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Bibliographic Cover Sheet

db868

Title **Commonwealth v. Draper and Wright, No. 67-1978 and 68-1978 -- Collected legal papers from 1977-1978**

Date 1977-10-22

Abstract Collected legal papers (motions, orders, etc.) regarding Draper's 1977 bust in Pennsylvania.

Keywords John Draper; Wortley Wright; Andrew Wright; Captain Crunch; Pennsylvania

James R. Harris, Jr. Pa. State Police, Swiftwater, Pa. 421-1700 (Phone No.)
(Name of Affiant) (Department or address of private Affiant)

A 208

DATE OF APPLIC 10/22/77

INVENTORY A-21221

being duly sworn (or affirmed) before me according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or in the possession of particular person as described below.

ITEMS TO BE SEARCHED FOR AND SEIZED: An electronic device commonly called a box" or devices for advancing long distance calls on to the Bell System Telecommunications service or any telecommunication or accessory equipment relating to the operation or intended to be used for such unlawful device(s) and/or plans for the manufacture or assembly of such apparatus; lists containing switching codes and/or names and telephone numbers of known or

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.): At a development called "The Hamlet", Price Twp., Monroe County, a 2-story dark wood frame dwelli block & cement foundation, upper floors dark brown, no doorway in front. Shale driveway on side of building. Plaque by driveway reads "M/H McFarland". House is 175 feet from road.

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description): Occupied by Andrew W. Wright, Jr., and John Thomas Draper. Telephone service is subscribed by Andrew W. Wright, Jr. with telephone number 717-595-3088.

VIOLATION OF (Describe conduct or specify statute): Section 910(1)(i)(ii) Manufacture, distribution or possession of devices for theft of telecommunications services; 907(a) Possessing instruments of crime; 3926 Theft of Services - Para.(a)(1)(2) Acquisition of services, Para. (b) Diversion of services; 3930(b)(1) Theft of Trade Secrets Section 903(a)(1) Criminal Conspiracy

DATE OF VIOLAT 10/17/77 to dat

PROBABLE CAUSE BELIEF IS BASED ON THE FOLLOWING FACTS AND CIRCUMSTANCES: Tpr. James R. Harris, Jr., on October 21, 1977, was furnished information from William Beam and Wilfrid A. and John Eisenhooth, all of whom are security agents for Bell Telephone Co. of Pennsylvania. William Beam is presently the security manager for Bell of Pennsylvania, Eastern area, with offices in Conshohocken, Pennsylvania. He has been employed by the aforesaid company for the past 25 years. Prior to this employment, he was schooled for one year with the U.S. Air Force in radio and electronic equipment. Prior to employment with Bell, Beam for three years worked for the U.S. Air Force on special communications. During this 25 years employment with Bell he spent 15 years handling installation and repair of Bell equipment and further has worked as a central office switchman, trained in the use and repair of step by step, number 5 cross bar, toll and centrex switching, and further during said employment with Bell, Beam has been an instructor in central office switching procedures for three years. Further, Mr. Beam has been wire chief/supervisor for central office switching.
Informant #2 Wilfrid A. Dunne is presently a Security Agent for Bell Telephone Company of Pa. with offices in Conshohocken, Pennsylvania. Dunne has been employed for 30 years by the aforementioned company. During his 30 years employment with Bell, Dunne spent 20 years handling installation and maintenance and repair of Bell equipment, and further has worked as a cent

ATTACH ADDITIONAL PAPER(S) COPIES IF NECESSARY X CHECK HERE IF ADDITIONAL PAPER IS USED.

RESULT OF SEARCH

DATE AND TIME OF SEARCH: 22 Oct 77 1415 ☐ A.M. ☒ P.M.
ARREST ☒ YES ☐ NO
JUDGE'S DISPOSITION ☐ DISC. ☐ HELD FOR COURT ☐ FURTHER HEARING ☐ FINE COM

PROPERTY SEIZED ☐ YES ☐ NO (If yes, list on continuation form R2008 and enter control number(s) here) A21221 - A2122

NAME OF PERSON SEIZING PROPERTY | BADGE NO. | OTHER OFFICERS PARTICIPATING IN SEARCH:

SIGNATURE OF AFFIANT | ADDRESS OF PRIVATE AFFIANT | BADGE No. | DISTRICT

Sworn to and subscribed before me this 22 day of Oct. 1977. My Commission expires the first Monday of January 19

Box 213, Mountainhome, Pa. 18342 43-4-02

Issuing Authority Office Address Magisterial District

TO LAW ENFORCEMENT OFFICER: WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the above described premises or person, and to seize, secure, inventory, and make return according to the Pennsylvania Rules of Criminal Procedure, the above described items.

☐ This Warrant should be served as soon as practicable but in no event later than 12:45 ☐ A.M. ☒ P.M. October 24, 1977 and shall be served only during daytime hours of 6 A.M. to 10 P.M.

Issued under my hand this 22nd day of October 1977, at 12:45 P.M. o'clock. (Issue time must be stated)

(Signature of Issuing Authority)

☐ This Warrant should be served as soon as practicable but in no event later than ______ ☐ A.M. ☐ P.M. ______, 19__ and may be served anytime during day or night.

Issued under my hand this ______ day of ______ 19__, at ______ o'clock. (Issue time must be stated)

(Signature of Issuing Authority)

Mag. Dist. No. 43-4-02 Office Address Box 213, Mountainhome, Pa. 18342 Phone No. 595-25

My Commission Expires 1st Mon of Jan., 1978 Title of Issuing Authority District Justice

* P.A. R. Crim. P. 2005(d).
** ... additional reasonable cause set forth in the accompany ... P.A. R. Crim. 2006(b).

... Security Agent for the investigation of electronic tel fraud cases wherein both "Blue Box" and "Black Box" devices were encountered for the past years. During this time, numerous cases have been investigated and tried with successful conclusions.

John Eisenhooth, Informant #3, having served with the Pa. State Police, having been the Ch Police at Bellefonte, Pa., and been security agent for the Bell Telephone Co. of Pennsylva for the past 30 years, is presently Senior Security Agent with offices in Wilkes-Barre, Pa The affiant personally has known and dealt with John Eisenhooth relative to criminal inves on many occasions in the past, and personally knows this man to be truthful and honest.

The affiant believes that, based on the experience of his informants as shown above, their information is true and correct.

My informants have obtained information on October 14, 1977, from Pacific and New York Tel Companies that John Thomas Draper a/k/a "Captain Crunch" was living in the 717 Pocono area, investigation began October 14, 1977. On October 17, 1977, it was established by my infor that John Thomas Draper was living at the home of Edward McFarland at The Hamlet, Price Tow Monroe County. On October 19, 1977, at 2:08 P.M. electronic surveillance was established a Security Office, Conshohocken, Pa., and continues to date. This surveillance was conducted Beam, Dunne, and Mrs. G.H. Orner, a 35-year employe of Bell Telephone Company and also a se agent. This electronic rotary dial touch tone and multi-frequency detector identified four made from telephone number 717-595-3034 to an in-watts number 800-323-7164, subscribed to b Johns Manville Company, Oak Brook, Illinois. These calls were then extended by using a tou tone pad to place a five digit code 84553 to gain access to a second dial tone by which cal were touch toned to New York and California. The AMA tape was interrogated by hand reading tape. Entries confirming these calls were found corresponding to the detector, however, th calls were billed to 717-595-7454 avoiding identity of the originating party. Beginning at 5:57 P.M., calls were made to the in-watts number 800-327-8333, located in Florida. Thi was followed by the application of 2600 HZ tone on the network, immediately followed by mult frequency signals extending these calls to various parties in different states. Eight sepa "Blue Box" calls were made. Sporadic calling continued until 5:08 A.M. on October 20, 1977, in which different 800 in-watt numbers were used. Similar activity has continued from the morning of October 20, 1977, through the morning of October 22, 1977.

And further, my informants, on the basis of their above-noted experience and expertise with Telephone Co. of Pennsylvania, and their participation in numerous investigations into the t of telecommunications services of a similar nature, state that the electronic device known as the "Blue Box" is utilized by a calling party dialling a distant point on a toll circuit and gaining access to that circuit and at the point of completion of the call, the caller utilize an electronic tone device which enables the called equipment to be disconnected but still maintaining control of a long distance toll trunk from the point of origin. At this time, th calling party has access to all the telephones within the Bell system and eventually in the world which he may then call free of charge and thereby commit the theft of telecommunication services. Employed in the act of theft is the passing of a different telephone number to the operator for billing purposes. This is done to avoid identity of the true calling number and to avoid billing.

The defendants are not employed by the Bell Telephone Company of Pennsylvania and have no leg right to be in possession of or to use the equipment or paraphernalia being used by them to circumvent billing and to avoid identity of the calls. These items and paraphernalia are subject to seizure because they are being used in an unlawful manner and are not equipment nor furnished to a telephone subscriber.

[signature] 466

Signature of Affiant   Badge No.   District/Unit

Sworn to and subscribed before me this 22nd day of October, 1977

[signature] District Justice 43-4-02   Box 213, Mountainhome, Pa. 18342

My commission expires 1st Mon of ...

suspected individuals who are similarly engaged in the theft of telecommunications services; tape recordings which manifest multi-frequency tones often used in the furtherance of this crime and which also may contain voice conversation with other persons which occurred during the theft of said telecommunications; or other documents relating to proprietary information or methods of signaling and any miscellaneous hardware which is obviously the property of the Bell Telephone Company of Pennsylvania and/or its associated companies, and any and all associated paraphernal

DESCRIPTION OF PREMISES AND/OR PERSONS TO BE SEARCHED (continued):

Thinly wooded left, right and rear. Hill behind house. No dwelling left or right. There is a dwelling across the road, right side of Fern Drive. Dwelling to be searched is on left side of Fern Drive, off main road Blue Ridge on to High Crest Road, on to Fern Drive. C183 lead drop pole 2.

James L. Harris J. C.P. Swiftwater, Pa. 18370 466

Signature of Affiant Badge No. District/Unit

Sworn to and subscribed before me this 22nd day of October, 1977.

Magisterial District Justice 43-4-02

Box 213, Mountainhome, Pa. 18342

My commission expires 1st Mon of Jan, 19?

RECEIPT/INVENTORY
OF SEIZED PROPERTY FROM

1:15 ☐ A.M. ☒ P.M. | AZ05[illegible]

[illegible] [illegible] [illegible]

[illegible] M. WRIGHT JR. [illegible] RD, [illegible] CANADENSIS, PA
(Name) (Address)

The following property was taken/seized and a copy of this Receipt/Inventory with a copy of the Search Warrant and affidavit[illegible] was ☒ personally served on the above named ☐ was left at *(describe location at premises)* ______ ______ as required by the Pennsylvania Rules of Criminal Procedure 2008(a)([illegible]

QUANTITY	ITEM DESCRIPTION	MAKE, MODEL, SERIAL No., COLOR, etc.
1	[illegible] CCTV [illegible] TE-[illegible] SER #6752806 7.	
2	S.L. TERMINAL COMPUTER, MOD # 20, SER # 91389-1, PROCESSOR TECHNOLO[illegible]	
3	PANASONIC PORTABLE TAPE RECORDER, MODEL RQ413AF	
4	ONE PROCESSOR TECHNOLOGY SOL SYSTEMS MANUEL	
5	[illegible] HARDWARE DESIGN, MLS-6, 8080 MICRO COMPUTER SYSTEMS USERS MA[illegible]	
6	[illegible] PAD W/NUMBERS, ONE TABLET OF LINED PAPER W/CODES + DIAG[illegible]	
7	ONE [illegible] MEMO BOOK CONTAINING PHONE NUMBERS + NAMES	
8	[illegible] PAPERS + MISCELLANEOUS PAPERS W/NUMBERS, DIAGRAMS ETC., [illegible]	
9	[illegible] DECODING.	
10	[illegible] BOX CONTAINING SIXTEEN CASSETTES	
11	ONE [illegible] BOX CONTAINING [illegible] PARAPHENALIA	
12	ONE BLUE "TOP FLIGHT" NOTEBOOK.	
13	ONE APPLE II" MINI-MANUAL FOR COMPUTER.	
14	ONE GENERAL ELECTRIC PORTABLE T.V. - NO SERIAL #	
15	ONE PANASONIC PORTABLE TAPE RECORDER, MODEL # RQ 309DS	
16	ONE APPLE COMPUTER POWER SUPPLY SER. # A2M001-012[illegible]	
17	ONE HEWLETT-PACKARD TRANSFORMER - W/MISCE[illegible]	
18	ONE [illegible] FAN MODEL WS 2107FL-55	
19	SIX CASSETTES	
20	TWO ADVERSARY RESET SWITCHES	
21	ONE TWO INCH SPEAKER MARKED #8	
22	ONE I.C. BREAD BOARD CIRCUIT MARKED "BLUE B[illegible]	
23	ONE COMPUTER KEYBOARD FOR APPLE COMPUTER	

☐ CHECK HERE IF [illegible]

I we TPR JAMES R. [illegible] JR. [illegible] of PENN[illegible]

do swear (or affirm) that the property seized and taken persuant to and under the authority of the [illegible] best of my/our knowledge and belief correctly and completely listed above as a just, true [illegible]

[signature] | TPR JAMES R. [illegible] JR. | PSP [illegible]

(Signature of Person Issuing Receipt/Inventory) (Printed Name of Person Issuing Receipt/Inventory) ([illegible]

SIGNATURE OF WITNESS TO VERIFY ACCURACY OF INVENTORY IN ABSENCE OF OWNER/OCCUP[illegible]

[signature] [illegible] [illegible]

(Signature of Witness) (Printed Name [illegible]) (Address[illegible]

[signature]

(Signature of Person Making Search)

Rule 2008(a). [illegible]

Rule 2008(b). [illegible] specified in paragraph (a) at a conspicuous location in the said premises. A copy of the Warrant and affi[illegible] davit(s) must be left whether or not any property was seized.

