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FILE COPY

Record Nos. 6369, 6370, 6371

Clerk, Supreme Court of Appeals

Richmond, Va.

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

DANIEL E. MOORE

v.

COMMONWEALTH OF VIRGINIA

---

FROM THE CORPORATION COURT OF THE CITY OF NORFOLK

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RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND

---

**Record No. 6369**

---

VIRGINIA :

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 3rd day of March, 1966.

DANIEL E. MOORE,

Plaintiff in error,

*against*

COMMONWEALTH OF VIRGINIA, Defendant in error.

---

From the Corporation Court of the City of Norfolk  
H. Lawrence Bullock, Judge

---

Upon the petition of Daniel E. Moore a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Norfolk on the 21st day of October, 1965, in a prosecution by the Commonwealth against the said petitioner for a felony (Indictment #1); but said *supersedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.



IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND

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**Record No. 6371**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 3rd day of March, 1966.

DANIEL E. MOORE, Plaintiff in error,  
*against*

COMMONWEALTH OF VIRGINIA, Defendant in error.

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From the Corporation Court of the City of Norfolk  
H. Lawrence Bullock, Judge

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Upon the petition of Daniel E. Moore a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Norfolk on the 21st day of October, 1965, in a prosecution by the Commonwealth against the said petitioner for a felony (Indictment #3); but said *supersedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

page 2 }

INDICTMENT #1

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Norfolk, and now attending the said Court, at its MAY term, 1965, upon their oaths, present that DANIEL E. MOORE, alias Joseph E. Moore to-wit, on the 8th day of February, 1965, in the said City of Norfolk, then and there unlawfully and feloniously did forge the name of Joseph E. Moore as maker of a certain writing, to-wit, a check, in the sum of, to-wit, \$20.00, No. , dated Feb. 5, 1965 payable to the order of Cash and payable at Bank of Virginia Beach, Virginia Beach, Virginia and which said check purports to be signed by the said Joseph E. Moore, as maker, thereof on the face thereof, to the prejudice of another's right, and with intent then and there unlawfully and feloniously to defraud, against the peace and dignity of the Commonwealth of Virginia.

SECOND COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said DANIEL E. MOORE, alias Joseph E. Moore, on, to-wit, the 8th day of February, 1965, in the said City of Norfolk, then and there unlawfully and feloniously did utter and attempt to employ as true a certain writing, to-wit, a check, in the sum of to-wit, \$20.00, No. , dated Feb. 5, 1965 payable to the order of Cash and payable at Bank of Virginia Beach, Virginia Beach, Virginia and which said check purports to be signed by the said Joseph E. Moore as maker thereof on the face thereof, which said purported signature of the said Joseph E. Moore, is a forgery, he, the said DANIEL E. MOORE, alias Joseph E. Moore at the time, aforesaid, that he did so utter and attempt to employ as true the said last mentioned writing, to-wit, said check, well knowing the said signature thereon to be then and there forged and well knowing the name of said Joseph E. Moore purporting to be signed thereon as maker thereof, to be in fact a forgery, and with intent then and there unlawfully and feloniously to defraud,

against the peace and dignity of the Commonwealth of Virginia.

page 3 } THIRD COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said DANIEL E. MOORE, alias Joseph E. Moore to-wit, on the 8th day of February, 1965, in the said City of Norfolk, to-wit, \$20.00 of United States Currency of the value of, to-wit, \$20.00, of the goods, chattels and moneys of 7-Eleven Stores, Incorporated, then and there being, then and there unlawfully did steal, take and carry away, against the peace and dignity of the Commonwealth of Virginia.

(on back)

Bond Forfeited .....  
Trial 9/14/65 ✓  
Judgment 9/14/65  
Motion New Trial 9/14/65  
Motion Overruled 9/14/65  
Sentence 10/21/65  
Mittimus 10/21/65  
Capias .....  
Suspension .....  
Bailed .....  
Fine and Costs Paid .....

Indictment for Forgery, Uttering and Petit Larceny.

A true bill.

GEO. A. PEEK, Foreman.

Witness:

Robert E. Ornoff  
Off. L. I. Rawls  
E. W. White  
R. A. Johnson

\* \* \* \* \*

page 5 }

\* \* \* \* \*

## INDICTMENT #2

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Norfolk, and now attending the said Court, at its MAY term, 1965, upon their oaths, present that DANIEL E. MOORE, alias Joseph E. Moore to-wit, on the 8th day of February, 1965, in the said City of Norfolk, then and there unlawfully and feloniously did forge the name of Joseph E. Moore as maker of a certain writing, to-wit, a check, in the sum of, to-wit, \$20.00, No. 319, dated Feb. 6, 1965 payable to the order of Cash and payable at Bank of Virginia Beach, Virginia Beach, Virginia and which said check purports to be signed by the said Joseph E. Moore, as maker, thereof on the face thereof, to the prejudice of another's right, and with intent then and there unlawfully and feloniously to defraud, against the peace and dignity of the Commonwealth of Virginia.

SECOND COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said DANIEL E. MOORE, alias Joseph E. Moore, on, to-wit, the 8th day of February, 1965, in the said City of Norfolk, then and there unlawfully and feloniously did utter and attempt to employ as true a certain writing, to-wit, a check, in the sum of to-wit, \$20.00, No. 319, dated Feb. 6, 1965 payable to the order of Cash and payable at Bank of Virginia Beach, Virginia Beach, Virginia and which said check purports to be signed by the said Joseph E. Moore as maker thereof on the face thereof, which said purported signature of the said Joseph E. Moore, is a forgery, he, the said DANIEL E. MOORE, alias Joseph E. Moore at the time, aforesaid, that he did so utter and attempt to employ as true the said last mentioned writing, to-wit, said check, well knowing the said signature thereon to be then and there forged and well knowing the name of said Joseph E. Moore purporting to be signed thereon as maker thereof, to be in fact a forgery, and with intent then and there unlawfully and feloniously to defraud, against the peace and dignity of the Commonwealth of Virginia.

page 6 } THIRD COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said DANIEL E. MOORE, alias Joseph E. Moore to-wit, on the 8th day of February, 1965, in the said City of

Norfolk, to-wit, \$20.00 of United States Currency of the value of, to-wit, \$20.00, of the goods, chattels and moneys of Colonial Stores, Incorporated then and there being, then and there unlawfully did steal, take and carry away, against the peace and dignity of the Commonwealth of Virginia.

(on back)

Bond Forfeited .....  
Trial 9/14/65  
Judgment 9/14/65  
Motion New Trial 9/14/65  
Motion Overruled 9/14/65  
Sentence 10/21/65  
Mittimus 10/21/65  
Capias .....  
Suspension .....  
Bailed .....  
Fine and Costs Paid .....

Indictment for Forgery, Uttering and Petit Larceny.

A true bill.

GEO. A. PEEK, Foreman.

Witness:

James Scarborough  
Off. L. I. Rawls  
E. W. White  
R. A. Johnson

\* \* \* \* \*

page 8 }

\* \* \* \* \*

INDICTMENT #3

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Norfolk, and now attending the said Court, at its MAY term, 196 , upon their oaths, pre-

sent that DANIEL E. MOORE, alias Joseph E. Moore to-wit, on the 11th day of February, 1965, in the said City of Norfolk, then and there unlawfully and feloniously did forge the name of Joseph E. Moore as maker of a certain writing, to-wit, a check, in the sum of, to-wit, \$20.00, No. 311, dated Feb. 10, 1965 payable to the order of Cash and payable at Bank of Virginia Beach, Virginia Beach, Virginia and which said check purports to be signed by the said Joseph E. Moore, as maker, thereof on the face thereof, to the prejudice of another's right, and with intent then and there unlawfully and feloniously to defraud, against the peace and dignity of the Commonwealth of Virginia.

SECOND COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said DANIEL E. MOORE, alias Joseph E. Moore, on, to-wit, the 11th day of February, 1965, in the said City of Norfolk, then and there unlawfully and feloniously did utter and attempt to employ as true a certain writing, to-wit, a check, in the sum of to-wit, \$20.00, No. 311, dated Feb. 10, 1965 payable to the order of Cash and payable at Bank of Virginia Beach, Virginia Beach, Virginia and which said check purports to be signed by the said Joseph E. Moore as maker thereof on the face thereof, which said purported signature of the said Joseph E. Moore, is a forgery, he, the said DANIEL E. MOORE, alias Joseph E. Moore at the time, aforesaid, that he did so utter and attempt to employ as true the said last mentioned writing, to-wit, said check, well knowing the said signature thereon to be then and there forged and well knowing the name of said Joseph E. Moore purporting to be signed thereon as maker thereof, to be in fact a forgery, and with intent then and there unlawfully and feloniously to defraud, against the peace and dignity of the Commonwealth of Virginia.

page 9 } THIRD COUNT: And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said DANIEL E. MOORE, alias Joseph E. Moore to-wit, on the 11th day of February, 1965, in the said City of Norfolk, to-wit, \$20.00 of United States Currency of the value of, to-wit, \$20.00, of the goods, chattels and moneys of Lakeland Grocery Corporation, trading as Valu Fair #29 then and there being, then and there unlawfully did steal, take and carry away, against the peace and dignity of the Commonwealth of Virginia.

