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Title **Commonwealth of Pennsylvania vs. Worley Andrew Right, Jr. and John Thomas Draper -- Preliminary Hearing**

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COMMONWEALTH OF PENNSYLVANIA
COURT OF COMMON PLEAS
MAGISTERIAL DISTRICT 43-4-02

COMMONWEALTH

:

vs.

:

WORTLEY ANDREW WRIGHT, JR.
and JOHN THOMAS DRAPER

:

Paradise Township Building
Swiftwater, Pa.
Thursday, December 15, 1977, 2:15 p.m.

BEFORE:

MARJORIE J. SHUMAKER
District Justice of the Peace

APPEARANCES:

RALPH A. MATERGIA, ESQ.
for the Commonwealth

GEORGE W. WESTERVELT, JR., ESQ.
for Wortley Andrew Wright, Jr.

GEORGE GOLDSTEIN, ESQ.
for John Thomas Draper

FRANK A. CONDON
Registered Professional Reporter

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THE MAGISTRATE: If everyone is present who has an interest in the case we will proceed at this time.

I would like at this time to read the complaints, unless you waive the reading of the complaints. Attorneys?

MR. WESTERVELT: We will waive the reading, Squire, if we can have a copy.

THE MAGISTRATE: I don't have a copy at all.

MR. WESTERVELT: I had it photocopied before it was executed.

THE MAGISTRATE: You didn't get the warrant copies from your clients?

MR. WESTERVELT: No.

THE MAGISTRATE: This is a preliminary hearing. The defendants are Wortley Andrew Wright, Jr., Fern Drive, The Hamlet, Canadensis, Pennsylvania; and John Thomas Draper alias Captain Crunch, The Hamlet, Canadensis.

On behalf of the Commonwealth Trooper James R. Harris, Jr., of the Pennsylvania State Police, has brought these charges against these two men. The

alleged violations took place at McFarland's residence, Fern Drive, The Hamlet, on October 19, 20 and 21. The charges made are the manufacture -- in the case of Wright -- manufacture, distribution or possession of devices for theft of telecommunications services and criminal conspiracy. The charges made against John Thomas Draper are manufacture, distribution or possession of devices for theft of telecommunications services, criminal conspiracy and theft of services.

At this time I'm going to swear in the prosecuting witnesses. Please stand now and raise your right hands, anyone who will be testifying today for the prosecution.

(Seven prospective witnesses sworn.)

MR. GOLDSTEIN: Before we get started, your Honor, I think if there are any charges which duplicate the charges at the previous hearing they should not be heard at this time.

MR. WESTERVELT: I agree with that. In Mr. Wright's case criminal conspiracy was charged and heard at the last hearing and bound over.

MR. GOLDSTEIN: The same with Mr. Draper. Theft of services -- let me see this.

Theft of services, 3926(a) (1) (2), paragraph (b), were already heard at the previous hearing. 903 was previously heard.

MR. MATERGIA: It's my understanding what we have done here by virtue of the conference in Judge Williams' chambers was to set forth a continuation of the original hearing. You had filed your motion and it was stayed on the basis of that.

MR. GOLDSTEIN: Oh, no.

MR. MATERGIA: Well, perhaps you wish to discuss that off the record.

MR. GOLDSTEIN: I'll discuss it on the record. I think at the conference we had we understood there were additional charges brought. And I don't think the same charges can be brought again at a preliminary hearing.

MR. MATERGIA: It was also put forth in the Judge's chambers ~~that~~ the preliminary hearing at that time was intended to be rescheduled. We were not sure of the date, and we subsequently decided today's date would afford defense counsel the opportunity to have additional discovery, which was one of the several purposes for your motion filed with the Court at that

time.

MR. GOLDSTEIN: The purpose for my motion was to have the charges dismissed because I didn't think a prima facie case was made out, and that was the only purpose, not for discovery. We'll have all the discovery we need later. I feel once charges have been held at a preliminary hearing and bound over for court it is improper for additional testimony to be brought out.

Now, as far as other charges, I have no objection to other charges and your bringing forth testimony. As far as I can see from Mr. Draper's case those charges will be contained as violations of paragraphs 9 and 10 of the Crimes Code, subsection 2. And that would be the only one. The other charges are duplicitous and already heard by the Court, and I don't think that they should be reheard at this time.

MR. MATERGIA: The Commonwealth will proceed on the complaints and the charges set forth in the new complaints filed on December 1. We wish to have all the charges, whether they be duplicated or not, heard in today's hearing. There being no ruling as to the exclusion otherwise we wish to

proceed on that basis.

THE MAGISTRATE: All right, I will allow the Commonwealth to present their case.

MR. GOLDSTEIN: Is that the charges already heard by this Court?

THE MAGISTRATE: Yes.

MR. WESTERVELT: Squire, I don't mean to argue with your ruling, but it seems to be an exercise in futility because you have already bound, just as to Mr. Wright, now, you have already bound criminal conspiracy over to court. Why let them present evidence as to criminal conspiracy? It's already been bound over once. You aren't going to make a ruling on the charges at the end of the hearing. Why bother to clutter the record and take everybody's time with additional evidence on that charge? It's already been sent to court.

MR. GOLDSTEIN: This is a blatant attempt by the Commonwealth to make good cases that were not good at the first hearing. They didn't prove their case at the first hearing and now they are trying to do this in an attempt to make good cases prima facie. I think it's improper.

MR. MATERGIA: Does counsel for the defense wish to set forth on the record an inability of the Commonwealth to proceed in the second preliminary hearing? Do you disagree with the ability of the Commonwealth to proceed in this hearing?

MR. GOLDSTEIN: As to the charges which have already been bound over for court, yes, sir.

MR. MATERGIA: As to the charges set forth in the complaint.

MR. GOLDSTEIN: As to any charges bound over for court already I think you have no right to proceed. As to new charges you have every right to proceed.

MR. MATERGIA: Would you further set forth the basis for your taking exception to that?

MR. WESTERVELT: My basis is that the charges have already been bound over to court, and anything on those charges is irrelevant as far as this Magistrate is concerned, and it has nothing to do with the charges that you're trying to bring now. Certainly if a charge is dismissed at the first preliminary hearing you can rearrest and present evidence on that charge. That's what you're doing

with the distribution and possession of devices on Mr. Wright. But the criminal conspiracy has already been bound over to court.

MR. MATERGIA: It was my understanding in chambers when we met with Judge Williams -- the date eludes me now -- December 1, was it?

MR. GOLDSTEIN: Second.

MR. MATERGIA: Second. Thank you. It was my understanding that in anticipation of the complaints being refiled, in anticipation of further discovery as well as Commonwealth's evidence, defense counsel would not proceed on his motion then standing with the Court to dismiss the committing magistrate's information.

MR. GOLDSTEIN: You are partially correct, Mr. Matergia. What I said was that since there was going to be a preliminary hearing on additional charges that we could hold this matter in abeyance until after that hearing. You had discussed the possibility of some testimony for this charge as being relevant to the other charges. I said that's fine, we'll hear that testimony. But at no time did I agree to hear all the charges over again, because

if it happens to come out in the testimony, that's one thing, but I think it has to be relevant to the charges pending. I don't think the Commonwealth has the right to continue to bring the same charges at preliminary hearings, especially after it's been returned to court. The Magistrate then has no jurisdiction over that charge any more, and I think that it's a violation of due process and all those other nasty things if you do so.

MR. MATERGIA: Okay, we wish to proceed on the basis of the charges as filed in the December 1 complaint as they are presently before the Court.

