not?

13 A Yes, sir, they were.

14 Q He was in jail at that time, was he not?

15 A Yes, sir, he was.

16 Q And is it not further true, sir, that there were

17 outstanding warrants for him from Arlington County at that

18 time?

19 A No, sir, not to my knowledge.

20 Q Where did you go to find that 1962 Ford T-Bird?

21 A Having received information it would be located

22 in the Thims' driveway.

23 Q In the driveway?

A Yes, sir.

Q It wasn't out on the public street?

A No, sir.

Q It was on private property?

A Yes, sir, it was.

Q You also had information that one of the items that allegedly was taken in a burglary was in that car?

A Yes, sir.

Q And the car was locked when you approached it, was it not?

A The trunk was.

Q Were the doors locked?

A No, sir.

Q Did you report the VIN number to the Division of Motor Vehicles?

A Yes, sir.

Q Who did it come back registered to?

A It did not come back registered.

Q Not registered?

A Virginia, Maryland, or D.C.

Q Now, you also had information, did you not, sir, that this automobile had been traded in exchange for a check that was passed by Mr. Thims?

A Yes, sir.

Q What time of the morning was that, sir?

A I'm sorry, could you --

Q (Interposing) That you first saw the car. Was it dark?

A No, sir, it was not. It was light.

Q It was in the morning?

A Yes, sir, it was.

Q You had no report of the vehicle having been stolen, did you?

A No, sir, I had not.

Q The VIN number did not come back from CCRE as a stolen vehicle?

A No, sir, it did not.

Q To your knowledge there had been no report of a stolen vehicle made in this area?

A None.

Q Of a similar nature?

A None that I recall.

Q And when you went there you suspected I believe or thought you had probable cause to believe there was contraband or stolen items in the car?

A Yes, sir.

Q Why didn't you get a search warrant?

A I tried to establish legal ownership of the vehicle.

Q Well, why didn't you get a search warrant, sir?

MR. NUNN: I would object to the question, Your Honor. Counsel has already admitted he didn't get one.

THE COURT: I think he may inquire into the reasonableness of obtaining one; that is to say whether there was sufficient time to obtain one or circumstances that would have permitted the obtaining of a search warrant.

BY MR. DeBOE:

Q Why didn't you get a search warrant?

A I felt I had probable cause with the information I had on hand to seize the vehicle.

Q Then you also had probable cause --

THE COURT: (Interposing) Excuse me, let him finish his answer.

MR. DeBOE: I beg your pardon, go ahead.

But if you had probable cause to believe it contained contraband or stolen items to justify opening the trunk and looking in, then it would seem reasonable to me you could have procured a search warrant, could you not?

MR. NUNN: Is that a question or statement by counsel?

THE COURT: Objection sustained.

BY MR. DeBOE:

Q Did you apply for a search warrant?

A No, sir, I did not.

THE COURT: Anything else, Mr. DeBoe?

BY MR. DeBOE:

Q Why did you think the car may have been stolen?

A Because it came back unregistered. It had no tags. As I recall, it had no Virginia inspection sticker or any other identifying details.

Q You had the car towed in after you could not verify ownership, is that right?

A Would you repeat that?

Q You had the car impounded after you could not verify ownership, is that correct?

A Yes, sir, that's correct.

Q Where is the VIN number located that you were looking for in the car?

A That would be on the door jamb if I recall correctly.

Q You looked on the door jamb, got the VIN number. Were you alone at the time?

A No, sir, I was not.

Q When did you open the trunk?

A After having exhausted all means available to obtain legal ownership of the vehicle.

Q After that? All right.

It came back not registered. Then you looked in the trunk, is that right?

A It came back not registered in this metropolitan area, correct.

Q Then you opened the trunk and looked inside?

A I inventoried the items in the car, both in the passenger compartment --

THE COURT: (Interposing) Were the contents of the vehicle inventoried and the procedures of the inventory then followed?

THE WITNESS: Yes, sir, they were.

BY MR. DeBOE:

Q Was anybody home at that address when you arrived?

A Yes, sir.

Q Who was there?

A Mrs. Thims.

Q Did she give you permission to come on the property?

A As I recall I searched the automobile first and started examining the vehicle. Mrs. Thims did come out, and we spoke to Mrs. Thims. She did not ask us to leave.

Q Did she give you permission to take that car off her property?

A We didn't ask her.

Q You didn't ask her?

A No.

Q You just took it?

A Yes, sir.

MR. DeBOE: I have nothing further.

THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. NUNN:

Q One question.

Officer Dwyer, from that date to this have you had occasion to determine the true legal ownership of that vehicle?

A No, sir, I have not. Upon seizing the vehicle, impounding the vehicle in Arlington County, a person showing proof of ownership may have the vehicle released through him. The vehicle has not been released as of this date.

MR. NUNN: Thank you, sir.

THE COURT: When you first went to the property did I understand you to say you did go to the door of the house or not?

THE WITNESS: No, sir, I don't believe I did. I

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Phyllis Dorsey]

1 believe I went directly to the car.

2 THE COURT: To the vehicle, then Mrs. Thims came

3 out?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right.

6 Anything else?

7 MR. NUNN: No, sir.

8 I call Miss Phyllis Dorsey.

9 THE COURT: You may step down.

10 Whereupon,

11 PHYLLIS L. DORSEY,

12 was called as a witness by and on behalf of the Commonwealth

13 of Virginia, and,having been previously duly sworn, was

14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. NUNN:

17 Q Would you state your name?

18 A Phyllis Dorsey.

19 Q You had better spell your middle and last names.

20 A L-e-a, D-o-r-s-e-y.

21 Q Where do you live?

22 A 2713 N. Florida Street in Arlington, Virginia.

23 Q In Arlington County?

1 A Right.

2 Q Did you have occasion to be home on the morning

3 of October 6, 1975?

4 A Yes, I was home for a little while, and I left

5 about -- a little before 11:00 because I knew I had to be

6 at school.

7 Q Do you recall what time you returned? I take it

8 you did return?

9 A I came back about 6:00 that evening.

10 Q Did you have occasion to notice anything unusual

11 upon your return home?

12 A Well, I walked in and the back door was open about

13 an inch and a half. I went downstairs into my room. I

14 noticed my receiver was missing.

15 Q Take at look at Commonwealth's Exhibit No. 2 over

16 her. Can you identify that?

17 A Yes, I can.

18 Q What is it?

19 A It is my Sony AM-FM stereo receiver, and I can

20 identify it by the serial number on my owner's manual.

21 Q On your owner's manual?

22 A Yes.

23 Q Would you like to have the witness come down and

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MR. DeBOE: I have no questions.

THE COURT: You may return to the witness room.

MR. NUNN: Miss Susan Graham, this would simply be corroborative of other witnesses' stories.

THE COURT: No connection with the suppression motion?

MR. NUNN: Yes, sir.

THE COURT: What would she corroborate?

MR. NUNN: She'll testify what she told the officer that evening about the connection between Mr. Thims and the vehicle as to where the receiver was found.

THE COURT: Have her come in then.

Whereupon,

SUSAN GRAHAM,

was called as a witness by and on behalf of the Commonwealth of Virginia, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NUNN:

Q Would you state your name please?

A Susan Graham.

Q How do you spell your last name?

A G-r-a-h-a-m.

So, make the evidence relevant to that point. That is why we are here.

All right.

BY MR. NUNN:

Q Let me get directly to that then.

Miss Graham, have you had occasion to see this before, this exhibit down here?

A Yes.

Q That's No. 2.

Where did you see it?

A In the back seat of Paul Thims' car, the station-wagon.

Q Did you have occasion to see it thereafter?

A Yes, Susan Dorsey put it in the trunk of the T-Bird.

Q The T-Bird?

A Yes.

Q Do you recall where she got it from?

A Paul Thims.

Q Now, directing your attention to the early morning hours of the 7th, do you recall where you were? This would be that night.

A Seven?

Q Yes, this was on the 6th you said.

A Yes.

Q So, the night of the 6th and 7th, the middle of the night.

A Police station I guess.

Q The police station where?

A Falls Church.

Q Do you recall who was there? Were there any Arlington County police officers there?

A Yes, Officer Dwyer.

Q Do you recall saying anything to Officer Dwyer concerning this exhibit?

A Yes, I told him it was in the trunk of the T-Bird.

Q Indulge me a moment, Your Honor.

You told the officer substantially what you told this Court, is that right?

A Yes.

MR. NUNN: I have no further questions.

THE COURT: All right, any questions, Mr. DeBoe?

MR. DeBOE: No, Your Honor.

THE COURT: All right, you may return to the witness room.

Does that complete the Commonwealth's evidence?

MR. NUNN: Yes, Your Honor.

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1 illegally parked. Mr. Kapler was admitted to the hospital,
2 then they told him they were going to take the car away. At
3 the impounding lot at a later time it was inventoried.
4 You might argue that the inventory was properly
5 done, or the taking away was properly done. But in this case
6 there is no reason not to have gotten a search warrant, and
7 none of the exceptions apply as I understand the law. I will
8 be glad to cite some cases.
9 THE COURT: Mr. Nunn, what do you have to say?
10 Let me hear from you first, then I'll look at the cases.
11 MR. NUNN: I'll be the first to admit Kapler is not
12 precisely on all fours with the facts of thiscase, but I
13 think the principle is very much the same.
14 Briefly, Your Honor, I think there are three argu-
15 ments which I would like to present against the suppression
16 of this exhibit.
17 First of all it was seized as evidence in a
18 possible forgery case, the check which has the name David
19 Woolhyde. I'll admit it's circumstantial. It has paid to
20 David Woolhyde signed by Phyllis L. Dorsey. Miss Dorsey
21 testified that was not her signature. There was testimony
22 from a number of witnesses that the T-Bird was purchased
23 with a -- I don't remember if the amount was stated, but

with a forged check.