(on back)

Bond Forfeited .....  
 Trial 9/14/65  
 Judgment 9/14/65  
 Motion New Trial 9/14/65  
 Motion Overruled 9/14/65  
 Sentence 10/21/65  
 Mittimus 10/21/65  
 Capias .....  
 Suspension .....  
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Indictment for Forgery, Uttering and Larceny.

A true bill.

GEO. A. PEEK, Foreman.

Witness:

Ben Gorlick  
 Off. L. I. Rawls  
 E. W. White  
 R. A. Johnson

\* \* \* \* \*

page 22 }

\* \* \* \* \*

In the Corporation Court of the City of Norfolk on the 21st day of October, 1965.

Daniel E. Moore, who stands convicted of Forgery and Uttering on indictments numbered 1, 2 and 3, was this day again led to the bar in the custody of the Jailor of this Court, and came as well the Attorney for the Commonwealth and the Attorney for the defendant, heretofore appointed for him by the Court, and the Probation Officer of this Court who filed his report, which said report was read to the defendant and filed herewith and made a part of the record, and thereupon the said report was read to the defendant in open Court

and the Probation Officer cross examined by the defendant, and the Court having heard all of the evidence and argument of counsel, the Court doth fix the punishment of said defendant at confinement in the Penitentiary for the term of Two Years on each of the said three indictments. Whereupon it being demanded of him if anything for himself he had or knew to say why the Court should not here and now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay of judgment, it is therefore considered by the Court that the said Daniel E. Moore be confined in the Penitentiary of this Commonwealth for the term of Two Years, on each of the indictments numbered 1, 2 and 3, subject to a credit of 26 days spent in jail awaiting trial, and pay the costs of his prosecution, including \$50.00 Attorney fee which is allowed John A. Gurkin, Jr., on each said indictment, for his services as appointed counsel. Thereupon, the defendant, in person, moved the Court for time in which to apply for a writ of error to the foregoing judgment, which motion being granted, it is ordered that the execution of the aforesaid judgments be postponed until the 20th day of December, 1965, or until the Supreme Court of Appeals shall deny said writ of error if prior thereto. There-

page 23 } upon the defendant, in person, advised the Court that he wished to employ his counsel to assist him in his application for said writ of error.

And the prisoner was remanded to jail and the penalty of his bail bond fixed at \$5,000.00 to cover the three aforesaid indictments.

\* \* \* \* \*

page 25 }

\* \* \* \* \*

**NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS**

NOW COMES the Defendant, Daniel E. Moore, and hereby gives notice of his intention to apply to the Supreme Court of Appeals of Virginia for an appeal from his conviction of forgery and uttering as charged in three indictments, judgment on which was entered on October 21, 1965. The Defendant, Daniel E. Moore, makes the following assignment of errors:

ASSIGNMENT OF ERRORS

1. That the Court erred in failing to sustain the Defendant's motion to strike the Commonwealth's evidence at the conclusion thereof.
2. That the Court erred in not setting aside the judgment as being contrary to the law and the evidence and in not granting a new trial.

DANIEL E. MOORE  
 By JOHN A. GURKIN, JR.  
 Of Counsel.

page 2 }  
 .....  
 \* \* \* \* \*

TRANSCRIPT OF TESTIMONY

Following is stenographic transcript of the testimony introduced and proceedings had upon the trial of the above entitled case, in said court, on the 14th day of September, 1965, before the Honorable H. Lawrence Bullock, Judge of the said court.

Appearances: Robert H. Anderson, Esq., Assistant Attorney for the Commonwealth.  
 John A. Gurkin, Jr., Esq., Counsel for Defendant.

page 3 }  
 \* \* \* \* \*

To: Commonwealth's Attorney:

PLEASE TAKE NOTE that on the 17th day of December, 1965, the undersigned will bring to the Honorable H. Lawrence Bullock, Judge of the Corporation Court of the City of Norfolk, Virginia, at the courthouse of said city, the stenographic report of the testimony and other proceedings of the trial, and will, on the same date, make application to the clerk of said court for a transcript of the above entitled case for certification by said Judge, and will, on the same date,

*Daniel E. Moore.*

make application to the clerk of said court for a transcript of the record in said case for the purpose of presenting the same to the Supreme Court of Appeals of Virginia with a petition for a writ of error and *supersedeas* to the final judgment in the trial court in said case.

DANIEL E. MOORE,  
JOHN A. GURKIN, JR.  
Attorney for the Defendant.

Legal service of the above notice is hereby accepted this 16th day of December, 1965.

.....  
Assistant Attorney for the  
Commonwealth.

page 4 } DANIEL E. MOORE,  
Defendant, having been first duly sworn, was examined and testified as follows:

By the Court:

Q. Is your name Daniel E. Moore?

A. Yes, sir.

Q. You are the Daniel E. Moore that is mentioned in these indictments that the clerk just read to you?

A. Yes, sir.

Q. Do you know you are entitled to have a jury trial if you want a jury trial?

A. Yes, sir.

Q. Do you have the money with which to hire a lawyer?

A. No, sir.

Q. Have you talked to Mr. Gurkin, whom I appointed for you?

A. Yes, sir.

Q. Did you talk to him about presenting a plea of guilty or not guilty?

A. Yes, sir.

Q. What was the result of your talking to him?

A. I decided on a court trial.

page 5 } Q. Is that your decision?

A. Yes, sir.

Q. And that decision was made by you without the influence of Mr. Gurkin or anybody else?

*Daniel E. Moore.*

- A. It was my own decision.  
Q. Are there any witnesses that would help you?  
A. Well, my wife is here, Your Honor.  
Q. Has Mr. Gurkin talked to you about witnesses?  
A. Yes, sir.  
Q. Is your wife the only witness that you have?  
A. Yes, sir.  
Q. Is there any other witness that would help you?  
A. No, sir. I have the evidence in writing here, the only thing I supposed I would need.  
Q. You have talked to Mr. Gurkin fully about this?  
A. Yes, sir.  
Q. And your wife is the only one that is present today?  
A. Yes, sir.

page 6 } Mr. Gurkin: May it please the Court, for the record, the defendant's sister happens to be here. I understood that he knew she was here, but evidently he does not.

The Court:

- Q. How many times has Mr. Gurkin interviewed you concerning your case?  
A. I don't know, Your Honor. It's been several times.  
Q. Are you satisfied with Mr. Gurkin's efforts in your behalf?  
A. Yes, sir.  
Q. Have you any complaint to make about Mr. Gurkin to me?  
A. No, sir, Your Honor.  
Q. Have you any complaint against the police officers that are investigating your case?  
A. No, sir.  
Q. Do you have any complaint against anyone connected with your case?  
A. No, sir, Your Honor.  
Q. Do you understand all the questions that I have asked you?

A. Yes, sir.  
page 7 } Q. The answers have been your own answers of your own mind that you gave me?  
A. Yes, sir.  
Q. Not influenced by anybody?  
A. No, sir.

*Herman A. Sacks.*

Q. You are ready for trial?

A. Yes, sir.

The Court: Commonwealth may proceed.

HERMAN A. SACKS,

witness called by counsel for the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined by Mr. Anderson:

Q. Mr. Sacks, for the record, you are Herman A. Sacks, senior partner of Sacks, Sacks and Kendall, with law offices in the City of Norfolk, located in Virginia National Bank?

A. Yes, sir.

The Court: Which one are we trying first?

Mr. Anderson: This pertains to all three, Your page 8 } Honor.

For purposes of identification, I would like to have these two exhibits marked "1" and "2", petition and order.

This would be number "1", Your Honor.

The Court: So marked.

Mr. Anderson:

Q. Mr. Sacks, in 1963, did you have occasion to represent the defendant who is in the courtroom this morning, Moore, in connection with the changing of his name?

A. Yes, sir, I did.

Q. I show you these exhibits, petition and order, in that respect, and I ask you if they were entered and for what purpose?