After this form is completed, enter serial No. of this form on Search Warrant and attach one copy of this to each copy of Warran[illegible]

RECEIPT/INVENTORY
OF SEIZED PROPERTY FROM

TIME OF SEARCH	SEARCH WARRANT No.
1415 ☐ A.M. ☑ P.M.	A20846

JOHN THOMAS DRAPER,
[illegible] W. WRIGHT, JR, FERN RD, THE HAMLET, CANADENSIS, PA
(Name) (Address)

The following property was taken/seized and a copy of this Receipt/Inventory with a copy of the Search Warrant and affidav[it] was ☑ personally served on the above named ☐ was left at *(describe location at premises)* ______ ______ as required by the Pennsylvania Rules of Criminal Procedure 2008(a)

QUANTITY	ITEM DESCRIPTION	MAKE, MODEL, SERIAL No., COLOR, etc.
ONE	PRINTED CIRCUIT BOARD. FOR APPLE COMPUTER	
[illegible]	[illegible] CONNECTS FOR [illegible] & FOUR BATTERIES FOR SAME	
NINE	CASSETTES	
TWO	PRINTED CIRCUITS & MISCELLANEOUS COMPONENTS.	
ONE	BOX CONTAINING MISCELLANEOUS PAPERS	
ONE	TOUCH TONE PHONE #2500D - PHONE # 215-815-9133	
ONE	[illegible] CONTAINING PAPERS	
ONE	[illegible] WITH ASSORTED PAPERS	

☐ CHECK HERE IF LISTING CONT[INUED] [illegible]

I we TPR JAMES R HARRIS JR of PENNA STATE POLICE

do swear (or affirm) that the property seized and taken persuant to and under the authority of the [illegible] best of my/our knowledge and belief correctly and completely listed above as a just, true and com[plete] [illegible]

[signature] TPR. JAMES R. HARRIS JR PSP

(Signature of Person Issuing Receipt/Inventory) (Printed Name of Person Issuing Receipt/Inventory) [illegible]

SIGNATURE OF WITNESS TO VERIFY ACCURACY OF INVENTORY IN ABSENCE OF OWNER [illegible]

[signature]

(Signature of Witness) [illegible]

[signature]

(Signature of Person Ma[king] [illegible])

Rule 2008(a) [illegible]

Rule 2008(b). If no one is present [illegible] specified in paragraph (a) at a conspicuous location in the said premises. A copy of the Warrant and affi[davit(s)] must be left whether or not any property was seized.

After this form is completed, enter serial No. of this form on Search Warrant and attach one copy of this to each copy of Warrant.

7312-31

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
MONROE COUNTY BRANCH - CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	
vs.	:	
WORTLEY A. WRIGHT, JR.	:	NO. 67-1978
and	:	
JOHN T. DRAPER	:	NO. 68-1978
Defendants	:	

O P I N I O N

Defendants Wright and Draper, in the above captioned matters, have filed various pre-trial motions with the Court, including, inter alia, motions to quash the magistrate's return of preliminary hearing, and applications to suppress various physical evidence seized against defendants. These motions are now before the Court for determination.

I. DEFENDANT WRIGHT'S MOTION TO QUASH THE MAGISTRATE'S RETURN OF PRELIMINARY HEARING.

Two preliminary hearings were held on the charges against defendant Wright; one taking place on November 1, 1977, and the other on December 15, 1977. It has been stipulated by counsel that the Court will decide the merits of this motion, and the companion motion filed on behalf of defendant Draper, based on the notes of testimony of said hearings.

It is time-honored law in the Commonwealth of Pennsylvania that at a preliminary hearing just as at a hearing in the nature of an habeus corpus, the Commonwealth must produce evidence that would constitute "sufficient probable cause to believe, that the person charged has committed the offense stated", that is, the Commonwealth must make out a prima facie case of guilt against the defendant. Commonwealth ex rel Scolio vs. Hess, 149 Pa. Super 371, 1942. It is not necessary at such proceedings that the Commonwealth produce evidence so as to require a finding by a jury of the guilt of the accused beyond a reasonable doubt, as a preliminary hearing, just as a proceeding in a nature of habeus corpus is not a trial.

Applying the standards set forward above to the instant proceedings, we will examine the evidence against defendant Wright in order to determine whether the magistrate's return, which indicated a prima facie case on all charges, those of conspiracy, theft of telecommunications services, and manufacture, possession or distribution of devices for theft of telecommunications services should be quashed.

The first charge against defendant Wright which the Court will consider is that of conspiracy. The crime of conspiracy is a violation of 18 C.P.S.A. 903 (A)(1) and (2). This statute provides:

> "A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime;
or
(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime."

As our appellate courts have held, the gist of the offense of conspiracy is an agreement, which may be established by evidence either circumstantial or direct. Commonwealth vs. Yobbagy, 410 Pa. 172, 1973, Commonwealth vs. Holman, 237 Pa. Super. 291, 1975.

The Court, upon reviewing the evidence against defendant Wright, finds it difficult to conceive of a record more devoid of evidence, whether circumstantial or direct, of an agreement which could be made the basis of conspiracy. Hence, we feel constrained to grant defendant Wright's motion to quash the information on this charge.

Next, we will consider the charge of theft of telecommunications services against defendant Wright. A plethora of highly complex technical testimony was elicited at the preliminary hearing to establish the fact that certain telephone calls were made illegally from a telephone which was listed in defendant Wright's name, and was located at his residence. Testimony was further elicited that defendant Wright owned a certain SOL computer, which was seized as a result of the search of the premises. This computer was not connected to the telephone lines at the said premises, and did

not have the capacity to communicate with the telephone system. More pertinently, no testimony was elicited whatsoever as to who made the illegal calls in question. On the contrary, the Commonwealth's witness, one Beam, N.T. 38-39, indicated he did not know who made the illegal calls in question. Under the circumstances, the Court likewise has no choice but to grant the motion to quash with respect to this charge. Lastly, we are left with the violation of Section 910 (1)(i)(ii) of the Pennsylvania Crimes Code, manufacture, distribution, and possession of devices for theft of telecommunication services.

The item in question that is the basis for this charge against defendant Wright is a certain SOL processor technology computer, which defendant Wright readily identified as being his at the time of his arrest.

It was established through testimony at the preliminary hearing that for a device to be used for theft of telecommunications services, it must be able to generate tones which may be used to manipulate the telephone system in the manner as a touch-tone telephone will do, as is the case of a so-called "blue box". Testimony was further elicited by experts of the Bell Telephone Company that the computer seized and identified as defendant Wright's cannot create such tones.

It was further established that in order for such a computer as this to generate such tones, it is necessary to utilize a "DAC", being a digital to analog converter. A hand-written diagram for such a DAC was uncovered in the search of said premises. Such a converter was then built by employees

of Bell Telephone Company and connected to the Wright computer, as a result of which tones could be generated, but were thereafter unsuccessful in making illegal calls, although same were attempted. N.T. pp. 176-177.

We do not find it of the greatest significance that the illegal calls could not be successfully made. As was indicated, the existence of side tones on the frequencies could prevent such a fraudulent call from being completed. However, we are concerned with the attempt by the Commonwealth to build a missing ingredient into the case against defendant. By supplying such a missing ingredient, the Commonwealth would have us find that the instrument without the converter in question, and not being set up for the purpose of making telephone calls in any fashion, was a device for the interception of telecommunications services. This, the Court is not prepared to do, and hence, feels bound to likewise quash the magistrate's return against defendant Wright on this charge.

II. MOTION OF DEFENDANT DRAPER TO QUASH MAGISTRATE'S RETURN OF PRELIMINARY HEARING.

We have discussed at some length the failure of the Commonwealth to prove a prima facie case against defendant Wright on the charges of conspiracy and theft of services. We find the same statements to be applicable to the case of defendant Draper. There is not a scintilla of evidence in the transcript of the magistrate's hearing, which would justify a prima facie finding against either defendant on either charge. Hence, the Court will grant the motion of defendant Draper to

quash the magistrate's return of preliminary hearing on those two charges.

However, we detect a noticeable distinction with regard to the charge of possession of an instrument for theft of telecommunication serivces with regard to defendant Draper. It was testified to at the preliminary hearing that defendant Draper owned an Apple computer, which was readily admitted by Draper as being his at the time of the arrest and search of the premises in question. It was further testified that a possible application of this computer could be for purposes of committing telephone fraud, if there was an accoustical or electrical connection to the telephone network to bring about manipulation of the network, and that in the computer in question, there is such an inner-face circuit. N.T. p. 97. Moreover, this computer was "hard-wired" directly to the telephone connecting terminal for the telephone service on the premises. N.T. p. 17, p. 23.

Based on the defendant's identification of this equipment as his, as well as the fact that such equipment had the present operating capacity to commit telephone fraud, we find that the Commonwealth did meet its burden of establishing a prima facie case as to this charge. Hence, the motion of defendant to quash the magistrate's return as to this charge will be denied.

III. APPLICATION OF DEFENDANT DRAPER TO SUPPRESS EVIDENCE.

A. Defectiveness of the search warrant as not supported by probable cause.

Both Commonwealth and defense have agreed that the United States Supreme Court has set forward what is known as the "two-prong" test for determining the sufficiency of probable cause where an affidavit is given based upon hearsay information. That is, the affiant must give the issuing authority the facts which will enable such authority to make two independent judgements; 1, the affidavit must contain sufficient underlying circumstances to permit the magistrate to make an independent judgement as to the validity of the informant's information; secondly, the affidavit must contain a showing that the informant is reliable. Aguiliar vs. Texas, 378 U.S. 108, 1964.

The affidavit in this particular case recites that defendant Draper was living in the home of one Edward McFarland at The Hamlet, Price Township, Monroe County, Pennsylvania, on October 17, 1977, as established by the informants. It further recites that Wortley A. Wright, Jr. occupied the said premises, and subscribed to a telephone service with telephone number 717-595-3088. Thereafter, electronic surveillance was monitored by the informants, wherein telephone calls were identified to a certain WATS line in Oakbrook, Illinois. Thereafter, by use of a touch-tone pad, which is not available through the 595 telephone exchange, access was gained to another dial tone by which touch-tone calls were made to New York and California. Thereafter, sporadic calls were made to other 800

WATS lines, including one in Florida, which was followed up by extended multi-frequency calls to other parties in different states. The informants in question were four employees of the Bell Telephone Company, William Beam, Wilfred Dunne, John Isenhooth, and Mrs. G.H. Orner. The affidavit further sets forth the employment qualifications and experience of the employees, and recites that they are known as honest and truthful to the applicant.

We feel that the affidavit, as written, satisfies these two-prong requirements. We believe that an adequate basis was established of underlying circumstances to permit the magistrate to make a judgement as to the validity of the informants' information. Secondly, we feel that the reliability of the affiant's informants was well-established by the recital in the affidavit. Hence, it is the conclusion of the Court that the warrant in question was not defective on its face because of any such defects as complained of by defendant Draper.

B. Illegality of the Search of the Premises Because of the Presence of Security Personnel of the Bell Telephone Company.

It is clear that under Pennsylvania Rules of Criminal Procedure, Rule 2004, that a search warrant must be executed and served by a law enforcement officer. It is clear from the testimony at the preliminary hearing that Trooper James R. Harris, Jr., of the Pennsylvania State Police, executed and served this warrant, together with other members of the Pennsylvania State Police.

Defendants would have us hold that the presence of employees of Bell Telephone Company at the time of the search was such as to render the search illegal. This, we are not prepared to do.

The testimony was that the Bell Telephone employees were utilized in order to assist the State Police in identifying the items to be seized. We find defendant's contention that Trooper Harris and the other State Police officers were acting as agents for Bell Telephone Company to be essentially without merit. Counsel for the defendant having cited no authority which would specifically prohibit such activities by the Bell Telephone Company in assisting the Pennsylvania State Police, we must deny defendant's motion in this respect.

C. Alleged Improper Contamination of Evidence by the Pennsylvania State Police by Turning Items Seized Over to the Bell Telephone Laboratories in New Jersey for Examination.