THE MAGISTRATE: All right, now, I think the defense has a good argument here and, as you know, I'm sitting as a lay judge and you're throwing all this at me. I would like to know how you wish to separate the charges filed on December 1 from the ones that you filed and preferred later.

MR. MATERGIA: We wish to present evidence.

THE MAGISTRATE: In regard to what?

MR. MATERGIA: 910, 903 and 3926 violations as it relates to Mr. Draper; and the 910

and the 903 violation as it relates to Mr. Wright. We wish to present the Commonwealth witnesses.

THE MAGISTRATE: And you are objecting to this?

MR. GOLDSTEIN: I certainly am. They had one bite at the apple. They have had their bite. If they haven't been able to prove their case I don't think it's fair or proper for them to come back to this Court when this Court has already, I'm certain, filed the transcripts within the five days as required. These are the same charges all over again and I think it's improper and I think it's in the nature of harassment at this point. I have no objection as to the new charges. You have heard no evidence on those. I don't think this Court should hear evidence on charges already bound for court.

MR. WESTERVELT: Certainly if this was a charge of burglary, there was only one charge and you had a hearing and bound it over to court, Squire, you wouldn't let the Commonwealth file another complaint on the basis of the same facts charging burglary and come back for another preliminary hearing. And if you strip away the other charges, that's the

substance of what's going on here as far as conspiracy against Mr. Wright, and I think two charges against Mr. Draper, they are cases that have been charged, heard and bound over to court. Now they are charging them again and trying to present evidence on them. I don't know what kind of ruling you're going to make.

MR. GOLDSTEIN: What happens if you feel they don't prove a case?

THE MAGISTRATE: Just a minute. May I see all of you outside.

(Hearing recessed at 2:30 p.m., and resumed at 3:25 p.m.)

THE MAGISTRATE: Do you want to repeat your motion, attorney.

MR. WESTERVELT: Squire, I'm moving on behalf of Mr. Wright that no evidence be received on the criminal conspiracy charge which was heard and bound over by the Court at the last preliminary hearing in this case.

MR. GOLDSTEIN: I'm joining in the motion that no testimony regarding the duplicitous charges be heard at this time.

THE MAGISTRATE: I'm sorry --

MR. GOLDSTEIN: As to Mr. Draper, your Honor, that would be every charge except violation of section 910, subparagraph (2).

THE MAGISTRATE: That would be manufacture, distribution --

MR. GOLDSTEIN: Well, distribution of the frames, the sale, giving away and transferring of equipment, apparatus or devices used in the theft of telecommunications services. That's the 910, subparagraph (2), which is the only additional new charge against John Draper.

THE MAGISTRATE: Do you want to say anything at this time, Attorney Matergia?

MR. MATERGIA: No. We are prepared to proceed.

THE MAGISTRATE: All right. I'm going to rule that you can proceed. We'll just hear the facts concerning the charges filed on December 1, and no testimony on the charges that have already been heard and bound to court. Proceed at this time, please.

MR. MATERGIA: I call Trooper Harris.

THE MAGISTRATE: Is it 910 (2) on

Draper and on Wright?

MR. WESTERVELT: 910 (1), I believe.

THE MAGISTRATE: 910 (1), subsections
i and ii.

MR. WESTERVELT: Right.

THE MAGISTRATE: Those are the only
ones we're hearing on Wright, correct?

MR. MATERGIA: That's correct.
Conspiracy having already been bound over.

THE MAGISTRATE: Okay.

JAMES R. HARRIS, JR., a witness called
on behalf of the Commonwealth, having been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MATERGIA:

Q State your full name, please.

A James R. Harris, Jr.

Q Where are you employed, Mr. Harris?

A Pennsylvania State Police.

Q In what capacity?

A Criminal investigation out of Swiftwater barracks.

Q Were you so employed on the 22nd of October 1977?

A Yes, sir, I was.

Q Were you responsible for the investigation of telecommunications fraud emanating from the development known as The Hamlet?

A Yes, sir.

Q And in the course of your investigation did you have the occasion to execute a search warrant?

A Yes, sir, I did.

Q And when was that?

A That was on the 22nd of October at approximately 2:15 p.m.

Q Would you describe to the Court what you found upon the execution of your search warrant?

A Upon the execution of the search warrant at the home, the search warrant was served on Mr. Wright at the residence, the McFarland residence, located on Fern Drive in The Hamlet.

Upon entry into the dwelling going up the steps into the -- there's a sliding glass door, and upon entry into the main room there was a computer setting on a table along with a closed circuit television which was hooked to it and a tape recorder, and there was paper paraphernalia, booklets.

Now, on the other side of the room to your right diagonally -- it is a rather long room -- there was another computer set up on a desk which would have been against the outside wall, and this particular computer also had a closed circuit TV and tape cassette monitor or tape cassette hooked to it with a small fan. There was wires running from this and these wires were hooked into the telephone junction box.

Q Did you have the occasion to photograph what you viewed at that time?

A Yes, sir.

MR. WESTERVELT: Squire, I object to this. I don't understand the relevance to this of a charge of sale of these items against Mr. Draper or pictures of Mr. Draper's computer on the charge against Mr. Wright of manufacture or distribution.

MR. MATERGIA: We haven't done anything yet.

MR. WESTERVELT: Well, you're going to put all these pictures in that show these that don't have anything to do with the question before the Court.

MR. MATERGIA: I think your objection is just a little premature, George. If I introduce any evidence here that --

MR. WESTERVELT: You have already had him testify about the computer being hot wired to the phone lines. That has nothing to do with any of these charges. I think we all agree on that.

MR. MATERGIA: Off the record.

(Discussion off the record.)

MR. MATERGIA: Back on the record.

BY MR. MATERGIA:

Q Trooper Harris, who was present at the home at the time you executed the search warrant?

A Just Mr. Wright as far as -- you're talking about occupants of the residence itself?

Q Right.

A Just Mr. Wright.

Q And he's seated in the courtroom today?

A That's correct. The gentleman with the glasses.

Q Next to Mr. Westervelt?

A Yes.

MR. MATERGIA: Let the record show he is identifying the defendant W. Andrew Wright.

BY MR. MATERGIA:

Q Did you have the occasion to speak to Mr. Wright?

A At that time, yes, sir.

Q And what did you say to him?

A Well, first after I asked him his name and I arrested him, read the complaint to him, and then I served the search warrant on him, read that to him, served him with his copies.

Q You advised him of his constitutional rights at that time?

A Immediately following the reading of the complaint and the search warrant.

Q Did you have any further conversation with him?

A As far as to the identification of his computer, he identified his and he identified the other one.

MR. GOLDSTEIN: Objection as to anything he may have said regarding Mr. Draper.

BY MR. MATERGIA:

Q Simply as to what he said relative to his computer, confine your testimony.

A Yes, he identified his computer.

MR. MATERGIA: I would like to have these marked.

(Four photographs marked Commonwealth Exhibits Nos. 1, 2, 3 and 4, respectively, for identification.)

MR. WESTERVELT: Squire, the assistant District Attorney shows me the exhibits marked Commonwealth 1, 2, 3, 4, and we will stipulate those are pictures of Mr. Wright's computer.

THE MAGISTRATE: All right.

MR. MATERGIA: Very well. I move their admission into evidence.

MR. WESTERVELT: No objection.

THE MAGISTRATE: Accepted.