A. Mr. Moore, he had his name changed from Joseph Edward Moore to Daniel Emmett Moore.

Q. Can you tell the Court, based on this certified copy of the order, what date that change was entered, if it was?

A. December 5, 1963.

Q. And what court did this?

A. Corporation Court of the City of Norfolk.

Q. The Judge being Honorable H. Lawrence Bullock, the same Judge this morning?

page 9 }

A. Yes, sir.

*Herman A. Sacks.*

Q. Mr. Sacks, I will ask you to read from this copy which is a certified copy of the petition, the reasons given for this change, beginning with, "That your petitioner", and down to the point where you think it is no longer, and "Your petitioner has experienced a great deal of confusion by the similarity of his first name and surname and the given names of divers other persons, and in order to prevent confusion and difficulty in the transaction of his business and affairs, he desires to change his name from Joseph Edward Moore to Daniel Emmett Moore."

That is, in order to prevent confusion and difficulty in the transaction of his business affairs, the change of name was requested?

A. Yes, sir, it is requested.

Q. And this petition is signed by whom?

A. Joseph Edward Moore.

Q. The person you represented in this connection?

A. Yes, sir.

Q. I asked you if you advised Mr. Moore of the page 10 } fact that this change had been entered in a decree entered by this Court?

A. Yes, sir, and I gave him a copy of the decree.

Mr. Anderson: Offered in evidence.

The Court: I mark them in evidence "C-1" and the order "C-2."

Mr. Anderson: Answer Mr. Gurkin or the Judge.

Mr. Gurkin: May it please the Court, the defendant here today, Daniel E. Moore, has seen the petition and the order and he says that they are the petition and the order that were entered.

Mr. Anderson: I don't think that is proper until the defendant takes the stand.

That is just testimony. That is all. It is offered on behalf of the defendant.

I don't particularly mind, but I think it is most improper.

Mr. Gurkin: I think the defendant has the right.

If it please the Court, we feel the defendant page 11 } certainly has a right to inspect the petition and order which was going to be entered into evidence; otherwise, how could we determine whether to object.

Mr. Anderson: Of course there is no objection to Mr. Gurkin and the defendant inspecting the petition and order.



*Robert Ellis Ornoff.*

Q. In what respect?

A. My initials right here, "R.O."

Q. Did you put those in there?

A. Yes, sir.

Q. I have asked you if you could identify this check. You said, "Yes."

A. By my initials on there. I put them on there myself.

Q. And your initials are what?

A. R.O.

Q. Did you receive the check?

A. Yes, sir.

Q. For what purpose?

A. From Mr. Moore for cash, in the amount of \$20.00.

Q. How is this check signed?

A. Cash.

Q. I mean, how is it signed?

A. Joseph E. Moore.

page 14 } Q. Did you put this check through in the normal  
course of your business with the bank?

A. Yes, sir, I did.

Q. What happened?

A. It came back, "No funds, closed", I think it was.

Q. Look at it and see.

A. "No account."

Q. And it has written what, in addition to "No account"?

A. Unable to locate.

The Court: Who presented that check to you?

A. Mr. Moore.

The Court: Who is Mr. Moore?

A. The gentleman right here.

(Witness points to defendant.)

Mr. Anderson:

Q. Did you know him?

A. I had seen him in the store once before that.

Q. Did you know his name when you saw him?

A. No, I didn't.

*James N. Scarborough.*

Mr. Anderson: If Your Honor, please, I offer page 15 } this check in evidence as Commonwealth's Exhibit "C-3".

The Court: I so mark it, Miss Reporter.

Mr. Anderson: Answer Mr. Gurkin or the Judge. Mr. Ornoff.

### CROSS EXAMINATION

Examined by Mr. Gurkin:

Q. This is very important, Mr. Ornoff. I am not trying to trick you or anything, except as to the absolute facts.

It is my understanding the defendant moved into that area some months prior to the cashing of this check and established a course of dealing with your store.

Now, think real hard. Are you sure you had never seen him but one time?

A. One time.

Q. And you viewed him, and you knew him then as Joseph Moore?

A. I didn't know his name then.

Q. Did he cash a check before?

A. That was the first time he asked to have a check cashed.

Q. And that was Joseph E. Moore?

A. Yes, sir.

page 16 } Q. And this is the man you knew as Joseph E. Moore?

A. Yes, sir.

Mr. Anderson: You may come down.

This will be in reference to indictment number two.

**JAMES N. SCARBOROUGH,**

witness called by counsel for the Commonwealth, having been first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

Examined by Mr. Anderson:

Q. State your name.

A. James N. Scarborough.

Q. Where are you employed?

*James N. Scarborough.*

A. Colonial Stores, Incorporated, 8506 Chesapeake Boulevard, Norfolk.

Q. Were you so employed in February of this year, 1965?

A. Yes.

Mr. Anderson: If Your Honor, please, I would like to mark these documents as Commonwealth's Exhibit "C-4" for identification.

page 17 } They should be stapled together. They have come apart.

Q. Mr. Scarborough, I show you this check dated February 6, 1965, in the amount of \$20.00, drawn on the Bank of Virginia, Virginia Beach, Virginia, and I ask you if you can identify it?

A. Yes, sir.

Q. In what way?

A. My initials are on the upper left hand corner, and they are J.N.S.

Q. Did you personally receive this check?

A. I approved it for cashing, yes, sir.

Q. And who presented it?

A. Mr. Moore.

Q. All right.

Q. What did he receive for it?

A. Merchandise, and the balance in cash.

Q. Merchandise and the balance in cash?

A. I would assume that, yes, sir.

Q. Did you know Mr. Moore?

A. No, sir, personally, no, sir.

Q. Did you know his name?

A. Yes, sir.

Q. Did you put the check through in the course of your business?

page 18 } A. Yes, sir.

Q. What disposition was made of it?

A. The check was returned from the bank, "No account" and a little notation, "Unable to locate."

Mr. Anderson: We offer this in evidence as Commonwealth's Exhibit "C-4".

(So marked.)

Mr. Anderson: Answer Mr. Gurkin.

*Ben Gorelick.*

CROSS EXAMINATION.

Examined by Mr. Gurkin:

Q. Mr. Scarborough, had you previously cashed payroll checks for Mr. Moore?

A. Not to my knowledge.

Q. It's been a long time ago, of course, but did you ever cash any checks for Mr. Moore?

A. Not to my knowledge. I couldn't say.

Q. You couldn't state you did not cash them?

A. No, sir, I could not.

Q. I see, and on this check, the man was this Mr. Moore sitting beside me?

A. Yes, sir.

Q. Whom you knew as Joseph Moore at that page 19 } time?

A. I didn't know his name, no, sir.

Q. Did he show you any identification?

A. Yes, sir, driver's license.

Q. What was the name on the driver's license?

A. It agreed with the name on the check.

Q. And that would be?

A. I believe Joseph E. Moore.

Mr. Gurkin: That is all.

BEN GORELICK,

witness called by counsel for Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Anderson:

Q. You are Mr. Ben Gorelick?

A. Lakeland Grocery Corporation, 1621 Military Highway, Norfolk.

Q. Were you so employed in February of this year?

A. Yes, sir.

Q. I would like to have this marked for identification as Commonwealth's Exhibit "C-5".

Mr. Gorelick, I show you this check bearing date page 20 } of February 10, 1965, for cash, in the amount of \$20.00, drawn on the Bank of Virginia, at Virginia Beach, Virginia, and ask you if you can identify it?

*Ben Gorelick.*

A. Yes, I can.

Q. In what way?

A. My initials are in the upper left hand corner.

Q. Your initials are B.G.?

A. Yes, sir.

Q. Did you receive this check?

A. Yes, sir, I did.

Q. What did the person who presented it get for it?

A. Groceries and the balance in cash.

Q. Who gave you the check?

A. Mr. Moore gave me this check.

Q. The defendant in this case?

A. Yes, sir.

Q. How is this check signed?

A. Joseph E. Moore.

Q. Did you receive this from him?

A. I authorized the receipt of it.

Q. Did he present it?

A. He presented it, yes, sir.

page 21 } Q. What happened to the check thereafter? Did you put it through your normal business?

A. Yes, sir, and the check came back, "No such account, unable to locate."

Q. Did you know Mr. Moore?

A. Not personally.

Q. Did you know his name?

A. No, I did not.

Mr. Anderson: I offer this as "C-5", Your Honor.

The Court: So marked, Miss Reporter.

Mr. Anderson: Answer Mr. Gurkin, or the Judge.

CROSS EXAMINATION.