Again, counsel for defendant has submitted no authority that such a procedure is illegal. The cases cited by defense as authority for a due process requirement of prior judicial approval before such property is transferred from a government agency to private individuals give no credence to the argument of defense counsel, and serve as a puzzlement to the Court as to why they were utilized for such authority.

We agree with the position of the Commonwealth that if the chain of evidence has been so contaminated by this procedure that the introduction of the evidence in thereby rendered untrustworthy and unreliable, that such issues should

be raised by the defense at the time of trial, at which time the Court will deal with same. At this time, the Court does not hold that this is a matter which would require that the evidence obtained in this case be suppressed.

D. Illegal Search and Seizure Based on Failure to Specifically Describe the Items to be Seized So As to Make the Warrant in Question a General Warrant.

Counsel for defendant is quite correct that a search and seizure warrant under the terms of both the United States and Pennsylvania Constitutions must specifically describe the items to be seized. Although, as counsel for defendant Draper candidly admits, an oversight was made in not raising this in the original motion to suppress, leave to amend the petition to include this grounds is granted, in the interests of justice.

The Court has examined with closeness the description of the items to be searched for and seized. We find that sufficient specificity was present so as not to render this warrant a "general one", and thereby violative of the Constitutional mandates herein before described. We do not feel that the fact that certain items were seized pursuant to this warrant, which were later returned to the defendants to be a significant factor in holding that the warrant was of a type that was constitutionally proscribed.

III. CONSTITUTIONALITY OF SECTION 910 OF THE PENNSYLVANIA CRIMES CODE.

Counsel for defendant Draper is quite correct that criminal statutes must give reasonable notice of the prohibited conduct to the person charged and that statutes which fail to provide such notice violate due process. The statement that the specificity of the statute must be judged in light of the conduct of the accused is also a correct statement of law. Commonwealth vs. Heinbaugh, 467 Pa. 1, 1976. However, we do not feel that the statute in question is subject to such constitutional infirmity. We believe it does give reasonable notice as to what will be complained of as illegal conduct, and that the standards of the statute are not so vague, indefinite, and incapable of application so that enforcement would violate due process. Furthermore, in light of the conduct of defendant himself under the Heinbaugh test, we find that the requirements of specificity with respect to this statute are met, and that as applied to defendant's conduct, the statute is not unconstitutionally vague.

FINDINGS OF FACT

1. An investigation of telephone fraud in the Cresco 595 exchange area was conducted by Bell Telephone Company security personnel, on October 17, 1977, which resulted in their contacting the Pennsylvania State Police.

2. Thereafter, on October 18, 1977, a search warrant was

obtained by the Pennsylvania State Police from District Magistrate Marjorie J. Schumaker, which was executed at the residence of defendants John Draper and Wortley Andrew Wright, Jr.

3. Pursuant to said warrant, certain evidence was seized and defendants were arrested and charged with numerous offenses, including those now before the Court, conspiracy, theft of services, and possession of a device for theft of telecommunications services.

CONCLUSIONS OF LAW

1. The Commonwealth's evidence has failed to establish a prima facie case against defendant Wright on all charges.

2. The Commonwealth's evidence has failed to establish a prima facie case against defendant Draper on charges of conspiracy and theft of services.

3. The Commonwealth's evidence is sufficient to establish a prima facie case against defendant Draper on the charge of possession of the device for theft of telecommunication services.

4. The search warrant in question is valid on its face, and meets the "two-prong" test of Aguiliar vs. Texas, and is supported by probable cause.

5. The search warrant was properly executed by the Pennsylvania State Police, and any participation by Bell Telephone personnel does not render the search and seizure pursuant thereto as invalid.

6. Any subsequent turning-over of evidence by the Pennsylvania State Police to Bell Telephone personnel for examination and analysis does not require suppression of such evidence.

7. The warrant in question was couched with sufficient specificity so as not to be constitutionally infirm as a general one.

8. Section 910 of the Pennsylvania Crimes Code is not unconstitutionally vague and ambiguous as applied to the conduct of the defendant Draper herein.

O R D E R

AND NOW, this 5th day of June, 1978, the motion of defendant Wortley Andrew Wright, Jr., to quash the magistrate's return is granted as to all charges. The motion of defendant John Thomas Draper to quash the magistrate's return is granted as to charges of theft of services and conspiracy, and denied as to possession of a

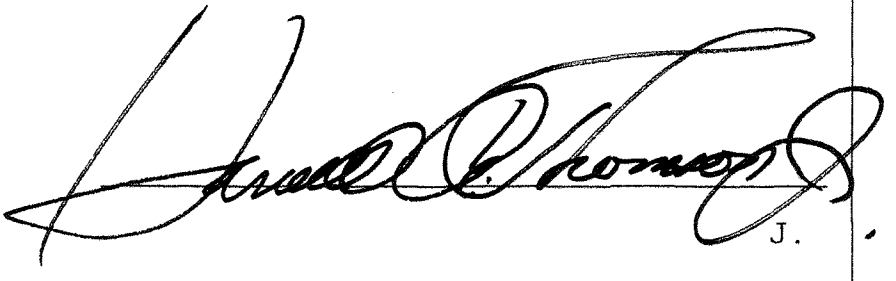
device for theft of telecommunications services. The District Attorney is directed to file no information against defendant Wortley Andrew Wright, Jr., and to file no information against defendant John T. Draper as to charges of theft of services and conspiracy.

The motion of defendant John T. Draper for suppression of evidence is denied. All such evidence received by the search and seizure on October 22, 1977, and evidence related to the examination, testing, and operation of same shall be admissible at trial.

The motion of defendant John T. Draper to dismiss the charge of possession of a device for theft of telecommunications services due to unconstitutionality of Section 910 of the Pennsylvania Crimes Code is denied.

All other motions of defendant Wortley Andrew Wright, Jr., are dismissed as moot, including defendant Wright's motion for severance.

BY THE COURT:



J.

CC: George W. Westervelt, Jr., Esq.
George E. Goldstein, Esq.
Monroe County District Attorney

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL TRIAL DIVISION
VS	:	
JOHN T. DRAPER	:	NO. 68 of 1978

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF PRE-TRIAL MOTIONS OF JOHN T. DRAPER

DISCUSSION:

III. THE ACTIVITIES OF BELL TELEPHONE IN CONNECTION WITH THE SEARCH AND THE LATER EXAMINATION OF THE ITEMS SEIZED SO PERMEATED THE ENTIRE PROCEEDING AS TO RESULT IN A DENIAL OF THE DEFENDANTS' FOURTH AND FIFTH AMENDMENT RIGHTS.

The activities of the Pennsylvania State Police in connection with the search and seizure complied with the letter of the law, as the warrant was served by Trooper Harris in accordance with Rule 2004, Pennsylvania Rules of Criminal Procedure and he prepared the inventory in accordance with Rule 2009. The inventory was witnessed by Mr. Beam of Bell Security.

However, the search was conducted in such a manner as to make the presence of the State Police superfluous. Trooper Harris testified at the second preliminary hearing that there were four Bell employees present at the time of the search (N.T.-149), and that he seized the items the Bell employees told him to, based on their expertise (N.T.-150). Essentially, he was acting as an agent for Bell Telephone.

Five days after the seizure, the vast majority of items seized were turned over to Bell Telephone Laboratories, located in New Jersey. These were delivered by Trooper Harris. Despite the fact that he was in possession of these items for five days, no notice was given to the Defendants of his proposed action, nor was the Pennsylvania State Police given any authority to hand over the items seized by any judicial officer.

It is true that a request for laboratory analysis was made in accordance with procedures established by the Pennsylvania State Police. However, this case differed from the normal situation in that the items were not transferred internally to a police laboratory for examination, but to a private party out-of-state. The items seized were not contraband per se, Commonwealth v Landy, 240 Pa. Super 458, 362 A.2d 999 (1976); but consisted of personal property which, on its face, was not illegal. Its seizure pursuant to warrant did not deprive it of this status. Due Process requires that prior judicial approval be given before this property was transferred from the governmental agency who had it by authority of law to private individuals who are completely unfettered by any constitutional limitations. See Commonwealth v Dingfelt, 227 Pa. Super 380, 323 A.2d 145 (1974); Commonwealth v Tanshyn, 200 Pa. Super 148, 188 A.2d 824 (1963).

Counsel has no way of knowing whether within the Pennsylvania State Police or other state agencies there exists sufficient technology to examine the items in question. However, our state government has become increasingly computerized, and it is likely that such expertise does exist. Undoubtedly, there are numerous private organizations other than Bell Telephone with the expertise

to examine this evidence.

Bell had a primary interest in the case. The mere fact that Draper was alleged to be living in the area resulted in a full investigation by Bell culminating in the search and seizure. Bell Telephone is the de facto prosecutor and has the primary interest in this prosecution. For this reason, counsel questions the efficacy of turning over "evidence" to the very organization which is primarily interested in the prosecution. It's like asking the fox to guard the hen house.

IV. SECTION 910 OF THE CRIMES CODE IS COUCHED IN GENERAL TERMS WHICH FAIL TO SPECIFICALLY DESCRIBE CRIMINAL CONDUCT AND IS THEREFORE UNCONSTITUTIONAL AND VOID FOR VAGUENESS.

Section 910 of the Crimes Code states:

> a. Offense defined - Any person commits an offense if he:
> 1. makes or possesses any instrument, apparatus, equipment or device designed, adapted or which can be used:
> (i) for commission of a theft of telecommunications service; or
> (ii) to conceal or to assist another to conceal from any supplier of telecommunications service or from any lawful authority the existence or place of origin or of destination of any telecommunication; or . . .
> 18 Pa. C.S.A. Section 910

The analogous Federal Statute establishes criminal conduct for any person who willfully:

> (b) manufactures, assembles, possesses, or sells any electronic, mechanical, or any device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications . . .
> 18 U.S.C. Section 2512 (1)(b).

The federal statute has been held to be constitutional. This is correct. The federal statute requires scienter as well as a device which is rendered PRIMARILY useful for the illegal purpose. The Pennsylvania law is written in the broadest possible terms and makes unlawful the mere possession of a device which can be used for illegal activity, with no mention of mens rea.

The rules of statutory construction require that penal statutes be strictly construed. 1 Pa. C.S.A. Section 1928 (b)(1). Statutory construction also requires that the courts assume the General Assembly intends the entire statute to be effective and certain 1 Pa.C.S.A. Section 1922. It has been said that the Courts must assume the legislature intends every word of a statute to have affect and in construing a statute words cannot be considered as surplusage. Commonwealth v Teada, 235 Pa. Super 438, 344 A.2d 682 (1975).

Commonwealth v Heinbaugh, 467 Pa. 1, 354 A.2d 244 (1976) establishes the manner in which a statute is examined to determine whether it is void for vagueness. The Court held that the specificity of a statute must be judged in light of the conduct of the accused and set forth various standards which govern that determination.

The Court held that criminal statutes must give reasonable notice of the prohibited conduct to the person charged and that statutes which fail to provide such notice violate due process. The Court stated:

> "That the terms of a penal statute creating a new offense must be sufficiently explicite to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement, consanent alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential

of due process of law." 354 A.2d at 246.

The Court said that due process is satisfied if the statute in question contains reasonable standards to guide prospective conduct. When a statute is written in such general terms that it does not contain a reasonably ascertainable standard for contemplated action, it is in violation of due process. By the same token, the Court held that when an ascertainable standard is present in the statute an individual whose conduct falls within that standard cannot complain of vagueness.

Commonwealth v Zasloff, 338 Pa. 457, 13 A.2d 67 (1940) held that a law is unconstitutional when its standards which differentiate criminal from legal activity are so vague, indefinite and incapable of impractical application that enforcement would violate due process. This requires that not only notice be given to the public of what is illegal conduct, but that reasonable men not differ as to its application.

It is submitted that when a statute is drawn in such a manner as to allow for selective prosecution, that statute is void. In the instant case, any possession of anything which could be used for the prohibited purpose is illegal. In our electronic age, this could embrace any tape recorder or other device capable of emitting the tones which the phone company has adopted. No criminal intent is required and the object itself need not be primarily used for that purpose as is required by federal law.

A comparison of this section of the code with 18 Pa. C.S.A. Section 907, Possessing Instruments of Crime. That statute specifically requires criminal intent and defines the circumstances that ordinary items can be classed as "instruments of crime."

A comparison of the two statutes underscores the deficiencies of Section 910. It is so vague and ambiguous that it establishes no ascertainable standard of conduct.

In Heinbaugh, at 354 A.2d 247, the Court stated..."that when an ascertainable standard is present in a statute, the violator whose conduct falls clearly within the scope of such standard has no standing to complain of vagueness." That case held that masturbating in public was an indecent act contemplated within the definition of a "lewd act." The Court based its decision on the long existing common law standard of lewdness in Pennsylvania. It held that when a statute is based on a common law norm, it merely reiterates customary standards and need not be drawn in such a precise manner as a statute which establishes a new crime. (Citing Zasloff, (Supra.).