BY MR. MATERGIA:

Q Now, when you refer to the testimony, Trooper, of Andrew Wright as identifying his computer are you referring to the exhibits which we have marked and admitted into evidence as Commonwealth 1 through 4?

A Yes. A Sol 20 Processor Technology computer.

Q And where was this computer located?

A That was the computer on the desk immediately upon entering the room from the outside that was right inside the door.

Q And what did you do with this computer?

A. The computer was taken apart and was disassembled, the closed circuit television set, plus the tape recorder and the computer itself. They were dismantled and then placed in boxes, they were itemized by myself on an inventory record and they were transported then later to the state police barracks in Swiftwater.

Q. Did you subsequently deliver these items as depicted in the Commonwealth's Exhibits 1 through 4, the photographs, to the Bell Labs for inspection?

A. Yes, sir. Down at Holmdel, New Jersey.

Q. And to whom did you deliver those items?

A. I delivered them to Mr. Kenneth Hopper and Mr. Walter Heintze. They are of the support security force.

MR. MATERGIA: Off the record.

(Discussion off the record.)

MR. MATERGIA: On the record again.

The Commonwealth would like to have marked as Exhibit 5 a group of tapes which will be referred to in testimony at different points perhaps as item 4, I want the record to indicate that, even though they are Commonwealth's Exhibit No. 5. And Commonwealth's Exhibit marked No. 6, which may for purposes of

testimony be referred to as item 5 by the Commonwealth's witnesses.

MR. GOLDSTEIN: Who are these offered against?

MR. MATERGIA: These are offered against Andrew Wright.

(Group of tapes marked Commonwealth Exhibit No. 5 for identification.)

(Group of tapes marked Commonwealth Exhibit No. 6 for identification.)

BY MR. MATERGIA:

Q Trooper, handing you Commonwealth Exhibit 5, would you identify that?

A These are tapes that were taken at the location of Mr. Wright's computer.

Q Where were they located again?

A At Mr. Wright's computer.

Q Were they depicted also in the photographs referred to?

A I would have to look at the photographs to be sure. Yes, there are tapes -- there are tapes on the back of Commonwealth Exhibit No. 2 clearly shown along with Commonwealth Exhibit No. 1, there are

portions of the tapes shown in the left corner of the picture. And also on Commonwealth No. 3 there are pictures of the tapes. And Exhibit 4 also.

Q Okay. Handing you Commonwealth Exhibit No. 6, would you identify that, please?

A These were also taken along at the point of Mr. Wright's computer.

Q They were seized in your search?

A They were seized in the search, yes, sir.

Q Where were they again located?

A At Mr. Wright's computer.

Q And what did you do with these at the time that you seized them?

A I marked them on the -- my inventory at the time, they were packaged in boxes and then were -- they were numbered by myself as to their contents and then transported to the Swiftwater barracks.

MR. MATERGIA: I move their admission.

THE MAGISTRATE: All right, they are accepted.

MR. GOLDSTEIN: Not against Draper.

MR. MATERGIA: Against Mr. Wright.

THE MAGISTRATE: These are against

Wright.

MR. MATERGIA: As to the charges against Mr. Wright.

Mark now as Commonwealth Exhibits 7 and 8 for identification purposes, again as to the charges outstanding against Mr. Wright, these documents.

(Page from Sol computer manual marked Commonwealth Exhibit No. 7 for identification.)

(Schematic drawing from Sol computer manual marked Commonwealth Exhibit No. 8 for identification.)

BY MR. MATERGIA:

Q Trooper, handing you Commonwealth Exhibit No. 7, would you identify that, please?

A This is a page that was taken out of the Processor Technology book belonging to the computer of Mr. Wright.

Q Would that be the Sol computer?

A The Sol computer.

Q Would it be fair to refer to that as the Sol computer manual?

A This is a page of the Sol computer manual, yes, sir.

Q. And Commonwealth Exhibit No. 8, would you identify that?

A. This is a schematic drawing which was also taken out of the Sol computer manual book.

Q. The same manual?

A. Yes, sir. It's a handwritten drawing.

Q. Did you take these two items into your custody?

A. Yes, sir.

MR. MATERGIA: I move their admission.

THE MAGISTRATE: All right, so noted.

BY MR. MATERGIA:

Q. What did you do with these items after you took them into your possession?

A. They were logged into evidence at the Swiftwater station, they were placed in the evidence room under lock and key. The only person who has access to that is Sergeant Hoski.

Q. Did you have the occasion to have this evidence as well as the other evidence examined?

A. Yes, sir.

Q. And by whom?

A. By the security support group, Mr. Hopper and Mr. --

BY MR. GOLDSTEIN:

Q State police?

A No, sir. This is from Bell Telephone.

BY MR. MATERGIA:

Q Did you deliver these items to the Bell Labs?

A Yes, I delivered them. I delivered --

Q To whom did you turn these items over?

A Well, specifically Mr. Hopper. These items here were not originally taken and turned over to the Bell Labs on the date of the initial -- this was later given to Mr. Hopper for further examination.

MR. MATERGIA: We will move their admission.

THE MAGISTRATE: Accepted.

MR. MATERGIA: Cross examine.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Trooper, where was Wright when you got there?

A Mr. Wright?

Q Yes, sir.

A Standing out on the porch, sir.

Q And what, if anything, did you say to him?

A I asked him who he was and then he identified

himself.

Q Then you placed him under arrest?

A Yes, sir.

Q And then what did you do?

A I read him the search -- the arrest warrant -- and then I read the search warrant.

Q This was all out on the porch?

A Pardon?

Q Was this out on the porch?

A No, sir. We moved inside the room in the house.

Q At what point did you move inside?

A What part?

Q Yes, sir. What point.

A When we moved inside the room.

Q Is that when you read the warrant to him?

A Yes, sir.

Q Did you go in there immediately after you arrested him?

A That was as we arrived we met Mr. Wright on the porch, and we stepped inside the room and I read the complaints to him.

Q Did you identify yourself? Were you in uniform?

A No, sir. I was in plainclothes.

Q Were any troopers in uniform?

A Yes.

Q When did you tell who you were?

A When did I tell him?

Q Yes, sir. At what point.

A As we were coming up the steps I displayed my identification and announced I was with the state police.

Q Now, who else was with you at the time?

A We had members of our organization and we also had members of Bell Telephone.

Q May I have first the names of the people from Bell Telephone?

A Along with us was Mr. Beam, William Beam, Mr. John Eisenhouth, Mr. Wilford Dunne.

Q Wilbur Dunne?

A Wilford.

Q Right. Anybody else?

A There was another gentleman whose name escapes me at the present time.

Q Where was he from, do you know?

A He's with the Bell Telephone security.

Q And you had the warrant in your possession when

you searched, is that right?

A Yes, sir.

Q And did you yourself know what this alleged violation was all about in terms of the technology involved?

A Not in technology.

Q And you took what Bell told you to take, is that right?

A I asked them to identify -- I took them along to identify the proper things that would be in connection with what we were looking for.

Q So you seized what they told you was proper to seize based on their expertise?

A Based on their expertise, yes, sir.

Q So what you're saying is you really had no knowledge, other than being a law enforcement officer, as far as what was seized. You took what Bell told you should be taken, is that right?

A I was informed of the items that we were seeking prior to our going there, and then I confirmed what I was taking with the people from Bell Telephone.

Q You had only one warrant that day, is that correct?

A. One search warrant?

Q. Yes.

A. Yes, sir.

Q. And that warrant was for a house?

A. Yes, sir.

Q. Did you have a warrant for any vehicles?

A. No, sir.

MR. MATERGIA: Objection.