Examined by Mr. Gurkin:

Q. Had you ever seen Mr. Moore in the store before?

A. I believe I had.

Q. Had you ever okayed any other checks to your knowledge?

A. To my knowledge, I can't remember.

Q. Did you ask him for any identification?

A. Normally, I would say we did.

page 22 } Q. But in this case, can you say whether you did or not?

A. No, sir, I cannot for sure.

*E. W. White.*

Q. And you don't say here today positively that you hadn't cashed other checks?

A. I can't say that, no, sir.

Q. You did not know him?

A. Personally, no, sir.

Mr. Gurkin: That is all.

E. W. WHITE,

witness called by counsel for the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Examined by Mr. Anderson:

Q. You are Detective E. W. White of the Norfolk Police Division, assigned to the Check Squad, is that correct?

A. That is correct.

Q. Did you, in company with Officer Rawls, have occasion to investigate the matter of these three checks?

A. I did.

Q. Did you, in company with other officers or on your own, interrogate the defendant and question him in connection with them?

A. Yes, sir.

Q. Were his answers that he gave you voluntarily given without any threat or promise or anything of that nature on your part, or on the part of other police officers?

A. They were quite voluntarily given, yes, sir.

Q. What did he tell you concerning them?

A. He stated that he wrote these checks, that he did sign the name of Joseph E. Moore to them.

He acknowledged that he did not have an account in the Bank of Virginia Beach on which these checks were drawn, and he stated also that when I asked him, he acknowledged that he did have his name changed back in 1963, from Joseph Edward Moore to Daniel Emmett Moore, and he said the reason that he had begun using Joseph E. Moore again was because of his children.

Q. Because of his children?

A. Yes, sir. He didn't explain any further but that was his answer.

Mr. Anderson: Answer Mr. Gurkin.

*E. W. White.*

Mr. Gurkin: I have no questions.

page 24 } Mr. Anderson:

Q. One minute. I am going to show you these three exhibits. Number "3" in the amount of \$20.00, dated February 5th; the second is number "4", in the amount of \$20.00, dated February 6th; and the next is Exhibit "5" in the amount of \$20.00, dated February 10th.

Are those the checks you are talking about?

A. They are the checks I am talking about. They were shown to him in my conversation and interrogation of him, and these are the checks he admitted writing.

They are the ones.

Q. No account in the banks?

A. He had no account in the bank on which they were drawn.

Mr. Gurkin: I do have one question.

#### CROSS EXAMINATION.

Examined by Mr. Gurkin:

Q. Did the defendant tell you how long he had been using the name Joseph E. Moore?

A. No. In fact, he told me that he was working over in South Norfolk, using the name of Daniel Moore.

page 25 } Q. You are sure of that?

A. Yes, sir.

Q. Mr. White, did you or did you not actually pick up Mr. Moore in J. C. Penney's, cashing his payroll check?

A. Yes, at one time I did.

Q. Will you tell me what name was on that payroll check?

A. I could not say for sure.

Q. But you will not say that it wasn't Joseph Moore, will you?

A. I cannot say. I do not know.

Mr. Gurkin: That is all I have.

#### RE-DIRECT EXAMINATION.

Examined by Mr. Anderson:

Q. How did you get the information about the name he was using, where he was working?

*E. W. White.*

Did he tell you that or what was it you said?

A. When I interviewed him the first time on March 3rd, concerning these, my recollection is that I took him from the City Jail where he was being held on other charges and this was not the time that Mr. Gurkin speaks of his being picked up at the J. C. Penney Company.

page 26 } At that time he told me he was working with the Kitchen Equipment Company on Indian River Road, as mechanic, making \$125.00 a week, working in the name of Daniel Emmett Moore.

He said he began work on February 17th on the job and that is where he was working when he was picked up and put in jail.

#### RE-CROSS EXAMINATION.

Examined by Mr. Gurkin:

Q. It's a little irregular, Mr. White, but do you recall, it's been a right good time ago, but do you recall whether his payroll check was good, whether there was any name on that that was wrong?

A. Mr. Gurkin, at the time you speak of his being in J. C. Penney's with the payroll check, it was not associated with this at all.

He was picked up on other charges and was in jail when I talked with him concerning these charges.

Now, the fact that he was picked up at J. C. Penney's was on warrants where he was wanted and not any charge made in connection with his payroll check, which he was attempting to cash.

Q. When you picked him up at J. C. Penney's, did you pick him up on these old charges, is that what you are page 27 } saying?

A. He was picked up on misdemeanor warrant charges.

Q. Did you pick him up?

A. Yes, sir.

Q. And it was not the time he was cashing the payroll check?

A. No. It was brought to our attention that he was there. It was the first time we had been able to locate him.

We had been looking for him.

Q. There was nothing wrong with the payroll check or signature on there?

*E. W. White.*

A. Yes. That is, not to my knowledge. That is the reason I didn't know the name on it.  
We never took it from him.

RE-DIRECT EXAMINATION.

Examined by Mr. Anderson:

Q. Under what name on the warrant were you looking for him under?

A. Daniel Moore.

Mr. Anderson: That is all.

Mr. Gurkin: Nothing further.

page 28 } Mr. Anderson: Commonwealth rests.

Mr. Gurkin: May it please the Court. I move to strike the Commonwealth's evidence.

The defense does not feel that they have borne the burden of proof in this case.

When we turn our attention to the indictments themselves, when we notice that the indictment itself recognizes this man here today as Joseph E. Moore, alias Daniel E. Moore.

In the second place, of course, the Code of Virginia, 1950, as amended, Section 18,1-96, states that, "If any person forging any writing such as mentioned in these other two sections, to the prejudice of another, write or utter, or attempt it to be true, knowing it to be forged, he shall be confined to the penitentiary not less than two years, not more than ten."

The Code of Virginia, as we know, does not define forgery.

page 29 } However, when we look at Black's Law Dictionary, it is defined as, "The false making or material altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability."

The whole heart of this thing, I believe, is the intent to defraud.

When we look at 23 Am. Juris, Section 12, under the heading of "Forgery", we find this, "The question of intention to defraud is, however, of vital importance.

"Since a person may write any and innocently assume and use a name not his own, for example, a person who signs a name not his own but one which he has adopted, using it without the intent to deceive as to the identity of the person signing it, does not commit forgery."

We submit here today that there is not sufficient evidence to prove that this defendant had any intent to deceive or defraud.

He admitted, according to the testimony of Detective White, that, yes, he wrote this check and he signed it but that he signed his name and that was his signature.

Now, he hasn't deceived or defrauded anyone else. This was his God-given name.

The Court: Has he paid these three checks?

Mr. Gurkin: As far as I know, no.

Defendant: I offered to pay them, but they wouldn't—

The Court: I won't permit an answer like that.

Mr. Gurkin: He was born with the name Joseph E. Moore and that is the name he signed here.

It is true his name was changed, but the best here, it would appear, we can distinguish this case from some other case where you have an individual who goes out and just picks a name out of the air, and signs that name.

Here we have got a man that was born to this name, married under the name Joseph.

Actually, later on, he worked under the name of Joseph E. Moore.

His W-2 forms are filled out Joseph E. Moore, his union card is under the name of Joseph E. Moore, and he has been known—

The Court: No evidence here about union cards or payroll.

Mr. Gurkin: No, sir, it isn't in yet.

We submit that in this instance, this man did not have the intent to deceive and that he signed a name which was his name, not anybody else's, and for that reason, we feel that the statement in Am. Juris is right in point that, if he adopts a name and it is even stronger in this case because it was his given name, and he uses it without the intent to deceive as to the identity of the person signing it, and that this man did not commit forgery.

Mr. Anderson: Your Honor, we hadn't had much of that evidence which was presented as evidence.

We have had as evidence Detective White saying they were looking for this man under the name of Daniel Moore, had warrants outstanding for him.

The pattern is most apparent. He had written all the bad paper under Daniel Moore that he could afford to use just now, so he goes back to his God-given name.

It is true he had that name when he was born, but he could have changed his name to Count Dracula if he wanted to.

The Court: Who is that distinguished person?

Mr. Anderson: Bela Lugosi, in a movie.

In February of '63, he didn't have any claim to that name based on his pious petition, so he wouldn't confuse everybody from now on.

The one thing we can establish most clearly is his intent to defraud.

page 33 } No question of the pattern to defraud on his part. That is all he knows, beats and eats.

Mr. Gurkin: In answer to the Commonwealth, here again we don't have the evidence before this Court as to intent to defraud.

Commonwealth says it is intent. Here again, I haven't put in certain evidence and the Commonwealth hasn't put in evidence on some things.

