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Record No. 7095

In the
Supreme Court of Appeals of Virginia
at Richmond

GALEN RANDOLPH REIL

v.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF DANVILLE

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.

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IN THE

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AT RICHMOND

Record No. 7095

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

Galen Randolph Reil, Plaintiff in error,

against

Commonwealth of Virginia, Defendant in error.

From the Corporation Court of Danville
Stuart L. Craig, Judge

Upon the petition of Galen Randolph Reil a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of Danville on the 17th day of November, 1967, in a prosecution by the Commonwealth against the said petitioner for a felony; 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 7 } Commonwealth of Virginia,
City of Danville, to-wit:
In the Corporation Court of Danville.

The Jurors of the Commonwealth of Virginia, in and for the body of the City of Danville, and now attending said Court at its November term, in the year 1967, upon their oaths present that Galen Randolph Reil on the 1st day of September in the year 1967, in said City, within one mile of the Corporate Limits of said City.

FIRST COUNT: did wrongfully, fradulently and feloniously use, conceal, embezzle, convert to his own use, and steal, chattels, monies and property, all of the value of $250.00, of the chattels, monies and the property of Galen's Shoes, Inc., a corporation organized and operating under the laws of the State of Virginia, in the city aforesaid, he the said Galen Randolph Reil having then and there in his possession said chattels, monies and property by virtue of a certain place and employment, to-wit: President and Manager of Galen's Shoes, Inc., a corporation organized and operating under the laws of the State of Virginia, against the peace and dignity of the Commonwealth,

SECOND COUNT: and the jurors aforesaid, upon their oaths aforesaid, do further present that the said Galen Randolph Reil, on the 1st day of September, 1967, in the City of Danville, Virginia, then and there being, then and there unlawfully and feloniously did steal, take and carry away, chattels, monies and property, all of the value of $250.00, of the chattels, monies and the property of Galen's Shoes, Inc., a corporation organized and operating under the laws of the State of Virginia, then and there being, then and there unlawfully and feloniously did steal, take and carry away, against the peace and dignity of the Commonwealth.

This indictment is found upon the evidence of William A. Hopkins, John C. Ryan, Jr., John W. Daniel; Officer John W. Martin witnesses sworn in Court and sent to the Grand Jury.

INDICTMENT FOR GRAND LARCENY

Commonwealth of Virginia
vs.
Galen Randolph Reil

A TRUE BILL

Hasia E. Corlson, Foreman.

1967, Nov. Court (16th); Plea Not Guilty; Jury Sworn; Evidence heard; Instructions & arguments given; adjourned until tomorrow at 9:00 A.M.

1967, Nov. Court (17th); Reconvened; Guilty; $500.00 Fine; 6 mos. to pay.

* * * * *

page 20 } We, the Jury, find the accused guilty of Embezzlement, as charged in the Indictment, and fix his punishment at a fine of $500.00.

Irvin Montgomery, Foreman

* * * * *

page 21 }

* * * * *

In the Corporation Court of Danville on Friday, the 17th day of November, in the year 1967.

* * * * *

This day came again the Attorney for the Commonwealth, and Galen Randolph Reil, who stands indicted of a felony, to-wit; embezzlement, again appeared according to the condition of his recognizance, and the jury sworn in this cause appeared in Court according to their adjournment on the 16th day of November, 1967, and again were sent to their room to consult upon their verdict, and after some time returned into Court and presented their verdict in the following words, to-wit; "We, the Jury, find the accused guilty of Embezzlement, as charged in the Indictment, and fix his punishment at a fine of $500.00." And the jury being polled each and every member thereof said that was his verdict.

Thereupon, the defendant, by counsel, moved the Court to set aside the verdict of the jury on the ground it was contrary to the law and evidence and without evidence to support it, which said motion, upon consideration by the Court, is overruled and the defendant, by counsel, excepts.

Thereupon, the defendant, by counsel, moved the Court to set aside the verdict of the jury on the ground the jury could or could not have been influenced by a certain news broadcast

by a certain news broadcaster this week, which said motion, upon consideration by the Court, is overruled and the defendant, by counsel, excepts.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him, according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the said Galen Randolph Reil forfeit and pay to the Commonwealth of Virginia Five Hundred Dollars ($500.00), his fine by the Court as-
page 22 } certained as aforesaid, and that the Commonwealth of Virginia do recover against the said Galen Randolph Reil its costs by it about its prosecution in this behalf expended.

The Court certifies that at all times during the trial of this case the accused was personally present and his attorney was likewise personally present and capably represented the defendant.

It is further ordered that the said defendant be allowed Six (6) months from this date in which to pay the fine and costs aforesaid.

And thereupon, he is released from custody until further order of this Court.

Fine:	$500.00
Costs:	304.75
	$804.75

* * * * *

page 24 } AFFIDAVIT

State of Virginia
City/County of Richmond, to-wit:

This day appeared before me, Herbert C. Stone, a Notary Public in and for the City/County of Richmond, in the State of Virginia, Galen R. Reil who made oath that he is without means to employ an attorney of his own choosing and that he is without funds and is financially unable to appeal his case tried during the November, 1967, term of the Corporation Court of Danville, Virginia.

Subscribed and sworn to before me this 8th day of December, 1967.

Herbert C. Stone, Notary Public

My commission expires August 9, 1970.

page 25 }

* * * * *

It appearing to the Court that the said defendant is an indigent person unable to employ an attorney for purposes of appealing the judgment of this Court rendered in this case on November 17, 1967, it is, therefore, ORDERED AND DIRECTED that Ronald W. Williams, an able and competent attorney at law practicing before the bar of this Court, be appointed to represent the defendant in his appeal before the Supreme Court of Appeals of Virginia.

It is further ORDERED that a copy of this order be sent to the defendant, Mr. Eugene A. Link, Attorney for the Commonwealth, and Mr. Ronald W. Williams, Attorney for defendant.

Entered December 12, 1967.

AMA

page 26 }

* * * * *

NOTICE OF APPEAL

Defendant, Galen Randolph Reil, gives notice of appeal from the Judgment of the Court rendered herein on November 17, 1967.

GALEN RANDOLPH REIL

By Counsel

Counsel for Defendant:

WARREN, PARKER AND WILLIAMS
321 Masonic Building
Danville, Virginia

By Ronald W. Williams

* * * * *

page 28 }

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ASSIGNMENTS OF ERROR

Counsel for Galen Randolph Reil, plaintiff in error in the above styled case, herewith sets forth his assignments of error as follows:

1. The Court erred in ruling before any evidence was offered by either the Commonwealth or defense that the defendant could not introduce any evidence to show the motive of the prosecuting witness, John W. Daniel, in taking out the warrant against defendant.

2. The Court erred in ruling that no evidence could be introduced showing motive or reason for the warrants against Mrs. Delbert Dalton.

3. The Court erred in imposing restrictions and limitations on the evidence of defendant before such was introduced or offered.

4. The Court erred in ruling that the defendant could not introduce evidence as to what he did after the alleged offense was committed.

5. The Trial Court erred in overruling defendant's motion to strike the evidence of the Commonwealth.

6. The Trial Court erred in imposing restrictions and limitations on defendant, ruling that defendant could not show why warrants were taken out against defendant and Mrs. Delbert Dalton by her father, John W. Daniel, and her husband, Delbert Dalton, and further ruling that no evidence could be introduced as to charges against Mrs. Dalton.

page 29 } 7. The Trial Court erred by imposing guidelines on defendant as to what evidence he could offer and that which he could not offer not only before any evidence was introduced by either side, but again before defendant commenced his defense.

8. The Trial Court erred in allowing the introduction into evidence by the Commonwealth of a letter written by defendant to his wife before he left Danville.

9. The Trial Court erred in not setting aside the verdict on the grounds that it was contrary to the law and evidence introduced in the case.

10. The Trial Court erred in not setting aside the verdict on the grounds of the influence on the jury by prejudicial news publicity by a local radio station which had broadcast an editorial critical of the jury's decision in a prior case of the same

term and quoting court officials as being upset by the jury's verdict and laxity in dealing with criminals.

11. The Trial Court erred in not setting aside the verdict because of prejudicial publicity by a local radio station which broadcast a critical editorial directed at this jury and quoting court officials as being upset by their verdict in an earlier case and as a result of such broadcast the court several days later dismissed the entire jury panel.

12. The Trial Court erred in not setting aside the verdict of the jury because of prejudicial publicity and the influence it had upon the jury.

GALEN RANDOLPH REIL

By Counsel

Filed February 23rd, 1968 in Clerk's Office, Corporation Court, Danville, Virginia.

Attest: Margaret Edmunds, Deputy Clerk

* * * * *

page 1 }

* * * * *

The following constitutes a transcript of all of the oral testimony and other incidents of trial in the above-styled cause, before the Honorable Stuart L. Craig, Judge of the Corporation Court of the City of Danville, on November 16th and 17th, 1967, wherein the Defendant, Galen Randolph Reil, was tried on an indictment for embezzlement, and of an examination of the jury panel by the Court on November 17th, 1967, and which was electronically recorded.

PRESENT:

William H. Fuller, III, Esquire
John W. Carter, Esquire
Danville, Virginia
for the Commonwealth

Ronald W. Williams, Esquire
Danville, Virginia
for the Defendant

Galen Randolph Reil
The Defendant in person

* * * * *

page 3 } Upon the opening of court, the case of Galen Randolph Reil, being number 50 on the docket, was called and the recorder was sworn. Both the Commonwealth and the Defendant announced themselves as ready, and the Defendant was arraigned, and pleaded not guilty; whereupon the following questions were propounded to the Defendant by the Clerk, T. F. Tucker:

Q. Do you make this plea after consulting with and being advised by your attorney, Mr. Ronald W. Williams?
A. I do.
Q. Do you wish to be tried by the Court or by a Jury?
A. By a Jury.

A venire of twenty called by the Clerk were administered the oath, after which the following occurred:

Mr. Link: If your Honor, please, I notice that in this particular column here, Mrs. Warren is on there. She is the wife of a member of the firm of Warren, Williams and Parker.

Judge Craig: Yes, sir, Mr. Link. The Court was going to ask the question, and was going to question Mrs. Warren about whether or not she knew anything about the case, and whether or not she felt this would influence her. So, since the matter has been brought out, Mrs. Warren, do you know anything at all about this case?

page 4 } Mrs. Warren: No.

Judge Craig: You are though, I believe, the wife of a partner in the firm of Warren, Parker and Williams?

Mrs. Warren: Yes.

Judge Craig: And Mr. Williams is a partner of your husband?

Mrs. Warren: Yes.

Judge Craig: I think under those circumstances that it would be better for everybody, and it might avoid some embarrassment if we excused Mrs. Warren. All right, would you call another juror?

Whereupon an additional juror was called and administered the oath by the Clerk, and the venire was examined on their *voir dire* by the Court as follows:

Judge Craig: All right, Gentlemen, this is the case of the Commonwealth of Virginia, represented by Mr. Link and Mr. Fuller, against the Defendant, Galen Randolph Reil, represented by Mr. Williams. The charge is that the Defendant did on or about September the 1st, 1967, embezzle and convert to his use certain moneys and property of the value of two hundred and fifty dollars of Galen's Shoes, Incorporated. Now, are any of you related by blood or marriage to the accused, the Defendant, or to any of the officers or owners of Galen's Shoes? (To which they all respond in the negative)

page 5 } Judge Craig: Do any of you have any interest in the outcome of the case?

(All respond in the negative except for one member who made the following statement) Yes, sir. I'm a personal friend of the Defendant, and I don't feel like I could render a just verdict; and I wish to be excused.

Judge Craig: You feel that your friendship would influence your decision?

Juror King: Absolutely.

Judge Craig: All right, sir, we will excuse you.

Whereupon an additional juror was called and administered the oath by the Clerk, and the Court continued the examination of the venire on their *voir dire* as follows:

Judge Craig: Mr. Frix, you heard the statement the Court has made to the other jurors about the matters involved in this case?

Juror Frix: Yes, sir.

Judge Craig: Do you, sir, have any interest in the outcome, or are you related by blood or marriage to any of the parties who may be affected or involved in this case?

Juror Frix: No, sir.

Judge Craig: Now, gentlemen, are any of you sensible of any bias or prejudice towards or against any of the parties or the attorneys in this case?

(All respond in the negative except for one mem-
page 6 } ber who made the following statement) Your Honor, I'm an officer of Security Bank and Trust Company, and I believe that our bank will enter into the testimony here today.

Judge Craig: Do you know anything at all about this case?

Juror Brumfield: Yes, sir.

Judge Craig: You do?

Juror Brumfield: Yes, sir.

Judge Craig: Do you feel that that would influence you in your decision in the case?

Juror Brumfield: No, sir, I don't think it would have any influence in my decision. I believe we will have an officer of our bank also as a witness in the case.

Judge Craig: But do you feel, sir, that you could under the circumstances go into the case and into the jury room, and decide the case on the evidence that is given you regardless of being influenced by any connection that you may have with the bank?

Juror Brumfield: Yes, sir.

Judge Craig: Do you feel, in other words, that you could give the Defendant a fair and impartial trial under all the circumstances?

Juror Brumfield: Yes, sir.

Judge Craig: And you have no personal knowledge, I take it, of the facts surrounding this incident?

Juror Brumfield: Yes, I do.

page 7 } Judge Craig: You do, sir?

Juror Brumfield: Yes, sir.

Judge Craig: Gentlemen, I think under the circumstances we should call another juror. We are going to excuse you, sir.

Whereupon an additional juror was called and administered the oath by the Clerk, and the Court continued the examination of the venire on their *voir dire* as follows:

Judge Craig: Mr. Knight, have you heard the questions the Court has asked the other members of the jury panel?

Juror Knight: Yes, sir.

Judge Craig: Are you, sir, related in any way by blood or marriage to any of the parties or any of the persons who may be affected by this case?

Juror Knight: No, sir.

Judge Craig: Do you have any interest in the outcome of the case, or are you sensible of any bias or prejudice towards or against any of the parties or the attorneys?

Juror Knight: No, sir.

Judge Craig: Now, gentlemen, are any of you presently represented in any pending litigation by either Mr. Fuller, or Mr. Link, or Mr. Williams? (All respond in the negative)

Judge Craig: Do any of you members of the jury panel know anything about this case, either from the

page 8 } newspaper, radio, or personal conversations with

other persons about the case? Do you know anything whatsoever about the case?

(All respond in the negative except for two members, one of whom made the following statement)

Juror Samuels: The case was discussed at the office.

Judge Craig: All right, sir. Do you feel that in view of that discussion that you could go into the case, and into the jury box, and the jury room with an independent judgment free of any inference that the prior discussion may have had?

Juror Samuels: Yes, sir.

Judge Craig: Do you feel that you could decide the case on the law and the evidence before you?

Juror Samuels: Yes, sir.

Judge Craig: Mr. Frix, you indicated . . .

Juror Frix: Just a newspaper story. The questions you asked him, I would answer the same.

Judge Craig: Would you feel that you could render a fair and impartial verdict in this case based upon the law and the evidence that comes forth from the witness stand, rather than from something you had heard? (Both respond in the positive)

Judge Craig: Have either of you gentlemen made up your mind about the case?

(Both respond in the negative and Juror Frix made the following statement)

page 9 } Juror Frix: I just remember reading about it in the paper.

Judge Craig: All right, sir. The Court does not feel that these two gentlemen are disqualified by reason of this slight knowledge of the case. Do any of you gentlemen—I will ask you this as a final question—know of any reason whatsoever why you should not be able to give a fair and impartial trial, both to the Defendant and to the Commonwealth, according to the law and the evidence in the case?

(All respond in the negative)

Judge Craig: Questions by Counsel?

Mr. Link: If your Honor, please, is any member of the panel a member of the Junior Chamber of Commerce?

(All respond in the negative)

Mr. Link: Have you all had any business dealings with Mr. Galen Reil?

(All respond in the negative)

Mr. Link: That's all I care to ask.

Mr. Williams: If your Honor, please, gentlemen, the Judge, I think, has covered it quite clearly, but when he asked you if any of you were related to, or had any interest in Galen's Shoes, Incorporated, he did not, of course, specify the stockholders. Gentlemen, I ask you this—Are you interested in, or do you have wives working for, or associates working for the John W. Daniel Company?

(All respond in the negative)

page 10 } Mr. Williams: Do you have any interest in the John W. Daniel Company, the Riverside Shopping Center, the Riverside Laundromat?

(All respond in the negative)

Mr. Williams: Are you related by blood or marriage to Delbert Dalton?

(All respond in the negative)

Mr. Williams: Thank you.

Judge Craig: Gentlemen of the Jury, before we proceed with the final strikes on this matter, let me ask all of you—The Court didn't know it at the time, but Mr. Carter is going to assist Mr. Fuller in the prosecution of the case. I wonder if any of you are presently represented in any pending litigation by Mr. John Carter?

(All respond in the negative)

Judge Craig: Are there any further questions on that?

(To which both the Attorney for the Commonweath and the Attorney for the Defendant responded in the negative)

Judge Craig: Are the strikes sufficient as they are?

Mr. Williams: Yes, sir.

Judge Craig: All right, sir.

A jury of twelve was then selected by Counsel, sworn and *impannelled.*

The Clerk read the Charges to the Jury, following which

the witnesses were called for both the Commonwealth and the Defendant, sworn and separated.

Mr. Fuller: Your Honor, we would like to be
page 11 } heard in Chambers before we start this case.

Judge Craig: Well, gentlemen, why don't we excuse the Jury since we are here? We will hear it right here in the courtroom.

Mr. Williams: It's all right with me, Judge.

Judge Craig: Gentlemen, if you would, would you retire to the jury room?

Judge Craig: All right, Gentlemen, let the record show that the jury has retired, and we are still in the courtroom, in the presence of the Defendant and all Counsel. All right, sir.

Mr. Fuller: The Commonwealth would like to make a motion that since this case is being tried as an embezzlement case under the proper statute, that any evidence that the defense may attempt to produce as to the situation as it developed between the Defendant and Mr. Daniel's daughter would be improper in this trial. It has nothing to do with whether this man is guilty of embezzlement, and we submit that it is not proper evidence in this case. And if the Commonwealth at the end of its evidence has not proved embezzlement to the satisfaction of the Court, then the Court can entertain a motion to strike, but any allega-
page 12 } tions as to this case being tried because the Defendant and Mr. Daniel's daughter were involved we feel is improper in the trial of this case. It has absolutely nothing to do with the statutory offence of embezzlement; and if we haven't proved embezzlement, then the proper motion could be entertained at the proper time. And we just don't feel that any evidence as to the association that this couple has had would be proper in this case.

Mr. Williams: If your Honor, please, I anticipated this; and I know exactly why Mr. Carter is sitting here in the courtroom right now. He's trying to protect John Daniel. I submit to the Court that that has a lot to do with it. And, of course, the embezzlement statute, the fraudulent intent, the criminal intent in one's mind is the most material element. The Court has held that, and it's been followed case after case. As a matter of fact, an old case in 138 Southeastern, the case of a commissioned agent, the Court went into this type of situation about the proof of good faith, or bonafide intent, or an honest belief in what a man did. And the Court in talking about it said, that "since the crime of embezzlement depends upon the existence of a fraudulent intent in the mind of the

page 13 } person by whom the money or property is alleged to have been converted, a wide scope is given to the evidence which may be introduced by the State to show a fraudulent intent, or on behalf of the Defense to show the absence thereof." I think the motion is premature. I don't know exactly what's going to come from the witness stand. No attorney or judge does. And I don't think the Court should limit me, or shackle me, as to what may or may not come from the stand at this point. If it does come out that in fact they left on September 1st, it was John Daniel's daughter, I'm sorry about that; but John Daniel's daughter or John Daniel does not deserve any precious position in this court any more than my client does. He's the one that stands charged with a felony. I think the motion is premature.

Mr. Carter: If your Honor, please, this is a very gentle statement of the law, and I am sure that anything that deals with the intent, or the motivation, of Mr. Reil in this matter from the standpoint of what his intent was in allegedly taking money from this corporation is relevant. This is a situation where Mr. Reil was the employee of a corporation, Galen's Incorporated. He had formerly been a stockholder. He had

page 14 } sold his stock to the other stockholders, which was Riverside Shopping Center, Incorporated. It is a wholly owned subsidiary of Riverside Shopping Center, which is a wholly owned subsidiary of Riverside Investors, Incorporated. Mr. Daniel is a stockholder in Riverside Investors, Incorporated. But, now, just what Mr. Daniel's daughter and Mr. Reil may have to do with whether or not Mr. Reil has taken money from the corporation of Galen's, Incorporated, to me could have no conceivable relevancy whatever. The only design here is to try and create as much embarrassment for Mr. Daniel and his daughter as possible; and I don't think that it is the purpose of the administration of justice to permit people to be embarrassed where the embarrassment is not necessary and relevant to the case.

Judge Craig: Gentlemen, you both put the Court on somewhat of a spot, because the Court doesn't know at this time, nor can it know, what is going to be brought out in the evidence. I can't tell whether or not the sole purpose of whatever evidence it is you may be objecting to at this time will be to embarrass Mr. Daniel's daughter, or whether it will be to establish some motive, or lack of motive, or intent.

Mr. Carter: Let me say this too. Mrs. Dalton held no

page 15 } position whatever, stockholder, officer, director, or any relationship, or employee, with Galen's, Incorporated.