MR. DeBOE: There was no such testimony, Your Honor.

MR. NUNN: I think it is easy to determine. I believe Officer Dwyer for one did state to the effect that his investigation revealed the T-Bird was purchased with a forged check. So, that would be the first argument, that the vehicle was seized as possible evidence in a forgery and uttering case against the defendant.

Secondly, the Commonwealth would argue --

THE COURT: (Interposing) You would say seizure of the vehicle itself?

MR. NUNN: Yes, sir.

THE COURT: As evidence of a possible forgery charge?

MR. NUNN: Yes, sir.

THE COURT: All right.

MR. NUNN: Secondly, of course Officer Dwyer testified even to this very day he doesn't know who the true owner is. He did suspect it was possibly a stolen automobile. I think he would be entitled to seize under those conditions.

Thirdly, I believe, and I believe it's one of the stronger arguments in this case, the defendant had no standing to object. The receipt that has been admitted into evidence

1 does not have his name on it. It has the name, if you'll
2 recall, David Woolhyde and Rhonda Thims who is his sister.
3 There is no license plate, no registration card, no title.
4 As far as we can determine, there is no reason to believe
5 it belonged to the defendant. There is, as I say, the
6 possibility it was stolen.
7 Now, Section 46.1-1, subsection 18 defines the owner
8 as "a person who holds legal title to a vehicle".
9 46.1-5 prohibits the operation of a vehicle without
10 a certificate of title. I think there is a wealth of
11 testimony here that there was no certificate of title
12 involved in connection with this vehicle.
13 64.1-41 requires the owner of a vehicle to secure
14 a certificate of title. Again, no legal ownership with
15 respect to this vehicle as Officer Dwyer testified. He ran
16 a check. I think he called it the VIN number, the vehicle
17 identification number. He was unable to determine its
18 ownership. He had information again and it was purchased with
19 a forged check.
20 Well, I think I have said enough on that particular
21 argument.
22 Summing up, I just don't feel there is enough here
23 to show the defendant owned the vehicle, and therefore what is

his standing to object to the seizure of the vehicle. It hasn't been shown, for example, the defendant lived with his mother.

Finally, I believe that the seizure would have been valid even if there would be some proof that the defendant owned the vehicle. I refer to Section 18.2-110 of the Code of Virginia.

THE COURT: 18.2- --

MR. NUNN: (Interposing) 110, Your Honor, which provides that any vehicle knowingly used by the operator for transporting stolen goods having a value of more than $100 shall be forfeited. It doesn't say it might be or could be, it says shall be forfeited to the Commonwealth and shall be seized. There are no ifs, ands or buts about the statute. It shall be seized.

The requirement as I see it would be that the officer had probable cause to seize the vehicle. Nothing in that statute mentions a search warrant, and I think we all know there is a long series of cases which clearly spell out the fact that an automobile is a horse of another color. It is not a house; it's not a shop; it's something that is moveable.

Now, what is the evidence that the officer who

seized the vehicle and consequently the contents which he discovered during the inventory search, what is the evidence he had probable cause to believe that the vehicle contained contraband, stolen goods of a value of more than $100?

Phyllis Dorsey testified she told Officer Dwyer she believed the defendant stole the stereo. She testified that it's value --

THE COURT: (Interposing) Just a minute, Mr. Shear, have the jury comeback in the courtroom. I am going to excuse them for lunch.

How did it happen this motion was not disposed of earlier on a motions day where they are supposed to be disposed of?

MR. DeBOE: Your Honor, I apologize to the Court, but there were two motions days, the 8th and the 15th.

THE COURT: Yes.

MR. DeBOE: And I was here on the 8th, and I requested permission to file a motion because the evidence was just coming out at that time to suppress.

THE COURT: What about the 15th?

MR. DeBOE: The 15th I was in court, and I advised Your Honor of that.

THE COURT: And we set it for this time? In the

future if you have a motion that is going to take the amount of time this does, have it heard on a motions day in advance of trial, even if the trial has to go to another term of court because this is very inconvenient, having a jury wait. They sit around here waiting to be sworn, and then you put them in the jury room while we go through all this. They don't know what's going on.

MR. DeBOE: I understand. I had no idea the motion was going to take this long. I was prepared to argue the law of the case.

THE COURT: Have them come in.

All right, take a seat.

Have the jury come in.

(Whereupon, the jury returned to the jury box.)

THE COURT: Ladies and gentlemen, as I indicated earlier, counsel has motions in this case which must be heard by the Court before the jury is impaneled or before the jury begins to hear the case. Usually it is our procedure here that those be done on a day other than a trial day. Unfortunately, that could not be the case in this instance. Therefore, the motions must be heard now.

It is difficult to determine what amount of time will be necessary before they are completed, but you may be

1 excused for lunch at this time to return at 2:00, and we
2 will commence the evidence of the case at that time.
3 Thank you.
4 (Whereupon, the jury was temporarily excused.)
5 THE COURT: All right, Mr. Nunn.
6 MR. NUNN: All right, sir.
7 THE COURT: All right, proceed.
8 MR. NUNN: All right, sir.
9 Well, I think I was in the process of listing off
10 very briefly those items which gave Officer Dwyer probable
11 cause to seize the vehicle.
12 First, Phyllis Dorsey told Officer Dwyer when he
13 met her, or she met him at the door, that she believed the
14 defendant stole the stereo. She testified that the value
15 was over $250.00. So, that satisfied that requirement.
16 Early the next morning -- that is more or less
17 the midnight hours, Officer Dwyer observed the receipt which
18 I believe is No. 1, Exhibit No. 1, which was taken from Miss
19 Graham referring to a 1962 Ford T-Bird.
20 Miss Graham told Officer Dwyer she had seen the
21 defendant hand the stereo to Miss Susan Dorsey, and seen Miss
22 Dorsey put a stereo in the trunk of a 1962 T-Bird allegedly
23 belonging to Paul Thims, I believe, was her testimony.

THE COURT: What time did all this occur, the meeting at the Fairfax or at the Falls Church police station?

MR. NUNN: The early morning hours of the 7th, I believe.

THE COURT: And that was on the early morning of October 7th?

MR. NUNN: That's right.

THE COURT: Let us say between 1:00 and 3:00?

MR. NUNN: I believe it was actually later than that, about 4:00.

THE COURT: All right, call it 4:00 then. The impoundment in Arlington was when?

MR. NUNN: I believe the officer testified he wasn't sure about that, but approximately 9:45 I think.

THE COURT: In the morning of the 7th?

MR. NUNN: That's right, Your Honor.

THE COURT: That's anywhere from six to eight hours after the gaining of the knowledge of the facts that may have been sufficient to obtain a search warrant?

MR. NUNN: Approximately six hours, that's correct.

THE COURT: That's what I am concerned about here.

MR. NUNN: Shall I continue?

THE COURT: Yes, sir.

1 MR. NUNN: Indulge me just a moment, Your Honor.
2 Yes, the time is 9:30, close enough.
3 THE COURT: It's on the impoundment form?
4 MR. NUNN: Yes, Your Honor, October 7.
5 So, with all this information, all these links
6 in the chain of probable cause, Officer Dwyer seized the
7 vehicle which he is required to do under the statute.
8 I think in either case -- whether the vehicle was
9 the defendant's or whether it wasn't -- if it wasn't his
10 vehicle -- there was no evidence it was -- he has no standing
11 to object. If it was his vehicle, I think the statute is
12 sugared.
13 Now, there is case law which supports this. I
14 think one of the most pertinent, closest case to this particular
15 case would be Cooper v. California.
16 THE COURT: All right.
17 MR. NUNN: 386 US 58.
18 THE COURT: What is the Supreme Court Reporter on
19 it?
20 MR. NUNN: Let's see if I can find it.
21 87th Supreme Court 788.
22 THE COURT: All right.
23 MR. NUNN: In that case there was a similar statute

in California referring to narcotics. Any vehicle knowingly used by the operator to transport narcotics was to be seized and forfeited to the state.

Now, in that case the police officer without a warrant did seize the vehicle because it was suspected of having been used to transport narcotics. A warrantless search was conducted one week later and the Supreme Court held that was perfectly valid because the officer had legal, valid possession of the vehicle when they impounded it under the statute. So, therefore they had legal possession of the contents of that vehicle.

THE COURT: Now, do the impoundment papers here -- there's been no indication to show the purpose for which it was impounded, does it?

MR. NUNN: It is on the stereo here, I think, Your Honor.

Here it is, yes. It's very general, Your Honor. "Reason for impounding: evidence."

Now, Officer Dwyer did testify he suspected it was involved in a forgery. It might have been stolen. You can see conditions for relief down on the bottom, "proof of ownership."

THE COURT: Yes, and the defendant in this case is

listed as the owner, alleged owner of the vehicle and his mother's address I think. Isn't that the North 27th Road address that was testified to?

MR. NUNN: I believe so.

THE COURT: That's given as his address.

MR. NUNN: May I see it a moment, Your Honor.

THE COURT: Well, it puts owner, then puts address, you see?

MR. NUNN: Yes, that's not the Dorsey residence.

THE COURT: It is not?

MR. NUNN: It must be his.

Yes, that is Thims residence, the detective just informed me.

THE COURT: It is what?

MR. NUNN: The Thims residence.

Additionally, U.S. v Haith, a 1961 4th Circuit case -- that's 297 F2d 65. Here the vehicle was seized in accordance --

THE COURT: (Interposing) U.S. v Haith?

MR. NUNN: Yes, sir, H-a-i-t-h, a 4th Circuit case.

Here a vehicle was seized in accordance, I believe, with a Federal statute for violation of revenue laws concerning moonshine whiskey. There was a search on the spot. It was held in that case the subsequent warrantless search was valid

since the officers did have probable cause to seize the vehicle against its reputation.

Well, this must have been a forerunner of Cooper.