Suppose a woman got married and her legal name would be that of her husband.

Suppose she signed a check, forgets whether she had a bank account in that bank, signs her maiden name.

Is she guilty of forgery?

The Court: He had no right to sign that name since he was divested of that right when his name was changed.

Suppose he had done the exact opposite. Before it was legally changed, he had signed the name that was his legal name now.

page 34 } What would have been the result?

Mr. Gurkin: I see what Your Honor is getting at.

The Court: It would be exactly the opposite.

In other words, when a man is divested of something and invested with something, he starts off with the invested part and he hasn't any right to do with the divested name after that, and if he does it with intent to defraud, then right back to what you said, that is the real criteria in this case.

Mr. Gurkin: With intent to defraud.

The Court: Yes, sir. So far as the name is concerned, I am not bothered about it at all.

Mr. Gurkin: That is our position and we submit the only thing this man is guilty of is petit larceny.

The Court: Three successive dates almost, 5th, 6th and 10th of February.

The checks came back and he got the cash for page 35 } them.

He knows what the score is. I am going to infer

*Daniel E. Moore.*

that fraud was intended and overrule your motion.

Mr. Gurkin: Very well. We note our exception.

DANIEL E. MOORE,  
defendant, having been previously sworn, was examined and  
testified as follows:

## DIRECT EXAMINATION.

Examined by Mr. Gurkin:

Q. State your name.

A. Daniel E. Moore.

Q. Where did you live before you were picked up on this charge?

A. 6500 Clemson Avenue, Bromley.

Q. You have heard the evidence presented here today.

Was your name when you were born, baptized, was it Joseph E. Moore?

A. Yes, sir.

Q. And you don't deny that you later changed that name, do you?

A. No, sir.

page 36 } Q. To Daniel?

A. Yes, sir.

Q. You have heard the reasons given here today for the change of that name, is that correct?

A. That is correct.

Q. Now, what name were you married under?

A. Joseph Edward Moore.

Q. What name did you work at the last time you worked?

A. Joseph Edward Moore since July of '64.

Q. Do you have any evidence of that?

A. I do.

Q. What is that?

A. W-2 form.

Q. How long have you worked at this place?

A. I went there in October.

The Court: What is your name, sir?

A. Your Honor, I had it changed.

The Court: What is your name?

*Daniel E. Moore.*

A. Daniel E. Moore.

The Court: Why were you working under Joseph Edward Moore and so on, if you had your name changed to Daniel E. Moore?

A. Both places I was working knew me as page 37 } Joseph E. Moore.

The Court: Why?

A. Because I had worked for the men prior.

The Court: I will mark this "D-1".

Mr. Gurkin: What is this "D-1"?

A. My W-2 form for 1962.

Q. What is the name on it?

A. Joseph Moore.

Q. What is the name of the concern?

A. Odiele, South Norfolk. It is so indicated on the piece of paper. Cordell Avenue, Washington, D. C., home office.

Mr. Gurkin: We offer that.

The Court: "D-1".

Mr. Gurkin:

Q. Do you have any other evidence?

A. ICC card, examined by the doctor here October 26th.

Q. Do you have to have this card to work?

A. You have to have that. The doctor's examination, you have to have it to work.

Q. The ICC requires that you be examined by a doctor to participate in your kind of work?

A. That's correct.

Q. I show you this card which has been marked page 38 } for identification as "D-2".

What is the card?

A. That is a doctor's certificate.

Q. Required by the ICC?

A. Yes, sir.

Q. What is the date on that card?

A. October 26, 1964.

*Daniel E. Moore.*

Q. What is the name that appears on that?

A. Joseph E. Moore.

Q. And how is it signed?

A. Joseph E. Moore.

Q. Is that your signature?

A. It is.

Q. That was the name you were using at that time?

A. Correct.

Mr. Gurkin: I offer that into evidence.

The Court: Mark it "D-2", Miss Reporter.

(So marked.)

Mr. Gurkin:

Q. Do you have any other evidence?

A. I have the evidence here. The police knew I was working under the name of Joseph E. Moore because I page 39 } got a letter from the Union indicating they were there looking for me.

Q. I don't see that it spells out the name Joseph E. Moore here.

A. Here.

Mr. Gurkin: We offer this for purposes of identification.

The Court: This will be "D-3", Miss Reporter.

(So marked.)

Mr. Gurkin:

Q. I show you Exhibit "D-3" for purposes of identification. What is that?

A. That is a letter from the Union stating why I was discharged.

Q. Who is the letter addressed to?

A. Mr. Joseph E. Moore.

Q. That was the name you were using at that time?

A. Correct.

Q. Who signed that letter?

A. Mr. John Grimes.

Q. In that letter, I would like for you to read the last paragraph, pertinent portion which substantiates your statement that the police—

page 40 } A. It says, "The State and the local police have both made attempts through me to get in touch with you for the purpose of arresting you."

*Daniel E. Moore.*

Q. And that is the name that the company knew you under and you were working under?

A. Correct.

Q. Who signed the letter?

A. Mr. John F. Grimes.

The Court: You gave the company that name?

A. Yes, sir.

The Court: Well, what are you complaining about?

A. I have no complaints on that name, Your Honor.

The Court: I was wondering.

Mr. Gurkin: We offer that in evidence.

The Court: I mark it "D-3", Miss Reporter.

Where did you live on February 5, 1965?

A. 8037 Diggs Road.

Q. Where did you live on February 6, 1965?

A. 6500 Clemson Avenue.

Q. Where did you live on February 10, 1965?

page 41 } A. 6500 Clemson Avenue.

Q. And I show you check which is marked Exhibit "C-3", signed Joseph E. Moore heretofore introduced and it shows 6500 Clemson Avenue, is that right?

A. Correct.

Q. And the next day you show 8037 Diggs Road?

A. I would put that on because that is what was on my driver's license. The man told me to put it on.

Q. Is this a fact? Did you live at either one of those places?

A. Yes, sir. I lived at both addresses.

Q. At the same time?

A. No, sir.

Q. The next day on February 10th, you gave 6500 Clemson Avenue?

A. That is correct. That is where I was living. I had just moved from Diggs Road.

Q. But the point is, one of these checks is dated the 5th. that is to give them one address and another one is the 6th, and the 10th is still going back to the first address?

*Daniel E. Moore.*

A. We still had the property at 8037 Diggs  
page 42 } Road during the month of February. We still got  
mail at both places.

Mr. Gurkin:

Q. Mr. Moore, do you have any further evidence?

What was the date on that letter referring to the police?

A. I believe it was January 30th if I am not mistaken.  
January 28, 1965.

Q. When you signed the name Joseph E. Moore to these  
checks, did you intend to deceive or defraud anyone?

A. No, sir.

Q. Did you think you had a right to sign Joseph E. Moore?

A. I didn't see where I was doing any crime by signing it.

The Court: Why did you have your name changed from  
one thing to another?

A. I had my name changed and I think I was under a lot  
of pressure when I had it changed, solely by the Police De-  
partment.

Q. When you were bonded out in the lower court, what  
name were you bonded out in?

A. Joseph E. Moore.

page 43 } Q. Do you have any proof of that?

A. I do. Here is a bond receipt. It was a con-  
tinuance of bond.

Mr. Gurkin: Offered in evidence as "D-4".

Do you have the bail bond in this case, Mr. White? It is  
not attached.

Mr. Ira White: He came in here in custody.

The Court: He has a receipt here he offered a bail bond.

Mr. White: What is the date??

A. January 8, 1965.

The Court: That is something else. You weren't arrested  
until the 8th.

A. I was on bond when I came in court.

Mr. Anderson: Your Honor, that was in reference to  
other charges that preceded this.

*Daniel E. Moore.*

The Court: That has nothing to do with either of the three charges, has it?

Mr. Anderson: No, sir.

Mr. Gurkin:

page 44 } Q. But that was the name you were bailed  
which indicates what you were using at that time?

A. That is correct, and at this time they had me charged as Daniel E. Moore.

The Court: Don't you recognize the fact your name was changed?

A. Yes, sir, I do now.

The Court: Don't you recognize a fact showing a continuation to using it, instead of aiding you, that it is sinking you?

A. No, sir.

The Court: Well, I do.

Mr. Gurkin:

Q. How long have you been using this name, Joseph E. Moore, I mean, since you went back to using it?

A. Since July of '64.

Q. What name did you use when you filed your State and Federal income tax?

A. Joseph E. and Daniel E. Moore. I used both names.

Q. Why did you do that?

A. I worked under both names on here. I worked under Daniel E. Moore the first part of the year and the  
page 45 } other name the last part of the year, with the same  
Social Security number.