Mr. Williams: If your Honor, please, that has nothing to do with it directly. We are dealing with the specific intent that is in a man's mind.

Mr. Carter: How could this conceivably bear on his intent?

Mr. Williams: The Court has said that broadly speaking the evidence is admissible which has a tendency, even the slightest, to establish fraudulent intent on the one hand, or the absence of it on the other.

Judge Craig: Gentlemen, let me say this. I'm inclined since this is a trial on a felony charge, to allow the defendant some leeway in the presentation of evidence; and if the Court feels that it has any bearing upon his motive or intent, I think it should be allowed. It will be unfortunate indeed if it does embarrass some witness or some other party; but after all, this man is on trial for his freedom, and the Court is going to allow the defense some leeway. I think though that we should strive, all of us, and the Court will listen to any pertinent objection at the time to refrain from embarrassing anyone unnecessarily during the trial. I think we are going to have to go along with it as it is.

page 16 } Mr. Carter: I would like for Mr. Williams to state more specifically to the Court just how this would have any bearing on the motivation of the defendant.

Mr. Williams: If your Honor, please, I'm not going to do that unless the Court orders me. I think that is ridiculous for me to state my case before we even get started.

Judge Craig: Mr. Williams, the Court does not feel that you should go out of your way to embarrass anyone during the trial if the sole purpose is to bring up something which is not relevant to the defendant's motive or intent. Now, I assume as an officer of the court, that you will go forth in good faith with that understanding, and the Court is not going to look kindly upon you if it appears that this evidence is brought in for any other purpose.

Mr. Williams: Judge, I assure you that I will do it in good faith, but I'm here to represent my client, and that's exactly what I'm going to do.

Judge Craig: All right, sir.

Mr. Fuller: If your Honor, please, the Commonwealth anticipates that this evidence is coming in to show that the only reason that Mr. Daniel took out this warrant was because his daughter left with this man. We submit that that

page 17 } has absolutely nothing to do with whether he was guilty or not.

Judge Craig: The Court feels that that evidence would be absolutely inadmissible. Why he took out the warrant is absolutely inadmissible.

Mr. Williams: I haven't said a thing about it, Judge.

Judge Craig: And the Court will rule now that there shall be nothing said about the reason for the warrant.

Mr. Williams: I will except to the ruling of the Court at this premature stage.

Judge Craig: You except to that?

Mr. Williams: Yes, sir.

Judge Craig: You feel that you should be able to show the purpose for which the warrant was taken out, Mr. Williams?

Mr. Williams: Judge, I'm not going to show the purpose for which it was taken out, but what was in this man's mind at the time he wrote the check. The fact that he and this woman were leaving had something to do with his intent. It could be against me or for me.

Judge Craig: All the Court is ruling on, Mr. Williams, is the fact that you cannot show the reason that the warrant was taken out. The fact is that it was taken out.

page 18 } This man is charged with embezzlement. Whether or not he is guilty is a question for the jury. The motive of the person who took out the warrant has no bearing in this case, and the Court is not going to allow either side to show it. You can except to that ruling if you want.

Mr. Williams: Yes, sir.

Judge Craig: All right.

Mr. Carter: I might bring one other matter to the Court's attention, and that is that Mr. Delbert Dalton, who is the husband of Mr. Daniel's daughter, has been summoned here. I have reason to believe that the only reason that he was summoned is that he, himself, had sworn to two warrants for his wife. And I don't see that his motivation in getting warrants for his wife or the disposition of those cases has anything to do with this case.

Judge Craig: It appears that that would be irrelevant at this time. Do you have any comment on that, Mr. Williams, before we start, sir?

Mr. Williams: Judge, I still think that I'm entitled to show what was in this man's mind.

Judge Craig: Yes, sir, you are. The Court is not denying you that, Mr. Williams. But what is the purpose of bringing a witness here who will show that warrants were

page 19 } issued against Mrs. Dalton?

Mr. Williams: I think the whole thing has got to be laid into the laps of the jury to determine from the case. If the Court is going to restrict me, I've just got to live with it and do my best before him, but the Judge doesn't know what is coming before him.

Judge Craig: The Court is only going to restrict you from bringing in irrelevant matters which have nothing to do with the offence. The offence is whether or not this man actually embezzled, and anything that goes to his intent at the time the Court is going to allow you to show it, his motive or intent. What happened after they left, whether or not warrants were issued, the Court feels is after the fact for one thing, and absolutely irrelevant, and immaterial, and could be prejudicial not only to the Commonwealth but to the defense.

Mr. Williams: Well, if your Honor, please, I feel like we are trying the case without the jury even being here. It is just most unusual for a criminal case, and it upsets me very greatly that we are going into this at this time.

Judge Craig: These are some preliminary matters of evidence, Mr. Williams, which you can ask the question if you want to later; but the Court feels that this would
page 20 } be irrelevant. Whether or not any warrants were issued for Mrs. Dalton has nothing to do with this man's situation or the charge against him.

Mr. Williams: I think the Court is limiting me. I have got to try the case with it, which I object to the ruling of the Court.

Judge Craig: All right, sir, you are going to except to the ruling and you can save the point. All right, gentlemen, is that all before we proceed?

Mr. Carter: I think that's all.

Judge Craig: Now, let me say this. The Court is interested in providing the defendant with every right, but we have got to limit this evidence to the case before us. And what he did, and what happened after the alleged offence, the Court feels has very little to do with his guilt or innocence, but I'll let you show anything that has to do with his motive, or intent, or whether or not it was fraudulent at the time or prior to the time that the alleged offence was committed.

Mr. Williams: Judge, of course, I am just going to have to go as I think best. They can object to it. I just can't be bound too strictly.

Judge Craig: Yes, sir. With the exceptions of the
page 21 } rulings we have made, I think that's your duty and your privilege. All right, gentlemen, let's call the jury back.

The Court and the Jury heard opening statements from Mr. Fuller on behalf of the Commonwealth, and from Mr. Williams on behalf of the Defendant, to which there were no objections nor exceptions; and the following evidence was introduced:

John W. Daniel

JOHN W. DANIEL, the first witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name to the Court and to the jury, please?

A. John W. Daniel.

Q. Mr. Daniel, let me ask you to first explain to the jury what your relationship is business-wise with the Defendant, Galen Reil, or what was it?

A. Galen's, Incorporated is owned one hundred percent by Riverside Shopping Center, of which I am president. So there is a direct . . . We are the owners of the shoe operation.

Q. How long have you been the one hundred percent owners of the shoe corporation?

A. August the 15th of '67.

page 22 } Q. Of this year?

A. That's right.

Q. All right, Mr. Daniel, if you would, give us a little background into how the shoe store operated before then, or what you may know about it?

A. Well, when we received our year-end report, the year ends March the 31st . . .

Q. Of this year?

A. Of this year. When we received that report we realized that things were not operating as they should. And we had a meeting and discussed the details of why there was a shortage showing up . . . that showed up in the Ballou Park operation. And that was explained to us, which we never could substantiate the facts to be as they were stated. And we would just have to take them as they were stated to us. So Mr. Reil wanted to stay on and operate the shoe store and assured us that he would do everything he could to make a successful operation out of it. Well, I like to give a man all the chance that we can, but before we would agree to go any further, I have an agreement that was drawn up that we signed.

Q. Is that agreement signed by the defendant?

A. That's right.

Q. What interest, if any, did you have in the

page 23 } shoe store that he was operating in March of 1967 when you had this meeting?

John W. Daniel

A. I personally had some stock in it at that time.

Q. I see. But the Riverside Corporation, of which you are the president, did not own a hundred percent of it at that time?

A. No. Galen Reil and Harrison Throckmorton both had a small interest in it as well as myself.

Q. As well as yourself. So why was this meeting held in March if Mr. Reil was a stockholder and . . . What was the other man's name?

A. Throckmorton.

Q. Throckmorton, and yourself were stockholders . . . between the three of you, among the three of you?

A. Riverside Center had an interest in it too.

Q. I see. And was that the controlling interest?

A. That's right.

Q. I see.

A. Controlling interest always by Riverside Center.

Q. I see, of which you are the president.

A. That's right.

Q. And at this time it was discussed as to what the situation was, and then you came up with an agreement. Is that correct?

A. That's right.

Q. And this is the agreement?

page 24 } A. That's the agreement. I might add that it was agreed that all of the stock would be taken over by Riverside Center at the time this agreement was signed, but it became effective and was done on August the 15th.

Q. August the 15th?

A. Was when it was actually transpired.

Q. Is this the agreement between you and Mr. Reil, or is it among the three of you?

A. Well, it's written, it's Riverside Shopping Center. See, I was acting as president of Riverside Shopping Center. So, the agreement is between Riverside Shopping Center and Mr. Reil.

Q. I see. Would you read that agreement to the jury, please?

A. The agreement is dated July the 21st, 1967. Mr. Galen R. Reil, Galen's, Incorporated, Riverside Shopping Center, Danville, Virginia. Dear Galen, after checking into the details of the shoe store operation, we find it necessary to have you to agree to the following before we will give further assist-

ance to this operation. Harrison Throckmorton out within thirty days. Galen to make out all daily reports and keep them up-to-date by opening the store between eight-thirty and nine in the morning. Follow Dale Prices Projection one hundred percent with adjustments as mutually agreed. Follow Dale Prices plan for liquidation of Ballou Park operation if same does not show a sizable improvement with-
page 25 } in the next sixty days. Weekly meetings with John Ryan to go over daily reports for past week, approve purchase orders, and bring up-to-date current projections and general discussions. All supplies will be advised by John W. Daniel. That no orders or invoices will be honored without either John W. Daniel's or *or* John Ryan's signature. Resign from all civic activities except one club. John Ryan to sign all checks. Galen, the above seems a little bit rigid and rough, but when I look at the past record and note the looseness with which you have handled and controlled the business when you had a free hand, you see where we are today. You leave me no other choice. I will need your acceptance of the above requirements. It is signed by me as president of Riverside Shopping Center. This is his signature —I pledge the following . . . I pledge to follow the above requirements and do all in my power to make this shoe business a profitable one. Signed, Galen R. Reil.

Judge Craig: What is the date, Mr. Daniel, of the letter and of the acceptance?

Mr. Daniel: July the 21st, 1967.

Q. This was July of 1967. And did this letter and agreement come as a result of the meeting in March?

A. Well, we met . . . See, that was when the audit . . . they made *a* audit of the shoe store. And when the
page 26 } auditors finished their report possibly it was sixty, or thirty, or maybe six weeks later when we received a report. Then we had our meeting.

Q. I see. And this went into effect August the 15th. Is that correct?

A. Well, that went into effect about that time. The follow through of Riverside Center taking over all of the stock did not . . . the completion of this was August the 15th.

Q. I see.

A. This was signed at the date of that agreement.

John W. Daniel

Q. July the 21st. So, in other words, as of this date Mr. John Ryan was countersigning the checks?
A. Yes, sir.
Q. As of July 21st?
A. Yes, sir.

Mr. Fuller: I would like to introduce this into evidence, please, as Commonwealth Exhibit 1.
Judge Craig: All right. Is there any objection, Mr. Williams?
Mr. Williams: No, sir.

Q. Well, now from the time that this agreement went into effect on July 21st of this year, what was the procedure as far as the check signing and so forth was concerned?
A. Prior to that time?
page 27 } Q. What was the procedure prior to that time and after this?
A. Well, all of the shoe orders was signed by Don O. Tickle, who was working with this store prior to John Ryan working with it. Don Tickle was transferred to Richmond, so John Ryan, who works in our office, he took over that responsibility. Of course, the pay roll checks and other items were being handled with Galen Reil's signature and Harrison Throckmorton, I believe.
Q. This was before July 21st?
A. Yes.
Q. In other words, they just had a more or less a free run?
A. That's right.
Q. And after July the 21st, what was the procedure?
A. All checks had to be signed by John Ryan, pay roll checks as well. No money to be expended without his approval.
Q. Without his approval. Well, did he generally just sign the checks or countersign them?
A. Well, most of the time he would see the bills and sign the checks.

* * * * *

Q. I see. Well, now, Mr. Daniel, after this agree-
page 28 } ment was reached between Riverside Shopping Center and the Defendant, what, if anything, else took place from that time until the time we are concerned

with as far as running the business? Is this the way it was run?

A. Yes, sir.

Q. Actually, Riverside was running it and he was just more or less managing it?

A. In a sense he was an employee at the time, managing the store under the supervision of John Ryan and Dale Price, who was to guide him in his purchasing of merchandise.

Q. I see. Now, during this period of time or at any time after Riverside took over, was there ever any discussion as to any vacation time for Galen Reil?

A. At the time we had this meeting and this agreement was signed, Mr. Reil advised that he did not plan to take any vacation; he would only take off one week-end; that his main objective was to make this store a profitable one.

Q. I see. And that he did not plan to take any vacation?

A. He volunteered that information himself.

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page 37 }

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JOHN C. RYAN, JR., the next witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name to the Court and the jury, please?

A. I'm John C. Ryan, Jr.

Q. What is your occupation, Mr. Ryan?

A. I'm an accountant for John Daniel.

Q. You are an accountant for Mr. John Daniel?

A. Yes.

Q. And in your capacity as accountant for John Daniel, have you had occasion to become involved in the Riverside Shopping Center corporation?

A. Yes, I have.

page 38 } Q. Would you state to the Court and the jury before I ask you any specific questions what, if

anything, you know about the operation, you know of your own knowledge of the operation of this Galen Reil's shoe store before the agreement was made between Mr. Daniel and Galen Reil on July 21st, 1967?

A. No, I don't know anything.

Q. You don't know anything about the financial condition of the store or anything before then?

A. No, only that the store was in financial trouble.

Q. Tell us when you first became involved with this shoe store and how.

A. I can give you an approximate date. It was sometime in July or the first of August.

Q. All right. And what was your capacity?

A. Mr. Daniel assigned me to oversee the operation to the extent that I would supervise the disbursement of funds and ordering of merchandise, to stay within a budget that had been prepared.

Q. What was your duty as supervisor as far as the money was concerned?

A. I was to countersign checks with Mr. Reil.

Q. In other words, before Mr. Reil could write any check it had to be countersigned by you?

A. That's correct.

page 39 } Q. Was that for everything, or just pay roll?

A. No, that's for all disbursements through the checking account.

Q. The paying of bills, pay roll, and so forth?

A. That's correct.

Q. How many were on the pay roll out at the Riverside store? Do you remember?

A. Well, if I recall . . . I don't know if you could say exactly, because I think the employees switched back and forth between two stores.

Q. I see, between Riverside and Ballou Park?

A. Yes, sir. There were several part time employees who were used to switch back and forth.

Q. I see. Well, now, when you became a part of this agreement sometime in July or early August and it became your duty to countersign these checks, how was it generally done, Mr. Ryan? What was the normal procedure?

A. The procedure is the company pays the shoe store . . . paid its employees for pay roll on Friday, and this was for a pay roll that ends on Saturday. And Mr. Reil would prepare, or his wife would prepare, the pay roll and then I would

come by and countersign the checks; or on occasions he had sent checks up to my office. I had to sign them. And on one or two occasions I had countersigned checks in ad-
page 40 } vance of them being prepared on the face, you know. He would prepare the checks as . . .

Q. I see, but most of the time the checks were prepared, names were filled in and so forth?

A. Well, I don't know if it's most or not. We've got to remember that it was only a few times that I was involved, because maybe four or five pay rolls. I'm not sure how many.

Q. I see. All right, now, did you usually countersign them on Friday?

A. Yes.

Q. And the employees were paid when?

A. Paid on Friday as I understood. The checks were given back to, were put in the possession of Mr. Reil.

Q. I see, and it was for the whole week. Is that correct?

A. That is correct.

Q. In other words, the week was from Friday to Friday?

A. No, the week was from Monday through Saturday.

Q. Monday through Saturday, but they were paid on Friday and expected to work on Saturday for that week's pay?

A. That's right. The hours were anticipated for Saturday.

Q. I see. And you sometimes you went by and sometimes the checks were sent up to you?

A. Yes.

Q. You signed them on Friday?
page 41 } A. Yes.

Q. Now, directing your attention to the 31st of August, do you know what day that was?

A. Yes, that was on a Thursday.

Q. It was on a Thursday?

A. Yes.

Q. Directing your attention to the 31st of August, what, if anything, did you do in regard to any pay roll checks on that occasion?

A. At that particular time the John Daniel Company was in the court, in some proceedings in court, and I knew that I would not be able to go by the shoe store on Friday and sign the pay checks. So, of my *on* initiative I went by the shoe store Thursday evening about eight-thirty in the evening and signed four pay checks, four blank checks. The hours were not known, how many hours it would take to pay the employees,

so they were not computed. So, I had, under the circumstances, to countersign blank checks.

Q. Who did you do this for?

A. Mr. Reil.

Q. Mr. Reil. Was he there at the time?

A. Yes, he was. And at this particular time he asked that when I completed my signing of the necessary checks for the pay roll, he asked that I sign a couple additional checks that he told me he needed to pay a couple of bills that page 42 } were due. And, so, I went ahead and signed the checks. He asked me to do so and I had faith that he would pay the bills as he said.

Q. So, you countersigned how many checks?

A. Six in this particular store operation.

Q. In this what?

A. Six for this store operation. I think it was two for the other store operation, but for the Riverside store six.

Q. So, four of them were pay roll checks?

A. That's correct.

Q. And he said he had two bills to pay?

A. Yes.

Q. Did he tell you which bills?

A. No, he did not.

Q. Did you ask him?

A. No, I did not.

Q. And this was Thursday night?

A. Yes.

Q. August the 31st?

A. Right.

Q. September the 1st would have been on Friday then?

A. That is correct.

Q. You knew you were going to be over here in court?

A. That's right.

page 43 } Q. When you countersigned these checks did you have your book there with you?

A. I have the check stubs, is that what we . . .

Q. This?

A. Yes.

Q. Show us where they start.

A. This is the first check that I signed on that particular night.

Q. All right, Mr. Ryan, would you state to the jury and to his Honor what that represents that you have in your hand?

John C. Ryan, Jr.

A. I have the check book that we were using for that operation at the time at the Riverside Shopping Center branch. And I am looking at the check stubs that were signed . . . that I signed the checks for on August 31st.

Q. On August the 31st?

A. Yes.

Q. All right, how do you know it was August the 31st?

A. Well, I just know it was Thursday night.

Q. I see. Well, when did you date these check stubs?

A. I did not date them. Mr. Reil, I assume, dated these. I didn't see them dated.

Q. I see. And they are dated what?

A. September the 1st.

Q. September the 1st.

page 44 } A. With the exception of one that's dated September the 2nd.

Q. September the 2nd. All right, now, starting out there with 2068 and going on through, how do you know which checks you started with on August the 31st, this Thursday?

A. Well, I know that . . . I'm not sure I understand your question.

Q. Well, now, actually the top check here I believe you indicated was not done on this particular day. Is that correct?

A. That is correct, yes.

Q. How do you know where you started? How do you know which checks you did on this Thursday night?

A. Well, I just know that there were four pay roll checks necessary for that pay roll and I went back for six checks. I signed two extra checks, and I counted back six checks and it comes out to check number 2069.

Q. And what is written there at that number?

A. It's payable to Galen R. Reil.

Q. For how much?

A. The net amount of the check is $112.21. It is for his pay roll for that particular week, his pay check for that particular week.

Q. And what is the number of that check?

A. This is 2069.

Q. I show you this check right here, and what is the number on that check?

page 45 } A. 2069.

Q. And who was it made payable to?

A. Galen R. Reil.

Q. And is your name on that check countersigning it?

John C. Ryan, Jr.

A. Yes, it is.

Q. And that check represents what?

A. This is his pay for the period ending September the 2nd, 1967, which is Saturday.

Q. And how much is that check made for?

A. $112.21.

Q. I see. And that's check 2069?

A. That's correct.

Q. All right, and what is written on the stub of check 2069?

A. It's paid to Galen R. Reil, $130.00 less deductions for taxes and so forth, $112.21 net.

Q. Did you write that?

A. No, I did not write that.

Q. You didn't write that. All right, that's check 2069. That's the first check you say you wrote?

A. Yes.

Q. All right, what is the next check.

* * * * *

page 46 } A. That's correct. The next check is 2070. It's payable to Rose M. Reil. That's also a pay roll check for the same week ending.

Q. And that's what the stub says, payable to Rose Reil?

A. Yes.

Q. What does the next stub say?

A. The next stub is dated September the 1st, payable to William Yeatts. It's in the amount of $74.28 net. That's also a pay roll check for the same week ending.

Q. Is he an employee out there at Galen Reil's?

A. Yes, he is.

Q. All right, and how about the fourth check?

A. The fourth check is dated September the 2nd. It's payable to Harrison Throckmorton in the net amount of $40.19. It's also a pay roll check for the same week ending.

Q. Did you countersign that check also?

A. Yes, I did.

Q. All right, how about the next one? Now, they were four pay roll checks. Is that correct?

A. That is correct.

Q. And you said you countersigned six checks for Riverside. Is that correct?

A. That's correct.

John C. Ryan, Jr.

Q. All right, and what were the other two checks to be used for?

page 47 } A. The other two checks were to be used to pay bills. Now, specific bills, I'm not sure which.