THE MAGISTRATE: State your objection.

MR. MATERGIA: This question is irrelevant as it relates to any charges against Mr. Goldstein's client, Mr. Draper.

THE MAGISTRATE: I'll sustain your objection.

BY MR. GOLDSTEIN:

Q. Well, did you seize anything from any vehicles?

A. No, sir.

MR. MATERGIA: Objection. There's been no testimony by the Commonwealth that relates to the search or seizure of any items in a vehicle nor the presentation of any items as they relate to charges against Mr. Draper.

THE MAGISTRATE: Sustained.

BY MR. GOLDSTEIN:

Q Did anyone from Bell make any searches independent of you?

MR. MATERGIA: Objection. I would like to have the question clarified as it relates to Mr. Draper.

MR. GOLDSTEIN: Well, so far there's been nothing against Mr. Draper. I want to find out what else he may know. I want to find out if anybody from Bell independent of him searched.

MR. MATERGIA: The purpose of cross examination is not a fishing expedition as to the Commonwealth's evidence against your client, but rather an ability to question this witness as to the content of his testimony on direct examination.

MR. GOLDSTEIN: He's discussing a search and what was there at the time, and I'm cross examining on that search.

MR. MATERGIA: I still would object to the line of questioning. What counsel is attempting to do here is attempting a discovery procedure for purposes of suppression.

MR. GOLDSTEIN: That's not what it's

for.

MR. MATERGIA: That's not before the Court.

MR. GOLDSTEIN: It's not for suppression. It's the other case I told you about.

MR. MATERGIA: I object for that purpose.

MR. GOLDSTEIN: I'll withdraw the question, Judge.

MR. MATERGIA: Counsel is well armed with the civil discovery technique as it relates to any other issues.

MR. GOLDSTEIN: Off the record.

(Discussion off the record.)

THE MAGISTRATE: Okay, you withdrew your question.

MR. GOLDSTEIN: I have no other questions at this time.

BY MR. WESTERVELT:

Q Mr. Harris, Mr. Wright was the only person in the house when you first arrived?

A Yes, sir.

Q Did other individuals arrive during the search?

A As the search was proceeding, yes, sir.

Q And who were they?

A Well, there was -- I -- one was the other defendant, Mr. Draper, along with other persons who I assume were guests at the residence.

Q How many altogether?

A I wouldn't be able to give you a factual number. I would have to only make a guess.

Q All right.

A Possibly ten or twelve people total.

Q The computer that Mr. Wright identified as his, where was that located in the house?

A That was sitting right on the desk inside the doorway.

Q What room was it in the house?

A I would -- I wouldn't know which room to call it. I would call it possibly the living room. It was being used apparently as a work room.

Q There were no beds in that room?

A No, sir. Only chairs and desks.

Q Both computers were located in the same room?

A In the same room.

Q And all the other electronics paraphernalia was

in the same room?

A. No, not all.

Q The majority of the electronics paraphernalia was in that room?

A. I would say a good portion of it was in that room.

Q Was this room open to the kitchen or other living areas?

A. There was -- the room was a rather long room and then there was a hallway leading off of that and into bedrooms in the back, and then there was a staircase leading up to the upstairs portion.

Q It wouldn't be inaccurate to describe this as a common area of the house or an open area of the house?

A. It appeared to be more like a business room, a work room.

Q Do you know how many individuals were living in this house at the time?

A. Living in the house at the time?

Q Yes.

A. No, I don't have -- I only have knowledge at the time that we went there of two probably living there. We expected more people to be there that day.

Q And in fact there were quite a few more people there that day?

A There was persons arrived while we were there that did not even come onto the property, turned around and left.

Q Mr. Wright never identified the tapes as his, did he?

A I don't specifically remember.

Q But he did identify the computer as his?

A Yes, sir.

MR. WESTERVELT: Okay. I have no other questions.

MR. MATERGIA: The Commonwealth has no further questions of this witness.

THE MAGISTRATE: You can take your seat.

MR. MATERGIA: I call Mr. Richard Previte.

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

DIRECT EXAMINATION

BY MR. MATERGIA:

Q Mr. Previte, I'm going to hand you the Commonwealth's Exhibits 1 through 5, being various photographs that have been admitted into evidence, and ask if you can identify the items depicted there.

A Yes, I can identify them.

Q And what is it?

A This is the -- it appears to be the computer that I looked at at the Bell Telephone laboratories in Holmdel, New Jersey.

Q What kind of a computer is it?

A It's a Sol computer manufactured by Processor Technology Corporation of California.

Q And is that a fair and accurate representation of the computer that you had the occasion to examine?

A Yes, it is.

Q And from whom did you obtain this computer?

A I obtained it from Mr. Kenneth Hopper, who showed it to me and indicated that he wanted me to look at it.

Q And likewise Commonwealth's Exhibits 5 and 6.

A Yes, I do recognize these as some of the tapes

that I had looked at at the laboratories. In fact my mark is on it as I had looked at them.

Q Is there a common name that you apply to these tapes?

A Just cassette tapes.

Q Software, is that appropriate?

A Oh, yes, software, cassette tapes.

Q And likewise Exhibit No. 6?

A Yes. I -- I don't know the number -- I believe 21 and 22, I believe, were music tapes, if I recall.

Q Where are you employed, Mr. Previte?

A I'm employed by Bell Telephone laboratories of Holmdel, New Jersey.

Q And in what capacity?

A I am an electrical engineer, member of the staff, and I work in their -- right now my particular job is exploratory terminal development.

Q What is your educational background?

A I have a degree, bachelor of electrical engineering, from Polytechnic Institute of Brooklyn, and I have been receiving continuing education in the field of electronics and computer technology at the Bell Telephone laboratories in our courses provided by the

Bell Telephone laboratories.

Q How long have you been employed in the electronics industry?

A About 23 years.

Q Did you have the occasion to examine the Sol 20 computer and software that you referred to as identified in Commonwealth's Exhibits 1 through 6?

A Yes, I did.

Q What was the nature of your examination?

A Well, when I first received it I was asked to examine it, to discover if there were any programs or any of the software was possible to perform any of the fraudulent telephone calls and things of this sort; in general to examine it. I then proceeded to look at all the tapes, both music and data tapes, and listened to them and tried to make a determination as to if there were anything incriminating on them with reference to performing fraudulent telephone calls or something of that sort. In my investigation I did find on tape 4, labeled item 4, and I don't know what exhibit it is --

Q It's item 4 and it's Exhibit No. 5. You may refer to it as item 4 if you are comfortable.

A. Yes. Item 4 I found a tape which related to MF generation.

Q. What is MF generation?

A. MF generation is something that is used to -- for trunking for completing calls by operators and by central office equipment. It's the tones that are not normally available or not available to an individual--

MR. GOLDSTEIN: I object. I think any tone is available to anyone. There's no law against possessing tones, sounds.

BY MR. MATERGIA:

Q. You may simply define the characteristics of MF tone generation as it relates to the Bell System.

A. My knowledge, they are multi-frequency tones which are used to complete connections of central office equipment, things of that sort, trunking and things of that sort.

Q. Okay, continue.

A. Well, when I did run these tapes I identified where to place them within -- memory within -- well, we call it memory, it's difficult -- how to put them into the memory of the processor. And once properly placed into memory of a processor program can be run

and they identify each other. It's something similar to, I guess, people talking to each other. If you have got the right location they know how to converse with each other. And simply stated you just have to know how to load them properly. Once they are loaded properly they can be run and perform functions which were intended by the software, by the program. This particular program --

Q You're referring to item 4?