What is the ascertainable standard of Section 910? There is none.

V. THE SEARCH AND SEIZURE WARRANT FAILS TO SPECIFICALLY DESCRIBE THE ITEMS TO BE SEIZED AND WAS THEREFOR A GENERAL WARRANT IN VIOLATION OF THE FOURTH AMENDMENT.

This issue was not raised by counsel in the motion to suppress evidence. It was an oversight, and should have been raised. Accordingly, counsel moves to amend to include an allegation that the warrant failed to particularly describe the things to be seized and was therefor void as being a general warrant.

The search warrant identified the items to be searched for and seized as:

> "An electronic device commonly called a "Blue Box" or devices for advancing long distance calls on to the Bell System Telecommunications Service or any telecommunication or accessory equipment relating to the operation or intended to be used for such unlawful device (s) and/or plans for the

> manufacture or assembly of such apparatus; lists containing switching codes and/or names and telephone numbers of known or suspected individuals who are similarly engaged in the theft of telecommunications service; tape recordings which manifest multi-frequency tones often used in the furtherance of this crime and which also may contain voice conversation with other persons which occurred during the theft of said telecommunications; or other documents relating to proprietary information or methods of signaling and any miscellaneous hardware which is obviously the property of the Bell Telephone Company of Pennsylvania and/or its associated companies, and any and all associated paraphernalia."

The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution both require a search and seizure warrant specifically describe the item to be seized. Stanford v Texas, 379 U.S. 476, 85 S.Ct. 506 (1965 held that:

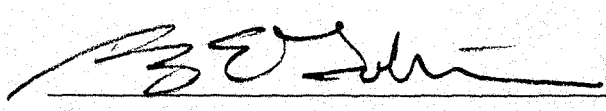
> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." 379 U.S. at 485, 85 S.Ct. at 512.

That warrant authorized the search of books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, and other written instruments concerning the communist party of Texas, et certera. The Court held that this was too broad a description and was therefor unconstitutional.

Examining the warrant at hand, we see that it specifically authorizes the seizure of a Blue Box or like device, and then continues in extremely general terms. As a result of this authority, the searching officers seized everything in sight which was

of electronic nature, as well as all tapes and records which might or might not have contained the information requested. In fact, they seized a great number of tapes which contained recorded music, personal records of a miscellaneous nature and technica manuals which had nothing to do with Bell Telephone. They indiscriminately seized anything which looked as if it might arguably be related to the case they were attempting to build against the defendants. This type of unbridled authority is exactly what the constitutional prohibitions seek to avoid. The fact that the vast majority of the material seized has been returned or is about to be returned to the defendants bears witness to this fact and the warrant should be suppressed for the additional reason that it is of a general nature.

RESPECTFULLY SUBMITTED:



GEORGE E. GOLDSTEIN, ESQUIRE
Attorney for John T. Draper

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL TRIAL DIVISION
VS	:	
JOHN T. DRAPER	:	NO. 68 - 1978

MEMORANDUM OF LAW IN SUPPORT OF MOTIONS TO QUASH RETURN OF COMMITTING MAGISTRATE AND TO SUPPRESS PHYSICAL EVIDENCE

HISTORY OF THE CASE:

Defendant John T. Draper, together with his co-defendant Wortley A. Wright, Jr., was arrested on October 22, 1977 pursuant to a Warrant of Arrest issued by District Justice Marjorie J. Shumaker. Mr. Draper was charged with various violations of the Crimes Code, as follows:

(a) Section 903 (a)(1)(2): Conspiracy

(b) Section 907 (a): Possessiong Instruments of Crime;

(c) Section 910 (1)(i)(ii): Manufacture, Distribution and Possession of Devices for Theft of Telecommunications Services;

(d) Section 3926 (a)(1)(2)(b): Theft of Services;

(e) Section 3930 (b)(1)(2): Theft of Trade Secrets.

The officers were armed with a search and seizure warrant also issued by District Justice Shumaker, and pursuant to the warrant the premises were searched and certain items were seized. The search and seizure warrant, together with the return are attached

hereto and marked Exhibit "A".

At the preliminary hearing held on November 1, 1977, District Justice Shumaker heard testimony regarding these charges and at the conclusion of the hearing dismissed the charges of Possessing Instruments of Crime (Section 907) and Theft of Trade Secrets (Section 3930). The Defendant was bound over on all other charges and a timely Motion to Quash the Return of the Committing Magistrate was filed, and is now before the Court for disposition. By agreement, the Notes of Testimony of this preliminary hearing have been introduced into evidence and will provide the basis for the Court's decision as to whether a prima facie case was established by the Commonwealth.[1]

A Motion to Suppress Physical Evidence has been filed on behalf of Defendants, and by agreement of counsel is to be considered upon the "four corners" of the warrant, as well as the testimony at the Preliminary Hearings insofar as it relates to the issues concerning disposition of the evidence after seizure, or otherwise applies.

---

[1]It should be noted that a later Preliminary Hearing was held on December 15, 1977, relating to other charges against Mr. Draper. These charges were dismissed and there was no testimony presented regarding the issues now before the Court. The testimony at the second hearing was directed solely towards Mr. Draper's co-defendant.

ISSUES:

I. Whether the testimony at the Preliminary Hearing was sufficient to establish a prima facie case against John Draper of:

a. Conspiracy;

b. Theft of Services;

c. Manufacture, Distribution and Possession of Devices for Theft of Telecommunications Services.

II. Whether the search and seizure warrant was based on information from informants shown to be reliable and whether the conclusions of criminal activity were supported by sufficient underlying circumstances to allow the issuing authority to come to a conclusion that criminal activity was taking place on the premises in question and that contraband would be found therein.

III. Whether the involvement of employees of the Bell System in the search and seizure and the later ex parte action of the Pennsylvania State Police in turning over the seized evidence to employees of the Bell System was a violation of Applicant's rights as guaranteed by the Fourth Amendment and a violation of his rights to due process of law?

IV. Whether Section 910 of the Crimes Code is unconstitutional as being void for vagueness?

1st day of Jan., 1978 [illegible] District Justice

[illegible] P.A. R. Crim. P. 2005(d).
[illegible] of additional reasonable cause set forth in the accompany
[illegible] P.A. R. Crim. 2006(b).

DISCUSSION:

I. THE COMMONWEALTH PRESENTED INSUFFICIENT EVIDENCE AT THE PRELIMINARY HEARING TO ESTABLISH A PRIMA FACIE CASE AS TO ANY OF THE CHARGES BOUND OVER BY DISTRICT JUSTICE SHUMAKER.

Rule 141, Pennsylvania Rules of Criminal Procedure governs the conduct of a Preliminary Hearing. Section (d) of that Rule requires a discharge if a prima facie case of the defendant's guilt is not made out. The burden, as always, is upon the Commonwealth to make out the case and the defendant contends that this burden was not met, and will discuss each charge and the evidence relating thereto separately.

In order to make out a prima facie case, there must be credible evidence to lead reasonable persons to the conclusion that the defendant could be responsible for the crime. This is not to say that the evidence should be such as would support the jury verdict of guilt beyond a reasonable doubt, and essentially is the same standard of proof required to get past the demurrer stage of a trial and allow a case to go to the jury for decision. Commonwealth ex rel. Scolio vs Hess, 149 Pa. Super 371, 27 A.2d 705 (1942); Commonwealth vs Smith, 212 Pa. Super 403, 244 A.2d 787 (1968). In other words, to establish a prima facie case, we must view the prosecution's case in its best possible light and give it the benefit of all reasonable inferences from the testimony. If, after viewing the evidence in this manner, there is a lack of proof of guilt, a prima facie case does not exist and the defendant must be discharged. The Commonwealth is in no way relieved from proving all essential elements of the crime charged.

a. Conspiracy;

The defendant is charged with conspiracy with Mr. Wright. The Crimes Code, Section 903, 18 C.P.S.A. Section 903, defines Conspiracy as an agreement with another person that they or one of them will engage in criminal conduct or an agreement to aid another person or persons in the planning of a crime.

A careful reading of the Notes of Testimony of the Preliminary Hearing indicates that Mr. Wright had a telephone listed in his name at the place where he and Mr. Draper were alleged to reside (N.T. 5). They both had their own computers at the premises (N.T.-16,17,20). At the time of the search of the premises along with Mr. Wright and Mr. Draper, there were three or four other persons on the premises and the prosecution did not know how many people in fact lived in the house (N.T. 4), although there was a note found in the house outlining duties of John, Andy & Judy (N.T.-31). The allegedly illegal telephone calls were made by a party unknown to the Commonwealth (N.T.-38,39,57).

There was no testimony as to any agreement between Mr. Draper and Mr. Wright, nor was there any testimony as to who made the telephone calls and whether either of them knew that the other or any other unnamed party had used the telephone illegally. Other than the fact that they lived in the same house together with other persons, the Commonwealth did not come forth with any testimony to indicate a joint venture to carry out criminal conduct. Giving the Commonwealth the best possible inferences from its testimony, there was nothing to show that either defendant knew illegal conduct was taking place, nor did the evidence show

that either defendant or any party was acting in concert with another to carry out illegal conduct.

Assuming arguendo that a crime was committed, the Commonwealth did not present any evidence to show that more than one person was involved in committing the crime. The only evidence they have is that Wright and Draper occupied the same dwelling house and even if one knew that the other was committing a crime, these facts do not establish the presence of a conspiracy. Commonwealth vs Stephens, 231 Pa. Super 481, 331 A.2d 719 (1974). In that case, an employer was held not to be liable for illegal acts committed by his employee, nor was he held to possess marijuana found in his place of business which was apparently brought there by his employee, who, incidentally, lived in the same apartment as the defendant, despite the fact that he may have had knowledge of the illegal acts.

Participation in an illegal act which is the object of a conspiracy is not sufficient to prove guilt as there must also be proof of the unlawful agreement and participation with knowledge of the agreement. If the defendants acted alone in carrying out the criminal acts alleged, this would not be sufficient to prove conspiracy Commonwealth v Murray, 240 Pa. Super 239, 368 A.2d 340 (1976). Even if we assume that both defendants used the telephone illegally, there is not present any evidence which establishes a common course of action in furtherance of a conspiracy. This charge was completely unfounded and not supported by any evidence and should be dismissed.

b. Theft of Services;

The defendant was charged with a violation of Section 3926

(a)(1) (2)(b) Theft of Services, 18 C.P.S.A. Section 3926, which holds a person guilty of theft if he intentionally obtains services available for compensation by deception, false token or other trick or artifice, to avoid payment for same.

Cutting through all the "telephonese," the issue as to this charge is whether or not services were stolen and if so, does the evidence indicate that John Draper was responsible for the theft. Quite simply, the Commonwealth did not prove who was responsible for the alleged theft of services. Mr. Beam testified that he did not know who placed the phone calls (N.T.-38,39,57). Coupling this with the fact that in addition to the two individuals charged, the Commonwealth was uncertain who else lived in the house, although three or four other individuals were there when the arrest was made (N.T.-74), the evidence of the Commonwealth is that a number of people had access to both computers and the telephone. We have not been shown who made the calls, nor is it more likely than not that either of the two defendants did it as opposed to any other person lawfully on the premises. Even if we assume that a "blue box" was used, this could be either wired to the phone system or used in an audible manner (N.T.-23). There was no proof as to how the calls were placed, only that they were made.

This type of situation is akin to that found in possessory crimes where mere presence is not sufficient to indicate guilt where the crime is unique to the individual charged. Commonwealth v Tirpak, 441 Pa. 534, 277 A.2d 476 (1971); Commonwealth v Reece, 437 Pa. 422, 263 A.2d 463 (1970); Commonwealth v LaRosa, 218 Pa. Super 203, 275 A.2d 693 (1971); Commonwealth v Davis, 444 Pa. 11, 280 A.2d 119 (1971).

In order to support this charge, the Commonwealth would have the Court find that the defendant committed the theft merely because he lived in the house, had a computer which was wired to a telephone and was charged with committing the crime. Better means of proof are available to the Commonwealth. The telephone company has the right to intercept telephone calls and record same. 18 C.P.S.A. Section 5702. They in fact did record one call (N.T.-38), but despite this did not know who placed it. It is submitted that over the period of time the line was being "observed", the telephone company had the opportunity to make recordings in an attempt to prove who was placing the calls. They did not do so, and cannot establish by any quantum of proof who made the calls. This charge should be dismissed as it could not be established that John Draper placed the telephone calls and it was established that more than one person had access to the telephone.

c. Manufacture, Distribution and Possession of Devices for Theft of Telecommunications Services;

Section 910 (1)(i)(ii) of the Crimes Code, 18 C.P.S.A. Section 910, makes it an offense to make or possess any instrument or equipment which can be used for the theft of telecommunication service or to conceal the existence or place of origin or of destination of any telecommunication. The Commonwealth would urge that Mr. Draper's computer was such an instrument.