Q. I see.

A. I mean I wasn't told.

Q. I see. All right, now, how about the fifth check? What was the number on the fifth check?

A. The fifth check is number 2073.

Q. And is there any notation on the stub there as to what that check was used for?

A. No, the stub is completely blank.

Q. The stub is blank?

A. Yes.

Q. All right, I show you check number 2073, and what does this check indicate? Who was it made payable to?

A. It's dated September 1st, payable to Galen R. Reil, in the amount of $250.00.

Q. $250.00?

A. Yes, sir.

Q. And is your name on there countersigning that check?

A. Yes, it is.

Q. And who else's name is on there?

A. Galen R. Reil.

Q. Do you know where it was deposited or

page 48 } cashed? Does it indicate on there?

A. Yes, Security Bank and Trust Company cashed the check on September the 1st.

Q. On September the 1st?

A. Yes.

Q. And it's made payable to Galen R. Reil?

A. Yes.

Q. Now, as I understand your testimony, the last two checks were to be used to pay bills?

A. That is correct.

Q. Was he authorized, Mr. Reil, to make this fifth check payable to himself?

A. No, he was not . . . not by me. I'm sorry.

Q. Well, now, we talked about five checks, four of which were pay roll checks, and that is the fifth check made payable to Reil, now how about the sixth check?

A. This sixth check is still intact in the book and has been voided by us. It's not used.

Q. The sixth check was not used?

A. That's correct.
Q. And it's still in the book?
A. Yes.
Q. You voided it?
page 49 } A. Yes.
Q. Was there any notation made on the stub of the sixth check?
A. No, the stub is blank on that and you can see on the check itself that the signature section has been partly torn out, with my signature partly showing there where I had previously countersigned it.
Q. Did you tear that out?
A. Yes, I did.
Q. You tore this out and voided the check?
A. Yes.
Q. I see. So that check was left intact in the book?
A. That's correct.
Q. Now, so, the first check Reil made payable to Galen R. Reil in the amount of his salary?
A. That's right.
Q. Now this is $112.21. Do you know that is his salary?
A. Yes, I do.
Q. You do know that of your own knowledge?
A. Yes.
Q. For a week's work?
A. That's right.
Q. He was entitled to this?
A. That's right.
page 50 } Q. Now, check number five, which is 2073, and for which there is no notation in the book . . . this is the one that we are concerned with. And what was your understanding that this check was to be used for?
A. That check was to be used to pay a bill with. The bill, I don't know the identity of the bill. But that was my purpose in countersigning the check in blank, to pay a bill with.
Q. To pay a bill. Did you know of any $250.00 bill outstanding at that time?
A. None to that exact amount. To my knowledge I didn't. There were bills outstanding that would be more than that amount of money.
Q. Well, is it a manner of the custom of the trade, is it customary for an employee to make a bill payable to himself and cash it and pay the check in cash?
A. Absolutely not. I would dismiss one of my own employees for the same thing.

John C. Ryan, Jr.

Q. In other words, these checks that you signed to pay bills were to be used to pay the bill with the name on the check. Is that correct?

A. That is correct. There is no reason to pay otherwise.

Q. So, this pay roll check for $112.21, is that correct?

A. That is correct, yes.

page 51 } Q. Do you know how long he had been making . . . How did you ascertain how much he would make per week? Was it a percentage basis, or what?

A. No, he had a set salary per week.

Q. A set salary of $112.00?

A. Well, net amount.

Q. I see. And if he made $112.00 a week, even if it were for two weeks it wouldn't came to $250.00 would it?

A. Not by my calculations, no.

Q. Well, now, when you went over on this occasion, August 31st, on Thursday night, was there any other discussion in regard to the business between you and Mr. Reil?

A. Yes, there was a brief discussion. When I was assigned this task by Mr. Daniel there were certain things to be done, to be accomplished. One was to release an employee that we had that was a part-time employee.

Q. Well, that name has already been mentioned. Would you state to the Court and to the jury who it is?

A. Yes, Mr. Harrison Throckmorton.

Q. All right.

A. I discussed . . . Mr. Reil had been reluctant to take this action and I asked him when he was going to do it. And as I understood it, we had to do this to reduce overhead,

page 52 } to get cost down. And I asked him when he was going to do this. And he told me, he said, "I'm going to be off a couple of days next week myself" . . . said, "I want to . . . I'll need him here in the store then." He said, "after that . . . next week will be his last one."

Q. Next week would be his last one. He told you he was going to be off a couple of days?

A. Yes.

Q. Did he tell you where he was going?

A. No, he did not. I didn't inquire.

Q. Did he tell you when he was going?

A. No, he didn't that either.

Q. Was any mention made of vacation?

A. No vacation was mentioned to me. No, sir.

John C. Ryan, Jr.

Q. When he said he was going to be off for a couple of days, did you have any idea that it would be vacation?

A. No, I didn't. I couldn't call a couple of days a vacation. Of course, it could be considered one I guess, but I supervise employees for the John Daniel Company and I . . .

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page 53 }

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Q. Well, tell us what, if any, discussion was between the two of you concerning these two days.

A. That was the only discussion to the best of my memory that took place. We didn't pursue it.

Q. I see. He said that he wanted to keep this man through the next week. Is that correct?

A. Yes.

Q. All right, now, while you were discussing this matter, did he ever make any mention to you about using one of the six checks for vacation pay?

A. No, he did not.

Q. Just for pay roll and to pay bills?

A. That's right.

Q. Do you of your own knowledge, or did you have any knowledge of any vacation agreement between Mr. Reil and Mr. Daniel?

A. I didn't have any knowledge of that.

Q. You didn't know anything about any vacation?

A. No.

page 54 } Mr. Fuller: I'd like to introduce these two checks as Commonwealth exhibits 2 and 3. Do you have any objection to that?

Mr. Williams: Is that all of the checks?

Mr. Fuller: No, just the two checks made payable to Mr. Reil for pay roll and the fifth check, the $250.00 check he made payable to Mr. Reil. Of course, the sixth check is already in the check book and I'm going to . . . Do you have all of the . . .

* * * * *

John C. Ryan, Jr.

page 56 }

* * * * *

Q. Mr. Ryan, looking through these check stubs, you have indicated you didn't fill out these stubs. Who usually filled out the stubs? Who was in charge of this book at that time?

A. Mr. Reil.

Q. All right, and we see from 2069 through 2072 names and figures. What do these figures represent?

A. They are gross pay rolls less pay roll deductions for income taxes.

Q. For taxes?

A. Yes.

Q. So, this one right here made to Galen Reil, what is that figure here?

A. The $130.00 is the gross pay roll for the week. The $5.72 is social security deduction. The $10.30 is a federal income tax deduction. And the $1.77 is the State income tax deduction.

Q. For a total of?

A. For a net of $112.21.

page 57 } Q. I see. And this check over here, 2073, which we are concerned with in this case, what does this stub say?

A. It doesn't have anything on it. It's a blank stub.

Q. It's a blank stub. There are no tax deductions or anything of that nature?

A. That is correct.

Q. And to whom is that check, 2073, made?

A. That's payable to Galen R. Reil, $250.00.

Q. $250.00, no deductions?

A. No deductions.

Q. And if it were a check for vacation pay, which you have already indicated you had no knowledge of . . . Ordinarily in the business if you were to write a man a check for vacation pay, would there be any deductions?

A. Yes, it would be deductions. It's illegal to write a pay roll check without deductions.

Q. So, even if that $250.00 represented two weeks' salary, even if it did, just assume that, if it had been written without any deductions . . .

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John C. Ryan, Jr.

page 58 }

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Q. So, in other words, this check, this $250.00 check, if it were a pay roll check, if it were a vacation check, then there would have to be deductions?

A. Yes.

Q. Well, now, what would you figure the salary to be, this man's salary to be for two weeks?

A. $260.00 gross salary.

Q. Gross. Take home, how much would that be?

A. $124 and some cents, I believe it is. $124.42 would be two weeks take home pay.

Q. Two hundred or one hundred?

A. Two weeks take home pay?

Q. Yes.

A. $224.42.

Q. All right.

Judge Craig: What you're saying, Mr. Ryan, is that it would be double check number 2069, which was $112.21. Is that right?

Mr. Ryan: Yes.

page 59 } Mr. Fuller: Your witness.

CROSS EXAMINATION

By Mr. Williams:

Q. Mr. Ryan, were you familiar with the agreement of July the 21st of this year, or the little letter that Mr. Daniel wrote to Mr. Reil?

A. I am familiar with an agreement that he wrote him, but I'm not sure that I know the one that you're talking about without looking at it.

Q. Well, look at it.

A. Yes, I'm familiar with that.

Q. You've seen it before. That's no question about it, you've seen it before?

A. Yes.

Q. Now, I believe you testified that you don't have any idea of what Mr. Daniel and Galen Reil talked about prior to this?

A. No, I do not.

John C. Ryan, Jr.

Q. You don't know anything about the business prior to your coming in in July?

A. No.

Q. Now, you started going around, that would be about four or five weeks, actually, before Galen Reil left, would it not? Or something in that neighborhood?

page 60 } A. Something in that neighborhood. I'm not sure of the exact date.

Q. Well, did you comply with this letter, going by there on Wednesday mornings? Was that your routine, to go by about eight-thirty in the morning?

A. I believe that Mr. Reil came to my office rather than me going by . . .

Q. You didn't go by the store?

A. I don't recall going by the store.

Q. You never went by Galen's Shoes at Riverside?

A. I've been by there several times, yes. On a particular Wednesday morning my memory doesn't serve me whether I went by there or not.

Q. Well, I'm not talking about this particular week, but from July the 21st, 1967, did you, or did you not, go by the store for weekly meetings?

A. Yes, sir, I have been by the store on a number of occasions, more than one time a week as a matter of fact.

Q. And you normally discussed the operation of the store and the problems of the store?

A. That is correct.

Q. Now, Harrison Throckmorton was on the pay roll when you took it over, and he's still on the pay roll?

A. That's correct.

Q. Now, did you go by there on Wednesday be-

page 61 } fore September the 1st, Wednesday morning?

A. I don't really recall if I did or didn't.

Q. That would be August the 30th.

A. I doubt if I did, but I don't recall.

Q. You don't recall going in there for a few minutes?

A. I don't recall, no, sir.

Q. But you're not saying that you did not go, or you did go?

A. No, I'm not saying that I didn't. I just don't recall.

Q. Well, what date do you recall having the conversation with Galen about whether or not he was going to take a few days off?

A. That was Thursday night.

John C. Ryan, Jr.

Q. Thursday night?
A. August the 31st.
Q. How long did you stay there?
A. Fifteen or twenty minutes maybe.
Q. You had to be in court the next day was the reason you went by there?
A. That is correct.
Q. And you say you stayed ten or fifteen minutes?
A. Fifteen or twenty.
Q. And you discussed Harrison Throckmorton and his status?
A. Very briefly, yes.
Q. And you say Galen at that time told you that
page 62 } he was going to take off a few days?
A. A couple of days he told me, yes.
Q. That would have been with pay too, would it not?
A. No doubt.
Q. Did anyone take a vacation after you took over supervision?
A. No, nobody's taken a vacation.
Q. Joe Yeatts never took a vacation, a paid vacation?
A. Not to my knowledge he didn't.
Q. You would have countersigned the check, would you have not?
A. After I took over I would have countersigned the check, yes.
Q. Was that up to Galen Reil as to who would take vacations?
A. I don't know the vacation arrangements. I testified to that.
Q. I see. You don't know anything about the vacation arrangements.
A. That's right.
Q. Thank you. Now, Mr. Ryan, isn't it a matter of fact that Galen made a deposit on September the 1st, 1967?
A. I can't testify who made the deposit. One was made.
Q. Well, one was in fact made, and what was that for?
A. Do you mean the amount of the deposit?
Q. Yes, sir.
A. $232.43.
Q. All right, sir. What balance, if any, did that leave?
A. The balance by the bank statement was at the
page 63 } end of that particular day was $1,316.71. I don't know what the check stub balance is.

John C. Ryan, Jr.

Q. All right, sir. Now, when you went by on Thursday night, did you not as a matter of fact, actually countersign in blank eight checks?

A. Not for Riverside Shopping Center.

Q. Eight checks total, Mr. Ryan?

A. Yes, I think it was eight.

Q. Were they all in blank?

A. I think they were the best I remember.

Q. And they all had to be signed by Galen Reil and filled out by Galen Reil?

A. Yes.

Q. Did he fill out the checks for the Southern Department shoe store employees?

A. Yes.

Q. Did they get their checks?

A. I didn't observe it. I assume they did.

Q. You checked the bank statement though, did you not?

A. Yes.

Q. Was there a balance left on the date that Galen Reil left at the Southern shoe department?

A. Yes, there was a balance. I don't recall the
page 64 } balance. I don't have any information here to
back up . . .

Q. It was over $1,000.00 wasn't it?

A. I don't recall, possibly it was.

Q. Now, Mr. Ryan, when you went in there, or ascertained that Galen Reil had left, did you have any problem at all in finding the cancelled check that he had written?

A. The $250.00 check?

Q. Yes.

A. What do you mean by problem finding it?

Q. Well, where did you go to find it?

A. To the bank.

Q. Did you find it there?

A. Yes.

Q. And, of course, as you have testified to, it had his name on it, and his signature, and the proper date?

A. Yes.

Q. Was the check book left there?

A. The check book was left in the store.

Q. Was this other blank check left with your name on it?

A. Yes.

Q. Where was that?

A. Still intact in the check book.

John C. Ryan, Jr.

page 65 } Q. Still intact in the check book. Now, as I understand it, during the four or five pay roll periods that you countersigned these checks, sometimes they would be brought to your office, sometimes you would go by there, sometimes they would be in blank. Am I correct there?

A. That is correct.

Q. Now, the night, the Thursday night that he asked you for the two additional checks he told you, I believe you testified, they were for bills?

A. That is correct.

Q. And that following day you were in court?

A. Yes.

Q. Now, Mr. Ryan, did you go to Galen's Shoes as soon as you found out he left?

A. No.

Q. When did you go there?

A. I'm not sure whether I went on Saturday morning or Monday . . . Tuesday. Monday was a holiday.

Q. And had the other employees gotten their checks to your knowledge?

A. To the best of my knowledge they had.

Q. I believe you testified that Mr. Reil filled these all out?

A. Yes.

Q. Is that the bank statement for Galen's Shoes?

A. I believe the bank statement is . . .

page 66 } Q. Now, this shows a balance of $1,192.63, does it not, sir?

A. That's correct.

Q. And that reflects the checks that were cashed . . . That was the balance, the net balance, when you took over or closed this account out?

A. The account has not been closed out. This was the balance when I asked the Security Bank to pull our statement on September the 2nd.

Q. I see. And the $250.00 check had been cleared?

A. Yes, it had.

Q. The balance would have been even more at the time Reil left town, would it not?

A. I don't know why it would be. Why would it be?

Q. On September the 1st I believe you testified it was $1,446.49, and he made a deposit of $243.00, or someone made a deposit?

John C. Ryan, Jr.

A. Yes, someone made a deposit. The checks were also cashed on the same day.

Q. Well, he made the deposits. I mean that was just part of his job, was it not? You didn't make it?

A. Yes. No, I didn't make deposits.

Mr. Williams: I would like to introduce this as an exhibit.

Judge Craig: All right, do you want to make it
page 67 } Commonwealth's exhibit . . .

Mr. Fuller: I was going to introduce it, Judge. I just forgot to. I was going to do it on re-direct.

Judge Craig: Well, we'll introduce it as Commonwealth's exhibit 4.

Q. Now, Mr. Ryan, you may not have testified to this. Mr. Reil would fill in all of these check stubs, would he not?

A. I would not fill them in. Mr. Reil would fill them in, or I think you will find that his wife probably filled in some of them.

Q. What was his wife? Was she the bookkeeper?

A. Yes.

Q. And you don't know whether he filled these in or she filled them in?

A. No, the handwriting to me appeared to be his.

Q. On all of them?

A. No, on the ones that we were talking about.

Q. Going back through all of them from July the 28th it varies, does it not?

A. Yes.

Q. His wife would . . . Do you know whether or not he would compute the pay roll deductions, or his wife would do that?

A. I don't know who did that.

Q. You don't know who did that?
page 68 } A. No.

Mr. Williams: My Ryan, I believe that's all I have, sir.

RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. Mr. Ryan, when did you discover that Mr. Reil had left the store?

A. Mr. Daniel told me Saturday morning, September the 2nd.

John C. Ryan, Jr.

Q. So you don't know anything about who closed up on Friday night or anything of that nature?

A. No, I do not.

Q. And the first knowledge you had was when you were told by someone else?

A. Yes, sir.

Q. From your investigation and from your books, have you been able to ascertain whether or not any bills that were outstanding against the store were ever paid in cash?

A. I have not been able to determine that any were paid in cash, no.

Q. And were you able to ascertain from your books whether or not any bills were paid by check by Galen Reil since this time?

A. Personally?

Q. Yes.

A. No, I was not able to determine that.

Q. I see. So as far as any bills having been paid with this $250.00 in cash, you don't have any knowledge of that?

page 69 } A. No, I do not.

* * * * *

RE-RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. But you don't have any record of any bills being paid. Is that correct?

A. I don't have one, no.

Q. Would you have any if any bills had been paid?

A. I would think that the proper procedure would have been that whoever was paid would apply the payment on an account for us, and the account would have come into the proper mailing at the store.

Q. In other words, you would have received a receipt?

A. That is correct. I think we would have.

Q. Have you ever received a receipt from anyone?

A. No.

* * * * *

page 70 } Judge Craig: Gentlemen, let's take about a ten minute break here. Please don't discuss the case

among yourselves or with anyone else during this or any future recess.

At the conclusion of the recess, Mr. Fuller continued his re-re-direct examination of the witness, John C. Ryan, Jr., which was as follows:

By Mr. Fuller:

Q. Mr. Ryan, you have already indicated your capacity in this thing. Now, after September the 1st, which was a Friday, what, if anything, did you discover about these checks or about the defendant?

A. Mr. Daniel told me Saturday . . .

Q. Don't tell us what Mr. Daniel did. Do you know whether or not the defendant was at the shoe store on Saturday?

A. To my knowledge he wasn't there.

Q. He wasn't there?

A. No.

Q. And what week-end was that? Was Monday a working day or a holiday?

A. Monday was Labor Day, I believe.

Q. Monday was Labor Day. Do you know of your own knowledge whether he was there on Tuesday?

A. I was in the store on Tuesday and he was not there.

Q. He was not there.

page 71 } Mr. Fuller: All right, that's all.

RE-RE-CROSS EXAMINATION

By Mr. Williams:

Q. Let's see, the Commonwealth has asked you what did you discover about the defendant. That would be Galen Reil. Did you go by there on Friday?

A. No, I did not go by there on Friday.

Q. Did you go by Saturday?

A. I don't recall going by Saturday, no.

Q. Was the store open?

A. Yes.

Q. Who managed it then?

A. Mr. Paul Simmons was called in by Mr. Daniel to look after the store that particular day.

Q. You knew Reil wasn't around?

A. Yes.

Q. And you knew he wasn't there Monday?

William A. Hopkins

A. I was reasonably sure that he wasn't there Monday. I didn't investigate.

Q. And Tuesday you went into the store?

A. Yes.

Q. Is that when you went down to Security Bank?

A. Yes.

page 72 } Q. You went down on Tuesday and picked up the checks?

A. Yes, I did.

Q. Checks 2069 through 2073 with the exception of Throckmorton's check. I don't believe he had cashed it.

A. That is correct.

Q. And you found that Reil had *cahsed* a $250.00 check I believe you said on September the 1st?

A. Yes.

Q. Did you ever make a demand on Galen Reil to return the $250.00?

A. No, I didn't.

Mr. Williams: That's all.

WILLIAM A. HOPKINS, the next witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Will you state your name to the Court and to the jury, please?

A. William A. Hopkins.

Q. Mr. Hopkins, what is your occupation?

A. I am assistant cashier at the Security Bank and Trust Company.

Q. Mr. Hopkins, I have here a bank statement. Would you indicate what the statement reveals?

A. Well, this is a statement of the account of

page 73 } Galen's Shoes, Incorporated, the demand, or the checking account deposit with the Security Bank and Trust Company.

Q. Is that a deposit, or what does that indicate?

A. Well, it has the balance, it also has the records of the checks drawn against the account, and also a record of the deposits made from the 1st through the 5th of September.

William A. Hopkins

Q. Are you in charge of those records at Security Bank?
A. No, sir, I'm not.
Q. You're not?
A. No, sir.
Q. Are you familiar with the records?
A. Yes, sir.
Q. All right, state to his Honor and the jury what this particular record indicates.
A. Well, the record gives the balance as of the 1st of September. It shows that on the 1st of September also a deposit of $232.43 was made. Also on the 1st of September two checks were drawn. $250.00 was the amount of one. $112.21 is the amount of the other.
Q. Two checks were drawn?
A. Yes, sir.
Q. In other words, they were cashed?
A. Well, I cannot say where they were cashed or
page 74 } whether they came in through the normal transaction of business.
Q. I see.
A. If I could see either of the checks, I could possibly tell you what happened to them.

Judge Craig: Is there any exhibit number on that statement?
Mr. Hopkins: Number four, sir.