Since they had probable cause to seize the vehicle, they were therefore in lawful possession of the vehicle and its contents, and a subsequent search was therefore valid.

In Chambers v Maroney, although the facts are a little bit different, I think the principle is the same. It is 399 US 42-90, Supreme Court 1975. Of course this is the famous 1970 Supreme Court case --

THE COURT: (Interposing) What is that 90, Supreme Court --

MR. NUNN: (Interposing) 1975.

THE COURT: Page 1975?

MR. NUNN: Yes, sir. Let me check that.

THE COURT: What's the name of the case?

MR. NUNN: M-a-r-o-n-e-y, Chambers v Maroney.

THE COURT: All right.

MR. NUNN: Here, just very briefly, the holding was -- and I am quoting here from the Supreme Court Reporter of 1981 -- "given probable cause to search, either course was reasonable under the 4th Amendment." Here is what they're referring to, either secure a search warrant and then go out and search the

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Honorable William L. Winston]

1 vehicle, or search the vehicle immediately without bothering
2 to get a search warrant.
3 There was a long string of Virginia cases which I
4 won't bore the Court with, culminating in Shumm v Common-
5 wealth, 215 Va 498.
6 THE COURT: 215 Va --
7 MR. NUNN: (Interposing) 498, Your Honor.
8 THE COURT: That's not an impounding case.
9 MR. NUNN: I don't believe it was, Your Honor.
10 THE COURT: I take it it's a probable cause for a
11 warrantless search?
12 MR. NUNN: That's correct. That case held the
13 warrantless search is reasonable. That's what the 4th Amend-
14 ment is to protect against. Namely, a warrantless search is
15 reasonable if probable cause to believe the car contains the
16 fruits of a crime.
17 I think under any of these four arguments, but
18 specifically under the latter two, namely the lack of standing
19 to object, or if he did own the vehicle in fact, the statute
20 was triggered and therefore in either set of circumstances the
21 seizure was valid.
22 THE COURT: I would suggest you gentlemen possibly
23 during your recess or during a part of it, if you have the

1 opportunity see what else you can locate dealing particularly
2 with these things, whether or not impounding can be relied
3 upon as a fall back for a lack of -- for the failure to
4 obtain the search warrant. That is to say, probable cause
5 could have been ample to have supported an affidavit that
6 would have led any magistrate to the issuance of a search
7 warrant.
8 That is not the question though. The question is
9 the delay of anywhere from seven to six, in that vicinity,
10 hours, that period of time lapse which would have been
11 available to obtain a search warrant where you certainly are
12 in a jurisdiction where you have magistrates that are on duty
13 around the clock and coupled with the alleged owner's
14 incarceration, things of that kind. Look into that, and see
15 what you can furnish when we come back. We will stand in
16 recess until 2:00.
17 MR. DeBOE: Your Honor, before you leave the bench,
18 if you would like I can give you some cases that say you
19 can't do that. One is the Cooper v California.
20 THE COURT: Yes?
21 MR. DeBOE: The other I believe is Chambers v.
22 Maroney, the one cited.
23 THE COURT: In other words, if it is an impoundment

it has to start off as an impoundment, it can't be a short circuiting of the --

MR. DeBOE: (Interposing) It can't be a sham, yes, sir.

THE COURT: (Continuing) Of the procedures.

MR. DeBOE: And Coolidge v New Hampshire is another case, Your Honor. I think they tried to rely on the inadvertence.

THE COURT: Well, let us stand in recess until 2:00, and counsel let me see you here in chambers.

(Whereupon, the hearing was recessed to reconvene at 2:00 p.m.)

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Phillis Lee Dorsey	4	9	13	
Susan Graham	15	20		
Susan Carol Dorsey	24	30	35	
Joseph Edward Shaeffer	35	41	46	
Michael Joseph Dwyer	47	64		
Paul Christian Thims	85	92		

EXHIBITS

COMMONWEALTH NO.		FOR IDENT.	IN EVID.
1	Memo of receipt	84	
2	Check for $45	84	
2A	Stereo	84	
3&4	Two checks partially blank	84	
5	Impoundment Sheet	84	
DEFENSE			
1	Receipt for Thunderbird	86	

[Transcript: March 3, 1976
P. 15, Line 2 to P. 24, Line 3
Susan Graham]

1 Whereupon,

2 SUSAN GRAHAM

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

6 DIRECT EXAMINATION

7 BY MR. NUNN:

8 Q Susan, would you state your name, please?

9 A Susan Graham.

10 Q How old are you?

11 A Sixteen.

12 Q You live here in Arlington?

13 A Yes, I do.

14 Q All right. Directing your attention to the
15 afternoon of the 6th of October, 1975, did you have
16 occasion to be at the Lubber Run Recreation Center?

17 A Yes, I did.

18 THE COURT: What day was that?

19 MR. NUNN: The 6th of October, Your Honor.

20 BY MR. NUNN:

21 Q Do you recall approximately what time you arrived?

22 A About 2 o'clock.

23 Q In the afternoon or morning?

A In the afternoon.

Q How did you get there?

A Paul Thims took me.

Q The same Paul Thims as the defendant in this case?

A Yes.

Q All right. Did he stay there with you?

A No.

Q Did there come a time when you saw him again?

A Yes, at 3 o'clock in the afternoon.

Q About 3 o'clock. All right. Now, before he left, did he make any --

MR. DeBOE: (Interposing) Your Honor, I think he is leading the witness rather substantially. In this particular instance, I would like to have a foundation laid on these items.

THE COURT: All right, sir.

BY MR. NUNN:

Q Before Mr. Thims left, did you have occasion to hear any statement from him?

MR. DeBOE: Your Honor, he is leading again.

THE COURT: Objection overruled.

THE WITNESS: Yes, he said that he was going over to the Dorseys' house.

BY MR. NUNN:

Q Did he say what he was going to do?

A He was going to take some checks.

Q Now, you said I believe, you stated you came back about 3 o'clock?

A Yes.

Q All right. Did you notice anything unusual when he returned?

A Um, yes, he had the stereo components with him.

Q Okay. Did it look like this stereo over here?

A Yes.

Q Did you know or do you have personal knowledge where he got the stereo?

MR. DeBOE: Your Honor, unless she was there. As to hearsay, I would object to it.

THE COURT: All right, unless you can say where she knows it's from.

BY MR. NUNN:

Q Do you have personal knowledge of where he got this stereo?

A All I can say is that he said --

THE COURT: (Interposing) You may say that. Mr. DeBoe says you have to see it in order to testify to it. That is not so.

THE WITNESS: Yes, he said that he got it from the Dorseys' house.

BY MR. NUNN:

Q And what did you all do after he came back? Do you recall?

A We went over to some guy's house and paid for a T-Bird.

THE COURT: I beg your pardon.

THE WITNESS: Paid for a T-Bird.

THE COURT: Went to whose house?

THE WITNESS: I don't know his name.

THE COURT: Now, you and the defendant went there?

THE WITNESS: And Susan Dorsey, yes.

THE COURT: Can you describe that car at all, the T-Bird? Do you remember what color it was?

THE WITNESS: I think it was blue.

BY MR. NUNN:

Q It's been some time. Directing your attention to the early morning hours of October 7, 1975, do you remember where you were?

A Yes, I was in the police station.

Q Where was that?

A Falls Church.

1 Q Falls Church? Do you remember who was there?

2 A Yes. Sergeant Terew and Officer Dwyer and

3 Officer Conway. That is all I can remember.

4 Q Was there anybody else there?

5 A Just Susan Dorsey and Ronda and Paul.

6 Q Any other police officers?

7 A Yes, but I don't remember their names.

8 Q Do you recall --

9 THE COURT: (Interposing) When was this that

10 you were at the police station in Falls Church?

11 THE WITNESS: It was on October 7th in the early

12 hours of the morning. I don't know exactly what time.

13 THE COURT: All right.

14 BY MR. NUNN:

15 Q Do you recall making any statement to the officers,

16 having any conversation with them?

17 A Yes.

18 Q Do you recall approximately what you said to the

19 officers?

20 A Approximately what I have said here.

21 MR. NUNN: I have no further questions.

22 THE COURT: By that, did you tell the officers --

23

1 I think you better state what you told them.

2 THE WITNESS: I told them that I knew where the

3 stereo components were and that he had taken the checks.

4 THE COURT: Now, how did you learn where the

5 stereo was?

6 THE WITNESS: Susan Dorsey had -- well, Paul told

7 her to take the stereo components out of the car and so she

8 put them in the trunk of his T-Bird.

9 THE COURT: All right. Now, where was the T-Bird

10 at the time that you were at the station in Falls Church?

11 THE WITNESS: I would say in front of Paul Thims'

12 house. That is what I told the police.

13 THE COURT: Now, was the defendant present when

14 you told the police that?

15 THE WITNESS: No.

16 THE COURT: All right, sir.

17 Mr. NUNN: I have no further questions, Your Honor.

18 THE COURT: Mr. DeBOE.

19 CROSS EXAMINATION

20 BY MR. DeBOE:

21 Q How long have you known Paul Thims, Susan?

22 A About seven months.

23 Q About seven months. Is he a good friend of yours?

1 A Yes.

2 Q Was he your boyfriend at one time?

3 A Yes.

4 Q Is he your boyfriend now?

5 A No.

6 Q And were you with him when you all were arrested

7 out in Falls Church?

8 A No.

9 THE COURT: What was that question?

10 MR. DeBOE: When Mr. Thims was arrested, I wanted

11 to know if she was with him and she said no, she was not.

12 THE COURT: I thought you just testified that you

13 were present at the police station out there.

14 THE WITNESS: Yes, but I was not arrested with him.

15 THE COURT: Were you arrested at all?

16 THE WITNESS: Yes, I was.

17 THE COURT: All right.

18 BY MR. DeBOE:

19 Q Isn't it true that you had in your possession a

20 check of Susan Dorsey's?