This statute is written in very broad terms and if it is constitutional, must be interpreted to mean that the words "can be used," mean more than the mere capability of being so used. To charge criminal conduct, the prosecution must show that the instrument in fact was being used for the illegal purpose or was adapted

in such a way as to make it obvious that it was being used for illegal activity.

Again, we are fed "telephonese", instead of plain, understandable testimony. Mr. Beam went into great detail to describe his investigation. However, he did not relate this to the Draper computer. He said that it had the capability of emitting touch-tone frequencies and storing and releasing 800 codes into 800 in Wats (N.T.-28). He later testified that he was unable to personnally testify as to the ability of the computer to make such calls (N.T.-59,62,76-77). His testimony did indicate that some of the 800 codes stored on a cassette tape which was programmed into the computer were those that were decoded by the pen register applied to the telephone (N.T.-30).

The 800 code is merely another area code such as 717, in which this Court is located, or 215, within which area counsel resides. As with any area code, there are various telephone exchanges and the fact that they are on a computer tape does not indicate illegal activity. Mr. Beam testified that merely wiring a computer to a telephone is not illegal (N.T.-78), and in fact using a computer to make telephone calls is not illegal (N.T.-86-87). A computer is a tool which is widely used in conjunction with the telephone and is often wired to the telephone to connect with computer terminals in order to transmit and receive information. Obviously it can be used for an illegal purpose, but to make this a crime it must be shown that it was either used for the illegal purpose or programmed in such a manner as to make it obvious that its purpose was illegal.

The most that the Commonwealth could show was that Draper's

computer could make a legal telephone call (N.T.-86-87), Mr. Beam was unable to tell whether or not it could make an illegal call (N.T.-60). Mr. Hopper, the individual who examined John Draper's computer is a thirty year employee of the Bell System who very much would have liked this computer to be illegal, but unfortunately, despite his evasive answers he was unable to testify that it was able to make an illegal telephone call. He attempted to testify in a manner which would indicate that the computer was illegal, and using sweeping generalities to avoid a definitive yes or no answer, stated:

> a. I recognized patterns in the printout which is indicative of fraud capability. (N.T.-85).
>
> b. I find references in this computer printout ordered in the right manner to manipulate the telephone network in a manner entirely consistent with blue box fraud...this, to me, is an indication that by further probing we may very well establish fraudulent signaling capability (N.T.-86).
>
> c. In reference to a telephone call made by use of the computer:
> Q. Is that illegal?
> A. Not in the manner that we placed the call, no sir. (N.T.-87,88).
>
> d. Q. Are any of the ways which this computer makes phone calls illegal?
> A. It is pointing in that direction.
> Q. Can you answer yes or no, and then explain please?
> A. Its pointing in that direction.
> Q. Does that mean yes or does that mean no?
> A. Neither term applies. (N.T.-88,89)
>
> e. Q. From what you have established to date, is the manner in which this computer makes telephone calls illegal?
> A. I can't answer that question as you've set it up.

Q. From what you have established from working with this computer is the manner in which it places telephone calls against the law?

A. I see indications of fraudulent potential (N.T.-90).

Upon being asked whether his examination indicated that the computer was being used illegally, he said "We have not reached conclusions in that regard, sir." (N.T.-90).

f. Q. So you can't establish any illegality, can you?

A. At this point the evidence is such that it is in that direction, that illegal use is a real possibility. (N.T.-91)

g. I cannot show you where an illegal call was made. (Using that computer). (N.T.-93).

h. Q. Can you now make any calls that would be illegal for a private citizen to make using this computer?

A. We don't understand that much about it.

Q. Is you answer no?

A. It would have to be at this moment. It might be in two weeks... (N.T.-93-94).

i. Upon being asked whether his evidence of fraudulent use was inconclusive, he testified, "We see things that have a definite sense of direction."

Q. But, you haven't found anything yet have you?

A. We're working hard on it (N.T.-101).

j. Upon being asked whether this computer could make an illegal phone call he stated, "We completed one call that went to an 800 number. Now, what happens beyond that point we are not at this point capable of answering." (N.T.-102).

The Court is also directed to the testimony from pages 102 to 105 in which despite his evasive answers, Mr. Hopper testified that Bell Labs was still trying to make an illegal call and that they

had not made a "Blue Box" type call using the machine at that point, but were hard at work trying to make one.

It is obvious that Mr. Hopper was trying his best to serve his employer. His job was to show that this computer was in fact an illegal device, and as he could not testify that it was able to be used in such a fashion, he used gross generalities in testifying and was evasive in his answers. However, his testimony boils down to the statement that try as they might, the best the telephone company could do was make a legal telephone call using the computer and try as they might, they were unable to make it operate in an illegal fashion. His testimony was that he was unable to use John Draper's computer to make an illegal telephone call although he thought that it might possibly be used illegally.

The testimony presented by the Commonwealth was insufficient to prove that the computer was a device made illegal by Section 910 of the Crimes Code. At best, it was established that the computer could make telephone calls which is admittedly not an illegal act. There was no testimony that calls could be made in such a way as to defraud the telephone company or that the device was ever used for such a purpose. These charges should be dismissed.

II. THE SEARCH AND SEIZURE WARRANT CONSISTS OF UNSUPPORTED CONCLUSIONS OF CRIMINAL ACTIVITY AND GENERAL STATEMENTS OF FACT NOT RELATED TO THE DEFENDANTS OR THE PREMISES TO BE SEARCHED, PROVIDED BY INDIVIDUALS WHO WERE NOT SHOWN TO BE RELIABLE INFORMANTS.

Aquilar v Texas, 378 U.S. 108, 84 S.Ct. 1509 (1964) as expanded by Spinelli v United States, 393 U.S. 410, 89 S.Ct. 584 (1969), set forth what has come to be known as the "two prong"

test for determining the sufficiency of probable cause based upon hearsay information. These cases and their progeny hold that the issuing authority must make an independent judgment as to probable cause based upon the underlying circumstances by which the informant based his conclusions of criminal activity and the underlying circumstances from which the affiant concluded that the informant was credible and his information reliable.

U.S. v Ventresca, 380 U.S. 102, 85 S.Ct. 741 (1965), states that the Courts should not strictly construe search warrants, but should use a common sense interpretation in passing upon them. There is no reported case which allows a reviewing Court to supply missing facts in order to find probable cause or to consider verbiage as a substitute for factual allegations. Commonwealth v Simmons, 450 Pa. 624, 301 A.2d 819 (1973), condemns a warrant which requires the magistrate to reach for external facts and base inference upon inference to sustain a search warrant.

a. The informants' reliability was not properly established.

There are four informants named in the warrant, William Beam, Wilfrid Dunne, John Eisenhooth and Mrs. G.H. Orner. The affidavit sets forth the employment qualifications and experience of Beam and Dunne and mentions that Orner is a security agent and a thirty five year employee of Bell. Eisenhooth is noted as a security agent for Bell for the past thirty years, known to the affiant as a truthful and honest man.

In addition to the named informants, the affidavit speaks of information from "Pacific and New York Telephone Companies." No names were given as to who gave this information. The applica-

tion for the warrant does not state who of the four named individuals gave the information to Trooper Harris, and fails to indicate which, if any, of the individuals operated the equipment and analyzed its results. Rather, the information is stated as given on a collective basis, without detailing the source.

The mere fact that an informant is named does not supply reliability. The fact that they are long term employees of Bell Telephone Company likewise does not establish knowledge on the part of the affiant that they are honest and reliable, nor does it support a conclusion that they were qualified to conduct the investigation. The mere statement that an affiant believes the informant to be truthful is not sufficient to establish his reliability. Rather, the affidavit itself must establish the reliability and trustworthiness of the informant. General conclusions will not do, but specific facts in the nature of underlying circumstances to set forth why the officer believed the individuals to be reliable must be disclosed. Commonwealth v Bailey, 460 Pa. 498, 333 A.2d 833 (1975), Commonwealth v Hagen, 240 Pa. Super 444, 368 A.2d 318 (1976).

Identifying the informants and giving their employment background does not satisfy the test of reliability. This investigation centered around alleged wrongs against Bell Telephone Company and the informants are employees of the allegedly injured party. Despite the fact that they may very well be law-abiding citizens, they are in a real sense of the word "victims" of the crime and their statements could very well be clouded by the prejudice a

victim feels against the one he feels has committed the criminal act against him. [2] The Commonwealth is bound to establish their honesty and credibility by circumstances other than their employment record. This was not done, and no facts were provided the magistrate to make an independent determination of the truthfulness of these informants.

The same is true with their experience. There is no statement detailing which, if any of the four named individuals was familiar with the equipment used in the surveillance and which, if any, analyzed the results. The affidavit does not indicate who made the information known to Trooper Harris, nor does it indicate whether the information was as a result of that individual's own efforts or as the result of information obtained from one or some of the others. The issuing authority was asked to believe the information because it came from a telephone company source. The application does not sufficiently detail the sources to make them proper. Commonwealth v Garvin, 448 Pa. 258, 293 A.2d 33 (1972) holds that the police may not rely upon a primary informant's judgment as to the reliability of a possible secondary informer.

The information received from the Pacific and New York Telephone Companies must not be considered. It is from informants not named and under the above-cited cases of no probative value.

b. Underlying circumstances to support a finding of criminal activity at the premises.

Aquilar and Spinelli(Supra) as well as Commonwealth v Conner, 452 Pa. 333, 305 A.2d 341 and Commonwealth v Simmons (Supra) and Commonwealth v Kline, 234 Pa. Super 12, 335 A.2d 361, all hold

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[2] The attitude towards Draper is shown by the fact that a report that he was living in the area was sufficient to result in a surveillance being set up by Bell. He was obviously important to them on a national scale.

that conclusions as to criminal activity must be supported by sufficient underlying facts to establish the reliability of this information and the conclusions that criminal activity is taking place where it is claimed to be and that the items to be seized are at that location.

The warrant at hand does not supply this necessary information, but consists of bare conclusions unsupported by facts to allow the issuing authority to reach the same conclusions. In order to come to the conclusion of criminal activity, the issuing authority must not reach for external facts and build inference upon inference as was condemned in Simmons (Supra).

In the main, these conclusions are found on the second page of the affidavit, beginning with the third complete paragraph and continuing with the fifth paragraph on that page.[3] There are also conclusions on the first page of the warrant which are unsupported.

Other than the statement that information was obtained from other telephone companies, and that it was "established" by the informants, there is nothing to indicate how the affiant came to know that Draper was living at the house in question. He was not seen there, there is no information that his vehicle was parked there, there is only the unsupported statement that he lives there. Likewise, there is absolutely no statement as to how it was known that Mr. Wright lived at that house. We may assume that the telephone company records are correct insofar as a telephone in the name of Mr. Wright, but nothing in the warrant other than unsupported conclusions establishes the fact that this telephone was connected at that premises. These essential conclusions are with-

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[3]The fourth paragraph is a general statement of the means by which telephone fraud is committed. It is completely conclusory in nature and it implies that the defendants were doing this. However it is not tied into the alleged criminal activity in any way and attempts to establish "guilt by association."

out factual support.

The electronic surveillance conducted by the telephone company is defective as it contains conclusions as to activity, without indicating who analyzed the data and whether the information was as the result of electronic equipment or individual observation. The conclusions very well may be correct, but the means by which they were obtained was not presented the issuing authority. The magistrate was required to assume that the information was correct without being given an explanation as to why or by whom, the conclusions were reached. The magistrate had no information as to the nature of the equipment, what it did, who operated it, what data it provided, or who analyzed the data.

The affidavit states that certain of the information was not from electronic surveillance and nothing is mentioned regarding the source or basis for these conclusions. Furthermore, as was testified at the Preliminary Hearing, an individual by the name of Don Ransom in Stroudsburg provided certain information regarding the telephone number used for billing purposes not being that of Andrew Wright. (N.T.-11). This was not mentioned in the warrant and is obviously information from a source other than the electronic surveillance. The Court has the obligation to look behind the facts set forth in an application for a search and seizure warrant to determine if they are properly obtained. Commonwealth v Dembo, 451 Pa. 1, 301 A.2d 689 (1973). The probable cause is a grab bag of unsupported conclusions and as such may not be the basis for the issuance of a search and seizure warrant.

All of the authority cited above requires that the underlying circumstances consist of conclusions supported by facts, not a

mere detailing of the conclusions themselves. It is necessary that the search warrant have substantiating facts and circumstances to enable the magistrate to make an independent determination as to probable cause. This was not done, and Justice Shumaker was presented with conclusions as to activity which was carried out, without being told how or by whom the conclusions were made. As important as this, is the fact that nothing supports the conclusions of the police that the activity was taking place at the location mentioned in the warrant and being carried on by the defendants.

Bell went to a great effort to protect the security of its lines. It is unfortunate that the same effort was not expended in protecting the security afforded the defendants by the Fourth Amendment. By adding some facts to support the general conclusions in the warrant, this could have been done. Without a factual basis for these conclusions, Justice Shumaker had no right to issue a warrant to search the premises.

The warrant was issued improperly and the evidence should be suppressed.