Q. What is the amount on those checks?
A. The first check is a $250.00 check.
Q. And this is the check?
A. Yes, sir.
Q. How can you tell that this is the check?
A. Well, it's been posted and marked paid by the bank on the date of September the 1st. It also indicates that my teller number 17 cashed the check.
Q. She cashed the check?
A. Yes, sir.
Q. And you don't know what happened to the money after it was cashed?
A. No, sir.
Q. All right, how about this check right here?
A. That's a check of $112.21. It indicates that it was paid
on the same day. Now, let me see the back of the
page 75 } check. The back of the check was endorsed, Galen

R. Reil, and deposited into the account of Galen's Shoes, Incorporated.

Q. That one was deposited into the account of Galen's Shoes, Incorporated?

A. Yes, sir.

Q. For $112.00?

A. $112.21.

Q. All right, how about this check here. Is there any indication what was done with this $250.00 check?

A. Well, the indication by the teller's stamp on the front, indicated that the check was cashed.

Q. Just cash paid?

A. Yes, sir.

Q. Any deposit? Any . . .

A. Well, I don't . . .

Q. You don't know?

A. There could have been a deposit made, but from this I would say that the check was cashed.

Q. I see. Two checks were cashed on September the 1st then?

A. Were drawn from the account, yes, sir.

Q. Were drawn from the account. One for $112.00 and one for $250.00?

A. Yes, sir.

* * * * *

page 76 } CROSS EXAMINATION

By Mr. Williams:

Q. Mr. Hopkins, the statement, of course, reveals more than two checks does it not?

A. Yes, sir. It should.

Q. And what does that indicate? The date that the bank received them?

A. The date that they were posted against the account.

Q. I see.

A. Now, I might explain that the work is cut today. This is today's date. It would be posted against your account tomorrow provided it was in the bank by one o'clock today. Now, if it's later than one o'clock today, then it would go into the next working day's business. Now, this indicates that the check was cashed or deposited either was on this day . . . because this is the day that it was posted and drawn from the

account, which would have been the next working day possibly.

Q. I see. Now, the other two, the $49.80 and the $74.28, September the 5th is the date that they were posted against the account?

A. Yes, sir.

Q. And the other two checks would indicate that they were posted on the 1st of September?

A. Yes, sir.

page 77 } Q. All right, sir.

A. In other words, they were in the day's business of September the 1st.

Q. The $112.21 check that was payable to the order of Galen's Shoes that Mr. Fuller just showed you, do you know whether or not that was in the deposit that was made that day of $232.43?

A. No, I do not. The back of the check indicates that it was. The deposit slip probably could be produced to show, but from the stamp on the back of the check indicated that it was deposited into the account of Galen's Shoes, Incorporated.

Q. Now, Mr. Hopkins, as of September the 1st, at the time that these two checks cleared, the balance was what, sir?

A. Before or after they cleared?

Q. Before they cleared and after they cleared.

A. All right, the balance was transferred at the end of the month's statement. On September the 1st the balance was $1446.49. After the deposit had been posted and the checks had been cleared the balance was $1316.71, which is the ending balance here of September the 1st.

Q. All right, that's September the 1st?

A. Yes, sir.

Q. $1316.71 is on the statement?

A. Yes, sir.

page 78 } Q. Now, Mr. Hopkins, all of this is in the normal course of the banking business, is it not? What you just testified to.

A. Yes, sir.

Q. The check that you were just shown bore the legitimate seal of the bank and so forth, and you could easily identify it couldn't you?

A. Right.

Q. You see nothing of any concealment or anything of that nature in reference to the checks?

A. No, sir.

William A. Hopkins

Q. There is no way to conceal it on this is it? I mean, as the check comes in it's going to be . . .

A. It's going to be posted to the account. That's right.

Mr. Williams: That's all.

RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. You don't know what happened to that $250.00 check other than it came into the bank, do you, Mr. Hopkins?

A. No, sir.

Q. Was it cashed?

A. Yes, sir.

Q. You don't know what was done with that cash?

A. No, sir.

page 79 } Q. What does this right here indicate?

A. This represents a deposit slip.

Q. It represents what?

A. This is a deposit slip showing that $100.00 on September the 1st was deposited into the account of Galen R. Reil.

Q. On September the 1st that indicates that $100.00 was put into the private account of Galen Reil?

A. Yes, sir.

Q. I see. All right, now, what does this indicate, Mr. Hopkins?

A. Well, this is a deposit slip for Galen's Shoes, made on September the 1st, deposit of $232.43, consisting of cash and checks.

Q. Cash and checks?

A. Yes, sir.

Q. That's the $232.00 you see right here, is that right?

A. That's right. Yes, sir.

Q. All right, this first check indicates for deposit only into the account of Galen's Shoes, which is the check for $112.00. Is there an indication on there as to this money?

A. Yes, sir.

Q. So, what does that mean really happened to the $112.21? How was it cashed?

A. Well, this particular check, the $112.21 check,

page 80 } was deposited into the account of Galen's Shoes.

Q. I see. So, that meant that it was cashed elsewhere?

A. No, sir. Well, it could have been.

Q. In other words, it could have been that $112.21 was taken from the cash register and the check just sent on in along with it. Is that correct?

A. It could indicate that. Yes, sir.

Q. In other words, the check for $112.00 came in along with these others from Galen's Shoes?

A. That's right.

Q. Which amounted to $232.43 and were deposited in Galen's Shoes, Incorporated?

A. Yes, sir.

Q. I see. And the $112.00 check came along with it?

A. Right.

Mr. Fuller: All right, that's all.

RE-CROSS EXAMINATION

By Mr. Williams:

Q. Mr. Hopkins, that's very usual is it not in the normal course of business?

A. I would say that it is not unusual, yes, sir.

Q. Now, of course, that means that the $112.21 was cashed out of the cash register or the cash box?

page 81 } A. It seems that way, yes, sir.

Q. Or it would appear that way, would it not?

A. Uh-huh.

Q. And that the $250.00 check was cashed at the bank?

A. Right.

Q. All right, sir, and, of course, you told me a minute ago that without this you could not tell for sure about the $112.21, but now you can say that it was in that deposit?

A. Yes, sir.

Q. Also, was there not currency of $75.92?

A. It is. Yes, sir.

Q. This, I believe you testified, is a $100.00 deposit into the account of Galen R. Reil?

A. That's right.

Q. All right, sir. This was made on the same day also and it's cash of $100.00?

A. Yes, sir.

Q. You, of course, had no idea of where the $100.00 cash came from?

A. I do not, no, sir.

John C. Ryan, Jr.

Mr. Fuller: I would like to introduce both of these as Commonwealth exhibits.

Judge Craig: They will be five and six.

page 82 } Mr. Fuller: I want to call Mr. Ryan back for a minute.

Judge Craig: All right. It will be short I take it, because we want to break for lunch.

Mr. Fuller: Yes, sir.

Mr. Williams: Your Honor, I'm not going to object to the procedure in the re-calling of Mr. Ryan, but I think it's improper from a technical standpoint.

Mr. Fuller: What's improper about it?

Judge Craig: Well, Mr. Williams, I think it's all right if . . . I don't think that the attorney should talk to a witness, though, between the time that he is called and the time that he is re-called. Now, if that's been done I think that it is not proper to re-call him, but it's all right to re-call him if he hasn't been conferred with in the meantime.

Mr. Williams: I'm not going to object to it.

Mr. Fuller: We're not rebutting, we're just asking him a question, if your Honor, please.

JOHN C. RYAN, JR., who had previously testified on behalf of the Commonwealth, was re-called and testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

page 83 } Q. Mr. Ryan, do you have any knowledge at all . . . This check here for $112.21, on the back here it says, for deposit only to the account of Galen's Shoes, Incorporated. Do you have any knowledge from your records as to where this check was cashed?

A. Yes, this check was cashed out of the cash funds of Galen's Shoes, Incorporated, and included in a deposit on September the 1st, the deposit we were previously talking about—$232.43.

Q. All right, so this check for $112.21 was cashed out of the cash register of Galen's Shoes?

A. That's what it amounts to, yes.

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page 85 }

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Court was reconvened pursuant to adjournment at 1:00 P.M., and the following occurred:

Mr. Fuller: The Commonwealth rests, if your Honor, please.

Judge Craig: The Commonwealth has rested.

Mr. Williams: All right, sir, I would like to be heard on a motion.

Judge Craig: All right, sir, let's excuse the jury and let them go back to the jury room.

Judge Craig: Let the record show that the jury has been excused and we are in the courtroom, in the absence of the jury and in the presence of the defendant and his counsel, and the attorney for the Commonwealth. All right, sir.

Mr. Williams: If your Honor, please, on behalf of the defendant, Galen Reil, and at the conclusion of the Commonwealth's evidence, I would move to strike the Commonwealth's evidence on the grounds that it has been insufficient to prove the charge of embezzlement, more specifically that charge contemplated under 18.1-109 of the Virginia Code. The Court has ruled in several or more cases over the years that there are approximately six essential elements involved. I submit to the Court that the Commonwealth has failed to show that the $250.00 that was taken was not in fact used for bills for Galen's Shoes, Incorporated. There has been no testimony of where that money went or what it was used for. It's about like the case of *Whitlow* v. *Commonwealth* in 184 Va. I believe that was the case of the tire. I beg your pardon, that was the Lee case, *Lee* v. *Commonwealth* in 200 Va. 233. This employee of a tire company had taken a tire and had sold it or swapped it for some pants. His employer alleged that no money had ever been paid into the company or anything of that nature, but there was evidence to show that the defendant had taken the tire and had it put on the account of a service station, and that there was actually no showing . . . Actually, what I am trying to say is there was no showing that there was an intent to deprive the owner of the money permanently, or the tire permanently. I submit to the Court that that essential element is missing here; that the conversion of the money to Galen Reil's own use with the intent to deprive the owner thereof is

page 86 }

page 87 } completely lacking, and without that the charge of embezzlement cannot stand. It is a matter of law that the Commonwealth has not proved the elements essential to a conviction under this statute. Therefore, we ask the Court to strike the evidence.

Judge Craig: What are the six elements, Mr. Williams?

Mr. Williams: Judge, they are listed in Michie's, 6 Michie's page 674. The six elements are the trust relationship with the person charged . . .

Judge Craig: All right, you concede that here?

Mr. Williams: Yes, sir. The property claimed to be embezzled is embraced in the statute. I submit that that's in there.

Judge Craig: All right, sir.

Mr. Williams: Three, that it is the property of another. I think that is in there.

Judge Craig: All right.

Mr. Williams: Four, that it came into his possession under and by virtue of his office or employment. That's in there. Five, that his manner of dealing with the money constituted a fraudulent conversion. Of course, I think that's up to the jury there, the fraudulent intent more or less.

page 88 } Judge Craig: All right, sir.

Mr. Williams: And six, that the conversion of the money to his own use was with the intent to deprive the owner thereof, of permanent deprivation.

Judge Craig: And you say that is the element that has not been proven?

Mr. Williams: Yes, sir. Now, he could have taken the money and left it with me or anybody to pay some bills of the company.

Judge Craig: I appreciate it. Thank you. I just wanted to know what they were since you had mentioned six elements.

Mr. Fuller: If your Honor, please, the Commonwealth specifically asked the witness if they had received any information whatsoever that any of these bills were paid, and, of course, they had not. As I said, the Commonwealth specifically asked this witness if any of these bills were paid, and, of course, they indicated that they had absolutely no receipt that any bill had been paid with this $250.00; plus the fact that the Commonwealth's witness was asked the question if it were proper for this man to write a check to himself for cash and then pay the bills that way, rather than to pay

page 89 } them on the two checks that Mr. Ryan himself countersigned. And, of course, he said that was improper, completely improper. And the evidence is that this

was a check for $250.000 payable to the defendant himself. There is no evidence whatsoever that . . . As a matter of fact, Mr. Ryan testified that they had received absolutely no information that these bills were paid that he was referring to. And we submit that it is conceded that it was the money of the corporation, Riverside Corporation, operating under the name of Galen Reil's stores; that the $250.00 that the defendant took, he was not entitled to; and the bills, if they were paid, could not have been paid in a proper manner; that they were supposed to have been paid by checks that were countersigned by Mr. Ryan. And he said, actually, the bills had not been paid because they have received no receipt of any bills whatsoever having been paid.

Judge Craig: Gentlemen, the defendant here concedes that all but the element of the fraudulent intent has been established. So that is the only question really that we have to consider. The statute provides that anyone who wrongfully and fraudulently uses, disposes of, conceals or embezzles money from a business in which he is in a position

page 90 } of trust or management, is guilty of embezzlement. Now, certainly if the conversion of the money, or the taking of it in this case, was under a bonafide claim or ownership, or that this defendant felt that he had a bonafide right to the money, then it's not embezzlement. The Commonwealth must show a fraudulent intent to deprive the owner, or the business, of its money or property. But the Court feels that under this evidence it's a question for the jury. There is evidence here that the defendant was not entitled to write a check to himself, and that he was not entitled to any vacation money. Clearly at best he would have been entitled under this evidence to be paid his regular salary during the time that he took his vacation. There is no evidence that he was entitled to extra compensation above and beyond his regular salary during his vacation. There is also evidence that he left town; that there was no explanation for the money; that no bills were paid. And the Court feels that under this evidence it's a question for the jury.

Mr. Williams: All right, sir. We except to the Court's ruling.

Judge Craig: Yes, sir. Is there anything else?

Mr. Williams: Yes, sir, if your Honor, please, I certainly don't want to engage the wrath of the Court by

page 91 } calling someone and having something said that the Court may have ruled on previously. And I think probably it would be proper for the Court to hear the

evidence of one of the witnesses I intend to call out of the hearing of the jury and rule upon it.

Judge Craig: I'll be glad to do that, if you would like.

Mr. Williams: Like I say, I don't want to do something I shouldn't be doing. I want to follow the guide lines handed down by the Court when we started, and it may come out without me doing it. I mean I may ask the wrong question and just open the gates to this type of thing coming out. But I would like it on the record that I called a person, the Court heard it, and ruled on it.

Judge Craig: What is the . . .

Mr. Williams: I want to call Mrs. Dalton.

Judge Craig: What is the purpose of the evidence?

Mr. Williams: Well, she, of course, went to Orlando, Florida and Galen Reil went to Orlando Florida. And when he contacted me to tell me where he was several days after they got there, I think . . . Of course, I advised him of the charges against him and the charges against her. And he went back and told her about the charges. And, of course, page 92 } that was the first time that the fact of any knowledge of any embezzlement or any other charge was brought to light. And she returned with him promptly. There were charges against her and there were charges against him. There were charges against her that were never served.

Judge Craig: Well, Mr. Williams, I think that if you feel that it is important to your case to show where the defendant went, and the manner in which he got the knowledge of the charges against him, and when he returned, and what he did about the charges, that the Court would be inclined to allow it. Now, as to the charges against Mrs. Dalton, I think we should stay away from that. That has no bearing upon this case whatsoever. And I think that her participation and involvement in it except to the extent that it touches upon the motive or intent should be avoided. Now, with that understanding the Court has no objection to your calling her.

Mr. Williams: Judge, let me ask this. Would the Court have any objection to me asking if she went to Orlando, Florida with Galen Reil?

Judge Craig: If you can connect it as having some bearing upon the intent or motive of the defendant, Mr. Williams. I don't think the mere fact that she went down page 93 } there has much to do with it. What we're interested in is whether or not this defendant had the intent to deprive Galen's Shoes, Incorporated of its money. What happened subsequently, subsequent to his leaving Danville and taking the money with him, I suppose is immaterial ex-

cept as it may touch upon his motive on intent in taking the money.

Mr. Williams: Well, does the Court feel that this is not a matter for the jury, or . . .

Judge Craig: If it touches upon his motive or intent in taking the money, the Court will let you show it, Mr. Williams, otherwise not.

Mr. Williams: Judge, I don't know what a person could say the motive would be since it is a subjective type of element.

Judge Craig: How does the fact that this woman went, or didn't go, to Florida with the defendant touch upon his guilt or innocence in this case, Mr. Williams?

Mr. Williams: Well, I think it goes back to probably why the warrants were taken out initially, to find them and bring them back.

Judge Craig: Mr. Williams, the Court feels that why the warrants were taken out is absolutely inadmis-
page 94 } sible. That's beyond the scope of this inquiry.

Mr. Williams: Well, I think your Honor has stated enough to give me guide lines in it. I'm just afraid to call them, and I would like to except to the Court's rulings and statements pertaining to this on the grounds that courts have stated time and time again that great latitude is necessary in proving intent, and I feel that this is not being allowed.

Judge Craig: Mr. Williams, the Court will allow you great latitude if it touches upon motive or intent. The Court does not feel that an explanation of why charges were brought is appropriate, or admissible, or relevant, or material. Now, it will be your decision as far as what you want to do about calling these witnesses. The Court takes no responsibility for your decision to call them or not.

Mr. Williams: I know that, Judge, but I think that the Court has sufficiently told me what I can do and what I can't do.

Judge Craig: All the Court is saying, Mr. Williams, is that it does not feel that it is proper or relevant to introduce evidence as to why the warrants were taken out or why charges were brought. The fact is that the charges
page 95 } were brought. The man is charged with embezzlement. The Court and the jury are interested in whether or not he is guilty of the crime for which he has been charged, and that alone. And any fact that you have in defense, whether it touch upon what happened as far as the money is concerned, or the man's intent or motive in

cashing this $250.00 check, the Court will allow you to show. I feel that we're being extremely liberal in this. Now, that's the only restriction that the Court is putting on it.

Mr. Williams: Judge, I think I'll *procede* without them and renew my exception.

Judge Craig: All right, sir. It is the Court's understanding that the defendant excepts to the Court's ruling that evidence about why the charges were brought should not be presented. All right, sir.

Whereupon the jury returned to the courtroom, and with the Court, counsel, and the defendant present, the following evidence was introduced in behalf of the defendant:

HARRISON THROCKMORTON, the first witness called on behalf of the Defendant, having been duly sworn, testified as follows:

page 96 } DIRECT EXAMINATION

By Mr. Williams:

Q. You are Mr. Harrison Throckmorton, are you not?

A. Yes, sir.

Q. Mr. Throckmorton, where are you employed?

A. At Dan River Mills, part time at Galen's Shoes.

Q. Part time at Galen's Shoes?

A. Yes.

Q. Mr. Throckmorton, have you ever had an interest in, or worked full time for Galen's Shoes, Incorporated?

A. Yes, sir.

Q. When did you purchase an interest in this store?

A. 1963.

Q. Who was operating the store at this time, the store manager?

A. Galen Reil.

Q. How much stock, if any, did you buy?

A. Ten per cent.

Q. Do you know who the other stockholders were, if any?

A. Yes. Galen Reil, Mr. Whitehurst and I don't know the other. I forgot.

Q. Was John Daniel the stockholder?

A. Yes.

Q. Now, do you know when you started in '63?

page 97 } A. The last week in March of '63.

Q. All right, sir. You say that Mr. Reil was the

store manager?

A. Yes.

Q. Did he hire you?

A. Yes.

Q. Now, during the year of 1963, could you state whether or not Mr. Reil took a vacation?

A. No.

Q. Did you take one?

A. No, sir.

Q. Did you work full time in the year of 1964?

A. Yes, sir.

Q. Could you state whether or not any employee took a paid vacation, including Mr. Reil?

A. Yes.

Q. Mr. Throckmorton, did you have an occasion to countersign checks during the course of your association with Galen's as a full time employee?

A. Yes.

Q. During what period of time was this?

A. '63, '64 I believe.

Q. Could you state whether or not to your recollection you ever signed a check payable to Galen Reil for vacation?

page 98 } A. I don't remember.

Q. Could you state whether or not to your recollection he took a vacation in '64?

A. In '64, yes.

Q. Or '65?

A. Yes.

Q. When did you leave Galen's as a full time employee?

A. December of '65.

Q. Now, Mr. Throckmorton, would Mr. Reil take any other time off other than a full vacation?

A. Just a couple of hours maybe two days a week.

Q. Maybe two days a week. Now, when did you start working as a part time employee?

A. I don't . . . I've forgotten.

Q. Are you working there now as a part time employee?

A. Yes, I am.

Q. Now, during this year of 1967, could you state whether or not Galen discussed a vacation in your presence?

A. He mentioned about a vacation, or wanting to take one.

Q. In the presence of Galen Reil . . . in your presence? Did you hear him state that?

Harrison Throckmorton

A. Yes.

Q. Could you state whether or not he took a vacation in '67, this year?

page 99 } A. No, he didn't.

Q. Now, Mr. Throckmorton, who would deliver the pay roll checks to you, your pay roll check?

A. Galen.

Q. Mr. Throckmorton, let me ask you this. Could you state how or where you would cash your pay roll check?

A. Most of them I cashed at the store.

Q. Cashed at the store?

A. Yes.

Q. That's Galen's, Incorporated?

A. Yes, sir.

Q. Would it be cashed out of the cash register or something there at the store?

A. Yes.

Q. Would you state whether or not this was normal and routine?

A. I don't know.

Q. Sir?

A. I don't know.

Q. What did you usually do?

A. Do you mean as far as cashing the check?

Q. Yes, sir.

A. Well, most of them I cashed them there at the store.

Q. I see. Now, who worked at the store this

page 100 } year prior to September the 1st, 1967, in addition to yourself?