The Court: Do you know it is an offense to use some other name than your own under the Code, to use a false name is an offense?

A. I knew a false name, but I didn't think it was to go back to my God-given name.

*Daniel E. Moore.*

Mr. Gurkin:

Q. What about Social Security? You mentioned you have the same number. What do the Social Security people think about this?

The Court: Not what they think.

Mr. Gurkin:

Q. Do you have any evidence of what transpired in regard to your Social Security?

A. No, I have no evidence.

Q. Do you have your card?

A. No, sir. It is lost. I have my number. That's all I have got.

Q. Mr. Moore, before you took the stand today, did I explain to you your right to take the stand or not take the stand, and you did not have to take the stand if you did not desire; and further, if you did not take the stand, it would page 46 } not prejudice your case in any way?

A. You did.

Q. You fully understand that?

A. Yes, sir.

Q. And you took the stand of your own free will?

A. Yes, sir.

Q. Is there anything else you would like to say while you are on the stand?

A. Well, while I was living under the name of Daniel E. Moore, Mr. White did come down and sit with a police car in front of my house and down at both ends of the block, and he even stopped and spoke to me one day and never said he wanted me or had any charges for me then.

Q. I just have two more questions. I want to be sure now.

Are you sure that at the time you signed these checks in the name of Joseph E. Moore, that you had no intent to deceive or defraud?

A. Definitely not.

The Court: You knew you didn't have money in the bank under those names, didn't you?

The question is, did you or not?

page 47 } A. Yes, sir.

*Daniel E. Moore.*

The Court: Did you not know that you didn't have money there?

A. I knew I didn't have any money there at the time.

The Court: Have you paid the checks back yet?

A. No, sir, I offered to make restitution for them when the detective first picked me up.

Mr. Gurkin:

Q. Had you attempted to open a bank account in the Bank of Virginia Beach?

A. I did.

Q. How long before these checks were written, was that?

A. I don't remember the exact date, but it was in February, and shortly after that, I was taken sick.

Q. These checks are dated, as I recall, the 5th of February, the 6th of February and the 10th of February, and you say it was before that?

Are you saying to the Court that you went down to open your account on the 1st or sometime prior to the 5th?

A. When I went down to open the account, the page 48 } lady gave me two cards and gave me four checks.

Q. And these were the checks you used?

A. I was supposed to mail my payroll check back to her with the card.

Q. And then you got sick, is that what you tell us?

A. Correct.

Q. And shortly after that, you were taken to court?

A. That's correct.

Mr. Gurkin: That is all I have.

The Court: Do I understand that you applied to open an account at the Bank of Virginia Beach?

A. Yes, sir, I did apply to open an account.

The Court: Why didn't you open it then?

A. I had to wait until I could get my payroll check before I could put it in.

*Daniel E. Moore.*

The Court: Why didn't you wait and take that there at the time you were going to sign the signature card?

A. I was carried down there by a friend. He had money in the bank there and that is the reason I transacted what I was going to do down there.

page 49 }

The Court: What individual waited on you at the Bank of Virginia Beach?

A. I don't recall.

The Court: The main office at Virginia Beach proper, the Village of Virginia Beach?

A. I was at the Princess Anne Plaza branch.

The Court: You do not know which one of the tellers was waiting on you then?

A. It wasn't a teller; the girl who opens the new accounts.

The Court: Did she give you a signature card to sign?

A. She did.

Q. Did you sign it there?

A. No, sir. If I opened an account, it would have been a joint account with my wife and I, so she would have given it to me to bring home.

Q. You took the card home with you to get your wife's signature?

A. Correct.

Q. And did you get your wife's signature?

page 50 } A. No, sir, I never had a chance to talk with her about it because the baby was sick and I was sick, too.

Q. If you were sick, that was before the check incidents, which is the 5th, 6th and 10th.

When did you get well to go writing these checks then?

A. I got out of bed to come over to court, February 17th.

Q. But you haven't been back to Virginia Beach except to withdraw the blank form for signature card and you took that home, have you?

*Daniel E. Moore.*

A. No, sir, but I talked to the man at Seven-Eleven Stores that I would make restitution, but I had to get my payroll check and I had to get it—

The Court: You men come in here and talk in circles as though I don't know the score.

I know how to open a bank account. I only asked you one question, and you put that other part in it.

CROSS EXAMINATION.

Examined by Mr. Anderson:

Q. Didn't you tell Detective White that you had not opened an account at Virginia Beach?

page 51 } A. No, I had not.

Q. Let me finish. But that your wife had, you thought?

A. No, I didn't tell him in those words.

I told him I was attempting to open up one in my wife's and mine, both our names.

Q. Then what I asked you, the answer is "No"?

You didn't tell Detective White you didn't open an account at Virginia Beach, Virginia, but your wife did?

A. I can't tell you. It's been eight months since I talked to Mr. White.

Q. Then you don't know, is that the answer?

A. So far as I know, I didn't tell him that.

Q. Then you don't know one way or the other, is that right?

A. I know that I did tell him we were opening a joint; we were going to open a joint account down there.

Q. Then you deny you told him you had not opened one, but you thought your wife had?

Do you deny it or not?

A. I deny it.

Q. Thank you.

page 52 } You testified you got four checks from the teller down there?

A. Correct.

Q. And you wrote three of them?

A. Correct.

Q. But you didn't write the fourth one, right?

A. That's correct.

*Daniel E. Moore.*

Q. Then what is this?

Look at it; isn't that your signature?

A. So far as I know, it is.

Q. Read the date on it.

A. February 5, '65.

Q. How is it signed?

A. Joseph E. Moore.

Q. What is the address on it?

A. 8037 Diggs Road.

Q. How much is it made out for?

A. \$15.00.

Mr. Anderson: I want to introduce this into evidence. I will show it to Mr. Gurkin first.

I offer this in evidence as Commonwealth's Exhibit "C-6".

Q. That's the fourth check which you just re-  
page 53 } membered having written after telling me you  
didn't use it.

A. I didn't tell you I didn't use it.

Q. The record will show you said you did not use that  
check.

The Court: Let me read this.

Did this girl at the Bank of Virginia Beach give you a  
checkbook, sir?

A. No, sir, just four loose checks is what she gave me.

The Court: Were these the kind you could pick up on  
the counter out in the lobby?

A. No, sir, they don't have checks in the lobby no more.

The Court: I didn't know that but I don't blame them.

I notice this one is the same date as the first one, February  
5, 1965.

And this was given to a Colonial Store, 1510 Norview Ave-  
nue.

You got these checks from the Bank of Virginia Beach at  
Princess Anne Plaza, is that right?

page 54 } A. That's correct.

*Daniel E. Moore.*

Mr. Anderson:

Q. Did you have a driver's permit under the name of Daniel E. Moore?

A. Yes, but that's been sometime ago, yes.

Q. What year?

A. '64.

Q. And you say during that year, something like July, June of '64, you began to use the name Joseph E. Moore?

A. That's correct.

Q. Did you notify people when you had your name changed in December of '63, that your name was thereafter Daniel Moore?

A. No, I don't think I notified everybody. I might have notified some people, but not everybody.

Q. Why did you have it changed, Mr. Moore?

A. That change was made under duress, under pressure.

Q. Under duress by whom?

A. Well, the Police Department and everybody concerned, I suppose.

I was constantly being followed by the police.  
page 55 } Q. Do you know any reason why they should be following you?

A. They didn't have any charge.

Q. You testified that Detective White harrassed you by driving in your area and just parking and, although he spoke to you once he didn't tell you why he was down there?

A. That's right.

Q. Why did you care?

A. He stopped in front of my door and called my attention. He talked to me.

Q. When he was parked at the end of the block as you first of all put it, did that make you nervous or bother you?

A. No, sir.

The Court: Why didn't you take a jury trial today?

This is the kind of case for you, Mr. Commonwealth's Attorney. You ought not waive a jury trial.

Let the jurors find out what was happening in their city and town.

Mr. Anderson:

Q. Here is your name, Joseph Edward Moore, page 56 } and this is your petition addressed to this Court, this Judge entered it and this is your language; you signed it. Mr. Sacks didn't sign it.

*Daniel E. Moore.*

It says, "Your petitioner," that is you, "has experienced a great deal of confusion by reason of the similarity of his given name and surname with the given names and surnames of divers other persons; that in order to prevent confusion and difficulty in his transaction of business in affairs, he desires to change his name from Joseph Edward Moore to Daniel Emmett Moore."

Do you say it is false?