A Item 4.

Q Exhibit 5?

A Yes. Once properly loaded. This particular program when I ran it displayed on the video screen instructions and the means of applying numbers --

MR. GOLDSTEIN: Now, I object at this point. Is this against Draper or against Wright?

MR. MATERGIA: It's against Mr. Wright.

THE WITNESS: Sol Processor.

MR. GOLDSTEIN: Okay. I withdraw the objection.

THE MAGISTRATE: You withdraw the objection?

MR. GOLDSTEIN: Oh, yes.

THE WITNESS: And on the screen it indicates both the instructions and the method to provide numbers by the user of the terminal for further use. Once the numbers are provided, presumably numbers that one wishes to complete calls to, the -- well, that's what the processor does. Now, I then -- do you want me to go further into the DAC?

MR. MATERGIA: Yes.

THE WITNESS: The processor by itself cannot generate tones --

MR. WESTERVELT: Excuse me. Maybe I missed the last part of that answer, but it seemed to kind of trail off, the answer to the last question. You said it read out on the video screen.

THE WITNESS: It reads out on the video screen both instructions and it provides a means for entering numbers which are later to be called by the user of the terminal.

MR. WESTERVELT: Entered into the machine, you mean?

THE WITNESS: They are entered into the machine and an individual then places numbers that he wishes to complete. In essence he's placing them

into the memory within the computer.

MR. WESTERVELT: Okay. Go ahead. I'm sorry.

THE WITNESS: He then -- the computer by itself, as I received it, is a standard Sol Processor not capable of generating tones. But what happens by the program it accesses what we call output ports. These output ports may be accessed by programs which -- by programs and by running the programs in certain fashions.

I found within the -- the Sol manual -- a sketch for a DAC. That's a digital to analog converter. What that digital to analog converter does, it takes essentially -- I'm having a hard time because I'm trying to give it in layman's terms -- it takes essentially DC signals -- when I say DC signals -- that are either on or off zero or one, or what we commonly refer to as digital signals. It takes these digital signals and, manipulating them in certain numbers, it either places more or less resistance in this particular loop. By placing more or less resistance in a loop it's similar, I guess, in layman's terms to putting on a faucet, you can turn or open

the faucet in a certain fashion and allow more or less water to get in. The analogy here is you can generate lower or higher voltages on the output terminal.

BY MR. MATERGIA:

Q Now, when you refer to the DAC diagram, I think you called it a schematic --

A Yes.

Q -- are you referring to what we have identified as Exhibit No. 8 and also No. 7?

A Yes. On No. 7, the Sol Processor, they have indicated within the Sol Processor the terminal numbers of their output ports, their output ports of an address. The address is also something that is placed within the programs of the tape. I don't know for sure, I believe this address was of a -- I'm not sure on that address. But those terminal numbers correspond to the terminal numbers on this DAC sketch.

Q That's what you're referring to as Exhibit 8?

A Yes. Now, the program is so arranged to output in certain ways these output terminals, or this address. Once that is done that generates varying voltages on this output. If one ties a speaker to that one can hear various frequencies or tones being

generated. It's these tones which are the MF tones or the single frequency tone.

If one observes and looks at the programs within -- let me go -- before I go to that let me just give you a little bit of a background as to how one places numbers into the computer and how one exercises them. The user identifies or knows what numbers he wishes to place calls to by the instructions there and by the program he accesses certain what's referred to on the -- on the program sender registers, he has access to place six numbers into the terminal. If one looks he has generated enough memory, if I can say so, to access these six numbers.

He places the numbers as he wishes into registers one through six. Each time he places a number into it it's placed into what we call an array or a memory location where he deposits these numbers so that they may be remembered, so that when he chooses to access them later he can go back into this memory and pick these numbers out.

He then presumably places a call. Do you want me to go into how one would effectuate a

call?

Q I would like you to speak to the significance of your examination and finding the multi-frequency tone.

A All right. Let me just go into that. He -- the user then can stipulate that this computer generates what we call an SF frequency, 2600 cycle frequency. The computer is also programmed to know the difference between an MF tone or a single frequency and change the time limitations placed on each tone, so that it generates an SF signal for one second and it generates the other signals for a lesser amount of time. It generates an SF signal to seize control of a network.

MR. WESTERVELT: I object to that.

He's giving you an abstract opinion of what this thing can do. There's no indication that that's what it's designed to do or that's its purpose.

THE WITNESS: Let me say this. It can generate frequencies.

BY MR. MATERGIA:

Q What is the significance of the ability to generate SF tones of 2600 cycle?

A To my knowledge the generation of a 2600 cycle into a call once established reseizes control of that

call so that other numbers can be entered.

Q And what is the significance of the emanation of such a tone in relationship to the Bell System's billing technique?

A The Bell System uses the SF signal, or the single frequency signal tone in order to re-establish the control mechanism of the network. In other words, once the trunks recognize this frequency they revert control back to accept multi-frequency signals to generate new calling procedures, and so on and so forth.

I'm not an expert on that phase of -- there may be other people who know much more about that. This is what I've been told and this is what I understand it to be.

MR. GOLDSTEIN: I object.

MR. WESTERVELT: It's hearsay. He's just admitted it's hearsay.

THE WITNESS: I can just tell you what the computer does.

BY MR. MATERGIA:

Q Okay, continue.

A The computer can generate 2600 cycle tones for a

period of one second, and the computer can generate MF tones up to 22 digits, or the digits so put in by the user, and it generates the tone corresponding to the digit which it sees in the computer.

Q Is the ability to generate MF or SF tones inherent in the Sol 22 computer?

MR. GOLDSTEIN: Objection.

THE MAGISTRATE: Will you state your objection, please.

MR. GOLDSTEIN: He's not been qualified as having anything to do as an expert on the computer.

THE WITNESS: Oh, but with the programs--

MR. GOLDSTEIN: No.

MR. WESTERVELT: Now, wait.

THE MAGISTRATE: Now, do you want to state your objection again, Mr. Goldstein?

MR. GOLDSTEIN: He's not been --

MR. MATERGIA: I'll rephrase the question.

MR. GOLDSTEIN: All right.

BY MR. MATERGIA:

Q Are you familiar with the Sol 22 computer?

A. Yes, I believe I am.

Q. Have you had any occasion to examine not only the computer but the manufacturer's operation manual?

A. Yes, I have.

Q. And in your examination do you know whether or not the Sol computer has the capability to generate MF and SF tones?

A. The Sol computer by -- you mean that blue box?

Q. That's correct.

A. It does not.

MR. GOLDSTEIN: I object. He asked if he knows.

MR. MATERGIA: I think he has already answered the question.

MR. GOLDSTEIN: I object. It's not responsive. I ask the answer be stricken.

THE MAGISTRATE: I don't see any objection to that.

MR. GOLDSTEIN: I don't think he's qualified. We can cover it on cross examination, I'm sure.

THE MAGISTRATE: Continue. I think he answered the question.

BY MR. MATERGIA:

Q Did you have the occasion to examine the Sol computer identified by yourself in Commonwealth's Exhibits 1 to 5 along with the so-called software, being Commonwealth's Exhibits 5 and 6, together, in an attempt to determine the ability of that equipment to intervene the Bell System?

MR. GOLDSTEIN: Objection.

A Yes.

MR. GOLDSTEIN: Leading.