A. Galen Reil, and William Yeatts.

Q. Now, I believe you said you turned your stock back in when?

A. I guess it was the first of '66.

Q. The first of '66. Did anyone take a vacation after July of 1967 at the store?

A. After July?

Q. Yes, sir, to your recollection?

A. I did.

Q. You did?

A. Yes.

Q. Did anyone else?

A. Well, I was part time, but I believe William Yeatts did.

Q. What hours did you work?

A. Four to nine.

Q. Four to nine. All right, sir. That's all.

CROSS EXAMINATION

By Mr. Carter:

Q. Now, Mr. Throckmorton, you say you bought a stock interest in this corporation in 1963. Is that correct?

A. Yes.

Q. How did you pay for it?

A. Well, it would have been taken out of . . .

page 101 } I was to pay so much along as . . .

Q. Was this some of Mr. Reil's stock that you had bought?

A. No, it was Mr. Daniel's.

Q. What?

A. Mr. Daniel's.

Q. Mr. Daniel's stock?

A. Yes, sir.

Q. And did you pay for the stock?

A. No, sir.

Q. How about Mr. Reil? Had he paid for his?

A. I don't know.

Q. And you and Mr. Reil had an interest in the corporation, but the largest single stockholder was Riverside Shopping Center?

A. Yes.

Q. Which owned the controlling interest. Is that correct?

A. Yes.

Q. And the business got into financial difficulties in '67?

A. Yes, sir.

Q. And this was the reason for your surrendering your stock?

A. Yes, sir.

Q. And do you know what relationship there was between the stockholder, Riverside Shopping Center, and Mr. Reil when it was determined that the business was in

page 102 } financial trouble? In other words, was there any pressure put on him to resign or give up his position?

A. I don't know.

Q. You don't know what went on about that?

A. No, sir.

Q. Now, were you at the store on the Friday, September the 1st of 1967?

Harrison Throckmorton

A. I went to work at four o'clock.

Q. You went to work at four o'clock. Was Mr. Reil there when you arrived?

A. No, sir.

Q. Did he come back at any time?

A. No, sir.

Q. Did you know where he was?

A. No, sir.

Q. Did he advise you that he was going on a vacation?

A. No, he didn't

Q. Did he give you any advice at all?

A. Do you mean prior to that?

Q. Yes.

A. Well, he had mentioned a vacation back in the early part of the summer.

Q. What?

page 103 } A. He had mentioned about wanting to take a vacation in the early part of the summer.

Q. In the early part of what?

A. The summer. Back in June probably.

Q. That was before he and Mr. Daniel entered into this agreement about taking back the stock of the corporation?

A. Yes.

Q. And he gave you no advice that he was going on vacation, or who was to be in charge of the store, or anything of that sort?

A. No, sir.

Q. You came in at four o'clock and he was not there?

A. Right.

Q. No explanation was made to you. When was the next day that you worked?

A. I worked Saturday that same week.

Q. Was Mr. Reil there on Saturday?

A. No, sir.

Q. Were you given any advice as to . . . or did you get any communication from Mr. Reil about the operation of the business?

A. No, sir.

Q. Who was operating the business at that time?

A. Well, William Yeatts was put in charge of it.

Q. Were you looking for Mr. Reil to come in

page 104 } Friday evening before you closed?

A. I didn't know.

Q. Hum?

A. I didn't know.
Q. Who closed up?
A. Mr. Yeatts.
Q. How did you get your pay check?
A. I guess it was sent down from Mr. Daniel's office.
Q. When was the next time you heard from Mr. Reil?
A. About two weeks later.
Q. About two weeks after that?
A. Yes.
Q. Did you remain in the employment of the store?
A. Yes, sir.
Q. During that period of time?
A. Yes.
Q. And you had no communication from him until about two weeks after this Friday, September the 1st?
A. No, sir.
Q. Did you have any discussion that evening about who would be responsible for the closing of the store, or how it was going to be closed? That is on September the 1st.
A. No, not really.
page 105 } Q. What?
A. No, sir.

Mr. Carter: I believe that's all, if your Honor, please.

RE-DIRECT EXAMINATION

By Mr. Williams:
Q. Mr. Throckmorton, did you in fact get your pay check on September the 1st?
A. Yes, sir.

Mr. Williams: That's all.

WILLIAM E. YEATTS, the next witness called on behalf of the Defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williams:
Q. Would you state your name and employment to the Court and the jury, please?
A. William E. Yeatts, employed at Galen's in Riverside.
Q. Mr. Yeatts, how long have you been employed at Galen's?

William E. Yeatts

A. Since August of '66.
Q. What capacity do you work in now out there?
A. Assistant manager.
Q. Who is the manager now?
A. Mr. D. W. Ray.
page 106 } Q. Now, Mr. Yeatts, who hired you?
A. Galen Reil.
Q. Who did you work under during the time up until September the 1st of this year?
A. Galen Reil.
Q. Now, were you working at Galen's Shoes, Incorporated in July of this year?
A. Yes.
Q. Could you state whether or not you took a vacation, if any, after July of this year?
A. Yes, I had a vacation the second week in August.
Q. How long a period of time, if any, did you take for a vacation?
A. One week.
Q. Could you state whether or not it was a paid vacation or not?
A. Yes, it was.
Q. Could you tell the Court and jury how you were paid, and by whom, and under what circumstances, if any?
A. The check was written by Mr. Reil and I carried it to John Ryan's office and he signed it, countersigned it.
Q. Where is John Ryan's office?
A. In the John W. Daniel office building.
Q. What day of the week did you take it to him?
A. It was on a Tuesday morning.
page 107 } Q. What conversation, if any, did you have with Mr. Ryan about the check?
A. I carried the check and he said, "I guess you're ready to go on vacation."
Q. Mr. Ryan said that?
A. Yes.
Q. So he knew you were taking a vacation?
A. That's right.
Q. You are still working there for Riverside Shopping Center?
A. Yes.
Q. Now, Mr. Yeatts, did Mr. Reil have any conversations with you relative to him taking a vacation?

A. Yes, he mentioned that he was going to take one, or wanted to take one.

Q. When did he mention this to you?

A. Before I took mine. He was supposed to take his the week before I took mine.

Q. And that would be in August?

A. That's right.

Q. Now, could you state whether or not you have ever seen Mr. John Ryan come to Galen's Shoes out at Riverside Shopping Center?

A. Yes, on numerous occasions.

Q. What would he do when he came, if anything?

page 108 } A. He usually . . . He came by to sign checks, pay roll checks and so forth. Normally it was the procedure for he and Mr. Reil to go to the back room and take care of the business.

Q. All right, sir, on September the 1st, 1967, what time did you get to work?

A. Ten o'clock.

Q. Who was there, if anyone?

A. Mr. Reil.

Q. Was there anyone else there?

A. No, Mrs. Reil came in shortly after.

Q. Could you state whether or not you received a pay check that day?

A. Yes, I did.

Q. Who gave it to you?

A. Mrs. Reil gave me the check later in the afternoon.

Q. All right, sir, approximately what was the last time you saw Galen that day?

A. About fifteen or twenty minutes after ten.

Q. What, if anything, did he say to you?

A. He said he had to go downtown to a meeting, and he had to make a deposit at the bank.

Q. Could you state whether or not you saw him any more that day?

A. No, I didn't.

Q. Who closed the store?

page 109 } A. I closed it.

Q. Who opened it Saturday, if anyone?

A. I opened it.

Q. Who worked with you, if anyone?

William E. Yeatts

A. Harrison Throckmorton worked that afternoon and Saturday, and Mrs. Reil worked the rest of that day.

Q. Was the store open Monday?

A. No, Monday was Labor Day.

Q. Who was there Tuesday, if anyone?

A. I was there.

Q. Who else?

A. There was John Ryan. I was the only employee of the store that was there during the day until four o'clock.

Q. Mr. Yeatts, could you state whether or not you knew where Galen Reil went, or where he was going?

A. I had no idea.

Q. What was Mrs. Reil's job there at the store?

A. Bookkeeper, part time sales clerk.

Q. All right, sir, Mr. Carter and Mr. Fuller will ask you some questions. Thank you.

CROSS EXAMINATION

By Mr. Fuller:

Q. Mr. Yeatts, you say that you went to work there in August of 1966?

page 110 } A. That's right.

Q. Were you aware that the store was having some financial difficulty in 1967?

A. Yes, I was.

Q. Do you have any knowledge of the agreement made between Mr. John Daniel and the defendant?

A. No, I had none.

Q. You don't know anything about that agreement?

A. No.

Q. Well, had Mr. John Ryan been countersigning checks before the summer of 1967?

A. No, he had not.

Q. He had not countersigned any checks until sometime in July or August of this year. Is that correct?

A. That's right.

Q. Well, was there anything said to you about the defendant as to why he was then countersigning the checks?

A. Not to my recollection.

Q. But when you took your vacation, you say you took a vacation the second week of August, when you took your vacation you did have to go up and have it countersigned by Mr. Ryan?

William E. Yeatts

A. That's right.

Q. Who did you discuss your vacation with, as
page 111 } to whether or not you would take a vacation?

A. Mr. Reil.

Q. Mr. Reil. You didn't have any discussion with Mr. Ryan about that?

A. No.

Q. He just signed the check?

A. That's right.

Q. That was going to pay you for your week off?

A. That's right.

Q. All right, the check was written by the defendant, Reil, and countersigned by John Ryan. Is that correct?

A. That's right.

Q. And you say that sometime before you took your vacation he had mentioned to you that he would like to take a vacation?

A. He mentioned that he was planning to take one.

Q. When was this conversation?

A. It was the last part of July.

Q. And I believe you also said that he was planning to take it a week before your's?

A. He had planned to take it the week before mine I believe.

Q. What makes you think that?

A. Well, he said that that was when he was supposed to take his.

Q. He didn't take it did he?

A. No, he didn't.

page 112 } Q. Did he give you any reason for not taking it?

A. Business reasons. There was too much to be done at the store and he couldn't take off at that time.

Q. He told you that?

A. That's right.

Q. Now, you were working on Friday, September the 1st. Is that correct?

A. That's right.

Q. And Mr. Reil was there during the morning. Is that correct?

A. Yes, he was there for awhile.

Q. And what time did he leave? Do you know?

A. Approximately fifteen or twenty minutes after ten.

Q. And did you ever see him any more that day?

A. No, I did not.

William E. Yeatts

Q. Did he tell you where he was going?

A. He said he was going down town to a meeting and he was going to the bank and make a deposit.

Q. Did you expect him back that day?

A. Yes, I did.

Q. And he didn't come back?

A. No.

Q. He didn't come back the next day?

A. No.

page 113 } Q. He didn't come back at all, did he?

A. No.

Q. And you had no knowledge of where he was gone or anything about it?

A. No.

Q. Was there any discussion as to what to do that night, on Friday night when he didn't return?

A. Was there any discussion?

Q. Yeah.

A. Between who?

Q. The employees there.

A. Well, I had . . . his keys were in the cash register, so we just normally locked the doors and made the night deposit.

Q. You still had no word from him and didn't know where he was?

A. No.

Q. He just told you he was going to go down town and go to the bank, and you were expecting him back?

A. That's right.

Q. And this was on September the 1st. Had he said anything to you at that time about taking a vacation?

A. At that particular time?

Q. Yes.

A. No.

page 114 } Q. Well, when you take vacations . . . When did you take your vacation, the second week in August? How did you take it, from Wednesday to Wednesday, or how?

A. I took mine, I worked until four o'clock on Monday and I took off until the following Monday morning.

Q. I see. You worked on Monday, and you came back on Monday?

A. That's right.

Q. But on this particular Friday he came down there and then he didn't come back?

A. That's right.
Q. And he said nothing to you about going on a vacation?
A. No, not at this particular time.
Q. And you don't know from whom you got your check?
A. My pay check at that time?
Q. Yes.
A. I got it from Mrs. Reil.
Q. From Mrs. Reil?
A. Yes.

Mr. Fuller: That's all.

RE-DIRECT EXAMINATION

By Mr. Williams:

Q. Mr. Yeatts, I believe you told Mr. Fuller that Mr. Reil had told you back the last of July that he was going to take a vacation?

page 115 } A. That's right.

Q. And he had planned on taking it the first of August?

A. Around the first of August, yes.

Q. And what did he tell you around the first of August about not taking one or why he didn't take one?

A. Well, the business needed him there at that present time and he couldn't afford to take a vacation at that particular time on account of the business.

Q. Mr. Yeatts, you worked from August of '66 with this man, did you not?

A. Yes, I did.

Q. Could you state whether or not he worked regularly?

A. Yes, he did.

Q. He was right there with you all the time?

A. That's right.

Q. Would he be there when you would get there?

A. He was most always there when I got there. Occasionally we would try to take maybe, one of us would take a morning off and come in at one and the other would come in at ten, and maybe a day or two later the other would take a morning off or an evening off.

Q. Mr. Yeatts, who did you look to for the control of the business, the hours of working and so forth?

page 116 } A. Mr. Reil.

William E. Yeatts

Q. Who did you talk with when you decided to take a vacation?

A. I talked to Mr. Reil.

Q. And I believe you testified, too, that you took your check up to Mr. Ryan to get it countersigned to go on vacation?

A. That's right.

Q. What did he say to you?

Mr. Fuller: If your Honor, please, he's just trying to repeat testimony that's already been introduced. It's repetitious. He's already testified to all of this.

Judge Craig: Yes, I think it is. I'll let him answer it though.

A. He said something to the effect that, or mentioned that I was ready to take my vacation, and I said, "yes."

Mr. Williams: All right, sir, that's all I care to ask.

RE-CROSS EXAMINATION

By Mr. Fuller:

Q. This was just another check to you as far as Mr. Ryan was concerned, just to countersign. Is that correct?

A. Well, it was a pay roll check, and normally we got our pay roll checks on Friday and this was on Tuesday.

Q. That's why you had to go up to Mr. Ryan's office?

A. That's right.

page 117 } Q. Mr. Yeatts, you said that he talked to you about a vacation sometime toward the end of August. Was he just talking about one week?

A. He didn't say how much time.

Q. I thought you said he was planning to take the week before yours.

A. He was planning to take a week.

Q. I thought you said the week before yours.

A. Yes.

Q. You took the second week in August?

A. That's right.

Q. He was talking about the first week in August?

A. He was planning to take a week before mine.

Q. A week?

A. Yes.

Q. He never made mention of anything more than a week?

A. That's right.

Mr. Fuller: All right.

GALEN RANDOLPH REIL, THE DEFENDANT, and a witness in his own behalf, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williams:

Q. Would you state your name to the Court, please?

page 118 } A. Galen Reil.

Q. Mr. Reil, how old are you?

A. Thirty-two.

Q. Where are you living now?

A. Richmond.

Q. What do you do for a living?

A. I am working at a shoe store.

Q. In Richmond?

A. Yes, sir.

Q. How long have you worked there?

A. This would be the end of my fifth week.

Q. Mr. Reil, when did you first come to Danville, Virginia?

A. The middle of March, '63.

Q. Where did you come from?

A. Farmville.

Q. Sir?

A. Farmville.

Q. What did you do there?

A. I was manager of a department store.

Q. How long have you been in the retail business?

A. Approximately fifteen years.

Q. Now, who brought you to Danville?

A. I came to Danville to open a shoe store with Mr. Daniel.

page 119 } Q. Now, this would be what shoe store?

A. Galen's Shoes.

Q. This bears your first name, of course?

A. That is correct.

Q. Now, when did you first come to Danville and when did you first open the store?

A. The store was opened April the 3rd, 1963.

Galen Randolph Reil

Q. All right, sir, what was your weekly wage at that time?
A. It was $115.00.
Q. Was that gross, or what?
A. That was gross.
Q. Now, could you state whether or not you took a vacation in 1963?
A. I did not take a vacation in 1963.
Q. Who was the manager of the store at this particular time?
A. I was.
Q. Who hired and fired, and so forth?
A. I did.
Q. Who ordered the merchandise?
A. I did.
Q. Who kept your books?
A. When we first opened I did part of it, my wife did the rest of it.
Q. All right, sir, moving on to 1964, did you take a vacation then?
A. I took a week's vacation in 1964.
page 120 } Q. Were you paid?
A. Yes, I was.
Q. In 1965 what, if anything, did you do in reference to vacation?
A. I took another week in 1965.
Q. Would you state whether or not that was a paid vacation?
A. That was paid.
Q. When did your income go up, or your weekly wage increase?
A. Spring of '65.
Q. When you first formed this corporation, what amount of stock, if any, did you have in it?
A. I had forty-five per cent; Mr. Daniel and his company have forty-five percent; ten percent was left untouched in the beginning. Shortly thereafter Harrison Throckmorton acquired the ten per cent.
Q. Now, could you state whether or not you actually paid for the stock, or what arrangement, if any, did you have?
A. No, my stock was not paid for. It was to be paid for out of the profits of the store.
Q. Would you state whether or not the store showed profits at any time?
A. Not after the first year.

Galen Randolph Reil

Q. How many employees did you have in the store, Mr. Reil, besides yourself and your wife?

A. At which time?

page 121 } Q. '65 we're at now.

A. '65? One other at Riverside, and two at Southern.

Q. When did Southern open up?

A. May of 1965.

Q. And who opened that up?

A. Harrison Throckmorton.

Q. What interest, if any, did you have in that?

A. There was no stock issued; however, my part would have again been forty-five per cent.

Q. What was the set up over there, Mr. Reil, at Southern? What part did you play in it, and what, if anything, did you do relative to it?

A. I operated the department completely with having a manager in it. I did most of the buying. I did all of the advertising, much of the book work, and wrote all of the checks for it.

Q. Now, during this time did you do the same thing for Galen's in the Riverside Shopping Center?

A. Yes, I did with the exception of at that time my wife had become full time, so she did all of the book work with the exception of what little I would do once in awhile.

Q. All right, in the year of 1966 what vacation, if any, did you take?

A. I did not take any vacation in 1966.

Q. Why, Mr. Reil?

page 122 } A. There would have been several reasons. In the spring of '66 I was forced to let Harrison go from our shoe department at Southern. Consequently, I had to put someone over there without much experience. I had to pull someone out of the store in Riverside. The person that I replaced them with I was not confident enough in them that I could go away and take a vacation. So, I just did not take one.

Q. What hours did you work, Mr. Reil, in '66?

A. Ten to nine ninety per cent of the time.

Q. What was your income at this time, weekly wage?

A. $130.00.

Q. Is that gross or net?

A. That is gross.

Galen Randolph Reil

Q. Now, what was the condition of Galen's Shoes, Incorporated in 1966, financial condition?

A. The first part of '66 fairly sound, but then due to inventory problems and several things we began to have quite a few financial problems.

Q. Now, when did Mr. Daniel assume a hundred per cent control of the business?

A. The exact date I don't remember, but I assigned my stock shortly after the first of August.

Q. What discussion, if any, did you have with
page 123 } him relative to the business in '67?

A. We discussed most of the things that were on the letter of agreement that I signed with him.

Q. This is the agreement is it not?

A. That is.

Q. Did you have an oral conversation with him relative to that before it was typed up?

A. Yes.

Q. What, if anything, was said about vacation?

A. Nothing.

Q. Now, what did Mr. Daniel want you to do relative to the business, if anything, in July of '67?

A. He would have wanted me to work very closely with the others involved in it and put the store back to the point that it would become profitable.

Q. Now, who was working for you at this time?

A. At Riverside at this time would have been Harrison part time, Mrs. Minnie Carr part time, my wife and a Mrs. Lillian Yeatts.

Q. What about William Yeatts?

A. Bill Yeatts was at Southern at this particular time. I did not bring him back to Riverside until the latter part of July.

Q. When Mr. Ryan was appointed supervisor, or whatever you may say, who was working at your Riverside store?

page 124 } A. All of those I just mentioned except Mrs. Yeatts. She was then at Southern and Bill Yeatts was at Riverside.

Q. Mr. Reil, why didn't you comply with the first stipulation or regulation there in that agreement about Throckmorton?

A. The first stipulation is that Harrison Throckmorton out within thirty days. I knew that . . . For two reasons. I

Galen Randolph Reil

actually had planned on taking a vacation. I knew I could not take a vacation if Harrison were gone. I would not have enough people at the store to go away. I also did not want to leave as I did shortly thereafter without leaving the store well-manned.

Q. Did you have any conversations with Mr. Ryan relative to Throckmorton?

A. For three straight Wednesdays prior to September the 1st, one of the first questions that was asked me at our meeting on Wednesday morning was what was the situation on Harrison.

Q. How often did Mr. Ryan come by?

A. We had a meeting set up to our both . . . mutual agreement that it would be at eight-thirty on Wednesday mornings. And he came by several times in between those times. When I needed something I called him and asked him to come by or either I went by his office.

Q. What conversation, if any, did you have with Mr. Ryan relative to vacations?

page 125 } A. The reason I gave Mr. Ryan as to why I had not complied with the first stipulation in this letter was that I could not let Harrison Throckmorton go and take a vacation; that once I had taken my vacation I would do this because I knew if I told Harrison that I had a letter which stated that he was to be gone within thirty days, the minute I told him he would leave.

Q. All right, Mr. Reil, now directing your attention to the week accumulating to September the 1st. Could you state whether or not you saw Mr. Ryan on any day of that week?