21 A Yes.

22 Q It was partially made out, was it not?

23 A Yes.

1 Q Now, did you tell them about knowing where the
2 stereo was and what had happened that day before or after
3 Officer Dwyer told you that Paul Thims no longer loved you?
4 MR. NUNN: I don't understand that question
5 myself.
6 THE COURT: Would you repeat it?
7 BY MR. DeBOE:
8 Q Did you make the statement about knowing where
9 the stereo was and knowing about checks and knowing that
10 happened that day -- did you make that statement before
11 or after Officer Dwyer told you Paul Thims no longer loved
12 you?
13 MR. NUNN: If it please the court, it is not the
14 words I misunderstand. It is the way the words are put
15 together. This sounds like one of those "if you stop
16 beating your wife" questions.
17 MR. DeBOE: I asked if it was before or after
18 Officer Dwyer told her Paul Thims no longer loved her?
19 THE COURT: Go ahead and answer it.
20 THE WITNESS: The Officer never told me that he
21 didn't love me. He told me that he had been seeing another
22 girl, yes.
23

BY MR. DeBOE:

Q I beg your pardon. Did you tell him this before or after he made that statement?

A After.

Q After? Did you love Paul Thims?

A Yes.

MR. NUNN: I would object to that question.

THE COURT: Any other questions?

BY MR. DeBOE:

Q Were you kept in detention for awhile after this?

A Yes.

Q And was Susan Dorsey retained in detention?

A Yes.

Q And as far as you know Paul Thims was under arrest at this time, was he?

A Yes.

Q And you told the police officers that there was a T-Bird and that the stereo was in it and was in front of Paul Thims' house?

A Yes.

Q And that Paul Thims had bought the T-Bird?

A Yes.

[Transcript: March 3, 1976
P. 24, Line 11 to P. 30, Line 23
Susan Carol Dorsey]

1 THE COURT: Did you tell them that Paul Thims
2 told you that?
3 THE WITNESS: Yes.
4 MR. DeBOE: I have nothing further.
5 MR. NUNN: Susan Dorsey, Your Honor, will be the
6 next witness.
7 THE COURT: All right. The next witness is who?
8 MR. NUNN: Susan Dorsey, Your Honor.
9 Whereupon,
10 SUSAN CAROL DORSEY
11 was called as a witness by and on behalf of the Commonwealth,
12 and after having been previously duly sworn, was examined
13 and testified as follows:
14 DIRECT EXAMINATION
15 BY MR. NUNN:
16 Q Susan, would you state your name, please?
17 A Susan Carol Dorsey.
18 Q You are Phillis's sister. How old are you?
19 A Sixteen.
20 Q Where do you live?
21 A 2713 North Florida Street.
22 Q You better speak up a little louder now, good
23 and loud so I can hear you all the way over here.

1 Susan, did you have occasion to be at the Lubber
2 Run Recreation Center on the 6th of October?
3 A Yes, I did.
4 Q Do you recall what time you got there?
5 A About two.
6 Q How did you get there?
7 A Paul drove us.
8 Q Do you want to point out Paul? Paul Thims, the
9 defendant in this case?
10 A Yes.
11 Q Did he stay there?
12 A No, he did not.
13 Q Pardon me?
14 A No.
15 Q He did not? Did there come a time you saw him
16 again?
17 A Yes.
18 Q Do you remember when that was?
19 A About three.
20 Q All right. Did he have anything with him? Did
21 you observe anything that he had with him?
22 A A Sony stereo.
23 Q Okay. Did he have anything else with him?

1 A Checks.

2 Q All right. I show you this check. It is on

3 the Virginia National Bank. It is No. 137 in the upper

4 right hand corner and I ask you whether you have seen that

5 before.

6 A Yeah.

7 Q Okay. What were the circumstances in which you

8 saw that check before?

9 A I don't understand what you are saying.

10 Q Okay. Let me ask it another way then. Do you

11 know whose check it is?

12 A Yes.

13 Q Whose check is it?

14 A It is my sister's.

15 Q Your sister, Phillis's? What happened concerning

16 this check after you saw it?

17 MR. DeBOE: Your Honor, I don't think he has

18 laid a foundation. She hasn't said how she had occasion

19 to see that check or any other check like that. There has

20 been no statement as to what the circumstances were surrounding

21 it,when she saw it, or what happened leading up to that,

22 why he had the check.

23 THE COURT: You may proceed.

1 BY MR. NUNN:

2 Q Where did you see this check?

3 A In Paul's car.

4 Q In Paul's car? All right.

5 THE COURT: Was that when he came back to

6 Lubber Run?

7 THE WITNESS: Yes.

8 BY MR. NUNN:

9 Q Do you know where he got that check?

10 A Yes.

11 Q All right. Where did he get it?

12 MR. DeBOE: I'd like to know how she knows where

13 he got that check, if he did.

14 THE COURT: First you said you do know?

15 THE WITNESS: I will restate it. I think he got

16 it from my house, my sister's.

17 THE COURT: How do you know that?

18 THE WITNESS: Because my sister does have checks

19 like this and it says her check.

20 THE COURT: The question was how he got it. Do

21 you know how he got it?

22 THE WITNESS: No, I do not.

23 THE COURT: Your know it was your sister's check

1 and that he had it when he got back?

2 THE WITNESS: Um-hum.

3 BY MR. NUNN:

4 Q Okay. Then what happened with respect to this

5 check?

6 A He asked me if I would write out a check for

7 an amount of $45.00.

8 MR. DeBOE: Your Honor, I think we are getting

9 into an area of a crime that is not charged to show something

10 to do with the crime that is charged and perhaps the

11 circumstances surrounding this sort of summary impoundment

12 of an automobile at a later time. However, I think that

13 the evidence will show that that check was unknown to the

14 police officers at the time all this happened and all of this

15 has come out long since the charge.

16 THE COURT: We'll find that out as the evidence

17 develops. What was your question?

18 BY MR. NUNN:

19 Q My question was, I believe you had answered that

20 he asked you to fill it out. And my question was, did you

21 fill that check out?

22 A Yes, I did.

23 Q Did you sign your sister's name down there on the

1 bottom?

2 A Yes.

3 Q Now, do you know what he did with that check?

4 A I do believe that he gave it to a guy to sell

5 him a car.

6 Q Do you know what kind of car it was?

7 A I think it was a T-Bird.

8 Q Okay. Now, directing your attention --

9 THE COURT: (Interposing) It was a what?

10 THE WITNESS: T-Bird.

11 THE COURT: Is it the same one that has been

12 referred to here?

13 THE WITNESS: Yes.

14 BY MR. NUNN:

15 Q In other words, Paul bought the car with it and

16 the car happened to be a T-Bird. Is that right? Okay.

17 Directing your attention to the early morning hours of

18 October 7th, this would be that evening, right, that night?

19 Do you recall where you were and who you were talking to?

20 A Officer Dwyer.

21 Q Okay. Anybody else you were talking to?

22 A Two other officers.

23 Q Do you know where you were?

1 Where was this?

2 A Falls Church Police Station.

3 Q All right. Do you recall saying anything to the

4 officers concerning this check, if you recall?

5 A I don't remember.

6 Q That's fine. But you did make a statement to

7 the officers. That is correct. I mean you did talk to the

8 officers?

9 A Yes.

10 Q All right. Do you recall saying anything to the

11 officers concerning the T-Bird?

12 A No, I don't think so.

13 Q You just don't recall?

14 A No.

15 MR. MEAN: All right. I have no further

16 questions.

17 THE COURT: Mr. DeBOE.

18 CROSS EXAMINATION

19 BY MR. DeBOE:

20 Q Ma'am, what is your address again, please?

21 A 2713 North Florida Street.

22 Q Were you living there on the 6th of October?

23 Did you live there?

[Transcript: March 3, 1976
P. 34, Line 4 to P. 34, Line 23
Susan Carol Dorsey]

are having this hearing again about. We are not trying the man on the case at this point.

BY MR. DeBOE:

Q Did you talk with the officers about Paul Thims that evening?

A Yes.

Q Did you know about the items in the T-Bird? Did you know there were some items in the T-Bird, stereo?

A Well, I took the stereo from the stationwagon and put it in the T-Bird.

Q You did?

THE COURT: Where did you do that?

THE WITNESS: After he bought the car.

THE COURT: Well, was the wagon turned in to get the T-Bird?

THE WITNESS: No.

THE COURT: Then where did you do it? Where? I'm referring to a place.

THE WITNESS: I don't remember where it was. It was in Falls Church.

THE COURT: But it was at the time of the purchase of the wagon?

THE WITNESS: The T-Bird.

[Transcript: March 3, 1976
P. 46, Line 17 to P. 82, Line 7
Officer Dwyer]

1 original one that you have proffered initially for the
2 $45. I have all of those.
3 MR. NUNN: I have no further questions then.
4 MR. DeBOE: No questions, Your Honor.
5 THE COURT: All right. May Mr. Shaeffer be
6 excused to leave?
7 MR. NUNN: Yes, sir.
8 THE COURT: You are excused and may leave.
9 MR. NUNN: I would call Officer Dwyer.
10 Whereupon,
11 MICHAEL JOSEPH DWYER
12 was called as a witness by and on behalf of the Commonwealth,
13 and after having been previously duly sworn, was examined
14 and testified as follows:
15 DIRECT EXAMINATION
16 BY MR. NUNN:
17 Q Officer, would you state your name, please?
18 A Yes, sir. Michael Joseph Dwyer.
19 Q Would you spell your last name?
20 A D-w-y-e-r.
21 Q What is your occupation?
22 A I am a police officer, Arlington County, Virginia.
23 Q How long have you been so employed?

1 A One year, five months.

2 Q Were you on duty on the 6th of October, 1975?

3 A Yes, sir, I was.

4 Q Do you recall what time you came on duty that

5 day?