MR. MATERGIA: Why is it leading?

MR. GOLDSTEIN: You just told him the answer to the question: did you in an attempt to do so-and-so do so-and-so?

MR. WESTERVELT: It suggests a yes-or-no answer on direct examination.

BY MR. MATERGIA:

Q Would you describe the nature of your examination of the software as it relates to the Sol 22 computer in terms of the ability of that equipment to make telecommunications calls?

A Programs on tape 4 are capable of changing the outputs to an addressed port.

MR. GOLDSTEIN: Move your hand, I can't hear what you're saying.

THE WITNESS: I'm sorry. The programs on the tape are capable of changing the outputs on one of the ports, on one of the outputs. When one ties the data to analog converter on those ports the changing -- the judicious changing of those ports can cause voltage variations to occur on the output. These voltage variations when applied to a speaker generate tones. It's these tones which when applied to a Bell System network instruct it to do certain things. The SF tone, to my knowledge, or the 2600 cycle tone, instructs the control network to revert back to accept MF tones. MF tones will be accepted by the network to -- to place, you know, to call the called parties referenced to by the numbers. That's about as simply as I can put it.

BY MR. MATERGIA:

Q Did you have the occasion to run the tapes referred to and identified as Commonwealth's Exhibits 5 and 6 in the Sol computer which you have identified?

A Yes, I did. Yes, I did.

Q And what was the result of running those programs?

A Well, the result was, as I indicated, to appear on the video screen the instructions and the methods to place called numbers into the memory of the Sol computer. When one -- well, I don't know -- the instructions are "I" and "T." When one presses a character, a specific character, one receives a tone, and the "I" generates a 2600 cycle tone. The "T" causes the computer to MF key pulse out the numbers that are placed upon the screen. The numbers that are placed upon the screen by the user are "K" -- it starts off with "K", which opens the specific sender register. Now, a "K" is interpreted to be key pulse. And in all MF calls key pulse is always the starting frequency. The computer then continues to MF key pulse the digits which were placed thereupon. Digits are represented in the control -- in the control of the network by frequencies.

And then the computer continues after all the digits to send out the key pulse represented by the digit "S" which the user places upon the screen to terminate the entering of numbers. And this "S" also corresponds to a group of frequencies which designate the start of -- in other words, the

completion of the call, the completion of the digits, start processing the information which you have received to the control network. That's -- so when one sends the "T" in rapid order the multi-frequency tones go out for the "K" digits and the start pulse.

Q How can that be used to create a theft of telecommunications services?

A Well, it -- I can say that it goes -- when one places --

Q How is it done?

A Well, my knowledge of how it's done?

Q Yes.

A My knowledge of how it's done is in -- is that one places a call to a free number, presumably to a free number, and that's --

MR. WESTERVELT: I object unless he identifies the source of his knowledge. I have a feeling this is hearsay.

MR. MATERGIA: One moment. We ask for the Court's indulgence.

THE MAGISTRATE: All right.

MR. MATERGIA: Back on the record.

BY MR. MATERGIA:

Q Did you have an occasion to use this equipment in an attempt to place a toll free call?

A Yes.

Q And when was that?

A I don't know exactly. It's about two weeks ago.

Q Would you describe how you accomplished this and what you did?

A We went to the Cresco office here locally and we set up the Sol computer. And then we attempted to complete calls to -- to given numbers that we had arranged to put into it. We then called -- we then set it up and we placed calls, we called up, I don't recall what numbers we called now, they were 555 numbers or something of that sort. And once we called those numbers, before the call was answered we would hit the "I" key to generate a 2600 cycle tone.

At that point the sender -- we heard a tone coming back to us which indicated that we now had seized control of the call, and then we hit the "T" button.

I was not successful in completing any calls with the "T" button because I was not successful

in getting all the digits exactly as I had thought. But I had accepted and I did get control of the network with the 2600 cycle tone. But I would get wrong numbers, that I had accomplished a wrong number or something of that sort.

Q Are you familiar with the term blue box?

A Yes. Well, I am now, yes.

Q And what does the term blue box signify?

A My understanding of what a blue box does is that a person places a call to a free number, presumably, and before the call is completed he seizes control of the network generating a 2600 cycle tone, and after which he generates MF tone and gets the number that he actually wanted, which is a charge number.

The central office, however, does not have knowledge of the fact that the second number was key pulsed and only has knowledge that the first call put in was a free call. That's my knowledge of what blue box is. So that the call is essentially never charged.

Q What are the essential elements that are present in a blue box, or blue box device?

A I would say my knowledge of a blue box, the

essential elements are the generation of 2600 cycle tone to -- over control of the network and then the generation of multi-frequency tones.

Q Does the Sol 22 computer with software have the capability of so generating those two elements necessary in blue box?

A You say just the Sol plus the software?

Q The Sol plus software which you had the occasion to examine and which you have identified as C-1 through 5 and 6 and 7.

A In addition to the DAC?

Q Yes.

A Yes, it does.

MR. MATERGIA: Cross examine.

CROSS EXAMINATION

BY MR. WESTERVELT:

Q Mr. Previte, I have to admit that I'm a little lost at this point. Let me tell you what I understand you said and you tell me if it's right. This computer you set up in Cresco?

A Yes.

Q And put in the tapes?

A Yes.

Q And then tried to make illegal calls?

A After we put numbers in, some numbers into it, yes.

Q So you had to add something to what was there, just numbers that you wanted to call?

A I think we picked up some -- we just picked some numbers we wanted to call, yes.

Q Were you successful in making these illegal calls?

A No.

Q Now, when you set this item up in the Cresco office isn't it a fact that you had to add another piece of equipment to the computer?

A I had to add a DAC which was built --

Q A DAC -- go ahead.

A A DAC which was built per the instructions basically that I received from the notebook that I had received in evidence.

Q And you made that yourself, that was not seized from Mr. Wright's house?

A No, that -- well, to my knowledge I did not get one.

Q You didn't get one?

A I did not get one.

Q No "D" to "A" converter was supplied to you?

A No. This is true.

Q You came up with that yourself and connected it to the computer?

A I made it per the instructions of item whatever it is.

MR. MATERGIA: I think on the record we should indicate here that he's referring to Commonwealth's Exhibits 7 and 8, being the instructions and diagram received or obtained in the Sol 22 manual identified by Trooper Harris and admitted into evidence.

BY MR. WESTERVELT:

Q So you had to add this "D" to "A" converter in order to attempt to make the calls which weren't successful, in any event?

A Yes.

Q Now is it right to say that if you look at this whole thing as a human being that the computer machine pictured in these Commonwealth's 1 through 4 would be the brain?

A Yes, I would say that.

Q And this "D" to "A" converter would be roughly the equivalent of a voice box, or a voice box and a mouth and a tongue and teeth and all the things it takes --

A The "D" to "A" converter is referred to as an interface.

Q It's something that lets the computer talk to other things?

A Yes.

Q In this case a phone system?

A Yes. It's -- It required a DAC -- it required this device in order to get information out, yes.

Q And there are other ways of making a computer talk to a phone system, isn't that right? You can hook a speaker onto a computer that's appropriately programmed and point the speaker at the telephone instrument and let it make tones, isn't that correct?

A In certain ways, yes. You mean the speaker directly? No, not without a DAC.

Q But the point is that this computer, as you received it, whatever was on the tapes, couldn't talk to a telephone?

A Without the DAC, this is true.

Q And you didn't receive any DAC from the state police when they delivered this to you?