A. I saw Mr. Ryan shortly after eight-thirty on Wednesday morning.

Q. What, if anything, was discussed or done?

A. About the only things that were discussed that morning was, again the first question was, what was the status on Harrison. Again I told him . . . At that time I told him the following week I was planning on taking a vacation, when I came back I would have Harrison removed then.

Q. All right, sir, what did he say, if anything?

A. He said that was agreeable with him.

Q. Now, did you see him any other time that week?

A. Again Thursday night.

Q. All right, what did he come by and do, if anything, then?

Galen Randolph Reil

A. He came by to sign pay roll checks since he would not be able to come by Friday morning.

page 126 } Q. Where was this check book kept, Mr. Reil?

A. At the store. Both that check book and the one from Southern were both kept at the store.

Q. The one from Southern and this one?

A. Yes.

Q. How were the checks handled for the one at Southern?

A. In what respect?

Q. Who had to sign those?

A. I had to sign them and at this time, Mr. John Ryan; and also Mr. Daniel could sign them.

Q. All right, when Mr. Ryan came by on Thursday night how long did he stay?

A. No more than fifteen minutes.

Q. What conversation, if any, did you have with him?

A. There would not have been but two things discussed at all. One was going over the pay roll checks and having him sign them. The second was that we sat in the back and discussed for a couple of minutes what we could think of as far as the trial that he was in the middle of at that time. Nothing else was discussed pertaining to the store.

Q. How many checks did he countersign in blank that night?

A. Eight.

Q. Now, why did you get the extra checks signed, Mr. Reil?

page 127 } A. I had two extra checks signed for Riverside at that time. One was to pay a telephone bill which I left laying on the desk. The second was to pay a newspaper advertising bill.

A. Is that what you told him?

A. That's what I told him.

Q. Now, who filled the checks out and the stubs?

A. I did.

Q. Now this is check number 2069 with all of these marked as an exhibit. Did you fill these out?

A. Yes, I did.

Q. Is that your signature on each one?

A. That is.

Q. Now check number 2069 for $112.21, what does that represent?

A. That represents my net pay for the week ending September 2nd.

Galen Randolph Reil

Q. That's your net pay?

A. Yes.

Q. After you had made deductions of what from your gross amount?

A. From the gross amount of $130.00.

Q. What did you deduct?

A. Social Security, withholding tax, and state tax.

Q. Well, Mr. Reil, what time did you fill in these checks, what day and what time?

A. September the 1st between nine and nine-thirty.

page 128 } Q. What did you do with your pay roll check, the $112.21?

A. I cashed it shortly thereafter when I was in the process of making the daily deposit for the store.

Q. This is another exhibit marked six. What is this, Mr. Reil?

A. This is a copy of the deposit slip I made out on the 1st of September for the day's receipts of the store for August the 31st.

Q. You made that out?

A. Yes, I did.

Q. And you say you cashed your pay roll check out of the . . .

A. Out of the money in this. Yes, sir.

Q. All right, sir, going to check number 2073, who filled that one out?

A. I did.

Q. And you filled it out for what purpose?

A. I filled it out for the purpose of knowing that I was leaving and that I felt that I had two weeks vacation pay coming to me for the year 1966 and 1967.

Q. All right, how did you arrive at the amount of money that you filled it out for?

A. I arrived at the amount of money by computing my two weeks salary and minus social security taxes. I did not deduct withholding taxes because I knew at that time that what my financial situation would be for the rest of

page 129 } the year income tax-wise, I would not have to pay any income tax.

Q. Mr. Reil, when you left on September the 1st, left the store, let's trace your steps. Where did you go?

A. I started going south headed for Orlando, Florida.

Galen Randolph Reil

Q. Where did you go after you left the store is what I mean. Did you go to the bank or where?

A. I went to the bank. I made the deposit for the store and cashed a check.

Q. And then you left for where?

A. Then I went to my home, put things in my car. I went from there to Lois Dalton's home, picked up some things at her home and put in my car. She got in her car and I got in my car and we went from there heading south.

Q. Now there's a deposit slip of $100.00 over there Mr. Reil. I may introduce it as an exhibit. Is this your writing too?

A. This is my writing.

Q. And what account was this put in?

A. This was put in a joint checking account I had with my wife.

Q. Where did the $100.00 come from?

A. It came from the money from which I cashed the check there, the $112.00 check that I cashed in the store.

Q. What did you do with the sixth check? That would be 2074 I presume.

page 130 } A. I left that in the store. I did not fill it out for the telephone bill, but I left it in the check book.

Q. Well, Mr. Reil, could you state whether or not you had taken any vacation in the year 1967?

A. No, I had not taken a vacation in 1967.

Q. Could you state whether or not you had taken off any week-ends or days?

A. I had taken off a couple of days throughout the whole year, which is normal. Anyone who worked at the store occasionally throughout the whole year would have a need off of a day to do something. Anyone who wanted it, it was no problem as far as I was concerned. I would let them have it. And I also did the same thing for myself.

Q. Could you state whether or not you knew there was a balance in the checking account of Galen's Shoes, Incorporated?

A. I knew there was a balance in both checking accounts which exceeded $1,000.00. The exact amount I did not know.

Q. $1,000.00 total?

A. In both checking accounts.

Galen Randolph Reil

Judge Craig: Do you mean that there was over $2,000.00 in the two accounts?

A. Yes, there were two separate checking accounts.

Q. All right, sir, when were you first apprised,
page 131 } or when did you learn of this charge against you?
Where were you?

A. We left on a Friday. The following Thursday I called Mr. Williams from Orlando, Florida, and this was the first thing he told me on the telephone.

Q. You called me?

A. I called you.

Q. All right, sir, what did you do then?

A. I then went to where Lois was and told her of what I had learned over the telephone, and that I would have no choice but to come back.

Q. All right, what did you do when you got back?

A. I came back, when we drove into town I stopped and sat out along the highway for a couple of minutes to see that Lois had pulled into a motel and had gotten a room. I then came down town and turned myself in.

Q. All right, Mr. Reil, what happened to the $250.00 that you had written a check for, if anything?

A. It was used for going from here to Orlando, Florida, for the two rooms that we each had every night going down and coming back.

Q. What other money, if any, did you have?

A. I would have had that plus approximately $150.00 to $160.00 over and above this.

Q. Going back to that morning of Friday, Mr.
page 132 } Reil, what time did you get to work?

A. Shortly after eight-thirty, twenty minutes to nine.

Q. What, if anything, did you do around the store that morning?

A. Well, one of the first things that was done when we walked in the store in the morning was to do a little sweeping around in the front. This I did, got out of the way very quickly, and then went and fixed out the checks, and from there to fix out the deposit for the store. And, of course, in between this time I also called Lois on the telephone and talked to her for a couple of minutes on the telephone.

Q. Galen, at what point, or can you state whether or not at what point, you decided to write the check?

Galen Randolph Reil

A. Late Thursday night. I decided that . . . in fact the thought just occurred to me to the point that I had not taken a vacation for the past two years, of what I was getting ready to do. It would certainly have been necessary to have had some money. So I felt like I was entitled to two weeks pay for the past two years. So for that reason I wrote them.

Q. Why didn't you mark it in the check book?

A. Because of the circumstances surrounding what was happening that morning. There were a million and one things running through my mind. I certainly had every intention of writing it in the book. I thought I had. I did not

page 133 } know that it was not in the book nor on the check until I came back here and saw that it was not.

Q. You say that you are living in Richmond now?

A. Yes, I am.

Q. Where is your family now, your wife and children?

A. My family is here. In fact, I have not seen them in several weeks.

Q. During 1967 . . . Let me rephrase that. After July 21st, I believe it was, did anyone in the store take a vacation?

A. Yes.

Q. Who took it, and for how long?

A. My wife took a vacation the first week of August as a paid employee. William Yeatts took a vacation the second week in August. And Harrison Throckmorton also took a vacation the first week in August.

Q. Were any of these people paid?

A. My wife, of course, received her full salary. William Yeatts received his full salary. Harrison, being a part time employee, he was paid an hourly rate. When I made his check up prior to his leaving on the Saturday before he was to leave, I added a few hours to his pay check to compensate in some small way for part of a vacation pay.

Q. And who countersigned all of these checks?

A. John Ryan.

page 134 } Q. Galen, do you recall a conversation with Mr. Daniel around the first of '67 about vacations or anything of that nature?

A. There has never been anything discussed vacation wise from the beginning of the corporation through this day. Everything pertaining to vacations, pertaining to employees, their work routines, everything was left entirely up to me. I had to answer to no one for that.

Q. What restrictions were placed on you other than those of the letter?

Galen Randolph Reil

A. There were no restrictions placed on me other than what is in this letter. There was absolutely nothing discussed at this time as to what I was to do as far as my employees were concerned.

Mr. Williams: All right, sir. You may examine.

CROSS EXAMINATION

By Mr. Fuller:

Q. Mr. Reil, you testified that you didn't get a vacation in 1966 or 1967, and so you decided to take them both together?

A. That's correct.

Q. You decided to pay yourself for a 1966 vacation in lieu of the fact that you had signed a rather rigid agreement with Mr. Daniel in July of 1967, at which time everything that went on was going to be discussed between the two of you? You no longer had a right to countersign checks either . . . I mean he had to countersign every check

page 135 } you wrote. Isn't that true?

A. Well, I had always had someone countersigning the checks.

Q. But you were no longer given the authority that you had had the year before. Isn't that true?

A. In some respects.

Q. Well, in the respects spelled out in that letter. You were even told that you couldn't belong to but one civic club, were you not?

A. That's correct.

Q. Well, that's right rigid, isn't it?

A. Yes, it is.

Q. Because as a matter of fact when the two of you discussed this thing in 1967, this summer, the place was in bad financial condition and you were in some respects you might say in jeopardy of your job. Isn't that true? He gave you another chance didn't he?

A. That's not worded just exactly right.

Q. Well, you tell me how you want to word it then. Tell the jury.

Mr. Williams: If your Honor, please, let Mr. Fuller ask him a question . . .

Mr. Fuller: I've asked him a question.

Galen Randolph Reil

Mr. Williams: It's such a long dissertation that I miss what he is trying to answer.

Judge Craig: I think the witness ought to an-
page 136 } swer the question if he can, Mr. Williams. If he can't answer it yes or no, perhaps he could give Mr. Fuller an explanation as to what the circumstances were. I think it's proper cross examination. Go ahead, sir.

Q. Weren't you . . . Wasn't your job in jeopardy when Mr. Daniel and you got together and discussed this thing?

A. In a certain way I guess it was, yes.

Q. He retained you under this agreement. Is that correct?

A. That is correct.

Q. It spells out things that you've got to do to stay in the job. Isn't that true?

A. Yes.

Q. It also indicates that no business can be transacted without John Ryan's countersigning the checks. Isn't that true?

A. Yes.

Q. Mr. Daniel testified that when you got together and the situation was so bad financially that it was just agreed upon that . . . Well, Riverside then became the one hundred per cent stockholder. Isn't that correct?

A. That is correct.

Q. Because you hadn't paid for your stock in the first place?

A. That's correct.

Q. And neither had Throckmorton. None of
page 137 } you had paid for your stock?

A. That is correct.

Q. So you were no longer a stockholder. You were working for Riverside?

A. Correct.

Q. Now, when you reached this agreement as to how the business was to be operated, you knew that you could no longer sign checks and just conduct the business as you had done before. That's also correct, is it not, without getting their approval?

A. To a certain point.

Q. You were told that you had to release one of the employees within thirty days?

A. That's correct.

Q. That's part of the agreement. You were also told that you were going to have to restrict your activities as far as civic clubs were concerned. Isn't that true?

Galen Randolph Reil

A. That's correct.

Q. All right. Now, when you were discussing this matter and going over the agreement, did you not tell Mr. Daniel that you just wanted another chance to get this business on its feet, and you didn't even want to take a vacation?

A. No.

Q. You didn't say that. What he said about the

page 138 } vacation was incorrect?

A. I have not said that.

Q. And he was incorrect then?

A. Yes.

Q. All right. Now, Mr. Reil, in lieu of the fact that you had signed this agreement that we have referred to, and it's a part of the evidence in this case, and in lieu of the fact that . . . Of course, all your employees that took vacations, and you said that both your wife and this fellow Yeatts took a vacation the first week of August. Is that correct?

A. No, that's not correct.

Q. When did they take their vacations?

A. Bill Yeatts took one the second week of August.

Q. And she took one the first week of August?

A. Yes, sir.

Q. Well, they had to get your approval and then checks had to be countersigned?

A. Correct.

Q. And they were vacations for 1967?

A. Correct.

Q. Well, in lieu of this strict, rigid agreement whereupon you were no longer a stockholder but just working for someone else, you still felt that when you left on Fri-

page 139 } day, September the 1st that you could go back and take $130.00 for 1966 as part of your vacation money?

A. Yes.

Q. You felt that you could take $130.00 for 1966 in lieu of this agreement, and also $130.00 for 1967 without telling a single sole that you were going to leave on vacation?

A. Under the circumstances I felt it would have been impossible to have told someone.

Q. So you just didn't tell anybody. Well, under the circumstances in which you left that is true, but you have acknowledged that you wrote, filled out the stubs on all of these. Is that correct?

A. That is correct.

Galen Randolph Reil

Q. But you left this one blank?
A. Yes.
Q. You forgot it?
A. I forgot.
Q. You forgot. The $250.00 check and you forgot it. Is that true?
A. I won't say I forgot. At that point the many things that I had running through my mind, I am quite surprised that I got the check typed out correctly.
Q. You told us a little earlier that you forgot. Did you change that now?

page 140 } A. You could use all of it in it, both forgetting, and overlooking, and thinking about everything else.

Q. So you just think you forgot. Well, now what about the checks that you asked Mr. Ryan to countersign for the bills?
A. Up until the time that I walked out of the store knowing that I would not come back, I thought of things that had to be done within the store. I asked him that night to countersign two checks for me, one for a telephone bill, one for a newspaper advertising bill that this would have been September the 1st and I wanted it paid and charged for the month of August, so it would have had to have been dated August the 31st. So I needed two checks for that.
Q. You didn't write either one of them?
A. No, I did not.
Q. So, actually you got him to countersign checks 2073 and 2074 for these bills, and you took 2073 and wrote it to yourself for $250.00 that you claim is vacation money?
A. That is correct.
Q. So you got him to countersign two checks under false pretenses. Is that correct?
A. No, I did not.
Q. You did not?
A. I did not.

page 141 } Q. Well, you're telling us then that when he did sign those two checks that you intended to write bills?

A. I certainly did.
Q. And when did you change your mind?
A. Late Thursday night.
Q. Late Thursday night?
A. Late Thursday night.
Q. You decided that you would no longer use those two

checks for bills, but you would use one for your vacation pay?

A. I don't say I decided no longer to use them to pay bills. At that time I decided that I felt like I was due a vacation pay for two years.

Q. I see. But actually you had not represented that to Mr. Ryan, had you?

A. No, I had not.

Q. As a matter of fact when you talked to him on Thursday night there was no mention made of a vacation for you beginning the next day. Is that true?

A. That is correct.

Q. And also as a matter of fact you decided to leave in the middle of the next day rather than go on and stay through Friday and Saturday and start your vacation on Monday?

A. Due to the circumstances, yes.

Q. Actually you were terminating your employment. Is this correct?

page 142 } A. That is correct.

Q. When you left there you were terminating your employment?

A. Yes.

Q. And no mention was ever made to Mr. Ryan about your being paid for the year before and this year's vacation?

A. That is correct.

Q. And you say that you wrote a check for $250.00 when two weeks' salary would have actually been $260.00 because you were deducting social security?

A. Correct.

Q. But you didn't really deduct the correct amount of social security, did you?

A. I did not look it up.

Q. Well, it was right there in front of you. You had written on the . . .

A. I had written . . . Those checks I had already written and . . .

Q. Well, doesn't $5.72 represent social security?

A. That is correct.

Q. So that would . . .

A. That was not put on the check stub at that time.

Q. So, it would have been about $248.00 and some cents if you had done it correctly. Right?

A. If I had looked it up and picked up those figures, yes.

Q. If you had looked it up. Well, all you had to

page 143 } do was turn a page wasn't it?

Galen Randolph Reil

A. No, it was not because that was not filled in the check book at that time.

Q. It wasn't filled in?

A. Those figures were not put in there until later. They were picked up out of a pay roll book.

Q. When was that done?

A. I don't know.

Q. You did it didn't you?

A. I did not.

Q. You didn't fill this in?

A. I did not fill in this part. That is not my writing, no.

Q. You did not fill in this part. You didn't bother to check how much social security really was?

A. The figure ran through my mind that it was approximately $5.00 a week that came out of my salary.

Q. And, in effect it was $5.72?

A. Correct.

Q. And you didn't deduct any federal income tax?

A. No, I did not.

Q. You were going to let the Company suffer that consequence. Is that correct?

A. No.

page 144 } Q. Don't they have to withhold your taxes? You were an employee at the time.

A. There would have been no tax paid.

Q. They would have had to report it would they not?

A. They would have had to have reported my income, yes.

Q. Well, you didn't report it on the stub or in your deduction. Did not you write this check over here for $112.21?

A. Yes, I did.

Q. Well, why did you deduct it for your last week's work and not your vacation pay for the following week?

A. What deduction are you speaking of?

Q. I'm speaking of your federal deduction. You have a check here for $112.21 and which it's all deducted. That was $130.00 to begin with, $5.75 for social security, then $10.30 and $1.77. That was the check that you cashed out of your drawer wasn't it?

A. Correct.

Q. All right, why when you turned over here on the next page, and you were talking about vacation pay for the week coming up in September, why did you think you had to deduct it for the last week in August and not the first week in September?

Galen Randolph Reil

A. Because I knew I was leaving and would not be back, and I knew that financial wise, income tax wise, for this taxable year I would not have to pay it, that I would get a refund.

page 145 } Q. Don't they have to report these things? It wasn't your money was it?

A. Yes, it was.

Q. It was your money? Mr. Ryan gave you check number five for you to write a check for yourself for $250.00?

A. What I took I felt like it was my money.

Q. You took because you felt like it was yours. Mr. Reil, did you indicate to anyone in the store that you were going to take your vacation and would not be back Friday night?

A. No, I did not.

Q. Did you leave orders for anyone to lock up?

A. No, I did not.

Q. Did you make any arrangements for the cash receipts to be deposited that night?

A. I made no arrangements along that, but I knew that it would all be done because I had left enough people within the store to do it.

Q. Who did you leave in charge to schedule the employee work hours the following week?

A. No one.

Q. No one.

A. I knew that would be done also.

Q. And you just don't remember why you didn't

page 146 } fill out the check stub for check 2073?

A. With everything I had on my mind that morning, I'm surprised that I even got names filled in on some of the checks.

Q. But you also admit that your last pay roll check for $112.21, that there were deductions from $130.00 to make up that $112.21?

A. Because I went through the pay roll book and entered all of them in it.

Q. I see.

A. So, when making up the check I then came through and picked up the next . . .

Q. But check number five which involved not only 1967, but 1966 as well, you were going to take money from the company then and not enter any deductions on that?

A. I could not enter it into the pay roll book, so the figures

ran through my mind of approximately $5.00 per week that came out of my salary for social security.

Q. And you just arbitrarily decided to leave off the federal income tax?

A. That is correct.

Q. For your vacation of 1966 and this of 1967?

A. Yes.

Q. And you did that even though that on the other check, the first check, deductions were put down?

A. That is correct.

page 147 } Q. So that was a legitimate check wasn't it? The $112.00 one.

A. They both were.

Q. That was for your week's work. They both were? Well, in lieu of that arrangement right there whereby you were supposed to indicate everything you were going to be doing with your money, and that the first four checks were for pay roll for you, your wife, for Yeatts, and one of them is missing for Throckmorton, in lieu of that and in lieu of the fact that you told John Ryan that five and six were to be used to pay bills, you say that was a legitimate check when you used it for something else?

A. If I had not felt like I had it coming to me, I would not have taken it.

Q. Anything you feel is all right then in lieu of the agreement?

A. No.

Q. Did you feel that in lieu of that agreement it was all right for you to arbitrarily take two years vacation pay?

A. I had given of myself to the store for two years without having a vacation. Everyone else around me had had a vacation.

Q. They had given you a break in letting you stay there, had they not?

A. That's not worded correctly.

Q. It's not? So, actually, what you did in effect . . . Well, don't you remember the Thursday night that Mr. Ryan went out there and asked you what you had done about

page 148 } this employee that he had asked you to . . .

A. Mr. Ryan said nothing about that on Thursday night.

Q. He did not?

A. He did not.

Q. You deny that you told him that you were going to be

gone for a couple of days next week and that as soon as you returned you would dispose of this man?

A. Yes. I told Mr. Ryan on Wednesday morning that I was going to take a vacation the following week and when I came back Harrison would be gone.

Q. You told Mr. Ryan that you were going to take a vacation the week that you took it?

A. Yes.

Q. I see. And you told nobody in the store?

A. No. I could not.

Q. You could not?

A. From the circumstances surrounding as to why I left.

Q. Well, why couldn't you tell them you were going to take a vacation the following week if you told Mr. Ryan?

A. I may have casually mentioned it to someone that I was going to, yes.

Q. Well, you heard them testify that you didn't. They were your witnesses.

page 149 } A. The things that I said, many of the things that I said prior to that week I cannot remember.