6 A Yes, sir, 1500 hours.

7 Q Directing your attention to approximately

8 6:30 that evening, did you have occasion to respond to a

9 citizen complaint?

10 A Yes, sir, I did.

11 Q As a result, what if anything did you do in

12 response to that complaint?

13 A I responded to the complainant's address,

14 spoke to the complainant.

15 Q Do you recall where it was?

16 A Yes, sir. I believe it was 52 --

17 Q (Interposing) If you recall, whose house was

18 it?

19 A It was the Dorsey's family house.

20 Q Is that in Arlington?

21 A Yes, sir, it is.

22 Q What if anything occurred when you arrived?

23 What if anything did you observe when you arrived?

A The complainant met me at the door and showed me various points of interest involving a burglary that occurred at that house during that day.

Q Did you investigate her complaint?

A Yes, sir, I did. I examined the points that she pointed out.

Q As a result of your investigation, were you able to determine whether anything was missing?

A Yes, sir, I was.

Q What were those things?

A A Sony AM-FM Stereo Receiver.

MR. DeBOE: I'd like as a result of this, did you determine what was missing? I'd like to have a foundation laid for that, how he knows what was missing and what he made a report of in his initial report.

THE COURT: This was as a result of Miss Dorsey's telling you that?

THE WITNESS: Yes, sir, it was.

BY MR. NUNN:

Q Go ahead, Officer.

A Aside from the receiver, excuse me, Miss Dorsey indicated that other personal property was taken, some of which were personal identification of Miss Dorsey's,

Miss Phillis Dorsey's.

THE COURT: All right.

BY MR. NUNN:

Q All right. Did there come a time that you learned that there were some checks missing?

MR. DeBOE: Objection, leading. Assuming a fact not in evidence.

THE COURT: Objection sustained.

BY MR. NUNN:

Q Now, as a result --

THE COURT: (Interposing) Did you determine that anything else was missing as a result of your investigation?

THE WITNESS: Yes, sir, I did. Those items were several checks belonging to Miss Phillis Dorsey.

BY MR. NUNN:

Q As a result of your investigation, Officer, were you able to determine the existence of any suspects?

A Yes, I was.

MR. DeBOE: Your Honor, he is leading. He is not laying a foundation. I would like him to proceed in a proper manner of questioning.

THE COURT: Objection is overruled. You may

1 cross-examine as to all of this.

2 MR. DeBOE: I shall, Your Honor.

3 BY MR. NUNN:

4 Q Did you determine the existence of any possible

5 suspects?

6 A Yes, I did. Through talking to the complainant,

7 Miss Dorsey, she indicated to me -- told me that she

8 suspected Paul Thims as being the perpetrator of the

9 crime.

10 Q All right. Directing your attention to

11 later on that evening, did you have occasion to be at the

12 Falls Church Police Department?

13 A Yes, I did.

14 Q Do you recall what time you were there?

15 THE COURT: Excuse me. What -- did she give

16 any underlying reasons of why she suspected the defendant

17 of being the perpetrator of any burglary or larceny?

18 THE WITNESS: Yes, sir, she told me that both

19 Paul Thims and his sister, Ronda Thims had been in the house

20 on several occasions prior to the burglary that I took

21 the report on and that items had been taken from the house

22 about the same time that the Thims family was in there on

23 those previous occasions and it was for this reason she

1 indicated to me she suspected Paul Thims and his sister,
2 Ronda Thims.
3 BY MR. NUNN:
4 Q What time did you arrive at the Falls Church
5 Police Department?
6 A It was approximately 12 midnight, early morning
7 hours.
8 Q What did you do upon arrival?
9 A I spoke to the arresting officers that apprehended
10 the Thimses, Susan Dorsey, Susan Graham.
11 Q All right, sir. Did you see any items upon your
12 arrival?
13 A Yes, sir, I did.
14 MR. DeBOE: Let me see that receipt just a
15 moment, please.
16 BY MR. NUNN:
17 Q I show you these exhibits, Officer. The first
18 one appears to be a receipt. Have you seen that before?
19 A Yes, sir, I have.
20 Q Where did you see it?
21 A I saw that at the Falls Church Police Department
22 the night of the arrest.
23 Q All right, sir. I show you these two checks,

1 Virginia National Bank checks. One is marked No. 127 in
2 the upper right-hand corner. The other is marked No. 13
3 in the upper right-hand corner. Neither is completely
4 filled out. I ask you if you have seen those before.
5 A Yes, sir, I have.
6 Q Where did you see those?
7 A The Falls Church Police Department at the same
8 time I saw the receipt.
9 Q What did you then do if anything?
10 A Well, after speaking to the officers that made
11 the initial arrest, I spoke to Susan Dorsey and Susan Graham
12 and at approximately 1:30 in the morning we conducted an
13 interview with Susan Graham which --
14 Q (Interposing) Do you recall what time the
15 interview was completed?
16 A Yes, sir. I believe about 2:12 hours.
17 Q Do you recall the substance of that interview.
18 A Yes, sir. Susan Graham indicated to me her
19 involvement and the involvement of others in the burglary
20 in Arlington County on that day, the previous day, on the
21 6th.
22 Q What happened then if anything?
23 A Well, after she gave us a verbal statement, we

1 asked that she would give us a written statement, which she
2 did, and in that written statement she implicated Paul Thims.
3 MR. DeBOE: Your Honor, the best evidence of that
4 is the written statement.
5 THE COURT: Is it where it can be obtained?
6 THE WITNESS: Is that the written statement, sir?
7 THE COURT: Um-hum.
8 THE WITNESS: Right now I don't believe so.
9 BY MR. NUNN:
10 Q It is in the Falls Church Police Department,
11 isn't it?
12 A Yes, sir.
13 Q I believe the officer is competent to testify
14 to what he heard the witness say.
15 A I was there during the interview.
16 MR. DeBOE: Your Honor, I object.
17 THE COURT: The objection is overruled.
18 MR. DeBOE: Note my exception.
19 BY MR. NUNN:
20 Q Would you continue to describe the contents of
21 Susan Graham's conversation with the officers?
22 A Yes, sir. Susan Graham told me that she had
23 been with the defendant and Susan Dorsey and Ronda Thims

1 that day for the better part of the afternoon and that at
2 approximately 1400 hours, 2 o'clock in the afternoon, Paul
3 Whims, the defendant, drove --
4 THE COURT: (Interposing) What time is that
5 now?
6 THE WITNESS: About 2 o'clock in the afternoon.
7 THE COURT: 2 p.m.
8 THE WITNESS: Drove her, Susan Graham and Susan
9 Dorsey down to Lubber Run Recreation Center, I guess,
10 approximately 2 o'clock in the afternoon, left them down
11 there, then returned at approximately 1500 hours or 3 p.m.,
12 at which time she told me she observed a stereo in the
13 back seat of the vehicle and some checks and she also advised
14 me that --
15 MR. DeBOE: (Interposing) Your Honor, this is
16 just getting into memory and hearsay and the girl is here
17 to testify. I think it is cumulative.
18 THE COURT: His state --
19 MR. DeBOE: (Interposing) I withdraw the
20 objection.
21 THE COURT: His state of mind is a critical issue
22 in the case on the issue of probable cause and hearsay is
23 admissible to show probable cause.

MR. DeBOE: I withdraw the objection.

THE COURT: Then I'd like for you, unless you have a serious objection, not to interrupt the testimony. Now, I want the answer read back.

(Answer read.)

THE COURT: You may proceed.

THE WITNESS: Yes, sir. She also advised me that Paul Thims told her that he was going back to the Dorsey home to try to pick up some more items.

BY MR. NUNN:

Q All right. What did she in your presence state what happened with the stereo she had mentioned?

A Yes, sir. I am not sure whether it was Susan Dorsey that told me this or whether it was Susan Graham but the defendant attempted to pawn the merchandise off at the National Pawnbrokers down at the 3100 block of Lee Highway and for some reason or other, it malfunctioned and the clerk at the Pawnbrokers would not accept it.

Q And what if anything did occur to the stereo thereafter?

A After it was unsuccessful at being pawned off, the stereo was placed in the back of a 1962 Ford T-Bird, blue in color.

1 THE COURT: You mean on the back seat or in the
2 trunk?
3 THE WITNESS: It was placed in the right rear
4 corner of the trunk, Your Honor.
5 THE COURT: That is according to Susan's story
6 to you?
7 THE WITNESS: Yes, sir.
8 BY MR. HUNN:
9 Q All right, sir. I believe you mentioned the
10 statement was typed up. What time were you completely
11 through with Susan Graham? Do you recall?
12 A Yes, sir. It would be roughly 3:15 hours in the
13 morning.
14 Q Then what did you do?
15 A After interviewing Susan Graham, we turned to the
16 other defendant, Susan Dorsey, and conducted an interview
17 with Susan Dorsey which began approximately 3:15 hours.
18 Q That began at approximately 3:15, you say?
19 A Yes, sir.
20 Q What time was that completed?
21 A At approximately 4:15 hours, I believe the
22 interview itself was completed. There was a waiting period
23 of approximately 40, 45 minutes to have the interview typewritten

1 up and then initialled.

2 THE COURT: That would have been completed at

3 what time?

4 THE WITNESS: Approximately 5:10, Your honor.

5 BY MR. NUNN:

6 Q Do you recall the substance of the statement that

7 you heard from Miss Dorsey?

8 A Yes, sir. Susan Dorsey also implicated her

9 involvement as well as the defendant's in the burglary

10 and grand larceny that occurred at her family's home

11 earlier the previous day and she spoke of the stereo recorder

12 which she found to be a surprise to her because when she

13 had left the house that day the stereo was still there and

14 when she was picked up at Lubber Run Recreation Center,

15 along with Susan Graham, she observed the stereo in the

16 back seat, I believe, of the defendant's car and the

17 defendant advised her that he wasn't going to tell her about

18 the stereo being taken because he wanted to use the money

19 to purchase the vehicle.