COMMONWEALTH OF PENNSYLVANIA	: IN THE COURT OF COMMON PLEAS OF
VS.	: THE FORTY THIRD JUDICIAL DISTRICT
WORTLEY A. WRIGHT, JR., and JOHN T. DRAPER	: MONROE COUNTY BRANCH CRIMINAL
	: NO. 67, 68 - 1978

STIPULATION OF COUNSEL

It is hereby Stipulated and Agreed by and between George W. Westervelt, Jr., Esquire, counsel for Wortley A. Wright, Jr., George R. Goldstein, Esquire, counsel for John T. Draper, and Ralph A. Matergia, Esquire, Assistant District Attorney and counsel for the Commonwealth, that for the purposes of the Defendants' Application to Suppress the chain of custody and control of certain hereinafter mentioned items of evidence was as follows:

1. On October 27, 1977, Trooper James R. Harris, badge no. 466, of the Pennsylvania State Police, stationed at Swiftwater, Pennsylvania traveled to the Holmdel Laboratory of Bell Telephone Laboratories, Incorporated. Trooper Harris requested a laboratory analysis of certain items of evidence and turned over custody of 25 items of evidence to Mr. Kenneth D. Hopper, Member of Technical Staff, of Bell Telephone Laboratories, Incorporated for laboratory examination. The items received were described on Pennsylvania State Police Property Record inventory no. 1205(dated 22 Oct. 77) as follows:

ITEM NO.

1. - ONE (1) PANASONIC CCTV MOD. #TR-9001M, SER. #68528067
2. - ONE (1) PANASONIC PORTABLE TAPE RECORDER, MODEL #RQ413AF
3. - FOUR (4) CASSETTE TAPES, ONE MARKED DYNAMIC DEBUGGING
4. - ONE (1) WHITE CARDBOARD BOX CONTAINING SIXTEEN (16) CASSETTE TAPES
5. - ONE (1) PACKAGE OF TWO (2) CASSETTE TAPES
6. - ONE (1) SOL TERMINAL COMPUTER, MOD. #20, SER. #213894, MADE BY PROCESSOR TECHNOLOGY

7. - ONE (1) PROCESSOR TECHNOLOGY SOL SYSTEMS MANUAL
8. - THREE BOOKS, "DYNAMIC DEBUGGING", "ALS-8" & 8080 MICRO COMP. SYSTEM USER MANUAL
9. - TWO SHEETS OF LINED PAPER CONTAINING NUMBER CODES
10. - ONE (1) TABLET OF LINED PAPER CONTAINING CODES AND DIAGRAMS
14. - ONE (1) "APPLE 11" MINI MANUAL COMPUTER BOOK
15. - ONE (1) BLUE, TOP FLIGHT, NOTEBOOK
16. - ONE (1) BROWN NOTEBOOK WITH ASSORTED PAPERS
20. - ONE (1) BROWN PAPER BAG CONTAINING SIX (6) COMPONENTS FOR "REDBOXES" AND BATTERIES FOR FOUR (4) OF SAME PLUS TWO PRINTED CIRCUITS AND MISCELLANEOUS COMPONENTS, & NINE (9) CASSETTE TAPES
21. - ONE (1) PRINTED CIRCUIT BOARD FOR "APPLE" COMPUTER
22. - ONE (1) TWO INCH SPEAKER
23. - ONE (1) COMPUTER KEYBOARD FOR "APPLE" COMPUTER
24. - ONE (1) IC BREADBOARD CIRCUIT, MARKED "BLUE BOX"
25. - TWO (2) ADVERSARY RESET SWITCHES
26. - ONE (1) BOXER FAN, MODEL WS2107FL-55
27. - ONE (1) PACKAGE OF SIX (6) CASSETTE TAPES
28. - ONE (1) HEWLETT-PACKARD TRANSFORMER WITH MISCELLANEOUS WIRES
29. - ONE (1) "APPLE" COMPUTER POWER SUPPLY
30. - ONE (1) PANASONIC PORTABLE TAPE RECORDER MODEL #RQ309DS WITH CASSETTE
31. - ONE (1) GENERAL ELECTRIC PORTABLE T.V., NO SERIAL NUMBER

A Pennsylvania State Police form SP-4 "Request for Laboratory Analysis" listing all of the above items was provided by Trooper Harris. A copy was receipted by Mr. Hopper and returned to Trooper Harris. A copy of this Request for Laboratory Analysis is attached hereto and incorporated herein as Exhibit "A".

II. On November 1, 1977, Mr. Kenneth D. Hopper visited the Swiftwater Station of the Pennsylvania State Police and Trooper Harris requested a laboratory analysis of certain additional items of evidence and turned over custody to Mr. Hopper the following items for laboratory examinations:

ITEM NO.

11. - ONE (1) SMALL MEMO NOTEBOOK CONTAINING NUMBERS & DATA
12. - ONE (1) CLIPBOARD CONTAINING MISCELLANEOUS PAPERS WITH NUMBERS AND DIAGRAMS
13. - ONE (1) AMPAD BOX CONTAINING PAPER PARAPHENALIA
17. - ONE (1) AMSCO, BLUE, THREE RING BINDER, CONTAINING ASSORTED PAPERS
18. - ONE (1) BOX CONTAINING MISCELLANEOUS PAPERS

A separate Pennsylvania State Police form SP-4 "Request for Laboratory Analysis" listing the above items was provided by Trooper Harris. A copy was receipted and returned to Trooper Harris. A copy of this Request for Laboratory Analysis is attached hereto and incorporated herein as Exhibit "B".

III. All items of evidence were in the custody of or under the control of Mr. Kenneth D. Hopper or Mr. Walter W. Heinze throughout the examination procedure. While at the Holmdel Laboratory, all items were kept in Room 3F-609 at all times.

Room 3F-609 consists of an outer office area, secured by a key-locked steel door and an inner laboratory area having a combination-locked vault-type door. The laboratory walls are steel from floor to ceiling. During night hours, all items of evidence except items 1, 2, and 6 were within the laboratory. Items 1, 2 and 6 were within the locked office area. Key possession and combination knowledge was limited only to the following persons: Messrs. Walter W. Heinze, Alfred C. Bandini, Kenneth D. Hopper, and two members of higher management. No master keys exist. The Holmdel Laboratory building is under 24-hour continuous guard by Wackenhut Security Services, Inc.

IV. On Wednesday, November 30, 1977, all items of evidence were brought to Stroudsburg, Pennsylvania by Messrs. Hopper and Heinze. They were contained in seven sealed boxes. The boxes were placed in the money counting room of the Bell Telephone Company of Pennsylvania business office located at 20 South 7th Street, Stroudsburg, Pa. Access to this room is strictly controlled and keys are retained by Mr. Elmer B. Chura, Manager, and Ms. Betty Jane Decker, Supervisor.

On the morning of Thursday, December 1, Messrs. Hopper and Heinze examined the seven sealed boxes and found them to be intact. All items of evidence were secured by Messrs. Hopper and Heinze and taken to the Cresco, Pa. central office where some of the sealed container were opened and certain items of evidence were removed for testing. Messrs. Hopper and Heinze maintained custody and control of all items of evidence throughout the testing procedure. At approximately 7:30 p.m., the tests were concluded and the items of evidence were returned to the containers and resealed. They were again taken to the Stroudsburg business office where Mr. Chura unlocked the building, the door to the business office, and the door to the money counting room. The sealed boxes remained in the money counting room until 11:00 a.m., of the following morning, Friday, December 2. At that time, Messrs. Hopper and Heinze examined the seals, found them to be intact and then transported the evidence to the Swiftwater Station of the Pennsylvania State Police. Trooper James R. Harris, Jr. then verified that all items were present and accepted custody. He acknowledged receipt by endorsements on the two PSP forms SP-4, previously referenced and attached hereto as Exhibits "A" and "B".

George W. Westervelt, Jr.
Counsel for Wortley A. Wright, Jr.

George R. Goldstein
Counsel for John T. Draper

Ralph A. Matergia
Assistant District Attorney

REQUEST FOR LABORATORY ANALYSIS

SECTION: SECURITY SUPPORT GROUP
BELL TELEPHONE LABS, HOLMDEL,

1. OFFENSE	2. LOCATION (CITY-BOROUGH-TOWNSHIP-COUNTY)	3. INCIDENT NO.	4. DATE OCCURRED
THEFT OF SERVICES	FERN RD, THE HAMLET, PRICE TWP. MONROE CO	#6-39474	19-20 OCT 77

5. VICTIM	6. ACCUSED	7. SUSPECT
BELL TEL. OF PENNA	JOHN THOMAS DROPPER / WORTLEY ANDREW WRIGHT, JR.	

8. TYPE OF EXAMINATION REQUESTED

ELECTRONIC ANALYSIS

9. SUBMIT REPORT TO (NAME AND ADDRESS OF AGENCY)
TPR. JAMES R. HARRIS, JR.
PENNA. STATE POLICE
SWIFTWATER, PA 18370

10. QUANTITY		ITEM NO.	DESCRIPTION
1	1	1	PANASONIC CCTV, MODEL # TR9001M, SER. # 6852806
1	2	2	PANASONIC PORTABLE TAPE RECORDER, MOD. # RQ413 A
4	3	3	1, 2, 3, 4 FOUR CASSETTE TAPES, ONE MARKED "DYNAMIC DEBUGGING
1	4	4.	5-20 WHITE CARDBOARD BOX CONTAINING SIXTEEN CASSETTE TAPES
1	5	5	21-22 1 PKG OF TWO CASSETTE TAPES
1	6	6.	SOL TERMINAL COMPUTER, MOD. # 20, SER. # 213894, MADE BY PROCESSOR TECHNOLOGY.
3	8	7	THREE BOOKS "DYNAMIC DEBUGGING," "ALS-8", 8080 MICRO COMPUTER SYSTEM USERS MANUEL
1	9	8	TWO SHEETS OF LINED PAPER CONTAINING NUMBER CODES.
1	7	9	PROCESSOR TECHNOLOGY SOL SYSTEMS MANUEL.
1	10	10	TABLET OF LINED PAPERS CONTAINING CODES & DIAGRAMS.
1	14	11.	"APPLE II" MINI-MANUEL COMPUTER BOOK.
1.	15	12	BLUE, TOP FLIGHT, NOTE BOOK.
1	16	13	BROWN NOTEBOOK W/ ASSORTED PAPERS
1	20	14	BROWN PAPER BAG CONTAINING (6) COMPONENTS FOR RED BOX FOUR BATTERIES, MISC. COMPONENTS, PLUS 9 CASSETTE TAPES.

11. REMARKS

PROPERTY RECORD ITEM #

EVIDENCE

RECEIVED FOR EXAMINATION BY THE
SECURITY SUPPORT GROUP OF
BELL TELEPHONE LABORATORIES,
HOLMDEL, NEW JERSEY
BY: K.W. Hopper 10/27/77

23-31
All items Returned to PSP Swiftwater on 2 Dec 77
Tpr James R. Harris

12. IF LABORATORY RESULTS ARE NEGATIVE, THE LISTED EVIDENCE MAY BE DESTROYED ☐ YES

13. SIGNATURE OF REQUESTER
Tpr James R. Harris

14. DATE
27 OCT 77

PROJECT RECORD ITEM #		
22	16.	ONE TWO INCH SPEAKER.
23	17.	COMPUTER KEYBOARD FOR "APPLE COMPUTER"
24	18.	I. C. BREADBOARD CIRCUIT, MARKED "BLUE BOX"
25	19.	ADVERSARY RESET SWITCHES.
26	20.	BOXER FAN, MODEL WS2107FL-55
27	21.	PKG. OF CASSETTE TAPES. (SIX) 32-37
28	22.	HEWLETT-PACKARD TRANSFORMER W/ MISC. WIRES.
29	23.	"APPLE" COMPUTER POWER SUPPLY
30	24.	PANASONIC PORTABLE TAPE RECORDER MODEL RQ 309DS. W/ CASSETTE 38
31	25	GENERAL ELECTRIC PORTABLE T.V. NO SER. NUMBER.

[redacted]

QUANT.	PROPERTY RECORD ITEM #	ITEM	DESCRIPTION
1.	21	15.	PRINTED CIRCUIT BOARD FOR "APPLE COMPUTER
1.	22	16.	ONE TWO INCH SPEAKER.
1.	23	17.	COMPUTER KEYBOARD FOR "APPLE COMPUTER"
1.	24	18.	I. C. BREADBOARD CIRCUIT, MARKED "BLUE BOX"
6	25	19.	ADVERSARY RESET SWITCHES.
1.	26	20.	BOXER FAN, MODEL WS2107FL-55
1.	27	21.	PKG. OF CASSETTE TAPES. (SIX) 32-37
1.	28	22.	HEWLETT-PACKARD TRANSFORMER W/ MISC. WIRES.
1.	29	23.	"APPLE" COMPUTER POWER SUPPLY
1.	30	24.	PANASONIC PORTABLE TAPE RECORDER MODEL RQ 309DS. W/ CASSETTE 38
1.	31	25	GENERAL ELECTRIC PORTABLE T.V. NO SER. NUMBER.