A No, I received no DAC.

Q Essentially what this computer could do was to think impure thoughts, isn't that right?

MR. MATERGIA: Objection.

Q Isn't that what it could do?

MR. MATERGIA: Objection. I think the characterization of counsel is misleading.

MR. WESTERVELT: Okay. I'll rephrase the question.

BY MR. WESTERVELT:

Q The computer could think illegal thoughts, couldn't it? Isn't that right?

MR. MATERGIA: I'm going to object to the question as being argumentative. If counsel wants to explore the opinion of the witness as to the capability of the equipment I have no objection. I think the form of the question is improper.

BY MR. WESTERVELT:

Q We agree that the computer in one of these blue box setups or a setup to make illegal calls is the equivalent of a brain, it does the thinking?

A. A blue box?

Q. The computer.

A. Oh, the computer, yes.

Q. And the DAC, or whatever other interface device you use, does the talking?

A. The DAC does the interchanging of information between the computer and the telephone system.

Q. You want to characterize it as conversing rather than talking or transfer of information rather than talking. Okay.

A. All right.

Q. Without the DAC or without the converter or without some other appropriate interface all the computer can do is think?

A. It could run programs and things of that sort.

Q. But it can't do anything, it can't have any intercourse with the telephone system?

A. Well, let me put it this way --

Q. Poor choice of words. Isn't that true? The computer without the DAC or without some other interface can't converse with the telephone system?

A. With a speaker. It needs a speaker to generate tones, yes.

Q But those items to your knowledge were not there, or at least they were not delivered to you?

A I didn't see them, no.

Q So again we come to the conclusion that all this computer could do was to think illegal thoughts or think of illegal things; it couldn't put them into action in the form that you received it.

A Well, this is true. But the fact that I had a sketch in my possession indicated that someone was doing something to the output ports. And while I didn't have it in my hand I had a sketch which I built my DAC upon. The DAC that I built was not one that I built out of memory or from my knowledge, but rather from the sketch that I had received.

Q But that sketch was a part of a a processor manual that had several hundred pages?

A No, no. That sketch was a handwritten sketch. That's not part of the Sol Processor. That's a handwritten sketch.

Q You're talking about the schematic?

A Correct.

Q Is the technology to construct a DAC secret technology in the Bell System?

A No.

Q Common knowledge among computer programmers and--

A I would say it's common knowledge among computer programmers.

Q About the equivalent of how to rebuild a carburetor among automobile mechanics?

A I would say it's pretty common knowledge.

Q Can you use also a DAC for things like instrumentation and music generation?

A Absolutely. That's what they use.

Q Did you make any written reports of your conclusions and your experiments with this machine as you went through the process of checking it out?

A I have information that I jotted down in my personal books, my personal notes, yes.

Q Did you make any written reports to other Bell employees or to the District Attorney?

A I --

MR. MATERGIA: You can answer that question.

A Yes, I did.

Q And can you tell us how many of those there were?

A How many reports there were?

Q Yes. Was there one final report or did you make interim reports?

A I -- I made a final report.

Q And that outlined your conclusions?

A Yes.

Q Do you have a copy of that with you today?

A I don't have one with me.

Q Do you recall the date of that final report approximately?

A Early this week sometime, it was Monday, Tuesday, it was this week I finished up my -- my work. I had-- before this I had also -- in other words, this final report was just not done Monday. I had naturally been putting things aside on my computer file as to what-- you know -- what I had been thinking, my thoughts on the subject.

MR. WESTERVELT: I have no other questions. Let me see if I can find Mr. Goldstein and see if he wants to cross examine.

He informs me he has no questions.

REDIRECT EXAMINATION

BY MR. MATERGIA:

Q Mr. Previte, how long did it take you to construct what you called a DAC, a digital analog converter --

A Very --

Q -- from the diagram?

A Well, I gave it to one of the wire men at the labs and I told him, you know, get the parts and build it. I think he did it in about half an hour.

Q Is this a difficult thing to construct once the diagram is present?

A No.

Q Now, when you indicated in direct examination that you attempted to make calls from the Canadensis area by applying the program and DAC which you constructed from the diagram and you were unsuccessful--

A Yes.

Q -- would you clarify that in terms of whether or not --

A All -- I found a lot of side tones on the frequencies when I analyzed it, and I presume with some debugging though that it could be made -- it

could be --

MR. BEAM: Purified.

THE WITNESS: -- purified.

MR. WESTERVELT: I want the record to indicate that Mr. Beam, who is a Bell security man, suggested that word to this witness.

THE WITNESS: Debugging. I want to say debugging. Put debugging. Let someone ask me later what it means.

BY MR. MATERGIA:

Q What does debugging mean?

A It means going in and adjusting your program.

MR. MATERGIA: No further questions.

MR. WESTERVELT: I have no recross.

MR. MATERGIA: I call Mr. Kenneth Hopper.

KENNETH D. HOPPER, a witness called on behalf of the Commonwealth, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MATERGIA:

Q Mr. Hopper, give your name, please.

A Kenneth D. Hopper.

Q Where are you employed?

A I'm employed by Bell Telephone Laboratories, at the Holmdel, New Jersey, laboratory.

Q In what capacity are you employed with Bell Telephone?

A I'm a member of the technical staff of specifically the security support group.

Q How long have you been employed with Bell Telephone System?

A Thirty years.

Q In your employment have you had experience with the examination of devices capable of emanating MF and SF tones?

A Yes, I have.

Q Are you familiar with the term blue box?

A Yes, I am.

Q And what is in lay language a blue box?

A A blue box is a tone generating device which is capable of generating the tones that are used to control the toll portion of the telephone network.

Q And how is this accomplished through the emanation of these tones?

A It's a -- the use of a blue box requires an entry procedure into the network. Do you want me to go through this entire procedure?

Q Well, explain, if you will, briefly the method of application of MF and SF tones so as to accomplish a theft call.

A All right. First let me define each of these. SF, single frequency, is a single frequency of 2600 cycles per second, which is used to indicate an idle condition on a trunk. The presence of 2600 cycles on a trunk is indicative that that trunk is idle and is not carrying conversation.

Okay. Multi-frequency, MF, is specifically a language of twin tones, two tones that are transmitted together to represent all the digits of zero through nine plus some network control signals which are also combinations of two tones.

Q Okay.

A Now, where do we go from there?

Q What is the significance of the presence of, or the capability of, the generation of MF and SF tones as it relates to theft of communications?

A All right. We take a typical case of fraudulent

telephone calling. An entry call is made into the net --

MR. GOLDSTEIN: Objection. It is not responsive to the question.

MR. MATERGIA: I believe it is responsive. I've asked him what the significance of the multi-frequency and single frequency tones are to the capability of making a fraudulent or accomplishing of a theft of communications and --

MR. GOLDSTEIN: The answer is that's the way you do it, not some philosophical discussion about how you do it.

MR. MATERGIA: Well, the witness should be permitted to explain or elaborate as to the method of doing so. I'll just ask the question: elaborate how this is done.

MR. WESTERVELT: Perhaps I can make another objection. This is all irrelevant. The previous witness has already testified basically as to how you do it and he said what they found didn't do it. I don't see what the relevance of how you do it again is.

MR. MATERGIA: That's not the case at

all.

MR. GOLDSTEIN: Is this testimony against Mr. Wright or Mr. Draper?

MR. MATERGIA: This testimony is directed for the charges against Mr. Wright.

MR. GOLDSTEIN: Okay, then, I'll just keep quiet.