Q. All you did was write this check that you told Mr. Ryan you were going to write for bills . . . That's all you did was to write that check, go to the bank and leave and not tell a *sole*. Is that correct?

A. That is correct.

Q. With no intention of ever coming back there to work?

A. Yes.

Q. Did you leave a note?

A. No.

Q. To anyone?

A. Yes.

Q. To whom?

A. To my wife.

Q. To your wife.

Mr. Williams: I would object to this, Mr. Fuller.

Judge Craig: I think it's got some probative value.

Mr. Williams: I would except to that.

Judge Craig: All right, sir.

Q. Is this the letter that you left your wife?

A. Yes, it is.

Q. Would you read it to the jury? Do you want me to read it?

Galen Randolph Reil

page 150 } A. I'd like to know . . .

Mr. Williams: Wait a minute, Mr. Fuller. I resent his attitude, jerking that out of this boy's hand. He's on trial, Judge, and he's noticeably upset.

Judge Craig: Yes, sir, all I'm interested in finding out, Mr. Williams, is whether or not the defendant admits that this is a correct copy of the letter he wrote. He doesn't have to read it if he desires not to. I'll allow Mr. Fuller to read it or the Court will read it.

Mr. Williams: He jerked it out of his hand so he couldn't look at it. Let me have it, Mr. Fuller.

Judge Craig: Let him make sure that it is a true copy. You don't have to read it if you would rather not, Mr. Reil.

Mr. Fuller: Well, if he's not going to read it . . .

Mr. Williams: Let him look at it, Bill, will you?

Mr. Fuller: He said he didn't want to read it.

Mr. Williams: He's not going to read it, but can't he look at it and see if it's a copy?

Mr. Fuller: I handed it to him and he wouldn't do it.

Judge Craig: Mr. Fuller, just sit down. He can see it and tell you whether it is or is not a true copy.

Mr. Fuller: If your Honor, please, I want this read into the record, and I don't think I should read it.

page 151 } Judge Craig: I'll read it. Gentlemen, the Court has ruled and there has been an exception on behalf of the defendant, that this is admissible not to show any relationship of the defendant and his wife, but solely as it may have some bearing and some probative value for the jury as to what the defendant's intent and motive was when he left, and in connection with this vacation pay that he has stated the $250.00 check represented. And I ask you to consider it solely for that purpose and not for any other. "Rosie, When you read this I will be many miles away from here. I am truly sorry for it to end like this. However I can not help it. I have tried for several years to make things different and could not. I have found someone with whom I know I will be happy. I don't want to hurt you and the boys, but there is no other way. I love the boys more than you or anyone will ever know. Please take good care of them so they will become a man of which we both will be proud of. I have no idea where we will wind up. Our punishment from the Lord above may be such that you will never see us again. Contact Ronald Williams as we have worked things out with

him." Signed, "Galen R. Reil." All right, we will introduce . . .

Mr. Williams: If your Honor, please, I would like to have a recess for Galen to compose himself.

page 152

Judge Craig: All right. Gentlemen, we will take about a ten minute recess here. Please don't discuss the case among yourselves or with anyone.

Judge Craig: Let the record show that we are still in the absence of the jury, and the defendant is present with his counsel and counsel for the Commonwealth. The Court has reconsidered, at least to some extent, the restrictions on the evidence that were previously stated by the Court; and the Court will allow the defendant through his attorney, Mr. Williams, to show any circumstance which may have any bearing upon the motive, or interest, or bias of the witness, John W. Daniel, in this case as far as why he took the warrant out and the circumstances under which it was taken out. The Court feels that this may possibly have some bearing upon the credit that the jury may decide to give to Mr. Daniel's testimony. For that reason the Court is inclined to allow it. And also the Court will allow Mr. Williams some leeway now in explaining the circumstances under which the defendant left Danville and the circumstances under which he came back, although I think that we should avoid very carefully any mention of any charges that may have been placed originally against Mrs. Dalton. All right, sir.

page 153

Mr. Fuller: If your Honor, please, the Commonwealth would except to the Court's ruling for this reason: Mr. Daniel has testified nothing of any probative value in this case. He has testified that there was a business relationship between them; he doesn't know anything at all about these checks; he can't in any way prove the Commonwealth's case as far as embezzlement is concerned; and, therefore, we submit that the Court's ruling at first was proper; that Mr. Williams opened it up when they brought out from the stand that the defendant left with a certain young lady and went to Orlando; and then the Commonwealth had a right to come in and show the intent involved. And we feel that to go into the other matter is irrelevant and that it should not be admitted into evidence.

Judge Craig: All right, sir, we note your exception. Let's bring the jury back.

GALEN RANDOLPH REIL, who was testifying under

cross examination at the time court was recessed, resumed the stand, and testified as follows:

Judge Craig: All right, gentlemen, I don't believe, Mr. Fuller, you had concluded your cross examination.

page 154 } Mr. Fuller: I have concluded.

RE-DIRECT EXAMINATION

By Mr. Williams:

Q. Galen, there was some mention by Mr. Fuller about your civic clubs in reference to what Mr. Daniel had told you. Could you state whether or not you had to drop many of your civic activities?

A. Yes.

Q. Could you state whether or not you in fact dropped them?

A. At the time I left this had not been done, although the last couple of weeks I was here there was nothing at all done by myself other than to attend a couple of meetings.

Q. Galen, I'm going to ask you point blank, who did you leave with?

A. Lois Dalton.

Q. What relation, if any, was she to Mr. Daniel?

A. Repeat that, please.

Q. What relation, if any, was she to John W. Daniel?

A. His daughter.

Q. How long had you known her?

A. Approximately three years, as a person.

Q. What were the circumstances you were talking about in answering Mr. Fuller, some of his questions?

A. The circumstances was that I was leaving with Lois Dalton, who is John W. Daniel's daughter. For

page 155 } this reason, neither of us certainly could have said anything to anyone as to what we were going to do.

Q. At the time you left could you state whether or not anyone knew where you were going or knew you were going?

A. No.

Q. What arrangements, if any, had you made for your children and for your wife?

Mr. Fuller: If your Honor, please, I don't think this is relevant at all.

Judge Craig: I'll allow it though.

Mr. Fuller: It's just absolutely irrelevant as to what arrangements he made. We're trying this man for embezzlement, not what he may have done, or may not have done, with somebody else.

Judge Craig: The Court's ruled, Mr. Fuller. I'm going to allow it.

Q. Go ahead.

A. I had come to Mr. Ronald Williams around the first of July and told him what was going on, what was happening, what we were planning. And several days before we left I again came back to Mr. Williams, gave him my power of attorney and left money with him with which to take care of my children. Lois came to him also giving him her power of attorney at that time.

page 156 } Q. Mr. Reil, Galen, the date that you left, which, of course, was September the 1st was it not?

A. Yes, it was.

Q. I believe you stated that no one knew that you were leaving then?

A. That is correct.

Q. You had not even told me?

A. I had not even told you.

Q. Now, when did you form the intent to leave?

A. You mean as far as . . .

Q. When did you all decide to leave?

A. Do you mean as far as we decided when to leave on September the 1st?

Q. Yes, sir.

A. The first part of that week was actually when we decided that that day would be the day we would leave.

Q. When did you decide to take the check for vacation?

A. Late Thursday night while I was sitting in my home watching t. v.

Q. And why did you do it? Why did you write the check?

A. Because I felt like for two years I had given of myself to the store. I certainly had a right to it.

Q. Now, Galen, had you had any financial problems of any nature during that year of 1967?

page 157 } A. I have had some financial problems for approximately the past three years, which was due to putting up money a little over three years ago along with Harrison Throckmorton to open up a small restau-

rant in the town of South Boston. I was hand strung by Mr. Daniel to the point that I could not participate in the store, or in the restaurant. I could not do anything. . . .

Mr. Fuller: If your Honor, please, this is irrelevant. I just don't see . . .
Judge Craig: Yes, sir, I think it is.

Q. All right, sir. Now, how soon did you come back after being apprised of the charge against you?
A. The next day we left.
Q. Could you state whether or not she came back with you?
A. She came back with me.
Q. How were you traveling?
A. She was driving her car, I was driving mine.
Q. After you returned to Danville have you talked to Mr. Daniel about this charge, or had any conversation with . . .
A. No, I have not.
Q. I believe I asked you, you're not living with your wife now are you?
A. That is correct.

Mr. Williams: I believe that's all, your Honor.

RE-CROSS EXAMINATION

page 158 } By Mr. Fuller:
Q. Mr. Reil, you say you made arrangements with Mr. Williams here to leave your wife some money?
A. Yes, I did.
Q. If you were in such bad financial shape, where did you get this money?
A. I borrowed it.
Q. You borrowed it. From whom?
A. From a finance company.
Q. Oh, a finance company. Which one?
A. In South Boston.
Q. In South Boston. How much?
A. It was two hundred and sixty some dollars I think was what I got.
Q. You don't remember the exact amount?
A. That is correct.
Q. Tell us something about these inventory problems you say you were having.

Lois Daniel Dalton

A. The inventory problems I was referring to was the fact that the inventory was quite high and we were trying to cut it down.

Q. Who is, "we?"

A. All of us pertaining to the store.

Mr. Fuller: All right, that's all.

page 159 } LOIS DANIEL DALTON, the next witness called on behalf of the Defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williams:

Q. Would you state your name to the Court and jury, please?

A. Lois Daniel Dalton.

Q. You are Mr. John W. Daniel's daughter?

A. Yes.

Q. How long have you known Galen Reil?

A. About three years.

Q. Do you have any business interest over in Riverside Shopping Center, or did you have any prior to November the 1st?

A. A partnership in Riverside Dry Cleaning and Laundry Village.

Q. Now, Mrs. Dalton, on September the 1st, 1967, did you leave town?

A. Yes, I did.

Q. Who did you leave with?

A. I left in my own automobile. Galen and I left together in separate cars.

Q. Where did you go?

Mr. Carter: If your Honor, please, I think all of this has been established by other witnesses. I see no point in putting this lady through this embarrassment.
page 160 } As to what relevancy it has here, there has been no contest as to the testimony of Mr. Reil; and I don't know what Mr. Williams is undertaking to do, but it can be nothing more but embarrassment for this lady.

Judge Craig: I think if we could get to the point, perhaps,

that you want to establish. There has been no question about the fact that the two left together, and, please, if you can . . .

Mr. Williams: All right, sir, I'm certainly not trying to embarrass her. I think the Court knows that.

Judge Craig: I understand, but I think we could get on with it.

Mr. Carter: If your Honor, please, we have not contested the testimony of Mr. Reil. This is just duplicating the testimony that he has already given in this court, and could have no conceivable further bearing on the case.

Judge Craig: At this point I agree with you, Mr. Carter. All right, Mr. Williams, please, if you could, sir, follow something that is pertinent and not, perhaps, merely repetitious.

Q. Mrs. Dalton, did Galen Reil, or can you state whether or not Galen Reil had any money when he left?

A. He had some, yes.

page 161 } Q. Now, when did you first learn of the charge against him?

A. After we had gotten to Florida and he had called you.

Q. All right, what did he do?

Mr. Carter: This has already been testified too, if your Honor, please.

Judge Craig: I'll let her tell it. She may have some different version of what the defendant did.

Mr. Carter: What has what he did got to do with his intent?

Judge Craig: I'm going to allow it, Mr. Carter. Go ahead.

A. He called you and found out that there were charges against both of us, and he said that we both had to return, he would have to return.

Q. Mrs. Dalton, let me ask you this: What, if anything, did you know about the vacation pay or the check that he signed?

A. I did not know anything about it until he said that there was a charge of embezzlement against him, and that he didn't know what it was for unless it was for the $250.00, but it was vacation pay.

Mr. Williams: I have no further questions, Judge.

Mr. Carter: No questions.

Richard Ayscue

RICHARD AYSCUE, the next witness called
page 162 } on behalf of the Defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williams:

Q. You are Mr. Richard Ayscue, are you not?

A. Yes, sir.

Q. Mr. Ayscue, you, of course, know Galen Reil?

A. I do.

Q. How long have you known him?

A. Approximately four to five years.

Q. Could you state whether or not you know other people that know him?

A. I do.

Q. Mr. Ayscue, what is this man's reputation for truth and veracity?

A. As far as I know it is good, Mr. Williams.

Mr. Williams: That's all.

CROSS EXAMINATION

By Mr. Fuller:

Q. What do you know about this man's reputation for truth and veracity as far as the community is concerned? Do you know anything about the community in which he lives?

A. I do, sir.

Q. Where do you live in relation to him?

A. I frankly don't know where he lives, but I live . . .

page 163 } Q. You don't know where he lives, so you don't know what the relationship to his veracity would be in the community in which he lives?

A. In the community in which he lives?

Q. Well, in the locality of which he lives?

A. I do not, sir.

Mr. Fuller: All right, sir.

RE-DIRECT EXAMINATION

By Mr. Williams:

Q. Mr. Ayscue, could you state whether or not you have

ever had business relationships with him, or civic relationships with him?

Mr. Fuller: Your Honor, I don't think that's a proper way to determine his truth and veracity.

Mr. Williams: That's what he asked, Judge.

Judge Craig: No, sir, I'll sustain that. I don't think a specific question is proper on the question of reputation.

Mr. Williams: All right, sir.

Q. Mr. Ayscue, I'll ask you again whether or not you know people that know Galen Reil?

A. I do, sir.

Mr. Williams: That's all.

Judge Craig: Perhaps, Mr. Ayscue, what everybody's interested in is whether you know what the man's
page 164 } general reputation is in the City of Danville, in and about the City of Danville and in this general community which would encompass, perhaps, an area of say seventy or eighty thousand people. Do you know what his reputation is within that community? I mean is it good or bad?

Mr. Ayscue: Well, in my . . . As far as I know it is good, sir.

Mr. Fuller: If Your Honor, please, I object to that because it is not a matter of what he knows but what the community knows.

Judge Craig: I thing he's entitled to express an opinion, Mr. Fuller, since he's stated that he knows people who know the defendant, and he knows of the defendant. And I don't know of any other way that he can express an opinion as to the defendant's character except by his general reputation. So, I'll allow the answer.

RE-CROSS EXAMINATION

By Mr. Fuller:

Q. Have you ever heard his general reputation discussed in the community?

A. Professionally I have, yes, sir.

Q. I mean as far as his truth and veracity is concerned?

A. Not specifically, no, sir.

page 165 } Mr. Fuller: All right.

Charles H. Davis

CHARLES H. DAVIS, the next witness called on behalf of the Defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Williams:

Q. Would you state your name and occupation, please, sir?

A. Charles H. Davis. I'm office manager for Laramore Construction Company.

Q. Mr. Davis, do you know or are you acquainted with Galen R. Reil?

A. Yes, I've known Galen four or five years.

Q. Could you state whether or not you know other people in the City of Danville, in this community, that know him also?

A. Yes, I went to church with Galen for several years at West Main Baptist. That's where we both attended. I knew his wife and his children there. I worked with him on the March of Dimes for three to three and a half years.

Q. Mr. Davis, what is his reputation, his general reputation in this community for truth and veracity and being a peaceful, law-abiding citizen?

Mr. Fuller: If your Honor, please, that's not proper.

Judge Craig: I'll sustain it until he's asked the witness whether or not he knows of the reputation of the

page 166 } Defendant in the community.

Mr. Williams: All right, sir.

Q. Mr. Davis, based upon what you have stated, do you have or can you form an opinion as to . . . or do you know this man's general reputation for truth and veracity?

A. Well, I know the three and a half years I worked with him on the March of Dimes he has given countless hours of his time . . .

Mr. Fuller: If your Honor, please, that's not what we're concerned with.

Judge Craig: What we're interested in here is whether or not you, personally, know what this man's reputation is, or know anything about his reputation in the community, not what you know about him, but whether you can state for us whether or not you know his reputation in this community. Do you feel that you are competent to give an opinion as to this man's reputation in the community?

Charles H. Davis

Mr. Davis: Well, the people that I know who have come in contact with Galen both in this particular organization and those that we have worked closely with, and in my dealings with him, I don't know of . . .

Judge Craig: Well, do you feel that because of the people that you have come into contact with, and your dealings and knowledge of this man, that you are in a
page 167 } position to state what his reputation is?

Mr. Davis: Yes, sir.

Judge Craig: All right, now, what is his reputation? Is it good or bad?

Mr. Davis: It is good. I have never heard anything detrimental in that respect.

Judge Craig: All right.

Mr. Williams: Thank you, Judge. That's all.

Mr. Williams: If your Honor, please, we rest.

Judge Craig: Is there any further evidence, Mr. Fuller?

Mr. Fuller: No, sir.

Judge Craig: Gentlemen, we will be at recess for, perhaps, more than a few minutes this time while we discuss instructions. We will be back to you as soon as we can.

Judge Craig: Let the record show that we are in the Judge's office in the absence of the jury, in the presence of the Defendant and his attorney, and the attorneys for the Commonwealth. We have considered the instructions and the Court will give on behalf of the Commonwealth Instructions numbered 2, 6 and 7. The Court will give on behalf
page 168 } of the Defendant Instructions 1, 3, 4, and 5. Are there any exceptions on the part of the Defense to the Instructions, Mr. Williams?

Mr. Williams: No, sir.

Judge Craig: All right, are there any on the part of the Commonwealth?

Mr. Fuller: The Commonwealth excepts to the Court's granting of Instruction number 3 as offered by the Defendant on the grounds that the Defendant, himself, has admitted that the check which he wrote payable to himself for $250.00, which he alleges was for vacation pay, he has admitted that the check was countersigned by Mr. John Ryan for him to write bills for the company in which he worked, and that therefore he could not have had a bonafide belief, or an honest belief, that he had a right to write this check. And

this admission comes from the Defendant, himself, and therefore we object to this Instruction.

Judge Craig: All right. Mr. Fuller, the Court feels that this is the Defendant's sole theory of the case, is that he thought he had a bonafied claim to this money because of this vacation pay, and since this is the Defendant's theory of the case and his sole defense to the charge against him, the Court feels that the Instruction must be given on his behalf under this evidence. We will note an exception on

page 169 } the part of the Commonwealth.

In open Court, with the Jury present and the Defendant present, the Court reads the Instructions granted to the Jury.

Arguments were made by Mr. Fuller on behalf of the Commonwealth, and by Mr. Williams on behalf of the Defendant, to which there were no objections nor exceptions. Mr. Carter made the closing argument on behalf of the Commonwealth, the following portion of which was objected to:

Mr. Carter: Gentlemen of the jury, when I first came here this morning I had, really, no intention of getting myself involved in this case. A capable lawyer like Mr. Fuller needs my assistance like he needs a hole in the head. But after I had seen the defense in this case unfold, I have felt constrained to make a few remarks if for no reason than to at least get a few things off of my chest.

Mr. Williams: Your Honor, I am going to object to anything that Mr. Carter thinks now. I think he should confine himself to the evidence in this and no personal . . .

Judge Craig: Yes, sir, I don't think any attorney should state what his personal belief is one way or the other.

Mr. Carter: I haven't said anything about my personal . . .

page 170 } Judge Craig: I didn't understand Mr. Carter to say that, Mr. Williams.

Mr. Carter then proceeded with his argument on behalf of the Commonwealth, to which there was no further objection.

The Jury retired to the jury room at 5:25 P.M., and at 6:30 P.M. were called back by the Court, who made the following remarks prior to the adjournment of court:

Judge Craig: Gentlemen, please don't discuss this case with your wives, or your friends, or anyone at home. The discussions, the deliberations should be limited to the jurors.

Please don't discuss the case over night with anyone, and please do not read any newspaper account of the case if there is one. Just refrain from discussing it with anyone or talking about it until we come back tomorrow morning. When you come back tomorrow, we will let you adjourn again and continue your deliberations. Thank you very much.

Court convened on the morning of November 17, 1967 at 9:00 A.M., with the Defendant present and all Counsel present. Counsel waive the call of the Jury, and the Clerk announces the Jury present.

Judge Craig: Gentlemen, the Court wants to thank you for staying so late last night and for coming back
page 171 } this morning at this early hour. And all there is to do now is for you to return to the Jury room and resume your deliberations.

The Jury retired to the Jury room, and upon its return, gave its verdict to the Clerk, as follows:

"We, the Jury, find the accused guilty of embezzlement as charged in the indictment and fix his punishment at a fine of $500.00." signed, Irvin Montgomery, Foreman.

The Clerk: So say you all, gentlemen? So say they all.

Judge Craig: Gentlemen, is there any wish that the Jury be polled in this case?

Mr. Williams: Yes, sir.

Judge Craig: All right, sir. Would you poll the jury, please?

The Clerk then called the name of each juror, asking the question, "Is this your verdict?", with each Juror answering in the affirmative.

Judge Craig: All right, are there any other motions before the Jury is excused?

Mr. Williams: No, sir.

Judge Craig: All right, gentlemen, are there any motions after the Jury has been discharged?

page 172 } Mr. Williams: If your Honor, please, I have two motions for the record. I move the Court to set aside the verdict on the grounds that it is contrary to the law and the evidence, and the improper introduction of certain evidence that we have objected to previously during the course of the trial. My second motion would be, if

your Honor, please, that the Court set aside the verdict on the grounds that this jury could have, or could not have, been influenced by certain prejudicial news publicity by way of radio media that took place during the course of this week. It is my understanding that a certain newscaster here in the City, over a radio station, quoted certain court officials in reference to the laxity, or the failure, in the duty of a jury in a previous case that was heard this week. I submit to the Court that that could have had, and would have had a prejudicial effect upon this case. I ask the Court on those grounds to set aside this verdict.