20 Q What vehicle was that?

21 A That was the 1962 Ford T-Bird, blue.

22 Q Was that vehicle, according to her statement, her

23 conversation, was that vehicle purchased?

A Yes, sir, it was. She advised me that the defendant forced her to write a check.

MR. DeBOE: Objection. She was here and she is still here. The characterization of force.

THE COURT: Objection overruled.

MR. DeBOE: Note my exception, please.

BY MR. NUNN:

Q All right. Go ahead, Officer.

A She advised me that -- told me that the defendant forced her to write a check for $45 for the purchase of the vehicle. She stated that she objected and was told that everybody else was chipping in by the defendant, why couldn't she, so on that basis she did write a check for $45 and forged her sister's signature on her sister's check.

Q And then the T-Bird, I take it was subsequently purchased?

A Yes, sir. The check was given to the defendant who passed it for the T-Bird.

Q Did there come a time when you left the Falls Church Police Department?

A Yes, sir, there was.

Q Do you recall approximately what time that was?

A Yes, sir, it was approximately 6:30 in the morning

1 Q Where did you go at that time?

2 A I, along with another officer, transported the

3 three juveniles, three female juveniles down to the Northern

4 Virginia Detention Home in Alexandria.

5 Q Do you recall what time you arrived there?

6 A Yes, sir. I believe it was about 7:05, 7:15,

7 somewhere thereabouts.

8 Q Somewhere between 7:05 and 7:15, you say?

9 A Yes, sir, definitely.

10 Q Do you recall what time you left?

11 A Yes, sir, that would be approximately 20 until 8.

12 Q In what direction did you go? What route did you

13 follow?

14 A When we left the Northern Virginia Detention Home,

15 we took 236 westbound, got onto 95 northbound, and arrived

16 back into the Arlington jurisdiction at approximately 0800 hours.

17 Q Did there come a time when you arrived at the

18 Arlington County Police Department?

19 A Yes, sir, there was.

20 Q Do you recall when that was?

21 A Yes, sir. It was approximately 900 hours.

22 Q What did you do then?

23 A I went up to our Criminal Investigation Division

1 and spoke with one of the detectives that would be handling
2 the case at which time he advised the vehicle should be
3 impounded because --
4 MR. DeBOE: (Interposing) Your Honor.
5 THE COURT: Objection is sustained.
6 BY MR. NUNN:
7 Q Did there come a time when you left the Arlington
8 County Police Department?
9 A Yes, sir, there was.
10 Q Approximately when was that?
11 A Approximately 9:10.
12 Q Where did you go at that point?
13 A We responded up to the Thims residence on 27th Road.
14 Q What did you observe as you approached that
15 residence?
16 A I observed from the street as I was coming up
17 on the house, the 1962 Ford T-Bird, blue in color, parked
18 in the driveway.
19 Q You were on the public street when you observed
20 the T-Bird?
21 A Yes, sir, I was.
22 Q Was it located in a garage or any other enclosed
23 area?

A No, sir, it was in plain view.

Q What did you then do if anything?

A Upon arrival, I tried to ascertain ownership of the vehicle by running what we call a check on the VIN number, Vehicle Identification Number through the computers and was unable to determine who the legal ownership belonged to or legally registered to.

Q Did you check the license plates?

A There were no license plates on the vehicle.

Q Did this vehicle match the description of the vehicle you had been told about earlier that evening?

A Yes, sir, I was told the type and make of the vehicle and where I could find the vehicle.

Q What did you then do?

A I impounded the vehicle, seized the vehicle for evidence, having been purchased with stolen checks, stolen forged checks.

Q And subsequent to seizing the vehicle, did you conduct an inventory of its contents?

A Yes, sir, I did.

Q Did you seize any evidence as a result of that inventory?

A Yes, sir. Several items were taken into custody

for protection and one was taken into custody as evidence and that is the stereo sitting over there.

Q The stereo that is the subject of this suppression hearing?

A Yes, sir.

Q Over there on the desk?

MR. NUNN: If you will indulge me just a moment, Your Honor.

THE COURT: Was the vehicle left at the Thims residence?

THE WITNESS: Yes. When I got there, sir, it was at the Thims residence. Two of the other defendants said that the defendant had obtained tags from his Mother's vehicle and driven the vehicle to his house after purchasing it.

THE COURT: I mean after you did what you did to the vehicle or took the evidence from it, was the vehicle left there at the Thims residence?

THE WITNESS: No, sir, it was impounded and taken to our property yard.

THE COURT: It was taken to the property yard?

THE WITNESS: Yes, sir, it was.

THE COURT: Were impoundment sheets filled out

1 on the impoundment?

2 THE WITNESS: Yes, sir, they were.

3 BY MR. NUNN:

4 Q Where was the inventory conducted of the

5 contents of the vehicle?

6 A It was conducted at the scene where the vehicle

7 was originally located at the Thims house.

8 Q Now, upon seizing the stereo, what did you do

9 with it?

10 A I immediately returned to the police department

11 and handcarried it up to our identification section for

12 comparison analysis for latent fingerprints.

13 MR. NUNN: All right. I have no further

14 questions.

15 THE COURT: Mr. DeBoe.

16 CROSS EXAMINATION

17 BY MR. DeBOE:

18 Q Now, what time did you get to the Falls Church

19 Police Department?

20 A It would be approximately 1:10 in the morning.

21 Q 1:10 and you left there about 5:00 in the

22 morning, is that right?

23 A No, sir. We left there around 6:30 in the morning.

1 Q Where did you go? Did you go out there by
2 yourself or with somebody?
3 A I responded by myself.
4 Q By yourself? Did there come a time another
5 officer became involved?
6 A I'm not quite sure I understand that.
7 Q When did you leave the Falls Church Police
8 Department?
9 A At 6:30 in the morning.
10 Q At 6:30 in the morning?
11 A Yes, sir.
12 Q Who was with you?
13 A Ronda Thims, Susan Dorsey, Susan Graham, and
14 Officer James Griswald.
15 Q Officer Griswald? And he accompanied you to
16 where? Arlington County Police Station?
17 A We first came down to drop off Officer Griswald's
18 vehicle at the Police Department and Officer Griswald came
19 with me in my cruiser and we drove over --
20 Q (Interposing) At that time, at that instant,
21 you had all the information that you have testified to
22 before, did you not, about the supposedly buying the
23 automobile, seeing a receipt there?

1 THE COURT: When was that, Mr. DeBoe?

2 BY MR. DeBOE:

3 Q When they arrived at the Arlington County Police

4 Department, you knew or you had the information relating

5 to all of the events that occurred prior to your going to

6 the Falls Church Police Department at 1 o'clock, did you

7 not?

8 A Yes, sir.

9 Q And you stopped to drop off the cruiser and at

10 that time when you arrived back at the Arlington County

11 Police Department, was there any necessity for you to go

12 out to the Detention Center? Couldn't someone else have

13 taken them out, like a lady officer or one of the Juvenile

14 Division -- isn't it true that that is normal procedure?

15 A No, sir, it is not.

16 Q It's not?

17 A No, sir. It's usually the arresting officer or

18 the officer that has the case.

19 Q When you left the Falls Church Police Department

20 that evening, Paul Thims was under arrest, was he not?

21 A Yes, sir.

22 Q And do you know what he was placed under arrest

23 for?

1 A I believe contributing -- driving while revoked.

2 Q Contributing, breaking and entering, grand larceny.

3 A Warrants were not obtained at that time.

4 Q But they were force -- you intended to procure

5 those warrants, did you not?

6 A Yes, sir.

7 Q And a bond was set on Paul Thims, isn't that

8 true?

9 A In what jurisdiction are you speaking of?

10 Q In Falls Church, Fairfax County?

11 A I believe so.

12 Q Do you recall how much it was?

13 A I believe it was $1500.

14 Q $1500?

15 A Yes, sir.

16 Q Did you look at the papers that were taken from

17 Paul Thims when he was arrested? Papers and checks?

18 A At the time Paul was arrested I was shown these

19 items that were taken from him.

20 Q Oh, I see. You didn't go through any of the

21 papers that were taken from him? These items were taken

22 from Paul Thims?

23 A This item was and these items were taken from

1 Susan Graham.

2 Q You are sure this came from Paul Thims?

3 A Yes, sir.

4 Q Would you look at the back of that, please?

5 A Certainly.

6 Q What does that note say?

7 A It says taken from purse belonging to Susan

8 Graham.

9 Q So, was it taken from Susan Graham or Paul Thims?

10 A According to this it was taken from Susan Graham.

11 Q Did you see any other writings of Paul Thims?

12 A To be honest with you, I don't know.

13 Q Let me show you --

14 MR. NUNN: (Interposing) May I see the item

15 first, this note here.

16 THE WITNESS: One item, I do recall having been

17 taken from Mr. Thims was a pawn check, I believe.

18 BY MR. DeBOE:

19 Q Let me show you this note here. Do you remember

20 seeing that in Paul Thims' effects?

21 A No, sir, I don't.

22 Q Could that have been in his wallet?

23 MR. NUNN: He doesn't recall seeing it, Your Honor.

1 THE COURT: Objection sustained.

2 BY MR. DeBOE:

3 Q Would you read it to the Court?

4 THE WITNESS: It is dated October in the upper --

5 THE COURT: (Interposing) He has never seen it

6 before. How would he get that into evidence?

7 MR. DeBOE: I will put it into evidence at a later

8 time.

9 THE COURT: All right, sir.

10 BY MR. DeBOE:

11 Q Did Susan Dorsey give a written statement?

12 A Yes, sir, she did.

13 Q And was her written statement substantially the

14 same as the verbal statement that you have said you overheard?