MR. MATERGIA: I think counsel for Mr. Wright has incorrectly stated the testimony of the previous witness.

MR. WESTERVELT: Well, I don't understand all this stuff, I admit. The objection is that it's repetitive because I think the last witness explained basically how you do this blue box business. And in any event my impression of his testimony was that when he tried the tapes in Mr. Wright's computer it didn't succeed in doing it. So I don't see what another recap of how you do it successfully has to do with the whole case.

THE MAGISTRATE: Do you have any answer to this objection?

MR. MATERGIA: Well, to some extent this witness' testimony is repetitive but it goes

beyond the knowledge of the previous witness when the previous witness indicated that he's not versed in the area of the operation of the Bell System as it relates to the issuance of multi-frequency and single frequency tones -- in other words, how fraud is accomplished through the generation of these tones.

THE MAGISTRATE: I don't think we heard that kind of testimony. I'm going to overrule your objection.

THE WITNESS: All right. In a rather classical and typical case of fraudulent calling an entry call is placed into the network, usually to a non-charge type number. This could be an 800 number, it could be to a 555 information service. After that call has entered the network and has switched through the toll portion of the network, but prior to answer at the far end, 2600 cycles is applied from this blue box device to the calling telephone. The presence of 2600 cycles appearing on that circuit is ignored by the local office. The local office has nothing sensitive to 2600 cycles. However, the 2600 cycles appearing on the toll trunk makes that trunk appear idle at the far end.

Now, the removal of the 2600 cycles looks to that distant toll office like a new seizure and it puts equipment on the line expecting to receive new digits for a new call in the multi-frequency key pulsing language.

Now, at this point the blue box user transmits a network control signal which is referenced as key pulse, KP, followed by the digits of the number that he wishes to direct the fraudulent call to. And at the conclusion of all those digits he transmits another network control signal known as ST, which indicates that all the digits are in, and the distance switching the machine should start to switch on the information it has got.

Now, at that point the local office has seen only the billing record for the 800 or 555 call, and then no knowledge in the billing record of the redirected destination. The call then switches and completes and an answer signal comes back from the redirected party, the fraudulently called party, which appears to be nothing more than an answer to the 800 call that was originally used to enter the network.

BY MR. MATERGIA:

Q Would a device capable of generating such multi-frequency and single frequency tones be capable of accomplishing a telecommunications theft?

A Yes, it would.

MR. MATERGIA: Cross examine.

MR. WESTERVELT: I have no questions for this witness.

THE MAGISTRATE: I have none. You can take your seat.

MR. MATERGIA: The Commonwealth rests.

MR. GOLDSTEIN: I move for a discharge against John Draper. There's no evidence he has anything in 910 (2).

MR. WESTERVELT: I have a motion to make, but maybe you want to rule on that one first.

THE MAGISTRATE: Let me read that subsection again.

MR. GOLDSTEIN: I would note, your Honor, that no evidence against Mr. Draper has been presented today whatsoever.

MR. MATERGIA: The Commonwealth will on the record state that there being no evidence presented

against Mr. Draper as it relates to the charges in this complaint, the charges should be duly dismissed as it relates to Mr. Draper.

THE MAGISTRATE: All right, at this time we will dismiss those charges.

MR. GOLDSTEIN: Thank you.

MR. WESTERVELT: Squire, on behalf of Mr. Wright I would like to move to dismiss the charge of manufacture, distribution or possession of telecommunications services for theft as presented today. The evidence today was not as long as at the last hearing. I think it's fairly easily recallable.

The witness through which the Commonwealth attempts to establish a prima facie case is Mr. Previte. Mr. Previte testified that he took Mr. Wright's computer, took the tapes, which, by the way, were not proven to be Mr. Wright's -- you're left to speculate they were Mr. Wright's, but let's leave that for a minute -- he said he did everything he could with them. He's had them for some time. He has tried all types of tests on them, and the taking of the equipment that was seized from Mr. Wright, there was no way that equipment could communicate

with a telephone line or telephone system, that he had to make up a piece of equipment to connect the computer to the telephone line.

Now, admittedly Mr. Wright had a diagram for making that piece of equipment. But Mr. Previte himself says that that's something that is as common to people who work with computers as repairing a carburetor is to someone who works on automobiles.

There's no way as this machine sat there when Trooper Harris seized it that it could communicate with the telephone system. Therefore it cannot be an item to steal telecommunications services because it has no method of communicating with the telephone system.

The second reason for dismissal is that even when this man, whose qualifications are very impressive, no doubt, and he seems to know what he's talking about, took it, put it all together, took it to Cresco and tried to make an illegal phone call, it didn't do it.

Now, he says if you debug it or if you modify or fix it up to make it do that then it will do it. But it doesn't do it. As it stands it will

not successfully accomplish a theft of telecommunications service, even adding on the extra part that he added on to it.

Two independent reasons why this charge should be dismissed. There's no question about it in this case, Squire, and I ask you to dismiss the charges of manufacture, distribution or possession.

MR. MATERGIA: Squire, this being a preliminary hearing, the Commonwealth is only bound to show a prima facie case, and I think we have made that case out. Furthermore, we have proven and submitted evidence to the effect that (1) a computer was seized; (2) that the computer was identified by the defendant as belonging to him. You have before you, first of all, direct evidence of the seizure of certain tapes which have been admitted into evidence, and that those tapes are programmed and can be in a sense played through the very computer which was seized and identified as belonging to Andrew Wright.

Circumstancially you have the testimony from Commonwealth witnesses that identify these tapes as being part of the computer in a sense of their, first of all, location with respect to the computer

that they were found next to, in direct proximity or immediate proximity to that computer, and also by virtue of the Commonwealth's Exhibits 1 through 5, the ability to examine the photographs to further corroborate the testimony of Commonwealth witnesses that those tapes were found with the computer.

So in essence you can through circumstantial evidence find that the computer and the tapes were one and the same or all one ball of wax.

We also have evidence to the effect that there is a DAC, or converter, the diagram of which in handwriting was found among those items identified as the Sol computer belonging to Andrew Wright, and that a converter could be constructed from the diagram such as to adapt the Sol computer so as to transmit the various multi-frequency and single frequency tones that are necessary to accomplish a telecommunications theft. So you have those things before you.

You also have the testimony of Mr. Previte, who not only establishes that the tapes and the DAC constructed from the diagram are all

compatible and work well with the Sol computer identified as belonging to Andrew Wright, but in fact comprise a system for the emanation of multi-frequency and single frequency tones capable of placing a fraudulent call.

Now, his testimony was that short of some debugging these devices in their entirety worked. He says that they do not work well. He was able to place calls, he got the wrong number, but nonetheless he was able to place calls by running the program and also using the DAC as constructed.

I think you also have to look to the statute because that's significant here. The statute says: "...makes or possesses any instrument, apparatus, equipment or device designed, adapted or which can be used..." So that the language very significant there is "designed for the commission of a theft of telecommunications services and adapted for the commission of theft of telecommunications services." And that's the relevant language that's before you.

Surely we feel we have made out a prima facie case against Andrew Wright.

THE MAGISTRATE: All right. Wortley Andrew Wright, I'm going to bind you over to the Court of Common Pleas on this charge. I think there is prima facie evidence shown here to establish that section. That evidence has been shown at this time. Court is dismissed.

(Hearing adjourned at 4:55 p.m.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me at the hearing in the above matter; and that the foregoing is a true and correct transcript of the same.



Frank A. Condon, Reporter