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL TRIAL DIVISION
VS	:	
JOHN DRAPER	:	NO. 68 of 1978

OMNIBUS PRE-TRIAL MOTION FOR RELIEF

TO THE HONORABLE, THE JUDGES OF THE COURT OF COMMON PLEAS OF MONROE COUNTY:

Defendant John T. Draper, by his Attorney, George E. Goldstein, Esquire, moves the Court for relief in accordance with Rule 306, Pennsylvania Rules of Criminal Procedure, as follows:

1. The defendant was arrested on or about October 22, 1977, and was charged with violation of Section 910 (1) (i) of the Pennsylvania Crimes Code (Manufacture, distribution or possession of devices for theft of telecommunication services), an Information being filed against him as of the above-captioned number.

FIRST COUNT

Motion To Suppress Statement

2. Subsequent to his arrest, defendant was warned of his rights against self-incrimination by Investigator James Harris, Pennsylvania State Police, and pursuant thereto, he declined to make a statement, and requested the assistance of counsel before making any statement.

3. Despite his refusal to make a statement, and despite his request to secure counsel, the defendant was interrogated, and subjected to actions by police officers and officials of Bell Telephone Company, who were assisting the Pennsylvania State Police, and were there by clothed with their authority, all of which was calculated to elicit inculpatory statements and admissions from the defendant.

4. The actions of the Pennsylvania State Police and others which were in violation of defendant's constitutional rights against self-incrimination and assistance of counsel, resulted in the defendant allegedly making certain statements and admissions which the Commonwealth intends to use against him at trial.

5. The said statements and admissions were obtained in violation of defendant's constitutional rights, and were as the result of the deliberate actions of the Pennsylvania State Police and others assisting them, which actions were calculated to obtain said statements and admissions.

WHEREFORE, defendant prays your Honorable Court enter an Orde suppressing any and all statements he may have made subsequent to his arrest, and ordering that the same not be admitted into evidence against him, nor comment thereon at the time of trial herein, or in any other proceeding.

SECOND COUNT
Motion To Dismiss Information

6. Section 910 of the Crimes Code is so vague and indefinit as to be unconstitutional in violation of the defendant's rights as enumerated in the Constitutions of the United States and Pennsylvania.

WHEREFORE, defendant prays that the Information indexed against him as of No. 68-1978 be dismissed.

THIRD COUNT
Motion to Quash Count II of Information

7. Count II of the Information charges defendant with possession of a device referred to as a "red box".

8. Criminal Complaint by which this prosecution was initiated made no reference to a device known as a "red box", nor did it allege possession or use of a device as set forth in Count II of the Information.

9. At the Preliminary Hearing in this case, there was no testimony presented regarding the possession or use of a device known as a "red box", as set forth in Count II of the Information.

10. Commonwealth may not file an Information against the defendant as to a charge for which there has been no Preliminary Hearing. Rule 231, Pennsylvania Rules of Criminal Procedure. See, also Commonwealth v. Nelson, 230 Pa. Super. 89, 326 A.2d 598 (1974).

11. Count II of the Information is defective in that it alleges possession of "diagrams for, miscellaneous parts for, and partially assembled devices commonly known as "red box" which are designed and can be used for theft of telecommunications service from pay telephones...", which charge does not set forth a violation of Section 910, (1) (i), of the Pennsylvania Crimes Code.

WHEREFORE, defendant prays that Count II of the above-captioned Information be quashed.

COUNT IV

Motion To Suppress Physical Evidence

12. The defendant has heretofore filed a Motion to Suppress Physical Evidence, upon which the Court has ruled. The defendant incorporates same herein by reference as part of the Omnibus Pre-Trial Motion For Relief.

WHEREFORE, defendant by counsel, prays the Court enter Orders in accordance with the relief requested herein.

RESPECTFULLY SUBMITTED:

GEORGE E. GOLDSTEIN, ESQUIRE

JOHN T. DRAPER

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
MONROE COUNTY BRANCH -- CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	#68-1978
vs.	APPLICATION TO DISMISS CHARGES OF CONSPIRACY, THEFT OF SERVICES AND THEFT OF TELECOMMUNICATION SERVICES.
JOHN THOMAS DRAPER, Defendant	

O R D E R

AND NOW, December 2, 1977, pursuant to request of both the Commonwealth and the Defendant, hearing is continued to a time to be fixed for the reason that the issue before the Court may be resolved as a result of new preliminary hearing to be hereafter held before a District Magistrate.

BY THE COURT:

P.J.

CC: District Attorney
George E. Goldstein, Esq., Star Route, Harmonyville Rd., Pottstown, Pa. 19464
M.P., Court Reporter

IN THE COURT OF COMMON PLEAS
OF THE FORTY-THIRD JUDICIAL DISTRICT
MONROE COUNTY BRANCH - CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA NO. 68 - 1978 TERM, 19____

vs.

JOHN T. DRAPER, a/k/a Captain Crunch

Fern Drive, The Hamlet

Canadensis, Pa. 18325

Defendant (s)

COUNT I

The District Attorney of Monroe County by this information charges that ~~on or about~~ between October 19, 1977 and October 22, 19 77, in said County of Monroe, at Fern Drive, The Hamlet, Price Township, Pennsylvania, John T. Draper, a/k/a Captain Crunch did possess an instrument, apparatus, equipment or device designed, adapted or which can be used for commission of theft of telecommunications service, to wit: Did possess an Apple computer and related software programs designed and adapted for the commission of theft of telecommunications service, in violation of Section 910, 1, (i) of the Pennsylvania Crimes Code, (18 P.S. 910, 1,i),

COUNT II

The District Attorney of Monroe County by this information charges that on October 22, 1977, in said County of Monroe, at Fern Drive, The Hamlet, Price Township, Pennsylvania, John T. Draper, a/k/a Captain Crunch, did possess an instrument, apparat equipment or device designed, adapted or which can be used for commission of theft of telecommunication service, to wit: Did possess the diagrams for, miscellaneous parts for, and partially assembled devices commonly known as "Red Boxes" which are designed and can be used for the theft of telecommunications service from pay telephones, in in violation of Section 910, 1, (i) of the Pennsylvania Crimes Code, (18 P.S. 910, 1,i

all of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

James R. Harris, Jr., PSP Pros.

COMMONWEALTH OF PENNSYLVANIA

vs

JOHN T. DRAPER, a/k/a Captain Crunch

Fern Drive, The Hamlet

Canadensis, Pa. 18325

Defendant(s)

INFORMATION

NOW June 9, 1978,

this information is approved.
(approved) (dismissed)

Ralph A. Matergia
(District Attorney)

Costs

AND NOW June 9, 1978,

the Defendant John T. Draper, a/k/a Captain Crunch
being arraigned, pleads not guilty.

John T. Draper
(Defendant)

(Counsel)

AND NOW _____, 19____,

the Defendant _____,
being arraigned, pleads not guilty.

(Defendant)

(Counsel)

AND NOW _____, 19____,

the Defendant _____
being arraigned, pleads not guilty.

(Defendant)

(Counsel)

Same day District Attorney answers similiter.

District Attorney

JAMES F. MARSH
DISTRICT ATTORNEY
Court House — Room 208, Stroudsburg, Penna. 18360

L. F. Smith
Brathy

I, _____, hereby enter a plea of _____.
DATE _____

_____ (Defendant)

_____ (Attorney for Defendant)

I, _____, hereby enter a plea of _____.
DATE _____

_____ (Defendant)

_____ (Attorney for Defendant)

I, _____, Defendant named in the within information
(Defendant)

_____ (Attorney for Defendant)

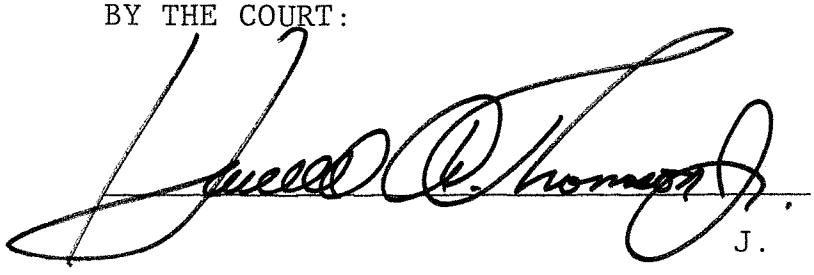
IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
MONROE COUNTY BRANCH - CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	
vs.	:	NO. 68 - 1978
JOHN T. DRAPER	:	

O R D E R

AND NOW, this 13th day of June, 1978, the Court having been advised by counsel for the defense and counsel for the Commonwealth that a stipulation had been entered whereby defense counsel would be permitted to examine, inspect, and duplicate certain sealed evidence now in the Commonwealth's possession, and that in return therefore the defense would raise no objection to contamination of the chain of evidence by opening and breaking the seals of such evidence, it is hereby ordered and directed that said seals shall be broken at the request of defense, defense thereafter to have the right to inspect, examine, and duplicate the said evidence.

BY THE COURT:



J.

CC: George E. Goldstein, Esq.
Ralph A. Matergia, Esq.

June 14, 1978.

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
MONROE COUNTY BRANCH - CRIMINAL

- - - - -

COMMONWEALTH OF PENNSYLVANIA, :

vs. : No. 68 - 1978

JOHN T. DRAPER. :

- - - - -

MR. MATERGIA: Let the record show that the attorney for the Commonwealth and the prosecutor are present, and we are here in the matter of the Commonwealth vs. Draper. I wish at this time to make a statement to the Court.

Following preliminary hearing held in November, 1977 motions were brought before the Court by defense counsel on behalf of defendants Draper and Wright to quash the Magistrate's return. These motions were filed in December of 1977. As a consequence of the filing of these motions the Court ordered the arraignment stayed until the motions could be disposed of and a new preliminary hearing held.

Counsel for the Commonwealth and the defendants agreed at that time that an arraignment of the defendants Draper and Wright could be held at the time of the commencement for trial so as to accommodate defense counsel it being advised to the Commonwealth that the defendants would have to travel some

distance to appear and counsel would have to travel some distance to appear, and it would be an accommodation to all parties if arraignment could be held prior to the calling of the case for trial.

The case was placed upon the April Trial Term and scheduled to be called April the 4th, 1978.

Between February and March, 1978 counsel for the Commonwealth agreed to provide the defendants with any request for discovery and to make himself and his files and all evidence available for inspection by the defendants and copying as well.

Defendant Wright through counsel George Westervelt proceeded with discovery. Defendant Draper through his counsel George Goldstein did not proceed with discovery during this time period.

A hearing was set for March 13, 1978 on defendants' motion to quash and suppress. By virtue of the defendants' petitions there were five issues brought before the Court. A stipulation at that time was entered into in open Court agreeing that the matter be argued on brief and that a transcript of the testimony at the preliminary hearing be entered into evidence on the issues raised in the defendants'

petitions. The Commonwealth filed its brief immediately as of the day of the hearing. The defendants were given two weeks until March the 27th to file their briefs. Defendant Draper's counsel responded on the 28th of March, 1978 with a brief addressing two of the five issues before the Court. The defendant through his counsel George Goldstein explained to the Court that due to recent illness he was delayed in completing his brief and would do so hopefully by March the 30th, 1978.

The case was attached for trial April the 4th, 1978. At that time the Commonwealth was prepared to proceed. Defendants' motioned to continue the matter to the June Term to allow time for the Court to decide the motions outstanding.

Between the April Term and the June Term the Commonwealth at all times made itself available for discovery.

The case appeared on the calendar for the June Term being attached for Tuesday, June the 6th, 1978. Defense counsel Goldstein represented that he would be unavailable until Thursday, June the 8th, 1978. Commonwealth appeared on Thursday, June the 8th, 1978 prepared for trial with all its witnesses. On June the 7th, 1978, the Assistant

District Attorney Ralph Matergia phoned Mr. Goldstein at his home upon request of Mr. Goldstein. During the course of the conversation Mr. Goldstein stated his wife was having a nervous breakdown, that he would be unable to appear the next day for trial, and that he would contact the Court.

On Thursday morning, June the 8th, the Commonwealth appeared prepared to proceed with trial. Attorney Goldstein called the Court Thursday morning from a pay telephone at New Stanton, Pennsylvania, and indicated he was on his way to drop his wife off in Pittsburgh, he was not available to start trial on Thursday, June the 8th, but would be available on Friday morning at 9:30 a.m., June the 9th, 1978.

The Commonwealth's witnesses were present on Friday morning and ready to commence trial. Mr. Goldstein did not appear at 9:30 a.m., but did appear at approximately 10:00 a.m. A conference was held with the Court. At that time Mr. Goldstein stated that he was not prepared to proceed with trial. He indicated that he wished to conduct discovery and also that he was attached in Federal Court for Monday, June the 12th, and would not be available for that week. He also indicated that he was attached in Federal Court for Monday, June the 19th, for a trial that would last several weeks.