A. No, I don't say it is false.

Q. Is it true?

A. At that time, the Police Department was harrassing me.

Q. You don't say the Police Department was harrassing you in here. You say in order to prevent confusion and in order to lend certainty to your affairs, that you once and for all want to get it straight.

A. Don't you think the Police Department—

Q. Just answer my questions.

A. The Police Department was the confusing part

Q. You don't say anything about the Police Department in here, Mr. Moore.

You said you wanted to get it straight once and for all about what your name was and you say six months later you went back to Joseph Edward Moore?

A. Well, less than that.

Q. Except for your driver's license, which is still Daniel Moore all year long, right?

A. No, not all year long.

Q. And your job of work. Weren't you under the name of Daniel Moore when you worked sometime in '65, of January and February?

A. Never.

Q. Didn't you tell Officer White; didn't he testify your name over here where you were working in February of this year, was Daniel?

A. That is not correct. I was working under Joseph E. Moore.

Q. So you were under police pressure and, therefore, you changed your name and the pressure let up and you went back to the old name?

All right. You told the Judge at the time you wrote these checks that you didn't have any money.

page 58 } The truth is, you didn't even have an account, did you, in the Bank of Virginia?

A. I was in the process of opening one.

*Daniel E. Moore.*

Q. Did you have an account or not at the time you wrote the checks?

A. No, I didn't have an account.

Q. Thank you.

The Court: Did you tell me that the girl did not give you a bank checkbook but that she gave you four checks which are these four here?

A. Yes. She stated that—

The Court: I didn't ask you that. If you would pay particular attention, I have my motives for what I ask.

They may be silly, but did she or did she not tear them out of the book, or were they loose, the ones that she gave you?

A. I don't remember, Your Honor.

The Court: How many checks did she gave you?

A. I believe it is four. I am not absolutely for certain now.

The Court: And why did you get four checks  
page 59 } when you didn't open the account, but were to  
open it at some future time?

A. The young lady told me to take the four checks; when the account was open, they would be good and she's send the checks with my name and address on them, and they would come through the mail.

The Court: And she handed you these four?

A. That's correct.

Q. And that was at Princess Anne Plaza, Bank of Virginia Beach?

A. Yes, sir.

Mr. Anderson:

Q. How many times have you been convicted of petit larceny?

A. I have never been convicted of petit larceny, never.

Q. How many times have you been convicted of worthless checks?

*Daniel E. Moore.*

A. I don't know.

Q. Fifty, two, five, give us a guess.

A. I can't number it one way or the other.

Q. You have no idea of the times. All right.  
page 60 } That is all.

By the Court:

Q. What name did you use on those other occasions, the checks?

A. On one occasion it was Daniel E. Moore.

Q. And what other name did you ever use?

A. Joseph E. Moore.

Q. How long ago of the latest one of those was it?

A. In December of '63 they were in the name of Daniel E. Moore.

#### RE-DIRECT EXAMINATION.

Examined by Mr. Gurkin:

Q. I show you "C-6". Where was that check cashed?

A. Colonial Stores, right there in my neighborhood.

Q. Is that the one on Norview Avenue?

A. Yes, sir.

Q. You heard the gentlemen testify here today?

A. Yes, sir.

Q. You recall he testified he was uncertain whether you had ever cashed checks under that name before.

page 61 } He couldn't be positive. Is that the same store?

Did you cash two checks in the same store with the name Joseph E. Moore?

A. No, no. This was a separate store here.

Q. I understood that was a store on Norview Avenue.

What was the gentleman's name that ran that, do you recall?

A. I don't recall. We traded in all the neighborhood stores and got the bargains.

The Court: Mr. White, call the Bank of Virginia Beach at the Princess Anne Plaza and undertake to find out the particular young lady that waited on this man in the early part of February, and if she gave him four checks, and get her name; and then get a summons on her and get her here at 2:30 this afternoon.

*Daniel E. Moore.*

Mr. Anderson: If Your Honor, please, Sergeant Hurst tells me he has already checked on that.

It may be that it wouldn't be necessary or advisable.

I would like to find out.

page 62 } Sergeant Hurst: They have no record at all,  
Your Honor.

The Court: In other words, they don't recollect Mr. Moore at all?

Sergeant Hurst: They have no record of him coming in the bank at all.

The Court: It is useless, Mr. White.

Thank you for your willingness.

Mr. Gurkin:

Q. Mr. Moore, as to the reason you changed your name, you read the petition and the order, of course, when it was written and before the order was entered, and you looked at it today and inspected it.

You have as your reason there, some confusion of divers persons of similar names.

Now, at that time, were there other reasons that you are not telling the Court?

Did they exist then?

A. Yes, there were other reasons that existed that weren't included on the paper.

Q. In other words, you just put in one reason but there were these other reasons you insist that made you change your name?

A. Correct.

page 63 } The Court: At the time you had your name changed, if you had given a check and a merchant had called the Retail Merchants Association, for verification, you would have gotten it thumbs down, wouldn't you?

A. Yes, sir.

The Court: At the time you had your name changed, if you had used the old name, the Retail Merchants Association would have turned it down just like that, wouldn't it?

A. I don't know, Your Honor. I never had one turned down.

*Daniel E. Moore.*

The Court: If you were to go to The Hub or Shulman, and they called Retail Merchants Association, and if you gave the name from which you changed, you would get turned down instantly, wouldn't you?

A. I suppose so. I never gave them one. I don't know.

The Court: Your suspicion is well-founded, sir.

Mr. Gurkin:

page 64 } Q. Mr. Moore, how long has it been since you have adopted this name Joseph E. Moore, after changing your name in July?

The Court: What year?

Mr. Gurkin: 1964.

The Court: What is the first official occasion that you used the name of Joseph E. Moore after it had been changed.

What was the act of business that you had to sign the name Joseph E. Moore?

A. Well, we had a new baby coming and I didn't it born under a different name.

The Court: And the medical certificate of birth made out by the doctor then gave your name as Joseph E. Moore?

A. Correct, Your Honor.

The Court: But that wasn't accurate at that time, was it?

A. I don't understand you.

The Court: It was not correct at that time, was it?

A. No, sir.

page 65 } The Court: That is all.

Mr. Gurkin:

Q. Mr. Moore, these four checks which you allege the lady down at the Bank of Virginia Beach gave you, let me understand you correctly.

*Daniel E. Moore.*

Was it or was it not the idea of you and the lady that you take these checks home along with the application card or signature cards, and that when you mailed in your check from your work, that that would be deposited into the bank and then you would have these checks, without coming back out there again?

Was that the idea?

A. That is true. I carried all the papers home with me. She didn't keep none. My wife signed them, too.

Mr. Gurkin: That is all I have.

RE-CROSS EXAMINATION.

Examined by Mr. Anderson:

Q. Do you still persist in denying you told Detective White that you hadn't been in the bank to open an account, but your wife probably had?

A. I never told him I wasn't in the bank.

Q. Did you tell him you had not opened an account page 66 } count?

A. I don't recall.

Q. Then you have changed your answer to you don't know is that right?

A. I can truthfully say I am not sure what happened eight months ago on that; so much conversation there.

Q. And everytime since December of '63, that you have used the name Joseph E. Moore, your name has been Daniel E. Moore according to a court order?

A. That's true.

Q. Including your income tax return, at work where you have been employed on the payrolls, and all the rest of it?

A. I filed both names on my income tax.

Q. But not where you work?

A. I did file. I gave a W-2 form where I worked. It had to be there.

Mr. Gurkin: That is all. You may step down.

Mr. Gurkin: I haven't rested yet. I would like a moment to confer with my client in regard to witnesses.

page 67 } LILLIAN IRENE MOORE,  
 witness called by counsel for the Defendant, hav-  
 ing been first duly sworn, was examined and testified as fol-  
 lows:

DIRECT EXAMINATION.

Examined by Mr. Gurkin:

Q. State your full name.

A. Lillian Irene Moore.

Q. Mrs. Moore, where do you live?

A. 8528 Jerrylee Drive.

The Court: All one word?

A. Yes, sir.

Mr. Gurkin:

Q. You live there with your husband?

A. Yes, sir.

Q. Are you the wife of the defendant sitting here today?

A. Yes.

Q. When you married this defendant, what name was used?

A. Joseph Edward Moore.

Q. Now, you know about the change of name, do you not?

A. Yes.

Q. You have heard the testimony presented  
 page 68 } here today, and the reasons the defendant has  
 given?

You have heard the reasons read off that he gave in his  
 petition and order for a change of name.

Do you or do you not agree that there were other pres-  
 sures on your husband that caused him to change his name,  
 other than just the one stated in the petition?