15 A Yes, sir.

16 Q And in there, did she say she was forced to write

17 that check?

18 A She said she was and I asked her to qualify that.

19 Q Did she tell you -- did either of the girls tell

20 you where the car was located, the Thunderbird?

21 A Yes, sir.

22 Q They said it was located in front of Paul Thims'

23 house?

1 A They said I could find the vehicle in the driveway.

2 Q In the driveway?

3 A At the Thims' residence.

4 Q It was in fact on private property, was it not?

5 A It was on the Thims' driveway.

6 Q How do you know these times so precisely? Did you

7 write them down?

8 A No, sir, I didn't.

9 Q So you could have -- you could have been at the

10 Detention Home at 6 o'clock instead of 8 o'clock or 7:30

11 instead of 8 o'clock?

12 A No, sir.

13 Q You remember those times specifically?

14 A Approximately.

15 Q Approximately. So what do you mean by approximately,

16 give or take 30 seconds, 30 minutes, five minutes?

17 A Five or ten minutes either way.

18 Q Five or ten minutes. You got back to Arlington

19 just around 8:15, 8:20?

20 A About 8:05.

21 Q As far as you knew, Paul Thims was still in jail?

22 A As far as I knew.

23 Q Didn't you have the keys to that Thunderbird with

1 you, sir?

2 A Yes, sir, I believe I did.

3 Q As far as you know, there was only that one set

4 to the Thunderbird?

5 A I wouldn't know.

6 Q As far as you knew then?

7 A I only had one set in my possession.

8 Q Those were the keys that were taken from Paul

9 Thims?

10 A Yes, sir, they were with his personal effects.

11 Q They were with his personal effects and you had

12 those keys in your possession?

13 A Yes, sir, I did.

14 Q Paul Thims was in jail?

15 A As far as I knew, yes, sir.

16 Q The two girls or three girls, whoever it was, were

17 in Juvenile Detention at that time?

18 A Yes, sir.

19 Q And the car was still precisely as was described

20 to you by the girls, is that right?

21 A I found it where I was told it would be located,

22 correct.

23 Q Why didn't you get a search warrant?

1 A Why did I not get a search warrant?

2 Q Why didn't you get a search warrant?

3 A Because it was purchased with stolen, forged

4 checks.

5 Q You didn't know that at the time, did you?

6 A Yes, sir, I did.

7 Q That is not -- I'm sorry if I seem like I'm

8 arguing. You did not know for certain that was the case,

9 did you?

10 A Yes, sir, I did.

11 Q You didn't have any checks, did you?

12 A Would you explain that a little bit?

13 THE COURT: All you have to have is probable

14 cause. You don't have to have the physical --

15 MR. DeBOE: (Interposing) I understand that.

16 I understand that but this purchasing was with stolen checks,

17 I think is hearsay. He could have obtained a warrant. It

18 is a misdemeanor for $45. It did not occur in his

19 jurisdiction. It was not committed in his presence. He

20 has no authority under that set of circumstances to go out

21 and seize a car. You can perhaps do these things if you

22 see the stolen items in the car and you know them to be

23 stolen in there, but I do not know of any authority that

allows you to go out on rumor or probable cause and summarily seize an automobile without that. Every case I have been able to find on that, sir, and the ones cited in the Virginia statute relate to items that were found like liquor found in a car and they have seen it there and they can impound the car and it relates to liquor and stolen items. So on those lines, Your Honor, that does not mature until the items are seen and known to be stolen. But I'd like to --

THE COURT: (Interposing) All right. You may proceed.

BY MR. DeBOE:

Q The car wasn't reported stolen, was it?

A No, sir.

Q And the car was closed when you went up to that driveway, isn't that right? The doors were closed?

A The doors were closed.

Q And the trunk was locked, was it not?

A Yes, it was.

Q And you found the VIN number inside the car?

A Yes, sir, on the door.

Q You had to open the door and look at it?

A Yes, sir.

Q And let me ask you just a theorotical question.

1 What would your response be had it come back registered to
2 Paul Thims? What would you have done then? Would that have
3 changed your conduct?
4 MR. NUNN: That is hypothetical conduct --
5 MR. DeBOE: (Interposing) And I am --
6 MR. NUNN: (Continuing) -- Excuse me, I believe
7 I was talking. It does call for a conclusion on the part
8 of the witness concerning a situation that would not have
9 occurred.
10 THE COURT: I think what he would have done under
11 other circumstances is not the issue. What he did under
12 these circumstances is what is before the Court.
13 MR. DeBOE: Thank you, Your Honor.
14 BY MR. DeBOE:
15 Q The car had not been reported stolen. The
16 information you had was that Paul Thims purchased it. It
17 had been sold to Paul Thims?
18 A Yes, sir.
19 Q And the items in there supposedly belonged to
20 Paul Thims? The stereo having been allegedly stolen by
21 him?
22 A Would you rephrase that?
23 Q Yeah. I'll rephrase it. Isn't it true you were

1 looking for evidence to incriminate Paul Thims and no one
2 else? Paul Thims was the object of your search, was he not?
3 A I had a case I was working. I was trying to
4 establish who was the guilty party.
5 Q But it was directed to Paul Thims though, wasn't
6 it?
7 A People involved in the crime, not specifically
8 the defendant in this case.
9 Q Now, I get back to the question. Why didn't
10 you get a search warrant?
11 A I felt I had no need to obtain a search warrant,
12 having been purchased with stolen and forged checks being
13 fruits of the crime itself and to be considered as evidence
14 and taken into custody as evidence.
15 Q Mr. Dwyer, I don't want to argue with you but
16 at the last suppression motion I recall a completely different
17 reason for impounding the car that you stated at that time
18 that you thought you had ample cause to seize the car because
19 it contained the stolen goods.
20 A Sir, if you remember correctly, I believe I gave
21 three reasons for impounding this vehicle.
22 Q Again, the reason you say, the sole reason now
23 that you did not obtain a search warrant was because it was

1 the fruits of a crime, you thought it to be the fruits of
2 a crime?
3 A No, sir, I had good reason to believe it was
4 the fruits of a crime.
5 Q But you thought it was fruits of a crime. That
6 is the reason you did it. That is what you are saying now.
7 A I would not say it was the sole reason. That was
8 part.
9 Q What were the other reasons?
10 A No legal ownership could be determined and that
11 it contained contraband.
12 Q All right, the fact that it was purchased with
13 stolen checks did not become known until the check was
14 received back, is that right?
15 A No, sir.
16 Q You didn't know that for sure?
17 A No, sir.
18 THE COURT: Who is testifying now, Mr. DeBoe?
19 That is not what he said.
20 MR. DeBOE: I will rephrase it.
21 BY MR. DeBOE:
22 Q When you went to that car, you did not know that
23 title was in somebody else's name, did you?

1 A MR. NUNN: Is that a question or a statement,
2 Your Honor?
3 THE COURT: It is a question.
4 BY MR. DeBOE:
5 Q Did you know when you arrived at the address
6 of Paul Thims and saw that car, did you have any information
7 that it was not his car?
8 A Prior to running the check on the vehicle?
9 Q Yes.
10 A No, I had no information.
11 Q And the only way you got this information, is
12 it not true that you opened the door and looked at the
13 VIN number of the -- Vehicle Identification No.?
14 A That was the only way I found out it wasn't
15 legally registered in the Tri-state area, Metropolitan Area.
16 Q And the only way -- after you had run the
17 Vehicle Identification Number check and it came back as
18 not belonging or not being registered in the tri-state
19 area, you then commenced an inventory of the vehicle?
20 A No, sir, I seized the vehicle prior to.
21 Q You seized the vehicle?
22 A Prior to conducting inventory search on it, yes,
23 sir.

1 Q And when did you conduct that inventory search?
2 Was it on the property of --
3 A (Interposing) Yes, sir, it was.
4 Q It was on the property of Paul Thims?
5 A Yes, sir, at his mother's house.
6 Q And why did you conduct that search right there?
7 A Because the vehicle was being taken into
8 custody. It was being impounded.
9 Q And the reason you didn't get a warrant is
10 because you didn't think you needed one, is that right?
11 A Yes, sir, that is correct.
12 Q Did you make an application to a magistrate
13 for a warrant?
14 A No, sir, I did not.
15 Q You looked at the receipt, I believe, here,
16 received of Ronda Thims $50?
17 A Yes, sir.
18 Q And let's see, received $50 from Ronda Thims and
19 $50 Monday?
20 A Correct.
21 Q Did you talk with Susan Graham first or Susan
22 Dorsey first?
23 A I spoke, I believe, with Susan Dorsey initially

1 for five or ten minutes and then spoke with Susan Graham.

2 Q And did she volunteer this information?

3 A We advised them they were under arrest and

4 anything that they might say involving other crimes in

5 other jurisdictions might be held against them and with

6 that information they did.

7 Q Did Susan Graham make the statement that you have

8 related before or after you told her that Paul was seeing

9 another girl?

10 A I never told anybody that Paul was seeing another

11 girl. He wasn't under arrest for that as far as I was

12 concerned.

13 Q You made no statement to that effect?

14 A No, sir, I did not.

15 Q Did anybody in your presence make any statement

16 like that?

17 A Not that I know of.

18 Q Did Susan Dorsey tell you that she had written

19 any other checks other than this one?

20 A Yes, sir, I believe she did.

21 Q And did she say that she cashed those checks?

22 A Attempted to.

23 Q Attempted to?

A Yes, sir.

Q And she was unsuccessful in doing that?

A Yes, sir.

Q Was that for cash money?

A To my knowledge I believe it was, yes.

MR. NUNN: My only objection to this line of questioning is it is getting to the trial on the merits.

MR. DeBOE: I have one more question, Your Honor.

BY MR. DeBOE:

Q Did she tell you that she had any money before she started writing these checks?

THE COURT: What does that bear on the issue here of this search of the vehicle?