He also indicated that he would call the Court on Monday, June the 12th, and advise the Court what had happened concerning his proceedings in Federal Court scheduled for Monday, June the 12th.

On Friday afternoon a jury was selected consisting of 12 members and six alternates, but were not sworn. Voir dire was conducted.

On Monday, June the 12th, 1978, Mr. Goldstein advised the Court that he would not be available to start trial until Wednesday, June the 14th, 1978, at 9:30 a.m. The reason was that he was attached in Federal Court on Monday, June the 12th, and that he would need several days to digest discovery and prepare for trial. Commonwealth witnesses were advised and told to make themselves available for trial on Wednesday, June the 14th, 1978.

On the 14th at 9:30 a.m. the Commonwealth was again prepared to proceed. However, at approximately 5:00 p.m. on Tuesday, the 13th, Mr. Goldstein called the Court and the Assistant District Attorney and advised them that he had been attached by Judge Bechtle in Federal District Court, Philadelphia, and that he would not be available for trial on Wednesday, June the 14th.

On the morning of Wednesday, June the 14th, 1978, Mr. Goldstein called the Assistant District Attorney and stated to the Secretary of the District Attorney's office that because of his involvement with the Federal case before Judge Bechtle that he would not be available to commence trial until Friday, June the 16th, at the earliest, if at that time. The Court confirmed with Judge Bechtle Mr. Goldstein's presence in Court in Federal Court and his unavailability for Wednesday, June the 14th, 1978. It being now 1:30 p.m. Wednesday, June the 14th, and the jury having been instructed to return, the Commonwealth is again prepared to proceed with trial at this time.

THE COURT: Let the record so show.

MR. MATERGIA: I also wish to add that discovery was accomplished on Saturday, June the 10th, and Monday, the 12th, and Tuesday, June the 13th, which we believe to be to the satisfaction of defense counsel.

It should also be shown that on Friday, June the 9th, at the request of defense counsel, being the initial request for discovery by defense counsel, the Commonwealth provided defense counsel with a copy of the Bell Lab. report of examination of evidence, and with a copy of the tapes of the

dialed number recorder intended to be introduced in evidence at trial.

THE COURT: Let the record so show, and I am instructing the Reporter to have this statement of the Assistant District Attorney transcribed forthwith so that the defense counsel, who is not present at this time, has an opportunity to review and respond to it, if he feels it necessary.

cc: R. A. Matergia, Esq., A.D.A.
George Goldstein, Esq.
D. Kinne, C.R.

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
MONROE COUNTY BRANCH - CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	NO. 68, 1978
vs.	:	
JOHN T. DRAPER	:	

WAIVER OF JURY TRIAL

AND NOW, this 19th day of June, 1978, comes the defendant and pleads not guilty and with the consent of his attorney and the approval of the judge, waives a jury trial and elects to be tried by a judge without a jury.

John T. Draper
JOHN T. DRAPER, Defendant

GEORGE E. GOLDSTEIN,
Attorney for Defendant

Joins in Motion
Asst. Dist. Atty.

JUDGE

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
MONROE COUNTY BRANCH - CRIMINAL

- - - - -

COMMONWEALTH OF PENNSYLVANIA, :

vs. : No. 68 - 1978

JOHN THOMAS DRAPER. : COUNT NO. I - POSSESSION OF
: DEVICES FOR THEFT OF
: COMMUNICATION SERVICES.

- - - - -

O R D E R

AND NOW, this 19th day of June, 1978, the defendant having entered a written plea of guilty to the above charge, imposition of sentence is deferred pending a presentence investigation. Bail is continued in the same amount.

BY THE COURT:

J.

cc: R. A. Matergia, Esq, A.D.A.
George Goldstein, Esq.
Probation
Sheriff
D. Kinne, C.R.

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
VS	:	
JOHN THOMAS DRAPER	:	NO. 68 - 1978

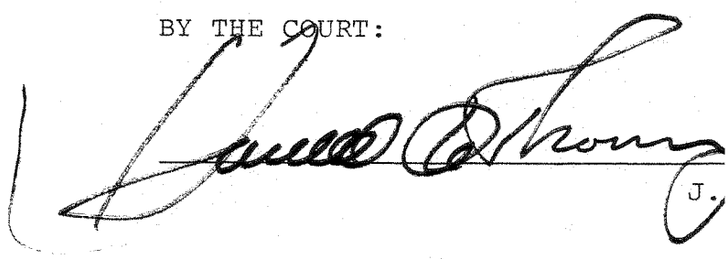
ORDER

AND NOW, this 18th day of August, 1978, the defendant John Thomas Draper having complied with all the terms and conditions of the bail posted herein, it is

ORDERED AND DECREED

that defendant John Thomas Draper and his surety Judy Peterson be and are hereby released from the terms and conditions of said bail, and it is further Ordered that the Clerk of Courts of Monroe County return to Judy Peterson the sum of five thousand ($5,000.) dollars posted herein as cash bail, less said charges as are authorized by law.

BY THE COURT:



J.

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
MONROE COUNTY BRANCH - CRIMINAL

- - - - -

COMMONWEALTH OF PENNSYLVANIA, :

vs. : No. 68 - 1978

JOHN THOMAS DRAPER. : POSSESSION OF DEVICES FOR THEFT
: OF TELECOMMUNICATION SERVICES.

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SENTENCE

AND NOW, this 18th day of August, 1978, it is the sentence of this Court that you, John Thomas Draper, undergo a period of imprisonment in the Monroe County Jail for not less that three months nor more than six months, pay a fine of $500.00 and the costs of these proceedings.

BY THE COURT:

J.

cc: R.A. Matergia, Esq., A.D.A.
George Goldstein, Esq.
Probation
Sheriff
D. Kinne, C.R.

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS OF THE FORTY THIRD JUDICIAL DISTRICT

VS. : MONROE COUNTY BRANCH - CRIMINAL

JOHN THOMAS DRAPER : NO. 68 - 1978

: CHARGE: Possession of Devices for Theft of Communication Services Count I and Count II

PETITION TO NOLLE PROSEQUI

TO THE HONORABLE, THE JUDGES OF THE AFORESAID COURT:

The Petition of Ralph A. Matergia, Assistant District Attorney/ ~~District Attorney~~ of Monroe County, Pennsylvania, respectfully represents:

1. That a transcript was filed in the Office of the Clerk of Court of Monroe County, Pennsylvania, on November 15, 1977, charging the above captioned defendant with Possession of Devices for Theft of Communication Services, Count I and Count II.

2. That the District Attorney of Monroe County approved an Information on June 19, 1978, on the charge of Possession of Devices for Theft of Communication Services, Count I and Count II.

3. That on June 19, 1978 the defendant appeared in Court and entered a plea of guilty to the charge of Count I, Possession of Devices for Theft of Communication Services.

4. That on August 18, 1978 the defendant was sentenced to undergo imprisonment for not less than three (3) months nor more than six (6) months, pay a fine of $500.00 and the costs of proceedings.

5. That it is the opinion of your petitioner that it is not in the interest of justice to prosecute further on the charge of Count II, Possession of Devices for Theft of Telecommunication Services as the penalty mentioned above is sufficient.

WHEREFORE, your petitioner prays that permission be granted to enter a Nolle Prosequi in the within case on the charge of Count II, Possession of Devices for Theft of Telecommunication Services.

Respectfully submitted,

Ralph A. Matergia

Ass't. District Attorney

COMMONWEALTH OF PENNSYLVANIA)
: SS.
COUNTY OF MONROE)

RALPH A. MATERGIA, being duly sworn according to law, depose and says that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.

Ralph A. Matergia

Sworn and subscribed to before me
this 24th day of August 1978

Betty L. Selesk
Asst Chief Dep. Prothy

AND NOW, August 24, 1978, I, Ralph A. Matergia Assistant/District Attorney of Monroe County, Pennsylvania, move the Court to grant permission to enter a Nolle Prosequi in the within case on the charge of Count II, Possession of Devices for Theft of Telecommunication Services.

Ralph A. Matergia
Ass't. District Attorney

AND NOW, September 6th 1978, the Court grants permission to the District Attorney to enter a Nolle Prosequi in the within case on the charge of Count II, Possession of Devices for Theft of Telecommunication Services.

By the Court,

Harold D. Thomson, J.

Eo Die, I hereby enter a Nolle Prosequi in the within case on the charge of Count II, Possession of Devices for Theft of Telecommunication Services.

Ralph A. Matergia
Ass't. District Attorney

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT

COMMONWEALTH OF PENNSYLVANIA

MONROE COUNTY BRANCH - CRIMINAL

- - - -

COMMONWEALTH OF PENNSYLVANIA	:	
VS	:	NO. 68 - 1978
JOHN THOMAS DRAPER	:	POSSESSION OF DEVICES FOR THEFT OF TELECOMMUNICATION SERVICES

- - - -

RULE

AND NOW, this 23rd day of October, 1978, upon motion of George E. Goldstein, Esquire, a Rule is granted upon the District Attorney of Monroe County to show cause why the within Petition for Parole should not be granted.

Rule returnable 6th day of November, 1978, at 3:30 O'clock P.M., Courtroom number 2, Monroe County Court House, Stroudsburg, Pennsylvania.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT

COMMONWEALTH OF PENNSYLVANIA

MONROE COUNTY BRANCH - CRIMINAL

- - - -

COMMONWEALTH OF PENNSYLVANIA	:	
VS	:	NO. 68 - 1978
JOHN THOMAS DRAPER	:	POSSESSION OF DEVICES FOR THEFT OF TELECOMMUNICATION SERVICES

- - - -

PETITION FOR PAROLE

TO THE HONORABLE HAROLD A. THOMSON, JR., JUDGE, COURT OF COMMON PLEAS OF MONROE COUNTY:

Defendant John Thomas Draper by his attorney George E. Goldstein, Esquire, moves the Court to grant him parole upon expiration of his minimum sentence and in support thereof sets forth the following facts:

1. On August 18, 1978, defendant was sentenced to imprisonment for a period of not less than three months nor more than six months with credit for time previously served.

2. Prior to the imposition of sentence, the defendant had served twenty five days for which credit was to be given.

3. Defendant's minimum sentence will expire on or about October 21, 1978 and he is in all respects eligible for parole.

4. The defendant was also sentenced to pay a fine in the amount of five hundred ($500.00) dollars, plus costs which counsel is advised are in the amount of two hundred seventeen dollars, seventy five cents ($217.75), which defendant is now unable to

pay as he has no funds, but upon his release he will be gainfully employed and in the position to make payment in full by the expiration of his maximum sentence.

5. Defendant is in all ways a proper subject for parole.

WHEREFORE, defendant John Thomas Draper by his attorney George E. Goldstein, Esquire, prays the Court enter an Order granting him parole.

RESPECTFULLY SUBMITTED:

GEORGE E. GOLDSTEIN, ESQUIRE
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA:
SS
COUNTY OF MONTGOMERY :

George E. Goldstein, being duly sworn according to law deposes and says that he is the attorney for John Thomas Draper and that the facts set forth in the foregoing Petition for Parole are true and correct to the best of his knowledge, information and belief.

GEORGE E. GOLDSTEIN

SWORN AND SUBSCRIBED
BEFORE ME THIS 19th DAY
OF OCTOBER, 1978.

Richard D. Winters

NOTARY PUBLIC

RICHARD D. WINTERS
Notary Public, Norristown Boro, Montg. Co.
My Commission Expires January 23, 1980

IN THE COURT OF COMMON PLEAS OF THE 43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA
MONROE COUNTY BRANCH - CRIMINAL

- - - - -

COMMONWEALTH OF PENNSYLVANIA	:	NO. 68 - 1978
vs.	:	POSSESSION OF DEVICES FOR THEFT OF TELECOMMUNICATION SERVICES
JOHN THOMAS DRAPER	:	

- - - - -

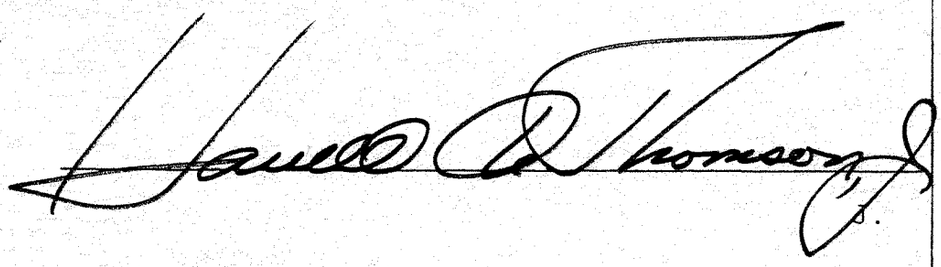
O R D E R

AND NOW, this 26th day of October, 1978, upon motion of George E. Goldstein, Esquire, and after hearing upon the within Petition for Parole, it is hereby

ORDERED AND DECREED

that John Thomas Draper be paroled subject to the terms and conditions of parole and subject to the condition that the fine and costs in the total amount of seven hundred twenty five dollars, twenty five cents ($725.25) be paid within the period of his parole.

BY THE COURT:



J.