Judge Craig: All right, sir. Mr. Williams, the Court is going to deny the motion to set aside the verdict on the grounds that the verdict is contrary to the law and the evidence, and without evidence to support it. The Court feels that a jury question was presented by the
page 173 } evidence, and that the jury has resolved the issue of fact about the wrongful or fraudulent intent against the defendant, and that this was an action which the jury was thoroughly authorized to take under this evidence. So, the motion will be denied on that ground and an exception noted on the part of the defense. As to the other motion, the Court understands that the defense attorney's objection is to some radio broadcast which concerned the extent of the punishment given by the jury in a previous robbery case, where the jury imposed a sentence of ten years in the penitentiary; and there was some comment over the radio that the Commonwealth's Attorney thought that the sentence was light, lenient, as the case may be. There has been no evidence presented here that this jury either heard the broadcast or that they were influenced by it. And by the verdict itself, the Court fails to see that there has been any influence of any prejudicial nature here, because having found the defendant guilty of embezzlement as charged in the indictment, the jury had the right to sentence the defendant to a term of up to twenty years in the penitentiary, or in lieu thereof to confine him in jail up to twelve months and, or, impose a fine up to $1000.00. The jury has seen fit here to
page 174 } impose no term of imprisonment but merely to fine the defendant the sum of $500.00, which the Court feels in view of the verdict of guilty, to be extremely lenient on this defendant; and the jury obviously has decided this case under the terms of the evidence. In other words, the Court doesn't feel that the jury's verdict was lenient in view of the evidence, but the Court feels that it was proper in view of the evidence. But as far as the maximum punishment that

could have been imposed in this case, the Court feels that the jury's sentence was a light one.

Mr. Williams: Well, if your Honor, please, I'm sure that's true, but the Court mentioned that I had not produced any evidence. Certainly, I haven't because I just learned of it. Therefore, I would like the opportunity to obtain a text of the broadcast and also have the jurors that were present, there are thirty of them I think that were here yesterday, put on the stand one by one and examined as to if they heard it, and what effect, if any, it had on them because I did not hear it myself, it is only hearsay on my part, but I understand that it was not only the Commonwealth's Attorney but the Chief of Police and the Captain of Detectives. And until I could obtain a copy of the text, of course, the

page 175 } Court would have nothing to base its ruling on.

Mr. Fuller: If your Honor, please, I object to that for this reason: The jurors were asked by the Court if they had heard anything about the case that would influence their opinion in any way. They all indicated that they had not, that there was nothing that they had heard or knew about the case that would influence their decision. To put them on the witness stand and ask them what went on in the jury room, in my opinion, would be an infringe on the rights of the jury; and, in effect, would be going back into the jury room and asking them what they considered when they have already indicated from the box in answer to the Court's questions that they heard nothing about the case, that they knew nothing about it that would influence their decision. It would, in effect, be, I think, impeaching the jurors because they have indicated that they had read or heard nothing about the case that would influence their decision.

Mr. Williams: As I understand it, this was not about the instant case, the Reil case, it was about in general what the jury had done with another case. The inference of it was that the jury was lax in its duty and that crime was committed on the streets because of this. I don't know,

page 176 } judge.

Judge Craig: Mr. Williams, the Court really though under the circumstances and in view of the verdict here, fails to see that this could have possibly influenced the jury in its verdict. There was only a fine imposed. The article on the radio did not go to the finding of guilt or innocence, but solely went to the question of the amount of punishment. And the most that you could say about this verdict on behalf of the defendant is that the fine of $500.00 should have been $100.00 or $50.00. So, it's purely a question of the monetary

amount, and the Court does not feel that we should subject this jury to that kind of inquiry under these circumstances. The Court just fails to see how this defendant's rights could possibly have been prejudiced in view of the verdict. So, I'm going to deny the motion.

Mr. Williams: All right, sir, we except, your Honor.

Judge Craig: All right, sir.

Mr. Williams: I've got one thing further, your Honor, if I may. I would like to request the Court that we be given some time to pay this $500.00 fine. This man has just been able to go to work. He can pay the costs probably, or a portion of it.

Judge Craig: Mr. Fuller, what do you say to that?

page 177 } Mr. Fuller: Well, I don't know. I assume he is under bond now. If Mr. Williams is going to note an appeal in this case, that would probably resolve . . .

Mr. Williams: Yes, sir.

Judge Craig: I would be inclined in any event, under the circumstances, to give this defendant time within which to pay this sum if that's his intention. What amount of time do you feel that you need?

Mr. Williams: Well, if your Honor, please, I would like to do this if I could; note an appeal before your Honor today and let your Honor decide on the bond that we have, and then talk with my client and see what he would like to do.

Judge Craig: Well, I would like to set a time within which we could allow the defendant to pay this fine at this point, if we could, rather than come back. I wonder if you could ask him right now and find out?

Judge Craig: If your Honor, please, what time would the Court allow us to pay this?

Judge Craig: Well, what I would like to know, really, from the defendant is how much time he feels that he would need in order to be able to do this without having him go without food and shelter, and so forth. In other

page 178 } words, what amount of time does this defendant feel is necessary?

Mr. Williams: Twelve months, your Honor.

Judge Craig: Mr. Williams, the Court feels that twelve months is, perhaps, a little too long. I'd be willing to give the defendant six months, which I think is very liberal.

Mr. Williams: All right, sir.

Judge Craig: That would be less than $100.00 a month. He is presently working in Richmond. Have the defendant stand, if you will, please. Mr. Reil, in accordance with the jury's

verdict, the Court sentences you under the verdict of embezzlement to a fine of $500.00 and gives you the period of six months from today within which to pay the fine and costs. Now, how much was the bond?

Mr. Williams: $1,000.00 I believe.

Judge Craig: All right, and we will continue the existing bond in this case, only though if there is an honest intention to appeal, Mr. Williams. Now, do you really want us to get this record up, and are you seriously going to note an appeal at this time?

Mr. Williams: Judge, I'm going to obtain a copy of that radio transcript, and I think in the interest of

page 179 } future court hearings that I'm going to pursue it.

Judge Craig: All right, sir. Mr. Williams, let me say this to you, that the Court would be most interested in obtaining a copy of this not only for this case, if it possibly had any effect, but for the future.

page 180 } On November 17, 1967 the Court, upon motion of Defense Counsel and upon its own motion, examined the Jury Panel as follows:

Judge Craig: Gentlemen of the jury and Mrs. Warren, if you would, please come up and have a seat in the jury box or on the front rows here. I would like for all other persons in the court room with the exception of the attorneys and the court officials to please leave and remain in the hall until we call you.

All right, let the record show that the jury is present and that there is no one in or about the court room except for the members of the jury panel during this criminal term of court, together with several attorneys and the three Commonwealth Attorneys. Would you, Mr. Tucker, swear the jury as on the *voir dire,* please?

T. F. Tucker, Clerk: Each member of the panel, hold up your right hand please. Do you and each of you swear that you shall make true and correct answers to all questions as may be propounded to you by the Court and by Counsel on this occasion so help you God?

Judge Craig: Ladies and Gentlemen, it is with some hesitation that I address you this morning on a rather delicate issue, but I ask each one of you to please answer the Court truthfully about this matter that I am going to speak to you about. It has come to the attention of the Court that a few days ago there was some address over the radio concerning the sentence of the jury in a case which was tried recently involving a charge of armed robbery. The Court is concerned

page 181 } as to whether or not this radio address, which the Court understands was broadcast more than once, may possibly have had some effect, or that it perhaps could have some effect, upon the jury's deliberations and decisions not only with respect to guilt or innocence, but with respect to the severity of the penalty imposed by the jury in future cases. Now, first of all let me ask you as a group how many of you, and I wish you would hold up your hands, heard such a radio broadcast. All right, let the record show that eight of the jury panel present indicated that they heard the broadcast. Now, Gentlemen and Mrs. Warren, the Court has in front of it a copy of the broadcast and there is an indication in it that some of the police, or court officials, or the Commonwealth's Attorneys had indicated that they thought that there should have been a more severe penalty. Do you Gentlemen and Mrs. Warren, do any of you feel that you may be influenced by this broadcast in your future deliberations? The Court is very interested to know whether you have been embarrassed by it, or affected by it, and whether or not it will influence you in any way, however slight, in your determination of either the verdict or the sentence in future cases. I am honest in asking you to please respond to this. I would like to know, perhaps, first whether or not there has been any general discussion about this among the members of the jury.

(Mr. Ansel King, a member of the panel raised his hand.)

page 182 } Judge Craig: Has there, sir?

Mr. Ansel King: Yes, I've discussed it.

Judge Craig: Do you feel that the jury may be perhaps embarrased somewhat by this, or influenced by it?

Mr. Ansel King: Well, frankly, Judge, I was a little indignant when I heard it.

Judge Craig: All right, sir.

Mr. Ansel King: But I don't think seriously it would affect the testimony. Frankly, I was a little indignant that a thing like that would be said when I, personally, was doing the best that I knew how, and I was sincere in my decision.

Judge Craig: The Court is not bringing this up to embarrass the jury, or question the jury's decision in the matter, but only to ask whether or not this has been discussed and whether or not there has been sufficient concern about it among the members of the jury so that it could possibly have some effect upon the jury's deliberations and the jury's conduct in future cases. And that is what the Court is concerned about. The

Court feels that the article was absolutely out of place and improper. The Court apologizes, Judge Aiken and I both do, to all members of the panel for any embarrassment that it caused them.

Mrs. Charles R. Warren, Jr.: Judge.

Judge Craig: Yes.

Mrs. Warren: I am the one that was talking to Mr. King about that. He asked me if I had heard it and I
page 183 } said that I had not. And he told me about it. And I could tell that from his attitude that I thought he was a bit upset. And I told him that I didn't think that that would have a thing in the world to do with it, that he had done what he thought he should, and that should be the end of it. I have heard no other discussion on this matter.

Judge Craig: Gentlemen, if there is any feeling, even the slightest, by any member of this jury panel that this broadcast may affect their future deliberations or verdicts, I want to know it now because I am going to excuse the whole panel if you feel that this has affected you. Yes, sir.

Mr. Wyatt: I think I should say that I only heard portions of this broadcast, but I did say to another member of the panel that it made me feel as if I couldn't determine myself whether I was even qualified to serve on the jury.

A. Juror: It was discussed at the coffee machine one morning, but that's all. I mean, it wouldn't have any bearing on me making a decision.

Mr. Samuels: I would like to make this comment, that, of course, a lot of people knew at the office that I was on the jury. They don't know whether I served on that case or not. And they said, "what are you doing letting this man off in two and a half years?" I said, "we're not supposed to discuss these cases during this term of court." I said, "all I can do is refer you to the paper." But in my mind we didn't give this man two and a half years.

page 184 } Judge Craig: Yes, sir. The Court understands that.

Mr. Samuels: And I was in a position of not being able to say anything, and yet somebody criticizing you for doing something.

Judge Craig: It is indeed unfortunate that this occurred, but we can't rectify that. It's happened, and the Court is not saying this as a matter of criticism, but is interested and wants all of you to understand, is whether or not you feel that you can serve for the remainder of the term without being influenced by this.

Mr. Samuels: I don't think that any criticism on my part would keep me from doing what I thought was the best in the future.

Judge Craig: I think we have eleven of the jurors who served on the case involving Mr. Reil, an embezzlement charge, and I wonder if any of you considered this article to have any possible effect upon the verdict in that case which was just rendered this morning?

(To which there was no affirmative answer)

Judge Craig: Mr. Williams, would you like to ask the jurors anything about that?

Mr. Fuller: If your Honor, please, before Mr. Williams does, I would like to make this objection to the Court. I have tremendous confidence in everybody that served on any jury down here. And before the Reil case was tried, the Court asked the jury if they had read or heard anything about the case that would influence their opinion. They all indicated that they had not. I think it's infringing on the
page 185 } rights of the jury in going behind closed doors to ask these men at this time if that influenced their decision when they already said it had not. And I object.

Judge Craig: All right, Mr. Fuller, sit down. Go ahead, Mr. Williams.

Mr. Williams: If your Honor, please, I'm sorry Mr. Fuller had to say that. I don't think it was proper. Let me have something to say now, Mr. Fuller. If your Honor, please, you said it was delicate, and it certainly is. Gentlemen and Mrs. Warren, I want you to know in all sincerity that I'm not here crying sour grapes or anything of that nature because you convicted my client. Really, I'm not. I've got other cases coming up in this term. I wouldn't hesitate one iota to you gentlemen hearing the three I've got coming up. I mean that. But I would like to ask you this: how many of you exactly either heard it or discussed it with some that did hear it? I think the Judge has said that. But how many of you actually heard from your other fellow jurors, or from neighbors, or from people in the office, or from acquaintances what was said, if anything, on the radio by this particular newscaster?

A Juror: Do you mean from the radio, or someone else?

Mr. Williams: Anyone else.

Mr. Charles R. Warren, Jr.: From anyone or on the radio. If you heard it from anybody else or on the radio.

A Juror: Are you asking just the ones that sat on this jury?

page 186 } Mr. Williams: Everyone, just everybody.

A Juror: Mr. Williams, are you talking about if you just heard the result of the case too?

Mr. Williams: No, sir, not the results, but this radio broadcast that happened earlier this week.

A Juror: Did I understand you to say that they had heard the Reil case mentioned, or what your Honor is talking about?

Mr. Williams: What your Honor is talking about is what I had reference to.

A Juror: Do you want to know whether we have heard it anyway?

Mr. Williams: Yes, sir.

A Juror: Heard about the broadcast?

Judge Craig: Yes, sir, heard it discussed, or mentioned in any way.

Mr. Charles R. Warren, Jr.: Sixteen of those that were here held up their hands.

Judge Craig: All right, sir.

Mr. Williams: Gentlemen and Mrs. Warren, let me ask you this too, if I may. Did this in any way have any inference to you, or any effect, that perhaps you had been too light or too lax in sentencing a man? Or did it affect your decision or question . . . Did you have any doubt or question in your mind that perhaps you had done something that had offended the Court or the Court officials?

Mr. Samuels: I felt like we, according to the page 187 } prosecution, we hadn't done what was right.

Mr. Williams: I see.

Mr. Samuels: I got that opinion from the people that I talked to.

Mr. Williams: I see. Did you sit on the Reil case, sir?

Mr. Samuels: No, sir.

Mr. Williams: I would like to direct a question to the gentleman that is sitting next to Mr. Belton there. I'm sorry, I don't recall your name, sir. What is it?

Mr. Wyatt: Wyatt.

Mr. Williams: Mr. Wyatt, did the broadcast in any way, or did you gather from the broadcast the inference that your decision in the prior case was not in keeping with what the Court or any of the court officials felt should have been done?

Mr. Wyatt: I can't say that. The only thing I could say is it made me wonder if I was qualified to sit on any jury.

Mr. Williams: Mr. Wyatt, did you discuss it with any other members of the panel?

Mr. Wyatt: If you mean afterwards, in the hall there were several of us on the jury standing in the hall waiting to come

in and we did discuss it. I can't tell you who it was, just who.

Mr. Williams: Mr. Wyatt, again, I don't mean to be picking on you, but why did this raise a question in your mind?

page 188 } Mr. Wyatt: Well, there's always been some question in my mind because quite frankly I think it takes a lawyer to really be able to sit and listen to all of the facts and determine what the verdict should be, truthfully.

Earl Willis: Mr. Williams, I heard part of the broadcast. There was something in there about the previous term this defendant had served. Now whether that's the argument, I don't know whether it was. I didn't hear any of the case at all. Looks like that was what the news announcer was maybe saying on his news. He was tried for a criminal thing before and he was tried again. I don't know. I just heard parts of it. He had just been taken away from a prison where he served his term and brought here to be convicted. So, I don't know whether the jurors knew that he had served a previous term or not, or whether he was a known criminal. I don't know. I didn't hear any of the case.

Mr. Williams: Gentlemen, Mrs. Warren, just one last question. Like I say, this is delicate and I certainly do not mean to offend anyone. I hope you realize that. After the broadcast and after some of the discussions that you had among yourselves and with other people, do you feel like that you have offended the Court in any way with your decision, and going further do you think that you were imposed to give a heavier sentence than you would have normally done so without this broadcast? In other words, do you feel like that

page 189 } on the Galen Reil trial that if you felt that he was guilty that the punishment should have been more because of what was said on the radio? Did it influence you in any way as to the sentence?

Earl Willis: Could the radio be taken . . . that's just one man's opinion, a radio announcer's opinion. I mean you can take it that way I believe. I think that was a radio announcer's opinion, not the Judge's, or the lawyers', or the Defendant, or anyone's.

Juror: Shouldn't these questions be directed primarily to the people who sat on that jury, because I know myself that I wasn't on it. And, therefore, I couldn't answer for them whether or not it influenced their decisions as far as people making comments.

Mr. Williams: Let me re-state it this way. Was anything said or anything discussed about the broadcast and what in-

fluence, if any, did that have on the Reil trial or future trials in this court? Not only the Reil trial.

Juror: I have only been on the jury on one, and, of course, this was about the boy that was given the ten years the day before and I heard that on the radio; but I don't believe in my own mind that it entered anybody's mind on the particular jury that I was on the following day. I'm just speaking for myself.

Mr. Williams: Thank you so much.

Judge Craig: Members of the jury, let me ask you one final question here. Do you feel that in a future case that might be presented here before you that you
page 190 } would be inclined to be more severe in the penalty because of this radio broadcast? Now, if anyone feels that way I want him to say so.

(To which they all responded in the negative)

Judge Craig: All right, are there any questions that anyone else wants to ask the members of the panel?

Mr. Charles R. Warren, Jr.: I would just like to ask this panel one question. The broadcast stated that "with the entire nation concerned about the surge of crime in this country, police and court officials took a dim view . . ." Do you members of the jury within your own minds when you use the term, "court officials," in this manner classify among the court officials as the Judge of this court. Those who would take that term, "court officials," to include the Judge of this court, I would like to have your hands raised, please. All of you that would classify a court official as being a Judge of this court. All of you hold up your hands again, please, and I would like those counted.

Judge Craig: I think that's all but one or two.

Mr. Charles R. Warren, Jr.: Yes, sir. Did you gentlemen in hearing this broadcast or discussing it, ever hear that term used that the court officials took a dim view of the verdict of the jury in that particular case?

Judge Craig: I would like to know whether any of the members of the panel had an idea that the Judge himself said it was disappointed or disagreed with the verdict? Did anybody have that idea?

page 191 } Mr. Samuels: I was told that Judge Aiken made the statement. Of course, I didn't believe it.

Judge Craig: But you didn't get the impression because you didn't believe what someone said?

Mr. Samuels: That's right. I didn't think he would say that.

Judge Craig: All right.

Mr. Link: I just want to ask one question. There seems like there is some implication to me. Did any of you all talk with me, or have I said anything to you, have you heard me say anything to anybody here? Any of you? Raise your hands, all of you, if you heard me say anything or heard Mr. Skenderis, or Mr. Fuller say anything in your presence or the presence of the jury room other than arguing this case before the jury here. I know you heard me say some of the things practically that were said, I guess, on the broadcast. They were said by me when I argued the case. Have you heard me discuss it with any one of you all? Have you ever overheard me in the hall or any place else say anything about any case I have tried up here or that we're going to try?

(To which they all respond in the negative)

Mr. Link: Thank you.

Judge Craig: All right, gentlemen, is that all the questions? Now, members of the panel, to conclude let me say that your verdict and your sentence is solely your right. It page 192 } is no one else's business. The law of Virginia puts the decision in the case in your hands. This decision should not be influenced or subjected to any influence by anyone whether it be the Court, or any of the attorneys other than, of course, the proper argument during the case, or any of the newspapers, or the police department, or anyone. And the reason that we called you here and stated this to you was in an effort to determine whether or not you could serve in a fair and impartial manner on future cases. And that's the sole purpose of this address to you. We don't want anyone, the Court or anybody else, to influence your decision in any case. That is your decision and no one should interfere with it or attempt to influence it whether it be a statement made directly to you or by information released to the newspaper or any other manner, and if anyone feels that they can't proceed on that basis on this jury panel, I want to know it now and we are going to excuse you. Does anyone here feel that they have been subjected to influence which would make a difference in their deliberations in the cases that we will try from now on or any that we have tried?

(To which they all respond in the negative)

Judge Craig: All right, you are all excused now until Monday morning unless, of course, we call you and advise you otherwise. Thank you very much.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error and *Supersedeas* Awarded	1
Record	2
Indictment	2
Verdict of Jury	3
Judgment—November 17, 1967	3
Affidavit of Poverty	4
Judge's Certificate	5
Notice of Appeal	5
Assignments of Error	6
Proceedings	8, 31, 48, 85, 94
Witnesses:	
John W. Daniel	18
John C. Ryan, Jr.	22, 47
William A. Hopkins	41
Harrison Throckmorton	53
William E. Yeatts	58
Galen Randolph Reil	66, 87
Lois Daniel Dalton	90
Richard Ayscue	92
Charles H. Davis	94