MR. DeBOE: She is talking about being forced -- the statement here is she is forced. That wasn't the statement from the girl when she was on the stand. She said she unwillingly wrote this check and he says that she attempted to cash some other checks for cash money.

THE COURT: All right. You may answer.

THE WITNESS: As far as I know, in answering your previous question, as far as I know, I don't know whether she did have any cash on her prior to the attempt.

BY MR. DeBOE:

Q When you arrived at the house, was Paul Thims there? Was Paul Thims at the house when you arrived to seize the car? When you arrived at 9 o'clock in the morning, was he there?

A No, sir, he wasn't.

MR. DeBOE: I have no further questions.

MR. NUNN: I have no further questions.

THE COURT: How did the keys to the car come to you? You say they were among his personal effects?

THE WITNESS: Yes, sir. It is procedure when a person is arrested to take all personal items and secure those items away from the individual and I obtained the keys to the vehicle out at the Falls Church Police Department that evening.

THE COURT: All right, sir. Anything else?

MR. DeBOE: I have one question prompted by Your Honor.

FURTHER CROSS EXAMINATION

BY MR. DeBOE:

Q The trunk, was it closed when you were there?

A When we first arrived, it was, yes.

Q It was? And did you open that trunk?

A Yes, sir.

Q And how did you open it, sir?

A Used the key, I believe.

Q Used the key?

A Yes, sir.

Q Put it in and turned it and the trunk came up?

A Yes, sir.

THE COURT: May Mr. Dwyer be excused?

MR. DeBOE: As far as I know, he can, yes, sir.

THE COURT: You are excused.

MR. NUNN: I wonder if I could ask Officer Dwyer to take the item back down to the property room?

THE COURT: Yes. The property will be returned.

We will take a recess and then argue the motion. Come back at 2 o'clock for argument. All right, 2 o'clock.

(Whereupon, at 1 o'clock p.m., the hearing was recessed, to reconvene at 2 o'clock p.m.)

[Transcript: March 3, 1976
P. 85, Line 8 to P. 88, Line 11
Paul C. Thims]

1 Whereupon,

2 PAUL CHRISTIAN THIMS,

3 defendant, was called as a witness by and in his own

4 behalf, and after having been previously duly sworn, was

5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DeBOE:

8 Q Would you state your full name, please?

9 A Paul Christian Thims.

10 Q Where do you live?

11 A 5217 North 27th Road.

12 Q Where did you live on October 6, 1975?

13 A 5217 North 27th Road.

14 Q Who did you live there with?

15 A My mother.

16 Q Your mother. On the 6th day of October, did there

17 come a time you were arrested in Falls Church, Virginia?

18 A Yes.

19 Q Was certain property seized from you?

20 A Yes.

21 Q Let me show you this exhibit. What else was

22 seized from you, sir, besides this?

23 A Keys to a Ford Thunderbird that I had paid for

half of it and I believe that is all.

1 Q All right. Were the keys taken from your
2 possession?
3 A Yes.
4 Q Is that the only set of keys in existence as far
5 as you knew?
6 A Yes.
7 Q Now, this item right here, do you recognize that
8 item? I have already shown you that, Mr. Nunn.
9 Did you have that item with you when you were
10 arrested?
11 A Yes.
12 Q Would you read it to the Court, please?
13 A Bill of Sale for 1962 Thunderbird, sold for
14 $100 cash.
15 Q Who is that signed by?
16 A Paul Wilhide.
17 Q Is that a receipt for the 1962 Thunderbird that
18 is in question here?
19 A Yes, it is.
20 MR. DeBOE: Your Honor, I would move this in
21 as a defense exhibit.
22 THE COURT: Defense Exhibit No. 1.
23 MR. NUNN: Your Honor, may I cross-examine on

1 the receipt?

2 THE COURT: At this time? Yes, you may if you

3 wish or you may reserve. I will reserve ruling on its

4 admissibility then and you cross-examine in connection

5 with your entire cross-examination and then I will rule

6 on your motion to admit it into evidence.

7 BY MR. DeBOE:

8 Q To your knowledge, Mr. Thims, or as far as you

9 know, was that receipt or that paper there taken from you

10 along with the keys and the other items that you had?

11 A At the time I was locked up, yes.

12 Q How long were you in custody, sir, as a result

13 of that arrest?

14 A For about three months.

15 Q And was there a bond set on the charges for you?

16 A Yes, there was.

17 Q Do you recall how much it was?

18 A I believe it was three thousand.

19 Q Three thousand dollars?

20 A Yes.

21 THE COURT: When was bond set, Mr. Thims?

22 THE WITNESS: The following day.

23 THE COURT: On the 7th?

1 THE WITNESS: Yes.

2 BY MR. DeBOE:

3 Q That car was parked on the property at the address

4 you gave us earlier on private property?

5 A Yes, it was in the driveway.

6 Q Did you give anyone permission to take that car

7 or search that car?

8 A No, I did not.

9 Q Did anyone ask?

10 A No.

11 Q Who all was -- are we having a rehearsal back here?

12 Your Honor, if they are going to do this, I would like to have

13 a rule. I do have other questions.

14 THE COURT: If those witnesses are going to be

15 recalled, I will ask that a rule be applied.

16 MR. NUNN: I don't intend to at this time.

17 THE COURT: Well, Mr. Dwyer was speaking to them.

18 MR. DWYER: I'm sorry, Your Honor.

19 THE COURT: Proceed.

20 MR. DeBOE: Let me look at these notes here,

21 Your Honor. I beg your indulgence for a second.

22 MR. NUNN: Your Honor, it is possible I will call

23 one of these witnesses.

[Transcript: March 3, 1976
P. 122, Line 5 to P. 125, Line 14
Honorable William R. Winston]

1 hope I have it here, sir.

2 THE COURT: Thank you. We will take a brief

3 recess.

4 (Whereupon, a short recess was taken.)

5 THE COURT: This is the second time we have

6 been through this and it would appear that the case is

7 as unique upon a second look as appeared to all of us to

8 have been on the first look in that you don't find cases

9 that seem to be factually particularly in point. I

10 approached it in three steps, so to speak, here.

11 First, with the Cabler against Commonwealth

12 doctrine as set forth in 212 Va. at page 520, being an

13 inventory case. There you had a defendant who was in

14 the hospital and he was arrested there on a felony charge.

15 His car had been illegally parked outside of the hospital

16 in a driveway that was blocking the ingress and egress

17 of ambulances to and from the hospital. There the vehicle

18 was impounded by the Roanoke Police and the property in it

19 was inventoried and among the property so inventoried was

20 the subject matter of some crimes.

21 Now the Court in the Cabler case sustained the

22 use of the inventory as the method by which the property

23

1 was taken and did it on the ground that the removal and
2 the inventorying of the contents of the vehicle were
3 reasonable acts performed under procedures established by
4 the Roanoke Police Department for the protection of property
5 in the possession of a person arrested away from his place
6 of residence. They went on to say that where the defendant
7 was away from his home the police will take temporary
8 possession of the property, including vehicles, for safe
9 keeping unless other immediate means are available to
10 protect such property, also for protecting the property
11 of the defendant, the owner or the occupant of the vehicle.
12 Here however you have the defendant arrested
13 away from the vehicle and the vehicle in the driveway of
14 the place where he lived, so it would appear that the
15 Cabler case is not really in point as such there factually
16 to what we have here. The inventorying referred to in
17 Cabler was one where temporarily there must be some
18 protection of property while a person is under arrest away
19 from his home.
20 So then I passed on to the next step in reaching
21 a decision, which was consideration of the search of the
22 vehicle, being a warrantless search incident to a lawful
23 arrest as set forth in Section 19.2, Sec. 59, and the Court

1 is of the opinion it would not be applicable there. It refers
2 to search of the person and any vehicle he may be occupying
3 at the time. Nor do you have here any exigent circumstances,
4 nor would it appear to the Court that the mobility doctrine
5 that is applied to the search of automobiles would apply
6 to the search of this automobile at the time and place where
7 it was then.
8 Then I think you come to the third step in the
9 decision and this is the real question and that was the
10 seizure of property, namely the automobile, in plain view
11 as the evidence of a crime. Now the officer had ample
12 information at the time, that is probable cause to believe
13 the automobile had come to the possession of the defendant
14 as the result of the issuance of these checks that had been
15 taken from the victim's home. They were unable to establish
16 the ownership of the vehicle. The question then is upon
17 seizure of the property in plain view as evidence of a
18 crime, which the Court is of the opinion that he had the
19 right to do, what else was he to do if he can't seize
20 a vehicle that he has probable cause to believe is the
21 evidence of crime? There is no process available to him
22 to get the vehicle. It is in plain view and as such a
23 search warrant would certainly not be necessary to go there

1 to find the vehicle that is sitting in the driveway. The
2 question then is following that seizure, does that authorize
3 a warrantless search of the property seized if you assume
4 or if you find that the vehicle itself was legally seized
5 as the evidence of crime. The Court finds that it would
6 permit such a search of the vehicle and the reasons for
7 that would be the same reasons that support the inventorying
8 of property on any impoundment case, that is the protection
9 of the property, a protection of the police for suits for
10 its loss, and the protection of the owner's interest in the
11 property. The Court will accordingly find that the seizure
12 of the vehicle was not unreasonable and that having seized
13 it legally that they could then search without a warrant
14 the vehicle and will accordingly deny the motion to suppress.
15 MR. DeBOE: Would you note my exception, Your
16 Honor, to the decision?
17 THE COURT: Yes, sir. All right.
18 MR. DeBOE: Your Honor, we have a trial date set
19 or did we, Mr. Nunn?
20 MR. NUNN: The 24th of March.
21 THE COURT: 24th.
22 MR. DeBOE: I have it scheduled, Your Honor.
23 THE COURT: All right. The case will be ready