A. Yes, sir.

Q. Do you or do you not feel that the police seemed to put  
 some pressure on your husband?

A. Yes, some that I know.

Q. Now, you heard Mr. Moore state that he had a small  
 child.

How old is that child?

A. He is nine months old.

Q. Is it a girl or boy?

A. Boy.

Q. What is that child's name?

*Lillian Irene Moore.*

A. I can't even think.

Q. I mean, is it Joseph E. Moore, David Moore, Daniel Moore, Sam Moore?

A. I can't even think of his name right now. Dennis De-

vine.  
page 69 } Q. Dennis Moore?

A. Yes.

Q. Did you know that your husband had gone back to using the name Joseph E. Moore?

A. Yes, because I would never accept any other name.

Q. You would never accept any other name?

A. No, sir. I was married to him under that name and that is the name I expected to keep.

Q. So you, too, were in effect, encouraging him to use the name Joseph E. Moore, is that what you are saying?

A. Correct.

Q. Can you estimate how long he has reverted to using the name Joseph E. Moore?

A. Since way before the baby was born.

Q. When was the baby born?

A. December 6th of last year.

Q. 1964?

A. Yes.

CROSS EXAMINATION.

Examined by Mr. Anderson:

Q. You say he was under pressure, trouble, at the time he changed his name.

Were all of his troubles due to bad checks that  
page 70 } he wrote?

A. Some of them.

Q. What were the police after him for, otherwise?

A. You mean his other trouble?

Q. I had better not get into that.

The Court: When did you get married?

A. March 28, 1961.

Mr. Anderson: That is all I have.

The Court: What date?

A. March 28th.

*E. W. White.*

The Court: How long had you known Mr. Moore at the time you married him?

A. I had known him for about seven or eight years.

The Court: Under what name did you know him then?

A. Joseph Edward Moore.

The Court: You have known him how long?

A. About seven or eight years.

The Court: Where did you come from?

page 71 } A. Charleston, West Virginia.

The Court: How long have you been in Norfolk?

A. About sixteen years.

The Court: Did you meet him here in Norfolk?

A. Yes, sir.

The Court: When did you learn of him having changed his name from Joseph Edward to Daniel E?

A. Well, at the time we were separated, when he had his name changed, we weren't living together.

The Court: That is all I have.

Mr. Gurkin: I have nothing further.

For the record, I would like to ask the defendant if he would like for me to call his sister to the stand.

The Defendant: It is not necessary.

Mr. Gurkin: Do you think it would be corroborative to what your wife testified?

Defendant: It would be the same thing.

Mr. Gurkin: We rest.

page 72 }

E. W. WHITE,  
witness recalled on rebuttal by counsel for the

*E. W. White.*

Commonwealth, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

Examined by Mr. Anderson:

Q. In reference to what this defendant told you about opening an account at the Bank of Virginia Beach, if he did or did not tell you that he hadn't opened one but that his wife probably had?

A. Yes, sir. He told me in my conversation with him that concerning the account at Virginia Beach, he said he had not ever had an account there nor had he opened any account there at anytime, but his wife had told him that she was going to open an account there.

Q. Start that over.

A. He stated that his wife told him that she was going to open an account there and that he wrote the checks, assuming what she had told him.

He further stated that the cause of all of his troubles with the Police Department was caused by his wife.

Q. In what way?

A. He said ever since he had been married to page 73 } her, when he opened an account in a bank, she would write checks, sign his name and keep him broke all the time.

Q. Did you find evidence of the fact he worked under the name of Daniel Moore since June or July of '64?

A. Well, he stated to me that he worked under the name of Daniel Moore at Kitchen Equipment Company on Indian River Road, as mechanic, making \$1.25 an hour.

Q. When is that supposed to have been on the calendar?

A. He began work on February 17, 1965.

Q. That's about the time he was so ill?

A. Yes. He said at that time he was living at 6500 Clemson Avenue and he moved there on January 22 and only lived there for a month, but the real estate company showed that he moved there February 16th.

Q. And in reference to these other matters in which he was involved in this court earlier, January or February of this year, the Judge asked him about whether he used the name Daniel Moore on those checks, or whatever the other

*E. W. White.*

name Moore is, Joseph, and he replied he used it on one check.

page 74 } What are the facts about that?

A. There has been more than one charge in the name of Daniel Moore since he had his name changed.

I do not have the record to show the exact amount of time that he had used it, but I have had numerous complaints.

Mr. Gurkin: May it please the Court, the defendant objects to going into all the other charges in such great detail.

The defendant has been asked had he been convicted of a felony.

The Court: When a fraudulent intent is involved, nobody can open up the mind and say, "I see fraud there, or the lack of fraud there," but it is proved by conduct, but so far as I am concerned, endless acts that have the appearance of dishonesty may be shown *ad infinitum*, where that may be.

Mr. Gurkin: Exception.

Mr. Anderson:

Q. In reference to the six checks in this court, page 75 } do you know what name that were here in January?

A. Daniel.

Q. All six of them had Daniel on them?

A. Yes, sir.

Q. That is Daniel E. Moore on February 5th, February 6th and February 10th?

Mr. Gurkin: Weren't those checks in December of 1963?

A. Mr. Gurkin, I don't recall the date on that. I believe not.

### CROSS EXAMINATION

Examined by Mr. Gurkin:

Q. The Commonwealth's Attorney made the statement one month, if I don't misquote him.

I asked you if you know of your own knowledge?

A. I know he was charged on six charges involving checks of Daniel E. Moore, and I believe those charges were in this court the first part of this year.

Q. Go to another date. Take February 17, 1965.

*E. W. White.*

Did I understand you to say that this defendant started to work February 17, 1965?

A. That was his statement to me.

page 76 } Q. Do you or do you not know of your own knowledge that he was actually in jail on February 17, 1965?

A. I do not. I know he was placed in jail earlier and was out on bond for sometime, but on that date, I cannot say.

Mr. Gurkin: We have no further questions of this witness.

Mr. Anderson: Commonwealth rests.

Mr. Anderson: Do you want to hear from us?

The Court: I have to wait for you gentlemen.

(Mr. Anderson presents closing argument on behalf of the Commonwealth.)

(Mr. Gurkin presents closing argument on behalf of the Defendant.)

The Court: I can't adopt your views, Mr. Gurkin.

I think it is absolutely a fraudulent scheme, a design from first to last.

page 77 } He has utilized it in order to avail himself of the funds and get by virtue of such use, and I find Mr. Moore guilty of forgery and uttering in all three cases.

Do I hear any further motions?

Mr. Gurkin: We move to set aside the verdict as being contrary to law and the evidence.

The Court: I overrule your motion for a new trial and you may except to that.

Mr. Gurkin: I except to that. I believe it would be a good idea at this time to refer this matter for a presentence report.

The Court: I will do that.

page 78 } JUDGE'S CERTIFICATE

I, H. Lawrence Bullock, Judge of the Corporation Court of the City of Norfolk, Virginia, who presided over the foregoing trial in the case of Commonwealth of Virginia v. Daniel E. Moore, tried in said court in Norfolk, Virginia, on Sep-

tember 14, 1965, do certify that the foregoing is a true and correct report of all the evidence, together with all motions, objections and exceptions on the part of the respective parties, the action of the Court, all exhibits, and all other proceedings of said trial.

I do further certify that the exhibits offered in evidence as described by the foregoing record and designated as Commonwealth's Exhibits 1 through 6, and Defendant's Exhibits 1 through 4 are all the exhibits offered upon said trial, and the originals thereof have been initialed by me for the purpose of identification.

I further certify that said transcript was presented to me for certification and signed within sixty days after the final order in said cause and that the attorneys for the Commonwealth and for the Defendant had reasonable notice in writing of the place at which the same would be tendered for certifications.

Given under my hand this 24th day of December, 1965, the same having been lodged with me December 17, 1965.

H. LAWRENCE BULLOCK, Judge

A Copy—Teste:

H. LAWRENCE BULLOCK, Judge

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CLERK'S CERTIFICATE

I, W. L. Prieur, Clerk of the Corporation Court of the City of Norfolk, Virginia, do hereby certify that the foregoing transcript of the testimony and other proceedings of the trial of the case of Commonwealth of Virginia *v.* Daniel E. Moore, duly certified by the Judge of the said court, together with the original exhibits introduced upon the trial of said case, identified by the initial of said Judge, was filed in my office on the 24th day of December, 1965.

W. L. PRIEUR, JR., Clerk  
By IVA B. WHITE, D. C.

A Copy—Teste:

H. G. TURNER, Clerk.

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